

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

OCTOBER 28, 2008

+ + + + +

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., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC D. LOUD Vice Chairman
SHANE L. DETTMAN Board Member
(NCPC)
MARY OATES WALKER Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK
ARTHUR JACKSON

This transcript constitutes the
minutes from the Public Hearing held on
October 28, 2008.

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

10:14 a.m.

CHAIRPERSON MILLER: Good morning, ladies and gentlemen. This hearing will, please, come to order. This is the October 28, 2008 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller. I'm the Chair of the BZA.

Joining me as we speak is our Vice Chair, Mr. Marc Loud, to my right and next to him is Mr. Anthony Hood from the Zoning Commission. To my left is Mary Oates Walker and Shane Dettman, Board Members, and next to Mr. Dettman is Mr. Cliff Moy from the Office of Zoning, Ms. Lori Monroe from the Office of Attorney General and Ms. Beverley Bailey 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 advised that this proceeding is being

1 recorded by a Court Reporter and is also
2 webcast live. Accordingly, we must ask you to
3 refrain from any disruptive noises or actions
4 in the hearing room.

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

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

20 The order of procedure for special
21 exceptions and variances is as follows:
22 First, statement and witnesses of the

1 applicant. Second, Government reports,
2 including Office of Planning, Department of
3 Public Works, DDOT, etcetera. Three, report
4 of the Advisory Neighborhood Commission.
5 Four, parties or persons in support. Five,
6 parties or persons in opposition. Six,
7 closing remarks by the applicant.

8 Pursuant to Section 3117.4 and
9 3117.5 of our Zoning Regulations, the
10 following time constraints will be maintained:
11 The applicant, persons and parties, except an
12 ANC, in support, including witnesses, 60
13 minutes collectively. Persons and parties,
14 except an ANC, in opposition, including
15 witnesses, 60 minutes collectively.

16 Individuals 3 minutes.

17 These time restraints do not
18 include cross examination and/or questions
19 from the Board. Cross examination of
20 witnesses is permitted by the applicant or
21 parties. The ANC within which the property is
22 located is automatically a party in a special

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1 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. After the
13 record is closed, no other information will be
14 accepted by the Board.

15 The Sunshine Act requires that the
16 Public Hearing on each case be held in the
17 open before the public. The Board may,
18 consistent with it's Rules of Procedure and
19 the Sunshine Act, enter Executive Session
20 during or after the Public Hearing on a case
21 for purposes of reviewing the record or
22 deliberating on the case.

1 The decision of the Board in these
2 contested cases must be based exclusively on
3 the public record. To avoid any appearance to
4 the contrary, the Board requests that persons
5 present not engage the Members of the Board in
6 conversation.

7 Please, turn off all beepers and
8 cell phones, at this time, so as to not
9 disrupt the proceedings.

10 The Board will now consider any
11 preliminary matters. Preliminary matters are
12 those which relate to whether a case will or
13 should be heard today, such as requests for
14 postponement, continuance or withdrawal or
15 whether proper and adequate notice of the
16 hearing has been given. If you are not
17 prepared to go forward with a case today or if
18 you believe that the Board should not proceed,
19 now is the time to raise such a matter.

20 Does the staff have any
21 preliminary matters?

22 MS. BAILEY: Madam Chair, Members

1 of the Board, to everyone, good morning. The
2 first preliminary -- well, the only
3 preliminary matter has to do with Application
4 No. 17834. That application was withdrawn,
5 Madam Chair.

6 CHAIRPERSON MILLER: Thank you.
7 And no action is required on the part of the
8 Board. Is that correct?

9 MS. BAILEY: None is required.

10 CHAIRPERSON MILLER: Okay. Then
11 let's proceed with the agenda. Would all
12 individuals wishing to testify today either in
13 support or opposition, please, rise to take
14 the oath and Ms. Bailey will administer the
15 oath.

16 MS. BAILEY: Would you, please,
17 raise your right hand?

18 (Whereupon, the witnesses were
19 sworn.)

20 MS. BAILEY: Thank you. The first
21 case this morning is Application No. 17835 of
22 Louis P. Fiore, pursuant to 11 DCMR 3104.1 and

1 3103.2, for a special exception to construct
2 an accessory garage serving an existing one-
3 family row dwelling under section 223, not
4 meeting the lot occupancy, section 403,
5 requirements, and variance from the alley set-
6 back requirements under subsection 2300.4.
7 The property is Zoned R-4. It is located at
8 225 9th Street, N.E., Square 939, Lot 95.

9 Madam Chair, there is a request
10 for party status in opposition to this
11 application from William and Patricia
12 Marshall.

13 CHAIRPERSON MILLER: Okay. And
14 are they here? Why don't you come forward at
15 this time then? I'm sorry, why don't we start
16 with introductions beginning with the
17 applicant?

18 MR. FIORE: Good morning. My name
19 is Lou Fiore and I'm a homeowner at 225 9th
20 Street, N.E., and have been for the last 10
21 years.

22 MR. SIEBER: My name is Derrick

1 Sieber. I'm the general contractor for the
2 project.

3 CHAIRPERSON MILLER: And you can
4 introduce yourself, at this point, too.

5 MS. MARSHALL: I'm Patricia
6 Marshall. I live at 227 9th Street, N.E.

7 CHAIRPERSON MILLER: Okay. I
8 would like to just make a preliminary remark.
9 And that is if I'm correct, this case involves
10 seeking variance relief related to a
11 disability. Is that correct?

12 MR. FIORE: Not essentially,
13 ma'am. It's actually a special exception for
14 lot occupancy and a set-back variance. And
15 quite frankly, the garage is to be constructed
16 for a vehicle. As far as disability is
17 concerned, it's just really accessibility.
18 That's the only disability issue that I can
19 testify to.

20 CHAIRPERSON MILLER: Okay. Well,
21 let me just say this in the event that it is
22 somewhat related and I thought that that came

1 out in the proceedings. But I understand that
2 it may be somewhat separate and that's why you
3 are here for a variance.

4 We have just been alerted that if
5 it ever is related to a disability, that to
6 let an applicant know that there are other
7 rights as well under the Fair Housing Act
8 related to requesting reasonable
9 accommodations from the Zoning Regulations.
10 Are you familiar with that?

11 MR. FIORE: Yes, ma'am, yes.

12 CHAIRPERSON MILLER: Okay.

13 MR. FIORE: Yes.

14 CHAIRPERSON MILLER: Then --

15 MR. FIORE: I apologize if I'm not
16 looking directly at you, because I can't
17 really see anyone up there.

18 CHAIRPERSON MILLER: That's fine.
19 Okay. Then I just wanted to bring to your
20 attention, if you were not aware, of other
21 rights that you might have in other
22 proceedings and you are aware of them?

1 MR. FIORE: Yes, thank you.

2 CHAIRPERSON MILLER: Okay. Fine.

3 Then let's go into the party status
4 application, because that's a preliminary
5 matter before we get into the merits of the
6 case. It's Ms. Marshall?

7 MS. MARSHALL: Yes.

8 CHAIRPERSON MILLER: Yes, whether
9 she can participate as a party in this case,
10 which would give you all the rights of a
11 party, such as cross examination and filing
12 pleadings and things of that sort.

13 I have Exhibit No. 24. It looks
14 like you are requesting party status to
15 participate that way and I just want to
16 clarify if you are or if you just want to
17 present testimony as any individual would be
18 allowed to do without, you know, being granted
19 party status.

20 MS. MARSHALL: I don't necessarily
21 understand the distinction.

22 CHAIRPERSON MILLER: Okay. So

1 maybe you didn't request it.

2 MS. MARSHALL: I did submit a
3 letter in response to a letter that I received
4 and I assumed that if we were in opposition,
5 that we needed to request party status.

6 CHAIRPERSON MILLER: Okay. And
7 most people don't understand it.

8 MS. MARSHALL: Okay.

9 CHAIRPERSON MILLER: So okay. The
10 difference is many individuals where you are
11 more impacted than someone else in the general
12 public, so that the Zoning Regulations can
13 give you a greater right of participation,
14 which would mean that you wouldn't just be
15 limited to 3 minutes of testimony or whatever,
16 that you could cross examine and present the
17 applicant and other parties, Office of
18 Planning, evidence, should you so choose.

19 Okay. If you don't get party
20 status, it means you can participate as a
21 matter-of-right in these proceedings and you
22 can testify basically about your opposition to

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1 the application. We don't always necessarily
2 limit you to 3 minutes. I mean, if you live
3 right next door and you've got a lot of
4 important information to say, we're not going
5 to like just cut you off at 3 minutes.

6 But basically, that's the
7 difference. The one is much fuller and in
8 order to get party status, then the Board has
9 to look and decide whether you are impacted
10 more than the general public. Sometimes
11 people don't even want to do more than give
12 testimony, so we don't have to go through all
13 of that. But does that make it a little bit
14 clearer?

15 MS. MARSHALL: Yes, it does. And
16 I think that we wanted to request party
17 status, because we are the immediate next door
18 neighbor, and do feel that we are impacted
19 more than the general public. And my comments
20 speak to that.

21 CHAIRPERSON MILLER: Okay. Is
22 there an objection, first of all, to party

1 status for Ms. Marshall?

2 MR. SIEBER: No objection here.

3 CHAIRPERSON MILLER: Okay. Does
4 the Board have any objections or comments?
5 Okay. You are -- you fall within the
6 requirements in that you are next door and you
7 are more impacted than others, so okay, then
8 I think by consensus, this Board will grant
9 you party status.

10 MS. MARSHALL: Thank you.

11 CHAIRPERSON MILLER: Okay. So now
12 we are ready to proceed then with the merits
13 of the case.

14 MR. SIEBER: You would like me to
15 make an opening statement now? You have
16 everything before you. I'm not going to, you
17 know, reiterate the whole application again.
18 But, you know, I did want to paint just a
19 brief kind of portrait of the landscape of the
20 alleyway that this project is going to go on.
21 I think it is important to have some context
22 of the landscape of the alleyway.

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1 This alley in between 9th and 10th
2 Street, N.E., it's only accessible by one way.
3 There is only one way in and out. And
4 basically, all the -- the alley is lined with
5 several detached garages and really there is
6 no -- in addition to a number of other nuances
7 about this alley, there is not really a
8 standard of conformity for a lot of the set-
9 backs, for most of the garages that occupy the
10 alley.

11 In addition to that, it's also
12 important to note that -- and I think probably
13 the last page on the Office of Planning's
14 report probably best illustrates this, but the
15 picture depicts how the alley has to make a
16 really sharp left 45 degree turn in order to
17 get back to a lot of the other houses.

18 It's an especially important thing
19 to note, because the entrance into this alley
20 doesn't allow for any service vehicles, EMS,
21 fire, sanitary, really anything like that to
22 even service the alleyway. So really the only

1 people that use the alleyway are, in fact,
2 the, you know, residents of that block.

3 And we will get into it later. We
4 have got some additional letters of support
5 from other people on the block that, you know,
6 would welcome the project as well. But that's
7 essentially it.

8 I wanted to just make the Board
9 clear that the entrance-way into this alley is
10 very restrictive. And also that the -- right
11 across from Mr. Fiore's existing detached
12 garage is a telephone pole which makes the
13 turn in -- it also gives you an idea of why we
14 are going for the angled approach on the
15 garage is because of the presence of some
16 retaining walls and a telephone pole.

17 So unless Lou would like to add
18 anything else to that?

19 MR. FIORE: The only thing I would
20 like to add is that the first 100 feet
21 entering into the alley is, you know, 10 feet
22 wide. And as Derrick said, nothing larger can

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1 get in there. If you can't get down that
2 alley and turn, there is really no other
3 vehicle.

4 My garage is -- has been there for
5 over a century, according to public records
6 and all the surveyor's offices, etcetera,
7 etcetera. And the position of the door has
8 also been pretty much in that way. My garage
9 is the first garage that has that kind of
10 property depth to it and currently sits back
11 6 feet from the center of the alley.

12 There are two support -- what do
13 you call them, Derrick?

14 MR. SIEBER: Buffer posts.

15 MR. FIORE: Posts or something
16 like that. But the actual foundation is about
17 6 feet from the center of the alley. And then
18 the others tend to set-back some. The first
19 three or four garages are only about maybe 2.5
20 or 7.5 from the center of the alley max. So
21 they are all nonconforming.

22 Most of the 10th Street side of the

1 alley has anywhere from, I guess, 1 foot or
2 less until you reach the very, very end of the
3 alley.

4 And the other thing that I would
5 like to mention also is that I'm asking for a
6 set-back variance, because what I have seen
7 back there and what has been brought to the
8 ANC Commission was in terms of turning around,
9 has been the set-backs that are put in place
10 in a one-way alley like that really just
11 promotes additional parking in front of the
12 person's garage and tends to narrow the alley
13 even more for other people that are trying to
14 get down it and turn around.

15 And you will see probably in some
16 of the photos that you have in the application
17 as well as Mr. Jackson's report of some of
18 those cars that are protruding or sticking out
19 and whether they are legal or not, I'm not
20 quite sure, but they tend to promote more of
21 an issue for turning around than I guess it's
22 worth. Thanks.

1 CHAIRPERSON MILLER: Thank you.
2 You are seeking a variance not a special
3 exception, correct?

4 MR. FIORE: Correct.

5 CHAIRPERSON MILLER: Okay. Since
6 you are seeking a variance, could you address
7 the three-prong test required for a variance?
8 Being what is exceptional or unique about your
9 property that gives rise to a practical
10 difficulty in complying with the regulations?
11 And then why there would be no adverse impacts
12 if the relief you are seeking is granted?

13 MR. SIEBER: Yes, with the three-
14 prong test, I'll go in the order. First of
15 all, the placement of that garage represents
16 the true and accurate dimensions of Mr.
17 Fiore's property, meaning the end of that
18 garage is -- reflects the end of his property
19 line.

20 It has been there for as long as
21 the house was there and, you know, people have
22 been coming and going, you know, with that

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1 protruding out in the alley for some time now.
2 And, you know, it -- there is not any
3 interference with people getting by it at
4 present.

5 And the situation with the alley,
6 being that it is one-way in, one-way out, and
7 it's also particularly, you know, restrictive
8 in that nature, I think, gives weight to, you
9 know, him -- to the variance. In addition,
10 the three-prong --

11 MR. FIORE: Also, Chairperson, I'm
12 in the process of constructing an addition and
13 that set-back would also allow the garage to
14 be further away from the addition versus
15 closer to it. And that extension of green
16 space I would prefer to have inside the yard
17 versus on the exterior of the yard. That
18 would be --

19 MR. SIEBER: Really, the -- what
20 puts him in a burdensome position is because
21 of his situation. It's important for him to
22 have accessory parking in the neighborhood.

1 And with the garage as it currently is, you
2 just can't park any kind of vehicle in there.
3 You know, there is, obviously, a slew of
4 garages back there that people have off-street
5 parking for.

6 And the homeowner feels that it is
7 tremendously burdensome for him not to be able
8 to have -- to utilize that garage the way, you
9 know, he would like to use it.

10 CHAIRPERSON MILLER: Okay. Let me
11 just make a couple comments. You know, when
12 I opened the hearing, that's why I asked if
13 you were familiar with the other rights under
14 other laws, like the Fair Housing Act, for
15 reasonable accommodations. Because under the
16 variance laws, the variance runs with the
17 property, so the Board is considering
18 practical difficulty upon an owner, any owner
19 of the property, basically, the owner of the
20 property, not really with respect to any
21 special needs of the particular owner.

22 Okay. It's a burden that

1 something unique about the property creates a
2 practical difficulty for any owner, for an
3 owner. And so I just want to make sure you
4 understand that distinction. But then there
5 are parallel, you know, other avenues.

6 MR. SIEBER: Sure.

7 CHAIRPERSON MILLER: Okay.

8 MR. SIEBER: I think it's also
9 important to note that, you know, Mr. Fiore
10 had a rear addition project that he is
11 currently in the process of completing. And
12 for all intents and purposes, he wants to stay
13 there and live the rest of his years in his
14 house as comfortable as he can.

15 And his addition was built up to
16 60 percent, so that he could have as much
17 space as he could. And it was determined, you
18 know, that going for a special exception 70
19 percent for whatever we could get for the
20 garage would be the best approach, because, at
21 the time, we felt that him having as much
22 space as he could inside of his house, living

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1 space, considering he wants to stay there, you
2 know, until the end, that it would be
3 important for him to have that space.

4 And I don't know if this goes to
5 the core of your question, but I think it is
6 important to note that there was an addition
7 that he is completing to accommodate his
8 lifestyle. And the Zoning Regulations,
9 obviously, they don't permit more than 60
10 percent. And the homeowner feels that the
11 property, you know, is -- you know, he needs
12 the accessory space for the garage.

13 CHAIRPERSON MILLER: Okay. Let me
14 say a couple of things, because there are a
15 few different areas of relief that are in this
16 case and I just want to make sure that they
17 are all kind of separate and understood.

18 First of all, you are seeking a
19 special exception for greater lot occupancy
20 and that can go up to 70 percent without a
21 variance. And the standard for that is
22 different from the variance. You don't need

1 to do the three-prong test for that. It has
2 specific criteria primarily going to adverse
3 impacts, as long as there is not adverse
4 impacts on adjacent properties. Okay, that's
5 number one.

6 So and then number two is the
7 variance test, which is a harder test, which
8 I'm trying to just let you know that you start
9 with there's something, you know, unique about
10 the property that is different from your
11 neighbors' properties that gives rise to a
12 peculiar practical difficulty upon the owner
13 of the property and that's why you are seeking
14 the relief and that that won't have adverse
15 impacts. Okay, so that's two.

16 And number three, again, you
17 probably are very aware of it, but it's
18 unclear on this Board that if you are, that if
19 something is peculiarly related to an
20 individual's needs, medical needs, special
21 needs or whatever, that DCRA considers that
22 kind of situation without a hearing and that

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1 route is under Chapter 14 of the District of
2 Columbia Municipal Regulations, which says you
3 can request a reasonable accommodation from
4 the Zoning Regulations through them.

5 And it's section 111 of Title 14
6 and if you want to look at that, you can seek
7 that from our staff and they will help you get
8 that. And I'm only saying this so that you
9 know that all these avenues are separate. And
10 you have a choice, because I didn't put this
11 on the record before, because you seem so
12 familiar with that anyway, but just for the
13 record, you have a choice to stay this
14 application while you pursue that avenue or to
15 continue with this application and pursue that
16 at a later date.

17 I just want to put that on the
18 record. I think I understand what you want to
19 do, but just so that it's on the record. So
20 you do want to proceed with this application?

21 MR. FIORE: Yes, ma'am.

22 CHAIRPERSON MILLER: Okay. And

1 so --

2 MR. FIORE: Is this on? But I
3 will have the opportunity at a later time to
4 seek this if things are not supported? Is
5 that what you are saying?

6 CHAIRPERSON MILLER: I am saying
7 that no matter what happens in this
8 proceeding, if we grant, deny, well, if we
9 grant, then you don't need to go seek another
10 avenue.

11 MR. FIORE: Okay.

12 CHAIRPERSON MILLER: Were we to
13 deny this application, it would not prejudice
14 you in any way from the other avenue under
15 DCRA dealing with --

16 MR. FIORE: Okay.

17 CHAIRPERSON MILLER: -- reasonable
18 accommodations.

19 MR. FIORE: Thank you.

20 CHAIRPERSON MILLER: They are
21 separate. Yes, okay.

22 MR. FIORE: Thank you.

1 CHAIRPERSON MILLER: Well, let me
2 see if other Board Members have questions, at
3 this point.

4 MEMBER DETTMAN: I have a quick
5 question. I'm looking at your detailed
6 statement which is our Exhibit 4. And as you
7 step through the three-prong test, you note
8 that the proposed garage dimensions would
9 facilitate parking for the applicant's current
10 vehicle as well as a handicap-friendly vehicle
11 being contemplated for the future.

12 Is that also driving the diagonal
13 entrance to your garage? What is the
14 justification for that?

15 MR. SIEBER: The justification for
16 the diagonal angle was if the variance was
17 granted and we were able to have the garage
18 where we wanted, you wouldn't be able to swing
19 into it on account of the telephone pole and
20 retaining wall that is across the street.
21 Again, those things, the retaining wall is
22 nonconforming, so you couldn't make the swing,

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1 so that's why we proposed a 45 degree angle on
2 the south corner of the garage to swivel or
3 turn into the garage.

4 MEMBER DETTMAN: Do you have any
5 idea how much space you would need to swing
6 into the garage?

7 MR. SIEBER: It would be the
8 garage would have to dictate the vehicle more
9 or less.

10 MEMBER DETTMAN: Well, I want to
11 take a look at your revised plans, which it
12 appears as if you submitted them on October
13 20th. The distance between the rear of the
14 new one story addition and the rear of the
15 garage as proposed looks to be almost 29 feet.

16 MR. SIEBER: Um-hum.

17 MEMBER DETTMAN: You could meet
18 your 12 foot setback from the center line of
19 the alley and still have a legal rear yard.
20 You would still be a little bit over your 20
21 foot rear yard, which would basically give you
22 a 10 foot alley plus another 7 to 8 feet set-

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1 back from your rear property line.

2 MR. SIEBER: 6, but, yes,
3 approximately that.

4 MEMBER DETTMAN: 6. That gives you
5 about 16 feet of swing space. You know, not
6 being an expert, it seems to me that's enough
7 for a current vehicle as well as maybe we'll
8 say a 19 foot vehicle, which is the standard
9 parking space.

10 MR. SIEBER: So you're saying that
11 if the garage was set-back, you know, 6 or 7
12 feet, then you would easily be able to make
13 the swing if it was just all -- if there was
14 no angle. You just enter from the rear of the
15 garage. Is that what you're saying?

16 MEMBER DETTMAN: I guess that's --
17 I'm posing a question, because I can't say for
18 sure. I'm not an expert in turning radius or
19 anything like that.

20 MR. FIORE: I would say that's
21 accurate.

22 MR. SIEBER: Yeah, I would say

1 that's accurate.

2 MR. FIORE: Um-hum.

3 CHAIRPERSON MILLER: Mr. Dettman,
4 can I just get a clarification from you? Are
5 you talking about rear yard? I mean, the rear
6 yard requirements or meaning the alley set-
7 back requirements?

8 MEMBER DETTMAN: The alley set-
9 back. You know, the alley set-back
10 requirement has the potential of possibly not
11 allowing an applicant from meeting the rear
12 yard requirement. But in this case, because
13 we have -- taking into consideration the one-
14 story addition that is currently under
15 construction, even taking into consideration
16 that, it appears that you have 29 feet of rear
17 yard, where the requirement is only 20.

18 So it seems to me that there is
19 some flexibility there where you could
20 actually push the garage back into the
21 property to meet your set-back requirement
22 from the center line of the alley and at the

1 same time you would still be in compliance
2 with your rear yard requirement of 20 feet.

3 CHAIRPERSON MILLER: And are you--

4 MEMBER DETTMAN: So what I'm
5 saying is that if you were -- you could meet
6 your -- you could eliminate the alley set-back
7 variance.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER DETTMAN: And then the
10 special exception would still be before us.

11 MR. SIEBER: I think I understand
12 what you are saying. Basically, give the 70,
13 hold back on the alleyway set-back and you've
14 got your garage. Is that what you are --
15 yeah, that's --

16 MR. FIORE: But then the door
17 would be actually having to be positioned
18 forward facing the alley as the others. Is
19 that correct, too?

20 MR. SIEBER: Right. Let me just
21 jump in here. If we did set it back,
22 basically the angle would be filled back in

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1 and that would elevate you over 70 percent
2 also, for what it's worth.

3 MEMBER DETTMAN: Well, I could see
4 two scenarios. One is that you could consider
5 meeting the alley set-back requirement and
6 still see if you could have your angled
7 entrance. Now, you run the risk of maybe
8 encroaching upon the property next door, but
9 I don't know.

10 MR. SIEBER: Right.

11 MEMBER DETTMAN: If we are talking
12 about a 6 to 7 foot set-back from the -- from
13 your rear property line, on your plat that you
14 submitted it looks like there is a distance of
15 about 10 feet. So you still might be able to
16 get a diagonal entrance, but I don't know.

17 MR. SIEBER: And alternately, I'm
18 not sure the neighbor to the south would, you
19 know, sign off on something like that, since
20 it would impact, you know, the accessibility
21 to her rear yard.

22 MEMBER DETTMAN: Of course, of

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1 course.

2 MR. SIEBER: Yes.

3 MEMBER DETTMAN: The other
4 alternative is to revisit the dimensions of
5 your garage to see how much you would be -- if
6 you were to square off the garage and not have
7 the diagonal, see how much you are over 70
8 percent and then --

9 MR. SIEBER: Scale it down.

10 MEMBER DETTMAN: -- revisit that
11 making sure that you meet your 9 x 19 space
12 requirement. I mean, those are the two
13 alternatives I see.

14 MR. SIEBER: Did you want to
15 comment?

16 CHAIRPERSON MILLER: Well, I think
17 part of the point of Mr. Dettman's question
18 goes to the variance. I mean, it goes to the
19 variance test if, in fact, you can build the
20 garage without requiring the relief from the
21 set-back, then you don't have a practical
22 difficulty in complying with the regulations.

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1 And therefore, that would be a grounds for
2 denying the variance.

3 And I'm not sure what the unique
4 condition of the property is, but that would
5 lead to a denial of the variance. However, if
6 you could -- because you wouldn't necessarily
7 need it to comply with the regulations, but
8 it's not saying your garage would be denied.
9 It kind of goes to Office of Planning's report
10 that if you can come within the special
11 exception, then we are just looking primarily
12 at elements of adverse impact on adjacent
13 properties.

14 MR. SIEBER: Right.

15 CHAIRPERSON MILLER: So is your
16 response that you can adjust that plan?

17 MR. SIEBER: I would say that we
18 have entertained that concept before, the
19 homeowner, and I'll let him jump in here in a
20 second, but he is very -- well, he would like
21 to see -- he would like to retain that space,
22 you know. You know, it's green space. A lot

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1 of the -- yeah, it's imperative to maintain
2 that green space.

3 And, you know, obviously, as a tax
4 payer, he wouldn't like to see, you know,
5 paying taxes on, you know, 7 or 8 foot of
6 property he wouldn't otherwise be entitled to.
7 I think it's also important to note that the
8 garage, as it is, stands a certain way. And,
9 you know, I don't know if, you know, a model
10 of the garage is something that is, you know,
11 desirous.

12 You know, in other words, you
13 know, pushing back from it and leaving the --
14 you know, not even having to go for the set-
15 back, you know. But yeah, we have entertained
16 that concept before and, you know, the
17 homeowner finds it limiting in that he wants
18 to spend his final years in the house. And
19 that limited green space that he otherwise
20 wouldn't be able to take advantage of, because
21 it has been forfeited more or less to the
22 city, isn't, you know, a favorable route for

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1 him.

2 And we would like to at least make
3 an effort to see if he couldn't retain some of
4 that set-back.

5 CHAIRPERSON MILLER: Okay. And I
6 just want to say one other thing and then
7 we'll see how this proceeds. I can see, you
8 know, why the applicant would want to do what
9 you are presenting. And our authority really
10 doesn't go to, you know, just granting it
11 based on what he wants to do or what might
12 look like a better idea or anything like that.

13 We really have to look at those
14 three prongs and you know your facts better
15 than we do and that's why I keep kind of
16 trying to solicit more facts from you, also.
17 But, you know, you can think more about this
18 as we go along, but, you know, maybe there is
19 something different about your property from
20 your neighbors, I don't know, that leads to,
21 you know, this practical difficulty if you
22 don't have the green space.

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1 I mean, there might be something,
2 you know, very -- that may be a great
3 practical difficulty if you don't have it on
4 your property versus other people's, but we
5 have these regulations that apply to --

6 MR. SIEBER: Sure.

7 CHAIRPERSON MILLER: -- everybody.
8 And so in order to get an exception under a
9 variance, it's a test that talks about your
10 being -- you know, property being exceptional.

11 MR. SIEBER: Right.

12 CHAIRPERSON MILLER: Okay.

13 MR. SIEBER: Well, one of the
14 exceptions, I think, you could point out is
15 that, like Lou mentioned, his property length,
16 you know, 105.9, I think it is, is the last --
17 he has the last depth of that length to the
18 south, meaning all the other properties to the
19 south are shorter than his. And from that
20 standpoint, you know, 45 on -- with the
21 garage, you know, sticking out like that would
22 accommodate -- would be more flexible with the

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1 flow of traffic.

2 And I guess you could also make
3 the argument that if you were faced with a
4 choice between what is there now and what
5 we're proposing, I think by and large the --
6 you know, those that use that alley would
7 welcome, you know, a reduced rear garage
8 length, you know, rather than what is there
9 now.

10 I don't know that that applies to
11 the three-prong, but --

12 MR. FIORE: If it helps any, if I
13 had to have a -- make a decision based on
14 where it is at and moving it back 12 feet, at
15 the very least, I would at least like the
16 Board to consider meeting either the set-back
17 to the south or at the very least the set-back
18 to the north, which is probably 5 or 6 feet.

19 And I still could potentially
20 angle the door for easy turning accessibility.
21 There is an existing 10 foot public space in
22 front of that door that allows me to drive

1 into that garage as it currently is right now.
2 But again, I could only drive forward and
3 that's, you know, not really deep enough for
4 me to actually put a garage and shut the door,
5 unless it's a Mini Cooper or something of that
6 nature.

7 CHAIRPERSON MILLER: Okay. It
8 looks like Mr. Dettman got that. I'm not sure
9 about everybody else. But it sounded like, you
10 know, where your property is located, you
11 somehow need or want to have this angle
12 instead of coming forward into the parking.
13 Is that right?

14 MR. FIORE: Yes, ma'am. The
15 property itself -- is this on?

16 MR. SIEBER: Yes.

17 MR. FIORE: Okay. It is unique
18 that I'm one of the first garages with that
19 property depth and that angle as that garage
20 door has always been in that position and
21 there is a 10 foot public space that allows
22 you to drive right into it. All the other

1 garages north of me have like front
2 accessibility.

3 CHAIRPERSON MILLER: Okay. So
4 take me through that. What you are saying is
5 that --

6 MR. SIEBER: One of the iniquities
7 is that there is a larger, I don't think an
8 easement is what it's called, space to the
9 south of his garage and I think that's one of
10 the features of his property that should give
11 weight to his variance set-back.

12 MR. FIORE: Do you have any photos
13 of my garage?

14 MR. SIEBER: Yes.

15 MR. FIORE: Show her what I'm
16 talking about, please.

17 CHAIRPERSON MILLER: What is this?

18 MR. SIEBER: See that.

19 CHAIRPERSON MILLER: This?

20 MR. SIEBER: Yeah. Let's say you
21 looked at the -- well, let me give you copies.
22 Do you mind if I give this to you right here?

1 These pictures right here?

2 CHAIRPERSON MILLER: Oh, they're
3 not in the record?

4 MR. SIEBER: No, I just came
5 across them from the ANC a couple weeks ago.

6 CHAIRPERSON MILLER: You need to
7 show them to Ms. Marshall, too.

8 MR. SIEBER: Okay.

9 CHAIRPERSON MILLER: I mean, you
10 need to -- you are a party now, so you would
11 need to see anything that he is going to be
12 referring to.

13 MR. SIEBER: That's fine. I was
14 just -- yeah, I'll just bring those to you.
15 It's just a map.

16 CHAIRPERSON MILLER: Do you just
17 have one copy?

18 MR. SIEBER: No, I have more.

19 CHAIRPERSON MILLER: Oh, than can
20 you give them to Ms. Bailey and she will get
21 them to everybody?

22 MR. FIORE: Chair Miller? Chair

1 Miller?

2 CHAIRPERSON MILLER: Yes?

3 MR. FIORE: Would it be too late
4 also to submit this letter, which is neighbor
5 support?

6 CHAIRPERSON MILLER: I don't -- do
7 you have an objection, Ms. Marshall? Has she
8 seen it?

9 MS. MARSHALL: I haven't seen any.
10 You said there were new drawings as of the
11 20th. I haven't seen any of that.

12 CHAIRPERSON MILLER: You should.
13 Okay. They are probably difficult to copy,
14 too. Do you have anything you can share with
15 her, at this point, so that she would be able
16 to follow what's going on? I mean, you
17 weren't a party, so they weren't obligated.
18 However, you are a next door neighbor, so you
19 probably should have had them shared with you.
20 They should have been shared with you.

21 Okay. Okay. Basically, my point
22 was though, I started to hear you describe

1 that there is something, it sounds like there
2 might be something, different about your
3 property where it is located from the other
4 properties on the block that is leading to
5 your design of the garage in that way.

6 And so I just wanted you to
7 continue through that, like what about that
8 location really that makes a variance
9 necessary, that gives rise to a practical
10 difficulty that you are trying to correct?
11 But it sounded like what you said before was
12 well, we maybe can redesign, so we need a less
13 of a variance, but you still need a variance.
14 Is that right?

15 You still need a set-back from the
16 alley, but not as much? Is that what you were
17 saying?

18 MR. FIORE: That would be
19 desirable.

20 MR. SIEBER: Yeah, I thought that
21 was something that you would weigh in on.

22 CHAIRPERSON MILLER: Well, we

1 don't -- you know, it's not like we compromise
2 here. It's just that we have -- if we can get
3 to the point where we are convinced that you
4 have this condition on your property and that,
5 you know, it's different from others, that
6 creates a different difficulty for you, and
7 you need this degree of a variance and it
8 won't have an adverse impact on your
9 neighboring property.

10 MR. SIEBER: Right.

11 CHAIRPERSON MILLER: So I didn't
12 know if you wanted to say anything more about
13 that.

14 MR. SIEBER: I think --

15 CHAIRPERSON MILLER: I mean --

16 MR. SIEBER: -- that with the
17 garage door the way it is, how you have to
18 pull in, literally, north into it, you
19 couldn't create a workable garage situation
20 with having that kind of layout. I mean, if
21 you were to increase the depth of the garage,
22 how are you going to get into it if you have

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1 to drive from the south/north straight up and
2 then turn around through there? Do you know
3 what I mean?

4 So I think that aspect and I think
5 that largely gives rise because of the 20 foot
6 public space area, the square if you will.
7 You know, the whole alley is 10 feet by 10.
8 Right to the south of this property you have
9 this 20 foot square and it creates kind of an,
10 you know, oddity where if the garage -- if you
11 are going to explore the option of extending
12 your garage, you have got to have a feasible
13 way of driving in to it.

14 And using that existing layout the
15 way that, you know, it is right now, isn't
16 workable, it's not viable. You can't do it.
17 Likewise, putting it on the very back of the
18 garage, because of these nonconforming
19 retaining walls on the opposite side of the
20 alley wall and this telephone pole, that makes
21 it you can't swing in to it, you know, from
22 the rear aspect.

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1 So I would say that the unique
2 situation with this property that makes the
3 set-back and the angle of the garage, in
4 particular, a requisite is the fact that there
5 is a 20 foot by 20 foot public space area and
6 these nonconforming retaining walls on the
7 other side is really what gives, you know, a
8 uniqueness to this property in that respect.

9 CHAIRPERSON MILLER: And could you
10 just tell me the difference then in the
11 variance relief that you are talking about
12 now? Do you know? The set-back would be less
13 it sounded like what you were saying.

14 MR. SIEBER: Yeah, if --

15 CHAIRPERSON MILLER: Do you know
16 it or you just have to go back to the drawing
17 board?

18 MR. FIORE: We would probably have
19 to go back to the drawing board.

20 CHAIRPERSON MILLER: All right.
21 You probably do? You would? You would have
22 to go back to the drawing board?

1 MR. FIORE: Yes.

2 CHAIRPERSON MILLER: But just in
3 general for our understanding where you are
4 going with this right now, how much less are
5 you talking about?

6 MR. SIEBER: You mean if --

7 CHAIRPERSON MILLER: For the set-
8 back, if you were to, you know, alter it as
9 you are describing.

10 MR. FIORE: Um-hum.

11 MR. SIEBER: We would need a 6
12 foot set-back from the center of the alley.
13 A variance for a 6 foot set-back.

14 CHAIRPERSON MILLER: 6 foot as
15 opposed to what?

16 MR. FIORE: No, 5 foot.

17 CHAIRPERSON MILLER: I'm not going
18 to hold you to this. I know you are just kind
19 of estimating.

20 MR. FIORE: Yeah.

21 CHAIRPERSON MILLER: But I'm just
22 trying to understand the degree of change that

1 you are discussing. It's from what to what?

2 MR. FIORE: I would say it would
3 be no more than a 5 foot --

4 MR. SIEBER: Yeah.

5 MR. FIORE: -- 5 additional feet
6 from -- well, which is -- what are you saying
7 is 10 foot? Are you saying 5 feet from the
8 center of the alley?

9 MR. SIEBER: Yeah. You're asking
10 me -- I'm sorry.

11 MR. FIORE: Could you repeat the
12 question, Chair?

13 CHAIRPERSON MILLER: Okay. I
14 thought that you were saying, in response to
15 Mr. Dettman's comments, that you could alter
16 your plans somewhat to have a smaller variance
17 from the setback requirements.

18 MR. SIEBER: Yeah, we would be
19 willing to -- you know, if the Panel was
20 absolutely stern and not willing to grant the
21 set-back at the location we are asking for it,
22 yeah, we would be willing to take a lesser

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1 one.

2 MR. FIORE: And just try to make
3 it work. But then the door would have to be
4 in the front and not on the side. It more
5 than likely would have to alter the entire
6 design. In other words, you would not be able
7 to have a side entrance as it is shown right
8 now.

9 MEMBER DETTMAN: Can I just ask a
10 quick question now?

11 MR. FIORE: Sure, sure.

12 MEMBER DETTMAN: Because I thought
13 I heard that you would be able to maintain
14 your diagonal entrance, but set-back your
15 garage slightly so that you are at least
16 consistent --

17 MR. FIORE: Right.

18 MEMBER DETTMAN: -- with the
19 garages that are along the alley now.

20 MR. FIORE: And that, I think, can
21 work.

22 MEMBER DETTMAN: And that's -- are

1 we talking -- we're talking somewhere around
2 between 2 and 2.5 feet?

3 MR. SIEBER: Yes, I think that's
4 accurate.

5 MEMBER DETTMAN: Okay.

6 MR. FIORE: Yeah.

7 MEMBER DETTMAN: So you would
8 still need the variance, but to a lesser
9 degree?

10 MR. FIORE: That's correct.

11 MR. SIEBER: Exactly.

12 MEMBER DETTMAN: Okay.

13 MR. SIEBER: Thank you.

14 CHAIRPERSON MILLER: Any other
15 questions? Ms. Marshall, do you have any
16 questions for the applicant?

17 MS. MARSHALL: Not in respect to
18 that, no.

19 CHAIRPERSON MILLER: Okay. Then
20 why don't we go to the Office of Planning?
21 Mr. Jackson?

22 MR. JACKSON: Good morning, Madam

1 Chair and Members of the Board. My name is
2 Arthur Jackson. I'm a Development Review
3 Specialist with the District of Columbia
4 Office of Planning. And I'm going to give a
5 brief summary of the Office of Planning's
6 report.

7 First of all, the Office of
8 Planning recommends approval of the special
9 exception to increase the allowable lot
10 occupancy under section 223, to increase the
11 allowable lot occupancy, from 60 percent to 70
12 percent.

13 We found that the, according --
14 under the standards of those regulations, row
15 dwellings and accessory garages are permitted,
16 that the relief that is being required is that
17 for lot occupancy and we note that under the
18 Zoning Regulations, no other relief is
19 required for -- under 3200.7, no other relief
20 is required for a garage that is in a District
21 where a garage is an allowable use on the
22 site.

1 We also find that the garage
2 itself will not have any significant impact on
3 the air and light of the adjacent dwellings,
4 nearby residences. But we noted that the
5 garage would not have impact on the privacy
6 and enjoyment of the neighboring properties,
7 but we feel that the deck on top of the garage
8 would.

