

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 17, 2007

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:30 a.m., Ruthanne Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
CURTIS ETHERLY, JR. Vice-Chairperson
JOHN A. MANN, II Board Member (NCPC)
MARC LOUD Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Specialist
ESTHER BUSHMAN General Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

DOUGLAS WOODS
STEPHEN MORDFIN
MAXINE BROWN-ROBERTS

The transcript constitutes the minutes from the Public Hearing held on April 17, 2007.

A G E N D A

Opening - Chairperson Miller 4

Preliminary Matters 8

 Application Number 17593 of Alex and
 Maryam Nock 8

Application Number 17592 of Jeff and
Susie Bradbury 10

Application Number 17595 of
O'Tilia V. Hunter 148

Preliminary Matters 188

Application Number 17594 of Minshall Stewart
Properties LLC 189

Application Number 17601 of D.C.
Department of Parks and Recreation 212

Vote for Approval 276

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

2 10:31 a.m.

3 CHAIRPERSON MILLER: Good morning.

4 We're going to start the hearing. It's April
5 17th, 2007. Public hearing of the Board of
6 Zoning Adjustment. We just went through the
7 introductions of the Board Members and Staff.
8 So, I'm not going to do that again except to
9 add that Mr. Turnbull representing the Zoning
10 Commission to my right has joined us for the
11 hearing.

12 Copies of today's hearing agenda
13 are available to you and are located to my
14 left in the wall bin near the door.

15 Please be advised that this
16 proceeding is being recorded by a court
17 reporter and is also webcast live.

18 Accordingly, we must ask you to
19 refrain from any disruptive noises or actions
20 in the hearing room.

21 When presenting information to the
22 Board, please turn on and speak into the

1 microphone first stating your name and home
2 address. When you are finished speaking,
3 please turn your microphone off so that your
4 microphone is no longer picking up sound or
5 background noise.

6 All persons planning to testify
7 either in favor or in opposition are to fill
8 out two witness cards. These cards are
9 located to my left on the table near the door
10 and on the witness tables. Upon coming
11 forward to speak to the Board, please give
12 both cards to the reporter sitting to my
13 right.

14 The order of procedure for special
15 exceptions and variances is (1) statement and
16 witnesses of the Applicant, (2) government
17 reports including Office of Planning,
18 Department of Public Works, DDOT, et cetera,
19 (3) report of the Advisory Neighborhood
20 Commission, (4) parties or persons in support,
21 (5) parties or persons in opposition, (6)
22 closing remarks by the Applicant.

1 Pursuant to Sections 3117.4 and
2 3117.5, the following time constraints may be
3 maintained: The Applicant, Appellant, persons
4 and parties except an ANC in support including
5 witnesses 60 minutes collectively. Appellees,
6 persons and parties except an ANC in
7 opposition including witnesses 60 minutes
8 collectively. Individuals three minutes.

9 These time constraints do not
10 include cross examination and/or questions
11 from the Board.

12 Cross examination of witnesses is
13 permitted by the Applicant or parties. The
14 ANC within which the property is located is
15 automatically a party in a special exception
16 or variance case. Nothing prohibits the Board
17 from placing reasonable restrictions on cross
18 examination including time limits and
19 limitations on the scope of cross examination.

20 The record will be closed at the
21 conclusion of each case except for any
22 material specifically requested by the Board.

1 The Board and the staff will specify at the
2 end of the hearing exactly what is expected
3 and the date when the persons must submit the
4 evidence to the Office of Zoning.

5 After the record is closed, no
6 other information will be accepted by the
7 Board.

8 The Sunshine Act requires that the
9 public hearing on each case be held in the
10 open before the public. The Board may
11 consistent with its rules of procedure and the
12 Sunshine Act enter executive session during or
13 after the public hearing on a case for
14 purposes of reviewing the record or
15 deliberating on the case.

16 The decision of the Board in these
17 contested cases must be based exclusively on
18 the public record. To avoid any appearance to
19 the contrary, the Board requests that persons
20 not engage the Members of the Board in
21 conversation.

22 Please turn off all beepers and

1 cell phones at this time so as not to disrupt
2 these proceedings.

3 The Board will now consider any
4 preliminary matters.

5 Preliminary matters are those
6 which relate to whether a case will or should
7 be heard today such as requests for
8 postponement, continuance or withdrawal or
9 whether proper and adequate notice of the
10 hearing has been given.

11 If you are not prepared to go
12 forward with a case today or if you believe
13 that the Board should not proceed, now is the
14 time to raise such a matter.

15 Does the staff have any
16 preliminary matters?

17 MS. BAILEY: Madam Chair, Members
18 of the Board, to everyone, good morning.

19 There is, Madam Chair, and it has
20 to do with Application Number 17593 of Alex
21 and Maryam Nock N-O-C-K. That application was
22 withdrawn.

1 CHAIRPERSON MILLER: Thank you and
2 I understand that no action is required by the
3 Board.

4 MS. BAILEY: No action is
5 required.

6 CHAIRPERSON MILLER: Thank you.

7 MS. BAILEY: There is another
8 preliminary matter and it has to do with
9 another case, but perhaps it's best taken up
10 when the case is called. That's 17592.

11 CHAIRPERSON MILLER: I agree and
12 that is our first case on the agenda.
13 Correct?

14 MS. BAILEY: That's correct.

15 CHAIRPERSON MILLER: At this point
16 then, Ms. Bailey, would you administer the
17 oath and then we'll call the first case.

18 MS. BAILEY: Sure. All those
19 persons wishing to testify today please stand.
20 Would you please raise your right hand? Do
21 you solemnly swear or affirm that the
22 testimony that you will be giving will be the

1 truth, the whole truth and nothing but the
2 truth? Thank you.

3 The first case is Application
4 Number 17592 of Jeff and Susie Bradbury,
5 pursuant to 11 DCMR 3104.1 for a special
6 exception to construct a garage serving a
7 single-family row dwelling under Section 223
8 not meeting the lot occupancy requirements of
9 Section 403. The property is zoned R-4 and
10 it's located at 740 9th Street, S.E., Square
11 950, Lot 69.

12 Members of the Board, the project
13 was advertised as needing relief from the
14 Special Exception Provisions of the
15 Regulations. The file does indicate that the
16 Office of Planning is of the opinion that a
17 variance may be needed for this project, Madam
18 Chair.

19 CHAIRPERSON MILLER: Thank you
20 very much. Would the parties please come
21 forward?

22 And is there an ANC? Oh, good.

1 You can come forward as well as you are a
2 party. Okay.

3 Good morning. Could you identify
4 yourselves for the record please?

5 MS. FOWLER: Hi, I'm Jennifer
6 Fowler. I'm the architect and agent on this
7 project.

8 MR. BRADBURY: Jeff Bradbury, one
9 of the owners of the property.

10 CHAIRPERSON MILLER: Um-hum.

11 MS. BRADBURY: Susan Bradbury, the
12 other owner.

13 CHAIRPERSON MILLER: Okay.

14 COMMISSIONER OSTERGAARD: Good
15 morning. I'm Daniel Ostergaard, ANC 6B04. I
16 happen to live right across the alley from the
17 Applicants.

18 CHAIRPERSON MILLER: I'm sorry and
19 who's with you?

20 COMMISSIONER OSTERGAARD: I
21 represent the ANC.

22 CHAIRPERSON MILLER: Oh, okay. I

1 thought you said and you had somebody with
2 you.

3 COMMISSIONER OSTERGAARD: I just
4 happen to live right across the alley, ma'am,
5 from the --

6 CHAIRPERSON MILLER: Oh, you live
7 across the alley. Okay.

8 You're the ANC Commissioner for
9 the Single Member District that it's located
10 in?

11 COMMISSIONER OSTERGAARD: Yes, I
12 am, ma'am. Yes.

13 CHAIRPERSON MILLER: Okay. And
14 authorized by the ANC to represent the ANC.

15 COMMISSIONER OSTERGAARD: Yes,
16 ma'am.

17 CHAIRPERSON MILLER: Okay. We do
18 have a little wrinkle here. Just so -- why
19 don't we start with that. Office of Planning
20 has assessed that you should have advertised
21 for variance relief and what's your position
22 on that?

1 MS. FOWLER: Okay. Just to give
2 you a little background --

3 CHAIRPERSON MILLER: Okay.

4 MS. FOWLER: -- we applied in
5 December and at that time, we were under the
6 assumption it was a special exception. The
7 precedence that I knew about before that were
8 special exceptions.

9 In March, we were contacted by the
10 Office of Planning and told that it was
11 possibly going to be reviewed as a variance.
12 So, at that point, we sent letters to BZA,
13 ANC, Capitol Hill Restoration, all of the
14 involved parties as well as all the neighbors
15 within 200 feet to let them know that it would
16 be possibly examined as a variance instead of
17 a special exception. So, that's how we
18 addressed that issue and that was based on a
19 meeting I had with Mr. Nero. What he
20 suggested that we do.

21 And we do have support from the
22 ANC. Capitol Hill Restoration, I have the

1 letter. They just gave it to me yesterday to
2 give you and Historic has agreed to sign off
3 at staff level. However, all have been as a
4 special exception and not a variance.

5 CHAIRPERSON MILLER: Before we go
6 down to others, do you have a preference as to
7 how you would like to proceed with this case
8 given that change?

9 Is it that -- first of all, there
10 was a question with notice. It seems like
11 you've addressed the question of notice.

12 But, is it your preference to go
13 forward or --

14 MS. FOWLER: It's my understanding
15 that if we went to file for permits with the
16 special exception relief we may be turned down
17 at DCRA. Is that correct?

18 I mean that's my understanding.
19 So, I think we need to proceed with the
20 variance.

21 CHAIRPERSON MILLER: That's
22 correct. Well, I think it's the Board's

1 initial assessment as well that a variance is
2 required.

3 You made some reference to
4 precedents, but I don't know what precedents
5 you may have been talking about.

6 But, it's our initial view unless
7 you were to say something persuasive to change
8 our minds that this should be a variance and
9 it requires different tests as you know and
10 the -- we'll move on to the ANC as well, but
11 it appears that the ANC and Capitol Hill
12 Restoration Society addressed the case as a
13 special exception.

14 So, I would like to turn -- what
15 is your name? I'm sorry.

16 COMMISSIONER OSTERGAARD:
17 Commissioner Daniel Ostergaard, Madam
18 Secretary.

19 CHAIRPERSON MILLER: Daniel.
20 Okay.

21 COMMISSIONER OSTERGAARD: Madam
22 Chair. Excuse me.

1 CHAIRPERSON MILLER: One of our
2 issues always is like note as a opportunity
3 for the ANC to weigh in fully and the question
4 is when the ANC looked at this case and
5 they're looking at the same structure.
6 They're looking at the same plans I understand
7 that, but still they're looking at is as a
8 special exception considering different tests
9 and one of our questions is whether or not the
10 ANC should take a look at this as a variance.

11 COMMISSIONER OSTERGAARD: We did
12 vote on this as a special exception and one of
13 the reasons we came today specifically in
14 addition to support the project is also to ask
15 and request respectfully that this issue to be
16 cleared up somewhat because we do have a lot
17 of constituents who are asking us what they
18 should do and from our perspective, if it is
19 going to be from this point in the future a
20 variance versus a special exception, we would
21 respectfully request that that be perhaps at
22 least understood. Perhaps clarified for us

1 how much -- the position over other ANCs might
2 be on that, but I know for a fact in this
3 particular alley, for example, there will be
4 other very similar packages forthcoming I'm
5 sure in the future and at that point in time,
6 you know, the question has come to us is this
7 a variance or is this a special exception?

8 So, we would ask respectfully
9 clarification so we can go back to our
10 constituents with that, ma'am.

11 VICE-CHAIRPERSON ETHERLY: Sure.
12 Just if I may, Madam Chair, just to kind of
13 jump in here to further orient us on where we
14 are. I think as perhaps Ms. Fowler now knows
15 and perhaps the Applicants, what's throwing
16 this into a variance situation is the lot
17 occupancy issue based on the Office of
18 Planning's report and, of course, we'll get to
19 that in some detail.

20 The lot occupancy restriction as
21 you know is 60 percent. You're currently at
22 42 percent. The application as it's proposed

1 would move you up to 63.9 which is 3.9 percent
2 beyond where you can be.

3 So, one of the options that you
4 have here, and I'm not suggesting it or trying
5 to offer you guidance, is as the Office of
6 Planning indicated in its report you could, of
7 course, downsize a little bit. But, for the
8 purposes of just furthering the ANC's
9 understanding of the matter, that's the issue
10 here that's throwing this into a variance
11 scenario. If it were smaller, we might not
12 necessarily be at this juncture.

13 So, I think the Chair has more
14 than adequately laid out kind of where we are
15 and I'm comfortable moving forward just as
16 long as we kind of clarify exactly what the
17 desire is on the part of the Applicant in
18 terms of how they want to proceed.

19 I think I'm hearing that they're
20 going to proceed as a variance and we'll just
21 listen to the case and see where we are.

22 CHAIRPERSON MILLER: I think also

1 what's throwing us here is that this is a
2 separate building. So, it's an accessory
3 instead of an attached addition and so,
4 therefore, it falls under different
5 regulations. Not under 223.

6 But, I think the threshold
7 question here today is if it's -- it was not
8 advertised as a variance. The ANC didn't
9 consider it as a variance. Office of Planning
10 has submitted a report recommending or I'll
11 get to the Office of Planning, but they cannot
12 recommend approval at this time and I think
13 part of the reason is that the Applicant was
14 seeing this as a special exception and so,
15 we're wondering if more time might be
16 beneficial to everybody for you to look at
17 this as a variance or look at your plans
18 again. Because it's a different -- it's a
19 different test. It's a higher threshold and
20 have the ANC look at it as a variance for the
21 same reasons.

22 I throw this out to the Applicant.

1 If there's some -- if you believe that you're
2 going to be prejudiced more by a delay and
3 want to go forward today, that is an option.
4 I think that the Board was of the view that
5 time would be in your favor actually.

6 MS. FOWLER: If we were to proceed
7 and not be supported, would we have to start
8 the process over again? How does that work?

9 CHAIRPERSON MILLER: What we would
10 do is -- I'm not sure if I understand your
11 question correctly, but what we would have in
12 mind is just continuing this case. You
13 wouldn't have to start over again. It's the
14 same case.

15 You would have to -- unless the
16 Office of Attorney General has a different
17 view, you would have to -- you've already
18 given notice already, but perhaps you could
19 give even the posting notice again as a
20 variance and then come back and either adapt
21 your plans or not and address the variance
22 case more fully and the practical -- looking

1 at your papers, it doesn't look like you
2 initially might actually have fully addressed
3 the uniqueness or exceptional condition or
4 practical difficulty I mean and I think OP
5 responds to that. So, just because OP may
6 have said at this point, you're not -- this
7 property's not unique or it's -- there's no
8 practical difficulty, in part that's because
9 you may not have articulated that as well as
10 you could.

11 So, that's -- that's our initial.
12 You can think about that for a minute. Why
13 don't we at this point let the Office of
14 Planning jump in if you'd like.

15 Want to introduce yourself and
16 express any comments at this point? This is
17 really a preliminary issue whether or not to
18 go forward today or continue.

19 MR. WOODS: Right. My name is
20 Douglas Woods. I'm with the Office of
21 Planning.

22 I believe it would be up to the

1 Applicant if they wanted to continue this to
2 another date. We would have no objection.

3 I'm not particularly sure that it
4 would change our recommendation due to the
5 subject site and whether it's unique or not.

6 CHAIRPERSON MILLER: Okay. And I
7 think the Board would only, thank you, only --
8 and my colleagues can jump in if they feel
9 differently, but only continue it on our own
10 if we thought that there was a notice problem
11 and that's an issue where we wouldn't leave it
12 up to you to decide whether or not to continue
13 and I guess it sounds like you addressed the
14 notice issue.

15 But, I think I would like to ask
16 the ANC Commissioner one more time, in your
17 opinion, do you think that the notice issue
18 has been addressed or not?

19 COMMISSIONER OSTERGAARD: We do
20 and I certainly, I represent ANC, will default
21 to the Applicant in terms of their desire,
22 ma'am, to postpone or not.

1 CHAIRPERSON MILLER: Okay. Okay.

2 VICE-CHAIRPERSON ETHERLY: If I
3 might, Madam Chair, I agree wholeheartedly
4 with I think where we are and the question
5 that she's putting -- that we're putting to
6 you. You could either proceed today, make
7 your case, you know, put the arguments out
8 there.

9 Recognizing variance test is a
10 higher standard, if you feel you got it, hey,
11 we're here. If you think that you can make
12 use of the time by revisiting with the ANC,
13 Capitol Hill Restoration Society. Both ANC
14 6B, Capitol Hill Restoration Society, they're
15 both very familiar with the wide range of
16 complex zoning issues that are at play on the
17 Hill. If you think that that time can be
18 better spent, as the Chair's indicated, as OP
19 indicates in its report, the variance standard
20 is a very high standard and with OP's lack of
21 support right now, that is an issue.

22 Doesn't mean that it's a killer by

1 any stretch of the imagination, but it is
2 something that you will have to address and
3 have to grapple with in the case.

4 I think the Chair didn't indicate,
5 but most certainly what we would envision,
6 what I think we would envision if we didn't
7 move forward today would simply be scheduling
8 another date. So, no, you wouldn't be back at
9 the beginning of the queue as the Chair
10 indicated. You wouldn't "lose your spot," but
11 it would give you more time to revisit with OP
12 perhaps.

13 I think I'm hearing from Mr.
14 Ostergaard that the ANC is comfortable moving
15 forward today recognizing that it's a higher
16 variance test. So, perhaps the ANC doesn't
17 need to take any further action, but as you
18 heard a little bit in the earlier case, the
19 ANC voted on a special exception. That means
20 we have to -- we're probably have to be very
21 detailed with our back and forth with them on
22 how we address the facts of the case.

1 So, I just wanted to kind of add
2 that into the mix to help hopefully fill out
3 your understanding of what your options are
4 today.

5 Thank you, Madam Chair.

6 CHAIRPERSON MILLER: I'm going to
7 just add to that and I want to add in another
8 wrinkle, but there we don't have a notice
9 question. So, the issue is, you know, do you
10 feel comfortable enough proceeding today on a
11 variance test. If you don't, this Board is
12 willing to continue the case to give you more
13 time considering, you know, not understanding
14 which relief to be seeking originally.

15 So, just think about that for a
16 minute. You don't have to decide this second.

17 It's also possible that you've
18 thought further and could address the Office
19 of Planning's comments today and you're
20 prepared and this Board can hear that since
21 there's no notice issue on that.

22 We just want to ask you one more

1 question. There's another regulation that I
2 want to ask you whether you think that you
3 comply with that and this project does and you
4 didn't seek any relief from it. It's just
5 it's a relevant provision.

6 It's 2500.4 in the regulations.
7 It says "An accessory building in any zoned
8 district shall not exceed one story or 15-feet
9 in height except as provided 2500.5." Which
10 is not really relevant here. It goes to
11 domestic employees and stuff.

12 I want to know did you consider
13 that regulation and are you in compliance with
14 that in your view?

15 MS. FOWLER: I believe we are in
16 compliance with the 15 -- my understanding is
17 that as long as it's under the 15 feet, we can
18 create an attic space. It's not a livable
19 space on the second floor.

20 In fact, I have a project four
21 doors down, a garage that was just built by
22 right, where we were approved. Very similar

1 scenario with the second floor and completed
2 constructed the last couple of weeks.

3 CHAIRPERSON MILLER: Okay. Thank
4 you and does the Office of Planning have an
5 opinion on this?

6 MR. WOODS: The Office of Planning
7 concurs with the Applicant that as long as
8 it's 15 feet or less then they comply.

9 CHAIRPERSON MILLER: Okay. Fine.
10 Then we're back to just the lot occupancy.

11 MS. FOWLER: We have one question.
12 What happens if we are denied approval today?
13 What's the process from there? Is there an
14 appeal process or do we -- can you explain
15 that to us?

16 CHAIRPERSON MILLER: Sure.

17 MS. FOWLER: What the implications
18 of proceeding today if we do not get approval
19 would be.

20 CHAIRPERSON MILLER: If you're
21 denied an approval, there will be a written
22 order that takes many months to write.

1 Usually there's a backlog and then that order
2 is subject to a motion for reconsideration
3 within ten days of the issuance of that order
4 and service on you and then the Board would
5 reconsider it and then if that is denied, then
6 you have a right to appeal to the Court of
7 Appeals.

8 MS. FOWLER: I think we'll go
9 ahead and proceed today with this case.

10 CHAIRPERSON MILLER: Okay. That's
11 fine. I want to say something before I
12 forget. Could you make sure that you put into
13 the record the additional notices that you
14 sent out that this was going to be heard as a
15 variance and not a special exception? That
16 you made reference to the ANC, to residents
17 within 200 feet. Is that correct?

18 MS. FOWLER: It was mailed to the
19 Office of the BZA.

20 CHAIRPERSON MILLER: It was mailed
21 to --

22 MS. FOWLER: It was. Yes, it

1 should have been in the record. If not, I
2 have a copy I can give you.

3 CHAIRPERSON MILLER: I just want
4 to understand what happened. You're saying
5 that you mailed -- did you mail out those
6 notices or did you mail to Office of Zoning to
7 mail out notices?

8 MS. FOWLER: No. No, the
9 homeowners sent the letters out to -- to you
10 guys --

11 CHAIRPERSON MILLER: Okay.

12 MS. FOWLER: -- Office of
13 Planning, Capitol Hill Restoration, ANC,
14 Historic as well as the 200 --

15 CHAIRPERSON MILLER: Oh. Okay.

16 MS. FOWLER: -- all the neighbors
17 within 200 feet.

18 CHAIRPERSON MILLER: And then you
19 sent us a copy, the Office of Zoning, a copy
20 of that letter?

21 MS. FOWLER: Um-hum. Right.

22 CHAIRPERSON MILLER: So, you're

1 saying it should be in our record?

2 MS. FOWLER: It should. Yes, it
3 should be in the record.

4 CHAIRPERSON MILLER: Okay. Great.
5 All right.

6 MEMBER LOUD: Madam Chair, just a
7 quick thought and I know my colleagues are
8 going to kill me, but it sounds like the ANC
9 has come prepared to discuss the variance
10 test. Has not? Okay. All right. Then I'll
11 withdraw my question.

12 COMMISSIONER OSTERGAARD: If I can
13 clarify that.

14 MEMBER LOUD: Go ahead.

15 COMMISSIONER OSTERGAARD: Madam
16 Chair, we did consider this as a special
17 exemption and did not consider this as a
18 variance. So, I am not prepared to speak on
19 behalf of the ANC in that sense. We did not
20 vote on this as a variance. So, we would ask
21 -- for what it's worth our conditions were as
22 a special exemption. Again, then -- and I'll

1 leave it at that.

2 CHAIRPERSON MILLER: Okay. One
3 other thing I want to clarify for procedure
4 since you've chosen to go forward today. It
5 doesn't mean that we make a decision today
6 either and it also doesn't mean that we might
7 leave the record open. For instance if the
8 ANC wanted to request that we leave the record
9 open for the ANC to submit something, that's
10 also a possibility. Just so you know the
11 whole scheme. Okay. Then you can move
12 forward.

13 MS. FOWLER: Okay. I would like
14 to address the second two provisions for the
15 variance and I'll let Jeff Bradbury address
16 the first one, but starting with the second
17 one, granting the application will not be of
18 substantial detriment to the public good in
19 terms of traffic, light and noise.

20 In terms of the traffic, there are
21 already two unsecured parking spots on that
22 property. So, we're not increasing the number

1 of cars going through the alley.

2 I do want to emphasize that it's a
3 30-foot alley and there are many, many
4 garages. So, there is quite a bit of
5 vehicular traffic going through there already.

6 The garage will not be inhabited
7 except for storage and garage functions. So,
8 there's not going to be any increase in noise
9 over what's there existing now. The second
10 floor is intended for storage space.

11 And we do feel that the garage
12 will increase the safety of the alley because
13 right now the open unsecured spots are not
14 ideal. There has been an increase in crime in
15 the area. There's a lot of foot traffic going
16 through with -- they're a block off of
17 Barracks Row. So, you have a lot commercial
18 uses quite close to where they live.

19 And then for number three,
20 granting the application will not be
21 inconsistent with the general intent and
22 purpose of the Zoning Regulations and Map.

1 Again, the alley is 30-feet wide. There are
2 many, many garages on the alley. I brought
3 some additional photos of the two -- some
4 other two-story garages and the one that was
5 completed since we've submitted the
6 application. So, it's not in the photos that
7 you have.

8 We can build our garage bay right
9 at 18 feet deep. So, we're really just asking
10 for the additional 4 feet in order to fit a
11 good size car in there. So, as far as the
12 massing from the alley in respect to the other
13 houses, it's really not a big change going
14 from the -- by right to the variance we feel.

15 And another thing thought about
16 the alley in particular is there are not a lot
17 of rear additions. These houses were built in
18 the '60s where you enter on the first floor
19 and go up, you know, two floors above that.
20 They don't have basements and typically, they
21 do not have rear additions. So, we feel like
22 building a garage is more in fitting with the

1 character of the alley and the streetscape.
2 Rather than bumping back a rear addition,
3 we've chosen to add the square footage at the
4 back of the property where most of those
5 houses have garages and not additions.

6 Those are the -- how we wanted to
7 address the second two points and now, I'll
8 turn this over to Jeff Bradbury for the --

9 MR. BRADBURY: Thank you. So, I
10 think the salient point as Jennifer pointed
11 out is this idea that says by right we're at
12 18 feet. The only reason we are here is
13 because we wanted a slightly larger garage to
14 take our current vehicle which is an SUV. The
15 minimum size that we could put that vehicle in
16 the garage and still have enough room to walk
17 completely around the vehicle is the 24 feet
18 which we've asked for in the -- I'm sorry, the
19 22 feet we've asked for in the plans.

20 We had started this project as
21 Jennifer pointed out as a special exception to
22 increase above the 60 percent threshold, but

1 stay well below the 70 percent threshold. At
2 the time, that was understood to be the right
3 approach. Even up to and through our original
4 request for an opportunity to speak before all
5 of the organizing committees, ANC, BZA, et
6 cetera, that was still the understanding.

7 It was only with the late addition
8 of the note from OP that this might be a
9 variance that we needed to kind of go back and
10 re-approach this.

11 In fact, and I'll certainly let
12 the ANC representative here talk to this
13 point, even in the ANC Council hearing, there
14 was a lot of conversation about this having
15 traditionally been done as a special
16 exception, that this was not understood to be
17 certainly the past reading of how the special
18 exception applied to buildings like a garage
19 and they specifically chose to vote on this as
20 a special exception because they felt were
21 they to approve it as a variance, it would
22 only add ambiguity to the question of why have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we changed the reading of the special
2 exception as it applies to auxiliary
3 buildings.

4 So you want to speak to that point
5 at all?

6 CHAIRPERSON MILLER: Usually, they
7 do you one at a time. So --

8 MR. BRADBURY: Okay.

9 CHAIRPERSON MILLER: -- let me
10 start with some questions because other Board
11 Members may have questions, too. Okay.

12 You are here now under a variance.
13 So, you need to address and we need to make
14 findings with respect to those three tests and
15 now, tell me -- with respect to why it has to
16 be -- the garage has to be 22 feet versus 18,
17 it sounds to me as if you were saying that
18 your SUV would not fit in the garage if it
19 were 18. Is that what you're saying --

20 MR. BRADBURY: That's exactly --

21 CHAIRPERSON MILLER: -- as a
22 matter of right?

1 MR. BRADBURY: -- that is exactly
2 correct.

3 CHAIRPERSON MILLER: So, that
4 looks like a practical difficulty to me. Just
5 so you understand, we're looking at different
6 things now. We're not looking at just no
7 adverse impact. I think you all have
8 addressed that really fully because it's
9 almost the same for special exception.

10 So, now, we have to fill in the
11 blanks here for the other test. So, the other
12 test is what's exceptional or unique about
13 this property and I assume you're not as
14 familiar with variance law as we are. Okay.
15 All right.

