

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JULY 1, 2008

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 3:30 p.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARY OATES WALKER Board Member
SHANE L. DETTMAN Board Member
(NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES V. Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

ARLOVA JACKSON

The transcript constitutes the minutes
from the Public Hearing held on July 1, 2008.

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

3:52 p.m.

CHAIRPERSON MILLER: Good

afternoon, ladies and gentlemen. This hearing will, please, come to order. This is the July 1st afternoon session of the Board of Zoning Adjustment Public Hearing for the District of Columbia. My name is Ruthanne Miller. I'm the Chair. And to my right is Mr. Greg Jeffries sitting with us from the Zoning Commission. To my left is Mary Oates Walker and Shane Dettman, Board Members. And next to Mr. Dettman is Lori Monroe from the Office of Attorney General and Beverley Bailey from the Office of Zoning. And joining us also will be Mr. Cliff Moy 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. Accordingly, we must ask you to

1 refrain from any disruptive noises or actions
2 in the hearing room.

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

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

18 The order of procedure for special
19 exceptions and variances is as follows: One,
20 statement and witnesses of the applicant.
21 Two, Government reports, including Office of
22 Planning, Department of Public Works, DDOT,

1 etcetera. Three, report of the Advisory
2 Neighborhood Commission. Four, parties or
3 persons in support. Five, parties or persons
4 in opposition. Six, closing remarks by the
5 applicant.

6 Pursuant to Sections 3117.4 and
7 3117.5, the following time constraints will be
8 maintained: The applicant, persons and
9 parties, except an ANC, in support, including
10 witnesses, 60 minutes collectively. Persons
11 and parties, except an ANC, in opposition,
12 including witnesses, 60 minutes collectively.
13 Individuals 3 minutes.

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

21 Nothing prohibits the Board from
22 placing reasonable restrictions on cross

1 examination, including time limits and
2 limitations on the scope of cross examination.

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

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

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

1 the contrary, the Board requests that persons
2 present not engage the Members of the Board in
3 conversation.

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

7 The Board will make every effort
8 to conclude the Public Hearing as near as
9 possible to 6:00 p.m. If the afternoon cases
10 are not completed at 6:00, the Board will
11 assess whether it can complete the pending
12 case or cases remaining on the agenda.

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

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1 matter.

2 Does the staff have any
3 preliminary matters?

4 MS. BAILEY: Madam Chair, Members
5 of the Board, to everyone, good afternoon.
6 Madam Chair, you had indicated earlier, but
7 just to put on the record once more that
8 Application No. 17789 of Walgreen Eastern
9 Company, that application was rescheduled to
10 October 28, 2008, the afternoon session, and
11 that was done earlier today.

12 CHAIRPERSON MILLER: That's
13 correct. Thank you very much. Yes, we did
14 take care of the preliminary matter in that
15 case and so we now have just two cases
16 remaining on the agenda for this afternoon.

17 MS. BAILEY: Exactly.

18 CHAIRPERSON MILLER: Okay. At
19 this point then, would all individuals wishing
20 to testify today on any case that's scheduled
21 for this afternoon, please, rise to take the
22 oath and Ms. Bailey will administer it.

1 MS. BAILEY: Would you, please,
2 raise your right hand?

3 (Whereupon, the witnesses were
4 sworn.)

5 MS. BAILEY: Thank you. Madam
6 Chair, the first case of the afternoon is
7 Application No. 17788 of Jane M. Boggs,
8 pursuant to 11 DCMR 3104.1, for a special
9 exception to construct a free-standing one car
10 garage under section 223, not meeting the side
11 yard requirements at section 405. The
12 property is located in the R-1-B District at
13 premises 4614 Warren Street, N.W., Square
14 1554, Lot 32.

15 Is Ms. Boggs here?

16 MR. BOGGS: I am Walter Boggs.

17 CHAIRPERSON MILLER: Okay. Come
18 on forward and you need to speak in the
19 microphone in order to get on the record.

20 MR. BOGGS: I am Walter Boggs.
21 Mrs. Boggs' son and I'll be speaking for her.

22 CHAIRPERSON MILLER: Okay. And

1 could you give your address as well?

2 MR. BOGGS: Yes. 4614 Warren
3 Street, N.W.

4 CHAIRPERSON MILLER: Ms. Bailey, I
5 just want to ask you, it looks like you
6 indicated on your notes for this case that
7 posting was on July 1, 2008. Is that a typo
8 or is that what you saw on the affidavit?

9 MS. BAILEY: That was what is
10 indicated on the affidavit. My assumption is
11 the applicant mistook the date when the
12 property was posted for the hearing date, so
13 perhaps some clarification can be made. Are
14 you familiar with the Affidavit of Posting,
15 sir?

16 MR. BOGGS: No, I'm not. What is
17 it? I received a letter requesting that I be
18 here today for this particular hearing, a copy
19 of which I have with me. I'm not sure what
20 you are talking about.

21 CHAIRPERSON MILLER: Okay. Let me
22 explain, first of all, what we are talking

1 about. When you come forward for -- when you
2 apply for a special exception, like in this
3 case, you need to give notice to the community
4 and your neighbors about the hearing.

5 MR. BOGGS: I did.

6 CHAIRPERSON MILLER: And the
7 application.

8 MR. BOGGS: I did.

9 CHAIRPERSON MILLER: Okay. So
10 there are different ways in which notice is
11 given. And one is that placard that you put
12 in front of the property.

13 MR. BOGGS: That's out, that has
14 been up.

15 CHAIRPERSON MILLER: Okay. I
16 think we are saying that there is an affidavit
17 that attests to the posting. And on that
18 affidavit it has a date of posting on July
19 1st.

20 MR. BOGGS: That -- I had
21 difficulty interpreting your affidavit here.
22 It was unclear to me exactly how to fill this

1 out and I assumed that what I wrote down here
2 was correct, but it has been the -- the
3 posting has been up for over two weeks. As a
4 matter of fact, the day I submitted this was
5 the day I had it up. So it has been up for
6 three weeks now. I actually submitted a
7 photograph of that at the same time.

8 CHAIRPERSON MILLER: Okay. And
9 you are under oath right now, so that's
10 equivalent to an affidavit.

11 MR. BOGGS: Excellent.

12 CHAIRPERSON MILLER: So I think
13 that we can accept that. Okay. The Board
14 doesn't have any concerns with that. Your
15 name is Walter?

16 MR. BOGGS: Walter Boggs.

17 CHAIRPERSON MILLER: Walter Boggs.
18 Okay. And you are the son?

19 MR. BOGGS: Yes.

20 CHAIRPERSON MILLER: Okay. And
21 did your mother, Jane Boggs, intend to be
22 here, but she couldn't?

1 MR. BOGGS: She is here.

2 CHAIRPERSON MILLER: Oh, she's
3 here?

4 MR. BOGGS: Yes.

5 CHAIRPERSON MILLER: Good. Okay.

6 MR. BOGGS: Yes.

7 CHAIRPERSON MILLER: Because even
8 though you are the son, a question has been
9 raised to make sure that you are authorized to
10 bring this application. You don't have a --
11 often we have like a letter of authorization
12 when somebody other than the applicant brings
13 the application.

14 MR. BOGGS: I see. I'm actually
15 building the garage. I'm the person paying
16 for the garage and constructing it. She
17 doesn't care about garages.

18 CHAIRPERSON MILLER: Okay. I can
19 see that she is in the audience and she is not
20 objecting to your proceeding. Okay. We will
21 accept that.

22 MR. BOGGS: Thank you.

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CHAIRPERSON MILLER: All right.

So we have read your application and we have read the Office of Planning report. And I'm going to let you, you know, make your case for your special exception, but I do want to also draw your attention to, I guess, one issue that Office of Planning has brought up, that there is not -- that you should have more space between the garage and the lot line on the side. Okay.

MR. BOGGS: I have lived in the

house for 50 years now and previous to the demolition of this, of the original garage, I was in that area between the property line and my garage a total of two times in 50 years. There was virtually no maintenance required on that previous structure. And this structure, which I would like to put up, will be a cinder block structure. And I don't anticipate any maintenance ever being required on that. They are pretty much permanent and forever.

As far as I'm concerned, 2 feet is

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1 quite sufficient to provide room for any
2 maintenance that might -- for any reason that
3 I might need to be back there. I have also
4 provided the Board with a letter this morning,
5 which I entered into my file, from the
6 construction company which states, in their
7 opinion, that there is -- 2 feet is sufficient
8 room for any required movement back there.

9 I also intend to place flagstones
10 on the ground in that area to prevent the
11 growth of any weeds or anything like that,
12 which was the only reason that I entered that
13 area previous to this time was to cut back the
14 weeds. So this should be a maintenance free
15 situation.

16 And I only have a 40 foot wide
17 lot. And so every inch of space that I can
18 obtain for -- in the center of my lot is very
19 valuable to me and my mother, who really
20 enjoys digging in the backyard and putting up
21 plants and whatnot. So though it seems like
22 a very small gain, it's a very significant

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1 gain to me.

2 CHAIRPERSON MILLER: And this
3 garage is replacing a previous garage?

4 MR. BOGGS: Yes.

5 CHAIRPERSON MILLER: The same
6 footprint?

7 MR. BOGGS: No.

8 CHAIRPERSON MILLER: No?

9 MR. BOGGS: It's about 8 feet
10 wider than the original garage. I -- the
11 original garage was termite-ridden and I
12 couldn't -- I needed a new roof. I couldn't
13 put a new roof on it, because the wood was --
14 it would not support the nails. It was
15 basically very easy to knock down.

16 So but I enjoy working in the yard
17 myself. I would like to have a place to store
18 my lawn mower and whatnot and I have a few
19 tools that I would like to place out there,
20 too. So I thought about making a larger
21 garage, a little bit wider. It's going to be
22 exactly the same depth as the original garage,

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1 which is 19 feet, was 19 feet. But I would
2 just like to make it a few feet wider. And --

3 CHAIRPERSON MILLER: Did you say
4 it's still the same distance between the side
5 of the garage and the lot line, this 2 feet?

6 MR. BOGGS: No.

7 CHAIRPERSON MILLER: Or no?

8 MR. BOGGS: The original garage
9 was 4 feet from the lot line. And because
10 this garage is wider, I would like to move
11 that, the new structure, over closer to the
12 lot line, so as to allow us more room in what
13 remains of the yard.

14 CHAIRPERSON MILLER: I haven't
15 seen the letter from the construction company.
16 Ms. Bailey, do we have that in the file?

17 MS. BAILEY: I don't have it,
18 Madam Chair, but if you give me a moment, I'll
19 go and hunt it down.

20 CHAIRPERSON MILLER: Okay. Okay.

21 MR. BOGGS: I just entered it in
22 the file today. As I walked in earlier,

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1 previous to 1:00, I gave it to the
2 receptionist, whose name I can't recall at the
3 moment.

