

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 21, 2009

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairman,
SHANE L. DETTMAN, Vice Chairman

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA,
Commissioner (OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
TRACEY W. ROSE, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

NEAL R. GROSS

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

OFFICE OF PLANNING STAFF PRESENT:

ARLOVA JACKSON
ARTHUR JACKSON
KAREN THOMAS

D.C. DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:

JEFF JENNINGS

The transcript constitutes the
minutes from the Public Hearing held on
April 21, 2009.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

T-A-B-L-E O-F C-O-N-T-E-N-T-S

WELCOME:

Marc D. Loud. 5

PRELIMINARY MATTER:

Application No. 17909 - Withdrawn:. 9

GERARD ALEXANDER:

APPLICATION NO. 17912 - ANC - 2E: 10

PRELIMINARY MATTER:

Request to Waive Late Filing. 11

WITNESSES:

Dale Overmeyer. 15

Gerard Alexander. 17

OFFICE OF PLANNING:

Arlova Jackson. 21

VOTE TO APPROVE 17912 (3-0-2):. 30

MARK MERLINO:

APPLICATION 17908 - ANC - 6C: 31

WITNESSES:

Mark Merlino. 35

Donald Stocks 61

OFFICE OF PLANNING:

Karen Thomas. 77

CLOSING REMARKS:

Mark Merlino. 97

BENNING STATION, LLC: 115

APPLICATION 17890 - ANC - 7D:

WITNESSES:

Christopher Collins 116

David Tolson. 134

Ben Soto. 136

John Edwards. 138

Osborne George. 152

OFFICE OF PLANNING:

Arthur Jackson. 186

DISTRICT DEPARTMENT OF TRANSPORTATION:

Jeff Jennings 190

CLOSING REMARKS:

Christopher Collins 221

VOTE TO APPROVE 17890 (3-0-2) 237

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

AFTERNOON SESSION

PRELIMINARY MATTER:

Appeal No. 17903 - Withdrawn:244

CENTRAL UNION MISSION:

APPLICATION 17717 - ANC - 1A.245

PRELIMINARY MATTER:

Request for Postponement.246

Kinley Bray246

Grant Request for Postponement.250

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

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

2 10:03 a.m.

3 CHAIRPERSON LOUD: This is the
4 April 21st public hearing of the Board of
5 Zoning Adjustment of the District of Columbia.

6 I've already introduced everyone
7 on the dais this morning for the public
8 meeting and won't repeat their names.

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

12 Please be advised that this
13 proceeding is being recorded by a court
14 reporter and is also web cast live.
15 Accordingly we must ask you to refrain from
16 any disruptive noises or actions in the
17 hearing room.

18 When presenting information to the
19 Board, please turn on and speak into the
20 microphone, first stating your name and home
21 address. When you are finished speaking,
22 please turn your microphone off so that your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 microphone is no longer picking up sound or
2 background noise.

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

11 The order of procedure for special
12 exceptions and variances is: (1) statement and
13 witnesses of the applicant; (2) Government
14 reports including the Office of Planning, the
15 Department of Transportation and so on; (3)
16 reports of the Advisory Neighborhood
17 Commission; (4) parties or persons in support;
18 (5) parties or persons in opposition; and (6)
19 closing remarks by the applicant.

20 Pursuant to sections 3117.4 and
21 3117.5, the following time constraints will be
22 maintained. The applicant, appellant if it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 an appeal, persons and parties except an ANC
2 in support, including witnesses, are allotted
3 60 minutes collectively. Appellees, persons
4 and parties except an ANC in opposition,
5 including witnesses are allotted 60 minutes
6 collectively. And individuals are allotted
7 three minutes.

8 These time constraints do not
9 include cross examination and/or questions
10 from the Board. Cross examination of
11 witnesses is permitted by the applicant or
12 parties.

13 The ANC within which the property
14 is located is automatically a party in a
15 special exception or variance case.

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

20 The record will be closed at the
21 conclusion of each case except for any
22 material specifically requested by the Board.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The Board and the staff will specify at the
2 end of the hearing exactly what is expected
3 and the date when the persons must submit the
4 evidence to the Office of Zoning.

5 After the record is closed, no
6 other information will be accepted by the
7 Board.

8 The Sunshine Act requires that the
9 public hearing on each case be held in the
10 open before the public. The Board may,
11 consistent with its rules of procedure and the
12 Sunshine Act, enter executive session during
13 or after the public hearing on a case for
14 purposes of reviewing the record or
15 deliberating on the case.

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

22 Please turn off all beepers and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

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

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

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

14 Does the staff have any
15 preliminary matters?

16 MS. ROSE: Good morning, Mr. Chair
17 and Members of the Board.

18 Yes, staff has two preliminary
19 matters this morning.

20 The first one is 17909, the
21 application of Kikos the Chicken has been
22 withdrawn.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Thank you, Ms.
2 Rose.

3 MS. ROSE: The second preliminary
4 matter relates to the first case of the
5 morning. Would you like for me to call the
6 case and then address it?

7 CHAIRPERSON LOUD: Yes, why don't
8 you do that, please.

9 MS. ROSE: The application is
10 17912 of Gerard Alexander, pursuant to 11 DCMR
11 section 3104.1, for a special exception to
12 construct a one-story side porch addition to
13 an existing one-family semi-detached dwelling
14 under section 223, not meeting the lot
15 occupancy, section 403, side yard, section
16 405, non-conforming structure requirements
17 under section 2001.3 in the R-3 District at
18 premises 3103 P Street, N.W., Square 1270, Lot
19 824.

20 Would the applicant come forward?

21 And we need to administer the
22 oath.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON LOUD: Yes. That will
2 be fine. Thank you.

3 (Whereupon, the witnesses were
4 sworn.)

5 MS. ROSE: You may be seated at
6 the table.

7 CHAIRPERSON LOUD: Thank you, Ms.
8 Rose.

9 Before we get started, did you go
10 into the preliminary matter?

11 MS. ROSE: Yes, the preliminary
12 matter which relates to this case deals with
13 the affidavit of posting which indicates that
14 the property was posted at only six days prior
15 to the hearing when 15 days are required. The
16 applicant would need a waiver of nine days to
17 proceed this morning.

18 CHAIRPERSON LOUD: Thank you, Ms.
19 Rose. I appreciate that. I think we've
20 reviewed our packages and, as you indicated,
21 were made aware of that issue. I don't think
22 it's something we want to spend a whole lot of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 time on this morning. I think we're
2 authorized by our rule 3100.5 to waive that
3 for good cause shown.

4 So what I'd like to suggest to
5 Board Members is that we hear from the
6 applicant regarding the reason for not
7 posting, and assuming that there's reason for
8 that, we'll move forward into the case.

9 MR. OVERMEYER: (Off microphone.)

10 CHAIRPERSON LOUD: Is your
11 microphone on, Mr. Overmeyer?

12 MR. OVERMEYER: Good morning.

13 CHAIRPERSON LOUD: Good morning.

14 MR. OVERMEYER: I'm Dale
15 Overmeyer. I'm the architect for 3103 P
16 Street.

17 I think it was just that we were
18 unclear on the instructions for the timing.
19 I was under the impression it was five days.
20 I apologize.

21 CHAIRPERSON LOUD: So are you
22 suggesting that Zoning Regulations can be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 unclear? That might be good cause shown.

2 MR. OVERMEYER: I beg your pardon.
3 It says that the photograph must be filed five
4 days before and that was my misunderstanding.

5 CHAIRPERSON LOUD: I think the
6 basic challenge, and it's not a big one, is
7 that the posting has to take place a certain
8 number of days. And the affidavit
9 establishing that it was posted, I think it
10 might be 15 days, is filed five days. So I
11 think that when you filed the affidavit you
12 suggested that you posted it on April 15th,
13 which would not have met the requirement. But
14 I do think uncertainty about the
15 interpretation of the rules can happen.

16 And with respect to our rules, I
17 also think that in this case notice was
18 accomplished through other means. The ANC
19 obviously held its meeting I think on March
20 30. All seven commissioners were present, so
21 apparently the word did get out. Mr. Nero in
22 our office also sent the notice at Exhibit 17

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and I think 18 notifying persons that live
2 within a 200-foot radius. So I don't think
3 that there's an issue with folks in the
4 community understanding what was going on.
5 And I note that we don't have any opposition
6 on record, although I'm not certain whether
7 anyone will show up during the course of the
8 hearing.

9 But as it stands now, colleagues,
10 I'm prepared to waive into the record the late
11 filing of the applicant. Unless Board Members
12 object, would consider it so waived in.

13 Okay. So we're going to waive our
14 rules and allow late filing of the affidavit.

15 Ms. Rose, thank you for bringing
16 it to our attention.

17 And as indicated, we've reviewed
18 the file. We think it's a very full, very
19 well-briefed file that you've submitted along
20 with the Office of Planning. And so you are
21 aware of the test for special exception under
22 223, and you don't actually have to go through

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 every single thing that you submitted with
2 your pleading, because again it is well-
3 briefed. But if there are certain things that
4 you want to highlight and lift up, now would
5 be an excellent time to do it, along with just
6 framing the general project that you're doing.
7 We can turn then to the Office of Planning and
8 move forward this morning.

9 MR. OVERMEYER: Thank you. Given
10 that the Board is aware of the physical
11 characteristics, I would just point out that
12 actually I'm a resident that dwells
13 immediately across the street at 3106 P Street
14 and have been familiar with the property for
15 15 years.

16 There was an existing structure in
17 the same location as our new structure. And
18 when the applicant, Gerard Alexander, bought
19 the house, we believe that that was a
20 structure that could be altered. We didn't
21 realize that it was a structure that had never
22 received a permit before even though it had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 probably been there for more than 20 years,
2 probably constructed this side of 1958. So it
3 really did not have any grandfathered status,
4 but I would argue that the structure that had
5 been there for so many years had never drawn
6 any real criticism from the neighbors and so
7 it acted as a kind of precedent. In the
8 structure we created, we made smaller in
9 several dimensions, especially the rear yard.
10 We made that conforming whereas the old one
11 had been greater than that.

12 I have a letter here, and I
13 believe this was submitted, but from the
14 immediate neighbors to the west, that is
15 Georgetown Presbyterian Church. They
16 submitted a letter that ends with the line,
17 "All in all I'm confident that there would be
18 real improvement to the situation. Look
19 forward to any further thoughts or questions."

20 And in the process submitting
21 before the Old Georgetown Board, as we saw
22 permit application, they supported our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 application with the merit of review of
2 historical. And I had a chance to personally
3 discuss this with neighbors that look across
4 P Street at the property and have had no
5 objection from those. And I will say in
6 addition that the owner sent out a personal
7 letter to all the addresses that the Office of
8 Zoning sent letters to as well and we received
9 no response. A couple of interested questions
10 about the project, but no objection in
11 response to those letters.

12 CHAIRPERSON LOUD: Thank you.
13 Does the applicant wish to say anything this
14 morning?

15 And, good morning. Just state
16 your name and address for the record.

17 MR. ALEXANDER: Good morning.
18 Gerard Alexander. I'm the owner of 3103 P
19 Street, N.W. and I think I'm wise enough to
20 let Dale speak for me.

21 CHAIRPERSON LOUD: Thank you.

22 Board Members, are there any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 questions?

2 Hearing none then, and I don't --

3 COMMISSIONER TURNBULL: I just had
4 one question.

5 CHAIRPERSON LOUD: I'm sorry. Go
6 right ahead.

7 COMMISSIONER TURNBULL: Was the
8 previous structure there when you bought the
9 house?

10 MR. ALEXANDER: Yes, sir. Yes,
11 sir, it was.

12 COMMISSIONER TURNBULL: And why
13 did you take it down?

14 MR. ALEXANDER: We wanted to -- it
15 was a -- I say with this without any aesthetic
16 training, a -- a Mediterranean style structure
17 that we thought went very poorly with the
18 house and it was sitting on a brick surface
19 that was quite degraded and even and we
20 thought to both replace and improve the brick
21 patio, which we did with permit, and install
22 a patio structure that fit better

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 aesthetically with the house. This was part
2 of a more general renovation of the home.

3 COMMISSIONER TURNBULL: Was the
4 brick patio already there?

5 MR. ALEXANDER: Yes, sir.

6 COMMISSIONER TURNBULL: So you
7 basically repaired or redid it?

8 MR. ALEXANDER: That's correct.

9 COMMISSIONER TURNBULL:
10 Refurbished it?

11 MR. ALEXANDER: Yes, sir.

12 COMMISSIONER TURNBULL: Okay.
13 Well, was the existing structure falling
14 apart?

15 MR. OVERMEYER: I'll be happy to
16 answer that.

17 It had actually been recently
18 repaired. I think probably for the sale of
19 the house, they had replaced the boards. The
20 western beam of it and columns were made of
21 steel and the roof structure was made of wood.
22 The wood had been replaced and previously

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there had been a corrugated plastic roof over
2 the whole thing which they didn't put back
3 when they did the repair.

4 COMMISSIONER TURNBULL: Sounds
5 attractive.

6 MR. OVERMEYER: We were encouraged
7 by the Office of Zoning to remove it once they
8 informed us that it had been non-conforming
9 and it really wasn't a structure that could be
10 grandfathered in. And so they indicated that
11 this is something they could support in a
12 special exception application and they advised
13 us to remove it, so that's what we did.

14 COMMISSIONER TURNBULL: Okay.
15 Thank you.

16 CHAIRPERSON LOUD: Any additional
17 questions from the Board?

18 Are there any witnesses for the
19 applicant in this case who would like to step
20 forward that perhaps stepped in after we
21 started the proceeding?

22 And seeing none, we'll move now to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Office of Planning for its report, which
2 is our Exhibit 22.

3 And, good morning.

4 MS. JACKSON: Good morning, Chair
5 and fellow Members of the Board.

6 For the record, my name is Arlova
7 Jackson with the D.C. Office of Planning.

8 The Office of Planning recommends
9 approval of the application pursuant to
10 section 223 requiring special exception relief
11 from section 403 and section 405.

12 We go into detail about how we
13 feel the project meets the standards for
14 special exception approval in our staff
15 report, which I could go into or I could stand
16 on the record in the interest of time and take
17 questions.

18 CHAIRPERSON LOUD: I think we're
19 moving fairly well this morning so far, so if
20 you want to just highlight just a few basic
21 points without going into what is a very
22 thorough and detailed report, that might be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 helpful.

2 MS. JACKSON: Okay. Sure.

3 The proposed addition is one
4 story, would be in the same location as
5 mentioned as a previous trellis structure,
6 although with a smaller footprint. The
7 adjacent neighbor is the Georgetown
8 Presbyterian Church and the properties are
9 separated by an eight-foot high privacy fence.
10 So we felt the project wouldn't unduly affect
11 light and air for the neighboring property.

12 The proposed open porch would
13 provide shelter for part of a garden, as well
14 as provide a covered entry to the house. It
15 would be smaller than the previous structure.
16 It increases the west side yard setback from
17 zero feet at the north end to between 5.2 and
18 7.8 feet.

19 In addition, the church building
20 to the west has an existing eight-foot side
21 yard, so we felt the proposed construction
22 wouldn't unduly compromise the enjoyment and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 privacy of the neighboring property.

2 Finally, the proposed addition
3 would be located approximately 40 feet from
4 the front property line and is proposed to be
5 11½ feet in height. Views from the street of
6 the porch would be partially obscured by the
7 existing trees and brick wall along the front
8 property line.

9 The project, as mentioned, has
10 been reviewed favorably by the Old Georgetown
11 Board and we thought would be in keeping with
12 the character and scale of other homes on the
13 block and should not visually intrude upon the
14 character, pattern of scale of homes along the
15 street.

16 With regard to the submittals, the
17 applicant provided a site plan, front, side
18 and rear elevations and photographs
19 representing sufficient graphical information
20 for the request.

21 And lastly, the proposed lot
22 occupancy is 47.1 percent, which is well

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 within the 70 percent allowed for a 223
2 special exception.

3 ANC 2E and the Commission on Fine
4 Arts both gave favorable recommendations for
5 the request and the Office of Planning
6 recommends support as well.

7 CHAIRPERSON LOUD: Thank you.
8 That was an excellent report.

9 Are there any questions for the
10 Office of Planning?

11 COMMISSIONER TURNBULL: Yes, I
12 have, Mr. Chair.

13 CHAIRPERSON LOUD: Go right ahead.

14 COMMISSIONER TURNBULL: Ms.
15 Jackson, in the counting of the lot occupancy
16 were you counting the four-foot side yard on
17 the other side of the house?

18 MS. JACKSON: Yes. Actually, the
19 applicant did that. For the total, it
20 includes the existing house at 34.7 percent,
21 the addition, 5.8 percent, accessory
22 structure; there's a shed at the rear, 2.2

NEAL R. GROSS

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

1 percent and the four-foot wide side yard is
2 4.4 percent for a total of 47.1.

3 COMMISSIONER TURNBULL: Okay.

4 Thank you.

5 CHAIRPERSON LOUD: Thank you, Mr.

6 Turnbull.

7 Mr. Dettman, do you have any
8 questions for the Office of Planning?

9 VICE-CHAIRPERSON DETTMAN: No.

10 CHAIRPERSON LOUD: Thank you.

11 Again, that was an excellent report.

12 MS. JACKSON: Thank you.

13 CHAIRPERSON LOUD: First of all
14 I'll ask for any member representing ANC 2E,
15 which is the ANC that this property is in, and
16 see that none is here, what I'll do is note
17 that as Ms. Jackson said, our Exhibit 21 is
18 the report of the ANC. And in the report, the
19 ANC met March 30. It was a fully-noticed
20 meeting. The full quorum, seven members
21 present and the ANC voted unanimously that
22 they have no objection to the request for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 establish and we are delighted that we'll give
2 their report great weight.

3 Now I'd like to see if there are
4 additional parties or persons in support.

5 There are none.

6 Parties or persons in opposition,
7 this would be the time to step forward.

8 There are none.

9 And now we turn back to the
10 applicant for closing remarks.

11 MR. OVERMEYER: No further
12 remarks, thank you.

13 CHAIRPERSON LOUD: Okay. All
14 right. Thank you very much. We really
15 appreciate the presentation and the well-
16 briefed submission that you have and what
17 sounds like a fantastic addition.

18 So I think we are ready to
19 deliberate on this morning.

20 Colleagues, are you prepared to
21 deliberate?

22 Okay. We've all reviewed this.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It's an excellently-prepared application. My
2 thought is that rather than myself walk
3 through all the elements of 223, I would like
4 to adopt by reference the very excellent both
5 written report, that's Exhibit 22, of the
6 Office of Planning. Within the verbal
7 testimony she walked literally right through
8 each of the elements that I would be doing
9 right now. It would just be repetitive for me
10 to do it.

11 So, I support this application. I
12 think they've met the requirements of section
13 223 in terms of light and air and privacy, use
14 of enjoyment, there not being any visual
15 intrusion upon the character and scale and so
16 on and so forth, for all of the reasons that
17 Ms. Jackson testified to. And based on the
18 report of the Office of Planning, based on the
19 testimony of the Office of Planning, based on
20 the fact that the ANC supports it, based on
21 the testimony of the applicant, I'm prepared
22 to vote approval for this application.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And we'll open it up for comments
2 from others.

3 VICE-CHAIRPERSON DETTMAN: Thank
4 you, Mr. Chairman. I'm also in support of the
5 application for all the reasons that were set
6 forth by DCOP as well as yourself.

7 I just wanted to make a couple
8 comments with respect to support for this
9 project. The applicant in his testimony
10 mentioned that the neighbors from across the
11 street, across P Street, are supportive. The
12 neighboring property, George Presbyterian
13 Church, is supportive. The only issue that I
14 saw in reviewing the project was potential
15 drainage onto their property and I was
16 delighted to see that that issue had been
17 raised and it's been addressed in a series of
18 emails that were submitted to us, that's our
19 Exhibit 19. It's supported by the Old
20 Georgetown Board, the ANC and the Commission
21 of Fine Arts. So this is a project that's
22 been well coordinated and it's supported by

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 all interested parties.

2 CHAIRPERSON LOUD: Thank you, Mr.
3 Dettman.

4 Any further, Mr. Turnbull?

5 COMMISSIONER TURNBULL: No, Mr.
6 Chair. I think Mr. Dettman has gone through
7 it quite well and I concur.

8 CHAIRPERSON LOUD: Okay. Then
9 without further, let me move approval of
10 application No. 17912, which is for special
11 exception relief under section 3104,
12 particularly section 223 for relief from
13 sections 403 and 405 for an addition to a
14 single-family dwelling.

15 Is there a second?

16 VICE-CHAIRPERSON DETTMAN: Second.

17 CHAIRPERSON LOUD: Motion's been
18 made and seconded for approval of application
19 No. 17912. All those in favor say aye.

20 (Chorus of ayes.)

21 CHAIRPERSON LOUD: All those
22 opposed?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Any abstentions?

2 Mr. Moy, can you read the vote?

3 MR. MOY: I'll defer to Ms. Rose.

4 CHAIRPERSON LOUD: Ms. Rose. I'm
5 very sorry.

6 MR. MOY: No, that's fine.

7 MS. ROSE: Yes, staff would record
8 the vote as 3-0-2 with Mr. Loud, Mr. Dettman
9 and Mr. Turnbull to approve the application,
10 no other Board Members participating.

11 CHAIRPERSON LOUD: Thank you, Ms.
12 Rose.

13 Again, we want to thank the
14 applicant. We have been trying over the last
15 couple of weeks when we can anticipate that a
16 case may be a summary decision case to have
17 the summary decision available before you
18 leave the building. Takes some tweaks to get
19 through that, so I don't know if we're going
20 to be able to do that this morning or not, but
21 let me turn to Mr. Moy and Ms. Rose and see if
22 we are.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MOY: We'll do what we can.
2 Probably late today or probably most likely
3 early tomorrow.

4 MR. OVERMEYER: Thank you.

5 CHAIRPERSON LOUD: Thank you.

6 MR. ALEXANDER: Thank you.

7 MS. ROSE: Mr. Chairman, would you
8 like for me to administer the oath to the
9 remaining witnesses for the morning?

10 CHAIRPERSON LOUD: Yes, please.

11 MS. ROSE: And then call the case?

12 CHAIRPERSON LOUD: Yes, please.

13 Thank you.

14 MS. ROSE: Would all persons
15 planning to testify this morning please rise
16 to take the oath?

17 (Whereupon, the witnesses were
18 sworn.)

19 MS. ROSE: You may be seated.

20 The next application is 17908 of
21 Mark Merlino, pursuant to 11 DCMR 3103.2 for
22 a variance from the alley width requirements

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 under subsections 2507.2 and 2507.3, to allow
2 a one-family dwelling in the R-4 District at
3 premises rear 645 Maryland Avenue, N.E., also
4 known as 318 7th Street, N.E. in Square 864,
5 Lots 816 and 818.

6 CHAIRPERSON LOUD: Good morning.
7 Are you Mr. Merlino?

8 MR. MERLINO: Yes, I am.

9 CHAIRPERSON LOUD: Fantastic. Mr.
10 Merlino, why don't you state your name and
11 address for the record? And turn on your
12 microphone.

13 MR. MERLINO: Mark Merlino. I'm
14 the owner of 645 -- also -- Maryland Avenue,
15 N.E., rear, also known as 318 7th Street, N.E.

16 CHAIRPERSON LOUD: Thank you. Mr.
17 Merlino, we've also reviewed the file in your
18 case and it's a very full briefing that's been
19 presented. You are before us for what's
20 called a use variance from the alley width
21 requirements to allow a residential dwelling
22 on an alley lot in the R-4. And the use

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 variance is one of the higher standards that
2 has to be met when coming before the BZA.
3 There's also the area variance. And the
4 distinction between the two is that with the
5 use variance one has to establish undue
6 hardship in the course of making the elements
7 of your case in order to obtain relief.

8 Now we've reviewed your
9 application and we're more than prepared to go
10 forward this morning on your application, and
11 you have that option. We also want to give
12 you the option, if you deem it's something
13 that you're interested in, to reflect on
14 whether each of the elements have been met and
15 can be met this morning. And if you have some
16 concerns about that and want to confer and
17 consult with counsel or with an architect, for
18 example, we would be more than willing I think
19 to consider continuing the case and giving you
20 that option as well. Either way, we want to
21 make sure that we're serving the best
22 interests of BZA this morning, as well as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 yourself. And so we put both of those options
2 before you and we're prepared to go forward
3 right now if you'd like to.

4 MR. MERLINO: Well, I guess as
5 opposed to the gentleman that was before me,
6 I'm not smart enough to have an architect
7 speak for me.

8 The undue burden I understand to
9 be as much physical characteristics of the
10 space, of the lots as -- as well as a
11 financial burden.

12 CHAIRPERSON LOUD: Well, if you
13 decide that you want to go forward this
14 morning, we're going to give you the option of
15 going forward. As you go forward, we're not
16 really authorized to give you legal advise.

17 MR. MERLINO: I understand.

18 CHAIRPERSON LOUD: So it begins
19 with the presumption that you've got your case
20 ready and you're ready to move forward, and
21 you're ready to meet each of the elements.

22 MR. MERLINO: I prefer -- I -- I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 prefer to move forward.

2 CHAIRPERSON LOUD: Okay. Very
3 good.

4 Then we begin the case with you,
5 and typically applicants may have an opening
6 system and/or if they have witnesses, this
7 would be the time to present them.

