

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 20, 2009

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairman
MERIDITH MOLDENHAUER, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
MAXINE BROWN-ROBERTS

The transcript constitutes the
minutes from the Public Hearing held on
October 20, 2009.

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

10:37 p.m.

CHAIRPERSON LOUD: Good morning.

This hearing will please come to order.

Ladies and gentlemen, this is the October 20th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Marc Loud, chairperson.

Joining me today to my right is Chairman Anthony Hood from the Zoning Commission; to my left Meridith Moldenhauer, Board of Zoning Adjustment member, mayoral appointee; Mr. Clifford Moy, secretary of BZA; Ms. Lori Monroe, Office of the Attorney General; Ms. Mary Nagelhout, Office of the Attorney General; and to my far left Beverley Bailey, zoning specialist in the Office of Zoning.

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

Please be advised that this

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1 proceeding is being recorded by a court
2 reporter and is also Web cast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room.

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

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

21 The order of procedure for special
22 exceptions and variances is: Statement and

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1 witnesses of the applicant; government
2 reports, including the Office of Planning, the
3 Department of Public Works, etcetera; the
4 report of the Advisory Neighborhood
5 Commission; parties or persons in support;
6 parties or persons in opposition; and finally,
7 closing remarks by the applicant.

8 Pursuant to sections 3117.4 and
9 3117.5 the following time constraints will be
10 maintained: The applicant, appellant, persons
11 and parties, except an ANC, in support
12 including witnesses, 60 minutes, collectively;
13 appellees, persons and parties, except an ANC,
14 in opposition, including witnesses, 60 minutes
15 collectively; and finally, individuals, three
16 minutes. These time restraints do not include
17 cross examination and/or questions from the
18 Board.

19 Cross examination of witnesses is
20 permitted by the applicant or parties. The
21 ANC within the property is located is
22 automatically a party in a special exception

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1 or variance case. Nothing prohibits the Board
2 from placing reasonable restrictions on cross
3 examination, including time limits and
4 limitations on the scope of cross examination.

5 The record will be closed at the
6 conclusion of each case, except for any
7 material specifically requested by the Board.
8 The Board and the staff will specify at the
9 end of the hearing exactly what is expected
10 and the date when the persons must submit the
11 evidence to the Office of Zoning. After the
12 record is closed, no other information will be
13 accepted by the Board.

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

20 Please turn off all beepers and
21 cell phones at this time so as not to disrupt
22 these proceedings.

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1 The Board will now consider any
2 preliminary matters. Preliminary matters are
3 those which relate to whether a case will or
4 should be heard today such as requests for
5 postponement, continuance or withdrawal, or
6 whether proper and adequate notice of the
7 hearing has been given.

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

12 Does the staff have any
13 preliminary matters?

14 MS. BAILEY: Mr. Chairman, good
15 morning. Members of the Board, good morning
16 as well.

17 CHAIRPERSON LOUD: Good morning.

18 MS. BAILEY: Yes, sir, there is a
19 preliminary matter. It has to do with the
20 postponement of one of the cases, application
21 17975. The applicant is requesting that the
22 hearing be postponed for this case. I believe

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1 it's for six weeks.

2 CHAIRPERSON LOUD: Thank you, Ms.
3 Bailey. Then why don't we do this? Why don't
4 we have all individuals wishing to testify
5 today please take the oath? Ms. Bailey will
6 administer the oath. And then I think we
7 should go ahead and call that continuance case
8 first and then go to the other two cases.

9 MS. BAILEY: Thank you.

10 CHAIRPERSON LOUD: Okay.

11 MS. BAILEY: All those persons
12 wishing to testify, would you please stand to
13 take the oath? And please raise your right
14 hand.

15 Do you solemnly swear or affirm
16 that the testimony that you'll be giving today
17 will be the truth, the whole truth and nothing
18 but the truth?

19 ALL: I do.

20 MS. BAILEY: Thank you.

21 Application 17975 of Cleotilde
22 Galvez Kimmell. It's pursuant to 11 DCMR

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1 Section 3104.1 for a special exception for a
2 child development center. That's for 12
3 children and four teachers under Section 205
4 at premises 6524 8th Street, N.W. The
5 property is zoned R-1-B. It's located in
6 Square 2973 on Lot 81.

7 Please have a seat at the table.

8 Mr. Chairman, if I'm not mistaken,
9 there is an interpreter here present as well.
10 Thank you.

11 CHAIRPERSON LOUD: First of all,
12 good morning to everyone.

13 Let me ask if the ANC is present
14 this morning for this case?

15 (No audible response.)

16 CHAIRPERSON LOUD: Okay. They're
17 not.

18 I guess the first thing would be
19 for everyone at the table to just introduce
20 yourselves and your address. Give your name
21 and address.

22 MS. KIMMELL: Good morning. My

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1 name is Cleotilde E. Galvez Kimmell and my
2 address is 6524 8th Street, N.W., Washington,
3 D.C. Zip code is 20012.

4 CHAIRPERSON LOUD: Thank you. And
5 to your right would be?

6 MS. ZEGEYE: (Off microphone.)

7 CHAIRPERSON LOUD: I don't think
8 we're picking you on the --

9 MS. ZEGEYE: Good morning. My
10 name is Meti Zegeye and I am a third-year law
11 student at Washington College of Law,
12 Community and Economic Development Clinic, and
13 along with my partner, Emily Sala, over here
14 representing Ms. Cleotilde Kimmell.

15 MS. SALA: Good morning. My name
16 is Emily Sala. I am also a student at
17 American University, Washington College of
18 Law, working this year in the Community and
19 Economic Development Law Clinic, representing
20 Ms. Kimmell today.

21 Do you need our addresses? I
22 wasn't sure if that was addressed to us as

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1 well.

2 CHAIRPERSON LOUD: No, I don't
3 think we normally get counsel addresses, so
4 no. Thank you.

5 MS. SALA: Okay. Just checking.

6 CHAIRPERSON LOUD: Is this your
7 first case representing a client in semi-
8 court?

9 MS. SALA: Yes, sir. We just
10 began this year in the clinic, in the fall.

11 CHAIRPERSON LOUD: Okay. Well,
12 good luck to you.

13 MS. SALA: Thank you.

14 CHAIRPERSON LOUD: And I'm sure
15 you'll be very, very outstanding.

16 Yes?

17 MS. ZEGEYE: I just want to add
18 the fact that we're working under the
19 supervision of our professor, Professor Jaime
20 Lee, who is a licensed attorney in the
21 District of Columbia.

22 CHAIRPERSON LOUD: All right.

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1 Well, I think we've read the record and we
2 realize that there's a request for a
3 continuance. So barring any concerns that my
4 colleagues up here, and I'll give them the
5 chance to ask you any questions, we've taken
6 the liberty of looking at the -- you've
7 articulated a strong case for a continuance.
8 We've taken a look at our calendar in terms of
9 some potentially open dates. And it looks
10 like December 15th in the afternoon would be
11 open and good for us. And we don't want to
12 drag this out unnecessarily.

13 So, board members, do you have any
14 questions of the applicant?

15 (No audible response.)

16 CHAIRPERSON LOUD: Okay. Is that
17 an acceptable date?

18 MS. SALA: I believe we will need
19 more time. Being we have received a response
20 from the ANC 4B last night indicating that we
21 would not be able to make a presentation at
22 their meeting until at least their November

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1 23rd meeting, so I would believe that they
2 would need some time, a few weeks after that,
3 at least, to be able to produce a response.

4 CHAIRPERSON LOUD: Well, if they
5 meet on November 23rd and get a couple of
6 weeks after that to produce a response, you
7 still don't think we -- by December 15th?

8 MS. ZEGEYE: We uncovered
9 something over the weekend which is basically
10 the fact that Ms. Kimmell in her application
11 had asked for 17 children. But it seems to be
12 that throughout the file that the BZA has the
13 understanding was that she was requesting for
14 12 children, but she's requesting for more.
15 Which means that we would need to make a
16 slight amendment to the original application.
17 And that may require more time, because I
18 guess the requirements that have to be met are
19 more -- maybe more difficult, you know, to
20 establish.

21 CHAIRPERSON LOUD: Okay. So, if
22 not December 15th, what would be a good date

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1 for you? We'll have to run this through Ms.
2 Bailey because she's got her finger on the
3 pulse of the available dates.

4 But I would just, you know,
5 looking it from a distance, think that you
6 could probably amend for the 17 and, you know,
7 go through the ANC process on November 23rd
8 and perhaps still be ready by December 15th.
9 But I don't want to put that kind of pressure
10 on you, if you feel like you need more time to
11 work with your client.

12 MS. BAILEY: Mr. Chairman, I just
13 wanted to add that the next meeting after the
14 15th of December is December 22nd, and that's
15 the last meeting of the year. So you probably
16 are looking for a date in January, if not the
17 December 15th meeting hearing date.

18 CHAIRPERSON LOUD: Is December
19 22nd pretty full?

20 MR. MOY: Mr. Chairman, we
21 deliberately kept the afternoon of December
22 22nd for carry overs. And we still have the

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1 entire month of November to go through that
2 and more cases. So we could add this case if
3 the applicant wishes, or set this off in
4 January if they feel they need ample time to
5 prepare the case.

6 CHAIRPERSON LOUD: Okay. I'm
7 being reminded up here that you have exams in
8 December and that I need to be nice. So, I
9 think January is fine, from the Board's
10 perspective.

11 MR. MOY: Well, then we're looking
12 at either January 12th in the afternoon, or
13 January 19th in the afternoon.

14 MS. ZEGEYE: January 19th in the
15 afternoon would be perfect.

16 CHAIRPERSON LOUD: You'll be fine.
17 It's not like pulling teeth. You'll be just
18 fine.

19 Okay. So, January 19th in the
20 afternoon. And I did see the latest that came
21 in this morning about the 17, but if there's
22 something additional from the ANC; you don't

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1 have to go into it now, just if you have it,
2 perhaps you can give it to Ms. Bailey so she
3 can make it part of our record.

4 Is there anything further on this
5 case?

6 MS. BAILEY: Not on this case, Mr.
7 Chair.

8 CHAIRPERSON LOUD: Okay. So,
9 we'll see you again on January 19th. And
10 again, if you have anything to put into the
11 record for the case, just give it to Ms.
12 Bailey.

13 MS. ZEGEYE: Thank you.

14 MS. SALA: Thank you.

15 CHAIRPERSON LOUD: I think, Ms.
16 Bailey, when you're ready, we can probably
17 call the next case.

18 MS. BAILEY: The next case?

19 CHAIRPERSON LOUD: Yes.

20 MS. BAILEY: Thank you, Mr.
21 Chairman. It's application 17970. It's the
22 application of Lorraine B. Purnell and it's

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1 pursuant to 11 DCMR Section 3104.1 for a
2 special exception to allow the construction of
3 an accessory garage serving a one-family row
4 dwelling under Section 223, not meeting the
5 lot occupancy requirements. That's Section
6 403. The property is located in the R-5-A
7 District at premises 222 Emerson Street, N.W.,
8 Square 3323, Lot 12.

9 Someone here representing Ms.
10 Lorraine Purnell? Please have a seat at the
11 table, sir.

12 CHAIRPERSON LOUD: Good morning.
13 Were you sworn in earlier?

14 MR. WILSON: (Off microphone.)

15 CHAIRPERSON LOUD: Okay. Very
16 good. And just for my own purposes, is there
17 anyone in the audience who's planning to
18 testify either in support or in opposition to
19 this case?

20 (No audible response.)

21 CHAIRPERSON LOUD: Okay. And is
22 the ANC present in this case?

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1 (No audible response.)

2 CHAIRPERSON LOUD: All right. And
3 the Office of Planning is here. Good morning.

4 Why don't you state your name for
5 the record? Give you name and your address
6 for the record. And I'll suggest some ways to
7 proceed in your case.

8 MR. WILSON: (Off microphone.)

9 CHAIRPERSON LOUD: I don't know if
10 your microphone is on. There's a green light
11 that comes on when you hit the button
12 correctly. Okay.

13 MR. WILSON: (Off microphone.)

14 CHAIRPERSON LOUD: She's still not
15 able to hear you, the court reporter, and
16 we're not able to hear you clearly either.
17 Thank you, sir.

18 MR. WILSON: My name is Yettekov
19 Wilson, architect. 6101 16th Street, N.W.,
20 Washington, D.C.

21 CHAIRPERSON LOUD: Okay. And
22 Exhibit 5 authorizes you to represent the

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1 applicant in this case?

2 MR. WILSON: Ms. Purnell.

3 CHAIRPERSON LOUD: That's correct.

4 Okay. I think the Board has had an
5 opportunity to review the file. It was a file
6 that was put together very well. It's for
7 special exception relief. And the Office of
8 Planning has prepared a report indicating that
9 they are in support of the relief. The ANC
10 has not filed in opposition. I believe that
11 there's one letter that came into our record
12 this morning of someone who's opposed to it,
13 and perhaps we'll ask you some questions about
14 that.

15 But again, I think the record is
16 pretty full. So I think in terms of
17 suggestions to you about how to proceed, you
18 may want to just highlight the bare
19 necessities of your case, what you're doing.
20 And then we'll probably turn to the Board, see
21 if there are any questions, maybe ask you
22 about this exhibit we received this morning.

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1 And then we'll go to the Office of Planning
2 for their report. And this should not take
3 very long.

4 MR. WILSON: So far as addressing
5 the opposition, I made a submission of
6 photographs. And the garages that she's
7 speaking of in paragraph 2, I show them on
8 view 1 and view 5. When the zoning officer
9 looked at his computer, these garages didn't
10 show up. So they were built illegally. And
11 what my client is trying to do is to build one
12 legally. And the lots are too small from her
13 lot east to build a garage on, and that's why
14 we need the assistance of BZA and the Board of
15 Planning.