4 CHAIRPERSON MILLER: Okay. And
5 did you go to an ANC meeting or anything on
6 this?

7 MR. BOGGS: Yes, I did.

8 CHAIRPERSON MILLER: You did.

9 MR. BOGGS: I received approval
10 from my local ANC on this, as did all of my
11 neighbors whom I canvased in preparation for
12 the ANC meeting. Everyone in my neighborhood
13 who owns their own house signed my letter of
14 approval. The only people I was unable to
15 obtain signatures from are the people who are
16 absentee landlords and that was, I think, four
17 people out of 36, 37 owners, I believe, a
18 relatively small percentage.

19 Everyone to whom I spoke was very
20 eager that I get the garage of my dreams, so
21 to speak. I have full approval of the
22 neighborhood essentially.

1 CHAIRPERSON MILLER: And is there
2 a neighbor that is impacted by this at all?

3 MR. BOGGS: As far as I'm
4 concerned, the person who would be most --
5 primarily impacted would be the Sullivans, my
6 next door neighbor, and they were actually the
7 first to sign my letter of approval.

8 CHAIRPERSON MILLER: Okay.

9 MR. BOGGS: So they are very nice
10 people and close friends.

11 CHAIRPERSON MILLER: Okay. And do
12 you have a copy of any written ANC report?

13 MR. BOGGS: Probably so, yes.
14 Although, I don't recall exactly seeing one.
15 I've got all the paperwork I have ever
16 received here, so this could take me a moment
17 to find, if I have it.

18 CHAIRPERSON MILLER: Okay. You
19 can take your time, because I asked because--

20 MR. BOGGS: Here is a copy of it.

21 CHAIRPERSON MILLER: -- I don't
22 believe we have a copy of that.

1 MR. BOGGS: This is a copy of the
2 letter from my construction company, which is
3 actually the letter the young lady is looking
4 for now. May I give it to you?

5 CHAIRPERSON MILLER: Okay.

6 MR. BOGGS: This is the original.

7 CHAIRPERSON MILLER: We'll give it
8 back to you. While you are looking, I will
9 note that the Office of Planning report
10 indicates that the ANC voted not to oppose the
11 application during its regularly scheduled
12 meeting on April 10, 2008. We just don't have
13 a copy of the report.

14 MR. BOGGS: I'm not sure that I
15 received a copy of the report either, although
16 I received something in the mail stating that
17 they had, I think, given their approval.

18 CHAIRPERSON MILLER: Okay.

19 MR. BOGGS: I received a verbal
20 approval at the meeting.

21 CHAIRPERSON MILLER: Okay.

22 MR. BOGGS: But there --

1 CHAIRPERSON MILLER: Okay. That's
2 okay. I mean, that's what we have. We have
3 indication certainly from Office of Planning
4 that they approved it at that meeting. I was
5 just -- if you had it, we would look at it,
6 but if you don't that's fine.

7 MR. BOGGS: Well, I'll continue to
8 look and I may turn it up. It sounds like a
9 familiar idea. I think I've seen something
10 like that. I received two pieces of mail
11 regarding this situation here. I have one of
12 them here.

13 CHAIRPERSON MILLER: I mean, it
14 may not exist if Office of Planning didn't
15 have it either. It's okay. We can move on.

16 MR. BOGGS: Excellent. Thank you.

17 CHAIRPERSON MILLER: It's okay.
18 Now, okay, if you want to just briefly say
19 anything else you want to about your
20 application, the special exception, you're
21 welcome to, at this point, otherwise we have
22 the application and we can move over to Office

1 of Planning, in that it appears that that's
2 the only concern they had was with the 2 feet
3 versus 3 feet for the side yard.

4 MR. BOGGS: I have nothing further
5 to add. That will be fine with me. Thank
6 you.

7 CHAIRPERSON MILLER: Let's do
8 that, unless there are other questions by
9 Board Members? Okay. Okay. Mr. Jackson,
10 good afternoon.

11 MR. JACKSON: Good afternoon,
12 Madam Chair, Members of the Board. My name is
13 Arthur Jackson. I'm a Development Use
14 Specialist with the District of Columbia
15 Office of Planning. I'm going to stand on the
16 record regarding the Office of Planning
17 report. And essentially just say that the
18 applicant welcomed me into their home and went
19 and showed me the site.

20 I acknowledge the location of the
21 foundation or the slab where the garage was
22 and where they propose to put the garage. And

1 as is a general procedure in the Office of
2 Planning, we look forward to the future when,
3 at such time, the property or garage -- the
4 garage of course has lasted 50 years. This
5 one will last 50 years.

6 And at some point in the future,
7 when it -- if it will require maintenance, it
8 would be, I think, reasonable to have
9 sufficient space where you could stand and
10 work or put a ladder in and climb on the top
11 or whatever it is that you needed to do, which
12 is the only reason why we suggested that the
13 space between the property line and the garage
14 be increased to 3 feet. But that's the only
15 reason for our proposal.

16 There wasn't anything imminent
17 with regard to the impact of this building on
18 the adjacent property. The adjacent property
19 is landscaped in that area. There is no
20 impact on air and light. We just think it
21 prudent to make that suggestion to the Board
22 for your consideration.

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1 COMMISSIONER JEFFRIES: Well, what
2 was the applicant's -- when you brought up 3
3 feet, what did the applicant say?

4 MR. JACKSON: Essentially, he made
5 the same statement here today that they plan
6 to be there a long time and they would cover
7 the ground such that nothing would grow. And
8 so that's reasonable from their perspective,
9 but again, we're looking long-term.

10 CHAIRPERSON MILLER: Any other
11 questions for Office of Planning? Does the
12 applicant have any questions for the Office of
13 Planning?

14 MR. BOGGS: No, thank you.

15 CHAIRPERSON MILLER: And you do
16 have a copy of their report?

17 MR. BOGGS: Yes, ma'am, I do have
18 that with me.

19 CHAIRPERSON MILLER: Okay. I'm
20 going to just double check if there is anybody
21 here from the ANC who wishes to testify in
22 this case? Okay. Not seeing anyone, anybody

1 who wishes to testify in support of the
2 application? Not seeing anybody, anybody
3 wishes to testify in opposition?

4 Okay. No one has come forward.
5 Then we can go to closing remarks. Do you
6 have any closing remarks?

7 MR. BOGGS: Oh, I'm sorry, no.

8 CHAIRPERSON MILLER: That's okay.

9 MR. BOGGS: I have no closing
10 remarks. I've stated my entire case and I
11 hope that you will see in my favor. Thank
12 you.

13 CHAIRPERSON MILLER: Okay. Thank
14 you. Any final questions from Board Members?
15 Okay. In which case, I think that this case
16 is ready to be deliberated on and I would move
17 approval of Application No. 17788 of Jane M.
18 Boggs, pursuant to 11 DCMR section 3104.1, for
19 a special exception to construct a free-
20 standing one car garage under section 223, not
21 meeting the side yard requirements of section
22 405.

1 And also, this doesn't meet lot
2 area and lot width requirements, I believe, as
3 set forth in the Office of Planning's report.
4 And it all falls under 223, so it's all
5 seeking relief under 223. Do I have a second
6 on this motion?

7 MEMBER WALKER: Second.

8 CHAIRPERSON MILLER: Okay. I
9 think, you know, not a lot has been said
10 today, because the file is very complete and
11 it's very straightforward. It is the type of
12 structure that falls under 223. 223
13 references different types of relief that
14 could be sought under 223 and includes the lot
15 width and the lot area and the side yard,
16 which is being sought here.

17 And 223.2 talks about that this
18 wouldn't have a substantially adverse effect
19 on the use or enjoyment of any abutting or
20 adjacent dwelling or property, in particular,
21 light and air and privacy and enjoyment or
22 view from the street. In any event, from all

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1 the evidence in the record here, it does not
2 affect the light and air of or the privacy and
3 enjoyment of neighboring properties.

4 And the only issue that we
5 probably need to discuss is this side yard
6 issue. Office of Planning was recommending
7 that the side yard setback should be 3 feet
8 instead of 2, that 2 feet is insufficient for
9 proper maintenance. This is what the Office
10 of Planning's report says would be "The
11 requested side yard setback of 2 feet would be
12 insufficient to allow proper maintenance of
13 this strip of land between the garage and the
14 side property boundary.

15 It would also be barely wide
16 enough to accommodate an individual performing
17 any sort of maintenance on that side of the
18 garage. And the applicant has responded by
19 saying that they are going to have flagstone
20 there and not grass, so it won't require
21 maintenance. And a letter from a contracting
22 company that was filed today, Enterprise

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1 Contracting Services, and that is the company
2 that has been hired to construct the garage at
3 the residence.

4 And the letter says that "A 2 foot
5 setback from the property line and the garage
6 is more than adequate for proper maintenance
7 to the structure."

8 I think Office of Planning noted
9 this and I would note it as well also, there
10 is no adverse impact from that on neighboring
11 properties. We're only looking at it now as,
12 you know, possible maintenance, I think,
13 problems for access for the applicant himself.
14 And so -- him and herself.

15 So they say they have lived there
16 a long time. They don't anticipate any
17 problems with it. I don't have an issue with
18 it. Do others want to weigh in on that
19 question? 2 feet versus 3 feet.

20 COMMISSIONER JEFFRIES: I'm
21 curious, I mean, we're talking 12 inches here.
22 I mean, I think the applicant mentioned in

1 terms of, you know, why they wanted a larger
2 garage and so forth. I mean, I do see Office
3 of Planning's point, you know, obviously,
4 things happen and people move away or
5 whatever, things happen in life.

6 And you know, the next group that
7 comes and lives in this house, you know, even
8 if you have flagstone there, things get caught
9 behind it or there could be, you know,
10 maintenance issues. So I don't like to really
11 make decisions based on particular ownership
12 really in terms of, you know, what could be,
13 you know, problematic for dealing with the
14 maintenance issues and so forth.

15 So I mean, I agree with Office of
16 Planning's thought. I mean, 2 feet is pretty
17 narrow. I don't feel very strongly about it.
18 I don't feel very strongly about it, so I
19 mean, I'm willing to go with, you know -- I
20 mean, I have certainly seen -- I mean, 2 feet
21 is like this.

