

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

Tuesday

July 8, 2008

+ + + + +

The Regular Public Hearing convened in
Room 220 South, 441 4th Street, N.W.,
Washington, D.C., 20001, pursuant to notice
at 9:30 a.m., Ruthanne G. Miller,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

GREGORY N. JEFFRIES, Vice Chairman
MICHAEL G. TURNBULL, FAIA,
Commissioner (OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN RICE
STEVEN COCHRAN
STEPHEN MORDFIN
KAREN THOMAS

The transcript constitutes the
minutes from the Public Hearing held on July
8, 2008.

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

2 9:55 a.m.

3 CHAIRPERSON MILLER: Okay. This
4 hearing will come to order now.

5 This is the July 8th, 2008, Public
6 Hearing of the Board of Zoning Adjustment of
7 the District of Columbia.

8 My name is Ruthanne Miller. I'm
9 the chair of the BZA. To my right is Mr. Marc
10 Loud, he's our vice chair, and next to him is
11 Mr. Michael Turnbull, sitting with us from the
12 Zoning Commission.

13 To my left is Mary Oates Walker
14 and Shane Dettman, Board members, and next to
15 Mr. Dettman is, coming up here, Cliff Moy from
16 the Office of Zoning, then Lori Monroe from
17 the Office of Attorney General, and Ms.
18 Beverly Bailey from the Office of Zoning.

19 Copies of today's hearing agenda
20 are available to you and are located to my
21 left in the wall bin near the door. Please be
22 advised that this proceeding is being recorded

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1 by a court reporter and is also webcast live.
2 Accordingly, we must ask you to refrain from
3 any disruptive noises or actions in the
4 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. When you're finished speaking,
9 please turn your microphone off so that
10 your microphone is no longer picking up sound
11 or 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. One.
22 Statement and witnesses of the applicant.

1 Two. Government reports, including Office of
2 Planning, Department of Public Works, DDOT,
3 et. cetera. Three. Report of the Advisory
4 Neighborhood Commission. Four. Parties or
5 persons in support. Five. Parties or persons
6 in opposition. Six. Closing Remarks by the
7 applicant.

8 Pursuant to Sections 3117.4 and
9 3117.5 of the Zoning regulations, the
10 following time constraints will be maintained.
11 The applicant, persons and parties, except in
12 ANC, in support, including witnesses, 60
13 minutes, collectively. Persons and parties,
14 except in ANC, in opposition, including
15 witnesses, 60 minutes, collectively.
16 Individuals, three 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
22 is located, is automatically a party in a

1 special exception or variance case.

2 Nothing prohibits the Board from
3 placing reasonable restrictions on cross
4 examination, including time limits and
5 limitations on the scope of cross examination.

6 The record will be closed at the
7 conclusion of each case, except for any
8 material specifically requested by the Board.
9 The Board and the staff will specify at the
10 end of the hearing exactly what is expected
11 and the date when the persons must submit the
12 evidence to the Office of Zoning.

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

16 The Sunshine Act requires that the
17 public hearing on each case be held in the
18 open before the public. The Board may,
19 consistent with its Rules of Procedure and the
20 Sunshine Act, enter executive session during
21 or after the public hearing on a case for
22 purpose of reviewing the record or

1 deliberating on the case.

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

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

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

18 If you're not prepared to go
19 forward with a case today or if you believe
20 that the Board should not proceed, now is the
21 time to raise such a matter.

22 Does the staff have any

1 preliminary matters?

2 MS. BAILEY: Madam Chairman,
3 Members of the Board, to everyone, good
4 morning. Staff does not.

5 CHAIRPERSON MILLER: Okay. Then
6 let's proceed with the agenda and would all
7 individuals wishing to testify today in any of
8 the cases on the agenda for this morning
9 please rise to take the oath, and Ms. Bailey
10 will administer it.

11 MS. BAILEY: Would you please
12 raise your right hand?

13 (Whereupon, the witnesses were
14 sworn.)

15 PATRICIA T. ROSENMAN

16 APPLICATION NO. 17709 - ANC-3F

17 MS. BAILEY: Thank you. Madam
18 Chair, the first case, Application Number
19 17709, The Application of Patricia T.
20 Rosenman, pursuant to 11 DCMR 3104.1, for a
21 special exception to allow a garage addition
22 to an existing one-family detached dwelling

1 under Section 223, not meeting the side yard
2 requirements at Section 405. The property's
3 located in the Forest Hill Tree and Slope
4 Protection Overlay District. It's located
5 also at 3425 Garrison Street, N.W., Square
6 2032, Lot 94, and this is a continuation of
7 the January 29th, 2008, public hearing.

8 CHAIRPERSON MILLER: Good morning,
9 and would you start out by introducing
10 yourselves for the record, please?

11 MS. ROSENMAN: I am Patricia
12 Rosenman, and I reside at 3425 Garrison
13 Street, N.W.

14 MS. SOLOMON: I am Jane Solomon.
15 I'm the Chair of ANC-3F.

16 MR. KATZ: I am Howard Katz, and
17 I'm assisting Ms. Rosenman with the design.

18 CHAIRPERSON MILLER: Okay.
19 There's a very full record on this, and I
20 understand that the design has gone through
21 changes to accommodate the National Park
22 Service's concern about there being an

1 adequate buffer between their property and
2 your property in the event you need to do
3 maintenance.

4 I have a couple of questions,
5 though, with respect to just fulfilling the
6 requirements of the regulations.

7 In looking over the file in this
8 case, it appears that when Office of Planning
9 originally did their report in, I believe,
10 January, they, first of all, raised an issue
11 that this property was in the Forest Hills
12 Tree and Slope Overlay.

13 So my first question goes to
14 whether you want to amend your application to
15 seek special exception relief under 1520 which
16 is the Overlay Special Exception Relief
17 provision because unless you -- unless I hear
18 otherwise from you or Office of Planning, it
19 sounds like you need both relief, the regular
20 223 and the overlay.

21 MS. SOLOMON: Is that something we
22 can do here at the hearing?

1 CHAIRPERSON MILLER: You can,
2 because we usually -- we allow amendments
3 where there's not going to be any prejudice to
4 any party, and in this case, if I recall
5 correctly, also, and the ANC is being
6 represented here, that they actually even
7 reference -- they do, they reference Section
8 1520 in the resolutions.

9 MS. SOLOMON: We did, and we
10 certainly took it -- we took the Tree and
11 Slope Overlay as a given --

12 CHAIRPERSON MILLER: Right. Okay.

13 MS. SOLOMON: -- in the process.

14 CHAIRPERSON MILLER: So --

15 MS. SOLOMON: I would like to
16 amend it.

17 CHAIRPERSON MILLER: Okay. All
18 right. The consensus of the Board, I believe,
19 is to accept that amendment. Okay.

20 Now, just, you know, looking to
21 zero in right now on some of those provisions,
22 I have -- they've all been met.

1 I think that there is a
2 requirement to provide a tree preservation
3 plan of some sort, and I think that the Office
4 of Planning said that you had provided one,
5 but we weren't sure where it was in the
6 record. That's 1520.3(b), a plan or statement
7 indicating how trees to be preserved on the
8 lot will be protected during the construction
9 period.

10 Is there something in the record
11 on that or not?

12 MS. ROSENMAN: No, there is not.

13 CHAIRPERSON MILLER: There's not.

14 MS. ROSENMAN: I have spoken with
15 the arborist about it. We have not developed
16 a plan yet. I did not know that was required
17 prior to asking for the zoning exception, but
18 there is an intent to preserve the large tree
19 on the property.

20 CHAIRPERSON MILLER: Do you know
21 how long it would take to put together a plan
22 to do that? Do you have any idea?

1 MS. ROSENMAN: I don't know.

2 CHAIRPERSON MILLER: Okay. Okay.
3 Have you looked -- it sounds like you may not
4 even have looked at these requirements lately,
5 I mean, which is understandable and that I
6 know the Office of Planning's most recent
7 report indicated they didn't have any concerns
8 basically.

9 However, when we took a look --
10 and we'll hear from the Office of Planning
11 shortly to see what their take is on it now.
12 Since you need relief from 1520 as well, there
13 are certain things you need to do here, which
14 is somewhat in the nature of, you know,
15 dotting your I's and crossing your T's.

16 Can you -- do you want to take --
17 do you have the regulations there or no? Or
18 else I can just highlight for you some of the
19 requirements and see if you have those or
20 expect to have those pretty shortly.

21 1520.3, in addition to talking
22 about the tree preservation plan, talks about

1 a site plan for development. I know you have
2 a small property, so -- but you -- it says a
3 site plan for development, including
4 computation and illustration of total lot
5 occupancy, impervious surface ratio, and
6 regulated trees proposed to be removed.

7 In the Office of Planning report,
8 it says they received all of the above
9 information, except the impervious surface
10 ratio information.

11 MS. SOLOMON: I know that the
12 impervious surface -- somewhere in all of this
13 application, I know that the impervious
14 surfaces were calculated.

15 MS. ROSENMAN: The post-garage
16 added to the house will make, we calculated,
17 27.37 percent of the entire lot which is
18 within the restricted requirement of 50
19 percent.

20 CHAIRPERSON MILLER: Okay. Now we
21 have your testimony to that. Is that also
22 referenced in the record somewhere else, too,

1 or --

2 MS. SOLOMON: I believe it should
3 have been on the application. I'm sure it's
4 in the original application.

5 CHAIRPERSON MILLER: Okay. We can
6 look for it. We'll ask Office of Planning as
7 well.

8 Is there anything else you wanted
9 to, you know, show us with respect to your
10 application in general? We --

11 MS. ROSENMAN: Yes, it is here.
12 The original application, lot occupancy
13 building area lot, 21.73 maximum allowed, 40
14 percent, total house and so on, 26.25.

15 CHAIRPERSON MILLER: Does that
16 have an exhibit number on it?

17 MS. SOLOMON: It's on Page 2.
18 It's Page 2 of the original application.

19 CHAIRPERSON MILLER: Was this
20 ratio changed at all with respect to the
21 revision of the garage?

22 MS. SOLOMON: If anything, I

1 believe it gets smaller.

2 MS. ROSENMAN: It would be
3 reduced. It would be reduced because the
4 revision reduced the total square foot.

5 CHAIRPERSON MILLER: Are there any
6 other specific questions right now? No.
7 Okay.

8 MS. SOLOMON: If I can just say a
9 word about, just so you have a sense of what
10 the tree preservation issues are, there's only
11 one tree on the property which is actually in
12 public space. It's a large street tree that
13 falls under the tree and slope requirements.

14 So, and having met also with Mrs.
15 Rosenman and the private arborist, it's a
16 question of, you know, installing tree matting
17 and fencing to protect the root zone when they
18 do the construction of a driveway.

19 CHAIRPERSON MILLER: Thank you.
20 Anything else you want to add?

21 MR. KATZ: Now it's on. We've
22 offset the driveway. The garage is there. So

1 we're coming in to the left of the garage.
2 The tree's right in this location. That is
3 the tree there. This is where we'll be
4 entering the property. So we're making sure
5 that we are as far away from the tree as
6 possible, but we also have constraints because
7 we have to have the curb cut a certain
8 distance from the corner. So we're
9 compromising both -- in both situations.

10 We're going to try and keep the
11 curb cut as far away from the tree as
12 possible.

13 CHAIRPERSON MILLER: Do we, by any
14 chance, have pictures of the tree in the
15 record or --

16 MR. KATZ: I don't know if these
17 photographs -- I think these photographs were
18 submitted, correct?

19 MS. ROSENMAN: We submitted
20 photographs.

21 CHAIRPERSON MILLER: We have an
22 Exhibit 6.

1 MS. ROSENMAN: In addition to
2 which, the layout of the tree is on the plat,
3 so that these were all submitted.

4 As you look at the front of the
5 house, it is slightly to the right of the left
6 wing which is the family room which will
7 attach to the garage. So the driveway will be
8 a reasonable distance from the tree but there
9 will be tree protection established.

10 CHAIRPERSON MILLER: Okay. Thank
11 you. Anything else for now?

12 (No response.)

13 CHAIRPERSON MILLER: Then we can
14 go to Office of Planning and get back to you
15 later. All right. Why don't we do that?

16 Good morning, Mr. Rice.

17 MR. RICE: Good morning, Madam
18 Chair. My name is Stephen Rice with the
19 Office of Planning.

20 OP does support this application.
21 We would stand on the record and I think it's
22 pretty full as far as the Section 223 is

1 concerned.

2 Regarding Section 1520.3, we -- OP
3 does stand corrected. The site plan was not
4 submitted. I think that was something that
5 was sort of lost in conversation, but we did
6 speak with the Applicant about getting those
7 plans and we would like to see those plans in
8 the record.

9 We did review all of the section's
10 requirements and we do feel that the Applicant
11 has met those requirements.

12 I'm open for questions to go into
13 details. As you know, this is a revision of
14 the original plans and the garage has been
15 reduced in size to accommodate the preferences
16 of the west neighbors, the property owners,
17 the U.S. Park Service. So a sustained three-
18 foot wide side yard would be provided.

19 We think that this revision would
20 satisfy all of the concerns we had with the
21 original submission. So we're open for
22 questions.

1 COMMISSIONER TURNBULL: Mr. Rice,
2 we don't really have anything from the Park
3 Service, though, in writing.

4 MR. RICE: Correct. This
5 information about the preferred three-foot
6 wide side yard is something that I think was
7 communicated with the Applicant orally and
8 also with the ANC. So we didn't receive any
9 official comments from the U.S. Park Service.

10 COMMISSIONER TURNBULL: Official
11 acknowledgment --

12 MR. RICE: No.

13 COMMISSIONER TURNBULL: --
14 agreeing with this?

15 MR. RICE: No. It was simply
16 something that was communicated through the
17 Applicant to us.

18 COMMISSIONER TURNBULL: Okay.
19 Thank you.

20 CHAIRPERSON MILLER: I just want
21 to ask you, in looking at 1520 and the Special
22 Exception Relief standards, one of them is

1 that the applicant shall demonstrate that
2 there's specific physical characteristics of
3 the lot that justify the exception.

4 What characteristics did Office of
5 Planning find?

6 MR. RICE: We believe the slanted
7 nature of the lot, the west property line,
8 justifies this exceptional condition.

9 I think it's 94 or so feet wide,
10 but it slants in toward the rear -- I'm not
11 sure -- maybe 20-30 feet or so. So there's
12 slanted condition. I think it does justify
13 some sort of exception.

14 CHAIRPERSON MILLER: also, if you
15 go to 1520.2, it talks about the Board
16 submitting the application to the following
17 agencies for review and written reports. Now
18 this application has really just been amended,
19 so I don't believe the Board or the Office of
20 Zoning has submitted the application to all
21 the listed agencies and obviously the Office
22 of Planning has the application, and it

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1 appears that DDOT gets a copy, correct?

2 MR. RICE: Yes, that's correct.

3 CHAIRPERSON MILLER: And does the
4 National Park Service, did they get a copy of
5 the application or they're just very well
6 informed about this because their property's
7 impacted?

8 MR. RICE: I'm not sure if they
9 received a copy. I did make attempts to
10 contact NPS, but I did not actually speak with
11 anyone, so I'm not sure if they have a copy of
12 it or not.

13 CHAIRPERSON MILLER: And did you
14 talk to Department of Parks and Recreation?

15 MR. RICE: No, I did not.

16 CHAIRPERSON MILLER: Or the
17 Department of Environment?

18 MR. RICE: No, I did not
19 personally.

20 CHAIRPERSON MILLER: Okay.

21 MR. RICE: I did speak with the
22 Ward 3 transportation planner from DDOT and I

1 believe he actually went out for a site visit
2 and he did inform us that there are not any
3 significant concerns with creating a new curb
4 cut. He noted that the new curb cut would be
5 at least 60 feet from the Garrison Place/36th
6 Street intersection. So it shouldn't create
7 any concerns.

8 CHAIRPERSON MILLER: And do you
9 know if anybody from the Urban Forestry
10 Division took a look at this application?

11 MR. RICE: I'm not sure if anyone
12 did or not. I didn't speak with anyone.

13 CHAIRPERSON MILLER: Okay. And
14 just to clarify, it's your recommendation that
15 we get into the record a site plan, correct?

16 MR. RICE: Correct.

17 CHAIRPERSON MILLER: And also a
18 tree preservation plan? That's what's called
19 for under 1520.3(b).

20 MR. RICE: Yes, that's correct,
21 too.

22 CHAIRPERSON MILLER: Okay. Other

1 questions?

2 MEMBER WALKER: Does the Applicant
3 have copies of the Office of Planning's two
4 reports?

5 MS. ROSENMAN: Yes.

6 MEMBER WALKER: Okay. And do you
7 have any questions for the Office of Planning?
8 Does the ANC have any questions for the Office
9 of Planning?

10 MS. SOLOMON: If I may, I actually
11 just want to recognize Stephen Rice for doing
12 such a good job. He's been in constant
13 contact with Mrs. Rosenman and myself on all
14 the twists and turns here, so thank you.

15 MS. ROSENMAN: The National Park
16 Service was on the original distribution list
17 for the plan.

18 MS. SOLOMON: Also, Mrs. Rosenman
19 hand delivered herself a copy of the new plan
20 to the office up in our neighborhood, to
21 Adrian Coleman's office. If it's helpful,
22 I'll gladly give you a history of the contact

1 with the National Park Service, given that
2 there's nothing in writing.

3 When this application was
4 originally filed, we arranged a site visit and
5 Joe Kisch, who's their border expert, came out
6 to the property, met with Mrs. Rosenman,
7 myself, and another commissioner, walked all
8 through it. He looked at -- he also was very
9 concerned about National Park Service trees
10 and looked at the site and determined that
11 they were all within sufficient distance that
12 they would have -- there would be no impact on
13 them from the construction and he was the one
14 who recommended -- the original application
15 was going for a one-foot side yard setback.

16 He was the one who recommended
17 three foot as being their typical minimum that
18 they request in border situations. He then
19 passed that recommendation on to Adrian
20 Coleman.

21 I subsequently had two
22 conversations with her over the telephone, one

1 before our first ANC vote which was back in
2 January or something, where she told me that
3 no, one foot is definitely not acceptable, and
4 when asked what would be acceptable, she said
5 three feet.

6 So on the strength of that, the
7 ANC opposed the original application, sent
8 Mrs. Rosenman with the directive to try and
9 come back with three feet which she did. So
10 prior to our last meeting in June when we
11 passed this resolution, I had yet another
12 conversation with Adrian Coleman where she
13 gave me the verbal okay on the three feet.

14 I sent her the resolution. She
15 knew when the hearing date was and asked her
16 to send something in writing and I think that
17 captures most of it.

18 CHAIRPERSON MILLER: Thank you.
19 Right. And they're the abutting property, so
20 they would have been notified in writing by
21 our notices. That's true.

22 Okay. I guess at this point, it's

1 -- does the ANC have anything else they want
2 to add? It's your turn. We do have a copy of
3 your resolution as well.

4 MS. SOLOMON: No, other than to
5 reiterate that as currently drawn, we very
6 much support it.

7 CHAIRPERSON MILLER: Any questions
8 for the ANC?

9 (No response.)

10 CHAIRPERSON MILLER: Is there
11 anybody here who wishes to testify in support
12 of this application?

13 (No response.)

14 CHAIRPERSON MILLER: Anybody who
15 wishes to testify in opposition to this
16 application?

17 (No response.)

18 CHAIRPERSON MILLER: Okay. We're
19 just about at closing remarks. I think that
20 -- in essence, I think where we're at is that
21 we can see from your application you've gone
22 through a lot and you've modified the garage

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1 in order to address the concerns of the
2 National Park Service and no other concerns
3 have been raised.

4 However, it doesn't appear, and I
5 want to hear if others on the Board feel
6 differently, that the record is quite complete
7 yet, as you heard from Office of Planning.
8 The overlay regulations call for a site plan
9 and a tree preservation plan and that's set
10 forth at 1520.3(a) and (b) and they're not in
11 the record.

12 It also calls for the Board to
13 notify certain agencies, some of which have
14 been notified but others which haven't, Office
15 of Planning has, Department of Transportation
16 has, but I don't know about the Urban Forestry
17 Division, National Park Service has, Parks and
18 Recreation and the Environment, it doesn't
19 appear like they have.

20 Now, they appear less significant
21 in the scheme of things certainly than the
22 Park Service, but it looks -- the way our

1 regulations are written, it says that the
2 Board shall do this.

3 So it seems to me those pieces are
4 missing. Since -- so I would recommend that
5 we leave the record open and have the
6 Applicant submit the tree preservation plan
7 and the site plan as required by 1520.3(a) and
8 (b) and in the meantime, the Board can send
9 out notices to those other agencies that are
10 listed here, such as Parks and the
11 Environment, just to comply with the
12 regulations.

13 That's where I see this going at
14 this point. Does the Applicant have a
15 reaction to that? Also, I want you to think
16 about how long it would take to provide us
17 with those plans because the Board can do its
18 part fairly expeditiously. The notices can go
19 out, you know, this week.

20 We have a decision meeting at the
21 end of the month before we recess for the
22 summer and that's July 29th. I don't know

1 whether you can get your plans in before that
2 or not. If you do, the Board will put this
3 case on the agenda to decide on the 29th.
4 Otherwise, it will be decided in September, if
5 you can get your plans in by then.

6 MR. KATZ: Excuse me.

7 CHAIRPERSON MILLER: Yes, go
8 ahead.

9 MR. KATZ: I just have one
10 question. The existing plan or what I
11 consider the site plan here, is the additional
12 information that you require other than that
13 kind of document for the site plan?

14 CHAIRPERSON MILLER: Okay. I'm
15 sorry. I was under the impression, in large
16 part from the Office of Planning, that we
17 didn't have a site plan in the record.

18 My Board member is saying we do
19 have a site plan. It just may not reflect the
20 impervious surface ratio? Okay. So it seems
21 to me if you're going to be submitting the
22 tree preservation plan, you can just perhaps

1 put it in writing what the new ratio is.

2 I believe the record shows that
3 it's under the requirement, in any event, and
4 that your revision made it a better ratio than
5 the original application, but if you'd just
6 put that document in -- that figure in the
7 record somehow, that would be good.

8 MR. KATZ: On the site plan. We'd
9 put it on the site plan.

10 CHAIRPERSON MILLER: Can that be
11 done? Yes.

12 MR. KATZ: We will put it on the
13 site plan.

14 CHAIRPERSON MILLER: Okay. That'd
15 be great. Okay.

16 MR. KATZ: And if we're using --

17 CHAIRPERSON MILLER: So you can do
18 that pretty easily.

19 MR. KATZ: Yes, exactly.

20 CHAIRPERSON MILLER: Okay.

21 MR. KATZ: The driveway will be
22 precast concrete block. Is that considered

1 impervious in D.C.? Is that an impervious
2 surface or is that pervious by D.C.'s
3 definition? Does the driveway -- do we --
4 does that get included as non-pervious?

5 MS. SOLOMON: Are there spaces
6 between the block?

7 MR. KATZ: Yes, they're just small
8 blocks.

9 MS. SOLOMON: Pavers.

10 CHAIRPERSON MILLER: Does the
11 Office of Planning want to respond to that
12 question?

13 MR. RICE: I'm not sure, to be
14 honest.

15 MS. SOLOMON: I think they're
16 actually considered pervious. I mean, when
17 you go out, having just built a driveway, when
18 you go out looking for driveways and pervious
19 surfaces, that is one method, but I don't know
20 what the technical --

21 CHAIRPERSON MILLER: Okay. I
22 mean, for the most part, we don't really

1 dispense legal advice up here on the spot, you
2 know. So I would just suggest that, you know,
3 you figure that out and then give us the
4 figure. Yes.

5 MEMBER DETTMAN: Madam Chair, --

6 CHAIRPERSON MILLER: A comment,
7 Mr. Dettman?

8 MEMBER DETTMAN: -- just one
9 comment because I don't have the answer to
10 your question either, but I just want to draw
11 the distinction between lot occupancy and the
12 impervious surface ratio where clearly -- and
13 you've already demonstrated that the lot
14 occupancy is well below what you're allowed to
15 have.

16 Really, the regulations don't set
17 a baseline for the impervious surface ratio.
18 It just says that you need to put that number
19 in, whether it's 20 percent, whether it's 51
20 percent.

21 I don't know what the Board would
22 do with that number, OP, because there really

1 isn't anything that says, well, if you're over
2 this number, that's bad, and if you're below,
3 it's good.

4 So I think it's just sort of a
5 formality where you need to do this
6 calculation, taking into account the
7 impervious surfaces on your lot, whether it's
8 the driveway or if you feel it's a pervious
9 surface, then not including it.

10 MR. MOY: Madam Chair, if the
11 staff could weigh in just for a bit?

12 Since the Board's indicated the
13 desire for the staff to give notice to Parks
14 and Environment, that we can follow through
15 with more of the specifics as to the comments
16 that the Board is interested in hearing back
17 from these particular agencies.

18 MS. SOLOMON: Mr. Dettman, 1518.2
19 references like a 50 percent ratio.

20 MEMBER DETTMAN: What was the
21 provision?

22 MS. SOLOMON: Well, I just look --

1 1518.2 talks about maximum pervious surface
2 coverage on the lot shall be 50 percent, so it
3 does matter. No? I thought you said there
4 was no figure.

5 MEMBER DETTMAN: Not being
6 entirely familiar with this overlay, you could
7 be right. I don't remember reading that in
8 1518, but if that exists, then --

9 MS. SOLOMON: It's in 1518.2.

10 CHAIRPERSON MILLER: Yes, that's
11 -- okay. In any event, -- okay. Mr. Moy,
12 you're saying that you can get those notices
13 out to those other agencies that weren't
14 notified?

15 MR. MOY: Right. While the Board
16 was deliberating, I checked the record and the
17 office did send notice to DDOT, so that's --
18 as well as --

19 CHAIRPERSON MILLER: National Park
20 Service.

21 MR. MOY: As well as the --

22 CHAIRPERSON MILLER: National Park

1 Service.

2 MR. MOY: Let's do this
3 officially. We served notice on the Office of
4 Planning as well as DDOT but not the other
5 entities.

6 CHAIRPERSON MILLER: Don't we do
7 the National Park Service since they're an
8 abutting property owner? I would think we
9 would.

10 MR. MOY: Typically we do.

11 CHAIRPERSON MILLER: Yes.
12 Actually, I mean, I think it would be good to
13 have something in writing from them, not that
14 it's required. You know, we have your
15 representations on the record under oath, but
16 we could leave the record open in the event
17 that they chose to submit something in
18 writing.

19 So yes, basically, what I would
20 propose then is leaving the record open for
21 the tree preservation plan which sounds fairly
22 simple and straightforward but it's required,

1 the figure on the impervious surface ratio and
2 going on the site plan, an amended site plan,
3 a letter from the National Park Service,
4 should they choose to submit one, and any
5 comments the Board might get back from
6 notifying the agencies that haven't been
7 notified, Parks and Rec and the Environment,
8 possibly Urban Forestry Division.

9 So anyway, we are prepared to put
10 this on the calendar for the 29th, so you
11 don't have too long a wait, if you think you
12 can have your part ready, have the Applicant's
13 part ready, which would be the tree
14 preservation plan, the new figure.

15 MS. ROSENMAN: I think I can have
16 the tree preservation site plan by that time.
17 Unfortunately, I will be out of town at that
18 time, so that I will not be able to be here.

19 CHAIRPERSON MILLER: Okay. There
20 won't be a further hearing, unless something
21 comes up, you know, from one of these agencies
22 that would require a hearing which I don't

1 anticipate.

2 MS. ROSENMAN: All right.

3 CHAIRPERSON MILLER: We would
4 actually need the plan before the 29th in
5 order for the Board to look at it in time to
6 deliberate on it by the 29th. So what date --
7 we're going to get a date for that, and unless
8 you prefer to put this off till September, we
9 can go forward with our deliberation on the
10 29th, but you don't need to be here for any
11 reason.

12 What date would that be for
13 submittal of the plan and the revised site
14 plan?

15 MS. BAILEY: Madam Chair, I would
16 say at minimum the 24th, July 24th.

17 MR. MOY: If the Applicant can
18 submit by the 24th, which I believe is a
19 Thursday, if you can do that by noon because
20 the staff likes to get the materials to the
21 Board in the package mailing that afternoon.
22 So 12 o'clock noon, if not a great hindrance,

1 that would facilitate things.

2 MS. ROSENMAN: I will try to do
3 that. I will indicate to the arborist and to
4 the company that I deal with that this is
5 something of an emergency and time is of the
6 essence and I will try for that date.

7 BZA VICE CHAIR LOUD: I just
8 wanted to say with respect to the plan over
9 here, that the rules don't delineate the
10 standards for the plan and based on Ms.
11 Solomon's testimony about what you've -- the
12 discussions you've already had, it seems to me
13 that a really very simple just listing of the
14 steps that are going to be taken, you talked
15 about matting, et. cetera, would suffice.

16 I don't think we're looking for
17 this elaborate very detailed complex document,
18 just something that we can put in the record
19 that satisfies 15 -- I guess it's 1520.3(b) or
20 something like that.

21 Thanks.

22 MS. SOLOMON: Thank you.

1 CHAIRPERSON MILLER: Right. I
2 would have your arborist look at that
3 provision, and if you find that it's going to
4 be a problem for you, just let us know and
5 we'll set this off till September, okay, but,
6 you know, usually applicants want their orders
7 as soon as possible. So, you know, we'll
8 accommodate you, if you can get that in.
9 Okay.

10 Do you have other questions for
11 us? Any other Board questions?

12 MS. ROSENMAN: We have been back
13 and forth on the site plan. We have talked
14 about the tree protection plan. Is the site
15 plan that we discussed adequate? Do you need
16 something beyond what we've already submitted?

17 CHAIRPERSON MILLER: My
18 understanding is the site plan's going to be
19 amended to reflect the impervious surface
20 ratio.

21 MS. ROSENMAN: Okay.

22 COMMISSIONER TURNBULL: Madam

1 Chair, I'd like to make one comment. I think
2 the Applicant -- I don't think, at least I'm
3 not going to have any angst in approving this.
4 I think -- but in light of 1520(b) in the
5 amendment, and I think of -- mainly looking at
6 the Urban Forestry Division and the National
7 Park Service, from the standpoint of
8 protection of the tree, I think it may be good
9 for them to know your plans and what they're
10 going to do. That would -- I think it's
11 basically looking at it from the environmental
12 aspect on how that tree is going to be
13 protected.

14 It's going to be probably the most
15 critical aspect that we've got here. So I
16 think if we could -- if that information could
17 be -- it would be nice to get a letter from
18 the Park Service saying approving this, but --
19 or at least some documentation that says
20 they're fine with it, but -- and I know you've
21 said that verbally and maybe just reinforcing
22 that.

1 Other than that, it's just
2 following up for 1520 from my standpoint.

3 MS. ROSENMAN: I believe it's a
4 city tree.

5 COMMISSIONER TURNBULL: It's a
6 city tree?

7 MS. ROSENMAN: Yes, it's in public
8 space.

9 COMMISSIONER TURNBULL: Oh, so
10 it's a city tree on Park Service land. Okay.

11 MS. ROSENMAN: It's not on Park
12 Service land.

13 COMMISSIONER TURNBULL: Oh, it's
14 not?

15 MS. ROSENMAN: No.

16 COMMISSIONER TURNBULL: So it's on
17 city land?

18 MS. ROSENMAN: Yes.

19 COMMISSIONER TURNBULL: Okay.

20 Well, then Urban Forestry is going to have
21 more to say about it then.

22 CHAIRPERSON MILLER: .And let me

1 ask you, Mr. Rice.

2 COMMISSIONER TURNBULL: Thank you.

3 CHAIRPERSON MILLER: It seems like
4 DDOT was informed about the application and
5 they commented on the curb cut location and
6 things like that, the driveway, but we don't
7 have any indication that Urban Forestry had
8 looked at the tree they were talking about, is
9 that right?

10 MR. RICE: That's correct. I
11 haven't heard anything from Urban Forestry.
12 So I'm not sure if they are even aware of this
13 application. I'm just not aware of it.

14 CHAIRPERSON MILLER: Okay. I
15 mean, you know, it's just they want to make
16 sure probably that you're taking the proper
17 steps to protect it during construction.

18 MS. SOLOMON: Well, and if I may,
19 I think it's a fairly simple process, either
20 through me at the ANC and also I know that the
21 arborist and the Ward 3 DDOT arborist know
22 each other. So in this tree preservation

1 plan, I think it would be very simple matter
2 to include them in the loop and perhaps even
3 get an official word from them.

4 CHAIRPERSON MILLER: That would be
5 terrific.

6 COMMISSIONER TURNBULL: And I
7 think it's basically looking for the
8 Applicant's protection more than anything
9 else, so that nothing comes back later on and
10 says you didn't do this and this. So we just
11 want to follow through with everything.

12 CHAIRPERSON MILLER: Okay. Ms.
13 Bailey, do you just want to repeat the dates
14 for them?

15 MS. BAILEY: Madam Chair, the
16 submissions are due to the Board on July 24th
17 and the Board will consider a decision on July
18 29th.

19 CHAIRPERSON MILLER: Okay. I also
20 just want to clarify, then we can end this
21 case, that the record is open for the ANC to
22 submit as well, particularly if you're

1 involved in any coordination with the City or
2 whatever.

3 MS. ROSENMAN: Thank you.

4 CHAIRPERSON MILLER: Okay. Well,
5 thank you very much.

6 MS. ROSENMAN: Thank you.

7 CHAIRPERSON MILLER: We're ready
8 for the next case when you are, Ms. Bailey.

9 1348 BRENTWOOD, LLC

10 APPLICATION NO. 17790 - ANC-5B

11 MS. BAILEY: Thank you, Madam
12 Chair.

13 Application Number 17790 of 1348
14 Brentwood, LLC, pursuant to 11 DCMR 3104.1,
15 for a special exception to establish a food
16 delivery service, that's a pizza
17 delivery/carry-out, under Section 734. The
18 property is located in the C-2-A District at
19 premises 1348 Brentwood Road, N.E., Square
20 3956, Lot 31.

21 CHAIRPERSON MILLER: Good morning.

22 MR. AGUGLIA: Good morning.

1 CHAIRPERSON MILLER: Want to
2 introduce yourself for the record?

3 MR. AGUGLIA: Richard Aguglia with
4 the law firm of Hunton and Williams.
5 Assisting me today is Darlene Dalback of the
6 firm and also with me are two of the
7 principals, Todd Kelly and Douglas Dartch and
8 Douglas Dartch will testify and was sworn in
9 this morning in the event that you need
10 further assistance that I cannot answer.

11 This --

12 CHAIRPERSON MILLER: Do you have a
13 preliminary matter, though, first? A very
14 minor preliminary matter that you wanted us to
15 waive 3113.(a), requirement to file your per
16 hearing materials 14 days in advance of the
17 hearing?

18 MR. AGUGLIA: Correct.

19 CHAIRPERSON MILLER: Okay.

20 MR. AGUGLIA: That was my
21 submission of June 27th. Actually, I had
22 another submission on July 1st.

1 The submission on June 27th was in
2 direct response to questions raised by OP and
3 on July 1st, I submitted some 79 postcard
4 petitions by the neighbors in support of the
5 application. That was a requirement of the
6 ANC.

7 So I would move that you waive the
8 14-day rule, please, and accept that, and I
9 would add that this is an unopposed
10 application.

11 CHAIRPERSON MILLER: Okay. And
12 our standard is good cause and no prejudice to
13 any party, and I think that's met here.

14 Anybody have a concern?

15 (No response.)

16 CHAIRPERSON MILLER: Okay. Not
17 hearing anyone, hearing from anyone any
18 concern, those rules are waived. Okay.

19 MR. AGUGLIA: Thank you. I will
20 do my best to keep this under 30 minutes.

21 As Ms. Bailey said, this is a
22 special exception for a premises located at

1 1348 Brentwood Road, N.E., Lot 31 and Square
2 3956. It's for a food delivery service and
3 carry-out in the C-2-A Zone. The Applicant-
4 Owner is 1348 Brentwood Road, LLC. Papa
5 John's is the proposed tenant for the
6 premises.

7 The application is made pursuant
8 to Section 734 of the Zoning regulations.

9 My original application referenced
10 that access to the subject property for
11 parking and trash removal would be by an
12 easement across the adjoining lot because the
13 Section 734 requirement that we put up the
14 brick buffer in the back prevented me from
15 accessing the lot.

16 So OP pointed out that the
17 easement, access by the easement of the
18 adjoining lot was not direct access for
19 parking and that we would need a variance or
20 seek lot consolidation. So the devil was in
21 the details there. By meeting the special
22 exception, we had to get a variance.

1 So upon further review, we believe
2 that, as the PowerPoint presentation will
3 show, that lot consolidation, I think, is the
4 best way to go, and if you approve the
5 application, it would be subject to lot
6 consolidation as a condition, and there's
7 precedent for this.

8 Roughly six months ago at Capitol
9 Hill, Papa John's, you approved the
10 application for special exception and that was
11 a condition that we get lot consolidation and
12 in fact we did get lot consolidation from the
13 Surveyor's Office.

14 Now, the -- all right. So as
15 you'll see from the PowerPoint presentation,
16 the lot consolidation does give us ease of
17 parking and ease of trash removal, and before
18 we go into it, I wanted to say that D.C. DOT,
19 we met with them, Charlene Reed, Mr. Ba, and
20 they liked the lot consolidation because of
21 the ease of parking and also because of the
22 ease of trash removal.

1 We met with the ANC-5B roughly a
2 month ago. I do not know if they submitted
3 anything for the record, but I will tell you
4 that I was there with my clients. They
5 approved unanimously our special exception
6 request as amended and they requested that we
7 put out these postcard petitions to see that
8 there was support from the immediate
9 neighborhood and as you saw, there was 99.9
10 percent support.

11 All right. So with that, we'll go
12 to the PowerPoint presentation, please.

13 (PowerPoint Presentation.)

14 MR. AGUGLIA: All right. It's a
15 little bit hard to see. I want to go with
16 this first. Okay. All right. In the upper
17 part of the frame is the subject property.

18 On the left-hand side, you'll see
19 a sign that says Timbuktu which is above the
20 car. That is the premises, Lot 31, 1348
21 Brentwood Road, that the client seek to use
22 for their Papa John's Pizza Delivery and

1 Carry-Out Service.

2 The property's been vacant for
3 roughly a year or more. It used to be a
4 fashion retail outlet. Immediately to the
5 right of it is 1350 Brentwood Road which is
6 Jerry Chan's, which is a Chinese carry-out,
7 but you'll see, it appears that the building
8 is one building, and I talked with the owner
9 who assigned me this case, and it appears to
10 be one building with one roof and there was a
11 partition down the middle to separate the two
12 stores, but the Office of Tax and Revenue is
13 carrying it on its records as two buildings on
14 two lots. I'm not sure if that's correct, but
15 the lot consolidation will fix the problem.

16 Jerry's does have a Certificate of
17 Occupancy that's current and existing, thus
18 not really an issue before this Board for
19 special exception, and I've attached a copy of
20 their Certificate of Occupancy to my pleading,
21 to one of my last pleadings on June 27th.

22 So directly below that, the frame

1 below it, is the side of Jerry Chan's and you
2 will see that there is substantial parking
3 along the side. In fact, it's 82 feet long
4 which means with a nine foot wide parking
5 spot, we could fit in nine parking spaces. So
6 six are needed for both buildings, for both
7 retail services, three and three, and then
8 there's an additional three that we can fit in
9 there, so there's plenty of room for customers
10 and employees to park.

11 If you'd go to the next frame,
12 please? All right. Here's another view of
13 the side of the property and you'll see that
14 there's an entranceway. That is all private
15 property. All of that is on Lot 30 and you
16 can see in the rear right, you'll see the
17 fence where the trash pick-up would occur.

18 And if you'd go to the next frame?
19 Again that's the entrance, that would be the
20 entrance off of Brentwood Road on to private
21 property.

22 Next frame. You'll see the upper

1 frame, there's a gate. Each gate is six feet
2 wide, so when you open it up, it's 12 feet
3 wide, so will easily accompany trash
4 collection, and you'll see there's a dumpster
5 there from the existing Jerry Chan's.

6 Below it, you'll see the back of
7 the property. To the right is the 1348.
8 That's the rear of 1348. It's a little hard
9 to see but that is it right there, and then to
10 the left of it, the longer building is 1350
11 and you can see the property is fenced.

12 Next frame, please. And you see
13 in the upper frame, again that's the back of
14 1348, that's 1350, if you just go slightly to
15 the right. That is 1348. You'll see there's
16 a firehouse next door and that is a concrete
17 buffer that was actually constructed by the
18 firehouse. That's on their lot.

19 So the property is well buffered
20 and fenced off from the neighborhood. Again,
21 the frame below it, you see a bit of a better
22 picture of the concrete buffer that separates

1 the subject property from the firehouse.

2 Next frames, please. All right.
3 Here is the alley which separates the
4 neighbors from the subject property. The
5 subject property is in a split zone, Zone C-2-
6 A, and then the alley divides the property
7 from the R-1-B residential property behind it
8 and because of the alley, we meet one of the
9 tests of the special exception.

10 Next frame, please. Here's
11 another picture of the alley. This is right
12 behind 1348 and you can see that there's, I
13 would say, roughly 80 or 90 feet behind the
14 property coming to the fence and then we have
15 another 10 to 20 feet for the alley, depending
16 on where you pick up the alley. This is
17 roughly 10 feet here and then you'll see that
18 there's also another buffer from the neighbors
19 because this is open space or garages where
20 they park their cars.

