

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

MAY 12, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:00 a.m., Marc D. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD Chairman  
SHANE L. DETTMAN Vice Chairman

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL TURNBULL Commissioner  
GREGORY JEFFRIES Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

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SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS  
PAUL GOLDSTEIN

This transcript constitutes the minutes from the Public Hearing held on May 12, 2009.

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

10:03 a.m.

CHAIRMAN LOUD: And I suppose now we will go to the hearing agenda for this morning. And we won't take a break, we'll go straight into the hearing agenda.

Thank you, Mr. Hood. Mr. Hood is leaving and we're going to be joined by Michael Turnbull representing the Zoning Commission.

Good morning again. This hearing will, please, come to order. We have been joined by Michael Turnbull representing the Zoning Commission.

This is the May 12<sup>th</sup> Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Marc Loud, Chairperson. Joining me today are Vice Chair, Shane Dettman, representing the National Capital Planning Commission, and as I said Mr. Michael Turnbull, Mr. Clifford Moy, Secretary, Ms. Lori Monroe and Ms. Sherry Glazer from the

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1 Office of Attorney General and Ms. Beverley  
2 Bailey from the Office of Zoning.

3 Actually I have to say this every  
4 single time that I convene a hearing, so  
5 that's why I'm repeating, for example, Shane's  
6 name, although most of you just heard me  
7 mention it.

8 Copies of today's hearing agenda  
9 are available to you and are located to my  
10 left in the wall bin near the door. Please,  
11 be advised that this proceeding is being  
12 recorded by a Court Reporter and is also  
13 webcast live. Accordingly, we must ask you to  
14 refrain from any disruptive noises or actions  
15 in the hearing room.

16 When presenting information to the  
17 Board, please, turn on and speak into the  
18 microphone, first, stating your name and home  
19 address. When you are finished speaking,  
20 please, turn your microphone off, so that your  
21 microphone is no longer picking up sound or  
22 background noise.

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

9 The order of procedure for special  
10 exceptions and variances is: No. 1, Statement  
11 and witnesses of the applicant. No. 2,  
12 Government reports, including the Office of  
13 Planning, the Department of Transportation,  
14 etcetera. No. 3, Report of the Advisory  
15 Neighborhood Commission. No. 4, Parties or  
16 persons in support. No. 5, Parties or persons  
17 in opposition. No. 6, Closing remarks by the  
18 applicant.

19 There are no appeals on the agenda  
20 for this morning, so I won't read the section  
21 pertaining to appeals.

22 Pursuant to Sections 3117.4 and

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1 3117.5, the following time constraints will be  
2 maintained: The applicant, the appellant,  
3 persons and parties, except an ANC, in  
4 support, including witnesses, are allowed 60  
5 minutes collectively. The appellee, the  
6 persons and parties, except an ANC, in  
7 opposition, including witnesses, are allowed  
8 60 minutes collectively. Individuals are  
9 allowed 3 minutes.

10 These time constraints do not  
11 include cross examination and/or questions  
12 from the Board. Cross examination of  
13 witnesses is permitted by the applicant or  
14 parties. The ANC within which the property is  
15 located is automatically a party in a special  
16 exception or variance case.

17 Nothing prohibits the Board from  
18 placing reasonable restrictions on cross  
19 examination, including time limits and  
20 limitations on the scope of cross examination.

21 The record will be closed at the  
22 conclusion of each case, except for any

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1 material specifically requested by the Board.

2 The Board and the staff will specify at the  
3 end of the hearing exactly what is expected  
4 and the date when persons must submit evidence  
5 to the Office of Zoning. After the record is  
6 closed, no other information will be accepted  
7 by the 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 it's Rules of Procedure and  
12 the Sunshine Act, enter Executive Session  
13 during or after the Public Hearing on a case  
14 for 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 present not engage the Members of the Board in  
21 conversation.

22 Please, turn off all beepers and

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

3 The Board will now consider any  
4 preliminary matters. Preliminary matters are  
5 those which relate to whether a case will or  
6 should be heard today, such as requests for  
7 postponement, continuance or withdrawal or  
8 whether proper and adequate notice of the  
9 hearing has been given. If you are not  
10 prepared to go forward with a case on our  
11 agenda today or if you believe that the Board  
12 should not proceed, now is the time to raise  
13 such a matter.

14 Does the staff have any preliminary  
15 matters?

16 MS. BAILEY: Mr. Chairman, Members  
17 of the Board, and to everyone, good morning.  
18 Mr. Gell is about to enter and sit down, so I  
19 won't steal his thunder. I think he has a  
20 preliminary matter.

21 CHAIRMAN LOUD: Good morning, Mr.  
22 Gell.

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1 MR. GELL: Good morning, Mr.  
2 Chairman and Members of the Board. I do want  
3 to thank the Board very much for its decision  
4 this morning in the Appeal 17902, Mr. Joseph  
5 Park. And I think there is no need for us to  
6 go forward with the Application 17922 later on  
7 this morning. So we hereby withdraw that  
8 application. And again, thank you very much.

9 CHAIRMAN LOUD: Thank you, Mr.  
10 Gell, for the preliminary matter and we will  
11 consider the case withdrawn.

12 Are there any other preliminary  
13 matters? There was a gentleman in the rear  
14 who raised his hand. Why don't you come  
15 forward and have a seat at the table. Good  
16 morning. If you could just state your name  
17 and the case that you are connected to. Is  
18 your microphone on? You have to --

19 MR. AGBORO: Hello. Oh, yes, it  
20 is. Good morning. My name is Frank Agboro  
21 and I'm a resident of Mount Pleasant and  
22 abutting neighbors of Janet and -- Janet

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1 Staihar and Dick Barnes, who are applicants of  
2 Application 17919, it's a zoning variance  
3 issues.

4 I would like to ask for the Board  
5 to postpone this proceeding, because of  
6 evidence that came up after -- through the  
7 process, after the ANC voted in supporting  
8 that zoning application.

9 We were not heard from. My family  
10 and I were not heard from by the ANC and  
11 neither were abutting neighbors, as a result  
12 of us not being informed. And so I have  
13 submitted some information to the clerk with  
14 signatures of neighbors who were not informed  
15 about the ANC vote.

16 CHAIRMAN LOUD: Okay. Why don't we  
17 do this, I don't think we have called that  
18 case yet, so should we call it, ms. Bailey?

19 MS. BAILEY: Mr. Chairman, that's  
20 the first case on the agenda and I can swear  
21 the witnesses in and then you can start with  
22 the case.

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1 CHAIRMAN LOUD: Okay.

2 MS. BAILEY: If that's appropriate?

3 CHAIRMAN LOUD: Yes, why don't we  
4 do that?

5 MS. BAILEY: Okay. Everyone  
6 testifying today, please, stand to take the  
7 oath and, please, raise your right hand.

8 (Whereupon, the witnesses were  
9 sworn.)

10 MS. BAILEY: Thank you.

11 CHAIRMAN LOUD: Good morning again.  
12 I would like to ask the applicant in this  
13 case to, please, come forward and take a seat  
14 at the table.

15 MS. BAILEY: Application 17919 of  
16 Richard Barnes and Janet Staihar, pursuant to  
17 11 DCMR 3103.2, for a variance from the lot  
18 occupancy requirements under section 403, a  
19 variance from the rear yard requirements under  
20 section 404, and a variance from the  
21 nonconforming structure provisions under  
22 subsection 2001.1, to allow a rear addition to

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1 an existing one-family row dwelling in the R-4  
2 District at premises 3150 17<sup>th</sup> Street, N.W.,  
3 Square 2600, Lot 87.

4 And as you have indicated, Mr.  
5 Chairman, there is a request for party status  
6 from the gentleman seated at the table, Mr.  
7 Frank O. Agboro.

8 CHAIRMAN LOUD: Okay. And is the  
9 ANC-1D here this morning? Okay. Why don't  
10 you join us at the table as well, because the  
11 ANC is automatically a party in the case.

12 MR. EDWARDS: Where shall I sit?

13 CHAIRMAN LOUD: All right. And  
14 once we get everybody situated, if we can have  
15 everyone introduce yourselves for the record?

16 And then we will resume back with the request  
17 for postponement. I don't anticipate spending  
18 a whole lot of time on the motion for  
19 postponement. We will discuss it and  
20 deliberate on it and reach a decision on it  
21 based on the information and record before us.

22 But I think we ought to start with everyone

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1 just introducing yourselves for the record.  
2 Just start with the ANC.

3 MR. EDWARDS: I'm Commissioner  
4 Gregg Edwards, Vice Chair of the Mount  
5 Pleasant Advisory Neighborhood Commission and  
6 my District is right across the street from  
7 the property.

8 CHAIRMAN LOUD: Good morning,  
9 Commissioner Edwards.

10 MS. STAIHAR-BARNES: Good morning.  
11 I am Janet Staihar Barnes, an applicant.

12 CHAIRMAN LOUD: Good morning, Ms.  
13 Barnes. And, Mr. Agboro, you have already  
14 introduced yourself for the record.

15 MR. BARNES: I'm Richard Barnes of  
16 3150 17<sup>th</sup> Street, N.W., husband of Janet, and  
17 we are the residents of the property.

18 CHAIRMAN LOUD: Okay. Good  
19 morning, Mr. Barnes.

20 MS. MITCHELL: Good morning. My  
21 name is Meagan Mitchell. I'm with Suzanne  
22 Reatig Architecture. I'm the project

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1 architect.

2 CHAIRMAN LOUD: Good morning,  
3 everyone. Again, we are in a preliminary  
4 matter with respect to the case and the  
5 request has come from Mr. Agboro, who has also  
6 submitted an application for party status to  
7 continue the case this morning citing, I  
8 believe, some information that some neighbors  
9 did not hear about the property.

10 Why don't we turn back to you, Mr.  
11 Agboro, and you can summarize for us the  
12 grounds for continuance and the prejudice that  
13 would result if the case were not continued.

14 MR. AGBORO: Thank you, Mr. Chair.

15 And I would like to thank the Board of -- the  
16 Board Members for having me -- giving us the  
17 opportunity to present our case. If you don't  
18 mind, I would like to read just a brief  
19 statement that --

20 CHAIRMAN LOUD: Well, at this  
21 point, it's not -- we're not into the case per  
22 se.

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1 MR. AGBORO: Okay.

2 CHAIRMAN LOUD: It's just a  
3 preliminary matter of whether or not the  
4 case --

5 MR. AGBORO: Should be --

6 CHAIRMAN LOUD: -- could be  
7 continued. Now, I understand you have a  
8 motion -- an application for party status.

9 MR. AGBORO: Yes.

10 CHAIRMAN LOUD: And I think the  
11 Board is inclined to grant that application.

12 MR. AGBORO: Okay.

13 CHAIRMAN LOUD: So you would be  
14 given the opportunity to give a statement.

15 MR. AGBORO: Okay.

16 CHAIRMAN LOUD: Once we go through  
17 that. This is just for whether or not this  
18 case should be continued to another date.

19 MR. AGBORO: Okay. During the  
20 process, it has become our understanding that  
21 the applicant, zoning applicant needed to have  
22 information from the ANC and -- because it is

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1 an entity of great weight in this process.  
2 And we were educated about that and we  
3 appreciate that fact, because that is our ANC  
4 Commissioner who we depend on for -- to look  
5 out for the residents of Mount Pleasant.

6 So when Mr. Barnes showed me the  
7 first -- the drawings of his proposed  
8 structure, the -- I kind of told him our  
9 concerns of light and transparency and, you  
10 know, the fact that we felt we would be boxed  
11 in. And he went back with the plans and never  
12 came back to us with any kind of revision or,  
13 you know, with any kind of -- or comments.

14 And so we waited, you know, to see  
15 whether the ANC would, you know, call us to,  
16 you know, appear. We kept looking at the note  
17 -- posted notices of the ANC, but there was  
18 never any posted notice about this tall  
19 enclosed structure posted anywhere.

20 I just happened to run into my ANC  
21 Commissioner on the bus on my way to work and  
22 just through conversation I thought they had

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1 already voted on it and that's when we started  
2 -- I asked all the neighbors, you know,  
3 especially the neighbors who live the length  
4 of the alleyway, none of those neighbors were  
5 contacted by the ANC, and so they didn't --  
6 their voices were not heard.

7           And then we went out to take -- to  
8 get petitions from other neighbors who live by  
9 -- close by and they too were not informed or  
10 were not aware of these -- of that proceeding.

11          And so we went ahead and started seeking  
12 petitions and signatures from residents to  
13 prove that point.

14           And then once the ANC found out  
15 that there was this discrepancy, they -- our  
16 Commissioner Jack McKay and Commissioner David  
17 Bosserman, who is my direct -- he is the  
18 Commissioner for my -- for our District,  
19 worked very hard to find a reasonable  
20 compromise and they could -- they came to the  
21 site. They actually visited the site and saw  
22 what we were seeing, which was the fact that

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1 we would be boxed in completely.

2 On one side you have a huge tree  
3 that hangs the full width of our deck. On the  
4 other side, and then in front of it, we have a  
5 big wall, a big white wall. And then --

6 CHAIRMAN LOUD: I don't want you to  
7 lose any of your fire, but you'll have  
8 subsequent -- when you present your case for  
9 party status. This is more just to help us  
10 understand whether or not we should postpone  
11 the case this morning or go forward with the  
12 case this morning.

13 MR. AGBORO: Okay.

14 CHAIRMAN LOUD: And I think you  
15 have indicated that you did not receive notice  
16 from the ANC. Commissioner Edwards is here  
17 and I'm going to let him respond in a few  
18 moments. And that a number of your neighbors  
19 on the alley also did not receive  
20 notification. At least not through the ANC  
21 process.

22 MR. AGBORO: Um-hum.

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1                   CHAIRMAN LOUD:     Did you receive  
2 notice in the mail from the Office of Zoning?

3                   MR. AGBORO:    Yes, I did.

4                   CHAIRMAN LOUD:   Okay.  Do you know  
5 if your neighbors received notice in the mail  
6 from the Office of Zoning?

7                   MR. AGBORO:    I'm not aware of those  
8 people receiving that.

9                   CHAIRMAN LOUD:   Okay.  All right.  
10 Did you have anything further you wanted to  
11 add to the postponement issue?

12                   MR. AGBORO:    No, that's --

13                   CHAIRMAN LOUD:   Okay.

14                   MR. AGBORO:    -- all.

15                   CHAIRMAN LOUD:   Why don't we turn  
16 to the ANC.  You have heard Mr. Agbororo's  
17 testimony this morning regarding notice and  
18 not getting it and the desire to postpone.

19                   MR. EDWARDS:   Thank you.  Thank  
20 you, Chairman Loud.  First, there was an ANC  
21 meeting of the -- last Tuesday with a quorum  
22 in which the parties showed up.  And there was

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1 a possibility for a motion to be made to  
2 overturn the previous resolution.

3 No motion was made to do so. It  
4 was a very contentious meeting with walk-outs  
5 and harsh words. And so -- and it is my  
6 impression that, but who knows, there is not a  
7 majority of the ANC that supports overturning  
8 our previous resolution.

9 I think it is safe to say that at  
10 least two Commissioners are friends of Frank  
11 and would like to -- and are sympathetic with  
12 his cause, so the statement that there is  
13 neither issues nor concerns now is no longer  
14 true. But of course, it takes a majority of  
15 the ANC to ask -- as individual Commissioners,  
16 we are just like ordinary citizens. So it's  
17 only the vote of the ANC that matters.

18 Addressing the issue of notice,  
19 there is no requirement that an ANC notify all  
20 the neighbors. The Zoning and Appeals Board  
21 has that responsibility. And there is no  
22 requirement that 1D post possible topics for

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1 consideration.

2 According to the law and to our  
3 rules of order, a majority of Commissioners  
4 can set the agenda however they want upon the  
5 meeting. Mr. Agboro is active in the  
6 neighborhood and certainly shows up when his--  
7 when he has issues and so on. And I think  
8 that people that get notice from the Board of  
9 Zoning ought to inquire about what is going on  
10 and think of the ANC.

11 The ANCs are not required to  
12 consider these things, but we did. And he had  
13 a shot. It was admittedly a tumultuous  
14 meeting, but the possibility was there. So  
15 the specifics of his rationale, I think, are --  
16 fail to meet the level of sufficiency.

17 CHAIRMAN LOUD: Thank you,  
18 Commissioner Edwards. Board Members, do you  
19 have any questions of Commissioner Edwards?  
20 And we'll get to you, Mr. Barnes.

21 COMMISSIONER TURNBULL: Yes, Mr.  
22 Chair. Commissioner Edwards, Commissioner

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1 Edwards?

2 MR. EDWARDS: Yes.

3 COMMISSIONER TURNBULL: You had --

4 MR. EDWARDS: Sorry.

5 COMMISSIONER TURNBULL: You had  
6 mentioned that at your last meeting the  
7 parties were present. What did you mean by  
8 the parties were present?

9 MR. EDWARDS: You were present,  
10 Richard Barnes, Janet Staihar, Frank Agboro  
11 and a woman he introduced as his wife and  
12 another woman that seemed to be associated  
13 with the family. I think her name was Joy.  
14 And so it seems to me that many of the people  
15 that are at the heart of this dispute were  
16 present and certainly spoke for each side at  
17 least the 4 minutes to speak.

18 COMMISSIONER TURNBULL: Now, the  
19 point of this whole meeting was to review your  
20 previous vote on this, on the applicant's  
21 project?

22 MR. EDWARDS: No, that was not the

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1 point. We had a meeting with four topics.

2 COMMISSIONER TURNBULL: But this  
3 was one of the agenda items?

4 MR. EDWARDS: This was one of the  
5 items that we knew was going to be brought up.

6 But the ANCs are not like your group here.  
7 We don't have published agendas.

8 COMMISSIONER TURNBULL: Okay.

9 MR. EDWARDS: But it was well-known  
10 and widely distributed that this was one of  
11 five items that we were likely to discuss.

12 COMMISSIONER TURNBULL: Okay.  
13 Thank you.

14 CHAIRMAN LOUD: Mr. Dettman, did  
15 you have any questions for either Mr. Agboro  
16 or Commissioner Edwards? Okay. Why don't we  
17 go now to Mr. Barnes and check in with you and  
18 see if you have any questions for either the  
19 Commissioner or Mr. Agboro and anything that  
20 you would like to say regarding postponement.

21 I think once we do that, I think we  
22 will have enough information to decide whether

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1 or not to postpone, but I'll confer with other  
2 Board Members and we will make a decision on  
3 that.

4 MR. BARNES: Thank you, Mr.  
5 Chairman. We would be opposed to a  
6 postponement. As you know, the lead time even  
7 to get before the Board is quite lengthy at  
8 this time. This project has been in the works  
9 for quite some time. The notice from BZA went  
10 to the neighbors within the 200 foot radius in  
11 late February. That notice specifically  
12 referenced the ANC-1D.

13 And certainly -- and except --  
14 presented the date for this session, so  
15 certainly anyone with concern about ANC action  
16 had a deadline date presented to them and knew  
17 that the ANC was the relevant, you know, body  
18 for this.

19 You know, we believe there was  
20 simply sufficient notice. The ANC also  
21 initially put the resolution supporting our  
22 project on its agenda at its March meeting and

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1 then held that over until its April meeting,  
2 at which meeting it was approved 5-0 and the  
3 resolution of support was subsequently  
4 submitted to the record in this case. Thank  
5 you.

6 CHAIRMAN LOUD: Thank you, Mr.  
7 Barnes. Board Members, do you have any  
8 questions for Mr. Barnes? Okay. Mr. Agboro,  
9 why don't you close out your argumentation on  
10 it, on this issue and then I think what we  
11 will do is make a quick decision on the  
12 postponement as well as your application for  
13 party status.

14 MR. AGBORO: Okay. With all due  
15 respect, Commissioner Edwards, the last  
16 meeting yes was tumultuous. And I have to say  
17 that was my wife and her name is Laura Agboro  
18 that was present. My -- a 30 year resident,  
19 Joy, was also present and she is a 30 year  
20 resident of Mount Pleasant. She lives on our  
21 street and she came and voiced her opinion.

22 One of the things that happened

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1 during this last proceeding was the fact that  
2 when the meeting was chaired by Commissioner  
3 Gregg Edwards and he allotted more time for --  
4 to Mr. Barnes and his wife to talk or to  
5 explain their position and when it came to my  
6 turn to speak, he told me I only had 1 minute.

7           And then 30 seconds later, he shut  
8 me up. And I -- this is not what we expected  
9 in terms of, you know, a fair process. All we  
10 -- what we are asking of the ANC was to  
11 participate in the process. However it turns  
12 out, the fact that as a resident of Mount  
13 Pleasant and a tax paying member -- citizen, I  
14 should be given fair treatment and my family  
15 should be given fair treatment.

16           On that level, we believe that we  
17 weren't. And so we came to that ANC meeting  
18 because of the fact that we knew there was  
19 going to be a meeting and we knew that we were  
20 at a point where we had to show up. If we had  
21 been informed earlier in the process as with  
22 other neighbors, because this structure is in

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1 full public view. It is not like in the  
2 alley. It is right there in full public view.

3 And in the past, I believe the ANC  
4 has actually posted things that really affect  
5 people directly, so that people can come and  
6 air their views. That has been my  
7 observation, you know, in Mount Pleasant. And  
8 I have lived there for over 17 years.

9 CHAIRMAN LOUD: Thank you, Mr.  
10 Agboro. I can't speak for other Board  
11 Members. I think I have heard enough from the  
12 testimony this morning to form some  
13 preliminary thoughts on whether we should  
14 postpone or not and I want to share those  
15 openly and transparently on the record with  
16 everyone.

17 I do think also that we need to  
18 deal with your party status application. We  
19 should probably do both in one fall swoop.

20 With respect to the motion to  
21 postpone the application, what I'm hearing  
22 much more than anything else is some concerns

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1 about more about the ANC and its process for  
2 reaching its decision on this matter as  
3 opposed to the application for relief  
4 submitted by the Barnes and whether or not the  
5 -- whether or not, Mr. Agboro, you knew about  
6 that.

7 With respect to just the issue of  
8 whether you -- there should be a postponement  
9 because you didn't know about the application  
10 for relief, we do have in our record, Exhibit  
11 25, which is the Affidavit of Posting, which  
12 the applicant had to submit which demonstrates  
13 that it posted notification of the project  
14 where it was supposed to.

15 We also have our Exhibit 6, which  
16 is the letter that goes out from the Office of  
17 Zoning regarding notifying all of the  
18 neighbors that live within a 200 foot radius  
19 of the applicant's property and your name is  
20 one of the names on that listing as well as  
21 your neighbors there in the alley. And  
22 indeed, you have testified that you got that

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1 letter.

2 MR. AGBORO: Uh-huh.

3 CHAIRMAN LOUD: In addition to  
4 which, you submitted, and it's dated April 15,  
5 it's our Exhibit 22, party status application,  
6 again demonstrating that as early as, at  
7 least, April 15 that you knew about this  
8 project and you registered some concerns with  
9 it.

10 So I don't think that there is any  
11 prejudice with respect to you not knowing  
12 about the application moving forward. I do  
13 think you have some concerns about the ANC  
14 and, in your view, how the ANC did or did not  
15 operate properly. And I think if you are  
16 granted party status, rather you will have an  
17 opportunity to do whatever damage you want to  
18 do to their report, provided it is relevant to  
19 the overall case that the applicant is trying  
20 to make this morning.

21 But I don't hear in your concerns  
22 about the ANC and whether the ANC gave you

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1 notice --

2 MR. AGBORO: Uh-huh.

3 CHAIRMAN LOUD: -- any reasons that  
4 we should delay the proceeding this morning.  
5 But let me turn to other Board Members.

6 VICE CHAIRMAN DETTMAN: I concur,  
7 Mr. Chairman.

8 COMMISSIONER TURNBULL: Same here.

9 CHAIRMAN LOUD: Okay. So I think  
10 we have disposed of that issue.

11 Now, there is remaining as a  
12 preliminary matter your application for party  
13 status. And you have alluded earlier two  
14 concerns about light and air and where you  
15 live in proximity to the property and your  
16 Exhibit 22 goes a little bit further noting  
17 that you live 3 feet away. You are at 1702  
18 Kilbourne Place. You have been there 13  
19 years. And again, you have alleged some light  
20 and air concerns about the project under  
21 consideration this morning.

22 My initial thinking is that you

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1 should be granted party status, but I want to  
2 give an opportunity to the applicant to weigh  
3 in, as well as the ANC, and then hear from  
4 other Board Members. Let's start with the  
5 Barnes.

6 And I just have a quick question  
7 now. Mr. and Mrs. Barnes, you are not sitting  
8 together, but it's still -- okay. You guys  
9 are teaming up this morning.

10 MS. STAIHAR-BARNES: This just  
11 happened, okay?

12 CHAIRMAN LOUD: Is there a way you  
13 -- do you want to sit with your representative  
14 and with --

15 MS. STAIHAR-BARNES: Well, our  
16 architect is over there close to the drawings.

17 CHAIRMAN LOUD: Okay. All right.

18 MS. STAIHAR-BARNES: So I've got to  
19 let her sit there.

20 CHAIRMAN LOUD: Okay.

21 MS. STAIHAR-BARNES: But I can move  
22 next to the grate if you want me to?

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1 CHAIRMAN LOUD: No, I mean, you are  
2 fine where you are.

3 MS. STAIHAR-BARNES: All right.

4 CHAIRMAN LOUD: It's just when I  
5 turn to the applicant for a statement, I  
6 wanted to know, you know, should I turn to  
7 you, should I turn to Mr. Barnes. What I'll  
8 do then is turn to where the architect is and  
9 if you have something you want to add, we'll  
10 make sure that we give an opportunity for  
11 that.

12 The immediate concern is the party  
13 status application of Mr. Agboro and your  
14 views for that.

15 MR. BARNES: I have no objection to  
16 his being a party.

17 CHAIRMAN LOUD: And do the ANC?

18 MR. EDWARDS: No objection.

19 CHAIRMAN LOUD: Okay. And Board  
20 Members?

21 MR. EDWARDS: By the way, I'm  
22 speaking as an individual Commissioner here,

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1 not as -- there has been no vote on this.

2 CHAIRMAN LOUD: Okay.

3 MR. EDWARDS: So this is not a  
4 formal answer from the entire ANC.

5 CHAIRMAN LOUD: Okay.

6 MR. EDWARDS: By our bylaws, I have  
7 got to identify that I'm only speaking as an  
8 individual Commissioner.

9 CHAIRMAN LOUD: Thanks for the  
10 clarification, Commissioner Edwards. And,  
11 Mrs. Barnes, did you want to add anything?  
12 Okay. Board Members, unless there is an  
13 objection, I think -- okay. I think we will  
14 move forward and grant Mr. Agboro party status  
15 in this matter.

16 MR. AGBORO: Thank you.

17 CHAIRMAN LOUD: I do believe that  
18 that exhausts our preliminary matters, Ms.  
19 Bailey, am I correct?

20 MS. BAILEY: For this case, yes,  
21 sir.

22 CHAIRMAN LOUD: Thank you. So why

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1 don't we now move into the case and we're  
2 going to begin with the applicant and the  
3 applicant's case. And again, just going over  
4 the order of procedure, so that everyone is  
5 clear, it's the statement and witnesses of the  
6 applicant, Government reports, including the  
7 Office of Planning, Department of  
8 Transportation, etcetera.

9 Then we would have the report of  
10 the Advisory Neighborhood Commission. Then we  
11 would have parties and persons in support.  
12 Then we would have the party status applicant  
13 in opposition. Then we would have closing  
14 remarks by the applicant.

15 And again, we can begin with --  
16 sorry. I'm sorry, we're going to begin with  
17 the applicant's case. I did want to clarify  
18 though, Mr. Dettman brought this up with  
19 Commissioner Edwards, with respect to your  
20 last statement that you are here as a Single  
21 Member District rep, was that only with  
22 respect to the party status application or are

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1 you authorized to give the ANC's Exhibit 26  
2 great weight report?

