

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 12, 2006

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT

GREGORY N. JEFFRIES  
JOHN PARSONS

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist
ESTHER BUSHMAN, ESQ.	General Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK  
MAXINE BROWN-ROBERTS

This transcript constitutes the minutes from the public hearing held on December 12, 2006.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

AGENDA ITEM	PAGE
CALL TO ORDER:	
Geoffrey Griffis. . . . .	5
PRELIMINARY MATTERS:	
APPLICATION 17542, Withdrawn . . . . .	.13
APPLICATION 17545	
Paul Tummonds, Pillsbury, Winthrop, Shaw, Pittman . . . . .	.15
Architect, Jim Greenwell. . . . .	.21
Jubilee Housing, Jim Knight Office of Planning Report, Ms. Brown-Roberts. . . . .	.37
Closing by Applicant, Mr. Tummonds. . . . .	.46
Vote: 5-0-0 to approve . . . . .	.56
APPLICATION 17537 . . . . .	.57
Victor Tabbs, Applicant . . . . .	.59
Office of Planning, Matt Jesick . . . . .	.92
ANC 6B, Commissioner Kenan Jarboe . . . . .	110
Witnesses in support and opposition	
Patrick O'Meara. . . . .	159
David Schneider. . . . .	168
Closing by Applicant. . . . .	181
CALL TO ORDER	
Geoffrey Griffis. . . . .	192
APPEAL 17538. . . . .	199
Preliminary matters	
Board Member Mann. . . . .	200
Motion to Dismiss. . . . .	207
Vote 3-2-0 to deny motion to dismiss . . . . .	249
Presentations . . . . .	250
John Goodman, President	
Woodley Park Community Association	
Commissioner Nancy MacWood, Chair	
ANC C3. . . . .	266
Zoning Administrator Crews . . . . .	284
Richard Nettler, Intervenor. . . . .	309
Ilan Sharfstein, JBG Companies. . . . .	317
Bill Anderson, ACG Architects . . . . .	327

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

Armando Lourenco, zoning  
consultant. . . . . 335

Closing statements

Intervenor, Mr. Nettler. . . . . 382

Government, Mr. Taylor . . . . . 386

Appellant, Mr. Goodman . . . . . 391

Statement of Commissioner Lindeman. . . . . 413

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

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

10:20 a.m.

CHAIRMAN GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 12th of December, 2006 the Board of Zoning Adjustment for the District of Columbia public hearing.

My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair Ms. Miller, and Mr. Etherly, our other esteemed member of the Board.

Representing the National Capital Planning Commission with us this morning and every morning, Mr. Mann representing the National Capital Planning Commission. And representing the Zoning Commission with us is Mr. Jeffries for this morning.

Copies of today's hearing agenda are available for you.

Mr. Jeffries is usually not introduced with the musical accompaniment. However, we like to spice it up here once in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1       awhile.

2                       The agenda is available for you on  
3 the table where you entered into the hearing  
4 room. Pick it up, you'll see where you are on  
5 the chronology. However, I am changing that  
6 chronology so I will do that after my opening  
7 remarks.

8                       I'm going to speed through this to  
9 make up some time. We appreciate everyone's  
10 patience. We had an extensive amount of work  
11 to do in Executive Session this morning, but  
12 we will get right into morning session and  
13 those cases on the agenda.

14                      It is very important for everyone  
15 to understand several things. The first, all  
16 our proceedings are held in the open and  
17 before the public. They are being recorded.  
18 They're recorded in two fashions. First, and  
19 most importantly, is the court reporter who is  
20 sitting on the floor to my right. They are  
21 creating the official transcript of this  
22 session and hearing.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1                   Attendant to that several things  
2 must happen. First, you must fill out witness  
3 card, which cards are available for you where  
4 you entered into. Also, they are available at  
5 the table where you will provide testimony to  
6 the Board.

7                   Those two cards go to the court  
8 reporter prior to coming forward.

9                   When you are ready to address to  
10 address the Board you will need to state your  
11 name and address for the record. You only need  
12 to do that once. You will need to do that in  
13 the microphone and the microphone should be  
14 on. I'll give you that technical direction if  
15 required.

16                   It should be noted that only that  
17 which is said into the microphone will be on  
18 the record and everything that happens in this  
19 room should be on the record. So if you want  
20 to address the Board, you're going to need to  
21 come forward and make yourself comfortable and  
22 have a seat.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1

2

3

4

5

6

7

I would also ask that everyone cell phones and other noise making devices as they disrupt the transmission of your voice to the court report and also may, in fact, set people off their cadence as they're providing such great testimony for the Board.

8

9

10

11

12

13

14

15

16

17

The second way we are being recorded is, of course, we're being broadcast live on the Office of Zoning's website. There are cameras all throughout the room. Don't worry about that, they'll move, they'll catch. And it is important, however, that you are on a microphone so that anyone that is viewing sessions will, in fact, be able to hear you and also you will be part of the official record.

18

19

20

Jumping right into special exceptions and variances, of which we will hear this morning, this is the order.

21

22

We will hear the case presentation by the applicant.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1           Secondly, we will hear any Government  
2 reports attendant to those applications.

3           Third, we will hear from the ANC  
4 within which the property is located.

5           Fourth, we will call forward any  
6 person or parties in support of the  
7 application.

8           Fifth, will be persons or parties  
9 in opposition to an application,

10          Sixth, finally we return back to  
11 the applicant for any rebuttal witnesses or  
12 closing remarks or summations that they might  
13 have.

14          I will go through each of those  
15 steps if you don't catch that chronology, but  
16 that is it. We start with the applicant, we  
17 finish with the applicant.

18          Cross examination is permitted by  
19 the applicant and parties in a case we will  
20 have to establish, particular parties in each  
21 individual case. However, the ANC within  
22 which the property is located is automatically

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 a party in the case and therefore, will be  
2 able to present a full hearing and also is  
3 able to cross examine witness.

4 The record will be closed at the  
5 conclusion of each case, and I imagine we will  
6 finish each case on our morning agenda this  
7 morning. We do at times keep the record open  
8 for additional submissions of information into  
9 the record. We will be very specific if  
10 additional information is required and/or the  
11 record has been kept open for those purposes.  
12 You will not leave this hearing room not  
13 understanding the fact that you owe us more  
14 information or the record is closed or, is in  
15 fact, open.

16 The Sunshine Act requires that  
17 this Board conduct its hearings and its  
18 procedures in the open and before the public.  
19 We do, as I've indicated this morning, enter  
20 into Executive Sessions both during or after  
21 hearings on cases. This is in accordance with  
22 the rules, regulations and procedures. It is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 also in accordance with the Sunshine Act.

2           It should be fully understood,  
3 however, two things. First, the Board's  
4 decision on cases is exclusively based on the  
5 record that is created before us today. So  
6 it's absolutely important in our files,  
7 folders that anything that you would like us  
8 to deliberate on is put into the record. And  
9 that can be done orally today in person and/or  
10 can be submitted in writing. These are  
11 contested cases, and therefore we will  
12 exclusively base our decision on that.

13           The second piece to that is  
14 attendant to our procedures today. We ask that  
15 people if we are on recess or at lunch breaks  
16 or anything of that sort and you see a Board  
17 member off the dias, please don't engage in  
18 private conversations this afternoon as it may  
19 well give an appearance of us receiving  
20 additional information that is outside of the  
21 public record.

22           With that, let me say a very good

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 morning and move on to Ms. Bailey, who is with  
2 the Office of Zoning. We have the Office of  
3 Attorney General represented, Mr. Moy with us,  
4 also with the Office of Zoning.

5 I'd like to get quickly into  
6 preliminary matters. Actually, why don't we  
7 have people sworn in first if they would.  
8 Anyone that's going to present testimony to  
9 the Board today, if you would please stand and  
10 give your attention to Ms. Bailey, she is  
11 going to swear you in.

12 (Witnesses sworn).

13 CHAIRMAN GRIFFIS: Thank you very  
14 much.

15 With that then, let me also say,  
16 Ms. Bushman is with us who is the attorney to  
17 the Office of Zoning.

18 And let us go to preliminary  
19 matters. Preliminary matters are those which  
20 relate to whether a case will or should be  
21 heard today, if proper and adequate notice has  
22 been provided, if you are not prepared to go

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 forward with a case today or you believe a  
2 case on our agenda is not prepared to go  
3 forward; these are elements of preliminary  
4 matter.

5 I would ask that you come forward,  
6 have a seat at the table if you have a  
7 preliminary matter for the Board's attention.

8 I'll ask Ms. Bailey if she's aware  
9 of any preliminary matters for the Board's  
10 attention?

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

13 The preliminary matter that I have  
14 concerns application 1752 of Elizabeth R.  
15 Shoemaker Homes, on behalf of The Fund For  
16 American Studies. That application was  
17 withdrawn, Mr. Chairman.

18 CHAIRMAN GRIFFIS: Excellent.  
19 Thank you very much. And my understanding is  
20 no official action of the Board is required,  
21 is that correct?

22 MS. BAILEY: No additional

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 information is required at this time.

2 CHAIRMAN GRIFFIS: Excellent.

3 Thank you very much.

4 With that then, if I don't see any  
5 other indication under preliminary matters, I  
6 have one preliminary matter that I am going to  
7 move the order and call 1745 first in our case  
8 proceedings this morning. And then we can  
9 move ahead to the other cases on the agenda.

10 So with that, Ms. Bailey, if  
11 you're ready you can call the case.

12 MS. BAILEY: Application 17545 of  
13 Jubilee Housing, Inc., pursuant to 11 DCMR  
14 3104.1 for a special exception to enlarge a  
15 nonconforming structure under subsections  
16 2001.3, to allow the renovation of an  
17 apartment building in the C-2-A District at  
18 premises 2233 18th Street, N.W. (Square 2560,  
19 Lot 863).

20 CHAIRMAN GRIFFIS: Excellent.

21 With that, I have one preliminary  
22 matter, but let me have the panel just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 introduce themselves for the record.

2 MR. TUMMONDS: Good morning. My  
3 name is Paul Tummonds with Pillsbury,  
4 Winthrop, Shaw Pittman.

5 With me here this morning is Jim  
6 Knight, Executive Executor of Jubilee Housing  
7 and Jim Greenwell, the project architect for  
8 The Sorrento Building that we are presenting  
9 here this morning.

10 CHAIRMAN GRIFFIS: Excellent. Is  
11 anybody else here in the audience here for  
12 this application? Just a show of hands? Any  
13 other additional person? Okay.

14 It just occurred to me to mention  
15 this. Let me put on the record, of course,  
16 that the architect in this case is my previous  
17 employer of -- gosh, it's been over a year  
18 now. However, memories are fond. But in  
19 direct point, I would bring that to the  
20 Board's attention and open myself up for any  
21 questions from the Board or anyone here  
22 present for this application. Let me just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 state I know that I can proceed with this in  
2 a judicial manner and not in anyway swayed or  
3 convinced just by the fact of knowing the  
4 architecture firm in this case.

5 But, can I answer any questions?

6 Is there concern or opposition from the  
7 Applicant in me proceeding on this case?

8 MR. TUMMONDS: None.

9 CHAIRMAN GRIFFIS: Shall we get  
10 more coffee?

11 Excellent. Okay. Well, we won't  
12 make a big thing about it. Let's move ahead  
13 then if there's no comments or questions that  
14 I take on this.

15 Mr. Tummonds, we'll turn it over  
16 to you.

17 Noting this, and I'll ask my Board  
18 Members if they agree, this case is incredibly  
19 complete in its submissions. I think you could  
20 stand on the record or summarize, if you  
21 would, and then we can get into this. I'm  
22 sure, knowing this Board, that we'll have some

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 particular questions but we might better spend  
2 in our time going directly to this.

3 MR. TUMMONDS: Great. Absolutely.

4 And there are really two things  
5 that we want to address today. First is the  
6 fact that this is in fact a variance  
7 application. I know that there was some  
8 concern about the official notice.

9 CHAIRMAN GRIFFIS: I'm glad to  
10 hear that.

11 MR. TUMMONDS: There was dialogue  
12 with the ANC, and I think the ANC provided  
13 evidence to the Office of Planning and the BZA  
14 that in fact they always understood this to be  
15 a variance application and they agreed with  
16 our rationale as how the variance standards  
17 have been satisfied.

18 The other issue is that in order  
19 to help finance this proposed renovation of  
20 this building for low income residents, the  
21 Applicant has been pursuing Historic  
22 Preservation tax credits which stay at the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 Historic Preservation office.

2                   Since the November 28th submission  
3 to the BZA, some additional changes have been  
4 made to address those concerns raised by the  
5 State Historic Preservation Office, the SHPO,  
6 with regards to the interior configuration of  
7 an existing stairwell, such that the  
8 information we presented to you today and the  
9 information that Mr. Greenwell will talk  
10 about, we are required to keep a stairwell  
11 such that we are adding an additional 110  
12 square feet of gross floor area for a total of  
13 940 square feet of additional gross floor area  
14 we are requesting in this BZA application.  
15 961 additional square feet of gross floor  
16 area. Mr. Greenwell will go through that.

17                   We believe that this additional  
18 gross area does not change our rationale as to  
19 how the variance standard is met. Again, this  
20 is all internal to the building. To anyone  
21 walking by you would not know that we are  
22 adding any additional gross square footage.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1                   CHAIRMAN GRIFFIS: So is that why  
2 we have ASK 02 Exhibit 8 a stairwell that's  
3 indicated as a new stair for historic credit?

4                   MR. TUMMONDS: That is correct.

5                   CHAIRMAN GRIFFIS: Okay.

6                   MR. GREENWELL: That is correct.

7                   CHAIRMAN GRIFFIS: Woof. Okay.

8                   MR. TUMMONDS: Mr. Greenwell can  
9 now go through the revised plans and make  
10 everyone's aware. And in order to expedite  
11 this process, Jim Knight from Jubilee Housing  
12 will be here to answer any questions that you  
13 may have about this project.

14                   CHAIRMAN GRIFFIS: Good. Okay.  
15 I'm going to start with the first thing that  
16 you brought up in terms of the advertising for  
17 a special exception when in fact this was a  
18 variance all the way through.

19                   Am I correct in the fact that you  
20 had submitted an application for a variance,  
21 is that correct?

22                   MR. TUMMONDS: That's correct.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   CHAIRMAN GRIFFIS: Okay. So at  
2                   some point along the way there was some  
3                   mislabeling of the advertising that went out.  
4                   And it's your understanding the letters that  
5                   have been submitted, if I look at these  
6                   correctly, that all the way through was always  
7                   talked about and addressed as a variance.

8                   MR. TUMMONDS: Absolutely. And I  
9                   think you hit it right on the head; it was a  
10                  mislabeling and nothing more. We were made  
11                  aware of this yesterday.

12                 CHAIRMAN GRIFFIS: Okay. And the  
13                  material and the graphic representation from  
14                  the public in terms of the ANC presentation  
15                  hasn't changed from when you submitted them to  
16                  the final outside of what we've had submitted  
17                  today?

18                 MR. TUMMONDS: That's correct.

19                 CHAIRMAN GRIFFIS: Thank you.

20                 Any questions, clarifications?

21                 VICE CHAIRPERSON MILLER: I just  
22                  also want to reference the ANC report since

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 the ANC's not here, and in that they make  
2 reference to no issues or concerns with the  
3 requested variance and the special exception.  
4 So either being used interchangeably or what,  
5 but at least they were on notice that variance  
6 relief was an issue.

7 CHAIRMAN GRIFFIS: Good. Good.  
8 Okay. I think that's an important aspect to  
9 bring up in terms of the substance and  
10 material were always addressed. And there it  
11 is.

12 Let's move ahead.

13 MR. GREENWELL: Good morning. My  
14 name is Jim Greenwell. I'm a resident of the  
15 District of Columbia, and I'm a registered of  
16 architect. I've lived in the District of  
17 Columbia for 31 years.

18 I would like to just first locate  
19 the building. I'm sure you know where it is,  
20 but it is located at the corner of Kalorama  
21 Road and 18th Street. It is an existing  
22 building that was built in 1905.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 The renovations for the building--

2 CHAIRMAN GRIFFIS: How long have  
3 you owned the building.

4 MR. KNIGHT: Jim Knight with  
5 Jubilee Housing. The answer would be about 25  
6 years.

7 CHAIRMAN GRIFFIS: Okay. Thank  
8 you.

9 COMMISSIONER JEFFRIES: And what  
10 is it used as currently? What's the current  
11 use?

12 MR. GREENWELL: The current use is  
13 affordable housing.

14 COMMISSIONER JEFFRIES: Okay. So  
15 it is -- okay.

16 MR. GREENWELL: It's rental.  
17 Jubilee Housing has an affordable housing  
18 nonprofit organization. They have seven  
19 buildings in the Adams Morgan area, all of  
20 which are affordable housing rents.

21 CHAIRMAN GRIFFIS: So the big  
22 picture is this a reconfiguration or a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 reprogramming of the affordable housing  
2 component of Jubilee Housing and this  
3 building?

4 MR. KNIGHT: That's correct.  
5 We're in the midst of a multi-year project, if  
6 you will, to rehabilitate the seven properties  
7 that we own in the neighborhood. We've been  
8 before you on a couple of those other projects  
9 along the way. Three are under construction  
10 now. This building, if we're successful,  
11 construction won't start for several months,  
12 but we are preparing for reconfiguration that  
13 will allow us to better house the families  
14 that are in the properties now. So there are  
15 some reconfigurations in the property, but  
16 that's not the main reason that the variance  
17 is needed.

18 COMMISSIONER JEFFRIES: So you  
19 have 31 units currently and you're going to  
20 redevelop to 23 --

21 MR. KNIGHT: Twenty-three or 24.

22 COMMISSIONER JEFFRIES: So and you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 actually have your plan on where these  
2 families are going and so forth and so on?  
3 And the difference, obviously, in terms of  
4 where those people are going?

5 MR. KNIGHT: Right. When it does  
6 come time to vacate the property for  
7 construction, we are responsible for finding  
8 suitable mid-term housing for folks. And in  
9 some cases that's other Jubilee Housing  
10 properties.

11 COMMISSIONER JEFFRIES: Yes.

12 MR. KNIGHT: In some cases it's in  
13 other places in the city. In either case, we  
14 subsidize any out-of-pocket expense to the  
15 households.

16 CHAIRMAN GRIFFIS: Good.

17 MR. GREENWELL: The renovations  
18 for the building, as Mr. Knight said, we're  
19 going from 31 units down to 23 units. And as  
20 part of the renovation will be upgrading the  
21 buildings with all code compliant issues, and  
22 that's one of the issues why we're adding some

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 of the additional FAR. We're also adding ADA  
2 in excess from an elevator accessible from  
3 Kalorama. And then also the Historic tax  
4 credit issue requires us to add an additional  
5 egress stair.

6 I'm going to run through the  
7 additional FAR areas.

8 Also the building is a four story  
9 building with a basement. It has an existing  
10 central open staircase, which is not code  
11 compliant. So we're bringing the building up  
12 to code by adding the necessary egress stairs.

13 The one stair, which is located  
14 here and you can see the orange section of the  
15 additional FAR, we are actually enclosing an  
16 existing light well and locating the stair in  
17 that light well. The light well is not large  
18 enough, however, to accommodate the full size  
19 of the stair. So we have to increase the size  
20 of that light well.

21 The other FAR areas is the second  
22 stair. And because of the tax credits I'm

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 going to back up a little bit. Because of the  
2 tax credits we cannot use the existing central  
3 stair as a means of egress. Therefore, we have  
4 to add two code compliant stairs. So we will  
5 now have three stairs in the building.

6 CHAIRMAN GRIFFIS: The use of the  
7 tax credit, just to put it in a quick  
8 perspective here, a tax credit, tell me if I'm  
9 wrong, is some historic body comes in and says  
10 okay, we'll give you some financing for this  
11 but these are the certain aspects that you  
12 have to do.

13 And what you're telling us is that  
14 you can't enclose that existing stair, which  
15 would be code compliant closed, make it fire  
16 protected because the historic folks are  
17 telling you keep that nice and open, and  
18 that's the way it is.

19 MR. GREENWELL: That is correct.

20 CHAIRMAN GRIFFIS: Okay.

21 MR. GREENWELL: That is correct.

22 BOARD MEMBER MANN: If I could

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 just ask a question, I think doesn't have  
2 relation to the relief that you're requesting.  
3 What is a smoke curtain?

4 MR. GREENWELL: A smoke curtain is  
5 a -- it's an 18 inch deep clear piece of glass  
6 which will surround the opening the stair.  
7 And what it does is it keeps the smoke, the  
8 smoke will build up, smoke rises to the  
9 ceiling and tries to find a way or an opening  
10 to move up. So what the smoke curtain does or  
11 this glass curtain is that it contains the  
12 smoke in the corridor and keeps it from  
13 funneling up through the staircase.

14 BOARD MEMBER MANN: So even with  
15 that it still doesn't make it code compliant  
16 and yet it does meet the historic preservation  
17 requirements?

18 MR. GREENWELL: That is correct.

19 BOARD MEMBER MANN: That's  
20 interesting.

21 MR. GREENWELL: Because it does  
22 not create a two hour enclosure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 BOARD MEMBER MANN: Okay. Thanks.

2 MR. GREENWELL: So then the second  
3 staircase will be located in this location and  
4 will go all the way through the building.  
5 Actually, in this diagram I do not show the  
6 location of the stair on the typical floor  
7 because we are in the process of designing  
8 this at this point. But we know that the  
9 stair has to be there and it does have to come  
10 to the basement to allow for two means of  
11 egress out of the base. So that's why this  
12 addition, whatever it is, 132 square feet is  
13 required for the second means of egress.

14 CHAIRMAN GRIFFIS: Did you  
15 calculate the FAR for the portion of the  
16 property that goes over the property line? Is  
17 this entire footprint calculated into the FAR?

18 MR. GREENWELL: Yes.

19 CHAIRMAN GRIFFIS: Fascinating.  
20 Okay. An interesting point because, frankly,  
21 we're not going to do the calculation here,  
22 but the portion of which that cross the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 property line would not calculate into FAR.  
2 This is an interesting nonconformity of this  
3 building or an existing condition let's call  
4 it that it actually is built beyond of which  
5 that would subdivide it. Who knows why. It's  
6 not our issue at this point. But Mr. Mann  
7 actually brought that to the Board's  
8 attention, so we'll give him full credit for  
9 giving you those square footage amounts.

10 But I think the substance is  
11 pretty straightforward of what we're looking  
12 at here. Okay.

13 MR. GREENWELL: So the additional  
14 FAR is made up of enclosing the light well,  
15 which goes full four floors, the additional  
16 second means of egress, which will extend down  
17 to the basement level. So we are requesting  
18 additional FAR for the staircase on the  
19 basement level.

20 And then as part of the excavation  
21 of the other second means of egress and the  
22 LDA elevator, we are requesting -- because we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 always have to excavate this, we have to  
2 excavate this; it's just as easy to go ahead  
3 and pretty much clear out the rest of the half  
4 of the basement. So we are asking for  
5 additional FAR in this area which will be  
6 used either for a community room or possibly  
7 an additional unit.

8 So to summarize, the issues are  
9 code compliance, ADA access, historic tax  
10 credits or HPRB requirements.

11 I want to make a point that there  
12 are no external changes to the building. That  
13 we are not adding any additional additions,  
14 extensions, whatever. This is all internal  
15 work to the basement and the light well.

16 Thank you very much.

17 CHAIRMAN GRIFFIS: Excellent.

18 MR. TUMMONDS: That concludes our  
19 presentation. We're available for any  
20 questions.

21 CHAIRMAN GRIFFIS: Good. I'm not  
22 sure the folks that have to dig out that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 basement would say it's just as easy to take  
2 out the rest. It's an interesting terminology  
3 to use for practical difficulty. But if I  
4 understand what you're saying, and it's very  
5 clear in terms of the graphics your  
6 presentations:

7 (1) You're having to go down into  
8 that level, which is not excavated now, to get  
9 an elevator pit, an elevator machine room  
10 access to that to the stairs to go down on  
11 each of those areas. Because three quarters  
12 of that, if I'm looking at that correctly in  
13 the graphs, or already if not more is already  
14 open and utilized so that that's a small  
15 quarter at that point of what you're into  
16 already.

17 And if I understand the written  
18 submission, the presentation today in addition  
19 to having those kind of mechanical or core  
20 elements that are coming down, part of the  
21 program also is to provide a more common area  
22 for the building of which is being all part of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 reconfigured. And that there is an opportunity  
2 there as you're in doing the work in that  
3 scope to continue to the edges of the  
4 building. Is that correct.

5 MR. GREENWELL: That is correct.

6 CHAIRMAN GRIFFIS: Okay.

7 Questions, clarifications?

8 The other piece of it is on the  
9 graphic on the lower level that you're talking  
10 about the light well, that just the part that  
11 is talked about as increased and graphically  
12 represented is increased, that's just a light  
13 well area. The other portion of the stair  
14 doesn't count towards FAR because it already  
15 is in FAR in the building, is that right?

16 MR. GREENWELL: That is correct.

17 CHAIRMAN GRIFFIS: Okay. But that  
18 whole stair is new?

19 MR. GREENWELL: That is correct.

20 MR. GREENWELL: Gotcha. Okay.

21 Ms. Miller?

22 VICE CHAIRPERSON MILLER: This is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 for Mr. Knight. Just to context I think, I'm  
2 wondering when you're renovating the other  
3 buildings, you're talking about seven  
4 buildings, are you trying to find program  
5 areas in those buildings as well?

6 MR. KNIGHT: Indeed, that is one  
7 of the goals of the entire renovation process.  
8 We're able to add a technology center, a  
9 wellness center, some other multipurpose  
10 classroom space in each of the properties. The  
11 goal is to get at least one notable amenity in  
12 each property.

13 VICE CHAIRPERSON MILLER: There  
14 are different amenities in each different  
15 property?

16 MR. KNIGHT: Yes. The technology  
17 center is one building, the fitness center is  
18 in another building, this space would be in  
19 yet another building so that Jubilee residents  
20 could use any of those spaces whether they  
21 live in building A or building B.

22 VICE CHAIRPERSON MILLER: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Great. Thank you.

2 CHAIRMAN GRIFFIS: It's an  
3 interesting perspective to bring up, and I  
4 think we've seen it already and this is a  
5 perfect example of the market or program --  
6 I'd call this a market is actually creating  
7 what we used to refer as residential  
8 recreation space, you know. But the market  
9 forces are taking care of that obligation or  
10 amenity in terms of providing it, this  
11 obviously being a reconfiguration of an  
12 existing. But we've also I think seen it  
13 recently in new construction.

14 Additional questions?

15 COMMISSIONER JEFFRIES: But you  
16 could in fact could in fact, you know, just  
17 break down one of the existing or two of the  
18 existing apartments and make a multipurpose  
19 room?

20 MR. KNIGHT: We could. The  
21 difficulty is we don't want to displace  
22 households who currently live in units in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 order to create extra space.

2 COMMISSIONER JEFFRIES: But you  
3 are going to displace some households?

4 MR. KNIGHT: No, not in this case.  
5 The --

6 COMMISSIONER JEFFRIES: I mean 31  
7 to 23, I guess that's what --

8 MR. KNIGHT: Okay. Maybe I didn't  
9 answer that clearly enough.

10 When we look across the seven  
11 properties we consider it one portfolio. We  
12 have taken into consideration the vacancy  
13 that's exist in the other properties. And so  
14 households sort of get moved around post-  
15 renovation in such a way that nobody's  
16 permanently displaced.

17 COMMISSIONER JEFFRIES: Okay.  
18 Great. So you have eight households that will  
19 not return to this building, you have places  
20 for them in your other properties?

21 MR. KNIGHT: Correct.

22 COMMISSIONER JEFFRIES: But you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 don't have ten, you have eight?

2 MR. KNIGHT: We actually have more  
3 vacancies at the moment than we have unit  
4 reductions in this particular property.

5 COMMISSIONER JEFFRIES: Okay.

6 MR. KNIGHT: But over the course  
7 of all seven some have more, some have less  
8 and it balances out.

9 COMMISSIONER JEFFRIES: Okay.

10 MR. GREENWELL: May I address that  
11 issue as well?

12 COMMISSIONER JEFFRIES: Sure.

13 MR. GREENWELL: One of the things  
14 that we're doing in this building is that we  
15 are creating some three bedroom -- some two  
16 bedroom units and three bedroom units.

17 COMMISSIONER JEFFRIES: Okay.

18 MR. GREENWELL: So that we are  
19 trying to -- we are accommodating the need for  
20 larger families in the affordable housing  
21 market.

22 COMMISSIONER JEFFRIES: Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Anything else?  
2 Any other questions, clarifications?

3 MR. TUMMONDS: No.

4 CHAIRMAN GRIFFIS: Anything else.

5 MR. TUMMONDS: That concludes our  
6 presentation.

7 CHAIRMAN GRIFFIS: Excellent.

8 Thank you very much. Thank you all very much.

9 I know it's already been  
10 mentioned, but is the ANC present today? The  
11 ANC? Very well.

12 If there's nothing further from  
13 the Board or questions, let's move ahead to  
14 the Office of Planning.

15 MS. BROWN-ROBERTS: Good morning,  
16 Mr. Chairman and Members of the Commission.  
17 Maxine Brown-Roberts from the Office of  
18 Planning.

19 And I will stand on the record.  
20 Our analysis, I think, stands except for that  
21 we would like to amend it to reflect the  
22 increase in the FAR. We think that this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 addition to a nonconforming structure will not  
2 be an detriment to the community and we do  
3 support this application and recommend  
4 approval.

5 Thank you, Mr. Chairman.

6 CHAIRMAN GRIFFIS: Excellent.

7 Thank you very much.

8 Is there questions from the Board,  
9 clarifications?

10 Does the Applicant have any cross  
11 from the Office of Planning?

12 MR. TUMMONDS: No.

13 CHAIRMAN GRIFFIS: Very well.

14 Thank you very much. Excellent report.

15 Appreciate the graphics and also helped to  
16 illustrate the analysis. It was fascinating  
17 to see actually the zone boundary line, too,  
18 on the map in the back of the property and  
19 possibly have more interest than just the  
20 aerial photograph just to see the eclectic  
21 nature of that area.

22 Very well. If there's nothing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 further from Office of Planning, we do  
2 appreciate that.

3 I don't have any other significant  
4 reports reporting on this application, unless  
5 a Board Member or applicant is aware of any  
6 other. This is not a historic district,  
7 although we have talked about an historic tax  
8 credit.

9 MR. TUMMONDS: This is the new  
10 created Washington Heights.

11 CHAIRMAN GRIFFIS: That's right.  
12 And the Office of Planning put that in their  
13 report, which I should have made note of. But  
14 I'm still getting familiar with that  
15 Washington Heights district area.

16 Okay. That being said --oh, wow,  
17 you know what?

18 COMMISSIONER JEFFRIES: Excuse me,  
19 Mr. Chair. I just have one more question for  
20 the Applicant.

21 CHAIRMAN GRIFFIS: Yes.

22 COMMISSIONER JEFFRIES: You said

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 there are greater vacancies, you have more  
2 vacancies within your portfolio of seven  
3 properties.

4 MR. KNIGHT: I was speaking  
5 specifically of The Sorrento property. There  
6 are more vacancies currently than the eight  
7 unit decrease. Over the course of all seven  
8 properties there are a number of vacancies  
9 which have allowed --

10 COMMISSIONER JEFFRIES: So you  
11 have more supply of units with your portfolio,  
12 is that what you're saying?

13 MR. KNIGHT: I think so. I'm  
14 trying to understand your whole question.  
15 There are other places within other Jubilee  
16 properties where residents of one building  
17 might be moved in order to get from a one  
18 bedroom to a three bedroom.

19 COMMISSIONER JEFFRIES: So eight  
20 families will not be coming back to this  
21 properties, but you have more than eight other  
22 units?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. KNIGHT: Availabilities.

2 COMMISSIONER JEFFRIES: So you  
3 have ten units, you have 12 units that you  
4 could move families to?

5 MR. KNIGHT: Yes, that  
6 illustration is correct.

7 COMMISSIONER JEFFRIES: So I guess  
8 that goes back to my question about what  
9 couldn't you just break down two of the  
10 existing units? You know, do 21 units.

11 MR. KNIGHT: Our mission is to  
12 provide as much affordable housing for the low  
13 income residents in the District as we can.  
14 So we -- over the course of the seven  
15 renovations we want to maintain as many units  
16 as possible for economic reasons just mostly  
17 to house more families.

18 COMMISSIONER JEFFRIES: So why do  
19 you have so many vacancies?

20 MR. KNIGHT: It has to do with the  
21 large parameters of the project. We begun  
22 three years ago and in order to not have to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 relocate households off site, to reduce the  
2 number of off site relocations, we have been  
3 collecting our vacancies for the last three  
4 years. So that allows family A to move to a  
5 different Jubilee building rather than across  
6 the city.

7 COMMISSIONER JEFFRIES: Okay. So  
8 that was you were sort of deliberately sort of  
9 preparing yourself for all the redevelopments  
10 and so you're artificially emptying it out  
11 these buildings?

12 MR. KNIGHT: Right.

13 COMMISSIONER JEFFRIES: Okay.

14 MR. KNIGHT: We have released  
15 vacancies as they have become available.

16 COMMISSIONER JEFFRIES: Okay.

17 Thank you.

18 VICE CHAIRPERSON MILLER: I'm sure  
19 this is very obvious, but the greater reality  
20 is that there's not enough affordable housing  
21 for all the residents in the District who need  
22 it, correct? So you're just trying to provide

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 as much as you can to meet those needs?

2 MR. KNIGHT: Correct.

3 VICE CHAIRPERSON MILLER: And it's  
4 temporarily vacant as you're trying to  
5 reconfigure the building?

6 MR. KNIGHT: Correct.

7 VICE CHAIRPERSON MILLER: Okay.

8 Thank you.

9 CHAIRMAN GRIFFIS: So to ask that  
10 question another way, are you asking him is it  
11 the lack of demand that have kept these vacant  
12 or is this purposely kept vacant?

13 MR. KNIGHT: Purposely kept  
14 vacant.

15 CHAIRMAN GRIFFIS: Right.

16 MR. KNIGHT: For the life of the  
17 renovation project. We will have a waiting  
18 list down the street the moment the units are  
19 available for lease.

20 MR. TUMMONDS: Maybe to help give  
21 a sense of scale, there are 850 families?

22 MR. KNIGHT: Eight hundred and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 fifty people.

2 MR. TUMMONDS: Eight hundred and  
3 fifty people who live in the seven Jubilee  
4 buildings. So it is a rather, I would say, a  
5 herculean task of having three of these  
6 buildings go off line, finding places in the  
7 neighborhood so that when year, year and a  
8 half construction period their lives haven't  
9 been disrupted too much. We can bring them  
10 back into that newly -- I mean it's  
11 astounding that Jim and his group have been  
12 able to provide that temporary housing and not  
13 have people go off site kind of move on with  
14 their life, but keep them in Adams Morgan  
15 neighborhood. It's amazing.

16 COMMISSIONER JEFFRIES: Yes. Yes.  
17 I appreciate that. I mean, for me the more  
18 stronger argument is what the architect spoke  
19 about, and that is demand for the larger  
20 families, you know. And that being part of  
21 the program that's been set forth here, I mean  
22 for me, for one person, I find to be a more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 persuasive argument about the need for the  
2 practical difficulties. And so, anyway, thank  
3 you.

4 CHAIRMAN GRIFFIS: Thank you.

5 Anything else, other questions?

6 Move on to the ANC then. ANC 1C  
7 is not present. They have submitted in their  
8 report, Exhibit 21, which is indicating  
9 support. I do believe it meets all the  
10 requirements for being afforded a great  
11 weight.

12 And we can go on unless the  
13 Applicant or Board Members have any comments  
14 on that.

15 I don't have any other submissions  
16 officially into the record from agencies. Let  
17 me ask if there are persons are present in  
18 regard to application 17545 here today to  
19 present testimony. Persons present? Persons  
20 in opposition who want to present testimony on  
21 17545 would be now the time to present to the  
22 Board. Come forward.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   If not, and not seeing anyone here  
2 present to issue testimony to the Board, but  
3 return to the Applicant for any closing  
4 remarks that they might have.

5                   MR. TUMMONDS: We thank you for  
6 your time this morning. We believe that in  
7 our written prehearing statement and the  
8 testimony we have provided this morning that  
9 we satisfied the variance relief standards and  
10 we would ask for a bench decision and summary  
11 order approving this application.

12                   Thank you.

13                   CHAIRMAN GRIFFIS: Thank you very  
14 much.

15                   Board Members, last questions,  
16 clarifications, comments?

17                   I believe this application is  
18 ready to proceed today unless there's any  
19 concern or opposition to doing that. I think  
20 we ought to take it up. And I think it's  
21 appropriate to expedite this.

22                   In terms of a motion, I would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 approval of Application 17545 of Jubilee  
2 Housing, Inc. attendant to the variance to  
3 enlarge the nonconforming structure under  
4 2001.3 which would allow the renovation as has  
5 been set forth to premises 2233 18th Street,  
6 Northwest. And I would ask for a second.

7 BOARD MEMBER ETHERLY: Second, Mr.  
8 Chair.

9 CHAIRMAN GRIFFIS: Thank you very  
10 much, Mr. Etherly. And I do appreciate it.

11 One of the things that we didn't  
12 get into in standing on the record of the  
13 Applicant didn't need to or did not get in and  
14 address this is first of all, I thought that  
15 the submission was excellent in terms of  
16 laying out: (1) The legal case before us.

17 We haven't talked about Monaco  
18 Clerics, all of which are cited and also  
19 Palmer; the classics we like to refer to them,  
20 I suppose. We should have them leather bound.  
21 But the critical piece of that is setting  
22 forth: (1) The test that needs to be made

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 with the exceptional circumstances,  
2 uniqueness, but also what is attendant to  
3 looking at a nonprofit in terms of meeting the  
4 uniqueness test and the other obligations of  
5 the variance.

6           And I think the Board is well  
7 versed in it, I don't need to address that  
8 specifically except for the fact that there is  
9 a lessor burden in terms of establishing the  
10 first couple of prongs of the test depending  
11 on how we break it down, uniqueness being the  
12 most critical one.

13           This meets it anyway. I mean,  
14 frankly on the basis of a 1905 building and  
15 structure, there is a unique aspect to that.  
16 There are numerous unique aspects to that  
17 which actually lend itself to making a  
18 practical difficulty fully confined with the  
19 regulations. Some of the specifics, however,  
20 are the existing configuration of the existing  
21 FAR. We didn't really push and explore and we  
22 didn't need to, I felt, the rationale or the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 unique and practical difficulty in having a  
2 portion of a level not able to be occupied,  
3 although within the overall mass of this. And  
4 as we start to look at that and we start to  
5 weigh in all of the establishment of the  
6 uniqueness, the practical difficulty in  
7 meeting: (1) We're looking at accessibility  
8 here in terms of adding an elevator. We're  
9 looking at building codes in terms of egress.  
10 And then we're actually looking at tax credit  
11 and level of responsibility or design  
12 constraints, one might say.

13           And when we put all those together  
14 it's pretty clear cut the practical difficulty  
15 in meeting all of the requirements. And here  
16 we just have the FAR.

17           We're looking at the extension of  
18 usable and occupiable spaces. I think we've  
19 had some great exploration here this morning  
20 of program and what type of responsibility or  
21 demand it is that's moving this. However, we  
22 really need to step back and assert the fact

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 that it doesn't necessarily -- it isn't  
2 necessarily required in the discussion of  
3 practical difficulty to prove that there is a  
4 use or some sort of hardship if you don't have  
5 it. Rather there's a practical difficulty in  
6 accessing the reasoning why one wants to have  
7 that increase or that small area of increase.  
8 Well, and then a full understanding and  
9 rationale for why that's actually happening.

10 And when you set it up for this  
11 case, I think it's very clear. The fact that  
12 there's excavation happening. There's a  
13 utilization and demand of program that is  
14 changing the dynamic of the unit sizes. And  
15 with that also is a program and the elements  
16 of providing a common space for the building  
17 itself.

18 And then when you put it  
19 altogether, no one said it but it was in my  
20 mind, it kind of makes common sense not to  
21 utilize that. I mean, I think Mr. Greenwell  
22 said it well in terms of what were there. I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 mean, why not? But it really makes common  
2 sense to say if you are doing all that work,  
3 there is that cost and expenditure. Why are  
4 you not creating a little bit more  
5 availability of space. For goodness sakes, it  
6 could just be storage for that matter. But  
7 here it is, it's all within the building. I  
8 think that is a critical aspect to the last  
9 piece of one of the smaller elements of the  
10 practical difficulty.

11                   And we didn't have it directly  
12 addressed orally in the presentation today.  
13 It's certainly in the written submissions  
14 whether it would go against the public good or  
15 in anyway impair the integrity of the zone  
16 plan or map. Clearly there's been no evidence  
17 or testimony that it would impair either one  
18 of those. In fact, if anything it kind of far  
19 exceeds the requirement of not impairing the  
20 public good but going directly to addressing  
21 the public good in many respects.

22                   One, revitalizing a stunning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 building. I mean I don't think anyone said  
2 that from the Board, but I think in the  
3 Board's perspective that it's a very handsome  
4 building and it holds that corner  
5 exceptionally well.

6 Ms. Bailey actually passed down to  
7 me during the hearing one of the old base  
8 Atlas Maps. And the history of this building  
9 is -- we don't even know, but it's rich. And  
10 then the surrounding area is rich also. And  
11 what's funny is to see kind of where this all  
12 came from, this huge land. And I won't take  
13 everyone's time on it. But, obviously there's  
14 the Federal Government. There's the square.  
15 Why is this square part of the square above --  
16 across the street. I mean, it's just an  
17 intriguing piece to it all. I can spend a lot  
18 of time, but no one wants to hear me talk  
19 about it. So, we'll move on.

20 But the point in fact of whether  
21 they're prepared to take it to the zoning  
22 plan, is a critical one to look at as we're

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 looking at a reconfiguration, a revitalization  
2 and no evidence has been presented that it  
3 would.

4 And, as I say, I think the  
5 regulations are set forth and this Board is  
6 charged with looking at things positively as  
7 they are put in an approval manner and  
8 certainly in a supportive manner as the  
9 application has put forth because we have  
10 provisions and availability and processes that  
11 allow people to reinvigorate buildings of this  
12 nature that were nonconforming. This was  
13 certainly built well before, if not 40 years  
14 maybe more, our zoning regulations actually  
15 came in adoption.

16 That being said, I don't think I  
17 need to address anything else, but I'm happy  
18 to do so. But I would open it up to other  
19 Board members for any comments or  
20 deliberations on this.

21 Mr. Jeffries?

22 COMMISSIONER JEFFRIES: Thank you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 very much, Mr. Chair. I'll just simply  
2 associate myself with you very thorough and  
3 thoughtful remarks. And I think the Board is  
4 always happy to hear you wax poetic about  
5 cases that are well put together.

6 I will just for the sake of the  
7 record also indicate that I enjoyed reading  
8 the briefing as well. Mr. Tummonds'  
9 presentation in written form is kind of old  
10 fashioned briefing where you get a lot of good  
11 cites, and as you said, we got the classics.

12 I think it's also important to  
13 highlight the line of questioning that Mr.  
14 Jeffries went into as we spoke to whether or  
15 not there were alternative measures or avenues  
16 through which you could accomplish what you're  
17 trying to do. And I think it's important to  
18 note that because of the purpose and the  
19 mission of the organization, the nonprofit  
20 that's behind this application, clearly there  
21 would be some difficulties in simply pulling  
22 space from elsewhere in the building where we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 do see the residential inventory that you're  
2 trying to create here. And I think it was a  
3 instructive to talk a little bit, as Mr.  
4 Jeffries did in his questioning, about the  
5 two/three bedroom mixture versus perhaps what  
6 you're seeing now. So I just wanted to simply  
7 highlight that for the record.

8 Thank you, Mr. Chair.

9 CHAIRMAN GRIFFIS: Excellent.

10 Thank you very much.

11 Others?

12 VICE CHAIRPERSON MILLER: I just  
13 want to add that I think in addition to the  
14 traditional variance analysis which the Chair  
15 covered very thoroughly and the obvious  
16 practical difficulties related to compliance  
17 with ADA and historic constraints, the fact in  
18 this case that it is a nonprofit I think that  
19 Mr. Knight made a very good case with respect  
20 to the practical difficulty in not using that  
21 common spaces in the basement. That, in fact,  
22 this organization would not be able to serve

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 a real public need. And I think at this time  
2 when we have such a great need for affordable  
3 housing, that that is something that should be  
4 acknowledged and facilitated.

5 So all the way around I think this  
6 is a very strong variance case and a very good  
7 use of this building in the context of the  
8 other buildings.

