

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

PUBLIC MEETING AND PUBLIC HEARING
February 1, 2011
Start: 10:21am - End: 6:08pm

Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

Board Members

Meridith Moldenhauer - Chairperson
Nicole Sorg - Vice Chairperson
Jeffery L. Hinkle - NCPC
Michael G. Turnbull - Architect
Greg Selfridge - Zoning Commission
Clifford Moy - Secretary
Beverley Bailey - Office of Zoning
Mary Nagelhout - Office of the Attorney General
John Nyarku - Office of Zoning

C o n t e n t s

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

2 CHAIRPERSON MOLDENHAUER: This meeting
3 will please come to order good morning ladies and
4 gentleman. This is the February 1, 2011, Public
5 Meeting of the Board of Zoning Adjustments for
6 the District of Columbia. My name is Meredith
7 Moldenhauer, Chairperson, joining me today to my
8 left is Vice Chair Nicole Sorg, Mayoral
9 Appointee, and to her left is the Zoning
10 Commission Representative Michael Turnbull.
11 Copies of today's meeting agenda are available to
12 you and are located to my left in the wall bin
13 near the door. We do not take any public
14 testimony at our meeting unless the Board asks
15 someone to come forward. Please be advised this
16 proceeding is being recorded by a court reporter
17 and is also being webcast live, accordingly we
18 must ask you to refrain from any disturbing
19 noises or actions in the hearing room. Please
20 turn off all cell phones and beepers at this
21 time. Mr. Secretary, do we have any preliminary
22 matters?

1 SECRETARY MOY: Good morning Madam Chair
2 for the Special Public Meeting, well if there are
3 any we'll address those when I call the case
4 Madam Chair.

5 CHAIRPERSON MOLDENHAUER: Okay, thank you
6 then we'll proceed with the agenda.

7 **Application No. 18168**

8 MR. MOY: Good morning Madam Chair,
9 Members of the Board, the first item for Board
10 Action is the expedited review calendar. You
11 have before you Madam Chair in your case folders
12 one case on that calendar which is Application
13 18168 of Irving Gorstein, I'd like to read for
14 the record the advertisement for that Application
15 and that case is pursuant to 11 DCMR 3104.1 for a
16 special exception to allow a rear addition this
17 was last approved under BZA Order No. 18100 to an
18 existing one family detached dwelling under
19 Section 223, not meeting the lot occupancy,
20 Section 403, and side yard Section 405
21 requirements in the R-2 District at premises 3924
22 Morrison Street, N.W. the property is located at

1 (Square 1748, Lot 34). As the Board will recall
2 the review of expedited review items is pursuant
3 to the requirements of Section 3118 of the Zoning
4 Regulations.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much Mr. Moy this is an expedited case and while
7 for the record I'll indicate that I've reviewed
8 the record and I believe so have all the other
9 Board Members and we'll enter into deliberation
10 on the case.

11 MS. SORG: Thank you Madam Chair, I think
12 we can pretty quickly go through this case in my
13 opinion I can incorporate for the record we have
14 our report from OP which is our exhibit, I'm not
15 exactly sure in which they recommend approval as
16 well as the support and a duly noticed meeting
17 from the ANC 3-4-G and "Exhibit 27" as well as
18 several signatures of the neighbors including
19 both adjacent neighbors to this property. In
20 addition the Board granted relief for this
21 application in Order No. 18100 I see no issue in
22 granting the last portion of the relief that is

1 required for this Applicant to complete their
2 project.

3 CHAIRPERSON MOLDENHAUER: I definitely
4 agree with you and we're looking at a minor
5 addition under 223 there's support, OP is in
6 support, there's no individuals present
7 requesting that this case be removed from the
8 expedited calendar and thus I see no reason in
9 taking out of expedited basis and moving forward
10 for approval. That being said is there a motion
11 or do we need further deliberation?

12 MR. TURNBULL: Madam Chair I just have
13 one point on the OP report since it wasn't really
14 submitted timely that we accept it into the
15 record.

16 CHAIRPERSON MOLDENHAUER: Yes thank you
17 it was submitted late and they do indicate that
18 it was not submitted less than seven days prior
19 to the Public Hearing today that was because
20 initially they thought it was going to be
21 scheduled at a later date but due to the
22 expedited basis it was pushed forward and I do

1 agree that we should accept that into the record
2 and waive filing requirement. Is there a motion?

3 MS. SORG: Yes Madam Chair I will submit
4 a motion to approve Application No. 18168 of
5 Irving Gorstein for a Special Exception to allow
6 rear addition at 3924 Morrison Street, N.W.

7 CHAIRPERSON MOLDENHAUER: Thank you a
8 motion has been made is there a second?

9 MR. TURNBULL: Second.

10 CHAIRPERSON MOLDENHAUER: A motion has
11 been made and seconded, all those in favor say
12 aye, aye.

13 CHORUS: Aye.

14 MR. MOY: Staff would record the vote as
15 3 to 0 to 2 this is on the motion of the Vice
16 Chair Ms. Sorg to approve the Application and the
17 expedited calendar seconded by Mr. Turnbull also
18 in support of the motion Ms. Moldenhauer.

19 **Application No. 18116**

20 MR. MOY: The second item for Board
21 Action is Application No. 18116 of Kerry Bedard.
22 This application is pursuant to 11 DCMR 3103.2

1 for a Variance from the floor area ratio
2 requirements under Section 402 a variance from
3 the lot occupancy requirements under Section 403,
4 a variance from the rear yard requirements under
5 Section 404 and a variance from a non-conforming
6 structure requirements under (Subsection 2001.3).
7 This is for construction of a rear addition
8 including garage serving a one family row
9 dwelling in the DC/R-5-B District at premises
10 2023 N Street, N.W, property located (Square 97,
11 lot 47). Madam Chair the office is in receipt of
12 communication from the agent for this application
13 a Mr. Armstrong Kassa and his filing is to
14 request that the Board postpone or delay its
15 decision to a time in April that's convenient for
16 the Board.

17 CHAIRPERSON MOLDENHAUER: Thank you very
18 much Mr. Moy. Seeing that right now we
19 understand his case is being reviewed under FHA
20 for a reasonable (inaudible) and that's the
21 reason for the continuance and I see no reason
22 why we can't grant that and we can put this on

1 the calendar for April 12th.

2 MR. MOY: Very good thank you Madam
3 Chair.

4 **Order No. 18138-A**

5 MR. MOY: The third and last action of
6 the Board in this Special Public Meeting Session
7 is the Applicants motion for reconsideration of
8 condition no. 1 and condition no. 5 of Order No.
9 18138-A of St. Paul's Rock Creek Parrish pursuant
10 to Section 3126 of the Zoning Regulations. The
11 original application Madam Chair was pursuant to
12 11 DCMR 3104.1 for special exception to allow a
13 private school and a child development center
14 that would be a 120 students ages 2.5 through 12
15 years of age and 18 staff members, under Sections
16 205 and 206 in the R-3 District at premises 210
17 Allison Street, N.W. no new construction is
18 proposed this is located on (Parcel 0111/0037).
19 The filing for this reconsideration is in your
20 case folders identified as "Exhibit 40" there is
21 no response from ANC 4-C and the Board is to act
22 on the merits of the motion for reconsideration

1 pursuant to requirements of Section 3126.6 that
2 completes Staff's briefing Madam Chair.

3 CHAIRPERSON MOLDENHAUER: Thank you very
4 much Mr. Moy and we'll discuss the merits of this
5 motion for reconsideration. Having reviewed the
6 two separate motions what I'll do is I'll first
7 start my discussion on the condition no. 1 and
8 aspects that have been identified in the "Exhibit
9 40". There have been some indications obviously
10 request to either extend the term or to eliminate
11 the term based on the fact that there's arguments
12 that there's no evidence in support or that
13 there's no specific reasoning for having a term
14 condition. That being said I disagree with that
15 conclusion I think there's nothing in the record
16 that would support it. There is information in
17 the record that would support it. This is a new
18 use, a use that has not previously been at this
19 location thus there are unforeseen factors,
20 factors that we cannot specifically predict in
21 regards to potentially how this new use would
22 effect the adjacent or nearby properties. That

1 being said the information we received from DDOT
2 and the issues in regards to the traffic flow and
3 the streets and which way the traffic should go
4 in regards to indicating those issues is a
5 separate and distinct issue from potentially the
6 fact that this is a new use, what other potential
7 problems neighbors could raise in the future.
8 There was a letter of opposition while it was
9 never raised to the level of the party status
10 application because the individual did not show
11 and there was testimony on behalf of the
12 Applicant that there has been discussions but
13 there was potential for obviously, there was an
14 inkling that there may be some future issues that
15 I would anticipate would be able to be worked
16 out. Right now we have no benefit of having the
17 experience of somebody in the neighborhood saying
18 or having the Applicant saying we've been running
19 this facility in this location for so many years
20 and not having any problems, is there a request
21 in this Application that obviously this term
22 would have some financial impact on the

1 Applicant. I don't see that that in the future
2 they would absolutely require a traffic condition
3 study as part of the argument for why they would
4 request elimination or additional time for the
5 term at that point in time they'll have five
6 years of experience and have that time frame in
7 order for them to be able to not have to go to
8 maybe to (inaudible) but rather go to the fact
9 that look our neighbors are friendly, they're
10 happy, they're loving the school whatever it
11 might be they'll be able to go to the actual
12 practical experience which we obviously enjoy
13 looking at which we cannot currently predict and
14 I think that's one of the reasons why when your
15 represented with a brand new use in a location
16 which is surrounded by residents and where there
17 is a lot of streets we're creating a new traffic
18 flow not just for what we discussed a lot at the
19 hearing which was in and out traffic for pick up
20 and drop off but they're going to have other
21 activities, parents nights, other things that we
22 cannot specifically predict nor can the Applicant

1 predict how the operation of the facility may
2 impact the adjacent or nearby properties and so
3 based on those factors I think that the Board
4 based on it's experience having seen these things
5 arise over years or having not see them arise and
6 then obviously it maybe a very quick and easy
7 renewal after the five year term and hopefully
8 that would obviously be our desire that there
9 would be no concern but we can't predict that
10 right now and the fact that it's a new use I
11 think lends specific evidence to the fact that it
12 would need some sort of term in place. That
13 being said I'll open up the floor to other
14 deliberation.

15 MS. SORG: Thank you Madam Chair, I think
16 I'm in agreement with your assessment and I think
17 you really went through in detail all of the
18 points relating to the motion and what we did
19 here in the hearing on this case. I would just
20 echo that this is, as you said, a brand a new use
21 and it's an active, certainly daytime use and
22 potentially have a good deal of evening use as

1 well that will undoubtedly have an impact on the
2 neighborhood. Obviously we hope that that impact
3 is positive over time and then at the time of the
4 end of this term I think would be an appropriate
5 time for the Applicant to come back and at that
6 time eliminate the term. I would also note that I
7 think we are supportive of course of education
8 uses in these neighborhoods across the city and
9 we'll hope for this new use being successful in
10 this neighborhood.

11 CHAIRPERSON MOLDENHAUER: Then lets move
12 on to this other deliberation condition no. 5
13 having reviewed the submission for
14 reconsideration I do believe that was a technical
15 error either in our deliberation and so it should
16 not be the Rock Creek Road entrance, it should be
17 the existing current Webster Street which is off
18 of Rock Creek, technically we have to get this
19 right so lets make sure I would definitely move
20 to correct that in a corrective order so that it
21 is an entrance to the existing Webster Street,
22 not the Rock Creek Church Street Road entrance.

1 MS. SORG: I agree.

2 CHAIRPERSON MOLDENHAUER: That being said
3 I'll if there's no further deliberation submit a
4 motion to deny in part and grant in part the
5 motion for reconsideration of BZA Application No.
6 18138 to deny any reconsideration for condition
7 no. 1 but to grant the reconsideration for
8 condition no. 5 to restate Webster Street.
9 Motion has been made is there a second?

10 MS. SORG: Second.

11 CHAIRPERSON MOLDENHAUER: Motion has been
12 made and seconded, all those in favor say aye,
13 aye.

14 CHORUS: Aye.

15 MR. MOY: Staff announces the final vote
16 Madam Chair there is an absentee ballot from Mr.
17 Selfridge who's participating on this application
18 and his absentee vote is to be in support of the
19 motion, so that motion on the motion of the
20 Chairperson Ms. Moldenhauer to deny in part,
21 grant in part, deny condition no. 1, grant
22 condition no. 5, seconded by Ms. Sorg, the Vice

1 Chair, no other Board Members participating so
2 again the final vote is 3 to 0 to 2.

3 CHAIRPERSON MOLDENHAUER: Thank you very
4 much Mr. Moy and I think that concludes our
5 public meeting this morning?

6 MR. MOY: Yes indeed.

7 **Morning Hearing**

8 CHAIRPERSON MOLDENHAUER: This hearing
9 will please come to order, good morning ladies
10 and gentleman, this is the February 1, 2011,
11 Public Hearing of the Board of Zoning Adjustments
12 for the District of Columbia. My name is
13 Meredith Moldenhauer, Chairperson, and joining me
14 today is Vice Chairperson Nicole Sorg, Mayoral
15 Appointee, and to her left is Representative of
16 the Zoning Commission Mr. Michael Turnbull.
17 Copies of today's meeting agenda are available to
18 you and are located to my left in the wall bin
19 near the door. Please be advised this proceeding
20 is being recorded by a court reporter and is also
21 being webcast live. Accordingly we must ask you
22 to refrain from any disturbing noises or actions

1 in the hearing room. When presenting information
2 to the Board please turn on and speak into your
3 microphone first stating your name and home
4 address. When you are finished speaking please
5 turn off your microphone so that your microphone
6 is no longer picking up sounds or background
7 noise. All persons planning to testify either in
8 support or in opposition are to fill out two
9 witness cards these cards are located to my left
10 on the table near the door and on the wall bins
11 near the door. Upon coming forward to speak to
12 the Board please give both witness cards to the
13 court reporter sitting to my right. The order of
14 procedure for special exceptions and variances
15 are as follows: 1. Statement of the Applicant and
16 Applicant's witnesses. 2. Parties and Persons in
17 support. 3. Parties and Persons in Opposition. 4.
18 Government Reports including the Office of
19 Planning and Department of Transportation. 5. ANC
20 within which the property is located. 6.
21 Rebuttal and closing statements of the Applicant.
22 The orders of procedures for an Appeal

1 Application are as follows: 1. Statement of the
2 Appellant and the Appellant's witnesses. 2. The
3 Zoning Administrator or other Government
4 Officials case. 3. Case of the owner, leasee,
5 and operator of the property or intervener if not
6 the Applicant. 4. Other intervener's in the case
7 permitted by the Board. 5. ANC in which the
8 property is located. 6. Rebuttal and closing
9 statements by the Appellant. Pursuant to Section
10 3117.4 and 3117.5 the following time constraints
11 will be maintained: The Applicant, Appellant,
12 persons and parties except an ANC in support and
13 including witnesses will be permitted 60 minutes
14 collectively. The Appellees persons and parties
15 except an ANC in opposition including witnesses
16 will be given 60 minutes collectively.
17 Individuals will be given 3 minutes and
18 organizations will be given 5 minutes. These
19 time restrictions do not include cross
20 examinations or questions from the Board. Cross
21 examination of witnesses is permitted by the
22 Applicant or the parties and the ANC within which

1 the property is located is automatically a party
2 to a special exception or variance case. Nothing
3 prohibits the Board from placing reasonable
4 restrictions on cross examination including time
5 limitations, and limitations on the scope of
6 cross examination. The record will be closed at
7 the conclusion of each case except it will remain
8 open for any materials specifically requested by
9 the Board. The Board and the staff will specify
10 at the end of each hearing exactly what is
11 expected and the date when the person must submit
12 this evidence to the Office of Zoning. After the
13 record is closed no other information will be
14 accepted by the Board. The Sunshine Act requires
15 that the public hearing on each case be held in
16 the open before the public. The Board may
17 consistent with its rules and procedures and the
18 Sunshine Act enter into Executive Session during
19 or after a hearing on a case for purposes of
20 reviewing the record or deliberating on a case.
21 The decision of the Board as in these contested
22 cases must be based exclusively on the public

1 record, to avoid any appearance to the contrary
2 the Board requests that persons present not
3 engage the members of the Board in conversation.

4 Please turn off all beepers and cell phones at
5 this time as to not disturb these proceedings.

6 At this time the Board will consider any
7 preliminary matters, preliminary matters relate
8 to whether a case should or will be heard today
9 such as a request for postponement, continuance
10 or withdrawal or whether proper or adequate
11 notice of a hearing was given. If you are not
12 prepared to go forward today now is the time to
13 raise such a matter. Mr. Secretary, do we have
14 any preliminary matters?

15 MR. MOY: Madam Chair we do we have
16 preliminary matters to Application 18161, of Byrd
17 as well as 18152 appeal case.

18 CHAIRPERSON MOLDENHAUER: Okay why don't
19 we address those as we call the cases and we are
20 going to shuffle the cases around a little bit
21 this morning but all individuals wishing to
22 testify today please stand and we'll administer

1 the oath.

2 MR. MOY: (Administers the Oath). Ladies
3 and gentleman you may consider yourself under
4 oath.

5 CHAIRPERSON MOLDENHAUER: What we'll do
6 is we're going to move around the cases, we'll
7 actually hear them in a reverse order so we'll do
8 Byrd then we'll go up from there.

9 **Application No. 18161**

10 MR. MOY: Very good that would be
11 Application No. 18161 of Valeri A. Byrd pursuant
12 to 11 DCMR 3103.2 for a variance from a non-
13 conforming structure provisions under (Subsection
14 2001.3) to allow a second story sun room addition
15 on top of an existing attached garage serving an
16 existing one family row dwelling in the R-4
17 District at premises 1245 G Street, N.W. property
18 located (Square 1005, Lot 41).

19 CHAIRPERSON MOLDENHAUER: Party please
20 step forward, I'd also just like to note for the
21 record it's for a case later on this morning but
22 we do have an individual present with sign

1 language if any of the Board Members including
2 myself go a little too fast please just put your
3 hand up and we'll know to slow down, thank you.
4 If you can turn on your microphone and please
5 introduce yourself.

6 MR. WOODILL: Madam Chairperson Joe
7 Woodill on behalf of my client Valeri Byrd if it
8 pleases the court we're going to need to ask for
9 a postponement for an issue which needs to be
10 worked out with DCRA and it's not something that
11 can be spoken about in public forum so we're
12 going to ask for a continuance, and one more
13 thing Mr. Moy I know it's a slip of the tongue
14 but it's N.E. not N.W.

15 MR. MOY: Thank you for the correction.

16 CHAIRPERSON MOLDENHAUER: Alright we've
17 identified the issue as well and so we were going
18 to address that but I'm happy the Applicant has
19 already identified that and so what we'll do is
20 we will postpone this statutorily I think you
21 have 45 days so why don't we push this off to 60
22 days which will be, we schedule a case earlier

1 today for April 15, will that be enough time?

2 MR. WOODILL: Madam Chairperson if I may
3 I think this can be worked out quickly with DCRA
4 having had preliminary discussions with them and
5 they're familiar with it, so I don't think we
6 need that amount of time, I would think that if
7 we needed to come back here and continue with
8 this we would want to do that quickly if we are
9 able to do that, so 30 days is just fine.

10 CHAIRPERSON MOLDENHAUER: I just know
11 that DCRA has 45 days based on the statute to
12 review an FHA case and so I want to make sure at
13 least we give DCRA their timeframe to potentially
14 respond, so we could do a March 15 date. So what
15 we'll do is we'll do it in the morning of March
16 15th then. Thank you very much.

17 MR. WOODILL: Thank you.

18 **Application No. 18159**

19 MR. MOY: The next application Madam
20 Chair is Application 18159 of Alan and Faye
21 Hegburg pursuant to 11 DCMR 3104.1 for a special
22 exception to allow an addition to an existing one

1 family semi-detached dwelling under Section 223,
2 not meeting the side yard Section 405
3 requirements in the R-5-B District, that premise
4 is 627 G Street, S.E. property located at (Square
5 858, Lot 152).

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much, if the party could introduce himself for
8 the record.

9 MR. OSSOLINSKI: My name is Matthew
10 Ossolinski, I'm the Architect representing the
11 owner my client Al and Faye Hegburg.

12 CHAIRPERSON MOLDENHAUER: I think that
13 the record is quite full in this case if you
14 would like you can either rest on the record or
15 you can present any additional information that
16 you don't believe is already in the record.

17 MR. OSSOLINSKI: Be happy to rest on the
18 record, thank you.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much then what we'll do is I'll look to the
21 audience and see if there are any individuals in
22 the audience in support or in opposition of this

1 case. Seeing none then we'll turn to the Office
2 of Planning.

3 MR. COCHRAN: And the Office of Planning
4 would also be happy to rest on the record.

5 CHAIRPERSON MOLDENHAUER: Thank you in
6 your report the OP was very thorough and I
7 appreciate that, thank you. Then we'll turn to
8 see if anybody is present today from ANC 6-B,
9 seeing nobody in the audience I'll indicate that
10 we have "Exhibit No. 25" which indicates that on
11 January 11, 2011, there was a regularly called
12 and publically held properly noticed meeting in
13 which the ANC 6-B discussed this case and the
14 special exception to allow the addition and that
15 they voted 6-2-2 to support the application and
16 so I would just go back to the Applicant and ask,
17 the two individuals that were in, I guess
18 opposition to the case were you present at that
19 and what were their concerns?

20 MR. OSSOLINKSI: I was not present but I
21 spoke with the Secretary of the ANC afterwards
22 and said that the opposition was primarily

1 because the, of an administrative issue with the
2 submittal that we did not get the papers to all
3 the Commissioners before the meeting and they
4 voted against it because they had not received it
5 beforehand.

6 MS. SORG: Have they since received it?

7 MR. OSSOLINSKI: Yes at the meeting each,
8 as I understand it each had seen it, yes.

9 CHAIRPERSON MOLDENHAUER: Do the Board
10 Members have any other questions for the
11 Applicant? I know that you have the ANC's
12 support I'm just wondering if you've spoken with
13 the neighbors, we have letters in our record from
14 both, they have no issues.

15 MR. OSSOLINSKI: That's right there are
16 letters in the record that there are no negative
17 comments in those letters and support. I have
18 not spoken with the neighbors but I know that my
19 client the owner of the property has repeatedly.

20 CHAIRPERSON MOLDENHAUER: Okay wonderful,
21 well then that being said is there any final
22 closing remarks?

1 MR. OSSOLINSKI: Only one small
2 correction for the record it's not a semi-
3 detached house, it's a fully detached house.

4 CHAIRPERSON MOLDENHAUER: Okay, do any
5 Board Members have any follow up questions from
6 that correction? Seeing none, then thank you
7 very much then at this point in time we will
8 conclude the hearing and what we'll do is we'll
9 actually enter into deliberation immediately.
10 I'll turn to my colleague to start us off.

11 MS. SORG: Thank you Madam Chairwoman, I
12 think actually in reading the record in this case
13 and what we've heard today and the exhibits from
14 the ANC and a couple of the neighbors including
15 an adjacent neighbor that we have in our record
16 this may have actually been a very good case for
17 the expedited review calendar. The relief that's
18 being sought in this case is 7 inches of side
19 yard relief which I think is not terribly great.
20 We've heard from the applicant, OP recommends
21 approval in their report and I would urge my
22 colleagues to approve this application.

1 CHAIRPERSON MOLDENHAUER: I agree I see
2 no issues and obviously this Applicant has done
3 due diligence in talking to the neighbors,
4 obtaining the ANC's report, it was good to kind
5 of hear the clarification to why maybe those two
6 ANC Commissioners voted to deny the case, seeing
7 that it was more of a procedural issue and not a
8 real issue on the merits for the 223 standard, I
9 see no issues with approving this case.

10 MR. TURNBULL: Madam Chair I would agree
11 with both yourself and the Vice Chair that this
12 is really dominium relief being requested and had
13 it not been for the vote of the ANC it could have
14 been an expedited hearing I think this is really
15 a shoe-in.

16 CHAIRPERSON MOLDENHAUER: Do we have a
17 motion?

18 MS. SORG: Thank you Madam Chair I will
19 submit a motion to approve Application No. 18159
20 for relief from side yard requirements of 406.1
21 at the dwelling at 627 G Streets'.

22 CHAIRPERSON MOLDENHAUER: The motion has

1 been made, is there a second?

2 MR. TURNBULL: Second.

3 CHAIRPERSON MOLDENHAUER: Motion has been
4 made and seconded, all those in favor say aye.
5 Aye.

6 CHORUS: Aye.

7 MR. MOY: Staff will record the vote as 3
8 to 0 to 2, this on the motion of Ms. Sorg, Vice
9 Chairperson to approve the application for
10 special exception relief under Section 223,
11 seconded the motion Mr. Turnbull, also in support
12 of the motion Ms. Moldenhauer, again the vote is
13 3 to 0 to 2. Madam Chair any consideration for
14 waiving the regulations for a summary.

15 CHAIRPERSON MOLDENHAUER: Yes I would
16 think we'd like to waive our requirements and ask
17 for a summary order to be issued.

18 MR. MOY: Thank you very much.

19 CHAIRPERSON MOLDENHAUER: Thank you.

20 **Application No. 18152**

21 MR. MOY: The next and last action of the
22 Board for the morning session Madam Chair is

1 Application No. 18152 this is the Appeal of the
2 Advisory Neighborhood Commission 1D, et.al.,
3 pursuant to 11 DCMR 3100 and 3101 from an August
4 17, 2010, decision by the Department of Consumer
5 and Regulatory Affairs to grant a building permit
6 allowing the renovation and expansion of the
7 existing Mt. Pleasant Library in the R-5-D
8 District at premises 3160 16th Street, N.W.,
9 property located at (Square 95, Lot 830).

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much Mr. Moy, will the parties please step
12 forward. Okay what we're going to do is we're
13 going to first just go through the introductions
14 so I'm going to go from my left to my right and
15 I'm going to ask each party to turn on their
16 microphone and just state their name and who they
17 are here representing and a home address and then
18 after that we're going to turn back and I will
19 address some of the preliminary matters and I
20 will try to knock through those one at a time.

21 MR. EDWARDS: I'm Dr. Gregg Edwards of
22 1647 Lamont Street, N.W., #201, and I'm here as

1 the Chair of the Mt. Pleasant Advisory
2 Neighborhood Commission 1-D as their duly
3 designated representative.

4 MR. OTTEN: Good morning Commissioners my
5 name is Christopher Otten, I am the Appellant in
6 18152, also here as the agent for the Park
7 Marcone Apartments and the Adalante Cooperative
8 Apartments which are just next to the library.
9 My address is 1830 Belmont Road, N.W.,
10 Washington, DC 20009, and I have affidavits
11 showing my agency with the apartments next to the
12 library, thank you.

13 MR. NICHOLS: My name is Robert Nichols;
14 I live at 2934 Fessenden Street, N.W.,
15 Washington, DC 20008.

16 CHAIRPERSON MOLDENHAUER: Thank you very
17 much, I think it might be helpful for purposes of
18 recording the transcript that if when you like
19 when you give your testimony in regards to the
20 architectural perspective that you maybe sign
21 that and we have your sign language interpreter
22 read that into the record so that we have no

1 issue with the transcript but I think for now
2 we're fine to continue, thank you very much.

3 MR. BONVECHIO: Jeff Bonvechio, Director
4 of the D.C. Public Libraries Capital Construction
5 Office, I reside at 1435 Cochran Street, N.W.
6 Washington, DC.

7 MR. LEGRANT: Good morning Matthew
8 LeGrant, I'm the Zoning Administrator with DCRA.

9 MR. SURABIAN: Good morning Assistant
10 Attorney General Jay Surabian on behalf of DCRA.

11

12 MS. BOWLING: Good morning Madam Chair,
13 Board Melinda Bowling, General Counsel for DCRA.

14 CHAIRPERSON MOLDENHAUER: Okay good
15 morning everybody. As we indicated earlier we
16 have a number of different preliminary matters to
17 address first in this case, so what we'll do is
18 we'll just take them one at a time. First is the
19 request for ANC 1-D to step in as the Appellant
20 in this case that was provided to us in the ANC
21 letter and also in their prehearing statement
22 recognizing that ANC 1-D wanted to make

1 themselves the Appellant I think that has been
2 recognized. The next issue is the status of Mr.
3 Otten potentially as an Appellant, if Mr. Otten
4 wishes to stay on as an Appellant in this case in
5 addition to ANC 1-D he would individually need to
6 pay the filing fee. If he does not wish to pay
7 the filing fee right now then he has the option
8 of either potentially orally requesting to
9 intervene the same as other interveners that have
10 requested and we'll address those afterwards but
11 if he wishes to stay on as the actual Appellant
12 he would need to pay the filing fee for himself.
13 So I'm going to turn to Mr. Otten and see if
14 that is something the he wishes to do at this
15 point in time or if he'd like to take other
16 action.

17 MR. OTTEN: Good question, my
18 understanding after the last hearing on January
19 11, I spoke with Mr. Nero and we had a pretty
20 long conversation about how the fee could be
21 waived and I was under the impression that if the
22 ANC enjoined with my initial appeal that bind of

1 that fact that the fee would be waived so I guess
2 I'm surprised to hear this today and I wish I
3 would have known this coming into the hearing
4 today.

5 CHAIRPERSON MOLDENHAUER: The fee would
6 be waived for the ANC 1-D but if you wish to stay
7 on the record as the Appellant and not as an
8 intervener or not as a witness then you would
9 need to pay the fee.

