

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

MAY 8, 2007

+ + + + +

The 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 G. MILLER	Chairperson
CURTIS ETHERLY, JR.	Vice-Chairperson
JOHN A. MANN, II	Board Member
	(NCPC)
MARC LOUD	Board Member

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
ARTHUR JACKSON
MATT JESICK
DOUGLAS WOODS
STEPHEN MORDFIN

This transcript constitutes the
minutes from the Public Hearing held on May 8,
2007.

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

2 9:58 a.m.

3 CHAIRPERSON MILLER: Good morning.

4 This meeting will come to order, this hearing.

5 This is the May 8, 2007 Public Hearing morning

6 of the Board of Zoning Adjustment of the

7 District of Columbia. My name is Ruthanne

8 Miller. I am the Chair of the BZA and to my

9 immediate right is Mr. Curtis Etherly, BZA

10 Mayoral Appointee, also is Mr. Jeffries

11 representing the Zoning Commission, to my left

12 is Mr. Marc Loud, Mayoral Appointee also of

13 the BZA, to his left is Mr. John Mann

14 representing NCPC on the BZA and then Mr.

15 Clifford Moy and Beverly Bailey from the

16 Office of Zoning.

17 Copies of today's hearing agenda

18 are available to you and are located to my

19 left in the wall bin near the door. Please,

20 be advised that this proceeding is being

21 recorded by a Court Reporter and is also

22 webcast live. Accordingly, we must ask you to

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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: One, statement
20 and witnesses of the applicant. Two,
21 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 Section 3117.4 and
7 3117.5, the following time constraints may be
8 maintained: The applicant, appellant, persons
9 and parties, except an ANC, in support,
10 including witnesses, 60 minutes collectively.
11 Appellees, persons and parties, except an ANC,
12 in opposition, including witnesses, 60 minutes
13 collectively. Individuals 3 minutes.

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

17 Does the staff have any
18 preliminary matters?

19 MS. BAILEY: Madam Chair, Members
20 of the Board, to everyone, good morning.
21 Staff does not have any preliminary matters.

22 CHAIRPERSON MILLER: Thank you.

1 Let us proceed then with the agenda. Would
2 all individuals wishing to testify today,
3 please, rise to take the oath?

4 MS. BAILEY: Would you, please,
5 raise your right hand?

6 (Whereupon, the witnesses were
7 sworn.)

8 MS. BAILEY: Thank you.

9 CHAIRPERSON MILLER: Ms. Bailey,
10 would you call the first case, please?

11 MS. BAILEY: The first case is
12 Application No. 17610 of Leslie Nayman and
13 Brian Paxson, pursuant to 11 DCMR 3104.1, for
14 a special exception to allow a basement
15 addition to an existing single-family row
16 dwelling under section 223, not meeting the
17 lot occupancy requirements, that's section
18 403. The property is Zoned R-4 and it's
19 located at 1404 Constitution Avenue, N.E.,
20 Square 1055, Lot 43.

21 CHAIRPERSON MILLER: Thank you.
22 Would the parties, please, come forward? Good

1 morning, would you identify yourself for the
2 record, please?

3 MR. PAXSON: Good morning, I'm
4 Brian Paxson.

5 MS. NAYMAN: I'm Leslie Nayman.
6 We're the homeowners at 1404 Constitution
7 Avenue.

8 CHAIRPERSON MILLER: Just before
9 you start, I just wanted to see is anybody
10 here from your ANC? Is anybody here from the
11 ANC on this case? Okay. Thank you. Go
12 ahead.

13 MR. PAXSON: We're looking to add
14 a basement to our house to add living space
15 for our family. And we're looking for a
16 special exception in this case, because the --
17 even though we won't be building out on the
18 property, the house already occupies more than
19 60 percent of the land of the lot.

20 CHAIRPERSON MILLER: Okay. And
21 your application is very full and very to the
22 point. And I'm not aware that there is any

1 opposition to it, is there, at this point?

2 MS. NAYMAN: No, I don't believe
3 there is.

4 CHAIRPERSON MILLER: Okay. Do any
5 Board Members have any questions on this?
6 Okay. If you are finished, at this point, we
7 can move to the Office of Planning's report.
8 Have you seen a copy of the Office of
9 Planning's report?

10 MR. PAXSON: Yes.

11 MS. NAYMAN: Yes, we have.

12 CHAIRPERSON MILLER: Okay. And
13 that's also very well-documented. Okay. Good
14 morning.

15 MS. THOMAS: Good morning, Madam
16 Chair, Members of the Board. We have nothing
17 to add, no significant impact on this project
18 and we'll stand on the record.

19 CHAIRPERSON MILLER: Okay. That
20 was an excellent report. And do we have any
21 questions from Board Members? Okay. Do you
22 have any questions of the Office of Planning?

1 MR. PAXSON: No.

2 CHAIRPERSON MILLER: Okay. And
3 I'm going to ask again if there is anybody
4 here from the ANC on this case? I have in my
5 records that the ANC voted to support the
6 application. Is that correct?

7 MR. PAXSON: Yes.

8 CHAIRPERSON MILLER: And do you
9 have that? Okay. This came in a little bit
10 late, so I would suggest that we waive our
11 rules and allow this to come into the record,
12 unless there is an objection? Okay. So we
13 will do that. It's dated April 30, 2007 and
14 it says that they voted 6-0-0 to support the
15 application and that Ms. Fowler presented the
16 plans to the ANC.

17 Okay. I'm not going to go into
18 the whole thing. In any event, she explained
19 that the basement would neither affect the
20 light or air of neighboring properties. It
21 won't be visible from the street and the
22 Commission was satisfied that it met the

1 requirements for its special exception.

2 Okay. So we'll take that into the
3 record. Is there anybody here at all in
4 support or in opposition to this application?
5 Okay. Not hearing from anybody, we can turn
6 to you for any other closing remarks, if you
7 would like to make.