22 MR. BOGGS: No, that's 2 feet.

1 COMMISSIONER JEFFRIES: This is 12
2 inches.

3 MR. BOGGS: Okay.

4 COMMISSIONER JEFFRIES: This is
5 about 2 feet.

6 MR. BOGGS: All right. That's
7 better, yeah.

8 COMMISSIONER JEFFRIES: Yeah,
9 yeah.

10 MR. BOGGS: I'm a machinist, so I
11 like --

12 COMMISSIONER JEFFRIES: These are
13 like -- these are about 2. Aren't these 2?

14 MR. BOGGS: Those are 18s.

15 COMMISSIONER JEFFRIES: 18s? Oh,
16 is that 18?

17 MR. BOGGS: I think so. I'm not
18 sure now. I didn't bring my tape.

19 COMMISSIONER JEFFRIES: Oh, okay.

20 MR. BOGGS: I'm sorry. May I add
21 one thing?

22 CHAIRPERSON MILLER: You can, but

1 not --

2 MR. BOGGS: I'm sorry. I forgot.

3 CHAIRPERSON MILLER: At this
4 point, we're deliberating.

5 MR. BOGGS: Right.

6 CHAIRPERSON MILLER: But --

7 MR. BOGGS: Excuse me.

8 CHAIRPERSON MILLER: -- unless we
9 choose to go out of deliberation.

10 MR. BOGGS: That's fine.

11 CHAIRPERSON MILLER: So hold that
12 thought.

13 MR. BOGGS: Okay.

14 COMMISSIONER JEFFRIES: Yes, okay.
15 So you can just look above at the ceiling
16 tile. I mean, that's 2 feet. That's pretty
17 narrow.

18 CHAIRPERSON MILLER: Okay. It may
19 be too narrow. I think that's why we should
20 really be discussing it. You know, often we
21 do decide that a side yard has to be wide
22 enough for reasonable maintenance and stuff.

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1 Now, but the Board usually -- we're usually
2 looking at a house that needs, you know,
3 general maintenance more than this kind of
4 garage, that's why I wasn't sure whether this
5 was a big deal.

6 COMMISSIONER JEFFRIES: There's a
7 fence. There's a fence to the next door
8 neighbor. There is a fence right there.

9 CHAIRPERSON MILLER: Okay. We're
10 going to go out of deliberation for a second.

11 COMMISSIONER JEFFRIES: Okay. I'm
12 sorry.

13 CHAIRPERSON MILLER: No, that's
14 okay.

15 COMMISSIONER JEFFRIES: All right.

16 CHAIRPERSON MILLER: Why don't we
17 go out of deliberation, because this seems
18 like an issue that, you know, we're looking
19 for a little more information on. So that's
20 fine. Now, you can respond, yeah.

21 MR. BOGGS: Thank you. The
22 property line is actually 6 inches beyond the

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1 -- the fence is actually 6 inches on their
2 property. It's not -- my yard is actually 40
3 feet. It's actually 41 feet wide when you
4 actually measure it today, because the fence
5 on each side of the -- of my yard is 6 inches
6 on the property, adjacent property.

7 COMMISSIONER JEFFRIES: So you are
8 encroaching on --

9 MR. BOGGS: So I actually -- my
10 yard is actually in actual fact wider than the
11 lot says it should be.

12 COMMISSIONER JEFFRIES: Right.

13 MR. BOGGS: So because these --
14 because when you have a fence built, the
15 construction company makes sure that the fence
16 that you are paying for is on your property.
17 And since I did not build the fence on either
18 side of my property, the -- each fence is 6
19 inches farther onto the other property than it
20 would be if they followed the exact property
21 line.

22 So in reality what I would -- if

1 you would allow me to have my fence, my garage
2 24 inches from the property line, it will
3 actually be 30 inches from the fence line.

4 COMMISSIONER JEFFRIES: What if
5 your neighbor at one point decides to build a
6 new fence and gets the measurement correct?

7 MR. BOGGS: Well, it's common
8 practice to place the fence on their property
9 by several inches. They never place it on the
10 property line, that's just not done. If you--
11 that's how things work. I mean, when you pay
12 for a fence, the people who build the fence
13 always make sure that they place it on your
14 property.

15 COMMISSIONER JEFFRIES: On their
16 own --

17 MR. BOGGS: I have never --

18 COMMISSIONER JEFFRIES: --
19 property.

20 MR. BOGGS: On the property.

21 COMMISSIONER JEFFRIES: They make
22 certain that they are not at all encroaching

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1 on the next door neighbor?

2 MR. BOGGS: Correct. So in actual
3 fact --

4 COMMISSIONER JEFFRIES: But you
5 sort of lucked out here, because on either
6 side, they both moved away from you, so your
7 lot is --

8 MR. BOGGS: Actually an act -- it
9 actually measures 1 foot wider than the survey
10 actually says it is.

11 COMMISSIONER JEFFRIES: 6 inches
12 on each side?

13 MR. BOGGS: Yes, it's 41 feet
14 wide. Whereas, the survey says it's only 40
15 feet wide. So I'm a very lucky fellow in that
16 respect.

17 CHAIRPERSON MILLER: So the
18 distance or the width for maintenance in this
19 case between the side of the garage and the
20 fence is actually 2.5 feet?

21 MR. BOGGS: Yes.

22 CHAIRPERSON MILLER: Is that what

1 we're looking at?

2 MR. BOGGS: Yes, it is. Right
3 now, it's 2.5 feet, 30 inches, essentially.

4 CHAIRPERSON MILLER: And that
5 fence has been there for how long?

6 MR. BOGGS: 20 some years. It's a
7 chain link fence.

8 CHAIRPERSON MILLER: Okay.

9 MR. BOGGS: It's a 4 foot high
10 chain link fence.

11 COMMISSIONER JEFFRIES: And, Mr.
12 Jackson, you noticed that as well?

13 MR. JACKSON: I noticed the fence,
14 yes.

15 COMMISSIONER JEFFRIES: Now, I'm
16 certain you noticed the fence. But I mean in
17 terms of this whole notion of it's actually a
18 little more than 22, 24 inches.

19 MR. JACKSON: That gives us
20 comfort that it's more than 2 feet.

21 COMMISSIONER JEFFRIES: I'm sorry?

22 MR. JACKSON: That gives us

1 comfort that it's more than 2 feet.

2 COMMISSIONER JEFFRIES: No, no,
3 I'm saying based -- yeah, I guess I'm just
4 dealing with your observation. Did it appear
5 that it was a little bit more than 2 feet
6 based on what the applicant is saying?

7 MR. JACKSON: Well, since --

8 COMMISSIONER JEFFRIES: There's an
9 additional 6 inches.

10 MR. JACKSON: -- my observation
11 was really just based on the foundation of the
12 old garage, the pad of the old garage where
13 they demolished the building, the pad,
14 concrete pad is still there and then I can see
15 a fence. And I walked over and looked, but I
16 did not take any measurements. I would say
17 though that the fences on both sides are
18 complete fences.

19 That is they are continuation of
20 the same material going both ways, but his
21 rear enclosure is different. It's different
22 from the two sides. So it does appear that

1 the two neighboring fences are separate from
2 whatever closure he puts on the back -- the
3 gate he has along the back of his property.

4 COMMISSIONER JEFFRIES: So we're
5 not going to see a flood of 2 feet clearances
6 for garages, are we?

7 CHAIRPERSON MILLER: No, I think--
8 what do you all think? I mean, it's hard, you
9 know, sometimes to decide about 6 inches, you
10 know.

11 COMMISSIONER JEFFRIES: Sophomore
12 year declared major.

13 MEMBER DETTMAN: I do recognize
14 DCOP's concern with respect to maintenance.
15 We do have the letter in the record from the
16 construction company saying that for this
17 particular structure, any maintenance that
18 would be necessary on that, which would be the
19 western side of that structure, 2 feet should
20 be enough.

21 I guess given the circumstances of
22 this case and the characteristics of this lot,

1 I would be comfortable going forward with 2
2 feet.

3 COMMISSIONER JEFFRIES: You know,
4 as long as, you know, I mean, obviously, there
5 are extenuating circumstances that when we are
6 looking at these things by a case by case
7 basis, I would not want someone to refer to
8 this case and say it is fine, you know, for 2
9 feet. I mean, there's a reason that we have
10 side yards that are say 8 feet. I mean, you
11 know, so I don't certainly want there to be
12 anyone looking at however we might go on this
13 and, you know, saying that it's acceptable.

14 I mean, as long as we're clear on
15 what the circumstances are that, you know,
16 would give us comfort with the 2 foot setback,
17 then I'm fine.

18 CHAIRPERSON MILLER: Well, I mean,
19 I think some of the factors are, one, that
20 this is just a garage as opposed to a house.
21 And so the maintenance on this would be
22 really, to me, different. Second, it's not

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1 really 2 feet, it's 2.5 feet from what I
2 understand the evidence to be. And third, you
3 know, we have this letter from the contracting
4 service who is going to be constructing the
5 garage there.

6 So, you know, I mean, I don't
7 think we need to spend too much time debating
8 6 inches. I don't know, you know. So I don't
9 think, you know, one answer is necessarily
10 right and the other is wrong. It's just a
11 judgment.

12 MEMBER WALKER: Okay. Thank you,
13 Madam Chair. I am looking at our Exhibit No.
14 22, which is a letter dated May 25th from
15 Robin Richardson, who resides at 224 Emerson
16 Street. Now, is that the neighbor who is
17 closest to the garage or is it the neighbor on
18 the other side?

19 MR. BOGGS: 224 Emerson Street is
20 not in the area. That must be a different
21 letter. We live on Warren Street.

22 CHAIRPERSON MILLER: That's good

1 for you.

2 COMMISSIONER JEFFRIES: Madam
3 Chair?

4 MEMBER DETTMAN: Just a --

5 COMMISSIONER JEFFRIES: Oh, okay.

6 MEMBER DETTMAN: -- quick question
7 for the applicant. The photos that you
8 submitted into the record, I believe, Exhibit
9 No. 6?

10 MR. BOGGS: Yes.

11 MEMBER DETTMAN: You can sort of
12 see the existing or the old foundation or the
13 old footprint.

14 MR. BOGGS: Yes.

15 MEMBER DETTMAN: Is that western
16 boundary changing at all?

17 MR. BOGGS: Yes, yes.

18 MEMBER DETTMAN: It's moving?

19 MR. BOGGS: The original --

20 MEMBER DETTMAN: It's moving
21 closer?

22 MR. BOGGS: Yes. The original

1 structure was, approximately, 48 inches from
2 the fence line. Now, that was an actual
3 measurement. So it was in reality, slightly
4 closer than that. It was 6 inches closer than
5 that.

6 MEMBER DETTMAN: 3 feet, 3.5?

7 MR. BOGGS: As it was -- when the
8 builder built the building, if he had seen the
9 actual property line stakes, then he actually
10 put it 38 inches from the actual property
11 line, if my math is correct.