16 CHAIRPERSON LOUD: Okay. Thank
17 you. And did you want to just summarize your
18 request for relief? I believe you're looking
19 for special exception relief because it does
20 not meet the lot occupancy and court
21 requirements of Sections 403 and 406. Your
22 proposed garage would take lot occupancy to 53

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1 percent. Forty percent is allowed. And
2 there's, I think, some questions that may be
3 raised about the open and closed court. And
4 we can get into that later with the Office of
5 Planning. But essentially that's your request
6 for your relief. You want to do a one-story
7 rear garage?

8 MR. WILSON: Right.

9 CHAIRPERSON LOUD: Okay. Is there
10 anything else you wanted to add to that?

11 MR. WILSON: No, just a plain
12 garage.

13 CHAIRPERSON LOUD: Okay. All
14 right. Well, let's see if board members have
15 any questions for you, and then we'll turn to
16 the Office of Planning.

17 ZC CHAIR HOOD: I just wanted to
18 ask, I'm looking at view 1, which is in your
19 submittal; and I appreciate the photographs.
20 The person who was in question, who has the
21 opposition, I believe, in view 1, that's their
22 garage?

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1 MR. WILSON: No.

2 ZC CHAIR HOOD: That's not their
3 garage?

4 MR. WILSON: No, the person that's
5 in opposition doesn't have a garage.

6 ZC CHAIR HOOD: Okay. Okay.

7 MR. WILSON: She is located to the
8 east of my client.

9 ZC CHAIR HOOD: To the east? So,
10 let's look at view 1. Your client's garage,
11 if I'm looking at the photograph here, they're
12 to the right, am I correct?

13 MR. WILSON: Correct.

14 ZC CHAIR HOOD: Okay. Just trying
15 to get my orientation straight.

16 MR. WILSON: These are three
17 garages that we are talking about that are
18 illegally built.

19 ZC CHAIR HOOD: Right. I was just
20 trying to get a reference to where your client
21 was.

22 MR. WILSON: I understand.

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1 ZC CHAIR HOOD: Okay. Thank you.

2 Thank you, Mr. Chair.

3 CHAIRPERSON LOUD: Thank you, Mr.

4 Chair.

5 Mrs. Moldenhauer, did you have any

6 questions?

7 MEMBER MOLDENHAUER: I just have

8 one question. Looking at view 1, I just was

9 not as clear. In the diagram, which is also

10 Exhibit 8, it looks as though this is going to

11 be a flat-roofed garage. Is that correct?

12 MR. WILSON: My garage is flat-

13 roofed.

14 MEMBER MOLDENHAUER: Yours is

15 flat-roofed? So it's going to be a one-story

16 flat roof structure.

17 MR. WILSON: (Off microphone.)

18 MEMBER MOLDENHAUER: Okay. Thank

19 you. Yes, that's it.

20 CHAIRPERSON LOUD: Thank you,

21 board member.

22 Okay. Why don't we turn now to

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1 the Office of Planning? The Office of
2 Planning submitted a report. It's our Exhibit
3 21. It's dated October 5th. The Office of
4 Planning was in support of the application at
5 the time.

6 Let me just ask at the outset,
7 have you received a copy of Exhibit 22, which
8 is a letter of the next door neighbor to the
9 east, I think. Okay. You have?

10 MS. THOMAS: No. No, I have not.

11 CHAIRPERSON LOUD: You have not?
12 Why don't I give you my copy? It's maybe a
13 paragraph. And just before you give your
14 report, just if there's anything in that
15 letter that would change the conclusion in
16 your report, if you could let the Board know.

17 MS.THOMAS: Mr. Chairman, good
18 morning.

19 CHAIRPERSON LOUD: Good morning.

20 MS.THOMAS: Karen Thomas with the
21 Office of Planning. Just briefly looking at
22 the report, Exhibit 22, I do not have any

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1 concerns regarding this opposition. In fact,
2 where it states that the proposed garage will
3 be outside District Codes and requirement, it
4 would not be. In fact, that's why they're
5 here, to abide by the regulation set forth in
6 Section 223. And based on our report and our
7 review, we believe that the garage does meet
8 the requirements.

9 And just a little bit of
10 clarification with respect to the courts. The
11 applicant calculated a lot occupancy at about
12 53 percent, but I didn't think that they
13 included the open and closed court together.
14 And based on the regulations, it says that
15 regulations require not less than 15 feet for
16 a closed court, and this one is going to be
17 proposed at five feet. And the existing open
18 court is at five feet where 10 feet minimum is
19 required. So, it had to be included into the
20 lot occupancy based on the definition of
21 building area in the Zoning Regulations. So
22 it just bumped it up a bit to 59 percent, but

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1 it's still within the regulations for 223.
2 So, on that basis we support the application
3 and we don't have any concerns with it not
4 meeting requirements.

5 I'll be happy to take any
6 questions.

7 CHAIRPERSON LOUD: Thank you. And
8 so as I understand it then, the closed court
9 bumps up the lot occupancy to 59 percent?

10 MS.THOMAS: That's correct.

11 CHAIRPERSON LOUD: Okay. And I
12 would like now to offer OAG, only if you
13 wanted to, weigh in or raise any concerns that
14 you may have had or that you see regarding the
15 issue of the closed court relief.

16 MS. MONROE: I actually just had a
17 question. I couldn't figure out why it was
18 closed, and I think it was more my reading of
19 the plans. The two sides parallel to the
20 alley in the rear of the home, are they walled
21 off? I just couldn't tell. That was more of
22 a question.

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1 MS.THOMAS: To me that's what it
2 looked like, because it seems as if there was
3 a wall there.

4 MS. MONROE: I just couldn't tell.

5 MS.THOMAS: And a gate. And he
6 was calling it a closed court.

7 MS. MONROE: But I agree with you,
8 if it's just five feet, it would go to lot
9 occupancy. It doesn't change the Board's
10 thinking at all.

11 MS.THOMAS: Yes.

12 MS. MONROE: I was just wondering.
13 That's all.

14 MS.THOMAS: I mean, I can pose
15 that question to Mr. Wilson.

16 The question is, is that a wall on
17 the side? Did you build a wall across on the
18 property line?

19 MR. WILSON: Yes.

20 MS.THOMAS: And in addition, it
21 seems based on your drawings to be -- if you
22 look at the south elevation from the alley,

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1 you can see that it's closed off, but it's
2 open to the sky in that portion.

3 MS. MONROE: Okay. That's fine.

4 CHAIRPERSON LOUD: All right.

5 Thank you Are there any questions for the
6 Office of Planning either from the applicant
7 or from the Board?

8 (No audible response.)

9 CHAIRPERSON LOUD: Okay. Then I
10 think if the ANC has since shown up, this
11 would be the time to step forward. They're
12 not here.

13 There are no other government
14 reports. There doesn't appear to be any
15 witnesses in support or in opposition to the
16 application.

17 So if you'd like to make some
18 closing remarks, now would be the time to do
19 it. And you don't have to if you don't want
20 to.

21 MR. WILSON: There's only one
22 opposition.

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1 CHAIRPERSON LOUD: Okay.

2 MR. WILSON: And I'll address
3 that, but nothing.

4 CHAIRPERSON LOUD: Okay. Then
5 what I'd like to recommend to members of the
6 Board is that we deliberate on the case today.
7 I'd be happy to start us off.

8 Okay. This is a request
9 application for Section 223 relief for a rear
10 one-story garage that does not meet the lot
11 occupancy, the open court or the closed court
12 requirements of the regulations. The lot
13 occupancy allowed is 40 percent. This is lot
14 occupancy will go up to 59 percent. The
15 closed court requirement is 10 feet, and this
16 court will have five feet. The open court
17 requirement, I'm sorry, is 10 feet. This one
18 will have five feet. The closed court
19 requirement is 15 feet. This one I think will
20 have five feet as well. We clarified that
21 they do need closed court relief, because
22 there's a wall built across the property line

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1 in the rear that faces up to the open area.
2 And it also increases the lot occupancy to 59
3 percent.

4 The Office of Planning supports
5 the application. There is no opposition from
6 the ANC. There was an opposition letter from
7 a neighbor, our Exhibit 22, I believe. But
8 notwithstanding that letter, the Office of
9 Planning has testified that it is continuing
10 to adopt its recommendation, which went into
11 the Section 223 analysis requirements
12 regarding light and air, and whether the
13 improvement would visually intrude upon the
14 character of the neighborhood and so and so
15 forth, whether it would disrupt privacy of use
16 and enjoyment of neighboring properties. And
17 has reached the conclusion that there's
18 nothing in the letter submitted by the
19 neighbor that would change its position.

20 So, in light of that, the
21 testimony of the applicant, the full record
22 that's been represented to the BZA, I'll be

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1 supporting this application.

2 Are there others?

3 (No audible response.)

4 CHAIRPERSON LOUD: All right.

5 Then what I'd like to do is move for the
6 approval of application No. 17970 for special
7 exception relief under Section 223 for an
8 addition to a single-family dwelling, a one-
9 story garage that does not meet the lot
10 occupancy, the closed court or the open court
11 requirements of our regulations.

12 ZC CHAIR HOOD: Second.

13 CHAIRPERSON LOUD: Motion's been
14 made and seconded. Is there further
15 deliberation?

16 (No audible response.)

17 CHAIRPERSON LOUD: Hearing none,
18 all those in favor say aye. Aye.

19 ZC CHAIR HOOD: Aye.

20 MEMBER MOLDENHAUER: Aye.

21 CHAIRPERSON LOUD: All those who
22 oppose?

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1 (No audible response.)

2 CHAIRPERSON LOUD: Are there any
3 abstentions?

4 (No audible response.)

5 CHAIRPERSON LOUD: Ms. Bailey, can
6 you read back the vote, please?

7 MS. BAILEY: Sure, Mr. Chairman.
8 The vote is recorded as 3-0-2 to grant the
9 application, as amended, to include open and
10 closed courts. The motion was made by Mr.
11 Loud, seconded by Mr. Hood. Mrs. Moldenhauer
12 supported the motion. There are no other
13 board members present at this time.

14 CHAIRPERSON LOUD: Thank you, Ms.
15 Bailey.

16 Congratulations to you.

17 MR. WILSON: Yes.

18 CHAIRPERSON LOUD: Have a great
19 day.

20 Is there anything further in this
21 case?

22 MS. BAILEY: Summary order, sir?

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1 CHAIRPERSON LOUD: Yes. Thank
2 you.

3 MR. WILSON: Thank you. Thank you
4 very much.

5 MS. BAILEY: Next case, Mr.
6 Chairman? Application 17974 of Cleo M. Davis,
7 pursuant to 11 DCMR Section 3103. 2 for a
8 variance from the lot occupancy requirements
9 under Section 403, a variance from the rear
10 yard requirements under Section 404 and a
11 variance from the non-conforming structure
12 provisions under Subsection 2001.3 to allow an
13 addition to an existing one-family row
14 dwelling in the R-3 District of premises 5000
15 4th Street, N.W., Square 3253, Lot 70.

16 CHAIRPERSON LOUD: Thank you, Ms.
17 Bailey.

18 Is the applicant present for this
19 case? Okay. Come on. Come on up to the
20 table and introduce yourself.

21 MS. BAILEY: Mr. Chairman, while
22 he is getting seated, I just wanted to make

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1 the record clear that he initially requested
2 variance relief, but the application was
3 amended to seek relief from the special
4 exception provisions.

5 CHAIRPERSON LOUD: Thank you, Ms.
6 Bailey. I appreciate that.

7 And once the gentleman introduces
8 himself, perhaps he can go into that a little
9 bit. We've also read the record in your case;
10 I think it's a pretty full record, and we can
11 offer some suggestions perhaps on how to
12 proceed in a way that might truncate the
13 hearing.

14 MR. BOLTON: Okay.

15 CHAIRPERSON LOUD: But they're
16 just suggestions, and of course I defer to my
17 colleagues on the Board; they may have some
18 questions. But we realize that you started
19 out as a variance and then subsequently you
20 shortened the size of -- it's a porch,
21 correct?

22 MR. BOLTON: That's correct.

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1 CHAIRPERSON LOUD: And so you
2 don't need a variance any longer. You just
3 need a special exception, as Ms. Bailey
4 indicated. And so why don't you introduce
5 yourself for the record and you can pick it up
6 from there.

7 MR. BOLTON: Great. My name is Hal
8 Bolton. I'm here as the authorized agent of
9 Ms. Davis.

10 CHAIRPERSON LOUD: And your
11 address, Mr. Bolton?

12 MR. BOLTON: It's 1641 Park Road,
13 N.W., Washington, D.C., 20010.

14 CHAIRPERSON LOUD: Okay. I note
15 that the Office of Planning has submitted a
16 report. It's our Exhibit 22 dated October 13.
17 They're in favor of the application. They're
18 also here this morning.

19 The ANC submitted a report, our
20 Exhibit 24. Do you have a copy of that?

21 MR. BOLTON: I do not have a copy.

22 CHAIRPERSON LOUD: Okay. We'll

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1 try to make sure you get a copy before you
2 leave today. This is a report that is
3 supportive of the application, certainly not
4 in opposition to it. It does not meet the
5 requirements of our rules regarding great
6 weight, because it doesn't indicate that there
7 was a quorum or that notice was present. But
8 nonetheless, it's going to be in the file and
9 it's very supportive of what you and your
10 client are trying to do there.

11 With that, if you'd like to sort
12 of just hit the main points of the relief?

13 MR. BOLTON: Sure. My client is
14 requesting permission to add a porch to an
15 existing row house in the R-3 District.