8 MR. PAXSON: Not from us. Thank
9 you.

10 CHAIRPERSON MILLER: I think, at
11 this point, this is a pretty straightforward
12 case, I'm going to move to grant the special
13 exception to allow the addition of a basement
14 below an existing single-family row dwelling
15 under section 223, not meeting the lot
16 occupancy requirements, section 403.2, in the
17 R-4 District at premises 1404 Constitution
18 Avenue, N.E.

19 VICE CHAIR ETHERLY: Second it,
20 Madam Chair.

21 CHAIRPERSON MILLER: Thank you.
22 As we know, ANC supports this as does Office

1 of Planning. The footprint hasn't changed in
2 any way and the only reason they are here is
3 because it's a nonconforming structure, which
4 was already out of compliance and the addition
5 of the basement is not adding to that
6 noncompliance.

7 The Office of Planning has gone
8 through all of the elements, including the
9 fact that this qualifies for a special
10 exception under 223, because the lot occupancy
11 does not exceed the 70 percent in the R-4
12 District. As set forth in the OP report,
13 light and air available to the neighboring
14 properties are not affected. It's a basement
15 addition, so it doesn't affect any privacy.

16 The basement addition is not out
17 of character with the row house character
18 along the street. The applicant provided all
19 the photos, elevations, drawings and site plan
20 and the community is in support.

21 So I, basically, think that covers
22 their meeting the special exception. Does

1 anybody else have any other comments on this?

2 Okay. Then why don't we call the vote?

3 All those in favor say aye.

4 ALL: Aye.

5 CHAIRPERSON MILLER: All those
6 opposed? All those abstaining? Would you
7 like to call the vote, Ms. Bailey?

8 MS. BAILEY: The vote is recorded
9 as 5-0-0 to approve the application. Mrs.
10 Miller made the motion, Mr. Etherly seconded,
11 Mr. Mann, Mr. Jeffries and Mr. Loud support
12 the motion.

13 CHAIRPERSON MILLER: Thank you.
14 And I would also suggest that we waive our
15 rules for full findings of fact and
16 conclusions of law and issue a summary order
17 in this case, as this is a very
18 straightforward case with no opposition. Do
19 we have a consensus of the Board to issue a
20 summary order? Okay. We do. Thank you.
21 Then that concludes your case. Thank you very
22 much.

1 And, Ms. Bailey, you can call the
2 next case when you are ready.

3 MS. BAILEY: Application No. 17602
4 of the National Presbyterian Church, pursuant
5 to 11 DCMR 3104.1, for a special exception to
6 establish a child development center that's
7 for 16 children, ages infant to 4 years, and
8 5 staff. The property is Zoned R-1-B and it's
9 located on the first floor of the multi-
10 purpose building at premises 4101 Nebraska
11 Avenue, N.W., Square 1724, Lot 805.

12 CHAIRPERSON MILLER: Good morning.

13 MR. NEILL: Good morning.

14 CHAIRPERSON MILLER: Would you
15 like to introduce yourself for the record,
16 please?

17 MS. PRINCE: Good morning. Good
18 morning. My name is Allison Prince and I'm
19 with the Law Firm of Pillsbury Winthrop Shaw
20 Pittman. With me is Jim Neill, head of
21 National Presbyterian School. We are here
22 this morning seeking special exception

1 approval for the National Presbyterian Church
2 under section 205 of the regs to permit a
3 child development center for up to 16 children
4 in the R-1-B Zone.

5 The center will be located in an
6 existing building on the 12 acre campus and
7 we're not proposing any new building area in
8 connection with this application. The school
9 currently has a child development center
10 licensed to operate its nursery school, which
11 is part of the school and an integral part of
12 the school's academic program.

13 The center that the application
14 seeks approval for today, however, will be
15 separate and independent from the nursery
16 school and will be a day care center for
17 faculty children predominantly. It will hold
18 its own license from the Department of Health
19 and will have a separate Certificate of
20 Occupancy.

21 We believe that the prehearing
22 statement has thoroughly outlined the

1 applicant's satisfaction of the special
2 exception standard under the regulations. The
3 proposed center has received the support of
4 the ANC, OP and the Department of Health as
5 well as the Department of Transportation.

6 In response to a request made in
7 the report of the Office of Planning, we have
8 designated one of the 400 plus parking spaces
9 on the site as the staff parking space. This
10 was requested by Arthur Jackson and we have
11 the plan to submit to the record. You should
12 have it up there. If the Board has not
13 questions, I would like to proceed with the
14 testimony of our only witness, Mr. Jim Neill,
15 the head of National Presbyterian School.

16 CHAIRPERSON MILLER: I think we do
17 have a question, I think.

18 MS. PRINCE: Sure.

19 CHAIRPERSON MILLER: Just with
20 respect to that issue about you already have
21 a child development center, what does that
22 mean? We didn't see -- you know, OP says

1 there is no order for a child development
2 center. But there is an order for the school
3 and so we are not clear as to whether or not
4 this child development center is before school
5 and after school, part of the school's order
6 or is an order missing or what is the
7 situation?

8 MS. PRINCE: There is a
9 complicated zoning history and I would be
10 happy to explain it. The existing child
11 development center is the nursery school for
12 3 and 4 year-olds. There is an order that
13 dates back to the '50s that allows nursery
14 school use on the premises and we believe that
15 that's the order that may have been relied
16 upon in issuing both the Certificate of
17 Occupancy and a license that contemplates
18 child development center use on the premises.

19 There does appear to be an order
20 missing. The school use was established on
21 the site in 1969, 38 years ago, and we have
22 been unable to locate the Certificate of

1 Occupancy. I mean, I'm sorry, the BZA order
2 that originally established the school use on
3 the premises, not the nursery school use,
4 because there is a '50s order that covers
5 that. But the school use.

