

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY, NOVEMBER 15, 2017

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Suite 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chair  
CARLTON HART, Vice Chair  
LESYLLEÉ M. WHITE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

CHRISTOPHER COHEN, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
BRYAN GOLDEN  
STEPHEN MORDFIN  
ELISA VITALE  
CRYSTAL MYERS

The transcript constitutes the minutes from the Public Hearing held on November 15, 2017.

## CONTENTS

Case No. 19573, Appeal of Nefretiti Makenta . . . . .	3
Case No. 19581, Application of Latin American Montessori Bilingual Charter School . . . . .	8
Case No. 19605, Application of 1331 Taylor Street, LLC . . . . .	229
Case No. 19572, Application of SIM Development, LLC . . . . .	270
Case No. 19589, Application of Thad Hunkins . . . . .	344
Case No. 19606, Application of St. Albans School . . . . .	351
Adjourn . . . . .	366

**NEAL R. GROSS**

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

10:36 a.m.

MR. MOY: All right. That moves the Board into the hearing session, and I believe the first case before the Board for public hearing is Appeal Number 19573 of Nefretiti Makenta, as captioned and advertised, as a decision --- an appeal from the decision made on May 26th, 2017 by the Zoning Administrator, Department of Consumer Regulatory Affairs, to issue Building Permit Number B1707364, amending Building Permit B160388 -- let me restate -- Building Permit B1603868 to alter the approved third floor addition in the RF-1 Zone at premises 3616 11th Street, N.W., Square 2829, Lot 169.

There are preliminary matters before the Board, a motion to strike under Exhibit 33, as well as a motion to dismiss from both DCRA and the property owner under Exhibits 33 and 36.

CHAIRMAN HILL: Okay, great. Is the appellant here?

MR. MOY: Mr. Chair, we, this morning, received a phone call from Ms. Makenta saying that she's caught in traffic from a traffic accident, and she would be late, but I'm assuming she will be here as soon as she can. That was about an hour ago, I think, at this point or 45 minutes ago.

CHAIRMAN HILL: Okay, all right. We don't have an applicant. What are we going to do?

**NEAL R. GROSS**

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

1 MR. MOY: We can move on to the next case and come  
2 back to this when she arrives, unless you have some other  
3 ideas, Mr. Chair.

4 CHAIRMAN HILL: Okay. Oh, do you have some ideas?  
5 Just give me a second. Let's introduce ourselves first,  
6 okay? So from right to left. One second. Okay. I'm going  
7 to introduce everybody. Can you introduce yourselves,  
8 please?

9 MR. TONDRO: Maximilian Tondro on behalf of DCRA.

10 MR. LEGRANT: Matthew LeGrant, Zoning  
11 Administrator, DCRA.

12 MS. MOLDENHAUER: Good morning. Meredith  
13 Moldenhauer from the law firm of Cozen O'Connor on behalf of  
14 the property owners, the interveners.

15 MS. DIAO: Alexis Diao, property owner.

16 CHAIRMAN HILL: Okay. So I'm going to turn to OAG  
17 here. Oh, I'm sorry.

18 MR. SMITH: That's okay. Good morning. I'm  
19 Graham Smith, and we're married and we own the house  
20 together.

21 CHAIRMAN HILL: You're the husband, right? So  
22 you're used to being ignored, so it's okay, right? Okay,  
23 good. Let's see. So I'm just turning to OAG here, and I'm  
24 a little confused. Again, we can't dismiss, you can dismiss  
25 this now or if the applicant is not here? I mean ---

**NEAL R. GROSS**

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

1 MR. UQDAH: Well, there are two motions to dismiss  
2 on the table. For the Board's consideration, however, OAG  
3 would tend to agree with the Secretary in that perhaps we  
4 should wait for the appellant.

5 CHAIRMAN HILL: Okay, all right. So we're going  
6 to wait and see what happens. I know you want to speak  
7 because you're about to speak, but I'll let you speak. Just  
8 give me one second again. So we're probably going to wait  
9 here. We'll see how long we wait or what we're going to do.  
10 But, Ms. Moldenhauer, you have something to say?

11 MS. MOLDENHAUER: We became aware this morning  
12 that there was also a filing. When Ms. Makenta does show up,  
13 there was a filing that was filed this morning at 8:59 a.m.  
14 We were not served with that. There was no certificate of  
15 service. So when this case does, I guess, get called today,  
16 we would obviously like to add that to our preliminary  
17 motions for a motion to strike.

18 CHAIRMAN HILL: Okay. Which one is that?

19 MR. TONDRO: Exhibit 39.

20 CHAIRMAN HILL: Okay, thanks. Okay, all right.  
21 Mr. Tondro.

22 MR. TONDRO: I just simply wanted to add to that  
23 just to note that the filing, not only does it violate also  
24 the three-day rule that's required that the appellant has to  
25 file at least three days prior to the hearing, but I also

**NEAL R. GROSS**

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

1 want to point out, in terms of this issue of the appellant  
2 being stuck in traffic, the fact was that this was uploaded  
3 to ISIS at 8:59 for a hearing that was due to start at 9:30.

4 CHAIRMAN HILL: Okay. Okay. Let's see. All  
5 right. We're going to move on. I don't think that, I mean,  
6 given how lengthy this has all been and given, you know, the  
7 applicant knows everything that's been going on for this, you  
8 know, I don't think that this is going to help matters by not  
9 hearing this. So we're going to go ahead and push back and  
10 hear the next case. So stick around.

11 Actually, I haven't done this before, but I'm  
12 interested in having an emergency meeting so that we can talk  
13 to OAG because I'm curious as to how now this delay works.  
14 And so, you know, if the person just continues to not show  
15 or be stuck in traffic, I mean, I want to talk about that a  
16 little bit further. Does the Board find that that's  
17 appropriate?

18 So, Mr. Moy, how do I do this?

19 MR. MOY: Well, we could recess from this public  
20 hearing to go into an emergency Board closed meeting. We can  
21 do that now and --

22 CHAIRMAN HILL: And you have to have, I'm just  
23 saying you take a roll call vote, right?

24 MR. MOY: Yes, I --

25 CHAIRMAN HILL: Okay. So I'm going to make a

**NEAL R. GROSS**

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

1 motion to have an emergency closed meeting, and I ask for a  
2 second and then have a roll call vote. Can I get a second?

3 VICE CHAIR HART: Second.

4 CHAIRMAN HILL: Motion has been made and seconded.  
5 Will the Secretary please take a roll call vote?

6 CHAIRMAN HOOD: Mr. Chair, I have a clarification  
7 question. The closed meeting, what are we going into the  
8 closed meeting for?

9 CHAIRMAN HILL: I wanted to find out a little bit  
10 more from the OAG just how, if the person, you know, what are  
11 our options in terms of, like, the delay and if the person  
12 doesn't show. I mean, how does this move forward?

13 CHAIRMAN HOOD: And this is in reference to Case  
14 Number 19573, correct?

15 CHAIRMAN HILL: Yes, we'd only be speaking about  
16 Case 19573.

17 CHAIRMAN HOOD: Okay. Thank you, Mr. Chair.

18 CHAIRMAN HILL: Thank you for the clarification.  
19 So, again, the motion has been made and seconded. Will the  
20 Secretary take a roll call vote?

21 MR. MOY: Yes. Thank you, Mr. Chairman. When I  
22 call your name, if the Board member can reply with a yes or  
23 a no. Mr. Hood?

24 CHAIRMAN HOOD: Yes.

25 MR. MOY: Ms. White?

**NEAL R. GROSS**

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

1 MEMBER WHITE: Yes.

2 MR. MOY: Chairman Hill?

3 CHAIRMAN HILL: Yes.

4 MR. MOY: Vice Chair Hart?

5 VICE CHAIR HART: Yes.

6 MR. MOY: We're a Board seat vacant, but the  
7 motion carries four to zero to one, Mr. Chair.

8 CHAIRMAN HILL: Okay. Let's talk.

9 (Whereupon, the above-entitled matter went off the  
10 record at 10:44 a.m. and resumed at 11:02 a.m.)

11 MR. MOY: Okay. Mr. Chairman, we're back in  
12 session. So I believe, if we can have parties to the table  
13 -- oh, wait a minute. Was there something you want to say  
14 on the record before I call the case?

15 CHAIRMAN HILL: No.

16 MR. MOY: Okay, all right. So the Board will move  
17 forward with Application Number 19581 of Latin American  
18 Montessori Bilingual Charter School, captioned and  
19 advertised, for a special exception under Subtitle U, Section  
20 205.1(a), to establish a public charter school in the R-16  
21 Zone at premises 5000 14th Street, N.W., Square 2711, Lot  
22 802. And, Mr. Chair, as you know, on the record there's a  
23 party status request on record under Exhibit 39.

24 CHAIRMAN HILL: Okay. Good morning. If you could  
25 please introduce yourselves from my right to left. You need

**NEAL R. GROSS**

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



1 to push the button first.

2 MR. UQDAH: Good morning, Mr. Chair. My name is  
3 Taalib-Din Uqdah. I am here on -- pardon me. I am here on  
4 behalf of the committee of neighbors directly impacted by  
5 LAMB. We are the committee which has filed for a party  
6 status in this matter.

7 CHAIRMAN HILL: All right, Mr. Uqdah.

8 MR. KADLECEK: Cary Kadlecek from Goulston &  
9 Storrs. I'm land use counsel on behalf of the applicant.

10 MR. ZAYETS: Morning. Jerry Zayets, Building  
11 Hope, the applicant.

12 MS. COTTMAN: Good morning. Diane Cottman,  
13 executive director and co-founder of LAMB.

14 MR. VAN PELT: Good morning. Dan Van Pelt,  
15 principal and vice president of Gorove/Slade Associates.

16 CHAIRMAN HILL: Okay. So Mr. Uqdah, if you would  
17 just kind of --- we got your submission in terms of party  
18 status in terms of the request. But if you could please just  
19 kind of clarify again for the Board why you think you should  
20 be granted party status.

21 MR. UQDAH: Thank you, Mr. Chair. For the record,  
22 my name is spelled T-A-A-L-I-B, dash, D-I-N. The last name  
23 is spelled U-Q-D, as in David, A-H, as in Henry. I'm not a  
24 John Smith or a Michael Brown, so I --

25 CHAIRMAN HILL: No, no, the transcriber

**NEAL R. GROSS**

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

1 appreciated that. So continue, please.

2 MR. UQDAH: Mr. Chair, this was a matter that the  
3 community discussed and through my counsel, we felt as though  
4 this, by presenting ourselves as a committee, it would save  
5 this board a lot of time because there would be one entity  
6 in which the majority of the people in close proximity to the  
7 subject property would be affected.

8 CHAIRMAN HILL: Okay, okay, all right. And, Mr.  
9 Kadlecek, I didn't see anything in terms of opposition for  
10 the party status request.

11 MR. KADLECEK: We have no opposition.

12 CHAIRMAN HILL: Okay. So starting with the board,  
13 I'm going to go ahead and grant the -- again, Mr. Uqdah,  
14 what's the acronym, I forget, for the --

15 MR. UQDAH: It's CNDI-LA. CNDI-LA.

16 CHAIRMAN HILL: CNDI-LA. Okay, great. All right,  
17 great. Then we're going to go ahead and grant your  
18 organization party status, and so you'll have an opportunity  
19 to present to us and also an opportunity to cross with the  
20 applicant, as well as the Office of Planning. So just bear  
21 with us here.

22 Mr. Kadlecek, so we have gone through the  
23 application, and we're going to go ahead and do a full  
24 presentation here with you because there's a variety of  
25 issues that we're going to try to work through.

**NEAL R. GROSS**

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

1           So you can go ahead and start whenever you like.  
2    I'm going to --

3           MR. KADLECEK:   Just one preliminary matter.  I  
4    wanted to make sure that Mr. Van Pelt was qualified as an  
5    expert.  I know he's been qualified before at the Board, but  
6    I just want to make sure that the Board --

7           CHAIRMAN HILL:  Sure.  And I appreciate that.  I  
8    think, Mr. Van Pelt, you're in the book, aren't you?  Okay,  
9    all right.  So we'll accept Mr. Van Pelt as an expert.  So  
10   I'll go ahead and put 20 minutes on the clock, Mr. Moy.  And,  
11   Mr. Kadlecek, you can begin whenever you like.

12          MR. KADLECEK:  Is it possible for us to have 30?  
13    I think that we probably --

14          CHAIRMAN HILL:  Sure.  Put 30 minutes.

15          MR. KADLECEK:  -- need 30 just to make sure we  
16    cover all the issues.

17          CHAIRMAN HILL:  Great.  No, I don't have anything  
18    to do here, yes.  Go ahead.

19          MR. KADLECEK:  We'll try and be as brief --

20          CHAIRMAN HILL:  Now Mr. Uqdah will get 30 minutes,  
21    as well.

22          MR. KADLECEK:  No, I understand that.

23          CHAIRMAN HILL:  Okay.

24          MR. KADLECEK:  But we felt it was important to  
25    make sure we cover all the issues.

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: No, I appreciate that.

2 MR. KADLECEK: Good morning, members of the Board.  
3 The application before you is for the special exception  
4 approval of a public charter school and for the co-location  
5 of a public charter school with another school. In all other  
6 residential zones, public charter schools are permitted as  
7 a matter of right, but in this case of the R-16 Zone, a  
8 special exception is required.

9 With this application, the Latin American  
10 Montessori Bilingual Public Charter School, or LAMB, one of  
11 the most successful and highly-regarded public charter  
12 schools in the city, proposes to consolidate its operations  
13 and occupy the existing building located at 5000 14th Street,  
14 N.W. It will share the facility with Kingsbury Center, a  
15 private school, until Kingsbury relocates, at which time LAMB  
16 will occupy the entire building.

17 LAMB has existed in the District for 15 years and  
18 currently occupies three different sites, so LAMB is not an  
19 unknown entity and this fact allows all the stakeholders to  
20 have a much greater assurance with respect to LAMB's  
21 commitments and impacts at the proposed site.

22 During the course of this public process, LAMB has  
23 proven to be eminently receptive, responsive, and reasonable  
24 with respect to addressing community concerns. For more than  
25 five months, LAMB has extensively engaged the community to

**NEAL R. GROSS**

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

1 listen to and respond to concerns.

2 To that end, LAMB has agreed to a remarkable 24  
3 of 25 total conditions proposed by a combination of the  
4 Office of Planning, DDOT, the community, and the ANC. And  
5 with respect to the 25th condition, LAMB has proposed an  
6 alternative with the same goals with which the Office of  
7 Planning agrees.

8 With all of these conditions, LAMB has responded  
9 to community concerns and heavily invested itself in  
10 mitigating its impacts on the community. We are pleased to  
11 have the support of the Office of Planning, DDOT, the ANC,  
12 many community members and residents of SMD 402, LAMB  
13 parents, the ANC Single Member District representative, Maria  
14 Barry, and Ward 4 Councilmember Brandon Todd.

15 With that, I'll turn it to Ms. Cottman.

16 MS. COTTMAN: Good morning, Board. Just a brief  
17 history of LAMB. We submitted our charter application 17  
18 years ago and were unanimously approved at that time to  
19 create a charter school here in the District to provide early  
20 childhood and elementary education to D.C. children. We  
21 opened in 2003 with 57 children. Today, 15 years later, we  
22 have been ranked as the highest early childhood elementary  
23 public school in the District of Columbia in terms of its  
24 academic achievement and number three of all public charter  
25 schools city-wide.

**NEAL R. GROSS**

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

1 LAMB has 462 students at three different  
2 facilities: the Historic Military Road School in Ward 4,  
3 South Dakota Avenue in Ward 5, and we recently opened at  
4 Delano Hall on the Walter Reed property. In two of those  
5 three locations, we co-locate with other schools, Perry  
6 Street Prep and with D.C. International. So we are very  
7 accustomed to having to share space.

8 19581 is more than a case number for LAMB. It's  
9 a means to achieve our vision of all of our students, pre-K  
10 three to five, consolidated under one roof where siblings are  
11 not split between buildings and parents no longer have to  
12 make two drop-offs and pick-ups daily. LAMB's enrollment  
13 ceiling is approved by the D.C. Public Charter School Board  
14 at 600. We will not reach that goal until the year 2024.

15 Kingsbury, an approximately 173,000 square feet  
16 property, has sufficient classroom space, outdoor green  
17 space, and off-street parking. Moreover, 49 percent of our  
18 current families live in Ward 4. Commuting to Kingsbury will  
19 just be night and day from what they have to do currently and  
20 allows many to then walk, bike, and carpool, which is much  
21 more difficult to achieve today. That 49 percent represents  
22 232 children. In addition, we have 25 staff members, that's  
23 a quarter of our staff, who live in Ward 4, and they, too,  
24 may choose to walk and bike to school.

25 Kingsbury really allows us to efficiently and

**NEAL R. GROSS**

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

1 effectively invest our resources into one building. With the  
2 move to Kingsbury, we would close our other three sites and  
3 operate from one site. That's our goal. We have a proven  
4 track record of being a good neighbor, and it's our hope that  
5 we will be given that opportunity at Kingsbury.

6 MR. ZAYETS: Thank you very much, Diane, for that  
7 introduction about the school. My name is Jerry Zayets, and  
8 I'm with Building Hope. Building Hope is, essentially, a  
9 financier for public charter schools. We provide the conduit  
10 for charter schools to allow ultimate facility ownership, so  
11 we're sort of the middle man in that transaction. We've  
12 worked with about 85 percent of all charter schools in the  
13 District of Columbia, and it is our goal and our intent here  
14 to help LAMB essentially move to the Kingsbury campus.

15 So just a little bit of background on the site for  
16 the Kingsbury campus. It's roughly 173,000 square feet.  
17 It's about four acres. It's located at the intersection of  
18 Gallatin, Piney Branch, and 14th Street, so it fronts three  
19 streets. 173,000 is about four acres.

20 This case is not really about density or height  
21 or bulk, so I do want to materialize and sort of put some  
22 perspective on what that means as far as capacity. So what  
23 we did was we put together some slides on similar comparable  
24 schools in the District of Columbia and essentially put a  
25 mass assumption under them.

**NEAL R. GROSS**

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

1           So this school in particular, at full enrollment,  
2 will basically be about 288 square foot per student. In  
3 comparison to the others schools, so Powell Elementary is a  
4 good example of a renovated school that's in Petworth. It  
5 tailors, it fronts Upshur Street. The school is enrolled at  
6 capacity of 534 students and roughly on a 100,000 feet of  
7 site, so that's roughly 60,000 square feet less, so that's  
8 almost an acre less. So as far as the density perspective,  
9 it's about 190 square feet per student.

10           A major distinction between this site and our  
11 prospective site at Kingsbury is the fact that loading and  
12 drop-off will take place for the Powell Elementary on public  
13 space adding traffic and congestion, whereas in the Kingsbury  
14 site it's all inside the property and self-contained.

15           The next example is the Truesdell Academic campus.  
16 Again, roughly, enrollment numbers of 679 students with a  
17 land mass of 132,000 square feet, so that's also about 30,000  
18 square feet less with a density of about 194 square feet per  
19 student. And, again, this one loads and drops off all in  
20 public space so very, very different circumstances.

21           Just a brief summary as far as the counts. This  
22 puts some density metrics in perspective, and you can see  
23 that the amount of land or area we're allocating to our  
24 prospective student count is roughly 30 percent more than the  
25 comparable schools in Ward 4.

**NEAL R. GROSS**

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



1           Next, I'm going to pass over the mic to Daniel  
2 with transportation. He'll go into the logistics, loading,  
3 and drop off, and various traffic mitigation measures. Thank  
4 you.

5           MR. VAN PELT: Good morning again. I'm Dan Van  
6 Pelt with Gorove/Slade. I'm working with LAMB and Building  
7 Hope on this application.

8           CHAIRMAN HILL: Mr. Van Pelt, could you just lean  
9 a little bit forward into the --

10          MR. VAN PELT: Oh, I'm sorry.

11          CHAIRMAN HILL: That's all right. It's just hard  
12 to hear you.

13          MR. VAN PELT: Is that better now?

14          CHAIRMAN HILL: Yes, thank you.

15          MR. VAN PELT: Okay, all right. So, yes, Dan Van  
16 Pelt with Gorove/Slade, and I'm working with LAMB and  
17 Building Hope on this application and going to go through and  
18 talk about the transportation review that we performed, the  
19 mitigation measures that were identified, and the associated  
20 transportation-related commitments, go through those and talk  
21 about those in some detail.

22                 The site is located in 16th Street Heights, and  
23 it's adjacent to 14th Street, which is an arterial street.  
24 It's further bound by Gallatin Street on the north, Piney  
25 Branch on the west, and a public alley to the south. D.C.

**NEAL R. GROSS**

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

1 Public Schools West Education Campus is located immediately  
2 across the street across 14th Street.

3           There are several bus routes and stops on 14th  
4 Street and several more one block to the west on 16th Street.  
5 There are bike lanes on 14th Street, and 14th Street is a  
6 significant north-south facility in the District's bicycle  
7 network. The nearest Capital Bikeshare station is located  
8 a little over three blocks to the south on 14th Street just  
9 off the figure that's shown on this slide. The Rock Creek  
10 Park Trail is in the vicinity. And while the site is a  
11 little more than a mile from the nearest Metro station, it  
12 is well served by other transportation modes.

13           I think one thing that is important to point out  
14 that DDOT has been actively studying this neighborhood. The  
15 16th Street Heights Neighborhood Traffic Safety Study was  
16 completed by DDOT in July of 2016, and it concluded with a  
17 recommendation to make blocks of Emerson Street one way to  
18 discourage cut-through traffic. This conversion took place  
19 during the course of our study for this application, and DDOT  
20 is now kicking off a second phase of this study in the  
21 neighborhood that actually will start next week on November  
22 20th. The next phase will pick up where the first phase left  
23 off, and it's going to review the streets for Farragut Street  
24 up to Military and should help address community concerns  
25 that exist today in the neighborhood.

**NEAL R. GROSS**

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

1 Many of the issues that we heard are independent  
2 of this site and project and relate to cut-through traffic,  
3 speed, safety concerns, pick-up/drop-off traffic related to  
4 West Education Campus, and the Beach Drive construction  
5 traffic diversions. These would be neighborhood concerns  
6 even if LAMB wasn't to do anything at this site.

7 So LAMB consolidating and moving to this new  
8 campus will not happen immediately and will be phased in.  
9 For a period of time, the Kingsbury School will continue to  
10 operate at the site, along with LAMB. For our transportation  
11 analysis, we looked at the interim condition where there  
12 would be the greatest occupancy of the two schools  
13 simultaneously at the site. We also looked at the ultimate  
14 condition when LAMB was projected to be at full enrollment  
15 of 600 students in year 2025.

16 The bell times at each school will be staggered  
17 to distribute arrivals and departure on the site.  
18 Additionally, bell times will be coordinated with the West  
19 Education Campus to disperse all school-related trips in the  
20 vicinity over a longer amount of time.

21 We should also note that LAMB provides before- and  
22 after-school care. Children will begin to arrive as early  
23 as 7 a.m. and may be on campus until as late as 6 p.m. This  
24 all acts to reduce the concentration of school trips in the  
25 morning and afternoon peak periods.

**NEAL R. GROSS**

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

1           As Kingsbury currently operates at the site,  
2 existing vehicle counts at the site driveways were used to  
3 determine the interim trip generation of the Kingsbury site  
4 component. Based on existing and proposed student and staff  
5 populations at Kingsbury, the site driveway vehicle volumes  
6 were factored up and determined the net change associated  
7 with that part of the site.

8           Interim and ultimate trip generation for the LAMB  
9 component of the site was based on data collected from LAMB  
10 at their existing facilities and incorporated with other  
11 observations of existing schools that we've studied in the  
12 District. The student and staff populations were dispersed  
13 across different modes of transportation, including car,  
14 transit, bike, and walking, and across different times of the  
15 day. Most of it was based on travel information provided by  
16 LAMB, differing for younger students, older students, and  
17 staff members, and cross-referenced with where students'  
18 families and faculty live to determine the appropriateness  
19 of those mode splits.

20           Ultimately, it was determined that 81 percent of  
21 the PK3 through 2nd grade students would be driven, 71  
22 percent of the 3rd through 5th grade students would be  
23 driven, and 70 percent of staff members would drive. It was  
24 also assumed that many students would be carpooling, given  
25 the prevalence of LAMB families with multiple students. The

**NEAL R. GROSS**

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

1 peak hour trip generation was further developed based on when  
2 student and staff members are expected to arrive and depart,  
3 as not all student and staff members are expected to do so  
4 during the same hour, the same peak hour.

5           The methodology described above shows the highest  
6 net increase of trips during the A.M. peak hour. During the  
7 interim condition, there would be a net increase of 166 new  
8 vehicles projected in the A.M. peak hour and during the  
9 ultimate condition, that increases to 247 vehicles projected  
10 during the A.M. peak period. However, it should be noted  
11 that many of these trips are likely already on the network  
12 in this neighborhood given that one of LAMB's campuses  
13 currently operates to the north. The study conservatively  
14 assumes that all trips will be new trips and, in reality, we  
15 don't expect that that would be the case, and we don't take  
16 credit for those existing trips.

17           Today, the site has four existing curb cuts over  
18 driveways. Two of those are on 14th Street, and two are on  
19 Piney Branch Road. Kingsbury uses all of them, and the curb  
20 cuts are planned to remain as is. Although LAMB intends to  
21 utilize all curb cuts, too, the circulation plan will orient  
22 pick-up and drop-off traffic to and from 14th Street. We'll  
23 talk more about that in a moment.

24           There are 107 vehicular parking spaces which will  
25 adequately accommodate projected demand. Demand was

**NEAL R. GROSS**

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

1 determined based on the number of faculty and staff expected  
2 to drive and carpool. Also factored in was the demand for  
3 student pick-up and drop-off of the PK through 2nd grade  
4 students whose parents must park and walk them into the  
5 school.

6 In the ultimate conditions, this results in a  
7 demand of about 40 parent cars parked at one time during  
8 pick-up and drop-off, combined with a demand of 64 spaces for  
9 staff. The total demand is 104 spaces, which is within the  
10 supply.

11 Outside of the pick-up/drop-off times, the 40  
12 spaces will be available for visitors during the evenings and  
13 the majority of faculty and staff parking is also available  
14 during the evenings.

15 All service vehicle activity will be accommodated  
16 on the site with any backing movements necessary occurring  
17 on private property out of public right-of-way. There will  
18 be a limited number of trucks coming to the site, mainly  
19 mail, FedEx, UPS, on a daily basis, along with the food  
20 service delivery. Trash will be collected a few times a  
21 week.

22 So under the interim condition while LAMB and  
23 Kingsbury both occupy the site, Kingsbury's primary student  
24 access will be along the north end of the building, while  
25 LAMB's primary access will be along the east side of the

**NEAL R. GROSS**

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

1 building. Vehicle queuing will take place adjacent to the  
2 primary access point for each of the schools.

3           The proposed circulation plan is shown here in  
4 yellow and orients the majority of the traffic towards 14th  
5 Street. LAMB's policy manual dictates that all arriving  
6 traffic by car, foot, or bike must enter the campus from 14th  
7 Street. Vehicular traffic will enter at the northeastern  
8 driveway identified here with the green dot on 14th Street.  
9 After circulating through the site, the majority of traffic  
10 will exit back onto 14th Street heading south. And this is  
11 identified with a larger red dot.

12           The plan does include some amount of pick-up/drop-  
13 off traffic exiting out to Piney Branch for those needing to  
14 return to the north. The exit onto 14th Street only allows  
15 a southbound right turn. And as stated in the staff report,  
16 DDOT concurred with the circulation plan and the usage of the  
17 site driveways, which includes assigning some exiting trips  
18 to Piney Branch Road.

19           Kingsbury is projected to have a queuing demand  
20 of about 50 feet or two to three vehicles with available  
21 space for over 150 feet of queuing or about seven vehicles.  
22 The projected demand is shown here in orange. Those are the  
23 orange vehicles, while the white cars that trail the orange  
24 ones are just showing you how much additional queuing space  
25 there is or what the queuing capacity is without impacting

**NEAL R. GROSS**

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

1 circulation on site.

2           As discussed previously, LAMB's pick-up and drop-  
3 off activity is split between drop-offs at the door for 3rd  
4 through 5th graders and parking and walking for the PK  
5 through 2nd graders, walking in for the PK through 2nd  
6 graders. Based on the expected student population in the  
7 interim condition, which assumes a higher proportion of  
8 younger students, LAMB is projected to have a queuing demand  
9 of 50 feet or about two to three vehicles with available  
10 space for up to 170 feet of queuing or about eight cars. The  
11 projected demand is shown on green on the slide, and, again,  
12 the trailing white cars just show you what additional  
13 capacity there is for queuing. And there's ample room for  
14 queuing on site.

15           Additionally, pick-up and drop-off activity for  
16 younger students results in a demand of 29 parking spaces,  
17 and those are the pink vehicles that you'll see on the plan.  
18 This demand is based on the assumption of parking and walking  
19 and will take about ten minutes per vehicle, a number that  
20 was provided to us based -- from LAMB based on their daily  
21 experience.

22           So going to the ultimate condition, after  
23 Kingsbury has left and LAMB is the remaining school on site,  
24 their primary access will remain on the east side of the  
25 building. Traffic circulation entering and exiting on the

**NEAL R. GROSS**

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



1 site will occur pretty much in the same manner that was  
2 described in the interim condition. Vehicle queuing will  
3 take place next to the primary access point, but the start  
4 of the queue will be shifted further to the south to allow  
5 for even more queuing space. Again, here the proposed  
6 circulation plan is shown in yellow and orients the majority  
7 of the traffic towards 14th Street.

8           Based on the expected student population of 600  
9 in the ultimate condition, LAMB is projected to have a  
10 queuing demand of 320 feet or about 14 vehicles, with  
11 available space for 880 feet of queuing or about 36 vehicles.  
12 So, again, the green is what we projected, the white trailing  
13 vehicles are not our projections but what is the actual  
14 capacity on site for queuing, so quite a bit more capacity  
15 for queuing than there is demand.

16           Additionally, pick-up and drop-off for younger  
17 students results in demand for 40 parking spaces, and those  
18 are shown here in pink again. We talked about the queuing  
19 space. The one thing that this is really kind of a unique  
20 situation I think, as was pointed out earlier, a lot of  
21 schools, a lot of public schools in the District rely on  
22 using public right-of-way and using curbside for pick-up and  
23 drop-off and parking, which is the case across the street at  
24 the West Campus.

25           So the comprehensive transportation review was

**NEAL R. GROSS**

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

1 scoped with DDOT and it was performed for the project to  
2 review the vehicular multi-modal impacts and accommodations.  
3 During the scoping process, there were 12 studied  
4 intersections that were initially scoped, with DDOT later  
5 requesting the inclusion of four additional intersections,  
6 primarily along 16th Street. This study was reviewed by  
7 multiple groups within DDOT, including the traffic operations  
8 group that manages the 16th Street Heights Neighborhood  
9 Traffic Safety Study and is very familiar with the  
10 neighborhood traffic conditions.

11 DDOT ultimately determined that the 16 studied  
12 area intersections -- that that study area was sufficient for  
13 evaluating potential impacts of the project. It should be  
14 noted that intersections outside of the ones selected for the  
15 study could observe some site-related traffic. However, it  
16 is these 16 intersections that DDOT determined are most  
17 likely to see potential impacts of this project based on the  
18 knowledge of the area.

19 As mentioned previously, DDOT is currently  
20 undertaking the 16th Street Heights study to address existing  
21 transportation-related issues in the surrounding area. And  
22 phase one was completed in July of 2016, and it resulted in  
23 the Emerson one-way conversions this past summer. And then  
24 phase two is going to get started here next week. This study  
25 is expected to address some of the existing issues that we

**NEAL R. GROSS**

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

1 outlined in our CTR.

2           The CTR was submitted to DDOT September 5th, and  
3 then there was an addendum that followed that with some  
4 additional information that DDOT requested. DDOT produced  
5 their staff report on November 1st, and overall DDOT  
6 concurred with the findings and methodology of the CTR and  
7 expressed approval with conditions. These conditions will  
8 be outlined a little bit later in the presentation.

9           Some of the highlights of the analysis, the  
10 analysis and methodology included in the CTR was consistent  
11 with what --- typical DDOT industry standards. However,  
12 there was one unique assumption here that we had to make that  
13 was a result of the Emerson one-way conversion. Traffic  
14 counts of the initial 12 study intersections were performed  
15 prior to the one-way conversion of Emerson Street in order  
16 to collect traffic volumes during a typical non-summer month.

17           Then over the summer DDOT converted Emerson Street  
18 to one-way operations and as such, existing traffic we  
19 counted along Emerson needed to be re-routed through the  
20 network to reflect the new traffic pattern. In order to  
21 maintain a conservative analysis, the traffic was distributed  
22 to the adjacent two-way through streets in the study area and  
23 a lot of the reassigned traffic was put on to Gallatin  
24 Street.

25           Supplemental traffic counts were performed for the

**NEAL R. GROSS**

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

1 four additional studied intersections that DDOT requested,  
2 and these were counted after the one-way conversion. These  
3 counts, along with the site reconnaissance, led us to believe  
4 that we probably conservatively re-routed too much traffic  
5 to Gallatin in our analysis. In reality, the traffic  
6 patterns were changed in a more global way that is difficult  
7 to replicate in the micro-level sort of analysis that we do  
8 here in the impact study. As such, areas of poor capacity  
9 are likely overstated in our traffic study.

10 Our analysis shows no issues with the operation  
11 of the site driveways, particularly on 14th Street, which  
12 would be the primary means for entering and exiting the site.  
13 Overall the traffic study determined that the project will  
14 not have a detrimental impact on the surrounding  
15 intersections, assuming the signal time adjustments are made  
16 at the intersection of 14th and Gallatin Street. We also  
17 recommended transportation of the management plan and that  
18 DDOT continue to study the after-effects of Emerson Street  
19 one-way conversion to the larger patterns in the  
20 neighborhood.

21 The TDM plan with this application was tailored  
22 specifically to LAMB, and we used it as a tool to coordinate  
23 with West Education Campus with a desire to have the greatest  
24 impact to reducing vehicular demands and facilitating walking  
25 and biking to schools for both schools. Many of the plan

**NEAL R. GROSS**

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

1 components are listed here. I won't read them all, but they  
2 should be familiar tools in the TDM toolkit. Particular  
3 attention was given in this plan to be developed and  
4 implemented working with the input from the community and  
5 again, coordinating with West. The siting of the two schools  
6 can actually be beneficial in developing a robust Safe Routes  
7 to School program as it provides more gravity for DDOT to  
8 provide crossing guards.

9           So DDOT agreed with our TDM plan and made it their  
10 first condition of their support. They have also requested  
11 off-site pedestrian improvements that the applicant will be  
12 making. We'll discuss more about that in just a moment. The  
13 third DDOT condition was the implementation of a performance  
14 monitoring plan. DDOT's plan, as described in the staff  
15 report, will begin once LAMB enrollment reaches 90 percent  
16 of the cap. However, LAMB will begin this monitoring the  
17 very first year at the site and will continue it annually  
18 until the DDOT requirements are met.

19           The monitoring will include multi-modal counts,  
20 mode split data, vehicle occupancy counts, queue length  
21 observations, and a review of the TDM measures that have been  
22 implemented, along with any tweaks to the plan for the next  
23 year. If the vehicle trip target is exceeded or queues back  
24 into public space, then LAMB would be required to adjust and  
25 improve the TDM plan until two consecutive years of

**NEAL R. GROSS**

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

1 compliance are demonstrated. The applicant has agreed to all  
2 DDOT conditions, and the applicant will continue to  
3 coordinate with DDOT as the project moves to public space  
4 permitting.

5           So to summarize the transportation elements of the  
6 projects being committed to by the applicant, the site has  
7 ample space on campus to accommodate queuing and parking  
8 needs without spilling over onto the adjacent streets, and  
9 all of this activity will occur on the site. Again, this is  
10 rather unique for a public school in the District.

11           The proposed mitigation plan includes a robust TDM  
12 plan, and the applicant is committing to work with DDOT to  
13 address signal timings and address pedestrian deficiencies  
14 in the vicinity. The figure that's shown here on this slide  
15 identifies a new sidewalk that will be installed on the south  
16 side of Gallatin Street. You can see it up there in blue at  
17 the top of the figure. That sidewalk is currently missing.  
18 There will also be crosswalk and curb ramp upgrades at  
19 locations that are identified here on the slide on Gallatin  
20 and 14th Street and Emerson Street.

21           And then the performing monitoring plan is the  
22 mechanism that will ensure that the TDM plan and overall  
23 transportation plan is effective and encourages multi-modal  
24 options in managing traffic loads over time. And lastly,  
25 there are even more transportation-related commitments that

**NEAL R. GROSS**

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

1 have been made to the community that others will touch on.  
2 I believe Jerry will touch on them later in the presentation.

3 With that, I'll pass it back to Jerry.

4 MR. ZAYETS: Thank you very much, Daniel. I got  
5 five minutes. I'll be brief. So as far as some of these  
6 conditions and some of the community engagements we've had,  
7 so we've had multiple engagements, more than 14 of them, with  
8 various community members: the ANC, local residents, and so  
9 on, Office of Planning, and DDOT. And as far as these  
10 conditions, we've summarized them into these four pages. I'm  
11 not going to go into all of them, but I'll highlight the most  
12 important ones.

13 There's a current lack of infrastructure. Daniel  
14 summarized what the sidewalks and some of the curbs that need  
15 to be improved, so we're going to go ahead and do that. And  
16 then as far as coordination with the West Education Campus,  
17 we are going to coordinate events and make sure large events,  
18 parties, and any type of larger event are not overlapping.  
19 This is super important when it comes to fundraising or co-  
20 fundraising events, maybe like Christmas tree sales where the  
21 schools respect each other's fundraisers and just cohabitate  
22 in a respectful manner.

23 As far as routing and traffic, Daniel has already  
24 highlighted that and explained some of the TDM procedures.  
25 Some specifics on operating the nuts and bolts where the

**NEAL R. GROSS**

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

1 school is going to route students and safe passage, they're  
2 all summarized in this slide.

3 School operating hours. We've coordinated with  
4 West as far as starting earlier and closing a little bit  
5 later. Because of the nature of the program, there's some  
6 flexibility for LAMB to do that, so we're going to go ahead  
7 and do that.

8 And then most importantly I'll focus on slide  
9 number five, which is this check to make sure that impacts  
10 of the schools are being monitored. Because we're here as  
11 a special exception, we wanted to assure the community and  
12 the Board that the implementation is happening. So what we  
13 put together is this condition where LAMB will demonstrate  
14 to DDOT and through the administration of using the zoning  
15 administrator and DCRA that if LAMB is not participating in  
16 the PMP program, LAMB will not be permitted to expand and  
17 grow their student count. So again, this is the check to  
18 make sure that the school is being monitored and is growing  
19 accordingly and being a good neighbor with the rest of the  
20 community.

21 These slides will be super brief. There was some  
22 questions brought up --

23 CHAIRMAN HILL: May I just interrupt you for one  
24 second? If you go back to that, is that the 25th condition  
25 that you were speaking to?

**NEAL R. GROSS**

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



1           MR. KADLECEK: Yes. So I just want to clarify  
2 that a little bit. So all the other -- there were 25  
3 conditions effectively proposed through agencies, ANC,  
4 etcetera. LAMB agreed to 24 of them. The 25th one was a  
5 condition that LAMB has to come back to the Board when it  
6 wants to expand to the full 600 students after Kingsbury has  
7 left the site. Jerry can go into the explanation about why  
8 that's problematic for LAMB. But as an alternative, because  
9 LAMB is sensitive to the concerns of the community that there  
10 is some sort of check put in place, we've devised this  
11 alternative condition that basically says if LAMB is not in  
12 compliance with the transportation performance monitoring  
13 plan proposed by DDOT, at the time that it goes to apply for  
14 a CFO to expand into the entire building -- which they need  
15 to do to accommodate 600 students, they cannot accommodate  
16 the 600 students until they are able to expand into the  
17 entire building -- they would have to demonstrate that they  
18 are in compliance with that transportation performance  
19 monitoring plan. If they cannot, then they have to come back  
20 to the Board. And that's an alternative to just having to  
21 come back to the Board in any course.

22           We've reviewed this condition with the Office of  
23 Planning, and they are in agreement with this.

24           MR. ZAYETS: As well as the zoning administrator.

25           MR. KADLECEK: Yes, and they've also reviewed it

**NEAL R. GROSS**

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

1 with the zoning administrator.

2 MR. ZAYETS: As far as the mechanism, we'll have  
3 to check. Again, this would happen at the --

4 CHAIRMAN HILL: Okay, I understand. And what was  
5 the reasoning as to why it's problematic to come back to the  
6 BZA?

7 MR. ZAYETS: So I'll summarize it. Because  
8 charter schools are given an allocation per pupil on an  
9 annual basis, there's no real mechanism for a charter school  
10 to get money from a public way to finance the facility. So  
11 we essentially, we, Building Hope, step up and we basically  
12 get market rate financing, but we have to finance the  
13 building at its whole. We finance the project up-front, and  
14 it's based on a series of enrollment numbers. So we finance  
15 it at full capacity, and then the idea is that the school  
16 grows into it.

17 In the meantime, there's usually a gap in funding  
18 because the school is not fully occupied. We cover that gap.  
19 But essentially, we need to then repay that loan to whoever  
20 we get the loan from as a whole at the later date. So we're  
21 a stop gap for the interim period, but in the end, the school  
22 ultimately has to reach that enrollment number in order to  
23 cover the costs of the facility and everything else. And we  
24 do that at no cost.

25 So it's that mechanism. Because there's no other

**NEAL R. GROSS**

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

1 mechanism, because we're using the private financial sector,  
2 that's the reason is that, from a lending standpoint, it just  
3 presents too much risk from a lender.

4 CHAIRMAN HILL: I got it. Okay. Please continue.

5 MR. KADLECEK: Thank you. So there are two other  
6 slides left in the presentation. One of them was, we added  
7 in here because we heard concerns from some of the neighbors  
8 about sewer backup and just the general demand, potential  
9 demand increase on the local infrastructure. We verified  
10 that this location is in the combined sewer, so sometimes,  
11 because it's a combined sewer, there's excess supply during  
12 rainstorms and that does cause potential over-supply of water  
13 in the sewer system. So that is being resolved by D.C. Water  
14 and the existing infrastructure.

15 Lastly, this slide is just a summary of all the  
16 community engagements we've had. There's a total of ten of  
17 them we've had. We actually started in June. Again, we've  
18 had conventional ANC meetings. We've had meetings at various  
19 civic associations, and we've just been super engaged with  
20 the community just to hear all their comments and questions.  
21 And it's really that process that has arrived at these series  
22 of conditions and these things that the school is willing to  
23 accept as part of this comprehensive review.

24 That concludes our presentation. We're happy to  
25 answer questions.

**NEAL R. GROSS**

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

1           CHAIRMAN HILL: Okay, great. Thanks. Does the  
2 Board have some questions for the applicant?

3           CHAIRMAN HOOD: Yes. If we can put back up the --  
4 yes, Mr. Chairman. If we can put back up the slide showing  
5 the ingress and egress of traffic pattern, the circulation  
6 slide. Mr. Van Pelt, where it's right out only, I'm trying  
7 to remember, what's to keep me from entering that way?

8           MR. VAN PELT: There is a median and --

9           CHAIRMAN HOOD: I keep looking for years. I've  
10 been looking on the wall. I've always look at --

11          MR. VAN PELT: I keep wanting to point to  
12 something over there.

13          CHAIRMAN HOOD: I'm with you on that.

14          CHAIRMAN HILL: It's called change.

15          CHAIRMAN HOOD: Okay, Chairman Hill.

16          MR. VAN PELT: There is a median there. But one  
17 of, I think, the other concerns, too, is just the geometry  
18 of that intersection and the proximity to the next  
19 intersection, it needs to operate as a right out only for  
20 that reason. But there is a median that is in --

21          CHAIRMAN HOOD: So there's a median. So I  
22 couldn't make a left?

23          MR. VAN PELT: No, no, I think it comes, I'd have  
24 to check, but I believe, I don't think it comes far enough  
25 that you could actually even try to hook around it.

**NEAL R. GROSS**

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

1 CHAIRMAN HOOD: So you'd have to go through a lot  
2 to make a left?

3 MR. VAN PELT: Yes. And it's also, you know --

4 CHAIRMAN HOOD: Can you check on that? I just  
5 don't remember that right out only, and I was thinking maybe  
6 we might use some signage. But I think the traffic pattern  
7 is, because a lot of stuff, like the load and unloading,  
8 would be on-site, correct?

9 MR. VAN PELT: Correct.

10 CHAIRMAN HOOD: Okay. So this is a more self-  
11 contained campus at Kingsbury, so it's not a whole lot that  
12 would be interactive with the -- it's just a matter of  
13 getting there.

14 MR. VAN PELT: It is very much a campus, yes.

15 CHAIRMAN HOOD: All right. Thank you. Thank you,  
16 Mr. Chairman.

17 CHAIRMAN HILL: Sure. Please, go ahead.

18 MEMBER WHITE: Yes, I don't know if that, I think  
19 I'm somewhat familiar with that street area. The right out  
20 only, I think they could make a u-turn, but it would be very  
21 awkward because you have traffic flowing down 14th Street,  
22 especially pretty rapidly during rush hour. And that leads  
23 into Emerson; is that correct?

24 MR. VAN PELT: Correct.

25 MEMBER WHITE: Yes. So was there a traffic study

**NEAL R. GROSS**

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

1 done after Emerson changed to one way in terms of how that's  
2 going to impact the traffic flow?

3 MR. VAN PELT: I think that's one of the things,  
4 I think DDOT asked for some additional information when we  
5 did our study, and I think part of it is they wanted to get  
6 some additional information to understand what changes may  
7 have happened associated with it. And I think this next  
8 phase of the neighborhood study that they're going to do is  
9 going to look at that because, when you do make changes, you  
10 have big changes to streets and make them one way from two  
11 way, you're going to change patterns.

12 And, again, our study, what we did, because our  
13 counts were before the one way happened, we just put those  
14 trips on the adjacent nearby streets. But, realistically,  
15 what happens is usually those get more dispersed. People  
16 change their patterns because one of their routes is no  
17 longer there. And so it becomes a more global thing.

18 I think that's one of the things that DDOT is  
19 going to look at, what has really been that impact, when they  
20 look at this next phase of the larger transportation study.

21 MEMBER WHITE: How do you prevent the cars -- I  
22 see you have some arrows saying LAMB access and then you have  
23 some that say Kingsbury access. What's to prevent a  
24 Kingsbury car from going through the LAMB entrance?

25 MR. VAN PELT: Well, all the traffic, pick-

**NEAL R. GROSS**

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

1 up/drop-off traffic will enter at that northeastern driveway.  
2 And what happens is that you'll circulate around through.  
3 So if you are coming to the LAMB access, if you're coming to  
4 LAMB pick-up and drop-off, you'll come into that lane where  
5 we have the green cars. If you are needing to park and  
6 you're a LAMB parent and you have to walk your child in  
7 because they're in the pre-K through 3rd, then you'll park  
8 where the pink are. If you're Kingsbury, then you just  
9 circulate through that parking area, go around to the north  
10 side of the site, so, basically, run around the little length  
11 of the site to get to that Kingsbury access.

12 MEMBER WHITE: So that entire site is gated, and  
13 there's parking inside of the self-contained gated area?

14 MR. VAN PELT: Correct. There's a fence around  
15 the entirety of the property.

16 MEMBER WHITE: And the final question is is there  
17 a traffic cop or someone kind of directing people or are  
18 people kind of just used to flowing a certain way to kind of  
19 keep the traffic moving?

20 MR. VAN PELT: On-site, I don't know.

21 MR. ZAYETS: So at this point, we don't own the  
22 facility, so we can't speak to the existing conditions. But  
23 as part of this PMP measure, we will have people in place and  
24 that's part of the conditions that somebody will be there  
25 morning and during rush hour guiding and basically directing

**NEAL R. GROSS**

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

1 traffic, where you cannot go. So it will be self-policing  
2 with a very strong check at the end.

3 VICE CHAIR HART: Just one quick question. About,  
4 actually, this alternative condition that you've proposed,  
5 did you say the ANC was, is anyone, are the other parties or  
6 other groups in support of this proposed condition, or are  
7 you just giving it now? Are you, you know, saying what if  
8 we did this?

9 MR. KADLECEK: Yes. We've reviewed it with the  
10 Office of Planning. The original condition for returning to  
11 the BZA came from the Office of Planning. For the reasons  
12 that Mr. Zayets explained, that condition didn't work for the  
13 applicant. So in the interim, between when the Office of  
14 Planning prepared their report and today, we had been working  
15 on something that we would have hoped would satisfy everyone  
16 and we reviewed it with the Office of Planning first since  
17 they were the first ones who came up with the alternative,  
18 and that's where we are now. So we're presenting it today  
19 as an alternative that has the same goals of making sure  
20 there's a check on the performance of the school as it grows  
21 into the campus.

22 VICE CHAIR HART: So the Office of Planning are  
23 the only, and I'm assuming DDOT?

24 MR. KADLECEK: Yes, and DDOT.

25 VICE CHAIR HART: Would be the ones that are

**NEAL R. GROSS**

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



1 onboard with this condition?

2 MR. KADLECEK: Correct.

3 VICE CHAIR HART: But the ANC has not weighed in  
4 on it, and I'm assuming the community, the rest of the  
5 community has not weighed in on it, as well?

6 MR. KADLECEK: They have not. We reviewed it with  
7 the single member district commissioner for the ANC, or the  
8 concept I should say, but, no, the rest of the community has  
9 not seen this exact language, no.

10 VICE CHAIR HART: Thank you.

11 CHAIRMAN HILL: And what did the SMD think of  
12 that?

13 MR. KADLECEK: Well, she was in agreement that it  
14 wasn't necessary to have to return to the Board, so she was  
15 in agreement with the concept. I believe we've not shared  
16 this exact language with her, but there is a letter from her  
17 in the record saying that she agrees that returning to the  
18 BZA as a requirement, she believed, speaking for herself,  
19 that that wasn't necessary.

20 CHAIRMAN HILL: Okay, all right. I got some  
21 questions, but I guess I'll wait until the end. Mr. Uqdah,  
22 do you have any specific cross exam questions that you'd like  
23 to apply to the applicant at this time from their  
24 presentation?

25 MR. UQDAH: Yes, sir, we do. First, as a matter

**NEAL R. GROSS**

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

1 of business, I would like to introduce one of our neighbors  
2 and colleagues and have him speak on the record.

3 MR. STRAND: Good afternoon. My name is John  
4 Strand, and I am a resident at 1501 Emerson Street, directly  
5 adjacent to the southwest corner of the subject property.

6 CHAIRMAN HILL: Mr. Kadlecek, can you pull up that  
7 map again that has the diagram going in? I'm just trying to  
8 understand where you are.

9 MR. STRAND: So you see where the new, it says new  
10 crosswalks and curb outings at the bottom there?

11 CHAIRMAN HILL: Yes.

12 MR. STRAND: I am the house right above the new.

13 CHAIRMAN HILL: Okay.

14 MR. STRAND: It's not a new house, but it's a, you  
15 know, that's where it's located.

16 CHAIRMAN HILL: Got it.

17 MR. STRAND: So we have standing here, and I'm  
18 presenting as a --

19 CHAIRMAN HILL: I understand. Did you get sworn  
20 in earlier?

21 MR. STRAND: I did, yes.

22 CHAIRMAN HILL: Okay.

23 MR. STRAND: So I just have two quick questions.  
24 They relate to the presentation earlier. First of all, there  
25 was a question about community engagement going for five

**NEAL R. GROSS**

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

1 months, and I believe there was a slide that had the number  
2 of activities. I just bring your attention to the fourth  
3 bullet there at number 13. This was the first occasion that  
4 we had an opportunity to meet with any of you about this, as  
5 a neighbor with immediate, on the list of people with  
6 standing. Was there any attempt on your parts to engage us  
7 prior to that? You had lots of conversation prior to  
8 September 13th, but I don't recall, as an immediate neighbor,  
9 anything, so did I miss something? Was there some kind of  
10 overt effort to engage the immediate --

11 MR. ZAYETS: Sure. So the typical protocol we  
12 always follow is reaching out to the ANC and the SMDs, and,  
13 essentially, the SMDs, we believe, are your local  
14 representative and we hope through them that they will reach  
15 out to the local residents and pass the word. That's the  
16 methodology.

17 MR. STRAND: So just as a point of clarification,  
18 as immediate neighbors, we didn't have any notice of this  
19 activity whatsoever until we received the notice that there  
20 was going to be a hearing here --

21 CHAIRMAN HILL: Right. That ANC meeting.

22 MR. STRAND: Yes, that's right. So that's one.  
23 The second question is directed to Mr. Van Pelt about the  
24 traffic study, and it sort of relates to the comment that was  
25 made about the benefits of having such a 49 percent of the

**NEAL R. GROSS**

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

1 school students living in Ward 4 and what a benefit that will  
2 be for walking and biking to mitigate the volume of traffic.  
3 In your study, I'm just looking at your traffic study where  
4 you were making the modal shifts, can you recall what your  
5 projections for the walking and biking were for the interim  
6 condition for the LAMB students? I believe it's on page 18  
7 of your study.

8 CHAIRMAN HILL: Mr. Kadlecek, do you know which  
9 exhibit that is, by any chance?

10 MR. KADLECEK: Sorry. The CTR?

11 MR. ZAYETS: Oh, real quick, is the clock supposed  
12 to be running?

13 CHAIRMAN HILL: No, unfortunately it's not. This  
14 is for cross exam. It could go on forever.

15 MR. KADLECEK: The initial CTR was Exhibit 31A,  
16 and then the supplemental pre-hearing, the CTR rather was  
17 36A.

18 MR. STRAND: So, Mr. Van Pelt, just for clarity  
19 and for simplicity, maybe we could just focus on the A.M.  
20 peak hour, which is analogous to morning rush hour, what your  
21 own projected modal splits for walking and biking.

22 MR. VAN PELT: So as I said earlier in the  
23 presentation, so we have, we really broke it out for the  
24 students by different age group. So we looked at the PK3  
25 through 2nd grade. Because of the age of the students, it's

**NEAL R. GROSS**

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

1 expected that more of them would be driven, and so what we  
2 said in the presentation, 81 percent. We have walking and  
3 biking, walk is 4 percent, biking is 3 percent, 8 percent  
4 transit. Some of those would actually be, well, I guess the  
5 way we look at some of those, they would have a passenger in  
6 a car because one of them has a child or a faculty member has  
7 a child that, you know, is at the school.

8 MR. STRAND: So just for clarification, I think  
9 there may have been a misimpression given that there would  
10 be a lot of walking and biking when, in fact, the combined  
11 numbers of their own projections for walking and biking were  
12 in the neighborhood of 4 to 5 percent just during that  
13 morning hour. So I just think that's an important contextual  
14 clarification on this by your own numbers.

15 MR. VAN PELT: Well, if I could just pick up on  
16 that, that is really based on existing patterns that happen  
17 today, and we really didn't try to take credit for potential  
18 additional walking or biking that could occur at this  
19 location. So we actually hope that there will be less  
20 vehicle trips and there will be more walking and biking, but  
21 we always do our transportation studies and we have a  
22 tendency to get criticized if we move too far away from  
23 vehicular trips because those are the ones that seem to be  
24 the most impactful.

25 CHAIRMAN HILL: Okay, okay, I understand, I

1 understand. Mr. Strand, is that it?