3 MR. EDWARDS: Um, originally, the  
4 Commission wanted Dave Bosserman to be here,  
5 but as Vice Chair -- and since the Chair is  
6 not here, I, and failing the absence of the  
7 Chair then, am the acting officer.

8 CHAIRMAN LOUD: Okay. Very good.  
9 Then you will be allowed to cross examine if,  
10 in fact, there is some testimony that comes  
11 out that you would like to ask questions  
12 about.

13 MR. EDWARDS: Okay.

14 CHAIRMAN LOUD: Okay. Good morning  
15 again. And you can introduce yourselves for  
16 the record and we can proceed with the case.

17 MS. MITCHELL: My name is Meagan  
18 Mitchell. I'm with Suzanne Reatig  
19 Architecture. And I would like to give a  
20 brief description of the project and then I  
21 was planning to have Janet and Dick talk about  
22 what the project means to them a little bit.

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1 I don't know if that's following the correct  
2 order or not. That was my scheme.

3 So okay. This property is located  
4 in the Historic Mount Pleasant District. As  
5 you can see from the drawing on this board  
6 here, it's at the corner of 17<sup>th</sup> Street and  
7 Kilbourne Place. What is unique about this  
8 lot is that it is the smallest lot on the  
9 square. It has an area of 1,215 square feet,  
10 which is much less than a minimum conforming  
11 lot in this R-4 Zone.

12 We are proposing a modest addition  
13 of 256 square feet. It's a 16 x 16 foot  
14 print. You can see a sketch of it here on the  
15 right. If this lot were a minimally  
16 conforming 1,800 square foot lot, this  
17 addition that we are proposing would be within  
18 the minimum lot coverage or would be within  
19 the lot coverage requirements. So we are  
20 asking for some relief on the lot coverage,  
21 given the restricted size of the lot.

22 And given that the lot is small,

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1 the footprint of the house is also very small.

2 On the first floor, there is a small living  
3 room at the north portion of the house facing  
4 Kilbourne. There is also an entry area with  
5 stairs going to the upper level. There is a  
6 half bath and there is a kitchen. There is no  
7 place for the family to entertain, to host a  
8 meal or have a large gathering.

9 So that's -- so we are proposing  
10 this modest addition to accommodate those  
11 needs and to update the house to a modern way  
12 of living. This house was built in 1910, so  
13 times have changed and we need to increase the  
14 footprint slightly to make it work for this  
15 family.

16 The addition that we are proposing  
17 is very light in the architecture. We are  
18 proposing windows on three sides and we're  
19 proposing obscured glass along the neighboring  
20 wall, so there is a sense of translucency, but  
21 there is also a sense of privacy there.

22 As you can see, the addition is

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1 only one story and it is raised on brick piers  
2 to match the aesthetic of the house. There is  
3 a large segment of public space, as you can  
4 see on the drawing, at the north portion of  
5 the site above the property line and along 17<sup>th</sup>  
6 Street. This is an area that is landscaped  
7 and maintained by the owner. It is a really  
8 lovely public amenity for the neighborhood.

9 And at the south side of the strip  
10 of public space, there is kind of a blurry  
11 area. You can see in the photographs where  
12 the alley comes out just south of their  
13 property. There is kind of a cracking paved  
14 area that sort of extends the sense of the  
15 alley, but this area is a part of the public  
16 space and we would like to reclaim that as a  
17 part of a landscaped area to extend that sense  
18 of garden and park space along 17<sup>th</sup> Street.

19 So we feel that would be a public  
20 amenity to the neighborhood and also you  
21 wouldn't see cars parked in the alley any  
22 more, so it would obscure the view of the

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1 cars. And we are providing a space for the  
2 owners to park a car below the addition that  
3 we are proposing.

4 So we are asking for zoning relief  
5 in two areas. The first, as I mentioned, is  
6 the lot coverage due to the restricted size of  
7 the lot. And the second area is we are asking  
8 for relief on the rear yard set-back. This  
9 lot is unusual because the entrance to the  
10 house is facing 17<sup>th</sup> Street, so the rear yard,  
11 by definition of the zoning, really appears  
12 more as a side yard.

13 So we are asking for relief to  
14 encroach into that rear yard set-back and we  
15 don't think that this is unusual as if -- if  
16 you look down the alley, there are quite a few  
17 structures that do encroach in that rear yard  
18 set-back.

19 So I wanted to just read one more  
20 thing. This is the evaluation and  
21 recommendation from the Historic Preservation  
22 Review Board. "3150 17<sup>th</sup> Street sits at a

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1 prominent corner location in Mount Pleasant  
2 Historic District. And as such, the treatment  
3 of the rear addition and public space warrants  
4 careful consideration.

5 The proposed two-story rear  
6 addition which is viewed as a side addition  
7 from 17<sup>th</sup> street is compatible with the  
8 character of the building and District, in  
9 terms of its massing, height, design and  
10 materials. It is consistent with previously  
11 approved additions in the Mount Pleasant  
12 Historic District and would result in a modest  
13 increase to the footprint of the house.

14 As well, the proposed addition will  
15 allow for the screening of the parking area  
16 for the cars as well as the restoration of the  
17 public space/front yard along 17<sup>th</sup> Street. The  
18 applicant should be commended for working with  
19 the staff on a solution to the parking that  
20 will result in a significant visual  
21 improvement to this highly visible corner  
22 location."

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1                   And with that, I would like to turn  
2                   it over to Dick and Janet. Thank you.

3                   CHAIRMAN LOUD: Thank you, Ms.  
4                   Mitchell. And again, good morning, Mr. Barnes  
5                   and Mrs. Barnes. Let me just also let you  
6                   know that if any of the testimony is  
7                   duplicative or overlaps, you don't have to  
8                   repeat it. In other words, if you're going to  
9                   say -- if you heard him say something that  
10                  you're going to say, feel free not to also go  
11                  into that, although you are more than welcome  
12                  to do it, but I do think that, you know, we  
13                  sort of get the point in terms of -- and we  
14                  have read the record.

15                  So again, I just wanted to make  
16                  sure that you don't feel the need to do that  
17                  if you don't have to.

18                  MS. STAIHAR-BARNES: Dick, do you  
19                  want me to speak first? Okay. Is this on?

20                  MR. MOY: Yes. No, it's off. It's  
21                  now on.

22                  MS. STAIHAR-BARNES: When we first

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1 moved into the -- we love Mount Pleasant and  
2 we want to do everything that we can not to  
3 bring it down, but to bring it up. That's why  
4 we, you know, went to the Historical Society,  
5 you know, to make sure that everything is in  
6 the -- is what the Historical Society wants  
7 and what the neighborhood wants.

8           When we first moved into the house,  
9 there was no landscaping in the front. It was  
10 a mess. And the neighbors tell us that it  
11 used to be sort of an area where people would  
12 come and sleep overnight in the front yard.  
13 We have absolutely cleaned it up with some  
14 fencing, I must say, a very nice English  
15 garden. We have -- and our neighbors come by  
16 and said this is great. This is not what it  
17 was before. This is great. So that's to that  
18 point.

19           We have a total of four children,  
20 grandchildren and we would like a dining area.

21           At this point in time, we can't have them  
22 over, because it's really chaotic in the small

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1 area that we have. So this dining area would  
2 enable us to bring, you know, the grandkids  
3 over and the children over. That's very  
4 important, you know, to us. Right now, we  
5 just can't do that.

6 We moved from Bethesda to Mount  
7 Pleasant because we loved the area and we want  
8 to stay there. We like, you know, D.C., you  
9 know, we are involved in D.C. That's my plea.

10 CHAIRMAN LOUD: Thank you, Mrs.  
11 Barnes. Before we go to you, Mr. Barnes, just  
12 to ask the Board Members if you have any  
13 questions of -- okay and also to ask the  
14 parties if you have any questions of Ms.  
15 Barnes or any examination of Ms. Barnes, I  
16 think, would be the more appropriate term.  
17 Mr. Agboro?

18 CROSS EXAMINATION

19 MR. AGBORO: Mrs. Barnes alluded to  
20 the fact that when they -- they just moved in,  
21 you know, and they thought they had a need to  
22 have this structure built, because they didn't

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1 have a dining area.

2 Well, you know, in Mount Pleasant,  
3 the structures for that kind of arrangement --

4 CHAIRMAN LOUD: Mr. Agboro, let me  
5 just cut you off. Again, I want you to sort  
6 of understand the proceedings, but also to  
7 begin to couch your testimony where it fits  
8 best. This is just the part where you get to  
9 ask very specific questions about something  
10 that she has testified to.

11 MR. AGBORO: Okay.

12 CHAIRMAN LOUD: But if you have  
13 statements to make, you will be given an  
14 opportunity to present your case and then you  
15 can go into your statements in a different --

16 MR. AGBORO: No questions.

17 CHAIRMAN LOUD: All right. Mr.  
18 Barnes?

19 MR. BARNES: I certainly completely  
20 agree with Janet with respect to our move to  
21 D.C., our intent to improve the neighborhood  
22 and, particularly, to fully enjoy the house.

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1 Our -- we have three children and four  
2 grandchildren who reside in the nearby area,  
3 within an hour, we can't really have over.  
4 There is just not a good, you know, effective  
5 way to host people nor any other kind of  
6 larger gatherings.

7 We would like to have the enclosed  
8 structure that Meagan's firm has designed,  
9 basically, as a year-round place for  
10 entertainment, be it, you know, dining or, you  
11 know, family room, entertainment, that sort of  
12 thing. We believe it certainly compliments  
13 the neighborhood architecture.

14 In particular, I believe it does  
15 not visually crowd the small lot, because  
16 there is so much landscaped area that is  
17 inside the sidewalk and the fence. It's  
18 public space, but visually it's identified  
19 with the house. There is so much of that, in  
20 fact, significantly more space than there is  
21 on the whole lot itself, that we believe this  
22 relatively small addition would not provide

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1 any kind of visual, you know, cramping with  
2 respect to that. And we would certainly ask  
3 you to approve the application.

4 CHAIRMAN LOUD: Thank you, Mr.  
5 Barnes. Are there any questions for Mr.  
6 Barnes from the Board? Then why don't we move  
7 to the Office of -- I'm sorry, Mr. Turnbull?

8 COMMISSIONER TURNBULL: Yeah, Mr.  
9 Chair, I did have some questions for the  
10 architect, Ms. Mitchell.

11 Ms. Mitchell, you stated that in  
12 your statements that this is a modest addition  
13 and you wanted some relief.

14 MS. MITCHELL: Yes.

15 COMMISSIONER TURNBULL: From the  
16 standpoint of the -- of bulk massing of the  
17 structure, you may be correct, but you're  
18 asking for a 20 percent increase in lot  
19 coverage. So you are -- that's really not a  
20 modest, that's a significant increase. I just  
21 wanted to clarify your view on that.

22 MS. MITCHELL: Well, we think the

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1 lot is extraordinarily small, given the other  
2 lots on the block. We are almost 12 -- 1,800  
3 minus 1,200, we're almost 600 square foot less  
4 than a conforming lot on that square. So we  
5 feel like there is some relief required to do  
6 this small addition.

7 And I liked what Dick said about  
8 the sense of the public space feeling. It is  
9 very much identified with the house and we  
10 don't think that the structure is imposing in  
11 any way.

12 COMMISSIONER TURNBULL: Although  
13 the lot is not that different from a lot of  
14 pre-1958 lots, it may be that it's a little  
15 bit different from some of the lots on the  
16 square, but it's certainly not unusual as to a  
17 lot of the other lots within the District.

18 Getting back to your design, I'm  
19 just -- explain to me. You have a hipped  
20 roof.

21 MS. MITCHELL: Yes.

22 COMMISSIONER TURNBULL: The hipped

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1 roof that faces -- and I'm looking at your  
2 elevation on Drawing 5, does the roof slope  
3 back to the house?

4 MS. MITCHELL: We will have to do a  
5 cricket or some sort of a -- is that what you  
6 are --

7 COMMISSIONER TURNBULL: Right. I  
8 see --

9 MS. MITCHELL: -- saying?

10 COMMISSIONER TURNBULL: --  
11 something ghosted that looks like it goes  
12 back, but it looks like you have got this  
13 whole thing sloping back to the house.

14 MS. MITCHELL: I mean, I think the  
15 roof needs to look like it is hipped from the  
16 17<sup>th</sup> Street side, but, obviously, we have to  
17 provide some sort of accommodation for the  
18 water on the roof.

19 COMMISSIONER TURNBULL: Did you do,  
20 in your design of this, any light and shadow  
21 studies?

22 MS. MITCHELL: We --

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1                   COMMISSIONER TURNBULL:     For the  
2     impact of what this place would look like on  
3     the neighbor?

4                   MS. MITCHELL:           We did not  
5     specifically. We looked at the site and we  
6     know the angles of the sun. We don't have  
7     anything to present for the shadow studies.

8                   COMMISSIONER TURNBULL:   And looking  
9     down on the -- on Exhibit No. 5, the photos,  
10    it would appear that at least the next three  
11    houses are maybe in line or about a foot  
12    beyond the edge of the applicant's house  
13    before I see anything coming back. And it  
14    looks like the next door neighbor, Mr. Agboro  
15    has a raised deck.

16                  MS. MITCHELL:     That's correct.

17                  COMMISSIONER TURNBULL:   And I'm not  
18    sure what happens. It looks like there is a  
19    tree after that and there could be another  
20    deck on another house, but they are all fairly  
21    low structures, like first floor structure  
22    decks.

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1 MS. MITCHELL: There's a variety of  
2 structures down the alley. There are a couple  
3 of sleeping porches and, you know, kind of  
4 remnants from the --

5 COMMISSIONER TURNBULL: Down  
6 further?

7 MS. MITCHELL: -- original -- yes,  
8 down further in the same alley.

9 COMMISSIONER TURNBULL: Are you  
10 relocating -- I see a lot of trash containers.  
11 I see air conditioning units out there. Do  
12 they move, get relocated or --

13 MS. MITCHELL: We are providing a  
14 tidied up enclosure beneath the addition to  
15 kind of clean up that area.

16 COMMISSIONER TURNBULL: Are you --  
17 when you redo this ground floor, the slab,  
18 what's the relationship of your property to  
19 the neighbor's property? Are you higher? Are  
20 you the same height?

21 COMMISSIONER TURNBULL: I believe  
22 it is relatively level there. I mean --

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1 MR. BARNES: There's a very slight  
2 natural gradient that moves from the east end  
3 of the alley, which is where we are located  
4 and gradually west goes, you know, very  
5 slightly down hill to the western end of the  
6 alley.

7 COMMISSIONER TURNBULL: So you are  
8 redoing the slab on there though?

9 MS. MITCHELL: That's correct.

10 COMMISSIONER TURNBULL: Are you  
11 sloping it to the alley or sloping it onto  
12 your own property?

13 MR. BARNES: It would -- there is  
14 also a slight gradient from the south wall of  
15 the house toward the alley. And you know, the  
16 intention is to have the slab, basically,  
17 follow the natural slope, so that the -- you  
18 know, any drainage from that would go, you  
19 know, to the alley not, you know, up against  
20 the foundation of the house and not into the  
21 carport that is under Frank's house.

22 There is, in fact, a bit of a

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1 raised concrete barrier or curb between the  
2 two houses.

3 COMMISSIONER TURNBULL: What is  
4 going to happen underneath then in the open  
5 parking area as it -- as you meet Mr. Agboro's  
6 property? It looks like I'm seeing like a --  
7 in your elevation, your sketch over there sort  
8 of shows like a rod iron fence or something.

9 MS. MITCHELL: Right. We were  
10 going to create some sort of an enclosure that  
11 is compatible with the -- possibly with the  
12 fence that is existing around the public  
13 space.

14 COMMISSIONER TURNBULL: So it's  
15 open?

16 MS. MITCHELL: It will be -- it  
17 will have a locked gate, but it will be open,  
18 so there is -- light and air can pass through.

19 MR. BARNES: There is an existing  
20 utility pad that is, I don't know, 3 or 4  
21 inches high, the air conditioners are on that.  
22 Essentially, that would be retained and

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1       instead of the present chain link fence, that  
2       you can see in one of the photographs, there  
3       would be a rod iron fence matching the fence  
4       that goes around the exterior of the house  
5       elsewhere.

6                   COMMISSIONER TURNBULL:     Now, your  
7       property line goes right to the edge of the  
8       alley?

9                   MR. BARNES:     Correct.

10                   COMMISSIONER     TURNBULL:             Okay.  
11       Thank you.

12                   MS. STAIHAR-BARNES:     Yeah, if I  
13       could add something to that?     Currently, we  
14       have three maybe four parking spaces in that--  
15       on that slab.     What we plan to do is take one  
16       of those parking spaces and make it into,  
17       essentially, a public garden.     So we would be  
18       losing one parking space to make it much more  
19       attractive on the 17<sup>th</sup> Street side.

20                   VICE CHAIRMAN DETTMAN:     But that  
21       space that you described just now, that's  
22       actually public space.     So I'm not sure what

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1 you mean by you are losing a parking space.

2 MS. STAIHAR-BARNES: Yeah, it's on  
3 -- that's exactly right.

4 VICE CHAIRMAN DETTMAN: Okay.

5 MS. STAIHAR-BARNES: It's all  
6 broken up. It's concrete and it's not  
7 maintained by the city. We, essentially, you  
8 know, have to maintain --

9 VICE CHAIRMAN DETTMAN: Okay.

10 MS. STAIHAR-BARNES: -- everything  
11 on the 17<sup>th</sup> Street side, including our  
12 landscaping.

13 VICE CHAIRMAN DETTMAN: Okay.

14 MS. STAIHAR-BARNES: So we will  
15 lose one, you know, spot to make it into a  
16 very nice garden.

17 CHAIRMAN LOUD: Thank you, Mr.  
18 Turnbull, Mr. Dettman. Unless there are  
19 further questions, I think we will turn to the  
20 Office of Planning. Good morning, Ms. Thomas.

21 MS. THOMAS: Good morning, Mr.  
22 Chairman, Members of the Board. The Office of

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1 Planning in this case couldn't support or  
2 recommend approval. We did not find that  
3 there was anything unique about the property  
4 itself to tie it to the three-prong variance  
5 test.

6 So we couldn't declare that there  
7 was a practical difficulty nor that there  
8 would be any impairment or no impairment to  
9 the variance test.

10 So we could not make a  
11 recommendation of approval. I'll be happy to  
12 take any questions.

13 CHAIRMAN LOUD: Thank you, Ms.  
14 Jackson. Board Members, are there any -- Ms.  
15 Thomas, I'm sorry. Board Members, are there  
16 any questions for OP?

17 COMMISSIONER TURNBULL: Yes, Mr.  
18 Chair. Ms. Thomas, you heard the applicant's  
19 architect talk about, from their standpoint,  
20 the uniqueness is related primarily to the  
21 square, that they have the smallest lot on  
22 this square.

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1                   In your analysis, could you comment  
2 a little bit more on that?

3                   MS. THOMAS:           Yeah, we did  
4 acknowledge that they were the smallest lot in  
5 the square, but they -- we didn't think that  
6 was any unique situation in the District or  
7 even within Mount Pleasant there, because  
8 right opposite in the square opposite, they  
9 have a similar situation with five similar  
10 lots even smaller than their's. So --

11                   COMMISSIONER TURNBULL:   Where is  
12 this?

13                   MS. THOMAS:           Across Kilbourne  
14 Place. If you -- in the square lot diagrams,  
15 these lots here.

16                   COMMISSIONER TURNBULL:   Okay.

17                   MS. THOMAS:           Have similar  
18 situations that directly face them on  
19 Kilbourne Place. It's the same type of lots.  
20 They are actually a little bit wider, 25  
21 feet, but they are 65 and this lot is 20 and  
22 65. 67 actually. So we can -- you know, I

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1       couldn't find any uniqueness there.    Several  
2       of them are like that.

3                You have that situation and you  
4       also have it above.

5                COMMISSIONER TURNBULL:   Well, what  
6       about as you go down again looking at the view  
7       down the alley, are there -- it looks like the  
8       next three houses are just almost the same  
9       depth, maybe a foot or so --

10               MS. THOMAS:    Exactly.    And they  
11       have the -- we couldn't find any records of  
12       how they were approved.

13               COMMISSIONER TURNBULL:   How they  
14       were approved.

15               MS. THOMAS:    There is -- to be  
16       fair, not within this square, but in two  
17       situations, prior situations back in the early  
18       '80s or the mid '80s or '90s, we did have two  
19       approvals, two Board approvals for carports or  
20       a similar situation in Square 2602, I think,  
21       yeah, 2602, yeah, but they were approved and  
22       they have the same situation of increased lot

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1 occupancy.

2 But I couldn't find any record as  
3 to what the uniqueness was about that. We  
4 have to tie that uniqueness to the three parts  
5 of the test or the other two parts of the  
6 test. We can just say that well, it was not  
7 unique, but it was a nice project and let it  
8 go at that. So we had to make that  
9 connection.

10 COMMISSIONER TURNBULL: So your  
11 feeling is that this would affect the Zone  
12 Plan with this?

13 MS. THOMAS: Yes. Without the  
14 uniqueness, yes. Yes, it would affect what  
15 the intent of the lot occupancy requirement  
16 would be.

17 COMMISSIONER TURNBULL: Are you --  
18 I guess in light of what you are saying, are  
19 you saying also that what if they had come in  
20 for just a deck?

21 MS. THOMAS: We will have to look  
22 at that. We -- it would still be lot

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1 occupancy.

2 COMMISSIONER TURNBULL: Um-hum.

3 MS. THOMAS: You know, it would  
4 have to show that -- we looked at it, could  
5 there be a patio instead? Could there have  
6 been some way that they could have done a --

7 COMMISSIONER TURNBULL: I mean, it  
8 looks like Mr. Agboro's raised deck is fairly  
9 significant also.

10 MS. THOMAS: That's correct. But  
11 again, I don't know how that was approved.

12 COMMISSIONER TURNBULL: Okay.  
13 Thank you.

14 VICE CHAIRMAN DETTMAN: Good  
15 morning, Ms. Thomas. I'm just wondering, just  
16 assuming for a second that you were able to  
17 get past the first two prongs, could you speak  
18 specifically to the third prong and any kind  
19 of impacts that you might see could occur on  
20 the public good, the adjoining neighbors?

21 MS. THOMAS: Well, to the third  
22 prong, the public good, you could -- the

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1 design it does meet the intent of the Historic  
2 District requirements. I would defer to  
3 Historic Preservation Review Board's comments  
4 on that. And so to that extent, I would think  
5 that it -- in its scale and mass, they are  
6 best to speak to that.

7 It did meet that requirement for  
8 the public good, in a sense that it would  
9 improve the public space. It would remove  
10 that, you know, unkempt parking area. And  
11 sort of add -- improve the vista, the public  
12 vista on 17<sup>th</sup> Street as well as even around  
13 Kilbourne. You have a continuation.

14 So that extent and the public good,  
15 I would defer to the Historic Preservation  
16 Review Board's comments.

17 CHAIRMAN LOUD: Mr. Dettman, do you  
18 have further questions, at this time?

19 VICE CHAIRMAN DETTMAN: Just a  
20 follow-up --

21 CHAIRMAN LOUD: Okay.

22 VICE CHAIRMAN DETTMAN: -- to my

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1 question. And what about impacts to light and  
2 air and privacy and what have you?

3 MS. THOMAS: I don't see an impact  
4 to the light and air due to the sunroom. The  
5 applicant's property is located to the east.  
6 It's on the eastern side. The abutting  
7 property, I don't believe would be that much  
8 affected by light and air. The sun would --  
9 they would get a good bit of light,  
10 particularly in the summertime. I don't see  
11 how it would -- particularly, since they will  
12 be utilizing glass, so it wouldn't be like a  
13 solid brick wall going up next to, you know,  
14 the abutting neighbors side. So I don't see  
15 that much affect, adverse affect to the light  
16 and air.

17 CHAIRMAN LOUD: Thank you, Ms.  
18 Thomas. Does the applicant have any -- have  
19 you seen the report of the Office of Planning?

20 MR. BARNES: Yes, I have seen the  
21 report. A couple of questions.

22 CHAIRMAN LOUD: Very good. You can

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1 direct your questions to Ms. Thomas.

2 MR. BARNES: Yes.

3 CROSS EXAMINATION

4 MR. BARNES: Ms. Thomas, I'm not  
5 quite clear on what -- what is there that  
6 distinguishes our proposed footprint in terms  
7 of the rear yard set-back requirements and the  
8 lot density requirements from the existing  
9 situation with the deck at 1702?

10 MS. THOMAS: In terms of lot  
11 occupancy, on the face of it, you would have  
12 the same type of lot occupancy. But I don't  
13 want to get into that situation, because  
14 that's another subject of this application. I  
15 don't know how that deck was acquired or, you  
16 know, I have no records of -- or I have seen  
17 no records of how that deck was placed there.

18 So I can't speak to the reasoning  
19 behind it, but if -- to compare the lot  
20 occupancy, yes, it may be the same as the  
21 property extends the same distance to the rear  
22 yard. It would have probably the same

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1 footprint.

2 MR. BARNES: Okay. How far back do  
3 the archives go that you were able to check?

4 MS. THOMAS: I checked to the '70s.

5 MR. BARNES: That's certainly  
6 further back than 2004.

7 MS. THOMAS: Yes.

8 MR. BARNES: Okay. One just  
9 further point of information. There has been  
10 some discussion about sun. We do have some  
11 photographs taken at different times of the  
12 day showing the sun's elevation in respect to  
13 the properties.

14 As Ms. Thomas certainly correctly  
15 pointed out, we are to the east. By the time  
16 you get to latest morning, the sun is  
17 certainly overhead and goes on to the west  
18 with all of the, you know, light coming to the  
19 more western properties, you know, clearly not  
20 blocked by ours.

21 MS. STAIHAR-BARNES: If I could  
22 speak to that just --

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1                   CHAIRMAN LOUD:       Thank you, Mr.  
2 Barnes. Hold on, Mrs. Barnes, for one second.  
3       It would be very helpful to us if --  
4 particularly because we are in cross  
5 examination now, I know that in the direct  
6 presentation of the case both of you spoke,  
7 but for purposes of cross examination, it's  
8 very helpful to have one designee doing the  
9 cross examination.

10                   And where we are in the proceeding  
11 right now, is that Mrs. Thomas has given her  
12 testimony. I think your husband examined her  
13 on some aspects of the testimony she gave,  
14 maybe went a little beyond that, but  
15 nonetheless, he was the one that I think the  
16 Board is looking to to ask her the questions.

17                   And I'm fine, if the Board Members  
18 are fine, with you going ahead and asking a  
19 few follow-up questions, but just moving  
20 forward again, it's very helpful just to have  
21 one person designated to do that for the  
22 applicant.

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1                   But did you have some questions for  
2 Ms. Thomas?

3                   MS. STAIHAR-BARNES: No.

4                   CHAIRMAN LOUD: Okay.

5                   COMMISSIONER TURNBULL: The other  
6 option was you could whisper in your husband's  
7 ear and he could ask the question.

8                   MS. STAIHAR-BARNES: That's kind of  
9 hard to do.

10                  CHAIRMAN LOUD: Now, if you have  
11 some statements that you want to make sure get  
12 on the record, you can confer, I think. You  
13 will have an opportunity to do a closing as  
14 the applicant and you can make sure that  
15 whatever statement you wanted to make gets  
16 into the closing, that your representative  
17 will have a chance to do and that will come a  
18 little bit later.

19                  MS. STAIHAR-BARNES: When can we  
20 submit pictures? You know, like with sun  
21 going over and that sort of stuff, now?

22                  CHAIRMAN LOUD: If you have those

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1 pictures, it would be good to give those  
2 pictures to Ms. Bailey now. It would have  
3 been ideal to have had them before the  
4 hearing, so that we could have reviewed them,  
5 but I think Ms. Thomas' testimony is fairly  
6 strong on that issue and your pictures will  
7 corroborate that. So you can give those to  
8 Ms. Bailey.