6 Nonetheless, twice since '69, the
7 school has appeared before this Board for
8 school-related applications. So some how,
9 some way, this Board has acknowledged that the
10 school is there with permission. So the child
11 development center that currently operates,
12 which is 3 and 4 year-olds in nursery school,
13 not only is it covered by a Certificate of
14 Occupancy, but there is a license that
15 specifically allows it. So we believe that
16 DCRA has accepted the zoning history and
17 allowed it.

18 CHAIRPERSON MILLER: There is a
19 1950 BZA order on the existing nursery school?

20 MS. PRINCE: Right. There is an
21 order that dates back to, I believe, 1953 that
22 governed the prior owner of the property, but,

1 as you know, these uses travel with the land,
2 that allowed nursery school use for up to 55
3 children on the premises. So we believe that
4 provided the foundation for the later C of Os
5 that were issued.

6 CHAIRPERSON MILLER: Is that in
7 our record? Was that cited?

8 MS. PRINCE: The '53 order?

9 CHAIRPERSON MILLER: Yes.

10 MS. PRINCE: I don't believe it
11 was, but I have a copy of it with me here
12 today.

13 CHAIRPERSON MILLER: Okay. I
14 think it would be good to get in the record,
15 just because of this issue. But because
16 Office of Planning brought up the question of
17 putting them together somehow and I didn't
18 know if that's -- you weren't seeking that?

19 MS. PRINCE: We're really not
20 seeking that and we're not seeking it because
21 although both uses fit under the definition of
22 child development center, they are really

1 quite different types of child development
2 center.

3 CHAIRPERSON MILLER: Okay.

4 MS. PRINCE: And the ages of the
5 children affected are totally different with
6 the one that we're here for today will take
7 children as young as 6 weeks.

8 CHAIRPERSON MILLER: Okay.

9 MS. PRINCE: And so we did talk to
10 Department of Health and they agreed that it
11 made sense to license it separately and have
12 a separate C of O.

13 CHAIRPERSON MILLER: Okay. And
14 just for our total understanding here, there
15 is also probably before school and after
16 school?

17 MS. PRINCE: There is after care.

18 CHAIRPERSON MILLER: There is
19 after care. But is that governed by a BZA
20 order for the school?

21 MS. PRINCE: That's governed.
22 That would be accessory to the school use.

1 CHAIRPERSON MILLER: Right.

2 MS. PRINCE: And that's governed
3 by the Certificate of Occupancy that covers
4 the school, that's part of that child
5 development center, the school C of O.

6 CHAIRPERSON MILLER: Okay. Thank
7 you. Anybody else have questions on this?
8 Okay. Thank you very much.

9 MS. PRINCE: You're welcome.

10 MR. NEILL: Good morning. My name
11 is Jim Neill. I live at 3257 Beech Street
12 here in the District and I'm the head of the
13 National Presbyterian School. And we're here
14 today with what we hope is a straightforward
15 application for a child development center to
16 serve up to 16 children on the campus of the
17 National Presbyterian Church and School.

18 And the center will be located
19 along Van Ness Street in a two-story building
20 that we're renovating to accommodate children
21 on the main floor and accessory office space
22 for the center staff on the second floor. The

1 National Presbyterian Campus currently
2 includes National Presbyterian Church and
3 National Presbyterian School.

4 The church was established on the
5 site in 1966 and it's primarily used for
6 services on Sunday. The school was
7 established a couple of years later in 1969
8 and serves children as we just heard from
9 nursery through 6th grade Monday through
10 Friday with very occasional use on weekends
11 that amounts to the occasional birthday party.

12 So we're nearing our 40th
13 anniversary. It's one of the only true
14 private elementary, true private elementary
15 schools, I should say, in Northwest. And we
16 discovered a need for the child development
17 center from our faculty and our staff, many of
18 whom are looking for a day care center for the
19 children. We have a few faculty here who are
20 currently pregnant or have just given birth
21 and the center will focus on serving them,
22 serving the faculty and the staff and to the

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1 extent other spaces are available, we'll allot
2 them to children affiliated with the church or
3 school and to the general public.

4 The center will serve children
5 ages 6 weeks to 4 years, Monday to Friday,
6 7:30 a.m. to 6:00 p.m. and at least four staff
7 members will be on-site at all times. And I
8 can say as one who when a teacher had a child
9 and the school provided day care center at the
10 school, I can speak on a personal level of how
11 important a benefit this was for me and how
12 important it is in terms of the retention
13 piece from our front for faculty.

14 In addition to using the indoor
15 space, there will be a play area immediately
16 in front of the building. It will have play
17 equipment and possibly a little paved strip
18 for tricycles and the like. The specific
19 equipment will be finalized once we have the
20 opportunity to hire a director. The center
21 will also use Turtle Park, which is a couple
22 of blocks away, on occasion.

1 The application meets the special
2 exception standard for a child development
3 center under the Zoning Regulations and I'll
4 briefly walk through that now. NPS, we, the
5 school, NPS, is capable of meeting the
6 Department of Health licensing requirements.
7 In fact, the Department of Health has
8 submitted a report urging the Board's support
9 of the application.

10 The center will not create any
11 objectional traffic conditions. The center
12 will be accessed from Van Ness Street.
13 Parents will park their cars and walk their
14 children to the center. There is ample
15 parking for 16 cars at the center, eliminating
16 any possibility of cars backing up on Van Ness
17 Street and we don't anticipate an increase in
18 traffic to the site, because many of the
19 children enrolled in the center will be
20 affiliated with the church or school and
21 parents would otherwise be driving to the
22 campus anyway.

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1 In the event that none of the 16
2 children are affiliated with the school, we
3 don't believe that 16 additional trips to the
4 school will have a detrimental effect on the
5 neighborhood. And the District Department of
6 Transportation has agreed with this and stated
7 it was unlikely to create additional traffic
8 in the area and stated as well that it did not
9 object to the application.

