

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 13, 2007

+ + + + +

The public hearing was convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD Vice Chairperson
MICHAEL TURNBULL Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER
STEPHEN MORDFIN
STEPHEN RICE
JOHN MOORE

The transcript constitutes the minutes from the public hearing held on February 13, 2007.

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P R O C E E D I N G

(9:51 a.m.)

1
2
3 CHAIRPERSON GRIFFIS: Good morning,
4 ladies and gentlemen. Let me call to order
5 our 13th of February 2007 public hearing of
6 the Board of Zoning Adjustment of the District
7 of Columbia.

8 My name is Geoff Griffis,
9 Chairperson. Joining me today is the Vice
10 Chair, Ms. Miller, and representing National
11 Capitol Planning Commission with is Mr. Mann
12 representing the Zoning Commission with us
13 this morning is Mr. Turnbull.

14 Copies of the agenda are available
15 for you. They are located on the table where
16 you enter into the hearing room. Would you
17 please pick one up and see where you are in
18 the chronology of our cases this morning?

19 There are several very important
20 things that everyone here needs to understand
21 and I will get through them hopefully very
22 briefly.

1 First of all, it should be noted
2 that all of our hearings are going to be
3 recorded. They're recorded in two fashions.
4 The court reporter sitting on the floor to my
5 right is creating the official transcript.
6 Attendant to that I'd ask two things.

7 First of all, if you would please
8 fill out two witness cards prior to coming
9 forward to speak to the Board. Witness cards
10 are available at the table where you entered
11 into the hearing room. They should also be
12 available where you will provide testimony.
13 Those two cards go to the court reporter prior
14 to coming up.

15 Secondly, you should note that we
16 are being broadcast live in the Office of
17 Zoning Website. Attendant to that, I would
18 ask that you turn off your cell phones/beepers
19 at this time, so that we don't have a
20 disruption of either of those transmissions.

21 When you are ready to present to
22 the Board, I would ask that you come forward,

1 make yourself comfortable. You will need to
2 state your name and address for the record.
3 You only need to do this once, and the you can
4 proceed to address the Board.

5 The order of procedure for special
6 exceptions and variances is as follows.
7 First, we will hear from the Applicant, the
8 presentation of their case.

9 Secondly, we will hear from any
10 government agencies addressing the
11 application.

12 Third, we will hear from the
13 Advisory Neighborhood Commission within which
14 the property is located.

15 Fourth, we will call for persons
16 or parties in support of an application.

17 Fifth will be persons or parties
18 in opposition to an application.

19 Finally, sixth, we will return to
20 the applicant for any rebuttal witnesses
21 and/or closing remarks and summations that
22 they may have at that time.

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

7 There are great restrictions,
8 directions, and allowances for cross
9 examination. I'm not going to get into any of
10 them at this time, but will address that as
11 needed in specific cases if we get to that
12 point.

13 The record will be closed at the
14 conclusion of the hearing on a case. It
15 should be very well understood as we proceed
16 into any of our hearings. These are contested
17 cases.

18 We are creating the official
19 record in this room today. Anything that you
20 believe should be understood by the board and
21 was within our jurisdiction, should be
22 submitted into the record. It can be done

1 orally today in presentation; could have been
2 submitted written already into the record or
3 can be submitted into the record today.

4 We will specify at the end of the
5 hearing if the record is going to be kept open
6 for additional information. You will be very
7 clear in your understanding upon leaving this
8 room whether the record is open or close, and
9 if left open, what, in fact, that specific
10 material will be required to be put into the
11 Office of Zoning and, therefore, into the
12 record.

13 The Sunshine Act requires that
14 this Board conduct all of its hearings in the
15 open and before the public. We do enter into
16 executive sessions both during and after
17 hearings on a case. We utilize these
18 executive sessions for review of the facts of
19 the act and at times often deliberate on
20 cases.

21 Anything we do in terms of our
22 decisions will be done also in the open and

1 before the public. this is in accordance with
2 our rules, regulations, and procedures. It's
3 also in direct accordance with the Sunshine
4 Act.

5 I would like to say -- well, let
6 me just make a quick note. We will be
7 breaking at a lunchtime. If there's a point
8 at which the Board is on research or a quick
9 break, I would ask the persons present today
10 to not engage Board members in private
11 conversation. As I have stated, we are
12 creating an official record in the open and
13 before the public. We would not want to give
14 the appearance of having information provided
15 to us that is outside of the official record.

16 With that, let me say a very good
17 morning to Ms. Bailey, who is with the Office
18 of Zoning on my far left. I am going to ask
19 now if all persons present that are going to
20 address the Board would please stand and give
21 your attention ot Ms. Bailey. She's going to
22 swear you in.

1 MS. BAILEY: Would you please
2 raise your right hand?

3 (Whereupon, the witnesses were
4 duly sworn.)

5 MS. BAILEY: Thank you.

6 CHAIRPERSON GRIFFIS: Thank you all
7 very much.

8 With that then, let's move ahead
9 to any preliminary matters. Preliminary
10 matters relate to whether a case will or
11 should be heard today. If you are requesting
12 a postponement withdrawing an application or
13 if you believe that the proper notification
14 and advertising of an application was not
15 forthcoming, it would be appropriate for you
16 to bring that to the Board's attention as a
17 preliminary matter.

18 You can do so by coming forward
19 and having a seat at the table at this time.
20 I will also say a very good morning to Mr.
21 Moy, who is with us from the Office of Zoning
22 and ask Ms. Bailey if she's aware of any

1 preliminary matters for the Board's attention.

2 MS. BAILEY: Mr. Chairman, member
3 of the Board, to everyone, good morning on
4 this snowy morning.

5 CHAIRPERSON GRIFFIS: Good morning.

6 MS. BAILEY: Staff does not have
7 any preliminary matters, sir.

8 CHAIRPERSON GRIFFIS: Very well.
9 Not noting any other indication of having a
10 preliminary matter, why don't we move ahead
11 then and call the first case for the morning"?

12 MS. BAILEY: And that is the
13 application of Linnell D. Handon, application
14 number is 17565, pursuant to 11 DCMR 3104.1,
15 for a special exception to allow a second
16 floor addition to an existing single family
17 detached dwelling under Section 223, not
18 meeting the side yard requirements. That's
19 Section 405. The property is zone R-2, and
20 it's located at 5109 A Street, S.E. The
21 property is also known as Square 5303, Lot 3.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Thank you very much.

2 A very good morning to you. If
3 you wouldn't mind, when you're ready -- don't
4 rush -- you can move that microphone over.
5 There's a button on the base of it. You can
6 just hit it once and it will turn it on.
7 Perfect.

8 If you would just state your name
9 and address for the record.

10 MS. HANDON: My name is Lanelle
11 Denise Handon. My address is 10005 Wilshire
12 Drive, Upper Marlboro, Maryland 20772.

13 CHAIRPERSON GRIFFIS: Excellent,
14 and you're bringing a special exception under
15 223 for the addition to this single family at
16 5109 8th Street, S.E.; is that correct?

17 MS. HANDON: Yes, sir.

18 CHAIRPERSON GRIFFIS: Excellent.
19 Is there anything that you would like just to
20 provide in terms of an opening statement?

21 I think I should say it's
22 appropriate for you to stand on the record.

1 The file is very full in the record, very full
2 on this and very direct. I do know that the
3 Board has some specific questions that we can
4 get into, but let me give you an opportunity
5 to make the statement

6 MS. HANDON: I don't have a
7 statement to make right now. Do I need to?

8 CHAIRPERSON GRIFFIS: No.

9 MS. HANDON: Okay.

10 CHAIRPERSON GRIFFIS: Excellent.
11 Very well. Why don't we jump right into
12 questions from the Board, and I know that
13 there are some specific ones.

14 Mr. Turnbull.

15 COMMISSIONER TURNBULL: Thank you,
16 Mr. Chairman.

17 I just had -- it's not related to
18 a zoning issue or anything directly with what
19 the applicant is going for. I have a problem
20 with the floor plan of the house in that I
21 don't think you can get up to the second
22 floor. The way the stairs are drawn, you

1 can't be taller than two foot, six to crawl
2 up through the stairs. The stairs the way its
3 placed on the plan shows it's inaccessible.

4 I would just suggest you have
5 whoever is doing the design for this look at
6 this because if you look at the second floor
7 plan, it shows four risers before it hits a
8 wall, the stairs going down.

9 You know risers are possibly
10 seven-plus inches high. So that's 28 inches
11 and then you hit a wall. It's not drawn so
12 that there's a clear opening going down the
13 stairs. It's either a drawing error -- it's
14 just not an accurate floor plan that would
15 allow someone to actually use the stairs.

16 CHAIRPERSON GRIFFIS: Are you using
17 someone locally, the designer, an architect,
18 anything?

19 MS. HANDON: Yes, yes.

20 CHAIRPERSON GRIFFIS: So they can
21 take a look at that.

22 MS. HANDON: Certainly.

1 CHAIRPERSON GRIFFIS: I mean, I
2 think obviously one of the difficulties in
3 permitting.

4 MS. HANDON: Yeah.

5 CHAIRPERSON GRIFFIS: In fact, we
6 can go further because your structural plan
7 and framing actually has no opening. So not
8 only will you hit the closet wall when you try
9 and walk down the stairs, but actually there's
10 no opening for the stairs to go to.

11 But that is all technical aspects.

12 MS. HANDON: Thank you. I
13 appreciate that.

14 COMMISSIONER TURNBULL: Yes, it
15 has got nothing to do with what you're
16 applying for. It's just a technical issue
17 with the state of the drawings.

18 MS. HANDON: Okay.

19 CHAIRPERSON GRIFFIS: It does bring
20 up another piece and I think we can go
21 straight to this. It's appropriate for us to
22 get into it because it does go to the fact

1 that part of the requirements under 223 is to
2 have graphic representation for what is
3 exactly proposed for the Board's
4 understanding.

5 And when we see things like that,
6 we go further because there's details there
7 that aren't working. So we look at further
8 aspects that may rise to some concern.

9 One of 223 also goes to looking at
10 if there is any need for the Board to require
11 lighting or design or enclosures of any kind
12 that might lend itself to fit to the character
13 of the neighborhood.

14 I don't know that I have anything
15 specific. However, I was wondering when you
16 have dealt with your architect and designer,
17 as Mr. Turnbull says, have you looked at the
18 possibility of having some fenestration on the
19 right side of the house? You have a blank
20 wall all the way up.

21 I mean, I think you have a great
22 opportunity to put a really intriguing

1 addition to a single floor, but it seems like
2 around the stair you have no windows. Is
3 there any thought of that?

4 MS. HANDON: I must apologize. I
5 am a mortgage banker. I don't really know how
6 to read the plans.

7 CHAIRPERSON GRIFFIS: Sure.

8 MS. HANDON: I gave my architect a
9 design of what I actually wanted, and I sort
10 of trusted his opinion, but are you asking me
11 what is the reason why the windows are not on
12 the right side?

13 CHAIRPERSON GRIFFIS: No, you don't
14 have any windows on the right side of the
15 house.

16 There it is. My advice: I'd have
17 a great talk with the architect-designer and
18 say, "Hey, show me where the windows are.
19 Can't we get a little more right in here?"

20 MS. HANDON: Oh, definitely,
21 definitely.

22 CHAIRPERSON GRIFFIS: and as you

1 build the second floor, make sure you can get
2 there.

3 Okay. Outside of that, any other
4 questions or clarifications at this point?

5 (No response.)

6 CHAIRPERSON GRIFFIS: I think we
7 ought to move right to the Office of Planning
8 then as their analysis is very full in this
9 case.

10 MR. MOORE: Good morning, Mr.
11 Chair and members of the Board.

12 I'm John Moore of the Office of
13 Planning. Excuse my voice. A sinus problem.

14 We could have looked at the
15 drawings a little closer, Mr. Turnbull, and we
16 didn't. I did talk to the architect on a
17 couple of occasions, and sometimes we sort of
18 take for granted that everything that should
19 be there is there.

20 We sort of endorsed the fact that
21 there are no windows on one side because the
22 house at the opposite end, of course, there

1 could be some issue with respect to privacy.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MR. MOORE: Although the windows,
4 if they were to be there, could be on the
5 second level, of course, and with that only
6 being a one story structure beside it, it may
7 not be a problem.

8 Other than that technical aspect
9 that we should have caught, the Office of
10 Planning will stand on the record and support
11 the application.

12 CHAIRPERSON GRIFFIS: Excellent.
13 Thank you very much.

14 And just to be clear, I'm not
15 concerned about the side of the elevations
16 where the fenestration is, although I think
17 adding another window in bedrooms is a great
18 idea. I'm more concerned with the front,
19 primary facade. As you walk in, there's
20 nothing on the right side.

21 The other piece to it, my personal
22 opinion, which I guess is substantiated on the

1 record already, I'm not a big fan of vinyl
2 siding, but there it is. I think with that
3 large field of that type of material with no
4 break, no fenestration, really it's kind of
5 the curb appeal of what you're proposing, and
6 I think it would be advantageous for you to
7 look at really breaking down that piece of the
8 house because I think it will lend itself to
9 a much better appearance and presence.

10 But that may well go beyond what
11 we need to in this application.

12 Mr. Moore, I appreciate it. An
13 excellent report, and actually it's very full.
14 It's appropriate for you to state on the
15 record. And, as always, I find it enjoyable
16 and helpful in terms of the graphics and the
17 photograph.

18 I've noted that we have a new
19 edition to your report, and it's OP Query
20 1.05, which is the last attachment. It seems
21 like Big Brother is watching. If I look at
22 this closely, there's actually a video picture

1 of the front of your property. So who knows
2 what OP has in their categories and computer
3 archives. We should all be careful.

4 MR. MOORE: Big Brother is
5 watching you.

6 CHAIRPERSON GRIFFIS: That's right.
7 Okay. Excellent.

8 Any other questions,
9 clarifications? Ms. Miller.

10 VICE CHAIRPERSON MILLER: Mr.
11 Moore, I also think this is an excellent
12 report, as always, and I just wanted to ask
13 you since there's no ANC report in the record
14 if you talked to any ANC Commissioner or --

15 MR. MOORE: Yes. I spoke to the
16 chair, Ms. Robinson, and the applicant. From
17 my understanding, the ANC is going to take the
18 matter up tonight at their regular meeting.
19 So obviously a report would be late.

20 When I talked to Ms. Robinson, she
21 didn't seem to have a problem with the
22 application.

1 VICE CHAIRPERSON MILLER: Thank
2 you.

3 CHAIRPERSON GRIFFIS: Good,
4 excellent question. I think a point to go
5 further is, of course, we want to wait for the
6 ANC to weigh in on this. However, all of this
7 in the 223 special exception seems ripe to
8 move ahead. If we kept the record open we
9 could not move ahead with it. We'd have to
10 set this for a decision.

11 Does OP have an opinion on that?

12 MR. MOORE: OP sees no reason why
13 the application should be moved ahead when you
14 look at what the applicant is asking for. It's
15 just relief on the side yard, and it's no real
16 negative impact on the neighboring structure,
17 and I don't think the ANC would reach a
18 different conclusion.

19 CHAIRPERSON GRIFFIS: Excellent.
20 Do you have any questions of the Office of
21 Planning?

22 MS. HANDON: No, sir.

1 CHAIRPERSON GRIFFIS: Do you have
2 their report?

3 MS. HANDON: Which report is that?

4 CHAIRPERSON GRIFFIS: The Office of
5 Planning's report.

6 MS. HANDON: I've reviewed it, yes,
7 yes. I have it.

8 CHAIRPERSON GRIFFIS: It's a good
9 report. It's well worth keeping.

10 Okay. Anything else, any other
11 questions? Very well.

12 There are no other government
13 reports. I don't have anything attendant to
14 this. Let me just ask: is ANC-7E represented
15 today?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Not noting
18 any representation from the ANC we've just
19 addressed that.

20 We do have Exhibit 21 that is
21 requesting that which was just stated. Unless
22 others are aware, I don't have any other

1 submissions on this, and I would ask if there
2 are persons present in Application 17565. If
3 they could come forward at this time to
4 provide testimony.

5 Persons, any persons at all in
6 support?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Not noting
9 any person present to provide testimony, let's
10 move ahead. If you have any closing remarks,
11 Ms. Handon.

12 MS. HANDON: My only remarks are
13 my purpose is to create some more space for
14 myself and my family. I think it would
15 increase the marketability of the area and the
16 property values. And that's it.

17 CHAIRPERSON GRIFFIS: Okay.
18 Anything else? Any other questions?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Is there
21 action proposed by the Board?

22 I think this is ripe to move ahead

1 today, and I think it's expeditious for the
2 Board to take action on this as the record is
3 full. This is a special exception under 223.
4 I would move approval of Application 17565 and
5 ask for a second.

6 VICE CHAIRPERSON MILLER: Second.

7 CHAIRPERSON GRIFFIS: Thank you
8 very much.

9 I'll speak briefly to this. First
10 of all, I think there were excellent comments
11 in terms of the viability of what is being
12 proposed that we've addressed.

13 I would note that I would add some
14 flexibility for these plans to change in order
15 to accommodate that obviously for that
16 flexibility that wouldn't have any impact on
17 zoning elements or zoning relief, and I would
18 anticipate, in fact, that that would be
19 required.

20 Going through the analysis of 223,
21 I think the great reliance on the Office of
22 Planning's report can be done by the Board in

1 their own deliberation, but it has clearly not
2 been evidenced that there would be any impact
3 or undue impact on the light and air, privacy
4 or use of the adjacent property.

5 This is a vertical addition and,
6 therefore, not impacting any of the lot
7 occupancy or the other aspects. Together when
8 viewed from the street, whether this would fit
9 into character, I think, it is shown very
10 clearly that there is somewhat of an eclectic
11 character, but certainly this would fit well
12 within the massing and the character of the
13 area in the neighborhood, and there has not
14 been any other undue or negative impact shown
15 in this case and, therefore, I believe it is
16 ready to move forward.

17 I would open it up for any other
18 comments.

19 VICE CHAIRPERSON MILLER: Mr.
20 Chair, I would just concur with what you said
21 and specifically address the ANC's request
22 that we keep the record open for an ANC

1 report.