9 COMMISSIONER TURNBULL: That kind  
10 of evidence or documentation goes a long way  
11 to the three-part test of the variance that  
12 you are not impeding your neighbors. And  
13 that's why I had mentioned to the architect  
14 sometimes some very simple studies go a long  
15 way in showing how the -- how it affects the  
16 adjoining property.

17 MS. STAIHAR-BARNES: Thank you.

18 CHAIRMAN LOUD: I have in my  
19 possession the pictures that you were  
20 referring to. And these -- this is the only  
21 copy that you have?

22 MR. BARNES: No, I have other

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1 copies.

2 CHAIRMAN LOUD: You have other  
3 copies. Do you have a copy for Mr. Agboro and  
4 a copy for the ANC?

5 MR. BARNES: I have one additional  
6 set.

7 CHAIRMAN LOUD: Okay. Well, why  
8 don't I do this, with the one set I have, I'll  
9 let Board Members take a look at it and then  
10 if we could pass that back and make sure that  
11 both parties receive it. Yes, Ms. Thomas?

12 MS. THOMAS: I would just like to,  
13 for the record, correct that the table in the  
14 zoning requirements on the height where I said  
15 was 36.8 inches proposed and three stories,  
16 that's not correct. That is a typo on the  
17 proposed. It's a one-story addition.

18 CHAIRMAN LOUD: Okay. All right.

19 MS. THOMAS: Um-hum.

20 CHAIRMAN LOUD: Thank you. And  
21 what page were you reading from?

22 MS. THOMAS: That would be page 2.

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1                   CHAIRMAN LOUD:    Okay.    Thank you.  
2           I think we were at the point in the  
3           proceedings if the ANC had any questions of  
4           Ms. Thomas?   I don't know if you are on the  
5           microphone, Commissioner Edwards.

6                   MR.   EDWARDS:        Thank you.        My  
7           question -- or questions are not argumentative  
8           to try to -- for one side or the other.   It's  
9           not the nature of the ANC to be argumentative.  
10          But it's a question.

11                    Could you consider the fact that  
12           this is a corner lot with a large amount of  
13           parking, which is to be maintained-- public  
14           property to be maintained at the owner's  
15           expense in a manner befitting a public park  
16           and the opportunity for a strong improvement  
17           in public aesthetics and public benefit versus  
18           what was there as well as the strictures that  
19           come because of it being in such an exposed  
20           position, unlike almost any other house in  
21           that square?

22                    Could you consider that as being a

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1 distinctive factor for this situation, since  
2 that addresses one prong of whether is this  
3 ceterus paribus? Is it all other things being  
4 equal? And it seems to me that there are some  
5 very substantial parts of this proposal that  
6 are not equal and that involve public good.

7 MS. THOMAS: I would admit that it  
8 would be a public good to clean up that  
9 portion and, you know, improve it with that  
10 landscaping, because she has very beautiful  
11 landscaping, as I have seen myself. But I --  
12 there may be a confluence of factors and I  
13 have heard the Board use that term before.  
14 There may be a confluence of factors, but I  
15 don't think that just being a corner lot there  
16 is a unique factor in and of itself, because  
17 there are many corner lots.

18 That they could do the same thing,  
19 Ms. Staihar and Mr. Barnes, their good will is  
20 doing this and so that's a public benefit that  
21 I do see in cleaning up the site of the lot.  
22 I mean, many of us could do it as well. But

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1 they may or may not choose to do it. That's a  
2 benefit. But how that plays to the uniqueness  
3 --

4 MR. EDWARDS: Well, another piece  
5 is that this is across the street from the  
6 zone declared to be the commercial corridor by  
7 the Office of Planning and in its current  
8 Small Area Plan process.

9 MS. THOMAS: Um-hum.

10 MR. EDWARDS: Which is being  
11 designated for special attention to see if we  
12 can upgrade the neighborhood, because such  
13 lots are -- have been -- from the proceeding  
14 so far, the Special Area Plan, upgrading these  
15 areas of public display has been noted as one  
16 of the significant areas that we -- that the  
17 neighborhood intends to operate.

18 So the fact that this is not just a  
19 corner lot, but one facing a very busy area  
20 and that is close to visibility from the  
21 commercial corridor area, seems to me to be --  
22 to add to the confluence, but not as you say.

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1 I could not make an argument that it would be  
2 definitive by itself. But there is these  
3 series of factors.

4 And again, I'm not trying to speak  
5 for one side or another, just to find out  
6 whether you had considered this. You know,  
7 the Office of Planning is a busy place,  
8 everybody has their own stuff, but this is --  
9 these are the things that, at a neighborhood  
10 level, we are concerned about because of the  
11 situation in Mount Pleasant right now.

12 MS. THOMAS: Yeah, you know, I  
13 would support what is happening in Mount  
14 Pleasant right now in terms of redoing of the  
15 Small Area Plan. But I again would defer to  
16 the Historic Preservation Review's report  
17 which speaks very clearly and specifically to  
18 the massing, to design and the improvement to  
19 the character or how it blends with the  
20 character, how the addition blends with the  
21 character.

22 And I think that's the best way to

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1 address it. You know, address your concerns  
2 with improvements of the neighborhood, that  
3 the addition does speak to the historic  
4 character of the neighborhood.

5 Now, as far as that goes, that's  
6 all well and good, but how it relates to the  
7 uniqueness of that property, every addition  
8 should relate to the historic character and  
9 should meet the Historic Preservation --

10 MR. EDWARDS: My question was more  
11 about the extra improvements and visual  
12 clarity and in cleaning up other elements that  
13 -- and of a very substantial investment. And,  
14 please, understand that I'm in my fourth term  
15 and we've got these -- we've got a couple of  
16 these contentious cases.

17 CHAIRMAN LOUD: Commissioner  
18 Edwards, let me just interrupt you for 2 brief  
19 seconds. Let me encourage you to ask very  
20 specific questions, because you are going to--  
21 you have not had your opportunity yet to  
22 present your case, your party, so you get an

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1 opportunity to present, in your circumstance,  
2 the report of the ANC.

3 MR. EDWARDS: I will review at that  
4 time.

5 CHAIRMAN LOUD: Yes. You could  
6 make some of those --

7 MR. EDWARDS: Accordingly --

8 CHAIRMAN LOUD: -- comments.

9 MR. EDWARDS: -- to be fair.

10 CHAIRMAN LOUD: Okay. You can make  
11 some of those comments with respect to that  
12 part of the proceeding.

13 MR. EDWARDS: But I wanted to  
14 clarify this, because these are -- to  
15 understand what the Board feels, because we  
16 have to work -- we're an Agency of Government  
17 to work collaboratively with the Board.

18 CHAIRMAN LOUD: Thank you. And we  
19 definitely want to get that on the record.  
20 It's just that this is the part of the  
21 proceeding to question Ms. Thomas about any  
22 assumptions in her report, particularly that

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1 the property is not unique with very specific  
2 questions about that.

3 MR. EDWARDS: I think I raised two  
4 or three of those.

5 CHAIRMAN LOUD: As opposed to some  
6 of those. Okay.

7 MR. EDWARDS: Very specific issues.

8 CHAIRMAN LOUD: All right.

9 MR. EDWARDS: And so far as I hear,  
10 these are elements that were not considered  
11 and who add to the confluence of factors.

12 CHAIRMAN LOUD: Thank you,  
13 Commissioner Edwards. Do you have any further  
14 questions for the Office of Planning?

15 MR. EDWARDS: No.

16 CHAIRMAN LOUD: Okay. Why don't we  
17 turn to Mr. Agboro as someone granted party  
18 status. You also have the opportunity to ask  
19 questions of the Office of Planning,  
20 specifically regarding their testimony and/or  
21 their report.

22 MR. AGBORO: I have no questions

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1 for the Office of Planning. They have made  
2 their decision. But if I may, is it the right  
3 time to make a statement? I don't know.

4 CHAIRMAN LOUD: We're getting  
5 closer and closer.

6 MR. AGBORO: Okay.

7 CHAIRMAN LOUD: It's not that time  
8 yet.

9 MR. AGBORO: All right.

10 CHAIRMAN LOUD: I think where we go  
11 next is the report of the Advisory  
12 Neighborhood Commission and so we go back to  
13 you, Commissioner Edwards, and this gives you  
14 the opportunity to get the report of the ANC  
15 on the record.

16 MR. EDWARDS: Okay. Well, let me  
17 first clarify the sufficiency of our  
18 proceedings. There were charges made. First  
19 of all, it was -- there was posted notices  
20 that -- of tabling and deferral of the  
21 discussion early on and it was posted in  
22 multiple places, on our website, on a listserv

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1 and so on, so that the public is attentive to  
2 this, especially anyone that realizes there is  
3 a case, they could start to look around.

4 ANCs, of course, have tiny budgets  
5 and we are volunteers, so we don't have -- we  
6 can't operate like a major agency.

7 Secondly, the renewed -- it is true  
8 as Franko, as we affectionately call him, and,  
9 please, call me Gregg, because we are close  
10 neighbors and have worked on a lot of projects  
11 together, that the -- I think that the  
12 rational stated in the document which you have  
13 before you, I heard it was Exhibit 25, the --  
14 and if you don't have a copy, I brought one.

15 CHAIRMAN LOUD: Just which, Exhibit  
16 25?

17 MR. EDWARDS: Excuse me, concerning  
18 the BZA filing for 3150 17<sup>th</sup> Street, N.W. I  
19 don't have the benefit of numbers, but I was  
20 trying to perk my ears up.

21 CHAIRMAN LOUD: That's the  
22 Affidavit of Posting, Exhibit 25.

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1                   MR. EDWARDS:     I'm sorry.     Then  
2     please correct me.

3                   CHAIRMAN LOUD:     Are you talking  
4     about the ANC report?

5                   MR. EDWARDS:     Yes.

6                   CHAIRMAN LOUD:     Okay.

7                   MR. EDWARDS:     Yes.    I would like to  
8     stipulate on the part of the ANC that, at this  
9     point, we have heard issues and concerns with  
10    the proposed zoning variance.    And but still,  
11    there has been -- it is my sense that, first  
12    of all, we gave a fair opportunity for redress  
13    of this.    And it is my sense that the majority  
14    -- there is not a majority of the Commission  
15    to overturn the basic proposition here.    There  
16    is a substantial minority now that is opposed  
17    to this.

18                   On the charges that -- about unfair  
19    time, the -- at any point in the discussion of  
20    the majority when we had a quorum, the  
21    majority of Commissioners could have passed a  
22    resolution to retrieve this resolution and

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1 they did not.

2 The form of the discussion was one  
3 that we have at the beginning of our meetings,  
4 which is a public discussion period. And that  
5 public discussion period, by resolution,  
6 explicitly limits each party to 3 minutes.  
7 And then we go around and I believe most of  
8 the people have seen that proceeding.

9 It is true that after about 2.5  
10 minutes, and by the way I made a recording and  
11 I -- of this. I transcribed parts of it. I  
12 took the timings, because these charges had  
13 been made. And Dick Barnes raised the issue  
14 that the deck nearby had not been legally  
15 permitted and completed.

16 And since that was a serious charge  
17 and one that I did not want, as the presiding  
18 officer, to get lost in the other sets of  
19 rules, I asked and so it was a ruling from the  
20 Chair, which could have been appealed by the  
21 majority of the Commissioners present to give  
22 Frank one minute to answer that charge.

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1           And it's clear on the transcript  
2 and I repeated it. After he had gone about 3  
3 minutes, not in my opinion answering the  
4 charge of whether he had legally completed the  
5 deck, I then wanted to return the time back to  
6 the uncompleted time of Barnes, because there  
7 was about a half minute or more and he could  
8 have gone longer.

9           At that point, the -- things fell  
10 into some confusion and the -- but there was,  
11 as I observed and as I have checked with,  
12 because I keep timer clocks and so on, because  
13 the issue of fairness at proceedings, as you  
14 know, is considerable.

15           After I had seen about 15 minutes  
16 of this, I raised the issue that since we had  
17 many other issues and because I had determined  
18 ahead of time that there did not seem to be a  
19 majority to overturn it, we had about 20,000  
20 words of email correspondence on this, then I  
21 asked the Commission if we should cease this  
22 and go on to other topics.

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1           So I have physical proof that the  
2 charges made by Frank are not correct and  
3 while it is true that perhaps I could have  
4 been clearly trying to lay out the rules and  
5 enforce them, it seemed a very impassioned  
6 event and that the more modest the  
7 intervention from the Chair, the better.

8           So I would say that the ANC has a  
9 legally passed resolution. While it is true  
10 that some -- Frank's friends on the ANC that  
11 are sympathetic to his cause are opposed to  
12 this now and there is no evident majority to  
13 overturn this resolution of support. And they  
14 had their chance.

15                   CHAIRMAN   LOUD:           Thank you,  
16 Commissioner Edwards.           Appreciate your  
17 testimony.

18                   MR. EDWARDS:   Um-hum.

19                   CHAIRMAN LOUD:   Board Members, any  
20 questions?

21                   VICE   CHAIRMAN   DETTMAN:        Mr.  
22 Edwards, I'm just wondering, could you very

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1 briefly kind of go through the three-prongs of  
2 the variance test and let us know how the ANC  
3 found that they could support the request  
4 because it met the variance test? Here it  
5 just says that you have reviewed the plans and  
6 don't have issues or concerns. But it's  
7 helpful for the Board to find out, you know,  
8 where the ANC came out with the variance test.

9 MR. EDWARDS: At the time we passed  
10 this, there were -- had been considerable  
11 discussion, but it was not included as part of  
12 the resolution. At the time we passed this,  
13 it did not seem necessary to go through a long  
14 discussion of these items.

15 So all I could do is to report to  
16 you my impression of the email traffic and the  
17 personal discussions, that I personally  
18 discussed this with most of the Commissioners  
19 in person and there was -- there is a faction  
20 of our ANC that likes to use emails and there  
21 was extensive email traffic during the  
22 consideration of this.

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1                   So we do not have a formal  
2 resolution stating the addition of the or  
3 addressing these three prongs.

4                   COMMISSIONER TURNBULL: Well, just  
5 going along with what Mr. Dettman said --

6                   MR. EDWARDS: You could ask  
7 questions about each one of them.

8                   COMMISSIONER TURNBULL: But how can  
9 you support something when you haven't given  
10 an analysis of it? If you haven't -- if you  
11 support the project, support the applicant,  
12 you must have looked at what is necessary for  
13 a variance, because of the lot occupancy  
14 requirement. What did you base it upon?

15                  MR. EDWARDS: Again, I go to the  
16 informal discussion and there was a sense that  
17 this did not have -- the lot variance was not  
18 particularly a problem, especially given the  
19 rather, I think, unique situation of this  
20 where it is -- it appears to be a much larger  
21 lot, because it is surrounded on two sides by  
22 public parking.

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1                   And so the massing of the addition  
2                   is relatively small in the context. And we've  
3                   discussed air and shadows and it's true that  
4                   two Commissioners are very strong about any --

5                   COMMISSIONER    TURNBULL:            You  
6                   discussed light and shadows and air? Did you  
7                   look at anything that could help you determine  
8                   that?

9                   MR. EDWARDS:     Well, I personally  
10                  went several times to look at the site as did  
11                  other Commissioners.

12                  COMMISSIONER    TURNBULL:            Is there  
13                  any record of that?

14                  MR. EDWARDS:     There is a record of  
15                  our email discussion of this, but there is --

16                  COMMISSIONER    TURNBULL:            Can you  
17                  submit that to us?

18                  MR. EDWARDS:     Yes. And you have--  
19                  the other issue of whether this is an unusual  
20                  situation or distinctive situation, I think we  
21                  have already addressed.

22                  VICE    CHAIRMAN    DETTMAN:            Okay.

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1 Well, I'm glad you said that, because when you  
2 were asking questions of OP, I heard you  
3 mention that you thought it was unique that  
4 there was this public space that was going to  
5 be improved and impacts -- you know, the  
6 benefit they would have on the neighborhood as  
7 well as the proximity to the commercial  
8 corridor in Mount Pleasant.

9 So and did I correctly state that?

10 MR. EDWARDS: Yes.

11 VICE CHAIRMAN DETTMAN: Okay. So  
12 if those were two unique elements, which would  
13 fit into the first prong, if those were two  
14 unique elements that the ANC, you know, was  
15 considering, how did those two elements create  
16 the practical difficulty for the applicant?  
17 And as I understand it, it's to have, you  
18 know, a more formal setting to have family  
19 over.

20 MR. EDWARDS: I'm sorry, I don't  
21 understand your question.

22 VICE CHAIRMAN DETTMAN: How do the

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1 two unique elements that you had mentioned to  
2 OP contribute to the applicant's practical  
3 difficulty? Because the two need to be  
4 linked. I agree with you that these are going  
5 to be benefits to the community. But I think  
6 that those fall more appropriately in the  
7 third prong.

8 MR. EDWARDS: Well, the -- I should  
9 -- look, I should be frank and say that we did  
10 not go through the considerations of your  
11 legal structure. We consider ourselves to be  
12 more like a jury that is -- that tries to look  
13 at it from the entirety of neighborhood  
14 perspective.

15 And since we have, according to the  
16 Office of Planning, the most demographically  
17 divergent neighborhood in the city, there are  
18 very often very strong differences of opinion  
19 on these things.

20 But specifically, we have not  
21 prepared a legal analysis. And I would argue  
22 that it should not be the place. We should,

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1 in fact, come and give you other kinds of  
2 arguments and perspectives and leave it to you  
3 to do the right thing.

4 COMMISSIONER TURNBULL: But we have  
5 to look at those arguments that you are not  
6 looking at.

7 MR. EDWARDS: Agreed.

8 COMMISSIONER TURNBULL: That's part  
9 of the test for us to look at.

10 MR. EDWARDS: And if you present  
11 them to me, I'll try to extract from --

12 COMMISSIONER TURNBULL: But if you  
13 present totally other reasons that are not  
14 related to that, we can't give it the great  
15 weight that it should have.

16 MR. EDWARDS: Well, what I have --  
17 I have been frank in saying that we did not  
18 look at it from that standpoint.

19 COMMISSIONER TURNBULL: Thank you.

20 MR. EDWARDS: But I did say that I  
21 would, if you present questions about the  
22 specific issues, extract from my memory of the

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1 extensive discussion and tell you the kinds of  
2 things that were said.

3 CHAIRMAN LOUD: Thank you,  
4 Commissioner Edwards. Board Members, you have  
5 any further questions? Then why don't we turn  
6 to the applicant to see if you have questions  
7 of the ANC.

8 VICE CHAIRMAN DETTMAN: Mr.  
9 Chairman? I just wanted to raise one point.

10 CHAIRMAN LOUD: Yes, sir.

11 VICE CHAIRMAN DETTMAN: Because I  
12 was looking for the section in the regs which  
13 ends up being 3115, Advisory Neighborhood  
14 Commission reports. And 3115.1(e) states --  
15 the listing is what needs to be included in  
16 the report, that there needs to be mentioned  
17 that there was a quorum. There needs to be  
18 mentioned there was a vote taken.

19 3115.1(e) states "The issues and  
20 concerns of the ANC about the appeal or  
21 application as related to the standards of the  
22 Zoning Regulations against which the appeal or

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1 application must be judged."

2 It says that in the ANC report,  
3 there needs to be in there the three-prong  
4 variance test.

5 MR. EDWARDS: We failed to do that.

6 CHAIRMAN LOUD: Thank you again,  
7 Commissioner Edwards. And we do appreciate  
8 your peculiar difficulty being a  
9 representative to speak for the ANC and not  
10 having been armed by the ANC report with the  
11 prongs and that is what it is. You can't  
12 speak to it, because it wasn't part of the  
13 deliberations. So we understand the  
14 difficulty of your situation as well.

15 Going to the applicant, did you  
16 have any follow-up questions for Commissioner  
17 Edwards regarding his specific testimony?

18 MR. BARNES: One very --

19 CHAIRMAN LOUD: I don't believe  
20 your microphone is on.

21 MR. BARNES: One very technical  
22 clarification since the proceedings are

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1 recorded. Commissioner Edwards, I think,  
2 referred to parking spaces around the  
3 property. It's public space. It's not  
4 parking. It's the landscaped area that we are  
5 maintaining plus a little bit of parking.

6 MS. THOMAS: Oh, let me provide a  
7 little correction.

8 CHAIRMAN LOUD: Thank you, Mr.  
9 Barnes and Ms. Thomas.

10 MS. THOMAS: The term parking is an  
11 old term that was used to identify public  
12 space. It was originally thought of us park,  
13 so the term is parking. So I guess probably  
14 that's why he said parking, but I can  
15 understand, but just so we know in the future  
16 that parking refers to the public space and  
17 that area in front.

18 MR. EDWARDS: We deal with that law  
19 a lot.

20 MS. THOMAS: Yes

21 CHAIRMAN LOUD: Thank you for the  
22 clarification. I never realized that. Thank

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1 you. Let's turn now to, unless the applicant  
2 has any further questions for the ANC, we will  
3 turn to Mr. Agboro and see if you have any  
4 questions for the ANC.

5 CROSS EXAMINATION

6 MR. AGBORO: I have a number of  
7 questions here.

8 CHAIRMAN LOUD: And again, your  
9 questions should be limited to what was  
10 brought out by the Commissioner during his  
11 direct testimony.

12 MR. AGBORO: The Commissioner  
13 claims that, you know, the notices were  
14 posted. I would like to know how were they  
15 posted, what was posted and, you know, how was  
16 it worded?

17 MR. EDWARDS: To not repeat myself  
18 about what are the requirements for an ANC,  
19 that we are not required to notify and so on  
20 nor are we required and cannot actually  
21 honestly predict what Commissioners will want  
22 to bring up in the meetings.

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1                   However, there was a deferral of  
2 this issue and the minutes for that were  
3 posted in advance. May I refer to the -- may  
4 I ask the Secretary of the Commission, Dr.  
5 McKay, who is sitting right behind me, because  
6 he has a better memory? Do I have permission  
7 to do that?

8                   CHAIRMAN LOUD: Well, I don't want  
9 to say -- I don't want to foreclose testimony  
10 that's going to be relevant to our  
11 deliberation in deciding on the case.

12                   MR. EDWARDS: Okay. Fine.

13                   CHAIRMAN LOUD: But I think you  
14 have kind of answered the question.

15                   MR. EDWARDS: Good.

16                   CHAIRMAN LOUD: And I think that's  
17 all you can do, use your best recollection as  
18 the --

19                   MR. EDWARDS: Yes.

20                   CHAIRMAN LOUD: -- representative  
21 of the ANC to answer the question. If your  
22 best recollection is that you don't know, then

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1 that's your best recollection.

2 MR. EDWARDS: Well, I say, in fact,  
3 I do remember that there was a deferral of  
4 discussion and that notice that we were  
5 discussing this issue was in the minutes that  
6 were posted in several places. So I have  
7 specific knowledge to that.

8 CHAIRMAN LOUD: Good. If you have  
9 further questions, you can ask the witness  
10 questions.

11 MR. AGBORO: I would just like to  
12 correct -- make a correction on one of the  
13 statements that he made about the last ANC  
14 meeting discussing this issue.

15 CHAIRMAN LOUD: Again, this is  
16 cross examination. You are allowed to ask  
17 questions.

18 MR. AGBORO: Okay.

19 CHAIRMAN LOUD: And if you want to  
20 get to a statement through a question, that's  
21 fine, but --

22 MR. AGBORO: Okay.

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1 CHAIRMAN LOUD: -- with respect to  
2 clarifications and statements, you can do that  
3 in your part of the case.

4 MR. AGBORO: Well, does -- I would  
5 just like to ask does the Commissioner recall  
6 my District Commissioner walking out of this  
7 meeting, this last meeting, when we tried to  
8 discuss this issue at the ANC meeting? Does  
9 he recall that?

10 MR. EDWARDS: I recall two -- yes.

11 MR. AGBORO: Okay. Just for the  
12 record.

13 CHAIRMAN LOUD: Is that it, Mr.  
14 Agboro in terms of your questions? Those are  
15 your questions? Thank you. I think where we  
16 are now is that the ANC has finished up its  
17 report. You have had the opportunity to  
18 question as well as the Board and the  
19 applicant. There are no parties or persons  
20 here -- are there parties or persons here in  
21 support of the application?

22 And seeing none, we will go to the

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1 party status applicant, Mr. Agboro, who has  
2 been named as a party and is in opposition to  
3 the case. So now you have your opportunity to  
4 make your statement and to get your  
5 perspective on the record.

6 MR. AGBORO: Thank you very much.  
7 On behalf of my family, I would like to thank  
8 you for having me -- having our opinions  
9 heard. I made up a statement, because I just  
10 don't want to take much time.

11 Distinguished Board Members, the  
12 Agboro family, Laura and Frank Agboro, are  
13 adjoining neighbors to Janet Staihar and Dick  
14 Barnes of 3150 17<sup>th</sup> Street, BZA Application  
15 17919. We are 17 year residents of Mount  
16 Pleasant living in our home 1702 Kilbourne  
17 Place, N.W., for 13 years with our three  
18 children, ages 5 to 13.

19 The Agboro family recognizes and  
20 appreciates the ANC as one of the entities  
21 with weight in the BZA process. However, the  
22 family, three children, Laura and Frank,

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1 wishes to submit the following considerations  
2 for the Board to renew -- to review its -- to  
3 review in its deliberations.

4 The Agboro family respectfully  
5 requests of the BZA the following: I talked  
6 about postponement, so I'm not going to go  
7 into that. We have already resolved that.

8 Secondly, the proposed enclosed  
9 structure, two levels, has a substantially  
10 adverse effect on the use and enjoyment of our  
11 property. Please, refer to Exhibit 1, B1, and  
12 these are pictures from the Agboro family's  
13 property, which show obvious light and air  
14 concerns compromise transparency, obstructing  
15 view from first and second level and  
16 potentially economic hardship. Deck, balcony  
17 and all windows on rear of the house will be  
18 affected. Our home will be boxed in in the  
19 back area.

20 (B) The privacy of use and  
21 enjoyment of our property will definitely be  
22 compromised as the proposed tall enclosed

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1 structure will cover the full length of our  
2 deck and will only be a foot away from our  
3 property, see Exhibit B2, thus compromising an  
4 eye on the street and obstructing view from  
5 existing balcony and windows.

6 As viewed from the -- (C), I'm  
7 sorry. As viewed from the 17<sup>th</sup> Street side,  
8 the proposed two level enclosed structure  
9 would visually intrude and substantially  
10 impact upon the character, scale and parking  
11 of -- and pattern of houses along the subject  
12 alley frontage.

13 Furthermore, transparency in the  
14 alleyway will be compromised and result in  
15 safety and rodent issues for our family.

16 (3) Exhibit C, ANC Commissioners  
17 findings, an attempt at rescinding ANC  
18 resolution and resolving the matter. The  
19 Agboro family will appreciate the Board's  
20 considerations of the above concerns in the  
21 process.

22 We submitted what I just read to

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1 you with all the exhibits. You will see with  
2 the Exhibit C referring to the ANC  
3 Commissioners' findings, yes, it speaks of the  
4 two Commissioners that came and actually  
5 looked at the project and made their comments.

6 And this is shown in an email that is there  
7 for you to see.

8 CHAIRMAN LOUD: Thank you, Mr.  
9 Agboro. Have you given the applicant as well  
10 as the ANC a copy of this? Which we received  
11 this morning, just this morning from you.

12 MR. AGBORO: Well, I have sent our  
13 -- you know, our thoughts and --

14 CHAIRMAN LOUD: Have you given them  
15 a copy of this?

16 MR. AGBORO: No, I have not given  
17 them a copy of that.

18 CHAIRMAN LOUD: Do you have extra  
19 copies with you this morning --

20 MR. AGBORO: I gave all the copies  
21 I had.

22 CHAIRMAN LOUD: -- that you can

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1 give?

2 MR. AGBORO: I had about 10 copies  
3 that I --

4 CHAIRMAN LOUD: Okay. Well, why  
5 don't we do this? Okay. I think Ms. Bailey  
6 is going to make sure that they have copies of  
7 that since you have referenced it.