10 The applicant provides sufficient
11 off-street parking spaces as the next
12 standard. We have nearly 100 spaces beyond
13 what is required by the Zoning Regulations and
14 the center will only require, as we just
15 heard, one additional space which will be
16 marked and located in the lot in front of the
17 building.

18 The adjacent properties will not
19 be adversely affected. As we heard earlier,
20 the on-site parking supply will preclude the
21 possibility of traffic backing up onto Van
22 Ness or the possibility of people parking in

1 the neighborhood to drop their children off.
2 It's just not needed.

3 The modest number of children in
4 the center diminishes the possibility they
5 will create any noise that could be heard on
6 neighboring properties, especially since the
7 play area would be internally located and the
8 houses nearby are located across Van Ness
9 Street.

10 Children will not be in danger
11 while traveling to an off-site play area.
12 Staff will walk with the children to Turtle
13 Park on the occasions that they go there and
14 they will be able to use the sidewalk the
15 entire way. And any streets the children have
16 to cross will be done in a crosswalk at a
17 light. So that piece is also covered.

18 Finally, the only other child
19 development center that is located within
20 1,000 feet of the school is also affiliated
21 with the National Presbyterian School and it's
22 the one we were just discussing. And while

1 technically a child development center, this
2 center functions as the nursery school for
3 National Presbyterian School.

4 The children are enrolled in the
5 school. They have to go through an
6 application process to get into that. They
7 are part of the progression of the school
8 curriculum and they pay a school tuition. So
9 it really is something totally different.
10 What we are looking to create is a day care
11 center for younger children and it will not
12 have a cumulative adverse effect on the
13 neighborhood because of that.

14 We met with the ANC on March 1st of
15 this year and they unanimously voted to
16 support the application and submit a
17 resolution to that effect. We also sent a
18 letter to neighborhood property owners. I
19 think we sent out about 200 copies of this
20 letter in early February outlining the
21 application and providing contact information
22 for neighbors to voice concerns. To date, we

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1 have not heard from any of the neighbors.

2 We also met with the Office of
3 Planning and gave Mr. Jackson a tour of the
4 site. I believe that was in March, but I'm
5 not -- and OP supports approval of the
6 application as well. So at this point, we
7 believe we meet the standards for a child
8 development center under the Zoning
9 Regulations.

10 We believe we have support of the
11 community in establishing this center. It's
12 important for us to be able to open the doors
13 by late August as our faculty would need care
14 by then with the beginning of the school year
15 and, accordingly, we ask that the Board
16 approve this application. Thank you very
17 much.

18 CHAIRPERSON MILLER: Thank you.
19 Do you have a real feel for the demand within
20 the school whether or not there is such a
21 demand that, basically, the school and the
22 church are going to fill all those spaces or

1 whether there is going to be spaces for
2 community outside of that?

3 MR. NEILL: We anticipate that
4 there will be spaces for community, whether
5 those community or church members are not
6 entire certainly, we anticipate probably five
7 spots will be filled by faculty and staff of
8 the church and school.

9 CHAIRPERSON MILLER: So the first
10 to get the slots are the school faculty and
11 staff. Is that correct.

12 MR. NEILL: Yes.

13 CHAIRPERSON MILLER: And then is
14 the church second or is the church in the same
15 category as the rest of the surrounding
16 neighborhood?

17 MR. NEILL: We anticipate that
18 they will be given some preference.
19 Obviously, the church includes people from the
20 neighborhood, but we anticipate they will be
21 given some preference. But it all boils down
22 to who is applying.

1 CHAIRPERSON MILLER: Right.

2 MR. NEILL: So it's hard to say
3 specifically.

4 CHAIRPERSON MILLER: I'm raising
5 this in looking at the ANC report, Exhibit 23,
6 you know where they asked for a set aside.

7 MR. NEILL: Yes.

8 CHAIRPERSON MILLER: Of a certain
9 number.

10 MR. NEILL: Yes.

11 CHAIRPERSON MILLER: And then I
12 thought, I think it's, two for residents of
13 ANC-3E and then I thought that I had read
14 something like you were going to give priority
15 to them, in general, with the remaining slots
16 that aren't being filled by the school.

17 MR. NEILL: Well, it's -- I mean,
18 because there is this overlap, in fact, the
19 person who is number one from -- on the
20 waiting list that we have right now, from the
21 church also lives a couple of blocks from the
22 facility. So there is this real overlap

1 between the two. But, yes, we do want to
2 provide spaces for the community on this front
3 to the extent we are able to do it.

4 CHAIRPERSON MILLER: Is somebody
5 here from the ANC as well? Okay. Then I just
6 want to pursue this a little more. Is there
7 a set policy, for instance, you know, you have
8 a few spots after you fill faculty and
9 students. And say you have four slots left
10 over, on behalf of the ANC, I just want to ask
11 where do those residents fall then? Is it,
12 you know, after the church or in the same,
13 both will be given priority as one group or do
14 you have a policy on that?

15 MR. NEILL: I mean, it's not
16 entirely set, because we don't have the entire
17 thing put together, at this point, but the
18 plan is, indeed, to have tiered approval
19 process with the faculty and staff of the
20 church and school, families of the church and
21 school and then neighborhood people after
22 that. However, to the extent that there is a

1 neighbor who is in there, they would get
2 priority over someone who was in that second
3 tier. They would be priority over anyone
4 else, given that request.

5 CHAIRPERSON MILLER: When you say
6 the church, do you mean the members of the
7 church?

8 MR. NEILL: Yes.

9 CHAIRPERSON MILLER: So, I mean,
10 the church doesn't use that parking at all?
11 So it's just the fact that they are a member
12 of the church that they might get a priority
13 into this day care center. Is that right?