16 The three subsections that she's
17 requesting the special exception for are the
18 percentage of lot occupancy. The porch would
19 increase the existing structure from 60
20 percent lot occupancy to a 70 percent lot
21 occupancy. And also for the rear yard
22 setback. The required rear yard setback is 20

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1 feet. The existing rear yard as it is
2 presently is 15 feet and this porch would then
3 extend eight-feet-nine-inches into that rear
4 yard. And then also she is requesting a
5 special exception for an expansion of a non-
6 conforming structure.

7 CHAIRPERSON LOUD: The record is
8 pretty full. I don't have any questions
9 regarding that. Let's see if board members
10 have any questions.

11 (No audible response.)

12 CHAIRPERSON LOUD: Okay. Why
13 don't we turn to the Office of Planning.

14 Good morning.

15 MS. BROWN-ROBERTS: Good morning,
16 Mr. Chairman. This is Maxine Brown-Roberts
17 from the Office of Planning.

18 I think I will stand on the record
19 and say that the Office of Planning supports
20 the application.

21 Maybe I'll just give a little
22 background that the original application was

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1 for the variance, however, I could not see how
2 they could meet the first prong of the test.
3 And therefore, talking to Mr. Bolton, the
4 applicant's representative, I suggested to
5 them that they try and come in under Section
6 223, which required reducing the size of the
7 porch.

8 I would also note that a portion
9 of the porch extends out into an adjacent
10 public space, and that public space will have
11 to grant permission for that portion of the
12 porch to be constructed. So that's another
13 step that has to be taken.

14 But, as regards the 223, the
15 application meets all of the requirements as
16 outlined in the Zoning Regulations and
17 addressed in my report. And therefore, I
18 recommend approval of the request.

19 Thank you, Mr. Chairman.

20 CHAIRPERSON LOUD: Thank you.

21 Do you have any questions for the
22 Office of Planning?

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1 MR. BOLTON: I do not.

2 CHAIRPERSON LOUD: Okay. Board
3 members, do you have any questions for the
4 Office of Planning?

5 (No audible response.)

6 CHAIRPERSON LOUD: Ms. Monroe?

7 MS. MONROE: Chairman, I just want
8 to be sure the applicant knows that this is
9 going to be under 223, the special exception.
10 All of the things that you talked about are
11 subsumed under 223.

12 MR. BOLTON: Right.

13 MS. MONROE: So that's what the
14 order would go to. Okay. Just so you know.

15 MR. BOLTON: Thank you.

16 CHAIRPERSON LOUD: Thank you, Ms.
17 Monroe. Ms. Monroe, I just had a quick
18 question about what the Office of Planning
19 just testified to about the public space. Is
20 that something that should be a condition?

21 MS. MONROE: No, I don't think so.

22 CHAIRPERSON LOUD: Okay. Thank

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1 you. I appreciate that.

2 All right. So you don't have any
3 questions for the Office of Planning. Sounds
4 like the Board does not have any questions for
5 the Office of Planning. Any little question
6 I may have had about the public space issue
7 was cleared by Ms. Monroe.

8 So what we would do now is;
9 there's no one else here but us, so if you
10 have a closing statement, you can give it now.
11 If you choose not to, it's fine.

12 MR. BOLTON: I do not. Thank you.

13 CHAIRPERSON LOUD: Okay. I think
14 we're ready to decide on this case today.

15 And is there a board member that
16 wants to start us off?

17 (No audible response.)

18 CHAIRPERSON LOUD: Okay. Then
19 I'll start us off.

20 This is a real simple 222. It
21 started out as a variance. Sounds like it ran
22 into some significant hurdles there and I want

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1 to commend the applicant for working with the
2 Office of Planning, because it's made it a lot
3 simpler for us to review. It's now a 223 for
4 a porch addition to the rear of the house,
5 correct? And it does not meet lot occupancy,
6 which is 60 percent for this zone. This
7 addition will take lot occupancy up to 70
8 percent. If I understand correctly, the rear
9 yard provision will be about six-and-a-quarter
10 feet and 20 feet is required. And it's also
11 going to expand existing non-conforming.

12 The Office of Planning has
13 testified in support of it. The ANC is in
14 support of it. There are no letters or
15 witnesses in opposition to it. The applicant
16 understands that this is section 223 relief,
17 not variance relief, and also understands that
18 there's a public space step that needs to be
19 taken in order to finish off the addition.

20 So, in light of the testimony from
21 the applicant, from the Office of Planning,
22 the entire record before us as reflected on

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1 our file, I'm in support of this application.
2 And will open it up to colleagues and see if
3 you have any additional comments.

4 MEMBER MOLDENHAUER: Chairman
5 Loud, I think you fully summarized everything.
6 I think the Office of Planning provided a full
7 report. And I agree with you that it was
8 positive to see the applicant working with OP,
9 so that way we could move forward and quickly
10 on this application. I have no additional
11 comments.

12 CHAIRPERSON LOUD: Okay. So, then
13 I would like to move approval of application
14 17974, as amended, for special exception
15 relief under Section 223 to build a rear porch
16 addition to a single-family dwelling.

17 MEMBER MOLDENHAUER: I second.

18 CHAIRPERSON LOUD: Okay. Motion's
19 been made and seconded. Is there further
20 discussion?

21 (No audible response.)

22 CHAIRPERSON LOUD: Hearing none,

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1 all those in favor say aye. Aye.

2 MEMBER MOLDENHAUER: Aye.

3 ZC CHAIR HOOD: Aye.

4 MEMBER MOLDENHAUER: All those
5 opposed?

6 (No audible response.)

7 CHAIRPERSON LOUD: Now, can we
8 have the reading back of the vote?

9 MS. BAILEY: Mr. Chairman, the
10 reading is 3-0-2 to grant the application.
11 Motion made by Mr. Loud, seconded by Mrs.
12 Moldenhauer. Mr. Hood supported the motion.
13 No other board members are present at this
14 time.

15 CHAIRPERSON LOUD: Thank you, Ms.
16 Bailey. Is there anything further in this
17 case?

18 MS. BAILEY: Summary order, Mr.
19 Chairman?

20 CHAIRPERSON LOUD: Yes.

21 Thank you for your patience this
22 morning. Congratulations to you and your

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1 client.

2 MR. BOLTON: Thank you.

3 CHAIRPERSON LOUD: All right.

4 (Whereupon, the hearing was
5 recessed at 11:15 a.m. to reconvene at 1:15
6 p.m. this same day.)

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

3

1:18 p.m.

4

CHAIRPERSON LOUD: This hearing

5

will please come to order.

6

Good afternoon, ladies and

7

gentlemen. This is the October 20th public

8

hearing of the Board of Zoning Adjustment of

9

the District of Columbia. My name is Marc

10

Loud, chairperson. To my right is the

11

distinguished Mr. Anthony Hood, chairperson of

12

the Zoning Commission. To my left is Ms.

13

Meridith Moldenhauer, the Board of Zoning

14

Adjustment mayoral appointee, Mr. Clifford

15

Moy, secretary of the BZA, Mr. Lori Monroe,

16

Office of the Attorney General, and to my far

17

left Ms. Beverley Bailey, zoning specialist in

18

the Office of Zoning.

19

Copies of today's hearing agenda

20

are available to you and are located to my

21

left in the wall bin near the door.

22

Please be aware that this

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1 proceeding is being recorded by a court
2 reporter and is also Web cast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room.

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

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

21 The order of procedure for special
22 exceptions and variances is as follows:

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1 Statement and witnesses of the applicant;
2 Government reports, including the Office of
3 Planning, Department of Public Works,
4 etcetera; the report of the Advisory
5 Neighborhood Commission; parties or persons in
6 support; parties or persons in opposition; and
7 finally, closing remarks by the applicant.

8 The order of procedure for appeal
9 applications will be as follows: Statement
10 and witnesses of the appellant; the Zoning
11 Administrator or other government official's
12 case; case for the owner, lessee or operator
13 of the property involved, if not the
14 appellant; the ANC within which the property
15 is located; the intervener's case, if
16 permitted by the Board; rebuttal and closing
17 statement by the appellant only.

18 Pursuant to sections 3117.4 and
19 3117.5, the following time constraints will be
20 maintained: The applicant/appellant, persons
21 and parties, except an ANC in support,
22 including witnesses, 60 minutes collectively;

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1 the appellees, persons and parties, except an
2 ANC in opposition, including witnesses, 60
3 minutes collectively; and finally, individuals
4 are allotted three minutes. These time
5 restraints do not include cross examination
6 and/or questions from the Board. Cross
7 examination of witnesses is permitted by the
8 applicant or parties.

9 The ANC within which the property
10 is located is automatically a party in a
11 special exception or variance case. Nothing
12 prohibits the Board from placing reasonable
13 restrictions on cross examination, including
14 time limits, and limitations on the scope of
15 cross examination.

16 The record will be closed at the
17 conclusion of each case except for any
18 material specifically requested by the Board.
19 The Board and the staff will specify at the
20 end of the hearing exactly what is expected
21 and the date when the persons must submit the
22 evidence to the Office of Zoning. After the

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1 record is closed, and the Board will indicate
2 that the record is closed, no other
3 information will be accepted by the Board.

4 Let me repeat that. After the record is
5 closed, and the Board will indicate that the
6 record is being closed, no other information
7 will be accepted by the Board.

8 The decision of the Board in
9 contested cases must be based exclusively on
10 the public record. To avoid any appearance to
11 the contrary, the Board requests that persons
12 present not engage the members of the Board in
13 conversation.

14 Please turn off all beepers and
15 cell phones at this time so as not to disrupt
16 these proceedings.

17 The Board will make every effort
18 to conclude the public hearing today as
19 closely as possible to 6:00 p.m. If the
20 afternoon cases are not completed by 6:00
21 p.m., the Board will assess whether it can
22 complete the pending case or cases remaining

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1 on the agenda.

2 At this time the Board will
3 consider any preliminary matters. Preliminary
4 matters are those that relate to whether a
5 case will or should be heard today such as
6 requests for postponement, continuance,
7 etcetera, or whether proper and adequate
8 notice of the hearing has been giving.

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

13 Does the staff have any
14 preliminary matters?

15 MS. BAILEY: Mr. Chairman, yes, we
16 do, and it concerns the postponement of one of
17 the cases for the afternoon.

18 CHAIRPERSON LOUD: Thank you, Ms.
19 Bailey. Why don't we then swear in all of the
20 witnesses.

21 You can stand and Ms. Bailey will
22 administer the oath and we'll take the

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1 preliminary matter in the context of the
2 cases.

3 MS. BAILEY: Please raise your
4 right hand. Do you solemnly swear or affirm
5 that the testimony that you'll be giving this
6 afternoon will be the truth, the whole truth
7 and nothing but the truth?

8 ALL: I do.

9 MS. BAILEY: Thank you.

10 Members of the Board, the
11 postponement has to do with application 17978
12 of Diana Embrey and it's pursuant to 11 DCMR
13 Section 3104.1 for a special exception to
14 construct a new accessory garage under Section
15 223, not meeting the lot occupancy
16 requirements; that's Section 403, at 612 A
17 Street, N.E. The property is zoned R-4. And
18 additionally, it's located in Square 867, Lot
19 98.

20 As I indicated, Mr. Chairman, the
21 applicant is requesting postponement of the
22 hearing. And her preference is for a February

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1 2010 hearing date. I believe she's present at
2 this time.

3 So, would you please have a seat
4 at the table?

5 CHAIRPERSON LOUD: Good morning.
6 If you could, as Ms. Bailey indicated, step to
7 the table. Please state your name and your
8 address for the record. We will not be very
9 long with your case. I think we've taken the
10 liberty; Ms. Bailey has and Mr. Moy, of
11 looking into the future at some dates and have
12 come up with February 2nd, which obviously
13 going to be a Tuesday, because we meet on
14 Tuesdays. And that would be the first case in
15 the afternoon. The other choice was January
16 12. It would be the third case in the
17 afternoon.

18 MS. EMBREY: (Off microphone.)

19 CHAIRPERSON LOUD: You're going to
20 have to speak directly into the microphone and
21 cut the microphone on. A green light will
22 come on once you've cut the microphone on.

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1 MS. EMBREY: Oh, there we go.

2 Sorry, I'm new to this.

3 Is there anyway possible to do it
4 later in February, because my architect is not
5 available certain dates? So the dates that we
6 had were February 23rd or March 2nd, or March
7 9th.

8 CHAIRPERSON LOUD: Let's just take
9 a look at it. Okay. How about February 23rd?
10 Okay. We'll do it February 23rd when your
11 architect is available.

12 MS. BAILEY: That's the morning
13 session, Mr. Chairman? The morning session?

14 CHAIRPERSON LOUD: I don't have my
15 calendar directly in front of me.

16 MS. BAILEY: Morning is open.

17 CHAIRPERSON LOUD: How many cases
18 do we have between 10:00 and noon?

19 MS. BAILEY: At this point, Mr.
20 Chairman, there isn't anything in the morning
21 on February 23rd.

22 CHAIRPERSON LOUD: Yes, let's do

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1 it first.

2 MS. BAILEY: First in the morning?

3 CHAIRPERSON LOUD: So we'll see
4 you bright and early on the morning of
5 February 23rd.

6 MS. EMBREY: Great. Thank you.

7 CHAIRPERSON LOUD: All right.

8 Thank you.

9 Is there anything further in this
10 case, Ms. Bailey?

11 MS. BAILEY: No, Mr. Chairman.

12 CHAIRPERSON LOUD: Okay. Let's
13 call the next case, please.

14 MS. BAILEY: The last case of the
15 day, Mr. Chairman, is an appeal, and it's No.
16 17966 of Stephen Bruce. And it's pursuant to
17 11 DCMR Section 3100 and 3101, from a
18 determination of the Office of the Zoning
19 Administrator, Department of Consumer and
20 Regulatory Affairs, to allow the conversion of
21 a non-conforming one-family detached dwelling
22 by adding an apartment within the garage at

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1 premises 2709 31st Street, N.W. The property
2 is located in Square 2125 on Lot 815 and it is
3 zoned R-1-A.