16 So, it doesn't -- yes, I'm going
17 to help you a little bit. It doesn't mean
18 that there's something just different about
19 your property. It means that the way it's
20 been interpreted by court decisions. There's
21 something exceptional perhaps about your
22 situation as your property is located. For

1 instance, you're the only one that doesn't
2 have a garage, for instance, in the whole
3 block or something. There's something like
4 that.

5 So, I just wanted to see if you
6 can address that prong because that's one of
7 the prongs that Office of Planning also had
8 problems seeing.

9 MR. BRADBURY: Sure and I'm happy
10 to do that. I was just trying to set context
11 that presents the approach that outlines where
12 we got to today and the fact that the only
13 thing that's changed in this entire
14 environment is a reading of a law that
15 traditionally has been read that this should
16 have been a special exception and that changed
17 in the course of this process. This is -- to
18 my understanding and from the comments that
19 were made at the ANC and the fact that we've
20 had recent garages built under the special
21 exception rules that this process has changed.

22 So, I'm just -- accept it as

1 context.

2 CHAIRPERSON MILLER: I don't think
3 so though. No, I don't think there's been a
4 change in process. I think that there's been
5 a change in your representative understanding
6 how the law applies to -- or which law applies
7 to the type of building that's being built.
8 There hasn't been any change.

9 MR. BRADBURY: Okay.

10 CHAIRPERSON MILLER: If you don't
11 -- no one's forcing you to proceed. Well, go
12 ahead.

13 MR. BRADBURY: Again, I just --

14 CHAIRPERSON MILLER: I mean --

15 MR. BRADBURY: I've only lived in
16 the neighborhood for 11 years and this is my
17 first project of, you know, changing the
18 exterior of the house. I have a host of
19 experience on the ANC and they were --

20 CHAIRPERSON MILLER: Um-hum.

21 MR. BRADBURY: -- very surprised
22 at this needing to proceed as a variance and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 again, they -- in their deliberation, they
2 made it clear that they were not willing to
3 take on this ambiguity and why the rules were
4 changing and so, again, I'm just using their
5 feedback as a sounding board for saying
6 context of how we arrived at this situation.

7 With regards to your question
8 about the first test point for a variance and
9 what is special about the property, I think
10 and I'll let again Jennifer speak to the
11 details of what the recent precedence as been
12 where similar structures have been approved
13 even under the variance guidance, but what I
14 will say is this is a three-story house built
15 on a solid slab. No opportunity to put a
16 basement in. Flat roof. No opportunity for
17 storage on the upper floors.

18 So, storage is at a severe premium
19 in the house. We are in the midst of an
20 adoption. We are trying to open up one room
21 in our house to provide room for a new child.
22 The only way to open up that room is with

1 additional storage. The options in front of
2 us were to move which we didn't want to do.
3 We love our neighborhood or to build some sort
4 of facility that would allow us to move
5 storage outside of our current living space.
6 A garage and a particular garage with upper-
7 floor storage seemed to be the best approach
8 to that.

9 In addition to just the need for
10 raw space and some of the other sort of
11 exceptions around what's sort of driving us to
12 this approach, there are, as has been
13 mentioned previously, many, many garages on
14 the block several of which are two-stories
15 tall, several of which are actually commercial
16 garages which are much higher than the 15-foot
17 limit.

18 We find it more and more necessary
19 to park behind our house because of the heavy
20 traffic around Barracks Row especially in the
21 evenings. Foot traffic through the alley is
22 increasing as people are walking through the

1 alley to get to and from Barracks Row. Crime
2 is up in that alley because people understand
3 that late nights people are walking through
4 that alley and in particular, I have a
5 motorcycle. My motorcycle is now stored in my
6 backyard because it's not safe in the off-
7 street parking area and just after the start
8 of the year, one of our neighbors up the block
9 had somebody kick down their fence to their
10 backyard and steal their motorcycle.
11 Literally, pick it up and carry it out of the
12 backyard.

13 So, again, for all of those
14 reasons, this seems to be the best possible
15 answer for securing our property, security the
16 necessary storage space so we can continue to
17 live in the neighborhood and providing safety
18 to ourselves and our neighbors as this garage
19 begins to form a consistent alley facing that
20 prevents people from moving in and using these
21 unsecured parking spaces as places to loiter
22 or hide.

1 I think those are all the salient
2 points with regard to special exception.

3 COMMISSIONER TURNBULL: Madam
4 Chair, I just had one. I mean one option --
5 I mean just talking out loud here is that
6 we're concerned about lot occupancy and
7 setting precedents for everyone on the block
8 suddenly coming for this and then the
9 regulations don't -- the variance doesn't make
10 sense anymore.

11 One thought is -- I don't know if
12 your plan is -- if you're worried about the
13 depth of your garage, is that if you kept a 3-
14 foot wide opening and kept the same length
15 you've met the lot occupancy. You're reduced
16 the total lot occupancy.

17 In other words, if you didn't --
18 if you -- if not cutting off 2 feet at the
19 back -- if not cutting off 2 feet at the back
20 that doesn't work, if you narrow the garage
21 but still kept the same length, you could get
22 your vehicle in, but then you've made the

1 footprint smaller. Therefore, satisfying the
2 lot occupancy requirements.

3 Now, I'm not sure whether or not
4 an exterior stair on the outside going up is
5 your cup of tea, but that might be something
6 you could look at with the gymnastics of
7 fitting of that in to get to that second
8 level.

9 But, from a lot occupancy
10 standpoint, I believe if it's narrower, but
11 it's the same length, I think you'll -- I'd
12 have to ask the Office of Planning if that
13 would still meet the lot occupancy of the plan
14 at that --

15 MR. WOODS: From my understanding,
16 if the stair were to be located outside of the
17 actual garage structure, anything -- any
18 projection that is above 4 feet from grade
19 would actually be considered as part of the
20 lot occupancy.

21 CHAIRPERSON MILLER: You mean part
22 of the stairs or do you mean just the landing?

1 Because I'm not sure the stairs are counted.

2 MR. WOODS: I would have to look
3 at the Zoning Regulations --

4 CHAIRPERSON MILLER: Double check.
5 Okay.

6 MR. WOODS: -- and get back to
7 you.

8 COMMISSIONER TURNBULL: I guess my
9 comment was if you're knocking off 3 foot --
10 well, the width, you're knocking off
11 automatically 66 square feet. Now, whether or
12 not you can still gymnastically fit a stair
13 inside is one thing, but maybe there's a
14 combination. I'm trying to be creative for
15 you to try to still meet the lot occupancy
16 requirements and yet keep the length of your
17 garage. So, just thinking out loud here
18 trying to get the footprint to work, but keep
19 the depth.

20 MS. FOWLER: In response to that,
21 it's my understanding that with a setback from
22 the property line we would have to go 6 feet

1 over because of open court requirements. I
2 don't think they would allow us to go 3 feet
3 over without having to get special exception
4 for open court requirements.

5 COMMISSIONER TURNBULL: Well, I
6 think one of the comments by OP was keeping an
7 opening. So, I mean maybe you can comment on
8 what that would mean.

9 MR. WOODS: I do not have my copy
10 of those Zoning Regs with me. If I could --

11 VICE-CHAIRPERSON ETHERLY: And as
12 OP is looking for that reg, I'll just kind of
13 jump in and piggyback on Mr. Turnbull's
14 comments.

15 It is, of course, most certainly
16 not lost on the Board that you're trying to
17 fit a vehicle of today's standards into a
18 space and we recognize that. Our challenge is
19 trying to fit what you're asking for into the
20 context of the reg. So, recognize that we
21 know every little bit you start shaving
22 creates a little more pressure in terms of can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you open that door and get out at a reasonable
2 way or are you going to have to do a shimmy to
3 get in and out of your car everyday which can
4 definitely be some difficulty.

5 So, I just wanted to kind of throw
6 that in there, but Mr. Turnbull's question is
7 nevertheless a very good one. Because if
8 there's a way in which you can comply with the
9 Zoning Regs and not have to deal with the
10 tough questions that the variance test is
11 asking you, you know, what makes this
12 different -- you know, we've had other cases
13 where we've struggled with the balance of
14 well, because we want to do it and I'm not
15 saying that's what you're simply saying. We
16 want to do it. That's what makes it
17 different.

18 You're trying to make the best and
19 productive use of your property. I appreciate
20 what you've said in terms of the alley and how
21 it's already animated with similar structures
22 and you're doing something that's very much in

1 character with that, but we still have to
2 balance that with what the variance test says
3 which is again a pretty high bar. What's
4 different and unique? What's the practical
5 difficulty about your ability to comply with
6 the Zoning Regs because of that uniqueness and
7 then finally, you know, is it consistent? Is
8 it in keeping with the integrity of the Zone
9 Plan and Map.

10 MR. BRADBURY: And I appreciate
11 that and I think Mr. Turnbull's suggestion is
12 a fantastic suggestion. I think as my wife
13 pointed out to me, one of the challenges, of
14 course, or one of the desires we had in
15 producing our garage is we are building again
16 this sort of security of a consistent garage
17 face to the alley. Any opening or gap that's
18 left between our property and the property
19 next to us is a space where somebody could
20 find a way to loiter, mask themselves and do
21 whatever it is that people who have those
22 sorts of tendencies while they're sitting back

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there.

2 So, I think it's certainly a great
3 idea. I think we will certainly work with
4 Jennifer to figure out if there's a way to do
5 -- anyway of shaving or reshaping the front
6 and maybe, you know, something we could do,
7 some bowed front or something, but I just --
8 the bottom line is I think the -- from a
9 security perspective a flat face to the alley
10 built flush against the garage that's
11 currently beside us and ideally against the
12 garage that will be at some point to the other
13 side of us I am sure begins to create that
14 solid wall of facing to the alley preventing
15 people from finding corners and darkness where
16 they can hide.

17 CHAIRPERSON MILLER: Let me say
18 this. Certainly the Board is very sympathetic
19 to your situation that you want a garage for
20 security reasons and we've heard that in other
21 cases and so, what's going on here is, first
22 of all, Mr. Turnbull is looking to see whether

1 -- is there a way you can do this as a matter
2 of right. That's one option.

3 The other thing is that if it were
4 a special exception, you know, we'd say okay.
5 Yes, no adverse impact on your neighbors.
6 That's all, you know, the test there is.

7 In a variance, we have to find
8 uniqueness or exceptional condition, practical
9 difficulty, no adverse impact and the reason
10 that is is we're not allowed in those
11 situations to grant you this if everybody else
12 in the neighborhood's going to say well, I
13 want to do that same thing. Then we're
14 actually rezoning and we're not allowed to
15 that. The Zoning Commission does that. We
16 can't do that.

17 So, just so you understand, you
18 know, where we're coming from, there have been
19 situations and I want to explore more your
20 situation with respect to the variance test
21 and the uniqueness.

22 There have been situations. We've

1 had a case where everybody else had a garage
2 and one -- and the applicant didn't. So, that
3 may have been unique. That made their
4 situation exceptional.

5 So, I just want to explore with
6 you. Is your situation in not having the
7 garage different from your neighbors?

8 MR. BRADBURY: I'll just go back
9 to the point I made a little bit earlier which
10 -- and certainly, you can look at the pictures
11 and the proposal. I would say the
12 preponderance of single family houses in the
13 alley have garages.

14 I would think that certainly on
15 our half of the block from the alley south,
16 there are only two -- there are only three
17 other houses of our type that don't have
18 garages.

19 CHAIRPERSON MILLER: Okay.

20 COMMISSIONER TURNBULL: I guess my
21 comment on looking at the site plan would show
22 that the preponderance of the garages though

1 are at the minimum requirements. There are
2 smaller garages that are only 18 feet. I mean
3 it looks like -- and again, without analyzing
4 all of them, it looks like they would probably
5 meet the requirements. I'm not sure. Some of
6 them may have been grandfathered in also.

7 MR. BRADBURY: Many of them were
8 grandfathered in as a matter of fact if you
9 actually at the -- had a chance to visit the
10 alley.

11 COMMISSIONER TURNBULL: Getting
12 back to my earlier thinking, just trying to
13 think of a solution, I -- with the lot
14 occupancy. I mean one -- and I'm just trying
15 to -- talking with the Office of Planning, I
16 mean it could be that if there was this side
17 yard and you don't met quite the side yard,
18 that might be something of a variance that you
19 could come back because of the uniqueness of
20 the site being short if needed 8 feet let's
21 say or whatever as a side yard. That because
22 of the uniqueness of the site, would that

1 dictate then that you could go to a smaller
2 side yard. That would be a variance that you
3 would be requesting. I don't know.

4 CHAIRPERSON MILLER: I'm not sure
5 what the difference would be. They'd have to
6 get a variance anyway.

7 COMMISSIONER TURNBULL: They have
8 to get a variance anyway, but it would be for
9 a variance for a side yard for an accessory
10 building. I am not sure. But, because of the
11 uniqueness. I don't know whether that's
12 getting us going down a road that we don't
13 want to go or not.

14 CHAIRPERSON MILLER: I don't know
15 if I'm following you. It seems like if
16 there's some uniqueness to the side yard that
17 might be affecting their variance for lot
18 occupancy.

19 COMMISSIONER TURNBULL: Well, I
20 mean if they met --

21 CHAIRPERSON MILLER: I don't know.

22 COMMISSIONER TURNBULL: -- if they

1 met the lot occupancy --

2 CHAIRPERSON MILLER: Oh, if they
3 met the lot occupancy.

4 COMMISSIONER TURNBULL: If they
5 met the lot occupancy, but they have a side
6 yard which is only 3 feet, is that something
7 we should -- could consider? I'm just
8 throwing that out.

9 MS. MONROE: Mr. Turnbull, could I
10 just tell you one thing? If you have a side
11 yard with less than 5 feet, it counts in your
12 lot occupancy. So --

13 COMMISSIONER TURNBULL: Oh, I see.

14 MS. MONROE: -- unfortunately, it
15 wouldn't work in that sense.

16 COMMISSIONER TURNBULL: Yes.

17 MS. MONROE: I also just want to
18 caution that Board that you can't rewrite this
19 entire application for them. Just be aware of
20 that. I mean that's not --

21 COMMISSIONER TURNBULL: No, you're
22 right.

1 MS. MONROE: You can't. I mean
2 that would essentially be giving them advisory
3 opinion as to what we think they should do
4 with it and it's not up to us -- you guys.

5 COMMISSIONER TURNBULL: Right.

6 MS. MONROE: They can come back.
7 They can do what they want, but we can't tell
8 them what to do.

9 VICE-CHAIRPERSON ETHERLY: And I
10 think if I may, Madam Chair, the Office of
11 Attorney General's comment is a very, very one
12 and nevertheless, I still, you know,
13 appreciate that spirit that Mr. Turnbull is
14 moving towards. Because I think at the end of
15 the day, where we're probably going to be is
16 we'll run through the case. You make your
17 arguments. Take everything in. I think the
18 Chair was beginning to indicate that possibly
19 one scenario is the record will continue to be
20 open because perhaps the ANC may have need to
21 additional discussion. The Capitol Hill
22 Restoration Society may have need for addition

1 discussion and we can take all of that
2 information back in.

3 So, with the OAG's point in mind,
4 I wholeheartedly agree with her. You know,
5 we're not suggesting wink wink, nod nod go
6 redesign, but again, you have the variance
7 test issue.

8 One of the things that I wanted to
9 be sure you understood because we have talked
10 a little bit about well, you kind of have
11 other garages that are currently there or
12 we've had other projects that have been done
13 as a special exception. I want to be sure you
14 understand how we got to this variance issue
15 and what's the rub here is Section 2300.5.
16 That's what's triggering this whole
17 conversation. Because that section says "A
18 private garage constructed on an alley lot
19 shall be exempt from the requirements for
20 minimum lot dimensions, but shall be subject
21 to the limitation on percentage of lot
22 occupancy for the District in which is it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 located."

2 So, it's the lot occupancy, the
3 sizing of the proposed structure that triggers
4 that piece. So, if you were a little smaller,
5 we'd be having a different conversation.

6 MR. BRADBURY: So, just I -- you
7 raise a very good point because reading that
8 and reading that in isolation, obviously, I'm
9 sure there's a lot of other rules that apply,
10 but reading that in isolation, that would say
11 I'm over 60 but under 70. I fall back into
12 the special exception rule.

13 CHAIRPERSON MILLER: No, you don't
14 qualify. You don't qualify for a special
15 exception because it's a separate building.
16 It has to be an addition attached. That's how
17 we got here.

18 And I hear the Attorney General --
19 Assistant Attorney General's advice and I
20 think that perhaps we should just move forward
21 and address the variance test at this point
22 and we probably will keep the record open for

1 you all to assess later.

2 Do you have more you want to say
3 with respect to uniqueness or --

4 MS. FOWLER: I just wanted to
5 bring up there were two cases in March that
6 were garages that were approved. Similar
7 situation where they applied as a special
8 exception. Were kind of surprised by the
9 change or perceived change and were approved
10 and I feel like the arguments that they had
11 for uniqueness were not really any stronger
12 than in this case.

13 I don't know if you're familiar
14 with the cases. One was on Capitol Hill
15 actually for a shed at the back of their house
16 for woodworking or something like that and the
17 other one was for a garage. So, I don't know.

18 CHAIRPERSON MILLER: Do you --

19 MS. FOWLER: I have these
20 transcripts if you're --

21 CHAIRPERSON MILLER: The
22 transcripts.

1 MS. FOWLER: I do.

2 CHAIRPERSON MILLER: Okay.

3 COMMISSIONER TURNBULL: I think
4 one of those -- I'm trying to remember. I
5 think one of those homes they were the only
6 home in the street area that didn't have a
7 basement. I think one of them was the only
8 home in the area that didn't have a basement
9 and I think that was one of the key attributes
10 of it I think, but I'm not sure.

11 MS. FOWLER: I think that was the
12 one on Capitol Hill for a shed where there --

13 COMMISSIONER TURNBULL: I think
14 so, but I'm --

15 MS. FOWLER: Yes.

16 COMMISSIONER TURNBULL: -- I'm not
17 -- we'd have to look back, but I think that
18 was one of the unique aspects.

19 MS. FOWLER: Um-hum.

20 COMMISSIONER TURNBULL: Every
21 other house had a basement except them or
22 something.

1 CHAIRPERSON MILLER: If you want
2 to either give us the case numbers or put the
3 transcripts in the record or whatever you want
4 to --

5 MS. FOWLER: Okay.

6 CHAIRPERSON MILLER: -- the Board
7 will certainly take a look at them and if you
8 want to address --

9 MS. FOWLER: Okay.

10 CHAIRPERSON MILLER: -- right now
11 why you think it's similar or different,
12 you're free to do that as well.

13 MS. FOWLER: Okay.

14 CHAIRPERSON MILLER: But, I think
15 we'll do that in closing actually because I
16 think at this point it's -- if you want to put
17 forward evidence or testimony as to, you know,
18 what -- that's what you should be doing.

19 MS. FOWLER: Okay.

20 CHAIRPERSON MILLER: Okay.

21 MS. FOWLER: Well, in the case of
22 17579, they did argue that didn't have a

1 basement. I don't believe there was an
2 argument with regards to other garages. I
3 don't think that everybody else had a garage,
4 but I think it was the fact that they didn't
5 have a basement.

6 And I do feel like we have a
7 little bit of similar situation because they
8 have this small row houses that were bare
9 linde style houses that were built without
10 garages or, sorry, without basements. So,
11 they don't have that kind of space to work
12 with.

13 So, I think it is similar. It's
14 not as, you know, it's not to say every --
15 they're the only one without a basement.
16 There are some others on that stretch that do
17 not have them, but that's the similarity in
18 this case.

19 The other one was 17573 and this
20 is also in March and their argument was that
21 they tore down their garage to build an
22 addition. Once they built the addition, they

1 realized they put themselves over the lot
2 occupancy and they wanted to build the garage
3 back. That was their main argument and so,
4 there you have it and it was approved. Both
5 were approved.

6 CHAIRPERSON MILLER: Okay.

7 MS. FOWLER: So.

8 CHAIRPERSON MILLER: We'll take a
9 look at them.

10 MS. FOWLER: Okay.

11 VICE-CHAIRPERSON ETHERLY: If I
12 could, Madam Chair, just an additional
13 question.

14 As we deal with that first prong
15 of the variance test which speaks to the issue
16 of kind of a specific uniqueness with respect
17 to the shape of the property, let me make sure
18 I'm clear about what's happening on either
19 side of your space right now.

20 There's at Exhibit Number 10 which
21 I believe had the drawings attached at
22 photograph C4 there's an alley view of your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 property and there is a small garage that
2 currently exists on one side of your property
3 and on the other side, is there also a
4 structure or is there just -- is there a fence
5 on the other side for your neighbor's yard?

6 MR. BRADBURY: It's just a fence.
7 I'm sorry. It's just a fence right now.

8 VICE-CHAIRPERSON ETHERLY: Okay.
9 So, you have a structure on one side and you
10 have a fence on the other.

11 MR. BRADBURY: Right.

12 VICE-CHAIRPERSON ETHERLY: Part of
13 your concern is based on that size if you were
14 to build something smaller with a smaller
15 footprint than what you would be required to
16 do, you're going to be creating spacing that
17 creates an issue. Correct?

18 MR. BRADBURY: That's the current
19 concern. Correct.

20 VICE-CHAIRPERSON ETHERLY: Okay.
21 Okay.

22 MR. BRADBURY: And then that

1 spacing only amplifies itself when that
2 neighbor beside me -- beside me who doesn't
3 have a garage then decides to build something.
4 He either has to build to his property line
5 and leave whatever gap is there.

6 VICE-CHAIRPERSON ETHERLY: Um-hum.

7 MR. BRADBURY: Which clearly
8 problematic or we need to figure out some way
9 to fill that gap in.

10 VICE-CHAIRPERSON ETHERLY: Okay.
11 Ms. Fowler, based on -- again, these are very
12 excellent photographs in terms of what's
13 happening at other properties in the alley
14 both across the street and along the side that
15 the Bradbury's are located. Is there a
16 difference in size with the space that you're
17 currently working with for the Bradbury's
18 versus some of the other alley structures?

19 Because it does appear to be, as
20 is not unusual on Capitol Hill being a Hill
21 resident myself and seeing a lot of these
22 alleys, it can be a hodgepodge back there and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in some ways, that's good and that's the joy
2 of Capitol Hill and in other ways,
3 architecturally you're like -- it's like
4 alphabet soup back there.

5 MS. FOWLER: Yes.

6 VICE-CHAIRPERSON ETHERLY: Is this
7 lot different or let me say is this backyard
8 different in any material way compared to
9 those others from a narrowness standpoint or
10 a width standpoint?

11 MS. FOWLER: No, there are a
12 couple of large lots across the alley from
13 them. There's an apartment complex across the
14 way and then there's some industrial garages
15 up the alley that I have additional photos of
16 I can hand you if you'd like them.

17 VICE-CHAIRPERSON ETHERLY: Okay.

18 MS. FOWLER: But other than that
19 especially in this row everything's pretty
20 much the same. The lot sizes vary in width.

21 VICE-CHAIRPERSON ETHERLY: Okay.

22 Okay.

1 MS. FOWLER: But, the depth is the
2 same.

3 VICE-CHAIRPERSON ETHERLY: But,
4 it's definitely your testimony and that of the
5 Bradburys that the proposed plan that you have
6 is must certainly trying to stay consistent
7 and in step with what's already happening at
8 the rear with other garage properties.

9 MS. FOWLER: Yes.

10 VICE-CHAIRPERSON ETHERLY: You're
11 not looking to do anything that's going to
12 aesthetically look different in a major way
13 from other structures.

14 MS. FOWLER: Right. Correct.

15 VICE-CHAIRPERSON ETHERLY: Okay.
16 Thank you.

17 MS. FOWLER: Can I bring up these
18 other photos to you --

19 MEMBER MANN: Madam Chair --

20 MS. FOWLER: -- right now?

21 CHAIRPERSON MILLER: You can give
22 them to Ms. Bailey.

1 MS. FOWLER: Okay.

2 CHAIRPERSON MILLER: Thank you.

3 MEMBER MANN: Madam Chair?

4 CHAIRPERSON MILLER: Yes.

5 MEMBER MANN: If I could ask a few
6 questions please that would piggyback on the
7 line of questioning that Mr. Etherly was just
8 offering.

9 Have you seen the Office of
10 Planning's report? I know we haven't gotten
11 to Office of Planning yet, but have you had an
12 opportunity to look at the report?

13 MR. BRADBURY: I have not.

14 MEMBER MANN: The Office of
15 Planning report has a statement in it that
16 your home was built in 1968. Is that correct?

17 MR. BRADBURY: I believe it is.

18 MEMBER MANN: And it says that
19 there are some other homes in the neighborhood
20 that were built in 1968?

21 MR. BRADBURY: That's correct.

22 MEMBER MANN: Do you know how many

1 homes there were on your block and where they
2 are in location to yours?

3 MR. BRADBURY: Certainly. Give me
4 a second. I'll look at the plans. I can sort
5 of tell you looking at Exhibit C2. So, where
6 the alley separates the block north to south
7 in half. That's the alley. Okay. So,
8 there's one, two, three, four -- but, within
9 ten years. Five, six. So, if you're looking
10 at sheet C2, six of those eight houses are
11 similar mid-century homes to ours. Mid-20th
12 century homes.

13 MEMBER MANN: And those were built
14 at the same time or --

15 MR. BRADBURY: All within a few
16 years of each other.

17 MEMBER MANN: Okay. The Office of
18 Planning report goes on to say that your home
19 which was built in 1968 does not comply with
20 some of the zoning requirements such as lot
21 area and lot width. Are you aware of that?

22 MR. BRADBURY: I believe we

1 mentioned.

2 MS. FOWLER: Yes, that is correct.

3 MR. BRADBURY: That is was
4 mentioned.

5 MEMBER MANN: Do you know --

6 MS. FOWLER: It's less than 18-
7 feet wide.

8 MEMBER MANN: And do you know why
9 in 1968 well after the Zoning Regulations were
10 in place that these homes were built not in
11 compliance with the Zoning Regulations?

12 MS. FOWLER: No, we don't know
13 why.

14 MEMBER MANN: Do you -- let me put
15 the question to you this way which I'm not
16 certain that you can answer today. Do you
17 know why there's such a unique zoning history
18 on this property?

19 MR. BRADBURY: None whatsoever.

20 MEMBER MANN: When we get to the
21 Office of Planning Report, I'll ask the same
22 question. When we get to the Office of

1 Planning rather. So, I'll just leave it at
2 that for the moment.

3 CHAIRPERSON MILLER: Did I
4 understand that you haven't seen the Office of
5 Planning report?

6 MR. BRADBURY: I have not read it.
7 Jennifer --

8 CHAIRPERSON MILLER: Okay.

9 MS. FOWLER: No.

10 CHAIRPERSON MILLER: I think in
11 which case -- do you have an extra copy with
12 you? Get that copied right now so they could
13 see it. Give it to Ms. Bailey and she'll make
14 a copy I think or Mr. Moy. One or -- okay.

15 MEMBER MANN: Just --

16 CHAIRPERSON MILLER: Yes.

17 MEMBER MANN: I'm sorry, Madam
18 Chair. Just to follow up on that question,
19 given that you didn't know the answer to my
20 last question, perhaps you may not know the
21 answer to this, but let me pose this to you.

22 Do you know whether or not any of

1 the other homes that were built in 1968 are
2 also in noncompliance with the Zoning
3 Regulations?

4 MR. BRADBURY: Let me be clear
5 about this because this might help out a
6 little bit. They are all as small or smaller
7 than our home in width. They are all on lots
8 that are 17 feet and change or smaller with
9 the exception of the one house that sits right
10 against the alley.

11 CHAIRPERSON MILLER: All these
12 homes you're referring to, were they built
13 around the same time or you don't know?