10 MR. OTTEN: He point blank though said
11 the regulations state that if I'm the Appellant
12 and that the ANC enjoins or a non-profit
13 association enjoins the case that was very clear
14 to me that the fee would be waived, I guess I'm
15 confused.

16 CHAIRPERSON MOLDEHAUER: Waived for them.

17 MR. OTTEN: Why for them they're joining
18 my case.

19 CHAIRPERSON MOLDENHAUER: Because they're
20 the non-profit, you are not a non-profit, you can
21 stay on the case as an intervener but you cannot
22 stay on the case as the Appellant unless you pay

1 the fee and that's up to the Boards decision and
2 that's the way the Board reviews the record.

3 MR. OTTEN: I'm quite disappointed
4 because I wasn't informed of that I was informed
5 the opposite of that and to me...

6 CHAIRPERSON MOLDENHAUER: The intervener
7 status if you wish to do that and you don't want,
8 I mean intervener status has the same status as a
9 party they are just not the initial Appellant in
10 the case, they have the right to cross examine,
11 they would have the right to be active in the
12 case but they are simply not the Appellant, they
13 are not the captioned party in the case unless
14 that is, and based on our review of the record if
15 you wish to stay on in your individual status and
16 not permit ANC 1-D to fully takeover and
17 intervene in the case then you would have to pay
18 the fee.

19 MR. OTTEN: Okay does the fact that the
20 two neighboring tenant associations have any
21 effect on this because that was the other aspect
22 that he spoke to me about is that there's a

1 neighborhood association that enjoins that that
2 would assume me as the Appellant as their agent
3 and waive the fee is that not the case, or I
4 don't know how that plays into this.

5 CHAIRPERSON MOLDENHAUER: As an
6 intervener you do not need to pay the fee and any
7 interested party for good cause can be an
8 intervener in the case.

9 MR. OTTEN: I see, okay, if that
10 expedites this process, sure.

11 CHAIRPERSON MOLDENHAUER: I just want to
12 make sure that I clarify the record we have in
13 our file "Exhibit No. 24" from Richard Nero in
14 our office that indicates that you were advised
15 that an exception to the appeal filing fee is
16 contingent on one of the ANC's joining in and
17 taking over the case, taking over and that the
18 Board needed an ANC resolution no later than the
19 21st, nowhere in here does he indicate that you
20 would then, it's vague this doesn't absolutely
21 talk to that, and so that being said again this
22 is one of the preliminary matters that we want to

1 address so the question to you is do you wish to
2 pay the fee or withdraw those are your two
3 options your status as the Appellant. Then after
4 that once we address that first question then we
5 can ask you if you would like to intervene in the
6 case.

7 MR. OTTEN: Okay I'm not prepared to pay
8 the fee today so I guess I would entertain
9 enjoining as an intervener.

10 CHAIRPERSON MOLDENHAUER: So you would
11 like to make an oral motion to intervene.

12 MR. OTTEN: I will make a motion to
13 intervene.

14 CHAIRPERSON MOLDENHAUER: Then what we're
15 going to do is we're going to address, right now
16 we have three individuals, yourself wishing to
17 intervene in this case, and we also have Yasmen
18 and Ms. Brewster also wishing to intervene in
19 this case and so what we'll do is I'm going to
20 turn to the District and see if Mr. Surabian are
21 you objecting to any of these interveners?

22 MR. SURABIAN: I object to all three the

1 two tenant associations filed untimely, they had
2 to file 14 days before the hearing and did not.
3 And also upon reading their affidavits and the
4 statements that they're making, nothing that
5 they've raised goes to the issues before the
6 Board today, the Zoning Regulations. So I don't
7 think that their inclusion is going to shed any
8 light on the issues that we're discussing.

9 CHAIRPERSON MOLDENHAUER: Where do you
10 see the 15 days at, I know that they filed the
11 paperwork for a party status and party status is
12 typically for a regular zoning application for a
13 special exception or a variance, this is an
14 appeal so we would then look not to the party
15 status requirement but we would look to Section
16 3112.15 where there's not time requirement for an
17 intervenor.

18 MR. SURABIAN: I would then remake my
19 second argument concerning that the relevance of
20 the, what information they would be bringing to
21 the Board and what they put in their affidavits
22 doesn't go to the Zoning Regulations. I think it

1 would be cumulative as well of what the
2 Appellants are raising.

3 CHAIRPERSON MOLDENHAUER: Okay, I'd like
4 to actually call the two intervening parties are
5 they present?

6 MR. OTTEN: They're not here but
7 according to the affidavit I'm supposed to be
8 serving as their agents.

9 CHAIRPERSON MOLDENHAUER: Okay, I don't
10 believe, did you guys have a new document; do we
11 not have copies of that?

12 MR. OTTEN: You should have a copy in the
13 very large...

14 CHAIRPERSON MOLDENHAUER: That we got
15 last night?

16 MR. OTTEN: Uh yeah, this was by the way,
17 I didn't expect you all to read this before; this
18 was going to help for the oral argument.

19 CHAIRPERSON MOLDENHAUER: You've actually
20 paginated it which I appreciate, I've made
21 comments at other hearings that I do criticize
22 people that do not paginate, and so what

1 paginated page are your authorizations?

2 MR. OTTEN: Okay page 13 is the Mt.
3 Pleasant Street Tenant's Association, paragraph 5
4 and page 17 4th paragraph down.

5 CHAIRPERSON MOLDENHAUER: Okay so Mr.
6 Otten as their authorized representative can you
7 address the argument by Mr. Surabian that these
8 points do not go to the limited scope of this
9 appeal?

10 MR. OTTEN: Well I think that's unfounded
11 Chapter 11 DCMR specifically points out why you
12 are here, one of those key things is protection
13 of property, overcrowding land and make sure
14 there's adequate light and air. In the affidavit
15 cover pages specifically the 4th point down, the
16 proposed expansion which is expanding into the
17 rear yard will also block light and air and
18 reduce the quality of life to surrounding
19 residents in the apartments, that's a key piece
20 and they're talking about in the last point about
21 their property and their lives being risked by
22 these expansion plans which directly relate to

1 expanding into the rear yard which is what's at
2 play today.

3 CHAIRPERSON MOLDENHAUER: Mr. Edwards
4 would you like to identify some additional
5 arguments?

6 MR. EDWARDS: I'm Dr. Edwards and I'm the
7 representative of the Appellant ANC 1D it is a
8 point that we have raised in our appeal and great
9 weight advice to this Board that it should
10 consider all the matters that are included in the
11 prolog of Zoning Administrations as a rationale
12 for the Zoning and these are issues that should
13 be considered by all the Zoning actions and so to
14 accept opposing council's approach would be to
15 prejudice our in affect motion to the Board.

16 MR. OTTEN: May I also point out page 22
17 is the Zoning Map and these are lots directly
18 effected by this plan these are all lots
19 literally adjacent to the library building and
20 for whatever reason my copy doesn't have that,
21 you should have page 22 the zoning map, so it's
22 lot 830 which is just 829 but it's the two lots

1 that are just adjacent to the library.

2 MR. SURABIAN: Mr. Otten do you have a
3 copy of that for the government? I didn't get
4 one.

5 CHAIRPERSON MOLDENHAUER: Did you not get
6 this package?

7 MR. SURABIAN: No.

8 CHAIRPERSON MOLDENHAUER: Mr. Moy do we
9 have by any chance an extra copy...

10 MR. MOY: I'll secure another copy Madam
11 Chair.

12 MR. SURABIAN: Thank you.

13 MR. OTTEN: It's the two lots there; they
14 have the lot numbers on there.

15 MR. SURABIAN: Do you have the numbers of
16 the property?

17 MR. EDWARDS: The one property I believe
18 is 0829 on the map.

19 MR. OTTEN: 0829 is the Park Marcone and
20 that's 1650 16th Street and then the 3149 Mt.
21 Pleasant Street is actually the Doe Hill
22 Apartments which burned to the ground.

1 CHAIRPERSON MOLDENHAUER: Why don't you
2 use instead of approaching why don't you go to
3 "Exhibit No. 25" and just describe to us,
4 paginated page 25. Describe to us which one,
5 which building that is, that's Mt. Pleasant.

6 MR. OTTEN: So the Park Marccone is 1650
7 16th Street is the building just to the left of
8 the library, the white roof, and 3149 Mt.
9 Pleasant Street is located kind of behind the
10 Park Marccone a little bit to the left of it, I
11 guess it's not an adjacent lot, that one, it's
12 less than 200 feet from the library that's
13 sitting kind of...

14 CHAIRPERSON MOLDENHAUER: There are three
15 buildings on the top.

16 MR. OTTEN: Let me point it to you, so
17 here's the Park Marccone, here's the Adalante
18 Cooperative right here, this building is no
19 longer there now.

20 MS. GLAZER: Madam Chair could we clarify
21 what exhibit we're working from, I think "Exhibit
22 25 at least my copy is a memo.

1 CHAIRPERSON MOLDENHAUER: No we're not
2 talking about exhibit no. 25, we're talking about
3 the prehearing statement that was submitted to
4 the District Office of Zoning on January 31st
5 which we're getting a copy for Mr. Surabian and
6 the District and it would be our last exhibit on
7 our exhibit list I don't know what number we're
8 at, so this document has paginated pages so we're
9 referring to the prehearing statement of the
10 Appellant paginated page number 25, paginated
11 page number 13.

12 MR. OTTEN: Page 23 is also a great
13 bird's eye perspective.

14 CHAIRPERSON MOLDENHAUER: I see good
15 cause shown for the property which is adjacent to
16 the library but the other building on Mt.
17 Pleasant I think is really a lot further away
18 especially in regards to the zoning issues that
19 we're talking about or at least that are being
20 articulated by the Appellant or the intervener
21 requesting status, other Board Members?

22 MS. SORG: Thank you Madam Chair, I

1 wanted to kind of take a step back and maybe I'm
2 just a little confused but it sounds like we've
3 got party status requests from two tenant
4 associations at least in my record which one is
5 the Doville Apartments which is the one
6 (inaudible) and then the other one is the Park
7 Marcone but as you introduced yourself you
8 mentioned the Adalante Apartments?

9 MR. OTTEN: They're supposed to be on
10 their way here to testify today so I don't have
11 an affidavit from them signing me s their agent
12 but hopefully they will be here soon.

13 CHAIRPERSON MOLDENHAUER: If we don't
14 have a request already and they're not present we
15 don't have that in writing they could be
16 witnesses later on for ANC 1-D or for any of the
17 other interveners but we can't entertain their
18 request for intervener status at this point, so
19 we're only addressing then the issue of the
20 Doville and the Park Marcone.

21 MR. OTTEN: And the Doville is certainly
22 less than 200 feet from the library property and

1 the key thing is one of the protection of peoples
2 lives this issue about expansion into the rear
3 yard they pointed out clearly effects emergency
4 exit points to their building which will be built
5 again and they worry that upon building it again
6 that they won't have adequate fire service access
7 to their new building, this is why they're
8 interested in this case also.

9 CHAIRPERSON MOLDENHAUER: Dr. Edwards.

10 DR. EDWARDS: Thank you, the fire report
11 for the Doville Fire pointed out that the fire
12 spread 18.5 feet to an adjoining building within
13 5 minutes all of these buildings up and down this
14 area are of the same vintage, they don't have
15 emergency fire stairs, they are very often
16 plaster on wooden lathing and they could go p as
17 a single as a very rapidly spreading fireball,
18 they are all within 18 feet of each other and
19 therefore the propensity of these buildings
20 forming a single fire hazard issue is of great
21 interest to us. Luckily the most recent fire two
22 months ago in which two people died, one jumping

1 out of a window that could not be reached by
2 under current circumstances by a ladder truck
3 shows that all of these buildings have good
4 reason to believe that their lives are in danger
5 and in a situation that could be mitigated except
6 for the yard that is now under question. In
7 accordance with one of the motions and deserving
8 great weight and particularity ANC 1D has asked
9 that all of these issues be included, they are
10 listed in the 148 points that we have submitted
11 to you.

12 CHAIRPERSON MOLDENHAUER: Okay we're not
13 there yet; right now we're simply talking about
14 intervener status we'll get to the scope of the
15 appeal next.

16 DR. EDWARDS: But this argues that all of
17 those people should be included as highly
18 impacted people in this consideration, that's
19 part of our motion.

20 CHAIRPERSON MOLDENHAUER: Thank you, I
21 think that now what we'll do is I'll look to the
22 other Board Members and we'll deliberate on the

1 issue of intervenor status. Do any Board Members
2 have any particular thoughts or views on granting
3 intervenor status for the party's that have
4 requested it?

5 MR. TURNBULL: Madam Chair, I'm just
6 curious there's other buildings in the area which
7 are adjacent, not sure I guess I'm questioning, I
8 guess I'm trying to question why these two
9 buildings more so than the others, what makes
10 these two special other than the other two or
11 three buildings right near by.

12 MR. OTTEN: Active tenant association.

13 DR. EDWARDS: But if I could answer it is
14 that all of them should be included but only
15 these have stepped up to the plate.

16 CHAIRPERSON MOLDENHAUER: Let me ask this
17 one question both to Dr. Edwards and Mr. Otten.
18 If we were to grant party status is this going to
19 be a combined presentation or are you looking to
20 present separate presentations?

21 MR. OTTEN: I would present it as the
22 same case.

1 CHAIRPERSON MOLDENHAUER: Okay and would
2 your intervener case be combined with ANC 1D's?

3 MR. OTTEN: That I'm unclear on, I don't
4 know, if they're going to be the Appellant, I
5 would presume so if I'm just an intervener at
6 this point which is why I was hesitant about
7 doing that if that affects it in anyway please
8 advise me I don't know.

9 CHAIRPERSON MOLDENHAUER: I'm asking you
10 obviously you would have a certain amount of time
11 if you wish to have your separate case as an
12 intervener but the question is have you worked
13 with Dr. Edwards and ANC 1D to create a combined
14 presentation or are you going to be presenting
15 separate presentations?

16 MR. OTTEN: Well I can't speak for Dr.
17 Edwards, we did speak a few times, we worked
18 together to make sure the ANC did enjoin because
19 that was important seeing that they're the
20 affected ANC and then had been left out of the
21 project for the most part, but the points that
22 they raise are subsumed in anything I would

1 present so I know the ANC's got a report and they
2 have to stay to the report, what I wanted to
3 bring in was the arguments to their report I'm
4 not sure if they have, I don't know how detailed
5 or flushed out their report is at this point in
6 terms of presentation.

7 CHAIRPERSON MOLDENHAUER: Board Members I
8 think that based on our standard of 3112.15 in
9 regards to is there a special right or interest
10 that these party's are trying to assert, I think
11 that they have at least presented a proposal as
12 to a special interest. That being said I would
13 grant all three including Mr. Otten, Park Marcone
14 and the Doville intervener status, I look to how
15 the other Board Members feel.

16 MR. TURNBULL: Madam Chair I guess I
17 don't have any opposition for granting it. I was
18 just hoping sort of reinforcing your statements
19 earlier that they consolidate and make a more
20 unified presentation that would be clearer and
21 more timely, that we could get through all this
22 in an expedited fashion without rehearing the

1 same arguments from two or three different
2 parties. I'd like to encourage them to get
3 together and to focus into a case that represents
4 for our interest to be able to through it as
5 quickly and without repeating it and getting
6 mired down in a lot of redundant comments. I
7 think if we could get to the central issues and
8 your focus I think it would be better for all of
9 us.

10 MS. SORG: Madam Chair I would agree with
11 Mr. Turnbull and I echo his statements also I
12 mean I guess I also wouldn't have opposition but
13 would note that I think in their request there's
14 a lot of description and issues that may not be
15 relevant to the case and so if we grant the
16 status as the presentation is coming up we can
17 perhaps indicate what the limited scope we're
18 willing to hear. I also would echo that to put
19 these three from what I can understand, you know,
20 intervenor requests together would be a positive.
21 I think that for the other tenants association
22 that Mr. Otten mentioned I think if they're not

1 here and they have not submitted a request I
2 don't think I would hear that.

3 CHAIRPERSON MOLDENHAUER: Okay then what
4 we'll do is we'll grant the party status,
5 intervener I apologize, the intervener's request
6 for both Mr. Otten, the Doville and the Park
7 Marccone, I believe it was orally requested for
8 the Avalante and we will deny that due to nobody
9 being present but those individuals can obviously
10 bring up as witnesses. That being said we will
11 just for procedural issues I want to make sure
12 that we amend the caption based on our prior
13 preliminary matter so that the caption now reads
14 ANC 1D as the Appellant and then identifying the
15 other individuals as the interveners. Next we
16 have a preliminary matter of ANC 1D made a
17 written request for a discovery request it was in
18 their "Exhibit 26" and, you know, the Board has
19 no provisions in our regulations for discovery
20 and so that motion or that request will be
21 denied, obviously during this discussion if there
22 are documents that we see are necessary for the

1 Board to deliberate we will ask parties for those
2 as indicated during my opening remarks the Board
3 can request documents from parties and the end of
4 the hearing we can leave the record open for
5 certain documents that we think would be
6 necessary for us to be able to deliberate on a
7 case. That being said we do not have a specific
8 discovery provision in our regs so we will be
9 denying that motion. The other preliminary
10 matter was and I haven't heard it raised it was
11 in our written submissions was a request for ANC
12 1D to continue this hearing. Dr. Edwards as the
13 representative of ANC 1D is that still an active
14 request?

15 DR. EDWARDS: Yes it is, by law the
16 various agencies involved in this were suppose to
17 have a acknowledged our resolution and to have
18 answered our points, each one in particular
19 stating their reasons why they believe their
20 evidence is superior to ours while giving
21 deference to the local knowledge of the ANC this
22 is all settled with law and they have not done so

1 without that information about why their thinking
2 is, what their information is, it would be
3 difficult for us to proceed, they have failed,
4 they come with dirty hands to this hearing.

5 CHAIRPERSON MOLDENHAUER: What law are
6 you referencing? What law are you referencing?

7 DR. EDWARDS: The ANC Law that requires
8 them to do so and also the mayors order which you
9 have in front of you that says that every agency
10 is to give timely notice for all changes like
11 this that impact planning issues, that their to
12 answer our resolutions in a timely manner and
13 they have not done so. Various appeals court
14 specified an elaborated what the primary law says
15 to answer in particularity from the perspective
16 of the ANC what the nature of that argument is.
17 We simply don't know what they have, like we were
18 never able to get from them detailed plans and
19 detailed rationales, so they are legally required
20 to provide us with that information and if this
21 Board continues your doing so while allowing them
22 to flaunt the law.

1 CHAIRPERSON MOLDENHAUER: Mr. Surabian.

2 DR. EDWARDS: The ANC is not just a
3 nearby homeowner where we represent many
4 thousands of people.

5 CHAIRPERSON MOLDENHAUER: Okay have you
6 concluded your argument?

7 DR. EDWARDS: For this yes.

8 CHAIRPERSON MOLDENHAUER: Mr. Surabian.

9 MR. SURABIAN: I think Dr. Edwards is
10 confusing the ANC law, I think the Board in
11 hearing the arguments the ANC makes when it
12 writes it's order has to address the specific
13 points and give the ANC great weight as it does.
14 I'm not aware, otherwise it's just not relevant
15 in this case the Board is here to adjudicate
16 allegations of error in the Zoning Regulations
17 and he's alleged them in that resolution and I
18 think we can argue them today and the Board can
19 come to a resolution. I don't know of any other
20 kind of information that they would need to get
21 and hasn't been identified by Dr. Edwards, I mean
22 here's a 191 page book of exhibits, and I can't

1 imagine what else is out there. I don't see any
2 cause to not go forward today. In terms of
3 explanations it's in the Zoning Administrator's
4 letter, it's in DCRA's prehearing statement even
5 after we met last time, Mr. Otten cc'd Mr.
6 Edwards on an email to the Zoning Administrator
7 in DCBL asking numerous questions that were
8 answered...

9 MR. OTTEN: They were not answered
10 actually.

11 MR. SURABIAN: I have evidence of that.
12 I just can't imagine that there would be any
13 reason to not go forward today especially given
14 the limited scope of the issues we're discussion.

15 CHAIRPERSON MOLDENHAUER: Mr. Otten as
16 the intervener would you like to present an oral
17 statement?

18 MR. OTTEN: Thank you Chair, Mr. Surabian
19 is correct I did immediately after the hearing
20 last time because questions of due diligence had
21 come up and whether or not we were following up
22 on this staff ad so I did email Mr. Bonvechio and

1 thank you Jeff for responding I did get answers
2 from Jeff but I had to follow up several times,
3 Mr. LeGrant did respond once but to get clarity I
4 had followed up and I never got response back and
5 I positioned it to say look this will expedite
6 today's hearing if I could just understand how
7 you got to certain things in your letter but I
8 never got a response to that, and I have the
9 email if you'd like to see it. I believe Mr.
10 Surabian you were copied on these.

11 MR. SURABIAN: I'll look to see what you
12 handed the Board.

13 CHAIRPERSON MOLDENHAUER: Bear with us
14 while we review the document. I believe that we
15 had a request to actually provide a few minute
16 break for the individual providing sign
17 interpretation so why don't we provide a break
18 there and then it will give us an opportunity to
19 review this letter that's been provided and to
20 consider the arguments that have been articulate
21 thus far and we'll come back, lets just say 10
22 minutes at 11:50 and we'll ask any additional

1 follow up questions and then deliberate on this
2 issue.

3 MR. SURABIAN: I also want to advise the
4 Board just before you break, what Mr. Otten is
5 submitting to you is, the Zoning Administrator
6 did respond to his questions but he has omitted
7 the responses from this filing.

8 MR. OTTEN: That email there is the last
9 email I sent to Mr. LeGrant following up his
10 responses.

11 MR. SURABIAN: So he did respond to you.

12 MR. OTTEN: Initially but the
13 clarification questions to help us expedite
14 today's hearing he did not respond I sent it
15 twice.

16 MR. SURABIAN: But you did not submit to
17 the Board the response that Mr. LeGrant gave you.

18 MR. OTTEN: It's in there, its front and
19 back.

20 DR. EDWARDS: Also I'd like a chance to
21 respond to Jay's statement because...

22 MR. SURABIAN: It's not.

1 CHAIRPERSON MOLDENHAUER: Okay this is an
2 oral motion and we're not going to go into
3 response time at this moment so what we're going
4 to do is we're going to go back, we're going to
5 deliberate, we're going to provide a few minutes
6 for the sign interpreter to take a break and we
7 will reconvene at 11:50, thank you.

8 CHAIRPERSON MOLDENHAUER: Okay, we're
9 back on the record. After having reviewed
10 everything what I'd like to do is I'd like to ask
11 some specific questions to Dr. Edwards on behalf
12 of ANC 1-D in regards to his request for a
13 continuance. You're indicating that the reason
14 for your request for continuance is due to the
15 fact that the ANC has submitted a resolution to
16 DCRA requesting responses to specific questions
17 and documents and they have failed to answer that
18 and that they are required to do so under ANC
19 Law. Obviously we do not govern ANC Law we are
20 not the body that reviews that, you're using that
21 as your reasoning for why we should grant a
22 continuance so my question then is based on our

1 case before us and the jurisdiction that we have
2 in the last portion of this case during that
3 hearing we narrowed the scope very clearly to two
4 zoning issues, the rear yard and the parking
5 variance that were articulated in the initial
6 appeal. So my question to you then Dr. Edwards
7 is what documents in the resolutions that you
8 have requested and not received from DCRA go to
9 those issues?

10 DR. EDWARDS: As part of our resolution
11 we appeal determination of the Board last time...

12 CHAIRPERSON MOLDENHAUER: Answer my
13 question, what documents are you looking at that
14 you've not received that go to those two points?

15 DR. EDWARDS: I am not clairvoyant and
16 I'm not able to know their inventory of documents
17 so I think that's an unfair question for me to be
18 able to guess what documents they have that would
19 appropriate to the case. So I have a suggestion
20 and that is just like they gave and I'm not going
21 to judge the quality, Chris Otten says that they
22 were insufficient answers and evasive but I would

1 like to submit the roughly 160 points raised by
2 ANC 1-D as questions in this hearing to the
3 Office of Zoning and ask them to respond to
4 those, within the rules of this Board.

5 CHAIRPERSON MOLDENHAUER: Within the
6 rules of this Board you will have an opportunity
7 when we get to that point in the case to ask DCRA
8 and any witnesses that they call or you call any
9 questions you want, there's a time limit for your
10 entire case which is 60 minutes so you would have
11 the opportunity if you felt that that was the
12 best course of action for you to ask any of those
13 questions that you wish and to obtain responses
14 during the merits of the case, that being said
15 we're talking right now simply about a
16 continuance, I'm asking you again, can you answer
17 if there's specific documents that you are
18 waiting to receive following an ANC resolution
19 that go to parking or that you would assume may
20 go to the parking or assume may go to the issue
21 of the rear yard, you have not yet received?

22 DR. EDWARDS: And my answer is that we

1 would like to have time to mount an appeal to the
2 arbitrary, I believe narrowing scope of the case
3 and by our resolution ignores the general
4 obligation statement of the Zoning Regulations.

5 CHAIRPERSON MOLDENHAUER: You're trying
6 to conflate two separate issues...

7 DR. EDWARDS: And secondly that I think
8 it's entirely unreasonable and I protest the idea
9 that we can know what their trove of documents is
10 without getting from them cooperation that would
11 be mandated under discovery and that perhaps so
12 without getting cooperation from them then I
13 don't think this Board is serving the public
14 wheel and you maybe seen as complicit in early
15 further deaths that occur due to the public
16 safety issues according to the intention of the
17 Zoning Regulations saying that promote safety
18 amongst other things, protection of property as
19 the intents of the Zoning Rules and I believe we
20 should be given the chance to present to you
21 court cases to show that you have a
22 responsibility to protect those larger purposes

1 and not evade your responsibilities to protect
2 safety and protection of property.

3 CHAIRPERSON MOLDENHAUER: Umm

4 MR. TUNRBULL: (LOUDLY STATED) Madam Chair
5 I resent the comments that were just made I think
6 they're totally inappropriate for a body such as
7 this, I think Dr. Edwards if that what you want
8 to be called you need to step back look at your
9 position and realize your responsibility to your
10 ANC and not bring comments like that or speak
11 when the Chair has asked you direct and simple
12 questions to proceed with this hearing and you
13 take it upon yourself to intimidate this Board I
14 am very resentful of this, I think this is
15 totally unfair, inappropriate and the ANC,
16 somebody ought to sanction him from his ANC,
17 totally inappropriate behavior and comments, that
18 is not serving the public good and don't throw
19 the public good in our face when you are also a
20 representative of the public, you need to take
21 up, you need to step-up and answer the questions
22 of this Board and not divert them and come up

1 with your own reasons and your self-serving
2 attitude is totally inappropriate for this body!
3 TOTALLY INAPPROPRIATE!

4 DR. EDWARDS: I would like to discuss
5 that with you separately and get down...

6 MR. TURNBULL: No! This is a hearing you
7 will answer the questions appropriately and do
8 your job appropriately.

9 CHAIRPERSON MOLDENHAUER: That being said
10 I think I'm going to at this point in time I
11 appreciate Mr. Turnbull's comments because I do
12 have many issues with the comments that were made
13 but we will at this point conclude any motions in
14 regards to motion to continue the Board will now
15 deliberate on the issue, I'll start us off, I
16 think that, you know, after having asked
17 questions three times and received no direct
18 response to them I don't see that there's any
19 good cause shown or that there's any prejudice to
20 the party's in regards to moving forward at this
21 time, I think that if they do have any complaints
22 in regards to a lack of response from their ANC

1 resolutions this is not the Body to actually
2 address any potential violations of the ANC Rules
3 and Regulations, this is the Body which simply
4 addresses Zoning Regulations and so seeing that
5 we have no evidence of any documents that would
6 need to be reviewed for purposes of the Zoning
7 matters that are before us today I see no reason
8 why we cannot continue this case so we will
9 continue on with this case, there will be no
10 postponement, that being said, that's a final
11 decision of the Board and as the presiding judge
12 I can make any motion decisions but I'll look to
13 my other Board Members I think I have a consensus
14 on that as well. Seeing nodding of heads I do
15 have a consensus on that, we'll move forward
16 there's one last preliminary matter and this is
17 the preliminary matter to amend the scope of the
18 hearing. In the submission that we received, Mr.
19 Moy can we give an exhibit number to this just
20 for clarity on the record, this last document
21 that we received, what was the last exhibit
22 number that we have in our record?

1 MR. MOY: Madam Chair the thick document
2 that you have which is dates scan January 31,
3 2011, that is in the case file identified as
4 "Exhibit 32".

5 CHAIRPERSON MOLDENHAUER: So, all party's
6 now have a copy of "Exhibit 32"?

7 MR. SURABIAN: Yes.

8 CHAIRPERSON MOLDENHAUER: Okay so in
9 "Exhibit No. 32" there is a written request it
10 indicates that this is an amended appeal and so I
11 see that they have oral statements by the
12 Appellant during our other preliminary
13 discussions identifying that they orally request
14 to amend this appeal to enlarge the scope of the
15 appeal, so I will turn now to ANC 1-D and allow
16 them to present a five minute argument and I'll
17 ask that we have a clock on that for what issues
18 they'd like to amend and what the reasoning is
19 for amending, we will then go to the intervener
20 for any potential additional comments they have
21 on a request to amend and then we'll go to Mr.
22 Surabian, each party will be given five minutes

1 to provide their oral argument on this issue.