4 CHAIRPERSON LOUD: Thank you, Ms.
5 Bailey.

6 Are the parties here in that case?
7 If you could step forward to the table or
8 tables.

9 Good afternoon. We're going to
10 come back and have everyone introduce
11 themselves.

12 First, I just want to make sure
13 that everyone's at the table who should be at
14 the table, including DCRA and including the
15 owner of the property.

16 I think there was a motion filed
17 to intervene, but it's not necessary, I think,
18 as you have indicated. And so you can either
19 withdraw it or we'll dismiss it. And it's
20 understood that the owner is automatically a
21 party. All right.

22 And starting then to my right, if

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1 everyone at the tables this afternoon could
2 introduce yourselves and state your address?

3 MR. BRUCE: (Off microphone.)

4 CHAIRPERSON LOUD: I don't think
5 your microphone is --

6 MR. BRUCE: Oh, okay.

7 CHAIRPERSON LOUD: Oh, there we
8 go.

9 MR. BRUCE: Stephen Bruce, 2701
10 31st Street, N.W.

11 CHAIRPERSON LOUD: Good afternoon,
12 Mr. Bruce.

13 MR. SURABIAN: This is an Attorney
14 General, Jay Surabian, representing the (off
15 microphone.)

16 CHAIRPERSON LOUD: Good afternoon,
17 Mr. Surabian. I think we caught the first
18 part of what you said. We didn't even catch
19 the first part. We didn't catch any of it.
20 But I think got to put your mouth right in
21 front of that microphone. Make sure that
22 light is on.

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1 MR. SURABIAN: This is an Attorney
2 General, Jay Surabian, representing the
3 Department of Consumer and Regulatory Affairs.

4 MS. PARKER-WOOLRIDGE: Good
5 afternoon. My name is Assistant Attorney
6 General Doris A. Parker-Woolridge representing
7 DCRA.

8 CHAIRPERSON LOUD: Good afternoon,
9 Ms. Woolridge.

10 MR. LeGRANT: Matthew LeGrant.
11 I'm the Zoning Administrator with the
12 Department of Consumer and Regulatory Affairs.

13 CHAIRPERSON LOUD: Good afternoon.

14 MR. HITCHCOCK: (Off microphone.)

15 CHAIRPERSON LOUD: She's not
16 picking you up either.

17 MR. HITCHCOCK: Yes, sorry. Con
18 Hitchcock. I'm attorney for Maryam
19 Mashayekhi, who is the homeowner, through a
20 family trust, the Maryam Mashayekhi Trust.

21 CHAIRPERSON LOUD: Thank you very
22 much and good afternoon.

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1 MR. HITCHCOCK: This is Ms.
2 Mashayekhi.

3 MS. MASHAYEKHI: Maryam
4 Mashayekhi. Address is 2709 31st Street,
5 N.W., Washington, D.C.

6 CHAIRPERSON LOUD: Good afternoon.
7 And good afternoon to everyone again here for
8 the purposes of this appeal case.

9 The Board has reviewed the file.
10 It's a pretty extensive file. It raises a
11 number of interesting issues regarding both
12 the use of the structure under question and
13 interesting issues regarding the appeal
14 itself. And I believe where we'd like to
15 start off is; and I'm going to read the
16 appropriate rule. Bear me for reading the
17 entire rule, but I think it's important for
18 the purposes of framing the initial
19 discussion, what we're getting ready to go
20 into and sort of the relevant standards that
21 we'll be looking at, and looking to you for
22 help on as we try to make it through the case.

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1 11 DCMR Section 3112.2(a) states
2 as follows: "An appeal shall be filed within
3 60 days from the date the person appealing the
4 administrative decision had notice or
5 knowledge of the decision complained of, or
6 reasonably should have had notice or knowledge
7 of the decision complained of, whichever is
8 earlier."

9 The skipping down to (c):

10 "Notwithstanding paragraphs (a)
11 and (b) of this section for purposes of
12 establishing the timeliness of an appeal under
13 this subsection, an appellant shall have a
14 minimum of 60 days from the date of the
15 administrative decision complained of in which
16 to file an appeal. The Board may extend the
17 60-day deadline for the filing of an appeal
18 only if the appellant demonstrates the
19 following: (1) There are exceptional
20 circumstances that are outside of the
21 appellant's control and could not have been
22 reasonably anticipated that substantially

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1 impaired the appellant's ability to file an
2 appeal to the board; and (2) the extension of
3 time will not prejudice the parties to the
4 appeal as identified in Section 3199.1," which
5 in this case would be the DCRA and the
6 property owner.

7 So I think where we'd like to
8 start off; and, board members, correct me if
9 I'm wrong, is with the each of the -- the
10 appellant, the DCRA, the owner helping us
11 address that standard and that issue. And as
12 soon as we make it through that issue, we'll
13 move to the merits of the case. Okay?

14 MEMBER MOLDENHAUER: Mr. Chairman,
15 you want to just mention about the intervener
16 status?

17 CHAIRPERSON LOUD: I did mention
18 it. I can mention it again. The motion was
19 dismissed because the proposed intervener is
20 automatically an -- that's okay. Just, you
21 know, keep everybody on our toes. But I think
22 I started out with that.

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1 Is that right, Mr. Hitchcock?

2 MR. HITCHCOCK: (Off microphone.)

3 CHAIRPERSON LOUD: Okay. So the
4 proposed intervenor understands that she's
5 automatically a party. Okay.

6 So with that having been resolved,
7 in terms of the order of procedure, as we go
8 through this initial threshold question, we'll
9 start with the appellant. Then we'll move to
10 the Zoning Administrator. Then we'll move to
11 the owner and we'll continue to go back and
12 forth like that. And of course, there will be
13 an opportunity as appropriate for cross
14 examination, if we get to that point. But I
15 think initially we're just going to start off
16 with an articulation of your response to the
17 threshold question.

18 MR. BRUCE: Stephen Bruce. I
19 think on timeliness that the appeal was filed
20 within 60 days of when I saw that there was
21 any construction. And it was also filed well
22 within 60 days when I heard from Mr. LeGrant's

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1 office that he was denying any action on my
2 complaints about the construction. There's a
3 series of emails, which we attached, which
4 run, I believe it's well into March. The last
5 one was April 17th from Reuben Pemberton that
6 they had found nothing to indicate that there
7 was a full apartment; e.g., no stairs.

8 CHAIRPERSON LOUD: And so if I
9 understand, let me just -- I'm sorry, were you
10 finished?

11 MR. BRUCE: No.

12 CHAIRPERSON LOUD: Okay. Just, as
13 I understand then, it was filed within 60 days
14 of when you first learned about the
15 construction?

16 MR. BRUCE: Yes, I believe the
17 construction started on February 27th, or
18 26th. And because February is a short month,
19 that my count was that the appeal was filed
20 one or two days before the 60-day period after
21 I saw any construction.

22 CHAIRPERSON LOUD: When were you

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1 aware that there was a permit in the case?

2 MR. BRUCE: That same day.

3 CHAIRPERSON LOUD: So, you were
4 aware around February 27 that there was a
5 permit?

6 MR. BRUCE: Yes, and I called and
7 complained about the construction that same
8 day.

9 CHAIRPERSON LOUD: Okay. When you
10 became aware on February 27th that there was
11 a permit, what steps were taken by you to
12 determine the date of the permit and when it
13 had been issued?

14 MR. BRUCE: I don't believe I
15 looked at the date of the permit. I didn't
16 inspect the date of the permit at that time.

17 CHAIRPERSON LOUD: Well, you were
18 aware on the 27th that a permit that been
19 issued. Did you make an effort to find out
20 when the permit had been issued?

21 MR. BRUCE: No. My effort was to
22 get the inspectors out to stop the

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1 construction, and that was what I was focusing
2 on.

3 CHAIRPERSON LOUD: Okay.

4 MR. BRUCE: And so I made several
5 calls that same day to get people out to stop
6 the construction. And I was told that someone
7 was going to get back to me. I didn't hear
8 anything further and I think the next
9 communication I had was a couple of weeks
10 later.

11 And after that at some point I
12 emailed Mr. LeGrant on March the 11th, and he
13 responded the same day promising an inspection
14 and review of the plans. And then I didn't
15 hear back from him after that. And I
16 contacted him again around March 27th. These
17 are all exhibits to the 427 appeal. But
18 around March 27th, I contacted him and he
19 referred me to Mr. Pemberton.

20 And Mr. Pemberton then told me
21 that there had been no violations found by an
22 inspector as a result of my first phone calls.

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1 And I had continuing communications with Mr.
2 Pemberton, who at some point came out and
3 inspected the property himself. And then
4 there were continuing communications from him
5 on April 7th that he said that Mr. LeGrant was
6 still taking the position that there were no
7 issues with the project. And at that point
8 there were some reasons for that given, and I
9 contested those.

10 And then on 4/17, Mr. Pemberton
11 indicated that they were -- that was the final
12 indication to me that they were not going to
13 take any action on this, that none of the
14 complaints about the change in use or the side
15 yard or the rear yard, or the changing a non-
16 conforming structure to a non-conforming use,
17 or the accessory apartment issues, that none
18 of those issues were going to be acted upon.

19 So within 10 days after that final
20 statement from Mr. Pemberton, I filed the
21 appeal, and I was counting the time from when
22 I had first seen the construction.

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1 MEMBER MOLDENHAUER: Mr. Bruce,
2 let me ask you a question. You're saying
3 you're counting the time from the date that
4 you first saw the construction?

5 MR. BRUCE: Yes.

6 MEMBER MOLDENHAUER: But you're
7 appealing a ZA's decision, correct?

8 MR. BRUCE: But I read the rules
9 and that was my understanding from Mr.
10 Pemberton, too, was that it was the time when
11 I became aware of the construction.

12 MEMBER MOLDENHAUER: You're
13 appealing a decision. You're not appealing
14 the construction. So, what was the decision
15 that permitted the construction to start?
16 What was the ZA's decision that permitted
17 construction to start?

18 MR. BRUCE: Well, I suppose it
19 would be the permitting officer's stamp of
20 approval on the plans.

21 MEMBER MOLDENHAUER: And do you
22 know what date that is now?

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1 MR. BRUCE: The building permit
2 itself is dated February the 11th.

3 MEMBER MOLDENHAUER: So wouldn't
4 that then mean that, you know, through all
5 your emails and your correspondence from
6 February 26th, you know, through March that
7 you would have had 60 days from February 11th
8 to file the appeal?

9 MR. BRUCE: Honestly, I didn't
10 have the appeal until it was provided to me
11 sometime in June. I didn't have the permit or
12 the permit application. I was dating things
13 from the date when I became aware that there
14 was construction going on.

15 MEMBER MOLDENHAUER: But you
16 understand the construction is not a ZA's
17 decision? I mean, as Chairman Loud read, the
18 Zoning Regs under 3112 state that it's 60
19 days, you have the right to appeal, from a
20 decision complained of.

21 MR. BRUCE: I'm appealing based on
22 the time when I became aware; which I didn't

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1 really prepare on this issue, but my reading
2 of the case law is that that's the time when
3 the 60-day period starts, but you can also
4 start it from the date when the permit is
5 issued, but you also start it from the date
6 when the person reasonably became aware of the
7 events. And then I'm also dating it from the
8 time when Mr. LeGrant made these continuing
9 series of decisions not to do anything about
10 the construction, which I understood were
11 decisions, that he promised me on March the
12 11th that he was going to inspect this and
13 review things and he would take a fresh look
14 at it. And when he took a fresh look at it,
15 he kept continuing to say that the appeal was
16 -- that this was perfectly permissible despite
17 the reasons that I gave.

18 And so I think that each of those
19 communications from his enforcement officer,
20 Mr. Pemberton, are decisions of the Zoning
21 Administrator.

22 MEMBER MOLDENHAUER: When you

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1 wrote your March 11th email, which is I guess
2 -- what is it, Exhibit 2(b)(2)?

3 MR. BRUCE: Yes.

4 MEMBER MOLDENHAUER: In this
5 letter you reference, you know, you looked at
6 the Zoning Regs and you reference, you know,
7 different terminology. So at that time you
8 had gone through and looked at the Zoning
9 Regs, as of March 11th?

10 MR. BRUCE: Yes.

11 MEMBER MOLDENHAUER: So had you
12 then seen the requirement to file an appeal,
13 the time frame in which to file an appeal?

14 MR. BRUCE: I don't think I was
15 focused on that at that point, because I
16 thought that this was so obvious that I was
17 going to get the Zoning -- I didn't want to
18 file an appeal. I wanted the Zoning
19 Administrator to correct this. I didn't want
20 to be spending my time learning about Zoning
21 Regulations and becoming familiar with all the
22 stuff that I've subsequently become familiar

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1 with. I pleaded with Mr. Pemberton for the
2 Zoning Administrator to take action here.
3 That was my hope, and that hope continued
4 really. And at each point where there were
5 communications, it seemed like something was
6 going to be done about this. It seemed like
7 there was still consideration of this. And
8 so, it was only on April 17th that I became
9 convinced that there was nothing that was
10 going to be done about it, that it was no
11 matter what regulations I cited or what points
12 I made that the Zoning Administrator was not
13 going to make a favorable decision on this and
14 revoke the permit.