9 We think that the deck in its
10 current location would have a clear view of
11 the rear dwellings, facades and rear yards of
12 the adjacent properties and this is partly
13 because of the different elevation that the
14 garage is from the existing dwelling.

15 The neighboring properties and
16 this -- the subject property have a general
17 rise to the rear, such that the rear of the
18 garage is close to the second floor elevation
19 at its current state. Then you add on a 15
20 foot new garage and a deck on top and it
21 appears that it will be at or about the same
22 height as the third floor of the neighboring

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1 dwellings.

2 From that advantage point, we
3 think it would -- we can understand why the
4 neighbors might have some concern about the
5 visibility into their garage and their rear
6 windows of their living areas. Such that we
7 think, as a result, we recommend that the
8 proposed garage not be approved with the roof
9 deck.

10 In addition, particularly, this
11 garage is in an Historic District, obviously,
12 and it was reviewed by the Historic
13 Preservation Review Board. And they have --
14 the made some changes with regard to the
15 comments from the Board and our Historic
16 Preservation Section indicated that those
17 changes were sufficient.

18 Based on that information, we
19 don't see that there are any additional
20 comments with regard to the design of the
21 garage or the materials used that are -- need
22 to be added to the record.

1 We think the -- we did find,
2 however, that the size of the garage clearly
3 has two issues. One is that the interior
4 space does not seem to be sufficient to meet
5 the requirements of an approved full-sized
6 parking space under the regulations, in that
7 there is not enough clear space in terms of
8 depth. There needs to be at least 19 feet,
9 probably a little more than that, and that
10 needs to be addressed.

11 We also note that the -- well,
12 that's the principal issue there. When we did
13 our own calculations, if you eliminated the
14 circular stair on the side of the garage, you
15 actually have more space, more lot occupancy
16 to work with and thereby would allow you to
17 have the 19 foot space, depending on the
18 garage design.

19 So we think the -- eliminating the
20 roof deck and the circular stair would
21 actually allow them to have a garage of
22 sufficient space to accommodate a vehicle.

1 And so we also note that this
2 proposal would not introduce or expand any
3 non-comparing -- nonconforming aspects on the
4 property. With that, we are very supportive
5 of the special exception with the conditions
6 as stated.

7 With regard to the variance relief
8 from the requirement from the alley center
9 line, we basically found that there did not
10 appear to be any unique circumstances or
11 characteristics associated with the property
12 as proposed that are pertinent.

13 The applicant made reference to
14 the fact that the alley south of the property
15 increases 20 feet. I don't see this as a
16 liability. I see this as an advantage. In
17 essence, when you are coming up the alley, you
18 have additional space where you could begin
19 your turn, so as not -- you're not turning
20 from a 10 foot space on-site, you are turning
21 from a 20 foot space, which allows you to make
22 a wider turn.

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1 With regard to the earlier
2 discussion about the location of the garage,
3 it just makes sense that if you are turning a
4 vehicle and you want to -- you make your
5 regular road turn into a driveway or a garage
6 and you back out to go south, if you are going
7 -- if you are always going to have to go down
8 to the southern tip of the alley to get in and
9 out, that would make it easier to turn around.

10 I discussed this with the
11 applicant and the architect. I'm sorry, the
12 contractor on-site and the observation was
13 made well, what they would do would be to back
14 down the alley to a space where there are --
15 where the alley widens on private property to
16 make the turn to go out.

17 I would think that's -- that would
18 be less efficient and more difficult than
19 backing the garage up the required distance,
20 which would be 5 feet from the rear property
21 line and doing -- so you could turn in using
22 the 20 feet that's south of it, the 20 foot

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1 wide space to the south of the turn in, and
2 back out the usual T-turn and go south.

3 I really think that that's
4 advantageous to the applicant and any future
5 residents of this property to make their U-
6 turn to go out of the property -- to go out of
7 the single entrance to the south.

8 Then in addition, we think moving
9 the garage back, we would -- let me digress.
10 We did look into the files of the Historic
11 Preservation Office, which go back a long way,
12 and there has been a garage there for an awful
13 long time. But we really think that moving
14 this garage would be an advantage and a
15 benefit to the community, to the neighborhood.

16 This has been at least our
17 experience in going out there and driving by
18 it in a car, that is rather imposing structure
19 there, even if it's just for residential
20 vehicles. Understanding that most people --
21 that all the residents take their collection
22 items out to the street along the alley, but

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1 just the general circulation of the vehicles
2 would be greatly improved if this was moved
3 back.

4 Because even if it's not -- it's
5 not in the alley. It's on the edge of the
6 property line. But that is an imposing
7 structure to try to go around, especially
8 because it's steel and glary. So again, we
9 see that moving this off the alley would be an
10 advantage to the community.

11 Moving it further back in the
12 property, would be an advantage to the current
13 property owner, in that they can make this
14 turn, make the turns that they would need to
15 in whatever size vehicle they have to get in
16 and get out and not have to back down the
17 alley to get out. They could do a T-turn and
18 drive in and out the proper way.

19 And we also see that this is an
20 opportunity to take full advantage of the 20
21 foot wide alley section to the south of them
22 to make the turning movements.

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1 So with that, we don't see that as
2 a practical difficulty in providing it. We
3 think it is beneficial to take advantage of it
4 and move the building back. And we think it
5 would be detrimental to public good to allow
6 this obstruction to remain where it is. We
7 really think it's -- this is an opportunity to
8 correct a problem that is along the alley and
9 we observe that the ANC and I know several
10 neighbors have expressed interest in also
11 moving the building back.

12 And based on that information, we
13 think not correcting this problem or at least
14 not addressing the proximity of the existing
15 garage to the alley would be detrimental to
16 the integrity of the Zoning Regulations,
17 because these regulations are really supposed
18 to address correcting these issues when you
19 have an opportunity.

20 This is an opportunity to correct
21 an issue that currently exists along this
22 alley and it would behoove the Board to take

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1 advantage of this opportunity. With that, we
2 think granting the parking variance will not
3 be consistent with the intent of the Zoning
4 Regulations. It would be detrimental to the
5 public good and the integrity of the Zoning
6 Regulations.

7 And so anyway, we raised the issue
8 we had with the deck and the interior of the
9 garage, but we do support its location there.
10 We think the applicant should have every
11 opportunity to take advantage of it. We think
12 it's -- it benefits everyone if it is located
13 further back from the alley.

14 For this application, we requested
15 that the Department of Transportation and the
16 Fire Emergency and Medical Services comment on
17 the application. We have not -- or raise any
18 concerns. We have not gotten back any
19 comments indicating there are any concerns on
20 their part.

21 We note that the ANC
22 recommendation and an email -- ANC

1 recommendation and letters from neighbors are
2 in the file and we had a report from the
3 resident of the Capitol Hill Restoration
4 Society indicating that they also support the
5 special exception, but they are opposed to the
6 requested variance, request for variance.

7 Now, Madam Chair, I would note
8 that there is not a letter in the file per se,
9 but we received an email with that
10 information. With that, that concludes the
11 Office of Planning's brief summary of our
12 report. And we will be available to answer
13 questions.

14 MEMBER DETTMAN: Mr. Jackson, I
15 have two questions for you. One is that could
16 you just quickly go over again how the
17 existence of the 20 foot section of alley
18 immediately to the south of this property
19 where the alley widens, how does that help
20 someone get into a garage if the garage was to
21 open on the alley?

22 MR. JACKSON: Well, what would

1 normally occur is -- now, this probably occurs
2 in any case, but if the alley is 20 feet wide,
3 then you can begin your turn into the garage
4 earlier. Such that you can -- you could
5 actually be what would normally be encroaching
6 on a person's property if you started turning
7 before you got to your property line.

8 Now, this is advantageous to them
9 if they were to do the angled entrance. And
10 that's why they are doing the angled entrance
11 is to take advantage to that earlier turning
12 opportunity. But I would contend that if they
13 move the garage back the required 7 feet, that
14 they could fully turn into the garage and
15 straighten up.

16 See my concern is when you make
17 that angled turn, you are never straight. So
18 you may have a problem actually closing the
19 garage door, because your car is not all the
20 way in and not completely turned. The further
21 back the garage is, you can make a full turn
22 into the garage, close the door and open the

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1 door, you can make a -- you can back out and
2 make a fuller turning movement, such that you
3 wind up being parallel to the property line
4 and then move south.

5 I think over time the difficulty
6 of moving -- of backing the vehicle down the
7 alley will -- may increase over time as you
8 get larger vehicles and as possibly the
9 neighboring properties across the street build
10 their own garages.

11 MEMBER DETTMAN: Okay.

12 MR. JACKSON: And at some point,
13 maybe the neighbors at the bottom -- at the
14 very south end of the garage won't have just
15 an open parking space there. They may be
16 parking -- there may be garages. So looking
17 at the long-term usefulness of this parking
18 space and ease of use in terms of turning
19 movements in and out, really moving the back--
20 moving the garage back and taking full
21 advantage of the 20 foot space south of it is
22 to everyone's advantage.

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1 MEMBER DETTMAN: Okay. We had
2 briefly talked about trying to find something
3 in the middle here between the proposed
4 placement and the conforming set-back. It
5 looks like if you wanted to become consistent
6 with say the garage to the north, you would
7 have to set this thing back about 4.5 feet,
8 which, in addition to the 10 foot alley, that
9 gives you 14 feet of swing space.

10 Do you have any opinions on that?
11 Is that enough space?

12 MR. JACKSON: Well, the -- it
13 probably would be good to ask, if there's an
14 architect doing these plans or if there is
15 some engineering assistance that could be
16 provided by the Department of Transportation,
17 to just do a turning diagram, a computerized
18 turning diagram to see what would work the
19 best.

20 I think more depth is better.
21 However, there -- of course, when we look at
22 the variances, there is also a provision

1 looking up the integrity of the existing --
2 whether it will be consistent with the
3 existing buildings in the area. And something
4 consistent with the neighboring garage to the
5 north would be -- it would be in the character
6 with the area.

7 But I think because of the
8 opportunity here to take advantage of this 20
9 foot space, really you can't really take full
10 advantage of it, unless you move the garage
11 further back. So that's just an observation.
12 But some distance back is good, but the full
13 dimension required by the regulations would be
14 the best solution, we feel in this
15 circumstance.

16 MEMBER DETTMAN: And quickly,
17 sorry, I know I said I had two questions, but
18 you heard the applicant say that if you -- if
19 they were to move the entrance to the garage
20 directly on the alley instead of a diagonal,
21 you are actually building -- you are actually
22 adding building space, which is going to go

1 above the 70 percent.

2 So I noticed that in OP's report
3 you had said that the staircase and the roof
4 deck is triggering a 70.3 percent lot
5 occupancy.

6 MR. JACKSON: Right.

7 MEMBER DETTMAN: If you were to
8 square this building off, you are really
9 pushing 72 percent. So your response to that?

10 MR. JACKSON: Well, what we --
11 what they are required to do is actually
12 provide an 11 -- a 9 x 19 space inside. So
13 the garage wouldn't have to be the full width
14 of the property. They could provide an
15 opportunity where you have a pass through
16 where you could walk to the back along one
17 side. And I would note that the regulations
18 don't require a side yard around garages.

19 So they could make a smaller
20 garage that is of sufficient size, but not
21 necessarily the full width of the lot.

22 Since it's 16 -- since the

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1 property is -- the width of the property is
2 only 16 feet, it's really not wide enough for
3 a two car garage. So a generous one car sized
4 garage on the back property with a pass
5 through to the rear yard, I think would be
6 something that they could consider.

7 So the short answer is there are a
8 number of architectural solutions that would
9 address the problem there that they are faced
10 with with a smaller addition.

11 MEMBER DETTMAN: Okay. Thank you.

12 MR. JACKSON: Um-hum.

13 MEMBER WALKER: Okay. Mr.
14 Jackson, I'm usually right with you, but I'm
15 having trouble here. Explain how it is again
16 that the set-back is going to enable one
17 making a turn to take advantage of the 20 foot
18 space to the south? You are contemplating the
19 door being -- facing the alley? Facing the
20 east side or facing the south side?

21 MR. JACKSON: Well, it could be
22 angled, but the -- for the -- to allow the

1 applicant to make the proper turn in and out
2 to go south, it should be parallel to the
3 alley. Now, just let me illustrate and the
4 best illustration I can give you would be a
5 parking space at a Metro Parking Garage.

6 Metro Parking Garages have a 20
7 foot wide space between the parking spaces.
8 And so they are much wider than the normal
9 parking space under our zoning requirements.
10 The reason it is wider is so you can swing in
11 a larger vehicle and go in either direction.

12 So what that does is if you are
13 starting your turn, you are able to start your
14 turn into the garage earlier, because you have
15 a 20 foot wide space to the south and you are
16 not cutting on anybody else's property. So
17 they can actually turn out of the 10 foot,
18 what would normally be the 10 foot, space
19 where the car will be lended to and continue
20 turning into the 20 foot space before they
21 even reach their property and turn it into the
22 site.

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1 Well, once they are in there, they
2 are able to line up perpendicular to the rear
3 property line. So not at an angle as might be
4 the case if they used the angle entrance.

5 From that position, they can back
6 straight up and then begin their turn out,
7 such that the car, the vehicle could swing to
8 the south as it backs out and even at that --
9 in that position, turn onto the alley, the 20
10 foot section of the alley to become positioned
11 where it is parallel with the rear property
12 line and then that's the reverse, and then go
13 forward and go straight south.

14 Again, the advantage is that you
15 can make a full turn in and a full turn out.
16 The full turn is where you are really taking
17 advantage of the 20 foot space to the south.
18 The turn out is just easier, because you are
19 perpendicular to the alley from that position
20 and you can swing out.

21 And even with a larger vehicle,
22 your swinging out would be such that the front

1 of the vehicle could possibly go onto the 20
2 foot space while you are trying to align
3 yourself to make the southern movement. So
4 that's the example I would give.

5 MEMBER WALKER: Okay. I think
6 I've got it. Thank you.

7 CHAIRPERSON MILLER: Mr. Jackson,
8 I want to make sure I understand this
9 situation here, so just tell me if this is
10 correct. Is it true because of the existing
11 improvements on the alley, that being the
12 other garages, that compliance with the alley
13 set-back requirements for this garage would
14 put it further back from the alley than the
15 other garages?

16 MR. JACKSON: Yes.

17 CHAIRPERSON MILLER: Okay.

18 MR. JACKSON: Now, I should
19 quantify that. I'm looking at the applicant's
20 submission, which is labeled original D.C.
21 Surveyor Plat paper and it shows the -- what
22 appears to be a dimension on the garage to the

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1 north of being, approximately, 2 feet. And
2 this and the line that is, approximately, 2.5
3 feet wide, if this dimension is accurate, then
4 if this dwelling was moved back the required
5 7 feet, it would be behind all the garages
6 along that frontage.

7 Now, again, this -- that's -- we
8 don't have any other dimensions to go by and
9 this does appear to be uniformly dimensioned
10 on all products that they are showing.

11 CHAIRPERSON MILLER: Okay. Yeah,
12 I just wanted to get straight the facts and
13 the concepts. So as I understood your
14 position that strict compliance with the
15 regulations would be your preference, because
16 it's an opportunity, as you see it, to bring
17 a property into compliance?

18 MR. JACKSON: Yes. But we would
19 want to also say that having taken the
20 position that there is no unique
21 circumstances.

22 CHAIRPERSON MILLER: Right.

1 MR. JACKSON: I basically have to
2 stay with that position.

3 CHAIRPERSON MILLER: Right, right.
4 No, that's fair. But I just want to
5 understand and I think what you did your
6 report on, I mean, we always hear more
7 information at a hearing than, not always, but
8 often, what is in the papers.

9 So sometimes when we look at
10 exceptional conditions, we look at existing
11 improvements around the property that might
12 affect it or, you know, something like that,
13 which they haven't addressed or the fact that
14 they are the last one of this row and how that
15 might create a different practical difficulty
16 for them.

17 MR. JACKSON: Madam Chair, again,
18 in light of what we have said initially in the
19 report, we can understand your position. But
20 we would also note that the neighbors who
21 would like to see additional space seem to be
22 satisfied, well, not the ANC, seem to be

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1 satisfied -- seem to support the idea of
2 having a distance similar to that that
3 currently exists with other garages as being
4 acceptable. And so we're just making that
5 observation.

6 CHAIRPERSON MILLER: So I mean, I
7 don't know if you said you accept our
8 position? Did you say that?

9 MR. JACKSON: Well, what position
10 you take, we accept it.

11 CHAIRPERSON MILLER: Oh, I see.
12 Okay. We haven't taken a position. So we are
13 just like bringing in the facts and exploring
14 the facts.

15 MR. JACKSON: I understand.

16 CHAIRPERSON MILLER: So I'm just
17 wondering also if that means would it be your
18 position or opinion that if the garage was
19 only set-back at the same line as the other
20 garages, if there is such a line, that that
21 wouldn't have an adverse impact on the
22 surrounding property or the community or the

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1 Zone Plan or something like that?

2 MR. JACKSON: Well, that setting
3 it back the distance equal to -- similar to
4 the other buildings would not be consistent
5 with what the Zoning Regulations call for.
6 But it would be consistent with the existing
7 conditions around it. And it would be an
8 improvement of the current circumstance where
9 there is a building that is exactly on the
10 property line, which would, and moving it back
11 at least this distance, benefit both the
12 applicant and the surrounding neighbors.

13 CHAIRPERSON MILLER: Okay. And I
14 want to explore the question about the roof
15 deck with you.

16 MR. JACKSON: Yes.

17 CHAIRPERSON MILLER: With respect
18 to adverse impacts. If this -- if these plans
19 are going to change to bring the property more
20 in compliance, the applicant is going to lose
21 more green space on his property by pushing
22 the garage back into his property further.

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1 Therefore, I guess my question is
2 then it would be somewhat of a trade-off for
3 the property owner to try to have some living
4 space on the deck above the garage, if, in
5 fact, it didn't have adverse impacts on the
6 adjacent properties which we are looking at.

7 So sometimes when we allow for a
8 roof deck, we look at conditions that might
9 mitigate adverse impacts, such as privacy on
10 neighboring properties. Do you see that as a
11 possibility in this case with respect to any
12 types of screening on the deck?

13 MR. JACKSON: Well, Madam
14 Chairman, I guess I heard two suppositions.
15 One is the applicant wants to preserve his
16 green space, but this is not green space on
17 top of the deck. This is --

18 CHAIRPERSON MILLER: Is this for
19 living space or no? What's it for? The deck?
20 A deck, right, okay. I mean, it's
21 recreational space.

22 MR. FIORE: Absolutely.

1 CHAIRPERSON MILLER: For a
2 homeowner.

3 MR. JACKSON: Right.

4 MR. FIORE: Correct. I see it as
5 an extension of green space, because you can
6 surely make it that way.

7 MR. JACKSON: Okay. All right.
8 Well, what was your question?

9 CHAIRPERSON MILLER: Well, you
10 know, we look at whether there are adverse
11 impacts on surrounding properties. And you
12 said because it's at the level it is at, it
13 may infringe on the privacy of some adjacent
14 property owners and we are going to hear from
15 one of them afterwards.

16 But we then look at other
17 conditions that sometimes can mitigate any
18 infringements on privacy, such as screens and
19 things like that. And I'm wondering if you
20 considered that in your analysis. And I'm not
21 sure how, you know, the distance between this
22 roof deck and neighboring properties.

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1 MR. JACKSON: The -- well, it --
2 theoretically, it's probably possible to put
3 a screen up that would block view from this
4 deck to the surrounding properties, but,
5 essentially, you basically walled off the deck
6 itself, so it kind of defeats the purpose.

7 And again, he -- this application
8 is a result of the applicant building an
9 addition. Behind the addition is a large
10 patio. Behind the large patio is now a
11 garage. Now, going on the top of the garage
12 for additional living space is probably --
13 it's not necessarily an idea that is counter
14 to the requirements, but there is only one
15 space that can be used.

16 And the concern really is not --
17 is that this garage, because of the plane of
18 the properties, both this property and the
19 neighboring properties will be at the height
20 of the third floor. And that's a rather
21 unusual circumstance, I would think, for most
22 cases.

1 So you've got areas that would
2 normally be -- not be visible from say a
3 normal deck. That will be very visible from
4 this vantage point. So that's really the only
5 concern. If you screened it off, that would
6 address the privacy concern.

7 But again, he is already close to
8 the lot occupancy and I think elimination of
9 that stair will give more flexibility about
10 making a suitable space for the vehicle or
11 vehicles that will come in the future. And I
12 think that's the primary purpose of the garage
13 in the first place is to address the issues of
14 transportation.

15 CHAIRPERSON MILLER: Okay. One
16 more question. Are there other roof decks in
17 this alley?

18 MR. JACKSON: There are other rear
19 decks that I saw from his property, but most
20 of the rear decks are rear decks, along the --
21 I guess it would be the second floor level of
22 the adjacent properties. But there are no --

1 I didn't see any decks on any garages in the
2 neighborhood.

3 CHAIRPERSON MILLER: Okay. Thank
4 you. Other questions?

5 VICE CHAIRMAN LOUD: Yes. Good
6 morning, Mr. Jackson. Just a quick question
7 on a couple of aspects of your testimony.
8 First, Ms. Marshall is going to come on later
9 and her Exhibit 24 talks about some of the
10 adverse impacts to her. The privacy issue is
11 something where the two of you resonate and
12 she mentions the deck being about 27 feet and
13 facing directly into her bedroom.

14 But an additional area that she
15 mentions is the loss of light, sunlight. And
16 she quantifies it at about 30 percent. I
17 think your report states that the orientation,
18 I think of her property, I'm not sure if you
19 were talking about her property or another
20 neighbor, being where it is, you did not see
21 very much light, adverse light impact.

22 And so if you can just respond to

1 her contention that there is substantial light
2 impact?

3 MR. JACKSON: Well, based on our
4 observation, we note that both properties have
5 east/west orientations. And with these
6 orientations, I mean, her property is to the
7 north, immediately north of that. And we note
8 that there is a very large garage on that
9 property that appears to be two -- it's large
10 enough for two vehicles and probably 25 to 30
11 feet, 20 feet deep.

12 Well, at any rate, it looks big in
13 pictures. The existing placement of this
14 garage is such that the shadows cast by it
15 would primarily be on the subject property.
16 Some would be cast to the north during certain
17 times of the year, but it appears that those
18 shadows would mostly fall on the neighboring
19 garage and not so much on the -- none would
20 fall on the house as far as we could estimate.
21 But some would fall in the rear yard.

22 And so that is why we think the

1 impacts on the light would be limited. But
2 that's just based on observation and none --
3 no shadow studies were prepared to address
4 that issue directly.

5 VICE CHAIRMAN LOUD: Okay. You're
6 going to have to slow down just a little. I'm
7 still getting familiar with a lot of the --

8 MR. JACKSON: Okay.

9 VICE CHAIRMAN LOUD: -- east/west
10 and north/south light orientation.

11 MR. JACKSON: All right.

12 VICE CHAIRMAN LOUD: Shadow
13 discussion. But --

14 MR. JACKSON: Let's look --

15 VICE CHAIRMAN LOUD: --
16 intuitively, I'm looking at it like this.

17 MR. JACKSON: Okay.

18 VICE CHAIRMAN LOUD: Because the
19 sun rises in the east --

20 MR. JACKSON: Um-hum.

21 VICE CHAIRMAN LOUD: -- and her
22 property -- I'm sorry, this addition would not

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1 be east of her property, then it is not going
2 to block off the primary sunlight?

3 MR. JACKSON: Well --

4 VICE CHAIRMAN LOUD: Is that sort
5 of the thinking behind it?

6 MR. JACKSON: Yes. In fact, let's
7 go to the -- if you look at the aerial
8 photograph --

9 VICE CHAIRMAN LOUD: Which exhibit
10 do you have?

11 MR. JACKSON: Exhibit 1.

12 VICE CHAIRMAN LOUD: Okay.

13 MR. JACKSON: Now, I'm not sure
14 what time of the year this is, but this is
15 probably in the spring, because everything is
16 green. You see that the shadows cast by the
17 buildings are to the east and somewhat north.
18 And that, in fact, the shadows cast by the
19 existing garage are not even visible, because
20 this -- the existing garage on the property is
21 shorter.

22 This garage will be taller than

1 the building next to it. I'm sorry, Exhibit
2 1. Everybody have Exhibit 1? Okay. Okay.
3 The -- I'm just characterizing the current --
4 from the aerials that are in the -- in my
5 report, the Office of Planning report. The
6 shadows are cast -- the shadows you see here
7 are primarily cast immediately adjacent to --
8 on the adjacent property.

9 So as I said, they do not extend
10 all the way up to the dwelling in the front.
11 And they have limited exposure on the property
12 itself. We think that would probably be the
13 typical circumstance, except in extreme
14 seasons where shadows are a little longer.

15 So our thought is that the
16 existing garage, which is in the green
17 rectangle, will be larger and deeper, but it
18 wouldn't be as deep as the existing garage to
19 the north. If the shadows were continuing to
20 be -- fall to the north, then most -- any
21 additional shadow cast by this taller garage
22 would be on the garage to the north and not on

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1 the dwelling to the north and would have
2 limited impact on the rear yard to the north.

3 So that's -- based on this
4 photograph, that appears to be what the
5 situation would be if this dwelling was -- if
6 this garage was constructed. Now, if the
7 garage were constructed and moved further
8 north, it still would probably only be 19 feet
9 deep, so if anything, it would still have a
10 minimal impact on the rear yard of the
11 neighboring dwelling.

12 In fact, most of the impact would
13 be on the subject property and would be on
14 their remaining green space.

15 VICE CHAIRMAN LOUD: Thank you
16 very much. I'm looking at the exhibit. Well,
17 I'm looking at Exhibit 26. But I think it's
18 the same picture that you described as your
19 Exhibit 1. And I'm trying to just sort out in
20 my mind where the shadows are that you are
21 talking about.

22 MR. JACKSON: Okay.

1 VICE CHAIRMAN LOUD: So to the
2 north of the green rectangular box.

3 MR. JACKSON: All right.

4 VICE CHAIRMAN LOUD: You mentioned
5 that there was --

6 MR. JACKSON: Well, let's go south
7 to the -- where the R-4 is, R-4 designation.

8 VICE CHAIRMAN LOUD: Yeah.

9 MR. JACKSON: You see there is a
10 garage to the -- on the property that is to
11 the south of the R-4, but then you go to the
12 north and you see where the shadows are
13 falling. There is no structure on the --
14 there is no garage structure on this neighbor
15 property to the north. You see all the garage
16 -- all the shadows are falling within the rear
17 area of the site.

18 So what we are -- the observation
19 I'm making is that that would probably be the
20 same circumstance on the subject property when
21 they built the larger garage. The shadows
22 would fall on the neighboring property, but

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1 they would fall on the roof of the garage,
2 because it's just taller.

3 There would not be a lot of
4 shadows falling to the west towards the
5 residence or the open space. There will be
6 some garage, but -- some shadows, but -- and
7 even if you note the residents that is
8 immediately adjacent to the 10 foot alley to
9 the south, it's throwing a lot of shadows, but
10 the shadows are going due north.

11 Well, not due north. They are
12 angled, but it's largely to the north. So
13 again, that's where we don't think that the
14 air and light impacts on the neighboring
15 properties would be significant. In fact, we
16 don't think it will have any impact at all on
17 the property to the south.

18 VICE CHAIRMAN LOUD: Okay. And
19 generally speaking, and this is just for my
20 own education, is that generally true that the
21 shadows are cast more to the north and less to
22 the west?

1 MR. JACKSON: Well --

2 VICE CHAIRMAN LOUD: Or is there
3 something unique about that?

4 MR. JACKSON: -- this is, of
5 course, taken at a certain time of day and so
6 the shadows would go back and forth. But it
7 moves around in a half circle for the most
8 part. So if you are throwing shadows to the
9 north, they will start -- in the morning they
10 will be on -- of course, the shadows are cast
11 to the west, but then they swing around to the
12 east as this thing goes over.

13 So it depends on the circumstance,
14 but as rule of thumb, we just looked at
15 whether or not it's east/west orientation or
16 north/south orientation. There is usually
17 more impact on the north/south just because
18 the sun is casting a shadow that will cut
19 across a number of properties.

20 In this case, the shadow cast by
21 the buildings due to the sun were more
22 east/west. The property is east/west. So the

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1 impact would primarily be on the property
2 where the new structure is being located, not
3 on the neighboring property.

4 VICE CHAIRMAN LOUD: Thank you. I
5 appreciate it.

6 MR. JACKSON: Okay.

7 CHAIRPERSON MILLER: I just have
8 one more question. After looking at this
9 picture, Exhibit 26, the aerial that you are
10 showing, I think that it gives a really good
11 picture of what is going on here.

12 And so my question is I understand
13 what you're saying about the light and the
14 shadows and everything and if I'm visualizing
15 the garage being pushed back next to this
16 other garage with a roof deck on it, it seems
17 like -- I'm having trouble seeing the privacy
18 issue now, because it looks like the back of
19 the houses are somewhat far away.

20 Maybe it's the perspective. I
21 mean, the one side -- on all three sides there
22 is no impact, right?

1 MR. JACKSON: Yes.

2 CHAIRPERSON MILLER: There is an
3 alley. There are two alleys and then there is
4 this garage.

5 MR. JACKSON: Correct.

6 CHAIRPERSON MILLER: So it's just
7 like the angle towards the abutting house. Is
8 that right?

9 MR. JACKSON: Yes. If you --
10 looking at their photograph to the right, the
11 angled photograph that has the buildings and
12 somewhat elevation, you see that the decks --
13 there are two decks evident. One is on the,
14 what would be, third floor of the adjacent
15 dwelling, second floor and the other is on the
16 first floor. Oh, the second floor of the
17 building to the south.

18 Note that this garage will be
19 taller than the one next to it. Such that it
20 will be 15 feet -- 14 feet tall and you have
21 the deck on top and it's another foot. At
22 that height, just based on the section that is

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1 in the submitted plans, it appears that that
2 garage would be the same height as the third
3 floor in the yellow building.

4 At that height, you are basically
5 looking down on the second floor of the other
6 dwellings. And so there is distance, but it's
7 a clear view. There is nothing to inhibit
8 that view. And so I can recognize that that
9 could be a concern from neighboring property
10 owners.

11 So it's not like -- it's not so
12 much that they are right in the windows, it's
13 just if this deck were, for instance, on the
14 first or second floor of the adjacent -- of
15 the existing dwelling, the subject dwelling,
16 there wouldn't be any impact because the
17 neighboring wall has no windows in it. They
18 wouldn't be able to see into it.

19 So that's one scenario where there
20 is no impact. But if you are back this far,
21 you're looking directly into the back of the
22 neighboring houses, which has the potential,

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1 I think, of having some impact on privacy.

2 Then again, that's just an
3 observation. And it could be screened in some
4 manner. It's just if you're going to all this
5 effort to put on a deck and then you screen
6 it, what do you gain?

7 COMMISSIONER HOOD: Madam Chair?

8 CHAIRPERSON MILLER: Yes?

9 COMMISSIONER HOOD: When you're
10 finished, can I ask a question?

11 CHAIRPERSON MILLER: Yes, please,
12 yes.

13 COMMISSIONER HOOD: Please.

14 CHAIRPERSON MILLER: Go ahead.

15 COMMISSIONER HOOD: Mr. Jackson, I
16 hate to take you back down the same path that
17 you just went through with my colleague, but
18 can you explain to me about the shadow study,
19 this shadow again? And also, I'm looking at
20 your Exhibit 1.

21 MR. JACKSON: Right.

22 COMMISSIONER HOOD: Tell me how I

1 would distinguish, looking at this Exhibit 1,
2 you mentioned how we can see the shadows.
3 Tell me how I can see it.

4 MR. JACKSON: All right. Again,
5 looking at the property to the south, where
6 the 10 foot wide alley symbol is, further
7 down.

8 COMMISSIONER HOOD: Right here?

9 MR. JACKSON: Yes.

10 COMMISSIONER HOOD: Okay. I see
11 that.

12 MR. JACKSON: You see the dwelling
13 there is a -- again, these aerials are not
14 quite in focus, but you see what looks like an
15 aqua colored shape, that's the roof of the
16 dwelling that is on his property.

17 COMMISSIONER HOOD: Right.

18 MR. JACKSON: And see this dark
19 area north of there, that's a shadow they are
20 casting to the north on the neighboring
21 property.

22 COMMISSIONER HOOD: You mean this

1 little dark area?

2 MR. JACKSON: Yes, that's a shadow
3 that is casting on the neighboring property
4 and either a deck or a first floor addition.

5 COMMISSIONER HOOD: So I can
6 distinguish that going all the way north. I
7 can distinguish what is casting this shadow?

8 MR. JACKSON: Right.

9 COMMISSIONER HOOD: I can just
10 look at those darker areas.

11 MR. JACKSON: Yeah, you have shade
12 and shadow.

13 COMMISSIONER HOOD: Okay.

14 MR. JACKSON: Now, note that's an
15 extraordinary circumstance so that this, the
16 dwelling to the south, must be much longer and
17 taller than the deck next to it. But if you
18 look further north and look at the garages,
19 the only place where the garages cast a lot of
20 shadow is when they are casting shadow on
21 vacant property. So --

22 COMMISSIONER HOOD: Give me an

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1 example. What lot?

2 MR. JACKSON: Okay. R-4, the R-4.

3 COMMISSIONER HOOD: Okay, R-4,
4 right.

5 MR. JACKSON: See there is a
6 garage on the property to the south, but on
7 the garage -- on the property north of there,
8 there is a small garage at the rear of the
9 property line and --

10 COMMISSIONER HOOD: I can see
11 that.

12 MR. JACKSON: -- there is nothing
13 there.

14 COMMISSIONER HOOD: Okay.

15 MR. JACKSON: You see that it
16 casts a shadow, but the shadow is north.

17 COMMISSIONER HOOD: Right.

18 MR. JACKSON: To the north.

19 COMMISSIONER HOOD: Okay.

20 MR. JACKSON: Although, there is
21 some shadow that is cast to the west, but it's
22 a small amount.

1 COMMISSIONER HOOD: Okay. Now,
2 let's work our way up to Lot 76.

3 MR. JACKSON: Okay. Now, the
4 subject property which is the green rectangle.

5 COMMISSIONER HOOD: Right.

6 MR. JACKSON: Okay. You've got a
7 rear garage that is sitting right on the
8 property line and it is casting a shadow, but
9 the shadow only comes up to the garage itself.
10 You see right at the property line, you see
11 that little gray triangle, dark gray triangle?
12 Yeah.

13 COMMISSIONER HOOD: This one?

14 MR. JACKSON: Yes.

15 COMMISSIONER HOOD: Okay.

16 MR. JACKSON: That is the shadow
17 that is casting against the garage to the
18 north. But note that that shadow is not on the
19 roof, so that means that the garage to the
20 north is actually taller. So it's a shadow
21 that is behind the national impact. But also,
22 look on the other end of the garage to the

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1 north, it is casting a shadow. But that
2 shadow is primarily on that property.

3 So there is a shadow to the east
4 of the garage to the north and then there is
5 some shadow that is cast by that garage, but
6 it is also to the north on the eastern part of
7 the property.

8 COMMISSIONER HOOD: Okay.

9 MR. JACKSON: Okay. So what we
10 anticipate happening here would be that the
11 proposed garage would be taller than the
12 garage to the north. It would cast a shadow,
13 but the shadows would primarily be -- would
14 fall upon the garage to the north and not on
15 the rear property line. Now, that would be --
16 the shadows would move back and forth, but the
17 impacts would appear to be minimal on -- very
18 minimal on the dwelling on the properties to
19 the north and south.

20 There will be some impact on the
21 rear yard, but I think that would be minimal.
22 Most of the impact would be the cast shadows

1 on the garage to the north and the vacant
2 lands of the south. That's based on -- that's
3 an assumption based on information we have in
4 this aerial.

5 COMMISSIONER HOOD: Okay. All
6 right. Thank you very much. Thank you, Madam
7 Chair.

8 CHAIRPERSON MILLER: Any other
9 Board Questions? Does the applicant have any
10 questions for the Office of Planning? And
11 first of all, sorry, do you have a copy of the
12 Office of Planning report?

13 MR. SIEBER: Yes, we do. And this
14 probably isn't the right time to -- well, I'll
15 wait until final.

16 CHAIRPERSON MILLER: Okay. This
17 is the time to ask any questions of Office of
18 Planning. If you have any rebuttal or
19 something, that's later.

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21 MR. SIEBER: Yeah, just a couple
22 of things I wanted to clarify with Mr.

1 Jackson. One, you said that the proposed
2 garage, the interior dimension wasn't 19 feet.
3 The last I checked, the proposed dimension
4 fell within that purview.

5 But more to the point, I think
6 when you are talking about gauging a standard
7 for privacy and for light and these things,
8 it's important to have some context with the
9 neighbors. If you look at that last page on
10 the --

11 CHAIRPERSON MILLER: This is for
12 Mr. Jackson's response? I just want to make
13 sure.

14 MR. SIEBER: Yes.

15 CHAIRPERSON MILLER: Okay.

16 MR. SIEBER: Yes, it is. How do
17 you feel that having the -- with the neighbors
18 having decks on both of their houses on the
19 left and the right, how do you think that that
20 plays into the proposed roof deck that he --
21 that the homeowner has in terms of light and
22 air and so forth?

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1 MR. JACKSON: I see. Well, the --
2 if the owner were to decide to, in the
3 alternative, have a roof deck on the rear of
4 their property, on the rear of the existing
5 dwelling, even on the addition, I think there
6 would be less impact on the -- it would not
7 impact the air and light of neighbor
8 buildings, but it would be less impact on --
9 potential impact on --

10 MR. SIEBER: The question I'm
11 asking you is do you think that the same
12 standard of privacy exists for the homeowner
13 with having the decks on the property to the
14 north and the property to the south basically
15 hugging and those decks being able to also
16 look into Mr. -- do you think that that same
17 degree, that same standard of privacy is
18 reflected on his property?

19 MR. JACKSON: Well, given the
20 circumstances -- well, not having full
21 knowledge of the neighboring properties, if it
22 was done as a matter-of-right and allowed

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1 under the Zoning Regulations as a matter-of-
2 right, then it would not be subject to the
3 standard that I just outlined.

4 MR. SIEBER: Um-hum.

5 MR. JACKSON: But with this
6 application, where you are asking for zoning
7 relief, there is a -- that is a standard that
8 is applied to such application.

9 MR. SIEBER: Thank you.

10 MR. JACKSON: So in essence, if
11 you built your deck as a matter-of-right, this
12 issue would not be raised.

13 MR. SIEBER: But you would agree
14 that there are some privacy issues the
15 homeowner has having those two decks on both
16 sides of the houses looking right into his
17 rear house?

18 MR. JACKSON: I can't address
19 that.

20 MR. SIEBER: Okay. Thanks.

21 MEMBER DETTMAN: Mr. Jackson,
22 would you mind just reiterating that last

1 point you made about matter-of-right, building
2 the roof deck as a matter-of-right?

3 MR. JACKSON: If the -- no, I was
4 saying, he was asking about the neighboring
5 properties having decks behind their homes.

6 MEMBER DETTMAN: Oh, okay.

7 MR. JACKSON: I'm saying if those
8 decks were -- okay. You understand the point,
9 okay. Yes?

10 MR. SIEBER: I don't have any
11 further questions.

12 CHAIRPERSON MILLER: Okay. Ms.
13 Marshall, do you have any questions for Office
14 of Planning? Do you have a copy of the
15 report? You probably don't, do you or do you?

16 MS. MARSHALL: I do not.

17 CHAIRPERSON MILLER: Okay. Let me
18 just say this, that all these documents are in
19 the Office of Zoning's public records that
20 anyone can get access to. And so, you know,
21 if someone is coming to participate in a case,
22 they do have access to that. But in any

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1 event, I understand that a lot of people come
2 to these hearings and aren't aware of
3 everything that is here and what they can look
4 at and what they can't look at.

5 MS. MARSHALL: Okay.

6 CHAIRPERSON MILLER: But do you
7 have, not having seen the report and you can
8 get a copy of the report, maybe Ms. Bailey
9 will be able to give you one, any questions
10 based on what you have heard today from Office
11 of Planning?

