GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

JUNE 20, 2000

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The Board met in the Zoning Commission Hearing Room, Suite 220, 441 4th Street, N.W., Washington, D.C. 20001 at 9:30 a.m. Sheila Cross Reid, Chair, Presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chair
RODNEY MOULDEN	Board Member
ANNE RENSHAW	Board Member
ROBERT SOCKWELL	Board Member

ZONING COMMISSION MEMBERS PRESENT:

JOHN PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHERI PRUITT	Secretary to the Board of Zoning Adjustment
BEVERLEY BAILEY	Office of Zoning
PAUL HART	Office of Zoning
JOHN HYARKU	Office of Zoning

OTHER GOVERNMENT STAFF PRESENT:

DAVE COLBY	Office of Planning
ELLEN MCCARTHY	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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(9:37 a.m.)

MS. REID: Good morning. The meeting will please come to order.

Ladies and gentlemen, this is the June 20th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Robert N. Sockwell, Anne Renshaw, Rodney Moulden representing the National Capital Planning Commission, and representing the Zoning Commission is John Parsons.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

When coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right. The order of procedure for special exception of variances is, one, statement and witnesses of the applicant, two, government reports including Office of Planning, Department of Public Works, et cetera, three, report of the Advisory Neighborhood Commission, four, parties and persons in

support, five, parties and persons in opposition, closing remarks by the applicant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC in which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except for any materials specifically requested by the Board, and staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons who are present not engage the members of the Board in conversation. Please turn off all beepers and cell phones at this time so as not to disrupt these proceedings.

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

If you're not prepared to go forward with

a case today or if you believe that the Board should not proceed, now is the time to raise such a matter. Are there any preliminary matters?

(No response.)

MS. REID: Does the staff have any preliminary matters?

MS. PRUITT: No, Madam Chair.

MS. REID: Okay, then we'll proceed with the first case of the morning.

MS. PRUITT: Good morning. The first case of the morning is application 16573, application of Martin Hardy, pursuant to 11 DCMR 3103.2 for variances for the construction of two flats from Section 402.4 from the maximum floor area ratio required for the structure, Section 403.2 from the permitted percentage of lot occupancy requirement for the structure and Section 404.1 from the minimum depth in rear yard requirement, Section 406.1 from the minimum width of area in closed court requirements in a DCOD/5-R-B District at 1821 and 1823 Florida Avenue, N.W., Square 2556, Lots 808 and 812.

All those planning to testify, would you please stand and raise your right hand? Do you swear or affirm that the testimony you're going to give

today is the truth?

(Witnesses sworn.)

MS. PRUITT: Please proceed. Madam Chair, I'd just like to note for the record that you do have three requests for party status, Hanna Associates, Lothrop House and Elaine Morris. And I believe Ms. Morris has a proxy for someone to represent her, Ms. Hayland?

MS. MORRIS: No, I don't have a proxy --

MS. PRUITT: Is it Ms. Morris?

MS. MORRIS: No, I represent --

MS. REID: Okay, can you please come forward? All three persons who are requesting party status.

MS. PRUITT: Two can sit here and one sit right there until we --

MS. REID: Okay, there are three requests for party status and you're saying that you represent two of those three requests, is that what I understand you to say?

MS. MORRIS: Yeah, the Lothrop House condominium is a corporation and I'm the president of the corporation. We request party status. And I, myself am a property owner at 1822 Vernon Street. I have certain separate issues from the condominium

association as a whole and I request party status.

MS. REID: And you're Elaine Morris?

MS. MORRIS: I'm Elaine Morris, yes.

MS. REID: Okay. Now, Ms. Morris, when you say that you have separate issues that are not germane to the issues of the Lothrop House Association, what are they?

MS. MORRIS: The only thing that I'm referring to is that the Lothrop House Condominium Association maintains the common elements. So they have -- the condominium association has a few additional issues, such as the retaining walls, that I personally do not have. My personal property.

MS. REID: Okay. But still it seems to me that if you're representing the association, even if it's just the common elements, that your concerns can be addressed along with that -- combined with that of the condominium association.

MS. MORRIS: Yes. I don't mean to make two separate presentations.

MS. REID: Exactly. Okay, so you're going to -- you're representing both just for the record but basically your questions -- you want to cross-examine?

MS. MORRIS: Yes.

MS. REID: And you're going to just ask questions that are going to be blanket for both?

MS. MORRIS: Oh, yes.

MS. REID: Okay. All right. That's all I needed to find out. And those concerns that are peculiar or unique to that particular case that are unusual and different from those that the type of impact that this particular development would have on the other surrounding people who live in the community is what?

MS. MORRIS: Are particular --

MS. REID: Uh-huh.

MS. MORRIS: Yes, well, we are actually abutting the subject property on three sides. The property is irregular --- two garages are very irregularly shaped in the back. And three sides -- in fact we share a party wall with a garage, so we are more particularly affected than any others in the neighborhood other than my neighbors at 1818 Vernon. They are basically in the same situation -- a similar situation.

MS. REID: I don't see her letter.

MS. PRUITT: Madam Chair, if you look at Exhibit 37 and 38, those are the written requests for party status from the Lothrop House and Ms. Morris

which outlines her concerns, and there's also a plat attached.

MS. MORRIS: In other words, the rear and side borders of the subject property do not abut any public space. They abut private space. Part of it is our private space, the Lothrop House, and myself, and part of it is Hanna Associates' private space.

MS. REID: Okay. And basically you're saying that the three parking spaces are in the rear and that these spaces will be -- that your spaces will be in the way of falling bricks and other debris during construction?

MS. MORRIS: Yes. But also the concrete area surrounding the parking spaces are Lothrop House private property. So we're abutting this construction, so we're more particularly affected than somebody three houses away. Plus we're more affected because this building would go up right in front of our windows and block out our light. So compared to somebody across the street or down the street, we're more directly affected.

MS. REID: Okay. Is there any opposition to this particular application for party status from Ms. Morris?

MS. MORRIS: And in fact our building is

in the picture there.

MS. REID: What number?

MS. MORRIS: Our building is right in the center.

MS. REID: Okay. All right, then, Ms. Morris, the Board members have no objection to granting you party status.

MS. PRUITT: I mean, could you take a vote so I can record, please? Can I get a motion, please, to accept party status for Ms. Morris and Lothrop House?

MS. REID: If you feel it's necessary.

MR. PARSONS: So moved.

MS. PRUITT: Thank you, Mr. Parsons.

MS. RENSHAW: Second.

MS. REID: All in favor?

THE MEMBERS: Aye.

MS. REID: Opposed? Aye. Opposed?

(No response.)

MS. PRUITT: Staff will record the vote as five to zero to grant party status to Lothrop House and Mrs. Morris, who will be representing both.

MS. REID: Okay.

MS. RENSHAW: Madam Chair, did you oppose? Would it be four to one?

MS. REID: No, un-un.

MS. RENSHAW: Sorry.

MS. REID: No, I have no objection.

MS. RENSHAW: Sorry.

MS. PRUITT: I believe we also have another request for party status from Mr. -- from Hanna Associates, correct?

MR. HANNA: That's correct.

MS. REID: Okay, uh-huh.

MR. HANNA: We are opposing on three grounds. Basically this property used one time to be part of --

MS. REID: We need your name, sir, and the address.

MR. HANNA: Sure. My name is Boushra Hanna. I'm the president of Hanna Association and the address of the property we own is 1818 Vernon Street, which is the property directly behind -- looking at that picture, the one on the right hand side that's directly behind the garages. And at one time, I would like to make this statement, that Lot 812, which is the proposed lot for construction, used to be part of Parcel Lot 24 and it was separated.

So the fact that this shape is unique, it was created because of the separation between the two

lots -- or broken down between the two lots. And no doubt that there is some other lots in that neighborhood have those kind of unique shapes.

The fact that this lot is not effectively used -- because it's currently in use. It is being used as garages, so nothing to prevent -- there's no hardship in here on using this space. They are useful garages and they can be basically cleaned as they are and continue to be used as garages.

We're going to be directly affected because it's going to be blocking light and air and view of approximately about 35 windows and is going to cause great hardship in our property. And we're glad -- the one -- may I approach?

MS. REID: I did see it. Your concerns are approximately the same as Ms. Morris in regard to the light and air, the deprivation of light and air, if in fact the application is approved?

MR. HANNA: That's correct.

MS. REID: Because your letter is -- basically the wording is the same.

MR. HANNA: And view.

MS. REID: Yes. And view.

MR. HANNA: And view.

MS. REID: Okay. Well, Board members,

the same basic issues. Are you going to make a motion?

MS. PRUITT: Excuse me, Madam Chair, just to note for procedural, this filing is late so you would have to waive filing for the written notice.

MR. SOCKWELL: How much late?

MS. PRUITT: It came in on the 14th.

MS. HICKS: The proponent, Mr. Hardy, objects if it's proper at this point because of untimely filing of the request for party status of Mr. Hanna and Hanna Associates.

MS. REID: Just one second, please.

MR. SOCKWELL: Madam Chair?

MS. REID: Uh-huh.

MR. SOCKWELL: Because the Board routinely will waive rules under certain circumstances to allow late filings and for the fact that the person requesting party status is particularly affected by the proposed development, I would request that we waive the rules and allow the filing to be accepted.

MS. RENSHAW: Second.

MS. REID: All in favor?

THE MEMBERS: Aye.

MS. REID: Opposed?

(No response.)

MS. PRUITT: Staff would record the vote as five to zero to, one, waive the fee and grant party status to Hanna Associates, motion made by Mr. Sockwell and seconded by Ms. Renshaw. Madam Chair, that concludes staff's preliminary issues on this particular case.

MS. REID: Okay. All right, now, thank you very much. You can have your seats, take your seats back. Those are the only requests for party status, correct?

MS. PRUITT: Right.

MS. REID: Right. So now we will proceed with the case.

MS. MORRIS: Do we use our seats --

MS. REID: No, have a seat back there and then when it's the proper time, then you'll be called up.

MS. MORRIS: Do we fill out --

MS. REID: You do fill out witness cards and they should be given to the recorder. Okay.

MS. HICKS: My name is Gladys Hicks. I'm a zoning consultant with Gladys Hicks and Associates, which is located at 7710 Merrick Lane in Landover, Maryland. Zip code is 20785.

I'm appearing on behalf of Mr. Martin E. Hardy, the owner of the subject property, which is located at 1821 and 1823 Florida Avenue NW. The lots are 808 and 812 and they're located in Square 2556.

The property consists of a one-story existing dilapidated garage which covers more than 60 percent of the lot and has no rear yard. It is bounded on side lot -- it goes from side lot line to side lot line, face on some walls, and it also has party walls on some of the sides. It's a small and irregular 1,045 square feet lot. Subject property is located in the DCOD/R-5-B residential zone.

Residential uses which are permitted as a matter of right are single family dwellings, two-unit flats and apartment houses. The type of construction which is proposed is a two-unit flat. The maximum height allowed is 50 feet and there's no limit on the number of stories. There is no side yard setback requirement if the proposed construction is designed to go face on-line or is constructed in a party wall fashion.

One off-street parking space is required for each two units. The maximum allowed FAR is 1.8. The maximum allowed lot occupancy is 60 percent and the rear yard setback required is 15 feet minimum.

Mr. Hardy is requesting four areas of relief. He is proposing to also construct an addition to an existing facility and is seeking relief through area variances. The legal test for an area variance requires a showing of unique condition inherent in the property or other exceptional condition related to the property that will cause exceptional difficulties or unique hardship on the property owner if the zoning regulations are strictly applied.

In addition, a showing of no public harm is required. Through testimony to be presented by the property owner, Mr. Hardy, Mr. Vallen, an architectural designer, and Mr. Jim Smith, who runs a permit and development company in the District of Columbia, we will demonstrate that the subject application fully meets the requirements of this legal test.

In addition, an alternative floor plan has been prepared showing what the consequences would be on a structure if it's set back any from the rear lot line. And this will be presented and shown through models and also exhibits. Also, we have exhibits showing the existing conditions.

We hope with our models and exhibits and

words that we will present to you and clearly demonstrate that no public harm will result in the area variances that we are seeking to grant.

In closing, one off-street parking space is provided for the two-unit flat using an existing curb cut. There is another wide curb cut which will be closed and which will allow the addition of two on-street parking spaces.

The exceptional condition related to the small and irregular lot size and the existing structure and the present practical difficulties and hardship are inherent with the property and are those which Mr. Hardy is trying to overcome with this proposed project.

The proposed two-unit flat will improve the last eyesore left in the 1800 block of Florida Avenue. No public harm will result in the area variances granted and there will be no adverse impact on the neighborhood. I might add also in conclusion that the ANC supports the application.

I would like to question Mr. Hardy.

MS. HICKS: Mr. Hardy, would you please state your name, home address and occupation?

MR. HARDY: My name is Martin Hardy. My address is 871 Dolley Madison Boulevard, McLean,

Virginia. And my occupation is retired. Until last October I was a staff member of the International Monetary Fund and a bureaucrat by day and a hobbyist by night, working on properties. Now, I guess this is more of a full time occupation but I wouldn't call myself a developer by any means.

MS. HICKS: Mr. Hardy, can you describe how you came to purchase the properties located at 1821 and 1823 Florida Avenue Northwest?

MR. HARDY: Well, as I say, while I was working at the IMF, I was doing some real estate work on the side. And I became aware of a property right opposite those garages, which was 1812 Florida Avenue, which was a group of three dilapidated houses that were for sale and it was an estate sale. And I bought 1812 and I remodeled that during my so-called spare time during 1997 to 1999.

Working on 1812, which is exactly opposite those garages, it was obvious to me looking -- all I could see was these broken down garages and it seemed to be a situation that was crying out to be fixed.

So I learned from the person who sold me 1812 that these were also part of the same estate, and I bought the garages from the estate of Bernard

Myzell (phonetic).

MS. HICKS: Mr. Hardy, can you describe the existing condition of the site and existing structures?

MR. HARDY: Well, I think if you look at the first picture, it speaks for itself. These garages have been separated from the properties behind for more than 70 or 80 years, if I'm not mistaken. They're extremely rundown and dilapidated. They are the last real eyesore on that 1800 block of Florida Avenue.

They are the rear back yard of properties that abut on Vernon Street. And it seemed to me that Florida Avenue really needs something different than this. And it seemed such an obvious need to make something that faces onto Florida Avenue to improve the entire block of Florida Avenue. So I just thought that the obvious thing to do with these garages would be to build a townhouse facing on Florida Avenue.

MS. HICKS: Mr. Hardy, did you ever have second thoughts last year about the project after you signed a contract to purchase and why?

MR. HARDY: Well, as I say, it seemed to me something that would be very obvious and I really

didn't anticipate any opposition to my project. I was quite surprised after I had signed the contract to purchase the garages, when I walked to look at the garages and I walked up behind where that white truck is parked, that a gentleman came out, who I later learned to be Mr. Morris who's the owner of the 1822 condominium and the husband of Elaine Morris, came out and asked me what I was doing on his property.

I said I was looking at the garages. He said, "Are you a professional developer?" I said, "No, I'm not." He said, "Well, I'm warning you I'm going to block this and make your life whatever." I'm not quite sure what he said. But it kind of gave me very much second thoughts and I actually went back to the lawyer who was handling the Myzell (phonetic) estate and asked to drop out of the contract because I didn't anticipate really having a lot of problems. And she said, "No, I would lose my deposit on that if I did that." So I did have second thoughts because I didn't really anticipate an opposition like this.

MS. HICKS: Mr. Hardy, what will be the consequences if the requested area variances are not granted for the proposed construction?

MR. HARDY: Well, I think if the

variances are not granted these properties are condemned to remain as garages and will continue to be an eyesore and wrecking the entire block.

MS. HICKS: Mr. Hardy, why are you proposing to convert the garages into a two-unit flat?

MR. HARDY: Well, I considered what could be done reasonably with that property from the point of view of the economics as well as the aesthetics and the impact on the neighbors.

Of course, under the zoning, a 50-foot apartment building could be constructed. There are other considerations which need to be remembered. There are party walls. The property behind, in 1818 and 1822 Vernon Street, is at least ten feet higher than the garages. And therefore, all of the walls on the east and north sides of the garages are retaining walls. So that they will need restructuring and buttressing, which adds a lot of cost to the project.

Also, the garages don't have any utilities, so we'll have to bring all new utilities to it, which adds to the cost. So there's a very heavy fixed cost involved in the project. So as a kind of -- as a best compromise between impinging on the height and finding an economic solution, I

thought that a two-family flat was the most economic and most rational solution.

MS. HICKS: Mr. Hardy, on the model, could you show the existing structure as it relates to the height.

MR. VALLEN: This is the existing building.

MS. HICKS: Okay, this is Mr. Vallen.

MR. VALLEN: Mr. Vallen, right.

MS. HICKS: He's the architectural designer.

MR. VALLEN: This is the existing building right there, the existing garage, taking up this space.

MS. HICKS: Which is one store.

MR. VALLEN: And on the photograph here, it's this. This is a side view looking east on Florida, northeast. This is standing up in this area here looking down over the rooftops, and then this is looking at the side view of the garage from here, to give you an idea of what it looks like in its current condition.

MR. HARDY: I might also point out that the land behind is ten foot higher than the garages and these are all retaining walls on the far side of

this garage.

MR. VALLEN: Right.

MR. HARDY: And that same applies to the Lothrop House on the other side. It's about ten feet higher than the grade of the garages. So by building up, at least one has to remember that one floor, at least, is down below grade, as far as the buildings behind are concerned.

MS. HICKS: On the model, could you please show the proposed new construction?

MR. VALLEN: The new construction?

MS. HICKS: Well, you can show what it would look like if we built up to a maximum 50 feet in height, how it would obstruct light area and ventilation.

MR. VALLEN: That's the maximum allowed.

MS. HICKS: That would be the maximum allowed.

MR. HARDY: That would be a 50 foot building.

MS. REID: That's a matter of right?

MR. VALLEN: That's a matter of right.

MS. HICKS: As a matter of right, yes.

MR. VALLEN: Okay.

MS. HICKS: And next, could you show what

has been proposed?

MR. HARDY: We proposed a building that's 31 feet high from the ground level on Florida Avenue.

MR. SOCKWELL: Would you place the two envelopes side by side?

MR. VALLEN: Sure. The 50 foot?

MR. SOCKWELL: Yes.

MS. HICKS: To get a better idea as to how it affects your lighting.

MR. SOCKWELL: Now, the reason I ask is that the 50 foot is in fact not a matter of right in terms of bulk, just a matter of right in terms of height.

MS. HICKS: It's height, yes.

MR. SOCKWELL: It would still require variances in order to achieve --

MS. HICKS That's right.

MR. SOCKWELL: -- the construction volume that you've shown there. So when you say matter of right, it's relative to only one aspect of the project.

MS. HICKS: That's right.

MR. SOCKWELL: So it's not matter of right. Say, achieves the allowable height but not as a matter of right.

MS. REID: So you're saying that that's a possibility given getting the correct variances.

MS. HICKS: Right, which would be a density of FAR variance and other variances that would be required.

MS. REID: Okay, now, move that one.

MS. HICKS: My question --

MS. REID: Okay, I'll wait. I'll let you just get down with that part and then I'll ask my questions that pertain specifically to that. Okay, all right.

MS. HICKS: Okay, Mr. Hardy, have you noticed a vector control problem on your property and adjoining properties?

MR. HARDY: Yes. In fact, I think if you've read -- members of the Board, if you've read many of the letters that are being written that are in support of my proposal, the neighbors complain that the garages -- people urinate on the garages, that undesirables tend to congregate around it.

There are rats -- certainly there are rats in the back. And that's an area which unfortunately cannot be accessed because the neighbor, Mr. Morris, has constructed a chain link fence and locked off access from the alleyway to get

onto the rear yard of Mr. Hanna's property, 1818. So I'm afraid those rats are living in a good deal of comfort up on the top of that ten foot retaining wall.

MR. VALLEN: So the wall, this chain link fence goes around the back, up the side and out and then actually cantilevers out over this other retaining wall out here. So the entire back of this has a seven-foot high chain link fence right on the property line.

MS. HICKS: Mr. Hardy, is there any other pertinent information that you wish the Board of Zoning Adjustment to know about the proposed project?

MR. HARDY: Well, I'd point out that I have tried to contact the neighbors within a 200-foot radius and I have had very strong support, with the two exceptions who are here today. But almost all of the neighbors have signed a petition and many have written letters in support of my proposal.

The other point I'd like to mention is what we just mentioned, which is that there is a problem of access from the back of those buildings because of the fact that the Lothrop House, the Morris property, has closed the alley and made -- there's no public alley and they consider it to be a

private alley with no public access. And to the point that they have constructed a chin link fence to prevent access to the garages from that side, and the fence is on my property in certain parts.

There is also a problem of drainage from the parking area of the Lothrop House. It is constructed in such a way that the water is being channeled into the backs of the garages which is causing structural damage and that is something I wanted to mention.

MS. HICKS: Thank you. Thank you, Mr. Hardy. Does the Board have any questions of Mr. Hardy?

MS. RENSHAW: Madam Chair, if I may?

MS. REID: Sure.

MS. RENSHAW: Mr. Hardy, you acquired these properties last year?

MR. HARDY: Yes. I settled in 1999. I think it was September 1999.

MS. RENSHAW: September of 1999. And were the properties rented at that point? In other words, do you have tenants for those garages?

MR. HARDY: They used to be rented and I've continued to rent them to waiters who work at the Hilton Hotel and they use the garages for their

cars.

MS. RENSHAW: All right. But you have not sought to improve those garages at all?

MR. HARDY: No, not really.

MS. RENSHAW: You have not put anything into --

MR. HARDY: No. I was hoping to have a clear way to go before I get involved in doing it.

MS. RENSHAW: All right. Thank you.

MS. REID: Let's see. I have -- did you wish to -- in regard to the issues that have been raised that you've heard from those who requested party status, and seeing the concern was primarily in regard to light and air, circulation, I did not hear in your presentation or from Ms. Hicks, what was your response to that, to those raising those issues?

MS. HICKS: Those issues will be taken care of by Mr. Vallen --

MS. REID: Okay.

MS. HICKS: -- the architectural designer if we may continue.

MS. REID: Very well.

MS. HICKS: Okay. Mr. Vallen, for the record, would you please state your name, home address and occupation?

MR. VALLEN: My name is Michael Vallen. I live at 1305 -- occupation, architectural designer. I live at 1305 Fairmont Street, Columbia Heights.

MS. HICKS: Mr. Vallen, would you explain the design concept from the exhibits for the proposed two-unit flat.

MR. VALLEN: The proposed flat is basically configured so that it uses the entire -- almost the entire space available on the current lot. And it actually would be built on top of these walls with a new wall being built across along the lot line in the front on Florida Avenue, along here. There's no impinging on public space in this particular proposal. This existing retaining wall ahs been there for as long -- probably as long as the garages.

The way the project works is that there's a flat at the ground level, which is raised up about two foot six inches off the street or off the sidewalk level. And there's a garage, single car, for the unit above.

Both units are entered in recessed doors off the sidewalk and outside public space, one going -- one entrance going in towards a staircase in the back to take you up and the other going in to take

you into the ground unit.

This use of the light well, or the well or court as it's called, is for several reasons. (A) to get light and air into a bedroom and also as a means of egress in case of an emergency as required by building codes. So that's what this niche is for.

The next move up to the second floor, it's a basic configuration of a townhouse with kitchen, dining, two bedrooms. Staircase takes you back up to the third level which has two bedrooms, utilities and such. The light court continues all the way up. And then finally up on the roof, you end in a roof deck.

And the thing to understand is that the design is shifted. The floors don't align between this area and this area. And that's why the staircase is placed in the way that it is and you actually pass through the staircase to get over to the other side of the building.

So that this is lower -- the floors are lower by two foot six inches on this side, which then allows you when you're on the roof to have a lowered roof deck, which kind of shows in this model. So the roof deck isn't at the highest point it could be. It's about two foot six inches lower and then would

have the required three foot six inch -- four feet, excuse me, by the time everything is done.

MS. REID: I'm not sure, Mr. -- is it Vallen or Vallens?

MR. VALLEN: Vallen.

MS. REID: Mr. Vallen, that you answered my question sufficiently.

MR. VALLEN: Okay, well --

MS. REID: The question pertains specifically to addressing the concerns of the persons who have raised the issue regarding adverse impact as to light and air. Now, I can understand that --

MR. VALLEN: I'll talk to -- I can talk to that.

MS. HICKS: Well, we have exhibits.

MR. VALLEN: Yeah.

MS. HICKS: The exhibit at the end --

MS. REID: Okay, so in other words --

MS. HICKS: -- which we're on our way to it. That's part of his testimony, yes.

MS. REID: You're not done with the --

MS. HICKS: No, not yet.

MR. VALLEN: No, not at all.

MS. REID: Okay, fine. Fine, I'll wait.

MS. HICKS: We're not through with the testimony yet.

MS. REID: I'll wait, thank you.

MS. HICKS: Okay, Mr. Vallen, would you please explain the exhibit pertaining to sunlight?

MR. VALLEN: Yeah. What I did is I use pretty sophisticated computer modeling programs and rendering packages, and I do this all the time studying light. You don't really study air, per se, but you study light and light patterns with this software. And the software, just for the record, is AutoCAD made by AutoDesk, release 14. And the software that allows me to do the light studies is called AccuRender, version 3.

So what I did is I built models of the Morris house, the Lothrop house -- excuse me.

UNIDENTIFIED SPEAKER: The Hanna House.

MR. VALLEN: Hanna House, pardon me. The building immediately next door, and then our proposal. And what I wanted to show was what effect this proposal has on all of these structures at six different times during the year.

So I picked the winter solstice and the summer solstice, or the longest and the shortest days of the year to demonstrate what would happen as the

sun tracks across the sky during the day.

Now, the software uses real world coordinates to establish where your model is in real world space, which means that where I've drawn this building and told it it is, it actually is in the computer's eye in that place. I've told it the city, I've told it the day, the date, the time of day, et cetera, and then the computer simulates sunlight. It's not an exact representation but it's a simulation of sunlight.

So I picked -- at the beginning here is December the 20th at 9:00 a.m., and what this is -- and I can bring this closer if you need to be able to see it. At 9:00 a.m., the sun is at about a five degree --

MS. REID: Excuse me, Mr. Vallen. The Board members would like for you to bring it closer.

MR. VALLEN: Sure.

MS. REID: And also can you all see that well? Okay, bring it closer.

MR. VALLEN: It's worth coming to -- can you get that, thank you. What's the best place to put -- where's the best place to put this so --

MS. REID: That's good, and if you don't mind coming around, and then you can kind of get an

idea as he's explaining it.

MR. VALLEN: Is that good?

MS. REID: Yes, that's fine.

MR. VALLEN: Okay. So on December 20th at 9:00 a.m., the sun is about five degrees above the horizon, okay? And it's tracking to the south -- coming up from the southeast. So it's rising up and really it's hitting the face of these buildings, the sides of these buildings almost dead on.

And as you can see, all shadows are being cast well actually towards the northwest in this direction. So there's really no incursion on any of the Hanna building at 9:00 o'clock in the morning on December the 20th. There is some at the bottom two units, this window and this window of the Morris. Excuse me, there's one below that you can can't see. It's this window and this window.

If we move to December the 20th at 12:00 p.m. so at the highest point -- close to the highest point of light in the daytime, this is the point where you start to see some shadow being cast on the lower unit, this unit right here, of the Hanna building. And some shadowing on the bottom of this window.

And then finally December 20th at 4:00

p.m., when the sun's at about 15 degrees but swung over in the other side of the sky and it's very late in the day, it's almost dark, you're starting to get shadows across the bottom, these two windows and portions of these two windows.

MR. HARDY: But those come from the other building.

MR. VALLEN: And you're getting a significant amount of shadow anyways from this building. So as the sun is over here, it's actually -- if this building isn't here, this window has its sunlight blocked December 20th at 4:00 p.m. anyways. Any questions about the wintertime?

MR. HARDY: In summary, in wintertime even the lowest window receives some --

MR. VALLEN: Yeah, there is some impact but it's not a complete blocking of all light at all times. It's a blocking of light in the middle of the day and the later part of the day and that's in December at the point when the sun is lowest in the sky.

So you have to remember that as the dates change, the sun is rising higher each day, and so slowly you get more and more light.

MS. REID: Well, what I'm trying to --

MR. VALLEN: Okay.

MS. REID: What I'm trying to figure out, Mr. Vallen, was looking at your presentation with the shadowing simulation, is that -- is this building right here appears to be --

MR. VALLEN: This one.

MS. REID: This large building.

MR. VALLEN: Yes.

MS. REID: I don't know what that building is.

MR. VALLEN: Okay.

MS. REID: That building --

MR. HARDY: It's 1825 Florida.

MS. REID: Uh-huh.

MR. VALLEN: This right here.

MS. REID: Yeah, that building appears to already have, you know, quite an impact as far as the shadowing is concerned in and of itself.

MR. VALLEN: Right.

MS. REID: But the addition of this building -- and maybe Mr. Sockwell can help me with this. I'm trying to figure out with adding that building further exacerbate that shadowing of that large building, because you have the shadowing already there and we don't have -- we don't have a

simulation of its existing effect right now.

MR. VALLEN: No, we don't.

MS. REID: And then to compare that to putting that building, the new building, right there in the midst of those three tall buildings like that, how much -- you know, the differential, I guess.

MR. VALLEN: Yeah, yeah.

MS. REID: Impact, uh-huh.

MR. VALLEN: I understand what you're saying and it's easy for me to say what I --

MS. REID: Okay.

MR. VALLEN: -- what I can about it, but the proof is really in the pudding, I guess, and the images, so it's hard for me to actually be completely accurate. But I believe that late in the day at the lowest point, when the sun is at its lowest point in the sky, this building would be casting -- you can see the line here. Casting some shadow. It would go over the garage and come probably covering this window here and a portion of this window here.

I doubt, because of this angle, as you can see how it goes, that it's really going to get over to these two. So this is adding some shadowing, but it's very late in the day and it's --

MS. REID: It's negligible.

MR. VALLEN: And I think what you see is that if we look at the summer, in the summertime right about this time of year, there's virtually no time when this building will cast a shadow on anyone.

MS. REID: What's this supposed to be here?

MR. VALLEN: So I'll take -- let me walk you through this bottom part, just like I did the top. So if we start June 20th, the summer solstice, 9:00 a.m., the sun's -- at 9:00 a.m., the sun is already 35 degrees in the sky, so it's almost like this.

MS. REID: Uh-huh, okay.

MR. VALLEN: And as it's coming up from the east, it's casting a shadow on this building. It's going to cast a shadow over in this area.

MS. REID: Uh-huh.

MR. VALLEN: And then as it tracks around, the sun is so steep by noon, it's 68 degrees up in the sky, there's almost no shadows being cast at all. In fact, this shows that there's virtually none. There are some. I mean, obviously there has to be. It shows the sun's not straight overhead.

And then by 4:00 in the afternoon, at the same time as the wintertime, the sun is way back

behind the buildings coming down across and it's starting to cast shadows out on the street but it's not casting shadows or blocking light from any of these buildings.

MS. REID: Okay.

MR. VALLEN: Any questions?

MS. RENSHAW: Just a question on your roof deck. On your model, the roof is open. Is it a sunken deck down in there?

MR. VALLEN: Yeah, it's slightly depressed.

MS. RENSHAW: Slightly depressed.

MR. VALLEN: That's why this floor line -- it kind of shows in this. The level of the windows are shifted. This side of the building is lower. The floor lines are lower than this side of the building, to allow the roof deck a little bit of -- to be lowered a little bit down into the roof.

MS. RENSHAW: But you built up the side so that it gives privacy?

MR. VALLEN: Well, yeah, but this wouldn't be solid. The model is just a representation of massing, really. All of this is just a representation of massing and not architectural design at this point. And it's really

going to be some sort of a screen element. What exactly it is, it could be glass, it could be pickets, anything really at this point.

MS. RENSHAW: Is the roof to be used by both flats or just one?

MR. VALLEN: No, only one.

MS. RENSHAW: The top flat?

MR. VALLEN: Only the top flat has access to the roof.

MS. REID: I was just trying to ascertain, and this is rather difficult, I guess, to determine -- when you speak of the air circulation and deprivation of air, we're looking at it and, you know, there is space between that -- between the two buildings and I guess when the witnesses have a chance to come up here, then we can have a further discussion about that so that they could further clarify for us the concern about the air.

MR. VALLEN: I don't think -- we're not touching any other building.

MS. REID: Uh-huh.

MR. VALLEN: The only thing we're touching are our retaining walls are touching parking areas.

MS. REID: What's the square -- what's

the linear footage between --

MS. HICKS: We have a site plan which will shows the distance, which is over to the lower --

MR. VALLEN: Yeah.

MS. HICKS: -- lower right.

MR. VALLEN: Let me grab that real quick.

MS. HICKS: There are measured distances.

MR. VALLEN: Yeah, I'll go -- this shows you right here.

MS. REID: Yeah. Yeah, you do. When they get done. When they get done.

MR. SOCKWELL: When we're finished.

MS. REID: When the Board members are finished questioning, then it's your opportunity to question.

MR. VALLEN: May I?

MS. REID: Sure.

MR. VALLEN: Okay. What these diagrams show, again, is massing only and relationships of heights. We're looking at this in perspective, so perspective foreshortens things. The things in the distance appear shorter than they really are. So to augment that, I put the actual -- or we didn't go out and actually measure. We counted bricks. But fairly

close approximations of the heights of the two buildings in question and then our proposal and of the retaining wall down here.

So you get a 54 foot high building that's ten feet off of the curb line of Florida Avenue. Our building's 31 foot three inches. The Lothrop House is 51 feet high but it's ten feet up.

As far as the question you asked, is distances. From this point of the rear wall, our property, to this point -- so from the rear of this piece here to the corner of this building here is 31 feet three inches.

From that same rear wall of this part of the garage to the face of this chimney stack is 25 feet. Excuse me, not the chimney stack. To this structure here, the small one-story windowless structure here is 25 feet. The area where we're asking for the greatest variance obviously is behind our proposal in relationship to this building here. And currently if we build directly on top on the outside face of our property or on the line of our property, we're ten foot seven inches away from this building. Does that answer all the questions about distances? Is it clear?

MR. SOCKWELL: Are you aware of the fact

that you are looking at a zero fire separation distance for building code purposes?

MR. VALLEN: No.

MR. SOCKWELL: Okay. That will affect the viability of any fenestration that you put on the rear.

MR. VALLEN: There is none right now.

MR. SOCKWELL: Okay, there is none.

MR. VALLEN: No. I was aware, I just -- the question caught me -- no, there's no rear fenestration at all. Currently the proposal is a solid wall going up the two floors above the retaining wall.

MS. REID: Ten feet -- you said ten feet seven inches?

MR. VALLEN: Uh-huh.

MS. REID: At its most narrow point --

MR. VALLEN: Yes.

MS. REID: -- basically. And so there is no -- there's no alleyway back there or anything?

MR. VALLEN: No, this is the raised -- let's see where it's best. If I can just take this down so you can see for a second.

MS. REID: So no cars have to enter back there to park?

MR. VALLEN: It's this area here, which is approximately ten feet high. Okay, so that's the area. It's an inaccessible area completely, unless you scale this wall or climb over the fence.

MR. SOCKWELL: Or unless you're on the property behind.

MR. VALLEN: Or if you come out their back down and go down and --

MR. SOCKWELL: Exactly. So it's not inaccessible. It's merely inaccessible from Florida Avenue.

MR. VALLEN: Right. And just to reiterate the condition that that's kept in, it's not an occupied space. It's not a garden. It's not a place where people put patio tables. It's basically unused space at this point. From our observations. I can't say what people do.

MS. REID: Okay, thank you very much.

MR. VALLEN: Did you have any other questions about it?

MS. REID: Ms. Hickman?

MR. SOCKWELL: Hicks, Hicks, Hicks.

MS. REID: Ms. Hicks, excuse me. How many more witnesses do you have?

MS. HICKS: Only Mr. Smith.

MS. REID: Okay.

MS. HICKS: He'll be brief.

MS. REID: Okay. Then did you want to ask Mr. Vallen now?

MS. HICKS: I'll just have a few more questions of Mr. Vallen.

MR. SOCKWELL: I might as well ask him.

MS. REID: Okay. Yeah, okay.

MR. SOCKWELL: Mr. Vallen, what was the specific purpose for showing the 50 foot non-matter of right massing? Because the taller that you make the building, the less economical the building becomes because with this type of site and the circulation issues, vertical circulation for fire egress and things like that, your core factor goes up exponentially and the building would not have been viable in the shape that you showed. So I just want to know why it was shown?

MR. VALLEN: If it were possible to do --

MR. SOCKWELL: But it isn't.

MR. VALLEN: But that's the reason why it was shown.

MS. REID: Well, just as a purpose of illustration?

MR. VALLEN: It was --

MS. HICKS: It was the purpose -- the purpose was illustration to show theoretically and under the current zoning regulations what the maximum is allowed.

MR. SOCKWELL: Yeah, well you showed it as a maximum height but you showed it as a bulk that was not matter of right, and the two actually didn't make a good example at all.

MS. HICKS: Well, it did illustrate height and that's what we were mainly going for, to demonstrate height.

MS. REID: Okay. Well, we've already scaled that hurdle.

MS. HICKS: More so than bulk.

MS. REID: Any other questions?

MS. HICKS: Mr. Vallens --

MS. REID: If you could choose, unless you had the architect who's right here and answering questions.

UNIDENTIFIED SPEAKER: Okay, we can wait.

MS. REID: Okay, he'll wait. All right, the witness is --

MS. HICKS: Okay, Mr. Vallen, will you go over the alternative exhibit?

MR. VALLEN: Yes.

MS. HICKS: Showing at least how the building would look if -- and an attempt to provide at least a minimum rear yard setback from the retaining wall.

MR. VALLEN: What we did is we put together an alternative plan and massing for a building that is shorter by two feet and for a building that does not go to the full extent of the lot in the rear at the point of greatest concern. So I'll explain it. First of all, the plan -- because I think that's important to understand, at least, how the building works.