14 MR. BRADBURY: All the same time.

15 CHAIRPERSON MILLER: Same builder.

16 MR. BRADBURY: All by the same
17 builder with the exceptions of 742 and 744.

18 CHAIRPERSON MILLER: And do they
19 have garages or not?

20 MR. BRADBURY: Which ones? All of
21 them or --

22 CHAIRPERSON MILLER: The ones

1 we're comparing yours to. I'm --

2 MR. BRADBURY: So, again -- so, of
3 the houses that are of similar time period as
4 ours which is all the houses that are in that
5 drawing on page C2 with the exception of 742
6 and 744. One, two, three, four of the one,
7 two, three, four, five, six. Four of the six
8 houses that are of the same vintage as our
9 house have garages and then -- oh, and then --
10 so, then there's one more that was just built.
11 Sorry.

12 CHAIRPERSON MILLER: It's only
13 five out of eight or how many?

14 MR. BRADBURY: Okay. So, let me
15 try this again.

16 CHAIRPERSON MILLER: Okay.

17 MR. BRADBURY: If I'm looking at
18 page C2, the very first house off the alley
19 has a garage and that is of similar vintage as
20 our house. The next two do not have garages.
21 Those are both of similar vintage as our
22 house. Seven thirty-eight, also similar

1 vintage, has a garage. Seven forty is our
2 house. It's why we're here. Seven forty-two
3 and seven forty-four are not of our vintage.
4 They are actually late 19th century homes if
5 I understand correctly. Seven forty-six and
6 seven forty-eight both have garages. Seven
7 forty-eight's not on this picture and I think
8 that's all of them. Chris and -- Chris and
9 Ray, 749.

10 They're both -- yes, and that --
11 there's one more house that's not on this
12 picture. Seven fifty, one more house. So,
13 748 not on the picture. They just had a
14 garage built. Seven fifty does not. They are
15 in the planning process to build a garage.
16 Also similar vintage to our house.

17 CHAIRPERSON MILLER: Okay. To the
18 extent you know about that property that's in
19 the process of building a garage, similar
20 vintage? Is that what you said?

21 MR. BRADBURY: It's the exact same
22 house.

1 CHAIRPERSON MILLER: Did they
2 bring a matter of right though? There's
3 something different about their property.

4 MR. BRADBURY: They're -- I think
5 they're still in midst of planning. I don't
6 know if they've decided to make it larger or
7 not.

8 CHAIRPERSON MILLER: Oh. Okay.
9 Okay. How many then are we talking about that
10 are in your same situation? Two?

11 MR. BRADBURY: That -- that have
12 garages?

13 CHAIRPERSON MILLER: You say that
14 don't have garages.

15 MR. BRADBURY: Two.

16 CHAIRPERSON MILLER: Two. You and
17 one other?

18 MR. BRADBURY: No, two -- two plus
19 us.

20 CHAIRPERSON MILLER: Two others.

21 MR. BRADBURY: So -- so, three.
22 Us and two others.

1 CHAIRPERSON MILLER: You and two
2 others including the one that's in planning?

3 MR. BRADBURY: Now, you've made
4 this tricky.

5 CHAIRPERSON MILLER: Sorry.

6 MR. BRADBURY: This is like a word
7 problem. Isn't it? No, it would be us and
8 three others. One of the three are in
9 planning.

10 CHAIRPERSON MILLER: And how many
11 others are there out there that do have
12 garages?

13 MR. BRADBURY: Five.

14 CHAIRPERSON MILLER: The five is
15 of the same vintage?

16 MR. BRADBURY: Yes.

17 CHAIRPERSON MILLER: Is that it?
18 And as far as on the alley, there are a lot
19 more others.

20 MR. BRADBURY: And on the alley,
21 there's a lot more. There's -- well --

22 CHAIRPERSON MILLER: Is it almost

1 everyone has a garage on the alley or how
2 would you characterize it?

3 MR. BRADBURY: Certainly more than
4 half. Probably approaching two-thirds. I'd
5 have to go out and do a by-hand count.

6 CHAIRPERSON MILLER: Okay.

7 MEMBER LOUD: Madam Chair, just a
8 couple of questions for you guys.

9 I want to go back to the
10 discussion about I guess the need to have 4
11 additional feet as I understand it for the
12 alley structure which is driven by the size of
13 your car I think.

14 What kind of car do you have?

15 MR. BRADBURY: We have a Land
16 Rover. An LR III.

17 MEMBER LOUD: And how long is your
18 car?

19 MR. BRADBURY: It's just over 16
20 feet long.

21 MEMBER LOUD: Do you know if your
22 immediate neighbors have young children?

1 MR. BRADBURY: Yes, there are.
2 You mean on either side? Oh, no.

3 MEMBER LOUD: No.

4 MR. BRADBURY: Not on either
5 immediate side of us.

6 MEMBER LOUD: Okay. And do you
7 think you'll need to rely on the garage to
8 accommodate your growing family?

9 MR. BRADBURY: We do.

10 MEMBER LOUD: And can you just
11 explain why?

12 MR. BRADBURY: Certainly. So,
13 again, I think as was said a little bit
14 earlier there -- there is no opportunity for
15 a basement or an attic in our house. We -- we
16 -- there -- there -- just the way the house
17 was built. It's built on a solid concrete
18 slab and we can't go above the third floor.
19 So, to bring a child into that house right
20 now, we need to open up some space.

21 The -- the space solution that
22 seemed most appropriate for us was a garage

1 with second-story storage that would allow us
2 to get roughly one room's worth of goods out
3 of our house and into that garage.

4 MEMBER LOUD: Well, let me ask the
5 question a little bit differently.

6 MRS. BRADBURY: I have --

7 MEMBER LOUD: Are you -- I'm
8 sorry.

9 MRS. BRADBURY: Go ahead.

10 MEMBER LOUD: Do you want to
11 respond?

12 MRS. BRADBURY: Yes, I have a
13 comment. I would like to have the garage that
14 long so I can fit my car in there and have the
15 safety of shutting the garage door and taking
16 my child out of the car knowing that I am safe
17 in my yard.

18 My neighbor who does have a child
19 was mugged in her backyard. That's why they
20 have a garage and she was worried that her
21 child was going to get stolen out of the car.

22 So, for me, I would like to have

1 the space to be able to feel safe in my own
2 environment with my new child since we've had
3 to wait so long for one.

4 MEMBER LOUD: Thank you. That was
5 sort of where my questioning --

6 MRS. BRADBURY: That's where I
7 thought your question was coming from. So.

8 MEMBER LOUD: -- was going and --

9 MRS. BRADBURY: For me, it's more
10 of a safety issue.

11 MEMBER LOUD: -- are you not able
12 to use the front of the house for that?

13 MRS. BRADBURY: We -- we are, but
14 the parking -- we only have -- he has the
15 motorcycle. I -- we have one vehicle and the
16 parking is so bad in our neighborhood now that
17 even with the parking across the street
18 because the Marine barracks are literally
19 across the street, lots of time when I come
20 home, I have to park in the back.

21 MEMBER LOUD: Okay.

22 MRS. BRADBURY: So -- and I not

1 feel safe doing that. Unloading groceries.
2 So, you know, you lock up the car. You lock
3 the back gate. You walk to the house. You
4 unlock the house. You lock the house because
5 you don't know. I mean we've had problems
6 with people urinating behind our home and --

7 MEMBER LOUD: Okay.

8 MRS. BRADBURY: -- I don't want to
9 have any problems as soon as my child gets
10 here. So.

11 MEMBER LOUD: Do you know what age
12 group you're going to be adopting yet?

13 MRS. BRADBURY: The child will be
14 between 12 and -- 12 months and two years old.

15 MEMBER LOUD: Okay.

16 MRS. BRADBURY: Does that kind of
17 answer from --

18 MEMBER LOUD: Do you know whether
19 or not there's a high crime level in the alley
20 and can you speak to any -- you just mentioned
21 crime I think involving your neighbor, but can
22 you speak to other specific incidents of

1 crimes in the alley?

2 MR. BRADBURY: Sure. I mentioned
3 a little bit earlier that just after the new
4 year one of our neighbors had their back fence
5 kicked down and somebody carried off their
6 motorcycle.

7 We've had some petty crime. Cars
8 being broken into. A couple of muggings in
9 and around the alley and on 10th Street where
10 the alley comes out on the other side and then
11 just sort of the general loitering of people
12 who have somewhat suspect intentions as my
13 wife mentioned. People urinating in the
14 alley. Used condom wrappers or other things
15 left in the alley that clearly indicate
16 somebody was back there doing something they
17 should not have been. So, I think --

18 MEMBER LOUD: I guess as parents
19 -- first of all, let me back up. We have to
20 look at the record before us. On the other
21 hand as parents, we all sort of understand
22 that transporting a child around in a car is

1 a lot different than transporting an adult or
2 transporting your friends.

3 Are there specific reasons why you
4 think that this 16-foot Land Rover LR III
5 which you have to get into this garage
6 supports your ability to transport your child
7 around? In other words, why couldn't you do
8 it in a Prius or something like that?

9 MR. BRADBURY: Sure.

10 MEMBER LOUD: What's unique about
11 this vehicle, this size that helps you -- that
12 will help you transport your child around?

13 MR. BRADBURY: So, I'd just say,
14 first of all, it's the vehicle we have.
15 Because he's certainly not going on the back
16 of the motorcycle.

17 So, I mean it's kind of -- it's
18 kind of the -- the hand we're dealt with right
19 now.

20 The other thing I would say is
21 just sort of in how we got here. I think as
22 I'm sure many of you know as you go through

1 your adult life and you begin to raise a
2 family. You find places to share your -- your
3 family and your love as you -- as you grow.

4 We started out with dogs and we've
5 adopted several dogs and when we bought this
6 car, we actually had four dogs. A couple, you
7 know, from shelters. We've since lost a few
8 of them, but that's sort of what started this
9 was the need to get my wife and our four dogs
10 and I to visit family in -- in New Jersey and
11 Pennsylvania and whatnot. So -- so, that's
12 kind of how we got to where we are with this
13 particular vehicle.

14 I think as we -- as we still have
15 two dogs and a child and all of the
16 accouterments that come with a child including
17 strollers and -- and goods and what not. I
18 think more and more you're finding people are
19 -- are choosing minivans or -- or SUVs or
20 station wagons or whatever to just made the
21 movement of all of the necessary products and
22 -- and people around easier. It's just kind

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of where we are.

2 MEMBER LOUD: Could you
3 accommodate the car, the 16-foot car, the
4 stroller in a garage structure that would be
5 according to zone? I guess what? Eighteen
6 feet.

7 MR. BRADBURY: Yes, the challenge
8 is -- and we've -- this -- you know, 22 feet
9 wasn't -- wasn't developed by accident and if
10 you think about by right your 18 feet gives
11 you about 16 feet usable in the -- in the
12 garage and the car's 16 feet. There's no room
13 to maneuver around the vehicle.

14 If you think about the need of
15 having roughly 20 to 24 inches to wheel a
16 stroller around or carry groceries or just
17 generally walk around the vehicle, you get
18 roughly 2 feet in addition on either side.
19 Eighteen and four gets you to 22.

20 That's kind of how we wound up
21 with that magic number.

22 MEMBER LOUD: Okay. Thank you.

1 CHAIRPERSON MILLER: Okay. Any
2 other questions now? Did you get a copy of
3 the Office of Planning report yet?

4 MR. BRADBURY: I believe we have
5 it.

6 CHAIRPERSON MILLER: Okay. Do you
7 have any other testimony or evidence you want
8 to put forward at this point? We'll come back
9 to you for closing.

10 MS. FOWLER: I don't. Thank you.

11 CHAIRPERSON MILLER: Okay. Do you
12 -- oh, let me just say something first and
13 then I'll let you just -- in case this relates
14 to it. We next do go to the Office of
15 Planning and I would like to know whether you
16 would all would like five or ten minutes to
17 read the report before we go to the Office of
18 Planning or not?

19 MR. BRADBURY: Yes, please.

20 CHAIRPERSON MILLER: Okay. At
21 this point, then why don't we take a ten-
22 minute break.

1 (Whereupon, at 11:38 a.m., off the
2 record until 11:56 a.m.)

3 CHAIRPERSON MILLER: Okay. I
4 think we're ready to proceed. Is the
5 Applicant ready for us to move on to the
6 Office of Planning or is there anything else
7 right now?

8 MS. FOWLER: We can go ahead and
9 listen to their report that they --

10 CHAIRPERSON MILLER: Okay. Okay.
11 Then we'll turn to the Office of Planning.

12 MR. WOODS: Madam Chair and
13 Members of the Board, once again, my name is
14 Douglas Woods. I'm with the Office of
15 Planning.

16 At this time, the Office of
17 Planning cannot recommend approval of the
18 application as the Applicant has not
19 adequately met the criteria for granting a
20 variance. The subject site is not unique and,
21 therefore, does not appear to meet the first
22 or second parts of the three-part variance

1 test.

2 I do want to add that the
3 information about the Applicant's home not
4 having a basement was actually new
5 information. I'm not sure how that would
6 enter into our analysis. The first part of
7 the variance test states "Does the property
8 exhibit specific uniqueness with respect to
9 exceptional shape, narrowness, shallowness,
10 topography or other extraordinary or other
11 exceptional situations or conditions?" And I
12 think that would be up to the Board to
13 determine if that is actually the case.

14 As far as the testimony of the
15 Applicants with regard to the character of the
16 alley and the number of garages along the
17 alley, some are new. Some are -- have been
18 there for awhile. Some are -- I believe a
19 couple are actually larger than what they're
20 proposing.

21 There is one new one that's going
22 in that is very similar to what the Applicant

1 is proposing. I believe that was done by
2 right. That the house on that particular lot
3 I believe is set back about 2 feet. The rear
4 of the house is 2 feet further in than the
5 Applicant's house and so, I believe that
6 they've met their lot occupancy requirement.

7 And so, lastly, I would just say
8 that on the third part of the test "Can the
9 relief be granted without substantial
10 detriment to the public good and without
11 substantially impairing the intent, purpose
12 and integrity of the Zoning Regulations and
13 Map," we do concur with the Applicant that
14 there does not appear to be substantial
15 impacts to light or air from the slight
16 deviation from lot occupancy. That the garage
17 would, in fact, be similar in size and setback
18 to other garages on the alley.

19 While the regulations intend to
20 prevent the over-building of lots in the R
21 District, the subject site would retain usable
22 open space and construction of the garage

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would not appear to impair the ability of the
2 neighboring owners to use or enjoy their
3 properties.

4 But, once again, as far as the
5 Office of Planning analysis goes, we do not
6 believe that they meet the first two parts of
7 the test as far as uniqueness of property.

8 That concludes my testimony. If
9 you have any questions, I'd be willing to
10 answer.

11 CHAIRPERSON MILLER: Thank you. I
12 have a few questions.

13 Is there a standard length of a
14 garage these days?

15 MR. WOODS: I think that we would
16 have to go by what the regulations call for as
17 far as what a standard parking space would be.

18 CHAIRPERSON MILLER: And that is?

19 MS. FOWLER: It's 9 by 19.

20 CHAIRPERSON MILLER: So, the
21 length of 19.

22 MR. WOODS: Thank you.

1 CHAIRPERSON MILLER: Is that
2 correct?

3 MR. WOODS: Yes. Yes, ma'am.

4 MS. FOWLER: Yes.

5 CHAIRPERSON MILLER: Okay. So, if
6 you go by that, but how do you address then
7 the Applicant's concern about being able to go
8 behind the parking space in order to take
9 things out of the car in a safe manner?

10 MR. WOODS: I don't believe that I
11 can adequately address that since I'm not
12 familiar with the size of the Land Rover.

13 CHAIRPERSON MILLER: Okay. That's
14 fine. I'm just going to ask you these
15 questions. If you can answer, fine. If you
16 can't -- you mentioned the basement being new
17 information. Is that something that would
18 affect your analysis with respect to practical
19 difficulty or uniqueness? The fact that they
20 don't have a basement and you didn't know
21 that.

22 MR. WOODS: To be honest with you,

1 I'm not sure where that would land as far as
2 the analysis. I do know that in a previous
3 case that was heard I believe March 20th, it
4 did enter into the discussion of the Board and
5 how the Board voted on that particular case.

6 CHAIRPERSON MILLER: And that's
7 one of the cases that Ms. Fowler mentioned?

8 MR. WOODS: Yes, ma'am.

9 CHAIRPERSON MILLER: Okay. We're
10 going to take a look at that. Is this lot a
11 small lot or unusually small lot?

12 MR. WOODS: This lot is fairly
13 typical of lots in Capitol Hill. All of them
14 seem to be in the range of anywhere from 18
15 feet to I believe your all's is 17 feet wide.
16 Some lots in the older sections of Capitol
17 Hill can be as narrow as 12 or 14 feet.
18 There's a good variation.

19 On this particular portion of the
20 block, there were approximately maybe six to
21 eight townhouse units that were built in the
22 late '60s I believe and their lot size width

1 is very similar. Around 17 feet.

2 CHAIRPERSON MILLER: And do these
3 have garages?

4 MR. WOODS: I would say on the
5 alley in question I would say at least --
6 probably between 60 and 70 percent of the
7 homes have some sort of accessory structure in
8 the rear that were put in at various times.

9 CHAIRPERSON MILLER: Is this house
10 more set back into the rear yard than the
11 other houses? I think you mentioned one where
12 there is a garage being built, but you thought
13 it was a matter of right because the house
14 itself didn't sit as far back into the
15 property.

16 MR. WOODS: From looking at the
17 rears of the homes on this particular block,
18 it does seem that some of the homes -- I
19 suppose just for variation in design some have
20 the rear about 2 feet maybe 3 feet further in
21 than the Applicant's home and it seems to be
22 maybe staggered. Maybe two houses and then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the other two or something like that.

2 CHAIRPERSON MILLER: So, are you
3 saying there may be two other homes that are
4 like this one that are -- with respect to
5 being this far setback into the rear yard?

6 MR. WOODS: There could be. I
7 would need to --

8 CHAIRPERSON MILLER: Need to
9 check.

10 MR. WOODS: -- check on that
11 information. Yes.

12 CHAIRPERSON MILLER: And do you
13 know whether they have garages?

14 MR. WOODS: Not offhand. No. I
15 believe the Applicant had made reference to
16 page C2 of their application which shows the
17 homes and the -- and the garages. So, as you
18 can see, there are a number of garages along
19 the alley. I would -- actually would need to
20 verify the rear of the row of row houses.
21 Because if my recollection is correct, I don't
22 believe all of those homes have the same rear

1 wall. But, I would need to check on that.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. One other question. I think we're
4 talking about a 4 feet difference between what
5 they're seeking and what's allowed as a matter
6 of right. Correct? From 18 to 22. Is that
7 correct?

8 MR. WOODS: Yes.

9 CHAIRPERSON MILLER: Okay. Is
10 that something that can be considered de
11 minimis or no?

12 MR. WOODS: That I would need to
13 defer to someone else on that.

14 CHAIRPERSON MILLER: Okay.

15 MR. WOODS: I do know -- I believe
16 in the staff report, I believe it's a matter
17 of 64 square feet or so that they're over the
18 60 percent lot occupancy.

19 CHAIRPERSON MILLER: Thank you. I
20 don't have any questions. Are there any other
21 Board questions? Yes, Mr. Turnbull.

22 COMMISSIONER TURNBULL: Thank you,

1 Madam Chair. But, looking at the -- at their
2 plan, the architect's plan, most of the
3 garages appear smaller. Whether they were
4 built, grandfathered in or matter of right or
5 they a lot smaller than what the Applicant is
6 doing.

7 MR. WOODS: On the Applicant's
8 plan, the ones on their side of the alley
9 appear to be approximately 2 feet shorter than
10 what the Applicant is proposing. There is one
11 that is -- it's not shown on this and that is
12 the new garage that is being built now and
13 it's probably I believe around probably 85
14 percent complete now and that's at 748 9th
15 Street, S.E. and visually, it looks to be
16 similar in size as the Applicant's proposal
17 and I believe it also has the additional
18 storage loft.

19 COMMISSIONER TURNBULL: Is the
20 house the same size or --

21 MR. WOODS: It is approximately
22 the same size.

1 COMMISSIONER TURNBULL: Okay.

2 Thank you.

3 MR. WOODS: You're welcome.

4 VICE-CHAIRPERSON ETHERLY: Madam
5 Chair, as a follow-up to Mr. Turnbull's
6 question which I think was an excellent one,
7 it perhaps spoke a little bit to something
8 that Mr. Woods indicated in his report in
9 terms of looking at, this is a little bit of
10 a question, but perhaps more of a comment,
11 that issue of lot occupancy as we look at the
12 other properties that are along this stretch
13 here probably part of the challenge for us and
14 part of the challenge as we all look at this
15 is being sure that we're comparing apples and
16 apples and to an extent, it might all seem
17 that they're apples because they're all
18 residences on Capitol Hill. But, the lot
19 occupancy equation is one where both the
20 garage and the principal structure impact that
21 equation.

22 Would you agree with that

1 statement, Mr. Woods?

2 MR. WOODS: Yes, sir.

3 VICE-CHAIRPERSON ETHERLY: Perhaps
4 -- and this might be more of a flag for
5 additional information as we round out the
6 record on this. Is the Office of Planning in
7 any position to characterize what the other
8 houses on this stretch how they compare to the
9 size of the primary residence -- of the
10 Bradbury residence? Are you in a position to
11 kind of characterize the Bradbury residence as
12 on a whole it's probably a little larger than
13 everything else that we're seeing on this
14 stretch or is it a little smaller?

15 MR. WOODS: I would say I'm not
16 prepared to actually characterize in
17 specifics.

18 VICE-CHAIRPERSON ETHERLY: Okay.

19 MR. WOODS: But, if you're looking
20 at it in comparison to the townhomes, the row
21 houses that were built in the late '60s, then
22 they are similar. Some could approximately,

1 you know, 2 feet shorter.

2 VICE-CHAIRPERSON ETHERLY: Um-hum.

3 MR. WOODS: But, they are very
4 similar.

5 VICE-CHAIRPERSON ETHERLY: Okay.

6 MR. WOODS: The homes that were
7 built prior to the '60s tend to be smaller.

8 VICE-CHAIRPERSON ETHERLY:
9 Smaller.

10 MR. WOODS: Right.

11 VICE-CHAIRPERSON ETHERLY: Okay.
12 Okay. Thank you. That concludes my question,
13 Madam Chair. Thank you, Mr. Woods.

14 MEMBER LOUD: Just two quick
15 questions if I can. First, my understanding
16 of the Bradburys' testimony and I'm not
17 quoting it verbatim, so I'm probably using
18 some of my own words, but in a nutshell part
19 of what they're saying is that they don't have
20 a basement for whatever reason. They need
21 some storage space. They've reached that
22 point where they need some storage space and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 they need the garage in the rear to
2 accommodate the storage space.

3 Part of what makes -- so, they're
4 arguing that the property is unique for that
5 reason. It lacks a basement which cannot
6 provide storage space.

7 But, then getting back to the
8 garage and the alley, part of what I hear them
9 saying is that the reason why this storage
10 space and I guess parking structure is unique
11 is that they need a full 22 feet to
12 accommodate their needs in the alley as
13 opposed to the 18 feet that would be permitted
14 and I just wanted to get your response to some
15 of that which -- that I thought I heard this
16 morning in terms of them needing the 22 feet
17 for all of the reasons that they shared
18 earlier when they gave their testimony and
19 your observations on whether that makes the
20 property unique or why it doesn't make the
21 property unique.

22 MR. WOODS: I think the only way

1 that I could answer that is that in a previous
2 case before the Board, I believe the Board
3 found that the lack of a basement that the
4 Board did see that as a unique situation.

5 Other than that, I believe I would
6 need to go back and look at the situation and
7 see. You know, perhaps that's a broader
8 discussion on uniqueness.

9 MEMBER LOUD: Thank you.

10 COMMISSIONER TURNBULL: I guess I
11 would just -- my one concern is that does the
12 size of an Applicant's vehicle dictate the
13 degree of variance that we offer him? If they
14 came in with a Lincoln Town Car or a Cadillac
15 and needed 26 feet, I don't know if -- I'm
16 just concerned about going down that line and
17 offering just because of the size of a
18 vehicle. That's just my thought on it.

19 MEMBER LOUD: I share the same
20 concern which is why I wanted to invite some
21 feedback on it. Although part of what I'm
22 hearing is it's not just the size of the

1 vehicle, it's concerns about protection of the
2 family. Concerns about, yes, protection of
3 the family, the functionality of the family
4 and, of course, you know, the under girding
5 pieces, the absence of the basement. Because
6 if they had that, I guess they could have the
7 storage right there on the house and there
8 would be no strong argument at all regarding
9 this, but it is difficult. It's a gray area
10 for me and wanted to know how OP felt about it
11 as well as my colleagues.

12 CHAIRPERSON MILLER: On that
13 issue, I think I see it as -- well, I wanted
14 to know whether there was a standard size of
15 garages now these days or what the norm is.
16 Sometimes times change and this is the -- this
17 is really a reasonable-size garage for now and
18 I'm not saying it is. I'm just throwing that
19 out as a possibility and I was going to ask
20 you about -- Mr. Turnbull talked about smaller
21 garages on the alley and I'm wondering, you
22 know, were those built a long time ago in a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 different era. You know, have things changed
2 so that that would be a reason to have this
3 longer garage?

4 MR. WOODS: It's a little bit of a
5 hodgepodge along this alley. I believe the
6 Applicant has a picture of the garage that is
7 adjacent and that seems to me to have probably
8 been built in the '70s. It seems to be
9 approximately the same size as far as looking
10 at it from the alley. The width of it seems
11 to approximate it even though it looks like it
12 may be a foot or two less wide than what the
13 Applicant is proposing. But, it is a little
14 bit of a mix and as far as the dates that some
15 of these were built, it probably varies. Some
16 seem to be older probably built turn of the
17 century maybe or retrofitted after that. The
18 new that is being built is very similar to
19 what's being proposed by the Applicant.

20 In other areas of Capitol Hill,
21 you get the same hodgepodge of garages and a
22 lot of it just depends on the width of the lot

1 and in some cases, the depth of the lot.

2 It's hard to make that
3 determination simply because the homeowner
4 seems to work with the space that they have
5 and try to at least maximize what they can and
6 in some cases, because of a lot width, the
7 garage is very minimal and I think it's just
8 a situation of the actual property size.

9 I'm not sure if that answers your
10 question.

11 CHAIRPERSON MILLER: No, I'm just
12 -- are you saying that this garage is minimal?
13 I'm not sure what you were referring to just
14 then.

15 MR. WOODS: I believe that the --
16 I don't think that we have a question about
17 the width of the garage going from lot line to
18 lot line. I do believe that if the length
19 were shortened and I'll just approximate, if
20 it was -- say you took 3 feet off of the
21 length, then that would approximate the amount
22 of square footage that they would need to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 reduce the garage in order to be at or under
2 the 60 percent lot occupancy. Thereby, not
3 requiring them to come in for a variance.

4 CHAIRPERSON MILLER: And my last
5 question. When you were discussing the lack
6 of a basement, I may have asked them before,
7 but -- and we may have to ask the Applicant,
8 but if being compared to another case that we
9 decided, in this case, is it -- it's because
10 they're unique or it would be both I guess.
11 Is it because they're unique that they're the
12 only ones that don't have a basement and,
13 therefore, that gives rise to a practical
14 difficulty? I mean I don't know if that's
15 been established, but I'm wondering, you know,
16 where that's coming in. This lack of a
17 basement.

18 MR. WOODS: I'm sorry. I'm not
19 sure if I understand.

20 CHAIRPERSON MILLER: You know, it
21 may be a more appropriate question for the
22 Applicant, but just before we leave you, there

1 was talk about a lack of a basement and I'm
2 just wondering and comparing it to another
3 case that we decided regarding the lack of a
4 basement --

5 MR. WOODS: Right.

6 CHAIRPERSON MILLER: -- and I just
7 want to know, is there evidence that this is
8 the only house without a basement on the alley
9 or where is this --

10 MR. WOODS: That I don't know.
11 The lack of a basement was information that I
12 just learned about today.

13 CHAIRPERSON MILLER: Okay.

14 MR. WOODS: And I don't believe
15 the lack of a basement enters into the
16 uniqueness situation when it comes to a
17 garage. Simply because there are other houses
18 that have basements that don't have garages or
19 may have garages. So, I don't see the
20 correlation between a lack of a basement and
21 a garage. Now -- and it's -- it would not be
22 up to me to interpret those -- the correlation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 between lack of a basement and the storage
2 space that a garage would provide since the
3 Applicant is proposing a garage with the
4 additional storage loft.