15 MEMBER MOLDENHAUER: Thank you. I
16 think I still have some additional questions,
17 but I'll wait until there's any other Board
18 questions.

19 CHAIRPERSON LOUD: Okay. Then
20 might I suggest we'll turn back to you, and if
21 you have some additional that you'd like to
22 add, now would be a good time to do it. If

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1 you don't, we may very well get back to you.
2 So don't feel like you have to get it all out
3 right now. But if you don't have additional
4 to add, we'll turn to the DCRA/Zoning
5 Administrator.

6 MR. SURABIAN: Good afternoon. I
7 think what we're hearing is that pretty
8 clearly that within the 60 days from the
9 issuance of the permit he was aware of the
10 Zoning Regulations that there was a possible
11 zoning violation that he was concerned about.
12 And he did reach out to DCRA, but he could
13 have also preserved his rights and filed an
14 appeal as soon as February 27th.

15 And I think it's also important
16 for the Board to note, and I think they
17 already have that, this appeal has been styled
18 as an appeal of the two emails, one from April
19 7th and 17th, and not as an appeal of the
20 permit. And I can only guess that was done
21 because the permit was outside of the scope of
22 the 60 days on the day that the appeal was

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1 filed. And when Mr. Bruce is saying is that
2 his continuing decisions to, you know, say
3 that the permit was valid somehow tolls his
4 time to file and appeal, and I just don't
5 think that's right. Because if you ask Mr.
6 LeGrant today if the permit was legally
7 issued, he'd continue to say yes, but that
8 doesn't create a never-ending statute of
9 limitations. It's got to be 60 days from the
10 issuance of the permit. And within two weeks
11 of issuance of the permit, Mr. Bruce was well
12 aware of the possible zoning violations and of
13 the construction.

14 CHAIRPERSON LOUD: Yes, but as I
15 understand it, he's also said apart from the
16 permit there was a dialogue with the Zoning
17 Administrator regarding a stop work order, or
18 enforcement of, I guess, what the permit
19 allowed. And that the decision regarding that
20 latter discussion was not made until either
21 April 7th or April 17th definitively in the
22 emails that came back.

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1 MR. SURABIAN: Well, I think what
2 happened --

3 CHAIRPERSON LOUD: You understand
4 him to be making that argument as well?

5 MR. SURABIAN: And I think I
6 addressed that, but I can clarify that, you
7 know, the decision from the Zoning reviewer
8 approving the permit -- you know, the reality
9 is that when something is brought to Matt's
10 attention and he can personally take time to
11 review it, I don't think that tolls the time
12 you have to appeal a building permit. And
13 unless I'm mistaken, I don't believe a stop
14 work order was ever issued. I think both the
15 Zoning inspector and a building inspector went
16 to the property and found that there was
17 violations. And again, I would say Mr. Bruce
18 believed there to be a violation and he could
19 have preserved his rights. And even still,
20 waiting for the inspectors to go out, who went
21 out relatively quickly; they were out there in
22 February, waiting for their decision I don't

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1 think is good cause or an exceptional
2 circumstance.

3 CHAIRPERSON LOUD: It does not
4 appear as though other board members have any
5 questions.

6 Let's turn now to the owner.

7 MR. HITCHCOCK: Thank you,
8 Chairman Loud. I think Mr. Surabian has --

9 CHAIRPERSON LOUD: Can you hear?
10 Okay.

11 MR. HITCHCOCK: Sorry. It looks
12 like it's on. I think Mr. Surabian has well
13 summarized the position that we would have on
14 it, that emails from the Zoning Administrator
15 saying I'm not going to do anything do not
16 constitute a building permit from which an
17 appeal can be taken.

18 I wanted also to talk a bit about
19 the chronology, because it was not clear how
20 Mr. Bruce was getting to the February 27th
21 date. The permit was issued on February 11th,
22 which was a Wednesday. Mr. Bruce says he

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1 first became aware of the construction,
2 although he doesn't say how, 15 days later on
3 Thursday the 26th. And he filed on October
4 6th some pictures showing a dumpster, port-a-
5 san and that sort of thing. I've spoken with
6 the contractor who is here, Kazem Alavi, who
7 can come up to the table, because that work
8 was begun before the 26th. So it's not clear
9 how Mr. Bruce even -- you know, even if you
10 accept his February 26th notice date, says he
11 wasn't aware of what was going on for the
12 intervening 10 days.

13 Mr. Alavi?

14 If there are questions of him from
15 the Board.

16 CHAIRPERSON LOUD: I'll see if
17 board members have questions. Right now it's
18 argumentation from counsel, and so you all are
19 not witnesses.

20 MR. HITCHCOCK: Correct.

21 CHAIRPERSON LOUD: And you're not
22 subject to cross examination.

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1 MR. HITCHCOCK: But as is a
2 proffer, that was a Wednesday. The crew went
3 out the next week, the week of the 16th. And
4 as you can see from the dumpster, these are
5 visible items. And I believe that it was not
6 until actually the garage door started to get
7 removed and repaired that he raised a concern.

8 CHAIRPERSON LOUD: And I'll turn
9 it over to Chairman Hood in a moment, but I
10 think Board Member Moldenhauer queried the
11 appellant on that regarding whether the time
12 begins when the decision is made or the time
13 begins when you become aware of the
14 construction. So if Mrs. Moldenhauer is
15 correct, it wouldn't matter if one became
16 aware of the construction on the 27th or the
17 16th. If she's correct about the time
18 beginning when the decision is issued, I'm not
19 certain if the offer or proffer moves us
20 forward one way or the other. However --

21 MR. HITCHCOCK: I would agree with
22 that, Mr. Chairman. If under her

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1 interpretation, then it doesn't make a
2 difference. Under Mr. Bruce's argument
3 though, then it may make a difference because
4 I think his appeal was filed on the 59th day
5 after February 16th.

6 CHAIRPERSON LOUD: Okay.

7 MR. HITCHCOCK: So that's why a
8 couple of days would make a difference if the
9 full board should not agree with Mrs.
10 Moldenhauer's proffer.

11 CHAIRPERSON LOUD: What is your
12 perspective on Mrs. Moldenhauer's
13 interpretation?

14 MR. HITCHCOCK: In this case, we
15 would agree that it is the date of the
16 decision. I remember in years gone by before
17 the Board adopted this 60-day rule, this was
18 an issue that used to tie the Board up to some
19 considerable length, and the rule was designed
20 to provide sufficient clarity. There may be
21 times when people are not aware that the
22 permit is issued. But I think in this case

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1 when you're dealing with a next door neighbor,
2 when you're dealing with, you know, a dumpster
3 and other equipment that is visible from the
4 street, when you have, you know, a neighbor
5 who is a lawyer who reads the Zoning
6 Regulations, who sees 60 days, that an
7 appellant in that situation is delaying at his
8 or her peril. What he may have been going for
9 was a stop work order, but meanwhile a permit
10 had been issued; it was still in force. And
11 emails about enforcement discretion or not
12 taking action do not constitute a new building
13 permit that the rules contemplate an appeal
14 can be taking from.

15 CHAIRPERSON LOUD: Thank you. Let
16 me see if board members have any questions and
17 then we'll get back to you.

18 ZC CHAIR HOOD: Mr. Chairman, I
19 just want to take into consideration what
20 Board Member Moldenhauer mentioned. I wanted
21 to go back to what Mr. Hitchcock -- and I hate
22 to have you repeat, but you started mentioning

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1 the avenue in which construction taking place.
2 It was like your last three sentences. I
3 missed some of that. If you could help me
4 understand that. I know the construction guy
5 is here; we don't need to hear from him,
6 unless the Chair permits it. But I want to
7 hear what you said the last part about how Mr.
8 Bruce would have known something was going on.

9 MR. HITCHCOCK: Sure.

10 ZC CHAIR HOOD: And you kind of
11 lost me a little bit.

12 MR. HITCHCOCK: Okay. Let me try
13 again, Mr. Hood. The chronology is, February
14 11th the permit issued, and that is a
15 Wednesday. The week of the 16th, Monday the
16 16th is when the construction began. And the
17 construction included -- and you're correct,
18 I went through this quickly -- the dumpster
19 that you see in Mr. Bruce's October 6th
20 filing. And if you look at it, it is outside
21 the garage gate. So it is visible there.
22 There is also the portable toilet, which is

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1 inside. And I'm advised that this began
2 during the week of the 16th.

3 Mr. Bruce stated in the appeal
4 that he did not become aware of any
5 construction on the site until February 26th,
6 which is 15 days later. And therefore, then
7 that was what triggered calls to DCRA the next
8 day, the 27th.

9 I would point out also, again, in
10 Mr. Bruce's submission of October 6th there is
11 a picture of the garage gate. You will see
12 two small rectangles there. Those are the
13 building permits which were put up relatively
14 soon after the permit issued. It came out on
15 a Wednesday. The contractor, Mr. Alavi,
16 wanted to get work started fairly quickly the
17 next week, and so they did.

18 So, I remember scratching my head
19 when Mr. Bruce said I didn't learn about this
20 until the 26th. And my understanding is that
21 when he first contacted Ms. Mashayekhi it was
22 when the door was being pulled of the garage

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1 and the replacement was being put up. But I
2 think one would know there was construction
3 going on from dumpster, portable toilet and
4 building permits. Mr. Alavi will testify they
5 wanted to get work quickly and get it done.
6 And it was completed and received the final
7 sign off in April, I believe before the appeal
8 was filed. It was April 27th, I think, and
9 the final sign off was shortly before that.

10 ZC CHAIR HOOD: Thank you, Mr.
11 Hitchcock.

12 MEMBER MOLDENHAUER: Can I just
13 ask a point of clarification? So, when then
14 are you attesting that the building permit was
15 posted as of?

16 MR. HITCHCOCK: Let me check with
17 Mr. Alavi. It was during the week of the
18 16th, if I could confer --

19 MEMBER MOLDENHAUER: If he can
20 come forward then? And were you sworn in, Mr.
21 Alavi?

22 MR. ALAVI: Yes, I did.

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1 CHAIRPERSON LOUD: Why don't you
2 state your name? I'm sure counsel is going to
3 voir dire you, but state your name for the
4 record so that we have it. And then once the
5 questioning ends, the other parties will have
6 an opportunity to cross.

7 MR. ALAVI: Kazem Alavi, 615 Shady
8 Oak Lane, Bethesda, Maryland, 20817.

9 I had a copy of permit posted on
10 12th of February on the garage, or should I
11 say the gates of the house, which is
12 completely visible from the city, from the
13 street.

14 Also, my record shows that we
15 started the work on Wednesday, February 18.
16 We requested and have a dumpster placed in
17 there on 18th; I'm sorry, on 19th, from a
18 company called CDS. Unfortunately, that
19 company was bought out with another company
20 and I don't have the information from. The
21 sani-john was ordered on 24th and was
22 delivered on the site on 26th of February.

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1 And I have the papers for it. And in the
2 meantime for the three or four days we were
3 using the facilities of the house, which was
4 -- then we decided to use our own.

5 So to summarize, on February 2nd
6 the permit was posted. And on February --

7 CHAIRPERSON LOUD: Did you mean
8 February 2nd, or February 12th?

9 MR. ALAVI: February 12th. I'm
10 sorry.

11 CHAIRPERSON LOUD: Okay. Okay.

12 MR. ALAVI: And on February 18th,
13 we started the work, which was demolition,
14 also cutting some concrete and all that.

15 MEMBER MOLDENHAUER: I'm sorry.
16 You were giving different days of the week.
17 What day of the week was the 12th?

18 MR. ALAVI: The 12th, it should be
19 Thursday.

20 MEMBER MOLDENHAUER: And you
21 stated that you had a photograph or some sort
22 of documentation that it was posted on the

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1 12th, or is that just by your recollection?

2 MR. ALAVI: That is the way that
3 we work. As soon as we get the permit, we put
4 it up. But there is a picture of the permits
5 as part of the --

6 MEMBER MOLDENHAUER: You didn't
7 take that picture though, so you don't know
8 when that picture was taken?

9 MR. ALAVI: Yes, Mr. Bruce took
10 that.

11 CHAIRPERSON LOUD: Are there any
12 questions for -- I'm sorry, give me your name
13 one more time?

14 MR. ALAVI: Kazem Alavi.

15 CHAIRPERSON LOUD: Okay. For Mr.
16 Alavi. Are there any questions from Mr.
17 Bruce? And then following Mr. Bruce, the
18 Zoning Administrator?

19 MR. BRUCE: Okay. When are you
20 testifying that you took the garage door out?

21 MR. ALAVI: I'm not sure on that.

22 MR. BRUCE: When did you start

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1 removing the beams that were above the garage
2 door?

3 MR. ALAVI: We did not move. We
4 do not remove the beams.

5 MR. BRUCE: Okay. And you are
6 testifying that you recalled that the dumpster
7 was there on the 19th, but you don't have any
8 records of it because the company went out of
9 business?

10 MR. ALAVI: Yes.

11 MR. BRUCE: And you have some
12 staff people, right? You don't have company
13 records that would show that, when you
14 actually started work?

15 MR. ALAVI: We started the work on
16 February 18th.

17 MR. BRUCE: What did you start
18 doing on February the 18th?

19 MR. ALAVI: We started with
20 demolition.

21 MR. BRUCE: When did your supplies
22 arrive?

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1 MR. ALAVI: I'm not sure, but
2 everything within the first week or two had to
3 do with demolition, had to do with providing
4 plumbing work and so on. If somebody wants,
5 I can check, you know, at the time of the
6 delivery of material as well.

7 MR. BRUCE: Did you have any
8 records of when you actually started work?

9 MR. ALAVI: We started the work
10 from our own log and the times that we start
11 paying people and we start charging for the
12 job.