2 MR. STRAND: That's it.

3 CHAIRMAN HILL: Okay. Mr. Uqdah, any more?

4 MR. UQDAH: Just real briefly. In the traffic  
5 study, was there any consideration given to how the queuing  
6 would be affected on 14th Street with West Education Campus?  
7 Currently, West parents use the west side of 14th Street to  
8 park, particularly when the traffic gets backed up on  
9 Farragut.

10 MR. VAN PELT: I mean, we are accommodating all  
11 of our queuing needs on site. So anything that West does on  
12 14th Street really doesn't impact the queues of this project.  
13 Any existing trips, any existing traffic patterns that's  
14 associated with West would be captured in our counts and is  
15 included in our analysis.

16 MR. UQDAH: Mr. Van Pelt, I'm not so much  
17 concerned with counts than I am with patterns, habits,  
18 patterns or habits when people are driving. Even though the  
19 queuing may start on Gallatin Street, it's going to wind  
20 around to 14th. And right now, Kingsbury, with its 107 - 108  
21 students, there are buses that park on 14th Street and there  
22 are other cars of parents who are taking their children to  
23 West that, because of the crowding on Farragut Street during  
24 pick-up and drop-off, they use 14th. And now your proposal  
25 that's shown on here, this project is going to add to that

**NEAL R. GROSS**

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

1 madness.

2 MR. VAN PELT: It will add traffic to 14th Street.  
3 It certainly will. I think that, again, this project doesn't  
4 need to use 14th Street for any queuing or parking for pick-  
5 up and drop-off. That's one of the things that's been  
6 committed to. Certainly, it's coordination with West, so,  
7 hopefully, some of the West-related activities that are  
8 happening on 14th Street, LAMB and West can coordinate ways  
9 to best mitigate those two overlapping and work with DDOT in  
10 terms of what sort of --

11 CHAIRMAN HILL: Okay. I'm just going to interrupt  
12 for one second. So, Mr. Uqdah, I do want to get to your  
13 presentation, and so I guess what he seemed to answer was  
14 that they are self enclosed and it's not going to be, West  
15 does not affect your --

16 MR. VAN PELT: Well, I think the point is that  
17 LAMB will produce additional trips on 14th Street, but we  
18 don't need to use 14th Street. It's more of, I think, how  
19 could West probably manage their activities a little bit  
20 better, and so can the two not also overlap.

21 CHAIRMAN HILL: Okay. And that's part of the  
22 conditions?

23 MR. VAN PELT: I think that's part of the  
24 performance monitoring, and that's part of the agreement to  
25 work with West to figure out how the two schools both co-

**NEAL R. GROSS**

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

1 exist.

2 CHAIRMAN HILL: Okay. So somebody just came and  
3 stacked me up here again. So do you have a specific question  
4 to the testimony that was given?

5 MR. GILES: Yes, I do.

6 CHAIRMAN HILL: Could you introduce yourself,  
7 please, also?

8 MR. GILES: Yes, my name is John Giles.

9 CHAIRMAN HILL: Mr. Giles, did you get sworn in  
10 also?

11 MR. GILES: Yes, I did. I live at 1501 Gallatin  
12 Street at the corner of Gallatin and Piney Branch. I just  
13 want to ask a quick question to our Building Hope colleague  
14 here about this 25th item which they're requesting to change.  
15 I think most of us are impressed by LAMB and not absolutely  
16 against LAMB moving into the neighborhood, but we worry about  
17 the credibility of the transportation demand management  
18 program and, if it is credible, I don't understand why the  
19 private capital market would worry about having to come back  
20 and see the BZA again.

21 CHAIRMAN HILL: I'm sorry. I'm just trying to  
22 understand your question.

23 MR. GILES: Yes.

24 CHAIRMAN HILL: So what is your question?

25 MR. GILES: My question is you have a credible

**NEAL R. GROSS**

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



1 transportation demand management program, correct? That we  
2 can count on, that we don't need to worry about --

3 CHAIRMAN HILL: Okay. I got that part. So what's  
4 your question?

5 MR. GILES: So if that's credible, what's the  
6 problem with coming back to see the BZA in five years or  
7 whenever Kingsbury moves out to approve moving to 600  
8 students?

9 CHAIRMAN HILL: Okay.

10 MR. GILES: You know --

11 CHAIRMAN HILL: No, no, no, just let him answer  
12 that question.

13 MR. ZAYETS: Thank you for that question, and  
14 that's completely valid and I completely understand it. The  
15 biggest difference between a zoning hearing and an  
16 administrative hearing is the fact that zoning is subject to  
17 objectivity and appeal and everything else, whereas, if it's  
18 an administrative process, that's something that's  
19 administered by DCRA as a matter of process and law. So  
20 that's the biggest distinction between the unknown and the  
21 known. One is a performance metrics. If you meet the  
22 performance standards, you're guaranteed that reward at the  
23 end, whereas the other one has some maybes and some un-  
24 assurances. And from a lending standpoint, that presents an  
25 element of risk.

**NEAL R. GROSS**

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

1           So it's a difference between administrative versus  
2 a hearing like we're here today. So that is a key  
3 distinction.

4           CHAIRMAN HILL: Okay, okay. He answered your  
5 question. So I'm just going to give you an opportunity to  
6 present your testimony. I mean, you'll have half an hour,  
7 and so, you know, there's plenty of time to present.

8           Mr. Uqdah, we're going to go ahead and give you  
9 30 minutes. Their presentation had Michelle Obama on it and  
10 smiling children all playing together, a multi-ethnic group.  
11 They need to throw in some puppies in there and then, you  
12 know, that might work. So I'd like to see your presentation  
13 also. Yes?

14           CHAIRMAN HOOD: I just want to go back. I want  
15 to expand on some more of what the last question was.

16           CHAIRMAN HILL: Okay, sure.

17           CHAIRMAN HOOD: Because when schools come back  
18 after a while, we're looking at special exception, correct?  
19 So when they come after a while, we look at adverse impacts  
20 and that's what we monitor. And so that's why you come back  
21 to the Board.

22           I can just let you know up-front I'm not there  
23 with you about not coming back to the Board. We've done it  
24 for years. I know change, you said change comes up, but it's  
25 that way for a reason, because that gives communities

**NEAL R. GROSS**

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

1 assurances so they can re-look at what's going on.

2 I'm still interested in this idea, but I'm not  
3 with you yet. So that's a heavy lift for me to get there.

4 MR. KADLECEK: I think the difference, Mr. Hood,  
5 I think the difference is, and Jerry can explain this maybe  
6 a little better, I think the difference is, one, it's a  
7 public school as opposed to a private school, so I think the  
8 burdens that are placed on a public school are very different  
9 in terms heaving to go back through the process. You know,  
10 a public school is subject to a budget, they're --

11 CHAIRMAN HOOD: Mr. Kadlecek, I've heard that  
12 argument before. I've been around enough to hear that  
13 argument.

14 MR. KADLECEK: I think it's still true.

15 CHAIRMAN HOOD: It's true, but it actually does  
16 not happen. There are private schools that come back, as  
17 well. I'm not saying this one has to come back, but I'm just  
18 saying that, some of that argument, I don't agree.

19 MR. KADLECEK: Yes, but I was trying to draw the  
20 distinction between a private and a public school.

21 CHAIRMAN HOOD: I went to public school, so I  
22 actually know that. We don't have to do that. We don't have  
23 to go there. I'm just talking about the issue at hand.

24 MR. KADLECEK: But I think that what we were  
25 trying to propose as an alternative, what we're trying to do

**NEAL R. GROSS**

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

1 is, to your point, which is give the community some assurance  
2 and allow a way to assess impacts. That's what this does.  
3 The performance monitoring plan actually sets metrics that  
4 the school has to meet, and if they don't meet those metrics  
5 --

6 CHAIRMAN HOOD: Mr. Kadlecek, we're going to have  
7 a long discussion on that because I want to make sure the  
8 checks and balances in place, and the problem is, while you  
9 come down here and tell us, when it leaves out the door  
10 there's no enforcement. So I'm not saying I'm closed to the  
11 idea. I just want you to know it's a heavy lift, so help me  
12 get there.

13 MR. KADLECEK: I understand. That's why we  
14 actually, as I was trying to explain earlier, the enforcement  
15 is the school cannot get a C of O if they don't meet those  
16 performance metrics. They can't. They physically cannot  
17 expand into the rest of the building because --

18 CHAIRMAN HOOD: I'm sorry, Mr. Kadlecek. Let's  
19 move on. We're going to come back to that discussion.

20 MR. KADLECEK: Okay.

21 CHAIRMAN HOOD: Because I've seen stuff that I  
22 didn't think happens down here, but it does happen, so I  
23 understand that. And people change, things change, stuff  
24 gets lost in the pipeline. And I'm not discrediting this  
25 school. I think this school is great. But I just want to

**NEAL R. GROSS**

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

1 make sure that we balance this to make sure that we look out  
2 for the community. And I know that coming back to the BZA  
3 was one safeguard that we had, and I'm not really ready yet  
4 to push that out of the way because is think Kingsbury, the  
5 whole thing up there, I think it's a good fit, but I also  
6 want to hear from the residents.

7 So let's have that discussion after. Maybe I  
8 shouldn't have brought that up.

9 MR. KADLECEK: Okay.

10 CHAIRMAN HILL: We're all apparently public school  
11 graduates up here.

12 CHAIRMAN HOOD: I didn't know. He was telling me  
13 --

14 CHAIRMAN HILL: So, Mr. Uqdah, we're back to you  
15 for 30 minutes, okay?

16 MR. UQDAH: Yes, sir. Thank you very much. Good  
17 morning, Commissioners. Good morning, Mr. Chair. The  
18 committee of neighbors directly impacted by LAMB application  
19 would welcome the LAMB school to our neighborhood and are  
20 pleased to see their proposed conditions of approval as was  
21 submitted in Exhibit 36B. However, we are against the  
22 applicant's proposed 600-student population plus faculty and  
23 staff and the gymnasium as an addition. As mirrored in our  
24 request for party status and OP summary recommendation where  
25 they stated, in part, the maximum number of students in the

**NEAL R. GROSS**

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

1 interim stage will be 310 and a maximum number of faculty  
2 staff shall be 36. They went on to discuss the hours of  
3 seven to six and that LAMB shall maintain the current  
4 allotment of 107 parking spaces.

5 Just to add a little to that, this board heard,  
6 I will tell you, maybe about a month ago, an application for  
7 Kingsbury to extend its hours to 7 p.m. So where LAMB may  
8 conclude at 6, Kingsbury will still be going until 7.

9 OP further recommends that when Kingsbury departs  
10 the property and the student population for LAMB is to be  
11 increased to 600, the proposal will be submitted to the BZA  
12 for further review. In addition, LAMB shall submit details  
13 of the gymnasium to the BZA for review prior to construction  
14 either as part of that review or as a modification to the  
15 approved LAMB.

16 Granting the applicant's request that is 600  
17 students plus faculty and staff and the addition of a 5,000-  
18 plus square foot gymnasium would adversely affect the noise,  
19 traffic, lighting, parking environment, and other quality of  
20 life issues on our 16th Street Heights community.

21 Kingsbury was granted a hearing before the BZA  
22 April of 2000, that's BZA Case Number 16569, seeking to  
23 establish a private school of 400 students ages 5 through 18  
24 and a staff of 200. In its final order, and you'll find this  
25 in Exhibit 42A of the opponent's submissions, the BZA granted

**NEAL R. GROSS**

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

1 the applicant's requests with 13 conditions, the first being  
2 that the student population would not exceed 300 students  
3 broken down to a maximum of 200 elementary to middle school  
4 students with 100 maximum limit for those of high school age.  
5 The staff was not to exceed 138.

6 Kingsbury never reached its 300 pupil BZA-approved  
7 limit, and, as such, for the past 17 years, this neighborhood  
8 has never experienced the potential for the adverse impacts  
9 associated even with the interim period offered in  
10 applicant's Exhibit 14, page five, paragraph two, lines 9  
11 through 12, where it states, during the interim period, the  
12 maximum number of students that will be at the property for  
13 both Kingsbury and LAMB will be 485. The maximum number of  
14 faculty and staff will be 116, and they repeat the hours of  
15 seven through six.

16 It is through this lens that we feel a combined  
17 Kingsbury - LAMB school increases the trepidation felt by the  
18 community and what would naturally follow when that  
19 consideration shifts to the requested 600 students, 110 staff  
20 maximum. We have nothing to compare it to. That, quite  
21 frankly, concerns us.

22 We, again, voice support for OP's recommendations,  
23 as they mirror our own. The maximum number of students  
24 interim stage, 310; 36 staff. When Kingsbury departs and the  
25 student population for LAMB is to be increased to 600, the

**NEAL R. GROSS**

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

1 proposal will be submitted to the BZA for further review and  
2 that LAMB shall submit details to the gym to the BZA for  
3 review prior to construction.

4           Finally, we would ask the BZA to stress the  
5 condition of its approval that LAMB holds quarterly meetings  
6 with designees from our committee and West Elementary Campus  
7 to review agreed-upon metrics and verify compliance with that  
8 order. This would allow all parties to assess the impact of  
9 LAMB's occupancy and management on the neighborhood impacts  
10 during this interim period before the maximum desired limit  
11 is reached.

12           This concludes my opening statement. I am now  
13 tasked with providing you a brief overview of the 1994 and  
14 2009 zoning overlays established by the Zoning Commission for  
15 the 16th Street Heights community, which is what has brought  
16 us all here. I will then move directly into the matters  
17 before you today, which will be reflected in our key points  
18 related to noise, traffic, parking, lighting, and  
19 environment. We will then proceed to substantiate evidence  
20 of those key points through testimony from witnesses in the  
21 affected area, charts or maps which identify our claims, or  
22 two cell phone videos that, Mr. Chair, are not very pleasant,  
23 but those have been submitted to the record demonstrating our  
24 concerns. And all of these have been uploaded.

25           With respect to the zoning overlay, zoning

**NEAL R. GROSS**

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



1 overlays in 1994 and 2009 in this instance were established  
2 by the Office of Zoning to protect the residential integrity  
3 of the 16th Street Heights neighborhood from Military Road  
4 to the north, Decatur to the south, 16th Street west, 14th  
5 Street to the east. The subject property falls within those  
6 boundaries.

7           According to the Office of Zoning, some of the  
8 purposes of this overlay now referred to under the new zoning  
9 rules as R-16 were to promote the conservation, enhancement,  
10 and stability of the low-density single-dwelling  
11 neighborhood, control the expansion of non-residential users,  
12 allow neighborhoods to continue to provide a range of  
13 facilities, as well as private institutions, that provide  
14 cultural and religious enrichment and economic vitality but  
15 within the framework of improved public review and control  
16 over the external effects of non-residential uses.

17           The R-16 zone is intended to respond to concerns  
18 that, over a period of years, approximately one in every ten  
19 houses in the R-16 zone north of Colorado Avenue has been  
20 converted to a non-residential use, a much higher ratio than  
21 has been identified for any other similarly-zoned  
22 neighborhood in the District. And south of Colorado Avenue,  
23 address concerns that more than 20 percent of the  
24 residentially-zoned land is used for non-residential  
25 purposes. And I would ask the Board to pay attention to the

**NEAL R. GROSS**

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

1 footnote that I have put there because that figure was  
2 actually revised to 35.5 percent, and we did submit that to  
3 you. You will find it in the Zoning Commission's notice of  
4 final rulemaking and order number 08-09, and that's on page  
5 eight.

6           To continue, the R-16 zone is also intended to  
7 recognize that the neighborhood accommodates a significant  
8 number and range of human service facilities and private  
9 institutions to an extent that new, and I stress this,  
10 "significantly expanded non-residential use facilities should  
11 be governed by improved public review to ameliorate adverse  
12 impacts on immediate and nearby neighbors," and, and this  
13 begins their last statement on the R-16 zone, respond to the  
14 D.C. comprehensive plan identification of the number of non-  
15 residential uses in the neighborhood as a problem.

16           With this backdrop, we submit this Commission is  
17 charged with upholding those parts of the law and its  
18 accompanying regulations that protect the integrity of this  
19 residential community, recognize and control the external  
20 effects of non-residential uses, ameliorate adverse impacts  
21 on immediate and nearby neighbors, and identify the number  
22 of non-residential uses in the neighborhood. And you will  
23 find that in Exhibit 95 as a problem.

24           With that, I would like to call our first witness,  
25 Mr. Rami Rihani.

1 CHAIRMAN HILL: All right, sir. If you could just  
2 introduce yourself. I assume you got sworn in earlier.

3 MR. RIHANI: I did, yes. Good morning. My name  
4 is Rami Rihani, R-A-M-I, and last name is R-I-H-A-N-I. I  
5 reside at 1505 Emerson Street, N.W. I'm the next door  
6 neighbor to Mr. John Strand. I'm that corner house right to  
7 the left of that new label that you saw earlier. I've been  
8 a resident in that neighborhood for the last eight years  
9 almost and 19 years in Washington.

10 I also wanted to echo Mr. Strand's comment about  
11 first hearing about this application when I received the BZA  
12 letter on August 21st and not beforehand. I also wanted to  
13 state about our ANC single member district commissioner's  
14 vote for the ANC resolution that you saw that she voted in  
15 favor of the ANC resolution which supported the OP  
16 recommendations, but her personal letter did not want that.  
17 So I thought that was a bit of a conflict.

18 But my main testimony today is I am particularly  
19 concerned about traffic, being on Emerson Street. In fact,  
20 when I look at the LAMB 2015 - 2016 annual report, they state  
21 that only 50 percent of their student population lives in  
22 Ward 4, and then they later show a breakdown of the students  
23 per grade and about 47 percent are in early childhood  
24 classes, PK3, 4, and KG, while the rest are in one through  
25 five. I heard the gentleman at the end of the table state

**NEAL R. GROSS**

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

1 that they hope that they can see more walking and biking,  
2 but, given that half of the population is in Ward 4 and half  
3 of it is under grade one, I just don't see how, you know,  
4 when you see statements like many people are going to walk.

5 I only say that because, being on Emerson Street  
6 and traffic issues are very fresh on our minds based on what  
7 we went through on the 1300 to 1600 blocks of Emerson Street.  
8 We went through a year-long conversation with DDOT that  
9 resulted in controlling that dramatic and very often  
10 dangerous increase in traffic that we witnessed.

11 Given LAMB's student population, location, and  
12 grade distributions, I am afraid, as opposed to the hope of  
13 more walking and biking, but I am afraid that we may return  
14 to those very unfavorable conditions on Emerson Street and  
15 believe the best way to mitigate it is to have a gate, like  
16 coming back to the BZA specifically to see that, in fact,  
17 they are being a good neighbor. Thank you.

18 CHAIRMAN HILL: Okay, great. Thank you.

19 MR. UQDAH: Next, Mr. Chair, we will hear from Mr.  
20 John Giles.

21 MR. GILES: Extra copies?

22 CHAIRMAN HILL: Sure. You can pass them up to the  
23 attorney there. Yes, I'm sorry. You have to speak in the  
24 microphone. And, actually, you know, I'm going to just let  
25 the rest of the audience know here what's going to happen.

**NEAL R. GROSS**

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

1 So we're here. There are, we're going to -- thank you for  
2 pointing that out. I don't know how to stop it from -- can  
3 I stop it from here? I don't know how to stop it from there.  
4 But I'll, just like soccer, I'll add another, like, minute  
5 after the end there.

6 So we're doing this hearing. There still is the  
7 Office of Planning. There's still questions. This is going  
8 to go on for a little while longer. Then we're going to do  
9 an appeal. And then, since this day seems to be kind of  
10 lengthy, we're probably going to take a lunch break.

11 So the people that are here after the appeal, we  
12 won't hear you until probably after lunch. I don't have a  
13 time for you. I'm just saying that it won't be any earlier  
14 than, you know, one or something. So if you guys want to go  
15 grab some lunch or something, then, you know, there you go.

16 Has the applicant, for the appeal, the applicant,  
17 are they here? Can you raise your hand? All right. Well,  
18 we'll see how that goes. Okay, all right, okay, all right,  
19 okay, all right. So, once again, the appeal of 19573 is what  
20 we're going to hear after this, and then we're going to take  
21 a quick lunch break, and then we're going to come back. So  
22 I'm just kind of letting everybody else know just because,  
23 you know, this ain't the DMV, so I want to kind of like, you  
24 know, let you know what's going to happen. No offense to the  
25 DMV.

**NEAL R. GROSS**

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

1 All right. How much time do you think you got  
2 there? I took three minutes? Okay, all right. Go ahead,  
3 please.

4 MR. GILES: All right. So I just want to point  
5 out I also went to public schools, and I believe in public  
6 schools. So I'm going to jump through this more quickly than  
7 simply reading it, but the transportation demand management  
8 plan looks, on paper, great. My neighbor, Liz, who lives  
9 across the street with me and had to leave, and I are both  
10 very much worried about alternative traffic routes that will  
11 come down Piney Branch Road to try to get in to the facility  
12 from the rear, and we don't really understand what mechanisms  
13 prevent individual behavior and individual drivers in a rush  
14 to get to school on time from making this decision.

15 If you look at the last page, there's the Google  
16 maps best route. This is at 8:13 a.m. on November 13, so  
17 imagine, parents typically don't space out their travel time  
18 uniformly over an hour. You're trying to get to school on  
19 time. What's the best way to do that? You drive down 14th  
20 to Colorado and then down Piney Branch. Piney Branch is a  
21 narrow, unimproved road with no sidewalks, and it can be  
22 unsafe when traffic is traveling quickly.

23 So, again, we support LAMB coming, but we would  
24 like to see some recourse and some return to BZA when the  
25 population expands to 600.

**NEAL R. GROSS**

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

1           With respect to some of the sort of heartfelt  
2 letters we've seen from our neighbors who are LAMB parents,  
3 many of them living three to eight blocks from the location,  
4 we just want to point out that they're not representative of  
5 the total commuting body of the prospective LAMB school.  
6 And, you know, again, we worry that LAMB cannot control the  
7 transportation decisions and the driving decisions of its  
8 parents before they show up at the gate.

9           Finally, again, the LAMB parents are parents of  
10 today. They're not necessarily -- and the administration is  
11 the administration of today. We worry that if this  
12 transportation demand management program isn't fully  
13 institutionalized with norms around its operation, well  
14 developed, that there's no way they can free commit future  
15 cohorts of parents and future administrators to abide by what  
16 is essentially a recommendation.

17           CHAIRMAN HILL: Okay, thank you.

18           MR. UQDAH: Mr. Chair, I now would like to  
19 introduce Ms. Amy Dine.

20           CHAIRMAN HILL: If you can just, again, like all  
21 the others, just state your name, please. And you did get  
22 sworn in earlier?

23           MS. DINE: I've not been sworn in.

24           CHAIRMAN HILL: Oh, okay. I'm going to get the  
25 Secretary. Hang on one second.

**NEAL R. GROSS**

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

1 MR. UQDAH: That's fine, Mr. Chair, because we  
2 have another witness that needs to be sworn in, so he can do  
3 both of them at the same time.

4 CHAIRMAN HILL: Okay, thank you. The chairman of  
5 the Zoning Commission is telling me that I can do it, but I'm  
6 just a little too uncomfortable with that. All right. And  
7 if there's anybody else here who is going to testify that  
8 missed the swearing in, if you could stand now and take the  
9 oath administered by the Secretary.

10 MR. MOY: All right. Do you solemnly swear or  
11 affirm that the testimony you're about to present in this  
12 proceeding is the truth, the whole truth, and nothing but the  
13 truth? Thank you. You may be seated.

14 (The witnesses were sworn in.)

15 CHAIRMAN HILL: I can memorize that. All right.  
16 You don't need a Bible or nothing. All right. Okay, please,  
17 go ahead.

18 MS. DINE: Sure. Hi. My name is Amy Dine. I  
19 live at 1500 Farragut Street, which is also an address called  
20 4920 Piney Branch because I'm on the corner right behind the  
21 property we're talking about. I'm here to speak on some of  
22 my concerns, and I also would like to relay some of the  
23 concerns that were written in a letter by my neighbor across  
24 the street on Farragut who's at 1501. Similarly, we are  
25 directly behind the property.

**NEAL R. GROSS**

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



1           And, first, I just want to say I'm a born and  
2 raised Washingtonian, and I have great regard for making  
3 better schools in this city and I have great regard for LAMB  
4 as an institution. Just as an aside, my grandmother was one  
5 of the first Montessori teachers ever certified in this  
6 country in the 60's, so I just really do appreciate your  
7 program.

8           CHAIRMAN HILL: I have to interrupt you just one  
9 second. I'm sorry. It was just brought to my attention.  
10 I don't think you can testify for somebody else who isn't  
11 here because there's no way we can cross exam that person.  
12 But, please, just go ahead and provide your testimony. Thank  
13 you.

14           MS. DINE: Okay. Thank you. I'm going to, I've  
15 just a number of points. I'll just say them quickly. First,  
16 I really want to take issue with the statements that said  
17 that LAMB and their proposal have been, quote, super engaged.  
18 I'd like to just reiterate, as neighbors, I heard nothing  
19 about this was going to happen until there was a piece of  
20 paper telling me about this September 13th meeting happening.  
21 So I just wanted to say that that does not bode well in my  
22 mind that LAMB can be a good neighbor. So I just need to  
23 relay that, that that does not, doesn't bode well for me.

24           Secondly, the R-16 zone, I just also want to  
25 reiterate, this is a very residential, trying to get back to

**NEAL R. GROSS**

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

1 what it's intended to be, as a residential neighborhood. It  
2 is not high density in terms of people, nor was it designed.  
3 And, specifically, that Piney Branch Road, it's essentially  
4 an alley. I mean, it's an asphalted alley with unimproved --  
5 and I have very strong concerns that there's no reason that  
6 any parent is going to go out that proposed northwest exit  
7 and go north. They can also turn south and zip around or  
8 somebody can take that right out of 14th and zip around if  
9 they need to get to 14th to 16th. So I'm just concerned  
10 about that.

11           Secondly or thirdly, talking about the land per  
12 student, I think what is the issue for some of us is actually  
13 the proximity of the way the school will operate to its  
14 neighbors. The examples given are schools that are actually  
15 in much more densely-populated parts of this city. To  
16 actually talk about -- one of the examples that was not  
17 presented was West Elementary across 14th Street, which, as  
18 a school, has an enormous buffer in terms of its place or,  
19 you know, grounds from its neighboring streets. And this  
20 does not.

21           Fourthly, so I, for one, I really, I have grave  
22 concerns about a school of 600 children being in this  
23 neighborhood. I don't care if it's 2025 or 2018. I don't  
24 think the community can actually comfortably accommodate what  
25 that will take. And by definition, a charter school is not

**NEAL R. GROSS**

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

1 a neighborhood school. It does not have its population  
2 within walking distance. By definition, it means that kids  
3 are coming all over the city, which I want them to come to  
4 LAMB, but this is not a property that is well served by  
5 public transportation. The Petworth - Georgia Avenue Metro,  
6 as was mentioned, is over a mile away. Little kids are not  
7 going to be coming on their own and walking from there.

8 Another point I just wanted to make is that we  
9 have also -- okay. I love living next to a school. I, you  
10 know, by choice, chose to buy the house that I'm in. But,  
11 again, I do really worry about a property that's not designed  
12 originally to be a school at all. I also worry quite greatly  
13 that somehow the special exception that was given to  
14 Kingsbury is somehow by right able to be passed along to  
15 another institution without them going through a much, just  
16 as rigorous process that Kingsbury was put through and living  
17 up to certain expectations. And the problem is that  
18 Kingsbury was not able to actually live up to many of the  
19 promises that it already made to this community.

20 And so that's, you know, for someone who has put,  
21 literally, blood, sweat, and tears into making, bringing a  
22 house back to life and, literally, probably, I'd also add,  
23 a lot of arguments and a lot of shouting matches to actually  
24 bring it back to a nice building that can be part of the  
25 neighborhood because our house was actually rather derelict,

**NEAL R. GROSS**

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

1 I do worry about that and it's been shared with me by real  
2 estate friends that, yes, living next to a very large school  
3 does affect a property value. And I say that feeling really  
4 embarrassed I'm saying that in talking about like, oh, I care  
5 about, but I think we all do and that's just something we're  
6 trying to preserve that the neighborhood is actually what it  
7 intended to be in terms of a residential neighborhood that  
8 actually has, you know, the right of quiet enjoyment for its  
9 residents.

10 So those were sort of my, basically my points.

11 CHAIRMAN HILL: Okay, great. Thank you.

12 MR. UQDAH: Mr. Chair, I would now like to call  
13 Ms. Gael Murphy.

14 CHAIRMAN HILL: Good afternoon. Just introduce  
15 yourself first.

16 MS. MURPHY: My name is Gael Murphy. I live at  
17 1405 Emerson Street, which borders 5000 14th Street on the  
18 southern side, so I'm at the alley just behind where the  
19 little butt of parking was added by Kingsbury.

20 So I'll try to be brief. I'd like to first put  
21 out the question that it's interesting that the lenders  
22 cannot take a risk but that that risk should be shifted to  
23 the community in the event that there's a problem after two  
24 years with LAMB's expansion. You said that Building Hope  
25 could not organize that kind of lending. We would ask that

**NEAL R. GROSS**

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

1 you try to be creative about it because I don't know why we  
2 should carry that burden if there's an issue.

3           And support the OP's recommendation that there be  
4 a serious BZA review at the end of two years. As others have  
5 stated, we have never lived with the reality of 300 students,  
6 let alone double that. And we would like the opportunity,  
7 as neighbors, to be able to see how that works out before,  
8 you know, and not a rubberstamp process at the end of a  
9 couple of years or several years.

10           Also, the overlay, as I understand it, was not why  
11 you had to come before the BZA but because it's a residential  
12 neighborhood and anyone wanting to use land beyond  
13 residential use must come before the BZA, as Kingsbury did.  
14 And, yes, I agree, it shouldn't be grandfathered in to  
15 another institution. I think every institution should have  
16 to present its qualifications for moving into the  
17 neighborhood.

18           I also believe that traffic is not the only issue.  
19 You talk about everything being contained in the building.  
20 Well, we've lived, you know, for 15 years with all the  
21 Kingsbury contained inside the building in terms of traffic:  
22 idling, backing up buses, stacking buses. I mean, you know,  
23 the air quality in the morning and the afternoons is pretty  
24 rough. And because they lost their, Kingsbury lost its  
25 certification somehow and so reduced the number of students,

**NEAL R. GROSS**

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

1 and they were no longer able to get public school buses, and  
2 it alleviated the problem.

3           So it isn't just traffic outside but how the  
4 environment and how the cars are maintained inside. You  
5 know, my bedroom window is right underneath where the buses  
6 used to park and idle and back up and beep. I can read in  
7 the evening at night without using a light because the  
8 lighting that Kingsbury installed was so bright. Now, that's  
9 not your issue, but, as others have said, promises are made  
10 and recommendations are made, particularly from the  
11 community, and then they're ignored or dismissed.

12           So we would like to have some say in what happens  
13 and appreciate that LAMB is more than willing to do that with  
14 us. But we really need that review after at least a couple  
15 of years or when that transition to doubling the activity use  
16 of that property.

17           And that's, I think, all that I have. Thank you.

18           CHAIRMAN HILL: Thank you.

19           MR. UQDAH: Thank you, Mr. Chair. Finally, I'm  
20 going to -- let me do this in the interest of time. The  
21 applicant, in its presentation, and this would be, it's not  
22 labeled as such but it would be on page 29 where they talk  
23 about the civil sewers. My testimony to you today was to  
24 have been on that very issue, but I want to state for the  
25 record, and I've expressed this to them, as well, that my

**NEAL R. GROSS**

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

1 concern about sewer backups which has occurred at my property  
2 at 14th and Crittenden Street, and you can see in the Exhibit  
3 51, I've uploaded two videos that are like a minute and seven  
4 seconds for both of them, and you can clearly see where raw  
5 sewage and storm water is rising up in my basement office.  
6 And then a few minutes later, it goes back down.

7 I'm not blaming that on Kingsbury or LAMB. I do  
8 note that the applicant has, you know, spoken with WSSA.  
9 I've spoken with WSSA. There is a project now to separate  
10 these, but I don't believe any of us in this room will be  
11 alive by the time they complete that separation. And there's  
12 no real plan as to what areas they're going to start when.  
13 They have started, I guess, this Board knows, they started  
14 over in the Bloomingdale, you know, Rhode Island Avenue area.

15 But I want to now turn my attention to Mr. John  
16 Strand who will offer his testimony and then give the closing  
17 remarks.

18 CHAIRMAN HILL: Okay. I went over by making my  
19 announcement and everything. I'm going to just let you know  
20 I'm putting five minutes up there for you guys to kind of  
21 wrap it up. Okay, thanks.

22 MR. STRAND: Members of the Commission and members  
23 of the Board, I live at the corner of Emerson and, almost at  
24 the corner of Emerson and Piney Branch at 1501. You've heard  
25 quite a bit of testimony here, pro and con. You've also

**NEAL R. GROSS**

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

1 perhaps had the opportunity to review a number of letters  
2 both in opposition and in support, and you can see that it's  
3 a very emotional issue for all involved.

4           For the supporters, none of whom have standing in  
5 this case because they don't live adjacent to the property,  
6 this involves the health and future of their children's  
7 school to which they have a deep attachment and a great  
8 commitment. And for the opponents, those of us, many of whom  
9 do have standing, myself included, this involves preserving  
10 the residential quality and character of our neighborhood.

11           The LAMB parents who posted letters of support  
12 present an impassioned case for the quality of their school  
13 and its potential positive contribution to our neighborhood.  
14 We don't dispute any of those points. If we were LAMB  
15 parents, we would probably feel the same way.

16           My kids walked around the corner to West  
17 Elementary School when they were growing up, so we have a  
18 commitment to school quality, local school quality, as well.  
19 But this application is really about the opportunity for LAMB  
20 to move in and increase the number of its students in that  
21 property from its current number of 108 to 600 and also to  
22 build a gymnasium.

23           So with the special exception request for making  
24 that degree of significant expanded non-residential use,  
25 there are certain conditions that apply. There's no doubting

**NEAL R. GROSS**

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



1 that this is significant expanded residential use. They want  
2 to increase the number of students by from 108 to 600.  
3 That's more than a 500-percent increase. And they want to  
4 increase the number of A.M., morning rush hour vehicle trips  
5 from the current Kingsbury level of 73 to 548. That's 475  
6 more trips or a 750-percent increase.

7           So we, as neighbors, feel strongly that the  
8 applicant has not sufficiently demonstrated that the adverse  
9 effects that may come from this significantly expanded non-  
10 residential use are have not going to have an adverse effect  
11 on our neighborhood, which is really the point of the R-16  
12 overlay. And we're justifiably worried. I've been there for  
13 21 years. We were there when Kingsbury moved in and made  
14 their application, and we heard all the promises of, you  
15 know, we're really good people, we're going to be good  
16 neighbors, we're going to work this out. And, unfortunately,  
17 in Kingsbury's case, it didn't work out that way. They have  
18 failed to meet 4 out of the 13 conditions that the BZA placed  
19 on them as a condition of their approval.

20           So while we would love to welcome LAMB to the  
21 neighborhood, we would like to be able to do it in concert  
22 with the conditions that the Office of Planning originally  
23 put in place in its November 13th letter. We have never seen  
24 this, you know, new alternative that the applicant has put  
25 forward. It sounds very interesting, but, once again, it's

**NEAL R. GROSS**

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

1 based on a performance management plan that we haven't seen,  
2 which primarily may be put in place to address traffic  
3 conditions when, as you've heard, there are a number of other  
4 conditions that qualify as potential adverse effects that we  
5 want to be attendant to.

6           So we would ask that the Board of Zoning  
7 Adjustment attend to the original concerns of the Office of  
8 Planning, hold the applicant accountable for meeting those  
9 terms, come back when they are ready to expand the numbers  
10 back up to 600, and then ask that there be a community school  
11 monitoring group that meets to examine a set of agreed-upon  
12 metrics and monitor those metrics and report regularly and  
13 address issues that arise so that we have a little bit of  
14 enforcement capability on the community side so that it's not  
15 an approval and then we're stuck with the outcome, whatever  
16 happens over the next, you know, five to ten to however many  
17 years. So that's it.

18           CHAIRMAN HILL: Okay. Mr. Uqdah, are you, I mean,  
19 are you good? Is that it? Do you want to --

20           MR. UQDAH: Yes, sir. I mean, I know how you all  
21 operate. I don't want to, you know, kind of --

22           CHAIRMAN HILL: It's okay. If you want to do a  
23 little closing, you're welcome to -- I think your witness did  
24 a really good closing right there.

25           MR. UQDAH: And I will, I don't want to step on

**NEAL R. GROSS**

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

1 that.

2 CHAIRMAN HILL: Right, okay.

3 MR. UQDAH: So that will conclude our --

4 CHAIRMAN HILL: Okay, great. So, Mr. Kadlecek,  
5 now we're back over to you in terms of cross.

6 MR. KADLECEK: I have no cross.

7 CHAIRMAN HILL: Okay, all right. There you go.  
8 Okay. Does the Board have any questions for the opposition?  
9 No? Okay. I got a couple. So is there -- I mean, and we'll  
10 get to all this because I'm a little confused, like, the  
11 dialogue that has taken place between the two groups. I  
12 mean, I understand there's notification questions and  
13 different things that are brought up, but you all are here  
14 now. So, Mr. Uqdah, like, is there a number that your group  
15 is comfortable, I'm a little confused as to, like, you know,  
16 there's 600, is there 500, 400? I mean, have you all come  
17 up with what you think is acceptable?

18 MR. UQDAH: We placed in our submission and agree  
19 with the initial OP report for 310 students, plus the  
20 requisite number of staff.

21 CHAIRMAN HILL: Right. So it's the jump to the  
22 600 that we're all here for?

23 MR. UQDAH: Right. Let's not, we're not going --

24 CHAIRMAN HILL: Okay, okay, all right. Okay.  
25 Anybody else got any questions?

**NEAL R. GROSS**

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

1 MR. UQDAH: And there's one other thing I want to  
2 point out. The 175 Kingsbury students that continues to be  
3 mentioned, that 175 is a projected number. So Kingsbury  
4 will, as part of this co-location, they're going to go out  
5 and recruit, roughly, what? About 67 more students that they  
6 don't presently --

7 CHAIRMAN HILL: The thing about this, you know,  
8 we're here for this application, so the issues with  
9 Kingsbury, I mean, I think it will be interesting to discuss  
10 and talk about, but, you know, Kingsbury is Kingsbury. But  
11 still the issues that you all are bringing up are issues that  
12 we are going to address and talk to the applicant about, so  
13 does anybody -- yes, sure, of course.

14 CHAIRMAN HOOD: I do want to ask Mr. Uqdah a  
15 question. Let me talk about the neighborhood engagement.  
16 I was looking at the list, and there was a charrette in,  
17 like, July, I think. Was anybody in the neighborhood engaged  
18 in that?

19 MR. UQDAH: Not those that had standing. There  
20 was -- none of those people participated in that.

21 CHAIRMAN HOOD: Okay. Help me understand when you  
22 say have standing because I feel like I have standing.

23 MR. UQDAH: Okay. And I'm just speaking from the  
24 process that takes place here at the BZA. There is a 200-  
25 foot limit that the applicant has given to be able to notify

**NEAL R. GROSS**

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

1 people within 200 feet of the --

2 CHAIRMAN HOOD: That's a notice. It doesn't  
3 necessarily give you standing. What it does is give you  
4 notice that there's activity that is getting ready to take  
5 place in your neighborhood, everyone who is within 200 feet  
6 of whatever is being proposed.

7 MR. UQDAH: Right. None of those people attended  
8 this charrette that you're talking about, we were unaware of  
9 it. I know I was unaware of it.

10 CHAIRMAN HOOD: Okay. So let me ask you can you  
11 emphatically state that nobody within 200 feet knew anything  
12 about the charrette? No, I'm talking, I'm sure the BZA runs  
13 like the Zoning Commission. We try to run it in order. So  
14 can you emphatically state that?

15 MR. UQDAH: I can emphatically state it, sir.

16 CHAIRMAN HOOD: Okay. So when did you first hear?  
17 I mean, how did you hear -- let me ask this. I'm just trying  
18 to figure all this out. How did you -- okay. Let me back  
19 up. Do you all participate in your ANC meetings?

20 MR. UQDAH: Yes, I'm a former commissioner.

21 CHAIRMAN HOOD: I thought so.

22 MR. UQDAH: For this --

23 CHAIRMAN HOOD: So you attend regularly?

24 MR. UQDAH: I attend, I either attend or follow  
25 from the agenda what the ANC is doing. And when those things

**NEAL R. GROSS**

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

1 that, you know, pique my interest, I make comments.

2 CHAIRMAN HOOD: So let me ask this. If there's  
3 a process, and this may be jumping the gun because I'm also  
4 going to ask the applicant when we get there and I don't want  
5 to hold things up, but if there's a process, I know in some  
6 other campuses and things that we do across the city, we do  
7 a phased process and it's looked at. It's like, intimately,  
8 it's added on, and then we evaluate how that looks, and then  
9 it's added on again and we evaluate how that looks. That's  
10 kind of what I'm hearing. I'm hearing nobody is against the  
11 school.

12 MR. UQDAH: No, sir.

13 CHAIRMAN HOOD: It's just the 600. And my  
14 question to the applicant, I'm getting ready for this  
15 applicant, is are we going to jump from where we are now to  
16 600 all in two or three months? I'm just throwing that out  
17 there like that. But I think there's some gradual increases,  
18 and I think there's something that they can put in place.  
19 And I also think there's something that can be put in place  
20 where the neighborhood can also monitor and work along with  
21 the applicant over the school and see how we're progressing.  
22 It's done in other schools that way, and I think you also  
23 mentioned an advisory committee with some of the neighbors  
24 and stuff.

25 So those are some things that I'm thinking about,

**NEAL R. GROSS**

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

1 and I'm just talking out loud, thinking out loud. I like  
2 that song. I'm thinking out loud, but I have colleagues that  
3 we have to talk about it. I'm just throwing that out there  
4 because I'm hearing that through all this discussion.

5 MR. UQDAH: And the only thing we're looking for  
6 -- first of all, to address one thing, the immediate  
7 community including myself did not learn of this application  
8 until August the 21st or thereabouts.

9 CHAIRMAN HOOD: Okay. But it's not like there  
10 can't be a remedy to fix it.

11 MR. UQDAH: There is a remedy to fix it, but I  
12 will say this: where the applicant extensively met with the  
13 community, like in September, they also met with West  
14 parents. Our issues that we've raised here today, those  
15 issues have not been addressed. I mean, I've talked about,  
16 you know, the environmental issues. I have both emails and  
17 telephone conversations where I asked about the number of  
18 restroom facilities at Kingsbury, and I still --

19 CHAIRMAN HOOD: I'm going to stop asking my  
20 questions. I think the Chair is ready to move on.

21 CHAIRMAN HILL: That's okay, that's all right.  
22 I got a question. Are there people here wishing to speak in  
23 opposition, if you could raise your hand? Okay. Are there  
24 people here wishing to speak in support, if you could raise  
25 your hand? Okay. I'm just trying to get an idea as to how

**NEAL R. GROSS**

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

1 long we're going to go.

2 All right. Does anyone have anymore questions?  
3 No? Okay. I'm going to turn to the Office of Planning then.

4 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and  
5 members of the BZA. For the record, I'm Maxine Brown-Roberts  
6 from the Office of Planning. The LAMB school has requested  
7 special exception review under Subtitle U 205.1. And as you  
8 have read, we have outlined, you know, how they meet the  
9 requirements of that section. I'll sort of just go towards,  
10 in the interest of time, go towards our recommendation.

11 In our November 3rd recommendation, we had some  
12 conditions, and number one was that the maximum number of  
13 students in the interim range would be 310 with a maximum  
14 number of faculty and staff of 36 and then the hours of  
15 operation and the retention of the 107 parking spaces. We  
16 further recommended to the BZA that, at the time, at the  
17 interim stage, that before the number of students include 600  
18 that they come back to the BZA for review. And we also  
19 outlined that we supported the conditions outlined by DDOT.

20 Subsequent to our November 3rd application, the  
21 applicant came to us and said that they had some concerns  
22 about our recommendation of coming back to the BZA, and we  
23 explained to them that our concern was that it was a big leap  
24 from the existing situation to 600 students, and we are  
25 concerned about that and how that would affect the community

**NEAL R. GROSS**

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



1 and especially since there were a number of issues that DDOT  
2 had, transportation issues, and we wanted to make sure that  
3 those things were being addressed.

4           So that was our response to the applicant, and  
5 they explained to us the financing of the project. And so  
6 we took that into consideration. They submitted the language  
7 for us to consider, and we consulted with DDOT and with the  
8 Zoning Administrator to make sure as to what they had  
9 recommended was something that was enforceable. And so all  
10 three of us worked together and we came up with the language  
11 that has been submitted by the applicant here today.

12           We think that that gives some certainty because  
13 what DDOT has recommended is that there are these monitoring  
14 mechanisms there, and so, before they can expand to their  
15 600, after Kingsbury moves out, then they have to demonstrate  
16 to DDOT that they have met these transportation conditions  
17 before that is going to be acceptable, and I suppose they  
18 write a letter to the Zoning Administrator saying, yes, we  
19 have met these conditions, and then the Zoning administrator  
20 would approve a certificate of occupancy for them to increase  
21 to the 600.

22           So that's where -- we are supportive of that, of  
23 that condition. And, you know, we still are open, if the  
24 Board thinks that it is something that is better for the BZA  
25 to review the application at the interim stage. I think we

**NEAL R. GROSS**

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

1 are supportive of both.

2 Thank you, Mr. Chairman, and I'm open for  
3 questions.

4 CHAIRMAN HILL: Okay. Just real quick, I mean,  
5 the language, it's the alternative condition that they had  
6 in their presentation.

7 MS. BROWN-ROBERTS: Yes.

8 CHAIRMAN HILL: And the performance monitoring  
9 plan, can you explain that a little bit more?

10 MS. BROWN-ROBERTS: If you look at the DDOT  
11 report, they have a section that outlines -- I'm not sure  
12 exactly what page. If you look at page four of the DDOT  
13 report, they have a bullet as part of their conditions that  
14 talks about implementing the following performance monitoring  
15 plan as agreed with the applicant. So what the applicant has  
16 to do is to, every year, they have to submit how they're  
17 meeting the requirements of this plan to DDOT, and DDOT will  
18 monitor it over the years.

19 CHAIRMAN HILL: Okay. Does anybody have some  
20 questions for OP?

21 CHAIRMAN HOOD: So, Ms. Brown-Roberts, I know  
22 we're deviating from a normal process with this. Has this  
23 been done before? I don't recall, but has this been done  
24 before, this new tool of using to make sure that a school is  
25 coming to compliance?

**NEAL R. GROSS**

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

1 MS. BROWN-ROBERTS: I don't know. I've never seen  
2 it, but I don't know if it has happened before. I personally  
3 haven't seen it before.

4 CHAIRMAN HOOD: I'm definitely open to it. I  
5 just, for example, the student cap, how is that -- that won't  
6 be monitored through this.

7 MS. BROWN-ROBERTS: Well, it's a condition, the  
8 student cap would be a condition of approval.

9 CHAIRMAN HOOD: Right. So the cap on the students  
10 will be 600. 600 when?

11 MS. BROWN-ROBERTS: Are you talking about --

12 CHAIRMAN HOOD: When we get to the -- I mean, I'm  
13 just, I'm having problems --

14 MS. BROWN-ROBERTS: If we were to go with  
15 alternate language, the cap would be 600 right now, yes.

16 CHAIRMAN HOOD: So it would be 600 without any  
17 track record or anything of how we're working with 300, 400,  
18 500? We go right to 600?

19 MS. BROWN-ROBERTS: Well, from speaking to the  
20 applicant, they're not going to go to 600 in 2018 when they  
21 start.

22 CHAIRMAN HOOD: Right. I kind of figured that.

23 MS. BROWN-ROBERTS: So the 600 will come, well,  
24 the 600 doesn't come into play until after Kingsbury moves  
25 out.

**NEAL R. GROSS**

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

1 CHAIRMAN HOOD: Okay.

2 MS. BROWN-ROBERTS: That's my understanding.

3 CHAIRMAN HOOD: Yes, we can probably talk about  
4 this all day, but we're not. So I'll just go ahead and save  
5 it for, see how this pans out. Thank you.

6 CHAIRMAN HILL: Okay. Does the applicant have any  
7 questions for DDOT? I mean, for the Office of Planning?

8 MR. KADLECEK: No, thank you.

9 CHAIRMAN HILL: Okay. Does the opposition have  
10 any questions for the Office of Planning?

11 MR. UQDAH: I do, Mr. Chair. Good afternoon. How  
12 are you? When was this new language submitted to you?

13 MS. BROWN-ROBERTS: I think maybe Monday.

14 MR. UQDAH: Oh, Monday of this week?

15 MS. BROWN-ROBERTS: Yes, yes. Either Monday or  
16 Friday of last week, yes.

17 MR. UQDAH: And do you know whether or not that  
18 new language was uploaded to ISIS?

19 MS. BROWN-ROBERTS: I don't because, actually, we  
20 just came to agreement yesterday on this new language -

21 MR. UQDAH: So it's safe to say that there was no  
22 notice to the community or any other, like, there was no  
23 notice to the ANC, there was no notice to any party that this  
24 change had been introduced?

25 MS. BROWN-ROBERTS: You are correct.

**NEAL R. GROSS**

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

1 MR. UQDAH: Can you explain how the applicant will  
2 be able to demonstrate that they have complied? Is it self-  
3 certification, or how will they be able to demonstrate, what  
4 metric will be used to say, yes, applicant, you're in  
5 compliance?

6 MS. BROWN-ROBERTS: This is all DDOT's  
7 recommendation, and I don't want to, you know, be talking on  
8 behalf of DDOT. But I think what's going to happen is that,  
9 after Kingsbury moves out and they have to come back to get  
10 a certificate of occupancy to occupy the whole building, then  
11 they'll have to demonstrate to DDOT that, yes, we have been  
12 meeting in the interim, you know, starting whenever the  
13 school starts next year, we have been meeting these  
14 requirements that are outlined in the DDOT report here today.  
15 And then what would happen is that I suppose DDOT will write  
16 a letter and say, okay, take this when you go for your  
17 certificate of occupancy. They take that document to the  
18 Zoning Administrator to say, hey, here we are meeting the  
19 requirements outlined by DDOT.

20 MR. UQDAH: Now, as you just outlined, wouldn't  
21 the applicant's lenders have the same concerns?

22 MS. BROWN-ROBERTS: I don't know. I don't know.

23 MR. UQDAH: Okay. And last thing, you keep  
24 mentioning and others have mentioned when Kingsbury moves  
25 out. When is that?

**NEAL R. GROSS**

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

1 MS. BROWN-ROBERTS: I don't know. I haven't been  
2 given a time line for that.

3 MR. UQDAH: Okay. Thank you.

4 CHAIRMAN HILL: You want to answer that question?

5 MR. ZAYETS: I'm sorry. I could have, I don't  
6 want to speak out of turn.

7 CHAIRMAN HILL: That's okay. You can just answer  
8 the question.

9 MR. ZAYETS: Sure. So there's a slide up on the  
10 board that actually shows the interim, and it shows the  
11 ultimate condition.

12 CHAIRMAN HILL: Okay, okay. All right. Mr.  
13 Uqdah, anything else for OP?

14 MR. UQDAH: No, nothing else for OP.

15 CHAIRMAN HILL: Okay.

16 MR. UQDAH: But it doesn't, but that slide that  
17 we're looking at, it doesn't give a time frame. I mean, it's  
18 2020. I mean, that's --

19 CHAIRMAN HILL: Yes, when Kingsbury moves out.  
20 That's what they're saying.

21 MR. UQDAH: So Kingsbury will be moved out in  
22 2020?

23 CHAIRMAN HILL: 2020.

24 MR. UQDAH: Is that correct?

25 MR. ZAYETS: So the ultimate condition is, at the

**NEAL R. GROSS**

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

1 latest, 2025. Because they're on a flexible lease, it's  
2 anywhere between after 2020 and 2025.

3 CHAIRMAN HILL: But after 2020, that's when it  
4 could go up to 600?

5 MR. ZAYETS: So we would need to meet the  
6 performance monitoring in order for that to happen so that  
7 we can get the C of O to even apply for that building permit  
8 application to increase the enrollment. So we would need to  
9 show from day one proof of performance standards being met  
10 and only after that would we be able to apply and ask for an  
11 increase.

12 CHAIRMAN HILL: Okay. Thanks.

13 MR. UQDAH: Mr. Chair, but only DDOT terms are to  
14 be met. None of the other conditions that we raised are on  
15 the list of, you know, things that have to be met. It's just  
16 DDOT. And I haven't heard anything about having the  
17 community review --

18 CHAIRMAN HILL: We actually know where we are, and  
19 there's a lot still here in terms of -- I think it's pretty  
20 clear what the different little issues are, so we just keep  
21 talking about them again and again. But we're going to get  
22 to, at some point -- but I am going to ask -- okay. Let's  
23 see. Do you have anymore questions for DDOT? I mean the  
24 Office of Planning.

25 MR. UQDAH: I do not.

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: I keep doing that. I wish there  
2 was someone from DDOT here.

3 MR. UQDAH: I do not.

4 CHAIRMAN HILL: All right. Is there anyone here  
5 -- well, first, is there anyone here from the ANC? Okay.  
6 Is there anyone here wishing to speak in opposition? Is  
7 there anyone here wishing to speak in support? Okay. If you  
8 could please come forward. Mr. Uqdah, if you don't mind  
9 giving up that side of the table.

10 Yes, you can just sit right there. No, wait one  
11 second. First of all, I'm going to wait for everybody to  
12 show up there and sit with you at the same time. You have  
13 to push the button to speak, and then did you fill out your  
14 witness cards? Oh, you did not. That's all right. You can  
15 fill them out afterwards. Did you get sworn in? Okay. So  
16 everybody got sworn in. Okay. So everyone is going to get  
17 three minutes, okay? And I'm going to start, if that's okay,  
18 just right to left or my right to left. It's over here.  
19 There you go. And please state your name and address.

20 MS. ASPINWALL: Good afternoon. My name is Maria  
21 Aspinwall, and I live in Ward 4, lived in 16th Street Heights  
22 for seven years. I'm connected to LAMB for about 15 years.  
23 Initially, I was one of the founding parents who believed in  
24 school choice and, since then, I've come on as staff.

25 So as part of when, initially, when we started the

**NEAL R. GROSS**

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



1 school as part of this school-parent compact, all families,  
2 all LAMB families are expected to volunteer for 40 hours to  
3 help the school become better engaged and better serve our  
4 students. During my volunteer service, that's when I got to  
5 know how special, how truly special the school was. I got  
6 to work with and meet the founding director and principal who  
7 are still there. So it was just a wonderful place to be.

8           While I was volunteering one day, I got the offer  
9 to work at the school and I was offered a position to  
10 implement a grant, a proposal that's called Safe Schools and  
11 Healthy Students Initiative. And so I welcomed the  
12 opportunity. I was very happy to do that. That was one of  
13 our first cross-sector partnerships, and, since then, well,  
14 it's been 14 years and I've done a lot of different things,  
15 worked with little kids and big adults.

16           But, currently, one of my main goals is really to  
17 strengthen the parent body and to get them more engaged in  
18 their child's education and then also work with the community  
19 to increase other opportunities of engagement. So I've  
20 introduced and managed partnerships, like I said, working  
21 with the government, with, you know, green -- River Smart  
22 programs, with the community, whether it's at church or  
23 another public charter school, and then also working with  
24 some of the business sectors to support some of our families  
25 in need.

**NEAL R. GROSS**

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

1           Let's see. Basically, I just wanted to say I'm  
2 supportive of LAMB's move to Kingsbury and I'm continued, I  
3 continue to commit to working with both parents and the  
4 communities' stakeholders. Thank you very much.