5 CHAIRPERSON MILLER: Any other
6 questions?

7 COMMISSIONER TURNBULL: Madam
8 Chair, could I --

9 CHAIRPERSON MILLER: Yes.

10 COMMISSIONER TURNBULL: -- I just
11 one more?

12 CHAIRPERSON MILLER: Go ahead.

13 COMMISSIONER TURNBULL: I was just
14 curious how your -- instead of going back
15 there 3 feet, if the Applicant had lined the
16 garage up with the existing garage at 20 feet,
17 the deviation probably goes down to 1 point
18 something, but they're making the case that
19 they're trying to at least preserve the
20 character of the line of the garage. I mean
21 if -- it's a random. Would that enter into
22 your consideration as to a -- trying to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 satisfy? I mean it's still going to be over
2 the lot occupancy, but as far as trying to
3 meet the variance test, does that help or not?
4 I mean they've got a -- they got a pair of
5 double doors in their garage which obviously
6 being in a center makes it a lot easier than
7 getting one door off of the side or the other.
8 I mean architecturally there's a way to get
9 access in and out around this, but I'm just
10 wondering if a 20-foot garage makes any
11 difference or --

12 MR. WOODS: Well, I think that
13 technically whatever the dimensions are if it
14 goes over the required lot occupancy, then we
15 would have to look at it as a variance and so,
16 it wouldn't have any bearing on it.

17 I'm not sure if in certain cases
18 and I'm not sure where in the Zoning
19 Regulations it states this, but in certain
20 cases for certain relief, there is leeway for
21 the Zoning Administrator to grant certain
22 relief and I'm not sure if that applies in

1 this particular case.

2 COMMISSIONER TURNBULL: Okay.

3 Thank you.

4 MR. WOODS: I would have to check
5 that.

6 CHAIRPERSON MILLER: Any other
7 questions? Does the Applicant have any cross
8 examination for the Office of Planning?

9 MS. FOWLER: We just had another
10 question. I'm not sure if this is the
11 appropriate time, but if this -- if we were to
12 connect the garage to the house with say a
13 covered walkway or some other kind of a
14 structure and then would that put it into the
15 special exception category? I don't know.
16 Maybe you know the answer to that. Just
17 trying to think outside of the box.

18 CHAIRPERSON MILLER: I understand.

19 MR. WOODS: I think I would have
20 to defer to the Zoning Administrator or to
21 someone else because that would be an
22 interpretation of the Zoning Regulations.

1 VICE-CHAIRPERSON ETHERLY: And I
2 would tend to agree. I would harken back to
3 OAG's caution that we not veer too close to
4 offering guidance or designing if you will.

5 I think ultimately the spirit of
6 the day as we continue to move through the
7 case will be -- at least I would suggest we
8 put a lot of information on the table. There
9 will still be some to come out from the ANC,
10 from your closing statement. They'll be time
11 to continue to work.

12 I mean not speaking for the Board
13 in terms of how my colleagues, you know, are
14 going to be desirous of moving forward today
15 or not, but if we don't move forward and
16 there's enough time set off, you can take it
17 back to the drawing board if that's what you
18 want to do, but I think OAG's caution about
19 the Board kind of, you know, wink wink, nod
20 nod, here's what we think you should do and
21 come back and you'll get a good result. I
22 don't think we would want to set that -- you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know, kind of give you an impression that, you
2 know, we'll guarantee if you connect it up and
3 create an addition as opposed to something
4 else, you're good to go.

5 Thank you, Madam Chair.

6 CHAIRPERSON MILLER: I
7 wholeheartedly concur with Mr. Etherly.
8 There's really a line and we can't really
9 cross that line and give you legal advice as
10 to how you should correct or change your
11 request for relief. I mean Office of Planning
12 came back and said this is a variance. That
13 was kind of clean.

14 So, I think what we're planning on
15 doing is finishing the hearing here and then
16 leaving the record open and you can take a
17 look and evaluate whether, you know, whether
18 you want to, you know, proceed further or
19 change your application. But, can't really
20 answer that question.

21 MS. MONROE: Madam Chair, can I?

22 CHAIRPERSON MILLER: Yes.

1 MS. MONROE: I just want to
2 interject. I apologize. I don't want to get
3 in things here, but I just want to be sure
4 because I realize that, you know, you're in
5 the end of this and I'm looking at the letter
6 that you guys sent out, the notice letter that
7 was sent out in March, and you cite the three
8 tests for the variance, but they're not the
9 correct tests and I'm concerned and I know
10 this has been going on for two hours here, but
11 the first one is uniqueness, exceptional, you
12 know, something exceptional about the
13 property. The second one is the practical
14 difficulty arising out of that and then the
15 third one is the substantial detriment and
16 inconsistency with the intent of the zone.

17 I want to make sure you guys know
18 those are the tests that you're dealing with.
19 That's what the Board has been addressing.
20 Those three.

21 I just want to be clear about
22 that.

1 MR. BRADBURY: I think we're
2 clear.

3 MS. MONROE: Okay.

4 CHAIRPERSON MILLER: Okay. Do you
5 have anything further?

6 MS. FOWLER: I don't. Thank you.

7 CHAIRPERSON MILLER: Okay. No, we
8 go to the ANC for cross of Office of Planning.
9 Do you have any?

10 COMMISSIONER OSTERGAARD: Yes,
11 Madam Chairman.

12 CHAIRPERSON MILLER: Okay. Go
13 ahead.

14 COMMISSIONER OSTERGAARD: Just a
15 couple of comments from the ANC. Thank you.
16 Thank you, Members of the Board for having me
17 here today.

18 And first, I'd like to just again
19 thank Mr. Moy who came down to the ANC last
20 week and gave us, I think, an excellent
21 presentation on some of the Zoning Regulations
22 and we certainly appreciate that.

1 With respect to this particular
2 case, the ANC had --

3 CHAIRPERSON MILLER: Can I just
4 interrupt you for one minute?

5 COMMISSIONER OSTERGAARD: Yes,
6 ma'am.

7 CHAIRPERSON MILLER: Do you have
8 any cross of Office of Planning? Otherwise,
9 we'll be finished with the --

10 COMMISSIONER OSTERGAARD: Oh, I'm
11 sorry. No, ma'am.

12 CHAIRPERSON MILLER: That's okay.

13 COMMISSIONER OSTERGAARD: I'm
14 sorry.

15 CHAIRPERSON MILLER: All right.

16 COMMISSIONER OSTERGAARD: No.

17 CHAIRPERSON MILLER: Then we will
18 go to your presentation.

19 COMMISSIONER OSTERGAARD: Sorry.

20 CHAIRPERSON MILLER: No problem.
21 I just wanted to make clear where we were in
22 the order. Okay.

1 COMMISSIONER OSTERGAARD: Just a
2 couple of comments from us. I need to give
3 you a feel for the conversations that we had
4 as the ANC. Clearly, we looked at this as a
5 special exemption. However, I do think that
6 several ideas came to play.

7 You know, this idea that they have
8 a large vehicle, I understand your concern
9 there. But, I don't -- from our perspective
10 and some of the side conversations we had as
11 the ANC was if this gets a vehicle of that
12 size off the street, it is in our best
13 interest as the ANC. In our particular area,
14 we certainly have a traffic problem, growing
15 traffic problem. It's not a -- in one sense,
16 of course, it's good because it's good for
17 businesses for 8th Street. On the other hand,
18 for those of us that live there and I live two
19 blocks off, I share the same problem. It
20 certainly does that.

21 The issue of perhaps fear of
22 personal safety, I realize, you know, that I

1 think is a -- is a very serious concern for
2 some people. You can't quantify that. It's
3 certainly qualitative. This thing goes
4 individual to individual, but I have three
5 children of my own and I'm scared every time
6 my wife sits out there and has to lean in the
7 car and buckle those kids in. So, from my
8 personal perspective and I think again the
9 type of vehicle they have in this particular
10 case, I just -- I throw it out as food for
11 thought perhaps.

12 We just had a young woman who was
13 stabbed from behind when she was leaning in
14 your car about two week ago on Capitol Hill.
15 That actually pierced her kidney.

16 Two weeks ago, we also had a young
17 woman and her child walking along who were
18 grabbed in an alley and the woman was raped in
19 front of her daughter while her daughter was
20 held forcibly.

21 So, those are issues I think. So,
22 in terms of constituents who would feel more

1 comfortable in this particular case, I would
2 -- that certainly came into our conversation.

3 The structure itself, when we
4 looked at it as a special exemption in terms
5 of the area, it certainly fits in keeping.
6 The one that was just built -- I live four
7 houses down across the alley, right behind my
8 house was a structure that was just completed
9 which looks identical as far as I can tell.
10 I'm not an architect, but as far as the
11 exterior, the view from the alley from the one
12 that these folks are providing is certainly in
13 keeping with that and there certainly are, a
14 personal side note, a lot of ugly structures
15 in that alley made of cinder blocks that I'm
16 sure had no permission to be built at the
17 time. That certainly couldn't accommodate
18 today's vehicles and yet, you know, they're
19 still there and that's how we live.

20 The concern that the ANC had quite
21 frankly and I'm still a little confused if I
22 can perhaps get a little clarification. I

1 understand that in the regulations and it has
2 been that these types of structures are -- as
3 garages have their place in the regulations.
4 However, from our perspective and there seem
5 to be some consternation last week, we
6 received this as a special exemption case and
7 looked at it. There was conversation whether
8 or not to look at it as a variance and we said
9 no, these have traditionally been at least
10 from our perspective, now perhaps this is
11 incorrect and if it can be clarified please,
12 but we looked at these types of structures as
13 special exemptions.

14 One of the conversations that we
15 had in this process then was -- and actually
16 one of the constituents came up to me after
17 the meeting and said well, they were going to
18 build a structure. Well, if they have to try
19 to pass a variance test to build a garage-like
20 structure, whatever you want to call that,
21 they're simply going to add it onto the back
22 of their house as an addition and then put a

1 special exemption in for anything over 60
2 percent.

3 Well, the concern then that I have
4 as a member of the ANC, that is certainly not
5 in keeping -- it may be in keeping with the
6 spirit of the law, but it's not in keeping
7 with the character of the neighborhood which
8 in this particular block in particular does
9 have these structures that sit outside away
10 from homes.

11 And so, I don't think from our
12 perspective there's confusion in terms of if
13 this is -- and I'll be honest. I've only been
14 here since January, but my understanding is
15 from my comrades on the ANC is that if we look
16 at these in the future, we're -- I'm getting
17 questions right now from constituents saying
18 if I build a garage, is it going to be
19 considered a variance or is it going to be
20 considered a special exemption and so, if it
21 is going to be a variance, maybe that's always
22 been the rule. But, for some reason, there is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 confusion out there in the field if you will.

2 I would just respectfully request
3 that if there is some way to clarify that.
4 Maybe it is clear in some people's minds, but
5 it's not in all. From our perspective, if we
6 could just get some kind of clarification, we
7 would be respectfully appreciative of that.

8 So, in that sense, I will
9 reiterate from the ANC's perspective as an
10 ANC, we did pass this without concern as a
11 special exemption and we have no negative
12 feedback from any neighbors and as a neighbor
13 myself across the alley, I certainly had no --
14 so, I have a personal feeling in that as well.

15 That's all I have, Madam Chairman.

16 CHAIRPERSON MILLER: Okay. Thank
17 you. Does the Applicant have any cross
18 examination of the ANC?

19 MS. FOWLER: No thank you.

20 CHAIRPERSON MILLER: Mr. Etherly,
21 do you have a question for the ANC?

22 VICE-CHAIRPERSON ETHERLY: Not --

1 first of all, let me just simply say thank you
2 to Mr. Ostergaard for your testimony. I think
3 we all recognize the difficulty and to an
4 extent, the same goes for the Applicant. I
5 mean we recognize the practical challenges of
6 simply trying to live in the city in the 21st
7 century in dealing with a set of regs that in
8 many instances were written right back before
9 we were just barely halfway through the last
10 century and sometimes the two don't mesh all
11 that well especially given the challenges of
12 today's vehicles. So, I'll note that.

13 Again, I'll come back to 2300.5
14 which just in this instance it may not
15 necessarily be the trigger for everybody else,
16 but unfortunately, in the Bradburys' instance,
17 it was 2300.5 that got you into this lot
18 occupancy discussion and it's fairly clear on
19 its face it creates a difficult hurdle for you
20 to have to climb and our share, you know, as
21 again I'm sure my colleagues feel, as Mr.
22 Ostergaard has shared.

1 I mean my colleagues and I, we
2 were -- we've been joking these last couple of
3 weeks because I'm to an extent in your same
4 position. I have a new addition coming on the
5 way to the family. I have a new wife and we
6 have the same challenges. I live perhaps --
7 and this is very much treated as a dicta, it
8 has nothing to do with your case, but that
9 being said, I live four blocks from you the
10 other way, away from the Marine barracks. I
11 recognize the kind of challenges that you have
12 in your neck of the woods. I had a landlord
13 who lived on your block. Very familiar with
14 the challenges that you're facing. Very
15 familiar with the considerations that Mr.
16 Ostergaard's testimony spoke to.

17 But, 2300.5 still kind of
18 challenges us in terms of how do we deal with
19 the size of the structure that you want to get
20 to.

21 Again, after all this is said and
22 done today, there will be plenty of time for

1 you to talk with your representative, Ms.
2 Fowler, about architecturally what your
3 options might be. That's going to be a very
4 personal decision. Focused on your budget.
5 Focused on a whole lot of other stuff.

6 But, at the end of the day, you
7 rest assured that, you know, on the personal
8 level, we all understand. It takes a lot to
9 get a little baby from point A to point B. It
10 seemingly is a short walk from your backyard
11 to the house, but it's a walk fraught with a
12 lot of considerations. Many of which we wish
13 you didn't have to deal with. Many of which
14 we all have to deal with as residents here in
15 the city.

16 So, that's a long winded kind of
17 reply of Mr. Ostergaard's report. I
18 appreciate it.

19 Let me perhaps ask this question
20 however. With your familiarity especially
21 because you are a neighbor in the vicinity,
22 are you in a position to characterized this --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the -- again, the issue here is the lot
2 occupancy which is determined by the interplay
3 between their main house and the garage
4 structure that they're trying to get at.

5 As you look at the other
6 structures in this vicinity, in this
7 neighborhood, is there anything that stands
8 out as different from a size standpoint with
9 respect to what would be if this application
10 were approved? What would be the two
11 structures on their property.

12 Again, you heard me ask the same
13 question of Office of Planning and I keep
14 coming back to it because the variance test
15 says what's different? What's unique?

16 And obviously, we talked a lot
17 with Mr. Woods about well, there's some 1968
18 structures and then structures that were built
19 a little farther back. Those that were built
20 farther back seem to be a little bit smaller
21 in an unscientific kind of empirical way.

22 What's your sense on that? Would

1 you agree with that statement? That for those
2 newer houses that are in this vicinity, yes,
3 they are a little bigger and the Bradburys'
4 house perhaps is a little bigger even in that
5 grouping or is it about the same?

6 COMMISSIONER OSTERGAARD: Yes,
7 sir, and this only anecdotally of course.

8 VICE-CHAIRPERSON ETHERLY: Yes,
9 sir, of course.

10 COMMISSIONER OSTERGAARD: I don't
11 have quantitative analysis of this.

12 My house is 1840. The one next to
13 me is 1987. The one next to -- I mean the one
14 next to them is also fairly new and so, in the
15 midst of the street itself, there is a great
16 mix.

17 Some of the older houses in the
18 1800s have garages. Some of the ones in the
19 1900s have garages. There are a lot of very
20 ugly industrial garages that someone came in
21 at some point in time, I'm not sure when, and
22 actually built garages for industrial and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 actually ran businesses out of there. I'm not
2 sure that it's still done or not. I don't
3 know what the status of that is.

4 But, so -- and they're just large,
5 ugly, cinder-block structures and then you
6 have a very large which is practically the
7 size of my house anecdotally that went into
8 the block that is a separate stand-alone
9 garage.

10 VICE-CHAIRPERSON ETHERLY: Um-hum.

11 COMMISSIONER OSTERGAARD: So, from
12 my perspective again as a neighbor, I don't
13 see anything quite frankly different. So, to
14 change this from 60 to 63.9, it certainly will
15 not affect the quality of life that I can
16 tell. There certainly was no one else that
17 came out against it either.

18 VICE-CHAIRPERSON ETHERLY: Okay.

19 COMMISSIONER OSTERGAARD: An
20 example, I think of the lot occupancy, right
21 across the street from them, is a ten-unit
22 apartment building that probably takes up, and

1 again, I'm just guessing, 80/85, you know,
2 percent of the space and I don't think that's
3 an adverse impact just the way -- the matter
4 of how it's worked out. So, I don't see this
5 particular thing as being -- if we're talking
6 about the difference between 60 percent and
7 63.9 percent, in my mind, personally we could
8 have got out of here two hours ago.

9 VICE-CHAIRPERSON ETHERLY: Got
10 you. I understand.

11 COMMISSIONER OSTERGAARD: That's
12 just my personal feelings.

13 VICE-CHAIRPERSON ETHERLY: And one
14 final quick question for you.

15 COMMISSIONER OSTERGAARD: Yes,
16 sir.

17 VICE-CHAIRPERSON ETHERLY: If
18 there were an opportunity for the ANC to
19 revisit this issue just -- if only for the
20 formality of walking through the variance
21 piece, when is the next scheduled meeting for
22 the ANC?

1 COMMISSIONER OSTERGAARD: The next
2 will be in the second week of May. So, and we
3 will certainly pick this up at that meeting if
4 we need to.

5 VICE-CHAIRPERSON ETHERLY: Okay.

6 COMMISSIONER OSTERGAARD: Excuse
7 me. Thank you.

8 VICE-CHAIRPERSON ETHERLY: Thank
9 you. Thank you, Madam Chair.

10 COMMISSIONER OSTERGAARD: Thank
11 you.

12 CHAIRPERSON MILLER: Just as a
13 follow-up on Mr. Etherly's questioning and
14 your response, would you then say that you
15 think that the relief being sought here would
16 be de minimis? Is that what you were saying?
17 It's just so little.

18 COMMISSIONER OSTERGAARD: Yes,
19 ma'am, quite frankly, I mean this is one of
20 the reasons I ran for ANC in the first place
21 is because of -- I understand the need for it
22 and I understand as organization. But, to me,

1 we're talking about bureaucratic step. I
2 understand there's reasons for it, but in the
3 big scope of life, it's not going to change
4 the life of 700 block of 10th and 9th Streets
5 in Washington, D.C. It's just not.

6 CHAIRPERSON MILLER: Okay. Thank
7 you. All right. Any other questions?

8 COMMISSIONER TURNBULL: Madam
9 Chair.

10 CHAIRPERSON MILLER: Yes.

11 COMMISSIONER TURNBULL: I guess,
12 you know, I sympathize with the Applicant in
13 trying to -- and we maybe went beyond our role
14 in trying to offer some ideas and -- which
15 this Board isn't really delegated to do, but
16 whether there's an architectural solution that
17 meets their need is something for them. I
18 guess my only -- my concern on this and, you
19 know, maybe it's a point that the ANC goes to
20 the Office of Planning and asks them to look
21 at the regulation. That's probably the best
22 way that there's a -- that the regulation is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 addressed.

2 I guess my concern here is that
3 the size of a vehicle is being used to dictate
4 what the relief should be.

5 I guess my feeling is that to me
6 it would have been easier to look at this as
7 the size of a vehicle as being 9 by 19 as a
8 parking stall and with the garage if it was at
9 20 feet and aligning with an existing one, it
10 would have been far easier as far as a
11 variance to offer that rather than saying 22,
12 23, 24. I think the more you go beyond a
13 standard whatever that standard is and the
14 only standard I'm looking at is the size of
15 parking for a vehicle. I think once you go
16 too far beyond that where we're exceeding our
17 role and -- and we're reinterpreting the
18 Zoning Regulations beyond that.

19 Now, I'm just concerned, again,
20 whether it's a Cadillac, a limousine. We're
21 limited by what we can interpret and other
22 than the fact that the regulations would be

1 changed themselves to address these kinds of
2 structures.

3 So, I'm a little bit reluctant to
4 go beyond that.

5 CHAIRPERSON MILLER: I just want
6 to say that I don't think we necessarily would
7 be doing that and I -- we're going to keep the
8 record open for the parties to address
9 questions further, but I mean there is no
10 regulation with respect to the length of a
11 garage as far as I can tell and so, we have a
12 parking space regulation. But, I think it's
13 reasonable the extent to which the Applicant
14 addressed that as well, you can -- you need to
15 add a little bit behind when you're talking
16 about a garage for safety. I don't think
17 that's rewriting the regs. I think that's us
18 weighing the reasonableness of the variance
19 relief.

20 COMMISSIONER TURNBULL: My only
21 concern is that there's a pair of double doors
22 in the middle of the garage which I think also

1 solves the problem as far as walking around.

2 CHAIRPERSON MILLER: Do you have
3 -- I think that's all food for thought for the
4 Applicant in the next few weeks. Do you have
5 any closing remarks?

6 MS. FOWLER: I guess just to
7 address the parking space size. You know, we
8 have existing spots now, parking pad. If we
9 go to the permit office with a -- even with an
10 18-foot garage, I'm not sure how they -- if
11 they would sign off on that because
12 technically we're removing a full-size space
13 and creating a compact space. So, I'm not
14 sure how that plays into it. But, I think
15 current standards would be a -- a 20-foot
16 minimum garage by today's standards I think is
17 what we're -- you know, the minimum for the
18 size of cars we have now. Twenty-two even
19 better, but I think 18 is just not -- just not
20 appropriate for the -- most vehicles that we
21 have now and other uses we needed the garage
22 to accommodate.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So, that's all I would like to add
2 and I just -- I also wanted to thank Mr.
3 Ostergaard for coming out today and thank you,
4 Doug Woods, for his report.

5 MR. BRADBURY: And just in
6 following that, I would like to thank
7 everybody's patience and time and support
8 today from Mr. Ostergaard and from Ms. Fowler.

9 Obviously, we're not professionals
10 in this area. So, we may have seemed to have
11 gone far afield in some of our -- some of our
12 points or some of our comments.

13 I think just to pick up on a
14 thread that -- that Jennifer started here. If
15 we went to the standard sizing of a parking
16 space of 19 feet, again, I -- I don't get to
17 write the laws. I'll certainly get a chance
18 to vote on it if they come before the public.
19 Nineteen feet's great and if you add in the
20 necessary building materials around that 19-
21 foot space, you put a roof over it, you're
22 probably back at 20½ feet to 21 feet anyway.

1 So, again, my concern is just as
2 Mr. Etherly brought up in for a penny, in for
3 a pound. I'm by right at 18 feet. Eighteen
4 feet's too small. Eighteen feet 1 inch puts
5 me in a variance situation.

6 And I know this isn't a
7 negotiation and I don't know that anybody's
8 coming to come up with an answer that says you
9 can have 20. You can have 20½. You can have
10 21. They're all good answers. We picked 22
11 because it was the answer that was most
12 convenient, most easy for us based on roughly
13 a 16-foot car, 2 feet of space around any side
14 of it plus building materials got us to 22.

15 You come back and say we like your
16 plan, but we think the answer is 20, you know,
17 we'll work around that. You think it's 20½ or
18 21. Those are all, you know, acceptable
19 answers and we can work within the open case
20 to figure out what sort of that right answer
21 is.

22 But, I don't -- I surely don't

1 want your job. This is a difficult job. In
2 the eyes of the law, you -- like I said,
3 you're over 18 feet by an inch we are in a
4 variance situation and we've got to deal with
5 a group that has said we think you're in
6 variance and we don't think you meet the
7 variance test.

8 Is it de minimis? Is -- is the --
9 is the extra couple of feet really a
10 warrantable hurdle in this argument? I don't
11 know.

12 Again -- again, we don't get to
13 make these decisions on our part. We're just
14 here kind of pleading our case that says this
15 is what we want.

16 We could certainly move this
17 garage flush against the back of the house.
18 Call it an addition. Build it to -- shoot, we
19 could build it to 26 or 28 feet if we wanted
20 to and be inside the 70 percent special
21 exception rule. That's -- that's a path we
22 could go down. Quite frankly, it would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 destroy the look and feel of the neighborhood
2 and I think that's, you know, completely the
3 wrong approach. We're trying to preserve and
4 protect the look and feel of the neighborhood
5 and as Mr. Ostergaard pointed out, the look
6 and feel of the neighborhood is to have a
7 detached structure at the back of the property
8 that serves as a garage/storage area to
9 augment the space within the living quarters
10 and that's where we are.

11 We would like to have this
12 council's concurrence that some structure back
13 there slightly larger than by right is
14 appropriate and that's, in fact, what we are
15 hoping to achieve.

16 So, thank you for your time today
17 and -- and if there's anything we can do to
18 work with you, work with the Office of
19 Planning, work with the ANC and everybody else
20 that's involved as a stakeholder in this,
21 we're happy to do that.

22 But, there are a couple of, you

1 know, bottom-line results that we're looking
2 for which is for which is to build a garage
3 with some storage space above it at the back
4 of our property.

5 Thank you.

6 CHAIRPERSON MILLER: Thank you.
7 Yes, this has been a very long hearing. I
8 just want to say what the Board has decided
9 what we want to do is leave the record open
10 for further pleadings on this. It's not a
11 question of whether we think it's a good idea
12 that you do this or we -- we don't see any
13 substantial detriment because I think you all
14 clearly made that case. Okay. We have to
15 make findings in the variance test and you
16 need to present that.

17 We've explored a lot during this
18 hearing and so, we want to give you the
19 opportunity to put that in writing and there
20 are some questions out there, but I want to
21 make sure you understand that the variance
22 test means that you need to explain how the

1 property with the building on it, not
2 necessarily just the topography, your property
3 is with what's on it exceptional in some way
4 and because of that, you have a practical
5 difficulty.

6 We see there's not substantial
7 detriment to the public. That's -- you've
8 made that case.

9 You made it for the special
10 exception, but we didn't see any new pleadings
11 originally and that's why we asked whether you
12 wanted more time, but I think this hearing was
13 productive.

14 But, we want to give you the
15 chance to elaborate further. We've heard
16 certain things, you know. Questions were
17 raised. Is your house located differently on
18 the lot which has given rise to a greater need
19 for the lot occupancy relief than other
20 houses? For instance. These are just things
21 that came up. Is there something with your
22 not having a basement? I'm not sure what that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 was, but perhaps that is related.

2 Just so you can go back and I
3 don't want to go through a review of this
4 hearing, but just think about that. What is
5 it about your property? And articulate that
6 and I'd like to leave the record open, of
7 course, for the ANC to address this as a
8 variance.

9 And I heard what you said about
10 the de minimis. It may just even come down to
11 that. You know, we get to weigh the practical
12 -- we get to weigh all these tests. Like how
13 unique is it? Well, it's a little unique, but
14 it's very little burden, et cetera or
15 whatever. So, if you think it's de minimis,
16 you can address that, too.

17 So, the ANC meets the second week
18 of --

19 COMMISSIONER OSTERGAARD: On the
20 10th of May.

21 CHAIRPERSON MILLER: Tenth of May.
22 Second Tuesday in May.

1 COMMISSIONER OSTERGAARD: Second
2 Tuesday of the month. I'm sorry. I don't
3 have a calendar.

4 CHAIRPERSON MILLER: Okay.

5 COMMISSIONER OSTERGAARD: It might
6 be the 9th.

7 CHAIRPERSON MILLER: So, I guess,
8 Mr. Moy, that would be -- the next one would
9 be May 22nd then? Oh, for our -- we don't
10 need to have another hearing on this. So,
11 just set it for -- oh, when could you get your
12 pleadings in? That's what we're --

13 COMMISSIONER OSTERGAARD: We'll do
14 it and we'll get it back to you all within a
15 regular -- I think about a week turnaround
16 that we have or something like that.