12 MS. MARSHALL: I've got some
13 questions and some comments.

14 CHAIRPERSON MILLER: Okay.

15 MS. MARSHALL: Is this my
16 opportunity to --

17 CHAIRPERSON MILLER: No. No,
18 questions. Because then we will give you your
19 opportunity to present your testimony. So
20 it's any questions for Office of Planning.

21 MS. MARSHALL: Well, I just have
22 some questions about the perspective of the

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1 shadow. I didn't agree with the -- the sun is
2 moving all day long, so the shadows are
3 moving. Our rear faces to the west, so
4 therefore the light that we have coming
5 towards us is the light coming from the east,
6 which is in the morning and midday.

7 By past midday, there is no light
8 coming, you know, because all of the houses
9 block the light. The sun has moved beyond.
10 And our sun comes from the east and southeast,
11 being as we are in the northern hemisphere.

12 So yes, I feel that it -- that
13 there is an obstruction in terms of the light
14 and so I guess my question is how do you
15 analyze that?

16 MR. JACKSON: Well, we did not ask
17 for a light and shadow study of this
18 application. However, we are -- this is based
19 on experience with other applications that
20 dealt with properties that were had an east/
21 west orientation. And the -- some assumptions
22 we would make about the pattern of the sun and

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1 whether those kind of shadows would be cast.

2 We sometimes -- the example we
3 have before us is just an aerial that was
4 taken at some point in the spring that shows
5 where the shadows will be cast. And usually,
6 the pattern is that the shadows kind of move
7 around in a half circle to the north. And so
8 based on this information, we didn't think
9 that the proposed garage would have a
10 significant impact on air -- on the light and
11 air.

12 Well, none of the air, but on the
13 shadows -- on the light available to the
14 dwelling and that it would be a limited impact
15 on the rear yard. But again, that's based on
16 past observation and the aerial that we have
17 before us. So we're not saying that that's
18 based on facts that we have analyzed, we just
19 say that that's based on past experience with
20 similar cases.

21 MS. MARSHALL: Okay. And my
22 second question has to do with the privacy of

1 the deck. The existing back porches or second
2 story porches face -- are attached to the
3 homes facing the alley all face away. The
4 roof top deck is the direct opposite. It
5 would be sitting here and facing this way.

6 Our deck does not, thank you very
7 much, face into the -- into his home. It
8 faces into our yard and into the alley and
9 over the garages.

10 MR. JACKSON: Is that a question?

11 MS. MARSHALL: No, but the
12 question is whether you distinguish between
13 the invasion of privacy of the deck attached
14 to a house and a deck on a garage facing the
15 house?

16 MR. JACKSON: Actually, in this
17 case, since we're not really making any
18 comments about the existing decks, we're just
19 talking about the proposed decks, because
20 there is a standard that has to do with the
21 impact on privacy and enjoyment of adjacent
22 properties.

1 We're just making the observation
2 that in the case of this deck in this
3 location, we think there is the potential for
4 a negative impact on the privacy and enjoyment
5 of adjacent properties.

6 MS. MARSHALL: Thank you.

7 MR. JACKSON: And we're not
8 addressing any other decks that are existing
9 at this point.

10 MS. MARSHALL: Thank you.

11 MR. JACKSON: Um-hum.

12 MS. MARSHALL: I don't have any
13 other questions.

14 MR. FIORE: I would just like to
15 comment if I may, that the light, air issue
16 has been addressed on several ANC hearings.

17 CHAIRPERSON MILLER: Do you have a
18 question? Because we will get to you for
19 rebuttal testimony --

20 MR. FIORE: Oh, I'm sorry.

21 CHAIRPERSON MILLER: -- and stuff
22 like that. That's okay. I just want to keep

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1 this in order.

2 MR. FIORE: No, actually it was
3 just a comment. Sorry.

4 CHAIRPERSON MILLER: Okay. So
5 hold it. Okay. Okay. So we have gone
6 applicant, Office of Planning. Is anyone here
7 from the ANC? Oh, come forward, please. I
8 didn't know you were here. You have an
9 opportunity to ask any questions also. Okay.

10 MR. HOLMES: No, I had no
11 intention of asking questions. Just to make
12 a statement.

13 CHAIRPERSON MILLER: And why don't
14 you start with identifying yourself for the
15 record, please?

16 MR. HOLMES: I'm David Holmes.
17 I'm the designated representative of ANC-6A.
18 I represent 6A03 and this is my Single Member
19 District. You have a copy of my statement.
20 There is a very similar case in the recent
21 past that is directly applicable to this where
22 the Board concluded that the applicant failed

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1 to show any exceptional situation or condition
2 of the subject property to support the
3 granting of variance relief.

4 The property is regularly shaped,
5 level, rectangular. It has no distinguishing
6 topographical features. It has street and
7 alley access. These are all directly parallel
8 to this case. So we could see no reason to
9 grant a variance here.

10 Nonetheless, because of the
11 privacy issue, we are supporting or requesting
12 that you consider granting them a set-back to
13 the common line of the alley. If you push him
14 back any further, then it just exacerbates the
15 problem of loss of privacy for the neighbors.

16 We oppose -- we have no objection
17 to the lot occupancy, 70 percent, we never
18 object to. At HPRB, the ANC took a position
19 and defended it that this was in violation of
20 the privacy of the neighbors, because of its
21 height and the fact that it overlooked not
22 just the 9th Street side of the alley, but the

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1 10th Street side.

2 It is high enough that it looks
3 straight into the back windows of houses both
4 on the north and on the 10th Street. This is
5 different from a house deck attached to the
6 house. I have one. I can't see into the
7 windows of my neighbors, except at a sharp
8 angle. This one can see straight into at
9 least eight houses, directly into their
10 backyards. And we have neighborhood
11 opposition, both from the 10th Street and 9th
12 Street because of that.

13 It is massive. It was reduced
14 from 15 to 14 feet at HPRB. But when you
15 start adding the required fencing for it and
16 any pertinent structures, gazebos that may be
17 put up there, this is going to be the dominant
18 structure of the square.

19 It is already high and it will be
20 a source of noise if it is used as a deck. It
21 will be a source of loss of privacy. So we
22 are asking that you not push him all the way

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1 back to an additional 7 feet, but just to the
2 common line of the alley structures that you
3 see.

4 In one of your pictures there of
5 the silver structure, you will see that there
6 are bollards there as well. The bollards sit
7 out further than the property line. It's an
8 additional almost 2 feet. So you are -- that
9 alley is severely constricted here. It is a
10 great danger to people who are trying to get
11 emergency vehicles back there.

12 It can get an ambulance back
13 through there, but it's really tight. You are
14 talking a matter of 1 or 2 inches to get past
15 those bollards. So we are looking forward to
16 the opportunity to push this back to the
17 common line, so that it is not a threat to the
18 safety of the alley.

19 With regard to the triangular
20 entrance that you see on the drawings that
21 have been given to you by the applicant, the
22 effect -- that narrows -- shortens the

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1 effective length of this garage considerably.
2 Someone who drives a truck, as Mr. Fiore does,
3 or a handicap van, which tend to be fairly
4 long, is going to have great difficulty
5 getting into this thing and closing it before
6 the -- without having the back corner of the
7 truck hit.

8 This is 10 feet here. Most of
9 these vehicles tend to be 14 feet or longer.
10 Some of them as much as 18 feet long. I don't
11 see how this can work. And that is another
12 reason to push it forward as suggested by the
13 Office of Planning to allow safety entrance,
14 to allow complete closure of that door, so
15 that he can actually get into that.

16 The other reason, as Mr. Jackson
17 said, for opposing this triangular entrance,
18 as you get older, as I am, it becomes harder
19 and harder to look back over your shoulder.
20 It becomes harder and harder to back up your
21 vehicle.

22 If you want to stay into this

1 thing, you can't really expect to back your
2 vehicle back out into an alley and then down
3 the alley for 30 or 50 feet and then make the
4 turn. It's difficult now. My wife couldn't
5 possibly do this with her -- she has some
6 mobility issues with her neck.

7 I don't understand how this could
8 be safe coming out at this angle. Whereas, as
9 a T-entrance would eliminate that problem. He
10 would be able to back out, so that he could
11 face the exit to the alley and then park or go
12 out the other way and then go down the alley.
13 So this angled entrance is a problem.

14 That, essentially, concludes my
15 very brief statement for you.

16 CHAIRPERSON MILLER: Thank you.
17 We also have in our record the ANC report, at
18 Exhibit 28, which reflects, as you mentioned,
19 support for the special exception and
20 opposition to the variance and a 6-0 vote on
21 this at a publicly noted meeting.

22 And the report reflects that the

1 vote primarily based on the fact, I'm not
2 reading it, so you can tell me if I'm
3 characterizing it wrong, but basically, that
4 the variance test wasn't met, the three-prong
5 test wasn't met.

6 MR. HOLMES: Correct.

7 CHAIRPERSON MILLER: Okay. And
8 then it says, as you did, that you are willing
9 to support the construction of the garage if
10 it is brought back to conform to the common
11 lines of the other buildings.

12 MR. HOLMES: The special hardship
13 is not so much for Mr. Fiore, but for the
14 neighbors in that it pushes the garage further
15 back towards their windows and a greater loss
16 of privacy for the adjacent neighbors. But
17 again, we do not support this deck at all.

18 CHAIRPERSON MILLER: Okay. Now, I
19 don't see that mentioned in the report.

20 MR. HOLMES: This is a prior --
21 it's not in what you have there, but reflects
22 the ANC position given to HPRB.

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1 CHAIRPERSON MILLER: Okay.

2 MR. HOLMES: But not to you.

3 CHAIRPERSON MILLER: But it's not
4 in here. Okay. That was my next question
5 then. I was going to ask you. I didn't see
6 that the deck was reflected. So I think we
7 would treat that differently with respect to
8 the great weight that is given.

9 MR. HOLMES: We proposed it to
10 HPRB.

11 CHAIRPERSON MILLER: Um-hum.

12 MR. HOLMES: Mr. Boasberg's
13 response to us was that the height and the
14 deck were both a matter-of-right and that was
15 the end of the issue. This kind of stunned
16 me, because I thought why are we at HPRB to
17 discuss this if this is a matter-of-right? So
18 we didn't include it, at this point, because
19 we took his assurance that it was a matter-of-
20 right. I've been informed by others that that
21 is not the case. So we did not include it in
22 the ANC, but we have at a previous -- by

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1 previous motion.

2 CHAIRPERSON MILLER: Okay. So I
3 mean, basically, I mean, we are hearing your
4 testimony, so we're considering that in the
5 record and everything that you are telling us.
6 I just wanted to make that legal distinction.
7 But also, I'll ask you just one other
8 question, because everybody's ANCs tell me
9 they have different character or whatever.
10 And I know Mr. Peterson is here. I think we
11 might hear from him.

12 But sometimes when we see roof
13 decks in applications before this Board in
14 different parts of the city or whatever,
15 sometimes they are an improvement as well.
16 That, in fact, they are attractive. You know,
17 they have trees and plants up there and they
18 do not interfere with neighbors' privacy.

19 Now, I just want to ask you in
20 your knowledge of your ANC or whatever, are
21 there some instances where you have seen that
22 roof decks have been an attractive improvement

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1 to a property?

2 MR. HOLMES: To my knowledge,
3 there are no permitted roof decks on separate
4 garages. Mr. Fiore and his contractor have
5 shown us pictures of some and we are
6 proceeding to get them removed. They were
7 built without permits. There are roof decks
8 to attached garages. In other words, the
9 house may come out on -- from one street to
10 another street and that's the garage and they
11 built on top of that attached structure.

12 We have less of a problem with
13 this, with that kind of structure than what is
14 proposed. Entirely separate, dominating an
15 alley. I don't know of any structures similar
16 to this with a roof deck.

17 CHAIRPERSON MILLER: And is your
18 concern with the roof deck with respect to --

19 MR. HOLMES: I'm referring to --

20 CHAIRPERSON MILLER: What?

21 MR. HOLMES: -- my Single Member
22 District.

1 CHAIRPERSON MILLER: Okay. But is
2 the concern that privacy going both ways, like
3 looking into the alley or looking into the
4 rear yards of neighboring properties?

5 MR. HOLMES: It goes both ways.

6 CHAIRPERSON MILLER: Both?

7 MR. HOLMES: It is high enough and
8 close enough that there is a very clear view
9 of the houses on the 10th Street side of the
10 alley.

11 CHAIRPERSON MILLER: Oh, I see,
12 you're saying he can look into properties
13 across the alley?

14 MR. HOLMES: Exactly.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. Any other questions?

17 COMMISSIONER HOOD: Commissioner
18 Holmes, I just wanted to ask you, let me make
19 sure I understand. In this alley, leaving out
20 of the garage you mentioned about backing up.
21 And I guess that's going south. There is no
22 egress. I can't exit the alley going north?

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1 MR. HOLMES: That's correct.

2 COMMISSIONER HOOD: Okay. So I
3 would have to back up and make the cut and
4 look over my shoulder. Okay.

5 MR. HOLMES: You would have to
6 back up to someone else's property down the
7 alley, swing into that and then make your exit
8 that way. You could not possibly turn that
9 corner going backwards with any safety at all.
10 So you would have to back up into someone's
11 property and then go this way.

12 COMMISSIONER HOOD: Okay.

13 MR. HOLMES: It's an awkward
14 situation.

15 COMMISSIONER HOOD: The residents
16 tend to maybe double park sometimes? Maybe to
17 take something in the house?

18 MR. HOLMES: My observation is
19 it's very rare.

20 COMMISSIONER HOOD: Okay.

21 MR. HOLMES: I don't see much
22 double parking.

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1 COMMISSIONER HOOD: Okay.

2 MR. HOLMES: The double parking we
3 see tends to be workmen during the day.

4 COMMISSIONER HOOD: Okay. All
5 right. Thank you.

6 CHAIRPERSON MILLER: Any other
7 Board questions? Does the applicant have any
8 cross examination of Mr. Holmes?

9 CROSS EXAMINATION

10 MR. SIEBER: Have you received any
11 letters in support for the project?

12 MR. HOLMES: No.

13 MR. SIEBER: Okay. Have you heard
14 any of the neighbors -- have any of the
15 neighbors suggested to you that the presence
16 of having a roof deck might be opposite to
17 that? Meaning, have you heard anything from
18 your neighbors that said that they would
19 welcome the presence of a roof deck to maybe
20 thwart, you know, theft or any kind of illegal
21 activity back there? That they would -- you
22 know, have any of the people you talked to

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1 welcomed the idea of a roof deck?

2 MR. HOLMES: No. The only thing I
3 have heard from the neighbors is opposition.

4 MR. SIEBER: You said that an
5 ambulance can get back there, too?

6 MR. HOLMES: Yes.

7 MR. SIEBER: All right. That's
8 all my questions.

9 CHAIRPERSON MILLER: Ms. Marshall,
10 do you have any questions for the ANC?

11 MS. MARSHALL: No, ma'am.

12 CHAIRPERSON MILLER: Okay. Then I
13 think it's your turn if you have any testimony
14 you would like to make. Oh, wait a second.
15 Is there anybody here in -- wait, hold on a
16 minute. Sorry, just checking my regulations.

17 The next in procedure is parties
18 or persons in support. So is there any -- I
19 don't believe we have a person -- a party in
20 support. Is there a person in support that
21 wishes to testify? Okay. Why don't we go
22 then to Ms. Marshall and then --

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1 MR. SIEBER: If I may just a
2 moment, I -- we have gotten some -- several
3 signatures as support for the project. Would
4 this be the appropriate time to submit this?

5 CHAIRPERSON MILLER: You can do it
6 when we get back to you. That will be fine.
7 As long as there's no live person here who
8 wants to testify.

9 MR. SIEBER: I don't believe there
10 are.

11 CHAIRPERSON MILLER: Okay. Ms.
12 Marshall, yes.

13 MS. MARSHALL: I have a couple
14 photographs. Can I --

15 CHAIRPERSON MILLER: You need to
16 show them to the applicant and the ANC and
17 then give it to Ms. Bailey.

18 MS. MARSHALL: My -- our
19 opposition is basically to three things. I'll
20 speak to the alley access. It's very tight
21 the way it is now. Utility vehicles can pass.
22 All cars entering garages have to jockey

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1 multi-point turns to get in. Just to sort of
2 establish what that is.

3 And we understand Mr. Fiore's need
4 to have access back there. So we did not
5 object to the alley line, the set-back. It
6 couldn't get any tighter than it is, but if --
7 I also understand the rationale for discussing
8 moving the house further off the alley, but
9 that will move it further into the property
10 and I'm going to speak to the size of the
11 structure.

12 If that were to happen, I think it
13 needs to reopen a discussion of the basically
14 the light and the space, because that's --
15 it's moving further into the space. We object
16 to the rooftop deck as discussed, because of
17 the privacy issue.

18 The current corner of the garage
19 where it abuts Mr. Fiore's property is at 10
20 foot 6 inches. His proposed structure was 15.
21 I'm understanding now that it is 14. So 14
22 feet or 4 feet above that and all the way

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1 across. And then if you put a railing on a
2 rooftop deck, I think that has to be a minimum
3 of 3 feet.

4 I've heard a screen mentioned. If
5 you screened it, then you are even going
6 beyond that. So in Photograph 2, which is a
7 photograph taken from our yard of the back of
8 our garage of the space that would be occupied
9 by the facade of this garage, all of that
10 space would be completely filled with his
11 garage.

12 So our objection is to the deck
13 from a privacy issue, because at that height,
14 it is a monolith in this backyard space. It
15 would be the highest thing. 360 degrees
16 around by 4 to 7 feet, depending on the
17 structure that it was -- that was built. And
18 it would look down in 360 degrees across the
19 gardens of 9th Street and 10th Street.

20 So I do -- we do feel that it is
21 an invasion of privacy. It would also be
22 directly at the height of the bedroom, second

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1 story windows on our site as well as on 10th
2 Street. And depending where it was located,
3 27 feet or closer to our back, it would also
4 look down into our family room. Basically,
5 into all of our living space at the rear of
6 our house. The same would apply to the houses
7 to the south.

8 Again, I'll speak to the light
9 issue. I suffer from a Vitamin D deficiency.
10 I am on therapeutic doses of Vitamin D for a
11 year to combat that. I also have to go out
12 and be in the backyard, sit in the backyard.
13 My only light in the backyard and on our back
14 patio is morning light.

15 That -- again, that illustration
16 of Photograph 2 is where the light is coming
17 from into my backyard in the morning. There
18 isn't light -- unless I went and plastered
19 myself up against my garage and faced west, I
20 wouldn't have access to light otherwise.

21 CHAIRPERSON MILLER: Wait a
22 second. Photograph 2, are you referring to

1 photographs you just passed out or other
2 photographs --

3 MS. MARSHALL: Yes.

4 CHAIRPERSON MILLER: -- in the
5 record?

6 MS. MARSHALL: Yes, ma'am.

7 CHAIRPERSON MILLER: Okay. I
8 don't know if we all have them before us, so
9 let me make sure. Hold on.

10 COMMISSIONER HOOD: I think
11 there's only one copy and I'm passing them
12 down. I just got them.

13 CHAIRPERSON MILLER: Okay.

14 COMMISSIONER HOOD: I'm not
15 holding them up.

16 CHAIRPERSON MILLER: We'll be
17 sharing them then. Okay. Photo 2 shows the
18 light when?

19 MS. MARSHALL: That's just a
20 photograph of our backyard. From our backyard
21 of our garage and the space. The blue space
22 would be fully occupied by the facade of Mr.

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1 Fiore's garage.

2 CHAIRPERSON MILLER: There is a
3 big shadow there now, right?

4 MS. MARSHALL: No, I'm talking
5 about the blue sky.

6 CHAIRPERSON MILLER: Oh, to the --
7 oh, the blue sky up there. Okay.

8 MS. MARSHALL: All of that area if
9 you drew it -- drew a box there of his west
10 facing facade of his garage, all of that space
11 would be occupied by the garage. The rooftop
12 deck would be beyond that.

13 MR. JACKSON: A point of
14 clarification. I just want to make sure we
15 are -- when you -- are you saying when you are
16 at the rear facade, standing in front of your
17 rear facade, you are facing what? If you're
18 standing behind your house and facing?

19 MS. MARSHALL: When I walk out my
20 back door, I'm facing east.

21 MR. JACKSON: Yes, okay. I just
22 wanted to make sure the directions were

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1 correct.

2 MS. MARSHALL: And the sun is not
3 directly east. It is always east to
4 southeast.

5 MR. JACKSON: Um-hum.

6 MS. MARSHALL: Where we live.

7 MR. JACKSON: Okay.

8 MS. MARSHALL: And then the -- and
9 as you spoke about the arc of the sun moving,
10 the only arc of sun that I have access to in
11 the backyard is the morning sun. The early
12 sun that moves through the east/ southeast
13 arc. So other than those pictures, which I
14 think were taken later in the day, which shows
15 the shadow casting to the northeast, there is
16 no longer any sun coming onto our house at
17 that time of day.

18 The sun that we are talking about
19 is the morning to midday sun, which would be
20 obstructed by that garage. And in a nutshell,
21 that's our opposition.

22 MEMBER WALKER: Ms. Marshall, I'm

1 sorry, what time of day was this photograph
2 taken?

3 MS. MARSHALL: That is --

4 CHAIRPERSON MILLER: No. 2 we're
5 talking about.

6 MS. MARSHALL: -- I would say that
7 is mid-afternoon, because the sun is fully on
8 our garage, which means it is coming from the
9 west/southwest.

10 CHAIRPERSON MILLER: And the
11 proposed garage is going to be next to your
12 garage, correct?

13 MS. MARSHALL: Yes, yes.

14 CHAIRPERSON MILLER: So that has
15 full sun, at this point, when this picture was
16 taken. So do you anticipate that --

17 MS. MARSHALL: No, what I'm --

18 CHAIRPERSON MILLER: It wouldn't
19 affect the --

20 MS. MARSHALL: In the --

21 CHAIRPERSON MILLER: -- yard at
22 that time.

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1 MS. MARSHALL: -- body of the
2 garage. Excuse me, in the majority of our
3 yard, on our deck patio and the light entering
4 our house into our living space all comes in
5 the morning. Not when this photograph was
6 taken. I said I would have to go and lay
7 myself up against my garage wall to have
8 access to the sun at all any other time of
9 day, if his structure was built.

10 I wouldn't have any sun in the
11 morning is what I'm saying.

12 CHAIRPERSON MILLER: You wouldn't
13 have any sun in the morning, but you don't
14 have a picture of your yard in the morning for
15 us?

16 MS. MARSHALL: Well, I did -- I
17 don't have a photograph of -- I didn't realize
18 the direction that this was going to go. I
19 don't have a photograph of my house and my
20 yard. I was trying to illustrate where the
21 garage would be, that was the purpose of that
22 photograph.

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1 CHAIRPERSON MILLER: Okay. So
2 long as we know what the purpose of the
3 photograph is. That's fine.

4 MS. MARSHALL: The photograph was
5 to --

6 CHAIRPERSON MILLER: Okay.

7 MS. MARSHALL: -- show -- the
8 space that is illustrated there is the space
9 where we have light coming into our house and
10 into our yard, which is the opposite of that.
11 And the garage would fill that space and then
12 I -- we would not have any sun coming into our
13 yard, other than at midday and then when it
14 moves off and hits the garage would be a
15 limited time of day.

16 We're already -- we already have a
17 full row of houses that blocks the sun going--
18 as it moves west. This would then block the
19 sun from the east as well. We would only have
20 this little bit of light and sun. I estimated
21 it at 30 percent. The first third of the
22 morning arc of sun would be obstructed by the

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1 garage.

2 CHAIRPERSON MILLER: Okay. Sorry
3 to interrupt you. I hadn't seen the photos
4 coming down and I wanted to know what we were
5 to do with it. Okay. Do you have more to
6 say?

7 MS. MARSHALL: No, that -- the
8 other was just the -- I spoke to the privacy
9 issue, other than the light issue. And that
10 was the location. Again, that photograph best
11 illustrates where that deck would be and what
12 is around it. There is nothing around it. It
13 would be very tall, 4 to 7 feet, deck height,
14 railing height above anything around it, 360
15 degrees and looking down into all the
16 surrounding yards and windows.

17 CHAIRPERSON MILLER: Any questions
18 from Board Members?

19 COMMISSIONER HOOD: Madam Chair?
20 Ms. Marshall, Commissioner Holmes' testimony
21 said that it would be, approximately, eight
22 homes, so I'm hearing from you it would be

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1 more than eight that would have a privacy
2 issue?

3 MS. MARSHALL: I would say yes,
4 more than eight.

5 COMMISSIONER HOOD: So basically,
6 you're saying the whole block more or less?

7 MS. MARSHALL: I beg your pardon?

8 COMMISSIONER HOOD: Are you
9 saying, basically, the whole block?

10 MS. MARSHALL: I wouldn't say the
11 whole block. That view wouldn't extend to the
12 end of the block. It would be -- I would say
13 it's 10 homes. It's more than eight.

14 COMMISSIONER HOOD: 10? Two on
15 the same side and two behind it or just try to
16 give me a reference point.

17 MS. MARSHALL: I have spoken to
18 neighbors three houses to our north and one to
19 our south and all share the concern because of
20 the height of the structure. It is giving it
21 a tremendous downward vantage point into
22 yards. There would be -- we would have zero

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1 privacy, I mean, in our yard.

2 As you can see from some of your
3 other photographs, you know, people have
4 fences up that provide you privacy at eye
5 level and people have parties and it's a
6 fairly social block. We have great relations
7 with all of the neighbors.

8 But this -- it's just very
9 uncomfortable to imagine that aspect looking
10 down on to the house and into the yard.

11 COMMISSIONER HOOD: So the concern
12 is into the yard and also into the house?

13 MS. MARSHALL: Yes, sir.

14 COMMISSIONER HOOD: Okay. Thank
15 you. Thank you, Madam Chair.

16 CHAIRPERSON MILLER: Any other
17 Board questions?

18 VICE CHAIRMAN LOUD: Very quickly.
19 Ms. Marshall, just very briefly, on the light
20 issue. Mr. Jackson and you couldn't disagree
21 more on that particular issue. He agrees with
22 you on the deck and the whole privacy issue.

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1 I mean, this is what he does. He is a
2 professional. They do -- that's part of what
3 they do.

4 Not to at all diminish your
5 testimony, but is your testimony based on your
6 actual experience? In other words, you
7 experience this loss of light in the morning
8 or perhaps I should word it differently. You
9 experience the peak periods of light in the
10 morning during that one-third part that you
11 talked about and then you are projecting that
12 this structure to your south will block it or
13 do you have some additional expertise around
14 shadow studies and light dispersion and all
15 that?

16 MS. MARSHALL: I haven't conducted
17 a shadow study either, but it's beginning to
18 sound like perhaps we should.

19 VICE CHAIRMAN LOUD: Well, no, I'm
20 just asking you to help me understand your
21 conclusion.

22 MS. MARSHALL: The structure from

1 our -- from where I live in the house or on
2 our back patio, the only direct sunlight that
3 I have is from the east/southeast, which is in
4 the morning. And is illustrated by that
5 Photograph 2. The blue -- that area of blue
6 sky is where the sun moves when I have -- the
7 only time that I have direct access to the
8 house and sun.

9 Once the sun moves beyond that and
10 is directly overhead, we have it, but it is no
11 longer shining on our house or into the back,
12 because we are west. So if you filled that
13 blue sky with a 14 foot or higher structure,
14 all of that sunlight would be blocked. So
15 that's -- it's not a shadow study, but it is
16 illustrated by that photograph.

17 The sun would no longer be visible
18 to me in that space.

19 CHAIRPERSON MILLER: I'm sorry,
20 can I just ask a question? I mean, I'm not an
21 expert on sun and shadows, etcetera, but
22 doesn't it depend how high in the sky the sun

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1 is? I mean, just the fact that, you know,
2 it's another story, you seem to say that it is
3 all going to disappear. And how do you know
4 that?

5 MS. MARSHALL: I don't understand.

6 CHAIRPERSON MILLER: I mean, it's
7 not just the direction. It's how high in the
8 sky the sun is, isn't it?

9 MS. MARSHALL: Right. And I'm
10 only speaking to the part of the sky that will
11 be blocked by the structure. In that
12 photograph, all of the blue sky that is
13 visible will no longer be visible. It will be
14 blocked. It will be filled by the structure.
15 So any sunlight that I am getting, which is
16 the sunlight that comes onto my house, from
17 that direction I will no longer get.

18 VICE CHAIRMAN LOUD: So you --

19 MS. MARSHALL: It's about 30
20 percent of that arc before the sun moves past.
21 I mean, I just went out there and said here,
22 here, here and that's how I estimated 30

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1 percent. It's approximately 30 percent of the
2 direct sunlight, which is what I need to
3 access will be blocked by that building.

4 VICE CHAIRMAN LOUD: And part of
5 that, just as a layperson listening, is
6 because you get a lot of your sunlight from
7 southeast, not due east. Would that be a good
8 way to --

9 MS. MARSHALL: Yeah, we all do.

10 VICE CHAIRMAN LOUD: Well, I mean,
11 there is some people that get it due east.
12 But you are saying you are getting your's from
13 the southeast direction where his improvement
14 will now block some of that. Is that a good
15 way to --

16 MS. MARSHALL: Yes.

17 VICE CHAIRMAN LOUD: -- sort of --
18 okay. All right. Thank you. I'm not saying
19 I agree with it fully or that it has been
20 reconciled, but it makes sense from your
21 perspective.

22 MEMBER WALKER: Ms. Marshall, are

1 you saying that your own garage doesn't block
2 the light into your yard and onto your back
3 deck?

4 MS. MARSHALL: To a much lesser
5 degree. Because of where we live in the
6 northern hemisphere, I don't want to sound
7 like a science teacher, where we live in the
8 hemisphere, we don't ever really get light.
9 The sun moves up, but then it is three-
10 quarters or more of the year it is to the
11 south of us.

12 So my sun very, very rarely, only
13 at the very peak will it ever come and it will
14 never really come directly east of me. It's
15 always to the east/southeast of us, as it is
16 to everyone where we live in D.C., so to a
17 much lesser degree. Also, it is not as high.
18 Again, our garage is at 10 feet.

19 CHAIRPERSON MILLER: Any other
20 questions? Does the applicant have any
21 questions? Okay.

22 MR. SIEBER: Just a couple. I'll

1 be brief.

2 CROSS EXAMINATION

3 MR. SIEBER: Thanks, Ms. Marshall,
4 for coming today. We appreciate you coming
5 out here. I was just curious. I have heard
6 from some of the neighbors in the neighborhood
7 that you're going to put your house on the
8 market. Is that right?

9 MS. MARSHALL: Maybe not.

10 MR. SIEBER: Oh, I'm just asking.
11 Are you putting your house -- are you selling
12 your house?

13 MS. MARSHALL: Not immediately,
14 no.

15 MR. SIEBER: Okay.

16 MS. MARSHALL: It's not -- I
17 mean --

18 CHAIRPERSON MILLER: It's not
19 really relevant. I don't think.

20 MR. SIEBER: Right. No, I was
21 just -- I wasn't sure. I know that we had
22 gone through the --

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1 CHAIRPERSON MILLER: You might
2 want to just move back a little from the mike
3 and it won't -- it will be clearer, I think.

4 MR. SIEBER: Okay, sorry. When we
5 were in the concept phase of the historic, did
6 you go to -- did you voice an -- your
7 objections at the Historic Review Board
8 hearing?

9 MS. MARSHALL: We voiced our
10 concerns to the ANC.

11 MR. SIEBER: Okay.

12 MS. MARSHALL: Which was taken to
13 the Historic Board.

14 MR. SIEBER: Gotcha. That's all
15 the questions I have.

16 CHAIRPERSON MILLER: And does the
17 ANC have any questions of Ms. Marshall? Okay.
18 Are there any other persons who wish to
19 testify in opposition to this application?
20 Mr. Peterson, you don't want to testify? Oh,
21 you are an organization. Okay. Okay. Okay.
22 Good. We want to hear from you. Is there

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1 anybody else here who wishes to testify on
2 this case? Okay.

3 MR. SIEBER: Can I get a copy of
4 that, sir?

5 CHAIRPERSON MILLER: Okay.

6 MR. PETERSON: I'm Gary Peterson.
7 I'm Chair of the Capitol Hill Restoration
8 Society Zoning Commission. I just had passed
9 to you my testimony, but I can make this
10 fairly short. We support the report of the
11 Office of Planning. So that will take care of
12 that.

13 I would just like to highlight
14 perhaps the most important -- if I had to rank
15 these issues 1, 2, 3, 4, what's the most
16 important to us and I think their -- the most
17 important issue is the roof deck. And I don't
18 think that the roof deck should be allowed.
19 I don't think it meets the test for special
20 exception and that is outlined why in my
21 testimony.

22 I think this roof deck will

1 certainly violate the privacy of the
2 neighbors, both on the 9th Street side and on
3 the 10th Street side and I think that's the
4 most important issue here.

5 The variance, I personally don't
6 think it meets the test for a variance. Even
7 if you assume the property is unique because
8 of the existing garage and the angle, I think
9 there is no practical difficulty. The
10 applicant can build a garage there that will
11 be usable, suit the needs and still keep a
12 rear yard that is within the legal
13 requirements. That's my testimony. I'm open
14 to your questions.

15 CHAIRPERSON MILLER: I was just
16 trying to figure out, you said that there
17 could be a distinction on the property that
18 given how it's at the end and it protrudes
19 further than the others.

20 MR. PETERSON: I think --

21 CHAIRPERSON MILLER: But you don't
22 think that creates a practical difficulty in

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1 complying with the regulations?

2 MR. PETERSON: I don't think there
3 is any practical difficulty. Even if you
4 assume that the property is in some way unique
5 because of those features, I don't think it
6 creates any practical difficulty. So it
7 doesn't meet the second prong.

8 CHAIRPERSON MILLER: And the roof
9 deck issue, have you seen any roof decks in
10 your area on garages that are separated from
11 the principal dwelling?

12 MR. PETERSON: I was trying to
13 think of some on garages where it is separated
14 from the primary house and I always hate to
15 say no there aren't any, because then someone
16 will point out the exception to when you say
17 that. But I can't think of any. I can think
18 of them being on garages that are attached in
19 some fashion to the main building. But I
20 can't right off the top of my head think of
21 one where it is a separate -- it's a detached
22 structure.

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1 I know in the past the Restoration
2 Society, at least, has opposed those if they
3 needed any zoning to do those.

4 CHAIRPERSON MILLER: And how is
5 the privacy so different if you have an
6 attached deck that goes further into the rear
7 yard than its neighbors, so that somebody on
8 that deck could look into the windows of a
9 next door neighbor?

10 MR. PETERSON: Well, when you
11 build one of those, because I have that
12 situation, you -- if you go out -- not only
13 can you look into their windows, but they can
14 look onto your deck. So I mean, what I have
15 done is I've put shades up on either side of
16 my deck to keep my privacy. So I really don't
17 want to look in my neighbor's windows. I
18 don't want them looking into my deck where I'm
19 sitting and having a drink or something.

20 So I would say when it is at the
21 rear of the garage, it's a lot more difficult
22 to protect yourself from someone visually

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1 looking down into your yard, your entire yard,
2 looking onto you deck where you expect some
3 amount of privacy.

4 And I think this covers, the ANC
5 said, you know, eight properties. It's 8 to
6 10 properties where easily you look into the
7 yards and look into the rear windows. And I
8 expect more property in my house with my
9 second floor and somebody looking into my
10 windows and I do respect property say on my
11 rear yard.

12 So I think this is unnecessary.
13 It does violate people's privacy. And the
14 applicant has a 29 foot long rear yard. I
15 mean, we can argue that maybe it has to be 27
16 if they change it, but that's much larger than
17 my rear yard is. So there is space for the
18 applicant to enjoy the use of his property by
19 not -- and not have a roof deck.

20 If you've got a situation where
21 someone had a 4 foot rear yard, I would say
22 then there is -- they have a much better

1 argument they need that open space themselves.
2 Here the applicant clearly doesn't need that
3 extra open space.

4 CHAIRPERSON MILLER: And would the
5 screening address your privacy concerns?

6 MR. PETERSON: Well, I don't know
7 how you could enforce the screening, frankly,
8 so I think you have an enforceability -- are
9 you going to put in your report that they are
10 required to plant so many evergreens or bushes
11 that are a certain height? I mean, and then
12 how is it going to be enforced? I don't think
13 that's very practical, frankly.

14 CHAIRPERSON MILLER: You know, I
15 don't know what this Board is going to do, but
16 when we do do something like screening,
17 whether it be screens or plants or whatever it
18 is, it is a part of the order. So it would be
19 enforceable and they could be reported to DCRA
20 if they were in noncompliance.

21 MR. PETERSON: Right. But I'm
22 just saying it is an enforcement issue, in my

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1 opinion. It's very difficult to enforce.

2 CHAIRPERSON MILLER: Any other
3 questions? Applicant have questions? ANC,
4 Ms. Marshall?

5 MS. MARSHALL: Only if it got to
6 the screening, because then we are actually
7 increasing the height of the structure. We
8 are increasing the obstruction --

9 CHAIRPERSON MILLER: A question
10 for Mr. Peterson only.

11 MS. MARSHALL: No, I do not.

12 CHAIRPERSON MILLER: Okay. All
13 right. Then I believe Mr. Dettman has a
14 question for the applicant.

15 MEMBER DETTMAN: Yeah. Thank you,
16 Madam Chair. Because as we wind down here, I
17 think we are getting closer to closing
18 arguments. And I just wanted to ask the
19 applicant something or maybe propose something
20 to them. I have been sitting here listening
21 to the concerns of the neighborhood and also
22 keeping in mind what the applicant wants to

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1 accomplish.

2 Build a bigger garage, a nicer
3 garage and put it in a spot that does not take
4 away too much of the rear yard. So it sounds
5 to me like we might be getting into an idea of
6 amended plans in one way or another. I think
7 it would be appropriate to consider setting
8 that thing back about 4.5 feet from your rear
9 property line. That would make it consistent
10 with the garage to the north and in line with
11 the, I think the ANC called it, common alley
12 line.

13 So that would address the ANC's
14 concerns, open up some access between both
15 sides of the alley and it also addresses the
16 Capitol Hill Restoration Society's concerns.

17 That also gives you about 14.5
18 feet of swing space to get into the garage and
19 not have to have a diagonal entry. I don't
20 like the diagonal entry because who knows,
21 that 20 foot are might go away some day. That
22 property owner might be able to acquire that

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1 somehow.

2 Backing down the alley does -- is
3 a little bit concerning. So we would get rid
4 of the diagonal and we would square up the
5 building. As the applicant said, that
6 increases their lot occupancy. What we heard
7 from DCOP is that we are proposing a 16 foot
8 wide garage where we could maybe decrease the
9 width and still maintain your 19.5 foot depth.

10 Just sitting here doing the math,
11 you would have to decrease your garage from 16
12 feet to 13 feet 10 inches. It's not bad. And
13 then essentially, what you would do is you
14 would build a gate, so that you could, as a
15 pedestrian, access the alley from your
16 backyard.

17 With that scenario, you back it up
18 4.5 feet so you are in line with all of the
19 garages. You square up the building and have
20 an entrance where you are going to pull
21 perpendicular into this thing. And you
22 decrease the width to 13 feet 10 inches. You

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1 would be within your 70 percent lot occupancy.
2 You would still need the variance, but it
3 decreased the magnitude of the variance.

4 So under this scenario, the relief
5 doesn't change, it just addresses some of the
6 concerns of the neighborhood.

7 And then one other thing, with
8 respect to the roof deck, I'm not a big fan of
9 roof decks on garages for all the reasons that
10 we have heard. So I wouldn't be, personally,
11 in favor of the roof deck. And I would also
12 be in favor of revisiting the height of this
13 structure to address some of the neighbors'
14 concerns.