21 Next frame, please. So again
22 you'll see that the property is well buffered

1 from the neighbors whose houses front on
2 Franklin Street which is on the opposite side
3 of Brentwood Road. So there's probably about
4 a 120 feet from the actual neighbors'
5 properties.

6 Next frame, please. All right.
7 There's very good parking in front of the
8 property. There's a little island in front of
9 the property. This is across from the island
10 before you come over to Rhode Island Avenue.
11 There's one hour parking there. There's two
12 sets of parking signs, one's 12 to 8, one's 8
13 to 8, one hour parking is permitted during
14 those time periods. So this meets another
15 test of the special exception that there be no
16 traffic conditions, no adverse traffic
17 conditions.

18 So the next sign, please. So this
19 is on the street that's immediately in front
20 of the property. The island is slightly
21 across the street. Again, we have one hour
22 parking during the designated hours and

1 unlimited parking before and after those
2 hours. There's no residential restriction
3 here. This is a commercial intersection.

4 Next frame, please. You're coming
5 down Brentwood Road here. This is a one-way
6 street, so the trash pick-up would come down
7 this street. It would turn right where that
8 white van is, into the parking area. The
9 owner of this property owns not only Timbuktu
10 and Jerry Chan's, but there's, across the
11 street there, there's a liquor store, across
12 the drive -- across the parking lot, there's
13 a liquor store and a deli mom and pop store.
14 So they have their own set of parking on their
15 side of that curb cut. So there's plenty of
16 parking for everybody and it's all owned by
17 the same owner.

18 Next frame, please. Yes, all
19 right. This is a Google overhead. I'm sorry
20 it's not quite as vivid as it could be, but
21 you can see the subject property is the
22 shorter building on the left and the 1350,

1 where the Jerry Chan's is, is the lighter
2 colored building to the right. It's longer
3 and then all that space in between is all
4 private property. That's Brentwood Road, the
5 one-way street coming down. That's all
6 private property for parking. So we have ease
7 of parking and trash removal. So the trash
8 trucks would come down Brentwood Road, take a
9 right into the -- you want to go a little --
10 yes, take a right into the parking area and
11 then come up to the fences, remove the trash,
12 come back down the private entrance there and
13 then out Brentwood Road, and we would instruct
14 them to do that.

15 That was one of DOC -- DDOT's
16 concerns, is they didn't want the trash truck
17 coming down the alley because they thought it
18 was a little bit narrow in spots. It goes
19 from 20 feet to 10 feet. This made them very
20 happy, and then the trash --

21 Next frame, please. All right.
22 This will give you -- this is the notice of

1 residents within 200 feet that your office
2 puts out, so it gives you a bit of a vivid
3 picture of how Brentwood Road intersects with
4 Rhode Island Avenue. There's the island that
5 I talked about where we have parking on both
6 sides of that island, one hour parking in
7 front of the subject property.

8 And that concludes the PowerPoint
9 presentation.

10 So to meet the other requirements
11 of the special exception, we are required to
12 put a six foot high 12 inch thick brick buffer
13 in the rear of 1348 which we will do, and we
14 will incorporate the trash enclosure as part
15 of it and the trash enclosure will be three-
16 sided brick with an opaque opening and it will
17 face the rear of the property. It will not
18 face the residential district.

19 So we'll meet the -- the dumpsters
20 -- there will be two dumpsters, an eight yard
21 dumpster for trash which is mostly paper,
22 cardboard boxes, and there will be a four yard

1 dumpster for recycling, and that will all be
2 enclosed in the three-sided brick enclosure,
3 and it will form part of the brick buffer wall
4 in the back.

5 So as I said, we've received OP
6 support with the conditions that we obtain the
7 lot consolidation. The ANC is very happy to
8 have us move in as a good neighbor and we will
9 hire residents from the immediate neighborhood
10 which is their standard practice, and DDOT
11 supports us.

12 So I await any of your questions.

13 CHAIRPERSON MILLER: With respect
14 to the hours of operation, is that similar to
15 the other restaurant that's there right now,
16 if you call it that, the other --

17 MR. AGUGLIA: The other carry-out.

18 CHAIRPERSON MILLER: The carry-
19 out. Okay.

20 MR. AGUGLIA: I don't know.

21 CHAIRPERSON MILLER: And was that
22 discussed at the ANC meeting?

1 MR. AGUGLIA: The hours of the
2 Chinese carry-out, it was not.

3 CHAIRPERSON MILLER: No, the new
4 delivery one.

5 MR. AGUGLIA: Yes.

6 CHAIRPERSON MILLER: Okay.

7 MR. AGUGLIA: The new delivery
8 will be the same as the Capitol Hill and it's
9 the same as almost all their stores, 11 a.m.
10 to 11 p.m. Sunday through Thursday, 11 a.m. to
11 1 a.m. Friday and Saturday.

12 CHAIRPERSON MILLER: Okay. I was
13 looking at Office of Planning. They said 11
14 to midnight --

15 MR. AGUGLIA: I'm sorry.

16 CHAIRPERSON MILLER: -- Monday
17 through Thursday, is that right?

18 MR. AGUGLIA: I misspoke. 11 to
19 midnight Sunday through Thursday.

20 CHAIRPERSON MILLER: Okay. But
21 that wasn't -- no one has any -- has raised
22 any concerns about those --

1 MR. AGUGLIA: No.

2 CHAIRPERSON MILLER: -- hours?

3 MR. AGUGLIA: It's a commercial
4 intersection. There's a lot of retail
5 directly across the street.

6 CHAIRPERSON MILLER: And with
7 respect to the consolidation of the lots, I
8 mean, it looks like it makes perfect sense.

9 MR. AGUGLIA: It does.

10 CHAIRPERSON MILLER: Have you --
11 is that a certainty to be able to consolidate
12 the lots? Have you started the process? Are
13 you waiting for this, the Board's order, or
14 what?

15 MR. AGUGLIA: Waiting for the
16 Board's order, but when I review both building
17 s consolidated, it's a lot of land with not
18 too much building and typically when you
19 consolidate rather than subdivide, there's no
20 issue. So I've looked at it and I believe
21 that the lot consolidation will be approved.

22 CHAIRPERSON MILLER: Okay. Any

1 other questions?

2 (No response.)

3 CHAIRPERSON MILLER: All right.

4 Thank you.

5 Then do you have any witnesses you
6 want to put on now? We're going to go Office
7 of Planning.

8 MR. AGUGLIA: Office of Planning.

9 CHAIRPERSON MILLER: Okay. Mr.
10 Cochran?

11 MR. COCHRAN: Thanks, Madam Chair.
12 For the record, my name is Steven Cochran,
13 D.C. Office of Planning.

14 I think what we would like to
15 stand on our report, except to note that
16 should there be a need, because the lot isn't
17 consolidated, for a variance from Section
18 2117.4, if that happens to be needed, OP would
19 support it.

20 You know, we're still recommending
21 that you make the approval conditional on the
22 lots being consolidated, but if at some point

1 in the future the lots get chopped up again,
2 then we would support a variance several years
3 from now.

4 CHAIRPERSON MILLER: Okay. But
5 wouldn't the scenario be that they would have
6 to come back to the Board?

7 MR. COCHRAN: Of course.

8 CHAIRPERSON MILLER: Okay.

9 MR. COCHRAN: I'm just letting you
10 know that --

11 CHAIRPERSON MILLER: In advance,
12 you support it.

13 MR. COCHRAN: Yes, I'm obligating
14 a future OP staff to support this.

15 CHAIRPERSON MILLER: Do you
16 believe that the Applicant addressed all your
17 concerns in their latest filing?

18 MR. COCHRAN: Yes.

19 CHAIRPERSON MILLER: Okay. Any
20 other questions?

21 (No response.)

22 CHAIRPERSON MILLER: Okay. Is

1 there anyone here from the ANC?

2 (No response.)

3 CHAIRPERSON MILLER: I'm not
4 seeing anybody. I don't believe we have a
5 report in the record. So we just have Mr.
6 Aguglia's testimony, though, that there was a
7 meeting and it was fairly well attended, is
8 that correct?

9 MR. AGUGLIA: Yes, it was well
10 attended and I believe almost all the members
11 of the ANC were there and key to the ANC was
12 ANC-5B-04, Racine Woodland, who was the SMD,
13 and she was heartily in favor and she was the
14 one who really wanted us to do the postcard
15 petitions.

16 So it was a unanimous approval,
17 subject to community input, and Mr. Cochran
18 said to me, "Whatever that means," and I said,
19 "No, it means postcard petitions," and that --
20 and we canvassed the neighbors and in fact
21 they overwhelmingly approved, as the record
22 reflects.

1 CHAIRPERSON MILLER: Okay. Is
2 there anybody here who wishes to testify in
3 support of this application?

4 (No response.)

5 CHAIRPERSON MILLER: Anybody here
6 who wishes to testify in opposition to this
7 application?

8 (No response.)

9 CHAIRPERSON MILLER: Okay. Any
10 closing remarks?

11 MR. AGUGLIA: I would request that
12 you, if you can't make a voice vote now in
13 favor, that you would take it up at your July
14 29th hearing meeting for decision, as the lot
15 consolidation will take probably about two or
16 three months and then with permit construction
17 for the interior construction, the Applicants
18 really would like to get this off the ground
19 by January 1st in terms of opening the store.

20 CHAIRPERSON MILLER: Mr. Aguglia,
21 let me just ask you this. I mean, it looks
22 like this record is pretty full.

1 Is there a requirement that the
2 nine parking spaces be striped?

3 MR. AGUGLIA: Yes, and that is in
4 my application, that these spaces will be
5 striped, and if you want to make that a
6 condition of your approval, there's no problem
7 with that.

8 CHAIRPERSON MILLER: Is that
9 something that could be shown on the plans?

10 MR. AGUGLIA: In my supplemental
11 submission of June 27th, on Page 2, I say the
12 parking spaces will be striped and it's part
13 of my -- I show the plat and I say nine
14 parking spaces to be striped. I don't
15 actually stripe it in, and you'll see from the
16 plat that it's 82 feet.

17 This is my submission of June 27th,
18 Exhibit A. It shows a picture of the side
19 parking as was on the PowerPoint and the next
20 picture is the plat and it shows the length of
21 the building as being 82 feet and then a
22 diagram noting that it will be nine parking

1 spaces to be striped.

2 CHAIRPERSON MILLER: Mr. Cochran,
3 is there any concern if the striping's not
4 shown in the plans but in fact is made a
5 condition of the order as an alternative?

6 MR. COCHRAN: Madam Chair, OP
7 doesn't have a concern. It seems like it
8 could be pretty easily solved by taking the
9 location drawing and simply crossing out paved
10 and to be striped, cross out "but not" and
11 just say "and to be striped" and then have
12 that submitted by Mr. Aguglia today right now.

13 BZA VICE CHAIR LOUD: Sorry.
14 Could you just clarify what you're looking at?

15 MR. COCHRAN: Sure.

16 BZA VICE CHAIR LOUD: Which
17 exhibit number? Is it 31?

18 MR. COCHRAN: I'm looking at a
19 plat that was submitted with one of the
20 variations on it. It's just before Exhibit B
21 on one of the earlier filings.

22 COMMISSIONER TURNBULL: It's the

1 June 27th filing.

2 MR. COCHRAN: Okay. And it says,
3 "Space for parking, nine vehicles on site
4 (paved but not striped)," and it seems like if
5 Mr. Aguglia could find that, cross out the
6 "but not" and say "to be," that would be
7 sufficient.

8 BZA VICE CHAIR LOUD: But on his
9 Exhibit 31, and maybe if you'll take a second
10 to see if you have that, he's got on Exhibit
11 A already, I think it's Exhibit A, nine
12 parking spaces to be striped and if that
13 suffices, then we wouldn't have to ask the
14 Applicant to do anything.

15 MR. COCHRAN: He actually had an
16 earlier one where he had the slash marks on
17 where they would be striped. I can show it to
18 you, but I've kind of reassembled in different
19 ways my information, so I don't know which
20 exhibit you're referring to.

21 MR. AGUGLIA: All right. I'm
22 making the correction to the exhibit. I will

1 hand it up. It's OP's request.

2 (Pause.)

3 CHAIRPERSON MILLER: Okay. We're
4 going to deliberate it now because basically
5 the record is complete and we think we can
6 solve that striping issue, it's a pretty minor
7 issue, you know, with the diagram, with a
8 condition.

9 MR. AGUGLIA: Thank you.

10 CHAIRPERSON MILLER: Okay.

11 BZA VICE CHAIR LOUD: Madam Chair,
12 I'd like to weigh in and start us off by
13 indicating my support for Application 17790.

14 In this application, the Applicant
15 proposes to open a Papa John's Pizza Delivery
16 at 1348 Brentwood Road, N.E., on Lot 31, which
17 is in the C-2-A.

18 At this particular location, there
19 will not be direct access to parking from a
20 street or alley, per the requirements of
21 Section 2117.4.

22 Since food delivery is going to

1 occur in the C-2-A, a special exception is
2 needed, per our Section 734, and since direct
3 access to parking is not available, the lots
4 require combination, as we've indicated in the
5 discussion before by Mr. Aguglia and also the
6 Office of Planning report.

7 The requirements of Section 734
8 have been set forth very clearly in the Office
9 of Planning's report as to which I want to
10 lift up and just incorporate in my remarks by
11 reference. They talk specifically about the
12 delivery location being more than 25 feet away
13 from a residence district which is the case
14 here, that there be a three-sided trash
15 enclosure, and that the rear of the property
16 include a six foot high 12 inch thick brick,
17 all of which again is in the Office of
18 Planning's report.

19 It's been reinforced by testimony
20 from Mr. Aguglia and I'm not going to repeat
21 every stitch of the requirement here. I just
22 want to incorporate Mr. Cochran's report by

1 reference.

2 We also have in our record Exhibit
3 31 which sort of amplified some of the pieces
4 that were missing from the Office of
5 Planning's report as regards there being
6 objectionable noise or sound or light, odors,
7 et. cetera, with respect to the neighbors and
8 Mr. Aguglia's exhibit speaks to that in terms
9 of the hours and the provisions being made to
10 address sound, light, odors, et. cetera, and
11 again I'm not going to repeat everything
12 that's in the report, just to lift it up for
13 reference purposes.

14 Specifically, let me direct
15 everyone's attention to the Office of Planning
16 report which is Exhibit 34 for Mr. Cochran's
17 very, very thorough analysis of Section 34.

18 There are two conditions that I'd
19 like to suggest for the Board's consideration,
20 both of which have been discussed this
21 morning, to base our approval on.

22 The first is that Lots 30 and 31

1 be consolidated prior to the Certificate of
2 Occupancy being issued and again that's to
3 address Section 2117.4 which I've spoken
4 about.

5 And the second condition would be
6 what we've just discussed, which regards the
7 plans being amended right now to reflect that
8 the nine parking spaces will be striped, and
9 I believe that Mr. Aguglia -- between Exhibits
10 31 and 30, that's addressed and taken care of
11 because 31 talks about the nine spaces to be
12 striped and 30 actually has the stripes on the
13 instrument, but I think what we've agreed to
14 this morning is that Mr. Aguglia's going to,
15 in addition to that, just take Exhibit 30 and
16 indicate that the parking spaces as identified
17 will be striped, and so I'm in support of this
18 application, Number 17790.

19 I think it meets the requirements
20 of Section 734. I think such has been
21 demonstrated through the Office of Planning
22 report at our Exhibit 34 as well as Mr.

1 Aguglia's testimony this morning.

2 While there is no ANC report in
3 the record, there is at Exhibit 32 a petition
4 that indicates that 79 persons are in support
5 of the application.

6 So I defer now to my colleagues on
7 the Board to weigh in.

8 CHAIRPERSON MILLER: Any other
9 comments on this? Yes, Mr. Turnbull?

10 COMMISSIONER TURNBULL: Madam
11 Chair, I would concur with Mr. Loud's
12 excellent summary.

13 CHAIRPERSON MILLER: Okay. I just
14 want to clarify the conditions then that would
15 be attached to this order.

16 It's that Lots 30 and 31 shall be
17 consolidated prior to the issuance of a
18 Certificate of Occupancy and nine parking
19 spaces shall be striped in accordance with the
20 Zoning regulations. I guess that's reflected
21 -- I'm not sure where it is on the plans that
22 we have, but we'll fill that in, but those are

1 the two conditions.

2 Okay. Yes, I think that the
3 Applicant also made a strong case for special
4 exception relief, meeting the specific
5 requirements, and also showing certainly no
6 adverse impact to the neighborhood.

7 Anything else?

8 (No response.)

9 CHAIRPERSON MILLER: Okay. Then
10 there's no further deliberation, all those in
11 favor of the motion as conditions, say aye.

12 (Chorus of ayes.)

13 CHAIRPERSON MILLER: Opposed?

14 (No response.)

15 CHAIRPERSON MILLER: Abstaining?

16 (No response.)

17 CHAIRPERSON MILLER: And would you
18 call the vote, please?

19 MS. BAILEY: Madam Chair, the vote
20 is recorded as 5-0-0 to grant the application.
21 Mr. Loud made the motion, Mr. Turnbull
22 seconded, Mr. Dettman, Mrs. Walker, and Mrs.

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1 Miller support the motion.

2 CHAIRPERSON MILLER: Okay.

3 MR. AGUGLIA: Thank you.

4 CHAIRPERSON MILLER: You're
5 welcome. There's somebody in the audience who
6 seems to want to say something. Do you want
7 to come forward to the microphone? Could you
8 come on the microphone so that you're on the
9 record?

10 MS. BAILEY: Summary order, Madam
11 Chair.

12 CHAIRPERSON MILLER: Let me just
13 hear what these individuals have to say and
14 then we'll --

15 PARTICIPANT: She's the manager of
16 the next door owner, like the restaurant Jerry
17 Chan's, and she would like to ask like we sell
18 pizzas, too, and is it okay like they sell
19 pizza and we sell pizza?

20 CHAIRPERSON MILLER: Okay. That's
21 something that's not in our jurisdiction or
22 our powers to, you know, what is being sold.

1 PARTICIPANT: Okay. She says
2 she'd like -- she's kind of like opposed to
3 it.

4 CHAIRPERSON MILLER: Were you here
5 in the room when we asked if there was anybody
6 here who wanted to testify because we went
7 through that and then -- and now we've already
8 deliberated on it. Were you in the room?

9 PARTICIPANT: We just called our
10 boss and he would like to say like he's kind
11 of opposed to it. I have no clue. She said
12 like --

13 (Off the record comments.)

14 PARTICIPANT: I'm sorry. I think
15 that's it. That's all I have to say.

16 CHAIRPERSON MILLER: Okay, okay.
17 That will be reflected on the record, you
18 know, that you oppose it and I think that her
19 concerns are, just for your information,
20 aren't really concerns that this Board has
21 authority over, you know.

22 PARTICIPANT: Right. Thank you.

1 CHAIRPERSON MILLER: Okay. Ms.
2 Bailey, so there will be a summary order.
3 There's no party in opposition. Okay.

4 All right. We're going to take a
5 quick five-minute break while you all set up.

6 (Whereupon, the proceedings went
7 off the record at 11:14 a.m. and went back on
8 the record at 11:25 a.m.)

9 CHAIRPERSON MILLER: Would you
10 call the next case, please?

11 ARMENIAN GENOCIDE MUSEUM AND MEMORIAL, INC.

12 APPLICATION NO. 17792 - ANC-2F

13 MS. BAILEY: Madam Chair, it's
14 Application 17792 of the Armenian Genocide
15 Museum and Memorial, Inc., pursuant to 11 DCMR
16 3104.1, for a special exception from the rear
17 yard requirements under Subsection 774.2, to
18 establish a museum and memorial. The property
19 is located in the SHOP/C-4 District at 615
20 14th Street, N.W., Square 153, Lot 67.

21 CHAIRPERSON MILLER: Good morning.

22 MR. GLASGOW: Good morning.

1 CHAIRPERSON MILLER: Would you
2 introduce yourself for the record, please?

3 MR. GLASGOW: Yes, please. Thank
4 you.

5 For the record, my name is Norman
6 M. Glasgow, Jr., of the law firm of Holland
7 and Knight, representing the Applicant, the
8 Armenian Genocide Museum and Memorial, Inc.
9 Here with me today is Mr. Rouben Adalian of
10 the Armenian Genocide Museum and Memorial, Ms.
11 Jill Cooper, also of Holland and Knight.
12 She's a land planner and her resume has been
13 submitted for the record. We'll be submitting
14 her for -- as an expert witness. And Mr. Gary
15 Martinez of Martinez and Johnson Architectural
16 firm. Mr. Martinez is also going to be
17 submitted as an expert witness and has been
18 accepted as an expert on numerous occasions by
19 this Board in the past.

20 Would you like to deal with the
21 expert witnesses first and then I can proceed
22 with the opening statement?

1 CHAIRPERSON MILLER: Sure. And I
2 know you submitted the resumes. I just wanted
3 to ask you, Ms. Cooper is being submitted as
4 an expert in what?

5 MR. GLASGOW: Land planning.

6 CHAIRPERSON MILLER: Land
7 planning. Okay. And Mr. Johnson in
8 architecture or what?

9 MR. GLASGOW: Yes, particularly
10 with architecture dealing with historic
11 buildings.

12 CHAIRPERSON MILLER: Okay. Any
13 questions for these witnesses?

14 BZA VICE CHAIR LOUD: Well, before
15 we start, I just wanted to get the witness's
16 name from your client.

17 MR. ADALIAN: Name is Rouben
18 Adalian. I'm the director of the project.

19 BZA VICE CHAIR LOUD: Thank you.

20 CHAIRPERSON MILLER: Okay. Any
21 questions or concerns about the witnesses who
22 are being offered as experts?

1 (No response.)

2 CHAIRPERSON MILLER: Okay. Then
3 there are no concerns, so they will be
4 accepted as experts. Ms. Cooper in land use.
5 Is that what you said?

6 MR. GLASGOW: Yes, land planning.

7 CHAIRPERSON MILLER: Land
8 planning, and Mr. Johnson in architecture,
9 particularly historic architecture. Okay.

10 MR. GLASGOW: Correct. Thank you.
11 Actually, Mr. Martinez. I'm sorry.

12 CHAIRPERSON MILLER: Mr. Martinez.

13 MR. GLASGOW: I've known them both
14 too well over the years.

15 All right. Next, Madam Chair, we
16 have for the record and members of the Board,
17 we have submitted a prehearing statement that
18 goes through a lot of detail, the burden of
19 proof and how we felt we have met the burden
20 of proof.

21 Also, we have reviewed the letter
22 that has been submitted in support by the ANC

1 and by the Office of Planning, both in support
2 of the application and how we meet the burden
3 of proof in this case.

4 We are prepared to give a full
5 presentation, an abbreviated presentation, or
6 rest on the record, whatever is the desire of
7 the Board members. We would note that this
8 project, while located in the SHOP/DDC-4 Zone,
9 the use is a preferred use in its entirety.

10 The uppermost portion of the
11 building is 79 feet in a zone that permits a
12 130 feet, due to the width of 14th Street, and
13 the FAR for the entire project is less than
14 four on a site that permits 10 FAR. So we
15 think that we are significantly under built
16 and are significantly under built on the site,
17 and we believe that we have met the burden of
18 proof for the rear yard waiver and are
19 prepared to either stand on the record or give
20 a presentation, whatever the Board desires, or
21 simply -- or answer questions.

22 CHAIRPERSON MILLER: Okay. You

1 did a very thorough job in the application.
2 I think it's good at these hearings if the
3 project, you know, can come alive a little
4 bit. We can see actually these things.

5 We don't think that we need, you
6 know, an overly-thorough presentation, but we
7 would like to see, you know, the project and
8 the highlights and then also, you know, why
9 you need the relief that's being sought, you
10 know.

11 MR. GLASGOW: All right. Maybe
12 then we could proceed with Mr. Martinez and
13 Mr. Adalian will be available for questions,
14 if needed.

15 Mr. Martinez, would you please
16 proceed with your testimony and address the
17 Chair's questions?

18 MR. MARTINEZ: Madam Chair, just
19 one question. Mr. Glasgow, was actually Mr.
20 Johnson's resume submitted in our file?

21 MR. GLASGOW: Mr. Martinez? We
22 have copies of the resume, if you would please

1 submit that.

2 MR. MARTINEZ: I see Ms. Cooper's
3 is in the file.

4 MR. GLASGOW: That is correct.

5 CHAIRPERSON MILLER: Okay. Can we
6 clarify that? Have you testified before us?

7 MR. MARTINEZ: I have. I have
8 testified before the Board, yes.

9 CHAIRPERSON MILLER: Okay. All
10 right. So we've recognized you as an expert
11 witness here before. Okay.

12 MR. MARTINEZ: Madam Chair,
13 Members of the Board, --

14 COMMISSIONER TURNBULL: Yes, I
15 just wanted to point out that for -- because
16 we have new members on the Board, if we don't
17 have that resume, it becomes unclear.

18 CHAIRPERSON MILLER: Thank you.
19 Okay.

20 MR. MARTINEZ: Madam Chair,
21 Members of the Board, good morning. My name
22 is Gary Martinez with Martinez-Johnson

1 Architecture. I'm pleased to be here with you
2 today to present some of the specific design
3 issues relative to the Armenian Genocide
4 Museum and Memorial.

5 I will abbreviate this
6 presentation for you, but I would note just
7 when you see my resume, I have 30 years, over
8 30 years of practice here in Washington,
9 working with buildings and adaptive reuse
10 mode, historic preservation, among them the
11 Gallet Building at 9th and F Street.

12 We just completed the Woodward
13 Building which is only a block or two from
14 this particular structure, as well as working
15 with the United Mine Workers Building at 15th
16 and I Streets. So a number of major
17 structures, all of which had additions similar
18 to this project.

19 One of the issues that we're
20 dealing with on this particular project is a
21 very restricted site. Sitting at the corner
22 of 14th Street and G Street, we have what was

1 the old National Bank of Washington Building.
2 You see a photograph of it here, looking
3 towards the southeast, and this building had
4 been vacant for over 20 years now. The site
5 that it sits on contains an open lot just to
6 the east which is just under 10,000 square
7 feet, actually about 9,100 square feet.

8 It's a historic structure and
9 unique to this particular project, and there
10 are only about 12 projects like this, 12
11 buildings like this in the city, not only is
12 the exterior protected but the interior of the
13 building is also protected. So this places a
14 special burden on the ability to create an
15 adaptive reuse project for this building,
16 primarily because at the center of the
17 structure, there's a main banking hall which
18 has, if you will, a two-story atrium, it's
19 entered off of 14th Street, and it occupies
20 the entire footprint of the building.

21 Because that particular room is
22 protected by preservation law here in the

1 District, we cannot insert elements, such as
2 elevators or fire stairs or even mechanical
3 shafts, necessary to bring the building up to
4 meet current Code.

5 In order to accomplish that, what
6 we've done is created an addition to the east
7 of the building and within that addition, we
8 would place all of the necessary life safety
9 elements.

10 Now when you take these two parts
11 of the project in combination, what we do is
12 we fill out the 9,100 square feet and in order
13 to do that, what you don't see in these
14 photographs is there is a small appendage here
15 in the southeast corner of the site which
16 contains an outdated staircase and that's
17 going to be demolished.

18 So as you look at this particular
19 site plan, what you have is the original
20 historic building with its large banking hall
21 at the center and then the piece which is the
22 addition which does occupy the full depth of

1 the site from G Street back to the alley.

2 The building sits in the
3 commercial district. There are only
4 commercial structures around it. So
5 everything that you see outlined in blue here
6 all represent commercial office buildings,
7 whether they're adjacent to the building to
8 the east and you see some of those buildings
9 here in the photograph, to the south which is
10 the West Story Building, sort of this large
11 structure, or across either 14th Street or G
12 Street because those are the northern and
13 western borders of the site.

14 So all commercial structures.
15 There is no habitable space in any of these
16 buildings. There's no habitable space in this
17 building.

18 So in terms of the questions of
19 light and air, we meet the tests of not
20 affecting habitable rooms and having enough
21 separation, you know, for the windows that are
22 utilized in the project structure itself.

1 One of the pertinent aspects of
2 the project is that the main banking hall in
3 the historic building, the main floor of what
4 will be the new exhibit space, is actually at
5 the second floor of the building. Like I
6 said, you enter off 14th Street and you go up
7 a grand staircase.

8 There's no access for disabled
9 persons through that entranceway. So what we
10 do is we utilize the addition on G Street and
11 create a secondary or another main entrance,
12 if you will, to the building and in looking at
13 the floor plan here, this is the first floor
14 plan, and we have 14th Street and G Street,
15 here is the original staircase going up to the
16 second floor, but we would come in at G Street
17 on grade and in doing that, we would be able
18 to get two elevators and the necessary fire
19 stairs and lifts that would then take us up to
20 the second floor to begin the museum
21 experience.

22 So as you can see in this plan,

1 the existing building occupies well over
2 three-quarters of the site that we have to
3 work with and just about everything else that
4 we have in here is a required fire life safety
5 or ADA regulation type of element for the
6 building.

7 All of the other spaces within the
8 addition have been minimized in terms of their
9 size to be able to meet a functional
10 requirement for the museum. So any lobby
11 space that we have, any restrooms that we
12 have, facilities like that, they've all been
13 minimized within the footprint of the existing
14 building.

15 In fact, most of the restroom
16 facilities have been placed down in the
17 basement level sort of to take them off of
18 that floor to try and open up the floor space
19 a little bit more.

20 So given the restrictions of the
21 site, given the fact that we've utilized a
22 good portion of the addition, four required

1 elements to meet fire life safety codes, these
2 become some of the reasons that we're seeking
3 the relief to the rear yard itself.

4 I've talked about the fact that we
5 have no habitable space in the building nor
6 buildings adjacent to us.

7 As a historic structure with an
8 addition which is less than 50 percent of the
9 gross area of the existing building, we're not
10 required to provide additional parking. There
11 was no parking with the original building, so
12 we are not providing off-street parking with
13 the project.

14 Likewise with the loading,
15 although we will have loading access at the
16 first level from the alley at the back, but we
17 do not have an off-street berth for the truck.
18 We anticipate most of the loading will be here
19 or at the cross -- I'm sorry. Most of the
20 loading will be here at the alley and any
21 small bits of loading might come in here
22 actually off of G Street.

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1 We have had review by a number of
2 different agencies of the District of
3 Columbia, Office of Planning. You have, I
4 think, documentation from them. We have also
5 been to the ANC and they have written a letter
6 in support of the project. They also
7 supported the project when we went to the
8 Historic Preservation Review Board which gave
9 its unanimous approval for the concept design
10 of the building itself.

11 And I believe those are the
12 pertinent facts of the design of the building.
13 I'd be happy to answer any questions you might
14 have.

15 CHAIRPERSON MILLER: I've got a
16 couple questions. Do you know why the
17 building was vacant for so long?

18 MR. MARTINEZ: It has simply been
19 difficult to find a user to actually make use
20 of this building, particularly given the
21 interior designation which is highly
22 restrictive of the things that you can do.

1 CHAIRPERSON MILLER: And could you
2 just -- I'm not an architect, so sometimes it
3 takes me a little longer to appreciate
4 everything here, but I know that it fronts on
5 two streets, 14th and G, and then I'm
6 wondering, could you just show again like
7 where the addition is in relation to other
8 buildings or the alley or, you know, what's
9 going on with that and the rear yard and
10 alley?

11 MR. MARTINEZ: Sure. I think I
12 can do all of that with these boards that I
13 have.

14 What we have here is this -- at
15 the bottom of this drawing is 14th Street
16 itself and this is actually the intersection.
17 G Street is coming right in here and going
18 around the corner of 14th Street.

19 So the front door to the historic
20 structure is off of 14th Street. You can see
21 the stair that's starting to come in and go up
22 to the second floor. That entrance is here in

1 this kind of photograph at the upper left,
2 coming in off of 14th Street and you're
3 actually going up a full level. It's actually
4 quite a tall floor.

5 In order to create an at-grade
6 entrance, we actually have to come around the
7 corner of the building over to G Street and at
8 G Street, there's a gap, you can see it right
9 here, between the historic building and the
10 buildings to the east.

11 This gap will be filled with the
12 addition which is in elevation, if you were
13 standing across G Street looking at the
14 building, here's the elevation of the new
15 piece that we would do. Here's the historic
16 structure and 14th Street is off to this side.
17 So we're kind of filling in this void with the
18 new addition.

19 In the plan, this is G Street.
20 Here's the front of the addition that we're
21 doing. So the front door to the addition is
22 right here, right here in elevation, and then

1 kind of will be sort of right there at the
2 center of the gap. That will allow you to get
3 into the building and take either an elevator
4 or actually using the fire stairs and
5 circulation elements.

6 We also have a one level grand
7 stair coming up from that level to the second
8 floor. So when you get up to the second
9 floor, which is really at this level, that's
10 where the main museum experience will begin
11 and we will utilize this main exhibition
12 level.

13 There is -- the room is actually
14 over 20 feet tall. It occupies this portion
15 of the building and at that -- within that,
16 there is a mezzanine level that kind of runs
17 a ring, if you will, around the floor below.

18 The only other space that we have
19 is actually up here behind the top part of the
20 building where there are no windows. There's
21 another floor up at that level and we do have
22 some exhibition space up at that level.

1 So we'll be using all three of
2 those levels as part of the exhibition space
3 of the museum itself. The first floor, which
4 is this area, will be used primarily as office
5 space and research space. We have some
6 temporary exhibit space at that level and then
7 a small retail presence affiliated with the
8 museum itself.

9 CHAIRPERSON MILLER: So that the
10 addition is filling in a gap. Is it abutting
11 the property next door, and what is that
12 property?

13 MR. MARTINEZ: It would abut the
14 property next door. There's a series of small
15 buildings. There are three small buildings
16 and a larger one. These are all separate
17 properties. The building would fill in this
18 gap completely. So beyond this would be this
19 series of buildings that you would see.

20 The building also fills the site
21 from the street line all the way back to the
22 property line at the alley and it's at that

1 point back here, because this is the alley
2 coming to the back of the building, it's in
3 this area here that we're seeking relief on
4 the rear yard simply because we've used so
5 much of the rest of the site for fire stairs
6 and mechanical spaces, elevators and things
7 like that. You know, without that relief, all
8 of this will basically take up sort of really
9 that entire floor plate all the way up through
10 the building.

11 We have very, very minimal space
12 within the addition. It really serves as a
13 circulation element for the floors that are in
14 the historic structure.

15 COMMISSIONER TURNBULL: Just
16 following up on Madam Chair's question. So
17 the -- in the alley, the door that's going to
18 be a service door, is that the one at the
19 stair?

20 MR. MARTINEZ: Yes, there's --
21 this is a -- if you go on on-grade entrance
22 kind of coming in from the alley at this

1 location coming in through there.

2 COMMISSIONER TURNBULL: Okay. And
3 the -- I think you mentioned that the 14th
4 Street entrance is going to be the main
5 entrance?

6 MR. MARTINEZ: Well, the 14th
7 Street entrance here is the main entrance into
8 the historic structure.

9 COMMISSIONER TURNBULL: Right.

10 MR. MARTINEZ: Because it's a
11 protected building, we're going to leave that
12 entrance and that would be an entrance that
13 would be used for, say, special events or
14 occasions like that.

15 The main entrance, the every-day
16 entrance, will be here off of G Street, would
17 be within the new addition itself.

18 COMMISSIONER TURNBULL: Okay.
19 Because I was wondering about -- because you
20 have on Sheet A-1, next to the -- down from
21 the double doors, there's a space that says
22 Reception or -- is that like a business

1 entrance or --

2 MR. MARTINEZ: Oh. You're looking
3 at this space off of 14th Street --

4 COMMISSIONER TURNBULL: Right.

5 MR. MARTINEZ: -- here. Yes.

6 This is really the -- this is the offices of
7 the museum and there is a -- we've created a
8 path where you can come in at the -- on the
9 14th Street entrance, come in to the
10 storefront level here at the first floor and
11 that's the receptionist for the director of
12 the museum, the researchers. There is -- this
13 is a series of offices and a conference room
14 for use by the museum officials.

15 COMMISSIONER TURNBULL: So those
16 doors are still going to be open during the
17 day?

18 MR. MARTINEZ: They would be open
19 during the day, that's correct, but general
20 public use would be up here on G Street.
21 That's correct.

22 COMMISSIONER TURNBULL: Okay.

1 Thank you.

2 MEMBER DETTMAN: I have a couple
3 questions and I think they're best directed to
4 Mr. Glasgow.

5 Am I correct in saying that with
6 respect to the addition, the height of the
7 addition and the penthouse fall below what the
8 Zoning regs as well as the Height of Buildings
9 Act would allow?

10 MR. GLASGOW: Yes, sir. They're
11 about 50 feet below.

12 MEMBER DETTMAN: Okay. And when I
13 was looking at the plans, the way the facade
14 of the addition is treated in that it sort of
15 curves in towards the entrance, it reminded me
16 of a previous case that I think Holland and
17 Knight brought to the BZA, I think it was the
18 Gallery Square case on H Street, and in doing
19 that, in order to add interest to the
20 elevation, you couldn't meet the setback
21 requirements of the penthouse and you sought
22 a special exception, and I was just wondering.

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1 It almost looks like that it's a similar case
2 with respect to the -- what would be the
3 northeastern staircase, and I was just
4 wondering if you've looked at that and sort of
5 the conclusion --

6 MR. GLASGOW: Yes.

7 MEMBER DETTMAN: -- that you came
8 to.

9 MR. GLASGOW: Sure. And the
10 reason why we came to the conclusion is
11 because we're so far under FAR in height, this
12 is all just part of the building. We haven't
13 taken any of the credits in the sense for
14 having, you know, a roof structure where you
15 get the .37 FAR credit.

16 We're putting all of that into the
17 building, if you will, the main building. In
18 a sense, you could say if you want to look at
19 it one way, the building could be looked at as
20 being 79 feet in height and it has, I guess,
21 slightly under 4 FAR with everything included
22 that you see.

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1 COMMISSIONER TURNBULL: Following
2 up on Mr. Dettman's question, on Sheet A-1.22,
3 there's a patron's lounge up next to the fan
4 room. I didn't know you'd have that many
5 patrons looking at mechanical --

6 MR. GLASGOW: Exactly. That's
7 part of the reason why we've included
8 everything, so that we don't have an issue
9 with part of it's a mechanical room, part of
10 it's occupiable space. We just didn't want to
11 have all of those issues. We're way under
12 FAR, way under height, don't need to try to
13 take any exceptions or parse that as to what's
14 going on with what use, where, within that
15 level.

16 COMMISSIONER TURNBULL: Okay.

17 BZA VICE CHAIR LOUD: I just want
18 to clarify some of the numbers that we're
19 using at today's hearing and some of the same
20 numbers in the record.

21 I think in the record, it was
22 suggested that the height was, I think, 66.5

1 feet and that the required rear yard was 13.8,
2 but I heard this morning that the actual
3 height is 79.5 feet. So I'm just trying to
4 reconcile. Either I'm misunderstanding part
5 of the discussion or should those numbers be
6 adjusted?

7 MR. GLASGOW: Those numbers should
8 be adjusted.

9 BZA VICE CHAIR LOUD: Okay.

10 MR. GLASGOW: We agree that those
11 numbers should be adjusted. I would suggest
12 that building height should be at the 79 feet
13 which is the absolute highest point of, I'll
14 call it, the mechanical enclosure and
15 therefore the rear yard will be -- somebody --
16 16.5 feet. The required rear yard would be
17 16.5 feet instead of I think it's 13.8 feet.

18 BZA VICE CHAIR LOUD: Okay. Thank
19 you.

20 MR. GLASGOW: Thank you.

21 MEMBER DETTMAN: And just quickly
22 going back to that staircase, from a design

1 perspective and viewed from the street, it
2 almost looks like you're not going to really
3 know it's there. It looks like it's kind of
4 incorporated into the architectural
5 embellishment with the same finishes and
6 everything.

7 MR. MARTINEZ: That is true. You
8 won't -- it would be buried within that
9 easternmost portion of the building and we've
10 picked those two corners because we have a
11 requirement to try and separate those stairs
12 from a point of fire life safety as much as
13 possible.

14 CHAIRPERSON MILLER: any other
15 questions?

16 (No response.)

17 CHAIRPERSON MILLER: Do you have
18 any other witnesses?

19 MR. GLASGOW: Well, we have Ms.
20 Cooper and she may or may not be dying to say
21 something, now that's she an expert witness,
22 but --

1 CHAIRPERSON MILLER: Fine. We've
2 got time.

3 MR. GLASGOW: Or do you have any
4 questions?

5 CHAIRPERSON MILLER: I don't hear
6 any more questions from the Board at this
7 time.

8 MR. GLASGOW: Okay. Then I think
9 that we'll rest on the record.

10 CHAIRPERSON MILLER: You're going
11 to rest? Ms. Cooper's not going to say
12 anything?

13 MR. GLASGOW: Only if she needs to
14 to save the case. Thank you.

15 CHAIRPERSON MILLER: Are we
16 missing something?

17 Okay. Any other witnesses?

18 (No response.)

19 CHAIRPERSON MILLER: All right.
20 Then why don't we turn to Office of Planning?

21 MR. MORDFIN: Good morning. I'm
22 Stephen Mordfin with the Office of Planning,

1 and the subject application is in conformance
2 with the provisions of Section 774.2 in that
3 no apartment windows will be affected and
4 sufficient light and air will be available to
5 all office windows as they are located either
6 across G Street or across a public alley.