17 CHAIRPERSON MILLER: By May 22nd?

18 COMMISSIONER OSTERGAARD: Yes.

19 CHAIRPERSON MILLER: Could you get
20 your pleadings in my May 2nd?

21 MR. BRADBURY: Absolutely.

22 CHAIRPERSON MILLER: So, that

1 means that you would address further those
2 problems with the variance test and if you
3 wanted to modify your application, you could,
4 but that's your choice. Otherwise, just
5 address this.

6 MR. MOY: Madam Chair, if I may --

7 CHAIRPERSON MILLER: Um-hum.

8 MR. MOY: -- may intervene for a
9 moment on the schedule. If the ANC says that
10 they meet on the second Tuesday, isn't the
11 second Tuesday May 8th?

12 COMMISSIONER OSTERGAARD: I don't
13 have a calendar. I'm sorry. Yes, that's --
14 it's the second Tuesday.

15 MR. MOY: Yes, The first Tuesday
16 is May 1st.

17 COMMISSIONER OSTERGAARD: Okay.

18 MR. MOY: Then May 8th and --

19 COMMISSIONER OSTERGAARD: Thank
20 you.

21 MR. MOY: And the third Tuesday
22 would be May 15th.

1 CHAIRPERSON MILLER: Is that
2 enough time for you?

3 MS. FOWLER: Yes.

4 CHAIRPERSON MILLER: Okay. Okay.
5 So, then May 15th. They don't need to respond
6 to each other I don't believe. Do you? Send
7 them in the same time or do you want to
8 respond to their --

9 COMMISSIONER OSTERGAARD: No, I
10 don't think we need to.

11 MS. FOWLER: Do we need to deal
12 with ANC first before we give you our
13 findings?

14 CHAIRPERSON MILLER: Let me say
15 this.

16 MS. FOWLER: You know, do we need
17 to meet with them first just so that -- make
18 sure we do everything properly?

19 CHAIRPERSON MILLER: If you want,
20 we can schedule it so you do yours first. I
21 mean it's the same application that we've
22 heard today. On the other hand, I expect

1 you'll be buttressing your case more. So, if
2 you want them to consider what you will be
3 writing, then it would make sense, but you
4 would have to get that to them before their
5 ANC meeting. So, it's up to you all.

6 COMMISSIONER OSTERGAARD: Ma'am,
7 if I may, I'd -- just for your consideration,
8 we do have the week before, then the first
9 Tuesday day of the month is the Planning and
10 Zoning. So, that may be part of your
11 decision. So, that would be the 1st then is
12 our -- when you'd have to have something ready
13 for.

14 CHAIRPERSON MILLER: So, we're
15 talking about May 15th submitting the
16 pleadings to the BZA. Okay. I mean because
17 you can get them to -- at the ANC earlier.
18 There's no restriction on that. As long as
19 that's enough time for you all. I think that
20 we then would --

21 MR. MOY: Madam Chair.

22 CHAIRPERSON MILLER: Yes.

1 MR. MOY: I want to recant a
2 little bit. The -- I thought that we would
3 come back for a hearing, but if the Board's
4 going to do a decision which would be June
5 5th, yes, the next decision meeting is June
6 5th.

7 CHAIRPERSON MILLER: Right.

8 MR. MOY: So --

9 CHAIRPERSON MILLER: So, they
10 could have a little more time if they need it.
11 Yes.

12 MR. MOY: So, I mean --

13 CHAIRPERSON MILLER: What would
14 you recommend?

15 MR. MOY: -- I mean if they -- if
16 the Applicant wants to -- can prepare their
17 submission by the earliest -- did you say May
18 8th? What's good for you? May 8th? May
19 15th?

20 MS. FOWLER: I think would prefer
21 to stick to the earlier date. I think we can
22 -- for the May 22nd. Is that the question?

1 CHAIRPERSON MILLER: We have a
2 normal decision meeting the first Tuesday of
3 the month. So, we're going to be deciding it
4 June 5th. So, we would need everything in by
5 what May 22nd? Is that right?

6 MR. MOY: For the staff, let's
7 work backwards then.

8 CHAIRPERSON MILLER: Yes.

9 MR. MOY: I mean we're looking at
10 responses from the Applicant's filing. Then
11 the staff would like to have it by let's say
12 Tuesday, May 29th. That's the responses to
13 the Applicant's filing and if the Applicant
14 prepared its submission by say the week before
15 or even earlier than that if they like. So,
16 we're looking at either May 15th or May 22nd
17 depending on -- the ANC needs at least a week
18 to respond. If the Applicant submit its
19 filing by -- if it's a week, it would May
20 22nd. Does that make sense or do you want
21 more -- less time?

22 MS. FOWLER: Can you start over?

1 The date is June 5th. Then we need to get --

2 MR. MOY: For a decision.

3 MS. FOWLER: Um-hum. We need to
4 get you --

5 MR. MOY: So, the Board would like
6 everything in the file -- in the record file
7 by May 29th.

8 MS. FOWLER: May 29th. Okay.

9 MR. MOY: So, that's why I'm
10 working backwards. So, if the ANC and other
11 parties are going to respond to the
12 Applicant's filing, that would be their
13 deadline of May 29th. So, the Applicant in
14 your case, you would want to prepare your
15 filing by either May 15th or May 22nd.

16 MS. FOWLER: Okay.

17 MR. MOY: Which one?

18 CHAIRPERSON MILLER: I just want
19 to -- I think we're getting tired and stuff,
20 too, but I don't know if this filing's going
21 to be different from what you're going to give
22 to the ANC before their meeting. Because we

1 started --

2 MS. FOWLER: Probably not.

3 CHAIRPERSON MILLER: -- on that
4 premise. That we had to go with the ANC
5 meeting which is what date? May 8th?

6 COMMISSIONER OSTERGAARD: The
7 official ANC meeting is on the 8th. The
8 Planning and Zoning Subcommittee Hearing which
9 you should really -- you guys probably want to
10 come and talk to is on the 1st of May. It's
11 the first Tuesday of the month.

12 CHAIRPERSON MILLER: Okay.

13 COMMISSIONER OSTERGAARD: So,
14 we'll have that. The pre-meeting in a sense
15 then is on the 1st and the full ANC will sit
16 on the -- on the 8th, ma'am.

17 MS. FOWLER: However much time the
18 ANC needs, we can work around that.

19 CHAIRPERSON MILLER: Okay.

20 MS. FOWLER: So, we'll --

21 CHAIRPERSON MILLER: I think Mr.
22 Moy is factoring in a lot more time after

1 that. Do you anticipate needing more time
2 after that to respond to their --

3 COMMISSIONER OSTERGAARD: I think
4 we can get a letter for you within a week, you
5 know, of the 8th meeting. So, by the 15th, we
6 should have a letter prepared for you.

7 CHAIRPERSON MILLER: So, if you're
8 ready by the 15th, when would the Applicant be
9 ready?

10 MS. FOWLER: We could also do the
11 15th.

12 CHAIRPERSON MILLER: Okay.
13 Because that anticipates that the ANC will
14 have reviewed it earlier and be responding to
15 it at the same time. Is that correct? You'll
16 have had enough time to respond. Okay. So,
17 coming into the Office of Zoning, they both
18 would come in the 15th. Okay. Okay.

19 Okay. Do you have any questions
20 for us? Okay.

21 Well, thank you very much. We'll
22 look forward to receiving those on the 15th

1 and we should be issuing -- deliberating on
2 this case on the 5th of June.

3 MS. FOWLER: Okay. Thank you so
4 much.

5 CHAIRPERSON MILLER: Okay. Thank
6 you.

7 Ms. Bailey, whenever you're ready
8 to call the case.

9 MS. BAILEY: The next case is
10 Application Number 17595 of O'Tilia V. Hunter
11 pursuant to 11 DCMR 3103.2 for a variance from
12 the lot area and width requirements under
13 Section 401, a variance from the lot occupancy
14 requirements under Section 403, a variance
15 from the side yard requirements under Section
16 405 and a variance from the off-street parking
17 requirements under Subsection 2101.1 to allow
18 the construction of a single-family detached
19 dwelling. The property is zoned R-2 and it's
20 located at 3107 20th Street, S.E., Square
21 5850, Lot 7.

22 CHAIRPERSON MILLER: Thank you.

1 Good afternoon. Could you identify yourself
2 for the record please?

3 MR. GELL: Yes, thank you, Madam
4 Chair. My name is Stephen Gell. I'm an
5 attorney -- a zoning attorney and I'm
6 representing the owner of the property who is
7 Pastor O'Tilia Hunter.

8 Shall I proceed?

9 CHAIRPERSON MILLER: Yes, but let
10 me just say this. We've looked at the papers
11 obviously and just to maybe focus here, it
12 looks like Office of Planning only has a
13 problem with the lot occupancy if I'm correct
14 and so, we would be most interested in your
15 addressing what's the practical difficulty in
16 complying with the lot occupancy.

17 MR. GELL: Okay.

18 CHAIRPERSON MILLER: Just -- I
19 mean you can give a quick general overview if
20 you want.

21 MR. GELL: Yes.

22 CHAIRPERSON MILLER: But, that's

1 really where we see the issue.

2 MR. GELL: Okay. It seems to me
3 that the issue -- the lot occupancy issue that
4 Steve Cochran who wrote up the report found
5 was that they could get a reasonable-size
6 house in 40 percent.

7 However, he also said that that
8 would be if they had a basement or three
9 stories. This house was not designed that
10 way. I don't know that there's any plans. I
11 don't think there's any plans to build a
12 basement or to build three stories. I know
13 that there wouldn't be three stories because
14 that would really look out of place in that
15 neighborhood.

16 And that -- he would have -- he
17 would say that a 2800-square-foot house is a
18 reasonable size house. Well, that's fine.
19 We're only going to have 2,000 square feet and
20 I think that's a pretty good reason to suggest
21 that the 45 percent is not an unreasonable
22 amount.

1 Now, we did -- in consultation
2 with the Office of Planning, we reduced the
3 side yards or increased the side yard from 2½
4 feet to 3 feet.

5 We also reduced the lot occupancy
6 from 48 percent to 45 percent which
7 effectively reduced it from a 20 percent
8 variance to a 12½ percent variance and I
9 appreciate the fact that we were able to work
10 with the Office of Planning and compromise on
11 some of those things and I wish that that had
12 been enough to kind them over on the 45, but
13 I respected the fact that they felt that they
14 had to say that the 45 was too much.

15 I think it's not unreasonable and
16 it's also interesting to note that if this
17 were an existing house that we would not have
18 to make any showing of practical difficulty or
19 uniqueness. It would be simply a 223 special
20 exception. I don't know how much that weighs.
21 Obviously, we can't take advantage of that,
22 but it does show that there was some intention

1 on the part of the Zoning Commission not to be
2 too hard on houses. Particularly where as
3 we've shown, I think very well, that the
4 neighbors are all for it. The ANC is for it.

5 It's not going to affect any of
6 the neighbors. The extra length of the house
7 is not going to have any affect on the
8 neighbors.

9 So, we think it's not unreasonable
10 for the Board to go along with us on the 45.

11 Reverend Hunter does have a
12 statement, but if you prefer, we can dispense
13 with that.

14 CHAIRPERSON MILLER: I know she's
15 been waiting a long time and if there's
16 something important you want to tell us, we'll
17 certainly listen.

18 Just as far as I think where the
19 Board is at this point, I think we're
20 primarily focused on that legal question about
21 the lot occupancy.

22 MR. GELL: Let me just add one

1 additional thing. I went back to the
2 architect and I asked him if it would be
3 reasonable to simply reduce it to 40 percent
4 because I thought he was more expert on that
5 question than I and we submitted for the
6 record, you may have it in front of you, his
7 more recent letter which does talk about the
8 bathrooms and the 5 foot -- the need for a
9 bath of 5 feet in order to get the kitchen --
10 to stock the kitchen with sufficient
11 appliances and so forth. He felt that the
12 dimensions that he had planned for were really
13 optimum. Were far better and that it would be
14 much too much of a strain to try to reduce it.

15 Is it possible to reduce it?
16 Obviously, it is. I mean there are some very
17 small houses around, but his feeling was that
18 it would really constraint the livability of
19 the house if he were to change it to that
20 degree.

21 So, I just wanted to add that one
22 other point.

1 CHAIRPERSON MILLER: We didn't
2 have that letter. So, we're just taking a
3 look at it now.

4 So, basically, are you saying that
5 to meet the lot occupancy requirement or go
6 even further towards that standard that that
7 affects the livability of the house with
8 respect to dimensions, bedrooms, closets?

9 MR. GELL: Yes, given the need for
10 a --

11 CHAIRPERSON MILLER: Hallways.

12 MR. GELL: -- 3-foot hallway and
13 so forth.

14 CHAIRPERSON MILLER: Given the
15 constrains. Given that you have to operate
16 within certain building code requirements.

17 MR. GELL: The code requirements
18 as well. He had hoped that he could be here,
19 but he simply couldn't. He had another
20 commitment. So, I asked him to send a letter
21 instead.

22 CHAIRPERSON MILLER: Okay. Any

1 questions? Yes, Mr. Turnbull.

2 COMMISSIONER TURNBULL: I just had
3 one question. I'm just curious. You say
4 there's not going to be a basement, but on the
5 plan, I don't see any location for a furnace,
6 laundry facilities. Are these not going to --
7 I'm just curious. I mean are they going to go
8 in -- I mean I see a closet, but it says
9 closet. I don't know if you're -- I'm just
10 curious how this really works.

11 MR. GELL: I assumed he made
12 provisions for all of those things.
13 Obviously, he's going to have to put them
14 somewhere.

15 REVEREND HUNTER: If -- if I may
16 speak.

17 MR. GELL: Yes, certainly.

18 REVEREND HUNTER: Originally, the
19 house was designed with a garage in the front,
20 but because it didn't meet -- and in that
21 garage would have been where the -- you know,
22 you could have had laundry facilities and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 things like that, but that design didn't fit
2 into the constraints of the neighborhood. It
3 didn't -- that design of the house. So, he
4 redesigned it and I think right in the front
5 of the house is a great area and he -- he
6 asked me what I wanted to do with that since
7 he took the whole garage out, but we could
8 design into that space somewhere for the
9 furnace or for the -- what we initially
10 thought was going to be that garage area.

11 I think he labeled it maybe the
12 living room or something like that, but there
13 was a great room that fell behind the kitchen
14 because that's where we saw the living space
15 and for the majority of everything centered in
16 the -- in the house.

17 I would -- I would think that it
18 would be in the front, in that front part of
19 the house.

20 COMMISSIONER TURNBULL: The front
21 part on the plan shows dining room. The great
22 room is at the back of the house or --

1 REVEREND HUNTER: That's the back
2 of the --

3 COMMISSIONER TURNBULL: So, you're
4 saying that --

5 REVEREND HUNTER: The original
6 design had the great room in the back of the
7 house and then he -- where you see the dining
8 room, that was when -- when we originally
9 looked at plans, that was where we were going
10 to have a garage, but that didn't fit into the
11 design of the community. So, he took the --
12 the garage out and he adjusted it to -- to the
13 dining room.

14 COMMISSIONER TURNBULL: So,
15 somehow that -- all those utilities are going
16 to fit up in that dining area somewhere?

17 MR. GELL: Possibly in back.
18 There's a great room. In the back where it
19 says great room, there may be a section carved
20 out for those utilities.

21 COMMISSIONER TURNBULL: Yes, I am
22 just curious because it's a practical

1 difficulty in how you're going to do that.
2 Then didn't see it on the plans and sort of
3 assumed that there would be a basement, but
4 you say there isn't going to be one.

5 MR. GELL: I don't believe the
6 original design was for a basement.

7 COMMISSIONER TURNBULL: Okay.

8 MR. GELL: She would be free to do
9 a basement, but it's an added cost,
10 considerable cost to put a basement in. I was
11 kind of surprised when the Office of Planning
12 simply thought well, you know, why not do a
13 basement? We do have to consider the -- you
14 know, the cost of construction and so forth in
15 that -- that --

16 REVEREND HUNTER: I would suggest
17 to the architect at this point that he do put
18 the washer on the first floor. I wouldn't put
19 it in the basement. I have children and I
20 know how hard it is to do laundry from the
21 second -- from the basement up to two flights
22 and recently, we renegotiated to have our

1 laundry moved up to the top level where the
2 laundry is usually kept. So, I wouldn't --
3 this house is -- is being built for my
4 daughter. So, I wouldn't put the laundry room
5 in the basement.

6 I do have a sister-in-law that has
7 her laundry room and all her facilities that
8 are right off her kitchen and that's what I
9 would recommend for him to put in if you
10 needed to see the plans there. It would --
11 would be a closet that went between the
12 kitchen and the great room. Only because of
13 functionability.

14 When you have children in the
15 house, it just -- for me personally. It works
16 better when you're on that floor where
17 everyone is.

18 CHAIRPERSON MILLER: Could you
19 address why -- if we were to grant the lot
20 occupancy relief as well as the other relief
21 there wouldn't be a detriment to the Zone Plan
22 or Zoning Regulations?

1 MR. GELL: Certainly, the -- well,
2 the Zoning Regulations do provide for variance
3 relief. We think we've met the test for that,
4 but in addition, we look very carefully at the
5 neighborhood and you do have a mix of styles
6 and sizes of houses. On one side is a two-
7 story house. On the other side is a one-story
8 house which happens to be much larger because
9 it occupies two lots.

10 All of the lots in that
11 neighborhood, original lots, were the same
12 size as Reverend Hunter's. In fact, there's
13 one I think two-doors down which is only 22½-
14 feet wide. So, and obviously people built at
15 a time when they -- when they could.

16 So, we -- we think that this will
17 fit in very nicely in that -- in that area.
18 In addition to which, there -- a bunch of
19 duplexes have been built. Very, very nice
20 looking duplexes called Henson's Ridge. Just
21 half a block down the street. It's a very
22 large development.

1 So, it's -- it's got a newer feel,
2 a younger feel to the neighborhood and I -- I
3 think it's -- it's a lovely place.

4 CHAIRPERSON MILLER: Thank you.
5 Do the Board Members have any other questions?

6 Is an ANC Commissioner here by any
7 chance for this case?

8 MR. GELL: No, the ANC did not
9 submit a letter. However, they did vote in
10 favor of this and I -- I got a call from Mr.
11 Wilson, Charles Wilson, the Single Member, on
12 Saturday explaining that they do like the
13 project. He was able to talk to neighbors.
14 He's satisfied that everybody likes it and
15 he's very sorry that they weren't able to get
16 a letter in and I -- I -- I kept that message.
17 I'd be happy to have you hear it if the Board
18 would want to accept that kind of testimony.
19 But, both of us have heard the message and we
20 can testify to what he said.

21 CHAIRPERSON MILLER: Okay. Thank
22 you. Any other questions, Board Members?

1 Okay. Then I think we should turn to the
2 Office of Planning. This is not Mr. Cochran.

3 MR. MORDFIN: I'm sorry.

4 CHAIRPERSON MILLER: This is not
5 Mr. Cochran.

6 MR. MORDFIN: No, he did prepare
7 the report which is what Mr. Gell was
8 referring to.

9 But, I'm Stephen Mordfin with the
10 Office of Planning.

11 And the Office of Planning
12 supports the first three variances as noted
13 earlier. However, the variance for the lot
14 occupancy the Office of Planning cannot
15 support because the site is not unique such
16 that it will prevent the development of a lot
17 for use as a single-family detached dwelling.
18 It does not result in a practical difficulty
19 to the owner because of the size of the lot or
20 allow for a single-family detached dwelling
21 with up to 955 square feet per floor and
22 because relief cannot be granted without

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 substantial detriment to the Zoning
2 Regulations because the Applicant has not
3 adequately addressed why the proposal cannot
4 comply with the maximum 40 percent lot
5 occupancy.

6 Therefore, the Office of Planning
7 will recommend approval of the variance
8 request for lot area and width, side yard and
9 parking. However, the Office of Planning will
10 recommend denial of the variance request for
11 lot occupancy.

12 Thank you.

13 CHAIRPERSON MILLER: Mr. Mordfin,
14 did you consider in your testimony just now
15 the representations made by Mr. Gell with
16 respect to why they can't meet the 40 percent
17 lot occupancy and the letter that was
18 submitted by the architect in this case?

19 MR. MORDFIN: We had looked at --
20 we did have copies of the floor plans that
21 were submitted by the Applicant and we seen --
22 I've seen here the letter that talks about the

1 distance for the hallways and bathrooms.
2 However, from the way we had looked at the
3 plans that were submitted, the room on the
4 back of the house is almost 20 feet long and
5 shortening that by approximately 5 feet so
6 that you had a room that was maybe only 15
7 feet long would result in a 40 percent lot
8 occupancy and that would not adversely affect
9 the side of the space for the bathroom or the
10 size of the kitchen or the size of the
11 hallways.

12 CHAIRPERSON MILLER: Thank you.
13 Any other questions?

14 MEMBER LOUD: Yes, Madam Chair.
15 Good morning. How are you?

16 Just directing your attention to
17 page 5 of the Office of Planning Report, I
18 believe it's page 5, under the leg of the test
19 that talks about substantial detriment, your
20 report indicates that the variance cannot be
21 granted without substantially impairing the
22 intent of the Zoning Regulations.

1 Without further elaboration on
2 what the substantial impairment is, the
3 contemplated substantial impairment, I just
4 wanted you to kind of share I guess for the
5 record what is viewed as a substantial without
6 the substantial impairment of the intent.

7 MR. MORDFIN: Okay. This is under
8 the lot occupancy and the amount of lot
9 occupancy that's permitted refers or relates
10 directly to the density and the size and the
11 appearance of the structures.

12 So, in this case by increasing the
13 lot occupancy which gives you -- permit a
14 larger building than would otherwise be
15 permitted on the lot and this changes per lot
16 size. So, the larger the lot you have, the
17 larger the dwelling you can have, but the
18 smaller the lot, that dictates the size of the
19 dwelling and it dictates the appearance of the
20 dwelling on the lot. How much of it you can
21 take up with your structure.

22 So, in this case, the substantial

1 detriment is that more of this lot will be
2 occupied by a building, increasing the
3 appearance of density.

4 MEMBER LOUD: So, if I understand,
5 then the -- part of the intent of the Zoning
6 Regs would be to obviously not only allow
7 density, but not allow even the appearance of
8 greater density and --

9 MR. MORDFIN: Yes, but also to
10 control density.

11 MEMBER LOUD: And control.

12 MR. MORDFIN: And different zone
13 districts. What is permitted. This is a
14 lower density zone district as opposed to the
15 R-5 which is an apartment zone. R-2 is single
16 family dwellings.

17 MEMBER LOUD: And the substantial
18 impairment here is the allowance of that extra
19 density, the 5 percent.

20 MR. MORDFIN: Would be that --
21 right. That's correct.

22 MEMBER LOUD: Okay. Just want to

1 sort of understand that in my mind.

2 CHAIRPERSON MILLER: Let me just
3 follow up on that. Just -- but, are you
4 saying that -- wouldn't it be true that any
5 variance from lot occupancy in that case would
6 be a substantial detriment to the Zone Plan
7 which is contradictory to the point of why we
8 have variances? If any, you know --

9 MR. MORDFIN: Right.

10 CHAIRPERSON MILLER: Is this one
11 in particular? Is it something -- I think
12 that's -- that's the point of this. Something
13 particular about this that's substantially
14 detrimental.

15 MR. MORDFIN: Well, in this case,
16 the lot is not of such a size that it prevents
17 you from building a single-family detached
18 dwelling. Nine hundred fifty-five square feet
19 per level is not an unusually small amount.
20 They're not constricted that you can't use
21 them properly adequately as proffered under
22 the R-2 Zone Regulations which permits the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 dwellings.

2 So, we're left with what is the
3 hardship? If you can build a dwelling that's
4 955 square feet which the Office of Planning
5 views as an adequate amount of space per level
6 for the footprint, then we don't see then what
7 is the hardship that the size of this property
8 let. If it was a very small property, much
9 smaller than this, perhaps we would view it
10 differently because you wouldn't be able to
11 use it and we don't want to end up with the
12 property being un-buildable, but in this case,
13 the size of the property does not result in
14 something that's un-buildable or something
15 that is unusable if you were to build in
16 conformance with the bulk regulations.

17 CHAIRPERSON MILLER: Thank you.
18 Mr. Gell, do you have some cross examination?

19 MR. GELL: I might just raise a
20 couple of points with the Office of Planning.

21 When you talked about taking part
22 of the great room off, obviously, you have a

1 little smaller great room, but did you look at
2 that in connection with the second floor which
3 I think goes more to what the architect was
4 talking about. The size of the bathroom, the
5 hallways, bedrooms and so forth.

6 MR. MORDFIN: We did look at that
7 in terms of the second floor. When we looked
8 at the second floor, there's also a large loft
9 area at the top of the stairs and, you know,
10 we thought that, you know, that large loft
11 area takes up a lot of space that perhaps is
12 not necessary to the operation of the house.
13 So, by re-configuring some of the second
14 floor, we thought it might be possible to
15 accommodate that by relocating the closet for
16 the second bedroom that's closest to the
17 staircase. Perhaps it would be possible to
18 remove some feet from the back of the house
19 without changing the sizes of the bathrooms or
20 any sizes of the bedrooms or the hallways.

21 MR. GELL: Isn't the loft area
22 where the stairways are?

1 MR. MORDFIN: Yes, it's at the top
2 of the stairs.

3 MR. GELL: So, if she were to
4 shorten -- if they were to shorten the house,
5 take some feet off of the back of the house,
6 you wouldn't have room for the stairs. Would
7 you?

8 MR. MORDFIN: No, you would still
9 have room for the stairs because you -- if you
10 relocated the closets of the second bedroom to
11 a portion of where the loft area is, you would
12 have the opportunity to remove some feet from
13 the rear of the house.

14 MR. GELL: Have you -- I know this
15 wasn't your case, but do you have any reason
16 to believe that this house as it designed is
17 any different, greater, bigger than the houses
18 around it?

19 MR. MORDFIN: I don't know that
20 it's any different from the other houses. The
21 other houses, it looks like there's a variety
22 of houses on that street. There are different

1 types and different styles and different
2 sizes.

3 MR. GELL: In fact, it might even
4 be smaller than other houses and might look a
5 little out of place. I think it was carefully
6 designed to kind of fit in with the general
7 size. Of course, those houses were built
8 before the Zoning Laws took affect, but when
9 you're talking about the affect on the Zone
10 Plan and on the neighborhood, it's -- well,
11 ask you. Why would not you look at the houses
12 that are there and the way this house fits ont
13 the site?

14 MR. MORDFIN: Well, part of the
15 reason is -- I mean those houses predate the
16 Zoning Regs and this one has to conform to it
17 and then when we apply the variance test to it
18 which doesn't include how this house relates
19 to the other properties, the variance test --
20 the three parts of the variance test relate to
21 the property, you know. What is unusual about
22 the property and how it creates a practical

1 difficulty and none of those relate to the
2 different types of structures that already on
3 the street that were permitted because -- at
4 the time that they were constructed.

5 MR. GELL: Right. But, you talked
6 about substantial detriment and I guess a
7 question that I would have is if this were a
8 223 case, if the house were the size that you
9 would suggest would be proper and we asked for
10 a variance to add something -- not a variance,
11 but a special exception to go up to even 50
12 percent, would you say that somehow the Zone
13 Plan was substantially affected?

14 MR. MORDFIN: Well, then we would
15 be looking -- it's a different set of rules.
16 We would be looking at different things and we
17 would be looking at adding onto an existing
18 dwelling.

19 MR. GELL: But, you'd --

20 MR. MORDFIN: In this case --

21 MR. GELL: -- you'd still be
22 looking at the detriment of the Zone Plan.

1 Wouldn't you?

2 MR. MORDFIN: Under the 223 --

3 MR. GELL: Yes.

4 MR. MORDFIN: -- we would be
5 looking at how it affects light and air. How
6 it affects the adjoining properties.

7 It's a different -- it's something
8 altogether different. It's an existing
9 building. This is -- there is no existing
10 building here that is being modified. This is
11 a new structure. It's a different -- it's a
12 different kind of application.