2 MR. SURABIAN: Madam Chair if I could
3 just ask a procedural question. The request to
4 amend the appeal is made by an intervener I don't
5 think that should be appropriate for them to do
6 that, I think the Appellant frames the case and
7 raises the issues that they want to appeal, I
8 don't think that...

9 CHAIRPERSON MOLDENHAUER: But the
10 Appellant has on multiple occasions this morning
11 made an oral request to do that and because of
12 the fact that we just this morning made a
13 procedural correction of who the Appellant was
14 I'm going to permit this procedurally to go
15 forward, thank you. That being said again we've
16 got five minutes on the clock, not 45, and we'll
17 turn to ANC 1-D and provide them an opportunity
18 to orally articulate the reasons and what they'd
19 like to amend the appeal to.

20 MR. EDWARDS: The reasons are stated in
21 the 1-D resolution and I fear that my honest
22 attempt at representation will not meet the

1 approval of the Board therefore I will not say
2 anything further than in the plain language of
3 the resolution.

4 CHAIRPERSON MOLDENHAUER: What exhibit is
5 the resolution, if you're simply going to
6 incorporate that as your argument?

7 DR. EDWARDS: It is the resolution that
8 was unanimously passed by 1-D.

9 CHAIRPERSON MOLDENHAUER: I'm asking for,
10 we have exhibit numbers at the bottom.

11 DR. EDWARDS: I haven't seen your system.

12 MR. MOY: Madam Chair I believe that ANC
13 1-D resolution is identified as "Exhibit 26" in
14 your folders.

15 CHAIRPERSON MOLDENHAUER: Thank you I
16 appreciate that. You have every right to present
17 an argument if you'd like you still have time,
18 you can present it, if not we will review the
19 resolution.

20 DR. EDWARDS: As I say the words of
21 democratically elected representatives of the
22 people of Mt. Pleasant are there in plain

1 language before you and I ask you to read them.

2 DR. EDWARDS: If you wish help in finding
3 them I will of course assist you in doing so.

4 CHAIRPERSON MOLDENHAUER: I found mine
5 what we'll do is we'll take the next few minutes
6 and I believe all of us have already reviewed
7 this but I will take a moment to silently review
8 this again. (Reviewing Document).

9 CHAIRPERSON MOLDENHAUER: For purpose of
10 incorporating this orally into the record, I will
11 indicate that reviewing this "Exhibit No. 26", I
12 see that, it looks as though ANC 1-D wishes to
13 incorporate the following additional arguments
14 into the appeal; 1. The alleged violation by the
15 ZA of the ANC Law. 2. The off-street parking
16 issue which has already been part of the initial
17 complaint appeal. 3. The ZA has failed to make
18 any changes to the lot usage which exceeds 10%
19 which was not included in the initial appeal.
20 Courts indicating that there's an alleged
21 violation of court requirements which was not
22 included in the initial appeal, this resolution

1 references issues of the rear yard which was
2 included in the initial appeal. The building
3 permits, their indicating allegations of
4 violations of the building permit and then they
5 indicate again sections of the rear yard and the
6 courts. That being said if there's nothing
7 additional from the representative from ANC 1-D,
8 is there anything further?

9 DR. EDWARDS: Well appendix two was our
10 statement which you have essentially ruled out of
11 order.

12 CHAIRPERSON MOLDENHAUER: I believe I
13 referenced that earlier, that's referencing the
14 fact that there's a violation of the ANC Law?

15 DR. EDWARDS: No this is that the
16 considerations of safety and protection of
17 property should be included because these are
18 included in the scope of the Zoning Regulations
19 which because they are in the Zoning Regulations
20 the argument is that this Board has a duty to
21 include those considerations and not ignore them.

22 CHAIRPERSON MOLDENHAUER: Anything

1 further?

2 DR. EDWARDS: I think these stand by
3 themselves. I would welcome incorporation of
4 other considerations in this by Chris Otten who
5 has done a lot of the leg work so may I yield my
6 further time to Chris?

7 CHAIRPERSON MOLDENHAUER: Yes you may,
8 Mr. Otten.

9 MR. OTTEN: Thank you, yes there's
10 certainly issues specific to courts that we found
11 after the initial appeal so there are issues with
12 the courts and some of the building permit
13 aspects of the Zoning Regs in terms of planning
14 for parking and loading at the library that I
15 think should be incorporated, I don't know if
16 that was in my amended appeal and the issue, I
17 think the boarder issue interpretation and
18 authority of this Board in terms of property
19 safety and air and light, that's pretty obvious
20 for you all but I certainly would encourage the
21 courts aspect being involved in this appeal and
22 building permit issue, I don't have the list of

1 the other 1-D, I do recall it was the rear yard
2 being the major aspect, also the minor
3 flexibility by the ZA in helping to determine
4 what the rear yard is, is that questions,
5 building permits courts mentioned that, I guess
6 that covers it, thank you.

7 CHAIRPERSON MOLDENHAUER: Would you like
8 to articulate your reasons as to why we should
9 amend?

10 MR. OTTEN: Well I guess they weren't
11 identified initially, the court particularly,
12 that issue wasn't identified back in October and
13 through the discussion since that has come up.
14 The building permit is key to this because that's
15 what started the appeal in the first place is the
16 fact that DCRA actually gave them a permit to
17 build something like this that will threaten land
18 values, air and light and property and we started
19 looking at that. I didn't notice that the Board
20 has authority over looking at what aspects should
21 have been supplied to the Zoning Administrator or
22 DCRA in terms of a plan regarding parking and

1 loading because this plan actually eliminates a
2 loading area on the northwest side of the
3 building, so if there's no plan for a loading
4 area specifically pursuant to 3202.2-A3 of the
5 Zoning Regs the application should be accompanied
6 by a loading plan and I went to DCRA last week
7 and I couldn't find it, so that's why it's
8 important.

9 CHAIRPERSON MOLDENHAUER: Anything
10 further?

11 MR. OTTEN: That's it Chair, thank you.

12 CHAIRPERSON MOLDENHAUER: Thank you, Mr.
13 Surabian.

14 MR. SURABIAN: Well I didn't hear any good
15 cause of why this should be included in the
16 appeal, this permit was issued in August, the
17 appeal was filed in October I think there was
18 plenty of time for them to discover whatever
19 issues that were there and raise them. Also
20 these issues that were just filed on Friday last
21 week, I mean, now we're at the hearing it's
22 impossible for the government to respond in full

1 to all of these issues. The Appellant has to
2 file 14 days in advance of the hearing that
3 should have been done in late December; we should
4 have had all this out in the open. Instead the
5 government filed and prepared its response long
6 before the Appellant did so we were at a
7 disadvantage from the beginning. That being said
8 none of these issues are irrelevant, lot impact
9 usage exceeding 10% I don't know where that is in
10 the regulations, I never heard of that and it's
11 groundless. Minor flexibility is not an issue
12 here; this is a matter of right project. The
13 building permits that sounds like it's beyond the
14 Board's jurisdiction it's not plead with a
15 sufficiency that I can even understand. The size
16 of the courts again it's untimely and it's also
17 baseless. I think the Board is right to continue
18 on the issues that have been, that we've known
19 about since October. I don't see any cause to go
20 forward with anything else.

21 CHAIRPERSON MOLDENHAUER: Okay I will, I
22 will give two minutes if Dr. Edwards wishes to

1 rebut any of the comments.

2 DR. EDWARDS: Umm we submitted, 1-D
3 submitted has a regularly scheduled meeting, we
4 are under schedule constraints and our monthly
5 meeting which was on the 18th, we submitted our
6 resolution the Board via the Secretary on the
7 next day and I think these have been available as
8 issues within some reasonable time because the
9 ANC is governed by DC Law and how it schedules
10 things and we don't have much flexibility
11 therefore the comments protesting the timeliness
12 of answers and proceedings I think should not be
13 held because of a conflict of laws. Next these
14 are indeed significant issues that could affect
15 the lives of large numbers of people and because
16 they are so consequential and because this Board
17 is, it has been under public policy like many
18 others like it around the country has been set up
19 to deal with local issues and a more informal
20 basis. I think all we need to demonstrate is that
21 these are quite significant issues that could
22 effect the lives of many people for a long time

1 and I believe that has been manifested by the
2 work that has already been done and I believe
3 that Chris Otten has gotten a large amount of
4 evidence to deal with these issues and that
5 should be heard, thank you for the time.

6 CHAIRPERSON MOLDENHAUER: At this point
7 we'll conclude any oral arguments on the issue of
8 amending or expanding the scope of the appeal and
9 will enter into deliberation and I'll look to the
10 Board Members and orally throwing out my
11 thoughts. I know that at the last hearing you
12 specifically identified the limited nature of the
13 scope of the hearing based on what we have
14 jurisdiction on. We looked at what the initial
15 appeal, our "Exhibit 1" is and what elements were
16 raised in that initial Appeal and they did not
17 include the issue of courts, they did not include
18 the issue of the loading or lack of loading.
19 They did include the rear yard and the parking.
20 They include other aspects which we don't have
21 jurisdiction on which we explained to the party's
22 that we obviously can look at issues of safety as

1 they relate to zoning matters such as a rear yard
2 if it's not done as a matter of right we can look
3 at how they may effect safety if we're looking at
4 a variance or special exception or if there
5 something where relief is needed. But in and of
6 itself we are not a Body that has any authority
7 or jurisdiction to address public safety in and
8 of itself as on its own behalf. That being said
9 in parallel we also do not have jurisdiction to
10 address specific ANC violations or violations of
11 ANC Law, we only have the ability to apply our
12 zoning review and so I don't see how we could
13 amend the appeal to include areas where we lack
14 jurisdiction. That being said the question then
15 is you know what do other Board Members feel in
16 regards to amending an the Appeal in areas where
17 we do have jurisdiction, areas such as courts and
18 loading those areas, I believe that the building
19 permit is really tied into the initial Appeal,
20 it's part of how the Appellant received notice of
21 their concern of the rear yard so I don't think
22 that that needs to be separately identified I

1 think it's really a matter of, you know, their
2 initial appeal identified two zoning issues in
3 which they believe the ZA erred by issuing a
4 matter of right building permit and the Appellant
5 is arguing that that was an error because of
6 these two zoning aspects. So I think that's
7 already incorporated in part of the appeal as
8 understood, so again my question then just is
9 really do we grant an amendment there has to be a
10 specific request to amend the appeal for the
11 courts and the loading. My concern potentially
12 would be that obviously these are untimely, the
13 District did point out that if they would have
14 had notice of these issues the same time that
15 they had notice of the rear yard issue or parking
16 issue previously and the fact that they are just
17 now kind of having the time to review it and add
18 to it, it still is untimely potentially and we'd
19 have to find that there's not prejudice to the
20 District if we were to then waive that timeliness
21 issue. I do have some concern about adding this
22 even though the Appellant did bring up that the

1 District had this from the 20th which means that
2 they had about 10 or 11 days to go through this
3 but at the same time this is a resolution that's
4 not very clearly stated, you know, we are wishing
5 to amend this for these specific points, it's not
6 a clearly written document so I do see that there
7 is a question of whether or not the District had
8 notice that these new issues were trying to be
9 amended. That being said I'm going to add some
10 kind of my off the cuff comments or thoughts at
11 this point, I don't have a specific on how I want
12 to go at this point but I'll turn to my other
13 Board Members to see where they stand on these.

14 MS. SORG: Thank you Madam Chair, I think
15 I'm pretty much in agreement with your comments I
16 think, you know, from our last hearing on the
17 preliminary matters we limited from the scope to
18 rear yard and parking, I think the issue of
19 loading here is related to the issue of parking
20 as we're looking at it in here and so to me the
21 only relevant additional point is the courts. I
22 do see the point of their possibly being

1 prejudice so I would want to know whether the
2 District would feel comfortable moving forward on
3 those because we have received documentation from
4 the Appellant on those they are in this large
5 document on those issues.

6 MR. TURNBULL: Madam Chair I would agree
7 with the both of you. I guess one of my
8 questions and it's asked in here is about the
9 plans, I mean the plans that we've seen even in
10 this document that was just received today I
11 think are enough to allow you to get a feeling
12 for the zoning issues, I'm confused by the
13 comment that says the plans in detail have not
14 been provided only rough sketches. I'm not sure
15 what's been received or not, I mean our packet
16 even the drawings we've got from the Appellant I
17 think show enough to make a determination on
18 aspects, I'm confused what other plans or
19 drawings would be necessary?

20 CHAIRPERSON MOLDENHAUER: I don't know
21 either I think that obviously from the diagrams
22 that they have even in their submitted exhibits

1 you know that the issue of courts could have been
2 ascertained at a prior date. That being said I
3 guess the question is it's about 12:30, we'
4 probably take a lunch recess, could give the
5 District the time frame to address these issues
6 and to prepare to address just the simple issue
7 of the courts and if we feel that there would be
8 any prejudice by providing them that time
9 otherwise the question really is, is there
10 prejudice for the fact that this is an untimely
11 amendment and that there has been very limited
12 time for the District to essentially respond.

13 MR. TURNBULL: I would agree.

14 CHAIRPERSON MOLDENHAUER: Which part,
15 sorry?

16 MR. TURNBULL: No with the way you're
17 doing it if you want to give them some time over
18 lunch break and then come back or what?

19 CHAIRPERSON MOLDENHAUER: Okay yeah I
20 think that in the interest of going forward I
21 think based on consensus of the Board Members I
22 think what we'll do is we'll give a limited,

1 we'll grant the amendment in a limited sense and
2 we'll allow an expansion of the scope of appeal
3 to include the rear yard, parking and loading and
4 courts. What we're going to do is we're going to
5 break for lunch, we are then going to hear an
6 afternoon appeal quickly which was scheduled for
7 a 1 o'clock timeframe prior to this which will
8 then also give the District a little more time as
9 well to potentially prepare for these issues and
10 then we will reconvene probably, we'll come back
11 for our 1 o'clock session at 1:30 and then we
12 will most likely reconvene this case around... Can
13 the interpreter go on the record at the moment
14 and indicate if she would be available from about
15 2 to 3? The interpreter indicated orally that
16 she would be available, so that's what we'll do,
17 we'll reconvene around 2 o'clock give or take to
18 then start the entire merits of the case and we
19 will start off with the Appellant you'll be given
20 the statutory period of time to present their
21 case with their witnesses and then obviously
22 we'll then turn to the District for their case

1 and rebuttal. That then adjourns this morning's
2 session and we will continue this case in the
3 afternoon, thank you.

4 **Afternoon Session**

5 CHAIRPERSON MOLDENHAUER: This hearing
6 will please come to order, good afternoon ladies
7 and gentleman this is the February 1, 2011,
8 Public Hearing of the Board of Zoning Adjustments
9 for the District of Columbia. My name is
10 Meredith Moldenhauer, Chairperson and joining me
11 today to my left is Vice Chair Nicole Sorg,
12 Mayoral Appointee, and to her left representing
13 the Zoning Commission is Michael Turnbull.
14 Copies of today's meeting agenda are available to
15 you and are located to my left in the wall bin
16 near the door. Please be advised this proceeding
17 is being recorded by a court reporter and is also
18 being webcast live. Accordingly we must ask you
19 to refrain from any disturbing noises or actions
20 in the hearing room. When presenting information
21 to the Board please turn on and speak into your
22 microphone first stating your name and home

1 address. When you are finished speaking please
2 turn off your microphone so that your microphone
3 is no longer picking up sounds or background
4 noise. All persons planning to testify either in
5 support or in opposition are to fill out two
6 witness cards these cards are located to my left
7 in the wall bin near the door and the witness
8 table. Upon coming forward to speak to the Board
9 please give both cards to the court reporter
10 sitting to my right. The order of procedure for
11 an Appeal case is as follows: 1. Statement of the
12 Appellant and Appellant's witnesses. 2. The
13 Zoning Administrator or other Government
14 Agencies. 3. The case of the owner, leasee or
15 operator of the property if not the Appellant.
16 4. Other Interveners in the case if permitted by
17 the Board. 5. The ANC in which the property is
18 located. 6. Rebuttal and closing statements by
19 the Appellant. Pursuant to Section 3117.4 and
20 3117.5 the following time constraints will be
21 maintained: The Applicant, Appellant, persons and
22 parties in support and including witnesses will

1 be permitted 60 minutes collectively. The
2 Appellees persons and parties except an ANC in
3 opposition including witnesses will be given 60
4 minutes collectively. Individuals will be given
5 3 minutes and organizations will be given 5
6 minutes. These time restrictions do not include
7 cross examinations or questions from the Board.
8 Cross examination of witnesses is permitted by
9 the Appellant, Applicant or the parties and the
10 ANC within which the property is located is
11 automatically a party to a special exception or
12 variance case. Nothing prohibits the Board from
13 placing reasonable restrictions on cross
14 examination including time limitations, and
15 limitations on the scope of cross examination.
16 The record will be closed at the conclusion of
17 each case except it will remain open for any
18 materials specifically requested by the Board.
19 The Board and the staff will specify at the end
20 of each hearing exactly what is expected and the
21 date when the person must submit this
22 documentation to the Office of Zoning. After the

1 record is closed no other information will be
2 accepted by the Board. The Sunshine Act requires
3 that the public hearing on each case be held in
4 the open before the public. The Board may
5 consistent with its rules and procedures and the
6 Sunshine Act enter into Executive Session during
7 or after a hearing on a case for purposes of
8 reviewing the record or deliberating on a case.
9 The decision of the Board as in these contested
10 cases must be based exclusively on the record, to
11 avoid any appearance to the contrary the Board
12 requests that persons present not engage the
13 members of the Board in conversation. Please
14 turn off all beepers and cell phones at this time
15 as to not disturb these proceedings. The Board
16 will make every effort to conclude the public
17 hearing as near as possible to 6pm, if the
18 afternoon cases are not completed at 6pm the
19 Board will assess whether it can complete the
20 pending cases or case on the agenda. At this
21 time the Board will consider any preliminary
22 matters, preliminary matters relate to whether a

1 case should or will be heard today such as a
2 request for postponement, continuance or
3 withdrawal or whether proper or adequate notice
4 of a hearing was given. If you are not prepared
5 to go forward today now is the time to raise such
6 a matter. Mr. Secretary, do we have any
7 preliminary matters?

8 MR. MOY: Yes we do Madam Chair there's a
9 preliminary to (inaudible due to coughing)
10 Application No. 18151 and also Appeal 18160 has
11 been withdrawn, in your case folders you'll note
12 that "Exhibit No. 18" to that Appeal case is the
13 letter from the ANC 6-A withdrawing their appeal.

14 CHAIRPERSON MOLDENHAUER: Will all
15 individuals wishing to testify for administering
16 the oath.

17 MR. MOY: Do you solemnly swear or affirm
18 that the testimony that your about to present is
19 the truth the whole truth and nothing but the
20 truth. Ladies and gentleman you may consider
21 yourselves under oath.

22 CHAIRPERSON MOLDENHAUER: Okay we have a

1 case from this morning that is continuing but
2 what we're going to do is we're going to first
3 hear the VanNess case so the party's in the
4 VanNess case please come forward.

5 **Application No. 18151**

6 MR. MOY: May I call that case into the
7 record Madam Chair?

8 CHAIRPERSON MOLDENHAUER: Yes please.

9 MR. MOY: That would be Application No.
10 18151 of the Appeal of the Van Ness South Tenants
11 Association, pursuant to 11 DCMR 3100 and 3101
12 from an August 13, 2010, decision by the Director
13 of the Department of Consumer and Regulatory
14 Affairs to grant Building Permit No. B-1001105
15 allowing the renovation of an existing apartment
16 building for dormitory use for the University of
17 the District of Columbia Students in the R-5-D
18 District at premises 3003 Van Ness Street, N.W.
19 the property is located on (Square 2049, Lot
20 806).

21 CHAIRPERSON MOLDENHAUER: Good afternoon
22 will the party's please identify themselves for

1 the record.

2 MR. LEDERER: Brian Lederer, Attorney for
3 Van Ness South Tenants Association.

4 MR. KOPECKY: David Kopecky, General
5 Manager of Archstone Van Ness.

6 MR. BROWN: Patrick Brown, on behalf of
7 Van Ness.

8 MR. AVITABILE: Dave Avitabile, Goldson
9 and Storrs on behalf of UDC.

10 MS. PRINCE: Allison Prince of Goldston
11 and Storrs on behalf of UDC.

12 MR. SURABIAN: Good Afternoon Assistant
13 Attorney General, Jay Surabian on behalf of DCRA.

14 MS. OWENS: Melinda Owens, General
15 Council DCRA.

16 CHAIRPERSON MOLDENHAUER: We'll go back,
17 the microphone's not on.

18 MS. PERRY: Karen Perry, ANC 3-F.

19 CHAIRPERSON MOLDENHAUER: We have a
20 preliminary matter in this case a motion for
21 continuance. Before I even address that I just
22 need to provide some disclosures on the record,

1 our Board unfortunately is not full, right now
2 Mike Turnbull sits on this right now for the case
3 that was continued from this morning, he's not on
4 this case, we do not have a quorum, Jeff Hinkle
5 is sick and Greg Selfridge who is also on this
6 case called in this morning with the stomach flu
7 and is not present. So right now we do not have
8 a quorum to even continue this case, so what
9 we'll have to do is we're going to have to
10 postpone based on the fact that we just don't
11 have a quorum to be able to hear this case today.
12 Based on the individuals that have prepared for
13 this case and read this case. Based on that I'm
14 not going to hear the motion to continue or hear
15 arguments on that because there's unfortunately
16 no way that we can go forward today based on the
17 fact that we don't have a Board quorum to move on
18 this case. That being said I will ask for dates
19 when parties are available for a continuance on
20 this case and I will indicate on the record now
21 for all parties to hear there will be no other
22 continuances in this case once you identify a

1 date that all parties can attend and any further
2 continuance or request for continuance will be
3 considered a lack of prosecution and the case
4 will be dismissed. So I'm now going to look to
5 Mr. Lederer to identify when your first available
6 date for a Tuesday is and then we'll go down the
7 line identifying dates for availability.

8 MR. LEDERER: My first available date is
9 March 15th or March 29th.

10 MR. BROWN: I think given under the
11 circumstances sooner than those dates, I thought
12 the Board was very clear wanting to move this
13 case along,

14 MR. LEDERER: I'm not available so...

15 CHAIRPERSON MOLDENHAUER: I'm fine.

16 MR. BROWN: If I could continue, when we
17 took against our opposition the first continuance
18 to this date the Chair and the Board made it
19 clear that we would proceed with or without Mr.
20 Lederer that the Van Ness South Tenant
21 Association is a well organized established
22 organization and the schedule would not relay

1 solely on his schedule so to push this off and we
2 have the misfortune of illnesses this morning but
3 to push this off two more months seems in
4 appropriate and unreasonable so that we ought to
5 go back and heed the Boards words from the first
6 continuance and set a date that's immediate. The
7 other thing and whether this is an appropriate
8 time to take it up is Mr. Lederer and the
9 Appellant has apparently ignored the Boards
10 orders, instructions from the first time around
11 so that before we're finished today I want to
12 make clear that yeah in my view the record is
13 closed Van Ness South has had at least two
14 opportunities to follow prehearing submission and
15 has failed to do so and that they shouldn't by
16 virtue of the bad fortune of Mr. Hinkle and Mr.
17 Selfridge take a third bite at the apple the
18 record ought to be closed and that should be it
19 and certainly that was the Board's clear
20 instructions and there was no good cause shown
21 for not filing a prehearing submission.

22 CHAIRPERSON MOLDENHAUER: In regards to

1 the prehearing submission right now without
2 having, we don't have any prehearing submission
3 that's requesting our consent until we do I won't
4 address that. Obviously there were prior
5 statements by the Board in that regard if we have
6 a motion which we have to act upon we'll have to
7 address that at that time. That being said I'm
8 looking at this, Greg Selfridge is our Zoning
9 Commissioner that was here and has read the
10 record on this case, the next available date that
11 he is going to be already scheduled to be at the
12 BZA is March 15th, now you indicated Mr. Lederer
13 March 29th, Is March 15th available.

14 MR. LEDERER: It's a difficult date
15 particularly we're going to try to file a
16 prehearing statement because I have other trials;
17 March 29th is the best date.

18 MR. BROWN: He opened up by saying March
19 15th was the first available date.

20 MR. LEDERER: Whatever, March 29th is the
21 best available date for me.

22 CHAIRPERSON MOLDENHAUER: But are you

1 available could you do it on the 15th?

2 MR. LEDERER: I could do it on the 15th.

3 CHAIRPERSON MOLDENHAUER: Okay if you can
4 do it I'm a lawyer, I volunteer here, I have
5 three depositions this week, I'm pregnant, I've
6 got a cough, I mean let's be honest okay, (crowd
7 laughing), we all have obligations going on and
8 you know we have, I'm trying to figure out how we
9 can push forward the public good so March 15th it
10 is, it will be on that schedule, what we'll do is
11 we'll schedule it for, we have a whole bunch of
12 223's in the afternoon so we'll schedule it in
13 the afternoon 1 p.m. it will be the last case in
14 the afternoon but I think those cases should go
15 quite quickly so it shouldn't be a problem and
16 we'll have to just obviously stay here as long as
17 it takes to get this case heard that day. So
18 it's on the afternoon schedule of March 15th.

19 MR. LEDERER: Thank you, your honor.

20 MR. BROWN: Thank you, question will you
21 be here March 15th? (Laughing).

22 CHAIRPERSON MOLDENHAUER: I will be here

1 March 15th yes.

2 MS. PERRY: What happened to Mr. Hood who
3 was here the last time?

4 CHAIRPERSON MOLDENHAUER: I believe it
5 was Greg Selfridge that was here the last time.

6 MS. PERRY: It was Mr. Hood.

7 CHAIRPERSON MOLDENHAUER: Mr. Selfridge
8 was on this case for today but we're going to go
9 with Mr. Selfridge has had this case, he read
10 this case for today's agenda so obviously we're
11 going to go with him for the 15th, so thank you.
12 The next party's from the appeal from this
13 morning can step forward, I appreciate that. Mr.
14 Moy if you could read the next case on the
15 agenda.

16 **Application No. 18152 - resuming**

17 MR. MOY: I believe Madam Chair we're
18 back to Appeal No. 18152 of the Advisory
19 Neighborhood Commission 1-D pursuant to 11 DCMR
20 3100 and 3101 from an August 17, 2010, decision
21 by the Department of Consumer and Regulatory
22 Affairs to grant a building permit allowing the

1 renovation and expansion of the existing Mt.
2 Pleasant Library in the R-5-D District at
3 premises 3160 16th Street, N.W., (Square 2595, Lot
4 830).

5 CHAIRPERSON MOLDENHAUER: Okay good
6 afternoon we are back on the record for this case
7 and what we'll do is we'll go back and just make
8 sure for the record that everybody's introducing
9 themselves and then we'll get started so we'll
10 start to my left.

11 DR. EDWARDS: I'm Dr. Gregg Edwards,
12 Chair of Mt. Pleasant ANC 1-D and I would like to
13 observe you said we would start at 2 and Chris
14 Otten is not here so we're earlier than
15 advertised.

16 CHAIRPERSON MOLDENHAUER: I did indicate
17 that we were going to go probably around 2
18 o'clock that we were going to hear the first case
19 of the day that was typically going to schedule
20 at 1 around 1:30 and so obviously we're going to
21 get started, the Appellant has the first portion
22 of the case, Mr. Otten is an intervener so he

1 will join us when he arrives, we're not going to
2 delay the proceeding for an intervener and we'll
3 have to just keep going. Anybody that will
4 introduce the next gentleman. Again for the
5 purposes if we can, I don't know if the
6 interpreter can obtain a microphone, a handheld
7 microphone, perfect. Then what I ask is that I
8 know obviously this is going to be challenging
9 having to put the microphone down for a second
10 but after, when you speak if you can sign to her
11 and then she can orally identify everything that
12 you say, that will make it clearer for the
13 record.

14 MR. NICHOLS: My name is Robert Nichols,
15 I live at 2934 Fasenden Street, N.W. in
16 Washington, DC 20008, and I live in Ward Three.
17 I am a professional design consultant.

18 MR. BONVECHIO: Jeff Bonvechio, Director
19 of Capital Projects for the D.C. Public Library.

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

22 MR. SURABIAN: Assistant Attorney

1 General, Jay Surabian on behalf of DCRA.

2 MS. BOLLING: Melinda Bolling, General
3 Council DCRA.

4 CHAIRPERSON MOLDENHAUER: Okay thank you
5 everybody at this point in time we will turn to
6 the Appellant to begin his case on the merits and
7 as I read earlier today the Appellant will be
8 given 60 minutes collectively along with any
9 other persons in support including his witnesses
10 so we'll put up 60 minutes on the clock and that
11 will be the time for your case.

12 DR. EDWARDS: Apparently Chris Otten took
13 all my papers by mistake so in order to not waste
14 the time of the Board you can hear that I'm sick
15 too, I'd like to ask that the consultant, design
16 consultant be given 10 minutes to give his
17 testimony at this point.

18 CHAIRPERSON MOLDENHAUER: Mr. Otten's
19 walking in the room at the moment. If you'd like
20 you can present a presentation or you can
21 question him.

22 DR. EDWARDS: I'd like for him to make

1 his presentation within 10 minutes our time is
2 precious and that will allow me to reassemble my
3 papers and it would also be in respect to him who
4 is a volunteer in this situation.

5 MR. SURABIAN: Madam Chair, sorry to
6 interrupt, I want to save the Board some time if
7 I'm going to be making repeated objections, I've
8 read Mr. Nichols report and at no point would,
9 he's talking about ADA compliance, he's talking
10 about the ramp, at no point does he reference any
11 provision of the zoning violations that this
12 projects in violation of, so I just want to, if
13 the Board can make is clear up front it may save
14 some time, some of those issues are not going to
15 be relevant today.