13 MR. BRUCE: Okay. And did you
14 bring your logs?

15 MR. ALAVI: No.

16 MR. BRUCE: Do you know when did
17 the jackhammering start to jackhammer out the
18 concrete to put in the water lines for the new
19 bathroom?

20 MR. ALAVI: I do not have that
21 number here, that date here.

22 MR. BRUCE: When did you start

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1 putting up the floor joists on the concrete
2 inside of the garage?

3 MR. ALAVI: That was after cutting
4 the slab and putting the plumbing.

5 MR. BRUCE: Wasn't it started at
6 the same time?

7 MR. ALAVI: Normally there's a lag
8 of two, three days in between. We have to cut
9 the slab, put the plumbing, then we request
10 the city to come and take a look at it and
11 inspect the plumbing and go. In this case,
12 part of the work was done. Part of the floor
13 joists were put. So I cannot exactly testify
14 at this moment, but I can go and look at the
15 records for it.

16 MR. BRUCE: So when did the city
17 come and inspect the jackhammering to see
18 whether you could go and install the plumbing
19 lines?

20 MR. ALAVI: I'm sure the
21 information is there. I did not know that
22 that was part of this hearing, these type of

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1 questions, but I do not have it.

2 MR. BRUCE: Well, Mr. Chairman,
3 Exhibit 2 in my April 7th appeal is an email
4 that I sent on March 11th to Mr. LeGrant, and
5 which I state in here that I called DCRA on
6 Friday, February 27th as soon as this
7 construction began. And I have a distinct
8 recollection of going -- I went next door
9 hearing the jackhammering and I complained to
10 the guy who was all there by himself, and I
11 complained to him about doing that. And the
12 floor joists, there were already floor joists
13 set up on the part of the garage floor. And
14 he called someone to see whether he should
15 stop work, and whoever he called said that he
16 shouldn't stop. And at that point I did look
17 at the permit and I got a telephone number off
18 of it and I started making phone calls. And
19 I wrote this email back at that time based on
20 when that occurred. And there would be a
21 phone call to Mr. Allen James on February 27th
22 complaining about this. That was when this

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1 started.

2 CHAIRPERSON LOUD: Mr. Bruce, of
3 course you are an attorney and you're
4 representing yourself. I think what you just
5 said is testimony as a fact witness, because
6 we're talking about notice basically, and this
7 is your testimony. The evidence is in direct
8 opposition to each other right now with the
9 owner saying February 12 it's posted and
10 construction started February 18, and you
11 saying I did not know about this until
12 February 27, and then elaborating on that.

13 MR. BRUCE: I'm saying, Mr.
14 Chairman --

15 CHAIRPERSON LOUD: I understand.
16 I just wanted to make this point, because
17 you're not only addressing us as a witness,
18 that the Zoning Administrator and the owner's
19 counsel have the opportunity to cross examine
20 you on the part of your statements that are
21 clearly testimony.

22 MR. BRUCE: Sure.

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1 CHAIRPERSON LOUD: So, why don't I
2 ask the Board if they have any questions? And
3 then we can see if there is cross by the ZA or
4 by the owner's counsel.

5 And we'll start with the Board, if
6 they have any questions.

7 ZC CHAIR HOOD: Mr. Bruce, so
8 apparently you became aware when you heard the
9 jackhammer. That's what I'm hearing from you,
10 right?

11 MR. BRUCE: Yes.

12 ZC CHAIR HOOD: And that was on
13 the 27th, am I correct?

14 MR. BRUCE: Yes.

15 ZC CHAIR HOOD: So I guess the
16 first day the jackhammer was used was on the
17 27th?

18 MR. BRUCE: Yes.

19 ZC CHAIR HOOD: And that's
20 February 27th?

21 MR. BRUCE: Yes. And I may have a
22 handwritten note of my conversation with Mr.

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1 James, but there should be a record at DC,
2 because he said that he was going to look into
3 this right away. So there should be a record
4 with DC of when, you know, they got a request
5 to issue a stop work order and to send
6 somebody out.

7 ZC CHAIR HOOD: Okay.

8 CHAIRPERSON LOUD: But again, your
9 testimony under oath this afternoon is that at
10 no time prior to February 27th were you aware
11 that any construction was either underway,
12 planned, had been permitted or was otherwise
13 taking place at your next door neighbor's? Is
14 that your testimony?

15 MR. BRUCE: Yes, I think that the
16 evening before that I saw some construction
17 materials there, and I didn't know what was
18 going on. And then that morning when I was
19 getting ready to go to work, I heard the
20 jackhammering, and I went over there to see
21 what was going on. And like I testified
22 earlier, there was a man doing work completely

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1 by himself and some floor joists had already
2 been set up. And he was doing the
3 jackhammering and I complained to him and he
4 called -- you know, he didn't seem to actually
5 work for Mr. Alavi's company, that he was some
6 kind of a sub-contractor. He made a phone
7 call to see whether he should stop work.
8 Whoever he talked to said that he shouldn't.

9 And at that point, I got a phone
10 number off of what was posted. I went next
11 door and started making phone calls, and I
12 spent most of the morning making phone calls
13 trying to get something done about this. And
14 so it wasn't just one phone call. There were
15 several, because I was referred from one place
16 to another, to try and get somebody out there
17 to take a look at this and to stop the work.

18 CHAIRPERSON LOUD: And all of that
19 happened on February 27th?

20 MR. BRUCE: Yes.

21 CHAIRPERSON LOUD: Okay. Let's
22 see if board members have additional questions

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1 and then we'll turn to counsel.

2 MEMBER MOLDENHAUER: Were you
3 home? Were you not away on business, or were
4 you home between, I guess, the 12th and the
5 26th?

6 CHAIRPERSON LOUD: I haven't
7 looked at my calendar, but I assume that I
8 was, yes.

9 MEMBER MOLDENHAUER: And your
10 property is adjacent to --

11 MR. BRUCE: Right.

12 MEMBER MOLDENHAUER: And so now
13 when you normally approach your home, do you
14 normally drive past the house, or is this
15 something where it's, you know, further down
16 the street? Can you kind of give me a
17 relationship as to whether or not you would --

18 MR. BRUCE: I pull up from the
19 other way. But as I said, I think that that
20 evening -- the evening before that I noticed
21 that there was some construction materials
22 over there. My recollection is there was no

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1 dumpster until after. I think at first they
2 were trying to do this with some trucks taking
3 the debris off, which is I think what is
4 stated in the permit, that there won't be a
5 dumpster used.

6 And so at some point later after
7 that, there was a dumpster put on that
8 property, but I think that was several days or
9 week after February 27th. And so Mr. Alavi's
10 testimony on that doesn't -- it isn't
11 consistent with my recollection at all.

12 MEMBER MOLDENHAUER: Well I guess
13 the reason why I'm asking about whether or not
14 you drove by the property on a daily basis to
15 get to your home or to get to work is because
16 the reason why people are required to get
17 permits and then permits are required to be
18 posted is for notice reasons. And the regs
19 say when you should have known of the decision
20 made. So if the property is right next to you
21 and whether you or somebody else, you know,
22 should have been on notice as of the date that

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1 that was posted, and if you were home for that
2 period before hand, I'm just trying to, you
3 know, understand as to whether or not, you
4 know, there was the opportunity for you to
5 have been noticed of the permits having being
6 post on their door, whether you heard the
7 construction or not.

8 MR. BRUCE: Well, I certainly
9 didn't notice the permits. Because as I said,
10 I noticed that there was building materials on
11 the evening of the 26th. And I thought, well,
12 you know, who knows what's going on?

13 And on the 27th is when I heard
14 the jackhammering and I came over there and
15 saw that the concrete in the garage was being
16 jackhammered away. And the guy told me that
17 he was putting in a bathroom, or putting in
18 lines for a bathroom. And so I knew at that
19 point that something was wrong, that this
20 wasn't just somebody bringing in some lumber,
21 that this garage was being converted to
22 something. And I saw the floor joists that

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1 were set up there.

2 I would agree with Mr. -- I mean,
3 my recollection with Mr. Alavi's testimony is
4 I do think that there was a port-a-john there,
5 but there wasn't any dumpster until
6 substantially later, that they were trying to
7 cart away the trash with a truck.

8 CHAIRPERSON LOUD: Why don't we
9 turn to the Zoning Administrator, and then
10 we'll turn to you, Mr. Hitchcock?

11 Did you have any questions for Mr.
12 Bruce?

13 MR. SURABIAN: Just a couple.

14 So, Mr. Bruce, just to clarify is
15 it your testimony that the permit was not
16 posted on the gate?

17 MR. BRUCE: The permit was posted
18 on the gate when I went over there to look at
19 the construction. The gates there, if you
20 look --

21 MR. SURABIAN: Was the permit
22 posted on the gate on February 12th? Are you

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1 saying it was not?

2 MR. BRUCE: I'm saying that I
3 don't know whether it was or not. I didn't
4 see any permit. And the gates there were
5 often opened. The gates weren't closed. And
6 in fact, when I went over there on the 27th,
7 the gate was open so that the only way that
8 you could have seen the permit was to come in
9 almost to the garage itself. And it was
10 beside a port-a-john. That's where I looked
11 at it.

12 MR. SURABIAN: So do you have a
13 memory of between February 12th and February
14 27th of the gates being open?

15 MR. BRUCE: No, I'm saying that
16 the gates were often open. And when I went
17 over there on the 27th, the gate was open and
18 the permit was posted on the opened gate,
19 which is in -- if you looked on --

20 MR. SURABIAN: But is it your
21 testimony that the dumpster was not there on
22 the 19th?

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1 MR. BRUCE: My testimony is that
2 the dumpster wasn't there until sometime after
3 the 27th.

4 MR. SURABIAN: Okay.

5 MR. BRUCE: There was no dumpster.

6 MR. SURABIAN: And on the 26th or
7 27th, you agree that there was a portable
8 toilet there?

9 MR. BRUCE: On the 27th there was
10 a portable toilet.

11 MR. SURABIAN: Okay. What's the
12 proximity between your house and 2709 31st
13 Street?

14 MR. BRUCE: That's one of the
15 issues in this case. Our kitchen door is 12
16 feet from this garage.

17 MR. SURABIAN: Okay. I don't have
18 any further questions.

19 CHAIRPERSON LOUD: Thank you.

20 MR. HITCHCOCK: Okay. Mr. Bruce,
21 you testified I believe that before the
22 dumpster arrived you saw trucks taking debris

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1 away. Is that correct?

2 MR. BRUCE: Yes, that pickup
3 trucks were being used to take away the
4 debris.

5 MR. HITCHCOCK: And when do you
6 recall first seeing the trucks?

7 MR. BRUCE: I think it would be
8 sometime after the 27th, because I said the
9 guy who was doing the jackhammering was there
10 by himself. And I don't believe he had a
11 truck at all.

12 MR. HITCHCOCK: Okay. Now you
13 testified also that you saw the gates were
14 open. Do you remember what times of the day
15 you saw them open?

16 MR. BRUCE: They were often open
17 all the time, and particularly --

18 MR. HITCHCOCK: Early morning?

19 MR. BRUCE: Yes.

20 MR. HITCHCOCK: Late at night?

21 MR. BRUCE: Yes, they were open
22 all the time.

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1 MR. HITCHCOCK: You mean they were
2 open 24 hours a day? They were never closed?

3 MR. BRUCE: Yes, that's what I
4 said.

5 MR. HITCHCOCK: You're saying they
6 had garage doors and they never closed them?
7 They were always open?

8 MR. BRUCE: The gate to the
9 garage.

10 MR. HITCHCOCK: The gate. I'm
11 sorry. Yes.

12 MR. BRUCE: Not the garage door.

13 MR. HITCHCOCK: Yes, the gate.
14 Sorry.

15 MR. BRUCE: Yes.

16 MR. HITCHCOCK: The gate was open
17 24 hours a day at all times? That's your
18 testimony?

19 MR. BRUCE: Yes, the gate was not
20 closed. And when I went over there, if you
21 look in --

22 MR. HITCHCOCK: Well, you've

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1 answered the question. Let me ask you this:
2 You filed with the Board a picture of closed
3 gates. How do you explain that?

4 MR. BRUCE: Well, if you look at
5 tab 20 --

6 MR. HITCHCOCK: I'm asking about
7 the photograph with closed gates.

8 MR. BRUCE: Well, let me --

9 MR. HITCHCOCK: And I want to know
10 when did you take that picture?

11 MR. BRUCE: Let me answer the
12 question first, Mr. Hitchcock. On the October
13 6th submission we have a picture of the house
14 as it existed, and then we have a picture of
15 the construction going on. And this is when
16 the garage door has been taken down and the
17 beams have been pulled out. And at that
18 point, there is a dumpster and the dumpster is
19 in front of the gate to the courtyard.

20 The picture that you're looking at
21 is when that had been roughed in and the
22 dumpster had been taken away so that they were

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1 starting to do interior work, and there wasn't
2 the need to have the dumpster anymore.

3 MR. HITCHCOCK: Mr. Bruce, you're
4 not answering the question. You testified
5 under oath that the gates were 24 hours a day,
6 seven days a week, and yet you filed with the
7 Board a picture of gates closed. Did you take
8 that photograph?

9 MR. BRUCE: I didn't testify to
10 the seven days a week.

11 MR. HITCHCOCK: All right.
12 Twenty-four hours a day. Well, which days
13 were they closed then?

14 MR. BRUCE: I said that the gates
15 were often open, and that when they were open
16 they were open all the time. It wasn't being
17 used with the automatic opener.

18 MR. HITCHCOCK: Okay. So your
19 testimony is that they were sometimes open,
20 and when they were open, they were open?