12 COMMISSIONER JEFFRIES: Mr. Boggs?

13 MR. BOGGS: Yes, sir.

14 COMMISSIONER JEFFRIES: So this is
15 the area in question, right?

16 MR. BOGGS: That's correct.

17 COMMISSIONER JEFFRIES: Yeah,
18 okay. There is a tree there. Is there a tree
19 on the other side of the fence?

20 MR. BOGGS: No, there are bushes
21 on the other side of the fence. There was a
22 tree stump there, which --

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1 COMMISSIONER JEFFRIES: Well, I'm
2 looking at this --

3 MR. BOGGS: Oh, those are -- we
4 call those bushes. They are holly bushes.
5 You could make --

6 COMMISSIONER JEFFRIES: But how
7 tall? How tall is it?

8 MR. BOGGS: Um, they keep trimming
9 them back. They are, approximately, 8 to 10
10 feet tall, I think, something like that. But
11 they don't --

12 COMMISSIONER JEFFRIES: They are
13 holly?

14 MR. BOGGS: Yes. They don't go
15 back -- the perspective of that photograph
16 shows them as being, basically, in line,
17 parallel with my garage. But in reality, they
18 are, in my memory, closer to the house. There
19 is short bushes directly adjacent to where the
20 garage will be placed.

21 COMMISSIONER JEFFRIES: Well, this
22 picture, it looks like it's a little taller

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1 than 8 feet. And I'm wondering how are they
2 able to trim it on your side?

3 MR. BOGGS: They come into my yard
4 and -- actually, I trim them myself as a
5 matter of fact. I go back there with little
6 nippers and they --

7 COMMISSIONER JEFFRIES: So you
8 build a garage, you will still be able -- you
9 will have room to go beside and clip this
10 thing?

11 MR. BOGGS: I think so, yes. But
12 in reality, it's seems -- I think the
13 perspective is off there, because the bushes,
14 there are short bushes right adjacent to where
15 the garage would be. If this were the garage,
16 those tall bushes are here and there are short
17 bushes there.

18 COMMISSIONER JEFFRIES: Ah, I see
19 what you mean. Okay. It does seem like its
20 adjacent to. I see what you just described.

21 MR. BOGGS: Yes, they are only
22 short bushes directly across from where my

1 garage would be. As a matter of fact, they
2 don't grow very -- they are not very thick,
3 because it doesn't get much light at that
4 point.

5 COMMISSIONER JEFFRIES: You have
6 the photograph that we are looking at, right?

7 MR. BOGGS: Yes, I should.

8 COMMISSIONER JEFFRIES: Fellow
9 Board Members, do you see what I'm referring
10 to here? I mean, I'm just looking at this,
11 which looks to be a fairly mature bush.

12 MR. BOGGS: The bushes that you
13 see --

14 COMMISSIONER JEFFRIES: I just
15 want to make certain. But what Mr. Boggs is
16 saying is that the perspective is the little--
17 I mean, it's more the foreground. It's not
18 really adjacent to the actual concrete pad.

19 My question was, you know, in
20 terms of, you know, how do you get to cut the
21 -- manage that and also if the garage goes up
22 and so forth. I'm probably spending too much

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1 time on this.

2 Mr. Boggs, let me ask one last
3 question. Now, what's the problem with moving
4 the garage over a foot to give 3 feet
5 clearance on the other side?

6 MR. BOGGS: My lot is only 40 feet
7 wide. The building will be 20 feet wide
8 itself and so that will leave me a very small
9 amount of room.

10 COMMISSIONER JEFFRIES: How much?

11 MR. BOGGS: That will leave me 20
12 feet. No, 17 feet if you -- by your --

13 COMMISSIONER JEFFRIES: As opposed
14 to 18?

15 MR. BOGGS: Yes, yes.

16 COMMISSIONER JEFFRIES: And that's
17 going to be very harmful?

18 MR. BOGGS: Not harmful at all, as
19 far as I can determine, but it would just --
20 I would prefer to have it as close to the
21 property line as possible to give me as much
22 room on that side of the yard as possible,

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1 because we enjoy working in the backyard and
2 putting plants out there. We plan to put
3 plants on the side of the garage on the
4 eastern side of the garage and that will
5 further decrease the amount of space in the
6 yard.

7 There were plants, bushes there
8 before actually and it looked pretty nice, I
9 thought, but it's -- all I can do is refer you
10 to these photographs here.

11 COMMISSIONER JEFFRIES: I see the
12 photographs. I just --

13 MR. BOGGS: I don't have the
14 photographs. Unfortunately, the copy of the
15 photograph that you have, I have only another
16 one here. But in my mind, this does show the
17 perspective of the smaller bushes though.

18 COMMISSIONER JEFFRIES: It's just
19 I just want to make certain that people are --
20 I mean, as -- I mean, the side yard
21 requirement can be, you know, somewhat
22 annoying from time to time, but it's in place

1 for a reason. And it doesn't distinguish
2 between, you know, a building, I mean, a house
3 or garage. I mean, it is what it is.

4 And so that's the only thing I'm--
5 well, anyway, you have made a motion and it
6 was seconded, wasn't it?

7 CHAIRPERSON MILLER: Yes, but we
8 went out, because we were trying to figure out
9 whether this 6 inches to 1 foot, you know, was
10 critical one way or the other. I mean, just
11 sometimes the small decisions are what we get
12 hung up on. But I know that Office of
13 Planning, you know, made the point that, you
14 know, we have to look at this for the long
15 term, not just for this owner and I think you
16 said the same thing.

17 COMMISSIONER JEFFRIES: Yeah, yes.

18 CHAIRPERSON MILLER: So we do.
19 And so I'm trying to appreciate if in the long
20 term whether 2.5 feet is enough for
21 maintenance, enough for a ladder to get in
22 there to get, you know -- so I want to ask the

1 applicant to address that one more time.

2 How do we know that that is
3 enough, other than, you know, we have this
4 letter that says it's enough?

5 MR. BOGGS: As far as I can
6 determine, the roof will not need any
7 maintenance at all and the side of the
8 building won't be -- won't need any
9 maintenance. There is --

10 CHAIRPERSON MILLER: Why won't the
11 roof need any maintenance?

12 MR. BOGGS: I anticipate putting
13 the 50 year asphalt shingles up and they --
14 there is nothing to do. You place -- you nail
15 them up and you're done with it and that's all
16 you have to do. I'm going to put a set of
17 gutters that -- the construction company will
18 provide gutters on either side, which will
19 empty into the alley. They don't require much
20 maintenance as well.

21 I intend to use the type of
22 gutters which are shielded, so that no leaves

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1 collect inside of them, so I -- as I say,
2 during the 50 years that I have lived at the
3 house, I have been back there twice. I don't
4 anticipate being -- the necessity of anyone
5 ever being -- going into that area.

6 COMMISSIONER JEFFRIES: Madam
7 Chair, Mr. Jackson, I mean, do you -- I know
8 what you have said. I mean, do you feel very
9 strongly about this 3 feet?

10 MR. JACKSON: Well, again, the
11 fact that there is 2.5 feet is -- it does
12 comfort us.

13 COMMISSIONER JEFFRIES: Okay,
14 okay.

15 CHAIRPERSON MILLER: Well, I
16 thought the applicant's further testimony was
17 helpful to me, because I started to think
18 about the leaves accumulating in the gutters
19 and what was going to happen with that. So
20 that doesn't seem like that will be an issue.

21 So, okay, any further comments?
22 Okay. Well, the motion that I made and that

1 was seconded contains the -- and it goes to
2 approving the plan as submitted by the
3 applicant, just for clarification, that has
4 the 2 foot side yard.

5 So are we ready to vote on this?

6 Okay. All those in favor say aye.

7 ALL: Aye.

8 CHAIRPERSON MILLER: All those
9 opposed? All those abstaining? And would you
10 call the vote, please?

11 MS. BAILEY: Madam Chair, the vote
12 is recorded as 4-0-1 to grant the application,
13 as amended. Mrs. Miller made the motion, Mrs.
14 Walker seconded, Mr. Dettman, Mr. Jeffries
15 support the motion. Mr. Loud is not present
16 at this time.

17 CHAIRPERSON MILLER: Thank you.

18 MS. BAILEY: Are we doing a
19 summary?

20 CHAIRPERSON MILLER: And this can
21 be a summary order --

22 MS. BAILEY: Summary order.

1 CHAIRPERSON MILLER: -- as there
2 is no party in opposition.

3 MS. BAILEY: Thanks.

4 CHAIRPERSON MILLER: Okay. Enjoy
5 your garage.

6 MS. BAILEY: Madam Chair, did we
7 need a copy of that for the record? Madam
8 Chair? Mrs. Miller, did we need a copy of
9 that letter for the record?

10 CHAIRPERSON MILLER: The applicant
11 indicated that he filed it. Did you find that
12 it wasn't in the file?

13 MS. BAILEY: No, ma'am, we don't
14 have.

15 CHAIRPERSON MILLER: We do need it
16 in the file. Do you need it back or do you --
17 okay. You can give it to Ms. Bailey. Okay.
18 Ms. Bailey, are you waiting for me?

19 MS. BAILEY: Yes, Madam Chair.

20 CHAIRPERSON MILLER: Okay. And
21 the rest of the Board. I believe we are ready
22 for the next case.

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1 MS. BAILEY: Application No. 17775
2 of District-Properties.com, LLC, pursuant to
3 11 DCMR 3104.1, for a special exception to
4 construct a new 12 unit multi-family project
5 under section 353. The property is Zoned R-5-
6 A and it's located at 117 Mississippi Avenue,
7 S.E., Square 6128N, Lots 37 and 55.

8 CHAIRPERSON MILLER: Whenever you
9 are ready, Mr. Sikder, but you can take your
10 time. We have a few questions also when you
11 are ready. First, I guess, you should
12 identify yourself for the record.

13 COMMISSIONER JEFFRIES: Turn your
14 mike on and bring it close to you, because I
15 don't get a sense you're going to speak up.

16 MR. SIKDER: My name is Mohammed
17 Sikder and I own this property and I will
18 represent and discuss.

19 CHAIRPERSON MILLER: Okay. I
20 want to have you clarify for us. I know you
21 submitted a revised plan.

22 MR. SIKDER: Correct.

1 CHAIRPERSON MILLER: And are there
2 six buildings?

3 MR. SIKDER: Six buildings.

4 CHAIRPERSON MILLER: Six
5 buildings. And are they on two lots?

6 MR. SIKDER: Yes. Originally
7 there were two lots and we submitted to for
8 subdivision to make it one lot.

9 CHAIRPERSON MILLER: Okay. So
10 it's now one lot?

11 MR. SIKDER: This will be --

12 COMMISSIONER JEFFRIES: It will be
13 one lot?

14 MR. SIKDER: That's right.

15 CHAIRPERSON MILLER: It will be
16 one lot. It's two lots. Okay. Well, I think
17 that we are wondering about whether you are
18 familiar with the Lot Control Regulation
19 3202.3? Do you have the regs? You don't have
20 the regs with you, do you?