16 DR. EDWARDS: May I answer; it was my
17 understanding that the Chair said that the prolog
18 issues of safety could be considered only if in
19 conjunction with zoning issues. It is our
20 concern that there are safety issues that would
21 be completely blocked if the courtyard extension
22 as allowed by the ruling of the Zoning

1 Administrator were allowed so this goes to the
2 argument that the changes that are proposed will
3 have very large consequences and I intend to
4 produce evidence that as many as 1000 peoples
5 lives could be at stake because it's a very large
6 consequence in this and this is the reason why
7 there apparently are zoning rules to allow access
8 between buildings, access and space between
9 buildings so we don't build except in particular
10 zones buildings right up against each other. I
11 argue that this is relevant.

12 CHAIRPERSON MOLDENHAUER: What I'm going
13 to do is I'm going to give you a very short leash
14 on this because I think that the issue here is,
15 the Appellant, you have to make your case that
16 the ZA erred on the issues specifically about
17 zoning, about the rear yard and about the courts,
18 you cannot use collateral evidence or additional
19 evidence to prove that, you have show that in and
20 of itself. If you'd like to take your case kind
21 of out of term by first showing some additional
22 information about the reasons why potential

1 violations create public safety issues or create
2 concerns about life safety, enjoyment, or use of
3 a property, you can do that but I will allow the
4 District to renew it's objection then at the end
5 of the Appellant's case if he then, in order to
6 provide Mr. Nichols and the interpreter some
7 latitude by allowing them to go first, but if he
8 has not made a case where it then becomes
9 apparent as how that's relevant to the rear yard
10 set back or to the ZA's error in regards to those
11 issues I will permit a renewed objection at that
12 time but at this point I will give you a latitude
13 to hear Mr. Nichols testimony first and then to
14 try to make that analogy, that connection between
15 his testimony and the zoning error at a later
16 point in time, hence taking your argument out of
17 place.

18 DR. EDWARDS: Your very kind and I think
19 fair.

20 CHAIRPERSON MOLDENHAUER: Okay, so what
21 we'll do is we'll turn our attention to Mr.
22 Nichols and allow him to present his testimony.

1 DR. EDWARDS: Since I now hear that he
2 was not prepared to make a presentation but
3 answer questions I would like to turn some of my
4 time over to Chris.

5 CHAIRPERSON MOLDENHAUER: So if your
6 going to turn it over to Chris what I'd like to
7 do again is I'd like to ask if you both are going
8 to work in conjunction with each other you need
9 to both indicate to me that your going to have a
10 combined presentation and thus the 60 minutes
11 would allow both of you to work in conjunction
12 with each other, otherwise procedural it's just
13 not going to work. Is that something that you'll
14 both agree to do, to have a combined presentation
15 and to work collaboratively together?

16 DR. EDWARDS: We did not plan to do so.

17 CHAIRPERSON MOLDENHAUER: But you're
18 asking me to look to him right now during your
19 merits of your case.

20 DR. EDWARDS: Before I was able to ask to
21 seek some time and so I would like to call him as
22 a witness to explain some of these issues.

1 CHAIRPERSON MOLDENHAUER: Okay so if
2 you'd like to start with your first witness and
3 it's Chris Otten then your more than welcome to
4 do that.

5 DR. EDWARDS: Then he can line up some
6 questions which we can precede to the second
7 witness and this might meet your procedural
8 needs.

9 CHAIRPERSON MOLDENHAUER: Please proceed.

10 DR. EDWARDS: Please I'm just trying to
11 adjust to the circumstances and I'm unfamiliar
12 with your procedures, thank you for indulging me.
13 Chris just because we're informal here you call
14 me Gregg and I'll call you Chris is that okay. I
15 would like to hear why you believe that the rear
16 court yard and issue was decided by the Zoning
17 Administrator in error, can you outline the
18 reasons that you have found and make available
19 the evidence.

20 MR. OTTEN: I guess some of it would come
21 out to with talking to the expert architect here.
22 The first thing that stands out and I tried to

1 understand the process by which Zoning
2 Administrators inform the community of their
3 decisions.

4 DR. EDWARDS: Please excuse me I want to
5 assure the Board that this is no ploy to run the
6 clock earlier I was trying to be respectful the
7 Board's time to prosecute the matter with any
8 available (inaudible) and I promise you that I'm
9 not going to try to repeat arguments and to over
10 elaborate, that's not my intent, please proceed.

11 MR. OTTEN: Part of the problem here,
12 first of all I was an ANC Commissioner for two
13 years. I have been involved of this for awhile,
14 never heard about the Zoning Administrator's
15 letter of determination until this appeal and
16 that was a big determination because it sets,
17 kind of makes a mockery of the Zoning Regs in a
18 sense that contrives a new rear yard for a
19 building that I think the rear yard can be
20 plainly seen.

21 DR. EDWARDS: Excuse me I would like to
22 then to focus on the 1-D case to ask you what

1 about what the Zoning Administrator did that did
2 not meet the Zoning Requirements for DCMR 11-406
3 on courts and the proposed courts on the
4 northwest side of the library do not meet zoning
5 requirements as they are not wide enough. What
6 evidence have you found to support that
7 particular proposition?

8 MR. OTTEN: Okay, I'll just keep this
9 short and try to get to the major points.

10 DR. EDWARDS: You're working for me now
11 so and responding to my questions and I have a
12 responsibility to focus your testimony and make
13 sure the evidence that is pertinent is put into
14 the records, so please help me with this.

15 MR. OTTEN: For the courts looking at the
16 exhibit I submitted page 31 and also page 34
17 which is the D.C. Office of the Surveyor and it
18 has demarcated measurements of the various points
19 around the proposed addition. It's very clear
20 that the definition of courts, what's happening
21 in this case is a courts being created on the
22 northwest side of the library because of this

1 attempt to pull and accessibility ramp so the
2 court is being created and the Zoning Regs are
3 pretty clear in terms of black letter of the law
4 on the width of courts this is an R-5-D
5 structure, the minimum width of the open court
6 should be 3 inches per foot of the height of the
7 building but not less than 10 feet, so if the
8 height of the buildings is 45 feet 6 inches then
9 the court should be minimally 11 feet 4 inches
10 wide and on this document page 34 there are
11 clearly points along the court line that are
12 measured at 6.67feet so I would imagine that
13 would fail the minimum width of an open court.

14 DR. EDWARDS: So this is reference to the
15 second page of the ANC resolution under B1 courts
16 do not meet zoning requirements and it is further
17 explicated in appendix one under .2 so we have,
18 can you introduce into evidence the measures that
19 shows that its at some places only 6.7 feet.
20 That instead of the requirement of being 15 feet
21 wide...

22 MR. OTTEN: Oh the evidence is the Office

1 of the Surveyor Platt of the proposed edition and
2 expansion of this library, do you all see that?

3 DR. EDWARDS: Would you please for the
4 benefit of the Board please give the page number
5 and the evidence exhibit number.

6 CHAIRPERSON MOLDENHAUER: We have it I
7 think it was "Exhibit 32" paginated page 34 is
8 that correct?

9 DR. EDWARDS: So you have that evidence,
10 the B2 is rear yards and minor flexibility this
11 is again .B2 on page 2. Rear yards can not be
12 reduced or omitted and must be provided. The
13 natural rear yard was reduced and omitted
14 arbitrarily and capriciously by the Zoning
15 Administrator who did not have the authority to
16 do so. Do you have evidence to show that in R-5-
17 D rear yards cannot be reduced or omitted and
18 must be provided?

19 MR. OTTEN: Well the zoning regs are
20 clear there's a reason why specifically rear
21 yards can't be omitted, side yards can but in
22 terms of a rear yard which is the key to this

1 case should not be omitted or reduced. The
2 Zoning Administrator erred in the finding that
3 the proposed addition complies with Section 404.1
4 of the Zoning Regs which requires that a rear
5 yard be provided on this property as part of the
6 addition. He claimed that the rear yard is where
7 only a side yard could be, I recognize DCPL and
8 its eagerness to get some kind of addition built
9 here but despite the overwhelming opposition...

10 DR. EDWARDS: I'm asking for the evidence
11 and not the interpretation right now, you can put
12 that in during your time if you wish. Now you
13 have evidence to show so the issue of what is
14 rear and side yards is one of the issues that is
15 contested by the honorable opposition. Can you
16 present the evidence that it doesn't really
17 matter which is the front and which is the side
18 yard because it reduces the amount of the passage
19 ways illegally or contrary to the Zoning
20 Regulations. While you're looking for that I
21 lent you my evidence and you made copies of it
22 very graciously for me. I would like to introduce

1 evidence that essentially shows that the failure
2 to provide legally required yard space or
3 distance between the buildings could have a very
4 dire impact upon the health and safety of people
5 and the protection of property in terms of three
6 appendices that go through all the issues to show
7 that there are over 1000 people that are
8 effected, that the distance between the buildings
9 is less than already experienced empirically,
10 that within five minutes the Doville Fire it
11 jumped 18.5 feet and in the group of these
12 buildings none of them have a clearance that is
13 greater than 18.5 feet, some of them are much
14 less than that. There's no way for fire trucks
15 to reach the requirements, of the international
16 fire code, to quickly to various sides of it and
17 if it's needed I can introduce evidence that the
18 International Fire Code (inaudible) says that
19 these buildings seen by the Doville and other
20 buildings spread very rapidly doubling in about
21 3.5 minutes and so any delays in getting trucks
22 to people can result in many deaths, so if it

1 please the court I, introduce...

2 CHAIRPERSON MOLDENHAUER: Can you first
3 provide a copy to the District?

4 DR. EDWARDS: Therefore the point of this
5 case is that...

6 MR. SURABIAN: Madam Chair I'm going to
7 object to this being entered into the record it's
8 a fire life safety consultant report, I quickly
9 browsed through it I didn't see any reference to
10 zoning in here anywhere. It looks like its
11 talking about fire truck access; I just don't see
12 how it's relevant to the court issue or any
13 issue.

14 DR. EDWARDS: Well the purpose of zoning
15 very often is to prevent the removal of access
16 routes and space between buildings which can
17 terribly affect safety of people in many
18 different ways. So this is the zoning issue its
19 part of the purpose of the Zoning Code and thus
20 variances from the Zoning Code have to pass the
21 test of whether this is involved, whether it has
22 potential consequences in terms of property and

1 safety.

2 CHAIRPERSON MOLDENHAUER: As I said
3 earlier I think that, I don't, I have this in the
4 record but the Board will determine what weight
5 to give it as to how relevant we find it. I'd
6 like to see maybe if the Appellant can make the
7 parallel or can make the jump in his argument
8 from the Zoning issues of the rear yard or from
9 potentially any error that the ZA had in his
10 conclusion as a matter of right development to
11 the life safety issues. I'll allow it in, what
12 weight we give it will be based upon the level
13 of, the burden obviously is with the Appellant
14 and how he makes that analysis later on in this
15 case or if he does or he doesn't. I think the
16 Board is more than qualified in determining what
17 would be relevant based on how the case is
18 proven. We will let this in for now and if you
19 can please continue Dr. Edwards.

20 DR. EDWARDS: That's quite fair; I'll
21 reiterate the two points that I have in mind.
22 Number one, the discretion used by the Zoning

1 Administrator in approving these plans was beyond
2 the legal capability that he had and secondly was
3 against the general provisions of the Zoning Code
4 to respect safety and property. These are part
5 of the Zoning Code. It is the duty of the Zoning
6 Administrator to make sure that these are
7 involved. The second point is that there are
8 potentially dire consequences as empirically seen
9 in the last few years, in fact in the last few
10 months where there was a fire in the Park Marcone
11 two months ago, there was a fire four months ago
12 with two deaths where they could not be accessed
13 according to appendix A of the International Fire
14 Code and there was of course the eight alarm fire
15 the largest in recorded history in D.C. at the
16 Doville and at the Meridian Hill structure. So
17 my second point is that we now empirically and it
18 should be known by the Zoning Administrator that
19 these questions about, and part of the intent of
20 the Zoning Code is to protect, the purpose of the
21 code amongst other things is to protect safety
22 and people and property damage. Both of these

1 are (inaudible) by recent evidence and great
2 risk. So thank you for allowing me to recap
3 this. So this determination is not only
4 questionable legally but it also is a very
5 serious transgression and deserves reversal by
6 this Board.

7 MR. OTTEN: I have a process question, as
8 intervener now I wasn't prepared to be questioned
9 by Gregg I was here to plead the case to the
10 Board and ask questions of the witness. I don't
11 know if I'm able to get across in this format, I
12 guess I want to understand how does an
13 intervener...

14 CHAIRPERSON MOLDENHAUER: Can we just
15 pause the time, thanks. As an intervener your
16 given time to present your case, right now ANC 1-
17 D has called you as a witness, he can ask you any
18 questions that he wants during that timeframe and
19 you have to answer those questions, then the
20 District can cross examine you on those questions
21 and those answers. When he finishes his case
22 we'll turn to you for your intervener case in

1 which you can then present your argument legally
2 based on the issues and based on the Zoning Regs
3 for your case. So at this point in time we're
4 going to turn back to ANC 1-D let him complete
5 his, and if you can actually clarify for me are
6 you going to continue with your general argument
7 and then are you going to turn back to questions
8 of Mr. Otten.

9 DR. EDWARDS: I was going to ask
10 questions as we go and if I may...

11 CHAIRPERSON MOLDENHAUER: Well because
12 the issue is this procedurally once a witness is
13 called then you ask them questions at the end of
14 the scope of those questions the other parties
15 are permitted to cross examine so if your going
16 to intertwine his questioning with your argument
17 it creates a challenge for me as the presiding
18 individual to determine what the limitation of
19 the scope is for cross examination, so I'd ask
20 that you finished your argument and then at a
21 point, your witness that's your whole case, that
22 includes all witnesses and all questioning of

1 witnesses it all has to be inclusive in that time
2 limitation.

3 DR. EDWARDS: After that they can proceed
4 to ask questions.

5 CHAIRPERSON MOLDENHAUER: What we'll do
6 you can do your argument if you want to call
7 witnesses first and do your argument at the end
8 whichever one you prefer. After you finish
9 questioning a witness put your time on hold, they
10 will then get to cross examine your witness, you
11 will then if you want get to redirect your
12 witness and then you can call your next witness
13 and the same thing will happen and your time will
14 get clicked on, you'll question your witness,
15 then we'll pause your time, they will get to
16 cross examine your witness and then you would
17 have whatever remaining time to provide any
18 closing remarks if you wish.

19 DR. EDWARDS: You're very fair, thank
20 you.

21 CHAIRPERSON MOLDENHAUER: That's the
22 procedure that's how we provide all of you, you

1 could always come in and observe any cases, and
2 this is how we run all of the cases. So I'm
3 going to turn your time back on and I'm going to
4 turn back to you for your case.

5 DR. EDWARDS: Alright now how can it be
6 where he can ask, can I ask him to give me
7 questions to ask of the second expert witness?

8 CHAIRPERSON MOLDENHAUER: No again you
9 did not want to combine your case so you have to
10 ask questions of your expert if Mr. Otten wants
11 to call an expert and ask questions he can during
12 his.

13 DR. EDWARDS: How about this just trying
14 to be cooperative can I ask him to list questions
15 that the expert...

16 CHAIRPERSON MOLDENHAUER: If you have
17 questions for an expert you have to ask those
18 questions, if Mr. Otten during his case he can
19 ask questions.

20 DR. EDWARDS: Alright, okay so Chris have
21 you found the large format colored drawing
22 showing that the areas are very large

1 irrespective of which entrance is considered.

2 MR. OTTEN: Okay for the rear yard, let's
3 put it this way there is, I'm looking at page 29
4 of my exhibit and I have a large format copy for
5 the Board if you'd like it.

6 CHAIRPERSON MOLDENHAUER: We all have
7 copies and again this is "Exhibit 32" and so it's
8 page 29 of "Exhibit 32".

9 DR. EDWARDS: Alright so let me move on
10 to the issue of the further difficulty with the
11 plan would be that it allows the large ramp of
12 roughly 120 feet long, 200 tons of material that
13 would block, that your usually legally required
14 space between buildings, but we've only learned
15 through massive destruction and deaths is a
16 necessity for a fire access corridor which is
17 also recommended and now required by the
18 international fire code. This seven consultants
19 used by both ANC 1-C and 1-D have unanimously
20 found that this barrier that is put in has the
21 consequence of potentially harming a large number
22 of people with disabilities and seniors and

1 infants so there are large consequences to this
2 so the argument goes again is the Zoning
3 Administrator made an error contrary to the
4 general and specific dictates of law and this is
5 not a trivial issue where he could just do it
6 because it looks right he has the responsibility
7 to balance off the safety and preservation of
8 property issues in how he does things that's part
9 of the zoning code and so we know and you've
10 already gotten evidence that is confirmed by ANC
11 resolutions both with 1-D and 1-C that this will
12 cause great harm because this is based upon local
13 knowledge of the only library that serves Ward
14 One. I ask that the ANC's resolutions be given
15 deference according to settled law in an appeals
16 court cases. Moving on the issue of parking, the
17 ANC resolution points out that there would
18 normally be about six parking places that are
19 required, there are currently about eight parking
20 places that are available to the library at the
21 current rear of the library, these would be
22 destroyed. There are about 500 people living on

1 the very short block where the library is at and
2 there are actually, if you discount the parking
3 spaces with metered parking this leaves us with
4 less than 20 spaces to serve 500 people as well
5 as pointed out there in the resolution, as well
6 as the commercial corridor in Mt. Pleasant and
7 the schools, there are several large schools
8 within a half block and the heavily used
9 headquarters of the Department of Parks and
10 Recreation. This because there's very limited
11 parking on 16th Street this is the closest parking
12 and so it is heavily used and therefore a rule of
13 rationality would suggest that an ignorance of
14 the parking requirements of the code should not
15 be overlooked because there are strong
16 consequences roughly for every space, the number
17 of spaces 3 or 4 blocks over is over 100 times
18 more available per unit of need than this
19 particular block. If your going to remove
20 mandated parking spaces this is the wrong block
21 to do so, the ANC resolution also makes the point
22 that there are apparently more than 50

1 educational programs that have stated in meetings
2 that I organized over several recent years that
3 they would like to, about 28 of them did use the
4 library facilities and more than 50 said they
5 wanted to use them but unless better parking were
6 provided they would not be able to do so. The
7 lack of parking the destruction of parking places
8 that currently exist needs to be placed in the
9 context and we argue, ANC 1-D argues this is a
10 misplaced discretion by the Zoning Administrator
11 given the tightness of parking here and the great
12 public need for well over 10,000 students as part
13 of their education to have use of this, thus the
14 case is that we ask the Board to overrule this
15 irrational and highly negative consequential
16 discretionary action by the Zoning Administrator.
17 May I now ask questions of my witness?

18 CHAIRPERSON MOLDENHAUER: Yes please go
19 ahead and ask questions.

20 DR. EDWARDS: Thank you, Chris do you
21 have further evidence other than what I have
22 given to support these resolutions?

1 MR. OTTEN: Well to clarify I want to
2 make sure you know ANC 1-C spoke through their
3 own resolutions and their own decisions when I
4 was a member of that commission, they did inquire
5 with and they hired Mr. Nichols here to get a
6 sense of the plans and we understand some of the
7 parts of the plans have changed in minor ways but
8 the key issue for the Board today is whether or
9 not the rear yard is where it is, or the Zoning
10 Administrators claiming now of where it's been
11 since 1925, that is the key argument to this
12 case. I wanted to get back to the courts real
13 quick because I did err in what I said there,
14 there's still an issue with the courts but I
15 misread the regulations on that, in R-5-D there
16 has to be minimally 10 feet for a court, a
17 definition of a court being an unoccupied space
18 open to the sky on the same lot with a building
19 which is bounded on two sides by the exterior
20 walls of the building or two or more exterior
21 walls, lot lines or yards and as you can see,
22 lets just go back to page 34, the court that's

1 being created is created because there's a wall
2 along the building line on the northwest side
3 there and there's also now a 7 foot high wall
4 where the canopy is there where the ramp ends,
5 that canopy begins here that's a wall there now,
6 so it's bounded by those two walls and it also
7 abuts the front lot line where it comes out on to
8 the street. So by definition that is a court it
9 needs to be in an R-5-D minimally 10 feet and
10 that measurement is 6.7 based on that Platt, so I
11 just wanted to clarify that it doesn't have to do
12 with the height of the building which I mentioned
13 earlier it has to do with the width of the court
14 it's supposed to be 10 feet wide. I think both
15 ANC 1-D and 1-C for the last two years have tried
16 to really get a good grasp of what.

17 DR. EDWARDS: Excuse me I asked you if
18 you had other evidence and at this point you can
19 reserve your arguments for your own time. I want
20 to respect the time of the Board and finish if I
21 can somewhat early.

22 MR. OTTEN: I did have evidence for that.

1 DR. EDWARDS: Then please get to it.

2 MR. OTTEN: Okay well inside, in my
3 exhibit pages...

4 DR. EDWARDS: While he's looking for that
5 let me also mention that I submitted the
6 resolution from ANC 1-A also on this issue which
7 expresses alarm about the design and the way
8 things have gone with the library so you have the
9 3 ANC's most directly connected to this library
10 all on record and where there concerns I asked
11 the Board to give all of them great weight, of
12 course 1-D because it's within our area directly
13 as distinct local knowledge which by settled law
14 entitles us to deference about many of these
15 issues and their consequences. We cannot be
16 experts on the Zoning Law that's what you are and
17 others are but we can testify about the
18 consequences on long term planning and this would
19 also, let me say, disrupt as they are
20 incorporated within the 148 points discussions of
21 the negative impact of this development on the
22 long term planning possibilities for Mt.

1 Pleasant. These have not been considered by the
2 Zoning Administrator as part of the intents of
3 the Zoning Law and I ask that the irrational
4 unsupported discretion shown by the Zoning
5 Administrator be reversed because he did not
6 engage and pay attention to the ANC resolutions,
7 they were sent to DCRA which promises to deliver
8 them to the Office of Zoning and we heard nothing
9 from them, therefore they had the responsibility
10 to have taken this in, they were given notice.
11 Do you have this final bit of evidence?

12 MR. OTTEN: Yeah so page 86 of my exhibit
13 it kind of goes through, actually that's the fire
14 document which show kind of whets been happening
15 over the last 36 months in the area. The fire
16 department hasn't been readily able to get behind
17 those buildings to put out those fires which is
18 why we've lot two buildings and two people in the
19 last 36 months. In terms of the ANC those
20 documents can be found at the index on page 115
21 of the exhibit and I just want to pull out a few
22 for you Gregg that stand out. Part of the issue

1 here is this expansion, I mean this is an
2 expansion going into the rear yard, nobody knew
3 or anticipated or asked for the expansion of this
4 library, this was new to the community as of
5 notification to the ANC which was July of 2008,
6 by official documentation even though they held
7 two community meetings already they didn't show
8 expansion options really until that second
9 meeting and that's when they informed the ANC
10 that they would like to expand the building which
11 is generating this problem. I attempted to FOIA
12 on the matter to get a sense of when this
13 decision to go from renovation only to expansion,
14 because on the table up until this point was
15 just...

16 MR. SURABIAN: I'm going to object here I
17 think we're going way far field.

18 MR. OTTEN: I just want to point out the
19 FOIA though, Mr. Surabian you mentioned last
20 hearing...

21 DR. EDWARDS: You can present all that in
22 your testimony. I'm asking you to cite the

1 chapter and verse of this to focus because I want
2 to get through early and preserve the time and
3 the attention of the Board, so do you have that
4 reference now or not?

5 MR. OTTEN: What are you asking?

6 DR. EDWARDS: Since you forgot my direct
7 question I would like to then cease my
8 questioning at this point, allow the honorable
9 opposition and reserve my time for later.

10 CHAIRPERSON MOLDENHAUER: Mr. Surabian do
11 you have a cross examination for Mr. Otten?

12 MR. SURABIAN: Yes just briefly. Mr.
13 Otten you testified earlier that the court was
14 only 6.7 feet wide can you tell us how you came
15 to that?

16 MR. OTTEN: It's from the Platt from the
17 Office of the Surveyor there's a measurement
18 across the width of the court that's being
19 created.

20 MR. SURABIAN: Does that text near that
21 line indicate propose concrete walk? Is that
22 what you're referring to?

1 MR. OTTEN: Yep there's also a seating
2 area there.

3 MR. SURABIAN: So the proposed concrete
4 walk is 6.67 feet is that right.

5 MR. OTTEN: The proposed court is at
6 points 6.7 feet with the seating area that's
7 there.

8 MR. SURABIAN: Why doesn't the court
9 extend to the lot line? Why is it only limited
10 to the walk?

11 MR. OTTEN: The court extends to the lot
12 line there if you follow the walk to the lot
13 line.

14 MR. SURABIAN: I'm referring to what's
15 called the west. This is the walkway can you see
16 it that far, why doesn't the court extend to this
17 lot line at the northwest edge here?

18 MR. OTTEN: Because it's a wall there
19 which is why it's a court, it's a wall to the
20 ramp.

21 MR. SURABIAN: There's the wall can you
22 point to that.

1 MR. OTTEN: It's the wall right along the
2 edge of the ramp, there's a wall here 7 feet high
3 at the end it goes up steadily, this is court now
4 created between the two walls, the wall of the
5 ramp and the wall of the building.

6 MR. SURABIAN: So what is the depth of
7 that grassy area?

8 MR. OTTEN: I'm not sure it's not
9 measured here.

10 MR. SURABIAN: Wouldn't that be relevant
11 to determining how wide the court is?

12 MR. OTTEN: Well the court is open to
13 people to sit down in these areas where the walk
14 is, so this seating area...

15 CHAIRPERSON MOLDENHAUER: Mr. Otten if
16 Mr. Nichols has a bigger version of that and we
17 could put that up on one of the Boards and then
18 if Mr. Otten you can get a portable microphone
19 and maybe point it out so the Board can also see
20 what your pointing at and then that might help
21 and facilitate Mr. Surabian's questions to kind
22 of use the diagrams we can all understand how Mr.

1 Otten is measuring versus what Mr. Surabian is
2 asking.

3 MR. OTTEN: Okay, I'm no expert but...

4 MR. SURABIAN: Mr. Otten let me ask you a
5 question, indicate on that drawing where the 6.67
6 measurement that you were talking about earlier.

7 MR. OTTEN: Between the wall of the
8 library it's not on this diagram here but it's on
9 that exhibit, it's measured out from here to here
10 6.67.

11 MR. SURABIAN: And that's the proposed
12 concrete walkway is how it's labeled, correct?

13 MR. OTTEN: Not on here.

14 MR. SURABIAN: But on the Platt it is.

15 MR. OTTEN: Right, there area here.

16 MR. SURABIAN: Then all the area north of
17 that to the lot line, how wide is that area?

18 MR. OTTEN: It's about 35, I don't know.

19 MR. SURABIAN: Why is that if the minimum
20 is 10 feet why is that not compliant?

21 MR. OTTEN: This is the court here,
22 that's created, that's useable right.

1 DR. EDWARDS: I'm sorry I can't see, can
2 you point to it again so I can follow.

3 MR. OTTEN: Okay so the court width is
4 defined as the minimum horizontal dimension
5 substantially parallel with the open end of an
6 open court so this is the open end of this open
7 court, it's open because people can walk on it,
8 it's parallel, and in the case of a non-
9 rectangular court the diameter of the largest
10 circle that be inscribed in the horizontal plain
11 of the court. So the court at this point from
12 behind the seating up to the ramp is no longer
13 horizontal it starts to go up to the ramp which
14 is up several feet at this point, up here it's
15 closer to 7 feet. So the horizontal rule in the
16 definition is this is a court, the width of the
17 court is measured on the horizontal plain
18 parallel to the horizontal plain, once you get
19 past this seating area it rises up to the ramp so
20 that's not longer horizontal to the plain it's
21 starting to rise up, even though its part of the
22 overall court, the width of the court again it

1 defines it as the diameter of the largest circle
2 that may be inscribed in a horizontal plain of
3 the court so the diameter would be I guess it
4 would be the width of this area here for this
5 section but right here it would be right here the
6 diameter we know is measured at 6.7 feet.

7 MR. SURABIAN: Do you have any expertise
8 on the Zoning Regulations?

9 MR. OTTEN: I'm just reading the Black
10 Letter of the definition.

11 MR. SURABIAN: Have you ever applied the
12 regulations prior to this?

13 DR. EDWARDS: Objection the council is
14 attempting to (inaudible) the...

15 MR. SURABIAN: That's exactly what I'm
16 doing yes; I'm questioning the credibility of
17 this evidence.

18 CHAIRPERSON MOLDENHAUER: Okay and Dr.
19 Edwards what's your objection?

20 DR. EDWARDS: My objection is that plenty
21 of court cases have said that the law must be
22 accessible to the ordinary people and the plain

1 language reading is the one that should control.

2 CHAIRPERSON MOLDENHAUER: Okay but what
3 is your objection to the questions.

4 DR. EDWARDS: My objection is that my
5 witness was giving the plain language reading
6 which according to established law is the one
7 that should prevail.

8 CHAIRPERSON MOLDENHAUER: But that's not
9 an objection, he's asking questions to determine
10 potentially Mr. Otten's knowledge, I'm going to
11 permit the question then to go forward, so please
12 continue.