7 2. No residential uses are
8 affected. 3. No parking is required because
9 the subject property is a historic resource.
10 And 4. No loading is required also because
11 it's an historic resource. And 5. DDOT had
12 no comments on the application, DHCD provided
13 no comments, and HPRB gave conceptual approval
14 of the design.

15 Therefore, the Office of Planning
16 recommends approval of the subject application
17 as it is in conformance with the criteria
18 necessary for the granting of a special
19 exception to waive the rear yard requirements.

20 Thank you.

21 CHAIRPERSON MILLER: Thank you.

22 Any questions for Office of Planning?

1 (No response.)

2 CHAIRPERSON MILLER: Okay. Does
3 the Applicant have a copy of the Office of
4 Planning's report?

5 MR. GLASGOW: Yes, we have. We've
6 reviewed the report.

7 CHAIRPERSON MILLER: And do you
8 have any questions for Office of Planning?

9 MR. GLASGOW: No, we do not.

10 CHAIRPERSON MILLER: Okay. Is the
11 ANC here in this case?

12 (No response.)

13 CHAIRPERSON MILLER: Not seeing
14 anybody come forward, I would note that we
15 have a letter from the ANC, dated June 24th,
16 2008, and it's our Exhibit Number 26, and in
17 which it's reflected that ANC-2F voted 5 to 0
18 in support of the application, finding that it
19 was in harmony with the general purpose and
20 intent of the Zoning regulations and maps and
21 won't tend to affect adversely the use of
22 neighboring property and that there'd be

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1 sufficient light and air to the building
2 through its frontage on G and the public alley
3 to its rear and there are no residential units
4 or habitable rooms affected by or included in
5 the proposal. Okay. So we have that.

6 Anybody here who wishes to testify
7 in support of the application?

8 (No response.)

9 CHAIRPERSON MILLER: Anybody here
10 who wishes to testify in opposition?

11 (No response.)

12 CHAIRPERSON MILLER: Okay. Not
13 hearing from anyone, closing remarks from the
14 Applicant.

15 MR. GLASGOW: The only closing
16 remark, Madam Chair, is that we'd like to have
17 resolution of this case today, if we could, by
18 the Board.

19 CHAIRPERSON MILLER: Okay. I
20 think that's possible. The record is very
21 full on this case and we have not -- we don't
22 have any unresolved questions as far as I can

1 see, and is the Board ready to deliberate?

2 BZA VICE CHAIR LOUD: I have one
3 question.

4 CHAIRPERSON MILLER: Oh, there's
5 still a question. Go ahead.

6 BZA VICE CHAIR LOUD: Very brief
7 question for Mr. Glasgow. With the revision
8 of the height from 66.5 feet to 79.5 feet, and
9 I just don't know the answer to this question,
10 and then taking a look at Section 2120.3,
11 where because it's an historic property, you
12 get a parking exemption if the GFA increase is
13 less than 50 percent, and your pleading
14 submission said it was 30 percent, --

15 MR. GLASGOW: That's correct.

16 BZA VICE CHAIR LOUD: -- and the
17 parking requirement is less than four, does
18 the GFA change any with the increase in height
19 now, with the height not being 66.5 feet, with
20 being 79.5 feet, and if it does change, --

21 MR. GLASGOW: Would not change.

22 BZA VICE CHAIR LOUD: It would not

1 change?

2 MR. GLASGOW: It would not change
3 those computations. It's a very small area.
4 It's a few hundred square feet.

5 BZA VICE CHAIR LOUD: Okay. Thank
6 you.

7 CHAIRPERSON MILLER: Okay. If
8 there aren't any further questions, then I
9 would suggest that we deliberate on this
10 application, and I would suggest that we can
11 do this under motion.

12 I would move approval of
13 Application Number 17792 of Armenian Genocide
14 Museum and Memorial, Inc., pursuant to 11 DCMR
15 Section 3104.1, for a special exception from
16 the rear yard requirements under Subsection
17 774.2, to establish a museum and memorial at
18 615 14th Street, N.W.

19 BZA VICE CHAIR LOUD: Second,
20 Madam Chair.

21 CHAIRPERSON MILLER: Okay. I
22 think this is an extremely straightforward

1 case as indicated by Office of Planning's
2 report and our lack of questions on this.
3 It's an exciting project in an historic land
4 mark that's finally being put to use after 20
5 years.

6 We look at specific standards in
7 our regs to determine the question here and
8 they're under 774.2 which says we can waive
9 the rear yard requirements of this section,
10 provided that certain provisions are met.

11 Office of Planning went through
12 them very succinctly and on point and the
13 Applicant also addressed them. We can
14 highlight some of them. Basically, it's not
15 affecting the air and light of any apartments
16 or offices. No apartment windows are affected
17 by this proposal and nor are office windows.
18 There's no additional parking required or
19 loading because this is an historic landmark
20 and it's not -- they're not increasing to the
21 extent that it would trigger any further
22 parking or loading requirements.

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1 DDOT didn't have any concerns.
2 HPRB has given conceptual approval. It's
3 certainly in accordance with character of the
4 neighborhood. It's in harmony with the
5 general purpose and intent of the Zone regs.

6 Applicant has shown, you know, why
7 they're doing it. It's for life safety, fire
8 concerns, and provide access also into the
9 building under ADA requirements, and I think
10 it covers all the regulations. I don't see
11 any concerns.

12 Do others have comments?

13 BZA VICE CHAIR LOUD: Did you
14 mention the ANC support for the project?

15 CHAIRPERSON MILLER: right. We
16 did read into the record Exhibit 26, but
17 that's right, it's a unanimous support by the
18 ANC, and there's no opposition in this case.

19 Anything else?

20 (No response.)

21 CHAIRPERSON MILLER: Okay. All
22 those in favor, say aye.

1 (Chorus of ayes.)

2 CHAIRPERSON MILLER: All those
3 opposed?

4 (No response.)

5 CHAIRPERSON MILLER: All those
6 abstaining?

7 (No response.)

8 CHAIRPERSON MILLER: And would you
9 call the vote, please?

10 MS. BAILEY: Madam Chair, the vote
11 is recorded as 5-0-0 to grant the application.
12 Mrs. Miller made the motion, Mr. Loud
13 seconded, Mr. Turnbull, Mr. Dettman, and Mrs.
14 Walker support the motion.

15 CHAIRPERSON MILLER: Okay. And
16 this can be a summary order as there is no
17 party in opposition.

18 MS. BAILEY: Thank you.

19 CHAIRPERSON MILLER: Okay.

20 MR. GLASGOW: Thank you. And this
21 -- our statement was prepared by Ms. Cooper,
22 so that essentially was her testimony.

1 CHAIRPERSON MILLER: Well, it was
2 excellent. Thank you very much.

3 COMMISSIONER TURNBULL: I was
4 going to say that this was actually the first
5 memorial museum that I've had to review not
6 sitting on the Memorial Commission.

7 CHAIRPERSON MILLER: Is there
8 anything else on our agenda for this morning,
9 Ms. Bailey?

10 MS. BAILEY: No, Madam Chair, not
11 for the morning.

12 CHAIRPERSON MILLER: Okay. Then
13 this hearing is adjourned.

14 (Whereupon, the proceedings were
15 recessed at 11:58 a.m. to reconvene at 1:30
16 p.m. this same day.)

17
18
19
20
21
22

1:27 p.m.

afternoon. This hearing will please come to order. This is the July 8th, 2008, Afternoon Public Hearing of the Board of Zoning Adjustment for the District of Columbia.

To my left is Mary Oates Walker and Shane Dettman, Board members. Cliff Moy, Office of Zoning. Lori Monroe, Office of Attorney General. Ms. Beverly 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 aware that this proceeding is being recorded by a court reporter and is also webcast live.

1 Accordingly, we must ask you to refrain from
2 disruptive noises or actions in the hearing
3 room.

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

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

19 The order of procedure for special
20 exceptions and variances is as follows.
21 First, statement and witnesses of the
22 applicant. Second, government reports,

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

7 Pursuant to Sections 3117.4 and
8 3117.5 of the Zoning regulations, the
9 following time constraints will be maintained.
10 The applicant, persons and parties, except in
11 ANC in support, including witnesses, 60
12 minutes, collectively. Persons and parties,
13 except in ANC in opposition, including
14 witnesses, 60 minutes, collectively.
15 Individuals, three minutes.

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

1 Nothing prohibits the Board from
2 placing reasonable restrictions on cross
3 examination, including time limits and
4 limitations on the scope of cross examination.

5 The record will be closed at the
6 conclusion of each case, except for any
7 material specifically requested by the Board.
8 The Board and the staff will specify at the
9 end of the hearing exactly what is expected
10 and the date when the persons must submit the
11 evidence to the Office of Zoning. After the
12 record is closed, no other information will be
13 accepted by the Board.

14 The Sunshine Act requires that the
15 public hearing on each case be held in the
16 open before the public. The Board may,
17 consistent with the Rules of Procedure and the
18 Sunshine Act, enter executive session during
19 or after the public hearing on a case for
20 purposes of reviewing the record or
21 deliberating on the case.

22 The decision of the Board in these

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

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

9 The Board will make every effort
10 to conclude the public hearing as near as
11 possible to 6 o'clock p.m. If the afternoon
12 cases are not completed at 6, the Board will
13 assess whether it can complete the pending
14 case or cases remaining on the agenda.

15 At this time, the Board will
16 consider any preliminary matters. Preliminary
17 matters are those that relate to whether a
18 case will or should go forward today, such as
19 requests for postponement, continuance or
20 withdrawal, or whether proper and adequate
21 notice of the hearing has been given.

22 If you're not prepared to go

1 forward with the case today or if you believe
2 that the Board should not proceed, now is the
3 time to raise such a matter.

4 Does the staff have any
5 preliminary matters?

6 MS. BAILEY: Madam Chair, good
7 afternoon, Members of the Board, to everyone.
8 No, staff does not have any preliminary
9 matters.

10 CHAIRPERSON MILLER: Okay. Then
11 would all individuals wishing to testify today
12 on any of the cases that are scheduled for
13 this afternoon please rise to take the oath,
14 and Ms. Bailey will administer it.

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

17 (Whereupon, the witnesses were
18 sworn.)

19 MS. BAILEY: Thank you.

20 CHAIRPERSON MILLER: Okay. Ms.
21 Bailey, then we're ready for the first case
22 when you are.

1 TAIWO DEMUREN

2 APPLICATION NO. 17796 - ANC-5A

3 MS. BAILEY: Madam Chair, the
4 first case is Application Number 17796 of
5 Taiwo Demuren, pursuant to 11 DCMR 3103.2, for
6 variances from the lot area and lot width
7 requirements under Section 401, and a variance
8 from the side yard requirements under Section
9 405. This is to construct a new one-family
10 detached dwelling in the R-1-B District at
11 premises 2212 Otis Street, N.E., Square 4242,
12 Lot 10.

13 And just a couple of really quick
14 matters, Madam Chair. The Board is in receipt
15 of two requests for party status in opposition
16 to the application and then, lastly, the
17 property was posted for 11 days. As you know,
18 15 days are required.

19 CHAIRPERSON MILLER: Okay. Would
20 the Applicant come to the table, please? Is
21 the Applicant here?

22 MS. BAILEY: Mr. Demuren? I'm

1 sorry. We just called your case.

2 CHAIRPERSON MILLER: Is someone
3 here from the ANC? And could you come to the
4 table, also? Thank you. And also the two
5 individuals and their attorney who are seeking
6 party status in this case.

7 Okay. Why don't we start with
8 introductions, starting with the Applicant,
9 then the ANC, and then the party status
10 applicants and their attorney?

11 MR. AGBIM: My name is Ike Agbim,
12 9611 Cedar Hollow Lane, Largo, Maryland
13 20774. I'm the agent for the Applicant.

14 CHAIRPERSON MILLER: Okay. And
15 the ANC?

16 MS. SMITH: Good afternoon. My
17 name is Shirley Rivens Smith. I'm the
18 Commissioner for 5A09.

19 CHAIRPERSON MILLER: And can you
20 give your address, also?

21 MS. SMITH: I'm sorry. 2000
22 Upshur Street, N.E., Washington, D.C. 20018.

1 CHAIRPERSON MILLER: Thank you.

2 MS. McALISTER: I'm Linda
3 McAlister, and I reside at 2216 Otis Street,
4 and I am a party to this matter.

5 CHAIRPERSON MILLER: Party status
6 applicant this point?

7 MS. McALISTER: Yes, I would like
8 to be a party.

9 CHAIRPERSON MILLER: Okay. Thank
10 you.

11 MR. HAER: My name is Stephen
12 Haer. I reside at 2210 Otis Street, N.E., and
13 I'm also a party applicant.

14 MR. MARCUS: My name is Stephen
15 Marcus. I'm counsel for Ms. McAlister and Mr.
16 Haer. My office is located at 1730 Rhode
17 Island Avenue, N.W., in Washington.

18 CHAIRPERSON MILLER: Okay. As Ms.
19 Bailey said, we have two preliminary matters
20 before we get into the merits of this case,
21 and one is the applications for party status
22 and then the other is the posting, and I want

1 to start with the applications for party
2 status.

3 Is it correct that both of you
4 live on either side of the subject property,
5 is that correct?

6 MR. MARCUS: That's correct.

7 CHAIRPERSON MILLER: Okay. And
8 it's your position you're being equally
9 impacted because of your proximity to the
10 property?

11 MR. MARCUS: Yes. Yes, that's
12 correct.

13 CHAIRPERSON MILLER: Okay. Do you
14 want to say anything else? I know you filed
15 something in writing anyway.

16 MS. McALISTER: Yes, ma'am, and
17 also I'm uniquely affected because I have a
18 Champion large oak tree in my backyard that's
19 a part of my property.

20 CHAIRPERSON MILLER: Any questions?

21 (No response.)

22 CHAIRPERSON MILLER: Okay. Are

1 there any objections to the party status
2 applications by the Applicant or the ANC?

3 MR. AGBIM: No.

4 CHAIRPERSON MILLER: Okay. Any
5 objections of the Board members?

6 (No response.)

7 CHAIRPERSON MILLER: Okay. It
8 seems very clear from the papers that you're
9 impacted by this application.

10 Now, is it your intent, though, to
11 proceed together and present one case? Mr.
12 Marcus will be representing the two of you as
13 one party basically?

14 MR. MARCUS: Yes, both Ms.
15 McAlister and Mr. Haer will testify but will
16 do it together and I'll represent both of
17 them, and I'd like to have a few minutes at
18 the end just to make some comments to the
19 Board on behalf of both parties.

20 CHAIRPERSON MILLER: Okay. Let me
21 tell you how it will work. I read the Rules
22 of Procedure, but, you know, a lot of times

1 people don't -- it kind of glosses over at the
2 beginning. You, as they will be a party, you
3 will have the opportunity to present a case
4 for them, basically present the opposition.
5 You'll have an opportunity to cross examine
6 witnesses.

7 The only thing is I believe the way
8 our regulations go, the Applicant has the last
9 word at the end. So I just want to let you
10 know that at the very end, you won't have a
11 last word. You'll have to have your last word
12 earlier after you present your case. I'll let
13 you know when that is.

14 MR. MARCUS: Well, I understand
15 that the Applicant has the last word. I just
16 want to make sure that after the witnesses
17 testify, before Applicant makes its closing
18 remarks, there are a few minutes left for me
19 simply to make sort of a legal presentation to
20 the Board.

21 CHAIRPERSON MILLER: Right, right.
22 Okay. So we know you want to do that, and

1 I'll just be sure to let you know when the
2 right time is.

3 MR. MARCUS: Thank you.

4 CHAIRPERSON MILLER: Okay. So
5 that's the party status. So you're being
6 granted party status and I just explained
7 somewhat what that's about, but that's very
8 different from just being able to testify.
9 You'll be testifying as part of your case and
10 your attorney can make arguments and cross
11 examine witnesses.

12 Okay. So the next preliminary
13 matter goes to posting. Does the Applicant
14 have an explanation with respect to -- did you
15 hear Ms. Bailey say that the notice was only
16 posted for 11 days and is required to have
17 been posted for 15?

18 MR. AGBIM: No, I didn't hear that.

19 CHAIRPERSON MILLER: Do you have an
20 explanation for that? Are you checking your
21 records?

22 MR. AGBIM: Yes.

1 CHAIRPERSON MILLER: Okay.

2 MR. AGBIM: To the best of my
3 knowledge, I believe that the signs were
4 received from the Office of Zoning on time.
5 The property owner posted the property
6 himself. I may have actually made an error in
7 filling out the application, may. So that's
8 my speculation at this point.

9 CHAIRPERSON MILLER: And it's your
10 testimony that you think that it was posted 15
11 days ahead of time but you may have -- there
12 may be an error in what was written on the
13 Affidavit of Posting?

14 MR. AGBIM: Yes, he may have filled
15 out the Affidavit based on the date he took
16 the picture. He may have done that. So I
17 truly believe that -- I think the property was
18 posted on time but the date of the picture, as
19 you can see, June 27th, I have a feeling that
20 he filled out the form based on that date.

21 CHAIRPERSON MILLER: Well, we have
22 abutting neighbors here. Do you recall when

1 the property was posted or when you saw the
2 posting?

3 MR. MARCUS: Well, because I
4 understand that the rules regarding that is
5 that it is 15 days before and, quite frankly,
6 I was, you know, keeping an eye on that and,
7 quite frankly, I don't believe that it was,
8 and I assumed that if it were not and I was
9 mistaken, that, you know, that information
10 would be brought up in the hearing. So.

11 CHAIRPERSON MILLER: All right.
12 Let me ask you this. There are a lot of
13 people here, I see. We can waive rules, too,
14 if we determine that there's no prejudice to
15 any party and there's good cause.

16 Basically, if we were to find that
17 -- if we were not to waive this, then we'd
18 reschedule the hearing and we would do that
19 based on the fact that we thought that there
20 wasn't adequate notice to the public to
21 participate.

22 So are there -- let me ask the ANC.

1 Do you -- in your opinion, was there adequate
2 notice of this hearing?

3 MS. SMITH: I did not see until --
4 let me just say I run past every morning. I
5 did not see the notice until week before last
6 which would have made around the 28th of June.
7 That was the first time that I actually saw
8 something on the property. I don't live on
9 that block. As a matter of fact, almost
10 everybody on that block is here today, so they
11 can very well say what it was.

12 CHAIRPERSON MILLER: That's kind of
13 where I'm heading, though.

14 MS. SMITH: Ma'am?

15 CHAIRPERSON MILLER: If -- okay.
16 There are other means of notice as well and if
17 everybody got notice who should have gotten
18 notice by some means or another, it wouldn't
19 pay to reschedule the hearing, that in fact
20 that might be difficult for a lot of people
21 who have rescheduled today to come out for a
22 hearing.

1 Yes?

2 MR. HAER: We've helped with the
3 notice in the neighborhood. So, I mean, we
4 have no objection.

5 CHAIRPERSON MILLER: Okay. Does
6 the ANC have any objection? Okay. Board
7 members?

8 (No response.)

9 CHAIRPERSON MILLER: All right.
10 We're going to go forward. We're convinced
11 that there was adequate notice, particularly
12 by this turnout.

13 Okay. So that's it for preliminary
14 matters. If there aren't any preliminary
15 questions, other than the ones we've dealt
16 with, we'll start with the Applicant's case.
17 Okay.

18 MR. AGBIM: This property, it's on
19 Otis Street, N.E., between 22nd and 24th
20 Street. The application is mainly for a
21 variance or variances from Sections 401.3 and
22 405.9.

1 The lot is 25-feet wide, short by
2 25 feet of the 50-foot required for this R-1-B
3 Zone. It's 159.69 feet deep. Therefore, we
4 have a less lot area less than the 5,000
5 square feet lot area that would be required
6 for matter of right lot allotment.

7 The property owner has come to the
8 Board to seek two variances, one from the side
9 yard requirement which would provide a four-
10 foot side yard on each side of the property
11 and also for a lot area which would have less
12 than what's required for building in this zone
13 which is 5,000 square feet.

14 The proposed structure is
15 compatible and designed with the buildings in
16 the area. Due to the narrow width of the lot,
17 the developer has proposed a 17-foot wide
18 building, 17-foot by 45-foot deep, which will
19 only allow us to have two side yards of four
20 feet from the property line, from both
21 property lines.

22 We believe that this narrowness of

1 the lot is unique and provides special
2 hardship for the developer simply because if
3 we were to provide two side yards of 16 feet,
4 of eight feet each, which would total out to
5 16 feet, we'd only have nine feet left for
6 construction of the single-family detached
7 dwelling that's allowed in this zone.

8 This is the proof of the test for
9 hardship and uniqueness for this property.

10 We also believe that granting this
11 application will not be a substantial
12 detriment to public good. The original
13 application filed was designed with a full
14 basement. Subsequently, we found out due to
15 the problems associated with the trees in the
16 area, the design was revised to only have a
17 building with two levels above grade and
18 Signal 4 handout piers -- I mean six handout
19 piers.

20 These piers -- we use all the piers
21 as a structural support will eliminate
22 excessive excavation on the site which will

1 disturb and lead to bringing of the heavy
2 equipment into the site. So this
3 concentration on design change was made by the
4 owner in order to reduce and completely
5 eliminate the impact of the proposed building
6 with construction and the design on the
7 property.

8 We have taken into cognizance the
9 fact that the trees have root areas and we
10 have met those in place to allow the
11 introduction and reintroduction of water into
12 the root areas in order to reduce the impact
13 on the property, on the neighboring
14 properties.

15 We also believe that due to the
16 provision of the off-street parking in the
17 rear of the property, 19x20 -- nine feet by 20
18 as required by D.C. Code, that would be
19 minimal impact to traffic parking in the area.

20 This design, as proposed, will also
21 be very consistent with the character of the
22 neighborhood. Like we mentioned earlier, this

1 zone is zoned the R-1-B Zone, so single-family
2 structure, which this is. It's a detached
3 structure. It's two levels. It's got a brick
4 front and siding and it will generally be
5 compatible with the type of buildings and uses
6 in this area.

7 With this summary introduction, I
8 wish to pass on. I wish to conclude my
9 initial presentation.

10 CHAIRPERSON MILLER: Okay. All
11 right. Maybe we'll start with a few Board
12 questions and then the other parties can
13 cross.

14 MEMBER WALKER: With respect to
15 character of the neighborhood, I thought that
16 I saw in the file that this house juts further
17 out in the front than the other houses on the
18 block, is that true?

19 MR. AGBIM: Yes, this is one of the
20 incorrect assertions on the statement by the
21 attorney.

22 Our property in fact is in line

1 with the property next door on the right side
2 which is 2216 and two other properties on the
3 right side of the property, but we also set
4 far up front from the property on the left
5 which is 2212 by a few feet.

6 MEMBER WALKER: We're talking about
7 the structure itself. The structure is --
8 you're saying the structure is further out
9 front from the house on the left but not on
10 the house on the right?

11 MR. AGBIM: No, it's on the -- in
12 line with the house on the right.

13 MEMBER WALKER: With respect to --

14 ZC VICE CHAIR JEFFRIES: Excuse me.
15 Could you give --

16 CHAIRPERSON MILLER: Oh, go ahead.

17 ZC VICE CHAIR JEFFRIES: --
18 addresses with respect to left to right? They
19 could be any one.

20 MR. AGBIM: Okay. The house on
21 the right is 2216 and the one on the left is
22 2212.

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1 ZC VICE CHAIR JEFFRIES: Just in
2 the future, just say the address. Thank you.

3 MR. AGBIM: Thank you.

4 CHAIRPERSON MILLER: There's also
5 questions raised with respect to how unique
6 the lot is. I think that you've described it
7 certainly as exceptionally narrow because of
8 the 25 feet.

9 Are there a lot of other lots in
10 the area that also are that narrow?

11 MR. AGBIM: I believe there are one
12 or two other lots, one on 24th Street, that is
13 25-feet wide.

14 CHAIRPERSON MILLER: So you're
15 saying it's just one or two?

16 MR. AGBIM: Yes.

17 CHAIRPERSON MILLER: One or two
18 within what radius? In what area are you
19 looking at?

20 MR. AGBIM: I believe within 200
21 feet radius.

22 CHAIRPERSON MILLER: Okay. And so

1 it's your position that the lot is of such a
2 size that you couldn't build on it without
3 variance relief, --

4 MR. AGBIM: Yes.

5 CHAIRPERSON MILLER: -- is that
6 correct? But could you sell it?

7 MR. AGBIM: Anything can be sold,
8 ma'am.

9 CHAIRPERSON MILLER: Anything can
10 be sold, really?

11 MR. AGBIM: I'm sorry. Any
12 property can be sold. Any property can be
13 sold.

14 CHAIRPERSON MILLER: Okay. Other
15 questions from Board members?

16 ZC VICE CHAIR JEFFRIES: Just a
17 quick question. You have the Office of
18 Planning's report in front of you. Can you go
19 -- turn to Page 2. You have an illustration
20 of Square 4242, and I'm -- can you find Lots
21 4 and 5? Are those separate lots? Do you
22 know that? I mean, I could see -- a number of

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1 the lots have been coupled and have one house
2 on them, but I just can't determine what's
3 happening there.

4 MR. AGBIM: It appears that Lot 4
5 and 5 have two semi-detached structures on
6 them.

7 ZC VICE CHAIR JEFFRIES: Oh, so
8 it's two. Okay.

9 MR. AGBIM: Right.

10 ZC VICE CHAIR JEFFRIES: So they're
11 attached. They have a party wall in the
12 middle and then -- okay.

13 In terms of the mitigation
14 approaches that you'll have to deal with in
15 terms of trying to preserve or save the trees,
16 is that considerable cost on to the
17 construction of the house?

18 MR. AGBIM: Yes, that requires
19 special steps to make sure that the trees are
20 well protected and the construction of the
21 structure does not impact the land and exert
22 any additional pressure on the land.

1 ZC VICE CHAIR JEFFRIES: So how
2 much costs would you say, would you estimate?

3 MR. AGBIM: Considerably over 15
4 percent.

5 ZC VICE CHAIR JEFFRIES: 15
6 percent?

7 MR. AGBIM: Over 15 percent.

8 ZC VICE CHAIR JEFFRIES: Of the
9 overall cost of the house?

10 MR. AGBIM: Yes.

11 ZC VICE CHAIR JEFFRIES: Okay.
12 That's it for me for now, Madam Chair.

13 CHAIRPERSON MILLER: I have one
14 other question. It's my understanding that
15 you made revisions in light of Urban Forestry
16 Administration's concerns, is that right?

17 MR. AGBIM: Yes.

18 CHAIRPERSON MILLER: And have you
19 shown your revision to Urban Forestry?

20 MR. AGBIM: Yes, we have.

21 CHAIRPERSON MILLER: And you have
22 comments back from them?

1 MR. AGBIM: We do have comments in
2 the form of an e-mail that was sent out a few
3 days ago to Office of Planning. I was
4 privileged to get a copy of that.

5 CHAIRPERSON MILLER: Okay. Board
6 hasn't seen that. I don't know if you want to
7 put it in the record or not, but the Board
8 doesn't have in its record comments from them
9 based on your revisions.

10 MR. AGBIM: Yes, what has happened
11 is that the arborist at the Urban Forestry
12 came up with concerns and we believe that the
13 reason why the neighbors have hired an
14 attorney and are objecting to the project is
15 because of the trees.

16 We do in fact believe that that's
17 the only reason why they're objecting to this
18 project. So what we've done in the meantime
19 is we've hired another arborist to work on our
20 behalf and give us advice and we've hired a
21 structural engineer.

22 Now our structural engineer came up

1 with a revised foundation method in order to
2 begin to address some of the concerns that
3 they have raised through the attorney and
4 which mainly was sent to the trees. They said
5 that the trees would die in five years and we
6 tried everything possible to address that by
7 removing the basement which would
8 substantially remove any machine excavation
9 that would necessarily go on the site.

10 We've also -- the owner has also
11 agreed to do hand digging only and to stage
12 the materials that will be used for structural
13 work on the site outside the site so that that
14 will make sure to ensure that tree protection
15 is maintained during construction and also to
16 make sure that the trees don't die, even the
17 trees on the street and across the alley in
18 the rear.

19 So these measures are things that
20 the owner of the property is willing to
21 undertake, even though they will cost him much
22 more, to develop this small property. It will

1 cost him much more, but he's willing to do
2 that to make sure that the trees don't die
3 which we believe is the reason why the
4 neighbors are in opposition to this
5 application.

6 CHAIRPERSON MILLER: So do you have
7 any evidence in the record to give us from an
8 arborist with respect to the conclusion that
9 the measures that are planned will prevent the
10 trees from dying?

11 MR. AGBIM: We in fact received the
12 official report on the 27th of June and we
13 haven't had enough time to have our arborist
14 develop this report which we can in a few
15 days.

16 CHAIRPERSON MILLER: What official
17 report are you referring to?

18 MR. AGBIM: The report we received
19 from D.C. Urban Forestry Administration was
20 issued on the 27th of June 2008.

21 CHAIRPERSON MILLER: Office of
22 Planning wants to comment on this, even though

1 we haven't gotten to Office of Planning yet.

2 That's fine. Yes?

3 MS. THOMAS: Madam Chair, good
4 afternoon. Karen Thomas for the record,
5 Office of Planning.

6 We did get that e-mail. We haven't
7 been able to share it with the Board in time.
8 I've asked for some copies to be made for you.

9 CHAIRPERSON MILLER: Okay. How
10 about the other parties here, have they seen
11 it? They would be the ANC and then the
12 neighbors.

13 MS. THOMAS: No, I don't believe
14 so. I shared it with the opponents' attorney.

15 CHAIRPERSON MILLER: Okay. We're
16 going to make enough copies so that all the
17 parties have this.

18 MS. THOMAS: This is in e-mail
19 format. It's not the report that's attached
20 to the back of the report. It's additional
21 comments made on the amendments that he
22 proposed, the Applicant proposed.

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1 CHAIRPERSON MILLER: Okay. So, Mr.
2 Marcus, is this the first time you're seeing
3 this e-mail? You need to get on the mike to
4 answer.

5 MR. MARCUS: No, we received the e-
6 mail yesterday.

7 CHAIRPERSON MILLER: But the ANC
8 hasn't seen it yet? Okay.

9 MS. THOMAS: Just wanted to
10 reiterate that we received this e-mail after
11 we filed the reports and everything else.

12 CHAIRPERSON MILLER: Okay. Are
13 there any other Board questions at this time?

14 ZC VICE CHAIR JEFFRIES: Yes, I do
15 have one question. So in terms of the width
16 of this house, which is 17 feet exterior wall
17 to exterior wall, what's the interior
18 dimension? I don't think that's -- I thought
19 I saw 17. Is it like 16 and --

20 MR. AGBIM: It will be 16 foot
21 three clear.

22 ZC VICE CHAIR JEFFRIES: Did you --

1 is that the absolute minimum width that you
2 could have that could, you know, make the
3 house desirous in terms of livability and so
4 forth?

5 MR. AGBIM: That's correct.

6 ZC VICE CHAIR JEFFRIES: You don't
7 know of a house that could be 15 feet in
8 width?

9 MR. AGBIM: Well, I've seen houses
10 that are even 12 feet in width, but the
11 reality is that to have sufficient air and
12 light within the property and around the
13 property and proper circulation that will not
14 impose further hardship on the owner, we
15 believe that 17 feet will be a good width for
16 the property exterior dimensions.

17 ZC VICE CHAIR JEFFRIES: Okay. And
18 then the other question, I have a letter here
19 from a Jimmy Rich and he is in opposition to
20 the application, but his Point Number 3, it's
21 Exhibit 30 -- okay.

22 Well, it says that the owner of

1 2212 Otis Street blatant disregard of the
2 neighborhood by not attending ANC meetings and
3 informing the community regarding the
4 intention to build on this small lot.

5 Do you want to comment on that?

6 MR. AGBIM: The property owner was
7 supposed to accompany me to the ANC meeting
8 but unfortunately had a family emergency at
9 the last minute and when I went to the
10 hearing, the ANC meeting, I did also express
11 that to them, that his intent was to be there
12 at the meeting because he felt there were some
13 issues he needed to -- he would be able to
14 personally clarify, but unfortunately he
15 wasn't able to attend.

16 ZC VICE CHAIR JEFFRIES: But you
17 were representing in his stead?

18 MR. AGBIM: Yes, I --

19 ZC VICE CHAIR JEFFRIES: I mean --
20 okay.

21 MR. AGBIM: -- duly represent him.

22 ZC VICE CHAIR JEFFRIES: Okay. So

1 there has always been some level of
2 representation at every ANC meeting --

3 MR. AGBIM: Yes.

4 ZC VICE CHAIR JEFFRIES: -- and
5 community meeting related to this development?

6 MR. AGBIM: Yes, sir.

7 ZC VICE CHAIR JEFFRIES: Okay.

8 Thank you.

9 CHAIRPERSON MILLER: Any other
10 Board questions right now?

11 (No response.)

12 CHAIRPERSON MILLER: Okay. How
13 about the ANC? Any cross examination?

14 MS. SMITH: I just want to announce
15 that when you did come to the ANC meeting, but
16 he could hardly answer any question. When the
17 citizens continued to ask questions, he
18 continued to come up with I'll get back to
19 you, I'll get back to you.

20 So we have not had any cross
21 discussion with him about the property because
22 we were expecting -- I called the owner twice

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1 and I spoke to him the second time and he said
2 he would come that day. Now he knew well in
3 advance that we were having the meeting.

4 Mr. Agbim did show up at the
5 meeting, but he was not prepared for the
6 audience that he was coming to confront that
7 evening about the property at 2212. So I
8 didn't see that we had that kind of discussion
9 where the -- I mean what he's reading today
10 was just about what he read, but it was no
11 answering of questions where the neighbors
12 really wanted some answers about the property.

13 CHAIRPERSON MILLER: Okay.
14 Basically this is the time for you to ask
15 questions, though, and then you can give
16 further testimony, you know, when we get to
17 the ANC. Do you have more questions for him
18 about what he's testified to?

19 MS. SMITH: Well, I walked around
20 that property and, I mean, I've seen the tree,
21 I know where the tree is, and I see the 17
22 feet, and I've walked up and down that block.

1 Most of the people sitting in the audience
2 here live on that block.

3 There is not another house -- I
4 know the small house he's talking about and
5 I'm hoping -- I was hoping the neighbor that
6 owned that house would be here today because
7 water's running off into -- that property has
8 problems with electricity, has problems with
9 water, so, you know, runoff.

10 The house was built, I don't know,
11 maybe 20 or 30 years ago in that neighborhood,
12 but this neighborhood is a solid neighborhood
13 in the community. It is well-mannered
14 neighborhood in the community. We have people
15 in the community that believe that this
16 property will be a part of something that
17 would take the whole look from the community.

18 If you've ever been on that street,
19 people take pride in their property and look
20 very clearly about where they want to live and
21 why they bought houses there.

22 CHAIRPERSON MILLER: Okay. Let me

1 just tell you procedurewise, okay, it's the
2 time to ask questions.

3 MS. SMITH: Okay.

4 CHAIRPERSON MILLER: I'm going to
5 give you, you know, the platform, --

6 MS. SMITH: Okay.

7 CHAIRPERSON MILLER: -- but right
8 now, do you have any questions of the
9 Applicant?

10 MS. SMITH: No, I'd like to --

11 CHAIRPERSON MILLER: No, not right
12 now?

13 MS. SMITH: Not right now.

14 CHAIRPERSON MILLER: Okay, okay.
15 Not now. This is the opportunity. Okay.
16 Okay. I'll wait for you, if you think you
17 might in a minute. All right.

18 MS. SMITH: Well, let me just ask
19 about -- let me go back because he said about
20 the tree and the healthiness of the tree that
21 he had gotten a report, and the fact that we
22 had looked at and asked earlier about what the

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1 tree that -- the health of this tree.

2 This tree is, I mean, a big
3 beautiful tree and it sits over the property,
4 maybe a half inch or so over the property
5 line. So I'm just trying to see if this is
6 the case of you being able to build and even
7 using hand equipment to build the property.

8 This property will come back to sit
9 beside the house and the tree and so we just
10 are trying to see where in your lines that the
11 tree and the house will not -- the tree will
12 not be in danger but anyway of you building
13 the house.

14 MR. AGBIM: Thank you. First, I'd
15 like to clarify that during the ANC meeting,
16 the questions I did not answer were questions
17 relating to the purchase of the property.
18 There were a lot of questions about how the
19 owner bought the property and didn't tell the
20 neighbors and all this. I could not answer
21 those questions because I wasn't there for
22 that. The questions that I could answer were

1 more about the property.

2 Secondly, we have a diagram. We
3 hired a D.C. surveyor to survey the existing
4 properties on the site and to locate
5 officially the tree in question, the tree with
6 the 17-inch diameter. That diagram is -- it's
7 -- excuse me. I have a copy of it for the
8 record. It shows the location of the building
9 and the location of 2212 and 2216 and also
10 shows the big tree in question.

11 CHAIRPERSON MILLER: What are you
12 referring to? Is it in the record or is it
13 something new you're putting in the record?

14 MR. AGBIM: Yes, I'd like to.

15 CHAIRPERSON MILLER: Okay. Then
16 Ms. Bailey will make copies for all the
17 parties and the Board.

18 BZA VICE CHAIR LOUD: Mr. Agbim, is
19 what you're going to show us on Page 3 of
20 Office of Planning's report?

21 MR. AGBIM: Yes, sir, they're
22 identical.

1 BZA VICE CHAIR LOUD: Yes, so just
2 take a look at that.

3 ZC VICE CHAIR JEFFRIES: Does the
4 Commissioner -- do you have a copy of the
5 Office of Planning's report? The only thing
6 I've got was Page 1 and 2 that was just passed
7 out.

8 BZA VICE CHAIR LOUD: Oh, okay.

9 ZC VICE CHAIR JEFFRIES: So we have
10 to have it. There's not a Page 3.

11 BZA VICE CHAIR LOUD: I think --

12 ZC VICE CHAIR JEFFRIES: This is
13 what he sent. This is the third page.

14 BZA VICE CHAIR LOUD: Okay. Yes,
15 okay. Fine.

16 ZC VICE CHAIR JEFFRIES: May I ask
17 one more question?

18 CHAIRPERSON MILLER: Is he still
19 answering a question, though? Are you
20 answering one of our questions?

21 MR. AGBIM: My conclusion was that
22 the diagram which is passing around.

1 CHAIRPERSON MILLER: Right.

2 MR. AGBIM: Just to clarify the
3 location of the building relative to the tree.

4 CHAIRPERSON MILLER: Okay. This is
5 a question? Okay.

6 MS. SMITH: The fence -- the
7 property line, I think in the package that
8 Zoning sent us, they had the picture there and
9 there's a fence.

10 Tell me where this property would
11 be -- excuse me -- located to this fence.

12 MR. AGBIM: I think they are here
13 to explain.

14 MS. SMITH: I understand, but it's
15 the -- I have this, but I'm saying is this
16 fence, is this 15-BRL, is that the fence?

17 MR. AGBIM: No. The fence, the
18 white fence is the line that runs right next
19 to the shed, another one that runs on the
20 shed, because the shed is on the property
21 line. The fence runs inside the subject
22 property, Lot 10, and runs sort of a little

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1 bit skewed off towards the back and the alley.

2 MS. SMITH: No, maybe I'm
3 misunderstanding. There's a fence in front of
4 this property. There's a fence in front of
5 this property of 2212 and there's been a fence
6 there for years.

7 Now I'm saying is your property
8 line, is your house -- where's your house
9 proposed in reference to looking at the fence
10 of this house?

11 ZC VICE CHAIR JEFFRIES: Excuse me.
12 Are you referring to the white fence or the --

13 MS. SMITH: No, the chain --

14 ZC VICE CHAIR JEFFRIES: The
15 chainlink fence. Oh, okay.

16 MS. SMITH: In the front of the
17 property.

18 MR. AGBIM: Sorry about that.
19 Okay. The chainlink fence.

20 MS. SMITH: Okay. I see. I'm
21 trying to figure out where is he with that.
22 That's it.

1 MR. AGBIM: The chainlink fence is
2 actually shown on the survey plan. It runs
3 east-west. There's a notice that says "post"
4 on the drawing that she passed on to you. It
5 says "post."

6 MS. SMITH: Okay. I see the post.
7 Okay.

8 MR. AGBIM: It's right here.

9 MS. SMITH: That's where it is?

10 MR. AGBIM: It runs from the post
11 east-west to the right towards 2216.

12 MS. SMITH: Boy, you're coming a
13 long -- okay. Okay. Thank you.

14 One more question. Then if that's
15 the case, if this is the post and 2216 is to
16 the right of that, and you have 2216 coming in
17 almost the back of the house, and 2216, this
18 chain fence comes at the porch, it starts at
19 the porch, it doesn't start at the back of the
20 house. So I'm just trying to see if this is
21 the case, then how are you taking the diagram
22 and having it almost at the middle of the back

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1 of the house rather than at the front of the
2 house where the porch is because that's where
3 the chain fence comes off at her porch.

4 She walks down her steps and
5 there's a chain fence. So it's on her porch.
6 It's not on the part of the house. That's why
7 I was confused by what you were saying.

8 MR. AGBIM: Is that a question you
9 want me to answer?

10 MS. SMITH: Yes, sir.

11 MR. AGBIM: Okay. The picture that
12 I see here shows the chainlink fence meeting
13 2216 on the side, not on the porch. I don't
14 know. I mean that's the picture that I see
15 here of the property and it's fairly
16 consistent with the survey because the survey
17 shows the chainlink fence meeting 2216 on the
18 side past -- set back away from the porch.