2 At this point I would agree with
3 you and the Office of Planning that we should
4 move ahead today, that there's no reason to
5 keep the record open. The record is full,
6 showing no indication of any adverse impact in
7 this case.

8 CHAIRPERSON GRIFFIS: Good. Thank
9 you.

10 Others?

11 (No response.)

12 CHAIRPERSON GRIFFIS: Lastly then I
13 think as noted in our Exhibit No. 8 are the
14 plans, and we've made some notes of that for
15 direction, and hopefully they will be taken
16 into account, one, as I said, the structural,
17 but also in terms of the design aspects of
18 potentially adding additional fenestration if
19 that is amenable and able to be done.

20 With that, if there's nothing
21 further, there is a motion before us. I would
22 ask all in favor indicate by saying aye.

1 (Chorus of ayes.)

2 CHAIRPERSON GRIFFIS: And opposed?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Abstaining?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Very well.

7 Why don't we record the vote?

8 MS. BAILEY: Mr. Chairman, the
9 vote is recorded as four, zero, one to approve
10 the application. Mr. Griffis made the motion,
11 Ms. Miller second. Mr. Mann and Mr. Turnbull
12 support the motion, and Mr. Etherly is not
13 present with us today.

14 And I do have a couple of
15 questions, Mr. Chairman, just for
16 clarification.

17 CHAIRPERSON GRIFFIS: Sure.

18 MS. BAILEY: If we do receive the
19 ANC report, do you want it filed in the record
20 or sent back to the ANC?

21 CHAIRPERSON GRIFFIS: I think we
22 can file it in the record.

1 MS. BAILEY: Okay, and you
2 indicated the flexibility for plans. Are you
3 asking the applicant to file new plans
4 showing -- okay.

5 CHAIRPERSON GRIFFIS: No. I think
6 we're just making clear, of course, if anyone
7 was referencing our decision, that the
8 flexibility was noted by the Board and
9 allowed, and I think that's appropriate.

10 Very well. Anything else?

11 MS. BAILEY: No, sir, just a
12 summary order.

13 CHAIRPERSON GRIFFIS: Yes, I
14 believe there would be. Unless there's any
15 objection, we could waive our rules and
16 regulations and issue a summary order on this.

17 Not noting any objections, let's
18 do that.

19 Very well. Thank you very much.

20 MS. BAILEY: Thank you, sir.

21 CHAIRPERSON GRIFFIS: Good luck.

22 MS. HANDON: Thank you.

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

3 MS. BAILEY: The next application
4 is number 17566 of A&M Investigations,
5 pursuant to 11 DCMR 3103.2, for a variance
6 from the lot width and lot area requirements
7 under Section 401 to allow the subdivision of
8 one lot into two lots.

9 The property is located in the R-
10 1-B district at 3546 Alton Place, N.W., Square
11 1970, Lot 897.

12 CHAIRPERSON GRIFFIS: Good morning.

13 MR. TUMMONDS: Good morning. Mr.
14 Chairman, members of the Board, I am Paul
15 Tummonds with Pillsbury, Winthrop, Shaw,
16 Pittman. Christine Roddy of our firm is here
17 with me also this morning, as is Loretto
18 Clavelly, the applicant in this case.

19 The case that we are presenting
20 you this morning is a rather simple,
21 noncontroversial area variance case. More
22 than most variance cases that come before you,

1 I believe that your approval of this
2 application will be based on the legal
3 standards and definitions of what the D.C.
4 Court of Appeals deems are the standards we
5 need to address for variance approval.

6 In that regard, I will make our
7 presentation and Mr. Clavelly will be able to
8 answer any questions that you may have.

9 As noted in our prehearing
10 statement, we are seeing variance relief from
11 the minimum amount lot width and minimum lot
12 dimension requirements in the R-1-B zoned
13 district in order to abate two record lots on
14 the property that currently exist at 3546
15 Alton Place.

16 As shown in the prehearing
17 statement and as shown on the board here,
18 we're seeing to create one record lot that
19 satisfies the R-1-B zone requirements and one
20 that does not meet the required 50 foot
21 minimum lot width and 5,000 square foot lot
22 requirement.

1 As you can see, the lot with the
2 existing single family home has 47.75 feet of
3 frontage along Alton Place and will have 34.93
4 feet of lot width at the rear of the property.
5 This lot will include 4,961 square feet.

6 I'd now like to review the context
7 of the 3500 block of Alton Place. As you can
8 see from the pictures and plats, there is no
9 real uniform lot size or general architectural
10 style on this lot.

11 Christine, if you could point out.

12 Yes, exactly. Those are probably
13 some north side, and on the plat we've
14 outlined in pink our lot in relation to the
15 other lots in this block.

16 As you can see, the lots on the
17 north side of Alton Place vary in width from
18 25 to 75 feet, with most having a lot width of
19 approximately 36 feet.

20 On the south side, the side of the
21 street in which our property is located, the
22 lots range from 25 feet to this property which

1 almost a double sized lot of 97.75 feet along
2 Alton Place.

3 As you can see from the pictures
4 on our other third board, this is our
5 property. The western half of the property
6 is, in fact, a large lot, a large, open green
7 space. So, in fact, what this lot really
8 looks like is one lot that has an existing
9 building on it and one lot that is vacant
10 rather than a lot that looks like a building
11 on it that has a really large side yard.

12 So we could point out this is the
13 open space part of the lot. The yellow house
14 there, and then the picture to the bottom
15 right corner is the existing house on the lot.
16 So you get a sense of that open green space is
17 the lot, the part of this lot that we are
18 looking to create the conforming lot.

19 As we discussed in detail in our
20 prehearing statement, we believe that we do
21 satisfy the three pronged test for area
22 variance relief.

1 First, the property is uniquely
2 situated such that it is subject to an
3 extraordinary situation or condition.
4 Pursuant to the Gilmartin and Monaco cases,
5 the BZA may find that the uniqueness standard
6 is satisfied from a confluence of factors. In
7 this case those factors are the large size of
8 the lot, the lot containing 10,961 square
9 feet, one of the largest lots on the 3,500
10 block of Alton Place.

11 Two, the history of this lot being
12 subdivided from a lot that was previously a
13 through lot from Alton Place to Yuma Street,
14 as we've discussed in detail in our prehearing
15 statement.

16 And, three, the canted western lot
17 line, which cuts the site's width as you move
18 away from the Alton Place frontage.

19 Similarly, with regards to the
20 second prong of the area variance test, the
21 practical difficulty standard. This BZA has
22 consistently followed the Court of Appeals

1 ruling in the Gilmartin case, that an
2 applicant for an area variance relief must
3 show that strict compliance with the zoning
4 regulations is unnecessarily burdensome, not
5 impossible.

6 The Gilmartin case also notes
7 three factors that the BZA can use in
8 determining whether this unnecessary burden
9 standard has been satisfied. These include
10 the weight of the burden of noncompliance, the
11 severity of the variance requested, and the
12 effect the proposed variance would have on the
13 overall zone plan.

14 I think we don't often really
15 address this notion of the weight of the
16 burden of noncompliance, but I think that's
17 especially important in this case in that the
18 burden of noncompliance of not allowing this
19 lot to be subdivided means nothing happens, as
20 opposed to, say, a side yard variance case, a
21 rear yard variance case. The weight of the
22 burden of noncompliance is you could build a

1 bigger building, shrink the size of that
2 building such that you have the appropriate
3 side yard, have the appropriate rear yard.

4 In this case, the weight of the
5 burden of noncompliance, you either can
6 subdivide the lot or you can't. There is no
7 middle ground. We think that is a significant
8 factor in this case addressing that
9 unnecessarily burdensome standard.

10 In addition, we think that the
11 amount of relief we're requesting is de
12 minimis. We've noted in our prehearing
13 statement with regards to the minimum lot
14 dimensions we are within the Zoning
15 Administrator's two percent flexibility.
16 We're requesting relief from 39 square feet of
17 lot size. We think that is true de minimis.

18 Also with regards to the minimum
19 lot width dimensions, when this property is
20 viewed from Alton Place, the area that most
21 people would actually see this lot that we're
22 creating for the existing building, it's going

1 to have a minimum lot width of 47.75 feet.
2 That is 2.25 feet less than the minimum
3 required width.

4 I don't believe that anyone
5 walking down the street would be able to
6 discern that, oh, that is a lot that is not a
7 typical R-1-B size lot.

8 In addition, as we've noted, most
9 of the lots on this 3500 block of Alton Place
10 don't even have 47.5 feet of frontage along
11 Alton Place.

12 And, finally, the third task the
13 proposed variances would have on the overall
14 zone plan. We think that the proposed
15 variance, in fact, is more in keeping with the
16 development patterns on this block. It allows
17 for the creation of two single family homes on
18 the site that are almost entirely consistent
19 with the size of R-1-B homes on this district
20 and in general.

21 This last factor in satisfying the
22 practical difficulty standard leads us into

1 the project satisfaction of the third prong of
2 the variance test: no harm to the public good
3 or to the zone plan will occur as a result of
4 approval of this application.

5 In fact, the granting of this
6 application will allow for development of two
7 single family homes on the property that are
8 much more in keeping with the general
9 development pattern on this block and allows
10 for development of what appears to be a vacant
11 lot on the block.

12 This board I'm going to put up on
13 my right shows what a single family home on
14 this lot could be. This is matter-of-right,
15 40 percent lot occupancy on a really large
16 lot. We think that that is not in keeping
17 with the general development patterns in this
18 area.

19 In addition, we note that the area
20 element of the 2006 comprehensive plan for
21 Rock Creek West notes that mansionization is
22 a concern as new development is introduced

1 into established neighborhoods.

2 The approval of this application
3 would preclude any future concerns of the
4 mansionization of this property.

5 Similarly, we'd note the support
6 that this project has received. At the
7 January 17th, 2007 ANC-3F public meeting, four
8 residents of the 3500 block of Alton Place
9 spoke in favor of the project, as did three
10 members of the ANC.

11 We've not received any letters in
12 opposition to this project from residents of
13 the 3500 block of Alton Place.

14 In this case we went above and
15 beyond the normal notice requirements that the
16 BZA gives to all neighbors of BZA applicants.
17 We personally sent on two occasions notice of
18 our application to all of the property owners
19 on the 3500 block of Alton Place.

20 We did not receive one inquiry
21 with regards to our project. I note that in
22 the record we have two letters of support from

1 the ANC-3F Commissioners that voted in favor
2 of this project, as well as a letter from the
3 Ward 3 Council Member Cheh. All of these
4 letters note that approving this application
5 to subdivide the property is in keeping with
6 the character of the neighborhood and has the
7 support of the immediate neighbors.

8 Therefore, we believe that
9 granting the application would not only not
10 create substantial detriment to the public
11 good versus substantially impair the intent or
12 integrity of the zone plan, but rather,
13 granting this application will further the
14 public good and the intent of the zone plan,
15 by creating two single family homes that are
16 consistent with the size of the other homes on
17 this block on a portion of the lot that now
18 appears to be a vacant lot.

19 I note that the Office of Planning
20 has submitted a report in opposition to this
21 case. I respectfully disagree with OP's
22 conclusions.

1 As I mentioned at the outset of
2 this morning's hearing, I believe that this
3 case really is based on a technical legal
4 interpretation of the variance relief
5 standards with regards to the uniqueness of
6 the property and whether it is subject to an
7 extra ordinary situational condition, and
8 whether or not we've satisfied the
9 unnecessarily burdensome standard to show that
10 we do face a practical difficulty.

11 I believe that we have adequately
12 addressed those standards in our prehearing
13 statement and the testimony we have presented
14 this morning.

15 I think that OP's rationale as to
16 why this application does not satisfy the
17 third program of the variance standard is also
18 incorrect. OP notes that many of the homes in
19 this area currently occupy much of their lots,
20 and if this property were to be redeveloped,
21 the resulting house would not be out of
22 character with the surrounding properties.

1 I think the flaw in that argument
2 is that this property is more than twice the
3 size of the surrounding lots in the area. So
4 as we show in this board, a building on our
5 double size lot, triple size lot to some of
6 the buildings on north side of Alton Place at
7 40 percent lot occupancy is a huge house
8 compared to the other lots and development and
9 that, in fact, allowing for what the OP says,
10 the full development of this site would not be
11 in character with the 3500 block of Alton
12 Place.

13 So, therefore, we believe for all
14 of the reasons noted in our prehearing
15 statement and in the discussions I've had this
16 morning that the applicant has satisfied the
17 area of variance relief standards, and that we
18 are available to answer any questions that you
19 may have.

20 Thank you.

21 CHAIRPERSON GRIFFIS: Excellent.

22 Thank you very much. We do appreciate it.

1 And also, it's very informative.
2 The 1960 and the actually '68 plats, it looks
3 like base Atlas copies that are in there to
4 show the kind of subdivision patterns that
5 went through this square. We may address
6 those details further.

7 But let me ask if there are any
8 questions at this immediate time from the
9 Board. However, first, Mr. Tummonds, does
10 Gilmartin talk about the de minimis nature of
11 the requested relief? Is that what you were
12 citing and also in your written submission?

13 MR. TUMMONDS: Yes, it does. It
14 says it's one of the factors that can be used
15 by the Board in determining whether or not the
16 practical difficulty standard, the
17 unnecessarily burdensome standard has been
18 satisfied.

19 CHAIRPERSON GRIFFIS: Excellent,
20 and I note that -- well, there it is.

21 Questions?

22 VICE CHAIRPERSON MILLER: I was

1 wondering if you might address further the
2 practical difficulty issue because I think
3 looking at this case one might say that it
4 doesn't seem unnecessarily burdensome that a
5 property owner has open space that he can't
6 build on.

7 I mean, the lot is less than
8 what's required. So why is that such a
9 burden? I mean, I think a lot of people might
10 say, "I wish I had that burden," or, "I could
11 put a swimming pool there. I could put a
12 garden there."

13 Why is this a practical difficulty
14 under the law?

15 MR. TUMMONDS: I mean, I think
16 those are the three standards that we can look
17 at to satisfy what is unnecessarily
18 burdensome. First, the weight of the severity
19 of noncompliance, and I think that --

20 VICE CHAIRPERSON MILLER: But
21 that's the issue. Why is this a great weight
22 of burden on the --

1 MR. TUMMONDS: Well, I think it's
2 in going to -- it's all or nothing as opposed
3 to like where, as I said, a side yard case, a
4 real yard case where the applicant is faced
5 with I'm requesting a two foot side yard
6 variance.

7 You can tell that applicant you
8 can still build your building there, but
9 rather than having a six foot side yard, you
10 can have an eight foot side yard. So the
11 request that you are seeking, a building of
12 some size can happen.

13 In this case if we say that it is
14 -- basically we're saying that it is
15 impossible for you to have a subdivision of
16 this property such that you can have one
17 conforming lot and one nonconforming lot.

18 So I think the severity of the
19 burden of compliance is the epitome of it.
20 You either can have it or you can't, but
21 that's just one factor. I think it's also --

22 VICE CHAIRPERSON MILLER: But I

1 mean also --

2 MR. TUMMONDS: -- the de minimis
3 nature.

4 VICE CHAIRPERSON MILLER: Just to
5 interrupt you here, I'm sure it's where Office
6 of Planning was coming from. It's not like
7 they can't have a home on this property. They
8 have a home on this property.

9 MR. TUMMONDS: Right.

10 VICE CHAIRPERSON MILLER: And I
11 think that there's this threat out there that,
12 well, if we don't subdivide, we can have this
13 huge house on this property. That doesn't
14 really go to the practical difficulties.

15 MR. TUMMONDS: No, but that goes
16 to the third prong.

17 VICE CHAIRPERSON MILLER: That
18 goes to the third prong. It doesn't --

19 MR. TUMMONDS: But what is
20 interesting when you look at Gilmartin, and it
21 has an intriguing thing though were I think
22 Gilmartin has almost blurred the difference

1 between the second prong practical difficulty
2 and the third prong of the variances about
3 impairing intent or integrity.

4 When you look at Gilmartin, it
5 does say, page 1171 of the Gilmartin case,
6 that, "In order for the BZA to deal with
7 circumstances such as those presented in the
8 application for variance in this case, BZA has
9 the flexibility to consider a number of
10 factors, including, but not limited to, one,
11 the weight of the burden of strict compliance;
12 two, the severity of the variances requested;
13 and three, the effect the proposed variances
14 would have on the overall zone plan."

15 Well, that kind of, you know, is
16 almost a hybrid between practical difficulty
17 and not impair the intended integrity, but in
18 Gilmartin they put that third prong under the
19 practical difficult standard.

20 So I think that is a valid point
21 for us to make, that approving this case
22 allows for development on the site that is

1 consistent with the overall zone plan. I
2 think R-1-B lots, R-1-B properties are
3 generally intended to be 5,000 square feet.
4 A building has 40 percent lot occupancy.
5 Those are generally deemed to be consistent
6 with the R-1-B zone plan.

7 This isn't an R-1-A district where
8 you'd have larger lots, larger homes. So I
9 think in that regards that does factor into
10 our satisfaction of the practical difficulty
11 standard.

12 It's interesting. In reviewing
13 for this case I knew that this was going to
14 be, you know, a big issue, and we don't
15 normally see that, but that is a blurring
16 almost of the practical difficulty and the
17 third prong, and I think we have a very strong
18 argument on that third prong, and truthfully,
19 that is why I believe we have received the
20 support of three members of the ANC and the
21 residents of the 3500 block of Alton Place.

22 They would like to see a home

1 developed on that -- we talked at one point it
2 looks like a missing tooth in the fabric of
3 that block. When you walk up and down Alton
4 Place, people generally -- and this is what we
5 heard -- generally don't think, "Wow, that's
6 a really big side yard that house has." They
7 think, "That's interesting that there is a
8 vacant lot on this block because everything
9 else is so developed."

10 And we think that as the comp.
11 plan, the 2006 comp. plan is concerned about
12 the, quote, unquote, mansionization of
13 established neighborhoods, this is exactly
14 what that portion of the comp. plan is meant
15 to address.

16 Approval of this application
17 precludes that from happening in the future by
18 allowing appropriate developments of this lot
19 for two similarly sized lots to the
20 surrounding properties.