5           CHAIRMAN HILL: Great. Thank you. Sir?

6           MR. CHAPLIN: Yes, my name is Duncan Chaplin, and  
7 I've just moved to the neighborhood in January or February  
8 of 2015. I have a two-year-old daughter, so she is not, we  
9 can't apply to LAMB yet, so I don't have any children -- my  
10 daughter probably won't go to LAMB, and I don't have any  
11 friends or relatives or connections to the LAMB school.

12           I do work for a research company called  
13 Mathematica Policy Research. We do a lot of research on  
14 charter schools. I've personally been doing research in  
15 education in D.C. for almost 25 years. So when I heard about  
16 LAMB, I got very excited about the idea that I could say I'm  
17 in the neighborhood that LAMB came to. And the way I view  
18 this is helping LAMB is going to help improve D.C. schools  
19 because LAMB is one of the best schools in the city, and  
20 making it easier for them to get more kids seems like a very  
21 positive thing.

22           Just a couple of very brief points on this sewage  
23 issue. It seems to me that, if LAMB is allowed to move in,  
24 that might help people apply to get work done on the sewage  
25 faster. It's going to be a tricky issue, I know, and I think

**NEAL R. GROSS**

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

1 that might help.

2 In terms of traffic, I happen to bike right around  
3 the school every morning, and so I did a little traffic count  
4 myself. That's in my letter of support, and it basically  
5 just supports the review that was done by others that this  
6 should be easy to accommodate for the neighborhood.

7 And last, I do think the neighborhood has been  
8 very involved, certainly in the last couple of months.  
9 There's been lots of meetings, lots of people engaged, and  
10 I think it's been a great process.

11 I am definitely sympathetic to concerns that, you  
12 know, LAMB won't be able to follow everything they're asked  
13 to do, just as Kingsbury, I think, faced some challenges.  
14 So I certainly think it's good to have a monitoring process.  
15 I don't know if BZA wants to be involved in that or what's  
16 appropriate, and so I certainly, I think it's good, like I  
17 said, it's good to have a monitoring process, but the details  
18 I haven't thought through. Thank you.

19 CHAIRMAN HILL: Okay, great. Thank you.

20 MS. SALSTROM: Thank you, guys, very much. My  
21 name is Sandra Salstrom. I live at 315 Allison Street, N.W.,  
22 so in the Petworth neighborhood of D.C. I've been a D.C.  
23 resident for 15 years. I've owned my home in Petworth for  
24 more than ten years. I currently have one child at LAMB and  
25 next year we will have two children at LAMB.

**NEAL R. GROSS**

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

1           So, currently, we live 1.8 miles from the Missouri  
2 campus where our daughter goes to school, and our son is in  
3 a daycare at 14th and Colorado, the Estrellitas Montessori  
4 School. So presently we do make that drive every single day  
5 from Petworth, you know, coming from the east side heading  
6 west, so I understand very much the concerns of these  
7 parents. But, you know, I can speak for myself to say that  
8 we wouldn't be adding any additional traffic because this is  
9 actually a commute that we already do every single day. I  
10 use Gallatin Street because it has lights, so I come from,  
11 you know, Illinois Avenue, take that left onto Gallatin, go  
12 Gallatin over to 14th Street, take the right up 14th Street,  
13 take the left onto Ingraham to go to Estrellitas, drop our  
14 son at Estrellitas and then continue on up to LAMB.

15           So, you know, there have been days when LAMB has  
16 been closed, and so I've only had one child to take to  
17 school, and Estrellitas is currently about a mile -- I looked  
18 at the map. Kingsbury would be 1.1 miles from my home, so  
19 in days when I've just had my son, I'm a runner, I have a  
20 running stroller, and I love nothing more than to try to get  
21 a little exercise, so I've actually put him in that running  
22 stroller and run him that mile up to Estrellitas, which is,  
23 you know, as I say, just a block over from Kingsbury. So  
24 we'd be very much incentivized to do the same thing and very  
25 much love biking. My husband and I are both big bikers so

**NEAL R. GROSS**

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

1 want to be able to bike both of our children.

2           Lastly, we are actually looking to purchase a home  
3 in the 16th Street Heights neighborhood with the express  
4 purpose of being able to walk to school. So, again, I can  
5 only speak for myself and our own commuting patterns, but,  
6 you know, right now, we already make that drive. We are  
7 looking to try to do less of that, more running and biking,  
8 and, ultimately, be able to walk our kids to LAMB. We are  
9 very much invested, you know, in the school, going to  
10 Kingsbury and the neighborhood. We have every incentive to  
11 be good neighbors, as I say, because we certainly want to be  
12 much closer neighbors to LAMB and to Kingsbury.

13           I know one other point, it's very hard, I believe,  
14 for charter schools to find adequate facilities. As you guys  
15 have heard, LAMB currently operates three campuses. It is  
16 very much in the school's plan and interest to have all of  
17 our students under one roof. It would help with cohesion.  
18 I think it would just benefit the students a lot.

19           So, again, just want to say very much in support  
20 of this and really appreciate you guys taking the time to  
21 listen to us.

22           CHAIRMAN HILL: Okay, great. Thank you. Does the  
23 Board have any questions for the witnesses? So I just had  
24 a quick one. Are you within the 200 feet boundary? No, you  
25 can speak into the microphone again to answer my question.

**NEAL R. GROSS**

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

1 But you can speak. You said you were in the neighborhood,  
2 so I just wanted to understand what that meant.

3 MR. CHAPLIN: Yes, my apologies. I'm about three  
4 blocks away.

5 CHAIRMAN HILL: Okay.

6 MR. CHAPLIN: But I live on one side of the  
7 school, my daycare is on the other, so I bike on Gallatin and  
8 Piney Branch.

9 CHAIRMAN HILL: Okay. That's okay. I was just  
10 curious where you were. Okay, great. Thank you. All right.  
11 Thank you all very much. If the Zoning Administrator  
12 wouldn't mind, if you wouldn't mind coming forward, I mean,  
13 we're actually, we don't normally have you with us. And so,  
14 Mr. Uqdah, you can also come forward because what I want to  
15 do is I want to be very precise with this. I don't want to  
16 take a lot of time. I have a couple of questions real quick,  
17 and then you'll have an opportunity to also cross to the  
18 testimony that the Zoning Administrator is about to give.

19 I do believe you've been sworn in, correct, sir?

20 MR. LEGRANT: I have.

21 CHAIRMAN HILL: Okay. If you could introduce  
22 yourself, please.

23 MR. LEGRANT: Yes. Matthew LeGrant, Zoning  
24 Administrator, DCRA.

25 CHAIRMAN HILL: Okay. So, Mr. LeGrant, for me,

**NEAL R. GROSS**

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

1 since you are here, I'm just kind of, a lot of discussion has  
2 taken place about the PMP and there's a lot of conditions,  
3 and you've been here, so you've heard a lot of testimony from  
4 the community. And what I'm just trying to understand is  
5 what's the process for this PMP because, ultimately, it's  
6 coming to you then again, right, in terms of whether they're  
7 fulfilling their requirements. So can you walk me through  
8 that process a little bit?

9 MR. LEGRANT: Well, let me tell you my familiarity  
10 with this application, which, I'll be up-front with everyone  
11 here, is very small because Maxine Brown-Roberts from the  
12 Office of Planning asked me, I believe it was Monday, about  
13 the then draft condition language that you've seen, to have  
14 a discussion about the enforceability of that, and she wanted  
15 to discuss that with me. So the context of the other  
16 conditions I did not even look at, but this one specific  
17 condition we discussed that condition in terms of, for my  
18 view, as Zoning Administrator, the enforceability because  
19 there's the, I guess, the PDRN that is being reported to DDOT  
20 as to the, I believe, with the traffic count, the question  
21 was would I be in a position to enforce that prior to  
22 granting a C of O for an expanded occupancy for the LAMB  
23 school. And we discussed the wording as to my point, which  
24 I think was incorporated in the latest version, is that it  
25 would be, DDOT is actually making the determination as to

**NEAL R. GROSS**

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

1 whether that standard has been met, that criteria of that  
2 program has been met. Then once that occurs, it has to be  
3 reported to me, so I'm knowledgeable of that result in order  
4 to then be able to consider a C of O for an expanded  
5 occupancy.

6 CHAIRMAN HILL: Okay, great. Okay. So that's  
7 great. Does the Board have any questions of the ZA for that  
8 answer? Okay. So, Mr. Uqdah, just to that one piece of  
9 testimony, do you have any question?

10 MR. UQDAH: The only question I have is just for  
11 clarity. So you don't have any enforceability other than  
12 looking at DDOT's approval in order to allow the occupancy?

13 MR. LEGRANT: In terms of this condition, if the  
14 Board were to accept the language, then I would agree.  
15 Generally, I look to DDOT for does it meet the standard or  
16 not, and they report it to me.

17 CHAIRMAN HILL: Okay, okay, great. Mr. Kadlecek?

18 MR. KADLECEK: Can I ask a clarifying question of  
19 Mr. LeGrant?

20 CHAIRMAN HILL: Yes, sure.

21 MR. KADLECEK: Just in general, how are other  
22 conditions enforced in orders? Not this one specifically,  
23 but, generally, how do you enforce conditions?

24 MR. LEGRANT: Well, it certainly depends on the  
25 condition. If there's a condition that requires -- I'll put

**NEAL R. GROSS**

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



1 it in three categories. There are some conditions that  
2 require reporting from other District government agencies,  
3 such as the one we're discussing here. There are sometimes  
4 requirements that the applicant make a representation or  
5 report to me for my evaluation and consideration the  
6 determination of whether the condition has been met or not.  
7 And then if any citizen or member of the community lodges a  
8 complaint about a particular condition, my office would  
9 investigate that.

10 MR. KADLECEK: Thank you.

11 CHAIRMAN HILL: Okay, all right, great. Okay.  
12 Thank you, Mr. LeGrant. All right. I guess let's see what  
13 we're going to do next. So we did opposition, people,  
14 everything. All right. Mr. Uqdah, do you want to provide  
15 like a little bit of a closing for us? Are you good?

16 MR. KADLECEK: Sorry, Mr. Chairman. ANC?

17 CHAIRMAN HILL: We asked for the ANC. Nobody was  
18 here. But thanks.

19 MR. UQDAH: I don't think I'm going to have a  
20 closing, but I do have a concern relative to testimony from  
21 Building Hope that I think deserves --

22 CHAIRMAN HILL: Testimony from who?

23 MR. UQDAH: From Building Hope.

24 CHAIRMAN HILL: Okay.

25 MR. UQDAH: There was this concern about dropping,

**NEAL R. GROSS**

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

1 you know, 600 students, that they would not be able to obtain  
2 financing. But I'm wondering whether or not a lender would  
3 have the same concerns if that condition, that last condition  
4 that they're seeking approval for is placed into the record.

5 CHAIRMAN HILL: Okay. I'm just trying to follow  
6 my own, the process here. So you're providing testimony  
7 again or you're asking a question about something.

8 MR. UQDAH: Right. I'm asking a question for  
9 clarity because the, you know, Building Hope is saying there  
10 is no other alternative --

11 CHAIRMAN HILL: Okay. I think we'll get to that  
12 on our own, meaning I think we are going to get to that  
13 issue. Is there anything you'd like to say in terms of,  
14 again, kind of a closing?

15 MR. UQDAH: No, no, sir. I think we've covered  
16 everything.

17 CHAIRMAN HILL: All right. Thanks, Mr. Uqdah.  
18 Mr. Kadlecek, do you want rebuttal and then a closing, as  
19 well?

20 MR. KADLECEK: Yes, is it okay if we just take two  
21 minutes to organize our rebuttal? I think there's a couple  
22 of issues outstanding that we just want to make sure --

23 CHAIRMAN HILL: Sure. We'll take two minutes.

24 (Whereupon, the above-entitled matter went off the  
25 record at 1:12 p.m. and resumed at 1:19 p.m.)

**NEAL R. GROSS**

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

1           CHAIRMAN HILL: Okay, Mr. Kadlecek, we are back  
2 here. Let's see, we've got somebody else who has joined us,  
3 so, okay.

4           MR. KADLECEK: Yes, so one of our rebuttal  
5 witnesses is Dominique Fortune and she works for Building  
6 Hope and she actually was the most engaged in the community  
7 process so we thought it would be most helpful to have her  
8 testify with respect to the community engagement --

9           (Simultaneous speaking)

10          CHAIRMAN HILL: Okay, then I'm going to have to  
11 do cross again, you know, it's new testimony being taken.

12          MR. KADLECEK: No, I understand that. I  
13 understand that.

14          CHAIRMAN HILL: Okay, all right. Before you even  
15 do that, and I guess you can, but, you know, I think really  
16 what is going to come down to a lot of this discussion is  
17 like the financing and how, you know, what it is, as to why  
18 you need it, you know.

19          So, okay. But you can go ahead and you --

20          (Simultaneous speaking)

21          MR. KADLECEK: You tell us. If you don't think  
22 it's valuable to hear the community engagement process, but  
23 we know that the party in opposition did testify a lot to  
24 that.

25          CHAIRMAN HILL: Okay. Does the Board need to hear

**NEAL R. GROSS**

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

1 about anything about the community -- I don't need to hear  
2 anything about the community engagement process, right?

3 MR. KADLECEK: Okay, then we won't --

4 CHAIRMAN HILL: There is going to be a lot of  
5 questions about the financing I think, and so go ahead and  
6 do your conclusion then and then, or, I'm sorry, rebuttal and  
7 then conclusion.

8 MR. KADLECEK: Yes. We're going to have just the  
9 two, we're going to touch on a couple things for rebuttal and  
10 then I'll do a closing that will be pretty brief.

11 CHAIRMAN HILL: Okay. Thank you.

12 MR. KADLECEK: Mr. Zayets will talk a little bit  
13 and then Mr. Van Pelt.

14 CHAIRMAN HILL: Okay, great. Thank you.

15 MR. ZAYETS: Thank you. So there was a couple  
16 things that came up and I wanted to reiterate. The first  
17 thing, the slide that's up there on the board is actually the  
18 interim condition, just for clarity.

19 So in the interim there will be approximately 175  
20 students from Kingsbury and approximately 310 students from  
21 LAMB, so cumulatively that's about 485 students. So when we  
22 speak of the condition of from there to the ultimate  
23 condition we're talking about that delta, it's not from 300  
24 but it's actually much higher, so we're talking, you know,  
25 in the lower 100s. So that's Point Number 1.

**NEAL R. GROSS**

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

1           As far as the general conditions that we have  
2 asked to modify in order to satisfy our lending requirements,  
3 that's going to address the transportation process and the  
4 traffic mitigation measures, but I do want to reiterate this  
5 is not so much for the Commission but more for the folks in  
6 the room is that any condition that we volunteer to is  
7 enforceable and it becomes a matter of law.

8           So that can be enforced at any time. So the  
9 lighting, the noise, the traffic mitigation measures, those  
10 are all enforceable conditions and at any point in time if  
11 there is a violation you can take enforcement action against  
12 us through DCRA and the Zoning Administrator's Office.

13           A couple other things I just wanted to reiterate,  
14 so as far as noise and matters of that, during one of the  
15 community meetings I actually heard explicitly from one of  
16 the folks is that there was some questions about noise  
17 mitigation, so what we did was we actually took some  
18 measurements from the proximity of homes to the nearest  
19 properties and where the mark is written "95 feet" there is  
20 some air conditioners that were installed by Kingsbury folks,  
21 we've actually agreed as part of our condition we're going  
22 to put acoustic blankets to muffle that and address the noise  
23 from those pieces of equipment.

24           As far as lighting, one of the other conditions  
25 we have agreed is that we're not going to be making any

**NEAL R. GROSS**

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

1 drastic improvements to the lighting plan that will add to  
2 any light pollution, and that's also in here as a condition.

3 As far as regular meetings, one of the questions  
4 that was brought up was Condition Number 4, LAMB  
5 representative will collaborative with representatives from  
6 West to coordinate schedules, so that is also a condition.  
7 That is part of the community involvement so that is already  
8 in here.

9 Safe Passage, Condition Number 7, that's the  
10 policy manual that Diane brought up that we want to put in  
11 place. It's information to ensure students safe arrival and  
12 departure. This policy manual can be made available to LAMB  
13 residents as well. So that is also a condition.

14 As far as busses, charter schools don't actually  
15 get an allocation for public school busses, so there probably  
16 won't be any busses on the campus outside of like small field  
17 trips or kids with special needs, but as far as the daily use  
18 there is not busses that is part of charter schools.

19 Oh, one more thing, the community group. So that  
20 is -- to which?

21 (Off microphone comment)

22 MR. ZAYETS: Ah, right. We'll focus on a  
23 community network directly impacted, that's the community  
24 group that will establish key metrics for verification  
25 methods and compliance with our own neighbors policies.

**NEAL R. GROSS**

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

1           So basically LAMB is going to put together a  
2 committee that is going to meet regularly with the neighbors  
3 and just to make sure any concerns are met and vetted on a  
4 regular basis. That's everything.

5           MR. VAN PELT: Okay, just a few transportation  
6 things. The policy manual also designates the routes that  
7 parents are to use and how they are to enter and use the  
8 campus, if you will, and that's to, you know, enforce that  
9 14th Street is the way that you arrive to campus and you must  
10 enter the campus off of 14th Street, and if you choose to  
11 exit off of Piney Branch, which we think is only the people  
12 that really want to go to the north, that that is, there is  
13 a route that you could do so but you are not to enter in off  
14 of Piney Branch, so I think that's something the policy  
15 manual will cover.

16           I wanted to pick up on the mode splits just a  
17 little bit. I want to make sure that, there may have been  
18 some misunderstanding on that, what was in the report and  
19 what we have in the report is really what is experienced by  
20 LAMB today.

21           We are hopeful and actually we expect that the  
22 non-auto mode splits will increase at this site, but we  
23 didn't take credit for that in this study. We didn't do that  
24 mainly because we didn't want to be accused of  
25 underestimating the number of vehicular trips, so that's why

**NEAL R. GROSS**

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

1 we didn't change those mode splits.

2           And then as far as the number of trips itself,  
3 there was a number, I think it was quoted earlier 548  
4 vehicular trips. Really when you look at it the net new is  
5 475 vehicular trips, but the way we have to think about that  
6 is it's not quite exactly like that.

7           We are school so we have a trip that enters the  
8 site and pretty much not too long after that exit the site,  
9 so what we are looking at is really more on the order of 247,  
10 you know, new cars that will be coming onto the network in  
11 the morning, but that trip is essentially entering the site  
12 and within a short period of time it's leaving the site  
13 again.

14           CHAIRMAN HILL: Okay. Okay, great.

15           MS. COTTMAN: I was just going to say one final  
16 thing regarding enrollment projections and this concern about  
17 an immediate increase in student population by LAMB students.

18           What we currently do is, I mean we have a steady  
19 growth plan and our enrollment projections generally have  
20 anywhere from 30 to 50 new students entering LAMB each year  
21 and that's because we only enroll children at three, four,  
22 and five years of age.

23           We do not backfill. So you cannot come into LAMB  
24 as a 5th grader or as a 4th grader or a 3rd grader. By  
25 having multiple campuses, until Kingsbury leaves, LAMB's

**NEAL R. GROSS**

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



1 overall project, student enrollment at Kingsbury only  
2 increases 20 to 25 students per year until after Kingsbury  
3 leaves and as part of Phase 2 development we have to renovate  
4 classrooms and the total number of 600 students at the  
5 earliest is at that '24/'25 school year, but we will not and  
6 cannot do that until we close another campus.

7 CHAIRMAN HILL: Okay, thank you.

8 MR. KADLECEK: Just in closing, I just want it to  
9 be understood that Kingsbury is extraordinarily sensitive to  
10 all the concerns that you heard from the opponents today.  
11 That's why they have agreed to 24 of the 25 conditions that  
12 have been put out by --

13 (Off microphone comment)

14 MR. KADLECEK: I'm sorry, LAMB's. I'm sorry,  
15 LAMB. LAMB has agreed to 24 of the 25 conditions that have  
16 been put out by the community, the ANC, the Office of  
17 Planning, DDOT, et cetera.

18 That is an utmost concern for them to be a good  
19 neighbor and they want to address those concerns. In fact,  
20 of all the concerns you heard there is a condition, as Mr.  
21 Zayets explained there is a condition to address all of  
22 those.

23 The reason that the proposed alternative condition  
24 was is it gives extra teeth to make sure that LAMB can't  
25 expand into the rest of the school unless they are meeting

**NEAL R. GROSS**

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

1 these very specific metrics for traffic, because, as you have  
2 heard, traffic is the biggest concern, and so they want to  
3 make sure that traffic is being addressed in a way that is  
4 satisfactory to everybody that is being impacted by it.

5           The other conditions will be in the order as well  
6 and they addressed the other concerns that you have heard and  
7 those, too, are enforceable, but this additional condition,  
8 as Mr. Brown-Roberts explained, gives additional enforcement  
9 and allows the school to have the certainty that at some  
10 point in the future it can get to 600 students but it's on  
11 its own responsibility that it can get to 600 students.

12           So if LAMB can't expand to 600 students under this  
13 condition that's LAMB's fault because it can't comply with  
14 the transportation performance monitoring plan. That's the  
15 difference between having to return to the BZA and being  
16 responsible for itself.

17           LAMB could be doing everything perfectly and if  
18 they return to the BZA there is still a risk from the lender  
19 standpoint that they could not get that 600 students and  
20 that's really where the rub is, is that from a lender's  
21 standpoint the expansion to 600 isn't guaranteed if they have  
22 to go back to the BZA.

23           If they can expand to 600 by demonstrating that  
24 they are in compliance with the transportation monitoring  
25 plan they can expand to 600 as long as they are doing what

**NEAL R. GROSS**

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

1 they are supposed to, and, as Mr. LeGrant explained, he would  
2 not grant a certificate of occupancy to expand into the rest  
3 of the building if there is no demonstration that LAMB is  
4 being responsive and in compliance with those conditions that  
5 are set forth in that transportation monitoring plan.

6           So I just hope that that helps explain it. I  
7 understand that there is maybe some further discussion to  
8 have about it, but with that I just wanted to close that LAMB  
9 is trying to do everything it can to be responsive to all the  
10 concerns that it has heard and that's why they have agreed  
11 to such extensive conditions, some of which are not  
12 insignificant, like improving the pedestrian areas nearby  
13 like by building sidewalks and so forth.

14           So they want to make sure that they are a good  
15 neighbor, that they will be a good neighbor for a long time,  
16 and that they minimize the number of impacts that they'll  
17 have on the neighborhood. So, thank you.

18           CHAIRMAN HILL: Okay, great. Thank you. Okay,  
19 so I guess what I would like to do is ask some further  
20 information from you guys. I don't think we're going to make  
21 a decision today.

22           And so I think depending upon what else the Board  
23 would like to hear from, please chime in, as well as I think  
24 we're going to do a continued hearing. What I would like to  
25 do is if you could -- Well, first of all, if you can try to

**NEAL R. GROSS**

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

1 talk to, you know, CNDI-LA, right, and see if they're --  
2 Well, okay, obviously the LAMB school, you know, everyone,  
3 no one is, you know, no one is saying that they are not a  
4 good neighbor, that they don't want them there, that they  
5 don't think that, you know, what your mission is isn't a good  
6 mission, and so it's kind of like, you know, you're trying  
7 to get the community there to agree, you know, that you will  
8 have, they will have, you will live up to your expectations,  
9 right, okay.

10           And so the first thing I want to see is like there  
11 is so many conditions all over the place, like if you can  
12 provide them in one place, like you mentioned 25, then there  
13 was 24 in your submission I think.

14           I mean if you could submit again all of the  
15 conditions that you are agreeing to, right, and then if you  
16 could also submit a little bit more specificity as to this  
17 last, the condition with, you know, the PMP, like what is  
18 tied to that PMP.

19           You've heard that there has been some discussion  
20 about, you know, the PMP is just about the traffic, right,  
21 and so the other conditions aren't things that you would,  
22 that DDOT would be looking at again, right.

23           So I guess part of the issue with even -- because  
24 what you are trying to ask us to do now is to grant  
25 everything going forward, right, I mean you won't come back

**NEAL R. GROSS**

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

1 to us again.

2           So I understand the opposition saying, okay,  
3 that's just the traffic issue that's not, and you can respond  
4 in a minute if you want to, but that's just the traffic issue  
5 it's not all the other conditions.

6           And I understand what you are saying is that, you  
7 know, if they are in violation of those conditions then you  
8 can go ahead and, you know, file something and get, you know,  
9 there is an action that would, they have a way to -- there  
10 is some teeth to it, right.

11           But at the same time who wants to do that, okay,  
12 right. So you obviously haven't -- and you haven't created  
13 enough of a comfort level, either be it that Kingsbury was  
14 there or whatever, that they are able to sign on to what you  
15 are saying, right.

16           And if you could provide this level of comfort I  
17 don't see why necessarily CNDI-LA, or at least I wouldn't see  
18 why CNDI-LA couldn't agree to that, right, like if they are,  
19 you know -- If everything is the way you say it's going to  
20 happen and, you know, there is some teeth to it and then,  
21 again, if you could, Mr. Kadlecek, again, the meetings, the  
22 community meetings that you talk about, if you could provide  
23 a little bit more clarity on that as well and when those  
24 meetings are supposed to take place and how there is some  
25 teeth to those meetings.

**NEAL R. GROSS**

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

1           Again, I can understand the Applicant saying, you  
2 know, we don't know what the parents are going to be like in  
3 ten years, you don't know what the administration is going  
4 to be like in ten years, but the community is still going to  
5 be there in ten years.

6           And I know that at least one member of the Board  
7 here had some question about what has been the norm in terms  
8 of coming back, or in terms of coming back when there has  
9 been a change like that, so going from, you know, whatever  
10 the numbers are to the 600. So then those are two things.

11           The last thing then is I would like further  
12 clarification again how the financing component works and  
13 really what it is that, you know, why is this not going to  
14 work, why is this such a problem that, you know, the  
15 financing doesn't work in terms of, you know -- so then you  
16 don't get the loan until you need the loan, that's the part  
17 I don't really get at this point in terms of why the  
18 financing is so tied to that number because it doesn't sound  
19 like you are doing the work, you know, when do you need the  
20 money, or what is it, why is it that this has to work the way  
21 it has to work in terms of you needing this approval in order  
22 to get the financing.

23           So those are kind of the three little things that  
24 I am interested, again. And just to repeat it for myself  
25 again, you know, clarity on all of the conditions, okay, then

**NEAL R. GROSS**

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

1 clarity, a second issue, clarity around how this PMP thing  
2 works and what it's tied to, so it sounds like it's not going  
3 to be tied to the conditions but it's going to be tied to the  
4 just the transportation issues, and then, third, how this  
5 community thing is going to take place and what teeth there  
6 is in the community process.

7           And then, lastly, again, was the financing thing.  
8 So there is four things that I am looking for. Does the  
9 Board have anything else they would be interested in?

10           VICE CHAIR HART: Yes, Mr. Chairman. I think, Mr.  
11 Van Pelt, you gave some information about mode splits and it  
12 sounded like what you were saying was that the mode splits  
13 that you gave in the report are basically very conservative  
14 because you wanted to make sure that you weren't  
15 overestimating or underestimating something that the  
16 community was interested in.

17           Could you provide something that's a little bit  
18 more what you anticipated it being, and if it was in there  
19 I apologize for missing it, but just a simple, you know, kind  
20 of this is what expect that to be, you know, the mode splits  
21 would be in whatever time frame you want to do, 2020 to 2025,  
22 I'm not exactly sure, but I think have -- If that's something  
23 that you could do that would be helpful for us to kind of see  
24 that.

25           I think to the Chairman's point about the

1 financing piece of it, I think what would be helpful is to  
2 understand the difference between the public charter school  
3 financing and the regular school, public school financing,  
4 just so that, you know, the public schools tend to get the  
5 funding, the public schools for capital projects tend to get  
6 financing through the, you know, through the government.

7           So there is a -- The District would provide, you  
8 know, \$50 million to do this particular building, how does  
9 the public charter school differ from that? And so that  
10 would be helpful to understand that difference because I  
11 think that that's part of what is going on with this is there  
12 is a bridge, what I understand there is some sort of, I'll  
13 call it a bridge loan, but there is some, a bridge that is  
14 allowing the lenders to be able to give money to the public  
15 charter school so the public charter school can then actually  
16 build, or actually they give it to an interim group who helps  
17 the public charter school to actually build the structure,  
18 or finance and build the structure.

19           So it would be helpful to just understand the  
20 difference between the public charter school funding for  
21 capital projects, in this case the capital project is a  
22 school, and a public school itself and how they do that.

23           And I think it's helpful to have, and this is a  
24 good slide to understand what the interim conditions are, but  
25 right now we are at 2017. Between 2017 and 2020 there will

**NEAL R. GROSS**

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



1 be 300, well, if this is approved, there will be 310 LAMB  
2 students, or a maximum of 310 LAMB students at the school,  
3 and I am assuming that is a maximum of 310 LAMB students, and  
4 I say that because there is a total of 400 or maybe 500, but  
5 that's just assuming that there is 175 Kingsbury, so let's  
6 just talk about the LAMB school.

7           So between 2020 and 2025 there is an expectation  
8 that the Kingsbury school will leave and the LAMB students  
9 will increase in size, again if the application is approved,  
10 but it's not really clear as to kind of how do you get from  
11 one to the other and is there -- I understand there is a, you  
12 know, you don't exactly know what that is, but there has got  
13 to be some projection that you are, you know, looking at.

14           I think if we have some information, the community  
15 brought this up a number of times about, you know, we're not  
16 really sure what's going, you know, when this is actually  
17 going to happen, so it would be helpful to understand the  
18 delta between, not the delta, the interim steps between 2020  
19 and 2025, because I think the community is really interested  
20 in that and I think we would be interested in that as well  
21 to understand how that phasing would occur.

22           So I think that's it that I would be looking for.  
23 I mean, and I agree with the Chairman on the aspects that he  
24 raised as well.

25           MEMBER WHITE: Yes, I am always interested in the

1 financing aspect of this so I am glad you guys covered that  
2 portion of it, but one question that I had, I know that there  
3 is some information from ANC but I don't, I got the sense  
4 that they might have some additional information to submit  
5 into the record.

6 I am just looking at the last sentence of Exhibit  
7 71, so if there are any updates from the ANC that you think  
8 would be helpful I would be interested in seeing that.

9 CHAIRMAN HILL: Yes, and I guess before Chairman  
10 Hood -- Just along those lines, you know, the ANC hasn't, I  
11 got a little, it was unclear to me as to how this alternative  
12 condition had been presented with them.

13 Like I know, you know, and just if you could put  
14 something in there from the ANC about the alternative  
15 condition in terms of, I know you spoke about it, but just  
16 add that to the record. Mr. Hood?

17 CHAIRMAN HOOD: I would agree with the list of  
18 what all of my colleagues mentioned, but I would also add,  
19 and I'm sitting here thinking, which is dangerous when I, I  
20 was sitting here thinking about why we at some point we  
21 didn't make this a campus plan, but that's for another  
22 question and answer at another time, I believe.

23 But I think that it's very important that you  
24 extrapolate and expound upon the good neighbor policy. I  
25 actually didn't, maybe, I don't know, but the good neighbor

**NEAL R. GROSS**

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

1 policy, I'm not sure if you had conversations with the  
2 neighbors about the good neighbor policy, but, you know, some  
3 time -- and if you did you did and if you didn't you didn't.

4           But I think when you start talking about good  
5 neighbor policy, I hear it a lot when I come down here. It's  
6 not the first time I heard of good neighbor policy, I've been  
7 hearing it now for about 20 years, but I think it's important  
8 though when we talk about the good neighbor policy that we  
9 don't have those questions, because that question, we don't  
10 have those questions if we didn't engage the neighbors when  
11 you talk about a good neighbor policy.

12           Now I'm not saying that you did or you didn't, but  
13 I've seen some good neighbor policies where those questions  
14 don't even come into play. But I want to associate myself,  
15 especially with the Chairman's remarks. I think he asked for  
16 quite a bit and I think that will get me where I need to go  
17 as far as moving forward.

18           CHAIRMAN HILL: Okay, thank you. And then I would  
19 like to ask one supplemental from the OP. About this  
20 alternative condition, I guess there wasn't, you hadn't  
21 written about it, correct?

22           MS. BROWN-ROBERTS: No, I did not --

23           (Simultaneous speaking)

24           CHAIRMAN HILL: Okay. And if you could just  
25 submit something to the alternative condition just so we can

**NEAL R. GROSS**

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

1 take a look at it.

2 MS. BROWN-ROBERTS: Okay. Um --

3 CHAIRMAN HILL: Yes?

4 MS. BROWN-ROBERTS: I'm not sure what it is you  
5 want. I know what the condition is, I mean I don't know, I'm  
6 not sure, do you want an explanation or --

7 CHAIRMAN HILL: Sure. No, I appreciate it. If  
8 you could provide some clarity again just to how you think  
9 it works. I know the Zoning Administrator spoke to it, but,  
10 again, just how the Office of Planning thinks that would work  
11 and how there is teeth to it, because, again, the length that  
12 I am trying to get to is, you know, the financing doesn't  
13 work, this is how this condition is going to work, the  
14 community is going to be taken care of, you know, everybody  
15 is going to be able to succeed and grow and flourish with,  
16 you know, all of the children that are going to be involved.  
17 So, okay. Yes, sure?

18 CHAIRMAN HOOD: I'm just asking, Ms. Brown-  
19 Roberts, you don't have to answer know, but why at some point  
20 in time if we move forward and graduate as was mentioned  
21 about how -- that reminds me so much of a campus plan.

22 And why at some point, I mean I don't know when  
23 we inject it, when we not inject it, should we do it, because  
24 I think that would solve a lot of what's going on here. I  
25 see you nodding your head so I finally got something right.

**NEAL R. GROSS**

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

1           But I think it's important though that we probably  
2 look at that at some point in time because that gives the  
3 neighbors input, it allows the school to be able to expand,  
4 but I'm not sure of the monetary issue, so that may be  
5 another issue.

6           So if we could at some point in time respond to  
7 that and see if, when that may trigger in or at some point  
8 if she continues to, if the school continues to grow it's  
9 going to have to trigger in I believe at some point.

10           MS. BROWN-ROBERTS: Okay.

11           MR. UQDAH: Mr. Chair, can I have two quick  
12 questions in terms of process?

13           CHAIRMAN HILL: Sure.

14           MR. UQDAH: Okay. While all of this information  
15 is being gathered would the record remain open providing the  
16 community an opportunity to respond to the submission?

17           CHAIRMAN HILL: Sure.

18           MR. UQDAH: Okay.

19           CHAIRMAN HILL: I think what we're -- Okay, sorry.

20           MR. UQDAH: And the second thing is with respect  
21 to, I believe Ms. White may have raised it, I'm sorry,  
22 Commissioner White may have raised it, and then someone else  
23 chimed in behind it, when you have this alternative condition  
24 being presented to the ANC I would request that it be the  
25 Full ANC and not the Single Member District Commissioner.

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: Okay. Let me just think about it.

2 So --

3 MR. UQDAH: Well, because the Single Member  
4 District Commissioner really -- The Board is required to rule  
5 on what the ANC submits. You can ignore the Single Member  
6 District Commissioner, as you well know the number of times  
7 I've been down here against my own Commission. Nothing I  
8 said had any real teeth to it because I was just, I was by  
9 myself.

10 CHAIRMAN HILL: Well, Mr. Uqdah, it has teeth to  
11 it, you're here, you are talking to us, we're listening to  
12 you.

13 MR. UQDAH: Okay.

14 CHAIRMAN HILL: We've been sitting her for an hour  
15 and a half, you know, right there is teeth to people coming  
16 down and talking.

17 (Simultaneous speaking)

18 CHAIRMAN HILL: -- and I'm just like, you know,  
19 I understand. I heard what you just said.

20 MR. UQDAH: Okay.

21 CHAIRMAN HILL: So let me just think about it for  
22 a second. And the Board can also chime in. I don't know how  
23 that works. So then you would have to go back to the ANC  
24 again. They've already approved this, right, and so you'd  
25 have to go back to the ANC again with this one alternative

**NEAL R. GROSS**

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

1 condition.

2 MR. KADLECEK: Yes. That would be our  
3 understanding, yes.

4 CHAIRMAN HILL: Right. And when I said that I  
5 would like something from the ANC how did you interpret that,  
6 or what would you think you were going to provide us?

7 MR. KADLECEK: Honestly, we were just talking  
8 about that because we were contemplating the same issue of  
9 do we need to go back to the ANC and have the Full ANC talk  
10 about it, can we just reach out to the Single Member  
11 District.

12 You know, I think that, you know, if it were left  
13 open I think we could say that we could go to the Single  
14 Member District and have her opine on it and either say she  
15 talked to the other ANC Commissioners or whatnot --

16 CHAIRMAN HOOD: I wholly, highly object to that.  
17 I think the statute and the administrative procedure makes  
18 it clear. You get great weight from the Full ANC. The  
19 Single Member Districts, sometimes we don't get along.

20 I mean not get along, but sometimes we don't  
21 agree, so we need to make sure -- they didn't come back just  
22 to --

23 (Simultaneous speaking)

24 CHAIRMAN HILL: Okay, I understand, I understand.

25 CHAIRMAN HOOD: They went to the full, they came

**NEAL R. GROSS**

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

1 to the full --

2 CHAIRMAN HILL: No, well, what I am getting at is  
3 that the ANC, they've already been through the ANC and the  
4 ANC has already given us their -- but you're right, they've  
5 given --

6 CHAIRMAN HOOD: On that issue.

7 CHAIRMAN HILL: Right, okay.

8 CHAIRMAN HOOD: They've been there on that issue.

9 CHAIRMAN HILL: Okay. Does anybody else have any  
10 thoughts?

11 (No audible response)

12 CHAIRMAN HILL: Okay. So then I guess go back to  
13 the Full ANC because, you know, if they are going to then,  
14 it is -- I'd have to go back and look through the report a  
15 little bit more specifically. I mean it would be better if  
16 the ANC agrees to that condition because it's not in there  
17 right now, and so I don't like having to delay -- I mean, I  
18 just want to, you know, I'm trying to be as reasonable as  
19 possible.

20 I'm just trying to get to a process here where we  
21 can make a determination upon the standards whether or not  
22 you guys should be granted this special exception, so, okay.  
23 So if you went back to the Full ANC again you'd go back to  
24 the Full ANC just for that one condition.

25 MR. KADLECEK: That would be my understanding,

**NEAL R. GROSS**

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



1 yes.

2 CHAIRMAN HILL: Right. Okay, all right. Okay,  
3 all right. Okay, so you go back to the Full ANC for that one  
4 condition, to get their thoughts on that one condition, okay.

5 And, again, you'd have to go and argue in front  
6 of them again concerning the financing, okay, so that's where  
7 you would be getting your practice.

8 MR. KADLECEK: Right.

9 CHAIRMAN HILL: Okay, all right.

10 MR. KADLECEK: Yes, that's fine.

11 CHAIRMAN HILL: Okay, so then we're back to that.  
12 So then again to provide clarity, we want something from the  
13 Full ANC in terms of that one condition, okay. Okay, so --

14 MR. KADLECEK: Well, we can guarantee that we'll  
15 go back to them. I guess we can't guarantee that they will  
16 produce anything, so we're going to --

17 (Simultaneous speaking)

18 CHAIRMAN HILL: Well, they'll have an opinion one  
19 way or the other.

20 MR. KADLECEK: Yes.

21 CHAIRMAN HILL: And if they don't have an opinion  
22 then that's also an opinion.

23 MR. KADLECEK: Right.

24 CHAIRMAN HILL: But, yes, I understand. So, okay.  
25 So then all that information I would like to get at some

**NEAL R. GROSS**

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

1 point in time as well as you having an opportunity to go to  
2 the ANC, and so I'm trying to find a date for that, and then  
3 we'd give the opposition seven days to respond after that,  
4 and then we'd come back here for a continued hearing just to  
5 hear on the items that we discussed. And so, Mr. Moy, are  
6 you following all of that?

7 MR. MOY: Yes, I am. Let me work backwards. I  
8 think --

9 (Simultaneous speaking)

10 MR. UQDAH: Mr. Chair?

11 CHAIRMAN HILL: Just give me one second.

12 MR. UQDAH: The ANC doesn't meet until --

13 CHAIRMAN HILL: Oh.

14 MR. UQDAH: The ANC won't meet again until the  
15 13th of December if that helps.

16 CHAIRMAN HILL: Okay. Sure, that actually did  
17 help, thank you.

18 CHAIRMAN HOOD: Let me ask you, can you make sure  
19 they get on the agenda so being a former ANC Commissioner,  
20 you can make sure that they are heard.

21 MR. UQDAH: Yes, sir.

22 CHAIRMAN HOOD: Okay. That's important.

23 MR. UQDAH: I'll tell them you sent me.

24 (Laughter)

25 CHAIRMAN HOOD: They won't get on the agenda.

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: Okay, so hopefully you're on the  
2 agenda for the 13th. Take a second.

3 MR. MOY: Okay.

4 CHAIRMAN HILL: I'm listening to you, Mr. Moy.

5 MR. MOY: No, no. Okay. I was going to add the  
6 next time Mr. Hood is back I heard you say this is a  
7 continued hearing.

8 CHAIRMAN HILL: Yes.

9 MR. MOY: So Mr. Hood is back on December 20th.

10 CHAIRMAN HILL: Okay.

11 MR. MOY: Okay, so if the ANC meets on the 13th --

12 CHAIRMAN HILL: The 13th.

13 MR. MOY: And I would imagine, or not, maybe the  
14 Applicant might want to respond to that.

15 CHAIRMAN HILL: Yes.

16 MR. MOY: Let's say in six days, but -- so that  
17 could work, you know. So then the only other thing I would  
18 need is when the Applicant feels that they can submit their  
19 filing and then allow seven days for the parties to respond  
20 to their filing, so I'd go back to Mr. Kadlecek as to when  
21 the earliest date they can make their filing, hopefully by --

22 MR. KADLECEK: Would December 6th for our  
23 submission work?

24 MR. MOY: It could work. December 6th and then  
25 responses from the parties in a week.

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: So that's the 13th.

2 MR. MOY: Right. And then the continued hearing  
3 was when?

4 (Simultaneous speaking)

5 MR. KADLECEK: Or we can shift those a few days  
6 one way or the other.

7 MR. MOY: Yes, one way or the other.

8 MR. KADLECEK: Depending on --

9 (Simultaneous speaking)

10 MR. UQDAH: I don't know how that would work,  
11 December 6th, if the ANC is not meeting until --

12 CHAIRMAN HILL: They're going to give all their  
13 information except for the ANC stuff on the 6th.

14 MR. UQDAH: Oh, okay, I'm just asking.

15 CHAIRMAN HILL: You'll have an opportunity of a  
16 week to respond to that.

17 MR. UQDAH: Okay.

18 CHAIRMAN HILL: The ANC -- I got a calendar, too.  
19 The ANC is on the 13th, right.

20 MR. UQDAH: Right.

21 CHAIRMAN HILL: And then we'll back here on the  
22 20th.

23 MR. UQDAH: Okay.

24 CHAIRMAN HILL: So the problem is, right, you  
25 would have to get something from the ANC after the 13th and

**NEAL R. GROSS**

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

1 then the parties would have to have time to respond, but we  
2 can waive the seven days.

3           Okay. So I am just letting you know, Mr. Uqdah,  
4 we're going to waive the seven days, like because Mr. Hood  
5 is back here on the 20th, right, and he doesn't come that  
6 often, you know, so you don't want to miss your shot.

7           So, okay, so then the 6th you are going to submit  
8 all of your filings, they'll have an opportunity to respond  
9 back, Mr. Uqdah, to those filings by the 13th. You can  
10 respond earlier if you like.

11           You are going to get to the ANC meeting on the  
12 13th and then we'll get something from the ANC, hopefully,  
13 from the 13th to when we meet on the 20th, okay, or at least  
14 you could report on it then if nothing else I suppose, right.

15           And then, Mr. Uqdah, if you want to look and see  
16 if they submit anything from the ANC or if the ANC submits  
17 anything after the 13th then you can just respond right away  
18 or you'll have an opportunity to respond on the 20th because  
19 I would assume you are going to be here.

20           MR. UQDAH: Yes, sir.

21           CHAIRMAN HILL: Okay.

22           MR. KADLECEK: And I assume we would have the same  
23 opportunity to respond to the ANC afterwards?

24           CHAIRMAN HILL: Yes.

25           MR. KADLECEK: Okay. Depending on the timing?

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: Yes.

2 MR. KADLECEK: Okay.

3 CHAIRMAN HILL: And so just to make sure with OAG  
4 now, the continued hearing, we just want to hear about these  
5 issues, everything else has been taken care of. I don't have  
6 to -- We did opposition, support, ANC, it's just a continued  
7 hearing on these issues.

8 MR. COHEN: For the record, yes.

9 CHAIRMAN HILL: Okay, great, all right. Okay, do  
10 you all have any questions?

11 MR. KADLECEK: No. Thank you.

12 CHAIRMAN HILL: Well, thank you very much. This  
13 has been very --

14 (Laughter)

15 MR. UQDAH: Thank you, Chair.

16 CHAIRMAN HILL: Okay. Is the Applicant here for  
17 Appeal Number 19573? If you could raise your hand if you are  
18 here.

19 Okay, so there is someone here. Okay, so we are  
20 going to take a -- all right, we're not taking a break.  
21 Apparently we're going straight in, so, Mr. Moy, you can call  
22 that case when you get a chance.

23 MR. MOY: Okay, Mr. Chairman. So let me go back  
24 to the top of the batting order and recall the case. This  
25 is Appeal Number 19573 of Nefretiti Makenta. As the caption

**NEAL R. GROSS**

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

1 advertised, this is an appeal from the decision made on May  
2 26, 2017, by the Zoning Administrator, Department of Consumer  
3 and Regulatory Affairs, to issue Building Permit Number  
4 B1707364, amending Building Permit Number B1603868.

5 This would alter the approved third floor addition  
6 in the RF-1 Zone at premises 3616 11th Street, NW, Square  
7 2829, Lot 169.

8 As I had stated previously there are preliminary  
9 matters to this. I believe there are three. First is the  
10 Motion to Strike from the property owner on Exhibit 33,  
11 motion to Dismiss from both DCRA and the property owner under  
12 Exhibits 33 and 36, and there is a third one that came up and  
13 I can't recall off the top of my head what that is, but I  
14 think the parties at the table will refresh our memory.

15 CHAIRMAN HILL: Okay, great. Thank you, Mr. Moy.  
16 All right, if you could please introduce yourselves from my  
17 right to left.

18 MR. TONDRO: Maximilian Tondro on behalf of the  
19 Zoning Administrator and DCRA.

20 MR. LEGRANT: Matthew LeGrant, Zoning  
21 Administrator, DCRA.

22 MS. MAKENTA: Nefretiti --

23 CHAIRMAN HILL: You need to push the microphone.

24 MS. MAKENTA: Nefretiti Makenta, Appellant.

25 MS. MOLDENHAUER: Meredith Moldenhauer from the

**NEAL R. GROSS**

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

1 law firm of Cozen O'Connor here on behalf of the property  
2 owners and interveners.

3 MR. DEBEAR: Eric DeBear from Cozen O'Connor also  
4 here on behalf of the property owners and interveners.

5 MS. DIAO: Alexis Diao, property owner.

6 MR. SMITH: Graham Smith, property owner.

7 CHAIRMAN HILL: Okay. Ms. Makenta, have you been  
8 sworn in?

9 MS. MAKENTA: No.

10 CHAIRMAN HILL: Okay. If you could stand and take  
11 the oath administered by the Secretary to my left.

12 (Off microphone comment)

13 CHAIRMAN HILL: No, you can just stand. And if  
14 anybody else is here that's going to testify and missed the  
15 oath if you want to stand as well.

16 MR. MOY: Do you solemnly swear or affirm that the  
17 testimony you are about to present in this proceeding is the  
18 truth, the whole truth, and nothing but the truth?

19 (The witnesses were sworn in.)

20 MR. MOY: Thank you.

21 CHAIRMAN HILL: Okay, great. All right, okay, so  
22 there is some preliminary motions. There was the additional  
23 one that you had mentioned, Ms. Moldenhauer, could you repeat  
24 that for us again?

25 MS. MOLDENHAUER: Yes, I can, and then I am

**NEAL R. GROSS**

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



1 actually going to be having to leave just due to the timing,  
2 but my colleague, Mr. DeBear, will be making the rest of the  
3 arguments.

4 CHAIRMAN HILL: Okay.

5 MS. MOLDENHAUER: Just so that way the Board knows  
6 as I step out. I apologize. But the initial, the third  
7 preliminary motion was a Motion to Strike the filing that was  
8 submitted at 8:58 a.m. this morning.

9 CHAIRMAN HILL: And which exhibit number is that,  
10 39?

11 MS. MOLDENHAUER: I don't -- I think it was 39.

12 MR. DEBEAR: Thirty-nine.

13 CHAIRMAN HILL: And the reason to strike?

14 MR. DEBEAR: It was not filed more than three days  
15 before today's hearing as required under Subtitle Y, 302.18.

16 CHAIRMAN HILL: Okay.

17 MR. DEBEAR: And there is no Certificate of  
18 Service, I apologize.

19 CHAIRMAN HILL: Okay. Sure.

20 (Simultaneous speaking)

21 CHAIRMAN HILL: Wait, give me a second, sorry.  
22 And then there is also the other motion in terms of timing  
23 again, which was the Motion to Strike, what was that again?

24 MR. DEBEAR: The Appellant's Pre-Hearing  
25 Statement.

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: Right, okay, and that was because  
2 it came in 16 days rather than the 21?

3 MR. DEBEAR: Yes.

4 CHAIRMAN HILL: Okay. Mr. Tondro, you had a  
5 comment?

6 MR. TONDRO: My apologies. I was just going to  
7 also support the Motion to Strike, Exhibit 39, and just point  
8 out that in addition to Y, 302.18, there is also Y, 302.14,  
9 which is a revision that Appellant cannot add any new  
10 document or witness unless it is in compliance with Y, 302,  
11 which would be 18.

12 CHAIRMAN HILL: Okay. All right, Ms. Makenta, you  
13 are aware of what is being asked at this point in terms of  
14 your timeliness and why, you know, these things are coming  
15 in?

16 I'm really actually first interested in the first  
17 motion, which is to strike, because your filings came in 16  
18 days rather than 21 days, can you explain your reason for  
19 that delay? And if you would push the microphone button  
20 there.

21 MS. MAKENTA: Well, the date of the hearing is  
22 today, it's November 15th, and so that was submitted October,  
23 I believe the 11th, so the code from what I understand says  
24 that it can't be 21 days before the date of the public  
25 hearing.

**NEAL R. GROSS**

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

1           So technically because of the administrative delay  
2 and the hearing being today I did meet the 21-day deadline  
3 for the hearing because it was filed October 13th and the  
4 hearing is November 15th, so that's more than 21 days.

5           CHAIRMAN HILL: Mr. DeBear?

6           MR. DEBEAR: The Motion to Strike was filed when  
7 the hearing was less than 21 days before her filing, it then  
8 got moved. We have not withdrawn it. I would certainly  
9 still assert that she did not comply with that requirement.

10          CHAIRMAN HILL: I understand, okay. All right,  
11 so unless the Board has any other issues on that motion I am  
12 going to deny that motion and we are going to accept the  
13 documents into the record. Is the Board okay with that?

14          (No audible response)

15          CHAIRMAN HILL: Okay, so that's on a consent  
16 motion, so we're denying that Motion to Strike. The one that  
17 just came up today again, so you filed something today?

18          MS. MAKENTA: Well, that is I didn't really need  
19 to file that. That's my testimony today, so that's my speech  
20 pretty much.

21          CHAIRMAN HILL: Okay.

22          MS. MAKENTA: So it's just for review if anyone  
23 wants to review it later, but as I was pretty -- I'm not a  
24 public speaker and such --

25          (Simultaneous speaking)

**NEAL R. GROSS**

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

1           CHAIRMAN HILL: All right, Ms. Makenta, that's  
2 great. I understand.

3           MS. MAKENTA: So I have something I want to read  
4 today.

5           CHAIRMAN HILL: Okay. So it sounds like it's  
6 your testimony and I would rather not -- I agree with the  
7 regulations that have been cited in terms of why we need to  
8 strike that.

9           So I would, unless the Board has any other  
10 thoughts, I would approve the Motion to Strike that exhibit  
11 that was submitted this morning, okay.

12           All right, okay, so now we're back to the Motions  
13 to Dismiss that, Mr. Tondro, you have filed a Motion to  
14 Dismiss, and, Ms. Moldenhauer, you have also filed a Motion  
15 to Dismiss, so I don't know who went first, but, Mr. Tondro,  
16 could you explain again your Motion to Dismiss?

17           MR. TONDRO: Yes, thank you. This is within, and  
18 I think it's probably easiest just because of the laundry  
19 list of sections for Y, 302 to refer to Exhibit 36, which is  
20 DCRA's Motion to Dismiss, Page 2 where it says "Motion to  
21 Dismiss" just because it calls out the various different  
22 sections and I think that may be the most helpful.

23           The point about this was that the Zoning  
24 Commission when the new rules were adopted a year ago very  
25 clearly laid out a timeline in which various different steps

**NEAL R. GROSS**

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

1 had to be taken by the appellant to make sure that there was  
2 an opportunity for the parties to be able to respond and  
3 collect all the information.

4           And one of the things that I note in particular  
5 here is that there is a requirement that at the initial  
6 appeal all claims are stated at that particular time and  
7 evidence is provided.

8           There is an allowance for later on, no later than  
9 21 days prior to the hearing for an appellant to provide a  
10 supplemental filing. There is also a time, there is another  
11 provision that allows for an appellant to file a rebuttal up  
12 to three days prior.

13           But both of those are supplemental, the gist of  
14 the regulations that I have cited there is they have to  
15 include the full statement and the evidence for that, for the  
16 allegations of the alleged violations have to be provided in  
17 that initial appeal filing, and in this case that's just not  
18 been done.

19           So in particular I am referring to Y, 302.2,  
20 sorry, pardon me, Y, 302.12(h), which requires that all of  
21 the evidence has to be made in the initial appeal filing and  
22 I went over then in Pages 3 to 4 what we saw as the three  
23 different aspects, or three different allegations.

24           The first, which was about the penthouse, the  
25 alleged, the setback. The second one was the issue of the

**NEAL R. GROSS**

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

1 modification of consequence. The third was just a sort of,  
2 a blanket, whatever else that the Appellant could find.

3 And so what my -- We believe that at the very  
4 least the second and the third, since there was no specific  
5 provision stated, that those should be dismissed for failure  
6 to state a claim or provide any evidence.

7 We would also argue that that's the same with the  
8 first claim there, there was a section, specific section,  
9 that was alleged to be violated, but there was no evidence  
10 that was provided at the time to support that claim. So  
11 that's the gist of that motion.

12 CHAIRMAN HILL: Okay, great. Thank you. Mr.  
13 DeBear, could you explain your motion?

14 MR. DEBEAR: Yes, Chair Hill. Our motion is  
15 really along the same lines as DCRA's motion. Essentially  
16 the Appellant has failed to put forth any evidence that would  
17 contradict the Zoning Administrator's decision to permit  
18 modification to plans that are approved by the BZA and that  
19 authority derives from Subtitle A, Section 304.10, and the  
20 record is bereft of any evidence to the contrary of his  
21 authority to do that or why my clients have not met the  
22 conditions set forth in 304.10.