13 MR. SURABIAN: Do you remember the
14 question?

15 MR. OTTEN: No.

16 MR. SURABIAN: Do you have any expertise
17 in the Zoning Regulations?

18 MR. OTTEN: My expertise is probably as
19 grand as yours Mr. Surabian in the sense I can
20 read the code and I can apply the code to the
21 specifications in the designs presented by D.C.
22 Public Library to DCRA, that's my...

1 MR. SURABIAN: Do you have a law degree?

2 MR. OTTEN: I'm going to law school yes.

3 MR. SURABIAN: Do you have any background
4 in planning?

5 MR. OTTEN: I know when to look at plans
6 that don't make a lot of common sense to the
7 public and as a commissioner I've seen plans over
8 and over again before our commission relating to
9 District Code and when something is, you know
10 this is the plain letter of the law, I can't
11 speak to more or less of it, it is what it is.
12 The facts stand for themselves.

13 DR. EDWARDS: Madam Chair my objection is
14 that if the implications of this objection were
15 held well then you would not be able, they would
16 be able to be applied to anybody who shows up
17 here that does not have a law degree, a planning
18 degree, and certified zoning expertise, therefore
19 it is irrelevant to screen and to sensor evidence
20 that are obtainable by eye and measure of plain
21 evidence and therefore I think his objection is
22 discriminatory and contrary to public to policy I

1 ask you to strike it.

2 CHAIRPERSON MOLDENHAUER: I believe you
3 don't mean his objection you mean his
4 questioning, you mean his questioning or his
5 objection?

6 DR. EDWARDS: The line of his questioning
7 is to impugn the observations of measurable
8 evidence.

9 CHAIRPERSON MOLDENHAUER: I understand
10 what your saying the Board is an experienced
11 Board at weighing evidence, we are going to
12 permit a line of questioning which is going to
13 drill down onto Mr. Otten's background and
14 knowledge into reading plans, evaluating it, and
15 we will provide Mr. Otten's testimony the weight
16 that we fell is appropriate based on the
17 information that we've gathered from both your
18 direct testimony and questioning and Mr.
19 Surabian's cross examination. We can continue
20 are there any further cross examination questions
21 Mr. Surabian?

22 MR. SURABIAN: Yeah I just want to nail

1 down the one point, so your testimony is that the
2 width of the court is 6.67 feet because of the
3 notation on the Platt is that right?

4 MR. OTTEN: Correct, that's just one area
5 where it's notated and there is a legend here
6 with a ruler that you can, I mean you can
7 visually check it out yourself.

8 MR. SURABIAN: And you also acknowledge
9 that there is a line from the building to the lot
10 line is about 30 feet you said? You testified to
11 that earlier.

12 MR. OTTEN: The horizontal plane goes
13 from the wall to where it starts to rise up which
14 is about right here, so what we know is the
15 measurement of this width, as well.

16 MR. SURABIAN: Do you know what the
17 phrase horizontal plane means?

18 MR. OTTEN: We're standing on it right
19 now.

20 MR. SURABIAN: Can you define it for me.

21 MR. OTTEN: I'll go to the Zoning Regs to
22 that if it's not in there.

1 MR. SURABIAN: Do you know if it is?

2 MR. OTTEN: Mr. Surabian the last hearing
3 we were here you questioned my due diligence I
4 was about to introduce...

5 CHAIRPERSON MOLDENHAUER: Mr. Otten...

6 MR. SURABIAN: I'm asking very fair
7 questions.

8 CHAIRPERSON MOLDENHAUER: I want to make
9 sure that we maintain a level of decorum, Mr.
10 Surabian right now is asking questions, Mr. Otten
11 you have an obligation to answer those questions
12 fairly and to your knowledge, there's no need for
13 you to provide additional information or to then
14 respond or to cast direct information. When he
15 asks you a question just answer the question to
16 us and we'll listen to your answer no matter,
17 whatever it is and then Mr. Surabian can ask any
18 other follow up questions and then we'll go back
19 to ANC 1-D for any follow up questions from that
20 okay.

21 MR. OTTEN: Again I wasn't prepared for
22 this part. I wanted to present a case to you not

1 be cross examined by a hostile prosecutor. But
2 yeah the horizontal plane it's in the rules I
3 don't know how much more I could speak to them
4 other than what's written in the Zoning Regs and
5 horizontal plane I think is pretty, I think we
6 learned that in geometry.

7 MR. SURABIAN: I asked the question what
8 is a horizontal plane please define it.

9 MR. OTTEN: You're sitting on one, your
10 sitting in a chair that's on the horizontal plane
11 of the floor it's an even plain, once it starts
12 to rise you start to lose your horizontal plane.
13 This area of the court rises up to the ramp
14 therefore you lose the horizontal plane.

15 MR. SURABIAN: Where did you get that
16 definition from is that in the regulations where
17 it says flat ground is a horizontal plane?

18 MR. OTTEN: I don't have all the regs in
19 front of me in terms of definitions, umm but it's
20 particularly, it mentions that in court width of
21 in the chapter section regarding Zoning
22 Definitions.

1 MR. SURABIAN: What is the front of this
2 property?

3 MR. OTTEN: What do you mean by front?

4 MR. SURABIAN: What is the front?

5 MR. OTTEN: Do you want to elaborate?

6 MR. SURABIAN: Nope I want you to answer
7 that question.

8 MR. OTTEN: I don't think I can if you
9 don't elaborate, are you talking about the front
10 property line are you talking about the grand
11 entrance that's been around since 1925?

12 MR. SURABIAN: What do you believe the
13 front to be?

14 MR. OTTEN: Well, let me break this out,
15 this is the birds eye view again, page 23, see
16 the library is situated from 16th Street here, the
17 main thoroughfare, actually this is great too
18 because you can see in this one here, this is
19 where the area starts to rise up behind the
20 seating area of the court so there's some plainer
21 measurements here but there are lines showing
22 that it starts to terrace up here, I don't know

1 if that's part of my exhibit, I don't believe it
2 is.

3 CHAIRPERSON MOLDENHAUER: It is I believe
4 it's, I'm looking at a similar diagram starting
5 on page 41 and kind of going, and yeah the bottom
6 right hand diagram is 45.

7 MR. OTTEN: Okay so you can see in there
8 are terraced lines showing the rise in elevation
9 hence no longer horizontal. In terms of the
10 question right now I think the best way to look
11 at that is the birds-eye-view of the whole area
12 and the front of this building has been clearly
13 demarcated since it was built, it's the gateway
14 from 16th Street to this Historic neighborhood,
15 the front kind of opens out onto Lamont Street
16 and this 16th Street byway a lot of people come in
17 this direction off buses and the rail is right
18 over here, Columbia Heights and so you have a
19 situation where people coming down the first
20 thing they see coming down Lamont Street is the
21 wonderful grand stairway entering into...

22 MR. SURABIAN: So is Lamont Street the

1 front of the building?

2 MR. OTTEN: There's been I mean it's hard
3 for me to determine that other than...

4 MR. SURABIAN: You've alleged that the
5 Zoning Administrator erred in determining which
6 size of the building was the front and so I'm
7 asking you, but now your saying that you don't
8 know which side is the front?

9 MR. OTTEN: I never said that the Zoning
10 Administrator erred in labeling the front
11 property line, he can do that, the question is
12 what is the rear building line, looking at the
13 building what is the rear line of the building?
14 The rear line of the building whether you pick
15 16th Street or whether you pick Lamont Street it's
16 still back here, this is the rear line of the
17 building in fact this is from DCPL's documents,
18 that red line is the rear line of the building
19 following up along the historic sun room which
20 has now been demolished so that's no longer there
21 so the rear line right now is literally along
22 this red line.

1 MR. SURABIAN: Can you remove that
2 diagram that's up now and go back to the Platt,
3 remove what's up there now please, thank you. So
4 I want to clarify you don't believe that the
5 Zoning Administrator is in correct in labeling
6 Lamont Street to be the front, just narrowly on
7 that point.

8 MR. OTTEN: I believe the Zoning
9 Administrator (inaudible) defining this as a
10 corner lot can allow the Applicant to choose this
11 property line as the front of the building
12 property or this property line here as the
13 frontage, street frontage, is that what you're
14 asking me?

15 MR. SURABIAN: Yes.

16 MR. OTTEN: Does that help?

17 MR. SURABIAN: And you acknowledge that's
18 in the regulations.

19 MR. OTTEN: I acknowledge that if this is
20 defined as a corner lot which I don't know that's
21 up to the Board to discern that the Zoning
22 Administrator can chose what the street frontage

1 is on either side.

2 MR. SURABIAN: And if one side is the
3 front, if 16th Street is the front or Lamont
4 Street is the front does that change which side
5 of the lot is the rear?

6 MR. OTTEN: Absolutely not, I think
7 that's pretty obvious by the birds-eye
8 perspective, I mean whether you say this is your
9 front or you say this is your front and let me, I
10 actually have a diagram I could show, this is a
11 very important exhibit, this is page 33, so
12 whether Lamont Street is chosen, whether 16th
13 Street is chosen and I did try to discern from
14 Mr. LeGrant how that would effect the rear yard I
15 never got an answer to that particulate. But
16 either way you draw it out the rear lot line is
17 pretty clear.

18 MR. SURABIAN: How so, how so, is there a
19 provision in the regulations you can point to
20 that tells us?

21 MR. OTTEN: If you look at this Platt
22 again from the Office of Surveyor whether the

1 front lotage line is Lamont Street or the front
2 lotage line is 16th Street projecting back from
3 those lot lines parallel to the other lines
4 surrounding it I think it's clear that the rear
5 yard and the rear lot line has been the same
6 since 1925, that hasn't changed for almost 100
7 years until now.

8 MR. SURABIAN: I don't have any further
9 questions.

10 CHAIRPERSON MOLDENHAUER: Does ANC 1-D
11 have any redirect?

12 DR. EDWARDS: ANC 1-D's resolution talks
13 about the width of the court and a minimum of
14 what the width is, the opposing council asked you
15 about the length of it but do not the regulations
16 specify it is the width that is the issue not as
17 put in by in his questions and suggestions the
18 length of this court.

19 MR. OTTEN: Truly this is minor compared
20 to the rear yard but if we're going to get down
21 to the details of the Zoning Regs I think what I
22 read into the record is what's before you all.

1 DR. EDWARDS: Excuse me I'm going to the
2 credibility of a series of arguments that tend to
3 unfairly and covertly impede the fair discussion
4 of this. Horizontal plane wouldn't you suggest
5 that a horizontal plane is one that has within a
6 few percent that is parallel to the surface of
7 the earth?

8 MR. OTTEN: I mean I think it's, my
9 understanding is and I worked with Mr. Nichols on
10 determining slope and cross slope of the ramp and
11 that's kind of where I got some experience
12 learning from him about the what's considered
13 horizontal, I mean you can only go a certain
14 percentage in terms of the landings I think it
15 was 2 percent or maybe 1 percent I can't recall
16 off hand in terms of it's horizontal plane so my
17 understanding is that you put one of those
18 measurement devices and if the bubble floats past
19 the line it's not horizontal.

20 DR. EDWARDS: So it's essentially
21 something that is parallel to a reasonable
22 approximation to the surface a tangent to the

1 surface of the earth at this point. Since the
2 intent of the Zoning Regulations are to preserve
3 light and air and access and so on, so wouldn't
4 you say that you can't that the intent would be
5 to say that you can't fill a space with a bunch
6 of stairs and ramps and other things that would
7 obscure the use of that courtyard and that's the
8 intent behind specifying that is must be a space
9 that is horizontal in order to qualify as a
10 court.

11 MR. OTTEN: I can only speak to what the
12 Zoning Regs say if that's what you conclude.

13 DR. EDWARDS: Then would you say that's
14 plausible?

15 MR. OTTEN: I'm not sure I think that's
16 up to the Board to decide.

17 DR. EDWARDS: Okay, on the issue of the
18 front of the building would you say that most
19 people in considering the front of this long used
20 library would say that the front is that part is
21 aligned with the most known street that it has
22 substantial access from that street in this case

1 there are two entrances that are immediately
2 available from the street, the one to the meeting
3 room and the main entrance and secondly that they
4 would say that because the back entrance is one
5 with all the surfaces and parking lot and a lot
6 of equipment so that the plain language reading
7 of what an affront is would align with those
8 kinds of normal expectations?

9 MR. OTTEN: Yeah I mean if your coming
10 off 16th Street what do you see, in fact DCPL's
11 documents show angles like of the front of the
12 building, live pictures from 16th Street because
13 that's where most of the people are coming to
14 this library from, they see this grand staircase
15 first, that's been the front of the building
16 since 1925, since Carnegie funded this library to
17 be built here in D.C. one of the first libraries
18 and it's going to be dramatically changed by
19 these plans.

20 DR. EDWARDS: Thank you.

21 CHAIRPERSON MOLDENHAUER: Any other
22 witnesses?

1 DR. EDWARDS: No.

2 CHAIRPERSON MOLDENHAUER: Do you have any
3 closing remarks?

4 DR. EDWARDS: Yes, I'm trying to make, one
5 further piece is the planning alternatives here
6 included the ANC resolutions included speaking to
7 the court and the safety of the court saying that
8 this design and quoting research on the use of
9 courtyards by a noted scientist planner by the
10 name of White lists a large number of problems
11 with the courtyard that is enclosed the way this
12 is that is small and is hidden mostly from the
13 street and therefore it falls under the issue of
14 a public safety, morals and order because it can
15 be a breeding ground for crime and for hidden
16 attackers, this was also mentioned by the experts
17 hired by 1-C and by 1-D and it is encoded in our
18 resolutions that were sent to DCRA and addressed
19 to the Office of Zoning. Therefore once again
20 let me go through the points; number one there
21 are a lot of minor small points in which this
22 design goes against public policy and in

1 particular the particular issues that are
2 required by the Zoning Code. Secondly that these
3 consequences are large because of the in almost
4 every case they go against the planning issues
5 described and passed by the local ANC and they
6 are alarming to the neighboring ANC's as well and
7 they include the possibility of endangering the
8 lives of 1000 people in what has proven to be a
9 very dangerous fire area, they include the
10 testimony of experts that I believe have been
11 introduced as evidence saying that this is a very
12 rough, the proposed entrance is very rough and
13 that entrance can only be possible because it
14 essentially obliterates a courtyard and side yard
15 and thirdly, that given the overall intent of the
16 Zoning Code the many objections that have been
17 raised and should have been considered rationally
18 by the Zoning Administrator he used, the Zoning
19 Administrator was irrational in their application
20 of their discretion given all these other
21 negative consequences and in addition to the
22 transgression of a number of specific issues for

1 these reasons ANC 1-D asks the Board of Zoning
2 Adjustment to please reject the Zoning
3 Administrator's discretionary moves and allow
4 this design to be worked out in conjunction with
5 local ANC's and the neighborhood so that we can
6 have a library that serves everybody, again it
7 goes against specific requirements, those
8 requirements give rise to designs that can have
9 huge potential impacts as already seen in large
10 disasters and that is forecloses the potential
11 for orderly development planning in addition to
12 all of these negatives, thank you I would reserve
13 the bulk of my time.

14 CHAIRPERSON MOLDENHAUER: Okay do any
15 Board Members have any questions for ANC 1-D at
16 this time?

17 MR. TURNBULL: Madam Chair I guess I'm a
18 little bit, there's no alley back there.

19 DR. EDWARDS: Is that a question?

20 MR. TURNBULL: Right.

21 DR. EDWARDS: No but there is an
22 opportunity for an emergency access route which

1 the current fire chief said would be highly
2 desirable, there's enough room to be able to put
3 emergency vehicle back there, and he does not
4 want an alley there because that means that cars
5 could go there, he wants something with just
6 chain link fences and otherwise no cars parked.

7 MR. TURNBULL: So basically part of your
8 rationale is that you want to be able to use this
9 buildings property to get vehicles to the back to
10 service other buildings?

11 DR. EDWARDS: Not just ordinary vehicles...

12 MR. TURNBULL: Emergency vehicles.

13 DR. EDWARDS: Specifically ladder trucks
14 that can save people that otherwise as we have
15 seen would be the death of people that are in the
16 upper stories. That's one of the purposes in
17 zoning to leave access...

18 MR. TURNBULL: But one of your concerns
19 that you brought up is fires leaping and the
20 distance between buildings but this is going to
21 be a building with sprinklers I believe. So are
22 you concerned about flames leaping from this

1 building to other buildings or are you concerned
2 about flames leaping from the exiting apartment
3 buildings to each other?

4 DR. EDWARDS: The second, and this blocks
5 access that could save hundreds of lives. This is
6 no idle speculation given the recent fire
7 history.

8 MR. TURNBULL: Do you feel this is a
9 little bit undemocratic not to allow a site to be
10 built, I mean from the zoning I'm looking at what
11 your wanting is to preserve a building as is
12 forever so that emergency vehicle can get down
13 there without looking at other options with the
14 fire department. If you looked at other options,
15 looking down access to other buildings, plans to
16 develop if a fire, I mean maybe these buildings
17 need sprinklers themselves or upgrades, maybe
18 it's the ownership issue.

19 DR. EDWARDS: I have investigated each
20 and every one of those issues and on several of
21 them I have prepared reports that I've given you
22 showing, first of all I worked closely for many

1 months with Bruce Faust who was the Fire Marshall
2 and is now the fire chief.

3 MR. TURNBULL: But I guess the jist of
4 one part of your argument is that this land
5 should remain open so that emergency vehicles can
6 get behind existing apartment buildings.

7 DR. EDWARDS: That is the intent of the
8 international fire code and it's one of the
9 intents of the Zoning Regulations is to not build
10 buildings so close to each other that they
11 interfere with public safety.

12 MR. TURNBULL: Okay thank you.

13 MS. SORG: I just have one follow up
14 question; can emergency vehicles get behind the
15 existing library?

16 DR. EDWARDS: The answer is in an
17 appendix that was given to you..

18 MS. SORG: Can you answer now orally?

19 DR. EDWARDS: Yes, yes after intensive
20 investigation and critiques that answer is, no
21 they can't.

22 MS. SORG: Okay thank you.

1 CHAIRPERSON MOLDENHAUER: That currently
2 they can't even get back there now?

3 MR. OTTEN: That's not true.

4 DR. EDWARDS: Well they could if we
5 simply overcame a wall in back of the current
6 library.

7 CHAIRPERSON MOLDENHAUER: So let's go to
8 that wall in back, I'm looking at "Exhibit 32"
9 which is this large thick document and "Exhibit
10 24" of that so...

11 DR. EDWARDS: I don't have the privilege
12 of having in hand you're...

13 CHAIRPERSON MOLDENHAUER: Well you should
14 have a copy of it; you should have a copy of all
15 the documents that are part of the records so
16 that I can ask questions, so if you can get a
17 copy of that.

18 MR. OTTEN: It's the birds-eye-view of
19 the library?

20 CHAIRPERSON MOLDENHAUER: Yes its page
21 24. So right now your talking about a wall, I'm
22 looking at this, is this the wall that you're

1 talking about this half arching circle?

2 DR. EDWARDS: Apparently we're looking at
3 different documents...

4 MR. OTTEN: That's the right one.

5 DR. EDWARDS: Okay so I want to have this
6 in black and white, okay.

7 MR. OTTEN: Another way to look at this
8 is on page 26, this is actually a photograph from
9 the adjacent building.

10 CHAIRPERSON MOLDENHAUER: Okay, so on
11 page 26, Dr. Edwards, okay so right now this is
12 showing on the right hand side of this page
13 that's showing the library as it currently exists
14 is that right, I'm asking Dr. Edwards, so is this
15 the way it currently exists and so there's this
16 concrete wall that's then there's actually a gate
17 on that?

18 DR. EDWARDS: Fire trucks can get through
19 that quickly.

20 CHAIRPERSON MOLDENHAUER: Getting through
21 the gate quickly, but they can't get through the
22 concrete wall?

1 DR. EDWARDS: That's correct.

2 CHAIRPERSON MOLDENHAUER: So they
3 couldn't actually then get into this rear area
4 they could only get to where the concrete wall
5 stops?

6 MR. OTTEN: The other side.

7 DR. EDWARDS: The argument is given the
8 great public need that has been shown by recent
9 fires and deaths; it would cost maybe \$5000 to
10 grade this so that emergency vehicles could get
11 through.

12 CHAIRPERSON MOLDENHAUER: But again
13 that's on their property and so you're trying to
14 suggest a certain way for them to design the
15 building?

16 DR. EDWARDS: Well it is but it's on the
17 property that we contend they are required by the
18 Zoning Code to preserve the space for.

19 CHAIRPERSON MOLDENHAUER: Okay so now
20 let's get to the question about that, the rear
21 yard, okay there's the connection I think that
22 he's trying to argue that they are required to

1 keep it.

2 DR. EDWARDS: Thank you for helping to
3 clarify the case.

4 CHAIRPERSON MOLDENHAUER: Then the
5 question that I have is let's now go to, I've got
6 some other documents here, lets go to page 29.

7 DR. EDWARDS: I should mention that we
8 have explored ways for rat prevention and a lot
9 of other things where essentially almost all of
10 the property owners we have contacted to abate
11 some of these problems they have given up some of
12 their property rights for the common wheel and in
13 this case it does not remove essentially anything
14 from their current functions and so we believe,
15 the ANC believes as a result of large numbers of
16 large meetings that it is something that could be
17 quickly implemented given the stakes and human
18 lives that are in question.

19 CHAIRPERSON MOLDENHAUER: Let's go back
20 to the issue of the zoning question in the rear
21 yard because that's how we get to anything else.
22 Looking at page 29, are you at page 29, is that

1 a colored version?

2 MR. OTTEN: Yes.

3 CHAIRPERSON MOLDENHAUER: Okay perfect,
4 are you contending that the entire section in
5 yellow is the rear yard?

6 DR. EDWARDS: Actually I would say that
7 the rear yard is both yellow and orange, that's
8 the way it intuitively appears to me.

9 CHAIRPERSON MOLDENHAUER: That's a good
10 point you make though that's intuitive. What in
11 the Zoning Regulations supports your assertion
12 that the rear yard can bound two separate
13 property lines?

14 DR. EDWARDS: I apologize I don't
15 understand the term bound to separate property
16 lines?

17 CHAIRPERSON MOLDENHAUER: The section
18 orange and yellow they abut the edge of two
19 separate property lines, there's an L here where
20 the property line is.

21 DR. EDWARDS: In most places the rear
22 yard of a building abuts three property lines.

1 CHAIRPERSON MOLDENHAUER: But I'm asking
2 here how based on this diagram what Zoning
3 Regulation do you have that supports that this
4 section can be defined as the rear yard? Dr.
5 Edwards.

6 DR. EDWARDS: I'm waiting...

7 CHAIRPERSON MOLDENHAUER: I'm asking you
8 this question, this is your case, and I'm asking
9 you.

10 DR. EDWARDS: But I have not memorized
11 the Zoning Code, here's the definition of the
12 Zoning Code, rear yard; a yard between the rear
13 line of a building and other or other structure
14 and the rear lot line except as provided
15 elsewhere in this title. The rear yard shall be
16 the full width of the lot and shall be unoccupied
17 except as specifically authorized in this title.

18 CHAIRPERSON MOLDENHAUER: So the rear lot
19 line is supposed to be the entire section of one
20 portion of the boundaries, so here your showing
21 that it's two, it's on an angle, what supports
22 that?

1 DR. EDWARDS: Well there are elements in
2 the code that say that you cannot have the
3 building built too close to adjoining properties.

4 CHAIRPERSON MOLDENHAUER: I know but
5 that's not talking about a rear yard. I'm just
6 trying to figure out where in the Zoning Regs if
7 you can point me to a section that you can
8 support your argument from this diagram it looks
9 as though your saying you figure out the rear
10 yard by measuring the center of the building line
11 and that's what I see in this diagram, the blue
12 line is the center building line and then your
13 taking that straight through and your then your
14 trying to angle out from there...

15 DR. EDWARDS: That is not my argument, my
16 argument is that there is an obvious well
17 established folk determination of what the front
18 of the building is and I gave the reasons for it,
19 it is the part that faces the main street of this
20 area 16th Street and secondly the other area is
21 full of backyard kinds of things...

22 CHAIRPERSON MOLDENHAUER; But one of your

1 witnesses Mr. Otten testified that he understood
2 that the ZA had the authority to change the
3 street frontage from 16th to Lamont, so do you
4 agree with that statement, that the ZA has the
5 authority to designate on a corner lot which
6 street is considered the front street?

7 DR. EDWARDS: I would say that they can
8 do so only after notifying the ANC and
9 considering the great weight recommendations of
10 the ANC including all the arguments and they did
11 not do that.

12 CHAIRPERSON MOLDENHAUER: What regulation
13 would require the ZA based on his regs and what
14 he's permitted to do have to authorize the ANC?

15 DR. EDWARDS: It is in the D.C. Charter
16 that precedes the Office of Zoning and that
17 states that all, that all changes that impact the
18 planning of the city and the area must be noticed
19 to the ANC and the body must give the ANC great
20 weight. The Mayors order also speaks to this as
21 well that proposed zoning changes, variances,
22 public improvements, licenses or permits of

1 significance to neighborhood planning and
2 development within a Commission area must go to
3 the Commission for review, comments and
4 recommendation and that was done so his
5 discretion is only in accordance with law and he
6 applied discretion without going through the
7 processes of law.

8 CHAIRPERSON MOLDENHAUER: I have no other
9 questions, any Board Members have any other
10 questions, okay then at this point in time we
11 will turn to Mr. Otten for his case.

12 DR. EDWARDS: I would like to say that
13 the characterization that I'm doing this for my o
14 own personal interest I think is an unfair sully
15 of my character.

16 CHAIRPERSON MOLDENHAUER: I've been
17 referring to you as the ANC 1-D that's who you
18 represent in this case, so...

19 DR. EDWARDS: But it was said earlier.

20 CHAIRPERSON MOLDENHAUER: Okay well let's
21 address what's going on here right now. Mr.
22 Otten if you'd like to present your case. Mr.

1 Otten how long do you think you'll need?

2 MR. OTTEN: I want to get to the major
3 issue here which is the rear yard so I'm hoping
4 not very long I want to try to break it down as
5 clear as I can and as simply as I can.

6 CHAIRPERSON MOLDENHAUER: Can I put like
7 20 minutes do you think that's good?

8 MR. OTTEN: I might need a little more
9 time, let's say 30.

10 CHAIRPERSON MOLDENHAUER: How about 30,
11 so 30 good okay. Okay so we'll put 30 minutes on
12 the clock, I appreciate that thank you for just
13 trying to identify timing.

14 MR. OTTEN: First of all I just want to
15 clarify that I drew these documents up and the
16 reason why these lines are here like this is to
17 show whether your pointing from the 16th Street or
18 the Lamont Street, and then the line goes through
19 the rear corner of the building which is why,
20 that's the point by which it strikes through so
21 even if you were to draw a line up from the end
22 of the building here this is the rear, original

1 rear yard of the building since 1925 from this
2 line over to this line here, I mean and it can go
3 as far as here too. Page 27 of my exhibit...

4 MR. SURABIAN: I just don't think we've
5 begun yet and I was going to ask the Board for a
6 5 minute recess before we went into that, into
7 his case is that okay?

8 CHAIRPERSON MOLDENHAUER: I can never
9 hurt I can take a quick 5 minute recess always,
10 sorry again...we have new factors that are taken
11 into consideration now days. But we'll take a 5
12 minute, its 3:20 based on my blackberry so what
13 we'll do is we'll take a 5 minute break, we'll
14 come back in here, I should say a 4 minute break
15 around 3:25, so a 4 minute quick break.