8 MR. MERLINO: I -- I -- I've had
9 the property for a -- a couple of years. I
10 have renovated it and done so with the
11 permitting and guidance of an architect, and
12 meeting with Mr. Nero and the historic group.
13 I've met with the Capitol Hill Restoration
14 Society and they've given my -- me my support.
15 I've met with the ANC and they've supported
16 our application.

17 I'm interested in the -- I've read
18 the history of the -- the code which produced
19 the 30-foot alley width requirement and
20 believe that with that history of the code in
21 mind that -- that -- that it pretty much no --
22 no longer applies to what's going on in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 alley dwellings in the District of Columbia.
2 And feel that in that R-4 Zone a -- a
3 residence or a single-family dwelling could be
4 applied for and obtained.

5 CHAIRPERSON LOUD: Thank you. Is
6 there further that you'd like to add to it in
7 terms of a little bit of what creates an
8 exceptional situation or uniqueness
9 regarding --

10 MR. MERLINO: The -- the -- the
11 lots were produced in the layout of that block
12 a good while before the Zoning Regulations
13 were instituted and width of the alley could
14 never be made wider. And the existing
15 structure that sat on Lot -- on 818, Historic
16 would not consider having things added onto
17 it. So with the guidance of the people in the
18 Historic at DCRA, we did what they preferred
19 us to do with replacement of windows and
20 doors, and roof line and -- and roof. And
21 feel that we've met the permitting
22 requirements for everything that we have done

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there. The use that we'd like to be able to
2 have there over time would be give us a
3 reduced electric bill, for one thing, with
4 getting a -- a residential use there instead
5 of the studio housing use that we have now.
6 And the -- the -- the restrictions of the
7 actual physical structure are what they are,
8 so we tried to work as best we could with
9 those.

10 CHAIRPERSON LOUD: Okay. I think
11 unless you have further, what I'll do is open
12 it up and see if Board Members have any
13 questions for you.

14 MR. MERLINO: Sure.

15 VICE-CHAIRPERSON DETTMAN: Thank
16 you, Mr Chairman. Yes, I have a series of
17 questions.

18 You had mentioned that owned the
19 property for a couple of years?

20 MR. MERLINO: Yes.

21 VICE-CHAIRPERSON DETTMAN: Prior
22 to that was it actually being used as an auto

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 repair shop?

2 MR. MERLINO: Yes. There was --
3 the -- the gentlemen that -- that sold it to
4 me owns also Lots 71 and 72 and that -- his
5 repair business goes all the way out to
6 Maryland Avenue and his address is 645. He
7 had used it for tire storage and parts and
8 actually had a couple of -- a -- a ramp in
9 there still that he was not using but he kept
10 his compressors in that separate section of
11 the building piped through the -- through the
12 wall. So he would park also cars that were
13 waiting for repairs and other vehicles on the
14 empty part of the two lots, on 816.

15 VICE-CHAIRPERSON DETTMAN: So if
16 you purchased the property in 2007, that's
17 when the auto repair operations were
18 discontinued?

19 MR. MERLINO: Actually, he -- I
20 continued to let him leave his compressors and
21 things in there. There was also a -- a -- a
22 storage tenant that came with the property

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that it took quite awhile to -- to relocate
2 him, to get all of his things out and to do
3 the drawings and get the permitting going.

4 VICE-CHAIRPERSON DETTMAN: Okay.
5 When you purchased the property did you
6 originally intend to use it as a dwelling, as
7 a single-family dwelling for yourself?

8 MR. MERLINO: I didn't know what I
9 was going to do with it initially. I -- I
10 intended to -- I -- I thought I got a buy on
11 it back when things were -- were going well in
12 the economy. And I -- as I started to speak
13 with different people about it, I -- I knew
14 that I could renovate it once I got the
15 fellow's stuff out of it and worked out
16 something with Mr. Jones, the fellow that sold
17 it to me, to lease it to somebody else for
18 auto repair. And when we actually got it
19 cleaned out and did -- did the drawing work,
20 that was my initial intent was to at least put
21 it to use to -- to generate income instead of
22 sucking the taxes. And then -- then I -- I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 resided at the time right on 3rd Street, N.E.,
2 only four blocks away, where we had lived for
3 just about 20 years. And my wife didn't want
4 to -- you know, we've had plywood over the
5 windows and was in terrible disrepair. She
6 couldn't see the light through the -- the --
7 at the end of the tunnel of what the potential
8 of the structure was.

9 VICE-CHAIRPERSON DETTMAN: So
10 you've made efforts to find an occupant for
11 this property. You mentioned auto repair just
12 now.

13 MR. MERLINO: Yes, and -- and that
14 met -- that met some serious opposition from
15 neighbors. I have -- I had a couple of people
16 approach me and say you're not going to put
17 another business back in here, are you? At
18 the time I was holding permits to start -- and
19 start -- had started the renovation, but as I
20 -- as I mentioned, as soon as I got it emptied
21 out and my -- my wife came by and saw the
22 spaces, she thought a lot differently about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the property. So we went back into the permit
2 processing again.

3 VICE-CHAIRPERSON DETTMAN: Can you
4 just briefly describe the efforts that you
5 made to market this property to a different
6 use?

7 MR. MERLINO: Oh, just word of
8 mouth.

9 VICE-CHAIRPERSON DETTMAN: Word of
10 mouth?

11 MR. MERLINO: Yes, I was -- when I
12 -- when I went and got the -- actually got my
13 electrician, he -- to, you know, go get his
14 permits to perform his work, he had two people
15 approach me right away that he knew. There
16 was no real advertising required. He had two
17 people approach me right away that he knew.

18 VICE-CHAIRPERSON DETTMAN: Okay.

19 MR. MERLINO: There was no real
20 advertising required.

21 VICE-CHAIRPERSON DETTMAN: There
22 was mention in the record about an artist

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 studio.

2 MR. MERLINO: Yes, I paint.

3 VICE-CHAIRPERSON DETTMAN: But was
4 a Certificate of Occupancy ever issued for an
5 artist studio?

6 MR. MERLINO: No, we finished --
7 we finished our work and had final
8 inspections, but we didn't make -- I -- I
9 didn't realize you had to make another
10 separate application for that occupancy
11 certificate. I -- I'm not aware of that as --
12 as the artist studio use was a matter of
13 right, I didn't know you had to go ahead and
14 get a occupancy for that.

15 VICE-CHAIRPERSON DETTMAN: The
16 renovations that were carried out, were those
17 done with building permits?

18 MR. MERLINO: Yes, sir.

19 VICE-CHAIRPERSON DETTMAN: They
20 were? On the building permits, do you know
21 what they say in terms of what the intended
22 use is?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MERLINO: I got -- I got a
2 couple of them here. Yes, it -- it started --
3 we have, at the encouragement of another
4 neighbor who was I want to say closely
5 monitoring our work, he -- my architect told
6 me that if I got the artist studio use, that
7 -- that the -- that a -- the residence of the
8 artist could be done there. My neighbor that
9 was monitoring us told me that I needed to go
10 ahead and check in with Mr. Nero because he
11 didn't feel that was the case. I went ahead
12 and made an application for another building
13 permit that spelled out the housing use on the
14 artist -- on the artist studio and that's --
15 I do have a copy of that here. When we went
16 through the ANC review, I -- I brought and
17 showed that to them as part of the process to
18 gain their support.

19 VICE-CHAIRPERSON DETTMAN: Okay.
20 So you're permitted right now to finish out
21 renovations and occupy that as an artist
22 studio?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MERLINO: Artist studio,
2 artist housing. There are two different
3 categories in -- in the -- in the code. The
4 architect that -- that I worked with told me
5 that one, the artist studio use would produce
6 -- would permit the occupancy of that -- of
7 artist studio space for -- for residence, to
8 be able to spend nights there. When I went
9 back into it and read the definitions again,
10 and in -- just with the encouragement of this
11 neighbor who told he had spoken with Mr. Nero,
12 I went back in and got another permit to have
13 the studio use and the housing use.

14 VICE-CHAIRPERSON DETTMAN: Okay.
15 So two more questions.

16 So when you went to DCRA, DCRA has
17 permitted your renovations under the
18 impression that this was going to be used as
19 an artist studio with dwelling, with artist
20 dwelling?

21 MR. MERLINO: Yes. Yes.

22 VICE-CHAIRPERSON DETTMAN: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And the permits say that?

2 MR. MERLINO: Yes, sir.

3 VICE-CHAIRPERSON DETTMAN: Okay.

4 My last question is, have you discussed this
5 matter with D.C. EMS at all?

6 MR. MERLINO: D.C. E --

7 VICE-CHAIRPERSON DETTMAN: Fire
8 and Emergency Management.

9 MR. MERLINO: No, I -- no, I
10 haven't, although during the -- during the
11 course of the -- the renovation, the -- there
12 was a -- one of my neighbors at 6 -- 7 -- 649
13 Maryland Avenue had an incident where there
14 was a -- a black cloud of smoke from the
15 boiler. And, you know, fortunately it wasn't
16 a fire, but when the fire department showed
17 up, the neighbors asked the respondents, the
18 -- the firemen, you know, how do you -- how do
19 you service these alleys and they just said we
20 run hoses up the alleys. There is -- in fact,
21 we're about I want to say maybe 125 feet from
22 the sidewalk to the beginning of -- of my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 property line. Beyond my property it's
2 probably another two to three-hundred feet to
3 get to actually the ends of the alley -- the
4 end of the alley where they're -- they are
5 able to service the rears of those properties
6 with the fire hoses.

7 VICE-CHAIRPERSON DETTMAN: Okay.
8 Thank you. If you have copies of those
9 building permits, I think I'd like to have
10 those in the record. Thank you.

11 MR. MERLINO: I -- well, I mean --
12 I mean, I can give you this one, but it's the
13 only one I'm holding right now. Should I --

14 CHAIRPERSON LOUD: Yes, if can
15 give those to Ms. Rose on your far right, yes,
16 she'll make some copies of it and we would
17 really benefit from having the opportunity to
18 look at those soon as possible.

19 MR. MERLINO: Okay.

20 CHAIRPERSON LOUD: Mr. Turnbull,
21 do you have any questions?

22 COMMISSIONER TURNBULL: Yes, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Chair. Thank you.

2 Following up on Mr. Dettman's line
3 of questioning, it would have been good for us
4 to have those permits ahead of time. We do
5 have a set of drawings. The drawings are
6 dated '04, 2004.

7 MR. MERLINO: We -- we -- we start
8 -- I've owned the building more than -- since
9 longer than '07. I -- I bought the building
10 probably in the very beginning of '04. And
11 when -- and did -- did some initial drawings
12 and planning back in -- back then and then
13 basically couldn't get any money to renovate,
14 waited until I could -- could afford to do
15 some of the work out of -- out of my pocket.
16 And the -- there are -- there are -- the -- I
17 think there's a stamp on maybe the Historic
18 from '04. We've since, you know, had to go
19 back through and get all those drawings
20 stamped again. I have copies of those
21 drawings here, too.

22 COMMISSIONER TURNBULL: Well, I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 just confused about an artist studio and a
2 live-in place for the -- you know, when I see
3 on the second floor that there's four
4 bedrooms. That's not just an artist sleeping
5 in his place. There's four bedrooms being
6 provided for on the second floor. Can you
7 explain that?

8 MR. MERLINO: In the application
9 to go to -- to convert residential, the -- the
10 drawings that are -- you know, there -- there
11 were a couple sets of drawings done for this.

12 COMMISSIONER TURNBULL: Well, I'm
13 looking at one dated '04. That's not recent.
14 You know, that's five years ago.

15 MR. MERLINO: I think that those
16 -- I think that those drawings were -- were
17 edited to make this package and -- and perhaps
18 the '04 date should have been whited out. But
19 I -- I can show you the latest set of
20 drawings.

21 COMMISSIONER TURNBULL: Well, this
22 is from Historic Preservation. This is a DCRA

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 stamp for '04.

2 MR. MERLINO: Right. And at --
3 and in '04, we got permit -- we got permits to
4 put a -- a roof on it and point up some of the
5 brick in order to keep the -- the building
6 from falling down. So that -- that date was
7 then supplemented in -- in '08, on the most
8 recent set of drawings for the -- the artist
9 studio space.

10 COMMISSIONER TURNBULL: Well, I
11 guess what I'm saying is that if this drawing
12 is dated '04 and it shows four bedrooms, it
13 sounds like you were planning to do more back
14 in '04.

15 MR. MERLINO: I -- I actually
16 tried to get a BZA hearing back in -- in -- in
17 '04 and came to -- and actually had a BZA
18 number, came and sat for a day and didn't get
19 heard and just kind of went I can put this on
20 the back shelf. It was something I couldn't
21 afford to -- to do at the time to renovate.
22 So I -- I -- I don't know what to tell you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 about that date other than that it -- it sat
2 on the burner until the -- the much more
3 recent -- the much more recent permitting had
4 took place. We didn't actually get -- I'm
5 trying to remember when we got funding to
6 start the -- the -- the renovations on a much
7 greater scale. Back in '04, I think that our
8 permits included putting on a roof and getting
9 the brick pointed up so that we could keep
10 water out of the building.

11 COMMISSIONER TURNBULL: Well, I
12 think it's confusing on the history of this
13 what you're trying to do. I mean, these
14 alleys that you're trying to put a four-
15 bedroom house on an alley that's nine feet and
16 twelve feet, doesn't really support the
17 residential neighborhood. I'm just confused
18 that I'm hearing an artist studio with a live-
19 in place for the artist, at least a section of
20 this place for the artist. But when I start
21 seeing a four-bedroom house shown on plans
22 back in '04, I'm a little bit confused about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 your intent before this Board.

2 MR. MERLINO: Yes.

3 COMMISSIONER TURNBULL: We don't
4 have the data in front of us that shows a
5 rational progression here. To me it's very
6 confusing what you're trying to do and how you
7 set this up. Unless I see something that
8 gives me reason to grant this, I'm a little
9 hesitant to go forward. I really don't see
10 your case on this, unless you can show me
11 something that's a little bit more conclusive
12 that speaks to the case of this variance.

13 MR. MERLINO: Well, we took -- we
14 -- we had -- we had the building a long time
15 and there was a lot of conversations between
16 my wife and I about what we were going to be
17 able to do with it. We did -- as I said, we
18 did a number of sets of plans on -- you know,
19 the -- the drawings I put together myself
20 mostly. So it was, hey, how much would it --
21 might it cost to do it this way? And how much
22 might it cost to move the walls around this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 way? And how much are the windows going to
2 be? If you're trying to get any intelligent
3 pricing from anybody, you really got to show
4 something about what's going to go on there.

5 The -- the -- in the interest of
6 domestic tranquility, the -- the plan changed
7 more than once. Every time the tax bill would
8 come around, it would be, hey, we got to do
9 something with this and things would stop and
10 start.

11 Getting -- borrowing money to --
12 to -- to renovate the building was also a --
13 an issue. Sometimes there was money
14 available. A lot of -- most of the time there
15 wasn't. So it was how -- how might you afford
16 this? As the numbers started to come in, we
17 -- we can't afford it.

18 COMMISSIONER TURNBULL: Well, what
19 are you using this facility for now?

20 MR. MERLINO: We -- I'm -- I'm
21 living there with my wife and -- and I do the
22 -- you know, I -- I do watercolor work. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 don't do it full time for a living, but when
2 I -- when I described to Mr. Nero what it was
3 that I -- who I am and what I do, he's the one
4 that told me, you know, as a matter of right
5 you could do this and get the permit for the
6 artist studio, then make your BZA application
7 and come down and see.

8 COMMISSIONER TURNBULL: Okay.
9 Thank you.

10 VICE-CHAIRPERSON DETTMAN: Thank
11 you, Mr. Turnbull.

12 I have a couple of follow-up
13 questions based on some of the testimony
14 already given this morning.

15 In terms of the artist housing,
16 your testimony regarding the artist housing,
17 do you have any records? Have you keep
18 records pertaining to your correspondence with
19 DCRA regarding the artist housing? I think
20 you provided a permit to Ms. Rose, but was
21 there correspondence reflecting discussions
22 and/or dialogue regarding that?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MERLINO: No, I don't -- I --
2 I don't think there was any correspondence
3 very written.

4 CHAIRPERSON LOUD: Okay.

5 MR. MERLINO: It was -- it was
6 filling out an application and taking it
7 through the process.

8 CHAIRPERSON LOUD: Okay. And what
9 time period are we talking about for the --

10 MR. MERLINO: That -- that was
11 done at the encouragement of my -- of my
12 neighbor. The application we applied in July
13 30th of '08 was the -- the first day that we
14 put the application in for that permit.

15 MS. MONROE: Excuse me. Can I
16 interrupt? Can we have those so we could copy
17 them?

18 MR. MERLINO: Sure.

19 MS. MONROE: So we can look at
20 them while we discuss them? Otherwise, it's
21 kind of in a vacuum.

22 CHAIRPERSON LOUD: Thank you, Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Monroe.

2 MR. MERLINO: And it took from
3 July 30th to November 5th to make it through
4 the process down in the District.

5 CHAIRPERSON LOUD: so the
6 discussions regarding artist housing would
7 have started around July '08 and gone through
8 November '08? Okay.

9 Have you incurred any expenses
10 relative to creating artist housing on the
11 site that would be different than artist
12 studio?

13 MR. MERLINO: I -- I don't
14 understand the question.

15 CHAIRPERSON LOUD: Have you
16 incurred any expenses with respect to the
17 alley lot relative to this permit for artist
18 housing that would have been different than
19 what you would have done for artist studio?

20 MR. MERLINO: To make -- to -- to
21 have it --

22 CHAIRPERSON LOUD: Did you incur

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 any expenses?

2 MR. MERLINO: Sure.

3 CHAIRPERSON LOUD: Okay. And do
4 you have records pertaining to the expenses
5 you incurred?

6 MR. MERLINO: Oh, I -- I -- I --
7 on? I don't -- I'm not sure I understand the
8 question. It's -- it's did I incur any
9 expenses that would be different from making
10 it artist housing than from artist studio?

11 CHAIRPERSON LOUD: Well, let me
12 just back up and make it a little more direct.

13 Did you incur any expenses?

14 MR. MERLINO: Any expenses?

15 CHAIRPERSON LOUD: That's correct.

16 MR. MERLINO: While I renovated
17 the property?

18 CHAIRPERSON LOUD: Yes.

19 MR. MERLINO: Yes.

20 CHAIRPERSON LOUD: Okay. And do
21 you have an idea of how much you spent for the
22 renovation?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MERLINO: Oh, I'd have to -- I
2 have to add it up. But I -- I -- I could
3 certainly go through that.

4 CHAIRPERSON LOUD: Do you have
5 records?

6 MR. MERLINO: Yes, I --

7 CHAIRPERSON LOUD: Not necessarily
8 here, but do you have some records that you
9 could also submit?

10 MR. MERLINO: Sure.

11 CHAIRPERSON LOUD: Okay. And with
12 respect to the expenses that you incurred,
13 were these expenses tied to the building
14 permit that you received from DCRA for the
15 artist housing?

16 MR. MERLINO: Yes, but that -- at
17 that time a lot of the work had been done as
18 I started it off to -- as a auto repair. You
19 see what I'm saying? We initially got permits
20 to -- to put auto repair in it and then that
21 started to get opposition, so we went back in
22 and got another permit. And some of those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 expenses were for either putting the walls and
2 doors and frames and windows in, and then as
3 we changed paths there were different -- you
4 know, the budget kind of changed direction.

5 CHAIRPERSON LOUD: But that
6 suggests to me that you had expenses for auto
7 repair.

8 MR. MERLINO: Yes.

9 CHAIRPERSON LOUD: Okay. And not
10 necessarily for artist housing?

11 MR. MERLINO: Yes. Well --

12 CHAIRPERSON LOUD: Okay. And so
13 what I'm trying to get at is if you've
14 incurred expenses tied to the permit that you
15 received for artist housing.

16 MR. MERLINO: Yes.

17 CHAIRPERSON LOUD: Okay.

18 MR. MERLINO: When we changed the
19 -- when we changed the entryway, that was a
20 different -- you know, there had been a garage
21 door with a door next to it. And of course,
22 when we changed the entryway to have a door

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and a window in it and went through with
2 Historic and asked them, you know, how we
3 should shape and form that, what it should
4 look like, that was a different application to
5 get that entryway in there.

6 CHAIRPERSON LOUD: Okay. And that
7 was when roughly?

8 MR. MERLINO: That was -- I want
9 to say it was before that July date. Probably
10 just about the same time. I'd have to get a
11 copy of that permit. It may have been even
12 this one that was done in May.

13 CHAIRPERSON LOUD: Okay.

14 MR. MERLINO: I could put that
15 sequence of -- of permits together for you.

16 CHAIRPERSON LOUD: Okay. Well
17 since you're here, let me ask one further
18 follow-up question.

19 This permit is dated, issue date
20 is November 5, 2008?

21 MR. MERLINO: Correct.

22 CHAIRPERSON LOUD: And it says

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 alteration repair. Use change from auto
2 repair shop to artist studio, single-family
3 house, interior only.

4 Have you incurred expenses since
5 November 5, 2008 relative to the alley
6 project?

7 MR. MERLINO: November 5, 2008?
8 Yes.

9 CHAIRPERSON LOUD: Yes. And do
10 you recall, again just ballpark figure, how
11 much you may have incurred in expenses to
12 effectuate this permit?

13 MR. MERLINO: I want to say most
14 of the interior work was done then, but to --
15 to speak intelligently, I'd really have to get
16 a -- a -- a couple of checkbooks out and see.

17 CHAIRPERSON LOUD: Okay. Can you
18 estimate it though? I mean, is it \$10,000?
19 One-thousand dollars? Five-hundred dollars?

20 MR. MERLINO: I would see a little
21 more than \$10,000, because that would probably
22 include the entryway, maybe putting tile in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the bathroom that would be different than the
2 utilitarian tile we had planned. But, you
3 know, they would be more -- they would be
4 predominantly cosmetic changes.

5 CHAIRPERSON LOUD: Okay. Okay.
6 Thank you.

7 Let me see if Board Members have
8 any additional questions.

9 All right. Do you have any
10 witnesses this morning?

11 MR. MERLINO: Just one of my
12 neighbors who happened to come in.

13 CHAIRPERSON LOUD: Okay.

14 Okay. Why don't you step forward?
15 Have you been sworn in?

16 MR. STOCKS: Yes.

17 CHAIRPERSON LOUD: Okay. Why
18 don't you step forward and sit at the table?
19 Join your neighbor. And if you could
20 introduce yourself and your address for the
21 record.

22 MR. STOCKS: My name is Donald

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Stocks. I live at 314 7th Street, N.E. The
2 structure in the alley involved today is
3 directly behind my house. My backyard, my
4 back fence -- the side of my house is the
5 alley. The alley makes a turn and make back
6 fence runs alongside the alley and across on
7 the other side of the alley is the structure
8 in issue today.

9 I have lived at 314 7th Street
10 since 1970. I've renovated the house. And
11 all that time the structure, which is a large
12 brick building, has been used as a storage for
13 tires, junk, discarded automobile parts and
14 what have you. It has been an eyesore and
15 certainly of no value to those of us who live
16 in the 300 block of 7th Street.

17 We have on occasion asked the
18 owner of the auto repair shop, which is on
19 Maryland Avenue and the structure, because of
20 the diagonal, the structure ends up being on
21 the -- the back of the alley on 7th Street, we
22 have asked him on -- on occasions to remove

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the tires since they were providing a mosquito
2 breeding ground as they collected water.
3 We've also have a number of problems with
4 people in the alley, everything from marijuana
5 smoking to relieving themselves in public.

6 We -- as I understand it,
7 currently there are two dwellings in the alley
8 that face on the alley that are residential.
9 They are carriage houses which have been
10 converted and people live in them.

11 As a long-time neighbor, and I
12 also spoke with my -- the rest of the people
13 who live in the 300 block of 7th Street, we
14 are in favor of having the structure used as
15 a residential building because it provides
16 light, activity and reduces undesirable
17 activity in the alley. I am not aware of
18 anybody in our block or around the corner that
19 objects to the structure being used as a
20 residential one. I am not familiar with the
21 procedures and the requirements of the permit
22 issue, which seems to be of concern to the --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Board this morning, however, as far as the
2 support for the structure being used a
3 residential, I can safely say that all of the
4 persons adjacent -- whose property is adjacent
5 to the structure would support the residential
6 use of the property.

7 CHAIRPERSON LOUD: Thank you.

8 Board Members, do you have any
9 questions for Mr. Stork?

10 You can remain at the table.

11 MR. STOCKS: All right.

12 CHAIRPERSON LOUD: There may be
13 some questions for you. Give us just a few
14 minutes. We're reviewing some documents that
15 we didn't have prior to the hearing. So I
16 think if Board Members have any questions for
17 you, we'll let you know very shortly. Your
18 indulgence for a few more moments.

19 VICE-CHAIRPERSON DETTMAN: Mr.
20 Stork, since you've lived at your current
21 residence, have there been any issues related
22 to fire and life safety in the alley that you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can remember?

2 MR. STOCKS: No.

3 VICE-CHAIRPERSON DETTMAN: No?

4 MR. STOCKS: No, the alley is --
5 is wide enough for a fire truck to drive up
6 the alley.

7 VICE-CHAIRPERSON DETTMAN: Okay.

8 MR. STOCKS: I think the only
9 concerns about fire and safety would be the --
10 the proximity to a fire hydrant, but there's
11 certainly -- the trash trucks come up that
12 alley on a regular basis. And I've been
13 around long enough to know that if the trash
14 truck can get up there, the fire engine can
15 get up there. I -- I frankly think the fire
16 and safety is a red herring brought up by one
17 neighbor who lives across the street whose --
18 whose alley is on the other side of the street
19 and from his house he can't even see the
20 structure.