23 CHAIRMAN HILL: Okay, thank you. Ms. Makenta, are  
24 you aware of their Motions to Dismiss and have you read them?

25 MS. MAKENTA: I have read them.

1 CHAIRMAN HILL: And do you have any thoughts on  
2 them?

3 MS. MAKENTA: Well, I do. All of the codes that  
4 -- it's really weird here because there are three cases.  
5 There is two connected properties --

6 (Simultaneous speaking)

7 CHAIRMAN HILL: No, that's okay, that's okay.

8 MS. MAKENTA: We're all the same property. We're  
9 all the same --

10 CHAIRMAN HILL: There is one case, which is this  
11 one that is in front of us.

12 MS. MAKENTA: Well, I guess you asked me if I had  
13 a response and I do, so I don't know if you are going to let  
14 me respond or --

15 CHAIRMAN HILL: Okay, I'm sorry, go ahead.

16 MS. MAKENTA: So I am aware of them and I guess  
17 I would like to say that the case should be decided on its  
18 merits and not on the basis of technicalities, and that's  
19 what I feel was happening here. This is the third case  
20 involving --

21 (Simultaneous speaking)

22 CHAIRMAN HILL: I'm just going to stop you because  
23 I want to get to the case. So you disagree with them?

24 MS. MAKENTA: I oppose the Motion to Dismiss.

25 CHAIRMAN HILL: You think you've clearly stated

**NEAL R. GROSS**

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

1 something that we can have a discussion with today?

2 MS. MAKENTA: Definitely.

3 CHAIRMAN HILL: Okay, all right. So I would then  
4 ask the Board, I think that we are going to hold these two  
5 dismissal motions in abeyance and have the hearing and then  
6 we can come back to it later. Does that sound --

7 PARTICIPANT: Sounds good.

8 CHAIRMAN HILL: Good, okay, all right. So, Ms.  
9 Makenta, we're going to go ahead and have a hearing here for  
10 you with your case. Again, I am going to go ahead and I'll  
11 put how much time you -- Sure?

12 MS. MAKENTA: Here is the thing, the last hearing  
13 I got ten minutes and I was told that each party can have 60  
14 minutes in general, and so I do need more time today than ten  
15 minutes for my opening statement.

16 CHAIRMAN HILL: Okay. I mean I don't remember  
17 holding you to ten minutes, but that's okay.

18 MS. MAKENTA: Well -- Okay.

19 CHAIRMAN HILL: It's basically, it's an hour for  
20 the whole production, right, so it's like, you know,  
21 testimony, cross examination, questions, but I will, you  
22 know, I want you to have your time and definitely we have a  
23 lot of questions about what you are saying in terms of what  
24 the Zoning Administrator -- So your appeal is that the Zoning  
25 Administrator has made an error.

**NEAL R. GROSS**

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



1 MS. MAKENTA: Yes.

2 CHAIRMAN HILL: Okay. And the error that -- Well,  
3 I'll let you present your case, but the error again is to the  
4 modification of the permit, not to the permit, just the  
5 modification of the permit, okay.

6 So that's what we are going to be hearing. We are  
7 not rehearing any old cases. We are hearing what you are  
8 saying now is the error for your case, okay.

9 MS. MAKENTA: Yes, that's what --

10 CHAIRMAN HILL: So I will go ahead and put, you  
11 know, 30 minutes up there if you'd like, okay.

12 MS. MAKENTA: Okay.

13 CHAIRMAN HILL: And so we can go ahead and hear  
14 your case.

15 MS. MAKENTA: Okay.

16 CHAIRMAN HILL: Okay.

17 MS. MAKENTA: Thank you. So I would like to --  
18 I'm going to just read because like I said I am not a public  
19 speaker, I'm not a lawyer, I am a layperson, I am not a  
20 zoning expert, and so it's just, it would probably feel more  
21 organized if I can just do that. So I would like to just  
22 share my statement.

23 Okay. So I would like to state the Zoning  
24 Administrator erred in that they did not act in accordance  
25 with the zoning regulations, erred in that they did not act

**NEAL R. GROSS**

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

1 in accordance with the requirements of the summary order.

2 DCRA asserts that the ZA correctly determined that  
3 the side roof deck should not be subject to the penthouse  
4 setback requirements because the side deck is on the third  
5 floor and so it's not a penthouse.

6 However, I believe that the Zoning Administrator  
7 made an error in arbitrarily deciding that the side deck  
8 should not be subject to the penthouse setback requirements  
9 of Section 1502.1.

10 It is irrelevant that the side roof deck is on the  
11 newly created third floor instead of the top floor like the  
12 uppermost roof deck and it is irrelevant that it is "not a  
13 penthouse."

14 The code does not say that these required setbacks  
15 are only relevant when they are provided in conjunction with  
16 a penthouse and the items on the list under that code are  
17 subject to setbacks collectively and independently.

18 The substance of the text is important. For  
19 example, the uppermost roof deck at the intervener's property  
20 is designed to be set back on all sides per this regulation  
21 though it is "not a penthouse."

22 That roof deck is designed to be accessed from a  
23 spiral stairway in the rear yard, not from a penthouse.  
24 Indeed, in their own pre-hearing statement the Zoning  
25 Administrator confirms that "a rooftop deck must comply with

**NEAL R. GROSS**

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

1 the penthouse setback requirements," and this side rooftop  
2 deck is no exception to that rule.

3 Further, prior to filing this case the Appellant,  
4 me, reached out to a top DCRA zoning official, which pretty  
5 much is Number 2 to Mr. LeGrant, in an effort to ascertain  
6 the possibility of approval of a pergola on my roof to  
7 install my permitted solar panels due to being  
8 disenfranchised and adversely aggrieved by the intervener's  
9 10-foot popup that is now blocking my ability to install my  
10 panels directly on my roof.

11 And the Number 2 zoning official directly under  
12 the ZA responded that it would be "a trellis," which is also  
13 on the list --

14 MR. DEBEAR: I just want to object on hearsay.

15 MS. MAKENTA: -- and it would therefore be subject  
16 to the penthouse setbacks. This requirement was in spite of  
17 the fact that the pergola on my roof would have absolutely  
18 no remote association with a penthouse.

19 Not only is the setback required because the side  
20 roof deck, side deck is a roof deck, i.e. a deck on a roof,  
21 and subject to the same setbacks as the upper roof deck but  
22 because a guardrail is also required per DCMR 12-1307.1.

23 Once DCRA acknowledges that a guardrail is  
24 required per their code the guardrail is also independently  
25 required to be set back based on this same zoning code which

**NEAL R. GROSS**

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

1 states that "any guardrail on a roof shall be set back."

2           Currently the side roof deck is bound by the  
3 parapet party wall, but the parapet party wall cannot  
4 substitute as a guardrail, for a guardrail, as it was  
5 designed for fire protection purposes between the two houses,  
6 mine and theirs, and is not a guardrail.

7           Additionally, 50 percent of the parapet belongs  
8 to the adjoining neighbor, me, and the parapet is covered in  
9 flashing for water runoff or whatever purposes and is unable  
10 to be divided such that the interveners, hundreds of Airbnb  
11 guests could hang over the intervener's parapet guardrail  
12 without simultaneously trespassing onto the Appellant's  
13 parapet, it's one parapet, it's joined.

14           Further, even if the jointly-owned parapet could  
15 function as and be deemed a guardrail it's use as a guardrail  
16 at its current position would also violate Subtitle B,  
17 1502.1, as it is permanently affixed and unable to be set  
18 back.

19           If the parapet wall is transformed into a  
20 guardrail it becomes a different structure. Once any  
21 structure is placed on that roof it must be set back.  
22 Moreover, this parapet wall cannot be a guardrail because it  
23 is not level and it is too low.

24           The 307.1 requires the guardrails to be 42 inches  
25 high, but this parapet wall is not only on an angle, imagine

**NEAL R. GROSS**

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

1 leaning over an angle, following the line of the adjoining  
2 roof as it slopes back, it is also just 24 inches high at the  
3 west edge of the side roof deck and 48 inches high at the  
4 east edge of the side roof deck. Remember it has to be, the  
5 rail has to be 42 inches.

6 As such, the parapet party wall cannot meet the  
7 guardrail height requirement and the interveners are required  
8 to install a separate guardrail on their side roof deck and  
9 based on 1502.1 it must be set back at least three feet, six  
10 inches.

11 Furthermore, the Zoning Administrator has asserted  
12 that the side deck qualifies as a "balcony," which is exempt  
13 from Section C, 1502.1, as articulated by their December 22,  
14 2016, guidance.

15 However, the Zoning Administrator also is making  
16 an error here in arbitrarily electing to term the side roof  
17 deck a balcony instead of a roof deck pursuant to Subtitle  
18 B, 100.1(g), the side roof deck does not qualify as a  
19 balcony.

20 As the zoning regulations do not define balcony  
21 or roof, 101.1(g) refers the Zoning Administrator to  
22 Webster's Unabridged Dictionary for these terms. Anything  
23 that is not defined in the zoning regulations the Zoning  
24 Administrator is required to go to Webster's Unabridged  
25 Dictionary.

**NEAL R. GROSS**

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

1           This version of Webster's defines "balcony" as a  
2 "usually unroofed platform projecting from the wall of a  
3 building and usually resting on brackets." Though the side  
4 roof deck is connected to and attached to the wall of the  
5 building it is not projecting from the wall and it is not  
6 resting on brackets.

7           This version of Webster's defines "roof" as "the  
8 outside cover of a building structure, including the roofing  
9 and all the materials and construction necessary to maintain  
10 the cover upon its walls or other support, such as the cover  
11 of a house or home, the highest point or reach of something."

12           Based on the definition as per the code this is  
13 a roof deck. The same black roof membrane material currently  
14 on the third floor roof is also on the second floor side roof  
15 that is adjacent to my property.

16           And the side roof deck floor is the highest point  
17 of reach, based on the definition, of the second floor of  
18 that part of the building. DCRA states that the term "roof"  
19 would "describe the covering of the top story but not include  
20 the top story itself."

21           Yet a house can have more than one top story  
22 covering, more than one roof covering, and in this case the  
23 intervener's house has two roofs, a roof on top of a portion  
24 of the new second floor and a roof on top of a portion of the  
25 new third floor.

**NEAL R. GROSS**

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

1           The roof deck is termed a roof deck because it is  
2 on -- A roof deck is termed a roof deck because it is on a  
3 roof. In this case there are two roofs and there are two  
4 roof decks.

5           Without access it would simply be a roof. As with  
6 the upper roof deck any stairwell or ladder access would make  
7 this a roof deck. In this case the door access, there is  
8 swinging doors, double doors, onto the side roof deck that  
9 face my property and the party wall.

10           In this case -- Okay. In this case the door  
11 access onto this roof makes this a side roof deck.  
12 Otherwise, it would just be a roof, a roof, but the access  
13 makes it a rooftop deck.

14           While the ZA has the authority to guide his staff  
15 through internal unpublished memos and emails, he does not  
16 have the authority to ignore the zoning code, and that has  
17 occurred here.

18           If the ZA followed the zoning regulations in  
19 deciding whether this side roof deck was a roof deck or a  
20 balcony he would have had to refer to Webster's Unabridged  
21 Dictionary as required, yet there is nothing in the email,  
22 the ZA guidance internal email to his staff, that would make  
23 any reasonable person believe that the Zoning Administrator  
24 based his decision on or consulted the dictionary's  
25 definition in defining what would be a balcony and what would

**NEAL R. GROSS**

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

1 be a roof deck.

2           The ZA's email states that he decided that any  
3 side deck which is less than ten feet wide is a balcony, yet  
4 nowhere in the zoning code or in Webster's is ten feet  
5 referred to as a decisive factor between a balcony and a roof  
6 deck.

7           As such, to the extent that the ZA approval of the  
8 planned amendment which adversely aggrieves the Appellant was  
9 predicated on the 10-foot measurement and the ZA decision was  
10 arbitrary and capricious and it is not justly upheld by the  
11 BZA.

12           There is no provision in the zoning code that  
13 gives the ZA any authority to make arbitrary interpretations  
14 that negatively impact an adjoining owner. DCRA's attempting  
15 to establish the 10-foot guideline, establish that the 10-  
16 foot guidelines memo carries the weight of actual code.

17           It's as if they are saying it's ten feet because  
18 DCRA said it's ten feet, "because we said so," however, is  
19 not supposed to be the determining factor in the ZA being  
20 enabled to adversely aggrieve adjoining owners.

21           The ZA also furnished a diagram purportedly  
22 depicting the difference between a side balcony deck and a  
23 side roof deck, but the two images are identical. Should I  
24 like refer to exhibits, you to the exhibits as I am going  
25 through or just keep kind of finish --

**NEAL R. GROSS**

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



1 (Simultaneous speaking)

2 MS. MAKENTA: Can I do that at the end?

3 CHAIRMAN HILL: Sure, you can refer to whatever  
4 you want whenever you want to.

5 MS. MAKENTA: Okay. Maybe it will be easier at  
6 the end.

7 CHAIRMAN HILL: Okay.

8 MS. MAKENTA: Okay.

9 CHAIRMAN HILL: It's your 30 minutes.

10 MS. MAKENTA: Okay. Yes, so -- Where was I?  
11 Okay, so the two images are identical. Moreover, the ZA  
12 illustration of the balcony versus the roof deck does not  
13 depict at all the context of this case.

14 The diagram provided by the ZA shows two detached  
15 houses, not two attached rowhouses. Even further, it does  
16 not illustrate attached rowhouses with the architectural  
17 feature of adjacent windows inside a window well of a  
18 neighbor's property, as are on mine and which form the key  
19 basis of concern here.

20 The interveners' erroneously approved north side  
21 deck on their second floor roof overlooks 11 south side  
22 windows at my property, including windows in bedrooms and  
23 bathrooms, which are not at risk and were built with the  
24 property more than 100 years ago, and there are two  
25 additional adjoining rowhouses north of mine which also have

**NEAL R. GROSS**

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

1 these windows inside the window wells.

2 As the result of the ZA approval privacy at my  
3 property, which I have owned for more than 15 years, and  
4 which I will own into the foreseeable future, is unduly  
5 compromised and negatively impacted.

6 Further, my access to light and air are also  
7 compromised as the presence of this side roof deck at the  
8 edge of the property line with no required setback will  
9 effectively turn my precious windows into walls due to the  
10 impact of the loss of privacy, so as in closing all, you're  
11 going to close the windows because people can see in.

12 I ask you to -- Well, I am going to come back to  
13 that. Okay. No reasonable, unbiased person can deduce that  
14 the ZA internal memo is equitably applied in this case. In  
15 terming this side roof deck as a balcony the ZA has  
16 overstepped its authority and violated zoning regulations.  
17 As such, the BZA is supposed to rescind this arbitrary and  
18 capricious ZA approval.

19 The ZA decision to term the immediately adjacent  
20 deck on the second floor roof a balcony instead of a roof  
21 deck and thereby exempted from the required setbacks is major  
22 enough due to its adjacency that the BZA and the Office of  
23 Planning is supposed to require that it be broadly published  
24 and subjected to sufficient broad, public scrutiny regarding  
25 its impacts prior to actual adoption.

**NEAL R. GROSS**

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

1           The ZA guidance should be rejected by the BZA in  
2 this case as the side roof deck is properly termed a side  
3 roof deck, not a balcony. DCRA's third assertion is that  
4 they correctly approved the revised permit as the revision  
5 did not depart from the plans approved by the Board's  
6 December 28, 2016, order in the special exception  
7 application.

8           However, the ZA did not act in accordance with  
9 this BZA summary order as required. The original order  
10 states that "it is, therefore, ordered that this application  
11 is hereby granted," this is all a quote, "granted and  
12 pursuant to Subtitle Y, 604.10, subject to the approved plans  
13 at Exhibit 66."

14           Yet on April 20, 2017, the Applicants filed  
15 revised drawings changing the envelope of the third floor  
16 addition and cutting a 7-foot wide, 7-foot deep section into  
17 the center of the addition which is visible from the street.

18           It is a blatant falsehood that the revision "did  
19 not depart from the plans approved by the Board's order," as  
20 DCRA states. To advance this fraudulent statement DCRA leans  
21 on a typo in the summary order.

22           DCRA writes that "the Board's summary order  
23 approved the special exception relief requested subject to  
24 the approved plans at Exhibit 66. This Exhibit 66 only  
25 showed renderings."

**NEAL R. GROSS**

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

1           They write feigning ignorance and of and/or  
2 shadily attempting to ignore the most substantive part of the  
3 requirement in the order "subject to the approved plans."  
4 Does DCRA not know what "approved plans" are? Certainly they  
5 know.

6           DCRA knew that the BZA intended by "subject to the  
7 approved plans," what the BZA intended, I'm sorry, and they  
8 know that those architectural plans are at Exhibit 8, not at  
9 Exhibit 66.

10           They know that "renderings," i.e. partial  
11 sketches, were not intended to substitute for the "approved  
12 plans" in this highly technical space before the BZA, yet on  
13 the basis of the typo "66" DCRA advances the false claim that  
14 the revision did not depart from the plans approved by the  
15 Board's order.

16           Anyone with eyes can see that the revision departs  
17 from the plans approved under the special exception  
18 application. DCRA should be ashamed of themselves for  
19 repeating this disingenuous argument first made by the  
20 intervener's counsel in Case 19510.

21           One wonders what is motivating DCRA in a manner  
22 that arose the faith that the public places in them to care  
23 for us all, not just the elite few with the million dollar  
24 renovation loan, not just the elite few who can afford to  
25 splurge on not just one attorney, but two, including a recent

**NEAL R. GROSS**

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

1 former BZA Chairperson, while consistently misrepresenting  
2 themselves to the BZA as financially fragile.

3 Will the BZA continue to give DCRA carte blanche  
4 in their bend over backwards effort to cover the interveners  
5 dispute them fraudulently obtaining their first permit and  
6 despite DCRA's erroneous release of the revised permit due  
7 to the fraud perpetrated by the interveners?

8 Will the BZA support DCRA in usurping BZA  
9 authority for the perpetual benefit of the interveners who  
10 acted in bad faith to secure their original permit and to the  
11 perpetual detriment of the pro se Appellant and her property  
12 rights? Can the BZA please correct the typo in its summary  
13 order changing "Exhibit 66" to "Exhibit 8?"

14 DCRA finally admitted in April 2016 that they  
15 erred in approving and releasing the original permit and  
16 DCRA, the ZA certainly erred in approving the revised permit  
17 in May 2017 because in addition to the other reasons the  
18 revision did indeed depart from the "approved plans" and the  
19 changes were not sanctioned by or ordered by the BZA as  
20 required.

21 Okay, this is my last point. DCRA asserts that  
22 the permit holder, interveners, requested ZA approval for a  
23 modification from Board-approved plans allowed under Section  
24 A, 304.10, which the ZA granted after review.

25 However, the ZA was not allowed to approve the

**NEAL R. GROSS**

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

1 revised plan based on Subtitle A, 304.10. At least three  
2 required criteria in that section were not met prior to ZA  
3 approval, and so in approving the revision under that section  
4 the ZA also erred.

5 The code states that the ZA may only approve a  
6 modification to approve plans if it does not violate a  
7 condition of the order. Here the approved plans were the  
8 condition that the ZA violated.

9 The BZA wrote in the order, I repeat, "it is  
10 therefore," caps and bold, "ordered that this application is  
11 hereby granted and pursuant to Subtitle Y, 604.10, and  
12 subject to the approved plans."

13 Though relatively few words on the order are  
14 emphasized this sentence is. Webster's Unabridged Dictionary  
15 defines "violate" as to "interfere with." Here the ZA  
16 obviously interfered with a condition of in the order, one,  
17 that the "BZA," typed in all caps and bold print.

18 As previously noted Section 604.10 states that an  
19 application shall be required to carry out the construction,  
20 renovation, or alteration only in accordance with the plans  
21 approved by the Board unless the Board orders otherwise.

22 As such, the ZA had no authority to issue zoning  
23 approval with the change building envelope without BZA  
24 approval and a second BZA order. Further, Section 304.10  
25 states that the modification cannot create any need for new

**NEAL R. GROSS**

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

1 relief.

2           But not only did this ZA violate a pivotal  
3 condition in the order but it also created a need for new  
4 relief for the adversely aggrieved adjoining owner, myself,  
5 due to the ZA's refusal to enforce the required setback and  
6 guardrail and due to the invasion of privacy caused by the  
7 doorway and walkway to the adjacent owner/Appellant's roof  
8 and interior windows.

9           Section 304.10 states that the building permits  
10 that are authorized by an order of the Board of Zoning  
11 Adjustment the Zoning Administrator following receipt of a  
12 request made pursuant to Subtitle 304.10 is authorized to  
13 permit modifications to approve plans in addition to those  
14 modifications specifically authorized pursuant to flexibility  
15 granted by the order if the ZA determines that the proposed  
16 modifications are consistent with the intent of the Board of  
17 Zoning Adjustment and the modifications would not violate any  
18 condition of the approval included in the order or create any  
19 need for new relief.

20           Though the ZA may have had some discretionary  
21 right to determine if the proposed modifications were  
22 consistent with the intent of the BZA the second half of this  
23 section of Subtitle 304.10 is not based on ZA discretion and  
24 as such it says "and modifications would not," separate and  
25 apart from the ZA determination that they would not.

**NEAL R. GROSS**

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

1           As such the ZA had no authority to use discretion  
2 in determining if the modifications "would not violate any  
3 condition of approval" and "would not create any need for new  
4 relief."

5           The ZA also violated 304.10's required timing.  
6 This section states that ZA authorization to permit  
7 modification can occur "following receipt of a request," yet  
8 the amended plan was approved by the ZA before, not  
9 following, the receipt of the Applicant's request.

10           The ZA approved the revised plan May 2, 2017, the  
11 ZA review approval, yet the Applicant's did not submit an  
12 application for the request until June 30, 2017, two months  
13 later.

14           The ZA usurped the authority of the BZA and did  
15 so not even on the basis of a request, which was required to  
16 be in writing per 304.11, and the writing did not occur until  
17 June 30th.

18           Even within his discretionary power the ZA could  
19 not have fairly concluded that this affront to a neighbor's  
20 privacy upholds the intent of the BZA. The intent of the BZA  
21 is to protect and enforce rights of adjacency.

22           Throughout the zoning code numerous titles state  
23 some version of the following as off limits, can  
24 substantially have adverse effect on the use or enjoyment of  
25 any abutting or adjacent dwelling or property, and

**NEAL R. GROSS**

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



1 particularly the light and air available to neighboring  
2 properties shall not be unduly affected.

3           The privacy of use and enjoyment of neighboring  
4 properties shall not be unduly compromised. The applicant  
5 shall use graphical representation, such as plans,  
6 photographs, elevations, sufficient to represent the  
7 relationship of the conversion.

8           The BZA may require special treatment in the way  
9 of design, screening, et cetera, for the protection of  
10 adjacent or nearby properties. Subtitle 304.3 further states  
11 that the ZA shall consider the following issues in  
12 determining whether any deviation will impair the purpose of  
13 the regulations, and that's pretty much the same thing as  
14 what I have just listed.

15           ZA discretion does not allow them to flout the  
16 intent and purpose of the BZA, yet in approving the side roof  
17 deck with the doorway which it knew would adversely aggrieve  
18 and deprive the neighbor of the privacy of use and enjoyment  
19 of her property and as a result also deprive her of the light  
20 and air available to her, the ZA did just that.

21           For all of the above reasons the ZA erred in  
22 issuing zoning approval under 304.10 and effecting the  
23 release of the second permit. Pursuant to Section 304.13 the  
24 May 2007 zoning approval is clearly supposed to be overturned  
25 by the BZA.

1           The modification proposed to the BZA approved  
2 plans "cannot be approved by the ZA pursuant to Subtitle  
3 304.10." As such, the zoning regulations demand that the  
4 interveners return to the BZA with the appropriate  
5 application and due to the scope of the issues at hand only  
6 a modification of significance or a special exception  
7 application, which can give the proper weight to the relative  
8 impact of the side roof deck to rights of adjacency, privacy,  
9 light, and air, as appropriate.

10           Lastly, if the modification had been allowed to  
11 take its due course by way of special exception application  
12 before the Board I would have had an opportunity to  
13 articulate my concerns about its impact on the use and  
14 privacy of my property which the administrative approval  
15 deprived me of.

16           But because DCRA, which admitted that it made an  
17 error in releasing the permit, the initial permit, refused  
18 to revoke the permit while admitting that they made the  
19 error, I was never given that opportunity.

20           By granting the modification as a revised permit  
21 the interveners and the ZA have by their own action inserted  
22 discussions about the original permit and the revised permit  
23 is inextricably tied to the original building permit.

24           The Office of Planning or the ANC have not been  
25 compelled to make a statement regarding the impact of the

**NEAL R. GROSS**

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

1 third floor side roof deck. The Office of Planning does not  
2 get involved in appeals at all.

3 And the BZA has never been allowed to properly  
4 consider the revised design that is related to an order out  
5 of a special exception. As the BZA is the ultimate  
6 interpreter of the regulations and as this revision comes out  
7 of a special exception application adequate weight to the  
8 revision by all stakeholders is paramount.

9 And that is my statement. So I guess I should now  
10 refer to some of the exhibits that I was speaking of.

11 CHAIRMAN HILL: Sure.

12 MS. MAKENTA: Okay. So I have my exhibit list,  
13 or was there something other -- What is my time?

14 CHAIRMAN HILL: Uh --

15 MS. MAKENTA: Oh, it's --

16 CHAIRMAN HILL: It's over there, yes.

17 MS. MAKENTA: Oh, wow. Okay, so maybe I can refer  
18 to those on his rebuttal or something --

19 CHAIRMAN HILL: I mean it's everything that you  
20 have into the record, correct?

21 MS. MAKENTA: Yes, it's both of -- they have  
22 exhibits in the record as well that apply.

23 CHAIRMAN HILL: Okay.

24 MS. MAKENTA: So I am using their exhibits as  
25 well.

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: Okay. So what is it that you  
2 wanted to do, I'm sorry, I don't understand?

3 MS. MAKENTA: I was going to refer to some of the  
4 things I was saying, if there was any kind of visual, I mean  
5 I, just --

6 (Simultaneous speaking)

7 CHAIRMAN HILL: Yes. No, I think we understand.

8 MS. MAKENTA: -- challenge in visualizing anything  
9 that I was explaining I was going to kind of point out some  
10 exhibits, but I don't have to do that.

11 CHAIRMAN HILL: Okay. Well, I think we can ask  
12 some questions of you and as we go through this if we have  
13 some questions about what you have stated and pointing out  
14 in the record where those exhibits are we can ask you at that  
15 time as well, okay.

16 All right, Mr. Tondro, do you have any cross  
17 questions?

18 MR. TONDRO: Yes, thank you, Mr. Chair. First of  
19 all, the requirement for a guardrail, could you say where  
20 that was again? You brought up in the very beginning that  
21 there was a requirement for a guardrail?

22 MS. MAKENTA: Right. That's the DCMR 12, the DCMR  
23 12, yes, 307.

24 MR. TONDRO: And DCMR 12 is otherwise known as the  
25 construction codes, I think?

**NEAL R. GROSS**

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

1 MS. MAKENTA: Correct, but that is referred to  
2 numerous times in the zoning, in Title 11, the guardrail and  
3 handrail.

4 MR. TONDRO: I -- And you said it 307, is that  
5 right?

6 MS. MAKENTA: 307.1.

7 MR. TONDRO: The problem that I am having is I  
8 have pulled up the building code, the District building code,  
9 which is 12(a), there is no 12 alone. The current District  
10 Building Code is 12(a), DCMR 307.1, it's within the Use and  
11 Occupancy classification, that's what Chapter 3 is, which  
12 deals with High Hazard Group H, so I don't think it's  
13 applicable.

14 MS. MAKENTA: It says "a balcony/deck shall have  
15 guards, handrails above the walking surfaces."

16 MR. TONDRO: I understand that, but my question  
17 is if we can't understand the full context of when that is  
18 required by having a correct citation, so is that the only  
19 citation you know?

20 MS. MAKENTA: So are you saying that a guardrail  
21 isn't required for a deck or a balcony?

22 MR. TONDRO: I do not know -- I do not know nor  
23 do I purport to, and this is the question, I am the one  
24 asking the question, what I am trying to understand is is  
25 that, now that I have indicated to you that I don't think

**NEAL R. GROSS**

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

1 that's the correct reference do you have another reference  
2 or --

3 MS. MAKENTA: I have one reference, 307, it says  
4 "handrails and guardrails," every exterior, and this is  
5 another like the penthouse where it --

6 (Simultaneous speaking)

7 CHAIRMAN HILL: Wait a minute, just hold on.

8 MS. MAKENTA: Oh, I'm sorry.

9 CHAIRMAN HILL: That's all right. Let him go one  
10 at a time. So your question again, Mr. Tondro, we're trying  
11 to figure out where the citation was?

12 MR. TONDRO: Right, and that was the extent of my  
13 question is trying to understand the citation so that I can  
14 understand the context and whether or not it's applicable in  
15 this particular circumstance.

16 CHAIRMAN HILL: Okay. And you are unclear as to  
17 whether it is applicable?

18 MR. TONDRO: Right. And I wanted to call  
19 Appellant's attention to the fact that at least when I just  
20 looked on, following up her reference, that that doesn't seem  
21 to be correct --

22 (Simultaneous speaking)

23 CHAIRMAN HILL: You do not believe --

24 MR. TONDRO: I just wanted to give her the  
25 opportunity --

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: No, that's okay.

2 MR. TONDRO: -- if she has another, if she can  
3 respond to --

4 MS. MAKENTA: I have --

5 CHAIRMAN HILL: Okay.

6 MR. TONDRO: -- that's all.

7 CHAIRMAN HILL: Sure.

8 MS. MAKENTA: I have the code copied and pasted  
9 here. The title is Guardrails and Handrails and it's 307,  
10 307.1, and it starts with general and it refers to flights  
11 of stairs, it refers to balconies, porches, decks, ramps,  
12 it's kind of like the penthouse list where even though it's  
13 "not a penthouse" it's under that section, it independently  
14 and collectively governs a balcony, a deck, and so that's the  
15 handrail/guardrail code of D.C. related to all of the, I  
16 mean, you know.

17 Yes, so that's the code I have. I'm not sure what  
18 section it's under, but I'm sure it's applicable.

19 MR. TONDRO: Just -- Well, okay.

20 MS. MAKENTA: Except that it's 307 -- Oh, do you  
21 mean like subtitle? No, that's not a subtitle, right?

22 MR. TONDRO: What I am trying to understand is  
23 there may be a requirement. Let's just say, just so -- I'm  
24 just -- With your patience and I just want to be clear --

25 CHAIRMAN HILL: Yes, sure, all right.

**NEAL R. GROSS**

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

1 MR. TONDRO: You know, there may be a circumstance  
2 if you have a balcony that is more than 25 feet high up in  
3 the air that projects out 30 you have to have guardrails.  
4 If it's a patio that is at roof level, that is at the floor  
5 level and there is no elevation change you may not need a  
6 guardrail.

7 So for us to understand the applicability of the  
8 section you are citing I just need to understand that  
9 context. So I am just -- The problem I kind of have here is  
10 that the reference you provide, which you I believe imbue  
11 with certain authority because you site the code reference  
12 I don't think it exists at least according to the reference  
13 you have.

14 So if you have something we could then work with  
15 that but until we have the specific reference we can't  
16 understand to be able to determine whether in fact it  
17 actually applies in this case.

18 MS. MAKENTA: When you say "the specific  
19 reference," DCMR 12A-307.1 is not specific enough?

20 MR. TONDRO: It is, but that's inaccurate, because  
21 the 12A, Chapter 3, which is Uses of an Occupancy  
22 Classification, and specifically 307 deals with high hazard  
23 or H Group uses.

24 (Simultaneous speaking)

25 CHAIRMAN HILL: Okay, so you think it's not

**NEAL R. GROSS**

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



1 applicable?

2 MR. TONDRO: As I am seeing I don't see a  
3 reference to a section that would be applicable.

4 CHAIRMAN HILL: Okay.

5 MR. TONDRO: So I just want to ask --

6 CHAIRMAN HILL: Okay, that's fine, so he asked you  
7 a question --

8 (Simultaneous speaking)

9 CHAIRMAN HILL: He asked you question, you  
10 answered the question, okay.

11 MR. TONDRO: Okay.

12 MS. MAKENTA: Can I read --

13 CHAIRMAN HILL: Sure.

14 MS. MAKENTA: -- the code that I am referring to?

15 CHAIRMAN HILL: He's asked you a question. I  
16 thought you just read the code that you were referring to,  
17 and he's saying it's not applicable.

18 MS. MAKENTA: But I believe he is not correct.

19 CHAIRMAN HILL: I understand. I understand you  
20 believe that.

21 MS. MAKENTA: It's only handrail and guardrail --

22 (Simultaneous speaking)

23 CHAIRMAN HILL: So, that's okay, he's just asking  
24 the questions and you can have your opinion, but he thinks  
25 that it's not applicable. And so, Mr. Tondro, your next

**NEAL R. GROSS**

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

1 question?

2 MR. TONDRO: Right. Thank you. I just had I  
3 think --

4 MS. MAKENTA: He thinks it's not applicable,  
5 that's the key.

6 MR. TONDRO: One question --

7 CHAIRMAN HILL: All right, okay.

8 MR. TONDRO: I'm asking one final question, which  
9 is in terms of the context of your being concerned about the  
10 windows and the light and so forth coming in and having to  
11 wall it in, do you currently live at the property?

12 MS. MAKENTA: No, but I own it, and --

13 MR. TONDRO: Have you lived at the property?

14 MS. MAKENTA: Yes, I have.

15 MR. TONDRO: When, most recently, if you don't  
16 mind me asking?

17 MS. MAKENTA: That's irrelevant.

18 MR. TONDRO: Okay.

19 MS. MAKENTA: I have to protect my property as the  
20 owner of the property.

21 MR. TONDRO: Thank you.

22 CHAIRMAN HILL: He is speaking to the light and  
23 air issue I guess, okay, so is that --

24 MS. MAKENTA: I have to protect my property as the  
25 owner of the property.

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: Okay, do you have anything else?

2 MS. MAKENTA: They don't live at their property.

3 CHAIRMAN HILL: No, this --

4 MS. MAKENTA: They haven't lived there for --

5 (Simultaneous speaking)

6 CHAIRMAN HILL: Excuse me, excuse me. All right.

7 MS. MAKENTA: Sorry.

8 CHAIRMAN HILL: We are not going to do this.

9 MS. MAKENTA: Sorry.

10 CHAIRMAN HILL: Okay. I have to get through this  
11 and we're going to get through this. Please turn off you  
12 microphone. All right. Okay, do you have any more  
13 questions, Mr. Tondro?

14 MR. TONDRO: No. Thank you.

15 CHAIRMAN HILL: All right. Do you have any cross  
16 questions specifically to the testimony?

17 MR. DEBEAR: I do. Are there existing windows on  
18 your first and second floors facing the intervener's  
19 property?

20 MS. MAKENTA: Yes.

21 CHAIRMAN HILL: You can turn on your microphone  
22 to answer the question.

23 MS. MAKENTA: Yes.

24 MR. DEBEAR: And can you look out of those windows  
25 directly into existing windows on the intervener's property?

**NEAL R. GROSS**

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

1 MS. MAKENTA: Not really. There is like a high  
2 window --

3 CHAIRMAN HILL: Your question, Mr. DeBear, is why?

4 MR. DEBEAR: Why is that my question?

5 CHAIRMAN HILL: Yes.

6 MR. DEBEAR: Because there is no existing  
7 expectation of privacy. There are existing windows that  
8 intervener's can look directly into the Appellant's property  
9 and that has not changed at all either by the BZA, the  
10 original BZA approval, or this modification.

11 CHAIRMAN HILL: Okay.

12 MR. DEBEAR: And I do have photographic evidence  
13 of that.

14 CHAIRMAN HILL: Okay. If you would like to submit  
15 that into the record.

16 MR. DEBEAR: I would.

17 CHAIRMAN HILL: Okay.

18 MR. DEBEAR: Ms. Makenta, looking at those  
19 pictures is that an accurate representation of the existing  
20 condition at the property?

21 MS. MAKENTA: I believe these are windows on my  
22 side not their side, correct? There are basically, there are  
23 about five windows on my side. There is a window at the top  
24 that's used for A/C or whatever. Like on my side there is --

25 CHAIRMAN HILL: Okay, Mr. DeBear, I understand

**NEAL R. GROSS**

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

1 your question.

2 MR. DEBEAR: Okay.

3 CHAIRMAN HILL: So your next question?

4 MR. DEBEAR: That's it.

5 CHAIRMAN HILL: Okay, all right. Okay, Mr.  
6 Tondro, we're going to turn to you when you have a moment  
7 here and go ahead and give your presentation. There was a  
8 lot of testimony, there was a lot of different points that  
9 were brought up, but I turn to you now to hear your  
10 presentation.

11 MR. TONDRO: Okay. Yes, good afternoon, Chairman  
12 Hill, Members of the Board, Chairman Hood, good afternoon.  
13 So I think first of all I would like to just remind everybody  
14 as I am sorry if I keep on doing this every time I come, but  
15 that the Appellant in this case has the burden of proof under  
16 Subtitle X, 1101.2. At least I am consistent on that.

17 Then in terms of moving forward I think we can  
18 basically agree that as I understand it that two broad  
19 categories of allegations that are raised then by the  
20 Appellant.

21 First is the issue of whether or not the side deck  
22 should even be allowed, whether it's in compliance with the  
23 zoning regulations, and second of all is the issue of the  
24 compliance with the BZA plans.

25 I think in this case, if you will bear with me I

**NEAL R. GROSS**

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

1 think I would like to sort of deal with the BZA, the issue  
2 with the BZA plans first, and then we can go to the merits.

3           As I stated in my pre-hearing statement at Exhibit  
4 36 on the record the Zoning Administrator made the decision  
5 in reviewing the proposed revision that it did not require  
6 a modification and that was because, again, the Board Order  
7 was very specific that it refer to the plans at Exhibit 66,  
8 and you can see I supplied that Exhibit 66 to the original  
9 application and that's filed then as Exhibit 36E on the  
10 record here, so you can see it if you want to.

11           I believe that as we understood it there was a  
12 reason that the Board referred to these particular plans and  
13 elevations, this is our understanding, but that that was  
14 because there had been a change in the application in the  
15 relief that was requested and that these were, therefore, the  
16 updated plans and that was the reason why the Board referred  
17 to them.

18           But honestly the Zoning Administrator doesn't go  
19 into interpreting what the Board's intent is, but that's the  
20 reason why we have orders. The order, it was a reasonable  
21 statement that the BZA-approved plans were subject to Exhibit  
22 66 and Exhibit 66 if you do look at that you'll see that the  
23 only elevations that are shown are the front and the rear  
24 elevations, which is page one, two, three, four, five, six,  
25 seven is the elevations, and then subsequently you can see

**NEAL R. GROSS**

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

1 on the pages afterwards a series of photo montages.

2           Again, presumably the reason why this was what was  
3 limited in being supplied and what was limited in terms of  
4 the condition of the orders because that directly related to  
5 the two relief, the relief that was specifically requested  
6 at that time which was to modify the roof turret and to raise  
7 the height of the upper story.

8           So those plans that were a condition of the order  
9 relate only to the specific area of relief so it makes sense  
10 as we understand that that was why the Board conditioned the  
11 approval to those, but it was also the letter of what the  
12 summary order said.

13           As a result the ZA just determined that since the  
14 deck here, the roof deck, did not depict, did not contradict  
15 anything that was shown on those approved plans, therefore,  
16 it was nothing that would require a modification.

17           Furthermore, it was an actual, a decrease in the  
18 actual relief that was being allowed. Nonetheless, the  
19 permit holder subsequently said out of an abundance of  
20 caution given all of the litigation that has gone on in this  
21 particular case they said that they would like to go and file  
22 for a modification.

23           So they filed for a modification, and you can see  
24 that, that modification then is Exhibit 36D on the record  
25 that I supplied, too. So you can see there this is a form

**NEAL R. GROSS**

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

1 that was created by the ZA's office specifically in response  
2 to this new requirement in the current zoning regulations and  
3 they go through all of the various different conditions that  
4 are required for A-304.10, and you can see that in that  
5 attached letter going forward through there.

6           The ZA therefore signed that because the ZA  
7 believed, approved the modification because although he  
8 believed the modification wasn't necessary, nonetheless, it  
9 still met the, it still complied even if the modification was  
10 necessary.

11           I'd just point out that I believe that in this  
12 particular case there is sort of a circuitous logic that  
13 Appellant is proposing, which is that somehow the Office of  
14 the Attorney General made an error in which plan set they  
15 were referring to.

16           Although there was an opportunity for Appellant  
17 to file a motion to reconsider if she believed that this was  
18 an error, the summary order was an error, that was never  
19 done. Appellant has availed herself of every other possible  
20 opportunity to litigate this case.

21           So I think in some sense that opportunity, if  
22 there was an error, you know, we live in the world in which  
23 we live in which is the world of the order that was, what was  
24 presented.

25           So I think from DCRA's perspective, and the ZA

**NEAL R. GROSS**

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



1 acted correctly in first of all saying there was no  
2 modification required to allow for this roof deck and, second  
3 of all, that if there was one required that he did that  
4 correctly and, therefore, there was no need to go back to the  
5 Board.

6           Going to the second issue of the first issue,  
7 which is sort of the merits of the deck. Here we have I  
8 think sort of a set of different concepts. As I stated in  
9 my brief first of all we have a situation where there is a  
10 question in terms of the penthouse requirements, right, the  
11 penthouse setback, the penthouse requirements of Subtitle C-  
12 1502, apply to penthouses, those are the areas I referred to  
13 in my pre-hearing statement.

14           Penthouses are seen as additional to the building  
15 envelope that is permitted, so three stories are permitted,  
16 the penthouse is there for that area above that third story.  
17 The roof deck is part of the third story, this particular --  
18 I should be more precise, the side deck, just to be clear,  
19 the side deck is a cutout of the third story within the  
20 permitted envelope and, therefore, we would assert it does  
21 not fall subject to the penthouse regulations which are  
22 relying on that area outside of those three stories.

23           However, there is an alternative if that Board  
24 does not agree with and then it is a roof deck that is where  
25 then the ZA had made that determination in response to the

**NEAL R. GROSS**

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

1 new regulations that came and these new provisions.

2           With the December email that is included as  
3 Exhibit 36C on the record with the illustrations that you can  
4 see behind the ZA was forced to deal with a situation or  
5 trying to understand how does this actually apply, the new  
6 requirements of the setback, particularly to guardrails, and  
7 he'll provide testimony as to the background of that, but  
8 just that's where that came in.

9           So as a result in this particular case the ZA  
10 decided that a 10-foot setback, if you have a deck that is  
11 less than ten feet deep then you shouldn't be, then it is  
12 effectively as it were a balcony, for lack of a better word.

13           Balcony was not used in the zoning regulations.  
14 The ZA did not look to Webster's because he was not looking  
15 to interpret a rule of the zoning regulations. He called it  
16 a balcony just for interpretation purposes to describe it  
17 and, therefore, within those small sort of areas there was  
18 no need to have a setback.

19           Particularly you can imagine, and, again, the ZA  
20 will provide testimony, but you can imagine the situation  
21 where you see a building that has a whole series of balconies  
22 that are projecting out, if you're going to make each of  
23 those balcony railings that are only three feet deep have to  
24 somehow now be setback equivalent to the height, they are  
25 required to be, what, 42 inches high usually, I think, you're

**NEAL R. GROSS**

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

1 going to have to have those railing, you have to have the  
2 balcony project out even further in order to allow the  
3 guardrail to come up and that sort of seemed to be a purpose  
4 that didn't seem to make sense, but, again, the ZA can  
5 provide more background on that.

6 In terms of the Appellant's assertion about  
7 whether the guidance document should have been provided  
8 publically, this was a document that the ZA used, you can see  
9 who it was provided to, it was provided to the Office of  
10 Planning to alert them and give them an opportunity to  
11 feedback as well as to all the zoning reviewers.

12 This was an internal document. It is able to be  
13 appealed, as in precisely today, whenever it is applied to  
14 a particular permit.

15 The reason we supplied it was not to say this is  
16 a hard and fast rule, that this is the reason, you can no  
17 longer appeal it, it was rather to say there is a logic, he  
18 wasn't just willy-nilly interpreting the rule, this is the  
19 way, this is the decision, this is what he came by, and this  
20 is the reason why.

21 But, finally, I would assert I think there is also  
22 another level which is the guardrail issue which was brought  
23 up by Appellant. I had looked online to try to see if I  
24 could find that particular provision.

25 The reason I am questioning it is because the

**NEAL R. GROSS**

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

1 plans for the building permit, the revised building permit  
2 we're looking at, do not appear to require a guardrail.  
3 Those were reviewed for compliance with the building codes.

4           So if they don't require a guardrail then it  
5 wouldn't be the guardrail that it would have to be setback,  
6 at most it would be the roof decking, which is probably some  
7 six inches high, and the requirement of 1502 would require  
8 at most an equal one-to-one setback which if it's the deck  
9 that's the object that is being setback it would be the  
10 height off the roof so it would have to be setback some six  
11 inches, which is probably about the width of the parapet that  
12 we're talking about.

13           So I think under either of those three  
14 circumstances that the ZA was correct in asserting, in  
15 approving the side deck as compliant with the zoning  
16 regulations.

17           With that, I am going to turn it over to the ZA,  
18 if I may.

19           MR. LEGRANT: Thank you, Max. So specifically  
20 about the differentiation of when an upper level of a  
21 building that has multiple roofs or areas open to the sky the  
22 question becomes when do the penthouse requirements kick in.

23           The general way that I have applied the penthouse  
24 regulations is if someone builds a building to the maximum  
25 building height in terms of number of allowed stories or in

**NEAL R. GROSS**

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

1 those Districts, or the building, there is not identification  
2 of stories, just the maximum height, then as we all know the  
3 zoning regulations permit a penthouse subject to several  
4 restrictions of height, of FAR, of use, and setbacks from  
5 certain edges of the roof.

6 In a situation such as here where you have a  
7 building that has a portion of a lower level that is open to  
8 the sky the question is like, well, is that building mass  
9 next to it considered a penthouse or not.

10 And so as we struggled with that issue I came up  
11 with the December interpretation, or I codified it in the  
12 email to my staff and as Max noted shared with the Office of  
13 Planning, as to when do we differentiate a roof that then  
14 those features would be subject to the, in this case,  
15 penthouse setback requirements of C-1502 from a lesser  
16 projection or loosely termed balcony that is not really  
17 functioning as a roof adjacent to that adjacent story.

18 So the 10-foot requirement, which is sort of the  
19 middle ground of different court requirements of, we have  
20 court requirements of six feet, we have court requirements  
21 of 50 feet, I have settled on ten feet as the place where  
22 this is a balcony in which it would not make sense to apply  
23 the penthouse setback requirements to the railing or the  
24 decking because it would diminish the usability of that.

25 So that was the, this, as Exhibit 36C that sets

**NEAL R. GROSS**

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

1 forth how where is the break of, oh, you treat ten feet or  
2 more as a penthouse subject to the setbacks, less than ten  
3 feet not.

4 MR. TONDRO: And just -- And I apologize if I  
5 didn't do this earlier, but just to facilitate the  
6 discussion, again, Exhibit 36A shows what the original permit  
7 is.

8 It shows all four floors. What we are looking at  
9 is the top floor, which is the third floor roof plan on the  
10 left, and then 36B shows then the revised permit, which is  
11 at subject and I tried to highlight in red the area that is  
12 the roof deck so you can see where it is coming out.

13 And I think you can see there that there is no  
14 notation of any guardrail either in that presumably because  
15 it is immediately adjacent to another roof and there is a  
16 parapet.

17 Again, I did not -- I am not the reviewer who did  
18 the building code so I can't testify to that, but what I can  
19 say is that this permit was reviewed and determined to be  
20 compliant with the building code as is seen right here. So  
21 if there were guardrails to be provided those would have had  
22 to have been shown or should have been shown there.

23 And so I think that at most even if this side deck  
24 were to be interpreted to be subject to the penthouse rooftop  
25 setback it would be only the one-to-one based on the height

**NEAL R. GROSS**

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

1 of the roof deck off of the roof itself, which I don't have  
2 the details here, but presumably it's at most between six to  
3 ten inches probably.

4 MR. LEGRANT: And I guess I'll add that parapets  
5 are not subject to the setback requirements, the penthouse  
6 setback requirements.

7 CHAIRMAN HILL: Okay.

8 MR. TONDRO: And with that I will rest. Thank  
9 you.

10 CHAIRMAN HILL: Okay. All right, thank you, Mr.  
11 Tondro. Ms. Makenta, do you have some cross examination  
12 questions based upon the testimony that was just taken?

13 MS. MAKENTA: I do and I also have clarification  
14 questions for the Board. I don't know how I deal with that.

15 CHAIRMAN HILL: I'm sorry, you can ask -- I mean  
16 at this point of the hearing what we do is we go ahead and  
17 they have provided some testimony, if you have any, you got  
18 clarifying questions, whatever you want, to call them in  
19 terms of upon the testimony that was given if you have any  
20 cross examination questions concerning the testimony that was  
21 given.

22 MS. MAKENTA: I do, but I was wondering in terms  
23 of clarification, a process, I had a question for you all,  
24 so when do I ask that question?

25 (Simultaneous speaking)

1 CHAIRMAN HILL: Well, you can go ahead and ask  
2 your question. What's your question?

3 MS. MAKENTA: Okay. Just in terms of this Exhibit  
4 66 conversation that's on the summary order, it says "subject  
5 to approved plans at Exhibit 66."

6 CHAIRMAN HILL: Yes.

7 MS. MAKENTA: Who is responsible for the  
8 technical, you know, just confirming that approved plans  
9 equals architectural plans not renderings and those are at  
10 Exhibit 8.

11 I just don't understand what the process is of  
12 getting rid of that typo. Is that --

13 (Simultaneous speaking)

14 CHAIRMAN HILL: Sure. No, that's okay, I  
15 understand, I understand.

16 MS. MAKENTA: -- a technical amendment?

17 CHAIRMAN HILL: I understand. So we are taking  
18 testimony here concerning whether or not in your appeal the  
19 Zoning Administrator has erred.

20 You have provided a bunch of testimony, one of  
21 which is that there was a typo in terms of the exhibit. The  
22 Zoning Administrator has provided testimony that that is  
23 actually incorrect, that that actually is the correct  
24 exhibit.

25 And so we as a Board I guess will determine what

**NEAL R. GROSS**

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



1 we think of whether or not the Zoning Administrator has erred  
2 in that. So that's your process question, correct? So I  
3 have answered it, correct? We determine it.

4 MS. MAKENTA: So you determine it based on the  
5 testimony?

6 CHAIRMAN HILL: We determine it. We are taking  
7 your testimony --

8 MS. MAKENTA: So look at the order and then you  
9 know how --

10 (Simultaneous speaking)

11 MS. MAKENTA: I think I understand.

12 CHAIRMAN HILL: Well, no, that's okay. Again, you  
13 are here to, you have appealed the decision that the Zoning  
14 Administrator has given.

15 You are saying that he erred and we are taking  
16 testimony as to why or how he erred and then afterwards we  
17 are going to look at all of the testimony and determine  
18 whether or not he has erred based upon, you know, it being  
19 your case, based upon the proof that you have given. So now  
20 -- Yes, so there you go.

21 MS. MAKENTA: So and then after I cross examine  
22 him do I cross examine --

23 (Simultaneous speaking)

24 CHAIRMAN HILL: So you'll cross examine the  
25 testimony, again, the testimony that was given, so whatever

**NEAL R. GROSS**

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

1 they just now said, then the Applicant will have an  
2 opportunity, not the Applicant, the property owner will have  
3 an opportunity also to provide testimony and then you will  
4 be able to cross examine that testimony as well.

5 MS. MAKENTA: Okay. So I am --

6 (Simultaneous speaking)

7 CHAIRMAN HILL: You are asking questions of them.

8 MS. MAKENTA: Okay. So, okay, questions. What  
9 is the internal process or is there an internal process at  
10 DCRA for overturning a guidance memo or is it only through  
11 this appeal process?

12 MR. LEGRANT: Well, as my counsel noted when my  
13 office issues guidance, makes determination letters, or any  
14 decision those can be appealed, as we are here.

15 In terms of particular cases people come to me  
16 seeking guidance. I look at the zoning regulations, I  
17 interpret the zoning regulations, I would issue the guidance.  
18 If they want to challenge it I inform them they can appeal  
19 the matter and --

20 MS. MAKENTA: I am just trying to find out the  
21 vetting, what is the vetting process I guess in terms of,  
22 like is a vote taken before?

23 MR. LEGRANT: Well, no --

24 (Simultaneous speaking)

25 CHAIRMAN HILL: Wait, I'm sorry, what's your

**NEAL R. GROSS**

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

1 question again?

2 MS. MAKENTA: Like is -- I mean what is the  
3 process in terms of before you get to the conclusion of this  
4 memo? Is there -- What is the process internally at DCRA?

5 CHAIRMAN HILL: Okay.

6 MR. LEGRANT: Right. So one of my charges as  
7 Zoning Administrator is to interpret zoning regulations. I  
8 analyze the situations where the regulations are not clear,  
9 I issue determination or guidance that is appealable to the  
10 BZA.

11 MS. MAKENTA: Okay. Why is the date of the ZA  
12 approval of the revised permit two months before the required  
13 application was filed?

14 MR. LEGRANT: I know you noted the dates. I am  
15 not aware of the date, the timeline that you have put forth.  
16 I know that the modification --

17 MS. MAKENTA: I can show that it is.

18 MR. LEGRANT: -- form that I signed I signed it  
19 on July 11, 2017.

20 MS. MAKENTA: Right. And then there is an  
21 application that was dated June 30th.

22 VICE CHAIR HART: Can you speak into the mic a  
23 little bit?

24 CHAIRMAN HILL: Speak into the mic, yes.

25 MS. MAKENTA: Oh, I'm sorry. And then there is

**NEAL R. GROSS**

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

1 an application that was, a request for modification of plans  
2 approved by the BZA, that is dated June 30th, but the ZA  
3 approval was May 2nd.

4 So the question was why is the date of that ZA  
5 approval two months before the required application was  
6 filed, which 304.10 doesn't appear to allow?

7 MR. LEGRANT: Well, I don't believe the permit was  
8 issued. The permit was not issued I believe until --

9 MR. TONDRO: We can find that date.

10 MS. MAKENTA: It was issued at the end of May, but  
11 that's even, the permit was even issued a month before the  
12 application was filed. So the ZA approval was May 2nd, the  
13 permit was issued and then it was a posthumous or a belated  
14 application filed.

15 And so the question is why, how did that occur  
16 when 304.10 specifically doesn't allow that?

17 MR. TONDRO: I think it was already stated and  
18 included in the briefs that the issue was the fact that the  
19 ZA determined that the approval of the permit was based on  
20 the fact that he did not believe that there was any  
21 requirement for there to be a modification under A-304.10  
22 because the summary order referred to Exhibit 66 and Exhibit  
23 66 did not have, did not show, it showed only the Exhibit 66  
24 of the application did, which I believe is 19387, did not  
25 show any area that would be impacted by the revised permit.

**NEAL R. GROSS**

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

1 MS. MAKENTA: Okay.

2 MR. TONDRO: Nonetheless, when the permit holder  
3 subsequently came and sought to sort of adopt a belt and  
4 suspenders approach just in case they then asked if it was  
5 possible for the ZA to review and approve a modification and  
6 at that point that was when that was submitted and Mr.  
7 LeGrant then responded to that.

8 MS. MAKENTA: Okay. And so that 66 comes up  
9 again. You mentioned the 6-inch setback on this roof, side  
10 roof deck, and I am trying to understand where that is coming  
11 from.