19 ZC VICE CHAIR JEFFRIES:
20 Commissioner, are you looking at the top photo
21 or the bottom photo?

22 MS. SMITH: I'm looking at both of

1 the photos and -- nor the house.

2 CHAIRPERSON MILLER: Commissioner,
3 you need to talk into the microphone.

4 MS. SMITH: I was looking at the
5 top and the back. In looking at the diagram
6 where he has the posts almost in the middle of
7 the house relevant at the front part of the
8 house and so either one of these chain fence,
9 if you look at it, it comes to the front of
10 the house. It doesn't go to the middle of the
11 house.

12 ZC VICE CHAIR JEFFRIES: Well, the
13 only reason I wanted to say because the top
14 photograph looks somewhat -- looks like the
15 points you're making, but the bottom
16 photograph, it does seem like that post is
17 going somewhere in the middle of the house, I
18 mean just how I'm looking at this.

19 I can see from the top photo, it --
20 well, even from the top photo, it just seems
21 that these photographs look somewhat accurate
22 to what's been shown here.

1 These -- excuse me. Applicant, I
2 mean Mr. Agbim, these -- this is a survey.
3 This has been done by --

4 MR. AGBIM: Yes, it was done by
5 D.C. licensed surveyor. So it's pretty
6 accurate.

7 ZC VICE CHAIR JEFFRIES: Not that
8 they can't make mistakes, but -- so I just --
9 I don't mean to interrupt your questioning,
10 but I'm just looking at the photos and it
11 seems like, particularly in the bottom photo,
12 that that post is hitting somewhere in the
13 middle of that house and not on the other side
14 of the front porch from how I'm seeing it. I
15 mean, you know.

16 MS. SMITH: Okay. That's not --

17 ZC VICE CHAIR JEFFRIES: But
18 continue with your questioning.

19 MS. SMITH: No, I just wanted to
20 make sure --

21 ZC VICE CHAIR JEFFRIES: I was
22 trying to --

1 MS. SMITH: I just didn't know
2 where the fence was to the house and when I
3 looked at this, I didn't understand what he
4 meant by post. So I didn't --

5 ZC VICE CHAIR JEFFRIES: Right,
6 right.

7 MS. SMITH: So when I -- I asked
8 because I thought he was talking about the 15-
9 inch BRL near the front. So I didn't
10 understand what he meant by that, but that's
11 what I was asking the question about.

12 ZC VICE CHAIR JEFFRIES: Okay.

13 MS. SMITH: For my own
14 understanding.

15 ZC VICE CHAIR JEFFRIES: Madam
16 Commissioner, do you have any other questions
17 for --

18 MS. SMITH: No.

19 ZC VICE CHAIR JEFFRIES: Oh, okay.

20 CHAIRPERSON MILLER: Okay. Do the
21 -- does the opposition, also I'll call you, I
22 guess, have cross examination questions?

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1 Okay.

2 MR. MARCUS: Mr. Agbim, you said
3 that you have now retained an arborist, is
4 that correct?

5 MR. AGBIM: Yes, we've talked to an
6 arborist regarding the concerns that were
7 raised.

8 MR. MARCUS: Have you talked to an
9 arborist or hired an arborist?

10 MR. AGBIM: We've talked to an
11 arborist regarding -- consulted with an
12 arborist regarding the concerns that were
13 raised by the neighbors.

14 MR. MARCUS: My question is this.
15 Have you hired someone to provide advice to
16 you on a tree preservation input?

17 MR. AGBIM: I need to check with
18 the property owner on that, but we're
19 currently talking to an arborist and we're
20 having him give us suggestions on how to move
21 forward.

22 MR. MARCUS: When did you have that

1 conversation?

2 MR. AGBIM: Last week.

3 MR. MARCUS: Did you participate?

4 MR. AGBIM: Yes, sir.

5 MR. MARCUS: Who was the arborist?

6 MR. AGBIM: I don't have the name.

7 MR. MARCUS: Now you attended the
8 ANC meeting, correct?

9 MR. AGBIM: Yes.

10 MR. MARCUS: When was that meeting
11 held?

12 MR. AGBIM: I don't have the date
13 of the meeting.

14 MR. MARCUS: If I told you it was
15 May 28th, would you have any reason to disagree
16 with that?

17 MR. AGBIM: No.

18 MR. MARCUS: At the ANC meeting,
19 was there any discussion at all of the tree
20 that's of concern to the neighbors?

21 MR. AGBIM: Yes.

22 MR. MARCUS: Would you agree with

1 me that you had every opportunity, certainly
2 no later than May 28th, to pursue this issue
3 but you have failed to do so until last week?

4 MR. AGBIM: I don't understand your
5 question, sir.

6 MR. MARCUS: Let me repeat it. You
7 were aware that there was a concern about a
8 large red oak tree and its survival and you
9 knew that certainly by May 28th, correct?

10 MR. AGBIM: We knew that on the
11 date of the ANC meeting. That's correct.

12 MR. MARCUS: Any reason why you
13 couldn't have hired an arborist at that point
14 to address the issue?

15 MR. AGBIM: We did consider our
16 options at that point.

17 MR. MARCUS: Any reason why you
18 couldn't have hired an arborist on May 29th?

19 MR. AGBIM: Sir, we did consider
20 our options at that point. After the ANC
21 meeting, I discussed with the owner and we
22 considered options.

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1 MR. MARCUS: Did you hire an
2 arborist at that point?

3 MR. AGBIM: I don't know if he
4 hired an arborist. What I'm saying is that we
5 did, after the meeting, consider the options
6 regarding the matter, the case, and the
7 concerns the neighbors had.

8 MR. MARCUS: Now you've revised
9 your construction plans based on the concerns
10 about the tree, correct?

11 MR. AGBIM: That's correct.

12 MR. MARCUS: Now you yourself are
13 not an arborist, right? Do you have any
14 training as an arborist?

15 MR. AGBIM: No, I'm an architect.

16 MR. MARCUS: So you have no
17 independent professional view as to whether
18 your plans will actually preserve that tree,
19 correct?

20 MR. AGBIM: Personally, we, like I
21 mentioned earlier, we did talk to a
22 professional about the concerns and also

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1 talked to an attorney about the concerns and
2 the rights of the property owner to build on
3 his property, and we were given advice and we
4 reacted based on that.

5 MR. MARCUS: My question, sir,
6 given your training, you're an architect, you
7 have no expertise to speak today to whether or
8 not the construction plans that you have
9 provided will save the tree, correct?

10 MR. AGBIM: I don't understand your
11 question, sir.

12 MR. MARCUS: You have no expertise
13 as an arborist to testify today?

14 MR. AGBIM: I am not an arborist.
15 That's correct.

16 MR. MARCUS: And you have not
17 provided a tree preservation plan today to the
18 BZA to show that your construction plans will
19 preserve the tree?

20 MR. AGBIM: We've written to the
21 UFA and we've told them that we are going to
22 abide by all D.C. standards as to tree

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1 protection, tree preservation, and all the
2 D.C. required regulations at permitting.

3 MR. MARCUS: Let me ask --

4 MR. AGBIM: And that's not an issue
5 for BZA. It's a permit process issue.

6 MR. MARCUS: Let me --

7 MR. AGBIM: It's a construction
8 issue.

9 MR. MARCUS: -- repeat my question.
10 Sir, have you finished with your answer? Have
11 you finished?

12 MR. AGBIM: Go ahead, sir.

13 MR. MARCUS: Let me repeat my
14 question. Have you provided the BZA with the
15 tree preservation plan to assure the BZA that
16 your construction plans will not injure or
17 kill the large red oak tree in Ms. McAlister's
18 backyard?

19 MR. AGBIM: We have not provided
20 any tree preservation plan because we're going
21 to do that at permitting, after --

22 MR. MARCUS: Do -- I'm sorry?

1 MR. AGBIM: Go ahead, sir.

2 MR. MARCUS: And you have no
3 evidence of an arborist here today to be able
4 to assure the BZA that your construction plans
5 will not injure or kill the large oak tree in
6 Ms. McAlister's backyard?

7 MR. AGBIM: We do not have an
8 arborist here today.

9 MR. MARCUS: Would you agree with
10 me that the D.C. Arborist, the Urban Forestry
11 Administration, still today, having seen your
12 revised plans, has serious concerns that your
13 construction plans will damage the large red
14 oak tree?

15 MR. AGBIM: The most recent e-mail
16 from the Urban Forestry still expresses
17 concerns, specific concerns about the tree in
18 the front, the tree beyond the alley, and the
19 big tree in the yard of 2216. They've
20 expressed concerns which we're willing to
21 address.

22 MR. MARCUS: And those concerns --

1 do you have the e-mail in front of you, Mr.
2 Agbim?

3 MR. AGBIM: Yes, sir.

4 MR. MARCUS: Would you agree with
5 me that in Paragraph 1, the D.C. Urban
6 Forestry Administration is concerned that
7 "because of the narrowness of the lot, the
8 private property tree will be impacted even if
9 tree protection is installed, staging limited
10 to offsite and hand digging performed. The
11 tree roots extend well beyond the canopy and
12 into the open space?"

13 MR. AGBIM: Could you read further,
14 please, sir?

15 MR. MARCUS: "DDOT requires that
16 tree protection be installed around the
17 critical root zone of a tree which would mean
18 that for every inch in tree diameter, one foot
19 of tree protection is needed. Therefore, if
20 this tree is, e.g., 40 inches in diameter,
21 approximately 40 feet of tree protection will
22 be needed which would limit construction."

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1 What is the diameter of the red oak
2 tree?

3 MR. AGBIM: It's stated at 40
4 inches.

5 MR. MARCUS: You're saying it's 40
6 inches?

7 MR. AGBIM: It's stated as 40
8 inches.

9 MR. MARCUS: Where does it say
10 that?

11 MR. AGBIM: It's stated in this e-
12 mail.

13 MR. MARCUS: That's an example.
14 That's not actually -- you would agree that's
15 not the actual diameter or do you know? If I
16 told you it was 58 inches in diameter, would
17 you disagree with me?

18 MR. AGBIM: No.

19 MR. MARCUS: Okay. Now, you've
20 given some testimony regarding the character
21 of the neighborhood. Would you agree that
22 most of the lots in the neighborhood are

1 double lots?

2 MR. AGBIM: It depends on what you
3 call neighborhood, how far you go, how far out
4 you go, because in this immediate block and
5 square, you have a combination of double and
6 single lots.

7 MR. MARCUS: Are most of the houses
8 on double lots on this block?

9 MR. AGBIM: Most of the houses on
10 this block are -- I mean, I haven't done a
11 count, but if you walk around the block, Perry
12 Street, 24th Street, Otis Street, and 22nd
13 Street, you see a mixture of, you know, double
14 lots and single lots, and I have a copy of a
15 D.C. surveyor's survey plans that show exactly
16 what's going on in the area.

17 MR. MARCUS: You've also testified
18 about the location of the proposed house at
19 2212 Otis Street. Is it right that that house
20 is going to project in front of the front of
21 the house which is at 2016 Otis Street?

22 And maybe for simplicity, you could

1 refer to the Office of Planning report, Page
2 3, where you'll see there's a drawing which I
3 think helps visually to show the juxtaposition
4 of the proposed house and the neighboring
5 house.

6 Do you see how your proposed house
7 juts out in front of 2016?

8 MR. AGBIM: We -- I don't see that,
9 sir.

10 MR. MARCUS: Sorry. I misspoke.
11 Excuse me. 2212 -- 2210.

12 MR. AGBIM: Yes, it does. It does.
13 It's out more towards the street further from
14 2212.

15 MR. MARCUS: And what is the number
16 of feet by which the proposed house at 2212
17 projects in front of the front of 2210?

18 CHAIRPERSON MILLER: Counsel, make
19 sure that the addresses that you're
20 referencing are accurate. I believe the
21 proposed house is 2214 and your question
22 relates to how far in front of 2212 it is.

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1 MR. MARCUS: I did misspeak earlier
2 about 2210, but the house -- I believe the
3 proposed house is at 2212, but perhaps Mr.
4 Agbim can correct me if I'm wrong.

5 MR. AGBIM: The 2216 is 27.5 feet.

6 MR. MARCUS: Just before you do, we
7 want a point of information. Is the house
8 that's proposed going to be constructed at
9 2212 Otis Street?

10 MR. AGBIM: 22 --

11 MR. MARCUS: Or 2214 Otis Street?

12 MR. AGBIM: 2214 Otis Street.

13 CHAIRPERSON MILLER: Office of
14 Planning's report says 2212 for the record.

15 MR. AGBIM: I'm sorry. 2212.
16 That's correct.

17 MR. MARCUS: Yes, I believe it's --

18 MR. AGBIM: Sorry about that.

19 MR. MARCUS: Now my question then
20 relates to 2212 and its relationship to 2210.

21 My question is this. How many feet
22 does the proposed house at 2212 jut out in

1 front of the front of 2210?

2 MR. AGBIM: About seven feet.

3 MR. MARCUS: About seven feet?

4 MR. AGBIM: Yes, sir.

5 MR. MARCUS: You don't have
6 anything a little more precise than that?

7 MR. AGBIM: We actually do have a
8 measurement on that.

9 MR. MARCUS: Could you find it,
10 please?

11 MR. AGBIM: Based on the survey
12 provided, we have a total of 7.25 feet, I
13 believe.

14 MR. MARCUS: Will the placement of
15 the house affect the view that the owner of
16 2210 will have of the streetscape, if the
17 owner looks in the direction of 2212 and 2216?
18 Would you agree with me that where you've
19 placed the house will partially obstruct the
20 view of the owner of 2210 Otis Street?

21 MR. AGBIM: We believe that any
22 time you put a structure next to another,

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1 there will be some level of obstruction, but
2 we believe that this level of obstruction is
3 minimal and will occur either place you -- any
4 where you put a structure, there will be some
5 level of obstruction because, like I mentioned
6 earlier, 2216 and 2212 are in line, and it
7 will just be -- if you do the site lines,
8 there will just be very minimal obstruction.

9 MR. MARCUS: Those are my
10 questions.

11 Thank you.

12 CHAIRPERSON MILLER: Okay. I'd
13 like to ask one follow-up question. That is,
14 as the Applicant has stated that you were on
15 notice that this tree was a big issue of
16 concern to the neighborhood, it's not like
17 that is like a secret or this is like a minor
18 issue that's just come to light at the
19 hearing, so you've known that for over a month
20 and you chose not to get any expert evidence
21 in the record from an arborist, and your
22 reason is that you think you can just wait

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1 till permitting, that you don't -- how do we
2 evaluate the third prong of the variance test
3 which goes to the public good when we hear
4 concerns about this issue?

5 MR. AGBIM: Thank you. Well, we --
6 when we went to the meeting, these concerns
7 were raised amongst others and what I did was
8 I packaged all the concerns, I met with the
9 owner and discussed the various options, and
10 he in turn started -- proceeded to look for
11 someone who can actually be on the case to
12 advise us on which ways to mitigate and to
13 prevent the problems.

14 Unfortunately, we were not able to
15 arrive at a resolution sooner in terms of what
16 direction to go with the recommendations from
17 the people he talked to and that's one of the
18 reasons why it appears to be a bit delayed,
19 but he did in fact make effort to speak to
20 different professionals about it and to see
21 what the options were as to how to reduce the
22 impact of the structure on the -- in the

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1 neighboring properties, especially the trees.

2 ZC VICE CHAIR JEFFRIES: And then
3 as a professional, what was your response --

4 MR. AGBIM: Well, I did --

5 ZC VICE CHAIR JEFFRIES: -- to the
6 fact that he's doing all of this talking
7 rather than hiring a professional?

8 MR. AGBIM: Well, by talking, I
9 meant, you know, first of all, if you -- you
10 know, he called around to, you know, try to
11 hire somebody who was actually familiar with
12 the issues that were involved and try to get
13 somebody who would actually be part of making
14 recommendations in order to -- because our
15 main effort was to find ways to solve the
16 problem, you know, to reduce the impact that
17 this structure would have on the trees since
18 he was determined to develop the property.

19 So we tried as much as possible to
20 find out ways we can change the design or do
21 something that will make the -- reduce or
22 eliminate the impact of the development to the

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1 trees that were of concern.

2 ZC VICE CHAIR JEFFRIES: Well, I'm
3 just a bit troubled because you've been before
4 this Board many occasions and, you know, you
5 are quite skilled and I'm just a bit troubled
6 with, you know, this issue of, you know, this
7 is something that is not in your jurisdiction
8 in terms of your knowledge base. You don't
9 have experience here. The owner doesn't have
10 experience.

11 You said that you wanted to present
12 options to him but you present options that
13 said you need to hire an arborist to tell us
14 exactly what -- was that one of the options
15 you gave him?

16 MR. AGBIM: Yes, sir.

17 ZC VICE CHAIR JEFFRIES: And he
18 just chose not to go and take that route?

19 MR. AGBIM: No, he did choose to go
20 that route and like I said earlier, we -- he
21 -- we worked very hard to get somebody who we
22 could actually retain to work on the matter.

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1 I regret that that didn't happen
2 sooner because if it had happened sooner, we
3 would have had a chance to present our own
4 side of the report or to provide the -- to do
5 the changes earlier in the process, so that
6 they would get it earlier and also be able to
7 react to it, but we're only able to make the
8 revisions to the drawings just last week.

9 ZC VICE CHAIR JEFFRIES: Madam
10 Chair, I don't have anything else. I'm sorry
11 I sort of --

12 CHAIRPERSON MILLER: All right. I
13 think we move to the Office of Planning in a
14 second, but I just want to say we haven't
15 heard from Office of Planning yet, except for,
16 you know, what's in our file so far nor the
17 opposition's main case, except we have seen
18 what's in our file, and the Applicant, though,
19 has the burden of proof that there be, you
20 know, no substantial harm to the public good,
21 and it appears that there's some serious
22 issues have been raised and I don't really see

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1 you addressing that, except by saying that
2 don't worry, we'll comply at permitting stage,
3 and if that's the case, if that were the
4 burden of proof, then why would we be here
5 considering substantial good?

6 ZC VICE CHAIR JEFFRIES: I mean,
7 the record is not full. I guess that's our
8 problem. You've not given us enough
9 information up here to make a determination as
10 to -- I mean, I'm listening to you and I'm,
11 you know, sympathetic, based on what you're
12 trying to do, but you just -- we don't have a
13 full record here to make a determination the
14 way I see it.

15 So anyway, I just -- you know,
16 Madam Chair, however you want to proceed.

17 CHAIRPERSON MILLER: I think we
18 need to proceed with the rest of the case, but
19 I think Mr. Marcus was getting to that point
20 as to, you know, well, you know, why aren't
21 you prepared? You know, it's your case. You
22 have the burden of proof. You knew way back

1 in May that this is a big issue. Maybe you
2 think that what you have is enough and we'll
3 go through the hearing and see whether that
4 proves out, but it seems to me we have, you
5 know, the Urban Forestry having serious
6 concerns. We have an arborist having serious
7 concerns and then we have the Applicant saying
8 don't worry, we're going to comply with
9 everything by -- at permitting.

10 ZC VICE CHAIR JEFFRIES: And the
11 tree is not in your lot. I mean, I'm just --
12 I'm somewhat puzzled, you know, particularly
13 you, you know, because you've been before this
14 Board. You know the type of things that we
15 look for. So I --

16 MR. AGBIM: I want to add that I'm
17 not necessarily saying that we're going to --
18 we're folding our arms and waiting to do
19 something at permitting. We have actually
20 worked hard and met with the structural
21 engineer, arborist to come up with something.

22 Unfortunately, had we done that

1 earlier and this is -- like I said earlier, I
2 regret that. Had we done that earlier, we
3 would have come here today with a report, but
4 we have actually worked hard to develop
5 something that will reduce these problems and
6 I think the last e-mail from Urban Forestry
7 acknowledges all -- really mentions about the
8 concerns.

9 We have come a long way from the
10 last design we had which was a full basement
11 which everybody will agree with me would mean
12 more extensive excavation, more equipment on
13 the site, and we've gone way over to a
14 solution whereby we have less impacting design
15 and my mention that we're going to abide by
16 all the D.C. tree protection standards does
17 not mean that we don't have a plan or that we
18 will not present a tree preservation plan to
19 this Board.

20 We do have every intention to do
21 that, even though it's not ready as I speak,
22 but the reason why I'm making that

1 presentation is just to say that it's
2 something that will be done in short order and
3 we have every intention of reducing and
4 eliminating the concerns that we currently
5 have on the site, as regards the construction
6 on the site.

7 CHAIRPERSON MILLER: Okay. I think
8 we need to go on with the case, but I do want
9 to say that, you know, today's your hearing
10 and if you couldn't have everything together,
11 perhaps you should have asked for an extension
12 of time, but, you know, a lot of times we
13 leave the record open for issues that come up
14 in the hearing that, you know, parties might
15 not have known about, that we need further
16 information.

17 This just seems like basic
18 information, but I think we want to hear -- I
19 want to hear obviously from Office of Planning
20 and the opposition and the experts, if there
21 are any here, with respect to whether they
22 even think it's possible that construction go

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1 forward on this house in any way without
2 damaging the tree.

3 So why don't we turn to Office of
4 Planning.

5 MS. THOMAS: Madam Chair, good
6 afternoon. Karen Thomas with the Office of
7 Planning.

8 This case is similar to past cases
9 we've had before in terms of its lot size.
10 It's a narrow lot and it was developed prior
11 to 1958.

12 In this situation, we had lots that
13 were combined into square and we have about
14 three lots in the square that weren't
15 combined. Lots that were originally 25 feet
16 were combined into lots of 50 feet. So that's
17 the situation today and this lot was left
18 behind as a 25-foot wide lot.

19 We would see that this would impose
20 -- this uniqueness would impose a practical
21 difficulty to develop the lot as a matter of
22 right and it would render the property

1 undevelopable if relief were not provided for
2 the side yards especially.

3 However, with respect to the third
4 part of the test, while relief itself would
5 repair the intent and purpose of the
6 regulations, we see it would affect the public
7 good, especially as there are concerns within
8 the neighborhood due to the trees, and as UFA
9 has identified, the Urban Forestry
10 Administration identified, other trees as
11 well.

12 So we invited Urban Forestry today
13 to speak to that aspect of it and we would
14 support the lot's development contingent on
15 UFA's satisfaction.

16 CHAIRPERSON MILLER: Thank you.
17 Okay. Is that all right? Okay.

18 I want to inquire about the lot
19 size issue because, as you stated, we have had
20 several cases before this Board with
21 exceptionally narrow lots and we've recognized
22 that they're exceptionally narrow and they

1 were before enactment of the Zoning
2 regulations and made it practically difficult
3 to build a little house on, et. cetera.

4 However, we always seem to have
5 been brought to the attention that these lots
6 were intended to be combined and that if they
7 could be combined, that that was more in
8 accordance with the intent of the Zoning
9 regulations.

10 Specifically, I know the Board just
11 issued or is about to issue an order related
12 to District properties in which we have this
13 situation and we noted in that order that,
14 according to the Office of Planning, R-1-B
15 Zoning was designated as the appropriate
16 zoning category for this area with the
17 expectation that lots would be combined in
18 order to meet the dimensional requirements and
19 that often when we see these lots, we say,
20 well, if they could be combined with the
21 neighboring property, that would be in
22 accordance with the intent of the Zoning

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1 regulations and that we have often given a
2 variance in the instances where it couldn't be
3 combined.

4 Now, in this case, there is
5 evidence in the record that it hasn't been
6 addressed yet at the hearing per se, but it's
7 in our record, that one of the abutting
8 properties did put in an offer to purchase the
9 property.

10 So, Number 1, it looks to me like
11 that goes to the practical difficulty test of
12 complying with the regulations, that actually
13 this property would be complying with the
14 regulations if it were combined, and Number 2,
15 in harmony with the Zone Plan, that it would
16 be more in harmony if it were combined before
17 you even get to the third prong of substantial
18 good or no impairment on the public good.

19 Yes, do you have a comment about
20 that? Are you aware of the -- of an offer to
21 purchase the property by an abutting property
22 owner?

1 MS. THOMAS: Yes, I was made aware
2 of that. The abutting property owner did meet
3 with Office of Planning and explain that to
4 us. We thought that was one of the best ways
5 that this whole situation could have been
6 resolved to save the trees actually.

7 But we have the fact before us that
8 it was not, so we have to deal with that
9 aspect. Yes, it would have been preferable if
10 the lots were combined.

11 CHAIRPERSON MILLER: Okay. And if
12 relief were denied in this case, we wouldn't
13 be depriving an owner of all use of the
14 property.

15 I think, you know, in some cases,
16 you have some vacant property that, unless
17 it's developed, it does go to waste. Nobody
18 else wants it.

19 MS. THOMAS: I don't think he
20 probably would -- I don't know how to answer
21 that, but he could put it up for sale again.
22 He would be within his right for somebody else

1 to --

2 CHAIRPERSON MILLER: And do you
3 have a comment about whether the structure
4 would be out of character of the neighborhood
5 because of its jutting out in the manner that
6 it does?

7 MS. THOMAS: I drove the street,
8 but I don't want to make assumptions about
9 remembering everything on the street. I don't
10 see a problem with the jutting out. The house
11 next door to it is jutting out. I think he's
12 going to be putting it to the same level to
13 the front part as the abutting neighbor,
14 albeit it would be in front of that guy's
15 house and blocking his view somewhat, but I
16 don't see that as a major problem.

17 CHAIRPERSON MILLER: Okay. Thank
18 you. Are there other questions on those areas
19 before we hear from Urban Forestry?

20 (No response.)

21 CHAIRPERSON MILLER: Okay.

22 MR. THOMAS: Hello. There's two

1 things, I guess.

2 CHAIRPERSON MILLER: Identify your
3 name.

4 MR. THOMAS: I'm sorry. John
5 Thomas, Urban Forestry Administration,
6 Department of Transportation.

7 We inspected the site and from our
8 experience, what we've found with all
9 development that's gone on in D.C. in the last
10 several years, incidental contact or
11 incidental interaction with trees that
12 pertains to getting supplies, materials,
13 staging, storing, that's where the real damage
14 comes in for trees and there really is no --
15 there is no guarantee that anyone can say that
16 these trees will be protected all the way
17 through the process and come out in the end
18 and do well.

19 There are things, diseases, such as
20 hypoxylon, especially on oaks for that matter,
21 as work is done around them and the compaction
22 of the soil. It adds stress to that tree and

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1 allows these diseases and fungus to enter into
2 the tree and decline. So we've seen -- in the
3 last five years, we've lost hundreds of trees
4 to hypoxylin which is related to construction
5 damage and compaction in the area around the
6 trees and that was my first concern when I got
7 on site, was that there was just no way to
8 alleviate the activity.

9 It's such a narrow site, there's
10 not a lot of room for error. There's not a
11 lot of room for entry or exit and when you
12 think about building a two-story structure,
13 there's just a lot of incidental space or
14 expansion space that's needed to perform those
15 activities, that I think all four trees that
16 are listed in our report would be impacted
17 severely.

18 My main concern, besides the large
19 tree on the adjacent property, as far as from
20 Urban Forestry perspective, our street tree
21 there has been able to grow quite well into
22 the front bank, if you look at the -- I guess

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1 the set of photos.

2 If you can see on the top photo,
3 that slow embankment or that subtle embankment
4 that goes up, that tree that's in the street
5 has been able to root itself in there very
6 nicely and anything that's going to be done in
7 that space will pretty much render that tree
8 dead or in such a state of decline that we
9 would have to remove it probably in less than
10 five years or three to five years and again
11 this is from our experience with I don't know
12 how many projects but several hundred and it
13 just -- the space that you can see between the
14 adjacent house and that street tree and if you
15 look behind that car, there's a retaining
16 wall. It does not leave much space to enter
17 and I don't know how you would get your
18 building materials that are needed. I'm not
19 sure that you can carry drywall and all the
20 parts and pieces that a house needs.

21 And we've also seen that with
22 renovations that have gone on, the impact of

1 loading -- a lot of these materials are loaded
2 into the second floor via equipment and that
3 has also damaged the crowns and canopies of
4 trees trying to use a crane to lift drywall
5 into the second floor window prior to the
6 windows being put in. So this would -- all
7 these limitations on this property would just
8 -- it just from my experience as a certified
9 arborist, there's just no way to guarantee the
10 health of these trees.

11 ZC VICE CHAIR JEFFRIES: In terms
12 of -- I think you mentioned -- I thought I
13 read something about staging in the alley but
14 you don't know the condition of the alley.
15 Could that help?

16 MR. THOMAS: The alley would have
17 been a good probably source or an entryway,
18 but if you look in the same photo, in the top
19 photo there, the third tree in the back of
20 your photo, that sits right on the alley apron
21 and negotiating that turn where the driveway
22 is going to be put is going to be a very

1 difficult task for large equipment that might
2 be brought in to deliver materials or pouring
3 the concrete -- probably what's happened there
4 because our alleys are older, they're not
5 built in the same standards that our streets
6 are, the tree roots from that tree probably
7 have crossed underneath that alley and may
8 have even entered into the back lot here.

9 So I think the work that would have
10 -- would go on there, there might even be
11 damage done to the alley which the Department
12 of Transportation might even ask that to be
13 repaired. So there's just -- in my last
14 comment, I think I said that it's incidental
15 or minimal, but it's something that still
16 needs to be considered because I guess the way
17 I've seen the plan, I really -- I'm judging on
18 just what I've seen on the property. I --
19 there's not enough here for me really to -- I
20 don't see a plan of attack, I guess, from the
21 owners of how they're going to get on the
22 property, move around.

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1 So I'm just kind of judging by what
2 I would see or what I've seen done around the
3 District, but like I said, there's no -- I
4 don't know how they're going to try to do all
5 this stuff, but what they're suggesting just
6 doesn't seem to -- is not conducive for
7 keeping the trees healthy and vibrant.

8 ZC VICE CHAIR JEFFRIES: Can any
9 type of structure at all -- I mean still
10 there's no guarantee, I mean anything that
11 interrupts or harms, you know, the roots, I
12 mean, will have -- will likely have some
13 impact on these trees.

14 MR. THOMAS: Yes, if one of the
15 three are not there, you may have a chance,
16 but just -- again going back to that top
17 photo, it's a great shot. It just -- those
18 three trees, the way they're set up and the
19 way they're positioned, it just -- there is no
20 way to -- you're shoe horning everything you
21 do in. There's no -- if the middle tree was
22 gone, then you'd have a lot of gap in between

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1 to negotiate. If the front street tree was
2 gone, you know, that proposes at least an
3 entry point, but with those three trees
4 existing and the way they're kind of adjacent
5 and stutter stepped down the property lines
6 there, I just don't see how you can kind of
7 come in and then go right and go left and do
8 all these things.

9 ZC VICE CHAIR JEFFRIES: What's the
10 canopy like for this ward versus other wards?
11 Does this have pretty good canopy coverage?

12 MR. THOMAS: Yes, Ward 5, you know,
13 is an older canopy. It's definitely more
14 mature, but it's exactly kind of where we want
15 to be and now we're kind of coming in and
16 revitalizing it with some new plantings, but
17 it's providing a tremendous amount of shade
18 and reducing heat island effect and stormwater
19 controls. It's doing exactly what we want it
20 to do.

21 CHAIRPERSON MILLER: Mr. Thomas,
22 thank you so much for your time today.

1 I am interested in backing up just
2 a little bit because I don't know a whole lot
3 about trees and I think it might be useful to
4 get a little information in the record about
5 sort of the value of the large tree in the
6 back as well as the other two trees that we've
7 been discussing generally, like how long does
8 it take for trees to reach this level of
9 maturity, what are, you know, the down sides
10 if we lose these trees?

11 MR. THOMAS: I mean, this is --
12 these are the -- when -- probably everyone saw
13 the KC Tree Report that came out several years
14 back and showed the big spot of lack of trees
15 on D.C.

16 This is exactly what was the
17 problem. It wasn't the public trees or the
18 street trees or the trees on parkland that we
19 lost. It was trees on private property that
20 created that hole and those are where our
21 largest trees usually reside because they've
22 had more space to grow.

1 That oak is in the backyard, I'm
2 sure, is all of 75 to a 100 years old, you
3 know, without cutting it and looking at the
4 growth rings.

5 Inner city trees tend to grow a
6 little faster because of the heat and the
7 availability of carbon dioxide and things, but
8 the street tree in front was probably planted
9 in the late '60s or late '70s and the tree
10 furthest back is probably in the mid '60s or
11 so that that was planted or seeded itself
12 there.

13 We are having a harder and harder
14 time getting trees established in the city.
15 What I'm finding is with all the construction
16 that's going on in the city, with the digging
17 that we're, you know, going down 10 stories in
18 some cases for parking garages, we're really
19 affecting, from what we can see, the way water
20 travels through soil and we're losing a lot of
21 mature trees, we think because they're no
22 longer able to find those pockets of water

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1 because we've disrupted so many underground
2 channels with all these parking garages and
3 other basements and things.

4 We've compacted soil to the point
5 where it's, you know, near gravel or concrete,
6 so water isn't penetrating the soil on the top
7 that we normally had and then the activities
8 obviously that surround the trees now as
9 populate more. So it's something, a resource
10 that we're not going to get back to any time
11 soon, trees of this size, especially if a
12 house goes in there, it's just we really --
13 we're going to lose what I see as a nice green
14 space that probably is really providing a
15 tremendous amount of heat island reduction.
16 It's allowing space for water to run and seep
17 in. It's doing what we need probably more
18 often in many of our neighborhoods.

19 CHAIRPERSON MILLER: You mentioned
20 earlier that there's no way to guarantee the
21 health of the trees, but if you had to try to
22 state the likelihood of losing the tree in

1 terms of a percentage, like the percentage
2 chance that one of these trees would be lost
3 as a result of this construction project, what
4 would your guesstimate be?

5 MR. THOMAS: I would say the middle
6 -- the tree in the middle -- going back to
7 this top photo again, the street tree probably
8 has -- it probably has a 65 to 70 percent
9 chance that we will lose it in the foreseeable
10 future, a 100 percent for the tree in the
11 center, the large oak, and the tree in the way
12 back in the alley, you know, maybe 20 percent,
13 depending on what goes -- depending on how the
14 parking spot goes back there and the
15 construction that's needed for that, but that
16 would be my rough -- like I said, driving over
17 here, I went past five projects that had --
18 the trees were really quite a ways away from
19 the project and they had the fence up and they
20 did all this stuff, but they all suffered this
21 hypoxilin and they're dead this year. So that
22 project was literally two years ago and when

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1 it wrapped up and they didn't leaf out this
2 spring as we predicted in our report to that
3 development.

4 CHAIRPERSON MILLER: Thank you.

5 BZA VICE CHAIR LOUD: I want to
6 follow up on Commissioner Walker Oates'
7 questions regarding -- I'm sorry, I said it
8 wrong. Started out wrong already, but I want
9 to follow up on -- just to make sure I
10 understand a little bit more about trees than
11 I did going into this case.

12 A couple of things. First, you've
13 outlined four trees, I think, in your report,
14 your March -- I'm sorry -- your June 27
15 report, that you indicate would suffer
16 significant damage. It sounds like of those
17 four trees that you initially identified,
18 there are two that are of significant concern
19 to you at today's hearing, is that correct?

20 MR. THOMAS: Yes, that's correct,
21 and I probably should have included the third
22 one that's on the adjacent -- it's smaller,

1 but it's almost literally parallel with the
2 large oak tree.

3 BZA VICE CHAIR LOUD: Okay. And
4 that third one would be the 24-inch tree?

5 MR. THOMAS: Yes.

6 BZA VICE CHAIR LOUD: Okay. So the
7 concern regarding the 49-inch tree, and I'm
8 assuming these are diameters, all right, is
9 not as prevalent now as when you wrote the
10 report on March 27, and again I'm just trying
11 to sort out in my mind what the public
12 detriment issues are that we're going to be
13 analyzing?

14 MR. THOMAS: Yes, the large -- the
15 tree along the alley is uncertain because, you
16 know, like I said, the -- if you look at some
17 of the documentation, I guess, on what's been
18 submitted or what I've been able to see, I
19 don't really see a work plan, I don't see a
20 construction plan, so I don't know, but
21 knowing that that's probably where most of the
22 activity is going to come in on the site to do

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1 this work, that tree is definitely going to
2 have some impact and until we could see really
3 what the plan is and how it's going to operate
4 back there, I'm saying now that it's a less
5 likelihood.

6 BZA VICE CHAIR LOUD: Okay. Just
7 so I'm clear that I understand it, let's start
8 with the oak tree which is the 58.7-inch
9 diameter tree. The detriment to the public
10 good with respect to this project as regards
11 the oak tree is that you need a 704, and I'm
12 assuming this is 704-inch radius or 704 feet?

13 MR. THOMAS: That's feet.

14 BZA VICE CHAIR LOUD: 704-feet
15 radius within which you can do no construction
16 activity around that tree?

17 MR. THOMAS: Ideally, yes,
18 according to industry standards, yes.

19 BZA VICE CHAIR LOUD: Okay. And
20 how do you get the 704 feet?

21 MR. THOMAS: For trees that are
22 exceptionally large or mature, usually over 30

1 inches, you go to -- you would use 12 or even
2 12.5 inches per inch of diameter for
3 protection. That tries -- at least gets you
4 out to the drip edge or to the canopy edge
5 where -- as a tree grows is in most cases, the
6 root system is at least as wide as the canopy
7 is at top. So you need to protect to the drip
8 line of the canopy.

9 The problem is that the street tree
10 and that middle oak tree almost touch, their
11 canopies almost touch, so it really renders --
12 if you were to follow the rules to a T, there
13 would be like maybe a seven-foot sliver in
14 there which you could actively work and be
15 within the guidelines, but otherwise you
16 really can't do much. You're in what we
17 consider the critical root zone.

18 BZA VICE CHAIR LOUD: Okay. You
19 lost me for just one second. You need
20 basically one foot for every inch?

21 MR. THOMAS: Yes.

22 BZA VICE CHAIR LOUD: Right. And

1 so if you have a diameter of 58.7 inches,
2 would you need basically 58 feet roughly, a
3 little over 58 feet, and the report indicates
4 704 feet, so I'm just trying to -- should it
5 be 704 inches?

6 MR. THOMAS: Yes.

7 BZA VICE CHAIR LOUD: All right.

8 MR. THOMAS: Sorry.

9 BZA VICE CHAIR LOUD: So now within
10 this 704-inch circumference, you can't do any
11 construction work. If you do any construction
12 work, you are likely to significantly damage
13 the tree?

14 MR. THOMAS: That's correct, yes.
15 To go through a quick -- the absorptive roots
16 are at the outermost edge of a tree's root
17 zone. Those are the roots that actively
18 provide water, nutrients and the needed -- the
19 essentials that a tree needs to grow and
20 survive.

21 As you move back closer to the
22 tree, the roots become more storage and are

1 more for structural and support of the tree
2 and keeping it standing upright and so that
3 activity then happens near that outermost
4 edge. As you cut the roots, damage the roots,
5 you're losing -- the tree loses its ability to
6 absorb the materials it needs to grow.

7 Once those are damaged or severed,
8 the roots further in really have -- they
9 cannot actively support growth or uptake of
10 water, so you're left with a tree that can
11 stand for the time being because it's
12 supported structurally but it has no ability
13 to bring up new nutrients.

14 BZA VICE CHAIR LOUD: But as to the
15 oak tree, the danger to the oak tree would be
16 the construction activity?

17 MR. THOMAS: Correct.

18 BZA VICE CHAIR LOUD: So if the
19 Applicant moves the construction activity, as
20 he has proposed to, I guess, offsite, I think
21 is his language, is there still a danger to
22 the oak tree?

1 I can see now the danger to the
2 street tree because it's closer to the street,
3 the construction activity, but in terms of
4 there being a danger to the oak tree, has that
5 been eliminated?

6 MR. THOMAS: Again without seeing
7 the plan, I would say it probably has been
8 reduced, but --

9 BZA VICE CHAIR LOUD: Okay.

10 MR. THOMAS: -- from our
11 experience, somehow the material has to get
12 onsite, whether you've got it four blocks away
13 and it's sitting there, somehow -- how is it
14 going to get to where it's finally going? I
15 mean, a guy isn't going to carry everything
16 that's needed to build a two-story house by
17 hand on to the property.

18 So at some point, something
19 mechanical has to enter the site and do -- and
20 cross through these zones and there has really
21 been no -- I think as was alluded to before,
22 there is no plan that I've seen for a tree

1 protection plan that's been submitted.
2 There's no -- I don't see where -- in most
3 cases during development, there's a proposed
4 construction drive, you know, and what that's
5 going to be built like, and then there's the
6 tree protection is set up and what's to be
7 maintained within that tree protection zone.

8 There is a staging area where the
9 materials are going to be set. There's
10 parking space set aside. None of that is --
11 I don't --

12 BZA VICE CHAIR LOUD: It's not
13 clear?

14 MR. THOMAS: Yes, none of that's
15 clear.

16 BZA VICE CHAIR LOUD: Okay. So
17 even based on the information you have
18 available at this hearing, there's still a
19 possibility that offsite staging could damage
20 the oak tree?

21 MR. THOMAS: Yes.

22 BZA VICE CHAIR LOUD: Okay. Then

1 moving away from the oak tree, the second tree
2 we're concerned about is the street oak tree
3 which is in the space between the sidewalk and
4 the curb, and is that the 30.2-inch diameter
5 tree in your report?