21 MR. BRUCE: Yes.

22 MR. HITCHCOCK: Okay. But so it

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1 is possible therefore that Ms. Mashayekhi as
2 a single woman alone would have closed them
3 for security purposes from time to time,
4 correct?

5 MR. BRUCE: I --

6 MR. HITCHCOCK: Is it possible?

7 MR. BRUCE: It's possible that she
8 could.

9 MR. HITCHCOCK: Okay. Thank you.
10 My next question, where do you park your car?
11 Do ever park it on 31st Street?

12 MR. BRUCE: Yes.

13 MR. HITCHCOCK: And do you park it
14 close to Ms. Mashayekhi's house?

15 MR. BRUCE: No, I park it in front
16 of our house.

17 MR. HITCHCOCK: And would have
18 occasion when you park it in front of your
19 house to see what is happening up and down the
20 street, and whether there might be any permits
21 posted?

22 MR. BRUCE: No.

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1 MR. HITCHCOCK: Okay. Do you ever
2 go for walks along 31st Street?

3 MR. BRUCE: I do, but I don't
4 usually go that way.

5 MR. HITCHCOCK: Well, my question
6 is do you go for a walk? All right. Well,
7 let me ask you this: Do you go for walks with
8 a dog?

9 MR. BRUCE: Yes.

10 MR. HITCHCOCK: And do you walk
11 the dog along 31st Street in front of the
12 house?

13 MR. BRUCE: Very rarely.

14 MR. HITCHCOCK: So the answer to
15 my question is yes, you do walk it in front of
16 the house. And did you walk it in front of
17 the house between February 11th and February
18 28th of this year?

19 MR. BRUCE: I would have no idea.

20 MR. HITCHCOCK: Okay. So the
21 answer is maybe, is that correct?

22 MR. BRUCE: No, it's that I would

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1 have no idea.

2 MR. HITCHCOCK: No idea? Okay. I
3 have no further questions.

4 CHAIRPERSON LOUD: Thank you.

5 MS. PARKER-WOOLRIDGE: I only have
6 one question for Mr. Bruce.

7 CHAIRPERSON LOUD: Yes, go ahead.

8 MS. PARKER-WOOLRIDGE: Mr. Bruce,
9 on page 1 of your appeal, it says, "On or
10 about February 26th, 2009, a construction
11 company from Bethesda began to convert the
12 non-conforming two-car garage into a one-
13 bedroom apartment.

14 In order for you to convert (off
15 microphone), are you saying that the equipment
16 was already there? What if you didn't know
17 that they were converting? Was the material
18 there?

19 MR. BRUCE: That's what I was
20 testifying to, was that --

21 MS. PARKER-WOOLRIDGE: So was the
22 material there prior to February 26th?

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1 MR. BRUCE: No, my recollection is
2 that I saw the material the evening of the
3 26th. And then I heard the jackhammering the
4 morning of February 27th, and I went next door
5 and saw the 12-inch floor joists being set up
6 over the concrete floor, which is what I said
7 in the appeal.

8 MS. PARKER-WOOLRIDGE: So what
9 you're saying is once the material arrived,
10 that's when they began converting?

11 MR. BRUCE: Yes. Well, it means
12 what it says, is that they began -- my
13 recollection is that when I came home in the
14 evening of the 26th that I noticed that stuff
15 was there, and it wasn't a regular delivery of
16 a TV of something and not --

17 MS. PARKER-WOOLRIDGE: Where was
18 the -- excuse me for cutting you off.

19 MR. BRUCE: Yes.

20 MS. PARKER-WOOLRIDGE: Where were
21 the materials placed at 2709?

22 MR. BRUCE: In the driveway.

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1 MS. PARKER-WOOLRIDGE: The
2 driveway? Was the dumpster there then?

3 MR. BRUCE: No.

4 MS. PARKER-WOOLRIDGE: It was not?
5 So was the gate open? Did they place the
6 material in the open gate, or was the gate
7 closed?

8 MR. BRUCE: I wouldn't. remember.
9 I don't think I went over there to look. I
10 think I could see the material from our
11 bedroom, sitting in the driveway.

12 MR. PARKER-WOOLRIDGE: So, Mr.
13 Bruce, you went to the premises. You didn't
14 even think about looking at the gate, but you
15 looked at the (off microphone.)

16 MR. BRUCE: No, I said that our
17 bedroom, from one of our bedrooms you can see
18 part of that front driveway. And I think I
19 noticed that there were construction materials
20 there, and they seemed like more than a
21 regular delivery of a TV or something like
22 that. And I didn't know what was going on.

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1 And then the next day I heard the
2 jackhammering. And so then I put it together
3 of what -- and went over there and actually
4 saw that there was jackhammering in the
5 garage.

6 MS. PARKER-WOOLRIDGE: Mr. Bruce,
7 looking at the fence, were the materials
8 higher than the fence that were placed there?

9 MR. BRUCE: No, I don't think so.

10 MS. PARKER-WOOLRIDGE: So the
11 materials were not higher than the fence, and
12 you still did not see the permits posted?

13 MR. BRUCE: No, I didn't go over
14 there.

15 MS. PARKER-WOOLRIDGE: You went on
16 walks and you did not see the permits posted?

17 MR. BRUCE: I didn't see the
18 permits posted, no.

19 MS. PARKER-WOOLRIDGE: Thank you,
20 sir.

21 MR. SURABIAN: Also at this time
22 the intervener and the appellant have been

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1 referring to exhibits that the Government
2 never received. I don't think Mr. Bruce
3 served his filing on the Government. There
4 were some photographs and those were never
5 served on that.

6 MR. BRUCE: Which are those?
7 October 6th?

8 MR. SURABIAN: October 6th. We
9 never received anything.

10 CHAIRPERSON LOUD: Yes, I was
11 going to suggest you speak with Mr. Bruce. If
12 you have copies of those right now, to provide
13 those copies.

14 Yes, sir, Mr. Hitchcock?

15 MR. HITCHCOCK: Mr. Chairman, Mr.
16 Alavi may be able to cast some light on the
17 points about construction beginning on the
18 27th, if the Board would permit an additional
19 comment.

20 CHAIRPERSON LOUD: Okay.

21 MR. HITCHCOCK: And materials
22 being available earlier, I mean, you just

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1 don't show up and start jackhammering. But
2 I'll let Mr. Alavi discuss the point.

3 CHAIRPERSON LOUD: Okay.

4 MR. HITCHCOCK: And, Mr. Surabian,
5 the submission I was referring to, I hadn't
6 focused on it, just has me as the only person
7 receiving a copy. There's no cc: for the
8 Zoning Administrator.

9 CHAIRPERSON LOUD: Okay. Thank
10 you.

11 If we can just make sure that Mr.
12 Surabian and Ms. Parker-Woolridge have copies
13 of that. Do you have extra copies here today?

14 MR. HITCHCOCK: (Off microphone.)

15 CHAIRPERSON LOUD: Okay. All
16 right. Have some time to look at that.

17 Before you get started on the
18 February 27th issue, Mr. Alavi, I just want to
19 ask you a couple of questions about February
20 the 18th, I think. Is that when the
21 demolition started?

22 MR. ALAVI: Yes.

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1 CHAIRPERSON LOUD: Okay. And by
2 "demolition," what are we talking about? Are
3 we talking about interior demolition or
4 exterior, or both?

5 MR. ALAVI: We demo-ed some stuff
6 inside the garage. We demo-ed some stuff
7 inside the house in order to connect the lines
8 to. We took the garage door off and --

9 CHAIRPERSON LOUD: That's an
10 exterior demolition?

11 MR. ALAVI: Right.

12 CHAIRPERSON LOUD: When you took
13 the garage off, did you board it up overnight,
14 or was it simply left open?

15 MR. ALAVI: Well, my recollection
16 is that we always had the gates at that time,
17 that we put open and closed. So we would
18 close it. And also we had to close it because
19 we had other material and equipment that we
20 will leave at the job site. So the door, I
21 would say definitely after we leave would be
22 closed. During the day I cannot testify it

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1 would be open most of the time, but after
2 4:30, 5:00 that we would leave, we would close
3 it.

4 CHAIRPERSON LOUD: Okay. So you
5 took off the garage, so the facing --

6 MR. ALAVI: We took off the
7 garage.

8 CHAIRPERSON LOUD: You took off
9 part of the house? This is where the two
10 sections were to be joined together by the
11 five-foot addition, correct? No?

12 MR. ALAVI: No, sir. What we
13 did --

14 CHAIRPERSON LOUD: You said that
15 you took off part of the house.

16 MR. ALAVI: Part of the -- that
17 was in order to connect from the pipes from
18 this addition to the house. So we had to take
19 the drywall off. We had to locate that. And
20 above all, we had to establish the wall lines
21 and so on inside the garage just to make sure
22 that the existing situation would correlate

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1 with what the drawings were showing.

2 CHAIRPERSON LOUD: Okay. But in
3 terms of exterior demolition, like say for
4 example the garage, were there other exterior
5 demolition that occurred on February 18?

6 MR. ALAVI: No. Besides the door
7 and besides removing some walls inside, no.

8 CHAIRPERSON LOUD: And in terms of
9 the debris that would have been caused by the
10 demolition, where was that? What happened
11 with that debris?

12 MR. ALAVI: Maybe the first two
13 days the debris was not much, so we just let
14 it sit inside the garage and in the yard in
15 front of it. And then we called for the
16 dumpster.

17 CHAIRPERSON LOUD: Would that
18 include the garage door?

19 MR. ALAVI: Yes, sir.

20 CHAIRPERSON LOUD: And so the
21 garage door sat where, inside of the garage,
22 recessed inside of the garage? And so was it

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1 visible from -- certainly the driveway. And
2 if the gates were open also, perhaps the
3 street, or not?

4 MR. ALAVI: Sir, I cannot testify
5 to that. I mean, during the construction,
6 when you start demo-ing, you don't take notes
7 of everything where they are. It's a process
8 that nobody thinks they would be that
9 important later on to show logs for everything
10 that you do. But one thing --

11 CHAIRPERSON LOUD: Well, I'm just
12 asking for your best recollection, not
13 detailed analysis or logs.

14 MR. ALAVI: It would be part of it
15 inside the garage, part of it in the yard. So
16 if the gate is open, somebody's looking, you
17 know, it could be seen.

18 CHAIRPERSON LOUD: Okay. And in
19 terms of the posting of the permit on February
20 12, did you do that?

21 MR. ALAVI: No, my supervisor did
22 that.

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1 CHAIRPERSON LOUD: Your
2 supervisor? Do you have any pictures of the
3 placement of the posting?

4 MR. ALAVI: No, sir.

5 CHAIRPERSON LOUD: And what's your
6 recollection regarding where the permit was
7 posted?

8 MR. ALAVI: We posted the permit
9 on the outside, because that's the way it
10 should be, on the gate. We copied the permit
11 drawings and left one copy with the owner in
12 case somebody comes in, they can take a look
13 at it. This is a normal procedure that we do.
14 In Maryland we have to post the signs in 48
15 hours, otherwise we're going to get fined.

16 CHAIRPERSON LOUD: And what were
17 the dimensions of the post, if you can recall?

18 MR. ALAVI: The posts are eight-
19 and-half-by-eleven permits.

20 CHAIRPERSON LOUD: And you don't
21 have any picture of it with you here today?

22 MR. ALAVI: Not other than what is

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1 provided by Mr. Bruce.

2 CHAIRPERSON LOUD: Okay. Thank
3 you. I don't have any additional questions.
4 I think you wanted the witness to testify a
5 little regarding February 27th?

6 MR. ALAVI: Yes. I just wanted to
7 take the testimony of Mr. Bruce. Mr. Bruce
8 says that on 26th, he realized that somebody
9 was cutting the slab and jackhammering.

10 MR. BRUCE: The 27th.

11 MR. ALAVI: The 27th. And on the
12 same day you realized that there were some
13 joists, floor joists were put in. So if we
14 made the deduction is that the material was
15 delivered much earlier than this and before
16 that carpenters were working in this area.
17 So, it brings back, you know, the construction
18 start pretty much to what we have. And now,
19 if Mr. Bruce did not notice that, that's a
20 separate issue, because it happens. But my
21 feeling is the permit and posting of the
22 permit is what we, a contractor, we go forward

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1 with. And the fact that 60 days are given
2 time is to account for these slippage of time
3 here and there.

4 MR. HITCHCOCK: If I may, Mr.
5 Chairman. What were the size of the joists?
6 How large were they, dimensions?

7 MR. ALAVI: They were two-by-
8 twelve. And just to add something else, our
9 hope was to be able to run the drain for the
10 bathroom within the joists. That's why we
11 didn't start with jackhammering the slab
12 first. And then we realized that either we
13 have to jack up the floor even more, because
14 we didn't have enough slope, or we had to go
15 and cut the slab and go down. That's why,
16 like anything else in construction, we had to
17 improvise and we had to go around our previous
18 schedule. So, our main schedule, which was to
19 do a clean up, do a demo and start with the
20 carpenter-ing, at some point had to be
21 stopped. And then we cut the slab, you know,
22 to put the pipe. Because the plumbing company

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1 who came, they said they cannot run the piping
2 inside the floor joists.

3 MR. HITCHCOCK: How many days
4 would it take the carpenters to assemble the
5 joists?

6 MR. ALAVI: I would say about two
7 days.

8 MR. HITCHCOCK: And is it your
9 testimony that work was done on the site, it
10 was that the joists were not preassembled and
11 brought in from somewhere else?

12 MR. ALAVI: They were done at the
13 site.

14 MR. HITCHCOCK: And what about the
15 plumbing work? How long would that have to
16 take, assuming that the work began on the
17 27th? You talked about running plumbing lines
18 and so forth.