12 The roof deck, for example, on the uppermost roof,  
13 if you look at, I'm not sure, it's the plan, it's the first  
14 page of the revised plan, A-001, it's in Tab A of the  
15 Intervener's Pre-Hearing Statement, but it is set back on all  
16 four sides by it looks like about maybe, it's look like, I'm  
17 not exactly clear how much is set back, but it's set back on  
18 all four sides and it's certainly set back by feet, not  
19 inches.

20 So that code -- Where is this six inches coming  
21 from --

22 MR. DEBEAR: Objection.

23 MS. MAKENTA: -- because that --

24 CHAIRMAN HILL: Wait, that's okay. Give me one  
25 second. Well, first of all so what are objecting to?

**NEAL R. GROSS**

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

1 MR. DEBEAR: Not in evidence.

2 MS. MAKENTA: What's not in evidence?

3 MR. DEBEAR: And she's giving -- You are giving  
4 an estimation.

5 CHAIRMAN HILL: Okay. So, Ms. Makenta, what is  
6 it that your question is again?

7 MS. MAKENTA: So the code says that the setback  
8 is a one-to-one setback.

9 CHAIRMAN HILL: In which situation?

10 MS. MAKENTA: For a roof deck or for a trellis or  
11 for a guardrail, and with regard to the guardrail situation  
12 --

13 CHAIRMAN HILL: Right, wait one second again,  
14 you're going back into your testimony.

15 MS. MAKENTA: Sorry.

16 CHAIRMAN HILL: I'm just trying to understand  
17 again the question you are asking of the Zoning Administrator  
18 based upon their testimony.

19 MS. MAKENTA: Oh.

20 CHAIRMAN HILL: And your question is what?

21 MS. MAKENTA: The question is where does the 6-  
22 inch setback, because the 1502 setback is related to the  
23 height of the guardrail or -- so, for example, I imagine the  
24 roof deck would have a guardrail, right?

25 CHAIRMAN HILL: Mr. Tondro, do you understand the

**NEAL R. GROSS**

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

1 question?

2 MS. MAKENTA: It's not just a platform and so it's

3 --

4 CHAIRMAN HILL: Can -- He's going to answer the  
5 question.

6 MS. MAKENTA: Oh.

7 MR. TONDRO: I'm sorry. Yes, I believe I  
8 understand the question, correct me if I don't. I believe  
9 the question is since the question revolves around how does  
10 if C-1502, the penthouse setback, applies, okay.

11 It establishes a one-to-one setback. In other  
12 words, the height above the roof --

13 (Simultaneous speaking)

14 CHAIRMAN HILL: But you're saying it doesn't  
15 apply?

16 MR. TONDRO: Right.

17 CHAIRMAN HILL: Right.

18 MR. TONDRO: We say it doesn't apply, but we say  
19 even if it did apply, in this case there does not appear to  
20 be any guardrails required by the building code so a  
21 guardrail would not be, the structure would have to be set  
22 back, it would be only the decking and the decking,  
23 therefore, as I stated, I don't have with me the details of  
24 how high, but it is presumably some time between six inches  
25 or maybe at most a foot above the roof.

**NEAL R. GROSS**

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

1 CHAIRMAN HILL: Okay.

2 MR. TONDRO: In other words, the surface of the  
3 deck --

4 CHAIRMAN HILL: Right, I understand.

5 MR. TONDRO: So that would have to be set back  
6 equivalent to its height above the roof, so if it's six  
7 inches it would have to be set back from the property line  
8 six inches, if it's a foot --

9 CHAIRMAN HILL: Right, if it was necessary.

10 MR. TONDRO: Right.

11 CHAIRMAN HILL: Right. Okay.

12 MS. MAKENTA: So the handrail is in actually, it's  
13 at OAH, so there is a case at OAH regarding --

14 CHAIRMAN HILL: What are you talking about?

15 MS. MAKENTA: They are talking about the handrail  
16 and whether or not it's required, that's a part of the  
17 building code. So we actually have a case at OAH --

18 CHAIRMAN HILL: That's okay. I am, again, asking  
19 your questions of the testimony that they provided, and now  
20 you're talking about something at OAH.

21 MS. MAKENTA: But I guess what I am saying is that  
22 the one-to-one setback that is required for a roof deck, for  
23 example, let's say the upper roof deck, that is based on the  
24 railing, correct, it's a distance of one of --

25 (Simultaneous speaking)

**NEAL R. GROSS**

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



1 CHAIRMAN HILL: Ms. Makenta, I'm sorry, I just  
2 don't understand your question. What is your question.

3 MS. MAKENTA: The setback is supposed to be a one-  
4 to-one setback --

5 CHAIRMAN HILL: If it were a penthouse.

6 MS. MAKENTA: -- based on the height of the  
7 railing. No.

8 No, that code is independent and collective, it's not just --  
9 it's like the guardrail code, it's independent and  
10 collective. That's the code that, you know, when you walk  
11 down the stairs here, that code, that 307 governs all of  
12 that.

13 CHAIRMAN HILL: Okay. What's your question again?

14 MS. MAKENTA: So the setback is not related to the  
15 platform of a deck. The setback is related to the height of  
16 the railing. So if this is a rooftop deck then the setback  
17 would be related to let's say they were saying the parapet  
18 wall, the height of the parapet wall, which is --

19 (Simultaneous speaking)

20 CHAIRMAN HILL: I'm just trying to understanding  
21 your question.

22 MS. MAKENTA: So let's say if the parapet wall was  
23 48 inches high, then it would have to be set back 48 inches.

24 CHAIRMAN HILL: What's your question?

25 MS. MAKENTA: So what I am saying is where in the

**NEAL R. GROSS**

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

1 code does it state that six inches, like where is that coming  
2 from, because that's not --

3 (Simultaneous speaking)

4 CHAIRMAN HILL: Okay, all right, all right, you  
5 can finish --

6 MS. MAKENTA: -- it's related to the railing?

7 CHAIRMAN HILL: You can stop. You asked the  
8 question and I'm trying to understand the question.

9 MR. TONDRO: Yes, as I think I explained the issue  
10 is it's a one-to-one setback on whatever structure is  
11 determined that has to be set back.

12 CHAIRMAN HILL: Right.

13 MR. TONDRO: Right. That's assuming that the  
14 penthouse does apply to this site.

15 CHAIRMAN HILL: Right.

16 MR. TONDRO: Right. Assuming that even if the  
17 penthouse does apply to the site --

18 (Simultaneous speaking)

19 CHAIRMAN HILL: Right, but you're saying it  
20 doesn't apply?

21 MR. TONDRO: Right, we do believe it doesn't  
22 apply.

23 CHAIRMAN HILL: Okay.

24 MR. TONDRO: But if it were to apply it's only  
25 whatever structure it is that's the tallest that --

**NEAL R. GROSS**

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

1 (Simultaneous speaking) .

2 CHAIRMAN HILL: Okay, I understand. The answer  
3 is -- you've gotten your answer now. You need to move on to  
4 your next question.

5 MS. MAKENTA: But the part that's the tallest is  
6 the parapet wall.

7 (Simultaneous speaking)

8 CHAIRMAN HILL: You need to move on to your next  
9 question.

10 MS. MAKENTA: There is no platform. Okay. Okay.  
11 Okay. I guess the question would be --

12 CHAIRMAN HILL: And about, again, how many more  
13 questions do you have?

14 MS. MAKENTA: Not many.

15 CHAIRMAN HILL: Okay.

16 MS. MAKENTA: What do I have time for? What is my  
17 time?

18 CHAIRMAN HILL: Well, the whole thing is supposed  
19 to last an hour and so we're already going way past that, but  
20 go ahead and please answer your, I mean ask your questions.

21 MS. MAKENTA: Okay. I guess --

22 CHAIRMAN HILL: We're trying to provide clarity,  
23 you know, that's what we're trying to figure out. We're not  
24 trying to re-hear your testimony. You are asking questions  
25 of the testimony that was just provided, so please ask your

**NEAL R. GROSS**

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

1 next question.

2 MS. MAKENTA: So here is the thing, here is the  
3 thing, we have a case at OAH currently --

4 CHAIRMAN HILL: No, no, no, no, what's your next  
5 question?

6 MS. MAKENTA: This is a question.

7 CHAIRMAN HILL: To them, you are asking them a  
8 question, not me.

9 MS. MAKENTA: Okay. Okay. All right, let's see.  
10 Okay, it's going to come back to this Exhibit 66 again and  
11 it's a question that's related to -- He's going to say he  
12 didn't know. This is all related to the 66.

13 So I guess until there is some deliberation on  
14 what is meant by subject to approved plans and what exhibit  
15 that is at it's going to be kind of hard to -- Okay, well  
16 he's going to --

17 (Simultaneous speaking)

18 CHAIRMAN HILL: I'm going to give you two more  
19 questions, okay.

20 MS. MAKENTA: Okay. A lot of my questions come  
21 back to -- the way they have gone about their testimony comes  
22 back to 66. One second.

23 CHAIRMAN HILL: Okay, so do you have anymore  
24 questions?

25 MS. MAKENTA: Yes. When you wrote the guidance

**NEAL R. GROSS**

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

1 email and you provided two detached houses as the images  
2 regarding -- did you contemplate rowhouses? Why doesn't that  
3 image, that diagram, show the impact of a balcony deck on the  
4 side of attached houses as opposed to detached houses and --  
5 yes.

6 MR. LEGRANT: The images were merely illustrative  
7 and the fact that this is a detached house it just helps  
8 illustrate that. There was no -- and there is privacy issues  
9 on the rear yard issue that can occur as well.

10 MS. MAKENTA: So the practical impact of that  
11 guidance wasn't necessarily fully weighed in the context of  
12 rowhouses?

13 MR. LEGRANT: Well, I would not agree with your  
14 characterization on that.

15 MS. MAKENTA: Okay.

16 CHAIRMAN HILL: Okay, what's your next question,  
17 your last question I should say?

18 (No audible answer)

19 CHAIRMAN HILL: Ms. Makenta, I'll tell you what,  
20 I'll give you one more question but we're going to keep  
21 moving on and then if you think about it and if you think  
22 what that question is we'll come back to the ZA for a last  
23 question. Okay. All right, so --

24 MR. DEBEAR: Can I ask just two very quick  
25 questions --

**NEAL R. GROSS**

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

1 (Simultaneous speaking)

2 CHAIRMAN HILL: Sure. I forgot that you had cross  
3 questions.

4 MR. DEBEAR: Yes, very quickly.

5 CHAIRMAN HILL: Yes, sure, go ahead.

6 MR. DEBEAR: To Mr. LeGrant, have you applied your  
7 determination, your interpretation, on the balcony  
8 consistently since issuing that interpretation in December?

9 MR. LEGRANT: Yes, I have.

10 MR. DEBEAR: And what authority does the Zoning  
11 Administrator have to cure mistakes that have been made by  
12 DCRA or by staff members of DCRA, just in the permitting  
13 process? Can you go back and fix mistakes that have been  
14 made previously?

15 MR. LEGRANT: Well, are you talking about mistakes  
16 in approving plans?

17 MR. DEBEAR: Or just general mistakes in  
18 application of law or approving plans, can you look at them  
19 again and say actually I have the ability to cure this and  
20 make it right?

21 MR. LEGRANT: Well, I guess I'll put it this way,  
22 if I become aware of a mistake made in approving a plan then  
23 that can be a basis for re-reviewing the application or  
24 revoking a permit. Your general question in curing problems  
25 with the regulations themselves is not my purview.

**NEAL R. GROSS**

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

1 MR. DEBEAR: That's it.

2 CHAIRMAN HILL: Okay, all right. We are going to  
3 take a quick 2-minute break before your testimony. I do have  
4 to mention, Ms. Makenta, since this is your application, I  
5 have to go catch a flight and so the Vice Chair is going to  
6 take over for me.

7 I will watch the record, I will review the record,  
8 I will be very interested to see how this goes. Okay, a 2-  
9 minute break.

10 (Whereupon, the above-entitled matter went off the  
11 record at 3:20 p.m. and resumed at 3:41 p.m.)

12 VICE CHAIR HART: Okay, we will come back to order  
13 -- and we lost our appellant. Thank you for your patience,  
14 by the way.

15 Welcome back. Okay, so we will come back to  
16 order. We are now at the Intervenor testimony. And Mr.  
17 DeBear?

18 MR. DeBEAR: Thank you, Mr. Hart -- Board Member  
19 Hart.

20 I just want to start this off by noting an  
21 objection to something the Appellant stated during her  
22 testimony, something concerning fraud. And I just want to  
23 object based on relevance and not being in evidence.

24 I think that concerned the original BZA case but  
25 I'm not certain. So I just wanted to note that for the

**NEAL R. GROSS**

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

1 record.

2 I'm going to make this short, shorter than I had  
3 intended. I think that DCRA stated most of what my clients  
4 would agree to be the basis for denying this appeal.

5 I wanted to state that this appeal concerns a  
6 revision to a building permit, as we know. Graham and Lexie  
7 changed their plans to account for a seven-foot cutout around  
8 Appellant's chimney. In the original BZA case, Graham and  
9 Lexie stated at the hearing that the addition was subject to  
10 Helen's chimney and that the assumption was Appellant would  
11 provide consent to raise her chimney.

12 The modification was made because Appellant would  
13 not consent to raise her chimney. Now, we understand that  
14 that is her decision to make but this appeal could have been  
15 avoided by allowing Graham and Lexie to raise her chimney.

16 Needless to say, Graham and Lexie agree with  
17 DCRA's arguments. I think the DCRA stated that it is their  
18 legal opinion that a request for modification, pursuant to  
19 304.10 of Subtitle A of the Zoning Regulations was not even  
20 necessary but even if it was, this was done in accordance  
21 with that provision. That provision allows someone who has  
22 obtained BZA relief to modify plans, if it meets certain  
23 criteria.

24 And Graham and Lexie's request met all of those  
25 criteria. They submitted the written request and outlined

**NEAL R. GROSS**

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



1 those criteria and why they are met. And that was submitted  
2 to the Zoning Administrator's office in accordance with that  
3 regulation.

4           The modification did not violate a condition of  
5 approval in the order. It did not increase, expand, or  
6 extend any area of relief. It did not create new relief.  
7 It did not change the principle use of the property. It did  
8 not increase the number of stories. It did not increase the  
9 gross floor area of the building. It did not increase the  
10 number of dwelling units and it did not increase the number  
11 of parking spaces. Those are the criteria under 304.10 that  
12 allows you to make this modification, which is, again, a  
13 cutout which was a direct reaction to Appellant's decision  
14 not to allow them to extend the chimney beyond their third  
15 floor addition.

16           The Appellant has raised two clear issues, I  
17 think. First, as the Zoning Administrator testified, the  
18 third floor balcony that resulted from the cutout is not a  
19 penthouse and is not subject to the penthouse setback  
20 requirements. I think we went through that in sufficient  
21 detail and I don't need to restate all of the Zoning  
22 Administrator and Counsel's testimony on that.

23           But there is an interpretation made by the Zoning  
24 Administrator that he testified to he has applied  
25 consistently to this exact type of situation. This is not

**NEAL R. GROSS**

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

1 a penthouse and there is no setback requirement.

2           The second issue is about privacy, which I believe  
3 we responded to in my question to the Appellant in that the  
4 existing condition is there is no expectation of privacy, not  
5 to mention the fact that it's not relevant to a modification  
6 under Subtitle A, 304.10. There is nothing in that  
7 regulation that says the word privacy. There is no -- it's  
8 not a special exception. It's not a modification of  
9 consequence or significance. There is nothing that requires  
10 a consideration of privacy but there is no expectation of  
11 privacy. There are windows, as reflected in the two images  
12 that I entered into evidence that are on the first and second  
13 floor of the Intervenor's property that look directly into  
14 the existing windows -- these are all existing windows -- of  
15 the Appellant. There is simply no expectation of privacy  
16 here.

17           And I will just finish by saying that I would like  
18 my clients to speak in defense of this modification but the  
19 ZA was acting under his authority, allowed this change to the  
20 plans, and this was all done in accordance with the zoning  
21 regulations and none of this was either arbitrary or  
22 capricious.

23           And now I will turn it over to Graham Smith.

24           MR. SMITH: Hi. Thank you so much for sitting  
25 through this and I know we were supposed to have a lunch

**NEAL R. GROSS**

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

1 break at some point and that's never happened. Everybody is  
2 probably pretty beat. I also want to say I appreciate the  
3 civility with which you all carry out your deliberations.

4           And it was very difficult for me to sit through,  
5 as a husband and as a father, the attacks and disparaging  
6 comments that were set forth in the Appellant's opening  
7 comments. I wish I could have responded to them at the  
8 moment but I think to cast shade on our family like that is  
9 a terrible thing. I think we are very good family. We have  
10 been a part of this neighborhood since 2003. We had 22  
11 letters of support when we wanted to do this project and zero  
12 letters of opposition.

13           And you know we have been out of the house, as we  
14 were getting ready for and doing these renovations but we  
15 look forward to moving back in there and being in our house  
16 that we've been in since '03 to raise our family and send  
17 them to D.C. public schools and continue being a part of this  
18 neighborhood.

19           So just a couple of things -- I'll just add a  
20 couple of things. You know when we originally brought this  
21 to you all, the plan was that the wall would go straight up  
22 essentially next to that light well. And that was approved  
23 by the Board as not being an undue burden on light or air  
24 into that area of the Appellant's property. It doesn't  
25 really get much light or air anyhow.

**NEAL R. GROSS**

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

1           As this modification has happened, it is actually  
2 set back several feet from there. So, as modified, it has  
3 even less impact than it would have had in the original  
4 approved plans. So it seems to me bizarre to make an  
5 argument at this point that somehow the modification imposes  
6 problems.

7           I would just double what Eric was saying about the  
8 privacy thing. As you can see in those photographs taken  
9 from our place into the Appellant's rooms, there are blinds  
10 in those windows. There are blinds because there is not an  
11 expectation of privacy. You do not put up blinds in a window  
12 where you have an expectation of privacy.

13           So you know to say that somehow somebody is going  
14 to stand on a balcony up above and look down at a severe  
15 angle and try to like look into a window that they can  
16 already see inside of and that somehow limits privacy seems  
17 to me very strange.

18           And finally, I would just say that when we  
19 originally came to you all and presented this stuff, we knew  
20 that there was this chimney issue that was still outstanding.  
21 We had a conversation about that. And you know we would have  
22 preferred certainly to amend it by building up the  
23 Appellant's chimney or by her building up her chimney, as it  
24 seemed like the DC area was asking at the time but this was  
25 certainly also part of the realm of possibilities.

**NEAL R. GROSS**

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

1           So we have done as we said we would do and make  
2 sure that we hewed to the law, to the code in terms of making  
3 sure that the chimney was not impacted or put out of  
4 compliance.

5           MS. MAKENTA:  Objection.

6           VICE CHAIR HART:  I'm sorry.  First, I understand  
7 that -- what is it that you are objecting to?

8           MS. MAKENTA:  I'm objecting to --

9           VICE CHAIR HART:  And normally it is a -- no, no,  
10 it's fine.  It's a specific thing that he -- that Mr. Smith  
11 just said.

12           MS. MAKENTA:  I guess I would call that hearsay,  
13 if something's not --

14           VICE CHAIR HART:  Call what hearsay?

15           MS. MAKENTA:  Well, he's talking about the chimney  
16 and it's not true what he's saying.  So I don't know how else  
17 --

18           VICE CHAIR HART:  He stated that they tried to get  
19 into an agreement with you, I guess as the homeowner -- just  
20 let me -- hear me out -- and that that agreement wasn't --  
21 you didn't come to an agreement.  So now they are having to  
22 do something to their property in effect to become in  
23 compliance with the regulations.

24           And so I think that that is kind of -- it's not  
25 really hearsay.  That's kind of the factual way in which we

**NEAL R. GROSS**

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

1 went about it. So, I'll let him finish and you can ask your  
2 questions. Okay?

3 MR. DeBEAR: I just want to add quickly -- I'm  
4 sorry, Graham -- that the chimney discussion is in the BZA  
5 transcript for their original application. I believe it was  
6 December 14th, I think. So, I just wanted to add that.

7 VICE CHAIR HART: That's fine. Thank you.

8 MR. SMITH: The last thing I would say is that in  
9 addition to you know the fact that we're a good family and  
10 we're trying to be part of the neighborhood, it's hard to  
11 hear the Appellant make characterizations about our financial  
12 situation, which she knows nothing about.

13 Her incredible litigiousness has been so  
14 expensive, financially and emotionally, for our family. It  
15 has been incredibly difficult to have to go in front of so  
16 many different bodies and intervene trying to just maintain  
17 our ability to like improve our house, which was a wreck  
18 before we went into this. And we are going into massive debt  
19 and we're going into debt to be able to defend our right to  
20 do this. And I don't know why she would feel like she would  
21 know anything about our situation or would try to represent  
22 that to you.

23 So thank you, again, for hearing this. I  
24 appreciate it.

25 VICE CHAIR HART: Thank you.

1 Mr. DeBear?

2 MR. DeBEAR: Nothing further.

3 VICE CHAIR HART: Okay. So now we will get into  
4 the cross-examination. Ms. Makenta, do you have questions  
5 that the Intervenor has -- questions about the testimony that  
6 the Intervenor has just provided?

7 MS. MAKENTA: Yes. You have these two images of  
8 windows. I have 11 windows on my -- on the east, west, and  
9 north side of my property. You have two pictures here.

10 How many windows do you have that face my -- on your  
11 property that face my property?

12 MR. SMITH: There's one window on each floor.

13 MS. MAKENTA: You have two windows, right? So I  
14 have 11 and you have two. So there is certainly an  
15 expectation of privacy, additionally --

16 MR. SMITH: I'm not sure why that follows.

17 MS. MAKENTA: I have two -- I have 11, you have  
18 two but that's fine --

19 VICE CHAIR HART: Let's move on to the next  
20 question, please.

21 MS. MAKENTA: Let me get through the next  
22 question.

23 And also, for example, my north side windows,  
24 because I also have two -- there is a group of five houses  
25 and we have these windows on both sides. I also have those

**NEAL R. GROSS**

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

1 same two windows that they are referring to but I can't see  
2 in my neighbors' property.

3 MR. DeBEAR: Objection; testimony. This isn't a  
4 question.

5 MS. MAKENTA: So the question is my north side  
6 windows, for example, are -- these houses originally had  
7 about ten-foot ceilings. They are about eight feet from the  
8 floor.

9 MR. SMITH: That's not true.

10 MS. MAKENTA: So --

11 VICE CHAIR HART: Let's --

12 MS. MAKENTA: So the question is how high -- not  
13 based on your renovation but the two windows that you are  
14 claiming remove my expectation of privacy in my 11 windows,  
15 somehow, how high are those -- how high were those before  
16 your rented -- before you renovated or began renovating your  
17 property? Because you moved the floors up, or you moved them  
18 down as part of your renovation.

19 VICE CHAIR HART: Ms. Makenta. Ms. Makenta, this  
20 is a really long question.

21 MS. MAKENTA: Oh.

22 VICE CHAIR HART: The question is, can they see  
23 from their property into your property right now. Is that  
24 what you're asking?

25 MS. MAKENTA: No. The question is simply before

**NEAL R. GROSS**

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



1 the renovation --

2 VICE CHAIR HART: Let's talk about --

3 MS. MAKENTA: -- were your windows eight feet high  
4 from the floor?

5 MR. SMITH: No.

6 MS. MAKENTA: From the hall?

7 VICE CHAIR HART: Okay, so the answer was no, they  
8 were not eight feet tall.

9 MS. MAKENTA: Okay. I have full-size windows.  
10 These are pictures of full-size windows. And I have 11 full-  
11 size windows. And all of my windows have blinds, regardless.  
12 So it's not true what he's saying --

13 MR. DeBEAR: Objection. This isn't a question.

14 MS. MAKENTA: -- about privacy and blinds.

15 VICE CHAIR HART: Well, the --

16 MS. MAKENTA: But the question is -- the question  
17 is -- I'm sorry. The question is, the two windows that you  
18 are referring to that are on two floors on your property,  
19 which in mine, for example, I have an air conditioner in --

20 MR. DeBEAR: Objection. I'm just waiting for a  
21 question.

22 MS. MAKENTA: Are they full-size windows?

23 MR. SMITH: I don't know what you mean by full-  
24 size. I mean they are like this big --

25 MS. MAKENTA: Okay, mine are not full-size windows

**NEAL R. GROSS**

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

1 and I assume yours are not as well.

2 MR. DeBEAR: Objection.

3 MS. MAKENTA: Correct?

4 MR. DeBEAR: I'm sorry, Chairman.

5 VICE CHAIR HART: Okay, hold on.

6 MS. MAKENTA: Well this is a full-size --

7 VICE CHAIR HART: Hold on. Excuse me. Excuse me.

8 For everybody, let's just calm down a little bit. Okay?

9 You are asking questions about the size of the  
10 windows. Is that the question that you have? Okay, are you  
11 asking if the windows in the Intervenor's property are the  
12 same size as the windows in your property. Am I correct?

13 MS. MAKENTA: Are they this size?

14 VICE CHAIR HART: Am I correct? Am I correct?

15 You are asking if they are the same size. Okay.

16 So the answer is either yes or no. Are they the  
17 same size; yes or no?

18 MR. SMITH: They're a different size than that,  
19 plenty big enough to see across the --

20 VICE CHAIR HART: Okay, that's all we need. Next  
21 question, please.

22 MS. MAKENTA: Okay. The application -- if your  
23 application had been properly brought before the BZA Board,  
24 your --

25 VICE CHAIR HART: Can I ask -- actually, when you

**NEAL R. GROSS**

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

1 are asking questions, you've stated that it was not properly  
2 brought before the BZA because you've made an assumption.

3 I would ask that you, when you are asking  
4 questions that you actually make them factual about what they  
5 have brought forward. The BZA case has already passed.

6 We are only looking at this specific issue about  
7 the --

8 MS. MAKENTA: Appeal.

9 VICE CHAIR HART: The appeal -- appealing the  
10 permit that allowed the side deck to be constructed.

11 And again, all you are focused on is the testimony  
12 that they gave. Okay.

13 MS. MAKENTA: This is related to privacy.

14 VICE CHAIR HART: But the question that you gave  
15 was a question on --

16 MS. MAKENTA: Can I finish my question?

17 VICE CHAIR HART: Because you are asking questions  
18 about an order that wasn't properly given and I am telling  
19 you that that is what you stated in your question.

20 So I'm asking you to just refrain from that.  
21 That's all. So if you can ask a question now, thanks.

22 MS. MAKENTA: I was asking about the modification  
23 application, not the special exception.

24 VICE CHAIR HART: We could have a conversation  
25 between you and I but really what we're trying to do is have

**NEAL R. GROSS**

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

1 conversation -- you are asking questions of the Intervenor  
2 at this point.

3 MS. MAKENTA: I'm sorry but my phrasing of a  
4 question may not be perfect. I'm not a lawyer.

5 VICE CHAIR HART: It's not about being perfect --

6 MS. MAKENTA: And so I would just ask that you --

7 VICE CHAIR HART: It's not about being perfect.

8 I'm just --

9 MS. MAKENTA: -- can bear with me a little bit --

10 VICE CHAIR HART: I am asking --

11 MS. MAKENTA: -- because I am trying to --

12 VICE CHAIR HART: I am asking that as you are  
13 asking questions to not to -- to make them factual.

14 MS. MAKENTA: I'm trying.

15 VICE CHAIR HART: Okay, that's it. Thank you.

16 MS. MAKENTA: Do you agree that those windows, for  
17 example that you mentioned, those two windows under -- okay  
18 -- that the expectation of privacy could have been evaluated  
19 before the BZA under the modification -- any of those  
20 modification or under the modification -- under a  
21 modification?

22 VICE CHAIR HART: What do the windows -- again,  
23 what do the windows have -- I know they brought them up but  
24 what do the windows have to do about this deck?

25 MS. MAKENTA: He's saying that there is no

**NEAL R. GROSS**

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

1 expectation of privacy.

2 VICE CHAIR HART: The deck, though.

3 MS. MAKENTA: What I'm saying is --

4 VICE CHAIR HART: That's what I'm trying to focus  
5 on, the deck.

6 MS. MAKENTA: Right. They can hang over their --  
7 the side of their deck and look into my windows.

8 VICE CHAIR HART: Okay and so we've established  
9 two things.

10 MS. MAKENTA: This is a privacy --

11 VICE CHAIR HART: Excuse me. We've established  
12 two things. One, that there are windows on both sides of the  
13 walls. There are different sizes of the windows. That there  
14 is a deck that is overseeing the court, I guess, that is  
15 created there. I think we've all established all of that.

16 MS. MAKENTA: Okay.

17 VICE CHAIR HART: So I'm not looking to ask -- I'm  
18 trying to get to the question about -- I don't think we need  
19 to know the size of the windows. We understand that there  
20 are windows. You can see out of windows.

21 MS. MAKENTA: Okay.

22 VICE CHAIR HART: So that's it. Thank you.

23 MS. MAKENTA: Okay. So, let's see.

24 You mentioned the chimney. You said that the  
25 fraud is not in evidence. Is it possible that I refused --

**NEAL R. GROSS**

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

1 but the fraud is in evidence, once you mentioned the chimney,  
2 because the fraud was related to a chimney application being  
3 submitted in my name under my property by your clients  
4 without my permission?

5 So when you say the fraud is in evidence, once you  
6 mentioned the chimney. I will say that.

7 But at any rate, is it possible that I refused to  
8 allow you to extend the chimney because of the fraudulent  
9 application submitted by your clients? Is that even  
10 possible?

11 MR. SMITH: I don't think any of that is a fair  
12 characterization of anything and I think that the OAH said  
13 that the DCRA properly --

14 MS. MAKENTA: Thank you. Thank you, that's the  
15 answer.

16 MR. SMITH: -- issued the permit.

17 VICE CHAIR HART: Well, actually, I'm the one  
18 asking the -- making sure that we are in order here.

19 MS. MAKENTA: Okay, I'm sorry.

20 VICE CHAIR HART: Thank you. That's okay. Thank  
21 you.

22 Do you have any other questions?

23 MS. MAKENTA: I get a closing statement, correct  
24 or no?

25 VICE CHAIR HART: Well we have to actually --

**NEAL R. GROSS**

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

1 MS. MAKENTA: After?

2 VICE CHAIR HART: The DCRA has to give their  
3 cross-examination of the Intervenor at this time, that is,  
4 if you have no other questions.

5 I'll take that as a no.

6 MS. MAKENTA: Yes, thank you. That's fine.

7 MR. TONDRO: Thank you, Vice Chair Hart. I just  
8 have a couple of questions.

9 To clarify this issue with the windows, looking  
10 at Attachment 36B, which shows the roof deck, just so that  
11 we understand --

12 MS. MAKENTA: A --

13 MR. TONDRO: 36B as in boy. Right. And I'm  
14 sorry, A-100 is the sheet and this is the one that shows the  
15 revised plan, I believe.

16 And so I'm asking the Intervenor just to clarify  
17 his answer Vice Chair Hart's question before, I believe that  
18 you are discussing -- the windows that you are raising are  
19 the two windows show on the second floor plan and the first  
20 floor plan that are directly below the roof deck.

21 Is that correct?

22 MR. SMITH: That's correct.

23 MR. TONDRO: And so, therefore, the reason you are  
24 bringing them up is because those windows then look -- have  
25 the same viewpoint into the windows of the Appellant, as

**NEAL R. GROSS**

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

1 would be visible from the roof deck?

2 MR. SMITH: Actually, no. I mean they have a much  
3 better view than you would ever be able to get from a roof  
4 deck. And so all I was saying is that I don't think one  
5 could have an expectation of privacy when you have windows  
6 that look directly into your windows. So there is no  
7 negative impact by having a balcony there because the privacy  
8 doesn't exist.

9 MR. TONDRO: In other words because the windows  
10 on the Appellant's side, those specific windows that she has  
11 are already visible through the windows on the first and  
12 second floor in yours.

13 MR. SMITH: That's correct.

14 MR. TONDRO: Thank you. That's all.

15 VICE CHAIR HART: Okay. So now that we have gone  
16 through the testimony, we are going to actually go through  
17 closing for -- I want to see each of you. I haven't done an  
18 appeal. So, bear with me.

19 MS. MAKENTA: I was supposed to get one last  
20 question.

21 VICE CHAIR HART: I'm sorry?

22 MS. MAKENTA: The Zoning Administrator, before he  
23 left, he said I got two. Is it too late?

24 VICE CHAIR HART: That's fine. That's fine.  
25 Let's ask a question, please.

**NEAL R. GROSS**

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



1 MS. MAKENTA: Okay. Subtitle B, 1502.1 states  
2 that penthouses, screening around unenclosed mechanical  
3 equipment, rooftop platforms or swimming pools, roof decks,  
4 trellises, and any guardrail on a roof shall be set back from  
5 the edge upon the roof which it is located as follows: A  
6 distance equal to its height from the side wall of the  
7 building upon which it is located.

8 VICE CHAIR HART: And your question is what?

9 MS. MAKENTA: I'm missing part of the doggone  
10 code.

11 Why do you believe that that code does not apply  
12 to this roof deck?

13 MR. LeGRANT: As DCRA has presented its case, we  
14 do not agree that that is a roof deck subject to those  
15 provisions.

16 VICE CHAIR HART: Okay.

17 MS. MAKENTA: That's fine for now.

18 VICE CHAIR HART: Thank you. So now we're going  
19 to go to closing and order.

20 I'm looking at -- I know I shouldn't be looking  
21 at this. I will look at OAH -- OAG, excuse me -- I keep  
22 saying that -- OAG in the sequence for closing.

23 MR. COHEN: That's fine. That's fine, Vice Chair.

24 The closing arguments are in the same order as  
25 each of the parties presented.

**NEAL R. GROSS**

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

1 VICE CHAIR HART: Oh, okay. Thank you. That was  
2 easy.

3 So the Appellant is first.

4 MS. MAKENTA: Oh, okay.

5 MR. MOY: Sir, how much time do you want to allow  
6 for the closing?

7 VICE CHAIR HART: Let's put ten minutes on it.

8 MS. MAKENTA: Ten minutes?

9 VICE CHAIR HART: You want to do seven minutes?

10 MS. MAKENTA: I don't need much time.

11 VICE CHAIR HART: Let's do five minutes, then.

12 MS. MAKENTA: So I guess I would just like to  
13 close in saying that this has not been a cakewalk for me, by  
14 far. It is unfortunate that I have been kind of pulled into  
15 baptism by fire, having to learn as I go just to protect my  
16 property interest and property rights. I wish my property  
17 wasn't so unique. I mean you have no idea. This has been  
18 one of the worst years of my life because of having to try  
19 to just protect my interests.

20 And it is not my fault that the D.C. Regulations  
21 force you to go in one place to dispute a building code, and  
22 one place to dispute a zoning code, and another place to  
23 dispute a heritage tree DDOT situation. My property is,  
24 unfortunately, extremely unique. Not many people I think are  
25 -- it's not common, as common, to have a heritage tree in

**NEAL R. GROSS**

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

1 your backyard, where the DDOT person said to me you know your  
2 tree is probably -- in 20 years, it's probably the second  
3 biggest tree in the backyard I've seen at any D.C. property.  
4 Oh, gosh. Why me?

5           These windows on the side, you know the neighbors  
6 to the south are you know living their lives and going about  
7 their lives. And I just wish I wasn't to the north you know.  
8 And so these windows, gosh, who knew a year ago that I would  
9 be here fighting for light, and air, and privacy?

10           And it's just -- and you know it's a nightmare for  
11 them. It's a nightmare for me as well. And you know I'm  
12 just trying to muddle along with the little resources I have  
13 and do the best that I can but it has not been easy and I  
14 resent the implication that I am somehow enjoying this or  
15 that the pain is one-sided.

16           This case has merit. It is not frivolous. I  
17 don't have the time or energy to deal with what I'm dealing  
18 with. But I'm to the north. I have a heritage tree. I have  
19 these 11 windows at the center of my property and I've owned  
20 the property for 15 years. I don't plan to sell it.

21           And so unfortunately, this is my fate. This is  
22 not something that I would ever choose for anyone.

23           And so I just ask that in the last hearing the BZA  
24 chairperson, when he deliberated and came back, he says oh,  
25 I feel sorry for them. And I said to myself, wow. My

**NEAL R. GROSS**

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

1 property has been flooded because of their construction. My  
2 tenant has been displaced because of their construction. And  
3 so I just ask that when you all go and deliberate, that you  
4 do so without bias.

5 I feel that this process for me -- I'm not a  
6 government entity. I don't have the power or the name  
7 recognition of the people sitting beside me but I deserve  
8 fairness as well. And I deserve a thoughtful consideration  
9 and I deserve to be treated -- I just ask that when you go  
10 and you vote, I just hope that you will seriously weigh and  
11 consider how you would feel if this side roof deck was  
12 suddenly -- you owned your house forever -- suddenly  
13 positioned at the edge of your property, hundreds of Airbnb  
14 people can be hanging over this deck looking at down into  
15 your windows. How would you feel if you were suddenly thrust  
16 into this situation where this thing is suddenly at the edge  
17 of your property, it was never subjected to any proper -- it  
18 wasn't subjected to the proper official scrutiny by the  
19 appropriate officials, by the Office of Planning and the BZA?  
20 How would you feel if DCRA used arbitrary methods, in my  
21 opinion, and internal email and measures a ten-foot or less  
22 guideline? Why not nine feet? Why not six feet in terms of  
23 the setback?

24 And the idea of saying that we don't know what  
25 approved plans means, I mean that's just shocking to be

**NEAL R. GROSS**

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

1 sitting here hearing that from DCRA. Not that specifically  
2 -- I'm sorry but that's Exhibit 66. It's just --

3 But at any rate, how would you feel -- before you  
4 vote, I just hope that you will imagine this happening to  
5 you. Imagine yourself meeting the deadline to contest it,  
6 availing yourself of your rights, and then imagine your  
7 commissioners reaching an unjust conclusion or a conclusion  
8 involving any level of favoritism, either to DCRA or to the  
9 Intervenors, or to an ex-BZA colleague.

10 Just imagine if you weren't sitting there and you  
11 were sitting here. That's all I'm asking before you take a  
12 vote. Yes.

13 I wish my property wasn't unique.

14 Oh, and another thing I've had to deal with is  
15 they sit there and they act like they are so innocent. And  
16 it is so interesting to watch. I mean I had to go to the  
17 City Council to have them remove a dumpster that they put in  
18 front of my house instead of theirs. So --

19 MR. TONDRO: Objection. Again, this is not  
20 something that was --

21 VICE CHAIR HART: Can we --

22 MR. TONDRO: Oh, sorry.

23 VICE CHAIR HART: Can we let her finish, please?

24 MS. MAKENTA: So literally, the city councilwoman  
25 emailed me to apologize because I had fought for two months,

**NEAL R. GROSS**

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

1 can you please remove the dumpster from my house.

2 VICE CHAIR HART: I understand that these are --

3 MS. MAKENTA: Okay.

4 VICE CHAIR HART: I understand that these are --

5 MS. MAKENTA: I'm sorry, I'll wrap up.

6 VICE CHAIR HART: I'm just saying that --

7 MS. MAKENTA: Yes.

8 VICE CHAIR HART: -- your five minutes is up.

9 MS. MAKENTA: So thank you for hearing me. Again,  
10 my last thing is I just ask that you treat this with fairness  
11 because that's not how I feel like I've been being treated  
12 from when I first, unfortunately, had to start this process.  
13 That's all I ask.

14 VICE CHAIR HART: Thank you.

15 DCRA.

16 MR. TONDRO: Thank you, Vice Chair Hart, Chairman  
17 Hood, Board Member White.

18 So I think, first of all, I want to just sort of  
19 take a step back, remember that the issue here is an issue  
20 of an appeal of the decision by the Zoning Administrator.  
21 As such, it is an appeal of the decision that was made by the  
22 Zoning Administrator in careful review based on his expertise  
23 of the Zoning Regulations and interpretation. And that's the  
24 reason, I posit, why in the Zoning Regulations the burden of  
25 proof is on the Appellant. It is the reverse in an

**NEAL R. GROSS**

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

1 application, where it is the applicant that has that burden  
2 of proof. But in this case, it is the Appellant who has the  
3 burden of proof.

4 As I said before, DCRA here believes that the ZA  
5 did not err and that the Appellant has failed to meet that  
6 burden of proof to show that he did in approving the permit.

7 Again, just to briefly hit the highlights again,  
8 in terms of the question of whether or not a modification was  
9 required, the ZA did not believe that it was required, that  
10 any modification under A, 304.10 was required because the  
11 summary order in BZA Application 19387 specifically stated  
12 at the bottom of page 2, in bold, in caps, subject to the  
13 approved plans at Exhibit 66. I don't think it gets clearer  
14 than that.

15 That was what the ZA reviewed. The ZA looked at  
16 Exhibit 66. As we stated, Exhibit 66 was in response to a  
17 change in the request, the reduction in the request for  
18 relief for that special application and, therefore, it showed  
19 the plans, the elevations and so forth that were shown at  
20 that time related to that requested area of relief.  
21 Therefore, it didn't seem like there was anything obvious  
22 that was out of place or why there was any typographical  
23 error that the ZA would have to somehow inquire about.

24 Again, had there been an obvious error, there was  
25 an opportunity for the parties to file a motion to

**NEAL R. GROSS**

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

1 reconsider. That did not happen, as far as I am aware.

2           Nonetheless, when the permit holder asked for the  
3 possibility of just doing the Belt and Suspenders approach  
4 of having also the modification in 304.10, the ZA reviewed  
5 it and went through, as you heard from Intervenor's counsel,  
6 when through the list of the various different provisions  
7 that 304.10 refers to that requires that the ZA review. And  
8 nowhere, as Intervenor's counsel stated, nowhere is there an  
9 issue of privacy involved in those, unlike, for example, the  
10 modification for minor flexibility, where the ZA is able to  
11 give two percent flexibility for deviations from matter of  
12 right. There, there is some privacy issues that are  
13 addressed but not for modifications of the Board order,  
14 provided it meets all those other criteria, including that  
15 it is consistent with the Board's order. The ZA did that.

16           Moving onto the subject matter, the issue of the  
17 side deck itself, again, DCRA's position is that, first and  
18 foremost of all, looking at Subtitle C, 1502, which is  
19 penthouse setbacks, the section preceding that is penthouse  
20 height. After that is penthouse area. All three of those  
21 only, therefore, we believe apply to an area that is a  
22 penthouse which is, by definition, above the permitted  
23 building envelope. In this case, you are allowed three  
24 stories, so the penthouse starts at above that third story.

25           Nonetheless, even if the Board were to determine

**NEAL R. GROSS**

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



1 that they believed that that is an incorrect interpretation  
2 by the ZA, the ZA then believes that first of all, if there  
3 is a handrail that is required, that under the guidance that  
4 he provided in December, that he codified in December, that  
5 that internal guidance establishes that there is -- that for  
6 guardrails, they shouldn't apply, as long as there is a  
7 relatively limited depth of a balcony. Then, it should be  
8 treated as a balcony.

9           Again, as I think I had indicated before, part of  
10 that is otherwise wound up in this situation where if you  
11 were required to have a guardrail on those projecting  
12 balconies that we see all throughout the city on these new  
13 buildings that go up, and that is required to be four feet  
14 or three and a half feet tall, you would have to have the  
15 balcony itself stick out another three and a half feet beyond  
16 the guardrail, which I don't think makes any sense and  
17 doesn't seem to be reasonable in terms of the interpretation  
18 of the Zoning Commission.

19           But the issue in terms of that guidance document,  
20 we included it to indicate that this was not applied will-  
21 nilly. The Zoning Administrator carefully considered this,  
22 reviewed this, and then applied it consistently across all  
23 different properties.

24           Again, it was an internal document precisely  
25 because it was for the -- to make sure that all the zoning

**NEAL R. GROSS**

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

1 reviewers used the same playbook. And if there is an  
2 opportunity, if the BZA determines that this was incorrect,  
3 somehow, the opportunity for redress is precisely as is  
4 happening right now. In other words, this is when that  
5 guidance is applied to a specific permit, then a person can  
6 appeal the permit, as is done in this case.

7 But finally, again, as I stated, that even if the  
8 penthouse, if the BZA disagrees with the interpretation that  
9 the penthouse does not apply to the allowed third story, that  
10 in this particular case, there does not appear to be a  
11 guardrail required by the building code, which case, the  
12 required one-to-one setback would only be based off the roof  
13 deck height itself, which would probably be minuscule, some  
14 six to maybe ten inches, depending, which would probably be  
15 encompassed by the setback from the parapet wall itself.

16 So for that reason, then, DCRA asserts that there  
17 is -- that the ZA correctly approved -- reviewed and approved  
18 the revised permit allowing the side deck and, therefore,  
19 that he did not err in doing so and requests, respectfully  
20 requests that the Board agree or also determine that the ZA  
21 did not err in approving the revised permit and, therefore,  
22 dismiss the appeal.

23 Thank you.

24 VICE CHAIR HART: Thank you, Mr. Tondro.

25 Ms. Moldenhauer or Mr. DeBear?

1 MR. DeBEAR: That would be me.

2 I want to thank the Board for the patience today.  
3 I know this has been a long day. I just want to -- I don't  
4 think I need to rehash the legal argument that counsel for  
5 DCRA just stated but I just wanted to be clear that this is  
6 an issue not of a BZA approval. This is an issue of whether  
7 a modification of the plans were needed and if so, out of an  
8 abundance of caution, if that modification was correctly  
9 granted.

10 This is not an issue of air, light, privacy,  
11 Airbnb. All these allegations made by the Appellant are not  
12 relevant.

13 This is a case of the Appellant wanting her cake  
14 and to eat it, too. The Intervenors wanted to raise the  
15 chimney. When she said no, which is her right, they said  
16 okay, we'll revise the plans. Now she challenges that  
17 revision to the plans. But the Zoning Administration  
18 correctly authorized a modification to the plans that were  
19 approved by this Board almost a year ago today.

20 I would just add that the Zoning Administrator is  
21 within his authority to do that and is in his authority to  
22 interpret this to be a balcony and not a penthouse.

23 And we would ask that the Board either grant  
24 DCRA's motion to dismiss or deny this appeal. Thank you.

25 VICE CHAIR HART: Thank you very much, everyone.

**NEAL R. GROSS**

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

1           And I'll speak for the Board but I will let the  
2 Board speak. I think the case -- I understand that the case  
3 has been contentious and you know it is what it is. I don't  
4 feel that I have the ability to rule on this case today and  
5 I need some time to kind of think through some of these  
6 things, some of the testimony that has been given.

7           And with that, Ms. Makenta, I have to say that  
8 I, at times -- I take exception to some of the  
9 characterizations that you've made to both the BZA and about  
10 the BZA and about some of the people that are in the room.  
11 And I just don't -- it's in the -- you're looking at me  
12 quizzically. It's in the testimony that you have provided  
13 and also the document that you provided as well.

14           And I just find that it would be helpful to be  
15 able to understand the facts of the case. And I think that  
16 you provided a lot of information for us today. I appreciate  
17 that. But again, I think that some of the testimony, and I  
18 was talking about it a little bit earlier, we are all trying  
19 to be civil and trying to understand what each other's points  
20 are. And it is not helpful to move away from that.

21           And so I would just leave you with when you are  
22 providing information to and testimony to folks at a Board  
23 or OAH, or whomever else that you are moving on with, that  
24 you try to keep to the facts that are at hand because -- I  
25 understand that there a lot of emotions that come out with

**NEAL R. GROSS**

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

1 properties and you have your perspective on things. The  
2 Applicants -- the Applicants -- the Intervenors their  
3 perspective on this. We understand that these are your homes  
4 and properties. And so I'm just making sure that you  
5 understand that.

6 And you may not have meant it that way but it was  
7 taken that way. So I just wanted to make sure that you were  
8 aware of that.

9 But again, I will let the rest of the Board speak  
10 and we can -- again, we are going to have to find out what  
11 the meeting date is going to be for this. It's not going to  
12 be next week because we actually have next week off. So at  
13 earliest -- actually it's probably not going to be in the  
14 next two weeks because we have a pretty rough schedule on the  
15 29th. So regardless, I will open it up to my other Board  
16 members.

17 MEMBER WHITE: I think you covered a lot. I mean  
18 it's hard not saying something for like two hours. But in  
19 doing that, I just want to make sure you all know that I  
20 listen to every case fairly. You know I don't have any skin  
21 in the game in terms of coming to a certain resolution and  
22 I know we kind of chastised you, Ms. Makenta, a little bit.  
23 But I think you were beat up on a little bit as well and I  
24 think that comes from the whole issue of you representing  
25 yourself.

**NEAL R. GROSS**

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

1           But regardless of that, I mean our task is really  
2 to just look at the request, look at the law, look at the  
3 facts and come to a fair resolution.

4           So I'm committed to doing that for anybody that  
5 comes before the BZA. You know there's no improper intent  
6 with any of my colleagues in trying to give everybody an  
7 opportunity to be heard and to come to a resolution. I  
8 didn't realize it would take this long today. I actually  
9 have a job on a daily basis. I told them oh, I'll be  
10 finished by 3:00. I lied. So, hopefully, they won't hold  
11 that against me.

12           But it is definitely, just as a D.C. resident,  
13 this is something that I do to give back to the community to  
14 be able to utilize some of my expertise to help individuals  
15 come to a resolution on these types of cases and I'll just  
16 leave it at that.

17           ZC CHAIR HOOD: I want to concur with both of my  
18 colleagues. Sometimes we have to be careful of what we  
19 insinuate or say about Commission members or Board members.

20           I could tell my story of how I got here, too. And  
21 it wasn't because of some glorious ride down North Capitol  
22 Street. It was because of trash in my neighborhood. But  
23 anyway that's a whole other issue. It's a whole other issue.

24           But I will say that the Appellant seems -- you  
25 seem to me to have done your homework. I don't always agree

**NEAL R. GROSS**

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

1 with the ZA or anybody. I don't always agree with everything  
2 you said. But I think that the vice chairman was exactly  
3 correct. Some of the accusations you made, when I hear that  
4 stuff -- but I get over that. I've been here long enough now  
5 -- no, it's time for me to talk now. I get over that because  
6 what I try to do, I think I try to get at the issue at hand.  
7 And I think the vice chair summed it up the best, so I don't  
8 want to extrapolate and keep going on that because when you  
9 said something about our former BZA colleague, I looked down  
10 and I said now I'm probably the only one who served with Ms.  
11 Moldenhauer.

12           So I started thinking well, don't take that  
13 personally because if you go back and watch some of the  
14 tapes, I will say in public to you, me and Ms. Moldenhauer  
15 went back and forth up here quite a bit. So you know and  
16 that's just the way it is. That's the process. I don't  
17 always agree with the ZA.

18           But let me get back to the -- let me get focus  
19 back to the issue at hand. Mr. LeGrant, this interpretation  
20 that I saw, have you exercised that previously?

21           MR. LeGRANT: Yes, I have.

22           ZC CHAIR HOOD: Okay. Let me ask you do you think  
23 it needs to be -- would it be to the point that we need to  
24 memorialize it in the Zoning Regulations?

25           MR. LeGRANT: I always believe that when I issued

**NEAL R. GROSS**

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

1 guidance that it may be questioned, that to codify it in the  
2 Zoning Regulations is certainly a good idea. And the  
3 Commission, itself, can look at that guidance and see if it  
4 is something that is consistent with their intent, change it  
5 if they wish, or codify it as is.

6 ZC CHAIR HOOD: So maybe that's something that we  
7 need to make sure that we put on our laundry list of things.  
8 I'm not going to say it's a corrective measure because I'm  
9 not sure what my colleagues have. But I want to make things  
10 more predictable. So anything to make it easier on the  
11 residents of this city, I think that we should be able to  
12 look at that.

13 So let's make sure between the two of us or all  
14 of us, Mr. Tondro, all of us, make sure that we get it on our  
15 list, our laundry list of things -- I'm not going to say  
16 correct -- things to look at and try to make them more  
17 efficient and effective for residents of this city.

18 But I associate myself with the vice chair and I  
19 hope that Appellant doesn't think that nobody's beating up  
20 on her. I think she has done her homework, whether we agree  
21 with her or not, and I'm going to be looking at her testimony  
22 and her presentation to us because I think she's done a lot  
23 of leg work and my hat is off to you. So I wanted to make  
24 sure you knew that.

25 Thank you, Mr. Vice Chair.



1           VICE CHAIR HART: Thank you. So I think we'll  
2 actually look to Mr. Moy, our secretary, to --

3           MS. MAKENTA: Can I just apologize?

4           VICE CHAIR HART: It's just --

5           MS. MAKENTA: I wasn't talking about you all.  
6 I've had to deal with many government officials. I wasn't  
7 talking about --

8           VICE CHAIR HART: That's fine. It's fine.

9           MS. MAKENTA: I'm sorry.

10          VICE CHAIR HART: What I was trying to let you  
11 understand that it was not just us. There were other  
12 accusations and other information that is or ways in which  
13 situations were described and things. And again, I don't  
14 need to get into it but I'm just letting you know that words  
15 matter, which is why we read through this.

16                  Anyhow, so Mr. Moy, we are probably looking at the  
17 beginning of December.

18                  MR. MOY: Yes, sir. I think I heard you say that  
19 the Board would need approximately two weeks. And if it is  
20 for a decision meeting --

21                  VICE CHAIR HART: Yes.

22                  MR. MOY: -- then two weeks would set you for a  
23 decision on December 6th.

24                  VICE CHAIR HART: Yes.

25                  MR. MOY: If you go to the next hearing, the next

**NEAL R. GROSS**

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

1 date would be December 13th.

2 VICE CHAIR HART: I think the December 6th is  
3 enough time. They're not asking for anything else.

4 MS. MOLDENHAUER: Chairman Hart, can I just point  
5 out that on December 6th, we're supposed to --

6 ZC CHAIR HOOD: Let me just say this. I actually  
7 would like to be here for this case, Mr. Chair.

8 VICE CHAIR HART: Okay.

9 ZC CHAIR HOOD: And I know nobody wants to put it  
10 off a long time but I won't be back until the 20th.

11 VICE CHAIR HART: Oh, that's -- I forgot.

12 ZC CHAIR HOOD: So and I won't be here. I know  
13 nobody wants to put it off but I'm not going to make it back  
14 on the 6th, unless you all just want me to send me a proxy.  
15 And I think this is significant enough for me to be able to  
16 be here and deliberate.

17 VICE CHAIR HART: I apologize. I forgot that you  
18 were not going to --

19 ZC CHAIR HOOD: That's all right, I'm used to it.

20 VICE CHAIR HART: No, I'm glad you brought it up.  
21 I was thinking that you were part of us. You're always here,  
22 Mr. Hood.

23 ZC CHAIR HOOD: Thank you, Mr. Vice Chair because  
24 the chair doesn't think that. Thank you very much.

25 VICE CHAIR HART: So Mr. Moy, it looks like maybe

**NEAL R. GROSS**

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

1 the 20th that we're looking at. So December --

2 MS. MOLDENHAUER: And all of the parties here  
3 would actually have to be at the Office of Administrative  
4 Hearings on the 6th anyway.

5 VICE CHAIR HART: Okay, so that's out.

6 MS. MOLDENHAUER: So that actually wouldn't work.

7 VICE CHAIR HART: Okay. Listen, I appreciate it.  
8 So I think the 20th is going to be -- so we are going to be  
9 coming back on the 20th for -- actually, you don't have to  
10 be here. You can be here if you would like but we will have  
11 this for -- excuse me.

12 If I didn't say, the hearing is closed for this  
13 particular case and we will have this as a public meeting for  
14 a decision on the December 20th.