21 CHAIRPERSON GRIFFIS: If I
22 understand you correctly, when we look at the

1 kind of unnecessarily burdensome, clearly
2 anyone could make the remark of any of the
3 applications that come before us that you
4 don't have to do anything. So what's your
5 burden?

6 MR. TUMMONDS: Right.

7 CHAIRPERSON GRIFFIS: And what
8 you're saying is once you start to invoke what
9 is essentially a matter of right in terms of
10 the subdivision of one side of this lot, then
11 you create an aspect that is nonconforming,
12 and with that becomes the unnecessary burden
13 and leads you down to the other aspects of,
14 one, the de minimis nature, but then also how
15 it fits within the comp. plan and then what
16 the actual practical difficulty is.

17 Is that correct?

18 MR. TUMMONDS: Yes, I believe so,
19 yes.

20 CHAIRPERSON GRIFFIS: Okay.

21 Follow-up?

22 VICE CHAIRPERSON MILLER: I assume

1 if there was precedent for this you would have
2 cited it in that a lot of your case seems to
3 be the preclusion of something worse. That's
4 why this should be done, in combination with
5 the de minimis nature of it.

6 MR. TUMMONDS: And it's in keeping
7 with the -- I believe it's in keeping with the
8 intent of the R-1-B zone district and the
9 comp. plan.

10 Again, this is an R-1-B district.
11 You know, with regards to a 5,000 square foot
12 lot, we're having a lot that's 4,961 square
13 feet, 39 square feet of difference from what
14 is a typical, standard R-1-B property.

15 So allowing a building on a lot
16 that's 5,000 square feet and the existing lot
17 we think is entirely in keeping. It's not
18 just what could possibly be done, but what is
19 there now, what are we proposing is consistent
20 and is certainly more consistent than what
21 could be done as a matter of right.

22 So I think we satisfy the

1 standards based on what we want to do, not
2 just we satisfy the standards because we could
3 do something. Something could be done on this
4 property that may not be as in keeping with
5 the R-1-B zoned district and the comp. plan.

6 So I do believe what we are
7 proposing is consistent, not just what we
8 could do is worse.

9 VICE CHAIRPERSON MILLER: I just
10 want to follow this up just a little more. I
11 follow you certainly with respect to the no
12 substantial detriment because you find that
13 it's de minimis and that it will be in the
14 character of the neighborhood to have two
15 houses on those lots.

16 MR. TUMMONDS: But de minimis goes
17 to practical difficulty.

18 VICE CHAIRPERSON MILLER: Okay.
19 That goes to practical difficulty, but nothing
20 has changed in this neighborhood as far as we
21 see in the record. So there wasn't a --
22 what's the practical difficulty between, you

1 know, they had this lot all of these years the
2 way it is? Why all of a sudden is a practical
3 difficulty now?

4 MR. TUMMONDS: Well, I think
5 specifically in the Gilmartin case it
6 references and talks about practical
7 difficulty does not have to have appeared at
8 some point in time due to some outside
9 influence. It could have been a practical
10 difficulty to the developer in 1960, 1968.

11 Now, it is not the standard that
12 we have to show that all of a sudden a
13 practical difficulty has just popped up
14 because, yes, this property has been like that
15 for a while, but I would argue that previously
16 that practical difficulty was still there
17 before.

18 VICE CHAIRPERSON MILLER: Thank
19 you.

20 CHAIRPERSON GRIFFIS: That's
21 interesting. It seems like this square has a
22 great history of subdivision. You can just

1 look at the note of the changes that are going
2 on. It's kind of interesting that that wasn't
3 subdivided out in the '60s or between '68, but
4 I don't think that has much to do with this
5 necessarily.

6 Okay. Anything else?

7 MEMBER MANN: Yes, Mr. Chairman.

8 CHAIRPERSON GRIFFIS: Yes.

9 MEMBER MANN: I had a question
10 about something that was brought up in the
11 prehearing statement that you said a little
12 while ago regarding the deviations that the
13 Zoning Administrator has allowed.

14 Can you explain that again?

15 MR. TUMMONDS: Yes. The Zoning
16 Administrator is allowed a two percent
17 flexibility with regard to approving the
18 minimum lot size and minimum lot width
19 dimension requirements.

20 So we could go in this case a lot
21 that has 4,961 square feet, not 5,000; you can
22 go to the Zoning Administrator and he can make

1 an administrative ruling that wouldn't require
2 BZA approval.

3 However, two percent of 50 feet is
4 one foot, not 2.25 feet we have on Alton Place
5 or the 15 feet of rear yard relief we're
6 requesting. So in this case we knew we had to
7 come to the BZA to get your approval of the
8 minimum lot width dimensions, and since we
9 were here, we said we should get also the
10 flexibility from the minimum lot size even
11 though we could have gone to the Zoning
12 Administrator to get that relief flexibility,
13 if you will.

14 MEMBER MANN: So it's your
15 understanding that that's something that the
16 administrator can grant in advance of a
17 project commencing versus something that
18 perhaps he can allow as a deviation if it's
19 discovered after the fact?

20 MR. TUMMONDS: Yeah. One would
21 hope that during your approval process in a
22 lot subdivision application that went

1 before -- all lot subdivisions have to go
2 before the Zoning Office and they review it
3 for consistency. And how the process should
4 work is that should be flagged. The Zoning
5 Administrator's office should say you don't
6 have your minimum lot size dimension.
7 However, we note that you're within two
8 percent flexibility. We'll approve it there.

9 So hoping that it would never get
10 to the point of someone was filing a building
11 permit application for a lot because it should
12 have been picked up in the lot subdivision
13 process at DCRA.

14 MEMBER MANN: Thank you.

15 CHAIRPERSON GRIFFIS: Others?
16 Questions?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Very well.
19 Let's move ahead then and hear from the Office
20 of Planning.

21 MR. RICE: Good morning, Mr. Chair
22 and Board. My name is Steven Rice.

1 The Office of Planning does not
2 support this application as the burden of
3 proof has not been met. Of course, the
4 proposal is to subdivide a currently
5 conforming lot to create two record lots that
6 will not be in conformance with the R-1-B
7 standards.

8 OP really struggled with the first
9 step which is the uniqueness of the property.
10 Of course, it is a larger lot, but the
11 argument, the initial argument was that the
12 shape of the lot was sort of unique because
13 the west property line does tape in
14 approximately what, 15 feet from the north,
15 from the front to the rear, but we didn't
16 think that that was particularly unique
17 because some of the other lots on the square
18 do have sort of the irregular shapes. None of
19 them are really sort of rectangular.

20 So that didn't really quite fly as
21 uniqueness, and plus, even if the lot was a
22 rectangular shape, a variance there would be

1 needed if the applicant wanted to subdivide.

2 The width that fronts Alton Place
3 still would be 97.75 feet, which one of the
4 lots would be 50 feet and the other lot would
5 be 47.75 feet, even if the lot was a perfect
6 shape, based on the width.

7 Practical difficulty is a direct
8 function of an identified, unique condition to
9 the property. The existing lot has adequate
10 dimensions to permit a single family detached
11 home, which is currently there. So no
12 variance is really needed to comply with the
13 strict application of the zoning regs.

14 So subdividing the lot would
15 create a nonessential nonconformity.

16 The applicant has noted that the
17 possible scale inconsistencies with the
18 surrounding properties could occur in the
19 future if the house on the property were to be
20 redeveloped to the permitted 40 percent.

21 Again, I don't think that would be
22 inconsistent if the property owner or the

1 future owner decided to go up to the permitted
2 40 percent because a lot of the properties in
3 this area do have homes that are built out to
4 the 40 percent or close to the 40 percent.

5 So although the lot is large, you
6 know, that's by right, and that's what's
7 permitted according to the zoning regs.

8 The nonconforming lot which would
9 result if the relief is granted would be
10 contrary to the purpose of the regulations
11 which intend to maintain existing conforming
12 lots and to bring new subdivisions to
13 compliance with the R-1-B standards.

14 So OP does not support the
15 requested variances.

16 Thank you.

17 CHAIRPERSON GRIFFIS: Excellent.
18 Thank you very much.

19 One quick question. You indicated
20 40 percent lot occupancy, and you were saying
21 that that would be similar to the other
22 properties in the area. Is that what you said

1 or on the block?

2 MR. RICE: Well, my point was if
3 the property owner did decide to build out to
4 40 percent, it wouldn't be a huge threat to
5 the character of the area because some of the
6 lots do have properties that are taking up
7 close to 40 or 40 percent of their lots.

8 CHAIRPERSON GRIFFIS: Okay. So in
9 that aspect, the element of lot occupancy, it
10 would be similar but you're not saying that
11 the size of the house would be similar.

12 I mean, I'm looking at your
13 graphic on page 2. As you said, that 40
14 percent lot occupancy, and I'm looking at
15 incredibly small lots for the minimum
16 required. Forty percent lot occupancy on
17 those would be a much smaller house.

18 MR. RICE: Yes.

19 CHAIRPERSON GRIFFIS: I remember
20 seeing photographs of those present and
21 presented as opposed to that -- I mean, I'm
22 not so sure how this all fits in, you know,

1 the what was it, mansionization and all of
2 that?

3 But just trying to understand your
4 point is that you're saying that the proposed
5 40 percent is similar to the character to
6 other 40 percent houses on the block.

7 MR. RICE: Well, yeah. Well, not
8 only on that block, but if you go north, you
9 probably can't see it on that image, but a lot
10 of the properties across the street to the
11 north are built out to probably even more than
12 40 percent. This block is a little different
13 because many of the lots aren't built up to
14 the 50 percent width. Some are 25 feet, some
15 are 30-something feet; others are even larger.

16 If you look to the west two blocks
17 over, two lots over, there's a really large
18 lot, and I don't know the exact lot coverage
19 of that home, but you do see that there are
20 large lots and smaller lots as well. None of
21 them are really to the minimum requirement.
22 So, you know, if they were to build out to the

1 40 percent, you know, that wouldn't be an
2 inconsistency because I think it's more of an
3 issue of where the house is situated, which
4 makes it seem as if it would be a real
5 problem.

6 But if the house were in the
7 center of the lot, you know, I don't think it
8 would be an issue.

9 CHAIRPERSON GRIFFIS: I see.

10 MR. RICE: Does that makes sense?

11 CHAIRPERSON GRIFFIS: Yes, I think
12 so. I think so. Like I say, I'm not sure how
13 substantive it is for us to get further into
14 it, but I think I understand your point.

15 I disagree with the fact that if
16 you put a 40 percent lot occupancy mass on
17 this site as is that it would be the same
18 scale or mass of the surrounding houses. I
19 mean, all I have is the '60 and '68 plats.

20 MR. RICE: Yes.

21 CHAIRPERSON GRIFFIS: It seems like
22 there are somewhat similar size houses

1 throughout no matter the varying of the lots.

2 MR. RICE: Yes. Well, I think I
3 was referring more so to not only this
4 particular block, but the block mainly to the
5 north and even some of the properties to the
6 south.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. RICE: So more of a general
9 area.

10 CHAIRPERSON GRIFFIS: Sure. Okay.
11 Good enough.

12 Other questions?

13 COMMISSIONER TURNBULL: Mr. Chair.

14 CHAIRPERSON GRIFFIS: Yes.

15 COMMISSIONER TURNBULL: Thank you.

16 Mr. Rice, so the fact that it's a
17 parallelogram doesn't make it unique in your
18 estimate?

19 MR. RICE: I don't think so. I
20 don't think so because if you look at the
21 plot, several of the lots -- well, one in
22 particular to the west two lots over, it's

1 similarly shaped. It sort of slants out to
2 the west, and if you look to the east of the
3 property, some of the lots closer to 35th
4 Street have slanted parallelogram shaped lots
5 as opposed to rectangular shaped lots or just
6 a normal shape.

7 So the shape of the lot in itself
8 is not necessarily unique.

9 COMMISSIONER TURNBULL: Is the
10 block unique though in the sense that there
11 are so many other lots that are relatively
12 smaller in size?

13 MR. RICE: Is the block unique?

14 COMMISSIONER TURNBULL: I mean in
15 the fact that this site in relationship to the
16 other sites, is it unique in that the other
17 houses are a lot smaller, the lots are a lot
18 smaller? I mean, does that add to the
19 uniqueness to it of the fact that it's --

20 MR. RICE: Well, some are smaller,
21 but some are equally as big or slightly
22 smaller.

1 COMMISSIONER TURNBULL: I see a
2 lot in the 30 foot, 36 foot range. There's a
3 couple 59, 54, 48, 25 feet.

4 MR. RICE: Yes.

5 COMMISSIONER TURNBULL: I mean, I
6 think I'm just looking at it from the
7 standpoint of uniqueness. Is the 97 foot
8 lot v--

9 MR. RICE: Yes, it is a lot larger
10 than the ones you've mentioned, but there are
11 some in this square that are similar in size
12 or dimensions.

13 COMMISSIONER TURNBULL: Thank you.

14 CHAIRPERSON GRIFFIS: Excellent
15 questions. Others? Ms. Miller.

16 VICE CHAIRPERSON MILLER: Mr.
17 Rice, did you say that this lot is the largest
18 in the square or were you saying that the
19 applicant represented that or I'm wondering if
20 it does have a uniqueness in that sense.

21 I understand that you don't think
22 it's unique was far as shape goes.

1 MR. RICE: No.

2 VICE CHAIRPERSON MILLER: But look
3 at size.

4 MR. RICE: Size-wise I don't think
5 it's the largest. I think it does have the
6 largest width in this square. There's one
7 with a 92.71 width, which is two lots over to
8 the west. But as far as the size, there's
9 a -- well, the one to the west, the two lots
10 over is larger because it's 13,998 square feet
11 and this lot is 10,000 and something. So the
12 size itself is one of the larger ones. It's
13 not the largest.

14 VICE CHAIRPERSON MILLER: And the
15 other large lot, does that have a building on
16 it?

17 MR. RICE: Yes, it does.

18 VICE CHAIRPERSON MILLER: And is
19 that building situated more in the center of
20 the lot or is it --

21 MR. RICE: Yes, it is. It is.

22 VICE CHAIRPERSON MILLER: It is.

1 Okay. So is this property unique in the sense
2 that it's such a large lot and the building is
3 situated to the side of it as opposed to in
4 the center of it?

5 I think that that's one of the
6 arguments of the applicant, that when we look
7 at property, we look at it with the
8 improvements that are on it, and that that may
9 be unique in that sense.

10 MR. RICE: Well, it is situated to
11 the east of the lot. If that's unique, it is
12 unique.

13 VICE CHAIRPERSON MILLER: And then
14 my other question is, which would be more in
15 character of the neighborhood, the lot
16 subdivided with a small house on it or the lot
17 not subdivided with a larger house that could
18 be built as a matter of right?

19 MR. RICE: I would say what's
20 there is probably the best scenario because
21 the lot itself now is not -- it is in
22 conformance with the regs. So if you were to

1 subdivide the lot, you would create a
2 nonconforming lot, but as far as the property
3 if you were to build two houses that were to
4 the requirements of 40 percent and met all of
5 the other requirement, I don't think it would
6 be inconsistent if the house was built out as
7 is on the lot to its max.

8 Although it looks scary to see
9 that on the plat, if you look at the lots that
10 surround this square, I don't think it would
11 be inconsistent.

12 VICE CHAIRPERSON MILLER: Do you
13 think it would be out of character with the
14 neighborhood to have the lot subdivided for
15 the smaller house on it as proposed by the
16 applicant?

17 MR. RICE: I wouldn't say it would
18 be -- if it was granted, if the variances were
19 granted, I don't think our position is against
20 the lots being subdivided. It's more so from
21 a technical standpoint. We don't choose to
22 support creating a nonconforming situation

1 where a conforming situation exists because
2 the practical difficulty is hard to really
3 gain. I can't really gain, I can't sense what
4 the practical difficult is.

5 VICE CHAIRPERSON MILLER: Okay,
6 and finally I wanted to ask you do you have a
7 comment or an opinion on the applicant's
8 characterization of the relief being sought as
9 de minimis?

10 MR. RICE: Yes, it is a very small
11 request, with 2.75 feet. I don't think a
12 normal person would notice that that is the
13 case. So I guess so.

14 VICE CHAIRPERSON MILLER: Thank
15 you.

16 CHAIRPERSON GRIFFIS: So have you
17 noticed if that makes you abnormal?

18 (Laughter.)

19 CHAIRPERSON GRIFFIS: That says a
20 lot about us.

21 Very well. Any other questions of
22 the Office of Planning from the Board?

1 (No response.)

2 CHAIRPERSON GRIFFIS: Mr. Tummonds,
3 any cross?

4 MR. TUMMONDS: No.

5 CHAIRPERSON GRIFFIS: Very well,
6 excellent. Thank you very much. A very
7 insightful analysis, and it was very
8 important, something we will take into great
9 consideration as we go into our deliberation,
10 but let's move to other government reports
11 attendant to this. I don't have anything
12 other associated with this.

13 Hold on a moment.

14 This is not noted as an historic
15 district. We did have some discussion and
16 there's obviously enough in the file regarding
17 the ANC-3F, and we have the individual
18 Commissioners, 3F-01, Susan Banta, Exhibit No.
19 25, in the record.

20 I would also make note that we had
21 additional submissions in this morning. I
22 don't know if you're aware of the additional

1 submissions that came in. We had if I'm not
2 mistake -- well, I thought I had three, but I
3 have three copies of the same. It's the
4 member --

5 MR. TUMMONDS: Commissioner
6 Solomon?

7 CHAIRPERSON GRIFFIS: Yes, Jane
8 Solomon who was ANC-3F-03, also in support of
9 the application, and as noted by the applicant
10 in their submission, we do have the Council
11 Member Cheh of Ward 3, Exhibit No. 24, also in
12 support, and it indicates in her letter that
13 she actually attended the ANC meeting and
14 gives note of that and her support, and also
15 the support of the community.

16 We have 3538 Alton Place, Exhibit
17 30, as a support of letters adjacent neighbor,
18 Exhibit 30 and Exhibit 26, which is 3514 Yuma
19 Street, Carroll household in opposition to
20 that.

21 But let me call if there's any
22 persons present in Application 17566, to

1 provide testimony, persons to provide
2 testimony in this case in support.

3 (No response.)