15 I'm looking at your elevation and
16 you are proposing a 15 foot high building.

17 MR. SIEBER: Actually, 14.

18 MEMBER DETTMAN: 14 foot high
19 building, but you only have a vertical
20 clearance of 7 feet 10 inches on your door.
21 So what that additional vertical clearance is
22 going to be used for, I'm not sure. But I do

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1 know that 7 feet 10 inches might preclude you
2 from getting a larger van in there in the
3 future.

4 So to drop this thing a couple
5 feet, unless you are going to be using the
6 ceiling, the upper area for storage, I don't
7 know it's not shown, but it seems to me that
8 you need to address the height of your door
9 just to get a van in here some day. So there
10 might be an opportunity to decrease the height
11 of the structure maybe 10 feet to match the
12 garage next door. Maybe 12 feet, whatever it
13 is.

14 It is going to reduce the amount
15 of impact that you may or may not be having on
16 light. And look at your door, so that you can
17 ensure that in the future you can get a van in
18 here.

19 Again, it doesn't change the
20 relief. It just addresses some of the
21 concerns of the neighborhood. It doesn't get
22 rid of the concerns, but it definitely is a

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1 step in the right direction, I think.

2 MR. SIEBER: Yeah, I -- that's a
3 reasonable alternative. Another one that we
4 had considered too was if we are going to
5 square up that angle and add to the 70
6 percent, if in fact, if we could get approval
7 for the deck, what we were considering was
8 maybe an alcove of sorts on the back wall of
9 the garage that you could recess the spiral
10 staircase into to create the, you know,
11 overage that you would have.

12 Does that make sense to you?

13 MEMBER DETTMAN: It does and that
14 allows you to retain your roof structure or
15 your roof deck, sorry. You know, of course,
16 under my scenario, if you put a spiral
17 staircase on, you have now jumped over 70
18 percent. To get around that, you could shrink
19 the width of your garage from 13 feet 10
20 inches to 13 feet.

21 MR. SIEBER: Or put it inside the
22 garage.

1 MEMBER DETTMAN: Or put it inside
2 the garage. However, to me, the roof deck
3 does not get addressed under the third-prong
4 of the variance test. Because to me, the
5 third-prong is can the relief, can the set-
6 back relief be granted without adversely
7 affecting the public good?

8 However, it would come into play
9 when analyzing it under 223, under the special
10 exception, because if I look at the garage as
11 a whole, I would find that the deck would have
12 an adverse impact on the neighboring
13 properties with respect to light, air and
14 especially privacy.

15 So if you were to shrink it from
16 13 feet 10 inches to 13 feet, so you could get
17 up there, I personally -- in my analysis it
18 would fail on the 223 special exception
19 analysis.

20 CHAIRPERSON MILLER: Thank you,
21 Mr. Dettman. I do want to just clarify that
22 everything that Mr. Dettman said is Mr.

1 Dettman's excellent suggestion and personal
2 right, that the Board has not come to any
3 decision about roof deck, you know, which way
4 to go on that, whether it's an adverse impact
5 or not.

6 And also, you know, we're going to
7 let you make your closing arguments, but I
8 think that the way this hearing has gone is
9 that we anticipate that you might want to
10 revise your plans, which we do allow after
11 initial hearing, after you have considered all
12 of the comments that you have heard.

13 And so what you have heard from
14 Mr. Dettman are some very good ideas that we
15 don't necessarily -- are required to offer,
16 number one, as Board Members. And number two,
17 it doesn't necessarily reflect all the other
18 Board Members' ideas or take away from
19 certainly what you need to do. You hear
20 everything and then you come back with any
21 revision that responds to concerns about the
22 legal questions that you have -- and factual

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1 issues that you have heard today and also
2 still responds to your goals.

3 So I just wanted to say that for
4 the record and put it in context. Do you have
5 some closing remarks? We don't have any other
6 questions, do we?

7 MR. SIEBER: Mr. Fiore has some
8 closing remarks. I was just going to --

9 CHAIRPERSON MILLER: Also, I said
10 you -- okay.

11 MR. SIEBER: Go ahead. I was just
12 going to say, you know, as part of my closing
13 statements before Lou makes his is, you know,
14 we went through the historic -- we went
15 through all the, you know, proper channels in
16 terms of Historic, you know, approval and the
17 concept basis.

18 You know, neighbors were brought
19 into it. We have got a flurry of support
20 letters, you know, in addition to --
21 obviously, there is the opposition. And there
22 is a strong precedence for roof decks in

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1 Historic Districts.

2 And I would just defer to Lou on
3 his --

4 CHAIRPERSON MILLER: Can I ask you
5 as you are going into that? First of all, the
6 support letters, I don't think you put them
7 into the record yet, did you?

8 MR. SIEBER: No, we didn't. I
9 have them right here.

10 CHAIRPERSON MILLER: And did you
11 show them to the others?

12 MR. SIEBER: Yes.

13 CHAIRPERSON MILLER: Okay. And --

14 MR. SIEBER: Yes. Go ahead.

15 CHAIRPERSON MILLER: We have heard
16 some references to HPRB hearings and the roof
17 deck. Was that something that they looked at
18 with respect to character of the neighborhood
19 or anything?

20 MR. FIORE: Yes, ma'am.

21 CHAIRPERSON MILLER: They did?

22 Okay.

1 MR. SIEBER: I would like to make
2 a comment.

3 CHAIRPERSON MILLER: Is that what
4 you were going to rebut?

5 MR. FIORE: Yes.

6 CHAIRPERSON MILLER: Okay.

7 MR. FIORE: I'm going to do a lot
8 of addressing on things that I have heard that
9 I would like to bring up to the Committee and
10 the Board.

11 First and foremost, the light/air
12 situation has been addressed. I have had four
13 public meetings and hearings with ANC and
14 HPRB. And Derrick and I have done a lot of
15 consulting on the side with the Historic
16 Preservation Office as well. We have looked
17 at their design build plans for rooftop decks.
18 We have tried to do whatever we could in terms
19 of meeting a lot of the design build goals
20 that they have there.

21 And at all four of those meetings,
22 we had no neighbor oppositions that were

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1 present. We had the ANC bring opposition, but
2 I believe those were solicited. And in all
3 four of those meetings, okay, the rooftop deck
4 was never really the issue. It was discussed.
5 It was liked. As a matter of fact, Mr. -- Dr.
6 Boasberg approved the design, loved the
7 design, wished he could have one.

8 In fact, the September 17th meeting
9 that I attended, I asked whether or not I was
10 going to need to attend any more ANC meetings,
11 since they had made a motion to support the
12 lot occupancy and had no position on the set-
13 back variance. And he said no, the next time
14 we meet maybe it will be on your rooftop deck.
15 He was very sure that this was going to be
16 sent up to BZA with an approval or support for
17 the lot occupancy and no opposition on the
18 set-back variance, which, to me, was okay,
19 because their initial concern was is this on
20 public space or not?

21 And on June 13th, Mr. Holmes had
22 sent me an email confirming and my contractor

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1 and I had done some dig downs as well to
2 confirm that this was, indeed, not on public
3 space. So once we were able to prove that on
4 the September 17th meeting, that was changed
5 back to a no position.

6 I was never invited to the October
7 9th meeting, because -- and I know it's a
8 public hearing and it's my responsibility to
9 go or not. However, with the way I left the
10 previous ANC meeting, it was said that pretty
11 much it was good to go. So I didn't feel like
12 I had to attend again.

13 And then when I saw Mr. Jackson's
14 report, I noticed that all of a sudden the ANC
15 has somewhat rejected the set-back variance.
16 It's okay, but I just want to let you know
17 what we have been doing in terms of due
18 diligence and consultations and things of that
19 nature.

20 And again, nobody else found
21 anything wrong with the light and the air
22 situation. And I certainly am not an expert.

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1 I don't know, I just barely remember that the
2 sun rises in the east. But the bottom line is
3 that that -- those were addressed even at the
4 HPRB.

5 And Chair Boasberg, I respect, he
6 is, you know, as you know, probably -- he is
7 an attorney in both Historic Preservation,
8 Environmental Law and Land Use. And I think
9 if anybody would have coached me differently
10 in terms of building a deck differently or a
11 garage differently, I would have gotten that
12 coaching from him or to go back to his staff
13 to do that.

14 So I'm a little perplexed about
15 these decisions and these changes and all
16 these other things that have been brought out
17 today. And really, you know, I just wanted to
18 let you know pretty much how I feel about
19 those situations.

20 In addition to the rooftop decks,
21 there are many rooftop decks in my area. In
22 fact, in my one block radius, there is at

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1 least four. And on those design build
2 guidelines from the Historic Preservation, I
3 do believe that one of the things that they
4 were concerned about most was not having them
5 visible to a public street.

6 And three of those four decks are
7 visible to a public street. There is a lot of
8 precedent and that's just within a one block
9 radius. You can go throughout Capitol Hill
10 and you will see tons of them. They are not
11 unusual. And like I said, I really don't --
12 I wouldn't have suspected it would have
13 created such a problem.

14 One of the neighbors that attended
15 the ANC meeting actually thought it was a good
16 idea, because it would be more -- you know, in
17 terms of security, because people would be up
18 there and, obviously, looking around the
19 alley. I didn't quite think that was Brinks
20 or anything but that was a comment she made.

21 Also, on this letter that I
22 brought today, there are four letters, four

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1 neighbors to the right of me or the south of
2 me that actually support this and there are
3 four neighbors to the left of me that support
4 this on the 9th Street side. And those four
5 are immediately after the neighbor to the
6 south of me.

7 So there is some support, neighbor
8 support in terms of the size and the scope and
9 the deck and everything else that's on this.

10 When it comes to a privacy issue
11 and rooftop decks and stuff like that, I don't
12 know how to articulate this any better than I
13 really don't understand the double standard
14 here. I don't understand the standard of a
15 deck being off the back of your house or
16 whether it's on the top of your garage.

17 If you look at the pictures that
18 you have in front of you, the property to the
19 left of me or the south of me, her deck is
20 about 16 x 18. And she literally can lean
21 over and look into my window if they wanted
22 to. And as far as looking down on my

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1 property, prior to this addition, and even
2 still now, each and every one of them can
3 literally -- they are towering my yard as well
4 and they can look down onto my property.

5 So I don't understand again the
6 double standard there in terms of privacy.
7 And like me, I do believe most of them have
8 blinds and shades if it is a problem. This
9 thing is -- this rooftop deck is an extension
10 of my green space. I have been living there
11 for 10 years and I have not had one barbecue,
12 not that that means anything to anybody, but
13 it's not going to be that "party deck" like it
14 is alluded to.

15 And I would like it more of an
16 extension of green space. And I do plan on
17 putting plants and foliage up there, just like
18 I have my front yard decorated fairly nicely
19 with stuff like that and it's really mostly
20 for my enjoyment or for having a couple of
21 people over. It's not, you know, for gangs or
22 whatever.

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1 What happens after I leave, I
2 can't tell you, but that primarily is what my
3 intention of the deck is.

4 Lastly, I'm surprised again about
5 the height and the scope and the mass of my
6 project, because my neighbor to the north of
7 me, her garage is every bit of 13 feet and
8 every bit of 20 feet wide by about 24 feet
9 deep. I mean, you can't get much bigger than
10 that on the lot.

11 So being 14 feet high just a foot
12 over with a deck on it that is -- in fact, one
13 of the modifications that we had as a result
14 of HPRB was to make sure that we had a rail
15 that was designed or built to allow more light
16 or air or whatever it was that we were asked
17 to do. I can't even remember at this point,
18 but I just know that we had made many
19 modifications and changes.

20 MR. SIEBER: Spacing.

21 MR. FIORE: Spacing of the pickets
22 I believe it was. So we had done everything

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1 that we thought we could do in terms of
2 character and in terms of, you know, what we
3 have been somewhat coached to do in order to
4 enjoy something like this.

5 And if you can give me one more
6 minute, because I'm trying to get all my
7 thoughts out. Okay. Lastly, I really don't
8 have any objections to making modifications.
9 Derrick made a suggestion, I appreciate it,
10 the Board Members suggestions, I apologize,
11 because I can't see your names or anything,
12 but I appreciate your suggestions and I do not
13 mind trying to modify this with some sort of
14 set-back relief and sort of lot occupancy, but
15 I would like to keep the rooftop deck.

16 Thank you.

17 CHAIRPERSON MILLER: Is that it?
18 Okay. Well, let me see where we are and talk
19 about where we're going to go from here. I
20 think that what we have been saying is that I
21 think the Board, I can safely say that the
22 Board would be amenable to providing the

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1 applicant with an opportunity to revise the
2 plans, based on what has been said in today's
3 hearing.

4 And it is totally up to you how
5 you want to revise your plan. I mean, you
6 heard ideas from Mr. Dettman and you heard, I
7 think, a lot of support for setting back the
8 garage in line with the other garages. But
9 anyway, you heard everything I heard. So you
10 can see if you want to revise your plans in
11 any way to respond to that.

12 If you were to set it back
13 further, you would still need a variance, but
14 as Mr. Dettman was saying, the variance would
15 be to a lesser degree. And in our analysis,
16 the lesser the degree, you know, the lesser
17 the burden, in a sense, for you to make your
18 case. And there was a lot of support for
19 that. In fact, it looked like -- Office of
20 Planning characterized it as an improvement.

21 In any event, and then I hear that
22 you want to proceed with the roof deck. As I

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1 said before that was just Mr. Dettman's
2 comments about his views towards roof deck as
3 one Board Member. Other Board Members have
4 seen roof decks that are viewed as
5 improvements to the community.

6 And one of the aspects of that
7 being more eyes on the alley is a safety thing
8 or it being done in a way that actually
9 beautifies the property. So you know, that's
10 up to you. There is opposition to that, but
11 we have heard all the opposition. There's not
12 going to be another hearing.

13 I just want to give you the
14 opportunity to revise your plans if you would
15 like and then to -- I would invite you to or
16 I would suggest that you have the opportunity
17 to address the variance test one more time
18 based on the revised plans and what you heard
19 today.

20 And then also with respect to
21 concerns regarding the roof deck, if you might
22 consider yourself proposing conditions or ways

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1 in which you might show on the plans how
2 privacy concerns would be mitigated, such as
3 screening, the pickets. I don't know how tall
4 the pickets are. I don't know what that ---
5 you know, what's there at this point,
6 greenery, trees, plants, whatever.

7 Do Board Members, do you have any
8 other specific concerns that you want to leave
9 the record open for?

10 VICE CHAIRMAN LOUD: Both a
11 question and possibly a concern, Madam Chair.
12 Mr. Fiore, you testified, I think, that there
13 were four properties to your south that
14 supported the rooftop deck, I think. And I
15 believe you said you were passing around --
16 did you say you were passing around some
17 exhibits reflecting that?

18 MR. FIORE: No, sir.

19 VICE CHAIRMAN LOUD: Okay.

20 MR. FIORE: I actually talked to
21 these people directly.

22 VICE CHAIRMAN LOUD: I see.

1 MR. FIORE: And showed them the
2 plans and what -- the document clearly
3 indicates what I was doing and then I had a
4 schematic that I was showing them along with
5 that.

6 VICE CHAIRMAN LOUD: Okay.

7 MR. FIORE: And that would be one
8 additional, the property to the -- direct
9 property to the south, 223. Apparently, it
10 was in opposition, but the four directly next
11 to her to the south were okay with it. And I
12 would have gotten more signatures, but there
13 are some rentals and there are some vacancies
14 and people on vacation. And some of the steps
15 I just can't get up to to talk to people
16 about.

17 But in talking with them in the
18 alley and stuff and didn't have the document
19 with me, there were many people that supported
20 it even on the 10th Street side. I just
21 didn't get their signatures.

22 VICE CHAIRMAN LOUD: And I also

1 thought in addition to the, I guess, 10th
2 Street side that you said some to the north as
3 well.

4 MR. FIORE: That's correct.

5 VICE CHAIRMAN LOUD: How many to
6 the north?

7 MR. FIORE: Four as well to the
8 north.

9 VICE CHAIRMAN LOUD: So four to
10 the north and four to the south?

11 MR. FIORE: That's correct. And
12 also, the interesting thing is one of the
13 people to the north who actually came to one
14 of the public hearings, her concern was trying
15 to turn in the alley. She lives, you know, at
16 the very end. And when I was telling you
17 earlier about how people are using the set-
18 back as a parking space, that was basically
19 her concern.

20 So you know, when I shared to her
21 -- shared with her my plans and stuff after
22 that meeting, she was then in support of my

1 garage.

2 VICE CHAIRMAN LOUD: And I think
3 you also testified that there were about four
4 homes on the block, I think you said, that
5 actually had rooftop decks. Is that correct?

6 MR. FIORE: Within a one block
7 radius.

8 VICE CHAIRMAN LOUD: Within a one
9 block radius.

10 MR. FIORE: Right.

11 VICE CHAIRMAN LOUD: Okay.

12 MR. FIORE: There are pictures
13 here if you would like to see them.

14 VICE CHAIRMAN LOUD: Okay. And
15 are any of those four in the eight that you
16 just mentioned, the four south and the four
17 north of your property that support that?

18 MR. FIORE: No, they are not
19 within that block and square. They are within
20 -- just within the block.

21 VICE CHAIRMAN LOUD: Okay. So,
22 Madam Chair, I think what I would like to --

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1 what would be helpful to me is to have, if the
2 applicant can pull it together, some written
3 verification or support letters from these
4 eight neighbors that support this project.
5 And yes, certainly from the eight neighbors
6 that support the project.

7 MR. FIORE: It's right here, sir.

8 VICE CHAIRMAN LOUD: And --

9 CHAIRPERSON MILLER: What is it?

10 MR. FIORE: This is the letter of
11 support of the --

12 VICE CHAIRMAN LOUD: You do have
13 it?

14 MR. SIEBER: They signed it.

15 MR. FIORE: Yes.

16 VICE CHAIRMAN LOUD: Is that an
17 exhibit that we have or --

18 MR. FIORE: We tried that.

19 MR. SIEBER: We hadn't entered it
20 into an exhibit yet, but if that's
21 permissible, we would like to.

22 VICE CHAIRMAN LOUD: Okay. Well,

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1 I'll defer to Madam Chair on the procedural
2 part of it, but I guess it's appropriate.
3 I'll defer to you to rule on that.

4 CHAIRPERSON MILLER: Well, I
5 guess --

6 MR. SIEBER: We addressed this
7 earlier when the Chair asked if there was any
8 objection to Ms. Marshall or anybody else
9 adding this earlier. No one just took it.

10 CHAIRPERSON MILLER: Okay.

11 MR. SIEBER: No one took it.

12 CHAIRPERSON MILLER: Yeah. I
13 mean, we would waive the regulation that
14 requires that submittals be filed 14 days in
15 advance of the hearing. We often do that at
16 the hearing. That's very common. But are we
17 talking about something additional?

18 MR. SIEBER: I'm sorry, could
19 you --

20 CHAIRPERSON MILLER: Are you
21 talking about additional letters or not? Just
22 this one document that you haven't give us

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1 yet. Could we see that? Actually, that would
2 help us know exactly what we are talking
3 about. I do recall we talked about this, the
4 concept at the beginning of the hearing.

5 MR. SIEBER: Yes.

6 CHAIRPERSON MILLER: You can just
7 give it to me, at this point. And you showed
8 it to Ms. Parks, right? I mean, Ms. Marshall.
9 I'm sorry.

10 MS. MARSHALL: Can I say
11 something? I didn't get to read it. I did
12 see the document. There has been a little bit
13 of confusion and I don't want to say
14 misrepresentation, but to myself there was in
15 terms of who is voicing approval of his
16 extension, his house addition plans and his
17 garage plans. And in fact, those plans were
18 withheld from me, although he voiced that I
19 had approved them. We had approved his
20 addition.

21 So I would really like to get all
22 of this clarified in writing from the

1 individuals as opposed to being accepted as it
2 is presented.

3 MR. FIORE: Chair, I can speak on
4 that, too.

5 CHAIRPERSON MILLER: Okay.

6 MR. FIORE: Ms. Marshall and my
7 neighbor to the south of me were both given
8 letters of support or notification on January
9 14th. And this was primarily for the first
10 phase of my project. It was the language, you
11 know, that I used, so it's basically all the
12 work was going to be primarily done in the
13 exterior or the interior of my home where it
14 would be rear yard.

15 And I had -- I was told that I
16 needed to give some sort of schematics or
17 whatever and I had done that. And it took me
18 at least two requests to get the letter or any
19 kind of dialogue going with Mr. and Mrs.
20 Marshall. In fact, it took about 47 days to
21 get the document back. The same thing with
22 the neighbor on the right. It took me many

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1 attempts to get any feedback from them and it
2 took them 17 days to return the document and
3 finally we had some discussion and that was
4 for the addition.

5 Because I was told that I needed
6 to go for a special exception and a variance,
7 I was not under the impression that I had to
8 paper the neighborhood again, because I
9 understood that that was a requirement. When
10 we filed for BZA, they sent out a radius
11 report. It wasn't until June 12th, at the ANC
12 meeting, that Mr. Holmes made a motion that I
13 needed new letters of support.

14 And on June 13th, I immediately got
15 them another letter indicating what I was
16 doing in terms of the garage, because my plans
17 were -- my blueprints were not even finished,
18 at that point. But I immediately got the
19 neighbors a letter inviting them to speak to
20 me again and showing them somewhat of a
21 schematic of what the garage looked at.

22 Based on only what I had, I didn't

1 have blueprints and, quite frankly, I didn't
2 know I needed to give them all that detail.
3 And then just invited, you know, questions and
4 stuff. So that's how that transpired. It
5 wasn't because I was trying to avoid them or
6 not make them aware of the project or what
7 have you. That's pretty much how that
8 happened.

9 But the very next day after the
10 ANC meeting, they did get their letter and
11 then Mr. Holmes was tasked on getting their
12 responses from them. Since the motion was
13 passed, they would not support this based on
14 the -- getting a response from the neighbors
15 one way or the other.

16 CHAIRPERSON MILLER: Okay. I'm
17 fine with that. I think that this also kind
18 of speaks for itself as to what they were
19 signing, this letter, this petition that you
20 submitted.

21 MR. FIORE: I'm sorry, are you
22 satisfied with that or is that --

1 CHAIRPERSON MILLER: No, I'm
2 satisfied that personally it is what it is.
3 As I understand it, it represents these
4 individuals in support --

5 MR. FIORE: Um-hum.

6 CHAIRPERSON MILLER: -- of you BZA
7 application.

8 MR. FIORE: Right. Because as you
9 can see, I invited them here or to send a
10 letter.

11 CHAIRPERSON MILLER: That's fine.

12 MR. FIORE: I made them aware.

13 CHAIRPERSON MILLER: That's fine.
14 That's fine.

15 VICE CHAIRMAN LOUD: I do have a
16 question just to clarify for the record very
17 briefly. The bottom of your petition, I guess
18 we'll call it, did they sign this? These are
19 their signatures?

20 MR. FIORE: Yes, they are.

21 VICE CHAIRMAN LOUD: At the
22 bottom? Okay.

1 MR. FIORE: And I guess what
2 happened was the first person printed and
3 everybody followed.

4 VICE CHAIRMAN LOUD: Gotcha, okay.

5 MR. FIORE: I'm sorry.

6 VICE CHAIRMAN LOUD: Just again
7 because I'm looking at it for the first time.

8 MR. FIORE: Absolutely.

9 VICE CHAIRMAN LOUD: And it's not
10 in the normal form of a signed support letter.
11 I just wanted to clarify. Okay.

12 CHAIRPERSON MILLER: Let me say
13 this though. Are you, let me ask you, at this
14 point, contemplating taking the opportunity to
15 revise your plans at all?

16 MR. FIORE: Well, yes, I believe I
17 would have to, because I do not want to walk
18 away with no support or relief at all.

19 CHAIRPERSON MILLER: I mean, the
20 Board hasn't voted on the application. But I
21 think that we would postpone decision making
22 until December anyway and give you that

1 opportunity. But yes, go ahead.

2 COMMISSIONER HOOD: Madam Chair, I
3 will ask and I don't want to put any more
4 burden on the applicant, but if the
5 application is going to go back and do some
6 revisions, I would just ask, and I'm hoping
7 I'm using the correct architectural, what I'm
8 asking for, perspective of exactly how the
9 addition will sit and how it will actually
10 look in the community.

11 Now, I see the site plans and I
12 see the drawings. But for me, I would need to
13 know how it exactly fits. How does it fit in?
14 That's only if you want to go back and revisit
15 it. I'm not putting any additional burden on
16 you by asking you to do it. But if you're
17 going to do that, that may be very helpful, at
18 least for this Commissioner, for this Board
19 Member.

20 MR. SIEBER: You mean like an
21 architectural rendering?

22 COMMISSIONER HOOD: Yeah. I think

1 they call it perspective. Show me how it sits
2 exactly.

3 MR. SIEBER: Um-hum.

4 COMMISSIONER HOOD: If you're
5 going to go back and revisit. Okay. And also
6 in relationship with the surrounding houses,
7 you get the logistics of what I'm asking for?

8 MR. SIEBER: I think so. Yeah, I
9 mean, we can definitely show perspectives of
10 the roof deck and --

11 COMMISSIONER HOOD: And not a
12 whole lot, just something real simple.

13 MR. SIEBER: To the extent of like
14 the background in terms of neighbors and such
15 may be a little bit harder, but, yes, you will
16 get the perspective.

17 COMMISSIONER HOOD: Okay. Thank
18 you. Thank you, Madam Chair.

19 CHAIRPERSON MILLER: I know, I
20 haven't said that whatever you do you will
21 need to serve on the ANC. Is that what you
22 were raising your hand, Mr. Holmes?

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1 MR. HOLMES: No.

2 CHAIRPERSON MILLER: Oh.

3 MR. HOLMES: That too, but also I
4 think we may have cases of double voting here,
5 too, because some of the people within that
6 radius have expressed the opposite point of
7 view to me and to the ANC. We need to go back
8 and find out who is in support and who is in
9 opposition, at this point.

10 CHAIRPERSON MILLER: You want that
11 opportunity? It's changing also. If it
12 changes, then --

13 MR. HOLMES: If it changes, I'll
14 have to --

15 CHAIRPERSON MILLER: Okay. All
16 right. Let's talk about -- let's see if we
17 can wrap this up. We'll talk about what we'll
18 leave the record open for. Okay. We have a
19 decision meeting December 2nd. And my
20 question for the applicant is, well, and
21 everyone, that enough time to revise plans and
22 then serve them on the ANC and Ms. Marshall in

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1 case they want an opportunity to comment and
2 the Office of Planning or is that -- you know,
3 we kind of looked back from -- in setting
4 deadlines we look to like what date we will
5 start and work backwards from our decision
6 date.

7 So do you think that that's going
8 to be enough time? I don't know how much time
9 you want to take to think about and make any
10 revisions, first of all.

11 MR. SIEBER: Yeah, that's
12 acceptable, December 2nd.

13 CHAIRPERSON MILLER: Okay.
14 Because we are trying to balance also often an
15 applicant's desire to move forward as
16 expeditiously as possible. Okay.

17 So what we would leave open the
18 record for would be revised plans and then the
19 applicant's opportunity to address the
20 variance test and the special exception if you
21 want to, but to a lesser degree, but
22 particularly the variance test in light of

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1 revisions and what you heard today.

2 And then three would be any
3 proposed conditions that you will suggest that
4 would mitigate privacy concerns with respect
5 to the roof deck. All of that would need to
6 be served on the parties in this case and the
7 Office of Planning. The parties being the ANC
8 and Ms. Marshall.

9 Do you know when the ANC meets, so
10 that if the ANC were to vote on this, we could
11 have that in our schedule as well.

12 MR. HOLMES: We won't meet until--
13 we will be meeting on November -- the second
14 week of November.

15 CHAIRPERSON MILLER: The second
16 week in November you meet?

17 MR. HOLMES: So we will not see
18 these plans before the ANC meeting.

19 CHAIRPERSON MILLER: How do you
20 know? Maybe they will have them ready by
21 then. Will you? Maybe not? Okay.

22 MR. HOLMES: That would be very

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1 speedy.

2 CHAIRPERSON MILLER: Okay.

3 MR. HOLMES: I need to walk these
4 around all the neighbors, that's what we
5 always do. We walk to everybody in the
6 square.

7 CHAIRPERSON MILLER: Okay. You
8 know, our rules don't require that the ANC
9 weigh in on it. It's helpful to know we do
10 have the ANC's views as expressed on the
11 previous one and what their concerns were. So
12 any comments on that if the ANC were not able
13 to comment? Unless you had a special public
14 meeting, which you can do sometimes, too. But
15 I know it's not that easy.

16 MR. HOLMES: We may have a meeting
17 and designate me as the special representative
18 to make a decision on behalf of the ANC. We
19 don't like to do that.

20 CHAIRPERSON MILLER: Um-hum,
21 right. Or your Planning and Zoning Committee
22 could meet or whatever. Do you object to

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1 those proposed schedules? Okay.

2 MR. HOLMES: It's just a matter of
3 having enough time for the neighbors to be
4 fully informed.

5 CHAIRPERSON MILLER: Right. Let
6 me ask you, you know, how long you need to --
7 do you think you will need? Otherwise, we can
8 push this up a little further.

9 MR. SIEBER: I think it's good
10 where it is.

11 CHAIRPERSON MILLER: December 2nd?

12 MR. SIEBER: We're going to need
13 probably about 2 to 2.5 weeks to or 3 to put
14 that -- yeah, December 2nd should be fine.

15 CHAIRPERSON MILLER: Okay. Let's
16 go back. Maybe, Mr. Moy, you can or, Ms.
17 Bailey, you can help me on this one, too. If
18 we have a decision date of December 2nd, then
19 we would need to have any parties response to
20 the applicant's revision and other submittals
21 by what's the last date, so that the Board
22 would have all materials to consider?

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1 MS. BAILEY: Madam Chair, perhaps
2 I missed it, but the date the applicant will
3 be filing is what date? Was that date
4 determined?

5 CHAIRPERSON MILLER: Well, I'm
6 going backwards from our decision date. We
7 were talking about a decision date of December
8 2nd. So then, you know, we would need the
9 last filing in the week before. I guess that
10 would be on Thursday or Friday?

11 MR. MOY: We do it Thursday.

12 CHAIRPERSON MILLER: Thursday,
13 yeah.

14 MR. MOY: Excuse me for
15 interrupting.

16 CHAIRPERSON MILLER: Thank you.
17 No, I need --

18 MR. MOY: That would be November
19 27th, which is a Thursday, which I believe is
20 Thanksgiving, right?

21 CHAIRPERSON MILLER: Oh.

22 MR. MOY: So I mean, we can do --

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1 the staff will be here on -- well, not on the
2 27th, but at the latest, you know, we can
3 accept something, have it couriered to the
4 Board Members on the 28th, Friday. Preferably
5 Wednesday, the 26th would be better.

6 CHAIRPERSON MILLER: Okay. So if
7 that was November 26th on a Wednesday, that
8 means that the applicant would need to get any
9 revisions, I would say, about a week ahead of
10 time to the other parties anyway. Would that
11 be sufficient? Well, for you, it would just
12 be for you to review and comment. You are not
13 obligated to circulate.

14 MS. MARSHALL: It seems to me that
15 that --

16 CHAIRPERSON MILLER: You need to
17 turn on your mike to be on the record.

18 MS. MARSHALL: I'm sorry.

19 CHAIRPERSON MILLER: We could go
20 10 days. What do you think?

21 MS. MARSHALL: That would be
22 helpful.

1 CHAIRPERSON MILLER: 10 days ahead
2 of time.

3 MS. MARSHALL: That would be
4 helpful to us.

5 CHAIRPERSON MILLER: If there were
6 November 16th, okay, so we are at October 28th,
7 so could you -- would that be sufficient time
8 for you?

9 MR. SIEBER: I don't think so.

10 CHAIRPERSON MILLER: You don't
11 think so?

12 MR. SIEBER: I think -- I don't
13 think so.

14 CHAIRPERSON MILLER: Maybe we can
15 just -- maybe we're just cramping this a
16 little bit and we can move into December just
17 a little bit more, because of Thanksgiving and
18 everything. Let's start with when do you --
19 when is a reasonable time for you to have your
20 revisions? And then we will go the other
21 direction.

22 MR. SIEBER: I think three weeks

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1 would be needed.

2 CHAIRPERSON MILLER: Three weeks.
3 Okay. That looks like November 18th. Is that
4 okay? That's a Tuesday. We were saying three
5 weeks. I'm just saying looking at our
6 calendar --

7 MR. SIEBER: Right.

8 CHAIRPERSON MILLER: -- that would
9 be Tuesday, November 18th.

10 MR. SIEBER: Yeah, I -- you know,
11 that sounds good, but maybe just a little bit
12 longer into the week. Maybe like, you know,
13 Wednesday or Thursday. Like Thursday, what is
14 it, the 18th? Is that right?

15 CHAIRPERSON MILLER: I don't
16 really want to necessarily rush anybody on
17 this. I think, you know, you're going to have
18 to live with this and this is your
19 application. And we're just saying how much
20 time do you need and then we will try to leave
21 enough time for the -- we will leave enough
22 time for the parties to respond.

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1 MR. SIEBER: Three and a half
2 weeks is fine.

3 CHAIRPERSON MILLER: Three and a
4 half weeks. So where does that bring us to?

5 MR. MOY: That sounds like either
6 the end of that week, Friday, the 21st, or the
7 Monday, the following Monday, November the
8 24th.

9 MR. SIEBER: I'm sorry, Madam
10 Chair?

11 CHAIRPERSON MILLER: Friday the
12 21st or November 24th, that Monday?

13 MR. SIEBER: November 24th.

14 CHAIRPERSON MILLER: Okay. When
15 is the next ANC meeting? Oh, the second of
16 the month? When is the next ANC meeting?

17 MR. MOY: Second week of the
18 month.

19 CHAIRPERSON MILLER: Second week
20 of the month.

21 MR. HOLMES: That will work.

22 CHAIRPERSON MILLER: Good. Okay.

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1 So the ANC can meet on the --

2 MR. HOLMES: We will not have seen
3 the plans by that point, so it's a question of
4 where you go from that point. If you push it
5 past the second Thursday of the month, then
6 the ANC will be able to vote on it.

7 CHAIRPERSON MILLER: What's the
8 date that the ANC is meeting? Can you give
9 me?

10 MR. HOLMES: The second Thursday
11 of December. I don't have my calendar in
12 front of me.

13 MR. MOY: That's December 11th,
14 Madam Chair.

15 CHAIRPERSON MILLER: All right.
16 Given, you know, that we get into the holidays
17 and all that, and also trying to accommodate
18 the ANC to a certain extent in this schedule,
19 we are going to schedule this for December
20 16th, a Special Public Meeting.

21 Okay. So, Mr. Moy, we all need
22 those dates now that we have this. December --

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1 oh, November 24th, I believe, is when the
2 applicant said they could file. And December
3 16th is when we are going to have our hearing.
4 I don't know whether given that -- our
5 meeting. Given that we are not going to have
6 our meeting until the 16th, whether we are
7 going to stick with that November 24th
8 applicant filing date or whether that would
9 change.

10 MR. MOY: Well, if the ANC is
11 meeting December 11th, which is a Thursday,
12 what would be sufficient time for the ANC, and
13 I'm assuming other parties, to file responses
14 to the applicant's filing before the 16th? Do
15 you want it that Monday, the 15th? Is that
16 enough time for the parties?

17 Actually, that Friday would be
18 better if people can respond by that Friday,
19 December the 12th, responses to the applicant.
20 The 11th, the meeting is on the 11th.

21 CHAIRPERSON MILLER: Well, let me
22 ask you this then. The applicant could file

1 a little later than the 24th in order for the
2 ANC to have sufficient time at the hearing.
3 You want to circulate though ahead of the
4 hearing and get people educated and come.
5 Okay.

6 So realistically, would that be
7 something like December 1st or would it be
8 just after -- you know, we have Thanksgiving
9 in here, so I'm trying to recognize that for
10 people's schedules.

11 MR. HOLMES: I'm agreeable to the
12 1st.

13 CHAIRPERSON MILLER: Okay. All
14 right. That should give you plenty of time.
15 And actually, you might want to talk to Ms.
16 Marshall or whoever before you do your final
17 revision and file it. Okay. So December 1st
18 would be the date that you would file, the
19 applicant would file. December 12th would be
20 the date that the parties would file any
21 responses. And December 16th would be our
22 decision date.

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1 MR. SIEBER: Madam Chair, just so
2 I'm clear on what I'm providing in addition.
3 I'm giving you amended plans that reflect, as
4 Mr. Dettman said, an alignment with the common
5 line?

6 CHAIRPERSON MILLER: If that's
7 what you choose to do. We heard a lot of
8 support for that in this hearing. But we are
9 not telling you what to do. It's your
10 application. So we're giving you the
11 opportunity to revise however you might want
12 to revise.

13 MR. SIEBER: I understand. Thank
14 you.

15 CHAIRPERSON MILLER: Okay. And
16 then address the variance test with respect to
17 the -- and possibly any changes and the
18 special exception test.

19 MR. SIEBER: In lieu of the new
20 design or right.

21 CHAIRPERSON MILLER: Conditions to
22 mitigate, right. Okay. And responses to that

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1 from the parties. And unless I hear anything
2 else, at this point, the record will be closed
3 to everything else. Okay. So we're not
4 saying -- we're not leaving the record open at
5 this point to petitions or sun and shade
6 studies or anything like that, unless we hear
7 right now that that's something that we need
8 to leave the record open for.

9 MS. BAILEY: Madam Chair, I just
10 would like to have clarification. There was
11 discussion about the perspective. Is the
12 record open for that?

13 CHAIRPERSON MILLER: The
14 perspective, yes, absolutely. With respect to
15 the revision or any amended plans, you would
16 also file the perspective that Mr. Hood talked
17 about.

18 MR. SIEBER: The perspective.

19 CHAIRPERSON MILLER: That will
20 probably help neighbors as well appreciate
21 what you would be constructing. Okay. And
22 serve Office of Planning as well. Okay. And

1 we'll leave the record open for Office of
2 Planning to file any response should you
3 choose to, Mr. Jackson. Okay.

4 All right. I think that that
5 concludes this case.

6 MR. MOY: Madam Chair, just --

7 CHAIRPERSON MILLER: Yes?

8 MR. MOY: -- one note. December
9 12, which is a Friday, for responses to the
10 applicant's filing, if the parties can submit
11 their documents by 12:00 noon, that would help
12 the staff. If there is an issue with that, if
13 you would let me know?

14 CHAIRPERSON MILLER: It has to be
15 distributed to us and we have to have time to
16 give it good thought. So okay. Anything
17 else?

18 MR. SIEBER: The --

19 CHAIRPERSON MILLER: Yes?

20 MR. SIEBER: So the documents from
21 us are required by December 1st. The
22 responses from the neighbors are required by

1 the 12th and you will be making your decision
2 on the 16th?

3 CHAIRPERSON MILLER: Correct.

4 MR. SIEBER: Okay.

5 CHAIRPERSON MILLER: And no one
6 needs to be here per se, you know, for our
7 meetings. It's our deliberation and our
8 decision. And we don't take testimony, unless
9 for some reason we would hit upon some unusual
10 question, but I don't anticipate that.

11 So you are not required to be
12 here. It should be webcast live on the
13 Internet. It would be the first thing in the
14 morning, which would be after 9:30.

15 MR. SIEBER: We can appear for
16 that just as spectator?

17 CHAIRPERSON MILLER: Yes, you can.

18 MR. SIEBER: And it's an open
19 dialogue type thing where you -- I mean, not
20 with us, but with you as the Panel?

21 CHAIRPERSON MILLER: Right.

22 MR. SIEBER: You open up a

1 dialogue on the project.

2 CHAIRPERSON MILLER: Exactly.

3 MR. SIEBER: Gotcha.

4 CHAIRPERSON MILLER: We discuss
5 the issues and then we vote on it. Okay.
6 Thank you very much.

7 We have one more case left in the
8 morning session. And we have two preliminary
9 matters in the afternoon session dealing with
10 continuances. So what the Board is going to
11 do is really take a very short break, like 5
12 minutes, and just decide how we are going to
13 proceed this afternoon, when we are going to
14 take our break.