21 MR. SIKDER: No, I don't.

22 CHAIRPERSON MILLER: No. And I

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1 can lend you a copy, because we're going to be
2 referring to some regulations if you would
3 like to borrow?

4 MR. SIKDER: Yes. I was
5 mentioning that there is restriction of too
6 many buildings?

7 CHAIRPERSON MILLER: That's right.
8 It talks about one principal building on a
9 single lot. It says "A building permit shall
10 not be issued for the proposed erection,
11 construction or conversion of any principal
12 structure or for any addition to any principal
13 structure unless the land for the proposed
14 erection, construction or conversion has been
15 divided, so that each structure will be on a
16 separate lot of record."

17 And yours are not. So that's our
18 first issue.

19 MR. SIKDER: Actually, I was not
20 familiar with that section. If you could give
21 me a copy? So I mean, are there way in other
22 -- I mean, basically, I cannot make six

1 buildings in -- on single lot?

2 CHAIRPERSON MILLER: Sometimes you
3 can.

4 MR. SIKDER: Maybe that's better.

5 CHAIRPERSON MILLER: Okay. I
6 mean, we don't always give out legal advice,
7 but there is an exception to the building lot
8 control provision and that's at 2516. It can
9 be approved as a special exception and then it
10 has its own sets of requirements that have to
11 be met.

12 Basically, 2516.1 says "If
13 approved by the Board of Zoning Adjustment as
14 a special exception under 3104, two or more
15 principal buildings or structures may be
16 erected on a single subdivided lot, subject to
17 the provisions of this section." And there
18 are many provisions, so I'm not going to read
19 them all.

20 MR. SIKDER: Well, in this case
21 maybe we had two options. One is if you
22 approve the lot to get the special exception

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1 for make marketable buildings or to subdivide
2 into six lots, but that might create some
3 problem. It might not meet the FAR and other
4 criteria.

5 CHAIRPERSON MILLER: Right. And I
6 think that you might need to take a little
7 time and look at all of these provisions and
8 see, you know, which way you want to go.

9 MR. SIKDER: Okay.

10 CHAIRPERSON MILLER: Because it
11 would be a new application if you brought it
12 under 2516 with new notice to the community
13 and everyone.

14 MR. SIKDER: Okay. That's --

15 CHAIRPERSON MILLER: You know,
16 does the Office of Planning have an opinion on
17 this? Did you notice this or did you see it
18 differently?

19 MS. JACKSON: I think we assumed
20 that he was going to apply for a subdivision
21 and so we just didn't look at it. But
22 generally, we're in support of the project, so

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1 if it has to get a special exception --

2 COMMISSIONER JEFFRIES: What do
3 you see in terms of the configuration of the
4 site and so forth that could be some
5 difficulty with, you know --

6 MS. JACKSON: Cutting it up?

7 COMMISSIONER JEFFRIES: -- with
8 parceling it out, how you would parcelize it.
9 I mean, I'm just --

10 MS. JACKSON: You know, they
11 probably would have to create cross easements
12 in order to get to the parking.

13 COMMISSIONER JEFFRIES: And the
14 parking in itself which could be, you know, a
15 different thing onto itself.

16 MS. JACKSON: You know, it's also
17 an opportunity if they wanted to change the
18 design maybe to come up with something better.

19 COMMISSIONER JEFFRIES: That's
20 more conducive to the grid perhaps? Okay.

21 CHAIRPERSON MILLER: Mr. Jeffries,
22 were you saying that if he went the

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1 subdivision route, like Office of Planning was
2 assuming he was going to subdivide, okay, but
3 most likely that would affect parking and
4 whether the parking would be considered
5 accessory parking versus parking for the
6 principal building. So it, would in any
7 event, might require more relief.

8 COMMISSIONER JEFFRIES: Right,
9 more relief.

10 CHAIRPERSON MILLER: Yeah.

11 COMMISSIONER JEFFRIES: It might
12 require more relief, but it also might be
13 pointing the application in the direction of
14 perhaps siting this a little differently, that
15 is more in keeping with, you know, the general
16 neighborhood. Because I mean, two of those
17 buildings -- well, I don't want to get into --
18 we haven't started the hearing yet, but I do
19 find that the configuration, I mean, the
20 siting is somewhat problematic.

21 MR. SIKDER: Would you, please,
22 repeat? What does it mean siting?

1 COMMISSIONER JEFFRIES: Well, just
2 how you -- your site plan. In terms of how
3 you, you know, position your buildings. I
4 mean, the four across Mississippi are not so
5 problematic. I'm just questioning the other
6 two.

7 MR. SIKDER: The first thing is
8 Xenia Street.

9 COMMISSIONER JEFFRIES: Yeah.

10 MR. SIKDER: Actually, we --
11 initially, we did all six. We were facing
12 Mississippi Avenue, but later on the Office of
13 Planning, they recommended. Initially we
14 filed six buildings.

15 COMMISSIONER JEFFRIES: Um-hum,
16 right.

17 MR. SIKDER: But their suggestion
18 that this two sets of building might look, I
19 mean, better, actually fit better in this
20 neighborhood and in general. So there we made
21 it to six.

22 COMMISSIONER JEFFRIES: Well, it's

1 -- I would imagine that Madam Chair probably
2 didn't want to get into much of the discussion
3 around this particular application, because we
4 might have some more structural issues with
5 the application itself. So I don't think you
6 and I need to go back and forth on this.

7 CHAIRPERSON MILLER: I guess it
8 seems to me that, you know, sometimes we hear
9 a case and the property might be subdivided
10 later and it's not an issue. But it looks to
11 me and my Board Members can correct me if I'm
12 wrong, but once you get into subdividing this
13 particular type of project, it does raise
14 other issues and looks like there are going to
15 be other areas of relief needed, such as
16 parking. It may become accessory instead of
17 the parking for the principal buildings,
18 since, you know, they are different buildings
19 that the one parking lot could be serving.

20 So anyway, it becomes a lot more
21 complicated. And so I think and others should
22 feel free to, you know, chime in as well, but

1 if you either -- if we postpone this for
2 instance and you've got to look at two options
3 like, I think we would need to know if you are
4 going to go with the subdivision, that each
5 one was on its own lot, we would need to know
6 then where the parking for each one is going
7 to be and whether or not we are looking at
8 providing relief for accessory parking or not.

9 Because I think the subdivision is
10 going to affect the relief that you are
11 seeking, that's why I don't think it's a good
12 idea for us to consider it now or the other
13 choice is you can look at 2516 and see whether
14 it makes more sense to get relief from the
15 building control restrictions and come in
16 under that provision.

17 COMMISSIONER JEFFRIES: But I
18 would say, I mean, it's not customary for,
19 obviously, the Board to, you know, make those
20 recommendations for you. And my suggestion,
21 if I have to make one, is that you -- I know
22 they are expensive, but, you know, given this

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1 site and what you are trying to put on it and
2 so forth, you might want to spend a few
3 dollars on a land use attorney.

4 I don't know if you have thought
5 about that. I mean, I know they are
6 expensive, but, I mean, given the issues that
7 you're going to have here in terms of, you
8 know, working through all the zoning relief
9 that you are going to require, it might make
10 sense for you to, you know, just bring someone
11 on board. I don't know how many hours. Just
12 to sort of work through what Madam Chair has
13 discussed with you.

14 I mean, this stuff gets
15 complicated and, you know, there's no need for
16 you to get -- to delve too much into it unless
17 you want to. But I just think that, you know,
18 when I look at what you are trying to put on
19 this irregular site and, you know, subdividing
20 and, I mean, you might want to, you know, just
21 employ someone who has been around the block
22 on this kind of stuff. That's just my

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1 suggestion.

2 MR. SIKDER: So that's okay. You
3 want to make a -- I mean, postpone -- I mean,
4 make another hearing, I mean?

5 CHAIRPERSON MILLER: Okay. I
6 mean, one option is we could postpone the
7 hearing on this case, which is for these
8 plans. Is this advertised as 353? I'm sorry.
9 Well, I was thinking if he goes to do the
10 subdivision, say on these plans, we could
11 postpone the hearing, unless the relief being
12 sought is totally wrong, in which case I don't
13 know whether you need to start again. That be
14 withdrawn or we dismiss.

15 Does the Office of the Attorney
16 General have an opinion on that?

17 MS. MONROE: If you just want me
18 to weigh in. I just want to explain to you a
19 little bit and I'm not going to delve into
20 this far, but I know you'll understand this,
21 because you have the definition of building.

22 If it's separated from the ground

1 up, it's a separate building, which means that
2 these four attached buildings are each their
3 own individual building, so they each need
4 their own lot or you need a 2516 special
5 exception or you need a variance from that
6 3202.3. So you've got a couple of options.

7 If you decide to subdivide and
8 make four separate lots and then two other
9 lots, each one of them will have to have
10 parking on that lot or you will need relief
11 from that.

12 MR. SIKDER: Okay.

13 MS. MONROE: And each one of them
14 will have to meet, as you mentioned before --

15 MR. SIKDER: That's right.

16 MS. MONROE: -- the lot occupancy,
17 the FAR, you know, all these other things,
18 side yard, rear yard. So if you decide to do
19 that, it's a totally new application, because
20 side yard, rear yard, you know, lot occupancy,
21 everything will change.

22 If not, if you decide to go for

1 the 2516, it's still a totally new
2 application, because it's a totally new
3 relief.

4 COMMISSIONER JEFFRIES: And you
5 have to go through a number of hurdles with
6 that as well.

7 MS. MONROE: Right. There's a lot
8 of --

9 COMMISSIONER JEFFRIES: Yeah.

10 MS. MONROE: -- parts. Right now,
11 you are here under 353, which allows new
12 developments in R-5-A, but it doesn't remove
13 the individual lot rule. So you still need a
14 lot per building. 353 just basically says you
15 can build a development, you know, kind of
16 multiple developments, but it doesn't say that
17 you can have many buildings on one lot.

18 So you kind of have to go back to
19 the beginning and figure out how to approach
20 this.

21 MR. SIKDER: No, I mean, okay. I
22 would like to make such a way that with this

1 current application duly applied, only thing
2 we're going to modify are the -- maybe we will
3 cut down on building and just subdivide it.

4 COMMISSIONER JEFFRIES: Wait say
5 that again. Cut down on? Can you say that
6 again? Cut down on?

7 MR. SIKDER: I mean, instead of
8 six buildings, maybe we will make just five
9 buildings. I'm just going to modify the
10 drawing. I have to make sure that all the --
11 it meets all the requirements. Because I
12 don't want to go, I mean, apply another
13 application which will, you know, delay our--

14 COMMISSIONER JEFFRIES: Again, I
15 strongly suggest that you -- I mean, I don't
16 know how we should go forward here, but I
17 think you need to step back and regroup and
18 figure out, you know, how you want to go
19 forward.