13 MR. GELL: I understand. That's
14 all I have.

15 CHAIRPERSON MILLER: Okay. So,
16 the ANC is not coming. Are there any persons
17 here who want to testify in support or
18 opposition to this application?

19 Okay. Not seeing any, Mr. Gell,
20 do you want to make some closing remarks?

21 And I would ask you. I still am
22 uncertain about one -- this one prong. So, if

1 you want to address it in your closing
2 remarks, you can in addition to the other
3 things you're going to say. But -- and that
4 goes to the practical difficulty of complying
5 with the lot occupancy requirement and I know
6 that we have this letter here, but if there's
7 anything else you want to tie together in your
8 closing, I'd be interested.

9 MR. GELL: Well, I wouldn't put
10 myself in the place of the architect in terms
11 of that expertise. We have offered that as --
12 I know he hasn't been qualified as an expert,
13 but he is the architect for the house and he's
14 made those statements and I would ask the
15 Board to consider them in terms of granting
16 this variance.

17 We think that it fits very well in
18 the Zone Plan. We think that we met the test
19 certainly of unique -- for uniqueness and
20 practical difficulty in building a house on
21 the lot and the house that the architect said
22 is optimum on that size and it fits in with

1 the neighborhood is the one that is about 12½
2 percent variance from the -- what would be
3 permitted at matter of right.

4 I don't have anything to add to
5 that and I know that it's late.

6 CHAIRPERSON MILLER: Did you have
7 any other questions? Okay.

8 What I'd like to suggest is that
9 we set this case off for decision making also
10 to our June 5th decision meeting and I
11 understand, Mr. Gell, that you were hoping
12 that the architect would be here and I would
13 be -- I and some other Board Members would be
14 interested in giving you the opportunity if
15 you'd like to submit an additional filing
16 addressing the practical difficulty of
17 complying with the lot occupancy requirement.
18 That seems to be really the only issue that
19 Office of Planning has concern with and the
20 Board Members at this point I think have
21 concerns with.

22 MEMBER LOUD: I would just --

1 CHAIRPERSON MILLER: That's as far
2 as not being fully briefed at least.

3 MEMBER LOUD: And just to
4 associate myself with the Chair's remarks,
5 your architect says that it would violate --
6 the way I read it would violate certain code
7 requirements to not do it the way that you're
8 suggesting to do it and if you could specify
9 those code requirements.

10 MR. GELL: Oh, I -- I'm not sure
11 he was saying that.

12 MEMBER LOUD: Am I reading it --
13 okay.

14 MR. GELL: I think what he was
15 saying was that in order to meet code
16 requirements that you would have to have
17 certain sizes of hallways and bathrooms and
18 exits and so forth and that that would mean
19 that it would be a detriment to the house and
20 to the ability to use the house in a
21 reasonable way.

22 I don't think he was saying it's

1 impossible to meet the code.

2 MEMBER LOUD: So, you could meet
3 the code at 955 square feet per floor as
4 suggested by OP?

5 MR. GELL: I'm sure the code could
6 be met.

7 MEMBER LOUD: Okay.

8 MR. GELL: But, it's a question --
9 it's really a question of whether you have a
10 house that's worth living in and whether it
11 really makes sense to try to shoehorn this
12 into this -- into this -- that size, the 40
13 percent.

14 Given the neighborhood, given the
15 use that's going to be made of the house,
16 given the fact that all the neighbors knew,
17 the ANC knew what was planned for that site
18 and they all felt that that was very
19 reasonable for that neighborhood. So, I'm
20 sorry the ANC didn't submit a letter, but --

21 CHAIRPERSON MILLER: Well, we're
22 going to leave the record open if they want to

1 submit the -- the record I think -- I mean
2 their report. We can leave the record open
3 for that as well and I guess I would say with
4 respect to the lot occupancy record -- the lot
5 occupancy issue, that we leave the record open
6 for you to address the variance test to it.
7 Not just the one prong. Just address the
8 whole variance test.

9 MR. GELL: Certainly. Thank you.

10 COMMISSIONER TURNBULL: Madam
11 Chair.

12 CHAIRPERSON MILLER: Yes.

13 COMMISSIONER TURNBULL: I just
14 wanted to clarify that the letter we have is
15 not from an architect, but it's from a
16 construction -- it's from a design build
17 construction group which I'm assuming retains
18 an architect to it, but so, when you say from
19 the architect, it's really from Boss
20 Construction Group. Is who we have the letter
21 from.

22 MR. GELL: It was written by

1 Lamont Jackson who is the architect for the
2 house.

3 COMMISSIONER TURNBULL: Okay. I'm
4 just -- it doesn't really say that. That he's
5 a registered architect. It just simply says
6 Boss Construction Group. I understand it's
7 design build, but it doesn't really clarify
8 that. But, I think -- and as was stated
9 before, I think you really need to go to prove
10 the test. That as the Office of Planning has
11 said, I mean notwithstanding your concerns
12 about the code and all that, but Office of
13 Planning is saying that through some design
14 and rearrangement of features of the house,
15 you could -- you could create a house that has
16 -- would be a substantial house and we do have
17 houses like that in the District on lots
18 similar to this that are very functionable and
19 liveable. So, I think they're saying that it
20 can be reached.

21 So, I think the test is to show
22 that it can't be reached.

1 CHAIRPERSON MILLER: I just wanted
2 to -- not necessarily because this is not a
3 use variance. So, it doesn't have to show
4 that it's not possible, but he has to identify
5 the practical difficulties and then we have to
6 weight those practical difficulties.

7 MEMBER LOUD: I stand corrected.

8 CHAIRPERSON MILLER: Thank you.
9 This could go on our May decision meeting, but
10 we thought that you might need the time if you
11 wanted to get the ANC report in and address
12 this issue more fully. But, if you want to do
13 this more expeditiously, that's an option.

14 MR. GELL: What date would you be
15 able to give us or what -- would you be able
16 to consider it?

17 CHAIRPERSON MILLER: May 1st is
18 our May meeting and June 5th is our June
19 meeting.

20 MR. GELL: I would prefer the June
21 meeting if possible.

22 CHAIRPERSON MILLER: Okay.

1 MR. GELL: Thank you very much.

2 CHAIRPERSON MILLER: Okay.

3 MS. BAILEY: Madam Chair, can I
4 suggest a submission date of May 22nd for both
5 the Applicant and the ANC?

6 CHAIRPERSON MILLER: Okay. Is
7 that all right with you all? The ANC should
8 definitely meet by then, too.

9 MR. GELL: I don't even know that
10 they need to have another meeting.

11 CHAIRPERSON MILLER: Right. Okay.

12 MR. GELL: So, yes, we will --

13 CHAIRPERSON MILLER: Okay.

14 MS. BAILEY: I'm sorry -- I'm
15 sorry for interrupting. Mr. Gell, I just want
16 to -- there's a matter about the fee. So,
17 maybe you would want to speak with staff about
18 that prior to the next hearing.

19 MR. GELL: I --

20 MS. BAILEY: You can speak to
21 staff about it later.

22 MR. GELL: Okay.

1 CHAIRPERSON MILLER: Okay. Do you
2 have any questions? So, are we set with this,
3 Ms. Bailey?

4 MS. BAILEY: Yes, Madam Chair.
5 Did you need for me to repeat the dates?

6 CHAIRPERSON MILLER: Do you need
7 the dates?

8 MR. GELL: No, we're fine. May
9 22nd for the submission and June 5th --

10 MS. BAILEY: And June 5th is the
11 decision.

12 MR. GELL: Thank you.

13 CHAIRPERSON MILLER: Thank you
14 very much. Do we have anything else on the
15 morning agenda?

16 MS. BAILEY: No further morning,
17 Madam Chair, but there are plenty of people in
18 the audience for the afternoon.

19 CHAIRPERSON MILLER: I see that.
20 So, I think we're going to try to take an
21 abbreviated lunch break here.

22 Okay. We're going to need to take

1 about 40 minutes. So, you all can leave as
2 well and we'll be back at 10 after 2:00.
3 Thank you.

4 (Whereupon, the hearing was
5 recessed at 1:28 p.m. to reconvene at 2:10
6 p.m. this same day.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 reporter and is also webcast live.

2 Accordingly, we must ask you to
3 refrain from any disruptive noises or actions
4 in the hearing room.

5 When presenting information to the
6 Board, please turn on and speak into the
7 microphone first stating your name and home
8 address. When you are finished speaking,
9 please turn your microphone off so that your
10 microphone is no longer picking up sound or
11 background noise.

12 All persons planning to testify
13 either in favor or in opposition are to fill
14 out two witness cards. These cards are
15 located to my left on the table near the door
16 and on the witness tables. Upon coming
17 forward to speak to the Board, please give
18 both cards to the reporter sitting to my
19 right.

20 The order of procedure for special
21 exceptions and variances is (1) statement and
22 witnesses of the Applicants, (2) government

1 reports including Office of Planning,
2 Department of Public Works, DDOT, et cetera,
3 (3) report of the Advisory Neighborhood
4 Commission, (4) parties or persons in support,
5 (5) parties or persons in opposition, (6)
6 closing remarks by the Applicant.

7 Pursuant to Sections 3117.4 and
8 3117.5, the following time constraints may be
9 maintained: The Applicant, Appellant, persons
10 and parties except an ANC in support including
11 witnesses 60 minutes collectively. Appellees,
12 persons and parties except an ANC in
13 opposition including witnesses 60 minutes
14 collectively. Individuals three minutes.

15 These time constraints do not
16 include cross examination and/or questions
17 from the Board.

18 Cross examination of witnesses is
19 permitted by the Applicant or parties. The
20 ANC within which the property is located is
21 automatically a party in a special exception
22 or variance case. Nothing prohibits the Board

1 from placing reasonable restrictions on cross
2 examination including time limits and
3 limitations on the scope of cross examination.

4 The record will be closed at the
5 conclusion of each case except for any
6 material specifically requested by the Board.
7 The Board and the staff will specify at the
8 end of the hearing exactly what is expected
9 and the date when the persons must submit the
10 evidence to the Office of Zoning.

11 After the record is closed, no
12 other information will be adopted by the Board
13 -- accepted by the Board.

14 The Sunshine Act requires that the
15 public hearing on each case be held in the
16 open before the public. The Board may
17 consistent with its rules of procedure and the
18 Sunshine Act enter executive session during or
19 after the public hearing on a case for
20 purposes of reviewing the record or
21 deliberating on the case.

22 The decision of the Board in these

1 contested cases must be based exclusively on
2 the public record. To avoid any appearance to
3 the contrary, the Board requests that persons
4 present not engage the Members of the Board in
5 conversation.

6 Please turn off all beepers and
7 cell phones at this time so as not to disrupt
8 these proceedings.

9 The Board will make every effort
10 to conclude the public hearing as near as
11 possible to 6:00 p.m. If the afternoon cases
12 are not completed at 6:00, the Board will
13 assess whether it can complete the pending
14 case or cases remaining on the agenda.

15 At this time, the Board will
16 consider any preliminary matters.

17 Preliminary matters are those that
18 relate to whether a case will or should be
19 heard today such as requests for postponement,
20 continuance or withdrawal or whether proper
21 and adequate notice of the hearing has been
22 given.

1 If you are not prepared to go
2 forward with a case today or if you believe
3 that the Board should not proceed, now is the
4 time to raise such a matter.

5 Does the staff have any
6 preliminary matters?

7 MS. BAILEY: Madam Chair, Members
8 of the Board, to everyone, good afternoon.

9 Yes, Madam Chair, and it has to do
10 with Application Number 17594. There is a
11 request for this application to be postponed
12 from this afternoon.

13 CHAIRPERSON MILLER: Okay. Could
14 we have everybody take the oath who intends to
15 testify today and then call the parties up in
16 that case?

17 MS. BAILEY: Thank you.

18 CHAIRPERSON MILLER: Thank you.

19 MS. BAILEY: All those persons
20 wishing to testify today please stand to take
21 the oath and would you also please raise your
22 right hand? Do you solemnly swear or affirm

1 that the testimony that you will be giving
2 today will be the truth, the whole truth and
3 nothing but the truth? Thank you.

4 Are the parties here for
5 Application Number 17594? That is the
6 Applicant.

7 CHAIRPERSON MILLER: Is the ANC
8 here in this case?

9 MR. HITCHCOCK: Madam Chair, Con
10 Hitchcock on behalf of the ANC. Preliminary
11 question, does the Board wish to identify
12 parties now before proceeding with the matter?
13 There are several requests for party status
14 application.

15 CHAIRPERSON MILLER: That's
16 correct. Okay. What we want to do is
17 actually assess what the preliminary nature
18 is. Whether or not we will be needing to hear
19 party status application at this point or --
20 or not. So, how about we just hear what the
21 request is and then we'll get into the party
22 status.

1 MR. EPTING: All right. Madam
2 Chair, I'm John Epting with Pillsbury Winthrop
3 Shaw Pittman with you today.

4 We have been trying to get a
5 ruling from the Zoning Administrator Bill
6 Crews that Section 1709.20 which is the 45
7 degree setback requirement does not apply to
8 this subject office building.

9 I was promised a confirmation by
10 1:00 today. I talked to him at 1:30 finally
11 and he has asked me -- he said he hasn't made
12 up his mind yet. He asked me to postpone and
13 he'll make a decision by April 20th. So that
14 we could postpone to have a hearing after that
15 if we need to have a hearing.

16 I apologize for that. I've been
17 trying to get this ruling for awhile. I've
18 talked to opposing counsel and we all consent
19 to postpone and they could probably tell you
20 that also.

21 CHAIRPERSON MILLER: Okay. And
22 then I guess the question is there are

1 applications for party status in this case and
2 is that something that you all believe should
3 be postponed as well or is that something that
4 you want to get resolved today?

5 MR. GELL: Good afternoon, Mr.
6 Chair. I'm Steve Gell. I'm an attorney for
7 two of the unit owners who are most affected
8 by the shadows being cast by the new building
9 and we did submit for party status. I think
10 it would be helpful to know whether they have
11 party status or not for all parties I would
12 think. So, I would urge you to do that, but
13 -- and this --

14 MR. EPTING: Excuse me. If the
15 Board doesn't want to go there, we have been
16 already serving all those people anyway as
17 potential parties. Just that we're on notice
18 because we did file a motion last week and I
19 really wanted to make sure that everybody knew
20 that we had filed that. So, we're willing to
21 also continue to do that.

22 MR. HITCHCOCK: And for the

1 record, Madam Chair, I'm also here on behalf
2 of the West End Place Condominium Association
3 as well as ANC 2A. There are the other
4 applications from Foggy Bottom Association and
5 several individuals for party status as well.

6 CHAIRPERSON MILLER: You would
7 also request that we hear that today? Party
8 status application.

9 MR. HITCHCOCK: I think it would
10 be helpful to know where we are going forward.
11 Mr. Epting is correct. They have been serving
12 everyone on a regular basis and we have been
13 in communication, but I think it would be
14 helpful to clarify.

15 CHAIRPERSON MILLER: Okay. Is
16 everybody here who has sought party status or
17 at least they have their -- are they
18 represented? I guess we have seven -- I
19 believe seven applications for party status.

20 MR. HITCHCOCK: Mr. Wascom I know
21 had to leave. He could come back. I believe
22 Mr. Shuman is out of town today.

1 MR. GELL: Mr. Schultz was not
2 able to come. He had a preexisting engagement
3 that he absolutely could not break. He tried
4 very hard, but Florence --

5 CHAIRPERSON MILLER: But, you're
6 representing him. So, that's fine.

7 MR. GELL: I am representing him
8 and Florence Harmon is here. She's the other
9 party --

10 CHAIRPERSON MILLER: Right.

11 MR. GELL: -- that I represent.

12 CHAIRPERSON MILLER: I think that
13 we could address the party status
14 applications. I don't think it's going to
15 take that long and I'm just trying to figure
16 out for -- okay. So, Mr. Schultz is not here.
17 Is he represented by anybody?

18 MR. GELL: Yes, I'm representing
19 him.

20 CHAIRPERSON MILLER: You're
21 representing him. Okay.

22 Ms. Harmon -- are you representing

1 Ms. Harmon?

2 MR. GELL: Yes.

3 CHAIRPERSON MILLER: Okay.

4 MR. GELL: And she is also here
5 and she'll be able to be a witness.

6 CHAIRPERSON MILLER: Okay. West
7 End Condominium Association?

8 MR. HITCHCOCK: I'm representing
9 the association.

10 CHAIRPERSON MILLER: Okay. Got
11 it. Okay. I believe that Mr. Michael Wascom
12 also couldn't be here. Is he --

13 MR. HITCHCOCK: Mr. Wascom had --
14 yes, Mr. Wascom had to leave. I am not
15 representing him. He could be here if --

16 CHAIRPERSON MILLER: You're not
17 representing him?

18 MR. HITCHCOCK: I am not
19 representing him.

20 CHAIRPERSON MILLER: And Mr. Gell
21 is not representing him. Is that correct?

22 MR. HITCHCOCK: No. He could

1 return if the Board would find it helpful.

2 CHAIRPERSON MILLER: I'm sorry.
3 What did you say?

4 MR. HITCHCOCK: He could return if
5 the Board would like to hear from him
6 directly? He is an adjacent owner who lives
7 in Schneider's Triangle. Is very close to the
8 property in question.

9 CHAIRPERSON MILLER: Mr. Shuman --
10 the Shumans, are they represented by anyone
11 here? They also indicated they couldn't be
12 here and they had a lack of notice. Okay.

13 Foggy Bottom Association.

14 MR. HITCHCOCK: I can represent
15 the Foggy Bottom Association.

16 CHAIRPERSON MILLER: Okay. And
17 Mr. David Jenks. Okay. He's not represented.
18 Not here. Is that correct? Okay.

19 Mr. Epting, do you have any
20 objections to any of the applications for
21 party status that have been filed?

22 MR. EPTING: I have none.

1 CHAIRPERSON MILLER: Okay. Do we
2 have an ANC Commissioner here?

3 MR. HITCHCOCK: Mr. Micone is not
4 here. I'm authorized to speak on his behalf.

5 CHAIRPERSON MILLER: Okay. Does
6 he have any objections to the party status
7 applicants?

8 MR. HITCHCOCK: No, I have spoken
9 with him immediately prior to the session and
10 okay.

11 CHAIRPERSON MILLER: Okay. Do my
12 Board Members have any questions with respect
13 to any of the party status applicants?

14 VICE-CHAIRPERSON ETHERLY:
15 Certainly. I'd love to jump in, Madam Chair.

16 I think the direction that we're
17 moving in is appropriate today given what it
18 sounds -- given where it sounds like we are
19 procedurally.

20 I would perhaps suggest that we
21 encourage all of the party applicants to
22 consider whether or not it would be most

1 effective perhaps to join or combine your
2 forces just for the purposes of consolidating
3 the inquiry if you will. I'd perhaps like to
4 suggest that and perhaps solicit some comments
5 from my colleagues. Of course, there may be
6 nuances if not outright differences across the
7 parties. So, I would be sensitive to that and
8 would want to know if there would perhaps be
9 any opposition.

10 But, Madam Chair, maybe as just a
11 first salvo in this discussion, I'd like to
12 suggest whether or not for the purposes of
13 administrative efficiency if there's a
14 willingness on the part of the parties to
15 combine their forces or perhaps just
16 consolidate themselves at least perhaps into
17 two groups, but I'd like to suggest that as an
18 opening.

19 MR. GELL: Mr. Hitchcock and I
20 have been working closely -- very closely on
21 all of the documents and we would be
22 presenting the case together as well.

1 Although he would be taking part of it, I
2 would be taking another part.

3 I can't speak for the people that
4 aren't represented, but we certainly will try
5 to coordinate and not have a lot of
6 duplication which I'm sure the Board would
7 prefer not to have.

8 MR. HITCHCOCK: To which, I would
9 only add that we would also not envision all
10 seven parties cross examining or anything of
11 that nature. Will work to make things proceed
12 efficiency in that area.

13 VICE-CHAIRPERSON ETHERLY: Madam
14 Chair, I would suggest as -- at minimum as it
15 relates to those parties that are either
16 present or represented by representation
17 today, I would have no objection to accepting
18 those parties status, those party applications
19 en toto if you will and denoting that the
20 representation will be coordinated through Mr.
21 Hitchcock and Mr. Gell.

22 I'm leaving out for the moment

1 resolution on Mr. Wascom, Mr. and Mrs. Shuman
2 and Mr. Jenks' applications at Exhibits 32, 30
3 and 27 respectively to deal with separately as
4 they are not here.

5 CHAIRPERSON MILLER: I would
6 concur with that.

7 VICE-CHAIRPERSON ETHERLY: So, I
8 would treat that as a motion for the purposes
9 of our procedures and move that the party
10 status applications of Mr. Schultz, Ms.
11 Harmon, the West End Place Condominium
12 Association, Foggy Bottom Association, that
13 those party status applications be accepted by
14 the Board. I would invite a second.

15 CHAIRPERSON MILLER: I think --
16 yes. Or by consensus I think we have that.
17 So, I think we just need to identify the fewer
18 others that aren't covered by this. That
19 would be I think Mr. Michael Wascom, Mr. David
20 Jenks. Anybody else? And the Shumans.

21 Okay. And I believe that they
22 stated that they're not here because of a

1 problem with notice and I don't know if you
2 want to address that, all of your starting
3 with Mr. Epting.

4 MR. EPTING: Sure. We did file
5 with our prehearing statement a cover letter
6 of all the service that we gave this case.
7 They did show up on the property owner list
8 that we prepared. We turned that property
9 owner list over to the Office of Zoning Staff
10 with labels and they send them out. So, in 30
11 years, I've never had a notice issue.

12 So, I don't quite understand what
13 happened. Some of the people across the
14 street clearly got the notice. So, I don't
15 doubt the Post Office missed things.

16 We did talk to -- not me, but Dave
17 Habertum, my associate, talked to Vince Micone
18 from the ANC and the property manager at this
19 building on December 11th or December 12th.
20 So, we have been in contact with them.

21 CHAIRPERSON MILLER: Okay. Is
22 there anything else to add just for the

1 record?

2 MR. HITCHCOCK: Yes, on that
3 point, and Mr. Micone can -- I'm speaking on
4 his behalf here because I think he would like
5 to address it. He has put into statement his
6 surprise at the number of people who came to
7 the ANC meeting who said they had not received
8 notice with respect to this application. He,
9 as you know, has been active in a number of
10 cases before this Board and the Commission and
11 said as long as he's been an ANC Commissioner
12 he's never had as many people coming forward
13 saying we didn't find out about this. We
14 didn't know.

15 Mr. Shuman I believe addressed
16 that point in letter specifically as did Mr.
17 Wascom.

18 We're not quite sure, you know,
19 how that happened. The condominium
20 association got constructive notice thanks to
21 Mr. Micone who provided the documents, but
22 notice was definitely a problem here.

1 CHAIRPERSON MILLER: Okay. I have
2 a suggestion. Since we're continuing this
3 case anyway, perhaps we could reevaluate those
4 three if this case goes forward and maybe in
5 the meantime they might join with one of the
6 parties that have been -- applicants that have
7 been given party status.

8 But, Mr. Epting, I'd ask if we go
9 that route that you serve these three with any
10 papers in the meantime --

11 MR. EPTING: Yes, I'm willing to
12 do that. Yes.

13 CHAIRPERSON MILLER: Okay. Great.
14 Okay. Is that all right with my Board? Okay.

15 So, then we need to talk about a
16 date to continue this to. Is that correct?

17 I have another note. There's a
18 motion to dismiss pending before us and as I
19 understand, an opposition to the motion came
20 in today and the Board has not had a chance to
21 even look at it and I'm wondering if -- do
22 either of you need time to respond as well?

1 We're going to be leaving the record open
2 obviously until we continue this.

3 MR. GELL: We're the guilty party.
4 We've been working very hard over the last few
5 days to respond to the motion. Obviously, we
6 didn't have much time. Only a few business
7 days. We did the best we could.

8 I think we made most of the points
9 we'd like to make. I think if it's possible
10 if we have some time perhaps we'll want to
11 supplement it or replace it with another
12 response. In the meantime, it gives Mr.
13 Epting a chance to respond to our papers.

14 CHAIRPERSON MILLER: We can do
15 that. I mean we're going to be continuing
16 this. So, why don't we figure out the date
17 that we're going to get to.

18 I just wanted to see if there were
19 any other dates that we're going to have to be
20 setting. That's the only outstanding issue.
21 Is that right? Okay.

22 VICE-CHAIRPERSON ETHERLY: And,

1 Madam Chair, if I may as we begin to look at
2 dates, I just wanted to clarify from Mr.
3 Epting's conversation today. It is basically
4 your conversation with the Zoning
5 Administrator, Mr. Crews. You are guardedly
6 optimistic that somewhere on or about April
7 20th you anticipate receiving some type of
8 guidance or communication from the ZA.

9 MR. EPTING: That's what I was
10 promised.

11 VICE-CHAIRPERSON ETHERLY: Okay.

12 MR. EPTING: So, and I'm always
13 optimistic. So.

14 VICE-CHAIRPERSON ETHERLY: With
15 that in mind, is there a sense on your part as
16 to how far down the line we would need to be
17 looking here date-wise or would you be looking
18 for the soonest available Tuesday after April
19 the 20th?

20 MR. EPTING: What Bill told me is
21 basically anytime after -- he's out the next
22 week, but anytime starting in early May, we're

1 ready for a hearing.

2 CHAIRPERSON MILLER: Okay. We see
3 an opening on May 15th at 1:00 in the
4 afternoon.

5 MR. EPTING: That's terrific.

6 CHAIRPERSON MILLER: Okay.

7 MR. GELL: I have to be here
8 anyway for another case.

9 CHAIRPERSON MILLER: Okay.

10 MR. GELL: I'm doubling up today.

11 CHAIRPERSON MILLER: So, then
12 there's just an issue about filing the papers.

13 MR. HITCHCOCK: Yes,
14 unfortunately, I will be on the west coast and
15 not coming back until the 15th.

16 CHAIRPERSON MILLER: You can't do
17 the 15th?

18 MR. HITCHCOCK: I'm afraid not.

19 CHAIRPERSON MILLER: Oh. Okay.

20 MR. HITCHCOCK: Are there other
21 dates available?

22 CHAIRPERSON MILLER: June 19th.

1 MR. GELL: Is that morning or
2 afternoon?

3 CHAIRPERSON MILLER: I'm sorry.
4 Afternoon.

5 MR. GELL: That's okay with us.

6 MR. HITCHCOCK: Yes, that's fine
7 with us.

8 MR. EPTING: I'm sorry. We will
9 make that work.

10 CHAIRPERSON MILLER: You may not
11 have to. Right? I mean we -- it may not be
12 here.

13 MR. EPTING: I'm hoping I don't
14 have to. That's correct.

15 CHAIRPERSON MILLER: Okay. So, in
16 the event that you are here, we'll put you in
17 for the afternoon. I guess you would be the
18 third case. We have two cases already. So,
19 that would be the third case in the afternoon.

20 Does that sound right, Ms. Bailey?

21 MS. BAILEY: Yes.

22 CHAIRPERSON MILLER: Okay. So,

1 with respect to the pleadings then, we can
2 just count back from June 19th as to when any
3 pleadings would be due I believe.

4 MS. BAILEY: The record is going
5 to remain open for anyone to file. So, do you
6 want a specific date for that to come in?

7 CHAIRPERSON MILLER: Just an end
8 date. You know, if we were going to get a
9 response to -- what do you anticipate a
10 response and then another filing or do you --
11 we just have to schedule this or just
12 responses to the motion to dismiss.

13 I understood there's been a motion
14 and an opposition. So, I'm not sure what's
15 left unless the ANC hasn't had an opportunity
16 or can you address that?

17 MR. GELL: Well, I think as far as
18 the motions are concerned, I may want to
19 provide some revision, but I think basically
20 we -- we made the major points.