16 RECESS

17 CHAIRPERSON MOLDENHAUER: So we'll turn
18 to Mr. Otten to begin.

19 MR. OTTEN: Its' better than Mr. Rotten,
20 well I want to thank you Commissioners for being
21 here today on this important matter and Members
22 of the Board and Madam Chairperson thank you my

1 name is Chris Otten, I'm the former ANC
2 Commissioner for ANC 1-C-02 which is in Adams
3 Morgan, this is my library it's the only library
4 serving all of Ward One which is kind of always
5 thinking back to the planning process which again
6 is an internal decision to them but there's only
7 one library for the whole Ward we certainly asked
8 about what determination they came to, to expand
9 this building why not a store front library
10 somewhere else in the Ward that's underserved,
11 like along Georgia Avenue or in Adams Morgan
12 instead of trying to squeeze an expansion in on
13 this lot, but the document I gave you is pretty
14 large I wanted to make sure you got all the
15 information that kind of showed some of the due
16 diligence that was questioned at the last hearing
17 that went into trying to get a handle on this
18 project, the amount of opposition to the project
19 is really overwhelming, like Commissioner Edwards
20 has pointed out three of the four Ward ANCs
21 representing about 50,000 people, 25 different
22 community groups but today I don't want to waste

1 your time I want to focus on the Zoning issue and
2 the matter at hand. This is a pretty simple
3 case, we believe that the Zoning Administrator
4 erred in approving the subject building permit
5 application. Specifically the Zoning
6 Administrator erred in finding that the proposed
7 addition to the rear of the Mt. Pleasant Library
8 complies with Section 404.1 of the Zoning Regs
9 which requires and there's a reason why that a
10 rear yard be provided on this property as part of
11 the addition. As you can see the designs show
12 that by eliminating this rear yard it's bringing
13 this very bulky expansion into this open space
14 that's going to be less than 18 feet from no
15 sprinkler buildings, as pointed out these are
16 buildings that are from the early 1900's they
17 don't have the money or the resources to get the
18 sprinkler systems in there so fires as has
19 happened in the past can project from them to the
20 library and if it's hot enough as the case of the
21 Doville which burnt to the ground it will project
22 out and destroy other buildings like the church

1 Meridian Hill Baptist Church was burned as well
2 as is now condemned and this could happen with
3 our library and that's the point of the Zoning
4 Regs is to provide these sort of, these
5 restrictions for a reason, the Zoning Regs on
6 this regarding the rear yard is being
7 circumvented by the Zoning Administrators letter,
8 he did this by claiming a rear yard, he claimed a
9 rear yard where only a side yard could be and
10 completely ignoring the obvious fact that this
11 point back here is the rear yard, not along the
12 side of the building and it's the only area that
13 can be considered a rear yard. The public
14 library in its eagerness to get some kind of
15 addition built here despite the opposition with
16 the complicity of the Zoning Administrator is
17 making mistakes and a mockery of the rear yard
18 requirement and the definition of a rear yard.
19 The result is that people will be harmed, fire
20 access will be compromised and light and air to
21 residence surrounding the library will be
22 negatively effected and I point that out only to

1 show that when Zoning Regs are not followed as is
2 the case here there are consequences, conversely
3 if the Zoning Regs are followed in most cases
4 people are protected this is why you are here, so
5 the only issue here, the big issue is where is
6 the rear yard? Is it here along the side of the
7 building as the Zoning Administrator claims or is
8 it where it's always been since 1925, right
9 behind the library building, that's where the
10 addition is going. First I want to direct the
11 Board's attention to the definition of rear yard
12 in the Zoning Regs; it's a yard between and I
13 emphasize the rear line of the building or other
14 structure and the rear lot line except as where
15 provided elsewhere in the title, so the rear yard
16 according to this definition begins at the rear
17 line of the building. This is the rear line of
18 the building and I want to point out in this
19 Zoning Reg there is no mention of lot frontage of
20 shifting street frontages, the focus is on the
21 building itself, the rear yard depends on the
22 rear line of the building. So the next question

1 I ask is where is the rear line of this building
2 as I pointed out here, this is the front of the
3 building, as I said earlier, it could be along
4 the 16th Street and Lamont Street it goes along
5 both those fronts, so if this is the front of the
6 building where is the rear of the building, if
7 this is the front line of the building, where is
8 the rear line of the building, I think that's
9 pretty obvious, it's the same line we're talking
10 about here. Since 1925 this has been the front
11 of the building and this has been the predominant
12 entrance to the front of the building right here
13 in the middle of the front. If you look on pages
14 23, 25, 39 and 41, that shows you there, this is
15 another image from DCPL, this is on page 25
16 showing the entry with the straight line going
17 through the center of the building projecting out
18 through the rear property line. This is when
19 they were considering a side garden, they're
20 calling this particularly a side garden because
21 it's on the side of the building and you talk
22 about a three floor expansion here, so this is

1 the rear yard where the expansion's going, this
2 is the rear line of the building, here's the rear
3 property line so the rear yard is between the
4 rear line of the building and the property line
5 and that's right there, here's the front of the
6 building, here's the sides. Again just to go
7 back to this, this projects right through the
8 center of the building which you can find on
9 those other documents like on page, the one we
10 were looking at earlier, page 29, this center
11 line is actually just highlighting a line that
12 was there by the architect it goes straight
13 through the center of the building. So if this is
14 the rear line of the building, let me start over
15 again. If this is the front of the building and
16 this is the rear of the inside of the building
17 then this must be the rear line of the building
18 and hence that's the starting point for the
19 calculation of a rear yard, according to the
20 language of the definition of the rear yard. So
21 the next question is where is the rear lot line?
22 Is the rear lot line here, or is the rear lot

1 line here? We have two obvious suggestions for
2 determining the rear lot line, first is the rear
3 of the building if you draw straight lines back
4 from the rear of the building whether you use the
5 sunroom of the angled part of the building
6 drawing straight lines back from the rear of the
7 building they all point to this rear lot line,
8 not the side lot line, the rear lot line. We
9 think that's pretty obvious, that's an obvious
10 interpretation. If the starting point is the
11 rear line of the building here then perhaps this
12 is the rear yard but this is not the rear of the
13 building this is the side of the building, here's
14 the front, here's the rear, and this is the side
15 of the building. If this method doesn't sound
16 reasonable then we can take the Zoning
17 Administrators premise that the Lamont Street is
18 the frontage and the rear lot line is
19 automatically that line that is opposite from
20 the frontage, so doing that, I brought that up
21 earlier, this Platt page 33 assuming, lets assume
22 that the Zoning Administrator is correct in

1 redefining the frontage on Lamont Street again if
2 you draw lines back from that front property line
3 the bulk of where that goes to is the same rear
4 lot line, not the side lot line but the rear lot
5 line, that's the opposite from the frontage as
6 the Zoning Administrator states, so again if
7 Lamont is front where is the rear lot line? I
8 think this piece of evidence shows you that it
9 points to the majority that rear lot line back
10 there. So even if you assume that the ZA is
11 correct that the lot frontage determines the
12 location of the rear yard the majority of the
13 rear lot line is here just like it was since
14 1925, if there's' any doubt looking back to the
15 birds-eye-view of the general vicinity you can
16 see that the buildings by which this is parallel
17 with in terms of along this 16th Street byway, all
18 the rears, this is the front of the Park Marcone,
19 that's the rear of the Park Marcone, this is the
20 front of the now condemned Meridian Hill Baptist
21 Church, here's the rear of the Meridian Hill
22 Baptist Church, here's the front of the library,

1 here's the rear of the library and the same thing
2 with the buildings on the other side along Mt.
3 Pleasant Street, you have the buildings frontages
4 on Mt. Pleasant Street and the rears of the
5 building come straight back down to the shared
6 yard in the back. So you can see it's kind of
7 nonsensical to designate this as the rear yard
8 and this as the rear lot line, but this is
9 exactly what DCPL and the Zoning Administrator
10 wants to do. It doesn't pass the relative Zoning
11 Regulation test let alone the smell test. It is
12 an artificial and gross distortion of the Zoning
13 Regs meant to get around an obvious Zoning
14 requirement that prevents the construction of
15 this addition and protects the tenants who live
16 behind the Mt. Pleasant library. To support
17 their position the ZA's claim that the frontage
18 can be re-designated at any time, that's fine,
19 but that doesn't change the obvious realign of
20 this building. As I noted a second ago even if
21 Lamont is the front there really is only one
22 reasonable interpretation of the location of the

1 rear yard. ZA's council claims the ZAs decision
2 fits the practice of the ZAs Office and cites two
3 BZA cases that when you look at closely they
4 don't apply or actually support our argument.
5 First Appeal No. 15136 is not relevant, that case
6 involved a subdivision of vacant lots not a re-
7 designation of an 85 year old building. Second
8 case 16071 which involved a determination of
9 building height had nothing at all to do with the
10 rear yards, the citation of this case wasn't
11 necessary the supposed precedent within that case
12 wasn't precedent it was actually in the
13 definition of building height where it states
14 that you can chose your own street frontage for
15 purposes of measuring building height but the
16 definition of the rear yard does not have this
17 language. So in conclusion by any reasonable
18 analysis the only rear yard in this property is
19 the area behind the rear of the building here,
20 behind the rear of the building, not along here.
21 By any reasonable analysis this is the rear lot
22 line here, not the side, here. DCPL proposes to

1 have no setbacks at all from this lot line and
2 instead simply designates this over here as the
3 rear lot line without any real explanation or
4 logic or authority and there are serious
5 consequences for this for the people that live
6 around the library. We think that the decision
7 to do this makes a mockery of the letter spirit
8 and intent of the rear yard regulations and we
9 think it should be correct, thank you. I guess
10 questions at this point.

11 CHAIRPERSON MOLDENHAUER: No what we'll
12 do is we'll hold off for any questions so if you
13 can call your witness or any witnesses that you
14 have.

15 MR. OTTEN: Very good thank you. Okay
16 I'd like to call Mr. Robert Nichols, our expert
17 witness today.

18 CHAIRPERSON MOLDENHAUER: Mr. Otten you
19 referenced Mr. Nichols as an expert but based on
20 our procedures you'd actually have to request
21 that he's qualified as an expert, provide us with
22 his CV and permit any potential objections from

1 other parties, if you'd like to do that I just
2 want to make sure that your aware that's the
3 process.

4 MR. OTTEN: Thank you for making me aware
5 of that, I didn't realize that. I'm referring to
6 him as an expert because he knows a lot more
7 about architecture than I do, he's my witness for
8 today, and I think he could speak to his
9 credentials. I did have a list of questions that
10 have somehow runaway, here they are, okay.
11 Thanks for coming today Mr. Nichols.

12 MR. SURABIAN: I'm sorry did Mr. Nichols
13 have a copy of his CV?

14 MR. OTTEN: He's just a witness.

15 CHAIRPERSON MOLDENHAUER: He's just a
16 witness; Mr. Otten has not requested him to be an
17 expert.

18 MR. NICHOLS: I have a copy of CV for you
19 (inaudible).

20 CHAIRPERSON MOLDENHAUER: Okay we need to
21 be able to record this and Mr. Nichols I
22 appreciate it but for purposes of needing and

1 absolutely requiring to record all the statements
2 I will need your interpreter to sign and then put
3 her hands down and then repeat what you were
4 saying from your signing to her so we can make
5 sure that we clearly and accurately, the major
6 issue is accuracy record what you say.

7 MR. NICHOLS: Okay (inaudible)

8 CHAIRPERSON MOLDENHAUER: So what she'll
9 do is I'm going to ask her to sign the questions
10 to you, she will then stop signing, she will then
11 pick up the microphone while you are signing to
12 her and then she will..

13 INTERPRETER: If there's a microphone not
14 being used, that way I don't have to pick it up
15 put it down, turn it off.

16 CHAIRPERSON MOLDENHAUER: Perfect I
17 appreciate that, look at this efficiency. Thank
18 you I appreciate that, so Mr. Otten you can begin
19 your questioning.

20 MR. NICHOLS: Would you like the copy of
21 my CV.

22 CHAIRPERSON MOLDENHAUER: I don't think

1 that's necessary Mr. Otten has not asked you to
2 be an expert but if there are questions Mr. Otten
3 has about your experience that may be helpful.

4 MR. OTTEN: Tell us about yourself and
5 why are you a witness today.

6 MR. NICHOLS: I would be happy to answer
7 anything about myself I have two professional
8 degrees in architecture, bachelors of
9 architecture and a master of architecture from
10 Cornell University 1979 to 1981, prior to
11 becoming an expert witness on ADA accessibility
12 in University of Design I've been experienced for
13 over 30 years including working for the U.S.
14 Accessibility Board, before that I was a Board
15 Member of BSA, the Boston Architecture Center in
16 MA, Accessibility for Disability Architecture so
17 I'm happy to work with Chris to do analysis of
18 the accessibility and fire safety for people with
19 disabilities in the community.

20 MR. OTTEN: Where do you live right now,
21 where are you located?

22 MR. NICHOLS: I live at 2934 Fesenden

1 Street, N.W. Washington, DC 20008. My family and
2 I live in Ward Three.

3 MR. OTTEN: How long have you lived
4 there?

5 MR. NICHOLS: It was after I got married
6 so I've lived there for over 13 years.

7 MR. OTTEN: Ok so you're here in D.C. for
8 awhile. What brings you to this case; you were
9 hired by ANC 1-C correct, for the Mt. Pleasant
10 Library review?

11 MR. NICHOLS: Yes that's correct.

12 MR. OTTEN: And you produced a report of
13 your findings to ANC 1-C back in May of 2010?

14 MR. NICHOLS: Yes that is right.

15 MR. OTTEN: And what is your
16 understanding why did ANC 1-C have to hire you,
17 what were the concerns from that Commission?

18 MR. NICHOLS: There was an interest in
19 accessibility and fire safety for people with
20 disabilities at the Mt. Pleasant Library.

21 MR. OTTEN: And what were your major
22 findings about the expansion plans including the

1 ramp?

2 MR. NICHOLS: I found that the ramp that
3 would be on the side yard would not comply with
4 ADA accessibility and that it would be a threat
5 for fire safety.

6 MR. OTTEN: Do you want to elaborate a
7 little more what's the threat of the ramp for the
8 safety of people?

9 MR. NICHOLS: The reason is that the ramp
10 is one that's designed with a curve and it does
11 not comply ADA. After careful review should be a
12 plan designed by an architect what happens is the
13 ramp gets segregated from the main entrance and
14 it's set up with a curve that doesn't comply with
15 ADA especially going with the rear yard that is
16 120 feet from the yard to the front street which
17 means that the ramp would not be safe for people
18 with disabilities to walk on that long curve to
19 go to the door in the rear from the street.

20 MR. OTTEN: Okay I appreciate that,
21 pulling it backs towards some of the zoning
22 issues here let's talk about the expansion. What

1 did your report say about the proposed expansion
2 which I believe I have a copy? Let me for
3 example on page 172 of the exhibit, it's page of
4 your report you kind of go into additional fire
5 safety issues, you kind of had some points in
6 there about how the size of the expansion is a
7 problem do you want to go into that, why was the
8 size of the expansion a problem.

9 MR. NICHOLS: First of all I've already
10 published my findings and it was over 90 pages
11 that I published by myself which is here and I
12 also made a copy of my findings that was given to
13 the City Council Members, the former Chair
14 Vincent Gray, the Fire Chief and the DCRA
15 Director. One problem that I wanted to bring up
16 with the fire safety issue is that I believe that
17 the DCPL proposal to expand to the rear of the
18 building that that would interfere with fire and
19 emergency access to the rear of the library. So
20 I believe that DCPL would squeeze the
21 accessibility for fire safety and it says in the
22 paragraph and it specifies that their expansion

1 would make the accessibility into a tiny lot
2 behind the library and it seemed to break the
3 scope of the D.C. Construction Code, Building
4 Code Section 101 under D.C. 12 Code and also did
5 not comply with International Fire Code and it
6 shows construction for 3 stories to be added on
7 the back of the historical library. So there's
8 approximately 18 feet between the next door
9 apartment buildings which are not safe for the
10 people who want to jump from the 6th floor in case
11 of a fire.

12 MR. OTTEN: Okay so I just want to
13 clarify, so you mentioned about 18 feet so that
14 would be from the back, we're talking about
15 between this 3 story wall that's going to be
16 built here the back wall of this library and the
17 adjacent apartment. Why is that a concern
18 especially in this corridor what is it about that
19 distance, did you get a sense of?

20 MR. NICHOLS: The problem is when the new
21 building is expanded there's no access for a fire
22 truck to be able to arrive in case of a fire in

1 the apartment buildings, so if there were a fire
2 in the apartment buildings how would a fire truck
3 be able to gain access it's what happened with
4 Doville when they were demolished because of lack
5 of an accessible route.

6 MR. OTTEN: So in the expansion plans I
7 just want to clarify it seems like fireman could
8 run down the side yard here to the back with
9 their hoses?

10 MR. NICHOLS: To be honest I don't feel
11 that the fire truck would be able to have any
12 kind of access unless they have an access road to
13 get there. Then the other question is how far is
14 it to the fire hydrant, it may be farther for the
15 firefighters to walk through the side but my
16 answer is no there's definitely no fire truck
17 that can get in there.

18 MR. OTTEN: Not on this side but in
19 theory if the ramp, looking at this design did
20 you get a sense that firemen without a truck
21 could even access this point anymore, it looks
22 like this blocks off this area completely?

1 MR. NICHOLS: The problem is that since
2 the architect designed the building with the new
3 ramp which is 7 feet higher above the finished
4 ground from the front it's going to be difficult
5 for firefighters to be able to jump over a 7 foot
6 wall to get to the rear yard that's impossible
7 for the fire service to be able to jump that so I
8 think the fireman would have to bring a ladder
9 with them but it's still not safe.

10 MR. OTTEN: I see, okay so on the rear
11 yard again I just want to focus on that real
12 quick before we finish this. In your opinion
13 what is the rear yard of this building here, can
14 you come up and point to it?

15 MR. NICHOLS: The rear yard would be from
16 these walls to the back here where the property
17 line is, and then this would be the side yard
18 here, this is the side and these spots here are
19 the rear so it would be this space here.

20 MR. OTTEN: And as far as you can tell
21 with this expansion plan, there's not setback
22 from property line, the expansion goes right to

1 the property line, to the rear property line?

2 Just looking at this image and the plans, the
3 expansion in the back does that go all the way to
4 the rear property line? There's no set back?

5 MR. NICHOLS: Yes that's right; it goes
6 to here to the property line.

7 MR. OTTEN: Okay thank you, no more
8 questions for now.

9 CHAIRPERSON MOLDENHAUER: Okay at this
10 point in time we'll turn to Mr. Surabian with
11 DCRA for any cross examination.

12 MR. SURABIAN: Thank you, Mr. Nichols you
13 were hired by ANC 1-C to create a report is that
14 correct?

15 MR. NICHOLS: That's right.

16 MR. SURABIAN: And were you compensated
17 to do that?

18 MR. NICHOLS: Yes.

19 MR. SURABIAN: And is your business to
20 provide consulting services related to
21 architectural design?

22 MR. NICHOLS: Well first of all to say a

1 professional architect means a licensed
2 architect, I am a professional design consultant
3 related to ADA design but I am familiar with
4 architectural drawings but I am not an architect
5 myself.

6 MR. SURABIAN: You're not a licensed
7 architect?

8 MR. NICHOLS: That's right.

9 MR. SURABIAN: Are you a licensed
10 engineer?

11 MR. NICHOLS: No.

12 MR. SURABIAN: Are you certified by the
13 AIA?

14 MR. NICHOLS: AIA certified means the same
15 as a licensed architect; however I am a member of
16 the AIA Association.

17 MR. SURABIAN: Do you provide design
18 consulting services regarding the Zoning
19 Regulations?

20 MR. NICHOLS: For this project the answer
21 is no.

22 MR. SURABIAN: So did you review this

1 project, the Mt. Pleasant Library project for
2 compliance with the Zoning Regulations?

3 MR. NICHOLS: Yes I did look at the DCPL
4 for Zoning for the Mt. Pleasant Library yes.

5 MR. SURABIAN: Is that reflected in your
6 report?

7 MR. NICHOLS: This report does not
8 include zoning but I have reviewed zoning on that
9 architectural drawing and on the construction
10 documents.

11 MR. SURABIAN: What provision of the
12 Zoning Regulations tells you or informed your
13 opinion of what the rear yard is?

14 MR. NICHOLS: Well first of all I had
15 reviewed the zoning on that architectural drawing
16 and then I researched to comply with the DC 11
17 Zoning and what I found is that the architectural
18 drawing, the zoning is correct to match with the
19 DC 11 with their Zoning.

20 MR. SURABIAN: So just to clarify, it is
21 in compliance or is not in compliance?

22 MR. NICHOLS: It complies with DC 11 yes.

1 Okay hold on I want to clarify something; if you
2 look at this it says G0.02 and I have reviewed
3 the zoning in this portion here and everything
4 that I've read is fine with the exception that
5 the DCRA is different from what it says on here
6 for the Zoning setback. I'll clarify so that you
7 can understand, with the zoning setback there are
8 three setbacks, there's the front, there's the
9 side and there's the rear. Because of the
10 complexity the building property line that is
11 shown it's not regular, it's actually irregular
12 because of the different street setup. The name
13 of the street here is Lamont which is the front
14 where the front property line parallels on the
15 front street where the address is located. This
16 side is the side of the building which is
17 parallel to the building next door because of the
18 different street that's on here it looks like
19 it's dropped off but its actually advanced to 16th
20 Street, it looks like it's not really the front
21 of the building but the answer is that this is
22 the front of the property here because this is

1 the front door, then this is the front side, this
2 is the side of the building and this is the rear.
3 The setback the rear is here so all three sides
4 here are the rears that extend back, the side
5 setback is here but comes across on this side and
6 now this side setback is right here, that is
7 setback in the space.

8 MR. SURABIAN: Are you aware that in an
9 R-5-D Zone that there is no side yard required?

10 MR. NICHOLS: Yes after I reviewed the
11 Zoning for the R-5-D the requirement for 75%
12 space so the setback that's here is part of the
13 R-5-D.

14 MR. SURABIAN: So could the side yard of
15 the existing building be extended all the way to
16 the lot line if no side yard is required?

17 MR. NICHOLS: You mean over here on this
18 space?

19 MR. SURABIAN: I mean in general on any
20 side yard on that property?

21 MR. NICHOLS: There is no side setback;
22 there is a side property line there.

1 MR. SURABIAN: And so the building can be
2 extended all the way to the property line,
3 correct?

4 MR. NICHOLS: I'm sorry I just need you
5 to repeat that, can you give me one second to
6 clarify? No he would not.

7 MR. SURABIAN: Okay no further questions.

8 CHAIRPERSON MOLDENHAUER: Dr. Edwards do
9 you have any cross examination?

10 DR. EDWARDS: No.

11 CHAIRPERSON MOLDENHAUER: Mr. Otten if
12 you would like to redirect.

13 MR. OTTEN: Just a quick redirect just to
14 clarify some of the issues here. Mr. Nichols I
15 know your not a zoning expert so the specifics of
16 the zoning you might not be totally aware of them
17 all, but what you did for ANC 1-C was a general
18 review of the architectural plans and how the
19 plans sit on the lot, correct?

20 MR. NICHOLS: Right.

21 MR. OTTEN: And today you identified what
22 you believe is the rear yard and has been the

1 rear yard since the building was built, correct?

2 MR. NICHOLS: Correct.

3 MR. OTTEN: Point to that again for me
4 just so I know. Okay and just to get all clarity,
5 the rear property line is located where? Okay no
6 further questions thank you.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much do any Board Members have any questions for
9 Mr. Nichols?

10 MR. TURNBULL: Yes I just have one
11 question, Mr. Nichols in your report on page 4
12 discussing fire safety and emergency access you
13 mention that the access point from Lamont side of
14 the library to the many, that this plan will
15 block the resident, let me go back and reread
16 this. The Lamont side of the library to the many
17 residentials that exist adjacent and behind the
18 library by locating the ramp on the side of the
19 library there is no chance to allow mechanical
20 emergency apparatus from access behind the
21 library but I thought we heard testimony earlier
22 that as of right now there is no access to any of

1 the buildings back there, so I'm just confused I
2 want to make sure that I understand that right
3 now no vehicles get back there anyways.

4 MR. NICHOLS: That's right.

5 MR. TURNBULL: Okay I just want to
6 confirm that.

7 CHAIRPERSON MOLDENHAUER: Any other
8 questions from Board Members? Seeing none thank
9 you very much. We'll turn back to Mr. Otten do
10 you have any additional witnesses?

11 MR. OTTEN: I'd like to ask Dr. Edwards
12 to briefly testify, briefly about one or two
13 questions I have.

14 CHAIRPERSON MOLDENHAUER: You said you'd
15 be about 30 minutes you're about at like 35
16 already so if you can just brief I'd appreciate
17 it.

18 MR. OTTEN: Okay thank you, and thanks
19 Mr. Nichols for being here. Dr. Edwards one of
20 the questions that have continued to arise is the
21 opportunity for access and how this will forever
22 forestall access to behind these buildings. Were

1 there any plausible design alternatives offered
2 by the community in anyway that could have showed
3 a different analysis of this plan and an
4 opportunity to expand safety for the people
5 behind the library?

6 DR. EDWARDS: Yes, the first observation
7 is that it would only take 5 or 10,000 dollars to
8 open the current library plan to emergency access
9 so it's a trivial amount given what is at stake.
10 Secondly recognizing that, that if we kept what
11 includes a lot of rear lot kind of things,
12 mechanicals and driveways and a parking lot that,
13 that could be kept open and that was the proposal
14 that was made at one point even the architects
15 appeared to say that they had considered that but
16 had been overruled. I served on the task force
17 with D.C. Library Staff and the President of the
18 D.C. Friends of the Library and we proposed but
19 were overruled in a similar kind of plan.

20 MR. OTTEN: What were the design options
21 that you saw?

22 DR. EDWARDS: There were quite a few

1 architects that submitted them, the one that was
2 in the ANC 1-D draft report, let me give a copy t
3 the Board and shows that one could keep open the
4 access and have an ADA compliant walkway so that
5 we could maintain and it would be also possible
6 if the library prevailed to have an extension in
7 back but maintain the, that most of our concerns
8 would be solved with this.

9 MR. OTTEN: Actually the plausible design
10 alternatives are pages 188 on, there were several
11 including if I'm not mistaken Dr. Edwards by the
12 Council Member something called Scheme G.

13 DR. EDWARDS: It is similar to Scheme G
14 but the problem with the library scheme G is that
15 it would block the access route and by turn the
16 stairs to the library, the ADA requirement stairs
17 it would only go down about two feet to the
18 ground floor and this would be far better than an
19 elevation of 7.5 feet.

20 MR. OTTEN: But in terms of the rear
21 yard, Scheme G which was developed with the
22 community with the help of Council Member Graham

1 kept the rear yard in place, the current rear
2 yard?

3 DR. EDWARDS: Yes it did however if this
4 slight alteration would show that there is
5 something that would satisfy all of our problems
6 that we have raised today, so there is a simple
7 direct much preferable way of handling all of our
8 problems that we have raised today.

9 MR. OTTEN: I just wanted to make sure
10 that there were other options on the table.

11 DR. EDWARDS: The current blockage is
12 trivial it is true that you can't get through
13 this concrete wall now but it would be only a few
14 thousand dollars to correct that.

15 MR. OTTEN: Thank you.

16 CHAIRPERSON MOLDENHAUER: Any further
17 questions Mr. Otten?

18 MR. OTTEN: None.

19 CHAIRPERSON MOLDENHAUER: Mr. Surabian do
20 you have any questions?

21 MR. SURABIAN: No questions.

22 CHAIRPERSON MOLDENHAUER: Do Board

1 Members have any questions? Seeing none, Mr.
2 Otten do you have any closing remarks?

3 MR. OTTEN: This is the closing right
4 now? Okay, I think it's pretty obvious that the
5 Zoning Administrator erred in approving the
6 subject building permit and finding that the
7 proposed addition to the rear of Mt. Pleasant
8 Library complies with Section 404.1 of the Zoning
9 Regs. As I alluded to in the different
10 documentation no matter what street frontage is
11 chosen, the rear lot line, and the rear yard
12 remains the same. The only rear yard on this
13 property is the area behind the rear of this
14 building here, not the side year, this is the
15 rear yard. Unfortunately the consequence of this
16 decision is pretty serious but it's very clear
17 just from the Zoning perspective that this was a
18 mistake and we hope you would recognize that and
19 particularly use page 33 and page 23 of your
20 exhibits to do that analysis.

21 CHAIRPERSON MOLDENHAUER: Anything
22 further?

1 MR. OTTEN: I think you got the picture
2 of what I was trying to say.

3 CHAIRPERSON MOLDENHAUER: Thank you, then
4 at this point in time we'll turn to the District
5 for their case.

6 MR. SURABIAN: Thank you Members of the
7 Board. First I want to just confirm that last
8 week I made and I filed a supplement to my
9 prehearing statement citing the case law
10 concerning a very similar issue, I just want to
11 confirm the Board received it.

12 CHAIRPERSON MOLDENHAUER: Yes we did
13 receive that.

14 MR. SURABIAN: And I think those cases
15 show pretty clearly that the Board has deferred
16 to the Zoning Administrators interpretations with
17 respect to when there's any type of ambiguity in
18 the regulations as to which and there's multiple,
19 lot facing multiple streets as to which side of
20 the lot can be the front. That being said I'll
21 call the Zoning Administrator as my first
22 witness. Please state your name for the record.

1 MR. LEGRANT: Matthew LeGrant.

2 MR. SURABIAN: And where do you work?

3 MR. LEGRANT: I work for the Department of
4 Consumer Regulatory Affairs.

5 MR. SURABIAN: And what capacity?

6 MR. LEGRANT: I'm the Zoning
7 Administrator.

8 MR. SURABIAN: And how long have you held
9 that position?

10 MR. LEGRANT: I've held that position
11 approximately four years.

12 MR. SURABIAN: And prior to that what did
13 you do?

14 MR. LEGRANT: Prior to that I was, for a
15 year I was the Deputy Zoning Administrator.

16 MR. SURABIAN: And could you provide a
17 brief summary of your educational and work
18 experience?

19 MR. LEGRANT: Sure, I have a Bachelors of
20 Science in City and Regional Planning from
21 California Polytechnic State University at St.
22 Luis Obispo. I have a Masters in City Planning

1 from the University of California at Berkley. I
2 have approximately 25 years experience in current
3 planning and zoning regulations with (inaudible)
4 jurisdictions including the City of Berkeley, CA,
5 the City of Alexandria, VA.

6 MR. SURABIAN: And in Berkeley, CA,
7 Alexandria, VA and the District did you apply and
8 interpret the Zoning Regulations?

9 MR. LEGRANT: I did.

10 MR. SURABIAN: And did you review
11 building plans for compliance with Zoning
12 Regulations?

13 MR. LEGRANT: I do, I have and yes I do.

14 MR. SURABIAN: Are you a member of any
15 professional associations?

16 MR. LEGRANT: I'm a member of the
17 American Institute of Certified Planners
18 approximately 25 years and also the American
19 Planning Association.

20 MR. SURABIAN: I'm going to ask the Board
21 to acknowledge Mr. LeGrant as an expert.

22 CHAIRPERSON MOLDENHAUER: Are there any

1 objections? Seeing none, we'll qualify Mr.
2 LeGrant as an expert.

3 MR. SURABIAN: Mr. LeGrant I'm going to
4 refer you to your letter of Mach 26th, in the
5 Districts' prehearing statement its "Exhibit E".