20 I think if we are postponing,
21 Madam Chair, yeah. I mean, it sounds like we
22 are moving towards, because it seems to me

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1 that you need some major surgery with this
2 application and you really need to sit down
3 with land use or a zoning counsel to figure
4 out what your strategy is.

5 You know, even if you are going to
6 come back and present almost a very -- take a
7 building out or whatever, we just can't get
8 into that kind of exchange with you today, you
9 know.

10 MR. SIKDER: That's right. I'm
11 not saying that we're going to.

12 COMMISSIONER JEFFRIES: Yeah.

13 MR. SIKDER: Only thing I'm
14 saying --

15 CHAIRPERSON MILLER: Okay. The
16 only way we would continue this is if, the way
17 I see it, you could modify your plans so that
18 each building was on a single lot and you
19 didn't need any other relief, so that it fits
20 under 353.

21 MR. SIKDER: Okay.

22 CHAIRPERSON MILLER: Do you think

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1 that's possible?

2 MR. SIKDER: Yes.

3 CHAIRPERSON MILLER: Okay. If the
4 plans change dramatically, you would need to
5 give notice again to the community.

6 MR. SIKDER: I don't think we're
7 going to change dramatically with the current
8 or the way we design. Only thing we're going
9 to modify is such a way that it will fit in
10 the current application. But I mean, maybe --
11 I mean, or try to act on all these other
12 requirements.

13 CHAIRPERSON MILLER: We just want
14 to take a break and talk about this a little
15 bit more. But let me just understand what you
16 are saying, because before you said you put in
17 an application for subdivision to make this
18 all one lot, correct?

19 MR. SIKDER: Yes.

20 CHAIRPERSON MILLER: So is that on
21 the table for you to consider changing that?

22 MR. SIKDER: Of course.

1 CHAIRPERSON MILLER: Yeah.

2 MR. SIKDER: I mean, changing the
3 subdivision, I don't know, is -- that's the
4 easiest part to do. It's just go apply for
5 subdivision which I would like to do. They
6 have no objection. Just pay the fee, they
7 will do it.

8 CHAIRPERSON MILLER: Did you also
9 say that as this is an application under 353,
10 you're going to look at your plans to see if
11 you can make it fit under 353?

12 MR. SIKDER: Absolutely. Right.

13 CHAIRPERSON MILLER: That's what
14 you would like to do?

15 MR. SIKDER: That's right.

16 CHAIRPERSON MILLER: Okay. I just
17 wanted to make sure I understood.

18 MR. SIKDER: Yes.

19 CHAIRPERSON MILLER: Okay. Okay.
20 We are going to take a short break and then
21 return.

22 (Whereupon, at 5:00 p.m. the

1 Public Hearing continued into the evening
2 session at 5:49 p.m.)

3 CHAIRPERSON MILLER: Okay. We are
4 back on the record. We were in recess for a
5 while, because this case, you know, really
6 raises an issue about how much can plans be
7 modified and still be considered the same case
8 and not really be a new application.

9 And we were looking at the plans
10 and in the context of 3202.3 provision and in
11 the context of the 353 Regulation. And in all
12 honesty, the Board is having difficulty
13 imagining that you are going to be able to
14 modify the plans in such a way that it won't
15 be to such a great extent as to really be
16 considered a new application.

17 However, that being said, we -- if
18 you would like, we would give you that
19 opportunity, because even though maybe we are
20 not imagining it, you have filed this
21 application and we don't see the harm in
22 allowing you an opportunity to take one more

1 look at it.

2 We also wanted to ask Office of
3 Planning, if you have an opinion, whether you
4 can imagine that, you know, and if you don't,
5 that's fine, you know, because we were talking
6 about this on the record about, you know, once
7 you start changing it to six lots, then you
8 have, you know, different types of parking
9 requirements. And then once you change it to
10 perhaps one building for one lot, then you
11 have a totally different type of structure.

12 So if you have any comments you
13 would like to make, feel free. If you would
14 rather not, at this time, you can reserve your
15 comments for later in writing. You know,
16 that's fine, too. We have spent a long time
17 dealing with that issue.

18 MS. JACKSON: I think it would be
19 premature to try and guess at this point. I
20 think we would have to wait and see.

21 CHAIRPERSON MILLER: That's fine,
22 that's fine. So the message we would like to,

1 you know, give to you it's not that, you know,
2 you could file anything with the Board and
3 then it doesn't meet the regulations, which
4 this doesn't on its face meet the Building Lot
5 Control Regulation 3202.3. And then come in
6 with something totally different and that's
7 still considered one application.

8 That if you modify your plans in
9 such a way that they just would be considered
10 -- they look pretty much similar to the plans
11 that you had before, but they, in fact, meet
12 the regulations, then it would be considered
13 the same application. But were you to come in
14 with totally new plans, in light of trying to
15 meet the regulations, that this Board would
16 look at that as a new application requiring
17 notice to the community and the regular things
18 that go with, you know, applications.

19 MR. SIKDER: No, I do not see
20 really we're going to change anything
21 significantly that would be -- I mean, I do
22 not see that. I couldn't make it -- the

1 existing concept, within the existing concept,
2 we can modify it to the requirements under
3 353.

4 CHAIRPERSON MILLER: Well, you
5 will have that. We were going to give you
6 that time and we will set a date and, you
7 know, you will have an option to do that or if
8 you decide that you just can't, you can always
9 withdraw your application and file a new one,
10 you know --

11 MR. SIKDER: Sure.

12 CHAIRPERSON MILLER: -- based on
13 complying with the regulations. Okay. Other
14 comments right now?

15 COMMISSIONER JEFFRIES: Well, I
16 just want to be clear. You look at this and
17 you can see where you can go under 353, is
18 that it? Yes?

19 CHAIRPERSON MILLER: That's what
20 he said. Uh-huh.

21 COMMISSIONER JEFFRIES: And that
22 could be deemed as just a minor modification

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1 to this application?

2 MR. SIKDER: Yes, yes, I see that.

3 COMMISSIONER JEFFRIES: I'm
4 curious how?

5 MR. SIKDER: That's what we will
6 decide. I mean, I get the feeling that -- I
7 mean, I don't want to say right now what way.
8 Maybe I have more options, so which means draw
9 it in the permit of the drawing. Then we will
10 present it. I'm not going to change any
11 dramatic that will make you consider this a
12 new application.

13 COMMISSIONER JEFFRIES: But you
14 understand having five, six individual
15 buildings as opposed to one building really
16 brings about very different circulation plan
17 and everything on the site.

18 MR. SIKDER: We are not doing as a
19 single building no. Your concern is that
20 instead of six buildings make one building?
21 That's where --

22 COMMISSIONER JEFFRIES: You know,

1 I really hope that you heed my advice in terms
2 of getting a land use counsel.

3 MR. SIKDER: No, it's -- I mean --

4 COMMISSIONER JEFFRIES: I mean,
5 I'm just -- you do what you want to do, but
6 I'm just -- you really might want to sit down
7 and go through these regs and be very clear
8 about how they impact upon this site. This is
9 probably very different than some of your
10 previous applications before the BZA and you
11 really need to be somewhat respectful, because
12 I'm a little bit troubled by you thinking that
13 going under 353 is -- you will virtually just
14 be a minor modification.

15 Because this Board does not see
16 that at all. And so there seems to be a gap
17 here and I just want to make certain. I don't
18 want you to walk out this door thinking that
19 you are going to be able to just, you know,
20 make a few changes here. From where I see it
21 and we're going to give you the opportunity to
22 prove us wrong, you know.

1 MR. SIKDER: Thank you.

2 COMMISSIONER JEFFRIES: But I
3 just, you know, want to make certain that I'm
4 on the record, this Board is on the record
5 for, you know, making certain you understand
6 that from where we sit, we've given you the
7 opportunity to do it, but it doesn't -- we
8 don't see how you're going to meet it. But
9 we're open.

10 MR. SIKDER: Thank you.

11 COMMISSIONER JEFFRIES: And if we
12 don't see that, then we're going to issue you
13 a new number.

14 MR. SIKDER: Sure.

15 COMMISSIONER JEFFRIES: Okay.

16 MR. SIKDER: I do understand.

17 COMMISSIONER JEFFRIES: Okay.

18 CHAIRPERSON MILLER: I noticed
19 that there are some individuals in the
20 audience and I don't know whether you wish to
21 testify in this case or not. And you know,
22 this case has taken a different turn than

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1 probably you expected. In fact, the Board is
2 not approving these plans or considering
3 approving these plans, because they don't meet
4 one of our most basic regulations.

5 So they are not really like alive,
6 if you have real concerns about them.
7 However, we respect that you have been here
8 for a long time. And if there is something
9 that you would like to put on the record, Mr.
10 Sikder, would you have any objection to them
11 testifying?

12 MR. SIKDER: Of course, not.

13 CHAIRPERSON MILLER: Okay. Would
14 you like to say anything today? Okay. Then
15 why don't you come forward to the table? And
16 you know, normally, Mr. Sikder would have made
17 his presentation, Office of Planning would
18 have made their presentation, but instead the
19 Board just noted that this wasn't going to go
20 forward, because of that regulation. Okay.

21 Whenever you are ready, you could
22 start with giving your name and address for

1 the record and individuals get about 3 minutes
2 each. I doubt you would need more than that,
3 but we're not putting the clock on you, but I
4 just wanted to let you know that that's
5 generally what individuals take.

6 MS. TOLSON: Yeah. Good
7 afternoon. My name is Mary Bernadette Tolson
8 and I'm a resident and homeowner of Ward 8
9 residing at 134 Mississippi Avenue, S.E. I'm
10 here to testify regarding the vacant property
11 at the end of my block located at 117
12 Mississippi Avenue.

13 This property has been a
14 troublesome piece of property for several
15 years. There was a house on this property
16 which was burned down to the ground. I worked
17 very hard to finally get this property cleared
18 of the burned remains of the house. It has
19 been an eyesore within my block for many
20 years.

21 Me along with other residents in
22 the 100 Block of Mississippi Avenue have

1 worked many long hours and are continuing to
2 deal with DCRA to keep it clean of debris,
3 cutting the overgrowth and illegal dumping.

4 DCRA, who deals with private
5 property, in my opinion, is the worst agency
6 within the District of Columbia Government.
7 They will promise you the world, but will not
8 follow through on anything. So we are happy
9 to hear and to understand that something good
10 is going to be done with this piece of vacant
11 property.

12 It is our understanding that 12
13 condominium units are going to be constructed
14 on this vacant piece of property. Since we
15 have not been privy to the plan, we have some
16 pertinent questions.