6 MR. THOMAS: That's correct.

7 BZA VICE CHAIR LOUD: Okay. And
8 the danger presented to that particular tree
9 is what, because you don't have the sort of
10 radius discussion around that tree that you
11 had with the oak tree? So what would be the
12 concern there?

13 MR. THOMAS: Basically, what
14 happens with street trees throughout the
15 District, we have such a -- our roads are
16 built with such a deep subbase and compacted
17 subbase to support the -- you know, our road
18 surfaces, our gutters, there's no air and
19 oxygen. So no roots actually actively grow
20 into the road. So all street trees in the
21 city, all the roots are growing towards the
22 houses.

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1 This tree has been able to --
2 because there is no house and there is nothing
3 going on there to limit its space, it's been
4 able to really take advantage of that open
5 turf that you see in the top photo. So those
6 roots are under the sidewalk and then have
7 grown up that embankment and that whole
8 embankment is covered with roots for the
9 street tree, so it's providing everything it
10 needs, and my assumption, I guess, was that
11 that somehow there would have to be a final
12 treatment on that -- the facade there, that
13 you couldn't just put a house there and kind
14 of leave that -- there would be some activity
15 on that embankment to finish it, whether it's
16 a retaining wall or I don't know what would be
17 there, but I can't imagine -- I guess I
18 assumed that there would be some work going on
19 in that space.

20 But that's probably about -- where
21 all the roots are on that tree are basically
22 in that space that we're looking at between

1 the two retaining walls. I didn't notice any
2 lift in either of the two retaining walls to
3 indicate roots have made it that far. My best
4 guess from what I could see up top was that
5 the roots were all in that zone that you're
6 seeing.

7 BZA VICE CHAIR LOUD: And by that
8 zone, do you mean the embankment area --

9 MR. THOMAS: Yes.

10 BZA VICE CHAIR LOUD: -- or even
11 going further back?

12 MR. THOMAS: Probably further back.
13 We found in parts where we've had to remove
14 trees of this size where we've had large
15 frontyards or parking, public parking
16 dimensions, the roots have really taken
17 advantage because they've had no compaction,
18 they've had no impacts to their growth, so
19 they've been able to really take off and do
20 well.

21 BZA VICE CHAIR LOUD: Did you see
22 any evidence of the roots --

1 MR. THOMAS: Yes, you can see --

2 BZA VICE CHAIR LOUD: -- actually
3 on the -- not the embankment itself but just
4 the -- going further back into the vacant lot?

5 MR. THOMAS: And up top, you can
6 see where there's activity.

7 BZA VICE CHAIR LOUD: Okay. And so
8 would your testimony be that the actual -- the
9 improvement itself on the vacant lot would
10 jeopardize that tree and those roots or is it
11 just the embankment area and the potential for
12 a retaining wall or something like that?

13 MR. THOMAS: Yes, any activity
14 because -- well, yes, I guess, to both your
15 questions because the two existing retaining
16 walls kind of force all activity where the
17 roots are.

18 BZA VICE CHAIR LOUD: and again
19 just so I'm clear because I'm learning a lot
20 through this exchange, the proposed 17 -- I
21 think it's 17-foot-wide house placed on the
22 lot where the Applicant intends to place it

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1 potentially or at least there's a likelihood
2 that that will destroy the roots for the oak
3 tree, the street oak tree or cause significant
4 damage to those roots?

5 MR. THOMAS: Yes, that's correct.

6 BZA VICE CHAIR LOUD: Okay. Is
7 there anything else about the project and the
8 street tree that will lend to destruction of
9 that street tree that I haven't asked about?

10 MR. THOMAS: I think just going
11 back to the ability to get materials and
12 staging. Like I said, in our experience has
13 been that obviously certain trees get removed
14 prior to development because they're in the
15 way, right, and you can't sheet and shore and
16 do all these other things that need to happen
17 without getting the tree out of the way.

18 What we're finding is that the
19 trees that are adjacent or nearby, the effects
20 of the construction is equally as detrimental,
21 except for they're not taken away right away.
22 We deal with them several years out and

1 there's just no way to uncompact soil after
2 you've compacted it. So there's limited
3 things that you can do in the space that we
4 have to protect that root zone there.

5 BZA VICE CHAIR LOUD: And in moving
6 on to the 24-inch diameter tree, and just if
7 you have Exhibit 6 in front of you, which is
8 this exhibit right here, which of these trees
9 is that 24-inch tree?

10 MR. THOMAS: If you look down along
11 the fenceline and you can just see the peak of
12 the shed and just adjacent to that is a gray
13 trunk that goes up and then splits into a
14 fork.

15 BZA VICE CHAIR LOUD: Okay. All
16 right.

17 MR. THOMAS: It's literally growing
18 like right next to the fence or maybe a better
19 way to see the root area is if you can see
20 kind of where -- along the white fence there
21 where there's the soil or the elevation kind
22 of mounds up, that is all root zone from that

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1 tree.

2 BZA VICE CHAIR LOUD: Okay. Okay.
3 Now going back to, I guess, the oak tree, the
4 private oak tree and the street oak tree, and
5 the Applicant's revisions where he talks about
6 no longer having the basement and putting in
7 something called these hand-built piers or
8 something like that, how does that -- in your
9 view, does that mitigate some of your concerns
10 regarding the impact of the construction
11 staging, the impact of the damage to the
12 roots, et. cetera, that you talked about?

13 MR. THOMAS: Definitely removing
14 the basement is -- eliminates a huge portion
15 of the activity that's going to happen.
16 Moving the house, I think what it does then
17 just focuses on how will the activity that's
18 left, how will that be dealt with, and what is
19 the plan, what is the route, you know, how
20 will that activity actually be taken care of,
21 how will they undergo that activity while
22 they're building the house?

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1 You know, we don't even --
2 nothing's been submitted on timeline, you
3 know. Are we six months to build the house,
4 nine months? These all -- it's kind of an
5 incomplete package, I guess. It's hard to say
6 because we don't know how long this is going
7 to go on for.

8 BZA VICE CHAIR LOUD: So you could
9 conceivably remove the basement from the plan,
10 but because there's so many other
11 considerations that impact whether or not the
12 red oak would live, that doesn't necessarily
13 eliminate the danger to the red oak, the fact
14 that you've removed the basement from the
15 plan, is that correct?

16 MR. THOMAS: That's correct. When
17 I was speaking earlier about hypoxylin, red
18 oak is one of the main oaks that we tend to
19 see this virus or this fungus really take off
20 after construction activity has happened
21 adjacent to these trees. I've just seen it
22 time after time and it literally can --

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1 construction can happen in fall and winter.
2 The tree goes into fall and winter full leaf,
3 no problems, and we can see signs of it at
4 leaf break and by June or July, it's
5 completely gone, brittle and dries up and
6 needs to be removed.

7 BZA VICE CHAIR LOUD: Okay. And
8 what about the Applicant's mitigation strategy
9 of using the hand-dug piers?

10 First of all, do you know what that
11 is?

12 MR. THOMAS: Yes, I think they're
13 going to -- basically building a deck, I
14 guess, in a sense. They're going to put them
15 on concrete tubes or concrete pillars and set
16 the house on kind of floating.

17 BZA VICE CHAIR LOUD: Okay. And
18 does that eliminate the danger to, first of
19 all, the private oak, 58.7-inch oak?

20 MR. THOMAS: It reduces it
21 significantly, yes.

22 BZA VICE CHAIR LOUD: What would be

1 the remaining danger, if it reduces it
2 significantly?

3 MR. THOMAS: I guess we'd need to
4 see, yes, kind of the staging, the --

5 BZA VICE CHAIR LOUD: Okay. So
6 again just as with the removal of the
7 basement, there's still questions regarding
8 staging and materials and schedules that are
9 just not available?

10 MR. THOMAS: Yes, you're still --
11 when you're onsite, it really starts to --
12 it's hard from photos sometimes and some of
13 these overhead shots and aerials or
14 elevations, but it's a lot closer back there
15 than it looks, I guess, from some of the
16 drawings than when you're physically onsite.

17 That large oak literally comes out
18 to the street tree pretty much and touches it.
19 It goes over into the adjacent yard and goes
20 considerably back into the backyard. So if
21 you just even use the rule of thumb of drip
22 line, you know, that whole area is basically

1 the root zone. The whole lot is being used by
2 that tree to survive.

3 So I commend anyone wants to dig by
4 hand, I love it, but there's still -- we're
5 building a two-story house. It's not like
6 we're putting in a shed or I don't know, an
7 addition, I guess, on the back of a house.
8 We're building a house as well.

9 BZA VICE CHAIR LOUD: And again
10 this may sound like a very elementary question
11 to you, but when you say the whole lot is used
12 for the root zone, you mean for both trees or
13 for the street oak tree or the red oak or, as
14 I said, for both of them?

15 MR. THOMAS: If you took the street
16 tree, then the 57-inch oak tree and then the
17 24-inch tree, that kind of triangulation, the
18 space between them all is pretty much the
19 critical root zone for those three trees.
20 There may be -- if you could, if you look at,
21 I guess I don't know what -- if this has been
22 submitted, but it's not accurate, but if you

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1 had the canopies on here, you may have a
2 sliver here and a sliver here, but the root
3 zones aren't criss-crossing, but it's -- we're
4 talking five to seven feet. It's not a large
5 space.

6 So really between the street tree
7 and the large oak tree, that's all root system
8 from what I could tell out there or 85 percent
9 of that space is being used by those trees.

10 BZA VICE CHAIR LOUD: Okay. I have
11 no further questions. I just want to thank
12 you for taking the time to walk me through a
13 better understanding of the issues.

14 ZC VICE CHAIR JEFFRIES: And I
15 think I appreciate, Mr. Thomas, you providing
16 as much expert testimony as possible without
17 having a lot of information in front of you.
18 It's hard to just sort of imagine, you know,
19 what's going to be happening here and trying
20 to provide some sort of, you know, insight to
21 the Board.

22 I just have a question from Ms.

1 Oates Walker, Board Member Oates Walker about
2 -- did I say it wrong again? I said it wrong?
3 Oh, okay. I'm trying to correct the record.

4 In terms of the percentages that
5 you cited before, were those percentages based
6 on the basement? When you were speaking about
7 those percentages in terms of, you know,
8 potential damage, was that based with basement
9 or without?

10 MR. THOMAS: Again without having
11 all the stuff, I would -- from what we've
12 seen, I was trying to translate what we've
13 seen even the lack of digging, the activity on
14 top has been almost as equally detrimental.
15 It just takes time for it to happen.

16 ZC VICE CHAIR JEFFRIES: Okay.

17 MR. THOMAS: So without really
18 understanding this offsite staging, delivery
19 and how that's actually going to happen, --

20 ZC VICE CHAIR JEFFRIES: Right.

21 MR. THOMAS: -- I don't know how to
22 -- I can't explain that.

1 ZC VICE CHAIR JEFFRIES: Okay.

2 MR. THOMAS: But they probably --
3 you could probably say that there's a less --
4 the more they can reduce the amount of
5 equipment and activity on top of the soil, the
6 lower the percentages for that tree.

7 ZC VICE CHAIR JEFFRIES: Right.
8 The other question I have, is it possible --
9 I mean, I don't obviously which way that the
10 Board is going, but it might be helpful, you
11 know, you've cited a couple of examples where
12 there's construction that is occurring in
13 close proximity to trees and you've actually
14 seen, you know, the death or the dying of the
15 trees and so forth, and, you know, just trying
16 to get a sense of, you know, just examples in
17 the District that, you know, you might be able
18 to provide.

19 Again, I don't know which direction
20 that the Board is going in terms of this case,
21 but it might be helpful for this Board to, you
22 know, be able to, you know, have examples of,

1 you know, outright cases of where you've
2 actually seen this kind of detriment to the
3 trees, based on, you know, construction.

4 Now I don't know if you can --

5 MR. THOMAS: And do you want them
6 now?

7 ZC VICE CHAIR JEFFRIES: Oh, you
8 can -- yes, yes. Well, no. Just -- and
9 actually --

10 MR. THOMAS: They're scorched in my
11 --

12 ZC VICE CHAIR JEFFRIES: -- it
13 would be good if it can be, you know, somewhat
14 of a comparable situation. I mean, you know,
15 this is a house going up and so forth and I
16 think it's really critical, you know, in terms
17 of having the information in front of you to
18 really show on the site plan just what the
19 root coverage is and how the canopy operates
20 and then being able to walk the site and then
21 being able to walk the site and see all the
22 mounds and so forth and it starts to give you

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1 some indication about, you know, root coverage
2 and so forth that you don't really get here.

3 I mean, you don't -- it's hard to
4 -- you know, in terms of looking at the
5 perspectives and so forth. So again it just
6 depends on where the Board is going, but it
7 would be helpful, you know, to get a sense of,
8 you know, where these areas where you might
9 have a comparable situation and we can
10 determine and see where the trees have
11 actually been hurt or damaged or whatever.

12 CHAIRPERSON MILLER: Is there
13 something that comes to mind that you wanted
14 to address now?

15 MR. THOMAS: There's one quick one,
16 Stanton Road, right off Suitland Parkway, they
17 just built several -- a big -- a large lot.
18 It's a large development, but it's -- whether
19 you're building one or you're building a
20 hundred of these, there were street trees all
21 the way down Stanton Road and they built
22 basically townhomes, attached townhomes all

1 the way down with a decent setback similar to
2 this and every single tree on that block got
3 hypoxylin and died and we just removed them
4 all. So I think there were 11 trees.

5 ZC VICE CHAIR JEFFRIES: How old
6 were the trees and what was the setback?

7 MR. THOMAS: Similar age, setback
8 was probably -- from curb to facade was -- I
9 would say somewhere between 14 and 18 feet.
10 If you go up Mass Ave., at 10th and Mass Ave.,
11 they just did some construction on the
12 building there, similar setback, about 14 feet
13 from the front edge of the curb, all three
14 trees are dead standing there right now. They
15 died this spring from hypoxylin from the
16 construction. So, I mean, they're not all the
17 same necessarily but --

18 ZC VICE CHAIR JEFFRIES: Well,
19 that's -- I mean, this is a little bit
20 anecdotal, but I just, you know, really, you
21 know, I just wanted to get a sense of just --
22 he was talking about examples as he was

1 driving here. So, you know, just a bit
2 illuminating.

3 MR. THOMAS: And probably one of
4 the last things that's more maybe my personal
5 -- when you add a structure in the middle
6 there and say we do lose the street tree, I'm
7 not sure we'll be able to replace the street
8 tree. We don't -- we have restrictions on
9 where we plant, so we don't plant in front of
10 doorways or walkways for -- so we need to be
11 offset by 10 or 15 feet from walkways so that
12 people don't walk down stairs and get poked in
13 the eye and things and due to the elevation
14 increase here, you know, we may not be able to
15 come back and plant a tree if we did lose this
16 tree. I don't know, because, you know, just
17 off this photo are two more trees. So we'd be
18 shoe horning something in for this.

19 CHAIRPERSON MILLER: We're not well
20 versed in the Tree Preservation Act and I'm
21 wondering if the oak tree, you know, was on
22 the subject property and no variances were

1 required and this was just a matter of right,
2 what kind of protection would the tree have?
3 I mean, would -- is it possible that
4 construction wouldn't be allowed because of
5 the location of the trees or not?

6 MR. THOMAS: No, unfortunately, the
7 Urban Preservation Act lacks some teeth, but
8 they would be required to pay into the Tree
9 Fund. So at any point, you can always remove
10 the tree. You just have to pay to remove it.
11 That was kind of watered down, I guess, as it
12 went through the process, but --

13 ZC VICE CHAIR JEFFRIES: Was it a
14 certain diameter that --

15 MR. THOMAS: Over 55 inches
16 requires you, if it's considered healthy by a
17 certified arborist, that you pay \$35 per
18 circumference inch. Once you make that
19 payment, then you can remove the tree. The
20 original version of the bill was that you
21 would not be able to remove that tree at all
22 for any cost and so the compromise was made,

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1 I guess, at Council to have some kind of
2 dollar figure attached so at least there was
3 some punitive, I guess, or some way to stop
4 people from doing it.

5 ZC VICE CHAIR JEFFRIES: So how
6 many -- I'm sorry. I'm being co-optive here.
7 How many rings -- I'm trying to get a sense of
8 just economically, I mean how many rings are
9 we talking about? You're saying \$35?

10 MR. THOMAS: It's to -- we measure
11 everything in diameter inch as arborists.
12 When this was written, the Preservation Act,
13 the attorneys put it in circumference inch.
14 So it's pie. It's the difference between the
15 two.

16 So an 18-inch tree which is roughly
17 slightly larger than a telephone pole, if that
18 puts it in perspective, are quite a bit
19 probably. Any tree of that size or larger
20 would be protected or require this payment
21 into the Tree Fund, if it's healthy and it's
22 not one of the three weed species that's

1 listed in there.

2 ZC VICE CHAIR JEFFRIES: But I'm
3 trying to determine how many rings would
4 generally be in a tree of that size --

5 MR. THOMAS: Oh.

6 ZC VICE CHAIR JEFFRIES: -- and
7 then multiply times whatever the rate. I'm
8 just trying to get a sense of how punitive
9 this is.

10 MR. THOMAS: It's only punitive to
11 the individual homeowner really because as a
12 developer, it's just part of doing business,
13 but if you're building one property and you
14 have one tree, it could be \$10 to \$15,000 if
15 you're building -- and there's just not a way
16 to kind of offset that cost on a single
17 project, right.

18 CHAIRPERSON MILLER: And when we're
19 evaluating here detriment to the public good,
20 I think it's been argued that the oak tree in
21 particular is particularly special. Can you
22 just address why and if this is a particularly

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1 special tree as opposed to just any tree?

2 MR. THOMAS: Yes, what we're
3 finding is trees that reach these sizes, 56
4 inches or large trees of this nature, it's
5 more than just the heat island effect that's
6 reduced. There's stormwater that they can
7 capture during a rain event. There's
8 wildlife. There's other species that live and
9 interact with this tree.

10 So you're losing kind of a super
11 micro -- kind of an ecology, I guess, is the
12 best word that is living and working with this
13 tree. The shading effect is, you know, being
14 felt on two properties. Even with the gap
15 between the two properties, you know, the
16 shade is being felt by two properties, and
17 it's just we don't have a lot of trees like
18 this in a neighborhood situation. We have
19 them in parks or pocket parks maybe, but
20 there's recent research that's come out and
21 said a tree of roughly this size supports
22 about 1,500 different organisms, ants, flies

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1 and things of that sort. So there's a lot of
2 activity going on on a tree of this size, not
3 to mention just the silhouette, the
4 architecture, I mean, I guess, the aesthetics
5 that this tree that offers the neighborhood.

6 You know, many of these trees,
7 especially in D.C., these were marker trees
8 that people used as -- when they were on their
9 horse leaving town and we have several of
10 these that have documented that these were
11 guidance, these were the early day GPS or GIS,
12 you know. It was the way of finding north,
13 finding east.

14 CHAIRPERSON MILLER: I have another
15 question. I think you said basically you
16 can't fully evaluate this because you don't
17 have, you know, their staging plans or
18 whatever, but can you make a judgment as to
19 how likely it would be that plans could be
20 developed that would address the concerns that
21 you have with respect to preventing these
22 trees from dying or getting severely injured?

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1 MR. THOMAS: I mean, I think you
2 could if there was no dollar limit, so you
3 could probably pay people to do as much by
4 hand as possible and increase your labor costs
5 and things of that sort, but yes, there's
6 probably ways to really reduce it down to
7 something that's probably negligible, maybe
8 not negligible, but at least reduces the risk,
9 but then I think the final piece to add is
10 who's going to police this plan and who's
11 going to make sure this plan goes because all
12 we find all the time is people have the great
13 intentions on the get-go and there's a great
14 plan but it's never carried out because as the
15 project goes on, money gets tighter and
16 tighter and tighter and so value engineering
17 starts to happen and that's when we start to
18 see this, that's when the problem comes, and
19 that's why we're seeing such an increase of
20 the incidental contact being detrimental to
21 the trees is because there is a rush at the
22 end to get all it done and save as much money

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1 and this is where it starts to happen.

2 CHAIRPERSON MILLER: Thank you very
3 much. All right. Does the Applicant have
4 questions for the Office of Planning?

5 MR. AGBIM: Yes, I do have
6 questions for Urban Forestry, please.

7 CHAIRPERSON MILLER: Okay.

8 MR. AGBIM: I heard you mention you
9 looked at the revised plans and you understand
10 that the proposal has been revised to show
11 construction on six piers. Did you get a
12 chance to look at these plans?

13 MR. THOMAS: I did. I saw a copy.
14 I saw the written changes that were proposed
15 and then I saw the actual drawings just before
16 coming in here.

17 MR. AGBIM: Do you agree that if a
18 prefab building is put up on the site with a
19 two-direction period of small hand-carried
20 prefinished exterior panels, that that will
21 eliminate any pressure on the soil around the
22 property and that could cause damage to trees?

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1 MR. THOMAS: What was the first
2 part you said there? Prefab?

3 MR. AGBIM: Prefab building. The
4 situation where after the foundation is done,
5 the piers are done, the building would be
6 prefabricated, staged outside and brought in
7 perhaps through the alley in small prefinished
8 panels that will have both the exterior
9 finish, the interior finish, and all the
10 structural components and it will be carried
11 by hand from the alley on to the property and
12 then erected.

13 Do you believe that method will
14 substantially, if not entirely, eliminate any
15 damage to the root system of the trees?

16 MR. THOMAS: It would definitely
17 reduce the damage to the trees for sure.

18 MR. AGBIM: What is the average
19 lifespan of the tree, the big tree in the rear
20 of 2216?

21 MR. THOMAS: I mean, it's hard to
22 say. In a perfect world, it could live for

1 500-600-700 years. In an urban environment,
2 in this situation as it is standing now, it
3 could probably go for another, I don't know,
4 storms, it's really kind of a major guess, but
5 it at least has 25 to 35 years of life for
6 sure.

7 MR. AGBIM: Thank you. What do you
8 think the impact is on the trash trucks that
9 ply the alleys? What do you think, what type
10 of impact do you think they will have on the
11 tree in the alley?

12 MR. THOMAS: I missed the first
13 part. The trash --

14 MR. AGBIM: Trash trucks and other
15 trucks that ply the alley. What impact do
16 those trucks have, you know, because I'm sure
17 daily or twice a week or so, trash trucks come
18 through the alley and pick up trash and
19 they've been doing that for the last couple of
20 years, I'm sure.

21 So what do you think that impact
22 has been on the tree in the alley in the rear?

1 MR. THOMAS: Limited. They're
2 relatively light vehicles in the sense of, you
3 know, they're just driving across an existing
4 road. I think the concern back there was the
5 turning radius. If you're back there and
6 you're standing where the proposed car parking
7 is, it's not -- I'm not sure how you would get
8 Code or from what a transportation -- the
9 diagonal or the radius of the turn is really
10 tight.

11 It's a 10-foot alley and the
12 turning radius would be -- the apron would
13 have to be quite expansive to have
14 construction vehicles make that entryway into
15 that -- again, you know, I'm armchair
16 quarterbacking a little bit because you don't
17 have a plan, so it's hard to -- I mean, I can
18 think on my feet, but it's -- until some of
19 this is on paper and you really see it, it's
20 -- I mean that's why we engineer things and we
21 have radii so we can see what are the impacts
22 of it and a triaxle truck trying to make that

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1 turn to unload equipment is not going to
2 happen. I know that from experience.

3 MR. AGBIM: Okay. What do you
4 think the impact of a Chevy Silverado truck,
5 a four-wheel truck, will be on that alley?
6 I'm just trying to compare that to a trash
7 truck in the sense that this is the kind of
8 vehicle that will probably be used to pull a
9 platform that will bring the prefab equipment.

10 CHAIRPERSON MILLER: Let me just
11 say something. You should feel, you know,
12 comfortable to decline to answer a question if
13 you're not prepared for it because in any way
14 cross examination for the most part is
15 supposed to be based on what someone's
16 testified to, so, of course, they're prepared
17 to answer.

18 Sometimes, you know, we give a
19 little leeway, but I want you to feel free not
20 to, you know, feel compelled to answer, if
21 you're not comfortable.

22 ZC VICE CHAIR JEFFRIES: If you

1 don't know about prefabricated panels and how
2 many and this and that, I mean, it's, you
3 know, --

4 MR. AGBIM: Okay. Let me just
5 reword that, and I'm very sorry about going
6 off in a different direction, but all I'm
7 trying to demonstrate is that prefab panels or
8 prefab construction methods for this building,
9 erection time of two days with the panels
10 brought in prefinished through the alley and
11 hand carried on to the foundation, will
12 substantially reduce and eliminate some of the
13 dangers, if not all, to the trees on the
14 property and also will remove any impact to
15 the tree in the street.

16 CHAIRPERSON MILLER: Is that in
17 your revised plan? I mean, are you just
18 telling us now that for the first time, that
19 it's going to be prefab over a two-day period?

20 MR. AGBIM: Right. In the revised
21 plan, I did mention staged out of the site,
22 and -- but, you know, this is something, you

1 know, that is going to be a prefab building
2 and the erection time will be two days.

3 ZC VICE CHAIR JEFFRIES: But then
4 I have to go back to -- so you've done this
5 before. You've taken a prefab building and
6 constructed it offsite, brought it on, panels,
7 I got it, where you prevented harm to trees?

8 MR. AGBIM: Yes, sir.

9 ZC VICE CHAIR JEFFRIES: Okay.

10 MR. MARCUS: Could I just make a
11 quick objection to this line of cross
12 examination? There's no evidence in the
13 record supporting this line of questioning.

14 The plans that have been submitted
15 do not suggest any prefab construction. This
16 is just testimony that's offered here as a
17 line of cross examination. There's no factual
18 foundation. I think it's inappropriate.

19 MR. THOMAS: I mean, I don't know
20 with all the questions you had, I think we
21 would definitely like to see the full kind of
22 mapping of it, the report, what's being done,

1 and then I think the other thing that's
2 missing and I found out was the utility
3 portion. There is no -- I don't know where
4 the water's coming in, the sewer. I'm
5 assuming it's overhead electricity from what's
6 there, but how is that being -- I guess is
7 there a plan or is that -- do you have it?

8 CHAIRPERSON MILLER: Okay. I just
9 want to follow up on this prefab testimony,
10 and I want to know whether the plans that we
11 have that were submitted to the record are
12 prefab plans. It's Exhibit Number 33. They
13 were your revised drawings, dated July 1st.

14 MR. AGBIM: The plans show the same
15 building without a foundation, with a
16 different foundation system, but in the memo
17 that accompany these plans, we did mention the
18 memo to the Office of Zoning, we did mention
19 that the building was going to be fabricated
20 and staged outside the site and brought in on
21 vehicles to the site.

22 CHAIRPERSON MILLER: Well, did you

1 -- is that in writing? Are you just --

2 MR. AGBIM: Yes, we --

3 CHAIRPERSON MILLER: Where is it?

4 MR. AGBIM: -- sent in a memo to
5 the Office of Zoning.

6 ZC VICE CHAIR JEFFRIES: Informed
7 the community and everybody?

8 MR. AGBIM: No, we -- that portion
9 of it, I will admit, was not presented to the
10 community during the ANC.

11 ZC VICE CHAIR JEFFRIES: You see
12 what the problem is here? I mean, you don't
13 have a full and complete record. The
14 community doesn't have everything. We're
15 asking Mr. Thomas to opine on stuff without a
16 full record. We're spending a lot of time
17 here and it's truly problematic.

18 CHAIRPERSON MILLER: And just to
19 close this one subject, though, it's the memo
20 you're talking about, July 1st, 2008, where you
21 say, "Number 3. Execution of the construction
22 to be done in a phased manner to eliminate

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1 staging of materials onsite" means prefab?

2 MR. AGBIM: Yes, at that stage when
3 that letter was written, we had mainly worked
4 on the portion of the project to eliminate the
5 basement and got the memo out to advise the
6 Office of Zoning that it was the intent of the
7 owner to not have a stick-built building, but
8 the construction of the building outside a
9 project -- outside a site that will then be
10 brought in in a phased manner.

11 That's the reference we made to,
12 you know, prefabricating the building outside
13 and bringing it in on to the site.

14 CHAIRPERSON MILLER: Okay. Do you
15 have any other questions to either the Urban
16 Forestry or the Office of Planning witnesses?

17 MR. AGBIM: No.

18 CHAIRPERSON MILLER: Okay.

19 MR. AGBIM: The only other thing I
20 want to add is clarification on the utilities.
21 The electric in this area is overhead.
22 However, water and sewer are underground and

1 to address also a question that was posed a
2 few minutes ago about the utilities, D.C.
3 Water Service is 44 inches coverage for both
4 water and sewer lines for frost reasons, and
5 there's equipment that tunnels underground to
6 connect, especially up to the curb, and then
7 from that, an excavation trench can be done to
8 connect to the mains in the street.

9 CHAIRPERSON MILLER: Okay. You're
10 going to get a chance for closing at the end
11 of this hearing.

12 MR. AGBIM: Thank you.

13 CHAIRPERSON MILLER: Does the ANC
14 have any cross exam? No. How about the --

15 MS. SMITH: Yes, I do. Sorry.

16 CHAIRPERSON MILLER: I'm sorry.

17 MS. SMITH: Yes.

18 CHAIRPERSON MILLER: I thought you
19 said -- I thought this was a no.

20 MS. SMITH: No, I said no.

21 CHAIRPERSON MILLER: Go ahead.

22 MS. SMITH: I guess two questions

1 I have. First of all, let me just say this is
2 the same kind of presentation he made with us
3 at the ANC meeting, but more than that, --

4 CHAIRPERSON MILLER: Is this a
5 question for Office of Planning?

6 MS. SMITH: No, this is --

7 CHAIRPERSON MILLER: No, it's not.

8 MS. SMITH: I'm sorry. I thought
9 it was for him.

10 CHAIRPERSON MILLER: No, no. The
11 Office of Planning or Urban Forestry.

12 MS. SMITH: No. Fine. No.

13 CHAIRPERSON MILLER: But you will
14 get to say your piece when we get to you.
15 Okay. The opposition party?

16 MR. MARCUS: Sorry. Just a quick
17 question for Mr. Thomas.

18 Mr. Thomas, you prepared a report
19 which you submitted to the Office of Planning
20 on June 6th, 2008, in which you described that
21 you inspected the site and concluded "that you
22 found that significant damage would be done to

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1 four mature trees if any development occurs on
2 this parcel."

3 My question is now having seen
4 what's been provided by the Applicant in terms
5 of revised plans, do those revised plans cause
6 you to change the conclusion that you reached
7 on June 27th?

8 MR. THOMAS: I think we would need
9 to see some of the details. I guess the sewer
10 and water piece is still not, you know, -- I
11 guess this is where we get caught all the
12 time. We say yes to things in advance or no
13 and then the details come out and it's too
14 late. So it would reduce my concern, but I
15 can't say it would eliminate my concern
16 because there's still a tremendous amount of
17 unknown, I guess.

18 If we were to closely understand
19 how the water line needs to go in and it has
20 to be perpendicular to the house and so there
21 would be some effects there, but I would say
22 it reduce it but not eliminate it.

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1 MR. MARCUS: Thank you.

2 CHAIRPERSON MILLER: Any other
3 questions?

4 (No response.)

5 CHAIRPERSON MILLER: Any other
6 questions from Board members?

7 (No response.)

8 CHAIRPERSON MILLER: Okay. All
9 right. Now is the time for the ANC.

10 MS. SMITH: I guess I'm really
11 concerned because I didn't know prefab houses
12 were in the District of Columbia. So that I
13 just never heard of.

14 I have a prefab house in Virginia
15 on a waterfront that they surely dug into the
16 ground in order to put the prefab, I mean what
17 they put the house on, so it wasn't like the
18 house was sitting up on level ground. Even on
19 the waterfront, they had to dig down to some
20 level.

21 So I'm just concerned, but I guess
22 the first time I've heard this because when he

1 spoke at the ANC meeting, he made it very
2 clear because we asked him about the side of
3 the house being wood and the front being
4 brick. Prefab houses don't come brick or
5 wood.

6 So I'm just concerned about now how
7 did they switch from a house that was wood on
8 the sides and brick on the front to be a
9 prefab house. So that was my question to him
10 now.

11 CHAIRPERSON MILLER: Okay. I guess
12 we can do it this way. Is that it, though,
13 with your testimony or are you going to make
14 -- you may still have some time for testimony,
15 but that's a -- you know, but that's new
16 information and I can appreciate that you
17 should get a response to that. I'm just
18 curious as to where we're going afterwards.
19 Do you have more testimony?

20 MS. SMITH: Well, I guess I'm kind
21 of concerned. Let me just say as a citizen
22 and as citizens who have come here, you've

1 said he's been here before. We've come as --
2 in good faith, as people who own our property,
3 who care about our property and our
4 neighborhood, and we have a developer who come
5 into the District and will come in and build
6 whatever they want to build and say whatever
7 they want to say but the burden has been put
8 on us as citizens to come and defend ourselves
9 against someone who doesn't live in the city,
10 doesn't pay any tax, and then we're the
11 taxpayers have Board members who, you know, we
12 have to question and have to defend, will have
13 to hire a lawyer to defend ourselves.

14 I mean, I'm just kind of concerned
15 that if this is the way we're going, what is
16 -- what are we doing to ourselves? If the
17 Office of Planning or the Office of Zoning, if
18 everybody is looking at someone who comes in
19 on a regular basis and apparently he's working
20 for a developer who's done this before and
21 apparently he's gotten away with it, so he
22 understands how he can come in here and be

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1 shabby with his answers and not be able to be
2 truthful about what he's presenting and then
3 we have to come back, but we have to live with
4 the prefab house in a neighborhood where there
5 aren't any.

6 I don't know of any in the
7 neighborhood. I mean, I don't know -- I
8 didn't know there was any in the District. So
9 I just wanted to make that statement since
10 that was my last statement.

11 Thank you.

12 CHAIRPERSON MILLER: Well, first
13 let's find out about this -- what is this
14 prefab house, you know, where everybody has
15 been shown plans that show wood and brick and
16 now all of a sudden you're saying prefab?
17 What does that mean? Are you talking about a
18 different type of house now or what?

19 MR. AGBIM: Yes, a prefab house is
20 -- basically prefabrication doesn't include
21 the foundation. Usually there's a foundation
22 in place already but the house comes either in

1 complete sections or in panels and gets
2 installed on the foundation.

3 To get to the answer, the
4 prefabrication process is a process of
5 construction. It doesn't have much to do with
6 the material being on the site like is
7 proposed. We have a four-sided building and
8 three sides, a side and the front is a brick
9 veneer which is just a veneer that's applied
10 after the structure is up.

11 Now, when I mentioned that the
12 construction erection time for the structural
13 work would be two days, that's for the
14 erection of the structure. Now, the front of
15 the house can be -- is shown as brick on the
16 current elevations and the three sides are
17 shown as siding. So the exterior finish of
18 the building generally is siding on the three
19 sides.

20 I don't know if that answers the
21 question.

22 CHAIRPERSON MILLER: Here's a basic

1 question. Are you building per plans, these
2 plans? Are they different? Are they not
3 these plans?

4 MR. AGBIM: No, the plans are the
5 same.

6 CHAIRPERSON MILLER: The plans are
7 the same.

8 MR. AGBIM: The plans are the same.
9 It's a prefab building which is a prefab
10 building.

11 CHAIRPERSON MILLER: Was it always
12 a prefab building?

13 MR. AGBIM: No.

14 CHAIRPERSON MILLER: No. So it's
15 just prefab because you -- it's built offsite
16 in sections?

17 MR. AGBIM: Yes, it's prefab
18 because it's prefabricated outside the site
19 and brought to the site for erection.

20 CHAIRPERSON MILLER: So you didn't
21 always plan to do it that way but you're
22 changing -- since --

1 MR. AGBIM: Yes.

2 CHAIRPERSON MILLER: -- this
3 revision?

4 MR. AGBIM: Yes, we're changing it
5 and again it's due to the concerns to
6 eliminate the impact on the land because a
7 stick-built building means that they're
8 bringing the 2X4s and they pick it piece by
9 piece and erect it on the site and people walk
10 around while they're doing that and after
11 that, they walk around to put the siding up,
12 to put the roofing up and all that.

13 So it's just need in a bid to
14 reduce the amount of activity on the site that
15 we're going to this method of construction, to
16 prefabricate outside the site, bring to the
17 site and do erection.

18 CHAIRPERSON MILLER: I don't know
19 whether I should, you know, leave unanswered
20 some of the comments you made because I think
21 that you kind of indicted the process and
22 everything, and I don't think that that's the

1 fair.

2 The Applicant has come here on
3 several cases and been successful on some and
4 maybe not on others, but I think the process
5 is always fair and the Applicant has the
6 burden of proof and the process is a
7 transparent, I think, and fair one that allows
8 the community the chance to be here and
9 protect their properties.

10 Okay. The process is not done. So
11 did you want to say something else?

12 MS. SMITH: They never came back to
13 the community to say anything. We had 85
14 people at an ANC meeting, okay, that came out
15 and 85 people voted for us against the
16 variance. That was the ANC report that we had
17 to come before you.

18 But I guess I'm just concerned that
19 he would come here today and say about the
20 prefab because we asked him about wood.
21 Prefab is not wood. It is not brick. And so,
22 therefore, I have a prefab house and I know

1 it's not brick and I know how it's built. So
2 for him -- and I'm not saying that I don't
3 know how he would do it in the District of
4 Columbia, but in the state of Virginia, you
5 can't do it like that, but I just wanted to be
6 clear that he would not have enough respect to
7 even come back and the owner, I spoke to him
8 myself, never called back, never said the
9 plans had changed or anything.

10 So we come here today with a
11 completely different plan and we're talking
12 about something that we never heard of before
13 we got here today. So I just want to say on
14 the record for that and thank you.

15 CHAIRPERSON MILLER: Okay. Does
16 the opposition have -- where are we? Let's
17 see. Oh, ANC. Okay. That's -- you're
18 finished with your case presentation? Did you
19 have any witnesses or anything else? You have
20 your report which we have in the record and
21 you just presented testimony.

22 Is there anything else you just

1 want to add?

2 MS. SMITH: Excuse me. I just --

3 CHAIRPERSON MILLER: I just want to
4 make sure you're finished with your
5 presentation.

6 MS. SMITH: Well, I guess the main
7 thing was what I said earlier, but we all are
8 concerned because, like I said, in the
9 audience are the members from the community
10 who live on that block and are on 24th Street
11 and one of the things for sure is that the
12 proposal, just bringing that kind of building
13 into our community with the houses that are
14 there. I mean prefab houses, you can -- what
15 he's looking at and what he said, if the
16 diagram of what he gave us is true, he can buy
17 that house for \$60,000 and put it up for
18 \$60,000. So he paid for 30 for the property,
19 that's \$90,000 and so therefore the houses
20 there are selling for 400 and 500,000 and up.

21 So here you stick a \$90,000 house
22 in the midst of \$400 and \$500,000 houses and

1 so I think that says something about the value
2 of what would happen to our community by even
3 adding that -- a prefab house to the
4 community. So that's the last thing I wanted
5 to say.

6 CHAIRPERSON MILLER: Well, let me
7 ask you since you do represent the community.
8 Do you think that -- do you think in general
9 that this house would be out of character with
10 the neighborhood?

11 MS. SMITH: 85 people thought this
12 kind of house would be out of character.

13 CHAIRPERSON MILLER: Okay.

14 MS. SMITH: 85 people in the
15 community. We had a meeting and he was there.
16 We had a meeting, a two and a half hour
17 meeting, and we tried to get answers from him.
18 I mean, none of these -- and different members
19 brought different things.

20 We have architects in the
21 community. Our community is a diverse
22 community with a lot of people coming with a

1 lot of ideas and things about how they bought
2 their homes and why they live there and we are
3 a very close-knit community.

4 So, I mean, I'm very -- I mean, I
5 might be -- you know, I'm laughing at him
6 because I really enjoy him upset with the fact
7 that he would even come in for us to be here
8 today and then talk about a prefab house, but
9 the character of that community does not
10 dictate. This is the same kind of mentality
11 was used for the 25- or the 17-foot house in
12 the community where homes are full houses.

13 CHAIRPERSON MILLER: So there
14 aren't prefab houses in the neighborhood?

15 MS. SMITH: I've never seen a
16 prefab house.

17 CHAIRPERSON MILLER: So it's out of
18 character that way, and do you have an opinion
19 otherwise how you think it's out of character
20 with respect to its placement on the property?

21 MS. SMITH: I think the placement
22 on the property, I mean here's a house that's

1 going to look like this and everybody else's
2 house going to look like this, and so,
3 therefore, you've got this -- you know, it
4 looks like a doll house.

5 Well, let me just say one other
6 thing. Up until 1989 or 1985, my brother
7 lived in that house for 25 years and owned
8 that lot next door. Now how that lot -- and
9 I said it to Linda McAlister. How that lot
10 got to be a separate lot, when he sold that
11 house, she's the second person after he sold
12 that house, but that lot was a full lot,
13 including those two, and he was told that he
14 could not build a garage or something else on
15 that property like 20 years ago.

16 So things have happened in this
17 city from that time to this in the sense of
18 that one lot and that's what I said to Linda
19 earlier. I don't know where in the records it
20 shows that when it switched from one lot to
21 two lots and how it was sold, but it was at
22 one time one lot. Those two -- that property

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1 there was in just one full lot.