15 But I anticipate that we will come
16 back and certainly deal with the two
17 continuances first, because I think that they
18 can be taken care of in a matter of minutes.
19 So we will be back in a few minutes.

20 (Whereupon, at 1:18 p.m. a recess
21 until 1:29 p.m.)

22 CHAIRPERSON MILLER: We're back on

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1 the record. Ms. Bailey, as I was saying
2 earlier, we decided that when we would come
3 back from that short break, we would like to
4 have you call the two cases in the afternoon
5 that are just seeking postponement.

6 MS. BAILEY: Madam Chair,
7 Walgreen, we'll start with that one.
8 Application No. 17789 of Walgreen Eastern Co.,
9 Inc., et al, pursuant to 11 DCMR 3104.2, for
10 a variance from the off-street parking
11 requirements under subsection 2101.1, for a
12 new drugstore in the C-3-A District at
13 premises 4225 Connecticut Avenue, N.W., Square
14 2051, Lot 7.

15 Is the applicant here for
16 Walgreen?

17 MS. RODDY: Yes, we are here.

18 MS. BAILEY: Thank you.

19 CHAIRPERSON MILLER: Good
20 afternoon. Why don't you introduce yourselves
21 for the record, please?

22 MS. RODDY: Hi, my name is

1 Christine Roddy and I'm with the Law Firm of
2 Pillsbury Winthrop Shaw Pittman and we
3 represent the applicant in this case.

4 MR. KLIBANOFF: Daniel --

5 CHAIRPERSON MILLER: Wait. Was
6 her mike on? No. Could you say that again?

7 MS. PERRY: Karen Perry from ANC-
8 3F.

9 MR. KLIBANOFF: Daniel Klibanoff,
10 also from ANC-3F.

11 CHAIRPERSON MILLER: Okay. I
12 understand that there is a request for a
13 continuance?

14 MS. RODDY: That's correct. The
15 applicant filed -- requested a continuance.
16 If you remember, we had requested a
17 continuance back in July, because there are
18 some outstanding issues with the community,
19 with Office of Planning and DDOT. And we have
20 since redesigned the building and that took
21 some time. And so now we are following up
22 with the ANC and we met with them last week

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1 and there are still some outstanding concerns
2 that we would like to take the time to
3 address.

4 And I wanted to update our
5 previous filing, because I know the ANC has
6 since filed a resolution. And we support
7 their February 1st request, that no hearing be
8 scheduled before February 1st.

9 We would ask, just given our
10 client's time line, if there is an
11 availability soon after February 1st, if we
12 would be able to squeeze this hearing in.

13 CHAIRPERSON MILLER: Okay. Any
14 other comments on that? Otherwise we will
15 look at our dates.

16 MS. PERRY: The ANC is suggesting
17 February, because we don't have some of their
18 plans yet. It's a whole new plan with three
19 variances, so we are hoping it will be
20 reposted.

21 CHAIRPERSON MILLER: So are you
22 still -- will you still be negotiating?

1 MS. PERRY: We haven't even
2 started yet. We're still waiting for a
3 rooftop plan, transportation study, some other
4 elevation plans. We don't have everything
5 yet, so hopefully we can negotiate it out.

6 MS. RODDY: When we met with the
7 ANC, we let them know that we would be
8 providing them the outstanding plans, November
9 20th.

10 CHAIRPERSON MILLER: And have
11 those plans been shown to Office of Planning?
12 You've been working with them. Is that it?

13 MS. RODDY: We have shown both the
14 ANC and the Office of Planning the new floor
15 plans as well as some of the elevations. The
16 rooftop plan, landscaping plan and one
17 elevation are still outstanding that we are
18 working on developing right now.

19 CHAIRPERSON MILLER: Okay. How
20 about February 24th in the afternoon? Fine?

21 MS. PERRY: That's fine for the
22 ANC.

1 MS. RODDY: Thank you.

2 CHAIRPERSON MILLER: Okay.

3 MS. RODDY: We appreciate that.

4 CHAIRPERSON MILLER: As of now, it
5 will probably be third in the afternoon, but
6 you can check the schedule as we get closer.

7 MS. RODDY: Okay.

8 CHAIRPERSON MILLER: Okay.

9 Anything else? All right. Thank you.

10 MS. RODDY: Thank you.

11 CHAIRPERSON MILLER: Ms. Bailey,
12 then I think we have 17717. Is that right?

13 MS. BAILEY: Yes, Madam Chair.
14 This is the Central Union Mission and it's
15 pursuant to 11 DCMR 3104.1, for a special
16 exception to allow the construction of a
17 mixed- use building with community-based
18 residential facility and ground floor retail
19 in excess of 12,000 square feet of land area,
20 pursuant to subsection 1329.2(b). The
21 property is located in the Georgia Avenue C-3-
22 A District at premises 3506 through 3512

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1 Georgia Avenue, N.W., and 714 Newton Place,
2 N.W., Square 2895, Lots 825, 826, 830 and 831.

3 CHAIRPERSON MILLER: Okay. Good
4 afternoon.

5 MS. BRAY: Good afternoon, Madam
6 Chair and Members of the Board. My name is
7 Kinley Bray on behalf of the Law Firm Arent
8 Fox representing Central Union Mission. We
9 are seeking a postponement today.

10 As I elaborated in our October 23rd
11 letter, the Mission has been asked by the
12 District of Columbia to consider exchanging
13 its property on Georgia Avenue, which is the
14 subject of this application, with the Gale
15 School, which is located in Ward 2 on
16 Massachusetts Avenue. And the Mission is
17 currently in negotiations with the District of
18 Columbia for that land exchange.

19 So that the Mission does not
20 abandon its application, at this time, we are
21 seeking a postponement to allow this
22 application to remain pending while the

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1 agreement to exchange the Georgia Avenue
2 properties with the Gale School is finalized
3 with the District.

4 CHAIRPERSON MILLER: Okay. And I
5 see that it says you notified the Office of
6 Planning and the ANC of this request. Did you
7 get any response from them?

8 MS. BRAY: I understand that a
9 representative of the ANC is present today,
10 the representative that was designated. I did
11 speak with the ANC on Thursday and there was
12 not enough time for them to take an official
13 vote on the matter, but I don't know if Mr.
14 Valenti wants to come forward.

15 CHAIRPERSON MILLER: Mr. Valenti?
16 Oh, come on forward.

17 MR. VALENTI: Hello.

18 CHAIRPERSON MILLER: Hello. Why
19 don't you start with introducing yourself for
20 the record, please?

21 MR. VALENTI: My name is Cliff
22 Valenti. I'm here representing ANC-1A. And

1 while ANC-1A did not have time to vote on this
2 particular delay, we have voted in favor of
3 supporting the Gale School Land Trade. So in
4 that spirit, I don't think there are any
5 objections to the continuation.

6 CHAIRPERSON MILLER: Okay. Thank
7 you. And I wouldn't think Office of Planning
8 would have one. Do you want to say anything
9 on this, Mr. Jesick? I know you are here
10 probably on another case, but --

11 MR. JESICK: Yes, no, we have no
12 objections.

13 CHAIRPERSON MILLER: Okay. Great.
14 Good. Okay. So you are asking for like six
15 months, right? Mr. Moy, could we put this
16 April 21? Is that six months? Let me think.
17 Do you want longer than that, April 21?

18 MS. BRAY: April 21 or April 28th
19 is sufficient time.

20 CHAIRPERSON MILLER: Okay.

21 MS. BRAY: Either date would be
22 fine for us.

1 CHAIRPERSON MILLER: They both
2 look wide open to me, at least the schedule
3 I'm seeing. So we'll put you on April 21 and
4 see what happens. This is kind of a
5 placeholder, at this point.

6 MS. BRAY: Yes.

7 CHAIRPERSON MILLER: Okay.

8 MS. BRAY: Is that in the morning
9 or in the afternoon?

10 CHAIRPERSON MILLER: Afternoon?

11 MR. MOY: Just in case, I've set
12 it for the afternoon.

13 CHAIRPERSON MILLER: Right.

14 MS. BRAY: Okay.

15 CHAIRPERSON MILLER: If it were to
16 go forward, it sounds like an afternoon case
17 if it were to go forward. Okay.

18 MS. BRAY: Okay. Thank you very
19 much.

20 CHAIRPERSON MILLER: Okay. Thank
21 you.

22 MS. BAILEY: Madam Chair, the last

1 preliminary matter has to do with just
2 housekeeping chore and that's the application
3 -- the withdraw of Application 17670, just to
4 put on the record that that application was
5 withdrawn.

6 CHAIRPERSON MILLER: Thank you.
7 Why don't you call the last case in the
8 morning and then we will discuss with them
9 also how we are going to proceed.

10 MS. BAILEY: Application No. 17833
11 of Timothy Lawrence, pursuant to 11 DCMR
12 3103.2, for a variance from the lot occupancy
13 requirements under section 403, and a variance
14 from the alley set-back requirements under
15 subsection 2300.4, to construct a private
16 garage on an alley lot in the R-4 District at
17 premises 1665 Harvard Street, N.W., Square
18 2588, Lot 827.

19 CHAIRPERSON MILLER: Okay. What I
20 want to say also to everybody who is left in
21 the hearing room, at this point, we are on the
22 last case in the morning and we have one case

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1 for this afternoon.

2 And at some point, we're going to
3 take a lunch break. And I want this case to
4 come forward in order to ask them and then you
5 can introduce yourselves for the record, but
6 they have been in this hearing room probably
7 all morning and I don't know whether you would
8 prefer to take a lunch break for yourselves or
9 to continue forward. The Board is willing to
10 go either way to accommodate this case.

11 So let's start with you all and
12 then I'll turn to the next case and give them
13 an idea of when we might be getting to their
14 case, in case they don't want to sit here the
15 whole time. So why don't you start with
16 introductions for 17833?

17 MR. LAWRENCE: My name is Tim
18 Lawrence. I'm the owner/occupant of 1665
19 Harvard, N.W. To answer your question, Madam
20 Chair, it's -- I would be happy to go straight
21 on through, but I would also be -- if the
22 Board would like to take lunch now, that's

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1 fine.

2 CHAIRPERSON MILLER: How about the
3 rest of you who are here? Go ahead.

4 MR. HEISEY: I'm Joel Heisey,
5 architect for 1665. I am able to go straight
6 through, but again, if the Board is up there
7 starving, I would rather have you pleasantly
8 satisfied.

9 CHAIRPERSON MILLER: Well, we did
10 have a little snack. Yeah, and you, sir?

11 MR. SCHNEIDER: I'm Ed Schneider,
12 1701 Harvard. And I haven't had a snack.

13 CHAIRPERSON MILLER: Yeah.

14 MR. SCHNEIDER: But we -- I would
15 go either way. We can go straight through
16 or --

17 CHAIRPERSON MILLER: Do you all
18 want to talk about it for a minute? Okay.
19 Because we know you have sat here all morning.
20 It's not going to really affect the next case,
21 because either way, I think, the Board will
22 take a short break before we get to the next

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1 case.

2 MR. HEISEY: Then may we take the
3 short break rather than splitting up the
4 presentation and that kind of thing?

5 CHAIRPERSON MILLER: No, we're not
6 going to take a break in the middle of your
7 case.

8 MR. HEISEY: Oh, okay.

9 CHAIRPERSON MILLER: I'm telling
10 the next case that we're not going to get to
11 them until we have heard your case and had a
12 break. So it doesn't matter in whatever order
13 we do our thing. So if you are here and you
14 are ready to go forward, that's fine. But you
15 are not -- if you want to take a break, it's
16 not going to affect our schedule either way,
17 we'll split the time.

18 Would you prefer a break? If
19 we're going to break, we're either going to
20 take like at least a half an hour or -- you
21 know, in order for us to -- everybody to get
22 something to eat or else we can do that later.

1 So if you -- it's really up to you all.

2 MR. HEISEY: Then let's march
3 onward.

4 CHAIRPERSON MILLER: Let me just
5 pause for a second and give the next case
6 though an indication of how much time they
7 might have at least to leave if they want to
8 leave and come back and get their lunch.

9 Okay. For those waiting for the
10 afternoon case, you have at least an hour. So
11 if you would like to go get your lunch or
12 something, this is a good time for you to do
13 that. We never know exactly how long the
14 cases are going to take, but we can assure you
15 that you can have at least an hour from now.

16 Okay. I want to make a
17 preliminary remark on this with respect to the
18 relief that is being sought and get some
19 responses from the applicant and the Office of
20 Planning. You are seeking a variance from the
21 lot occupancy requirements and a variance from
22 the alley set-back requirements under

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1 subsection 2300.4 to construct a private
2 garage on an alley lot. That's the way it has
3 been advertised, which are area variances for
4 not meeting the requirements of lot occupancy
5 and alley set-back.

6 In Office of Planning's report,
7 they state that the garage is a matter of
8 right use on the alley lot. And I'm not sure
9 that's true. And so I want to address that.
10 But actually before I get into this, I want to
11 make sure we don't have any party status
12 applicants in this case, because otherwise
13 they would need to come forward. And I think
14 we do, now that I am looking back at my
15 records. And also the ANC.

16 So is someone here from the ANC?
17 He had to leave? Okay. It's Ed Schneider and
18 Rita Kempley? Oh, you're Ed Schneider. Okay.
19 Well, let's deal with your party status
20 question and then we'll get to whether other
21 relief is required. Oh, Mr. Schneider, okay,
22 I think this was pretty obvious. Okay.

1 It's your property that the
2 private garage would sit behind on that lot
3 that belongs to the applicant. Is that
4 correct?

5 MR. SCHNEIDER: Exactly.

6 CHAIRPERSON MILLER: Okay. Does
7 anybody have a problem with -- does the
8 applicant have a problem with granting party
9 status to Mr. Schneider?

10 MR. LAWRENCE: No objection,
11 ma'am.

12 CHAIRPERSON MILLER: Okay. I
13 mean, the standard is that his property would
14 be more impacted than others in the general
15 public and it seems very obvious that that's
16 the case here. Anybody have an objection?
17 Okay. Then we will be granting you party
18 status in this case.

19 And that means that you can
20 participate fully as a party, so that when I'm
21 going to raise this issue, if there is
22 something you want to say on it, you can.

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1 Whereas, if you were just a member of the
2 public, we wouldn't be inviting you to
3 participate as fully. And you will get an
4 opportunity to cross examine the applicant and
5 the Office of Planning.

6 Okay. So, Mr. Jesick, do you want
7 to introduce yourself for the record, because
8 I want to bring you in right away in this
9 discussion.

10 MR. JESICK: Good morning, Madam
11 Chair and Members of the Board. My name is
12 Matt Jesick with the Office of Planning.

13 CHAIRPERSON MILLER: Okay. I
14 think that at least based on the evidence in
15 the -- what's in our files, I couldn't tell
16 that this, in fact -- that this garage is a
17 matter-of-right use on this alley lot. And i
18 want to bring everyone's attention to our
19 regulation set forth at 201.1.

20 Especially, 201.1(i) says, this is
21 under matter-of-right uses in the R-1
22 District, and I know that we are in the R-4

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1 District, but the way our regulations work is
2 they often refer back to uses allowed in other
3 R Districts. And this goes back to R-1, I
4 believe.

5 So R-1, and 201.1(i) says "Private
6 garage on an alley lot so recorded on the
7 records of the surveyor of the District of
8 Columbia or recorded on the records of the
9 D.C. Office of Tax and Revenue on or before
10 November 1, 1957, subject to the special
11 provisions of Chapter 23 of this Title."

12 And when I looked at the file in
13 this case, there didn't seem to be evidence
14 that this was recorded on the D.C. Office of
15 Tax and Revenue records before November 1,
16 1957 and there was some -- and I guess the
17 Office of Planning said that it hasn't been
18 recorded yet in the records of the surveyor.

19 And so I'm wondering whether, in
20 fact, this would need a use variance to have
21 a private garage on this alley lot. Mr.
22 Jesick?

1 MR. JESICK: I think the key
2 phrase in the paragraph that you just read is
3 "either on the records of the surveyor of the
4 District of Columbia or on the records of the
5 D.C. Office of Tax and Revenue." So while the
6 subject lot is not a record lot, it is a tax
7 lot under the Office of Tax and Revenue.

8 CHAIRPERSON MILLER: How do we
9 know that?

10 MR. JESICK: It shows up on our
11 computer systems as a tax lot, as a separate
12 lot of -- while there is one record lot --

13 MR. LAWRENCE: Madam Chair?

14 CHAIRPERSON MILLER: Mr. Jesick,
15 and do we know if it's a tax lot when it was
16 recorded as a tax lot? Because it goes to on
17 or before November 1, 1957.

18 MR. JESICK: Yes. I mean, since
19 it's creation it has been a tax lot. It has
20 its own lot and square reference numbers. To
21 the best of our knowledge, it was created
22 before 1957. We looked at some old maps, the

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1 Baist and Sanborn Maps and found it on there.
2 So to the best of our knowledge, it was
3 created before the new Zoning Regulations were
4 in place, which would prevent a lot like this
5 from being created.

6 CHAIRPERSON MILLER: Okay. And
7 then we will get to the applicant, but I just
8 was wondering because there was a reference in
9 one of the filings about a subdivision that
10 took place before 1978. And so I didn't know
11 when before 1978 or if that was related to
12 when the tax lot was created.

13 MR. JESICK: I don't think that
14 the Zoning Regulations post-1958 would have
15 permitted the creation of that lot. I could
16 double check that, but I think --

17 CHAIRPERSON MILLER: As a tax lot
18 it wouldn't have permitted it?

19 MR. JESICK: I don't believe so.

20 CHAIRPERSON MILLER: Okay. Well,
21 let's hear from the applicant.

22 MR. LAWRENCE: I was just going to

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1 say, ma'am, that I pay two separate taxes.
2 One for the -- my main property and then the
3 separate lot. So as a matter of D.C. Tax
4 Record, it is a separate tax lot. And we have
5 a copy of the legal description here where the
6 property was transferred in 1948.

7 MR. HEISEY: Well, it references,
8 during the subdivision, Lot 1701. And it says
9 recorded June 23, 1948 for that lot. And it
10 is recorded in the deed as recorded in the
11 assessor's office as a tax lot.

12 CHAIRPERSON MILLER: Okay. Is
13 that in our record?

14 MR. HEISEY: No, it's not. I
15 actually have this because of future. I need
16 to file this to get this to become a surveyed
17 lot rather, so I had the deed with me. Would
18 you like it entered in?

19 CHAIRPERSON MILLER: I think so,
20 because that was a question here. Anybody
21 else have any other comments? Yes? Oh, yes,
22 could you show Mr. Schneider, please?

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1 MS. BAILEY: Mr. Schneider, I can
2 make a copy for you, if you would like.

3 MR. SCHNEIDER: Thank you, Ms.
4 Bailey.

5 CHAIRPERSON MILLER: I just want
6 to make sure. Are we waiting for you to take
7 a look at that to see if --

8 MR. SCHNEIDER: No.

9 CHAIRPERSON MILLER: You're okay
10 with it? Okay. So you don't have any
11 objections to that?

12 MR. SCHNEIDER: No, I have no
13 objections to that.

14 CHAIRPERSON MILLER: Okay. All
15 right. So that addressed the question that I
16 had. And I think we have another preliminary
17 matter and that is request -- is there a
18 request for a waiver of the 14 day advance
19 filing fee -- filing requirement for letters
20 to put into the record?

21 MR. HEISEY: Yes, Madam Chair.

22 CHAIRPERSON MILLER: Support and

1 opposition from the applicant, right?

2 MR. HEISEY: I submitted to --
3 submit the letters of proponents and opposes
4 to -- opposition to a petition that the
5 applicant had circulated and a page of the
6 minutes from the ANC's September meeting.

7 CHAIRPERSON MILLER: Okay. Do any
8 of the parties have any objection to admitting
9 these materials? I think they are 7 days in
10 advance instead of 14 days, according to my
11 calculations. It's dated October 21st.

12 MR. SCHNEIDER: Ms. Chair, is this
13 a letter that was sent around to neighbors for
14 signature? If so, I have not seen those
15 particular letters and those particular names
16 and locations.

17 CHAIRPERSON MILLER: Okay. So you
18 weren't a party before today, so they wouldn't
19 have been obligated to serve you with this
20 necessarily.

21 MR. SCHNEIDER: I was a party as
22 of two weeks ago.

1 CHAIRPERSON MILLER: No. I'm
2 sorry. You were a party status applicant and
3 then what we just did was agree to grant you
4 party status. So from today forward, you have
5 all the rights and responsibilities of a
6 party. But before today, the Board hadn't
7 acted on your request.

8 MR. SCHNEIDER: Oh, you hadn't
9 acted on my request?

10 CHAIRPERSON MILLER: No, not until
11 today.

12 MR. SCHNEIDER: It's been two
13 weeks ago.

14 CHAIRPERSON MILLER: Yeah, no.
15 You requested in a timely manner.

16 MR. SCHNEIDER: Right.

17 CHAIRPERSON MILLER: So all I'm
18 saying is, it's not their fault that they
19 didn't show you these things and though they
20 were in the public record, anybody can look in
21 the public record at the Office of Zoning.

22 It's just a question of can you

1 show him what we're talking about at least?

2 It's our Exhibit 24.

3 MR. LAWRENCE: Ma'am, he received
4 a copy of the letter.

5 CHAIRPERSON MILLER: Oh, he did?

6 MR. LAWRENCE: Yes, ma'am.

7 MR. HEISEY: In fact, he is one of
8 the opposing letters that is included in
9 there.

10 CHAIRPERSON MILLER: Oh, that's
11 the letter that you are talking about?

12 MR. HEISEY: Yes, ma'am.

13 CHAIRPERSON MILLER: The attached
14 letters. Okay. Do you know what they are
15 talking about?

16 MR. SCHNEIDER: Oh, yes.

17 CHAIRPERSON MILLER: Okay. So you
18 got that. And then in addition to that is
19 only the minutes of the September 2, 2008
20 meeting of ANC-1D, correct? And then their
21 request. I just want to ask the Board, I
22 mean, briefly it's -- as I was saying in the

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1 previous case, it's not that unusual to get
2 some submissions a little closer to the
3 hearing or at the hearing even.

4 So unless there is a prejudice to
5 a party and no good cause, then we would not
6 accept it. But I would ask you if you have an
7 objection as a party?

8 MR. SCHNEIDER: No objection.

9 CHAIRPERSON MILLER: It's just the
10 timing. You don't have to agree with the
11 letter or anything. Okay. Any objections by
12 the Board to accept this into the record? All
13 right. Then this is accepted into the record.

14 I have one question about this.
15 It says that we are supposed to have four
16 letters in opposition. I only counted three.
17 So I don't know if I'm missing one. If you
18 want to just -- you know, it could happen, it
19 could just be what I have in my package.

20 MR. HEISEY: There should be one
21 from --

22 CHAIRPERSON MILLER: If you want

1 to give the names, then I'll tell you.

2 MR. HEISEY: Yes, that's what --

3 CHAIRPERSON MILLER: Yeah.

4 MR. HEISEY: I have one separated
5 from the rest of the file here. There is one
6 from Cynthia Pratt at 1710 Hobart.

7 CHAIRPERSON MILLER: Yes, I have
8 that, yes.

9 MR. HEISEY: There is one from
10 Stephen, I think it's Stephen, Dunn at 1708
11 Hobart.

12 CHAIRPERSON MILLER: That I don't
13 have. Stephen Dunn?

14 MR. HEISEY: Yes, 1708 Hobart.

15 CHAIRPERSON MILLER: Okay. Ed
16 Schneider and Kempsey at 1701 Harvard Street
17 and John, is that, Griffin, 1702 Hobart.
18 1701, 1702, 1708 and 1710 Hobart. Well, 1701
19 Harvard.

20 CHAIRPERSON MILLER: Stephen Dunn
21 was where? Because that's the one I don't
22 think I have.

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1 MR. HEISEY: 1701 Hobart Street.

2 CHAIRPERSON MILLER: Okay.

3 MR. SCHNEIDER: Pardon me, that's
4 1708.

5 MR. HEISEY: I'm sorry, 08, sorry.

6 MR. SCHNEIDER: Hobart.

7 CHAIRPERSON MILLER: Okay. Do
8 others have that in their package? Do you
9 know?

10 VICE CHAIRMAN LOUD: I have a full
11 record. I'm sorry, Madam Chair, I do have a
12 full record.

13 CHAIRPERSON MILLER: You do.
14 Okay. So it's here. So I'll just get a copy
15 from somebody else.

16 COMMISSIONER HOOD: I have
17 everything but 1708.

18 CHAIRPERSON MILLER: You don't
19 have 1708 either?

20 COMMISSIONER HOOD: Yeah.

21 CHAIRPERSON MILLER: Okay.

22 MR. SCHNEIDER: I have a copy of

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1 the letter that Mr. Dunn wrote as well as
2 copies of -- not the letter that was signed.

3 CHAIRPERSON MILLER: Is your mike
4 on?

5 MR. SCHNEIDER: Yes, the light is
6 on.

7 CHAIRPERSON MILLER: Okay. I'm
8 sorry, what? You have --

9 MR. SCHNEIDER: I'll move closer.
10 I have copies of the letter that Stephen Dunn
11 wrote to the BZA as well as copies of letters
12 from Cynthia Pratt and Laurence Rickers and
13 Patricia Jayne. I just wanted to make sure
14 that those were in your file. Full letters
15 and not --

16 CHAIRPERSON MILLER: Okay. I'll
17 take a look at that. I just was looking at
18 this one pleading to begin with that said
19 there were four letters of opposition and I
20 was missing one. And I just want to make sure
21 that we have it, somebody has it and then we
22 can copy it. I know it says the same thing.

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1 It's just Stephen Dunn so we know.

2 Ms. Bailey, do we have that?

3 MS. BAILEY: Yes, Madam Chair.

4 CHAIRPERSON MILLER: Okay.

5 MS. BAILEY: It's Exhibit No. 19
6 in the record.

7 VICE CHAIRMAN LOUD: You know what
8 I don't have, Madam Chair, and I don't know if
9 this --

10 CHAIRPERSON MILLER: Got it.

11 VICE CHAIRMAN LOUD: I don't have
12 the attachment, which says the letter was
13 attached.

14 MR. HEISEY: Yes, I didn't have
15 that.

16 VICE CHAIRMAN LOUD: Okay.

17 MR. HEISEY: I was just handed it.
18 I didn't have it at the time.

19 VICE CHAIRMAN LOUD: Okay.

20 MR. HEISEY: It wasn't sent to the
21 applicant.

22 VICE CHAIRMAN LOUD: Okay.

1 MR. HEISEY: She sent it.

2 VICE CHAIRMAN LOUD: All right.

3 So that's something you --

4 MR. HEISEY: Yeah, I didn't have--

5 VICE CHAIRMAN LOUD: -- are
6 entering.

7 MR. HEISEY: -- it at the time to
8 submit it. I'm sorry. We do have it here if
9 you would like to have it submitted.

10 VICE CHAIRMAN LOUD: Okay.

11 MR. HEISEY: It should be,
12 apparently, in your record. I think it was
13 addressed to the D.C. Zoning Office. It
14 should be in your record in either case. On
15 the top it has Stephen Dunn.

16 COMMISSIONER HOOD: I do have 1708
17 now, Exhibit 19.

18 CHAIRPERSON MILLER: Okay. We are
19 just going to take a minute ourselves to look
20 at the legal description that was submitted to
21 us to answer my question about whether there
22 was a tax law, you know, in existence prior to

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1 1957. I think we are all right with that
2 other document. I think I was not referring
3 to Stephen Dunn's individual letter. I was
4 only referring to his signature in opposition
5 to the form letter that was attached. Okay.

6 Did Office of Planning get a copy
7 of this as well?

8 MR. JESICK: Yes, we got a copy of
9 the legal description.

10 CHAIRPERSON MILLER: Okay. Do
11 Board Members have some questions they want to
12 ask OAG?

13 MS. MONROE: All I want to do is
14 just interject or explain this. This is
15 complicated. Unfortunately, as we are all
16 confused, the regulations, unfortunately,
17 perhaps say that if this was recorded in the
18 Office of Tax and Revenue or the Office of the
19 Surveyor before November 1, 1957 as an
20 individual separate lot, this would be a
21 matter-of-right use.

22 If it's not so recorded, it

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1 probably becomes a use variance, which is
2 pretty much the opposite end of the spectrum
3 where you would have to make the three-part
4 variance test in order to put it there at all.
5 Let alone any area variances that you might
6 need. Okay.

7 That's why it's important for us
8 to determine and it sounds very petty, but
9 it's important for us to determine when it was
10 so recorded, so we know what type of relief we
11 are looking for. And the only thing I want to
12 say is what you gave us, from what I'm
13 reading, it doesn't really have a date. And
14 the date that it has is referring to the land
15 next door, because it's using it as a boundary
16 description. You may know that.

17 But I just wanted to point that
18 out to the Board, because it doesn't establish
19 it as being recorded before 1957. And maybe
20 nobody knows. Maybe there is no way of
21 finding out. I don't know. But if so, we
22 would be probably thrown into the use variance

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1 category. That's why we're trying to figure
2 out when it was recorded, if at all.

3 MR. HEISEY: If I may just kind of
4 address this whole thing? I understand why
5 you are going through it and I understand it
6 is a point. Office of Planning, as we have
7 tried to find when it was actually
8 established, and nobody is able to actually
9 find it, Office of Planning.

10 The other thing when you are
11 saying about the use by right, I believe -- I
12 don't have the Zoning Regulations with me, but
13 I think Office of Planning does. Chapter 25
14 does state in there that an alley lot by right
15 is permitted garage use, in Chapter 25,
16 irrespective of the zoning, you know, the R-4
17 Zoning that is there.

18 CHAIRPERSON MILLER: I don't think
19 it says irrespective.

20 MR. HEISEY: Well, not
21 irrespective. It doesn't say irrespective.
22 Let's say in contradiction to what you are

1 reading in the R-1 uses. Chapter 25 it says
2 "An alley lot may be used for a garage."

3 MS. MONROE: You referred to
4 2507.6? Yeah.

5 MR. HEISEY: I know zoning code,
6 but not that -- by heart.

7 MS. MONROE: Yeah, that's okay.
8 Well, I'm looking at it.

9 MR. HEISEY: Yeah.

10 MS. MONROE: You know, when
11 approved by the BZA, it may be used for
12 storage or parking permitted under 333. And
13 that's I think what you're talking about.

14 MR. HEISEY: I'm taking your word
15 for it.

16 MS. MONROE: Yeah, and then what
17 happens though if you go back to 333, it seems
18 to be talking more about public parking. It's
19 kind of hard to --

20 MR. HEISEY: It's the section that
21 refers to private garages.

22 MS. MONROE: Private garages.

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1 MR. HEISEY: It's the first
2 section. And then it goes parking garages on
3 the second series. But there is a section
4 private garages and one of the first sections
5 has "An alley lot may be used for a parking
6 garage."

7 CHAIRPERSON MILLER: We looked at
8 that.

9 MR. HEISEY: Right.

10 MS. MONROE: Well --

11 MR. HEISEY: Private garage.

12 CHAIRPERSON MILLER: Wherever that
13 is.

14 MEMBER WALKER: Okay. If we could
15 just get back to this legal description for
16 one minute, because I want to try to
17 understand what this is an exhibit to. You
18 gave us part of a document. What is this a
19 part of?

20 MR. HEISEY: That is the deed for
21 the lot. That is the recording deed.

22 MEMBER WALKER: Of which lot?

1 MR. HEISEY: The deed description
2 of Lot 857, which is the one that we are
3 proposing to build this garage on.

4 MEMBER WALKER: Okay. Do you have
5 the rest of the document?

6 MR. HEISEY: That's the first
7 page. Yes. It's just the deed is who it is
8 going to and that's the legal description of
9 the lot.

10 MEMBER WALKER: If you -- just for
11 context, so we can try to figure this out, if
12 you could give that to Ms. Bailey?

13 VICE CHAIRMAN LOUD: Madam Chair,
14 if I would ask OAG again to walk through the
15 explanation of why this doesn't establish that
16 Lot 827 was created in 1848?

17 MS. MONROE: If you read it
18 carefully, what it says is the lot that we are
19 dealing with is being measured and then if you
20 go down to the line right above the date,
21 being measured to the northeast corner of the
22 land converted to Francis M. Lewis, et al, by

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1 instrument number blah, blah, blah, recorded
2 June 23, 1948.

3 So in other words, the land that
4 was converted to Francis M. Lewis was recorded
5 in that instrument on that date. But that's
6 the land to the corner of which our subject
7 lot is being measured. It's not the date that
8 this subject lot was so recorded. It's just
9 how you read a survey's description.

10 And I'm seeing the applicant is
11 agreeing with me, so, yeah, it doesn't
12 actually prove it, but it does give an idea
13 of, you know, around when kind of.

14 MR. HEISEY: Yeah, I mean, you
15 have to assume that this lot was subdivided
16 from that lot and that lot some time was
17 subdivided, you know. And we can't find any
18 record as to when that was.

19 CHAIRPERSON MILLER: The
20 subdivision?

21 MR. HEISEY: Madam Chair?

22 CHAIRPERSON MILLER: Yes?

1 MR. HEISEY: May I ask --

2 CHAIRPERSON MILLER: Sorry.

3 MR. HEISEY: -- to look at the
4 Zoning Regulations?

5 CHAIRPERSON MILLER: Absolutely.
6 Do you have a --

7 MR. HEISEY: I just want to look
8 at something in R-4, because there in R-4
9 garages are by right, even if it is after
10 1957. So I just want to see if I can find
11 that specific thing that in our right
12 accessory use garages are allowed. And then
13 because you are looking at the R-1, which this
14 would be a case, but we're in an R-4 Zone.

15 CHAIRPERSON MILLER: Okay. You
16 are welcome to look at that. And the reason
17 I looked though in R-1 is often our
18 regulations refer us back to the previous
19 zone.

20 MR. HEISEY: Yes, exactly. As
21 they go down through the R-4, the R-4 does
22 allow by right a garage irrespective of the

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1 1957, I know this, believe me. All right.

2 CHAIRPERSON MILLER: We did look
3 at this and --

4 MR. HEISEY: You couldn't find it
5 in R-4?

6 CHAIRPERSON MILLER: -- you are
7 welcome to, you know, find that provision and
8 then we will discuss it. All right. Let me
9 just jump in here for a second. And I'm going
10 to refer you to a couple of regulations you
11 might be looking for. And then also, give you
12 an opportunity if you want to take a lunch
13 break and look at the regulations and look at
14 this issue longer than the next few minutes,
15 it's up to you, we could still do that.

16 It's kind of maybe a surprise to
17 you that we have responded that we think you
18 need this. But anyway, I'll leave that up to
19 you. I know that without, you know, going
20 through all of the regulations, and our
21 regulations the way they work, they often
22 refer back and refer back to previous

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1 provisions.

2 You may be looking for 2507.6.
3 Oh, you are now in 23? Okay. There are a lot
4 of regulations that refer to private garages
5 or alley lots.

6 MR. HEISEY: Yeah, the one I was
7 specifically referring to was 2300.1 and
8 2300.2.

9 MEMBER DETTMAN: Excuse me, Mr.,
10 is it, Heisey?

11 MR. HEISEY: Heisey.

12 MEMBER DETTMAN: Heisey. Are you
13 starting to suggest that it could be looked at
14 as an accessory building?

15 MR. HEISEY: I'm having trouble
16 trying to get that word accessory out of
17 there, but yeah, that's --

18 MEMBER DETTMAN: Okay.

19 MR. HEISEY: -- where I can't
20 argue that it is by right, because it does
21 have that word accessory in there.

22 MEMBER DETTMAN: Right, yeah.

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1 MR. HEISEY: And I can't really
2 argue that's accessory, because it's an
3 independent free-standing lot. So yeah, but
4 this has never been raised anywhere else
5 before.

6 MEMBER DETTMAN: Okay.

7 MR. HEISEY: The assumption had
8 always been an alley lot, created as an alley
9 lot, was always intended to be used for
10 parking and a garage by right is what was
11 allowed there. And if I wanted to put a house
12 there, then that would be use exception. But
13 it had always been the standard interpretation
14 by the Office of Zoning, when you go in for a
15 zoning permit, is that by right an alley lot
16 is allowed to have a garage built on it.

17 MS. MONROE: And that's exactly --
18 we went through this before, that's why I said
19 this could take a while. But -- and I just
20 want to say this quickly. Technically, you
21 are right, but if you look to the definition
22 of accessory building and accessory use, it

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1 says it has to be on the same lot. And since
2 this isn't on the same lot, it just kind of
3 falls out of that.

4 MR. HEISEY: Well, that's why I'm
5 going to go more closely through the 2507
6 buildings on alley lots, because that's what
7 I had originally done.

8 MS. MONROE: Now, if you look at
9 2507.6, which allows parking on alley lots,
10 okay, as a special exception, it sends you
11 back to 333. If you go to the first line of
12 333, it talks about parking garages. And it
13 doesn't say anything about parking space. So
14 it tends to be more of a parking lot, parking
15 garage or public use, that's -- because we go
16 through that too.

17 MR. HEISEY: There are
18 improvements that could be made on this Zoning
19 Code.

20 MS. MONROE: Oh, and that's what
21 we went through this morning at length. And
22 it's actually a lot -- so many conflicts and

1 very ambiguous.

2 CHAIRPERSON MILLER: Mr. Jesick, I
3 just want to clarify. And you said you
4 thought it was recorded prior to 1957, but do
5 you have any evidence in the record to that
6 effect?

7 MR. JESICK: I can go back and
8 look again in our Sanborn and Baist Atlas and
9 try and pin down a date or I can do more
10 research at the Office of the Surveyor, but I
11 don't have any proof right now.

12 CHAIRPERSON MILLER: I don't know
13 if you would have to -- well, you would have
14 to prove it was recorded prior to at least
15 that date, '57. Okay.

16 MR. SCHNEIDER: Madam Chair, may I
17 ask what the significance is if it is recorded
18 prior to 1957 and how that affects us here?

19 CHAIRPERSON MILLER: If it's
20 recorded prior to 1957, then they would -- the
21 use as a private garage would be allowed as a
22 matter-of-right on the alley lot. If it's

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1 afterwards, according to the regulation we
2 cited, or if they don't have proof that there
3 was a recording prior to 1957, they have to
4 see a use variance in this application in
5 addition to the other variances.

6 The other variances are area
7 variances and what is different is in an area
8 variance, the applicant has the burden of
9 proving that some uniqueness in the property
10 gives rise to a practical difficulty in
11 complying with the regulations.

12 In a use variance, they have to
13 prove undue hardship in complying with the
14 regulations. And so it's a tougher standard.

15 MR. HEISEY: Madam Chair, the
16 difficulty of going through this is there is
17 nothing that really describes the permitted
18 uses for alley lots. I mean, on Chapter 25,
19 it only addresses alley lots being used for
20 single-family dwellings. It doesn't address
21 them for use other than referring you back to
22 333, which is storage and parking garages.

1 And there is nothing that -- it
2 would allow a parking garage, which is a
3 higher use than a private parking garage. And
4 I can't find anything in here that an alley
5 lot says it is prohibited, but there is
6 nothing that says it's permitted either way.

7 I mean, it says you are allowed to
8 use alley lots for storage, that was their
9 intent. Storage and parking garages, and you
10 would assume parking -- a private parking
11 garage is a subset of a smaller impact than a
12 parking garage.

13 So the implication of the -- and
14 spirit of the Zoning Code is that alley lots
15 were meant for parking garages, even though
16 there is no explicit statement of that that I
17 can find anywhere here other than in the R-4
18 where they address them as accessory uses
19 which are permitted, but they -- there is this
20 gap in the Zoning Regulations for a discrete
21 alley lot that cannot be used for residential
22 habitation, because of lot size, because of

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1 alley width restrictions, but yet it does in
2 spirit say that alley lots are intended for
3 storage and parking garages and use for
4 parking.