4 CHAIRPERSON GRIFFIS: In
5 opposition?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Very well. I
8 do not believe we have anyone here to lend
9 additional testimony to this.

10 I turn to you, Mr. Tummonds. Any
11 closing remarks that you might have,
12 summations?

13 MR. TUMMONDS: I think just that
14 as I stated at the beginning, I think case
15 really hinges on more of a legalistic
16 interpretation of the first two standards of
17 the area variance test, whether or not this
18 project is unique and subject to extraordinary
19 situation or condition and whether or not the
20 applicant is faced with the practical
21 difficulty such that strict compliance with
22 the zoning regulations is unnecessarily

1 burdensome.

2 I believe in our prehearing
3 statement and in the testimony we provided
4 this morning, the questions that we've
5 answered from the Board, that we have shown
6 that we have satisfied those standards and we
7 would request your approval of this
8 application.

9 Thank you very much.

10 CHAIRPERSON GRIFFIS: Excellent.
11 Thank you very much.

12 Last questions, clarifications
13 from the board?

14 (No response.)

15 CHAIRPERSON GRIFFIS: If there are
16 none of the applicant or the Office of
17 Planning, I believe we're ready to move ahead
18 with this. I don't think there's anything
19 additionally that we can bring into the record
20 to help our deliberation on this, and I think
21 it's most appropriate to expedite decision on
22 this under a motion, and I will propose that

1 we approve Application 17566 of A&M
2 Investments and ask for a second.

3 MEMBER MANN: Second.

4 CHAIRPERSON GRIFFIS: Thank you
5 very much.

6 I can start by saying in all
7 variance cases there is great elements of
8 which the Board has to weigh. As we move
9 specifically into this, I think they are of no
10 difference in terms of what we look at.

11 I think Office of Planning's
12 analysis is an excellent one and a very strict
13 reading of the regulations, for certain.
14 However, there are some areas of variance in
15 my own deliberation in looking at this, and I
16 will go to that.

17 I think Mr. Tummonds has made an
18 excellent presentation and very persuasive
19 argument in terms of the legal issues involved
20 in this in terms of looking at Gilmartin.

21 I differ in my opinion of
22 establishing uniqueness from the Office of

1 Planning. I look at the square. It's kind of
2 interesting. The square is 1970, and it's
3 actually three blocks or two and a half full
4 blocks, but even to go beyond the square, I
5 think Mr. Turnbull was really going in the
6 direction that I also saw it, and that is this
7 particular site in relation to the block, the
8 square, and the surrounding area.

9 It doesn't mean we could not find
10 something similar. That's not the basis of
11 which it is not unique, but rather are there
12 unique aspects to this that are not generally
13 found over and over again, and specifically in
14 this area.

15 As I look at Square 1970. This is
16 a unique site. Its history is unique, if you
17 look at it, how it was actually dealt with
18 before, but even now in its occurrence. The
19 size, the shape, the placement of the existing
20 structure.

21 We haven't talked about it, but
22 it's in the record in the photograph shot.

1 There's a curb cut that looks like it's
2 attendant to the site that's being proposed to
3 be sub -- none of it really to me makes sense
4 in just looking at it from a pedestrian
5 standpoint of what is this. It almost
6 naturally -- well, that goes a little bit too
7 far.

8 So the uniqueness is that I think
9 the practical difficulties we look at, I
10 think, is well and persuasively put to us from
11 Mr. Tummonds, and that is relying on -- he
12 mentioned Monaco, but clearly I see the
13 relevancy in that but also in Gilmartin and
14 looking at the weight of the burden of the
15 noncompliance.

16 I mean, we're looking at something
17 here that was well said. You either can or
18 you can't, and then as we weigh in all of
19 those aspects of the practical difficulty, I
20 think we do always weigh into the level and
21 the amount of relief sought, and it is a very
22 subjective piece.

1 In this one it's pretty clear. I
2 don't think there's anyone that would disagree
3 that this is very de minimis in its nature.

4 And then lastly as we go into
5 that, the practical difficulty, I think, is
6 well said also in terms of the severity of the
7 burden. This burden of not being able to make
8 one complying subdivisions I think was clearly
9 stated.

10 Ms. Miller, I think, was very
11 persuasive, whether she wanted to be or not in
12 this realm, but in terms of talking about the
13 character of the area and does this fit in the
14 character as is. Does it fit in the character
15 of what could be proposed as a matter of right
16 development or does it fit in character as a
17 subdivided?

18 And I think to me, looking at the
19 lots, the lot sizes, the eclectic nature of
20 this, there's actually a lot in here that's
21 ten feet wide, which is kind of fascinating,
22 but a digression.

1 But as we look at what the
2 character of the overall block is in that
3 street on Alton, I think it is well within
4 character as what's being proposed. I think
5 outside of character would be a much larger
6 house.

7 I think Office of Planning is
8 correct in saying, well, you know, it may not
9 be that terrible nature, whatever, but what
10 we're looking at is how it would fit within
11 the existing character and what is actually if
12 the subdivision is to move forward.

13 And really that doesn't really go
14 into the massing, what the house would be and
15 all of that. I think it's obviously not
16 contested, the fact that as one aptly said a
17 normal person walking down wouldn't be able to
18 assess that there was some sort of variation
19 from the standard.

20 I was actually trying to find what
21 the standard would be on this block. It would
22 be quite difficult.

1 That's my beginnings, openings,
2 and I'll open up to others for comments and
3 deliberation.

4 Yes, Ms. Miller.

5 VICE CHAIRPERSON MILLER: I think
6 this hearing was enlightening for me with
7 respect to evaluating the project in the
8 context of the variance test because I think
9 coming in almost as not exactly a lay person,
10 but just looking at the test, I thought, well,
11 practical difficulty, this doesn't seem very
12 burdensome to have all of this open space, if
13 you just look at it that way.

14 But if you look at it in the
15 context of the guidance of the Court of
16 Appeals in Gilmartin, as Mr. Tummonds has
17 cited, I think it does meet the variance test.

18 I think that it is unique in the
19 sense that it is a large property that already
20 has an existing structure on it that actually
21 creates a practical difficulty of the owner
22 using the property almost like almost any

1 other owner in this block would have been able
2 to use it were it not for a de minimis amount
3 of space.

4 And I think that's where the de
5 minimis aspect comes in for me, and I think
6 that even though under the Gilmartin case and
7 the variance test, that we look at the prongs
8 individually. I think they do overlap and
9 they do affect the final judgment, I think, of
10 this Board.

11 And it runs into the third prong
12 of no substantial detriment, that even as the
13 Office of Planning stated, that the project as
14 proposed subdivided would actually be in
15 character with the neighborhood, and that's
16 very important.

17 And I think that what concerned me
18 is we have had other cases, I believe, where
19 an applicant has come in and wanted to
20 subdivide property because it would be more
21 profitable, and we have found that they didn't
22 meet the variance test.

1 And as I recollect, I know that a
2 large part of the reason was that it created
3 houses that were actually out of character
4 with the neighborhood.

5 So all three prongs need to be
6 met, and I'm convinced in this case that they
7 have here.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Very well.

10 Others?

11 VICE CHAIRPERSON MILLER: I'm
12 sorry. I just want to add --

13 CHAIRPERSON GRIFFIS: Yes, please.

14 VICE CHAIRPERSON MILLER: -- also
15 the no substantial detriment, I find that
16 based on the graphics and the record, but also
17 the fact that no opposition has come forward
18 in the neighborhood, I think that if people in
19 the neighborhood found that this was going to
20 be crowding or create some kind of other
21 negative impacts we would see it in the
22 record, and it's not here.

1 CHAIRPERSON GRIFFIS: Well said.

2 COMMISSIONER TURNBULL: Mr. Chair,
3 I guess my only comment, and I would agree
4 with your comments and that of the Vice Chair,
5 obviously if this were a historic site,
6 historic home -- and I'm not taking any way
7 that if the applicant doesn't think that this
8 house is historic to him -- but if this house
9 was an historic house, obviously, and the
10 grounds were important, we'd be looking at it
11 a lot differently.

12 I think here, and again, looking
13 at and not to disagree with OP totally, there
14 is a uniqueness to -- if you look at this
15 neighborhood, there is a uniqueness in that
16 this site, this particular lot is an awkward
17 lot, and it's either -- as the applicant is,
18 if you've looked at it, you could put a huge
19 house on this lot which would change the
20 character of the neighborhood.

21 I would think, again, looking at
22 it, dividing this current lot into two, it is

1 de minimis, and I think that it does not
2 affect the character of the neighborhood, and
3 I would go along with this.

4 CHAIRPERSON GRIFFIS: Excellent.
5 Thank you.

6 Others? Any comments,
7 deliberation?

8 (No response.)

9 CHAIRPERSON GRIFFIS: Very well.
10 If there's no further comments or deliberation
11 required, we do have a motion before us that
12 has been seconded. I ask for all those in
13 favor signify by saying aye.

14 (Chorus of ayes.)

15 CHAIRPERSON GRIFFIS: And opposed?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Ms. Bailey,
18 if you wouldn't mind recording the vote.

19 MS. BAILEY: Mr. Chairman, the
20 vote is recorded as four, zero, one to approve
21 the application. Mr. Griffis made the motion,
22 Mr. Mann second. Ms. Miller and Mr. Turnbull

1 support the motion. Board Member Etherly is
2 not present at this time.

3 CHAIRPERSON GRIFFIS: Excellent. I
4 don't see any reason unless there's opposition
5 from the Board or the applicant that we
6 wouldn't waive our rules and regulations and
7 issue a summary order on this, unless there's
8 any difficulty with that.

9 I appreciate everyone's
10 participation, and I ask specifically that the
11 opportunity of the individual ANC members
12 decide to write in to clarify their individual
13 positions, since there was no official ANC
14 position, and also the council member in this
15 area was obviously informed.

16 With that being said, thank you
17 very much. I appreciate it. Have a great
18 morning.

19 MR. TUMMONDS: Thank you.

20 CHAIRPERSON GRIFFIS: And let's
21 move ahead.

22 MS. BAILEY: Application No. 17568

1 of 3510 16th Street, LLC, pursuant to 11 DCMR
2 3103.2, for variances from the nonconformance
3 structure provisions under Subsection
4 2001.3(a) and the lot occupancy requirements
5 under Section 403, to allow a three-story
6 addition to an existing apartment building.
7 The property is zoned R-5-D, and it's located
8 at 3508 through 3510 16th Street, N.W.

9 Mr. Chairman, excuse me. I
10 received this morning from Mr. Brown a revised
11 survey of the plat showing the property on one
12 lot of record. So I'll pass that out at this
13 time.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Thank you.

16 I appreciate that, and staff did
17 make note that there was a subdivision that
18 seems pending on the application. So
19 obviously this will bring some clarification
20 to it.

21 Excellent. Why don't we move
22 ahead? I'll have you introduce yourself and

1 the folks that are with you.

2 And let me just say this is a very
3 clear and succinct application. So I think we
4 can kind of hit the highlights on it. The
5 Board may have a few questions, but I'll turn
6 it over to you.

7 MR. BROWN: Thank you, mr.
8 Chairman.

9 Patrick Brown from Greenstein,
10 DeLorme & Luchs on behalf of the applicants.
11 With me this morning to my immediate right is
12 Faisal Khan and next to him is Oswald Durant,
13 both principals in the applicant. They're
14 available to provide an overview or to answer
15 your questions.

16 We've tried to put together a
17 complete package. I would indicate that the
18 Office of Planning has recommended approval as
19 well as the ANC, and this is a relatively
20 straightforward matter involving a
21 nonconforming structure where the variance
22 goes to the underlying nonconformity of lot

1 occupancy.

2 In doing so, we've laid out the
3 three-part test in a clear fashion, and I
4 think I would leave it at that at this stage.

5 We have some additional pictures
6 should that be necessary or I think it might
7 be just best to open it up to the Board's
8 questions.

9 CHAIRPERSON GRIFFIS: I appreciate
10 that. I think this is very straightforward.
11 Section 2001.3 allows for additions to
12 nonconforming structures as long as they meet
13 certain requirements, that being lot
14 occupancy.

15 Obviously this doesn't meet lot
16 occupancy. So you'll hear for that. As we
17 look at this, and do correct me if I am
18 incorrect in my now statement, this is taking
19 down an addition that was prior done. There
20 was no documentation determining that,
21 irregardless, and it's replacing those.

22 So that any of the nonconformities

1 are not being extended or added onto, but
2 rather the footprint is staying the same.

3 I would also note that this is
4 nonconformance to rear yard; is that correct?

5 MR. BROWN: That's correct.

6 CHAIRPERSON GRIFFIS: Okay, and
7 that would fit within the 2001.3 in my reading
8 of the regulations. If it was conforming to
9 lot occupancy, but not to rear yard this could
10 move ahead as a matter of right, and
11 therefore, it wasn't requesting relief from
12 the rear yard; is that right?

13 MR. BROWN: That's correct, and
14 there's no change in the rear yard. The
15 footprint of this building stays exactly as it
16 is now, and we're just talking about utilizing
17 that space above the first addition and, quite
18 frankly, value added in removing the less than
19 idea wood frame structure with a more
20 compatible visually historically and
21 structurally compatible edition well within
22 the height and FAR requirements.

1 So I think the end result from a
2 perspective of zoning as well as historic
3 preservation, which is important in this area,
4 we have a value added, a better situation,
5 again, all within the confines of the zoning
6 restrictions.

7 CHAIRPERSON GRIFFIS: In terms of
8 the uniqueness, of course, you've asserted
9 that part of the unique aspect of this is the
10 historic district that it's in, also the
11 corner and the shape of the lot, and then the
12 condition of what was there.

13 You were, and I should be clear to
14 truly understand, adding FAR on this, but was,
15 as you just stated and obviously in the
16 written submission, that it's within the
17 allowable FAR for this.

18 Okay. I don't have any further
19 questions or clarifications, unless there are
20 other Board members that have any.

21 (No response.)

22 CHAIRPERSON GRIFFIS: Very well.

1 Let's move right ahead into the Office of
2 Planning. A very good morning.

3 MR. PARKER: Good morning, Mr.
4 Chairman, members of the Board.

5 OP agrees the record is fairly
6 complete. I'm happy to elaborate on our
7 written report, but in the absence of any
8 questions, I'll be happy to stand on the
9 record as well.

10 CHAIRPERSON GRIFFIS: Excellent. I
11 appreciate it.

12 I would make note that you
13 addressed the rear yard, which I think was
14 very informative in terms of looking at the
15 analysis and a full understanding of the
16 application, which I think was appropriate.

17 Do other have questions of the
18 Office of Planning from the Board?
19 Clarifications?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Does the
22 applicant have any cross examination of the

1 Office of Planning?

2 MR. BROWN: No, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: No cross.

4 Very well. Thank you very much.

5 Let's move heard then to other
6 government reports attendant to this
7 application. We will note, as we've said, the
8 site is located in the Mount Pleasant Historic
9 District. The Office of Planning had
10 indicated that HPRB reviewed the project in
11 October of '05 and had given conceptual
12 approval.

13 I believe that there were some
14 material elements that were going to be
15 discussed with that. I would also ask if ANC-
16 1D is present. Is anyone from the ANC
17 present?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Not noting
20 any presence, we do have Exhibit No. 22, which
21 was recommending approval of the application
22 that indicated the ANC indicated that they had

1 been by and did not see anything that would
2 have -- let me pull it out so that I don't
3 misquote -- they reviewed the plans and
4 inspected the site and has neither issues nor
5 concerns for the proposed zoning variance.

6 I believe this meets all of the
7 requirements attendant to giving great weight
8 by the Board. It doesn't delve deeply into
9 the variance thresholds that we need to
10 address, but I think it does its job.

11 That being said, other questions
12 or comments on that?

13 (No response.)

14 CHAIRPERSON GRIFFIS: If there's
15 nothing further, then we have the Office of
16 Planning and the historic with the ANC. I'd
17 ask for any persons present to provide
18 testimony on Application 17568. Is there any
19 person that would like to address the
20 application?

21 Yes, come on up.

22 MR. CARRILLO: Hi. My name is

1 Eric Carrillo.

2 CHAIRPERSON GRIFFIS: Yes.

3 MR. CARRILLO: My address is 3502
4 16th Street, the same block, Washington, D.C.,
5 Northwest.

6 I guess I have to admit that I
7 came here as much to ask questions as to make
8 any statements. I wasn't clear if this
9 addition would, I guess, elevate the overall
10 structure, you know, above where it is or
11 whatever, or if it's on the side.

12 Because when we saw it posted on
13 the notice or whatever, we thought that it was
14 an addition that was building upward, and that
15 was our concern. We wanted to kind of -- this
16 is my father. He's one of the homeowners
17 there. We've lived there 21 years. So
18 anything that would dramatically, you know,
19 alter the appearance of the block, as well as
20 coordinating with the beginning of the next
21 block, which is, I believe, two or three story
22 buildings we would, you know, be opposed to.

1 But we weren't sure if that was
2 the case or not with this proposed addition.

3 CHAIRPERSON GRIFFIS: Excellent,
4 and I appreciate you being down here and
5 asking this question.

6 They probably presented all of
7 this at the ANC meetings. Maybe you weren't
8 there, but that's fine. While we're here and
9 we have ample time, this is a little bit
10 outside of what we would normally do, just
11 based on the fact of the time requirements and
12 also what was needed, but I'm sure the
13 applicant will share exactly what they're
14 proposing at this time.

15 MR. BROWN: We'd like to show and
16 I think the best way to do it is elevations of
17 the proposed construction.

18 CHAIRPERSON GRIFFIS: Right, but
19 while they get that prepared, what is being
20 presented is not an addition to the top of
21 this, but rather I'm sure you're very familiar
22 with the property. There's a small piece of

1 an addition. Some of it is brick. Some of it
2 is kind of wood.

3 MR. ERIC CARRILLO: Yes, very
4 ugly.

5 CHAIRPERSON GRIFFIS: Yes, indeed.
6 That ugly part, as you've well described in
7 the zoning technicality of the nomenclature,
8 is coming off, and they are proposing to add
9 back in the same general area a little bit
10 larger addition, but in that same footprint.