2 So, I mean, it's something that's
3 happening and I think that the citizens and
4 maybe because we don't pay enough attention,
5 but things are happening in this city in the
6 sense of lots and property. So I don't know
7 because there are other lots that are --
8 people are looking at and talking about in the
9 community.

10 So I'm only saying that that is
11 just something I wanted to say on the record
12 because we are concerned about that and we are
13 concerned about the presence this property
14 will have with other things being built around
15 us in the community.

16 CHAIRPERSON MILLER: Thank you.
17 Yes, that is a concern that we've actually
18 seen where lots are being sold on the block
19 and somebody on the block wanted to buy it and
20 they didn't know about it and didn't know how
21 it happened.

22 Yes, okay. Are there any Board

1 questions for the ANC?

2 (No response.)

3 CHAIRPERSON MILLER: Mr. Agbim,
4 cross exam?

5 MR. AGBIM: I have two questions.
6 Are you familiar with the 24th Street between
7 Otis and Perry? Yes. Are you familiar with
8 the houses on the west side of the street
9 which would be, if you're approaching Perry
10 from Otis, on the let side? Are you familiar
11 with the houses on that side of the street?

12 MS. SMITH: Yes.

13 MR. AGBIM: Okay.

14 MS. SMITH: I'm sorry. Yes.

15 MR. AGBIM: Okay. Do you agree
16 with me that out of all the houses, there are
17 about 1-2-3-4-5-6-7-8-9-10 houses on that side
18 of that street, that the majority of them are
19 17-foot wide and about 26-foot deep?

20 MS. SMITH: No.

21 MR. AGBIM: Okay. I have a copy of
22 the official D.C. surveyor's records showing

1 the houses on the west side of the street and
2 the reason why I'm bringing this up is the
3 issue about this house being a chicken or shed
4 house or something.

5 I'm trying to demonstrate that
6 while this is a small house in terms of width,
7 that there are other houses in the area in the
8 same square that are 17-foot wide.

9 MS. SMITH: Excuse me. One of the
10 houses that I spoke of earlier, the owner of
11 that house is here. Mr. Fishman is here. He
12 owns one of those houses and when I was
13 speaking of a house around the corner that had
14 had problems because it was built out of scale
15 with the other houses and that is one of the
16 houses, but he's here in the audience today,
17 but out of the other houses are not the size
18 of his house. So that's the only house that
19 I know of that size in the block.

20 MR. AGBIM: Yes, I'm referring to
21 the houses that are on Lot 45, 44, 43, 42, 41,
22 40, 39, 38, and 37, and these are all in

1 between the first house on the corner, on the
2 corner of Otis and 24th, and the last house,
3 which is the one on the corner of Perry and
4 24th.

5 CHAIRPERSON MILLER: You really
6 just need to answer what you know. If you
7 don't know it, you don't know it.

8 MS. SMITH: All I know of that is
9 that there's only one house that's small in
10 that block. The others, the lot -- I don't
11 know of anybody -- I don't know of any house
12 that the lot is on a 25 square foot lot. Let
13 me just say how -- what the size of the house
14 is is one thing. What the lot is, I can say
15 the lot is not the size lot that is the same
16 lot he's talking about building 2212 on.

17 Are you talking about -- you said
18 Perry to what?

19 MR. AGBIM: 24th Street, between
20 Otis and Perry.

21 MS. SMITH: Okay. Thank you.

22 CHAIRPERSON MILLER: Anything else?

1 MR. AGBIM: That's all.

2 CHAIRPERSON MILLER: Okay. Does
3 the opposition have any cross exam for the
4 ANC?

5 MR. MARCUS: No, thank you.

6 CHAIRPERSON MILLER: Is there
7 anybody here in the audience who wishes to
8 testify in support of this application?

9 (No response.)

10 CHAIRPERSON MILLER: Okay. Okay.
11 Well, we're down to opposition, parties or
12 persons in opposition. Do you -- does the
13 party want to go first and then we can hear
14 the persons in opposition?

15 MR. MARCUS: Yes.

16 CHAIRPERSON MILLER: Okay. Let me
17 just ask you this. Would this -- this might
18 take awhile. Maybe it's an appropriate time
19 for a break. Yes, why don't we do that? Then
20 take about 10 minutes. Okay.

21 (Whereupon, the proceedings went
22 off the record at 3:59 p.m. and went back on

1 the record at 4:35 p.m.)

2 CHAIRPERSON MILLER: Okay. We're
3 back on the record and it's time for the
4 opposition party to present its case.

5 MS. McALISTER: Good afternoon. My
6 name is Linda McAlister, and I reside at 2216
7 Otis Street, N.E., Washington, D.C., directly
8 next to the lot that is the subject of this
9 hearing today.

10 Now during my testimony, I want to
11 give a little background on three basic areas
12 and underscore why granting this variance
13 would not be in the public good.

14 My three basic areas are my
15 ownership of one of the near largest Champion
16 oak trees in Washington, D.C., the changing
17 character of the neighborhood, and the lack of
18 transparency of the representative of the
19 developer during an ANC meeting.

20 Now as a person how has invested
21 personally and professionally in the city, I
22 am a social work supervisor with D.C. Child

1 and Family Services, I purchased my home in
2 February of 1999, not only to work for the
3 city and work in the city but to also be a
4 part of a neighborhood.

5 Now, as a native of North Carolina,
6 I can't tell you just how delighted I was to
7 find a neighborhood like the
8 Woodridge/Brookland community.

9 You know, I just always thought
10 that living in the city was congested, not
11 much green space, kind of people living on top
12 of each other, but when I found this community
13 and saw the large lots and the green space,
14 but I can tell you what really sealed the deal
15 for me was when I saw the large oak tree in
16 the backyard because once I saw that tree, I
17 knew that was the place for me because it
18 reminded me of home, it reminded me of North
19 Carolina, and the respect that I have for
20 nature.

21 Now, I've been in my house for
22 almost 10 years now and I know that was the

1 best decision I've ever made. However, during
2 the almost 10 years that I've lived in my
3 home, to my dismay I learned that a small
4 strip of land that was enclosed in my backyard
5 was not part of my property.

6 Now upon learning this information,
7 I contacted and spoke with various Zoning
8 technicians and they assured me, they said,
9 "Ms. McAlister, don't worry about the green
10 space because this lot is a non-buildable
11 lot."

12 However, I took extra steps and
13 tried to purchase the property not only to
14 protect the green space but for added
15 assurance that my tree would not be encroached
16 upon and that it would in no way ever endanger
17 my tree.

18 Now upon signing the contract to
19 purchase the property, I soon learned that the
20 property was sold to a developer who intended
21 to place a single-family house on a lot less
22 than half the size of the lots on my street.

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1 Now although I'm greatly concerned
2 about the change of character of the
3 neighborhood, putting large houses on small
4 lots and blocking both the street view for
5 especially the Haers and myself to an extent,
6 I am most concerned about what damage granting
7 this variance would cause to the majestic tree
8 in my yard but also to the other trees on the
9 property.

10 Now, I was delighted to learn that
11 I am the owner of one of D.C.'s near Champion
12 oak trees which is within one inch of the
13 largest oak trees in Washington, D.C. Now
14 this information was provided to me by Barb
15 Neal, a board-certified arborist, and John
16 Thomas, Associate Director of the D.C. Urban
17 Forestry.

18 Now, inevitably, when friends and
19 neighbors come over to my house, they look in
20 the backyard and they say wow, Linda, look at
21 this beautiful oak tree, and I can tell you
22 every time I look at that tree, I have a wow

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1 effect as well, because what it represents is
2 it represents something that human beings
3 cannot make and it represents something larger
4 than ourselves and because of my respect for
5 the tree and my property in general, I have
6 paid for the upkeep of both that narrow strip
7 of land that's enclosed in my fence and I've
8 also routinely had the tree maintained by H&H
9 Tree Service, spending approximately \$6,000 to
10 date.

11 Now according to both reports by an
12 independent arborist and an arborist with the
13 D.C. Urban Forestry, both have indicated that
14 building any structure on the lot would kill
15 my Champion oak tree which would be in direct
16 conflict with the Urban Forestry Protection
17 Act.

18 Therefore, granting this variance
19 is clearly not in the public good.

20 In closing, I would like to thank
21 the Board of Zoning in advance for upholding
22 the Urban Forestry Act of 2002. Additionally,

1 I thank you for making sure that integrity is
2 part of the process, that the expectation is
3 not that a developer can come into a
4 neighborhood and attempt to mislead the
5 residents and be granted a variance.

6 Finally, the different
7 neighborhoods in Washington, D.C., is what
8 makes the city unique. The U Street Corridor
9 with its night life and density is different
10 from Eastern Market which is different from
11 Georgetown and so I thank you for helping to
12 preserve the Woodridge Community as one of the
13 last suburban-like areas in the city.

14 Thank you.

15 CHAIRPERSON MILLER: Thank you.
16 Why don't we take some questions, if that's
17 okay? Thank you for your excellent testimony.

18 I'm just wondering if you can shed
19 a little bit of light on the contract for sale
20 that you said you signed.

21 MS. McALISTER: I was contacted by
22 a, I guess, real estate firm that owned the

1 property and we came to an agreement on the
2 price. I sent him a good faith check. I
3 signed a contract, and then I kept calling and
4 I didn't hear anything for a couple weeks. I
5 thought that was a bit odd, and after that, I
6 kept trying to contact him with no response,
7 and then about, heavens, a month and a half
8 later, I found -- I see -- I found out that a
9 developer had bought the property and
10 apparently for more than what I'd offered.

11 But I was in dismay because I at
12 least expected for the person who -- the
13 company, rather, who I signed the contract
14 with to at least inform me of that.

15 CHAIRPERSON MILLER: Thank you.

16 BZA VICE CHAIR LOUD: Good
17 afternoon.

18 MS. McALISTER: Good afternoon.

19 BZA VICE CHAIR LOUD: Thanks for
20 your testimony. I just wanted to also ask you
21 to help me understand just a little bit about
22 this particular oak tree, and I realize you're

1 not an arborist but you referred to it, I
2 think, in your testimony as a Champion oak
3 tree, and I noticed in one of the exhibits,
4 Exhibit 26, it says that the tree is one inch
5 of girth less than the city Champion oak.

6 So what exactly is a Champion oak
7 as distinguished from any other kind of oak
8 and any other information that you can shed on
9 what a Champion oak?

10 MS. McALISTER: Well, again,
11 because I'm not an arborist, my understanding
12 from Barb Neal, who will certainly testify
13 later, that it has to do with the size of the
14 tree and so my understanding is that with the
15 tree being about 55 in diameter, if a tree is
16 larger than that, then it falls in that
17 Champion or near Champion range.

18 BZA VICE CHAIR LOUD: Thank you.
19 I'll also wait for Mr. or Ms. Neal.

20 CHAIRPERSON MILLER: Let me ask,
21 Mr. Agbim, do you want to do your cross of Ms.
22 McAlister right now, and we'll do them

1 separately?

2 MR. AGBIM: Yes, please.

3 CHAIRPERSON MILLER: Okay.

4 MR. AGBIM: Since you've been here,
5 I believe you have listened to Mr. Thomas talk
6 about the concerns that he had after receiving
7 the last version of plans for this project,
8 and I'm sure you also heard him say that there
9 we're now limited to exactly how we present
10 the method of actually executing the
11 construction work on the site, and he also
12 mentioned that much of the concerns they had
13 initially were based on the fact that the
14 original design had a foundation.

15 Do you not think that if we present
16 a very concise plan showing exactly that we
17 can avoid protecting the trees, that there
18 shouldn't be any problem and the beautiful
19 trees you have in your yard and your area will
20 actually be there for a couple more hundred
21 years?

22 MS. McALISTER: No, sir, I don't

1 agree with that at all. From an expert
2 opinion, from the expert arborist, looking at
3 the critical root zone, from what I
4 understand, it pretty much covers the lot, and
5 in addition, I think that Mr. Thomas also
6 talked about the execution.

7 It's one thing to state what you
8 will do, it's another thing to state what --
9 it's another thing to actually do it. So no,
10 the revised plan doesn't satisfy me in the
11 least.

12 MR. AGBIM: So do you then believe
13 that if it's properly executed per a properly-
14 arranged and planned staging method, that the
15 trees will be conserved and there will be no
16 need or concern any more about the death of
17 the trees or --

18 CHAIRPERSON MILLER: Mr. Agbim, I
19 think she asked and answered this.

20 MR. AGBIM: Okay. All right. I
21 have a letter here. I don't know if you have
22 a copy of this. It's from the real estate

1 company that executed the sale, and they claim
2 that there was never any contract entered into
3 by you for the purchase of the property, and
4 I'd like to know if you have anything to say
5 about it.

6 MS. McALISTER: Well, I have a copy
7 of the contract that I submitted with my --
8 with a report that I provided. So what
9 they're saying now, there was a contract that
10 was faxed to me, I signed off on it, I sent
11 them a good faith check.

12 MR. AGBIM: Was the contract
13 ratified?

14 MS. McALISTER: I sent -- I was
15 asked to sign the contract, fax it back, I
16 sent them a good faith check. That's the last
17 I heard.

18 MR. AGBIM: Is it okay to enter
19 into -- this into the record? It's a letter
20 from the real estate company --

21 CHAIRPERSON MILLER: Is there an
22 objection to that letter being entered into

1 the record?

2 MR. MARCUS: Could we see it? I've
3 no objection, but we'd like to have a copy.

4 CHAIRPERSON MILLER: All parties
5 should have a copy if it's going into the
6 record.

7 MS. McALISTER: What I think is
8 important to note is that my willingness to
9 purchase that lot, to protect the green space
10 and to protect the tree and that was my intent
11 and that's what I attempted to do.

12 CHAIRPERSON MILLER: Can I ask you,
13 without asking for a specific figure, what the
14 basis for your -- the amount you offered was?
15 Was it based on some fair market price of some
16 sort of what or was it -- how did you come to
17 whatever amount you agreed to?

18 MS. McALISTER: Well, certainly
19 there were negotiations and, you know, when I
20 spoke with the owner of the lot, we agreed
21 upon that price, a set price. So --

22 CHAIRPERSON MILLER: So you had an

1 oral -- a verbal agreement on a price?

2 MS. McALISTER: No, no. It was
3 written and that's in the contract.

4 CHAIRPERSON MILLER: But the seller
5 never signed, is that it?

6 MS. McALISTER: Again, I faxed the
7 contract with my signature. I sent a good
8 faith check. The owner of the property was
9 supposed to sign it. We were to move forward
10 and that's the last I heard from him, but
11 apparently my understanding is that the
12 developer paid a bit more and that's why we're
13 here today.

14 CHAIRPERSON MILLER: And were you
15 given the opportunity to match the developer's
16 offer?

17 MS. McALISTER: I was not.

18 CHAIRPERSON MILLER: No.
19 Questions? Oh, Mr. Agbim, any other
20 questions?

21 MR. AGBIM: No, ma'am.

22 CHAIRPERSON MILLER: Okay. Does

1 the ANC have any questions?

2 MS. SMITH: No.

3 CHAIRPERSON MILLER: Okay. All
4 right. Thank you.

5 MR. MARCUS: Our next witness, a
6 little bit out of order, if it's all right to
7 put our expert next, the arborist, since I
8 think we're all focused on that issue and then
9 Mr. Haer, a party, will testify.

10 The one question I would ask the
11 Board is in the submission we made in writing,
12 we asked that Ms. Neal be qualified as an
13 expert. Is the Board satisfied or would the
14 Board like me to walk Ms. Neal through some
15 questions to qualify her so she can give
16 expert opinions today?

17 CHAIRPERSON MILLER: Do the other
18 parties have any objections to Ms. Neal being
19 qualified as an expert witness?

20 (No response.)

21 CHAIRPERSON MILLER: Does the Board
22 have any questions?

1 (No response.)

2 CHAIRPERSON MILLER: I think so.
3 Her resume is here?

4 MR. MARCUS: Her resume is attached
5 to the submission that I made, yes. But if
6 you'd like, we can ask -- Ms. Neal could just
7 give you a very quick background, if you'd
8 like.

9 CHAIRPERSON MILLER: Really quick,
10 just really quick. Yes, that'd be fine. I
11 see the resume and good afternoon, Ms. Neal.

12 MR. MARCUS: Ms. Neal, could you
13 briefly describe your educational background?

14 MS. NEAL: Hello.

15 CHAIRPERSON MILLER: We don't need
16 it?

17 MS. NEAL: Again, my name is
18 Barbara Neal.

19 CHAIRPERSON MILLER: Okay. You
20 know what? Everyone's saying that that's
21 okay, we got the resume, so you don't have to
22 do that, and we're fine with it, correct?

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1 Fine with it, everyone? Okay. We're fine
2 with recognizing Ms. Neal as an expert witness
3 in what exactly? Arborist? As an arborist?

4 MS. NEAL: Yes, I'm a consulting
5 arborist.

6 Again for the record, Barbara Neal,
7 6205 Wagner Lane, in Bethesda, Maryland.

8 Well, Mr. Thomas covered a whole
9 lot of what I was going to cover and if you
10 pardon me, one of my qualifications or
11 experiences is that I'm a professor instructor
12 at George Washington University. So if I
13 start lecturing you, you know, you can give me
14 the high sign, but it is sort of important to
15 know about how trees grow and their impacts on
16 when construction happens, as Mr. Thomas was
17 talking about hypoxylon canker, there are
18 other problems that are also associated with
19 trees and constructions.

20 Probably the most important thing
21 that you have to know about trees is that the
22 root system -- most people think that it's

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1 very deep, like a carrot, but in fact it's
2 very broad spread and, yes, the big buttress
3 roots that you trip over or your mower hits,
4 they're there and they're constant, the ones
5 that heave the sidewalk, but the roots that do
6 the work are the fine feeder roots and they're
7 the diameter of maybe a hair on your head and
8 they are, as Mr. Thomas said, out at least to
9 the drip line which is, if you imagine the
10 canopy of the tree, it's the very edges.

11 That's called the drip line because the rain
12 drop would hit and kind of roll down that way.

13 So if you can imagine that, they're
14 at least there, if not further, and that's
15 where -- they're also a dynamic structure in
16 that they're flushing and dying all the time.
17 So it's very important for these fine feeder
18 roots to have appropriate soil conditions to
19 keep being alive and taking up water and
20 nutrients.

21 Therein lies the rub with tree
22 preservation and construction because when you

1 run over soil -- oh, by the way, they're all
2 in the top 12 inches of soil. In fact, most
3 of them are in the top six inches of soil.

4 So what you're doing to the top of
5 the soil you're doing to the tree. So you
6 have this huge massive organism, especially
7 this tree, it's 58 inches in diameter, that is
8 really dependent on these tiny little roots.

9 Now, the roots can only survive if
10 they have enough oxygen in the soil to
11 respire. They need to respire to breathe, just
12 like we do, and they need oxygen, just like we
13 do, and that oxygen is in the soil and so when
14 you run over the soil with a piece of heavy
15 equipment and it can be -- this is not like
16 something that can happen over six months,
17 this can be a one-day event. If the soil's
18 really moist, a bobcat goes in there and it's
19 compacting the soil, you're displacing, you're
20 smushing the soil, it's a technical term,
21 smushing the soil and the oxygen is displaced,
22 the soil becomes more solid and the roots

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1 cannot physically live. They die from
2 asphyxiation and even the ones that survive
3 can't physically push the soil particles aside
4 in order to grow.

5 As Mr. Thomas said, we don't have
6 any tools in our kit to ameliorate that. What
7 causes soil to have oxygen, to have these
8 pores is the living and dying of organisms,
9 the freezing and thawing of soil, as soil
10 moves slowly and it aggregates into these --
11 creating these oxygen pockets and that's the
12 biggest danger in tree preservation.

13 Yes, you can protect the tree from
14 physical harm. Yes, you can, you know, say
15 okay, we won't sever roots within a certain
16 distance, but it's the compaction that really
17 does the tree in, as Mr. Thomas alluded to.

18 Mr. Thomas also talked about the
19 critical root zone. When you're talking about
20 that, that's what you're trying to protect.
21 The soil, not so much the tree, the soil that
22 the roots are inhabiting, and that is that one

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1 foot for every one-inch diameter for the tree.

2 Everybody good?

3 So in this case, a minimum of 58-
4 inch radius from the trunk needs to be
5 protected if you want to protect this tree.

6 It's also recognized by arborists
7 that in cases of mature trees or sometimes we
8 call them overly mature trees, i.e., really
9 big ones, you actually want to extend that
10 critical root zone out even further, to maybe
11 1.25 feet or 1.5 feet for that critical root
12 zone, if you really, really want to keep that
13 tree alive.

14 So that's the general overview of
15 tree preservation.

16 Ms. McAlister asked me to come, I
17 believe it was early in May, to take a look at
18 the tree, knowing that this construction
19 project could be on board, and certainly as
20 the plans were drawn, I could see no way the
21 tree could survive.

22 Just to cover it, it's 58 inches in

1 diameter. Casey Trees list the largest tree
2 of that species as 59 or something like that
3 inches. By the way, I need to qualify a
4 little bit with Champion tree.

5 There's a whole system to denote
6 Champion trees and it's by girth and by canopy
7 spread and by height and as I looked at it, we
8 were just shy of the Champion tree status. I
9 mean, certainly this tree, God willing, could
10 become a Champion at some point, but right
11 now, we're just shy of it. So does that clear
12 up what Champion is? It's actually a 3 point
13 thing.

14 All right. So I evaluated the
15 tree. The root system actually right now is
16 in pretty good condition for a tree of that
17 size. There's some problems with the canopy,
18 but in general, the tree for that age is in
19 pretty darn good condition. So I was very
20 pleased about that, and I wrote a report which
21 I believe is part of our submission.

22 In terms of -- I was also asked to

1 respond to the tree preservation plan as put
2 forth by the Applicant and just like Mr.
3 Thomas, I can't because there is no plan. You
4 have design changes which, yes, could be
5 beneficial to the tree, but that is not a
6 tree-safe plan.

7 Tree-safe plan starts with -- well,
8 it really starts with a commitment to do it
9 and to do it correctly and as I always tell my
10 students, the problem with tree preservation
11 is the devil is in the details.

12 One misstep, the Comcast guy comes
13 in and he wasn't told about this whole plan
14 and he trenches that six-inch little trench to
15 put the cable line in and you've severed
16 roots.

17 The mole for the utility line hits
18 a rock, deflects and now you have to dig,
19 you're severing roots. So it takes a
20 commitment in terms of creating the plan. It
21 takes an enormous commitment to follow through
22 with that plan and I was just telling Mr.

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1 Thomas at the break, you all were asking for
2 examples of when something's gone wrong with
3 tree preservation, and honestly, I can say on
4 a weekly or bimonthly basis, I go out to a
5 property and there's a dying tree, often oaks,
6 sometimes tulip poplars, whatever. I look at
7 it and then I turn to them and I say when did
8 you do your renovation? Two years or three
9 years ago? Oh, like, well, that -- but that
10 was so many years ago, they say.

11 Well, that's what happens, and I
12 see it on truly a weekly basis when I'm busy.
13 It's absolutely standard and people -- the
14 problem with trees is that it does take three
15 to five years for some of these to manifest
16 the problem. So the developer's long gone or
17 the renovation is -- the people are well moved
18 in. They don't make the connection. I kind
19 of wish trees died immediately because then we
20 would get it but they don't. They take many
21 years.

22 In terms of this specific plan, I

1 have so many questions. Just to run through
2 a few, the drywells, where are they going?
3 How are they going to be dug? How's the
4 piping going to happen?

5 The concrete path to the back.
6 That's severing roots. How are we going to
7 deal with that? What's the financial
8 incentive for the developer/contractor to
9 follow the plan? It's not his tree. Is there
10 going to be any watering? What's going to
11 happen underneath the house? Okay. Even if
12 you span the roots, those roots no longer get
13 moisture. How's that going to be handled?

14 So these are the questions, you
15 know, that I would just put forth. There's no
16 answer at this point. But even if these
17 concerns are addressed, I still have sort of
18 three issues that also don't go away.

19 One is, is that, you're still --
20 let me -- I've been sort of talking about
21 this. I've been talking about this, but this
22 maybe gives a better schematic. This is the

1 oak in question and I'm specifically
2 addressing just this large oak, not the street
3 trees.

4 This is the canopy line of the oak
5 that -- the minimum that you would want to
6 give in terms of tree protection. So the
7 minimum, the fencing would go at the canopy
8 line. That's the bare minimum.

9 What D.C. would require is this
10 critical root zone that I've put right here,
11 so that would be your tree preservation
12 fencing would be placed there. That's
13 according to DDOT specifications. So, of
14 course, the house is in that area, regardless
15 of whether it's standing or not, and
16 obviously, like I say, this concrete path,
17 that's right in it, too. You put in a path
18 six inches with a three-inch subbase and a
19 concrete top, you've severed six inches of
20 roots, you've severed all the fine feeder
21 roots. So that's where we're having problems
22 with the critical root zone being impacted,

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1 regardless of how it's being built.

2 And as I've said, it takes three to
3 five years for this damage to manifest itself.
4 This tree is owned by Mrs. McAlister. I can
5 tell you if anybody's had any tree work done,
6 it's going to be \$6-7-8,000 to remove this
7 tree. She will bear the cost, not the
8 developer, and unfortunately, again I work
9 with many small municipalities, Chevy Chase
10 Village, and I see this all the time. One
11 person has the benefit, one person has the
12 cost.

13 Lastly, once, if the house is
14 built, the new owners will have no duty to
15 preserve the tree and they could say, hey, I'd
16 like to have a nice patio, a lap pool, a
17 retaining wall here, seating wall, little fire
18 pit, whatever, and they will do more damage to
19 the tree than probably the construction total.

20 So there's no -- even if it's done
21 correctly, that doesn't make the tree come out
22 free and clear. So as I said in my report, in

1 sum, the root loss and the soil compaction
2 resulting from the construction of a home on
3 the lot will have grave consequences on what's
4 one of the District's largest oak trees.

5 CHAIRPERSON MILLER: Thank you.
6 What would be the lifespan of that oak tree?

7 MS. NEAL: As Mr. Thomas said, they
8 can go for many, many years. The Wye Oak was
9 400 years old. Realistically, probably
10 another 50 years for the large one. The
11 street trees could go quite a bit longer.

12 CHAIRPERSON MILLER: Okay. Thank
13 you. Other questions?

14 BZA VICE CHAIR LOUD: Yes.
15 Professor Neal, how many years does it take
16 for an oak tree to become a Champion?

17 MS. NEAL: Well, I'm guessing that
18 that tree is about just slightly over a
19 hundred years old. It's again really hard to
20 tell without having -- doing the core right to
21 the center and counting the rings, but that
22 would be my calculation. So it's a long-term

1 project.

2 BZA VICE CHAIR LOUD: And that
3 would be the case for any oak tree?

4 MS. NEAL: Yes.

5 BZA VICE CHAIR LOUD: It would take
6 roughly around a hundred years?

7 MS. NEAL: Yes.

8 BZA VICE CHAIR LOUD: Okay. And do
9 you have any idea of what percentage of oaks
10 in the city reach Champion status?

11 MS. NEAL: Very few, because, quite
12 frankly, I work mostly for homeowners and I
13 just get really tired of condemning,
14 especially oaks. They not only get the
15 hypoxylin from construction but they're under
16 attack from bacterial leaf scorch which is
17 really doing a number.

18 So I, unfortunately, am seeing lots
19 and lots of 60-year-old oaks being removed.
20 I probably condemn two a week.

21 BZA VICE CHAIR LOUD: Okay. And
22 without guessing, could you quantify? Is

1 there a percentage? Less than 10 percent?

2 Less than 20 percent?

3 MS. NEAL: No, I couldn't quantify.

4 BZA VICE CHAIR LOUD: Okay. and
5 are you aware of whether or not in this part
6 of the city, are Champion oaks more rare, just
7 as rare or --

8 MS. NEAL: Well, I just want to be
9 clear. There is only one Champion.

10 BZA VICE CHAIR LOUD: Oh, there's
11 only one --

12 MS. NEAL: But this is is a near
13 Champion.

14 BZA VICE CHAIR LOUD: Okay. I
15 gotcha. Wow!

16 MS. NEAL: Yes. Only one can be
17 the biggest.

18 BZA VICE CHAIR LOUD: Oh, thank
19 you.

20 MS. NEAL: Like Mohammad Ali, you
21 know, he's the greatest. There's only one.

22 CHAIRPERSON MILLER: That's in the

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1 District? There's only one in the District of
2 Columbia?

3 MS. NEAL: But this is very -- in
4 the District. Yes, Casey Trees did an
5 inventory --

6 BZA VICE CHAIR LOUD: That's
7 incredible.

8 MS. NEAL: -- and it was somewhere,
9 I forget where it was, it's somewhere
10 Northwest.

11 MR. THOMAS: There's several around
12 the country but just the District, there's
13 only one that meets the standard and this one
14 --

15 MS. NEAL: Sure.

16 MR. THOMAS: -- is just under it.

17 MS. NEAL: Sure.

18 BZA VICE CHAIR LOUD: All right.

19 MS. NEAL: For each jurisdiction,
20 I'm more familiar with Maryland, there is a
21 whole tree. You can nominate your tree and
22 someone will come out and calculate -- do the

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1 three calculations and give you a point value
2 and that point value is how close you are to
3 the Champion.

4 BZA VICE CHAIR LOUD: And this one
5 -- based on your report, I'm looking at, I
6 guess, Exhibit 27, this one is a quarter of an
7 inch away from --

8 MS. NEAL: It -- well, let's see.

9 BZA VICE CHAIR LOUD: No, I'm
10 sorry. It's less than one inch.

11 MS. NEAL: Less than one inch from
12 the girth of the biggest tree diameter.

13 BZA VICE CHAIR LOUD: So if
14 something were to happen to that tree, this
15 tree might be in contention to be the next
16 Champion?

17 MS. NEAL: Yes, yes.

18 BZA VICE CHAIR LOUD: Okay.

19 MS. NEAL: This is where you
20 measure it. You measure it four and a half
21 above grade. So this just gives you the size
22 of the scale. When you first see the tree,

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1 you know, I was like, oh, okay, and then you
2 get close. I did have also that wow factor.
3 Like wow, you don't see them this big around,
4 not oaks. It's a big boy.

5 BZA VICE CHAIR LOUD: Okay.
6 Continuing a little further, your report
7 indicates on Page 2 that this tree -- having
8 a large tree in this neighborhood constitutes
9 a public good and just in terms of again sort
10 of backing that up a little bit, what are some
11 of the reasons why this tree is a public good,
12 apart from its proximity to being a Champion
13 oak tree?

14 MS. NEAL: Well, Mr. Thomas alluded
15 to some of them, the stormwater management,
16 stormwater impoundment which is a huge issue
17 in the District especially, the shade in terms
18 of environmental, lowering the heat island and
19 also providing shade for the properties.

20 He started to talk about one thing
21 and we're just -- this is just really emerging
22 from an entomologist at the University of

1 Delaware. How important our native trees are
2 in terms of providing the food source for
3 migrating birds and for many years, people
4 said, oh, natives are great, natives are
5 great, and there really wasn't a good thought
6 process behind it.

7 Now people are realizing that
8 insects and trees co-evolved and trees don't
9 want to be eaten, right? So they produce
10 toxins in their leaves. So only certain
11 members of caterpillars or whatever can eat --
12 have co-evolved to eat those leaves.

13 Well, it turns out that oaks,
14 specifically white oak, this is a red oak, but
15 there are -- red oaks are right up there,
16 provide a food source for numerous
17 caterpillar-type insects and those are the --
18 these caterpillars are the food source for
19 migrating birds.

20 So we're finding out how important
21 it is to have these native species, especially
22 because we are -- this whole area is part of

1 that migrating -- where songbirds are
2 migrating from Central and South America up
3 through Delaware. So we're right on the path
4 and so just everybody's consciousness is being
5 raised by how important it is, the role that
6 these trees play, especially the native trees
7 play.

8 It's great to say, oh, my tree
9 doesn't get anything. Well, if it doesn't get
10 anything, then nobody's benefitting from it
11 from an ecological point of view.

12 BZA VICE CHAIR LOUD: And if you
13 had someone who said, you know, so what, who
14 cares, why is that in the public good, what
15 would your response be?

16 MS. NEAL: I don't know. I mean,
17 I'm an arborist because I love trees, but, I
18 mean, there's the energy, there's the heat
19 island, stormwater mitigation, and then the
20 ecological role, I mean, besides aesthetic
21 beauty which is why I got into it in the first
22 place.

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1 CHAIRPERSON MILLER: What do you
2 mean by heat island?

3 MS. NEAL: Well, the Washington
4 area is -- everybody's had the experience, as
5 you drive closer and closer to the urban
6 center, of it getting warmer and warmer
7 because the sun comes in and it hits all of
8 our concrete masonry buildings and heat is
9 stored and so it's considerably hotter in and
10 dryer in the urban center than it is
11 elsewhere.

12 I've had direct experience with
13 that. We just had a case this year where
14 someone brought to me an insect, a scale
15 insect, looks like a little piece of white
16 powdery gunk, and I identified it as cottony
17 cushion scale, and the professional
18 entomologist I sent a picture to, he goes,
19 "Oh, yes, that's cottony cushion scale," and
20 then his peers are saying no way, no way, it
21 doesn't live here. It can't survive our
22 winters.

1 Well, it can in the urban center
2 because we're warmer than anywhere else and
3 that's just one example. I have many --
4 horticulturists know that there's some global
5 warming going on because we see insects now
6 here that were only in the southern parts of
7 the country before.

8 So, you know, these large trees
9 that provide the canopy cover help ameliorate
10 that.

11 MEMBER DETTMAN: Ms. Neal, when you
12 discussed the drip line and the critical root
13 zone, in your experience, is there a measure
14 or is there sort of a range in there in terms
15 of the amount of that area that can be
16 disturbed by construction and whether or not,
17 you know, if you reach a certain point, you're
18 going to irreparably damage the tree?

19 MS. NEAL: Right, right. In
20 Montgomery County, I believe it's 30 percent,
21 you can't go beyond 30 percent disruption, and
22 even at that point, I mean, I've called in

1 when we're trying to work with trees with a 30
2 percent CRZ impact and you have to take
3 extraordinary measures in order to keep it
4 going.

5 MEMBER DETTMAN: Okay. I know in
6 the landscape courses I took at GW, --

7 MS. NEAL: Yes!

8 MEMBER DETTMAN: -- I never had you
9 as a professor, I know that when you go out
10 and you do field analysis on a site, you sort
11 of look to see if there's any specimen trees
12 or old growth and you do everything you can to
13 protect those.

14 I can't recall what that means.
15 Would this particular oak tree be considered
16 a specimen tree?

17 MS. NEAL: Yes, it would be.

18 MEMBER DETTMAN: And why is that?

19 MS. NEAL: Specimens -- again it
20 depends on the jurisdiction. Montgomery
21 County is within 30 -- there's a percentage of
22 within the Champion -- well, let's see. No,

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1 I think they just have -- they have like for
2 an oak, it would have to be over 30-inch
3 diameter. They have standards like that
4 because for forest preservation because when
5 you hit trees like that, then bink, you know,
6 you're in a different level of tree
7 preservation when you're dealing with what
8 they call specimen trees.

9 MEMBER DETTMAN: Okay.

10 MS. NEAL: So that's a -- it's
11 fungible, but there are standards for it.

12 MEMBER DETTMAN: Okay. And --

13 MS. NEAL: This would certainly be
14 well above what we would call a specimen tree
15 because it's nearer the Champion level.

16 MEMBER DETTMAN: And my last
17 question is I know that there are tools out
18 there that you can put sort of a dollar value
19 on a tree or a certain landscape in terms of
20 the amount of carbon it can sequester or even
21 the amount of -- you can put the dollar sign
22 on it in terms of the amount of money it adds

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1 to a particular property in terms of its
2 value.

3 MS. NEAL: Yes.

4 MEMBER DETTMAN: In your experience
5 and the size of this tree and looking at other
6 ones, could you give a ballpark figure?

7 MS. NEAL: Oh, wow! You know how
8 much I charge for doing appraisals? It's --

9 MEMBER DETTMAN: You can send the
10 bill to the Office of Zoning.

11 MS. NEAL: It's really hard. There
12 -- a friend of mine said tree appraisal,
13 putting a dollar value on a tree isn't rocket
14 science, it's much harder than that because
15 trees don't read the rules and they don't
16 follow rules. As you know with Zoning, they
17 don't follow property lines either.

18 There are three methods, basic
19 methods that you use for tree appraisal. One
20 would be the market as you alluded to. That's
21 just how much the value of the property would
22 be diminished by the loss of that tree, and I

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1 forget the statistics, what a landscape adds
2 to property, but I'm going to guess it's
3 between 10 and 15 percent of the value of the
4 home for the total landscape.

5 So there's a market base. There's
6 a tree size base just based on the true --
7 just the girth of the tree. There's -- you
8 can do a dollar amount for that, but it's all
9 dependent on the condition of the tree, the
10 site, the location. It's really complicated,
11 so I can't put a number on it. Sorry.

12 But just to give you an idea, the
13 removal would be several -- you know, well
14 over \$5,000 and you could look at -- I don't
15 have a calculator with me -- what the -- what
16 D.C. UFA would charge for the permit, the \$35
17 per inch circumference, you have to do 58
18 times pie and times 35 and that would give you
19 an idea of how much they would charge just for
20 the privilege of removing that tree.

21 ZC VICE CHAIR JEFFRIES: Ms. Neal,
22 I have a question and I apologize for having

1 to step out. I had to get my kid in here.

2 I'm curious. The Applicant has
3 talked about, you know, having, you know,
4 talked with an arborist, you know, about, you
5 know, the best ways in which to, you know, not
6 hurt or damage trees with this new
7 development.

8 I'm just curious. I mean, you
9 know, I guess there's outright activists
10 amongst the arborist business, like any other,
11 you know, industry where people are purists
12 and, you know, nothing can happen here.

13 Are there -- is there some other
14 level of arborist that might come out here and
15 say, you know, I think that, you know, there
16 are things that can be done on the site that
17 could preserve these trees?

18 I mean, this -- I'm just trying to
19 understand sort of the universe here because,
20 you know, in any particular industry, you have
21 the purists and then you have the people who
22 are sort of practical and pragmatic and so

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1 forth, and I'm just wondering, you know, the
2 likelihood that, you know, this Applicant
3 could find an arborist in this area who could
4 come out into this location and, you know, put
5 together a potential plan that could give
6 greater comfort to this Board that there in
7 fact could be a way to preserve this almost
8 Champion oak.

9 MS. NEAL: Yes, yes. You have it
10 absolutely right and there are people who are
11 purists. I put myself in the pragmatic and I
12 work for developers, too.

13 ZC VICE CHAIR JEFFRIES: Okay.

14 MS. NEAL: I've written tree safe
15 plans, too, and a plan could be written, but
16 I don't honestly think it could be executed
17 because the devil's in the details. One
18 mistake and you're done.

19 How are those -- I didn't know
20 about this prefab thing, but how is the second
21 floor going to get up? Well, if you run a
22 piece of equipment, that's compacting the

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1 roots.

2 I assume there would be gravel
3 underneath or some sort of material underneath
4 the house. How's that going to get there?
5 All these things are the kind of things that
6 can trip up a well-made plan. It's just you
7 have to think -- have all these things thought
8 out and then they all have to be executed
9 properly, and I've had problems where I've
10 been working with the developer and he will
11 say now whatever you do, Mr. Subcontractor,
12 Excavator, don't dig beyond here and sure
13 enough three feet out, I mean all the time,
14 because it's not just the general contractor,
15 it's the subs that can make the mistakes.
16 It's the trenching, utility folks. It's the
17 TV, you know. So it takes an enormous
18 commitment.

19 ZC VICE CHAIR JEFFRIES: And so
20 just, you know, one false move --

21 MS. NEAL: One bad day and you're
22 done.

1 ZC VICE CHAIR JEFFRIES: Yes, and
2 the magnitude is still felt.

3 MS. NEAL: Yes.

4 ZC VICE CHAIR JEFFRIES: Okay. So
5 I'm happy to hear, though, that you're not
6 quite the purist. I mean that actually --

7 MS. NEAL: No, I'm not.

8 ZC VICE CHAIR JEFFRIES: I mean,
9 because, you know, I love, you know, trees and
10 gardening and so forth, but I'm also a
11 developer. So, I mean, it's good to hear
12 that, you know, you're working for developers
13 and you understand the practical nature of
14 this and that you're not just, you know, no
15 matter what.

16 MS. NEAL: No, no, not at all.

17 ZC VICE CHAIR JEFFRIES: Okay.
18 Thank you.

19 MS. NEAL: I like to think of
20 myself as an advocate for the tree and not
21 necessarily -- I mean because sometimes I have
22 to tell the client, look, you screwed up, you

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1 gotta take it out, you know, or yes, you're
2 bad, you owe this person some money. I view
3 myself as an advocate for the tree, not for
4 whoever's paying for me.

5 CHAIRPERSON MILLER: I just have
6 one question, based on your experience, have
7 you found that in other -- in other
8 experiences, it is possible to protect trees
9 in some instances but you have to have -- I
10 mean certainly circumstances maybe not as
11 close as the one little thing goes wrong and
12 also perhaps if it's their own property and
13 they have a real commitment and interest in
14 protecting the tree. Are those things that
15 make the difference?

16 MS. NEAL: Yes, it's really in
17 having a rock solid plan and then a knowledge
18 and appreciation for trees, understanding how
19 they work and understanding where things can
20 go wrong, and then, quite frankly, things
21 still go wrong, you know, and that's just the
22 reality of building.