9 Thank you.

10 CHAIRMAN GRIFFIS: Thank you.

11 Thank you.

12 Others? Comments?

13 Very well. If there's nothing  
14 before and we have no more reports, it has  
15 been seconded and I'd ask for all those in  
16 favor signify by saying aye.

17 ALL: Aye.

18 CHAIRMAN GRIFFIS: Opposed?

19 Abstaining. Very well, Ms. Bailey, if you  
20 wouldn't recording the vote.

21 MS. BAILEY: Mr. Chairman, the  
22 vote is recorded as five-zero-zero to approve

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 the application.

2 Mr. Griffis made the motion, Mr.  
3 Etherly second, Mr. Mann, Mrs. Miller, Mr.  
4 Jeffries approved of the application.

5 And I just wanted to clarify, Mr.  
6 Chairman, the exact relief that was approved  
7 today. And that is area variance from the  
8 floor area ratio requirements under Section  
9 771.2 and 2001.3(a) and (b).

10 CHAIRMAN GRIFFIS: I believe  
11 that's correct.

12 MR. TUMMONDS: You know, we didn't  
13 go into the FAR relief because it is an  
14 existing nonconforming structure so we have  
15 just requested relief from 2001.3, which says  
16 you cannot exacerbate an existing  
17 nonconforming.

18 CHAIRMAN GRIFFIS: Right. All  
19 right. Yes. I mean I think the way Ms. Bailey  
20 read it is redundant, but possibly the way to  
21 go as it is in fact the element of relief that  
22 is covered under 2001.3. So there's some

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 clarity there. Okay.

2 Thank you very much.

3 I don't see any reason why we  
4 wouldn't issue a summary order on this and  
5 waive our rules, regulations and do so, unless  
6 there's any opposition from the Board or the  
7 Applicant. Not noting any, very well then we  
8 will do that.

9 Thank you very much. Thank you  
10 all very much. Have a pleasant day.

11 Let's move ahead to the next case.

12 MS. BAILEY: Application number  
13 17537 of Victor Tabbs pursuant to 11 DCMR  
14 3104.1, for special exception under 223 not  
15 meeting the lot occupancy requirements in 43  
16 and pursuant to 3101.2 for a variance from  
17 the limitation on the number of stories under  
18 400.1, to construct a four (4) story rear  
19 addition to a flat at premises 740 13th  
20 Street, S.E. The property is zoned R4 and it's  
21 located Square 1045 on Lot 97.

22 CHAIRMAN GRIFFIS: Are we ready?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Is the Applicant here? Excellent. A very  
2 good morning to you.

3 If you wouldn't mind just stating  
4 your name and address for the record and we  
5 can proceed?

6 MR. TABBS: My name is Victor  
7 Tabbs. And I'm a resident -- well, a property  
8 owner at 740 13th Street, S.E. in Washington,  
9 D.C.

10 Okay. I'm here today requesting  
11 approval for a special exception to build a  
12 three story addition to my existing residence.

13 A year ago today I was in the  
14 market to purchase a home, and saw this  
15 particular home and decided that I was  
16 interested in buying in. One of the first  
17 things I did was call down to DCRA to ask if  
18 I could put an additional level on top of it.  
19 That's the first thing. And they said that  
20 that's something that I could do because there  
21 was a height restriction of 40 feet, if I'm  
22 not mistaken.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   So I -- there was a couple of  
2 other things I did prior to that. So once I  
3 found that out, I went to purchase the home.  
4 So once I purchased the home, the first thing  
5 I did was there was an existing one level  
6 addition that was already there, but it was --  
7 the addition -- it was a smaller addition, but  
8 it was one level just on the first floor.

9                   And if you want to go through the  
10 drawings, I can show you where the existing  
11 is. I think it's on page ==

12                   CHAIRMAN GRIFFIS: Before we get  
13 too far into this, let's just go back a little  
14 bit in terms of the big picture of this. Last  
15 time we met there were some issues that have  
16 been reconciled.

17                   MR. TABBS: Yes. I didn't know  
18 how ar you wanted me to go back.

19                   CHAIRMAN GRIFFIS: Yes. But one  
20 of the big pieces which is the relief that was  
21 requested and required, and we had some issue  
22 about number of stories?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TABBS: Yes.

2 CHAIRMAN GRIFFIS: And I  
3 understand we have a new submission and I'm  
4 asking you, actually if this is your intention  
5 and direction that the Zoning technician has  
6 indicated that this meets the requirement for  
7 allowable number of stories.

8 MR. TABBS: Correct.

9 CHAIRMAN GRIFFIS: It would ge  
10 three.

11 MR. TABBS: Correct.

12 CHAIRMAN GRIFFIS: Okay. And  
13 you're in agreement with that?

14 MR. TABBS: Correct.

15 CHAIRMAN GRIFFIS: Okay. So what  
16 we're here for then is just lot occupancy?

17 MR. TABBS: Correct. Just lot  
18 occupancy.

19 CHAIRMAN GRIFFIS: Okay. And this  
20 would be under a special exception then under  
21 223?

22 MR. TABBS: Correct.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Okay.  
2 Excellent. Yes, so let's go to -- yes,  
3 drawings. Do you have a new set that was  
4 submitted today?

5 MR. TABBS: Well, I submitted a  
6 set today because I understood that the copies  
7 -- they're the same sets, because the copies  
8 I originally submitted, they weren't that  
9 clear.

10 CHAIRMAN GRIFFIS: Perfect.

11 MR. TABBS: So I submitted another  
12 copy.

13 And when I was here last, Mr.  
14 Chairman, like you said there are couple of  
15 issues that you wanted me to address. And one  
16 was which you wanted me to meet with the ANC  
17 to determine or to clarify the special  
18 exception.

19 CHAIRMAN GRIFFIS: Right.

20 MR. TABBS: And also you wanted me  
21 to measure the first floor of the property.  
22 And you wanted me to come up with a solution

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 to fill the gaps on the side and also cover  
2 the window. And I was able to do all those  
3 things. I first --

4 CHAIRMAN GRIFFIS: And Mr.  
5 Jeffries has brought up which came up before,  
6 was also this step off the property line a  
7 little bit, a adjacent, which was creating  
8 courts.

9 MR. TABBS: Exactly. Yes.  
10 Exactly. Yes. I addressed that. The way that  
11 I was going to address that is going to have  
12 to build a wall from -- that's come out to my  
13 property line --

14 CHAIRMAN GRIFFIS: Right.

15 MR. TABBS: -- and go straight up,  
16 which go straight up to the third story. And  
17 which that would do, is that would actually  
18 cover up the window as well and it would be a  
19 masonry wall --

20 CHAIRMAN GRIFFIS: Okay.

21 MR. TABBS: -- that's going  
22 straight up.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Okay. So if we  
2 look at the drawings A1 --

3 MR. TABBS: Yes.

4 CHAIRMAN GRIFFIS: Yes?

5 BOARD MEMBER MANN: Mr. Chairman,  
6 can you perhaps remind me or have the  
7 opportunity to remind me why we required that  
8 the window needed to be filled in?

9 CHAIRMAN GRIFFIS: Oh, I don't --  
10 I don't --

11 MR. TABBS: I'm sorry?

12 CHAIRMAN GRIFFIS: Mr. Mann is  
13 asking why -- what necessitated the filling in  
14 of a window?

15 MR. TABBS: Actually, the window  
16 should have been -- it should have never been  
17 open because the approved drawings don't call  
18 for a window to be there. That was a mistake  
19 and the drawings actually did not call for a  
20 window. It's against the regulation, the DCRA  
21 regulations

22 CHAIRMAN GRIFFIS: Which window

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 are you talking about.

2 MR. TABBS: The windows on the  
3 side.

4 CHAIRMAN GRIFFIS: On your  
5 property?

6 MR. TABBS: On the addition,  
7 correct.

8 CHAIRMAN GRIFFIS: Right. So  
9 because they're not fire rated and they're too  
10 close to the property line?

11 MR. TABBS: Well, if -- I guess if  
12 my neighbors wanted to build out an addition -  
13 -

14 CHAIRMAN GRIFFIS: Right.

15 MR. TABBS: -- an addition to mine  
16 is, my window would be sort of against their  
17 wall.

18 CHAIRMAN GRIFFIS: Any windows  
19 showing on A1 on that addition?

20 MR. TABBS: Well, if you can look  
21 on A2 it shows on the side that the windows  
22 are taken out.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   CHAIRMAN GRIFFIS: A2 on the west  
2 elevation?

3                   MR. TABBS: Correct. It shows that  
4 there are no windows there.

5                   CHAIRMAN GRIFFIS: Okay.

6                   COMMISSIONER JEFFRIES: A1.

7                   CHAIRMAN GRIFFIS: A1.

8                   COMMISSIONER JEFFRIES: Yes.

9                   CHAIRMAN GRIFFIS: And deal with  
10 the courts. But you're still showing these  
11 walls as creating a difficult situation.

12                   MR. TABBS: Okay. Okay. Oh, I  
13 understand what you're saying now. No, I did  
14 not bring additional drawings which show that  
15 -- additional drawings that show the additions  
16 were guilt out to my property line. Is that  
17 your question?

18                   CHAIRMAN GRIFFIS: Yes.

19                   MR. TABBS: Yes. No, I apologize.  
20 I didn't understand the question. But I did  
21 not show that. But that is something that I  
22 am going to do is I'm going to build a masonry

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 wall out to the property line and go straight  
2 up to the third level. So the windows will be  
3 covered anyway.

4 CHAIRMAN GRIFFIS: Right. We're  
5 not so concerned about the windows, I don't  
6 think.

7 MR. TABBS: Okay.

8 CHAIRMAN GRIFFIS: But more of,  
9 which Office of Planning if I recall correctly  
10 and Mr. Jeffries is bringing it up is the  
11 difficulty that that would potentially and  
12 realistically create for the adjacent  
13 neighbors, but also for your property.

14 Now, legally and procedurally we  
15 would not be able to approve an application  
16 without the drawings in front of us that were  
17 actually to be approved. So at this point we  
18 keep the record open, Ms. Bailey, for any  
19 addition -- for the drawings that adequately  
20 reflect --

21 MR. TABBS: Okay.

22 CHAIRMAN GRIFFIS: -- what you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 have now said is your intention for the  
2 construction.

3 MR. TABBS: Okay.

4 CHAIRMAN GRIFFIS: And does that  
5 change the lot occupancy relief required?

6 MR. TABBS: No. I don't think that  
7 changes it.

8 CHAIRMAN GRIFFIS: Right. It  
9 shouldn't, because it should have been  
10 calculated in originally into the lot  
11 occupancy.

12 MR. TABBS: Yes. That will not  
13 change the percentage level.

14 CHAIRMAN GRIFFIS: Okay.  
15 Excellent.

16 All right. What else?

17 MR. TABBS: Let's see here. And  
18 I'm not exactly sure where to go from here. We  
19 have established that it's a special  
20 exception.

21 CHAIRMAN GRIFFIS: Well, let's go  
22 through 223 then. And, of course, 223 is a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 special exception, but it has additional  
2 requirements, specific things that needed to  
3 be addressed. And that is can you speak of  
4 whether this will or will not tend to  
5 adversely affect the privacy and use and  
6 enjoyment of the adjacent properties and also  
7 will it tend to or not tend to negatively  
8 impact the light and air available to those  
9 adjacent properties?

10 MR. TABBS: Yes. I can address  
11 that. I went to my surrounding neighbors and  
12 got a statement from them indicating that it  
13 would not I guess directly intrude on the  
14 lighting and the airflow of the properties.

15 CHAIRMAN GRIFFIS: And that's in  
16 the record?

17 MR. TABBS: Yes, it is.

18 CHAIRMAN GRIFFIS: Okay.

19 MR. TABBS: It's in the record.

20 But also it's in the record that I do have  
21 some opposition to that as well.

22 CHAIRMAN GRIFFIS: Sure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 MR. TABBS: So just to let you  
2 know.

3 CHAIRMAN GRIFFIS: Sure. Okay.  
4 What is your position on whether this would  
5 adversely effect the character of the  
6 neighborhood if this was approved and built as  
7 is being shown?

8 MR. TABBS: If it was built and  
9 approved as being shown in the drawings, it  
10 would not effect it. And the reason why there  
11 are other homes in the area that actually  
12 probably exceed the lot occupancy. In addition  
13 to that, there are at least two homes that are  
14 in the neighborhood that go up an additional,  
15 I guess it's a third level. But I'm not  
16 exactly sure what the zone is for those  
17 particular homes, but there are at least two  
18 homes in the neighborhood.

19 CHAIRMAN GRIFFIS: Okay. In terms  
20 of the existing condition, that small addition  
21 that came out the back, it was like a covered  
22 -- whatever it was, how far did that extend,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 do you recall?

2 MR. TABBS: Yes. That actually  
3 extended -- let's see here. It actually  
4 extended 27 feet -- 27 feet deep. The  
5 measurement is 17 by 27 by 38 inches high once  
6 it's all completed. So extended 27 -- an  
7 additional --

8 CHAIRMAN GRIFFIS: The existing  
9 condition, wasn't there a small addition one  
10 story on the back side.

11 MR. TABBS: Oh, yes, that I added  
12 to. Okay. Yes.

13 COMMISSIONER JEFFRIES: Is there a  
14 demolition plan? Do you have that to show?

15 CHAIRMAN GRIFFIS: Right. The D1s.

16 COMMISSIONER JEFFRIES: Okay.

17 CHAIRMAN GRIFFIS: Where I'm going  
18 is I'm interested to know what the difference  
19 of the dimension just for my understanding as  
20 one of the requirements of 223 is to  
21 graphically represent what you're proposing.  
22 So I'm trying to understand the dimension of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 the existing condition.

2 MR. TABBS: Okay.

3 CHAIRMAN GRIFFIS: That portion  
4 that was at the rear and compare that to the  
5 dimension of what's being proposed in the  
6 additional.

7 MR. TABBS: Okay. Okay. Okay. I  
8 didn't know. I'll go through that page. On  
9 D1, I'm looking at it.

10 CHAIRMAN GRIFFIS: So at the upper  
11 left hand you have a plant?

12 MR. TABBS: Yes.

13 CHAIRMAN GRIFFIS: Do you see  
14 where the existing masonry wall is? Do you  
15 see where the smaller wall, let's call it the  
16 addition, the existing edition is?

17 MR. TABBS: Yes.

18 CHAIRMAN GRIFFIS: How far does  
19 that extend from the house, not counting the  
20 stairs?

21 MR. TABBS: That extended probably  
22 about nine feet.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Okay. Plus or  
2 minus nine feet?

3 MR. TABBS: Yes.

4 CHAIRMAN GRIFFIS: Mr. Jeffries, a  
5 question?

6 COMMISSIONER JEFFRIES: Oh, no,  
7 that's all right.

8 CHAIRMAN GRIFFIS: I thought the  
9 mike went on. Excellent.

10 COMMISSIONER JEFFRIES: Well, I  
11 turned it off. If you measure it from this,  
12 you can probably see it.

13 MR. TABBS: Okay.

14 CHAIRMAN GRIFFIS: That puts it in  
15 a little context, because we've got a lot of  
16 graphic representation now of what this is.  
17 First of all, I've an aerial photograph which  
18 shows that existing condition, which I can  
19 then look to its relation to the adjacent  
20 properties.

21 MR. TABBS: Okay.

22 CHAIRMAN GRIFFIS: Now I also have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 the extent of the addition that's being  
2 requested is about 22 feet 6 inches.

3 MR. TABBS: Correct.

4 CHAIRMAN GRIFFIS: Okay. Good  
5 enough.

6 I don't have any other questions.  
7 Questions, clarification from the Board?

8 MR. TABBS: Mr. Chairman?

9 CHAIRMAN GRIFFIS: Yes.

10 MR. TABBS: And there was another  
11 -- and you wanted me to also that you had  
12 asked how that the special exception or the  
13 variance came into play. The zoning branch  
14 originally sent out a variance and then they  
15 sent out a special exception letter.

16 CHAIRMAN GRIFFIS: Right.

17 MR. TABBS: Okay. And one of the  
18 reasons why is because on my drawings, my  
19 drawings actually show that the rear as the  
20 measurement says 6 foot 1 inch.

21 CHAIRMAN GRIFFIS: Right.

22 MR. TABBS: But it's incorrect.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 And there's a letter from my architect that I  
2 put in record to show that that was an  
3 incorrect measurement in the rear of the  
4 property.

5 CHAIRMAN GRIFFIS: What does that  
6 go to? I think what you were trying to  
7 address is the Zoning technician indicated  
8 that that may need a variance or needed  
9 variance for the number of stories, is that  
10 correct?

11 MR. TABBS: Correct.

12 CHAIRMAN GRIFFIS: And that was  
13 based on the fact that they read your drawings  
14 and saw six foot 1 inch?

15 MR. TABBS: Correct. Yes.

16 CHAIRMAN GRIFFIS: And it is in  
17 the rear of the property?

18 MR. TABBS: That's correct.

19 CHAIRMAN GRIFFIS: And the zoning  
20 regulations and definition of story would  
21 indicate that the number of stories is  
22 calculated from where you take the height of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 the building?

2 MR. TABBS: From the height of the  
3 -- from the grade to the --

4 CHAIRMAN GRIFFIS: No. Because  
5 it's one point at which the stories is  
6 calculated in 199. And that would be at where  
7 you measure the height. So if the front of the  
8 building, that ceiling was above four feet  
9 from the adjacent grade, then it would  
10 calculate as a story and would therefore be  
11 added on to the number of stories of the  
12 building.

13 So in my understanding of reading  
14 the regulation the fact of the matter is you  
15 could have a partial basement and a partial  
16 cellar and not be story.

17 MR. TABBS: Correct.

18 CHAIRMAN GRIFFIS: In reverse you  
19 could have a partial level that is a basement  
20 and a cellar and also be a story.

21 And in my understanding you have  
22 indicated that from the measuring point of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 where the height of the building is calculated  
2 that this is just a three story structure?

3 MR. TABBS: It is a two story --  
4 existing it's a two story structure plus a  
5 cellar. But once the addition is added, there  
6 would be a three story addition plus a cellar.

7 CHAIRMAN GRIFFIS: Would it?

8 MR. TABBS: Yes.

9 CHAIRMAN GRIFFIS: Okay.

10 MR. TABBS: And the only reason  
11 why I brought that to the attention as far as  
12 the measurements is because there was a  
13 mistake by my architect in the drawings.

14 In the rear of the building, if  
15 you would look at -- let me see here. If you  
16 would look at A2 --

17 CHAIRMAN GRIFFIS: Sure.

18 MR. TABBS: -- in the rear of the  
19 building on the left hand side it shows from  
20 the first floor to grade as six foot 1, which  
21 would mean that that is considered a story.

22 CHAIRMAN GRIFFIS: Right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 MR. TABBS: But that's an  
2 incorrect measurement. That measurement is  
3 actually from first floor -- no, from grade to  
4 the under ceiling is actually under four feet.

5 CHAIRMAN GRIFFIS: Because you  
6 have grade out in front and then you step down  
7 to the sidewalk, is that correct?

8 MR. TABBS: Correct. Correct. And  
9 that's the same at the rear. Because that  
10 actually is built up. And I don't know if --  
11 if you wanted to take a look at, I guess,  
12 Exhibit 4 one of the pictures shows the rear  
13 of the property.

14 CHAIRMAN GRIFFIS: Right.

15 MR. TABBS: And it shows the grade  
16 which is under four -- under four feet. From  
17 grade to the under ceiling, it's under four  
18 feet.

19 COMMISSIONER JEFFRIES: So what's  
20 floor to ceiling at the cellar?

21 MR. TABBS: From floor to ceiling,  
22 from grade to ceiling?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   COMMISSIONER JEFFRIES: No. Once  
2 you get into the cellar, what's floor to  
3 ceiling?

4                   MR. TABBS: Okay. From floor to  
5 ceiling once you get int the cellar, it's six  
6 foot one once you get in it. But from grade to  
7 the under ceiling from the outside it's under  
8 four feet.

9                   CHAIRMAN GRIFFIS: It can't be  
10 6'1".

11                  COMMISSIONER JEFFRIES: Yes.

12                  CHAIRMAN GRIFFIS: When you're  
13 inside the structure in that area in the  
14 lowest level and you're standing on the floor,  
15 Mr. Jeffries' question is how high is the  
16 ceiling from the floor?

17                  MR. TABBS: I think it's about 6  
18 foot.

19                  CHAIRMAN GRIFFIS: Can you stand  
20 under that, you personally?

21                  MR. TABBS: Something like that.

22 Yes. Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: You can?

2 MR. TABBS: Yes. And there's also  
3 a crawl space in there also. There's a crawl  
4 space in there. And initially there was a  
5 crawl space in the front. And then as you go  
6 further in, there's -- you can stand up. You  
7 could stand up in it.

8 CHAIRMAN GRIFFIS: But it's --

9 COMMISSIONER JEFFRIES: But how  
10 tall are you?

11 MR. TABBS: I'm 6 foot. I'm  
12 actually 6 foot 1".

13 CHAIRMAN GRIFFIS: But you're  
14 proposing that this would be animated as  
15 living space/kitchen as part of one of the  
16 units, is that correct?

17 MR. TABBS: Well, it's going to be  
18 one unit. It's not going to be two units.  
19 It's just one unit. And it'll be like an in-  
20 law suite in the basement. It will just have  
21 a kitchen in it.

22 CHAIRMAN GRIFFIS: Two total units

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 in the building and the basement, the lowest  
2 level is part of one of the units?

3 MR. TABBS: No. It just would be  
4 one unit. The entire house. It's a single  
5 family house. It's a single family house with  
6 a kitchen in the basement.

7 COMMISSIONER JEFFRIES: So it's an  
8 in-law unit with one entrance on the back?

9 MR. TABBS: One entrance. No.  
10 The one entrance would be in the front.

11 COMMISSIONER JEFFRIES: For the  
12 cellar unit? For the cellar unit?

13 MR. TABBS: For the cellar unit?  
14 Well, you go inside the house from the front  
15 and then you go down to the basement. So  
16 there's no separate unit. It's just one --  
17 it's just one house. One single family house,  
18 but it has a kitchen in the basement. But  
19 there's no separate entrance in the front.

20 CHAIRMAN GRIFFIS: Okay. But I  
21 would hope you have more than 6'1" down there.

22 COMMISSIONER JEFFRIES: I think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 you probably have more than 6'1".

2 CHAIRMAN GRIFFIS: Okay. Very  
3 well. Let's move ahead then. Other questions,  
4 clarifications?

5 COMMISSIONER JEFFRIES: Yes, I  
6 have a question.

7 CHAIRMAN GRIFFIS: Yes. Good.

8 COMMISSIONER JEFFRIES: Mr. Tabbs,  
9 you mentioned, I think the Chair asked you  
10 about the character of the neighborhood --

11 MR. TABBS: Yes.

12 COMMISSIONER JEFFRIES: -- and  
13 would this three story addition somehow have  
14 impact on the character of the neighborhood.  
15 And you mentioned that there were other  
16 buildings that had a similar FAR as well as  
17 height?

18 MR. TABBS: Yes. There are similar  
19 buildings actually on that particular row of  
20 houses that actually exceeds the lot  
21 occupancy.

22 Now, as far as the height there

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 aren't any homes on that row of houses. But on  
2 the Pennsylvania Avenue side there are a  
3 couple of homes that actually go up three  
4 levels.

5 COMMISSIONER JEFFRIES: So if I  
6 looked at your house, if I got far enough back  
7 and I looked at your row, on your place there  
8 would be this bump up, but you'd have to stand  
9 far enough back to see it? Because I clearly  
10 realize you have a fairly sizeable setback,  
11 but I just want to make certain that I'm clear  
12 about the context.

13 MR. TABBS: Yes. If you were to  
14 go across the street, right across the street  
15 is a housing development and -- but if you  
16 would go across the street you actually  
17 wouldn't see the addition from across the  
18 street. Now if you're walking in front of my  
19 house, you definitely wouldn't see it because  
20 it's only covering 27 feet. It's not coming  
21 past the original part of the house. So it's  
22 not coming past there. Not coming past that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 point.

2 COMMISSIONER JEFFRIES: Okay.

3 MR. TABBS: So you would not --

4 COMMISSIONER JEFFRIES: I'm really  
5 just speaking more to the character. I mean,  
6 in terms of stories and from what I'm  
7 gathering if this is permissible, but I was  
8 just really dealing with the question of sort  
9 of the character of the neighborhood through  
10 the special exception.

11 MR. TABBS: Well, and with that, I  
12 don't think you'd be able to see it, but right  
13 behind me they're building condominiums.  
14 They're called Jenkins Row. And they're going  
15 up five stories.

16 So you would see that development  
17 before you would see mine from the front. You  
18 would see there's first. Because they are  
19 probably two floors higher than I am and they  
20 are right across the alley. So you would  
21 actually see that first before you see mine.

22 COMMISSIONER JEFFRIES: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Thank you.

2 MR. TABBS: Yes.

3 CHAIRMAN GRIFFIS: Good. Any other  
4 questions, clarifications? Anything else at  
5 this point.

6 MR. TABBS: No. No, sir.

7 CHAIRMAN GRIFFIS: Very well.

8 Let's move ahead then to the  
9 Office of Planning's report. Oh, I'm sorry.  
10 Of course. Coming up.

11 COMMISSIONER JARBOE: Mr.  
12 Chairman, my name is Kenan Jarboe. I'm ANC  
13 Commissioner for 6B-05, and I'm representing  
14 ANC 6B on this case.

15 CHAIRMAN GRIFFIS: Excellent.

16 COMMISSIONER JARBOE: I just have  
17 one quick clarification. And this goes to the  
18 issue of whether a variance is needed or not.  
19 We will be disputing that in our testimony.

20 As I understand it what was  
21 submitted to the Zoning technician and I  
22 believe to you but I'm not sure, are pictures

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 taken at the front of the building. Are those  
2 in the record? Were those submitted?

3 MR. TABBS: The pictures that we  
4 went over at the ANC meeting.

5 COMMISSIONER JARBOE: Right.  
6 Right.

7 MR. TABBS: I do not -- no, those  
8 aren't on the record. The only pictures they  
9 have are the ones at the front of the house.

10 COMMISSIONER JARBOE: Okay. My  
11 understanding is that what then was submitted  
12 must have been submitted to the -- you  
13 submitted those to the Office of Zoning,  
14 though? The Zoning technician?

15 CHAIRMAN GRIFFIS: No, to DCRA.

16 COMMISSIONER JARBOE: To DCRA?

17 CHAIRMAN GRIFFIS: Not Office of  
18 Zoning.

19 COMMISSIONER JARBOE: All right.  
20 Excuse me. Pardon.

21 CHAIRMAN GRIFFIS: Okay. Because  
22 my understanding is what you asked for last

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 time was in fact that measurement out front.  
2 What I'd like to put on the record here is  
3 just to clarify, because we went through this  
4 in the ANC, and I guess you don't have that  
5 picture in front of you, I guess they just  
6 went to the Zoning technician to make their  
7 determination, but I want to clarify where  
8 that picture was taken and where the  
9 measurement was taken that the Zoning  
10 technician is using as we talked about in the  
11 ANC.

12 If you go to the drawings in A1,  
13 my understanding, and this is -- I'll describe  
14 the picture that was presented to the ANC,  
15 which was basically of a measurement -- no, it  
16 was a head on picture right in the very front  
17 of just the base of the house that showed a --  
18 that had a tape measure showing that it was  
19 more than four feet. And there was a little  
20 window there that showed the front of the  
21 house.

22 MR. TABBS: Under four feet.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 COMMISSIONER JARBOE: Right. And  
2 showing it was under four feet.

3 MR. TABBS: Under four feet.

4 COMMISSIONER JARBOE: That  
5 particular measurement. And I believe that's  
6 what the Zoning technician was relying on for  
7 their determination.

8 CHAIRMAN GRIFFIS: Sir, just for  
9 my understanding where are you going with  
10 this? You're disputing that it is a story or  
11 not a story?

12 COMMISSIONER JARBOE: Yes. I will  
13 be disputing that there is a story.

14 CHAIRMAN GRIFFIS: Okay.

15 COMMISSIONER JARBOE: I just want  
16 to clarify where that measurement was taken.  
17 It is correct -- if you look at what would be  
18 existing first floor on A1 where the porch is  
19 shown. Where the porch is shown on the second  
20 to the left drawing, that that measurement was  
21 taken in the middle of that porch, the front  
22 porch.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TABBS: Oh, okay.

2 COMMISSIONER JARBOE: That  
3 measurement was taken in the middle of that  
4 porch, correct? The measurement that you  
5 submitted to the Office of Zoning --

6 MR. TABBS: Right above the window  
7 here, the picture right here, Exhibit 4. If  
8 you go to Exhibit 4 what he's trying to  
9 describe and it's where the window is.

10 COMMISSIONER JARBOE: Where that  
11 window is.

12 MR. TABBS: Where I measured it  
13 was right below the concrete porch.

14 COMMISSIONER JARBOE: Right.  
15 Right--

16 MR. TABBS: What is the under  
17 ceiling.

18 COMMISSIONER JARBOE: Right next  
19 to that window. What I want to determine is  
20 that is not -- if you go to the far left  
21 drawing, which is the existing basement, it  
22 shows a window. That's not the same window

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 that shows in the picture, correct?

2 MR. TABBS: The far left?

3 COMMISSIONER JARBOE: In the  
4 drawings. That window is not the window in  
5 the picture that you actually have the porch,  
6 underneath the porch is enclosed, correct?

7 MR. TABBS: That's correct. Right.

8 COMMISSIONER JARBOE: That's the  
9 crawl space that you were talking about.

10 MR. TABBS: Correct. Correct.

11 COMMISSIONER JARBOE: Okay. So  
12 that that window that's shown on that picture  
13 is actually a window that's next to the stair  
14 here and there's an interior window behind it?

15 MR. TABBS: No, I disagree. There  
16 is a window directly behind it.

17 COMMISSIONER JARBOE: Directly  
18 behind that window?

19 MR. TABBS: Directly behind it.

20 COMMISSIONER JARBOE: Right.

21 MR. TABBS: But as far as  
22 positioning, they're the same.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 COMMISSIONER JARBOE: Right. It's  
2 the same, but that's a second window. There's  
3 a window in front of the porch that shows the  
4 porch and then there's this window on the  
5 basement, directly behind it, correct?

6 MR. TABBS: Yes, sir. Because if  
7 you go in the basement, you crawl through that  
8 window --

9 COMMISSIONER JARBOE: And you  
10 crawl through it --

11 MR. TABBS: -- to get to the crawl  
12 space?

13 COMMISSIONER JARBOE: Right. And  
14 then this area under the porch is a crawl  
15 space?

16 MR. TABBS: Correct.

17 COMMISSIONER JARBOE: Okay. Thank  
18 you.

19 COMMISSIONER JEFFRIES: Okay. But  
20 is your point -- obviously, you're argument is  
21 that there's two sets of windows, but one  
22 window is at a lower --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   COMMISSIONER JARBOE: No. I will  
2 argue that there's an alternative place where  
3 the correct measurement should be taken. And  
4 I think it will become clear when you get to  
5 my testimony or my ANC's report.

6                   COMMISSIONER JEFFRIES: Excellent.  
7 Okay. Great.

8                   CHAIRMAN GRIFFIS: Good. If there  
9 is nothing further on cross, then let's move  
10 to the Office of Planning.

11                  MR. JESICK: Thank you, Mr.  
12 Chairman and Members of the Board. My name is  
13 Matt Jesick. I'm with the Office of Planning.

14                  The Office of Planning reviewed  
15 this application as a special exception  
16 pursuant to 223, which is for a rear  
17 addition to a single family dwelling. And  
18 perhaps it would be informative if I informed  
19 the Board about how we reached that  
20 conclusion.

21                  With the original submission to  
22 the Office of Planning we received a letter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 from the Zoning Review Branch of DCRA, dated  
2 June 15th, which stated that a variance was  
3 required for a four story rear addition.

4           Subsequent to that, I believe some  
5 time in early October, we received a second  
6 letter from DCRA which indicated that special  
7 exception relief was required. It was our  
8 assumption at that time that this second  
9 letter, although it had the same date,  
10 superseded the first letter.

11           And more recently, of course, we  
12 received Exhibit -- I believe it's 35 or with  
13 a handwritten note from Ms. Ogenae stating  
14 that the special exception relief was the only  
15 relief required.

16           So we reviewed the application  
17 using the criteria of 223. And as the Board  
18 has already, they include light and air,  
19 privacy and character of the neighborhood, et  
20 cetera. It was our judgment that the addition  
21 to the home would not unduly effect light and  
22 air to nearby properties. It will cast some

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 shadow on the property to the north, but will  
2 not completely block light to that property.

3 The applicant has agreed to fill  
4 in the illegal windows on the side property  
5 line, and that will guarantee privacy for  
6 neighboring properties.

7 Regarding the character of the  
8 neighborhood, the addition will make this  
9 house taller than the neighboring houses, but  
10 regarding lot occupancy we examined the entire  
11 neighborhood and saw a variety of house  
12 sizes, a variety of lot occupancies; some  
13 houses with additions some without, some with  
14 detached garages in the back some without and  
15 we saw a great variety of character within the  
16 neighborhood.

17 The addition would meet lot  
18 occupancy requirements under 223.3. It is  
19 approximately 64 percent lot occupancy, and  
20 that is less than the 70 percent that is  
21 required.

22 And in regards to 223.4 which

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 speaks to special treatments in the way of  
2 design or screening, lighting, et cetera, we  
3 recommend that the courts be filled in, as has  
4 been noted, and that the windows be sealed,  
5 the side windows. And I believe the applicant  
6 has agreed to those two provisions.

7 We have not received direct phone  
8 calls or letters from the community, but  
9 obviously we understand that there is  
10 community opposition to the project. But we  
11 recommend approval of this special exception  
12 because it has met the requirements of 223.

13 I'd be happy to take any  
14 questions.

15 CHAIRMAN GRIFFIS: Excellent.  
16 Thank you very much. A very thorough report.  
17 We appreciate it.

18 Is there questions from the Board?

19 VICE CHAIRPERSON MILLER: I have a  
20 couple of questions. One is you said that it's  
21 going to be taller than neighboring houses?  
22 How much taller?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   MR. JESICK: One story. I believe  
2 about ten feet.

3                   VICE CHAIRPERSON MILLER: Okay.  
4 Thank you.

5                   And then my next question is it  
6 goes to OP standard with respect to light and  
7 air. Basically on your report, page 4, you  
8 said that the construction will cause some  
9 additional shadow on the home to the north but  
10 will not egregiously darken the adjacent  
11 property. And then today you said something  
12 like it'll cast some shadow but won't  
13 completely block -- or I don't know, something  
14 like that.

15                   So it sounds like a very high  
16 standard that -- I mean or low standard,  
17 "egregiously darken," is that the standard?

18                   MR. JESICK: Perhaps I choose a  
19 bad adverb in that case. But in other reviews  
20 of 223s, of course additions to homes will  
21 cast some shadows on neighboring properties.  
22 That's unavoidable.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 I think what the language of the  
2 zoning regulations says that "The light and  
3 air available to neighboring properties will  
4 not be unduly effected." So it does leave  
5 some gray in there. And in the past what we  
6 have said is, you know, some shadow is okay  
7 but there does have to be a judgment made.  
8 And in this case we felt that the obstruction  
9 of light did not rise to the level unduly  
10 impeding the light available to the property  
11 to the north.

12 VICE CHAIRPERSON MILLER: Okay.  
13 Can you just quantify a little bit what kind  
14 of shadowing is happening, what's going to  
15 happen? I mean, is it like part of the day or  
16 just a couple of hours, or just a little part  
17 of the property that's going to be shadowed or  
18 what?

19 MR. JESICK: Well, we have not  
20 received a formal light and shadow study from  
21 the Applicant. So I'd be hesitant to exactly  
22 quantify, you know, what hours of the day

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 would be in shadow. But it's certainly during  
2 part of the day. And that vary, of course,  
3 according to season as well.

4 VICE CHAIRPERSON MILLER: Okay.  
5 I'm just trying to get a feel for what your  
6 conclusion is based on.

7 CHAIRMAN GRIFFIS: The property is  
8 oriented east/west?

9 MR. JESICK: That's correct.

10 CHAIRMAN GRIFFIS: Okay. So the  
11 sun is going to extend up and over the back of  
12 the property at all seasons?

13 MR. JESICK: Can you explain what  
14 you mean by "up and over"?

15 CHAIRMAN GRIFFIS: East/west. So  
16 it starts at the back and come around. So the  
17 shadows cast will start to extend towards the  
18 evening.

19 VICE CHAIRPERSON MILLER: I think  
20 what the Chairman is saying that because of  
21 the orientation of where the addition's going  
22 to be and the way the sun is going to be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 moving, there's always going to be sunlight  
2 and there's not going to be a great shadowing.  
3 Is that your understanding?

4 MR. JESICK: Yes. I think that's  
5 our understanding.

6 VICE CHAIRPERSON MILLER: Okay.  
7 Could you also explain this issue  
8 about the two nonconforming courts on either  
9 side being a fire hazard unless they were  
10 filled in. And I think, I guess, the walls  
11 are going to be built to take care of that  
12 issue. But can you just explain that a little  
13 bit?

14 MR. JESICK: Sure. The courts --  
15 well, let me start with the building addition  
16 left two approximately one foot wide courts on  
17 either side of the addition. At this point  
18 those are just open to the adjacent  
19 properties. But should the neighbors at some  
20 point in the future decide to build additions  
21 to their homes, you'd be left with that very  
22 small gap between the two structures. That

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 could be, you know, a place where debris could  
2 collect or if somehow fire were to start in  
3 that spot, it would be hard to get to  
4 extinguish. So that's the reason why it's a  
5 fire hazard.

6 VICE CHAIRPERSON MILLER: Thank  
7 you.

8 CHAIRMAN GRIFFIS: Questions?

9 BOARD MEMBER ETHERLY: Thank you  
10 very much, Mr. Chair.

11 I'd like to thank the Office of  
12 Planning for its report. I'll indicate just  
13 for the benefit of my colleagues that I've  
14 some familiarity with this neighborhood having  
15 lived in immediate vicinity for some years.  
16 But let's stick to the four corners of the  
17 case.

18 The Applicant, Mr. Tabbs, did  
19 mention during his presentation Jenkins Row,  
20 and I just want to be sure I'm clear on  
21 perhaps what the Office of Planning's  
22 perspective is relative to as we talk about

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 the impact of light and air. Were you in a  
2 position or was the Office of Planning in a  
3 position to perhaps characterize to an extent  
4 how much of the light and air has already been  
5 impacted to an extent by the Jenkins Row  
6 construction at the rear of the subject  
7 property?

8 MR. JESICK: Again, I don't know  
9 if I could quantify that, but certainly having  
10 a five story structure on the opposite side of  
11 the alley would -- on the east side of the  
12 alley would impede certainly morning light  
13 coming into that neighborhood, the subject  
14 property and adjacent properties.

15 I would hesitate to say that the  
16 air would be effected by that project, but it  
17 certainly is a much larger structure compared  
18 to the town homes on 13th Street.

19 BOARD MEMBER ETHERLY: Okay. And  
20 with respect to, as you referenced and I  
21 believe Mrs. Miller had alluded to in her  
22 questions, you referenced the fact that there

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 is already quite a bit of additional animation  
2 or activity at the rear of the properties  
3 along the 13th Street to varying degrees with  
4 respect to additions or carriage houses.

5 Can you speak to an extent, and  
6 perhaps you already went over this but I just  
7 wanted to be sure I'm clear on it, relative to  
8 that existing activity at the rear of those  
9 properties, does this represent in the Office  
10 of Planning's opinion a consistent move? I  
11 think that's what I hear you saying that it is  
12 fairly consistent, or is it more the case  
13 that, hey, it's already kind of busy back  
14 there. This isn't necessarily too out of step  
15 with what's already happening?

16 MR. JESICK: I would almost  
17 combine those two statements.

18 BOARD MEMBER ETHERLY: Okay.

19 MR. JESICK: The neighborhood has  
20 a lot of variety in the rear of the homes.  
21 Like I mentioned, the detached garages and you  
22 can see from the vicinity maps some additions

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 have been put on homes previously. So I would  
2 say that this is another example of an organic  
3 development within the neighborhood that is  
4 different from the immediate neighbors,  
5 perhaps, but also in keeping with the variety  
6 that you see within other properties.

7 BOARD MEMBER ETHERLY: Okay. Let  
8 me just very quickly, I want to come back  
9 again to the Jenkins Row piece. I'm trying to  
10 be very careful, because again the Applicant  
11 alluded to it and I know that it's a factor of  
12 consideration for the ANC and probably other  
13 residents in the vicinity. So I just want to  
14 be sure I'm clear in terms of understanding.  
15 Essentially I'm trying to separate the  
16 light/shadow impact of the addition from that  
17 that's already being experienced by the  
18 properties by virtue of Jenkins Row.

19 I hate hypotheticals, but let me  
20 just kind of toss one and see what your  
21 reaction is to it. Would you agree with the  
22 statement that Jenkins Row already casts a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 formidable shadow on these rear properties and  
2 the subject property is not essentially going  
3 to markedly change that impact, or is there  
4 still enough light and air that hits the rear  
5 of these properties even with Jenkins Row on  
6 the table that there still is some impact  
7 caused by the proposed project in this case,  
8 but not substantially enough to impair light  
9 and air?

10 MR. JESICK: I would agree with  
11 the last part of your statement.

12 BOARD MEMBER ETHERLY: Okay.

13 MR. JESICK: Jenkins Row will  
14 certainly cast a shadow in the early morning.  
15 Again, just is my estimation.

16 BOARD MEMBER ETHERLY: Yes. This  
17 isn't perfect.

18 MR. JESICK: But during the midday  
19 I think the effect on the property to the  
20 north will be more from the immediate  
21 vicinity, i.e., the subject property rather  
22 than Jenkins Row. At five stories it would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 cast a shadow in the early part of the day,  
2 but certainly not a skyscraper that would  
3 block out light in the middle of the day.

4 BOARD MEMBER ETHERLY: Okay.

5 Thank you.

6 And just as a heads up, it might  
7 be very helpful also to hear a little bit of  
8 discussion from the ANC about that particular  
9 issue as well.

10 Thank you, Mr. Chair. That  
11 concludes my questions.

12 CHAIRMAN GRIFFIS: Excellent.

13 Thank you.

14 Others?

15 COMMISSIONER JEFFRIES: Yes, I  
16 have a couple of questions.

17 CHAIRMAN GRIFFIS: Yes.

18 COMMISSIONER JEFFRIES: This  
19 Jenkins Row, you might not have this  
20 information, but I'm trying to get a sense of  
21 what the distance is between the properties to  
22 the west where Mr. Tabbs' property is and the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 actual Jenkins Row. And so whatever that --  
2 unless you have that information.

3 MR. JESICK: Well, I can describe  
4 it. Perhaps I can refer to the vicinity map  
5 within the OP report.

6 CHAIRMAN GRIFFIS: It's across the  
7 alley, correct?

8 MR. JESICK: It is across the  
9 alley.

10 COMMISSIONER JEFFRIES: Yes. I  
11 just don't know the width of the alley. I  
12 mean I'm just trying to get a sense of it.

13 MR. JESICK: I believe the alley  
14 is about 20 feet wide.

15 COMMISSIONER JEFFRIES: And is  
16 there any -- I mean is there a setback? I'm  
17 just trying to get a sense of what --

18 MR. JESICK: My recollection when  
19 I was out there, I believe it comes fairly  
20 close to the alley. I -- I can't tell you how  
21 much of a rear yard is provided, if any.

22 COMMISSIONER JEFFRIES: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Okay. My other question is I keep going back  
2 to this bump up and visibility from 13th  
3 Street. Obviously, it's a very long setback.  
4 I mean, the entire existing building is a  
5 setback. So are there places where the  
6 pedestrian could clearly see if they're  
7 walking along 13th Street or is this a street  
8 here? Okay. If someone's walking along 13th  
9 Street, could they realize this bump up in the  
10 back?

11 MR. JESICK: Certainly I think if  
12 you were back far enough, you know, north or  
13 south on 13th Street you'd be able to see it.

14 COMMISSIONER JEFFRIES: So if  
15 you're on 13th Street, you're across the  
16 street and you're looking eastward right at  
17 Mr. Tabbs' property and you saw it along with  
18 the other buildings, you could see that bump  
19 up in the back?

20 MR. JESICK: Well, I don't think  
21 if you were directly across the street. If you  
22 were farther north or south from Mr. Tabbs'

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 property, you'd have a better angle.

2 COMMISSIONER JEFFRIES: Oh, so you  
3 have to be -- oh, you have to be at an angle?  
4 But you couldn't see it head on? So if you  
5 are walking, you could look down and see this  
6 bump up in the back?