It's similar in concept in the sense that there's a garage -- can you see? Is this okay? There's a garage, however there's provisions for utilities within this garage to service both properties which allows us to capture a little more space on the inside.

The units are -- we're using some of the public space for projections, and using those projections to have bay and entrances into the property. So that allows us to move everything forward by a few feet. Out units still go up to a second level unit, and the first floor unit is at the base.

By making it more of a studio-type arrangement rather than a one-bedroom unit, it allows us to eliminate the court so that sleeping would occur in the front, you have your second way out, and you also have your front door, and you have air and light going into a sleeping area, and then put the utilities in the back.

The upper unit is fairly similar to the other, except that we're able to take advantage of some of these projections to capture some space. But what we do here is that we step the building back at the second level three feet away from the property line, so that that rear back area increases from ten foot seven to thirteen foot seven. So we're trying to give back a little bit more light, air, et cetera.

And then finally up at the top is bedrooms and then a small staircase up to a roof deck, which isn't quite as recessed as the other but similar in configuration to the other building. And then this just shows the amount of projection approximately. This might be slightly large and there could be some refinements to this.

As far as what the massing appears like, this model represents it relatively well with the exception that these are set back, the entrances are

set back away from the sidewalk. You walk up a couple of steps. There's more of a sense of entry into the building. And this image here shows that setback and underneath the projecting bays.

Other than -- really the effect on shadowing is minimal although you get a little bit less. When I did it, I didn't print all the tests. But you get a little bit less at the worst times of year because the building is set back slightly and that's really -- that's probably all I need to say about it at this point.

But we are -- what we wanted to show is that there are attempts being made to try to mitigate some of the concerns of the people that live around this and to make it so that this is a little bit more of a manageable and livable sort of a project.

MS. REID: Okay. Thank you, Mr. Vallen. Mr. Hardy?

MR. HARDY: Just briefly, what we've done in the second model is to move the second and third floors forward by three feet from the back. And also lowered the height of the building from 31 feet to about 29.

MR. VALLEN: It's 29, yeah.

MR. HARDY: So this was in an effort to

address the concerns of the neighbors who will be speaking today about projection in terms of height and also how close we are to the - particularly to the Hanna building.

MS. REID: So the -- what are you proposing? The first model and in the alternative the other? I'm not -- is that what you're doing, Ms. Hicks?

MS. HICKS: Yes. The one plan, the first plan that was submitted with the Board of Zoning Adjustment application, had comments from the ANC that if feasible we should try to at least mitigate some of the concerns of the adjoining property owners by at least trying to give a rear yard.

There's not much to be given on this small lot, but we're at least trying to show that there is some attempt through an alternative plan. And we want to show also on a floor plan basis, and also bulk basis, what the building would look like.

MS. REID: Understood. But my question is what are we voting on? What are you presenting for us to vote on ultimately? Or did you want us to make that decision? I'm not clear.

MS. HICKS: Yes, whether you want the first submitted plan or the alternative --

MS. REID: Okay, all right.

MS. HICKS: -- that the ANC suggested that we try to work out to mitigate the situation.

MS. REID: Okay, I understand.

MS. HICKS: So there is a little flexibility here. Not much, but a little bit.

MS. REID: All right, go ahead.

MS. HICKS: Mr. Vallen, would you please discuss any design challenges and obstacles related to the project?

MR. VALLEN: The biggest challenge are the condition of the walls. Because of the water incursion over many, many years, they're weakened in several areas. The rear wall of -- this wall here is actually bowed rather significantly.

There's a significant amount of water damage in this building here because of a pooling of water at the upper level here. It's not graded properly so it's not draining into the drain provided. It's actually pooling and draining into this building. It's pretty clear that that's where the water is coming from.

And there's a similar condition in the rear of this garage. So there's going to be a lot of work just getting these walls up to an acceptable

level so that they can be built on. And this rear one will almost definitely have to be shored with steel beams to brace it back to here.

MR. SOCKWELL: Is that wall on your property or --

MR. VALLEN: Yes.

MR. SOCKWELL: It's on your property.

MR. VALLEN: Yes, it's all on ours. Other issues are obvious in the sense that there's very little area for staging of construction. We would have to have public space permission for dumpsters. We will have great difficulties now that the Morris folks have built the fence surrounding the rear. We'll basically have to build from the inside -- build our exterior wall from the inside of the building up, and probably forcing us to use a type of construction that will allow us to do that.

One of the issues that we have also looked at was the parking. There's currently a curb cut here and a curb cut here to go into this garage, and we're only keeping this curb cut. We're providing a space in the garage for the dwelling. We're eliminating this curb cut which will give us back approximately two spaces on the street, which currently they don't have. So we're trying to

balance -- do a balancing act with the parking so that there's no loss of parking. That's all.

MS. HICKS: Okay. Mr. Smith is next. Thank you, Mr. Vallen. Mr. Smith, for the record, would you please state your name, home address and occupation?

MR. SMITH: Yes, Gladys. My name is James F. Smith. I live at 6 Logan Circle NW, here in the District, and I own and operate a company known as Mr. Permit.

MS. HICKS: Okay. Mr. Smith, can you explain the type of consulting you provide in the District of Columbia?

MR. SMITH: Yes, we give code analysis and some waiver analysis for building projects. We look at zoning ramifications and we help facilitate engineering and architecture through the District of Columbia system.

MS. HICKS: Mr. Smith, can you briefly tell us about your development experience in Adams Morgan?

MR. SMITH: Yes, I'd be happy to. In fact, the particular block of Florida Avenue that's in question is the largest amount of activity that my company has had.

This is Vernon Street out here and I have done quite a bit of work. 1806 Vernon Street, which is also 1807 Florida was a dilapidated office building for a not-for-profit. And I worked with the developer this last year to change it into a three-story office building and a beauty shop that's been very positive to the neighborhood.

I've also just represented Franklin's Coffee House who just got a liquor license this last Friday. I represented the Duplex Diner in its quest for a sidewalk cafe next door to that. Next door to that, I represented Sicado (phonetic), which just got their piano bar liquor license.

And I was before this body in about 1995 or 1996 with Thomas Moore Jarue (phonetic) down here at 19th and Florida Avenue to do a small inn that was an eyesore rooming house. It's a very modern building catty corner from the Hilton. You might -- you probably know it when you see it.

And we changed it into an inn, and the impact has been so soft it's rented to Aeroflot Airlines and they use it as a place where their airline pilots and stewardesses stay when they have to stay overnight from Reagan National. And then we had this project.

It's not any surprise to me that most of my projects have been coming from 19th Street and Dupont Circle and because they're over at 18th Street, there was never any activity in the center of the block. And the reason why there wasn't any activity in the center of the block, in my opinion, is that we have these dilapidated garages that just look awful.

In fact, if Mr. Hardy applied for a building permit because it's a nonconforming use as a principal use as a garage, and there's no certificate of occupancy, we doubt that we could even do anything substantial except painting the graffiti. And I think that Mr. Hardy's notion when he bought them was to do some kind of a development.

It also is my opinion that the design has been substantially mitigated due to the hardship due to the nature of the configuration of the lot by pushing the envelope down as much as possible on either proposal, by eliminating a lot of windows, especially in the first alternative which would be a brick wall. Because it's right on the property line, we can't put windows in it. So that if they have a sense that noise is coming from this unit, it won't be because it's a sheer wall.

In the second proposal, there's a couple of windows for kitchens and stuff like that but we have the right to do that because we set it back sufficiently for zoning to allow us to do that.

We also discuss having a roof deck that's fairly far removed. The building is designed to be outward toward Florida Avenue and in no way, except for the fact that there's a wall here, interfere with this problem.

The alternatives also are better for the perception of safety. Should we push this development down one floor, then there would only be about a six foot or so high wall, because of the height of 13 feet at this level going up, so that someone could climb into the top and break into the house, so that we tried to make it tall enough so that it would deter anybody from breaking and entering into the house, such as this -- even though it's not accessible, this retaining wall here does keep this building a little safer because people can't break into it.

Now, if there's a fire, they're going to have a hard time getting out of it, but currently they can't break into it very easily except from that viewpoint.

So I think that -- I think that there's been a lot of pains taken in the whole concept. I've been involved in the project since just before he filed with your body. And we came up with alternative designs and stuff like that because we think that by designing a building that is principally fronting on the outward place -- the outward space, and by limiting its massing and by pushing it down, that we've actually come up with a project that causes very few impacts, if any, on the surrounding neighborhood.

We also have retained three parking spaces because we can give back two parking spaces by curb cuts. And I don't know if you've ever gone to eat over there. Fortunately I bicycle because I can find a parking space. So it will help the neighborhood by increasing the parking load by this proposal as well and will eliminate an eyesore.

MS. HICKS: Mr. Smith, how will the proposed development of a two-unit flat at the premises benefit and improve the 1800 block?

MR. SMITH: Well, I think it's pretty obvious. If you want to have this, then that's what you have right now. And we need to figure out what we can do with it that's constructive. I think that

there's a hole in the center from this building right here -- there's only backs of buildings until you get practically to Vernon Street, and it's a very ugly urban landscape.

We have numerous curb cuts. They're illegal curb cuts, by the way, because I've done a lot of curb cut work on that street and they don't allow new curb cuts to bend, although they allow existing ones to bend at an angle, so that most of the parking that's back there isn't even permitted.

But it's not an attractive urban landscape. Across the street, there are some buildings all in a row and they have some promise of being redeveloped and stuff like that. As Mr. Hardy's indicated, he's already done three of them. But there's still quite a few buildings in the center of the block that will benefit from having something like this eliminated -- something like the garages eliminated in exchange for a nice, very unobnoxious, single-family residence with a rental apartment.

MS. HICKS: Thank you. This concludes our testimony.

MS. REID: Okay. Thank you very much, Ms. Hicks.

MS. HICKS: You're welcome.

MS. REID: All right, Board members? Mr. Parsons?

MR. PARSONS: Thank you. Mr. Hardy and company, I'm trying to determine -- or ask you for more information as to why the first level apartment is necessary. I understand from Mr. Smith it was a safety issue. I understand you to say that it's maybe needed economically. But if you could give us a little more information as to why a two-story building, a single family home at less height, what are the factors that bring you to the need for a flat below that?

MR. HARDY: Well, certainly economic considerations must be kept in mind. There are factors in this lot that should be noted. The particular situation that we're building, we have to use retaining walls around a large portion of it because they're retaining ten feet of soil behind. This means the walls will have to be strengthened and maybe even underpinned. That's going to be a big expense.

Secondly, the utilities will have to be brought in. In fact, most of the -- I mean, the sewer runs down Florida Avenue. I'm not sure whether we can have access except it's going to be very deep,

and there's no electricity and water. And I believe on Vernon Street and also near the south side of Florida, I knew the sewers run in the alleys, so we're going to have quite -- a lot of expenses to defray in developing these garages.

This is the reason why the economic use would be to have a single family house with a rental unit besides. Also, remember that it doesn't have yards and gardens, so there's certain lack of amenities which would need to be handled, too.

MR. PARSONS: I'm sorry, I didn't understand that.

MR. HARDY: Well, I think if you're thinking in terms of saleable single family house, most of the houses in the neighborhood would have back yards and gardens. We have to overcome that by having a roof deck and also by having a rental unit to improve its marketability.

MR. PARSONS: And, Mr. Smith, I didn't understand the safety issue. You seemed to be claiming that you needed a flat beneath so that people wouldn't break into the unit.

MR. SMITH: No, sir. My comment was that if we go up to the top side of the lot, which is back up here, that that is 13 feet above where the garage

starts in the front. And his floor splits. It's not -- the second floor level doesn't start at the 13 foot level. It actually starts about ten feet, and there's three feet of the second floor still underground where it touches the Lothrop and the Hanna property.

So that if we built just a two-story building, it would only be about six feet or seven feet above the grade of their area. It would enable several factors. It would enable more visibility to the roof deck.

It would give a sense of -- I think, for a person wanting to buy in the neighborhood, seeing the condition of the parking lots and the stuff around them, that it would just be another factor that would be a more difficult marketing technique and also be a perception that the building isn't as safe because it is accessible. You can climb up and climb into somebody's roof deck.

MR. PARSONS: Okay, thank you. This second alternative that you've shown us today -- and I don't see it in our record, by the way. Those drawings weren't submitted. Seem to be dependent on, I guess, getting some kind of a public space permit, is that correct?

MR. VALLEN: Yes.

MR. PARSONS: And have you had any discussions with those authorities? I mean, what wisdom would there be in us dealing with this alternative here if indeed there's a problem with a public space issue?

MR. VALLEN: Well, we're allowed two projecting bays over the length of the building. It's 35 feet. We're allowed 13 feet in a 24-foot width, and then six inches for every foot beyond that. So if we have 35 feet, it allows us 17 feet six inches of projection, not to exceed more than four feet into public space. So our projections are three feet. One goes out a little bit beyond that. And the overall footage is less than 17 and a half feet.

MR. PARSONS: So I guess what you're saying is that --

MR. VALLEN: I don't foresee any --

MR. PARSONS: -- you feel confident you'll get that.

MR. VALLEN: Yeah, yeah. And the plan is flexible enough that if we're incursing into public space too much, we can change it. We can remold it and reshape it slightly to not exceed what the

maximum allowable is.

MR. PARSONS: And what is the reduction in FAR for this second alternative?

MR. VALLEN: It's actually the same.

MR. PARSONS: 2.61?

MR. VALLEN: No, it's 2.74, I think. Yeah.

MR. PARSON: I think your --

MR. VALLEN: It's whatever is on -- yeah, it's the same.

MS. HICKS: It's 2.6.

MR. VALLEN: Yeah, it's the same. Because the tradeoff was by eliminating the light court and -- we eliminate the light court so we gain that space back. We pull our building back by three feet across the whole rear. Our projections don't count except for the parts that are within our property line. So when you do all the math, it's actually within a few feet of being identical, so the FAR would remain the same.

MR. PARSONS: So I'm not sure what the different in relief is between these two alternatives, from our standpoint.

MR. VALLEN: Well, the one is shorter, so in this --

MR. PARSONS: But you're not asking for any kind of relief from height, are you?

MR. VALLEN: No, we're not, but we're trying to make a gesture. We're taking --

MR. PARSONS: Oh, I understand, but I mean as far as we're concerned --

MR. VALLEN: Right.

MR. PARSONS: -- and the action you're asking from us, I don't see the difference in relief you would receive from us.

MR. VALLEN: Okay.

MR. PARSONS: The FAR's the same, the setbacks are the -- everything's the same, right?

MR. VALLEN: Yes.

MR. PARSONS: Except maybe this court, is that correct?

MR. VALLEN: Right, yes.

MR. PARSONS: Is the --

MR. VALLEN: The court's eliminated in the alternative.

MR. PARSONS: So you don't need that relief.

MR. VALLEN: Right.

MR. PARSONS: All right. Thank you.

MS. REID: Mr. Parsons?

MR. PARSONS: That's it, thank you.

MS. REID: Okay.

MR. MOULDEN: This question is to the architect. One thing I wasn't clear on in the rear, have you checked with the authorities, particularly the fire department and police about emergency access in the rear? Are there any requirements? Have you talked with the authorities to clear up that there would be no access required even though there isn't any now?

MR. VALLEN: No, we haven't, but there isn't. And what access there was was recently blocked off by the Morrisses with their fence.

MR. MOULDEN: Yeah, well, that may be a problem itself there. I mean, it could be.

MR. VALLEN: Yeah, it could be, but it's not -- it's really their issue because they built the fence on their property, so we can't --

MR. MOULDEN: But that's something you're going to check into further.

MR. VALLEN: Yes, absolutely.

MR. MOULDEN: Okay. From just a general use standpoint, I commend you for trying to provide more housing in the city. But also the whole design and just the whole layout just seems to be so

congested and tight, you know.

I know you have several alternatives. Is this housing going to be an interference or just totally out of sync of the character of the area? I mean, is there anything similar to this in the city or nearby? It seems to be totally sort of out of character.

MR. VALLEN: Well, because of the site, it's extremely difficult to make a comparison directly. There are many, many single family homes with a rental flat. I mean, I own two of them myself so I think -- and they make a lot of economic sense because they really allow people to buy properties in neighborhoods that otherwise they couldn't because obviously the rental income counts for you when you go to purchase.

So I think there are examples to a point of it, and there are many, many -- and it's actually a more popular way of renovating the older houses and saving them, because the costs are so exorbitant to save them, you almost have to have a unit.

And maybe this is the best way, I think, to -- my personal opinion, to keep the densities a little bit lower instead of -- I mean, you know, perhaps we could have come in here with three units

and come up with some magical way to do it, you know, which would increase densities from a lot of different perspectives in not necessarily good ways, I think.

So this to me is the best way from an economic perspective and from a purely community and urban perspective to make -- to me it's better to have people living facing the street seeing what's going on, watching and being a part of the community, than to have three garage doors and graffiti and the kind of ugliness that's there now. So I hope I -- I tried to answer your question the best I could.

MR. HARDY: Can I add -- I mean, as far as out of character, the intention is very much to build something in character architecturally. These are simply diagrams, but the facade has not been worked out yet. And this building is a three-story building. All of the buildings on the south side of Florida Avenue are between two and three story buildings, so it's very much in character with Florida Avenue.

And this is the issue, that this section of Florida Avenue is really an eyesore because it sees is the back side of buildings on Vernon Street and garages, and this will really improve the

landscape on Florida Avenue very substantially.

MS. REID: Ms. Renshaw?

MS. RENSHAW: I just wanted to ask you to put the first model beside the alternative model, if you would, please?

MR. VALLEN: This one?

MS. RENSHAW: Uh-huh.

MR. VALLEN: Beside it?

MS. RENSHAW: Just beside it.

MR. VALLEN: Okay.

MS. RENSHAW: Right. Okay, thank you.

MR. VALLEN: Sure.

MS. RENSHAW: No questions.

MR. HART: Can we look at it on the same level?

MS. REID: Okay, cross examination. Ms. Morris?

MS. MORRIS: Am I going to have a chance to make my own presentation?

MS. REID: Yes.

MS. MORRIS: Okay. To Mr. Vallen --

MS. REID: Excuse me --

MS. PRUITT: Ms. Morris, you have to turn your mike on, please.

MS. MORRIS: Sorry.

MS. REID: Cross examination is limited just to the testimony --

MS. PRUITT: You have to turn on your mike.

MS. REID: The cross examination is limited to the testimony here today and you can't testify during cross examination, so just basically pose your questions in the form of a question and go ahead and ask whatever you'd like to ask.

MS. MORRIS: Mr. Vallen, will you be supervising -- is that your name? I'm sorry? My name is Elaine Morris and I'm the president of the Lothrop House Unit Owners Association. I'm also a property owner. I own several units, plus the three parking units which are separate lots within the condominium. I also represent three individual unit owners who are interested and couldn't be here today.

Will you be -- Mr. Vallen, will you be supervising the construction of this project?

MR. VALLEN: Mr. Hardy's only contracted with me to design and do construction documents at this point in time. I'm not a contractor, so I wouldn't be supervising in that capacity, but I would imagine that as with most of the projects I do I would have some relationship continuing well into the

construction until the day someone moves in, answering questions, clarifications, et cetera.

MS. MORRIS: But there are some architects, are there not, that actually supervise the construction?

MR. VALLEN: It all depends on the contract that you have with your client. There's no obligation to do that.

MS. MORRIS: Have you done supervising of construction?

MR. VALLEN: I have done my own construction, yes.

MS. MORRIS: You've mentioned party walls and you've mentioned -- I think what you said, our wall or Mr. Hardy's wall. Can you identify on your plat exactly which ones are party walls and which are entirely Mr. Hardy's walls?

MR. VALLEN: According to the plat, the party wall is this wall here. And it's believed that this wall and this wall are also party walls. The plat shows the property line a distance behind this rear wall. I can't tell you what that distance is. To me it looks like it's about eight inches, and that's according to the license survey of the property. Face on line. This is face on line.

Yeah, right, so it's -- right, so it's not a party wall.

So really the only party wall is the middle wall, which is on this piece of wall right here.

MS. MORRIS: And the others, you're saying the face of the garage wall is on the party line -- is on the property line?

MR. VALLEN: Yeah, it says face of building on party -- on property line. Along here, along here, and this is not on the line at all.

MS. MORRIS: Okay. I don't know, where does it say that the property line is not on the -- I mean, the wall is not on the property line? It just ahs a measurement of ten feet seven and a half inches.

MR. VALLEN: These are markers. These are corner markers. And clearly the wall is drawn behind the corner markers and the line extended as the property line. And it clearly points out on the drawing that the face of building on property line everywhere where the face of building is on a property line.

MS. MORRIS: It doesn't actually point out which is the property line on that small northern

side, does it?

MR. VALLEN: No, it doesn't, but that would be an easy enough clarification from the surveyor to get it if that needed to be done. Would you like to see this?

MS. REID: Continue, Ms. Morris.

MS. MORRIS: Yeah. After we finish, can I ask my colleagues to take a look at it or allow my colleagues to take a look at it?

MS. REID: Sure.

MS. MORRIS: And, Mr. Vallen, you made some remark about the chain link fence preventing emergency fire access. What exactly are you talking about?

MR. VALLEN: If an emergency vehicle had to come and get down here, this is their only way in. They can't get up over the wall, the ten foot wall, without a ladder. They were able to go -- they could stop here and get into that area, but there's now a fence with a gate and a padlock preventing anyone from crossing over into that space. Not just emergency vehicles but anybody.

MS. MORRIS: Well, are you disputing that the fence is not on private property?

MR. VALLEN: No. All I'm saying is that

the fence is there.

MS. MORRIS: Okay. And when you build a building, the building will prevent people from getting up there from Florida Avenue, right?

MR. VALLEN: Up where from Florida?

MS. MORRIS: Well, you're assuming that anybody and everybody would want to cross our private property or have a right to cross our private property, is that right?

MR. VALLEN: I made no assumptions of that kind.

MS. REID: Ms. Morris, you cannot be argumentative.

MS. MORRIS: All right. Have you examined plats of that block from Vernon Street to Florida Avenue from 18th to 19th in preparation of drawing your plans?

MR. VALLEN: Uh-huh.

MS. MORRIS: Okay. Is there an alley that goes to your property or Mr. Hardy's property at all?

MR. VALLEN: No.

MS. MORRIS: Okay. There's no right of Mr. Hardy to cross the area behind the garages, is that correct?

MR. VALLEN: No.

MS. MORRIS: Are you a computer expert of any kind?

MR. VALLEN: Yes.

MS. MORRIS: Can you describe how you are, in what way?

MR. VALLEN: I'm a architect who uses a computer.

MS. MORRIS: Okay.

MR. VALLEN: I've taught myself. My work's been published from a rendering perspective. I'm very good at it. I don't know how else to call myself an expert. No one's certified me as one, but I think I'm known around town as being good at it.

MS. MORRIS: But can you testify as to the scientific correctness of your computer model?

MR. VALLEN: Well, I built it. I used real dimensions, real sizes of things.

MS. MORRIS: No, I'm sorry. I'm referring to the light study.

MR. VALLEN: Can I testify --

MS. MORRIS: Can you testify as to the scientific accuracy of the light study?

MR. VALLEN: I'm not -- no, I can't.

MS. MORRIS: And who publishes that

particular program?

MR. VALLEN: It's the largest manufacturer of Computer Aided Design software in the world, AutoCAD.

MS. MORRIS: Okay. Are there any ambient light studies that you could have performed?

MR. VALLEN: There are many, many different kinds of light studies that I could do. I'm only doing one kind.

MS. MORRIS: That's direct sunlight.

MR. VALLEN: Direct sunlight, right.

MS. MORRIS: Okay, but there is such a thing as ambient light.

MR. VALLEN: There's an ambient light everywhere --

MS. MORRIS: Okay.

MR. VALLEN: -- that just exists in the world, and it's different every place you go.

MS. MORRIS: Right.

MR. VALLEN: There's ambient light in this room.

MS. MORRIS: Right. But if I put a curtain around you --

MR. VALLEN: There's reflective light.

MS. MORRIS: -- you wouldn't get any --

you know, you would guess ambient light, isn't that correct?

MR. VALLEN: Less, yeah, uh-huh.

MS. MORRIS: So there may be an effect on the ambient light of your project on the buildings behind, isn't that correct?

MR. VALLEN: There may be an effect of reflected light. I wouldn't say there'd be any effect on ambient light. Ambient light is not coming from a source in particular. It's light that just exists.

MS. MORRIS: How far is -- what is the measurement between the northwest corner of the large garage -- no, the other northwest corner, and our building on Vernon Street?

MR. VALLEN: This building?

MS. MORRIS: Well, there's a one-story in addition to our building.

MR. VALLEN: The windowless one-story building?

MS. MORRIS: Right.

MR. VALLEN: From the corner, it's about one foot three inches, I believe.

MS. MORRIS: Okay. And how -- have you measured how far it is to the window above that?

MR. VALLEN: To this window?

MS. MORRIS: Right.

MR. VALLEN: Yes. It was -- hang on a second. To the window from that, it's approximately 12 feet.

MS. MORRIS: What are the back and side walls of the project going to be constructed of?

MR. VALLEN: That's up in the air at this point. It will most likely be masonry and probably a mass of masonry that can be built from the inside out.

MS. MORRIS: I'm sorry, was it you who testified that the fence would prevent somehow or alter the plans for building those walls, the chain link fence?

MR. VALLEN: They just make it a little more difficult, but certainly not impossible.

MS. MORRIS: Okay. How so would they make it more difficult?

MR. VALLEN: Reaching around. They're kind of right there on the line. So, you know, the masons will scrape their hands a little bit when they're putting their blocks in.

MS. MORRIS: Now, brick laying is not a very neat process, is it?

MR. VALLEN: It depends on the mason.

MS. MORRIS: Okay.

MR. VALLEN: I work with very neat masons. No slobs.

MS. MORRIS: Can you guarantee that those neat masons will be hired on this project?

MR. VALLEN: I can't guarantee anything like that.

MS. MORRIS: Because in effect, the mortar is very likely to fall off onto the private property outside the footprint of Mr. Hardy's space.

MR. VALLEN: Certainly.

MS. MORRIS: Do you envision how he would clean that up, or would he clean it up?

MR. VALLEN: Of course, he'd clean it up and it would have to be done as they're working. That's the only way this construction can be done.

MS. MORRIS: But the fence, you weren't contemplating actually building the wall from the private property behind that, were you?

MR. VALLEN: No. I'm not building the project too, by the way, so I can't really testify 100 percent accurately as to how it will be built or who will build it.

MS. MORRIS: Also, to the Board, I'd

appreciate and ask if you would strike the particular model that Mr. Sockwell referred to as it's very misleading because the proponents testify that that model is available as a matter of right. And as Mr. Sockwell observed, they're only talking about one aspect of it. Otherwise, it still meets the variance.

MS. REID: Well, Ms. Morris, we were very clear as to the aspect of that particular model that pertained to what was a matter of right. I think Mr. Sockwell very succinctly explained it as such. I think that we understand that and we're very clear on it so it's --

MS. MORRIS: Okay.

MS. REID: It's moot.

MS. MORRIS: Isn't there also a requirement for side courts. I don't know if they are called closed courts or open courts.

MR. VALLEN: Not on this.

MS. MORRIS: None whatsoever?

MR. VALLEN: No, not on this kind of building.

MS. MORRIS: I guess I'll have to ask Mrs. Hicks that.

MS. HICKS: Under the zoning regulations

in the R-5-B zone construction is permitted to go from side lot line to side lot line, face on wall, either party line construction is permitted, unless you get into a building code issue, which would be setback of a court niche or court for light to get into the structure or for an ingress/egress issue.

MS. MORRIS: May I ask Ms. Hicks briefly a question before I go back to Mr. Vallen.

MS. REID: Sure.

MS. MORRIS: Ms. Hicks, I'm just going to show you part of Mr. Hardy's application where it's apparently the building department. It says his notes and computations, and it says at the bottom, "Required, closed courts have to be a minimum width of 15 feet and a minimum area of 350 square feet." Can you tell me what that's referring to?

MS. HICKS: If a closed court is provided, in the R-5-B residential zone for a two-unit flat, the requirement is for a 15 foot minimum width and a minimum area of 300 feet. The nature of the relief sought in item number four was for a variance from the open court and the closed court area requirement.

In one of the models, the court is not provided, and the initial submission a three minimum

court niche is provided to give some light, and there's some windows on the side of the building. And it also is there to give an egress or a way of getting out of the building in case there's a fire. It doesn't have to be there.

MS. MORRIS: It doesn't have to be there.

MS. HICKS: No.

MS. MORRIS: All right. Then to Mr. Vallen again, the stairs that you show in your plan, are those common stairs to the two units? There is a stairway. Is it common to the two units?

MR. VALLEN: In which? The first submitted drawings or in the alternate?

MS. MORRIS: Well, I've never seen the alternate drawings, so I can only refer to the submitted drawings.

MR. VALLEN: Okay. And your question is are the stairs common? Which stairs are you referring to?

MS. MORRIS: Well, I think there's just one set of stairs, isn't there?

MR. VALLEN: Yeah, this staircase is not common.

MS. MORRIS: It's not common.

MR. VALLEN: No. There are steps up, a

short staircase into the lower unit from the street.

MS. MORRIS: And the air conditioning units or heat pumps are on the roof?

MR. VALLEN: The condensers would be on the roof in a screened area back here.

MS. MORRIS: Okay. If there are not common stairs --

MR. VALLEN: They're recessed. Right, they're recessed.

MS. MORRIS: If there are not common stairs for both units, how will both condensers be serviced?

MR. VALLEN: The basement is -- not the basement, excuse me. The lower unit is a rental. Therefore, service people would be going through the owner's house to get to those condensers.

MS. MORRIS: Okay. Do you know whether this building -- proposed building could be turned into a condominium with separate ownership of the two units?

MR. VALLEN: I can't really answer that. It's not designed as such, so --

MS. MORRIS: Are there any exhaust fans or exhaust pipes on the rear facade?

MR. VALLEN: No.

MS. MORRIS: How --

MR. VALLEN: Everything is going to go through the roof.

MS. MORRIS: Okay.

MR. VALLEN: Of the building

MS. MORRIS: And how will the roof drain?

MR. VALLEN: It'll drain through the front.

MS. MORRIS: The front?

MR. VALLEN: It'll drain to the front of the building.

MS. MORRIS: Onto the street?

MR. VALLEN: No, into the storm sewer, or the sanitary sewer, whichever.

MS. MORRIS: Right. So in fact, that is the way any area should be draining, into the storm sewer or the sanitary sewer or whatever. Is there any fire escape on any of the rear or side facades?

MR. VALLEN: No.

MS. REID: Ms. Morris, how many more questions do you have?

MS. MORRIS: I'd just like to ask Mr. Smith one or two questions.

MS. REID: Okay.

MR. VALLEN: Are you finished with me?

MS. MORRIS: Yes, thank you.

MR. VALLEN: Okay, thanks.

MS. MORRIS: Mr. Smith, you were testifying that this proposal would give back two parking spaces to the community, is that correct?

MR. SMITH: Yes, that's correct.

MS. MORRIS: And what would happen to the people that are renting the garages right now as parking?

MR. SMITH: I have no idea.

MS. MORRIS: They'd be looking -- logically they'd be looking for street parking as well, isn't that true?

MR. SMITH: Yes.

MS. MORRIS: Do you know anything about the chain link fence that Mr. Hardy and his -- and Mr. Vallen were referring to?

MR. SMITH: Well, I do know that we're investigating it today to see if you have a permit to put up that fence.

MS. MORRIS: Okay. Well, now that you mention it, I'd like to ask you if this permit looks official to you?

MR. SMITH: It seems to be a --

MS. RENSHAW: Madam Chair, is this

something that was shown to the Board? The permit for the fence?

MS. REID: No, it was not. And, excuse me, it has not been, and this line of questioning pertains to Mr. Smith's testimony regarding the -- he made some mention of the fence that was there. And she -- Mrs. Morris is asking -- I guess asking him to verify whether or not that permit looks like it's authentic, which is okay, but we should look at the permit as well.

MS. MORRIS: Uh-huh, sure.

MS. REID: Yes, please. Give it to staff, please, Mr. Smith, and then we'll take a look at it as well, because he's basically being asked to verify in his opinion whether he thinks it looks authentic, correct?

MS. MORRIS: Yeah, okay. That's all right. I mean, there's an allegation that the fence is illegal.

MS. REID: Un-un-un. You can't testify.

MS. MORRIS: All right.

MS. REID: When you -- at the time when you are given the opportunity to testify, Mrs. Morris, you can then go ahead and express whatever you want to, but not at this point.

MS. MORRIS: Very well.

MS. REID: Uh-huh.

MR. SMITH: Can I answer the question?

MS. REID: Nope. You cannot ask a question of her.

MR. SMITH: No, I was going to answer her questions.

MS. REID: Oh, I'm sorry. I thought you said: "Can I ask a question."

MR. SMITH: No, ma'am. I did not.

MS. REID: Sure, go ahead.

MR. SMITH: Okay. Based upon my experience, having pulled many fence permits, it seems to be authentic to me.

MS. REID: So then we'll just make a copy?

MS. MORRIS: Yes, I'd like to introduce that as an exhibit if you'd like.

MS. REID: You can do that when you --

MS. MORRIS: That's fine.

MS. REID: -- have your time to testify.

MS. MORRIS: Okay, do I know where it is now so I'll take it back and --

MS. REID: Making a copy of it. They're making a copy of it.

MS. MORRIS: Oh, I see. In that case -- sorry, I guess they're not finished.

MR. SMITH: I'm sorry, could you repeat the question?

MS. REID: Did you have another question?

MS. MORRIS: No, I don't have another question. I just wanted my permit back.

MS. REID: Oh, okay. So that concludes your cross.

MS. MORRIS: Of Mr. Smith, yes.

MS. REID: All right.

MS. MORRIS: I would like to question Mr. Hardy as well.

MS. REID: Okay, all right. Thank you, Mr. Smith. Ms. Morris, I was under the impression that those were your concluding questions. You have more?

MS. MORRIS: Well, Mr. Hardy is the applicant.

MS. REID: I understand that. Again, how many more questions do you have? Because this is coming to be quite lengthy.

MS. MORRIS: Well, this is an important issue for us so I was --

MS. REID: I understand that.

Nonetheless, we still have -- also still we have time constraints. We did not limit your time but nonetheless we just ask that you --

MS. MORRIS: Yes, I'll try to be as brief as I can with Mr. Hardy.

MS. REID: Please. Thank you. And this is what you said that your colleague wanted to see this, is the surveyor's --

MS. MORRIS: Yes, please.

MS. REID: -- rendering of the subject site. and I think it belongs to Mr. Vallen, so please return it to him.

MS. MORRIS: Mr. Hardy, you purchased your garages, what was it? Six months ago or so?

MR. HARDY: That's when I settled on it, yes.

MS. MORRIS: Have you received -- let me ask you this. You say you tried to get out of the contract and were unable to.

MR. HARDY: Uh-huh.

MS. MORRIS: Did you receive any offers to purchase the garages as is?

MR. HARDY: I understand that both -- well, I might have to ask you that. But I think -- I've been led to believe that both you and the Hanna

would be interested in purchasing those properties.

MS. MORRIS: And what did they cost you? What did you pay for them?

MR. HARDY: Am I supposed to answer these questions?

MS. REID: You don't have to. That is not within the purview of this particular proceeding.

MR. HARDY: I think that's a matter between --

MS. REID: You may answer just in that -- you know, in that manner, that you prefer not to disclose.

MR. HARDY: I prefer not to, I think. They cost a substantial amount of money.

MS. MORRIS: Mr. Hardy, you are alleging that it's not economic for you to repair the garages, are you not?

MR. HARDY: I am stating that the best use of those properties is not as garages.

MS. MORRIS: Then you're not saying that it would be impossible for you to fix up the garages to be used as garages.

MR. HARDY: I understand that I cannot get a certificate of occupancy as separate garages. They don't have a certificate of occupancy right now.

MS. MORRIS: In fact, you paid a fairly modest amount of money for the garages, isn't that correct?

MR. HARDY: That depends on your point of view.

MS. MORRIS: Well, you paid about $38,500 for them, right?

MR. HARDY: That seems to be in the record, yes.

MS. MORRIS: Okay. And in fact, didn't Hanna Associates offer to pay you $10,000 more than you bought it for and with the idea that they would fix them up and use them as garages?

MR. HARDY: No, I never received any offer with a figure.

MS. MORRIS: Well, if I were to make that offer to you today, would you sell it to me with a $10,000 profit?

MS. REID: I'm not sure that this is the proper forum for that type of discourse. I think that, Mrs. Morris, those discussions you can have outside of this particular proceeding. But this particular proceeding only pertains to the application before us.

MS. MORRIS: I understand that, Ms.

Cross-Reid. But in his application, he claims that it's not economic to continue a garage use.

MS. REID: Exactly, but remember also that the variance that we are now considering does not take into consideration the economic aspects of this particular transaction.

MS. MORRIS: Well --

MS. REID: We look only at the variance -- the test as it pertains to obtaining a variance, and that is the things that have been presented here today. So that that does not have any bearing on our decision. And as such, that discussion can be better had outside of this particular hearing room.

MS. MORRIS: Okay. Let me just say one other thing, Ms. Cross-Reid. Part of the tests for practical difficulties or undue hardship is whether the applicant can make a reasonable return on his investment. That's according to the D.C. Court of Appeals.

MS. REID: Well, that's not according to the zoning regulations.

MS. MORRIS: That is in the law.

MS. REID: Well, first of all, let me explain something. It is not an undue hardship. This is an area variance, correct?

UNIDENTIFIED SPEAKER: Yes, area variance.

MS. REID: And as such, the test is a practical difficulty. Okay, that's different. Now, a use variance requires the demonstration of undue hardship. This is an area variance and this is practical difficulty. And as such, practical difficulty only requires that it will cause -- that there is a practical difficulty for the applicant to be able to comply with the existing zoning regulations. This is his only test. That's the only thing he has to do here. It has no -- we don't look at economic considerations at all in this particular variance.