21 VICE-CHAIRPERSON DETTMAN: But you
22 don't recall ever an ambulance or a fire truck

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 having to get up into the alley system?

2 MR. STOCKS: No, I'm --

3 VICE-CHAIRPERSON DETTMAN: Okay.

4 MR. STOCKS: -- I don't think
5 we've had any -- any fires. Most of the
6 houses in this neighborhood have already been
7 renovated.

8 COMMISSIONER TURNBULL: Mr.
9 Merlino, what is your address exactly?

10 MR. MERLINO: The District -- oh,
11 my address, correct? The -- during the very
12 last application that we made in July, the
13 District asked me to change the address since
14 the alley access from 7th Street to 318 7th
15 Street where had -- up to that point it had --
16 the property had always been known as 645
17 Maryland Avenue Rear. So the District has,
18 you know -- they had me send when we -- when
19 we got that notice from them, you know, while
20 I was in the permit process, it took several
21 months for them to actually issue me the
22 letter that was -- was dated months before the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 letter when I received it. But then they --
2 at that point they had me mail a copy of that
3 letter to the police, the -- you know, the gas
4 company, the electric company, the postal
5 service, maybe 15 different places, a copy of
6 that notice went to. Maybe 12.

7 VICE-CHAIRPERSON DETTMAN: And
8 during the process where you were getting all
9 these permits, DCRA was aware, you made them
10 aware that this was an alley lot?

11 MR. MERLINO: Absolutely.

12 VICE-CHAIRPERSON DETTMAN: Okay.

13 MR. MERLINO: You questioned the
14 800 numbers?

15 VICE-CHAIRPERSON DETTMAN: Excuse
16 me?

17 MR. MERLINO: I've been asked
18 before how come -- how could the 800 numbers
19 still be in existence on these lots? And I'd
20 say they -- the Historic folks told us do not
21 perform the subdivision, I think they call it,
22 because we don't -- if -- if the -- if those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lots were -- were joined into one and given a
2 new number, then someone would -- might be
3 able to add onto this property and we don't
4 want that to -- to happen. We want that
5 structure preserved as is. Capitol Hill
6 Restoration Society asked me that question
7 when I met with them.

8 VICE-CHAIRPERSON DETTMAN: And I
9 think typically when a set of plans is going
10 through the permit process, the series of
11 stamps that it gets, one of them is from the
12 Zoning Administrator. I don't exactly know
13 what the stamp says. Do you have a copy of
14 those plans that actually are stamped by
15 Zoning?

16 MR. MERLINO: Yes, I do.

17 VICE-CHAIRPERSON DETTMAN: And are
18 the set of plans that --

19 MR. MERLINO: I think I have them,
20 but -- I think I have the -- the -- that
21 latest stamped set right here.

22 VICE-CHAIRPERSON DETTMAN: And are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 those the plans that accompanied this building
2 permit?

3 MR. MERLINO: Yes, sir. But see,
4 they -- you can they had them white out the
5 645th -- they -- they had the 645 Maryland
6 Avenue whited out and changed to 318 7th
7 Street on this set. I'm just looking for the
8 Zoning stamp. I don't know what their stamp
9 looks like either. It's got the electrical,
10 mechanical, everything else. Probably one of
11 these on the front is the Zoning stamp.

12 VICE-CHAIRPERSON DETTMAN: Yes.
13 Well maybe we could take a look at those,
14 because it would be helpful to have the set of
15 plans that, you know, are associated with this
16 building permit nonetheless.

17 CHAIRPERSON LOUD: Sorry, you want
18 to give those to Ms. Rose on the end, and
19 we're going to get a copy of that made.

20 Mr. Turnbull, I believe you were
21 asking some questions of Mr. Merlino.

22 COMMISSIONER TURNBULL: I had just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wanted to clarify he address, because I see
2 both addresses showing up. So I wanted the
3 applicant to explain that, which thank you for
4 doing that.

5 MR. MERLINO: Yes, I think the
6 lady's name was Veronica Wells.

7 CHAIRPERSON LOUD: I don't know if
8 you're on the microphone, Mr. Merlino.

9 MR. MERLINO: I think that the --
10 the person's name that asked me about changing
11 the address was Veronica Wells or Welch.
12 Second floor across the hall from where the
13 actual permit processing takes place. And
14 then the -- there was a gentleman that
15 actually assigned the address who was in that
16 same office with her that showed me an aerial
17 photograph of the property to be certain that
18 that was the -- the building and then he
19 assigned me that 318 7th Street. A process
20 that they said would take a couple weeks, but
21 it took several months for them to get that
22 address actually back to me.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE-CHAIRPERSON DETTMAN: During
2 the process that you were going through to get
3 this building permit that's dated November
4 2008 --

5 MR. MERLINO: Yes?

6 VICE-CHAIRPERSON DETTMAN: -- do
7 you remember having any meetings with anyone
8 from the Office of the Zoning Administrator?

9 MR. MERLINO: It was somebody that
10 sat at a desk. I actually sat with a -- a Mr.
11 Hatcher who is a permit processor that has
12 helped me with a lot of the process.

13 CHAIRPERSON LOUD: I think Mr.
14 Turnbull is reviewing some of the documents
15 again that we just received moments ago, so
16 sometimes it takes a little time to get
17 familiar with it.

18 Let me ask two quick questions
19 during this pause.

20 The first is for Mr. Stork in
21 terms of being a neighbor of the applicant and
22 being in the area. And it sounds like the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 community, at least from your perspective,
2 would support a single-family dwelling in the
3 alley. Is that correct?

4 MR. STOCKS: It would.

5 CHAIRPERSON LOUD: Would the
6 community also support artist housing in the
7 alley?

8 MR. STOCKS: We would. I can say
9 for -- for myself and the other persons in the
10 neighborhood that I have spoken to, primarily
11 those -- or in the 300 block of 7th whose back
12 yards face on the alley. We would support
13 housing, residence, studio, any activity,
14 legitimate activity that would occur in the
15 alley. As I said, we currently have two
16 carriage houses that are residential. They're
17 attached to houses. One is -- fronts on C
18 Street and the other fronts on Maryland
19 Avenue. And although those houses don't have
20 much light around them, there is some light,
21 but having a third structure with outdoor
22 lights provides additional, how should we say,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ambience for the alley which means that we
2 don't have problems in the alley.

3 CHAIRPERSON LOUD: And that sort
4 of gets to what I was seeking to ask. So your
5 testimony would be partially then that the
6 community would support an artist studio in
7 the alley?

8 MR. STOCKS: We would support an
9 artist studio.

10 CHAIRPERSON LOUD: Okay.

11 MR. STOCKS: We would also support
12 a residence.

13 CHAIRPERSON LOUD: I understand.

14 For Mr. Merlino, let me ask the
15 question of what would be the undue hardship
16 to you of having to put an artist studio there
17 instead of either artist housing or a single-
18 family dwelling?

19 MR. MERLINO: Before I answer
20 that, I just wanted to point out I just gave
21 Ms. Rose what I would -- what -- what was only
22 needed to use at the ANC hearing, was a -- a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 letter of support from a architect that lived
2 on the 600 block of Maryland and a petition
3 that has 20 or 25 names from neighbors that I
4 had met and asked for support for the
5 residential use. And I just thought that they
6 seemed to want that at the ANC. I didn't know
7 I should bring it here also.

8 CHAIRPERSON LOUD: Thank you. We
9 will make sure that we get that an exhibit
10 number.

11 MR. MERLINO: The -- the undue
12 hardship would -- would be -- I mean, the --
13 the undue hardship for my personal use can
14 only make it -- a couple things just pop into
15 mind is a little more difficult to get a loan.
16 I pay a little higher rate on something
17 that --

18 CHAIRPERSON LOUD: You mean to do
19 it as an artist studio?

20 MR. MERLINO: And artist studio,
21 correct.

22 CHAIRPERSON LOUD: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MERLINO: I -- I pay a higher
2 rate on my electric bill every month forever.
3 I plan to be -- I -- I'd like to be in this
4 property as long as I was in my last home on
5 3rd Street. I could see myself being in this
6 property for the next 20 years as I do more
7 and more painting and less and less of what I
8 have to do to scratch a living now. So I'm
9 looking for a -- a long term. In the -- in --
10 in the end, if anything would ever happen to
11 me or to my wife and -- and I needed to sell
12 the property, it would make it somewhat more
13 marketable to have single-family dwelling
14 status. I don't know what the definition of
15 an undue hardship is, because you know, as you
16 say, some of the zoning regulations are a
17 little difficult to read for -- for a fellow
18 that's not as good with words as some of the
19 -- some of my fine neighbors.

20 CHAIRPERSON LOUD: Thank you. I
21 think, you know, it begins with you
22 articulating what the hardship is to you,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because you'd have a very clear sense of that
2 in terms of outlay of monies, and as you
3 indicate, some of the things here you've here
4 talked about, a higher interest rate and so
5 on. So I wanted to just hear from you what
6 you thought those were.

7 MR. MERLINO: Two point is a lot
8 of money, especially over the time frame that
9 I plan to be there. A lot of money.

10 CHAIRPERSON LOUD: Okay. I don't
11 have any further questions. Let me check
12 Board Members one last time.

13 All right. Thank you, very much
14 Mr. Stork.

15 MR. STOCKS: My name is Stocks.

16 CHAIRPERSON LOUD: Stocks.

17 MR. STOCKS: S-T-O-C-K-S.

18 CHAIRPERSON LOUD: Thank you very
19 much for the correction. S-T-O-C-K-S?

20 MR. STOCKS: Yes.

21 CHAIRPERSON LOUD: Stocks? Okay.

22 Thank you very much, Mr. Stocks.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. STOCKS: Not a good thing to
2 have these days.

3 CHAIRPERSON LOUD: Do you have
4 anymore witnesses, Mr. Merlino?

5 MR. MERLINO: No.

6 CHAIRPERSON LOUD: Okay.

7 MR. MERLINO: That was good. I --
8 I had none and then Mr. Stocks was gracious
9 enough to post up. I -- and I appreciate it.

10 CHAIRPERSON LOUD: We to thank you
11 for coming down and your patience in waiting
12 for your opportunity to give your testimony.

13 We're now going to turn to the
14 Office of Planning for its report.

15 Good morning.

16 MS. THOMAS: Good morning, Mr.
17 Chairman, Members of the Board. I'm Karen
18 Thomas with the Office of Planning.

19 Our report states that we cannot
20 support this application at this time. We
21 didn't believe that the applicant made a case
22 of undue hardship at that time when he

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 submitted his application. And on that basis,
2 we didn't see how the nexus was drawn between
3 the property and the width of the alley. So
4 we concluded that we couldn't support the
5 application.

6 I'd be happy to take any questions
7 on our report.

8 CHAIRPERSON LOUD: Thank you, Ms.
9 Jackson.

10 Board Members, do you have any
11 questions for OP?

12 COMMISSIONER TURNBULL: Ms.
13 Thomas, it's your understanding of the
14 regulations that the artist studio which would
15 be allowed does not include a live-in portion
16 or a live-in element attached to it?

17 MS. THOMAS: Yes, it does.
18 Because we first see the use of a accessory
19 house internal at the studio in the CM-1 Zone
20 under 801.5. The artist studio itself is
21 first permitted in the CR Zone and so we have
22 a little problem as the term housing, artist

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 housing and that's why we don't see that.

2 COMMISSIONER TURNBULL: So it's
3 allowed in the CM-1?

4 MS. THOMAS: Yes. Yes, it's first
5 shown in the CM-1.

6 COMMISSIONER TURNBULL: Okay.

7 MS. THOMAS: In the CM, yes.

8 COMMISSIONER TURNBULL: It's an
9 interesting distinction between artist studio
10 and artist housing.

11 MS. THOMAS: And artist housing,
12 yes. And it is also distinguished in the
13 definition where and artist housing is an
14 apartment or studio where an artist works and
15 lives, and an artist studio is a place of work
16 of one or more persons engaged actively in
17 specified vocations.

18 COMMISSIONER TURNBULL: Well based
19 upon your analysis then, this piece of
20 property can be used as an artist studio,
21 garage still, or --

22 MS. THOMAS: Yes, it can be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 permitted as a matter of right as an artist
2 studio and a garage by special exception.

3 COMMISSIONER TURNBULL: Anything
4 else that could go in here?

5 MS. THOMAS: At this time, no.

6 COMMISSIONER TURNBULL: Okay.

7 MS. THOMAS: Yes.

8 COMMISSIONER TURNBULL: Thank you.

9 MR. MERLINO: Could I ask a
10 question? I -- I -- when I spoke with Mr.
11 Nero --

12 CHAIRPERSON LOUD: If you can hold
13 on for one second.

14 MR. MERLINO: Oh, sure.

15 CHAIRPERSON LOUD: You definitely
16 get an opportunity to ask questions of Ms.
17 Jackson based on her -- Ms. Thomas, I'm sorry
18 -- based on her report, not so much bringing
19 in -- not testimony, in other words. Not
20 additional testimony. But you can ask her
21 specifically about her report, and I'm
22 assuming that you've had an opportunity to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 review her report.

2 MR. MERLINO: Yes, I've read it.

3 CHAIRPERSON LOUD: Okay. So you
4 can ask her questions about that and about her
5 testimony, but if you don't mind, let me see
6 if Board Members have additional questions for
7 her and then we can certainly get back to you.
8 Okay? Then that way you'll have a good open
9 opportunity to ask her without any
10 interruptions by Board Members.

11 MR. MERLINO: Excuse me, Mr. Loud?

12 CHAIRPERSON LOUD: Yes, sir?

13 MR. MERLINO: Could I ask for a
14 copy of that report here?

15 CHAIRPERSON LOUD: Yes. Is there
16 a way that we can get a copy for Mr. Merlino,
17 the report?

18 Yes, we're going to get you a copy
19 so that you can have it at the table.

20 MR. MERLINO: Thank you.

21 MS. THOMAS: I'd just like to make
22 one correction in my report under zoning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 requirements. In our table where it says lot
2 area, the deviation is not 346, but it would
3 be 25, 23 square feet, for the record.

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

6 Let me ask a couple of quick
7 questions as I think Board Members are
8 deciding whether to ask further questions.

9 You would agree that the lot is
10 unique? Trapezoidal shape. It's smaller than
11 lots facing the street in that area. It's a
12 pre-'58 lot. Would you agree that the lot
13 shape is itself unique, or do you think
14 there's a problem meeting that prong of the
15 test?

16 MS. THOMAS: I don't think that
17 the lot shape is unique. We have a fair
18 amount of trapezoidal lots in the District.

19 CHAIRPERSON LOUD: Okay.

20 MS. THOMAS: Yes, it's pre-'58.

21 CHAIRPERSON LOUD: I guess what
22 I'm getting at is, is the more difficult part

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of this test for this applicant the undue
2 hardship in your estimation?

3 MS. THOMAS: Yes, it is the undue
4 hardship test.

5 CHAIRPERSON LOUD: And in regard
6 to that, have you heard anything this morning
7 from the applicant --

8 MS. THOMAS: Well -- I'm sorry.

9 CHAIRPERSON LOUD: I'm sorry. Go
10 ahead.

11 MS. THOMAS: I should say it is
12 the uniqueness.

13 CHAIRPERSON LOUD: Okay.

14 MS. THOMAS: What makes it unique?
15 I mean, we can get to the undue hardship
16 fairly easily. And the last part of the test,
17 that there is no adverse impact in the sense
18 that -- you know, no light and air issues, but
19 I adverse impact isn't the issue with respect
20 to variance.

21 We considered the issue of life
22 and safety with respect to the fire

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 department's comments made to OP, albeit they
2 do run hoses up the alleys if something
3 happens. But also, one point that was made to
4 me was that an ambulance couldn't work its way
5 up the alley and that is also a life and
6 safety issue.

7 But I think it would go back to
8 the first part, the uniqueness. What about
9 the situation there is unique before we got to
10 the second part of the test?

11 CHAIRPERSON LOUD: Okay. Just on
12 the one statement you made regarding the
13 ambulance not being able to get through the
14 alley, was that communicated to you by someone
15 at the fire department?

16 MS. THOMAS: Yes.

17 CHAIRPERSON LOUD: Okay.

18 MS. THOMAS: Yes, that was
19 communicated to me. I don't have a written
20 report. They have promised to do that, but to
21 date we didn't have one. But he did call me
22 and we discussed the case. Apparently they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 did visit the alley. They did visit the site
2 and he sent photos that they took of the alley
3 and so forth.

4 CHAIRPERSON LOUD: Do you have a
5 name?

6 MS. THOMAS: Captain Rogerson.

7 CHAIRPERSON LOUD: Okay. All
8 right. Now let's assume that the applicant
9 for some reason can meet the unique prong of
10 the test, when we get to the undue hardship
11 prong of the test, have you heard testimony
12 this morning that would lead you to believe
13 that the applicant has made a case for an
14 undue hardship?

15 MS. THOMAS: Well, on the basis of
16 the fact that probably he's living there right
17 now, it would be a hardship for him, I guess,
18 if he doesn't have another place to live.
19 Where would he go? I guess, to me, on just
20 that basis, but I couldn't go further than
21 that.

22 CHAIRPERSON LOUD: Okay. Well

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 don't go any further than you feel comfortable
2 going. I just wanted to ascertain, because
3 there's a difference between what was
4 submitted in the pleadings, his Exhibit 3,
5 where he talks about meeting the test and then
6 the testimony this morning, particularly some
7 of the zoning history.

8 MS. THOMAS: Yes.

9 CHAIRPERSON LOUD: I wanted to get
10 OP's take on that.

11 Board Members, do you have any
12 questions for Ms. Thomas?

13 Okay. Mr. Merlino, now is the
14 opportunity for you to ask Ms. Thomas any
15 questions you might have.

16 MR. MERLINO: I'm fairly familiar
17 and have been in every alley on Capitol Hill
18 certainly, many others, while I went through
19 the history of these alley dwellings and the
20 codes. I would challenge someone to show me
21 three more trapezoidal lots on Capitol Hill.
22 So if -- if you were looking for a unique

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 shape, the -- the property is approximately 35
2 feet across the front, 40 feet down one side,
3 22 feet across the back and 30 on the fourth
4 side. I don't know of another one, one on
5 Capitol Hill, but there may be as many as
6 three in some of the pie-shaped lots. But
7 unique -- unique in my definition means
8 there's only one. But if there are as few as
9 three or four, I would say that it was pretty
10 special.

11 As far as somebody saying that an
12 ambulance couldn't make it up that alley, with
13 the BFI trash truck and guys hanging off the
14 sides can come up that alley, they must have
15 a pretty wide ambulance if they -- if they --
16 or -- or be wanting to drive way too fast, but
17 I don't see any difficulty getting that -- or
18 huge moving trucks have been in this alley and
19 of the tractor-trailer size as another
20 neighbor at 647 has just moved in. And we
21 moved the storage that was in there out. With
22 the fellow that had it stored there, a half a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dozen times we had moving trucks in and out of
2 there.

3 CHAIRPERSON LOUD: Mr. Merlino,
4 let me just share with you again that you'll
5 have an opportunity to actually do a closing
6 statement.

7 MR. MERLINO: Okay.

8 CHAIRPERSON LOUD: As the
9 applicant in the case. So you may want to
10 save some of the fire power for the closing
11 and direct specific questions to Ms. Thomas
12 while you have an opportunity.

13 MR. MERLINO: Okay.

14 CHAIRPERSON LOUD: About either
15 what she testified to or what's in the report.

16 MR. MERLINO: Okay. Then I -- I
17 would guess that the point we made already
18 about the undue hardship would be based on the
19 -- the financial parts of having to carry a
20 loan that's too expensive and I forgot what my
21 other point was earlier.

22 CHAIRPERSON LOUD: All right. You

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will have an opportunity again to do a closing
2 statement, so if it comes back to you, maybe
3 jot a note if we're doing something different.
4 You can clean it all up in the closing
5 remarks.

6 MR. MERLINO: The -- the -- the
7 one other question I did have was as -- as I
8 have -- I'm not as intimately familiar, I
9 don't believe, as the Planning people, but
10 when I see -- and when I spoke with Mr. Nero
11 about the uses permitted for the property, I
12 didn't hear anything about -- you know, he was
13 well aware that we were in a -- a completely
14 R-4 situation there. I didn't hear anything
15 about the use being limited to a CM-1 or
16 whatever was just discussed. We were clear as
17 a bell on this is what we have, this is where
18 we are, here's the lot and square, here's the
19 plat and he directed me that the uses that we
20 were trying to achieve were permitted in that
21 R-4 block. And as I stated in my application,
22 we feel that having a -- a -- a single-family

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dwelling use in that R-4 is permitted by the
2 -- by the code.

3 CHAIRPERSON LOUD: Thank you. I
4 appreciate those comments. Obviously the
5 Office of Planning doesn't take the same view
6 and they're entitled to give their report
7 which expresses their view. And we will
8 resolve it when we deliberate and decide the
9 case.

10 I think what we'll do now, unless
11 you have any further questions for Ms. Thomas,
12 is move onto the next part of the proceeding,
13 which would be the ANC report.

14 And I don't believe anyone from
15 the ANC has joined us. This would be ANC-6C,
16 and since no one is stepping forward, I'll
17 just note for the record that the ANC did
18 submit a report. Let me see, I have the wrong
19 report in front of me. It's Exhibit No. 22,
20 ANC-6C. And it's dated March 17, '09 and
21 essentially that the ANC does support the
22 application. They had a full meeting,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 properly noticed and a quorum present and did
2 vote to support the application. So we will
3 in the course of our deliberations give that
4 report great weight.

5 Now I'd like to move on to the
6 parties or persons in support of the
7 application. Obviously you had one witness
8 already that you called in support. And if
9 there are any other witnesses in the audience
10 right now that would like to come up and
11 testify in support, now is the time to do
12 that.

13 MR. MERLINO: I -- I -- I thought
14 -- I thought that the Capitol Hill Restoration
15 Society, a fellow named Gary Peterson, was
16 going to write a letter of support. All I
17 have -- I do have a copy of the email that
18 shows that we met with him and -- and they --
19 they do support, but I -- he had told me that
20 he would have that here and I didn't see it
21 when I looked at the file.

22 CHAIRPERSON LOUD: I also don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have a record of that, so if you have a copy
2 of it, it would be helpful again to give it to
3 Ms. Rose and she can make copies for us, and
4 we can give it an exhibit number.

5 As I was saying, if there are
6 parties or persons in opposition to the
7 application, now would be the time to step
8 forward. It doesn't appear that that are any.

9 So, Mr. Merlino, we're back to you
10 and we're back to closing remarks. You can
11 take a few moments if you'd like to gather
12 your thoughts and then provide closing remarks
13 that would support our granting the relief
14 before us today.

15 COMMISSIONER TURNBULL: Mr. Chair,
16 could I ask just one question?

17 CHAIRPERSON LOUD: Absolutely.

18 COMMISSIONER TURNBULL: Just
19 getting back to the ANC's letter, the
20 beginning of the second paragraph they said,
21 "After some discussion with the applicant,
22 during which he answered questions, there was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 some concern regarding process inasmuch as the
2 applicant is already currently residing at the
3 address which he's seeking a variance."

4 How did that conversation --

5 MR. MERLINO: Same -- same
6 question that you guys had about obtaining the
7 permit for the artist studio and housing use.
8 The fellow that actually raised the issue with
9 me about a definition between the artist
10 studio and artist housing as -- as I had been
11 directed by an architect that lived on the
12 block and a fellow that actually helped me
13 make this application, Mr. Gay, that there was
14 subjective interpretations to that. But when
15 Mr. Adelstein testified at that hearing, I
16 took that copy of that permit and showed it to
17 them and they had -- that was their concern,
18 was that we hadn't gotten the permit to have
19 the housing use there. And they -- they, you
20 know -- when I explained to them this is how
21 we started, this is where we went in the
22 middle and at the encouragement of this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 neighbor, we went ahead and went through the
2 process again to get the permit for the
3 housing use there, that's -- was where they
4 concluded yes we can support.

5 Their -- their concern seemed to
6 be more of, you know -- I'm -- I'm trying to
7 remember how they put -- how they put it, but
8 one of the members on that ANC said we want to
9 blame somebody for -- because this shouldn't
10 have gone this way. When you made the
11 application to do something with the use, we
12 should have gotten before they issued you this
13 permit. But what they did was they issued you
14 the permit and you proceeding with your work.
15 We don't think we can blame you, but we want
16 to, you know, talk to somebody down there.

17 Capitol Hill Restoration group had
18 the same issue when they talked about when you
19 take something that's been, you know, a -- a
20 -- a dump forever and you want to improve it
21 and it's in our community, some -- the -- the
22 DCRA is supposed to notify us to see what's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to go on there. As we had made
2 application to have the continued use or auto
3 repair then when I initially made application
4 for -- for my permitting, they felt they
5 should have been notified at that point that
6 something was going on and we should have sat
7 -- been having a meeting at that point about
8 what it was going to look like from the
9 outside.