7 MR. JESICK: If you were walking,  
8 yes, up and down the street.

9 COMMISSIONER JEFFRIES: Okay. And  
10 you don't feel that that has any impact on the  
11 character of the neighborhood and the  
12 integrity of the roof line and --

13 MR. JESICK: Because it is set so  
14 far back, Office of Planning did not feel that  
15 it had a significant impact.

16 COMMISSIONER JEFFRIES: Okay.  
17 Thank you.

18 CHAIRMAN GRIFFIS: Good. Anything  
19 else? Anything else from the Board?

20 Does the Applicant have any cross  
21 questions of the Office of Planning? Any  
22 questions of them?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TABBS: Me?

2 CHAIRMAN GRIFFIS: Yes.

3 MR. TABBS: No. I don't have any  
4 questions.

5 CHAIRMAN GRIFFIS: ANC?

6 COMMISSIONER JARBOE: One quick  
7 question.

8 CHAIRMAN GRIFFIS: Excellent.

9 COMMISSIONER JARBOE: Ken Jarboe  
10 from the ANC again.

11 I just have a quick clarification  
12 on page 4 of your report, the analysis. When  
13 you cite 223.3 where you talk about the lot  
14 occupancy being 70 percent, that means you're  
15 talking about the lot occupancy not exceeding  
16 70 percent by special exception? That you  
17 need a special exception to go from 60 to 70,  
18 but it would be beyond 70 would require a  
19 variance?

20 MR. JESICK: That's correct.

21 COMMISSIONER JARBOE: I just  
22 wanted to clarify that. Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Good. Don't go  
2 too far. We're ready for you if you're ready.

3 And just for clarification, I  
4 don't have any submissions from the ANC in the  
5 record. Okay. If you wouldn't mind putting  
6 those in now, you can just provide that to the  
7 Applicant also on your way.

8 COMMISSIONER JARBOE: I've given a  
9 copy to him.

10 CHAIRMAN GRIFFIS: Excellent.

11 COMMISSIONER JARBOE: Mr.  
12 Chairman, I've just given Beverly ANC's report  
13 on this. I think you have the report from the  
14 earlier meeting, but just a little bit of a  
15 refresher on where we stand on this.

16 The ANC had met on this prior to  
17 the earlier hearing that was postponed. We  
18 did bring up some preliminary matters having  
19 to do with whether this was a variance or a  
20 special exception.

21 Subsequent to that information the  
22 ANC met again on this, and just to refresh

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 your memory, one of the problems was that our  
2 ANC meeting actually is tonight. So we had to  
3 take emergency measures here, if you will. So  
4 for that reason, I would ask the Board waive  
5 the seven day notice requirement.

6 CHAIRMAN GRIFFIS: Very well. Any  
7 reactors to that or comments? I don't see any  
8 -- and in fact someone anticipated this. So  
9 we appreciate this coming in out of series or  
10 we couldn't waive and should accept this into  
11 the record.

12 Let's move ahead.

13 COMMISSIONER JARBOE: So what  
14 happened is the Planning and Zoning Committee,  
15 we had a special call meeting. We did not get  
16 a quorum. We had a Planning and Zoning  
17 Committee meeting instead where the Applicant  
18 came in, the neighbors came in. We had an  
19 extensive discussion on this new information  
20 and the measurements and all, and the side  
21 yards and all of that. That is the second  
22 page of what we've submitted as the Planning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 and Zoning Committee Minutes Report. They're  
2 summarized in the letter as well. You don't  
3 have to read both of them.

4 VICE CHAIRPERSON MILLER: Can I  
5 ask just a quick question.

6 COMMISSIONER JARBOE: Certainly.

7 VICE CHAIRPERSON MILLER: At the  
8 Planning and Zoning Committee meeting is that  
9 just with people who were specifically  
10 interested in this or was it advertised to the  
11 public?

12 COMMISSIONER JARBOE: The special  
13 call meeting was advertised. And it also  
14 falls on the same date as our normal Planning  
15 and Zoning Committee meeting.

16 Subsequent to that and in keeping  
17 with our bylaws we then had a special  
18 emergency Executive Committee meeting last  
19 night, which ratified the Planning and Zoning  
20 Committee's report, accepted it unanimously.

21 Again, pursuant to our bylaws that  
22 vote of the Executive Committee will be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 ratified tonight at our meeting. So I would  
2 ask that you hold the record open at least  
3 until tomorrow so that we could get you the  
4 letter from the full ANC that says, yes, this  
5 actually is the full ANC's decision.

6 CHAIRMAN GRIFFIS: Excellent.

7 COMMISSIONER JARBOE: At that  
8 meeting -- at all of these various meetings  
9 the recommendation was threefold:

10 (1) was to oppose the special  
11 exception on the grounds of air and light;

12 (2) to recommend to you that in  
13 fact this does require a variance for the  
14 number of stories, and;

15 (3) to restate our earlier  
16 opposition to that variance should it be  
17 required as it fails the test of uniqueness.

18 Let me take those in the order  
19 here. On the special exception I think we  
20 have to take -- we disagree with the Office of  
21 Planning on this that it does not have a  
22 significant impact on air and light. We think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 it has a major impact on air and light in two  
2 regards. It's partly cumulative because of the  
3 Jenkins Row, but even without the Jenkins Row,  
4 frankly the neighbors are looking at a 38  
5 story wall in the back yard that juts out past  
6 their properties.

7 CHAIRMAN GRIFFIS: Thirty-eight  
8 foot wall?

9 COMMISSIONER JARBOE: It's  
10 basically the height of the addition in the  
11 back is 38 feet.

12 CHAIRMAN GRIFFIS: Okay. Okay.  
13 You said 38 stories? I just wanted to clarify.

14 COMMISSIONER JARBOE: No, I'm  
15 sorry. I meant to say 38 feet.

16 CHAIRMAN GRIFFIS: We're moving  
17 into a whole new realm then.

18 COMMISSIONER JARBOE: That would  
19 be a different realm for the District.

20 CHAIRMAN GRIFFIS: Okay.

21 COMMISSIONER JARBOE: I know as an  
22 architect you would be interested in that, but

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 it's only 38 feet.

2 That what essentially does, given  
3 that all the neighbors have garages behind  
4 their house --

5 CHAIRMAN GRIFFIS: Right.

6 COMMISSIONER JARBOE: It's hard to  
7 tell from the photo in the Office of Planning,  
8 but everyone has a two story house, a yard and  
9 then a garage except for this particular unit,  
10 which doesn't -- the garage is gone, and it  
11 has been gone for this particular house.

12 Instead there will be this addition out there  
13 that will be 38 feet that will essentially  
14 block off any air and light from the south.

15 You add on this fact that Jenkins  
16 Row then is -- there is no setback from the  
17 alley. It is right up against -- pretty much  
18 up against the alley in the back there. What  
19 you create then are two huge walls on either  
20 side of the back neighbors. And I believe one  
21 of the neighbors has a photo that will show  
22 what this looks like. Right now it's only up

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 an additional story. What they're talking  
2 about is adding a story and a half to where  
3 it's already built. So it would be this 38  
4 foot, if it's allowed to go to what we  
5 consider is four stories. So you would have  
6 a major impact on the air and light of the  
7 neighbors.

8 I've also submitted a letter from  
9 one of the neighbors, the immediate neighbor  
10 to the north Mr. Jackson that was not  
11 available before where he does oppose the  
12 special exception based on the impact on his  
13 air and light. Basically, he said that he's  
14 in shadow now even with the partial completion  
15 of this addition.

16 CHAIRMAN GRIFFIS: Did you say you  
17 put that in now?

18 COMMISSIONER JARBOE: I handed it  
19 Ms. Bailey.

20 CHAIRMAN GRIFFIS: Okay. You only  
21 have one copy?

22 COMMISSIONER JARBOE: I only have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 one copy. This was the original copy.

2 And just to get some feeling, he  
3 explains the confusion. Mr. Jackson has  
4 basically been in record on both sides of this  
5 and this is his attempt to clarify and come up  
6 with a final definitive statement by him as to  
7 his opposition on this.

8 So we believe that this meets the  
9 test of an adverse impact on the air and light  
10 of the neighborhood.

11 Concerning the measurement and the  
12 need for a variance here, as I tried to state  
13 in my cross of the Applicant, the measurement  
14 that the Applicant provided to the Zoning  
15 technician was taken at the front of the porch  
16 of this building. The porch of this building  
17 slopes down from the first floor to such an  
18 extent that that measurement, I would assert,  
19 is not accurate.

20 What that measurement measures is  
21 the height of the crawl space that is the  
22 enclosed part underneath the porch from grade,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 not the height of the ceiling of the basement  
2 floor. And I would submit I have additional  
3 pictures I'd like to submit. And I believe  
4 one of the neighbors would also submit these  
5 that shows what we think should be the proper  
6 measurement.

7 CHAIRMAN GRIFFIS: Okay. So what  
8 are we looking at? We have a red structure --

9 COMMISSIONER JARBOE: So we're  
10 looking at the porch, that red structure is  
11 the building and that is the porch. What we  
12 are trying to do in these pictures is to  
13 determine where the first floor actually is.  
14 Because it isn't where the porch -- the front  
15 of the building where the porch slopes down,  
16 concrete that slopes down, it's actually you  
17 have to measure it from -- you have to go back  
18 to the front door and determine where the  
19 first floor is.

20 So there's a number of different  
21 measurements showing -- the most clear that I  
22 think is from the side of the building up to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 where the floor joist of the first floor would  
2 be. And that measurement from grade up to  
3 where the floor of the first floor would be,  
4 I believe is 65 inches. If you then allow --  
5 all these houses have joists of 8 inches. So  
6 the ceiling of the actual basement, not the  
7 crawl space but the basement, would actually  
8 be well above four feet. And therefore, that  
9 basement counts as a story.

10 Now there's another way that we  
11 can arrive at that number as well. Going back  
12 to the letter that the architect submitted, I  
13 think about the measurements being incorrect.  
14 This document seems to be full of a lot of  
15 measurements that are incorrect:

16 A) The letter is immaterial in  
17 the sense that it is dealing with the  
18 measurement at the back of the house where the  
19 regulations state that it has to be from the  
20 front of the house. But even there, if you go  
21 to the drawings themselves, you can determine  
22 the height of the grade, at least a proxy for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 it. If you look at drawing S1, structural 1,  
2 it shows the concrete reenforced stair section  
3 in drawing B, which is the back stairs going  
4 up to grade. That shows four risers of 72  
5 inches each. So that's basically 30 inches  
6 below grade. If you then go to S3 in drawings  
7 D, they show the depth of the additional  
8 basement. And by the way, you probably also  
9 figure out what the actual existing basement  
10 is from that drawing. I won't do the  
11 calculation. But the new basement is going to  
12 be 7 feet 6 inches, which is 90 inches by my  
13 calculation.

14 So you take 30 inches away from  
15 the 90 inches to the ceiling of the basement,  
16 and it's my understanding that the ceiling of  
17 the new basement, the addition basement, is  
18 flat with the addition of the existing  
19 basement; so it's the same height. So  
20 essentially it's 60 inches above grade. That  
21 more than four feet.

22 So I would argue that unless this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 architect has gotten all these measurements  
2 wrongs in here and is just throwing numbers  
3 around, that that basement is more than four  
4 feet -- is four feet or greater and therefore  
5 constitutes a story, and therefore this is a  
6 four story addition.

7 I would point out a couple of  
8 other things that are anomalies on there that  
9 we're very concerned about. One is, and I  
10 think you alluded to part of this, there's a  
11 question of whether this is going to be a unit  
12 or not in the basement. I would point out  
13 while there is not a front door to this, there  
14 is the potential for that. And --

15 CHAIRMAN GRIFFIS: That's not an  
16 issue here, is it?

17 COMMISSIONER JARBOE: Well, the  
18 issue is whether or not this -- I think  
19 whether this is a one or two story. It's  
20 being metered separately. So whether or not  
21 this is --

22 CHAIRMAN GRIFFIS: That doesn't go

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 to stories, though?

2 COMMISSIONER JARBOE: No, that  
3 doesn't go to stories.

4 CHAIRMAN GRIFFIS: Okay. So say  
5 it is two units.

6 COMMISSIONER JARBOE: Okay. Well,  
7 it would then be an illegal unit because the  
8 existing basement --

9 CHAIRMAN GRIFFIS: Illegal for  
10 zoning?

11 COMMISSIONER JARBOE: Illegal for  
12 zoning.

13 CHAIRMAN GRIFFIS: How so?

14 COMMISSIONER JARBOE: Because the  
15 ceiling in the existing basement is not high  
16 enough.

17 CHAIRMAN GRIFFIS: That's not  
18 zoning?

19 COMMISSIONER JARBOE: It's for a  
20 certificate of occupancy.

21 CHAIRMAN GRIFFIS: So it would be  
22 building code?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 COMMISSIONER JARBOE: It would be  
2 building code. Okay. I'll withdraw that  
3 then.

4 CHAIRMAN GRIFFIS: Okay. It  
5 wouldn't be part our thing.

6 COMMISSIONER JARBOE: The final  
7 point I have on here has to do with the lack  
8 of plans. What you have before you, this is  
9 not what he's building. This isn't in fact  
10 what he's already built. What he's already  
11 built is five feet larger than this. But what  
12 he did --

13 CHAIRMAN GRIFFIS: Five feet  
14 larger how?

15 COMMISSIONER JARBOE: Five feet  
16 longer.

17 CHAIRMAN GRIFFIS: So it's 27 feet  
18 6 inches?

19 COMMISSIONER JARBOE: It is -- it  
20 is not -- that is why we are here for a  
21 special exception because he's already built  
22 beyond the scope of these plans.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 COMMISSIONER JEFFRIES: Wait. I  
2 thought we were at like, that the plans were  
3 59 but the actual is 63.

4 MR. TABBS: It's actually 64.

5 COMMISSIONER JEFFRIES: Sixty-  
6 four.

7 MR. TABBS: It's actually 64;  
8 that's what's already been built. I went out  
9 42 feet further than I should have. It was  
10 actually -- the plans, the drawings were  
11 approved to be 222 feet deep. But it's  
12 actually, they went out 27. Now once it went  
13 out to 27 that puts it at 63 percent lot  
14 occupancy. So that's why I'm here today  
15 requesting the relief for lot occupancy  
16 because the Board can approve up to 70 percent  
17 of lot occupancy.

18 COMMISSIONER JARBOE: My argument  
19 here --

20 CHAIRMAN GRIFFIS: What's the  
21 issue with what's been constructed today.  
22 Because we're not approving what's constructed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 or we're not even reviewing what's there or  
2 isn't there. We're approving or we're  
3 assessing a special exception for what's  
4 proposed, which should be shown on these  
5 drawings --

6 COMMISSIONER JARBOE: What is  
7 proposed is not on these drawings.

8 CHAIRMAN GRIFFIS: Well --

9 COMMISSIONER JARBOE: What is  
10 proposed is on these drawings is what he  
11 originally wanted to do --

12 CHAIRMAN GRIFFIS: But how are you  
13 answering that? You're statement is that it's  
14 22 feet 6 inches, is that correct?

15 MR. TABBS: No. The drawings were  
16 approved for 22 feet, I think it's 22 feet 6  
17 inches. And that would have put it at 59  
18 percent lot occupancy. I --

19 CHAIRMAN GRIFFIS: So he's correct  
20 in asserting that what you're showing us isn't  
21 even what you're asking?

22 MR. TABBS: Yes. What's on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 drawings isn't what's there. What I'm here  
2 for--

3 CHAIRMAN GRIFFIS: I don't care  
4 what's there. What are you asking for?

5 MR. TABBS: Well, I'm asking for a  
6 special exception for a lot occupancy up to 64  
7 percent.

8 CHAIRMAN GRIFFIS: And what  
9 dimension is that?

10 MR. TABBS: That's 27 feet deep,  
11 the width is 14 feet.

12 CHAIRMAN GRIFFIS: Because we need  
13 all them drawings, Okay. We already kept the  
14 drawings -- the record is open to enclose  
15 those courts or whatever you're proposed to do  
16 on that.

17 MR. TABBS: Good.

18 CHAIRMAN GRIFFIS: But I think  
19 we're going to need -- and that is a big  
20 issue. We're looking at 42 more feet. So  
21 we'll have that also documented.

22 MR. TABBS: Correct.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Okay. All  
2 right. Good. What else?

3 COMMISSIONER JARBOE: I know this  
4 probably isn't an issue for you, but this is  
5 an issue I'll bring out for DCRA, is these  
6 documents were submitted and drawn up after  
7 the building was already built.

8 CHAIRMAN GRIFFIS: Yes.

9 COMMISSIONER JARBOE: So these  
10 were never correct.

11 CHAIRMAN GRIFFIS: Right. I don't  
12 understand all that process. And, you know,  
13 if we had any availability to get into it, we  
14 would. But we don't want to raise your  
15 expectations and do anything about it and we  
16 don't want to raise our blood pressure in  
17 dealing with it.

18 COMMISSIONER JARBOE: I understand  
19 it's a DCRA permitting.

20 CHAIRMAN GRIFFIS: Right. Right.

21 COMMISSIONER JARBOE: But this  
22 entire case has been fraught with problems,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 both from the Applicant of illegal  
2 construction and two stop work orders and  
3 problems with DCRA and the Zoning  
4 Administrator. The Zoning Administrator didn't  
5 even catch the illegal side courts on these  
6 drawings.

7 CHAIRMAN GRIFFIS: Okay.

8 COMMISSIONER JARBOE: So there  
9 have been problems all along on this  
10 particular one.

11 COMMISSIONER JEFFRIES: And, Mr.  
12 Jarboe, just one quick question. The  
13 elevation that is the difference between the  
14 face of the building and the porch is what?  
15 What's the difference?

16 COMMISSIONER JARBOE: If I  
17 understand correctly, the elevation at the  
18 face is to the floor, that's what we have --

19 COMMISSIONER JEFFRIES: Right.

20 COMMISSIONER JARBOE: -- 65 inches  
21 by those drawings I submitted.

22 COMMISSIONER JEFFRIES: Sixty-

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 five.

2 COMMISSIONER JARBOE: Sixty-five.

3 I believe the elevation that was submitted by  
4 the Application that at least he showed us at  
5 the ANC meeting, which was the same he must  
6 have submitted to the Zoning technician, was  
7 45?

8 MR. TABBS: It was three feet 8  
9 inches.

10 COMMISSIONER JARBOE: Three feet  
11 eight inches.

12 MR. TABBS: But that was from the  
13 grade to the under ceiling, that's what's it  
14 for.

15 CHAIRMAN GRIFFIS: Okay.  
16 Excellent. Good exhibits.

17 Let's go directly to the  
18 questions. Where is it in the regulations  
19 that shows we calculate a story to the back  
20 portion, not the crawl spaces which you're  
21 talking to, but rather going into the building  
22 into the main wall? As I read the definition

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 of a story obviously determines where we start  
2 to calculate the story, but what moves us back  
3 to the measuring point of which you say --

4 COMMISSIONER JARBOE: As I  
5 understand the regulations, they say that you  
6 calculate to the ceiling of the floor of the  
7 story --

8 CHAIRMAN GRIFFIS: So we'd have to  
9 then assume in your assertion that slab, which  
10 is a front porch, is not part of a floor and  
11 therefore the underside of that is not the  
12 ceiling level of that crawl space or cellar  
13 level?

14 COMMISSIONER JARBOE: Correct.

15 CHAIRMAN GRIFFIS: Okay.

16 COMMISSIONER JARBOE: And I think  
17 if you look at the pictures, you will see that  
18 the slab that constitutes the front porch is  
19 tipped down --

20 CHAIRMAN GRIFFIS: I don't  
21 disagree with that. However, what I'm trying  
22 to find is where in the regulations does it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 require us to move beyond that? Because the  
2 regulations say we calculated the story at the  
3 point of which we calculate the height of the  
4 property, which would be the center and the  
5 adjacent grade at the front. So we're there.  
6 We're with you. However, that's putting us  
7 right at the extension of the front porch.

8 Now you're asking us to say forget  
9 that enclosed area, that crawl space, we've  
10 got a slab enclosure, a window area, we need  
11 to move back into the basement area and  
12 calculate there, which is as you're asserting  
13 -- we don't know but you're asserting that,  
14 that steps up the ceiling height. I  
15 understand all that. I don't understand what  
16 requires us to move back.

17 COMMISSIONER JARBOE: I think the  
18 regulations that state that the definition of  
19 a story is calculated from the ceiling force  
20 you to move back. Because you're not  
21 calculating -- you can project out from the  
22 facing of the building where that is and then

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 you're still at the point where you're  
2 measuring from the center of the building in  
3 the front.

4 The porch could disappear  
5 tomorrow. The porch is essentially a temporary  
6 structure. It could be taken off tomorrow and  
7 then you'd still have the facing of the  
8 building.

9 CHAIRMAN GRIFFIS: Okay.

10 COMMISSIONER JARBOE: And my  
11 argument is you have to make -- the correct  
12 measurement is from the facing of the  
13 building, not from a porch. A porch is simply  
14 a temporary extension of the building and not  
15 the building itself.

16 CHAIRMAN GRIFFIS: Where does it  
17 say that in the regulations that a porch is a  
18 temporary extension of the building?

19 COMMISSIONER JARBOE: I think  
20 that's--

21 CHAIRMAN GRIFFIS: Does it count  
22 for as lot occupancy?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   COMMISSIONER JARBOE: I can't  
2 answer that. But I do know that you can take  
3 the porch away without damaging the integrity  
4 of the working. Therefore, a common sense  
5 definition would be that the porch is an  
6 extension of the building. If you take that  
7 porch away, it does nothing to the structural  
8 integrity of the rest of the building.

9                   CHAIRMAN GRIFFIS: Okay. I may  
10 not disagree with that, but still there's  
11 nothing in the regulations that talks about  
12 structural integrity or temporary structures.

13                   COMMISSIONER JARBOE: No. But  
14 there's nothing in the regulations that  
15 doesn't. And what I'm saying is the correct  
16 measurement if the regulations call for the  
17 measurement from the ceiling of that bottom  
18 floor, you have to assert --

19                   CHAIRMAN GRIFFIS: But what you're  
20 saying is is that slab doesn't create a  
21 ceiling?

22                   COMMISSIONER JARBOE: I am

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 asserting that that slab does not create the  
2 ceiling of the bottom floor.

3 CHAIRMAN GRIFFIS: But you need to  
4 make me understand why.

5 COMMISSIONER JARBOE: It may  
6 create the ceiling of the crawl space --

7 CHAIRMAN GRIFFIS: Well then --

8 COMMISSIONER JARBOE: But the  
9 ceiling of the crawl space is not the ceiling  
10 of the floor. And it's the floor -- I think it  
11 would be a stretch of the regulations to say  
12 that the crawl space constitutes the entire  
13 bottom floor and is the only thing that you  
14 would measure in terms of --

15 CHAIRMAN GRIFFIS: No one's  
16 asserting that.

17 COMMISSIONER JARBOE: -- measuring  
18 a story.

19 CHAIRMAN GRIFFIS: No one's  
20 asserting that. In fact, you can have a  
21 building that has a partial basement, a  
22 partial cellar and is not an additional story

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 at that level or you can have one in reverse.

2 The point is is the regulations  
3 are pretty direct. They say you pick one  
4 point, we're going to measure how high this  
5 building is and at that point of that height,  
6 we're also going to measure where the stories  
7 are. You're coming up with an assertion. I'm  
8 not disagreeing, I'm trying to find it in the  
9 regulations to support your assertion because  
10 it's not there yet. You're asserting that  
11 this concrete slab that has no structural  
12 integrity, of which I'm not -- well, there it  
13 is. That that projecting out and it's  
14 enclosed does not constitute a ceiling  
15 structure or a floor, the space between serves  
16 as two successive floors in the building.  
17 Rather we have to step back in and recalculate  
18 somewhere else. Because, in fact, I'm not  
19 sure -- and if I look at it in another way,  
20 I'm not sure actually that the regulations  
21 support that movement because we don't take  
22 the height of the building inside the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 building. We don't go in and set a new grade.  
2 How do we establish the grade beyond that  
3 porch level? No, we're assessing at the  
4 height of the building the grade at that most  
5 extensive point.

6 COMMISSIONER JARBOE: But, again,  
7 that's for assessing the point of height. I'm  
8 not arguing on height. I'm -- it's the point  
9 at which --

10 CHAIRMAN GRIFFIS: No, but they're  
11 linked. You can't move away from one or the  
12 other.

13 COMMISSIONER JARBOE: They're  
14 linked as to where the point is, correct.

15 CHAIRMAN GRIFFIS: Okay.

16 COMMISSIONER JARBOE: And what my  
17 assertion is that you have to measure it --  
18 the height, either one of those particular  
19 places would give you the same height of the  
20 building because you're not changing where  
21 grade is, going back taking the porch off or  
22 not taking the porch off, you're not changing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 where the very top of the building is.

2 CHAIRMAN GRIFFIS: Yes, you would.

3 COMMISSIONER JARBOE: No. No.

4 CHAIRMAN GRIFFIS: It would.

5 COMMISSIONER JARBOE: I don't  
6 understand how you would change the -- because  
7 the grade's the same. The only measurement  
8 that changes is the measurement up to the  
9 ceiling of the basement.

10 CHAIRMAN GRIFFIS: -- or you moved  
11 into the basement. If you moved into the  
12 basement in the crawl space to measure the  
13 height, you'd have varying grades all the way  
14 down the block. Conceivably some people have  
15 dug a little bit or filled in a little bit, or  
16 there was existing grade there. I mean,  
17 that's a whole changing environment.

18 COMMISSIONER JARBOE: But, no. The  
19 grade usually if they dug out, they dug out  
20 underneath grade. They haven't changed the  
21 grade out in front of the building.

22 CHAIRMAN GRIFFIS: But you're

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 saying, you're telling us act like this  
2 doesn't exist because it's temporary.

3 COMMISSIONER JARBOE: I'm saying  
4 that the regulations call for the definition  
5 of a story to be from the ceiling of the  
6 floor, that area, and that the correct area to  
7 be measured starts at the facing of the floor  
8 and the floor -- where the floor is between  
9 the bottom of the floor and the first floor.  
10 And to determine that you have to go back to,  
11 in this particular case because the slab is  
12 not indicative of where that floor is, where  
13 that ceiling is in the basement, you have to  
14 go back and project back as we did with those  
15 beams to the facing of the building.

16 CHAIRMAN GRIFFIS: All right. It's  
17 an interesting assertion. I am not familiar  
18 with it.

19 First of all, there are a couple  
20 of things that I see, and I would love this to  
21 be refuted or not. But first of all, this  
22 masonry structure appears to be originally --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 and there's no documentation of that. It is  
2 covered, and therefore it does count toward  
3 lot occupancy.

4 COMMISSIONER JARBOE: If you look  
5 at all of the other houses in the row there,  
6 this is the only one that's filled in. There's  
7 a masonry below --

8 CHAIRMAN GRIFFIS: No. But it's a  
9 concrete slab. They all appear to be concrete  
10 slabs on brick piers.

11 COMMISSIONER JARBOE: On brick  
12 corner piers, yes. Not filled in as this one  
13 has been. They were open. They were all --  
14 all of the porches along the houses there were  
15 open underneath. This one was filled in at  
16 some later time. And, in fact, the drawings  
17 show the original window is back on the -- the  
18 window to the basement is back on the facade--  
19 on the facing of the building -- not in this  
20 later brick concreted in underneath of a  
21 porch.

22 CHAIRMAN GRIFFIS: Okay. What

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 else? Is everyone clear on that? Good.

2 What else do you have?

3 COMMISSIONER JARBOE: That's it.

4 Just to reiterate the ANC's position that we  
5 oppose the special exception because we feel  
6 it has an adverse impact on the air and light  
7 of the neighbors. And we believe that this is  
8 a four story addition under the regulations.  
9 And that we oppose the variance for a four  
10 story because there is absolutely nothing  
11 unique about this particular property.

12 CHAIRMAN GRIFFIS: Okay. Do you  
13 have a copy of the exhibits that the ANC put  
14 in?

15 MR. TABBS: No. Not the color  
16 pictures.

17 CHAIRMAN GRIFFIS: I'll --

18 MR. TABBS: No, I don't have the  
19 color pictures.

20 CHAIRMAN GRIFFIS: Okay. Can you  
21 make sure you don't leave today without having  
22 those, please?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TABBS: Sure.

2 CHAIRMAN GRIFFIS: And that way we  
3 won't require the ANC to serve them on you.

4 MR. TABBS: Okay.

5 CHAIRMAN GRIFFIS: Good. Those  
6 are critical, because there's a couple of  
7 things you're going to need to do with those,  
8 and I'll make sure you understand those before  
9 you leave.

10 COMMISSIONER JARBOE: Mr.  
11 Chairman?

12 CHAIRMAN GRIFFIS: Yes.

13 COMMISSIONER JARBOE: I think one  
14 of the neighbors may have additional copies of  
15 those. So we may be able to get him copies  
16 later this afternoon.

17 CHAIRMAN GRIFFIS: All I care  
18 about is that he leaves with copies.

19 COMMISSIONER JARBOE: Understood.

20 CHAIRMAN GRIFFIS: We have some  
21 into the record, so we'll get ours.

22 That being said, are there any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 other questions from the Board of the ANC?

2 Yes, Mr. Etherly. I'll let him go first this  
3 time. Rapid fire.

4 BOARD MEMBER ETHERLY: Just very,  
5 very briefly, Commissioner Jarboe. Thank you  
6 very much for your testimony.

7 Just very quickly on the Jenkins  
8 Row piece. I appreciate your comments  
9 regarding my earlier line of questioning with  
10 the Office of Planning. I just want be sure  
11 I'm very clear with respect to the ANC's  
12 position.

13 Even if you take Jenkins Row out  
14 of the equation, there clearly still is from  
15 the ANC's standpoint very clearly is an impact  
16 to light and air from the proposed property?

17 COMMISSIONER JARBOE: Correct. It  
18 will, because it is so close -- so large and  
19 so close to the other properties that it will  
20 effect the air and light of those properties,  
21 even if Jenkins Row wasn't there. Jenkins Row  
22 being there makes it just that much worse.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 BOARD MEMBER ETHERLY: Okay.

2 COMMISSIONER JARBOE: And this  
3 being there, makes Jenkins Row that much  
4 worse.

5 BOARD MEMBER ETHERLY: Okay. And  
6 with respect to a little bit of the  
7 conversation from the Office of Planning's  
8 report time regarding other structures,  
9 additions, carriage houses that are at the  
10 rear of the properties along 13th Street, it's  
11 your sense that even considering that this is  
12 definitely out of step, out of character with  
13 what's already happening back there?

14 COMMISSIONER JARBOE: Correct.  
15 This would be a much larger addition than  
16 anything that's already back there or much  
17 higher from anything. And it would be visible  
18 from across the street, I think as the  
19 Applicant has already said. It would be  
20 backdrop to park of Jenkins Row, but it would  
21 be visible above existing houses.

22 BOARD MEMBER ETHERLY: Okay. And

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 perhaps just to follow up on Mr. Jeffries'  
2 earlier question if you were standing  
3 immediately in front of the property, what's  
4 your sense there? Probably, maybe not  
5 visible, but then again neither would Jenkins  
6 Row be if you're standing right in front of  
7 it?

8 COMMISSIONER JARBOE: Jenkins Row  
9 will be visible anywhere --

10 BOARD MEMBER ETHERLY: Even if  
11 you're standing along that sidewalk?

12 COMMISSIONER JARBOE: If you're  
13 standing on the sidewalk on the opposite side  
14 of 13th Street along Potomac Gardens  
15 development.

16 BOARD MEMBER ETHERLY: Correct.  
17 But if you're standing on the sidewalk  
18 immediately in front of the subject property--

19 COMMISSIONER JARBOE: No.  
20 Probably neither Jenkins Row nor this  
21 position, immediately would probably be  
22 visible from immediately in front. You'd have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 to go off to an angle, I think as was stated  
2 before.

3 BOARD MEMBER ETHERLY: Okay.

4 Thanks. Thank you.

5 Thank you, Mr. Chair.

6 CHAIRMAN GRIFFIS: Anything else?

7 Good. Any cross from the Applicant?

8 COMMISSIONER JEFFRIES: Oh, I'm  
9 sorry.

10 CHAIRMAN GRIFFIS: Go ahead.

11 COMMISSIONER JEFFRIES: I just  
12 want to make certain that the Applicant,  
13 you've seen this. Do you have a copy of this?

14 MR. TABBS: I don't have a copy of  
15 that, but if you don't mind, can I come and  
16 take a look at it?

17 CHAIRMAN GRIFFIS: We'll get it to  
18 you. What do you want to see.

19 COMMISSIONER JEFFRIES: Yes, okay.  
20 Yes. I just -- well, because it shows, you  
21 know, from -- if you're at the north walking  
22 that you see this pop-up here.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TABBS: Yes.

2 COMMISSIONER JEFFRIES: Which, you  
3 know, might question about the character. And  
4 I just wanted to make certain that you saw  
5 this.

6 MR. TABBS: Yes.

7 COMMISSIONER JEFFRIES: And this  
8 is a part of the record, isn't it? Yes.

9 COMMISSIONER JARBOE: Mr.  
10 Jeffries, was that part of Mr. Cassidy's  
11 submission? Because it looks like something  
12 that had been presented to the ANC, but we  
13 don't have a copy. We have a copy of it maybe  
14 in our file.

15 BOARD MEMBER ETHERLY: I believe  
16 what Mr. Jeffries is referencing, I believe is  
17 at the end of Exhibit 37, which was Mr.  
18 Cassidy's letter.

19 MR. TABBS: Okay. Okay. That  
20 just came. That came in. Okay.

21 COMMISSIONER JEFFRIES: Well, I'm  
22 just -- the only reason I'm bringing it up is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 that it's quite a revealing --

2 MR. TABBS: Exactly.

3 COMMISSIONER JEFFRIES: --

4 perspective.

5 MR. TABBS: Exactly.

6 COMMISSIONER JEFFRIES: And you  
7 should probably be prepared to somehow address  
8 this perspective.

9 MR. TABBS: Well, I can. That is  
10 without a doubt an inaccurate drawing.

11 COMMISSIONER JEFFRIES: You know,  
12 you don't have to even say anything about  
13 saying visually --

14 MR. TABBS: Oh, okay. Okay.

15 COMMISSIONER JEFFRIES: You might  
16 need to address this.

17 MR. TABBS: Oh, okay. Okay.

18 COMMISSIONER JEFFRIES: Okay. I  
19 mean --

20 MR. TABBS: Can I just add  
21 something?

22 COMMISSIONER JEFFRIES: Sure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   MR. TABBS: Jenkins Row is, like I  
2                   said, it's five stories high. And if you were  
3                   to walk right in front of my property, you  
4                   would not see Jenkins Row. Okay. If you were  
5                   to talk directly across the street, there is  
6                   a housing complex called Potomac Gardens. If  
7                   you were to walk directly across the street,  
8                   you would not see Jenkins Row. Now that's not  
9                   to say that you wouldn't see mine, but you  
10                  would not see Jenkins Row directly across the  
11                  street. And there's a difference between what  
12                  my property -- where the addition will be  
13                  Jenkins Row probably 25 feet across the alley.  
14                  And Jenkins Row is going to be probably two  
15                  stories above mine.

16                         So just realistically without it  
17                         being up that far, I really I don't think  
18                         you'll be able to see it from across the  
19                         street. And if you were to go into the  
20                         complex, further into the complex, of course  
21                         you would see Jenkins Row. You would.

22                                 COMMISSIONER JEFFRIES: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 Well, I'm just -- and I understand that. But,  
2 you know, obviously as we experience the  
3 world, we don't really experience it so much  
4 in elevation.

5 MR. TABBS: Correct.

6 COMMISSIONER JEFFRIES: You really  
7 experience the world in 3-D. And, you know,  
8 much of -- again, this exhibit might very well  
9 be, as you say, incorrect and that's fine. But  
10 all I'm saying is that it does warrant --

11 MR. TABBS: Okay.

12 COMMISSIONER JEFFRIES: -- you as  
13 the Applicant to --

14 CHAIRMAN GRIFFIS: Well here's a  
15 direct question that I think was being asked  
16 here. Your addition is as shown in the  
17 elevations, correct, or substantially -- on  
18 A2, look at A2. That's not showing the  
19 original existing structure, is that correct?

20 MR. TABBS: What that's showing,  
21 A2 is showing --

22 CHAIRMAN GRIFFIS: The proposed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 addition?

2 MR. TABBS: Well, A2 is showing  
3 the proposed addition.

4 CHAIRMAN GRIFFIS: The existing  
5 structure is not shown on A2, is that correct?

6 MR. TABBS: That is correct.

7 CHAIRMAN GRIFFIS: Okay. Are you  
8 adding onto the existing structure at the  
9 upper level?

10 MR. TABBS: Yes. Yes. This entire  
11 structure with this it would be coming out --

12 CHAIRMAN GRIFFIS: No, no, no.  
13 The existing building, not A1. The third  
14 floor plan --

15 MR. TABBS: Okay. I'm on A1.

16 CHAIRMAN GRIFFIS: Okay. So the  
17 existing building, the area on the third floor  
18 plan shows the existing roof, right?

19 MR. TABBS: Yes.

20 CHAIRMAN GRIFFIS: The backside  
21 shows a bedroom, bath and stairway?

22 MR. TABBS: Correct.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: That's the  
2 addition?

3 MR. TABBS: That's correct.

4 CHAIRMAN GRIFFIS: The height of  
5 that addition, does that come across onto the  
6 existing building?

7 MR. TABBS: No, it does not.

8 CHAIRMAN GRIFFIS: So the  
9 perspective that Mr. Jeffries was looking at  
10 has an extension in addition drawn on the  
11 existing building.

12 MR. TABBS: Oh, okay.

13 CHAIRMAN GRIFFIS: Is that what  
14 you're saying?

15 MR. TABBS: Yes. Therefore, I  
16 didn't see the exact drawing.

17 CHAIRMAN GRIFFIS: I see.

18 MR. TABBS: But-- but the way he  
19 has it drawn up, he has it drawn up on the  
20 existing building.

21 CHAIRMAN GRIFFIS: Okay.

22 MR. TABBS: That's how he has it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 drawn up.

2 COMMISSIONER JEFFRIES: Well, to  
3 be honest with you, Mr. Chair, I'm not fully  
4 certain exactly what this thing is showing.

5 CHAIRMAN GRIFFIS: Yes.

6 COMMISSIONER JEFFRIES: But it  
7 looks somewhat obtrusive?

8 CHAIRMAN GRIFFIS: Right.

9 COMMISSIONER JEFFRIES: So someone  
10 needs to show something that is somewhat  
11 accurate. Because, you know, whether it's  
12 going -- because my understanding has never  
13 been since I've been, you know, looking at  
14 these drawings that you were building over the  
15 existing building. I'm clear on that, but very  
16 extensive setback. But looking at this drawing  
17 it's probably very inaccurate, but I just want  
18 to make certain that, you know, somehow your  
19 architect can clearly demonstrate through some  
20 sort of perspective --

21 MR. TABBS: Okay.

22 COMMISSIONER JEFFRIES: -- you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 know, what this looks like.

2 MR. TABBS: Yes.

3 COMMISSIONER JEFFRIES: So thank  
4 you.

5 CHAIRMAN GRIFFIS: Okay. Anything  
6 else? Questions? Good.

7 Did you have any cross examination  
8 of the ANC, Mr. Tabbs? Any questions of them?

9 MR. TABBS: Well, I don't know if  
10 the ANC can address this, but I have another  
11 drawing that was entered into the record and  
12 the same individual who presented that  
13 drawing. And this drawing is inaccurate as  
14 well. And I don't know -- it's not labeled,  
15 but this is --

16 CHAIRMAN GRIFFIS: Right. Okay.

17 MR. TABBS: It's not labeled. It's  
18 an exhibit on my record.

19 CHAIRMAN GRIFFIS: It's in the  
20 record.

21 MR. TABBS: It is in the record?  
22 Well, the way he has this drawn up, and it is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 -- it's like a massive structure. He has this  
2 drawn up all the way to the property line.  
3 And as you can see in my pictures, the  
4 addition isn't to the property line. But this  
5 is how he got the -- my other neighbors to  
6 sort of to get their opposition. This is one  
7 of the ways.

8 CHAIRMAN GRIFFIS: And your  
9 position is that that's not a fair and  
10 accurate--

11 MR. TABBS: That is not a fair and  
12 accurate drawing of my property that's being  
13 built. And it's the same person who drew this  
14 is the person who drew the other one that you  
15 inquired about --

16 CHAIRMAN GRIFFIS: Okay.

17 COMMISSIONER JEFFRIES: -- Broad  
18 Member Jeffries.

19 COMMISSIONER JARBOE: Mr.  
20 Chairman, could I --

21 COMMISSIONER JEFFRIES: I think  
22 the importance, and I think the Chair has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 talked about this, there's just absolute  
2 importance to have, you know, detailed,  
3 accurate drawings that clearly demonstrate  
4 what we have here.

5 MR. TABBS: Okay.

6 COMMISSIONER JEFFRIES: So that we  
7 can make some determination as to the relief  
8 that's being sought. And naturally the point,  
9 I mean when people are putting all these  
10 files, you know, putting these different  
11 drawings in the file --

12 MR. TABBS: And I understand that,  
13 and I apologize. I mean, this is not --

14 CHAIRMAN GRIFFIS: Okay. Actually,  
15 now is the time to do cross of the ANC. If  
16 you have any questions of them. If not, we're  
17 going to move on because we've got persons to  
18 give testimony. And then we'll return to you  
19 to have any additional closing remarks. But  
20 the record's open on this because we need more  
21 information, so there's going to be further  
22 opportunity for you to address all these

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 elements. But did you have any across of the  
2 ANC.

3 COMMISSIONER JARBOE: Mr.  
4 Chairman, if I take that as a question --

5 CHAIRMAN GRIFFIS: You want to  
6 cross yourself?

7 COMMISSIONER JARBOE: Well, I was  
8 trying to respond to that as a form of a  
9 question. That I think that that's --

10 CHAIRMAN GRIFFIS: Hold on two  
11 seconds.

12 Do you have any direct questions  
13 of the ANC? They just presented a lot of  
14 testimony, a lot of assertions. Do you have  
15 any questions or cross of them?

16 MR. TABBS: No, I don't have any  
17 questions or cross.

18 CHAIRMAN GRIFFIS: Okay. That's  
19 fine. I just want you to fully understand  
20 that they're asserting -- obviously you heard  
21 that, that the measurement for a story was  
22 inaccurately done. So, as long as you know

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 that.

2 MR. TABBS: Okay. I'm sorry, did  
3 you say inaccurately done?

4 CHAIRMAN GRIFFIS: Correct, by the  
5 Zoning technician. So they're asserting the  
6 fact that you have a need for a variance  
7 relief. They're asserting the fact that you  
8 have to measure the height of the ceiling into  
9 the building itself, into the area where you  
10 will occupy beyond that porch. That would  
11 make this a nonconforming to the number of  
12 stories allowed in the R-4 District, which  
13 would then put it back into required variance  
14 relief.

15 MR. TABBS: Okay.

16 CHAIRMAN GRIFFIS: There's two  
17 sets that could happen on this. First of all,  
18 this is not self-certified application. This  
19 is a referred application. Therefore, you  
20 could rest on the assurance that the Zoning  
21 technician was correct in their assessment and  
22 referral to this Board.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TABBS: Okay.

2 CHAIRMAN GRIFFIS: And we'd move  
3 ahead and we would have to assert the same  
4 thing, not making a judgment on that.

5 MR. TABBS: Okay. Okay.

6 CHAIRMAN GRIFFIS: In which case,  
7 you set yourself up to whatever, the  
8 vulnerabilities of the further review for the  
9 permit.

10 And the other assertion would be  
11 that the Board would review and make a  
12 determination of relief that is required.  
13 We're not, obviously, prepared to do that  
14 today because we haven't had time to address  
15 it. But as long as you're clear on those  
16 elements.

17 MR. TABBS: Okay.

18 CHAIRMAN GRIFFIS: Okay. Now, is  
19 there anything else from the ANC that you  
20 needed to present?

21 COMMISSIONER JARBOE: No, I'll  
22 wait. And I'll deal with it in cross of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 neighborhood witnesses, if that's allowed?

2 CHAIRMAN GRIFFIS: Of course. Very  
3 well.

4 In which case, then let's go those  
5 persons present to provide testimony. And  
6 everyone that's here to provide additional  
7 testimony, if you would come forward, have a  
8 seat at the table. I'll ask you to state your  
9 name and address for the record and also to  
10 state whether you are for support or in  
11 opposition to this application.

12 And I will note for the record  
13 that persons providing testimony are allotted  
14 3 minutes. I will keep time on that.