8 Was there something in here  
9 specifically, it's maybe a total of, I don't  
10 know, 20 pages, so but is there something  
11 specific in it that you wanted to reference  
12 right now for your testimony?

13 MR. AGBORO: Um, give me a second  
14 here. Well, the air and light issues.

15 CHAIRMAN LOUD: Okay.

16 MR. AGBORO: Looking at Exhibit B1?

17 CHAIRMAN LOUD: Yes, sir.

18 MR. AGBORO: Okay. You can see  
19 that where they are proposing to have the  
20 structure, that would obstruct our view of  
21 this eye on the street to 17<sup>th</sup> Street. And it  
22 would cause a shade over our deck, okay. And

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1 we have kids that play in the back area. We  
2 utilize the deck a lot. We are outdoors  
3 people. And that would really have a great  
4 impact. They have all celebrated their  
5 birthdays on that deck. And that's where they  
6 play.

7 So of course, I have safety issues  
8 and safety concerns as a result of the  
9 imposing structure. If you look to the right  
10 of this, there is a white wall on that Exhibit  
11 1, the view from deck to 17<sup>th</sup> Street. You see  
12 a white wall to the side. Okay. That's -- we  
13 are looking at that.

14 You come out to the deck, you are  
15 looking at a white wall. Okay. And then if  
16 you look at exhibit -- okay, it's even clearer  
17 on exhibit -- the second Exhibit 1. You can  
18 see the wall directly, that small window. And  
19 then if you look at Exhibit, let's see, 2,  
20 that's a view from the second floor balcony  
21 from our house. And you can see how that  
22 would impact our view and cause light and air

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1 issues.

2 And the other exhibit is on the  
3 right, my neighbor on the right, that's 1704,  
4 that's Exhibit 2, B2. It shows the puce tree  
5 that my neighbor has on his yard that hangs  
6 the full width of our deck. And every summer  
7 poor Joe has to come over and stand up on our  
8 deck and cut the leaves, so we can have more  
9 light and transparency.

10 So I think this proposed  
11 construction would add more of a burden to  
12 what we already are managing or trying to  
13 manage actually.

14 So those are pretty much the main  
15 things we had. You know, we have had issues  
16 with rodents in the past, which we have taken  
17 good care of and -- because of the  
18 transparency issue, because that alley was  
19 never usually -- was not welcoming before. We  
20 made it so that it is transparent, it's open.  
21 The kids can play back there.

22 We have made it so that people

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1 don't come back there and defecate. You know,  
2 we get stragglers from Mount Pleasant Street  
3 that walk down and they find a little -- any  
4 corner they can, you know, do whatever it is  
5 they want to do, which would compromise our --  
6 the safety of our family.

7 And we have enjoyed this for a very  
8 -- for as long as we have lived in that house.

9 And this pretty much threatens that.

10 CHAIRMAN LOUD: Thank you, Mr.  
11 Agboro. I'm going to turn over to -- or open  
12 it up rather for Board Members, if they have  
13 any questions of you, regarding your testimony  
14 and then we will give the same opportunity to  
15 the applicants and to the ANC.

16 VICE CHAIRMAN DETTMAN: Mr. Agboro,  
17 I'm just looking through these emails that you  
18 have attached to your filing and,  
19 particularly, the last page which talks about  
20 there was potential for this project to  
21 actually just become a deck, an outdoor deck.

22 MR. AGBORO: Yes.

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1                   VICE CHAIRMAN DETTMAN:    And there  
2                   is no name on the email, but the way it is  
3                   written it sounds like it may have come from  
4                   the applicant.    Could you kind of describe  
5                   that process and how that played out?

6                   MR.    AGBORO:        I'll be happy to.  
7                   Once the ANC discovered that there were issues  
8                   with this project, our ANC Commissioner, Dave  
9                   Bosserman, working very hard with Commissioner  
10                  Jack McKay, came to the site and looked at it  
11                  and they go wow.    So this is what you were --  
12                  they could see it.    It was right there.    They  
13                  agreed.    And that's what you see in the email  
14                  and they could see.

15                  And there was a very, very  
16                  commendable attempt by both Commissioners to  
17                  seek a resolution of this matter.    And we  
18                  wanted to work with our neighbors to figure  
19                  out a way that this could work.    As long as it  
20                  was transparency, we just -- what we were  
21                  concerned about was an enclosed structure,  
22                  which would compromise the value of our house.

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1                   It        would        compromise        the  
2       architectural value of the house.    And it  
3       would cause undue economic hardship to my  
4       family, as a result of that, because it  
5       deviates from the pre-existing rear and side  
6       structures in Mount Pleasant.    And you know,  
7       if one -- nobody wants to be boxed in.    It  
8       would just defeat the purpose of having an  
9       outdoor area where the, you know, kids can  
10      come out and enjoy.

11                   COMMISSIONER TURNBULL:    Mr. Agboro,  
12      in the papers you have given us marked under  
13      Exhibit C it's the fourth paper from the end.

14                   MR. AGBORO:    Um-hum.

15                   COMMISSIONER TURNBULL:    It's an  
16      email        from        Jack        McKay        to  
17      anclld@googlegroups.com and it is cced to  
18      Barnes and I'm assuming yourself, you are  
19      francojazz?

20                   MR. AGBORO:    Yes.

21                   COMMISSIONER TURNBULL:    Okay.  
22      Could you explain some of this?    The second

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1 paragraph of that letter says "Dick has made a  
2 very great concession agreeing to delete the  
3 second story structure reducing his project to  
4 a simple deck and carport, pretty much like  
5 that which Franco has on his house. I hope we  
6 can pass this resolution very quickly on  
7 Tuesday evening putting this matter to rest."

8 MR. AGBORO: Yes.

9 COMMISSIONER TURNBULL: Could you  
10 elaborate on that?

11 MR. AGBORO: I can. Like I said,  
12 once the resolution was passed and the  
13 Commissioners, Jack McKay and Dave Bosserman,  
14 found out that there were these issues that  
15 they were unaware of that we had as abutting  
16 neighbors, they tried very hard. They came  
17 over to see what we were talking about, to  
18 check out what was going on.

19 And so they said they -- they  
20 figured okay, well, this doesn't look right  
21 and they, basically, were also referring to a  
22 precedent that the ANC had regarding air and

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1 light issues, which they supported the claims  
2 -- the similar claims that we had.

3 And so, you know, they found  
4 themselves in a situation where, you know,  
5 they had to try to address it again, but some  
6 of the other Commissioners, mainly  
7 Commissioner Edwards, was opposed to  
8 revisiting this case.

9 We were willing to compromise. We  
10 were -- actually came to that meeting last  
11 Tuesday to talk about it and see if we can  
12 arrive at some reasonable compromise, but it  
13 wasn't possible.

14 COMMISSIONER TURNBULL: Well, I  
15 mean, it sounds like this addition was even  
16 bigger than what is showing now, but I'm not  
17 quite sure I understand reducing it to a  
18 simple deck and carport.

19 MR. AGBORO: Well, from the image,  
20 I don't see too much of a difference from the  
21 initial drawings that I saw. I don't see a  
22 substantial difference. We knew it was two

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1 stories high and we still feel that our  
2 concerns are the same.

3 COMMISSIONER TURNBULL: Okay. You  
4 need to come up to the microphone.

5 CHAIRMAN LOUD: Good morning. If  
6 you could state your name for the record?

7 MR. McKAY: I'm Jack McKay, one of  
8 the Members of the Commission and I'm the  
9 author of that particular email, because, at  
10 the time, I was -- when I looked at the  
11 property, I could see that there was really no  
12 issue with the carport. There was no issue  
13 with the deck. But the structure on top was  
14 going to be a real problem for the adjacent  
15 deck.

16 And I talked to both parties here  
17 and got this suggestion that the proposal  
18 could be reduced from what you see here to  
19 just the deck and the carport. And I thought  
20 that would be something that the ANC could  
21 happily support. I'm not sure quite -- quite  
22 sure what happened after that, but that was

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1 the origin of that particular email.

2 COMMISSIONER TURNBULL: Thank you.

3 MR. MCKAY: Thank you.

4 VICE CHAIRMAN DETTMAN: Mr. McKay,  
5 so you were able to gain consensus on an  
6 outdoor deck and carport with both the  
7 applicant and Mr. Agboro?

8 MR. MCKAY: Well, you will have to  
9 ask Mr. Barnes the details.

10 VICE CHAIRMAN DETTMAN: Okay.

11 MR. MCKAY: Where this -- it was  
12 sort of an -- a background. Yeah, maybe we  
13 could agree on this compromise.

14 VICE CHAIRMAN DETTMAN: Okay.

15 MR. MCKAY: That's as far as it  
16 went.

17 VICE CHAIRMAN DETTMAN: Okay.  
18 Thank you.

19 CHAIRMAN LOUD: And sorry for the  
20 interruption to your case, Mr. Agboro. We're  
21 still actually in your case and I think Mr.  
22 Turnbull had some follow-up questions for you

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1 when it led us down a path of inviting Mr.  
2 McKay up. So let me see if Mr. Dettman or Mr.  
3 Turnbull have any further questions for you.

4 COMMISSIONER TURNBULL: Well, I  
5 guess, Mr. Agboro, in your submission on  
6 Exhibit B, I mean, the view of across the  
7 alley to the neighbor's house, it is what it  
8 is. I mean, that's -- you are living in the  
9 city and, you know, across the alley, that's--  
10 I mean, you have to accept what is already  
11 there.

12 MR. AGBORO: Right.

13 COMMISSIONER TURNBULL: Now, you  
14 don't -- do you park under your deck?

15 MR. AGBORO: I do.

16 COMMISSIONER TURNBULL: You do.

17 MR. AGBORO: Um-hum.

18 COMMISSIONER TURNBULL: Okay.  
19 Those are the only questions I have, Mr.  
20 Chair.

21 CHAIRMAN LOUD: Thank you, Mr.  
22 Turnbull. Let us see now if Mr. Barnes, the

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1 applicant, has any questions for Mr. Agboro  
2 and then we will move to the ANC. And then I  
3 think we can wrap this case up allowing the  
4 applicant to give his closing statement and  
5 make a decision up here as to whether or not  
6 we're going to deliberate this morning or set  
7 the case for a decision at a later date.

8 Go ahead, Mr. Barnes, and again,  
9 what you are doing now, just out of an  
10 abundance of caution, is questioning Mr.  
11 Agboro on anything that he brought forward  
12 during his statement regarding the project.

13 CROSS EXAMINATION

14 MR. BARNES: Frank, in your  
15 statement your objections seem to fall into  
16 two categories. Some are in, you might call,  
17 the light/view/shadow category, which really  
18 go to the issue of the window, walls and roof.

19 Others of your issues go to criminal  
20 activity, people defecating on your property,  
21 issues that essentially go to the existence of  
22 a structure at all, since those are all ground

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1 level activities.

2 I recall at the ANC you mentioned,  
3 you know, a recent incident of the defecation  
4 issue. You also, I believe, have a solid  
5 neighbor's fence to your west side, but to our  
6 side there is no solid fence at all.  
7 Presently, there is a chain link fence.

8 So is it fair to say that those --  
9 that half of your opposition would apply as  
10 well to a deck as it would to a super  
11 structure? And the reason I ask that is my  
12 conversations with Jack or actually it was our  
13 email exchanges anything we might do in the  
14 way of changing the project was, essentially,  
15 predicated on the ANC's support for, you know,  
16 what would be done.

17 And your affirmative support, but  
18 at that point, I had not seen your submission  
19 to the BNZ, so I was not aware of your  
20 opposition to, you know, various -- your  
21 various categories of opposition that would go  
22 to a deck as well as to the structure. Does

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1 that correctly characterize the two categories  
2 of your opposition?

3 MR. AGBORO: Well, Mr. Barnes, I  
4 think -- let's go back to how the process was  
5 supposed to take place. You came to me with a  
6 plan and I gave you my -- our thoughts about  
7 it. You were supposed to come back, but there  
8 was no back and forth here. So if there was  
9 some kind of back and forth, maybe you would  
10 have understood where we were coming from in  
11 terms of our thoughts and our, you know,  
12 ideas, because, you know, we wanted to work  
13 objectively with you to -- you know, so that  
14 we can arrive at some reasonable compromise.

15 But that opportunity did not take  
16 place, so unfortunately you get to hear what--  
17 how we feel about this. I know you shouldn't  
18 -- you should have known it in the emails, in  
19 the correspondence in Exhibit C, which I think  
20 you were also copied on that. You were copied  
21 as to what we were arriving at or trying to  
22 work out in terms of a reasonable compromise.

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1           A transparent, open structure that  
2 would not be obstructive. You know, that's  
3 what we were -- and you know, we were  
4 concerned about. We were also concerned about  
5 medical issues. We have three children with  
6 serious medical issues that we have to  
7 protect. And the only way we can do that is  
8 from our -- at least have control over is from  
9 our own home, if we can help it.

10           Okay. So these are the issues we  
11 were looking at and that's why we have done --  
12 as long as we have been living in Mount  
13 Pleasant, we have done things in the  
14 neighborhood to make it not just good for our  
15 children, but for other kids, too, so that  
16 they can grow up in a reasonably safe  
17 environment.

18           MR. BARNES: Well, I mean, that's  
19 your view of it. Did you contact us at any  
20 point after the BNZ announcement of a  
21 proceeding here came around, other than when  
22 you saw me in the front yard the weekend after

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1 the ANC action and basically said, you know,  
2 hey, nothing personal. I have to do what I  
3 have to do. You have to do what you have to  
4 do.

5 MR. AGBORO: Well, you can -- can I  
6 answer that question?

7 CHAIRMAN LOUD: I don't --

8 MR. AGBORO: I don't want to  
9 interrupt the process here.

10 CHAIRMAN LOUD: I think it's a real  
11 direct question. Did you contact him? Did  
12 you make those representations when you  
13 contacted him? And then we can probably move  
14 on. I don't think we need to spend a whole  
15 lot of time here.

16 MR. AGBORO: No, I did not contact  
17 him.

18 CHAIRMAN LOUD: Okay.

19 MR. AGBORO: I'm sorry. Can I add  
20 to that?

21 CHAIRMAN LOUD: I'm sorry. If you  
22 want to explain it, you can explain --

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1 MR. AGBORO: I would like to  
2 explain.

3 CHAIRMAN LOUD: -- your answer.

4 MR. AGBORO: I did not contact him.

5 CHAIRMAN LOUD: Very briefly.

6 MR. AGBORO: I did not contact him  
7 because we thought the process was -- you  
8 know, we had given him our opinion and we  
9 thought the next, you know, phase would be for  
10 him to come back, that's why, you know, we  
11 didn't contact him. Because when I spoke to  
12 him, he kind of dismissed our concerns pretty  
13 much and never came back.

14 MR. BARNES: Well, when we spoke is  
15 --

16 CHAIRMAN LOUD: You can continue  
17 your questioning of the witness.

18 MR. BARNES: When we spoke, when  
19 you reacted to our first showing the plans to  
20 you back last fall, do you recall that when  
21 you raised your two objections, one to rodents  
22 and one to translucency, I said well, as to

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1 the windows, we had originally thought in  
2 terms of having opaque windows, but we could  
3 certainly go to clear windows to reduce any  
4 adverse light impact.

5 And as to you -- you were concerned  
6 about rodents along the visual screening of  
7 the carport and I said we could certainly work  
8 to eliminate that, so there wouldn't be any  
9 rodents and, you know, we have not had any  
10 rodent problems. Do you recall those  
11 exchanges the first time when you responded to  
12 our initially showing you the plans?

13 MR. AGBORO: Yes, I do recall that.

14 I also recall trying to explain to you that  
15 it would be an obstructive view for us and it  
16 would cause -- I mean, we had all this -- we  
17 would have -- there was a potential of all  
18 these problems with air and light and open  
19 transparency, you know. I think I made that  
20 very clear to you.

21 You know, looking at the alley from  
22 17<sup>th</sup> Street, you know, that would be

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1 obstructive. It would be obstructive from our  
2 deck looking onto the street, you know, and to  
3 the back area where the kids play. I thought  
4 I made these -- those points very clear.

5 CHAIRMAN LOUD: Further questions  
6 for the witness, Mr. Barnes?

7 MS. STAIHAR-BARNES: Is it possible  
8 I could ask a question?

9 CHAIRMAN LOUD: I really -- and  
10 that's sort of what I had alluded to earlier.

11 If we could just combine that effort, so that  
12 the questions come from one applicant.

13 Let me take this pause as an  
14 opportunity to say that there is a case  
15 scheduled for this morning's calendar, the  
16 Capitol Hill Hilton Hotel case, which normally  
17 would have been heard by now, 12:00 noon. We  
18 normally break at 12:00 noon, but we would  
19 like to ask the parties to hang around if they  
20 can and not break, because it's our intention  
21 to work straight through and try to get to  
22 that case, so that we don't have a break and

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1 we don't lose any potential witnesses for  
2 lunch.

3 So if the entire crew is here and  
4 you can keep them together, we would like to  
5 move straight from this case, which we don't  
6 think will take that much longer, to your  
7 case. I'm sorry.

8 Mr. Barnes?

9 MR. BARNES: Well, in light of  
10 those concerns, why don't we simply proceed on  
11 and we can take our -- any further points in  
12 our summation.

13 CHAIRMAN LOUD: Okay. That sounds  
14 good. I appreciate that. And the ANC,  
15 Commissioner Edwards, do you have any  
16 questions for Mr. Agboro?

17 MR. EDWARDS: Yes. On your point  
18 2B on the first page, I'm just looking at this  
19 for the first time, in bold you seem to  
20 summarize your point that there is, in effect,  
21 a scenic easement from your existing balcony  
22 and windows. Is there any legal basis for

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1 that?

2 MR. AGBORO: What do you mean legal  
3 basis? I don't understand.

4 MR. EDWARDS: For a scenic easement  
5 that you have a right to continue to see the  
6 street from your deck unobstructed?

7 MR. AGBORO: Well, these are all  
8 safety concerns. I mean, our kids play around  
9 the back a lot. We get to see what they are  
10 doing. We have control over what they are  
11 doing. So it has been very useful for us and  
12 to be able to see who comes in through the  
13 back and who has the ability to -- or, you  
14 know, to access our home from that part of  
15 the --

16 MR. EDWARDS: Do you have an answer  
17 to my question?

18 MR. AGBORO: That was the question.  
19 It wasn't -- what was your question?

20 MR. EDWARDS: I asked if you have  
21 any legal basis for --

22 MR. AGBORO: What do you mean by

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1 that?

2 MR. EDWARDS: Is this one of the  
3 rights that Appeal Courts say you can use to  
4 object to these things?

5 MR. AGBORO: Well, I'm just -- I'm  
6 here to represent our interests and that's  
7 what I'm expressing to you.

8 MR. EDWARDS: I got lectured about  
9 doing that. The -- No. 2, I see you have  
10 quite a long list of neighbors. I have heard  
11 that quite a few of them felt pressure and  
12 that this came up in their face and they did  
13 not understand what they were signing and the  
14 like.

15 I know I have gotten a lot of  
16 pressure in the neighborhood to force me to  
17 change my --

18 CHAIRMAN LOUD: Commissioner  
19 Edwards, do you have a question for him?

20 MR. EDWARDS: Are you aware that  
21 many of those felt pressured?

22 MR. AGBORO: Should I be answering

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1 this question?

2 CHAIRMAN LOUD: It's a yes or no  
3 question. Are you aware --

4 MR. AGBORO: Not at all.

5 CHAIRMAN LOUD: Okay.

6 MR. AGBORO: People were willing to  
7 sign, because they were not informed. They  
8 felt it was their due right to be informed.

9 CHAIRMAN LOUD: I think his  
10 testimony is that he was not aware.

11 MR. EDWARDS: Thirdly, the -- in  
12 some of your writings about this, you say that  
13 there was a compromise imminent, but from the  
14 discussion before the ANC, it did not seem  
15 like the applicants, Barnes, were ready to  
16 compromise in any volunteer way. Was there --  
17 did you put pressure on them to -- or do you  
18 think there was pressure on them to  
19 involuntarily agree to changes?

20 MR. AGBORO: I don't think so. I  
21 really don't. I think we have great  
22 neighbors. I think we have wonderful people

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1 whom we have, you know, known over the years  
2 that we have lived in Mount Pleasant. I don't  
3 see any one of them, you know, pressuring them  
4 to do anything that they wouldn't do. Our  
5 neighbors don't do that. They may sign a  
6 petition and voice their opinion maybe, but  
7 they are not going to pressure you.

8 MR. EDWARDS: Thank you.

9 CHAIRMAN LOUD: Thank you,  
10 Commissioner Edwards. I believe that we are  
11 now at the point for the applicants' closing  
12 statement and then we will decide up here  
13 whether we are going to deliberate today or  
14 set it for decision. And so I turn to the  
15 applicants. I'm sorry, feel free to go right  
16 ahead when you are ready. As the applicant,  
17 you have an opportunity to have closing  
18 remarks.

19 MR. BARNES: Well, you have, I  
20 think, certainly heard, you know, both sides  
21 of the issue. I think there are some other  
22 points that could use, you know, a bit more

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1 elaboration. I mean, for example, on Mr.  
2 Agbororo's petition, the second signer on the  
3 petition in this, Stephanie Kay, emailed us  
4 somewhat after that saying -- in part saying  
5 she felt long and hard about the issue and  
6 decided that I signed Frank's petition  
7 prematurely.

8 "I signed it based solely on what  
9 he had described to me. I had not heard the  
10 other side of the story and I think it's  
11 important to do so. I'm writing to say I  
12 would like to remove my name from the  
13 petition, if one can do so after the fact."  
14 It's part of a longer email.

15 A neighbor across the street who  
16 signed the petition also spoke, you know,  
17 orally with my wife and said she indeed did  
18 feel pressured to sign the petition. Now, I  
19 didn't, you know, witness any of Frank's, you  
20 know, circulation of the petitions.

21 But I think, you know, essentially,  
22 we are dealing with a relatively legal kind of

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1 matter with some equities that are before this  
2 Board, issues, disputes that may relate to the  
3 ANC, essentially, relate to the ANC. The  
4 structure even of the petition, essentially,  
5 goes to the issue of the ANC.

6 I think the issue here is whether  
7 our project, you know, merits a variance, you  
8 know, and the exception. It is a one-story  
9 project that protrudes from the second story  
10 of the house, the existing use of the parking  
11 cars underneath is unchanged. The existing  
12 utility pad is unchanged, except for having a  
13 better fence around it, rather than a chain  
14 link fence.

15 The issues of safety, we maintain  
16 quite a well-lighted back area with both  
17 spotlights and in case there are any  
18 incidents, we also have recorded security  
19 cameras. We have had no incidents, you know,  
20 on that area of the house. We had one very  
21 minor incident on the front side of the house  
22 and, in fact, we got very good pictures of the

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1 incident.

2 I think, you know, Frank has the--  
3 in his under area has, you know, the problem  
4 of a dark fence on the other side and it does  
5 create quite a dark area under there, which I  
6 think is -- would be substantially different  
7 from what the area would be like under ours.

8 As to the issues of light and  
9 shadow, certainly if we were to the west and  
10 Frank were to the east, I think it would be a  
11 much more substantial issue. But you know, as  
12 we all know, the sun rises in the east, gets  
13 overhead and continues on to the west after,  
14 you know, late-ish -- mid to late morning, I  
15 don't believe there is going to be, you know,  
16 a shadow issue.

17 If you look at -- when you are  
18 looking at the photographs, the reference to  
19 the white wall just because of the two  
20 dimensional nature of photography, it kind of  
21 makes it look like the wall is right up  
22 against his property. In fact, it's the width

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1 of the alley plus another 4 feet away. And  
2 you know, we have exactly the same view out of  
3 our windows and would have out of our  
4 structure when it is built.

5 Chairman Edwards raises the issue  
6 of a scenic easement. We are certainly aware  
7 of no scenic easement on our property. We  
8 purchased it about 5 years ago, which  
9 coincidentally was just about exactly the same  
10 time that, you know, Frank's deck was going  
11 up. And we were aware of no scenic easement  
12 on the property.

13 I can understand what he is saying,  
14 but I think, frankly, the equities, the  
15 requirements, the fact that he already enjoys  
16 exactly the same footprint as we would have if  
17 this variance is granted, all speak in favor  
18 of your approval of this project. We seek it  
19 and we appreciate your time and certainly your  
20 extended time in hearing this matter. Thank  
21 you.

22 CHAIRMAN LOUD: I want to thank

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1 you, Mr. and Mrs. Barnes and thank you, Ms.  
2 Mitchell as well, as well as Commissioner  
3 Edwards and also Mr. Agboro. I think that we  
4 have heard a tremendous amount of testimony  
5 this morning. There was a substantial written  
6 record before we even got to the testimony  
7 this morning.

8           And I think I would like to confer  
9 with colleagues regarding whether we  
10 deliberate now or we set this for a decision  
11 at a later time, bearing in mind, and I think  
12 you put it pretty eloquently, Mr. Barnes, that  
13 the real test here is the variance test,  
14 whether there is something unique or  
15 exceptional about the property that causes a  
16 practical difficulty and whether relief from  
17 the strict application of the regulations  
18 would cause a substantial detriment to the  
19 public good or substantially impair the Zone  
20 Plan, Regs or Map.

21           And that's really what we are  
22 looking at in this case. I think the back and

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1       forth regarding the ANC relates to a component  
2       of the case, in terms of the great weight to  
3       be afforded the ANC's position, but that's  
4       only one component of the overall case. And  
5       so the standard we would be looking at would  
6       be the variance test.

7                   I don't necessarily feel like there  
8       is a whole lot more than I would need to have  
9       to be ready to deliberate on. In fact, I  
10      don't feel like there is anything else that I  
11      would need to have. But I would defer to  
12      colleagues and get your sense of it, as to  
13      whether you think we can go forward now or set  
14      this on for decision later.

15                   VICE CHAIRMAN DETTMAN:        Mr.  
16      Chairman, I think the record is full enough  
17      and I would be in favor of moving forward  
18      today with a decision.

19                   CHAIRMAN LOUD:        Mr. Turnbull, any  
20      thoughts on that?

21                   COMMISSIONER TURNBULL:        No.     I  
22      could do that, too.

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1                   CHAIRMAN LOUD:    Okay.    Well, Mr.  
2                   Dettman, can you walk us through where you are  
3                   on it and sort of take the lead and we'll  
4                   weigh in as appropriate?

5                   VICE CHAIRMAN DETTMAN:    Certainly,  
6                   Mr. Chairman.    Just by way of background, this  
7                   is a proposal for a rear addition to an  
8                   existing row house structure located at the  
9                   intersection of 17<sup>th</sup> Street and Kilbourne  
10                  Place, N.W.    The requested relief is in two  
11                  areas.

12                  It is -- the applicant is seeking  
13                  variances from lot occupancy as well as rear  
14                  yard, as this is the R-4 District, the  
15                  allowable lot occupancy is 60 percent.    The  
16                  existing lot occupancy is 67.7.    What is being  
17                  proposed would extend the lot occupancy to  
18                  88.7.

19                  With respect to rear yard, the  
20                  regulation calls for a 20 foot minimum.    The  
21                  existing is 20 foot and what is being proposed  
22                  would reduce the rear yard to 4 feet.

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1           Just to briefly describe what is  
2 being proposed, as I said, it's a rear  
3 addition, measured 16 x 16. It's a one-story  
4 addition that would actually be supported on  
5 brick piers where the applicant would be able  
6 to park their vehicles below.

7           What is also being proposed is they  
8 are proposing to improve the paved public  
9 space that currently exists to the southeast  
10 of the subject property, at the southeast  
11 corner of the lot.

12           Stepping into the variance test,  
13 the three prongs that need to be met. Let me  
14 just pull -- with respect to the first prong,  
15 "Is the property unique due to an exceptional  
16 narrowness, shallowness or shape of a specific  
17 piece of property at the time of the original  
18 adoption of the regulations or by reason of  
19 exceptional topographic conditions or other  
20 extraordinary exceptional situation or  
21 condition?"