11 So that the building is not going
12 higher. Now, that is the front elevation,
13 right?

14 MR. BROWN: Yes. It shows, again,
15 looking at it from 16th Street, your property
16 would be down this way, toward Maine. This is
17 where they're filling in, again, maintaining
18 the roof line, which is one of the critical
19 factors rising out of the historic district
20 restrictions.

21 CHAIRPERSON GRIFFIS: So this is as
22 if we're looking at it from 16th Street.

1 MR. BROWN: That's correct.

2 MR. JAIME CARRILLO: So there
3 won't be any -- if there are changes to the
4 property because it is a historical district.
5 You're not supposed to change windows in
6 there.

7 CHAIRPERSON GRIFFIS: State your
8 name and address, please.

9 MR. KHAN: I'm sorry. My name is
10 Faisal Khan. My address is 701 Easley Street,
11 Silver Spring, Maryland 20910.

12 I just wanted to state that we're
13 working closely with Tim Denay of the
14 Historical Society to insure that we match the
15 brick, the brick molding, and the stucco, and
16 also the wood windows that they would want
17 that would be in keeping with the respect of
18 the structure.

19 It's in the Mount Pleasant
20 Historic District, and you know, we're working
21 closely with them.

22 CHAIRPERSON GRIFFIS: Right. So

1 you're under full Historic Preservation
2 review. So not only just a staff member, but
3 the Board may well have to review this.

4 Do you have questions on the
5 proposed front elevation?

6 MR. ERIC CARRILLO: Well, I think
7 they have probably been answered, but I did
8 have questions on it, but I think I understand
9 what is being proposed.

10 CHAIRPERSON GRIFFIS: Okay and just
11 for my understanding, as you look at the front
12 elevation from 16th looking at this site
13 property, where are you in relation to it?

14 MR. ERIC CARRILLO: To the left,
15 or south, two doors.

16 CHAIRPERSON GRIFFIS: So you're
17 down, but you're on the attached --

18 MR. ERIC CARRILLO: Three doors
19 south of the 08.

20 CHAIRPERSON GRIFFIS: Excellent.
21 So the impact on you, do you understand if
22 there is any impact on yours?

1 MR. ERIC CARRILLO: Yeah, I mean,
2 it wouldn't really. It' all the way down at
3 the end of the -- I understand where it is.

4 CHAIRPERSON GRIFFIS: Okay,
5 perfect. What else can we do?

6 MR. JAIME CARRILLO: My other
7 concern is the parking situation that we have
8 on that area. We don't have enough parking
9 for the people that have lived here for years.
10 So actually I'm not opposing to being
11 condominiums, but I still want to make sure if
12 they're going to do anything about parking or
13 they're going to propose some parking areas
14 for residents.

15 CHAIRPERSON GRIFFIS: Excellent.
16 They're not here for review of relief of
17 parking, but let's ask the question. What are
18 you doing for parking?

19 MR. DURANT: Actually there's not
20 much we can do for parking.

21 CHAIRPERSON GRIFFIS: Do you want
22 to turn the mic on?

1 MR. DURANT: Sorry. Yes, we'd
2 love to have more parking, but we don't have
3 the property ourselves, and unfortunately
4 there's not much we can do. We have to deal
5 with the park, the street parking, that we
6 have for everyone else.

7 But this proposed addition, really
8 I don't think it will affect -- I mean the
9 number of units are not changing. It's the
10 look and feel of it and actually making some
11 units a little larger, but that won't change
12 parking. The number of units will be the same
13 regardless of the addition.

14 MR. ERIC CARRILLO: Well, I don't
15 think anybody currently lives in that ugly
16 little brick and wood thing that exists there
17 now. So I think that it would affect parking.

18 As my father was saying, it's a
19 very tight parking situation currently. If
20 you arrive there, let's say, after 6:00 p.m.,
21 you will not find a parking spot in that
22 immediate area, you know, in Brown Street

1 behind or Meridian or any of those streets.
2 You basically have to go a few or possibly
3 even several blocks away.

4 So that was also one of our
5 concerns.

6 CHAIRPERSON GRIFFIS: Excellent.
7 Yes.

8 COMMISSIONER TURNBULL: I just had
9 a question. The little addition at the side
10 there, isn't that part of the first floor
11 unit? I mean, the existing floor plan sort of
12 shows that there are two bedrooms that come
13 off.

14 MR. DURANT: Well, what it is, the
15 first floor, if you see the photos, this, so
16 that everyone can see, this brick addition
17 right up to here is all brick. That is the
18 first floor, part of the first floor.

19 The two ugly or vinyl siding that
20 you see up top, that's what we're proposing
21 adding to this going up, and so yes, the first
22 floor unit already has -- part of the first

1 floor unit is here.

2 COMMISSIONER TURNBULL: But that's
3 already tied into another first floor.

4 MR. DURANT: Yes.

5 MR. KHAN: All of the additions
6 are part of a unit.

7 COMMISSIONER TURNBULL: They're
8 all going to be --

9 MR. DURANT: This is the ugly one
10 that you see.

11 COMMISSIONER TURNBULL: So it's
12 not like you're getting new tenants.

13 MR. DURANT: No, no.

14 COMMISSIONER TURNBULL: You're
15 just increasing the bedrooms on those existing
16 units.

17 MR. DURANT: Yes.

18 COMMISSIONER TURNBULL: So the
19 amount of occupancy of numbers of units
20 doesn't change.

21 MR. DURANT: No.

22 MR. CARRILLO: But with increased

1 bedrooms, I would submit that that would be
2 increased people, of course.

3 MR. BROWN: We could argue the
4 point either way, but increasing an efficiency
5 to a one bedroom may not, in fact, increase
6 the occupancy load. It just may create a
7 separate bedroom. We'll assume that an
8 efficiency would have a bedroom facility
9 there.

10 The other thing is in looking at
11 this, because of the very minor increase,
12 there is no additional parking requirement
13 imposed, and given its longstanding existence,
14 the parking is not a factor in this
15 application requiring relief.

16 CHAIRPERSON GRIFFIS: So you're
17 saying based on the zoning regulations that
18 calculate what parking is required by every
19 property in the city, the proposed addition
20 here, the proposed renovation does not invoke
21 additional parking requirements.

22 MR. BROWN: That's correct.

1 Increases of less than 25 percent do not give
2 rise to an additional parking requirement.

3 CHAIRPERSON GRIFFIS: Very well.
4 Anything else we can address?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Excellent.
7 Thank you.

8 Is there questions from the Board?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Is there
11 cross from the applicant?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Appreciate
14 your coming down and providing that very
15 insightful information and testimony.

16 Let's move ahead then. If there's
17 others here present to provide testimony for
18 the Board?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Not noting
21 any other individuals present to provide
22 testimony either in support or in opposition,

1 we can move ahead. I don't have any other
2 aspects to address in this application.

3 I'll turn it over to you for
4 closing summation.

5 MR. BROWN: I'd just like to close
6 asking that I think under the circumstances
7 that a bench decision, summary order would be
8 an appropriate conclusion and use of the
9 Board's resources in resolving this matter and
10 would ask for both.

11 Thank you.

12 CHAIRPERSON GRIFFIS: Very well. I
13 don't disagree. I think the record is
14 absolutely full on this, and I think it would
15 be appropriate to move for approval of
16 Application 17568 of 3510 16th Street, LLC.
17 This is, of course, for the addition to the
18 nonconforming structure under provisions of
19 2001.3, and that is for the premises of 3508-
20 3510 16th Street, N.W.

21 I would ask for a second.

22 COMMISSIONER TURNBULL: Second.

1 CHAIRPERSON GRIFFIS: Thank you
2 very much, Mr. Turnbull. I do appreciate it.
3 there's a couple of unique aspects
4 we've been through. One, the shape of the
5 lot, the historic district and all of those
6 are components of elements that render the
7 uniqueness and also the practical difficulty.
8 What we have is an existing nonconforming.
9 The regulations address properties of this
10 nature and say you can accommodate. You can
11 add on to structurally change, put additions
12 to, just as long as your lot occupancy is in
13 the appropriate level, and that is of
14 conforming lot occupancy.

15 Based on the fact of the site and
16 the existing building, it does not, therefore,
17 come to us as a nonconforming addition to
18 nonconforming. Part of the unique practical
19 difficulties, where and how they could deal
20 with, and also the history of the construction
21 of this and the additions that are put on that
22 were shown to be of substandard structural

1 integrity and also not accommodating the
2 historic district that this is in. What's
3 being proposed is well in line with that that
4 the regulations, I think, in my reading
5 anticipate for the reanimation and upkeep and
6 revitalization of properties.

7 Clearly, there is not aspects of
8 lot occupancy that are changing. It's staying
9 well within the FAR that is allowable in the
10 R-5 district where it's located.

11 The other additional
12 nonconformities are not being added to and
13 actually are just staying the same. All in
14 all, it's a supportable project, and outside
15 of the major concerns, which I think is a
16 great concern for this area generally, and
17 that is of parking. However, it was shown
18 that there is on parking relief required for
19 this based on the regulations and what is in
20 existence there.

21 The addition, of course, and the
22 placement of the materials from the zoning

1 perspective I've addressed; from the design
2 and historic perspective are going to be
3 addressed by the staff members or the HPRB,
4 and I think that we can have great reliance
5 that that will be well done in terms of
6 material choice and articulation.

7 Whether this would impair a
8 particular zone plan map or be against the
9 public good I think is shown in the R-5-D,
10 which is an interesting district to overlay
11 onto this block in particular, but it clearly
12 doesn't go beyond or outside of that which is
13 proposed in that district and would be against
14 public good or have showing that it would.

15 I'll leave it at that for my
16 comments and open it up to others for theirs.
17 Yes, Ms. Miller.

18 VICE CHAIRPERSON MILLER: I just
19 want to comment on the neighbors' concern
20 about the increase in parking because that is
21 something that we do hear in cases, that
22 whenever there's an improvement to property,

1 that means that more people may move into that
2 area, and they may bring cars in that. In a
3 lot of areas of the city, parking is a
4 problem.

5 So that's a real concern, but I
6 want to say that there are regulations that
7 govern parking requirements, and in this case
8 the applicant meets those, and the variance
9 log doesn't contemplate that we deny a
10 variance because a property will be improved
11 and used and, therefore people will come. The
12 parking problems need and should be addressed
13 in other forums.

14 Thank you.

15 CHAIRPERSON GRIFFIS: Any further
16 deliberation from the Board?

17 (No response.)

18 CHAIRPERSON GRIFFIS: In two
19 seconds. Very well, if there's no other
20 further deliberations from the Board, we do
21 have a motion before us. It has been
22 seconded. I would ask all in favor to signify

1 by saying aye.

2 (Chorus of ayes.)

3 CHAIRPERSON GRIFFIS: And opposed?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Abstaining?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Let's record
8 the vote.

9 MS. BAILEY: Mr. Chairman, the
10 vote is recorded as 401 to approve the
11 application. Mr. Griffis made the motion.
12 Mr. Turnbull seconded the motion. Ms. Miller
13 and Mr. Mann support the motion, and Board
14 Member Etherly is not present at this time.

15 CHAIRPERSON GRIFFIS: Excellent.
16 Unless there's ny objection from the Board, I
17 think we are ready to issue a summary order on
18 this.

19 To your question, we're under a
20 motion, but now that that's dispensed with,
21 what can I do?

22 MR. CARRILLO: I thought I heard

1 during the course of the proceeding that when
2 the addition as is was originally built, it
3 was built without any type of permission. Is
4 that correct?

5 CHAIRPERSON GRIFFIS: From the
6 written statement from the applicant, there
7 was no evidence that as permit was pulled.
8 Whether it was or wasn't I'm not sure, but
9 they couldn't find evidence of that.

10 MR. CARRILLO: Okay. So I guess I
11 don't understand the rationale of allowing an
12 addition that, to begin with, was built
13 without permission to be further developed.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. CARRILLO: So what is that
16 rationale? I mean, do you understand my
17 question?

18 If it wasn't a legit addition to
19 begin with, why would it be legit now just
20 because it's there? And why would it be
21 considered legitimate to add onto that
22 addition?

1 CHAIRPERSON GRIFFIS: Right.
2 There's a lot of things that you're asking
3 that I fully understand. The whole aspect of
4 legitimate is an interesting phrase. One,
5 whether actual permits from DCRA were pulled,
6 that's one element of legitimacy. Whether
7 there's legitimacy in the zoning regulations,
8 of course, that's what we're here for.

9 We have nothing to do directly
10 with whether permits are pulled or not pulled.
11 the case which they made today was a small bit
12 based on the existing condition, which was
13 those pieces that were there, but not wholly
14 on the fact that's there; therefore, we're
15 going to build more.

16 But I'll turn to the applicant if
17 they want to address that very briefly.

18 MR. BROWN: Well, I think the end
19 result of today and the whole process is to
20 legitimize the end result. What may have
21 occurred over time, particularly the wood
22 sided addition, we're not able to document,

1 but the end result of this process is that
2 everything that will be there will have been
3 approved by this Board for zoning purposes and
4 also be subject to building permitting and the
5 historic preservation review process.

6 So I think the end result is much
7 more legitimate, is fully legitimate, which I
8 think is really the goal of both this Board
9 and the DCRA processes to bring matters into
10 compliance.

11 CHAIRPERSON GRIFFIS: Yes. The
12 interesting thing as I look at the photograph
13 and also the drawings, at the first level or
14 the first two levels, it looked like they were
15 potentially original to the construction of
16 that whole line. So the other points of which
17 were of issue of the existing was the wood on
18 top. Whether those were original or not, who
19 knows? But there it is.

20 Excellent questions. I think
21 probably the applicant would avail themselves,
22 you know, while they're here today to answer

1 any other questions that you have in terms of
2 background or anything else on the project if
3 you'd like.

4 MR. CARRILLO: Okay. Good.

5 MR. BROWN: Be happy to.

6 MR. CARRILLO: Thanks.

7 MR. BROWN: Thank you, Mr.
8 Chairman and members.

9 CHAIRPERSON GRIFFIS: Thank you
10 very much. I appreciate it.

11 Ms. Bailey, is there anything
12 further from the Board? Mr. Moy.

13 MR. MOY: Mr. Chairman, just for
14 the record, it's staff's understanding that
15 the drawings that were approved were those
16 shown on Exhibit No. 10 in the case folder,
17 correct?

18 CHAIRPERSON GRIFFIS: Yes, that's
19 what I have. We have one set that are
20 submitted in --

21 MR. BROWN: That were part of the
22 original application.

1 CHAIRPERSON GRIFFIS: Right.

2 MR. BROWN: CoRrect, yes.

3 CHAIRPERSON GRIFFIS: With the site
4 plan there. Excellent.

5 Ms. Bailey, do you have anything
6 else for the Board?

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

9 CHAIRPERSON GRIFFIS: If there's
10 no further business for the Board, let's
11 adjourn. Thank you all very much. Have a
12 good morning.

13 (Whereupon, at 11:26 a.m., the
14 meeting was recessed for lunch, to reconvene
15 at 1:30 p.m., the same day.)

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1 understood that all of our proceedings are
2 being recorded. They're recorded in two
3 fashions. The court reporter on the floor on
4 my right is sitting there making the
5 transcript. We're also being broadcast live
6 in the Office of Zoning's Web site.

7 Attendant to that, I will be
8 asking that everyone will be presenting
9 testimony to the Board to fill out two witness
10 cards so they can go to the court reporter
11 prior to coming forward.

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

17 Some very important things to
18 understand. First, let's turn off of cell
19 phones and beepers so that we don't disrupt
20 the transmission of this.

21 But also importantly, the Sunshine
22 Act requires that we hold our hearings in the

1 open and in before the public. We do this,
2 although we do enter into executive sessions
3 at time for review of facts in each case. We
4 will always deliberate and make our decisions
5 in the open. All of that is in accordance
6 with our rules, regulations, procedures also
7 in accordance with the Sunshine Act.

8 The decision of all cases before
9 the Board and special exception variances are
10 contested and must be based exclusively on the
11 record that is created before us. We are
12 about to do that this afternoon.

13 Attendant to that, we would ask
14 that people not engage our members in private
15 conversations if you see us off the dais on
16 recess at any point during the day. We would
17 appreciate it.

18 That being said, let me say good
19 afternoon to Ms. Bailey to my far left, the
20 Office of Zoning, and Mr. Moy is with us with
21 the Office of Zoning also.

22 I would ask that all persons

1 present this afternoon that are going to
2 provide testimony to the Board, if you would
3 please stand and give your attention to Ms.
4 Bailey, she's going to swear you in.

5 MS. BAILEY: Would you please
6 raise your right hand?

7 (The witnesses were duly sworn.)

8 MS. BAILEY: Thank you.

9 CHAIRPERSON GRIFFIS: thank you
10 very much.

11 At this point then we can hear any
12 preliminary matters for the cases in the
13 afternoon. A preliminary matter is those
14 which led to other cases which would be heard
15 today. If you have a preliminary matter,
16 please come forward at this time, have a seat
17 at the table as an indication.

18 I'll ask Ms. Bailey, are you aware
19 of any preliminary matters to bring to the
20 Board's attention?

21 MS. BAILEY: Mr. Chairman, to
22 everyone, good afternoon, sir. Staff does not

1 have any.

2 CHAIRPERSON GRIFFIS: Very well.
3 Then let's proceed and call the first case in
4 the afternoon.

5 MS. BAILEY: Mr. Chairman, I just
6 wanted to say before calling the case that it
7 was amended, but I will be calling it as it
8 was advertised in the public register, but
9 this case was amended.

10 Application of Washington
11 International School, the number is 17560, and
12 it's pursuant to 11 DCMR 3104.1, for a special
13 exception to increase the number of private
14 school faculty and staff from 102 to 110, and
15 to increase the number of students from 425 to
16 450 under Section 206. The property is zoned
17 R-1-A, and it's located at 3100 Macomb Street,
18 N.W., Square 2084, Lot 827.

19 And also, Mr. Chairman, if I might
20 for just a second, to indicate that the
21 applicant perhaps should address the square
22 and lot. The lot was formerly known as Lot

1 837 in Square 284. It's now known as Lots 840
2 and 841. We do need an updated plat in the
3 record, Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Excellent.
5 Thank you very much. We'll have them address
6 that at their opening.