MS. MORRIS: Well, I'd like to state for the record that in Palmer vs. Board of Zoning Adjustment for the District of Columbia, the D.C. Court of Appeals has said a variance cannot be granted where property conforming to the regulations will produce a reasonable return but if put to another use will yield a greater return. Now, that's a matter of law.

MS. REID: Well, what you're -- again, you're getting like apples to oranges. An area variance and a use variance are two different things.

MS. MORRIS: I understand that.

MS. REID: And as such, that particular case that you just cited, if I heard it correctly, did not specify. It simply said a variance, and then we have to go into what type of variance, and then you get into a legal issue. And if you then do that, then I have to defer to code counsel because I just -- you know, to be correct on that. Ms. Sansone, would you respond?

MS. SANSONE: Madam Chair, my recollection is Palmer involves a use variance and not an area variance.

MS. REID: Okay, Ms. Morris, you see that's a different type of variance.

MS. MORRIS: Well, it distinguishes practical difficulties. And under the section of practical difficulties, that is the quote. And I also would like to say that in Rumel vs. D.C. BZA and Carliner vs. D.C. BZA, it was stated that the property owners could make a reasonable return by selling it to adjoining owners and therefore a variance must not be granted in that case. But I'd like to go on because--

MS. REID: Yeah, please do, because that then gets ensnarled into a legal argument and that is

not the purpose of this particular body. The only thing we do is look at whether or not the application before us complies with the regulations as it pertains to an area variance, and then we apply the regulations under which -- the sections of the regulations under which they are coming before us.

MR. SOCKWELL: Ms. Morris?

MS. MORRIS: Yes.

MR. SOCKWELL: In the cases that you cited, was the word reasonable defined in specific dollar terms per square foot, dollar terms per square foot per year --

MS. MORRIS: Not at all.

MR. SOCKWELL: -- dollar terms per square foot per unit time?

MS. MORRIS: No, not at all.

MR. SOCKWELL: Then it's not relevant unless you can quantify it, as far as I'm concerned. And if you can't quantify it, I think we should leave the subject. It would be based on any specific piece of property in any specific location with specific criteria applied to it for specific terms, time, circumstances. You cannot quantify any of that for us today, can you?

MS. MORRIS: No, but if this is --

MR. SOCKWELL: Thank you. Then we will leave it.

MS. MORRIS: I'll take this up with my --

MR. SOCKWELL: We will leave it.

MS. MORRIS: Okay. Mr. Hardy, do you believe that you have a right to use our concrete parking area for any use?

MR. HARDY: I have looked at the surveys and it's clear that this is a closed-off alley. I do like to be a good neighbor and I would find it would be much more convenient, certainly, to have access but I certainly don't have any right.

MS. MORRIS: And are you alleging that somehow we closed off an alley illegally?

MR. HARDY: I'm not alleging that. Some of the neighbors feel that way but I'm not alleging that.

MS. MORRIS: But you say you've looked at the surveys.

MR. HARDY: I have indeed.

MS. MORRIS: And what do the surveys indicate to you?

MR. HARDY: Private alley.

MS. MORRIS: A private alley. And belonging to who?

MR. HARDY: To 1822 Vernon Street.

MS. MORRIS Okay. Then is there anything illegal about that?

MR. HARDY: No. I just said there's nothing illegal about it.

MS. MORRIS: Now, there will be a garage door in your proposed building, is that correct?

MR. HARDY: These proposals are not expressed to the last detail, but, yes, the idea would be to have a garage door, yes.

MS. MORRIS: Okay. I'd like to show you a picture of some garages around the corner in the alley and ask you if there's any -- if your garage door will look anything like these. And I'll show it to --

MS. RENSHAW: Madam Chair, we need to see what Mr. Hardy is looking at.

MS. REID: Mr. Hardy, please give it to staff and then they'll just pass it up to us.

MS. RENSHAW: What is the purpose of this?

MR. SOCKWELL: If I might state, I believe that in terms of elevations and final details, the designer stated that his designs were merely conceptual and not final, and it would be very

difficult to place a value on a photograph without having something to compare it to that would be considered a final drawing.

MS. SANSONE: Madam Chair, I'd also like to add that these photographs and other materials being handed to the witnesses should be made part of the record.

MS. REID: Okay. Well, I didn't --

MS. MORRIS: Yes, please, I'd like them to.

MS. REID: Once it comes up to us, then we -- we don't give it back. It has to become part of our record. I didn't say that. Thank you, Ms. Sansone.

MS. MORRIS: Mr. Hardy, did you make any estimates of replacing the garage doors and fixing the roof and cleaning up these garages?

MR. HARDY: I have applied to the zoning board for zoning variances to construct a two-family flat. That has always been, to me, the most aesthetic as well as economic way of developing the properties. So I have not looked at other alternatives at this point.

MS. MORRIS: Okay. So then you're saying that you haven't actually made an economic analysis

of fixing up the garages to be used as garages?

MR. HARDY: I've said many times I don't think that garages enhance Florida Avenue. Therefore I have applied for a variance.

MS. RENSHAW: If I may, Madam Chair, this business of alternatives was not part of the testimony. And you have to -- Ms. Morris, you have to restrict your questions to exactly what was asked.

MS. MORRIS: Okay.

MS. RENSHAW: Or what the testimony was before the board.

MS. MORRIS: Okay. Mr. Hardy, will you be supervising your construction?

MR. HARDY: I'm not certain on that.

MS. MORRIS: And have you decided what the rear walls and side walls will be made of?

MR. HARDY: No. I shall need professional advice on all those things.

MS. MORRIS: Okay.

MR. HARDY: I'd just like to say that I intend to cooperate with all of the neighbors to make sure that this is a building that is in keeping with the architecture of the neighborhood.

MS. MORRIS: All right, thank you. I'll make other comments on my own testimony.

MS. REID: Thank you. All right, Mr. -- okay, give your name. It's Mr. Hanna, right?

MR. HANNA: My name is Boushra Hanna, representing Hanna Association.

MS. REID: Okay.

MR. HANNA: And I'd like to ask the architect a couple of questions, please.

MS. REID: Mr. Hanna, all we ask is that they not be repetitive or redundant.

MR. HANNA: No, ma'am.

MS. REID: Okay.

MR. HANNA: It's not going to be. I can appreciate your concern about having the windows viewing the streets for our proposed building. What about consideration for all of the existing 35 windows that you're now going to be blocked their view, so you cannot very much in favor of that but without no consideration to existing conditions that will be directly affected.

MR. VALLEN: What we did try to show in the -- well, in both of these proposals or alternatives is that we aren't blocking -- I don't think it's 35 windows directly. And again, like I said, this is a perspective view. It's not a straight elevation, so the buildings in the back are

shorter than they actually are. In reality, we're blocking one window from a frontal perspective completely, and half of the window above it in 1818 Vernon. We're blocking no windows in 1822.

And in fact, from the perspective of this perspective, looking towards the west -- the northwest, you're still able to see past this building out to the street from the worst case, which is this lower window in the west corner of 1818 Vernon.

MR. HANNA: Can I ask you to put that perspective back again, please?

MR. VALLEN: Sure.

MR. HANNA: And I would like to mention the fact that this perspective is taken with a top view kind of like an angle.

MR. VALLEN: It's taken at 30 feet above grade.

MR. HANNA: Okay. So it is not --

MR. VALLEN: So that you're looking straight across at 30 feet from -- we're not -- the camera and the target of the camera are in the same elevation. And the reason why that was done was because there's a distortion in perspective when you stand at -- what I would normally do is stand at five

foot six, look up at about 24 feet. You see the entire building, but that's done for the effect of looking at the entire building that we're designing. Not showing the true effect of the buildings in back of --

MR. HANNA: Exactly.

MR. VALLEN: -- and related to it.

MR. HANNA: Exactly, and you just made the point. With this kind of presentation, it is not showing exactly the effect on the building in the back because it's showing with a top view angle which is going to cast --

MR. VALLEN: Well, what we're actually trying to do is to show it from as many different perspectives --

MR. HANNA: Right.

MR. VALLEN: -- in still frame renderings. had I the time and the equipment to do, I would have created an animation for you that could have shown you anything you wanted to see. But one of the things that I did so -- the whole effort here is to not be deceptive. And I think that's really critical that we state that, because we're not trying to deceive anyone about anything we're doing. And so we do do a shot of the building from street level.

If I'm standing in the middle of Florida Avenue, I'm five foot six high, my eye level, and I'm looking up 24 feet, this is what I'm going to see. This is the lower windows at 1818 Vernon from the corner, and these are the upper windows at 1822 Vernon, so --

MR. HANNA: Please understand that I'm not indicating that you are directly trying to show something different. It can be -- just happened to be that way.

MR. VALLEN: Right.

MR. HANNA: And it is going to be a lot of windows from the front as well as from the sides and not -- going back to the air circulation and light, I understand that you were examining the light as far as shadows. Have you examined the light as far as the reflective? You know, the fact that light can be reflective. If you completely cast an element in front of it, you're preventing from not only creating a shadowing but you're also creating it light not to reach another element to reflect it back, so --

MR. VALLEN: I think that's an issue that -- I'm sorry, go ahead.

MR. HANNA: I happen to be a professional

electrical engineer as well. I do study and have professional knowledge of lighting too, and I understand all of the electrical and so on. And I believe that the shadowing issue is more severe than what was presented.

MS. REID: Mr. Hanna?

MR. HANNA: Yes, ma'am.

MS. REID: Again, you cannot testify.

MR. HANNA: Okay. I apologize.

MS. REID: You will have an opportunity to testify and when you do, you certainly can bring forth any information you like, but not at this point.

MR. HANNA: Intentionally, I couldn't help it so --

MS. REID: It slipped out.

MR. HANNA: Yes. Other things concerned about the utility and the costs that was brought up that is going to be an added cost to bring in utility. If you approach any utility company, they are obligated to bring it to the property line for no additional cost, so I would like to point this out that there is no cost impact --

MS. REID: Is there a question here?

MR. HANNA: Yes. The cost impact that

was posed regarding the utility, whether you build one or two or three is kind of like a fixed cost. What is that cost? Has that been quantified?

MR. VALLEN: It hasn't been quantified, no.

MR. HANNA: Okay. Well, I recommend that you research that further because the utility company will bring it to you at no cost to the property.

MR. VALLEN: Not in the District. That's not true.

MS. REID: Mr. Hanna, if you continue to testify, then we're going to have to stop your cross examination.

MR. HANNA: Okay. As far as the egress, is there a mention for a second mean of egress being that this is more than two family -- two or more family units, you're required to put a second mean of egress. Are you required to put a second mean of egress?

MR. VALLEN: Well, we have more than one way out.

MR. HANNA: Can you show that to us, please?

MR. VALLEN: Well, the ground floor of this unit has its door and windows and court as ways

out. The upper unit has its door in the garage. There's two ways out. It also has the court from the second floor, okay?

MR. HANNA: Okay. In the second floor, the door and garage are using the same common stair.

MR. VALLEN: No.

MR. HANNA: So they qualify to come down.

MR. VALLEN: Oh, right, right.

MR. HANNA: Yes. So the qualified second mean of egress will be the court.

MR. VALLEN: Yes, from the bedroom, right.

MR. HANNA: Okay. Do you realize that this court facing a driveway that could be blocked?

MR. VALLEN: Right.

MR. HANNA: Is that makes it a qualified egress?

MR. VALLEN: Right now, it is. In future, if someone could build on that adjoining property, there would be an issue.

MR. HANNA: Are you saying that you're restricting us from building by putting that?

MR. VALLEN: No.

MR. HANNA: Because your situation would be an existing condition.

MR. VALLEN: It doesn't matter.

MR. HANNA: How many parking garages are you talking away? How many parking garages are you putting back?

MR. VALLEN: We're keeping one essentially and we're eliminating two, but we're giving back two spaces on the street, so there's no net loss or gain.

MR. HANNA: And how many losses being getting away from the use of the garage?

MR. VALLEN: I'm sorry?

MR. HANNA: How many parking space will be directly affected for the use of those garage right now that they are currently used?

MR. VALLEN: Two.

MR. HANNA: All right.

MR. VALLEN: There's three using it currently. There's three garage spaces.

MS. HICKS: I'd like to point out that the current garages have no certificates of occupancies. They're located in an R-5-B residential zone. So the use isn't permitted as a matter of right, so the three cars there now are not legitimate parking spaces.

MR. HANNA: If this is the case, why it's

being used and rented if there's no certificate of occupancy?

MR. VALLEN: I'm not the owner. I can't answer that question.

MS. HICKS: Well, it's something that's been existing there prior to Mr. Hardy owning the property and he'd like to make the use a use that's permitted as a matter of right in the R-5-B residential zone going from a nonconforming use that's not documented into a documented confirming use.

MR. HANNA: May I ask you to remove that easel or adjust the perspective to just demonstrate or ask you about the referred to in the back.

MR. VALLEN: Oh, sure. Is that good?

MR. HANNA: In addition to the four bays, do you believe there is an additional parking space such as a car parking in front of it which is within the property line, not in a public space? How many parking possibly can be handled in this existing --

MR. VALLEN: I've actually never analyzed it so it's an assumption at this point for me to make which I don't -- I really cant' answer that question accurately.

MR. HANNA: Okay. I very much want more

things about what is your expertise on analyzing air and circulations in this kind of area as far as air circulation and making sure there is no stagnant air is being created?

MR. VALLEN: Our proposal isn't creating any area that's completely enclosed. We are not enclosing anything on more than -- we're only adding a wall on one side that would affect a building directly, and that's the ten foot seven area on your property. So I don't see that there is -- but it's personal opinion.

You know, the wind blows from the north down to the south and it's going to blow right through that court and might increase in velocity slightly as it's moving through there. In the summer, the air is stagnant everywhere.

So I mean I really don't know that I can tell you quantitatively how that this will actually affect the air moving behind those buildings.

MR. HANNA: Well, by the same token, you cannot say it's not going to affect in your expert opinion.

MR. VALLEN: I can't say one way or the other.

MR. HANNA: Thank you.

MS. REID: All right. Thank you very much, Mr. Hanna. Ms. Hicks, before you leave, I had a question regarding the type of relief that was requested. I have in my file a letter from the Zoning Administrator, Michael Johnson.

MS. HICKS: Yes.

MS. REID: And I have a self-certification application that was filled out by a Brian Cass (phonetic) signed by -- who is the agent for, I guess, Mr. Hardy. I don't understand. Typically we have one or the other and in this instance we have both.

MS. PRUITT: Madam Chair, I may be able to shed some light on that.

MS. REID: Okay.

MS. PRUITT: A lot of times we get self-certifications in, and because of the responsibility of the onus put on the owner to make sure that the zoning certification is correct, and particularly in a case like this where a lot of relief is requested, sometimes we ask the Zoning Administrator to give us a letter also.

MS. REID: Oh, okay.

MS. PRUITT: And it's more of a safeguard so that -- you know, the responsibility for self-

certification is that the owner takes all that responsibility. If it's wrong, they go back through the system again.

MS. REID: I understand.

MS. PRUITT: Because of our tight schedule, trying not to add an additional hardship to not only the Board but the owner, if we catch it early enough we are now trying to get the Zoning Administrator to sort of confirm that the self-certification is correct.

MS. REID: Oh, well, thank you. I wasn't aware of that. That sounds -- that's good.

MS. HICKS: Yes, it's been done for at least, I think about two years.

MS. PRUITT: And we've been trying more and more to work with the Zoning Administrator's office when we find self-certs that -- unfortunately we can't catch all of them because, one, it's not our job to do the interpretation. But when we do the advertisement --

MS. REID: Okay.

MS. PRUITT: -- if we think that there's some question or we want to verify.

MS. REID: Okay, now, and the other question then becomes -- maybe Ms. Pruitt you can

answer or Ms. Hicks -- the relief of the sections that are indicated in the self-certification and those that are in the Zoning Administrator's letter differ somewhat.

For example, in the Zoning Administrator's letter and in the self-certification, they both stipulate Sections 402.4 and 403.2 and 404.1, however then in the Zoning Administrator's letter it says 406.1 and that's not in the self-certification application. But on the self-certification application, we have 405.9 and 2003.1.

MS. PRUITT: That's precisely why we sometimes refer it to the Zoning Administrator because sometimes people ask for zoning relief that's unnecessary or the wrong relief. And we advertise based on the Zoning Administrator's letter, who is the interpreter of the zoning regs and who indicates actually what relief is required.

MS. REID: Okay. Then in the notice, Ms. Pruitt, the notice reflects that that has been specified by the Zoning Administrator only.

MS. PRUITT: Correct.

MS. REID: Okay. So basically that usurps the self-certification?

MS. PRUITT: Yes. I mean, it's -- uh-

huh. Because basically at the end, the zoning Administrator -- after self-certification, the Zoning Administrator, after the Board has, you know, determined -- theoretically if the Board approves a project that has been self-certified, when the person goes to get their building permit, the Zoning Administrator then verifies that they have been -- have certified or requested correct zoning relief.

MS. REID: Okay.

MS. PRUITT: So it still has to be checked off by them either at the beginning or the end.

MS. REID: Okay. All right, fine. Thank you. All right, now, we move now to -- thank you very much, Ms. Hicks.

MS. HICKS: Okay, you're welcome.

MS. REID: And we move now to the Office of Planning report. Is there an Office of Planning report on this? Okay. Then the ANC in which the application site -- the ANC that has jurisdiction over this particular site, which is 1C and 2B. We do have a letter from ANC-1C but --

MS. PRUITT: There is no representative. It was called --

MS. REID: No representative here?

MS. PRUITT: They will not be here but they did send a letter in support, and there's also a letter from the single member district.

MS. REID: All right, thank you. Ms. Renshaw, do you have the letter that you could kind of --

MS. RENSHAW: Yes, I do. The letter from ANC-1C is dated June 13, 2000. And ANC-1C met on June 7th, 2000. They had a voice vote and a quorum present, and 1C voted to support the efforts of Mr. Hardy in building on this irregular lot at 1821 and 1823 Florida Avenue. And state that filling in the site with a well-designed building is highly desirable.

And mentioned the detailed alternative plans are desirable to ascertain the most feasible development of the property to result in the most minimal intrusion into desired separation at the rear from the property behind it.

And that is signed by Linda Softli, the chair, and Peter Schot, the vice chair.

MS. REID: And also, Mrs. Renshaw, they do indicate that in their view the alternative plans that were presented are more desirable to ascertain the most feasible development of the property to

result in the most minimal intrusion into a desired separation at the rear from the property behind it.

MS. RENSHAW: Yes.

MS. REID: Now, I must note here that while it is -- they do refer to the alternative plan, they do not condition their approval --

MS. RENSHAW: That's correct.

MS. REID: -- on the alternative plan. So there is a difference there. All right, thank you very much. They will be given the great weight to which they're entitled. We now go to any other government reports, which I don't think we have any. Then persons and parties in support of the application. Is there anyone else here, Ms. Hicks, that want to testify in support of the application?

(No audible response.)

MS. REID: All right. Then, Ms. Hicks, now your presentation is done so if you'd kind of take a seat back and --

MR. RUTKOWSKY: This is going to be short.

MS. HICKS: This is Mr. Rutkowsky.

MS. REID: All right.

MR. RUTKOWSKY: Yes, my name is John Rutkowsky and I actually developed 1812 Vernon Street

and across the street at 1930 and 1918, and 1806 and 1808 Florida Avenue and I'm for him changing this use, get the garages off the street. And that's all I have to say. I'm just --

MS. REID: All right. Thank you, sir.

MR. RUTKOWSKY: I still have 18 units, you know, across the street.

MS. REID: Okay. We also have for the record three letters that came in in support of the application, from a Mr. -- a Jennifer Campbell and Vincent Walsh and a Troy Tebone (phonetic) in support of. All right, thank you very much.

MS. PRUITT: Excuse me, Madam Chairman. Before the applicant steps away, could we please have reduced copies of your alternative plans and all the shadow studies for our record, please? And do you have the shadows studies?

MS. REID: Give them to the staff, please.

MS. PRUITT: If you can get us copies of it. You don't have --

MR. VALLEN: I will.

MS. PRUITT: Okay, thank you very much.

MS. REID: Mr. Hardy, did you have a comment?

MR. HARDY: There are more letters than that. There's a letter by Mr. William Carter.

MS. REID: I noted Mr. Carter's letter.

MR. HARDY: And Mr. Burch.

MS. REID: Oh, I'm sorry, there's a petition. Right, there is a petition that has --

MR. HARDY: There is a petition.

MS. HICKS: Several pages.

MS. REID: -- several pages. I just saw one page. Petition in support of --

MS. HICKS: There are also more than three letters of support in the folder.

MS. REID: You're right.

MS. HICKS: I think there was more like seven or eight.

MS. REID: There was another letter from a Mr. Burch. I have four --

MS. HICKS: Okay.

MS. REID: -- and the petition. If you have others, then you can submit them into the record. I only have four plus the petition. The petition is signed by approximately -- looks like about 20 or 25 people in support. 22 persons on the petition. Okay, all right, now we'll take that into the record, Mr. Smith.

Okay, now, persons or parties in opposition. Okay, come up, please. How many people? Just the three of you? Okay, come up in a panel. Mrs. Hicks, can you allow all of them to sit up now, please? Okay, parties in opposition have five minutes. If you want to consolidate, you can consolidate.

MS. MORRIS: No, I don't think we want to consolidate it in five minutes.

MS. REID: All right, okay, well --

MS. MORRIS: Then I have five minutes for the Lothrop House and five minutes for myself.

MS. REID: Well, I mean, basically if you can consolidate that part.

MS. MORRIS: Well, this is an important issue for us. Once it's built, there's nothing we can do about it.

MS. REID: Okay. Excuse me one second.

(Discussion among Board members.)

MS. REID: Okay, I understand. Thank you, Ms. Pruitt. Ms. Morris, we did -- typically we try to balance the time out between the applicant and the persons or parties in opposition together to make their presentation.

And Ms. Pruitt was reminding me that you

don't have a time, just to go ahead and make your presentation, since we didn't stipulate in the beginning. And just try to, you know -- since this has taken so long, try to accelerate it as much as you can but not in such a way that it in any way compromises what you have to say here today.

MS. MORRIS: Thank you. As I said, my name is Elaine Morris. I'm the president of the Lothrop House Condo Association consisting of 16 units plus three legal parking spaces. I own several of the units and others, of course, own other units. I specifically represent Gertrude Ding, Johan Hayland (phonetic), and Jose Coroga. And Ms. Ding and Mr. Coroga also wrote separate letters.

As a few quick preliminary matters. One of the individuals who signed Mr. Hardy's petition is the owner of unit 302 in our building and he has just gone into a contract to sell his unit, so his signature is relatively moot. His property will be sold within the next ten days.

Also, the letter from Mr. Hardy's application from Mr. Carter, again at the end of that letter it makes the scandalous accusations that we have basically taken the public alley for our own use which is totally untrue. There's a deeded right of

way from our property to the alley, and of course our property is our property. In this country there still is a notion of private property, I hope.

Also the ANC, I appreciate that they do have concerns for the property owners behind. I went to a meeting in May, beginning of May, and it wasn't taken up. I didn't know when it was going to be taken up, this particular petition. And in fact I asked somebody.

The meeting ran over in May and I asked one of the Commissioners, a Mr. Miztek (phonetic), whether he recalled this project being discussed and he said he believed it was already discussed and the ANC approved it, so I just thought that was a *fait accompli*. I believe the ANC really didn't hear from us. Whether that was our fault or their fault, I don't know. They didn't hear from Hanna Associates or Lothrop House.

And I'd also like to says that the great weight that the Board should accord to the ANC views means that the Board should come to grips with everything that the ANC brings up, every concern and every issue, not that the ANC's opinion should persuade the Board. And that's in Wolf vs. District of Columbia BZA. And I will be happy to give copies

of these cases that I'm referring to. I know you didn't want me to discuss them before but I really think they're important and I'd like to put them in the record.

Let me go on to say that the garages, as Mr. Hardy said, were originally part of multi-family buildings on Vernon Street. Both Mr. Hanna's, the large garage, and us, the smaller garage. And as such, they were accessory parking garages that are permitted, still permitted, as a matter of right.

But this structure would affect us substantially. Mr. Hardy and I believe Mr. Vallen were talking about our short chain link fence, which I have a picture of, would cause danger for people trying to run -- I'm not sure where he was saying they would be running, from Mr. Hanna's building to ours or from ours to Mr. Hanna's building -- in the case of a fire.

But in fact building a structure on the footprint of the garage would almost completely eliminate any possibility of getting through that area because the corner of the garage and our building are one foot apart. So if you're being chased by a fire, I think you can perhaps climb a short chain link fence but you can't get through a

brick building. So I'd like to put in that particular photo as an exhibit.

But, again, our lot is private property. There is no right of access from our lot into Mr. Hanna's and from Mr. Hanna's into ours, and I think we both recognize that. Although there is a gate on here and some of the neighboring property owners can get through the gate and we're very happy to give Mr. Hanna the right to get through it as well. Hanna Associates, excuse me.

But we're concerned about our security as well as Mr. Hardy concerned about his potential security of his building, because if this monolithic wall goes up, it's much more easy for criminals to hide behind that wall and break into units in Mr. Hanna's building and units in our building.

Right now, as you see, the backs of our buildings are visible from Florida Avenue. We get the street lights. And when there's a wall there, it's going to be very close and easily a good place for criminals to hide. We won't get that street light at night either.

And also I don't think the architect has addressed the units and the apartments in the courtyards there between the two buildings. Many of

them, and especially Ms. Gertrude Ding, currently has light that she sees over the garages and she has -- many of us have a view of the Washington Monument, which in many cases will be cut off. And I also have a photo taken from the unit just above Ms. Ding's that I'd like to submit.

Again, this particular property was not an undeveloped lot, as I said. It was cut off by a predecessor in title and it was used as an accessory garage -- they were used as accessory garages. Again, these buildings would cut off our light and air, make it less safe for windows in the back.

It would add parking -- burden parking to the neighborhood because these waters that are now parking on Mr. Hardy's property would be parking in the street. And, of course, we didn't discuss what he's charging for parking but certainly many of the residents in the neighborhood would be happy to pay for parking.

And I'd like to refer to Exhibit No. 3 of Mr. Hardy's. At the very end, he said without variances the property would be condemned to remain as storage space/garages. As such, it would likely remain an eyesore spoiling the entire 1800 block of Florida Avenue. As this type of use cannot justify

the cost of renovation.

So as I said before, Mr. Hardy introduced the economics of it when he said this type of use would not justify the cost of renovation, and we don't have any figures about what the cost of renovation is, are, or how they would be added to the price that he paid and make it uneconomic.

Again, we're concerned about the physical support of our retaining walls. If Mr. Hardy's plans go through, we don't know yet who's supervising. I'd also like to say that there's a drain in our concrete parking lot and it drains into the sanitary sewer, just like it's supposed to. Mr. Morris, who they referred to, my husband, is a licensed master plumber in the District of Columbia and he's taken care that all our plumbing and all our storm runoff is according to code.

So my feeling is that the petition cannot be granted without substantial detriment to the public good, in fact the immediate neighbors. Now, many people signed the petition who live across the street or down the street or around the corner, and I understand that it doesn't look attractive. They would prefer to see a building there.

Well, it's really not supposed to be a

vote as to what's the most attractive use. It's what can the project conform to the existing zoning regulations. If everything were to be judged on what's the most attractive use, then you don't need zoning regulations.

And, again, I'd like to refer you to Rumel vs. District of Columbia BZA, Barber vs. District of Columbia BZA, Carliner vs. District of Columbia BZA, where it said if a use can be made -- and they are talking about area variances. I used the word use, but an occupation -- you know, you make use of property, whether it's a use variance or not. If a use can be made consistent with the zoning regulations, a variance must not be granted.

And in fact these garages can be fixed up. You know, Mr. Hardy's application says they're not economic but we don't have any evidence as to why that's not economic and he can also --

MS. SOCKWELL: Ms. Morris?

MS. MORRIS: Yeah.

MR. SOCKWELL: If you don't mind, you've referred to enough cases, X plus Y versus the BZA, and you've excerpted specific phrases that you think are beneficial to your case. And without knowing the specifics of such cases, what you're saying is really

irrelevant.

MS. MORRIS: Well --

MR. SOCKWELL: It is really irrelevant. And as much as -- and I'm sure it sounds very good to say all those little snippets of whatever, they're not balanced with anything that makes us on this Board know one way or the other the validity of the references nor the specificity of the references. And I think that you've used enough of them to have just burdened me at this point with words that are meaningless.

And if you're not going to give us something that is more specific and more relevant, it's not of any value toward proving your part of this case.

MS. MORRIS: Well, of course, the petitioner has the burden of proof.

MR. SOCKWELL: Well, in your case, you have the burden of representing your constituents effectively.

MS. MORRIS: Right.

MR. SOCKWELL: And I think you can do better at it.

MS. MORRIS: Well, I'm sorry you feel that way. Again, that's why I wanted to give the

whole --

MR. SOCKWELL: And so am I, believe me.

MS. MORRIS: Again, I would like to put the whole case into the record so that whoever your legal counsel is could review that. But what I'm trying to say is the petitioner does have the option, as in these other cases where the BZA refused to grant variances similar to this.

He does have the option of selling the units at a profit to Hanna Associates who already offered to buy it and to us, and we would return them to accessory garage use which are permitted as a matter of right in the zoning regulations. And I have to emphasize that that's very important, and I'll leave that for your consideration.

Again, I had a picture of garages around the corner that certainly look neat and tidy, and that sort of garage door could be put on these garages and the roof repaired and made to look just like anybody else's garages. In fact, there would be a garage door in the proposed plan and they would look similar to that. We'd be willing to do it and so would Hanna Associates.

Again, as I said, Mr. Hanna has -- I mean, Mr. Hardy has letters and a petition but those

people have nothing really at stake other than that they look at something that's not attractive -- and I agree it's not attractive. And I believe it could be fixed up to look like very ordinary and attractive garages, just like part of the proposal will be if it's granted.

And we're also, of course, concerned, they couldn't give us any specific statements about what the walls will be that immediately abut our property. Some of them are, of course, party walls and some of them just off the walls are our private property.

We have legal parking spaces which will be in use during construction and we really have no way of knowing whether we'll be able to use our parking spaces or whether bricks will be falling and mortar will be falling on our yard and our parking -- on our cars and mortar to be washed into our storm sewer and perhaps harden up.

Now, I would like to -- and if -- you know, please tell me if I'm able to. I'd like to get Mr. Hanna's testimony that he made an offer to purchase the garages and convert them to accessory garage use. If you don't want me to do that, I'll defer to Mr. Hanna.

MS. REID: You'd like to do what now?

MS. MORRIS: I'd like to get Mr. Hanna's testimony on the record that he's willing to purchase the units or I'll let him do that himself.

MS. REID: But what I don't understand, Ms. Morris, that doesn't have any bearing on this case.

MS. MORRIS: I really think it does, as a matter of law. If the property can be returned to use conforming with the zoning regulations, then this type of extreme variance cannot be granted. But I'll just leave that in the record. And I also would like to say the extreme nature of this -- the variances, you know, in the proposal -- the original proposal which is actually in the record is no rear yard.

Now, I'm not exactly sure whether you'd be considering that or considering a partial rear yard, but no rear yard or a three foot rear yard is really a tremendous burden on us as the adjoining property owners, as well as the height because in effect it makes us provide Mr. Hardy with a rear yard.

Now, he has to -- or the person who buys from him, the only way they can get to their rear wall is to come on our property, and I don't believe

that's fair. It's sandwiching a narrow shallow building into surrounding multi-family buildings which all have rear yards. And it's too much of a burden on us.

I'd also like to say that there are other garages in the neighborhood, and if Mr. Hardy can convert a garage into a townhouse, then as a matter of due process I would imagine that other people can convert garages into townhouses and you'd have these little shallow properties, you know, sticking up all over the place perhaps.

Again, I think in the beginning you asked Mr. Hardy or you asked the architect, are there similar examples. I'm really -- again, I haven't taken a survey but I doubt if there are any or many houses with no -- that are built almost completely on their property, no rear yard or three-foot rear yard, no side setbacks, no front setbacks. I just believe that's too burdensome to the surrounding owners. Thank you very much.

May I also put in my exhibits?

MS. REID: Yes. Thank you, Ms. Morris. One moment, do you have any questions of Ms. Morris?

MR. SOCKWELL: Ms. Morris, with regard to the rear yard issue, the existing garages that are on

the property provide how much rear yard now?

MS. MORRIS: They provide zero, but they're on the level with our rear yard. Their roofs are basically on the same level as our rear yard.

MR. SOCKWELL: But they do provide a zero rear yard.

MS. MORRIS: Because originally they were --

MR. SOCKWELL: Just yes or no?

MS. MORRIS: Yes.

MR. SOCKWELL: Thank you.

MS. REID: Okay, thank you. Mr. Hanna?

MR. HANNA: I'm going to try to keep it brief. I understand the time constraints. No doubt that there is going to be a direct effect on and a hardship on our property, and this was admitted during the presentations that Mr. Hardy and his associate has made. It's just a matter of what is the extent.

It was admitted that there is going to be some shadowing. It is going to be admitted there's going to be some blocking to the view, and we feel it is more than the extent that was presented.

If this is going to go, it's going to add a big burden on not just one family, two families,

three families. It is going to be a major effect on almost 50 percent of our property directly and maybe more indirectly. Not to mention again I need to emphasize not only the effect on lighting, air and view, but there is also direct effect on parking spaces.

This issue has been brought up but I wanted to bring something else for your consideration, that in order for this to go on blocking this common driveway, we have to introduce a driveway for our space, so that's an added more burden. We calculated it based on what's been seen. There is a possibility of five cars can be parked as it is right now.

If the proposed structure goes, it was giving back one parking in the premises and will give two parking in the street, so that will be a balance of five minus three will be two. But it will also add a need for additional parking because of the tenants introduced to the space. We feel like a two-family house unit will be an average of three parking.

So that's again going back to a deficit of five parking, plus we have to cut a driveway in the street is going to take two more parking. So if

this will go, it will create a deficit of seven parking spaces, which is very critical to this kind of neighborhood because parking space is a commodity.

And I would need to emphasize again and need to say that we're willing, ready and able to purchase the property, clean it up and just for the record, and fix it up and maintain it as a garage, and will be aesthetically appealing to the community, and we're very sensitive to that as well.

MR. SOCKWELL; You're Mr. Hanna?

MR. HANNA: Yes, sir.

MR. SOCKWELL: I have a question about the parking. Would you show me specifically on the -- can you show me on those drawings access to the parking spaces that you're speaking of?

MR. HANNA: Yes, sir. This parking space is -- there's two parking spaces in the property. I can show it better in this plat if I wanted to --

MR. SOCKWELL: All right.

MR. HANNA: -- present it as an exhibit here.

MR. SOCKWELL: And the street access to those parking spaces is from where?

MR. HANNA: Is using that common driveway

in here.

MR. SOCKWELL: Show me where the common driveway is.

MR. HANNA: It's right here.

MR. SOCKWELL: All right. Which means that from that common driveway one has to drive along the sidewalk and then into your parking spaces, which is an illegal access to parking spaces under any circumstances.

You are not allowed to drive a four-wheeled automobile along the public sidewalk for any length. You are allowed to cross directly on a 90 degree angle straight driveway or you are allowed a circular drive or in certain circumstances a slightly angled drive. But what you are showing is an illegal access to what is therefore illegal parking.

MR. HANNA: All right.

MR. SOCKWELL: It is not --

MR. HANNA: Okay.

MR. SOCKWELL: -- existent.

MR. HANNA: All right, if you --

MR. SOCKWELL: It's there but it doesn't exist. Just as the representation of parking on Mr. Hardy's property, which is with -- perhaps within garages that are not occupiable, although the aprons

may not fall under quite the same regulations. But your parking is illegal.

MR. HANNA: Okay. I'll take this into consideration, but even if you strike this --

MR. SOCKWELL: No, there's nothing to consider. It's illegal, trust me.

MR. HANNA: That's fine. We've been using them without no knowledge on that. But --

MR. SOCKWELL: Right. Because you know you've -- have you ever seen anyone driving horizontally along a sidewalk in the District of Columbia legally?

MR. HANNA: It's not intended to drive in it. To just pull in.

MR. SOCKWELL: I know, but you understand what I'm saying.

MR. HANNA: Yes, sir.

MR. SOCKWELL: And I realize that it doesn't support your case but if you're an intelligent man, as I assume you to be, you know exactly what I'm saying and exactly what I mean and it is exactly correct, is it not, sir?

MR. HANNA: Correct.

MR. SOCKWELL: Thank you.

MR. HANNA: And if I might state that the

calculation would be rather than a seven parking deficit, it will be a five parking deficit.

MS. REID: I didn't hear that.

MR. HANNA: It's going to be five parking spaces that are being created as a deficit to the space. I'm striking the seven used but is going to take away five spaces, or is going to take away -- introducing a burden of five more parking more spaces to the neighborhood as it is right now.

MR. SOCKWELL: And you're making those representative of the spaces that are on Mr. Hardy's property?

MR. HANNA: It's basically one, two, three, four and two cars within the property makes it five are currently in use. By building a new structure, you're taking away all of these five with exception of giving back one, and giving back the two spaces in here, but you're also introducing a tenant in here that would require more additional spaces.

MR. SOCKWELL: And those five spaces that are being removed from Mr. Hardy's property have been characterized as being illegally occupied as well. So now we are subtracting zero from zero and getting zero because none of the spaces that you speak of are being occupied legally. Yours, the two that you

initially represented, have no legal access so they are not legal spaces.

Mr. Hardy's spaces, per the characterizations of I think Ms. Morris, are illegal because the garages are not properly issued certificates of occupancy. And the spaces on the apron may or may not be considered legal if the property itself is not occupiable because the garages comprise the only structures on the property and the aprons are part of the garages. And therefore I think none of it's legal at this point.

MR. HANNA: The fact is --

MR. SOCKWELL: So we're not losing anything.

MR. HANNA: That's fine. But the fact is it has been -- it was legal at one point or another and this condition was created. Why cannot we reinstate it back and making it legal, that's the point I would like to make.