22           Based on the filings and the

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1 testimony that we heard today, I believe that  
2 the uniqueness that the applicant feels is the  
3 strongest that leads to the second prong. The  
4 practical difficulty is the fact that it's the  
5 smallest lot on the subject square.

6 In addition to what the applicant  
7 has stated, I believe the ANC raised some  
8 other features of the property that they feel  
9 could meet the uniqueness test. And that was  
10 the existence of the abundant public space  
11 that surrounds the south and east side of the  
12 subject property and the poor condition that  
13 it's in.

14 And thirdly, the ANC raised the  
15 fact that the subject property is in close  
16 proximity to a burgeoning commercial corridor  
17 in the Mount Pleasant area.

18 Stepping into the second prong of  
19 the variance test on whether the unique or  
20 extraordinary situation gives rise to a  
21 practical difficulty upon the applicant. As  
22 far as I can gather from the record and the

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1 testimony that was given today, the practical  
2 difficulty is that the small lot makes it  
3 practically difficult for the applicant to  
4 provide an adequate dining area.

5 It's a small lot. It's a small  
6 house. And they have a desire to have a more  
7 formal dining area, so that they can entertain  
8 friends and family.

9 Now, whether the three unique  
10 elements that were provided to us give rise to  
11 the practical difficulty, I guess, at this  
12 point, I'm not seeing the connection. So in a  
13 sense, I agree with DCOP.

14 And so if there is -- if the first  
15 prong does not give rise to the practical  
16 difficulty and the second prong essentially  
17 the variance test is not met, but just to  
18 finish out the variance test, and moving into  
19 the third prong with respect to impacts to the  
20 Zone Plan as well as the public good, I think  
21 the applicant has gone to great lengths to  
22 make sure that what is being proposed will fit

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1 in with the historic nature of the -- with  
2 Mount Pleasant.

3 I think they are proposing a good  
4 thing to reclaim the public space, to pave it,  
5 to make it much more lush instead of  
6 hardscaped. But I do see the potential here  
7 for visual impacts and impacts to light on the  
8 neighboring property.

9 The variance test does take a  
10 little bit broader look than the special  
11 exception in that we are talking about the  
12 public good and not just adjoining neighbors.

13 But certainly, Mr. Agboro is part of the  
14 public good. So I do see the potential for  
15 adverse impacts to the neighboring property.

16 In addition, I see a potential for  
17 safety issues that could result as -- that  
18 could result from this proposal. So at this  
19 point, I can turn it back to you, Mr.  
20 Chairman, and just state once again for the  
21 record that I'm not seeing that the variance  
22 test is met here.

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1                   CHAIRMAN LOUD:       Thank you, Mr.  
2                   Dettman. I'm viewing the evidence fairly in  
3                   the same manner that you are. I think the  
4                   applicant did an outstanding job of  
5                   demonstrating what the practical difficulty is  
6                   and I think that all of us have not -- I mean,  
7                   most of us, if not all of us, can empathize  
8                   with the smaller size of some of the homes in  
9                   the District and a growing family and wanting  
10                  to have your family together. And so I  
11                  thought they did a very good job on that  
12                  prong.

13                  But I think the evidence from the  
14                  Office of Planning was compelling about there  
15                  not being a unique situation here or  
16                  exceptional situation. And I think when Ms.  
17                  Thomas testified earlier, one of the things  
18                  she mentioned is that directly across from the  
19                  applicant's property, I think, I guess it  
20                  would be the 17<sup>th</sup> Street side, yeah, on the 17<sup>th</sup>  
21                  side that the lots are -- some of the lots are  
22                  as small as or even smaller than the

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1 applicants' lot.

2           So there was nothing unique  
3 necessarily about the size of it. The shape of  
4 it is rectangular-shaped. It is unfortunate,  
5 but we can't -- it's unfortunate in the sense  
6 that -- unfortunate for the applicant, but we  
7 can't pick and choose which of these elements  
8 to go with. We have to apply all of them.

9           And so while I think the  
10 applicant's case was strong with respect to  
11 practical difficulty and could have gone  
12 either way with respect to the substantial  
13 detriment to the public good, I don't think  
14 that they met the unique and exceptional  
15 situation part of the test.

16           So that's where I come out on it.

17           COMMISSIONER TURNBULL: Mr. Chair,  
18 I would concur with both your's and Mr.  
19 Dettman's explanation in going through this.  
20 And especially as representing the Zoning  
21 Commission, I'm very concerned about the Zone  
22 Plan and making sure it stays in tact.

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1                   And I agree with the Office of  
2 Planning and their analysis. I think the  
3 street, the lots she was referring to are not  
4 on 17<sup>th</sup>, but on the other street.

5                   And just looking at the plan, it  
6 looks like there are some -- you know, you've  
7 got a wide -- the street -- the ones across  
8 the street are actually wider, but they are a  
9 lot shorter. They are very short lots. I  
10 think 59 feet.

11                   So I mean, you've got a mix. I  
12 mean, the lots are what they are. And I --  
13 again, I agree with Mr. Dettman. I don't  
14 think that the applicant made his case for the  
15 uniqueness of the site as to what really -- I  
16 think the plans that were drawn, yes, do fit  
17 in with the character of the neighborhood and  
18 they would fit in with the house, but that's  
19 not what we are looking at.

20                   I mean, we want that, but there are  
21 -- more important is to make sure that they  
22 meet the variance test and can actually go

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1 back and show the uniqueness of why we would  
2 grant the variance. And I don't think they  
3 have really done that.

4 The light and -- you know, I talked  
5 about earlier about the light and air and, you  
6 know, sunlight studies, which we have received  
7 on several applications with decks and  
8 everything else. We have had several  
9 architects submit plans. I don't really need  
10 that here.

11 I think we know that yes, for the  
12 morning there is going to be shade on the deck  
13 and that by -- in the afternoon there is going  
14 to be sun, just because of the orientation of  
15 the lots.

16 So that was not clearly explained.

17 That was not clearly identified. And the  
18 response to the concerns were not really  
19 identified. And I think -- and I guess what--  
20 and as Mr. Dettman pointed out earlier in  
21 arguments is that the ANC's letter of approval  
22 did not clearly go through the right kind of

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1 procedure that we are used to seeing on  
2 getting approval for something like this.

3 It did not address the three prong  
4 test. So I -- in giving -- looking at that,  
5 how can we give the ANC's support great weight  
6 if they haven't really addressed the issues  
7 that are necessary to -- for us to grant the  
8 variance?

9 So I'm in agreement with both you  
10 and Mr. Dettman.

11 CHAIRMAN LOUD: Thank you, Mr.  
12 Turnbull. As I said earlier, it has been a  
13 full record, a full briefing, both on the  
14 written submissions and the testimony. So  
15 without further deliberation, is there a  
16 motion with respect to the matter?

17 VICE CHAIRMAN DETTMAN: Mr.  
18 Chairman, I would move to deny Application No.  
19 17919 of Richard Barnes and Janet Staihar,  
20 pursuant to 11 DCMR 3103.2, for a variance  
21 from the lot occupancy requirements under 403,  
22 and a variance from the rear yard requirements

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1 under section 404, and a variance from the  
2 nonconforming structure provisions under  
3 subsection 2001.1, to allow a rear addition to  
4 an existing one-family row dwelling in the R-4  
5 District located at 3150 17<sup>th</sup> Street, N.W.

6 CHAIRMAN LOUD: Motion second. The  
7 motion has been made and seconded.

8 All those in favor say aye.

9 ALL: Aye.

10 CHAIRMAN LOUD: All those opposed?  
11 All those abstaining? Ms. Bailey, can you  
12 read back the vote, please?

13 MS. BAILEY: Mr. Chairman, the vote  
14 is recorded as 3-0-2 to deny the application.

15 Mr. Dettman made the motion, Mr. Loud  
16 seconded, Mr. Turnbull supports the motion.  
17 Two Mayoral Appointees not sitting at this  
18 time.

19 CHAIRMAN LOUD: Thank you, Ms.  
20 Bailey. What I would like to do now, I thank  
21 the applicant and the ANC and the party  
22 opponent for your appearance here this

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1 morning. What I would like to do now is maybe  
2 take a maximum 5 minute break, just promise,  
3 for a hall conference and then come right back  
4 and finish up this morning's hearing agenda.

5 MS. BAILEY: Mr. Chairman, there  
6 were some photographs floating around. Do you  
7 still have those?

8 CHAIRMAN LOUD: I don't have them,  
9 but I can check.

10 MS. BAILEY: Does someone in the  
11 audience have those?

12 CHAIRMAN LOUD: Wait a minute. I  
13 think I do have them, Ms. Bailey. I do have  
14 them, Ms. Bailey. Okay. Thank you.

15 So can we adjourn for 5 minutes and  
16 be back here at exactly, let's say, 12:20 and  
17 resume with this morning's calendar.

18 (Whereupon, at 12:17 p.m. a recess  
19 until 12:26 p.m.)

20 CHAIRMAN LOUD: Good morning again.  
21 I believe we are still in the morning hearing  
22 calendar for May 12 and I don't think we need

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1 to -- I don't need to go through any special  
2 statements. Okay. So we can just resume  
3 where we were.

4 Welcome. I think Ms. Bailey is  
5 going to call the next case.

6 MS. BAILEY: Thank you, Mr.  
7 Chairman. Application 17920, this is the  
8 application of CHH Capital Hotel Partners LP,  
9 pursuant to 11 DCMR 3104.1 and 3103.2, for a  
10 special exception to allow the extension of  
11 the regulations applicable in a less  
12 restrictive zoning district to a more  
13 restrictive zoning district under subsection  
14 2514.2, and a variance from the 35 foot  
15 limitation on such extensions under subsection  
16 2514.2(a), for a hotel with ground floor  
17 retail and service uses. The property is  
18 split zoned C-4 and SP-2. It is located at  
19 premises 1001 16<sup>th</sup> Street, N.W., Square 198,  
20 Lot 39.

21 CHAIRMAN LOUD: Thank you, Ms.  
22 Bailey. That was an excellent summary of the

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1 case and the parties have stepped forward this  
2 morning. So why don't we ask you to just  
3 introduce yourselves for the record.

4 MR. JOHNSON: Good afternoon,  
5 Chairman Loud, Members of the Board. My name  
6 is Jeff Johnson with the Law Firm of Holland  
7 and Knight here on behalf of the applicant.  
8 Seated to my immediate right is Greg Brown,  
9 the general manager of the Capital Hilton.  
10 Seated to his right is Fred Kolek, who is the  
11 director of property operations at the hotel.  
12 And at the far end we have Steven E. Sher,  
13 Director of Zoning and Land Use Services at  
14 Holland and Knight.

15 CHAIRMAN LOUD: I think we have  
16 seen him a couple of times before. I do  
17 believe that -- just so you will know, our  
18 record is full. We have reviewed the  
19 pleadings and the submissions that were  
20 captured in the pleadings. I also understand  
21 that one of the witnesses may have to leave at  
22 12:45, but I think from our vantage point and

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1 I'll let Board Members weigh in as well, OP  
2 supports it, the ANC, which is ANC-2B,  
3 supports it.

4 Again, we have looked at the relief  
5 being requested, the variance test. So what  
6 you may want to do is just highlight the  
7 essential parts of your case and be prepared  
8 to answer questions that Board Members may  
9 have on one or more prongs of the variance  
10 test or whatever Board Members have questions  
11 on.

12 Mr. Turnbull and Mr. Dettman, can  
13 you weigh in on that?

14 COMMISSIONER TURNBULL: I'm fine  
15 with that.

16 CHAIRMAN LOUD: Okay. So then why  
17 don't we proceed again with the understanding  
18 that you don't have to repeat everything that  
19 has already been submitted through your  
20 submissions.

21 MR. JOHNSON: Well, thank you very  
22 much. With that, we will turn this over to

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1 Mr. Sher.

2 MR. SHER: Good afternoon, Mr.  
3 Chairman and Members of the Board. For the  
4 record, my name is Steven E. Sher, the  
5 Director of Zoning and Land Use Services with  
6 the Law Firm of Holland and Knight.

7 Two areas of relief, special  
8 exception and variance, both relate to the use  
9 of approximately 2,700 square feet on the  
10 ground floor at the southwest corner of the  
11 existing hotel building. Attached to the  
12 outline, which Mr. Moy just handed you, at the  
13 back, is an aerial photograph which shows the  
14 hotel in the center and the vicinity around  
15 it.

16 16<sup>th</sup> and K Streets, the heart of  
17 the downtown central employment area and an  
18 area that is Zoned C-4, but for the SP-2 strip  
19 along 16<sup>th</sup> Street and that area is shown on the  
20 Zoning Map, which is attached, behind Tab D of  
21 the applicant's prehearing submission.

22 We have attached as Tab C the

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1 Certification of Zoning which we received for  
2 -- from the Office of Zoning which shows, and  
3 I'm just holding it up for immediate  
4 reference, the location of the zone boundary  
5 line as it runs through this building.

6 The hotel was constructed in 1943,  
7 long before the present Zoning Regulations  
8 which date to 1958. In 1958, for reasons that  
9 frankly we have no idea why, the Zoning  
10 Commission drew a line through this building  
11 that starts at K Street 32 feet from the  
12 right-of-way of 16<sup>th</sup> Street. It goes up 45  
13 feet. It goes back 68 feet and then goes  
14 north through the square at a depth of 100  
15 feet. That line has no relationship to the  
16 existing building. It doesn't have any  
17 relationship to what goes on in the building.

18 Why it was drawn like that, we have  
19 no idea. Frankly, I have tried to research  
20 that before and could never find an  
21 explanation for it. There are no underlying  
22 lots that might have existed in 1958 that

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1 would have explained why that line was drawn  
2 that way.

3 And again, if you --

4 COMMISSIONER TURNBULL: Oh, sure,  
5 just blame it on the Zoning Commission.

6 MR. SHER: I'm blaming on the  
7 Zoning Commission. I don't have anybody else  
8 to blame it on. But it's just the reason for  
9 that is unknown to me.

10 And if you look at the Map under  
11 Tab D, you will see that the zone boundary  
12 line generally has a greater depth along 16<sup>th</sup>  
13 Street, but right there at that corner and  
14 actually on the opposite side of the street as  
15 well, there is another little indentation that  
16 comes up, but it is at slightly different  
17 dimensions.

18 The second piece that I would like  
19 you to -- or third piece, at this point, is to  
20 look at the plan of -- partial plan of the  
21 hotel first floor, ground floor, which is  
22 behind Tab F of the applicant's prehearing

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1 submission and it looks like this.

2 And what that shows is the area of  
3 that ground floor with the zone boundary line  
4 running through it, the area that is in blue  
5 is the area that we would like to use for  
6 retail or service uses by extending the  
7 provisions of the C-4.

8 And the area to the north of that  
9 yellow line that runs through that blue area  
10 is the area beyond 35 feet. So everything  
11 south of that line would be permitted by  
12 special exception. The area north of that  
13 line, which is an area of about 550 square  
14 feet out of the total 2,710, requires the  
15 variance.

16 The criteria for the special  
17 exception are set forth in section 2514 and we  
18 have addressed those both in the written  
19 statement and in the outlying. What is  
20 important about this is that the extension is  
21 only to -- with respect to the use on the  
22 ground floor. We are not seeking to change

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1 the height, FAR or any of the other provisions  
2 of the SP-2 Zone by extending the C-4 into it.

3 As I'm sure the Board is aware, K  
4 Street is one of the prime commercial streets  
5 through that golden triangle section of  
6 downtown and what we are seeking to do is to  
7 use that corner of the building for retail,  
8 much as retail extends both east and west of  
9 that site.

10 We are not proposing to make any  
11 changes to the exterior of the building with  
12 the possible exception of some signs, which  
13 would all be subject to review by the Historic  
14 Preservation Review Board, because the hotel  
15 is in the 16<sup>th</sup> Street Historic District.

16 We don't have a tenant for that  
17 space. We don't know what those signs would  
18 look like. But they would be subject to  
19 review by HPRB, so we don't think there is any  
20 reason for the Board to be particularly  
21 concerned about that.

22 The buildings on the opposite sides

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1 of the street at the southwest corner of the  
2 hotel have either a restaurant or retail space  
3 available on the ground floor. Directly to  
4 the south across K Street is the St. Regis  
5 Washington Hotel whose restaurant faces north  
6 onto K Street.

7 Diagonally across the street is the  
8 World Center Building which has the restaurant  
9 Olives and a Starbucks on the ground floor.  
10 And across 16<sup>th</sup> Street to the west is the  
11 building which was a PUD that replaced the  
12 Solar Building, which has designated retail  
13 space on that corner of 16<sup>th</sup> and K. I don't  
14 think it is actually being used that way right  
15 now, but it is approved for retail use on that  
16 corner.

17 We do not intend to cut any  
18 entrances into the building from 16<sup>th</sup> Street.  
19 We don't intend to make any use of the space  
20 outside the hotel on 16<sup>th</sup> Street. The face of  
21 the hotel is actually 10 feet back from the  
22 property line. So there is some private space

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1 along there and then you've got the public  
2 space and the right-of-way of 16<sup>th</sup> Street,  
3 which is 160 feet wide. But the retail would  
4 be entirely within the building. And if there  
5 are any signs, again, they would be subject to  
6 HPRB.

7 With respect to the variance, what  
8 happens is when you take the space as shown  
9 south of that 35 foot line, you've got this  
10 550 square foot space left over. It is  
11 bounded by the retail space on one side, by  
12 the wall of the hotel on the other, by a stair  
13 going up and a stair going down to the north  
14 and it becomes a relatively isolated part of  
15 the hotel.

16 In fact, this part of the hotel  
17 has, basically, not been used for any hotel  
18 purpose for many years. At one point in time,  
19 there were a number of airline ticket offices  
20 in this location, since airlines have  
21 generally done away with downtown ticket  
22 offices, I mean, at one point I remember,

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1 because I worked on the next block, Delta,  
2 Northwest, United and American all had ticket  
3 offices right in this location, but nobody  
4 does that any more. You go on-line and book  
5 your tickets that way, so they don't have  
6 downtown ticket offices.

7 But the hotel has, essentially, not  
8 used this space for hotel-related purposes and  
9 we're not here to argue a use variance. We  
10 don't need to get that far, but there has been  
11 no realistic way that the hotel would have use  
12 for that 550 square feet, which is isolated  
13 from the rest of the hotel lobby once you put  
14 the retail in where we can get the special  
15 exception for it.

16 So for those reasons, we believe  
17 that the exceptional condition results from  
18 the location of the zone boundary line, the  
19 interior configuration of the hotel, the  
20 practical difficulty is to find a use that is  
21 -- that -- for that space where the hotel  
22 doesn't really have one at the moment.

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1           The no detriment to the public good  
2 would be that we are not changing the height  
3 or density of the building. The space for  
4 retail is compatible with adjoining spaces and  
5 with spaces along K Street.

6           And for all of those reasons, we  
7 believe we met the test for both the variance  
8 and the special exception. And we are happy  
9 to answer any questions the Board may have.

10           CHAIRMAN LOUD: Thank you, Mr.  
11 Sher. Board Members, any questions for Mr.  
12 Sher? I think they are reviewing their notes.  
13 There appear to be no questions from Mr.  
14 Dettman. I think -- yes.

15           COMMISSIONER TURNBULL: Just going  
16 through your -- the drawing under Tab F where  
17 it shows the SP-2 and C-4. The actual piece  
18 you are asking for is -- I guess I looked at  
19 the Office of Planning report. You are  
20 basically extending the one -- are you going  
21 in two directions or just one?

22           MR. SHER: We're basically going in

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1 two. We are going west and north.

2 COMMISSIONER TURNBULL: West and  
3 north.

4 MR. SHER: And as you can see, the  
5 35 foot dimension there becomes a piece of an  
6 arc at the corner and then it's about -- the  
7 extension on the north end runs about -- I had  
8 that number in my head and I lost it. It is  
9 49 feet from -- on the east side and 56 feet  
10 on the west side because of that arc.

11 COMMISSIONER TURNBULL: Right.  
12 Okay. Thanks.

13 CHAIRMAN LOUD: I just had one  
14 really quick question and it's more strategy  
15 as opposed to the merits of the case. Could  
16 you not have just requested a variance for the  
17 entire 2,710 square feet? And I realize that  
18 had you done that, it would have been riskier,  
19 because if you didn't prevail on the variance,  
20 you would not have gotten the portion of this  
21 that is achievable through the special  
22 exception.

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1                   But just conceptually, I'm just  
2 trying to understand, because you have  
3 requested that from the very beginning.

4                   MR. SHER: I think we could have.  
5 I think that probably winds up being a use  
6 variance and I don't think we need to -- we  
7 certainly didn't want to get to there if we  
8 didn't have to get there. And since 2514  
9 provides specific provisions where a boundary  
10 line does cross the lot and gives the Board  
11 some standards for that, the only issue is  
12 whether we ought to be entitled to go the  
13 additional 14 to 21 feet to get that, our  
14 theory, on the north.

15                   I think the Board is aware that in  
16 a special exception case, the regs pre-deem  
17 that to be compatible on an applicant who  
18 meets the burden, the showing under the  
19 regulations is entitled to that approval. We  
20 think we have met that showing and, therefore,  
21 are entitled. So we are not then left with  
22 550 square feet and what do we do with it.

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1                   CHAIRMAN LOUD:     No, I understand  
2                   that.  And again, it makes sense both in terms  
3                   of the use variance and also the special  
4                   exception being deemed compatible already.  So  
5                   thank you very much.  I don't think that there  
6                   are any questions from Board Members.

7                   Why don't we turn to the Office of  
8                   Planning for your report?

9                   MR. GOLDSTEIN:  Good afternoon, Mr.  
10                  Chairman and Members of the Board.  I can keep  
11                  my testimony brief.  Just to say that the  
12                  Office of Planning recommends approval of the  
13                  requested special exception and variance  
14                  relief.  We did identify two conditions that  
15                  we would urge the Board to impose.

16                  The applicant has not asked for  
17                  anything contrary to these conditions.  It was  
18                  just to get it in the record and in the order.

19                  They both go to the -- how the building or  
20                  the new space interacts with 16<sup>th</sup> Street.  One,  
21                  that there be no new entrance to the service  
22                  area, to the service or retail use.  And the

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1 other is that there be no actual use of the  
2 front yard or public space.

3 As you have heard already in  
4 testimony, the applicant is not opposing that  
5 or is proposing anything contrary to it. But  
6 we were hoping to get that into the order for  
7 the case.

8 If you have any additional  
9 questions for me about my report, I can  
10 certainly answer them at this time. Thank  
11 you.

12 CHAIRMAN LOUD: Thank you. And it  
13 was an excellent report. It's at our Exhibit  
14 26 and we did review it. Board Members, any  
15 questions for the Office of Planning?

16 VICE CHAIRMAN DETTMAN: Just one  
17 quick question, Mr. Chairman. Good afternoon,  
18 Mr. Goldstein. The two kind of, I'll call  
19 them, conditions that you are proposing that  
20 you just described, what are you trying to  
21 accomplish by having those in the order?

22 MR. GOLDSTEIN: We're trying to

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1 accomplish the pattern that goes along 16<sup>th</sup>  
2 Street. That has -- as the Comprehensive Plan  
3 refers to it, it's kind of a ceremonial  
4 gateway to the White House. What you see is  
5 quite a lot of green space along 16<sup>th</sup> Street.

6 And I don't think you see much in  
7 the way of retail fronting or visibly fronting  
8 16<sup>th</sup> Street with a couple exceptions. When the  
9 Solar Building PUD was approved a few years  
10 ago, there was also conditions on how it  
11 looked from 16<sup>th</sup> Street. We are just simply  
12 trying to continue that pattern.

13 Also, it's recognizing particularly  
14 with the entryway concerns that Historic  
15 Preservation could have in the future if it  
16 was asked, if it was ever asked that there be  
17 an additional entrance along that space. So  
18 it's partly from Historic Preservation, party  
19 to continue the pattern that you see along 16<sup>th</sup>  
20 Street.

21 VICE CHAIRMAN DETTMAN: And if the  
22 applicant eventually somewhere down the road

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1 was to consider doing a new entrance on 16<sup>th</sup> or  
2 the use of the public space, that would  
3 trigger HPRB as well as Public Space review?

4 MR. GOLDSTEIN: I believe if they  
5 wanted a new entrance, and I shouldn't say  
6 this definitively, that that would come  
7 through HPRB's review. There is two different  
8 parts of the front along 16<sup>th</sup> Street. One is  
9 their front yard, which is about 10 feet, and  
10 then the second is the public space.

11 I assume that the public space  
12 component would come through the Public Space  
13 Committee, if they intended to use it for a  
14 retail or service use. The 10 feet of front  
15 yard space, I believe, would not be reviewed.

16 VICE CHAIRMAN DETTMAN: Is there  
17 any reason why those two review mechanisms  
18 couldn't accomplish the same things you are  
19 looking to with a proposed condition in the  
20 order?

21 MR. GOLDSTEIN: I think for the  
22 public space portion and the entryway portion

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1 probably, yes. This is really just to get  
2 ahead of possible issues in the future and  
3 just to set it out as the rights directly in  
4 the order.

5 But yes, I think that the entryway,  
6 I think, would be subject to HPRB review,  
7 that's my sense of it. And then beyond the 10  
8 feet if you continue going out, I believe that  
9 would be a Public Space review.

10 CHAIRMAN LOUD: Thank you, Mr.  
11 Dettman. Do the parties -- does the party,  
12 rather, have any questions for the Office of  
13 Planning?

14 MR. SHER: No, we don't.

15 CHAIRMAN LOUD: Okay. Then we  
16 would now normally move to the report of the  
17 ANC and there is no ANC present. However, in  
18 our record at Exhibit No. 23, there is an ANC  
19 report. And in the ANC report it notes that a  
20 duly noticed public meeting with a quorum in  
21 place was held March 11, 2009 and that ANC-2B  
22 voted 9-0 to support BZA Application No. 17920

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1 or special -- it says special exemption, I  
2 think they meant special exception and  
3 variance relief to allow use of ground floor  
4 of Capital Hilton for retail and service uses.

5 So that report is entitled to great  
6 weight under our rules and we'll give it great  
7 weight under our rules.

8 We would now move to any parties or  
9 persons in support of the application. None  
10 in the room. Any parties or persons in  
11 opposition? Also there appearing to be none  
12 in the room. We would now go to closing  
13 remarks by the applicant.

14 MR. JOHNSON: No closing remarks,  
15 just thank you very much.

16 CHAIRMAN LOUD: Thank you for your  
17 presentation this morning. Thank you for your  
18 patience as well. And as I said, I think the  
19 record was briefed very well, even before the  
20 testimony.

21 We have a couple of options. We  
22 can schedule this for a decision, maybe get

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1 you on in November or December of '09 or we  
2 can deliberate this morning. Let me see what  
3 Board Members would like to do.

4 I'm hearing strong, strong, strong  
5 preference for scheduling this for December of  
6 '09 for decision. But I'm going to overrule  
7 that and I think we are ready to deliberate  
8 this morning. And I think I'll turn to Mr.  
9 Dettman who is going to walk us through the  
10 deliberation.

11 VICE CHAIRMAN DETTMAN: Thank you,  
12 Mr. Chairman. I think this can be very brief.

13 The applicant is requesting two areas of  
14 relief as testified to by Mr. Sher. Special  
15 exception under 2514.2 and, in a sense, that's  
16 simply to extend the use provisions of the C-4  
17 District into the abutting SP-2 District.

18 And I could just -- I can rely upon  
19 DCOP's report with respect to the special  
20 exception and say that the provisions of  
21 2514.2 are met, with the exception of  
22 2514.2(a) which is the second area of relief

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1 that the applicant is asking for, a variance  
2 from the 35 foot limitation on the extension  
3 of the use provisions into the SP-2.

4 2514.2(b) is not applicable to this  
5 application. 2514.2(d) "The Board may impose  
6 requirements pertaining to design, appearance  
7 and screening." The Office of Planning  
8 doesn't see a need for any additional --  
9 anything there. I would certainly agree with  
10 them.