5 CHAIRPERSON MILLER: I'll tell you
6 how I see the regulations. When I look for
7 matter-of-right uses in R-4, it's set forth at
8 330. Okay. And then to look for the
9 provision, but, yeah, okay, 330.5 "The
10 following uses shall be permitted as a matter-
11 of-right in the R-4 District (a) Any use
12 permitted in R-3 District under 320.3." And
13 then you go to that and then that says, you
14 know, I can pull it, but the normal thing is
15 any use for an R-3, the first thing will be
16 "Any use permitted in R-2 District."

17 And then you go to R-2 and then it
18 will say "Any use permitted in an R-1
19 District." And the first time I see -- and
20 then when I look in the R-1 District, that is
21 where I saw private garages on an alley lot,
22 as long as they were recorded prior to 1957.

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1 And that's at 201.1.

2 MEMBER DETTMAN: Madam Chair, I
3 think the applicant does make a good point.
4 I mean, there is this gap and I think this is
5 the reason why we are in this position that we
6 are. You know, an alternative is to go with
7 the accessory scenario that we spent so long
8 this morning talking about. And it would
9 result in one additional area variance, which
10 would be from -- which could be from
11 2300.2(a), which states "A private garage that
12 is an accessory building in a Residential
13 District may be located either within a rear
14 yard or beside the main building provided that
15 the garage is located beside the main
16 building." And it goes on to say a couple of
17 things.

18 Basically, this wouldn't be
19 located in the rear yard of the applicant's
20 house. It would be located some place else.
21 And so you would grant an area variance from
22 that location requirement, because it is

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1 located on this alley lot.

2 So again, it would get us away
3 from this pre-1957 threshold because we would
4 be looking at it as an accessory use instead
5 of something under the matter-of-right uses in
6 an R-1.

7 CHAIRPERSON MILLER: Are you
8 saying it's an accessory building?

9 MEMBER DETTMAN: Under that
10 scenario, you would consider it an accessory
11 building, yes.

12 CHAIRPERSON MILLER: No.
13 Accessory building is defined as being on the
14 same lot. And this is not on the same lot.

15 MEMBER DETTMAN: That --

16 MS. MONROE: Except this gets you
17 out of it, because it says you get an area
18 variance essentially from that particular
19 requirement, because it says "may be located
20 within a rear yard or beside the main
21 building." It's not located within the rear
22 yard of the building it's serving. So he

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1 needs an area variance from that.

2 And it works because it's a
3 requirement under 2300 as well as under the
4 definition. You would be giving an area
5 variance from 2300.2(a), which is exactly
6 where they are going anyway, because 2300.2(b)
7 is the center line variance.

8 CHAIRPERSON MILLER: I under --

9 VICE CHAIRMAN LOUD: We're also
10 getting a variance from the definition.

11 CHAIRPERSON MILLER: Yeah.

12 VICE CHAIRMAN LOUD: So to speak.

13 CHAIRPERSON MILLER: And you would
14 also be giving a variance from 201.1.

15 MEMBER DETTMAN: Is 201.1 the
16 matter-of-right use is in an R-1?

17 CHAIRPERSON MILLER: Yeah.

18 MEMBER DETTMAN: No, you wouldn't.
19 That's the thing that we got hung up on this
20 morning. If you look at it as an accessory
21 building, you jump out of 201.1 and then you
22 are into 204, which talks about accessory

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1 buildings. Granting a variance from the
2 definition is a good point, that that's true.

3 VICE CHAIRMAN LOUD: As we mull
4 over Mr. Dettman's suggestion, which I think
5 we ought to mull over, it also -- I'm just
6 reflecting on it, too. It seems to me that
7 what we have is not really a legal problem.
8 It's an evidentiary problem, to me, and we
9 have got OP, which is testifying on the
10 record, presumably they have some expertise in
11 this area that they have reviewed this Baist
12 Map or whatever it was, Sanborn Map.

13 And his best recollection is that
14 upon his review, that this lot was recorded
15 prior to 1957. And that is evidence that is
16 a part of our record. And I would be willing
17 to, especially for the purpose of moving our
18 deliberations forward, credit their testimony
19 in that regard.

20 MEMBER DETTMAN: Mr. Jesick, did--
21 I don't remember or I missed it. Did we get
22 a date on the Baist or Sanborn that you were

1 referring to?

2 MR. JESICK: I don't have the
3 date. I would have to go back and double
4 check.

5 MEMBER DETTMAN: Okay.

6 MR. JESICK: I think even the
7 strongest evidence, perhaps, that this lot
8 predates 1957 is that it exists at all.
9 Because like I said earlier, I don't think the
10 Zoning Regulations would permit a lot like
11 this to be created in the first place.

12 CHAIRPERSON MILLER: Well, what if
13 it wasn't? Would we know if it wasn't a legal
14 lot?

15 MR. JESICK: I'm sorry, repeat
16 that.

17 CHAIRPERSON MILLER: Would we know
18 if it wasn't a legal lot?

19 MR. JESICK: A legal lot?

20 CHAIRPERSON MILLER: Yeah.

21 MR. JESICK: I mean --

22 CHAIRPERSON MILLER: This little

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1 lot.

2 MR. JESICK: -- it wouldn't be
3 recorded. I mean, they wouldn't have been
4 able to obtain a plat for the property if it
5 was somehow illegally created. I mean, they
6 have submitted a plat from the Surveyor's
7 Office that shows the lot boundaries,
8 etcetera.

9 CHAIRPERSON MILLER: Okay. I
10 mean, I guess rather than credit, I would --
11 if we want, we could leave the record open.
12 Would you be able to submit evidence that
13 would confirm that it was recorded prior to
14 1957?

15 MR. JESICK: Yeah, I can do a
16 little more research and try and nail down
17 that date.

18 CHAIRPERSON MILLER: Okay. I
19 guess where I'm at is I think, personally,
20 that a use variance would be required under my
21 interpretation of these regulations without
22 that evidence. We haven't taken a vote on

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1 this, but I think some Board Members might
2 feel otherwise. I don't know.

3 We could, as far as proceeding,
4 proceed with this as an area variance and
5 leave the record open for Mr. Jesick to submit
6 that documentation and/or if it didn't come
7 in, we could leave the record open for you to
8 address the use variance after the hearing or
9 it's not that -- it's only one-prong that is
10 different.

11 In your arguments on the area
12 variance, you could say we could, you know,
13 take arguments today that if, in fact, this is
14 considered a use variance, you think there is
15 an undue hardship if you do, if you're ready
16 to address that. So those are the options I
17 see with respect to proceeding.

18 MR. LAWRENCE: Yes, Madam Chair,
19 the only concern I have, I guess, with leaving
20 the record open is, you know, some sort of
21 finish to this. This is -- you know, we just
22 bought -- we bought the house three years ago

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1 and we have been sort of working on this ever
2 since after fixing, you know, the other parts
3 of the house first.

4 So I am concerned about an unended
5 and I'm just very concerned about just finding
6 any evidence at all of when it was
7 transferred. So if that is the burden of
8 proof, then I am concerned about being able to
9 find that as a, you know, three year-old
10 homeowner at that location.

11 But as far as the proving a fourth
12 prong to that, I thin it falls into the
13 arguments that we are already planning on
14 laying out and based on the sort of merits of
15 the case and what that lot is intended for or
16 should -- you know, can conform to. I'm okay
17 with going forward on that.

18 MR. HEISEY: The only thing I
19 would ask is you say there is a slight -- you
20 could recite to us perhaps the exact wording
21 of the use variance that is significantly
22 different. We could make sure we address that

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1 during our presentations.

2 CHAIRPERSON MILLER: Do you have
3 the regulations in front of you or no?

4 MR. HEISEY: No, I passed them
5 back.

6 CHAIRPERSON MILLER: Okay. I can
7 read it, but also if you wanted to look at it,
8 just let us know.

9 MR. HEISEY: I think the key words
10 will be fine.

11 CHAIRPERSON MILLER: Okay. Oh,
12 take a look at 3103.2. The difference is, and
13 you can read it, "Exceptional practical
14 difficulties would result in peculiar and
15 exceptional practical difficulties to" is the
16 area variance test and/or "exceptional and
17 undue hardship upon the owner" is the use
18 variance.

19 MR. HEISEY: That's fine, Madam
20 Chair, we will incorporate that into our
21 presentations then.

22 CHAIRPERSON MILLER: Okay. So we

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1 are ready whenever you are to present your
2 case.

3 MR. LAWRENCE: Okay, ma'am.

4 CHAIRPERSON MILLER: I'm sorry,
5 unless other Board Members have questions.
6 No? Yeah, we're ready.

7 MR. LAWRENCE: Yes. As I have
8 already stated, you know, we purchased this
9 house three years ago. And it has this, which
10 I think fulfills the first prong, uniqueness
11 in terms of a legally separated lot, which
12 makes it, you know, a unique aspect in that
13 sense. It's non-contiguous to our property,
14 because it has a public alleyway that descends
15 down to the alley between Harvard and Hobart,
16 to Harvard Street where there is a public bus
17 stop.

18 So not only is it a public
19 alleyway, there is significant elevation
20 change there, stairs and I think over time
21 where if you look on a larger map of that
22 area, the other north/south alleyways between

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1 those buildings have all been closed off by
2 the property owners. This is the only one in
3 that area that remains open.

4 So again, to the uniqueness of
5 that where the lot -- you know, if it were
6 contiguous, we wouldn't be even, you know, at
7 this point in time having to request these
8 same variances, I believe, at least for some
9 of this.

10 But when we bought it, the lot had
11 an existing, which is still there, chain link
12 fence, had it on all four sides. We took down
13 the side that is on the property line, so it
14 had a chain link fence on the property line
15 right at the alley. We took that down simply
16 because, you know, my wife and I both drive,
17 so you could not get two cars into that at the
18 same time.

19 CHAIRPERSON MILLER: Let me ask
20 you, do you have parking on your property?

21 MR. LAWRENCE: We do not. There
22 is a --

1 CHAIRPERSON MILLER: I mean, on
2 your -- you know what I mean, the main
3 property.

4 MR. LAWRENCE: Directly behind our
5 house.

6 CHAIRPERSON MILLER: Okay.

7 MR. LAWRENCE: Yes, if that's --
8 there was a large -- we kept the external
9 structure of large doors that open out into
10 the alley and I can't -- there is a relatively
11 shallow space in terms of depth there. And
12 the way that our basement stairs are pretty
13 much in the center of our house, as they come
14 from down to up, so that that gap that does
15 down would prevent, in terms of depth, pulling
16 a vehicle into that space, if you follow me on
17 that.

18 It would be difficult to pull a
19 car into, you know, had we, you know, decided
20 to try and make that a parking pad directly
21 behind our house, because there is a drop, cut
22 out stairs that go to the basement.

1 So we put a small shed, 10 x 5,
2 back there where I can pull a motorcycle in
3 there and that's it, that's about it. And we
4 built a deck along with tearing down the back
5 of the house and all that. So as I said this
6 project has been ongoing as part that.

7 The separate lot, 827, where we
8 would now like to put a garage, has been a
9 source of parking and security concern over
10 time. Since the time we moved in there, we
11 now have four police reports of vandalism,
12 break-ins, etcetera. It historically has been
13 an area that is poorly lit and that is, I
14 think, encouraged and aggravated by the amount
15 of foot traffic that goes through that one
16 remaining public alleyway that goes back
17 there.

18 So speaking to the third-prong of
19 public good, in terms of putting a garage on
20 there that is more -- would be in a more
21 secure location, it would be in keeping with
22 what exists up and down the alley on both

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1 sides. It would be, you know, better lit and
2 a few other concerns which Joel will probably
3 speak to.

4 But in our efforts to do this,
5 working with the -- trying to work with the
6 neighbors and the ANC, we went east and west,
7 north and south, so 10 houses each way, so a
8 total of about 40 of the letters of which you
9 have and we had overwhelming support. 16
10 returned positive, 4 returned negative in
11 terms of our project to do this.

12 The ANC however ruled against this
13 at the 7 October hearing, but that was pretty
14 much a pre -- we went intending -- we brought
15 these petitions intending to have a dialogue
16 on this and the ANC opened the meeting with a
17 motion to move to the next item, stating that
18 all the Commission Members had already decided
19 how they were going to vote on this. And they
20 had a negative resolution already prepared.
21 So it was not an inclusive dialogue at all.

22 I think just to wrap up my portion

1 of opening comments, that in terms of the
2 merits of what this lot is intended for and
3 what our request is, it's consistent with
4 existing garages and structures on the alley,
5 as to, you know, some of the -- whether it is
6 considered a tax lot and pre-1957 matter-of-
7 right, that's a little bit new to me here
8 today.

9 But I think again the request is
10 consistent. We're not asking to, you know,
11 build anything higher than what is existing
12 there or use it for any other way than what it
13 is intended, which is for parking.

14 So I'll turn it over to Joel, at
15 this point. Unless if anyone has any
16 questions, I would be happy to take those.

17 MR. HEISEY: I think I'll just
18 continue through and then it's probably
19 easier. If you come up with something, stop
20 me, otherwise, I'll just go through. What I
21 was looking for -- part of the existing
22 conditions, any structure built on this lot is

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1 only limited to 40 percent lot coverage.
2 That's why I was looking under the lot code.
3 It says "other uses." But then it goes back
4 to the uses.

5 But anything that you build on
6 here, which apparently by every definition,
7 would only be a single-family house by right
8 anyway, you would only be limited to 40
9 percent lot coverage. That's why we're asking
10 for a larger lot coverage. You are limited to
11 40 percent, which is only an 11 x 20 foot
12 space.

13 And assuming the use is a garage
14 by right or not, even by doing that, you could
15 get a single car garage, but then you would
16 not meet either your size of the parking space
17 requirements or you would not meet your side
18 yard set-back requirements with the lot
19 dimensions just do not allow 40 percent lot
20 coverage to make any usable structure put on
21 the space.

22 So that's kind of the uniqueness

1 of the lot. It is very small. The
2 dimensions, the 40 percent, you can't cover
3 the rest of the block, because they are
4 contiguous lots. They can use 60 percent of
5 their lot. Every other house on that block,
6 the 1700 Block of Harvard, would be by right
7 allowed to put a 16 x 20 foot garage there by
8 right and their lot coverage would only go
9 between 47 and 53 percent.

10 So every other property on that
11 block would be able to put a garage in the
12 rear of the property as an accessory use with
13 no lot coverage variances and they wouldn't
14 even need the set-back variance, because they
15 would be able to push their garage further
16 into the yard, which there is not even an
17 option of that on this lot because of the
18 fixed boundaries of the lot.

19 CHAIRPERSON MILLER: But this is
20 different, because it's not being shared with
21 a primary residence lot.

22 MR. HEISEY: Right. But I'm

1 saying as far as uniqueness, this is unique
2 because you can't do anything else like that,
3 but every other lot on that street would be
4 able to put a garage there. So there could be
5 garages the whole way down the block there on
6 every lot. It's just that this lot -- then
7 you would be denying this space being used as
8 a lot which is the same as the ground 20 feet
9 over, just because it's deeded differently.

10 Does that make sense? Because if
11 I'm looking down this alley, every owner next
12 to us has every right to build a new garage,
13 because it's an accessory building, because of
14 use, because of lot coverage and everything
15 else, they can do that by right.

16 But because of the uniqueness of
17 this lot being that it's not going to be an
18 accessory use, because of it's small size, we
19 are here needing exemptions from that to be
20 able to mimic the same structure that could be
21 built the entire length of the block.

22 And also, just opposite on the

1 remainder of the blocks of 1500 or 1600 Block
2 of Harvard and the 1700 Block, of those, 48
3 percent of those lots have detached garages
4 already. And so this lot is unique in that we
5 would have to get a variance to do what
6 everyone else is being able to do by right
7 with the garage.

8 CHAIRPERSON MILLER: But it's
9 different. Everybody else's is different.
10 But maybe that's what you're saying. It's
11 unique because your's is different from them.

12 MR. HEISEY: That's why we need
13 the variance.

14 CHAIRPERSON MILLER: But it sounds
15 like if --

16 MR. HEISEY: So it's for use and
17 for the coverage and for everything else.

18 CHAIRPERSON MILLER: Why is it an
19 undue hardship not to be able to have the
20 garage there?

21 MR. HEISEY: The undue hardship
22 comes from the security issue. I mean, just

1 last week, three of the four tires were sliced
2 and this is the fourth incident, and that's
3 \$1,000 to replace those tires. And this is
4 the fourth incident of that already.

5 The hardship is that, you know,
6 the security issues being right next to that
7 highly used public alley, that people come and
8 they congregate in that area. By providing an
9 enclosed secure garage, that would be able to
10 mitigate those circumstances.

11 Again, the practical difficulty is
12 the 40 percent lot coverage makes the
13 remainder of the lot unusable.

14 The set-back requirements if we
15 would have to set-back 12 feet off the lot,
16 the interior space of the garage would not
17 meet the minimum parking size, standard size
18 for parking space. It would be too short.

19 Oh, my, here comes the calvary. Should I
20 continue or do you want to look at them?

21 I'll continue and they can tell us
22 when they find it.

1 CHAIRPERSON MILLER: Yeah, right.
2 I don't know when they are going to be ready.
3 Okay.

4 MR. HEISEY: And you will have
5 enough to grant a use variance anyway. So
6 anyway, what I was saying is the other
7 practical difficulty is with the set-back
8 requirement. If you meet the 12 foot center
9 line set-back, the garage becomes too small
10 that you are not able to get a 19 foot long
11 parking space on the lot. It does not happen.

12 We have to have that relief, so we
13 can get a full size space on the lot. And
14 going to the zero will allow the owners to get
15 in, because there is a wide enough lot that we
16 would be able to get in without the turning
17 radius and everything. They would be able to
18 use the interior space of their garage for
19 that.

20 Again, the hardship is the
21 security issues. And just like we went before
22 20 or 30 minutes of trying to find what is the

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1 definition of this lot, it's -- the records
2 don't seem to exist very well. That may be
3 cleared up in a minute or not.

4 As far as the public good, I mean,
5 alley lots, always the intention was that they
6 were being used for garages. And like I had
7 said previously, the majority of the houses on
8 these two blocks have garages. Of those, 56
9 percent of those garages have a zero set-back.
10 97 percent of them all have less than a 12
11 foot set-back from the center line on that.

12 This garage won't affect the air
13 or light of adjoining buildings. It is to the
14 north of the immediate property owner. It
15 will cast no shadows. It will affect nothing.
16 We're 17 feet from his building. And as far
17 as the buildings to the north, this is a very
18 steep grade in Mount Pleasant. This will be
19 at the same height as the garages on the
20 opposite side of the alley, which are below
21 the basement level of the houses on Hobart
22 Street on the other side. It's a very steep

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1 grade at this location.

2 As far as -- the applicant has
3 made efforts to involve the community and let
4 them know what they are proposing here. They
5 had submitted petitions to owners, 10 lots to
6 the east and 10 lots to the west, on both
7 sides of the alley, which are the letters that
8 you have in support and opposition.

9 With each letter, there was a map
10 of the proposal and a photograph of the lot,
11 so that people knew, you know, what they were
12 being asked to sign. Of those, approximately,
13 40 petitions that were sent out, 20 of them
14 came back. 16 of them came back in support of
15 the garage, often citing security issues. And
16 also that it is their lot, they should be
17 allowed to build what they would like to build
18 on it.

19 4 opposing ones was you will hear
20 from the adjoining owner, but the other one
21 was the letter from Stephen Dunn. And I mean,
22 just going through some of this, yes, it is a

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1 narrow alley and I sympathize with him not
2 being able to get into this garage. But other
3 property owners have no obligation to provide
4 access across their lot for someone else to
5 enter into their garage.

6 This particular -- at 1708 isn't
7 even affected by this garage. The property
8 immediately behind this property is 1702
9 Hobart and then possibly a corner of 1704.
10 1708 is still two doors down and would not at
11 all be affected by this garage.

12 And let's see, the other thing is
13 this was -- the ANC has sent a letter to the
14 Board in opposition. I would just like to
15 address that and the fact that they say it was
16 advertised, discussed and advertised, at a
17 properly noticed meeting.

18 The reason I submitted the minutes
19 from the ANC meeting of September 2nd was this
20 proposal was discussed during the public
21 discussion portion of the ANC meeting, which
22 is where anybody can raise any issue that is

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1 not on the agenda.

2 My client, the applicant did not
3 know this was going to be raised and was not
4 present at that meeting and had no
5 presentation made at that meeting. That's
6 where this was discussed. The applicant had
7 spoken with the ANC representative, had gotten
8 onto the October agenda. As the meeting
9 started for the ANC, the first order of
10 business was to remove that item from the
11 agenda.

12 The applicant was never allowed to
13 present to the ANC their proposal. When they
14 had walked into the meeting, there had
15 already --

16 MR. LAWRENCE: I had three
17 minutes.

18 MR. HEISEY: Oh, okay. Oh, you
19 did have three minutes? Okay.

20 MR. LAWRENCE: Yes, three minutes.

21 MR. HEISEY: The attachment that
22 you had gotten with your letter was already

1 posted at the October meeting prior to when
2 they were not allowed to speak. And
3 apparently a decision -- they were told that
4 the motion by the ANC Members, as I understand
5 it, was they were removing this, because the
6 decision has already been made.

7 So the applicant never had a
8 chance to present to the ANC, so I would like
9 the Board to consider that when they are
10 putting their weight on the recommendation of
11 the ANC. The applicant was never allowed to
12 present their proposal to the ANC.

13 The HPRB, this was presented to
14 them last week for the historic review. They
15 approved the design as submitted to
16 yourselves. The Office of OP staff report
17 recommends approval for both the lot coverage
18 and for the site set-back or the set-back from
19 the center of the alley.

20 Just to summarize then, I think
21 uniqueness of the lot, its small size, its
22 alley use, it can only be used for a garage,

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1 essentially, and parking. You know, like we
2 said, we went through this and it's a little
3 unclear how, but the intent and the spirit of
4 the law is that alley lots were meant for
5 parking garages.

6 The practical difficulty is that,
7 you know, it's small. You can't use it. The
8 security issues make the use difficult having
9 it open as it is. And it is consistent with
10 the zoning intent since at least half of the
11 other houses on these two blocks have alley
12 garages as well.

13 So thank you, Madam Chair.

14 CHAIRPERSON MILLER: Could you
15 address how the security issue is an
16 exceptional practical difficulty to this
17 property as opposed to other lots where there
18 is open parking in the alley?

19 MR. LAWRENCE: Madam Chair, I
20 think the security consideration here is again
21 just the immediate adjacency to this public
22 access. There is only one light that lights,

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1 which is probably close to 100 meters in
2 length from the bottom of the stairs to the
3 alleyway. There is actually -- it's a public
4 lighting right outside our window, but it does
5 not light the corner where the alley is.

6 We have installed a motion light
7 there, but obviously it has not taken care of
8 the security problems that we have had. As I
9 said, in total four police reports based on
10 broken windows, vandalism, as recent as last
11 week and, you know, both animals and people
12 throwing trash, defecating in that what is now
13 open lot, since we took the chain link fence
14 down, so we could park there.

15 So it has been, you know, an
16 ongoing problem since we did that, which we
17 thought, at the time, was, you know, making it
18 more useful for us in terms of parking. But
19 it has not worked out in terms of a security
20 issue. And I think it is the immediate
21 proximity to that alleyway and the amount of
22 traffic it gets that makes it the exceptional

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1 case there.

2 CHAIRPERSON MILLER: This alleyway
3 is it something that is publicly used, that
4 the public wants?

5 MR. LAWRENCE: Yes.

6 CHAIRPERSON MILLER: So it's not
7 like you can ask to get that closed for
8 security reasons?

9 MR. LAWRENCE: We could actually
10 ask. We could ask to get that closed if both
11 neighbors agreed, but we discussed that with
12 the neighbor over a year ago and the problem
13 would be sort of liability, because of the
14 steep steps on the front side. And the other
15 neighbor has -- was not interested. They have
16 already closed their entire boundary to that
17 with a cost probably, a significant expense.

18 So it would not be advantageous to
19 them. And the neighborhood had strong
20 concerns over closing that alley, because
21 there are many people that use that alley to
22 access the bus. So as part of this project,

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1 we assured people that, you know, if we were
2 allowed to build on this, we would certainly,
3 by bringing electricity over there to power
4 the garage, we would also put up more motion
5 lights and make it a, hopefully, safer and
6 better lit area.

7 CHAIRPERSON MILLER: Okay. And
8 did you consider any other options for
9 enclosing, such as a pull down door or other
10 fencing or what?

11 MR. LAWRENCE: To be honest,
12 ma'am, in terms of construction costs, some of
13 these self-furling things would probably be
14 about the same cost to us and we have already
15 had significant -- we've done over \$100,000 of
16 renovating the house that we are in, which
17 again, to the public good. But frankly, you
18 know, some of those things are, I think, more
19 -- we haven't considered that and we would
20 consider that if we don't get the variance we
21 are seeking, but we would rather put a flat
22 roof that conforms to what is consistent in

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1 the alley that already exists.

2 MR. HEISEY: And also, the
3 additional security. Part of the impetus is
4 that he has a motorcycle, which people can
5 jump over fences and motorcycles are very
6 vulnerable. This would provide cycle parking
7 in front of the two vehicles, plus additional
8 storage in the area above the vehicles as
9 well. That's why it's a structure enclosed
10 and weatherproofed.

11 CHAIRPERSON MILLER: Other
12 questions?

13 MS. MONROE: I would just speak
14 briefly. When we were discussing whether or
15 not it was, you know, recorded before 1957, I
16 realized that OZ has several old Baist Maps,
17 so I went to get one and I think I can let OP,
18 the experts, speak to this. But I have one
19 from 1925 over there and we have the page, so
20 Mr. Jesick can refer to it.

21 CHAIRPERSON MILLER: All right.
22 Maybe we can get that issue resolved and know

1 which kind of variance we're dealing with.

2 MR. JESICK: Thanks to Ms. Monroe
3 and Mr. Moy for bringing this map dating from
4 1925, which shows a lot in this location. So
5 it's at least that old, 1925.

6 CHAIRPERSON MILLER: Okay. Good.
7 So I think that resolves the question unless
8 other Board Members have any other concerns?
9 Okay. So we are dealing with -- we know what
10 standard. We're now dealing with the
11 practical difficulty standard. Okay. Good.

12 I'm sorry, but I have to ask you
13 about one other relief that you might need.
14 But it's lesser. Your parking spaces. You
15 are not parking on your lot and you are not in
16 here for relief from your parking spaces.
17 However, this is before us in the sense that
18 we're considering parking in your proposed
19 garage.

20 And I just want to bring it to
21 your attention and it just may be something
22 that may need to be added to the application.

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1 2116.1 talks about location of parking spaces
2 being located on the same lot with the
3 buildings and structures they are intended to
4 serve.

5 Your parking spaces are not
6 located on the same lot. Are they serving
7 your -- oh, go ahead, respond.

8 MR. HEISEY: Well, no, but I'll
9 bring you back now then to that it is used by
10 right under R-1 if it's prior to 1957. It
11 could be anybody could own that lot and it
12 could be done as a garage then. You're saying
13 in an R-1 District you are allowed to have a
14 garage on an alley lot prior to 1957.

15 CHAIRPERSON MILLER: Do you have
16 the regulations there? I'm just talking about
17 location of parking spaces, even if you didn't
18 have your garage.

19 MR. HEISEY: No, well, that's what
20 I'm saying that that lot, as an independent
21 lot, even if this applicant didn't own it and
22 have the adjacent property, somebody from

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1 Columbia Heights owned that lot, they would be
2 allowed to use it as parking, because of the
3 R-1 prior to 1957 designation of that lot. It
4 would be allowed to be used for parking.

5 Am I interpreting this correctly
6 or am I missing your question entirely?

7 CHAIRPERSON MILLER: I hear what
8 you're saying. It's on its own lot. It's
9 intending to serve its own lot. Is that
10 basically what you are saying?

11 MR. HEISEY: Yes.

12 CHAIRPERSON MILLER: Yeah.

13 MR. HEISEY: It just happens that
14 the owner of this lot is the lot adjacent,
15 which is the -- that and the owner simply are
16 the two most logical owners of that lot, but
17 there is nothing to prevent somebody from
18 Adams Morgan or Georgetown or anything else
19 from owning that lot and improving upon it.

20 And that would go back to the use
21 under the R-4 as an accessory building prior
22 to 1957.

1 CHAIRPERSON MILLER: Okay. I
2 don't really see the connection with 1957, at
3 this point.

4 MR. HEISEY: Well, that's saying
5 that it would be allowed by right.

6 CHAIRPERSON MILLER: A parking
7 garage?

8 MR. HEISEY: Yes, a parking -- a
9 private parking -- well, a parking garage and
10 a parking -- private garage. There's
11 distinction in the Zoning Code.

12 CHAIRPERSON MILLER: Yeah.

13 MR. HEISEY: A parking garage --

14 CHAIRPERSON MILLER: That's fine,
15 that's fine. That's fine. That's right.
16 That's what we said. That's fine. The
17 private garage is okay now, because it was on
18 a lot that was before 1957.

19 MR. HEISEY: And that's why --

20 CHAIRPERSON MILLER: It's okay as
21 long as it meets the other regulations.

22 MR. HEISEY: Right. And what I'm

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1 saying is --

2 CHAIRPERSON MILLER: Yeah.

3 MR. HEISEY: -- what you are
4 raising is if it wasn't that and I'm saying
5 since it's allowed by right, any owner could
6 do it.

7 MR. LAWRENCE: I certainly concur
8 with what Joel is saying in terms of the
9 matter-of-right part of the other lot, but if
10 I could, I think to answer your question of,
11 I think it was, sort of why don't we or why
12 can't we park immediately behind our property,
13 if I understood the question correctly.

14 CHAIRPERSON MILLER: Let me,
15 before you answer. It's like I gave a partial
16 statement. It says "If you can't park on your
17 own property for a space that you are required
18 to have," not an additional space, but even
19 like if you are required to have one space and
20 you can't provide it on your own property,
21 then you go to 2117.9(c). It says "The Board
22 can allow you to park on a separate lot by

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1 special exception.

2 MR. LAWRENCE: Right. And to
3 speak to that one, ma'am, then, it's -- as I
4 mentioned, the depth from the property line to
5 our house is probably about 16 feet. So it
6 would not have -- my wife's car is 16 feet
7 wide -- long. And the problem is the stairs
8 from the basement are in the -- almost in the
9 center directly behind our house.

10 CHAIRPERSON MILLER: Okay. But
11 what I want to say is -- and I know it's
12 getting late. I just want to refer you -- I
13 think we can leave the record open for you to
14 address this if we decide later that you
15 should. I want to hear from Office of
16 Planning, too, whether he thinks you should.

17 The provisions are 2116.1, which
18 requires "parking spaces located on the same
19 lot with a building or structures they are
20 intended to serve," it says. And then it says
21 "but if you can't, you go to 2117.9(c)" and it
22 says that "the Board can grant a special

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1 exception to allow you to have it on another
2 lot, provided you meet the provisions under
3 that."

4 MR. LAWRENCE: Right.

5 MR. HEISEY: Right. These, Madam
6 Chair, are required spaces under the Zoning
7 Code. The ones we are asking for are not
8 necessarily required for the single-family
9 house in this designation. The Historic
10 District exempts them from being required to
11 provide parking, so this is not a required
12 parking. This is an optional parking space,
13 so this -- the section 2116 would not apply,
14 because it is not a required space.

15 CHAIRPERSON MILLER: Okay. That's
16 a good answer.

17 MS. MONROE: Is it a contributing
18 building in the Historic District? Do you
19 know if it has been certified?

20 MR. HEISEY: Yes, it would be.

21 MS. MONROE: It is? Was it
22 certified by HPRB? Because then you get out

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1 of the parking.

2 MR. HEISEY: Right.

3 MS. MONROE: If it's --

4 MR. HEISEY: It is.

5 MS. MONROE: Okay.

6 MR. HEISEY: It is contributing.

7 MS. MONROE: Because that needs to
8 be on the record, because then we know.

9 MR. HEISEY: It's a contributing
10 building for the Historic District. It's a
11 1908 building.

12 MR. SCHNEIDER: I'm sorry, may I
13 ask, I got confused by that whole last bit.

14 CHAIRPERSON MILLER: You did.

15 MR. SCHNEIDER: Can somebody
16 explain it to me, please?

17 CHAIRPERSON MILLER: Well, first
18 of all, we have regulations that govern
19 location of required spaces, parking spaces.
20 It is required, for instance, if a single-
21 family dwelling is required to have one
22 parking space. And say they don't provide it

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1 on their lot, they provide it on the other
2 lot. Then we were saying then they may need
3 to get a special exception, because that's
4 what our regs say.

5 However, historic properties that
6 are found to be contributing, are exempt from
7 some of the parking requirements. Especially
8 if they have been historically exempt, it's
9 grandfathered. If that property has never had
10 a parking space, then that has been waived,
11 basically, under the law, so we don't have to
12 get into the parking spaces under this
13 provision, because it applies to required
14 parking spaces.

15 MR. SCHNEIDER: Might I add that
16 the previous owner used the backyard of that
17 property, 1665, for parking. So it has been
18 a behind the property parking lot in the past.

19 CHAIRPERSON MILLER: Okay. I'm
20 just going to leave it out here and then we'll
21 see what happens with it. I just wanted to
22 raise it, because it looked like a possible

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1 regulation that applied. Okay.

2 Any other Board questions? Okay.

3 Does the applicant have anything further on
4 their case right now?

5 MR. LAWRENCE: Just on the last
6 comment on some of the old photos that I saw
7 of our -- of the lot, he actually had fit
8 three cars inside the fence lot at one point.
9 One of those vehicles was a VW Bug. I suspect
10 that might have been the one that would fit
11 immediately behind his house, but you would
12 certainly not fit a normal size car that we're
13 driving today.

14 CHAIRPERSON MILLER: Okay. Thank
15 you. Anything else?

16 MR. HEISEY: Well, no. I was just
17 going to say and there is the requirement for
18 a legal spot to be 8 x -- or 9 x 19 or 8 x 19.
19 I'm fuzzy, at this point. And that would be
20 impossible to obtain behind the existing
21 property.

22 MEMBER WALKER: What is the

1 dimension of the area?

2 MR. HEISEY: Behind the existing
3 property?

4 MEMBER WALKER: That's correct.

5 MR. HEISEY: At best, I would have
6 to give you a guess. There's nothing as to
7 dimension. The width of the lot is 16 feet
8 point 5, point 05. I don't have anything
9 dimensioned in.

10 MR. LAWRENCE: And the stairs are
11 in the middle of that.

12 MR. HEISEY: Yeah, and I don't
13 have anything for the dimension for the depth
14 to the -- the existing is built out with a
15 deck and a storage shed. Even if you tear all
16 that down and I don't know what the distance
17 to the building would be.

18 MR. LAWRENCE: I can tell you that
19 our deck is probably about 10 feet deep. The
20 storage shed is 5 feet. And that goes right
21 to the property line. And the stairs come out
22 to about 8 feet. So the -- you know, you are

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1 looking at 16 feet width, maybe as much as 16
2 feet depth, but with stairs that come out to
3 probably 12 feet or so depth. So again,
4 that's my best guess to answer your question.

5 CHAIRPERSON MILLER: Okay. Any
6 other questions? Mr. Schneider, do you have
7 cross examination questions for the applicant?

8 MR. SCHNEIDER: Yes, a few.
9 In regard to the ANC meetings --

10 CHAIRPERSON MILLER: Let me just
11 say one thing, okay?

12 MR. SCHNEIDER: Yes.

13 CHAIRPERSON MILLER: You will have
14 time to testify after this and do any rebuttal
15 or whatever. So just these are questions.
16 You may have been setting up a question, but
17 I just want to make sure you're not going to
18 be giving rebuttal testimony at this point or
19 anything.

20 MR. SCHNEIDER: Well, it could
21 work either as rebuttal or as a question. So
22 let's save it for rebuttal.

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1 CHAIRPERSON MILLER: Okay. It's
2 up to you. Okay.

3 MR. SCHNEIDER: So I'm good at
4 this point.

5 CHAIRPERSON MILLER: All right.
6 Why don't we go to the Office of Planning
7 then?

8 MR. JESICK: Thank you, Madam
9 Chair and Members of the Board. Again, my
10 name is Matt Jesick. As with any variance, we
11 reviewed this application using the three-part
12 variance test. On the first part of the test,
13 we did feel that the property exhibited some
14 unique or extraordinary conditions. One is
15 its small size. It's 557 square feet and only
16 24 feet deep by 22 feet wide.

17 Secondly, as has been noted, it is
18 in an unusual relationship to the adjacent
19 property to the south. Obviously, throughout
20 the city, we don't normally see lots
21 configured in this fashion. We feel that the
22 extraordinary situation doesn't pose a

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1 practical difficulty for the applicant.

2 It would be difficult to build
3 anything on this lot, given the 40 percent lot
4 occupancy limit. Even if a one car garage
5 were to be built, it is unusual or it would be
6 unclear if the remaining portion of the lot
7 could be used for a parking pad or something
8 else at all.

9 Regarding the second part of the
10 relief, the set-back, from the center line, we
11 feel that the practical difficulty is created
12 because the short depth of the lot makes it
13 difficult or would make it difficult to
14 achieve the full 19 feet required by the
15 Zoning Regulations for the depth of the
16 parking space, if the depth of the garage were
17 to be reduced.

18 Also, the garage cannot be shifted
19 to the south, because it abuts the adjacent
20 property.

21 On the third part of the test, we
22 feel that the relief could be granted without

1 substantial detriment to the public good and
2 without impairing the intent of the Zoning
3 Regulations.

4 One aspect of the Zoning
5 Regulations is to protect the light and air to
6 adjacent property owners. And we feel that
7 there would be no impact. In fact, the garage
8 would be to the north of the most -- the
9 closest house, so the sun, which, of course,
10 shines from the south, would not be impeded in
11 any way.

12 Regarding the set-back, most other
13 garages on the alley are built to the property
14 line. And so this garage would be in keeping
15 with the character of the alley. Also, if we
16 were to require compliance with the set-back
17 from the center line, we could be replacing
18 one area of relief with another, that is
19 replacing the set-back relief with relief from
20 the standard size for a parking space.

21 So we feel that the application
22 meets the three-part variance test and we are

1 recommending approval of the variances. I
2 would be happy to take any questions.

3 CHAIRPERSON MILLER: Well, could
4 you address the impact on Mr. Schneider's
5 property, the property that is right behind?

6 MR. JESICK: Sure. As I
7 mentioned, we feel there would be no impact to
8 light, because the garage would be to the
9 north of the property at 1701. We do not feel
10 that there would be any impact to air or
11 privacy for the property at 1701. The
12 backyard is highly shaded by at least two
13 existing trees, so we're not sure that there
14 would be any impact, you know, light is coming
15 from the south.

16 But even if there would be some
17 shadow, the trees would already cast a shadow
18 on the backyard. So the garage would be
19 taller than the existing fence, but we don't
20 feel that that would have a substantial impact
21 on the property.

22 CHAIRPERSON MILLER: And what's

1 the distance between Mr. Schneider's rear
2 wall, the end of his house and the garage?

3 MR. JESICK: I believe it's about
4 17 feet.

5 CHAIRPERSON MILLER: Any other
6 questions? Does the applicant have any cross
7 examination for Office of Planning? You have
8 a copy of the report?

9 MR. LAWRENCE: Yes, ma'am, I do.

10 CHAIRPERSON MILLER: Okay. Mr.
11 Schneider, do you have a copy of the Office of
12 Planning report?

13 MR. SCHNEIDER: (No audible
14 answer).

15 CHAIRPERSON MILLER: Okay. Do you
16 have any questions for the Office of Planning?

17 MR. SCHNEIDER: No, I don't.

18 CHAIRPERSON MILLER: Okay. I
19 understand that the ANC was here, but left.
20 The ANC has not come back, at this point?
21 Okay. Is there anybody here who wishes to
22 testify in support of the application? Okay.

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1 Not hearing from anyone, then let's turn to
2 Mr. Schneider, who is a party in opposition.