15 And when you're ready, you can  
16 proceed.

17 MR. O'MEARA: Good morning, Board.  
18 My name is Patrick O'Meara. I'm current  
19 resident and owner of the 736 13th Street,  
20 S.E., two houses down from Mr. Tabbs'  
21 property.

22 I just have to be brief with 3

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 minutes, but I have some submissions that I  
2 would like to add.

3 CHAIRMAN GRIFFIS: Are you in  
4 support or not in relation to the application?

5 MR. O'MEARA: I'm in opposition of  
6 the special -- excuse me -- the special  
7 exception to exceed the 60 percent lot  
8 occupancy and also I'm in opposition to the  
9 measurements of the basement floor.

10 CHAIRMAN GRIFFIS: And you had  
11 things to submit in?

12 MR. O'MEARA: That's correct.  
13 These are copies of the same drawings --

14 CHAIRMAN GRIFFIS: Excellent.  
15 So the 11 by 17s that are  
16 submitted, are they identical to the ANC's  
17 submission?

18 MR. O'MEARA: I believe so. Mr.  
19 Jarboe', he may know if those were the same  
20 ones, they should be --

21 CHAIRMAN GRIFFIS: Did you draw  
22 these?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   MR. O'MEARA: I did take the  
2 pictures and do the drawings, yes. I'm a  
3 mechanical engineer and construction  
4 engineering project manager.

5                   CHAIRMAN GRIFFIS: Okay. So you  
6 provided these to the ANC?

7                   MR. O'MEARA: That's correct.

8                   CHAIRMAN GRIFFIS: Excellent.

9                   All right. Let's move ahead.

10                  MR. O'MEARA: I'll start with lot  
11 occupancy, since that's the first item of  
12 business. If you take a look, I tried to  
13 label the exhibits there at the bottom. PFO\_4  
14 is a picture taken from my back porch and  
15 deck. It shows the view for the existing  
16 construction, which has already been  
17 completed, Mr. Tabbs has done. And I've drawn  
18 in the construction if it would go up to the  
19 existing roof line, and then it if would add  
20 the additional story as Mr. Tabbs has  
21 proposed.

22                   It shows also the two lines

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 extending towards the rear of the property  
2 showing what you would see from my porch at a  
3 60 percent occupancy and his proposed 64  
4 percent occupancy.

5 And basically just to give you a  
6 view from my porch as far as the light and air  
7 impact that that would have.

8 CHAIRMAN GRIFFIS: These are taken  
9 from your property?

10 MR. O'MEARA: That's correct.

11 CHAIRMAN GRIFFIS: Okay.

12 MR. O'MEARA: Again, light and air  
13 is not a quantitative measure unless we're  
14 able to do -- or Mr. Tabbs is able to do some  
15 kind of a solar study. But generally to tell  
16 you now light and air is impacted by Jenkins  
17 Row. We don't get actually light on that back  
18 porch until about 10:00 a.m. in the morning.  
19 In past we had light as soon as the sun came  
20 up. And in the winter, actually, I know you  
21 were discussing the east/west rotation of the  
22 sun in the winter, it actually falls a little

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 bit more to the south. And with a four story  
2 addition, and even with a three story addition  
3 which continues the same roof line as our  
4 properties do now, in the winter that's going  
5 to significantly impact. And we get shade  
6 pretty much. We get light from 10:00 to 10:45  
7 or 11:00 a.m. until it's also shaded by the  
8 existing construction, which has already been  
9 started.

10 CHAIRMAN GRIFFIS: But in your  
11 diagram you're looking at the lot occupancy.  
12 Sixteen percent lot occupancy for an R-4 is an  
13 allowable, right?

14 MR. O'MEARA: Correct.

15 CHAIRMAN GRIFFIS: So what you're  
16 saying is that 42 feet extension is the impact  
17 you're talking about?

18 MR. O'MEARA: That's correct, yes.

19 CHAIRMAN GRIFFIS: Okay.

20 MR. O'MEARA: I mean the 16  
21 percent is also a pretty significant impact,  
22 but that's legal impact that I have no --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 there's nothing I can do about.

2 MR. GREENWELL: Right. Right.

3 MR. O'MEARA: And the other aspect  
4 is also just to show the additional story.  
5 Again, pending the measurement question is a  
6 separate item altogether. But that only  
7 extends it even additionally.

8 Exhibit PFO\_5 is a picture which  
9 is taken closer to the porch for 738, just to  
10 show the viewpoint from that gentleman. Mr.  
11 Jackson is a guy who has lived in the  
12 neighborhood for a very long time. I've  
13 talked to him personally about this and you  
14 have the letter on record stating his  
15 opposition to the construction as well.

16 CHAIRMAN GRIFFIS: Okay.

17 MR. O'MEARA: If then I go to the  
18 drawings and pictures which I submitted,  
19 essentially the definition of cellar is taken  
20 that portion of a story which is measured from  
21 the ceiling of the story to grade. Going to  
22 your discussions earlier with Mr. Jarboe, you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 do in fact have to take the measurement of the  
2 ceiling where the ceiling would be. So it  
3 doesn't actually -- there's no way to measure  
4 that from the outside of a property because  
5 there's no ceiling outside the property. So  
6 you have to infer or extend that ceiling  
7 measurement to the external side of the  
8 property to the point at which your earlier  
9 mentioned, which is where you also measure the  
10 overall height of the property.

11 So I actually live in the same  
12 construction and architectural style house. If  
13 you take a look at Exhibit PFO\_1, essentially  
14 the sill or stoop as you enter the house, you  
15 step over about a half inch threshold, as I  
16 indicated, to get onto the hardwood flooring  
17 of the house.

18 As you see in my hand drawing to  
19 the side, if you essentially give an inch of  
20 flooring and then the 8 inch joist which all  
21 of these age houses have, and then another  
22 ceiling thickness of one inch drywall

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 underneath that, you can kind of come up with  
2 the measurement based on that sill dimension.  
3 And again, it's one of those situations where  
4 if you pile dirt up outside the house or if  
5 you build a drop ceiling in the basement, you  
6 can change how that measurement would be made  
7 and maybe somehow effect whether it's defined  
8 as a cellar versus a story.

9 CHAIRMAN GRIFFIS: An interesting  
10 notion.

11 You want to conclude?

12 MR. O'MEARA: Yes. I guess  
13 generally Mr. Tabbs, I was without work for  
14 some time while he was starting some of the  
15 construction. And generally from my viewpoint  
16 as a project manager in professional  
17 construction, the nature of the construction  
18 that's gone on has been of relatively good  
19 quality compared to some of the constructions  
20 and renovations that have gone on around D.C.  
21 that I saw. And generally, the legal addition  
22 I would support. But exceeding the 60 percent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 lot occupancy and additional story above, I  
2 would oppose.

3 I would conclude just to say if it  
4 were at all possible, I realize it's outside  
5 the realm where we're discussing today, but if  
6 Mr. Tabbs were to come forth in the future and  
7 ask for a special exception to keep the  
8 courts, that would be something that I would  
9 support because it would reduce -- essentially  
10 it would keep the brick veneer wall and  
11 eliminate the potential block wall which he  
12 was describing how you fill in the sides. And  
13 it would not have any impact any on light and  
14 air or anything else from us from a property  
15 standpoint. So if you were to come forth in  
16 the future with that --

17 CHAIRMAN GRIFFIS: Interesting.

18 MR. O'MEARA: -- I would support  
19 that in an effort to reduce his expense in  
20 reconstruction and speed up the completion of  
21 the work.

22 CHAIRMAN GRIFFIS: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. O'MEARA: Thank you.

2 CHAIRMAN GRIFFIS: Thank you very  
3 much.

4 Yes?

5 MR. SCHNEIDER: My name is David  
6 Schneider. And I live at 732 13th Street. So  
7 just a bit north of Mr. Tabbs.

8 Mr. Chair and Members of the  
9 Board, first of all thank you for your time.  
10 I'll keep my remarks brief.

11 My main objection to the protocol  
12 or is that the protocol that has been outlined  
13 by the DCRA has not been followed and has, in  
14 fact, been disregarded. I would encourage  
15 that you not reward the behavior by granting  
16 variances or special exceptions at this time  
17 due to, in my opinion, a lack of respect for  
18 both bodies.

19 As neighbors we have witnessed the  
20 entire project. We have seen the plans and  
21 the dates of the project and where it has  
22 occurred don't really line up in terms of a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 time line for us, or for me speaking  
2 personally.

3 The first floor, in my opinion,  
4 was either constructed before or concurrently  
5 with a permit application. I'm not an engineer  
6 so I'm not sure exactly the permit process,  
7 but I would only imagine that you should have  
8 a permit before constructing.

9 CHAIRMAN GRIFFIS: You understand  
10 we have no jurisdiction on that.

11 MR. SCHNEIDER: I do.

12 CHAIRMAN GRIFFIS: Okay.

13 MR. SCHNEIDER: And disregard if  
14 it's irrelevant.

15 Furthermore, I'd also like to make  
16 you aware that there are additional properties  
17 on the block that are under stop work orders  
18 at this moment, and would encourage you to  
19 realize that your decision probably will in  
20 fact set a precedent or could in fact set  
21 precedent for the rest of the block. And right  
22 now those three properties with a limit of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 potentially 30 houses on the block, we've got  
2 approximately 10 percent of the block now in  
3 flux and in change.

4 In conclusion, we have a confused  
5 time line. As you have all seen, we have a  
6 confused architect and confused contractors  
7 who the architect has revised a number of  
8 times in terms of the mistakes that we've made  
9 -- the mistakes that we've seen on the plans,  
10 the contractors accidentally went too far in  
11 one case. They actually built windows in  
12 another case. So it's setting up an  
13 uncomfortable trend for me in terms of the  
14 quality of work that's going forward.

15 If construction is allowed, it is  
16 my opinion that it is a great concern to the  
17 neighbors that the proper footing inspections  
18 and all that be done in due time.

19 And that's all I have.

20 CHAIRMAN GRIFFIS: Thank you.

21 MR. SCHNEIDER: Actually, if I  
22 could add one more thing.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Sure.

2 MR. SCHNEIDER: One final thing.

3 We were unaware as to -- as the neighbors are

4 unaware that the wall extending back into --

5 the extension was going to be a masonry wall.

6 Is that a brick? Is that brick?

7 MR. TABBS: Yes. Masonry. It'll

8 be -- well, it'll be either brick or block.

9 MR. SCHNEIDER: So I would argue

10 that in accordance with the rest of the backs

11 of the houses that, I don't know what the

12 process be, but it should in my opinion be

13 brick.

14 MR. TABBS: I think there's no

15 restriction on as far as the wall itself that

16 I have to put up. Actually, I could put up

17 either brick or block. But because of the

18 expense I'm incurring now, I'm just leaving my

19 options open to put up a block wall. I would

20 leave to leave the brick wall up because, as

21 you can see, it's a nice brick wall. But I'm

22 just reserving my options to put a block wall

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 up.

2 MR. SCHNEIDER: In response to  
3 that, I would like to second my support or  
4 second Mr. O'Meara's support for the variance  
5 for the courts if it would retain the brick  
6 wall.

7 CHAIRMAN GRIFFIS: Excellent.  
8 Appreciate that. A lot of the comments that  
9 you've made, obviously, are construction means  
10 and methods, which would go under the normal  
11 inspection no matter what happens here. And  
12 DCRA would be in charge of that. But I  
13 appreciate you both providing testimony for  
14 the Board today, specifically the exhibits,  
15 the PFO exhibits we'll take into great  
16 consideration in our deliberation.

17 That being said, Mr. Tabbs, do you  
18 have any last -- closing remarks --

19 COMMISSIONER JARBOE: Mr.  
20 Chairman, I hate to prolong this, but could I  
21 have one quick cross?

22 CHAIRMAN GRIFFIS: Yes, go ahead.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 COMMISSIONER JARBOE: I apologize.

2 Mr. O'Meara, that drawing that you  
3 submitted for the record of the height of the  
4 building on the side, is that similar to the  
5 drawings that we saw at the ANC?

6 MR. O'MEARA: Yes. Basically I  
7 think you have in record some drawings from  
8 Mr. Cassidy, which show approximately the same  
9 view, but maybe with me in the foreground  
10 wearing a gray sweatshirt or something like  
11 that. It should be a similar type of picture.  
12 I didn't know that he would have those  
13 submitted, so --

14 COMMISSIONER JARBOE: Based on  
15 your drawings, the drawing that was referred  
16 to by Mr. Cassidy before that showed a hand  
17 drawing of the addition that the Applicant  
18 said was incorrect, leaving aside the  
19 architectural details of the windows and  
20 whether it goes lot line to lot line, is it  
21 your understanding that that drawing is  
22 essentially correct in concerning the massing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 and the heights of the addition based on your  
2 own visual renderings of what the massing and  
3 the height of that addition would be?

4 MR. O'MEARA: Can you just clarify  
5 which drawing? Is it the view from the rear  
6 porch or is it from across the street?

7 COMMISSIONER JARBOE: It's the  
8 view from the rear porch that had been  
9 circulated to the neighbors for -- in a  
10 petition form. I don't have the exhibit in  
11 front of me. But it was the exhibit, Mr.  
12 Chairman, that you held up or the Applicant  
13 held up and said was inaccurate.

14 CHAIRMAN GRIFFIS: So what's the  
15 question?

16 COMMISSIONER JARBOE: My question  
17 is based on his own drawings as an engineer of  
18 the massing and height of that particular  
19 addition, is that drawing essentially correct  
20 in the massing and height?

21 CHAIRMAN GRIFFIS: Is it  
22 essentially correct or is it essentially

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 incorrect?

2 COMMISSIONER JARBOE: Well, it's  
3 been asserted by the Applicant --

4 CHAIRMAN GRIFFIS: It's a  
5 perspective, right?

6 COMMISSIONER JARBOE: It's been  
7 asserted by the Applicant that that's an  
8 incorrect drawing.

9 CHAIRMAN GRIFFIS: Sure.

10 COMMISSIONER JARBOE: And I'm  
11 asking the neighbor who has done their own  
12 drawings on this, whether they think that  
13 that's essentially correct in the massing and  
14 the height, which is the important --

15 CHAIRMAN GRIFFIS: I think that's  
16 your assertion. I don't think we need an  
17 answer on that. Otherwise, we're going to  
18 start to question you of your expertise in  
19 assessing that perspective.

20 MR. O'MEARA: I would only comment  
21 that when a petition like this --

22 CHAIRMAN GRIFFIS: No comment

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 needed. We don't have anything else.

2 Mr. Tabbs, this is all you now.

3 Yes, except for Ms. Miller, it's all you.

4 But let me just tell you, she's going to ask  
5 you a question in a second, Mr. Tabbs. I just  
6 want to make sure that you are understanding  
7 what's about to happen. I'll give you an  
8 opportunity just to summarize today. You don't  
9 need to take that, because frankly the  
10 record's going to be kept open for a  
11 substantial amount for you to submit in.

12 So my recommendation would be  
13 that's utilize not the time today, but the  
14 time to submit in writing to the record to  
15 address some of these exhibits that are in and  
16 also to submit the other things that we'll go  
17 through.

18 But Ms. Miller has a question.

19 VICE CHAIRPERSON MILLER: I just  
20 have a quick question for Mr. O'Malley, just  
21 to follow up to your testimony. I just want to  
22 know if you can quantify in any way what you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 think the difference and the impact on light  
2 and air would be from a matter of right  
3 addition as compared to the addition that's  
4 proposed?

5 MR. O'MEARA: Actually, I can.  
6 First to clarify Mr. O'Meara is the name, not  
7 Mr. O'Malley. But --

8 VICE CHAIRPERSON MILLER: I'm  
9 sorry.

10 MR. O'MEARA: -- no big deal.  
11 While I was kind of hanging out  
12 there in the back waiting I did some  
13 calculations of the square footage of  
14 essentially the side of the building which  
15 will be viewed from both my porch and Mr.  
16 Jackson's porch, which essentially you could  
17 use as a quantification as to the blockage as  
18 to light and air that will be incurred.

19 As proposed, Mr. Tabbs is  
20 approximately 27 foot extension, 38 feet in  
21 height will have a new blockage -- and I'm  
22 going to take out the blockage that already

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 exists from Mr. Jackson's fence, so I'll pull  
2 that out of there, is about 50 square feet of  
3 brick blockage as he's requesting.

4 And there's so many permutations,  
5 I'll try to be quick here.

6 The three story addition that is a  
7 story above our roof line at 60 percent is 713  
8 square feet of blockage. A two story addition  
9 at 60 percent, which is what we would propose  
10 as being a legal addition, is only 450 square  
11 foot blockage, which is not quite half of what  
12 he is requesting. And then a two story  
13 addition at the 64 percent is 536 square foot  
14 blockage.

15 VICE CHAIRPERSON MILLER: Thank  
16 you.

17 CHAIRMAN GRIFFIS: Good. That  
18 being said, Mr. Tabbs, anything else you'd  
19 like to address?

20 MR. TABBS: I just want to get  
21 clear on all that. That blockage, does all  
22 that include the legal lot occupancy? Sixty

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 percent or does that include just only the  
2 portion that exceeded the legal lot occupancy?

3 MR. O'MEARA: That's why I had so  
4 many examples. I tried to take into account  
5 all of those, both a two story addition and a  
6 three story addition, a 60 percent occupancy  
7 and a 64 percent occupancy using a 60  
8 occupancy number of 23 foot addition, which  
9 was greater than the 22 and a half. And a 64  
10 percent occupancy, which is the 272 foot  
11 addition.

12 MR. TABBS: Okay. So I guess -- I  
13 just want to be clear on we're talking about  
14 the four percent, not the 60 percent, we're  
15 talking about the four percent that's beyond  
16 the 60 percent lot occupancy. Those are the  
17 numbers that I was -- because that was  
18 included.

19 MR. O'MEARA: The two options I  
20 gave were a 60 percent occupancy, which  
21 matches the numbers that are on the submitted  
22 drawings and a 64 percent occupancy, which

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 matches the 272 foot extension number, which  
2 I believe is what's there as you had given in  
3 ANC meetings.

4 MR. TABBS: Okay. Okay. So the  
5 six percent that's on the drawings, which  
6 actually has been approved by the Zoning  
7 Branch, that's legal, correct?

8 MR. O'MEARA: Right. I mean --

9 MR. TABBS: Okay. Thank you.  
10 Yes. Thank you.

11 MR. O'MEARA: Those are the two  
12 measurements in the measurements that I was  
13 given.

14 MR. TABBS: Yes. Just wondered.  
15 Make that clear.

16 MR. O'MEARA: Was that clear to  
17 the Board, the measurements?

18 MR. TABBS: Crystal. And Ms.  
19 Miller took copious notes, so she's going to  
20 brief the Board on it also. But I think we're  
21 understanding exactly the impact that you're  
22 talking about in taking the square footage

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 calculations to the wall that's being proposed  
2 and necessarily not into a visual impairment  
3 calculation.

4 Very well. Anything else?

5 MR. TABBS: A closing remark.

6 CHAIRMAN GRIFFIS: Okay.

7 MR. TABBS: I just that I meet the  
8 requirements to request for you to approve the  
9 application for a special exception. And I  
10 only request that the Board provide that  
11 approval. That's it.

12 CHAIRMAN GRIFFIS: Excellent.  
13 Thank you very much.

14 As was indicated, we have  
15 additional requirements that needed to come  
16 into the record. And so let me assert those  
17 or list those now. And after which, I'm going  
18 to ask how much time it's been you're going to  
19 require to submit those into those into the  
20 record.

21 But first and foremost is the  
22 architectural drawings that show actually what

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 your proposed to build.

2 And I think the other information  
3 that was coming in, Ms. Bailey?

4 MS. BAILEY: I believe you wanted  
5 the Applicant to provide an explanation of how  
6 the courts are to be treated?

7 CHAIRMAN GRIFFIS: Right. Thank  
8 you. I mean that should all be within the  
9 drawings that you submit. The project as you  
10 are proposing to build it and what's before us  
11 for relief.

12 Yes?

13 MS. BAILEY: And, Mr. Chairman,  
14 you had asked that the Applicant provide a  
15 response to the graphics that were filed by  
16 the ANC, and also a discussion of the  
17 technical aspects of the case that were  
18 presented today?

19 CHAIRMAN GRIFFIS: Excellent.

20 And lastly, the ANC the record was  
21 left open for the official action from the ANC  
22 this evening. Good.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   So to be absolutely clear, there  
2                   is an assertion in that the calculation that  
3                   the Zoning technician at DCRA did was  
4                   incorrect. We're allowing you to address  
5                   that, if you would like, for the Board to  
6                   consider.

7                   MR. TABBS: Okay.

8                   CHAIRMAN GRIFFIS: But most  
9                   importantly, we need the drawings.

10                  MR. TABBS: Okay.

11                  CHAIRMAN GRIFFIS: Okay. Anything  
12                  else? Any of the Board Members have any --  
13                  yes?

14                  COMMISSIONER JEFFRIES: And part  
15                  of the drawings, I just want to again make  
16                  certain that you sort of address not just from  
17                  an elevations, but show some very simple  
18                  perspectives about how this addition from the  
19                  back looks if you're going north or south, and  
20                  also from the back.

21                  MR. TABBS: Okay. Okay.

22                  CHAIRMAN GRIFFIS: I mean I think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 perspective is a great vehicle, but it's not  
2 necessarily -- could not be done in elevation,  
3 or do you believe that that's not the case for  
4 your viewing of the character of this  
5 addition?

6 COMMISSIONER JEFFRIES: Absolutely.  
7 I'm dealing with -- I'm just dealing with  
8 character and I'm just concerned about the  
9 roof line. And I just want to see -- I mean,  
10 again, the drawing that I saw, again, was  
11 somewhat obtrusive to me. And as long as I  
12 can see a correct drawing about how this --  
13 what I consider to be pop-up towards the back  
14 of the building looks as you're walking down,  
15 you know, from the north, then I mean that's  
16 fine. Because I'm concerned about character.  
17 And it goes right to the special exception.

18 MR. TABBS: Okay. Good. To  
19 answer your question, me standing across the  
20 street with a camera taking a picture of the  
21 roof, would that be -- no, that's not. Okay.

22 COMMISSIONER JEFFRIES: Because I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 need to see what that pop-up is going to look  
2 like.

3 MR. TABBS: Okay. You want to see  
4 what it looks like. Okay. Okay.

5 CHAIRMAN GRIFFIS: But it's there,  
6 isn't it?

7 MR. TABBS: No. It's not already.  
8 It's up to the second level.

9 CHAIRMAN GRIFFIS: I gotcha.  
10 Okay. Good.

11 Anything else? Just need to set a  
12 date for this. How quickly do you think you  
13 could have in? This would be -- what I'd like  
14 to do is set this for our February decision  
15 making, which would make a decision on the 6th  
16 of February.

17 Yes?

18 COMMISSIONER JEFFRIES: Does that  
19 work for you?

20 MR. TABBS: No, it doesn't.

21 CHAIRMAN GRIFFIS: Okay. Then we  
22 would set this for a special public meeting,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 which would be on the -- that should be on the  
2 23rd of January.

3 MR. TABBS: Would that the  
4 soonest?

5 CHAIRMAN GRIFFIS: Yes. And then  
6 that would mean that all you information and  
7 the agencies would need to be in the record by  
8 the 16th of January at 3:00. Is that enough  
9 time to have all that done?

10 MR. TABBS: Yes, it is.

11 CHAIRMAN GRIFFIS: Okay. Good. Is  
12 there any concern, questions from the Board?

13 Mr. Tabbs, do you have any  
14 procedural questions that you have for me?

15 MR. TABBS: No, I don't.

16 CHAIRMAN GRIFFIS: Okay. If you  
17 get into the point where you're questioning  
18 what is to be submitted and when, please call  
19 the Office of Zoning. Ms. Bailey, Mr. Moy are  
20 obviously here with us. They know exactly  
21 what's being required.

22 MR. TABBS: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   CHAIRMAN GRIFFIS: They can answer  
2 any procedural questions for you at that time.

3                   MR. TABBS: Okay.

4                   CHAIRMAN GRIFFIS: If not, we will  
5 look for those to be submitted. We will call  
6 this for a special public meeting and decision  
7 on that.

8                   There is no other time for you to  
9 address the Board in person. It is all now  
10 being put in writing into the record. At the  
11 time when we call this, we will open up for  
12 the deliberation and decision based on all of  
13 the information that has been submitted into  
14 the record.

15                  MR. TABBS: Okay. So can I submit  
16 additional information including what you have  
17 here, what you're asking for?

18                  CHAIRMAN GRIFFIS: Like what?

19                  MR. TABBS: Well, the pictures  
20 that I took of my measurements?

21                  CHAIRMAN GRIFFIS: As it's going  
22 to assert for the stories?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TABBS: Correct.

2 CHAIRMAN GRIFFIS: Absolutely you  
3 can.

4 MR. TABBS: Okay.

5 CHAIRMAN GRIFFIS: The record's  
6 open for you to address that element.

7 MR. TABBS: Okay. Okay. That's  
8 what I have.

9 CHAIRMAN GRIFFIS: Good. Good.  
10 And any other procedural questions like that  
11 if they're not answered today, again, do talk  
12 to the Office of Zoning.

13 MR. TABBS: Okay. Thank you.

14 CHAIRMAN GRIFFIS: Very well.

15 Anything else? Any other  
16 questions I can answer?

17 Is the ANC good?

18 COMMISSIONER JARBOE: Just to make  
19 clear that the Applicant also has to send the  
20 ANC the same materials, is that correct?

21 CHAIRMAN GRIFFIS: Oh, I'm sorry.  
22 Absolutely. That's a good point. Obviously,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 anything, we're just continuing as we're  
2 going, even if they're to the ANC.

3 MR. TABBS: Yes. Yes. Understood.

4 COMMISSIONER JARBOE: And we will  
5 get our letter to Mr. Tabbs as well.

6 CHAIRMAN GRIFFIS: Fantastic.  
7 We'll look forward to seeing it all when it's  
8 ready. If it isn't here on time, we'll move  
9 ahead.

10 That being said, if there's  
11 nothing further in this case, Ms. Bailey, is  
12 there further for the Board this morning.

13 COMMISSIONER JEFFRIES: Excuse me,  
14 Mr. Chair.

15 CHAIRMAN GRIFFIS: Yes, Mr.  
16 Jeffries?

17 COMMISSIONER JEFFRIES: I'm sorry.  
18 I have one more thing. The ANC made a  
19 discussion about air and light from this  
20 addition, particularly in the context of  
21 Jenkins Row. So when you -- when the  
22 architect looked at the back of this in terms

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 of some volumetric or whatever, you should  
2 really take that in consideration in terms of  
3 making that case.

4 MR. TABBS: Okay.

5 COMMISSIONER JEFFRIES: In terms  
6 of, you know, just addressing what's been put  
7 forward by the ANC.

8 MR. TABBS: Okay.

9 COMMISSIONER JEFFRIES: Okay? I  
10 mean, the context of having this taller  
11 addition in close relation to Jenkins Row and  
12 trying to at least show us or at least show  
13 me, you know, what that looks like.

14 MR. TABBS: Okay.

15 COMMISSIONER JEFFRIES: And so to  
16 make the case, again, it goes back to this  
17 whole notion of this special exception.

18 MR. TABBS: Okay.

19 COMMISSIONER JEFFRIES: Thank you.

20 CHAIRMAN GRIFFIS: Good. Anything  
21 else? Ms. Bailey?

22 Very well. If there's nothing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 further for the morning session, let's  
2 adjourn. I will note that it's getting on our  
3 afternoon. We will call for the afternoon  
4 case at 2:30 today.

5 (Whereupon, at 1:00 p.m. the  
6 hearing was adjourned, to reconvene this same  
7 day at 2:34 p.m.)

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

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

2 2:34 p.m.

3 CHAIRPERSON GRIFFIS: Good  
4 afternoon, ladies and gentlemen. Let me call  
5 to order our afternoon session the 12th of  
6 December, 2006, this is the Board of Zoning  
7 Adjustment for the District of Columbia. My  
8 name is Geoff Griffis, Chairperson. Joining  
9 me today is the Vice Chair Ms. Miller and Mr.  
10 Etherly.

11 Representing the National Capital  
12 Planning Commission is Mr. Mann. And  
13 representing the Zoning Commission with us is  
14 Mr. Parsons.

15 Copies of this hearing agenda are  
16 available for you.

17 I'm going to go very quickly into  
18 my opening remarks because we have one case in  
19 docket for this afternoon, and I am assuming  
20 you know most of what you are responsible for,  
21 and if not I will give direction. However,  
22 there are certain things that I will have to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 say in my opening remarks. And that is, it  
2 should be fully understood that all the  
3 proceeding before the Board of Zoning  
4 Adjustment are held in the open and before the  
5 public. Attendant to that, there are several  
6 very important things.

7 First, I'm going to ask that  
8 everyone turn off their cell phones, beepers  
9 at this time so we don't have disruption of  
10 the transmission of these proceedings. The  
11 transmission of these proceedings are very  
12 important. They're done and recorded in two  
13 fashions. One is a court reporter sitting on  
14 my right to the floor as the most important  
15 and integral one of this proceeding. He is  
16 creating the official transcript. Attendant  
17 to that are two things. First, I'm going to  
18 ask that everyone fill out witness cards.  
19 Witness cards are available at the table in  
20 front where you will provide testimony. They  
21 are also available where you entered into the  
22 hearing room. Pick those up, two cards, fill

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1       them out at this time. You can give them to  
2       the court reporter. Obviously, that's so we  
3       can spell your name correctly.

4                       When you are ready to come forward  
5       and are addressing the Board you're going to  
6       need to speak into a microphone. you're going  
7       to need to state your name and address for the  
8       record. You only need to do this once.  
9       Obviously, we can identify you for the record.

10                      We are also being broadcast live  
11       on the Office of Zoning's website. There's  
12       nothing you need to be concerned about with  
13       that, but take time to get some composure and  
14       get ready because it will be filming live.

15                      In addition, let me say that --  
16       well, let's go through the procedure for the  
17       appeal. As we call this case for this  
18       afternoon session we will go to the statement  
19       of the Appellant. We'll hear from the Zoning  
20       Administrator or the Government. We will hear  
21       from the Intervenors as they are set forth.  
22       We will also hear from the ANC and we will go

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 to rebuttal.

2 I'll go through all of that as we  
3 walk through this afternoon and the  
4 requirements. I'm going to set times. I'm  
5 going to ask everyone in participating if they  
6 will give me an estimate of time and we will  
7 set a judicial and fair amount for each of  
8 those participants in this case.

9 Cross examination, of course, is  
10 allowed by the Appellant -- Appellee, and  
11 intervenors as they are set. Our regulations  
12 are very comprehensive in terms of the rules  
13 and regulations in regards to that. I won't go  
14 through all those now but will give direction  
15 as is needed.

16 The case will be closed at the  
17 conclusion of the hearing. We will, if  
18 needed, identify additional information that  
19 should be submitted into the record. But none  
20 of you will leave without having a full  
21 understanding of if the record is left open,  
22 what it is left open for.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   The Sunshine Act does require that  
2 we conduct all our hearing in the open and  
3 before the public. We do enter into executive  
4 sessions both during or after proceedings  
5 before the Board of Zoning Adjustment. This  
6 is in accordance with our rules, regulations,  
7 procedure. It is also in accordance with the  
8 Sunshine Act.

9                   The decision of this Board must be  
10 based exclusively the record that we are about  
11 to create this afternoon. So, there are two  
12 things attendant to that. So there are two  
13 things attendant to that.

14                   First of all, we ask that persons  
15 present not engage Board Members in private  
16 conversation today if you see us on a break,  
17 a recess or immediately after this as it may  
18 give the appearance of us receiving  
19 information outside of that which is on the  
20 public record.

21                   Also attendant to that anything  
22 that you believe the Board should be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 deliberating on, of course, should come into  
2 the record. And that should be submitted in  
3 writing into the record and/or submitted  
4 orally today as part of our proceedings.

5 At this time I'm going to say a  
6 very good afternoon to Ms. Bailey with the  
7 Office of Zoning. Ms. Bushman, also with the  
8 Office of Zoning. Mr. Moy with us with the  
9 Office of Zoning.

10 Ms. Monroe, with the Office of  
11 Attorney General is with us this afternoon.

12 I'm going to ask that all persons  
13 that may be provided as witnesses to give  
14 testimony to the Board, if you would please  
15 stand and give your attention to Ms. Bailey,  
16 she's going to swear you in.

17 (Witnesses sworn).

18 CHAIRMAN GRIFFIS: Thank you all  
19 very much. At this point then we're ready to  
20 consider any preliminary matters.

21 Preliminary matters are those  
22 which relate to whether a case will or should

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 be heard today. If you believe that a case on  
2 our agenda is not prepared to go forward or  
3 you believe as someone any participant is not  
4 ready to go forward, now would be a great time  
5 to tell us that. But also whether proper and  
6 adequate notice has been provided or any other  
7 legal elements of preliminary matter.

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

11 MS. BAILEY: Mr. Chairman, members  
12 of the Board, good afternoon.

13 I believe the preliminary matters  
14 are case specific and staff does not have any  
15 at this point.

16 CHAIRMAN GRIFFIS: Excellent.

17 Is anyone here present who would  
18 like to address the Board in terms of  
19 preliminary matter before his case is called?

20 MR. TAYLOR: I'm Dennis Taylor  
21 DCRA in this proceeding. I would move the  
22 Board to dismiss this proceeding as one that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 has been untimely file before the Board.

2 CHAIRMAN GRIFFIS: Excellent. So  
3 you have a motion to dismiss based on  
4 timeliness, is that correct?

5 MR. TAYLOR: That is correct.

6 CHAIRMAN GRIFFIS: Good. I think  
7 Ms. Bailey is absolutely correct, at that  
8 point the matter needs to be taken up under  
9 the case itself. So why don't we call the case  
10 unless there's any preliminary procedural  
11 matters that would stop us from calling this  
12 case. Not seeing any indication of such, Ms.  
13 Bailey if you're ready.

14 MS. BAILEY: This is an appeal,  
15 and the number is 17538 of Advisory  
16 Neighborhood Commission 3C and Woodley Park  
17 Community Association, pursuant to 11 DCMR  
18 3100 and 3101, from the administrative  
19 decision of the Zoning Administrator,  
20 Department of Consumer and Regulatory Affairs  
21 to issue Building Permit Nos 86798 and 67758  
22 on May 25, 2006 allowing the construction of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 a new building/underground parking garage.  
2 Appellant alleges that the authorized  
3 construction is in violation of several  
4 sections of 11 DCMR, including subsections  
5 330.5, 2301, and 2500. The property is  
6 located in the R-5-B and R-5-D Districts at  
7 premises at 2660 Woodley Road, N.W., Square  
8 2132, Lot 832.

9 CHAIRMAN GRIFFIS: Excellent.  
10 Thank you very much, Ms. Bailey.

11 The Board has one preliminary  
12 matter before we proceed to the motion.

13 Mr. Mann?

14 BOARD MEMBER MANN: Thank you, Mr.  
15 Chairman.

16 I do have one small disclosure to  
17 make. Up until earlier this year I lived in  
18 the Woodley Park neighborhood very close to  
19 the hotel. I did attend a couple of Woodley  
20 Park Community Association meetings where the  
21 proposal was discussed. However, that was at  
22 a time when it was presented as a matter of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 right and there had been no question raised at  
2 that time as to whether or not zoning really  
3 was necessary. And the primary issues that  
4 were discussed were not zoning issues, but  
5 curb cut issues.

6 CHAIRMAN GRIFFIS: Excellent, Mr.  
7 Mann. Do you have nay difficulty in your  
8 judgment in rendering a fair and impartial  
9 decision on this case if you were to proceed?

10 BOARD MEMBER MANN: If I were to  
11 proceed, I believe that I could listen to the  
12 testimony and I've read the case filings, and  
13 I believe that I could make a fair judgment on  
14 this case.

15 CHAIRMAN GRIFFIS: In meetings  
16 that you were attendant to, were there any of  
17 these legal elements discussed?

18 BOARD MEMBER MANN: No. As I said  
19 at the time, the case seemed to be a matter of  
20 right. None of those issues regarding relief  
21 had been raised at the meetings that I was at,  
22 at least. And again, the only issues were curb

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 cut issues, which are not at issue here today.

2 CHAIRMAN GRIFFIS: Good. Any  
3 other Board Members have any questions of Mr.  
4 Mann?

5 I'm going to have the panel  
6 introduce themselves because I'm going to have  
7 everyone, of course, state a position or ask  
8 Mr. Mann a question. We've had DCRA in fact  
9 introduce themselves. If I could have the  
10 left side of the panel?

11 MR. HITCHCOCK: Good afternoon,  
12 Mr. Chairman, Members of the Board. My name  
13 is Con Hitchcock. I'm appearing here as  
14 counsel today for the Woodley Park Community  
15 Association and Advisory Neighborhood  
16 Commission 3-C.

17 Joining me at the table is John  
18 Goodman, who is the President of the Woodley  
19 Park Community Association and Nancy MacWood,  
20 who is the Chair of the ANC 3C.

21 CHAIRMAN GRIFFIS: Thank you.

22 MR. HITCHCOCK: And I would add,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Mr. Chairman, while we're on preliminary  
2 matters, we do have a PowerPoint presentation.  
3 We're waiting for the staff to set up the  
4 screen so we can run it when we get to that  
5 point.

6 CHAIRMAN GRIFFIS: Perfect. That  
7 costs extra, however we'll accommodate.

8 How about the issue at hand, Mr.  
9 Mann. Do you have any questions of Mr. Mann,  
10 Mr. Goodman? Or do you have a position of  
11 whether you would be in opposition of Mr. Mann  
12 continuing on this case?

13 MR. HITCHCOCK: No, we take no  
14 position. We have no problem.

15 CHAIRMAN GRIFFIS: That's two  
16 different things.

17 MR. HITCHCOCK: We have no problem  
18 with him continuing.

19 CHAIRMAN GRIFFIS: Thank you.

20 MR. TAYLOR: Mr. Chairman, if I  
21 may do a more complete introduction at this  
22 point.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Sure.

2 MR. TAYLOR: For the record, I'm  
3 Assistant Attorney General Dennis Taylor with  
4 the Department of Consumer and Regulatory  
5 Affairs in their Office of General Counsel.

6 With me today is my colleague  
7 sitting behind me, Mr. Ali Sarafzadeh. The  
8 clerk has the cards to help spell that.

9 And sitting with me is the Zoning  
10 Administrator of the District of Columbia, Mr.  
11 Bill Crews.

12 CHAIRMAN GRIFFIS: Thank you.

13 MR. TAYLOR: Regarding the  
14 question of Mr. Mann, the District has no  
15 objection to Mr. Mann sitting on this matter.

16 CHAIRMAN GRIFFIS: Thank you very  
17 much.

18 And I note Mr. Nettler has joined  
19 the panel. And I think we can address before  
20 we get to him, the status of Intervenor in  
21 order to allow him to also address the issue  
22 of Mr. Mann's disclosure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   It has been, and in the  
2 regulations, in fact, that the owners are  
3 established as Intervenor in appeals unless  
4 anyone has concern with that, Mr. Goodman,  
5 DCRA. I would continue with the Board  
6 noticing Mr. Nettler as representing the owner  
7 and Intervenor in this case.

8                   MR. HITCHCOCK: No objection, Mr.  
9 Chair.

10                  CHAIRMAN GRIFFIS: Thank you.  
11                  Mr. Goodman, any comment? Okay.  
12 Thank you.

13                  Mr. Nettler?

14                  MR. NETTLER: Good afternoon. My  
15 name is Richard Nettler with the law firm of  
16 Robins, Kaplan Miller and Ciresi. With me is  
17 Ms. Kinley Dumas.

18                  We present, as you said, the  
19 Wardman Hotel LLC which the JBG Companies are  
20 the principal members of that LLC.

21                  And we do not have any objection  
22 to Mr. Mann sitting on the Board today.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   CHAIRMAN GRIFFIS: Very well. Is  
2 anyone here present in this case of interest  
3 at all have a question of Mr. Mann? Yes. I'm  
4 going to need you on a mike. You're just  
5 going to need to state your name and address  
6 also.

7                   COMMISSIONER LINDEMAN: I just  
8 wanted to say that I'm Commissioner Lindeman  
9 for 3C-0-2. And since the ANC already spoke,  
10 I didn't. But I thought you were asking  
11 something else. Sorry.

12                  CHAIRMAN GRIFFIS: Oh, okay. Did  
13 the ANC -- well, very well. Thank you.

14                  COMMISSIONER LINDEMAN: Chairman  
15 MacWood is officially representing, but I'm  
16 here as backup, too.

17                  CHAIRMAN GRIFFIS: Okay. Anything  
18 else then? Very well. Let's move on to the  
19 motion.

20                  Do you have a written submission  
21 of the motion or are you going to make an oral  
22 motion on this?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TAYLOR: My intention is to  
2 make an oral motion. The facts are very  
3 simple. The building permit which is the  
4 primary permit being appealed here is the  
5 permit to allow the parking project to move  
6 forward. That, in fact, the proper number for  
7 that permit is number 86798. That permit was  
8 issued on May the 12th of 2006.

9 Sixty days from May 12th would be  
10 July the 11th, 2006. This appeal was filed  
11 before the Board on July the 14th, 2006, which  
12 was 63 days past -- excuse me. Sixty-three  
13 days, which is three days past the last date  
14 of timeliness.

15 As you are well aware, the  
16 regulations do provide an opportunity for the  
17 Board to extend that 60 day deadline if tow  
18 conditions are met. One there being  
19 exceptional circumstances outside of the  
20 Appellant's control that could not have been  
21 recently anticipated that substantially  
22 impaired the Appellant's ability to file the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 appeal before this Board. The Government is  
2 unaware of any exceptional circumstances  
3 involved with this appeal. The most  
4 exceptional circumstance that the Government  
5 can cite to is the inordinately high degree of  
6 communication that took place between the ANC  
7 and the Office of Zoning Administrator leading  
8 up to the issuance of this building permit.  
9 Certainly nothing that impaired a timely  
10 filing of appeal.

11 The second element, the extension  
12 of time will not prejudice the parties to the  
13 appeal. I think it would be more appropriate  
14 to let the parties speak for themselves on  
15 that matter, but I do believe that in addition  
16 to the number one being fatal, that a party is  
17 going to put forward prejudice that they are  
18 feeling by the untimely appeal.

19 CHAIRMAN GRIFFIS: Excellent.  
20 Thank you. We're going to have a round of  
21 responses to that motion, and then we'll end  
22 back up with DCRA if needed.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   First of all, questions from the  
2 Board for clarification on the motion to  
3 dismiss on the grounds of timeliness?  
4 Questions? Excellent.

5                   Mr. Goodman?

6                   MR. GOODMAN: My understanding of  
7 the regulations is that time to file an appeal  
8 runs either from the date that the permit is  
9 issued or from the time when a person has  
10 notice of the issuance. And although the  
11 permit says it was issued on the 12th and we  
12 did not have notice of it on that date, we did  
13 not have notice of it until a number of days  
14 after that. And so it was 60 days.

15                  CHAIRMAN GRIFFIS: Okay.  
16 Actually, if one were to put it in  
17 perspective, it's when the Board would assess  
18 when you knew or should have known. We won't  
19 go too far into that.

20                  When you say "we were given  
21 notice, "what was your notice?

22                  MR. GOODMAN: We heard of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 issuance of the permit at a meeting of ANC 3C,  
2 or at least that's when WPCA first heard about  
3 it, which was -- I don't have the date at  
4 hand, but I believe it was the week after the  
5 permit was issued.

6 CHAIRMAN GRIFFIS: But you're  
7 joined in this appeal with the ANC. When did  
8 the ANC know?Dent Building

9 COMMISSIONER MacWOOD: Mr.  
10 Chairman and Members of the Board, I'm the ANC  
11 Board Chair of ANC 3C. And I apologize at the  
12 outset. I've been under the weather, so Mr.  
13 Goodman is going to do most of our talking.

14 But at our May meeting, which is  
15 the third Monday of the month, and I would  
16 have to check the calendar to give you the  
17 exact date, but it was after this point it was  
18 filed. Mr. Crews was an invitee at that  
19 meeting and he informed the ANC at that  
20 meeting that the permit had been issued. And  
21 I believe that the appeal was filed within 60  
22 days of that meeting and that notice.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. HITCHCOCK: Let me see if I  
2 can add a little context. I would draw the  
3 Board's attention to an attachment to the  
4 application to the appeal itself containing a  
5 memorandum that was written to Ms. MacWood by  
6 Bill Crews, dated May 15, 2006, which is three  
7 days after the first of these permits issue,  
8 which I think is contemporaneous with the  
9 notice.