19 MR. ALAVI: That takes about three
20 to four days after cutting the slab.

21 MR. HITCHCOCK: Okay. But it's
22 your testimony as a contractor that if you

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1 were jackhammering you wouldn't be building
2 joists the same day and get it all done in one
3 day?

4 MR. ALAVI: Yes, sir.

5 MR. HITCHCOCK: Yes, that's
6 correct?

7 MR. ALAVI: That's correct.

8 MR. HITCHCOCK: Okay. Thank you.

9 CHAIRPERSON LOUD: Thank you. I
10 believe we probably are fully briefed on this
11 issue and can wrap up, unless there are any
12 sort of parting shots from the Board or from
13 the parties.

14 MR. SURABIAN: If I could just
15 make a quick, something like a legal
16 argument summarizing what we've heard?

17 CHAIRPERSON LOUD: Sure.

18 MR. SURABIAN: And my argument is
19 sort of two-pronged. And first, I think the
20 testimony that we just heard is really
21 uncontroverted that on the 12th the permit was
22 posted and up on the gate. And given the

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1 proximity of the two properties, in the
2 absence of kind of extenuating circumstances
3 of why he wouldn't have been able to see that
4 permit, I don't think he can show good cause
5 for the extension. So, I think he's late on
6 appealing the permit.

7 My second point is, even if he
8 didn't see the permit until the 27th, it
9 doesn't matter, because I think in order to
10 show the -- because the date runs from the
11 issuance. And the fact that he was well aware
12 of it well within the 60 days, I don't think
13 that the Board can find that he's shown good
14 cause or exceptional circumstances for his
15 appeal to go forward, if you're well aware and
16 fully apprised of the issue within two weeks
17 of the issuance and you have another 45 days
18 to file your appeal.

19 CHAIRPERSON LOUD: Thank you.

20 And, Mr. Bruce, did you have any
21 final remarks?

22 MR. BRUCE: Yes.

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1 CHAIRPERSON LOUD: At least with
2 respect to just this one issue?

3 MR. BRUCE: Yes. The fact that
4 there's some kind of materials in somebody's
5 driveway does not tell me what they're doing.
6 And, you know, I'm in the uncomfortable
7 position of filing an appeal about what some
8 neighbor is doing, but I really am not that
9 nosey. So if somebody puts, you know, boards
10 in their driveway, I'm not thinking well,
11 they're converting their garage into a
12 bedroom. But it's when I hear jackhammering
13 coming from the garage that I think they're
14 converting their garage into something else.

15 And, you know, the Board is of
16 course familiar with building permits, but you
17 can get kind of the distance from the pictures
18 and if you had a building permit like this
19 posted on your gate, it would be about the
20 same distance between me and Ms. Monroe. So,
21 if I see something like this put up on a gate,
22 I'm supposed to, you know, go onto somebody

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1 else's property and look to see what it is?
2 I don't do that. You know, it was only when
3 I heard that there was jackhammering that I
4 knew that something was going on. And when I
5 saw what was going on, I immediately knew that
6 it was not right, that you can't be converting
7 a garage that's right on the property line
8 into something else, because we're in an R-1
9 District where the residences are supposed to
10 have side yards on each side.

11 CHAIRPERSON LOUD: Okay. Thank
12 each of you. I think what we'll do now is
13 take about a five-minute break and then we'll
14 come back and I believe we'll be prepared to
15 make a ruling on the threshold issue. Okay?
16 Thank you.

17 (Whereupon, at 2:35 p.m. off the
18 record until 2:55 p.m.)

19 CHAIRPERSON LOUD: The afternoon
20 session will resume. We're on the appeal of
21 Bruce, No. 17966, and we had just concluded a
22 briefing on the threshold issue of the

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1 timeliness of the appeal. I believe that the
2 record has been full of both the testimony and
3 the exhibits that were made a part of our
4 record earlier. And I believe we're ready to
5 deliberate and I believe Mrs. Moldenhauer is
6 going to start us off.

7 MEMBER MOLDENHAUER: Thank you,
8 Chairman Loud. The threshold question that we
9 are first addressing is timeliness to
10 determine whether or not we have jurisdiction
11 to actually hear the merits of the case. And
12 in doing so, we're looking at Section 3112,
13 specifically 3112.2(a) which talks about the
14 fact that the appeal must be filed within 60
15 days from the date the person appealing the
16 administrative decision had notice or
17 knowledge of the decision complained of, or
18 reasonably should have known or have knowledge
19 of the decision complained of, whichever is
20 earlier.

21 Initially, there was statements
22 made by the appellant, Mr. Bruce, regarding

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1 the April 7th through the 17th letters,
2 however, in our discussion he stated that such
3 subsequent letters would not represent a new
4 or different decision that would restart the
5 clock. And in that we were relying on the
6 court of appeals decision Baskin v. D.C. Board
7 of Zoning.

8 And so now, putting that aside,
9 going to the question of fact that we analyze
10 as to whether or not or when, rather, Mr.
11 Bruce should have known or reasonably should
12 have known of the notice, we obviously are
13 going to weigh the different factors in
14 regards to the posting and when he reasonably
15 should have known, not when he actually knew,
16 but when he should have known.

17 And in my opinion, the reason for
18 requiring an applicant to post a building
19 permit is to put the public on notice. And,
20 you know, if you're driving around the area of
21 the District of Columbia, you're going to see
22 these building permits posted throughout the

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1 city. There are all sorts of neighborhood
2 organizations which take pictures of these.
3 So if you discredit the need to post or the
4 notice requirement of posting the building
5 permit, you're actually providing a really
6 slippery slope for a lot of other projects
7 throughout the District of Columbia. And so
8 we have conflicting statements as to whether
9 or not or rather when the permit was posted
10 and whether the appellant had knowledge or
11 should have known of that.

12 Based on those conflicts, in my
13 opinion, I would give greater credibility and
14 weight to Mr. Alavi's testimony as he went
15 through kind of his perspective on, or rather
16 his recollection of facts as to specifically
17 the fact that he posted it on either the 12th,
18 or he said in Maryland it's usually 24 hours,
19 so it might have been even the 13th. Then the
20 fact that Mr. Hitchcock pulled out in
21 testimony that Mr. Bruce walks his dog and,
22 you know, as dog walker myself, you know, you

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1 observe a lot of things and, you know, have to
2 not recognize a posting or whether he should
3 have. Whether he did or did not is not the
4 question, but it's rather whether he
5 reasonably should have noticed it.

6 Additionally on that issue, the
7 section 3112.2(a) says whichever is earlier.
8 So, you know, we are not permitted to change
9 the regs; we just have to apply them. And in
10 this instance, we are not able to pick
11 whichever was the later, but rather we have to
12 apply whichever was the earlier of those two.
13 So again, based on the testimony of, you know,
14 posting it around the 12th or the 13th and
15 then work that started on the 18th and the
16 19th, you know, all of those would have
17 determined that the appellant was untimely in
18 filing his appeal, which was not filed until,
19 I think the date was on Exhibit 2, which was
20 filed and stamped, I believe, on March 27th.

21 So I open up the floor to any
22 additional discussion.

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1 CHAIRPERSON LOUD: Thank you, Mrs.
2 Moldenhauer.

3 I take a slightly different
4 opinion of what we've heard this morning, but
5 I reached the same conclusion. I find it a
6 little, I don't want to say hard, but the fact
7 the posting (off microphone), meaning that --
8 can you hear me?

9 PARTICIPANT: (Off microphone.)

10 CHAIRPERSON LOUD: Okay. I find
11 it a little difficult to equate the fact of
12 posting with the exact time that a neighbor
13 has notice. I agree that once you start
14 opening up a dialogue about the posting and
15 whether it's going to be effective or not, or
16 whether we're going to continue to hold
17 applicants and neighbors to the requirement
18 for posting starts to get real ambiguous real
19 fast. But just the very idea that someone has
20 posted something, I have trouble equating that
21 with the time that the neighbor should have
22 known that construction was getting ready to

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1 happen. Because there are so many things that
2 can happen in terms of it, for example, being
3 -- and I'm not saying we heard evidence of
4 that here, but being posted at night and you
5 coming in after it's posted and you not
6 knowing it was posted that night. Or in this
7 case, the post is an eight-and-a-half-by-
8 eleven. You know, it's not the big kind of
9 post that we see, for example, in the typical
10 special exception or variance case where you
11 have to, you know, really post a fairly large
12 sign.

13 So, I'm not totally on board with
14 that part of your analysis. But, I am on
15 board with your conclusion that I think that
16 the evidence shows that there was notice
17 before February 27. And I think what
18 triggered it for me; well, a couple things,
19 first, I think February 18th when the
20 demolition occurred in particular of the
21 facade or the exterior of the garage, that
22 should have triggered an awareness on the part

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1 of the neighbors that something was going on
2 at that house. And that should have triggered
3 looking at the notice that had been posted on
4 February 12th, which would have taken the
5 appellant at least back to February 18 in
6 terms of when he should have known that a
7 decision had been made.

8 And so I think when I look at the
9 February 12th posting in conjunction with the
10 February 18 beginning of the work, as Mr.
11 Alavi had testified, and clearly some exterior
12 demolition taking place that was visible and
13 should have been apparent to neighbors, that
14 is enough for me to make me come to the
15 conclusion that you've reached regarding
16 notice.

17 The appellant was a compelling
18 witness, and sometimes in these kinds of cases
19 what you're doing is you're measuring up
20 witness against witness, or what I'm doing is
21 measuring up witness against witness and
22 trying to make some judgments as to the more

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1 credible witness, or where there are holes in
2 the record or gaps in the record. And even
3 the appellant was a compelling witness, there
4 was a hole or gap in the record that shifted
5 the balance of the weight, in my perspective,
6 toward the owner and the evidence they put on.
7 And that was when the appellant testified that
8 on the morning of February 27, I believe, when
9 he heard the construction noise and went over
10 and inspected what was going on. And then I
11 think as he was leaving, he saw the permit and
12 he looked on the permit and he got a telephone
13 number off of the permit and he immediately
14 called DCRA.

15 That was testimony that sort of
16 didn't measure up with the appellant's other
17 testimony that he didn't bother to look at the
18 date on the permit. I mean, I think if one
19 would have looked at the permit and bothered
20 to get the details of the telephone number off
21 probably would have also seen the date on the
22 permit. And so, I'm not raising that to

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1 suggest that the date should have been from
2 February 27th. I'm raising it more to say
3 that the weight of the witness' credibility
4 was affected by that omission, or what I
5 perceive to be an omission in their testimony
6 regarding that reading of the permit on
7 February 27th.

8 So, it was a close call for me,
9 but I agree with, Mrs. Moldenhauer, that
10 notice was before, certainly before February
11 27th. In my mind, it was February 18th at the
12 latest. And for that reason, I don't think
13 that the appeal was timely.

14 ZC CHAIR HOOD: I would concur
15 with Board Member Moldenhauer. Even though it
16 was in question about the eight-and-a-half-by-
17 eleven notices and whether you notice, I also
18 looked at the distance in the picture which
19 was submitted in Exhibit 20, the distance
20 between the sidewalk and the signs. Even
21 though it's eight-and-a-half-by-eleven, I now
22 that Mr. Bruce said he was not a nosey

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1 neighbor, I don't consider myself as a nosey
2 neighbor either, but I'm a concerned neighbor.
3 And if I see that and I see a port-a-john and
4 other things going on, you know, whether it's
5 opened or closed, that would then call into
6 question for me. So I agree with both of my
7 colleagues and I think the issue is
8 timeliness.

9 MEMBER MOLDENHAUER: And I agree
10 with Mr. Hood. And I don't think that I
11 disagree with Chairman Loud as to whether or
12 not the notice would have to be larger I think
13 than eight-and-a-half-by-eleven as sufficient
14 enough. That's what's required. I wanted to
15 correct my statement earlier that the appeal,
16 I believe, was untimely as of April 28th,
17 which is Exhibit 1. It was dated as of the
18 27th, but it was actually filed at the Office
19 of Zoning as of April 28th.

20 At this time I will submit a
21 motion to dismiss case No. 17966 for lack of
22 jurisdiction under D.C. Reg 3112.2(a).

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1 ZC CHAIR HOOD: Second.

2 CHAIRPERSON LOUD: Okay. The
3 motion has been made for denial of the
4 appeal/dismissal for lack of jurisdiction and
5 it's been seconded. Is there further
6 discussion?

7 (No audible response.)

8 CHAIRPERSON LOUD: Hearing none,
9 all those in favor, say aye. Aye.

10 MEMBER MOLDENHAUER: Aye.

11 ZC CHAIR HOOD: Aye.

12 CHAIRPERSON LOUD: All those who
13 oppose?

14 (No audible response.)

15 CHAIRPERSON LOUD: Can you read
16 back the vote, Ms. Bailey?

17 MS. BAILEY: Mr. Chairman, the
18 Board as voted 3-0-2 to dismiss the appeal for
19 lack of jurisdiction. Mrs. Moldenhauer made
20 the motion, Mr. Hood seconded, Mr. Loud
21 supported the motion. No other board members
22 are present at this time.

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1 CHAIRPERSON LOUD: Thank you. I'd
2 like to thank the parties for your patience,
3 for your briefing this afternoon.

4 Is there anything further on this
5 case, Ms. Bailey?

6 MS. BAILEY: No, Mr. Chairman.

7 CHAIRPERSON LOUD: Okay. Is there
8 anything further on this afternoon's calendar?

9 MS. BAILEY: No, that's it for the
10 day.

11 CHAIRPERSON LOUD: All right.
12 Today's calendar is adjourned.

13 (Whereupon, the hearing was
14 concluded at 3:07 p.m.)

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