14 MR. NEILL: The church doesn't use
15 the parking at all?

16 CHAIRPERSON MILLER: No, I mean,
17 at the same time, the church uses on Sundays.

18 MR. NEILL: Oh, not at the same
19 time.

20 CHAIRPERSON MILLER: Right. So I
21 mean, it's not like there is church members
22 there who have children, that they are at the

1 church at the same time and so their children
2 would be going to the child development center
3 while they are at the church. Do you know
4 what I'm saying?

5 MR. NEILL: I'm not following.
6 I'm sorry.

7 CHAIRPERSON MILLER: Okay. Sorry.
8 Okay. What I understand is you all share the
9 same property.

10 MR. NEILL: Yes.

11 CHAIRPERSON MILLER: In general,
12 the church meets on Sunday.

13 MR. NEILL: Yes.

14 CHAIRPERSON MILLER: So what I'm
15 saying, unless it's an administrative person
16 at the church, Monday through Friday, it's not
17 like they would be on the grounds Monday
18 through Friday. So they would be in a similar
19 situation as a neighbor, in that they would be
20 doing their own separate thing, separate from
21 the property and their child just would be
22 eligible?

1 MR. NEILL: Yes, possibly, because
2 there are many church families who are also
3 already at the school.

4 CHAIRPERSON MILLER: Okay. Okay.

5 MR. NEILL: So they are already on
6 campus. They get priority in admissions to
7 the school. So --

8 CHAIRPERSON MILLER: Okay.

9 MR. NEILL: -- they would be
10 already on campus. If they had an older
11 child, for example, who was at the school and
12 then maybe they had a little baby that they
13 wanted to take to the day care center.

14 CHAIRPERSON MILLER: Okay. So
15 it's faculty.

16 MR. NEILL: So that's not an
17 addition of traffic.

18 CHAIRPERSON MILLER: Right. But
19 as far as who could have their children in
20 these slots, it's faculty and staff first and
21 then is it parents of students at the school
22 who may have a younger sibling?

1 MR. NEILL: Right.

2 CHAIRPERSON MILLER: Okay.

3 MR. NEILL: Right.

4 CHAIRPERSON MILLER: Okay. Then I
5 just wanted to clarify where the ANC residents
6 fall in the priority? I can understand that
7 those three, those people are already there.
8 There is already transportation there,
9 etcetera. But as far as then church members
10 and neighbors in ANC-3E, is there a --

11 MS. PRINCE: That's the priority
12 between the church member who is in the --

13 CHAIRPERSON MILLER: Is there --

14 MS. PRINCE: -- ANC would be --

15 CHAIRPERSON MILLER: -- a line?

16 MR. NEILL: Yes, a church member
17 who is in the ANC would definitely be the
18 first on that list.

19 CHAIRPERSON MILLER: Yes, okay.

20 MR. NEILL: No question about it.

21 CHAIRPERSON MILLER: What about
22 church members not in the ANC?

1 MR. NEILL: A church member who is
2 not in the ANC --

3 MS. PRINCE: Compared to someone
4 in the ANC.

5 MR. NEILL: -- compared to that
6 person. Yes, the person in the ANC would be
7 given priority.

8 CHAIRPERSON MILLER: Okay. Okay.
9 Thank you.

10 MR. NEILL: But -- okay. So,
11 okay, I clarify the record then. My
12 apologies. I'll just walk through it. I feel
13 we're creating -- I'm creating more confusion
14 here. The plan is to have tiered admission to
15 this. The first tier would be for families --
16 sorry, for faculty and staff of the church and
17 school. The second tier would be for children
18 of church and school families. However, not
19 necessarily faculty and staff of the church or
20 school.

21 And then community members.
22 Within that community members tier, any

1 community members could be people who work or
2 live in the area, within that tier, people who
3 live in the area would be given preference in
4 response to that request from the ANC.

5 CHAIRPERSON MILLER: Okay.

6 MR. NEILL: Does that make it
7 clear?

8 CHAIRPERSON MILLER: It does.

9 MR. NEILL: I apologize.

10 CHAIRPERSON MILLER: And I
11 probably made it confusing. I'm sure I did.
12 And I just wanted to understand what your
13 exact response was to the ANC request to set
14 aside at least two of the child care slots for
15 residents of ANC-3E, which is in their
16 resolution. And from what I understand is I
17 don't believe you are going to do that, that
18 you don't want to do that, set aside two
19 slots, but that you want to make them a
20 priority in this order. Is that correct?

21 MR. NEILL: I think that's
22 correct.

1 MS. PRINCE: That's correct.

2 CHAIRPERSON MILLER: Okay. Any
3 other questions?

4 MR. NEILL: I'm sorry for being
5 confusing.

6 CHAIRPERSON MILLER: No, me, too.
7 Okay.

8 MR. NEILL: It's a work in
9 process.

10 CHAIRPERSON MILLER: Okay. And
11 did you have anything else you wanted to add,
12 at this point?

13 MS. PRINCE: Nothing else.

14 CHAIRPERSON MILLER: Okay. No
15 other Board questions? Okay. Then why don't
16 we go to Mr. Jackson with the Office of
17 Planning?

18 MR. JACKSON: Good morning, Madam
19 Chair and Members of the Board. My name is
20 Arthur Jackson. I'm with the -- I'm a Develop
21 Use Specialist of the District of Columbia
22 Office of Planning and I'll briefly summarize

1 the Office of Planning's report.

2 We found -- we visited the site
3 and talked with the applicant. We reviewed
4 the materials and find that this application
5 is consistent with the requirements of section
6 205 with regard to establishing a new child
7 development center on the site. Since it
8 meets the requirements of the regulations, we
9 support approval, in that we initially we
10 waiting for a comment from the Department of
11 Transportation, but we note in their letter,
12 dated September 26th, that the -- from a
13 transportation standpoint, DDOT has no
14 objection. So that eliminates that concern.