10 COMMISSIONER TURNBULL: Okay.

11 MR. MERLINO: So, you know, it's
12 --it's a -- it's -- where you implied or
13 inferred; I'm not sure which it is, that some
14 of the Zoning Regulations are tough to read or
15 something like that, tougher to interpret is
16 what the -- how the decision making process
17 happens in the permit office. What -- what is
18 the right information to provide and the right
19 answer to get back seems to be a crap shoot
20 almost at every review station.

21 COMMISSIONER TURNBULL: Thank you.

22 MR. MERLINO: You're welcome.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Let me ask one
2 quick clarification question before you
3 proceed to your closing.

4 And that is, where did you live
5 before you actually lived in the --

6 MR. MERLINO: Third Street, N.E.

7 CHAIRPERSON LOUD: But what was
8 the address?

9 MR. MERLINO: Four-twenty-three.

10 CHAIRPERSON LOUD: Okay. And when
11 did you move from 423 3rd Street?

12 MR. MERLINO: October.

13 CHAIRPERSON LOUD: Of '08?

14 MR. MERLINO: October -- this is
15 '09. Yes, the very end of October of '08.

16 CHAIRPERSON LOUD: Okay. And do
17 you still own 423 3rd Street?

18 MR. MERLINO: (Off microphone.)

19 CHAIRPERSON LOUD: Did you sell
20 423 3rd Street in connection with the building
21 permit that was issued for the single-family
22 in the alley? Was it all part of one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 transaction?

2 MR. MERLINO: I think -- I think
3 we were -- I think we were told that that
4 permit was ready to pick up so we could pick
5 a settlement date and settle, and then we went
6 down and paid the fee. Those -- those dates
7 were very close together and it was very busy
8 around then.

9 CHAIRPERSON LOUD: Thank you.

10 MR. MERLINO: You're welcome.

11 CHAIRPERSON LOUD: You can go
12 ahead and do your closing now.

13 MR. MERLINO: I guess the -- the
14 -- the unique shape of the lot, as I stated in
15 my application, to me is not by definition not
16 unique, but very special.

17 The approach of the -- the
18 approach of the ambulance and the -- and the
19 fire department equipment seems to me to be --
20 it's not -- the alley's not 30 feet wide.
21 It's certainly not. That's why we're looking
22 for this variance. But there -- there seems

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to be no difficulty for the half a dozen
2 people that park vehicles back there in -- in
3 terms of a couple of pickup trucks and, you
4 know, SUVs and -- and then some smaller --
5 smaller cars. The trash truck from BFI comes
6 to get the trash from a dumpster that's behind
7 my house for the auto repair place every
8 Friday. They back all the way up to my
9 property and spill paint on it and everything
10 else as they come and go, so I know they're
11 there. And I would venture that the ambulance
12 is less wide than the trash truck. If
13 somebody from the EMS took some pictures there
14 and said that they would have difficulty
15 getting and out -- getting in and out, I think
16 that they could easily come within 50 feet of
17 the doors of the furthest carriage house on --
18 and if -- if my vehicle wasn't parked on my
19 little patio parking space, they'd have no
20 problem getting around that corner to get to
21 that carriage house.

22 The distance from a -- the 7th

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Street to the -- to the -- to my property is
2 -- is between 110 and 135 feet and I would say
3 that in another 30 or 40 feet you're at the
4 fire hydrant for -- for the hose use. In
5 fact, to get to the end of the alley for the
6 hose use on neighboring properties that the --
7 I believe that the alleys are intended to be
8 able to get to the back of a house for a fire,
9 you would have to have 375 or 400 feet of
10 hose. So we're only a quarter of the way in
11 to some of those locations.

12 The -- the -- the -- the direction
13 that I have taken from the -- the folks that
14 are in the -- the Zoning office here have --
15 have led me to the conclusion that we've done
16 has been proper, although convoluted, to get
17 to where we are today. Every bit of work that
18 we performed in this property was -- was
19 permitted, inspected and approved, along with
20 the guidelines and guidance of the Historic
21 folks, as we know it, we've -- we're sensitive
22 to be out everybody's back window and we would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be in everybody's view.

2 I guess that's it as -- well, I
3 see that the -- the use that we have right now
4 is -- is permitted we believe by right. The
5 flexibility of having it classified as single-
6 family dwelling gives us some obvious
7 advantages that we've -- we've talked about.

8 I think that's it.

9 CHAIRPERSON LOUD: Thank you very
10 much.

11 MR. MERLINO: Thank you.

12 CHAIRPERSON LOUD: What we're
13 going to do now is discuss the next steps in
14 the case, including whether or not we're ready
15 to deliberate on it today and we will move
16 forward accordingly. But we'll make a very,
17 I think, prompt decision as to whether we're
18 going to deliberate today. If we decide not
19 to deliberate today, we'll get you on the
20 calendar for a decision at the earliest
21 possible opportunity. And if we do deliberate
22 today, we'll go through it right now.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Just hold on for one second.

2 MR. MERLINO: Okay.

3 CHAIRPERSON LOUD: Beg your

4 indulgence. Sorry. I think --

5 MS. MONROE: Mr. Chair?

6 CHAIRPERSON LOUD: Yes.

7 MS. MONROE: Can I ask a question?

8 CHAIRPERSON LOUD: Indeed.

9 MS. MONROE: This is a little out
10 of order, but I want to ask the applicant, you
11 gave us the latest permit that was issued in
12 November of '08. Do you have the application
13 documents --

14 MR. MERLINO: I have only -- I
15 have only --

16 MS. MONROE: -- because that has
17 the zoning box on it and that's where the
18 check would be, because there's no -- I just
19 want to know.

20 MR. MERLINO: I have only the
21 front page --

22 PARTICIPANT: Please use the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 microphone.

2 MR. MERLINO: Oh, I'm sorry. I
3 have only the front page of it, but I know
4 that I can get a copy of the rest of the
5 application from the records department over
6 there and --

7 MS. MONROE: Up to the Board if
8 they want it, but it might be helpful because
9 it usually have the little check off on all
10 the different sections. And since we don't
11 have anything from Zoning here, that's the
12 only --

13 MR. MERLINO: I -- I -- I
14 understand.

15 MS. MONROE: Okay.

16 MR. MERLINO: It's -- I -- I took
17 it because I wanted -- when -- when the -- Mr.
18 Hatcher, the expediter fellow was there, I
19 asked him for a copy of it, but not the whole
20 application. I just said I need to see that
21 first page to be showing this to my neighbor
22 that was bugging me for it. Here's the way

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we've applied for it. Here's the permit that
2 we obtained. And I actually had those two
3 hanging in the front window to -- to
4 demonstrate to him that we'd gone through the
5 process.

6 MS. MONROE: That's fine. I just
7 thought it might be helpful for the Board.
8 They can ask for it if they want it.

9 MR. MERLINO: Yes.

10 MS. MONROE: I just didn't know if
11 you had it.

12 MR. MERLINO: Yes.

13 MS. MONROE: Thank you.

14 MR. MERLINO: It's -- but I -- I'm
15 certain that we can get it from that records
16 department there.

17 CHAIRPERSON LOUD: Thank you, Ms.
18 Monroe. I think that's a good segue.

19 We've heard quite a bit of
20 testimony this morning, some of it being a
21 little bit different than what was contained
22 in the pleadings, and that was in a very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 helpful way in terms of rounding our
2 understanding of the case.

3 I think for me, and we'll hear
4 from other Board Members, I'm not ready to
5 deliberate on the case today. I think a very
6 strong case has been made in some respects
7 with respect to the use variance test, but I'm
8 very concerned about the testimony of Ms.
9 Thomas that Captain Rogerson had represented
10 to her that the alley was too narrow for
11 emergency vehicles.

12 So I'd like to leave the record
13 open, not deliberate today, get a date that we
14 can deliberate by checking with the calendar
15 availability, and one of the things I'd like
16 to request is for the D.C. Emergency Medical
17 Services to submit a written report that we
18 can look at and discern for ourselves and not
19 rely upon the oral conversation and then go
20 into deliberation after we get that. I think
21 other Board Members may have some things that
22 are of importance as well, and so I'll defer

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to them and then we'll come back to Ms.
2 Monroe's point about the full application that
3 was submitted for the building permit.

4 Board Members?

5 VICE-CHAIRPERSON DETTMAN: Thank
6 you, Mr Chairman. I have a couple notes about
7 things that I think would be beneficial to the
8 Board in their deliberation.

9 One, I think you had just
10 mentioned the EMS report, or some
11 documentation saying that you've discussed
12 this matter with them to get them to take a
13 position on it.

14 During your discussions with EMS,
15 if they come out and say that this isn't going
16 to work, perhaps some additional evidence that
17 you could put together that could show us that
18 a truck the size of an ambulance or something;
19 you had mentioned garbage trucks, maybe some
20 photos of them going through the alleys. That
21 might be helpful for us.

22 I would say that it would be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 helpful for the Board if you could discuss the
2 issue of ambulances going through the alley
3 with EMS and then have another discussion
4 about fire trucks. You had mentioned you had
5 a conversation with someone that said they run
6 the hoses up through the alley. That could be
7 helpful.

8 The documents that Ms. Monroe had
9 mentioned. Any kind of documentation that you
10 have associated with these 2008 permits would
11 be helpful. And if you have any documentation
12 or permits that were issued in 2004, that
13 would be great, too.

14 MR. MERLINO: I don't think we
15 ever made it through the process then.

16 VICE-CHAIRPERSON DETTMAN: Okay.

17 MR. MERLINO: We just kind of cut
18 if off. So all of the permit -- would you
19 like to see the inspection green stickers if
20 I got copies of those, or --

21 CHAIRPERSON LOUD: I think Mr.
22 Dettman is nodding his head yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MERLINO: Now, when I -- when
2 I -- as I gather those, where do they go? I
3 mean, who -- how do I find you guys when I get
4 them together?

5 CHAIRPERSON LOUD: What you want
6 to do is submit those documents to the Office
7 of Zoning.

8 MR. MERLINO: Back to Mr. Nero's
9 side over there?

10 CHAIRPERSON LOUD: That's correct.
11 And you want to provide copies of it for the
12 Office of Planning. And I believe the ANC as
13 well, is that correct? And the ANC as well.

14 Mr. Dettman, did you have further?

15 VICE-CHAIRPERSON DETTMAN: No.

16 CHAIRPERSON LOUD: Okay. Mr.
17 Turnbull?

18 COMMISSIONER TURNBULL: Your
19 building, I didn't see it anywhere, are you
20 planning to sprinkler the building?

21 MR. MERLINO: No.

22 COMMISSIONER TURNBULL: If that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 became an issue with EMS?

2 MR. MERLINO: No one ever asked me
3 anything about it.

4 COMMISSIONER TURNBULL: I'm just
5 throwing it on the table.

6 MR. MERLINO: I -- I -- I don't
7 know what would be required to get -- or
8 there's a new -- there's a one-inch water
9 service to the building, but I don't think
10 that that could -- I just don't know --

11 COMMISSIONER TURNBULL: Yes.

12 MR. MERLINO: -- what that would
13 -- what the -- you know, how much water
14 pressure you need or, you know, how big the
15 pipe would have to be. I have no clue.

16 COMMISSIONER TURNBULL: All right.
17 Thank you.

18 MR. STOCKS: Mr. Chairman, could I
19 ask --

20 CHAIRPERSON LOUD: I'm sorry.
21 Yes, sir, Mr. Stocks?

22 MR. STOCKS: Clarification.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: You have to be
2 on the mic, sir.

3 MR. STOCKS: About the -- the --
4 the alley and emergency services, is -- is it
5 the concern that the emergency services will
6 not get to his building, or to the other
7 buildings in the alley? Because the alley
8 makes another right turn and goes on beyond
9 and runs along the back of C Street. And some
10 of the buildings that have their rears on the
11 alley, are C Street buildings. And then
12 there's the 7th Street, which is my section,
13 and then there's Maryland Avenue. And it's
14 quite clear to me that any vehicle, trash
15 truck, ambulance, fire truck, can go right up
16 to within 10 feet of his building.

17 Now, the question is, can they
18 make a turn and continue on up the alley to
19 other buildings? I don't know that. But to
20 get to -- access to the building in issue
21 here, there's no question.

22 CHAIRPERSON LOUD: Let me respond

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to you, and we don't want to rehash this this
2 morning, and since I'm one of the people that
3 asked for it, let me tell you what my
4 reasoning is. Matters that are abundantly
5 clear to lay people and very innocuous
6 oftentimes are a little more complicated for
7 persons that do that for a living. And I
8 think the last thing any of us would want to
9 do is approve a variance where public safety
10 professionals have indicated that there is
11 some law, there's some specific regulation
12 that would make that a violation of their
13 standards.

14 So, not being personally familiar
15 with that; I'm a layperson in that arena, and
16 there not being any real clear testimony here
17 today regarding whether there is some
18 legitimate regulation on the books that has to
19 be complied with, out of an abundance of
20 caution, because we're talking about public
21 safety, I think it would be appropriate to
22 leave the record open to get a definitive

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 answer from more than just a layperson on that
2 question. I think your points are very valid,
3 but again, hearing from persons that are in
4 the trenches that do this for a living would
5 make all the difference in the world to me.

6 MR. STOCKS: Okay.

7 CHAIRPERSON LOUD: Thank you.

8 I think if my sense of where we
9 are right now is accurate, we would need a
10 date for a decision in this case and then we
11 can back up from that date in terms of
12 deadline dates to have these different
13 documents pulled together.

14 MS. ROSE: Staff would recommend
15 May 19th for a special public meeting at 9:30.

16 CHAIRPERSON LOUD: Okay. And if
17 we go with May 19, 9:30?

18 MS. ROSE: Is the Board interested
19 in having a response from the applicant to the
20 submission by the D.C. EMS?

21 CHAIRPERSON LOUD: Yes, I think
22 that would be a fair thing to do. But I don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 want to give it more than about a week or so.

2 MS. ROSE: All right.

3 MS. MONROE: Are you asking the
4 applicant to talk to EMS, or are you asking OP
5 to get it from EMS? I want to be sure,
6 because you don't get a response if you've
7 already talked to them.

8 CHAIRPERSON LOUD: No, I think if
9 our normal process is that OP would get the
10 report from EMS, that's what we want. We want
11 a written report in the normal course.

12 MS. MONROE: All right.

13 MS. ROSE: Then the EMS submission
14 would be due May 7th and the submissions from
15 the applicant and his response to the EMS
16 response would be due May 14th by noon; that's
17 a Thursday, for a decision on May 19th at
18 9:30.

19 CHAIRPERSON LOUD: Okay.

20 MR. MERLINO: What day of the week
21 is the May 19th?

22 MS. ROSE: That's a Tuesday.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Thank you very
2 much. We're going to schedule a decision on
3 this May 19, with May 7 being the deadline for
4 the EMS report, OP requesting that report, May
5 14 being the applicant's deadline to respond
6 to the EMS report. And then we need to give
7 the applicant a date to get in the information
8 requested by Mr. Dettman, that is the back up
9 application; I think Ms. Monroe mentioned it
10 first, the back up application materials for
11 the November '08 permit. And then information
12 pertaining to the 2004 permit documentation.

13 MS. ROSE: All the documents could
14 be submitted on May 14th and we would get it
15 in the package in time to get it to the Board.

16 CHAIRPERSON LOUD: Okay. I think
17 that would work. All right.

18 MR. MERLINO: I think --

19 CHAIRPERSON LOUD: I'm sorry?

20 MR. MERLINO: I think that what
21 we'll have is the '08 stuff. I think the '04
22 stuff is true ancient history.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Submit what you
2 have and we'll take it from there.

3 MR. MERLINO: You bet you. I'll
4 get you everything I can.

5 CHAIRPERSON LOUD: And we'll see
6 you on May 19th. Thank you again --

7 MR. MERLINO: Thank you.

8 CHAIRPERSON LOUD: -- for your
9 presence this morning and your testimony, and
10 your efforts.

11 Well, we have one more case this
12 morning. We're not at 12:00 noon. I wanted
13 to get a sense of if we're going to lose any
14 witnesses for the next case that we would have
15 called if we do take a break. And also a
16 sense of the Board in terms of taking a break.

17 I think what we want to do, Mr.
18 Collins, is we want to hear this case. We
19 don't want to break for lunch. We want to go
20 straight through. But we want to take a five-
21 minute break and then let everyone sort of do
22 what they need to do. And we'll be back in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 five minutes and we'll go straight through
2 what we need to go through. All right.

3 (Whereupon, at 11:55 a.m. off the
4 record until 12:10 p.m.)

5 CHAIRPERSON LOUD: Good afternoon
6 again. We're going to resume the morning
7 hearings calendar. And I don't believe, Mr.
8 Moy or Ms. Rose, that I need to do the
9 introduction and the bin, and all that good
10 stuff. Okay. Excellent.

11 MS. ROSE: The last application of
12 the morning is 17890 of Benning Station, LLC,
13 pursuant to 11 DCMR section 3104.1, for a
14 special exception for a reduction in the
15 number of required non-residential off-street
16 parking spaces under section 2108, and a
17 special exception from the roof structures
18 provisions under subsections 411.11, for a
19 mixed use development in the C-3-A District at
20 premises 440-4430 Benning Road, N.E., Square
21 5139, Lots 24, 25, 803 and 807.

22 CHAIRPERSON LOUD: Thank you, Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Rose.

2 Are the applicants prepared to go
3 forward?

4 MR. COLLINS: Yes we are, sir.

5 CHAIRPERSON LOUD: Thank you.
6 Appreciate your patience this morning.

7 Why don't we begin, Mr. Collins,
8 with you stating your name for the record and
9 we can proceed with your case?

10 MR. COLLINS: Certainly. Thank
11 you, Mr Chairman and Members of the Board.

12 My name is Christopher Collins
13 with the law firm of Holland & Knight. Seated
14 to my left is Jeffrey Johnson of our office as
15 well. To my right are David Tolson and Mr.
16 Benjamin Soto of Benning Station, LLC, the
17 applicant in this case. And to my far right,
18 Mr. John Edwards from Bonstra Haresign
19 Architects and Mr. Osborne George from O R
20 George & Associates. Both Mr. Edwards and Mr.
21 George will be testifying as experts this
22 afternoon. They've both previously qualified

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 as experts before this Board.

2 This is an application for two
3 special exceptions. Number one, to reduce the
4 amount of required parking by 25 percent for
5 this transit-oriented development. And
6 secondly, to reduce the size of the roof
7 structures by allow two separate structures of
8 different heights. Both will far exceed the
9 setback requirements and both are below the
10 maximum permitted height.

11 We have the support of the Office
12 of Planning in this case. There's no
13 opposition in the record.

14 We filed a prehearing statement
15 with exhibits and the four witnesses I
16 mentioned will be our only witnesses today.
17 And we are prepared to go ahead.

18 CHAIRPERSON LOUD: Thank you, Mr.
19 Collins.

20 Let me get the names of your
21 witnesses again. Mr. Soto, Mr. George?

22 MR. COLLINS: Mr. Tolson and Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Soto will testify on behalf of Benning
2 Station, LLC. And Mr. John Edwards of Bonstra
3 Haresign Architects as an expert witness in
4 architecture. And Mr. Osborne George of O R
5 George & Associates, as an expert in
6 transportation planning.

7 CHAIRPERSON LOUD: Thank you, sir.
8 We can proceed when you're ready.

9 MR. COLLINS: Yes.

10 CHAIRPERSON LOUD: Sorry, Mr.
11 Dettman. Did you have a -- hold on for one
12 second, please.

13 Sorry for the pause, Mr. Collins.
14 A couple of things. We've seen Mr. George
15 before. I'm not certain if we've seen Mr.
16 Edwards before, but certainly Mr. George we've
17 seen before as an expert, and just want to
18 acknowledge his qualifications as an expert
19 before we get too far into the case.

20 Where is Mr. Edwards? Got you.
21 I've seen you before as well. You've been
22 before BZA, correct?

NEAL R. GROSS

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

1 And in terms of your
2 qualifications to serve as an expert, do you
3 want to just state them on the record very
4 briefly?

5 MR. EDWARDS: I'm an architect
6 with Bonstra Haresign Architects. I've been
7 in the architectural profession for 15 years
8 now. I have a professional degree in
9 architecture from the University of Maryland
10 and I've been the project architect and
11 project manager for this case, for this
12 project with Bonstra Haresign.

13 CHAIRPERSON LOUD: Excellent.

14 Board Member, are there any
15 concerns about qualifying either Mr. George or
16 Mr. Tolson as experts? Mr. Edwards, I'm
17 sorry, and Mr. George as experts?

18 COMMISSIONER TURNBULL: I don't
19 have any problem, but I wish we had had the
20 résumés up front.

21 MR. COLLINS: Well, as a matter of
22 fact you do, under tab F of the applicant's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 statement?

2 COMMISSIONER TURNBULL: We do?

3 MR. COLLINS: And then tab G as
4 well for Mr. George.

5 CHAIRPERSON LOUD: Mr. Turnbull,
6 did you need an extra minute to look at that?

7 COMMISSIONER TURNBULL: I stand
8 corrected. I stand corrected. Thank you.

9 CHAIRPERSON LOUD: Okay. So
10 without there being objection, we will qualify
11 them as experts for today's proceeding.

12 I think there's also a matter we
13 may want to get into a little bit that relates
14 to what was handed out prior to just a few
15 moments ago, our recalling the case. And I'm
16 going to turn to Mr. Dettman to frame us and
17 walk us through that concern before we get
18 into actual testimony.

19 VICE-CHAIRPERSON DETTMAN: Thank
20 you, Mr Chairman.

21 I think that this is an issue that
22 could be addressed now and so that the Board

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 knows what relief exactly is before us today.

2 Mr. Collins, in DCOP's report they
3 mention that there could be a potential for
4 additional variance relief under chapter 21 or
5 chapter 22 with respect to the location of the
6 service delivery space. Did you want to
7 address that?

8 MR. COLLINS: Yes, I do. If you
9 look at the report, the report mentions that
10 we made additional relief under either section
11 2116.4 and/or 2203.3 for the service delivery
12 loading space located between the building
13 restriction line and the property line. We
14 disagree with that interpretation, and let me
15 walk you through that.

16 Chapter 21 of the Zoning
17 Regulations deals with parking, and chapter 22
18 deals with loading. This is a service
19 delivery loading space, which is the issue of
20 concern, so chapter 21 doesn't even apply to
21 that situation. So we'd be looking at chapter
22 22.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 My handout this morning is a
2 number of documents, and I'll walk you through
3 them, beginning with the Zoning Commission
4 Notice of Final Rulemaking in Case. No. 82-5
5 from 1984. And that's the culmination of a
6 two-year case before the Zoning Commission to
7 comprehensively revise the parking and loading
8 regulations. In those regulations they made
9 a number of changes, and I've highlighted the
10 pertinent issues before you.

11 First and foremost, they defined
12 what is a service delivery loading space. And
13 it's highlighted in yellow on page No. 1.
14 I've identified the pages in the upper right
15 hand corner of each in red pen with a circle
16 around it.

17 Page No. 1 identifies service
18 delivery loading space, gives the definition.
19 And the second sentence in that definition is
20 very telling. It says, "Such a space,"
21 service delivery loading space, "shall not be
22 considered a parking space or a loading

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 berth." We start with that provision.

2 Then on page 2 in those same final
3 rules begins the chapter 22, off-street
4 loading requirements.

5 If you go to page 3, page 3 begins
6 section 2203, location of loading berths,
7 loading platforms and service delivery loading
8 spaces.

9 If you go to page 4, you see
10 section 2203.3. It says, "All loading berths
11 shall be designed so that no vehicle or any
12 part thereof shall project over any lot line
13 or building line." It does not say service
14 delivery loading spaces.

15 If you look elsewhere in those
16 rules, if you turn back to page 3 and read
17 beginning 2203.1, it says, "Except as provided
18 below, all required loading berths and service
19 delivery loading spaces shall be located as
20 follows:" And it gives identification.

21 If you turn the page to page 5
22 under section 2204, you will see that almost

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 everyone of those subsections they identify
2 loading berths and service delivery loading
3 spaces, call them out specially.

4 So it's clear that if the Zoning
5 Commission intended that section 2203.3 was to
6 apply to service delivery loading spaces, they
7 would have said so, but they did not.

8 And then pages 5 and 6 and 7, you
9 see where the Board, the Zoning Commission
10 specifically identifies when they want to
11 regulate service delivery loading spaces, they
12 call them out specifically in the regulations.

13 So what essentially Office of
14 Planning would want to do is to ask this Board
15 to rewrite the regulations.

16 Please turn to page 8 of the
17 handout, and that's a section from the D.C.
18 Official Code, section 6-641.07, which clearly
19 states under subsection E, "The Board of
20 Zoning Adjustment shall not have the power to
21 amend any Zoning Regulation.

22 If you turn to page 9, pages 9 and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 10 are just a portion of a case called Tenley
2 and Cleveland Park Emergency Committee v. D.C.
3 Board of Zoning Adjustment. And one of the
4 famous footnotes in that case is No. 10, which
5 says, "The first step in statutory
6 construction is to examine the language of the
7 statute and to interpret its words according
8 to their plain and ordinary meaning."

9 Well, the plan and ordinary
10 meaning of service delivery loading space was
11 spelled out by the Zoning Commission when they
12 adopted Case. No. 82-5.