10 And so counting from this date of  
11 notice, that the notice was sent, we get to 60  
12 days for the first permit. I note Mr. Taylor's  
13 concern --

14 CHAIRMAN GRIFFIS: Okay. But  
15 you're starting to calculate from the date  
16 that Mr. Crews wrote a letter notifying of a  
17 permit?

18 MR. HITCHCOCK: This is the  
19 interpretation with respect with dealing with  
20 area of measurements. But I was going to say  
21 I note Mr. Taylor's concession as well that  
22 the second permit is timely and it was dated

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 May 26. 2006. So the limitation here -- I  
2 mean the amount of time we're talking about is  
3 truly de minimis as to the first one. The  
4 information -- I guess Ms. MacWood may  
5 remember what the date of the meeting was in  
6 May? It's normally the third Monday, which is  
7 the 15th of May, which was -- if the permit  
8 issued on Friday the 12th, it's hard to  
9 believe that the Commission would have known  
10 about it prior to Monday the 15th, which is  
11 the date of the memorandum.

12 CHAIRMAN GRIFFIS: Fine. The  
13 issuance of a permit is a public issuance.

14 MR. HITCHCOCK: Well, but not --  
15 only if one is at the offices where they are  
16 there.

17 CHAIRMAN GRIFFIS: But that's when  
18 the clock starts.

19 MR. HITCHCOCK: But there's not  
20 mailing, there's not that sort of thing.

21 CHAIRMAN GRIFFIS: Right. But the  
22 clock starts when the permit was issued. And

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 then we can move on to the step of or should  
2 have known when conceivably there is a element  
3 of which you could not have known of this  
4 public issuance of a permit. I mean these are  
5 the elements. Let's just figure out why a  
6 special circumstances happened.

7 MR. HITCHCOCK: I guess because,  
8 you know, in this case there was no indication  
9 of when the permit would come out, one would  
10 have to be checking on a daily basis and they  
11 were told promptly thereafter.

12 CHAIRMAN GRIFFIS: Let me ask for  
13 some clarification. On the third Monday, I  
14 believe it was, in May when Mr. Crews showed  
15 up, was this the first time that this was on  
16 the agenda this project? Is this when the ANC  
17 was getting acclimated that this was  
18 happening?

19 COMMISSIONER MacWOOD: No, Mr.  
20 Chairman.

21 CHAIRMAN GRIFFIS: Were you aware  
22 that the development was under and in for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 permit?

2 COMMISSIONER MacWOOD: No. We  
3 were under -- we knew that permit applications  
4 were going to be submitted. We had asked the  
5 Zoning Administrator to look at the entire  
6 project and determine whether there were  
7 zoning issues that needed to be addressed  
8 before permits could be issued. And Mr. Crews  
9 had agreed to do that. So we were under the  
10 impression that there was basically a freeze  
11 on any permits being issued until he made an  
12 interpretation of whatever applicable zoning  
13 regulations there might be.

14 When he came to our meeting on May  
15 15th that's when we got his memorandum, which  
16 was in response to our request.

17 CHAIRMAN GRIFFIS: That was kind  
18 of shocking to hear that the permits had been  
19 issued when you --

20 COMMISSIONER MacWOOD: We heard at  
21 the same meeting, exactly, that a permit had  
22 been issued the Friday before. So that is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 when we had notice and we had every reason to  
2 believe prior to that point that permits would  
3 not be issued until we had been notified.

4 CHAIRMAN GRIFFIS: Would not be  
5 issued? You were aware that they were in for  
6 permit?

7 COMMISSIONER MacWOOD: I can't --  
8 I don't recall if we knew that a permit had  
9 been applied for or not. We certainly knew  
10 that if they hadn't already been applied for,  
11 they would be imminently.

12 CHAIRMAN GRIFFIS: Is your  
13 understanding that the Zoning Administrator  
14 does not put freezes on issuing permits?

15 COMMISSIONER MacWOOD: I think we  
16 had -- I mean, I don't want to speak for the  
17 Zoning Administrator, but I think we had -- we  
18 had an understanding of whether it was  
19 informal as opposed to formal that he would --  
20 he had agreed to look at these issues and so  
21 we --

22 CHAIRMAN GRIFFIS: Would he not be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 charged with looking at these issues in a  
2 normal course of reviewing the permit, or were  
3 you asking him to do something more than he  
4 was required --

5 COMMISSIONER MacWOOD: I'm not  
6 sure that the Zoning Administrator gets  
7 involved with the issuance of every permit.  
8 We had asked that this be elevated --

9 CHAIRMAN GRIFFIS: That's  
10 interesting. Does the Zoning Administrator  
11 get involved in the issuance of every permit?

12 ZONING ADMINISTRATOR CREWS: No,  
13 sir.

14 CHAIRMAN GRIFFIS: What permits  
15 don't you -- would this be a choice of yours  
16 to review or not review?

17 ZONING ADMINISTRATOR CREWS: Yes.  
18 I mean mainly because of the --

19 CHAIRMAN GRIFFIS: So this  
20 wouldn't have necessarily zoning review unless  
21 you wanted to do zoning review that day? So  
22 like Monday, Tuesday, Wednesday you do zoning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 review. Thursday, Friday if you're in, you're  
2 clear, just get through it.

3 ZONING ADMINISTRATOR CREWS: I do  
4 complaints.

5 I mean, I have a staff of review  
6 technicians --

7 ZONING ADMINISTRATOR CREWS: I'm  
8 sorry. When I say "Zoning Administrator," I  
9 mean your office.

10 ZONING ADMINISTRATOR CREWS: Oh,  
11 absolutely. Absolutely.

12 CHAIRMAN GRIFFIS: I mean all, not  
13 you. The Zoning Administrator has to -- the  
14 zoning review happens under the Zoning  
15 Administrator, right?

16 ZONING ADMINISTRATOR CREWS:  
17 Right. Right.

18 CHAIRMAN GRIFFIS: Whether it be a  
19 technician or not.

20 ZONING ADMINISTRATOR CREWS:  
21 Right.

22 CHAIRMAN GRIFFIS: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 ZONING ADMINISTRATOR CREWS: Yes.

2 So this, obviously under review and --

3 CHAIRMAN GRIFFIS: So other  
4 permits that don't go through zoning review?  
5 Basic building, architectural permits?

6 ZONING ADMINISTRATOR CREWS:  
7 Certainly not for additions or major  
8 alternations. We are looking at, perhaps, a  
9 tenant layout with no change.

10 CHAIRMAN GRIFFIS: Okay.

11 ZONING ADMINISTRATOR CREWS:  
12 Fences.

13 CHAIRMAN GRIFFIS: Sure. Something  
14 that wouldn't invoke the zoning regulations.

15 ZONING ADMINISTRATOR CREWS: Yes.

16 CHAIRMAN GRIFFIS: But certainly  
17 there'd be a check to make sure that it didn't  
18 invoke zoning regulations, so that in itself  
19 is review?

20 ZONING ADMINISTRATOR CREWS: Yes.  
21 Exactly. And if I might just mention in terms  
22 of this particular overall project, we had

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 already issued some of the permits for the  
2 project in terms of the relocation of the  
3 loading docks, of the renovation of Exhibit  
4 Hall C. I think those were the main ones.

5 CHAIRMAN GRIFFIS: Okay. Are  
6 there different levels of review that you do  
7 based on the request of ANCs or associations  
8 or individual?

9 ZONING ADMINISTRATOR CREWS: That  
10 all factors in to how -- who should review it.  
11 You know, everything gets a thorough review,  
12 but in terms of higher profile issues we may  
13 make sure that we understand how if a  
14 reviewer, a technician reviewed it, that we  
15 may understand how they reviewed it so we're  
16 aware of potential questions and that sort of  
17 thing.

18 CHAIRMAN GRIFFIS: Understood. So  
19 if it's more complicated or larger, you may  
20 bring in more people to take a look at it.

21 ZONING ADMINISTRATOR CREWS:  
22 Absolutely.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   CHAIRMAN GRIFFIS: I see. Okay.  
2                   Let's go back. Other questions from the  
3                   Board?

4                   VICE CHAIRPERSON MILLER: Can I  
5                   just clarify, Mr. Crews? I was looking  
6                   through the regs while you all were speaking.  
7                   But the permit was issued on May 12th and the  
8                   ANC found out about it on May 15th, is that  
9                   correct, from you?

10                  ZONING ADMINISTRATOR CREWS: I can  
11                  only say that I did attend their meeting on  
12                  May 15th. And, undoubtedly, you know told them  
13                  that the permit had been issued.

14                  VICE CHAIRPERSON MILLER: And is  
15                  there a normal course that DCRA takes in  
16                  notifying ANCs about the issuance of certain  
17                  permits, certainly effecting properties that  
18                  they know the ANC is interested in?

19                  ZONING ADMINISTRATOR CREWS: We  
20                  send out, I think twice a month, from our  
21                  Advisory Neighborhood Commission liaison, Eric  
22                  Rodgers, a list of issued permits and of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 pending permit applications. So --

2 VICE CHAIRPERSON MILLER: Is it on  
3 a regular day, by any chance? I mean, is it  
4 like, you know, the 1st of the month, mid-  
5 month or --

6 ZONING ADMINISTRATOR CREWS: I'd  
7 have to check with him.

8 VICE CHAIRPERSON MILLER: Okay.

9 ZONING ADMINISTRATOR CREWS: And I  
10 apologize. But they should have had notice  
11 that on that list of pending applications that  
12 this was done. Maybe the owner comment. But,  
13 you know, this just didn't come in one day and  
14 we signed off on it the next. I'm sure they  
15 were waiting.

16 CHAIRMAN GRIFFIS: It was under  
17 the two day review.

18 VICE CHAIRPERSON MILLER: Okay.  
19 So that's pretty quick that you notified them  
20 considering -- I mean, looking at my calendar  
21 May 12th was a Friday and on the following  
22 Monday you let them know.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   ZONING ADMINISTRATOR CREWS: That  
2 was primarily just happenstance in terms of  
3 having the meeting scheduled where I was  
4 invited to attend.

5                   VICE CHAIRPERSON MILLER: Thank  
6 you.

7                   CHAIRMAN GRIFFIS: Anything else?

8                   MR. HITCHCOCK: I'm advised that  
9 some of the similar process about holding off  
10 on applications were done in some other  
11 projects involving this hotel. I understand,  
12 for example, the new restaurant and I'm  
13 advised the ballroom may have been subject to  
14 a similar process here. So that's why --

15                   CHAIRMAN GRIFFIS: What similar  
16 process?

17                   MR. HITCHCOCK: The process we  
18 were talking about where we understood that  
19 there was what we called a freeze and hold  
20 onto in terms of applications. But I'm trying  
21 to buttress the point that was made before.

22                   CHAIRMAN GRIFFIS: Right. I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 understand.

2 MR. HITCHCOCK: So --

3 CHAIRMAN GRIFFIS: I'm somewhat  
4 shocked to hear that there's a freezing  
5 process. But we don't need to explore that  
6 too much more.

7 MR. HITCHCOCK: Well, it's at  
8 terminology issue. But I think that's why it  
9 was done here with the expectations such as  
10 they were.

11 CHAIRMAN GRIFFIS: But I don't  
12 understand. What is the process as you  
13 understand it. You make a call into the  
14 Zoning Administrator and the Zoning  
15 Administrator stops the processing of a  
16 permit?

17 MR. HITCHCOCK: No. Well, I think  
18 it was understood that, you know, it would be  
19 put on hold. I can let someone else speak to  
20 it more fully.

21 CHAIRMAN GRIFFIS: Okay. So not  
22 stopped but put on hold?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. HITCHCOCK: Yes.

2 CHAIRMAN GRIFFIS: I'm not sure  
3 I'm going to spend a lot of time on this  
4 because I'm not going to get a lot of  
5 reconciliation of it. But I'm a little  
6 concerned with the assertion that that's what  
7 happens.

8 Let's hear from the owner and see  
9 if we can get back to the timeliness issue.

10 ZONING ADMINISTRATOR CREWS: Sure.  
11 Let me give you a little bit of background  
12 because I think it's both in the context of  
13 what the rule provides and why the rule  
14 provides what it provides as well.

15 Prior to the Zoning Commission's  
16 change in the rule to require a 60 day time  
17 for filing of appeals from the issuance of  
18 building permits, there was no time limit  
19 provided and it was governed by a number of  
20 court decisions which generally focused on,  
21 and actually one of them involved this hotel  
22 back in 1981/'82, generally focused on when

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 the community or those who were challenging  
2 the permits that were issued had a reasonable  
3 opportunity to find out that a permit had been  
4 issued and, therefore, could -- such as  
5 construction being begun or being formally  
6 notified. And the court said that there was  
7 somewhat of a flexible standard in terms of  
8 the days, either 30, 60, depending on those  
9 circumstances.

10 The Zoning Commission in response  
11 to the varying nature of those periods adopted  
12 the present rule which set a specific time  
13 frame of 60 days. It did not -- the 60 days  
14 does not begin to run from I guess notice of  
15 a particular permit, it begins to run from  
16 when the permit is issued.

17 And in this case, and also or  
18 following litigation in the late '70s and  
19 early '80s, as a matter of course the  
20 Department of Consumer and Regulatory Affairs  
21 every month sends out a notice of pending  
22 applications for building permits as well as

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 permits issued. It's part of D.C. Register.  
2 It's also published in the D.C. Register every  
3 Friday and a separate actually notice is sent  
4 to the ANC's. And the suit that led to that  
5 actually was brought by this ANC in the early  
6 1980's that led to that change in the  
7 practice.

8 In this case the owner was before  
9 this ANC on a number of occasions, as recently  
10 as I think it was March 6th to discuss the  
11 permits that were being sought by the  
12 applicant, one of them being the garage. And  
13 there were a number of public meetings both  
14 before the ANC and before Woodley Park  
15 Community Association regarding that. And, in  
16 fact, on May 11th, which was the day before  
17 the permit was issued, the owner again  
18 appeared before the ANC to describe the nature  
19 of the permits that had been applied for and  
20 what was it was seeking.

21 The permit was issued the next  
22 day, as you see from the permit that was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 issued. There was a subsequent meeting of the  
2 ANC at which the owner was present and which  
3 the ANC tried to determine which permits it  
4 wanted to appeal. It had determined that more  
5 than 60 days had run from the loading dock  
6 permit being issued, and so that it was not  
7 going to appeal that determination that it was  
8 in compliance with the zoning regulations and  
9 said the ANC determined at the date that was  
10 indicated by the Appellant, to appeal the  
11 garage permit presumably as it appears from my  
12 understanding, presumably because it viewed  
13 the sheeting and shoring permit as the  
14 appropriate permit to give this Board  
15 jurisdiction over the garage permit, which had  
16 been issued before the sheeting and shoring  
17 permit, and to appeal this memorandum that was  
18 issued by the Zoning Administrator as well,  
19 which I understand is going to be the subject  
20 of this separate argument by the Department of  
21 Consumer and Regulatory Affairs regarding your  
22 jurisdiction. But it was not because of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 fact that the permit that was issued for the  
2 garage was issued on a date other than what it  
3 says it was issued and that there was some  
4 other reasons why they should -- there was  
5 some reason for delaying filing the appeal.

6 So I think the counsel for the  
7 Department of Consumer and Regulatory Affairs  
8 is absolutely correct that the Board does not  
9 have jurisdiction over this appeal to the  
10 extent that it seeks your review of the permit  
11 that was issued for the garage that is under  
12 construction.

13 CHAIRMAN GRIFFIS: Excellent.

14 Thank you.

15 MR. GOODMAN: Mr. Chairman?

16 CHAIRMAN GRIFFIS: Yes.

17 MR. GOODMAN: First, I believe Mr.  
18 Nettler said there was a meeting on May 11th  
19 in front of the ANC.

20 MR. TAYLOR: Excuse me. It was  
21 Woodley Park Community Association.

22 MR. GOODMAN: That's correct. And

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 it had nothing to do with the permits. The  
2 only subject that JBG talked about at that  
3 meeting was the landscaping that they were  
4 going to do in this area. There was no  
5 discussion of the permits or the timing, or  
6 what had been filed or what had not been  
7 filed.

8           Also, under the regulations time  
9 to appeal runs from when a party had a notice  
10 or knowledge of the issuance of the permit.  
11 And in the order in which the Zoning  
12 Commission adopted that regulation, it states  
13 that it understands that the people who are  
14 effected by the grant or the issuance of a  
15 permit might not have information immediately  
16 about when a permit is issued. And that is why  
17 the words in the regulation talk about notice  
18 or knowledge of the issuance of the permit.

19           Here the permit was issued on the  
20 12th. I think everybody agrees that we had  
21 both notice and knowledge on the 15th. And the  
22 appeal was filed timely from that date.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TAYLOR: Mr. Chairman, if I  
2 may throw in five very quick final points on  
3 behalf of DCRA.

4 First of all, DCRA is also quite  
5 surprised to hear about the freeze procedure.  
6 It is not a procedure that is in our  
7 regulations. It is not a procedure that anyone  
8 at DCRA is familiar with instituting or  
9 following.

10 We don't know how such an impression  
11 may have been conveyed, but would respectfully  
12 suggest that someone may have heard what they  
13 wanted to hear when asking a question about  
14 whether this project followed regulations.

15 Second of all, if you were to look  
16 at Appellant Exhibit A page 4 I would want to  
17 point out to you that the Office of Zoning  
18 approved this project on April the 7th.

19 CHAIRMAN GRIFFIS: A4, is that  
20 what you said?

21 MR. TAYLOR: Page A, page 4. Yes,  
22 sir. Right hand column number 3. That is the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 page where all the different approvals are  
2 given.

3 CHAIRMAN GRIFFIS: Gotcha. Okay.

4 MR. TAYLOR: And it shows that the  
5 Zoning Administrator's office approved the  
6 construction of the underground garage on  
7 April the 7th. So if there was any freeze in  
8 the project after that, it either: (a) Came  
9 from some office other than Zoning, or; (b)  
10 there was freeze in the office of the Zoning  
11 Administrator's work because they'd already  
12 completed their review of the project and  
13 registered the approval.

14 Third, again, I would point out  
15 that this is not a stealth permit. This is  
16 one that got issued without anyone knowing  
17 that there was a permit in progress. As I  
18 think all parties have agreed, there was  
19 considerable communication among parties as  
20 this was being developed. There were hearings  
21 on the overall project before this body that  
22 had already taken place. People were fully

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 aware. And that is substantiated by the fact  
2 that the memorandum that Bill Crews sent to  
3 Ms. MacWood and Ms. Lindeman on May 15th was  
4 pursuant to a request that they had made  
5 regarding the propriety of this project. I  
6 would submit that they made that request in  
7 advance of May 15th. Again, this was not a  
8 surprise.

9 At risk of redoing old ground,  
10 this Board will recall that the 60 day period  
11 for filing an appeal was established in a  
12 loose manner judicially in the Waste  
13 Management case, later adopted into this  
14 Board's regulations. It has been the practice  
15 of this Board to strictly enforce the  
16 regulation. And I would refer you even to this  
17 year back to the case of Rodut & Associates.  
18 And the case where it was enforced against an  
19 ANC in the Matter of 1124 East Street.

20 CHAIRMAN GRIFFIS: Yes.

21 MR. TAYLOR: The final point from  
22 the Government, the regulation does not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 necessarily call for diligence -- excuse me,  
2 for knowledge. The regulation calls for  
3 diligence. And it has been the practice of  
4 this Board that when there is a high profile  
5 matter that the parties are deeply interested  
6 in, that they have the responsibility to know  
7 that a permit has been issued.

8 In this case it's not a question  
9 of them not knowing, it's a question of them  
10 waiting until what they thought was the very  
11 last possible day that they could get  
12 something in, and there's been no evidence  
13 presented to you that there were any  
14 exceptional circumstances that forced this to  
15 go to the 14th. No reason why this could not  
16 have been timely filed on the 11th.

17 CHAIRMAN GRIFFIS: Excellent.

18 COMMISSIONER MacWOOD: May I speak  
19 to that, Mr. Chairman?

20 CHAIRMAN GRIFFIS: Last round and  
21 then we're going to be timely and deal with  
22 this.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   COMMISSIONER MacWOOD: All right.  
2 I will be very quick because I'm going to lose  
3 my voice pretty soon.

4                   I think it's important for the  
5 Board to understand, and I think this is the  
6 issue before you, is when the ANC should have  
7 known that a permit had been filed.

8                   We have two means of being  
9 notified. One is through the D.C. Register.  
10 The D.C. Register. The D.C. Register is  
11 published on a Friday. If a permit is issued  
12 on a Friday, it would not go in the same day's  
13 Register. So it would have been after the  
14 12th, after the 15th.

15                  We receive the D.C. Register by  
16 mail. We often get it three weeks late. It  
17 has been an ongoing issue. Many ANC  
18 complained about it, including ours.

19                  The second mode of getting  
20 notification is through Eric Rodgers and  
21 through the DCRA office. He sends emails out,  
22 usually twice a month. In response to Mrs.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Miller's question, they are not always posted  
2 on the same day. They arrive in a format that  
3 is very difficult to read. Again, this is  
4 something that we have been working with DCRA  
5 on for a very long time. You have to hunt and  
6 peck through them to find the right addresses.

7 CHAIRMAN GRIFFIS: Okay.

8 COMMISSIONER MacWOOD: I think  
9 that having the notice, there's no way we  
10 could have known if it was going to be issued  
11 on the 12th, the 11th, the 10th; what date.  
12 We can't camp out at the permit office.  
13 Learning about it next business day and filing  
14 timely based on that information that we  
15 received, I frankly think we did pretty well.  
16 And I would hope that the Board would not  
17 expect more from us.

18 ZONING ADMINISTRATOR CREWS: May I  
19 just respond, just briefly? I'm sorry.

20 But if you look at the Appellant's  
21 Exhibit I, which is their ANC resolution, it  
22 was adopted on June 20, 2006. Adopted the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 resolution authorizing them to appeal. They  
2 simply waited, if you count from 20 to the  
3 16th of July they simply waited 36 days to  
4 file that notice of appeal of a permit that  
5 was issued on the 12th. So they already took  
6 the action. They already knew about it.

7 CHAIRMAN GRIFFIS: Questions from  
8 the Board?

9 MR. GOODMAN: You said that time  
10 does not run from knowledge. Knowledge isn't  
11 relevant. And 31.12(2)(a) says that an appeal  
12 shall be filed within 60 days from the date  
13 that the person appealing had notice or  
14 knowledge of the decision. So it runs from  
15 the knowledge, which is meaning they knew  
16 about it, real knowledge. And here we did  
17 appeal within 60 days of the time that we had  
18 knowledge. The notice, I believe what  
19 happened in these cases when a permit does  
20 show up in the Register, that would be a later  
21 date. If we had not had actual knowledge on  
22 the 15th, then an appeal could have been filed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 even later.

2 As to the timeliness --

3 CHAIRMAN GRIFFIS: That's actually  
4 not correct in terms of the interpretation of  
5 this Board and actually the courts. And I  
6 think you're hitting on a good point which the  
7 Board would obviously take intention that it  
8 wasn't based on knowledge.

9 But it says the appeal should be  
10 filed within 60 days from the date of the  
11 person appealing the Zoning Administrator  
12 decision had notice or knowledge of the  
13 decision complained of, or reasonably should  
14 have had notice or knowledge of the decision  
15 complained of, whichever is earlier. So you  
16 can't say that we decided not to look into it  
17 -- so we'll taking a later date. There will  
18 be an assessment of when you should have know,  
19 even if you admit to knowing or not knowing,  
20 or you didn't actually know when you should  
21 have known.

22 This is not unfamiliar territory

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 to the Board. I mean, of course, we always  
2 thought when the Zoning Commission adopted  
3 that part, we'd stop seeing these preliminary  
4 motions of time timeliness because it would  
5 all be set in stone and we'd all understand  
6 them greatly.

7 But I'd like to hear more from the  
8 Board at this point. I don't think there's  
9 any additional information that will be  
10 enlightening to us in terms of our decision.  
11 It seems to me we're really haggling over a  
12 few days here. And as the 12th is a Friday,  
13 which is an interesting point, and Monday  
14 being a 15th and we have a three day element,  
15 let me hear from Board Members.

16 VICE CHAIRPERSON MILLER: Mr.  
17 Chairman, what I would say is this seems to me  
18 very straightforward. It is a jurisdictional  
19 question for us.

20 I think we all agree that the  
21 operative provisions is (a), which you started  
22 to read, which says "An appeal shall be filed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 within 60 days from the date the person  
2 appealing the administrative notice had notice  
3 or knowledge of the decision complained of or  
4 reasonably should have had notice or knowledge  
5 of the decision complained of, whichever is  
6 earlier."

7 In this case we don't have any  
8 factual dispute that the ANC had knowledge and  
9 notice of the decision complained of on Monday  
10 the 15th and they filed within 60 days of that  
11 date. So, I think it's timely.

12 CHAIRMAN GRIFFIS: Others?

13 BOARD MEMBER ETHERLY: Thank you  
14 very much, Mr. Chair.

15 Timeliness has been an issue that  
16 this Board has grappled with quite frequently  
17 over the last couple of years. There are a  
18 couple of cases and appeals that this Board  
19 has dealt with that are somewhat instructive  
20 to me, so I would perhaps invite a little more  
21 comment from my colleagues with respect to a  
22 couple of the appeals that I'm going to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 reference.

2                   With respect to one of my concerns  
3 here is that does appear to be a fairly well  
4 developed set of events that speaks to the  
5 fact that there was clearly some ongoing  
6 monitoring and scrutiny of this particular  
7 project by the ANC and other interested  
8 parties. In our Appeal 17329 of the  
9 Georgetown Residents Alliance this Board  
10 noted that the Appellant's close scrutiny of  
11 a project including monitoring of concept  
12 permit applications before, in that particular  
13 instance, the old Georgetown Board has  
14 persuasive evidence that the Appellant knew or  
15 should have known of a decision complained of  
16 when a permit was issued.

17                   Additionally this Board has noted  
18 in other instances that where a party chooses  
19 to pursue other avenues as a potential remedy,  
20 that does not necessarily toll or freeze the  
21 deadline for filing an appeal. And that comes  
22 from our Appeal 17411 Paul Basken and Joshua

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 Meyer.

2 And then finally I'll note also in  
3 the Basken and Meyer appear this Board noted  
4 that when a decision complained of is based on  
5 the issuance of a building permit, the date  
6 that triggers a start of that requisite 60 day  
7 appeal period is the date of issuance.

8 Those are a couple of the  
9 precedential matters that I'm kind of starting  
10 from as I look at this particular issue. So  
11 what concerns me, Mr. Chair, is that there  
12 does appear to be a fairly clear demonstration  
13 that there had been some activity around this  
14 particular project up to and, of course,  
15 following the issuance of the building permit.  
16 So I'm struggling with why the pause in  
17 activity, if you will, after the building  
18 permit had been issued, especially for the  
19 length of time that we seem to have here, Mr.  
20 Chair.

21 So at this particular juncture I  
22 am inclined to find that that time limits is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 here, has not been demonstrated in terms of  
2 the filing of the appeal, but I'm open to some  
3 discussion.

4 Thank you.

5 CHAIRMAN GRIFFIS: Thank you, sir.

6 COMMISSIONER PARSONS: I would  
7 agree with Mr. Etherly, This is not an  
8 unsophisticated ANC and it had been involved  
9 in a process for a long period of time. It  
10 seems to me they would have filed this appeal  
11 within 30 days. And I'm just not persuaded  
12 that this 63 day period was necessary. There  
13 don't seem to be any exceptional circumstances  
14 offered by them at all.

15 CHAIRMAN GRIFFIS: Go ahead.

16 VICE CHAIRPERSON MILLER: I just  
17 want to say to my Board Members that  
18 exceptional circumstances don't kick in when  
19 you're looking at paragraph A as to when the  
20 time starts to run. Exceptional circumstances  
21 kicks into our analysis if we go down to (d)  
22 when we're talking about extending a 60 day

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 time period for some reason.

2 If you find that it starts from  
3 the date of notice, then you're not in a  
4 position where you're extending. And that's  
5 why I'm reading it that it's not an extension.  
6 That, in fact, the time runs from when they  
7 had notice or reasonably should have had  
8 notice.

9 And I understand that they were  
10 aware of that there was activity going on with  
11 this property, and we've had cases like that.  
12 But this does not seem to me to be a situation  
13 where they're sitting on their rights or  
14 they're exploring other avenues. There was a  
15 weekend in between the date when a permit was  
16 issued and then the day that they got notice.  
17 I mean, it's a very short period of time.

18 And I think that the reg reads  
19 that it runs from when they got notice, not  
20 necessarily from when it was issued.

21 CHAIRMAN GRIFFIS: Others?

22 BOARD MEMBER MANN: Yes. I think

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 it's interesting to hear Mr. Etherly's  
2 argument, which I think actually lays the  
3 foundation for a different conclusion than Mr.  
4 Etherly reaches. And I think between his  
5 reasoning and the one business day between the  
6 time that they possibly should have done when  
7 they filed, I believe leads me in this case to  
8 say that it was timely.

9 Thanks.

10 CHAIRMAN GRIFFIS: Very well. Is  
11 there a motion?

12 VICE CHAIRPERSON MILLER: I would  
13 move to deny the motion to dismiss.

14 CHAIRMAN GRIFFIS: Is there a  
15 second?

16 BOARD MEMBER MANN: Second.

17 CHAIRMAN GRIFFIS: Is there  
18 discussion of the motion? Mr. Parsons?

19 COMMISSIONER PARSONS: No. I'm  
20 sorry. I'm preparing to vote.

21 CHAIRMAN GRIFFIS: Indeed. Very  
22 well.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   Let me just speak to the motion  
2                   very briefly. And I think that DCRA was  
3                   correct in their assertion that the Board  
4                   takes this very seriously and to the point of  
5                   very strict reading of that. And I think in  
6                   the past citings that DCRA gave and also Mr.  
7                   Etherly gave, it seems to reenforce that.  
8                   However, when we look at this particular  
9                   circumstance I am somewhat of the  
10                  understanding of two points.

11                  First, the Zoning Commission did  
12                  look at this from the court proceedings before  
13                  we had it in the regulations to the date and  
14                  said that 60 days was this kind of magical,  
15                  but a date of which we could set in stone that  
16                  this is what's rational and what's reasonable.  
17                  And that 60 date then, obviously, takes under  
18                  a consideration that that's how much time it  
19                  takes to prepare, to get ready to be put into.  
20                  There are certain obligations and obviously  
21                  certain dates that have to be set based on who  
22                  is bringing the appeal. In this particular

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 case we have an association, an ANC of which  
2 have their regulatory dates of meetings for  
3 adoption of official documentation.

4 So if we look at that in the  
5 framework of 60 days and then we step back to  
6 when the knowledge was and the official action  
7 happened to be appealed, I tend to move  
8 towards the fact that this is timely.  
9 Specifically the fact of the matter is that on  
10 the end of a week and then the beginning of  
11 the next week of which action than began or  
12 the clock would essential start.

13 So I will be supporting the motion  
14 to move ahead with this to get into the  
15 substance of the appeal based on the de  
16 minimis time that we're actually talking about  
17 in terms of establishing timeliness. And I do  
18 believe that the notice could be correctly  
19 provided as a starting time on the 15th.

20 With that then, let me open it up  
21 to any others that have any comments on the  
22 motion.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 COMMISSIONER LINDEMAN: Mr.

2 Chairman, can I ask a question?

3 CHAIRMAN GRIFFIS: Yes.

4 COMMISSIONER LINDEMAN: To  
5 everybody. Is this motion on the first permit  
6 or the second permit, or both? Are you moving  
7 to dismiss as to the construction permit and  
8 the sheeting and shore permit? Are you  
9 considering that untimely also, and are you  
10 dealing with the both at the same time or not?

11 CHAIRMAN GRIFFIS: Let me put  
12 clarification. Because it's the Board's  
13 perspective that this is Permit 86798.

14 MR. TAYLOR: Yes, and that was the  
15 Government's contention. There is no debate of  
16 which we are aware that would indicate that  
17 the sheeting and shoring permit is not timely  
18 to be appealed. However, the Government would  
19 also say that latching onto the more specialty  
20 permits --

21 CHAIRMAN GRIFFIS: Okay. We're  
22 under a motion, so I just wanted clarification

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 of a procedural element that is in the motion.

2 Is that satisfactory? There it is then.

3 We do have a motion and I'll open

4 it up again to the Board as to deliberation.

5 Very well. If there's no further deliberation

6 or comments, we do have a motion before us.

7 All those in favor signify by saying aye.

8 BOARD MEMBERS: Aye.

9 CHAIRMAN GRIFFIS: And opposed?

10 COMMISSIONER PARSONS: Opposed.

11 BOARD MEMBER ETHERLY: Opposed.

12 CHAIRMAN GRIFFIS: Abstaining?

13 Very well. Ms. Bailey?

14 MS. BAILEY: Mr. Chairman, the

15 Board has voted three-two-zero to deny the

16 motion to dismiss the appeal.

17 The motion was made by Mrs.

18 Miller, seconded by Mr. Mann. Mr. Griffis

19 supports the motion, Mr. Etherly and Mr.

20 Parsons are opposed to the motion.

21 CHAIRMAN GRIFFIS: Excellent.

22 Thank you very much.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1                   Very well. Are there any other  
2 preliminary matters from the proceedings  
3 today? Any other preliminary elements? Any  
4 other motions. Okay. If there is nothing  
5 further, then let's turn it over to the  
6 Appellant for their presentation of their  
7 case. However, before the panel leaves, let  
8 me ask how much time is required for the  
9 Appellant's presentation of their case?

10                   MR. HITCHCOCK: We're estimating  
11 20 to 25 minutes. We have the PowerPoint  
12 presentation and I will distribute copies of  
13 it to Mr. Moy.

14                   CHAIRMAN GRIFFIS: Good. We're  
15 going to run the clock. We're going to hope  
16 that you're closer to the 20 minutes. Of  
17 course, we'll give you equal time as we go  
18 down the panel.

19                   It's my anticipation, I should  
20 say, and I say this probably most for myself,  
21 that we will hold all questions until  
22 presentations are done and then we will at the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 panel at the end of that fire off any  
2 questions that we might have and move on from  
3 there.

4 I think we can expedite this  
5 pretty quickly. We'll get directly down into  
6 legal elements and issues.

7 I'll let any Board Members have  
8 any comments or directions if need be at this  
9 time? Good.

10 When you're ready. Are we  
11 technologically ready?

12 MR. HITCHCOCK: While we're  
13 setting up, Mr. Chair, I would note too that  
14 because the ANC is an Appellant, Mr. Goodman  
15 will be doing the bulk the presentation. Ms.  
16 MacWood would add some comments for the ANC  
17 afterwards, so we need to kill two birds with  
18 one stone in the presentation.

19 MR. GOODMAN: If you want me to  
20 proceed without the big screen will that --

21 CHAIRMAN GRIFFIS: Someone's  
22 working on it. We'll give them two more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 minutes.

2 CHAIRMAN GRIFFIS: Are we ready?

3 MR. HITCHCOCK: Yes.

4 MR. GOODMAN: Good afternoon,  
5 again. Obviously, this is who we are and this  
6 is why we're here.

7 I think the facts in this case are  
8 not in dispute, so I'm going to run fairly  
9 quickly over what this what property is This  
10 is the Marriott Wardman Park Hotel. It's  
11 about 17 acres, give or take, in the Woodley  
12 Park neighborhood. It's on Woodley Road on  
13 the north part of the property. There's a  
14 little kind of foot onto Calvert Street and  
15 then also access onto Connecticut Avenue and  
16 24th Street.

17 This is a picture of the hotel.  
18 Obviously, the hotel is labeled there Marriott  
19 Hotel. A kind of silver roof building on the  
20 Calvert Street side is not part of the hotel.  
21 There is a big front lawn on the Woodley Road  
22 side as well.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   That is the main entrance to the  
2 hotel where the cars and cabs come. That  
3 arrow shows the driveway entrance as of the  
4 time of this picture. Now that there has been  
5 construction on the property, that has been  
6 changed a bit and that arrow is the egress  
7 driveway, the exit driveway.

8                   The next five slides are going to  
9 be pictures of the property from the five  
10 locations indicated on the slide now.

11                   That is the Calvert Street side of  
12 the hotel. Again, the grayish building to the  
13 right is not part of the hotel. This is, I  
14 think, basically the side of a part of the  
15 building on the Calvert Street side.

16                   This is a view from the 24th  
17 Street which is looking west. It's kind of  
18 taken from where the Metro stop is. This is a  
19 driveway that is used for trucks and tour  
20 buses and other things like that.

21                   This is from the corner of  
22 Connecticut Avenue Woodley Road looking south.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 This is the Wardman Tower part of the hotel.  
2 This is the Wardman Tower from the other  
3 angle, and this picture shows the current main  
4 entrance driveway of the hotel.

5 This is a picture of the hotel,  
6 but you can't really see the hotel because of  
7 all the trees there on the lawn. This is on  
8 the Woodley Road side, again, looking kind of  
9 south and east.

10 And this is a picture of the hotel  
11 as it looks now, pretty much without all the  
12 trees and the construction being done. If  
13 you'll notice the row of windows in the middle  
14 part, that's actually an elevator with a  
15 glassed in back. And that picture was taken  
16 from the elevator. It gives you an idea of the  
17 size of the garage and of this part of the  
18 project.

19 This next map is taken from the  
20 diagram done by JBG. It shows the hotel, it  
21 shows where the new garage is going to be  
22 where they are aiming to build a condo tower.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 The arrow now shows the soon to be entrance to  
2 the hotel part will enter there. And they  
3 will, after the garage is built they would  
4 make a right hand turn and go down a ramp to  
5 the garage.

6 There's also an outcropping, this  
7 is actually there's going to be an elevator  
8 and stairs. It will be about -- I think about  
9 600 square feet above ground. And it will  
10 rise, I think, in part a story and a half  
11 above grade.

12 And the dotted is my understanding  
13 is to show the access from the garage to the  
14 main building. There'll be some kind of  
15 walkway at the P2 level. This is done not at  
16 ground level and it's not at the first -- the  
17 first level of parking, it's at the next level  
18 down.

19 As you know from our filings, we  
20 say there, we got three violations of the  
21 zoning regulations here. The first is at this  
22 garages and accessory building. And the zoning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 regulations say where an accessory building  
2 may be built, and it's not being built there  
3 in this case.

4 Two, there is a special rule in  
5 the regs having to do with hotels in  
6 residential areas and constructing a new hotel  
7 building is not permitted by that regulation.

8 And third, that the permits were  
9 issued, we believe, without the Zoning  
10 Administrator's assuring that the plans  
11 complied with the zoning rules.

12 Step 1. As I said, the garage is  
13 in the wrong place. This garage is an  
14 accessory building. JBG told the DCRA in the  
15 permit application, which is attached to our  
16 filing, that the garage is a separate  
17 building. If you look at page 1 of the  
18 application, Exhibit A, in box 11 they were  
19 given a choice of new building, addition,  
20 alteration and repair and they checked new  
21 building. And I did not put this stamp over  
22 here to the right where it says this is under

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 penalties of all kinds of things if you don't  
2 tell the truth. So JBG said this was a new  
3 building.

4 And, in fact, it is under the  
5 zoning regulations. It is an accessory  
6 building as defined in the regs because it is  
7 a subordinate building on the same lot as the  
8 main building. And, of course, a hotel garage  
9 is customary incidental subordinate to the  
10 hotel, and this Board has found in the past  
11 that a parking garage is an accessory to a  
12 hotel.

13 Now, if it is an accessory  
14 building, the zoning regulations tell you  
15 where an accessory building may be built. And  
16 when you kind of thread through the two  
17 sections of the ranks, it boils down to it can  
18 be built either in the rear yard or in points  
19 within the main building.

20 In JBG's letter to the Board a  
21 couple of weeks ago I don't believe it  
22 disagrees, but these are the requirements of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 the regulations.

2 In this case, however, the garage  
3 is not in the rear yard. And in JBG's letter  
4 it doesn't argue that it is in the rear yard  
5 and, frankly, would be impossible and  
6 incredible for JBG to argue that. The Woodley  
7 Road side is the front of the hotel, it's  
8 where the main entrance is, et cetera, et  
9 cetera. So this is in the front of the hotel.  
10 It is not in the rear. And it's not allowed  
11 to be built there.

12 The other choice is that the  
13 garage may legally be built within the main  
14 building. And in this case, as we pointed out  
15 a couple of minutes ago, this garage is not  
16 even part of the main building. Again, the  
17 JBG told the DCRA that this was a separate  
18 building and was not an addition to an  
19 existing building. And again, the zoning  
20 regulations show that JBG is right. You know,  
21 even though the building is attached to the  
22 hotel, again at the PT2 level, two levels

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 down, the existence according to the regs of  
2 a communication between separate portions of  
3 a structure below the main floor shall not be  
4 construed as making that one building. And  
5 that's what you have here. The communication  
6 is below the main floor and, therefore, this  
7 is not part of the building of the hotel. It  
8 is a separate building. And because it's not  
9 even part of the main building, it certainly  
10 is not within the main building.

11           And it makes sense. We won't want  
12 the people to build garages in their front  
13 yard. It's an eyesore. But it's an eyesore  
14 even closer to home, this is a garage in a  
15 front yard on Wisconsin Avenue. This is not  
16 attractive and we don't want anything like  
17 this in the neighborhood, and that's why we  
18 believe the regulations have a requirement  
19 that a garage accessory use be either in the  
20 rear yard where it's not right on the street  
21 or other than the main building.

22           The JBG has told the Board on page

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 2 of the letter that it sent that this garage  
2 is entirely underground. That's not true. As  
3 I showed on the slide a few minutes ago, there  
4 is going to a 30 foot wide 60 foot long access  
5 ramp that is going to be clearly visible from  
6 the street and it is at ground level. There  
7 is also a 660 square foot elevator stair shaft  
8 that's going to be a story and a half high.

9 I notice that on the permit  
10 application there is a notation, I'm not sure  
11 who put it there, that says there is in excess  
12 of 1600 feet, close to 1700 square feet above  
13 grade. This is on the last page of Attachment  
14 A to our file. I don't know whose notes those  
15 are. But this building is not a building that  
16 is entirely below ground and at least  
17 according to the plans has at least a half  
18 dozen other above grade components.

19 Again, the JBG has told the Board  
20 that this is not a sperate. This is  
21 inconsistent with what they said to DCRA in  
22 permit application. It's also inconsistent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 with what they said to DCRA in other papers  
2 that they filed.

3           They also appear to be arguing  
4 that it is not an accessory use. And, again,  
5 that's inconsistent with other papers that JBG  
6 gave to DCRA.

7           The other issue that we raise is  
8 that this section under 350.4 sets out what  
9 uses are permitted in R-5 District. And if  
10 this use is not one of those on the list, then  
11 it is not allowed. We're focusing here on (d)  
12 which permits certain hotels in R-5 zones.  
13 And for the purpose of this rule that was  
14 adopted in 1980 was to, as it says, prevent  
15 further growth and encroachment of hotels in  
16 residential areas and to protect the  
17 residential areas for residential uses. And  
18 the prior owners to this hotel in variance  
19 applications that may have filed over the  
20 course of the last 20 years have recognized it  
21 and these folks are in our filing but they  
22 boil down to an understanding that we have and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 that I would say prior owners of the hotel had  
2 that with these regs froze the hotel as it was  
3 in 1980 would not permit the construction of  
4 a new hotel building.

5 Now, now getting back to the word  
6 again of the regulation it says that here is  
7 what is permitted as a matter of right. And  
8 it's a hotel that was in existence in 1980.  
9 And therefore, if a hotel was not in existence  
10 in 1980, then it was not allowed in the  
11 District, in the R-5 District.

12 Now the zoning regulations define  
13 what a hotel is. A hotel is the building or a  
14 part of a building and it's used in a certain.  
15 It's going to be allowed under 350.4 a  
16 building or part of the building had to have  
17 been in existence and used as a hotel in 1980.  
18 If there a building or a part of the building  
19 that was not in existence and used as a hotel  
20 in 1980, then it's not allowed in an R-5  
21 District.

22 Now the garage, I think we have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 established, is a separate building. It is  
2 certainly not in existence and use as a hotel  
3 in 1980, therefore it may not be built now.

4 The prohibition against  
5 construction of a new hotel building which we  
6 find peculiarly stated in the first part of  
7 the section, is also buttressed by the last  
8 words in the section where it says that  
9 certain kinds of changes of construction may  
10 be done to an existing hotel in the zone, and  
11 any other project is not permitted. And this  
12 project violated this provision basically two  
13 reasons.

14 It says that the work has to be  
15 done in an existing hotel, and existing hotel  
16 as we have said is an existing building and  
17 this work authorized by these permits is not  
18 work being done on an existing building. It's  
19 being done to construct a new building.