17 Now, I must say that since we have
18 been here for five hours waiting to testify,
19 we have learned a lot from listening to you
20 all and the builder and then we did go over
21 and talk with the Office of Planning that is
22 here and we have been able to review some of

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1 the plans.

2 So I'm going to state my
3 questions, but some of them we have answered
4 ourselves. Are any of these condominiums
5 going to be Section 8? Well, we already know
6 the answer to that. Are they going to be sold
7 at market value for our area? Now, we're
8 still not sure about that. Are any of these
9 condominiums for low to moderate income? We
10 don't know about that.

11 This is our main problem or our
12 main concern. Are parking garages and/or
13 carports being constructed for each
14 condominium and their guest? How many
15 condominiums are in each unit? Well, we know
16 that now, according to the present plan. Are
17 these going to be brick? Because if not, it
18 might lower our property value, because all of
19 the houses on our block are brick with the
20 exception of one and that's next door to the
21 property that he has purchased at 125
22 Mississippi.

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1 We want to know have you already
2 done an environmental impact screening for
3 this? And is this going to be a gated
4 community? And I guess this other stuff we
5 have already found out, since we have been
6 here.

7 So I guess that's the -- he has
8 some things that both of us have talked about
9 that's in his testimony that both of us agree
10 on, so I'll --

11 COMMISSIONER JEFFRIES: He?

12 MS. TOLSON: Lafayette Barnes.

13 COMMISSIONER JEFFRIES: Oh, I just
14 wanted you to get it on the record.

15 MS. TOLSON: Right. Yes, I'm
16 sorry. Lafayette Barnes, who is a neighbor,
17 who is going to testify also.

18 So I think our main concern is is
19 it going to be brick buildings and if there is
20 going to be ample parking? But I do want to
21 bring this up. If you will -- I'm looking at
22 a document from the Deputy Director of the

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1 Office of Planning, the subject is "BZA
2 Application 17775, Request for a Special
3 Exemption under 353 to construct six flat
4 buildings for a 12 unit residential
5 development."

6 If you can go to -- do you have
7 that document? Okay. If you can go to page
8 5? Page 5 says "Community comments: Office
9 of Planning has not received any submissions
10 from ANC-8C or neighbors." Well, that's
11 because we didn't know anything about it,
12 okay, as far as the neighbors are concerned.

13 Now, the ANC is a relatively new
14 ANC person, as we understand it. We think he
15 is Cardell Shelton. So just for the record,
16 we didn't know anything about that. And if
17 you could go to page 2 of this document, there
18 is a chart that it looks like to me they are
19 saying that 40 percent of the max -- is the
20 maximum amount of space that he could use to
21 build these units.

22 He is proposing to build only on

1 29.8 percent of this space, which leaves some
2 space. And we were just wondering, we know
3 now that he is going to have one parking space
4 per condo, when it usually takes two people
5 and a family to pay for a mortgage, which
6 would be two spaces.

7 If later he decides to remove one
8 of those units instead of six and have five,
9 if he could possibly use this for more parking
10 space, because parking is an issue on our
11 street already. Thank you.

12 MR. BARNES: Okay. Madam Chair,
13 my name is Lafayette Barnes. I'm a long time
14 resident of Ward 8 and also live at the 100
15 Block of Mississippi Avenue, 114 Mississippi
16 Avenue and I am here to testify regarding
17 Application 17775.

18 My wife, Denise Rolanda Barnes,
19 and I have lived on the 100 Block of
20 Mississippi Avenue for nearly 20 years and
21 have developed strong ties with residents of
22 this block and community. We are very

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1 interested in the proposal to conduct -- to
2 construct, I should say, a new condominium
3 project across the street from our home.

4 However, we have several questions
5 about the project that will ultimately affect
6 our decision to accept this plan, so we're
7 still on the fence, if I may say. And many of
8 these questions my neighbor, Bernadette
9 Tolson, has addressed, so I'm just going to
10 skip through my written testimony and just ask
11 a few.

12 First of all, I would like to know
13 exactly how many parking spaces the developer,
14 District-Properties.com, LLC, is required to
15 put on a condominium site. And I would also
16 like to know if the Department of
17 Transportation has submitted a copy of its
18 traffic study for this project and what were
19 the major findings?

20 As you may know, the Mississippi
21 Avenue, part of this construction site, is
22 also a bus route for the Metro A2 Bus.

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1 Parking is a big issue and so we are very
2 curious about that. The other thing that I
3 noticed in looking at the statement of
4 explanation and reasoning -- and reasons
5 supporting an application to the Board of
6 Zoning Adjustment, and this was submitted by,
7 let's see who this was submitted by.

8 I'm not really sure, but the point
9 is it indicates that of these 12 units that
10 are being proposed, the entrance for Units 2,
11 4, 6, 8, 10 and 12 are located on Mississippi
12 Avenue. Yet, all the parking for this complex
13 is in the rear. I find that somewhat
14 troubling, particularly if I were a resident
15 living in this complex for seniors or other
16 perhaps disabled tenants.

17 And I'm wondering whether or not
18 the developer has looked at the ADA
19 requirements as relates to those tenants that
20 might be willing to -- or owners who might be
21 willing to buy from this developer.

22 And then second, I would like to

1 know in looking at -- I haven't seen the
2 actual -- I think it's called the rendition,
3 the architectural design. I have looked at
4 sort of some of the prints, but I'm curious to
5 see in terms of the design and materials how
6 they conform with the compatibility of the
7 existing properties located in this block.

8 So and I guess after listening to
9 the testimony today or the questions today, I
10 guess our biggest concern is what the new plan
11 might look like. I would also like, Madam
12 Chair, if I may, to submit a party status
13 application, so that in the future, I can at
14 least get whatever, you know, materials and
15 documentation are submitted as relates to this
16 proposal. And that's all I have for right
17 now. Thank you.

18 CHAIRPERSON MILLER: Did you fill
19 out the party status application?

20 MR. BARNES: I do have it with me,
21 ma'am.

22 CHAIRPERSON MILLER: And is it

1 just you or both of you?

2 MR. BARNES: You want one, too?

3 MS. TOLSON: Yeah, I would. Well,
4 I can get from you. He can share with me,
5 because we share things.

6 MR. BARNES: We live on the same
7 block, so we're neighbors.

8 CHAIRPERSON MILLER: Okay. We
9 would need separate applications for each of
10 you.

11 MS. TOLSON: Okay.

12 CHAIRPERSON MILLER: But, you
13 know, I was just wondering if we just might
14 explore it now, because if we were to grant
15 you party status, then that would entitle you
16 to be served with the new plans.

17 MS. TOLSON: Okay. Then I will.

18 MR. BARNES: Great.

19 CHAIRPERSON MILLER: So we don't
20 have that in front of us, but we will need
21 that in the record. But let me just get
22 clear. You are both neighbors and how are you

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1 each neighbors to the property? Can you again
2 tell me?

3 MR. BARNES: I live within 200
4 feet of where this property is, so I'm
5 actually right across the street from the
6 location of 117 Mississippi Avenue. My
7 address is 114, so it's within a stone's throw
8 away if you will.

9 MS. TOLSON: And I'm right down
10 the street about 2, 4, 6, about 8 houses down
11 the street.

12 CHAIRPERSON MILLER: Okay. Ms.
13 Tolson, just because you are a little bit
14 further --

15 MS. TOLSON: Okay.

16 CHAIRPERSON MILLER: -- let me
17 just ask you how you would be impacted
18 differently than someone in the general public
19 by this project?

20 MS. TOLSON: Well --

21 CHAIRPERSON MILLER: Of the relief
22 being given in this application.

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1 MS. TOLSON: -- because it's on my
2 block. It's all within the 100 Block of
3 Mississippi Avenue. And that piece of
4 property has been almost a part of my life
5 really for several years trying to keep it
6 clean, because when you enter Mississippi
7 Avenue, that's the first thing that you see.
8 And sometimes, you know, it makes you feel
9 well, you don't even want visitors to come to
10 your house if they have got to go through
11 something that looks like this.

12 So now that something is going to
13 be built there, you know, we want it to be
14 conformed with the way the block looks. So it
15 has as much of an impact on me as it does my
16 neighbor, Lafayette Barnes, and he is right
17 across the street.

18 CHAIRPERSON MILLER: Mr. Sikder,
19 do you have any opposition to the Board
20 granting party status to these individuals?

21 MR. SIKDER: No, not -- I don't
22 have any objection. I do not have any

1 objection.

2 CHAIRPERSON MILLER: Okay. Do
3 Board Members have any other questions?

4 MR. SIKDER: And do -- I mean, I
5 could answer a couple of other questions as
6 the questions raised. I mean, I'm --

7 CHAIRPERSON MILLER: Well, let's
8 wait a second and let's just deal with this
9 party status application. I was saying that
10 you need to put in separate applications.

11 MS. TOLSON: Yeah, we will.

12 CHAIRPERSON MILLER: Or at least
13 your names need -- but you can and should
14 coordinate together. And let me just explain
15 what that means and then we can see whether
16 you really want to be one party, you know, two
17 individuals as one party.

18 What that would mean is Mr. Sikder
19 would only have to give you one -- serve one
20 pleading or plans on you, otherwise he has to
21 serve two. Okay.

22 The other thing is party status

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1 gives you the privilege of participating as a
2 party in these proceedings, which means you
3 could cross examine Mr. Sikder --

4 MS. TOLSON: Uh-huh.

5 CHAIRPERSON MILLER: -- or any of
6 his witnesses, should he have any. And you
7 could put on witnesses yourself, otherwise you
8 testify like today. I was saying are you
9 testifying as a person, you have about like 3
10 minutes or so and you give your testimony.

11 Okay. So that's the difference.
12 but in any event --

13 COMMISSIONER JEFFRIES: And you
14 can also cross OP.

15 CHAIRPERSON MILLER: And OP. You
16 can ask Office of Planning questions.

17 MS. TOLSON: Uh-huh.

18 CHAIRPERSON MILLER: There's not
19 too much difference in participating
20 separately as together. I mean, for the most
21 part, I would recommend together is more
22 efficient. You have -- the rules talk about

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1 60 minutes per party, so in any event, no, no
2 60 minutes per -- sorry, opposition or 60
3 minutes parties in support. You would share
4 that 60 minutes, whether you were one party or
5 two, that's my point.

6 MS. TOLSON: Okay.

7 CHAIRPERSON MILLER: So as far as
8 I can see, the only difference would be in how
9 many copies Mr. Sikder has to give you,
10 because even if you ask questions of Office of
11 Planning or Mr. Sikder, you are still sharing
12 the same amount of time.