15 We also recommended that the
16 parking spaces for the center teachers and
17 staff be assigned or otherwise identified. I
18 note that the requirement in Zoning
19 Regulations is, for all Districts, one space
20 for four teachers and they have four
21 employees. So, in essence, they need to have
22 two spaces, since we don't have factual spaces

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1 on our regulations.

2 The plan, we had originally asked
3 for a plan identifying the location of the
4 staff parking to be added to the public
5 record. We note that in their submittal, the
6 prehearing statement, they include a map
7 showing the location of the recreation space,
8 outdoor recreation space, which we think would
9 be good for reference, to make sure that the
10 location that is proposed is the one that this
11 recreation space is located outside the
12 building.

13 And for the purposes of the Zoning
14 Administration, we suggested that the child
15 development center before and after school
16 program that's licensed by the Department of
17 Health be incorporated into this application.
18 We also noted that the current number of
19 school staff exceeds the amount, the 40
20 faculty and staff allowed under Order No.
21 14681.

22 Essentially, what we're saying is

1 we just found that there were a couple of
2 inconsistencies with regard to the uses on-
3 site and the Zoning Regulations and we wanted
4 to encourage that those inconsistencies be
5 resolved, so that the property is consistent
6 with the regulations going forward.

7 Of course, we note in section
8 3104.3 that the -- that in the case of a use
9 of the established -- permitted or lawfully
10 established in a matter-of-right of which the
11 Zoning Regulations now require a special
12 exception or by definition becomes a special
13 exception use, any extension or enlargement of
14 the use shall require a special exception
15 approved by the Board.

16 I think there are a number of ways
17 this could be handled. We're just suggesting
18 that these consistencies should probably be
19 addressed at some point by the applicant.
20 That concludes the Office of Planning's report
21 and we're available to answer questions.

22 COMMISSIONER JEFFRIES: Madam

1 Chair?

2 CHAIRPERSON MILLER: Yes, go
3 ahead.

4 COMMISSIONER JEFFRIES: But
5 obviously, you are not expected us to do
6 anything today about these inconsistencies.

7 MR. JACKSON: No.

8 COMMISSIONER JEFFRIES: I mean,
9 it's just a statement. Okay.

10 CHAIRPERSON MILLER: I believe the
11 applicant said earlier that they had
12 identified one, were going to identify one
13 space for staff.

14 MR. NEILL: Right.

15 CHAIRPERSON MILLER: With signage
16 that it's staff parking or something like
17 that. Are you suggesting that they need to
18 identify two spaces that way?

19 MR. JACKSON: Well, again, looking
20 at the Zoning Regulations, it requires one
21 space per each four teachers and other
22 employees. They have five employees, teachers

1 and employees, so that one space does not
2 appear to meet the Zoning Requirement.

3 CHAIRPERSON MILLER: Okay. As I
4 understand it, they have more than ample
5 parking.

6 MR. JACKSON: Right.

7 CHAIRPERSON MILLER: Do they need
8 to -- do the Zoning Regs require them to
9 identify specific spaces?

10 MR. JACKSON: Well, no, no. This
11 is just a suggestion that the --

12 CHAIRPERSON MILLER: Oh, just a
13 suggestion.

14 MR. JACKSON: -- places be marked.

15 CHAIRPERSON MILLER: Okay.

16 MR. JACKSON: They have got more
17 than enough spaces, so just mark them.

18 CHAIRPERSON MILLER: Okay. What
19 were you reading from that indicated that DDOT
20 found no problems?

21 MR. JACKSON: In the --

22 CHAIRPERSON MILLER: Oh, it's

1 Exhibit 28?

2 MR. JACKSON: Yes, that's the --

3 CHAIRPERSON MILLER: Okay.

4 MR. JACKSON: There were two
5 agencies that commented. Of course, one was
6 the Department of Health, the other is DDOT.
7 And I was reading the last sentence in their
8 memo, dated April 26th.

9 CHAIRPERSON MILLER: Exhibit 26 is
10 that one then?

11 MR. JACKSON: Well, I --

12 CHAIRPERSON MILLER: Is that
13 right?

14 MR. JACKSON: -- just have a --
15 oh, yes, Exhibit 26.

16 CHAIRPERSON MILLER: Okay. Okay.
17 Thank you.

18 MR. JACKSON: I just read the last
19 sentence.

20 CHAIRPERSON MILLER: Okay. And
21 then finally with respect to the issue about
22 the existing day care center or child

1 development center and then this new one,
2 we're looking at this new one separately, but
3 I believe in your OP report, you had thought
4 perhaps we should try to combine them. And
5 are you feeling different now in that, I
6 think, I heard the applicant say that DOH said
7 it should be looked at separately now. Is
8 that correct?

9 MR. JACKSON: Well, I think the
10 more appropriate party to talk to, because the
11 concern expressed, that I heard expressed by
12 the applicant, was about the Certificate of
13 Occupancy, not the licensing of the child care
14 center, so I think the more -- in that case,
15 there are problems that should have been
16 addressed with the permanent office of DCRA,
17 not the Department of Health.

18 But irregardless of that, we just
19 wanted to highlight that the existing uses on-
20 site have a couple of inconsistencies with
21 regard to the Zoning Regulations, in that one
22 exceeds the number that was allowed under the

1 original special exception and the other is it
2 doesn't seem to be addressed in any of the
3 previous orders. And that only came to light,
4 of course, when I asked about any other child
5 care center within 1,000 feet.

6 So however the Board decides to
7 address that is, obviously, appropriate. I
8 just wanted to highlight those issues that if
9 properly addressed, could bring the entire
10 site within accordance with the Zoning
11 Regulations.

12 CHAIRPERSON MILLER: So the aspect
13 that I think you are addressing with respect
14 to noncompliance goes to the school. Is that
15 correct? The school's order which limited the
16 number of faculty and staff, correct?