20 And then in this project is not  
21 any one of these four types of projects. It's  
22 not a repair, a renovation, a remodeling or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 structural alterations; and we go through the  
2 definitions of these four terms in our papers.  
3 Only one of the terms is defined in the regs,  
4 and that's structural alteration which talks  
5 about a permanent physical change to a  
6 building or structure or the changing of the  
7 bearing walls and such. This clearly isn't  
8 that. And the other three terms, repair,  
9 renovation and remodeling, according to the  
10 definition in the dictionary all have kind of  
11 a common theme of fixing the defect, mending  
12 or returning something to a prior state and  
13 obviously building a new garage is not any of  
14 those things.

15                   There is a third issue under these  
16 regulations with this project. And one of the  
17 requirements in the rule is that a hotel owner  
18 is not allowed to expand the area of the  
19 commercial aspects of the hotel. The exhibit  
20 stays in the function rooms and the flower  
21 shops and such. And the words on the screen  
22 are the words in the regs.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   And the regulations, the  
2 definition of a hotel says that all the parts  
3 of the hotel, all the areas in a hotel, has to  
4 be contingent in one of these five categories  
5 here.

6                   Now, a garage it seems to us does  
7 not fit within any of the five categories. I  
8 believe the JBG is arguing that a garage is a  
9 service area, but if you look at the  
10 definition of the service area it talks about  
11 things like boiler rooms and mechanical  
12 platforms and electrical switchboards and  
13 other things like that. And it's kind of hard  
14 for me to squeeze a garage into that  
15 definition.

16                   And a garage, in fact, supports  
17 all of the areas of a hotel. Some cars they  
18 park there for people who are staying are in  
19 the guest rooms, other cars may park there for  
20 people going to, you know, dinner at the  
21 restaurant or they go to some kind of other  
22 dinner, other event. So a garage supports all

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 the areas in a hotel. So it appears to us  
2 that a garage and the area of the garage has  
3 to be allocated in some way most logically in  
4 terms of the usage as among the five types of  
5 areas of the hotel in order to determine  
6 whether the total area of the commercial  
7 function in the hotel is being increased by  
8 the project. And we believe that this was not  
9 done. In our calculations-- by the way we  
10 would have termed the calculation, which was  
11 in the filing it would suggest that if the  
12 calculation were done, then you find that the  
13 total area of the commercial function is being  
14 increased by the construction.

15 Finally, the third issue. This is  
16 a sentence taken from the Zoning  
17 Administrator's letter to the ANC. We read  
18 this to say that the Zoning Administrator was  
19 giving his approval to the plans, and even  
20 though he had not taken the steps to ensure  
21 that they comply with the zoning regulations.  
22 That is not what this language is saying or it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 is not talking about with these plans and is  
2 talking about other aspects of some other  
3 project, then this may not be an issue. But if  
4 this sentence is referring to the plans for  
5 the garage, then we feel like it would be a  
6 mistake or error for the Zoning Administrator  
7 to bless plans without being sure that all the  
8 plans comply with the zoning requirements.

9 CHAIRMAN GRIFFIS: Thank you very  
10 much.

11 COMMISSIONER MacWOOD: Good  
12 afternoon, again, Mr. Chairman and Members of  
13 the Board. I'm Nancy MacWood, Chair of ANC  
14 3C.

15 And, again, I apologize. I'm ill  
16 today.

17 The ANC -- ANC 3C feels that  
18 there's some important issues concerning the  
19 granting and the issuing of these permits. We  
20 don't lightly file appeals. In the six years  
21 that I've been on the Commission, we have  
22 never filed an appeal of a permit issuance.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 But as I said, we're very concerned about the  
2 issuance of these permits and how the  
3 regulations have been interpreted that led to  
4 the issuance of these permits.

5 Mr. Goodman, I think, has done a  
6 very comprehensive job of walking you through  
7 the issue, so I'm not going to repeat that.  
8 And I'm very grateful that he did walk you  
9 through them so I don't have to.

10 The ANC passed a unanimous  
11 resolution authorizing the file of this appeal  
12 at our June 20th public meeting. And I'd be  
13 happy to read that resolution into the record  
14 if you would like me to.

15 CHAIRMAN GRIFFIS: It's in the  
16 record.

17 COMMISSIONER MacWOOD: Since you  
18 probably would not like me to, it is at Tab I.  
19 And that's a conclusion of my statement, and  
20 I'd be happy to respond to any questions you  
21 might have later.

22 CHAIRMAN GRIFFIS: Excellent. What

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 I'd like to do is get through all the  
2 presentations and hold Board questions unless  
3 we have something that needs absolute  
4 clarification at this time.

5 Very well.

6 We can open if there are any  
7 questions of cross of presentation?

8 MR. NETTLER: Mr. Goodman, could  
9 you just give me your background? Are you  
10 employed?

11 MR. GOODMAN: No, I'm retired.

12 MR. NETTLER: And were you an  
13 architect?

14 MR. GOODMAN: No. I was a lawyer.

15 MR. NETTLER: Excuse me?

16 MR. GOODMAN: Lawyer.

17 MR. NETTLER: In what area?

18 MR. GOODMAN: Primarily  
19 telecommunications.

20 MR. NETTLER: Telecommunications.  
21 So you're not professing to have an expertise  
22 in the interpretation of zoning regulations,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 are you?

2 MR. GOODMAN: I have read the  
3 zoning regulations. I try my best to  
4 understand them, to read cases. I don't know  
5 if that qualifies as expertise. But I am  
6 clearly newer to the zoning regulations than  
7 anybody else in this room.

8 MR. NETTLER: So you don't have  
9 any architectural experience or planning  
10 experience?

11 MR. GOODMAN: No.

12 MR. NETTLER: When you had, I  
13 think it was slide 10 which was showing the  
14 construction, the excavation for the garage,  
15 do you have that in front of you?

16 MR. GOODMAN: Okay. Yes, I do.

17 MR. NETTLER: Okay. And it's your  
18 contention that what's being constructed there  
19 is a separate building and in the front yard  
20 of the Wardman site, correct?

21 MR. GOODMAN: Yes.

22 MR. NETTLER: Okay. And that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 construction that you see going on there is  
2 underground, correct?

3 MR. GOODMAN: It's a hole in the  
4 ground, yes.

5 MR. NETTLER: Okay. It's below  
6 grade, correct?

7 MR. GOODMAN: It's a hole.

8 MR. NETTLER: Okay. And then you  
9 in trying to buttress your position, I guess  
10 in terms of the rationale for why a garage is  
11 in the wrong place, if you turn to Exhibit 18  
12 you make reference -- you have there a garage  
13 structure that's located above ground in the  
14 front yard of a building, correct, of a house?

15 MR. GOODMAN: That's a picture of  
16 a garage in the front yard of a building, yes.

17 MR. NETTLER: Okay. And that  
18 structure is above grade, right?

19 MR. GOODMAN: Yes.

20 MR. NETTLER: Okay. And you don't  
21 show any connection between that structure and  
22 the house itself, do you?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. GOODMAN: No.

2 MR. NETTLER: Okay. And do you  
3 understand what significance would entail if  
4 that was connected to the house?

5 MR. GOODMAN: If it were connected  
6 at grade level you mean?

7 MR. NETTLER: At grade level or  
8 even -- or any other place. Underground,  
9 let's say.

10 MR. GOODMAN: Are you asking me  
11 about the legal significance or --

12 MR. NETTLER: No, the zoning  
13 significance.

14 MR. GOODMAN: I'm aware of the  
15 zoning significance if it is connected two  
16 levels below grade.

17 MR. NETTLER: Okay. So you don't  
18 know what change in the nature -- what this  
19 building would be construed how that would be  
20 changed if it was connected above ground or  
21 below ground? You're not aware of that under  
22 the zoning regulations?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. GOODMAN: No. I said I was not  
2 aware of any zoning significance if it was  
3 connected two levels below ground is what I  
4 said.

5 MR. NETTLER: All right. Now you  
6 have an exhibit on your PowerPoint that shows  
7 the existing site plan, I believe. Let's see--  
8 no, apparently not. Let's see, you're familiar  
9 with the existing site plan, are you?

10 CHAIRMAN GRIFFIS: He didn't  
11 introduce it. Is it in the record?

12 MR. NETTLER: I don't see that it  
13 is.

14 CHAIRMAN GRIFFIS: Why don't refer  
15 to the plan for the site rather than the site  
16 plan then, which is the evidence that they  
17 have presented.

18 MR. NETTLER: I'm sorry. I don't  
19 see it. He has -- oh, yes. Excuse me. Page 3  
20 of your exhibits you're showing an overview of  
21 the site, do you see that?

22 MR. GOODMAN: Yes, I do.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. NETTLER: Okay. And do you  
2 see on the upper left hand corner a structure  
3 that's known as the Cotillion Ballroom and  
4 Garage? It's underneath what you have as main  
5 entrance.

6 MR. GOODMAN: Right. Correct.

7 MR. NETTLER: Okay.

8 MR. GOODMAN: I do see that  
9 structure.

10 MR. NETTLER: And you're familiar  
11 with the fact that that's a garage that's  
12 connected to the Marriott Hotel above grade,  
13 correct?

14 MR. GOODMAN: I believe that's  
15 true, yes.

16 MR. NETTLER: Okay. And the  
17 garage is located where? In the front yard of  
18 the property?

19 MR. GOODMAN: Yes.

20 MR. NETTLER: Okay. Do you know  
21 what's happening to that garage when this new  
22 garage is completed, the new underground

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 garage is completed?

2 MR. GOODMAN: I've heard that they  
3 are going to tear down that structure to make  
4 way for -- to build a building, a condominium  
5 building on that part of the site.

6 MR. NETTLER: And if JBG tears  
7 down that structure, it still has a  
8 requirement to provide the required parking  
9 for the Marriott Hotel, does it not?

10 MR. GOODMAN: Of course.

11 MR. NETTLER: All right. I have no  
12 other questions.

13 MR. TAYLOR: Sorry. Just a few,  
14 Mr. Chairman.

15 Mr. Goodman, you spoke about the  
16 access ramp to the proposed garage. And I  
17 believe you stated that it was not below  
18 grade. Did I hear you correctly?

19 MR. GOODMAN: In order for cars to  
20 get into the garage, they would have to -- the  
21 ramp has to come up to the level of the grade.

22 MR. TAYLOR: Up to the level? So

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 is there any part of the ramp that would be  
2 below grade?

3 MR. GOODMAN: The ramp goes down.

4 MR. TAYLOR: Wouldn't the ramp  
5 have to go down to get to a below grade  
6 parking?

7 MR. GOODMAN: Yes.

8 MR. TAYLOR: And how much of that  
9 access ramp would be above grade?

10 MR. GOODMAN: Probably only a  
11 piece at the start of it. But, of course, a  
12 ramp going down located in that particular  
13 location is going to be visible from the  
14 street and from other parts of the property.

15 MR. TAYLOR: And which part of  
16 that ramp -- let me rephrase that.

17 In the plans can you point out  
18 which part of the ramp is above grade level?

19 CHAIRMAN GRIFFIS: Which plans?

20 MR. TAYLOR: The plan for the  
21 site.

22 MR. GOODMAN: I believe they said

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 that the ramp had to come to grade level.

2 MR. TAYLOR: Up to grade level?

3 MR. GOODMAN: Yes. So it is not  
4 underground, that was my only observation. It  
5 is at grade level.

6 MR. TAYLOR: So would you expect  
7 the ramp to come a couple of feet above grade  
8 level?

9 MR. GOODMAN: I don't know how  
10 they're going to construct it. Sometimes you  
11 do have a ramp that comes up to slow the  
12 traffic and then it will go down. I don't know  
13 how they --

14 MR. TAYLOR: But you don't know?

15 MR. GOODMAN: I do not know.

16 MR. NETTLER: So it is quite  
17 possible that they could have that ramp come  
18 right up to grade level but never --

19 CHAIRMAN GRIFFIS: You're asking  
20 him a hypothetical?

21 MR. TAYLOR: Pardon?

22 CHAIRMAN GRIFFIS: You're asking

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 him a hypothetical?

2 MR. TAYLOR: He is testifying to  
3 hypothetical possibilities --

4 CHAIRMAN GRIFFIS: Correct.

5 MR. TAYLOR: -- by saying that the  
6 ramp is not below grade level.

7 CHAIRMAN GRIFFIS: But I think  
8 you've crossed enough.

9 MR. TAYLOR: Okay. Okay.

10 CHAIRMAN GRIFFIS: I'm not sure  
11 that we get a lot out of him answering the  
12 next question.

13 MR. TAYLOR: Okay. Okay.

14 CHAIRMAN GRIFFIS: But I have a  
15 question of clarification. If we go to sheet  
16 11 on your presentation, which area are you  
17 talking about that the ramp is?

18 MR. GOODMAN: My understanding is  
19 that the ramp is right here.

20 CHAIRMAN GRIFFIS: Okay.

21 MR. GOODMAN: Cars come into the  
22 hotel off of Woodley. I can -- well, no, I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 can't put it up on the screen, can I.

2 CHAIRMAN GRIFFIS: I see.

3 MR. GOODMAN: Yes. Come here and  
4 then they turn and go down into the hotel  
5 here. Into the garage here

6 CHAIRMAN GRIFFIS: Okay.

7 MR. TAYLOR: Now you stated that  
8 one of the purposes for the hotel regulation  
9 was to prevent negative impact from hotel  
10 operations. Does the hotel currently have a  
11 negative impact -- or excuse me. Do the hotel  
12 operations currently have a negative impact on  
13 the community?

14 CHAIRMAN GRIFFIS: I don't  
15 understand where we're going with that. Was  
16 that part and parcel of the Zoning  
17 Administrator's discretion of looking at it or  
18 was that staff's?

19 MR. TAYLOR: The Zoning  
20 Administrator will be addressing that.

21 CHAIRMAN GRIFFIS: Adverse impacts  
22 of the hotel?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. TAYLOR: Well, where I'm going  
2 with that, and you may choose to direct me in  
3 another focus, is that where the cars are  
4 parking for the people who are the guests at  
5 the hotel, visitors to the hotel, is not going  
6 to have a huge difference on the hotel  
7 operations impact to the neighborhood. If  
8 anything, it would have a positive impact  
9 because the cars are going to be traveling  
10 less distance above grade. There is going to  
11 be less traffic congestion, which would then  
12 make life that much better for the residents.

13 CHAIRMAN GRIFFIS: Good. All  
14 right. Two things on this. First of all, I  
15 didn't see any of the presentation on the  
16 appeal based on negative or adverse impact.

17 Two, we're not under special  
18 exception or variance, for that matter, and I  
19 don't think we want to open those up at this  
20 point.

21 I think we stick to the legal  
22 issues under appeal at this point and move

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 ahead.

2 MR. TAYLOR: Okay. I will go into  
3 one further area.

4 When you speak of the Zoning  
5 Administrator's May 15th letter, which is  
6 Exhibit G in the Appellant's materials, and  
7 you quoted the portion saying "I caveat this  
8 determination and the calculations provided by  
9 JBG are preliminary and that the Office of  
10 Zoning Administrator will have to ensure that  
11 all submitted plans cumulative comply with the  
12 zoning requirements." If it were to be  
13 determined that the complete project did  
14 cumulative comply with the zoning  
15 requirements, would you be satisfied at that  
16 point?

17 MR. GOODMAN: You mean if the--

18 MR. TAYLOR: The complete plans  
19 for the entire project --

20 CHAIRMAN GRIFFIS: I'm not sure  
21 we're here to make sure he's satisfied.  
22 What's the actual question?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   MR. TAYLOR: In your view what is  
2 the impact of the complete project as opposed  
3 to this phase of the project?

4                   MR. GOODMAN: I am not sure  
5 exactly what the sentence is referring to, as  
6 I indicated in my direct. If the plans and  
7 the calculations and Mr. Crews is referring to  
8 here, are the plans and the calculations for  
9 the garage for which a permit was issued three  
10 days before this memo, then I think the zoning  
11 blessing ought to be given on final plans and  
12 final calculations, not on things that are not  
13 final.

14                   If this sentence is talking about  
15 phase 3 or phase 4 or phase 5 of the project,  
16 then I assume we will deal with those phases  
17 when they come.

18                   MR. TAYLOR: And finally, Mr.  
19 Chairman, I would submit that Exhibit G in the  
20 Appellant's exhibits is not a complete exhibit  
21 of what was presented by the Zoning  
22 Administrator. And I would like to enter the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 complete document that the Zoning  
2 Administrator presented to the ANC on May  
3 15th. And I would ask if someone could make  
4 the appropriate copies.

5 CHAIRMAN GRIFFIS: Any volunteers?

6 Okay. Let's get some copies of  
7 that around.

8 MR. TAYLOR: Thank you, Mr.  
9 Chairman.

10 CHAIRMAN GRIFFIS: Certainly.

11 Any other questions?

12 MR. TAYLOR: That will take care  
13 of my questions.

14 CHAIRMAN GRIFFIS: Very good.

15 MR. NETTLER: I just have one  
16 follow up question in response.

17 Mr. Goodman, you said you weren't  
18 aware of why the Zoning Administrator was --  
19 what the Zoning Administrator was responding  
20 to in this memo. Isn't it a fact that the  
21 Advisory Neighborhood Commission had asked the  
22 Zoning Administrator to comment on all of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 plans that have been presented to both the  
2 Woodley Park Community Association, the ANC  
3 which included future development of a  
4 condominium residential building. And  
5 requested that the Zoning Administrator not  
6 issue any permits until he had made a  
7 determination as to whether the plans that had  
8 been provided to you by the owners of the  
9 property and which could be reviewed by the  
10 Zoning Administrator to ascertain whether  
11 those future construction and addition to the  
12 ones that were already pending before him  
13 satisfied the zoning regulations; wasn't that  
14 the context in which the Zoning Administrator  
15 was issuing that letter or that memo?

16 MR. GOODMAN: What I said was that  
17 I wasn't sure what the sentence -- not what  
18 the whole memo was all about. All we were  
19 talking about was the sentence "I caveat."  
20 And it seemed to me reading this memo that  
21 what he was talking about was the plans for  
22 the garage.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. NETTLER: Does that he even  
2 make any sense that he's issuing a permit  
3 saying that on the basis that it complies with  
4 the zoning regulations and then is issuing a  
5 memo in response to this plethora of other  
6 possibilities that are going on with the  
7 premises and saying that he's not sure whether  
8 the permit just issued comply with the zoning  
9 regulations?

10 MR. GOODMAN: And that's why we  
11 made an argument on appeal that we agree it  
12 made no sense.

13 MR. TAYLOR: Okay. Mr. Chairman,  
14 I would anticipate that the Zoning  
15 Administrator would testify for approximately  
16 15 to 20 minutes and possibly this is where  
17 you would find a good break opportunity, but  
18 at your discretion.

19 CHAIRMAN GRIFFIS: Let's move.

20 ZONING ADMINISTRATOR CREWS: Mr.  
21 Chairman and Members of the Board of Zoning  
22 Adjustment, today we have I believe parties of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 good faith with a disagreement over the  
2 interpretation of the zoning regulations.  
3 We're talking about structures, about  
4 buildings and about hotels.

5 Let me address, first of all  
6 briefly in a general way the hotel provision  
7 350.4, if I remember off the top of my head,  
8 and the fact that it is my interpretation of  
9 looking at the actions of the Zoning  
10 Commission and the way it's been interpreted  
11 that the regulations are not necessarily  
12 designed to have the hotels and wither and  
13 die.

14 The Marriott, in this case, is  
15 altering itself to serve a changing market.  
16 Instead of large trade shows or conventions  
17 that are in reality moving to the Convention  
18 Center and even moving out of the District to  
19 Washington Harbor and the development there,  
20 the Marriott has explained to me that it is  
21 altering its configuration in order to serve  
22 a changing market. To be able to have smaller

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 consecutive and concurrent meetings rather  
2 than large single ones. And the parking  
3 alteration that's the subject of today's  
4 hearing is designed to ease congestion and  
5 actually enhance the open front yard. And I'm  
6 sure that the owners will get into that during  
7 their presentation.

8           And I would also make note, though  
9 not necessarily referred to in the Appellant's  
10 PowerPoint presentation, that previously the  
11 hotel had brought applications to this Board  
12 for variances to expand the hotel. And  
13 adhering to the judgment of the Board, the new  
14 owner of the hotel has designed plans that  
15 will slightly reduce the actual square footage  
16 of the hotel.

17           The ANC says that the hotel is out  
18 of proportion to the neighboring historic  
19 buildings. However, the hotel itself is an  
20 integral part of this historic neighborhood.  
21 The Wardman Towers existed on the property for  
22 over 85 years. And nonetheless, the hotel

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1       itself is not actually in the historic  
2       district.

3                       I'd also mention that references  
4       in their material to buildings plural is  
5       misleading. There is only one building there  
6       now.

7                       The spacious front lawn that was a  
8       buffer between the hotel and community, while  
9       now the site of a huge hole, will become a new  
10      garage for the hotel. As part of the  
11      construction plans for this new garage, the  
12      spacious front lawn will be returned to a  
13      similar status, if not improved. The front  
14      lawn at the completion will have more green  
15      space than it currently does, along with  
16      additional amenities and design features.

17                      In later additions as we get to --  
18      as has been brought up in terms of the  
19      cumulative impacts of various phases of the  
20      project of the owner, that even if the  
21      proposed condominium addition to the building  
22      is completed, that there will almost be a full

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 football field width of additional buffering  
2 between that proposed addition and Woodley  
3 Road.

4 Now let me get to the three  
5 arguments that they brought forward.

6 First of all, in response to their  
7 first argument it's my interpretation and in  
8 reviewing this application that the new  
9 parking garage is not a stand alone building.  
10 It is below grade with only de minimis life  
11 safety features above grade, i.e., two exit  
12 egress provisions, two stairways. They refer  
13 to six things sticking up above grade. There  
14 are four air intakes that are less than four  
15 feet above grade, and therefore not counting  
16 under the zoning regs.

17 Again, while the garage is  
18 certainly an accessory use in the definition  
19 of 199.1 that a parking garage is accessory to  
20 the principal use, it is not in this case an  
21 accessory building. The regulations regarding  
22 placement of parking garage in reference to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 rear yards are for separate buildings. They do  
2 not apply to this completely underground  
3 structure that doesn't effect lot occupancy  
4 and does have a connection. So it has been my  
5 interpretation that this parking structure if  
6 an alteration of the existing building.

7           The reference to the lack of an  
8 above grade connection between the garage and  
9 the hotel does not invalidate my determination  
10 that the proposed garage and hotel are part of  
11 one building. But that is designed in tandem  
12 with the above grade connection requirement  
13 only to two above grade structures or above  
14 grade buildings. And as an existing example  
15 of the Cotillion Ballroom is part of the same  
16 building, because it is above grade and it has  
17 an above grade connection.

18           The proposed condominium addition  
19 is an addition to the building that's an off  
20 grade and that does have an above grade  
21 connection proposed for it. So it's not the  
22 construction of a new garage building, but

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 simply the alteration of the accessory parking  
2 use.

3           Also this construction is not  
4 prohibited by 350.4 of the zoning regs.  
5 Again, it's not a stand alone building. It is  
6 below grade. Section 350.4(d) permits  
7 structural alterations and neither the  
8 building's permit Appellant's determination  
9 nor the permit intake person's determination  
10 that the garage was a new building is  
11 dispositive. The character of the  
12 construction is whatever it is. In this case,  
13 the construction is an alteration, not an  
14 addition, not a new building.

15           And no new land is being used as a  
16 hotel and the garage being below grade will  
17 not violate lot occupancy.

18           And also my interpretation that in  
19 the five functions or uses, I should say, of  
20 the definition of hotel that this is  
21 completely under the service area. The floor  
22 within in a hotel devoted to mechanical

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 services and storage supportive of the hotel  
2 as a total entity. This garage, as most  
3 garages, are used to store the cars while the  
4 drivers and their passengers are enjoying the  
5 hospitality of the hotel.

6 There is a minimum expansion of  
7 gross floor space. Below grade space is not  
8 counted. And to the extent that the garage  
9 would add approximately 1700 square feet of  
10 gross floor space and that might be an  
11 overstatement in terms of the two above grade  
12 egress towers, that other phases of the  
13 project will have to give back floor space in  
14 terms of gross floor space, the limit in  
15 350.4(d).

16 And then I kind of segue now into  
17 my memo of May 15th. Because part of the  
18 argument is I believe that unless you have  
19 everything in front of you and can certify  
20 that everything is okay, I shouldn't certify  
21 anything.

22 Well, first off, there's no

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 authority for that proposition. And in  
2 reality this Applicant has done my office a  
3 favor by giving the total proposed project as  
4 opposed to what is often the case, we get  
5 applications piecemeal and we are not always  
6 then are able to connect the dots and make  
7 sure that we don't overextend the uses. When  
8 we get an application, we approve it. And  
9 then we get another application, it presents  
10 a problem.

11 In this case the Applicant has  
12 provided the total proposed project in phases.  
13 And I've been very up-front about them that we  
14 -- in the memo, and that's what the whole  
15 caveat's about, is that they've completely  
16 changed around. That the memo was  
17 informational, not decisional because it was  
18 simply based on the figures that the  
19 Applicant, the owner, had provided. And we get  
20 the copies of the rest of the attachments to  
21 my memo, you will see on there several tables  
22 of existing and proposed square footage of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 various functions and the various areas of the  
2 hotel. And down at the bottom they say  
3 "preliminary."

4 And so there's two different  
5 things that happened here in terms of this  
6 memo and in terms of this building permit. We  
7 had the building permit in front of us, we had  
8 the final figures for that part of the  
9 proposal for that alteration, and we were able  
10 to determine that that complied with the  
11 zoning regs. And so we signed off on that. I  
12 personally signed the application, reviewed  
13 the project and signed the application. So  
14 that those figures were set and those are what  
15 they have to build it.

16 The memo on May 15th looked at not  
17 only this, but previous projects; the loading  
18 dock that I mentioned, the rehabilitation of  
19 Exhibit Hall C and looked at future phases of  
20 this project. The new Junior Ballroom, the  
21 raising of the Cotillion Ballroom and parking  
22 structure and the propose condominium addition

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 to the building, and that's why we have the  
2 caveat. That I'm looking at it both some  
3 specific, some proposed and you know I had to  
4 put the caveat in there. Because if they  
5 changed, and I've been very up-front with them  
6 and I'm sure I mentioned this at the Advisory  
7 Neighborhood Commission meeting, but I'm sure  
8 the Applicant will say that I've been very  
9 clear that we are keeping a cumulative total  
10 of the changes that are approved in building  
11 permits. And if they get to the condominium  
12 tower and they're over, then they're going to  
13 have to scale back the condominium tower. And  
14 this is primarily in terms of total FAR for  
15 the condominium tower. But again, as we're  
16 reviewing right now the Junior Ballroom that  
17 we had to make sure that -- and we've been out  
18 to inspect the Cotillion Ballroom to confirm  
19 the figures that they gave, that what the new  
20 Junior Ballroom is going to take is less than  
21 what the Cotillion Ballroom is giving up. And  
22 we do also have mechanisms in place now to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 understand that they can't -- you know, that  
2 once the Junior Ballroom is ready to be used  
3 and they want a Certificate of Occupancy, they  
4 have to stop using the Cotillion Ballroom and  
5 then proceed to the raise. And we've actually  
6 talked about physical barriers and that sort  
7 of thing to make sure that they do not exceed  
8 their current both gross floor area and the  
9 total floor area for the function space and  
10 the commercial adjunct -- and what's the third  
11 item that's limited?

12                   So, the whole idea of using my  
13 memo of May 15th for anything more than what  
14 it is and trying to turn around the whole  
15 purpose of the caveat is really a distraction  
16 from the fact that this building permit was  
17 judged on the plans at application that was  
18 submitted that met the requirements of the  
19 zoning regulations as a structural alteration  
20 to the existing building. And therefore, is  
21 allowable as a matter of right under the  
22 existing zoning regulations.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Thank you.

2 Cross?

3 MR. HITCHCOCK: Thank you, Mr.

4 Chair.

5 Mr. Crews, I have a few questions  
6 based on your testimony here. You talked  
7 about the changing market for hotels and new  
8 configurations enhancing the front yard. I  
9 mean, none of that has anything to do with the  
10 legal questions here, do they?

11 ZONING ADMINISTRATOR CREWS: Well,  
12 I think they do if you're going to say that my  
13 May 15th memo has something to do with the  
14 legal questions here today.

15 MR. HITCHCOCK: Well, how about  
16 the cite in the interpretation of 350.4(d) and  
17 the other provisions that we've been talking  
18 about?

19 ZONING ADMINISTRATOR CREWS: Well,  
20 I think the overall point is that I don't  
21 think that 350.4 is that the intent of that is  
22 to have hotels wither and die. And that they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 are allowed to make structural alterations,  
2 and that's what this Applicant is in the  
3 process of doing in order to serve a changing  
4 market.

5 MR. HITCHCOCK: Okay. Well, we're  
6 not making value judgments here. You're not  
7 asking the Board to make a value judgment on  
8 that point.

9 ZONING ADMINISTRATOR CREWS: No,  
10 there's no value judgment. That's -- you  
11 know, that's just the facts and the motivation  
12 on how I looked at this in terms of  
13 interpreting the zoning regs so that this  
14 permit is permissible under the regs.

15 MR. HITCHCOCK: Let me ask you  
16 this question: You say the ANC has referred  
17 to this proposal as out of the proportion to  
18 the historic district. Could you tell us  
19 where in the application or the prehearing  
20 submission it said that?

21 ZONING ADMINISTRATOR CREWS: On  
22 page 1 of your statement of Appellant's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Preliminary Statement about three pages in  
2 from your spiral bound submission, "The hotel  
3 is of a scale that is out of proportion to the  
4 neighboring historical buildings." You also  
5 above in reference to another comment I made,  
6 "The largest hotel in the city is the Wardman  
7 Park in the residential neighborhood and  
8 historic district called Woodley Park."

9           You know, I believe that that's a  
10 bit of a sleight of hand to try and give the  
11 impression that the hotel itself is in the  
12 historic district itself, and that was why I  
13 wanted to make that clear that it is, in fact,  
14 across the street from the historic district.

15           MR. HITCHCOCK: Don't you think  
16 the word "neighboring historic buildings"  
17 would do that?

18           CHAIRMAN GRIFFIS: That's a  
19 different --

20           ZONING ADMINISTRATOR CREWS: Okay.  
21 Okay.

22           MR. HITCHCOCK: Let me ask you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 this question with respect to the building  
2 being underground. You saw Mr. Goodman put up  
3 slide 20. This is where he details the various  
4 respects in which this is not underground. You  
5 don't disagree with any of these statements,  
6 do you?

7 ZONING ADMINISTRATOR CREWS: Well,  
8 I disagree with the conclusion --

9 MR. HITCHCOCK: Okay. But that  
10 wasn't what I asked you. I just asked about  
11 the facts. Going to talk about the  
12 conclusions in a moment.

13 ZONING ADMINISTRATOR CREWS: I  
14 don't agree with that the 30 foot wide ramp,  
15 I believe that on cross was testified that  
16 that was below grade.

17 MR. HITCHCOCK: But there's an  
18 entrance from the street, is there not, to the  
19 garage?

20 ZONING ADMINISTRATOR CREWS: But  
21 none of that entrance is above grade.

22 MR. HITCHCOCK: But one has to go

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 up the ramp to get into the garage, correct?

2 ZONING ADMINISTRATOR CREWS: No  
3 one said anything about going up the ramp to  
4 get into the garage.

5 MR. HITCHCOCK: It's on a grade,  
6 though, isn't it?

7 ZONING ADMINISTRATOR CREWS: I  
8 don't -- I don't understand where you're --

9 CHAIRMAN GRIFFIS: That's a  
10 different question, isn't it?

11 MR. HITCHCOCK: All right.

12 ZONING ADMINISTRATOR CREWS: An  
13 admission that the --

14 CHAIRMAN GRIFFIS: Let's just get  
15 clarification of this. We don't really need  
16 to be mysterious about this.

17 MR. HITCHCOCK: Yes.

18 CHAIRMAN GRIFFIS: There's three  
19 things that are being talked about. Above  
20 grade, you just said on grade, which is a  
21 totally different question.

22 MR. HITCHCOCK: I'm sorry. Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 You're right. I'm sorry.

2 CHAIRMAN GRIFFIS: And then  
3 there's below grade.

4 MR. HITCHCOCK: Okay.

5 CHAIRMAN GRIFFIS: Kind of a  
6 sandwich, actually, if you think about it.

7 You want him to decide whether the  
8 30 foot, 60 foot access ramp is above, below,  
9 on or intermixed? What's the question?

10 MR. HITCHCOCK: I'll take that; is  
11 it above, on or below?

12 ZONING ADMINISTRATOR CREWS: I'd  
13 say below.

14 MR. HITCHCOCK: In its entirety?

15 ZONING ADMINISTRATOR CREWS: As  
16 far as I know.

17 MR. HITCHCOCK: Okay. And are  
18 there not retaining walls leading down? Would  
19 there not be retaining walls leading into the  
20 garage?

21 ZONING ADMINISTRATOR CREWS: None  
22 that are above four feet that I'm aware of.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Structure four feet are below are not counted  
2 for the purposes in terms of structures in  
3 required open spaces.

4 MR. HITCHCOCK: Okay. And  
5 what's the source of your information on that?

6 ZONING ADMINISTRATOR CREWS: The  
7 plans.

8 MR. HITCHCOCK: Okay. Do you have  
9 a disagreement with the other two, the 660  
10 foot elevator stair enclosure? Actually, I  
11 know your --

12 ZONING ADMINISTRATOR CREWS:  
13 Again, my contention is this is a necessary  
14 access for life safety egress and while we are  
15 counting that as gross square foot, that it's  
16 a de minimis part of the determination of that  
17 this is an underground alteration of the  
18 existing building. And that the other above  
19 grade components are air intakes that are less  
20 than four feet above grade.

21 MR. HITCHCOCK: Mr. Crews, have  
22 you ever heard the phrase that the words "de

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1       minimis" mean not really?

2                       ZONING ADMINISTRATOR CREWS: Well,  
3       if that's a poor change of word. I don't know.  
4       I mean, but to me it is not of significance --

5                       MR. HITCHCOCK: Excuse me. Let's  
6       pursue that a moment in a different way. Could  
7       you take a look at the definition of building  
8       and could you point where in that you draw the  
9       conclusion that a building is not a building  
10      if it's below grade?

11                      ZONING ADMINISTRATOR CREWS: Well,  
12      I'm not saying -- I'm saying that this is part  
13      of the building.

14                      MR. HITCHCOCK: I'm sorry, what is  
15      the "this?"

16                      ZONING ADMINISTRATOR CREWS: The  
17      garage alteration is part of the existing  
18      hotel building.

19                      MR. HITCHCOCK: Okay. But in  
20      other words, I guess what I'm trying to -- but  
21      there are parts of it that do reach up and are  
22      above ground, correct? I mean, you're just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 saying they're de minimis; that's your  
2 position?

3 ZONING ADMINISTRATOR CREWS: I'm  
4 saying they're not significant enough and  
5 required by life safety requirements that they  
6 do not change my interpretation that this is  
7 a below grade alteration of the building.

8 MR. HITCHCOCK: Okay. And where  
9 do you find that life saving exception or  
10 gloss that you are referring to? Either in  
11 rule or in interpretation of it?

12 ZONING ADMINISTRATOR CREWS:  
13 That's my interpretation of taking the plans  
14 as a whole, the zoning regs as a whole, the --  
15 my understanding of past interpretations and  
16 the experience of buildings having below grade  
17 extension from the above, you know, extending  
18 beyond the above grade -- the above grade  
19 portion of a building now just to the National  
20 Cathedral's parking structure, Sibley  
21 Hospital, the Ritz Carlton, the Washington  
22 Hilton and such.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. HITCHCOCK: Were the arguments  
2 that the Appellants are making here raised in  
3 those cases?

4 ZONING ADMINISTRATOR CREWS: I'm  
5 not --

6 CHAIRMAN GRIFFIS: You mean were  
7 they appealed?

8 MR. HITCHCOCK: Now were they --

9 ZONING ADMINISTRATOR CREWS: I  
10 don't know.

11 MR. HITCHCOCK: Are you referring  
12 to BZA cases?

13 ZONING ADMINISTRATOR CREWS: No.  
14 I'm just referring to the previous  
15 interpretation that below grade extensions of  
16 above grade footprint of a building still is  
17 considered all one building.

18 MR. HITCHCOCK: Okay. But you're  
19 not referring to any Board decisions or court  
20 decisions you're referring to in those cases?

21 ZONING ADMINISTRATOR CREWS:  
22 Right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. HITCHCOCK: Okay. Let me move  
2 on. Let me talk a little about the 350.4(d).  
3 Did I understand you to just characterize the  
4 garage as a storage area?

5 ZONING ADMINISTRATOR CREWS: Yes.

6 MR. HITCHCOCK: Are there other  
7 decisions you're relying upon that have viewed  
8 this, a garage as storage areas?

9 ZONING ADMINISTRATOR CREWS: Well,  
10 the purpose of the garage is to store cars  
11 while you're --

12 MR. HITCHCOCK: Well, for purposes  
13 of interpreting this regulation or this order?

14 ZONING ADMINISTRATOR CREWS: It  
15 seems quite reasonable to me to acknowledge  
16 the plain fact that parking garages are used  
17 to, in effect, store cars while folks are  
18 somewhere else. In this case, at the hotel.

19 MR. HITCHCOCK: Okay. But there's  
20 not a prior interpretation that you can point  
21 to?

22 ZONING ADMINISTRATOR CREWS: I'm

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 not necessarily sure I need to point to.

2 MR. HITCHCOCK: Okay.

3 ZONING ADMINISTRATOR CREWS: That  
4 may be exactly, you know, why you appeal and  
5 why we have the Board.

6 MR. HITCHCOCK: Okay.

7 ZONING ADMINISTRATOR CREWS: But  
8 that's my interpretation.

9 MR. HITCHCOCK: Okay. I'm just  
10 trying to understand where it comes from.

11 I don't think I have any further  
12 questions.

13 Thank you, Mr. Crews.

14 CHAIRMAN GRIFFIS: Mr. Nettler?

15 MR. NETTLER: Just a few  
16 questions.

17 In response to Mr. Hitchcock's  
18 questions about the protrusions above ground,  
19 you differentiated between those that were  
20 four feet and less below grade -- four feet  
21 above grade and less and those that were up  
22 higher. And I understand your interpretation

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 is that those protrusions that are a part of  
2 an underground structure are not by themselves  
3 a separate building, is that correct?

4 ZONING ADMINISTRATOR CREWS: Yes.

5 MR. NETTLER: And is that because  
6 they don't meet the definition of a building  
7 which is a structure having a roof supported  
8 by columns or walls for the shelter, support  
9 or enclosure of persons, animals and chattel  
10 as distinct from being part of a some existing  
11 structure?

12 ZONING ADMINISTRATOR CREWS: Well,  
13 again, it's all part of this structure and  
14 that the significance of he two stairwells is  
15 such that it's pretty much required to be  
16 there for life safety issues.

17 MR. NETTLER: And it's not  
18 something that is intruding into a required  
19 yard, is it?

20 ZONING ADMINISTRATOR CREWS: No,  
21 it's not.

22 MR. NETTLER: Because there is no

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 required front yard?

2 ZONING ADMINISTRATOR CREWS: Front  
3 yard, exactly.

4 MR. NETTLER: So it was, if  
5 anything, if it was in a rear yard or a side  
6 yard and it was above four feet above grade,  
7 that might be a different issue? But that's  
8 not the issue, correct?

9 ZONING ADMINISTRATOR CREWS:  
10 Exactly.

11 MR. NETTLER: I have no other  
12 questions.

13 CHAIRMAN GRIFFIS: Thank you.  
14 You ready?

15 MR. NETTLER: I'm ready.

16 CHAIRMAN GRIFFIS: Let's go.

17 MR. NETTLER: I have a preliminary  
18 statement that I'm going to make.

19 I'm going to be blunt. It's our  
20 position that this appeal is frivolous. It's  
21 not consistent with any interpretation ever  
22 made of the zoning regulations by this Board

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 or by the Zoning Administrator. Certainly not  
2 those provisions that have been in existence  
3 in the last 50 odd years since the zoning  
4 regulations went into effect. And it's  
5 certainly not consistent with any  
6 interpretation of those regulations that  
7 effect hotels that have been in existence  
8 since the 1980s.

9 With reference to that because it  
10 is commented upon in the Appellant's own  
11 decision, let me give you a little bit of  
12 background as to what's on the site, where  
13 we're going and what this Board and the Zoning  
14 Administrators have done with this site in the  
15 past.

16 As you know, this has been around  
17 for -- the Wardman itself, for around 80  
18 years. The larger hotel since the mid '50s  
19 actually. The Cotillion Garage, which is this  
20 garage in the front yard that's connected by  
21 this above grade connection, has been around  
22 since the '60s, subsequent to the regulations

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 that we're now dealing with went into effect.  
2 And then in the 1990s, mid 1990s the former  
3 owner of the site, the ITT Sheraton, sought to  
4 do a number of things with this site. And  
5 principally it sought a major expansion of the  
6 hotel with regard to the conference and  
7 exhibit space. It came to this BZA requesting  
8 a variance from the provisions of 350.4(d). It  
9 sought to demolish at that time the Cotillion  
10 Ballroom and Garage, the same thing that JBG  
11 Companies are looking to do here, propose a  
12 new garage, an underground garage. But part of  
13 that underground garage not the mere life  
14 safety components, but part of that  
15 underground garage extended above grade.

16 The Woodley Park Community  
17 Association opposed that application. I happen  
18 to have represented them at the time. And the  
19 Board agreed with us that they were not  
20 entitled to a variance, however neither the  
21 ANC in response to the Applicant's argument  
22 that the underground portion of the garage did

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 not need either a special exception or a  
2 variance, ever took issue with that fact.

3           And the Board of Zoning Adjustment  
4 makes reference in its opinion the fact that,  
5 I'm going to summarize the testimony, there  
6 were portions that were proposed for the  
7 Sheraton at that time, now the Wardman  
8 Marriott, that were underground that could be  
9 constructed as a matter of right. The only  
10 underground components that were being  
11 proposed at that time that could be  
12 constructed as a matter of fact was the  
13 garage. And in its finding, in its  
14 conclusions it made mention of the fact that  
15 it was unfortunate that certain matter of  
16 right components were a part of this and  
17 hoped, and the Board make it clear in fact in  
18 testimony in the hearings, that it hoped that  
19 those things would go forward. They didn't.

20           Sheraton sold the property to  
21 Marriott and Marriott has sold the property to  
22 the JBG Companies. Nevertheless, Marriott will

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 continue to operate.

2 What JBG is now the owner of the  
3 Wardman and has plans, as you've heard, to  
4 reposition the hotel. There are various  
5 components that are being completed in phases.

6 Now here because the ANC has  
7 appealed the issuance of what we've  
8 characterized as declaratory order, and it's  
9 probably not even that, it's probably not even  
10 sure that the Board even has jurisdiction over  
11 that mere memo, but I think given the  
12 clarification that the Zoning Administrator's  
13 made as to what that memo says and doesn't say  
14 is enough to deal with that situation. But  
15 they've also challenged the permit that was  
16 granted for the garage on the grounds that  
17 it's an accessory building.

18 First of all, it's not an  
19 accessory building. It is clearly an  
20 accessory use, but not every accessory use is  
21 an accessory building. And to be an accessory  
22 building it has to be unconnected to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 existing building. And we would argue that  
2 for this purposes, for garage purposes, it  
3 would have to be above grade. And we don't  
4 have to get to that issue here because the  
5 structure that's being constructed is to  
6 replace the parking that's demolished. And in  
7 order for JBG to continue operating this  
8 hotel, it needs to maintain the number of  
9 parking spaces that are provided today on site  
10 and to replicate them somewhere else  
11 consistent with those zoning regulations.

12           And it's not increasing the gross  
13 square footage of the hotel, because as you  
14 heard from the Zoning Administrator, it is  
15 removing portions of the existing hotel to  
16 compensate for anything that's more than four  
17 feet above grade.

18           It's not building a separate  
19 building in the front yard, because it's below  
20 grade and it doesn't count towards gross  
21 square footage. And I don't recall anytime  
22 the Board of Zoning Adjustment or any Zoning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 Administrator has ever said that anything  
2 built below grade counts toward square  
3 footage. And that's what the provision dealing  
4 with the restriction on hotels focuses on is  
5 the expansion of the gross square footage of  
6 a hotel, not the replication of what already  
7 exists with something else in a way that  
8 doesn't expand the gross square footage.