MR. SOCKWELL: Okay, and that I can accept.

MR. HANNA: It can be easily made legal and that will be a benefit to the community.

MR. SOCKWELL: That I can accept.

MS. MORRIS: Mr. Sockwell, I didn't --

MS. REID: Thank you, Mr. Hanna.

MS. MORRIS: I didn't make any allegation about this parking not being legal or a certificate of occupancy.

MR. SOCKWELL: Oh, I thought --

MS. MORRIS: In fact if he needed a special exceptions, which I think he can get a special exception for --

MR. SOCKWELL: Okay. Well, maybe I misrepresented what you said but I know that someone made a representation to the lack of certificate of occupancy on the garages.

MS. MORRIS: I think --

MR. SOCKWELL: And maybe it was applicant himself.

MS. MORRIS: I believe so. I believe so. And we would support a special exception if he wanted to fix it up and continue running it as a garage.

MS. REID: All right, thank you. Ms. Hicks, did you have any cross examination questions of these --

MS. HICKS: No, I was just signaling that the applicant made the --

MS. PRUITT: Ms. Hicks, you need to speak

from the mike, please.

MS. HICKS: Oh, I'm sorry.

MS. PRUITT: Thank you.

MS. HICKS: I was signaling to the Board that the applicant made the allegation that no certificate of occupancy could be found.

MR. SOCKWELL: Call it assertion?

MS. HICKS: Assertion made, yes.

MS. REID: Ms. Hicks, wait. This is the time to cross examine these witnesses, and if you don't have questions for them, then we will then have closing remarks by the applicant, at which time then you can proceed with what you're saying to us right now. But you can't do it until you -- until we are done with this segment.

MS. HICKS: Okay.

MS. REID: Do you have any questions?

MS. HICKS: We have questions, yes.

MS. REID: Okay.

MS. HICKS: We'd like to introduce floor plans of the condominiums that allege that they will be affected and we'd like to ask some questions of Ms. Morris and Mr. Hanna.

MS. REID: I'm not following you. Is this in keeping with the testimony from them here

today?

MS. HICKS: Yes. They are claiming that light and ventilation would be affected on certain units, and they're also representing individuals of x-number of units.

MS. REID: So you have a question? In other words, you have -- okay.

MS. HICKS: We have layouts of each floor of the condominium that Mr. Smith has.

MS. REID: To use as the basis for a question pertaining to their testimony.

MS. HICKS: Yes.

MS. REID: Okay.

MR. SMITH: We have only an exhibit right now but we can get you a copy for the record.

MS. REID: Into the mike, please, Mr. Smith.

MR. SMITH: We have a copy of the plat and plans of condominium of Lot 26, Square 2556, and we don't have an extra copy but we can get one to the record today. Mrs. Morris, you've told us that you represent Gertrude Ding. Can you tell us -- you can use my laser pointer if you would like -- which unit is owned by Mrs. Ding?

MS. MORRIS: You may have to tell me --

MR. SMITH: Just push the red button.

MS. MORRIS: Yes, that's -- I'll get it eventually. 201. Ms. Ding owns 201.

MR. SMITH: For the record, she's pointing to the front of the building along Vernon Street and a unit facing mostly Vernon Street and Unit 201. You've also told us that you represent Jose Coroga, I think. is that how you say his name?

MS. MORRIS: Coroga, I think.

MR. SMITH: Coroga?

MS. MORRIS: I'm not sure.

MR. SMITH: Can you show us for the record where his units are on this plat, 306?

MS. MORRIS: Yes. Here and here as well. It's a two-unit -- two floor building on the third and fourth.

MR. SMITH: Okay. 306. Can you show us on the model? Can you come and show the Board on the model where these units are located, both Mrs. --

MS. MORRIS: I'll try.

MR. SMITH: Unit 201. Where's Unit 201 located?

MS. MORRIS: Well, you're not showing it because it's back here in the corner.

MR. SMITH: Okay. And about what level?

MS. MORRIS: Second floor.

MR. SMITH: Where's the second floor on this model?

MS. REID: Mr. Smith and Ms. Morris, you're blocking --

MR. SMITH: I'm sorry.

MS. REID: You're blocking the view from the very body that you wish to present it to.

MR. SMITH: My apologies.

MS. MORRIS: Well, it's really hard because there's no windows showing exactly where the units are.

MR. SMITH: But you would characterize it as being in the front block on the second floor.

MR. SOCKWELL: I think we can assume --

MS. REID: Okay.

MR. SOCKWELL: I think we can assume that the windows can be carried around from the front of the building or the back of the building to the side at the same level, so that whatever windows show, the windows on the side would align with those windows. So you can pretty much just chart a course.

MS. REID: Okay, so it's back in the back.

MS. MORRIS: You know, it's the second

floor.

MR. SOCKWELL: So it's deep in there.

MS. REID: I see. And where's the other one?

MS. MORRIS: Well, 201 has double windows. That's her bedroom, 201.

MR. SMITH: At the end of the court.

MS. REID: Okay. And where's Mr. 30 -- 3 something.

MR. SMITH: 306.

MS. MORRIS: 306 is these two windows and these two windows.

MR. SMITH: So you're saying that there's this fire escape, one of these windows right here and maybe the one above it or part of that unit?

MS. MORRIS: Exactly, yes.

MR. SMITH: Okay. And it's your argument that they have a problem with their light and ventilation due to this project?

MS. MORRIS: Ms. Ding does. Mr. Coroga --

MS. PRUITT: Excuse me, Ms. Morris. You have to be on the mike so we can get you.

MS. MORRIS: At least Mr. Smith --

MR. SMITH: Here, I'll share mine.

MS. MORRIS: Of course, Mr. Coroga wrote

his own letter stating that -- I don't remember what he said verbatim but he said partially the light, partially the view and his sense of -- I think he said the sense of privacy because of the rooftop deck. And he's a professor at George Washington University and he does research and studies from his unit. And also the view. I mean, he has a view of Florida Avenue.

MR. SOCKWELL: Mr. Smith, would you move that one block out of the way. Thank you. You've got one that's suppose to be there. Leave it there, of course.

MS. MORRIS: And he has a view of Florida Avenue.

MR. HANNA: This is alternate.

MR. SOCKWELL: Beg your pardon? Yeah, that's the alternate.

MR. HANNA: You want the alternate?

MR. SOCKWELL: Yes.

MR. SMITH: Is that okay?

MR. SOCKWELL: Uh-huh. Now, place the other one in the position with the alternate. Replace the two. Set it down. It's not quite in place. We wouldn't want you to have a --

MS. REID: And Mrs. Morris, indicate for

us where your unit is.

MS. MORRIS: Well, I have several.

MS. REID: The one that you live in.

MS. MORRIS: The one that I live in is back here -- oops, I'm going to knock everything over. Here. And I have windows on the side as well.

MR. SOCKWELL: And the others that you own?

MS. MORRIS: Yes, the first floor under Ms. Ding, the third floor over Ms. Ding.

MR. SOCKWELL: Uh-huh, which has windows on the front and into the courtyard?

MS. MORRIS: Yes. The bedrooms on that section just -- the bedrooms on that section just have windows out to the courtyard.

MS. REID: Mr. Hanna?

MR. HANNA: Yes.

MS. REID: Where is your unit?

MR. HANNA: Okay.

MS. MORRIS: I have others.

MS. REID: I'm sorry, you said -- go ahead.

MS. MORRIS: And also 103, which are these two windows and these two windows. And almost -- especially LL1, which is actually terrace level,

back here, that's a glass door.

MR. VALLEN: That is storage space.

MS. MORRIS: Pardon me?

MR. VALLEN: That is storage space.

MS. MORRIS: No, that's the door on the right. The door to the left. I believe you knocked on their door at one point. That's LL1.

MS. REID: Right there?

MS. MORRIS: Yes.

MS. REID: Over there?

MS. MORRIS: Yes.

MS. REID: Okay.

MS. MORRIS: This first floor building is partially storage and it's partially the kitchen of LL1. It has a skylight. And, of course, some of the building would cast a shadow on the skylight as well.

MS. REID: And where is Mr. Hanna?

MR. HANNA: Okay. More than one unit will be -- I have to remove this model to see it.

MR. SOCKWELL: That's all right. That's fine.

MR. HANNA: So this model here you can see it. So basically right in here is perfectly in front, this unit here. And this unit in here. This is partially in back.

MS. RENSHAW: Which one do you live in?

MS. REID: Those three are all --

MS. RENSHAW: Which one do you live in, Mr. Hanna?

MR. HANNA: I don't live in here but the tenant that I have in here --

MS. REID: Where do you live? Where do you live?

MR. HANNA: I live in Richmond, Virginia. I have my associate lives nearby the property.

MS. REID: Okay.

MR. HANNA: In addition to that --

MS. REID: Mr. Hanna --

MS. PRUITT: You've got to speak into the mike so the recorder can pick you up, please.

MR. HANNA: Okay, thank you. As I said before, those two windows and part of that window will be directly affected. Also not to mention once you put this back to illustrated, now there are some windows throughout the entire side. And as you can tell, there's a change in elevation.

So the tenant that lives in that level is very much dependent on them windows for light because this is their only source of light and view, is on this side, because the units are divided some units

in here some units in here.

So they don't have any other alternative for any light or views, and then the elevation is high as you can tell from this photo --

MS. REID: Give it to staff, please.

MR. HANNA: Sure. There is a lot of windows being affected on the side, not to mention the one up in front.

MS. REID: Is it only that -- with that particular unit, is just that window that is germane to that unit or is it both of the units -- I mean, both of the lights on the front? Both of the window lights on the front?

MR. HANNA: It's the window -- actually this is going to be affected also --

MS. REID: No.

MR. HANNA: These windows.

MS. REID: No. That window there. I'm asking are both of those windows for the same unit?

MR. HANNA: No, ma'am. Two separate units.

MS. REID: All right.

MR. HANNA: And those on other units are also, depending on where is the south heading, this can also cast some shadow in here. But the direct

effect on the view happening in here and happening in all of the units that viewing from the side because it's a direct obstruction here.

MS. REID: Okay.

MR. HANNA: As well as light.

MR. SMITH: Mr. Hanna, while you're here, can I ask you a question to point out on this model? Where is the southernmost portion of your lot and show us how your lot is configured on this model to show your boundary lines, where it comes? Does your boundary come up to Florida Avenue?

MR. HANNA: Yes. The boundary line comes this way --

MS. PRUITT: The microphone.

MR. HANNA: The boundary line, we already got some setback on the side so the boundary line is right in here. And I'm continuing with my pen all the way to Florida this way, that way, that way and on. And there is a surveyor in here and I took the moment to share it and read it.

MS. REID: We have it. That's the survey. We have that already in our -- in the file. We have it.

MR. HANNA: This one, our lot, which is not in -- this I'm just presenting it today. That

shows the extent of our Lot 24.

MS. REID: Okay, it's the --

MS. PRUITT: Similar survey. It's just that it's marked differently than what you have in your file.

MS. REID: Okay.

MR. SMITH: So for the record you were indicating that your lot continues for a substantial distance along Florida Avenue next to the garages that are the subject of this discussion. How many units do you have in your building, sir?

MR. HANNA: We have a total of 18.

MR. SMITH: Ms. Morris, can you come up and show us on this model where your back yard goes to? I want to make sure that everyone understands the extent of their property. Can you just sort of show us where it goes?

MS. MORRIS: Okay. Actually it borders this proposed building and then straight down onto Florida Avenue, then back up around 1825 to here. So basically this whole flat area is our back yard. Plus this, yes. That's why I said borders down to Florida Venue.

MR. SMITH: Can you also please show us on your condominium plat where your property lines go

to for your condominium common ownership and -- your limited common ownership and your private ownership.

MS. MORRIS: That's sort of a compound question. The outline of both the Lothrop House again borders the west side and part of the north side of the garages, straight down to Florida Avenue, down 7.54 feet and back up along this line. That's the common area. These are the three parking spaces.

MR. SMITH: So it's a fair characterization to say that your back yard is much more substantial than just the distance between the two buildings in question which is this one story addition and then this garage property, is that correct? Your back yard is substantially larger.

MS. MORRIS: I guess the plat speaks for itself. I don't know.

MR. SMITH: Okay, thank you.

MS. RENSHAW: If I could ask Ms. Morris since Ms. Morris is right here. The building that's right behind you on the model, was that building built after you took ownership of the Lothrop House?

MS. MORRIS: Are you talking about this building?

MS. RENSHAW: That right there.

MS. MORRIS: Yes, it's always been there

as far as I know.

MS. RENSHAW: So when you moved in, that building was there?

MS. MORRIS: Oh, yes.

MS. RENSHAW: Oh, all right. Thank you.

MS. REID: Okay. Any further questions? Okay, Ms. Hicks, then now closing remarks for the applicant? Closing remarks?

MS. HICKS: We have set forth today to submit two proposals. The first proposal was submitted with the Board of Zoning Adjustment application and the second submission was submitted on suggestion by the ANC to try to mitigate the rear yard setback, even if it's minimum at best.

The current use of the property is a nonconforming, non-legal use. We cannot document it on an issued certificate of occupancy. In order to establish the use in an R-5-B residential zone, we would need Board of Zoning Adjustment relief so we would be back here again with probably some of the same arguments, even if we wanted to renovate the existing properties.

But Mr. Hardy feels like he could put it to a better use, a more beneficial use, and clear up the eyesore that's existing there. And he's trying

to do it with minimal impact to his adjoining neighbors. And he's providing one off-street parking space which is required under the zoning regulations for the two units.

Parking to the front of the structure is not allowed in an R-5-B residential zone. He proposes to leave one curb cut open, close the widest curb cut and try to restore two off-street parking space.

Height, we've tried to keep the building, especially in the alternative, as low as we could possibly get it in order to get some reasonable use out of the building.

We feel like we've demonstrated that there is a practical difficulty and a hardship with the lot constraints. It's not a parallel lot. It's an irregular lot. It has an existing building on it that has no rear yard, which covers more of the lot than would be allowed under the current zoning regulations. And that's basically all I have to say. Mr. Hardy, do you have any comments in closing?

MR. HARDY: No, just to comment that I would hope to work towards developing something that is very harmonious with the neighbors. I would like to be on good relations with my neighbors. I feel

that some of the interest that has been expressed today is the interest of the immediate neighbors who would have liked to have purchased the property themselves and I think that that speaks for itself, but I think it's not really something that's at issue before the Board. What's at issue before the Board is a use for the property which maximizes the benefit to the city as well.

And I think for the city what we're proposing here is an enormous improvement on a block which is marred by this dilapidated derelict structure which has been there -- when I first moved to Washington, which was 36 years ago and I lived on 18th and S Streets, it was there then and it's been there since before that time. And what I'm trying to do is clean up the mess and put something that'll be nice for the neighbors.

MS. REID: Thank you, Mr. Hardy. Ms. Hicks, I just have one question.

MS. HICKS: Yes.

MS. REID: In regard to Ms. Morris' assertion that there could be accessory parking spaces put on this lot as a matter of right, can you address that as to the reason why Mr. Hardy is preferring to go the variance route to have his

application approved?

MS. HICKS: Could you repeat --

MS. REID: Okay, the practical hardship aspect of it pertains to a practical hardship in not being able to comply with the existing zoning regulations. If in fact the existing zoning regulations would allow the accessory parking lots, then how do you then respond to that?

MS. HICKS: In the R-5-B zone, it would take Board of Zoning Adjustment approval to establish commercial parking.

MS. REID: So are you saying either way you still have to come to the BZA?

MS. HICKS: Either way. Whether -- since the use is not documented on an issued certificate of occupancy --

MS. REID: Uh-huh.

MS. HICKS: -- it's considered a -- it's not considered a legal commercial usage. The property has been used that way, and in order to get it legally established, even to get a building permit to upgrade the existing structure as a commercial garage, he would need for zoning adjustment approval. It would never be issued without a certificate of occupancy.

MS. REID: So you're saying that that is not correct. That it's not permissible under the current zoning to put in the accessory parking lots.

MS. HICKS: Well, the private garage has not been used as -- to my knowledge as accessory parking. To me, it's my understanding that over the years it's been used for commercial usage. Those spaces have been leased or rented out. In order to get that use legitimate --

MS. REID: Well, that's a legal. I mean, we know that.

MS. HICKS: It would need Board approval. If the spaces were maybe owned by the Lothrop House or someone else, they could combine the lots and use them as accessory parking for their structures.

MS. PRUITT: Excuse me, Madam Chairman.

MS. REID: Oh, so you're saying -- excuse me one second. Yes?

MS. PRUITT: I was going to say it may get cleared up on the fact that this lot has been subdivided a long time ago. And at one time this parking structure -- this lot was part of the lot before it. 808, I believe, was part of Lot 26, and 812 was part of Lot 24 a long time ago. And these structures would have been existing at that time,

which would have been an accessory to those buildings.

MS. REID: Okay.

MS. PRUITT: I don't know if that's true but that's an analogy -- or that could be how they got where they are.

MS. REID: Okay. All right, that clarifies to me my area of confusion.

MR. SOCKWELL: I have several potential issues but I will get to the one that has been most important to me and since Ms. Pruitt brought it up, it has been characterized -- this property has been characterized as a lot. In fact, this property is actually two lots, not one individual lot that has specific properties of shape that make it an unusual lot.

And generally in order to satisfy the requirements for variances, there has to be an exceptional narrowness, shallowness shape or specific -- of a specific piece of property, and this is two specific pieces of property, when only as a combined lot would they actually provide this particular nonconformity, and yet you are coming to us as if the lots exist in the condition that they must for a building permit to be issued for the particular

structure that you propose.

And I have problems with that because one cannot create a nonconformity for the purpose of coming before the Board.

MR. HARDY: Could I answer --

MR. SOCKWELL: Please.

MR. HARDY: -- on that issue. This property was sold to me as a single property.

MR. SOCKWELL: It's in single ownership but it's two separate lots and cannot be built upon as 800 lot numbers. And believe me, I know Ms. Hicks will certainly attest to that.

MS. HICKS: These are --

MR. HARDY: As a result of that, I have filed for a new subdivision plat and they have been combined, legally combined, and that's already been approved, so they are now a single lot.

MR. SOCKWELL: And that information was not conveyed to the Board.

MR. HARDY: No, I'm afraid that's an oversight, but it was finished about a week ago.

MS. HICKS: Right, initially the application came in as two taxation and assessment lot numbers, which are 800-series lot numbers.

MR. SOCKWELL: Absolutely.

MS. HICKS: In order to get a construction permit issued by the Department of Consumer and Regulatory Affairs, you must combine the two lots.

MR. SOCKWELL: As you know, I well know.

MS. HICKS: Yes, yes.

MR. SOCKWELL: We don't have any question about either your or my knowledge of the system, I don't believe.

MS. REID: Okay, that having been established, let's move on.

MR. SOCKWELL: But so the issue is: What is the new lot number?

MR. HARDY: I'll have to tell you afterwards but I do have it.

MS. REID: You'll provide it. You'll provide, okay.

MR. HARDY: But I do have the plat.

MS. REID: All right.

MS. HICKS: Yes, Mr. Hardy will provide that information.

MS. REID: Okay, any further questions by the Board members?

MR. SOCKWELL: But again, the issue still is not necessarily satisfied in my mind as to whether

or not the subdivision itself creates a lot that is therefore valid for consideration under the specific requirement for variances.

That is the question that I raise, because if we create a lot that in fact creates the circumstance by which the zoning ordinance is to be applied, then we are stepping away from one of the principal elements that establishes specific conditions for the use of the variance procedure and that is where I am concerned because we've had this come up before.

And the situation is that while I certainly think that certain parts of your proposal can be looked at certainly on merit -- for example, some of the light and ventilation issues are handled by the fact that there is at certain times a large truck that parks directly at the mouth of the court between the two existing apartments buildings.

That truck takes out all the necessary view of anyone in the LL and anyone on the first floor of those condominiums. And this building, while if it is built becomes permanent, it certainly replaces a typical condition that is intermittent but existing.

The alternative scheme to me seems to

have more merit than the primary scheme --

MS. REID: Well, what I --

MR. SOCKWELL: But there again --

MS. REID: Excuse me, Mr. Sockwell.

MR. SOCKWELL: -- that's an issue but I --

MS. REID: Yeah, that would be better discussed --

MR. SOCKWELL: Could be better discussed--

MS. REID: -- when we go to deliberations.

MR. SOCKWELL: Yeah, if we deliberate. But the issue that I am raising specifically is the applicability of the variance to a created condition.

MS. RENSHAW: I'd like to -- Madam Chair, I'd like to ask Mr. Sockwell what he is proposing. Are you proposing to suspend or to postpone until you see the new plot and --

MS. REID: Well, I --

MS. RENSHAW: But that information, I don't understand.

MR. SOCKWELL: I'm proposing that we withhold a decision on this matter until we can confer with corporation counsel and discuss the

specific issues of application of this ordinance in this case.

MS. REID: Okay, I think that given the fact that we do have parties in opposition that it would not be able to be decided upon today at any rate and so it would have to be at our next regularly scheduled meeting date, which would be on July 5th. Ms. Pruitt? July 5th, I'm almost certain. That morning. Right? July 5th?

MS. PRUITT: Yeah, I was just going to make a suggestion that maybe we can get corp counsel to write us an opinion on how subdivided lots --

MS. REID: Yes.

MS. PRUITT: Or, yeah, lots that have been combined.

MS. REID: Right, and to address the --

MS. PRUITT: Mr. Sockwell's concerns.

MS. REID: Mr. Sockwell's concern whether or not once it is combined and then presented to us as a single lot, if that has any bearing on the manner in which we treat this particular application. And corp counsel will give us a reading on that, Mr. Hardy will present us with the plat that reflects the actual --

MS. PRUITT: The new lot.

MS. REID: -- new lot number. And we'll have all that before us before our next meeting, in which time we will be able to do the deliberations on this particular case.

MS. PRUITT: And I'd like to -- well, I just wanted to run through some dates with you, if possible, for the July 5th meeting, and so we are all clear for the record what needs to be submitted. We will have the exhibits of the alternative plans, which you've given me, but also the shadow studies, and all the stuff that you've provided today, along with the new combined lot.

And if you -- both parties and the applicant can submit a draft order, if they'd like, by the 26th of June. Excuse the short turnaround time but because of the holiday, we're -- you know, everybody's a little crunched.

MS. REID: Also, in regard to the actual construction, typically when we have large developments, we ask for a construction management plan. In the absence of a huge unnecessarily, you know, detailed construction management plan, I'd like for you to identify for us the contractor and how are you -- how are you going to manage the property, the construction. And particularly in regard to some of

the concerns raised here today pertaining to the brick laying and how the mortar is going to be handled and things that are of concern to your neighbors.

If you could basically summarize something for us to kind of address those issues and to give some -- give the neighbors some sense of comfort that these things are being considered and that you take their concerns very seriously, we'd appreciate that as well.

MS. RENSHAW: And, Madam, Chair, if I might add, since you have asked for some construction information, if the architect would give us some detail as to whether or not you're going to be putting in a basement and whether or not you are going to be requiring any blasting on this site.

MS. REID: And that information would be due when, Ms. Pruitt?

MS. PRUITT: That's what I was trying to say. All of that information would be due 6/23, by Friday. That's, I mean, unfortunately short turnaround.

MS. REID: That's next week.

MS. PRUITT: This week.

MS. REID: This week?

MS. PRUITT: Well, if you want to make a decision --

MS. REID: Oh, right, right.

MS. PRUITT: -- before the holiday with the holiday weekend, yes, I'm sorry, that's the concern.

MS. REID: Is that possible?

MS. PRUITT: That's a lot of information but --

MS. REID: Is that doable? Because that would allow us to be able to put you on the calendar at our next scheduled meeting date and not have to delay it until after our recess which is in August. It would have to be in September.

MR. SOCKWELL: Another thing that I would like to request of the architect or the designer is that he get a second opinion on his solar angles for the District of Columbia because they don't conform to what I know. And rather than specifically state what my difference is, an AutoCAD program with the additional whatever it is -- which one you were using, I've forgotten.

You were using 14 with AccuRender version 3.0. I think there's a discrepancy between the AccuRender, especially in the summer -- actually the

summer and the winter angles don't match what I understand them to be for the district of Columbia, and they're off a significant number of degrees, and I would want you to get either a U.S. Weather Service reading on that or another qualified source. And, if necessary, you can input that to your drawings and make a correction. And I would want that. Thank you.

MS. REID: Okay? Thank you very much.

MS. PRUITT: Excuse me, Madam Chair, just because we've gone through a couple of more things, can I just reiterate for the record so everybody's straight, particularly myself. For the 23rd, which is this Friday, we'll have the additional alternative designs, the shadow studies, the new combined lot, information concerning construction and construction management. And from the architect a second opinion on the shadows, possibly from -- I'm sorry, you said U.S. Service, Mr. Sockwell?

MR. SOCKWELL: Yes. Weather Service.

MS. PRUITT: U.S. Weather Service or equally qualified source.

MR. SOCKWELL: Yes.

MS. PRUITT: And then draft orders would be due the following Tuesday, which is the 27th.

MS. SANSONE: Madam Chair, I'm concerned if we have new evidence coming in with the second opinion and the construction practices that the parties in opposition have a chance to review that and perhaps submit rebuttal information.

MS. REID: Okay.

MS. PRUITT: All right. So if that was the case, it still puts us on this same very tight timeline. Draft orders and any rebuttal would be due the same day, which will be the 27th. If you have -- please come to the mike.

MS. MORRIS: I'm not sure how we can review something and get a second opinion on the very same day that it's being submitted.

MS. PRUITT: No, it'd be submitted on the 26th -- I mean, excuse me, 23rd, Friday. Unfortunately, you would have to submit your rebuttal and draft on the following Tuesday.

MS. MORRIS: I don't see how that can logically happen.

MR. SOCKWELL: A comparison of the existing presentation of the shadow drawing could be made if you get a copy of that from the applicant. And then you can very quickly see the differences, if there are differences, in the solar angles. It would

not be something that would take any study at all. You could look at it, you could see it, you would know what the differences were. It's not brain surgery here when you're just looking at pictures.

MS. REID: Ms. Morris, also, you were to submit for the record today the copies of the cases that you were citing.

MS. MORRIS: I believe I did.

MS. REID: You did? Okay. That also we would like to have included in the packages that come out prior to that meeting so that we could look at that information.

MS. PRUITT: They're part of the record so we'll mail it to you.

MS. REID: Okay.

MS. PRUITT: I mean, she's already submitted it today.

MS. REID: Okay.

MS. PRUITT: And also just a reminder, please serve all information on the parties. Sometimes we forget that. But make sure that both Ms. Morris and Mr. Hanna get copies that you serve us on the Board. Thank you.

MS. REID: All right. All right, then that would then conclude this morning's session. We

know we're running behind. This case took considerable more time than what had been allotted. But nonetheless, we don't have any control over that. We're going to just take a short lunch, 30-minute lunch, and resume back at -- let's say 1:20 to take up the other two cases of the morning and try to get through the afternoon cases.

We do have a continuation, do we not, Ms. Pruitt?

MS. PRUITT: Just one.

MS. REID: One continuation for one of the cases this afternoon, which clears our calendar somewhat so that we don't have to wait too long.

MS. MORRIS: Ms. Reid, didn't you say that we could make a summary as well?

MS. REID: No, no, no. Only the applicant has an opportunity at the end to -- excuse me, excuse me, excuse me. Wait a minute. Excuse me. We have not yet completely adjourned for the morning.

The applicant has the ability or opportunity to come at the end and give closing remarks, but the opposition unfortunately they don't have that opportunity. That is not something that is afforded them.

MS. PRUITT: Mrs. Morris, you can include your information in your draft order. You know, you can propose a draft order when you do your findings of facts and conclusions of law and include your opinions and stuff in that part.

MS. REID: And on disk, please. The draft order.

MS. PRUITT: That would be helpful if you can.

MS. REID: Please, if you can.

MS. PRUITT: If not --

MS. MORRIS: What format? Word Perfect? Word?

MS. PRUITT: Word.

MS. MORRIS: Word.

MS. PRUITT: Yeah, we use Microsoft Office 2000 Word. Microsoft Word.

MS. MORRIS: I may have a slightly older version.

MS. PRUITT: That's okay.

MS. MORRIS: A copied disk, you're talking about. Not CD, I hope.

MS. PRUITT: No.

MS. MORRIS: Thank you.

MS. REID: Okay?

MS. PRUITT: Of you can even e-mail us if that's possible, too.

MS. MORRIS: Could I get the e-mail address?

MS. REID: All right, we can do that after. That concludes this morning's session. We will resume at 1:20.

(Whereupon, a luncheon recess ensued from 12:58 p.m. until 1:37 p.m.)

MS. REID: Good afternoon. The hearing will please come to order. Ladies and gentlemen, this is the June 20th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid. Joining me today is Robert N. Sockwell and Anne Renshaw, who is not in the room right now but she'll be here shortly. And representing the Zoning Commission is John Parsons.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

When coming forward to speak to the Board, please give both cards to the reporter who is

sitting to my right. The order of procedure for special exception of variances is, one, statement and witnesses of the applicant, two, government reports including Office of Planning, Department of Public Works, et cetera, three, the ANC in which the site is located, parties and persons in support, parties and persons in opposition, and lastly closing remarks by the applicant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except for any materials specifically requested by the Board, and staff will specify at the end of the hearing exactly what is to be expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons who are present not engage the members of the Board in conversation. Please turn off all beepers and cell phones at this time so as not to disrupt these proceedings.

The Board will make every effort to

conclude the public hearing as near as possible to 6:00 o'clock p.m. If the afternoon's cases are not completed by 6:00 o'clock p.m., the Board will recess until they can complete the pending case or cases remaining on the agenda. And we will, by all means, attempt to be done by 6:00 o'clock.

At this time the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today or requests for postponement, continuance or withdrawal or whether proper and adequate notice of the hearing has been given.

If you're not prepared to go forward with a case today or if you believe that the Board should not proceed, now is the time to raise such a matter. Are there any preliminary matters? I think that we did have a preliminary matter and request for a continuation for Dumbarton and also for --

MS. PRUITT: Yes. Madam Chair, the Dumbarton is actually an announcement. The Board made that decision awhile ago --

MS. REID: Okay.

MS. PRUITT: -- to continue it but it was actually scheduled for today. I just --

MS. REID: Oh, by mistake?

MS. PRUITT: No, it was scheduled for today but you continued it prior. And in case -- it just needs to be announced here in case not everyone got to know that it was -- we don't renotice everybody when we reschedule.

MS. REID: I see. Okay.

MS. PRUITT: So it's just more of an announcement.

MS. REID: Okay. Then the case No. 16555 for Dumbarton Oaks, there was a request for postponement to October 24th. We were able to accommodate that date?

MS. PRUITT: Yes, we've already rescheduled it --

MS. REID: Okay.

MS. PRUITT: -- and it's been on the agenda.

MS. REID: Okay.

MS. PRUITT: We just wanted to publicly announce to anyone who may show up today.

MS. REID: And anyone here who's -- anyone who came today for this particular case, we're notifying you that this case will not be heard today. It has been postponed to October 24th. All right, thank you.

Now, there was another one with regard to -- what was the case number for Sisson?

MS. PRUITT: Case No. 16521.

MS. REID: 16521.

MS. PRUITT: You received it today. I'm sorry, you received -- it's a request from the ANC.

MS. REID: Okay. And is there anyone who is affiliated with Case No. 16521 here? Please come forward.

MS. PRUITT: This request is from the ANC.

MS. REID: Uh-huh.

MS. PRUITT: Do you have a copy?

MS. REID: Okay. Is the ANC also here? Okay. All right, there is a request from the ANC that says basically that -- and I'll read in pertinent part, "although a hearing is scheduled for June 20th by the BZA, we urge the BZA to suspend any consideration of any remedial variance until" -- remedial is in quotes -- "until the appeal to the District of Columbia court of Appeals of the BZA order 16521 has been concluded."

"Any other action would discourage settlement and prompt resolution of the case. Further consideration of this matter by the BZA while

the appeal is pending also undermines enforcement of the overlay district and the finality of the BZA orders." And that's what's before us today.

So Board Members, do we have a motion in regards to this particular request from the ANC. And as you well know, with the ANCs who are accorded great weight, we try to accommodate them where possible, particularly in instances where it's a very complicated application, as this one is with Sisson. A motion?

MR. SHER: Madam Chair, may I address something?

MS. REID: I'm sorry, I'm sorry. Yes, please.

MR. SHER: For the record, my name is Steven E. Sher. I'm the director of zoning services with the law firm of Wilkes Artis. We represent Mr. Sisson. My colleague, Allison Prince, is the one who's been handling the case as the lawyer involved, and I'm the planner --

MS. REID: Exactly.

MR. SHER: -- but nonetheless here I am. This case has been before the Board on many occasions and has been postponed and postponed and postponed. Not at the applicant's request because

we've been prepared to go forward.

MS. REID: Right.

MR. SHER: We are again prepared to go forward today.

MS. REID: Is their attorney here to actually be able to put on the case?

MR. SHER: Well, we're the last case of the day, so --

MS. REID: I understand that.

MR. SHER: -- that's why they're -- I didn't know of this frankly and I'm not sure that I'm prepared to address it particularly. But all I know is we're prepared to go forward today.

MS. REID: Mr. Sher, you were not served with this request from the ANC? It was dated June the 13th.

MR. SHER: Mrs. Prince may have it. I have not seen it until just now.

MS. REID: All right.

MR. SHER: I know she was at the ANC meeting that night. There was not a quorum present. There was -- as I think Mrs. Huer's (phonetic) letter indicates, there was some discussion that went on and I don't know whether the A -- in fact, I think I would have to say in the absence of a quorum I

don't think the ANC itself could have made this request. But notwithstanding that, we're prepared to go forward with the case today and I believe that we would prefer to have the Board do that.

MS. REID: All right. Well, Mr. Sher, I don't think that -- in order for that request to be considered by this body, I think it would have to be done by the attorney who's representing the applicant. I don't think that that --

MR. SHER: Well, I'm happy to have you do that if we could defer that until Mrs. Prince gets here. I mean, I don't think anybody anticipated that, given the way the morning calendar worked, that you were going to take these matters up now.

MS. REID: Well, preliminary matters are generally taken up at the beginning of the afternoon session or the beginning of the morning session. And as such, we were getting the preliminary matters out of the way.

MR. SHER: Well, I --

MS. PRUITT: Madam Chair?

MS. REID: Yes.

MS. PRUITT: My understanding is that Wilkes Artis is authorized to represent Mr. Sisson, the firm itself.

MR. GLASGOW: Right. Madam Chair?

MS. PRUITT: So I believe Mr. Sher or Mr. Glasgow could stand in for Ms. Prince.

MR. GLASGOW: Yeah, I believe the law firm is authorized to represent the applicant.

MS. REID: The law firm -- and I'm sorry, Mr. Glasgow, my understanding was that the law firm had -- I mean, I'm sorry, that the applicant in the letter of authorization had specified which attorney for the law firm. Was it just the law firm itself? Okay.

MR. GLASGOW: Yeah, it's the law firm.

MS. REID: All right, fine. Well, what we'll do, you're saying Mrs. Prince is coming?

MR. SHER: Yeah, we're prepared to put the case on this afternoon.

MS. REID: All right. Well, whether she's here -- if you're representing the law firm , them whether -- if she's here or not, we could still take a vote or we could wait until she gets here --

MR. SHER: Well, I'm --

MS. REID: -- to take a vote.

MR. SHER: I guess what I'm saying is this case -- you have a report from the ANC that opposed this application many months ago. There was

a hearing scheduled for last month, at which there was some question raised about a survey.

We produced the survey. The survey was given to the attorney for the opposing neighbor who lives next door. The survey was given to the ANC. We went to the ANC meeting which was supposed to occur on Monday the 12th. They did not have a quorum, so we're prepared to go forward today.

I don't know how many more opportunities it is going to take before we can actually get to hear this case, but I also really sort of wonder how you could have a request from the ANC for a postponement when the ANC didn't have a proper number of members present to take an action requesting a postponement.

MS. REID: Well, it does --

MR. PARSONS: Madam Chairman, it seems to me we ought to get on with the morning session.

MR. SHER: that's fine with me.

MS. REID: All right, okay. We'll do that. We'll just wait until the other attorneys come in and then we can make a decision. Okay. All right, thank you.

The first case of the afternoon, if there aren't any more preliminary matters --

MS. PRUITT: Actually, it's the second case of the morning.

MS. REID: Oh, right, right. Okay. Right, I forgot that. Second case of the morning.

MS. PRUITT: Application 16580, application of Holidae Hayes pursuant to 11 DCMR 3104.1 for a special exception of Section 403 under Section 223 to exceed and increase the allowable percentage of lot occupancy requirements for a dwelling and the refurbishing and enclosing of an existing rear sundeck and the renovation and enlargement of an existing second floor bathroom in an R-3 District at 3114 N Street, N.W., Square 1208, Lot 875.

All those planning to testify, would you please stand and raise your right hand. Do you swear or affirm the testimony you're going to give today is the truth?

(Witness sworn.)

MS. PRUITT: Please be seated. Madam Chair, originally you had one request for party status from Mr. William C. and Jane Evans Ramsay. Earlier this morning he actually gave me a little handwritten note. It stated, "I am William Ramsay and I am canceling my request to testify in this

case," so it appears that we have on here to testify in opposition or in support.

MS. REID: Okay. Well, then that's very good for you.

MR. SIERS: Thank you.

MS. REID: As such, generally when we don't have opposition, persons in opposition, then we will allow you to expedite your case and basically you can stand primarily on the record, and we have read your case.

MR. SIERS: Okay.

MS. REID: And given the fact that we are running so behind today, then if you can just quickly summarize for us the merits of your case. Like I had said before, we have read it. And if the Board members have questions, we can do that, and then proceed on and hopefully wrap this very quickly.

MR. SIERS: Okay. My name is Russell Siers. I live at 3287 D Sutton Place, N.W., and I'm representing Holidae Hayes. And as you've stated, we're here to seek special exemption from the 40 percent lot occupancy, to increase it up to 51 percent.