7 Very well. Ready? Very well. If
8 you wouldn't mind introducing yourself for the
9 record and let's get to the bottom of this
10 precarious square-lot situation.

11 MR. DePUY: Thank you, Mr.
12 Chairman, members of the Board.

13 For the record, I'm Jacques DePuy,
14 attorney with Greenstein, DeLorme & Luchs.
15 Appearing with me as co-counsel is Stephanie
16 Baldwin.

17 With respect to the lots, the
18 property has not changed. The property is
19 still the same. It simply has two lots as
20 opposed to one. The reason for that is that
21 the Washington International School is in the
22 process of doing what's referred to as a land

1 swap with the adjacent owner, Tregaron Limited
2 Partnership, and Mr. Hall will briefly touch
3 upon the relationship between Tregaron Limited
4 Partners and the Washington International
5 School.

6 But suffice it to say that there
7 will in the near future be some conveyances of
8 property between the parties, but for the
9 moment, there have been no such conveyances
10 and simply there is the creation of two
11 assessment and taxation lots to take the place
12 of the one former assessment and taxation lot,
13 but, again, it's the same property, the same
14 boundaries, the same perimeter. It now has
15 two lots as opposed to one.

16 CHAIRPERSON GRIFFIS: Okay. I
17 don't know that we need any additional
18 information then, do we?

19 MR. DePUY: I don't think you'd
20 need a plat to show that. It's the same.

21 CHAIRPERSON GRIFFIS: Okay. It
22 doesn't go to any of the elements of 206 that

1 we're discussing.

2 MR. DePUY: No, it does not. It
3 does not.

4 CHAIRPERSON GRIFFIS: Okay. I
5 think we're good, as long as Ms. Bailey has
6 sufficient information in the record to
7 address that.

8 Is there anything else that you
9 wanted?

10 MS. BAILEY: I think the
11 applicant's statement on the record should
12 suffice, Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Excellent.
14 Great. Thank you very much, Ms. Bailey.
15 Okay.

16 MR. DePUY: At this point, I'd
17 like to introduce our witnesses and give a
18 very brief opening statement.

19 To my right, Richard Hall, the
20 head of the Washington International School,
21 and to his right, David Cox, architect with
22 Cox Graae + Spack, and also if necessary, O.R.

1 George, traffic engineer, is here and
2 available to answer questions and also Mr. Tom
3 Alexander, who is the Director of Finance for
4 the Washington International School, is also
5 here in case there are questions that we need
6 to put him on to respond to.

7 I'd simply like to say that the
8 application was amended to include some
9 additional land, which is part of the land
10 swap that I referred to, though it's
11 unexecuted, and at this point for this purpose
12 we needed to get the permission of the
13 adjacent owner to include that land, which we
14 did get, so that the International School can
15 present today to this Board for approval, in
16 addition to the increase in the number of
17 faculty, staff, and students, also some
18 modifications to the site plan, which would
19 allow for the existing soccer field to be
20 expanded, for an existing basketball court to
21 be relocated, and for one small building
22 referred to as a gardener's cottage, to be

1 moved slightly as our witnesses will identify
2 to accommodate the expanded soccer field.

3 This matter, the revised site
4 plan, has been the subject of quite extensive
5 discussions in the community; has received
6 very strong support from the ANC, from friends
7 of Tregaron and other community
8 representatives; has also been the subject of
9 numerous hearings before the Historic
10 Preservation Review Board in conjunction with
11 proposals for the development of the adjacent
12 parcel owned by Tregaron Limited Partners.

13 And both the International
14 School's proposal and the proposed development
15 of the adjacent property by Tregaron Limited
16 Partners, which is proceeding as a matter of
17 right, have been approved by Historic
18 Preservation Review Board.

19 Having said that, I'd like to call
20 our first witness, Mr. Hall, and ask him to
21 give his testimony to the Board.

22 MR. HALL: Good afternoon, Mr.

1 Chairman. My name is Richard Hall, and I am
2 head of Washington International School.

3 We're here before you today to
4 request the Board's approval of the school's
5 application for a special exception to allow
6 the school to (a) increase the number of
7 faculty and staff from 102 to 110; (b)
8 increase the number of students from 425 to
9 450; and (c) permission to expand the size of
10 an existing soccer field on the school's
11 campus to regulation size.

12 Secondly, relocate the existing
13 outdoor basketball court.

14 And, thirdly, relocate the
15 existing gardener's cottage.

16 And, fourth, undertake landscaping
17 and other site work related to the foregoing.

18 The requested increase in faculty,
19 staff and students, as well as the expansion
20 of the soccer field to regulation size and the
21 other site and landscape improvements were the
22 subjects of extensive and wide ranging

1 discussions with the community, numerous
2 meetings, and a community process which took
3 well over a year to complete.

4 As a result of working closely
5 with the community, there is a strong and
6 widespread support for our proposal from
7 neighborhood organizations and ANC-3C.

8 The increase in faculty, staff and
9 students is a critically important element of
10 a written agreement which was reached with
11 friends of Tregaron and supported by ANC-3C.
12 Under the agreement, the preservation of the
13 historic Tregaron estate was assured. Limited
14 development of the Tregaron estate on that
15 portion not owned by WIS was agreed to, and
16 limited future site improvements to the WIS
17 campus which are not part of today's
18 application were accepted by all parties.

19 The revenues to be provided by the
20 increased enrollment vital to the school's
21 financial ability and its legal obligation
22 under the written agreement to fund a

1 significant portion of the effort to preserve
2 and conserve the historic Tregaron estate.

3 A copy of the written agreement
4 with the Friends of Tregaron was included with
5 the initial application filed with the Board.

6 Increase of faculty staff and
7 students. The increase in the number of
8 students at our school is tied to the need for
9 additional revenue to meet our obligation to
10 fund the effort to preserve and protect the
11 historic Tregaron estate.

12 The requested increase in the
13 number of faculty and staff will provide an
14 appropriate level of academic and
15 administrative support for the additional
16 students.

17 The increase in the number of
18 faculty, staff and students will not have a
19 negative impact on or cause objectionable
20 conditions or adversely affect neighboring or
21 nearby property. The school provides a
22 sufficient number of parking spaces to support

1 the increase in faculty and staff.

2 As well, the school restricts the
3 number of students which are allowed to bring
4 a car to campus, depending on the availability
5 of parking spaces from year to year, and of
6 course, with the additional 25 students being
7 spread across seven grades, few will be old
8 enough to drive. Thus, parking will be
9 unaffected by the increase in the number of
10 students and ample parking will continue to be
11 provided to accommodate the teachers, staff,
12 and visitors who come to the school by
13 automobile.

14 Additionally, the school's campus
15 is located on the property in such a manner so
16 as to assure compatibility with residential
17 homes in the neighborhood and in order to
18 minimize any potentially adverse negative
19 impacts.

20 Thus, activity on the campus is
21 substantially out of view from nearby property
22 and is not likely to become objectionable

1 because of noise or number of students.

2 We would like to clarify a point
3 made in the Office of Planning's report. The
4 school does not limit the number of students
5 who drive to school, only the number who drive
6 to campus. There are students who drive to
7 school and park within the neighborhood. The
8 ANC is aware of this practice and has
9 requested, as you will note in the ANC's
10 report that all students who drive to school
11 provide clear identification of affiliation
12 with their school on their car so that in case
13 there is a concern with a parked car, for
14 instance, a car blocking a driveway, the
15 school may be contacted and the situation
16 remedied.

17 The school will agree to provide
18 students with such identification.

19 Expansion of the existing soccer
20 field. The school also requests authority to
21 expand its existing soccer field so that it's
22 regulation size. The school needs a

1 regulation size soccer field to offer a full
2 range of athletic activities on campus and, as
3 well, to attract and retain a student body
4 that in today's competitive private school
5 marketplace expects such facilities.

6 Our current athletic field is not
7 only small, but it is also poorly graded and
8 lacking in appropriate signage, seating, and
9 other accoutrements, all of which serve to
10 prevent us from holding home games.

11 And because soccer is such a
12 popular sport, we believe that our inability
13 to offer a regulation sized field adversely
14 affects student recruitment.

15 The Historic Preservation Review
16 Board approved the concept design for the
17 expansion of the soccer field and the
18 relocation of the basketball court and the
19 gardener's cottage at its November 16, 2006
20 meeting. A copy of the Historic Preservation
21 Office staff report is included with the
22 revised application.

1 The expanded soccer field will be
2 located in the same area as the existing
3 athletic field on the western edge of the
4 campus and south of the addition to the arts
5 and athletic center currently under
6 construction.

7 In order to expand the soccer
8 field, the basketball court and the gardener's
9 cottage must be relocated. As will be
10 described by Mr. Cox in greater detail, both
11 the basketball court and the soccer field are
12 purposely positioned so that they will
13 essentially be invisible from the mansion.

14 Both the soccer field and
15 basketball court are also set back
16 considerably from Macomb Street, and are
17 screened by the school's buildings, insuring
18 compatibility with nearby residential homes.

19 As well, the elevation of the
20 field and court are set lower than the
21 existing terrain, reducing their visibility
22 not only from the mansion, but also from the

1 adjacent land.

2 Additionally, the regulation sized
3 soccer field will not cause any change in
4 operations of the school. For example,
5 currently the school hosts basketball games at
6 the campus. There are no traffic or parking
7 issues associated with the games. Visiting
8 school buses are able to park on the campus,
9 and with the events scheduled after school,
10 there is sufficient parking for spectators.

11 Thus, we do not anticipate any
12 problems from the use of the soccer field.

13 Like the requested increase in
14 students, faculty and staff, Friends of
15 Tregaron and ANC-3C also strongly support the
16 school's plan for an expanded and regulation
17 sized soccer field and other site and
18 landscape improvements.

19 In summary, the construction of a
20 regulation sized soccer field and the
21 relocation of the basketball court as well as
22 the gardener's cottage will not have any

1 adverse impacts on the surrounding properties,
2 nor will it produce objectionable amounts of
3 noise, traffic, numbers of students, or other
4 objectionable conditions.

5 I ask that you allow us to
6 increase our faculty, staff and student
7 numbers and expand our existing soccer field
8 by voting to approve the requested special
9 exception.

10 And before I conclude, I must
11 bring one more item to the Board's attention.
12 Under the school's 1997 BZA Order No. 16189,
13 Condition No. 12 limits our athletic events to
14 a number consistent with the number of such
15 events in its 1996-97 athletic calendar. The
16 condition goes on to allow an increase of the
17 schedule by no more than ten percent in the
18 aggregate.

19 As a part of the negotiations and
20 agreements with the neighborhood, we have
21 received support from the neighborhood to set
22 our limit for our athletic events to those

1 consistent with typical member schools of
2 Potomac Valley Athletic Conference, or a
3 comparable high school league, including the
4 usual and customary playoff games.

5 As such, we would like to request
6 a revision of that condition which reflects
7 our current agreement with the neighborhood.

8 I thank you for the opportunity to
9 testify, and I would be pleased to answer any
10 questions.

11 CHAIRPERSON GRIFFIS: Thank you
12 very much.

13 Questions.

14 MR. DePUY: Mr. Griffis, does it
15 make sense to call Mr. Cox and then have the
16 Board ask questions of both witnesses after
17 they have concluded or do you want to have
18 questions --

19 CHAIRPERSON GRIFFIS: We'll just
20 take a couple of quick questions right now and
21 I think we can get through this.

22 Ms. Miller.

1 VICE CHAIRPERSON MILLER: Does
2 Washington International School have a traffic
3 management plan in place?

4 MR. HALL: We do.

5 VICE CHAIRPERSON MILLER: And does
6 that address the issue of students who drive
7 to school who don't park on campus?

8 MR. HALL: Students who do not
9 park on campus park on the street and follow
10 the same regulations as anybody else who would
11 be parking on that street, and there is ample
12 parking on the street on Macomb Street.

13 And the ANC, we discussed this all
14 with the ANC.

15 VICE CHAIRPERSON MILLER: Well,
16 has there been a problem with students who
17 park on the street?

18 MR. HALL: No.

19 VICE CHAIRPERSON MILLER: Blocking
20 driveways or things like that?

21 MR. HALL: Not very much.
22 Occasionally it happens, and the ANC

1 requested, as you saw in the report, they
2 requested that we have visible identification
3 just in case that happens. There has not been
4 a large problem, no.

5 VICE CHAIRPERSON MILLER: I don't
6 think you included a copy of the TMP; is that
7 right?

8 MR. DePUY: It's set forth in one
9 of the prior BZA orders and referenced
10 specifically in a prior order. So we did not
11 resubmit it.

12 VICE CHAIRPERSON MILLER: I know
13 the Office of Planning references a condition
14 that talks about the school developing a
15 traffic management plan, and that it include
16 the following ABC. Is that what you mean?

17 MR. DePUY: Yes, yes, and that was
18 developed and is implemented on a regular
19 basis.

20 VICE CHAIRPERSON MILLER: And is
21 it provided to all of the families of the
22 school and the neighbors or the ANC or what?

1 MR. HALL: You mean as a total
2 document?

3 VICE CHAIRPERSON MILLER: So is
4 there a means by which the families and the
5 community is aware of what the TMP provides?

6 MR. HALL: Yes. At the beginning
7 of the year, for instance, we take certain
8 parts of the traffic management plan, which
9 we've been specifically asked to do, into our
10 publications, and so, for instance, it's one
11 way. There's only a one-way traffic on the
12 campus, and we remind them about that at the
13 beginning of the year. Those kinds of things
14 we are pretty attentive to making sure that
15 goes well because that means a lot to the
16 neighborhood.

17 VICE CHAIRPERSON MILLER: Okay.
18 Thank you.

19 MR. HOOD: Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. HOOD: Just a question. You
22 alluded to the parking in the neighborhood.

1 I know the ANC has asked you to put something
2 in place to kind of put some control measures
3 there. Is there zone parking in that area?

4 MR. HALL: There is.

5 MR. HOOD: There is zone parking.
6 So you can only park there two hours anyway.

7 MR. HALL: That's it.

8 MR. HOOD: Okay, all right.

9 MR. HALL: As I say, the students
10 are required to follow the same rules as
11 anybody else as far as that's concerned.

12 MR. HOOD: Okay. So you may have
13 a student that comes to one class?

14 MR. HALL: No, they'll come and
15 stay all day, but they can sometimes leave
16 campus.

17 MR. HOOD: Okay. I wonder how
18 does that work, and if they're only able to
19 park, I think zone parking is only two hours.

20 MR. HALL: That's right.

21 MR. HOOD: Unless there's
22 something different over there. So in other

1 words, they must leave the campus and go out
2 and move their car somewhere, and you have to
3 be outside of that zone.

4 MR. HALL: I'm sorry. I don't
5 understand.

6 MR. HOOD: Zone parking is only
7 two hours.

8 MR. HALL: That's right.

9 MR. HOOD: You said they're there
10 all day, and I'm just wondering how that
11 works.

12 MR. HALL: Well, either they have
13 a sticker, they have their own Zone 3 sticker
14 because they live with --

15 MR. HOOD: Or a ticket.

16 (Laughter.)

17 MR. HALL: Or they have to move
18 the car, yes.

19 CHAIRPERSON GRIFFIS: They have to
20 comply with the same rules and regulations
21 that anyone else.

22 MR. HALL: That's exactly it.

1 MR. HOOD: Okay. That's
2 interesting.

3 MR. HALL: And pay the ticket.

4 MR. HOOD: All right. Thank you.

5 CHAIRPERSON GRIFFIS: Good
6 question. Anything else?

7 MEMBER MANN: Did you voice an
8 opinion as to whether or not you agreed with
9 the ANC's request?

10 MR. HALL: I think I did, but we
11 do agree with the request and we will make
12 sure that is implemented for the next school
13 year.

14 MEMBER MANN: So there would be
15 some sort of identification that you would
16 agree to that would go on that automobile.

17 MR. HALL: And would be visible,
18 very visible.

19 MEMBER MANN: Now, would that be
20 incorporated into part of your TMP or is that
21 an adjunct to it?

22 MR. HALL: I'm not sure I know

1 what that means, but we'll do it.

2 MEMBER MANN: I was wondering
3 whether or not there was flexibility in your
4 TMP whereby, you know, this would be just one
5 way of implementing part of that TMP or
6 whether or not this was just outside of the
7 TMP and is just an additional something that
8 you're going to do.

9 MR. DePUY: I think the school
10 would accept it either as a condition to the
11 order or would agree to incorporate it in the
12 TMP, whichever the Board is more comfortable
13 with.

14 MEMBER MANN: That is what I was
15 going for.

16 MR. HALL: We felt that it was a
17 very reasonable request and we would be happy
18 to make sure that happens.

19 MEMBER MANN: Okay. Thanks.

20 CHAIRPERSON GRIFFIS: Excellent.
21 Any other questions of the Board at this time?

22 (No response.)

1 CHAIRPERSON GRIFFIS: All right.
2 One critical fundamental question that we
3 really can't go beyond in this application
4 until it's answered. What type of surface is
5 going on the soccer field?

6 (Laughter.)

7 MR. HALL: It will be an
8 artificial surface.

9 CHAIRPERSON GRIFFIS: Fabulous.
10 Okay. Let's move ahead.

11 MR. DePUY: Mr. Cox, would you
12 give your testimony to the Board, please?

13 MR. HALL: And we're accepting any
14 contributions to that surface that you would
15 care to give us.

16 CHAIRPERSON GRIFFIS: I thought you
17 were going to say and the allowable play list
18 is already starting because it looks like a
19 great field.

20 MR. COX: Good afternoon. David
21 Cox, a principal with Cox Graae + Spack,
22 architects.

1 I'll just briefly go through the
2 fundamentals of the play field. This is an
3 aerial view that was taken several years ago
4 of the back side of the campus with Klingle
5 Road down at the bottom portion of the
6 drawing. So we're looking north.

7 This is the existing play field
8 that's nestled against the west property line
9 with the Taiwanese Embassy, and the main
10 campus buildings, the mansion, you can see
11 them kind of sprinkled in this general area.

12 The basketball court that we had
13 referenced is placed at an odd angle just to
14 the east of the play field. the school cannot
15 presently hold competition games because of
16 the small size of the play field. It's about
17 117 feet long or wide by 255 feet long, and
18 it's about 50 feet short in both dimensions,
19 width and length.