9           It clearly is a storage use. It  
10 was recognized as a storage use by the Board  
11 of Zoning Adjustment back in the 1990s. It has  
12 always been counted -- parking has always been  
13 characterized as a storage use by every Zoning  
14 Administrator for every hotel in the District  
15 of Columbia that's in a residential zone. And  
16 there's a good reason for it. Because it is  
17 exactly what the Zoning Administrator said:  
18 It is two keep -- to store cars while people  
19 are using the hotel. It doesn't fit any other  
20 definition that's provided for that are really  
21 aimed at different types of function uses and  
22 commercial uses that are not uses that are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 required for hotels, as parking is, as loading  
2 docks are. You're not required to have a  
3 certain number of function rooms. You're not  
4 required to have a certain number of  
5 restaurants. You're not required to have a  
6 certain size of hotel lobby. But you are  
7 required to have parking. It is a storage use.  
8 That's all it is. A service use.

9                   So it certainly doesn't violate  
10 those provisions.

11                   As far as the connection goes  
12 there are numerous situation in the District  
13 of Columbia where parking is connected to main  
14 buildings, Sibley Hospital being one that  
15 immediately comes to my mind. If you can  
16 think about the way in which the -- unusually  
17 the way in which the Ritz Carlton in  
18 Georgetown was constructed, if you were to  
19 take the Appellant's argument to what they  
20 think is their conclusion, every parking  
21 garage that's ever been built underground  
22 could never be built in a front yard of any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 building. And that makes no sense. It could  
2 never be part of any building extended into  
3 the front yard makes absolutely no sense.

4 The whole purpose for restricting  
5 the provision of any type of, whether it's a  
6 garage or accessory building in rear yards or  
7 side yards or whatever those provisions deals  
8 with is so that they don't obstruct those  
9 particular yards. And an underground garage  
10 does nothing like that.

11 I'm going to provide you testimony  
12 from the architect who was involved in both in  
13 the 10995 Zoning case and has been involved  
14 with the project on behalf of the JBG  
15 Companies and from Mr. Lourenco, who was a  
16 former Zoning Administrator, who has also been  
17 involved with this project and from Ilan  
18 Sharfstein is here on behalf of the JBG  
19 Companies. I'm going to ask you at the end to  
20 dismiss this appeal.

21 And my first witness is Mr.  
22 Scharfstein.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. SCHARFSTEIN: Good afternoon.

2 I'm Ilan Scharfstein with the JBG Companies.

3 I've been involved in this project  
4 since 2004 when we first identified the  
5 opportunity to purchase this hotel. We  
6 actually closed on the asset in July 2005.  
7 And as was alluded to earlier, we saw several  
8 opportunities in purchasing this hotel.

9 One was to do a substantive  
10 renovation, repositioning of the hotel in  
11 light of oncoming competition, specifically  
12 from the Gaylord Hotel in PG County. The  
13 Wardman has been up to date the largest hotel  
14 in the D.C. Metro area. And that won't always  
15 be the case. And so we looked at different  
16 ways to reposition the asset to make it more  
17 competitive in light of this competition.

18 We also wanted to take advantage  
19 of the untapped density on the site by  
20 building a residential addition to the hotel.  
21 And that is really what this case is about.  
22 And I'll elaborate on that in a moment.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   In 2004 we put together a team of  
2 consultants that had specific expertise in  
3 zoning and in this asset, this hotel itself.  
4 Of course, Mr. Nettler has been involved along  
5 the way representing different groups at  
6 different times. We hired ACG Architects Bill  
7 Anderson, whom you'll hear from next, who has  
8 been involved in various renovations and  
9 repositioning of the hotel in the past as a  
10 consulting architect for the garage project.  
11 The architect of record on the garage is  
12 Walker Associates, which is a group that  
13 specifically designs parking garages.

14                   We hired Armando Lourenco as a  
15 zoning consultant to make sure that everything  
16 that we were doing was by right. Because we  
17 did not want to go through a process of making  
18 presentations here at BZA and trying to get  
19 interpretations and such.

20                   And as soon as Mr. Crews was  
21 appointed as the Zoning Administrator, we met  
22 with him, we sat down with him, we explained

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 our overall strategy in the project so that we  
2 could get his feedback and make sure that  
3 everything that we were doing was in fact by  
4 right. And in the dialogue that ensued we did  
5 make some changes to the plans based on the  
6 feedback that we heard so that we would in  
7 fact be 100 percent by right.

8           And the other member of the team  
9 on the garage project is Sasaki. Sasaki is a  
10 landscape architect. You haven't heard much  
11 about them up to now. But Sasaki is designing  
12 the park that will sit atop the garage  
13 structure. And while the picture you saw may  
14 not look very pretty right now, the soil will  
15 be restored across the top of the garage  
16 structure, trees will be planted there, grass  
17 will be planted there in that area that the  
18 community has historically seen as its  
19 property, despite the fact that it is a  
20 privately owned property, will continue to be  
21 available to be used by members of the  
22 community. In fact, the park will be designed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 by a nationally renowned landscape architect  
2 that's currently working on a similar project,  
3 the park that will atop the Visitor's Center  
4 at the U.S. Capitol. So this will be a  
5 wonderful asset in the neighborhood.

6 We have had numerous meetings all  
7 along the way. But really, you know, the  
8 important point is that we met with the Zoning  
9 Administrator, we sought his input along the  
10 way, we made changes to our plans.

11 The overall project is a  
12 complicated project. But really what we're  
13 talking about here is quite simple. It's the  
14 construction of a below grade garage structure  
15 in the front lawn of the hotel that will  
16 replace a partially above grade garage  
17 structure that sits in the front lawn of the  
18 hotel. That's it.

19 And it is an aspect of the project  
20 that is actually supported by a lot of  
21 neighbors, by a majority of the neighbors I  
22 believe in the community. There are two

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 letters of support in the file talking about  
2 how the existing garage creates noise for the  
3 neighbors. It's been the --

4 CHAIRMAN GRIFFIS: I don't think  
5 we need to go too far into that, do we?

6 MR. SCHARFSTEIN: Okay. That's  
7 fine.

8 And so that ultimately the goal  
9 here is to replace the loading dock component  
10 of the project that sits where the condominium  
11 or residential addition to the hotel will be  
12 , to replace the garage component of the  
13 Cotillion Ballroom structure where the  
14 residential addition will be and to replace  
15 the ballroom component of the Cotillion  
16 structure so that that structure can be  
17 demolished and the residential addition can be  
18 put in its place. And that is what the  
19 neighborhood as represented here by the ANC  
20 Commissioner and the WPCA President is  
21 fighting against, is our ability to make use  
22 of the unused density on the site to a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 residential addition, a by right use in the  
2 zoning.

3           Just, you know, again a couple of  
4 other points, and you'll hear Mr. Anderson  
5 elaborate on this, but ultimately the hotel  
6 will be reduced in size both in the number of  
7 rooms and in the overall square footage and  
8 whether it's 600 or 800 or 1400 square feet  
9 that we're talking about here, will be offset  
10 by in excess of 40,000 square feet once the  
11 Cotillion garage structure and associated  
12 loading and ballroom functions are demolished.

13           And that is kind of quick synopsis  
14 of what we're doing here in a more simple term  
15 I hope.

16           CHAIRMAN GRIFFIS: Excellent. Let  
17 me just address why I had redirected the  
18 witness, and I think we'll hear from Mr.  
19 Parsons also. But clearly just I know everyone  
20 has a firm understanding of this, but we're  
21 not under special exception or appeal. We're  
22 not here to go into intent or what the entire

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 project. We're here on a limited focus. And,  
2 frankly, the Appellant has framed this appeal  
3 excellently. There are three points. So we  
4 are talking specifically about those three  
5 points under appeal and whether there was an  
6 error based on those or not. So, I will  
7 redirect if we go too far off into intents or  
8 even descriptions further of the project that  
9 don't go direct to that.

10 But I believe Mr. Parsons has  
11 something.

12 COMMISSIONER PARSONS: Only to say  
13 that I have to leave for another public  
14 hearing.

15 CHAIRMAN GRIFFIS: Right.

16 COMMISSIONER PARSONS: And I'll  
17 read the record as you finish it this evening,  
18 I hope. And look forward to participating in  
19 the case.

20 Thank you.

21 CHAIRMAN GRIFFIS: Excellent.

22 Thank you very much, Mr. Parsons. Do

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 appreciate it. And we know we'll get you the  
2 transcript as soon as possible.

3 With that, let's continue.

4 MR. NETTLER: Mr. Anderson?

5 We're submitting Mr. Anderson's  
6 CV. He has been accepted as an expert before  
7 by this Board. I know one instance when I was  
8 on the other side, and that was regard to ITT  
9 Sheraton. But Mr. Anderson, if you want, can  
10 tell you a little more or you can just peruse  
11 his résumé that's being submitted.

12 CHAIRMAN GRIFFIS: I'm sorry. An  
13 expert witness in?

14 MR. NETTLER: In architecture.

15 CHAIRMAN GRIFFIS: Architecture.

16 Okay.

17 Are there questions? Mr. Goodman,  
18 do you need additional information or  
19 questions on this?

20 MR. GOODMAN: As the Chair  
21 indicated, there are three legal issues. It  
22 was kind of puzzling to me what expertise an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 architect would have on the legal issues.

2 CHAIRMAN GRIFFIS: I tend to  
3 agree. However, they've ben proffered, so  
4 we'll cut them off if they get out of control  
5 here. But the thing that's before us now is  
6 whether we establish him as an expert in  
7 architectural design. Have you been delivered  
8 the résumé?

9 MR. GOODMAN: No.

10 CHAIRMAN GRIFFIS: I'm sorry. Why  
11 don't we just get a copy of that. It will  
12 only take a minute.

13 What was the case that Mr.  
14 Anderson was previously?

15 MR. NETTLER: Well, in particular,  
16 the one I'm familiar with is the last Wardman  
17 case, Sheraton Wardman in the 1995 BZA case.

18 CHAIRMAN GRIFFIS: Oh, okay.  
19 Okay.

20 MR. ANDERSON: Good afternoon. My  
21 name is William Anderson.

22 CHAIRMAN GRIFFIS: Want to wait

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 two seconds to get any comments back as I can  
2 take or I allow recommendations in terms of  
3 participants of the other parties in terms of  
4 establishing expert witness. Frankly, it's  
5 just the prerogative of the Chair to establish  
6 them or not, however I'll give you an  
7 opportunity to address if there are concerns  
8 with establishment of an expert witness.

9 MR. TAYLOR: I'm sure he's an  
10 expert architect.

11 CHAIRMAN GRIFFIS: Okay. Does  
12 have Government have any difficulties?

13 MR. TAYLOR: Government has no  
14 objection in this matter.

15 CHAIRMAN GRIFFIS: Okay. Let's  
16 proceed. I don't have any difficulty  
17 establishing Mr. Anderson as an expert. I  
18 think it's well stated we're intrigued of how  
19 far we need to go with this witness, but let's  
20 move ahead.

21 MR. ANDERSON: Good afternoon. My  
22 name is William Anderson, I'm a principal with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 ACG Architects. My address is 1430 Springhill  
2 Road, Suite 104, McLean, Virginia.

3 MR. NETTLER: Mr. Anderson, are  
4 you familiar with the zoning regulations?

5 MR. ANDERSON: Yes.

6 MR. NETTLER: And how many years  
7 have you been practicing?

8 MR. ANDERSON: I've been  
9 practicing in the District of Columbia as a  
10 licensed architect for over 30 years.

11 MR. NETTLER: And are you familiar  
12 with the requirements specifically dealing  
13 with hotels and residential zones?

14 MR. ANDERSON: Yes, I am.

15 MR. NETTLER: And are you familiar  
16 with the manner in which both this Board and  
17 the Zoning Administrator has interpreted those  
18 regulations dealing with hotels and  
19 residential zones?

20 MR. ANDERSON: Yes, I am.

21 MR. NETTLER: Okay. You were  
22 involved, were you not, in a BZA case dealing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 with this property before?

2 MR. ANDERSON: Yes. The 1995 case.

3 MR. NETTLER: And in that 1995  
4 case did the then owner of the site seek,  
5 among others, to construct a garage that was  
6 partially underground and above ground?

7 MR. ANDERSON: Yes.

8 MR. NETTLER: Okay. And did the  
9 Applicant in that case take the position that  
10 the portions of the garage that were  
11 underground were permitted as a matter of  
12 right?

13 MR. ANDERSON: Yes.

14 MR. NETTLER: And was that because  
15 they didn't increase the gross footage?

16 MR. ANDERSON: That's correct.  
17 They were underground.

18 MR. NETTLER: Okay. And do you  
19 know why that underground garage was not  
20 constructed?

21 MR. ANDERSON: Because it was pat  
22 of the full development plan and when the full

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 development plan wasn't approve, they didn't  
2 proceed with that small portion of the  
3 project.

4 MR. NETTLER: Okay. And when did  
5 you become involved with this project, on the  
6 JBG Companies?

7 MR. ANDERSON: I've been involved  
8 with the hotel since 1995 and with JBG for  
9 approximately three years on this project.

10 MR. NETTLER: And in your  
11 professional opinion does the comply the  
12 typical zoning regulations?

13 MR. ANDERSON: Yes, I believe it  
14 does.

15 MR. NETTLER: Okay. Is parking an  
16 accessory use?

17 MR. ANDERSON: Parking is, as the  
18 Zoning Administrator said, I believe an  
19 accessory use or as part of the building, as  
20 in this case it would be.

21 MR. NETTLER: Okay. And under the  
22 definition of hotel, what type of use is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 parking?

2 MR. ANDERSON: It is -- again, I  
3 agree. It's a service use. It's storage use.  
4 And I further indicate that it's even  
5 indicated as storage use, the amount the  
6 applicable for this group, but in the building  
7 code parking is a storage use.

8 MR. NETTLER: Okay. And as  
9 permitted and as under construction does the  
10 garage that's been proposed increase the gross  
11 floor area of the building, the existing  
12 building?

13 MR. ANDERSON: Well not when  
14 you're considering ongoing and future  
15 projects, it does not.

16 MR. NETTLER: Well, let's deal  
17 with the underground portions first.

18 MR. ANDERSON: There is no gross  
19 floor area increase in the underground  
20 portions.

21 MR. NETTLER: Okay. And are you  
22 aware of the -- were you asked to do

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 calculations regarding the total gross square  
2 footage of the floor area of the hotel as it  
3 exists today?

4 MR. ANDERSON: I was, yes.

5 MR. NETTLER: And were you asked  
6 to also do calculations as to what would exist  
7 given what was being proposed for the  
8 underground garage as well as all of the  
9 demolition that was being proposed for the  
10 site?

11 MR. ANDERSON: Yes. Yes.

12 MR. NETTLER: Okay. And when you  
13 completed those calculations did you conclude  
14 that there were certain aspects of the garage  
15 that were protruding above grade that added to  
16 the gross square footage?

17 MR. ANDERSON: Yes.

18 MR. NETTLER: And was that  
19 compensated for by the portions of the hotel  
20 that were being demolished?

21 MR. ANDERSON: Yes. Yes. In two  
22 ways. Actually, there's a portion that is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 being demolished right now or there is a  
2 permit for a portion to be demolished that is  
3 greater than those portions that stick out of  
4 grade plus the next phase of the project, as  
5 Mr. Scharfstein indicated, would actually  
6 reduce the hotel's gross floor area by over  
7 40,000 square feet.

8 MR. NETTLER: Okay. And you're  
9 aware of the connections that are proposed  
10 between the underground garage and the  
11 existing hotel, are you not?

12 MR. ANDERSON: Yes. Right now the  
13 connection is that the second level or what  
14 they call the P2 level of the garage.

15 MR. NETTLER: I have no other  
16 questions.

17 MR. HITCHCOCK: Mr. Chairman,  
18 could I reiterate the objection Mr. Goodman  
19 stated earlier about the witness testifying as  
20 an expert. I mean, he's testifying as an  
21 architect and he testifying as to his  
22 opinions, but I didn't hear anything really

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 that would qualify as expert testimony and  
2 he's testifying on issues that the Board is  
3 ultimately going to have to decide on this  
4 case. So we would reiterate the objection to  
5 characterizing this testimony as expert  
6 testimony.

7 CHAIRMAN GRIFFIS: I'm not sure I  
8 know what --

9 MR. HITCHCOCK: Well, for example,  
10 he's testifying as to compliance with various  
11 regulations. I mean, we're certainly prepared  
12 to accept the notion that he thought that was  
13 in compliance, but that is not entitled to any  
14 extra weight in terms of what the Board has to  
15 decide.

16 CHAIRMAN GRIFFIS: No.

17 MR. HITCHCOCK: That was the only  
18 thing I was saying.

19 CHAIRMAN GRIFFIS: And I think in  
20 establishing the expert it just doesn't  
21 entitle that to more weight or less weight. It  
22 allows for a certain and different type of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 testimony which actually goes into the  
2 projection of an interpretation or opinion  
3 rather than just fact based. And I think that  
4 he's stayed well within that in establishing  
5 it.

6 Okay. Let's move on. Next  
7 witness.

8 MR. NETTLER: Mr. Lourenco.

9 I'm handing up Mr. Lourenco's  
10 résumé. Mr. Lourenco was the former Zoning  
11 Administrator of the District of Columbia,  
12 former Administrator of the Building and Land  
13 Registration Administration. He has been  
14 accepted as an expert in the interpretation of  
15 those zoning regulations by this Board on  
16 numerous occasions and he can certainly give  
17 you his experience on those regulations and  
18 their interpretation if you would request the  
19 likes.

20 CHAIRMAN GRIFFIS: I'm going to  
21 give the participants a minute to look at  
22 this.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Does Government have any comment  
2 on Mr. Lourenco established as an expert  
3 witness?

4 MR. TAYLOR: The Government has no  
5 objection.

6 CHAIRMAN GRIFFIS: Thank you. As  
7 stated we have in fact -- Mr. Lourenco in past  
8 have established him as an expert in zoning  
9 regulations. And I would also have him as  
10 such in this past.

11 Let's move ahead.

12 MR. LOURENCO: Good afternoon, Mr.  
13 Chairman, Members of the Board. My name is  
14 Armando Lourenco. My professional office is  
15 5016 Connecticut Avenue in the District of  
16 Columbia. I'm also resident of the District of  
17 Columbia. My address is 35 Harrison Street,  
18 Northwest.

19 I have been -- I was the Acting  
20 Zoning Administrator for approximately one  
21 year in 1998/1999. And I'm familiar with the  
22 zoning regulations and with its application.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 And I have been practicing as a zoning  
2 consultant since 2000 up until the present.

3 I am familiar with this project. I  
4 was hired by JBG to provide the expert's  
5 review of the plans for the series of partial  
6 projects that comprise this redevelopment plan  
7 for the site.

8 It's a complex series of projects  
9 that prompted me to recommend that they  
10 prepare those tables you have in the record  
11 which show the gross foot areas in the various  
12 subwings of the hotel building and how they  
13 evolve over the various phases of the project.

14 The issue before -- well, I  
15 reviewed the plans for the zoning  
16 regulations--

17 MR. NETTLER: Are you what we call  
18 the third party reviewer?

19 MR. LOURENCO: Yes, that's  
20 correct.

21 MR. NETTLER: Could you explain  
22 what that is for the record?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   MR. LOURENCO: The District  
2                   established a process by which professionals  
3                   that are accredited by the DCRA can provide  
4                   expert review and certification of plans for  
5                   the purpose of obtaining the permits. And  
6                   that in the area of zoning has been -- has  
7                   actually helped bring the project before the  
8                   Zoning Administrator with a lot more of the  
9                   review completed and digest and examined at a  
10                  greater level of detail which enables,  
11                  hopefully, the Zoning Administrator to make an  
12                  informed decision with more assurance.

13                   In this particular case I had no  
14                   contacts with the Zoning Administrator other  
15                   than the documental submission that was made  
16                   to the Zoning Administrator.

17                   MR. NETTLER: Are you familiar  
18                   with the regulation governing hotels in  
19                   residential areas?

20                   MR. LOURENCO: Yes, I am. It's  
21                   one of the points that the Appellants bring up  
22                   is that the permit for this garage was issued

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 in violation of 350.4(d). In my opinion  
2 that's incorrect.

3 Every stage -- at every stage of  
4 the project we considered that particular  
5 section in addition to, of course, all the  
6 other sections of the zoning regulations. But  
7 we were particularly careful with the  
8 application in that section.

9 That section basically imposes --  
10 with that section the Zoning Commission  
11 imposed two types of restrictions to existing  
12 hotels in residential areas.

13 MR. NETTLER: That section creates  
14 -- makes a hotel a grandfathered use, does it  
15 not?

16 MR. LOURENCO: That's correct.

17 MR. NETTLER: It's not a  
18 nonconforming use, correct?

19 MR. LOURENCO: No, it's not a  
20 nonconforming use.

21 MR. NETTLER: There's a  
22 distinction between -- for zoning purposes

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 there's a distinction between a nonconforming  
2 use and a grandfathered use?

3 MR. LOURENCO: That's correct.

4 MR. NETTLER: Could you explain  
5 what that distinction is?

6 MR. LOURENCO: Well, the hotel --  
7 as the hotel as it exists on the date  
8 specified in the zoning regulations is deemed  
9 to be a compliant use. And certain actions  
10 can be taken in terms of alterations to the  
11 hotel and so on, repositioning of the  
12 components of the hotel as long as you do it  
13 within the parameters of the limitations that  
14 are specified in 350.4(d).

15 MR. NETTLER: Okay. And if it was  
16 a nonconforming use, isn't it a matter of  
17 zoning policy that you interpret the zoning  
18 regulations in a way that would eliminate the  
19 nonconforming use as distinct from uses that  
20 are grandfathered?

21 MR. LOURENCO: That's correct.

22 Now, going back to the point I was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 making 350.4(d) basically establishes two  
2 things. That the gross floor area of the  
3 hotel cannot be expanded, cannot be increased.  
4 And secondly, it established -- it further  
5 limits the ability to increase the overall  
6 area dedicated to commercial actions, function  
7 areas and exhibition -- exhibitionaries.

8 This -- basically what this does  
9 is it prevents the hotel from the hotel  
10 building as a whole with its five components,  
11 prevents it from increasing its bulk because  
12 it restricts the gross floor area. It  
13 prevents -- furthermore it prevents three of  
14 the types of components that make up the hotel  
15 from increasing in area overall.

16 It does not limit any increase on  
17 service areas, the fourth to fifth component  
18 of the hotel. Obviously, you don't naturally  
19 expect guest rooms to be placed in underground  
20 areas which wouldn't count for gross floor  
21 area. Therefore, there's no need to limit the  
22 overall area of the guest rooms area in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 hotel. But it does -- the section does limit  
2 any increases in the aggregate area of the  
3 three components; commercial adjunct, exhibit  
4 areas and function areas.

5 For instance, if the hotel decides  
6 to increase the size of the kitchen in an area  
7 that's completely below grade, that's  
8 perfectly allowable by the 350.4 in my  
9 opinion.

10 Now the issue here -- under which  
11 of the five types of areas in the hotel does  
12 parking garage fall. It's clearly not a  
13 commercial adjunct, it's not service or retail  
14 use. It's clearly not a guest room, not an  
15 exhibit area, not a function area. The  
16 definition of hotel clearly states that any  
17 portion of hotel shall fall under one of those  
18 five categories.

19 Obviously the category that it  
20 falls under is, even though it's not  
21 specifically spelled out as parking garage, is  
22 the area -- the service area component. It's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 a storage use that serves the hotel. Other  
2 arguments have been presented here to this  
3 view that it's a storage use. It's been  
4 always interpreted by the Zoning Administrator  
5 as a storage use. And besides, if you look at  
6 the definitions in the zoning regulations  
7 under garage, there's an entity that's defined  
8 in the zoning regulations which is something  
9 between what this parking garage is and a  
10 repair garage, which is called a public  
11 storage garage. And a public storage garage  
12 narrowly from the definition is a building or  
13 a structure, or part of the building or  
14 structure in which any repair, greasing,  
15 waxing or similar services are incidental to  
16 its primary use for the parking of motor  
17 vehicles.

18 So even in the definitions of  
19 zoning there's a clear indication that parking  
20 garages -- here's a parking garage which  
21 principal primary use is the parking of  
22 vehicles and it's identified as a public

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 storage garage.

2 All of these were considerations  
3 that we were considerations that we made in  
4 our review determining that the proposed  
5 parking garage was part of the service area of  
6 the hotel and the fact that it was completely,  
7 or almost completely below grade. Therefore,  
8 not counting towards the gross floor area of  
9 the building. Therefore, we recommend  
10 approval of the proposal as submitted.

11 Obviously, even for the permit to  
12 be issued the Department itself, the plans,  
13 the application have to make sense by  
14 themselves and independent even of future  
15 phases. Otherwise, the Zoning Administrator  
16 has top ut in place mechanisms to control at  
17 what point this portions of the overall  
18 development plan can be placed in service  
19 conditioning the issuance of those  
20 certificates of occupancy to the abandonment  
21 and dismantling of other areas.

22 There were some arguments that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 were made as to whether the garage is  
2 completely below grade or above grade and  
3 there were some discussions even back and  
4 forth. I call your attention to the section  
5 on required yards and to the definition of  
6 yard.

7                   First of all, the definition of  
8 yard starts by saying yard is an exterior  
9 space. Obviously, a few more qualifications  
10 after that, but start by saying it's an  
11 exterior space. And also that it -- when it's  
12 a required yard, it shall be opened to the sky  
13 from the ground up. This garage is obviously  
14 not in a yard. It's enclosed as any structure  
15 will ever be. It's buried. The yard starts  
16 about six feet above the top of the garage and  
17 that from there up. This is the definition of  
18 yard in general.

19                   It accrues that this particular  
20 "front yard" is not even a required yard. So  
21 it's the limitation on what could be on that  
22 yard would have to go through the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 reformulation of where that yard starts. If  
2 you look at the footprint of all the wings of  
3 this hotel in the lot, you'll notice that the  
4 two further most wings north -- northern most,  
5 I'm sorry. The two most northern most wings  
6 of the hotel is the Cotillion Garage and one  
7 of the wings of the Wardman Tower. If you run  
8 a straight line that touches those two  
9 corners, you can say that north of that line  
10 you have a front yard. If you decided to  
11 append another garage or another structure to  
12 the end of the Cotillion and move it another  
13 50 feet further north, you would just be  
14 changing the size and shape of the front yard.  
15 It would still not be in the front yard. The  
16 front yard would just be smaller. Since  
17 there's no requirement for the size of the  
18 yard, I guess that that makes difficult to  
19 work in that unit since.

20 Now, the structures that actually  
21 protrude from this garage above grade are of  
22 three kinds, in my opinion.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   There's the ventilation intake  
2 structures that are less than four feet above  
3 grade. Even in a required yard they would be  
4 allowed by Chapter 25.

5                   There's retaining walls which are  
6 obviously necessary for safety to retain the  
7 dirt behind them. Those retaining walls are  
8 also authorized as permitted encroachments  
9 into required yards. And we're not talking  
10 about a required yard. But even if it was a  
11 required yard, it would still be allowed.

12                  Guard rails that are required by  
13 the building code along those retaining walls,  
14 depending on the height of the drop, are also  
15 permitted as -- permitted encroachments. They  
16 don't count for the height.

17                  The only other structures that are  
18 protruding above the grade as the enclosure of  
19 the stairs, which are required by the building  
20 code for emergency egress. And the enclosure  
21 of the elevator shaft elevator is required by  
22 the accessibility requirements of ADA Federal

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 law as the means of access to the various  
2 parking levels below grade.

3 The amount of area that those two  
4 stair tower and the elevator tower contribute  
5 to the gross floor area is far offset by other  
6 phases of the project including by one of the  
7 preliminary phases that is going to be  
8 implemented to increase the hedge room on  
9 covered side so that fire emergency vehicles  
10 can gain access up the drive.

11 MR. NETTLER: You're aware that  
12 the Applicants already obtained a demolition  
13 permit for portions of the Park Tower,  
14 correct?

15 MR. LOURENCO: That's someone else  
16 talking.

17 MR. NETTLER: And that reduction  
18 in square footage is what offsets the square  
19 footage for those two egress portions that you  
20 mentioned, is that correct?

21 MR. LOURENCO: That's correct.

22 COMMISSIONER MacWOOD: Good

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 anything else?

2 Next witness.

3 MR. NETTLER: I don't have any  
4 other questions for this witness.

5 CHAIRMAN GRIFFIS: Very well. Do  
6 you want to make a closing?

7 MR. NETTLER: Sure. I won't be as  
8 verbose as I was to start, but there are  
9 questions that they may have.

10 CHAIRMAN GRIFFIS: Yes, okay.

11 MR. HITCHCOCK: I will be brief.

12 Mr. Lourenco, I would draw your  
13 attention to Exhibit F of the prehearing  
14 submission, which indicates it has a copyright  
15 of Lourenco Consultants.

16 MR. LOURENCO: Yes.

17 MR. HITCHCOCK: Did you have any  
18 role in preparing this document?

19 MR. LOURENCO: Yes, I did.

20 MR. HITCHCOCK: Okay. And you  
21 stated in there in item 7 this is a new  
22 building, correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. LOURENCO: You're talking  
2 about the zoning review computation sheet  
3 draft 2?

4 MR. HITCHCOCK: Exhibit F, yes.

5 MR. LOURENCO: Yes. This is a  
6 document in progress. It's just the second  
7 draft of this.

8 MR. HITCHCOCK: But you had a role  
9 in preparing this document, didn't you?

10 MR. LOURENCO: That's correct.  
11 That's not the final.

12 MR. HITCHCOCK: You submitted this  
13 document to the Zoning authorities?

14 MR. LOURENCO: That was submitted  
15 just to document the phase of the review.

16 MR. HITCHCOCK: And it states "new  
17 building," correct?

18 MR. LOURENCO: Yes, in the draft.

19 MR. HITCHCOCK: And you had a  
20 choice of ticking the box addition to existing  
21 building or alteration of existing building,  
22 correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. LOURENCO: That's correct.

2 MR. HITCHCOCK: And neither of  
3 those was selected?

4 MR. LOURENCO: New building is --  
5 this is a computer --

6 MR. HITCHCOCK: There was a  
7 deliberate choice made --

8 MR. LOURENCO: If your question is  
9 what is my opinion --

10 MR. HITCHCOCK: No. I'm asking you  
11 what is done for this document.

12 MR. LOURENCO: My opinion is it's  
13 not a new building?

14 MR. HITCHCOCK: Correct.

15 MR. LOURENCO: I did prepare it.  
16 It's not a finalized document.

17 MR. HITCHCOCK: Well, but it was  
18 submitted to a Government agency, correct --

19 MR. LOURENCO: As part of --

20 MR. HITCHCOCK: -- and it was  
21 intended to be used by a Government agency in  
22 taking action that could be fatal --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. LOURENCO: No, no. That's not  
2 correct.. There's a final version of this  
3 document -- there's a final version of this  
4 document. And this is a draft. It's a work in  
5 progress. As you can see total cellar area  
6 has two question marks, okay. I ended up  
7 putting the actual -- it's not a new building.

8 MR. HITCHCOCK: And when it was --  
9 but it is now your opinion that this is an  
10 addition to an existing opinion -- existing  
11 building?

12 MR. LOURENCO: That's correct.

13 MR. HITCHCOCK: And why was that  
14 not communicated?

15 MR. LOURENCO: It's -- it's clear  
16 from the overall submission that it is an  
17 addition to an existing building.

18 MR. HITCHCOCK: But you didn't see  
19 any obligation to tell --

20 MR. NETTLER: I object. The  
21 witness has stated this was a draft.

22 CHAIRMAN GRIFFIS: Right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. NETTLER: There was a final  
2 document that was prepared that --

3 CHAIRMAN GRIFFIS; Understood.

4 MR. NETTLER: -- was prepared that  
5 was clear. If the Appellant has the final  
6 document that was submitted, he should be --  
7 he should move off the draft.

8 MR. HITCHCOCK: This is the only  
9 one we have. All right.

10 Let me ask this question. Mr.  
11 Lourenco, do you have Exhibit A that we have  
12 submitted?

13 MR. LOURENCO: Yes, I do.

14 MR. HITCHCOCK: And did you play  
15 any role in preparing this document?

16 MR. LOURENCO: No, I didn't.

17 MR. HITCHCOCK: No, you didn't?  
18 This document also says new building, correct?

19 MR. NETTLER: Objection.

20 CHAIRMAN GRIFFIS: Understood.  
21 Okay. Let's move on.

22 MR. HITCHCOCK: Okay. All right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   You cited the definition of the  
2 word yard from zoning regulations, correct?

3                   MR. LOURENCO: That's correct.

4                   MR. HITCHCOCK: That part of it  
5 says it shall be open from the ground up,  
6 correct?

7                   MR. LOURENCO: That's correct.

8                   COMMISSIONER JEFFRIES: But that's  
9 not true --

10                  MR. LOURENCO: A required yard.

11                  MR. HITCHCOCK: I'm sorry?

12                  MR. LOURENCO: A required yard.

13                  MR. HITCHCOCK: Where does it say  
14 the word "required"? A yard required. Okay.  
15 Shall be open to the sky.

16                  But you would agree that this yard  
17 is not open from the ground up because of  
18 protrusions we've been talking about, correct?

19                  MR. LOURENCO: This is not a  
20 required yard.

21                  MR. HITCHCOCK: That wasn't my  
22 question, sir.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. LOURENCO: What is your  
2 question then?

3 MR. HITCHCOCK: My question is  
4 this yard, this front yard, is not open to the  
5 sky from the ground up, correct?

6 MR. LOURENCO: Can you tell me  
7 where your yard is?

8 MR. HITCHCOCK: I'm just asking is  
9 it open to the sky from the ground up?

10 MR. LOURENCO: There is a front  
11 yard, once that construction is completed  
12 there will be a front yard about 160 foot wide  
13 or deep, however you want to measure  
14 perpendicular to any road, 160 foot yard that  
15 will be open from the ground up.

16 MR. HITCHCOCK: Except for the  
17 protrusions.

18 MR. LOURENCO: The protrusions are  
19 161 feet away from the property line.

20 MR. HITCHCOCK: All right. I  
21 understand your point.

22 Let's go to the question about

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 storage uses and storage area. That comes from  
2 the definition of hotel, correct? The  
3 definition of service areas.

4 MR. LOURENCO: That's correct.

5 MR. HITCHCOCK: Do you have that  
6 in front of you?

7 MR. LOURENCO: The definition of  
8 hotel?

9 MR. HITCHCOCK: Yes.

10 MR. LOURENCO: Yes.

11 MR. HITCHCOCK: Okay. Am I not  
12 correct that the storage areas appears in the  
13 part that refers to boiler room, mechanical  
14 platforms, electrical switchboard, workshops,  
15 maintenance areas, storage areas, employee  
16 facilities -- I won't read the whole thing in  
17 similar uses, correct?

18 MR. LOURENCO: What is your  
19 questions? It appears under service areas?

20 MR. HITCHCOCK: Right. And--

21 MR. LOURENCO: Twice. Actually it  
22 appears twice.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. HITCHCOCK: Right. I was just  
2 reading that so we would all have it.

3 MR. LOURENCO: Yes.

4 MR. HITCHCOCK: And those refer,  
5 however, to uses that are made by the hotel  
6 and not by hotel guests, correct?

7 MR. LOURENCO: It says storage  
8 supportive of the hotel as a total entity.

9 MR. HITCHCOCK: But it does not--

10 MR. LOURENCO: And it adds "and  
11 similar uses."

12 MR. HITCHCOCK: Okay. But none of  
13 the other uses are used directly by hotel  
14 guests in the same sense as a garage, correct?

15 MR. LOURENCO: Yes, I guess you  
16 can say that. Yes.

17 MR. HITCHCOCK: Okay. Thank you.  
18 That's all I have, Mr. Chairman.

19 MR. TAYLOR: I have no questions,  
20 Mr. Chairman.

21 MR. NETTLER: I have some  
22 redirect.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   Let's deal with that issue first,  
2 okay. Under the regulations you can convert  
3 function area space into new hotel rooms,  
4 right, for residents, correct?

5                   MR. LOURENCO: That is correct.

6                   MR. NETTLER: And if you did that  
7 you would have to accommodate those new hotel  
8 rooms with more parking, correct?

9                   MR. LOURENCO: That's correct.

10                  MR. NETTLER: All right. So it as  
11 all logical to read the zoning regulations on  
12 the one hand allowing you to increase the  
13 number of hotel rooms but never allowing you  
14 to increase the number of parking spaces?  
15 Does that make any sense?

16                  MR. LOURENCO: It doesn't make no  
17 sense. It would create the violation of  
18 Chapter 21.

19                  MR. NETTLER: Right. So doesn't  
20 that support your position that the parking  
21 spaces have to be part of the service areas of  
22 the hotel?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. LOURENCO: That's correct.

2 MR. NETTLER: Now in reference to  
3 the fact that the draft zoning computation  
4 sheet that was part of the Appellant's  
5 submission was not the final submission by  
6 you, do you recall that?

7 MR. LOURENCO: Yes, I recall that.

8 MR. NETTLER: When you did  
9 complete the zoning computation sheet as a  
10 final version did you characterize the garage  
11 space as an expansion of the cellar area of  
12 the existing hotel?

13 MR. LOURENCO: Not explicitly on  
14 that sheet, but it's implied in everything  
15 else that I've --

16 MR. NETTLER: You had some certain  
17 remarks that were appended to the sheet. Did  
18 you not characterize this cellar area in those  
19 remarks?

20 MR. LOURENCO: That is correct.

21 MR. NETTLER: And as the cellar  
22 area of the existing structure, did you not?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. LOURENCO: That's correct.

2 MR. NETTLER: I have no other  
3 questions.

4 MR. HITCHCOCK: May I follow up on  
5 the last point quickly.

6 Mr. Lourenco, when was the  
7 subsequent submission that you refer to  
8 submitted? What date?

9 MR. LOURENCO: I don't know. I  
10 don't exactly have off the top of my head.

11 MR. HITCHCOCK: Okay. Long after  
12 draft 2 or several months, several weeks?

13 MR. LOURENCO: Probably --

14 MR. HITCHCOCK: Let me ask --

15 MR. LOURENCO: -- a few weeks,  
16 yes.

17 MR. HITCHCOCK: Do you remember  
18 the date this document was?

19 MR. LOURENCO: No. I don't recall  
20 that.

21 MR. HITCHCOCK: Okay.

22 Thank you, Mr. Chair.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 CHAIRMAN GRIFFIS: Thank you.

2 Very well. We're going to take a  
3 five minute break. When we come back, we're  
4 going to take Board questions of the entire  
5 panel. We'll start in chronology, we'll go  
6 down. It shouldn't take that long. And then  
7 we will give an opportunity for five minute  
8 submissions of each, and then we'll turn it  
9 over to the panel for closings, or rebuttal if  
10 you have.

11 We'll be right back.

12 (Whereupon, at 5:37 p.m. the  
13 hearing was adjourned, to reconvene and move  
14 into evening session at 6:09 p.m.)

15 CHAIRMAN GRIFFIS: Good. Let's  
16 resume. We're going to start with Board  
17 questions.

18 VICE CHAIRPERSON MILLER: I have a  
19 question for Mr. Lourenco. Is he still here?  
20 Yes. I think that when you were talking about  
21 the parking garage you looked in the  
22 definitions and you seemed to say that this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 particular garage in your opinion, and correct  
2 me if I'm wrong, fell under garage public  
3 storage. And when I look at the definitions  
4 and I look two above that as under garage  
5 parking that one seems to me to fit more than  
6 garage public storage because garage public  
7 storage gets into greasing, washing, similar  
8 services and garage parking goes to parking of  
9 motor vehicles without repair or service  
10 facilities. So I'm just wondering if you can  
11 address what you meant or why you referenced  
12 the public storage?

13 MR. LOURENCO: No. I didn't say  
14 this was a public storage garage. I was  
15 addressing the issue of is parking garage  
16 essentially a storage use. This isn't a  
17 public storage garage because it doesn't have  
18 all the other incidental limited, other  
19 services. This is strictly a parking garage.  
20 So you're right it falls under parking garage  
21 definition.

22 I was just alluding to the fact

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 that even in the zoning regulations when they  
2 created this other entity that it is more than  
3 just a parking garage but less than repair  
4 garage, and it's essentially dedicated to the  
5 parking of vehicles, they called it public  
6 storage garage. And that to me is a signal  
7 that when the definition was prepared, this  
8 idea that the main use being parking of  
9 vehicles would be a storage use. Because all  
10 of the other services have nothing to do with  
11 storage. Have to do with quasi-repair.

12 VICE CHAIRPERSON MILLER: So if I  
13 understand you correctly, you were just using  
14 it as an example to buttress your point going  
15 to the storage use under the definition of  
16 hotel, but not that this was a public storage  
17 garage, right?

18 MR. LOURENCO: Yes, is correct.  
19 Yes.

20 VICE CHAIRPERSON MILLER: Thank  
21 you.

22 I just have one other question I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 guess for the -- I guess the owner. But how is  
2 this garage connected to the hotel exactly?

3 CHAIRMAN GRIFFIS: Your mike?

4 MR. SCHARFSTEIN: The garage has  
5 been designed with two connection points. One  
6 to the east at the P2 level, as you heard  
7 earlier in the introductory statement by WPCA.  
8 But also a connection on the west to the  
9 future residential addition to the hotel.

10 VICE CHAIRPERSON MILLER: All  
11 right. You spoke really softly. I'm not sure  
12 if I heard you.

13 MR. SCHARFSTEIN: Okay. Sorry.

14 VICE CHAIRPERSON MILLER: I'm kind  
15 of interested is it a corridor that connects  
16 it or how is it connected to the hotel?

17 MR. SCHARFSTEIN: There's a  
18 corridor and there's a connection at the  
19 garage level underneath the residential  
20 addition that will tie the existing hotel  
21 structure with the residential addition and  
22 this garage structure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   If you want, I can point out on  
2 the plans where that is, if that's helpful.

3                   VICE CHAIRPERSON MILLER: That's  
4 fine. Thank you.

5                   CHAIRMAN GRIFFIS: Anything else?  
6 Any other questions?

7                   Let me ask the Appellant, Mr.  
8 Goodman, or whoever would want to answer this  
9 going to your Exhibit A, which is the  
10 application for construction permit on private  
11 property you spent some time going through the  
12 indication of the type of proposed work and  
13 new building is checked. Let me ask you, is it  
14 your understanding that that is a zoning  
15 designation of the proposed work?

16                  MR. GOODMAN: It is my  
17 understanding that that was at the very least  
18 the plain English characterization.

19                  CHAIRMAN GRIFFIS: Okay.

20                  MR. GOODMAN: And a person filling  
21 this out aware of the zoning context and which  
22 an application is reviewed, presumably would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 state accurately what the zoning  
2 characteristic was.

3 CHAIRMAN GRIFFIS: Okay. Good.

4 Mr. Crews, let me ask you when  
5 reviewing this for zoning compliance is that  
6 something that you look at in terms of the  
7 zoning designation?

8 ZONING ADMINISTRATOR CREWS: No.

9 And we are actually not supposed to -- even if  
10 we would look at that and say this isn't a new  
11 building, we're not supposed to change the  
12 Applicant's applications. But it does not  
13 determine how I interpret the regulations that  
14 either side offered up or not.

15 CHAIRMAN GRIFFIS: Okay. Mr.  
16 Lourenco, when you facilitated the application  
17 of this in looking at that you had a draft  
18 which was your part, assuming that that  
19 actually carried through because your drafts  
20 then went into the final; was that you  
21 recommendation as the consultant on this  
22 project that that was a zoning designation

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 that should be indicated on the permit  
2 application?

3 MR. LOURENCO: No. No. Actually,  
4 the reason why that box is checked in that  
5 form is a typo, is an administrative error in  
6 my office, but the issue --

7 CHAIRMAN GRIFFIS: Well, it made  
8 it into the final application.

9 MR. LOURENCO: Well --

10 CHAIRMAN GRIFFIS: Am I not look  
11 at Exhibit A is the application for  
12 construction permits on private property for  
13 this?

14 MR. LOURENCO: Oh, you're talking  
15 about the application or are you talking about  
16 my zoning computation, draft --

17 CHAIRMAN GRIFFIS: Well, I'm  
18 assuming just for --

19 MR. LOURENCO: Okay. The  
20 application is the responsibility of the  
21 Applicant. I don't touch the application.

22 CHAIRMAN GRIFFIS: Right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   MR. LOURENCO: Typically new  
2 construction, new construction gets checked in  
3 new without regard for is this a separate  
4 building zoning wise or not. This  
5 qualifications that are here are based on  
6 building code definitions, not necessarily  
7 zoning definitions. This is not a zoning  
8 form. This is a DCRA form that encompasses all  
9 the disciplines and it's not supposed to be  
10 absolutely coordinated with all the various  
11 definitions in zoning, the building code and  
12 so on.