Primarily the area of concern, or my client's concern, is that the rear of her property,

she really doesn't have any views of her back yard from the family room. She's got a fireplace and two door openings, and thus we wanted to be able to enjoy the rear of the property by maybe enclosing the porch, making it a little bit bigger and enclosing it with a glass structure which you've seen the elevations for and so forth. And thus because of this requirement, we also can't enclose a exercise room up on the second floor, which you've also seen.

All these things have already been approved through the Old Georgetown Board and, as I said, we have letters in support from the three adjacent neighbors. And to tell you the truth, I was a little bit intimidated after this morning's hearing. I didn't know what to expect so, I mean, I guess to make it short, that's really all. I'm here just to see if the Board will grant this special exemption. And we have the full support of the ANC and the Old Georgetown Board and the three adjacent neighbors.

MS. REID: And you're in compliance with Section 403 and Section 223 --

MR. SIERS: Correct.

MS. REID: -- of the regulations? Just

one moment.

MR. SIERS: If I may add one more thing which my client wrote a letter, it was prior to the submittal, that there used to be an existing structure here and consequently several weeks ago the granddaughter of the lady who owned the property came by and talked to the contractor and then gave us a photograph -- an old photograph, which I have here which I can submit to you, that shows that there used to be actually a big masonry structure in place of this, and we're actually not going to be as big, so I'll submit that.

MS. REID: Give it to staff, please.

MS. PRUITT: Excuse me, you have to give it to me through them. Yeah, I'm sorry, it's just procedurally.

MS. REID: Okay, now, in the meantime these pictures that you have, can you just basically indicate for us what they are in your exhibit?

MR. SIERS: They've also -- I submitted a package for each board member that had a color photograph and these are basically the same depictions and they're each noted in the submittal. I think I submitted four sets of copies of photographs describing each thing.

Hello? Hello? That's it? Okay. Maybe what I'll do is I'll bring this a bit closer to you, because they're small photographs, I apologize. This is the rear of the property right here and we have an existing deck here, okay. Do you have photographs there?

Oh, thank you, thank you. It's my first time presenting. Right here? Okay, this here shows the existing structure with a wood deck behind there. What we're proposing is to add to that deck an extra three feet towards the pool and enclose with a glass and wood structure around there.

If I can show you this wall down here, this is an existing on-line wall which was part of the previous structure of this -- there used to be an addition behind the house. We're not going all the way to the end. We're going five feet back from there and that will be the end of our structure, and we're going up two feet above that line.

This was a compromise that we came up with the neighbors. The originally approved Old Georgetown Board was four foot six above this masonry wall. And between going back with the ANC commissioners and mediation, we all agreed that we can go up to two foot high wall, compromising my

client's design but allowing us to move ahead in that respect. And we tried to stay somewhat in a style that was somewhat pleasing to the board.

And then the other thing is that unfortunately the -- I'll show you here on the site plan over in the distance here, we have a -- our house is a semi-detached house, and that's what limited us to a 40 percent lot occupancy. Well, the neighbor next door has the same -- basically, I guess, had the same house with the same pools, pool house, everything, and they -- what they did, I guess, several years ago is they built to the property line, which thus then allowed them to build the 60 percent lot coverage.

And in the beginning of this process, in my oversights, I looked at this building and we had a deck there. I read the code; I didn't read it thoroughly enough, and I oversighted that I'm a semi-detached row dwelling which I'm limited at 40 percent.

And on top, also the Zoning Administration also had oversight at the same time that I was approved to continue. So both of us kind of made a mistake but we've gone back and rectified that and tried to work with the neighbors and so

forth. And I'm in the hopes that you find my project or our project in compliance with the intent.

MR. SOCKWELL: You say your neighbor built to the property line at some point?

MR. SIERS: Yes. A long time ago, this structure -- they built that structure right there that allowed them then to touch both property lines, making them -- I think to make them a row dwelling, like an attached, because it goes from property line to property line.

MR. SOCKWELL: Yeah, but that doesn't make it a row dwelling just because it's -- unless it's attached to something else. And if they did it with a building permit, just fine. Without, then not so fine.

MR. SIERS: Because their lot occupancy is 60 -- I'd say about 60 percent by just the massing of it. They have a structure there and it's bigger than ours. And then this property next to us, which was the area that was of concern because our addition was on that, that existing property line right there, on-line wall that we have, they were the people that had the concern with the height of our addition.

MR. SOCKWELL: Uh-huh.

MR. SIERS: And the thing is you can see

on this on-line wall, you can still see where the stud -- where the floor joists were and you can see footings and so forth, but we didn't -- we're not using that case for -- to make a case or whatever, so --

MS. REID: All right. And in regard to the relief that you're requesting for the special exception under 403 which pertains to lot occupancies which you're asking for the special exception from, as well as under 223 which, just for the record, speaks primarily about the adverse impact aspect, and it says that you're dwelling unit should not have a substantially adverse effect on the usage of any abutting or adjacent dwelling or property owners. Have you had any complaints or any opposition. I think we had one letter from --

MR. SIERS: Yes. The one person that we did was the gentleman that was here earlier, and they're ones that we've been working with, some of us --

MS. REID: Okay.

MR. SIERS: -- with ANC. And it was an issue that the height of it did have an impact on the shadow onto their property and so forth. So as a compromise, we lowered our wall down two foot six and

going for glass -- mostly a transparent structure, in the spirit of cooperation.

MS. REID: And the rest of it pertains to just what you said, light and air available to neighboring properties, privacy of use and enjoyment of neighboring properties in addition and together with the original building as viewed from the street, alley and other public ways shall not substantially visually intrude upon the current scale and pattern of houses along the subject street frontage.

MS. SIERS: Yeah.

MS. REID: And lastly -- well, last and (d), and demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, applicant shall use graphical representations such as plans, photographs and elevation and section drawings sufficient to represent the relationship of the proposed addition to the adjacent buildings and view from public ways -- from the public ways, and which you've done there.

The lot occupancy of the dwelling reflect, together with the addition, shall not exceed 50 percent, and so we talked about that in your request for relief. And the Board may require special treatment in the way of designs creating

exterior lighting, building materials and other features.

Okay, so that then presents to us the relief which you're requesting. The Board members don't have any questions. We could move now to office of Planning report. I don't think we had one on this case. ANC is not here, however, Ms. Renshaw is --

MS. PRUITT: And, Madam Chair, I'd just like to say --

MS. REID: Yes.

MS. PRUITT: -- the report is late so you need to waive the filing time.

MS. REID: Yes, okay. Ms. Renshaw, do you have that copy of the ANC report?

MS. RENSHAW: Yes, I do.

MS. REID: First of all, let us take up the issue of the fact that has been filed late and they request a waiver of time for the submission of their report and I have no problem with it. If there aren't any objections from any of my colleagues, then we move now to the ANC report.

MS. RENSHAW: All right. This is ANC-2E. it is a letter dated June 16th, 2000 and it's signed by Peter Pulsifer, the Chair. And the ANC met on May

30th, 2000, a regularly scheduled meeting. It was duly noticed and all eight, 100 percent, of the commissioners were present. And ANC-2E supports the modified design in the agreement concerning 3114 N Street and urges its approval by the Board of Zoning Adjustment on the 20th of June on the basis that the Old Georgetown Board administrator will work out the details. And that is the extent of Peter Pulsifer's, the chair's, letter to the Board of Zoning Adjustment.

MS. REID: And as such, they will be accorded the great weight to which they're entitled. In regard to the agreement, the modified design agreement, did you enter an agreement with the ANC? A written agreement or was it verbal?

MR. SIERS: There was a letter between my client and the next door neighbors about limiting the height of that masonry wall to two feet. I think --

MS. REID: Do we have a copy of that?

MR. SIERS: I believe so, yeah.

MS. REID: Okay. We do?

MR. SIERS: It was submitted last week. And the Old Georgetown Board has also reviewed this drawing and they had a special meeting to approve this revised drawing.

MS. REID: It is in the record you said, Mr. Parsons?

MR. PARSONS: Yes, it is.

MS. REID: Okay, all right. All right, then persons and parties in support? There are none. Or the persons and parties in opposition? There are none. So closing remarks by the applicant.

MR. SIERS: Closing? Just to be brief, I hope that we have met -- if there's a burden, that we met all the lights and air quality and privacy issues here by getting support from all three surrounding neighbors and the ANC and the Old Georgetown Board as far as aesthetics. And I'm in the hopes that you will allow this project to move ahead so that we can go file for a permit and make my client happy.

MS. REID: Are you asking for a bench decision summary order?

MR. SIERS: Sorry?

MS. REID: That means that you receive the decision today.

MR. SIERS: I would like that. That way -- because unfortunately I applied for this project way back in August of last year and I had zoning approval and then we had the Old Georgetown Board approve us by February, I believe, and then we found

out we had to go to the zoning after in reverse. The whole process was in reverse.

And my client is just -- this is basically holding up all our exterior work and my client would like to move into her house. She's now living in the basement with all her furniture all scattered around the house. And I would appreciate it if you could make a motion now so that we could proceed hopefully.

MS. REID: Okay. Board members?

MR. SIERS: Thank you.

MS. RENSHAW: Madam Chair, I urge that the BZA support application No. 16580 for the modified design of Holidae Hayes --

MS. REID: Okay, Ms. Renshaw, you want to word that as I move --

MS. RENSHAW: -- pursuant to

MS. REID: I mean, I move that --

MS. RENSHAW: I move.

MS. REID: -- the BZA approve.

MS. RENSHAW: All right, I move that the BZA approve the application --

MS. REID: Okay.

MS. RENSHAW: -- of Holidae Hayes, Application No. 16580 pursuant to 11 DCMR 3104.1 for

a special exception of Section 403 under Section 223 to exceed and increase the allowable percentage of lot occupancy requirements for a dwelling and the refurbishing and enclosing of an existing rear sundeck and the renovation and enlargement of an existing second floor bathroom in an R-3 District at the premises 3114 N Street, N.W., Square 1208, Lot 875.

MS. REID: Okay. And do you feel that they have met their burden of proof?

MS. RENSHAW: Yes, they have met the burden of proof.

MS. REID: And what about in regard to the issue of any detriment to the public good?

MS. RENSHAW: There is no detriment to the public good and we have --

MS. REID: What about the impact that it would impair the integrity or the intent of the zoning regulations in map?

MS. RENSHAW: It does not impair the integrity of the zoning regulations in map and there is no opposition.

MS. REID: All right. And I would second it. All right, are there any further discussions?

MR. SOCKWELL: Yes. I have one question.

The proposed side yard versus the existing side yard is what?

MR. SIERS: The proposed side yard of --

MR. SOCKWELL: You're showing expansion and renovation of an existing bathroom.

MR. SIERS: Correct. We're building on top of an existing structure. We're not increasing the perimeter of the existing structure. We're building above it.

MR. SOCKWELL: So the existing side yard would --

MR. SIERS: Will remain the same.

MR. SOCKWELL: Do you know what that dimension is?

MR. SIERS: It's 5.03, I believe.

MR. SOCKWELL: All right. I would add to the motion the amendment that the side yard for the proposed structural modifications not be reduced to less than 5.03 feet.

MS. RENSHAW: I accept that amendment.

MS. REID: Okay. All in favor?

BOARD MEMBERS: Aye.

MS. REID: Opposed?

(No response.)

MS. PRUITT: Okay. Staff will record the

vote as four to zero to approve that the amendment made by Mr. Sockwell that the structural -- I'm sorry, can you repeat that just so I can --

MS. RENSHAW: Just the side yard modification.

MR. SOCKWELL: That structural modifications not reduce the side yard to less than 5.03 feet.

MS. PRUITT: Okay.

MS. REID: Okay.

MS. PRUITT: By a vote of four to zero, motion made by Mrs. Renshaw, seconded by Mrs. Reid, amended by Mr. Sockwell.

MR. SIERS: Thank you for a pleasant experience.

MS. PRUITT: Summary order?

MS. REID: Thank you. Summary order, and you should have your decision in approximately two weeks. Okay, thank you.

MR. SIERS: Thank you very much.

MS. RENSHAW: By the way, Mr. Siers, is Ms. Hayes here?

UNIDENTIFIED SPEAKER: I'm her mother.

MR. SIERS: Her mother is here.

MS. RENSHAW: Oh, your mother.

MR. SIERS: No, not my mother. Her mother.

MS. RENSHAW: Her mother. How do you do?

UNIDENTIFIED SPEAKER: My mom was here earlier.

MS. REID: Okay, next case please, Mrs. Pruitt?

MR. SIERS: Thank you.

MS. PRUITT: Last case of the morning agenda is 16581, application of 912 F Street Associates LP, pursuant to 11 DCMR 3103.2, for a variance from the floor area ratio for a historic landmark and to construct a twelve-story tower by incorporating portions of building 910, 912 and 914 F street into a hotel and the site of 916 F Street which would provide a public entrance to the hotel under Subsection 1707.4. The building will be joined with the tower by way of glass atrium in a DD/C-4A District at 910, 912, 914 and 916 F Street, N.W., Square 377, Lots 847, 848, 828 and 829.

All those planning to testify, would you please stand and raise your right hand? Do you swear or affirm that the testimony you're going to give today is the truth?

(Witnesses sworn.)

MS. PRUITT: Please be seated.

MS. REID: Okay. Is there anyone here in opposition to this case? What about persons in support. So basically, Mr. Glasgow, it's just the witnesses that are involved in putting on your case for your application.

MS. PRUITT: Ms. Reid, do you want us to time this?

MS. RENSHAW: Yes.

MS. REID: No.

MS. PRUITT: Okay.

MS. REID: Now, what I was about to say was, first of all, let me apologize on behalf of the Board for the delay in your case this -- which was supposed to be this morning, but this afternoon. Nonetheless, we'll try to make it up to you in that we have read -- Mr. Glasgow, we have read your case and we are well aware of the merits of the case. You don't have any opposition here today?

MR. GLASGOW: That's correct.

MS. REID: And as in previous cases that you've presented before us, this is an opportunity to expedite, and if you could basically give us the salient points of your case quickly, but state on the record as much as possible, and we should be able to

wrap this up relatively quickly.

MR. GLASGOW: All right. Thank you, Madam Chair. For the record, my name is Norman M. Glasgow, Jr., of the law firm of Wilkes & Artis, representative of the applicant 912 F Street Associates.

Here with me today I have Ms. Anne Adams, architectural historian, Mr. Peder Selerud, the architect, Mr. Christopher Brueh of Donahue Construction, Mr. Ted Seale of Thorne Consultants. They are consultants in hotel economics and feasibility. And Mr. Steve Sher with land planning.

I think what we will do is I will offer Ms. Adams, Mr. Selerud, Mr. Brueh, Mr. Seale and Mr. Sher as experts. Mr. Adams and Mr. Sher have been accepted as experts previously by this Board. Mr. Selerud was accepted as an expert in architecture at the Historic Preservation Review Board hearing before the Mayor's Agent hearing. And Mr. Seale and Mr. Brueh's curricula vitae I'll submit for the record.

I don't plan on calling all of those witnesses. I just want the Board members to be aware that they are here --

MS. REID: Okay.

MS. GLASGOW: -- in case you have any

questions that deal with their respective areas of expertise. I understand you have a copy of the statement of applicant.

We are seeking an FAR variance from 6 FAR to 7.17 FAR. We have been to the Mayor's Agent. I assume that you all have had an opportunity to read the Mayor's Agent's order. It was obviously quite complimentary of the project and notes at page 8, "The Mayor's Agent further concludes that the granting of this application is necessary in the public interest as described in the relevant part of DC Code Section 5-1001B, nothing that this project will contribute to the existing character of the historic district as an adaptation of the site for current use and that both -- note, and that both the proposed alteration of the existing structures and the proposed new construction are each compatible with the current character of the historic district."

We have been through a fairly lengthy process before the historic preservation review board and the Mayor's Agent, we have been to the ANC, and we are very pleased to receive the report of the Office of Planning yesterday which also is supportive of the project. We are not aware of any opposition to the project.

We believe that the statement of applicant at pages 5 through 13 goes through the burden of proof that we have as does the report of the Office of Planning to the three-part test with respect to the granting of the variance that is requested.

We also note that we have testimony that could be submitted that shows that the volume of this building at 7 FAR is the same as a 6 FAR office building, so that with respect to the height and the bulk of the building, if it were a different use, would be the same size. But with less FAR, we would hope that the Board would be encouraging the use of this site as a hotel and grant the variance that has been requested.

We have setbacks that are about three times what are proposed in many projects in the historic district. We're a 67 foot setback. We're able to do that because of the depth of the lot, so the depth of the lot does cause us a number of issues. But in this case, we have used it to create significant setbacks.

We also have a slope in the lot that's 13 to 14 foot change in grade so that we have parking and loading, which is counted in FAR in this site.

That is we try to avoid that in almost any other case that we have. That's about a 4500 square foot penalty. The atrium is another 1600 square foot. That's separation that we normally would not have in many projects, particularly on a lot this size.

So that the conditions on the site also cause us to increase the FAR and is part of the need that we have for the variance. And if there are no preliminary questions, we are either ready to turn to the witnesses that we have or answer questions to the Board -- from the board as a panel, whatever your desire would be.

MS. REID: Go ahead and proceed with your witnesses, Mr. Glasgow. And, again, we would like for you just to basically summarize and you don't have to -- you can submit for the record your testimony but just give us the highlights of your particular testimony.

MR. GLASGOW: All right. I'd like to call the first witness, Ms. Anne Adams, architectural historian.

MS. ADAMS: Good afternoon, Madam Chair and commission members. My name's Anne Adams. I'm an architectural historian. I would like to show you a few slides to get you oriented to our site and I

will try and be brief.

MS. REID: How many slides do you have? Because I think that everyone on this Board is very familiar with those sites -- with that site on F Street --

MS. ADAMS: That's fine.

MS. REID: -- for many, many years.

MS. ADAMS: It's been sitting there looking less than wonderful for a long time.

MS. REID: Right. All right, is there any Board member -- Ms. Renshaw, are you familiar with the site?

MS. RENSHAW: I would like to see one photograph of the site. Also I'd like to see the property from the rear.

MR. GLASGOW: Ms. Renshaw, in Tab D, the third page, and the fourth page of that exhibit also show photographs of the site from the rear.

MS. ADAMS: Can you see that?

MS. RENSHAW: Uh-huh.

MS. ADAMS: I'll show you maybe two slides that will help with this. Our site is a mid-block site on the south side of F Street, 910 to 916. The four small buildings that you see there sandwiched between the Riggs Bank Building, which is

at the corner of 9th and F, and the National Union Insurance Building, which is the tall dark sandstone building. I'll get to the buildings themselves. I'm sorry.

MR. GLASGOW: Why don't you just tab --

MS. ADAMS: All right.

MR. GLASGOW: Yeah.

MS. ADAMS: What you can see used to be Sonny's Surplus. On the left side of the side where it says Optical is 910. The entrance to Sonny's Surplus is 912. 914, those are the three contributing buildings in the historic district. And that is 916 F Street, the noncontributing building.

MR. GLASGOW: You can use Exhibit D. Second page.

MS. ADAMS: Exhibit D, second page has a picture that shows all of the buildings. I don't have slides of the back, but the next page in Exhibit D does show the rear of the buildings with many of their twentieth century additions. Is that sufficient?

MS. RENSHAW: Yes, thanks.

MS. ADAMS: Thank you. The buildings have been altered significantly in not very appropriate ways, and this project that you're going

to see will allow for their retention and restoration incorporated into a project the likes of which we actually haven't seen in a long time. This is not a facade project. This is actually a preservation project. We are saving all of the original fabric and mass of 914 F Street and restoring its oriole window which has been lost over the years. And the main blocks of 910 and 912.

We have been to the Mayor's Agent for approval to remove the rear wings of those two buildings, which was granted as consistent with the purposes of the Act. So we have an unusual situation here where we have three buildings which will be incorporated into a new hotel. The noncontributing building at 916 will be demolished and the entrance to the hotel will be put there. And that in and of itself, with its design that is compatible with the historic district, and linking to the hotel tower in the back, well do better things for the historic district than what that building does right now.

Sandwiched between the two taller buildings that you saw, the hotel -- the new construction in the back actually will be not visible from -- it'll be not visible much at all. We have a very deep site which actually presents problems but

it also presents opportunities to basically limit the visibility of the hotel.

The site -- we've done a lot of research on the buildings. They are -- the contributing buildings were built approximately 1875. They've been commercial for most of their histories. We have an unusually shaped lot. We have a large nineteenth century sewer running through the lot which actually presents interesting archeological opportunities which will be included as part of this project.

As I said, this is a significant departure from what we've been -- what the Historic Preservation Review Board and the Mayor's Agent has been looking at and we think this is a very positive thing.

The whole building retention, the significant facade restoration, the retention and restoration and incorporation of the second floor front room of 914 which is basically the only room that has any significant original fabric left, it's all there, and that will be used to be a very special hotel room, something that we can take advantage of.

The hotel use is an easy fit for these buildings in terms of the upper floors being rooms and lower floors having public access for public

spaces associated with the hotel. This is a very good adaptive use project.

The atrium allows for additional setbacks from the historic building so that because of the deep lot and because of the nature of how you do a hotel, it allows us to have the main bulk of the construction set way back from the street and allows the retained buildings to read very much as they would have originally as small scale whole buildings.

As I mentioned, we will be doing archaeology, and the new construction and the alterations have been deemed compatible with the character of the historic district.

In terms of the zoning issues, and I sort of stay away from these things, because I think what you have to do to get a good preservation project is look at each site and look at the buildings and figure out what works on the site and what works for the buildings. It's not necessarily a project of 3 FAR or 6 or 7.19.

What we have here is an unusual circumstance where a building with slightly greater FAR than is allowed will actually reap much better preservation benefits than we would have otherwise, because it allows for a viable hotel project that can

incorporate all these preservation aspects and let this project go forward to allow these buildings to contribute to the historic district and to the very important F Street streetscape in a way that maximizes their potential in essence and maximizes the preservation aspects of the project.

We usually think of bigger is not better, but in this case because of the site and the peculiarities of the site and the possibilities of the site, bigger is better in this instance I believe.

This is an unusually positive preservation project. And, as the Mayor's Agent noted in his decision on the demolition of the two rear wings, which he did allow as consistent with the purposes of the Act, he also noted that, quote, the proposed alteration to the existing structures and the proposed new construction are each compatible with the current character of the historic district, unquote.

I very much hope this project can go forward so that these buildings can help re-establish F Street in the midst of all the ongoing work that's happening down there in a very positive way. And if you have any questions, I will try and answer them.

MS. REID: Thank you. Ms. Renshaw, do you have a question?

MS. RENSHAW: Yes. Ms. Adams, you stated that you were doing archaeology. Would you expand upon that, please?

MS. ADAMS: As par of our review by the Historic Preservation Review Board, the issue of archaeology came up. We have consulted with the staff and we will be developing an appropriate scope of work for the site to investigate the rear yards and possibly the basements of some of these buildings. We haven't done that yet but we will be working with Nancy Kasner (phonetic).

MS. RENSHAW: So there will not be any blasting on this project if you're doing archaeology.

MS. ADAMS: We would do the archaeology certainly before any construction goes forward, and as far as I know there's no blasting in any event. But archaeology would be done prior to construction.

MS. RENSHAW: About how long is that going to take you?

MS. ADAMS: I don't know because we haven't finalized what work will be done.

MS. RENSHAW: Uh-huh. What I'm trying to get at here is how extensive your archaeology is

going to be.

MS. ADAMS: Basically we will be doing what the Preservation Office requires us to do.

MS. RENSHAW: Okay.

MS. REID: Thank you very much. Thank you.

MR. GLASGOW: I'd like to call the next witness, Mr. Peder Selerud. And Mr. Selerud, if you could summarize your testimony and hit the high points. Thank you.

MR. SELERUD: Again, my name is -- is this on?

MR. GLASGOW: Yes.

MR. SELERUD: Okay. My name is Peder Selerud. I am a registered architect, senior designer, with the firm of Grennen, Bier, Gormon & Monk here in Washington, D.C.

I will run very quickly through some of the site constraints that Anne alluded to. One of the key issues is that this site is located on F Street between two high-rise -- or two very tall landmark historic buildings, the Riggs Bank Building, about a ten-story building to the east, the National Union Trust Building, an eight-story building to the west.

That places two very strong bookends, if you will, on the site, with large blank walls. So immediately our window line on any development on the site regardless of building type is rather severely limited to the north and south or inward.

In addition, as mentioned, we have the three historic buildings that we are retaining on the rather narrow facade along F Street. It's 88 feet wide in total. The new -- the infill area is about 27 feet wide. Access to the site is by way of a 15-foot alley on the west side of the Union Trust Building that leads into the main east-west alley at the rear of the site which is a 30-foot alley. This alley drops about 13 to 14 feet from F Street to the alley at the rear.

The site is also affected -- the planning of the site is also affected by an odd little notch in one corner. And then Anne mentioned the nineteenth century sewer line that runs through. And this is not a modest little pipe of any kind. This is an eight-foot wide vaulted structure that comes through the site. It is, from all indications, still in use.

Things have been modified somewhat in other locations, but as it goes through this portion

of the block it presents a formidable obstacle in terms of planning and careful design so to avoid any damage to that structure.

The response -- the design response to all of these constraints, not the least of which were the historic buildings, has resulted in an evolution of a project through a series of meetings with the NCPC and -- not NCPC. HPRB and their staff, in which we have placed the main portion of the hotel at the rear of the site. This is a section if you were looking towards the east. The front of the site leaves those historic buildings intact separated by an atrium. The width of the atrium varies depending on the depth of the building.

These dashed lines indicate site lines from across the street on F Street to indicate that you will really see about the top four stories of the building plus a little bit of the top of the penthouse. So the visibility of the -- the visibility for this building is really out on F Street, which is the construction of an entrance building to the hotel that is similar in scale but not mimicking directly the existing three buildings.

I show you these drawings a little bit hesitantly in that the design will continue to evolve

and some of the details will not -- or already have changed. If you look at the elevations, some of the details will have been modified and will continue. These are preliminary concept drawings in that way.

The height of this building was in response, again, to HPRB staff and the HPRB themselves saying they would like to see a bit taller building. We initially had it lower. There's some significant scarring on the side of the National Trust Building as a result of previous demolition.

Moving quickly as I was prompted to do, I just want to touch very briefly on the plans of the building because the zoning of the site I think is an important part of this concept as well, in that it is not quite what you usually see in a hotel design. In that, I mean we have -- the front almost half of the site is really devoted to public functions.

Frequently when you go into a hotel now, you immediately are confronted by the registration desk and whatever. We are really identifying the renovated buildings, the restored buildings as a public kind of function, a restaurant or retail that has as much relationship to the street as it does to the hotel, as well as the public functions of the hotel and the lobby and atrium kinds of spaces. All

of the rear of the site is then the registration desk, the access to the rooms, all of those kinds of things.

As we move up through the building very quickly, show a diagram of how these historic buildings may be used. We add some additional hotel rooms in that entrance piece to the -- this new entrance piece. The rear block for the hotel itself is really designed to be a very compact efficient hotel plan and to keep it as small as we can within the requirements for a hotel.

The rooms are pretty much what is accepted within the standards within the industry now, which is a room width of 12 to 13 feet and a depth of 27, 28 feet. So we are staying within those kinds of guidelines in the initial planning of this hotel. In the center, there's a rather large -- proportionately a rather large core because of the needs for the elevators, stairs and other services.

The elevation of the building, we have -- as I mentioned at the beginning where we have these strong bookend historic buildings on either side, the attempt was not to create another landmark building in between them but rather to create a background building that relates to these in its scale and

texture but is really truly treated as a background building.

I don't have anything more to add right now.

MR. GLASGOW: All right. Thank you, Mr. Selerud. I'd like to call the next witness Mr. Christopher Brueh, Donahue Construction. If you'd please summarize your testimony.

MR. BRUEH: I'll be very brief. Good afternoon, Madam Chair and members of the Board. My name is Chris Brueh. I'm vice president with the Donahue companies where I've been employed for 13 years.

I've actually worked on three projects with the applicant before you today over the past 12 years, and all three have in fact involved a substantial degree of historic preservation, including the Riggs Bank Building, Hotel Conversion at 900 F Street, which is adjacent to the site you're considering today.

I'm here today though to speak to the construction premiums associated with the development of the F Street Hotel project. The premiums are estimated at total access of $1 million and relate primarily to major issue areas First, preservation

issues, and second, site constraints.

Speaking of preservation issues, which have been discussed previously, 910, 12 and 14, there are premiums associated with the facade, retention of those buildings, and the restoration, not just the front elevation but also the rear of the three buildings.

There are elements that involve interior restoration and something we haven't touched on, but structural remediation such that to bring these historic structures up to current codes and unloading requirements.

The other component I spoke of are site constraints. There are a number of inefficiencies of construction that are going to occur on this site, predominantly staging is expected to take place from the F Street elevation where two-thirds of the available frontage is obstructed by existing buildings that are slated to remain.

The site is basically a boxed-in site from a construction standpoint, and the proportion with a two-to-one depth to width ratio is somewhat challenging from a construction point of view. It's, of course, an interior lot with limited access.

The 88 feet of frontage on F Street only

yields actually about 27 feet of construction access due to the preservation of 910 through 914. The alley width is limited, of course, to 15 feet between the structures, which limits our ability to work from the south elevation. And last but not least, the large capacity nineteenth century sewer line which is still active today traverses the rear corner of the site.

To wrap up here, I know you're pressed for time, in summary the project has a substantial preservation component that occurs in a critical staging area along F Street. The preservation requirements, the three buildings, coupled with the site constraints, that is the inefficiencies, the limited access, the active sewer line, all contribute to driving these construction phase premiums to costs in excess of $1 million.

In the interest of time, I will wrap up and wait for comments and questions.

MR. GLASGOW: Thank you, Mr. Brueh. I'd like to call the next witness, Mr. Theodore Seale.

MR. SEALE: Chair and members of the Board, my name is Theodore Seale. I'm with Thorne consultants testifying before you today regarding the hotel market and economic feasibility. I have over

16 years of experience in the Washington, D.C. lodging market.

Very briefly, in my opinion, the project with 115 rooms will be very difficult to finance because it will not generate sufficient cash flow to cover its development costs, which would range about $200 to $220,000 a room. Spreading that risk over 146 units begins to bring development costs down to something that would be likely to be financed, between $170,000 and $175,000 a key.

In addition, there was a study done by the accounting firm, Deloitte Touche, in regards to the new convention center that indicated a need for 4,000 additional hotel rooms in the city to support the expansion of the convention center.

This property at 115 keys would not likely be helpful in that because the hotel management would likely take transient business only and not take convention delegates. At 146 keys, the possibility for the hotel manager to allow a room block of 30 to 40 rooms would be much more likely and could take some of the city-wide business that would be right up the street from its location. Thank you.

MR. GLASGOW: I'd like to call --

MS. REID: Thank you, Mr. Seale.

MR. GLASGOW: I'd like to call the last witness, Mr. Steven Sher.

MR. SHER: Good afternoon, Madam Chair and Members of the Board. For the record, my name is Steven Sher, the Director of Zoning Services with the law firm of Wilkes Artis. I believe staff has handed you my analysis of this case. I'm going to go right to the bottom line which is compliance with the variance that we've asked for.

Just to put one comment that Ted made in context, we're asking for a hotel of 146 rooms in 7.17 FAR. His reference to 115 rooms is the number of rooms you could accommodate if you were limited to the 6 FAR which is what normally applies. So that was the understanding of where we are versus where we would be.

In terms of the compliance with the variance standards, as the Board knows, we have to demonstrate an exceptional or extraordinary situation or condition, and we believe that this site is affected by a combination of things which create that situation or condition:

The change in grade from the F Street measuring point down to the alley at the back results in a substantial portion of the base -- what would

otherwise be a cellar level being a basement and being charged against FAR, the proportion of the width to the length, the nature of the interior lot, presence of existing buildings on both sides, lot lines affects areas where windows could be constructed on the site and how you actually arrange the site, and Mr. Selerud has talked about that, the presence of the sewer line crossing the southeast portion of the property, the retention of all of the significant -- historically significant fabric of the three buildings which contribute to the character of the historic district, we believe the entirety of those four points creates the exceptional situation.

Practical difficulty is involved with the cost related to the historic preservation activities. The inability to spread the density across properties which are not limited to 6 FAR. As the Board may be aware, we have had other projects where we have sites which are both limited to 6 FAR in part and not. And when you have that ability to spread that density across properties that are not limited to 6 FAR, it significantly affects the ability to proceed.

And the last point is that the hotel program requires the minimum of about 150 rooms to

cover the infrastructure and operating costs of a newly constructed hotel with these constraints.

The last part of the variance clause requires that the Board find there be no detriment to the public good. Both Ms. Glasgow and Ms. Adams have referenced the Mayor's Agent's findings about the project and I won't repeat those.

The high bulk and use are consistent with surrounding properties, but probably most importantly approval of the variance allows for an economically viable hotel use with emphasis on the word hotel, as opposed to office use or some other use of this property, hotel use being identified as one of those critically important land uses for downtown.

The bulk of this project is essentially the same as the volume that would be associated with an office building at 6 FAR. If you compare 12 stories at eight feet eight inches floor-to-floor or ten stories at 11 feet or ten foot six or ten foot eight floor-to-floor, you get essentially the same envelope occupied by a 7.17 hotel as you would be a 6 FAR office building.

On the top of page 6, I have cited out of the regulations the Commission's goals and policies in setting the 6 FAR limitation, and I believe that

this project is consistent with all those goals and policies. And as a result, I believe we have met the test for the granting of an FAR variance and suggest that the Board should approve the application. Thank you very much.

MS. REID: Thank you, Mr. Sher. That was really quick. Thank you. Okay, I think that completes your presentation, Mr. Glasgow?

MS. GLASGOW: Yes, it does, Madam Chair.

MS. REID: Okay. The Office of Planning report?

MR. COLBY: My name is David Colby. The Office of Planning is represented here today by Ellen McCarthy and myself.

In the interest in assisting the Commission in getting through the agenda today and since you have our report, I would just refer to that as part of the record and only note that our only concern -- and I think it's a concern the applicant would mitigate anyway, is that there be at least front entrance to the retail and that it not be entered only from the hotel, in the interest of maintaining an active pedestrian-oriented downtown retail corridor. And with that, we would recommend the approval of this application.

MS. REID: Thank you, Mr. Colby. The ANC report?

MS. RENSHAW: Yes, Madam Chair, we have a report from ANC-2C, and the report is dated December the 14th, 1999, and it is signed by Norma Davis, the vice-chair of ANC-2C.

They had a regularly scheduled meeting on December the 1st. It was a public meeting at which time a quorum was present and the ANC voted four to zero to support the project. And they are mind -- the ANC is mindful of the support of the Historic Preservation Review Board for the height and massing of the building. And the ANC received and reviewed a copy of the staff report on the project.

There was not undue pressure on historic buildings due to the permitted FAR. The letter spoke about parking pushed further to the southern end of the site resulting in FAR utilized for parking. And again they stated at the end of the letter that they supported the project. Therefore. I request that this ANC-2C be given great weight.

MS. PRUITT: Madam Chair, just for the record, you need to waive this in. It was submitted to our office on Jan -- excuse me, June 15th. So you need just to waive the filing time.

MS. REID: Unless there's any objection, I would so waive. And they will also be accorded the great weight which they are entitled. Also in regard to the OP report, we also need to waive the rules to accept your report late and I will so waive unless there are any objections by any of the Board members.

And there's no one here testifying in support and no one here to testify in opposition. I don't think there was any opposition. I don't think there was even any letters of opposition. We didn't see any in the file. As such, Mr. Glasgow, your closing remarks.

MS. RENSHAW: Madam Chair, do we have a short chance for a few questions?

MS. REID: I'm sorry. I thought that you --

MS. RENSHAW: No, I just --

MS. REID: -- just didn't ask questions.

MS. RENSHAW: No, we were zipping right along and we did not want to hold up the train, so to speak.

MS. REID: All right, sure. Sure.

MS. RENSHAW: But in any case, just a few questions --

MS. REID: Okay.

MS. RENSHAW: -- for whoever would like to speak about this. This project has a great deal of eye appeal in a very narrow section of the street. And I noted in he OP report that -- and also on your boards here that you're planning for or suggesting a restaurant. And so I would like to know whether your thinking is to have some kind of an outdoor restaurant activity and whether that would ruin the look of this historic front of the hotel. So if someone could address that.

And I'd also like someone to tell us whether or not there's going to be a cut for taxis so as not to hold up traffic along the street.

MS. REID: Well, wait now, Ms. Renshaw.

MS. RENSHAW: Yes.

MS. REID: In the interest of time, the questions that --

MS. RENSHAW: They're very quick questions.

MS. REID: -- the Board members ask should be germane to the zoning issues.

MS. RENSHAW: I know.

MS. REID: And the taxi cabs and as well as the outdoor cafe, there's no testimony to that effect today. So the assumption is that there would

not be. So I would like to keep moving.

MS. RENSHAW: Could someone answer the questions though, Madam Chair?

MS. REID: There is no -- the point I'm making is that that is not a zoning issue and the questions should be germane to zoning. In the interest of time, I would like to continue to move on because that is not -- that is not something that is pertinent to the relief which they're requesting today.

MS. RENSHAW: Well, I'll abide by what the Chair said but I would still request that there be some answers to those two very short questions for the record.

MS. REID: I have no problem with them submitting an answer in writing or something like that, but I would not like to stop for those questions to be responded to today.

MS. RENSHAW: Well, we could have an answer by now, but we'll let it go at that and request something in writing.

MS. REID: Mr. Parsons?

MR. PARSONS: I'd like the applicant to respond to the suggestion of the Office of Planning about the retail.

MS. REID: The entrance?

MR. GLASGOW: We agreed to that. The plans that we have for the retail I believe we have three retail entrances.

MS. PRUITT: Mr. Glasgow, is that --

MR. PARSONS: These are the plans that were submitted to us or this is a new plan?

MR. GLASGOW: I believe those are in the plans that were submitted.