17 MR. JACKSON: Right. And the fact
18 that the orders don't mention the child
19 development center.

20 CHAIRPERSON MILLER: Right. Okay.
21 And they are not before us, at this point,
22 though. Is that correct?

1 MR. JACKSON: No.

2 CHAIRPERSON MILLER: Okay. Okay.

3 Any other questions? Any cross examination?

4 MS. PRINCE: No cross examination.

5 CHAIRPERSON MILLER: Oh, I have
6 one other question. The recreation area that
7 you were referring to, were you suggesting
8 that it be specifically referenced that they
9 may use Turtle Park or were you referencing
10 where the recreation area is on-site?

11 MR. JACKSON: Well, their
12 prehearing statement included a map in the
13 back that indicated where the recreation area
14 was going to be. I think it was referred to
15 as being in front. I thought it was in back,
16 but I guess it would be next to the door
17 between the building and the parking lot. I
18 was suggesting that for going -- this is a
19 clear enough indication of where the lot --
20 the location would be, so that we can be so
21 sure that in the future it won't be adjacent
22 to a street frontage.

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1 It won't be crossing -- children
2 won't have to cross any travel aisles to get
3 to the recreation space. They won't be
4 traveling along the street. So that we, you
5 know, going forward where the location will
6 be, since the need -- the development of the
7 recreation site will probably be sometime in
8 the future, assumingly after the final order
9 is issued for this application. So it would
10 just be clear going forward where the site
11 would be.

12 COMMISSIONER JEFFRIES: Where the
13 playground will be?

14 MR. JACKSON: Playground. I'm
15 sorry, playground would be, yes.

16 CHAIRPERSON MILLER: Any other
17 questions? Does the applicant have any cross
18 examination for the Office of Planning?

19 MS. PRINCE: No cross examination.

20 CHAIRPERSON MILLER: Do you have a
21 response to specifying where the playground or
22 recreation area will be?

1 MS. PRINCE: I believe we already
2 specified that.

3 MR. NEILL: Yes, we have.

4 MS. PRINCE: Right. It's behind
5 the building. It was already specified in the
6 prehearing statement. This is a 12 acre
7 campus.

8 CHAIRPERSON MILLER: I guess my
9 question goes to, I'm not sure if this was
10 what Mr. Jackson was getting at, you said
11 where it is going to be. What about being
12 locked into where that's going to be within
13 the order? Is that a problem?

14 MS. PRINCE: I think that's fine.

15 CHAIRPERSON MILLER: Okay.

16 MS. PRINCE: That's absolutely
17 fine.

18 CHAIRPERSON MILLER: How about
19 hours of operation and number of children? I
20 know you represented in the prehearing
21 statement.

22 MS. PRINCE: Correct.

1 CHAIRPERSON MILLER: Is that
2 something that is going to stay the same if we
3 were to reference it in an order?

4 MS. PRINCE: Right. Those are --
5 you can use the hours of operation that were
6 indicated in the prehearing statement, I
7 believe, 7:30 to 6:00, 16 children.

8 CHAIRPERSON MILLER: Okay.

9 MS. PRINCE: 5 staff.

10 CHAIRPERSON MILLER: And how about
11 the issue of one of your spaces is going to be
12 identified for staff parking. Is that right?

13 MS. PRINCE: And we believe the
14 requirement is one space, but if you would
15 like us to mark two spaces, we're happy to
16 mark two. We have an incredible over supply
17 of parking as you see from the plan.

18 CHAIRPERSON MILLER: I guess my
19 understanding is that there be a certain
20 number provided, not that they would be
21 marked.

22 MS. PRINCE: Um-hum.

1 CHAIRPERSON MILLER: But you have
2 to have two parking spaces for staff. Do you
3 have a different understanding?

4 MS. PRINCE: The requirement for
5 five staff at 1:4 is one space, because we
6 round and in that case, you would round down,
7 so there is one requirement. We have one
8 space designated, but we have such an over
9 supply of parking, that if you would prefer us
10 to designate two, we're happy to do that.

11 CHAIRPERSON MILLER: Okay. This
12 is my question though. I think there is a
13 difference between designating and having the
14 spaces.

15 MS. PRINCE: Um-hum.

16 CHAIRPERSON MILLER: Because it
17 seems to me that I understand the regulations,
18 but I might be missing something, that you
19 have to have two spaces for these staff
20 people.

21 MS. PRINCE: We're happy to
22 designate two spaces.

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1 CHAIRPERSON MILLER: But I'm
2 saying, I don't know that you have to
3 designate.

4 MR. NEILL: We have the spaces as
5 well.

6 CHAIRPERSON MILLER: As long as
7 you have them.

8 MS. PRINCE: Yes, we have the
9 spaces.

10 CHAIRPERSON MILLER: But you will
11 designate them as well?

12 MS. PRINCE: However the Board
13 would like us to handle it.

14 MR. NEILL: Yes.

15 MS. PRINCE: I mean, we can mark
16 them. We don't have -- you know, whatever.
17 We have the fortunate situation of having an
18 over supply of parking, so we'll do whatever
19 the Board would like.

20 CHAIRPERSON MILLER: Okay. And
21 what do you see as the demand for the parking
22 for the faculty, for these five faculty

1 members? Is there a lot of -- I mean, based
2 on your history, would they be driving to
3 school?

4 MR. NEILL: We have faculty who
5 drive to school and who take the subway to
6 school and some who walk to school.

7 CHAIRPERSON MILLER: Okay.

8 MR. NEILL: So I think the two
9 spaces would be more than adequate.

10 CHAIRPERSON MILLER: Okay. Well,
11 I'm sure two spaces would be. And if you
12 designated two spaces, you would still have
13 plenty of spaces left for everybody else, for
14 visitors and everybody else?