1 CHAIRPERSON MILLER: Thank you.
2 Other questions? Mr. Agbim, do you have some
3 question?

4 MR. AGBIM: Yes.

5 CHAIRPERSON MILLER: Yes, go ahead.

6 MR. AGBIM: Thank you for your
7 presentation.

8 MS. NEAL: You're welcome.

9 MR. AGBIM: I have a few questions.
10 The first question is if I own 2216 Otis and
11 I wanted to build a patio, a 40-foot by 20-
12 foot patio at the back of my house, would that
13 kill the tree maybe?

14 MS. NEAL: You mean Mrs.
15 McAlister's property?

16 MR. AGBIM: that's correct.

17 MS. NEAL: I would have grave --
18 yes, I think I would have problems with it.
19 I would have to work with her on that and I
20 might discuss design modifications, depending
21 on what patio.

22 MR. AGBIM: So you believe there

1 are design modifications that she can have in
2 place to ensure that the tree health is
3 preserved?

4 MS. NEAL: I always want to be in
5 at the beginning of a project, not in the
6 middle.

7 MR. AGBIM: Okay. So you believe
8 that if she gets an expert to work on the job
9 from -- and be in it from beginning to end,
10 that that will greatly reduce the chances of
11 her damaging the tree with the patio
12 construction?

13 MS. NEAL: It would reduce it. It
14 would not eliminate it.

15 MR. AGBIM: Thank you. Do you also
16 believe that surface gravel walk paths can
17 allow the soil below to be aired out and not
18 block infiltration of water and oxygen into
19 the root system?

20 MS. NEAL: A travel walk would
21 definitely be preferable. Again, devil in the
22 details. How's the edging? How deep is the

1 edging? How deep is the gravel? What did you
2 use to excavate the soil? Where were you
3 walking around when you were doing it?

4 MR. AGBIM: So you do believe that
5 in fact that is a possibility, that with the
6 right edging and other circumstances, a gravel
7 path can save -- can not damage the roots
8 below?

9 MS. NEAL: Well, we damage it by
10 the fact that you're having to excavate it,
11 but in terms of moisture, it is permeable
12 whereas concrete or asphalt is not permeable
13 and that is preferable.

14 MR. AGBIM: Does foot traffic have
15 an impact on the soil in terms of compaction
16 either during non-construction or during
17 construction?

18 MS. NEAL: As I teach my students,
19 the answer to every horticultural question is
20 it depends. It really depends on are you
21 going in the same path every time? In your
22 case, you don't have much room in order to

1 work. So certain areas will be highly
2 impacted even by foot traffic.

3 It also depends on the soil
4 moisture which we don't have any control over.
5 So that a moister soil is much more
6 compactable. So it depends on the soil
7 moisture and how many people are walking on it
8 for how long, that kind of thing.

9 MR. AGBIM: Thank you very much.

10 MS. NEAL: You're welcome.

11 CHAIRPERSON MILLER: Okay. Does
12 the ANC have any cross examination? No.
13 Okay. Thank you very much.

14 MS. NEAL: You're welcome.

15 MR. HAER: Distinguished Members of
16 the Board, good afternoon. My name is Stephen
17 Haer. I live at 2210 Otis Street, N.E., with
18 my wife Linda and our two-year-old daughter,
19 and I live next to the proposed variance site.

20 I'm a federal law enforcement
21 agent. My wife has a small real estate
22 business. We enjoy a wonderful sense of

1 community with our neighbors in Woodridge.
2 We work very hard to enhance and maintain our
3 home and want to be able to enjoy the fruits
4 of our labor.

5 We are concerned that a house being
6 built so close to our property and that
7 obstructs our view will diminish the value and
8 enjoyment of our home.

9 I'm against the approval of the
10 requested variances for the following reasons.
11 We don't want another vacant for sale house in
12 our neighborhood. The proposed house will
13 significantly block light and our line of
14 sight to the street. A structure built so
15 close to our property will pose an added fire
16 risk to our own house, and finally, the
17 construction will kill two trees in our yard
18 that have not been yet addressed and, of
19 course, the near Champion oak tree located in
20 Ms. McAlister's yard.

21 We moved to the Woodridge
22 neighborhood in 2004 because we were attracted

1 to the open space, the mature trees and nice
2 size yards. The large lots in the area give
3 Woodridge an almost suburban feel, yet we are
4 close enough to downtown to avoid a major
5 commute.

6 We have a wonderful large shaded
7 backyard that our two-year-old loves to play
8 in. We love our neighbors, but we would have
9 stayed in my wife's condo if we wanted to live
10 in a dense neighborhood in such close
11 proximity to them.

12 I'd like to show you -- I know
13 you've seen some pictures already, but
14 pictures 1-2 and 2 show our house and the
15 proposed footprint of the yet-to-be-
16 constructed house in yellow tape. Our house
17 is on the left, of course, and Ms. McAlister's
18 house is on the right with the proposed
19 footprint in the middle.

20 CHAIRPERSON MILLER: Are those on
21 the record yet or are they new for the
22 hearing?

1 MR. HAER: We have --

2 CHAIRPERSON MILLER: Okay. We'll
3 have to get copies in the record, too.

4 MR. HAER: I have smaller copies
5 that I can present to you guys.

6 CHAIRPERSON MILLER: Okay. Good.
7 Thank you.

8 MR. HAER: I noted in the Office of
9 Planning report from Joel Lawson on Page 5,
10 Section 3, that notes the proposal to build a
11 home at 2212 Otis Street "promotes a positive
12 addition to the neighborhood through needed
13 in-fill housing on a vacant lot."

14 We dispute the need for in-fill
15 housing. I'd like to point out that as of
16 July 3rd, 2008, according to the statistics my
17 wife, a licensed realtor, researched, in the
18 Woodridge zipcode of 20018, there are 97 homes
19 currently for sale and of those, 32 are listed
20 as vacant. These properties have been sitting
21 vacant and for sale for an average of 138
22 days. Clearly, we're not in need of in-fill

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1 housing at this time.

2 There's not enough demand for the
3 houses that are currently for sale or for
4 rent. We are well aware of the dangers posed
5 by these vacant homes that are uncared for.

6 It's obvious that another vacant
7 property for sale is not needed and will not
8 serve as a positive addition to the
9 neighborhood.

10 Granting this variance to build a
11 house will significantly damage our property
12 in the following ways. First and foremost,
13 the construction of the house will be
14 approximately 16 feet closer to the street
15 than our house, 16 feet closer than our house,
16 and that's measuring apples to apples, meaning
17 our front wall to the front wall of the
18 proposed house, not our front porch which I
19 think is what was presented earlier.

20 This poor placement will have a
21 significant impact on our property. As Madam
22 Chair has already pointed out, a house that

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1 far forward will be out of character with the
2 neighborhood and it would significantly reduce
3 our view from our front porch and from our six
4 windows and front door.

5 If you look at Photos 8 and 9,
6 that's a photo from our front porch. You can
7 see the yellow outline of the proposed house
8 and if you look in Photo 10, I drew a line
9 where the front post would be or the front
10 leading edge of the proposed property. All
11 the shaded area is all of our view that would
12 be blocked from our property.

13 I cannot emphasize enough the
14 impact that the placement of this structure
15 will have. We often enjoy sitting on our
16 front porch and watching the world go by. If
17 this house is built, it would limit our view
18 of the street by almost two thirds.

19 In addition, the placement of the
20 house is only 12 feet from our house. This
21 has several impacts on our property. The
22 first and foremost is having a wooden

1 structure or prefab or whatever it's going to
2 be that close to our house will significantly
3 increase our risk of fire should that property
4 ever catch fire.

5 The house will block a substantial
6 amount of sunlight into my wife's office
7 located on the first floor corner of our home.
8 This window captures the morning sun and fills
9 the room with light while my wife works at her
10 computer and tends to our two-year-old.

11 In addition, the sunlight will also
12 be blocked from our second floor bedroom
13 window at the rear of the house. In addition,
14 the line of sight from this window will also
15 be blocked, the line of sight to the street
16 will be blocked.

17 It will also reduce a considerable
18 amount of light that reaches the ground
19 between our houses. With only 12 feet in
20 between the structures, sunlight on the
21 plantings in that portion of my yard will
22 receive only one to two hours of direct

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1 sunlight each day. That's not nearly enough
2 sunlight to maintain the grassy area.

3 Also, I am concerned that granting
4 the variances will destroy two additional
5 trees located near the property line but in
6 our yard. We have a six-inch American Holly
7 and an eight-inch Arborvitae that will be
8 affected by the building of the property and
9 has already been amply testified to, the near
10 Champion red oak will be destroyed.

11 This has significant impact on us
12 as well because we enjoy the shade from the
13 tree that covers our backyard and allows us to
14 use our yard and our deck during the hottest
15 months of the summer.

16 This proposed house will have a
17 significant negative impact to our
18 neighborhood in general and our house in
19 particular. A house 12 feet away and 16 feet
20 closer to the street will certainly not
21 increase the property value of our house and
22 can only diminish it.

1 I think we have showed that the
2 developer's failed his burden of proof and I
3 ask that the BZA deny his request for the
4 variances, and as I've stated, we have smaller
5 copies of the photos to include in the record.

6 Thank you.

7 CHAIRPERSON MILLER: Thank you.
8 Let me ask you. I think this is the first
9 time I've heard someone say that another house
10 12 feet away posed a fire hazard and I was
11 wondering if, you know, you have some
12 information that we haven't heard before based
13 on your law enforcement experience or anything
14 like that.

15 MR. HAER: Nothing in my law
16 enforcement experience, although I've seen the
17 effects of houses that are that close together
18 and the nearby structures, the siding has
19 melted and they suffer significant damage as
20 well, and there's no house there now, so
21 there's no danger, whereas putting one that
22 close does increase our risk.

1 CHAIRPERSON MILLER: And with
2 respect to the question about the house being
3 out of character because of its placement
4 closer to the front and I followed your
5 testimony and these pictures about that with
6 respect to your house, can you make an
7 assessment of the neighborhood in general,
8 whether that would be an anomaly for the
9 neighborhood?

10 MR. HAER: Yes, based on living on
11 the street for several years, I would say 90
12 percent of the houses are in line with one
13 another and the houses that appear to have
14 been built later than the majority of the
15 neighborhood's appear to be set back further
16 on their lot.

17 CHAIRPERSON MILLER: So, for
18 instance, I mean in your case, you're not in
19 alignment with Ms. McAlister's house, right?

20 MR. HAER: We are not.

21 CHAIRPERSON MILLER: But there's
22 all that space in between, --

1 MR. HAER: Right. So it doesn't
2 affect us.

3 CHAIRPERSON MILLER: -- so it's not
4 an issue?

5 MR. HAER: And I would like to
6 point out, because I went out with my tape
7 measure and based on their drawings and their
8 survey, I measured where they were going to
9 put the house and that sort of thing, and it
10 appears to me that the house is even forward
11 of Ms. McAlister's house, that their front
12 wall appears to be flush with her porch, not
13 her front wall, and I think that's --
14 actually, if you look at the Office of
15 Planning drawing, that appears to be the case.
16 I don't think our porches are represented on
17 those drawings.

18 CHAIRPERSON MILLER: And if this
19 house were to be built as proposed, your front
20 porch, you would look over to a wall, is that
21 right?

22 MR. HAER: Yes, yes.

1 CHAIRPERSON MILLER: What did you
2 mean by limiting the view, your view of the
3 street by two-thirds?

4 MR. HAER: If you sit on the front
5 porch, and the picture with the lines through
6 it, I think, would be able to show that, if
7 you sit there, you can see almost to the end
8 of the block. I mean, you have almost a
9 panoramic view of Otis Street, the 2200 block
10 of Otis Street, and if that house were to be
11 built, I lose -- you look to the left and all
12 I see is vinyl siding. So we'll be limited to
13 what's directly to our front and then to the
14 west.

15 CHAIRPERSON MILLER: Thank you.
16 Questions?

17 MEMBER WALKER: I have a question.
18 Mr. Haer, you said that you moved to the
19 neighborhood because of the large lots in
20 part.

21 What did you know about the lot
22 next door when you purchased your property?

1 MR. HAER: From appearances, it
2 seemed to be part of Ms. McAlister's yard
3 because of the way the fences were and the
4 fact that it was maintained along with her
5 yard.

6 So I assumed initially and for the
7 most of the time that we've lived there that
8 it was part of her yard.

9 MEMBER WALKER: So it's the case
10 that Ms. McAlister does maintain or has
11 maintained?

12 MR. HAER: Ever since we've been
13 there, she has maintained. I'm sure she could
14 answer for how long.

15 MS. McALISTER: February of 1999.

16 MEMBER WALKER: And did you erect
17 the chainlink fence?

18 MS. McALISTER: No, the fence was
19 there when I purchased the property and so
20 looking at the property, the assumption was
21 made by me that everything that was fenced was
22 a part of my property.

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1 MEMBER WALKER: Thank you.

2 CHAIRPERSON MILLER: Okay. No more
3 Board questions. Mr. Agbim?

4 MR. AGBIM: Yes. Please, I'd like
5 to object to, if possible, to the inclusion of
6 those photographs in the record because
7 they're wrong. The location marked on the
8 site as the location of the property is very
9 misleading and not accurate and doesn't --
10 it's not consistent with what we've drawn in
11 the drawings that we submitted to the Office
12 of Zoning.

13 ZC VICE CHAIR JEFFRIES: You mean
14 the yellow tape that's shown?

15 MR. AGBIM: Yes.

16 ZC VICE CHAIR JEFFRIES: Okay.

17 CHAIRPERSON MILLER: Okay. I would
18 have to say that your objection is noted, but
19 that they are part of the record as we have
20 all the transcript in the record the photos
21 being discussed and so what will be included
22 in the record will be your comments that

1 they're not accurate.

2 MR. AGBIM: And also a drawing by
3 a licensed D.C. surveyor locating the property
4 boundaries and the existing boundaries, 2216
5 and 2210, I'd like to enter this into the
6 record, please.

7 CHAIRPERSON MILLER: Don't we have
8 that in the record?

9 MR. AGBIM: Okay. Yes, you do.

10 CHAIRPERSON MILLER: Yes, okay.

11 MR. HAER: I'd just like to
12 respond. I'm not a licensed surveyor, I don't
13 pretend to be, but I can read a set of
14 drawings and I can go off of his surveyor's
15 and I can read a tape measure.

16 The markings are accurate as best
17 you can do with a tape measure to within a
18 couple of inches to what is in the drawing and
19 what are in the plans and what was submitted
20 to the BZA.

21 MEMBER DETTMAN: Mr. Agbim, that
22 diagram you just held up, the surveyor's

1 drawing, did you submit it into the record,
2 because I'm not seeing it? We do have this
3 drawing which I'm not sure that that's the
4 same one you just held up.

5 MR. AGBIM: It's the same drawing,
6 but this one that I held up, it's got the name
7 of the surveyor and all the other information
8 on it. No, that's the plat. This one was
9 done by licensed D.C. -- has the title block
10 and the name of the surveyor and all the other
11 information, but it's exactly the same
12 information, except that this one is more
13 formatted for the paper.

14 MEMBER DETTMAN: And is this
15 drawing to scale?

16 MR. AGBIM: Yes.

17 MEMBER DETTMAN: Just sort of
18 pulling a scale off of this drawing and
19 comparing it to the plat that you submitted,
20 Exhibit Number 2, where you -- it looks like
21 the distance from Otis Street to the front
22 wall of your house is 19 feet eight inches.

1 Just pulling a dimension off of
2 this surveyor, I'm coming up with 24 feet.

3 MR. AGBIM: Yes, the dimension from
4 the front property line to the front porch of
5 the proposed structure, per our revised
6 drawings, is 15 feet plus 7.45 feet, so that
7 would be 22.45 feet.

8 MEMBER DETTMAN: And that's from
9 the front property line to the front of the
10 house?

11 MR. AGBIM: To the front porch,
12 yes.

13 MEMBER DETTMAN: To the front
14 porch?

15 MR. AGBIM: Yes.

16 MEMBER DETTMAN: You're saying
17 that's how many feet?

18 MR. AGBIM: 22.45 feet.

19 MEMBER DETTMAN: Exhibit Number 2
20 is saying from the front property line to the
21 front of the house, so it's going further than
22 the front of the porch, from the front

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1 property line to the front of the porch is 19
2 feet eight inches.

3 MR. AGBIM: No, what I'm saying is
4 -- I understand what you're saying, based on
5 the old plat, --

6 MEMBER DETTMAN: Okay.

7 MR. AGBIM: -- but what I'm saying
8 is that the revised drawings show a total
9 distance of 22.45 feet from the front property
10 line to the front porch of the --

11 MEMBER DETTMAN: Do we see an error
12 in Exhibit Number 2 or between this drawing
13 and the new survey, you moved the house back?

14 MR. AGBIM: Yes, and there's also
15 a new plat that was submitted with the revised
16 drawings that showed 22.45 feet which is
17 consistent with the survey.

18 MEMBER DETTMAN: I have the fax
19 that I received yesterday, the revised plans,
20 and on the site plan, I'm still seeing 19 feet
21 eight five-eighths inch, 19 feet eight and
22 five-eighths inches and so that makes a

1 difference because with your new survey, it
2 shows that the front of your porch is in line
3 with Ms. McAlister's front of her house, but
4 if it's actually 19 feet, you're actually in
5 advance of her house.

6 MR. AGBIM: That's correct.

7 CHAIRPERSON MILLER: So the subject
8 property would be in advance of both houses
9 then, is that right?

10 MR. AGBIM: Yes, the intent is to
11 have it at 22.45 feet.

12 CHAIRPERSON MILLER: So how far in
13 advance is it of each of the houses, the
14 neighboring houses?

15 MR. AGBIM: The revised plans show
16 it as 19.45 -- 19. -- excuse me -- over 19
17 feet, slightly over 19 feet, 19 foot eight and
18 five-eighths to the front wall of the house.
19 That's what the revised plans show.

20 CHAIRPERSON MILLER: I guess my
21 question was how far in front of the other
22 houses would it be?

1 MR. AGBIM: In front of -- that
2 will make it about three feet in front of
3 McAlister's house which is the house on the
4 right.

5 MEMBER DETTMAN: Okay. Just so I'm
6 clear, the distance in the revised plans is
7 correct? It's 19 feet and so the intent is
8 not to place the house 24 feet off the front
9 property line? It's actually 19 feet?

10 MR. AGBIM: No, the intent is to
11 place the house 22.45 feet from the front
12 property line.

13 MEMBER DETTMAN: Okay.

14 MR. AGBIM: That's to the porch.

15 MEMBER DETTMAN: So you're moving
16 the house essentially three feet back?

17 MR. AGBIM: Backwards, right.

18 MEMBER DETTMAN: Back.

19 ZC VICE CHAIR JEFFRIES: To align
20 with Mrs. -- okay -- Mrs. McAlister's?

21 MR. AGBIM: Yes.

22 ZC VICE CHAIR JEFFRIES: Okay.

1 CHAIRPERSON MILLER: But it doesn't
2 align.

3 ZC VICE CHAIR JEFFRIES: Excuse me?

4 CHAIRPERSON MILLER: It doesn't
5 align.

6 ZC VICE CHAIR JEFFRIES: Oh, no. I
7 know the drawings. I'm just dealing with
8 intent. No, I'm just saying, I mean, you
9 know, the Applicant's intent is for it to
10 align. I mean that's my understanding, but
11 it's absolutely not representative correctly
12 in the drawings that we have on the record.

13 CHAIRPERSON MILLER: But it's not
14 going to happen. I mean, would it happen?
15 You're saying the intent is?

16 ZC VICE CHAIR JEFFRIES: No, no.
17 I mean, he would -- I mean, the Applicant
18 would have to submit the correct drawings to
19 this body. Yes, that's what I'm saying. I
20 mean, the intent is, I guess, admirable, but
21 it's not being reflected in what we have and
22 so we're not going to be able to -- I mean, I

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1 just think it's the steady flow of a file that
2 is not complete and leaves us really, you
3 know, incapable of really, you know, making a
4 full decision.

5 CHAIRPERSON MILLER: Well, let's
6 keep going. Okay. Where were we? Mr. Agbim,
7 were you asking questions? Is that where we
8 were?

9 MR. AGBIM: Yes, I just had one
10 more question.

11 CHAIRPERSON MILLER: Okay.

12 MR. AGBIM: Do you believe that if
13 the -- because I know you mentioned about a
14 fire hazard because there's a certain distance
15 from your property to the proposed structure.
16 Do you believe that if a two-hour fire-rated
17 wall is the design for the side walls, that
18 that concern would go away?

19 MR. HAER: I'm not an expert. I
20 don't know. I know that driving through the
21 neighborhood and seeing houses that are close,
22 I see a lot of damaged siding and damage to

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1 houses next door.

2 MR. AGBIM: Thank you.

3 CHAIRPERSON MILLER: Does the ANC
4 have any questions?

5 (No response.)

6 CHAIRPERSON MILLER: Okay. All
7 right. Any other witnesses?

8 (No response.)

9 CHAIRPERSON MILLER: I think this
10 is the point, Mr. Marcus, if you want to make
11 any legal arguments. This is the end of your
12 case. Okay. I'm sorry. Hello. Who are you?

13 MR. EVANS: Good evening. My name
14 is Gregory Henry Evans. I'm currently the
15 Vice President for the TTOP Block Club.

16 CHAIRPERSON MILLER: Hold on a
17 second. Oh, we know we have other witnesses.
18 You want to testify in opposition to the case?

19 MR. EVANS: Yes.

20 CHAIRPERSON MILLER: Okay. I know
21 we're going to hear from you next and then
22 anybody else in the audience who's here to

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1 testify in opposition. These two individuals
2 are parties in the case and so we're just
3 going to finish up their case and then we'll
4 hear from you all.

5 ZC VICE CHAIR JEFFRIES: Madam
6 Chair, --

7 CHAIRPERSON MILLER: You want to
8 hear from the further witnesses?

9 ZC VICE CHAIR JEFFRIES: Oh, no,
10 no, no. Oh, absolutely no, no. You're in
11 control. I just want to make certain
12 everybody is cognizant of the time and that if
13 we can try not to sort of duplicate. I mean,
14 obviously you guys have as much time, but, you
15 know, I mean we've been here and we've heard
16 quite a bit and so, you know, rest assured
17 that, you know, we will take everything into
18 consideration.

19 Thank you.

20 MR. MARCUS: And you've sat very
21 patiently, so I'll try to be as brief as
22 possible.

1 The application should be denied on
2 several grounds. First, as the Chair herself
3 kind of acknowledged, recognized, there's an
4 issue here about whether in fact this property
5 could be used for a different use.

6 In order to meet the standard, the
7 physical characteristic standard, the burden's
8 on the Applicant to show that it's difficult
9 to use the property in compliance with the
10 Zoning regulations.

11 There's evidence from Ms. McAlister
12 that she was fully prepared to purchase the
13 property and I daresay that continues to be a
14 viable alternative. It's not as if this
15 property will lie vacant and turn into
16 neglected land and there's a long history,
17 almost a decade, of experience where Ms.
18 McAlister has demonstrated, without being the
19 owner of the property, concern by taking care
20 of it and so there is future for this
21 property.

22 It would be wrong to view this as,

1 gee, if we don't grant the variance, this
2 property will simply fall into disuse and into
3 neglect. That's not necessary and in fact
4 probably not very likely.

5 So there is an alternative use
6 involving the sale of this property to the
7 most logical buyer would be Ms. McAlister.

8 Secondly, and I think more
9 importantly, the Applicant has failed with
10 respect to its burden to show there's been no
11 substantial detriment to the public good and
12 I think what makes this case sort of
13 interesting in a way is that the public good
14 in some respects is actually articulated for
15 the BZA in the Urban Forestry Protection Act.

16 That is an Act which is designed to
17 protect trees and the tree canopy and it's our
18 position that granting this variance would
19 violate two important components of that
20 statute.

21 First, the statute requires that in
22 order to destroy what's called a special tree,

1 which is a tree of a certain circumference and
2 this far exceeds that, you need to -- the
3 owner, only the owner, can seek permission.
4 It has to be by way of permit.

5 Well, here there's clearly no
6 application to do it. The owner of 2212 isn't
7 able to purchase or acquire the permit and
8 therefore if the tree is destroyed as a result
9 of the construction, it would violate the
10 permitting requirements of the statute.

11 Secondly, the statute goes on to
12 say that it's a violation of the statute to
13 wilfully injure trees belonging to someone
14 else.

15 Now, you could say, well, there's
16 nothing wilful here because the intent isn't
17 to destroy the tree if construction takes
18 place, but in the face of really undisputed
19 expert testimony, it would be hard to deny
20 that any developer going forward could say
21 that they didn't know that their conduct would
22 cause damage to the tree and so to the extent

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1 that the statute makes it unlawful to wilfully
2 injure trees belonging to other people, we
3 submit that granting the variance application
4 and allowing the construction to take place
5 would violate the statute and therefore be
6 contrary to the public good as articulated in
7 this D.C. statute.

8 It's undisputed that the burden
9 here is on the Applicant. Section 3119.2 puts
10 the burden completely, the burden of proof
11 shall rest on the Applicant.

12 Well, there's simply no evidence in
13 this record that the Applicant has brought
14 forward to deal with the question of whether
15 or not the construction plans will injure the
16 tree in Ms. McAlister's backyard and the other
17 trees that have been the subject of testimony,
18 and it's not as if this issue has come as a
19 surprise to the Applicant.

20 The Applicant has acknowledged
21 attendance at an ANC meeting on May 28th at
22 which this issue was discussed. I'm told, and

1 I apologize if this wasn't in testimony, that
2 85 people attended this ANC meeting which
3 apparently is by -- you know, much greater
4 attendance than is typical for a meeting like
5 that, showing very serious concern on the part
6 of the neighborhood which the Applicant simply
7 failed to address.

8 It's not even clear, frankly, that
9 the Applicant has addressed it to this day
10 because when I asked question about whether
11 they've retained -- whether the developer or
12 the owner has retained, hired a tree
13 consultant, an arborist, the answer was very
14 fuzzy. It sounded to me more like there was
15 a phone conversation, not an actual
16 engagement.

17 That suggests to me, even in the
18 face of the ANC meeting, even in the face of
19 concerns raised by the opponents and by the
20 Forestry Administration, the owner continues
21 to show a lack of concern about this issue
22 which we fear, if the application is granted,

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1 will carry through, whatever statements of
2 intention are made today, will carry through
3 and with whatever plan is put forward, that
4 lack of concern will carry through with
5 respect to the implementation of that plan and
6 there's been undisputed testimony from both
7 Mr. Thomas and Ms. Neal on this question of
8 execution of even the most well-thought-out
9 tree preservation plans.

10 It requires extraordinary
11 vigilance, someone who has to care really
12 deeply and be very committed and I don't --
13 would respectfully suggest that this Applicant
14 has not demonstrated that commitment, at least
15 at this point in the proceedings.

16 But not only is there, I would
17 suggest, a reason to deny the case, the
18 application for lack of proof on the part of
19 the Applicant, there's a lot of proof on the
20 other side of the case, showing that if this
21 application is granted, that there will be
22 substantial detriment to the public good, that

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1 the trees at issue will in fact be severely
2 compromised.

3 We heard very eloquent testimony,
4 I thought, from Mr. Thomas who showed real
5 mastery with respect not only to the specifics
6 of this case but also the District in general
7 in terms of the phenomenon of development,
8 particularly with respect to private property.

9 He talked about concerns with
10 respect to policing the plan, concerns about
11 value engineering that accompanies the --
12 occurs at the end of a project through no
13 one's fault but when money gets short, this is
14 the kind of thing that he's concerned will
15 ultimately be compromised and that will result
16 likely in serious damage to the tree.

17 Ms. Neal talked about the need for
18 what she called a rock solid plan. There's no
19 plan before the BZA. Nothing. The evidence
20 is entirely to the contrary and while both
21 experts indicated that the construction plans,
22 which is not the same as a tree preservation

1 plan, but the construction plans will reduce
2 the risk. Neither expert said it eliminated
3 the risk, that in fact there continues to be
4 a substantial risk that these trees,
5 especially the large tree in Ms. McAlister's
6 backyard, will face serious risk to their
7 health.

8 Those are my comments. My main
9 point really goes to the statute and to try
10 and put before the Board the proposition that
11 in looking at the public good, it's important,
12 of course, to consider the considerations
13 about the impact and we've heard testimony
14 about tree cover and, you know, bird migration
15 and global warming, but there's actually a
16 statute, there's a statute that articulates it
17 which the Board can look to to root its
18 decision, to say granting the variance would
19 violate potentially the statute and therefore
20 compromise or affect the public good and for
21 that reason, we would submit the application
22 should be turned down.

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1 Thank you.

2 CHAIRPERSON MILLER: Thank you.

3 Okay. So at this point then, we're going to
4 turn to any other individuals who are here to
5 testify in opposition to the application.

6 We can start with you, you're at
7 the table.

8 ZC VICE CHAIR JEFFRIES: And Madam
9 Chair, we were going to sort of -- I thought
10 it might be a good idea to sort of do time.

11 CHAIRPERSON MILLER: Oh, okay.

12 ZC VICE CHAIR JEFFRIES: Given the
13 time.

14 CHAIRPERSON MILLER: How many
15 individuals are going to be testifying in
16 opposition?

17 (Show of hand.)

18 CHAIRPERSON MILLER: Just one?

19 Just one. Okay. So it's not too bad.

20 Normally, what I said in the rules
21 is it's usually three minutes. Go ahead.
22 We'll see how it goes.

1 MR. EVANS: I'll try my best to
2 stay within the three-minute limit.

3 My name is Gregory Henry Evans.
4 I'm currently the Vice President for the TTOP
5 Block Club. TTOP is -- stands for 22nd to 24th
6 Otis and Perry. Those are the streets that
7 make up the core of our Block Club.

8 My purpose here today is to show
9 support of the TTOP Block Club for the
10 Advisory Neighborhood Commission 5A-09
11 Resolution opposing the Board of Zoning
12 Adjustment Application Number 17796, the
13 requested variance for Square 4242, Lot 10.

14 The TTOP Block Club is a
15 neighborhood organization that has been in
16 existence since 1979. We currently have over
17 25 active members.

18 The site of the requested variance
19 falls within the boundaries of the Block Club.
20 At our monthly meeting on Monday, June 2nd,
21 2008, the Block Club resolved to oppose to
22 requested variances for Square 4242, Lot 10.

1 The Club opposes the variances for
2 several reasons, two of which are the members
3 of the Club are concerned that the proposed
4 construction of a single-family home on such
5 a small lot will affect the character and
6 fabric of the neighborhood.

7 MR. EVANS: Two, club members are
8 concerned that construction on this lot will
9 constitute a loss of green space that is
10 appealing to the neighborhood. The lot, and
11 others like it, located throughout the
12 neighborhood give a feeling of open space and
13 creates a feeling of much less density within
14 the community.

15 The Club submits that the requested
16 variances on Square 4242, Lot 10, present a
17 substantial detriment to the public good. The
18 members of the Club feel that the giant oak
19 tree located at 2616 Otis Street, N.E.,
20 constitutes a public good.

21 The TTOP Block Club opposes the
22 requested variances on Square 4242, Lot 10,

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1 for other reasons, some of which are
2 intangibles and speak to the quality of our
3 neighborhood. We view the loss of private
4 open space and the tight spacing between
5 residences that would result as destroying the
6 character and scale of our neighborhood.

7 We also are concerned about the
8 precedent that approval for the requested
9 variances would set.

10 In addition, we are adamantly
11 opposed to the destruction of the grand red
12 oak tree located at 2216 Otis Street, N.E.,
13 that construction on extremely small lot,
14 Square 4242, Lot 10, would surely cause.

15 We trust that as you deliberate,
16 you will consider the concerns of the
17 neighborhood, and I'd just like to add I'm a
18 native Washingtonian and basically grew up in
19 the neighborhood where I'm currently living.

20 The homes there, the feeling in the
21 neighborhood, although I understand with the
22 passing of the time, development, things

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1 change, change is always inevitable, but the
2 people who came to the neighborhood came to it
3 for the warmth and feel that the neighborhood
4 gives.

5 We have some of our neighbors who
6 have moved in recently who also are property
7 owners, also developing property in our
8 particular neighborhood, the Woodridge area,
9 but in doing so, they're working with the
10 Advisory Neighborhood Commission. They're
11 working with the Civic Association. They're
12 working with the neighbors.

13 How can I develop this and keep
14 this neighborhood in a condition which would
15 be favorable to you because they also live
16 there, and in this particular instance, we
17 haven't seen that. This is someone who's
18 coming in without regard for the look and feel
19 of the neighborhood and I think that's
20 happening all too often through our city.

21 You know, unfortunately, having
22 been a native Washingtonian, I've now seen

1 where in some of the Northwest communities
2 with the row houses, you have three-story
3 homes that now have become four-story homes.
4 You have a trend of the mega homes, as they
5 like to call them, homes where they build
6 right out to the end or edge of the property,
7 the very limit, and I really think, as does
8 our Block Club and our ANC, that this is more
9 of a detriment to our community than it is a
10 plus.

11 CHAIRPERSON MILLER: Okay. Thank
12 you very much.

13 Does anybody have a question here?

14 (No response.)

15 CHAIRPERSON MILLER: Okay. Any
16 questions out there? Wait, wait. Excuse me.
17 If you want to say something, we'd love to
18 hear you. You need to come to the microphone
19 so you can be on record. We'd love to hear
20 you.

21 MS. BWAKENPEAR: My name is Valerie
22 Bwakenpear, and I live at 2433 Perry Street,

1 N.E., and I'm a member of TTOP, and so we've
2 come just to show our support because, you
3 know, like he said, we're definitely opposed
4 to this. There were seven of us here today?

5 Yes, so I just -- you know, that's
6 why we're sitting here. We just want to show
7 our support for this opposition.

8 Thank you.

9 CHAIRPERSON MILLER: Okay. Thank
10 you for waiting. Were there others that had
11 to leave?

12 MS. BWAKENPEAR: Yes.

13 CHAIRPERSON MILLER: Okay. That's
14 what I thought. Okay. Anybody else here to
15 testify with respect to this application?

16 (No response.)

17 CHAIRPERSON MILLER: Okay. Then
18 any other final questions? Yes?

19 BZA VICE CHAIR LOUD: I wanted to
20 ask the counsel for the party status,
21 applicants who were granted party status, on
22 the whole Urban Forestry Act issue that you

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1 raised, does the Act apply to persons as to
2 whom the tree is not on their lot?

3 MR. MARCUS: Yes, because, --

4 BZA VICE CHAIR LOUD: It does.

5 Okay.

6 MR. MARCUS: -- in other words,
7 there's a provision in the statute which makes
8 it illegal, in violation of the statute to
9 injure trees owned by someone else.

10 So to the extent that this
11 development, if it's approved and the
12 building, the house was constructed, if the
13 construction of that house compromised Ms.
14 McAlister's tree, that would be a violation of
15 the statute.

16 BZA VICE CHAIR LOUD: And just very
17 briefly, if you know the answer, what's the
18 provision for violating the statute or the
19 penalty for violating the statute?

20 MR. MARCUS: I believe the
21 sanctions are pretty modest. I don't know off
22 the top of my head. I don't think that they

1 are horrendous. Perhaps if it would be
2 helpful, I can provide it to you in a
3 submission afterwards, but I believe there's
4 a modest monetary penalty.

5 BZA VICE CHAIR LOUD: Well, for
6 right now, I'm not necessarily asking for it
7 later. I just wanted to know if you know it.

8 MR. MARCUS: Not --

9 BZA VICE CHAIR LOUD: I think as we
10 move forward, we're going to decide what --
11 how we're going to proceed in the case.

12 Thank you.

13 CHAIRPERSON MILLER: Okay. Any
14 other questions?

15 (No response.)

16 CHAIRPERSON MILLER: Mr. Agbim, you
17 have some closing remarks?

18 MR. AGBIM: Yes, thank you.

19 CHAIRPERSON MILLER: Okay.

20 MR. AGBIM: Much of what we've had
21 this evening is opposition for this project,
22 based on concerns about the health of the tree

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1 after construction.

2 This concern is based on the fact
3 that there's a belief that enough preparation
4 hasn't been made or presentation hasn't been
5 made to exactly how and what methods will be
6 used to make sure that this tree does not in
7 fact get compromised.

8 Working through this process, the
9 owner chose a prefab method of fabrication to
10 reduce the risk to the tree, to reduce the
11 impact that the construction activities would
12 have on the site, has chosen alley assets and
13 a few other measures that will make sure that
14 -- will ensure that the tree doesn't get
15 affected adversely.

16 In short order, we are able to
17 submit a detailed staging plan, fabrication
18 plan, tree conservation plan, tree protection
19 plan, traffic control plans, utility
20 connection plans, material handling plans, to
21 all parties in the matter, and also are
22 willing to hire the assistance of a tree

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1 expert during the construction phase to ensure
2 that all measures are in place to minimize any
3 impact to the trees during construction.

4 Our prayer is, therefore, give us
5 time to present this package to all parties
6 involved to show that the developer in fact
7 has taken all measures to ensure that if this
8 project is approved, that the health of the
9 trees that are on the property, on adjacent
10 properties, on the street, will be carefully
11 managed, to make sure that nothing happens to
12 the trees post-construction.

13 I will summarize by stating again
14 that granting this variance will not
15 necessarily lead to, automatically lead to the
16 death of the trees on the property and any
17 other adverse impacts.

18 Thank you.

19 CHAIRPERSON MILLER: Thank you very
20 much. Okay. Thank you very much.

21 It's been a long afternoon, but I
22 think that the Board actually is ready to

1 proceed in its deliberations. So if you hang
2 in here for a few more minutes, here we go on
3 this application.

4 I am going to actually start this
5 under motion and we'll see where the motion
6 goes, but we can deliberate under the motion
7 and that would be a motion to deny Application
8 Number 17796 of Taiwo Demuren pursuant to 11
9 DCMR Section 3103.2 for variances from the lot
10 area and lot width requirements under Section
11 401 and a variance from the side yard
12 requirements under Section 405, to construct
13 a new one-family detached dwelling at premises
14 2212 Otis Street, N.E.

15 ZC VICE CHAIR JEFFRIES: Second.

16 CHAIRPERSON MILLER: Okay. I'd
17 like to, you know, start this discussion and
18 I'm sure that others will have a lot to chime
19 in because it's been a very full discussion
20 this afternoon and I think pretty insightful.

21 I'm going to just jump into the
22 variance test. It's a three-prong test. The

1 first prong is that the property have an
2 exceptional quality about it that leads to the
3 second prong which leads to a practical
4 difficulty in complying with the Zoning
5 regulations and third, that relief can be
6 granted without substantial detriment to the
7 public. I'm paraphrasing it but that's in
8 essence what the variance statute and
9 regulations say.

10 We have looked at properties of
11 this sort in that we've looked at properties
12 that have been about 25 feet wide and which
13 have been characterized as exceptionally
14 narrow and we have actually recognized that in
15 several cases that that does give rise to a
16 practical difficulty in building a liveable
17 house on it and in particular where the
18 property was in existence prior to the
19 enactment of the Zoning regulations, we have
20 recognized that as an exceptional situation.

21 I think there was discussion in the
22 papers, not so much here, about whether there

1 were a lot of other lots in the area that
2 shared that quality or not, but I don't think
3 it was convincing, at least in this case, that
4 there were so many others that this one be
5 considered exceptional that way, in my view.

6 However, as I was saying in my
7 discourse with the Office of Planning, when
8 we've looked at those properties, we've looked
9 at what was next door and that the Office of
10 Planning has constantly said to us, and I
11 think it's well supported, that the intent of
12 the Zoning regulations and the Zoning
13 Commission was that these narrow properties be
14 combined with abutting properties, if
15 possible, and if they could be combined, then
16 there really isn't a practical difficulty in
17 complying with the regulations.

18 And in this case, we have an
19 abutting property owner who had a contract in
20 to purchase that property and in fact that
21 would be, in my understanding, totally in
22 furtherance of the intent of the Zoning

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1 regulations and that to do otherwise would be
2 contrary to it and so for that reason, I don't
3 believe that the second prong is met.

4 And then we get to the third prong,
5 that the Board shouldn't grant variance relief
6 is the result would be detrimental to the
7 public good, and we spent a lot of time
8 listening to the witness from the Urban
9 Forestry and Ms. Neal, the arborist for the
10 opposition, because we don't that often have
11 occasion to consider trees in this context,
12 but I think that the case was certainly made
13 that this is an extraordinarily special tree.
14 It's next to Number 1 being Champion in the
15 city. It's over a hundred years old, that
16 it's not just an adverse impact on the
17 neighbor whose tree the property is on, but in
18 fact that it provides a very significant
19 canopy and a whole eco system that the Urban
20 Forestry witness was addressing.

21 The other thing -- other aspects I
22 want to touch upon and then I'll let others

1 speak was that both the experts in trees that
2 we heard today said that -- I don't think they
3 had confidence that any construction plan or
4 staging plan actually would protect the tree
5 for sure, though I don't think they wanted to
6 totally prejudge without having seen one, but
7 that was the impression that I got, and then
8 they, especially Ms. Neal, went on to talk
9 about how important not just the plan is but
10 the implementation and the confidence that you
11 have to have in those policing the plan and so
12 based on the testimony that's in the record,
13 I don't think we have any reason to be
14 confident that this developer would
15 necessarily -- he might, but we don't have any
16 evidence in the record that would make us feel
17 confident that we have this person that we've
18 seen and we know this person cares about trees
19 and we can place our confidence in this person
20 in making sure that such a plan was
21 implemented and even under those
22 circumstances, it seemed as if both Ms. Neal

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1 and Mr. Thomas didn't have high confidence
2 that these trees could be protected by any
3 construction.