MR. PARSONS: Our are dated June 6th.

MR. GLASGOW: This would be the same as what is submitted to you.

MR. PARSONS: What is up here is simply reformatted and printed out larger. The intent is to retain or to restore the storefronts to an early nineteenth or twentieth century.

MR. GLASGOW: Exhibit J.

MS. REID: Okay, does that answer your question?

MR. PARSONS: Yes.

MS. REID: Okay. Thank you, Mr. Glasgow. Oh, I'm sorry, Mr. Sockwell.

MR. SOCKWELL: I need to be brief, but Mr. Brueh deserves a question or two. I'm sure he wouldn't want to present himself before this Board

and not have to atone for his -- Mr. Brueh, since you represent the construction side of this, could you give us any brief statement regarding how the construction phase will be managed in that there are active projects using the alleys?

And, of course, F Street has come back alive primarily with the hotel to the east, and the active club activities to the west and north, and the completion is coming of the new building across the street that is being appended to the original Garfinkel or whatever it is Building that's on the corner.

Give us some idea how you intend to work within an active block in a constrained situation to produce a good product in a reasonable period of time.

MR. BRUEH: Okay. Actually, I think we're in actually a very good position to --

MS. REID: Again, excuse me. Again, I'm trying to keep this on track and that is not a question that is necessarily germane to the application before us today, Mr. Sockwell.

MR. SOCKWELL: Well, actually it is. It's the only application we're talking about and it's the only thing they're going to build.

MS. REID: Mr. Sockwell, I don't think that -- I don't think that that is a question that we need to be concerned about and that is not something in keeping with the relief that is requested here today.

MR. SOCKWELL: All right. Then we'll dispense with that question and I'll ask another one.

MS. REID: All right.

MR. SOCKWELL: Mr. Brueh, you're off the hook. The question would be then with regard to the overall massing and the impact of the new project visually with regard to the existing facades just -- and perhaps the architect can just briefly tell us how that massing relationship is most effective visually in maintaining the streetscape.

MR. SELERUD: I think that these drawings help describe the relationship better than looking at the straight elevation in that one can see that we will be maintaining the scale of the buildings along F Street, particularly in restoring those three buildings, adding the fourth as the entrance to the hotel, then stepping back more than 60 feet before we begin the tower portion of the hotel, the major new construction.

When standing at the corner of F and 9th,

one will only see a small portion of the building. It really is going to be seen primarily from longer distances than experienced from the street. What one will see from the street is really those facades which are really three-story facades. Does that answer your question?

MR. SOCKWELL: And signage, you're providing a marquee at the entrance.

MS. SELERUD: We would have a marquee at the entrance to make it clear where the hotel entrance is.

MR. SOCKWELL: And somewhat diminutive signage to relate to what previously would have existed in a quality environment?

MS. SELERUD: Yes, the -- do you want to say anything about the restoration of the storefronts? That issue has come up a couple times.

MS. ADAMS: With respect to the storefronts and signage, we have a fair amount of information, not many drawings but some photographs, of the buildings around the turn of the century. We will be going back to probably circa 1910 storefronts. The signage will all be reviewed as part of HPRB review to be compatible with those restored storefronts in the historic district.

MR. SOCKWELL: Okay, thank you.

MS. REID: Thank you. Mr. Glasgow.

MR. GLASGOW: Madam Chair, if there are no further questions of any of the members of the panel, if we could, we would like to have a bench decision and an expedited or summary order with respect to this project. We felt that we have met the burden of proof.

We're pleased to be able to be here before the Board today but we have been through an extensive review process before we got here of going to the Historic Preservation Review Board, the Mayor's Agent, we've been to the ANC, and we look at this as the culmination of the process and would like to get an approval today if we could and move on with this important project.

And I'm sure you saw the photographs of the before and the drawings of after, and we think we have a lot to contribute with respect to the further development of F Street with this project moving forward. Thank you.

MS. REID: Board members, I would recommend approval of this project, the application. I feel that the applicant has demonstrated and met the burden of proof and that there is obviously a

practical difficulty in this particular site in attempting to comply with existing zoning regulations.

They have demonstrated the various constraints as pertaining to the site itself and the FAR, and that there does not seem to be any adverse impact in that we have heard from anyone in the community any opposition to this case. There are no letters of opposition in regard to parking, light, traffic, noise or otherwise. Any other further discussion?

MS. RENSHAW: Yes, Madam Chair. I brought up the matter about the narrowness of the project and the fat that had the question about the outdoor cafe. And I would really like to condition the order that we not mar -- or the applicant not mar the front of that building because it is going to be such a historic eye appeal structure with an outdoor cafe, and I'd like to have that as a condition.

MS. REID: You know, Mrs. Renshaw, I'm not sure if we can condition -- that's a historic preservation issue. Excuse me, please, Mr. Sockwell and Mrs. Sansone. In regard to that condition, my thinking is that that's historic preservation and they would have -- or they would make any kinds of

conditions as it pertains to the facade or the exterior.

MS. PRUITT: Also, Madam Chair, they'd also have to get a public space permit so it's not like they could just put it up.

MS. REID: So they couldn't -- they could not just do that, Mrs. Renshaw.

MS. RENSHAW: And it has --

MS. REID: And they would be constrained by --

MS. RENSHAW: And it would have to go --

MS. REID: -- other entities that would --

MS. PRUITT: Other governmental -- District government entities. They'd have to be reviewed.

MS. RENSHAW: All right. And if they had to get a public space permit for the outdoor cafe, it would have to go back to the ANC.

UNIDENTIFIED SPEAKER: Yes.

MS. RENSHAW: Yes.

MS. PRUITT: Yes.

MS. RENSHAW: It would have to.

MS. REID: Just as a practical matter, it would have to.

MS. PRUITT: Correct, and then of course under the SHIPO or State Historic Preservation, there are a lot of requirements there and that really is not our jurisdiction. It's the Board's jurisdiction to make those determinations and actually determine what can and cannot be done to the facades and interior.

MS. RENSHAW: I thank you for clarifying.

MS. REID: Okay, thank you. All in favor?

MEMBERS: Aye.

MS. REID: Opposed?

(No response.)

MS. PRUITT: Staff will record the vote as four to zero to approve motion made by Mrs. Reid, seconded by Mr. Parsons, a summary order and the record's closed.

MS. REID: All right, you should have your order in about two weeks, Mr. Glasgow. Good luck. That should be a great improvement to that strip of town there on F Street.

Okay, next case.

MS. PRUITT: Madam Chair, I've noticed that both Ms. Prince and Mr. Brown for the Sisson case has come in, and since we are actually starting

on the afternoon agenda, you may want to take up that --

MS. REID: First, okay.

MS. PRUITT: -- preliminary item that we had deferred.

MS. REID: Okay, okay. Okay.

MS. PRUITT: Although I believe Ms. Prince stepped out of the room for one second.

MS. PRINCE: No, I'm here.

MS. PRUITT: Oh, she's here, I'm sorry. I couldn't see her.

MS. REID: Okay, then, we are -- that completes the morning session even though we already opened the afternoon session, but you know it's been that kind of day. Nonetheless, a preliminary matter in regard to Mr. Sisson.

If both attorneys could please come forward, Mr. Brown and Ms. Prince, to discuss the latest request from the ANC to delay this particular matter. Are you both familiar with the request? Ms. Prince, were you aware?

MS. PRINCE: Yes.

MS. REID: Okay, because some of the other representatives of your company was not aware of it. Mr. Brown?

MR. BROWN: I am aware of it.

MS. REID: Okay.

MR. BROWN: Good afternoon, Madam Chair, members of the Board. Patrick Brown from Greenstein, Delorme & Luchs, counsel for Mildred R. Crary.

MS. PRINCE: Allison Prince from Wilkes Artis, counsel for the applicant, Mr. Sisson.

MS. REID: All right. Either one of you can make your comments. What's before us, just to reiterate that for the record, is that we received a request from the ANC to postpone this case again due to their -- it's basically their unreadiness for it to go forward, and you can both give us your comments.

MR. BROWN: Madam Chair, can I -- and the ANC acted and filed the letter requesting a postponement. Also, the Board had on May 24th pending before it and went to great lengths to leave my motion to dismiss to deny the application pending, to defer action on that. This morning, I renewed that motion.

What has occurred is several developments. On May 24th, the Board instructed the applicant to prepare an as-built survey. That was prepared. It was, through no fault of anybody's,

late in arriving. The ANC got it the night of their meeting. They did not have a quorum and were not able to take official action but expressed their great interest in the matter, longstanding interest.

The important development, and adding to all our frustrations, is that I raised an issue, even though I was out of town, as to the validity of that survey having to do with the side yard issue and the nature of the measurements.

Lo and behold, on the 15th -- dated the 15th, received last Friday the 16th, the applicant provided yet another revised as-built drawing that you have in the package I filed this morning showing that in fact the side yard was different, less than what had been shown on the earlier survey and less the minimum five-foot required.

So that -- and Ms. Prince and I met with Mr. Johnson yesterday morning, 11:00 o'clock, and in fact at noon today heard from him by phone. We have not received his written comments as to the various outstanding issues.

But the great frustration is that, you know, at 12:00 noon on the day of a 1:00 o'clock hearing, we're still trying to fight over the zoning relief required for this case, and made more

difficult by the fact that there's a constant fluctuation of the information for which Mr. Johnson has to make his decisions, I need to view the case, the ANC needs to review the case, and ultimately this Board.

So it's out of enormous frustration that I renewed my motion to dismiss. Again, it's always the applicant's burden to file an appropriate and complete application and prosecute that forward. We're now on the fifth hearing date in this case. I dare say we're probably not a whole not closer to going forward than we were October 19th of 1999 when this case was first filed.

MS. REID: Okay, Mr. Brown, the question before you is the issue in regard to postponement. We have not gotten to the issue regarding your motion to dismiss.

MR. BROWN: Sure. I'm trying to put some context. Certainly, at a minimum -- and I know the ANC. It's my home ANC. Their interest in this case is enormous and ongoing.

MS. REID: Right.

MR. BROWN: And they've stuck in. And the fact that they were not able to take up this matter and also were not able to take up the matter

with what is now the latest survey before them which raises other important issues, as well as none of the parties yet have the zoning computations from Mr. Johnson, the Zoning Administrator's Office.

MS. REID: I thought that that was -- that it had been provided. My understanding it was --

MS. PRUITT: Madam Chair, may I just help maybe clarify?

MS. REID: Yes.

MS. PRUITT: Yesterday I met with Mr. Johnson and Mr. Nunley and we discussed this. In fact staff is going to find out where they are. We were told that there would be somebody here today.

MS. REID: That was my understanding.

MS. PRUITT: And that at that time they would have looked at the revised survey and would then be able to qual -- to certify whether or not the correct zoning relief has or has not been requested. Were you able to get in touch with either one of them.

MS. PRINCE: I can shed some light on it.

MS. PRUITT: And so we were expecting to see somebody here today.

MS. PRINCE: They're on call. Mr. Nunley

asked that I call him when I felt this matter was about to come pursuant to a conference call that pat and I had with both Mr. Nunley and Mr. Johnson this afternoon at 12:00. And I simply haven't called him yet because there are several cases ahead of ours.

MS. REID: Were they supposed to have submitted something to us to give us some guidance?

MS. PRUITT: They didn't say they would submit. They actually said they'd be here. Mostly because they just got it yesterday so I don't know if there was time for them to actually do a written report. But it was my understanding that they were going to come here to testify.

MS. REID: Okay.

MS. PRUITT: Or maybe in lieu of that, then either submit something, fax it to us, I'm not sure, but my understanding is that they were going to come.

MS. REID: Okay.

MR. BROWN: But I certainly think the ANC issue is one that probably comes first because of their importance in this process and their interest. And the fact that while Ms. Prince and I -- Allison and I and Mr. Johnson, have been working overtime on this matter, they're out of the loop about where we

are now in this case, and I think it's changed substantially since they met. And certainly they didn't have a quorum and the ability to act in any official way that would be given the great weight they're entitled to.

So I think certainly at the base level of the ANC, a postponement is appropriate. I might add that my client, Mrs. Crary, is not here. She had -- and I have a letter from her. She had prepaid, pre-arranged plans to attend a writer's conference. She is in fact a writer. That's how she made her living. That's how she's now spending her retirement down in Georgia, attending a professional writer's conference and meeting with agents.

So her absence here is an enormous handicap to the Board's ability to hear a case that, you know, up until noon today no one quite knew what it is and we still don't have the information before us. so I think the ANC postponement is, at a minimum, appropriate.

MS. REID: Thank you, Mr. Brown.

Ms. Prince?

MS. PRINCE: Good afternoon, members of the Board. I'm here today, I think now for the third time, simply trying to get a hearing. That's all I

want is to be able to go forward with the hearing today.

I got some homework when were last postponed. I was given three tasks and I have worked very hard to accomplish all three of those tasks, and they have in fact been accomplished.

MS. REID: What were they? Can you reiterate them for us?

MS. PRINCE: Yes. First, I was asked to secure an as-built survey. The moment we left the hearing, we made contact to secure an as-built survey.

As you know, in the current building climate, that is not easy to secure but we did in fact get one by one of the few surveyors that are registered to do wall checks in the District of Columbia because we felt it was important not to go with any surveyor but one on the designated D.C. list. The survey was in fact prepared and made available to the Zoning Administrator, Mr. Brown and this Board on June 8th.

Second, I was asked to go to ANC-3D. The ANC has considered this property no less than six times. I spent the entire evening of June 12th at the ANC meeting, and despite the fact that the ANC

did not have a quorum they considered quite a lengthy discussion of the application by me and by Janine Rustad (phonetic) from Pat's office.

I feel there was a very fair opportunity to air the issues at the meeting. This question about the discrepancy in the survey because of the thickness of the siding of the house, a 1.68 inch issue, was in fact aired at the ANC meeting, and I believe that although the ANC didn't have a quorum their letter speaks for itself. They are opposed to a front yard variance and we're willing to live with the ANC's opposition even though it wasn't taken --

MS. REID: Which letter are you referring to, Ms. Prince?

MS. PRINCE: The request for postponement states the ANC's general sentiment against the grant of variances from the Wesley Heights setback requirement.

MS. PRUITT: That's Exhibit 50?

MS. PRINCE: And as I said, the ANC has considered this property no less than six times. Third, Pat Brown --

MS. REID: No, no, no. Before you go there --

MS. PRINCE: Yes.

MS. REID: I need to understand where in the ANC letter does it indicate that they are in opposition to this particular case?

MS. PRINCE: The second paragraph of the letter states that ANC-3D has consistently and repeatedly opposed any course of action which undermines the force and effectiveness of the zoning regulations, and in particular the Wesley Heights overlay.

Pat and I are in full agreement that we need a variance from the setback requirement of the Wesley Heights overlay district.

MS. REID: Well, wait, excuse me. That's not my interpretation. The interpretation that you just gave me was specific to the -- anything that undermines the force and effectiveness of the zoning regulation in the Wesley Heights overlay, I did not garner what you just read to me that they were opposing this application per se.

MS. PRINCE: They have not taken any specific action --

MS. REID: That's what I thought.

MS. PRINCE: -- on this application because they lacked a quorum. They have longstanding opposition to the property in the previous appeal.

MS. REID: Then, why are they asking for a -- I don't understand then the request for a delay, because that being the case they could simply say that we just oppose it. that they would not ask for a delay in order to be able to consider the matter and to come to some resolution. I'm not fully clear.

MS. PRINCE: I had the benefit of attending the entire ANC meeting. I unfortunately was not able to glimmer any possibility of support of this application from the meeting. There was not discussion at the meeting of requesting a postponement so I can't shed light on that.

MS. REID: Again, it would appear to me they would just simply send a letter of opposition, period.

MS. PRINCE: One would think, but I --

MS. REID: And not ask for a delay for consideration and also to try to come to some resolution. That's what gives me pause.

MS. RENSHAW: Well, Madam Chair, if I may?

MS. REID: Yes.

MS. RENSHAW: The business of the ANC opposing or approving this application would have to be done with a quorum present, and a quorum was not

present at this particular meeting, and a vote was not taken at this meeting, although the vice-chair who signed the letter, Ann Huer (phonetic), could in her capacity send the BZA a letter asking what she has asked for, a suspension of consideration of any remedial variances, et cetera. That can be done without a quorum present. But if you are going to vote, you have to have a quorum present.

MS. PRINCE: I simply would like to note there was no quorum. So if there was no quorum, there was no quorum to request a postponement, there was no quorum to state opposition, there was no quorum to state support.

I was at the meeting. It would not be in my interest to suggest that something happened at the meeting that didn't happen. I did not find the meeting to be a friendly exchange. I sensed longstanding opposition to the existing improvements on my client's property and I see no benefit in a seventh appearance before this ANC to discuss this property when this case has in fact already been postponed five times.

MS. REID: Well, be that as it may, Mrs. Prince, it also says in the ANC letter that until the Zoning Administrator resolves what variances are

actually required, the ANC is not in a position to make any specific recommendation in this matter.

Accordingly, we urge the BZA to continue this matter to give the parties an opportunity to meet with the Zoning Administrator for the parties to then appear again before the ANC so that we may make a meaningful recommendation regarding the necessary variances in this case.

Now, what I gleaned from the tone of the ANC letter from Mrs. Huer (phonetic) is this, that apparently there is still an unreadiness on the part of the ANC, and there has not been an official position taken because of the unreadiness.

Now, because of no official position being taken, there's not been a forum, there's not been a vote taken to give us a signal from what in fact they would like this Board to do, and to give them the great weight to which they're entitled, then in the absence of that, then Ms. Huer (phonetic), as the vice-chair is asking for a postponement so that the ANC can get to a point of readiness.

So before this Board then is simply a matter of -- without a vote they would be given great weight but -- I mean, with a vote they would be given great weight and a quorum present. And they did not

have a quorum present and did not have a vote on this matter and it's a -- I guess it's a request from the ANC vice-chair for us to simply take into consideration a request to delay so that they can become ready. And as such, they don't have to have a quorum to make that request. They can request so that they can have a quorum present and it's a matter of --

MS. PRINCE: I would --

MS. REID: Excuse me. It's a matter of whether or not we feel that we should afford tem that accommodation to allow them to be able to do so.

MS. PRINCE: Can I continue with my third piece of homework that we followed up on diligently --

MS. REID: Sure.

MS. PRINCE: -- and at great cost and a very time-consuming exercise. Pat and I were finally able to meet with the Zoning Administrator yesterday. Our first meeting was scheduled for June 8th. Because I was unable to provide Mr. Brown with a copy of the survey until immediately prior to that meeting, we had no choice but to postpone it.

Mr. Brown was then on vacation for several days, so we had no choice but to postpone it

until his return.

We met with the Zoning Administrator yesterday. Both parties had an opportunity to fully air all of their issues with respect to the property. Mr. Johnson informed us that his office was inclined to stand by their original zoning memorandum which was in fact the one before the BZA -- I'm sorry, before the ANC, and he contacted us in a conference call at 12:00 o'clock today to express, number one, his office's opposition to a continuance, number two, his office's position that they stand by their original memorandum, number three, that the 1.68 inch discrepancy in the side yard measurement that came about as a result of the thickness of the siding that was added to the house sometime between 1975 and 1994, as a result of that discrepancy he would simply exercise his discretion under Section 2622 to allow the project, the application, to go forward without a side yard variance that would otherwise be required absent his exercising that discretion.

Therefore, we were asked to do three things. We did all three things at considerable time and expense. I have to ask: In the event that the case is postponed, what additional information can we provide to this Board that will further clarify he

information that is before you? We have an as-built survey, there is agreement, I believe, among the parties as to the accuracy of he survey.

In fact, when there was an issue raised, we immediately had the issue clarified, the thickness of the siding issue, a zoning nuance if ever I saw one. The ANC has considered this property six times. The Board is -- the applicant is fully prepared to proceed on the assumption that the ANC is not going to support this application.

If the board would like to keep the record open for the ANC's definitive position on the project, I welcome you to do so. However, to send us back to the Advisory Neighborhood Commission for a seventh time seems a little burdensome under the circumstances.

MS. REID: Ms. Prince, I don't remember this Board sending you to the ANC seven times.

MS. PRINCE: No, the ANC --

MS. REID: I think that the last meeting we did --

MS. PRINCE: The ANC has considered the application six times. I'm sorry, they've considered the property. As you'll recall, the existing improvements were the subject of an appeal, and that

appeal was before the ANC five times.

MS. REID: Well, that within itself is irregular. The fact that an ANC meeting on the same issue that many times is still not going to be able to come to any kind of resolution?

MS. PRINCE: No, they did, and they strongly supported the appeal which Mr. Brown's client filed and the Board in fact granted the appeal.

MS. REID: You're referring to the entire --

MS. PRINCE: And in granting the appeal

MS. REID: Over the whole life of this case, okay.

MS. PRINCE: Right. And we were invited by the Board when they granted the appeal to come back and file for a variance to rectify the situation.

MS. REID: Uh-huh.

MS. PRINCE: So this is a property with which the ANC has a tremendous amount of familiarity, a tremendous amount of background. And if we're quibbling over whether the ANC had before it at the June meeting the correct variances, I can now tell you today yes they did because Michael Johnson has

confirmed that no new variance relief is required.

So I strongly urge you to allow us to go forward. Otherwise, I know we're looking at a delay till October. I'm realistic, I've been through this before, and I don't -- I am not aware of any additional information, unfortunately, that I can provide you with that will either bring the parties closer together or will shed further light on the issues that are before you.

I think there comes a time when every case simply needs a hearing. And the further postponement of this hearing will not provide any additional information to this Board, but it will be a tremendous prejudice to my client who has been seeking a hearing since December.

MR. BROWN: Madam Chair, can I interject very quickly. Certainly as it relates to the ANC, and they made it very clear in their letter, they said in the second page at the top, "This ANC has not had an opportunity to review and comment on a properly prepared case before it comes before the BZA."

The zoning computations we still haven't seen from Mr. Johnson and his office. But as to the two agreed-upon variances, the front yard and lot

occupancy, both those -- the quantity of those variances are different. The front yard is almost twice as large a variance required as earlier believed to be.

And certainly for the ANC considering, as well as this Board considering a variance, the fact that it's a foot or five feet is critical.

As to lot occupancy, the lot occupancy variance is larger than originally believed. And, again, the ANC who don't have the luxury of making this their livelihood, have asked to have all the information they need to judge this application, and I think they're entitled to it.

And I think, quite frankly, the Board, Mr. Sisson, and certainly my client is entitled to that as part of the process.

MS. REID: Okay, thank you, Mr. Brown. Board members, could I get a motion in regard to this matter?

MR. PARSONS: I just have one question. Ms. Prince, you say the ANC has considered this six or seven times.

MS. PRINCE: Yes.

MR. PARSONS: Have you ever gotten a position, a vote, position on this from the ANC?

MS. PRINCE: Yes. The ANC participated heavily in the appeal case and was always, always unanimously in opposition to my client's position. They have never taken a position in support of my client's position on any aspect of this project at any time.

MR. PARSONS: Of the seven times, then, how many times did they take a position in writing?

MS. PRINCE: Oh, I really -- I mean, I have the pleading files. I could pull it out for you and address it, but they certainly are on the record in opposition to the appeal. And as I said, I mean, they did not have a quorum on the 12th but I did have the benefit of sitting through the entire meeting and I did not walk out of that meeting with even a glimmer of hope that they would be taking a position in support of my client. They certainly stated on the record that they will, whenever possible, defend the Wesley Heights overlay, and this is a case that involves a variance from the setback requirement of the Wesley Heights overlay.

So to provide the ANC with another opportunity to say that is a futile exercise.

MR. BROWN: See, I disagree that that's a futile exercise.

MR. PARSONS: Well, I didn't ask for a debate here. Wait a minute.

MR. BROWN: All right.

MR. PARSONS: So we have no position of the ANC in this case however, do we?

MS. PRINCE: Not on this variance request.

MR. PARSONS: Request, okay. So I can't imagine how you would see us proceeding when the only message we have from the ANC on this particular case is a request for a delay. And to say, "Oh, we know what they're going to say," and blow them off, I can't agree with that. I understand your frustration, certainly.

MS. PRINCE: I mean, the entire and probably the fundamental reason why the case was postponed the last time, as you'll recall, was because we had not appeared before the ANC. I called the ANC the next day, I made every arrangement possible to appear at that meeting. I appeared at the meeting and for the first time in two years that ANC lacked a quorum.

Had they had a quorum, I have little question what the position would have been. And to lose three months, now to wait for what I fear is an

inevitable position when the record can be left open, is simply what we're asking.

MR. BROWN: Madam Chair, can I interject? I think you shortchanged Mr. Sockwell because one of his critical points on the 24th was the absolute need for the as-built drawings.

So the last time we met, I think -- and if I could briefly indicate that Mr. Sockwell didn't feel he had the information necessary or the others participating. So it was more than just an exercise in going back to the ANC. It was going back to the ANC with the parties fully educated as well as the Board.

MS. REID: How did I shortchange Mr. Sockwell?

MR. BROWN: No, no, no. I didn't want to --

MS. REID: Oh, Ms. Prince.

MR. BROWN: Yes, because I mean --

MS. REID: Oh, I thought you said -- oh, I see. I thought you meant --

MR. BROWN: No.

MS. REID: And I was, like, I don't remember doing that to my colleagues.

MR. BROWN: No, no, no. My apologies,

Madam Chair, and I was trying to focus in on an important part of what the Board did last time which is Mr. Sockwell who -- you know, who's got a very strong background in these matters said, "I can't make any sense of it, how can anybody else." And I think it was a point well taken and important information was produced.

MS. REID: Okay. I think we need to move forward on this issue. We'll take a vote and just let the chips fall where they may. All right, may I have a motion?

MR. SOCKWELL: Madam Chair, since we've aired this on one side, I just want to say that while I'm fully award of the need for us to have accurate information and for the Advisory Neighborhood Commission to have its positive or negative say, we may have gotten to a point where the information -- we have sufficient information to go forward, that we could leave the record open for the ANC to make its report, but it might be just pushing our own schedule deeper and deeper into a negative condition by continuing to push this case further and further back.

MS. RENSHAW: Madam Chair, I disagree with Mr. Sockwell's point. I would like to suggest

that -- or I could even make a motion at this point that we continue this case to another suitable date to allow the ANC to once and for all vote on this because both parties have met with Michael Johnson, the Zoning Administrator, and that was a point brought up in the ANC's letter. And the as-built survey has been supplied. And if you would -- or if we would or however we communicate with the ANC, that they have another, one last opportunity to vote on this to get a quorum together and to get its vote in to the BZA as of a certain date.

MR. PARSONS: Second.

MS. REID: All in favor?

MR. PARSONS: I think we ought to get a certain date here. I don't think we ought to --

MS. RENSHAW: Put a date certain on it.

MS. REID: Well, okay. Before we vote yes or no?

MR. PARSONS: Well, I wanted to discuss that a little bit.

MS. REID: Okay.

MS. PRUITT: Just for the record based on your schedule right now, it appears that the first available reasonable hearing date would be October 17th.

MS. RENSHAW: Okay.

MS. PRUITT: Unless you'd like to meet in August.

MS. REID: Can't meet in August.

MR. PARSONS: Well, that would certainly give the ANC an opportunity --

MS. RENSHAW: That gives the ANC plenty of time.

MS. REID: All right. And also just in light of the fairness of this whole matter, can we stipulate that this would be the last time we would send for the ANC?

MS. RENSHAW: Yes.

MS. REID: Give them all due time. And after this, there will be no more accommodations or no more -- we will not allow any more delays, any more postponements. The 17th and that's it. Can we amend --

MR. PARSONS: That's fine.

MS. REID: Who's motion was it?

MR. PARSONS: Ms. Renshaw's.

MS. RENSHAW: It's my motion.

MS. REID: Amend Ms. Renshaw's motion to October 17th being the last and final delay and postponement, period.

MS. PRUITT: And, Madam Chair, would you like to add that the ANC report should be in by October 10th, which is seven days in advance?

MS. REID: In a timely fashion. In a timely manner.

MS. PRUITT: Which would be October 10th so they'll have a date certain.

MS. REID: This is more than enough time for them to be able to do so.

MS. RENSHAW: Madam Chair, I'd like to know how we are going to -- or how the ANC is going to get a report from Michael Johnson concerning his remarks to the two of you?

MS. REID: Ms. Pruitt, would you ask --

MS. RENSHAW: How is that done?

MS. REID: -- that he supply both the Board and --

MS. PRUITT: Certainly we will ask.

MS. REID: -- all parties --

MS. PRUITT: We have asked and --

MS. REID: -- with whatever new information or new position or whatever --

MS. PRUITT: Certification or either new zoning or certification, that the relief that is requested is correct.

MS. REID: Because the danger here is that the hearing is being set that they've taken this position or that position and we don't have anything in writing nor are they here. So we have to have something to authenticate whatever their position is.

MS. PRUITT: We will certainly request in writing that they provide us with that.

MS. REID: Okay. Thank you so much.

MS. PRUITT: Uh-huh.

MS. REID: All right.

MS. PRUITT: So just -- I'm sorry.

MS. REID: Go ahead.

MS. PRUITT: You wanted to call the vote?

MS. REID: I did.

MS. PRUITT: Just for the record, I'd just like to note the motion was made by Ms. Renshaw and seconded by Mr. Parsons that this case be postponed to October 17th with no more postponements after that, with the ANC report due on October 10th, which is the timely filing, and that staff will request in writing from the zoning Administrator a verification of the zoning required for this particular project.

MS. RENSHAW: Also, can a letter get to be sent to 3D informing them of this?

MS. PRUITT: Yes.

MR. SOCKWELL: The Zoning Administrator will receive all documentation provided to the Board, correct?

MS. PRUITT: Excuse me?

MR. SOCKWELL: The Zoning Administrator will be receiving all information being provided to the Board so that he'll have all the numbers that we're supposed to be getting.

MS. PRUITT: All documentation from --

MR. SOCKWELL: In other words, if we're using a new plat and new numbers and all that, the Zoning Administrator is going to need that in order to know what he's talking about.

MS. PRUITT: Correct, the parties are -- all right, the parties are to serve that on them.

MR. SOCKWELL: All right.

MS. PRUITT: Or the applicant and parties are to serve. I'm sorry, excuse me.

MR. BROWN: And I believe he has been provided.

MS. PRUITT: Yeah, I didn't think that was a problem.

MS. REID: In the meantime, it would be great if you all could come to a settlement.

MR. BROWN: Madam Chair, we're working on it. Allison and I are working on it.

MS. REID: All right. I'd like to see that happen. I think everyone would be happy if that could take place. Okay, thank you very much.

MR. BROWN: Thank you.

MS. REID: All right, the first case -- would it be the first case of the afternoon? Didn't we vote?

MS. RENSHAW: Did vote but it wasn't read back to us for the record.

MS. REID: We did vote but you didn't read the vote back to us.

MS. PRUITT: No, actually you didn't vote. I just did first and second. That's what I was asking you for.

MS. REID: Oh, okay.

MS. PRUITT: Please vote.

MS. REID: Oh, okay. All in favor? I thought we did vote.

MEMBERS: Aye.

MS. REID: Opposed?

MS. PRUITT: Four to zero.

MS. PRUITT: Okay, the first case on the afternoon agenda, just for an update, we've already

continued Case 16555, application of Harvard University Trustees/Dumbarton Oaks. That's been continued to October 24th.

So the first case on our afternoon agenda is actually 16563, application of Mark and Judith Siegel pursuant to 11 DCMR 3103.2 for a variance under Subsection 2001.3 subsections (a), (b) and (c) to allow for the construction of an addition to an existing nonconforming single-family dwelling under Section 403.2 from the maximum allowable lot occupancy, Section 404.1 from the minimum rear yard setback requirements in an R-3 District at 2134 Leroy Place, Square 2531, Lot 18.

All those planning to testify, would you please stand and raise your right hand? Do you swear or affirm that the testimony you're going to give today is the truth?

(Witnesses sworn.)

MS. PRUITT: Madam Chair, on this particular case, we have two requests for party status. One from Carter H. and J. Hills, and one from Marie Drissel, so you need to make a determination on those. Ms. Drissel is not here. She did leave me a voice mail that said -- my understanding is she no longer has any opposition to

the case.

MS. REID: She basically rescinded her opposition?

MS. PRUITT: That's what she said on the phone. Great, because I don't have anything in writing but I did speak with her. If you could -- thank you.

MS. REID: All right. Mr. Ellis?

MR. ELLIS: Good afternoon. My name is Craig Ellis and I represent the Hills. They are the neighbors directly to the west of the Siegels -- excuse me, to the east of the Siegels at 2132 and they would be directly impacted by the construction that is proposed. So we're seeking party status based on the fact that they are directly impacted by this proposed variance relief being sought.

MS. REID: Okay. And how -- just for the record, tell us how they're impacted?

MR. ELLIS: One, it affects their view. Two, it affects their privacy in that there is a deck that would be built around the property, and (e) it would affect their light because the light would be coming from the west. There's an effect from the western light by this construction into a garden to the rear of their home that has several camellia

trees and a magnolia to the rear.

MS. REID: Okay. Unless any of the Board members have objection, let's vote on whether or not to accept the Hills to give them party status? I'd move to grant the party status of the Hills.

MS. RENSHAW: Second.

MS. REID: All in favor?

MEMBERS: Aye.

MS. REID: Opposed? All right.

MR. ELLIS: Thank you.

MS. REID: Okay, Mr. Brown?

Mr. Collins, I'm sorry.

MR. COLLINS: Morning, Madam Chair and members of the Board. My name is Christopher Collins, and seated to my right is Judy Siegel, who is the owner with her husband of the property which is the subject of this application. And to my far right is Mr. Robert Schwartz, who is an architect and recently elected as a fellow of the American Institute of Architects.

This is an application for variance relief for an addition of a small kitchen breakfast area to the rear of the Siegels' home. This application was scheduled for hearing, as you may recall, on April 5th. When the case was called there

was -- as a preliminary matter, there was an issue raised about insufficient notice. Mrs. Siegel was here and requested and was granted a postponement in order to make things right with regard to the notice, and Mrs. Siegel will talk about that in a little bit.

At the time, the Board granted a postponement. I believe it was you, Madam Chair, who suggested that the parties try and get together and seek some accommodation. During that time, Mr. and Mrs. Siegel did obtain input from their neighbors and instructed their architect to redesign the addition to address those issues.

As you will see during the presentation, the addition is smaller, it's lower and it has greater setbacks than the original design which was presented for the public hearing in April. There is a letter from the applicants which addresses this matter. Mrs. Siegel will provide some background. At this point, after which time, Mr. Schwartz will address the design of the new revised plans.

MS. REID: Mr. Collins, with the revision of the plans, did you get any closer to a resolution of the issues?

MR. COLLINS: Yes. As you will see, I --

MS. REID: Is there a settlement?

MR. COLLINS: I certainly am not here to testify, Madam Chair, but during the course of the presentation you will obtain letters of support from those who otherwise were in opposition or had conditions or concerns last time.

MS. REID: Okay.

MR. COLLINS: It's my understanding that the Hills still have some opposition based upon what Mr. Ellis said here today, but I believe that we can demonstrate in a very objective way how we address those concerns.

MS. REID: Yeah, but basically the opposition here today is the Hills.

MR. COLLINS: Yes, that's correct.

MS. REID: So my question was: had you sought for -- were you able to obtain prior to today some type of agreement with them? And you didn't --

MR. COLLINS: It was tried and --

MS. REID: Not yet?

MR. COLLINS: Again, I am not here to testify.

MS. REID: You're still trying?

MR. COLLINS: And during the course of the hearing, you will hear about that.

MS. REID: Okay.

MR. COLLINS: But the other parties who did express opposition or concerns over issues have been satisfied.

MS. REID: Okay.

MR. COLLINS: Ms. Drissel, who requested party status, has given us a letter of support indicating her issues are resolved. Mr. Chapin, who lives across the alley, who expressed some concerns and issues, now is very pleased. And, again, I don't want to testify or pre-empt the witnesses what you will hear during the course of the hearing.

MS. REID; I understand. I think that given the time aspect, we can basically -- you can stand primarily on your submission. We have read it. We are familiar with it. And I would ask that you give us the highlights of your case but particularly address the issues raised by the Hills because I think that is what we would like most to see today is that -- how close we can get to that -- you know, some resolution of those issues.

MR. COLLINS: Good.

MS. REID: Thank you.

MR. COLLINS: All right, thank you. Unless there's any questions at this point, I'd like to go directly to Ms. Siegel.

MS. REID: Please.

MS. SIEGEL: Okay. Hi, I'm Judy Siegel. Let me first explain -- I'm sorry. Hi, nice to be back. Let me explain that my husband's mother is undergoing surgery as we speak and he is not here and we're sorry about that and I don't even know her condition, I wish I did. She's at Suburban Hospital.

Secondly, and we worked hard to work with our neighbors. I'll try to tell you about that as quickly as I can. I do have, if I can give them to you, a few letters. Okay, I have copies for -- let me keep one for me. Okay. You'll be getting this handout. It's four letters.

The first is a letter from Maurilice Carter, the ANC Commissioner, expressing her personal support as a neighbor and as an ANC Commissioner recommending approval of the plans, and you see the details of that letter.

She, I believe, faxed it to you this morning so perhaps you have it in your files. In addition, as Mr. Collins told you, we have a letter that we just got last night from Christopher Chapin expressing -- I think you'll see it's not an exaggeration, very strong support of the reviewed plans and he's quite pleased with them and he thinks

it will add to the neighborhood, add to our home, et cetera.

We have a letter from Mrs. Drissel, who I think originally had planned to be here then had other business, saying that she believes the Siegels have taken great steps to compromise with the neighbors. The new drawings solved my problems with the initial plans. And this letter is in support. It's actively in support.

We have a letter from the next neighbor, Chris Manion and H.P. Goldfield, which was on the record the last time, a similar letter to the last one, expressing no position. So those you would have had.

I think you want me to tell you what has happened since? Or the contest or -- okay, just very, very briefly, last time in addition to what Mr. Collins told you, we weren't working with him at the time.