6 MR. LEGRANT: Yes my letter of March 26,
7 2009, to Kinley Bray at Arrant Fox.

8 MR. SURABIAN: And you're familiar with
9 this document?

10 MR. LEGRANT: Yes.

11 MR. SURABIAN: The first paragraph what
12 is this letter?

13 MR. LEGRANT: Arrant Fox on behalf of the
14 District Library, Department of Library came to
15 me March 12, 2009, and met with me to discuss the
16 Mt. Pleasant Library and the determination of
17 yards.

18 MR. SURABIAN: And did you, concerning
19 the determination of yards what was the issue
20 specifically?

21 MR. LEGRANT: The issue is because the
22 property sits on two streets it's a corner lot

1 and so the question is the designation of the
2 front of the lot and then that in turn drives all
3 the resulting yards or the lot lines to be
4 designated side lot lines and rear lot lines
5 which then determines which can be determined as
6 yards specifically a rear yard and or side yards.

7 MR. SURABIAN: So is it necessary to
8 determine the front of a lot in order to
9 determine which, what other boundaries will be
10 the rear and side, is that correct?

11 MR. LEGRANT: That's correct you have to
12 especially on a corner lot determine what is the
13 front of that lot to in turn be able to designate
14 which are the resulting side lot lines and rear
15 lot lines and that's how you can determine and
16 regulate the yard requirements.

17 MR. SURABIAN: And in a case where a
18 building was built in lets say 1925, is it
19 possible to know what side was, what side is the
20 front?

21 MR. LEGRANT: Well it might be possible
22 but of course construction 1925 predated the

1 Zoning Regulations so what was relevant in the
2 issue before me was a determination as to what
3 the front of the lot is going forward to in turn
4 drive what yard regulations would apply.

5 MR. SURABIAN: And where is the entrance
6 of the building?

7 MR. LEGRANT: The entrance to the Mt.
8 Pleasant Library sits on an axis that can be made
9 perpendicular to the corner of Lamont Street and
10 16th Street.

11 MR. SURABIAN: I just want to alert the
12 Board the clock is incorrect I don't know where
13 it started but we haven't run 25 minutes since
14 I've been talking.

15 CHAIRPERSON MOLDENHAUER: Oh well why
16 don't we just keep going and we'll see where you
17 are at the end of 34 and we'll go from there,
18 okay.

19 MR. SURABIAN: I just want to make sure I
20 have my full hour, thank you. And did you
21 analyze the extent of the frontage on each
22 street?

1 MR. LEGRANT: Well what's important the
2 Zoning Regulations tell us in the definition of
3 street frontage how to look at a corner lot and
4 because this does qualify as a corner lot then it
5 gives the property owner the option of which of
6 those two streets can be the front of the lot?

7 MR. SURABIAN: If it's, do you permit
8 that in all cases or do you limit it in any way,
9 the selection?

10 MR. LEGRANT: It is the option of the
11 property owner so once the first threshold is the
12 corner lot and once it's determined that it's a
13 corner lot then a property owner can come to me
14 as is the case here, my determination letter was
15 in response to their request of denoting which of
16 the frontages would be deemed the front of the
17 lot.

18 MR. SURABIAN: And which side did you
19 determine to be the front?

20 MR. LEGRANT: Lemont Street.

21 MR. SURABIAN: And was that the
22 preference of the DCPL?

1 MR. LEGRANT: It was.

2 MR. SURABIAN: And would you permit, do
3 you permit a property owner to if it's an
4 existing building does that change whether a
5 property owner can designate what is the front of
6 their lot?

7 MR. LEGRANT: No, however if you have a
8 situation where somebody is designating the front
9 of a lot or a corner lot and it might create a
10 non-conformity if a portion of the building sits
11 in a required yard set back but it doesn't
12 preclude the property owner from designating what
13 is the front of the lot.

14 MR. SURABIAN: Did the designation of
15 Lamont Street as the front create a non-
16 conforming condition?

17 MR. LEGRANT: No it did not.

18 MR. SURABIAN: And could you perhaps get
19 up and stand by the plan so maybe you can orient
20 the Board.

21 MR. OTTEN: Chair I just want to point
22 out that these are our exhibits, did the

1 opposition council bring exhibits to show for
2 you, I don't mind but I just want to point that
3 out, did you bring any exhibits that you can use?

4 MR. SURABIAN: Is it a problem if I use
5 your exhibit Mr. Otten?

6 MR. OTTEN: Well umm seeing that I'm not
7 an expert I don't know if these exhibits meet
8 your standards is that okay.

9 MR. SURABIAN: That is one of the
10 drawings in the plan set that DCPL submitted to
11 DCRA isn't it?

12 MR. OTTEN: Do you have it? I pointed
13 out only because Mr. Nichols may have to leave
14 pretty soon and they are his.

15 MR. SURABIAN: Could you flip the page I
16 want to see what's behind that, okay flip it
17 back. Could you identify that plan?

18 MR. LEGRANT: Okay this is labeled D-1-01
19 demolition at terrace floor, it's called the
20 terrace plan and it basically outlines the lot
21 and the building foot print on the lot.

22 MR. SURABIAN: Is it easier, you have a

1 Platt in your hand, can the Board see that?

2 CHAIRPERSON MOLDENHAUER: While Mr.

3 Nichols is here I think its fine to just use the

4 large version I think for efficiency and

5 convenience of the Board.

6 MR.SURABIAN: Okay, could you indicate

7 where Lamont Street is?

8 MR. LEGRANT: Sure Lamont Street is along

9 here.

10 MR. SURABIAN: And where's 16th Street?

11 MR. LEGRANT: It's along here.

12 MR. SURABIAN: And if you could explain

13 your analysis of what the front is and the rear

14 and the size and how that's determined.

15 MR. LEGRANT: Sure, so in response to the

16 request of designating Lamont Street as the front

17 of the lot being a quarter lot then the crucial

18 part of the analysis is the lot line opposite the

19 front to determine what the rear lot line is, so

20 if this is Lamont I concluded in my letter I

21 think it's point 6 that this line here would be

22 the rear lot line, this in turn then would make

1 this a street side yard, this would be a side lot
2 line and then if there was a side yard applicable
3 it would extend along the side lot line. The
4 rear yard as has been I think noted previously
5 here is measured from the back of the building
6 and this of course would be facing the rear lot
7 line to the rear property line.

8 MR. SURABIAN: And the Appellant has
9 indicated that the rear is which you've described
10 as the side, and could you explain why that's
11 incorrect.

12 MR. LEGRANT: Well because it follows once
13 you designate the front of the lot and the side
14 opposite becomes the rear that drives all the
15 placement of what is deemed side lot line, rear
16 lot line, rear yard resulting with applicable
17 side yard, so once you deem Lamont as the front
18 the side opposite is the rear, rear lot line,
19 then this becomes the rear yard and then although
20 it doesn't show here the addition, any
21 construction that would, additions to the
22 building would have to comply with the yard

1 requirements in the subject Zoning District
2 there's a rear yard requirement of a minimum of
3 15 feet and there is no side yard requirement.

4 MR. SURABIAN: So then an addition could
5 be built into the side yard all the way to the
6 property line is that correct?

7 MR. LEGRANT: That's correct and that's
8 what the library's project entailed is
9 construction to right up against the side lot
10 line.

11 MR. SURABIAN: And you determined, and
12 using the, your determination of which end was
13 opposite how did you reach that, the opposite?

14 MR. LEGRANT: Well the code doesn't give
15 any guidance on this so when looking at a, once
16 you've determined the front you have to look at
17 what would be the rear lot line, the standard
18 uses opposite of that, is it arguable that this
19 line here is opposite this as well as this, I
20 think it's a judgment call and the judgment that
21 I made was that this lot here is in fact opposite
22 the Lamont Street frontage.

1 MR. SURABIAN: If the front was 16th
2 Street, if DCPL chose 16th Street, where would the
3 rear be?

4 MR. LEGRANT: Well then you could look at
5 this line here as being the line opposite that
6 16th Street being the front so as to be a rear lot
7 line here.

8 MR. SURABIAN: And so in your meeting
9 with the attorney for DCPL you explained the
10 effect of which street frontage would result in
11 which rear lot line is that correct?

12 MR. LEGRANT: That's correct during the
13 meeting we discussed the issue obviously of what
14 the designation of the front and the resulting
15 rear would be and then once I made a conclusion
16 and I issued the letter was to document that
17 decision about what in fact the front and the
18 rear would be. And have you as the Zoning
19 Administrator have you applied those regulations
20 similarly, have you made other determinations as
21 to rear and front yards?

22 MR. LEGRANT: Yes I have.

1 MR. SURABIAN: And did you follow the
2 same analysis?

3 MR. LEGRANT: I did.

4 MR. SURABIAN: And are you aware, do you
5 know if DCRA has applied a similar analysis in
6 other cases?

7 MR. LEGRANT: Yes in looking at different
8 development situations, corner lots are fairly
9 common; people come to me with a variety of
10 proposals, commercial and residential to get a
11 determination or designation of the front of the
12 lot and the resulting yard. As I described
13 earlier people have come to me and asked the
14 designation of a front and if it would create a
15 non-conforming condition that would be an issue
16 that would be subject to relief.

17 MR. SURABIAN: And what side, how wide of
18 a rear yard is required in this instance?

19 MR. LEGRANT: Well the rear yard has to
20 run the length of the area along the rear lot
21 line.

22 MR. SURABIAN: And how wide from the

1 building to the lot line does it have to be?

2 MR. LEGRANT: In this particular case the
3 proposed construction or using the building in
4 the proposed construction is a minimum of a 15
5 foot rear yard.

6 MR. SURABIAN: And how did you determine
7 that?

8 MR. LEGRANT: Well the standard set forth
9 in section 404 is 4 inches of building height per
10 foot of the bounding wall and when you have to
11 look at the height of the wall at the rear of the
12 building from grade to the roof to the establish
13 what that height is but in any case a minimum of
14 15 feet.

15 MR. SURABIAN: I'm going to show you
16 another plan and I have copies for the Board
17 maybe their already in the record but I have
18 additional copies. What plan are we looking at?

19 MR. LEGRANT: Okay of the approved
20 building permits that this is sheet A4.03 the
21 rear and side elevations, the top portion of the
22 drawing labeled No. 1 is the rear elevation where

1 it says elevation at rest which shows the rear of
2 the building, its great as well as the mechanical
3 screening on the roof.

4 MR. SURABIAN: So in applying Section
5 404.1 walk us through how you determine the
6 building.

7 MR. LEGRANT: So what one would do is say
8 okay what is the height of the rear of the
9 building in which we would require this rear yard
10 from, we start from grade which is labeled as
11 plus or minus 3 feet, the lowest level is what's
12 called the terrace floor, we measure from the
13 grade so we measure the grade up to the what's
14 labeled as the parapet of that is the area of the
15 screen, screening for the mechanical equipment.

16 MR. SURABIAN: And what is a mechanical
17 screen, can you just describe it.

18 MR. LEGRANT: Under Section 411,
19 mechanical equipment must be screened with a wall
20 that is set back at least a one to one set back.
21 In this case the addition has a mechanical
22 screen and has an angled or sloped screen of sort

1 of a metal mesh for lack of a better word that
2 extends up it's the darker area on this drawing.

3 MR. SURABIAN: And is that included in
4 measuring the building height?

5 MR. LEGRANT: It is not it's measured to
6 the parapet.

7 MR. SURABIAN: And is that from
8 regulation?

9 MR. LEGRANT: Yes.

10 MR. SURABIAN: You indicate that the
11 standard was it 4 inches per vertical foot.

12 MR. LEGRANT: Right so in this case this
13 difference is 37 feet which is I recall applying
14 the math resulted in a yard requirement of
15 approximately 13 feet but at the calculation of
16 the yard is less than 15 you apply the minimum
17 which is 15.

18 MR. SURABIAN: And how much on that plan
19 how much of a rear yard is provided there?

20 MR. LEGRANT: Fifteen feet.

21 MR. SURABIAN: So it is in compliance?

22 MR. LEGRANT: Yes now this particular

1 drawing because this is an elevation doesn't show
2 the yard set back the drawing I had earlier the
3 Platt indicates the rear yard set back.

4 MR. SURABIAN: Could you get the Platt?

5 MR. LEGRANT: This is a copy of the
6 approved Platt part of the building permit it
7 includes the depiction of what I determined to be
8 the rear yard it's dimension 15.0 feet.

9 MR. SURABIAN: Concerning the issue of
10 the courts, if you could hold up that Platt and
11 define, explain for us what part of that lot is a
12 court or if it is one at all.

13 MR. LEGRANT: Okay, with the addition of
14 the concern about the court I went ahead and
15 looked at the Platt and in yellow I indicated
16 what could be deemed a court. The court as shown
17 here is an irregularly shaped court, the court is
18 measured from the edge of the building, the
19 building wall to the property line.

20 DR. EDWARDS: Could you also arrange that
21 occasionally I can see what you're doing?

22 MR. LEGRANT: I apologize, so the yellow

1 area would be my determination of what would be
2 the court.

3 MR. SURABIAN: So it extends from the
4 building what I'll call the northwest property
5 line, is that your understanding?

6 MR. LEGRANT: Yes.

7 MR. SURABIAN: It extends from the end of
8 the building to the property line is that...?

9 MR. LEGRANT: That's correct.

10 MR. SURABIAN: And is that, what is the
11 method that you used to measure the width of
12 that?

13 MR. LEGRANT: Well the definition of
14 minimum court width is set forth in definitions
15 199.1 I can quote the regulation is very specific
16 the definition of court; "width of, the minimum
17 horizontal dimensions substantially pair well
18 with the open end of an open court of the lesser
19 horizontal dimension of a closed court; or in the
20 case of a non-rectangular court the diameter of
21 the largest circle that may be inscribed in a
22 horizontal plane within the court.

1 MR. SURABIAN: And is this a non-
2 rectangular court?

3 MR. LEGRANT: Yes.

4 CHAIRPERSON MOLDENHAUER: Dr. Edwards if
5 you ask something if you could just ask for it on
6 the record, your microphone's not on.

7 DR. EDWARDS: Sorry, I apologize.

8 CHAIRPERSON MOLDENHAUER: Can you repeat
9 what you were asking for?

10 DR. EDWARDS: I would like to see the new
11 drawing made by the Zoning Administrator with his
12 suggestion of what might be marked in yellow
13 because it's hard to see at a distance.

14 MR. SURABIAN: I'd like the Zoning
15 Administrator to keep holding it up for everybody
16 to see.

17 CHAIRPERSON MOLDENHAUER: Okay we'll wait
18 a moment we'll allow Dr. Edwards to review it and
19 then once he's finished reviewing it we'll all go
20 forward. Just so that the record can reflect Mr.
21 Otten is now reviewing it.

22 MR. SURABIAN: And did you have an

1 opportunity to measure that?

2 MR. LEGRANT: Yes with the standard which
3 was noted before that the open court, I should
4 clarify this as an open court, the minimum
5 requirement would be 10 feet but as I've read the
6 definition you apply a method to scribe a circle
7 to determine what that minimum court width is.
8 When I looked at this area and inscribed a circle
9 of approximately 25 feet in width.

10 MR. SURABIAN: And that exceeds the
11 minimum of 10 feet.

12 MR. LEGRANT: It does.

13 MR. SURABIAN: Mr. Otten testified that
14 the horizontal plane means flat land is that
15 found in the regulations?

16 MR. LEGRANT: No.

17 MR. SURABIAN: What is a horizontal
18 plane?

19 MR. LEGRANT: Well a horizontal plane is
20 a plane that could be basically sliced through
21 air at any point of the court in order to
22 determine what like the case at hand to be able

1 to measure the court width. We have many courts
2 that involve areas that are not flat areas, they
3 have stairs, they have slopes, and they have
4 differing grade areas so it's very standard for
5 me in my office to apply a horizontal plane
6 sometimes not at the ground level but at a higher
7 level to take in account varying topography.

8 MR. SURABIAN: So if the topography of the
9 court slopes down that's not relevant to your
10 analysis?

11 MR. LEGRANT: It's not.

12 MR. SURABIAN: And is there any issue of
13 loading was raised earlier is there any
14 requirement for a loading dock or loading
15 facility at this property.

16 MR. LEGRANT: Well the loading
17 requirements set forth in Chapter 22 of the
18 Zoning Regulation 22.01.1 set forth for different
19 uses what a loading requirement would be. It
20 calls out different uses such as office,
21 apartment buildings, but it also has what we call
22 a catch all category of all other uses. Because

1 library is not mentioned specifically in that
2 2201 listing it is put in the all other uses
3 category. There is a loading requirement
4 beginning at buildings of 30,000 square feet or
5 more. The square footage of this building with
6 the addition is approximately 25,000 square feet,
7 therefore since it is below the 30,000 square
8 feet the Zoning Regulations do not require any
9 loading spaces.

10 MR. SURABIAN: Would you require an
11 applicant who did not have to provide a loading
12 space to provide a loading plan?

13 MR. LEGRANT: It's not within my
14 authority to do so.

15 MR. SURABIAN: And in building and adding
16 the addition is DCPL required to obtain a
17 variance or special exception regarding parking?

18 MR. LEGRANT: No.

19 MR. SURABIAN: Does DCPL need to add
20 additional parking in order to accommodate the
21 addition?

22 MR. LEGRANT: No because it's historical

1 landmark the parking requirements are governed by
2 Section 2120 which set forth the parking
3 standards for historical resources.

4 MR. SURABIAN: I'll just note for the
5 record for the Board that "Exhibit B" in the
6 Districts prehearing statement has a portion of
7 the District of Columbia inventory for historic
8 sites. If you're applying 2120.3 does this
9 addition increase the GFA of this building by
10 more than 50%?

11 MR. LEGRANT: No it does not, that is the
12 relevant regulation when you build an addition to
13 historical resource there's a two prong test the
14 first being set forth in 2110.3 that the addition
15 has to increase the floor area by 50% or more and
16 there's a second prong, if you pass the first
17 prong then the second prong is it must generate a
18 parking requirement of 4 or more spaces. In this
19 case the addition increased the floor area by
20 approximately 38% so it did not rise the level of
21 50% size does not pass the first prong of the
22 test, I conclude there's no parking required.

1 MR. SURABIAN: If there was no parking
2 required if you applied 2120.3 and found there
3 was no parking required would you require
4 parking?

5 MR. LEGRANT: No I would not.

6 MR. SURABIAN: Thank you, no more
7 questions.

8 CHAIRPERSON MOLDENHAUER: Before we go to
9 cross examination Mr. Surabian do you have any
10 other witnesses that you're planning on?

11 MR. SURABIAN: Yes I do Jeff Bonvechio
12 from the library.

13 CHAIRPERSON MOLDENHAUER: Cross
14 examination from Dr. Edwards.

15 DR. EDWARDS: Question of the Zoning
16 Administrator, first your testimony was quite
17 impressive, thank you. What happens if there's
18 already parking at the site, they plan to get rid
19 of the current parking does that involve zoning
20 at all?

21 MR. LEGRANT: Well if there was on the
22 site a designated parking then that parking would

1 have to be preserved, in the case before us I
2 know there's an access driveway that leads to a
3 dumpster that I believe is used informally by
4 library personnel for parking but it's not a
5 designated parking lot.

6 DR. EDWARDS: But it would impact the
7 parking requirements and availability around the
8 library if it has been used more than 6 or 10
9 years because then the parking is here as a
10 matter or right, no?

11 MR. LEGRANT: No it would have to be
12 parking that is recognized and sanctioned as
13 designated parking spaces striped meeting
14 certain, meeting the zoning requirements.

15 DR. EDWARDS: Is there is handicapped
16 parking?

17 MR. LEGRANT: Well, the District does
18 have handicapped parking requirements that are
19 administered not through the Zoning Regulations
20 but through the building code and so at the time
21 that any building permit application is referred
22 to DCRA for review and if the with the zoning

1 analysis there has to be a building code analysis
2 and an accessory or ADA parking analysis that
3 occurs as part of the building code review not
4 zoning.

5 DR. EDWARDS: Has that been done in this
6 case to your knowledge:

7 MR. LEGRANT: To my knowledge DCRA issued
8 a building permit and it was reviewed by the
9 structural discipline by DCRA I assume it was
10 done.

11 DR. EDWARDS: Okay, but you don't know?

12 MR. LEGRANT: I don't know.

13 DR. EDWARDS: And certainly it's outside
14 the scope of this Board?

15 MR. LEGRANT: That's true.

16 DR. EDWARDS: I asked you this question
17 before, how do you interpret the requirements
18 under the DC Charter and the DC Municipal Code to
19 on building permits especially those that have
20 long term significance and planning, to notify
21 the relevant ANC's?

22 MR. LEGRANT: Well the Zoning Regulations

1 do not require my office to inform ANCs or any
2 other party of matter of right decisions. My
3 office makes many of hundreds if not thousands of
4 zoning decisions a year on building permits and
5 certificates of occupancy. The Zoning
6 Regulations do specify that upon issuance of
7 building permits that ANCs get notified of those
8 building permit issuance.

9 DR. EDWARDS: How about when there's a
10 judgment call?

11 MR. LEGRANT: I make judgment calls
12 everyday, there's no requirement in the Zoning
13 Regulations for me to give notice to any party of
14 those decisions.

15 DR. EDWARDS: When I discussed this with
16 Nick Majette the New Director, he said the issue
17 gets down to as he was advised by his attorney's
18 that whether there was discretion so if things
19 were clear and as a matter of right then his
20 attorney's tell him, he is also an attorney, that
21 there is no need to specifically notify ANCs but
22 if there is a matter of discretion, (inaudible),

1 well then they are required, and the law states
2 that each DC Body must give notice to the ANC.

3 MR. LEGRANT: Are you asking me a
4 question?

5 DR. EDWARDS: Yes I am, how do you when
6 you have judgment calls that are involved, how do
7 you then escape, and I certainly understand the
8 argument of the matter of right, because it's
9 straight forward, but when there are judgment
10 calls then I got the impression from Nick Majette
11 that you are required to notify the ANCs, what am
12 I missing in this?

13 MR. LEGRANT: Well, I'll give you my view
14 of discretion. The Board of Zoning Adjustments
15 certainly exercise discretion when before them is
16 an application for a special exception or a
17 variance. My role as Zoning Administrator is to
18 administer, interpret and enforce the Zoning
19 Regulations, I administer Zoning Regulations for
20 building permits, certificate of occupancy for
21 matters of right, I do make judgment calls, I do
22 make determinations but those do not rise to the

1 level of what I consider discretion.

2 DR. EDWARDS: So then there is some
3 distance between a judgment call, there is a
4 matter of right that's clear, there's a judgment
5 call, there is discretion and only when it
6 reaches discretion, help me understand please,
7 would you explain the difference between judgment
8 call and discretion.

9 MR. SURABIAN: I must object to the, Dr.
10 Edwards is misapplying the law that is not part
11 of the Zoning Regulations it's a statute
12 concerning what notifications must be given to
13 the ANC, I can talk about that law and I am very
14 well aware of it but it's not relevant to this
15 case, the fact that what he does on a daily basis
16 that DCRA is required by statute when an
17 application is received, give notice, when a
18 permits issued given notice, but his daily
19 application of what he does, does not require
20 dissemination to the ANCs, that being said when
21 he does write a letter he actually does publish
22 it on line, at this point Dr. Edwards

1 (inaudible), but what he's getting into is
2 debating the fine points of the statute that he
3 doesn't understand and the Zoning Administrator
4 frankly I don't expect to be well versed in
5 either of these, it's a different realm entirely.

6 DR. EDWARDS: May I respond?

7 CHAIRPERSON MOLDENHAUER: Yes.

8 DR. EDWARDS: It is a motion explicitly
9 stated in the ANC resolution that the Zoning
10 Administrator should administer all of the Zoning
11 Regulations including the intent because those
12 are stated in the law and issue of that involve
13 public safety and property preservation and
14 others, those must be included and it is no
15 excuse to take a bureaucratic, a petty
16 bureaucratic mindset and say just because I've
17 looked at a few simple items that I can ignore my
18 duty and responsibility and my sworn oath by
19 honor to uphold the laws and this is part of the
20 Zoning Law, these statements that, that's part of
21 the intent and it cannot be ignored, that's the
22 ANC motion in this and here we come down to it

1 because otherwise a loophole could be used to let
2 a battalion through or in this case a usage that
3 could have impact of hundreds of peoples death.
4 This is not a trivial matter to be handled and is
5 part of our argument that this gets at the core
6 of the situation that what appears to be a
7 triviality could in fact be of great significance
8 and he has responsibility, not him personally but
9 the office has a responsibility to apply all
10 elements of the Zoning Code.

11 MR. SURABIAN: Let me get to the point, if
12 the argument is that the Zoning Administrator
13 erred by failing to give notice that is beyond
14 the Board's jurisdiction and should not be
15 permitted as questions.

16 DR. EDARDS: I'm trying to respond
17 briefly. The question is that the Board has the
18 right and duty to overturn this if he did not
19 consider the issues about health and safety and
20 order and so on.

21 CHAIRPERSON MOLDENHAUER: But right now
22 you're not asking about health and safety, you're

1 asking him about the ANC notice and notice
2 requirements. We've already ruled earlier that
3 the ANC notice requirement are not something that
4 we have jurisdiction over, that was the line of
5 questioning, to me your point is unrelated to the
6 question that you've been going down with the
7 Zoning Administrator. Your point is talking
8 about health and safety while the questions that
9 you had address the Zoning Administrator had to
10 do with the ANC notifications, and Nick Majette's
11 perspective on those so I am going to indicate
12 that we will not go through any additional
13 questions on the ANC issue's if you would like to
14 ask other question then I'm going to go back to
15 you for other questions but I will agree with the
16 objection in regards to that this is beyond the
17 scope of our jurisdiction.

18 DR. EDWARDS: That's not what I was
19 getting at because I perfectly understand your
20 ruling on that, what I'm trying to establish here
21 is that the need for the Zoning, the application
22 of the Zoning Law.

1 CHAIRPERSON MOLDENHAUER: If the object
2 of what you're trying to obtain is something
3 else, you need to ask a better question, so I'm
4 going to go back to you, your still under cross
5 examination but you need to ask clear questions
6 that are trying to get to what the objective is
7 that you're identifying.

8 DR. EDWARDS: Alright, thank you, I think
9 you have a fair response. Do you consider the
10 larger issues that are included in the opening of
11 the Zoning Code when you apply as Zoning
12 Administrator your judgments?

13 MR. LEGRANT: Well I guess I'll respond t
14 his way. The Zoning Regulations set forth
15 certain permitted uses and standards, my
16 obligation as Zoning Administrator is to apply
17 those specified standards set forth in the Zoning
18 Regulations that are written by the Zoning
19 Commission that guide me as to what I consider in
20 reviewing an application.

21 DR. EDWARDS: So does that mean if you
22 had knowledge or there was a possibility that by

1 applying things in a very small judgment
2 perspective that some very large consequence
3 could occur that is covered by the introduction
4 to the Zoning Regulations that you would discount
5 it.

6 MR. LEGRANT: I don't understand what
7 your question means could you rephrase it?

8 DR. EDWARDS: Alright, I'm saying do you
9 feel that you do not have any responsibility to
10 consider the large consequences of a Zoning
11 Decision given the statement of intent of how the
12 code is to be applied, to protect safety and the
13 other issues.

14 MR. LEGRANT: Well I guess in total the
15 Zoning Regulations form the guidance as to that
16 speak to the general purposes of the Zoning
17 Regulations, Chapter One has the general purpose
18 of the Zoning Regulations. The Zoning Commission
19 in turn in specifying the particular regulations
20 describe list out and make specific how to embody
21 those general purposes in specific cases, those
22 standards that are set forth in the permitted

1 uses and the development standards for height
2 setbacks, lot occupancy, parking so forth.

3 DR. EDWARDS: Then why, so I gather that
4 your position is that if you pay attention to all
5 the details then the larger issues take care of
6 themselves?

7 MR. LEGRANT: I would characterize it
8 that way, I'm sorry.

9 DR. EDWARDS: How would you characterize
10 it then?

11 MR. LEGRANT: I guess I would
12 characterize it that I look at the Zoning
13 Regulations as set forth and apply them to the
14 best of my ability as specified for those
15 particular requirements.

16 DR. EDWARDS: Madam Chair let me just say
17 that I am unprepared to get the case law where
18 the courts continually have ruled that the
19 prologs and statement of purposes of regulations
20 also must be addressed, I believe you said there
21 would be two weeks to turn in that...

22 CHAIRPERSON MOLDENHAUER: I have not made

1 a determination as to whether we believe there
2 will be any need on the Board's part for
3 additional information, unless we leave the
4 record open the record will be concluded at the
5 end of this hearing so we will make that decision
6 at the end of this case.

7 DR. EDWARDS: I believe this to be a very
8 significant issue and that there is case law on
9 this.

10 CHAIRPERSON MOLDENHAUER: I hear your
11 point; do you have any other questions?

12 DR. EDWARDS: No.

13 CHAIRPERSON MOLDENHAUER: Mr. Otten do
14 you have any cross examination questions? Can I
15 ask you how long you think you'll be?

16 MR. OTTEN: I guess it depends on the
17 answers because I have some precise questions,
18 umm 7 minutes.

19 CHAIRPERSON MOLDENHAUER: Okay, I'm
20 trying to get a gage thank you.

21 MR. OTTEN: Thank you for being here
22 today Mr. LeGrant. Just going off what you said

1 today I want to focus on that. The courts real
2 quick, and I'm not a Zoning expert, that's why
3 you're here. To understand the wall that kind of
4 borders the side of the court, we have the
5 library building wall and then what would define
6 the wall on the other side near the ramp, would
7 it be where it begins to slope up or at a certain
8 height?