4 So why don't I let others speak at
5 this point?

6 MEMBER WALKER: Madam Chair, I
7 agree with your comments and also believe that
8 the Board should deny this application.

9 The Applicant has made some very
10 general representations that certain measures
11 will be taken to ensure the health of the
12 trees that we've been discussing, but there is
13 really undisputed expert testimony in the
14 record, both the arborist engaged by the
15 parties in opposition and Mr. Thomas from the
16 Urban Forestry Administration, that there's
17 likely harm to or demise of the trees that
18 will result from this project.

19 There is a consensus of opinion of
20 both the arborists and the Applicant has
21 failed to provide a tree preservation plan and
22 we have testimony from the arborists that even

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1 if there were a plan, it is not likely to be
2 executed successfully.

3 So for that reason, I believe that
4 the third prong also fails.

5 BZA VICE CHAIR LOUD: Madam Chair,
6 Commissioner Walker, I just want to say that
7 I echo both of your comments 100 percent.

8 I also am going to vote to deny the
9 application.

10 I do want to say that I don't, and
11 I'll be real brief, I don't buy into the
12 argument that the public good here is the
13 Urban Forestry Act and so I wanted to be clear
14 that at least with my vote of denial, I'm not
15 supporting that argument.

16 I think Madam Chair laid out or
17 sort of recited a lot of the testimony that
18 was placed on the record by Professor Neal, by
19 Mr. Thomas, that established that this
20 particular tree is a public good for a lot of
21 reasons. It's a near Champion tree. The 80-
22 to 88-foot canopy that it provides, the eco

1 system support that it gives and so on and so
2 forth. So those are the reasons why I believe
3 that it constitutes a public good, not the
4 Urban Forestry Act.

5 I also wanted to say to Mr. Agbim,
6 I hope I'm pronouncing that correctly, I think
7 you did a really good job with what you had to
8 work with in this particular case and you
9 attended the ANC meeting and you took some
10 heat for your principal not being at that
11 meeting, but nonetheless you tried to make the
12 case at every step of the way, but I do
13 believe that under Section 3119.2, which
14 counsel for the party witnesses brought to our
15 attention, and most of us knew it as well
16 anyway, the clear burden of proof rests with
17 the Applicant and the rule goes on to say that
18 even if there's no evidence presented in
19 opposition to the case, that the Applicant
20 still bears a responsibility for meeting that
21 burden and in this particular case, we have an
22 abundance of testimony in the record from

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1 Professor Neal, from Mr. Thomas, regarding the
2 impact of this construction and the lack of a
3 staging, a clear staging plan, and the
4 presence of about 85 percent of the critical
5 root zone within a radius or at least a
6 footprint that includes most of the house, the
7 improvement.

8 There just -- that burden was not
9 met today and it's not to say that it couldn't
10 have been met, but that's speculative. It
11 clearly was not met. There was further
12 testimony from Professor Neal that she didn't
13 think that you could put together a plan and
14 execute a plan that could preserve this near
15 Champion tree.

16 So for those reasons, I'm
17 supporting Madam Chair and Commissioner Walker
18 and voting to deny when the time is called for
19 a vote to deny the application.

20 ZC VICE CHAIR JEFFRIES: The only
21 thing -- well, I've seconded. So the record
22 is clear where I stand.

1 The only thing that I would add to
2 the third hurdle of the variance test, and
3 that is no substantial detriment to the public
4 good, even if there wasn't a discussion around
5 preservation of tree, I do consider a house
6 being situated in the context of this
7 neighborhood to be really not in keeping with
8 the character of the neighborhood.

9 So I just want to make clear to the
10 Applicant that beyond just tree preservation,
11 I think you have another issue that's tied to
12 the third hurdle. It's really around the fact
13 that I don't think that inserting a house into
14 this sort of in-fill design, I don't think
15 it's in keeping with this neighborhood and I
16 think when we look at the various zones within
17 the District, you know, we really do try to
18 preserve a certain type of quality in certain
19 parts of the District.

20 We don't want every part to look
21 like, you know, Ward 1 and U Street where I
22 live. We want to have some variety of

1 neighborhoods and so for me to look at a house
2 that you're going to insert and then a prefab
3 house which I don't have a sense of what
4 exactly that looks like, it just doesn't seem
5 that it would be in keeping.

6 So beyond the discussion of
7 preservation of the mighty Champion, almost
8 Champion oak, I just think that, you know, you
9 just have not met the burden of proof. You
10 haven't even gotten close on the -- for me on
11 the third hurdle, and I will be voting to
12 deny.

13 CHAIRPERSON MILLER: Okay. I don't
14 know if I said this or not. I do want to say
15 it, though, in that we have had other cases,
16 you know, where the property has been as
17 narrow as 25 feet wide, but some that come to
18 my attention were where the applicant has
19 said, well, they offered to sell the property
20 to one or other of the abutting property
21 owners and they wouldn't buy it and so,
22 therefore, there was their practical

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1 difficulty and I see this case distinguished
2 in that sense.

3 Also, with respect to -- there were
4 a lot of questions with respect to, I think,
5 you know, burden of proof and maybe we could
6 have taken into evidence, you know, more
7 specific plans, staging, but for me, I would
8 like to say that, first of all, I didn't see
9 any -- I may have said this earlier, but any
10 good cause as to why the evidence wasn't here
11 today.

12 You know, sometimes we do keep the
13 record open for additional evidence and I
14 think in those instances, it's often as a
15 result of topics that come up at the hearing
16 that weren't anticipated or whatever, but I
17 think that in this case, it was the writing
18 was on the wall that the trees were a huge
19 issue in this case.

20 So I just wanted to address that
21 and I think, you know, it's questionable
22 whether the proposed structure would be in

1 character with the neighborhood and again the
2 Applicant has the burden of proof.

3 I was concerned about it jutting
4 out further than the other houses and then I
5 was concerned about also the prefab, what that
6 meant, even are we looking at what's on the
7 pictures and the plans or not, but there are
8 just so many things, I guess, that were wrong
9 in this case.

10 So are there other comments?

11 BZA VICE CHAIR LOUD: Just very
12 briefly, I wanted to commend the ANC and
13 Commissioner, I hope I'm pronouncing it
14 correctly, Rivens Smith as well. It was very
15 clear from the testimony that the community as
16 a whole was very much against this project and
17 so your efforts in pulling together your
18 quorum and getting about 85 persons present as
19 well as the Woodridge Civic Association and
20 TTOP, I thought, were also critical factors as
21 well and as you know, your report in
22 particular deserves great weight from the BZA.

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1 So thank you.

2 CHAIRPERSON MILLER: I guess I'll
3 make one other final remark on that.

4 I think that's what also is
5 disturbing in this case, is, you know, that
6 the -- one of the reasons I wouldn't have
7 confidence that such a plan to protect trees
8 would be carried out in a very careful and
9 considerate manner is because we don't have
10 any evidence that the developer met with the
11 community or the neighbor in a very careful or
12 considerate way.

13 So we don't see that this
14 frequently, to tell you the truth. So it's
15 disturbing to the Board as well.

16 Okay. Any other comments?

17 (No response.)

18 CHAIRPERSON MILLER: All right. We
19 have a motion that's been seconded. All those
20 in favor, say aye.

21 (Chorus of ayes.)

22 CHAIRPERSON MILLER: All those

1 opposed?

2 (No response.)

3 CHAIRPERSON MILLER: All those
4 abstaining?

5 (No response.)

6 CHAIRPERSON MILLER: and would you
7 call the vote, please?

8 MS. BAILEY: Madam Chair, the Board
9 has voted 5-0-0 to deny the application. Mrs.
10 Miller made the motion, Mr. Jeffries seconded,
11 Mr. Dettman, Mr. Loud and Mrs. Walker support
12 the motion, and Ms. Monroe will be doing a for
13 order.

14 MS. MONROE: Yes.

15 CHAIRPERSON MILLER: All right.
16 That concludes this case. Thank you.

17 Are the parties for the second case
18 on the agenda here today? Okay. We'll be
19 getting to you in a minute.

20 We're going to take a five-minute
21 break before we get to the next case.

22 (Whereupon, the proceedings went

1 off the record at 6:27 p.m. and went back on
2 the record at 6:41 p.m.)

3 CHAIRPERSON MILLER: Okay. We're
4 back on the record, and Ms. Bailey, you can
5 call the last case of the afternoon when
6 you're ready.

7 DRM AND ASSOCIATES, INC.

8 APPLICATION NO. 17791 - ANC-6C

9 MS. BAILEY: Madam Chair, with the
10 Board's approval, the Applicant amended this
11 application and he had initially sought to
12 develop -- well, continue the child
13 development center and also to establish a
14 community service center and then to allow an
15 addition to the existing building.

16 However, since initially filing
17 that application, it has been amended. So
18 with the Board's permission, I will be calling
19 the case as it concerns particularly just the
20 child development center because that's all he
21 is requesting relief from now, if that makes
22 any sense.

1 This is Application Number 17791 of
2 DRM and Associates, Inc., and it's pursuant to
3 Section 3104.1 for a special exception to
4 continue a child development center that's for
5 50 children, infant to 12 years and nine
6 staff.

7 The property is located at 728 F
8 Street, N.E., and it is zoned R-4 and it is
9 located in Square 891 on Lot 49.

10 There is a request for party status
11 from a Vincent Morris at 726 F Street, N.E.

12 CHAIRPERSON MILLER: Thank you.
13 Would you introduce yourself for the record,
14 please, starting with the Applicant? You need
15 to press it and then the light -- yes.

16 MR. MADDEN: I'm Donald Madden, 243
17 K Street, N.E. I'm President and Owner of DRM
18 and Associates, Inc.

19 CHAIRPERSON MILLER: Okay. And who
20 else is at the table?

21 MR. HAMILTON: Tom Hamilton from
22 ANC-6C. I live at 415 6th Street, and I

1 finally realized how I killed my hemlocks.

2 CHAIRPERSON MILLER: Okay. And is
3 Mr. Morris here? Would you come to the table,
4 also, please? Okay. Would you introduce
5 yourself for the record, please?

6 MR. MORRIS: I'm Vincent Morris at
7 726 F Street, right next door to the daycare.

8 CHAIRPERSON MILLER: And you're
9 seeking party status in this case?

10 MR. MORRIS: Yes.

11 CHAIRPERSON MILLER: Okay. And do
12 you know the difference between being a party
13 and just testifying as an individual?

14 MR. MORRIS: Roughly -- yes. Yes,
15 I do. I was told by the City that as the
16 adjacent owner, I would have that status, if
17 I wanted it.

18 CHAIRPERSON MILLER: If we give it
19 to you. You're -- you can definitely -- you
20 can always testify. If you want to, you can
21 always testify.

22 To grant party status, we have to

1 decide that you're impacted differently than
2 the general public by this application, and I
3 just want to tell you the difference in case
4 you don't want to go through that whole hassle
5 of, you know, whether we should grant it to
6 you or not.

7 It's just that as an individual,
8 you can definitely testify to the application.
9 If you're granted party status, you can cross
10 examine the Applicant and the Office of
11 Planning and, you know, present evidence just
12 like a party in litigation, submit pleadings,
13 et. cetera. We may not go that far in this
14 case, but is that clear?

15 MR. MORRIS: Yes.

16 CHAIRPERSON MILLER: Okay. And do
17 you want us to consider your party status?

18 MR. MORRIS: Yes.

19 CHAIRPERSON MILLER: Okay. And
20 does the Applicant have any objection to our
21 granting party status to Mr. Morris? Do you
22 have any reason why we shouldn't?

1 MR. MADDEN: Yes, Your Honor. I'm
2 sorry. Madam Chair, he, I think, would be in
3 a position for that if the whole application
4 were being considered here today, but we are
5 only considering continuation and I think that
6 would be the basis for my objections, that it
7 wouldn't be applicable for his status to be
8 any different than anyone else for what we are
9 dealing with today.

10 CHAIRPERSON MILLER: Mr. Morris,
11 how are you impacted by this application?

12 MR. MORRIS: Well, it's adjacent to
13 my property and I -- the Applicant, although
14 he says he has an address on K Street, he
15 actually lives out in Maryland, and I've lived
16 next to the daycare for many years and owned
17 the house and obviously I have -- it's a huge
18 impact on me.

19 So regardless of whether he has
20 decided not to do the two-story addition, he
21 still is seeking to continue running a
22 business that I think has been run in a very

1 poor way and it's adjacent to my house. So
2 yes, I think I have party status.

3 CHAIRPERSON MILLER: Okay. You
4 don't have party status yet, but is it
5 basically that you're impacted by the
6 operations of the child care center and you
7 also have, I would assume, have a lot to
8 testify about since you've observed how it's
9 been operating over the past few years?

10 MR. MORRIS: Yes, I think I have,
11 yes.

12 CHAIRPERSON MILLER: Okay. Do the
13 Board members have any objection to granting
14 party status? Okay. We see that Mr. Morris
15 seems to be in a special situation to be
16 impacted by the operations since he is next
17 door and therefore are going to be granting
18 party status to him.

19 Okay. So -- oh, I'm sorry. Did
20 the ANC have a concern about that?

21 MR. MORRIS: No.

22 CHAIRPERSON MILLER: Okay. Good.

1 All right. Then I think that does it for
2 preliminary issues and we can go right to the
3 Applicant's case then. You're seeking a
4 continuation of the operations of the child
5 care development center?

6 MR. MADDEN: Yes, I am.

7 CHAIRPERSON MILLER: Okay. What do
8 you want to tell us?

9 MR. MADDEN: First of all, I know
10 more about trees than I ever thought I would.

11 I'll give you a brief history. I'm
12 sorry?

13 CHAIRPERSON MILLER: I'm sorry. I
14 couldn't hear what you said. Could you speak
15 into the mike and say that again, please?

16 MR. MADDEN: Okay. I was just
17 saying that I know more about trees now than
18 I ever expected to, and I owned a tree company
19 for about 25 years.

20 But I want to give you a brief
21 history of this center. This is my third time
22 here and I'm hoping that I won't have to

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1 return again and this will be a continuation
2 indefinite as I'm requesting.

3 We've been operating this center
4 for approximately nearly two decades now and
5 the first graduates, two of the young ladies
6 that I consider to be in the genius category,
7 one of them has already graduated from college
8 and I think it's a unique center and the
9 situation here where college students can come
10 back home and go past and see where they went
11 to child care, where in this District it's
12 pretty difficult because it's hard to come
13 back now and see where you went to high school
14 because they're changing and closing so many.

15 So I think that's unique and I
16 think we've been operating there for almost
17 two decades, no accidents, no incidents, and
18 we have support in the files greater than
19 combination of time period before in support
20 of this center, its operations, we have 36
21 names, letters of support for the center.

22 We've graduated approximately

1 between 600 and 1,000 children from that
2 center and as I say, they're now graduating or
3 have already graduated, the first group, from
4 college.

5 I had intended to bring the young
6 lady here, but I wasn't able to get her to
7 come today. I wanted to show you her
8 educational history.

9 The need for the center continues.
10 We have infants in this center and in the
11 District of Columbia, there's a critical need
12 for infant child care and we provide that at
13 this center for --

14 CHAIRPERSON MILLER: Okay. I'm
15 going to interrupt here. Okay?

16 MR. MADDEN: Yes.

17 CHAIRPERSON MILLER: How many
18 infants do you provide child care for? How
19 many infants do you have there? You have 50
20 children all together.

21 MR. MADDEN: Eight infants at the
22 present time.

1 CHAIRPERSON MILLER: Eight? Okay.

2 MR. MADDEN: We started out, we
3 were zoned for 11 infants in there, but over
4 the time period, regulations and so forth
5 changes and we only have eight there at the
6 time.

7 CHAIRPERSON MILLER: Okay. Mr.
8 Moore can probably comment on this as well,
9 but the regulations have changed again and
10 they may change again, but the way they are
11 written now, child development centers are
12 limited to ages 2 through 15, I believe.

13 Mr. Moore, maybe you can jump in on
14 this. This is an important issue, I think,
15 for this case, if he has eight infants. Do
16 you have anything you want to say on this?

17 MR. MOORE: Obviously I didn't want
18 to hear that again, based on the last case we
19 had.

20 CHAIRPERSON MILLER: I thought you
21 might have changed the law already.

22 MR. MOORE: I wish we had, but as

1 the regulations stand now, it's between 2 and
2 15. I think on the last case, we just sort of
3 captured the 15 with no lower limit.

4 CHAIRPERSON MILLER: Okay. I'm
5 sorry to be so blunt here, but this is an
6 issue that, you know, we recently saw in
7 connection with another child development case
8 that we didn't have the authority to issue an
9 order for a child development center that --
10 for the infants.

11 So that were we to issue an order
12 today, it's my understanding that it would be
13 limited to the definition of child development
14 center in our regulations, which is at 199,
15 and it's for ages 2 to 15.

16 However, that may change in the
17 near future, but I believe that the Office of
18 Planning is going to be suggesting that it
19 change because these infants aren't covered
20 and if and when that were to change and you
21 had an order authorizing a child development
22 center, you would be able to add infants at

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1 that time perhaps, but depending on how we go
2 today.

3 But I just wanted to bring that to
4 your attention. I understand that your order
5 has expired now, is that right?

6 MR. MADDEN: I don't think it's
7 expired as of today.

8 CHAIRPERSON MILLER: Didn't it
9 expire June 23rd? I thought it was --

10 MR. MADDEN: But 9.

11 CHAIRPERSON MILLER: Oh, 2009?

12 MR. MADDEN: Right.

13 CHAIRPERSON MILLER: So yo don't
14 need to be here today.

15 MR. MADDEN: Well, no.

16 CHAIRPERSON MILLER: I'm sorry.

17 But --

18 MR. MADDEN: We had a 10-year grant
19 before.

20 CHAIRPERSON MILLER: Mr. Moore,
21 what's the status of those regulations? Is
22 there any status?

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1 MR. MOORE: Just trying to get this
2 clear a little bit first, if you don't mind.

3 CHAIRPERSON MILLER: I'm sorry.

4 MR. MOORE: Mr. Madden, --

5 MR. MADDEN: Yes, sir?

6 MR. MOORE: -- is your C of O still
7 valid? Your Certificate of Occupancy, that's
8 still valid?

9 MR. MADDEN: Yes.

10 MR. MOORE: It says 2009?

11 MR. MADDEN: Right.

12 MR. MOORE: The expiration date
13 says 2009?

14 CHAIRPERSON MILLER: If you want to
15 say something, we'd love to hear from you, but
16 you need to come to the microphone to get on
17 record.

18 MS. LANE: According to my
19 understanding, there was a 10-year period
20 given --

21 CHAIRPERSON MILLER: Excuse me.
22 Can you just state your name and address?

1 MS. LANE: My name is Isadora Lane,
2 and according to my understanding, if I look
3 at -- the Certificate of Occupancy, as issued,
4 doesn't have an expiration date on it. It
5 doesn't have a period of time on it. It says
6 that the C of O is issued by the District of
7 Columbia and so what was -- what is being
8 requested was the extension of the site as a
9 proposed child development center. So that's
10 the extension that was being requested, not
11 the C of O, but the extension of the
12 designation of the designation of the center
13 as a child development center.

14 MR. MOORE: Madam Chair, if I may
15 be permitted? It seems I don't know how you
16 do it after the long day you've been through
17 to come up with that bit of wisdom.

18 I believe this Applicant is really
19 here because he attempted to add an additional
20 use to the building with no relationship to
21 the existing use, but because the existing use
22 was there, he put in the application.

1 If he's got a C of O, and I haven't
2 seen the C of O that says it expires in 2009,
3 because that can be -- that's independent of
4 this Board approving it for 10 years, the date
5 of the C of O is when he's got to go back for
6 renewal, and if that date is 2009, I wish he
7 had some proof of it now, this hearing would
8 be moot. There wouldn't be need for it till
9 2009 since the second phase has been withdrawn
10 from the application.

11 CHAIRPERSON MILLER: Well, the
12 reason I was asking about those other
13 regulations was because under this order, he's
14 authorized to have infants, isn't he?

15 MR. MADDEN: Yes, I am.

16 CHAIRPERSON MILLER: Okay. And so
17 if we were just to give a new order today
18 under the regulations in effect today, right
19 now they don't allow for infants at a child
20 development center.

21 MR. MOORE: Regarding that order,
22 the Office of Planning is in the process of

1 doing something. We already met with the
2 Department of Health to discuss that tissue.

3 CHAIRPERSON MILLER: Okay. I just
4 was wondering and now, you know, I'm just
5 thinking aloud, which is maybe kind of
6 dangerous at this late hour, but whether, you
7 know, this might be continued. I mean, we
8 could start with the hearing today, but, I
9 mean, if he wants to have infants and there
10 might be a change in the law later down the
11 road within six months or whatever, you might
12 not want this decision decided until then.

13 MR. MOORE: What decision?

14 CHAIRPERSON MILLER: What decision?
15 Well, in a year, the authorization to use the
16 building for a child development center will
17 expire.

18 ZC VICE CHAIR JEFFRIES: So you're
19 saying that we should have a hearing for
20 something that will occur a year from now?
21 That's what you're -- for something that will
22 take effect a year from now? Is that what

1 you're saying or just the opposite?

2 CHAIRPERSON MILLER: I'm saying it
3 might not certainly want to be decided today.
4 You know, we haven't even begun to hear the
5 case and so I'm sorry that we're kind of
6 jumping into this issue, but as of now,
7 they've been, as I understand, authorized to
8 and have been providing child care for
9 infants. Okay?

10 The order expires authorizing them
11 to do that in a year. In the meantime, since
12 this order was issued, the regulations changed
13 and the definition of child development center
14 is now ages 2 and up.

15 ZC VICE CHAIR JEFFRIES: Right.

16 CHAIRPERSON MILLER: So I'm just
17 wondering whether if we issued a new order
18 today, what the effect would be on them having
19 infants at their facility.

20 ZC VICE CHAIR JEFFRIES: Can we
21 hear from the Office of the Attorney General?

22 CHAIRPERSON MILLER: sure.

1 MS. MONROE: I'm trying to figure
2 it out. I don't know what the actual
3 expiration date is of the current order.

4 MR. MADDEN: In the records,
5 February 18, 2008, you have a letter and that
6 is Subject: Renewal, BZA Application 16446,
7 Final Date of Order June 23rd, 1999, and
8 approval for June 23rd, --

9 MS. MONROE: So June 23rd, 2009,
10 basically is the end. Okay. So it would be
11 in another year.

12 ZC VICE CHAIR JEFFRIES: But the
13 Applicant is good to go currently with
14 infants.

15 MS. MONROE: Yes, under this order.

16 ZC VICE CHAIR JEFFRIES: Under this
17 order.

18 MS. MONROE: Yes.

19 MR. MADDEN: Right.

20 MS. MONROE: But if we -- if
21 another order is issued, that would take
22 precedence and it would be under the law of

1 today. I think this is what the Chair --

2 ZC VICE CHAIR JEFFRIES: Which
3 would be --

4 MS. MONROE: Which would mean no
5 infants.

6 ZC VICE CHAIR JEFFRIES: Which
7 would mean he could not have infants, unless
8 you're looking at this being effective -- is
9 that what you're saying, Madam Chair?

10 CHAIRPERSON MILLER: That's the
11 next question, would be, yes, could -- if we
12 issued an order today, could it be effective
13 upon the expiration of the present order, but
14 I don't think we've ever done that.

15 MS. MONROE: Well, you haven't, but
16 I don't know what you could do. I mean, I
17 don't whether you could or not. To be honest,
18 I don't know why you couldn't, you know. This
19 order is good until then, no matter what,
20 basically, and if you want to issue an order
21 and say it becomes effective when this one
22 ends, I don't see why you couldn't, but it

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1 would be effective under the terms of the
2 regulations at the time and I don't whether
3 the Zoning Commission's taking this up to
4 change the infants. Do we know?

5 MR. MOORE: The Office of Planning
6 has been asked to explore that.

7 MS. MONROE: Oh. So it's not --

8 MR. MOORE: To include infants.

9 MS. MONROE: But it hasn't been
10 before the -- hasn't been set down. So we
11 don't know. It might not even change.

12 MR. MOORE: No. We just got this
13 request last month.

14 CHAIRPERSON MILLER: Okay. You
15 know what? What we've done in the past, I
16 think, is we have had the hearing and we, you
17 know, can do that and then postpone the
18 decisionmaking in this case until after the
19 new regulations are in effect, if we would
20 like, because you don't need a -- you wouldn't
21 need an order today because you have an order
22 that's in effect right now.

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1 ZC VICE CHAIR JEFFRIES: Which
2 works for you today.

3 MR. MADDEN: Right, right.

4 CHAIRPERSON MILLER: Yes. Okay.
5 So why don't we just set that side as that's
6 a possible recourse and here, the merits, like
7 what's going on with this child development
8 center, and look at the issues that we need to
9 look at to determine whether it should be
10 renewed and whether there should be different
11 conditions. Okay.

12 ZC VICE CHAIR JEFFRIES: Renewed in
13 June of 2009, almost a year from now.

14 CHAIRPERSON MILLER: You know, I
15 mean that's the -- what -- I guess I'd want to
16 hear like, for instance, you know, if that's
17 the case, could circumstances be so different
18 in June that we really shouldn't be hearing
19 this until later. Maybe you all can address
20 that. I want to hear from Mr. Morris as well.

21 MR. MORRIS: One thing I was going
22 to say is that -- one thing I'd like to ask

1 for is that I don't think the owner should be
2 allowed to have a 10-year window to run the
3 business, given the way it's been run in the
4 past. As I will document --

5 CHAIRPERSON MILLER: Okay. That's
6 okay.

7 MR. MORRIS: So I would say that if
8 you're going to have a hearing, it should be
9 open and he was going to be allowed to
10 continue the operation, it should only be for
11 a year at the maximum anyway. So if you're
12 going to have the hearing today and then not
13 decide it for a year from now, the facts may
14 have changed a year from now and the evidence
15 may change and so it would require to me a
16 whole another hearing.

17 CHAIRPERSON MILLER: Mr. Madden,
18 why should we hear it today? I mean, I think
19 originally you planned to do additions and all
20 that kind of stuff and so that was the reason
21 you wanted to begin the construction, et.
22 cetera.

1 Now that's not going to happen. So
2 why should we hear today as opposed to, you
3 know, several months down the road, closer to
4 the expiration?

5 MR. MADDEN: Well, Your Honor,
6 first of all, I would be willing to wage that
7 the decision regarding infants will be
8 reinstated, if that's the right term, in what
9 they are considering because there's a drastic
10 need for infant care in the District of
11 Columbia, more so than 2 to 12, because the
12 new Mayor's ruling that he was taking children
13 and put them into schools at early age now.
14 So there's not -- there's a much less need for
15 children 3, 4 and 5 to be in child care, but
16 the infant care is drastically needed in the
17 District of Columbia.

18 So I would be almost certain that
19 that's going to be amended and we will have
20 infants, so that's why I think we should go
21 forward with it, and I am willing to take my
22 chances that's going to be, plus I'm

1 requesting -- we've been here -- this is my
2 third trip here, and at the suggestion of
3 people involved as far as the ANC and others
4 in doing this process, that we should request
5 an indefinite period for this time and not to
6 have to keep coming back which is unfair to me
7 as the owner, and we have operated and I'll be
8 able to testify in detail that we've operated
9 as safely and we produce quality and --

10 CHAIRPERSON MILLER: Okay. Let me
11 just try to focus on the initial question.
12 Will it make any difference whether we hear
13 the case today or 10 months from now? Would
14 your operations change in that period at all?
15 Is there anything, you know, that would be
16 different?

17 MR. MADDEN: As we stand now, we're
18 going to continue to operate as we've been
19 doing for two decades and hoping to do for
20 many, many more years. We're going -- if the
21 ruling is we don't have infants, we'll deal
22 with that because we have to go back each year

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1 for licenses and they decide and the
2 determination we had to go through the Zoning
3 and all of that process in order to determine
4 how many children, what the ages of the
5 children and all of that each time we go back
6 and forth for licensing. It's not necessarily
7 has to be done here at the Board for that.
8 That's done at a lower level and that's done,
9 you know, all the time. That's -- but we have
10 in effect the basics for what was allowed in
11 the beginning for the child care. We never
12 exceeded that, so we operated under that order
13 for all those years and each time it's been
14 renewed, and it's nothing different now, other
15 than a possibility that infants may be
16 removed.

17 ZC VICE CHAIR JEFFRIES: You know,
18 obviously Board members shouldn't be making
19 suggestions to applicants, but my suspicion is
20 that you got a good little lead time here
21 before your current order is up to try to make
22 some level of peace with your next-door

1 neighbor here.

2 I'm just wondering whether you put
3 yourself in a little bit of a better position,
4 you know, or in terms of, you know, dealing
5 with issues around operation and all those
6 kind of things. I mean, I'm just throwing
7 that out as a suggestion, you know. You got
8 some lead time to sort of work through some of
9 this because your operations, I mean, you
10 know, obviously in a residential zone, it's a
11 big deal.

12 So I'm just sort of asking you to
13 -- I mean, what do you think of that?

14 MR. MADDEN: Well, sir, I
15 appreciate that. However, if you take the
16 weight of -- well, to give you an example, in
17 the opposition at the ANC, there was like
18 three people, one of whom was before the Board
19 of Zoning Commission the last time I was here
20 and he made the comment and compared children
21 laughter to dogs barking and the Board and the
22 whole audience laughed him out of here. He

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1 stormed out the door before any more comments.
2 So that was one of the three people that was
3 commenting against at the ANC meeting.

4 Mr. Morris was the other one and
5 one other lady that didn't put any comments in
6 and she didn't show up today.

7 So we're dealing with one
8 individual in opposition compared to letters
9 of support of 36 people in the surrounding
10 area --

11 ZC VICE CHAIR JEFFRIES: Next door.

12 MR. MADDEN: Right. That live next
13 door. They live in the radius of where the
14 letters were sent.

15 CHAIRPERSON MILLER: Wait a sec.
16 I want to try to stay focused on that initial
17 question, though. Does the ANC have an
18 opinion whether it matters, you know, if we
19 have the hearing a little bit early?

20 MR. MORRIS: Well, the ANC voted
21 last month to oppose this application, but I
22 didn't know until I got here today that it had

1 been amended and so the ANC voted on the full
2 application which included the addition and I
3 don't know, whatever, the center, whatever
4 they were calling it, which may in fact
5 affected how we voted on the whole thing.

6 I think it would be very strange if
7 I went back to the ANC and said what you voted
8 on was not decided and what was decided
9 doesn't take effect for a year. I just find
10 that peculiar.

11 I would much prefer that the
12 hearing be held more closely to when this
13 actually expires.

14 ZC VICE CHAIR JEFFRIES: Because --
15 excuse me, Commissioner. Because?

16 MR. MORRIS: The ANC voted based on
17 what they knew at the present time.

18 ZC VICE CHAIR JEFFRIES: What we
19 could do, we could sort of postpone this for
20 a couple of weeks and give the ANC time to --
21 that's what I'm just trying to -- I mean, are
22 you really dealing with --

1 MR. MORRIS: Well, I'm not sure why
2 you would want to postpone for a couple weeks
3 and still decide on something that wasn't
4 going to take effect for a year.

5 ZC VICE CHAIR JEFFRIES: Well, we
6 might do something like that in order to give
7 the ANC a chance to vote and so forth. That's
8 what we might do, but I'm really more getting
9 to the question of, you know, why you think
10 it's a little odd that we would do it a year
11 in advance of the expiration of the order.

12 MR. MORRIS: Because you're already
13 telling me that the law may change, the
14 circumstances may change, the center may
15 change.

16 ZC VICE CHAIR JEFFRIES: Okay.

17 MR. MADDEN: May I comment on that?

18 CHAIRPERSON MILLER: What's the
19 status of the Certificate of Occupancy again?
20 You have a Certificate of Occupancy that
21 allows infants, is that correct?

22 MR. MADDEN: That's correct.

1 Always have.

2 CHAIRPERSON MILLER: And does it
3 have an expiration on that or no?

4 MR. MADDEN: No.

5 MS. LANE: It's not issued with an
6 expiration date. The Certificate of Occupancy
7 itself states the numbers of children that are
8 allowed, the ages of the children, but it does
9 not specifically state -- it was issued as a
10 standard Certificate of Occupancy and those
11 are not issued with a specific termination
12 date on them. That's certainly different from
13 what the application is here tonight.

14 ZC VICE CHAIR JEFFRIES: Do you
15 have a copy of -- you don't have a copy of it?

16 MR. MADDEN: We didn't bring --

17 MS. LANE: I can provide that to
18 you.

19 MR. MADDEN: We didn't bring that
20 with us, didn't think it was --

21 CHAIRPERSON MILLER: And when was
22 this Certificate of Occupancy issued?

1 MS. LANE: I don't have it in front
2 of me, but the Certificate of Occupancy was
3 issued years ago, but I could certainly bring
4 a copy of it.

5 BZA VICE CHAIR LOUD: Madam Chair,
6 can I weigh in?

7 I'd be very uncomfortable going
8 forward today. It's so far in front of the
9 expiration date order. I mean, the evidence,
10 it's not that it could, the evidence will grow
11 stale by the time that the order becomes
12 effective, and there's so many things that
13 could change that would impact whether or not
14 the operation is being run smoothly.

15 You could have more college
16 graduates by that point in time or you could,
17 per this Exhibit 24 where it says that you've
18 just changed management and you have a new
19 team in place, there could be a bunch of
20 issues that we close the door on today from an
21 evidentiary standpoint that don't pop up until
22 four or five months down the road and then

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1 we'd have to everybody back here. We'd have
2 to open the record for supplemental reports.

3 It just to me wouldn't make sense
4 to pull together an evidentiary record today
5 for something that's going to be evaluated and
6 place young people not necessarily in harm's
7 way, but young people under your care a year
8 from now. I don't follow the logic of it.

9 MR. MADDEN: Sir, may I make -- I
10 think the way you read that, I think that's
11 not the way it was intended. That letter from
12 Mrs. Ware was --

13 BZA VICE CHAIR LOUD: I'm saying
14 that a year from now --

15 MR. MADDEN: New management has
16 been in effect for three years.

17 BZA VICE CHAIR LOUD: It cuts both
18 ways. It was just an example. What I'm
19 saying is that a year from now, you could have
20 a lot more success stories to support your
21 renewal request as well as there could be some
22 additional evidence that would impact our

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1 evaluation. It just seems to me that we're
2 making an evaluation today on this record and
3 these witnesses for something that will impact
4 young people a year from now and a whole lot
5 of things could happen over the next eight
6 months, nine months.

7 ZC VICE CHAIR JEFFRIES: And I
8 agree, I mean, and that was sort of what I was
9 trying to suggest to you and, you know, I
10 didn't -- I just -- you know, you have an
11 opportunity to, you know, really, you know,
12 try to manage, I mean, address some of the
13 operational issues.

14 Maybe you've tried to do it or
15 whatever, but I just -- it just seems that,
16 you know, you've got some time and you've got
17 an order, you know.

18 I mean, Madam Chair, if I'm missing
19 something here, please tell me, but --

20 CHAIRPERSON MILLER: Okay. I think
21 that -- I think I want to call a quick break.
22 There might be some other regulations that

1 bear on this and I think we ought to take a
2 quick look at that, you know. I know there's
3 lots of sides to this. The Applicant's early,
4 but again the Applicant is here and there's
5 not a prohibition against being early, except
6 for this possible change in the law, but I
7 want to call a quick break and then we'll come
8 back and deal with this, and I know it's late
9 and I appreciate everybody's patience. I just
10 want to deal with this properly. Okay.

11 (Whereupon, the proceedings went
12 off the record at 7:15 p.m. and went back on
13 the record at 7:39 p.m.)

14 CHAIRPERSON MILLER: Okay. We're
15 back on the record.

16 Let's see if I can convey the
17 sentiment of the Board accurately, otherwise I
18 welcome corrections.

19 But basically the Board is of the
20 view that, you know, it's the Applicant's
21 choice whether you want to go forward today,
22 but that I think, as Mr. Loud was saying, the

1 Board is of the view that if we do proceed
2 today, that we would issue an order shortly
3 based on the law in effect now and that the --
4 but we're not in a position to dispense legal
5 advice.

6 Certainly one of the regulations
7 that I did bring to your attention was in the
8 definition 199 which talks about child
9 development center definitions being from ages
10 2 to 15.

11 There may be other regulations that
12 might indicate there may be other options, but
13 in any event, we are to operate under 205
14 which talks about authorizing use of the child
15 development center and that's what we would be
16 considering.

17 We are, I think, of the view,
18 though, that if the Applicant wishes to
19 continue the case to a later date, that the
20 Board thinks that might be a good idea but
21 that it's up to you because there might be a
22 change in the regulation dealing with child

1 development center but that's not known yet,
2 and it isn't even on the Zoning Commission's
3 calendar. So it's kind of vague, but you do
4 have a year before the current order expires.

5 We've also heard from the ANC that
6 the ANC might have a different position now
7 that your application has changed and they
8 didn't consider the revised application, and
9 we've heard from -- we haven't heard that much
10 but we've heard a little bit, you know, that
11 there's concern, you know, by the abutting
12 neighbor, Mr. Morris, and that the time might
13 serve you well.

14 I'm not sure if I'm missing
15 something else. I feel like I am, but do you
16 have a response?

17 MR. MADDEN: Yes, I do. We
18 basically had some discussion while you were
19 having your discussions, and we pretty much
20 decided we will wait contingency on it being -
21 - I don't know how we -- I'll talk to Mr. Nero
22 tomorrow and see how things stand. Do I have

1 to pay again or whether we -- how it handles,
2 so forth.

3 But we're willing to meet with ANC
4 and work out whatever and we'll wait on the
5 decision from dealing with the infants and
6 hopefully do it before, you know, time to come
7 back.

8 CHAIRPERSON MILLER: Okay. I think
9 what we could do is perhaps set a date, Mr.
10 Moy, you know, that far out. Could we do
11 that, for like next April or as we get closer
12 to -- the order expires in June, is that
13 right?

14 MR. MADDEN: June 23rd.

15 CHAIRPERSON MILLER: Yes, not that
16 we want to cut it too close.

17 I think, also, just to bring to
18 your attention, you know, we have all reviewed
19 the file so far, and there was some concern
20 about -- I just want to bring to your
21 attention so that maybe you can get this
22 addressed somehow or Office of Planning can in

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1 the meantime.

2 Child and Residential Care
3 Facilities Division of the Department of
4 Health said that "please note the existing
5 child development center has been in operation
6 for several years but is now functioning under
7 new management. The previous management when
8 the center was named Tender Love had many
9 licensure issues with this office and Tender
10 Love had the same owner, Mr. Donald Madden."

11 That raises some concerns in our
12 minds but don't know what that all means. It's
13 something that we would have explored at the
14 hearing.

15 So you might want to be prepared
16 to, you know, address this. It's Exhibit 24.

17 So what would happen is that you
18 would not have to pay again. I mean, you paid
19 for your hearing and we're continuing it. I
20 don't think Mr. Nero will tell you anything
21 different.

22 As we get closer, you could -- we

1 would want you to update the application and
2 Office of Planning also weigh in again so we
3 wouldn't be dealing with a stale application
4 at that point, we'd be dealing with a current
5 application, and the ANC would submit a
6 current resolution, I assume.

7 And Mr. Morris has been granted
8 party status, so that would continue. So that
9 anything that you serve, any other papers that
10 you file should be filed not only on the Board
11 but Office of Planning, the ANC, and Mr.
12 Morris. Okay? I think that's a wise choice.

13 Do you have a date?

14 MR. MOY: Yes, I do. I'd like to
15 run by the Board, Madam Chair, that the --
16 assuming that the current order expires June
17 23rd of 2009, it might be wise to at least go
18 out three months prior to June in case there
19 are multiple hearing dates. So the staff is
20 suggesting perhaps maybe the Ides of March or
21 close to that. So possibly maybe March 17th.

22 CHAIRPERSON MILLER: That sounds

1 good.

2 MR. MOY: Just to pick a date out
3 of the air.

4 CHAIRPERSON MILLER: Okay. Okay.
5 That's all right with your calendars?

6 MR. MADDEN: Long as you have me on
7 first so I don't have to listen to any more
8 tree stories>

9 CHAIRPERSON MILLER: Oh, on first.
10 I think you are the first one on board. Is
11 that morning then we would do or do we do
12 these kind of cases in the afternoon? We're
13 not sure.

14 MR. MOY: Well, typically, these
15 kind of child development centers are at 1
16 o'clock.

17 CHAIRPERSON MILLER: 1 in the
18 afternoon. Okay. We can put you first in the
19 afternoon. You're right. Thank you very much
20 for your patience.

21 MR. MADDEN: Thank you.

22 CHAIRPERSON MILLER: Okay.

1 Anything else on the agenda, Ms. Bailey?

2 MS. BAILEY: No, Madam Chair.

3 CHAIRPERSON MILLER: Okay. Any
4 other questions?

5 MR. MADDEN: No. Thank you very
6 much.

7 CHAIRPERSON MILLER: Okay. Thank
8 you very much.

9 MR. MADDEN: Have a nice evening.

10 CHAIRPERSON MILLER: You, too.

11 Okay. Then this hearing is adjourned.

12 (Whereupon, the foregoing matter
13 was concluded at 7:46 p.m.)

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