13 Spring Valley, the next page, page
14 11, begins a section on a portion of the case
15 called Spring Valley Wesley Heights Citizens
16 Association v. D.C. Board of Zoning
17 Adjustment. And on page 12 of the handout,
18 the Court of Appeals has said, "Recognize that
19 the statute which sets out the BZA's authority
20 explicitly provides that the Board shall not
21 have the power to amend any Zoning
22 Regulation," and then goes onto say, "The Home

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Rule Act provides that the Zoning Commission
2 is the exclusive agency invested with the
3 power to enact Zoning Regulations," citing the
4 Tenley and Cleveland Park case.

5 And finally we get to the third
6 case I've cited a portion of is Frank P.
7 Murray v. D.C. Board of Zoning Adjustment.
8 And that case, on page 14, the Court of
9 Appeals has said, "It is the Board, not the
10 Zoning Administrator which has the final
11 responsibility to interpret the Zoning
12 Regulations."

13 So in this case, I'm asking the
14 Board to interpret the regulations according
15 to their plain meaning as they were written by
16 the Zoning Commission, and that is to
17 interpret so that section 2203.3 applies to
18 loading berths and not to service delivery
19 loading spaces.

20 Now I would invite you, if you'd
21 like, to check the current sections of the
22 regulations. They are identical in every

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 respect to what the Commission enacted in 1984
2 with regard to these sections which I've cited
3 to.

4 CHAIRPERSON LOUD: Thank you, Mr.
5 Collins. I think that is very impressive body
6 of authority that you've pulled together.

7 I'm curious to know if the Office
8 of Planning, normally we would not go out of
9 order, but having started down this path, has
10 a response to what's just been put on the
11 record.

12 MR. JACKSON: Yes, Mr. Chair,
13 Members of the Board. I am Arthur Jackson
14 with the D.C. Office of Planning.

15 I raised the issue, the
16 possibility of this --

17 CHAIRPERSON LOUD: For some reason
18 I'm not picking you up very clearly.

19 MR. JACKSON: I'm sorry. I raised
20 this question with the applicant at one of our
21 earlier meetings. And after pursuing it, my
22 concern was again, given the way section

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 2116.4 and 2203.3 is written, it appears that
2 the intent of the regulations was that the
3 area between -- that vehicles not -- required
4 parking not be located between the building
5 restriction line, or building line and the
6 property line. Again, it appeared to me that
7 -- well, to the Office of Planning, they will
8 not review that, that could be an issue.

9 Now, Mr. Collins was kind enough
10 to provide a response to our official inquiry
11 about these regulations and we conferred with
12 the Zoning Administrator. And the Zoning
13 Administrator also felt that it did appear
14 that the regulations were intent -- the intent
15 of the regulations was that this area between
16 the building restriction line and the property
17 line be kept free of required parking.

18 We would note that of course to
19 provide the required parking there would have
20 to be a retaining wall put in place and so it
21 would be an actual structure with a parking
22 space on it. And so given that background, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 decided to include that in our report to see
2 if based on the response we had from the
3 Zoning Administrator that concurred with our
4 original impression.

5 So we're not disputing what the
6 applicant's representatives have said in terms
7 of what the letter of the regulations are. We
8 just think that the intent is not met by
9 putting a required service loading delivery
10 space in this location.

11 And that's the basis for us
12 including this question within our report.

13 CHAIRPERSON LOUD: But you sat
14 there and heard Mr. Collins walk through an
15 analysis of statutory interpretation. And if
16 the intent is as clear as you and the Zoning
17 Administrator represent, would there be an
18 explanation for why the wording was not
19 specifically in the definition and why we
20 would need to look beyond the plain language
21 of what's before us to discern intent?

22 MR. JACKSON: I would say that I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sure there is a reasonable explanation for why
2 it was not in there, if that was the intent.
3 However, we do not have that reason. And so
4 we basically are presenting that for your
5 consideration and keeping in mind what the
6 applicant has presented in terms of the letter
7 of the regulations the way he has defined
8 them. So we don't dispute that the
9 information he's provided about what the
10 regulations actually say. Our question is
11 just the intent of the regulations, the way
12 they seem to be structured.

13 MR. COLLINS: Mr. Loud, I'm
14 prepared to discuss the intent of the
15 regulations as well, if you'd like?

16 CHAIRPERSON LOUD: Well, before do
17 that, let me see if Mr. Dettman wants to weigh
18 in on where we are at this point.

19 VICE-CHAIRPERSON DETTMAN: I
20 looked at this issue and the items in the regs
21 that Mr. Collins has pointed out prior to
22 today. I'm in agreement with Mr. Collins. I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think that the plain language of the regs is
2 very clear. Maybe one of the few areas of the
3 regs that is really clear. The definition is
4 very clear. It says it's not a parking space.
5 It's not a loading berth.

6 I'm prepared to kind of move on.
7 I think that we can dispose of this issue. I
8 understand DCOP's interpretation and their
9 position on what the intent of the regulations
10 are, but I think that we first look to the
11 language of the regs, and it's fairly clear.

12 My assumption would be that they'd
13 still need to pass this through Public Space.
14 I'm not sure about that, but if Public Space
15 felt that this was an issue and the applicant
16 would have to find another place on the
17 property to locate this service delivery
18 space, and they couldn't provide it at all,
19 we'd see them again. But right now I think as
20 the plans are before us, that they're fine.

21 CHAIRPERSON LOUD: Thank you.

22 First things first in terms of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 just keeping it as simple as we can. I'm
2 inclined to agree with you, Mr. Dettman. I
3 think we have run across a number of
4 regulations. And just generally as lawyers
5 you run across a number of provisions that are
6 capable of being interpreted very differently
7 by different counsel. But this is so very,
8 very clear in the language, that the space
9 shall not be considered parking space for a
10 loading berth. And then the backup
11 information provided by Mr. Collins is also
12 very helpful. So I'm inclined, I don't even
13 know if we need to get into Mr. Collins
14 addressing the whole question of intent.

15 But let me turn to Mr. Turnbull
16 and hear your thoughts on it.

17 COMMISSIONER TURNBULL: I would
18 concur with Mr. Dettman, except I would make
19 a corollary here to that. If, and that's what
20 the space actually looks like when it's built,
21 if it's like it's now, it just looks like it
22 has a paved area with a curb on two sides of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it, I would agree that it could be considered
2 a service delivery. I think if the very back
3 end of it starts to have a higher than normal
4 platform, a concrete area, I don't care if you
5 call it a service delivery or not, it becomes
6 a loading berth. So I just want to be sure
7 that from an architectural standpoint when you
8 define that area it's simply a paved area with
9 a curb around it, which is I'm assuming what
10 it is now. But I think once you start
11 building up at the back or do something at
12 that far end, I think then that could be
13 construed as a loading berth. Just my own
14 thought on it.

15 CHAIRPERSON LOUD: Okay. Then why
16 don't we do this, not hearing objection from
17 Board Members? Why don't we proceed with the
18 understanding that section 2203.3 would not
19 apply to the proceeding before us and we're
20 going to be attentive for testimony regarding
21 the extent to which this service delivery
22 loading space/berth supports a finding that it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is in fact what you suggest, Mr. Turnbull;
2 that is, it's a service delivery loading space
3 and not anything different. And we'll listen
4 for testimony that makes that very, very
5 clear. But we will proceed as though we've
6 reached the conclusion that 2203.3 would not
7 apply to the service delivery loading space.
8 Okay? All right.

9 With that behind us now, I think
10 we can proceed to your case, Mr. Collins.

11 MR. COLLINS: Thank you.

12 CHAIRPERSON LOUD: And you are
13 free to begin.

14 MR. COLLINS: Thank you. The
15 first witnesses are Mr. Tolson and Mr. Soto.

16 Mr. Tolson, would you please
17 identify yourself for the record and proceed
18 with your testimony?

19 MR. TOLSON: Good afternoon. My
20 name is David Tolson, manager of Benning
21 Station, LLC.

22 The brief history of the project

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is that the property, the subject property was
2 put under contract in January of 2007 with a
3 long study period to determine the feasibility
4 of development. During that study period, it
5 was determined that the incoming mayoral
6 administration had gone on the record that
7 they supported locating D.C. Government leases
8 to outlying neighborhoods as a -- as a means
9 of spurring economic development and
10 revitalization.

11 We had several meetings with the
12 -- with the different staff members from the
13 Deputy Mayor's Office for Economic Development
14 and also various meetings with D.C. council
15 members and determined that there was a large
16 degree of support for developing this site,
17 which is directly located across from the
18 Benning Road Metro Station.

19 We then last August responded to
20 the Office of Property Management to a
21 solicitation and OPM made it clear that their
22 requirements would be one parking space for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 every 1,500 square feet, which brought about
2 the -- the -- resulted in -- in the building
3 being over parked for the proposed use. And
4 that is why we are here today.

5 MR. SOTO: Good afternoon. My
6 name is Ben Soto. I'm also a member of
7 Benning Station, LLC. Thank you, Chairman
8 Loud and other Member of the Committee for the
9 opportunity to present to you today.

10 As David mentioned, we responded
11 to that solicitation. We've since heard that
12 we are not going to receive that lease due to
13 the fact that the District has existing
14 inventory that they'd like to use for the
15 Office of Child and Family Services, but they
16 -- they have asked us to provide a proposal
17 with an attempt to possibly get the lease with
18 another city agency. So we're in the midst of
19 doing that.

20 During the process that Mr. Tolson
21 talked about, we met with Councilmember Chair
22 Gray who -- who was very emphatic on us making

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 sure that we got the support of the community,
2 and we took that advice to heart. And we've
3 been to several, over 30 community meetings
4 and several ANC meetings, and the community
5 has come out in full force in support of our
6 project. In December of '07 we were able to
7 get a unanimous vote of support for our
8 project, not related to this BZA request, but
9 just for the overall project. And then last
10 March, the ANC-7D hearing, they did vote in
11 support for our BZA application. They made it
12 conditional on us providing a letter related
13 to jobs for Ward 7 residents and related to
14 the transportation report. And they were
15 unable to meet again to provide a formal
16 letter to you today, but they did vote in
17 support of that last month. So I wanted to
18 share that with you.

19 Thank you again for the
20 opportunity.

21 MR. COLLINS: Thank you.

22 Mr. Edwards, would you identify

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 yourself for the record?

2 MR. EDWARDS: Yes, my name is John
3 Edwards. I'm the project manager for the
4 Benning Station project at Bonstra Haresign
5 Architects. And I'd like to start off by just
6 giving you a brief description of the project
7 so you can get your bearings.

8 This is a five-story building with
9 ground floor retail use. It takes up all of
10 Square 5139 with the exception of a -- a small
11 parcel, which is right there on the corner
12 that is reserved for WMATA use. It's bounded
13 on the south by Benning Road, on the west by
14 44th Street, on the north by Blaine Street,
15 and on the east by 45th Street. It is in the
16 C-3-A Zone and it's bordered -- on the north
17 side across from Blaine Street is an R-2
18 Residential Zone and there's also I believe
19 the R-5-A Residential Zone across 44th Street.
20 It is immediately adjacent to the Benning
21 Station, Benning Road Metro Station, which is
22 right off of this map. Basically right across

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this part of 45th Street is the entrance to
2 Benning Road Station.

3 The project has 193,000 roughly
4 square feet of gross floor area and that leads
5 to a 2.5 FAR for the building, which maxes out
6 the commercial FAR for this property. Of
7 that, around 180,000 square feet of gross
8 floor area is office use, around 11,250 square
9 feet is retail use on the ground floor. The
10 building is served by a three-level below-
11 grade parking garage and that provides 270
12 spaces, and that's entered off of -- it's curb
13 cut on 45th Street here. There's an existing
14 curb cut there as well that -- we are using
15 the location of that to access the underground
16 garage.

17 MR. COLLINS: Mr. Edwards, is that
18 44th Street?

19 MR. EDWARDS: Yes. I'm sorry, did
20 I say 45th Street? Sorry about that. Yes,
21 44th Street right there.

22 The loading complies with chapter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 22, as we've just discussed. There are three
2 loading berths and three loading platforms
3 within the building and a service delivery
4 space which is off 45th Street with a curb cut
5 here. So there is the loading delivery that
6 we were discussing before, which is just
7 bounded by a -- a curb. It's a platform with
8 a curb.

9 The northern section of the
10 property, this triangular section here is
11 reserved for future residential use. It's the
12 intention of the partnership to give that back
13 in some way to the city for potential future
14 residential use. Since we have maxed out the
15 commercial FAR for the property, the only
16 remaining FAR would be for residential use on
17 that northern section. But that is not part
18 of this application at this time.

19 The project is seeking two special
20 exceptions today. The first one that I want
21 to go through with you very briefly is a
22 special exception from uniform height and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 single enclosure requirements for a roof
2 structure. This is per section 411.11. This
3 arising from the requirements under section
4 411.3 and 411.5.

5 The proposed project includes two
6 separate rooftop structures that are separated
7 by over 50 feet. One of them is enclosing the
8 roof stair access and the cooling tower. The
9 other one is enclosing the elevator equipment
10 room. The two rooftop structures are
11 differing in height since the greater height
12 of the cooling tower equipment --
13 necessitating a 15-foot enclosure around that
14 section. The lower height of the elevator
15 equipment room is nearly nine-feet-eight-
16 inches approximately, which is all that is
17 required for that room, for the equipment in
18 it. And on the elevation here you can see
19 that's the -- the larger of them and you can
20 barely see the smaller one there behind the
21 parapet.

22 Special exception relief under

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 section 411.11 can be allowed where
2 impracticable due to operating difficulties,
3 the size of the building lot or other
4 conditions relating to the building that would
5 make full compliance with the requirements
6 unduly restrictive, prohibitively costly or
7 unreasonable.

8 In this case, strict compliance
9 with the requirements of section 411.3 and
10 411.5 is not only impractical but we feel it
11 is unreasonable in that it would actually
12 undermine the very objectives that those
13 provisions are trying to achieve. Raising the
14 height of the lower penthouse structure and
15 then combining those two structures into one
16 monolithic structure would be a 140-foot long,
17 15-foot high structure that would stretch
18 across the whole face of this building. This
19 is the elevation on Benning Road. This would
20 be the elevation facing the residential area
21 to the rear of the site facing Blaine Street.
22 So imagine that continuing all the way across.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The proposed roof structures would
2 not materially impair the intent or the
3 purposes of the Zoning Regulations and we
4 don't feel that they would adversely affect
5 the light and air of the adjacent buildings.
6 Both of the proposed roof structures, as Mr.
7 Collins noted, are well below the maximum
8 allowed height of 18-foot-six-inches and both
9 of them will be set back from the building's
10 parapet well beyond the minimum that is
11 required by the Zoning Regulations.

12 And in addition, the property is
13 surrounded by wide -- wide public right of
14 ways, including the 15-foot section that is
15 between the building restriction line and the
16 property line, which encircles the entire
17 property on the entire block.

18 And strict compliance would
19 arguably have a greater impact on the adjacent
20 properties, as I noted before, in terms of
21 their light and air and their view. Putting
22 that large structure on the top would actually

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 make a much more visible structure from the
2 public space and from the neighboring
3 properties. And if there were any impact on
4 light and air, that would be greater with that
5 larger 140-foot, 15-foot structure than with
6 the two smaller structures that we have. So
7 that we feel that this special exception
8 relief in this instance will actually further
9 the purpose and the intent of the Zoning
10 Regulations.

11 The second exception that we're
12 looking for today is a special exception for
13 the reduction in number of off-street parking
14 spaces per section 2108.

15 Currently, under section 2101
16 we're required to have 360 spaces for a
17 building of this size. We are providing 270
18 spaces in three levels of underground parking
19 which represents a 25 percent reduction from
20 the required 360.

21 Section 2108 sets out four
22 conditions to be met for special exception

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 relief for the parking. The first of these in
2 section 2108.2 is that the amount of parking
3 will not be reduced by more than 25 percent.
4 And as I stated, the 270 spaces that are
5 provided represents exactly a 25 percent
6 reduction from the 360 that would otherwise be
7 required.

8 Section 2108.3 states the
9 consideration to be given to a number of
10 different considerations. The first and
11 foremost for this project would be the nature
12 and location of the structure. The site is
13 located within 800 feet of a Metrorail
14 station, which ordinarily under the Zoning
15 Regulations would allow us a by-right
16 reduction in the parking by 25 percent.
17 Because we are also adjacent to a Residential
18 Zone, that by-right reduction cannot be taken.
19 However, the site is within 800 feet of a
20 Metro Station. It's served by multiple
21 Metrobus routes, both along Benning Road and
22 along East Capitol Street, which is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 approximately one block south from the site on
2 the other side of the Metrorail entrance.

3 The project represents an
4 exceptional example of transit-oriented
5 development on an under-utilized site and in
6 an underdeveloped part of the city. And the
7 project will provide significantly -- a
8 significant amount of new office and retail
9 development in -- in immediate proximity to
10 public transportation. And by doing so we
11 feel that this will be a catalytic effect on
12 the development in the surrounding area, which
13 is very much in line with the District's
14 encouragement of transit-oriented development.

15 One of the other considerations
16 under 2108.3 is to the maximum number of
17 employees and customers expected to be using
18 this structure. We do not have a exact number
19 from the Office of Property Management, but
20 using their figures when we were doing the
21 initial fit-out based on the numbers that they
22 gave us, it would come to about 950 office

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 occupants in this building. So translating
2 that with the 270 spaces that we're providing,
3 that's approximately one space for every
4 three-and-a-half occupants of the building,
5 which is considerably better than if we had a
6 strict application of the occupancy from the
7 building code occupancy numbers, which comes
8 out to about one space to five-and-a-half
9 occupants.

10 The next consideration that they
11 have is for the amount of traffic congestion
12 that the structure is expected to create. Mr.
13 George will elaborate on this much more. I
14 will suffice it to say at this point that
15 based on his analysis that the project will
16 not appreciably increase the existing level of
17 traffic congestion or it will not appreciably
18 decrease the level of service on the
19 surrounding roads and the surrounding
20 intersections.

21 The last consideration under
22 section 2108 concerns -- 2108.3, excuse me,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concerns the proximity to public
2 transportation, which we went over briefly
3 before. This is directly on top of the
4 Benning Road Metro Station. This line that
5 goes right to the south of the building face
6 across the bottom of the property is the
7 actual platform of the Benning Station
8 Metrorail. Underneath the building and
9 directly across 45th Street is the entrance to
10 the Metro Station as well, as Mr. George can
11 also elaborate, was served by Metro --
12 multiple Metrobus routes, both on Benning Road
13 and nearby East Capitol Street.

14 The two other conditions that
15 section 2108 sets forth for granting a special
16 exception, one of them is the continuance of
17 ride sharing program, if one is used. In this
18 case, that is not an applicable provision
19 because we do not see the need for a ride
20 sharing program based on the traffic analysis
21 that we've gotten and the occupant load of the
22 building. Since the proposed size of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 garage is more than adequate for the number of
2 occupants that are anticipated for the
3 building as well as the project's close
4 proximity to public transportation, we feel
5 that both of those will adequately serve the
6 building's occupants.

7 The last condition is that the
8 Board shall refer this to the District
9 Department of Transportation for review and
10 report, which was done. This was referred
11 when the application was made to the Board
12 back in September 2008 and our traffic
13 consultant, O R George & Associates, has been
14 working closely with the DDoT staff to ensure
15 that the project will not have any
16 unreasonable traffic impacts, and Mr. George
17 can elaborate on that further.

18 Based on all of this, we feel that
19 this requested special exception relief will
20 be in harmony with both the purpose and the
21 intent of the Zoning Regulation and maps and
22 will not tend to adversely affect the use of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the neighboring properties. We feel that the
2 special exception relief requested is fully
3 consistent with the purposes outlined and we
4 -- elaborate upon that our traffic consultant
5 will discuss further the project will not
6 increase traffic congestion or have an
7 unacceptable impact on the service levels of
8 the adjoining roads. And further that the
9 proposed project will further several land
10 uses and transportation policies for transit-
11 oriented development set out on the District's
12 Comprehensive Plan. So we feel this is
13 enhancing both the property as well as the
14 surrounding area.

15 And with that, unless you have
16 questions at this time, I'll turn this over to
17 Mr. George to elaborate more on the traffic
18 analysis report that we used to support this.

19 MR. COLLINS: Before we get to
20 that, I just have one question of Mr. Edwards.

21 Mr. Edwards, did you describe the
22 topography of the site in your opening

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 presentation?

2 MR. EDWARDS: No. The site -- the
3 low point of the site is along Benning Road.
4 As you go north along 44th Street or along
5 45th Street, the site slopes up precipitously
6 so there is around a 20 foot difference in
7 elevation from the back part of the
8 intersection at Blaine Street and 45th Street
9 than you have on the Benning Road section
10 here. So getting down to lower levels of the
11 parking garage, in order to be feasible, we're
12 entering at the low point of the site. The
13 loading that you see here is actually on the
14 second floor of the building because in that
15 short distance that you go up 45th Street
16 you've gone up a full floor, a full retail
17 floor.

18 VICE-CHAIRPERSON DETTMAN: Thank
19 you, Mr. Edwards.

20 Board Members, you have any
21 questions now, or would you like to hold?

22 Okay. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GEORGE: Good afternoon, Mr.
2 Chair, Members of the Board. For the record,
3 I'm Osborne George, principal of O R George
4 Associates. I'm assisted here by Terry Davis,
5 who's also an engineer with our firm.

6 Mr. Moy isn't here, but is there
7 some way I could get the -- the light dimmed
8 a little bit? I would like to use the
9 exhibit.

10 Is there an intermediate point?
11 Seem like we're fully dark.

12 CHAIRPERSON LOUD: Is it too dark,
13 Mr. George?

14 MR. GEORGE: Yes, I have some
15 notes.

16 CHAIRPERSON LOUD: Okay.

17 MR. GEORGE: It seem like there's
18 usually a midpoint between -- okay. I could
19 perhaps work with -- work with this.

20 Mr. Collins, shall I --

21 COMMISSIONER TURNBULL: Does the
22 light on the desk work by your computer there?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GEORGE: Oh, okay. Yes.

2 COMMISSIONER TURNBULL: If that
3 helps.

4 MR. GEORGE: Yes. All right.
5 Thanks, Mr. Turnbull.

6 In summary -- summary, Mr.
7 Chairman, we are requested to perform a -- an
8 analysis to support the applicant's request
9 for a 25-percent reduction in the parking. We
10 engaged DDoT very early in the process, went
11 through a scoping as to what our study would
12 address and we concluded, or we formed rather
13 conclusively that the proposed development is
14 not likely to cause objectionable impacts on
15 the surrounding area. And I'd like to briefly
16 highlight the reasons why.

17 To do so I'd like to use the first
18 exhibit, and we do have copies of these I
19 should point out, Mr. Collins, if we would
20 like to provide Members of the Board.

21 Mr. -- Mr. Edwards described the
22 project location. From the transportation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 perspective I'd like to go over that just
2 briefly.

3 This is Benning Road which runs
4 diagonally from southwest to northeast -- I'm
5 sorry, southeast to northwest. East Capitol
6 Street is along here. This is the famous or
7 the historic Shrimp Boat Restaurant at the
8 corner here. The Benning Metro Station is at
9 this point here with access -- we can see the
10 pedestrian pathways into the site. This is
11 45th Street which is part of the -- the
12 typical grid pattern of the city. Blaine
13 Street to the north and I think Mr. Edwards
14 touched on that, 45th -- 44th Street to the
15 west of the site.

16 In terms of traffic control
17 devices, this intersection is signalized.
18 This intersection is stop sign controlled.

19 We talked a lot about the transit-
20 oriented development characteristics of the
21 site, so I think it's relevant that I
22 highlight the pedestrian facilities. There

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are sidewalks all along the roadways, along
2 all the roadways here, along Benning Road,
3 along 44th Street and along the east street of
4 45th Street. There are crosswalks here,
5 highlighted crosswalks. And as I -- I showed
6 here, I think DDoT did a great job in that
7 there are a number of pedestrian amenities.
8 There are highlighted pedestrian crosswalks.
9 By highlighted I mean they're striped to
10 ensure maximum visibility and there are
11 warning signs indicating pedestrian crossings
12 along both approaches. This is the only
13 unsignalized crosswalk that pedestrians would
14 use. I will show the Board a few photographs
15 of these a little bit later and I'll try to be
16 brief.

17 Bus stops, transit -- in the
18 context of transit-oriented development,
19 again, we see the number of bus stops along
20 here. There's a bus stop here for westbound
21 traffic. I'll -- I'll refer to this as
22 westbound for pedestrians between the station

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and the bus. There's also a bus stop right
2 here adjacent to the -- the west entrance of
3 the site. In the eastbound direction there
4 are also bus stops. So the area is well
5 served by pedestrian facilities and other
6 elements which promote access to transit.

7 Now, our report points out that
8 this roadway is classified as a principal
9 arterial, but I think that deserves a special
10 discussion because we normally think of a
11 principal arterial as a roadway --
12 incidentally that's the same classification as
13 East Capitol Street, which we know has high
14 speed almost, in some sections, freeway-type
15 of characteristics. On the contrary, Benning
16 Road has a posted speed of 25 miles per hour
17 in the westbound direction and 30 miles per
18 hour in the eastbound direction. This is
19 essentially the same as the posted speed
20 limits on the local residential streets. So
21 I think this makes the area promotes traffic
22 calming. I won't go into the other details.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It's a 40-foot roadway, but parking is allowed
2 during the off-peak period. So there are a
3 lot of -- in terms of the functioning of the
4 roadway, there are a lot of traffic calming,
5 traffic control measures.