9 MR. LEGRANT: Well my understanding of
10 what's happening on the ground it his court,
11 first of all you measure the width of the court
12 as I've stated from the building wall to the
13 property line, within that area I know there's
14 paved walkways, there's seating areas, there's a
15 grassy area or a grass slope that slopes up to
16 the access ramp which in turn also rises so there
17 is, I believe there's maybe a wall at the edge of
18 the access ramp adjacent to the property line but
19 there is no wall in-between that access ramp and
20 the building wall.

21 MR. OTTEN: Okay the definition of the
22 court width, you mentioned it's the distance from

1 one wall to the property line?

2 MR. LEGRANT: Well I'll paraphrase it
3 again, the minimum horizontal, for court width,
4 the minimum horizontal dimensions substantially
5 parallel to an end of an open court or lesser
6 horizontal dimension of a closed court or in the
7 case of a non-rectangular court the diameter of
8 the largest circle that may be inscribed in the
9 horizontal plane within the court.

10 MR. OTTEN: And earlier you mentioned the
11 horizontal plane can cut through as it slopes up,
12 is that what you were saying. I just wanted to
13 get clarity on that, I leave it up to the Board
14 to really look into that. There is confusion and
15 the only reason I brought it into my appeal is 1-
16 C brought it up in their concerns so I would urge
17 the Board to determine that. Parking and
18 loading, there will be patrons parking to go into
19 the library, correct?

20 MR. LEGRANT: I have no doubt.

21 MR. OTTEN: And they'll be loading up
22 books and materials into the library, correct?

1 MR. LEGRANT: I imagine so, yet.

2 MR. OTTEN: So pursuant to DCMR 11 3202,
3 regarding building permits, is it your
4 understanding that each application for a
5 building permit shall be accompanied by a parking
6 and loading plans and the basis for computation
7 of those plans?

8 MR. LEGRANT: If the parking and loading
9 requirements apply.

10 MR. OTTEN: If the requirements apply?

11 MR. LEGRANT: Yes.

12 MR. OTTEN: So because the requirements
13 don't apply in this situation because it's of
14 historic nature and stuff like this then there's
15 no reason to plan for parking of patrons of
16 loading of materials for the building?

17 MR. LEGRANT: Well let me try to explain.
18 When, if the Zoning Regulations require parking
19 spaces or loading spaces then we do need a
20 parking or loading plan that clearly lays out the
21 layout of those, how they're paved, the minimum
22 dimensions, how they're striped and marked. If

1 as in the case at hand there is not parking
2 spaces required or any loading spaces required,
3 there's no need to require a parking or loading
4 plan because there's not going to be any spaces
5 provided for, and furthermore I have no authority
6 to say well I know the Zoning Regulations don't
7 require parking or loading but I want you to
8 provide it anyway, I don't have that authority.

9 MR. OTTEN: How does the applicant, I
10 guess, express how they're going to deal with the
11 flow of traffic and people coming to the library
12 and materials getting into the library because if
13 I'm not mistaken at one point, I mean the loading
14 dock right now or the area where loading
15 materials happens is on the northwest side of the
16 building, that's available to them right now.
17 That is being eliminated by the ramp and this
18 courtyard. Do they have to explain how loading
19 of the materials and things are going to happen
20 now, going into the library?

21 MR. LEGRANT: Nope there is no zoning
22 requirement to do so.

1 MR. OTTEN: Okay because I'm reading, and
2 again this is something for the Board to look
3 out, but it does say shall be accompanied, it's
4 pretty specific in terms of shall be accompanied
5 in terms of the plan and the basis for that plan,
6 so that's something for the Board to look at.
7 The most important thing is the rear yards,
8 because that's why here today basically, and
9 that's why you're here, your determination of the
10 rear yard. In terms of the required setbacks in
11 your opinion as our zoning expert here in D.C.
12 why is it important to this Board and to the
13 general citizens of D.C. why is the rear yard
14 setbacks important?

15 MR. LEGRANT: Well any yard that's
16 required, ultimately required by the Zoning
17 Regulations is important historically for the
18 provision of light and air, so that is the
19 standing reason why the yard setbacks.

20 MR. OTTEN: And overcrowding would that
21 be, is that part of light and air, overcrowding
22 of lots?

1 MR. LEGRANT: Well I believe in certain
2 zones that where there are requirements for yard
3 setbacks that it also decreases the amount of
4 building bulk and creates the spacing between
5 buildings.

6 MR. OTTEN: Thank you for that, and this
7 image really does very well define the building
8 bulk, I guess, I wanted to ask in your letter of
9 determination, point number eight. You say that
10 the proposed rear yard will ensure that adequate
11 light and air are provided to the adjacent
12 apartment house at 3150 16th Street, that's the
13 Park Marcone, which has windows facing the
14 proposed rear yard. Are you aware if this
15 apartment building which is also adjacent to the
16 library lot does this have rear windows facing
17 this building now, the current real lot?

18 MR. LEGRANT: That the adjacent building
19 called the Mt. Pleasant?

20 MR. OTTEN: This one here is lot on page
21 22 of the exhibit its lot 200.

22 MR. LEGRANT: So your question is am I

1 aware of the windows on that buildings?

2 MR. OTTEN: Yeah are there windows facing
3 the current rear yard?

4 MR. LEGRANT: I am not aware of the
5 fenestrations of that adjacent building, no I am
6 not.

7 MR. OTTEN: There are indeed, this is a
8 four story building here with windows facing the
9 lot. Also in lot 634 also kind of behind this,
10 it would be this building right here, are you
11 aware if this building has windows facing the
12 current rear lot?

13 MR. LEGRANT: No I am not aware of the
14 windows or fenestrations of that building.

15 MR. OTTEN: Okay because I noticed that,
16 in your letter in that point you highlight
17 specifically that this particular plan provides
18 adequate air and light for the Park Marcone but
19 didn't mention these two buildings, I wanted to
20 get clarity as to why?

21 MR. LEGRANT: Well simply that once there
22 is a rear yard requirement and once I deem what

1 the rear yard would be I was, I guess elaborating
2 the point that, that particular rear yard would
3 be consistent of the requirements for yard
4 setbacks themselves will provide light and air
5 and in this case to the adjacent property, I was
6 simply trying to state that.

7 MR. OTTEN: Okay, umm do you know the
8 distance between the Park Marcone I guess, here
9 and here and this building?

10 MR. LEGRANT: I do not.

11 MR. OTTEN: Okay, it should be on that
12 Platt, page 34, so the Park Marcone, this part of
13 the building right here will be 15 feet away from
14 the library wall as I understand it or for that
15 setback.

16 MR. LEGRANT: Are you asking me or
17 telling me?

18 MR. OTTEN: I'm asking you, based on that
19 Platt that you showed earlier.

20 MR. LEGRANT: Well when I look at the
21 Platt and I look at 3150 16th Street which is
22 labeled the Marcone Park II, yes that building

1 goes to the property line and there would
2 actually be a greater setback than 15 feet
3 because the building jogs in an additional 5 or 6
4 feet so I guess it would be about 20 feet between
5 the buildings there.

6 MR. OTTEN: Less than 20 feet and in your
7 interpretation that's providing air and light,
8 adequate air and light?

9 MR. LEGRANT: My requirement is to make
10 sure that the rear yard set back is met.

11 MR. OTTEN: Okay well thank you, I guess
12 the follow up on that, because the reason why I
13 wanted to ask that is these people have expressed
14 that this wall here now, they're going to be
15 looking out on that its going to be less than 20
16 feet from their building. You said that..

17 MR. SURABIAN: I just want to clarify a
18 point, is the Marccone Apartment is that wall
19 facing the existing library building, and is that
20 what you're referring to. That wall of the
21 Marccone is that facing the existing building and
22 not the addition?

1 CHAIRPERSON MOLDENHAUER: I think the
2 Board understands and I think the Board can make
3 note of that.

4 MR. OTTEN: Say that again, this wall
5 here?

6 MR. SURABIAN: In that diagram, so if you
7 could just read off the numbers so the Board
8 knows for the record.

9 MR. OTTEN: 037, I don't know what that
10 is on my exhibit.

11 MR. SURABIAN: So the Marcone is on the
12 right hand side and then across from it is the
13 existing library isn't it?

14 MR. OTTEN: This is the point I was
15 making just to see how close this was and that it
16 wasn't mentioned in your letter.

17 CHAIRPERSON MOLDENHAUER: Do you have any
18 more questions Mr. Otten?

19 MR. OTTEN: I do, this is the key, and
20 these are the key questions regarding the rear
21 yards. I wanted to bring these exhibits up
22 because these are the critical questions I

1 probably should have got to right away, but. You
2 said it was a judgment call between two potential
3 rear lot lines to chose, you said the applicant
4 has the right because it's a corner lot, correct
5 to choose what's their street frontage?

6 MR. LEGRANT: That's correct.

7 MR. OTTEN: And so then it was up to you
8 to decide between two potential lot lines what
9 would be the rear lot line?

10 MR. LEGRANT: That's true.

11 MR. OTTEN: So what factors lead you to
12 judge that this was the rear lot line?

13 MR. LEGRANT: Well the key determinate is
14 whether in designating a rear lot line as I
15 testified earlier if it would create a non-
16 conforming condition, in either case using either
17 of those property lines it did not create a non-
18 conforming condition so in the end I looked at
19 that whole situation and I felt that would be
20 deemed a rear lot line as opposite the front, the
21 frontage of the lot.

22 MR. OTTEN: Okay, so, okay, you also said

1 that since this is your judgment call which of
2 the two lot lines it was going to be in terms of
3 the rear lot line, correct me if I'm wrong it's
4 not the applicants choice to chose the rear lot
5 line?

6 MR. LEGRANT: No but what, in this
7 particular situation the lot as we all know is
8 not a rectangular or square lot, it's more like a
9 five sided lot, so it does fall to me to
10 ultimately make a determination once the front is
11 deemed as to what is the rear lot line.

12 MR. OTTEN: So DCPL chose Lamont Street
13 as the front lotage line and then you chose this
14 as the rear lot line?

15 MR. LEGRANT: The question I have to
16 follow that up, using that newly designated
17 street frontage you chose the, your saying that
18 this street frontage determines this rear lot
19 line? I'd like to ask you where does it in the
20 definition of rear yard does it mention street
21 frontage in determining the rear yard?

22 MR. LEGRANT: No.

1 MR. OTTEN: What's the definition of rear
2 yard, do you happen to know off hand?

3 MR. LEGRANT: Let me read it, the
4 definition is as follows; a yard, rear a yard
5 between the rear line of a building or other
6 structure with the rear lot line, except as
7 provided elsewhere in this title. The rear yard
8 shall be for the full width of the lot and shall
9 be unoccupied except as specifically authorized
10 in this title.

11 MR. OTTEN: So it doesn't mention
12 anywhere in that definition about the street
13 frontage whatever lot frontage is chosen
14 determines the rear lot line?

15 MR. LEGRANT: That's true.

16 MR. OTTEN: Okay, why wouldn't this be
17 the rear lot line?

18 MR. LEGRANT: Well as I think I noted in
19 my letter of March of 2009, I made a finding as
20 to what was the, that the rear lot line was that
21 line opposite the front.

22 MR. OTTEN: So this is the front line and

1 you're saying that this is opposite this front
2 line.

3 MR. LEGRANT: That's correct.

4 MR. OTTEN: Okay no more questions.

5 CHAIRPERSON MOLDENHAUER: Mr. Surabian
6 any redirect?

7 MR. SURABIAN: No redirect.

8 CHAIRPERSON MOLDENHAUER: Do Board
9 Members have any questions for Mr. LeGrant?

10 MR. TURNBULL: Yes Madam Chair I just
11 have one I want to get back to the front and the
12 rear yard it's sort of counter intuitive to the
13 way my mind is looking at this. We basically
14 have, I take the bump off the building I've got a
15 squinched octagon, it's got eight sides, it's
16 kind of funny its like two parallelograms thrown
17 together, but if I look at Lamont I think when
18 you said if it was 16th you would go back straight
19 to what you think is the rear of the building but
20 if this is a symmetrical building around a
21 central access Lamont would be the same thing, if
22 you go perpendicular back from the Lamont face

1 wouldn't that be the rear and you go to that rear
2 building line, I mean that's just intuitively
3 that's what I want to do, I want to draw a line
4 that's parallel with the side and goes straight
5 back and then hit what is a parallel wall with
6 the Lamont Front, I mean intuitive that's what I
7 want to say you do but you sort of make a jog,
8 you can make a straight line but it's not quite
9 straight, I mean it does take a jog, make a
10 little dog leg, and I'm just confused as to how
11 you, I mean intuitively I want to go straight
12 back and am I not looking at that right or is
13 that...

14 MR. LEGRANT: Well I can say what I
15 looked at once we determined the front what line
16 made the most sense to me as being the opposite
17 of that, you could probably conclude analysis to
18 go the other way but if you look at the opposite
19 situation where 16th has a line that is parallel
20 and then if you switch the frontages to Lamont my
21 determination was well then you would also switch
22 what line would be the rear as well, that was my

1 analysis.

2 MR. TURNBULL: I guess if the children's
3 entrance was the front of the building I could
4 make more of a case for going straight back and
5 hitting that other side, I'm just, I'm a little
6 bit uneasy on how we look at that, I'm mulling
7 that over and how you actually, how the parallel
8 lines work out and how you can look at that. If
9 there has been an entrance at the other side, I
10 mean you've got a building right next to it, the
11 Marcone Park which is parallel to one line and
12 which has been intuitively always been seen as a
13 side yard and I'm struggling with the argument
14 that if you don't go, that you could make that
15 much of an angle diversion on Lamont and not do
16 the line straight back and say that's the rear of
17 the building. I guess I'm struggling with the
18 mechanics of that right now. I'll look to my
19 other Board Members to; if they have any follow
20 up on that or...

21 MS. SORG: I have one follow up that in
22 my mind might help me and the question that I've

1 been thinking about in your testimony is does
2 building orientation impact or how does it impact
3 your determination?

4 MR. LEGRANT: It did not impact my
5 determination here as I noted here if a building
6 is situated as such that a change in the front
7 would create non-conforming conditions in those
8 situations would be relevant to the analysis.

9 CHAIRPERSON MOLDENHAUER: I've got a
10 question, I kind of did my own little diagram
11 back here and based on your assessment you said
12 that you really had the choice to chose that
13 either 16th Street and the side where the sides
14 thus making Lamont and the prior existing the
15 rear, or doing it as you did identifying this
16 section as the rear then having the longer side
17 being the side and then the side on 16th Street.
18 What made you go with and I think from my
19 understanding of the Zoning Regs you have the
20 deference to make these choices, but my question
21 is looking at your methodology and understanding
22 your methodology because you said that you looked

1 at it and you said well I could chose one as the
2 opposite side or one as the opposite side, my
3 question is what made you chose the opposite side
4 and identifying that as the rear a side that had
5 not historically been considered the rear?

6 MR. LEGRANT: Well two points when I
7 considered this and I did not take this
8 consideration lightly because I know that in the
9 absence of a side yard requirement that a
10 building addition would go to the site property
11 line there is no side yard setback requirement.
12 So this building would become brought out to the
13 side lot and so you have adjacent lots with
14 residential uses that would be, one of those
15 properties or adjacent properties would be
16 impacted by the addition, this also frankly was
17 the library's plan to try to maximize the size of
18 the area for their addition. The area that
19 would, that ultimately was proposed and improved
20 by my office to build the line gave an area on
21 which the addition could be better accommodated.
22 The other aspect was that when you look at the

1 lot width you have an irregularly shaped lot, we
2 have a methodology to use a 10 foot interval
3 method that made more sense to start across
4 Lamont or start at the beginning at the top of
5 the lot as you go back to where I ultimately
6 designate as the rear lot line for the lot for
7 doing the 10 foot interval method for measuring
8 the lot width.

9 MR. SURABIAN: I think it would be
10 impossible if this was the rear yard I don't see
11 how you could measure the lot width using this as
12 the front you'd come up with some really strange,
13 you'd start here and come up with some really
14 strange, it wouldn't be going to the rear of the
15 property.

16 MR. LEGRANT: Yeah, using the 10 foot
17 interval method it would be difficult to given
18 the lot shape to put those slices the other way
19 to come up with a determination of the average
20 lot based on the 10 foot interval method.

21 MR. SURABIAN: Before the addition this
22 would, correct me, this was, before the addition

1 this would be part of this yard it would be
2 connected right?

3 MR. LEGRANT: Right.

4 MR. SURABIAN: So because without this
5 canopy here that's what makes it a court rather
6 than a part of the yard, so if 16th Street was the
7 front this would be the rear, and this would also
8 be the rear, it would be all the rear yard here.

9 But if we're using Lamont Street as the front
10 then, and you're going to use this as the rear,
11 the rear and the front would be end up connecting
12 here and it just doesn't in that sense it
13 doesn't, it doesn't make sense that way. You
14 know and it's all a result of the fact that you
15 have an odd shape lot, so I don't think there's
16 a, you know it's not going to be perfect, it's
17 not going to be, if it was a rectangle, if we
18 eliminated this and we brought Lamont Street down
19 and make a perfect rectangle then this clearly
20 would be the rear but it's not shaped that way?

21 CHAIRPERSON MOLDENHAUER: Do Board
22 Members have any other questions for Mr. LeGrant?

1 Mr. Surabian it's back to you then.

2 MR. SURABIAN: I just have about five
3 questions for the next witness.

4 CHAIRPERSON MOLDENHAUER: And you feel
5 that's its necessary to have Mr. Bonvechio
6 testify?

7 MR. SURABIAN: Yes especially on one
8 point, very quickly. Please introduce yourself.

9 MR.BONVECHIO: Jeff Bonvechio, Director of
10 the D.C. Public Library Capital Construction
11 Office.

12 MR. SURABIAN: Is there currently a
13 loading dock on the property?

14 MR. BONEVECHIO: There is not.

15 MR. SURABIAN: Are there any stripes,
16 legal parking spaces on the property?

17 MR. BONEVECHIO: There are no striped
18 legal parking spaces on the property.

19 MR. SURABIAN: Was the area, the proposed
20 access ramp on the north side of the property is
21 that on grade?

22 MR. BONEVECHIO: No it's not on grade it

1 starts at grade and then rises up to the main
2 level of the library.

3 MR. SURABIAN: Is that, the area in the
4 court is the topography of that area sloped?

5 MR. BONEVECHIO: Yes it is sloped and
6 landscaped.

7 MR. SURABIAN: When I use the phrase on
8 grade, is the ramp elevated off the natural
9 slope?

10 MR. BONEVECHIO: Yes it is.

11 MR. SURABIAN: How much?

12 MR. BONEVICHIO: The ramp travels from
13 street grade up 7 feet to the first floor.

14 MR. SURABIAN: And is that, was the plan
15 for the addition of the library reviewed for fire
16 safety?

17 MR. BONEVECHIO: Yes the fire marshall
18 and the former fire chief reviewed the plans on
19 several occasions.

20 MR. SURABIAN: Were they uncomfortable
21 with the plans?

22 MR. BONEVECHIO: No they did not indicate

1 any sort of discomfort with the plans.

2 MR. SURABIAN: Thank you no further
3 questions.

4 CHAIRPERSON MOLDENHAUER: Dr. Edwards.

5 DR. EDWARDS: I thank the patience of the
6 Board so I'll try to keep it very short. This is
7 not a private building and should not be treated
8 as one.

9 CHAIRPERSON MOLDENHAUER: If you're going
10 to keep it short let's ask questions and not make
11 statements.

12 DR. EDWARDS: Oh I thought I was going
13 into closing.

14 CHAIRPERSON MOLDENHAUER: No if you have
15 questions for Mr. Bonvechio, cross examination
16 questions.

17 DR. EDWARDS: Sorry I misunderstood, I do
18 not.

19 CHAIRPERSON MOLDENHAUER: Mr. Otten do
20 you have cross examination questions?

21 MR. OTTEN: Real quick, thank you Chair.
22 Mr. Bonvechio were you aware of the overwhelming

1 community opposition to these plans?

2 MR. BONEVECHIO: Through the 15 community
3 meetings we had we heard both opposition and
4 support for the library.

5 MR. OTTEN: And those 15 community
6 meetings, of those how many did DCPL host?

7 MR. BONEVECHIO: We hosted 6 of those
8 meetings.

9 MR. OTTEN: Six of them, one of those
10 meetings October 22, 2008, according to the notes
11 it's on page 63 of my exhibit, this when you were
12 showing this expansion scheme with the expansion
13 on the side of the building and the side yard.
14 Do you recall what the concerns were raised about
15 this expansion on the side yard?

16 MR. BONEVECHIO: If my memory's is
17 correct I believe the residents adjacent to that
18 were concerned in the building that kind of
19 encroaches on our property where your index
20 finger is.

21 MR. OTTEN: So the residents next to this
22 expansion expressed according to the DCPL's

1 public notes impact on air and light, impact on
2 property values, access to fire escape routes, IS
3 that correct?

4 MR. BONEVECHIO: Yes as well as there was
5 also Historic Mt. Pleasant as well as the CFA and
6 the Historic Preservation Office were also not in
7 favor of that design.

8 CHAIRPERSON MOLDENHAUER: Mr. Otten I'm
9 just going to interrupt here for purposes of
10 efficiency. This is beyond the scope of what was
11 asked initially on direct and I don't see how
12 it's going to the elements that are actually on
13 the appeal so if you can focus you're questioning
14 and I'll...

15 MR. OTTEN: The relevancy of that was at
16 one point they had another expansion scheme that
17 encroached on air and light, the residents now in
18 the back have expressed the same concerns and yet
19 they seem to be wanting to move forward with it,
20 I just wanted to show the Board that they
21 responded at one point and now they haven't
22 responded in this case and there's concerns about

1 that, thank you.

2 CHAIRPERSON MOLDENHAUER: Do you have any
3 other questions Mr. Otten?

4 MR. OTTEN: That's it.

5 MR. SURABIAN: I also have the two
6 exhibits that were reference during my
7 presentation I have the large version of what I
8 gave the Board in case you're interested in
9 having it?

10 CHAIRPERSON MOLDENHAUER: I think we've
11 seen all the documents we're fine with the size
12 and the versions that we have.

13 MR. SURABIAN: And then there's the
14 version of the Platt and that contains the Zoning
15 Administrators notes for the purpose of the
16 transcript if that would be...

17 CHAIRPERSON MOLDENHAUER: Yes I think you
18 could provide that to Mr. Moy that would be
19 helpful a part of the record. Do you have any
20 closing remarks Mr. Surabian?

21 MR. SURABIAN: Just briefly I'll
22 summarize the points that were hit. I think we

1 had four issues before us today. We had the
2 loading area which I think we established is
3 inapplicable here as the building and the total
4 size will be less than 30,000 square feet. There
5 was the court which I think the Zoning
6 Administrator testified is approximately over 25
7 feet it is not less than 10 feet which is the
8 requirement. Regarding the parking the
9 building's an historic resource no additional
10 parking was required as a result of the addition.
11 Then with regards to the rear yard we've heard a
12 lot of testimony on this. The Zoning
13 Administrator gave his explanation of how he came
14 to that conclusion I think it's a reasonable one,
15 I think that the Board I think in fitting with
16 prior precedent should defer to the Zoning
17 Administrator's interpretation where they are
18 reasonable and consistent with the regulations
19 and I think in this case that's what was
20 appropriate and that's what was done. The result
21 rear yard is 15 feet at the least and extends
22 even further than that, that's exactly what the

1 regulations require so it's in compliance. In
2 summary it's a matter of right project and the
3 opposition is really focused on folks that are
4 dissatisfied with the design and want a different
5 design but that's not what this case is about
6 it's about the Zoning Regulations and so their
7 attempt to find flaws in the, to change the
8 design as a result of what they believe by
9 identifying errors in the Zoning Regulations they
10 just completely failed so with that I'll rest.

11 CHAIRPERSON MOLDENHAUER: Thank you, at
12 this point we'll turn back to Dr. Edwards for
13 your closing remarks.

14 DR. EDWARDS: Thank you, our position is
15 that the determination of the Zoning
16 Administrator was not a matter of right it was
17 not cut and dried but as he himself said it was a
18 matter of judgment and when things are a matter
19 of judgment well then larger issues can be
20 brought in to rationally set a framework of what
21 is important in serving the public wheel. This
22 is not a private building so other regulations

1 and other issues do need consideration, it is the
2 only library serving Mt. Pleasant which has a
3 population including workers of about 120,000
4 people, and it is the main historic site in Ward
5 One. It seems to me that the common sense as
6 well as a check list of other issues suggests
7 that the building has two fronts. It is designed
8 so that you enter it and at an angle that's seen
9 by the main stairs and thus it is only reasonable
10 that it should have two rear lot lines and the
11 determination of the rear lot lines is not set by
12 what you consider to be the front, it's true but
13 by the shape of the building, there is adequate
14 discussion about that, I think in the
15 regulations, as informed by Chris Otten. So we
16 asked the Board to use it's judgment to designate
17 the rear lot line so the building as being those
18 opposite of the front, the big monumental front
19 that was one of the hallmarks of the whole
20 design. The reason for the check list is that we
21 want to have harmonization of the law, of other
22 laws not just Zoning Laws which may be entered

1 when there's a toss up. The ADA wall and other
2 issues really recognize that it's the front and
3 you don't want people to be forced around to what
4 people think is the rear. There has been long
5 public engagement on this and it is clear that
6 the public has assumed that there is this front
7 and there is the rear and when you need for
8 various reasons. We ask you to overrule the
9 Zoning Administrator because he applied judgment
10 and this Body at least can respect the intents of
11 the Zoning Code and there are huge issues
12 involving potentially many 10's or 100,000 people
13 who would have to be inconvenienced by the way
14 the new design is set up based upon a shallow
15 understanding and analysis of the situation, and
16 perhaps a thousand people that are in danger for
17 fire safety and plus to recognize that the three
18 ANC's nearby have protested this as well as rare
19 unanimity of the people around Mt. Pleasant
20 because they recognize the huge potential impact
21 and danger and pain of the people that are
22 involved. Giving the intent within the Zoning

1 Laws to consider these other facts we ask that
2 you do so and tilt the balance to one that makes
3 sense and reduces the threats to the safety and
4 property and the users of this glorious public
5 building in the District of Columbia, thank you.

6 CHAIRPERSON MOLDENHAUER: Okay, thank you
7 at this point then we conclude the hearing.

8 MR. OTTEN: Don't I get a conclusion as
9 an intervener?

10 CHAIRPERSON MOLDENHAUER: No you don't.

11 MR. OTTEN: That's what my council is
12 telling me I should get a conclusion.

13 CHAIRPERSON MOLDENHAUER: I'll give you
14 about the same time as Mr. Edwards.

15 MR. OTTEN: I need less, we heard tonight
16 that the building orientation did not impact the
17 ZA's determination on this hence the grand
18 staircase at the front since 1925, that's the
19 front of the building, this is the rear of the
20 building and the zoning definition is black and
21 white, the yard between the rear line of the
22 building and the rear lot line which is what it

1 was originally, is the rear yard, this is the
2 rear of the building, this is the rear lot line,
3 this is the rear yard. The, so the consequences
4 to the air and light and safety and I think this
5 is pretty obvious. It's very clear language in
6 the definition of rear yard it even flies in the
7 face of the Zoning Administrators own
8 determination that Lamont is the frontage and
9 (inaudible) is the rear lot line as shown in that
10 exhibit there. The AG's Office or the Zoning
11 Administrator has presented no evidence to
12 support such an obvious and outrageous distortion
13 nor to rebut the obvious conclusion that the
14 addition is being constructed in the rear yard
15 without setbacks. This interpretation does not
16 justice to the Zoning Regulations, for the
17 benefit of the city itself we think that the
18 integrity of the Zoning Regulations took a huge
19 hit when this decision was made. We ask you to
20 restore that integrity and grant our appeal,
21 thank you.

22 CHAIRPERSON MOLDENHAUER: Seeing a

1 comment in the audience that maybe there are some
2 individuals that wish to testify in opposition
3 but you have to be an intervener in a case in
4 order to testify, in an appeal case or you have
5 to be the ANC otherwise if your not an intervener
6 or an ANC then based on what I'm looking at my
7 procedural statements there's an opportunity for
8 general opposition to testify in an appeal case.
9 That being said this hearing is now at its end.
10 I've heard requests from the Appellant
11 potentially have an opportunity to submit written
12 memorandums of law and authority, while I don't
13 totally know if it's going to be necessary for
14 the Board I do want to provide the opportunity if
15 they believe it's going to be necessary for their
16 case to articulate some of the issues of law that
17 they have identified throughout the hearing so
18 what I'm going to do is I'm going to indicate
19 that both parties can submit memorandums of law
20 and authority. I'm going to ask that they be no
21 more than three pages max and by February 15th
22 both parties will then be able to reply to that

1 by February 22nd and that should be no more than
2 two pages max and then we'll put this on decision
3 for March 1st.

4 MR. OTTEN: Thank you Chair.

5 MR. SURABIAN: Madam Chair could you walk
6 through that again, the first deadline is for...

7 CHAIRPERSON MOLDENHAUER: The first
8 deadline is for both parties to submit any
9 memorandums of law and authority they wish to
10 submit, three pages max. Then both parties have
11 the opportunity to reply to each others motions
12 or briefs on the 22nd and then we will deliberate
13 on this case on March 1st. And that concludes
14 today's hearings, thank you.

15 DR. EDWARDS: Would it be out of order to
16 thank the Board.

17 CHAIRPERSON MOLDENHAUER: Thank you.

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