15 So thank you all very much. Have a good evening.  
16 Enjoy dinner.

17 Folks, sorry for the -- I know it's been a long  
18 day for you all. I appreciate you all staying, those that  
19 are in the audience.

20 So we have the agenda that is on the -- that is  
21 in the bin to the back of the room. And we have -- we are  
22 going to be going down the list of cases as they are set on  
23 the agenda, starting with 19564 of Tammika Thompson.

24 But I wanted to ask if there were anyone that  
25 needed to leave and needed to leave because there is a prior

**NEAL R. GROSS**

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

1 commitment, if you could talk to the secretary because we're  
2 trying to make sure that we can kind of hear things.

3           If there is nothing -- if there is no objection,  
4 we would like to just move through the rest of the agenda but  
5 I wanted to give at least some of you an opportunity to state  
6 your case.

7           You have to come to the mike. And if you're  
8 talking about the agenda, you can ask --

9           PARTICIPANT: There was someone that came and he  
10 had to leave. Is there a way that he can have something  
11 read? I don't know how that works.

12           VICE CHAIR HART: I mean the only way that you can  
13 -- you can add in -- the question was around -- well as long  
14 as it's submitted testimony, that's fine for us. It's in the  
15 record.

16           So, Mr. Moy?

17           MR. MOY: I'm sorry. Where were we?

18           VICE CHAIR HART: No, I just wanted to know.  
19 There was a question about someone had to leave that gave  
20 testimony -- that wanted to give testimony. The actually did  
21 provide written testimony. So I think we have that in the  
22 record. I'm not sure which case it was but as long as they  
23 provided it, that'll work for us.

24           And I didn't know if you had any other changes  
25 that you wanted me to be aware of.

1 MR. MOY: No. I think if it is who I think it is,  
2 they would be able to hand that in when the case is called  
3 and then we would put that into the record.

4 VICE CHAIR HART: Sorry, folks. Could you bear  
5 with me for just a minute more?

6 Okay, Mr. Moy, if we could move to the next case.  
7 And we did make a change and that's 19605, if you could call  
8 that case, please.

9 MR. MOY: Yes, sir, thank you. So if I could have  
10 to the table the parties to Application 19605 of 1331 Taylor  
11 Street, LLC. As captioned and advertised for special  
12 exception relief under the Residential Conversion Regulations  
13 of Subtitle U, Section 320.2. This would convert a one-  
14 family dwelling into a three-unit apartment house in the RF-1  
15 zone. This is the premises at 1331 Taylor Street, Northwest,  
16 Square 2822, Lot 15.

17 VICE CHAIR HART: Thank you, Mr. Moy.

18 Good evening or good afternoon. So, if you could,  
19 please introduce yourselves.

20 MR. CHARLES: Reuben Charles and I'm with the  
21 developer group. And address, I think, was the other thing  
22 you needed?

23 VICE CHAIR HART: Yes, please.

24 MR. CHARLES: I live at 5100 Tilden Street,  
25 Northwest, Washington, D.C.

**NEAL R. GROSS**

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

1 MS. WALLER: And my name is Rose Waller of  
2 MotleyWaller. I represent the applicants.

3 VICE CHAIR HART: Thank you. And Ms. Waller, are  
4 you going to be giving us the presentation? I mean it's a  
5 presentation -- are you going to be speaking for us? I don't  
6 know which --

7 MS. WALLER: Yes.

8 VICE CHAIR HART: That's fine. And you may begin.

9 MS. WALLER: Okay. Well --

10 VICE CHAIR HART: Just all we're looking for is  
11 just explaining your -- just a brief explanation of the  
12 project that you have submitted to us. That's what we're  
13 looking for. It doesn't have to be long.

14 MS. WALLER: Okay. No, we -- my -- the Applicants  
15 have a single-dwelling unit at 1331 Taylor Street, Northwest,  
16 that they would like to -- it's a two-unit building that they  
17 would like to add an additional unit.

18 So we are asking for special exception relief to  
19 add an additional unit.

20 VICE CHAIR HART: Okay. And is that it?

21 MS. WALLER: Yes.

22 VICE CHAIR HART: Okay, I didn't know if the Board  
23 had any questions for this applicant.

24 MEMBER WHITE: I would just ask, you are asking  
25 for special exception, if you could just kind of maybe give

**NEAL R. GROSS**

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

1 an overview of why you believe you meet the criteria in order  
2 to get a special exception relief. You know there is a  
3 specific regulation that covers it.

4 MS. WALLER: Is there something outside of the  
5 application that you are looking for in particular?

6 MEMBER WHITE: Well just the criteria in terms of  
7 -- let me just look at -- what's the case number for this  
8 one?

9 So this is a special exception for a residential  
10 conversion under Subtitle U, Section 320.2. I can see that  
11 you have got no report for the ANC. DDOT doesn't seem to  
12 have an objection. We will, obviously, listen to OP's  
13 feedback as well.

14 But in terms of the relief under that particular  
15 section, I didn't know if you had any supporting information  
16 about why this conversion would be in the best interests of  
17 the community, why it meets the criteria, or any feedback  
18 with respect to that.

19 I don't see that you have any letters of  
20 opposition. So, I don't have any severe concerns about the  
21 relief you are asking for.

22 MS. WALLER: Okay. The addition of a third unit  
23 does not impact the light and air available to neighboring  
24 properties. It does not infringe on the privacy of use and  
25 enjoyment of neighboring properties and does not intrude upon

**NEAL R. GROSS**

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

1 the character of the neighboring properties.

2 VICE CHAIR HART: And did you say you went to the  
3 -- do you all go to the ANC 4C or can you just describe what  
4 the interaction has been with the ANC?

5 MS. WALLER: Okay. Our first contact with the ANC  
6 was on June 14th of this year. We requested a meeting to  
7 present our plans for this project. We have met with a  
8 Single Member District of the ANC with some of the neighbors  
9 and we have also been in contact with some of the neighbors  
10 of the -- some of the adjoining neighbors of the property.

11 And of course, you have two letters of support and  
12 Mr. Charles can talk more to his interactions with the  
13 neighbors.

14 Between June 14th of this year and October 27th,  
15 I made several attempts to schedule a meeting before the ANC  
16 and I actually have copies of email correspondence between  
17 myself and Mr. Zach Teutsch, who is the Single Member  
18 District person, who is also the chairperson of the ANC for  
19 4.

20 VICE CHAIR HART: Is that in the record, the  
21 email?

22 MS. WALLER: No. No, it's not.

23 VICE CHAIR HART: Would you --

24 MS. WALLER: But I do have copies.

25 VICE CHAIR HART: Can you -- oh. I was going to

**NEAL R. GROSS**

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



1 tell you to give them -- Mr. Moy is over there.

2           If you could give copies, I think it would be  
3 helpful to have that just in the record so that we understand  
4 kind of why there isn't an ANC report. I don't think it's  
5 a deal breaker but I think it is helpful to at least  
6 understand it.

7           MR. CHARLES: While counsel is doing that, we met  
8 on two or three occasions with the neighbors. On the first  
9 occasion we met with the ANC, had three or four of the  
10 neighbors come by, state whatever concerns they had. There  
11 was a development on the same street, in fact, two or three  
12 houses down, I think it's 1326, that was done about two or  
13 three years ago.

14           So we had the neighbors adjoining that property  
15 and again, two or three other neighbors coming just to  
16 express whatever concerns they had about what we were  
17 attempting to do or proposing to do. They went through the  
18 design. They raised questions about underpinning. They  
19 raised questions about the design of the fence of the rear  
20 yard, some building materials. We just addressed whatever  
21 concerns they had and have since been in regular  
22 conversations with the two adjoining neighbors. And to date,  
23 I think have received their support beyond the actual letters  
24 they provided.

25           But we are extremely communicative. They all have

**NEAL R. GROSS**

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

1 my telephone numbers and we gave that to the three neighbors  
2 on either side so if any of them had questions, they could  
3 reach us at any time.

4 So I think we have done everything within our  
5 power to be available and supportive.

6 VICE CHAIR HART: I appreciate it.

7 MR. CHARLES: Sure.

8 VICE CHAIR HART: Do the Board members have any  
9 other questions for the applicant?

10 (No audible response.)

11 VICE CHAIR HART: Hearing none, let's go to the  
12 Office of Planning. Mr. Golden.

13 MR. GOLDEN: Good evening, Mr. Vice Chair and  
14 members of the Board.

15 The Office of Planning is recommending approval  
16 for this special exception relief. And I will go ahead and  
17 rest on the report in the record but I am available for any  
18 questions, if you have any.

19 VICE CHAIR HART: Thank you, Mr. Golden.

20 Any questions for the Office of Planning?

21 (No audible response.)

22 VICE CHAIR HART: Hearing none, thank you.

23 Okay, so next we will move to hear if the ANC is  
24 actually here for the case.

25 Is there anyone in opposition to the case?

**NEAL R. GROSS**

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

1           Anyone in support of the case, please come  
2 forward.

3           Okay, no one has come forward. So back to the  
4 Applicant. Do you have any closing comments that you would  
5 like to make?

6           MS. WALLER: No.

7           MR. CHARLES: No, but we intend to do everything  
8 we told the neighbors we will do and be consistent in our  
9 interactions with them throughout the process, as we have  
10 been over the last three to four months.

11          VICE CHAIR HART: Thank you. Board members, do  
12 you have any other questions for the Applicant?

13          ZC CHAIR HOOD: Mr. Chairman, no I don't have any  
14 questions. I'm ready to put a motion. I think the record  
15 is complete. As stated, I think our reach out to the ANC 4C  
16 has been provided and no response may have been -- whatever  
17 the case it may have been but I know this ANC is definitely  
18 responsive.

19          And with that, I would move that we approve BZA  
20 Case 19605 request for special exception relief pursuant to  
21 Subtitle U, 5201.1 from U, 320.2 to allow for a three-unit  
22 apartment building. And I would ask for a second.

23          VICE CHAIR HART: Seconded.

24          ZC CHAIR HOOD: Oh, you have got to carry the  
25 motion.

**NEAL R. GROSS**

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

1 VICE CHAIR HART: I know. It kind of dies hard,  
2 doesn't it?

3 All in favor of the motion, say aye.

4 (Chorus of aye.)

5 VICE CHAIR HART: Any opposed?

6 (No audible response.)

7 The motion carries.

8 MR. MOY: The staff would record the vote as three  
9 to zero to one -- or rather three to zero to two. This is  
10 on the motion of Mr. Anthony Hood to approve the application  
11 for the relief requested, a second of the motion by Vice  
12 Chair Hart; also in support, Ms. May. We have a member not  
13 participating, a seat vacant. The motion carries.

14 VICE CHAIR HART: Summary order, Mr. Moy.

15 MR. MOY: Thank you.

16 VICE CHAIR HART: Thank you.

17 Mr. Moy, the next case, if you would.

18 MR. MOY: Yes. So if we can have parties to the  
19 table to Application 19564 of Tammika Thompson. The  
20 application, as amended, for a special exception from the  
21 residential conversion requirements of Subtitle U, Section  
22 320.2, including waivers in the rear addition requirement of  
23 Subtitle U, Section 320.2(e) and the chimney requirements of  
24 Subtitle U, Section 302.2(f).

25 This would convert an existing one-family dwelling

**NEAL R. GROSS**

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

1 into a three-unit apartment house with a rear addition in the  
2 RF-1 zone at premises 428 Randolph Street, Northwest, Square  
3 3236, Lot 69.

4 VICE CHAIR HART: Thank you, Mr. Moy.

5 Good afternoon. Could you please introduce  
6 yourselves and if you give your name and your address?

7 MR. GOODMAN: Sure. Jonah Goodman representing  
8 ANC 4C.

9 VICE CHAIR HART: I'm sorry?

10 MR. GOODMAN: Jonah Goodman.

11 VICE CHAIR HART: Jonah, thank you. I'm sorry.  
12 It's been a little long day. So I apologize.

13 MR. CROSS: Michael Cross, architect, 2001 S  
14 Street, Northwest.

15 MS. BACHER: I'm Emily Bacher also with the  
16 architect's office, 2001 S Street, Northwest.

17 VICE CHAIR HART: Okay. So we will have a  
18 presentation and you can begin whenever you'd like.

19 MS. BACHER: Thank you, Chairman Hart.

20 So we are here with R. Michael Cross Design Group  
21 representing the client, our clients Tammika Thompson and her  
22 husband, Brian Young. As stated, we are looking for relief  
23 under U, 320.2 converting a single-family row home into a  
24 three-unit condo. And --

25 VICE CHAIR HART: I'm sorry, I need to do this and

**NEAL R. GROSS**

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

1 I apologize. I want to make sure that -- have all of you  
2 been sworn in?

3 MS. BACHER: Yes.

4 VICE CHAIR HART: I kind of figured you had but  
5 I just wanted to double-check. Thank you. You may continue.

6 MS. BACHER: We've all been here since 9:30.

7 VICE CHAIR HART: I thought as much but, again,  
8 like I said, it's been a long day. So you may continue.

9 MS. BACHER: I hear you. Thank you.

10 So we are largely conforming to the requirements  
11 of that section. There is a little bit of confusion as to  
12 whether or not -- what we're seeking to waive. We are  
13 actually only looking to waive the ten-foot addition  
14 requirement.

15 The chimney, we had had some back and forth with  
16 the Office of Planning on the chimney issue and we were able  
17 to get a signed letter of approval to extend the neighbor's  
18 chimney. So we are not seeking to waive the chimney  
19 requirement. We will be conforming with that. So it is only  
20 the ten-foot addition we are looking to waive.

21 So we represent Tammika, as I stated before,  
22 Tammika and her husband, Brian. They have lived in this  
23 house for 13 years and they are looking to develop their own  
24 property in order to accommodate their unique family  
25 situation. There are the two of them and they have three

**NEAL R. GROSS**

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

1 school-aged children. One of their children is anticipated  
2 to need to live either at or near home as an adult. Ideally,  
3 in an additional unit next to, within their own building  
4 property. So that's where they are looking for a full  
5 family-sized unit to accommodate themselves, another unit to  
6 accommodate their son as an adult, and then a third family-  
7 sized unit to help finance the construction of this project  
8 to make it a feasible construction for them.

9           They are looking to waive the ten-foot addition  
10 so that they can produce units that are large enough to  
11 accommodate their family, as well as other families, which  
12 was a concern voiced by the neighborhood. And we've worked  
13 with them to make sure to step back the development so that  
14 it doesn't extend -- so that the impact of the extension is  
15 as minimal as possible.

16           The actual addition is 31 feet at the cellar level  
17 but above the cellar level it is a 19 foot addition. So  
18 there is a stepping back that happens, as you go up on the  
19 property and that allows a little bit more light in there,  
20 as was discussed as well in the Office of Planning Report.

21           So we were able -- and we really thank the Office  
22 of Planning for their report in support of our application.  
23 We were unable to come to an agreement with the ANC  
24 commissioners as regards to this project. We do, however,  
25 have 27 signed letters of support from neighbors within the

**NEAL R. GROSS**

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

1 ANC district and within the 200-foot radius of the property,  
2 including a non-opposition letter from the adjacent property  
3 owner.

4 And I think that's you know a pretty good summary  
5 of where we're at. We're happy to answer any questions. We  
6 appreciate all of your time today and can fill in any blanks  
7 that you might have.

8 VICE CHAIR HART: Thank you, Ms. Bacher. I wrote  
9 it down and I wasn't sure if I was pronouncing correctly.

10 MS. BACHER: Yes, that's correct. Thank you.

11 VICE CHAIR HART: So I did have a question. You  
12 just stated that you have a you said non-opposition letter  
13 from one of the neighbors?

14 MS. BACHER: Yes, that's correct, one of the  
15 adjacent neighbors. So like the next-door neighbor.

16 VICE CHAIR HART: Yes, I was just trying to  
17 understand. So what about the neighbor?

18 MS. BACHER: The other neighbor we have been in  
19 contact with but we haven't been able to get anything from  
20 them.

21 MR. CROSS: Both neighbors are developers. The  
22 one that we do not have is actually an out-of-state owner.  
23 We have been in touch with his architect expediter and Tim,  
24 himself. Unfortunately, the conference call that we arranged  
25 with him he did not join. We haven't been able to catch up

**NEAL R. GROSS**

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



1 with him to get a signature or discuss the project.

2 VICE CHAIR HART: So the neighboring properties  
3 are owned by developers?

4 MR. CROSS: Both immediate neighbors are owned by  
5 developers. They are not occupied.

6 VICE CHAIR HART: So they are unoccupied. Okay,  
7 thank you. I was trying to understand if you were saying  
8 they were occupied by the developer but you're just saying  
9 they are owned by it.

10 And can you talk about the ANC vote -- I mean they  
11 were pretty close -- and that kind of process a little bit  
12 more? The vote was, if I am reading this correctly, four to  
13 three to one. Is that right?

14 MR. CROSS: Maybe we can let the --

15 VICE CHAIR HART: I know, I just -- I'll hear from  
16 the ANC.

17 MR. CROSS: But yes, our experience was that we  
18 did present to them. We ended up postponing so that we could  
19 have more interaction with the community. Our clients was  
20 able to work directly with dozens of his neighbors there.  
21 We were unable to get some sort of other forum to round up  
22 some of the folks -- any of the folks that had stated some  
23 sort of opposition off the record.

24 But yes, we did present to the ANC. There was  
25 only one person present that spoke with any opposition.

**NEAL R. GROSS**

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

1           VICE CHAIR HART: And the opposition not from the  
2 ANC but from the neighbors, can you characterize that? Is  
3 it -- how would you characterize it?

4           MS. BACHER: So we only -- well we actually only  
5 have one letter of opposition that we have. And so that's  
6 the only one that we can speak to but I'm sure Jonah would  
7 be happy to talk about the other concerns that the neighbors  
8 that he spoke with had. But I can speak to that specific  
9 opposition letter, if you would like.

10          VICE CHAIR HART: Yes, please.

11          MS. BACHER: So they made three points in that  
12 opposition letter. Their concerns were -- they are not an  
13 adjacent neighbor but their concerns were light and air.

14                 They were concerned about the issues of flooding  
15 and sort of storm water management and they were concerned  
16 about the neighborhood moving away from family-sized --  
17 family units that can accommodate families to just kind of  
18 one-bedroom condos.

19                 So in regards to that, with regards to the light  
20 and air, our addition, as I stated earlier, steps back. So  
21 that does help with the light and air. These lots are very  
22 deep. So despite the addition, there is still a 57-foot rear  
23 yard from even the farthest part of our addition.

24                 And on top of that, these are all -- the rear  
25 yards on this side of the street face the south, so there is

**NEAL R. GROSS**

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

1 a lot of sunlight that comes into them as is. So the impact  
2 would be -- there will be an impact but it won't be quite as  
3 bad as I think some people would imagine.

4 In regards to storm water, you know D.C. has very  
5 stringent requirements for green. As you are aware, in this  
6 zone, it is a 20 percent pervious area -- permeable area  
7 requirement. The building as drawn -- the construction as  
8 drawn shows a 35 percent permeable area. So it is well above  
9 what D.C.'s already stringent requirements are.

10 And with regards to the family housing situation,  
11 we went through a process of making sure that the units were  
12 able to accommodate families. Actually, the existing house,  
13 as it is, only has two legal bedrooms and one bathroom. We  
14 are proposing three units, two that are three-bedroom, and  
15 one that is two-bedroom plus a den.

16 VICE CHAIR HART: Thank you. Do my other fellow  
17 Board members have any questions?

18 MEMBER WHITE: Yes, my only question -- I'm  
19 looking at the last exhibit on the list. It's an ANC letter.  
20 Do you see that? They expressed some concerns about -- well  
21 they asked that the Applicant agree to a number of requests.  
22 I don't know if you saw them.

23 MS. BACHER: Oh, the ANC letter that has the four  
24 requests at the back end?

25 MEMBER WHITE: Yes, can you speak to those?

**NEAL R. GROSS**

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

1 MS. BACHER: Yes, I can speak, I believe so.

2 MEMBER WHITE: You thought I was talking about  
3 something new, huh?

4 MS. BACHER: I just didn't know. I just want to  
5 make sure we're on the same page.

6 MEMBER WHITE: Yes, I got you.

7 MS. BACHER: I have that letter right here. So  
8 let me look at it so I make sure that I have it.

9 MEMBER WHITE: Okay.

10 MS. BACHER: That's not it. No, I got it.

11 The one it's got pest abatement, stairwell access,  
12 is that the one? Okay.

13 So in terms of what we've got here, we have for  
14 pest abatement, we have no problem doing that. The stairwell  
15 access we might need to discuss with Jonah a little bit. I  
16 thought we had come to an agreement on that, that we were  
17 providing two parking spaces in the rear of the property and,  
18 therefore, they were willing to waive that. But I'm not sure  
19 why that is not in the letter so I might be incorrect about  
20 where we landed on that.

21 We can certainly -- and then with regards to lead  
22 testing, that is also something that would be absolutely  
23 doable. I mean these are -- like the pest abatement, water,  
24 is stuff I mean we recommend our clients do as a matter of  
25 like just we don't even -- it's not even a question.

**NEAL R. GROSS**

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

1           The only -- we would be willing -- I think our  
2 client would be willing to work on the stairwell access. I  
3 think there was a little bit of confusion about where we  
4 landed on that with the ANC but maybe -- I'm sure Jonah can  
5 clarify.

6           VICE CHAIR HART: Mr. Hood, do you have any  
7 questions?

8           ZC CHAIR HOOD: I was just looking it over but  
9 I'll wait until we get to the ANC. I have more questions  
10 about their letters than anything.

11          VICE CHAIR HART: Then I think we can move to the  
12 Office of Planning. Mr. Mordfin.

13          MR. MORDFIN: Good evening, Chair and Members of  
14 the Commission -- of the Board. I'm Stephen Mordfin and the  
15 Office of Planning supports this application.

16          The Applicant is requesting one waiver, at this  
17 point, the waiver, as the Applicant indicated, for blocking  
18 or impeding the function of the chimney has been addressed.  
19 So that is no longer an issue. And they are just requesting  
20 the one waiver, which is to increase the length of the  
21 addition beyond ten feet to 31 feet.

22          As the Applicant indicated, most of the addition  
23 will be 19 feet just on the basement level. And then also  
24 the other thing has to do with the size of these lots, which  
25 are deep lots. And what that does is that changes the way

**NEAL R. GROSS**

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

1 the addition will affect the neighboring properties because  
2 you still have a significant rear yard.

3 In addition, oftentimes we check and we contact --  
4 we see if there are any comments from the adjoining property  
5 owners. In this case, it is rather unusual but both of them  
6 are vacant. There is nobody living in them. So there is  
7 nobody to comment on it because there are no residents there.

8 And we also requested that the Applicant provide  
9 some kind of siding on the side of the addition so it wasn't  
10 just plain solid, I don't know, material but to try and make  
11 it a little bit more interesting to look at for the people  
12 who will live up and down that side of the block to see, to  
13 make it more interesting. And the Applicant did comply with  
14 that and submitted additional drawings.

15 So in light of that, and that also it is in  
16 conformance with all of the other criteria for the granting  
17 of the special exception. So in light of that, the Office  
18 of Planning recommends approval of this application.

19 Thank you.

20 VICE CHAIR HART: Thank you, Mr. Mordfin.

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

23 I know I have a question. Mr. Mordfin, I know  
24 this may be putting you on the spot but I need to understand  
25 something in the exhibits. The ANC raised a question about

**NEAL R. GROSS**

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

1 another case and I don't know if you are aware of the ANC  
2 report and that case that they referenced. And, if you  
3 could, speak to that.

4 The question that they are raising is, again, each  
5 one of the -- each of the BZA cases are reviewed on their own  
6 merit but the ANC is noting that there is a similar case on  
7 the same street and, in that case, the Office of Planning had  
8 not recommended that particular case, the addition in that  
9 case.

10 And I think it would be helpful for us to kind of  
11 understand where that -- the differences that we're talking  
12 about here so that we can look at this on its own merits but  
13 understand just in the fuller context.

14 And I'm assuming you understand which case I am  
15 speaking of.

16 MR. MORDFIN: Yes.

17 VICE CHAIR HART: Okay, thank you.

18 MR. MORDFIN: I think some of the difference in  
19 this case is we also look at the adjoining neighbors, which  
20 in this case, there weren't any. There was nobody that was  
21 going to be impacted to be able for us to have any  
22 discussions with or to read any submittals from them about  
23 how they thought this was going to adversely impact them  
24 because the entire time that this case has been going  
25 through, they have been vacant.

**NEAL R. GROSS**

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

1 Another thing I think has to do -- I think because  
2 of the way this one steps back, I think it does make it  
3 different. Although the basement does go out 31 feet, I  
4 think it makes a difference. The 19 feet is much less. And  
5 for most of it, that's what will appear as you go up and down  
6 the alley. The basement will stick out but the rest of the  
7 floor, the main floor, which goes out to the front, will be  
8 above that 31-foot extension. And I think the way with the  
9 deep lot and the 19-foot -- I think it makes a difference  
10 just in this specific case, with the way it appears.

11 VICE CHAIR HART: Thank you. I do appreciate  
12 that. That's helpful to understand this in its context.

13 Do the other commissioners -- Board members have  
14 any questions?

15 Does the Applicant have any questions for the  
16 Office of Planning?

17 MS. BACHER: I really -- I have another example  
18 of why this case is different from that BZA case, that other  
19 BZA case. I can say that now or later.

20 VICE CHAIR HART: Sure. It's related. So, why  
21 not?

22 MS. BACHER: Yes. So all the points that Mr.  
23 Mordfin brought up are very good and relevant. I'd also like  
24 to add that that, I believe, is on Varnum Street. And in  
25 that case, the yards are on the north sides of the buildings

**NEAL R. GROSS**

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



1 so they already have a very limited light supply. So  
2 restricting it even more would have been detrimental.

3           Again, in our case, the yards are on the south  
4 sides of the buildings and, consequently, there is a lot more  
5 sunlight. And both yards on either side will still be  
6 getting sunlight for most of the day.

7           VICE CHAIR HART: I appreciate that. Thank you  
8 very much.

9           No other questions for the Office of Planning.

10           Okay, we will now go to the ANC. Mr. Goodman,  
11 welcome. Thank you for waiting patiently.

12           MR. GOODMAN: Sure. So just a couple of  
13 clarifications. I wrote the letter, so my apologies. It is  
14 incorrect. We can remove the roof deck stairwell. We have  
15 already addressed that and come to an agreement. So one of  
16 the four stipulations in the bottom of the letter, that  
17 should have been removed. My apologies.

18           VICE CHAIR HART: Thank you very much. Can I ask  
19 the OAG a question about this?

20           The ANC has approved a -- they have provided us  
21 with some conditions and one of those conditions is something  
22 that they no longer want to include. Do we just strike that?  
23 Do we have to have another ANC report or what?

24           MR. COHEN: The ANC no longer wants to include  
25 that condition or the Applicant does not?

**NEAL R. GROSS**

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

1 VICE CHAIR HART: Neither one.

2 MR. COHEN: Well then the Board --

3 VICE CHAIR HART: And they have just stated -- the  
4 ANC has just stated that they are not wanting to include  
5 that.

6 MR. COHEN: Sure. The Board would just not  
7 include that as a condition in the order.

8 VICE CHAIR HART: That's fine. I just wanted to  
9 make sure that there was nothing that we needed to do other  
10 than that.

11 MR. COHEN: No, if the record reflects that --

12 VICE CHAIR HART: Okay.

13 MR. COHEN: -- if that's the case, I think it's  
14 okay.

15 VICE CHAIR HART: Yes, I mean it is the exhibit  
16 includes it and --

17 MR. COHEN: Sure.

18 VICE CHAIR HART: -- I just wanted to make sure  
19 that someone is not going to ask well, why is that not in  
20 there.

21 MR. COHEN: Sure, I understand.

22 VICE CHAIR HART: There was a reason for that.

23 MR. COHEN: Okay.

24 VICE CHAIR HART: Thank you very much, Mr. Cohen.

25 MR. COHEN: Yes, sure.

**NEAL R. GROSS**

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

1 VICE CHAIR HART: You can continue.

2 MR. GOODMAN: Sure. So for additional  
3 clarification, this ANC has taken two votes on this case.  
4 The September 1, which you have noted, which was a four to  
5 three to one vote, the three, and I can't speak for all  
6 three, but the question was they were looking to get more  
7 time to allow the Applicant to work with the neighborhood.  
8 The Applicant had turned down several asks to have community  
9 meetings.

10 The next ANC meeting was not going to be before  
11 the BZA hearing before we asked for a postponement. So we  
12 had to take a vote on it but several members wanted to  
13 essentially postpone it before we could ensure that we got  
14 a postponement. So that was the concern there.

15 In the November meeting, we came back and we  
16 amended the document and we re-voted on it. We are a ten-  
17 person commission. Only six were present at this meeting it  
18 was a five to one vote. Two of the three people that opposed  
19 on the first vote supported this second one. So nine of the  
20 ten commissioners have gone on the record, I believe at this  
21 point, to oppose both special exceptions of this case.

22 Let me go through. So the ANC has heard from  
23 about 15 --

24 ZC CHAIR HOOD: Can I just ask you a clarifying  
25 question because I'm still not --

**NEAL R. GROSS**

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

1 MR. GOODMAN: Yes.

2 ZC CHAIR HOOD: Okay. So it was four, three, to  
3 one --

4 MR. GOODMAN: Yes.

5 ZC CHAIR HOOD: -- the first time you all took the  
6 vote. And you did that to get more -- well, you had more  
7 time to work with the applicant and try to bridge some of the  
8 gaps, right?

9 MR. GOODMAN: We had to weigh in in order to be  
10 available for this meeting. Before we knew we were going to  
11 postpone, we agreed with the Applicant to postpone after that  
12 ANC meeting but we wanted to take a vote because our next  
13 public meeting would have been after the BZA hearing. So we  
14 wanted to weigh in.

15 ZC CHAIR HOOD: So to postpone the vote, that was  
16 unanimous?

17 MR. GOODMAN: Yes.

18 ZC CHAIR HOOD: Okay. So the next vote when you  
19 all were supposed to work together, it seems like some people  
20 switched sides. And I think you mentioned that but it kind  
21 of went past me because the vote was five-zero-one, I  
22 believe.

23 MR. GOODMAN: Five-one-zero.

24 ZC CHAIR HOOD: Five-one-zero, okay.

25 MR. GOODMAN: Correct.

**NEAL R. GROSS**

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

1           ZC CHAIR HOOD: I'm trying to go off the top of  
2 my head.

3           So with the five-one-zero vote, what happened,  
4 some people switched?

5           MR. GOODMAN: In the first vote, two of the four  
6 people who voted in favor of opposition were not present for  
7 the second vote at the meeting. Two --

8           ZC CHAIR HOOD: Okay, additional people came.

9           MR. GOODMAN: Additional people came on. Two of  
10 the people that voted against opposing in September are now  
11 supporting opposing this. So in total, I believe there are  
12 nine commissioners that are now supporting either in the  
13 September motion or the November motion to oppose this of the  
14 ten of us.

15          ZC CHAIR HOOD: Okay. Okay.

16          MR. GOODMAN: I mean I just want to clarify. It  
17 seems like it's a close vote but I believe about nine out of  
18 ten are actually standing in opposition to this.

19          ZC CHAIR HOOD: Okay. So let me ask you another  
20 question. In the opposition, whose single member -- is this  
21 your Single Member District?

22          MR. GOODMAN: This is mine, yes.

23          ZC CHAIR HOOD: Okay. All right, thank you.

24          MR. GOODMAN: Sure.

25          VICE CHAIR HART: You may continue.

**NEAL R. GROSS**

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

1 MR. GOODMAN: Yes, so ANC has heard from about 15  
2 neighbors who oppose this project. I understand not many of  
3 them have filed opposition letters with the BZA. The ANC  
4 doesn't actively solicit letters in support or in opposition  
5 to projects that come before.

6 The ANC also recognizes that the Applicant has  
7 gained letters of support from I think we have now said 27  
8 residents. Several of them we're just noting are outside of  
9 the 200-foot notice area. They are still residents in this  
10 area but they are beyond that and at least one house, it is  
11 our understanding that it is an Airbnb resident and not  
12 residents of D.C. This was a case that came up in a previous  
13 case I was working with you that went into, I believe,  
14 testimony on that.

15 So I'm not protesting it. I believe they have  
16 about 20 that the ANC is agreeing with that are in support  
17 of this. And then we believe there is an additional about  
18 15 who have come to the ANC for opposition but I believe only  
19 one actually filed opposition directly with the BZA.

20 So just in terms of where the awareness of and how  
21 we voted on it.

22 I basically have three reasons that the ANC has  
23 been opposed to this. As we discussed this in two cases just  
24 this morning, there was this whole question that came up  
25 about a ten-foot extension and what is really the regulations

**NEAL R. GROSS**

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

1 wanting. And in very explicit cases, the Board talked about  
2 a 30-foot extension and whether that was in the spirit of  
3 this ten-foot by right allowance. And you very explicitly  
4 said that ten feet is kind of a starting point, that there  
5 needs to be 11, 12, 13 feet to fit whatever conditions  
6 require, that that is essentially allowable and permissible.  
7 But the Board made a very clear distinction between what a  
8 30-foot extension is, and what a 10-foot or 10 to 13 area  
9 foot extension is.

10 So given that, and given that the ANC looks at  
11 these regulations and says that by right is ten, we feel that  
12 30 is excessive. The ANC has gone to the Applicant and made  
13 a compromise that we would support the three-unit exception  
14 if they came back to ten feet by right and the Applicant has  
15 turned us down.

16 The second point is if the BZA wants to encourage  
17 Applicants to work with community, I don't think this is the  
18 case to grant that Applicant their special exception. I have  
19 been with you before, a previous case in August, where the  
20 Applicant spent about five months with community meetings,  
21 getting neighborhood support, reinforcing the square, doing  
22 additions to the alley. This project is directly behind this  
23 house. The Board made special notice to say how excited they  
24 were to see that community involvement and that's what BZA  
25 cases and ANC should be.

**NEAL R. GROSS**

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

1           In this case, the ANC has asked the Applicant,  
2 when this first was filed, to hold community meetings and the  
3 ANC was denied several times and they refused to hold  
4 meetings.

5           They eventually came around to it and they have  
6 done tremendous work doing footwork getting these letters.  
7 But it's been a very problematic case to the point that at  
8 the last meeting, the Applicant directly verbally threatened  
9 me and I had to be escorted from the meeting by fellow  
10 commissioners and driven away from the library.

11           It's a challenging, challenging case with them in  
12 that there is tremendously strained relations and lack of  
13 involvement with the Applicant in terms with working with ANC  
14 or the community.

15           The last third point here is that this is, while  
16 the case that I mentioned earlier on Varnum is four blocks  
17 away, I can stand on 4th Street and see this house and I can  
18 look up the hill and see the intersection where Varnum is.  
19 This is a contiguous RF-1 zone. These are the same houses  
20 built at all the same time. And while each case, I agree,  
21 is a unique case, this is an almost identical lot size, mid-  
22 block, not on an alley, not on a corner, northwest facing,  
23 very deep lot, where OP and BZA has denied a 27-foot  
24 extension and this case is looking at a 31-foot extension.  
25 And yes, the sun does rise and set in the more southerly side

**NEAL R. GROSS**

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



1 but almost all the other details of that case are nearly  
2 identical.

3 In that case, the Office of Planning went on the  
4 record in the transcript for that case saying that a three-  
5 story unit and 20 feet does impact the neighborhood, quote.  
6 You know I think it has privacy implications. There is now  
7 a rooftop deck. There is a stairwell that goes to the first  
8 and second level.

9 And you know this creates a large plank wall. I  
10 understand that they are introducing green space on the side  
11 but it introduces a large plank wall that is going up against  
12 adjoining properties.

13 In that same case, same transcript on that record,  
14 the chairperson of this BZA stated it is kind of the pop-back  
15 that I am having the issue with. I wish I could just say  
16 okay, that's great but, again, we have gone through this so  
17 many times with the ten feet and that's what the Zoning  
18 Commission got to, which is, that you can go back ten feet  
19 from the existing property line and you guys, in this case,  
20 are trying to go back 20 feet.

21 Those are two reasons why we opposed -- I said 27.  
22 They actually amended it to 17 and the 17 was objected to in  
23 this case. Yes, we are looking at 31-foot rear addition.  
24 And while the second floor and third floor may pop back to  
25 19, that's still significant. That's still double what is

**NEAL R. GROSS**

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

1 by right permissible in this area.

2           You know I think the fact that there is some  
3 precedent in this SMD within four blocks, within this year  
4 with this same case, I would like you to consider that and  
5 understand this. The ANC looks to the BZA in how you review  
6 cases in terms of how we recommend it to our own commission  
7 and neighbors. That if you have ruled against something  
8 already, it's a very smart case, we use that to ask neighbors  
9 to compromise and come to a conclusion that should pass based  
10 on the merits of what the BZA has ruled previously.

11           I think the ANC would like us to treat these  
12 cases, while unique, fair and equitably across the  
13 neighborhood when they are in such close proximity to each  
14 other.

15           The ANC would like to BZA to ask the Applicant to  
16 go back and work with us on a compromise, so allowing a  
17 three-unit exception but asking this to come closer to the  
18 by right ten-foot allowance to keep the precedent.

19           VICE CHAIR HART: Thank you, Mr. Goodman.

20           Do the Board members have any questions for -- any  
21 other questions for the ANC? Lesyllee.

22           MEMBER WHITE: I just had one question -- well a  
23 question regarding this particular property. I mean there  
24 are no adjoining neighbors on either side and I think that  
25 has played into, or at least was part of the contributing

**NEAL R. GROSS**

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

1 factor for Office of Planning's support, possibly. Maybe I  
2 should let them speak for themselves with respect to that.  
3 But do you think that should be a consideration in terms of  
4 granting the relief that the Applicant is seeking in this  
5 case?

6 And also, there are a lot of letters of support.  
7 So I wanted to see what your thought was with respect to  
8 that.

9 MR. GOODMAN: Sure. So while the two properties  
10 are vacant, they can either support this or they can't oppose  
11 this. So there is really no standing from any of these  
12 neighbors.

13 There will be neighbors in these houses,  
14 hopefully, in the future. You know we have a density  
15 problem. We have a housing problem.

16 The ANC wants to get people into these houses.  
17 Eventually there will be neighbors. And just because the one  
18 property that abuts this will have a 30-foot wall doesn't  
19 mean two houses away is not also negatively impacted by this.

20 If you look at the square and the rear addition  
21 of this, this isn't common and this doesn't happen in any of  
22 the other houses. The neighborhood will have to live with  
23 this. It's not just the two adjoining properties that have  
24 to live with this and the consequences of a 30-foot wall that  
25 they are going to stare at in their yard.

**NEAL R. GROSS**

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

1           While there is additional yard space back there,  
2 these neighbors don't live on their parking pads. They live  
3 up front where this wall is and where this is abutting these  
4 properties and this property line. So I do think it is a  
5 tremendous impact on other neighbors in this, yes.

6           MEMBER WHITE: Okay.

7           ZC CHAIR HOOD: Okay, so the issue -- I think the  
8 Office of Planning said there are no neighbors on either  
9 side. What's going on on both sides?

10          MR. GOODMAN: Sure. There are houses. They are  
11 vacant row homes. So 430 is currently going under  
12 development. They have not requested any special exceptions  
13 or variances. So they are, essentially, flipping the house  
14 by right, which they are permissible to and which we are  
15 asking this applicant to do.

16          The other side, the house is vacant and it is on  
17 the market for just under \$1 million as a show of a house.  
18 So somebody is sitting on it for some reason and not putting  
19 people in it.

20          ZC CHAIR HOOD: Okay. Was this the neighborhood  
21 that helped the Zoning Commission develop those regulations  
22 for the ten feet or for the pop-back? Was this one of the  
23 neighborhoods?

24          MR. GOODMAN: I'm unsure. I came on midterm last  
25 year. So I've only been on for about 14 months.

**NEAL R. GROSS**

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

1           ZC CHAIR HOOD: Oh, okay. So you all believe that  
2 it's more than just whether or not there are neighbors next  
3 door. You all believe that that is going to really change  
4 if you extend what's already allowable. And I know they had  
5 discussion earlier there about this but if you extend what's  
6 allowable, you all believe that that's going to change the  
7 character. Is that where you are going with this or you want  
8 to continue to have a dialogue?

9           I'm not following a lot of this about as far as  
10 the going back. I understand you don't want it to go back  
11 30 feet or whatever -- 19 feet. Why is that, because it's  
12 the character of the neighborhood or why is it? Just tell  
13 me why.

14           MR. GOODMAN: Yes, just the density of the  
15 character of the lot being put there. In the case that we  
16 talked about, 19418, OP, one of their reasons for objecting  
17 to it is that this character doesn't exist anywhere and this  
18 would be setting tremendous precedent for all the other  
19 houses to do this.

20           The same thing with this square. You know we  
21 don't have 30-foot rear additions elsewhere in this area.  
22 We have some other houses within the area who have come in  
23 through old zoning regulations that were allowed to go  
24 slightly larger. Not in this square. These other neighbors  
25 aren't facing that.

**NEAL R. GROSS**

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

1           So yes, I think this tremendously is going to  
2 impact it.

3           ZC CHAIR HOOD: Okay. All right, thank you.  
4           Thank you, Mr. Vice Chair.

5           VICE CHAIR HART: And actually I have a question  
6 for the Applicant. The penthouse that you are looking at,  
7 what is the distance from the front of the building? Do you  
8 know?

9           I was just trying to understand if you could  
10 actually see that from the street. I didn't --

11          MS. BACHER: I am going to have to possibly  
12 estimate.

13          VICE CHAIR HART: The reason that I'm looking at  
14 --

15          MS. BACHER: It is going to be at least, what 27.8  
16 feet from the front of the building, 27 feet, 8 inches from  
17 the front of the building.

18          VICE CHAIR HART: Do you have any images that show  
19 what this looks like from the street?

20          MS. BACHER: From the street, yes. Well, from the  
21 street what we have is an elevation. We don't have a view.

22          VICE CHAIR HART: I know. That's what I -- I mean  
23 I'm looking at -- what is this -- I think page 11 of your  
24 revised drawings, Exhibit 31. It's the revised drawings that  
25 you all submitted.

**NEAL R. GROSS**

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

1           And so page 11, it says BZA 11, I'm assuming that  
2 is what that is. Yes, that actually has the penthouse on top  
3 of this. And as I'm looking at it, I don't know how far --  
4 how wide the road is. So I'm not exactly sure. It almost  
5 seems like I am going to see that penthouse and it just looks  
6 really tall on this.

7           You know you have a roof deck. You have decks on  
8 the front and on the rear of the building. And then there  
9 is this kind of penthouse that goes up to the roof deck and  
10 it just seems really, really high. And I didn't know what  
11 that view was.

12           I don't know about the rest of the Board. I would  
13 actually like to see that view to understand what that is.

14           MEMBER WHITE: That's not enough.

15           VICE CHAIR HART: Yes, I'm not exactly sure -- Ms.  
16 White is showing me another image. I'm not exactly sure what  
17 this image is -- oh, it's on the front of the application.  
18 Where is this view taken from? Is that like on the street  
19 or is that on -- is there anything from across the street?  
20 That's what I'm trying to get to.

21           MS. BACHER: Sorry about that. That view is going  
22 to be from I believe the sidewalk on the opposite side of the  
23 street but I would have to double-check because I can't  
24 remember -- I don't know exactly where that camera is placed.

25           VICE CHAIR HART: I mean I don't know about the

**NEAL R. GROSS**

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

1 other Board members. I just would like to understand what  
2 that looks like.

3 MS. BACHER: Okay.

4 VICE CHAIR HART: And I just don't feel like I  
5 have that. It seems really tall to me. I mean I know you  
6 have -- you're limited at 35 feet and you are at the 35-foot  
7 with the third addition -- the third floor. The penthouse  
8 is on top of that and even though it is set back a number of  
9 feet, 20-some odd feet, it still seems tall to me. And it  
10 seems kind of prominent.

11 MEMBER WHITE: You can see it from the front.

12 VICE CHAIR HART: Yes, and I'm thinking you are  
13 going to be able to see that. And it's just like --

14 MS. BACHER: The regulation is one-to-one, which  
15 it is greater than one-to-one but if that's -- if we're going  
16 to -- I don't know what the policy is going to be but I mean  
17 if we need to -- if we are going to do like an extended  
18 hearing, we can submit that information.

19 VICE CHAIR HART: Yes, I mean I don't know. I'll  
20 leave it up to my other Board members but it is just helpful  
21 for me to understand that.

22 ZC CHAIR HOOD: Yes, I agree. I'm going to ask  
23 some, a little more, too, added to what you are seeing. I  
24 would like to see this placed down to the circumstances that  
25 exist now, what you are asking for -- the rear part that you

**NEAL R. GROSS**

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



1 are proposing. And I would like to see it, you know what I  
2 mean?

3 VICE CHAIR HART: A prospective rendering, is that  
4 what you are looking for?

5 ZC CHAIR HOOD: A prospective --

6 VICE CHAIR HART: An aerial.

7 ZC CHAIR HOOD: What actually exist.

8 VICE CHAIR HART: Oh, oh, oh. You want to see  
9 what it looks like.

10 ZC CHAIR HOOD: I want to it put in to what  
11 actually exists, what is there now.

12 VICE CHAIR HART: The rear or the front?

13 ZC CHAIR HOOD: I want to see both, all of it to  
14 see how it works all the way around.

15 VICE CHAIR HART: And the --

16 ZC CHAIR HOOD: I don't want to put an undue  
17 burden on anybody or cost but if you could do that minimally,  
18 I would appreciate it. I think that will show what you are  
19 trying to look at.

20 VICE CHAIR HART: Is this beyond what we have on  
21 the front page of the --

22 ZC CHAIR HOOD: Yes, it's beyond that.

23 VICE CHAIR HART: Okay.

24 ZC CHAIR HOOD: It's much beyond that.

25 VICE CHAIR HART: So I think what we are looking

**NEAL R. GROSS**

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

1 for is just some views definitely from across the street.  
2 Chairman Hood talked about the rear as well, just to kind of  
3 understand what this is.

4 And I think part of this is for us to really  
5 understand this. And again, I understand that it may be sent  
6 back.

7 The penthouse, to me, seems like it is fairly  
8 large and I just get to a wow, okay. I know that that is not  
9 necessarily what you are for but it is helpful for me to  
10 understand the entire kind of project.

11 You know I think that's it. I don't want to say  
12 too much more about it.

13 I think I understand most everything else that is  
14 going on with this. And I'm not necessarily sure we need to  
15 have a continued hearing. I think it's more if you could  
16 submit this and then we could have a meeting on it. I'm  
17 looking to the other Board members to make sure that that's  
18 okay.

19 MEMBER WHITE: So it would just be a decision?

20 VICE CHAIR HART: Yes, I think it would not be a  
21 continued hearing. It would be a decision meeting but it's  
22 really just to try to understand that.

23 MEMBER WHITE: And since it's going to be a  
24 decision hearing, would it be -- I'm assuming it would be  
25 acceptable to accept three of those conditions that were in

**NEAL R. GROSS**

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

1 the ANC letter as part of our analysis of whether or not we  
2 are going to grant any type of relief, excluding the  
3 stairwell portion.

4 MS. BACHER: Well, absolutely those three. And  
5 the ANC did waive that stairwell. But if we feel that it is  
6 too prominent, we can absolutely look at cutting it back, if  
7 that would be helpful. I mean we're willing to work on that  
8 as well.

9 VICE CHAIR HART: I would appreciate it. I mean  
10 I don't want to cause another problem with different height  
11 roofs and things because I know that can be some kind of an  
12 issue for penthouses that are not the same height roof.

13 So I am not trying to get it in to another issue.  
14 I'm just trying to understand what that kind of looks like  
15 from the street in that it doesn't exist now and I think that  
16 that may be somewhat a prominent feature as you move forward.

17 So Mr. Moy, actually I haven't finished the  
18 hearing. So we have heard from the ANC.

19 Is anyone here in opposition to the project?

20 Anyone here in support of the project?

21 Okay, so I think at this point we can -- I don't  
22 know if the Board wants to talk anymore. No.

23 I think we can close the hearing at this point and  
24 we will ask -- we've asked for these pieces, these other  
25 pieces of information.

**NEAL R. GROSS**

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

1           And Mr. Moy, we are looking at this as being a  
2 decision. Again, I know the docket is pretty full for the  
3 29th so it is probably the -- I don't know.

4           MR. MOY: Well, let me think. Okay, we'll start  
5 there. If the Board sets this for decision on the 29th, and  
6 if the Applicant can submit the additional 3D drawings or  
7 axonometric drawings as requested.

8           And is the Board going to allow the ANC to respond  
9 to those drawings or not?

10          VICE CHAIR HART: I thought the ANC would have  
11 their -- I thought they were able to respond, regardless.

12          MR. MOY: Yes, they can. Well, I would have to  
13 put this into the time line.

14          VICE CHAIR HART: You're just saying the time  
15 line.

16          VICE CHAIR HART: Yes, I would give them an  
17 opportunity to do that. I don't know. I'm asking our OAG  
18 a well.

19          ZC CHAIR HOOD: Board's discretion.

20          VICE CHAIR HART: Fine.

21          MR. MOY: Can the Applicant submit, make their  
22 submission -- how long would it take to file, a week, this  
23 Friday, or -- because I would like to give the ANC enough  
24 time to respond to your drawings.

25          MS. BACHER: Friday might be pushing it.

**NEAL R. GROSS**

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

1 MR. MOY: Monday, the 20th or do you need a full  
2 week?

3 MS. BACHER: So if we submit the 22nd then there  
4 is a week until but you want the ANC to be able to respond  
5 before that?

6 If we submit the 22nd, then the hearing or the  
7 decision hearing would be on the 29th, that's a week. Is  
8 that not enough time?

9 VICE CHAIR HART: Well, what ends up doing is then  
10 we wouldn't --

11 MR. MOY: It would be December 6th.

12 VICE CHAIR HART: Yes, I mean we would move it to  
13 December if it did.

14 MS. BACHER: Oh, I see. Yes, probably by Monday.  
15 End of day Monday?

16 VICE CHAIR HART: That works for us.

17 MR. MOY: Okay. So that would be Monday, November  
18 the 20th. The ANC would have more than seven days to  
19 respond, if they want to. And then the Board can make its  
20 decision on the 29th.

21 VICE CHAIR HART: Okay. Thank you, Mr. Moy.

22 MR. MOY: Thank you.

23 VICE CHAIR HART: I think we're finished. Thank  
24 you very much for coming. Enjoy the rest of your evening.

25 The next case, Mr. Moy, when you're ready.

**NEAL R. GROSS**

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

1 MR. MOY: All right, thank you Mr. Vice Chair.  
2 That would be Application 19572 of SIM, S-I-M, Development,  
3 LLC captioned and advertised for variances from the  
4 nonconforming structure requirements of Subtitle C, Section  
5 202 and the parking requirements of subtitle C, Section  
6 701.5. This would add two stories containing 16 units to an  
7 existing two-story, 9-unit mixed use building. This is an  
8 MU-4 District at premises 1916 15th Street, Southeast, Square  
9 5766, Lot 845.

10 VICE CHAIR HART: Thank you, Mr. Moy.

11 And we have a full contingent. When you're ready,  
12 if you could, introduce yourselves from my right to the left.

13 MR. JONES: Phinis Jones. That's spelled P-H-I-N-  
14 I-S.

15 MR. BELLO: Toye Bello, representing the  
16 Applicants, SIM Development, LLC.

17 MR. CRUICKSHANK: Neil Cruickshank, Architectural  
18 Solutions, also for the Applicant, SIM, LLC.

19 VICE CHAIR HART: What's your last name again?

20 MR. CRUICKSHANK: Cruickshank.

21 VICE CHAIR HART: Can you spell that? Sorry.

22 MR. CRUICKSHANK: I think I can. C-R-U-I-C-K-S-H-  
23 A-N-K.

24 VICE CHAIR HART: Thank you.

25 MR. CRUICKSHANK: It's a mouthful.

**NEAL R. GROSS**

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

1 MR. ANDRES: Good afternoon, Vice Chair Hart,  
2 Erwin Andres with Gorove/Slade Associates.

3 MS. KENNEDY: Good evening. Karinne Kennedy, a  
4 resident and landlord on 15th Street.

5 MEMBER WHITE: Can we get the address?

6 MS. KENNEDY: I'm sorry, 1920 15th Street,  
7 directly across the alley from the property in question.

8 MS. AGYEI: Dorcas Agyei, resident Historic  
9 Anacostia, address 1926 15th Street.

10 VICE CHAIR HART: Can you spell your last name  
11 again? I'm sorry.

12 MS. AGYEI: The last name is A, as in apple, G,  
13 as in George, Y-E-I. And the first name is D-O-R-C-A-S.

14 VICE CHAIR HART: Thank you.

15 MS. ECKLES: My name is Linda Atherton Eckles.  
16 I live about 120 feet from this building. I'm a multi-term  
17 ANC commissioner and chair of ANC commissions in the past and  
18 served eight terms in those capacities.

19 VICE CHAIR HART: Welcome.

20 MR. MULLER: Good evening. John Muller, long-time  
21 community reporter, renter on the 1400 block of W Street  
22 across from Mr. Frederick Douglass' Washington, D.C. home.

23 MS. GUNNELS: Good evening. My name is LaTasha  
24 Gunnels and I am a resident of Historic Anacostia. I am  
25 homeowner on W Street and I have lived there for three years.

**NEAL R. GROSS**

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

1 MS. FULLER: Good evening. Greta Fuller, ANC  
2 Commissioner 8A06. I've been a commissioner in Anacostia now  
3 for four or five terms. I can't remember anymore.

4 But I'm here today -- I'm not the Single Member  
5 District representative but I'm here to speak on behalf of  
6 some of the residents in the vote at the ANC.

7 VICE CHAIR HART: Okay. Thank you very much.

8 So I'm assuming Mr. Bello, are you -- okay. Okay,  
9 you can start your presentation when you would like.

10 MR. BELLO: And I will just try to summarize it.  
11 I understand that it has been a long day.

12 The proposal that we have before for this project  
13 is to construct two floors of addition plus a habitable  
14 penthouse to an existing two-story building. The two areas  
15 of --

16 VICE CHAIR HART: Can you hold -- I'm sorry. Can  
17 you hold on one second?

18 MR. COHEN: Mr. Vice Chair, just for the record,  
19 there were a couple of preliminary matters for the Board's  
20 attention.

21 VICE CHAIR HART: Yes, I apologize for that.

22 MR. COHEN: And we apologize to the Applicant.

23 VICE CHAIR HART: Mr. Bello, I should have caught  
24 that and I did not but I will catch it now before we start  
25 into this.

**NEAL R. GROSS**

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



1           So there were some preliminary matters that we  
2 needed to I guess deal with. One was with regard to I guess  
3 a posting concern. And this is -- the posting concern was  
4 with regard to whether or not the posting was done in the  
5 appropriate fashion and I guess I will look to our OAG to  
6 give me a little bit of help with it. Are we making a  
7 motion, too or are we --

8           MR. COHEN: Well, Mr. Vice Chair, from what I  
9 understand, the posting wasn't accurate in terms of what  
10 substantively was on it.

11           For the Board's consideration, I presume, is  
12 whether or not they feel that waiving the procedure and  
13 technical requirements of the posting -- excuse me of the  
14 posting requirements in the Zoning Regulations, whether or  
15 not the Board feels that would prejudice the parties, given  
16 the fact that we have so many people here today.

17           MR. MOY: Mr. Vice Chair, if I may intervene.

18           VICE CHAIR HART: Please.

19           MR. MOY: This issue was promulgated because there  
20 is a letter in opposition in the record from -- which is, I  
21 believe, Exhibit 52, which raises discrepancies in the  
22 posting requirements.