6 I'd like to switch to the next
7 one. In terms of the potential impact, I
8 think it's very -- it would be very important,
9 Mr. Chairman, to look at the existing
10 situation. And so the second exhibit tells us
11 what's happening on the site today.

12 The site until very recently was
13 occupied by a gas station and a convenience
14 store in the western section. There was a
15 restaurant in the middle of the site and then
16 there was a day care center here. Perhaps
17 even more importantly there were six driveways
18 or curb cuts. One, two, three, four, five,
19 six along Benning Road and one into the gas
20 station and convenience center, approximately
21 30 feet from Benning Road. These uses were
22 recently closed and in fact when we started

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 our study, this station was still open. It is
2 now closed. But again, if we think of the
3 access situation in terms of the curb cuts and
4 the uses, which could be reactivated without
5 coming to the city before the Board perhaps
6 simply through the permitting process, we'd
7 have a situation here which is very disruptive
8 of pedestrian traffic movements, as well as
9 traffic flow along the corridor. The proposed
10 -- the proposal would close all of these curb
11 cuts and replace it with a single curb cut
12 accessing the garage, approximately 25 feet
13 south of Blaine Street.

14 So it's my opinion, Mr. Chair,
15 that this would create a much more favorable
16 situation in terms of pedestrian movements and
17 safety within the area. I think this is part
18 of the city's policies, DDoT policies of
19 access control to minimize curb cuts wherever
20 possible and arrange for access via the minor
21 roadways and through alleyways where possible.

22 So the opposite side of the street

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 essentially is the same thing, but of course
2 this is not part of the application and it's
3 not really part of our argument here.

4 I will -- in the context of the
5 parking, I would also use this exhibit to
6 point out that parking is allowed along
7 Benning Road during the off-peak periods
8 between 9:30 and 4:00. And -- well, except
9 during the -- the -- the peak hours, which is
10 7:00 to 9:30 a.m. and 4:00 to 6:30 p.m.
11 parking is allowed.

12 What we find is that in addition
13 to the parking, the 270 parking spaces, fully
14 satisfying the needs of the development based
15 on the transit-oriented develop
16 characteristics there would also be the
17 opportunity for additional -- I just lost my
18 -- right -- for additional on-street parking
19 along Benning Road should this be a decision
20 that the city, perhaps DDoT, would make. So
21 I think this is important to point out when we
22 compare the existing situation versus what is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proposed.

2 You heard from Mr. -- Mr. Soto
3 that the application relies heavily on the
4 parking needs that were indicated by the
5 Office of Property Management for the
6 prospective use. And so I'd like to stress
7 that the anticipation is that this -- the
8 proposed building, the proposed facility would
9 be utilized by a long term Government tenant.
10 We did our analysis based on the assumption
11 that it would be the Child and -- Child and
12 Family Services Administration. And we had
13 the good fortune of being able to survey the
14 current site which is in Southwest. And
15 again, we went through this with DDoT, Mr.
16 Jennings, and we conducted the survey. Very,
17 very comparable.

18 That site consists of 180,000
19 square feet, which is around the same square
20 footage as the proposed building. It had 200
21 parking spaces, just over 200 parking spaces.
22 We found a very low vehicle trip generation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rate. We found a very high transit usage,
2 transit usage of 75 percent, and vehicle trip
3 generation rate well below what you would
4 typically expect for an office building. So
5 again, we think this supported our analysis.
6 I won't go into the details. It's documented
7 in our report.

8 So we think in terms of the future
9 traffic that would be generated by the site,
10 this allows me to point out one thing and I --
11 I almost missed it. What we showed here is
12 the volumes of traffic which we counted while
13 the station was in operation. The restaurant
14 is closed, the day care is closed. And the
15 traffic that would be generated by the future
16 use is less than the traffic that would be
17 generated by the gas station alone. So we
18 think it's our general estimate that all of
19 the uses on the site would generate perhaps
20 twice the traffic volumes that the proposed
21 development would generate. I think this
22 speaks to the issue of congestion. In effect,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what we're saying is that the proposed use,
2 when compared with the existing development on
3 the site, would -- would represent a
4 significant reduction in traffic.

5 So based on these factors, Mr.
6 Chair, I think we've concluded that the 25
7 percent parking reduction is quite
8 appropriate. We concluded that the proposed
9 use would not result -- create any congestion
10 and in fact would substantially reduce the
11 vehicular traffic generated by the site.

12 I think the one issue that we
13 thought even though not specific to the
14 application was as to the appropriateness of
15 these -- this -- the proposed garage entrance.
16 Again, the entrance would be approximately 25
17 feet to the south of the curb -- the curb line
18 along Blaine Street and 54 feet north of the
19 curb line along Benning Road. The Zoning
20 Regulations require a separation of 25 feet.
21 And so we meet those -- those criteria in both
22 instances.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Looking further afield, we find
2 that trips entering the -- the site, even
3 though they would be low, they would be well
4 distributed. And in that context I would
5 mention that 44th Street is designated as a
6 collector roadway and that -- it's -- it
7 doesn't carry as much through traffic as
8 Benning Road does, but it serves land uses
9 well to the north away from the immediate
10 area. This connects all the way up to Nannie
11 Helen Burroughs Avenue, which is a major east-
12 west route in the -- what's called the central
13 northeast section of the city.

14 So we think again with the concept
15 again linking to Mr. Soto's statement that
16 this use is intended to bring city services
17 closer to the community. It is clear that
18 trips would be approaching the side from the
19 north, from the east, from the south and from
20 the west. We think that favorable
21 distribution of traffic with a traffic light
22 at this point would allow for this entrance to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 operate quite efficiently and quite safely.

2 I would like to stop there, Mr.
3 Chair, and, Mr. Collins, if you're okay with
4 that. I'll answer further questions which you
5 may have or which they Board may have.

6 CHAIRPERSON LOUD: Thank you, Mr.
7 George. I think we're going to get the lights
8 cut back on.

9 Board Members, do you have any
10 questions for Mr. George?

11 COMMISSIONER TURNBULL: Mr. Chair,
12 I do.

13 Where do you see the preponderance
14 of traffic coming? Is it going to be mainly
15 on Benning Road, do you think, of people who
16 work here?

17 MR. GEORGE: I -- I think we see a
18 good deal of traffic distribution, but we --
19 as I said, I think it will be well
20 distributed. It is difficult to do a
21 reasonably precise distribution pattern
22 without knowing the particular agency that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be there and the type of users, the type
2 of patrons that would be served. But I think
3 -- thinking in terms of the employees, one can
4 assume that they would live within, you know,
5 various jurisdictions with -- or various areas
6 of the city and they would approach from
7 various sections likewise. We --

8 COMMISSIONER TURNBULL: Well, you
9 know what I'm looking at is when you come out
10 of the garage or you're going into the garage,
11 you're going to have people either making a
12 right turn or a left turn getting in. I mean,
13 it's going to be equally distributed maybe
14 both ways. And what I'm concerned about is
15 with the stop light.

16 MR. GEORGE: Yes.

17 COMMISSIONER TURNBULL: Are people
18 going to be backed up coming out and the same
19 thing backed up going in? The only reason I
20 bring it up is we have the entrance to the
21 garage to this building is right over here on
22 the corner on 3rd and C and I don't think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you're supposed to make a left turn.

2 MR. GEORGE: You're not.

3 COMMISSIONER TURNBULL: You're
4 not. But tell me if anybody in this building
5 obeys that. Off the record, I guess.

6 But anyway, what I'm concerned
7 about is, and it sometimes can be a zoo; I
8 know when I come over and if I'm driving and
9 I try to make a U-turn, try to park somewhere
10 out there, I've seen a lot of traffic back up.
11 And I'm just wondering, I'm looking at the
12 stop light, what kind of timing you have to do
13 to try to -- you know, again, at the rush
14 hours when most of the people are coming in,
15 that half-hour, 45 minutes. I just wonder how
16 you -- do the lights have to be resequenced?
17 Is there going to be special turn lanes or how
18 are you going to accommodate that? I'm just
19 concerned about the traffic going in at that
20 those certain hours.

21 MR. GEORGE: Yes. Yes. I -- I
22 think I can answer that. First -- first of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 all, I -- I use the garage downstairs and I
2 think it's perhaps around I'd say 20 or 30
3 feet, if that much.

4 COMMISSIONER TURNBULL: Yes.

5 MR. GEORGE: Here we're 54 feet.

6 So there -- the -- the separation is -- is
7 greater, a good deal greater.

8 The second thing I'd like to point
9 out is that as you enter the garage there's
10 considerable stacking before you -- you get
11 into the structure itself. There's -- so
12 there's adequate provision for queuing within
13 the site so that vehicles would have the
14 opportunity to queue inside if they need to.

15 But perhaps more importantly what
16 you would find is that during the morning peak
17 hour the traffic volumes are heavy inbound
18 this way. Everybody's going to work. And
19 during that time the traffic volumes along
20 44th Street leaving the residential areas to
21 the north is relatively heavier. So there is
22 a reverse flow pattern which is quite

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 favorable. A.M. peak hour, heavy outbound
2 from the neighborhood along 44th Street and
3 the preponderance of traffic coming from
4 Benning Road into the site.

5 During the afternoon peak hour the
6 situation is exactly reversed. Everybody's
7 going home, so -- so this traffic is much
8 heavier. The queues along this approach to
9 Benning Road would be a lot less.

10 This --

11 COMMISSIONER TURNBULL: I don't
12 mean to interrupt you. What is the level of
13 service now at that intersection?

14 MR. GEORGE: Yes. This operates
15 quite well because it's signalized and its
16 level of service, just to be sure -- it's
17 level of service B during both the morning and
18 afternoon peak hour, yes. So --

19 COMMISSIONER TURNBULL: And it's
20 going to go to what level with the new
21 building?

22 MR. GEORGE: We think that it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would drop, but it would stay within the B
2 range. As you know --

3 COMMISSIONER TURNBULL: Oh,
4 really?

5 MR. GEORGE: Yes. The -- the --
6 it's -- it's a band, and so it's -- it's not
7 as high within the band, but it still falls
8 within the -- the B band. And again, that was
9 presented in our study and was reviewed by
10 DDoT.

11 COMMISSIONER TURNBULL: Yes.
12 Okay.

13 MR. GEORGE: Yes.

14 COMMISSIONER TURNBULL: Thank you.

15 MR. GEORGE: Yes. Did I answer
16 adequately to your concerns?

17 COMMISSIONER TURNBULL: Well, it
18 sounds like what you're saying, even with the
19 level of service, that you're feeling that the
20 lights are going to be adequate, that you have
21 stacking within the garage. I guess I'm just
22 worried about the stacking on Benning Road

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going up and for all these people making
2 turns, but sounds like you're reassuring us
3 that it's going to work.

4 MR. GEORGE: Yes. I -- I -- I
5 think -- and we mentioned I believe in our
6 report, as you develop a site like this and as
7 transportation elements that are looked at,
8 perhaps you're in the permitting process, it
9 is possible that some subsidiary signage such
10 as do not block intersection for -- for
11 traffic coming along Blaine here to have gaps
12 coming in here, that may be an issue. But
13 again, this is a driveway and we think
14 courtesy gaps are a fact of life. And looking
15 at what happens, the -- the fact is, Mr.
16 Turnbull, we're able to see what happens here
17 with a closer intersection with higher volumes
18 of traffic coming out today. And I think this
19 represents a significant improvement, and so
20 we think that it will work.

21 COMMISSIONER TURNBULL: Thank you.

22 VICE-CHAIRPERSON DETTMAN: Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 George, I have a few questions that go to trip
2 generation, which is page 15 in your report.

3 MR. GEORGE: Sure.

4 VICE-CHAIRPERSON DETTMAN: The
5 numbers for the retail portion of the
6 project --

7 MR. GEORGE: Yes.

8 VICE-CHAIRPERSON DETTMAN: --
9 which is line item 2, where do those rates
10 come from?

11 MR. GEORGE: What's the ITE code?
12 Yes. Right. Okay.

13 Those are per ITE, the Institute
14 of Transportation Engineers.

15 VICE-CHAIRPERSON DETTMAN: Okay.
16 And the rates for the Government office
17 portion, you didn't use ITE, is that correct?

18 MR. GEORGE: Yes. I think when we
19 looked at the -- the -- the options that we
20 had, the -- we had no good options for -- from
21 the ITE Handbook. And so we -- we surveyed
22 that site, the -- the Child and Family

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Services site. And if I -- just to review,
2 approximately the same size building, same
3 amount of parking and we thought -- we
4 surveyed it on two separate days. So we think
5 the statistics are quite good. And the rates
6 are quite low. As I said, it -- around 70 to
7 75 percent non-vehicle use. So we thought
8 that was good. But what we did, Mr. Dettman,
9 is we -- we, as planners are wont to do, we
10 said let us factor that up, include a factor
11 of safety. So we increased those rates by 33
12 percent, by a third. And so we think they
13 represent a reasonable estimate and may even
14 be high.

15 VICE-CHAIRPERSON DETTMAN: Okay.

16 And well typically when we receive
17 transportation studies it's either ITE or if
18 you diverge from that, it's a survey done on
19 three comparables, and here we have one
20 comparable. So I guess my question is, what
21 level of confidence can we have in this since
22 it only uses one comparable that's based on a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 leasee that is no longer going to be the
2 leasee?

3 MR. GEORGE: Yes, I think you are
4 correct. We tried to find additional sites.
5 If CFSA had had other sites, we would have.
6 And so it is for this reason that we felt we'd
7 apply -- or one of the reasons that prompted
8 us to apply that factor, that factor of safety
9 of over 30 percent.

10 I think the other factor was also
11 the -- the fact that OPM, whether it's CFSA,
12 Child and Family Services, or another agency,
13 we understand from the applicants that the
14 parking requirement is the same for any
15 Government agency; that is, one space for
16 every 1,500 square feet. And this well below
17 the typical parking requirement for an office
18 building. So that gave us some level of
19 confidence.

20 VICE-CHAIRPERSON DETTMAN: Okay.

21 MR. GEORGE: Yes.

22 MR. TOLSON: That's consistent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with all our communications with OPM.

2 VICE-CHAIRPERSON DETTMAN: Okay.

3 And just two more quick questions.

4 Do you have any idea with the
5 removal of the curb cuts along Benning if DDoT
6 does decide to put parking there, how many
7 parking spaces that might be?

8 MR. GEORGE: There are presently
9 eight parking spaces, because, you know, this
10 is chopped up as it is with the -- with the
11 curb cuts. We estimate that you would double
12 that. It would be 17 or 18 parking spaces
13 that would become available. A total of 17 or
14 18.

15 VICE-CHAIRPERSON DETTMAN: Okay.
16 And the underground garage, is that going to
17 be made available to patrons of the retail
18 space?

19 MR. TOLSON: Yes, it would be.

20 VICE-CHAIRPERSON DETTMAN: It will
21 be? Okay. Thank you.

22 CHAIRPERSON LOUD: Thank you, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Dettman.

2 Thank you as well, Mr. George.

3 MR. GEORGE: Thank you.

4 CHAIRPERSON LOUD: I just have a
5 couple of quick questions, follow up.

6 The level of service B is at the
7 intersection of Benning and 44th?

8 MR. GEORGE: Yes.

9 CHAIRPERSON LOUD: Okay. And just
10 conceptually help me understand how -- I think
11 you testified that the traffic generated by
12 the proposed development would be about one-
13 half --

14 MR. GEORGE: Yes.

15 CHAIRPERSON LOUD: -- of what is
16 currently generated, roughly one-half I
17 thought. But go ahead, correct me if I'm
18 wrong.

19 MR. GEORGE: Yes.

20 CHAIRPERSON LOUD: But my question
21 follows that statement.

22 MR. GEORGE: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: If that's the
2 statement and the level of service will go
3 from B to somewhat less than B, how is that
4 possible? I'm not disputing it. I'm just
5 trying to understand conceptually how you can
6 cut the traffic by half, but you would
7 actually reduce the level of service?

8 MR. GEORGE: And I think my simple
9 answer is that we try to include as many
10 factors of safety as we can. So first of all,
11 even though as we looked at the traffic
12 volumes along Benning over the -- the last
13 four or five years, we used DDoT's data, we
14 find that the traffic has been -- the volumes
15 have been relatively stable. We assume the
16 worst and we -- we applied a two percent
17 growth per year, so we assume that there would
18 be growth over the three-year periods so that
19 -- I -- I think we assumed build-out in 2011.

20 In addition, we could have
21 deducted the traffic that accesses the site
22 now, but we assume the worst case and said let

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 us assume that traffic stays there and we
2 added our traffic. So we applied double
3 jeopardy -- or probably -- probably triple
4 jeopardy to ourselves. And we prefer to
5 project that it would be B or C or D, and it's
6 -- and it turns out to be better than the
7 opposite way.

8 CHAIRPERSON LOUD: So in effect
9 the worst case scenario is that it would still
10 be within level B, marginally lower than
11 currently?

12 MR. GEORGE: Yes.

13 CHAIRPERSON LOUD: But there's
14 some reason to believe that it would actually
15 be much higher than that?

16 MR. GEORGE: Yes.

17 CHAIRPERSON LOUD: Okay.

18 MR. GEORGE: Yes. Yes.

19 CHAIRPERSON LOUD: Thank you. I
20 think that that would conclude applicant's
21 case, Mr. Collins, unless you have additional
22 witnesses.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: No, that's it, sir.

2 CHAIRPERSON LOUD: Okay. Board
3 Members, do you have any further questions for
4 any of Mr. Collins' witnesses?

5 MR. COLLINS: There's one more
6 point.

7 CHAIRPERSON LOUD: I'm sorry?

8 MR. COLLINS: There was one more
9 point that Mr. George wanted to make.

10 CHAIRPERSON LOUD: Oh, please, go
11 right ahead.

12 MR. GEORGE: Yes. And I think,
13 Mr. Chair, simply for the reason that I
14 pointed out that I think DDoT has done a good
15 job in pedestrian signage and the highlighted
16 crosswalks and so on, and since one of the
17 exhibits that I passed out, it -- it was
18 included here, I would just like to make
19 special reference to it.

20 This is much of the signage that
21 is along Benning Road between East Capitol
22 Street and 44th Street. And so we see the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 highlight crosswalks. There are cases where
2 pedestrians are wont to use only the painted
3 crosswalks and things like that. So I would
4 like to just say that as we looked it, as I
5 point out, the posted speed limit along
6 Benning is 25 miles, which is what you'd
7 expect on a neighborhood street. And I think
8 DDoT -- I don't think Mr. Jennings' department
9 is particularly the ones responsible, but I'd
10 like to say that I think DDoT has done a good
11 job in looking at the pedestrian issues in
12 that area. And since you have that exhibit,
13 I wanted to highlight this for the public
14 hearing.

15 CHAIRPERSON LOUD: Thank you, Mr.
16 George. We appreciate that.

17 I think we'll now turn to -- I'm
18 sorry?

19 VICE-CHAIRPERSON DETTMAN: Just
20 two more questions.

21 CHAIRPERSON LOUD: Oh, absolutely.
22 Some additional questions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE-CHAIRPERSON DETTMAN: I have
2 actually two quick questions, one for Mr.
3 George and then one for Edwards, is it? Yes.

4 Mr. George, I noticed that in your
5 level of service numbers in your study, for
6 the signalized intersection at Benning and
7 44th, you report the overall level of service
8 of the intersection?

9 MR. GEORGE: Yes.

10 VICE-CHAIRPERSON DETTMAN: And
11 then on the Benning and 45th, and the other
12 intersections that you studied, the three
13 other ones, you reported just the worst case.

14 MR. GEORGE: Yes.

15 VICE-CHAIRPERSON DETTMAN: And I'm
16 just wondering why.

17 MR. GEORGE: Yes. Again, it's our
18 normal practice to -- not to try to sugarcoat
19 anything, but try to present as realistic an
20 assessment. What it says is that, let's say
21 we were to -- can we go back to just one of
22 those exhibits just so we can look at it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Right. This is the signalized intersection,
2 Mr. Dettman. If you look at this
3 intersection, a users --

4 VICE-CHAIRPERSON DETTMAN: Would
5 you identify it for the record when you're
6 saying "this" and "that?"

7 MR. GEORGE: Yes. Okay. I'm
8 sorry. I'm sorry. Yes.

9 The intersection of Benning at
10 45th, a user along the 45th approach would
11 have to wait much longer to go through the
12 intersection than would somebody along Benning
13 Road. So that user would perceive themselves
14 as having the worst situation. And so we like
15 to tell their story as opposed to the -- the
16 -- the traffic along Benning Road, who would
17 perhaps have little or no delay whatsoever.
18 And that's -- that's the reason we do that.

19 VICE-CHAIRPERSON DETTMAN: Okay.

20 Mr. Edwards, just a question.

21 What's actually driving the need
22 to have two roof structures? I mean, could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you take the elevator structure and, you know,
2 move it to the west, or to the north,
3 actually?

4 MR. EDWARDS: Well, part of it is
5 -- part of it is the logic and reasonableness
6 within the building itself, of the core
7 structure. Also because the exits, the fire
8 stairs and -- that are coming up have to be
9 reasonably separated within the building, it
10 pushes those stores more or less towards the
11 -- the extremities of the building. So one of
12 those stairs is going to always be out from --
13 from the others. The core where the elevators
14 are is normally centrally located in order to
15 facilitate the communication and the
16 circulation within the building. So the
17 elevator cores are going to be more or less in
18 the center of the building. The stairs are
19 going to be isolated from that. One of those
20 stairs, by the code, has to go to the roof.
21 So one of those stairs is going to the roof
22 and the elevator is where it is. We've just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 put the mechanical equipment onto one of those
2 for convenience in order to make it most
3 logical we could.

4 VICE-CHAIRPERSON DETTMAN: Thank
5 you.

6 COMMISSIONER TURNBULL: I'd like
7 to follow up with that.

8 But what if you had switched it
9 and put the cooling tower down by the other
10 elevator and came up the other staircase?
11 You'd have them all grouped together then.

12 MR. EDWARDS: You mean to put it
13 on the right hand side?

14 COMMISSIONER TURNBULL: Right.

15 MR. EDWARDS: Well, also one of
16 the -- the issues is because of the core
17 placement, there are mechanical equipments and
18 duct lines that are running down from where
19 the cooling tower is within the core of the
20 building there is a -- a group of rooms that
21 go all the way down that are grouped as you
22 can see here. So to put the cooling tower on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this side means that you can't -- it -- it --
2 you have to cross the elevator core in order
3 to get the mechanical equipment to go down
4 into the mechanical rooms that are connected
5 to that cooling tower, which makes placement
6 of the cooling tower on this side the more
7 logical place to go.

8 COMMISSIONER TURNBULL: All right.
9 I was just curious. From a maintenance
10 standpoint, it would have been -- the other
11 stair tower is right near the loading dock for
12 bringing equipment up. It would have been a
13 straight shot up the -- the elevators aren't
14 going up to the roof.

15 MR. EDWARDS: Well, the equipment
16 is going to be brought in by a crane, not by
17 the steps. So that's all going to be going up
18 first.

19 COMMISSIONER TURNBULL: But I mean
20 replacement, repairs. You'd think it would
21 have been easier to bring stuff up the other
22 stairs. So you're basically saying it's the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 core underneath that's dictating where this
2 thing is going?

3 MR. EDWARDS: That's correct.

4 COMMISSIONER TURNBULL: Okay.

5 Thank you.

6 MR. EDWARDS: Also, I -- I should
7 point out that the -- the structural lines are
8 going across the building from the Benning
9 Road side to the back. So you have very deep
10 prestressed beams going across there. So
11 crossing both the -- the elevator core and
12 those beams is problematic from a structural,
13 as well as a -- a space planning point of
14 view, which is why we want to have the
15 mechanical equipment as centered over top
16 where the mechanical rooms are as possible so
17 you don't have to lose headspace by going
18 under large beams.

19 CHAIRPERSON LOUD: Anything
20 further, Mr. Turnbull?

21 COMMISSIONER TURNBULL: No. Thank
22 you, Mr. Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Thank you, Mr.
2 Edwards.

3 And again, I believe we're through
4 with applicant's case. There are no
5 additional witnesses you have, correct?

6 MR. COLLINS: That is correct.

7 CHAIRPERSON LOUD: Any additional
8 exhibits?

9 MR. COLLINS: No, sir.

10 CHAIRPERSON LOUD: Okay. Then
11 what we will do, I do believe before we move
12 to the Office of Planning we had a 1:00 p.m.
13 scheduled hearing on the Central Union case
14 and I don't know if anyone's in the audience
15 who is from that case at all. Okay. So we'll
16 continue with this case and we'll deal with
17 that issue as it surfaces for us.

18 Office of Planning. Mr. Jackson,
19 good to see you.

20 MR. JACKSON: Thank you, Mr Chair
21 and Members of the Board.

22 Again, the name is Arthur Jackson

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with the D.C. Office of Planning.

2 Briefly, the Office of Planning
3 stands on --

4 CHAIRPERSON LOUD: For some
5 reason, and it's been happening throughout the
6 morning, I can't hear you very clearly.

7 MR. JACKSON: Oh, let me move
8 closer.

9 CHAIRPERSON LOUD: Okay.

10 MR. JACKSON: Is that better?
11 Okay.

12 Again, Arthur Jackson with D.C.
13 Office of Planning.

14 You have the Office of Planning's
15 report before you. And so for that reason, we
16 will stand on the record and answer any
17 questions you have about our report.