21 I would want to reserve an
22 opportunity to respond to Mr. Epting once I

1 see his response if that's possible, but
2 certainly if you --

3 CHAIRPERSON MILLER: You know, I
4 don't know if we're aware of all the motions
5 that have been filed. I thought there was
6 just one motion to dismiss and then an
7 opposition to that. Is that right?

8 MR. GELL: Well, the opposition is
9 several parts.

10 CHAIRPERSON MILLER: Okay.

11 MR. GELL: One part talks about
12 the jurisdiction of the Board to hear the
13 motion.

14 CHAIRPERSON MILLER: Um-hum.

15 MR. GELL: Another -- some of them
16 are to -- to postpone. Obviously, we dealt
17 with that.

18 VICE-CHAIRPERSON ETHERLY: So,
19 would it -- does it sound as though -- so, it
20 sounds as though basically everyone's fired
21 the gunpowder off and you want to kind of
22 stand pat for the remainder of the time

1 between now and June?

2 MR. GELL: I would like the
3 opportunity to have a few more days just to
4 look at the motion that we filed. Maybe
5 tailor it. We can certainly strip out the
6 issue of notice because now notice is no
7 longer a problem and also the postponements.
8 So, it'll be a much more tailored. Hopefully,
9 a better --

10 CHAIRPERSON MILLER: I --

11 MR. GELL: Hopefully shorter.

12 CHAIRPERSON MILLER: Okay. You're
13 saying because you had to do it -- you did it
14 very quickly in anticipation of this hearing
15 and you might want to supplement it. Okay.

16 But, I was just trying to figure
17 out what we're scheduling for then. You would
18 do -- you might do a supplement to your
19 opposition and then Mr. Epting might do a
20 response to that. Is that correct? Is that
21 what we're scheduling or are we finished with
22 the supplement?

1 MR. HITCHCOCK: The ANC, I
2 believe, has had its meeting for this month.
3 So, it would want a chance to submit something
4 next month.

5 CHAIRPERSON MILLER: ANC wants to
6 submit. Right?

7 MR. HITCHCOCK: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MR. EPTING: And I would probably
10 file a short response just on one single
11 issue.

12 CHAIRPERSON MILLER: Okay. All
13 right. Ms. Bailey, what I'm suggesting is
14 that we count back from June 19th. Because
15 this case may not even get to May for all we
16 know. Depending on what the ZA does. So,
17 there's no rush to file. You can file as
18 early as you want, but there's no rush until
19 we get to our hearing.

20 MS. BAILEY: Madam Chair, then I
21 would suggest that the parties file by May
22 31st and then the Applicant can respond by

1 June 12th.

2 CHAIRPERSON MILLER: Okay. Is
3 that all right with the parties?

4 MR. EPTING: Yes, ma'am.

5 MR. GELL: That's fine with me.

6 CHAIRPERSON MILLER: Okay. Any
7 other questions?

8 MR. EPTING: No thank you.

9 CHAIRPERSON MILLER: Okay. Thank
10 you very much.

11 MR. EPTING: Thank you.

12 MR. GELL: Thank you.

13 CHAIRPERSON MILLER: Okay. Okay.
14 Right. Right. Great. Thank you.

15 Ms. Bailey, do you want to call
16 the next case?

17 MS. BAILEY: That is Application
18 Number 17601 of the D.C. Department of Parks
19 and Recreation pursuant to 11 DCMR 3104.1 for
20 a special exception from the lot occupancy
21 requirements under Subsection 403.3, a special
22 exception from the gross floor area

1 requirements under Section 408 and pursuant to
2 11 DCMR 3103.2 a variance from the off-street
3 parking provisions to allow the development of
4 a new public community center. The property
5 is zoned R-5-A and it's located at 49th and
6 Quarles Street, N.E., Square 5162, Lot 801 and
7 Parcel 184/95.

8 CHAIRPERSON MILLER: Good
9 afternoon. Would you identify yourselves for
10 the record please?

11 MR. BLANCHARD: Yes. Good
12 afternoon, Madam Chair and Members of the
13 Board. My name is Lyle Blanchard, Greenstein
14 DeLorme & Luchs and we're here today
15 representing the D.C. Department of Parks and
16 Recreation.

17 With me today are -- well, I'll
18 just let them go down the line and introduce
19 themselves.

20 CHAIRPERSON MILLER: Okay.

21 MS. CAMPBELL-MURGA: Good
22 afternoon. My name is Cheryl Campbell-Murga.

1 I'm the Project Manager for this project with
2 D.C. Parks and Recreation.

3 CHAIRPERSON MILLER: Your name is
4 Cheryl Campbell what?

5 MS. CAMPBELL-MURGA: Murga.

6 CHAIRPERSON MILLER: Murga.

7 MS. CAMPBELL-MURGA: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MR. HENDERSON: Hello. My name's
10 Chris Henderson. I'm with JLC-Alpha. I'm the
11 Program Manager for D.C. Parks and Recreation.

12 MR. SCHIESEL: My name is Robert
13 Schiesel with Grove Slade Associates. We're
14 traffic and parking consultants.

15 MR. BELL: I'm Matthew Bell with
16 Aaron Kransects Study Queue and Architects.
17 We're the designers for the new project.

18 MR. BLANCHARD: And with that,
19 Madam Chair, as you know from what's been
20 submitted for the record, this is an
21 application that requests two special
22 exceptions pursuant to the Zoning Regulations

1 for public recreation and community centers
2 and the first is under Section 403 the
3 percentage of lot occupancy would exceed 20
4 percent. The second special exception is
5 under Section 408.1. That's for a gross floor
6 area to exceed to 40,000 square feet and then
7 one area variance under Section 2101.1 and
8 that's to allow a reduction in the required
9 amount of off-street parking spaces.

10 We've already introduced the
11 witnesses that we'll have here today.

12 In the prehearing statement, we
13 mentioned that we had hoped that the Director
14 of Parks and Recreation Wanda Durden would be
15 able to join us in making this presentation
16 and actually in her stead Aretha Ferrell
17 Brown, the Department of Parks and Rec Chief
18 of Staff was here earlier before your break
19 for lunch. Unfortunately, she was not able to
20 stay and so, Ms. Campbell-Murga will, I'm
21 sure, do an able job of presenting the
22 Department's testimony.

1 You all are aware of the special
2 exception and variance standards. We believe
3 as we've submitted in the application in the
4 prehearing statement of April 3rd that we will
5 meet those standards with regard to the two
6 special exceptions and area variances. So, I
7 won't go through those standards at this
8 point.

9 But, I do want to mention that
10 there is support from ANC 7C and there was a
11 -- there may be two letters from the ANC in
12 the record now. I don't know the specific
13 exhibit numbers, but there was a letter from
14 November and then there was a second letter
15 submitted recently. I believe it was stamped
16 in on April 11 that's more extensive and
17 speaks to the ANC's support of this project.

18 The Office of Planning's --

19 CHAIRPERSON MILLER: It's Exhibit
20 26. We do have that.

21 MR. BLANCHARD: Good.

22 CHAIRPERSON MILLER: Um-hum.

1 MR. BLANCHARD: Thank you. The
2 Office of Planning is here and Ms. Brown-
3 Roberts will speak later, but the Office of
4 Planning supports the project and also DDOT
5 submitted a report dated April 6th which is
6 also in support of the project and I don't see
7 any community people here today, but I
8 understand that -- well, I won't speak for
9 them since they're not here. But, you can see
10 from the ANC that there is community support.

11 So, with that, I'm going to turn
12 it over to Ms. Campbell-Murga to present the
13 Departments testimony.

14 MS. CAMPBELL-MURGA: Good
15 afternoon, Madam Chair and Board Members.

16 CHAIRPERSON MILLER: Good
17 afternoon. I just want to indicate to you
18 that we're very impressed with the project and
19 think you've done a great job in your papers
20 in addressing the specific tests.

21 So, you know, feel free to
22 highlight whatever you want to highlight, but

1 I just wanted to let you know where the Board
2 is coming from at this point.

3 MR. BLANCHARD: Thank you.

4 CHAIRPERSON MILLER: Okay.

5 MS. CAMPBELL-MURGA: Thank you.

6 Oh, wow, with that in mind, I can kind of jump
7 to the bottom.

8 I do want to stress that this is
9 one center that is unlike any other and it is
10 -- this neighborhood it is -- this
11 neighborhood did put a lot into it. What
12 we're hoping is that this will be a model for
13 future centers in neighborhoods such as this.
14 Goodness.

15 CHAIRPERSON MILLER: Well, let me
16 ask you. Is this -- are there going to be
17 more like this within Ward 7? Because I think
18 that I read in the pleadings that this is the
19 only one in Ward 7.

20 MS. CAMPBELL-MURGA: So far.

21 CHAIRPERSON MILLER: So far. So,
22 there may be --

1 MS. CAMPBELL-MURGA: So far.

2 CHAIRPERSON MILLER: -- plans for
3 other ones?

4 MS. CAMPBELL-MURGA: They're in
5 the planning stages for others.

6 CHAIRPERSON MILLER: Like this?

7 MS. CAMPBELL-MURGA: Similar.

8 CHAIRPERSON MILLER: This type of
9 model. Library --

10 MS. CAMPBELL-MURGA: Similar.
11 They would be -- it would still be a co-
12 location --

13 CHAIRPERSON MILLER: Um-hum.

14 MS. CAMPBELL-MURGA: -- with other
15 amenities.

16 CHAIRPERSON MILLER: Um-hum.

17 MS. CAMPBELL-MURGA: I mean maybe
18 not necessarily a leisure pool. Maybe
19 something else.

20 CHAIRPERSON MILLER: What the
21 neighborhood is --

22 MS. CAMPBELL-MURGA: What they ask

1 for --

2 CHAIRPERSON MILLER: -- wanting.

3 MS. CAMPBELL-MURGA: -- as a part
4 of what we can supply for them.

5 CHAIRPERSON MILLER: That's
6 terrific. Okay.

7 VICE-CHAIRPERSON ETHERLY: Madam
8 Chair, if I may. See this is going to be the
9 toughest part of your application. You're
10 going to have to let us know when are you
11 getting these into other parts of the city.
12 Because I want one in my ward and I'm sure Ms.
13 Miller wants one in her ward. So, that's the
14 toughest part of the day for you right now.
15 That's all in joking.

16 MS. CAMPBELL-MURGA: Thank you. I
17 can't say when.

18 What I do want to stress is that
19 everybody in the community did have a huge
20 impact on it and of course, the amenities were
21 the pool, yea, the gym, the early child care
22 and the library which is absolutely the best

1 thing I think all the way around for
2 everybody.

3 The building right now it would
4 have about 22 to 25 staff members. That's
5 what we figured in the area and we were
6 looking for the fact that the staff would
7 commute by Metro or by bus of some means for
8 environmental issues. So, you know, there
9 would be a low impact in the area from DPR
10 coming into the area.

11 CHAIRPERSON MILLER: Can I ask
12 you? I think there was some reference to
13 Metro Check or something like that. Has any
14 -- is there a definite plan for that kind of
15 thing?

16 MS. CAMPBELL-MURGA: They're still
17 -- they're still looking into that as far as
18 I know. I know from right now that most of
19 the people that do -- in the Parks and Rec,
20 they do catch the Metro to their facilities.
21 A lot of them are normally neighborhood-based
22 people. So, that could be an additional plus

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 being neighborhood based.

2 Goodness. What I wanted to say is
3 that it would be a definite enhancement
4 providing this to the neighborhood for a safe
5 for children. Where they can be creative.
6 We've planned a sound room and a music room
7 for them and other activities where they can
8 enhance their learning capabilities and having
9 the flexibility to go from the library to the
10 computer lab and then they can venture into
11 other crafts. Like arts and crafts is one of
12 the programs they're going to have there.
13 There will just be a multitude of things for
14 them to do.

15 We do have also other activities
16 that we -- the kids would be doing at the
17 recreation center and that would be sports
18 like Little League football, softball and
19 soccer and the field is definitely a perfect
20 size for these activities. Goodness.

21 CHAIRPERSON MILLER: Could you
22 just also highlight why it's beneficial to

1 have a library on the first floor as opposed
2 to the floor? I think that was somewhat
3 addressed in the papers, but it goes to your
4 lot occupancy relief or something that it or
5 maybe Mr. Blanchard can address that.

6 MS. CAMPBELL-MURGA: Maybe the
7 architect.

8 CHAIRPERSON MILLER: But, there
9 seemed to be a programmatic benefit.

10 MR. BLANCHARD: Actually, if Mr.
11 Matthew Bell could respond to that.

12 MS. CAMPBELL-MURGA: The
13 architect.

14 CHAIRPERSON MILLER: Okay.

15 MR. BELL: Yes, when we first
16 started programming the building and working
17 on it, we did propose looking at a second-
18 floor library and the library system came back
19 and told us they felt very strongly that the
20 library be put on the first floor because in
21 their research and in their use of other
22 libraries, the libraries where people could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 see into the facility got more use and they
2 felt that if they were on the second floor it
3 would be, you know, a decrease in activity at
4 the library and they wanted to have as much
5 impact on the community as possible by having
6 the library on -- on the first floor and when
7 you look at the site, you know, it does cause
8 the lot occupancy to go up because of that.
9 But, we felt that it improved the sort of
10 sense of community of the ground floor people
11 coming and going into the different
12 facilities.

13 CHAIRPERSON MILLER: Thank you.
14 Yes.

15 MS. CAMPBELL-MURGA: I also would
16 like to add one more thing about one of the
17 quality features we feel that makes this
18 center so unique and so marvelous is that we
19 have a street instead the building. It's
20 called The Street. It's like a plaza. It's
21 enclosed. In this plaza, what they will do is
22 show art work. They would have banners about

1 the neighborhood. They would displays about
2 the neighborhood's history, their growth and
3 where they are now and I wanted to really
4 stress that as a real point of interest
5 because that was really what they pushed the
6 most for is to, you know, to be able to have
7 that flexibility.

8 MR. BLANCHARD: That's a
9 conceptual street. It's not actual --

10 MS. CAMPBELL-MURGA: It's not a
11 street street.

12 MR. BLANCHARD: It's like a
13 hallway.

14 MS. CAMPBELL-MURGA: It's -- yes,
15 it's -- when I said a plaza, it's --

16 CHAIRPERSON MILLER: It's a wide
17 hallway?

18 MR. BLANCHARD: Yes.

19 MS. CAMPBELL-MURGA: No cars or no
20 trucks and it's an -- it's an ease -- how
21 would you call it, Matthew?

22 MR. BELL: The -- the idea is to

1 provide a place that clearly unifies all the
2 District program elements and has a very
3 strong visual connection to the exterior play
4 fields. We have drawings we can show you. It
5 also allowed us to make a very efficient floor
6 plan and not have much wasted space with
7 hallways and things like that.

8 VICE-CHAIRPERSON ETHERLY: One
9 very quick question, Madam Chair, and I agree
10 with you at the outset. I think it's more
11 than appropriate for this Applicant to
12 predominately stand on the record. I think
13 the record is very full on what is a very
14 strong project and in all seriousness, I
15 definitely hope to see it come to other parts
16 of the city because this is a wonderful model.

17 There was brief reference in the
18 prehearing submission to discussions with Ron
19 Brown Middle School about the potential usage
20 of that park and facility and I agree with
21 what was stated in the prehearing submittal
22 and that is that it's very difficult to rely

1 on that. We've had some experience
2 unfortunately with the difficulties of other
3 entities in getting agreements with DCPS, but
4 I just wanted to see whether or not you've had
5 any movement on that or is that still shall we
6 say moving along very, very slowly?

7 And I definitely don't -- I don't
8 believe that, you know, we need to have you
9 demonstrate any kind of agreement to that
10 affect. I just wanted to ask, you know, if
11 you had any progress on that front.

12 MS. CAMPBELL-MURGA: No real
13 progress.

14 VICE-CHAIRPERSON ETHERLY: Got ya.

15 MS. CAMPBELL-MURGA: They were
16 still trying.

17 VICE-CHAIRPERSON ETHERLY: Okay.

18 MS. CAMPBELL-MURGA: I can say
19 that.

20 CHAIRPERSON MILLER: Okay. Let me
21 ask you. I understand no real progress means
22 you don't have a written agreement between

1 them -- with them, but is there some kind of
2 understanding or an indication that they're
3 going to be allowing parking or can you give
4 us an idea on that or are they out of the
5 equation?

6 MS. CAMPBELL-MURGA: I can't even
7 say on that.

8 CHAIRPERSON MILLER: You can't.
9 Okay.

10 MS. CAMPBELL-MURGA: I can't.

11 CHAIRPERSON MILLER: Okay.

12 MS. CAMPBELL-MURGA: I don't have
13 that.

14 CHAIRPERSON MILLER: So, as far as
15 what's before us, we cannot look to that
16 parking lot as available for excess parking.
17 Okay. Okay. It's possible, but we can't rely
18 on that. Okay.

19 MR. BLANCHARD: Ms. Miller, I
20 think the best way to characterize that is
21 that there have been verbal discussions and
22 overtures made at a higher level. Higher than

1 Ms. Murga and with Ron Brown and with the
2 DCPS, but unfortunately, there's not even
3 documentation in response. So, there's
4 nothing that we can proffer to the BZA to say
5 here's what's going on. There just has not
6 been a response at that -- to that extent.

7 CHAIRPERSON MILLER: Thank you.

8 MR. BLANCHARD: Mr. Henderson
9 wants to talk very briefly about construction
10 time line and then we'll go on to Matt Bell.

11 MR. HENDERSON: Hello again. The
12 construction's actually very simple. It's
13 basically a 24-month period and that'll have
14 three months of preconstruction on the front
15 side. It'll be 18 months of pure construction
16 to actually build the facility, have it ready
17 for use and then you'll have three months of
18 closeout on the back end. That's basically
19 it.

20 MR. BLANCHARD: Short and sweet.

21 MR. BELL: Do you all have a
22 mobile microphone so I could just refer to

1 these?

2 I'll be brief. I could talk for a
3 long time, but I won't. Yes, if we could just
4 set -- yes, these on one, on the other. Okay.

5 The site is adjacent to the
6 Deanwood Metro Station. Hope everybody can
7 see this and when we conceived the building,
8 we thought of it as completing a campus that
9 included the Ron Brown Middle School and the
10 new facility.

11 So, when you design these
12 buildings what you have to be cognizant of is
13 the program for the site is not just the
14 interior of the community center and library,
15 but it's also the play fields. The play
16 fields have lots of use, lots of different
17 sports, lots of different activities go on
18 there. There's a tennis court. Two tennis
19 courts existing. We were able to save one of
20 them.

21 So, what we ended up doing once
22 the program had been expanded from --

1 initially it was 18,000 square feet to 60,000.
2 What we ended up doing was really trying to
3 understand how that affected the exterior
4 program. So, what this site does is it
5 maximizes the preservation of the play fields
6 that are there and also five existing specimen
7 trees that are in this line. They're really
8 wonderful trees and we're trying to add onto
9 that.

10 All that considered, it tended to
11 push the building into this corner because we
12 want to preserve the flexibility of the play
13 fields and also make sure that the specimen
14 trees were not interrupted. So, what we have
15 is an entry on this side from the Metro
16 Station into the street here which is right
17 here and you can see and then we have a
18 community entry here as well.

19 The program has several different
20 units. The library here with visibility to
21 the street so the community will be able to
22 see into it. We have the swimming pool at the

1 other end here. Locker rooms in between the
2 gym and the pool. So, we only have to build
3 one set for people to be able to use and the
4 early child care center with this exterior
5 play area to the south getting the best light
6 here.

7 All of this is organized by what
8 Cheryl referred to as the street here which is
9 a simple sort of public place for people to
10 gather and for art work to be displayed. I
11 think I have a view of what that looks like
12 here. It'll be a place -- pretty lively
13 place. This is an early sketch we made, but
14 the community will have display areas for
15 banners and trophies and neighborhood
16 memorabilia and things like that.

17 So, the exterior adjacent to the
18 building has an entry drive and drop-off,
19 disabled parking and unloading spaces there.

20 The street conceptually is
21 continued across to go into the building so
22 that it has an organizing feature of the site.

1 There's a small terrace that
2 overlooks the sports area and here you can see
3 the youth baseball field and the football
4 field and soccer field.

5 We were able to include in the
6 lead silver design which is what this
7 building's going to be bio-retention gardens
8 and other lead features of the building and I
9 believe this is one of the first or second
10 lead silver buildings that DPR is doing. So,
11 we're very proud of that as a project moving
12 forward.

13 CHAIRPERSON MILLER: What did you
14 say? What kind of garden?

15 MR. BELL: Bio-retention.

16 CHAIRPERSON MILLER: Can you
17 explain that a little bit more?

18 MR. BELL: Bio-retention. Can I
19 explain that a little bit more? Do we have
20 the phone number of our landscape architect?

21 This is a place where rainwater is
22 going to collect and be generated back into

1 the ground there. Okay.

2 Parking -- the small parking lot
3 here and one tennis court.

4 One of the things that's important
5 about the parking issue is that, and Rob's
6 going to explain this, is that if we had to
7 add parking, chances are we would lose the
8 bio-retention garden and one of the tennis
9 courts. So, we felt that these were important
10 amenities to have for the neighborhood and not
11 over-build the parking. Because in our view,
12 there's sufficient flexibility of parking in
13 the neighborhood.

14 So, moving on here, yes, so these
15 are the different program elements. The
16 building would be serviced here. There will
17 be a loading dock here. It's an existing
18 public alley between our site and the block to
19 the north so we can get service through there.

20 Initially, we had wanted not to
21 have to bring vehicles out to Quarles Street,
22 but DDOT was uncomfortable with the way

1 traffic -- vehicular movement there. So, cars
2 will be coming and not all that often. I mean
3 I don't -- how often would you imagine? Very
4 rarely, but we will have cars, trucks loading
5 and coming in here.

6 There will be gates around the
7 site here. They show up here. So, we're
8 gating the whole area to make it secure there.

9 And then the green areas are
10 shared facilities. There's a computer room
11 here that will be a community computer room.
12 There's a sound studio for future musicians.

13 There's an adult room here where
14 adults can -- one of the things we heard loud
15 and clear from the community was that they
16 wanted -- the seniors in the community wanted
17 a special room all their own that they could
18 have their own activities and keep -- store
19 their own equipment and things related to
20 their activities.

21 An exercise room. This is a
22 bathroom here that is on the street and

1 there's a multipurpose room that can be
2 divided in half. It has a storage area and a
3 catering kitchen that opens up to an exterior
4 garden.

5 In the street, the idea is you'd
6 be able to have views out to the sports field.
7 So, you could imagine a parent coming,
8 dropping their kid off for an activity on one
9 of the recreation fields and then going inside
10 and being actually able to monitor when the
11 activity was completed and be able to go pick
12 up their child.

13 Child care will come in this door
14 here and in here and they'll have their own
15 play area here and they also will have some
16 access to the exterior of the building.

17 And then the library is also
18 accessed from the inside of the building with
19 different activity zones within the library
20 itself.

21 This gives you the sense with the
22 model what the massing of the building is

1 like. As you know, it's a one-story building.
2 We're trying to vary it and not make it look
3 so monolithic and give it a lot of variation
4 in roof height and things and part of that, if
5 we could tilt that up, is the result of having
6 the pool and the gym and the street and the
7 different heights of the roof and different
8 parts of the program so that it doesn't look
9 like one sort of flat building. It has some
10 activity at the skyline and things like that.

11 And so, the result of that is
12 larger volume of the gym. It's closer to the
13 Metro Station where we felt it was appropriate
14 to have a larger volume and then the pieces of
15 the building that are more neighborhood scale,
16 smaller in scale, are down towards -- towards
17 the residential neighborhood which will be
18 this elevation here. Whereas here, this is
19 likely what you'd see on the Deanwood Metro
20 Station site. This side of the building.

21 And then this is facing south.
22 The sports field. It has a large overhang

1 here for sun control purposes in order for us
2 to achieve maximum efficiency for our lead
3 silver project where we want heat gain in the
4 wintertime but not heat gain in the summertime
5 and that'll be facing south. So, you'll see
6 the community room, the street and the child
7 care center there.

8 And I'm happy to answer any
9 questions.

10 CHAIRPERSON MILLER: What are the
11 materials? I mean, for instance, do you have
12 like wood in some situations because of the
13 silver -- the lead status or --

14 MR. BELL: Largely, the materials
15 will be brick. Different kinds of brick.
16 Block. These are metal panels here. Glass
17 here. There's a medal roof over the main
18 street. I don't believe there's a lot of wood
19 here. Part of the -- part of the -- the gym
20 floor will be wood.

21 I mean part of the issue with
22 these buildings is durability. So, you have

1 to pick materials that are best suitable for
2 -- for energy issues and also for durability
3 issues as well.

4 CHAIRPERSON MILLER: Thank you.

5 MR. BELL: Thank you.

6 MR. BLANCHARD: Next, we'd have
7 Robert Schiesel talk about the traffic issue.

8 MR. SCHIESEL: My name is Robert
9 Schiesel. Like I said before I'm with Grove
10 Slade Associates.

11 On this project, we did do some
12 traffic analyses. I'll let those stand on the
13 record because the one thing that -- one of
14 the reasons we're here today is the parking
15 issue. So, I'll just touch on that and if you
16 have any questions about the other aspects of
17 what -- any other questions, you can just ask
18 those.

19 The site is a little bit unique.
20 So, when we tried to analyze exactly how much
21 parking is required, we kind of looked at
22 other comparable sites and eventually, we

1 ended up with a number that we think of the
2 maximum parking around here would be on 62
3 spaces. Very close to the actual zoning
4 demand which is 59.

5 The proposed parking lot has 30
6 spaces. Leaving a deficit of approximately 30
7 spaces.

8 A simple tour of the site though
9 would kind of -- kind of gives you the
10 indication that the neighborhood directly
11 adjacent here does have the parking to meet
12 that need. Just as kind of the -- the
13 neighborhood parking supply can serve the
14 community center, the same way the community
15 center kind of serves the neighborhood.

16 There's a couple of big parking
17 lots adjacent to the site. In addition,
18 there's a lot of on-street parking adjacent to
19 the site.

20 The on-street parking, we did a
21 simple survey just looking at right around the
22 block. There's two types of parking. Near

1 the middle school, there's unrestricted
2 parking and then adjacent to any residential
3 dwelling, there's restricted residential
4 parking. Between those two there's 82
5 unrestricted spaces and 99 restricted spaces.

6 If you go there, most of that
7 parking's used in the middle of the day. Most
8 likely because this is adjacent to the Metro
9 Station. The unrestricted spaces will all get
10 filled up.

11 The unrestricted space -- the
12 restricted spaces are filled to around half
13 capacity during the same time. So, which is
14 more than the deficit of 30 spaces.

15 So, as long as this community
16 center is serving people from the neighborhood
17 from the same ward, these restricted spaces
18 can serve the major use and also, at other
19 times especially weekends and evenings when a
20 lot of the major activity will be occurring at
21 the community center, all of these spaces or
22 most of these spaces will be available. The

1 unrestricted spaces because heavily available
2 on weekends and on week nights. So, people
3 will be able to park around the block here.

4 CHAIRPERSON MILLER: How many
5 spaces is that then that would be available at
6 night?

7 MR. SCHIESEL: Well, the
8 unrestricted spaces just shown there in that
9 blue right around the block that contains the
10 site is 80 spaces approximately. Those spaces
11 are pretty much full during office spaces just
12 because of their proximity to Metro Station.

13 The unrestricted space -- the
14 restricted spaces which are generally
15 available during the day have a two-hour limit
16 unless you're from the ward. Just like the
17 residential permit parking in the city.

18 CHAIRPERSON MILLER: And how many
19 of those are --

20 MR. SCHIESEL: Well, just
21 indicated in red just around the block that
22 includes the site and middle school is 99.

1 So, around 50 spaces are available during the
2 day.

3 CHAIRPERSON MILLER: They exist
4 there or that they're free when you say
5 they're available?

6 MR. SCHIESEL: That's the total
7 number of spaces available.

8 CHAIRPERSON MILLER: Total number
9 of spaces?

10 MR. SCHIESEL: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MR. SCHIESEL: Total number of
13 spaces is what's indicated on the chart. For
14 the unrestricted ones, during the day, none
15 are available. So, that would be 0 out of the
16 82 and then for the restricted spaces, it's
17 around 50 out of the 99.