23           VICE CHAIR HART: And so we have to -- really this  
24 is to determine whether we should be waiving this provision,  
25 correct?

**NEAL R. GROSS**

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

1 MR. COHEN: That's correct.

2 MR. MOY: You may ask staff, again, to reply, to  
3 respond to that, Mr. Vice Chair.

4 VICE CHAIR HART: Thank you, Mr. Secretary.

5 Mr. Bello, you are aware of this particular  
6 concern that was raised?

7 MR. BELLO: I am aware and there is a good  
8 explanation for it, Mr. Vice Chairman.

9 This application has been postponed twice. One  
10 at the requests of the Applicant in order to respond  
11 adequately to some of the issues raised by the ANC. The  
12 second postponement was actually at the behest of the ANC  
13 itself, after we presented to the ANC and the ANC thought  
14 that the community members needed a little bit more time.

15 So the dates for the hearing that was posted  
16 reflected the original date of the hearing, which was October  
17 25th but the community at large, the ANC and everybody was  
18 very aware of this application because we had to meet with  
19 them severally.

20 So I do not feel that anybody is prejudiced by  
21 what the claim of the opposition is.

22 VICE CHAIR HART: Thank you.

23 Does the Board have any questions for the  
24 Applicant on this?

25 (No audible response.)

1 VICE CHAIR HART: Hearing none -- that's fine.

2 So, I guess it's up to us. I mean it seems as  
3 though folks are actually -- would you like to say something?

4 MS. AGYEI: Yes.

5 VICE CHAIR HART: Actually, one of you can speak.  
6 It's fine.

7 And are you the person that actually submitted the  
8 -- thank you. Ms. -- I'm sorry.

9 MS. AGYEI: Agyei.

10 VICE CHAIR HART: Agyei?

11 MS. AGYEI: Yes.

12 VICE CHAIR HART: Thank you.

13 MS. AGYEI: So what he is speaking to does not --  
14 is not what we are disputing. And I have pictures.  
15 Unfortunately I don't know how to make this work but I can  
16 show --

17 VICE CHAIR HART: Can you actually give the  
18 pictures to the Secretary?

19 MS. AGYEI: Sure. And they are also submitted but  
20 I don't know the best way to describe it.

21 So what he is speaking to is the actual placard  
22 that is visible has the date of the 25th. What we're  
23 speaking to is because that building is on the corner of a  
24 major throughway, which is Good Hope Road, and that is  
25 intersects with 15th Street, there was not a posting also on

**NEAL R. GROSS**

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

1 Good Hope Road street, so that people walking by could see  
2 that actually something was going to be happening with the  
3 building.

4 VICE CHAIR HART: So you are saying that it was  
5 just inadequately posted.

6 MS. AGYEI: Correct.

7 MEMBER WHITE: The absence.

8 MS. AGYEI: Absence. There was the absence of the  
9 placard on Good Hope Road.

10 VICE CHAIR HART: Thank you.

11 Mr. Hood?

12 ZC CHAIR HOOD: Mr. Chairman, can I ask Mr. Cohen,  
13 if you could let me know, does it specify? I know it has to  
14 be a place that is conspicuous and noticeable but does it say  
15 in our regulations exactly where it needs to be placed?

16 MR. COHEN: If you will allow me an opportunity  
17 to check up on that, I would appreciate it.

18 ZC CHAIR HOOD: Okay. I just can't remember this.  
19 Okay, we'll give you some time because I remember off the top  
20 of my head that it has to be a certain but it doesn't  
21 necessarily say exactly.

22 Anyway, I'll wait and see what it says. I don't  
23 want to go off my memory.

24 VICE CHAIR HART: Yes, Mr. Hood, I did --

25 ZC CHAIR HOOD: You have it?

**NEAL R. GROSS**

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

1           VICE CHAIR HART: Yes, it looks like I have the  
2 documents here. And I know this is not the entire one but  
3 I think the part that we need to be aware of, the notice --  
4 this is -- oh would you like to give --

5           MR. COHEN: I believe the relevant regulation and  
6 section that you are asking about is Subtitle Y, Section  
7 402.4 and I'm just going to read it verbatim: The notice  
8 required by Subtitle Y, Section 402.3 to be placed upon an  
9 applicant's property shall be posted in plain view of the  
10 public at each street frontage on the property and on the  
11 front of each existing building located on the subject  
12 property.

13           Those are the requirements for the Board's  
14 consideration.

15           ZC CHAIR HOOD: All right, Mr. Bello, I know you  
16 know this very well. Why was it not -- how many were posted,  
17 just one, two, or what? I know they usually give out two or  
18 whatever.

19           MR. BELLO: And we do have the affidavit of  
20 posting and the two photographs. Both streets were posted,  
21 Mr. Chairman.

22           MS. AGYEI: The pictures that are before you  
23 present what have been there for the last month or so.

24           ZC CHAIR HOOD: I believe these are from, Mr.  
25 Chairman, Exhibit 37. I think it's 37. Yes, I wanted to

**NEAL R. GROSS**

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

1 close it back up -- 37.

2 VICE CHAIR HART: Yes, I see the affidavit of  
3 posting on this. So I guess -- I mean the image that we have  
4 shows the posting -- the affidavit of posting, it looks like  
5 it's two different places. Yes, I think I am looking at that  
6 correctly. It looks like it is on two different places, I  
7 guess on two different walls of two different streets but I  
8 see in the image that Ms. Agyei provided, one of them is no  
9 longer on the wall as it sounds like it should have been.

10 I understand that all of us -- it seems as though  
11 all of us are here. And I understand the issue that you're  
12 raising up. I think that it is a valid point to make. I  
13 will say, though, that we are all here at the table and that  
14 we have at least understood -- I understand there may be more  
15 people that wanted to come. I do understand that.

16 I'm trying to kind of weigh the people that have  
17 actually made their -- have taken time the time to come here  
18 --

19 MS. AGYEI: I just wanted to make sure that that's  
20 just noted in the Board that we potentially would have had  
21 the opportunity to engage more people, had they known about  
22 it.

23 VICE CHAIR HART: Yes, and I appreciate your  
24 bringing up about the concern. I don't know how the other  
25 Board members feel about it. Feel free to chime in.

**NEAL R. GROSS**

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

1 ZC CHAIR HOOD: We also have more than one way of  
2 advertising. I think folks from the 200 feet advertisement  
3 --

4 VICE CHAIR HART: Yes, that's true.

5 ZC CHAIR HOOD: -- I think it's also in the D.C.  
6 -- well nobody really reads it, not even me, but the D.C.  
7 Register. I'm not saying go to that point but I mean we have  
8 more than one avenue to advertise.

9 I'm more concerned about if it's not up there, if  
10 it's not properly noticed, I'm more concerned about making  
11 sure that people got -- and I think our record is complete  
12 that everyone within 200 feet at least got a notice.

13 VICE CHAIR HART: And you can --

14 MS. AGYEI: My neighbor can speak to that. She  
15 is right next door.

16 MS. KENNEDY: I'm right next door to the building.  
17 I did not get any type of notice. I did talk to Mr. Jones  
18 and Ms. Wilcher and they explained that they had a mailing.  
19 But when I go on your website and pull down their list of  
20 mailings, my address is incorrect. So I did not get one.

21 VICE CHAIR HART: Yes, and I'm not sure how to  
22 correct the addresses here you know for this.

23 Yes, ma'am.

24 MS. ECKLES: I'd like to also state that I am  
25 within that radius. I did not get a notice of this. But to

**NEAL R. GROSS**

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

1 not acknowledge the importance of proper notice on the Good  
2 Hope Road side, which impacts the whole neighborhood, as  
3 opposed to this little side location over at 15th Street,  
4 where nobody goes anyway. So if that was not there, it might  
5 not be substantive.

6 MS. AGYEI: It's not that nobody goes but may not  
7 be as noticeable.

8 MS. ECKLES: But to not placard and publicly  
9 notice Good Hope Road, I can guarantee you it says why the  
10 few of us are here.

11 VICE CHAIR HART: It seems like a lot of folks  
12 here.

13 MS. ECKLES: No, trust me.

14 VICE CHAIR HART: No, no, what I'm saying is --

15 MS. ECKLES: This is not a lot of people.

16 VICE CHAIR HART: What I'm saying is you could  
17 have a hundred people here. What I'm saying is that there  
18 are people that actually were aware of this and actually  
19 spent the time to come down here, which we appreciate. Don't  
20 get me wrong. I think that that's great to see that.

21 MS. ECKLES: I'm one of them.

22 VICE CHAIR HART: Mr. Cohen, one question about  
23 right now what we're looking at is whether or not this is --  
24 this was posted correctly but what is -- do you have an  
25 opinion on how long the posting -- you know the image that

**NEAL R. GROSS**

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



1 we have for the affidavit of posting includes the sign on --  
2 you said Good Luck Road?

3 MS. ECKLES: Good Hope Road.

4 VICE CHAIR HART: Excuse me, Good Hope. And the  
5 image that we have that Ms. Agyei -- I'm sorry, I keep on  
6 looking at that and I'm like -- provided does not have that  
7 on there.

8 So there's a point in time that that sign no  
9 longer was on there. So it was on there at some point but  
10 just didn't stay on there. I mean that is what I would  
11 assume from this.

12 MR. COHEN: Mr. Vice Chair, you might get  
13 frustrated with my response. I'm not equipped to give my  
14 opinion.

15 VICE CHAIR HART: Yes, that's fine.

16 MR. COHEN: I can tell the Board that the Board  
17 should consider any prejudice or if there is any good cause  
18 as to whether or not these procedural deficiencies should  
19 affect when this hearing is to occur.

20 VICE CHAIR HART: Thank you I do appreciate that.  
21 That is information.

22 I think that the Applicant has shown that they  
23 have document, made the poster on this street. I understand  
24 that it may not be on there now. I do also understand that  
25 you all are here and I think that we should be forward with

**NEAL R. GROSS**

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

1 at least having the hearing.

2           You do not have to agree with it. I'm just  
3 telling you this is my opinion on it. And I think that we  
4 could be able -- I think that I would be in support of  
5 waiving that particular provision. I could hear from the  
6 rest of my Board members if they have any opinion on this and  
7 if they want to sway me, I'm open to that as well.

8           MEMBER WHITE: I mean I can see that maybe more  
9 people would have been here but I think we've got a pretty  
10 adequate number of people to at least get started with  
11 hearing the case now. And the people that perhaps do want  
12 to submit something in writing would still have an  
13 opportunity to do so, unless we close the hearing and the  
14 record today, which I don't know whether or not we will get  
15 to that point or not.

16           VICE CHAIR HART: Mr. Hood?

17           ZC CHAIR HOOD: I think that is one of our  
18 options. Board Member White is exactly correct. I think we  
19 leave the record open. I think we have people here on the  
20 stand about the notice, the placards because I, actually  
21 downtown, put one back up myself. So I know that it happens.  
22 It does come down, people take it down.

23           But let me ask you this, Mr. Bello. Were you  
24 aware that the placard come down? Because it looks like one  
25 was posted on Good Hope.

**NEAL R. GROSS**

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

1           MR. BELLO: I wasn't aware that the placard came  
2 down. I don't want to get into the case ahead of it but we  
3 have very substantial and significant community interaction  
4 over this case.

5           ZC CHAIR HOOD: Okay. Because I know periodically  
6 the applicants ride by and make sure that their stuff is  
7 still up for this very reason.

8           But I would agree with the Vice Chair and also  
9 with Ms. White. I think Ms. White has a good remedy.  
10 Towards the end, we can leave it open for comments, to get  
11 some of those people that you all say that may not have  
12 gotten notice.

13           As the Vice Chair said, you may not disagree but  
14 you've been here. You've been here all day and we don't take  
15 that lightly. And we're also going to operate on the merits  
16 of the case. We can get to the case and that way we can make  
17 our discovery as we move forward.

18           Thank you, Mr. Vice Chair.

19           VICE CHAIR HART: Yes and actually one other  
20 thing. After we kind of finish with this, I think that we  
21 are in agreement that we are waiving this particular  
22 provision so we can move on from that.

23           Mr. Moy, because I just thought about it, I just  
24 want to make sure if everyone has actually been sworn in.  
25 I'm assuming all of you have but -- you have not? Okay,

**NEAL R. GROSS**

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

1 well, anyone in the audience who has not been sworn in,  
2 please stand so that the Secretary can administer the oath.

3 (Whereupon, the witnesses were sworn in.)

4 VICE CHAIR HART: Thank you. And Mr. Moy, I  
5 think there is another issue regarding the supplemental  
6 filings and this is with regard to the traffic study.

7 MR. MOY: Yes, I believe Ms. Agyei, if I  
8 pronounced your name correctly, she was the person who raised  
9 that discrepancy. So she can speak to that and then the  
10 Board can move forward with that.

11 VICE CHAIR HART: Thank you, Ms. Agyei.

12 MS. AGYEI: Thank you. We just want to put on the  
13 record that the Applicant was not in compliance with the 21-  
14 day prior rule of getting you all the traffic studies so you  
15 could review and make notes as you wanted to, and preside  
16 adequate questioning him if you had chose to.

17 He submitted on the 10th of November of this year.

18 VICE CHAIR HART: And I will -- I'm sorry. I'm  
19 looking at the actual provisions in the Zoning Code.

20 So as Ms. Agyei just said, the traffic study was  
21 prepared by a transportation consultant. That was submitted  
22 to us on November the 10th. DDOT actually submitted their  
23 report on October 13th. So that was -- the Applicant's  
24 transportation consultant submitted their report after DDOT  
25 submitted their report. So there is a time lapse there.

**NEAL R. GROSS**

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

1           And I will also read I guess the applicable Zoning  
2 Regs. This is 300.13 -- Subtitle Y, as well? Okay.

3           If the application includes a report by a  
4 transportation consultant or expert, the Applicant shall  
5 provide a copy of the report to the DDOT on the same day of  
6 filing with the Office of Zoning. So that is one aspect of  
7 it.

8           Subtitle Y, 300.14: No later than 30 days before  
9 the date of the public hearings on the application, the  
10 Applicant shall file with the Board any traffic or  
11 transportation reports to be submitted in support of the  
12 application. All such reports shall include the resume of  
13 the expert who prepared the report and there are some other  
14 things but I think the piece of this is about being no later  
15 than 30 days before the date of the public hearing.

16           And so it looks as though the Applicant has  
17 submitted their report a few days before the public hearing  
18 and the question is whether or not we want to, I guess, waive  
19 that provision.

20           So any -- the only thoughts I had on this were  
21 really it would have been very helpful for DDOT to be able  
22 to have seen the traffic study. So having the transportation  
23 consultant submitting their report after the DDOT report  
24 isn't that helpful for us.

25           MS. AGYEI: And then also, we are in the same

1 predicament with the ANC. They submitted the traffic studies  
2 of the ANC the same date five minutes before the ANC voted  
3 on November 7th.

4 VICE CHAIR HART: Okay. Well, that's the ANC.  
5 That's their particular concern.

6 MS. AGYEI: Okay.

7 MS. VITALE: It was a concern. None of the  
8 commissioners had read it and we didn't even know what it was  
9 saying.

10 VICE CHAIR HART: No, I know. What I'm saying is  
11 about the transportation consultant and submitting to DDOT.  
12 DDOT submits their reports to us and so we are reviewing  
13 that. I understand that you're saying that it wasn't -- they  
14 weren't able to -- the ANC was not able to apply it or at  
15 least understand it because they had gotten it so late.

16 So the question is do we think that that should  
17 be waived, actually both of these should be waived. I'm not  
18 sure what happens if we don't waive them and maybe that  
19 further Ms. White's concern about having a continued hearing.  
20 We may take some testimony today but actually have a  
21 continued hearing and have DDOT be able to provide us with  
22 information regarding the transportation study so that we can  
23 get their full understanding of the transportation concerns.

24 ZC CHAIR HOOD: I would agree, Mr. Vice Chair.  
25 We can do a limited scope. We can do the transportation and

**NEAL R. GROSS**

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

1 what other outstanding issues. And meanwhile while we are  
2 doing that, we can go ahead with whatever we have tonight.

3 VICE CHAIR HART: Yes, I agree.

4 ZC CHAIR HOOD: But while we are doing that, we  
5 can also get another placard and put up, even though we would  
6 only leave it open for limited scope hearing on  
7 transportation and what other issues we come up with this  
8 evening. And then they can do as Ms. White has already  
9 mentioned, is to provide written testimony.

10 VICE CHAIR HART: So I think we are --

11 ZC CHAIR HOOD: Question: How did the ANC vote  
12 on something --

13 VICE CHAIR HART: I don't know.

14 ZC CHAIR HOOD: -- and they are saying they didn't  
15 read it.

16 VICE CHAIR HART: I don't know.

17 MS. AGYEI: That's a very good question, sir.

18 VICE CHAIR HART: We're not at the ANC so we have  
19 to go with things that are in front of us right now.

20 MS. AGYEI: That's a very good question, sir.

21 VICE CHAIR HART: If we could --

22 ZC CHAIR HOOD: I was talking to the Vice Chair.

23 VICE CHAIR HART: Yes.

24 ZC CHAIR HOOD: I wasn't talking to the ANC or  
25 nobody. I was just making that statement out loud.

**NEAL R. GROSS**

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

1           VICE CHAIR HART: I appreciate that. I knew who  
2 you were talking to.

3           Mr. Bello?

4           MR. BELLO: Yes, sir. We don't have a problem  
5 with how the Board decides to proceed. But I would have the  
6 record that DDOT did not predicate their report on the  
7 requirement for a traffic study, rather a requirement for an  
8 approved transportation demand management plan.

9           For the record, I sent a copy of this traffic  
10 report to DDOT and DDOT had no problem with it. I also sent  
11 a copy of the study, the traffic report to OP as well.

12           And one of the reasons, in fact the central reason  
13 for the postponement requested by the ANC was for the  
14 Applicant to provide them with a traffic study, not that DDOT  
15 required it.

16           VICE CHAIR HART: I understand that. There still  
17 are requirements under zoning that we have to make sure that  
18 we are following. And someone has brought up some concerns  
19 and so we are trying to address those concerns and understand  
20 where we are with them.

21           And we will hear from the Office of Planning and  
22 go through the hearing as we need to.

23           ZC CHAIR HOOD: And I think, Mr. Vice Chair, I  
24 think you are exactly right. Mr. Bello, understand the  
25 position we are in. We want to make sure nothing comes back

**NEAL R. GROSS**

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



1 on any of us, including us.

2 So we have procedures that we have to follow, as  
3 you already know. But I think the Vice Chair is exactly  
4 right to make sure that all of our bases are covered, as we  
5 move forward in this case.

6 VICE CHAIR HART: Thank you, Mr. Hood.

7 So with all of that, Ms. Agyei, I think what we  
8 are going to do is to have a second hearing to talk about the  
9 transportation concerns, and transportation report, and all  
10 of that. There may be some other concerns for that second  
11 hearing. So you can talk to your folks that weren't able to  
12 make it today and maybe they can make that new date.

13 But right now I think what we are going to start,  
14 I think all of the preliminary stuff is over. We can start  
15 with Mr. Bello and your presentation. Then we will go from  
16 there. Thank you.

17 MR. MOY: Excuse me, Mr. Vice Chair. How much  
18 time?

19 VICE CHAIR HART: Let's say ten minutes.

20 MR. BELLO: That's fine.

21 VICE CHAIR HART: That's fine? Okay.

22 MR. BELLO: All right the first project at this  
23 property is to construct two additional floors on top of an  
24 existing two-story structure and a habitable penthouse. The  
25 Applicant is before the Board of Zoning Adjustments because

**NEAL R. GROSS**

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

1 it is compelled to be before the Board of Zoning Adjustments  
2 because of the preexisting condition of the subject property.

3           The two areas of relief sought here is to allow  
4 a construction of an addition, an enlargement to an existing  
5 nonconforming structure under Subsection C, Chapter 2,  
6 Section 202.2(a) and (b) and that request is precipitated by  
7 the fact that the preexisting building already occupies 91  
8 percent of the existing lot. So there isn't anything the  
9 Applicant can do in the way of an addition without coming to  
10 the Board of Zoning Adjustments and that's forced upon the  
11 Applicant by the preexisting condition of a pre-1958  
12 structure.

13           The second relief is a special exception from the  
14 parking requirement. That exception also is forced upon the  
15 Applicant because there is nowhere on the lot that the  
16 Applicant is able to provide the three parking spaces that  
17 are required in order to increase the aggregated density of  
18 dwelling on this property from its preexisting 9 units to 25  
19 units.

20           So the extraordinary situation of condition of  
21 property is with respect to the existing improvement upon the  
22 property, an improvement which predates the May 12, 1958  
23 adoption of the 1958 Zoning Regulations. And the special  
24 exception provisions under Section 703.2 only requires that  
25 the Applicant comply with just one of those conditions. And

**NEAL R. GROSS**

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

1 one of those conditions is the inability of the Applicant to  
2 provide the on-site parking spaces.

3           The request here is for 100 percent variance from  
4 the parking requirement and those requirements are limited  
5 to just three parking spaces.

6           I would want the architect to run through the  
7 design project but the application does not require or  
8 request any other relief. We will be compliant with the  
9 density, if there are requirements or limitations for the MU-  
10 4 zone, it would be within the height restrictions and we  
11 would meet all of the requirements that are applicable to  
12 this application.

13           I would like to turn it over to the architect to  
14 walk you through the design drawings. Thank you.

15           MR. CRUICKSHANK: So as stated by Mr. Bello, in  
16 doing the design we tried to make sure that the addition that  
17 we are doing would have been done as a matter of right, had  
18 the property not been noncompliant.

19           So we carefully did an FAR study and a lot area  
20 study to make sure that we stay within what those  
21 requirements would have been. And also because the new  
22 zoning codes allow us to do a penthouse, we went ahead and  
23 added a habitable penthouse to help increase the amount of  
24 units that were applied to the property.

25           So the first slide up there is the existing

**NEAL R. GROSS**

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

1 property layout. As you can see, it has very little yard  
2 left open. The second slide we are showing there shows the  
3 proposed addition that sits on top of the existing property  
4 and the darker L shape on top of that is the footprint of the  
5 penthouse.

6 This slide shows the cellar, basement renovation  
7 where we were able to add two units. Based on some comments  
8 from DDOT, we also went back and added some bicycle parking,  
9 lockers in the basement that are accessed right off of the  
10 proposed new elevator that we are adding to the property.

11 The existing first floor where there are  
12 retailers, we have not increased the retail space. The only  
13 thing we have done there is added a stairwell on one side of  
14 the retail space for a second means of egress from the upper  
15 apartments we added. And on that level, we have located an  
16 area for trash storage, as well as some public bike parking  
17 spaces. And again, was able to add, in this case, one, two,  
18 three apartment units on this floor.

19 This was the existing apartment, floors with  
20 apartment units. And we just reconfigured it. The owner  
21 asked us to try to find a way to develop the property with  
22 all two-bedroom units. So that's what we did. That's what  
23 we were able to do.

24 The third floor is the first floor of the  
25 addition. The third floor and the fourth floor are

**NEAL R. GROSS**

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

1 practically identical. Because of the Zoning Code  
2 requirements we need to do some Green Area Ratio and we are  
3 using this spot on the roof to comply with that green area  
4 ratio. We also take the opportunity to provide a little bit  
5 of a roof deck spot of the amenities to the apartments.

6 Again, the fourth floor, like I said, is almost  
7 identical to the third floor.

8 And this is the penthouse unit. We were able to  
9 get two three-bedroom penthouse units and then we used the  
10 rest of the roof around the penthouse unit to complete our  
11 Green Area Ratio requirement with a green roof and again  
12 another small roof deck for the tenants.

13 This is the elevation on Good Hope Road. What we  
14 are proposing to do is to refurbish the existing brickwork  
15 and then provide a lighter material as we are adding on top  
16 of an existing building and we will probably have to go down  
17 and reinforce the existing foundation. So we want to do that  
18 mitigation as little as possible.

19 But the proposed addition, in terms of the  
20 Building Code is going to comply with a III-B construction  
21 type to maintain the existing construction type that is  
22 already existing on the site, which essentially requires like  
23 a 2-0 exterior. Load-bearing wall and all the interior  
24 structure will be wood. And the proposed fenestration will  
25 be some type of a pre-Fenestra and board material.

**NEAL R. GROSS**

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

1           This is the elevation on 15th Street, where the  
2 existing entrance is. We will maintain the existing entrance  
3 to access the new upper floors.

4           This elevation is off of the existing alley.

5           And the final elevation is the elevation adjacent  
6 the property on 15th Street.

7           It is a very straightforward, I think. I am open  
8 to any questions that you may have.

9           VICE CHAIR HART: Do the Board members have any  
10 questions? No? Ms. White? Okay.

11           Sorry, Mr. Bello?

12           MR. BELLO: Yes, in that case, I would like to  
13 turn it over to Mr. Jones to walk us through some of the  
14 community outreach efforts that we embarked on for this  
15 application.

16           VICE CHAIR HART: Thank you.

17           MR. JONES: Thank you, Vice Chair Hart, Ms. White,  
18 and Chairman Hood. I changed my opening to say evening  
19 instead of this morning. It is right to be before you.

20           My name is Phinis Jones, as I have indicated. I  
21 live at 1844 -- I'm sorry -- 1845 Woodmont Place, Southeast,  
22 four blocks from the property off Good Hope Road.

23           My firm was engaged to do the community outreach.  
24 We reached out to the ANC and we met with them in an  
25 executive meeting. They met in the executive meeting on

**NEAL R. GROSS**

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

1 9/18. They asked us to come to the full ANC meeting on 10/3  
2 and we did. We presented to the ANC on 10/3. They asked us  
3 would we consider a delay so that we could go to the  
4 community. And we said we would.

5 In so doing, they wrote a letter to you asking you  
6 to extend the hearing, which would give us more time to go  
7 and meet with the community. We, indeed, met with the  
8 community at the site. We met the community at this site on  
9 10/10/17 and talked about the project with them in length --  
10 at length.

11 At that meeting, we were requested to meet with  
12 the principal at Ketcham School. We did -- by one of the  
13 homeowners next door. We met with the principal at Ketcham  
14 School on 10/27/17.

15 We went back to the full ANC meeting on 11/7. And  
16 the morning of 11/7, I would like to add that we provided the  
17 ANC early morning the full transportation report to the ANC  
18 chair to be distributed to the members.

19 Upon arriving at the meeting, I brought courtesy  
20 copies because we had already provided them to all the ANC  
21 members for the meeting and circulated them to the meeting  
22 at the night but they had received them prior to them.

23 One of the things that in the Executive Committee  
24 meeting on 9/13, the ANC asked us would we consider a  
25 community benefit package. And we did. The ANC laid out

**NEAL R. GROSS**

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

1 that community benefit package. I indicated that I would  
2 bring it to the developer and the developer approved all  
3 parts, everything that the ANC had asked for in that  
4 community benefit package. We submitted that to the ANC as  
5 well.

6 One of the items in that community benefit package  
7 was a cash payment to Ketcham School and that was the purpose  
8 of the meeting with the principal at Ketcham School to see  
9 how she wanted those funds to be used at the school. And she  
10 decided that she would like them to be used for the Teacher-  
11 Parent Association, which we have agreed to do.

12 From the meeting with the principal, she had one  
13 request that we would put a camera in the alley behind the  
14 building. I brought that back to the developer and they  
15 agreed to that as well.

16 So, clearly, we have been engaged. I should point  
17 out that the last meeting of the ANC on 11/7, the ANC  
18 approved the projected four to two, in a vote four to two.  
19 And the chairman asked me would I continue to work with the  
20 community to work out their concerns and I walked outside of  
21 the hearing and met with the two ladies and said we are still  
22 open. We are still wanting to work with them to address  
23 their concerns in the community.

24 Thank you.

25 VICE CHAIR HART: Mr. Bello?



1 MR. BELLO: Yes, sir, I would like Mr. Andres to  
2 speak briefly about the traffic study.

3 MR. ANDRES: Good evening. Erwin Andres, Vice  
4 President and Principle of Gorove/Slade Associates.

5 I guess before I get started, I guess  
6 procedurally, should I go through this if the next sort of  
7 meeting is the transportation related one? I just don't want  
8 to waste anybody's time.

9 VICE CHAIR HART: Yes, why don't we just hold on  
10 and we'll talk about it at the next meeting?

11 MR. ANDRES: Okay. But I do want to make a brief  
12 statement in that our study was done after DDOT had issued  
13 their letter, primarily just to answer ANC questions. DDOT  
14 had no issues and they have identified that in their report.  
15 They have identified four conditions that the Applicant is  
16 willing to and agreed to implement.

17 So our report was not necessarily done for DDOT,  
18 which is typically the way we do it, but was specific to  
19 answer any questions by the ANC.

20 VICE CHAIR HART: Thank you.

21 Mr. Bello?

22 MR. BELLO: And that's our presentation, Mr. Vice  
23 Chair.

24 VICE CHAIR HART: Thank you very much. Do the  
25 Board members have any questions for the Applicant?

**NEAL R. GROSS**

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

1           ZC CHAIR HOOD:  Actually, yes, I want to ask Mr.  
2 Jones and Mr. Bello.  I took two points out of this.  And  
3 typically this only happens in the PUD.  You're giving out  
4 amenities and you met at the site.

5           MR. JONES:  Yes.

6           ZC CHAIR HOOD:  Yes.  To me, I don't see a lot of  
7 that when it comes to this type of development.  So I'm  
8 actually -- actually I was sitting here thinking all other  
9 cases that come in front of me, I'm going to start pushing  
10 some of that.  I mean because that's a big deal.

11           But how did we get to the community amenities?  
12 This is not a PUD.  How did we get there?  I don't want to  
13 undo it.  I'm just curious how we got there.

14           MR. JONES:  Well, let me address the site first.  
15 The young lady nameless in this case, I mean she owned the  
16 building next door to the building and that's why we got to  
17 meet at the site.  We called her up.  My staff called her up.  
18 We agreed to a meeting and we met at her building on her  
19 front step of her building.  And that's the site of the  
20 building on 15th Street.

21           To your question about the amenities, when we met  
22 with the ANC in the executive meeting, the amenities came up  
23 and asked would the developer be amenable to a community  
24 benefit package.  Mr. Bello was there at that meeting back  
25 on the 18th of September.  And they laid out what they

**NEAL R. GROSS**

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

1 thought would be a community benefit package and Mr. Bello,  
2 representing the developer, agreed to it on the spot.

3           There's been a few things added since that time,  
4 which he and the developer has agreed to.

5           ZC CHAIR HOOD: All right, thank you.

6           MEMBER WHITE: Is that benefit package in the  
7 record or is that something you would be willing to share?

8           MR. JONES: Yes, we submitted it to the ANC but  
9 I am certain I have a copy here available.

10          MR. BELLO: It is Exhibit 40.

11          MEMBER WHITE: Okay, thank you.

12          VICE CHAIR HART: And Mr. Bello or Mr. Jones, if  
13 you could speak to the -- I mean there was an issue of kind  
14 of mailing out and the 200-foot radius, all the folks that  
15 were there. Did you get some of the mail back? I mean it  
16 was mailed out so I'm just trying to understand. Some of the  
17 folks that are here have said that they didn't either receive  
18 something, or wrong addresses, or whatever. So could you  
19 speak to that please?

20          MR. BELLO: I actually can since that is a  
21 function of the Office of Zoning. They did do the mailing  
22 out and verification.

23          VICE CHAIR HART: Then I'm asking the wrong  
24 people.

25          MR. JONES: Mr. Vice Chair, if I may add, when we

**NEAL R. GROSS**

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

1 met with the neighbors, the young lady who indicated here  
2 that she did not get a letter, she did express that to us  
3 because we were going door-to-door knocking. The reason how  
4 we reached the neighbors in the first place, a staff member  
5 was going door-to-door, got their names and we had a  
6 subsequent meeting with them.

7 She did indicate to us that she did not get a  
8 letter and we told her the letters were mailed out by the  
9 office here. But in addition to that, we went door-to-door  
10 and knocked and that's how we found out back on 10/3 that,  
11 according to her, she did not receive the letter.

12 VICE CHAIR HART: Thank you very much for that.

13 I had a question about whether or not -- Mr.  
14 Jones, you talked about having a meeting on-site and most of  
15 these meetings that you are talking about basically happened  
16 within the last month.

17 MR. JONES: Yes, I can --

18 VICE CHAIR HART: So were there any meetings prior  
19 to that month? I mean it is a fairly sizeable development  
20 that we're talking about, especially in this corner. I just  
21 didn't know if you had actually met prior to the past month.

22 MR. JONES: Our first with the ANC on 9/13 and we  
23 continued to meet since that date in the Executive Committee  
24 meeting.

25 VICE CHAIR HART: Okay, thank you.

**NEAL R. GROSS**

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

1 Do the Board members have any other questions?

2 MEMBER WHITE: No, I don't have any.

3 VICE CHAIR HART: Okay, let's hear from the Office  
4 of Planning.

5 MS. VITALE: Good evening, Mr. Chair and members  
6 of the Board. Elisa Vitale with the Office of Planning.

7 OP recommends approval of the requested relief for  
8 an addition to an existing nonconforming structure and for  
9 relief from the minimum parking requirements, subject to the  
10 TDM conditions that were put forward in the DDOT memo.

11 This concludes my report and I'm happy to answer  
12 any questions. Thank you.

13 VICE CHAIR HART: Do the Board members have any  
14 questions for the Office of Planning?

15 I'm assuming, Ms. White, you don't have one.

16 MEMBER WHITE: I don't.

17 VICE CHAIR HART: Okay. Your mike is on. That's  
18 why I was asking.

19 MEMBER WHITE: Sorry.

20 VICE CHAIR HART: And so, Ms. Vitale, you are  
21 saying that you believe that the Applicant has met the  
22 variance requirements. Could you kind of talk about that in  
23 a little bit more detail?

24 MS. VITALE: Certainly. There are two areas of  
25 relief for this particular case. One pertains to the

**NEAL R. GROSS**

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

1 addition to an existing nonconforming structure. And as put  
2 forward in the OP report, the unique situation here is the  
3 fact that this is a pre-1958 existing building. The  
4 Applicant, obviously to create a conforming structure on the  
5 lot would have to demolish portions of the existing building.  
6 You know generally, that's not something that we would  
7 recommend an applicant do to create a conforming situation.  
8 The additional floors that the Applicant is proposing, as  
9 well as the penthouse, would meet lot occupancy. They are  
10 at 61 percent, which is below the maximum permitted lot  
11 occupancy in the zone of 75 percent for projects that comply  
12 with the Inclusionary Zoning provisions, which this project  
13 would.

14           The second area of relief relates to parking.  
15 Again, the property, given the existing structure on the lot,  
16 does not provide adequate space to provide the three required  
17 parking spaces. We did look at the property. There is  
18 access through Metro Bus. There is proximity to Metro Rail  
19 stations, as well as on-street parking in the area. So we  
20 believe that the test was met with respect to the requested  
21 parking relief.

22           VICE CHAIR HART: Okay, thank you.

23           Does the Applicant have any questions for the  
24 Office of Planning?

25           MR. BELLO: No, Mr. Vice Chair.

1 VICE CHAIR HART: Okay. So now we're going to the  
2 ANC. Is there a representative from the ANC that is  
3 representing the ANC? Okay so --

4 MS. FULLER: I don't know if I'm necessarily  
5 representing the entire ANC.

6 VICE CHAIR HART: I'm only asking for the ANC  
7 because there is a portion -- a part of this hearing, we will  
8 hear from the ANC. Then we will hear from parties in  
9 opposition and parties in support.

10 MS. FULLER: I am not the Single Member District  
11 ANC. So I cannot.

12 VICE CHAIR HART: And that's fine. And that's Ms.  
13 Fuller?

14 MS. FULLER: Yes.

15 VICE CHAIR HART: Okay, thank you. I appreciate  
16 that.

17 So anyone here in support of the application?

18 Anyone here in opposition to the application? I'm  
19 assuming that it is all of you that are sitting here.

20 And why don't we start with Ms. Kennedy? Have I  
21 got that correct?

22 MS. AGYEI: Can you take me first? Because I have  
23 to move my car, if that's okay.

24 VICE CHAIR HART: Yes, that's fine. We have --  
25 it's three minutes for each of you so -- you have up to three

**NEAL R. GROSS**

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

1 minutes. You don't have to take it all.

2 MS. AGYEI: Only three minutes?

3 VICE CHAIR HART: Yes, it's for people that are --  
4 for folks that come to give testimony that are representing  
5 themselves as an individual, then they have three minutes.  
6 For folks that are here representing an organization, they  
7 have five minutes. And so that's where we are.

8 MS. AGYEI: Okay. I first want to state that it's  
9 not that people are opposed the development, it is opposed  
10 to the development as they have it presented. And I feel  
11 like everyone is missing in this, as you all have heard  
12 throughout the day, that these are our homes. These are our  
13 investments. These are where we have to live. This is what  
14 we have to live with. And someone made that statement and  
15 that is a very good statement.

16 This is what we have to live with. This is not  
17 what you have to live with if you're four blocks up the  
18 street. This is not what you have to live with if you are  
19 five blocks down, or two blocks over, or across and  
20 northwest. This is what you have to live with if you are a  
21 19 15th Street resident and that's who we are.

22 And I have heard this term a lot, nonconforming  
23 building. And a lot of things that have happened when people  
24 have been renovating, they have used the building as-is and  
25 they have renovated within the constructs of that building.

**NEAL R. GROSS**

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



1 And I don't understand why the developer is not taking the  
2 opportunity, the challenge to do that with this building,  
3 considering that is in fact a 1950 building.

4 And my concern is if you agreed to this  
5 development as-is, you are going to change the landscape of  
6 Historic Anacostia, even though this building may not be  
7 directly in Historic Anacostia, it borders Historic Anacostia  
8 that I believe starts in 1920 and Karinne can speak to that.

9 And then also with that, we didn't -- there was  
10 a lot of lack of transparency with the developer in the  
11 community. And during the meeting that Mr. Jones is speaking  
12 to, which was kind of an impromptu meeting on-site, we voiced  
13 our opposition at that time and we also voiced our opposition  
14 to our Single Member District ANC, who at that time told us  
15 he wouldn't vote on it but then turned around and voted on  
16 it.

17 So there is a lot of frustration that the voices  
18 of the people that actually live on that street are not being  
19 met or not being heard and that people aren't listening to  
20 what our concerns are.

21 And then also I know that you said you're going  
22 to talk about the transportation next time so I won't really  
23 talk about that, other than on the design.

24 He's saying that and you said that well, people  
25 have access to Metro. They have access to bikes or whatever

**NEAL R. GROSS**

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

1 the other transportation you said is. If you are going to  
2 make this someone's home and it's a three -- just think about  
3 it. These are going to be three-bedroom homes. So people  
4 with three-bedroom homes, their only source of transportation  
5 is going to be a bike or a Metro or the bus? So I just think  
6 that is being ingenuous to say that these people that live  
7 here are not going to have cars and that that's not going to  
8 impact our parking and the surrounding community.

9           And I don't know in the reports that are given to  
10 you all if they actually present you with pictures so you can  
11 actually see the visual impact or if it's just write-ups of  
12 what they're envisioning is going to happen or not happen.

13           So that's my concern.

14           VICE CHAIR HART: Thank you very much.

15           MS. AGYEI: You're welcome.

16           VICE CHAIR HART: Ms. Kennedy?

17           MS. KENNEDY: Good evening.

18           VICE CHAIR HART: Actually, I'm sorry. Do the  
19 Board members have any questions for --

20           ZC CHAIR HOOD: She's leaving.

21           MS. AGYEI: I can take questions.

22           ZC CHAIR HOOD: Okay. Something you said earlier,  
23 I want to ask you -- well, let me just ask you, since you're  
24 here. How far is the -- I am trying to get my orientation  
25 right. How far is the new -- well, I don't know if it's new

**NEAL R. GROSS**

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

1 now, the Salvation Army? How far is that?

2 MS. AGYEI: It's about a 15-minute walk from home  
3 and I'm 1926. Yes, it's about a 15-minute walk.

4 ZC CHAIR HOOD: So you think the design of this  
5 building -- I guess you've seen more than what we -- have you  
6 seen other than what we have here on the screen?

7 MS. AGYEI: Sir, this is all that was shown to us  
8 at the ANC meeting.

9 ZC CHAIR HOOD: And you think that's going to  
10 change the character or that's going to change the --

11 MS. AGYEI: It is.

12 ZC CHAIR HOOD: No, you said it was going to  
13 change Historic Anacostia.

14 MS. AGYEI: It will change the character of the  
15 landscape of our current neighborhood. Ketcham Elementary  
16 School, which I think there may be some photos of Ketcham in  
17 the packet of pictures that I sent to you all.

18 This structure, unless I am incorrect, would be  
19 taller than Ketcham Elementary School, making it now the  
20 highest item on our block, which would be higher than --

21 VICE CHAIR HART: Can you make sure you're  
22 speaking into the mike. I'm sorry.

23 ZC CHAIR HOOD: Yes, you don't have a mike. Thank  
24 you.

25 MS. AGYEI: If this building, the way I understand

**NEAL R. GROSS**

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

1 is supposed to be 60-feet high, it would be higher than  
2 Ketcham Elementary School, which is now right now the highest  
3 item on our block and it would be higher than Karinne's home,  
4 the building structure that is like right now kind of level  
5 to the existing building.

6 ZC CHAIR HOOD: Okay, I had another question.

7 MS. AGYEI: And I have a --

8 ZC CHAIR HOOD: Well, I'll ask somebody else. I  
9 can't think of it.

10 Okay, thank you.

11 MS. AGYEI: So I think you can see the building  
12 height in one of the pictures.

13 I have to move my car but I do plan on coming  
14 back. Do we get to cross-examine like the other people did?  
15 No? Okay.

16 VICE CHAIR HART: No.

17 Ms. Kennedy.

18 MS. KENNEDY: Are you saying go?

19 VICE CHAIR HART: Yes, please.

20 MS. KENNEDY: Okay, again, I'm Ms. Kennedy and I  
21 do, I live directly across the alley on the 15th Street side  
22 of the building in question. Yes, that's me.

23 So my concern is, and I don't want to go deep into  
24 parking because you all are going to discuss that at a later  
25 date. However, I do know that Mr. Jones explained to me that

**NEAL R. GROSS**

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

1 one of the requirements of any resident --

2 VICE CHAIR HART: Can you also speak into the  
3 mike? I'm sorry.

4 MS. KENNEDY: Okay, I'm sorry.

5 VICE CHAIR HART: Yes, it's okay.

6 MS. KENNEDY: One of the requirements of anybody  
7 that was going to reside in the new building is that they  
8 would not be able to register their vehicles at that address,  
9 in an attempt to alleviate the parking issue.

10 I'm a native Washingtonian. I do not think that,  
11 although I'll give him an A for effort, I do not think that  
12 is going to stop people from bringing their cars. All you  
13 need is D.C. tags to park on that street as it is.

14 I also think that it's kind of a small block that  
15 is divided by an alley. So we have four -- my building,  
16 three homes, the alley that you have this large structure  
17 that takes up the whole other half of the street. So we're  
18 talking about 25 three-bedroom units that potentially is 75  
19 more people on this small block. So that's another concern  
20 I have.

21 When I moved on 15th Street back in 2003, there  
22 was nobody on that block. Everything around me was  
23 abandoned, including the building he's talking about and  
24 including my neighbors' homes. I lived there alone on that  
25 block for two years. I fought to have trash picked up that

**NEAL R. GROSS**

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

1 piled up for four months. I fought to have my mail  
2 delivered. So for me to go through the hard part -- and  
3 again, I'm going to reiterate it's not that we don't want the  
4 building developed. We do. I just think that what I thought  
5 was two more floors but it's really three more floors, I just  
6 think that's overkill. I think it's overkill and I think  
7 it's easy for someone to do that lives in Virginia and never  
8 has to come to the hood and never has to deal with any of the  
9 issues that may arise where I live at. And I feel like I  
10 opened, I reopened that block. Nobody lived on that block  
11 when I came.

12 My building was also abandoned for I want to say  
13 eight years and I dusted it off, and shined it up, and I  
14 moved in, even though I was the only person there. And I  
15 just don't want to feel like my concerns don't matter because  
16 of big business because somebody wants to -- and I'm not  
17 saying this to be offensive but they're not doing this  
18 building for free. You know there is supposed to be some  
19 type of return and I understand that but I just don't want  
20 to feel like that I was the brave person that went on the  
21 block by myself and now I don't have a say so and it's like  
22 okay.

23 Yes, he did come and talk to us. It was very  
24 impromptu and how that meeting came about was because we were  
25 complaining. We found out that day what was happening.

**NEAL R. GROSS**

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

1 Somehow, somebody got in touch with him. He called somebody  
2 and goes oh, we're going to meet you today. So it wasn't  
3 planned. That was how the meeting happened and it did happen  
4 on my porch. And we spoke about our opposition about the  
5 development as they're proposing it now, not that we don't  
6 want it developed.

7 So, that's where I am with it.

8 VICE CHAIR HART: Thank you very much, Ms.  
9 Kennedy.

10 Are there any questions for Ms. Kennedy? And I  
11 just had one quick question.

12 You're not opposed to -- if this didn't have the  
13 two floors on it you're saying that you would be -- that's  
14 the issue that you're looking at?

15 MS. KENNEDY: I'm going to tell you how much I'm  
16 willing to compromise. I say split the difference. Split  
17 the difference. There's two floors as it stands now. You  
18 want to add two more. Let's split the difference; add one.

19 I'm willing to compromise but that's not what they  
20 want.

21 VICE CHAIR HART: And the reason that you're  
22 looking at going down one floor is because you think this is  
23 out of the scale of the development along the road, that it's  
24 just out of scale.

25 MS. KENNEDY: I think esthetically it will blend

**NEAL R. GROSS**

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

1 in more with what we already have.

2 VICE CHAIR HART: Okay.

3 MS. KENNEDY: I think as far as parking, as far  
4 as foot traffic, you have less people to deal with.

5 VICE CHAIR HART: Okay.

6 MS. KENNEDY: So, I'm fine with that. I just  
7 think that three floors, I just think that's a lot.

8 VICE CHAIR HART: Okay, thank you.

9 ZC CHAIR HOOD: Ms. Kennedy, you mentioned about  
10 the parking issue and I think you said Mr. Jones mentioned  
11 that it would -- was it RPP or they would be on their leases  
12 that they couldn't have cars. Which one was it?

13 MS. KENNEDY: They could not register their  
14 vehicles at their address. And I want to add. If I can add  
15 to that, what that is -- if this goes forward, what that's  
16 going to force us to do is to apply for zone permit parking,  
17 which would then affect the teachers at Ketcham who have to  
18 run out every two hours to move their car. That's why we  
19 haven't done it because we don't want to affect the teachers.  
20 We want them to be in class teaching.

21 If this happens, we have no other choice so that  
22 we'll be able to park.

23 ZC CHAIR HOOD: So if he puts it on the leases,  
24 is that where we're going?

25 MR. JONES: Mr. Chairman, Chairman Hood, let me.

**NEAL R. GROSS**

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



1 This continued to come up by the chair of ANC. And each  
2 meeting of the chair of the ANC he talked about some  
3 development where you can prohibit people from registering  
4 their car at that address.

5 My staff member continued it at the meeting. It  
6 was my staff, Vickie, who was with me, continued the  
7 conversation from the chairman. I don't understand it. I  
8 don't know anything about it and I don't know how that works.  
9 I never brought that up.

10 ZC CHAIR HOOD: Okay.

11 MR. JONES: While I'm speaking, let me just say  
12 at the very first meeting, the ANC got a full set of plans.  
13 As a matter of fact, Commissioner Fuller and I, at the very  
14 first ANC meeting was trying to go through them because she  
15 was telling me she didn't understand them. They got a full  
16 set of the plans and not just one page.

17 Thank you.

18 ZC CHAIR HOOD: So there are two ways. RPP, I  
19 guess is what is on the lease.

20 VICE CHAIR HART: Can you tell them what RPP is,  
21 just so they know that?

22 ZC CHAIR HOOD: You know I'm not a fan of RPP.

23 VICE CHAIR HART: I know. I just wanted to make  
24 sure that you read that.

25 ZC CHAIR HOOD: Nobody wants me to get on my

**NEAL R. GROSS**

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

1 soapbox about RPP.

2           But anyway, RPP is residential parking and what  
3 it does -- and I think that's where you all are going. You  
4 don't want to hurt the folks who are working over at Ketcham  
5 because it's two hours. I know it's around the city they had  
6 some problems with people who work like take care of our  
7 cities have to keep running out. Maybe, if it's open to the  
8 Applicant, maybe they want to look at the lease. I don't  
9 know.

10           You know it's something to look at because I do  
11 know that it's done all over the city. More RPP and then we  
12 starting to hear about the leases. If that's a -- if parking  
13 such a major issue but I'm waiting for us to get to that  
14 point. Okay.

15           VICE CHAIR HART: Thank you, Mr. Hood.

16           Yes, ma'am, you're next.

17           MS. ECKLES: You know I'll speak last.

18           VICE CHAIR HART: You actually have to speak into  
19 the mike.

20           MS. ECKLES: I'll speak last but can we ask a  
21 question to clarify that?

22           VICE CHAIR HART: That's okay.

23           MS. ECKLES: RPP, how can you legally require  
24 somebody to register at another address, if that's not their  
25 legal address? DMV allows you to? I mean it has the rigors

**NEAL R. GROSS**

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

1 of where you register your car. It has to be truthful.

2 VICE CHAIR HART: I mean there's a question out  
3 there and I don't think we want to get into RPP right now,  
4 Mr. Hood.

5 ZC CHAIR HOOD: We don't want to get into RPP.

6 MS. ECKLES: No, no, I'm not talking --

7 VICE CHAIR HART: And actually and honestly, we're  
8 going to be having another discussion about just the  
9 transportation aspects of this.

10 So I understand the question and I don't know, Mr.  
11 Moy, maybe it's good to have somebody from DDOT here to be  
12 able to respond to some of the questions that we get at the  
13 next hearing but just a thought.

14 Ms. Fuller. Have I got that right?

15 MS. FULLER: Yes.

16 VICE CHAIR HART: And you also have three minutes.

17 MS. FULLER: Okay. My name is Greta Fuller. I'm  
18 here today representing the ANC 8A06 because it is the SMD  
19 that is adjacent to ANC 8-05 where this property sits.

20 I oppose the vote for the special exception on the  
21 mere fact that I believe that we didn't get the questions  
22 answered that we need for the parking relief and for the  
23 overall development of the site.

24 Mr. Jones is correct that he gave us a set of  
25 plans. I was not at the ANC executive meeting where all

**NEAL R. GROSS**

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

1 these other POMANTs and CBA and all of that took place. I  
2 was only at the first October, I believe it was October  
3 meeting, ANC meeting. And as the secretary, I haven't even  
4 seen the letter, if they sent -- if the ANC sent a letter of  
5 support to show that the vote was actually four yes and two  
6 no.

7 I only became involved --

8 VICE CHAIR HART: It was submitted.

9 MS. FULLER: Oh, okay, but I never saw it, as a  
10 commissioner.

11 VICE CHAIR HART: It's Exhibit 53.

12 MS. FULLER: Okay. I'm only involved here today,  
13 like I said, because I'm adjacent and because the residents  
14 at ANC 8-05 was not getting any response from their  
15 commissioner. So they reached out to the commissioner that  
16 was adjacent to the property to hear their concerns.

17 Their concerns was that the property was too high.  
18 Even I don't quite understand the height of the property  
19 according to Ketcham Elementary. And these are questions  
20 that I'm asking at an ANC meeting, when they only have 10 to  
21 15 minutes to present, when I feel like we really should have  
22 had a separate meeting with all the residents that are  
23 involved and anyone who wanted to come and the developer, so  
24 that he could express to everyone what the design was and not  
25 a 15-minute meeting. I don't think that you can really

**NEAL R. GROSS**

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

1 understand, ask questions, review, and look at. So that was  
2 a problem for me.

3           The second problem that I had was that we got the  
4 traffic study right when it was time for the vote. And  
5 you're right, Mr. Hood, I don't know how they could vote on  
6 something and they couldn't even understand what the traffic  
7 study said, hadn't read it, or anything. And if the chair  
8 did have the traffic study, I looked in both my emails and  
9 I never received a traffic study except for the hard copy  
10 that was given to Mr. Jones as a courtesy during the ANC  
11 meeting.

12           So they asked me for a vote and I haven't even  
13 reviewed and I just couldn't, in good faith with all the  
14 residents, vote on something or agree to something that I  
15 don't understand.

16           I am not against this project but I think that  
17 there are things that still need to be cleared up with the  
18 residents so that they understand exactly what is going on  
19 and what their parking concerns, and any other concerns that  
20 they may have.

21           I personally called Mr. Jones, I believe it was  
22 yesterday or the day before, and just asked him to postpone  
23 it so that we could really get clarity and understand. He  
24 said that he did not want to; he already did it; and the ANC  
25 had voted on it; and that was it.

**NEAL R. GROSS**

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

1           And as far as parking, I want you guys to really  
2 understand. I was at a hearing, it was Monday, for Martin  
3 Luther King Gateway of which the disposition. So we're  
4 having new buildings revised, which we are so happy about,  
5 from Good Hope Road, 1201 to 1215, which is bringing over 250  
6 new employees and retail at the bottom.

7           We're also rehabbing 1909 Good Hope Road -- 1909  
8 -- I'm sorry -- Martin Luther King through 1913 Martin Luther  
9 King is where the historic facade fell. So that's more  
10 parking that's needed.

11           If you also go to Good Hope and 13th Street, you  
12 would see that the entire block, it's kind of like a strip  
13 mall, is already being renovated for more stores, retail,  
14 housing. And if you cross the street, next to the -- it's  
15 called the Goalpost, on the same street, Good Hope Road, less  
16 than a block away, there is new construction and opening up  
17 with housing there.

18           So I have a big concern for the people that are  
19 saying that they have parking issues. So even though they  
20 gave this report that there is a bus, there is Metro, and  
21 there is bicycles, nobody's talking about all the  
22 construction and the renovation that's going on along Martin  
23 Luther King.

24           We also have a new Busboys and Poets coming. We  
25 have a new Maple View Flats on Martin Luther King.

**NEAL R. GROSS**

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

1 VICE CHAIR HART: You're actually over.

2 MS. FULLER: Okay.

3 VICE CHAIR HART: Yes, you're through.

4 MS. FULLER: Okay, so I just want you to really  
5 hear that it is not just this is new construction. We have  
6 new construction going up and down the street and parking is  
7 important, at least that we understand. That's all.

8 VICE CHAIR HART: Thank you.

9 MS. FULLER: Thank you.

10 VICE CHAIR HART: Thank you.

11 ZC CHAIR HOOD: Can I ask a question?

12 VICE CHAIR HART: Yes, by all means.

13 ZC CHAIR HOOD: Commissioner Fuller, I have known  
14 you a while. I know you have been a commissioner for some  
15 years. You've been in the trenches so I want to commend you  
16 for all the hard work you've done over the years and I've  
17 thought you've always been very fair.

18 Let me ask you a question. Did you vote in the  
19 four-two vote?

20 MS. FULLER: Yes, I did.

21 ZC CHAIR HOOD: You were the two and actually your  
22 vote was a protest vote.

23 MS. FULLER: Yes.

24 ZC CHAIR HOOD: Was it a protest? I'm not putting  
25 words. I'm just trying to understand.

**NEAL R. GROSS**

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

1 MS. FULLER: My vote was no because I felt like  
2 the community had not satisfied their questions. If their  
3 questions and even my questions were satisfied, I most likely  
4 would have voted yes. And I want to be clear, I am for this  
5 building being renovated. I am excited about bringing you  
6 know larger units to the community but we must be clear on  
7 what is actually happening and that is what I think is not  
8 happening here.