13 MS. TOLSON: Um-hum.

14 CHAIRPERSON MILLER: And you want
15 to work efficiently anyway.

16 MS. TOLSON: Yes, um-hum.

17 CHAIRPERSON MILLER: So do you
18 have a preference as to being considered one
19 party or two?

20 MR. BARNES: No, not really.

21 MS. TOLSON: One party is fine.

22 CHAIRPERSON MILLER: Okay.

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1 MS. TOLSON: As long as we get to
2 share.

3 CHAIRPERSON MILLER: Exactly.

4 MS. TOLSON: Um-hum, yes.

5 CHAIRPERSON MILLER: Okay. Okay.

6 MS. TOLSON: And then he would
7 only have to serve one party, which will be
8 him. Okay.

9 CHAIRPERSON MILLER: Okay. That's
10 fine.

11 MS. TOLSON: That's fine.

12 MR. BARNES: And since I have my
13 application already here.

14 MS. TOLSON: Yeah.

15 MR. BARNES: Maybe that would
16 expedite the matter.

17 CHAIRPERSON MILLER: Okay. You
18 probably -- you want to be reflected as having
19 party status, too?

20 MS. TOLSON: Yes, I would.

21 CHAIRPERSON MILLER: Yeah.

22 MS. TOLSON: Um-hum. Okay.

1 CHAIRPERSON MILLER: Okay.

2 COMMISSIONER JEFFRIES: Did you
3 answer all the questions and all that? Oh,
4 okay, okay.

5 MS. TOLSON: Yes.

6 COMMISSIONER JEFFRIES: Okay.

7 CHAIRPERSON MILLER: Okay. So we
8 may just refer to you as like Neighbors Tolson
9 and Barnes or something.

10 MS. TOLSON: Yeah, that's fine.

11 CHAIRPERSON MILLER: Okay. Good.
12 All right. So that's set. I know Mr. Sikder
13 wants to answer some questions and I think
14 maybe some are appropriate and some you can do
15 outside of the hearing room as well, because
16 now, for instance, like with the parking and
17 stuff the plans are going to change, because
18 they don't comply with the regs.

19 So it's a good opportunity for
20 you, I think, outside of really this hearing
21 room to give input about parking and then Mr.
22 Sikder can consider that. So a lot of these

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1 questions that you asked about that, things
2 like that may be subject to change.

3 I just want to also indicate that
4 in our records you will get served with all
5 the papers in the future. But the ANC did
6 weigh in on this case. It's our Exhibit 24.
7 Mr. Cardell Shelton did. He said "As
8 Commissioner for the District of Columbia, I
9 along with the residents of my community, have
10 no objections to the construction of Square
11 6128, Lots 55 and 37 located at 117
12 Mississippi Avenue," etcetera.

13 MS. TOLSON: Well, he doesn't have
14 the --

15 MR. BARNES: Okay, partner.

16 CHAIRPERSON MILLER: Okay.

17 MR. BARNES: We view it the same,
18 Madam Chair, that we live on the block and we
19 haven't participated in any of the
20 conversations that Mr. Shelton has had.

21 CHAIRPERSON MILLER: Well, I would
22 say this. Since you will be getting copies of

1 the plans and everything, if you want to
2 contact the ANC yourselves and make sure they
3 are holding a meeting on the application or
4 whatever, you will have all the information
5 you need. So okay.

6 MR. BARNES: Madam Chair, if I
7 might ask?

8 CHAIRPERSON MILLER: Yes?

9 MR. BARNES: We did prepare
10 written testimony. Is that something that we
11 should submit today for the record, given the
12 fact that this is going to change or I mean,
13 we have it with us if you would like?

14 CHAIRPERSON MILLER: You might as
15 well put it in. I mean, this is part of the
16 record.

17 MS. TOLSON: Yeah.

18 CHAIRPERSON MILLER: So okay. I'm
19 just trying to review my notes to see if there
20 is anything else we really need to respond to
21 you about -- I do think that most of the
22 questions go to Mr. Sikder and not us today,

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1 since there really aren't any -- the plans
2 that we really are going to consider aren't
3 before us right now. Unless there is
4 something that you feel differently about, you
5 could ask Mr. Sikder.

6 Certainly about brick and about
7 condominiums and all that stuff, we don't have
8 answers for you for that.

9 COMMISSIONER JEFFRIES: And
10 particularly, you know, low and moderate
11 income and those kind of things, it's just,
12 you know, not part of these hearings. But,
13 you know, the applicant should be able to
14 respond to that.

15 MR. BARNES: Can I just ask, what
16 about ADA requirements? Is that part of this
17 hearing or is that a separate issue as well?
18 Disability Act.

19 CHAIRPERSON MILLER: Okay. I
20 mean, they should comply with ADA
21 requirements, but it's not our job to
22 determine that. If they are not in

1 compliance, it's another agency.

2 MR. BARNES: Okay.

3 CHAIRPERSON MILLER: So what we
4 concern ourselves with are only compliance
5 with the Zoning Regulations.

6 MR. BARNES: Okay. Thank you.

7 CHAIRPERSON MILLER: And if you
8 have other questions as you, you know, go
9 through this process, you should ask Office of
10 Planning or you should ask -- you can ask our
11 Office of Zoning. Mr. Cliff Moy is right
12 here. He would be happy to answer questions
13 for you.

14 MR. BARNES: Okay.

15 CHAIRPERSON MILLER: Okay.

16 MR. BARNES: Thank you.

17 MS. TOLSON: Okay. Thank you.

18 MR. BARNES: That's all I have.

19 CHAIRPERSON MILLER: All right.

20 Any other questions for these witnesses?

21 Okay. Mr. Sikder, I think you wanted to

22 answer some of their questions, but I think

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1 it's all right if you answer them outside of
2 the hearing, because a lot of them really
3 don't pertain to the Board. Okay.

4 Well, thank you. Thank you for
5 hanging in. We're going to set a schedule.

6 MR. SIKDER: Yes.

7 CHAIRPERSON MILLER: Okay. So
8 what we are going to do is set a new date for
9 a hearing in the fall. Mr. Moy, are you
10 looking at the calendar?

11 MR. MOY: Yes.

12 CHAIRPERSON MILLER: Okay. We're
13 going to set a date for a hearing in the event
14 that the plans are not modified drastically,
15 that they pretty much are similar to what has
16 been filed. And if they are only modified to
17 that extent, we will have the hearing on that.

18 If it looks like, in light of the
19 regulations, it was impossible to modify them
20 only in a minor way, that, in fact, there is
21 a drastic change, then that would require a
22 new application, a new notice to the

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1 community.

2 So we can make that determination
3 at the hearing date or Mr. Sikder you can
4 always make that earlier if you find that
5 actually it's not what you expected and you
6 really do have to file a new application, you
7 could do that -- you could file a withdrawal
8 earlier and file a new application earlier.

9 MR. SIKDER: Sure.

10 CHAIRPERSON MILLER: Okay.

11 COMMISSIONER JEFFRIES: And the
12 only other thing I would add is, you know, in
13 your conversation with the Office of Planning,
14 this whole business of minor modification or
15 major, you know, they might be able to assist
16 you in terms of perhaps how we would look at
17 something being major or minor.

18 I'm pretty clear about how I look
19 at it. I mean, you know, changes in curb cuts
20 and circulation around the homes and anything
21 that really steps away from this, you know,
22 might require a new application. But, you

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1 know, you should, you know, sit down with
2 Office of Planning and they should be able to
3 give you some direction on how things are
4 looking.

5 MR. SIKDER: Sure.

6 CHAIRPERSON MILLER: We're just
7 going to -- the one last thing that we have to
8 do is pick a date in September. And so we are
9 looking at our schedule now.

10 MEMBER WALKER: Let me just ask
11 the neighbors one question while we wait. How
12 did you learn of today's hearing?

13 MR. BARNES: Well, there is a
14 notice posted in the property and so we read
15 the notice. And then I did receive a mailing
16 from the Zoning Office about it and then we
17 shared the information amongst ourselves.

18 COMMISSIONER JEFFRIES: Also --

19 MEMBER WALKER: Ms. Tolson, did
20 you also receive a notice?

21 MS. TOLSON: No, I did not receive
22 a notice, but I did see the sign that was on

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1 the property. We were out talking the other
2 day about some things in the neighborhood. We
3 were standing outside and we looked over and
4 saw it, so we -- that's how we knew that it
5 was today.

6 COMMISSIONER JEFFRIES: Well, it
7 looks like we have our Exhibit 6 and you
8 should have received something, because your
9 name is prominently featured. In fact, it's
10 the first name on the list of people who
11 received things. So anyway, are you done?

12 MEMBER WALKER: I'm done.

13 COMMISSIONER JEFFRIES: And also,
14 check your drawings. You have here northeast
15 you project name, so --

16 MR. SIKDER: I see that, yes.

17 CHAIRPERSON MILLER: Okay. We're
18 looking at September 16th in the afternoon.

19 MR. BARNES: It's okay.

20 CHAIRPERSON MILLER: Okay. Good.

21 MR. SIKDER: And when I need to
22 submit the drawings?

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1 CHAIRPERSON MILLER: Okay. I
2 would think that the regulations for like
3 prehearing statement would apply and that
4 would be 14 days in advance. Is that correct?
5 Mr. Sikder, could you do that, 14 days in
6 advance would be September 2nd.

7 MR. SIKDER: Yes.

8 CHAIRPERSON MILLER: Okay. And I
9 would suggest to the neighbors here that our
10 regulations are also on-line.

11 COMMISSIONER JEFFRIES: Yes.

12 CHAIRPERSON MILLER: And you can
13 go there. It's Title 11, 11 DCMR and you
14 might want to get yourself familiar with just
15 a little bit of our rules of procedure for
16 hearings. It's not very complicated, but
17 anyway, I just wanted to bring that to your
18 attention that that is on-line. And also, our
19 hearings like now are on-line.

20 I don't know if you have ever
21 watched them, but if you ever wanted to see
22 before you came down how things are done in a

1 normal hearing, which you didn't really see
2 too much today. You saw a little bit the case
3 before us, but you could always watch on a
4 Tuesday.

5 Okay. Do you have any other
6 questions anyone?

7 MR. SIKDER: No.

8 CHAIRPERSON MILLER: Okay. Well,
9 thank you very much and thank you again for
10 hanging in. Some days go later than others
11 and some issues get trickier than others. But
12 okay, I guess that's it then. We will see you
13 maybe in September. Have a good summer.

14 MR. BARNES: Thank you very much.

15 CHAIRPERSON MILLER: Ms. Bailey,
16 do we have anything else on the agenda for the
17 afternoon hearing?

18 MS. BAILEY: No, Madam Chair.

19 CHAIRPERSON MILLER: Okay. Then
20 this hearing is adjourned.

21 (Whereupon, the Public Hearing was
22 concluded at 6:23 p.m.)