3 MR. SCHNEIDER: Thank you, Madam
4 Chair. We are, my wife and I, in opposition
5 to the construction of this structure for a
6 number of reasons. I do believe that the
7 light and air would be significantly affected.
8 17 feet away from our back windows, there
9 would be a 16 foot 3 inch garage, as proposed,
10 against -- which comes up less than 4 feet
11 from our roof line. So all of our back
12 windows would be looking out at the tree and
13 beyond that at a wall blocking off sky and
14 light.

15 The ANC did, as Mr. Lawrence said,
16 come to a conclusion in advance of the October
17 meeting in large part because the BZA letter
18 was sent out July 22nd. Six weeks later when
19 I had not heard anything or no underpinning
20 letter, no neighbor to neighbor letter, we
21 were concerned that our light and air would be
22 impinged upon and we would have this huge

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1 structure stuck in our backyard, so we went --
2 we sent a note to the ANC with our objections
3 to what we presumed was going to be proposed.

4 And what we presumed was going to
5 be proposed turns out to be pretty much what
6 has been proposed. No plans were filed with
7 the ANC until less than two weeks before the
8 October meeting, which is why they, on
9 procedural matters, I guess, did not consider
10 them.

11 So what they had was our
12 objections and by that point, they had
13 received the plans, which I didn't get until
14 September 11th, which is two and a half months
15 from the date of the letter. And that was
16 just a few days before the ANC meeting. So
17 they only got a brief look at that and they
18 had already decided.

19 Having come over to the property,
20 looked at the unusual lot, 827, its
21 relationship to our house and how it would
22 impact our enjoyment of our property and our

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1 backyard.

2 As has already been noted, these
3 houses are set into a steep hillside. The
4 front of my house, 1701, is three stories.
5 And the back opens only to two stories, the
6 upper two stories. The patio floor of my
7 backyard is 3.5 feet below the proposed floor
8 of the garage.

9 So with a 12 foot 9 inch garage
10 and 3 foot 6 down to my patio, that comes out
11 to 16 feet 3 inches high as soon from my 17
12 foot wide patio. And I think you have, in my
13 filing, a photograph of the width of my patio.
14 I have another copy here which I could
15 provide. It looks like this.

16 CHAIRPERSON MILLER: We have the
17 photographs that you attached to your
18 submission. I'm not sure which one you want
19 us to look at, but --

20 MR. SCHNEIDER: The one that shows
21 the patio, the table and the height of the
22 fence and the relationships.

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1 CHAIRPERSON MILLER: So instead of
2 the fence, you're going to have the garage is
3 going to be there?

4 MR. SCHNEIDER: The garage will be
5 where the fence is, except that it will be,
6 instead of 9 feet 6 inches high, 16 feet 3
7 inches high and I have a photograph again for
8 you that has not been submitted yet, which I
9 would like to submit to you, if I may.

10 CHAIRPERSON MILLER: Show it to
11 the applicant first and see if they have no
12 objection or do you have an objection?

13 MR. LAWRENCE: I do have an
14 objection.

15 CHAIRPERSON MILLER: Okay.

16 MR. LAWRENCE: Actually, the first
17 one that was just handed to me, this one that
18 has a picture of the table kind of in the
19 center, if you look at the top left of that
20 photo where it says top of their current
21 fence, that is the view directly to the north
22 from the building, which you can see the gray

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1 brick on the left side of that photo.

2 And as you can see, it's basically
3 a wall of green. We have proposed keeping
4 that, you know, putting trellis work and we
5 have tried to work in -- but in any case, the
6 objection I have is that it says it's 6 feet
7 counted from the top of that chair to the
8 fence.

9 Now, the fence itself is 6 feet
10 high. So --

11 MR. SCHNEIDER: That would be --
12 if I may?

13 MR. LAWRENCE: I'm just looking at
14 what I'm reading here. So the fence itself is
15 6 feet. It's kind of a sunken terrace here,
16 which really wouldn't change. I mean, we are
17 proposing adding 4 or 5 feet to the top of
18 that fence, but we're also very sympathetic to
19 keeping everything green in that area and
20 that's -- that part would not change. Thank
21 you.

22 CHAIRPERSON MILLER: So the green

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1 and the fence, would that be next to the wall
2 of your garage? Is that on --

3 MR. LAWRENCE: Where those words
4 are --

5 CHAIRPERSON MILLER: That's on Mr.
6 Schneider's property?

7 MR. LAWRENCE: Yes, ma'am. Where
8 those words are that says top of their current
9 fence, that would be the southern wall of the
10 garage, if you will.

11 CHAIRPERSON MILLER: Behind the
12 fence?

13 MR. LAWRENCE: Well, that fence
14 would either come down or we would put trellis
15 work there to keep that.

16 CHAIRPERSON MILLER: Oh, that's
17 your fence?

18 MR. LAWRENCE: That is our fence,
19 yes, ma'am.

20 CHAIRPERSON MILLER: As I
21 understand the picture, but I could be wrong,
22 that, and I thought Mr. Schneider said this,

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1 it was 9 feet 6 inches from the ground to the
2 fence, to the top of the fence.

3 COMMISSIONER HOOD: Madam Chair,
4 he needs to turn his microphone on.

5 CHAIRPERSON MILLER: Turn your
6 mike on.

7 MR. SCHNEIDER: I'm sorry, I
8 thought it was. The top of his fence is
9 indicate properly. It is a 6 foot stockade
10 fence on the -- which sits on what would be
11 the floor of his garage, which is 3 foot 6
12 inches above our patio floor, so that's where
13 I get the 9 feet 6 inches to the top of that
14 fence.

15 If I may, I gave him the other
16 photograph. May I bring this up or give it
17 to --

18 CHAIRPERSON MILLER: That's what I
19 was asking. Is there an objection to the
20 photograph that he wants to submit?

21 MR. LAWRENCE: Just that the
22 dimensions are clearly wrong in what is

1 presented.

2 CHAIRPERSON MILLER: In what you
3 are looking at, which we haven't seen. Is
4 that right?

5 MR. LAWRENCE: I thought he was
6 referring to something he submitted.

7 CHAIRPERSON MILLER: What is it a
8 picture of? Just

9 MR. HEISEY: We have no --

10 CHAIRPERSON MILLER: Just tell us
11 what it is.

12 MR. HEISEY: -- objection if he
13 provides it.

14 CHAIRPERSON MILLER: Okay. Tell
15 us what it is, so when we have it --

16 MR. SCHNEIDER: It is a picture
17 shot from the side of my yard with finally
18 getting -- I couldn't get a wide enough lens
19 to get the -- where the top of the garage will
20 be when constructed. And if I may bring this
21 up?

22 MR. HEISEY: The only comment, if

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1 I may make, is --

2 CHAIRPERSON MILLER: Well, wait.
3 I don't know. Oh, all right, I guess you can
4 on this photo.

5 MR. HEISEY: Well, no, it's about
6 the objection is if the red line is to
7 indicate where the proposed structure is, that
8 is not at all accurate. That's the only
9 objection I would have to this photo.

10 CHAIRPERSON MILLER: You want to
11 say why not?

12 MR. HEISEY: It's pulled much
13 farther toward the corner of the garage. If
14 the -- the white structure here is the
15 neighboring garage. And then there is the
16 fenced corner down here. The corner of the
17 garage would actually go from the corner of
18 that existing fence. And I can't really judge
19 how high that might go on this scale or
20 anything.

21 MR. SCHNEIDER: That existing
22 fence is my fence, which comes -- it's

1 difficult to explain. But it is on the
2 survey. You will see that there is a cinder
3 block concrete wall that as it approaches the
4 east, curves away from the property line.

5 We have built a fence. When we
6 built our fence along the walkway, we built in
7 about 4.5 or 5 feet to backup behind that
8 curved fence. That's what he is looking at
9 there. Their stockade fence is behind --
10 continues behind that wooden fence. I forget
11 what kind of fence it is. But there it
12 continues all the way over to the edge of the
13 property, which is, approximately, where I
14 have drawn that red line. And that's an
15 approximate height as well just based upon
16 proportions.

17 CHAIRPERSON MILLER: Okay.
18 Anything else?

19 COMMISSIONER HOOD: Madam Chair, I
20 may need Mr. Schneider to mention that again
21 once we get that in front of us.

22 CHAIRPERSON MILLER: Okay. Yeah,

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1 they are making copies, so we didn't have a
2 chance to scrutinize that photo too much.

3 COMMISSIONER HOOD: Madam Chair, I
4 do have a question though. The ANC, I was --
5 I think the applicant had mentioned and Mr.
6 Schneider you, obviously, are well-informed.
7 You obviously attended the ANC meeting. But
8 the applicant mentioned that he was not able
9 to present at the ANC meeting.

10 And then when I read what the ANC
11 has submitted, he asked us to take the great
12 weight into consideration. When I look at
13 what it says, "ANC-1B considered this
14 application at its regular monthly meeting."
15 Was that considered at the meeting or was it
16 already decided before we got to the meeting?

17 MR. SCHNEIDER: Well, I can't
18 speak for the ANC, but they had written a
19 draft, based upon their assumptions of what
20 this property -- what this proposal would look
21 like, based upon our objections. And the
22 applicant did not send in the plans to the ANC

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1 in time for them to officially consider it,
2 but they knew what the plans were. They had
3 seen it by the time of the meeting.

4 COMMISSIONER HOOD: So the
5 applicant never made a presentation in front
6 of the ANC?

7 MR. SCHNEIDER: No, he did not,
8 but he came at the October meeting to the ANC.

9 COMMISSIONER HOOD: And also the
10 ANC probably -- it's unfortunate the
11 Commission left.

12 MR. SCHNEIDER: Yes, it is.

13 COMMISSIONER HOOD: I guess they
14 did, had to.

15 MR. SCHNEIDER: 10:30 or 11:00.

16 COMMISSIONER HOOD: Right. So I
17 guess that the ANC did not allow presentation
18 and it was not deliberated at the ANC meeting
19 in a public forum, which is my concern.

20 MR. SCHNEIDER: The ANC opened up
21 the floor, because Mr. Lawrence and his wife
22 objected to having a decision already made and

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1 they made a statement and there was discussion
2 on the floor.

3 COMMISSIONER HOOD: Okay. So it
4 was discussed?

5 MR. SCHNEIDER: Only a slight
6 change was made to the ANC's official ruling.

7 COMMISSIONER HOOD: Okay. Thank
8 you. And, Madam Chair, when we get the other
9 photograph that Mr. Schneider was alluding to,
10 maybe we can just -- if he can give us a brief
11 -- just give me at least a brief conversation
12 on that. Thank you.

13 CHAIRPERSON MILLER: Okay.
14 Anything else, Mr. Schneider?

15 MR. SCHNEIDER: We are a bit
16 concerned that the applicant did not operate
17 in good faith and was not forthcoming to the
18 neighbors as he indicated. That neighbor to
19 neighbor letter, that copies of which he gave
20 you, was dated October 5th, which is when he
21 handed it out and they were due back in his
22 hand, the next day or the day after in time

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1 for the ANC meeting, which I believe was
2 October 7.

3 Prior to that, we had -- we heard
4 nothing from them until Ms. Armstrong of
5 Historic Mount Pleasant informed me that she
6 had gotten a hold of the plans. That was
7 September 11th. The BZA filing or at least
8 the letter to us was dated July 22nd. I think
9 that's an inordinate amount of time to have no
10 contact whatsoever.

11 Once we did have the plans in
12 hand, Ms. Armstrong arranged for a meeting
13 between Charlotte Lawrence and myself and Ms.
14 Armstrong was there to discuss the plans and
15 what our objections were. And that is the
16 only circumstance where there was interaction
17 between the next door neighbor and the
18 neighbor most affected.

19 CHAIRPERSON MILLER: Okay. Mr.
20 Hood, do you have the picture in front of you?

21 COMMISSIONER HOOD: Yes, I have
22 it.

1 CHAIRPERSON MILLER: Okay.

2 COMMISSIONER HOOD: Thank you. I
3 have the picture in front of me.

4 CHAIRPERSON MILLER: I just want--
5 you have a question?

6 COMMISSIONER HOOD: I just want
7 him to go back over that. Do some of the red
8 line and if we could just go back over that
9 whole piece?

10 CHAIRPERSON MILLER: Okay. The
11 side where the wall is going to be of the
12 garage, you know, where that red line is above
13 the greenery that we see --

14 MR. SCHNEIDER: Right.

15 CHAIRPERSON MILLER: Orientation-
16 wise, what --

17 MR. SCHNEIDER: You're looking
18 northeast, diagonally northeast. That wall of
19 greenery is the northern edge of our property.
20 And the top of that fence is -- it's a 6 foot
21 stockade fence which sits on the floor of what
22 will be their garage, which is 3.5 feet above

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1 the level of our patio creating a, at the
2 fence line, which we have lived with for 30
3 years, 9 foot 6 inch fence.

4 Now, the garage proposed will take
5 it up to 16 feet 3 inches. And I tried to
6 approximate. I was a graphic designer for a
7 long time and tried to approximate quickly the
8 proportion above that fence to where that roof
9 line of the garage would be. And the question
10 that Mr. Lawrence had or Mr. Heisey, sorry,
11 had about where the right hand edge of the
12 structure would be, he was related it to the
13 fence that is right under the words 9 foot 6
14 inches. And that is a fence that I have on my
15 side of the property.

16 Their stockade fence continues
17 behind it up until, approximately, where my
18 vertical red-line is drawn. Again, my wife
19 and I, my wife is retired, and I work at home
20 primarily, our office, the whole back of our
21 house is glass windows. And our office stares
22 out at the trees and at the air above the

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1 parking spaces. And with a 16 foot 3 inch
2 high, in relation to our patio floor,
3 structure 17 feet from our windows, that would
4 be above eye level when seated by about a
5 foot.

6 It's 3 foot 9 inches below the
7 height of the -- our building 20 feet down to
8 16 foot 3 as compared to their's. So
9 essentially, there would be another house
10 right adjacent to us.

11 Also, I had a question. If Mr.
12 Lawrence or anybody else had the space on his
13 property to build a garage, would there not be
14 a 20 foot requirement, that it be 20 feet
15 away, if not attached to the property, from
16 his existing structure? Because if that's the
17 case, 17 feet on my own -- that's not the
18 case? Then I've been ill-advised.

19 CHAIRPERSON MILLER: I think you
20 are probably referring to rear yard
21 requirements. Understanding is they run from
22 the rear of the house back all the way, not in

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1 between the two structures. If you have a
2 garage and you have a rear house -- I mean,
3 you have a garage and a house, it's not the
4 distance in between the garage and the house.
5 It's to the property line. It's from the rear
6 of the house to the property line.

7 MR. SCHNEIDER: Okay. I think
8 maybe my question was not clear enough. If he
9 had 19 feet for a garage behind his house,
10 would -- and it was a pre-standing garage, is
11 there a zoning requirement that it be a
12 specific distance from the structure of his
13 house to allow him green space and whatever
14 back there?

15 VICE CHAIRMAN LOUD: None.

16 MR. SCHNEIDER: Okay.

17 CHAIRPERSON MILLER: Not that I'm
18 aware of. Though I don't like to answer
19 hypotheticals too much. But not that I'm
20 aware of.

21 MR. SCHNEIDER: All right. Thank
22 you.

1 CHAIRPERSON MILLER: Okay.

2 VICE CHAIRMAN LOUD: Just a point
3 of clarification. I think I'm probably the
4 only one that didn't follow this. The ivy, if
5 that's what it is, that's growing in the back,
6 on the opposite side of that, is that where
7 the structure would be built? Okay. All
8 right.

9 And so in --

10 MR. SCHNEIDER: I'm sorry, you can
11 see just the tip of the stockade fence above
12 the ivy and that is the property line.

13 VICE CHAIRMAN LOUD: Okay. So
14 right now, you stare out at the ivy?

15 MR. SCHNEIDER: I stare out at the
16 ivy, yes.

17 VICE CHAIRMAN LOUD: And this tree
18 in the other picture, this is Exhibit 22.

19 MR. SCHNEIDER: The Holly tree?

20 VICE CHAIRMAN LOUD: Yes.

21 MR. SCHNEIDER: Yes.

22 VICE CHAIRMAN LOUD: That is not--

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1 you don't stare out at that tree? That's off
2 to the --

3 MR. SCHNEIDER: From my back
4 windows, I do stare out at that tree, yes.

5 VICE CHAIRMAN LOUD: Okay. And
6 I'm lost again, because that tree is not in
7 front of the ivy.

8 MR. SCHNEIDER: No, it is not.

9 VICE CHAIRMAN LOUD: At all.

10 MR. SCHNEIDER: Well, it is from
11 the view from inside the property looking
12 north. That window is looking east.

13 VICE CHAIRMAN LOUD: Okay. All
14 right. Okay. All right. I think I'm in the
15 ballpark now.

16 CHAIRPERSON MILLER: Well, I think
17 your photographs are very helpful for at least
18 us to be able to visualize what is happening
19 here.

20 MR. SCHNEIDER: Thank you.

21 CHAIRPERSON MILLER: I want to ask
22 the applicant --

1 MEMBER DETTMAN: Madam Chair?

2 CHAIRPERSON MILLER: Oh, sorry.

3 MEMBER DETTMAN: Can I just ask
4 very quickly?

5 CHAIRPERSON MILLER: Go ahead.

6 MEMBER DETTMAN: Can I see the
7 color version of this? That's it.

8 MR. SCHNEIDER: I believe they
9 have the only copy that I have here.

10 CHAIRPERSON MILLER: I was
11 wondering if the applicant could just clarify
12 what is the height of the proposed garage
13 structure?

14 MR. HEISEY: By right, the
15 structure is allowed to be 15 feet. What we
16 are proposing is at the alley it would be a
17 height -- there is a section in the materials
18 that you have, it should look like this. The
19 alley side is 10 feet 4 inches. And then
20 using standard construction for a 12 and 1
21 sloped roof, the high side would be 12 feet 9
22 inches.

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1 And that is at the existing grade
2 level. And yes, like I said, this is Mount
3 Pleasant. There is a very steep grade down
4 through, so there is a grade as shown in these
5 photographs from the grade level of our lot to
6 the patio level of the property adjoining.
7 But the building structure we are proposing at
8 its highest point is 12 feet 9 and 15 feet is
9 allowed by right.

10 CHAIRPERSON MILLER: Do you know
11 how high it is going to go above the fence
12 that's there now? You have a 6 foot fence?

13 MR. HEISEY: 6 feet 9.

14 CHAIRPERSON MILLER: Oh.

15 MR. HEISEY: It's a 6 foot fence.

16 CHAIRPERSON MILLER: Got it. I've
17 got it, got it.

18 MR. HEISEY: Okay.

19 CHAIRPERSON MILLER: All right.

20 And you talked about possibly putting a
21 trellis there or something like that? Is that
22 correct? I thought I heard you mention that.

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1 MR. LAWRENCE: Yes, ma'am. I can
2 speak to sort of in rebuttal to some of the
3 points that Mr. Schneider brought up or I can
4 answer it now.

5 CHAIRPERSON MILLER: All right.
6 Well, it's almost time for your rebuttal. Do
7 you have any cross? If you want to just hold
8 that and you can do rebuttal for that. Do you
9 have any other questions for Mr. Schneider?
10 Because you are allowed to ask him any
11 questions.

12 MR. HEISEY: I would, if I could.

13 CHAIRPERSON MILLER: Why don't you
14 do that first and then just hold that
15 question.

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17 MR. HEISEY: For the September 11th
18 ANC meeting, did you let the Lawrences know in
19 advance that you were going to raise this
20 issue at the ANC meeting?

21 MR. SCHNEIDER: I didn't feel it
22 was my responsibility to approach them with a

1 project that they are initiating. So they
2 never approached me and we did not have a
3 discussion until September 13th.

4 MR. HEISEY: Okay. Did you meet
5 with the Lawrences and Faye Armstrong from
6 Historic Preservation about the building on
7 September 19th though?

8 MR. SCHNEIDER: Was it the 19th?
9 Faye can verify the date. I thought it was
10 the 13th, but it might be the 19th.

11 MR. HEISEY: It was September,
12 mid-September?

13 MR. SCHNEIDER: It was a Friday.

14 MR. HEISEY: Okay. So you did
15 meet. And the other thing is you bought this,
16 your current property, with that lot being
17 there?

18 MR. SCHNEIDER: Yes, I did.

19 MR. HEISEY: And it has always
20 been there?

21 MR. SCHNEIDER: Yes, it has.

22 MR. HEISEY: And you were aware

1 there was a possibility that it could be built
2 on, right?

3 MR. SCHNEIDER: I was always told
4 that it was a non-buildable lot, because it
5 was an orphan lot that was too small for an R-
6 4 structure.

7 MR. HEISEY: Well, I'm not going
8 to make judgment. I believe that is
9 incorrect. But you knew the lot was there
10 when -- since you've owned the house?

11 MR. SCHNEIDER: Yes.

12 MR. HEISEY: Okay.

13 MR. SCHNEIDER: I knew the lot was
14 there.

15 MR. HEISEY: That's the only thing
16 I have for now. Thank you.

17 MR. SCHNEIDER: I might also point
18 out that the Lawrences knew that the walkway
19 was there when they bought their property.
20 And the walkway does have occasional crime and
21 his vehicles are not the only ones that have
22 ever been broken into, vandalized in many

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1 ways. Most of the owners in the 1700 row, all
2 of whom have parking pads, over the years have
3 had problems.

4 I have been there 30 years. I
5 have had two slashed tires, several broken
6 windows. I have had only one burglary in the
7 car. But it is common in that neighborhood.
8 And we all are aware of it and never leave
9 anything in the car visible.

10 CHAIRPERSON MILLER: Okay. Any
11 other questions?

12 MR. LAWRENCE: No, ma'am.

13 CHAIRPERSON MILLER: Okay. Then
14 it is time for any rebuttal and closing. Oh,
15 no, I'm sorry. I didn't ask if there was any
16 persons here who wanted to testify in
17 opposition. Please, come forward, sorry.
18 Hold your rebuttal. I apologize for that.
19 And whenever you are ready, you can introduce
20 yourself for the record.

21 MS. JAYNE: Yes. My name is
22 Patricia Jayne. I reside at 1653 Harvard

1 Street. I gave Ms. Bailey earlier this
2 morning a statement in opposition.

3 First, following up Mr.
4 Schneider's remarks about security. This is
5 an urban neighborhood. And the Lawrences are
6 proposing a suburban solution to an urban
7 problem. I had an armed hold-up outside my
8 house on a summer afternoon this year. This
9 weekend there was a carjacking outside of my
10 house where they shot at the cops.

11 It's so common, it didn't even
12 make The Post. So crime is -- I may not like
13 it, but for 22 years it is part of living in
14 a city. And if I wanted to live in a gated
15 community, I would live in the suburbs. And
16 this solution is a gated solution to an urban
17 problem.

18 To grant this would be setting up
19 a precedent for all of these lots to not have
20 the alley restriction, the distance on the
21 alley. There is not a single garage in the
22 1700 Block of Harvard Street. Every single

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1 house of the entire block has parking pads.

2 Now, two of them have carports over them.

3 If I had to guess, I have not gone
4 through the unbelievable mess of the
5 permitting files, I doubt that there were
6 permits issued for them. That's a personal
7 opinion.

8 Joe Wells who owned the house
9 before the Lawrences was my neighbor and my
10 friend for 20 years. And we discussed the
11 public walkway and this lot many times. It's
12 a little disingenuous that the Lawrences took
13 off the gates and said that they couldn't --
14 because they couldn't park there, because, in
15 fact, the opening of the garage they propose
16 is precisely the same opening that existed
17 with the gates.

18 There is no difference in the
19 width those gates opened that lot fully. When
20 Joe installed those gates without a permit, I
21 personally didn't object. I did not raise it,
22 because I felt that was a reasonable reaction

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1 to some crime that had been going on where we
2 had all had trouble along the alley.

3 The Lawrences have chosen to open
4 that up, because -- I don't know why they
5 didn't want to keep these quite heavy, quite
6 effective gates after Joe installed them. As
7 far as I know, he never had any trouble. He
8 never mentioned it. We used to discuss many
9 times.

10 His brother had lived at 1657 and
11 had a debilitating stroke and his brother was
12 my very close friend. And I spent a lot of
13 time with Joe as we dealt with Frank's care.
14 Joe often parked in the rear of 1665 Harvard
15 Street. He parallel parked some kind of a
16 Volkswagen. It was not a bug. I would say it
17 wasn't a Jetta. I can't remember what are
18 they Rabbits or something that came before the
19 Jetta? I'm not a great car person.

20 But he parallel parked it. The
21 Lawrences without permits did extensive
22 renovations to the back of the house. They

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1 built a shed, a huge shed that covers the
2 whole backyard without permits. They have
3 added an apartment to the house without
4 permits.

5 So they have taken away one
6 parking space. And you may ask why Joe Wells,
7 a single man, had three cars, I can't answer
8 that. But he often had three cars and one of
9 them he parked behind the house and the other
10 two in this lot.

11 This is not a unique lot. It is
12 exactly the same as all of the lots that go
13 down the 1700 Block of Harvard Street. It is
14 precisely the same. There is nothing unique
15 whatsoever about this.

16 There are no difficulties. They
17 can park there. They could put a parking pad
18 on it. They could put fencing. I don't think
19 any of the neighbors would object to
20 reinstating the gates that were quite
21 effective before that, which would still allow
22 for the light and the air not only going to

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1 the Schneiders and Anne Maria's house, but
2 also to the alley.

3 For those of us in my group of
4 houses, especially from 1653 to 1665, the
5 alley is our street. The District recognizes
6 this. We have regular street lighting in that
7 alley. The United States Postal Service
8 delivers our mail to the alley. We get UPS
9 even in the alley, which has a corporate
10 policy of not delivering in alleys. They
11 consider it a street.

12 There is extensive foot traffic
13 from the senior citizens Harvard Towers, it is
14 a D.C. senior citizens apartment at 1801
15 Harvard Street. They walk through the alley.
16 The effect of having a building enclosing in
17 this alley more where it is now very light
18 will be extensive, because it would not
19 surprise me then when the next applicant comes
20 in and requests the same variance to have it
21 up against the lot line and they would, I
22 believe, by right have that once you grant

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1 this one to the property line, there would be
2 strong precedent that -- to grant that.

3 And it would change the light and
4 the air and the safety for all of us who use
5 that as our street. I cannot -- while
6 obviously I have no interest in Mr.
7 Schneider's house, I have been in his
8 backyard. It is small. It is a very small
9 yard, because it has been -- it has had to be
10 terraced, because of this -- of the hill
11 descending through from the alley down to his
12 first floor.

13 This would block out all the
14 light, in the sense of skylight, of even being
15 able to see the sky from his backyard.

16 Now, the Lawrences, I just want to
17 point out several things about Mr. Lawrence's
18 testimony. He testified several times that he
19 lived there three years. According to the
20 deed, they have lived there just two years.

21 I analyze every rear of every
22 house on the Harvard-Hobart alley. And there

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1 are 120 residences on the alley. Of those,
2 there are 35 garages of separate garages and
3 17, what I would refer to and has been
4 referred to, as I have been told,
5 architecturally, as integral garages. Ones
6 that were built, in essence, as part of the
7 structure.

8 In fact, when my house was built,
9 it had one of those. We have turned it into
10 a parking pad, because it simply was unusable
11 as a garage and having been built for a Model
12 T. It was too steep and too small and the one
13 and only time we ever had a car in it, we
14 couldn't close the doors, because it stuck out
15 into it and plus we have to push the car into
16 the alley, because you couldn't get it over
17 the rise.

18 These -- there are many parking
19 pads on the Harvard Street side alone. There
20 are -- of the -- there are 30 parking pads.
21 This is not unusual. Nothing, there is
22 nothing unusual about this lot that would

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1 require or would merit a zoning variance. It
2 is just like many others on these blocks.
3 Thank you.

4 CHAIRPERSON MILLER: Okay.
5 Questions?

6 MEMBER DETTMAN: I'm curious about
7 two things. One, would you not consider this
8 a unique lot, simply because it is the only
9 alley lot along this entire block based
10 between Harvard and Hobart?

11 MS. JAYNE: No, I don't consider
12 it unique. It is in the same placement as
13 every other one in the 1700 Block. And what
14 you -- what they are asking is that it have no
15 side yard/rear yard. They want it to be
16 treated as a separate lot, but then not have
17 it comply with the Zoning Regulations of side
18 yard and rear yard. They want it all. They
19 want a suburban solution to an urban issue.

20 MEMBER DETTMAN: And I was
21 wondering if you could just kind of expand
22 upon your comment that this is going to open

1 the door for other garages to be built without
2 the proper set-back?

3 MS. JAYNE: I have had extremely
4 limited BZA experience, but in terms of what
5 I have done and in terms of research on prior
6 cases, an adjoining owner or an owner of one
7 of these houses on the 1700 Block of Harvard
8 Street who wanted to cite their by right
9 garage, which they would by right have the
10 ability to build on the lot area ratio, as was
11 mentioned several times here today, they could
12 then ask for an exception to the alley set-
13 back, which they would be required to have,
14 even though they were by right could build a
15 garage of a certain size, depending -- the
16 lots vary in size.

17 So you know, but they could say to
18 the Board that why the Lawrences or this lot,
19 this Lot 827, was able to build to the
20 property line. We should be too. And we, in
21 fact, heard that extensively this morning in
22 the case that you heard precisely that same

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1 argument that oh, everybody else is at the lot
2 line, we get to do it, too.

3 And my limited research and the
4 cases I have been involved in the BZA is that
5 that often takes the case.

6 I would just like to say one thing
7 about the ANC meeting. I meant to mention
8 this. I received the notice in July. And
9 that -- the next thing I received was on
10 October 5th or excuse me, on October 7th, as I
11 was driving somewhere else and I picked up my
12 mail from the alley and I'm illegally just
13 reading my mail at a stop light, I found the
14 note from the Lawrences had been left in my
15 box noting that there was going to be an ANC
16 meeting that night.

17 I -- from my stop at 6:30, I
18 called a neighbor and said, you know, my God,
19 I don't even know what time the ANC meeting
20 is. There was no notice. There was no
21 attempt to discuss this with the neighbors at
22 all.

1 I went to the ANC -- and I made it
2 to the ANC meeting. By the grace of the Gods
3 of parking, I was able to get a space. This
4 had been raised. This was on the agenda for
5 that day. It had been posted as being on the
6 agenda. Frankly, I never look at the agendas.
7 I'll be the first to admit. They post them on
8 trees and I have missed seeing one. I have
9 been involved with moving my in-laws into
10 assisted living and I wasn't around a lot
11 before that.

12 And they were -- they made
13 presentations, both Mr. and Mrs. Lawrence did.
14 There was certainly some acrimony, but the ANC
15 had drafted their resolution, based on this.
16 My understanding is they had not gotten any
17 filings. They had not gotten any of the
18 paper. They had not been papered with this
19 nor had I as a neighbor within the radius had
20 not received anything, until literally that
21 day.

22 And if I had -- you know, I often

1 don't pick up my mail. I might not have even
2 known about this. But I, in fact, at that
3 time, I said I can't -- I don't even know
4 whether I oppose it or am for it, because that
5 was the first information I had received other
6 than the notice from the BZA.

7 So that I think -- going to the
8 weight of the ANC, I think they were taking it
9 based on what they had received. You know,
10 they had done independent investigation,
11 that's my understanding, to try to understand
12 what this was, because none of us received
13 anything until that day.

14 CHAIRPERSON MILLER: Okay. Thank
15 you. I would like to ask you just a couple of
16 questions. The gates that you mentioned.

17 MS. JAYNE: yes.

18 CHAIRPERSON MILLER: What were
19 they like? I mean, were they manual or
20 automatic or how did they work?

21 MS. JAYNE: They were manual.

22 They were wood over, what's that stuff called,

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1 chain link. I'm sorry. Ed, I believe -- Ed,
2 do you have a picture of that?

3 CHAIRPERSON MILLER: Is that in
4 the record?

5 MR. LAWRENCE: No, ma'am, but I
6 would be happy to give it to you.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 MS. JAYNE: But they --

10 CHAIRPERSON MILLER: Well, if you
11 give us one, we can copy them.

12 MS. JAYNE: They were large gates
13 that -- it's by necessity. My gates swing out
14 into the alley, because our lots are too --
15 there is just not enough depth to have them
16 swing in. So they swung out into the alley.

17 CHAIRPERSON MILLER: So when you
18 want to bring your car in, you need to get out
19 of your car and open the gate or something?

20 MS. JAYNE: Yeah, yeah.

21 CHAIRPERSON MILLER: Okay. So
22 security-wise --

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1 MS. JAYNE: You do whatever you
2 have --

3 CHAIRPERSON MILLER: -- in your
4 opinion, they -- did they protect the
5 automobile when they enclosed the automobile?

6 MS. JAYNE: Yes.

7 CHAIRPERSON MILLER: Okay.

8 MS. JAYNE: Yes.

9 CHAIRPERSON MILLER: But you have
10 to -- you have a little security issue when
11 you get out of your car maybe?

12 MS. JAYNE: You know, I don't have
13 a garage door opener. I got my -- I get my
14 exercise opening it up. But that's what we do
15 in cities. That's how we live.

16 CHAIRPERSON MILLER: And did you
17 make the comment that is it safer for people
18 in the alley if these areas are open instead
19 of enclosed in a garage?

20 MS. JAYNE: Yes, I believe it is.
21 I walk down this alley a fair amount at night.
22 And it's very nice to be able to see those lit

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1 windows. I -- sometimes I see people in their
2 yard during the day when they are out there.
3 It's a very light feeling allowing the vista,
4 one of the things that was a factor in the
5 Mount Pleasant Historic District formation was
6 the vistas of Rock Creek Park.

7 And as Harvard Street literally is
8 going down to Rock Creek, you see these vistas
9 even in the alley. Harvard Street itself, I
10 have been told, was originally a stream, which
11 has now been put in some kind of a conduit
12 under the street itself, which is why it's
13 very steep is that that was a stream bed, a
14 tributary of Rock Creek.

15 CHAIRPERSON MILLER: Okay. I'm
16 being cautioned about the time, at this point.
17 We have another case coming up. So since that
18 was my question, I think I don't need to have
19 you go any further. So okay. No, you gave us
20 a lot of information. Thank you.

21 MS. JAYNE: And I gave you a
22 written statement about --

1 CHAIRPERSON MILLER: Okay.

2 MS. JAYNE: Okay.

3 CHAIRPERSON MILLER: Does the
4 applicant have cross examination?

5 MR. LAWRENCE: I have no
6 questions, but I would, when I guess do
7 rebuttal at the end, like to speak to some of
8 the points she mentioned.

9 CHAIRPERSON MILLER: If there are
10 no other questions from Board Members, I would
11 say that time is now.

12 MR. LAWRENCE: Okay. Just to
13 begin with the last testimony, as you can now
14 see from the photos that were just
15 distributed, when the fence did exist there,
16 it is not correct to say that the gates, you
17 know, fully opened to the lot. You can see
18 that there are the steel cement bedded posts
19 that are 6 feet in on either side of the lot,
20 which means that, as a matter of practicality,
21 only one car at a time could get into the lot
22 as those gates existed. Just as a point of

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1 fact.

2 Second, I take offense to saying
3 that we did construction without permits. We
4 had permits for all our construction. It's a
5 matter of public record. So those are there.

6 As to the ANC meeting, as soon as
7 the meeting was called to order, the
8 Commission who was here earlier, his first
9 statement was a motion to move to the second
10 item, because all of the Commissioners knew
11 how they were going to vote on the resolution
12 which was up on the screen.

13 When I objected to that, I was
14 told I could have three minutes. So that is
15 not, you know, discussion. So the ANC, in my
16 opinion, ruled on the input of a few
17 individuals instead of, you know, the
18 petitions that we did receive back that you
19 have in front of you, 16 for and 4 against.
20 So that's as far as ANC input.

21 As to alley set-back, which Jayne
22 spoke to, according to Joel's research, 97

1 percent of the garages, and there are many
2 more than 30 odd garages on that lot, 97
3 percent of them do not meet the set-back
4 requirement. Most all of the garages on that
5 alley are built up to the property line.

6 I think Joel is going to speak to
7 some of the other points, but we have
8 summarized our points at the outset in terms
9 of meeting the three-prong requirements in
10 terms of, you know, uniqueness. I think
11 clearly just by the openings today and trying
12 to deliberate what kind of a lot it is, I
13 think it is a unique lot.

14 You know, the security
15 considerations that we have had, you know, and
16 again for taking down the opening there, it's
17 -- you know, my wife is -- we've got three
18 small kids with groceries that kind of thing,
19 getting in and out of there it's not -- it was
20 certainly not conducive to two vehicles
21 parking there.

22 So yes, we took those down trying

1 to make it easier and we ended up with some --
2 you know, our neighbor mentioned he has been
3 there for a long time, had a lot of over the
4 years, but I don't think in the term of the
5 two years that we have actually been there, we
6 bought the property in fall of '05. Moved in
7 in January, to have the number of incidents
8 that we have experienced in two years, is one
9 of the major impetuses that we have to want to
10 build this.

11 Again, you know, four police
12 reports, numerous -- after a while, my wife
13 stopped locking her car. She just leaves it
14 open. And I can tell that people, you know,
15 rummage through there and whatnot. But in any
16 case, so that is a concern. I think that that
17 would be a betterment to the public good if we
18 were allowed to build.

19 And we will and have considered
20 even lowering from 12 foot 9 down to either,
21 I think, 11.6 or 10.6, whatever, to have a
22 flat roof instead of what the diagrams that

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1 you have that we submitted, but we didn't want
2 to further delay this process by waiting and
3 getting -- submitting another set of plans.

4 We actually do have those plans
5 already, at our own expense. We have tried to
6 -- in our effort to accommodate the ANC, at
7 the 7 October meeting, we were willing to
8 discuss that an alternative compromise to go
9 down to a lower height.

10 Which brings me to the other point
11 that I would like to rebut in testimony here
12 that Mr. Schneider gave. This is a -- this
13 photo that he circulated is very misleading in
14 terms of what you are looking at. As he
15 stated, its orientation is northeast. The lot
16 itself is directly north/south. So by
17 including on the right side of that picture
18 which is our house in the photo, that is not
19 the orientation of the proposed construction
20 at all.

21 And obviously, by standing at a
22 lower elevation and pointing a camera up at

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1 the sky, you are getting the inference that
2 you are going to lose a lot of light and air.

3 All of the green that you see on
4 that on the left, that is our fence that all
5 that ivy is on and we have no -- you know, my
6 wife's green thumb, we have no desire to take
7 away any of that, but we would, of course,
8 take that fence down, but be more than willing
9 to keep the greenery, put a trellis, do that
10 type of stuff.

11 But we did not want to again alter
12 the plans in terms of retracting the 12 foot
13 9, which is currently submitted.

14 And I'll let Joel speak to some of
15 the other technical points. Thank you.

16 MR. HEISEY: I'll just continue a
17 bit on this photo. I hate to admit but I have
18 been doing architecture almost 30 years
19 already now. And you get used to perspectives
20 and what things are. And without going into
21 a detailed analysis or anything, this just
22 doesn't feel right. It just does not look

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1 right.

2 It has -- as it would be, I do
3 believe it would be back here. It is a bit --
4 if the red line is to be where this structure
5 will be, it just does not feel right in the
6 way I have been looking at this.

7 The other thing is I would like to
8 address some of the concerns. It's like
9 change is always hard and adding new buildings
10 where there has been vacant lots is always
11 hard for people. I find it just disingenuous
12 for someone to say live with being mugged
13 rather than trying to do something about
14 securing your vehicles by not building a
15 garage. I find that a bit difficult to take
16 on.

17 This is a very unique lot.
18 Looking down the street, it may look the same,
19 but for ownership and the way the property
20 rights are, it is a very unique lot. It is a
21 small size. It is situated behind somebody
22 else's property. The Lawrences who are the

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1 adjoining neighbor happen to own it. Anybody
2 in the city could possibly own this and they
3 could be in here asking for exactly the same
4 variances that we are asking for.