18 We just would say that after
19 reviewing the standards under 411.3 and 411.
20 -- I'm sorry, under 411 and 2108, we think the
21 application more than meets the requirements
22 for approval of a special exception. And that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the presentations made by the applicant and
2 the consultant satisfied the Office of
3 Planning that the information that was
4 provided initially in the report is valid and
5 is sufficient for the relief that's being
6 requested. And that concludes a brief summary
7 of our report and we are available to answer
8 any questions.

9 CHAIRPERSON LOUD: Thank you, Mr.
10 Jackson. And it was a very thorough report.

11 Board Members, any questions for
12 Mr. Jackson, Office of Planning?

13 Mr. Dettman, are you mulling it
14 over?

15 VICE-CHAIRPERSON DETTMAN: Just a
16 quick question.

17 Mr. Jackson, on page 5 of your
18 report you had stated, "In light of this
19 review and pending receipt of comments from
20 DDoT" you support the application. We
21 received the DDoT report today, so I was
22 wondering where you stand after reviewing the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DDoT report.

2 MR. JACKSON: We briefly saw the
3 DDoT report at least and think that in terms
4 of the report they are also supportive of the
5 special exceptions with regard to the parking.
6 So we think the report in general supports the
7 relief that's being requested by the
8 applicant.

9 VICE-CHAIRPERSON DETTMAN: Okay.
10 Thank you.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Dettman. I think this would probably be an
13 appropriate time to ask Mr. Collins if he has
14 any questions for the Office of Planning.

15 MR. COLLINS: I do not.

16 CHAIRPERSON LOUD: Okay.

17 As Mr. Dettman mentioned, we did
18 receive the DDoT report. It's at Exhibit No.
19 27. Mr. Collins, did you receive that report?

20 MR. COLLINS: We received it
21 Friday afternoon, sir.

22 CHAIRPERSON LOUD: Friday

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 afternoon? Okay. And as you sort of suggest,
2 Mr. Collins, it did not meet the requirements
3 of our rule in terms of it being submitted
4 seven days before the hearing. It came in on
5 Friday. However, we are empowered to waive
6 our rules under section 3100.5 for good cause
7 shown.

8 So I wanted to ask Mr. Jennings
9 the reason for the last submission.

10 MR. JENNINGS: Good afternoon,
11 Chairman Loud. My name is Jeff Jennings. I
12 worked for the District Department of
13 Transportation. I do apologize for the late
14 submission. A lot of it had to do with the
15 internal review at DDoT. Our civil engineer
16 staff was not able to actually get out and
17 visit the site until much later than
18 anticipated. And additionally, we've had some
19 various supervisory staff members not
20 necessarily in place to take a final review of
21 the document.

22 CHAIRPERSON LOUD: Mr. Collins,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 did you want to weigh in at all on the issue
2 of the late filing?

3 MR. COLLINS: No, sir.

4 CHAIRPERSON LOUD: Okay.

5 MR. COLLINS: No. We did not have
6 an opportunity to fully get through it until
7 -- well, we had about 24 hours, you know, one
8 business day to deal with it. So in our
9 response to it, please understand that.

10 CHAIRPERSON LOUD: Okay. But
11 you're prepared to move forward today through
12 it?

13 MR. COLLINS: Yes, we are.

14 CHAIRPERSON LOUD: Okay. That's
15 great.

16 Board Members, any concerns?

17 Anything further on this question?

18 Then I think what we'll do,
19 hearing no objection, we'll go ahead under
20 3100.5, good cause having been shown in terms
21 of the agency as a whole not being able to get
22 the right personnel to address different

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 aspects of the report on time. We'll go ahead
2 and waive it in under 3100.5.

3 And then, Mr. Jennings, turn to
4 you for your report.

5 MR. JENNINGS: Thank you, sir.

6 Allow me to repeat, my name is
7 Jeff Jennings. I work for the District
8 Department of Transportation. We had
9 approximately, today being April 21, we
10 received the report as the date reflects on
11 the cover of the applicant's transportation
12 analysis, March 23, 2009. We typically have
13 the opportunity of 30 days or more to review
14 these transportation analyses, so perhaps that
15 contributed to the delay in getting this in.

16 We do agree with the reduction in
17 parking. The site being as close as has been
18 stated earlier to the Metro Station, numerous
19 bus lines and we feel that it makes plenty of
20 sense to go forward with that reduction in
21 parking for this case.

22 As we stated in our report, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 only point that is not meeting DDoT
2 requirements is where the entrance located on
3 44th Street, which the applicant presented to
4 us at our meeting at DDoT in mid to late-
5 March, where Office of Planning attended as
6 well, they were aware that the 44th Street
7 curb cut did not meet and still does not meet
8 DDoT requirements. And what I mean by that is
9 we have design and engineering requirements
10 through our traffic safety division. Those
11 requirements are put together by civil
12 engineers and mostly engineering staff with
13 the thought that a curb cut should be a
14 certain distance away from an intersection.
15 It allows queuing to occur without obstructing
16 any other traffic. As we take into
17 consideration how this building will also have
18 a significant intermodal split, so therefore
19 we're thinking this building will generate a
20 lot of pedestrian traffic as well. So these
21 are things that clearly we wanted to take into
22 consideration with the proposed curb cut on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 44th Street.

2 It should also be stated, and it's
3 not stated in the report, we oftentimes
4 receive a request from an applicant as far as
5 safety along a major corridor like Benning.
6 We did not in this particular instance for
7 this case, and allow me to explain.

8 We will respond to the applicant,
9 or the applicant knows the staff within the
10 agency where they can collect crash data and
11 that would have been certainly pertinent for
12 Benning Road. We didn't hear that request for
13 this particular case. Again, you see the date
14 on the cover of the traffic impact analysis,
15 or transportation impact analysis. And it's
16 almost as though it was, you know, kind of put
17 back on DDoT to kind of look into the safety
18 aspects. We did appreciate the fact that they
19 did respond to our pedestrian experience
20 review or pedestrian level of service. That
21 was very helpful. Again, I think we stated
22 that inside the report.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Benning Road, especially along
2 this area, is a major pedestrian crash route,
3 it should be stated. I don't have the numbers
4 with me here today, but I'll be happy to
5 provide those if the record remains open after
6 today.

7 It is 25 miles and hour, I think
8 as the applicant's transportation consultant
9 certainly did testify to that. That is very
10 helpful, however, the amount of vehicles that
11 perhaps adhere to or stick to a 25 mile an
12 hour travel speed, I think that would be an
13 interesting review if we had that. We don't
14 have that in front of us today and I can
15 certainly ask our traffic engineering division
16 if they have such numbers. The other number
17 that I'll be happy to provide is the average
18 daily traffic volume that we have. The most
19 recent numbers that we've collected I believe
20 are from 2007. We do this on an annual basis,
21 the Agency does. So that would also certainly
22 take into consideration why we have what we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have inside of our written report.

2 The ADT, the design and
3 engineering guidelines, at the intersection at
4 44th and Benning with that curb cut placed
5 there.

6 And then the last piece that we
7 didn't necessarily contribute into the report
8 but I'm happy to speak about today is the
9 proposal by the applicant to remove parking,
10 residential permit parking along Blaine Street
11 on the north portion of this image we have up
12 right now. That would have to be done by a
13 separate rulemaking. We would need support or
14 some recognition from the ANC at the local
15 level and then DDoT would actually draft a
16 rulemaking. And what the applicant has asked
17 is removal of parking on the south side of
18 Blaine Street where you see the double yellow
19 stripes. And what that would support, they're
20 putting in retail that requires some loading.

21 What we have in our report would
22 actually negate that loading opportunity there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and we would prefer to see a curb cut along
2 Blaine Street, a local street. And because we
3 believe this site will not generate a
4 significant amount of vehicle trips at certain
5 times of the day; we see this site clearly
6 being supported by a lot of pedestrian trips
7 and then the vehicle trips we don't feel would
8 have a significant impact if they were to
9 enter and exit off of this south side of
10 Blaine Street.

11 We did also want to inform the
12 Commission that we would anticipate because of
13 the significant amount of pedestrian trips the
14 mass transit most likely, the various
15 transportation management strategies that we
16 would like to see the applicant provide as
17 well.

18 That hopefully concludes our
19 verbal testimony and please accept my
20 apologies for the late submission. We are
21 hoping and trying to do much better.

22 CHAIRPERSON LOUD: No apology is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 necessary. We appreciate all your efforts and
2 those of DDoT to get the reports in.

3 I just want to encourage you every
4 opportunity you can to get it on time. It
5 makes for a hearing that can be conducted much
6 smoother and more quickly for all
7 participants.

8 Board Members, are there any
9 questions for Mr. Jennings?

10 I've got a quick question for you,
11 Mr. Jennings, and I made it through your
12 report, but I made it through very briefly.
13 So if some of my facts or assumptions are
14 incorrect, I apologize.

15 But one of the things you state on
16 page 2 is that the applicant did not provide
17 an analysis of level of service D for the 44th
18 Street and Benning Road intersection. I think
19 his testimony earlier was that it's a level of
20 service B. Is there a disconnect here
21 somewhere?

22 MR. JENNINGS: I would have to go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 back through their report. The last I saw the
2 44th and Benning, being an unsignalized
3 intersection; if I am incorrect, I will
4 certainly be happy to make that adjustment,
5 but it being unsignalized certainly caught our
6 eye in many ways. 44th and Benning is the
7 intersection that is most used by pedestrians.
8 In this instance if they were to walk north
9 and west to the site, and once again the
10 proposal is to have a retailer such as a
11 drugstore which we feel would generate that
12 many more pedestrian trips from the Benning
13 Metro Station on that south and east portion,
14 I guess you'd call it, of the site, at the
15 ground floor retail. But, you know, we'll go
16 back and I'm happy to take a look at the
17 traffic report again.

18 CHAIRPERSON LOUD: I think what
19 may have happened is that they were talking
20 about 44th and Benning as level of service B
21 and your report speaks to 45th and Benning.
22 So the error was probably just my quick review

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of it and picking out some things. So I don't
2 think you'll have to back and review it.

3 The second question I have
4 concerns just trying to understand the concern
5 about pedestrians that you have. And they've
6 testified that the traffic generation is
7 expected to drop by one-half as a result of
8 the proposed development from what it
9 currently is. And I understand your concern.
10 I think you agree with that. Your concern is
11 that the pedestrian use will increase because
12 more of the population will walk to work. But
13 in walking to work, would not they encounter
14 one-half of the traffic that exists at the
15 site now so that one might not necessarily
16 have the same level of concern about
17 pedestrian safety?

18 And again, if there's a
19 disconnect, just let me know.

20 MR. JENNINGS: Sure. What we took
21 into consideration when we made the statements
22 that are either in the report or what I may

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have just delivered via verbal testimony is we
2 took into consideration all seven days of the
3 week and especially the idea of having a sit-
4 down restaurant on the north and west portion
5 of the site. And if we can perhaps put
6 together a case scenario where it's -- opposed
7 to a church crowd going to a sit-down
8 restaurant and if there is a vehicle queue
9 that's competing with pedestrians that are
10 looking to enter that particular restaurant on
11 the north and west portion of the site,
12 perhaps that's really where we would have many
13 potential pedestrian impacts, certainly during
14 the work week we would see maybe a staggered
15 pedestrian level of service, those maybe
16 arriving between, you know, early as 7:30 and
17 8:00 and then going maybe as late as 9:30 and
18 10:00 to arrive to work. Therefore, those
19 conflicts are certainly there, just maybe not
20 as dense of a population as what you would
21 see, you know, maybe on a Saturday or a Sunday
22 with the vehicles competing against that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pedestrian flow on Benning Road.

2 CHAIRPERSON LOUD: Thank you.

3 Board Members, do you have any
4 questions for Mr. Jennings? If not, we'll
5 turn to Mr. Collins.

6 MR. COLLINS: Several questions
7 just following up on that one.

8 You mentioned that the DDoT
9 policies or standards is 60 feet from an
10 intersection.

11 MR. JENNINGS: That's correct.
12 And even during our March meeting it came to
13 light that the 44th Street curb cut perhaps
14 needed the thorough analysis that it did
15 receive and because it didn't breach that
16 design requirement.

17 MR. COLLINS: And the design
18 requirement is 60. And do you recall what the
19 distance is from Benning to the driveway
20 entrance?

21 MR. JENNINGS: Fifty-four.

22 MR. COLLINS: Fifty-four? And do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you recall whether there is any opportunity
2 for cars to drive down --

3 MR. JENNINGS: And from Blaine
4 Street to the driveway it's 24 feet, I
5 believe.

6 MR. COLLINS: Let me finish my
7 question.

8 Do you recall whether there is any
9 opportunity for cars driving into the garage,
10 into the driveway to go all the way down into
11 the garage before they have to meet a toll
12 collector or ticket taker, or something like
13 that?

14 MR. JENNINGS: Yes, the
15 conversation we had was I believe from March
16 that the gate, if you will, to enter into the
17 garage was somewhere down the ramp allowing
18 for queuing to occur.

19 MR. COLLINS: Okay. The analysis
20 that you had, I just want to make sure I
21 understand what you're not saying, you're not
22 saying that because there will be more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pedestrians coming to this building that this
2 approval should not be granted?

3 MR. JENNINGS: That's correct.

4 MR. COLLINS: All right. No more
5 questions.

6 CHAIRPERSON LOUD: Thank you, Mr.
7 Collins.

8 We would now go to the ANC. Is
9 anywhere here from the ANC?

10 Okay. There's not.

11 Was there an ANC report in the
12 file?

13 No. I didn't think there was. I
14 wanted to make sure that I had a complete
15 record. But we don't have an ANC report in
16 the file, nor do we have it listed in our
17 exhibit log.

18 So are there persons in support of
19 the application that have not had an
20 opportunity to testify?

21 Are there persons in opposition to
22 the application that have not had an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 opportunity to testify?

2 Then, Mr. Collins, we will turn to
3 you for closing remarks.

4 MR. COLLINS: Perhaps some
5 rebuttal as well.

6 CHAIRPERSON LOUD: Okay.

7 MR. COLLINS: First Mr. Edwards
8 and then Mr. George.

9 Mr. Edwards, you've heard the
10 testimony about the desire by DDoT to have the
11 location of the curb cut entrance on Blaine
12 Street and perhaps to have that 60 feet from
13 the intersection of Blaine and 45th. Would
14 you be able to design a ramp that could get
15 from that point into the garage?

16 MR. EDWARDS: At this point that
17 would be virtually impossible. As I mentioned
18 earlier, the slope goes up rather
19 precipitously as you're going up 44th Street
20 and Blaine Street. Just turning this corner
21 to the same point on Blaine Street, you're
22 already up four feet. If you're going 60 feet

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 up here, you're almost the better part of a
2 story above the point where you are down here
3 in terms of entering that garage. So if there
4 was a curb cut in this section of Blaine
5 Street, there would be no way physically to
6 actually get from that point to this point
7 here, which is probably only around 25 feet,
8 you would be going down almost the same amount
9 of distance that you're going across. And
10 we're limited by a 12 percent slope there. So
11 there would be no way to actually get a ramp
12 down into the garage from a curb cut on Blaine
13 Street.

14 The reason why this works as it's
15 shown is because we have this long area where
16 we can have the ramp and the queuing space
17 going down to get to that lower level garage
18 which is one level below the first floor.

19 MR. COLLINS: Assuming that you
20 could put a curb cut on Blaine Street, what is
21 directly across the street from there? Is
22 that commercial, is that residential?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. EDWARDS: This is residential
2 across the street from Blaine.

3 MR. COLLINS: Mr. George, your
4 testimony about the curb cut on 44th Street,
5 you testified that that in your opinion would
6 be acceptable in terms of traffic safety, is
7 that correct?

8 MR. GEORGE: That is correct.

9 MR. COLLINS: With the DDoT policy
10 of 60 feet from an intersection for a setback
11 and the applicant's provision of 54 feet from
12 Benning, do you see that from that point that
13 there is a significant difference that would
14 result in some traffic safety issue were it
15 not for 60 feet?

16 MR. GEORGE: Specifically you're
17 asking me to compare the impact of the 54
18 separation versus the 60?

19 MR. COLLINS: Yes, I am.

20 MR. GEORGE: Right. Yes. I would
21 say that is quite insignificant and it should
22 not cause any additional operational

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 constraints.

2 MR. COLLINS: And in terms of
3 traffic that may be coming southbound on 44th
4 Street to turn into the driveway entrance,
5 that driveway entrance from Blaine is a 25-
6 foot setback from Blaine Street, is that
7 correct?

8 MR. GEORGE: That is correct.

9 MR. COLLINS: And do you know
10 whether that meets the Zoning Regulation
11 requirement?

12 MR. GEORGE: As stated in the
13 Zoning Regulations, yes, it does.

14 MR. COLLINS: And in terms of
15 making that movement, can you describe how a
16 car would be able to make that movement in,
17 given the fact that there's a traffic light at
18 44th and that 44th Street is actually -- I'm
19 sorry, 44th and Benning traffic light and
20 given the width of 44th Street itself --

21 MR. GEORGE: Yes.

22 MR. COLLINS: -- and the absence

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of curbside parking?

2 MR. GEORGE: Yes. Yes, I think
3 you're referring to traffic that would be
4 turning left from 44th Street into the garage
5 entrance?

6 MR. COLLINS: That's correct.

7 MR. GEORGE: Right. Okay. First
8 of all, the traffic light at 44th and Benning
9 operates on roughly a 120-second cycle. Of
10 that, roughly 100 seconds is allocated to
11 traffic. Between 90 and 100 seconds is
12 allocated to traffic along Benning Road.
13 Therefore, traffic approaching from the north,
14 either from Blaine turning here or from
15 further north on Benning would have
16 considerable period of time when they would be
17 conflicting with little or not traffic that's
18 turning -- as they turn into the garage.

19 In addition to that, and I didn't
20 specifically testify to it, this is a 34-foot
21 wide roadway, between 34 and 36. And so in
22 effect if a vehicle is turning left, there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be enough room for a vehicle to pass by
2 to proceed south. And again, we're talking
3 about vehicles moving rather slowly
4 approaching a red signal faced to the south.

5 Similarly, going to the north, if
6 a vehicle is slowing to turn right into the
7 garage, there would be adequate room for a
8 vehicle to pass by. So we have a situation
9 here that does accommodate the movement of
10 vehicles.

11 In relation to that, I would like
12 to point out that we did look closely at the
13 pedestrian movements and the major movements
14 are along Benning Road crossing along here.
15 And from the community, the pedestrian
16 movements, they are oriented obviously toward
17 45th to get into the garage. So at this
18 point, there are not major conflicts between
19 the vehicles turning into the garage entrance
20 and the pedestrians along the adjacent
21 sidewalks. Does that --

22 MR. COLLINS: Yes, thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GEORGE: Okay. Great.

2 MR. COLLINS: Could you explain
3 what the yellow lines are on that drawing on
4 both sides of Blaine Street?

5 MR. GEORGE: Yes. We wanted to
6 highlight that these were residential parking
7 permit spaces. RPP usually is the reference.
8 And by that, they're restricted to two-hour
9 uses by -- except for Ward 7 permit holders.

10 MR. COLLINS: And you understand
11 that if that was to be changed in any way that
12 that would have to go through a separate
13 process?

14 MR. GEORGE: Yes, sir, I do.

15 MR. COLLINS: And is it your
16 understanding that that is proposed to be
17 changed in this development process now?

18 MR. GEORGE: Not that it should be
19 changed, but I think there's the understanding
20 that there could be a service, some sort of
21 on-street service delivery space there, which
22 may encroach. It may require one or two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 spaces. Well, I think typically DDoT requires
2 around 30 to 40 feet, which would be two
3 spaces along this edge, this end of the
4 street.

5 MR. COLLINS: But that's not a
6 requirement of the Zoning Regulations?

7 MR. GEORGE: No.

8 MR. COLLINS: For this project?

9 MR. GEORGE: No. Yes.

10 MR. COLLINS: All right.

11 Just bear with me a second.

12 The DDoT report made some mention
13 about the need to have a loading dock manager.

14 MR. GEORGE: Yes.

15 MR. COLLINS: Given the nature of
16 the building, the nature of the uses, the size
17 of the building, do you believe in your
18 professional opinion that a loading dock
19 manager would be a requirement for this
20 building?

21 MR. GEORGE: The term "loading
22 dock manager" I think could be interpreted in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 many different ways and I'm reluctant to
2 answer that without some further definition as
3 to what do you mean, or what DDoT may mean by
4 a "loading dock manager." If that's
5 interpreted to mean a full-time person looking
6 at the loading off the site, then I would say
7 probably not. But outside of that, I would
8 not be able to comment based on the expertise
9 that I offer her.

10 MR. COLLINS: Okay. Final
11 question. You have seen the proposed TDM
12 strategies in the DDoT report, is that
13 correct?

14 MR. GEORGE: Yes. Yes, I have.

15 MR. COLLINS: And you've had an
16 opportunity to review them?

17 MR. GEORGE: Yes, sir.

18 MR. COLLINS: And let me back up a
19 second. Let me ask Mr. Tolson.

20 You've also had a chance to review
21 those TDM strategies in the DDoT as well?

22 MR. TOLSON: Yes, I have.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: And as the developer
2 of the building, but not the user of the
3 building, not the occupant of the building,
4 not the manager of the building, would you be
5 in a position to comply with each and every
6 one of those requirements?

7 MR. TOLSON: Well, not each and
8 every one of the requirements in that some of
9 the requirements would specifically be the
10 obligation of the tenant and not the
11 developer.

12 MR. COLLINS: Would you, as the
13 developer, be willing to enter into discussion
14 with the D.C. Government as the intended user
15 of this building that they, as the manager,
16 the occupant of the building, would take on
17 some of these requirements as a condition of
18 the building management contract?

19 MR. TOLSON: Absolutely.

20 MR. COLLINS: Mr. George, I'm
21 going to hand you a document I think that
22 you've seen before and ask if you believe that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 these are reasonable alternative TDM
2 strategies based upon what is contained in the
3 DDoT report?

4 MR. GEORGE: Yes, sir. I think it
5 incorporates or encompasses most of the
6 comments that they've had and I don't know
7 whether the Board Members have this.

8 CHAIRPERSON LOUD: Mr. Collins, if
9 we have a copy of that, it would be helpful to
10 look at it as you voir dire the witness.

11 MR. COLLINS: Again, we've had
12 just one business day to respond to this and
13 we've taken a look at it and --

14 CHAIRPERSON LOUD: I understand.

15 MR. GEORGE: Yes, but I would like
16 to comment that I think the measures that are
17 included here, they're all supportive of the
18 TDM characteristics which the applicant has
19 pointed out as being highly desirable. It
20 provides for bicycle parking. It provides for
21 preferential parking for carpools, which is
22 certainly a strong TDM measure. It provides

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for free parking to be available for car
2 sharing or a Zipcar, what we typically refer
3 to as Zipcar-type of spaces. It provides for
4 further discussions or interaction with DDoT
5 with respect to a SmartBike location. That's
6 the fourth bullet. I think that was one of
7 the items in the DDoT report. A web site.
8 Internet communication is definitely
9 supportive of a TDM and it provides for that.
10 A centrally-located lobby kiosk bulletin board
11 to communicate information on bus schedule,
12 train schedules, etcetera. It provides for
13 what's generally referred to as a site
14 transportation coordinator, or an employee
15 transportation coordinator in the penultimate
16 bullet to coordinate and promote the TDM
17 strategies. And it provides for periodic
18 monitoring and evaluation. I think that's
19 typically a requirement to ensure
20 effectiveness and that would include tweaking
21 the planners necessary, but providing for
22 those reports to be done.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 So I think that all of these are
2 definitely in keeping with typical
3 transportation planning, transportation
4 management plans, or TDM strategies.

5 MR. COLLINS: Mr. Edwards, could I
6 just ask you one question?

7 On the first bullet point, if
8 you'd just take a look at what Mr. George was
9 looking at there about the five percent of
10 bicycle?

11 MR. EDWARDS: Yes.

12 MR. COLLINS: And this project has
13 a unique feature, and that is with regard to
14 bicycles. Is it five percent of the vehicles?

15 MR. EDWARDS: It's five percent of
16 the peak users. Since this building is
17 pursuing a LEED certification, one of the
18 credits that we are pursuing is involving
19 alternative transportation. So already
20 designed into the building is secure bike
21 storage for five percent of the peak users of
22 the building, which is considerably more than

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 five percent of the parking total. And that
2 includes showering facilities that are
3 consistent with what appears here as well.

4 MR. COLLINS: Thank you.

5 And, Mr. Tolson, in rounding out
6 this line of questioning, you've had a chance
7 to review these alternative proposed TDM
8 measures. Are these measures that you're
9 willing to incorporate into your building
10 program?

11 MR. TOLSON: Yes, they are.

12 MR. COLLINS: Thank you. There's
13 nothing further.

14 CHAIRPERSON LOUD: Thank you.

15 MR. COLLINS: Well, I guess my
16 closing.

17 My closing is that --

18 CHAIRPERSON LOUD: Can I ask one
19 quick question of your witness on rebuttal?

20 Because again we're just getting
21 both the TDM and the counter to it, are there
22 any specific things that were rejected in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DDoT's TDM? Some were reworded, but just off
2 the top of your head if you know which ones
3 were just rejected outright so we can --

4 MR. COLLINS: I can go through
5 that, if you'd like.

6 CHAIRPERSON LOUD: Okay.

7 MR. COLLINS: Anything having to
8 do with charging a fee or a reduced fee, or no
9 fee, since the developer is not the manager,
10 is not the tenant, these are things that the
11 owner, the developer of the project would have
12 to negotiate with the ultimate user of the
13 property. And that would be reflected in the
14 rent somehow. That's just not something that
15 can be committed to today.