18 CHAIRPERSON MILLER: Okay. Thank
19 you.

20 MR. SCHIESEL: Otherwise, I will
21 just leave what the Traffic Department Report
22 has said on record.

1 VICE-CHAIRPERSON ETHERLY:
2 Excellent. If I could jump in, Madam Chair,
3 very, very quickly. I think everything is
4 spot on with respect to your own analysis. We
5 have the report in the record from the
6 Department of Transportation.

7 I just wanted to ask very quickly
8 and this may perhaps be an architectural
9 question, it might be for DPR in terms of the
10 construction -- the post-construction side,
11 but signage. I think there's more than
12 adequate parking to deal with the need that's
13 going to be generated and many of the patrons
14 as is indicated in the submittal will probably
15 be coming either from the immediate
16 neighborhood or through public transportation.

17 With respect to vehicular traffic
18 that is seeking to come directly to the site,
19 I would hazard a guess that human nature, of
20 course, is to first and foremost go towards
21 where you see a parking space. So, I just
22 wanted to make sure that you will, of course,

1 have adequate signage with regard to the
2 parking spaces that will be set aside for
3 disabled patrons of the center.

4 Could you speak a little bit to
5 just how you're using signage at the entrance
6 portal just so you don't have kind of
7 circulating around looking for parking kind of
8 inside the perimeter of the facility if you
9 will?

10 MR. BELL: That's a very good
11 point. I think these spaces down here at the
12 entry drive off of Minnesota will be
13 designated disabled parking there and I think
14 it will have all the appropriate levels of
15 signage there.

16 VICE-CHAIRPERSON ETHERLY: Okay.

17 MR. BELL: It's the kind of
18 facility where you go there once and you learn
19 the routine.

20 VICE-CHAIRPERSON ETHERLY: Okay.

21 MR. BELL: I think. So, you know,
22 I think people will figure it out and park

1 where they're -- you know, parking is an
2 inexact science. They'll park where it's
3 convenient to them, but they will have
4 opportunities to park in the lots there and
5 there and the disabled parking will be clearly
6 indicated.

7 VICE-CHAIRPERSON ETHERLY: Okay.
8 And could you -- changing gears here. Could
9 you perhaps indicate very, very quickly --
10 that satisfies my question on that issue.
11 Could you highlight very quickly what you're
12 doing in terms of exterior lighting for let's
13 just say kind of the key perimeter areas of
14 the building? What are your plans for
15 lighting?

16 MR. BELL: I can't quote you
17 chapter and verse what --

18 VICE-CHAIRPERSON ETHERLY: Okay.

19 MR. BELL: -- the foot candle
20 level will be. I can tell you that the
21 existing field is lit and they do have evening
22 activities there and we will have a -- I think

1 DPR has a pretty good policy about the kind of
2 lighting that they have at their facilities.
3 I can't tell you exactly what foot candles
4 we're talking about, but --

5 VICE-CHAIRPERSON ETHERLY: Okay.
6 That's okay. But, more so for just kind of
7 let's say the non-athletic field stuff.
8 Because that's going to be pretty standard.
9 You're going to do what you normally do there.
10 But, for other portions of the building and in
11 particular, let's say the entrance -- the
12 entry drive area. What will you be doing
13 there in terms of any exterior lighting? Are
14 you utilizing any light poles or fixtures for
15 that area of the entrance space?

16 MR. BELL: Chris, do you recall
17 what the specifications are calling for in
18 terms of lighting?

19 MR. HENDERSON: There are
20 definitely lights all the way around the
21 building. The minimum foot candle requirement
22 is actually three foot candles --

1 VICE-CHAIRPERSON ETHERLY: Okay.

2 MR. HENDERSON: -- designated for
3 around the facility.

4 VICE-CHAIRPERSON ETHERLY: And the
5 reason why I ask is again I'm not necessarily
6 -- I don't view it as a starting -- as a
7 problem of a starting point, but having some
8 experience with other facilities that I
9 frequent and love from a Parks and Rec
10 standpoint, I know at times when you have
11 residential -- adjacent residential properties
12 lighting on the field becomes a huge issue.
13 That's one I can live with. So, I just wanted
14 to kind of get a sense of what you were doing
15 and just making sure that you were being
16 sensitive to some of those concerns.

17 MR. BELL: If you look at the site
18 plan, the way the site lays out I think it
19 does -- you know, your lighting on the fields
20 it does minimize the impact on the residential
21 neighborhoods.

22 VICE-CHAIRPERSON ETHERLY:

1 Excellent.

2 MR. BELL: What happens here is
3 that this building comes around. This will be
4 lit here. The walkway and this exterior area.
5 This will be lit as an entry to the building
6 right there, but no more than you would have
7 a school or a public library or something lit.

8 So, I think the building does a
9 reasonably good job of shielding the negative
10 impact of this lighting and these trees as
11 well which is one of the reasons why we wanted
12 to preserve them from this residential
13 neighborhood.

14 There are few residences here that
15 we can't really do too much about --

16 VICE-CHAIRPERSON ETHERLY: Okay.

17 MR. BELL: -- because they're in
18 this location, but I think inasmuch as we
19 could to this neighborhood, I think it does
20 work.

21 VICE-CHAIRPERSON ETHERLY:
22 Excellent. That concludes my questions.

1 Thank you. Thank you, Madam Chair.

2 CHAIRPERSON MILLER: Do you know
3 the hours that the center's going to be open
4 at this point?

5 MS. CAMPBELL-MURGA: Yes, I do.
6 The pool area normally opens about 6:00 a.m.
7 and it closes about 10:00 a.m. -- 10:00 p.m.
8 Excuse me.

9 The recreation center is normally
10 open during the week. It opens earlier for
11 seniors. They open at 9:00. For the kids on
12 the school days, they are open at 3:00 and
13 they close at 9:00 at night. So --

14 CHAIRPERSON MILLER: So, hours
15 aren't being changed from what's presently the
16 hours for what's there right now. Is that
17 right?

18 MS. CAMPBELL-MURGA: Yes, it's
19 currently -- they remain the same.

20 Library's hours I'm not sure
21 about, but we have longer hours than they do.
22 So, they will probably come in later than we

1 do and close before we do.

2 CHAIRPERSON MILLER: Okay. Great.
3 With respect to parking, I mean there's plenty
4 of public transportation and it looks like
5 there are a lot of cars around there. But, I
6 just want to ask you. It sounds like at least
7 in the short term and maybe not, but it sounds
8 like, you know, this great center that's being
9 created and it's the only one in the ward.
10 So, is it going to be like a destination for
11 people other than those that live in the
12 neighborhood and, therefore, attract more
13 traffic and I know you had a comp that you
14 compared it to that you based the parking on
15 and I'm wondering was that comp, you know, the
16 comparable one in that kind of situation where
17 it might have been a destination or do you not
18 anticipate this being a destination?

19 MR. SCHIESEL: Yes, like I said
20 before, it was a little -- a lot of the
21 attritional traffic analysis methods, you
22 know, especially for parking demand, it was a

1 -- were a little tricky to kind of develop
2 that number of how many spaces we anticipate
3 needed.

4 I don't think the comparable --
5 there is any comparable to what we are
6 proposing here as far as what we can easily
7 measure.

8 So, we did do a lot of this -- we
9 did look at more of the components
10 individually. What a day care center and kind
11 of looked at the comparable plus a day care
12 center. The comparable plus a library and
13 kind of developed those numbers based on the
14 difference between the two programs. So, it
15 wasn't just we looked at one program of a
16 comparable. We looked at a program of a
17 comparable plus traditional traffic and
18 parking patterns of libraries and day care
19 centers and made some assumptions as far as
20 how much synergy there would be between the
21 uses.

22 CHAIRPERSON MILLER: And certainly

1 a day care center is kind of static. I mean
2 there are only a certain number of kids or
3 babies or whatever enrolled in the program.
4 So, you know what that is.

5 The other is -- it's probably
6 metamorphosis. Right? How many people are
7 going to be coming to play basketball or play
8 in the fields.

9 MR. BELL: It's important to point
10 out I think that the intense use hours of a
11 community center like this are -- are in the
12 evenings and on the weekends. So, that does
13 have a kind of positive sum total of how
14 people use this. You know, more parking
15 available in those hours.

16 CHAIRPERSON MILLER: Okay. I just
17 wanted to throw that question out to you
18 because I mean there is a lot of parking and
19 I think the way it works also is if people
20 really want to come and they're having trouble
21 finding parking, they can take the Metro or
22 public transportation.

1 MR. BELL: I think it's also
2 important to get into a policy of not over-
3 building parking, you know.

4 CHAIRPERSON MILLER: Any other
5 questions? Okay. Do you have anything
6 further?

7 MR. BLANCHARD: Only to say that
8 this is not a regional center. I just wanted
9 to reiterate that point. This is not Tacoma
10 Rec Center. It will not be able to have swim
11 meets here and big, you know, activities like
12 that. But --

13 CHAIRPERSON MILLER: Why is that?
14 Because it's a D.C. Rec Center?

15 MR. HENDERSON: I can actually
16 answer that.

17 CHAIRPERSON MILLER: Okay.

18 MR. HENDERSON: There's only four
19 lap lanes within that. It's a large leisure
20 pool. It has a big splash park area within it
21 and then there's also a lazy river that's
22 within the facility as well and then there's

1 a 0-depth to 3-feet entry level that has
2 sprouting mushrooms and stuff like that. So,
3 it's more a big play splash area for children
4 than it is for recreational swimming.

5 CHAIRPERSON MILLER: Okay. And
6 the fields? What are they for? Ballpark, is
7 that what they are?

8 MR. HENDERSON: These are
9 multipurpose fields as you can see on this
10 diagram here.

11 MR. BELL: They're existing.

12 MR. HENDERSON: Yes, they are
13 existing right now and that also answers your
14 light poles are already there --

15 CHAIRPERSON MILLER: Okay.

16 MR. HENDERSON: -- for your
17 existing ball fields, but it'll be set up for
18 soccer, baseball and then whatever intended --
19 okay. Football.

20 CHAIRPERSON MILLER: So, that
21 program's not really going to change. So, we
22 have soccer matches there and stuff? Okay.

1 And baseball? Softball. Okay. Great. Okay.

2 Thank you.

3 MR. BLANCHARD: Thank you. That
4 concludes our testimony. We believe we met
5 all the standards for both the special
6 exceptions and the Department of Parks and
7 Recreation is committed to maintaining the
8 open space of the existing fields as far as
9 the lot occupancy is concerned and you've
10 heard about the synergy and collocation of the
11 various uses there which goes to the
12 additional gross floor area and you've heard
13 about all the parking issues. So, I believe
14 we've met the standards and welcome any other
15 questions after planning.

16 CHAIRPERSON MILLER: Also, now are
17 there going to be two tennis courts or one
18 tennis court?

19 MR. BLANCHARD: There's only one.

20 CHAIRPERSON MILLER: One tennis
21 court. Okay. Because we -- I heard different
22 things today. I don't know. I don't know.

1 MR. BELL: Unless we can figure
2 out how to play tennis in bio-retention
3 gardens.

4 CHAIRPERSON MILLER: Okay. I
5 guess we're ready to go to the Office of
6 Planning.

7 MS. BROWN-ROBERTS: Good
8 afternoon, Madam Chairman and Members of the
9 Board.

10 I'm Maxine Brown-Roberts from the
11 Office of Planning.

12 I also will stand on the record
13 regarding our analysis of this application.

14 Just a few things to highlight is
15 that regarding the special exception that the
16 lot occupancy and the -- the increase in lot
17 occupancy and also in the gross floor area is
18 mainly cost because of the collocation of all
19 the three uses and that is something that we
20 fully support and would also encourage in
21 other facilities.

22 Regarding the variance for the

1 parking, we also have some concerns about
2 that, but after analyzing the Applicant's
3 traffic study and also doing a site visit
4 during the day and also at another period when
5 there was -- when the commuter traffic was not
6 there, we also believe that the reduction in
7 parking will not be a detriment to the
8 community and so, we do support the variance
9 request and believe that they meet all the
10 three tests regarding that special exception.

11 Also, in our report, we
12 highlighted the fact that -- and this is
13 basically a policy of the Office of Planning
14 regarding residential use at Metro Stations
15 and we just wanted to be on the record that
16 that is something that we support. We would
17 like to encourage the Department of Parks and
18 Rec to look into that -- to look into adding
19 the residential use at this site because there
20 is a Metro Center -- Metro Station there that
21 we think could do with some additional
22 residential use to make it more productive and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 fruitful for the community.

2 So, that is something by the way
3 and we -- in summary, we recommend approval of
4 the requested special exceptions and the
5 variance.

6 Thank you, Madam Chairman.

7 CHAIRPERSON MILLER: Thank you.
8 Let me ask you with respect to the housing
9 that you're suggesting would be beneficial.
10 Is that something that could be added at a
11 later time or is that something once these
12 plans are approved in this proceeding they
13 wouldn't really allow for? You mean housing
14 on top. Is that correct?

15 MS. BROWN-ROBERTS: Yes.

16 CHAIRPERSON MILLER: Yes.

17 MS. BROWN-ROBERTS: Yes.

18 CHAIRPERSON MILLER: Yes, I don't
19 -- yes.

20 MS. BROWN-ROBERTS: And they would
21 have to come back because what we're proposing
22 is that they do it within the allowable -- the

1 allowed FAR on -- within the Zoning District.
2 So, you know, changes could be made. They
3 still have the facility.

4 They -- well, I suppose there may
5 be some design changes that they may -- that
6 they -- you know, they may --

7 CHAIRPERSON MILLER: Yes, I'm sure
8 we'll -- I would like to hear from the
9 Applicant, too. But, that's what I was
10 wondering.

11 MS. BROWN-ROBERTS: Right.

12 CHAIRPERSON MILLER: If the
13 building as designed as the plans are
14 presented before us, would -- might preclude
15 that because of the way -- I'm just asking.
16 If you know.

17 MS. BROWN-ROBERTS: Yes, there --
18 I suppose there is a possibility for that.
19 Because when we looked at it also, we also had
20 some concerns because we know that the -- for
21 example, the pool area, that has a very high
22 roof and in order to get within the FAR and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 also the height limit, they may not be able to
2 put anything on that. So, it may be -- you
3 know, residential may only be able to go over
4 the library area and some of the other
5 administrative areas.

6 So, I would -- I mean I think that
7 I would see that there are some -- that there
8 would be some changes to the building. That
9 they may -- you know, maybe they'd have to
10 come back just to show that.

11 CHAIRPERSON MILLER: And I don't
12 know how far you want to go with this, but is
13 this something that Office of Planning
14 actually discussed with Department of Parks
15 and Recreation?

16 MS. BROWN-ROBERTS: It is
17 something that was taken up at the Department
18 head level. Yes.

19 CHAIRPERSON MILLER: And how about
20 the --

21 MS. BROWN-ROBERTS: We haven't
22 gotten any response on where that is right

1 now.

2 CHAIRPERSON MILLER: Okay. And
3 how about the community? The community not
4 the ANC.

5 MS. BROWN-ROBERTS: No, that is
6 not something that we have taken. No.

7 CHAIRPERSON MILLER: No.

8 MS. BROWN-ROBERTS: No.

9 CHAIRPERSON MILLER: Okay.

10 MS. BROWN-ROBERTS: No. No. It
11 was just sort of in-house.

12 CHAIRPERSON MILLER: Okay.

13 MS. BROWN-ROBERTS: Brainstorming.

14 CHAIRPERSON MILLER: It's
15 compatible with the policy of --

16 MS. BROWN-ROBERTS: Right.

17 CHAIRPERSON MILLER: --
18 residential around the --

19 MS. BROWN-ROBERTS: Right.

20 CHAIRPERSON MILLER: Okay.

21 MS. BROWN-ROBERTS: Um-hum.

22 MEMBER LOUD: Thank you for your

1 report. I just wanted to ask you a quick
2 question regarding the housing element of your
3 report. Namely, are there any projects like
4 that currently in the District? I know I read
5 about one in Arlington. Public/private
6 development that had housing on the upper
7 floors and I think there was a fire station on
8 the ground floor. But, are you aware of any
9 in the District?

10 MS. BROWN-ROBERTS: No, I'm not
11 aware of any at all that functions like that,
12 but it's still something we'd like to explore.

13 CHAIRPERSON MILLER: There's been
14 some discussion though. For instance, like
15 with Tenley with the library that was going to
16 be renovated.

17 MS. BROWN-ROBERTS: Right.

18 CHAIRPERSON MILLER: There's been
19 some discussion about doing this --

20 MS. BROWN-ROBERTS: Yes. Yes,
21 there have been some. Right. Yes.

22 CHAIRPERSON MILLER: -- type of

1 thing.

2 MS. BROWN-ROBERTS: Um-hum. Um-
3 hum.

4 CHAIRPERSON MILLER: Okay. Any
5 other questions for Office of Planning? Does
6 the Applicant have any cross examination for
7 Office of Planning?

8 MR. BLANCHARD: No cross
9 examination.

10 CHAIRPERSON MILLER: You do have a
11 copy of the Office of Planning report?

12 MR. BLANCHARD: We do.

13 CHAIRPERSON MILLER: Okay.

14 MR. BLANCHARD: I just wanted to
15 say, Madam Chair, that if housing was to be
16 added to this project, it's located in an R-5-
17 A zone and so, it would require special
18 exception relief under Section 353.

19 CHAIRPERSON MILLER: Under what?

20 MR. BLANCHARD: Three fifty-three.

21 CHAIRPERSON MILLER: Okay.

22 VICE-CHAIRPERSON ETHERLY: Just to

1 put a pin in that piece, is the project being
2 conceived with the idea of potentially at some
3 later point in the future having housing added
4 to it?

5 MS. BROWN-ROBERTS: We haven't
6 gone that far.

7 VICE-CHAIRPERSON ETHERLY: I just
8 wanted to clarify that. I figured as much.
9 I just wanted to make sure. Excellent. Thank
10 you, Madam Chair.

11 COMMISSIONER TURNBULL: Madam
12 Chair, I think the architect could probably
13 comment on it. I think it would be a lot of
14 structural gymnastics and rearranging of the
15 design to make that even work.

16 MR. BELL: Yes. Although, the
17 other way to look at this is not necessarily
18 -- the way I took the comment was that there
19 was additional FAR that could be added to the
20 site. It wouldn't necessarily have to be on
21 top, but it could be somewhere on the site if
22 they wanted to consider that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Now, there are tradeoffs. There
2 are sports fields there and things.

3 My suggestion on all that back to
4 the Office of Planning would be there's a huge
5 Metro Station here with surface parking.
6 There's the Ron Brown Middle School. There
7 was some questions about the future of that
8 and things. It would seem prudent now that
9 this -- there's a big public investment with
10 this project to look at areas where you would
11 have an opportunity to put housing where you
12 wouldn't have to redesign and delay a
13 community center with a community sort of been
14 waiting for several years to have something
15 like this.

16 I think it's, you know, from a
17 sort of planning point of view, it's good
18 planning to try and put residential near Metro
19 Stations, but I believe Commissioner Turnbull
20 is correct. It would require very significant
21 changes to the building to do that on top of
22 the building.

1 CHAIRPERSON MILLER: Any other
2 questions?

3 Just looking to see if anybody
4 else has come into the hearing room to testify
5 either in support or opposition to this
6 application. Okay. Not seeing anybody.

7 Mr. Blanchard, I'll turn to you
8 for a closing argument.

9 MR. BLANCHARD: No argument here,
10 Madam Chair. We believe again that we've met
11 all the standards for the relief requested,
12 the two special exceptions and the variance
13 and just in light of the fact that there is no
14 opposition, we request that the Board made a
15 bench decision if it's so disposed and a
16 summary order.

17 CHAIRPERSON MILLER: Thank you.

18 MR. BLANCHARD: Thank you.

19 VICE-CHAIRPERSON ETHERLY: Madam
20 Chair, it would be my motion to move approval
21 of Application Number 17601 of D.C. Department
22 of Parks and Rec pursuant to 11 DCMR 3104.1

1 for a special exception from the lot occupancy
2 requirement under Subsection 403.3, a special
3 exception from the gross floor area
4 requirements under Section 408 and pursuant to
5 11 DCMR 3103.2, a variance from the off-street
6 parking provisions to allow the development of
7 a new public community center at premises 49th
8 and Quarles Street, N.E. and I would invited
9 a second.

10 CHAIRPERSON MILLER: Second.

11 VICE-CHAIRPERSON ETHERLY: Thank
12 you very much, Madam Chair.

13 I'd love to just start us off. I
14 think the record is very full and complete.
15 So, I will not wax as poetically as I normally
16 am known to do on this particular issue.

17 But, I will take a point of
18 personal privilege just to say that yet again
19 tennis is getting short shrift here in the
20 District of Columbia as an avid tennis player,
21 but that being said, the project is a
22 wonderfully conceived project.

1 And I think clearly with respect
2 to the variance aspect of it, first, let's
3 deal with the issue parking. Clearly, there's
4 an unusual topography to the site in terms of,
5 one, it's shape, in terms of what you
6 currently have on the site relative to assets
7 that are to be protected and maintained, i.e.,
8 the green space and the open space and the
9 athletic fields, such that the location of the
10 requirement parking on this site would
11 seriously impair the programmatic and policy
12 objectives of the District of Columbia
13 Department of Parks and Recreation.

14 I would even hazard -- actually,
15 I'm not even going to go there. I was going
16 to make a mention of the Monaco case if I
17 recall correctly from my thinking. Monaco had
18 spoken to kind of the nonprofit goals and
19 objectives of nonprofit organizations as they
20 relate to aspects of the variance test, but I
21 think you don't even have to reach Monaco in
22 this case.

1 This is clearly a home run under
2 the variance test as it relates to parking.
3 The proximity to Metro, the proximity to --
4 and a very adequate inventory of on-street
5 parking be it restricted or unrestricted, I
6 think clearly speaks to the fact that there is
7 no impact here as it relates to the Zone Plan
8 and Map.

9 We have support from the
10 Department of Transportation. The Office of
11 Planning is in support.

12 Perhaps most importantly in this
13 particular case, of course, we have
14 considerable support through the ANC and just
15 the result of a longstanding community
16 engagement process around what type of
17 programming and assets they wanted to see
18 utilized here at the Deanwood Recreation
19 Center.

20 So, I think on the variance test
21 it's very clearly a home run and if it's a
22 home run on the variance test, then you're

1 really walking in the park easily with respect
2 to the issue of the special exceptions as they
3 relate to both the issue of the gross floor
4 area requirements and the lot occupancy
5 requirements.

6 As you deal with the issue of lot
7 occupancy, lot occupancy is directed related
8 to the policy objectives, programmatic
9 objectives of the proposed facility as it
10 relates to the combination of three distinct
11 uses all on one facility.

12 Clearly, there dictates as it
13 relates to -- we discussed a little bit the
14 issue of the library. We discussed how the
15 orientation of the library on the first floor
16 specifically contributes if you will to
17 insuring that you're going to have effective
18 and active use of the library. Child
19 development center. Placement of other
20 resources on the first floor.

21 I think clearly the gross floor
22 area is directly tied to the public policy

1 needs and directives of the Department and of
2 the District of Columbia.

3 As it relates to the issue of lot
4 occupancy, I think that too is also directly
5 tied into the agency policy of preserving open
6 space here.

7 We would definitely be remiss if
8 we did not -- if we didn't highlight the lead
9 standard that the building is attempting to
10 adhere to. The bio-retention area. Very
11 rarely do we see architects veer into
12 explanations of bio-retentions. So, my
13 congratulations to the team for being able to
14 multi-task.

15 But, clearly, the program and the
16 decisions that have been made around the
17 construction of the property are all directly
18 tied to some very key and clear objectives
19 here and I think the record is very, very full
20 in that regard.

21 Again, as I reference, the ANC is
22 in support and we have their report on file at

1 Exhibit Number 26 dated -- I apologize. They
2 don't -- March 26, 2007. Where at a properly
3 noticed meeting, the ANC clearly granted its
4 proposal and in relevant portion says we ask
5 that swift action be taken to bring this long
6 awaited community center into fruition.

7 So, with that, Madam Chair, I'll
8 open it up for other colleagues to add in.
9 Thank you.

10 CHAIRPERSON MILLER: Thank you,
11 Mr. Etherly. That was excellent. I'm only
12 going to add a few things because you covered
13 a lot territory.

14 I want to add that Department of
15 Transportation did weigh in at Exhibit Number
16 25 in support and in large part, recognizing
17 that the project is well served by public
18 transportation. That goes specifically to the
19 variance for the parking.

20 And on that variance, I think this
21 clearly meets the variance test. It's unique
22 in a lot of ways and you highlighted a lot of

1 them.

2 One, I'm not sure if you said was
3 just that this is one of a kind in the whole
4 ward, this whole center and it's meeting a lot
5 of needs and was designed in order to respond
6 to community requests and needs specifically
7 and the practical difficulty that arose in
8 doing that was that in order to comply, this
9 is just for parking, they would have to cut
10 into more valuable aspects of the center such
11 as the garden or the fields. So, that's their
12 practical difficulty and there's absolutely no
13 substantial detriment that's been identified.
14 There's plenty of parking all around and
15 public transportation and there's plenty of
16 public benefit to be gained by the center.

17 So, it sounds really great to us
18 and I think you also made a great case with
19 respect to your special exceptions
20 particularly as Mr. Etherly said the lot
21 occupancy is easily understandable why this is
22 altogether and the library being on the first

1 floor. How important that is to encourage use
2 of the library.

3 So, I think Mr. Etherly covered
4 everything else that I would have said. So,
5 anybody else have any comments on this?

6 VICE-CHAIRPERSON ETHERLY: I'll
7 just note in closing --

8 CHAIRPERSON MILLER: Okay.

9 VICE-CHAIRPERSON ETHERLY: --
10 Madam Chair that with respect to lot
11 occupancy, we're talking about a very de
12 minimis increase over 20 percent. We're
13 looking at 25 percent here and as we just put
14 a pin in the density issue as was discussed,
15 the architectural renderings clearly
16 illustrate a respect for the kind of dual
17 nature of the area. You have some
18 residential. You have some other uses in the
19 vicinity. So, when you look at the massing on
20 various -- from various perspectives of the
21 proposed project, clearly, there's
22 consideration being given to its impacts.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Minimal, it's impacts on some of the adjacent
2 residential property.

3 So, I think all around again it's
4 a home run. Thank you.

5 CHAIRPERSON MILLER: Thank you.
6 Any other comments? Okay.

7 Then I think we can vote. All
8 those in favor say aye.

9 (Ayes.)

10 CHAIRPERSON MILLER: All those
11 opposed? All those abstaining?

12 Would you call the vote please?

13 MS. BAILEY: The vote is recorded
14 as 5-0-0 to grant the application. The motion
15 was made by Mr. Etherly, seconded by Ms.
16 Miller. Mr. Mann, Mr. Turnbull and Mr. Loud
17 are in agreement to the motion and are we
18 doing a summary order, Madam Chair?

19 CHAIRPERSON MILLER: I believe
20 that there's consensus on the Board for a
21 summary order.

22 MS. BAILEY: Summary order.

1 CHAIRPERSON MILLER: There's no
2 opposition in this case.

3 MS. BAILEY: Thank you.

4 CHAIRPERSON MILLER: Okay. Thank
5 you very much. We look forward to seeing
6 this. More tennis. Yes.

7 Ms. Bailey, do we have anything
8 else? Or, Mr. Moy, do we have anything else
9 on the agenda?

10 MS. BAILEY: That's it.

11 CHAIRPERSON MILLER: Okay.

12 MS. BAILEY: That's it for us.

13 CHAIRPERSON MILLER: Then this
14 meeting's adjourned. Hearing. Thank you.

15 (Whereupon, the hearing was
16 concluded at 3:49 p.m.)

17

18

19

20

21

22