There was a great deal of confusion. We had been given an incorrect -- we had been given an incorrect date, and then when we corrected it. We're new to -- well, we lived in the District awhile ago. We're new to the District within the last year.

We bought the house about 14 months ago.

We had worked with Robert Schwartz before on a house in the area. As soon as we saw it before we bought it, we knew that it had to have a new kitchen. The current kitchen is the former butler's pantry. It's very teeny, doesn't work with the house, doesn't work with our family.

We didn't see it as a big issue in terms of buying the house. We said, "Oh, we can -- no problem, we can expand over the driveway." You know, we just saw it -- and Bob did tell us at the time, "Well, you'll need to get a variance," and we said, "Fine, we'll get a variance."

Bought the house, moved in. Bob drew up some wonderful -- we thought wonderful plans that again -- and I have to say for someone who fancies herself pretty sophisticated, I really wasn't thinking about -- I didn't know anything about the legal issues of the percentage of the lot that we were using. I had spent most of my adult life in a suburban house with land around it and, you know, a few feet here or there were not consequential.

So Bob came up with these plans. Basically it was an issue of cost. Could we afford them? We and he advised us to hire someone who would get us permits, We thought, you know, that that

might be something hard to navigate. We hired this guy, his name is on the record. Not permits, rather applications, you know.

He put through the paperwork. There was some dispute at our last hearing about whether -- he did give you all the right addresses for our neighbors. Some of our neighbors claimed that they hadn't been notified about the hearing. In view of all that, I asked you to postpone it because it was kind of confusing.

As we were approaching the last hearing, let me tell you briefly what happened. I can't recall, I'm trying to search my memory, why, but I know that we were contacted let's say about two months before the last hearing by the Sheridan Kalorama Historical Association.

We had not filed anything. We were pretty open when talking with our neighbors about renovation. We were contacted, my husband went before this association. We have, as you'll see in some of the pictures, a very beautiful wrought iron, two small balconies at the back of the house, very beautiful.

We actually had no specific plans about the edging of the deck in Bob's plans but Mark, my

husband, came back from the hearing, said they were concerned about how the deck will look. They'd like us to make the deck wrought iron to be architecturally consistent. We said, "Great idea," and then they gave us -- he agreed to that and they gave us approval.

I also got a phone call at that time from Linda Bombalo who I gather was then the head of the ANC asking us to come to an ANC meeting. We agreed to come, of course. Right before the meeting, she called me, and I don't have notes on what she said, but it was something like, "There's no need to come, you know, the ANC doesn't need to review this." I said, "Fine."

That's how I found out, by the way, that I had the wrong date because we actually had almost a war of words. She said, "your hearing on whatever date," and I said, "No, it's on that." So I called you guys, I got the right date of the hearing.

I was very nervous about the date of the hearing 'cause it had been messed up by whatever reason. So about -- the hearing, I believe, was on a Wednesday. The Friday before the hearing, I looked at my calendar, I decided because I'm kind of a nervous Nellie, to call your office and make sure

that finally I had the right date. I spoke to a helpful staff person. I said, "Well, you know, good, we have the right date. Is there anything I can do to help my case?"

As hard as it will be for you to believe, I didn't know how to approach this. They said, "well, if you could get letters of support from your neighbors, that would help you." So this was a Friday afternoon. As I recall, we called our neighbors, including the Hills, and they knew we were doing a renovation. And we said, "You know, can you support this plan," and we showed them the plan.

And at that point, a few days before the hearing, people focused on it, and they -- some of our neighbors had various problems with it.

We asked for letters of support. Two of the letters, I don't know if they used the word support. They were sort of weak support at best from Chris Chapin and Chris and Carol -- well, it was just from Chris Chapin and from Marie Drissel, had some concerns which have been addressed. I'll tell you about them. And, of course, the Hills had some concerns.

Came to the hearing, the Hills were here, Marie Drissel was here. In view of everything that

happened, you gave us an extension and you said, "Can't you work it out," which is what I wanted to do. It's only a kitchen. It's not a -- you know, a person or -- so the three neighbors who had the concerns are the Chapins -- Drissel is Mr. -- Dr. Bristol is her husband. They're Drissel-Bristol, so Dr. Bristol didn't have any concerns. And the Hills.

We spoke with and or met with each of them. In the case of he Hills, my husband met with Mr. Hills. In the case of Marie Drissel, I spoke with her. In the case of Chris Chapin, I think my husband and I both spoke with him.

We summarized their concerns. We went back to Bob Schwartz. At this time, we hired Mr. Collins to help us. WE went back to Bob Schwartz, we laid out the concerns, we had a meeting, I guess, three or four weeks ago when everyone fully aired their concerns. The meter was running at this meeting but we had Mr. Collins at the meeting with the architect to make sure we were really addressing all the concerns.

Let me summarize the concerns and how we responded to them in the interest of time. The concerns as I understood them. What I'm reading from is a personal note that I sent to my neighbors, not

something that you have. There's something I'm leaving out here. Let me tell you very briefly, and you'll see it in what was submitted.

When we made the original plans, which were really wonderful plans that had a larger kitchen which would be nicer for us, we based these plans -- and you can see this on the third page of what we sent to you if you look at the photos.

MR. COLLINS: This is the June 6th letter that Mr. and Mrs. Siegel submitted to the Board.

MS. SIEGEL: This was submitted to the Board within the dates and the guidelines and whatnot. if you look at the first page, you'll see the front of our house. The second page shows you the beautiful wrought iron that I told you about. The third page shows you two shots of the alley. The fourth page shows you more shots of the alley. On the fourth page on the left you see Mr. and Mrs. Chapin's kitchen.

When Bob Schwartz made up these plans, they were, as far as we could tell, exactly analogous to many, many of the houses on the alley, which if you look at them have pulled either a kitchen, a small deck, in one case a garage, absolutely to the complete limits of the space, and that's what our

plan did. Actually our plan did not use all of the space even though Bob entertained with us the possibility of an addition that would extend behind the dining room too. For architectural reasons, we didn't want to do that. We care about the architectural integrity of the house.

So when we came up with these plans -- when Bob came up with them, we maybe -- I think not naively, I think honestly understood these to be absolutely consistent with our neighbors' houses. In the case of Mr. Chapin's house, and if he were here, he and I have talked about this, he would tell this to you.

That's on the fourth page on the left, the white garage with the white addition above it. One hundred percent of his space is used for this addition. So we really thought we were doing something that was rather routine in the neighborhood.

In any event, back to where I digressed from. So we summarized their concerns, and basically let me tell you what I think they were and how we addressed them.

We knew that the Hills were concerned about light that would go into a small garden that

they have next to our driveway. It's blocked off. It's not something we see. It's blocked off by a very large tree and by a fence.

At that time, we thought they were mostly concerned with light and with their view from their kitchen which is in the rear. We thought they -- they told us that they were concerned with their view, that they found the trees that they looked at to be pleasing, and we support that. We want to keep the trees. We'll be able to keep most of the trees that they care about. And the issue of light for the garden and I guess light for their house.

The matter of the railing on the deck, which I've already addressed, we've committed, as you see in the submission -- we're happy to commit to have a new railing fabricated that matches exactly the railing for reasons of aesthetics and architectural integrity.

MR. COLLINS: And whose issue was that?

MS. SIEGEL: That issue was a number of issues. That was the Kalorama Sheridan Board and that was Marie Drissel's issue. So we've agreed to that and we're happy to do that.

On the matter of what Mr. Chapin told us conversationally that the mass of the addition, we

first cut as much as we could off the top of it. The addition comes out only one floor in what is in effect a four-story house. Because in the back of the house, you enter at the ground level, so it occupies what from the back is a second floor, not the third and the fourth. It occupies, Bob can confirm this, in both instances less than half of the width.

We cut as much as we could off the top. That I think was Chris Chapin's request. We cut the size of the addition, in terms of square feet, the calculation I did was 47 percent. We cut it back by almost 50 percent from the previous plans. I'm talking about the size that extends out.

Because of the Hills' concern about light, we did a number of light studies. Bob Schwartz will tell you that in any event the plan has minimal impact on the light. But because of their concern about the extension on the common wall, we actually changed the plans that we developed at the second meeting.

We had a plan to have the revised addition come out about six feet. Bob is a man -- I don't know if you know him -- of enormous integrity and imagination. And he said, "Look, if they really

want light, six feet is not going to do it." So he came up with a design that's very inventive. On the Hills' side, it extends only three feet before you actually see the addition, thereby letting in even more light.

The side of the deck, I hear from their attorney that they're concerned about privacy. The deck on the side of the Hills is not really a deck. It's a very narrow balcony. We have no intention to use it. It's not really useable. What you'll see there is -- my husband is something of a gardener. You'll see pots of attractive plants there.

It's not -- if we use the deck at all, it's not -- you know, it's not exactly a private space in the alley to say the least. But if we use it at all, we will be sitting on the side other than the Hills' house. We reduced the height.

Also, Ms. Drissel was quite concerned about if you look at the plans -- and Bob Schwartz will tell you this a little bit more. The way the alley is configured, trucks come in from Leroy Place, they come down an alley which is banked by my house and the Chapin's house, they make a left turn to go down the long alley. And she was concerned about the trucks swaying and hitting the railing of the deck.

Bob Schwartz will tell you more about this. He was never really concerned about that. He said he took that in mind when he made the plans. Nonetheless, we cut it back. She asked -- you know, I said, "Marie, how much do you want it cut back?" She said, "Another foot." We can cut it back another -- we can cut it back 21 inches rather -- it was cut back 12 inches. Bob will explain why he can cut it back to 21 inches. Marie Drissel was satisfied with that. So that's basically how we accommodated that concern.

And in the interest of time, I know that some other of our neighbors, let me say, are concerned and I know there's a letter on the record about the way the alley is used. We completely support that. We completely support the addition of any -- an additional one-way sign. That's not something frankly that our addition has anything to do with, so that really is a non-issue. Anything we can do in that regard, we'll help.

So the remaining -- so as you'll see, all of our neighbors support this. As far as the Hills are concerned, they're concerned about the view as you'll see and -- well, Bob can address these issues. But the view, we've done careful studies, won't be

changed at all. What you'll see is their magnolia tree as you see it now.

We angled -- another thing that Bob did was angle the addition. Mr. Hills was concerned about what he thought was a -- what he thinks is a pleasant view actually of the Drissel-Bristol house. The new addition is at a sharp angle, a 45-degree angle, so that the view of the Drissel house is unobstructed.

Basically what we were looking for -- Bob just told me now, I was pretty shocked, while we were waiting for you, the kitchen isn't getting too much bigger. It really isn't. You know, it needs to be bigger than what we're asking for but what we wanted most of all we do get in this very modest addition. it's a very modest architecturally attractive addition. What we get is a small table where we can sit with our family and have breakfast. So have I covered everything? Okay.

MR. COLLINS: Unless there's any questions at this point, we'll just go to the architect.

MS. REID: Thank you. Members, do you have any questions of Mrs. Siegel? Okay, go ahead.

MR. SCHWARTZ: My name is Bob Schwartz.

I'm an architect in the District. I'd like to go over the plans with you, and I've arranged them so that we see the before and the after on each one of these.

This is just -- is this working? This is showing the before, the original plan that we had, and the after, above. And you have plans of this but I've just marked them up with red here so you can see the difference.

The other one came out along the property lines with the Hills, so the Hills are at the bottom of the page here, even though that's to the east.

MR. COLLINS: It's actually I think --

MR. SCHWARTZ: Yeah, it's to the east of them. And the property, it's a rectangle that comes out with a bay that comes right to the edge of the property line. What we did was cut it back so that the addition now comes out three feet, then goes back three point six feet, and then comes out three feet something, like three-seven, I think it is, and then has a bay at the end.

And what Mrs. Siegel was talking about was this light and view from their house. Their house steps back a little bit, and I think it's shown on some of the other plans. So that's just in

general. This is the alley where people were talking about a turning of a truck.

Right now, there's a retaining wall which is actually slightly off their property, which is out into the alley, and then there's a tree which is beyond that. So a lot of the difficulty of trucks and all the rest of that has nothing to do with their property. It's really something which is in the alley that's off their property.

So these plans show before and after also. One shows that we would be -- originally have been building a wall all the way along and a brick pier out here to support the addition above, which was this big. And now we're going to have smaller steel columns and we have a brick wall that's only three feet long along the property line.

Now, this is the before and this is the after. And before it came out fourteen foot nine. It was about twelve foot four to here and then it had this two foot six bay. And now what we've done is come out three feet, then we go back, and come out and have a bay. And this is designed to have their breakfast table.

It's constrained on -- first of all, the size, you need three feet around a table so you have

to be able to get out and get around it. And we can't go any further in this direction because of the windows in the dining room, so we're constrained on this side. So this is sort of the minimal size for this table.

And then we did the wall here. And here is the kitchen, the kitchen that they would have now. This is the kitchen that they were going to have. This was 36 lineal feet of countertop and appliances and so on. This is 26 lineal feet, so they've given up ten lineal feet of kitchen. So they have a lot less kitchen. I think Mrs. Siegel knew that but she didn't know exactly how much and that's what I just told her.

And this is designed to make the view -- here's the wall of the Hills' house back here. So in the existing condition, before any addition, the Hills' house is here, then there's a blank wall that's a party wall, and then this is the back of the Siegels' house. So the addition we're talking about is on the edge of that.

Now, this is showing the elevations before and after. And here we had a brick wall with a bay in it and it was all glass. And the bay and glass on this side, but basically blank on the other

side. it was a party wall.

So we changed that and we came to make this smaller addition. This is the size of the addition, which is the size of the bay. And this is where that three foot wall is. So this is an elevation of the site from their deck. And you can see, in talking about the deck, this is the area where they would be sitting. The Hills' house is back here.

This part of the deck is really as Mrs. Siegel described. It's for putting plants on it. You couldn't put a table there. You couldn't put chairs there. You could walk there, but the whole idea is if you have windows here you want to have some planting out in front of it. So now --

MR. COLLINS: Excuse me, Bob, before you go on, using the plan that's closest to me that shows the side view of the addition, can you describe approximately how much lower the new addition is using that side elevation?

MR. SCHWARTZ: Yes, it's three feet lower.

MR. COLLINS: Would you point to the plans that I'm talking about there on the side?

MR. SCHWARTZ: Yeah. If you take this

height, which was the party wall that was going all along their property line, this was a little over 22 feet high, and we've moved it down to 19 feet. So we took three feet off.

MR. COLLINS: And that's from the ground, not from the --

MR. SCHWARTZ: From the ground.

MR. COLLINS: -- the first floor.

MR. SCHWARTZ: Right. Yeah, not from the first floor. That's from the ground up. There's an existing wall, low wall that's about eight feet high, between the property all the way along anyway. So the new one -- see, this one had clear story windows, high windows above the door and windows. This one does not. This one has, you know, a normal -- just windows where the ceiling is. So we lowered it down pretty much as much as we could.

This is a drawing which actually the Hills requested that we did. It's from their yard. And so it shows -- this part of it is the existing site of the Siegels' house. This is the brick wall and this is where the Hills' house comes. This is the three foot we're adding and this is the existing wall. So the part we're adding is this.

In addition, if you step back, you can

see this is where the Siegels' addition is, which is back three feet and then sloped 45. And this is this handrail that, you know, matches the historic handrail.

Also, I'd like to show you these photographs, which I have copies of, to give to everyone. yeah, thank you. When you talk -- we've done -- I'm going to show you some light studies showing where the sunlight comes, because that's one of their main concerns. But these light studies are done without the effect of the trees. And there is a very large magnolia tree right at the edge of this property in between the two properties.

A magnolia tree, I'm sure you're aware, is in leaf all year long. This is not a deciduous tree. And that's this tree here. Now, if you look at these photographs and you look at this elevation, you can see that there's two windows. The upper window and then the lower window. And then below it is where our addition is. And if you look at the trees, you can see where the upper window is and you can see the line, I hope, where the second windows are.

These trees are up above where this addition really is right now. And they are on this

property line. So I'm going to show you exactly the effect of our addition without these trees, but right now these trees keep the yard pretty much in shade from this side, the west side, which is the setting sun side.

That doesn't mean they get no sunlight because the sun, you know, is revolving around and there is some from the south. They also have a tree on the south but, you know, I think the whole question about the sunlight and their garden I think is somewhat mitigated. In the drawing we tried to ghost in roughly where this magnolia tree is. It's somewhat mitigated by the existing situation.

Now, I'm going to put up these shadow drawings and it's going to look confusing at first but I hope not too confusing. What this is is a set of drawings for the before addition and a set of drawings for the after where we changed to show what is the difference on the effect of the light.

Now, the first thing I'd like to point out is that what this is -- the way we did this was these are like little snapshots of where the sun is as it revolves around. And, of course, when the sun is coming from the east in the morning and to the south, there isn't much effect of our building so we

haven't drawn that.

What we've done is at noon, which is when the sun is due south, and then we have at 3:00 o'clock a snapshot and at 5:00 o'clock. So what you're seeing is noon, 3:00 and 5:00 as the sun goes around in the sky.

And as the sun goes around in the sky, it gets lower as the evening comes, obviously. And also in the summer and the winter, at June 12th the sun's about 72 degrees and -- at June 21st I guess, not 12th. June 21st it's at its highest. And then at March and September it's in the middle. And then in December it's at its lowest. It's about 27 degrees.

So what we've done is June, March and September and December to show what are the effects over the course of the year of this addition on this shadows. And, remember, this is done without any tree shadows. This is as if they all died.

Well, first off, you can see that the conditions in the alley are such that there's no difference in the shadows whether they build or not for all these drawings.

That is, in December it doesn't change anything because they're in shadow all the time. They're in shadow either from the houses across the

street or, as the sun goes around, from the end. Now, they may get some light in some of the time. Remember this is snapshots of only half the day. But for the part of the day where we are concerned, they don't get any light.

And the same is true for the evening of both June and September and March. You don't get any light. also the setting of the sun changes its position. In June it's way far around to the west. In December it's much closer to south. So the time that there is an effect is in these four drawings. June at noon, June at 3:00 o'clock and March and September at noon and March and September at 3:00 o'clock.

And what I've done here is I've darkened in the actual additional shadow compared to the shadows that would have happened on their yard based on the existing condition. And this one is for the previous addition. And this one is for our new addition.

Now, we've improved things. They get more sunlight. You can see that these are much smaller areas. So here at June 21st at noon there's a shadow which is about a foot and a half by three feet long, bigger than if there wasn't any addition

there at all.

Here, there's a shadow that comes -- now, this is right where the magnolia is, but if it wasn't there there'd be an additional shadow. It's -- I didn't write down what it was but it looks to me like it's maybe six feet long. And for this time of day, that part of the shadow would be towards the outside edge of their property.

And here there's a little triangle and an even smaller triangle. So this one is close to this size. You know, about a foot and a half by three. This one is a triangle six and a half feet on one side and three and a half on the other that is going to fall in this area on their yard.

So I think the sunlight is better. I think it has more impact. What we've done will have more impact on perhaps their sense of openness. That's what's really changed here. This sunlight, I don't think there has really been any appreciable, you know, change with either of the additions in the amount of sunlight and the relation to their garden.

I also have here -- my associate is a garden nut and so he has given me something to show you that camellias like to have shade.

MR. COLLINS: Excuse me, Bob. May I just

ask you a question. These shadow studies, the ones on the left show the shadows that would exist with the redesigned addition and without the trees. If those trees were fully accounted for in the shadow studies on the left, representing the new design addition, what would be -- what type of shadows would be cast on the property from the new addition?

MR. SCHWARTZ: There wouldn't be any additional shadow on the property if the trees stay.

MR. COLLINS: From any of these times that you have?

MR. SCHWARTZ: At any time of day.

MR. COLLINS: All right, thank you.

MR. SCHWARTZ: Because you can look at the tree photos and see that the trees are taller than the addition would be. So, you know, right now they get less light anyway.

So, now, if you want me to I could review the criteria for granting a variance and why I think they should get it or --

MR. COLLINS: May I just ask you another question? I'm sorry, I just -- in looking at the photos that you submitted numbered 1, 2 and 3 that show a view of the back of the Siegel residence and the back area of the Hills' residence, and given the

placement of these trees, the magnolia and the other tree that's in that location, those are the trees that would block the sunlight that would -- that are blocking the sunlight to the Hills' rear yard, is that correct?

MR. SCHWARTZ: Right, there's --

MR. COLLINS: The one that you just talked about.

MR. SCHWARTZ: Right.

MR. COLLINS: Looking at it from the other way and looking at these photos, would you -- would a person reasonably be able to see any of the Siegels' addition from this vantage point?

MR. SCHWARTZ: Well, one of these trees on the property line is a deciduous tree and I assume, you know, if the leaves fell off of that, you could see part of the addition when the leaves fell off of that, or if that tree was gone, which may very well be.

The magnolia tree is going to be there, you know, we're sure.

MR. COLLINS: Which one of these trees is the more -- is the larger of the two?

MR. SCHWARTZ: The magnolia's the bigger tree and covers a big area, but the other tree is on

our property and I don't think it's going to survive the construction. I think that part of this small ledge here -- and I think if you look at the pictures, you can see there's two trees. The one magnolia's much bigger. The magnolia's the one that's out further. The problem with this is --

UNIDENTIFIED SPEAKER: And that's on somebody else's --

MR. SCHWARTZ: But, see, this is in back.

UNIDENTIFIED SPEAKER: The magnolia's on somebody else's property?

MS. SIEGEL: The magnolia is on the Hills' property and that will stay, of course. The magnolia is what you're primarily looking at, and that will stay. It's the Hills'.

MR. SCHWARTZ: Right. That's not on our property and that's why it won't be affected by the construction, whereas -- and they have another tree which you can see from this picture which is noted three which is in their back yard also but it doesn't affect us and it's to the south of their property. So they're getting some shade from that.

Not that there's anything wrong with that. I mean, it's a deciduous tree and in the summer you want some shade and in the winter it'll

lose its leaves so I'm sure that's nice in their back yard. That'll stay.

MS. REID: In answer to your question regarding the variance relief and how it --

MR. SCHWARTZ: Yes.

MS. REID: Yes, you may discuss that somewhat.

MR. SCHWARTZ: Okay, thank you. First, I think their property is an odd size and it's much smaller -- let me see if I've -- if you look at the -- just the layout of the street you can see that LeRoy goes straight and the alley slopes. So as you get further away from the Siegels' house, the lots get bigger and bigger. They have the smallest lot. I don't know if it's the smallest lot in the neighborhood but certainly the smallest lot in this --

MS. REID: Okay, point out Ms. -- point out the Siegel house. I don't see it, actually 18 on here.

MR. SCHWARTZ: It's got the number 18 on it. And it's right next to the alley.

MS. REID: Okay, I see.

MR. SCHWARTZ: Yeah.

MS. REID: You're saying it's the

smallest lot in this line of properties.

MR. SCHWARTZ: Yeah. I think that the --

MS. REID: Uh-huh, I see.

MR. SCHWARTZ: The one, number 48, the Chapins, might be smaller. But if you look at all the other lots, they're quite a bit bigger and have a lot more room.

MS. REID: 19 is the Hills'.

MR. SCHWARTZ: 19's the Hills.

MR. SOCKWELL: Some of the lots become smaller in width although they become deeper and there may be some balancing factor.

MR. SCHWARTZ: Right.

MS. REID: Okay, go ahead. We can see that. It's smaller, it's irregular shaped.

MR. SCHWARTZ: It's irregular shaped and so I think it's an unusual situation. In terms of their hardship, if you look at the plan of the house, this is a plan with very -- it's a building with strong, good architectural character, as are many in the neighborhood. and you can see that it's got this structure where there's these three rooms in a row all with fireplaces. It's got, you know, an axial opening with a set of axial windows at the end of the axis.

And as Mrs. Siegel described, there was a pantry in this corner and the kitchen evidently was in the basement. And that was because they had servants and they'd bring the stuff up and serve it here. So you've got these great rooms and then you've got this tiny little space. So then the question is well it's -- this is inappropriate. It doesn't work in this. What can you do about it?

Well, you don't want to have it on a different floor like they used to have because they don't have servants and we don't live like that anymore anyway, most people. The second thing is you can see that if you tried to do anything appreciably in this dining room, it would make a dining room which is not very workable but it would also destroy a lot of this character.

The strength of this building comes in part from seeing and feeling this strong row of rooms here. And if you really wanted to do this without doing this, you can see that, you know, how much more kitchen would you get? You'd have to go in here and take half the dining room. And pretty soon, you couldn't even sit in the dining room. So it really doesn't make sense. Not only that, structurally it's fairly difficult to do this, although that's not a

big deal.

So it is really a hardship for them to try to put this what they want to do anywhere else. They'd be destroying the very thing that charmed them about buying the house.

The third thing is adverse effect. I think they've, I believe, gone way out of their way to try to work with all their neighbors. I am sorry to see that the Hills are still not happy, but all the other people who they've talked to in the neighborhood who had concerns, I think they've, you know, done everything they can to respond to them. And we have tried to do everything, I think I've illustrated, within our ability to respond to the Hills' requirements also.

MS. SIEGEL: If I may? May I, just for a second? In fairness to the Hills, the Hills probably have the greatest -- the Hills and the Chapins probably have the greatest interest. So the Hills, you know, have a greater stake in this than other neighbors maybe who are happy. So I don't want to leave the impression that everyone else has been taken care of and, you know, maybe one family is not happy.

We cared the most about the Hills because

they're our next door neighbors. And in terms of the three issues that they'll be talking about, view, privacy, light, camellias as a subset of the light, we care about the magnolia tree a lot. It's beautiful. It will stay. And it's their tree that will ironically address their issues, I think.

MS. REID: Okay, all right.

MS. SIEGEL: Okay.

MS. REID: Thank you. Mr. Ellis, did you have any cross examination questions of these witnesses?

MR. ELLIS: Mr. Schwartz, when you were saying that the rear of the Hills' home, the view, and you were pointing out in your three pictures that you gave to the Board, can you locate or do you know where their kitchen is in the pictures that you've provided?

MR. SCHWARTZ: No, I don't know where their kitchen is but I --

MR. ELLIS: You have to be on a microphone, Mr. Schwartz.

MR. SCHWARTZ: Oh. I don't know where their kitchen is. I haven't been in their house. I assume, just looking at this, that it's in the far end, the far side. So if this is just --

MS. REID: that's okay, Mr. Schwartz. You don't know. Let's move along.

MR. SCHWARTZ: Yeah, I don't really know.

MS. REID: Don't assume. Let's just move forward. Thank you.

MR. ELLIS: All right. You've made a statement that their view would not be affected in any way by the addition that's being added. From what perspective are you taking that position?

MR. SCHWARTZ: I don't think that their view wouldn't be affected at all because, as I said, there's a thin sliver on the edge where there's a tree that's on the Siegels' property that will disappear. And I think that they will definitely see there's a three-foot wall on the side that goes up. Essentially there's an eight-foot wall that exists. This three foot wall will go up one story above that. You know, it's going up to 19 feet so it goes up another 11 feet. They're going to see that.

And then if they swiveled out or walked out into their yard and looked straight at the edge, they'd see the edge of the property -- the edge of the addition. They may not -- I'm not sure exactly where the magnolia hits, but for instance the bay part might not be visible. But they will see some of

the addition.

MR. ELLIS: All right. I direct your attention to your picture number 3 that you provided to the Board, and I will note on the picture number 3 on the far right hand side of the page hat's partially cut off, you see a slightly pitched roof that's coming out there? Do you see that, Mr. Schwartz?

MR. SCHWARTZ: Yeah.

MR. ELLIS: And do you see that there is the edge of a window that -- your picture ends at the edge of the window that's right there.

MR. SCHWARTZ: Right.

MR. ELLIS: And assuming that there's a window just around the corner, which there is, on that outcropping that's there, would not that view from that window be affected by the addition that's going to be constructed?

MR. SCHWARTZ: yes, it would.

MR. ELLIS: It'd be directly impacted by that construction that's being proposed, would it not?

MR. SCHWARTZ: Sure, you'd be able to see that wall, yeah.

MR. ELLIS: All right. Now, from that

window, that window now, if looking that direction, would have an unimpeded view towards the other houses towards the end of the block across the Siegels' property, would they not?

MR. SCHWARTZ: If the trees weren't there they would, yeah.

MR. ELLIS: The tree is there but the tree doesn't totally block a view.

MR. SCHWARTZ: Well, I think the pictures speak for themselves. I think they're pretty dense and --

MR. ELLIS: Well, do you have a picture from the perspective of that window that's there?

MR. SCHWARTZ: Yes, if you look at pictures number 1 and 2, even though they aren't from that window, you can see that the trees come right to the edge of the existing -- the Siegels' house. The Siegels' house is white on the back and then brick color so you can see the corner of it if you look at that. And then one shows the windows and the Hills and so you can sort of see the corner there.

So I think that's generally showing the view, you know, in that direction.

MR. ELLIS: So you're saying that from the Hills' house, that they can't see across the back

of the Siegels' house because the tree blocks their view completely.

MR. SCHWARTZ: Yeah, it looks -- sure, pretty much.

MR. ELLIS: All right.

MR. SCHWARTZ: I've been there and I haven't been able to look into their -- I haven't tried to look in their property, I suppose. But I haven't been able to see into their yard in any way.

MR. ELLIS: Now, you've heard Mrs. Siegel's testimony earlier in reference to the -- you built a large deck and a part of the deck wraps around along the edge of the party line fence that's about three feet wide?

MR. SCHWARTZ: Yeah.

MR. ELLIS: All right. Now, what is the purpose of that three-foot extension -- that three-foot section? That looks right over into the Hills' yard, does it not?

MR. SCHWARTZ: Yes. There's two reasons. One is that they want to have plants outside their windows so that they can look at them. The other one is that their structure -- there has to be structure there to support the addition that we're doing. Otherwise it would be floating over -- their driveway

is underneath there, so you cant' put a column directly below there. so we have to have some structure there.

MR. ELLIS: Okay.

MR. SCHWARTZ: So even if you don't put decking on it, you've got a structure there. So it would like nicer just to have some plants there.

MR. ELLIS: When you say structure there, the garage on the property -- on the Siegel property, is further away from the Hills' property at the lower level, is that not correct?

MR. SCHWARTZ: Right.

MR. ELLIS: It is actually the structure that's necessary to support the addition that you're talking about.

MR. SCHWARTZ: Absolutely.

MR. ELLIS: But the decking there that's going to be around actually still looks right over into the Hills' yard -- I mean, or into the -- yeah, into the Hills' yard.

MR. SCHWARTZ: Well, maybe you're misunderstanding me. Let me go up and --

MR. ELLIS: I'm not misunderstanding.

MR. SCHWARTZ: Yes, the garage is on this side of the property.

MR. ELLIS: Correct.

MR. SCHWARTZ: But you need structure over here to span from this wall over to whatever structure we're doing. And the way we've got this, you have to span all the way across here. You can't stop here because you can't use their driveway and you can't have access to their house if you put this structure down there.

So we have to have a structure that starts here on the Hills' side even though the garage is on the other side. You got what I mean?

MR. ELLIS: Now, in terms of this particular house, and you're talking about the variance, how many square feet is within this house? Do you know?

MR. SCHWARTZ: I don't know.

MR. ELLIS: Okay, okay. That's all right. I deal with that. All right, no further questions at this time.

MS. REID: Okay, thank you. Board members, any questions? Okay. Sir? No, if you have questions, please.

MR. SOCKWELL: I have a couple of questions. I guess they're in a -- I'm not sure to whom they should be addressed. But the minimum lot

area in an R-3 is approximately 2,000 square feet. And your lot is less than that. And the minimum width in an R-3 district is 20 feet. Your lot is 28.22 feet, which is greater than that.

Percentage of lot occupancy in an R-3 district is 60 percent at a minimum lot size that would yield a house of approximately 1200 square feet. And I would say that your house is a semi-detached, and does that break you down to less than that or does that leave you at 60 in an R-3?

I'd have to look at something, but based on just the recommended minimum percentage of lot occupancy, your house occupies 68 percent of what would be a standard minimum lot, even though your lot is smaller than a standard minimum lot.

And the minimum rear yard in an R-3 is 20 feet and you have less than 20 feet rear yard in a lot that's less than minimum size.

MS. REID: Is there a question in here, Mr. Sockwell?

MR. SOCKWELL: My questions were actually designed around your original proposal which was for almost 300 square feet of addition. And from what I understand in looking at this, your current square foot is 98 square feet plus or minus total of

addition based on the drawing and that would be your plan.

MS. REID: So what is the question?

MR. SOCKWELL: Yeah, is it 98 feet?

MS. SIEGEL: Yes. Yes, sir, the addition --

MR. SOCKWELL: 98 square feet on enlargement of --

MS. SIEGEL: Is 98 feet.

MR. SOCKWELL: Okay. Okay, that's -- okay.

MS. SIEGEL: As Mr. Schwartz told you, it was designed simply to fit a table into it.

MR. SOCKWELL: So you reduced by about two-thirds what you were proposing originally.

MS. SIEGEL: Yes.

MR. SCHWARTZ: I don't think it was reduced that much. Sorry to throw --

MR. SOCKWELL: Beg your pardon?

MR. SCHWARTZ: I don't think it was reduced that much.

MR. SOCKWELL: I think the original -- I wanted to --

MS. SIEGEL: There's a confusion -- I think there's a confusion between two pieces of the

proposal. One is the deck and one is the addition. The interior part of it.

As I said in my statement, the interior part of it was reduced, I believe, by 47 percent. I did it with a calculator. The deck -- when we talk about the deck, I guess I'd like to say it's a deck but it's not a deck. It's a balcony. It's not something we're planning to use a lot. The side on the Hills' side, as Bob Schwartz told you, is just for some plants.

In redesigning it to accommodate our neighbors -- and one thing Bob didn't spend as much time on, I know we're kind of pressed for time, we designed it to be as attractive as possible. You'll see in Mr. Chapin's letter that he's very pleased with the way that it looks.

So even if some of our ne -- you know, one of the things I guess I want to say is if you're looking out of a window, whether it's a kitchen or any other window, and you're looking at it, I would submit it's as pretty as anything else you'd be looking at, and it's pretty small.

One of the things that hasn't been mentioned in the record that Bob mentioned informally that we'd be happy to do is you'll see that the back

of our is white. If people would be happy for us to paint it white, that might be more appealing. It's an appealing thing to look at, so I guess I want to say that we're not just plopping something on that's an eyesore.

If you're looking at Mr. Chapin's kitchen or you're looking at ours, they're both pretty nice looking I think.

MS. REID: Okay. There is an ANC. Did anyone from the ANC come in? 1D? ANC-1D come in?

MS. RENSHAW: Madam Chair, are you referring to Maurilice Carter, June 19th, 2000?

MS. REID: Yes. This is not the ANC -- full ANC report.

MS. RENSHAW: No.

MS. REID: And this is basically the Sheridan Kalorama Historical Review Board that that -- I'm sorry, we don't have letter from the ANC. And typically when we don't have a letter from the ANC, we assume that they have no opposition to the case because if they did they would certainly let us know.

MS. SIEGEL: She told me that, yeah.

MS. REID: The Sheridan Kalorama Historical Review Board did send a letter approving the application. Okay, there are no persons here to

testify in support of the application and there are no persons here other than the Carters -- I mean, did the Hills wish to testify?

MR. ELLIS: Yes, ma'am.

MS. REID: Okay. Testify in opposition. So please come forward. And in regard to letters in support, we did have several letters in support, two of which were from previous neighbors who had originally opposed and then they rescinded their opposition. And then we did have a letter from the American Gold Star Mother's Inc. in support.

Now, in this letter -- I meant to mention this. This letter says something about a one-way designation and a parking restriction be enforced. Is anyone familiar with that? I don't know if we can do that. I don't know if we -- okay, all right. I don't think that's something that we can do. Okay, all right, go ahead, Mr. Ellis.

MR. ELLIS: Again, good afternoon. My name is Craig Ellis and I'm here as counsel for the Hills. I've already submitted the requisite documentation. I'd like to point out there are several letters in the file also in opposition. There's one from Bob Hamaday (phonetic) and Hildegarde Stevens.

MS. REID: Okay.

MR. ELLIS: There's another one from Clark Swain, M.D. (phonetic).

MS. REID: Okay.

MR. ELLIS: Saywin (phonetic), I'm sorry. Saywin, M.D. And so those are --

MS. REID: In the record?

MR. ELLIS: They were submitted.

MS. REID: Let me look.

MR. ELLIS: They were submitted. Maybe they haven't caught up with your file but they have been submitted. We do have -- I don't have enough -- I have -- I don't have enough for all.

MS. REID: Mr. Ellis, I don't have those. I have three or four letters with --

MR. ELLIS: I will provide them.

MS. REID: Okay. All right, go ahead, Mr. Ellis.

MR. ELLIS: I'm going to address some legal points and then I'll have my clients deal with some personal points.

MS. REID: Okay.

MR. ELLIS: With the variances that are requested, there are three variances here. One was from Section 2001.3(a), (b) and (c) to allow a

nonconforming structure devoted to a conforming use in an R-3 residential zone.

Specifically, it says that enlargements or additions may be made to a structure provided that the structure shall conform to the percentage of lot occupancy requirements. That's subsection (a). This structure does not comply with the lot occupancy requirements.

I have just provided to the Board a tabulation of the properties that are on the even side, that these are the properties next to -- these are like row properties going down the block in the 2100.

You will note in the -- not the last. That's the year the property was built, but the second and third to last columns on this property, one has marked at the top interior and the other one has square foot. That with the exception for some reason lot number 21, 28 is sort of split and has like two square footages that you have to put together. It comes up to, like, 1265, but for some reason they have it listed as 511 and then 754. But looking at that sheet, you will note --

MS. BAILEY: Mr. -- excuse me. The Board members haven't received the submission that you're

addressing. We're making copies of it.

MR. ELLIS: I submitted enough copies for the Board.

MS. BAILEY: Oh, is that --

MR. ELLIS: I submitted five copies.

MS. BAILEY: Oh, okay. We thought it was just one. Okay, I'll make sure they get it. Okay.