13                   CHAIRMAN GRIFFIS: I see.

14                   MR. LOURENCO: So, we're trying to  
15 read too much into that. But when I reviewed  
16 the project, I reviewed it as an underground  
17 addition to the existing hotel building.

18                   CHAIRMAN GRIFFIS: Okay. Mr.  
19 Crews, let me ask you in the definition of  
20 building, it's kind of fascinating because our  
21 zoning regulations use building and structure  
22 often times interchangeably, but then they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 separate and make them distinct. However, the  
2 definitions of each are nonequivalent.

3 The definition of building a  
4 structure having a roof supported by columns  
5 or walls for a shelter, support or enclosure  
6 of persons, animals or chattel -- you don't  
7 see a lot of that anymore -- when separated  
8 from the ground up or from the lowest floor  
9 up, each portion shall be deemed a separate  
10 building. Is this area of which we're talking  
11 about, is it separated from the ground up?

12 ZONING ADMINISTRATOR CREWS: I  
13 don't believe that there really is much above  
14 ground. It's all -- other the two means of  
15 egress --

16 CHAIRMAN GRIFFIS: Is this  
17 definition going to distinguish something that  
18 is actually above grade then?

19 ZONING ADMINISTRATOR CREWS:  
20 Right. I think so. That in terms of if you had  
21 on a large parcel two or more buildings above  
22 grade, that the reading the regs as a whole

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 that for them to be considered one building  
2 for FAR or other purposes, that they're for  
3 these above grade buildings that they need to  
4 have an above grade connection. But this as an  
5 extension or alteration of the existing  
6 building doesn't need the above grade, as  
7 we've indicated that that's been the historic  
8 interpretation --

9 CHAIRMAN GRIFFIS: So the  
10 definition ends with the existence of the  
11 communication between separate portions of a  
12 structure below the main floor shall not be  
13 construed as making a structure of one  
14 building. Are you saying then if you're  
15 looking at buildings or structures above  
16 grade, you can't have them connected below  
17 grade to make them one structure or building--

18 ZONING ADMINISTRATOR CREWS:  
19 Right. Right.

20 CHAIRMAN GRIFFIS: -- for the  
21 second building? I shouldn't say -- okay.  
22 That's correct.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 ZONING ADMINISTRATOR CREWS:

2 Right. For two above grade buildings --

3 CHAIRMAN GRIFFIS: So does that  
4 mean in fact a building could be constructed  
5 above grade but have a below grade parking  
6 footprint that was larger than the building  
7 itself?

8 ZONING ADMINISTRATOR CREWS:

9 Absolutely.

10 CHAIRMAN GRIFFIS: And it would be  
11 below grade?

12 ZONING ADMINISTRATOR CREWS: Yes.

13 CHAIRMAN GRIFFIS: And therefore  
14 would not come under any other regulations or  
15 the zoning regulations in terms of occupancy  
16 or occupying areas that needed to be open  
17 required yards, required setbacks. Would  
18 there be anything that it would begin to evoke  
19 in your recollection at this hour?

20 ZONING ADMINISTRATOR CREWS: I  
21 don't think so. I mean, and that is actually  
22 some -- might be somewhat of a concern in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 terms of a side yard is required for detached  
2 homes. But what about the ability to put  
3 something completely underneath the grade and  
4 go all the way to the property line? Does  
5 that -- I mean, that that's allowable whether  
6 it's -- you know, the policy is obviously up  
7 to the Zoning Commission, but that's the  
8 current interpretation of that.

9 And again, that this particular  
10 portion of the building is underneath a yard  
11 that's not required,

12 CHAIRMAN GRIFFIS: Is something of  
13 a structure with a ceiling height that's below  
14 four feet of the adjacent grade count towards  
15 the gross square footage or --

16 ZONING ADMINISTRATOR CREWS: No.

17 CHAIRMAN GRIFFIS: -- the floor  
18 area ratio?

19 ZONING ADMINISTRATOR CREWS: No.

20 That's -- right. No. Again, you could direct  
21 it to the definitions, the difference between  
22 the definition of cellar and basement. Cellar

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 meaning that the ceiling does not come -- is  
2 not four feet or above the grade and it is not  
3 counted for gross square foot and is not  
4 counted as a floor in terms of those districts  
5 where the number of floors is limited, like an  
6 R-1, or 2, 3 or 4.

7 CHAIRMAN GRIFFIS: Okay. Thank  
8 you.

9 I don't have anything else.

10 VICE CHAIRPERSON MILLER: I just  
11 want to follow up, Mr. Crews, and ask you why  
12 wouldn't this underground parking garage fall  
13 in the category of the accessory building, a  
14 subordinate building located on the same lot  
15 as the main building, the use of which is  
16 incidental to the use of the main building?

17 ZONING ADMINISTRATOR CREWS: Again  
18 because I consider it an extension of the  
19 existing building. It's not a separate  
20 building so that it's not -- it wouldn't be an  
21 accessory building it's not -- again, because  
22 it's a below grade extension of the existing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 building.

2 VICE CHAIRPERSON MILLER: Because  
3 it's connected you're saying, right?

4 ZONING ADMINISTRATOR CREWS:  
5 Right. Right.

6 VICE CHAIRPERSON MILLER: And then  
7 we get back to that whole point about well  
8 it's connected but it doesn't count as  
9 connecting it -- the two buildings as one  
10 building because it's an underground  
11 connection.

12 ZONING ADMINISTRATOR CREWS: Well,  
13 yes. And, again, that that -- I believe that  
14 that is referring to above grade buildings  
15 where here we have just one above grade  
16 building and then this extension below grade.

17 VICE CHAIRPERSON MILLER: Okay.  
18 And I hear that you believe that and I think,  
19 you know, that's certainly a rational way to  
20 interpret that reg. But is there any other  
21 reason why that would be the preferable  
22 interpretation as opposed to it could also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 fall the other way?

2 ZONING ADMINISTRATOR CREWS: Well,  
3 again, I think part of it goes back to the  
4 provisions of whether or not you can have more  
5 than one building in a single lot. And I  
6 think at that point for those provisions, you  
7 know, of either coming to the Board or not to  
8 allow that, that there's a different purpose  
9 for that provision. And I think it goes to  
10 above ground density, above ground impacts as  
11 opposed to something that's below grade. And  
12 throughout the code below grade structures are  
13 not deemed to have anywhere near the impact in  
14 terms of the purposes of zoning.

15 CHAIRMAN GRIFFIS: Say Ms. Miller  
16 is correct in her assertion that this is an  
17 accessory building. What would be the remedy  
18 then to make it a single building? Would it  
19 be an above grade connection to the air or  
20 would it mean actually constructing a  
21 structure that would then connect? I mean,  
22 I'm not -- it's an interesting point that we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 obviously need to explore.

2 VICE CHAIRPERSON MILLER: I just  
3 want to say I'm not necessarily asserting  
4 that. But when I look at the definition --

5 CHAIRMAN GRIFFIS: I'm all for  
6 drama. It's after 6:15.

7 VICE CHAIRPERSON MILLER: Okay.  
8 It seems to fall within those words -- it  
9 could fall within those words.

10 Why would you have to be able to  
11 connect it anyway? Make it one building or --

12 CHAIRMAN GRIFFIS: Because often  
13 times it helps when the regulations, I find --  
14 when the regulations aren't complete in their  
15 understanding. They don't address every  
16 single minute detail or circumstance, then  
17 let's look at it in reverse. If it is what's  
18 being asserted, then how would we make it  
19 compliant rather than to say it is -- right.  
20 How does it fit into the regulations.

21 If you read it one way, like  
22 you've just asserted well you could read it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 the way Mr. Crews is saying, but you can also  
2 read it the way the Appellant is saying and  
3 the way you're asserting.

4 Well, so let's take each and  
5 formulate them. Let's not talk legally or  
6 hypothetically. Let's try and put it into  
7 reality because that's what the regulations  
8 do. This is not theory. This is not legal  
9 doctrine. This is actually to build  
10 buildings. So how would it be done?

11 VICE CHAIRPERSON MILLER: But  
12 that's --

13 CHAIRMAN GRIFFIS: How would the  
14 remedy be done if this was -- just for -- we  
15 may not answer that now. But I think it's  
16 something that the Board should look at in  
17 terms of if the regulations are asserting that  
18 that's what this is, let's give that, then how  
19 do they set up a situation where -- well,  
20 that's what we'll have to determine: What  
21 does it actually set up if you read them that  
22 way.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   VICE CHAIRPERSON MILLER: I mean,  
2                   thinking aloud it sounds like it sets up a  
3                   situation maybe in this particular situation  
4                   they wouldn't be allowed to do it. But I don't  
5                   know that that would mean in all situations --

6                   CHAIRMAN GRIFFIS: They wouldn't  
7                   be allowed to do what? To build something  
8                   below grade?

9                   VICE CHAIRPERSON MILLER: To build  
10                  -- if you follow the theory that's being  
11                  presented by the Appellant, then they wouldn't  
12                  be able to put the garage there.

13                  CHAIRMAN GRIFFIS: This would be  
14                  last. Then if we were looking at as  
15                  developer, for instance, we had the last case  
16                  of which we had a structure above grade that  
17                  connected below grade that needed to be  
18                  further -- was controversial, I don't know  
19                  anything about it. I wasn't involved in any of  
20                  it, and it didn't go through. Although the  
21                  Board has asserted of what I heard for the  
22                  first time, after pulled out the last order,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 asserted well look we have a certain amount in  
2 this matter of right below grade. So now we're  
3 in the reverse situation somewhat, I don't  
4 know all the details and facts. But as I'm  
5 understanding this, now we have a below grade  
6 asserting that we need an above grade  
7 connection in order to make it a single  
8 building. So I'm asserting what would be the  
9 remedy? Well, it would mean what?

10 Constructing something above grade. A  
11 structure above grade that would then be able  
12 to connect back to the larger portion of that  
13 building, which is an interesting conundrum as  
14 you read the regulations in that fashion.

15 I'm not saying it's complete in  
16 all the elements that are addressed in this  
17 appeal.

18 MR. TAYLOR: And if I may, Mr.  
19 Chairman, the logical follow to that if that  
20 if you have an above grade connection, then  
21 you have to build something above grade for  
22 the below grade building to connect.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   CHAIRMAN GRIFFIS: Well, that's  
2 what I'm asserting. You'd have to build a  
3 building --

4                   MR. TAYLOR: Yes. So you got to  
5 build up to the connection.

6                   CHAIRMAN GRIFFIS: -- of which  
7 you'd then have a connection above grade. I  
8 understand that.

9                   Okay. Very well. Let's move  
10 ahead. I don't have any other questions.  
11 Clarifications? Good.

12                   In which case, what I'd like to do  
13 if there's nothing further from us, I believe  
14 we've exhausted all those elements of which we  
15 need to address in the appeal except for what  
16 I'd like to do is allow five minutes for  
17 closings and then turn it to the Appellant for  
18 final closing.

19                   Unless you want to have rebuttal  
20 witnesses first, in which case then we'd go  
21 for cross and then closing.

22                   MR. HITCHCOCK: We don't have any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 witnesses. I mean, but Mr. Goodman will do  
2 the closing. As mentioned, several items in  
3 the record that I think are responsive to some  
4 points, but I think it would fall in the  
5 category of argument, not witness statement.

6 CHAIRMAN GRIFFIS: Excellent.  
7 Good. Very well. Ready?

8 We're going to start -- actually  
9 well you guys have the last word, so I'll  
10 start with Mr. Nettler, then we'll go to  
11 Government. Reverse hierarchy, if that's  
12 correct. Okay.

13 MR. NETTLER: Well, thank you.  
14 I'll make it part of my closing, but I will  
15 respond at least to the point that was made  
16 about the section describing the building and  
17 the connection.

18 The Zoning Commission has actually  
19 done a very thorough review of this, albeit it  
20 in the context of a PUD project that JBG  
21 Companies were building for the Department of  
22 Transportation on Southeast Federal Center

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 where that issue arose as to whether they  
2 could use a below grade connection between the  
3 buildings to make it into one building for the  
4 Department of Transportation. And the Zoning  
5 Commission went through a whole big analysis  
6 as to what this provision meant. And it means  
7 exactly what Mr. Crews said, and that was it  
8 was only intended to apply to situations where  
9 you had more than one principal building on a  
10 single subdivided lot and you want to make  
11 that more than one building into one building,  
12 you then have to have the connection, a  
13 meaning connection above grade. It was never  
14 intended to apply to situations where you have  
15 underground construction that's connected to  
16 a building. It doesn't apply. It only applies  
17 to above grade situations.

18 Therefore, buildings that --  
19 getting into my closing here -- the contention  
20 that this is an accessory building is simply  
21 not born out by either the way the prior -- by  
22 the Board of Zoning Adjustment's construction

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 of the exact issue involving the same exact  
2 same site back in 1995 and by prior  
3 considerations of these provisions with regard  
4 to accessory buildings and the difference  
5 between buildings and structures.

6 This is certainly an accessory  
7 use. It is a required parking. It is  
8 underground. It doesn't count toward gross  
9 square footage. I don't know of any instance  
10 when this Board or any other Zoning  
11 Administrator has ever considered below grade  
12 space counting toward gross square footage.

13 So that leaves a question of  
14 whether it's in the right yard. And the answer  
15 is it's not in a yard because a yard only goes  
16 above, it doesn't go below. There is no  
17 restrictions on a front yard. It's not an  
18 accessory building, so it doesn't have to be  
19 in a rear yard. And that leaves us with the  
20 issue as to -- or the question that was raised  
21 as to where the connection is.

22 If you look at the PowerPoint page

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 11, I believe it is -- thank you. You'll see  
2 where the connection is below grade between  
3 the hotel and the new garage.

4           And then there's also a connection  
5 which is a little lighter between the new  
6 garage and the condo, but we're dealing with  
7 what's existing now, what's permitted now, and  
8 that is the connection that has been  
9 identified here between the existing building  
10 and the new garage that's below grade.

11           And then the last question is  
12 whether this is a service use or not. And I  
13 don't think any rational or reasonable person  
14 could conclude that it fits within any of the  
15 other uses that have been identified for a  
16 hotel. I think Mr. Lourenco gave some very  
17 good explanation as to why it must be  
18 considered a service use, aside from the fact  
19 that other parking garages have also been --  
20 the analogy to other parking garages, the  
21 other types of uses as he acknowledged, are  
22 uses that can be expanded or -- I mean that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 cannot be expanded but can be contracted but  
2 for the residential component.

3           And if you couldn't deal with the  
4 parking requirements that attendant to a  
5 grandfathered use like a hotel, then you'd  
6 never be able to accomplish what the Zoning  
7 Commission allows you to do, which is to  
8 expand the number of hotel rooms and provide  
9 the required parking for them. Because then  
10 your parking would always be set at a  
11 particular amount that you could never alter,  
12 and that doesn't make a sense.

13           It doesn't make any sense simply  
14 from the perspective of what those other types  
15 of uses do as a function and as in terms of  
16 their relation -- in terms of the concerns  
17 that the Zoning Commission had and the  
18 communities had about hotels being in  
19 residential zones. Parking eliminates adverse  
20 conditions, function uses, exhibit use and  
21 other types of commercial space add to the  
22 adverse impacts that the Zoning Commission had

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 identified in residential zones.

2 So I think that the Zoning  
3 Administrator in this case or Mr. Lourenco as  
4 the prior Zoning Administrator and the Board  
5 in prior cases has correctly construed this  
6 type of a use, this type or a development as  
7 a matter of right for a hotel in a location it  
8 is without any impact on the gross square  
9 footage of that hotel.

10 CHAIRMAN GRIFFIS: Thank you.

11 MR. TAYLOR: Mr. Chairman and  
12 Board, Mr. Nettler has given a very good  
13 summary of the situation. From the  
14 Government's point of view, I will not take  
15 five minutes trying to replicate everything  
16 that he said so well.

17 I just want to very quickly run  
18 through the three issues that are before us.  
19 One being the zoning regulations do not permit  
20 the construction of a new garage building.  
21 And probably the getting to that then number  
22 one thing is this a new garage building. And

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 it is the Government's contention that, no,  
2 this is a structural alteration, this is an  
3 extension if you will of the building that  
4 already is existing. There is one building and  
5 there is clearly no regulation that prohibits  
6 the portion of that building to be used as a  
7 garage.

8 In the yard I think is a wonderful  
9 statEment. And I know when I first came across  
10 this case, in the yard. Yes, that's the thing.  
11 They're putting this in the yard. They're  
12 putting it below the yard. They are not  
13 putting a garage in the yard which should be  
14 defined as on top of where the grass would go.  
15 Therefore, for that reason we believe that it  
16 is allowed.

17 And even if you were to say that  
18 this was an accessory building going in the  
19 front yard, it is they're replacing a parking  
20 garage that is already in the front yard. So  
21 we are essentially doing a trade off of one  
22 front yard usage for another front yard usage,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 which the Government believes comes out to be  
2 a wash.

3           The Appellant believes that this  
4 construction is prohibited by regulation  
5 350.4. The Government disagrees. The  
6 specific terms of that section do permit  
7 structural alterations to the hotel, and the  
8 Government contends this is one. It is a  
9 change in the permanent physical numbers of  
10 the building. There has not been any evidence  
11 to the contrary that there's been permanent  
12 physical members of the building being  
13 changed.

14           Again, as Mr. Nettler had said,  
15 when it comes to how to characterize the  
16 usage. It is common knowledge that there are  
17 many hotels in this city that have parking  
18 within the hotel building. If the regulations  
19 say that every part of that building must be  
20 used as a hotel, then clearly the regulations  
21 contemplate that that parking falls into one  
22 of these uses as what is a hotel.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1                   The Government agrees with the  
2 owner that the parking at best fits into the  
3 area of a service area where it stores the  
4 automobiles while they are not being used.

5                   And finally, as comes to it was an  
6 error for the Zoning Administrator to approve  
7 the issuance of the permits without ensuring  
8 that the plans complied with the zoning  
9 regulations. First argument is that the  
10 premise is incorrect. The Zoning  
11 Administrator approved these permits being  
12 issued on April 7th after doing a very  
13 thorough review of the application both  
14 specific to the garage and to the project as  
15 a whole, made the determination that yes it  
16 did comply.

17                   When he wrote a letter to the ANC,  
18 that was an informational letter. It was not  
19 a decision being made. That decision had been  
20 made a month earlier.

21                   And the caveat that is now going  
22 to become such a popular topic, when further

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 plans for the remainder of the project come  
2 in, they will be evaluated in conjunction with  
3 this permit that has already been issued. And  
4 to the extent that that is going to require  
5 changes in plans down the road so that the  
6 project as a whole meets the zoning  
7 regulations, that is going to be accomplished.

8 I thank you very much for your  
9 patience in hearing all of this. The  
10 Government thinks this is an easy case and is  
11 clearly and completely within the regulations.

12 CHAIRMAN GRIFFIS: Thank you.

13 MR. GOODMAN: Twice now Mr.  
14 Nettler has referred to the case ten years ago  
15 where it was then the Sheraton came in and  
16 asked for a variance. And Mr. Nettler is  
17 correct as to who is client was at that point.

18 His memory of the decision,  
19 however, is not correct. In that case the  
20 Board looked at all of the changes that the  
21 owner wanted to do to the property, and the  
22 Board commented that some of the changes like

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 an enclosed parking garage -- I'm sorry, an  
2 enclosed loading dock and more parking would  
3 be a good thing and the neighborhood probably  
4 would want that, but the Board concluded that  
5 the zoning regulations prohibit them.

6 So in the past, you know, I do not  
7 see anything in the decision where the Board  
8 turned down a variance and found that the  
9 zoning regulations prohibited a garage to  
10 support a position that the garage is  
11 permitted now.

12 There was also some discussion  
13 earlier of how much of the garage is above  
14 ground, at grade. We do have a copy of a plan  
15 which is obviously too big to quickly make  
16 copies of. But here it shows that that much--

17 MR. TAYLOR: Mr. Chairman, we'd  
18 like to object. This is not the time to bring  
19 evidence into the record.

20 CHAIRMAN GRIFFIS: Right.

21 BOARD MEMBER MANN: Nor as we  
22 understand would have -- unless it was before

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Mr. Crews, it's also not permitted to be  
2 brought before you.

3 CHAIRMAN GRIFFIS: I don't even  
4 know what it is.

5 MR. GOODMAN: This is the plan for  
6 the garage submitted to Mr. Crews, which we  
7 got the copy of from Mr. Crews.

8 CHAIRMAN GRIFFIS: Why bring it up  
9 in closing?

10 MR. GOODMAN: It was to respond  
11 to--

12 MR. HITCHCOCK: We're trying to  
13 bring it up just to establish the factual  
14 premise of whether it's above, on or below  
15 grade.

16 CHAIRMAN GRIFFIS: I mean, that  
17 was part of the case in chief. I mean I don't  
18 see any reason -- I mean we've got objections  
19 of actually even discussing it. I mean, if  
20 you want to use it, I'm inclined to let you  
21 use it, but let's open this up then and get  
22 questions on it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. GOODMAN: Okay.

2 CHAIRMAN GRIFFIS: I mean it's up  
3 to you. Do you want to put this in?

4 MR. GOODMAN: I think it would be  
5 -- if the Board is concerned with where the  
6 garage is, then I think that this is a factual  
7 basis for that. You know, it's better than  
8 either my testimony or the testimony of  
9 anybody else. Just to helpful.

10 CHAIRMAN GRIFFIS: I don't  
11 understand. You mean where the garage is?

12 MR. GOODMAN: Well, you know, how  
13 much of it, if any, below grade, how much of  
14 it is at grade.

15 MR. HITCHCOCK: I mean it's being  
16 offered as an objective fact as to the  
17 location of the entrance to the garage based  
18 on plans prepared by JBG. So it is fact. It's  
19 not something that we have generated ourselves  
20 and said JBG's document.

21 MR. GOODMAN: Right.

22 MR. HITCHCOCK: And we thought it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 was just a simple factual matter just to add  
2 clarity for the record in terms of the facts  
3 as to where the entrance is and whether it's  
4 at grade, above or below.

5 MR. TAYLOR: I would further  
6 object, Mr. Chairman, that there's not been a  
7 foundation laid to establish that the Zoning  
8 Administrator relied on this for his decision.

9 CHAIRMAN GRIFFIS: Right. No. I'm  
10 very concerned we're just setting up the  
11 procedural matters of how we authenticate what  
12 this is and what we're talking about if you  
13 want to put it in. But I'm also additionally  
14 concerned with that you're able to put it in  
15 factual evidence that you want. This is just  
16 a strange time to bring it up. I mean, you've  
17 had plenty of time to allow that to happen.

18 I mean, I'm inclined to let you  
19 put it in, but we need to open up this case  
20 again and I need to have Mr. Crews review that  
21 and see what it is. And then we can discuss  
22 and have it crossed. It's up to you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. GOODMAN: Mr. Crews?

2 CHAIRMAN GRIFFIS: Are you going  
3 to put it in?

4 MR. GOODMAN: Yes, I would like  
5 to.

6 CHAIRMAN GRIFFIS: Okay. Can you  
7 just describe to us what it is, please?

8 MR. GOODMAN: It is a -- it says  
9 the Wardman Park East, the garage, JBG  
10 Companies--

11 CHAIRMAN GRIFFIS: What's the plan  
12 title?

13 MR. GOODMAN: Wardman Park East,  
14 the garage, it has the address --

15 CHAIRMAN GRIFFIS: A1.1.

16 MR. GOODMAN: A1.1

17 CHAIRMAN GRIFFIS: Okay. Is there  
18 a certification stamp of review on it?

19 MR. GOODMAN: Here. Yes.

20 CHAIRMAN GRIFFIS: Is that the  
21 engineer's stamp or is that a District stamp?

22 MR. HITCHCOCK: Professional

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 engineer.

2 CHAIRMAN GRIFFIS: Okay. Is there  
3 a District stamp? Is there a Zoning stamp on  
4 it? All those little things.

5 MR. HITCHCOCK: It's Mr.  
6 Lourenco's --

7 CHAIRMAN GRIFFIS: Mr. Crews, do  
8 you recognize the Zoning stamp on that?

9 ZONING ADMINISTRATOR CREWS: He  
10 hasn't seen it --

11 CHAIRMAN GRIFFIS: I know. I'm  
12 relying on his expert side.

13 ZONING ADMINISTRATOR CREWS: We  
14 haven't qualified him for that.

15 CHAIRMAN GRIFFIS: Absolutely  
16 right. Are there District review stamps?

17 CHAIRMAN GRIFFIS: No. There  
18 doesn't appear to be any District DCRA stamp  
19 on this.

20 CHAIRMAN GRIFFIS: Is it third  
21 party review?

22 ZONING ADMINISTRATOR CREWS: These

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 are all third -- third party review.

2 CHAIRMAN GRIFFIS: Okay.

3 ZONING ADMINISTRATOR CREWS: And,  
4 of course, that doesn't include Zoning. And  
5 I really wouldn't know if this was part of the  
6 approved plans or not at this point.

7 CHAIRMAN GRIFFIS: Understood.  
8 Understood. All right.

9 We're at a crossroads again.  
10 Because we obviously can't authenticate the  
11 fact that that was part of the permit  
12 documents. I'm still open if we want to put  
13 that in. It seems to me we're going to show  
14 a section of the ramp or a drive off?

15 MR. GOODMAN: Yes. It was just to  
16 show the ramp and show that there is a  
17 significant part of the ramp that, according  
18 to the plan, is at grade level. So the ramp  
19 goes across and then down --

20 CHAIRMAN GRIFFIS: Okay. So  
21 there's an apron at grade level?

22 MR. GOODMAN: Right. And then it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 also shows a good --

2 CHAIRMAN GRIFFIS: Okay. Does  
3 anyone dispute that?

4 MR. NETTLER: I would certainly  
5 the way he characterizes it.

6 CHAIRMAN GRIFFIS: But you might  
7 want --

8 MR. SCHARFSTEIN: I mean, again,  
9 the problem --

10 CHAIRMAN GRIFFIS: Mike.

11 MR. SCHARFSTEIN: This is -- it's  
12 a diagrammatic axonometric of how the garage  
13 functions that what's labeled there as plaza  
14 is actually the deck, the concrete deck under  
15 which supports the soil on which the park will  
16 be placed. So there are several feet of dirt  
17 above that deck that established the grade  
18 level, which is not shown in this diagrammatic  
19 axonometric, but would be shown on a civil  
20 plan or grading plan, for example.

21 CHAIRMAN GRIFFIS: Is there any  
22 grade that will show me?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 MR. GOODMAN: Yes.

2 MR. SCHARFSTEIN: Yes. It  
3 establishes grade as at the point at which the  
4 ramp starts and descends into the garage.

5 CHAIRMAN GRIFFIS: Okay.

6 MR. HITCHCOCK: Which was the only  
7 point why we were proffering it just to  
8 establish that so the facts would be clear.

9 CHAIRMAN GRIFFIS: Okay.

10 MR. NETTLER: So that means --

11 MR. HITCHCOCK: It was meant to be  
12 a simple exercise.

13 MR. NETTLER: So it makes our  
14 point that the ground starts at grade and  
15 descends. So all of it is below grade.

16 CHAIRMAN GRIFFIS: Right. That's  
17 all it is. I mean, they said that they were  
18 showing it that there was a paving at grade  
19 level. Okay.

20 Anyone dispute that? Okay.

21 Then I'll turn it to you, Mr.

22 Goodman, in the assertion of that as an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 undisputed fact of this, we'll put this into  
2 the record. Do you want a copy of it?

3 MR. GOODMAN: I'd be happy to make  
4 copies for you folks.

5 CHAIRMAN GRIFFIS: Okay. Let's do  
6 that. Let's have copies made and we'll keep  
7 the record open and get it distributed to the  
8 other participants in this.

9 Excellent. Okay.

10 MR. GOODMAN: Okay. A lot of what  
11 we have been -- I've been talking about here  
12 I think boils down to whether this garage is  
13 a building under the zoning regulations. But  
14 then building is defined, I'm not going to  
15 read it, we've been talking about the  
16 definition all afternoon. There is nothing in  
17 it to suggest that if a thing happens to be  
18 underground, otherwise it comes within all  
19 these words, that it is not a building. There  
20 is no carve out that says it's a building, if  
21 it's a structure having a roof yada, yada,  
22 yada and it's above ground.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   So we believe that the words are  
2 clear that a structure with a roof et cetera,  
3 even if it were completely underground, would  
4 still be a building. Here there are some  
5 outcroppings on top of the ground, so this  
6 isn't even a pure case of a completely below  
7 ground structure. But, as I said, there is  
8 nothing in these words that says that if it is  
9 underground, then it is not a building. And I  
10 would be concerned about the ramifications of  
11 that kind of decision.

12                   I don't know what all the  
13 ramifications are under the zoning regulations  
14 if a below ground structure is not a building  
15 and other obligations, protections, et cetera,  
16 et cetera are lost if this structure below  
17 ground is not a good one.

18                   The definition of a building also  
19 -- there is a communication that is below the  
20 main floor, then it's not construed to make  
21 the two structure one building. Again, there  
22 is nothing there to carve out an exception

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 where one of the structures is completely  
2 below grade. It's just not in the words.

3           There's also been some talk of  
4 whether the yard that we're talking about is  
5 a front yard or is it a required yard or is it  
6 a side yard. I'd submit that that's really  
7 not relevant. You know, the only issues are  
8 is it a rear yard because that's where an  
9 accessory building has to be built if it is  
10 not within the main building.

11           So we don't have to show that this  
12 is a front yard in order to prevail. We just  
13 have to show that it is not a rear yard and,  
14 as I said many number of hours now, I don't  
15 understand anybody to be arguing that this is  
16 in fact a rear yard.

17           There's also been a lot of  
18 discussion. Mr. Crews says that the  
19 regulations are not intended to force a hotel  
20 to wither and die, and that is certainly true.  
21 There's also been discussion of well how is a  
22 hotel going to have enough parking if it has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 to comply with the rules. And there's also  
2 been some discussion in passing that an  
3 underground garage is better than garage  
4 that's not underground. And these are kind of  
5 policy arguments and as to whether one type of  
6 garage is better than another type of garage  
7 might be grounds for variance, but the  
8 question is under the regulations, under the  
9 definitions, is this a permitted construction,  
10 is this a building, is this an accessory  
11 building? If it is, is it built in one of the  
12 two places where that kind of building may be  
13 built? We submit it's not.

14 Under 350.4, again, we believe  
15 that putting aside the issues of storage space  
16 and all these other issues, that the  
17 fundamental thing that 350 was intended to do  
18 was to freeze, in the words of the prior  
19 owners of the hotel, freeze the hotels in  
20 their 1980 state. And I believe the Board  
21 also commented that the hotels were being  
22 grandfathered as they existed in 1980.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1                   Now, building a new building or a  
2 new structure, you wouldn't even want to call  
3 it a building, building a large new structure  
4 is inconsistent with the idea of a freeze.  
5 Again, that doesn't mean that they can't come  
6 forward, and as two prior owners of the hotel  
7 have done, come forward and ask for a variance  
8 if they needed to prevent their business from  
9 withering and dying. But those are not  
10 arguments to interpret the zoning regulations  
11 in ways that don't make sense. Those are  
12 arguments in support of a variance.

13                   Thank you.

14                   CHAIRMAN GRIFFIS: Thank you very  
15 much. Excellent.

16                   Any follow up questions,  
17 clarifications from the Board.

18                   MR. NETTLER: Housekeeping  
19 measures.

20                   CHAIRMAN GRIFFIS: Yes?

21                   MR. NETTLER: I noticed that in  
22 the record Exhibit 10 is actually in the wrong

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 file. It should be in another case.

2 CHAIRMAN GRIFFIS: We're going to  
3 have to start the whole thing over.

4 MR. NETTLER: And if you like this  
5 to take judicial notice, or I can give you  
6 copies of the BZA decision in 16072, which is  
7 the prior decision involving this.

8 CHAIRMAN GRIFFIS: I'm sorry.  
9 You're going to send in the prior decision  
10 into the record. So you make copies for  
11 everyone. That's excellent.

12 Yes?

13 VICE CHAIRPERSON MILLER: What's  
14 the Zoning Commission case that you were  
15 referring to that you said dealt in depth with  
16 the communication --

17 MR. NETTLER: It was the  
18 Department of Transportation. And it was two  
19 years ago. I can provide you with it.

20 CHAIRMAN GRIFFIS: Okay. Very  
21 well.

22 Then let's set this for decision.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Let me see if there's any major -- excuse me.  
2 Major consternation in setting this for our  
3 next available decision making on the 6th of  
4 February.

5 Any difficulty in that? Any  
6 comments on that? Very well. If there's  
7 nothing of major concern, we'll set this for  
8 decision making the 6th of February.

9 We have the record for two things,  
10 as I recall now. Three if we count both of  
11 those submission by Mr. Nettler, but Ms.  
12 Bailey's going to correct me if I'm wrong. I  
13 must be right. Do you have anything else on  
14 the list?

15 We have the drawing A1.1 that's  
16 coming in now. We have two citations from Mr.  
17 Nettler. And I didn't have anything else in  
18 the record left open.

19 February 6th also allows us to get  
20 the transcript to Mr. Parsons so he had not  
21 heard the last hour and 20 minutes of closings  
22 and comments and questions.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Yes.

2 MR. HITCHCOCK: Proposed findings?

3 CHAIRMAN GRIFFIS: Board Members?

4 Proposed findings. I was not inclined to  
5 require them because I didn't see the need for  
6 them in this case.

7 MR. HITCHCOCK: Okay.

8 CHAIRMAN GRIFFIS: But I'll leave  
9 it open to Board Members for comment on that.

10 VICE CHAIRPERSON MILLER: It  
11 seems likes it was very well briefed, so I  
12 don't think so.

13 CHAIRMAN GRIFFIS: I don't think  
14 it's worth having it required and the  
15 additional burden to do that. I absolutely  
16 agree. We've got everything we need in front  
17 of us.

18 Yes, ma'am. If you could get close  
19 to a microphone.

20 COMMISSIONER LINDEMAN: Since I am  
21 here as the Commissioner for the single member  
22 district and I was not given a chance to speak

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 today, would you take some written comments  
2 from me on the record that I wasn't allowed to  
3 make today?

4 CHAIRMAN GRIFFIS: Well --

5 COMMISSIONER LINDEMAN: I am  
6 authorized in the resolution to speak on  
7 behalf of the ANC as well.

8 CHAIRMAN GRIFFIS: Yes, I'm sorry.  
9 I should have addressed --

10 COMMISSIONER LINDEMAN: I just  
11 would like to know if I could please just send  
12 you a few comments rather than take up more of  
13 your time.

14 CHAIRMAN GRIFFIS: As part of the  
15 ANC who brought this appeal, the way we deal  
16 with appeals is they could call you as a  
17 witness, but you're part of that appeal.

18 COMMISSIONER LINDEMAN: And I did  
19 swear in today, too, but I was not heard.

20 CHAIRMAN GRIFFIS: Right. There's  
21 no point under appeal that we actually call  
22 persons to provide testimony. It's much more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 of a dry kind of a legal arguments. So I was  
2 assuming that you were actually part of the  
3 ANC's appeal.

4 COMMISSIONER LINDEMAN: Well, I am  
5 except that I was not allowed to speak to some  
6 points today myself. And I have comments.  
7 There were references to other things that  
8 were entered into the record by other parties  
9 that are not here today. And I just wanted to  
10 know if a couple of paragraphs of commentary  
11 would be accepted.

12 MR. NETTLER: Well, I would  
13 object. As you said, the ANC is one of the  
14 parties to the appeal. They create their own  
15 case. The fact that they don't call someone  
16 doesn't give them the opportunity to then  
17 submit testimony or statements afterwards.

18 CHAIRMAN GRIFFIS: Right. Right.  
19 Well, let's take a minute to address these.  
20 This is an important aspect.

21 For the directness of procedure,  
22 it's not that you were not allowed to speak.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 I mean, I didn't make a decision not to let  
2 you speak.

3 But let me ask the ANC, the  
4 comments and questions that were to be put in  
5 of how are we to address this or why wasn't  
6 this incorporated?

7 COMMISSIONER MacWOOD: Mr.  
8 Chairman, I wasn't aware that Commissioner  
9 Lindeman until the break, that Commissioner  
10 Lindeman wanted to make some comments and it  
11 didn't appear to me at that point in the  
12 proceeding that there was actually at that  
13 point at which she could do that since the  
14 direct had already been finished, completed.  
15 But if, you know, certainly as a colleague and  
16 fellow ANC Commissioner if there was something  
17 -- some comments that she would like to make,  
18 obviously we would have no objections to that  
19 if the Board determines that that would be  
20 appropriate.

21 CHAIRMAN GRIFFIS: Do you have  
22 them in written form for today or -- okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 You could get them into the record though this  
2 week? Friday at close, 3:00? Perfect.

3 And then we're going to have them  
4 distributed and then we're going to have the  
5 record left open for any sort of responses  
6 that the other group would be -- I'm going to  
7 take it actually as a part and parcel of the  
8 Appellant's case, though. Is that correct?

9 COMMISSIONER MacWOOD: That's  
10 fine, Your Honor -- Mr. Chairman.

11 CHAIRMAN GRIFFIS: Good enough.

12 MR. MOY: Mr. Chairman?

13 CHAIRMAN GRIFFIS: Yes.

14 MR. MOY: Oh, I'm sorry to  
15 interrupt.

16 CHAIRMAN GRIFFIS: Oh, of course.  
17 I thought there was an objection.

18 MR. MOY: I just wanted to point  
19 out for the record that in Exhibit 2 for Ms.  
20 Lindeman's letter is attached to Exhibit 2.

21 CHAIRMAN GRIFFIS: Sure.

22 MR. MOY: It's the last letter.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 Just to make sure that you're aware of that.

2 CHAIRMAN GRIFFIS: We do have it  
3 in the record. Oh, but this isn't her  
4 comments, is that what you're saying? This  
5 isn't what you wanted to put in the record?

6 COMMISSIONER LINDEMAN: This is  
7 not what I wanted to state.

8 CHAIRMAN GRIFFIS: Right.

9 COMMISSIONER LINDEMAN: If I had  
10 30 seconds, you wouldn't have to wait for  
11 something from me.

12 CHAIRMAN GRIFFIS: Go.

13 COMMISSIONER LINDEMAN: One of the  
14 issues that was raised by the Zoning  
15 Administrator today was about parking and  
16 storage. And I just wanted to state that I  
17 think it's pretty clear there's a difference  
18 between parking and storage.

19 I'm a renter in the District.

20 CHAIRMAN GRIFFIS: Sure.

21 COMMISSIONER LINDEMAN: Every  
22 month I write a rent check for my rent and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 \$160 of that is for my parking. It's on my  
2 lease.

3 CHAIRMAN GRIFFIS: Sure.

4 COMMISSIONER LINDEMAN: And \$50 is  
5 for storage. If parking and storage were the  
6 same thing, they wouldn't be separated in  
7 common language in most of the real world. If  
8 this garage is indicated -- is supposed to be  
9 for storage, then vehicles wouldn't be the  
10 only thing anyone could store there. So I'd  
11 hardly think they'd allow someone like to me  
12 store personal effects in a garage or to store  
13 a broken down vehicle because that would be  
14 very different from storing "a car," which I  
15 don't think as storage. It's not meant to be  
16 there indefinitely.

17 CHAIRMAN GRIFFIS: Okay.

18 COMMISSIONER LINDEMAN: And that's  
19 just what I wanted to say. I just didn't  
20 understand the argument between parking and  
21 storage and most lay people would understand  
22 that they're completely different things and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 I don't understand why they were included here  
2 today.

3 CHAIRMAN GRIFFIS: Excellent  
4 point. Actually, it's often confounding when  
5 you read the regulations and you say that's  
6 common sense and lay people would say these  
7 things, and yet we still spend four or five  
8 hours lamenting over them. Because frankly  
9 that's what we are here to do. But most  
10 importantly, it is -- I totally agree with  
11 that kind of common sense attitude towards  
12 this, and yet sometimes we need to dispense  
13 almost with common sense because we have  
14 regulations that are written. And when we  
15 need definition or further informed  
16 understanding of the regulations, we can't go  
17 out to our personal experiences, but rather go  
18 to legislative intent. What did the Zoning  
19 Commission do or what did the courts do in  
20 terms of their interpretation.

21 So for instance in your parking  
22 analogy you pay two different portions, but

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1       could you not store a vintage car there and  
2       never move it? Do we get into the actual  
3       definition of a vehicle or not? Is there  
4       different types of storage? Is there  
5       conditioned storage or nonconditioned storage?  
6       When you do your fur coats and you put them  
7       away, do you also just put your -- what, your  
8       trinkets and watches in the same type of  
9       storage? I mean it gets to be cumbersome.

10                       But I understand fully what your  
11       point is, is that why this is so hard to  
12       understand.

13                       COMMISSIONER LINDEMAN: And it  
14       just -- it didn't make sense to me to try to  
15       put the two terms as one because they're not  
16       really one in the same.

17                       And, yes, I am speaking as a lay  
18       person.

19                       CHAIRMAN GRIFFIS: Sure.

20                       COMMISSIONER LINDEMAN: But that  
21       was part of it.

22                       And one other really quick comment

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 was they mentioned about this parking garage  
2 and tearing down the other one. Well, no  
3 one's forcing them to tear down the other  
4 garage. They're tearing it down specifically  
5 because of this garage.

6 CHAIRMAN GRIFFIS: Right.

7 COMMISSIONER LINDEMAN: No one's  
8 making them build a condo tower. If they  
9 don't tear down the other garage, they can't  
10 build their condo tower because that's the  
11 property on which they want it to sit.

12 CHAIRMAN GRIFFIS: Right.

13 COMMISSIONER LINDEMAN: And no  
14 one's making them do this. So this is not  
15 something that they have to do.

16 CHAIRMAN GRIFFIS: Understood.

17 Understood. Appreciate that.

18 Two last things with that and I'll  
19 let people cross if there is any.

20 First, the zoning regulations  
21 don't kick in when things have to happen. The  
22 zoning regulations kick in when there are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 projects that are proposed. That's not the  
2 test even that we're here to assess whether  
3 they have to do something or not.

4 The other aspect is going back to  
5 that kind of a lay person interpretation.  
6 It's a fascinating theoretical position that  
7 we often go in. I know I do individually.  
8 But you realize the weight of which words have  
9 when you're making decisions that will sit in  
10 writing and that will be used over and over  
11 and over again. So it is critical, not only  
12 just to take on the experience, the  
13 regulations and what they're saying, but then  
14 also to try to understand how else they are  
15 used with the intent of the regulations.

16 That being said, is there cross,  
17 Mr. Nettler?

18 MR. NETTLER:

19 MR. GOODMAN: Not from me.

20 CHAIRMAN GRIFFIS: Government?

21 MR. TAYLOR: No, Mr. Chairman.

22 CHAIRMAN GRIFFIS: Redirect of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 your witness?

2 COMMISSIONER MacWOOD: No.

3 CHAIRMAN GRIFFIS: Excellent.

4 Thank you all very much then.

5 Ms. Miller?

6 VICE CHAIRPERSON MILLER: I just  
7 want to be clear. Does Ms. Lindeman speaking  
8 as part of the ANC case or --

9 CHAIRMAN GRIFFIS: Yes, she is.

10 VICE CHAIRPERSON MILLER: Okay.

11 CHAIRMAN GRIFFIS: She said a lay  
12 person in terms of her understanding and  
13 interpretation of the parking.

14 VICE CHAIRPERSON MILLER: Right.

15 CHAIRMAN GRIFFIS: And storage, if  
16 I'm correct.

17 COMMISSIONER LINDEMAN: I said as  
18 a lay person because I'm neither an attorney  
19 nor a zoning expert.

20 VICE CHAIRPERSON MILLER: Okay.

21 Thank you.

22 CHAIRMAN GRIFFIS: Excellent. Very

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

1 well.

2 Then back we were to the 6th of  
3 February.

4 I don't have anything else that's  
5 coming into the record. All that can be  
6 submitted in, Ms. Bailey?

7 MS. BAILEY: I'm going to suggest  
8 January 29th, Mr. Chairman, which is a week  
9 before.

10 CHAIRMAN GRIFFIS: Certainly. It  
11 can come in anytime before that, but I would  
12 hope that it is at least by that. There's  
13 nothing of critical nature with that -- well  
14 there it is.

15 Mr. Nettler's going to put in  
16 those two citings.

17 Anything else? Board Members,  
18 clarifications, questions, any procedural  
19 questions I can answer? Anything else on  
20 that? Very well then.

21 We thank you all very much.

22 This would then conclude the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.

1 appeal, conclude the afternoon session.

2 Thank you all.

3 (Whereupon, the hearing was

4 adjourned at 7:08 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.