11 So I would say that the  
12 requirements for the special exception have  
13 been met. And I can step into the variance  
14 test. And again, pulling heavily from OP's  
15 great report and the testimony that was  
16 provided today, with respect to the first  
17 prong of the variance test, whether there is a  
18 specific uniqueness or exceptional condition  
19 that exists at the property that gives rise to  
20 a practical difficulty, we heard from the  
21 applicant today that it is kind of a  
22 confluence of factors, one being the location

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1 of the zoning boundary line that was drawn  
2 after this building had actually been  
3 constructed.

4 I don't remember the actual number  
5 of years. I think maybe 15 years after the  
6 building was constructed. The interior  
7 configuration of the hotel, the boundary line  
8 was drawn with no consideration for that. And  
9 so it's the applicant's testimony that those  
10 unique conditions give rise to the practical  
11 difficulty and that by applying this 35 foot  
12 limitation from the common boundary, zoning  
13 boundary line, it creates this relatively  
14 isolated space in the hotel, which is bounded  
15 by -- will be bounded by the proposed retail  
16 in the south, a stair on the north, the  
17 exterior wall in the west as well as what  
18 looks like probably the front desk, front  
19 lobby area.

20 In a sense, that space is going to  
21 be again isolated. It can't be reconfigured  
22 or reportioned in a manner that could be

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1 put to an effective SP-2 use. So I think that  
2 the first two prongs of the variance test are  
3 met there.

4 And just finishing out with the  
5 third prong, adverse impacts to the general  
6 public -- the public good, I'm sorry, and the  
7 Zone Plan. The applicant testified that they  
8 are not contemplating any change to the  
9 exterior of the building, except for maybe  
10 some signage, which will be required to be  
11 reviewed by HPRB anyway.

12 They are only extending the use  
13 provisions of the C-4 at the ground floor  
14 level. No additional height or bulk is being  
15 proposed anywhere on the building. And again,  
16 the use provisions are only going to happen at  
17 the ground floor.

18 And finally, they are not proposing  
19 any use of the public space outside the  
20 proposed retail space along 16<sup>th</sup> Street. So  
21 it's pretty clear to me that the variance test  
22 is made here.

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1                   CHAIRMAN LOUD:       Thank you, Mr.  
2                   Dettman. Further discussion on the case? Mr.  
3                   Dettman, did you go into -- I know you had an  
4                   exchange with the Office of Planning regarding  
5                   the proposed conditions. And I think in  
6                   response to some of your questions, OP more or  
7                   less conceded that some of the -- their  
8                   concerns, their two basic concerns would be  
9                   addressable through other processes.

10                   Did you have any thoughts on those  
11                   conditions in terms of --

12                   VICE CHAIRMAN DETTMAN: Um, yeah, I  
13                   think in reviewing the record, I wasn't sure  
14                   what utility these two conditions would serve,  
15                   because I can't really see what they would be,  
16                   at first and see what they would be,  
17                   mitigating. And what I wanted to make sure is  
18                   that if the ground floor retail gets in there  
19                   and it just turns out that for whatever reason  
20                   it's not doing well and that a new entrance or  
21                   additional signage or maybe a cafe along 16<sup>th</sup>  
22                   would be useful, it would trigger these

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1 additional review authorities.

2 And if HPRB did happen to find out  
3 that a new entrance along 16<sup>th</sup> Street, you  
4 know, would be compatible in the Historic  
5 District and they were inclined to improve it,  
6 they wouldn't be able to do it, because we  
7 have this condition in the zoning order.

8 I'm comfortable relying upon the  
9 other review authorities that are out there  
10 with respect to what is being proposed here,  
11 although I do understand Mr. Goldstein's point  
12 to the 10 feet that is in front of the  
13 building that I guess wouldn't trigger any  
14 review authority.

15 So I don't know, I'm still kind of  
16 inclined to just let it go and not have the  
17 conditions in it. But I'll defer to you and  
18 Mr. Turnbull on that.

19 CHAIRMAN LOUD: Well, my thought  
20 just again witnessing the exchange between you  
21 and OP is that the other review authorities  
22 could address those contingencies very well

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1 and indeed are probably set up and in some  
2 respects have more expertise than we do to  
3 address some aspects of the whole ceremonial  
4 gateway to the White House type consideration.

5 So I would be in favor of not  
6 imposing those conditions in whatever we  
7 decide to do this morning for the reasons you  
8 just articulated, so that we don't tie their  
9 hands.

10 Is there further deliberation? Is  
11 there a motion?

12 VICE CHAIRMAN DETTMAN: I would  
13 move for approval of Application No. 17920 of  
14 CHH Capital Hotel Partners LP, pursuant to 11  
15 DCMR 3104.1 and 3103.2, for a special  
16 exception to allow the extension of the  
17 regulations applicable in a less restrictive  
18 zone district to a more restrictive zone  
19 district under subsection 2514.2, and a  
20 variance from the 35 feet limitation on such  
21 extensions under subsection 2514.2(a), for a  
22 hotel with ground floor retail and service

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1 uses in the C-4, SP-2 Districts at -- located  
2 at 1001 16<sup>th</sup> Street, N.W.

3 CHAIRMAN LOUD: Second the motion.  
4 Further deliberation? Hearing none, the  
5 motion has been made and seconded.

6 All those in favor say aye.

7 ALL: Aye.

8 CHAIRMAN LOUD: All those opposed?  
9 Any abstentions? Ms. Bailey, can you call  
10 the vote, please?

11 MS. BAILEY: Mr. Chairman, the vote  
12 is recorded as 3-0-2 to grant the application.

13 Mr. Dettman made the motion, Mr. Loud  
14 seconded, Mr. Turnbull supports the motion.  
15 Two Mayoral Appointees not sitting at the  
16 Board at this time.

17 Mr. Chairman, are we doing a  
18 summary order?

19 CHAIRMAN LOUD: I think we can do a  
20 summary order in this case. And I think out  
21 of an abundance of caution, we want to mention  
22 the ANC report. I think we mentioned it

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1 earlier when we came to that part of the  
2 discussion where they would normally give  
3 their report and the fact that it is accorded  
4 great weight.

5 But in the deliberation part, we  
6 didn't mention it specifically, so I think we  
7 want to just include reference to it as  
8 Exhibit 23 and they fully support the project  
9 as well.

10 MS. BAILEY: Thank you, sir.

11 CHAIRMAN LOUD: Thank you, Madam.  
12 So is that it for this morning?

13 MS. BAILEY: That's it for the  
14 morning, Mr. Chairman.

15 CHAIRMAN LOUD: Okay. We will do a  
16 summary order. And the meeting is adjourned.

17 MS. BAILEY: Thank you.

18 CHAIRMAN LOUD: All right. Thank  
19 you. And thank you.

20 (Whereupon, the Public Hearing was  
21 recessed at 12:54 p.m. to reconvene at 1:54  
22 p.m. this same day.

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

2 1:54 p.m.

3 CHAIRMAN LOUD: Good afternoon.

4 This hearing will, please, come to order.

5 This is the May 12<sup>th</sup> Public Hearing of the

6 Board of Zoning Adjustment of the District of

7 Columbia. My name is Marc Loud, Chairperson

8 of the BZA. Joining me today are Vice Chair,

9 Shane Dettman, representing the National

10 Capital Planning Commission, Mr. Greg Jeffries

11 representing the Zoning Commission. To my

12 left taking his seat is Mr. Clifford Moy,

13 Secretary of the BZA, Ms. Sherry Glazer from

14 the Office of Attorney General and Ms.

15 Beverley Bailey, Zoning Specialist in the

16 Office of Zoning.

17 Copies of today's hearing agenda

18 are available to you and are located to my

19 left in the wall bin near the door. Please,

20 be aware that this proceeding is being

21 recorded by a Court Reporter and is also

22 webcast live. Accordingly, we must ask you to

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1 refrain from any disruptive noises or actions  
2 in the hearing room.

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

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

18           The order of procedure for special  
19 exceptions and variances is not applicable to  
20 this afternoon's hearing, so I'll skip that  
21 section and go straight to the order procedure  
22 for appeal applications, which is as follows:

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1 The statement and witnesses of the appellant,  
2 the Zoning Administrator or other Government  
3 officials case, the case for the owner, lessee  
4 or operator of the property involved, if not  
5 the appellant, the ANC within which the  
6 property is located, the intervenor's case, if  
7 permitted by the Board and then the rebuttal  
8 and closing statement by the appellant.

9 Pursuant to sections 3117.4 and  
10 3117.5, the following time constraints will be  
11 maintained: The applicant, appellant, persons  
12 and parties, except an ANC, in support,  
13 including witnesses, are allotted 60 minutes  
14 collectively. The appellees, persons and  
15 parties, except an ANC, in opposition,  
16 including witnesses, are allotted 60 minutes  
17 collectively as well. And individuals are  
18 allotted 3 minutes.

19 These time constraints do not  
20 include cross examination and/or questions  
21 from the Board. Cross examination of  
22 witnesses is permitted by the applicant or

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1 parties. The ANC within which the property is  
2 located is automatically a party in a special  
3 exception or variance case.

4 Nothing prohibits the Board from  
5 placing reasonable restrictions on cross  
6 examination, including time limits and  
7 limitations on the scope of cross examination.

8 The record will be closed at the  
9 conclusion of each case, except for any  
10 material specifically requested by the Board.

11 The Board and the staff will specify at the  
12 end of the hearing exactly what is expected  
13 and the date when the persons must submit the  
14 evidence to the Office of Zoning. After the  
15 record is closed, no other information will be  
16 accepted by the Board.

17 The Sunshine Act requires that the  
18 Public Hearing on each case be held in the  
19 open before the public. The Board may,  
20 consistent with it's Rules of Procedure and  
21 the Sunshine Act, enter Executive Session  
22 during or after the Public Hearing on a case

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1 for purposes of reviewing the record or  
2 deliberating on the case.

3 The decision of the Board in these  
4 contested cases must be based exclusively on  
5 the public record. To avoid any appearance to  
6 the contrary, the Board requests that persons  
7 present not engage the Members of the Board in  
8 conversation.

9 Please, turn off all beepers and  
10 cell phones, at this time, so as not to  
11 disrupt these proceedings.

12 The Board will make every effort to  
13 conclude the Public Hearing as near as  
14 possible to 6:00 p.m. If the afternoon case  
15 is not completed at 6:00 p.m., the Board will  
16 assess whether it can complete the case or  
17 cases that remain for the day.

18 At this time, the Board will  
19 consider any preliminary matters. Preliminary  
20 matters are those that relate to whether a  
21 case will or should be heard today, such as  
22 requests for postponement, continuance,

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1 withdrawal or whether proper and adequate  
2 notice of the hearing has been given. If you  
3 are not prepared to go forward with a case  
4 today or if you believe that the Board should  
5 not proceed, now is the time to raise such a  
6 matter.

7 Does the staff have any preliminary  
8 matters?

9 MS. BAILEY: Mr. Chairman, good  
10 afternoon to everyone.

11 CHAIRMAN LOUD: Good afternoon.

12 MS. BAILEY: There is a preliminary  
13 matter from DCRA to dismiss the appeal, Mr.  
14 Chairman, but it's the -- the appeal is the  
15 only case for the afternoon, so staff is going  
16 to suggest that we call the case and then DCRA  
17 can take that matter up at that time.

18 CHAIRMAN LOUD: I think that's a  
19 great suggestion, Ms. Bailey. So why don't we  
20 do that?

21 MS. BAILEY: This is Appeal No.  
22 17915 of Jonathon Bolduc, pursuant to 11 DCMR

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1 section 3100 and 3101, from a March 25, 2008,  
2 zoning compliance letter from the Director of  
3 the Department of Consumer and Regulatory  
4 Affairs allowing the construction of a porch  
5 addition under Building Permit No. B466306.  
6 The property is located at 1433 Parkwood  
7 Place, N.W. It is Square 2688, Lot 64. It is  
8 Zoned R-5-B.

9 Mr. Chairman, just very quickly,  
10 may I swear the witnesses in?

11 CHAIRMAN LOUD: Yes, please.

12 MS. BAILEY: As a preliminary  
13 matter.

14 CHAIRMAN LOUD: Thank you.

15 MS. BAILEY: All those wishing to  
16 testify, please, stand to take the oath.  
17 Please, raise your right hand.

18 (Whereupon, the witnesses were  
19 sworn.)

20 MS. BAILEY: Thank you.

21 CHAIRMAN LOUD: Thank you, Ms.  
22 Bailey. Can the parties approach the table

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1 set forth in front of the room? And we will  
2 begin and you can introduce yourselves for our  
3 record, if you are a party. Good afternoon.

4 MR. HAWKINS: Good afternoon.

5 CHAIRMAN LOUD: We can proceed from  
6 my left, I guess, to my right. It doesn't  
7 matter. I don't think your microphone is on,  
8 Mr. Hawkins.

9 MR. HAWKINS: There.

10 CHAIRMAN LOUD: There we go.

11 MR. HAWKINS: My name is Don  
12 Hawkins. I live at 1220 North Vernon Street,  
13 Arlington, Virginia. I'm here to represent my  
14 daughter and son-in-law, Sarah Hawkins and  
15 Jonathon Bolduc, who are the residents of 1435  
16 Parkwood Place.

17 CHAIRMAN LOUD: Good afternoon.

18 ZONING ADMIN. LeGRANT: I am  
19 Matthew LeGrant. I'm the Zoning Administrator  
20 for the District of Columbia.

21 CHAIRMAN LOUD: Good afternoon, Mr.  
22 LeGrant.

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1 MS. PARKER-WOOLRIDGE: Good  
2 afternoon. My name is Doris A. Parker-  
3 Woolridge. I'm the Assistant Attorney General  
4 for DCRA.

5 CHAIRMAN LOUD: Good afternoon.

6 MS. MADDOX-LEVINE: And my name is  
7 T. Gail Maddox-Levine, also with the District  
8 Department of Consumer and Regulatory Affairs.

9 CHAIRMAN LOUD: Thank you. I do  
10 believe as Ms. Bailey had indicated that there  
11 is a preliminary matter of a motion to dismiss  
12 that was filed by the DCRA and we have had the  
13 opportunity to review it. And the way we are  
14 going to proceed, because for us that's a  
15 jurisdictional issue, whether or not it is  
16 timely filed, and we would lack jurisdiction  
17 if it was not timely filed, so we would like  
18 to proceed in that order.

19 We would like to review the issue  
20 of the timeliness of the appeal and whether it  
21 was filed within the time period allowed for  
22 by our Rule 3112.2. And having heard that

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1 evidence, then we will make a decision on what  
2 to do after that.

3 So we are going to start with that.

4 I believe it is your motion, DCRA, I'm sorry,  
5 so we will ask you to start us off. But let  
6 me just say that the test in the rule that we  
7 are looking at is in 3112.2, subsection D 1  
8 and 2. And I'm going to read it briefly, so  
9 that everyone will know what your testimony  
10 and any information you want to put in the  
11 record has to relate back to.

12 The Board may extend the 60 day  
13 deadline for the filing of an appeal only if  
14 the appellant demonstrates that there are  
15 exceptional circumstances that are outside of  
16 the appellant's control and could not have  
17 been reasonably anticipated that substantially  
18 impaired the appellant's ability to file an  
19 appeal to the Board.

20 And secondly, the extension of time  
21 will not prejudice the parties to the appeal  
22 as identified in section 3199.1, in this case,

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1 that would be the DCRA and the appellant.

2 So we are looking at that question  
3 and we are looking at that test to get us  
4 started off. And since you moved for  
5 dismissal, you have the burden. And of  
6 course, with a motion to dismiss, all  
7 inferences are drawn in favor of the non-  
8 moving party, because it is an extraordinary  
9 basis for relief.

10 And so we will do that here. We  
11 won't get into a lot of factual evidence,  
12 because you don't do that with a motion to  
13 dismiss. You're saying it falls flat on its  
14 face just based on the pleading. So we will  
15 get into that.

16 And before we start it, I'll just  
17 ask Board Members if they want to weigh in at  
18 all before we get started? Okay. Why don't  
19 we start then and I'll turn it over to you,  
20 DCRA.

21 MS. MADDOX-LEVINE: Thank you,  
22 Chairman Loud. Just if I might, regarding the

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1 other preliminary matter, which you stated  
2 that the Board will make every effort to  
3 conclude by 6:00 p.m., if the Board does  
4 decide to have the proceedings go longer than  
5 6:00, I would ask that you would consider the  
6 fact that counsel and, I'm not certain of,  
7 some witnesses as well rely on public  
8 transportation and would very much appreciate  
9 it if the Board could conclude by 9:00 p.m.,  
10 if at all possible.

11 And regarding the motion to dismiss  
12 --

13 CHAIRMAN LOUD: We have no  
14 intention of being here until 9:00.

15 MS. MADDOX-LEVINE: I've been here  
16 until 12:00, Chairman Loud, so I just wanted  
17 to see if that was a consideration that the  
18 Board would entertain if you decided to go  
19 beyond 6:00 p.m.

20 CHAIRMAN LOUD: Thank you.

21 COMMISSIONER JEFFRIES: It's a  
22 brave new world.

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1                   CHAIRMAN LOUD: I appreciate that.  
2           But given that it's 2:00 now, we have no  
3           intention of being here at 9:00.

4                   MS. MADDOX-LEVINE: Thank you,  
5           Chairman Loud.

6                   CHAIRMAN LOUD: So you can proceed  
7           forward.

8                   MS. MADDOX-LEVINE: All righty. On  
9           April 24, '09, the District, of course, filed  
10          its motion to dismiss. Mr. Bolduc is the  
11          appellant and he lives right next door to the  
12          property at issue in this appeal. On May 4,  
13          '09, Mr. Bolduc filed what he termed his  
14          additional submission, which may or may not  
15          have been in response to the District's  
16          motion. However, the District will address  
17          certain issues that were raised in that  
18          submission as well.

19                   Appellant states that the District  
20          failed to address the issue he is bringing  
21          before the Board. Yet, the appellant  
22          continues to reframe the basis for his appeal

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1 in every new submission.

2 On November 20, 2008, appellant  
3 states that he is appealing three different  
4 things. The "unauthorized administrative  
5 decision relative to Building Permit 466306,"  
6 that the oversized addition interferes with  
7 the light and air available to him and his  
8 family and that the addition is contrary to a  
9 series of different Zoning Regulations,  
10 specifically, 11-403.2, 405.3, 405.6 and  
11 405.9.

12 On May the 4<sup>th</sup>, appellant states  
13 that he is appealing a fraudulent existing  
14 porch dimension which the owner supplied to  
15 DCRA. Although the appellant has restated the  
16 basis of his appeal in several ways, one thing  
17 has remained consistent. He has constantly  
18 failed to bring any cause of action to this  
19 Board while it still had power to entertain it  
20 pursuant to DCMR 11-3112.2.

21 And the appellant cites many  
22 different excuses for his delay in filing his

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1 appeal regarding the 2004 permit at issue in  
2 this case. And I'm just going to count off  
3 the excuses.

4 (1) A loss or incompliance with  
5 this 2008 FOIA request, which is irrelevant,  
6 because the mere -- because he merely had to  
7 file his appeal within 60 days to preserve his  
8 appellate rights, not to provide emails or  
9 documents to prove his case. That's what the  
10 hearing is for.

11 (2) He cites a concern that his  
12 "pursuit of fairness" might further antagonize  
13 his neighbors. This is also an -- irrelevant  
14 and questionable as in many emails and in his  
15 initial appeal and most recently in his filing  
16 on May 4<sup>th</sup> with this Board, the appellant  
17 verbally attacks the homeowner, her friend and  
18 her son with no apparent concern for the  
19 effect his words will have on his neighbors.

20 (3) Don Hawkins role as a caregiver  
21 for his mother.

22 And (4) Don Hawkins role as

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1 executor for his mother's estate.

2 While the District is completely  
3 sympathetic to the strain, heartache and  
4 personal loss of Mr. Hawkins during such a  
5 difficult time in his life, his personal set  
6 of circumstances is irrelevant as to why Mr.  
7 Bolduc failed to either get another  
8 representative to file his appeal or why Mr.  
9 Bolduc failed to file the appeal himself to  
10 preserve his right before this Board.

11 (5) He cites the collapse of the  
12 International Credit Market, which is complete  
13 irrelevant.

14 (6) He cites appellants -- the fact  
15 that appellant considered themselves bound by  
16 an agreement not to lodge complaints against  
17 inept bureaucrats.

18 The reason offered by the appellant  
19 is not only a misrepresentation of the facts,  
20 but is negated by the fact the appellant  
21 continued to lodge complaints with DCRA  
22 throughout this project.

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1           But regardless of what the  
2 appellant believes, what is before the Board  
3 is very simple. On October 1, 2004, Building  
4 Permit No. 446306 was issued, which allowed  
5 Ms. Wright to renovate her single-family  
6 dwelling as per the plans. These plans  
7 included the renovation of her pre-existing  
8 porch.

9           On March 25, 2008, Director Linda  
10 Argo sent a letter to the appellant stating  
11 that the porch was, in fact, built in  
12 compliance with the permit that was issued in  
13 2004.

14           On November 3, 2008, the appeal was  
15 filed regarding Director Argo's administrative  
16 decision. The District submits that the  
17 appeal is without merit, in any case, because  
18 if Mr. Bolduc seeks to file his appeal to  
19 challenge the '04 permit, he is over 1,400  
20 days late and this Board is without  
21 jurisdiction to even consider it.

22           On the other hand, if Mr. Bolduc

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1 seeks to file his appeal to challenge the  
2 March 25, '08 letter, he must -- he  
3 misunderstands what that letter was. It was  
4 not a matter that was appealable under DCMR  
5 11-3100.2. In other words, it wasn't an  
6 order, a requirement, a decision or  
7 determination or refusal.

8 What it was was a confirmation from  
9 the Director that the zoning approval that was  
10 already provided under the 2004 permit -- it  
11 was a confirmation that what was provided --  
12 what was constructed under the 2004 permit was  
13 in compliance and it was also a notice to him  
14 that the many, many inspections that were  
15 initiated by the many, many complaints that he  
16 lodged with DCRA were over. And as such,  
17 those matters are not appealable to this  
18 Board.

19 Regardless of that, pursuant to  
20 DCMR 11-3112(a) and I quote "An appeal shall  
21 be filed within 60 days from the date the  
22 person appealing the administrative decision,"

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1 in this case Mr. Bolduc, "had notice or  
2 knowledge of the decision complained of or  
3 reasonably should have had notice or  
4 knowledge, whichever is earlier."

5 The timely filing of an appeal with  
6 the Board is mandatory and jurisdictional and  
7 there is a long line of cases that we have  
8 cited in our motion. If the appellant's  
9 appeal was not timely filed, the Board is  
10 without jurisdiction to consider it.

11 Here, the appeal of Building Permit  
12 466306, which was issued on October 1, 2004,  
13 was due on or before December 1, 2004. But  
14 despite the appellant's close scrutiny of the  
15 project and his constant communications  
16 regarding construction under this permit, he  
17 waited 1,433 days to file his appeal, which  
18 is, in fact, 1,373 days after the Statute of  
19 Limitations ran. As such, he missed his bite  
20 at the apple.

21 Likewise, the appeal of Director  
22 Argo's May 25, '08 letter was due on or before

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1 May 28, 2008, which also includes three days  
2 for mailing pursuant to DCMR 11-3110.3.

3 Appellant received the letter and  
4 despite again his close scrutiny of the  
5 project and his constant communication  
6 regarding construction, appellant waited 159  
7 days to file his appeal regarding that letter,  
8 which is 99 days after the Statute of  
9 Limitations ran for this Board under 11-  
10 2112(a). So again, he missed his bite at the  
11 apple.

12 The appellant also is apparently  
13 knowledgeable about the procedural rules of  
14 this Board, which is evidenced by the fact  
15 that he was careful to comply with the very  
16 technical requirement under DCMR 11-3112.4,  
17 which required a statement from the appellant  
18 regarding his agent or representative's  
19 authority to act on his behalf.

20 Moreover, the Board has been very  
21 clear and precedent. It established precedent  
22 it had established in other cases. And for

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1 example, I quote Georgetown Resident Alliance  
2 Appeal, which is Appeal No. 17329, and I do  
3 have copies of that decision if the Board  
4 would care to review that or the appellant.

5 For example, in that case, the  
6 Board dismissed an appeal for being 86 days  
7 late. Moreover, the Board made it clear in  
8 that decision and I quote that "A party who  
9 chooses to engage in other ways to resolve a  
10 dispute does not thereby extend the time for  
11 filing an appeal."

12 Here, the appellant also chose to  
13 resolve the dispute in another way. He chose  
14 to complain to DCRA while he let his appellate  
15 options before the Board lapse. So pursuant  
16 to the appeal of Georgetown Residents  
17 Alliance, despite appellant's close scrutiny  
18 of the project and his constant communications  
19 about it, he was also required to follow the  
20 law and to file a timely appeal and to file  
21 his appeal while the Board still had  
22 jurisdiction to hear his complaint, but he

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1 failed to do so.

2 The Board has also made it clear in  
3 previous decisions that the 60 day deadline to  
4 appeal can only be extended under a very  
5 narrow set of circumstances. And, as the  
6 Chairman stated, that's where the appellant  
7 demonstrates two things: Exceptional  
8 circumstances and where the appellant  
9 demonstrates that the extension does not  
10 prejudice the other parties to the appeal.

11 Under DCMR 3 -- DCMR 11-3119,  
12 parties are defined as: "A person whose  
13 administrative decision is subject of the  
14 appeal." In this case, Director Argo or DCRA.

15 "A party is also defined as the owner of the  
16 property involved in the administrative  
17 decision." In this case Ms. Wright. And "A  
18 party is defined as the ANC for the area  
19 within which the subject property is located."

20 On both prongs of this very narrow  
21 extension test, the appellant fails. He  
22 cannot demonstrate that exceptional

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1 circumstances, which are defined as  
2 circumstances that are either outside of his  
3 control or that couldn't reasonably be  
4 anticipated by him, have substantially  
5 impaired his ability to file his appeal.

6 As the District submitted earlier,  
7 the appellant's excuses for why he filed the  
8 '04 -- why he filed the appeal of the '04  
9 permit over 1,400 days late and his excuses  
10 for why he filed the appeal of the Director's  
11 letter over 150 days late are all irrelevant.

12 I can review them again if the  
13 Board would like, but in the interest of time,  
14 the District submits that even if the Board  
15 finds that the appellant's excuses are  
16 credible, they in no way substantially  
17 impaired Mr. Bolduc's ability to file a timely  
18 appeal.

19 At any time before his appeal right  
20 lapsed, Mr. Bolduc could have reasonably  
21 anticipated that he would have to pick another  
22 agent to file -- to assist him or he could

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1 have filed his own appeal. These were both  
2 things that the appellant controlled. And  
3 nothing that he has offered as an external  
4 excuse for his late filings substantially  
5 impaired his ability to file as required,  
6 which is on time.

7 Even if these excuses caused him  
8 additional difficulties at any point before he  
9 allowed his appeal rights to lapse, he could  
10 have filled out the one page appeal form and  
11 filed it before the Statute of Limitations  
12 ran. But he didn't. And now he asked this  
13 Board for yet another bite at the apple.

14 And I'm about to close, so I thank  
15 you. Additionally, the appellant cannot  
16 demonstrate that the extension will not  
17 prejudice the other parties. Prejudice is  
18 defined as "damage or detriment to one's legal  
19 rights." And with that in mind, for almost 5  
20 years now, Ms. Wright, among others, has  
21 endured verbal and written attacks of every  
22 hue from the appellant.

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1                   And from the appellant's May 4, '09  
2 additional submission, the Board can see just  
3 how personal and derogatory the complaints  
4 from the appellant about Ms. Wright, her home,  
5 her son and her partner have become. But  
6 despite the constant accusations and  
7 complaints from the appellant, Ms. Wright has  
8 done everything that DCRA has asked for her to  
9 do.