MR. ELLIS: I'm sorry. I assumed you had it. Has the Board -- anyway, I'll move to -- while that's coming back. There's no problem with the fact that the addition shall conform to the use requirements, the structure requirements.

Subsection (c), the addition or enlargement itself shall not increase or extend any existing nonconformity aspect of the structure and shall not create any new nonconformity of the structure and addition combined.

As Mr. Sockwell pointed out, this property is less than the minimum lot size in the RJ-3 zone, that which requires 2,000 square feet. This property, the Siegel property, has 1,681. Assuming that it had 2,000, there's a lot occupancy of 60 percent. 60 percent would mean that they could occupy 1,200 square feet. They occupy already 5,000 -- well, I'm sorry, I misread that. I'm sorry. Bear

indulgence.

MR. COLLINS: Madam Chair, we don't dispute the fact that we need a variance, and that's why we here.

MR. ELLIS: Okay.

MR. COLLINS: What I do dispute is the numbers on this. I don't know where they came from. I don't know if there's anyone here to back up these measurements, but I certainly dispute the need to go through, you know, each of the individual variances. We're here for a variance. We know we're here for a variance. It's been advertised. We've asked for a variance and we've presented a case for a variance.

MR. ELLIS: But the variance -- Your Honor, I want to make it clear that when we're dealing with a variance, there are sometimes when a person comes in and says, "Look, my property is small and had my property been the right size I could go up to 1200 square feet." But this is a property that already exceeds the amount of lot occupancy that they would be allowed to have even if the lot was full size.

It's one thing to say, "I can come up to because my lot is smaller than everybody else's lot, and I can come up to everybody else's size." But

it's different when you say, "My lot is already smaller and I now already exceed the lot occupancy and I want to keep on going on size." I want to make that distinction clear, that that's what we're doing here. We're not bringing it up compatible with the other lots.

What we're doing is we're making it bigger than what the other properties, because I want to point out this lot is not the smallest on the block as what was said earlier. It is the ninth smallest of approximately 12 lots. so it is not unique. It is not the smallest of the group.

So we're here talking about a lot that is not the smallest that they want to enlarge that as not -- as we sit, it's already bigger than many of the others. It is the fifth largest piece of property on that block in terms of total square footage.

MS. REID: Wait a minute, Mr. Ellis. Let's look at the Sandborn (phonetic) map again. All right, now, you're saying that these lots on Leroy Place -- can you just point out to me which lots are larger?

MR. ELLIS: The lots that are larger -- I don't have the Sandborn map here, I'm sorry. The

lots --

MS. REID: Well, I do, and I'm looking at the lots.

MR. ELLIS: The lots that are larger is the lot for 2110 LeRoy Place, if they have addresses on your Sandborn map there.

MS. REID: Un-un.

MR. ELLIS: It's the lot all the way at the end of the block to the east.

MS. REID: Let me get something --

MR. ELLIS: Which would be -- which would be the -- I'm sorry, I'd have to see your Sandborn map.

MS. REID: Okay. Because we have to see the proximity of these that you have brought to our attention and --

MR. ELLIS: They've all --

MS. REID: -- the ones on the Sandborn that shows --

MR. ELLIS: These are all the --

MS. REID: -- the siting.

MR. ELLIS: Madam Chair, so you're clear, the numbers that I provided you from 2110 to 2130 are all on the same side of the street.

MS. REID: Where is 2110 and 2130?

MS. PRUITT: I don't know.

MR. ELLIS: These are all on the same side of the street adjoining the subject property. They're all the properties that are joining the subject property.

MS. REID: Wait one second, Mr. Ellis.

MR. ELLIS: Okay.

MS. REID: Let us try to --

MR. COLLINS: May I address that point?

(Pause while Board examines maps.)

MR. COLLINS: Madam Chairman, may I address that point, the issue about the variance about the size of the lot?

MS. REID: Could you put a pin in it for just one second because we have a problem. Germane to the case is subsequent to your case today and what we're going to have to do is to -- they have to leave and we're going to have to continue that case.

So I'm going to ask your indulgence to allow us to attend to that matter, to continue that case because they have to be out of here by 5:00 o'clock. Just -- I'll only need a couple of minutes, and then to resume with your case, which will be then the last case of the afternoon. Okay? All right, thank you.

Now, persons who -- Sheri, can you call them up, please?

MS. PRUITT: Yes. All those involved with application 16570 to discuss a continuance, could you please come forward.

MS. REID: Come forward, please, those who are involved with this case. We were anticipating being able to conclude your case today because we had committed ourselves to being here -- being here to at least 6:00 o'clock. And with this present case being wrapped up and we anticipated it wrapping up in a few minutes, it gave time for us to continue -- I mean, to complete your case today and this is what we were moving toward.

However, it's been brought to my attention that you have some logistical problems as far as timing is concerned and that key people have to leave by 5:00 o'clock or before 5:00 o'clock, which gives us no choice but to try to accommodate you otherwise.

And when you come down for these cases, we don't have any control over how long a case is going to go, but you can anticipate that if you're on for the afternoon, especially if you have the agenda and you see that you're for the last case, that it's

probably going to go around 4:00, 5:00, 4:30, 5:00 o'clock at least to start.

And so that being the case, I just wanted you to come up so that we could see what we could do. And we do apologize. We apologize on he one hand, but on the other hand too it is not our fault that you have to leave at 5:00 o'clock. So tell us what you'd like for us to do.

MR. ANDERS: I'll be the spokesperson. I am Joel --

MS. PRUITT: Sir, can you put your mike on. Please be seated so you can be heard an push the button. You don't have to stand.

MR. ANDERS: Hello, I'm Joel Anders. I'm here as attorney for Tucker Day Care. Because of the architect's need to take an examination, her testimony being intrinsic to this hearing, I have a client waiting in my office who's facing some rather serious criminal charges in Arlington County Circuit Court tomorrow morning. He needs a quotient of my attention.

For these reasons, I would respectfully request the next available hearing date. I've got my calendar and I would solicit as early a date as you all can afford us.

MS. REID: Did you have something to say, sir?

MR. SIMMS: Yes. I'm Melvin Simms. I'm from the ANC appointed in this case. I will give Ms. Tucker all the time that she needs, preferably sometime in October or November. I will be agreeable to that so I yield to their request.

MR. ANDERS: Needless to say, if an earlier date were available, sometimes justice delayed is justice denied. So that if an earlier date were in all of your needs, that would be much appreciated.

MS. REID: Okay. Let us look at our calendar and see. Mrs. Pruitt, what is the earliest date that you can get them on the calendar?

MS. PRUITT: October 17th.

MS. REID: Now, how does that -- we understand this is a day care case. And typically we know that school starts around in September -- or I don't know if it's before and after care or just day care or whatever, and how does that -- what bearing does that have on your case?

MR. ANDERS: Well, quite obviously, if school begins in September on or about Labor Day, the request being to expand the capacity of the school,

to reconvene in October delays the start of school. Nonetheless, I've calendared many cases before and if that's the next available date then we're all bound by it, but I would solicit an August date if an August date were available.

MS. REID: The only thing about that is that we're on recess in October (sic).

MS. PRUITT: August.

MS. REID: I'm sorry, in August. In August.

MR. ANDERS: Would you all forgive me and indulge me, I'm being tugged at by Ms. Tucker. Excuse me one moment.

(Pause for discussion between parties.)

MS. REID: Ms. Pruitt, what's that date, July 11th in the afternoon? There seems to be a little space on the calendar.

MS. PRUITT: You have a Foreign Missions and an appeal.

MS. REID: Not that afternoon.

MS. PRUITT: You have the Potter appeal, that's going to be controversial. And East of the River, which is also a big case.

MS. REID: But still we only have two?

MS. PRUITT: Yes, you do, but my point is

in the morning you have Azer Baijan, a Foreign Missions case, which we're getting controversy over. Washington Ethical Society, which is up the street from JPDS, which I assume will probably have some same people who came for JPDS. So I think that the morning agenda may fall into the afternoon.

MS. REID: Uh-huh.

MS. PRUITT: And then in the afternoon, you have East of the River, which is a big project, and the Potter appeal. Appeals usually take at least twice as long as regular cases.

MS. REID: What's the Potter appeal?

MS. PRUITT: It's a new case, you've not seen it. It's an appeal of a Zoning Administrator's determination.

MS. REID: Let me see that calendar for a minute, please.

MS. PRUITT: Ms. Reid, you don't have a copy? You should.

MS. REID: I do but I don't know --

MS. PRUITT: Do you need one?

MS. REID: It's ensnarled in some of these papers right now and I just couldn't get my hands on it immediately.

MR. ANDERS: For the record, counsel

would be available the afternoon of July 11th or whatever general time you designate.

(Pause while Board discusses scheduling.)

MS. REID: Okay, here's what we are going to do. On July the 11th, even though our calendar is pretty full, we're going to put you on the afternoon at the first case.

MS. TUCKER: Is there any way -- my architect is here and I have a lot of my supporters here this afternoon, from nine to ten? It's no way we can be heard this afternoon? Is it any way possible?

MS. REID: Well, I have no problem with you being heard this afternoon, ma'am. The reason why we are having this discussion is because there was a request that you not be heard, that you be rescheduled, from your attorney.

MS. TUCKER: Well, we wouldn't like to reschedule, you know, but really didn't have to, you know. But he was saying, you know, he have to leave at a certain time, but if we go ahead on with it then he could stay then, you know, leave. So that's why I was just saying is there any way possible that you can go ahead and hear us.

MS. REID: Okay, I am confused. What do

you want to do?

MR. SOCKWELL: Mrs. Siegel, it's ten to 5:00 now.

MS. REID: What do you want to do? We suspended our case that we had before us to try to accommodate you because you had to leave to give you -- to try to work out some kind of scheduling for you to be able to reschedule. And then after ten minutes you say that you don't need to reschedule? I mean, what is the point of this?

MS. TUCKER: Well, they was telling me that they didn't want to reschedule, so that's why I said it.

MR. SOCKWELL: See, the question that -- what we're trying to do is accommodate your -- Ms. Tucker, what we're trying to do is accommodate your attorney on what sounds like a very serious problem with a client which --

MS. REID: But nonetheless, Mr. Sockwell --

MR. SOCKWELL: -- we've gone forward on and now that we've looked at the schedule, you'd rather do it another way.

MS. REID: Right. I mean, we've come to a solution to the problem only to find out that you

want to go ahead without your attorney, is that what you're saying?

MS. TUCKER: No.

MS. REID: Well, Ms. Tucker -- Ms. Tucker, if your attorney has to leave and you want to go forward, then it means that you want to go forward --

MS. TUCKER: Okay, go ahead and reschedule then.

MS. REID: -- forward without your attorney.

MS. TUCKER: Go ahead and reschedule.

MR. SIMMS: Madam Chair, this would be the second time that we have postponed this hearing at the request of the attorney. I'm going to ask that July 11th not be scheduled because I would like to go on vacation. And no one have given me consideration in these postponements at all. So if you could schedule it after that, I would like to take vacation. I really would.

MS. REID: Okay, there is no -- we don't have any other date. First of all, let me find out this. Now, you're okay with rescheduling, Ms. Tucker. Okay, one. Two, sir, your name? Your name, sir? Counsel?

MR. ANDERS: Joel Anders.

MS. REID: Okay, Mr. Anders, will you be available on that date?

MR. ANDERS: Yes, I'm available the afternoon of July 11th.

MS. REID: That's okay, two. The ANC, if you cannot be present, can't another representative come and to bring your report and give your report on that date?

MR. SIMMS: We have a very limited ANC and I'm the only one versed in this case.

MS. REID: Well, the only other alternative, sir, would be that we would have to reschedule them until October --

MR. SIMMS: that's what I --

MS. REID: -- which would then be moot because then that nullifies the need for them to be before us in the first place.

MS. PRUITT: Excuse me, sir. Could you submit your ANC report in writing?

MR. SIMMS: I have re --

MS. REID: Because generally that --

MS. PRUITT: Well, first of all do you have a quorumed ANC report?

MR. SIMMS: Yes, it's on file.

MS. PRUITT: Okay, so then we have an official ANC report done at a quorum in a duly noticed meeting.

MS. REID: That's all we need.

MS. PRUITT: Because that's what the board can give great weight to. Otherwise it's just testimony, sir.

MS. REID: If you have some testimony, sir, that you'd like to submit, then you can submit it in writing and it could be read into the record if you like.

MR. SIMMS: I could submit additional testimony to you?

MS. REID: Sure.

MS. PRUITT: Yes, until the record is closed, you can submit anything in writing.

MR. SIMMS: Okay.

MS. REID: Sure.

MR. SIMMS: So July 11th?

MS. REID: Sure.

MR. SIMMS: Okay.

MS. REID: Thank you very much. We appreciate your indulgence.

MR. SIMMS: You're welcome, sure.

MS. REID: Okay, all right. That's it

then.

MS. PRUITT: I just wanted to verify, please, that we have rescheduled this to July 11th. We're going to put you on as the first case in the afternoon.

MS. REID: Now, understand, please, Mr. Anders and Ms. Tucker, that day is a full calendar so we're going to have to try to -- we're putting you in and so try to be as efficient and as compact as possible so we can get through that with relative, you know, swiftness, okay? This is a major accommodation because, like I said before, it is a very full calendar that day.

MR. ANDERS: Madam Chair, let me -- if I may respond to representations made by the ANC. Counsel did endeavor to call to the Board's attention a client conflict that I myself have. Nonetheless I was also speaking for our architect whose testimony is intrinsic to this proceeding.

MS. REID: Okay.

MR. ANDERS: Cross examination being reserved.

MS. REID: Okay.

MR. ANDERS: And she's advised me that she has an exam scheduled which would dramatically

compromise her if she missed it.

MS. REID: Mr. Anders, we understood that and she will be able to be here on the 11th without -- oh, that's you. Okay, you will be able to be here. Fine, so we're all on the same page on board with this. So thank you very much. Now, I have to proceed with the case that I interrupted in order to be able to reschedule you. Thank you very much.

MR. ANDERS: Thank you, Madam Chair, and my apology to the case that was interrupted.

MS. REID: Okay. Okay, Mr. Ellis, where were we?

MR. ELLIS: I want to clear up one thing, Your Honor.

MS. REID: Okay.

MR. ELLIS: I said that the existing lot of the Siegels presently has a lot occupancy of 1,368.70 or 1,369. The additional 98 square feet would take them right about 1,450 some square feet, which means that they are larger. They would only be -- if the lot was -- the actual minimum lot size for an R-3 zone, they could only go up to 1,200 anyway. So they already, right now at 1,368, they already exceed the size of a lot.

MS. REID: Okay, but isn't that what

they're here for.

MR. ELLIS: They're here for the --

MS. REID: For the variance?

MR. ELLIS: But I'm -- there's a critical distinction I'm trying to make and I want to make sure the Board understands it. Typically you have a house or a building that sits on a lot. And when you're saying that a special -- I mean, that a variance is needed because my lot is small here and I want to increase it, it's because as in this case if this house was the minimum size which would be 1,008 because of its size, 60 percent of the actual lot area which is 1,681 would render a house on that lot would only be 1,008.

But now they wanted to increase the size up to the 1200, and it's because their lot is so small topographically because of, you know, in the neighborhood, then they would come in and seek a variance to going up to the 1200.

But now we're not talking about this. We're talking about some people who have a small lot who now want to go to -- who already have a house bigger than the size it would be if their lot was larger. They want to get even bigger.

MS. REID: Well, wait a minute, Mr.

Ellis. You're saying that their area, their lot size is already smaller than that that is allowed, number one.

MR. ELLIS: That's correct.

MS. REID: Okay, number one.

MR. ELLIS: Uh-huh.

MS. REID: And then 60 percent of that lot occupancy --

MR. ELLIS: Would only be 1008.6 square feet of their small lot. But if it was the regular size, 60 percent would be 1,200.

MS. REID: Okay, but here's where I'm having some difficulty. In a situation where -- I mean, can you apply those same ratios in a situation where the lot size itself is already nonconforming, it's irregular, it's already small? I mean, can you still apply that same rationale?

MR. ELLIS: Well, what happens is I want to make it clear -- but the lot -- okay, this lot, we keep talking about it being small and irregular. But the lot may be small and irregular but it already contains a building that's larger than the building that would be on a lot if it was full size.

MS. REID: Exactly, okay. Exactly. That's what I'm saying. Exactly. Mr. Sockwell?

MR. COLLINS: Sir, isn't that why we're here. Madam Chair --

MS. REID: Just hold one second. I'd ask my colleague to weigh in on this because it gets a little too complicated. I'm having some difficulty grasping what both of you are saying.

MR. SOCKWELL: The actuality of this situation, to me, is that based upon the location of the house on the lot currently, this existing building appears to abut the front property line of this lot. And I think there is no disagreement on that fact. As well, with the addition currently proposed, there is only a 98 square foot addition to the building, enclosed portion of the building let's say, with the kitchen addition.

Once one adds the deck, which is greater than four feet above the finished grade, primarily to allow access to the car parking underneath, you now approach approximately 100 percent lot occupancy give or take three or four percent for the angles. And it might even be less than that.

And with the recently submitted evidence that this is quite a large house and as I had already determined in my own investigations that the percentage of lot occupancy for this house on a

minimum 2,000 square foot lot would be approximately 68 percent of such a lot if this lot met those size requirements.

Then it appears to me that with the smaller lot, we're pushing the envelope even further and we are requesting close to 100 percent lot occupancy which is something that becomes a radical variance from the ordinance, as opposed to a minor variance from the ordinance or even a moderate variance from the ordinance.

And that is to say specifically that there isn't as great a justification when the property itself is being over-utilized as a standard lot and greatly over-utilized as a substandard lot.

So all we're doing is taking a lot that's been built out gratuitously and adding more to it without seeing -- at least I don't see any particular hardship in the current occupancy of the lot and it makes it more apparent when one sees the full square footage of the house. But the full square footage of the house is irrelevant to this case. It's strictly a lot occupancy minimum rear yard et cetera situation.

As well, the house is a semi-detached house and as a semi-detached house it would normally

be restricted to somewhat less occupancy than a row house. And it really has generous proportions now and I think that's where we are.

MR. COLLINS: May I just make a correction and observation, If I can. It is not a semi-detached house. It is a row dwelling. It meets the definition of a row dwelling. A semi-detached house would have one side yard and this does not --

MR. SOCKWELL: Okay, this does not have a side yard at all.

MR. COLLINS: May I just point out the test for variance relief in Section 3103.2?

MS. REID: Uh-huh.

MR. COLLINS: How we meet it and let's -- rather than talk about theoreticals, I'd rather talk about the existing facts of the case. Section 3103.2 states that where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a piece of property. I think that we demonstrated that.

First of all, this lot existed -- has existed since 1911. The building permit application

is part of the submission, dated 1911, shows Lot 18, which is the same Lot 18 that exists now. I think the Board can take administrative notice of the fact that 1911 was well before the adoption of the zoning regulations. So the fact that this house does not comply with the zoning regulations is no surprise, nor is it true to say that this Board is not permitted to grant variances for nonconforming structures. We're here to seek a variance from them.

Another fact is that the topography of the site. If this was not a sloping site, if the elevation at the rear of the property was the same as the elevation at the front, then the deck would not count in lot occupancy. A deck that is no more than four feet above grade may occupy any open space.

MR. SOCKWELL: Absolutely.

MR. COLLINS: Okay. So because of the topography, we're further penalized by this. We're adding 98 square feet of a building at one level. Some of the letters of opposition have indicated that this is a two-story addition. It is really a one-story addition that's one level above grade because of the slope of the site.

We are here seeking a variance. There's nothing in the regulations that precludes us from

seeking a variance because the lot is nonconforming, because the property's nonconforming, and that's why we're here.

MR. SOCKWELL: We're extending the nonconforming aspects.

MR. COLLINS: Exactly and that's what a variance is all for. That's how we show the three-part test.

MR. SOCKWELL: And yet here again one might want to think that any piece of property could just as easily qualify for 100 percent lot occupancy if it has some flaws. In this case, the flaw in the property has not restricted occupancy of the lot to any less than that which a minimum standard sized lot would accommodate.

In fact, this lot does have even more generous occupancy. Albeit prezoning ordinance, it's occupied to a higher degree than would any of its neighbors that might have 2,000 square feet or more. So under those circumstances, the property hasn't been encumbered by its size in the amount of building that can be put on it from a square footage lot occupancy footprint standpoint. And yet on the basis of property where the restriction has prevented and equitable use of the land as compared to its adjacent

neighbors, zoning relief would be most appropriately considered.

In this case, I am having difficulty seeing the hardship as a real hardship but more as -- I'm having an easy time seeing it as a condition, but I'm not having a good time trying to find the hardship portion.

MR. COLLINS: Well, I guess the answer to that is that the hardship is not the test. The test is practical difficulty. Hardship is the test for use variance, and this is an area variance. The test would be practical difficulty.

I think that Clark Waggaman, as brilliant an architect as he was in the early part of the century, you know, could not have had the foresight to know that 60 years later, 50 years later, the zoning commission would have adopted a new set of zoning regulations which would have made his designs nonconforming. He probably could not have had the foresight to know that lifestyles change, that properties change, that people's tastes change, such that everyone doesn't have servants anymore.

And I think it's also -- the Board could take official notice of the fact that it would be very difficult to demolish a portion of this house

which would be demolition under the Historic Preservation law to allow for the reconfiguration of the house to provide for a modest 98 square feet of kitchen addition.

The addition has been designed in such a way -- it's been redesigned in such a way it's been pushed away from the Hills, it's behind their tree. I think the photos speak for themselves. Little or none of the addition will be readily visible through the trees even from the windows that are facing that direction.

If you look at the photos that were submitted into the record, you'll see that there are buildings all around on all sides that no matter which direction you look at you see buildings.

MR. SOCKWELL: Mr. Collins, I just don't see the need for all of what's there as a hardship extension to the property. And unfortunately, yes, it does encompass some issues, but as far as I'm concerned, it's a complete giveaway of the things that the ordinance attempts to stand for, and I'm not sure that I can accept that in my own way of thinking, the way I see the documented numbers, that's all.

MS. REID: I think that what we're

getting away from is Mr. Ellis putting on his case in regard to the opposition. And while I appreciate your comments and your take on this particular situation, we do have to allow Mr. Ellis to continue.

MR. ELLIS: As Mr. Collins brought up, they have to meet the test for the variance. As you know, the test for a variance is the property suffers from exceptional narrowness, shallowness or shape from exceptional topographical conditions or other extraordinary or exceptional situation or condition.

Even assuming -- and I disagree with the statement by Mr. Collins about the topographical. This is a four-story townhouse. It's four stories. I mean, there's nothing -- there's no rolling hill here that's causing stuff to be moved here. It's a four-story townhouse. It's straight up and down, four stories.

And this house has a strange lot but it doesn't warrant total -- as Mr. Sockwell pointed out, when you essentially look at what's being done here, there is total lot coverage or nearly total lot coverage here by the proposal when you take in the deck and the structure being added with it.

The deck is above four feet over the ground. It is that way so you can get the car in the

garage. The property in of itself does not warrant the kind of relief that's being requested here.

These exceptional -- number two is these exceptional circumstances result in a peculiar exceptional practical difficulty to the owners unless he or she can obtain a variance.

What it's saying here is, "We want a larger kitchen, we want to sit down and eat." I mean, these are all nice things, but we're not saying that the family can't eat somewhere else in the house. I mean, there is a dining room here. They just want an eat-in kitchen.

It doesn't fit. There are lots of people -- and I mean I -- there are lots of people who live in the District of Columbia who don't have eat-in kitchens and, I mean, that doesn't make a fatal flaw in the house. And to say that it's a peculiar -- because now we -- you know, we can't have an eat-in kitchen, I find some difficulty with that rationale.

And number three, the variance relief will not create a substantial detriment to the public good or substantially impair the intent, purpose and integrity of the zone plan is embodied in the zoning regulations.

As Mr. Schwartz pointed out, there are

going to be pillars that are going to be put pretty much towards the edge of the property to support. The pillars are smaller because they're going to be metal, but there is a problem there.

The city is investing a large amount of money in brand new garbage trucks. When there is snow, those alleys are hard to manipulate -- maneuver through them. any sliding and you hit that pedestal does pose a possibility of some type of liability. And it gets to be difficult in that alley. The alley -- we will show a picture shortly when my clients testify, this alley when it makes that turn narrows. And it makes it just that much more difficult for that truck to make that turn.

So, no, it would not be in the public good. That's my position on behalf of my clients on the legal issues. Now, I'm going to have them address -- I'm going to have Mr. Hills address for a second. There was a couple things that was brought to the board that their views would not be affected.

Can you tell us, Mr. Hills, looking out of your kitchen, can you see across the Siegel property as we speak? Can you tell us what you see from your kitchen?

MR. HILLS: This --

MS. REID: Into the mike.

MR. HILLS: Oh, yes.

MR. ELLIS: And can you identify yourself, first.

MR. HILLS: My name is Carter Hills and I'm a retired foreign service officer and living on LeRoy Place with my wife. Can I get up and speak here?

MR. ELLIS: Yes, you have to take the microphone right there in front of Mr. Collins.

MR. HILLS: The perspective that you describe is not accurate. The magnolia tree is on this -- right alongside of the -- right alongside of the outward wall on the street and it sticks there. The stock of the tree goes right up here. So everything on the other side of it is our garden, which you can see here. There's the magnolia right smack against the corner lot there.

This is part of our garden which we've worked very hard on. This is a tree in the Siegel's property going up, which he would plan to cut down in order to impose the deck and the glassed in enclosure for a new breakfast room.

We have a wrought iron -- a deck with

wrought iron steps going down. Here's the wrought iron deck and here's me looking at it. Here's the small extension that our kitchen is in, which Mrs. Siegel and her husband were guests and that's where they got the idea.

Well, ours is a pretty modest operation. And while in principal I'm entirely in support of helping the Siegels obtain whatever they want, there's a certain problem with our view, our perspective, the impact of the sun.

Now, our gentleman astronomer here, I also studied astronomy. The sun, as I pointed to my wife sitting here, it comes over this way in the morning and hits these plants. In the afternoon -- camellia trees. In the afternoon, it comes this way and impacts on the sun there -- or excuse me, on the camellia plants and the other parts of the garden there.

I was afraid that - well, first of all, Mr. Siegel came to me and said to me, "Now, we want to build a deck from three feet from the end of this wall," which means three feet from the alley. And I walked out there with him -- or I mean, I walked out on the wall to see just what it would do, what it would be like. And it wouldn't -- nothing's going to

hurt this magnolia tree because it's over there. What it does do is completely -- and he agreed that 12 feet was too much and he brought it back to three feet.

And he gave the verdict on three feet because I got out there and I measured how far we could go to have a structure adjoining which would still allow me to see the houses down the alley, Marie Drissel's house. I took great pleasure as a neighbor in seeing her washing her dishes. Well, that would go. And it sounds corny, but, you know, as sometimes -- you know, sometimes things are corny but they are meaningful.

MS. HILLS: That picture is taken from our kitchen.

MR. ELLIS: You have to put your name and --

MS. HILLS: Sorry.

MR. HILLS: You want a microphone, too?

MS. HILLS: No, that's all right.

MR. HILLS: Okay. And then this is the alley and there's only one house which has a projection similar to what's being proposed, and that's this house, the Saywins (phonetic). They have sent a letter opposing this because it's on the

corner. And the statement about the difficulty of the garbage trucks getting around was understated, because I go out every morning here and make sure that they don't drop these things all over the place and I put the garbage back -- of put the top of the cans back on.

When they get to the corner, they can barely go around. And now there are two trucks that cannot go around. So what happens is they're parked out on LeRoy Place and I'm helping them out there making sure that everything of ours is done right. And they have two -- there are two guys that do it. Two bins this high, and they pick up all the garbage from the houses around here and they dump it in. And then they walk it out and around the corner.

So this is just to say that whoever of you suggested there might be a problem on the corner is genuine and extent.

At the same time, while I originally felt that three feet was all I felt that we could continue to have our view down the alley on the right to Marie Drissel's house and all the others on the left and discovering that if we didn't as the proposal is now, all we have is to look straight ahead through the magnolia tree to two houses which are red brick and

back of red brick going all the way up to the top.

Now, that's the dismal difference between seeing up the alley to houses on both sides, the Drissel house and the Chapin house and watching Marie at her homework or housework.

At the same time I want to be as accommodating as I can to our neighbors because (a) they're neighbors. As my wife says, we have to get along with them, and they're nice people. For that reason, I didn't protest when Joan was ready to go along with what they're doing. She did suggest that if -- I mean, what it would do though is definitely block out any view of the alley on the right. And I said that to Marie Drissel and she said, "Pfft," like that.

So that is something that we would have to forego, which is a pleasure in our life to see up the alley from our deck. I haven't said it so far, that your presentation was correct from your perspective but you weren't in our back yard so you didn't see what the true perspective is. That is in the corner and we're looking out from our deck here, and we can see all the way at present up the alley to the Chapin house, to the Drissel house, to the next house, whoever's living there, and the next two.

With the construction, we're only going to be straight ahead. On the other hand, my wife being kind of the good neighbor that she is, she said, "Well, if they can knock off the deck on this side of their glassed-in structure so that nobody comes to watch me when I'm gardening in my shorts or we're giving a dinner party in our patio, that would seem to be a reasonable thing to do."

Now, I took that up this morning and yesterday with Mr. Siegel when he telephoned me and asked me to be constructive. And that's one that he said that he's already spent so much money on the plans that he didn't want to undertake any such change. But if that is the case --

MS. HILLS: This picture was taken in the snow.

MR. SOCKWELL: Speak into the microphone.

MS. HILLS: This picture was taken in the snow. The alleyway is right here. And it shows the bend in the -- you're coming up right here, you can't because the tree is there, but there's a lot of snow there and it shows the wall right there. And I think it gives a very good perspective.

And this picture here shows our view. I'm not a very good photographer, but that actually

is Mrs. Drissel's window. But it's taken from our kitchen.

MR. HILLS: Our --

MS. HILLS: It's actually not. It's taken from inside our kitchen. And it shows that we will not have the view that we would like to have, and that the addition will block off a certain amount of view.

MS. RENSHAW: Excuse me. I'm asking Mrs. Hill, is that the Siegels' home?

MS. HILLS: This is the Chapins' home here.

MS. RENSHAW: This is the Chapins' home. Is your home on any one of these pictures?

MS. HILLS: This is the Chapins. And this addition was put up illegally. This is Mr. and Mrs. Chapin there. That's their house there.

MS. RENSHAW: All right.

MS. HILLS: And they're -- this is the Siegels' house. I mean, you can't see it. It would be right here.

MS. REID: Okay, let me ask you something. Intuitively, it appeared to me that I heard some -- in this presentation that I heard a proffer of some kind of compromise and a concession.

If that is the case then, can we do that, and then we can just put this --

MR. ELLIS: I'm sorry, can I hear?

MS. SIEGEL: May I?

MR. ELLIS: Wait a minute.

MS. REID: Wait one second.

MR. ELLIS: Let me hear what the chair.

MS. REID: I heard in this discussion when Mr. Hill was showing some of the pictures and he kind of proffered -- Mr. Hill?

MR. ELLIS: He is not --

MS. REID: But he's talking so I'm speaking about something that I heard him say --

MR. ELLIS: He's already told me what the agreement was, Your Honor, so that's what -- and if you're saying that they --

MS. REID: Do you have something?

MR. ELLIS: Well, Mr. Collins and I --

MS. REID: Do you want to recess for about five or ten minutes because --

MR. ELLIS: No, wait a minute. Mr. Collins and I -- we don't want to take up any more of your precious time. Mr. Collins and I just spoke. The structure -- and the architect and I also spoke. The structure that is on the side of the Hills'

house looking over into their yard, if that's done away with, my clients have informed me that they don't have any problems with this.

MS. RENSHAW: Now, can somebody point it out?

MR. SOCKWELL: Are you talking about something like this?

MR. ELLIS: Yes. Mr. Sockwell is holding -- where Mr. Sockwell's finger is at the bottom of the page, that section of -- if that is done way with --

MS. RENSHAW: No, no.

MR. SOCKWELL: Yes, this area right here. How much do you want --

MR. ELLIS: No, it's this right here.

MS. REID: Okay, we're going to recess for about five minutes. Okay?

(Whereupon, a brief recess ensued.)

MS. REID: Now, Mr. Ellis and Mr. Collins, if in fact you all have come to some resolution or meeting of the minds, then can we just -- can you submit it for the record? Just tell us briefly what you have come to. And then even if it's written in hand -- you know, handwritten, that's okay, and signed by both and done -- okay.

MR. COLLINS: What we have, Madam Chair -- Chris Collins from Wiles Artis. We have a revised site plan which I'd like to submit for the record. It's labeled revised plan 62000 signed by all the parties.

MS. REID: Okay.

MR. COLLINS: It eliminates the deck area on the east side of the Siegel property all the way around approximately to the westernmost window of the bay, and I'll submit it and you can make copies of it. And it goes at an angle to match the angles, so it's more symmetrical. But it is agreed to by all the parties.

MS. REID: Okay.

MR. COLLINS: If I may submit it this way and you can pass it on down so everybody can see it.

MS. REID: Okay. Thank you very -- actually, Ms. Renshaw, you have to give that back to Mr. Collins.

MS. RENSHAW: Oops.

MR. COLLINS: Oh, yes, I sure will.

MS. REID: Mr. Collins, has to give it to staff. You have to do it procedurally. Okay. All right, great. So then, Mr. Ellis, let's see, you were putting on your case and there is no one here in

opposition. I'm sorry, you were putting on your case. Then the opposition was Mr. and Mrs. Hill. There's no one here in support. Closing remarks.

MR. COLLINS: By me?

MR. ELLIS: We support the resolution that ahs just been reached and we have no problem this matter moving forward.

MS. REID: And you ask for?

MR. ELLIS: That's his obligation.

MS. REID: Oh, I'm sorry. Wrong attorney, I'm sorry. I'm sorry. Boy, I'm sorry. Please excuse me. Mr. Collins.

MR. COLLINS: Madam Chair --

MS. REID: Now, closing remarks.

MR. COLLINS: Based upon the evidence of record, the fact that the only party in opposition and the applicant have come to a resolution, mutually agreeable resolution in this case, based on the fact that the applicant believes that we have met the burden of proof and that we have letters of support from the single member district commissioner of the ANC although not a full ANC report, we have letters of support from the other two most immediately abutting neighbors, based upon the photos, the evidence of record, the plats, the plans, the

testimony, we respectfully request approval of this case at your earliest possible date. And if you so choose to grant a bench decision, we'd ask for a summary order.

MS. REID: Okay.

MR. COLLINS: Thank you.

MS. REID: Thank you. And a couple of things. First and foremost -- well, Mr. Sockwell, you missed the fireworks. You missed the grand finale.

MR. SOCKWELL: Oh.

MS. REID: First and foremost, I'd like --

MR. SOCKWELL: Could you repeat that?

MS. REID: I'm sure that my colleagues join me in commending you for working out a resolution to this particular issue which appeared to me was something that was very doable and possibly inevitable. It is that kind of working together that I think this city is all about.

And as neighbors, I'm glad to see that both sides were willing to try to bend some to try to make it work because I know that you don't want to live in a contentious relationship with a neighbor because a neighbor is someone who you never who you

might need at an important time in life. Neighbors are very important, and that's what this city is all about.

And that's what also the regulations -- just wanted to mention that the regulations, we all know have their problems in that they were written during an era in 1958 in which current lifestyles were not taken into consideration with some of the architectural structures and layouts of some of the buildings in Washington.

And our Board serves to be the body to give relief from the strict application of the regulations when sometimes it just does not fit, and to also allow the residents here in Washington to be able to enjoy some of the things that, you know, they would not otherwise have unless they lived in the suburbs.

So I am so glad that we came to a resolution of this and I again commend you most highly for having done so. Thank you very much.

And as such, can I have a motion? I'm sorry, I forgot, Mr. --

MR. PARSONS: Madam Chair, I move we approve this application based on the new diagram just provided to us.

MR. SOCKWELL: I would second that.

MS. RENSHAW: Oh, I would, too.

MS. REID: We feel that they have met their burden of proof and that they have not -- they don't have any -- there are no adverse impacts. And given the fact that the opposition -- a party in opposition has now rescinded their status in opposition that allows us to then grant a summary order bench decision.

MR. SOCKWELL: I have two requests. One, that the documentation of square footages and percentage of lot occupancy be provided to the Board for the record, and that should be simple enough to do. And second, that the Hills be certain to be invited to sit in the Siegels' breakfast room as the idea was conceived in the Hills' breakfast room.

MS. SIEGEL: That was my line. We'll invite all of you.

MS. REID: Okay. And that this granting of this relief would not impair the integrity or intent of the zoning regulations or map. Okay.

MS. RENSHAW: We have to vote.

MS. REID: All in favor?

MEMBERS: Aye.

MS. REID: Mr. Parsons, did you want to -

- did you say aye?

MS. RENSHAW: Mr. Parsons, did you put your aye on the record?

MR. PARSONS: Yes.

MS. RENSHAW: Oh, all right.

MS. REID: Okay. All in favor, aye. All opposed?

(No response.)

MS. PRUITT: Staff would record the vote as four to zero to issue a summary order based on the revised floor plan submitted by -- and signed both by applicant and party. And that the applicant will submit for the record revised -- documentation of the revised square footages for the record.

MS. REID: Okay, all right.

MS. PRUITT: And Mr. Collins, would we be able to get that within a week so we will know about closing the record? Just so we have some time certain.

MS. REID: Okay.

MR. COLLINS: Yes, the architect is indicating we can.

MS. PRUITT: How about if we say before the 4th of July, to give you a break.

MR. SCHWARTZ: Sure.

MR. COLLINS: Yes.

MS. PRUITT: I mean, that way we can still get your summary order out but --

MS. REID: Okay, that concludes today's hearing. Thank you very much.

MS. SIEGEL: Thank you, Your Honor.

MS. REID: Great to end on such a nice note.

(Applause.)

MS. REID: Thank you, I love that. I love a happy ending.

MS. RENSHAW: Yes, that was the best.

(Whereupon, the meeting was concluded at 5:42 p.m.)