16 CHAIRPERSON LOUD: Can you look on
17 page 3 of Exhibit 27?

18 MR. COLLINS: Sure.

19 CHAIRPERSON LOUD: And there are
20 only a handful there.

21 MR. COLLINS: The first bullet
22 point?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Yes.

2 MR. COLLINS: The first bullet
3 point, last sentence. Second bullet point.
4 There's a difference on the availability of
5 the car sharing vehicles. Twenty-four hours
6 a day, seven days a week. We don't know what
7 agency is going in the building and whether
8 they'd be able to keep their garage open 24/7.
9 It's a security issue. We'd have to negotiate
10 that and discuss that with the ultimate user
11 of the building.

12 CHAIRPERSON LOUD: And you want to
13 limit that to two as well? They just say
14 provide free parking.

15 MR. COLLINS: Oh, we've said that
16 we would do that.

17 CHAIRPERSON LOUD: Okay.

18 MR. COLLINS: That's for the
19 Zipcar.

20 CHAIRPERSON LOUD: Okay. All
21 right.

22 MR. COLLINS: Bullet point 3 is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 not in the revised -- the applicant's version.
2 Bullet point 4 is not in the applicant's
3 version. And the final bullet point is not in
4 the applicant's version.

5 CHAIRPERSON LOUD: Thank you, Mr.
6 Collins. That's a big help.

7 Okay. Would you like to move to
8 your closing?

9 MR. COLLINS: Thank you. It's
10 been a long morning/afternoon for you.

11 We believe that we've given you a
12 complete picture of what the proposal is here.
13 The areas of relief are, we believe, minor.

14 The roof structure special
15 exception with respect to the location of the
16 core and things, we think we have a very good
17 reason for that. We think that ultimately it
18 will result in less construction on the roof
19 than would otherwise be required by Zoning.
20 That's one of the anomalies of the Zoning
21 Regulations. The Regulation would require us
22 putting more stuff on the roof than we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proposing to put on the roof.

2 In terms of parking, the parking
3 reduction of 25 percent has been supported by
4 both DDoT and OP. It's apparently the wave of
5 the future. And the Zoning Commission is
6 entertaining now with Office of Planning the
7 idea of reducing parking requirements across
8 the city. We believe that given the transit-
9 oriented development nature of this project,
10 in close proximity to Metrorail and Metrobus,
11 that the reduction of 25 percent is
12 appropriate.

13 These other issues, we believe
14 that we have addressed them adequately and
15 that the requests that we're asking for here
16 will not result in any negative impact on the
17 public good or in the community. And we
18 request your approval.

19 CHAIRPERSON LOUD: Thank you, Mr.
20 Collins. I think we are ready to deliberate
21 today.

22 Before we move into deliberations,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I just want to say again if there's anyone
2 here who's waiting for the Central Union case
3 which was to start at 1:00, I anticipate that
4 we're finishing up the morning hearing
5 schedule. This probably won't take more than
6 an additional 10 minutes or so. So if you can
7 be patient, we'll get to that case and that
8 won't take us long either.

9 With that being said, why don't we
10 move into deliberation, if Board Members are
11 ready to? And, Mr. Dettman, I'll turn to you
12 to start us off.

13 VICE-CHAIRPERSON DETTMAN: Thank
14 you, Mr Chairman.

15 What I'd like to do is just kind
16 of briefly frame our discussion. And I'll
17 start off by saying, you know, two areas of
18 relief are being pursued here. They're both
19 special exceptions. One is the special
20 exception by way of 411.11, from the roof
21 structure provisions of section 411. And the
22 other one is a special exception under 2108

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for a reduction in the required number of off-
2 street parking spaces. And I'll start with
3 the roof structure relief.

4 As I stated, this is a special
5 exception under 411.11. I won't read it in
6 its entirety, but essentially 411.11 states
7 that a special exception is warranted if
8 compliance with all of the roof structure
9 provisions of 411 is impracticable for a
10 variety of reasons where strict enforcement of
11 the Zoning Regulations would be prohibitively
12 costly or unreasonable.

13 I think in the pleadings that were
14 submitted prior to the hearing, as well as in
15 the testimony, I think that the applicant
16 meets their burden for the roof structure
17 relief under 411.11 for a number of reasons.
18 Mainly, we heard in the oral testimony that
19 there are some structural reasons that are
20 necessitating more than one roof structure
21 enclosure.

22 Additionally, as Mr. Collins

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 stated in his closing remarks, really the
2 regulations would cause more construction on
3 the roof and I think the spirit of 411 is to
4 minimize the visibility of roof structures on
5 top of a building and strict compliance would
6 actually increase the visibility of roof
7 structures. So what the applicant has done is
8 propose two roof structures, once being about
9 15 feet, the other being nine-foot-eight
10 inches. They are separated and they stated
11 that extending the walls to make them into one
12 enclosure would add to the bulk on the roof
13 and increase visibility from the street. And
14 I assume that by raising the height of the
15 nine-foot roof structure and building
16 unnecessary walls in order to make them one
17 enclosure would also be costly to the
18 applicant. So again, I think they meet their
19 burden for 411.

20 And let me quickly turn to 2108 to
21 address the parking reduction. And as I do,
22 I can open it up to other Board Members'

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 comments with respect to the special exception
2 under 411.

3 CHAIRPERSON LOUD: I agree with
4 you, Board Member Dettman. Just wanted to add
5 that I found Mr. Edwards' testimony, and you
6 cited it pretty much without mentioning his
7 name, very persuasive on that point in terms
8 of there being the two rooftop structures and
9 what would happen if they were to try to
10 harmonize both structures into one enclosure
11 and creating, I think he testified 140-foot
12 unsightly structure on the roof, and the need
13 to have separate enclosures in the first place
14 because the cooler and the elevator shaft both
15 require separate enclosures and some of the
16 core requirements of the building being a
17 driver for that. So I would agree with your
18 articulation and found applicant's
19 presentation of the evidence very persuasive.

20 COMMISSIONER TURNBULL: Mr. Chair,
21 I would concur with Mr. Dettman on all his
22 remarks. I would especially point out that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 under 411.11 for the parking, I think that
2 this is an exceptional job. This is a
3 transit-oriented development. They're going
4 for LEED certification. And under the
5 sustainable site section of the LEED, you can
6 see on their plans where they've got preferred
7 parking, they've got the bike racks, along
8 with the handicap within. I think they're
9 meeting the intent of a lot of the orientation
10 that we need to be moving in and I think as a
11 special exception that this more than
12 qualifies.

13 CHAIRPERSON LOUD: Since you
14 mentioned parking, did you want to segue into
15 parking, Mr. Dettman?

16 VICE-CHAIRPERSON DETTMAN:
17 Certainly. As I stated when I started, this
18 is a special exception under 2108 for the
19 reduction in the required number of parking
20 spaces. I think it's worth noting that the
21 Board kind of needs to look at this in a
22 narrow fashion with respect to the potential

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 impacts. This isn't a special exception for
2 the use. We're not looking at the use. We're
3 looking at the reduction in parking. And so
4 I think it's important to approach the traffic
5 study to identify what are the impacts that
6 this reduction is actually going to have on
7 congestion in the neighborhood due to persons
8 circling the neighborhood looking for a
9 parking space because they can't find one in
10 the garage because we've reduced the parking?
11 And also, you know, what are the impacts that
12 the reduction is going to have on available
13 on-street parking due to the spillover caused
14 by the garage being full?

15 And so with that narrow focus,
16 looking at 2108 and quickly going through the
17 provisions, 2108.2 says that the parking
18 cannot be reduced in excess of 25 percent.
19 The applicant is required to provide 360
20 spaces. They're proposing 270, which is
21 exactly a 25-percent reduction.

22 2108.3 says the Board shall give

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 consideration to -- and it enumerates five
2 items that we need to consider in order to
3 analyze the special exception. The first one
4 is the nature and location of the structure.
5 And what I'll do is rely upon DCOP's very well
6 prepared report for the analysis under 2108.
7 The nature and location of the structure, it's
8 located along Benning Road across the street
9 from the Benning Road Metro Station. I
10 believe it's 200 feet from the Metro Station.
11 I think its very close proximity to the
12 Metrorail, as well as adequate service by
13 Metrobus warrants this reduction.

14 The maximum number of students,
15 employees, guests that can be expected to come
16 to the proposed structure is 2108.3(b). The
17 transportation study, in conducting their trip
18 generation analysis, relied upon an existing
19 office building, which I believe the current
20 tenant is D.C. Government's Child and Family
21 Services. That building is very similar to
22 what's being proposed here. And so they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 conducted their study and essentially what
2 they found is that there's a very high
3 reliance on public transit. They came up with
4 75 percent. They came up with vehicle trip
5 rates for that building. And in order to gain
6 a sense of comfort, what they did is they
7 padded the vehicle trip rate and applied it to
8 this site.

9 Page 15 of the transportation
10 study lays out what could be expected for trip
11 generation on this site. In total, in the
12 a.m. we're looking at 73 trips. For the p.m.,
13 looking at 123. And so with that in mind and
14 stating that there's 270 parking spaces being
15 provided, it appears, if these numbers are an
16 adequate representation of what can be
17 expected, there shouldn't any spillover into
18 the neighborhood.

19 2108.4, the applicant has stated
20 that they don't intend on relying upon a ride
21 sharing program. And 2108.5 requires the
22 application to be submitted to DDoT. It

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 appears as if the applicant has met their
2 burden under 2108. DDoT has raised some
3 concerns with respect to the location of the
4 driveway. From a zoning perspective it looks
5 like it's in compliance with the Zoning
6 Regulations. And I can't quite see the
7 connection between the location of the
8 driveway and the potential impacts that the
9 reduction is going to have, which is I believe
10 our narrow focus.

11 And my last point is DDoT has
12 suggested some TDM measures. And the first
13 two, with respect to bicycle parking and
14 preferred parking for carpools, as the
15 applicant stated, you can actually see on the
16 submitted plans that they've decided to comply
17 with those two suggestions.

18 With respect to the rest of the
19 TDM measures which are in our Exhibit 27 and
20 the TDM measures for Benning Station filing
21 that was just given to us by the applicant, I
22 think they're very, very good recommendations

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and I could see including them, as suggested
2 by DDoT, in our order as conditions. I could
3 only see that if we were confident that there
4 is going to be a potential for spillover, that
5 there is the potential for adverse impact or
6 a minor adverse impact on the neighborhood and
7 that what we would do is include these as
8 conditions in order to mitigate any kind of
9 impact. But I really don't see in reviewing
10 the transportation report, which signed off on
11 by DDoT, and through the oral testimony, and
12 the fact that there's no opposition here, I
13 don't really see a potential here for any
14 adverse impact on the surrounding neighborhood
15 due to the reduction in the number of parking
16 spaces.

17 That being said, I'm in support of
18 the application. I'm prepared to make a
19 motion.

20 CHAIRPERSON LOUD: Quick
21 clarification question.

22 And thank you. That was an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 excellent summary of the evidence and the
2 different positions on the table.

3 With respect to the TDM measures
4 for Benning Station that was just submitted by
5 the applicant, are suggesting that those
6 measures as well go beyond mitigation and
7 aren't necessary? These are measures that the
8 applicant I believe is willing to abide by? I
9 just wasn't clear.

10 VICE-CHAIRPERSON DETTMAN: I think
11 the applicant has indicated they're willing to
12 abide by these because they're smart
13 transportation measures, they're, you know,
14 smart urban planning practices, they're
15 sustainable measures that clearly the
16 direction we're going these days. But looking
17 through them I don't see how -- other than the
18 ones that can clearly be seen on the plan like
19 the provision of bicycle parking spaces, which
20 is something that could potentially lead to
21 people deciding not to drive to work which
22 reduces the number of trips to this site,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 preferred parking for carpools, I think that's
2 a measure that could potentially drive down
3 the number of cars coming to this site. But
4 the other ones, I think that they're laudable.
5 I think that they're practices that the
6 applicant or the future tenant of this
7 building should do and could do, but I just
8 don't see how by including them as conditions
9 in the order what we're actually mitigating.

10 CHAIRPERSON LOUD: Thank you, Mr.
11 Dettman.

12 I'm inclined to agree with you
13 both on the substance and on the procedure.
14 I think if we get these kinds of reports in as
15 came in from DDoT, not to beat up on DDoT at
16 all; they're always very well-done reports,
17 that it would allow for more of that kind of
18 discussion where some of the things you
19 mentioned can be fleshed out ahead of the
20 hearing and we're not sitting on the dais
21 trying to figure it out in real time. So I
22 would tend to agree that the study itself

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 should be the foundation upon which we make
2 determinations about adverse impacts and
3 whether or not we even need TDMs. And I think
4 in this case the study was pretty strong.

5 I did want to go back to one of
6 the things you said, which would be 2108.3(b)
7 where they talked about the maximum number of
8 students, employees, etcetera. I think it was
9 Mr. Soto who testified that the original
10 lessee may not be in the picture any longer,
11 but that the applicant is continuing to work
12 with the D.C. Government. And given the size
13 of the building and that it's not going to
14 grow, they have a good sense of the size of
15 the tenant that will come and I think one of
16 the witnesses testified to maybe 950
17 employees. So that even though the lessee is
18 not known and some of the projections in the
19 study were based on a different tenant, that
20 that number probably won't change, as I
21 understood the testimony. So I agree with the
22 conclusion. Just wanted to note that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Mr. Turnbull, did you have any
2 further?

3 COMMISSIONER TURNBULL: I have no
4 other comments, Mr. Chair.

5 CHAIRPERSON LOUD: Okay. I think
6 Mr. Dettman mentioned that there was a motion.
7 Okay.

8 VICE-CHAIRPERSON DETTMAN: Thank
9 you, Mr. Chairman. Let me find my stuff here.

10 Mr. Chairman, if there's no
11 further deliberation, I would move for
12 approval of application No. 17890 of Benning
13 Station, LLC, pursuant to 11 DCMR 3104.1 for
14 a special exception for a reduction in the
15 number of required off-street parking spaces
16 under section 2108 and a special exception
17 from the roof structure provisions under
18 subsection 411.11, at premises 4400-4430
19 Benning Road, N.E.

20 COMMISSIONER TURNBULL: Second.

21 CHAIRPERSON LOUD: Thank you, Mr.
22 Dettman. Thank you, Mr. Turnbull.

NEAL R. GROSS

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

1 The motion has been made and
2 seconded for approval of application No. 17890
3 as stated by Mr. Dettman. All those in favor,
4 say aye.

5 (Chorus of ayes.)

6 CHAIRPERSON LOUD: All those
7 opposed?

8 All those in abstention?

9 Ms. Rose, can you read back the
10 vote, please?

11 MS. ROSE: Staff will record the
12 vote as 3-0-2 with Mr. Dettman, Mr. Turnbull
13 and Mr. Loud to approve the application, and
14 no other Board Members participating.

15 CHAIRPERSON LOUD: Thank you, Ms.
16 Rose.

17 I do believe that this could be a
18 summary decision? Okay. And so we're going
19 to try to make it a summary decision.

20 Now in terms of our goal of trying
21 to have summary decisions available same day,
22 how's it look for this one?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MOY: Oh, yes, I think, Mr.
2 Loud, to be realistic, tomorrow morning.

3 CHAIRPERSON LOUD: Tomorrow
4 morning.

5 MR. COLLINS: Okay.

6 CHAIRPERSON LOUD: All right.
7 Thank you, Ms. Rose. Thank you, Mr. Moy.
8 Thank you, applicants.

9 (Whereupon, at 12:17 p.m. off the
10 record until 12:19 p.m.)
11
12
13
14
15
16
17
18
19
20
21
22

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1

2

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

3

12:19 p.m.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

CHAIRPERSON LOUD: Please come to
order. Ladies and gentlemen, this is the
April 21st public hearing of the Board of
Zoning Adjustment of the District of Columbia.

My name is Marc Loud, chairperson.
Joining me today are Vice-Chair Shane Dettman
to my right. To his immediate right, Mr.
Michael Turnbull from the Zoning Commission.
To my left, Mr. Clifford Moy, Secretary of the
BZA. To his immediate left, Ms. Lori Monroe
from the Office of the Attorney General. And
on the far end, Ms. Tracey Rose from the
Office of Zoning.

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

Please be aware that this
proceeding is being recorded by a court
reporter and is also web cast live.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Accordingly we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

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

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

19 The order of procedure for special
20 exceptions and variances is: statement and
21 witnesses of the applicant; Government reports
22 including the Office of Planning, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Department of Transportation, etcetera; report
2 of the Advisory Neighborhood Commission;
3 parties or persons in support; parties or
4 persons in opposition; and closing remarks by
5 the applicant.

6 Pursuant to sections 3117.4 and
7 3117.5, the following time constraints will be
8 maintained. The applicant, appellant, persons
9 and parties, except an ANC in support,
10 including witnesses, are allotted 60 minutes
11 collectively. Appellees, persons and parties
12 except an ANC in opposition, including
13 witnesses are allotted 60 minutes
14 collectively. Individuals are allotted three
15 minutes.

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

21 The ANC within which the property
22 is located is automatically a party in a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 special exception or variance case.

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

6 The record will be closed at the
7 conclusion of each case except for any
8 material specifically requested by the Board.
9 The Board and the staff will specify at the
10 end of the hearing exactly what is expected
11 and the date when the persons must submit the
12 evidence to the Office of Zoning.

13 After the record is closed, no
14 other information will be accepted by the
15 Board.

16 The Sunshine Act requires that the
17 public hearing on each case be held in the
18 open before the public. The Board may,
19 consistent with its rules of procedure and the
20 Sunshine Act, enter executive session during
21 or after the public hearing on a case for
22 purposes of reviewing the record or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 deliberating on the case.

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

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

11 The Board will make every effort
12 to conclude the public hearing as near as
13 possible to 6:00 p.m. If the afternoon cases
14 are not completed at 6:00 p.m., the Board will
15 assess whether it can complete the pending
16 case or cases remaining on the agenda. We
17 don't have that issue today.

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 withdrawal, or whether proper and adequate
2 notice of the hearing has been given.

3 If you are not prepared to go
4 forward with a case today, or if you believe
5 that the Board should not proceed, now is the
6 time to raise such a matter.

7 Does the staff have any
8 preliminary matters?

9 MS. ROSE: Good afternoon, Mr.
10 Chairman and Members of the Board. Staff has
11 two preliminary matters this afternoon.

12 The first relates to appeal No.
13 17903 of Frederick H. Graefe Trust. This
14 appeal has been withdrawn.

15 CHAIRPERSON LOUD: Thank you, Ms.
16 Rose. So noted for the record.

17 The second preliminary matter?

18 MS. ROSE: The second preliminary
19 matter is a request for postponement in the
20 application of Central Union Mission, No.
21 17717.

22 Would you like for me to read the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 case into the record, or would you like to
2 just proceed on the request?

3 CHAIRPERSON LOUD: Do we have to
4 have the case number and everything read into
5 the record? I'm not certain. Whichever way
6 is the proper way.

7 MS. ROSE: Mr. Moy?

8 MR. MOY: Mr. Chairman, it's been
9 the practice of the Board to read the record.
10 It makes -- because of the public transcript
11 for research at a later point.

12 CHAIRPERSON LOUD: Okay. Thank
13 you, Mr. Moy, as always.

14 And, Ms. Rose, we'll follow the
15 practice.

16 MS. ROSE: Yes. Application No.
17 17717 of Central Union Mission, pursuant to 11
18 DCMR section 3104.1, for a special exception
19 to allow the construction of a mixed-use
20 building with community-based residential
21 facility and ground floor retain totally in
22 excess of 12,000 square feet of land area,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 pursuant to section 1329.2(b), Zoning
2 Commission Case. No. 06-48. This is Georgia
3 Avenue Overlay, C-3-A District at premises
4 3506-3512 Georgia Avenue, N.W., and 714 Newton
5 Place, N.W., Square 2895, Lots 825, 826, 830
6 and 831.

7 CHAIRPERSON LOUD: Thank you, Ms.
8 Rose.

9 Do we need to swear anybody in?

10 Okay. We do not.

11 So why don't we just move forward?

12 I understand there's a request for a
13 continuance, and we're looking at perhaps
14 sometime in September. But it might be good
15 to just go on the record with the basis for
16 the continuance and then we can sort out the
17 dates and stuff.

18 MS. BRAY: I'd be happy to. Thank
19 you, Chairman Loud.

20 CHAIRPERSON LOUD: And thanks for
21 your patience.

22 MS. BRAY: No problem at all. My

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 name is Kinley Bray with the law firm of Arent
2 Fox on behalf of the Central Union Mission,
3 the applicant in this case.

4 We submitted a request for
5 postponement on April 14th, on the basis of
6 the nature of the use proposed will be
7 changing. Just procedural history, this
8 case has twice been postponed. It was
9 originally scheduled for February of 2008 and
10 it came in as a request for a special
11 exception for construction of any building on
12 land area that is greater than 12,000 square
13 feet as required by the Georgia Avenue
14 Commercial Overlay.

15 The application actually came in
16 prior to the codification of the Georgia
17 Avenue Overlay, as a matter of fact. And it
18 came in with a hearing notice that did not
19 reflect the actual uses proposed because the
20 special exception is for the building. And
21 the threshold or the trigger for the special
22 exception is the size of the lot in this case,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 regardless of the use proposed.

2 Interestingly enough, the Central
3 Union Mission has been in the news over the
4 past year as entering or attempting to enter
5 into a negotiation with the District of
6 Columbia to exchange the subject property with
7 the Gales School at 65 Massachusetts Avenue to
8 serve a homeless population closer to
9 downtown. Those negotiations stalled mostly
10 on the basis of a lawsuit to enjoin the
11 contract brought by the ACLU and Taxpayers
12 United Against Church and State.

13 The Mission has taken a step back,
14 looked at its plans, consulted with
15 Councilmember Graham, other members of the
16 community and has determined that given the
17 significant level of opposition to a
18 community-based residential facility, which is
19 what the Mission was proposing in this
20 building, that it will eliminate that use and
21 instead propose to construct a mixture of
22 housing at various rates below and at market

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and some combination of retail, which is
2 required by the Georgia Avenue Overlay, and
3 mission programs that are not residentially-
4 based. There may be administrative offices,
5 for instance.

6 That mixture of uses has not yet
7 been determined. Although it was our intent
8 to move forward and get you revised plans in
9 advance of this hearing date, after consulting
10 with Office of Zoning staff and the hearing
11 notice having noted a community-based
12 residential facility being proposed, we
13 determined that re-advertisement was probably
14 necessary if the uses were going to be
15 changed. And given that the Mission would
16 rather do it once and do it right, as we like
17 to say, we are requesting postponement at this
18 time.

19 The Mission is undergoing a
20 process with its architect to fit out the
21 building that is proposed in the application
22 that's pending before you for the different

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 use as housing and a mixture of various other
2 uses that are permitted in the C-3-A Zone and
3 has consulted with the community, including
4 the Advisory Neighborhood Commission and
5 Councilmember Graham, as well as the Office of
6 Planning of its intent to amend the
7 application.

8 I understand the next available
9 hearing dates are probably after the August
10 recess, which is why I suggested that the
11 Board scheduled this for the next available
12 date after that recess.

13 And I'm happy to answer any other
14 questions you may have.

15 CHAIRPERSON LOUD: Thank you.

16 Let me turn to Board Members and
17 see if there are any questions.

18 Okay. We understand the situation
19 you find yourself in and, you know, can't
20 comment one way or other on the case, but the
21 idea of increased ground floor retail on
22 Georgia Avenue has some appeal, so certainly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can understand the shift in that direction.

2 Why don't we just look at the
3 calendar and see if we can get this scheduled
4 for September?

5 MS. ROSE: Staff is recommending
6 September 22nd at 1:00.

7 CHAIRPERSON LOUD: September 22nd
8 at 1:00?

9 MS. BRAY: No objection.

10 CHAIRPERSON LOUD: No objection to
11 that? Okay. That was easy.

12 MS. BRAY: I understand that the
13 Advisory Neighborhood Commission does not meet
14 in the month of August. So the applicant is
15 prepared to file an amended application in
16 advance of the July Advisory Neighborhood
17 Commission date, which I believe is the second
18 week in July. So we'd be probably looking at
19 a filing in late June.

20 CHAIRPERSON LOUD: Do you have to
21 re-advertise?

22 MS. BRAY: That's my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 understanding. Even though the special
2 exception does not relate to the use, but
3 because the use was mentioned in the hearing
4 notice that we ought to re-advertise.

5 CHAIRPERSON LOUD: Okay. So
6 assuming then you do that with some haste,
7 they'll get that notification as well.

8 MS. BRAY: That's right.

9 CHAIRPERSON LOUD: Okay. As well
10 as the plans. Okay.

11 Is there anything further?

12 All right. Well, we'll see you
13 again on September 22nd at 1:00.

14 MS. BRAY: Thank you very much.

15 CHAIRPERSON LOUD: Thank you.

16 If there's nothing further, this
17 meeting is adjourned.

18 (Whereupon, the hearing was
19 concluded at 2:30 p.m.)
20
21
22

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701