10                   On top of that, to now also have to  
11 endure a hearing where the appellant gets to  
12 complain even more about something that was  
13 issued over 5 years ago, is just beyond the  
14 pail.

15                   At some point, Ms. Wright should be  
16 able to enjoy the rights her permits afforded  
17 her. At some point, DCRA should be able to  
18 stop diverting its resources to a moot issue.

19                   And at some point, all parties should be able  
20 to avoid taking valuable time and resources of  
21 this Board to hear complaints that the  
22 appellant didn't even bother to lodge until

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1 1,400 plus days and almost 100 plus days after  
2 he knew about them.

3 Therefore, the appellant shouldn't  
4 be able to use this Board or its public forum  
5 along with the time and resources of others  
6 just so he can have one more bite at the  
7 proverbial apple.

8 Therefore, the District asks that  
9 its motion be granted without further delay.  
10 Thank you.

11 CHAIRMAN LOUD: Thank you. We  
12 appreciate that. And let me see if the Board  
13 Members have any questions for you. I have a  
14 couple of questions for you.

15 In terms of the March 25, 2008  
16 letter that went out under Director Argo's  
17 signature, which in our Exhibit 2 I think is  
18 referenced as the matter that the applicant is  
19 appealing from, and this is my question just  
20 to help me understand.

21 What is it that makes this letter  
22 not an appealable letter? And what are the

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1 basic requirements to make communication like  
2 -- something like this from the Director an  
3 appealable letter? I guess I'm trying to get  
4 the boundaries and where the gray area ends.

5 MS. MADDOX-LEVINE: Thank you for  
6 your question, Chairman Loud. In the letter  
7 itself dated March 25, '08, in the last  
8 paragraph I direct your attention to where it  
9 states "Based upon DCRA's extensive review and  
10 consideration of all available documentation,  
11 the Agency's multiple inspections of the  
12 property, we do not see any basis for  
13 enforcement action or further investigation in  
14 this matter. We regard the matter as closed."

15 And what that is referring to is  
16 the investigations that were initiated as a  
17 result of the appellant's complaints. If you  
18 will notice in the second paragraph, and the  
19 last sentence of that paragraph, it  
20 specifically states "These inspections have  
21 confirmed that the owner of the property has  
22 built in conformance with Building Permit

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1 B466306."

2 And I submit or the District  
3 submits that that is what is actually at issue  
4 in this appeal. It is what was the owner  
5 permitted to build under that permit and did  
6 she, in fact, build that?

7 All of the evidence and inspections  
8 that DCRA reviewed and conducted indicate that  
9 this property is in compliance with that  
10 permit. And since the appellant has missed  
11 his ability to appeal that permit by over  
12 1,400 days, the District submits that he is  
13 using this 2008 decision, which is just a  
14 confirmation of what has already taken place 5  
15 years earlier to be able to bring this matter  
16 before the Board.

17 I'm sorry, so I submit to you that  
18 it is not a new determination, but it's the  
19 confirmation of things that existed -- things  
20 that were already approved in 2004.

21 CHAIRMAN LOUD: But there was some  
22 history. I mean, the 2004 building permit was

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1 the subject, I think, of a stop work order in  
2 January of '05. And that resulted in a new  
3 building permit being issued in June of '07  
4 with a new permit number. And I'm assuming it  
5 relates to the same project and work.

6 But I don't even -- I don't think I  
7 want to go there. I'm just trying to again  
8 clarify in my mind. So a building permit is  
9 something that definitely would -- you can  
10 appeal from?

11 MS. MADDOX-LEVINE: That's correct,  
12 Chairman Loud.

13 CHAIRMAN LOUD: Okay. So that's in  
14 one category. Are there any other types of  
15 DCRA actions that you can appeal from that are  
16 not necessarily issuances of building permits?

17 MS. MADDOX-LEVINE: I draw -- of  
18 course, you are probably as familiar as I am  
19 with these. Under DCMR 11-3100.2, the Board  
20 shall also hear and decide appeals where it is  
21 alleged by the appellant that there is an  
22 error in any order --

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1 CHAIRMAN LOUD: Um-hum.

2 MS. MADDOX-LEVINE: -- requirement,  
3 decision, determination or refusal made by an  
4 administrative officer in the administration  
5 or enforcement of the Zoning Regs.

6 CHAIRMAN LOUD: Um-hum.

7 MS. MADDOX-LEVINE: And the way  
8 that this is distinguished from what is  
9 appealable under that specific provision is  
10 that this is not a determination about what  
11 could be built, such as a building permit.  
12 This is not a determination about whether or  
13 not she exceeds the scope, such as a stop work  
14 order.

15 What this is is a -- this letter is  
16 a confirmation that what was done was done as  
17 per previous approvals. And so there is  
18 nothing new about what is relayed in this  
19 letter. And therefore, it is not appealable.

20 CHAIRMAN LOUD: Is the refusal to  
21 issue a stop work order appealable?

22 MS. MADDOX-LEVINE: It's my

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1 understanding that that decision would be  
2 appealable before OAH, but I would also -- the  
3 District would also offer that that is not  
4 what is at issue in this particular instance.

5           You are correct that there were a  
6 stop -- there was a stop work order issued,  
7 but by virtue of even the second permit, which  
8 we are not getting into the specifics of, a  
9 stop work order would have to have been lifted  
10 for a subsequent building permit to have been  
11 issued.

12           CHAIRMAN LOUD: Um-hum.

13           MS. MADDOX-LEVINE: So I would  
14 submit that that is not what is at issue in  
15 this case.

16           CHAIRMAN LOUD: Okay. And I think  
17 second to last question. The -- this letter  
18 starts out, the March 25 letter, saying "This  
19 letter responds to your most recent  
20 communications about the property." Do you  
21 recall what those communications were and the  
22 form that they were submitted in?

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1 MS. MADDOX-LEVINE: The District  
2 reviewed numerous prolific emails from the  
3 appellant. And I would -- I do not know  
4 specifically what he is referencing, which  
5 particular email he is referencing. However,  
6 again, I would draw your attention to the  
7 decision in Georgetown Alliance where it  
8 specifies that even if an appellant pursues  
9 other avenues either through complaints or  
10 other ways to solve whatever is at issue, that  
11 the appellant considers appealable, it does  
12 not then allow him to late file his appeal.

13 In other words, he still has the  
14 responsibility to file his appeal in a timely  
15 manner. I mean, that's consistent with the  
16 precedents by this Board.

17 CHAIRMAN LOUD: Okay. And I  
18 understand the important of being a lawyer and  
19 I'm a lawyer and making sure you make every  
20 argument and get it on the record for the sake  
21 of getting it on the record.

22 But in this case, do you see a

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1 scenario where even if this is an appealable  
2 decision, that dates to March 25, 2008, that  
3 the appeal from this was made within 60 days?

4 In other words, why are you -- why is such a  
5 big deal being made about whether or not this  
6 March 25, '08 letter is an appealable  
7 decision?

8 MS. MADDOX-LEVINE: That is the way  
9 that the appellant -- one of the many ways  
10 that the appellant phrased his appeal. In the  
11 actual appeal form that he filled out, he  
12 references the decision made on March 25,  
13 2008. And so it is the District's belief that  
14 that is the way that he framed, at least in  
15 November '08, his appeal.

16 And so in an attempt to make sure  
17 that all areas were covered, yes, we looked at  
18 it as though the appellant was appealing the  
19 March 25, '08 decision. If he was appealing  
20 that, then he was still out of time, because  
21 he did not file an appeal relevant -- related  
22 to that letter until 159 days later.

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1           So even if he was appealing that,  
2           it was not timely. And so even -- then we  
3           looked at if we are looking at what is the  
4           subject of his appeal, being the initial  
5           building permit, then he is 1,400 days late.

6           CHAIRMAN LOUD: Okay. Thank you.  
7           I don't have any additional questions. Why  
8           don't we now turn to the appellant in the  
9           case. And I believe you heard me articulate  
10          at the outset the legal standard that we are  
11          looking at in terms of the 60 day timeliness  
12          of the appeal and you have heard the Office of  
13          -- Department of Consumer and Regulatory  
14          Affairs put on their argument.

15          And so we will now turn to you.

16          MR. HAWKINS: Thank you. I  
17          appreciate the opportunity to say actually  
18          anything to people who will listen. And I --  
19          having heard what a lawyer could do with my  
20          excuses, I am somewhat abashed. I don't  
21          recognize some of what that was about.

22          But I did, I think in my recent

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1 submission, give the reasons which -- one of  
2 which we might play down, but needs to be  
3 played up now, the fear that has grown in my  
4 family over the years, which -- and that has  
5 come to a head. They have had to move out of  
6 their house.

7 A physical attack on somebody in--  
8 on our property aimed at my family occurred a  
9 week and a half ago. And it's just not safe  
10 for them to be there any more.

11 CHAIRMAN LOUD: So --

12 MR. HAWKINS: The long-term  
13 safety --

14 CHAIRMAN LOUD: If I may interrupt  
15 you for just one second. I just want to make  
16 sure I'm both understanding and following your  
17 argument. So one of the reasons why the  
18 appeal was not filed within the 60 day time  
19 period was the fear of the consequences --

20 MR. HAWKINS: There was a  
21 disagreement --

22 CHAIRMAN LOUD: -- of bodily harm?

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1 MR. HAWKINS: -- about -- yes, I'm  
2 sorry.

3 CHAIRMAN LOUD: Is that correct?  
4 Okay.

5 MR. HAWKINS: Sorry to be talking  
6 over you, but there was a disagreement in the  
7 family as to whether it was safe to appeal to  
8 ask for justice under the conditions that were  
9 at that time. 9 years ago when my son-in-law  
10 found this house, one of the few probably in  
11 the city at the time and during a rising real  
12 estate market that a social worker could find  
13 a place that he could raise a family and  
14 afford to pay for.

15 After 4 years, when the  
16 construction began next door and the  
17 destruction of the house began to be apparent,  
18 we tried to do something about it. The period  
19 of time since the letter from Ms. Argo was a  
20 difficult time for them, that is the -- for my  
21 family who was living there, and for the rest  
22 of the family.

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1           The condition of the world economy  
2 was not irrelevant. There was a great deal of  
3 stress as a result of that in handling my  
4 mother's estate.

5           I may not be able to make a good  
6 case for being late, for not being timely in  
7 my application, but it was confusing. I got  
8 different advice and different information  
9 from different people in the city and among  
10 colleagues as to what I should do about a  
11 letter, none of whom had seen such a letter,  
12 so I didn't know how to appeal it.

13           So the question of whether to  
14 appeal and how to appeal, which seems to still  
15 persist, I simply added to the time it took me  
16 to get to it. When I did finally come to the  
17 Zoning Office directly and ask directly, I was  
18 discouraged from appealing, because the time  
19 had gone by.

20           And then I came back a couple of  
21 weeks later and said I want to do it anyway.  
22 I wasn't told not to. I was just told that

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1 the odds were that my appeal would not be  
2 heard. But desperate for anybody to listen to  
3 me, because damage had been done. The damage  
4 still exists.

5 I felt that we had to pursue what  
6 we could. I do not see how anything that we  
7 have done could damage the owners of the  
8 property next door, since the construction  
9 seems to be still underway. After 5 years,  
10 there is still -- it's not a finished project.

11 MS. MADDOX-LEVINE: Objection.

12 CHAIRMAN LOUD: Yes?

13 MS. MADDOX-LEVINE: Chairman Loud,  
14 I believe that we were discussing the motion  
15 to dismiss and if we're getting into facts  
16 that are in dispute, I think we have gone  
17 beyond the argument about the motion to  
18 dismiss. As I understood it, you wanted to  
19 hear discussion about whether or not the tests  
20 were satisfied for untimely filings.

21 And so I would ask that the  
22 appellant can confine his remarks to that.

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1                   MR. HAWKINS:    I understand that.  
2                   And the reason for my mentioning that is that  
3                   the condition a year ago and the condition  
4                   today are virtually the same for the occupants  
5                   of 1433.    I don't see what difference this  
6                   passage of time will have made in a project  
7                   that is, essentially, as it was, as I say, a  
8                   year ago.

9                   But it's not that we have held up  
10                  completion.

11                  CHAIRMAN LOUD:    I thought he was  
12                  testifying to the prejudice prong of the test,  
13                  but if you could again, just -- as you were  
14                  doing, I think you started to lay out  
15                  different reasons that supported the delay in  
16                  filing.    You talked about bodily harm to a  
17                  member of your family.    You talked about  
18                  confusion about whether and how to proceed.

19                  So if you could continue to set  
20                  forth those grounds for the delay, that would  
21                  fit within what we are looking at right now.

22                  MR. HAWKINS:    I believe that that

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1 is all there is. My -- if I might make a  
2 general statement, I have for 5 years --  
3 actually, only 4.5 been trying to simply have  
4 a conversation with anybody who understood the  
5 building process of the law. I am still here  
6 having to talk about something else when --

7 COMMISSIONER JEFFRIES: Mr.  
8 Hawkins, I'm sorry, to ask you this, but could  
9 you just pull back from the mike just a bit,  
10 because --

11 MR. HAWKINS: Yes.

12 COMMISSIONER JEFFRIES: -- it's  
13 right over. Thank you.

14 MR. HAWKINS: Yes. In the  
15 statement of counsel asking for the case not  
16 to be heard, I again heard my case misstated.

17 And it is not that I am changing what I am  
18 saying, I'm trying to get someone to  
19 understand exactly what we're saying, which is  
20 that it was not that the building was built  
21 not in compliance.

22 The porch, which was removed from

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1 the same spot and the result of that, that we  
2 are now concerned about is -- there are two  
3 results. One is that this addition is  
4 oversized and it does block light and air from  
5 my family's home.

6 The other is that in the  
7 contentious atmosphere that developed when  
8 DCRA -- and I do not think it was an intention  
9 to work against us, but I think the psychology  
10 of the process was that we, the plaintiffs,  
11 became the obstructionists in the minds of  
12 DCRA.

13 So when I said there's a beam that  
14 should be holding up the roof and should be  
15 holding up the --

16 MS. MADDOX-LEVINE: Chairman Loud,  
17 I'm sorry to interrupt, but I would have to  
18 make a motion to strike that comment about  
19 what DCRA said.

20 MR. HAWKINS: I don't want to  
21 characterize anybody negatively in this.

22 CHAIRMAN LOUD: I think to a larger

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1 point, and DCRA has raised this before, with  
2 the part of the case that we're in now that  
3 just deals with their motion to dismiss and  
4 there are very, sort of, limited issues under  
5 review for that part of the case. And you've  
6 spoken to three grounds that relate to the  
7 test and let me repeat them back to see if you  
8 have anything to add.

9 The first is that there was a fear  
10 of bodily harm to a member of your family.  
11 And if they filed within the 60 day period, it  
12 may have resulted in some kind of harm to that  
13 family member.

14 The second was that there was some  
15 confusion and you got different information  
16 from colleagues you turned to about when to  
17 appeal and how to appeal, how to actually  
18 effectuate the appeal.

19 MR. HAWKINS: That's right,  
20 colleagues in the city.

21 CHAIRMAN LOUD: Okay. And the  
22 third reason you mentioned was that you were

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1 discouraged from appealing by, I believe you  
2 said, the Zoning Office, because you  
3 approached the Zoning Office after 60 days had  
4 lapsed.

5 MR. HAWKINS: That's right.

6 CHAIRMAN LOUD: Were there  
7 additional grounds for filing outside of the  
8 60 day time limit that you would like to place  
9 on the record this afternoon?

10 MR. HAWKINS: I don't believe that  
11 there's anything that would conform to your  
12 requirements, the personal issues being the  
13 only additional issues.

14 CHAIRMAN LOUD: Okay. Why don't we  
15 do this. Let me see if the Board Members have  
16 any questions for you.

17 COMMISSIONER JEFFRIES: Excuse me,  
18 Mr. Hawkins, you never offered any testimony,  
19 written or otherwise, about DCRA impairing  
20 your ability to appeal in a timely fashion.  
21 I'm really asking the question. I can't  
22 recall from what I --

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1                   MR. HAWKINS:     I did have some  
2 difficulties administratively with DCRA, but  
3 they're not really the reasons I applied late  
4 and thought I should have some more  
5 information before I appealed.

6                   COMMISSIONER JEFFRIES:   Um-hum.

7                   MR. HAWKINS:     I believe that there  
8 is information that I haven't been able to get  
9 a hold of, that my FOIA request would have  
10 turned up, that would have been very positive  
11 on my side, but I -- and I thought I ought to  
12 have that before I appealed.

13                   Then when I figured out how to do  
14 that, I didn't get the information. And I was  
15 told that there was more information that I  
16 was not allowed to have. This gets into a  
17 conspiratorial sounding mode and I don't want  
18 to do that.

19                   COMMISSIONER JEFFRIES:   But you are  
20 not saying here today that DCRA impaired your  
21 ability to file in a timely fashion?

22                   MR. HAWKINS:     I think if I wanted

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1 to make every case I could, I would say that  
2 they did to some extent. But I don't know  
3 why. That -- I wouldn't know how to  
4 characterize the way I didn't get the  
5 information I wanted. I'm sorry I'm not being  
6 clear about that.

7 COMMISSIONER JEFFRIES: Okay.  
8 Okay. Thank you.

9 MS. MADDOX-LEVINE: The District  
10 would like to respond.

11 CHAIRMAN LOUD: I'm sorry, I wanted  
12 to see if all the Board Members had any  
13 questions for the appellant before and then we  
14 would give the District an opportunity. So I  
15 think Mr. Jeffries did and let's see if Mr.  
16 Dettman has anything. Okay. You can go  
17 ahead.

18 MS. MADDOX-LEVINE: Thank you,  
19 Chairman Loud. Just in response to a couple  
20 of points that the appellant raised, he  
21 mentioned fear of physical attack. And I  
22 believe that he also stated that he has lived

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1 at that -- his daughter and son-in-law have  
2 lived at that residence since they lived there  
3 while the construction was going on and only  
4 recently moved out.

5 And during that time, the appellant  
6 continued to file email, telephone and  
7 complaints to DCRA personnel in person. And  
8 so if those -- if he had a fear of physical  
9 attack that prevented him from filing his  
10 appeal, it certainly didn't prevent him from  
11 lodging other complaints with DCRA.

12 Also, those complaints that were  
13 lodged with DCRA were responded to. I'm sure  
14 the appellant can provide, or if not the  
15 District can, responses from DCRA to  
16 complaints and issues that the appellant  
17 raised on many different occasions. In fact,  
18 different representatives from DCRA from the  
19 Deputy inspections -- Chief of Inspections to  
20 the Zoning Administrator to our Chief Building  
21 Permit Officer/Inspectors all went out to the  
22 site in response to the appellant's

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1 complaints.

2 And so his point that he is still  
3 trying to have a conversation is a bit  
4 indulgent, because certainly DCRA has tried to  
5 engage with them to figure out what his  
6 concerns were and address them if they could  
7 be addressed. Simply because the set of facts  
8 as the appellant sees them, if he believes  
9 that they are different, it doesn't -- the way  
10 he is presenting it, just because he presents  
11 it a certain way, doesn't make it so.

12 And I don't know if that's his  
13 point of frustration, but certainly DCRA has  
14 tried to be responsive to his concerns while  
15 also trying to ensure that it continues to  
16 allow the construction as permitted to  
17 continue, as long as it's not violative of any  
18 regulations or codes.

19 The appellant also raised the fact  
20 that the appeals process was confusing, but  
21 the rules are consistent. The Zoning  
22 Regulation Rules regarding how do you file an

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1 appeal are consistent. As a matter of fact,  
2 they are available on-line should the  
3 appellant have availed himself of those.

4 And at any point, he was free to  
5 obtain counsel. Certainly, if you find  
6 yourself in an adjudicative process that you  
7 don't understand, it's highly recommended that  
8 you do get counsel. And appellant could have  
9 done that at any point.

10 Also, the representative of the  
11 appellant is an architect or at least has  
12 practiced for several years as an architect  
13 and, therefore, is familiar with the Zoning  
14 Regulations in that profession. So the fact  
15 that he found the Zoning Regulations confusing  
16 regarding their procedural aspects is not  
17 credible.

18 Also, he indicated that he was  
19 discouraged and I'm sorry I didn't catch if  
20 you were discouraged by the Zoning Office or  
21 the Zoning Administrator's Office, but --  
22 regarding a filing -- filing your appeal a

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1 couple of weeks ago. But regardless of which  
2 office it was, if it was that he was  
3 discouraged a couple of weeks ago, even a  
4 couple of weeks ago, he was well over 1,400  
5 days late to appeal the building permit and  
6 well over 150 days to appeal the letter that  
7 he now complains of.

8 And I'm sorry, and he also  
9 mentioned that there was information that he  
10 was seeking to retain and I believe what he is  
11 referring to is his 2008 FOIA request.  
12 However, the building permit that he complains  
13 of was issued in 2004. And so again, we have  
14 the issue of being out of time to file.

15 The court's indulgence, please.

16 CHAIRMAN LOUD: Court Reporter, can  
17 you -- are you able to hear? Okay. I think  
18 you can resume when you are ready.

19 MS. MADDOX-LEVINE: Okay. Thank  
20 you, Chairman Loud.

21 CHAIRMAN LOUD: If everyone can  
22 hear.

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1 MS. MADDOX-LEVINE: So my last  
2 point was that if he was waiting for the  
3 results or a response to his 2008 FOIA  
4 request, that still would not have allowed him  
5 to timely file an appeal of a 2004 building  
6 permit.

7 And in addition to that, just going  
8 back to the fear of physical attack,  
9 certainly, he had interactions where he  
10 discussed things with the homeowner. He went  
11 to the homeowner's property and at no point in  
12 time did he raise, at least with DCRA, that he  
13 was concerned about physical attacks and would  
14 not be able to file his appeal. And I don't  
15 think that he -- I think that if that were the  
16 case, then we would have had probably a  
17 different set of facts here that we would be  
18 reviewing.

19 But the point is, in summation,  
20 that the excuse or the reasons or excuses that  
21 are offered by the appellant don't meet the  
22 test that is required to extend the 60 day

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1 deadline. And for that reason, the Board does  
2 not have jurisdiction over this appeal at this  
3 late date.

4 CHAIRMAN LOUD: Thank you. Why  
5 don't I turn now to the appellant and if you  
6 have anything additional to add and then I  
7 will ask Board Members to weigh in and see if  
8 we are ready to, if we have heard enough,  
9 deliberate on the motion. Okay.

10 MR. HAWKINS: I don't think I can  
11 do it completely, but I think there are a  
12 number of things that were confused in there,  
13 but it should be clear that I -- it was from  
14 the time that we received the Argo letter last  
15 March that any of this timing should be  
16 started, not from the permit, which we  
17 couldn't -- obviously, can't tell if a permit  
18 is acted on appropriately from the moment that  
19 it is issued. That would mean that I would  
20 have to have appealed it almost before they  
21 began.

22 In the couple of weeks that I was

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1 referring to of discouragement was last year  
2 at a time earlier than the November  
3 application for the appeal that I actually got  
4 in. I had gone and spoken with several people  
5 in the Zoning Office, not the Zoning  
6 Administrator's Office.

7 The FOIA request that I made was a  
8 large part of the reason that I didn't get  
9 back on this was I kept trying to get that  
10 FOIA material. And eventually the woman who  
11 was handling it was transferred. And so when  
12 I began again trying to get it, I found that  
13 there was no record of my having made the  
14 first application.

15 I believe it was about that time  
16 that I decided I had better make -- I had  
17 better get going with the appeal. It had  
18 taken all of last summer. I believe it was 10  
19 weeks before the first bundle of things, all  
20 of which were emails that I had either mailed  
21 or received, were -- that was all I got from  
22 my FOIA request.

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1                   And when I made another FOIA  
2 request, I was told again that there were  
3 materials that were -- I'm sorry, I was going  
4 to misstate something, confusing two different  
5 things.

6                   I was told that it was going to  
7 take more time to get my FOIA request  
8 responded to, because it was a different  
9 agency from the one that I was asking for.  
10 And so I was told 18 working days after I had  
11 made the application that it hadn't been begun  
12 yet, because it was OCTO, not DCRA.

13                   I'm just trying to get to a point  
14 where somebody can recognize that there is an  
15 unstable building next door to my family and  
16 this is the only approach that I have been  
17 able to find, because there are two problems.

18                   There is the outside problem and  
19 there is an inside problem. And if the Zoning  
20 Regulations had been complied with when the  
21 plan reviewer first had the plans in front  
22 with them, I think that -- which means that

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1 the size of the porch would have been verified  
2 before it was issued, we wouldn't have all of  
3 this.

4 And we are now in a situation where  
5 I can imagine that I seem sympathetic to  
6 anybody who is looking at this, except the  
7 people who are in opposition, but may not be  
8 able to help me. But I hope that if the Board  
9 cannot hear my case, that it will refer a --  
10 refer me to somewhere else where I can have a  
11 dangerous condition looked at.

12 COMMISSIONER JEFFRIES: Mr. Chair,  
13 I just want to ask one question of Mr.  
14 Hawkins. I have here reason for not filing,  
15 you know, fear, confusion, discouraged by  
16 Zoning Office. As relates to the FOIA, your  
17 attempts at, you know, the FOIA request, is  
18 that a fourth item or is that part of --

19 MR. HAWKINS: I think it --

20 COMMISSIONER JEFFRIES: --  
21 confusion?

22 MR. HAWKINS: Certainly, it was

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1 very important to -- it's very important to  
2 this case what I think that a FOIA property --  
3 the carried out FOIA request would give me.  
4 So I'm saying yes, it was part of it.

5 COMMISSIONER JEFFRIES: It was a  
6 fourth reason for --

7 MR. HAWKINS: The FOIA definitely  
8 was. Early on, it was the reason I was  
9 terribly discouraged by it.

10 COMMISSIONER JEFFRIES: Okay.

11 MR. HAWKINS: By not getting.

12 COMMISSIONER JEFFRIES: Okay, okay.  
13 Thank you.

14 MR. HAWKINS: And there is specific  
15 -- I should say that I was told that there was  
16 specific things that were in the hands of the  
17 FOIA officer, but she was not allowed to give  
18 them to me yet and that was last June or July.

19 COMMISSIONER JEFFRIES: If you had  
20 actually been able to get those requests  
21 fulfilled quickly, then you would have filed  
22 an appeal?

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1 MR. HAWKINS: It was my intention.  
2 Yes, it was my intention to get that, see what  
3 I had, know how I would make my case and come  
4 directly forward. And if I had --

5 COMMISSIONER JEFFRIES: Do you  
6 think there was any way you could have gone  
7 forward and filed an appeal, even without  
8 getting that FOIA request fulfilled?

9 MR. HAWKINS: I could have.

10 COMMISSIONER JEFFRIES: I mean, did  
11 you consider it or you had talked to anyone  
12 about it? I mean, you're an architect. You  
13 have been around the block, I mean.

14 MR. HAWKINS: And I know how cases  
15 can be made one way or another. There is a  
16 piece of information that I believed FOIA  
17 would turn up and I can tell you what it is  
18 specifically. It was that Mr. LeGrant, the  
19 Zoning Administrator, and I had had a  
20 conversation in December in which he told me  
21 that he had found --

22 COMMISSIONER JEFFRIES: December?

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1 MR. HAWKINS: December 2008.

2 COMMISSIONER JEFFRIES: Okay.

3 MR. HAWKINS: I'm sorry, 2007.

4 That the porch had -- that he had found that  
5 the porch pre-existing had been smaller than  
6 the ultimate addition was. This was  
7 subsequent to the order for the wall check,  
8 which Ms. Argo had made. That was in August.

9 She had told me she was going to have this  
10 done at the end of July, the beginning of  
11 August.

12 MS. MADDOX-LEVINE: At this point,  
13 I'm sorry, the District would object because  
14 the statement that the appellant made  
15 mischaracterizes what the Zoning Administrator  
16 said. If we should happen to go forward, I'm  
17 sure that would be clarified, but it is not  
18 accurate to state that the Zoning  
19 Administrator found that the pre-existing  
20 porch was smaller.