5 The adjoining properties came up
6 at Historic Preservation Board that they do
7 not have garages, probably as a cost measure
8 when these houses were first built. There is
9 nothing in the Zoning Regulations that says
10 there could not be garages built on the rest
11 of these lots.

12 By saying this is like those, it
13 isn't. This needs an exemption to build on
14 this lot. It's an alley lot. As we discussed
15 in the very early part of this, it is intended
16 for a garage use, as the main thing.

17 It is unique in its size, its
18 placement and everything else. Its coverage
19 issues. If we were limited to the 40 percent,
20 it would make the remainder of the lot
21 unusable and not solve a lot of the security
22 issues that we are trying to address here as

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1 well.

2 The practical difficulty is if
3 other garages or -- would be built down the
4 street, they could meet that set-back, because
5 they have the remainder of the building that
6 they could move it back. We are constrained
7 with set boundaries that cannot move. If we
8 meet the set-back from the center of the
9 alley, there is not a legal parking space
10 inside at that point.

11 So we have to have relief. That
12 is not an uncommon relief. The other garages
13 on these two blocks, there is 48 percent of
14 them are built at the zero lot line. It's not
15 unusual. As far as the public good, there are
16 garages up and down this alley.

17 The 1700 Block of Harvard may not
18 have garages, but the 1700 Block of Hobart
19 Street, which is the other side of the alley,
20 has numerous garages that again abut the
21 alley. It's kind of -- this is a diagram I
22 did of the whole -- from Mount Pleasant Street

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1 down to the end of the 1700 Block of Harvard.

2 The yellow squares are garages.
3 The red square being the subject lot that we
4 are talking about. Alley garages are not
5 uncommon. Zero set-back lots are not uncommon
6 in this area. HPRB also agreed that it is
7 within historic guidance the designs we are
8 proposing is compatible with the neighborhood.

9 And I think it clearly meets -- OP
10 has also recommended and said that it meets
11 the three tests that we need for the variances
12 that we are requesting for the lot coverage
13 and the set-backs. Thank you, Madam Chairman
14 and Board.

15 CHAIRPERSON MILLER: Thank you.
16 Any other questions?

17 COMMISSIONER HOOD: I just have
18 one question.

19 CHAIRPERSON MILLER: Yeah.

20 COMMISSIONER HOOD: I'm looking at
21 Exhibit 5 and I'm looking at what was just
22 given to us. Was there some work done? Was

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1 there an enclosure? Was there some work done
2 prior? Do we have two sets of pictures or is
3 my orientation off? I'm looking at Exhibit 5.
4 Then I'm looking at what was just --

5 MR. HEISEY: We don't know what
6 Exhibit 5 is.

7 COMMISSIONER HOOD: Oh, okay.
8 Exhibit 5 is one you --

9 MR. HEISEY: Okay.

10 COMMISSIONER HOOD: And then I'm
11 looking at what you just passed us.

12 MR. LAWRENCE: Yes, sir. To
13 answer, what you are looking at, the only work
14 done was the --

15 COMMISSIONER HOOD: Enclosure?

16 MR. HEISEY: No removing.

17 MR. LAWRENCE: Removing of the
18 property line fence.

19 MR. HEISEY: The fence along the
20 alley.

21 MR. LAWRENCE: So in other words,
22 there were four sides to this fence. We took

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1 off the one side that opened to the alley.

2 COMMISSIONER HOOD: Right. But
3 I'm looking at House 1665 in this picture.
4 And maybe my orientation is off, And then
5 when I look at it in this picture, unless I'm
6 coming from a different angle. Is this the
7 same house?

8 MR. SCHNEIDER: I can answer that.
9 It is the same house. The other photograph
10 was taken several years ago when Mr. Wells'
11 lived there.

12 COMMISSIONER HOOD: Okay. So
13 okay. So some alterations made. Okay. I
14 gotcha. All right. Thank you.

15 MEMBER WALKER: Madam Chair, if I
16 may? I'm just curious about this issue of the
17 accessory apartment that was raised.

18 Do you have an apartment in the
19 dwelling?

20 MR. LAWRENCE: We do rent out the
21 basement apartment, ma'am, yes.

22 MEMBER WALKER: Okay. And so you

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1 have how many tenants there? And do you know
2 what the parking requirements are for your
3 accessory apartment?

4 MR. LAWRENCE: The -- I'll defer
5 to my -- my wife does all the permit work,
6 ma'am, but she is behind me. But Joel is
7 telling me there is no parking requirement for
8 rental tenants there and there are two. We
9 have a two bedroom apartment in our basement.

10 MR. HEISEY: And again, it goes
11 back to the Historic District is exempt from
12 the parking requirements.

13 CHAIRPERSON MILLER: It's not
14 quite that broad a brush though, that they are
15 exempting all parking requirements. But I
16 thought that it went to the --

17 MR. HEISEY: No.

18 CHAIRPERSON MILLER: -- row
19 dwelling. And a row dwelling required like
20 one parking space and then --

21 MR. HEISEY: If it requires
22 additional parking spaces, but since one is

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1 required for one unit, where one is required
2 for two units, they are not required to
3 provide any others. And since they are
4 exempted from the one to begin with, they
5 don't have to require -- they don't have to
6 provide another. Did that make any sense?

7 MR. LAWRENCE: I'm sorry, my wife
8 is telling me as a matter of record it is
9 classified as an in-law suite, which actually
10 is the identical situation which our neighbor
11 here has.

12 MEMBER WALKER: It's classified by
13 whom as an in-law suite?

14 MR. HEISEY: Well, just for the
15 Board, the difference between --

16 CHAIRPERSON MILLER: You'll have
17 to come to the microphone though.

18 MR. HEISEY: No, I will clarify
19 that an independent unit would not have access
20 between the two units. An in-law suite would
21 mean that there is access, like a stairway,
22 between the basement unit and the second

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1 floor. Is that the case?

2 MR. LAWRENCE: Yes.

3 MR. HEISEY: So that would be the
4 definition, as it being an in-law suite, there
5 is access between the two units.

6 CHAIRPERSON MILLER: Excuse me, if
7 you want to testify, sure. You need to
8 identify yourself for the record.

9 MS. LAWRENCE: Hello. I'm
10 Charlotte Lawrence.

11 CHAIRPERSON MILLER: Are you sworn
12 in? Are you sworn in?

13 MS. LAWRENCE: I just want to tell
14 you --

15 CHAIRPERSON MILLER: No. Wait a
16 second. Ms. Bailey, do you want to swear her
17 in?

18 (Whereupon, the witness was
19 sworn.)

20 MS. LAWRENCE: I'm Charlotte
21 Lawrence living at 1665 Harvard Street. I
22 work with the Historical Board and spend many

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1 days at DCRA fighting to get my permits.
2 Especially my -- to create a basement entry on
3 the front, because we have a student from
4 Paris. I'm from Paris and my family coming
5 here, so we really wanted to finish the
6 basement.

7 And that's probably why the Joseph
8 that was the previous owner, and die,
9 unfortunately, because he would be happy, I
10 think, to see what we are doing to his house.
11 He was not using the basement and so he was
12 parking on the back. We really needed the
13 extra space downstairs. We have three kids,
14 a big family. And that's why we finish the
15 basement. That's it.

16 And that's why we called it in-law
17 suite, so we kept the access, so we have an
18 access from my kitchen a staircase going down
19 to the basement apartment.

20 MEMBER WALKER: Okay. So you use
21 the space in the basement? You don't have
22 tenants in the basement?

1 MS. LAWRENCE: Well, we get the --
2 they pay us a certain amount because that
3 space we have student from France. So since
4 last year, my cousin came for six months,
5 every six months, you know, I try to have
6 people that wants to -- like my cousin, she is
7 here now. She is here and she wants to
8 practice French, so we have, but no, we don't
9 have a two-unit house.

10 MR. HEISEY: If I may just -- this
11 is an odd question, but I'm concerned. What
12 does this really have to do with the garage on
13 a separate lot? I'm just curious.

14 MEMBER WALKER: I'm trying to make
15 sure that all of the parking requirements are
16 met, sir.

17 MR. HEISEY: Oh, okay. Okay.

18 MEMBER DETTMAN: Mr. Lawrence, you
19 had mentioned that the gates that were once
20 there were removed, because it wasn't
21 convenient or it was difficult with children
22 and groceries getting in and out of this

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1 space. Is that correct?

2 MR. LAWRENCE: Yes, it was
3 practically -- as a matter of practicality, it
4 was impossible to pull two vehicles in side by
5 side, as the gates existed previously, which
6 you can see from the photos where the gates
7 actually opened, on each side of the lot,
8 began at 6 feet in. So what was a 24 foot
9 wide space that we own, was already shortened
10 to 12 feet. So you couldn't pull two vehicles
11 into the garage previously.

12 MEMBER DETTMAN: Okay.

13 MR. LAWRENCE: I'm sorry, not
14 garage, but that parking space.

15 MEMBER DETTMAN: Okay. Once those
16 gates were removed and you started having
17 these issues with vandalism and such, was the
18 garage the only solution you explored to
19 resecuring this, so that it was convenient to
20 get two cars in there?

21 MS. LAWRENCE: Can I answer?
22 Because my husband was deployed last year for

1 six months while I had my car broke in three
2 times. One day I even went to Ed and Rita
3 crying. I was so upset with the whole thing.
4 And I told them we need to do something. And
5 I went to the surveyor, DCRA, and said well,
6 the solution may be to ask the Congress to
7 give you back the alley, the public alley,
8 which was given back to the owner on the -- on
9 Hobart Street. And you still can see the
10 public lights.

11 And when I talked to Ed about
12 that, he said that well, let me think about it
13 and then everybody was against the idea. And
14 I even proposed, you know, what we do in New
15 York or Paris City, we put gated curd gates,
16 you know, the curd, so all the neighbors can
17 have access, except for the gang. I mean, I
18 have kids smoking dope every week in this
19 little alley.

20 MEMBER DETTMAN: I guess my
21 question goes more to this idea to construct
22 a garage versus something like a remotely

1 controlled roll-up door. I have seen that
2 before. It's a way to secure a parking pad
3 without actually building a structure.

4 So I was just wondering if
5 building a garage was the only solution you
6 explored. And if it wasn't why did we rule
7 out other things?

8 MR. LAWRENCE: We have not ruled
9 out other options, but, you know, as my wife
10 said, we try and to come up -- it was after
11 that point where we did install some motion
12 lights to help try and light the area, but
13 that still has not resolved the issue.

14 MS. LAWRENCE: We got to make as
15 well for the roll-up door. Well, first of
16 all, I find them absolutely ugly. I mean, did
17 you see it? And we live in Mount Pleasant,
18 which is protected by the Historic
19 Association.

20 You know, we are trying to improve
21 the neighborhood. And one of the neighbor put
22 that on cycle. The guys they came and gave me

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1 an estimate of \$10,000 just to put the door,
2 plus remove the gate and the fence, ugly
3 fence. You know, it's chicken wire, another
4 \$5,000 and \$7,000 for the concrete slab.

5 So at the end, I was at \$22,000.
6 \$22,000 is probably -- it's close to what the
7 two-car garage is going to cost us. So we may
8 as well go for it, you know. I mean, that was
9 all. And especially for me it was mostly
10 aesthetic. I mean, I work closely with Jean
11 Anton and Tim Denny and they really work out
12 to improve the neighborhood and the look as
13 well.

14 So what we already -- I mean, this
15 was our decision.

16 CHAIRPERSON MILLER: Any other
17 questions? Okay. What I would like to
18 suggest is that, let's see, we have to
19 schedule this for decision making. We're not
20 going to make a decision today. Okay. It
21 would either be -- well, our next decision
22 making meeting is November 5th.

1 I just want to explore whether
2 there are anything, other documents we want to
3 get in or other submissions prior to our
4 decision meeting and then see how long it
5 would take.

6 So I want to just throw out some
7 questions and see whether they result in
8 submissions. I thought I heard you make
9 reference to another plan that is not in the
10 record with the flat roof, because we need to
11 have in the record whatever plan it is that
12 you want us to rule on. So, yeah, could you
13 respond to that? Because if that's not the
14 case, we need to leave the record open for
15 this plan.

16 MR. HEISEY: Well, we are asking
17 for an exemption for the lot variance and the
18 set-back, not height requirements. So I
19 didn't think that falls within. Does that
20 become a stipulation within your ruling?

21 CHAIRPERSON MILLER: We approve
22 plans.

1 MR. HEISEY: You approve plans.

2 Okay.

3 CHAIRPERSON MILLER: And
4 therefore, we have to know the whole picture.

5 MR. HEISEY: Okay.

6 CHAIRPERSON MILLER: Plus this
7 does go to adverse impacts and things like
8 that that we are analyzing.

9 MR. HEISEY: Right.

10 CHAIRPERSON MILLER: And so even
11 though you are not seeing, you know, any
12 relief related to that, it's germane.

13 MR. HEISEY: There were sketches
14 done. The 12 foot 9 was determined using kind
15 of the lowest -- the height on the alley
16 matches the alley garage on the opposite side
17 of the street. The 10 foot 6 matches the
18 alley on the other side of the alley. And
19 then it was just determined by standard
20 construction of 1 to 12 slope, is how we got
21 to the height of 12 feet 9.

22 Now, by manipulating that,

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1 increasing the cost because of roofing, that
2 can be lessened. We were able to get that to,
3 I think, about 11.6.

4 MS. LAWRENCE: Excuse me, Joel. I
5 know you are much more out there than I am and
6 I sympathize for Ed and Rita. And I talked to
7 Tim about it. We would consider to lower the
8 roof height, you know. And I think we went
9 down to 10.6, Joel.

10 CHAIRPERSON MILLER: Okay. It
11 sounds like it's not in our record.

12 MR. HEISEY: It's not in your
13 records.

14 CHAIRPERSON MILLER: Okay.

15 MS. LAWRENCE: We have the sketch.

16 CHAIRPERSON MILLER: So why don't
17 we -- we need you to submit final plans in the
18 record showing exactly what you want us to
19 rule on.

20 MS. LAWRENCE: Can you rule on one
21 or the other? How does it work?

22 CHAIRPERSON MILLER: No.

1 MS. LAWRENCE: Or it has to be
2 one?

3 CHAIRPERSON MILLER: One or the
4 other? No.

5 MS. LAWRENCE: Like if we submit--

6 CHAIRPERSON MILLER: We basically
7 rule on what you submit, but we are going --

8 MS. LAWRENCE: -- this one, do you
9 -- can you still say yes on the other one or
10 not?

11 CHAIRPERSON MILLER: To tell you
12 the truth, at this point, I don't know what
13 you are talking about.

14 MR. HEISEY: We'll discuss it. We
15 will discuss it and provide you a proposal
16 that we would like to have ruled upon.

17 CHAIRPERSON MILLER: Okay. If you
18 were listening to the previous case, probably,
19 they are going to be making revisions and we
20 don't know exactly what they are going to come
21 back with, but they are coming back with a
22 revision.

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1 MR. HEISEY: We will discuss it
2 and work out a proposal that we are
3 comfortable with.

4 CHAIRPERSON MILLER: Okay,
5 perfect. So we will leave the record open for
6 that. I would like to ask if then you could
7 also identify any conditions related to
8 mitigating the impact of the garage wall on
9 the neighboring property, such as in the form
10 of a trellis or greenery, which has been
11 discussed here.

12 Also, and Board Members feel free
13 to comment, I think security seems like a very
14 important part of your argument, from what I
15 have heard today, and I'm wondering if -- I
16 want to give you the opportunity perhaps to
17 just document that a little further or
18 elaborate a little further.

19 I heard you comment that you
20 thought one of the photos was an inaccurate
21 perspective. And I don't know whether you
22 think there is an accurate perspective in the

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1 record or not or whether you want the
2 opportunity to provide an accurate, what you
3 consider, perspective.

4 Okay. You're going to have the
5 opportunity to comment on these things. Oh,
6 one other comment I have. I think, you know,
7 there has been representations that this is
8 historic and the parking requirement related
9 to the primary residence is waived. If you
10 could just document that a little better, more
11 fully that it has been waived. I mean, it is
12 grandfathered because it's a contributing
13 building.

14 This is related to the provision
15 that I referenced, the location of parking
16 spaces, you know, for the primary residence
17 that is located on another lot. And you said
18 it's waived, because it is a required space.

19 MR. HEISEY: And I understand that
20 and we can do that. But I guess my concern
21 is, again, if this was owned by a separate
22 owner, irrespective of being the adjacent

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1 owner, we can provide it. I'm sure it is
2 waived, but I mean --

3 CHAIRPERSON MILLER: We still
4 would look at it. I mean, it's not before us
5 in that you are asking for it in the sense
6 that you are asking for a garage.

7 MR. HEISEY: Well --

8 CHAIRPERSON MILLER: But it
9 doesn't matter.

10 MR. HEISEY: -- I don't know if I
11 can get an actual ruling from Historic or from
12 somebody. It might be difficult to get them
13 to put something in writing. But yeah, we'll
14 see what we can provide.

15 CHAIRPERSON MILLER: Okay. Well,
16 we will just leave the record open for that
17 and see what you can do.

18 Board Members, is there anything
19 else you would like to help with the decision
20 making?

21 COMMISSIONER HOOD: Madam Chair,
22 when are we going to decide this or you're

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1 still working on it?

2 CHAIRPERSON MILLER: Well, okay.
3 So I'm not sure whether, November 5th is our
4 next decision making date, that provides
5 adequate time for the filing and a response.
6 That's only a week away, so it probably
7 doesn't. It probably doesn't.

8 So you think about how much time
9 you would like and then we'll pick up after
10 that.

11 MR. HEISEY: I mean, I could -- I
12 mean, what you are asking is fairly basic,
13 from my point of view. The hard part would be
14 trying to get some kind of documentation from
15 Historic about the exemption, which I don't
16 think is possible. As far as the drawings and
17 things, I could have those easily by the end
18 of the week.

19 CHAIRPERSON MILLER: Well, let's
20 hear from Office of Planning on that.

21 MR. JESICK: I think all the Chair
22 is asking you to do is to look at section 2120

1 of the Zoning Regulations. They talk about
2 parking for historic structures.
3 Unfortunately, I don't have it in this copy of
4 the Zoning Regs in front of me, but then you
5 can just determine whether or not you fall
6 under those provisions.

7 MR. HEISEY: That's fine. Yeah, I
8 mean, I think by the end of the week, I would
9 be able to provide everything that we are
10 being asked for here. It's not that
11 difficult.

12 CHAIRPERSON MILLER: Okay. You
13 know, let us know what you know. I mean, if
14 you go as far as you can go and you believe it
15 is and why you believe it is, then, you know,
16 it's somewhat peripheral to the application,
17 but I think it's a question that has been
18 raised. And if we can resolve it fully,
19 great, otherwise, we'll see. Okay.

20 MR. SCHNEIDER: Might I rebut with
21 just one thing? When the gates were on --

22 CHAIRPERSON MILLER: No.

1 MR. SCHNEIDER: Okay.

2 CHAIRPERSON MILLER: Well, I'm
3 sorry. It's like 4:15 and the way our
4 procedures go, they don't really provide for
5 rebuttal from another party. So because it's
6 so late, when I read the procedures, I don't
7 know if you were listening, but the applicant
8 under the Zoning Regulations is the only one
9 that actually gets an opportunity to rebut.

10 MR. SCHNEIDER: Okay.

11 CHAIRPERSON MILLER: Okay. But I
12 want you to -- you will have an opportunity to
13 respond to these filings that the applicant is
14 going to file. So how much time would the
15 applicant like for this?

16 MR. HEISEY: By the end of the
17 week I could have the items that you have
18 requested.

19 CHAIRPERSON MILLER: You could?

20 MR. HEISEY: Yes.

21 CHAIRPERSON MILLER: Okay.

22 MR. HEISEY: They are not that

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1 impossible.

2 CHAIRPERSON MILLER: Then we
3 possibly could hear this, decide on the 5th.
4 Is that right?

5 MR. MOY: Yes, we could. I mean,
6 if assuming that parties have a chance to, I
7 imagine, respond to the applicant's refiling,
8 so to speak. If those parties would require--
9 could do it in a week, you know, we could set
10 a deadline for them for, I'll give them
11 Friday, October 31st.

12 CHAIRPERSON MILLER: Mr.
13 Schneider, do you want to respond to this,
14 since you're the only party here?

15 MR. SCHNEIDER: The 31st is a
16 little tight for me. I have got business
17 meetings all that day and it's only a couple
18 days away.

19 MEMBER WALKER: It's one week.

20 MR. HEISEY: I'm sorry, he is
21 saying responses is on the 21st -- 31st, where
22 that's this Friday, which is what I would need

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1 until.

2 MR. MOY: Yeah.

3 MR. HEISEY: I would need that
4 time to get my things together.

5 MR. MOY: I apologize. I thought
6 today was the 21st.

7 MR. HEISEY: Yeah.

8 MR. HEISEY: He is a week ahead of
9 himself or behind, depending on how you look
10 at it. I need until the 31st to be able to
11 submit my information.

12 MR. MOY: So November 5th would be
13 problematic, unless you want to schedule this
14 for a Special Public Meeting, Madam Chair,
15 otherwise we're looking at the regular public
16 decision on -- in December.

17 MR. HEISEY: I mean, I might be
18 able to get it to you on Thursday, but again,
19 that's -- that leaves me basically tomorrow to
20 get things together.

21 CHAIRPERSON MILLER: Okay.

22 MR. MOY: Madam Chair, were you --

1 I'll remind that we also have scheduled a
2 Special Public Meeting for the 18th of
3 November. So if you want to add this to that
4 date, that's a possibility.

5 CHAIRPERSON MILLER: I was looking
6 at that, but I'm hesitant, because that's --
7 oh, I see, we have four cases in the
8 afternoon. Okay.

9 MR. MOY: In that case, that
10 leaves December 2nd.

11 CHAIRPERSON MILLER: Okay. Are
12 you going to be -- is it going to be a problem
13 if we decide on December 2nd? Should you be
14 granted the relief, is that going to, you
15 know, be a big delay?

16 MR. HEISEY: I mean, it's fine for
17 me. If we have that long, I would appreciate
18 having until December 7th to get my materials
19 together then.

20 CHAIRPERSON MILLER: You should.

21 MR. HEISEY: November 7th, sorry.

22 CHAIRPERSON MILLER: You should,

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1 okay.

2 MR. HEISEY: Yes.

3 CHAIRPERSON MILLER: I think that
4 would be better.

5 MR. HEISEY: I think just looking
6 at November 7th, yeah, if I could have until
7 November 7th to submit my materials and then
8 if we have the hearing, I guess, on December
9 2nd.

10 CHAIRPERSON MILLER: That sounds
11 good, because it seems to me then the ANC
12 would also have a chance to consider this.
13 And if you wanted to attend their meeting and
14 address the ANC there, you would have the
15 opportunity. If you want to, it's not a
16 requirement. You all would have a chance
17 perhaps to share revised plans with your
18 neighbors, if you wanted to.

19 So I think the more time is a
20 better thing. Yes?

21 MS. LAWRENCE: Just one last
22 comment. When we met with Ed and Faye and we

1 tried to come up with compromise as a matter
2 of the height and the green and even building
3 planters and all that, Ed told me directly
4 that whatever plan we have, he will be opposed
5 to it.

6 CHAIRPERSON MILLER: Okay. I
7 don't think -- this is not what I want to get
8 into, at this point, because I didn't let him
9 say any more either.

10 MS. LAWRENCE: Oh, no.

11 CHAIRPERSON MILLER: We had --

12 MS. LAWRENCE: It's just --

13 MEMBER WALKER: No. We don't need
14 to hear this.

15 MS. LAWRENCE: Okay.

16 CHAIRPERSON MILLER: You can --
17 you know, it would be great if you all can
18 work it out.

19 MS. LAWRENCE: We would love to.

20 CHAIRPERSON MILLER: If you can't,
21 then we will, you know, decide on the papers.
22 So are there any more questions about the

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1 schedule or what you are obligated to file?

2 MR. MOY: Madam Chair, while they
3 are thinking, so I'm assuming then that
4 parties can respond to the applicant's filing
5 by November the 25th?

6 CHAIRPERSON MILLER: Okay. Let's
7 hear the dates. They proposed November 7th
8 filing.

9 MR. MOY: That's correct. And
10 that would give --

11 CHAIRPERSON MILLER: Okay.

12 MR. MOY: -- ample time for
13 parties to respond by November the 25th, which
14 is also a Tuesday.

15 CHAIRPERSON MILLER: Before
16 Thanksgiving, yes.

17 MR. MOY: Right. And then the
18 Board's decision on December the 2nd.

19 CHAIRPERSON MILLER: Okay. I
20 think that's a good schedule. Any problems
21 with that schedule?

22 MR. LAWRENCE: The 2nd?

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1 CHAIRPERSON MILLER: 2nd. You
2 don't need to appear for our decision. We
3 deliberate. We don't take testimony at that
4 point. You can come if you want to hear us in
5 person deliberate on the papers, otherwise,
6 you can watch on the Internet, if you choose.

7 Okay. Any other questions?

8 MR. LAWRENCE: No, ma'am.

9 CHAIRPERSON MILLER: All right.
10 If you have other questions that come up later
11 on, feel free to contact Mr. Moy. Okay.
12 Thank you very much.

13 MS. BAILEY: Madam Chair, excuse
14 me, I'm very sorry. Prior to the Board taking
15 -- you are finished with that. They are
16 finished. The next case, as you know, is
17 scheduled, let's see, Application No. 17793,
18 and they are asking that before the Board take
19 a break to consider there is a request to
20 postpone this hearing to a later date from one
21 of the participants.

22 So they are asking would the Board

1 consider that request prior to taking a break?

2 CHAIRPERSON MILLER: Sure. That
3 makes sense. So why don't you call that case
4 and they can come forward?

5 MS. BAILEY: Application No. 17793
6 of Ann-Lee and Ray S. Chen, pursuant to 11
7 DCMR 3104.1, for a special exception to allow
8 the change of a nonconforming rooming house to
9 a flat under subsection 2003.1, in the R-3
10 District at premises 1693 35th Street, N.W.,
11 Square 1294, Lot 218.

12 CHAIRPERSON MILLER: Okay. I just
13 want to go get my file, even though you may
14 not be referring to it too much, but just in
15 case. It will take 30 seconds. Okay. At
16 this point, we are just going to hear any
17 legal type of arguments about schedule. No
18 one is going to testify, are they? If so, we
19 would need to swear that person in.

20 So no? Yes? No. Okay. So, Ms.
21 Bailey, did you call the case? I can't
22 remember.

1 MS. BAILEY: I did, Madam Chair.

2 CHAIRPERSON MILLER: Okay. So why
3 don't you introduce yourselves for the record
4 to start and then we'll get to the
5 postponement question.

6 MR. LEWIS: I'm Ron Lewis from
7 ANC-2E. And it's our request that I'll be
8 presenting to you for postponement.

9 CHAIRPERSON MILLER: Okay. Why
10 don't we just go through the introductions and
11 then we'll get to that request.

12 COMMISSIONER HOOD: I don't think
13 his mike is on, because I know I didn't hear
14 him.

15 MR. BROWN: Patrick Brown from
16 Greenstein, DeLorme and Luchs on behalf of the
17 applicant.

18 MS. CHEN: My name is Ann-Lee
19 Chen. I'm the property owner and applicant.

20 MS. ZARTMAN: Barbara Zartman
21 speaking for the Citizens Association of
22 Georgetown.

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1 CHAIRPERSON MILLER: Okay. And is
2 this motion for continuance opposed? Just so
3 we know before we hear it?

4 MR. BROWN: Well, and I thought
5 the request was coming from the Citizens
6 Association of Georgetown. My understanding
7 was that their witness, Mr. Blume, is now
8 unavailable given the hour.

9 CHAIRPERSON MILLER: Wait. Is it
10 going to be a problem? I mean, I should hear
11 the motion first before we hear your response
12 to it, shouldn't we?

13 MR. BROWN: Yeah.

14 CHAIRPERSON MILLER: Okay. So you
15 might be opposed, basically. You're not --
16 you can think about it. Okay. Let's hear the
17 motion.

18 MR. BROWN: I'll defer to Mr.
19 Lewis to make the request.

20 CHAIRPERSON MILLER: Okay. And
21 then we will see. All right.

22 MR. LEWIS: The ANC and CAG are

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1 together on this. And the key witness who
2 lives the closest to the subject property
3 tried hard. He was here until about 10
4 minutes ago and he just can't go this late
5 today. He has a business conflict that won't
6 let him be here. And he truly is the key
7 witness.

8 We honestly tried. We thought
9 that with a kind of 1:00 or 2:00 target and
10 two cases ahead of us that were being
11 continued in the afternoon, that there would
12 be plenty of time. And there just isn't. And
13 we really need him. That's the gist of our
14 case.

15 CHAIRPERSON MILLER: You need him
16 how so?

17 MR. LEWIS: He will give firsthand
18 testimony of the affects on the neighborhood
19 of the current and proposed situations for the
20 subject property and its neighbors. He lives
21 right there. He is right in the heart of the
22 circle on the map that circles this property.

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1 So he has firsthand information.
2 And this is a case where, as you will see, the
3 affects of the types and number of tenants
4 living in the subject property is the key to
5 deciding this case. The activities and the
6 number of the tenants.

7 CHAIRPERSON MILLER: He is the
8 only neighbor? Is he the only person who has
9 information about that?

10 MR. LEWIS: He is the only
11 neighbor who was available to testify. There
12 are, I think, at least three letters in your
13 file from other -- from him and two other
14 neighbors, as well as the ANC's resolution.

15 But his firsthand testimony is
16 really key to this. This is a case about
17 facts.

18 CHAIRPERSON MILLER: Okay. Mr.
19 Brown? Unless somebody has a question right
20 now before we hear from Mr. Brown? Okay. Mr.
21 Brown?

22 MR. BROWN: Well, certainly my

1 client can agree to the continuance,
2 recognizing that we requested a continuance
3 when we became -- my firm became involved in
4 the case. I think that the key, one, we're
5 here. We're ready to move forward.

6 This is not all that complicated a
7 case. Mr. Blume, the missing witness, he
8 lives at 1675 35th Street, that's eight houses
9 down. And this case is not about how many
10 people live at the house. It is not about,
11 primarily about, things that a witness would
12 be exceptionally important to.

13 It is considering the
14 circumstances and really a status quo, but
15 changing of how you characterize the use of
16 the property. I mean, the key and going back
17 to a point that we will make throughout our
18 case is you have seen in the letters and
19 correspondence in opposition that this is an
20 expansion. This isn't doubling the number of
21 tenancy.

22 Quite frankly, it's not. It's

1 really status quo on how we identify and
2 characterize the use of the second floor, what
3 I'll refer to as Unit No. 2 of this property.
4 At the end of the day, it's not going to make
5 any difference the number of people who are
6 allowed legally to occupy the entire building
7 or, quite frankly, to occupy any part of the
8 building.

9 So I don't see the importance of
10 Mr. Blume. Having said that, I'm willing to
11 leave the record open to allow him to submit
12 written testimony within a reasonable period
13 of time. But again, I'm not so sure the
14 critical nature of his testimony. And
15 certainly the Citizens Association and the ANC
16 are here, I assume, ready to proceed.

17 So I would leave it at that. The
18 only -- I'll stop there and we can consider
19 the Board's views on this.

20 CHAIRPERSON MILLER: I have a
21 basic question that goes somewhat to what you
22 were saying. And without getting too much

1 into the case, but I had that impression when
2 I looked at the file that it might not change
3 the number of people living there or whatever.
4 So why are you seeking a change?

5 MR. BROWN: One, because --

6 CHAIRPERSON MILLER: Your client.

7 MR. BROWN: My client. One,
8 because while it won't change the number of
9 people, a rooming house is different than --
10 the rooming house use of the Unit No. 2 is
11 different than the same number of people using
12 it as a single-family dwelling, one-half of a
13 flat, a two-unit.

14 So it's a question of correctness.
15 When my client went to apply for a Certificate
16 of Occupancy to reflect the way they wanted to
17 use the building, which is in two separate
18 units rather than a rooming house and the Unit
19 No. 1 on the lower level and first floor, they
20 were sent to the BZA correctly.

21 It reflects really an internal
22 change. How my client desires to leave the

1 building. My client desires not to lease Unit
2 2, the second floor, to a group of individuals
3 separately. They desire to lease it to a
4 single group in one lease, one accountability,
5 one rent payment or, quite frankly, it could
6 be what we -- a nuclear family for that
7 matter.

8 And that's how they would like to
9 own and operate the facility. And that's what
10 requires this application.

11 CHAIRPERSON MILLER: Okay. Ms.
12 Zartman, do you have any other comments on the
13 motion>

14 MS. ZARTMAN: We do believe that
15 the experience of the immediate neighbor is
16 very relevant for your consideration. We
17 believe we will be able to demonstrate that
18 there are appreciable differences in how the
19 property will be used.

20 The impact of this small group of
21 houses at one corner is an important one for
22 you to consider before licensing, further

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1 expansion of that intense use. I believe Mr.
2 Brown is speaking of nuclear families. I
3 believe these properties, according to Mr.
4 Brown's own filing, have traditionally been
5 used as student housing.

6 And the collective impact of a
7 number of resident facilities with nearly a
8 dozen persons in each is an impact that I
9 think somebody affected by it has a right to
10 share with you. The impact standard for this
11 kind of a change of a nonconforming use is
12 regulated at 300 feet from the subject
13 property.

14 So I think the fact that Jeff
15 lives seven or eight houses away makes his
16 testimony as relevant as anyone else's. I was
17 saying to Mr. Lewis some time ago there was a
18 seminar I was involved with talking about
19 training of third country nationals. And the
20 question of whether you do that training in
21 country or back here stateside.

22 And the comment was made by a very

1 experienced world traveler that there was a
2 serious difference between how you appreciated
3 something that you had experienced personally.
4 And something that you simply read about or
5 were told about.

6 I think that's the difference in
7 the kind of impact that Jeff's testimony can
8 have in sharing with you what it is really
9 like. And I think that consideration should
10 be included.

11 CHAIRPERSON MILLER: If I recall
12 correctly, I think we gave you party status to
13 represent a few neighbors. Is that correct?

14 MS. ZARTMAN: Yes, including --

15 CHAIRPERSON MILLER: Not just --

16 MS. ZARTMAN: -- Jeff.

17 CHAIRPERSON MILLER: Including
18 him. So are you prepared today to go forward
19 to make your case, other than what Mr. Blume
20 would testify to?

21 MS. ZARTMAN: Yes, but he would
22 not be here as somebody against whom I could

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1 check any testimony regarding circumstances.

2 I don't have his knowledge.

3 MR. BROWN: Correct me if I'm
4 wrong, and maybe I am wrong, don't you live in
5 the same block or the next block over?

6 MS. ZARTMAN: Another block over
7 across the street, yes.

8 CHAIRPERSON MILLER: Is the ANC
9 prepared to present its case?

10 MR. LEWIS: We can present what we
11 can present, but Mr. Blume's testimony really
12 is key, because I think we will convince you
13 that the numbers, the permissible numbers
14 would, in fact, change if this application is
15 granted. That's part of our case.

16 I mean, and therefore --

17 CHAIRPERSON MILLER: The
18 permissible numbers, when you say permissible,
19 doesn't that mean they are governed by a
20 regulation?

21 MR. LEWIS: Yes.

22 CHAIRPERSON MILLER: So why would

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1 that -- why would he be able to --

2 MR. LEWIS: In a nutshell, the C
3 of O, the grandfathered C of O, if it remains
4 grandfathered, which is also an issue, permits
5 four, up to four roomers on the second floor.
6 And if you treated what is below the second
7 floor as a single-family apartment, they would
8 have a maximum of six there, that's 10.

9 If it's not grandfathered, there
10 would be a maximum of six in the entire
11 building. If they get what they are asking
12 for, which is two flats, there would be a
13 maximum of 12 in the building. There is a
14 difference.

15 And the circumstances of these
16 student kind of dormitory buildings, that
17 difference is important. And Jeff can explain
18 why.

19 CHAIRPERSON MILLER: All right.
20 This isn't just like a little consent motion
21 for a continuance, so rather than try to talk
22 about it this way, I think we're going to take

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1 a few minutes to go in there and then come
2 back and see if we have any other questions
3 and tell you how we want to proceed.

4 We're going on, you know, it's
5 4:30. We haven't had lunch. So not that I
6 like to say that, but I think just we need
7 just a few minutes to reflect on your request.
8 And then we will come back and let you know
9 whether to be prepared to go forward after
10 another little break or whether we will
11 continue it.

12 (Whereupon, at 5:00 p.m. the
13 Public Hearing continued into the evening
14 session.)

15 CHAIRPERSON MILLER: Okay. We're
16 back on the record. Okay. Well, wait a
17 minute. Okay. Everybody is here? Okay. We
18 had a few minutes to reflect on the motion for
19 continuance. And I believe it is the
20 consensus of the Board and others I'm sure
21 will correct me if I'm mistaken to grant the
22 continuance, if we can find an acceptable

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1 date.

2 I personally though would like to
3 make a few remarks about that, because I do
4 have some concerns that we are doing this and
5 this not be seen as a precedent, because I
6 believe that this case is still being called
7 during the business hours and that parties who
8 have a case before the BZA need to set aside
9 an afternoon or a morning, whatever it is to
10 participate in the proceeding. And that they
11 can't expect normal situations for the Board
12 to just continue a case because a witness
13 cannot be here.

14 So I want to say that and then I
15 want to say that the motion was also
16 considered though in the context that the
17 Board did grant the applicant a motion for a
18 continuance when the applicant sought the
19 continuance. So that was a factor.

20 And if we can -- and I also do
21 want to recognize that also going against
22 granting this kind of motion is the fact that

1 for those who did wait all afternoon, that
2 they are inconvenienced by having to come back
3 another time. So the Board recognizes that.

4 If we can find an acceptable date,
5 then I don't believe there would be much
6 prejudice as far as delay goes to the
7 applicant.

8 As you may have noticed, we are
9 not holding hearings on Election Day, next
10 Tuesday, but we are holding hearings on the
11 following day, November 5th. And that day or
12 that morning actually is a little bit light,
13 so we have two cases for decision in the
14 morning, which we don't anticipate taking more
15 than an hour together, though that's, you
16 know, not a guarantee.

17 But that would take us to around
18 10:30 or so and we are wondering if you all
19 are available around 10:30 next Wednesday?
20 And then we could hear your case then with
21 everybody here, if everybody could be here.

22 MR. BROWN: We're available.

1 CHAIRPERSON MILLER: Okay. That's
2 good.

3 MR. LEWIS: We're available.

4 CHAIRPERSON MILLER: Okay.

5 MR. LEWIS: If the witness is
6 available.

7 CHAIRPERSON MILLER: Terrific.

8 MS. ZARTMAN: Ditto.

9 CHAIRPERSON MILLER: Okay. Good.
10 That will be fresher, too. It will be in the
11 morning. You won't have to wait all day to
12 proceed with your case.

13 Okay. So that --

14 MS. ZARTMAN: And you won't have
15 to wait until 5:00 for lunch.

16 CHAIRPERSON MILLER: We can go
17 have dinner now. Okay. All right. Good.
18 Then is everything else in order for this
19 case? Do we need to address any other issues?

20 MR. LEWIS: I don't believe so.

21 CHAIRPERSON MILLER: Okay.

22 MR. BROWN: 10:30?

1 CHAIRPERSON MILLER: 10:30. No,
2 no, it's possible. Our deliberation could
3 take a little bit longer, but not much. And
4 it is deliberation. It's not a hearing with
5 witnesses or anything like that.

6 MR. BROWN: Okay.

7 CHAIRPERSON MILLER: Okay. Then
8 we will see you November 5th around 10:30.

9 MR. BROWN: Good evening.

10 CHAIRPERSON MILLER: Yes, thank
11 you.

12 MR. BROWN: Thank you.

13 CHAIRPERSON MILLER: Have a good
14 evening.

15 (Off the record at 5:05 p.m.)
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