9 ZC CHAIR HOOD: Yes, I see that all over the city.

10 Now let me ask you -- now you're the secretary and  
11 I don't know how you all send letters out. And I'm not  
12 condemning the ANC because I think what the ANC commissioners  
13 do is a lot of work. But you're the secretary and you didn't  
14 you know that we had a letter?

15 MS. FULLER: I am the secretary. I know that you  
16 probably got a letter but I never saw the letter. I never  
17 read the letter. I never created the letter. I'm sure it  
18 came from our chair.

19 ZC CHAIR HOOD: So most of the time when we get  
20 letters from the ANC -- I'm not trying to school you because  
21 you've been around a long time -- most times it comes from  
22 the chair and the secretary.

23 MS. FULLER: Exactly.

24 ZC CHAIR HOOD: They usually sign both. We have  
25 some in our files that say the chair and the secretary. So

**NEAL R. GROSS**

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



1 next time, maybe the letters should have the chair and the  
2 secretary's name on it. That's just a hint.

3 MS. FULLER: I totally agreed. I have asked many  
4 times when letters go out you know to like step this back.  
5 And it should really be a final review of the ANC as a whole  
6 to see what we're actually writing. What we vote on and what  
7 we write could be two different things.

8 ZC CHAIR HOOD: Okay. Okay well, let's see how  
9 this goes. Thank you very much.

10 VICE CHAIR HART: Thank you.

11 Ms. Gunnels, is it?

12 MS. GUNNELS: Yes.

13 VICE CHAIR HART: Thank you. You have three  
14 minutes as well.

15 MS. GUNNELS: Okay, so I'm not going to read what  
16 I wrote because we're going to discuss the traffic study at  
17 a later date.

18 VICE CHAIR HART: That's correct.

19 MS. GUNNELS: But again, kudos to you guys for  
20 sitting up there for so long. I don't know how you do it.

21 But I live two blocks from this project on W  
22 Street and I am not opposed to the development of the  
23 building but I am concerned about parking. I am also  
24 concerned about the height of the building because the  
25 building borders Historic Anacostia and I am concerned that

**NEAL R. GROSS**

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

1 if this five-story building gets built, it's setting  
2 precedent and I'm concerned about other developers trying to  
3 build five-story buildings in Historic Anacostia, when we  
4 have two-story wood frame homes all around that area. It's  
5 a residential neighborhood.

6           And I would also like to see the developer reach  
7 out a little more to people around the community. It's not  
8 enough to just come and show up with like a picture. I would  
9 like to see something tangible for us to take home, like  
10 maybe a PowerPoint presentation, something for us to take  
11 home and look at. And just engage with us a little more and  
12 you know maybe we can work with you and make a better  
13 building.

14           So just a little more outreach. I'm not against  
15 this project but I would like for you guys to work with us.

16           That's it. Thank you.

17           VICE CHAIR HART: Thank you.

18           VICE CHAIR HART: Mr. Muller?

19           MR. MULLER: Yes, thank you. Good evening,  
20 everyone. Thank you for moving this forward and not taking  
21 a lunch and dinner break. I'll just quickly get through  
22 this.

23           My name is John Muller, a resident of the 1400  
24 block of W Street, Southeast, across the street from the  
25 Frederick Douglas National Historic Site on Old Jefferson

**NEAL R. GROSS**

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

1 Street in Old Anacostia. The street names were changed in  
2 1908. So Jefferson Street is old. 15th Street was named  
3 after Zachary Taylor, Taylor Street. I just wanted to  
4 mention that.

5 I'm here to testify with regards to BZA  
6 Application 19572 for the development of 1916 15th Street,  
7 Southwest, a long-vacant laundromat at the corner of Good  
8 Hope Road and 15th Street, Southeast.

9 I attended an ANC 8A meeting on Tuesday, October  
10 3, 2017, where this application was first introduced to the  
11 community at large. I was unable to attend November's  
12 previous meeting or the recent meeting in November 2017. I  
13 was not able to attend that ANC 8A meeting, where it is my  
14 understanding, it's been communicated today, that what I  
15 observed at October's meeting was essentially repeated in  
16 that the community still has not seen any architectural  
17 drawings nor any transportation studies. I'm in the  
18 community, not the ANC. I am in the community of which I am  
19 the community and people here are, as everyone else here is  
20 a community.

21 I was so taken aback, as a resident and someone  
22 who has been attending ANC 8A meetings since about 2008-2009  
23 in my capacity a community reporter, I was so taken back by  
24 what I saw, and this happens all the time, that I wrote a  
25 quick summation and distributed it to the community listserv.

**NEAL R. GROSS**

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

1           With you indulgence, I will just read this in  
2 full. This is kind of a summary of what went on and I wrote  
3 just like right after this happened.

4           So at last night's ANC 8A meeting, October 3,  
5 2017, a presentation was made by a group applying to BZA for  
6 the old laundromat at 15th and Good Hope Road. The group had  
7 no PowerPoint, no handouts, no easels and placards; nothing  
8 to show anyone.

9           ANC commissioners acted as though they had never  
10 heard of the group before and, for a number of minutes, while  
11 the meeting was going on, the presenting group at ANC spoke  
12 before a filled meeting room of 60 to 70 people.

13           So like this I while the ANC meeting is going on.  
14 It's like huddle up and call you know 36 pitch sweep. That  
15 was like -- it's hard to accept that these things go on over,  
16 and over, and over again. And that really bothers me.

17           Audience opposition was near uniform, which was  
18 as much a result of what little was communicated as with how  
19 it was communicated. Eventually, an oversized book with the  
20 architectural designs for the two-story addition and a  
21 penthouse was passed around and Tasha sent me the plans that  
22 had been available online for months. I think like in March  
23 these were filed online. But you know just the dynamics of  
24 the community is just like people didn't know that.

25           In my hand was the -- and at this meeting --

**NEAL R. GROSS**

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

1 before I went to the meeting, I went to the BZA schedule and  
2 found out that they were planned or scheduled to go before  
3 you guys on -- I'm sorry, I'm over time -- October 11th. In  
4 my hand was a BZA schedule for October 11, 2017. This group  
5 was scheduled for second that day.

6 I passed the paperwork to Commissioner Troy Dante  
7 Pressworth while the meeting was going on and told him this  
8 is what is important. All the conversation is nothing  
9 because no one even mentioned that they were going before the  
10 -- it's incredible.

11 This information of their pending date on October  
12 11th was not shared by the group nor the ANCs at any time of  
13 the presentation. I posed the question, public question, as  
14 a reporter, asking the group were they on the BZA schedule  
15 for October 11th. They said they asked for a continuance to  
16 October 11. I asked again, saying the paperwork that I had  
17 in my hand, that I printed out that day, indicated that they  
18 were on for October 11th. They insisted it was October 18th.

19 At the end of the meeting, a number of people  
20 approached me and asked me to share the information about the  
21 upcoming hearing because they had no idea like what I was  
22 talking about.

23 I have been reporting on community meetings in  
24 Anacostia since 2009, when I used to write for the Washington  
25 Times. So, I've seen this stuff over and over again. Very

**NEAL R. GROSS**

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

1 little -- very little has changed in terms of the way that  
2 these things are processed administratively.

3 And you know I go to war for Ward 16 ANC meetings.  
4 The stuff that happens at ANC 8A does not happen elsewhere.  
5 It is not accepted.

6 So and I know that is really not like an issue for  
7 you. I know that's not like pertinent to this conversation.  
8 I just have to say that.

9 And I mean Ms. Dickerson of W Street, who is an  
10 elderly lady, she was just like absolutely beside herself.

11 And so that's what happened at the meeting October  
12 3, 2017, as I saw, heard, and understood it.

13 VICE CHAIR HART: Thank you.

14 MR. MULLER: Thank you very much for your time.

15 VICE CHAIR HART: Thank you very much, Mr. Muller.

16 And Ms. Atherton Eckles? Have I got it right?

17 MS. ECKLES: I have to totally reconsider what I  
18 would have intended to say. It's sort of a well-practiced  
19 40-year experience of going before Boards and asking them to  
20 understand why communities like Anacostia feel so estranged  
21 from the regulatory process, so oppressed by it, and in my  
22 more extreme moments, exploited by it.

23 And when you don't understand the importance of  
24 the failure to properly placard Good Hope Road, you are  
25 missing the whole point of why Good Hope Road is the rough,

**NEAL R. GROSS**

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

1 raggedy, tough part of the neighborhood that I'm pretty sure  
2 none of you live in.

3           We are bound by two streets, Good Hope Road and  
4 Martin Luther King. You made reference to Salvation Army.  
5 That's not on Good Hope Road. That's clear up MLK. Okay?  
6 But we only have those two choices, as do anybody making that  
7 perilous trip over the 11th Street Bridge, either to suburban  
8 Maryland, to Hillcrest at the top of the hill. We don't have  
9 that option. We are dependent on that God-loved street  
10 called Good Hope Road that cannot and will not ever be  
11 widened one inch.

12           This building is unique. You could ask a hundred  
13 people walking down the street in Anacostia and say where is  
14 this building and they wouldn't know because it has been  
15 vacant so long. It is a zero property line building out to  
16 both sidewalks and has been vacant so long and is so -- it  
17 is not an abandoned building. It never was abandoned but  
18 it is derelict but evenly so. It's not part of it is about  
19 to fall in. It's just been this big, until you scrape off  
20 the uglies of it, big solid building that goes out to zero  
21 property line on both sides. And it just -- people just  
22 forget it's there because it has not been a functioning part  
23 of the community for so long.

24           Now anytime you have the possibility of nine  
25 apartments and small-scale retail standing vacant for that

**NEAL R. GROSS**

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

1 number of years, you have to say why. We've got 80 to 100  
2 running feet on Good Hope Road that has been vacant for  
3 decades. Well, guess what? When you say those lovely words,  
4 nonconforming building and then it is sort of okay,  
5 nonconforming, what does it have big ears or something? That  
6 is a nonconforming building because it never brought to the  
7 table, when it came, adequate parking, either for its small-  
8 scale retail functions, or its functions as an apartment  
9 building.

10 I'm one of the few people in the room that  
11 remember it when it functioned. I'm probably the only person  
12 in this room that has ever been inside of it in direct  
13 relation to this as an application process. It has been  
14 vacant.

15 And as everyone itemized, we want to see this  
16 building developed. We don't want to see it multiply two and  
17 a half times the things that made it a non-working building  
18 to begin with, which is you can't have viable retail in  
19 buildings that can't get deliveries, that can't get trash.  
20 You can't have 25 three-unit apartment buildings upstairs  
21 that can't park anywhere because what they're going to do,  
22 is they are, by right, they are going to park around and  
23 around. They won't park much in front of me. I'm over on  
24 Minnesota Avenue. I'm in my grandmother's house that two  
25 people have owned it in 80 years. But they will irreparably

**NEAL R. GROSS**

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



1 damage the single-family historic houses that immediately  
2 surround this on the back side.

3           And I will beg your indulgence for a little  
4 historical sense of why it is not in the Historic District,  
5 because, again, I'm pretty sure that I'm the only person that  
6 goes back to when it was declared a historic district and how  
7 that negotiation went.

8           Number one, there is only two reasons it's out of  
9 the Historic District: because God-loved Frederick Douglas  
10 lived up the hill; and the second is because the residential  
11 base was so strong it was negotiated.

12           If we would let the gerrymandering go on on the  
13 facade line down on Good Hope Road to exclude the commercial  
14 buildings, because there were people who said, oh, God, if  
15 you go historic, there will never be real development down  
16 there. Well, there can't be because we don't have service  
17 alleys. We do not have depth of street. We do not have  
18 parking. And this was back in the late '60s we didn't have  
19 adequate parking.

20           Anybody that drives that road, no matter their  
21 destination, that drives Good Hope Road will tell you this  
22 location is a continual bottleneck, primarily because of  
23 Ketcham School. And don't get into this thing about hype  
24 about Ketcham School. Ketcham School sits way back from Good  
25 Hope Road and is beautiful. It's a nice school. But you

**NEAL R. GROSS**

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

1 look up Good Hope Road and you don't even know it's there  
2 because it's set back and is nowhere comparable to a zero  
3 property line four-story facade along the Good Hope Road,  
4 which has no other buildings over two stories in the  
5 immediate environs. The scale of the commercial corridor  
6 there is limited itself.

7           This building never worked when it was building  
8 very well. It had continual vacancies, continual both in the  
9 apartments that exist and in the retail space it utilizes  
10 now. But it will doubly doom that part of Good Hope Road and  
11 its environment to double the size and not bring one parking  
12 place to the table. That's beyond comprehension. And I'm  
13 not even -- I'm sparing you the irregularities of the process  
14 so far but I'm asking you to understand the criticality of  
15 notices in a neighborhood like Anacostia because it always  
16 wants to say we didn't get notice. It always wants to say  
17 we didn't get the letter. But I'm an eight-term  
18 commissioner. When I look you in the eye and said I don't  
19 get a letter from Zoning, trust me. I didn't get the letter.

20           But understand that the placard process is the  
21 vestige of -- it's like the Magna Carta. Notice is critical  
22 to a community. Then, if they don't come to the meetings,  
23 if they don't go to the ANC and raise Cain, that doesn't mean  
24 that a few handful of people, including myself, can come down  
25 here and purport to be the community.

**NEAL R. GROSS**

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

1 VICE CHAIR HART: No, I appreciate that and I --

2 MS. ECKLES: I don't think so.

3 VICE CHAIR HART: No, no, I have been in -- doing  
4 planning for about 20 years. So I appreciate it. I do  
5 understand it.

6 MS. ECKLES: But have you been living in a  
7 neighborhood that --

8 VICE CHAIR HART: I've lived in many different  
9 places. So I appreciate your passion and --

10 MS. ECKLES: It's not my passion, it's the  
11 neighborhood's and that's what makes me mad.

12 VICE CHAIR HART: I understand. And I think the  
13 -- I appreciate that you have spent your time here today,  
14 that all of you have spent your time here today.

15 MS. ECKLES: I've done 40 years of these things.

16 VICE CHAIR HART: We are not going to decide this  
17 today because that's why we have the continued hearing. We  
18 heard you and wanted to actually hear this and also hear from  
19 some of the community. And I understand that you're saying  
20 that there are others in the community that were not able to  
21 come here today.

22 MS. ECKLES: My concern is that you waived the  
23 notice placard. That's a matter of regulation and of law.  
24 Okay, and you just waived it like okay, we'll waive it. You  
25 hadn't even heard that there was a transportation study

**NEAL R. GROSS**

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

1 irregularities in this meeting.

2 I'm not asking that you didn't have this meeting  
3 and I am very grateful that you have offered the opportunity  
4 for those people who did make the sacrifice to come down  
5 here.

6 But for you to just, with no real understanding  
7 of the rigor of that regulation that notice be appropriate,  
8 for you to not acknowledge the centrality of Good Hope Road  
9 to the community's perception of what's going on.

10 And lastly, for you to not notice the damage you  
11 do, yourselves, when I've got to go back and say well, they  
12 just waived the notice because people love to say we didn't  
13 get a notice.

14 ZC CHAIR HOOD: Can I, Mr. Vice Chair?

15 VICE CHAIR HART: Sure.

16 ZC CHAIR HOOD: I think we took care of that  
17 notice issue earlier because what we said there are some  
18 things we are going to look at. So that was done an hour  
19 ago. I don't know, maybe you might have missed that part but  
20 we will reiterate it.

21 MS. ECKLES: I didn't miss it.

22 ZC CHAIR HOOD: Yes, we will reiterate it. But  
23 I want to explain to you why I know the difference between  
24 the Good Hope Road and I know the difference between the MLK.  
25 I walked Good Hope Road for many years with the Fairlawn.

**NEAL R. GROSS**

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

1 So I know all about Good Hope Road.

2 My point was the Salvation Army helped jumpstart  
3 some of that old Martin -- yes it did on MLK because I voted  
4 on it. I've been here. I've been here 20 years.

5 And when I looked at this project, and I know  
6 about that area of Good Hope Road and I know about the  
7 historic part around that area, and I'm looking at this and  
8 I'm saying okay, now, all of the other communities in this  
9 city are trying to move -- I'm going to give you an example.

10 At first, I was a little hesitant in my  
11 neighborhood about Hecht's Warehouse. Now you can't keep me  
12 out from over there. Best thing going because something over  
13 there jumpstarted it. And when they first, you didn't go  
14 over there in the daytime. Now you go over there,  
15 everybody's there. You can't even get in there because  
16 everybody's pushing to get in there. Ivy City Steakhouse.  
17 Everybody's there. I don't have to go downtown to all those  
18 fancy -- I can stay right in my neighborhood now.

19 And I use that a lot on the Zoning Commission when  
20 other neighborhoods -- yes, we made a sacrifice and I was a  
21 little taken aback at first because we wouldn't go over that  
22 at night. Now try it. If you haven't tried that, try it.

23 But my point is that I think that what we started  
24 earlier, to your point, is that we are going to remedy the  
25 placard issue. But we also -- you all have been here all day

**NEAL R. GROSS**

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

1 and we didn't just waive it, waive it off because you heard  
2 me ask Mr. Bello to make sure it's placarded again. You're  
3 coming back again for the transportation. The record is  
4 going to be kept open. So you might have missed that.

5 MS. ECKLES: I didn't miss it.

6 ZC CHAIR HOOD: We left that open for all those  
7 people who want to chime in and want to give us some input  
8 on what's going on in that area. You might disagree with  
9 that process but this ain't our first rodeo. We have to  
10 balance this and that's what I think we did today, especially  
11 for those who have been here all day.

12 You know you may disagree with it but a lot of  
13 people have been here all day.

14 And then guess what? Here's the other thing.  
15 When you come down here all day and don't hear from us, then  
16 you go in front of the City Council. And when I have to go  
17 down for the oversight hearing, I have to answer those  
18 questions, the chair of this board and myself. We answer  
19 those questions. Not that we don't mind doing it because at  
20 the end of the day, it's about balancing and making sure we  
21 try to do the best answers for the best of the city. That's  
22 what this is all about.

23 You and I can talk all day but go right ahead.

24 MS. ECKLES: No, I don't want to talk all day.

25 I was with the people that were down here. I didn't want the

**NEAL R. GROSS**

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

1 hearing to not move forward but I wanted to be darn sure that  
2 in the pressure of time and stuff that it had another  
3 component after this failure to notice was remedied. And  
4 that was not clearly -- you know you haven't suggested how  
5 it's going to be remedied or any rigor to the remedying of  
6 the placarding. In other words, it is a regulation. It is  
7 not an opinion. And so normally speaking, somebody over here  
8 would say well they can remedy that by doing this, this, and  
9 this.

10 But when you turn to Mr. Bello, who is on their  
11 side and say okay, we are going to work out something for you  
12 --

13 ZC CHAIR HOOD: Let me ask you this -- no, I  
14 didn't say that. Who puts up the placards?

15 MS. ECKLES: They do.

16 ZC CHAIR HOOD: Hold on. Mr. Moy, do you put the  
17 placard up?

18 That's why I went to Mr. Bello. I did that an  
19 hour ago because I want him to re-placard it.

20 MS. ECKLES: But you didn't mention that as a  
21 remedy.

22 ZC CHAIR HOOD: Did anybody else not hear me  
23 mention that as a remedy?

24 VICE CHAIR HART: And that was --

25 MS. ECKLES: You mentioned you were going to go

**NEAL R. GROSS**

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

1 to Mr. Bello but the remedy was not clarified so that I can  
2 go back to my to the community and say there is going to be  
3 placards over there.

4 ZC CHAIR HOOD: Okay, well let me clarify. Mr.  
5 Bello, Mr. Jones, and others, please make sure that the  
6 placard is up.

7 Okay. As a matter of fact, I want you to go  
8 another step. Can you work with her and you all placard  
9 together? Can you have time to go down and that way we can  
10 -- no, seriously. I'm not being sarcastic. I'm being  
11 serious.

12 MS. ECKLES: I understand you're being serious but  
13 that's not -- I do not participate --

14 VICE CHAIR HART: Can you lean into the mike,  
15 please? I'm sorry.

16 MS. ECKLES: All I'm asking for you to use your  
17 good offices to have the Applicant remedy the situation, not  
18 to entwine me to his benefit.

19 VICE CHAIR HART: And that's fine.

20 ZC CHAIR HOOD: That's fine. That's fine.

21 VICE CHAIR HART: And I think we can --

22 ZC CHAIR HOOD: You don't have to. I just wanted  
23 to make sure that there was somebody who I can count on to  
24 make sure it gets placard. But we'll get a picture. I know  
25 there is going to be picture there. If somebody from the

**NEAL R. GROSS**

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



1 neighborhood wants to go by and take a picture and assure us,  
2 give us a confidence level as we move forward, that's the  
3 remedy.

4 Thank you, Vice Chair.

5 VICE CHAIR HART: Thank you, Mr. Hood, and all of  
6 you that have given your testimony today.

7 We are going to continue the hearing. And I think  
8 that we need to hear from Mr. Moy and try to figure out what  
9 the hearing date might be.

10 Actually, I'm assuming that Mr. Hood is going to  
11 be back with us for this. So it's going to be a while.  
12 We're probably looking at December --

13 MR. MOY: December 20th.

14 ZC CHAIR HOOD: December 20th. Is that getting  
15 full? How is that looking? If I have to come back here an  
16 earlier date.

17 MR. MOY: What? You come in early?

18 ZC CHAIR HOOD: Not really but the 20th --

19 MR. MOY: Well you've already gone through some  
20 of this already, right?

21 ZC CHAIR HOOD: So how much do we have for the  
22 20th?

23 MR. MOY: Eight cases. This would be the ninth  
24 case.

25 VICE CHAIR HART: I mean it's fine. I think we're

**NEAL R. GROSS**

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

1 okay with that.

2 MR. MOY: Yes, we're good; no appeals on that  
3 date.

4 VICE CHAIR HART: So I think what we're looking  
5 at is having that -- I will ask the Applicant a few things,  
6 in addition to the transportation focus that we're going to  
7 be doing at the next hearing. A lot has come up about scale  
8 of development in this area and this as being out of scale  
9 with the development. And I would like to have a -- I don't  
10 know what it is. Maybe it's photographs that show scale.

11 I think that one of the things that I'm really  
12 looking for is we talked about Ketcham School quite a bit and  
13 height of this building with the relationship of that. And  
14 I would like to understand one, those relative heights but  
15 also the relative -- the relationship between these. I don't  
16 have a good sense of where these are with relation to each  
17 other. So are we talking about a longer distance? I mean  
18 if it's such a long distance that it's kind of irrelevant,  
19 then that's one thing. And so I would like to understand  
20 where those two buildings are. So to have the height of this  
21 building, I don't know if it is a section or whatever that  
22 shows these two buildings with relationship to each other.  
23 That would be helpful.

24 The scale issue, I don't know. I'm not looking  
25 for 3D renderings or anything. I'm more looking for what is

**NEAL R. GROSS**

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

1 it along these two streets and these areas that we are kind  
2 of relating to one another. As you heard pretty clearly that  
3 the folks who came here today that have testified in  
4 opposition are saying that this is out of scale with the rest  
5 of the neighborhood, or at least along this portion of the  
6 street.

7 So I don't know if there are other things and  
8 photographs showing what this -- what you're talking about  
9 in terms of your development with regard to other buildings  
10 that are next to it on either street.

11 And you have a question.

12 MR. BELLO: Well not so much a question but  
13 hopefully an explanation.

14 I'm willing to do a drawing to show the scale and  
15 the distance for the -- what's the name of this school -- the  
16 Ketcham School. But what I was going to mention is that the  
17 new Zoning Regs allow -- this is the new Zoning Regs height  
18 limitation and we're not quite at the height limitation. We  
19 are a couple of feet below and then we set back for the  
20 penthouse. So this is the new Zoning Regulation allowable  
21 height limit for this neighborhood in that zone.

22 VICE CHAIR HART: I'd still like to see it, just  
23 to have an understanding.

24 MR. BELLO: Yes.

25 VICE CHAIR HART: Because right now, I'm just

**NEAL R. GROSS**

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

1 hearing it and it's helpful for me to see things. I'm  
2 visual. So it's just something that I think that would be  
3 helpful to have.

4 Yes, Ms. White?

5 MEMBER WHITE: How many units again in the  
6 building?

7 MR. BELLO: Twenty-five.

8 MEMBER WHITE: Twenty-five?

9 MR. BELLO: Yes.

10 VICE CHAIR HART: Any other questions?

11 ZC CHAIR HOOD: Mr. Chairman, I would also -- and  
12 I do this all the time and I think you all do this as well,  
13 I would ask that the Applicant again meet with Ms. Fuller and  
14 those who may not be part of the ANC. If you all could maybe  
15 convene a meeting on-site, have a continued meeting, have  
16 that continued dialogue. Maybe it was rushed. Maybe people  
17 felt like it was rushed. Maybe to have that conversation  
18 would help clarify some of the misunderstandings that may be  
19 out there.

20 So I would offer you all to do that. Maybe, Ms.  
21 Fuller, if you can head that up, along with Mr. Jones.

22 MR. JONES: I will reach out to Ms. Fuller and we  
23 will get it scheduled.

24 VICE CHAIR HART: And include, please --

25 ZC CHAIR HOOD: So far, we are two for two.

**NEAL R. GROSS**

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

1           VICE CHAIR HART: -- have drawings, if you have  
2 boards with this stuff on it, have handouts. I think people  
3 are just feeling like it sounds as though that the folks that  
4 are coming and testified are just feeling like we just don't  
5 know. That they don't know and that others don't know.  
6 While they are not necessarily representing others, they are  
7 saying that there are other people that are just feeling left  
8 out. And I think it would be helpful to be able to show  
9 them.

10           Yes, ma'am.

11           MS. KENNEDY: And can I just add that the other  
12 thing that we're feeling is yes, we had the conversation, we  
13 had the impromptu meeting -- I went to the ANC meeting but  
14 what we're really feeling is that everybody is just checking  
15 a box to be able to say yes, I talked to the residents but  
16 that they really don't care what we're saying and they don't  
17 care what we think. And they are not even considering the  
18 fact that we're not saying no. Can we come to some kind of  
19 a healthy medium or compromise, where you can get kind of  
20 what you want and maybe I might sacrifice something but still  
21 get something I want not just you bulldoze me because that's  
22 what it feels like.

23           VICE CHAIR HART: And Ms. Kennedy, is it? I think  
24 that you've heard also from the architect that has said that  
25 this development is within the actual zoning in the area.

**NEAL R. GROSS**

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

1 MS. KENNEDY: Can I just say something to that?

2 VICE CHAIR HART: I'm just saying that that's  
3 something he said.

4 MS. KENNEDY: Yes, because Mr. Jones has said it  
5 to me, too. And what I say to that is on my end, it's not  
6 a question about whether it was legal for you to do it or  
7 whether you were in scope to do it. That's not my issue.

8 VICE CHAIR HART: Yes.

9 MS. KENNEDY: I'm not even questioning whether you  
10 can do it or not legally. We live there so that's not our  
11 issue.

12 VICE CHAIR HART: I know. I was just making sure  
13 that you were aware of that.

14 MS. KENNEDY: No, he's --

15 VICE CHAIR HART: So what he's also saying is that  
16 as long as that zone is -- that zone would encompass other  
17 buildings. So it may not be just that building that we're  
18 talking about right now but there may be other buildings that  
19 are in that same zone that will allow that height and that  
20 size. So I'm just telling you to just be aware that is the  
21 zoning that you're dealing with right now. So just a little  
22 point of clarification. That's all.

23 MS. KENNEDY: Thank you. I appreciate it.

24 VICE CHAIR HART: So I think we'll continue the  
25 hearing until the 20th. I think that we should have -- I

**NEAL R. GROSS**

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

1 don't know. Can you give me some dates when the Applicant  
2 should kind of respond to --

3 MR. MOY: Well, while I do that, Mr. Vice Chair,  
4 I don't recall whether or not the Board's already addressed  
5 the issue but was the Board interested in having DDOT review  
6 the Applicant's transportation study or has that already been  
7 resolved?

8 VICE CHAIR HART: I think it would be helpful to  
9 have something in the record that just said that they have  
10 looked at it or that they agree with it, that they don't have  
11 any issues with it, whatever they are going to say about it.  
12 I just think that right now that just is -- I just want to  
13 have some finality with that.

14 MR. MOY: Okay, I can pursue that and I'll work  
15 in coordination with the Office of Planning.

16 So if we continue the hearing on the 20th of  
17 December, then if the Applicant can make their filings so  
18 that everyone will have a chance to review the documents,  
19 let's say by December 6th or can you submit it earlier than  
20 that?

21 VICE CHAIR HART: You have to speak into the mike.

22 MR. CRUICKSHANK: Yes, I can work with that  
23 deadline.

24 MR. MOY: Okay, December 6th it is.

25 ZC CHAIR HOOD: Is this going to be a limited

**NEAL R. GROSS**

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

1 scope or are you going to open it all back up?

2 VICE CHAIR HART: No, I think it should be a  
3 limited scope. I don't want to have -- this is really to  
4 discuss the things that we've --

5 ZC CHAIR HOOD: The different issues that we've  
6 just spoke about.

7 VICE CHAIR HART: Yes, okay.

8 ZC CHAIR HOOD: So it will be limited to that.

9 VICE CHAIR HART: And the record is going to  
10 remain open. So if there are folks that want to be able to  
11 comment, they have the ability to do that, if they want.

12 That's it for this case. Thank you very much all  
13 for staying with us so late. And I know there are some other  
14 folks here. Just waiting, chomping at the bit.

15 We actually have to take like a two-minute break  
16 because we've sitting here for a little while. So I  
17 apologize for it but we'll be back in a sec.

18 (Whereupon, the above-entitled matter went off the  
19 record at 7:11 p.m. and resumed at 7:19 p.m.)

20 VICE CHAIR HART: Okay, we're back to order. And  
21 the folks that have really been here. You've been here  
22 through thick and thin. I appreciate it.

23 Mr. Moy, next case, please.

24 MR. MOY: Yes, with pleasure. This would be  
25 Application 19589 of Thad Hunkins, captioned and advertised

**NEAL R. GROSS**

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



1 with special exceptions under Subtitle E, Section 5201 from  
2 the lot occupancy requirements of Subtitle E, Section 304.1,  
3 rear yard requirements, Subtitle E, Section 205.4, and under  
4 Subtitle C, Section 1504 from the penthouse setback  
5 requirements of Subtitle C, Section 1502. This would  
6 construct a one-story rear addition and roof deck to an  
7 existing one-family dwelling RF-1 Zone, 643 F Street,  
8 Northeast, Square 861, Lot 188.

9 VICE CHAIR HART: Thank you, Mr. Moy.

10 Welcome. I just want to make sure that you've  
11 been sworn in. I'm assuming you have but --

12 MR. WILLIAMS: Yes.

13 VICE CHAIR HART: Okay. If you could, introduce  
14 yourself and if you could, just give a brief description of  
15 your project. I think we're pretty familiar with it but just  
16 so if you could walk us through it. I appreciate it.

17 MR. WILLIAMS: Yes, my name is Chris Williams.  
18 I'm with Landis Architects and Builders here representing the  
19 builder and our client, the owner.

20 Our client is a military officer who is stationed  
21 overseas currently. He wants to retire back to the home.  
22 He wants to take an existing five-foot deep covered open  
23 porch and replace that with a ten-foot deep enclosed room  
24 that he's going to use for a breakfast room/office space to  
25 be next to his kitchen. And to make it easy, we'll have a

**NEAL R. GROSS**

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

1 roof deck, as opposed to a roof, to keep it as small as  
2 possible.

3 That's our case.

4 VICE CHAIR HART: That's very quick.

5 Do we have any questions for the Applicant?

6 MEMBER WHITE: One question would be can you let  
7 me know or let us know and share with us whether or not  
8 you've gotten any pushback from adjacent owners?

9 MR. WILLIAMS: Both neighbors have submitted  
10 letters of approval and support.

11 MEMBER WHITE: Okay and no opposition that has  
12 been part of the record, that I could see.

13 MR. WILLIAMS: No.

14 MEMBER WHITE: And ANC feedback?

15 MR. WILLIAMS: It was all positive.

16 MEMBER WHITE: Great, thank you.

17 VICE CHAIR HART: Okay, I guess we'll go to the  
18 Office of Planning.

19 MS. MYERS: For the record, Crystal Myers with the  
20 Office of Planning.

21 The Office of Planning is recommending approval  
22 but we also are recommending an additional -- or actually  
23 only one condition, that the rear yard tree have protection  
24 during construction. So it says during construction the rear  
25 yard tree shall be protected with securely-installed fencing

**NEAL R. GROSS**

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

1 around the drip line of the tree or with a similar protective  
2 measure.

3 But otherwise, we are recommending approval and  
4 stand with the record of the staff report.

5 VICE CHAIR HART: Thank you.

6 Does the Board have any questions for the Office  
7 of Planning?

8 (No audible response.)

9 VICE CHAIR HART: Hearing none, does the Applicant  
10 have any questions for the Office of Planning?

11 MR. WILLIAMS: No.

12 VICE CHAIR HART: Okay, thank you.

13 Next we'll go to the ANC. Anybody here from the  
14 ANC? No.

15 Anyone here in support of the application?

16 Anyone here in opposition to the application?

17 Nobody else; just you, Mr. Williams.

18 So bringing it back to the Board, do you have any  
19 final questions? And actually the only question I had was,  
20 Mr. Williams, you've read the Office of Planning report and  
21 their condition that they -- and I can read the condition  
22 which is during construction the rear yard tree shall be  
23 protected with --

24 MR. WILLIAMS: Absolutely. We'll have it on our  
25 permanent drawings, no problem.

**NEAL R. GROSS**

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

1 VICE CHAIR HART: Okay, I just wanted to make sure

2 --

3 MR. WILLIAMS: Absolutely.

4 VICE CHAIR HART: -- that it was on there.

5 I went through all of those. Sorry, I'm going  
6 through my head the procedure.

7 I've already heard opposition. I asked for final  
8 questions. It doesn't look like there are any. I'll close  
9 the record at this point. We'll bring it -- yes, sir?

10 MR. MOY: Sorry to interrupt you. I just noticed  
11 -- I hate to bring this up --

12 VICE CHAIR HART: That's fine.

13 MR. MOY: -- because I know it is really late.  
14 It's just a technical aspect. I just noticed that on the  
15 Letter of Authorization, typically we have the name that is  
16 associated in the authorization letter. It does authorize  
17 Lanis Architects and Builders but if the Board agrees if you  
18 can supplement the record with the name of the agent.

19 VICE CHAIR HART: Mr. Williams?

20 MR. WILLIAMS: Okay.

21 MR. MOY: Yes, and I would include that into the  
22 record.

23 VICE CHAIR HART: I don't have an issue with it.  
24 Thank you very much, Mr. Moy, for pointing that out to us.

25 Mr. Williams, if you could supplement the record

**NEAL R. GROSS**

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

1 with that, that would be helpful.

2 MR. WILLIAMS: You just want me to --

3 MR. MOY: Upload it into the record.

4 MR. WILLIAMS: -- upload into the record the  
5 authorization with my name on it.

6 MR. MOY: That's correct, yes.

7 MR. WILLIAMS: Got it.

8 MR. MOY: Representing Lanis, signed by Mr.  
9 Hunkins. Thank you.

10 VICE CHAIR HART: So with this, I now will close  
11 the record. Thank you, Mr. Moy.

12 I'll start. I have read the full record and I  
13 felt that listening to the Applicant, as well as reading  
14 through the Office of Planning report, as well as the ANC  
15 report, I believe that the Applicant has met the special  
16 exception criteria and the relief that they are requesting  
17 and would be in support of the application, as it has been  
18 provided to us, as well as the conditions that the Office of  
19 Planning has put forward.

20 Do you have any other comments?

21 MEMBER WHITE: No, I concur with what your  
22 comments were, that they met the criteria for the special  
23 exception relief for lot occupancy relief, rear yard relief,  
24 and also penthouse setback relief under Subtitle C, 1502.

25 So I am supportive of the application with the

**NEAL R. GROSS**

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

1 conditions stated regarding the preserving of the tree,  
2 protection of the tree. So yes, I am supportive of it.

3 VICE CHAIR HART: Excellent. And with that, I  
4 would like to make a motion to approve Application 19589 of  
5 Thad Hunkins, as read by the secretary, including the  
6 condition that the Office of Planning has provided.

7 MEMBER WHITE: Second, Mr. Vice Chair.

8 VICE CHAIR HART: We've had a motion and a second.  
9 All in favor of the motion say aye.

10 (Chorus of aye.)

11 Any opposed?

12 (No audible response.)

13 The motion carries.

14 MR. MOY: Staff would record the vote as three to  
15 zero to two. This is on the motion of Vice Chair Hart to  
16 approve the Application for the relief being requested.  
17 Seconding the motion, Ms. White. Also in support, Mr. Hood.  
18 Board member not participating, board seat vacant. The  
19 motion carries.

20 VICE CHAIR HART: A summary order, Mr. Moy.

21 MR. MOY: Thank you.

22 VICE CHAIR HART: Thank you very much, sir.

23 MR. WILLIAMS: Thank you.

24 VICE CHAIR HART: Mr. Moy, if you could call the  
25 -- is this the last case?

**NEAL R. GROSS**

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

1 MR. MOY: Yes. Yes.

2 VICE CHAIR HART: And everyone looks so fresh and  
3 -- okay, I'm sorry. I couldn't pull it off.

4 So we're all here and it's pretty late. So, Mr.  
5 Moy, if you could read the next case, 19606.

6 MR. MOY: Yes. Yes, I'll read that quickly. This  
7 is Application 19606 of St. Albans School, captioned and  
8 advertised for a special exception under the use regulations  
9 of Subtitle U, Section 203.1(1) to permit an increase to the  
10 maximum permitted number of students, faculty, and staff of  
11 an existing private school, R-1-B zone, 3101 Wisconsin  
12 Avenue, Northwest, Square 1944, Lot 25.

13 VICE CHAIR HART: Thank you very much, Mr. Moy.

14 Now, if we could go from my right to left, if you  
15 could, introduce yourselves and provide your address.

16 MR. BAAD: Sure. My name is David Baad. I'm the  
17 Associate Headmaster at St. Albans School, which is at 3101  
18 Wisconsin Avenue, Northwest.

19 VICE CHAIR HART: That's B-O-D-D?

20 MR. BAAD: B-A-A-D.

21 VICE CHAIR HART: Okay, I was nowhere near that.

22 MR. WILSON: Vance Wilson, Headmaster of St.  
23 Albans School, 3101 Wisconsin Avenue.

24 VICE CHAIR HART: Thank you.

25 MR. ANDRES: Good evening, everyone, Erwin Andres,

**NEAL R. GROSS**

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

1 Gorove/Slade Associates, 1140 Connecticut Avenue.

2 MS. SHIKER: Good evening. Christine Shiker with  
3 the law firm of Holland and Knight, 800 17th Street,  
4 Northwest.

5 MR. DETTMAN: Good evening. Shane Dettman. I'm  
6 Director of Planning Services with the law firm Holland and  
7 Knight, same address as Christie.

8 VICE CHAIR HART: Thank you very much.

9 And so Ms. Shiker, are you going to be starting  
10 the presentation?

11 MS. SHIKER: Yes. Yes, I am.

12 VICE CHAIR HART: Okay.

13 MS. SHIKER: Yes, good evening. Thank you. We  
14 are pleased to be here to present this application, which is  
15 requesting a very slight increase in the enrollment and  
16 employment caps for St. Albans.

17 We are very pleased to be here today with Office  
18 of Planning support, with DDOT support, with unanimous ANC  
19 support. And all of this support has come because of the  
20 close coordination work that we have done during this  
21 process.

22 St. Albans, as you may know, is an existing  
23 private school that opened in 1909 and has continued  
24 operating as a school for boys since that time. While the  
25 use predates zoning and is a legal conforming use, there have

**NEAL R. GROSS**

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



1 been several BZA cases over the year which approved  
2 construction of additional facilities.

3 Can you go to the third slide, please?

4 All right and on the board you can see the various  
5 cases since 1971. We had cases in 1976, 1994, and the most  
6 recent case, which is the one of most importance to this case  
7 is in 2005. That's BZA Case 17320, in which physical  
8 construction was approved, as well as athletic fields,  
9 physical construction, and there was the enrollment and  
10 employment cap that was put on the school at that time.

11 Over the course of the past 12 years, there have  
12 been fluctuations in that enrollment, based on a number of  
13 factors that have led us to this application here today. We  
14 are seeking to increase the maximum enrollment to 600  
15 students, which is an increase of 21 students, and to  
16 increase the corresponding maximum employment of faculty and  
17 staff FTEs to 145, which is an increase of two FTEs.

18 While this application was assigned a new case  
19 number, the application is, in fact, a modification to the  
20 condition in the 2005 order. This has been a discussion with  
21 the Office of Zoning staff and like the past cases for St.  
22 Albans, it is considered a new case but I wanted to make sure  
23 that the Board understood the relationship to the 2005 order.

24 In addition, we worked very closely with the  
25 Neighborhood Liaison Working Group, which was established

**NEAL R. GROSS**

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

1 under the 2005 order, with ANC 3-C, with OP, and DDOT. As  
2 a result of that outreach, we have two areas of new  
3 conditions to add. I will stress that the 2005 order will  
4 not change. It will stand and we are seeking to slightly  
5 revise three of the conditions.

6 And if we could go to the next page, we have done  
7 this to make it very easy and we actually have a printout for  
8 staff.

9 The first condition that would change would be the  
10 increase -- if the application was approved, it would be the  
11 increase in the number of students and the number of FTEs.

12 The second would be a clarification to condition  
13 number 3 and this change comes directly from the conditions  
14 that the ANC has requested as part of their unanimous support  
15 for this case. So that language from the ANC order has been  
16 dropped in exactly. It is similar in context to the old  
17 condition number 3 but has a bit more specificity in the  
18 language and we've agreed to that.

19 The final change would come into condition number  
20 5 and it adds a couple of transportation demand management  
21 measures that DDOT has requested in its report. Specifically  
22 those are that students who are eligible, would be encourage  
23 to participate in the D.C. One Program and that the Applicant  
24 will include information on establishing carpools in all of  
25 its summer and pre-academic year orientation mailings and

**NEAL R. GROSS**

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

1 meetings. Again, we've agreed to those.

2 In DDOT's report and in the Gorove/Slade report,  
3 you would see a comprehensive list of transportation demand  
4 management measures. All of those, with the exception of  
5 these couple that I am point out now, were originally  
6 included in the 2005 order and would continue to be  
7 applicable to the operation of St. Albans. These additional  
8 ones would come as a direct result of increasing this slight  
9 increase for the number of students and FTEs.

10 Therefore, as I've said, we've showed you the only  
11 changes to the 2005 order and we are prepared to proceed with  
12 a presentation or we're happy to go directly to questions,  
13 if the Board feels that it has reviewed the record.

14 So we will follow your direction.

15 VICE CHAIR HART: Does the Board have any  
16 questions at this point? Or would you like a presentation  
17 or would want to move to a -- do you have any questions at  
18 this time?

19 (No audible response.)

20 VICE CHAIR HART: Okay, that's fine. I don't have  
21 any questions. And I don't think that we need to go through  
22 a presentation. I think that it's fairly straightforward.

23 MS. SHIKER: Okay.

24 VICE CHAIR HART: What are doing now? So are you  
25 finished with your --

**NEAL R. GROSS**

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

1 MS. SHIKER: Yes. Unless there are questions, we  
2 do have representatives from the school, Erwin on any  
3 transportation issues, and then Shane to talk about any  
4 questions you have with compliance with the special exception  
5 standard. Otherwise, I know that there is a representative  
6 from the ANC who wanted to speak and, obviously, Ms. Brown-  
7 Roberts.

8 VICE CHAIR HART: Yes. Okay, so let's, because  
9 we are trying to move through the process, let's go to the  
10 Office of Planning. If there are any questions, we will give  
11 them to the Office of Planning or maybe have some questions  
12 for the Applicant at some point.

13 So Ms. Brown-Roberts.

14 MS. BROWN-ROBERTS: Good evening, Mr. Vice Chair  
15 and members of the Board. Maxine Brown-Roberts from the  
16 Office of Planning.

17 I will stand on the record and say that we  
18 recommend approval of the request to increase the number of  
19 students to 600 and for the FTEs to go to 145. And we're  
20 also in support of the other transportation recommendations  
21 that were made by DDOT, to which the Applicant has referred  
22 this afternoon.

23 And I am available for questions. Thank you.

24 VICE CHAIR HART: Thank you.

25 Any questions for the Office of Planning at this

**NEAL R. GROSS**

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

1 point?

2 (No audible response.)

3 VICE CHAIR HART: Hearing none, Ms. Shiker, do you  
4 have any questions for the Office of Planning?

5 MS. SHIKER: I do not. Thank you.

6 VICE CHAIR HART: Okay, next we have the ANC.  
7 Please join us.

8 If you could, introduce yourself -- excuse me.  
9 If you could introduce yourself, that would be helpful. And  
10 also, I'm assuming that you have -- well, I shouldn't assume.  
11 Have you been sworn in today at any point?

12 MS. MAY: No, no.

13 VICE CHAIR HART: Okay. And that's why we don't  
14 assume, right?

15 MS. MAY: Yes.

16 VICE CHAIR HART: Mr. Moy, if you could.

17 MR. MOY: Yes, with pleasure.

18 VICE CHAIR HART: Thank you.

19 (Whereupon, the witness was sworn.)

20 VICE CHAIR HART: And if you could, state your  
21 name and your address.

22 MS. MAY: Yes, my name is Catherine May and I  
23 reside at 2800 36th Street, Northwest. I am speaking this  
24 evening on behalf of Malia Brink, who is the Single Member  
25 District Commissioner for ANC 3C08. And I held that seat

**NEAL R. GROSS**

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

1 before her from 2005 until January of this year.

2           It's late so I will be very brief. St. Albans  
3 enjoys broad support throughout the Single Member District  
4 and I know that you have two letters on file in opposition  
5 to this application and I will speak very briefly to both of  
6 those.

7           I also have served on the Neighborhood Liaison  
8 Working Group across the past 12 years and St. Albans has  
9 been extremely diligent in working with the neighbors to  
10 resolve any of the parking and noise issues referenced in one  
11 of the letters.

12           And there is a letter also about the tennis  
13 courts. And I would just like to go on record as saying that  
14 there are a number of constituents who live right across the  
15 street from the tennis courts who are in support of keeping  
16 the screens up all year round and we worked carefully with  
17 the school to find a compromise that would address the needs  
18 of both groups.

19           And I'll stop there, unless you have questions.

20           VICE CHAIR HART: I'll open it up to the Board.  
21 I don't have any questions. Do other Board members have any  
22 questions?

23           ZC CHAIR HOOD: I may have missed it but are you  
24 going to speak to one of the letters in opposition. I was  
25 trying to wait for Myers to open it up.

**NEAL R. GROSS**

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

1 Did you speak to it? I might have missed it?

2 MS. MAY: Yes, there was one letter that  
3 referenced an increase in noise and traffic as the result of  
4 this application.

5 MEMBER WHITE: I have one question.

6 VICE CHAIR HART: Yes, please.

7 MEMBER WHITE: Did you have a chance to read some  
8 of the information from DDOT regarding the proposed TDM plan  
9 that is potentially going to be incorporated as part of the  
10 relief --

11 MS. MAY: Yes, indeed.

12 MEMBER WHITE: -- if it's granted. And I wondered  
13 if you had any concerns or whether or not you are 100 percent  
14 onboard with those conditions.

15 MS. MAY: I fully support the conditions and the  
16 language that the school has agreed to.

17 MEMBER WHITE: Okay, thank you.

18 ZC CHAIR HOOD: And you are the ANC Single  
19 District --

20 MS. MAY: I was the ANC commissioner across the  
21 past --

22 ZC CHAIR HOOD: Oh, you were. So you're not  
23 speaking on behalf of the ANC.

24 MS. MAY: I'm not speaking on behalf of the ANC.  
25 I am speaking on behalf of Malia Brink, the Single Member

**NEAL R. GROSS**

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

1 District Commissioner, who now holds the seat that I held for  
2 12 years.

3 MS. SHIKER: And I will just point out, Ms. Brinks  
4 was here for quite a while but had to get home because she  
5 needed to see her family. She's leaving town tomorrow. So  
6 she did issue a letter saying that she could speak in her  
7 stead, since she had to leave.

8 ZC CHAIR HOOD: Okay and Nancy MacWood is the  
9 chair?

10 MS. MAY: That is correct.

11 ZC CHAIR HOOD: Okay.

12 MR. MOY: Yes, I'm sorry I had neglected to  
13 mention that.

14 ZC CHAIR HOOD: That's okay. I was just trying  
15 to see where we were.

16 MR. MOY: Yes, that's good.

17 ZC CHAIR HOOD: That's good. Thank you.

18 VICE CHAIR HART: And in the -- just the letter  
19 of opposition, one of the things they bring up is that the  
20 school has exceeded the approved cap. And could you speak  
21 to just -- because right now you are looking at the cap of  
22 600. And if you could just speak to kind of how you are  
23 going to keep within that, I guess.

24 MS. SHIKER: That's correct. And I think I would  
25 ask Mr. Baad to speak to that, if that's okay.

**NEAL R. GROSS**

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



1           VICE CHAIR HART: That's fine. I'm just focusing  
2 on you because you're the only one who has spoken so far.

3           MR. BAAD: Sure. A couple of years ago, our Board  
4 of Governors undertook a study to decide what the optimal  
5 size of the school was going to be. And given our  
6 restrictions on facilities and programs and also the long-  
7 term financial sustainability of the school, they determined  
8 that the optimal size is 585. So that is going to be our  
9 goal.

10           We're asking for a cap of 600 because we have  
11 found, over the years, that the admissions game in  
12 independent schools is a little more art than science. And  
13 trying to determine what yield numbers will be in a given  
14 year can be a little bit difficult sometimes and,  
15 occasionally, you will go over by a few students.

16           And we also tried to extend late deadlines to  
17 families who have been with us for many years and they're  
18 trying to make decisions. So that can be sometimes difficult  
19 to hit an exact number.

20           VICE CHAIR HART: Thank you, I appreciate it.

21           MR. BAAD: Sure.

22           VICE CHAIR HART: Does the Board have any other  
23 questions for the --

24           MEMBER WHITE: Just a final question, just to  
25 confirm that St. Albans is onboard with the conditions

**NEAL R. GROSS**

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

1 outlined in the TDM plan. I asked the representative for the  
2 Single Member District but I wanted to make sure I addressed  
3 it.

4 MS. SHIKER: So the TDM, the comprehensive TDM  
5 elements that are in DDOT's report, the significant majority  
6 are already conditions to St. Albans in a 2005 order and they  
7 will continue to govern the site.

8 The three additional conditions, which have been  
9 identified in the redline are the only new ones and St.  
10 Albans is agreeing to each of those.

11 VICE CHAIR HART: And do we have any other  
12 questions for the Applicant?

13 (No audible response.)

14 VICE CHAIR HART: There are -- while we have heard  
15 from the ANC, I actually had not gone through the opposition.  
16 And if anyone is here in opposition to the -- since no one  
17 else is here, I would take that as a no.

18 Anyone else in favor of the application?

19 (No audible response.)

20 VICE CHAIR HART: Also, I think you are the only  
21 one here that is not actually representing the school.

22 I think that we can -- do we have any other  
23 questions from the Board? I think we can close the record  
24 for the case.

25 Hold on.

1           And so I wanted to note the Board was ready to  
2 deliberate. Yes? Okay. I'll start.

3           I, having listened to the testimony and read  
4 through the record that is included in the case, hearing from  
5 the Office of Planning and their report, their recommendation  
6 for approving the application, also support from the ANC3C,  
7 as well as DDOT, I feel that I'd be comfortable in supporting  
8 this special exception and would like to hear other comments,  
9 if you have any.

10           MEMBER WHITE: I would concur with you, Mr. Vice  
11 Chair. I think St. Albans, their counsel has done an  
12 excellent job in making sure that they continue to be a good  
13 neighbor. I think the request that they're asking for to  
14 expand their private school use under Subtitle U, 203.1 is  
15 in line with the facts of the case. After reviewing the  
16 record, I think they've met the criteria and I don't see any  
17 reason not to support it, at this point.

18           ZC CHAIR HOOD: I would agree, Mr. Chairman, with  
19 all the support, especially when I see ANC 3C and I see Ms.  
20 Nancy MacWood and others who have supported this project  
21 going forward. I know that's no easy task and I know they  
22 don't take no tea for the fever.

23           So I would be voting in support of this,  
24 especially with the overwhelming support I see here.

25           VICE CHAIR HART: Thank you, both of you, for your

**NEAL R. GROSS**

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

1 thoughts on it.

2           And the -- I'm looking at the conditions. So I  
3 guess what we're looking at is there are five conditions that  
4 the Applicant has stated on this slide that is, I guess,  
5 before us. I'm not even sure which exhibit this is. I don't  
6 know. Exhibit 49, I think.

7           MS. SHIKER: It's the last exhibit in.

8           VICE CHAIR HART: I think it's 49, at least that  
9 is what I have on my screen.

10           So I would make a motion to approve Application  
11 19606 of St. Albans School, as read by the secretary and with  
12 the conditions as -- I'm trying to think if this is the only  
13 other place -- do we have this in the record, too, besides  
14 this? Is it written in another place?

15           MS. SHIKER: It is in the PowerPoint that was  
16 uploaded.

17           VICE CHAIR HART: Yes.

18           MS. SHIKER: We also have a hard copy we could  
19 submit to you.

20           VICE CHAIR HART: That would be helpful, just so  
21 it's cleaner. Because it is kind of -- the strikeout part.

22           MS. SHIKER: Okay, we'll go ahead and submit this  
23 to Mr. Moy. And it shows all of the conditions from 2005  
24 with the three changes in the three conditions.

25           VICE CHAIR HART: Okay.

**NEAL R. GROSS**

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

1           So I would make a motion to approve Application  
2 19606 of St. Albans School, as read by the secretary and  
3 including the conditions changes that are in -- let's just  
4 say this is -- that will be in the record.

5           And do I have a second on that motion?

6           MEMBER WHITE: Second.

7           VICE CHAIR HART: Hearing a second, all in favor  
8 of the motion, say aye.

9           (Chorus of aye.)

10          VICE CHAIR HART: Any opposed?

11          (No audible response.)

12          VICE CHAIR HART: The motion carries.

13          Mr. Moy.

14          MR. MOY: The staff would record the vote as three  
15 to zero to two. This is on the motion of Vice Chair Hart to  
16 grant the modification to the conditions as submitted into  
17 the record. The second on the motion, Ms. White. Also in  
18 support, Mr. Anthony Hood. We have no other member  
19 participating. We have a Board seat vacant.

20          VICE CHAIR HART: Summary order, Mr. Moy.

21          MR. MOY: Yes, sir.

22          VICE CHAIR HART: And if -- I know that you have  
23 submitted it so we have this. I appreciate you all spending  
24 your entire day with us. And I hope you have a good  
25 afternoon or good evening now, since it's -- oh, my gosh,

**NEAL R. GROSS**

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

1 it's almost eight o'clock.

2           Have a good evening and I think we stand adjourned  
3 -- actually, are there any other items before the Board, Mr.  
4 Moy?

5           MR. MOY: I'd be crazy to mention anything new.  
6 None at all.

7           VICE CHAIR HART: With that, the hearing is  
8 adjourned. Thank you.

9           (Whereupon, the above-entitled matter went off the  
10 record at 7:47 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 11-15-17

Place: Washington, DC

was duly recorded and accurately transcribed under  
my direction; further, that said transcript is a  
true and accurate record of the proceedings.



-----  
Court Reporter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701