21 COMMISSIONER JEFFRIES: But I'm  
22 still trying to figure out --

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1                   MR. HAWKINS: I realize that's my  
2 testimony.

3                   COMMISSIONER JEFFRIES: But I'm  
4 still trying to figure out what did that have  
5 to do with you filing your appeal?

6                   MR. HAWKINS: The -- and the  
7 discussion about the size, the pre-existing  
8 size of the porch had become the pivot point  
9 for the whole zoning case. There are 20  
10 houses in a row on Parkwood Place. 19 of them  
11 have porches that are 7 feet deep or less.

12                   The Zoning Administrator had  
13 originally tried to make the case with us that  
14 the porch at 1435 had been 9 feet deep to  
15 begin with before the issuance of the 2004  
16 permit.

17                   COMMISSIONER JEFFRIES: Your  
18 daughter's place?

19                   MR. HAWKINS: No, the 1435 -- I'm  
20 sorry, I mean, 1433.

21                   COMMISSIONER JEFFRIES: Right.

22                   MR. HAWKINS: The -- yes. That

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1 1433 had had a 2 foot larger porch than any of  
2 the rest of the -- in the row. And this was  
3 an issue. This became the issue about whether  
4 the permit had been issued properly in 2004.  
5 I have submitted photographs that show that it  
6 was a small porch like all the others when it  
7 began.

8 So at an October meeting, Mr.  
9 LeGrant showed me an aerial photograph that  
10 was, as he said, you know, fairly crude, but  
11 it looked as though it might have been a  
12 larger porch. It was so questionable we  
13 rejected that.

14 MS. MADDOX-LEVINE: At this point,  
15 I'm sorry, the District will have to object.  
16 And we're trying to be very sympathetic to the  
17 fact that the appellant is not represented by  
18 counsel. However, the appellant's  
19 representative is basically testifying as to  
20 what he would state in a hearing should we go  
21 forward.

22 And there is many things that the

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1 District does not agree with and we don't  
2 believe that he should be allowed to continue  
3 in that manner. Perhaps if he could summarize  
4 an answer to Mr. Jeffries' question, that  
5 would be more appropriate.

6 MR. HAWKINS: That's fine.

7 CHAIRMAN LOUD: Let me just -- I  
8 think Mr. Jeffries was just trying to get  
9 enough information about the circumstances for  
10 the FOIA to make -- draw some conclusions  
11 regarding the 60 day time frame. Let me just  
12 ask Mr. Jeffries. Have you gotten what you  
13 were looking for? Is there a way you want to  
14 ask the question differently?

15 COMMISSIONER JEFFRIES: Well, I  
16 just -- I mean, he -- my question was really  
17 what does any of this have to do with you  
18 filing the appeal on a timely fashion?

19 MR. HAWKINS: I --

20 COMMISSIONER JEFFRIES: I mean, is  
21 there a way in which you could have still  
22 filed this appeal without having what you

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1 considered to be everything sort of aligned  
2 and so forth?

3 MR. HAWKINS: A condition I didn't  
4 put in because it sounded like the cat ate my  
5 homework is that my -- the photographs that I  
6 took of the job that would have been  
7 sufficient without the FOIA request were in a  
8 computer that got flooded. And that  
9 happened --

10 COMMISSIONER JEFFRIES: Now, we  
11 have a -- do we have a fifth? We have a  
12 fifth, right?

13 MR. HAWKINS: You have a fifth.  
14 This happened before --

15 COMMISSIONER JEFFRIES: I've got a  
16 list going here, so --

17 MR. HAWKINS: Okay.

18 COMMISSIONER JEFFRIES: No. 5.

19 MR. HAWKINS: This one -- I mean,  
20 it does sound as though I'm loading things on.  
21 But in the spring of 2008, I had a flood in  
22 my office which destroyed a computer that I

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1 didn't think I could get -- even get the hard  
2 drive out.

3 COMMISSIONER JEFFRIES: Um-hum.

4 MR. HAWKINS: And it would be  
5 useful. It looks as though maybe that is  
6 possible. The photographs I had been taken  
7 for four years of the house next door were in  
8 that computer. The only thing that I knew was  
9 -- for certain was that I had a conversation  
10 that I thought told me that the DCRA had  
11 recognized the facts about the porch next  
12 door, without my having to show any more  
13 photographs than the few that I have that were  
14 outside that computer.

15 What I hoped to find was a written  
16 report from Mr. LeGrant to Ms. Argo saying  
17 this porch was just like all the other porches  
18 before they started working on it next door.

19 COMMISSIONER JEFFRIES: But what  
20 was preventing you in an appeal, even if you  
21 didn't have these various documents --

22 MR. HAWKINS: Um-hum.

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1                   COMMISSIONER JEFFRIES:  -- at least  
2                   sort of sustaining your -- you know that -- I  
3                   mean, I just don't know what stopped you from  
4                   filing the appeal.

5                   MR. HAWKINS:       The -- I didn't  
6                   believe I had a very good case, based on -- I  
7                   had been trying to make my case with the  
8                   material that I have here to DCRA.  I didn't  
9                   think that I had much to go on to come to you  
10                  with that -- without that.  I thought that  
11                  there was something -- I remember, I'm sure  
12                  I'm going to hear otherwise, but I remember a  
13                  conversation that had me greatly cheered for a  
14                  little while.  And I wanted to find a record  
15                  of the reason that I got that impression that  
16                  Mr. LeGrant had told me something and I wanted  
17                  to see it in -- see the facts in print.

18                  You can see the case I have is only  
19                  -- has got some photographs showing that it  
20                  looks as though it was a smaller building  
21                  before.  I didn't think that was very strong.

22                  COMMISSIONER JEFFRIES:       But it's

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1 interesting though that you proceeded finally  
2 filing the appeal and one could say that the  
3 information you have today is probably the  
4 information you would have had back when.

5 MR. HAWKINS: I've tried two more  
6 times, three more times with -- for the FOIA.

7 I had thought that by this time, I would have  
8 found out why I couldn't have the stuff that I  
9 was told I couldn't have. I was told that  
10 there was something -- there were messages  
11 between Mr. LeGrant and Ms. Argo and that they  
12 were the ones that were withheld from what I  
13 was given.

14 It all fits in with what I thought  
15 might have been happening.

16 COMMISSIONER JEFFRIES: Okay. Mr.  
17 Chair, I have no more questions.

18 CHAIRMAN LOUD: Thank you, Mr.  
19 Jeffries. Mr. Dettman, do you have any  
20 questions?

21 VICE CHAIRMAN DETTMAN: Maybe just  
22 one question, Mr. Chairman. And I think my

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1 question is best posted to Ms. Levine.  
2 Assuming just for a second, and we did this  
3 earlier, that the March 25<sup>th</sup> letter from Linda  
4 Argo is appealable, when was the first, I  
5 think of two, FOIA requests submitted?

6 MS. MADDOX-LEVINE: Based on the--  
7 we have a letter here that is in response to  
8 Mr. Hawkins' FOIA request and that letter is  
9 dated April 2, 2009. We also have, and I can  
10 search for it, although I wasn't prepared to  
11 talk about FOIA, an email from Mr. Hawkins  
12 which indicates that he had filed his first  
13 FOIA request 6 weeks earlier.

14 So if we are at April 6, 2009 and  
15 his first FOIA request is filed 6 weeks  
16 earlier, he is still out of time.

17 MR. HAWKINS: Excuse me, this is--  
18 that's the wrong request. There was one last  
19 year. I think it is noted in the earlier --

20 VICE CHAIRMAN DETTMAN: I think in  
21 exhibit --

22 MS. MADDOX-LEVINE: Well, even if

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1 that were the case that he made a FOIA request  
2 last year, as a person who often has to prove  
3 a case, if I were to wait until I had all of  
4 the evidence assembled before I went forward,  
5 we would shut down the judicial system.

6 So it's really irrelevant as to  
7 whether or not the appellant had everything  
8 that he needed to prove his appeal. The  
9 requirement of the Zoning Regulations is that  
10 he file his appeal. And that's clearly and  
11 succinctly stated in the rules.

12 VICE CHAIRMAN DETTMAN: Well, let's  
13 just work with assuming that the letter is  
14 appealable and that the appellant felt that --  
15 as if he needed this information to submit  
16 with his application for appeal. Your motion  
17 to dismiss in Exhibit 17, unless it is maybe a  
18 typographical error, it says on page 8 "Mr.  
19 Hawkins filed his FOIA request on May 22, 2008  
20 and on April 2, 2009."

21 MS. MADDOX-LEVINE: I'm sorry, Mr.  
22 Dettman, could you restate where you are

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1 looking?

2 VICE CHAIRMAN DETTMAN: Exhibit 17  
3 on page 8.

4 MS. MADDOX-LEVINE: Are you  
5 referring to our --

6 COMMISSIONER JEFFRIES: In the  
7 motion to appeal.

8 VICE CHAIRMAN DETTMAN: Your motion  
9 to dismiss.

10 COMMISSIONER JEFFRIES: Your motion  
11 to dismiss. I'm sorry. Page 8, the last  
12 paragraph.

13 MS. MADDOX-LEVINE: Okay. I'm  
14 sorry, I have it now. And you're saying in  
15 our motion to dismiss?

16 VICE CHAIRMAN DETTMAN: Right. On  
17 page 8 it mentions a FOIA request filed on May  
18 22, 2008.

19 MS. MADDOX-LEVINE: Yes.

20 VICE CHAIRMAN DETTMAN: That's  
21 correct? That's the correct date?

22 MS. MADDOX-LEVINE: Yes, I believe

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1 that is referring to Mr. Hawk -- an email that  
2 Mr. Hawkins had.

3 VICE CHAIRMAN DETTMAN: Okay. So  
4 if DCRA would have fulfilled that FOIA request  
5 in a timely fashion, would Mr. Hawkins have  
6 been able to file his appeal timely?

7 MS. MADDOX-LEVINE: To be honest, I  
8 could not answer that question, because Mr.  
9 Hawkins has had ample opportunity to file his  
10 appeal with -- since then, before then and  
11 since then.

12 VICE CHAIRMAN DETTMAN: Um-hum.

13 MS. MADDOX-LEVINE: So in all  
14 honesty, I can't say that he would have filed  
15 his appeal. Certainly, he would have maybe or  
16 perhaps he would have had, in his mind, a  
17 stronger case, but again, that's not the  
18 standard under which he is bound.

19 VICE CHAIRMAN DETTMAN: Was that  
20 FOIA request submitted within the 60 day time  
21 period from the date on the Argo letter?

22 MS. MADDOX-LEVINE: I don't know.

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1 I understand when Mr. Hawkins represented that  
2 he sent that FOIA request.

3 VICE CHAIRMAN DETTMAN: Okay.

4 MS. MADDOX-LEVINE: However, we  
5 have not verified that it was received when  
6 that was indicated. It was merely a reference  
7 in another email that he had submitted it at  
8 that time.

9 VICE CHAIRMAN DETTMAN: Okay.

10 MS. MADDOX-LEVINE: And so we don't  
11 -- we do not have a record indicating that.  
12 And FOIA is very date-specific.

13 VICE CHAIRMAN DETTMAN: Um-hum.

14 MS. MADDOX-LEVINE: And so, you  
15 know, if the Board would require that  
16 information, certainly, we could look into  
17 that.

18 VICE CHAIRMAN DETTMAN: Um-hum.

19 MS. MADDOX-LEVINE: However, this  
20 was just a representation that Mr. Hawkins  
21 made. But again, the District submits that  
22 what is at issue again is the 2004 permit.

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1 VICE CHAIRMAN DETTMAN: Yeah.

2 MS. MADDOX-LEVINE: That he is  
3 seeking to come through the back door and  
4 appeal at this late date.

5 VICE CHAIRMAN DETTMAN: Okay. And  
6 my last question is the emails that Mr.  
7 Hawkins says that he received as part of a  
8 FOIA request, he had said that he got a  
9 portion of the information he needed, was that  
10 as a result of the April 2, 2009 FOIA request  
11 or the May 22, 2008 FOIA request?

12 MS. MADDOX-LEVINE: I do not know  
13 the answer to that question, because I haven't  
14 been given nor did i inquire about what he  
15 received in his FOIA request, because, again,  
16 at any date -- at any rate, his appeal was  
17 filed 6 months or 159 days after the letter.  
18 And so the rational for that why he filed  
19 late, was not covered by the regulations nor  
20 was it a point that, at that time, I  
21 investigated, because it didn't seem to be  
22 relevant to the issue of why he filed late.

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1 VICE CHAIRMAN DETTMAN: Um-hum.  
2 Thank you.

3 CHAIRMAN LOUD: Okay. I think what  
4 I would recommend now is a 5 minute break and  
5 then we can reconvene if Board Members are so  
6 disposed. We can reconvene in about 5 minutes  
7 and begin --

8 MS. MADDOX-LEVINE: I'm sorry,  
9 Chairman Loud?

10 CHAIRMAN LOUD: Yes?

11 MS. MADDOX-LEVINE: If I just might  
12 add one other matter that was brought to my  
13 attention?

14 CHAIRMAN LOUD: Go right ahead.

15 MS. MADDOX-LEVINE: Apparently in  
16 response again to the appellant's complaint,  
17 several DCRA employees went to the -- to  
18 review the site at 1433 Parkwood. And we were  
19 informed and we can provide testimony to the  
20 fact that during that site inspection that it  
21 was the appellant who was initiating physical  
22 attacks against Ms. Wright and/or her family.

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1           And at that point, DCRA removed  
2 themselves from the situation indicating they  
3 were not there for that. So again, we do not  
4 find it credible that the appellant did not  
5 file his appeal, because he felt -- or Mr.  
6 Bolduc did not file his appeal because he was  
7 in fear of physical attack. And the  
8 inspection was stopped as a result of the  
9 appellant's attacks.

10           CHAIRMAN LOUD: Okay.

11           COMMISSIONER JEFFRIES: Okay.

12           CHAIRMAN LOUD: Okay. Where I was  
13 was that I thought we had been fully briefed  
14 on the issue and we were going to come back  
15 out in 5 minutes and begin deliberation on it.

16           But given what you just said, I think in all  
17 fairness, if the appellant has a response to  
18 that, I'll let him respond and then we can  
19 adjourn and resume in about 5 minutes.

20           Did you want to respond to that,  
21 Mr. Hawkins, very briefly if you can?

22           MR. HAWKINS: That was a case where

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1 it -- the whole story would be interesting,  
2 but what it comes down to is that the six  
3 people from DCRA were agreed on a -- in a  
4 telephone conversation that would -- we would  
5 meet at the site.

6 It was given as the address. I  
7 waited at the address. After about 20  
8 minutes, my son-in-law told me everybody was  
9 out back in the alley with the man next door.

10 I went around back and said hello to  
11 everybody and they all walked into the -- into  
12 1433. And one of them turned around and said  
13 not you, you can't come in here.

14 I went back out and sat on the  
15 front porch and 45 minutes after the meeting  
16 that DCRA had taken the trouble to make with  
17 me, they came around. They were following Mr.  
18 -- well, the guy next door's Bentley.  
19 Everybody in DCRA was driving small cars.

20 They came up. I invited them to  
21 come up on the porch, so that we wouldn't be  
22 out on public property, because the man next

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1 door was there. He had two young lady friends  
2 with him. While my son-in-law, the DCRA  
3 people and I stood on the porch talking, the  
4 man next door and his girlfriends were telling  
5 jokes, having fun, obviously, mocking us.

6 After about somewhere between 12  
7 and 15 minutes, my son-in-law, who was  
8 standing in his door, it's 15 feet to the  
9 gate, said get off my gate. And immediately a  
10 man from DCRA said this meeting is terminated.

11 There was about 15 feet from my son-in-law to  
12 the gate when he said that. He stood forward  
13 and said get off my gate, which I think he had  
14 a right to do. That was our attack on the  
15 next door neighbor.

16 CHAIRMAN LOUD: Thank you. I think  
17 the whole issue goes to credibility and I  
18 think there are a lot of different ways to  
19 size up a witness' credibility. So we will --  
20 it will go to the weight that we give the  
21 whole issue of credibility. And I think with  
22 that, we are ready to adjourn and we will be

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1 back in about 5 minutes.

2 (Whereupon, at 3:07 p.m. a recess  
3 until 3:30 p.m.)

4 CHAIRMAN LOUD: I think we can go  
5 back on record and just resume the hearing. I  
6 don't need to make any of the prefatory  
7 remarks, correct? Okay.

8 MS. BAILEY: No, Mr. Chairman.

9 CHAIRMAN LOUD: Thank you, Ms.  
10 Bailey. And I want to thank the parties this  
11 afternoon for your patience and your time. I  
12 know we got started a little late this  
13 afternoon and your arguments regarding both  
14 the motion to dismiss and the opposition to  
15 the motion to dismiss, they were both well-  
16 received and contained a lot of useful  
17 information for our purposes today.

18 I think we are ready to deliberate  
19 on the motion to dismiss. And I would be more  
20 than happy to start us off. So let me begin  
21 by repeating what we have heard already, which  
22 is the rule regarding the 60 day deadline and

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1 it is found at 31 -- section 3112.2 of Title  
2 11 of the D.C. Municipal Regulations.

3 And it reads that "The Board may  
4 extend the 60 day deadline for the filing of  
5 an appeal only if the appellant demonstrates  
6 that there are exceptional circumstances that  
7 are outside of the appellant's control and  
8 could not have been reasonably anticipated  
9 that substantially impaired the appellant's  
10 ability to file an appeal to the Board and the  
11 extension of time will not prejudice the  
12 parties to the appeal as identified in section  
13 3199.1," which in this case would be the DCRA,  
14 the appellant, the property owner.

15 As reviewed against that standard,  
16 my own personal take on this and I'll open it  
17 up for other Board Members is that the  
18 standard to extend the deadline does not  
19 appear to have been met by what we heard this  
20 afternoon.

21 I found the appellants -- first of  
22 all, let me start with the appellant. I found

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1 the appellant to be very, very credible, very  
2 compelling, a very honest witness not trying  
3 to do slight of hand or confuse the issues in  
4 any regard.

5 But that notwithstanding, the test  
6 is what the test is. And we are not allowed  
7 to, particularly with this rule, which is  
8 jurisdictional, we don't even have  
9 jurisdiction over a case if the 60 day  
10 deadline is not met, we have to follow the  
11 rule.

12 And in the proceedings this  
13 afternoon, what came out that there were --  
14 what came out rather was that there were  
15 several reasons for not filing the appeal  
16 within 60 days of either 2004 or 2008. And  
17 I'm assuming arguendo for purposes of my  
18 comments right now, that March 25, 2008 was an  
19 appealable letter and giving the appellant the  
20 benefit of the doubt on that issue.

21 The reasons offered for the delay  
22 were fear of bodily harm to a member of the

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1 appellant's family, if they had not filed  
2 within 60 days; that it was confusing and got  
3 a little bit -- and that the appellant got  
4 different information from various colleagues  
5 about whether to appeal and how to appeal;  
6 that the appellant was discouraged from  
7 appealing by either a Zoning Office personnel  
8 or DCRA personnel, but that related to  
9 discouragement because the time had already  
10 lapsed for filing the appeal; that there was a  
11 FOIA request that would have allowed the  
12 appellant to put his best foot forward with  
13 respect to filing the appeal; that verified a  
14 conversation, I think, between Mr. LeGrant and  
15 the appellant, as I understand it, that the  
16 porch addition was larger than the pre-  
17 existing porch.

18 And I think those were all of the  
19 reasons that I heard. And I think that while  
20 those reasons are -- I accept on their face  
21 that the appellant experienced all of those,  
22 all of what he put out on the record, I don't

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1 think that any of the reasons that were  
2 articulated rise to the level of becoming an  
3 exceptional circumstance that are outside of  
4 the appellant's control and prevented him from  
5 reasonably -- I'm sorry, prevented him from --  
6 rather, substantially impaired him from filing  
7 the appeal.

8 I think that with respect to the  
9 issue of bodily harm, that is to be taken  
10 seriously. It should be taken seriously. But  
11 it wasn't clear that whatever the harm was,  
12 and it wasn't specified, it stopped somehow  
13 the appellant from making the appeal or that  
14 somehow the potential for harm ceased on  
15 November 3<sup>rd</sup> when the appeal was actually  
16 filed.

17 There was also some feedback from  
18 the DCRA that there were emails that were  
19 being submitted by the appellant that,  
20 arguably I think this was the point DCRA was  
21 trying to make, if one were concerned about  
22 bodily harm to a member of the family, these

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1 emails also might have put one's family in  
2 harm's way.

3           Again, for me, I just wasn't  
4 convinced that that was a compelling enough  
5 reason not to file within the 60 days.  
6 Although, it is clear from the tension between  
7 the neighbors that there is something  
8 definitely going on between the parties in  
9 this case that is not good or neighborly. But  
10 I don't think that it prevented the filing  
11 within the 60 days.

12           With respect to the other grounds,  
13 the confusing information received from  
14 colleagues and so on, I accept on the face  
15 that that's accurate, but again, it doesn't  
16 rise to the level of the section 3112.2  
17 grounds for not filing within the 60 days.

18           And so notwithstanding that, the  
19 appellant, to me, is a very sympathetic and  
20 compelling witness and I believe that there  
21 probably was a much better way for these  
22 parties to interact with one another over this

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1 alleged porch addition, nonetheless, there is  
2 a 60 day time line. And I don't feel like the  
3 time line has been met in the context of the  
4 argumentation and evidence that we have heard  
5 this afternoon.

6 Let me open it up for other Board  
7 Members.

8 VICE CHAIRMAN DETTMAN: Mr.  
9 Chairman, I see it your way on this one. I  
10 think the legal test is very clear and I don't  
11 think it has been met. As unfortunate as that  
12 may be, that while this might be the end of  
13 the BZA avenue for the appellant, I certainly  
14 hope that it is not the end of the situation.

15 I think that there are -- there  
16 have been questions that have been answered,  
17 information has been requested and I hope the  
18 appellant, you know, keeps up his efforts to  
19 get that information. And if it turns out  
20 that he gets that information and he was  
21 correct, I hope that there is another avenue  
22 that he could go down.

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1           But in terms of our role here, I  
2 think that we need to look very narrowly at  
3 the legal test. And as you stated, even  
4 assuming that the March 25<sup>th</sup> letter is the  
5 appealable event, that 60 day period has not  
6 been met.

7           COMMISSIONER JEFFRIES: I would  
8 agree with my colleagues here. I would agree  
9 that the appellant is -- seems to be very  
10 trustworthy and I'm very sympathetic to, you  
11 know, what you have been dealing with. And  
12 not just you, but also your neighbor. I mean,  
13 it's just a very tough thing to be, you know  
14 in -- have some sort of disagreement with your  
15 neighbor, because that's sort of where you  
16 live and your place of refuge. It's just not  
17 a good feeling.

18           But you know, today we had to look  
19 very narrowly at this case, you know, as the  
20 Board of Zoning Adjustment. And I just don't  
21 think you met your burden as related to your  
22 statement of those circumstances that

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1 prevented you from filing in a timely fashion.

2           You know, 1,433 days is quite a  
3 bit. And my suspicion is that there is  
4 probably some other sub-plot in terms of how  
5 you got to where you are here with your  
6 family. But I just -- you know, I don't think  
7 this is quite the venue for us to deal with  
8 your issue.

9           And I would agree with my colleague  
10 that, you know, you should, particularly  
11 around this whole issue of being concerned  
12 about structural issues and so forth, I mean,  
13 probably take that up with DCRA, perhaps even  
14 after this hearing to sort of deal with that.

15          I mean, you stated that a couple of times on  
16 the record.

17           So hopefully, you know, you might  
18 continue to make certain that, you know, if  
19 you think that there are some structural  
20 issues, that you cover that. But again,  
21 that's just not in our jurisdiction. And I  
22 wish you luck.

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1                   CHAIRMAN LOUD:       Thank you, Mr.  
2                   Jeffries.    I just want to echo something I  
3                   heard you say and then I realized, too, it's  
4                   beyond my jurisdiction as a Member of BZA.  
5                   But I do think you -- the appellant mentioned  
6                   a number of times about an unstable building  
7                   next to his house and he really needed someone  
8                   to hear him loud and clear.

9                   And I think that someone who has  
10                  jurisdiction is Mr. LeGrant, who is sitting  
11                  right to your left.    And I hope that Mr.  
12                  LeGrant, it's just my hope, it's well beyond  
13                  my jurisdiction, would make time in his  
14                  schedule to sit down and speak with the  
15                  appellant in this case about the structural  
16                  integrity issue and to the extent it is within  
17                  Mr. LeGrant's jurisdiction get to the bottom  
18                  of it, so that at least we don't have that as  
19                  an issue of potential harm to any of our  
20                  citizens.

21                  But as Mr. Jeffries said, that's  
22                  beyond our jurisdiction.    Our jurisdiction is

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1 the simple question of whether the appeal was  
2 submitted within 60 days of the decision of  
3 the DCRA.

4 Is there further deliberation on  
5 this matter? Ms. Bailey, do I need to make a  
6 motion with respect to this?

7 MS. BAILEY: Yes, Mr. Chairman.

8 CHAIRMAN LOUD: I do need to make a  
9 motion?

10 MS. BAILEY: Yes, the Board does  
11 need to vote on this.

12 CHAIRMAN LOUD: Thank you. Then I  
13 would like to move that the Board grant the  
14 DCRA's motion to dismiss in the Appeal of  
15 Jonathon Bolduc, I hope I'm pronouncing it  
16 correctly, Case No. 17915. Is there a second?

17 COMMISSIONER JEFFRIES: Second.

18 CHAIRMAN LOUD: The motion has been  
19 made and seconded.

20 All those in favor say aye.

21 ALL: Aye.

22 CHAIRMAN LOUD: All those opposed?

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1 Are there any abstentions? Ms. Bailey, can  
2 you call the vote?

3 MS. BAILEY: Mr. Chairman, the  
4 Board has voted 3-0-2 to grant DCRA's motion  
5 to dismiss the appeal based on timeliness.  
6 Mr. Loud made the motion, Mr. Jeffries  
7 seconded, Mr. Dettman supports the motion.  
8 Two Mayoral Appointees not present -- not  
9 sitting on the Board at this time.

10 CHAIRMAN LOUD: Thank you, Ms.  
11 Bailey. Do we have any other matters on  
12 today's calendar?

13 MS. BAILEY: No, Mr. Chairman.

14 CHAIRMAN LOUD: Okay. Then the  
15 proceedings for --

16 MS. MADDOX-LEVINE: Excuse me,  
17 Chairman Loud?

18 CHAIRMAN LOUD: Yes.

19 MS. MADDOX-LEVINE: I'm so sorry to  
20 interrupt.

21 CHAIRMAN LOUD: Yes.

22 MS. MADDOX-LEVINE: I just wanted

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1 to clarify for Mr. Hawkins a point of  
2 reference.

3 CHAIRMAN LOUD: Um-hum.

4 MS. MADDOX-LEVINE: That if he has,  
5 I'm sorry, structural integrity issues that he  
6 should actually bring those to the attention  
7 of Lennox Douglas and he is seated right  
8 behind us raising his hand.

9 CHAIRMAN LOUD: Okay. Thank you  
10 very much for that clarification. Does Mr.  
11 Douglas work for Mr. LeGrant?

12 MS. MADDOX-LEVINE: He is employed  
13 by DCRA.

14 CHAIRMAN LOUD: Separate division  
15 altogether?

16 MS. MADDOX-LEVINE: In a different  
17 division.

18 CHAIRMAN LOUD: Okay. Thank you  
19 very much. We appreciate that clarification.

20 And if there are any spill-over issues that  
21 would extend to Mr. LeGrant's jurisdiction, we  
22 would hope that Mr. LeGrant makes himself

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1 available as well. Thanks for the  
2 clarification.

3 Today's proceedings are adjourned.

4 MS. MADDOX-LEVINE: Thank you.

5 (Whereupon, the Public Hearing was  
6 concluded at 3:42 p.m.)

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