20 And so that's a central feature of
21 this, to try to get a regulation size,
22 competition size high school play field and

1 how to do that in a way that is consistent
2 with the historic parameters that are overlaid
3 on the Tregaron site.

4 With those two elements, we've
5 been working this out with the Price of
6 Tregaron for well over a year, and the
7 ultimate scheme that's been approved is this
8 plan on my far right.

9 And just to kind of show you the
10 difference between in the site plan, these are
11 two drawings, both drawn at the same scale,
12 slightly cranked orientation with the proposed
13 plan, but this shows you the area in yellow
14 here, the sort of long, narrow shape of the
15 existing play field, and the basketball court
16 off to the east with the existing campus
17 building shown in brown at the upper part of
18 the drawing.

19 One thing I just want to point
20 out. This is the next academic addition with
21 the theater and library that we came before
22 you previously, which is currently under

1 construction, and one of the key things in
2 this project is the timing of the construction
3 so that we don't have to bring a contractor
4 onto the site a second time. At some point in
5 the future we want to try to tag the
6 construction of the play field onto the very
7 end of this building next spring, before the
8 contractor moves off site.

9 So that's why this whole thing is
10 very intimately tied together as one
11 disturbance to the site.

12 So with this plan now, what we're
13 doing basically is keeping the field at its
14 north end hugged as tightly as possible to the
15 line of the new addition as it is proposed and
16 tight to the west property line, but widening
17 it to the east and to the south.

18 And it's really this area in the
19 south that was a subject of all of the
20 potential impact discussions on the historic
21 pond area of Tregaron back here as part of the
22 Klingle Road zone.

1 And to that end, what has been
2 worked out with HPRB and the Friends of
3 Tregaron is a series of two tiered retaining
4 walls made from rubble stone that fitted into
5 the landscape with, as you can see, a very
6 heavy landscaping component that is inserted
7 basically weaving itself into the existing
8 tree line down at the southern end of the
9 campus.

10 The basketball court is shifted
11 from this angle and moved close to the edge of
12 the soccer field and basically integrated into
13 it. The elevation of the basketball court and
14 the soccer field are both at the same level,
15 and that elevation, this is a really key
16 element to making the walls down at this end
17 work.

18 This has dropped 13 feet from the
19 current grades of the soccer field as it is
20 now, and because of that, we have to build
21 retaining walls along the whole edge of this,
22 and then more retaining walls here.

1 But the 13 feet, at first it was a
2 four foot drop. Then we got it to eight feet,
3 and finally the approved plan is 13 feet.

4 So by dropping it that much, it
5 insures that the impact of the soccer field is
6 minimized on the surrounding area.

7 That's it in a nutshell. I had
8 one other photograph I just wanted to show you
9 of the current construction. This was taken
10 last week, and it's a shot standing roughly in
11 this area about in the middle of the soccer
12 field looking at the new construction. We're
13 just at the stage of digging the foundations
14 and the hole, but this would be the place
15 where the new soccer field would be going in.

16 I'm just reminded that as one
17 other part of this plan is that the width,
18 because we are adding 50 feet to the width of
19 the existing field, it does impact this one
20 small building, this former gardener's
21 cottage, and we are actually lifting this
22 building off its foundations and sliding it

1 about 25 feet further north and relocating it
2 so that it has an alignment with the adjacent
3 greenhouse building and our new library
4 building.

5 That allows some breathing room
6 down at this corner.

7 CHAIRPERSON GRIFFIS: Very nice.

8 MR. DePUY: Mr. Chairman, as I
9 indicated, Mr. George is here if there are
10 questions with respect to traffic or
11 transportation issues, and Mr. Alexander as
12 well, but in the absence of any questions from
13 the Board, this completes our case on direct.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Any questions of the engineers, financial?
16 Okay.

17 VICE CHAIRPERSON MILLER: I am
18 just wondering do you know how many students
19 drive to campus who don't park on campus?

20 CHAIRPERSON GRIFFIS: What is the
21 driving age in D.C.?

22 VICE CHAIRPERSON MILLER: Sixteen

1 and a half.

2 CHAIRPERSON GRIFFIS: Sixteen and a
3 half is the driving age?

4 VICE CHAIRPERSON MILLER: Isn't
5 that correct? I believe it -- here we go
6 again. I believe it's 16.

7 CHAIRPERSON GRIFFIS: Funny how
8 many school applications and we've never been
9 able to get that information.

10 VICE CHAIRPERSON MILLER: For the
11 permit, for the learner's permit.

12 CHAIRPERSON GRIFFIS: Okay.

13 VICE CHAIRPERSON MILLER: So
14 there's no -- nobody has numbers on that, on
15 the number of students who drive who don't
16 park on campus?

17 MR. DePUY: I do not, no.

18 VICE CHAIRPERSON MILLER: How many
19 students drive who do park on campus? Do you
20 know that?

21 MR. DePUY: About ten.

22 VICE CHAIRPERSON MILLER: Okay.

1 Do you know how many students are of driving
2 age at the school?

3 MR. DePUY: Well, I could make
4 some assumptions.

5 CHAIRPERSON GRIFFIS: You have to
6 know the driving age, wouldn't you.

7 VICE CHAIRPERSON MILLER: It would
8 be at least --

9 MR. DePUY: It would be some
10 juniors and seniors. The senior class is
11 about 60 typically, but certainly on a small -
12 -

13 VICE CHAIRPERSON MILLER: They
14 don't all drive, right. Okay. Thank you.

15 CHAIRPERSON GRIFFIS: If approved,
16 what is the construction schedule? When would
17 the soccer field be complete?

18 MR. COX: Construction would start
19 on the soccer field next summer and probably
20 take about three months.

21 CHAIRPERSON GRIFFIS: Wow. Mr.
22 Moy, will our team be up and running?

1 MR. MOY: It's on schedule.

2 CHAIRPERSON GRIFFIS: We're
3 launching an Office of Zoning's team. We want
4 to start taking on the rest of the city, play
5 the ANCs for a bit. Maybe we'll pay OP, a
6 little soccer.

7 Okay. Very well, if there is any
8 other further and definitive -- are there any
9 issues that came up? The record is full on
10 this, but doesn't get into great detail on
11 many of the aspects that oftentimes are of
12 critical nature.

13 Were there any other details that
14 we should be aware of in the community or any
15 sort of conversations regarding the increase
16 of students, staff, faculty, anything of that
17 nature?

18 MR. HALL: No. I think you have
19 the reports from both Bonnie LaParte, the head
20 of Friends of Tregaron, and also from the ANC.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. HALL: I think we did our

1 homework.

2 CHAIRPERSON GRIFFIS: Excellent.
3 Very well. Let's move ahead then if there's
4 nothing further at this time. We can get back
5 to that because I think there are a couple of
6 things we'll have to get into there.

7 Let's move on to the Office of
8 Planning.

9 MR. MORDFIN: Good afternoon,
10 Chair and members of the Board. I'm Steven
11 Mordfin with the Office of Planning.

12 And the subject application is in
13 conformance with provisions of Section 206 in
14 that it is for the continuation of an existing
15 private school and not a trade school. The
16 school is not likely to become objectionable
17 to adjoining and nearby property because of
18 noise, traffic, number of students, or other
19 conditions because the application proposes to
20 only increase the number of students by 25 to
21 450, and the number of faculty and staff by
22 eight to 110, and ample parking will be

1 provided because the school controls the
2 number of students that are permitted to drive
3 to the campus.

4 Therefore, the Office of Planning
5 recommends approval of the application as
6 submitted by the applicant.

7 Thank you.

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

10 Questions?

11 MR. HOOD: I had a question.

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. HOOD: It actually is more for
14 the applicant. I know I'm out of sequence.

15 CHAIRPERSON GRIFFIS: That's al
16 right.

17 MR. HOOD: Maybe Mr. Mordfin
18 knows.

19 What is the criteria for the
20 student? It may have been mentioned and I
21 just missed it or it may have been in the
22 submittals and I just missed it. But anyway,

1 what is the criteria for the students to drive
2 to the campus?

3 MR. MORDFIN: There is no criteria
4 in Section 206 for students to drive.

5 MR. HOOD: No, I'm saying there's
6 some students who drive, and this is probably
7 for the applicant.

8 Is there a criteria where or what,
9 do you they come down and say, "I've got a
10 car. Can I drive?" or how does that work?

11 MR. HALL: That's right, and they
12 will be required to register at the ANC has
13 requested. So they will not be able to drive
14 unless they have registered and have the
15 identification in the car.

16 MR. HOOD: I'm not even mentioning
17 about what the ANC has asked now. I'm just
18 saying if I wanted to drive my car, I just
19 want to know do I just come to you and say I
20 want to drive?

21 MR. HALL: That's right.

22 MR. HOOD: And I'll get a space?

1 MR. HALL: That's right, or if
2 there are spaces you get a space, yes.

3 MR. HOOD: Oh, okay. All right.
4 That's fine.

5 Thank you.

6 CHAIRPERSON GRIFFIS: It's an
7 excellent question. How many spaces do you
8 have to allocate for students?

9 MR. HALL: That will depend on the
10 year, and this year -- it's ten this year? --
11 it's ten this year, probably fewer than usual
12 because of the fact that we have construction.

13 CHAIRPERSON GRIFFIS: Well, what
14 makes them available or not available? Do
15 they go to the faculty first?

16 MR. HALL: Yes, yes.

17 CHAIRPERSON GRIFFIS: Based on the
18 faculty that are driving?

19 MR. HALL: Yes, yes.

20 CHAIRPERSON GRIFFIS: Anything left
21 over then would be students, and it's first
22 come first serve or --

1 MR. HALL: Exactly -- wait. No,
2 there's a system that I'm not quite aware of
3 that --

4 CHAIRPERSON GRIFFIS: The captain
5 of the soccer team gets one special space.

6 MR. HALL: It may be a lottery,
7 but I'm not sure.

8 CHAIRPERSON GRIFFIS: I'm kind of
9 hooked on this soccer thing.

10 Okay. So there's obviously some
11 way that it's apportioned out.

12 MR. HALL: Yes, it is.

13 CHAIRPERSON GRIFFIS: But there's
14 obviously a limited number.

15 MR. HALL: That's right.

16 CHAIRPERSON GRIFFIS: And so if
17 it's a lottery -- right now you're saying ten
18 drive, but that's based on not demand, but
19 rather availability of parking.

20 MR. HALL: That's right.

21 CHAIRPERSON GRIFFIS: Do you know
22 off hand in nay year or last year how many

1 requested on-site parking?

2 MR. HALL: I do not.

3 CHAIRPERSON GRIFFIS: Do we know,
4 an assessment? I mean are there 500
5 requesting parking and ten get them?

6 MR. HALL: Oh, no, no, no, no, no.
7 And, again, there is parking around the
8 school.

9 CHAIRPERSON GRIFFIS: Sure, sure.

10 MR. HALL: There's plenty of open
11 parking around the school. That's really not
12 an issue for us. We've not had complaints of
13 that kind involved.

14 CHAIRPERSON GRIFFIS: Okay. Yes.

15 VICE CHAIRPERSON MILLER: I don't
16 know if Mr. George identified this or whether
17 you know. You say that there's plenty of
18 parking around the school on the street. Do
19 you know how much that means? I mean, how
20 many spaces are normally available during the
21 school day?

22 MR. GEORGE: Ms. Miller, for the

1 record, Osborne George.

2 Good afternoon. We did not as
3 part of this application do a detailed parking
4 survey. We did so during the last cycle of
5 applications in 2005 and 2006, and we found
6 that, to the best of my recollection, there
7 was considerable number of spaces available,
8 as Mr. Hall has indicated.

9 In addition, I think Mr. Hood has
10 talked about the zone parking and the
11 restrictions, and he's correct.

12 To the Klingle Road side of the
13 school frontage, that section, there are a
14 number of spaces, and again, speaking just
15 from my recollection, it's between 20 and 30
16 spaces that are available that are not subject
17 to the RPP restrictions, and those spaces
18 appear to be used.

19 So, again, from the previous
20 studies that we have done, there was
21 considerable spaces available during the
22 period of the school, which is essentially

1 from eight till three in the afternoon, and
2 there is a significant number of spaces to the
3 south side of the school within easy access.

4 VICE CHAIRPERSON MILLER: When you
5 say 20 or 30 spaces available, do you mean --

6 CHAIRPERSON GRIFFIS: That are not
7 RPP, residentially restricted.

8 MR. GEORGE: Let me clarify.

9 VICE CHAIRPERSON MILLER: But when
10 you do a site visit or something, do you
11 notice that there are 20 spaces available
12 during the day at a certain time or --

13 MR. GEORGE: Let me just state
14 again, obviously, because of the location of
15 the school and the streets which abut it, the
16 spaces within a convenient walking distance
17 are along Macomb Street to the north and
18 Klinge Street to the south.

19 We did surveys during the 2005-
20 2006 time period, and we found that during the
21 day from, let's say, between nine and three
22 there were a considerable number of spaces

1 available along Macomb Street.

2 I think the two hour parking limit
3 would, of course, be a strong deterrent, as
4 Mr. Hood has pointed out, but I'm saying along
5 Klinger Road to the south, there is a section
6 of roadway accommodating approximately between
7 20 and 30 spaces that are not subject to the
8 RPP regulations, and these appear to be used.

9 VICE CHAIRPERSON MILLER: So there
10 hasn't been a problem of illegal parking
11 because there aren't enough spaces on the
12 street for the students to park.

13 MR. GEORGE: Not that we were
14 aware of, and as was stated by several
15 persons, the students who parked would be
16 subject to the RPP regulations as would anyone
17 else.

18 VICE CHAIRPERSON MILLER: And
19 isn't it also true that actually that 2005
20 study might be a more accurate study to look
21 at than something done now since there's
22 construction being done on Macomb Street?

1 MR. GEORGE: Precisely so, and we
2 stated that in our brief report. So we didn't
3 repeat the study because the conditions are
4 not representative of what would typically
5 apply within the neighborhood.

6 VICE CHAIRPERSON MILLER: Right.
7 Okay. Thank you.

8 MR. GEORGE: Okay, great. Thanks.

9 CHAIRPERSON GRIFFIS: Excellent.
10 anything else then for the applicant, Office
11 of Planning?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Any cross of
14 the Office of Planning?

15 MR. DePUY: No.

16 CHAIRPERSON GRIFFIS: Let me ask.
17 I don't see, but is the ANC present today?
18 Anyone representing the ANC?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Not having
21 any representations, let's move ahead then.
22 We'll make note of Exhibit 33, which is from

1 the ANC-3C, which notes their process review
2 and also the resolution. I think we've
3 touched upon it several times, of course, the
4 condition that they are requesting the Board
5 review for registering all student drivers and
6 providing identification to be posted visibly
7 in or on any car driven to the school by the
8 student.

9 Yes?

10 VICE CHAIRPERSON MILLER: I just
11 want to comment. There isn't a member of the
12 ANC here today that I see.

13 Okay. I just want to comment that
14 the ANC requests this condition, but they
15 don't identify an adverse impact that it is
16 directed to mitigate against. They note, in
17 fact, that the ANC, and I quote, is not aware
18 of any complaints concerning the effectiveness
19 of the TMP, and they also note that the
20 traffic study concluded that the increase in
21 students, which is partially in response to
22 demand from families with children already in

1 the school would not have a noticeable impact
2 on traffic, and that the increase in staff
3 would probably result in a demand for five
4 more parking spaces that the school can
5 accommodate on site and remain in compliance
6 with Chapter 21.

7 I bring that up because when
8 we're evaluating this condition, we usually
9 impose conditions in an order in accordance
10 with the Court of Appeals' direction that they
11 are for the purpose of mitigating against
12 adverse impacts either that are existing or
13 that we can reasonably conclude would result
14 from the relief being granted.

15 CHAIRPERSON GRIFFIS: Indeed. Very
16 well. That being said, we've made note of the
17 ANC and also the other organizations,
18 foundations that have submitted on this.
19 Friends of Tregaron we have the letter from.
20 It's all in the evidence and also part of the
21 applicant's submission.

22 I don't have any other attendant

1 association or government agencies unless the
2 applicant is aware of any other that we have
3 not taken note of.

4 At this time then we can go to
5 persons here present to provide testimony in
6 support or in opposition to Application 17560.
7 Is there any other persons to provide
8 testimony?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Not noting
11 any other persons, let's move ahead a little
12 bit.

13 We were just handed this; is that
14 correct? The agreement between Washington
15 International School and Friends of Tregaron
16 Foundation?

17 MR. DePUY: Yes. That was
18 submitted in a prior case, but we recognized
19 that it was perhaps not submitted in this
20 proceeding, and we thought the Board ought to
21 have it to complete its file in this
22 particular proceeding.

1 CHAIRPERSON GRIFFIS: We're not
2 being asked to act on this though, are we?

3 MR. DePUY: No, but the condition
4 that Mr. Hall testified to that we would like
5 to ask the Board to change does come out of
6 this particular agreement, that is, the
7 reference to the 1997-1998, if I have the
8 dates correct, athletic calendar was dealt
9 with by this agreement, and that's the basis
10 for our request that that earlier condition be
11 modified.

12 CHAIRPERSON GRIFFIS: Right. It
13 was '96-'97, which is actually interesting.
14 I think this Board has taken great time and
15 attention to crafting conditions that allow
16 them -- first of all, that would obviously go
17 to mitigating a potential or evidenced adverse
18 impact.

19 Two, that would allow
20 measurability, understandability, and
21 therefore, compliance.

22 And in all of that wrapped in, I

1 think, we've always been diligent in making
2 sure that they have livability I would call
3 it, something that transcends the date the
4 order is issued or, like this one, 1996-97,
5 which seems to -- well, it doesn't seem to.
6 It obviously dates it and renders it kind of
7 somewhat difficult.

8 I don't think we're going to have
9 any difficulty in looking at that particular
10 condition as perhaps some of the others.

11 To that then, any other aspect in
12 this that we need to be aware of, as I can say
13 I have not read all of this through today as
14 it was just handed to us.

15 Is this still in force?

16 MR. DePUY: The agreement, yes.

17 VICE CHAIRPERSON MILLER: Did you
18 say it was done in connection with the BZA
19 order, a previous BZA order?

20 MR. DePUY: It was done at the
21 time that the school was developing the plans
22 for the building which was approved previously

1 that contains the additional classrooms, the
2 theater and the library. It was done at that
3 time, and this process actually today is a
4 continuation of that public process which has
5 gone beyond that building into the grounds and
6 historic estate restoration, et cetera. But
7 it has all been part of an ongoing process
8 with the community that has really lasted
9 although the witness has said one year, it has
10 been longer than one year because it really
11 goes back to the time of that building being
12 presented to this Board and to the HPRB.

13 VICE CHAIRPERSON MILLER: Was it
14 submitted to the Board in connection with
15 that?

16 MR. DePUY: The agreement? Yes.

17 VICE CHAIRPERSON MILLER: At that
18 time?

19 MR. DePUY: It was submitted in
20 connection with that addition, the prior BZA
21 case.

22 CHAIRPERSON GRIFFIS: Okay. Thirty

1 more seconds on the absurdity. We're asking
2 to condition the use of the athletic field for
3 a fixed number of events of athletic nature,
4 and if you look at this agreement it actually
5 goes to the number that would be comparable to
6 the high school league or the Potomac Valley
7 Athletic.

8 So I guess I'm wondering what's
9 the adverse condition that we're actually
10 addressing, that this be used for athletic
11 events?

12 It can be used for as many as are
13 needed to participate in the league.

14 MR. HALL: That's right.

15 CHAIRPERSON GRIFFIS: Okay. What
16 would be non-use of an athletic event? I
17 guess I'm not understanding what we're
18 actually trying to get to here.

19 MR. DePUY: One possible
20 resolution would be simply to delete the
21 earlier condition because the school is still
22 bound by its agreement with Friends of

1 Tregaron and the ANC. So it is bound to abide
2 by this modified condition, but I agree that
3 the language --

4 CHAIRPERSON GRIFFIS: It would seem
5 you're going to get into kind of limiting the
6 use of an athletic field for athletic event.
7 I mean, how many are we talking about?

8 And again, not even that. I mean,
9 it goes to the bigger picture as what is it
10 that would be an adverse condition based on
11 athletic events or a number of them?

12 VICE CHAIRPERSON MILLER: It could
13 be, you know, increased traffic of spectators
14 or participants. I mean there are things that
15 it could be. It could be, you know, more
16 noise on neighbors. It could be -- but, I
17 mean, it varies on the proximity of the field
18 to the neighbors.

19 So I mean, you know, I don't know
20 what's been shown in this case to be adverse
21 impact.

22 CHAIRPERSON GRIFFIS: Okay.

1 VICE CHAIRPERSON MILLER: I mean,
2 if you can articulate it, if it has been
3 concerns that are being addressed in this
4 agreement.

5 MR. DePUY: We're not aware of any
6 problems in this area that have been raised by
7 community groups. I think in the discussions
8 that led up to this agreement, the parties
9 obviously tried to deal with actual and
10 potential problems. So this may have been in
11 the category of potential, but
12 unfortunately --

13 CHAIRPERSON GRIFFIS: It can't be
14 potential. Let's cut to the quick on this
15 one. I mean, there is absolutely no limit to
16 athletic events. I mean, even read the
17 agreement, you could have anything that you
18 needed to in order to comply with the
19 comparable league or playoffs or anything of
20 that nature.

21 I mean it gets into it. When you
22 go to Exhibit C, it goes to non-athletic

1 events. Now, I can see that. At this point,
2 I mean, I'm not sure why we're going to need
3 to step into that at all. I mean, I don't see
4 anything that's rising out of the agreement,
5 out of what's in here or not.

6 But we can take that under
7 advisement.

8 MR. HOOD: Well, let me ask. Is
9 the field used for a carnival or anything or
10 is the field used for something other than
11 soccer?

12 MR. HALL: I think our concern is
13 that what's in order now, the BZA order now
14 that applies is the one from 1997. So what we
15 were trying to do was to simply regularize
16 that to what makes sense today and in relation
17 to what we talked with the ANC and the
18 neighborhood about and which they have
19 supported.

20 So it's a matter of just getting
21 the record straight.

22 CHAIRPERSON GRIFFIS: Sure. No,

1 I'm totally clear on that, and Mr. Hood brings
2 up an interesting issue because, you see, what
3 I'm seeing is there are two things and the
4 conditions are in the order and in the
5 agreement there's two types of events. One is
6 athletic and one is the non-athletic, and the
7 non-athletic I'm not even talking about.

8 You bring up an excellent point.
9 There is restrictions on that, which we don't
10 necessarily need to go into at this point.
11 The Condition No. 12 has its difficulty in
12 terms of setting it to the date of '96-'97.
13 I totally understand.

14 So I went further into the
15 agreement saying, okay, where did this come
16 from, and in the agreement, it says, "Well,
17 look. You're limited to athletic events on
18 the property." There's the wording:
19 consistent with typical member schools in
20 Potomac Valley Athletic Conference or
21 comparable high school leagues, including the
22 usual and customary playoff games and the

1 number of non-school events and functions.

2 Okay. So then I had to ask the
3 question: what are the potential athletic
4 events that go above and beyond that? That's
5 what I don't understand. What is this
6 actually regulating?

7 And even if there are these
8 potential athletic events that are happening
9 outside of that which the Potomac Valley
10 requires, what's the adverse impact to having
11 additional athletic events?

12 So I wasn't clear on any of it in
13 terms of just that. But now I've confused you
14 all with me. So we can continue on.

15 Anything lese on that?

16 VICE CHAIRPERSON MILLER: Well, I
17 mean, are we also to possibly conclude that
18 because there is this settlement agreement
19 that that's for all of these conditions within
20 this agreement, that there may not be a need
21 for additional conditions by the Board to
22 these points?

1 MR. DePUY: As to this point, yes.
2 I think there has been no evidence that there
3 are adverse impacts with respect to the number
4 of athletic events.

5 CHAIRPERSON GRIFFIS: Can this
6 field be used by anybody else? I mean, do you
7 have any agreements?

8 MR. HALL: No. The answer is no.
9 We are the only ones that use it.

10 CHAIRPERSON GRIFFIS: Are you aware
11 of any restrictions to that?

12 MR. HALL: No.

13 CHAIRPERSON GRIFFIS: Okay.
14 Anything else on that? Any other questions?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Very well.
17 Let's move ahead. What else do you need to
18 get to, Mr. DePuy?

19 MR. DePUY: We had nothing
20 additional to submit, and in lieu of a
21 summation, I would simply indicate that we
22 believe that the record is complete, both

1 based on the written submissions and the
2 testimony today that show that the special
3 exception requested is sufficiently
4 meritorious to be granted by this Board, and
5 we would respectfully request a bench
6 decision.

7 Thank you.

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

10 I have a couple of questions just
11 in terms of detail, in terms of how much we
12 have in the past history to this, and
13 obviously you've seen us stumble over a couple
14 of conditions, and this is what I'd like to
15 propose for discussion from the Board and the
16 applicant.

17 And that is first a question. My
18 understanding, if this is approve, this
19 special exception, the enrollment and faculty
20 increase and then the site, the grounds; that
21 this would be the controlling order; is that
22 correct?

1 MR. DePUY: That's correct,
2 although an earlier order adopts all of the
3 conditions from prior orders.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. DePUY: So we're dealing with
6 that as well.

7 CHAIRPERSON GRIFFIS: Right, which
8 brings to the fore what we've had to deal with
9 numerous times and have tried to be consistent
10 with the fact of not having a condition that
11 says and everything before it also controls,
12 but rather, creating the standing document.

13 So what I would like to do is to
14 set this for a decision, have a proposed order
15 with the conditions listed, and I'd like to
16 just take a couple more minutes today to go
17 through if we have any questions on any of
18 them or those which we have comments on.

19 We could get that in, and I'll
20 just set out a schedule to think perhaps we
21 could have that in this week and have a
22 decisions, a special public meeting on Tuesday

1 next or the following Tuesday if that is a bit
2 too difficult in terms of filing.

3 But let me look to Board members
4 and see if they have comments on that. Is
5 there any objection to that?

6 VICE CHAIRPERSON MILLER: I think
7 it's a good idea to get rid of conditions that
8 are dated and to have attached to the most
9 recent document a list of conditions that
10 actually apply up to date so that the school
11 and the community and everyone is aware and
12 it's very clear what are the conditions that
13 apply to the school pursuant to the zoning
14 order.

15 And it's not like we're going to
16 have a whole new hearing on what conditions
17 should apply. It's just in looking at some of
18 these conditions, especially, as they're laid
19 out in the Office of Planning, they seem dated
20 already, and they don't need to be there, and
21 it should be concise and clear. And that's
22 basically where we're going.

1 I would also say that, you know,
2 in the last ten years there has been more of
3 an effort by schools and communities like you
4 have done to come to certain agreements and to
5 have traffic management plans and things like
6 that that didn't exist before. So all of
7 these conditions were in the Board's order,
8 and it seems to be making more sense to have
9 some of those conditions really like in your
10 traffic management plan because then they can
11 be revised more readily as circumstances might
12 change and you have these agreements with the
13 community.

14 So therefore, I think it
15 necessitates fewer conditions in the Board's
16 order. If the community is protected in an
17 agreement, it doesn't have to be reiterated
18 necessarily in the Board's conditions.

19 So I think it would be a good idea
20 if the applicant had a chance perhaps to
21 consult with the AND or share that with the
22 ANC and then submit the conditions that they

1 believe should be attached to the most recent
2 order.

3 MR. HOOD: I would agree, Mr.
4 Chairman, with your comments and with also
5 Board Member Miller's comments that we put it
6 all in one place as we alluded to, referring
7 to the previous order, to the previous order.
8 I think it brings it and it makes it easy on
9 Board members, the ones to follow us, to be
10 able to go back, hey, this is the order on
11 Zoning Commission Case 17560 or whatever you
12 have it.

13 And I would agree with Board
14 Member Miller's comments about making sure we
15 go back to the ANC because as you can see by
16 the attendance here today, that obviously
17 something is working, and I would agree with
18 Mr. Hall's comments about trying to fine tune
19 it because some of these orders were ten years
20 ago and sometimes you had to bring thins to
21 the current date and bring it up to date, and
22 these things need to be revisited.

1 So I would agree with your
2 comments, but it's key though that we
3 hopefully don't have to have another case, and
4 once we put that out to the ANC, hopefully,
5 you know, it looks like everything is working,
6 but like I said, the tendency.

7 So I would be in favor of moving
8 in that direction and schedule a special
9 public meeting.

10 CHAIRPERSON GRIFFIS: Okay.
11 Comments?

12 MR. DePUY: We'd be glad to
13 accommodate that and move in that direction.
14 I would point out that Mr. Hall tells me that
15 they have to make some decisions about
16 accepting or not accepting students for the
17 next academic year. So two weeks is what we
18 would request, that the Board take action
19 within two weeks.

20 VICE CHAIRPERSON MILLER: Do you
21 think that you would have an opportunity to
22 share that idea with the ANC or you would not?

1 MR. DePUY: Yes, we would.

2 VICE CHAIRPERSON MILLER: You
3 would. Okay. I don't think the Board would
4 have a problem in coming to a decision in that
5 time frame.

6 And it's primarily a clean-up, you
7 know. Some of these conditions go to
8 construction activities related to projects
9 that are already completed, and I think it
10 also makes it -- I know it makes it easier for
11 enforcement of these orders if it's just the
12 provisions that are necessary.

13 MR. HALL: The issue that we were
14 considering as far as admissions is concerned
15 is the issue of the 25 students. There seems
16 to be no opposition to that.

17 CHAIRPERSON GRIFFIS: Okay. when
18 are you able to submit a draft order with
19 conditions?

20 MR. DePUY: Would it be acceptable
21 to submit a summary order with conditions?

22 CHAIRPERSON GRIFFIS: Yes.

1 MR. DePUY: In that case we could
2 do that within a week and consult with the ANC
3 and Friends of Tregaron.

4 CHAIRPERSON GRIFFIS: Okay. That
5 would set us for -- we actually have a special
6 public meeting set for the 27th of February.
7 We could put it first on the special public
8 meeting already set on the 27th. That would
9 have your submission in by the 21st at three
10 o'clock. That's a week from tomorrow. Is
11 that possible?

12 MR. DePUY: Yes, we'll submit it
13 on that schedule.

14 CHAIRPERSON GRIFFIS: All right.
15 That gets to the schedule. Now to the
16 question. Of course, actions obviously need
17 to be taken. Our official action will not be
18 until that day, and you'll note our decision,
19 and then officially it wouldn't be until an
20 order is actually issued, which will be after
21 that obviously.

22 I think you could take it from the

1 Board's perspective today that we're moving in
2 accordance with approving an order, and now
3 we're looking at crafting the conditions that
4 would be attendant to that, and that's, I
5 think, as much assurance as I can lend from
6 the Board's position.

7 Let me take a couple more minutes
8 and run down a couple of these, and I'll have
9 other Board members, and I'm actually looking
10 at Office of Planning's order, which is
11 excellent in terms of calibrating these, but
12 it's for the applicant's perspective as we
13 look at the previous 1997 and the conditions.

14 And I'm specifically looking at
15 Condition No. 9. The school shall limit to
16 five the number of living, mature trees to be
17 removed in conjunction with construction of
18 the new building. I take it that that isn't
19 talked about in this approval. It's not the
20 soccer field but a previous construction.

21 MR. DePUY: That's correct.

22 CHAIRPERSON GRIFFIS: Okay. I

1 don't see the relevancy of that one.

2 Number 10, the school shall
3 install and maintain storm water collection
4 quality and quality control system. I assume
5 that's done and it's being maintained.

6 MR. DePUY: That's done and in the
7 new project also it has been adhered to.

8 CHAIRPERSON GRIFFIS: Sure, and
9 there's also different specifications on an
10 athletic field in terms of drainage. Right?

11 MR. DePUY: Yes.

12 CHAIRPERSON GRIFFIS: Okay. That
13 to me doesn't rise to the level of a zoning
14 element that I'm aware of.

15 Eleven, parking lots will be
16 planned. Now, I know we dealt with this
17 somewhat previously, but parking lots will be
18 planned and constructed. Are there new
19 parking lots that are going to be constructed
20 or planned?

21 MR. DePUY: No.

22 CHAIRPERSON GRIFFIS: Okay. We've

1 talked about 12. I'm open to hear how that
2 might be reworded or crafted or whether it
3 actually is in or not, and that goes to the
4 school limiting athletic events, the number
5 consistent with the number of such events,
6 '96-'97, and would also note in Section 4 of
7 the agreement, 4(b), there's very specific
8 elements that deal with the athletic events.
9 So I'll give that to you in terms of how you
10 look at it or whether it's actually a
11 condition that's proffered for our review or
12 not.

13 Thirteen, air conditioning
14 condensers shall be placed. I don't know that
15 that has any relevancy anymore.

16 MR. DePUY: No.

17 CHAIRPERSON GRIFFIS: The rest are
18 somewhat open. Fifteen has all to do with
19 construction activities related to the
20 gymnasium, arts, music building. Again, we're
21 looking at an order that will now continue for
22 some time. So obviously I would look to have

1 conditions attendant to the elements under 206
2 that are jurisdictional for the Board.

3 Okay. Anything else?

4 MR. DePUY: Mr. Chairman, you
5 seemed to suggest or seemed to ask for the
6 applicant's suggestion on Condition 12. We
7 would suggest for consideration that this
8 refer to limiting non-athletic events and not
9 deal with athletic events.

10 CHAIRPERSON GRIFFIS: I think that
11 has more pertinence to what we're dealing
12 with. I mean, what's interesting is
13 there's --

14 VICE CHAIRPERSON MILLER: Is that
15 not limited in the agreement or is that
16 covered in the agreement?

17 MR. DePUY: It's also covered in
18 the agreement, and the school would still be
19 bound by that agreement. The agreement would
20 go beyond what some of these conditions would
21 be in the Board's order.

22 CHAIRPERSON GRIFFIS: Use your

1 discretion, and obviously we're going to have
2 to deliberate on it and review it. I mean,
3 any other additional information, as Ms.
4 Miller always says and says it well, hasn't
5 today, but conditions go to mitigate adverse
6 impacts. We would request if it is not clear
7 what adverse impact it's mitigating, that you
8 might give a short narrative so that we would
9 have an understanding of where in the record,
10 whether it's this one or in the previous, at
11 which this is somewhat based on that, so that
12 we could have an understanding of why we would
13 have a condition set to an order which we
14 would approve.

15 Okay. Anything else?

16 VICE CHAIRPERSON MILLER: I just
17 want to just comment that it seems to me if
18 you have an agreement or a traffic management
19 plan that addresses the potential impact,
20 adverse impact, that there may not be a need
21 for a superfluous condition in the Board's
22 order.

1 CHAIRPERSON GRIFFIS: Okay. I
2 don't have anything else. Unless other board
3 members have any requests for clarification,
4 I'll take any questions procedurally.

5 If not, obviously we're looking at
6 three o'clock on the Wednesday following to
7 have a summary order with proposed conditions.
8 Obviously the record is open for your
9 submission in terms of any narrative
10 assistance is needed for those, but believe me
11 that the Board has been through these so many
12 times and this site itself. I mean, it brings
13 back great memories of reviewing the past
14 addition and such.

15 So I guess my counsel is that
16 we're very well aware of the detail and the
17 elements. So as succinct as possible.

18 The record will also be kept open
19 for any submission by the agency in response
20 to these. However, we are charging you with
21 the responsibility of addressing and bringing
22 those up. So we will look for that

1 submission.

2 With that, is there anything else?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Very well.

5 If there is nothing further then, we'll set
6 you on your way to get to work on that, and we
7 thank you very much. An excellent
8 presentation, and we appreciate it, and also
9 the additional submissions.

10 Ms. Bailey, let me ask: is there
11 anything further for the Board in this
12 afternoon's hearing?

13 MS. BAILEY: No, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Very well.
15 Travel all safely. It looks like it is
16 getting very cold and icy out there, and let's
17 adjourn.

18 (Whereupon, at 2:41 p.m., the
19 public hearing was concluded.)

20

21

22