15 MR. NEILL: Yes.

16 MS. PRINCE: Absolutely.

17 CHAIRPERSON MILLER: Okay.

18 MR. NEILL: Plenty.

19 CHAIRPERSON MILLER: Any other
20 questions? Okay. I'm going to ask again if
21 anybody is here from the ANC in this case?
22 Okay. Is anybody here to testify either in

1 support or opposition to this case? This is
2 Case 17602. Okay. Not hearing from anybody,
3 any final questions? Okay. Then we are ready
4 for closing remarks.

5 MS. PRINCE: We believe that we
6 have met the burden of proof in this case and
7 we would greatly appreciate the Board's prompt
8 action in approving the application, so that
9 we can get the center opened in time for the
10 start of school in late August. Thank you for
11 your time this morning.

12 MR. NEILL: Thank you.

13 CHAIRPERSON MILLER: Thank you. I
14 think that we can deliberate on this case, at
15 this time, and perhaps we should do this under
16 motion and then we can discuss the conditions.
17 Okay. Then I would move to grant the
18 Application No. 17602 of National Presbyterian
19 Church, for a special exception to establish
20 a child development center, 16 children, ages
21 infant to 4 years and 5 staff, on the first
22 floor of the multi-purpose building at

1 premises 4101 Nebraska Avenue, N.W. Do I have
2 a second?

3 COMMISSIONER JEFFRIES: Second.

4 CHAIRPERSON MILLER: Okay. Then
5 I'm just going to pull 205 and we can go
6 through 205, which is the section for a
7 special exception for child development
8 center. And I think, basically, from what we
9 have in the record, that they do meet each of
10 these, but we can go through them.

11 We have no opposition and we have
12 the support of Office of Planning and the ANC
13 and Office of Planning just had some
14 recommendations. Okay. 205.1 "Use of a child
15 development center shall be permitted as a
16 special exception in an R-1 District if
17 approved by the BZA, subject to the following
18 provisions of this section."

19 The first is that "They should be
20 capable of meeting all applicable code and
21 licensing requirements." They have indicated
22 that they are. We have also in the record

1 support by the Department of Health and the
2 Office of Planning. "The center shall be
3 located and designed to create no
4 objectionable traffic conditions and no unsafe
5 condition for picking up and dropping off
6 children."

7 We have the support of the
8 Department of Transportation on this. I
9 believe that's Exhibit 28. Hardly anything is
10 changing. It's mainly faculty and staff who
11 already use the school and drop-off and pick-
12 up are internal, so I don't think we have any
13 problems here.

14 205.4, "The center shall provide
15 sufficient off-street parking spaces to meet
16 the reasonable needs of teachers and employees
17 and visitors." They have showed that they
18 have more than ample parking to cover all the
19 needs. That's in the record, I'm not going to
20 go through all of that, except they do say
21 they have a surplus of 52 spaces.

22 205.5, "The center, including any

1 outdoor play space provided, shall be located
2 and designed so there will be no objectionable
3 impacts on adjacent or nearby properties due
4 to noise or activity or visual or other
5 objectionable conditions." Again, they are
6 using the play area within the campus and it's
7 not located near a residence. So there is no
8 issue of an adverse impact on the residence.

9 205.6, "The Board may require
10 special treatment in the way of design,
11 screening or buildings, plantings and parking
12 areas, signs or other requirement as it shall
13 deem necessary to protect adjacent and nearby
14 properties." OP doesn't recommend any and I
15 don't think that we need any. Again, there's
16 hardly any change going on except providing
17 this service to faculty and staff primarily
18 and neighbors.

19 Okay. "Any off-site play area
20 shall be located so as not to result in
21 endangerment to the individuals in attendance
22 at the center in traveling between the play

1 area and the center itself." Okay. They have
2 proposed, basically, using a site which we can
3 identify on-campus. They did say that they
4 may take the children to Turtle Park, but when
5 they do so, they are going to be using the
6 sidewalks and they are going to be well-
7 supervised. So I don't think we have a
8 problem there.

9 "The Board may approve more than
10 one child/elderly development center in a
11 square or within 1,000 feet of another child
12 development center only when the Board finds
13 that the cumulative effect of these facilities
14 will not have an adverse impact on the
15 neighborhood due to traffic, noise, operations
16 or other similar factors."

17 We discussed that issue here and I
18 think got into the record a copy of the order
19 for a pre-existing child development center
20 which is on the campus which services a
21 different age group. And there is no evidence
22 that there would be any, again, adverse

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1 impacts on the neighborhood due to traffic,
2 noise or whatever. We're only adding 16
3 children on campus. Very few additional cars
4 are going to be coming in or anything like
5 that. So we have covered that.

6 Okay. I think what we should do
7 now is just discuss what conditions we might
8 want to attach to this. Normally, we do hours
9 of operation and number of children to begin
10 with. So I suggest that we start there. That
11 would be -- and ages limited to 16 children,
12 ages, as it was advertised, infant to 4 years.
13 Is everybody on board with that? Okay.

14 The hours of operation, as
15 presented by the applicant, Monday through
16 Friday, 7:30 a.m. to 6:00 p.m. Okay. Office
17 of Planning talked about designating two spots
18 for staff parking and the applicant agreed to
19 that. Do you have a comment on that?

20 BOARD MEMBER MANN: Yes.
21 Personally, I don't think that can -- that
22 it's necessary to condition that. The

1 applicant entered into the record the location
2 of where one of those staff parking spaces
3 would be, but I don't see that we need to
4 condition it, personally, although I wouldn't
5 be vehemently opposed to it if you would like
6 it as a condition.

7 VICE CHAIR ETHERLY: I would tend
8 to agree, Madam Chair. I'll also note just as
9 a little bit of a housekeeping. Should we
10 decide to provide the condition for the two
11 spaces, we will need an additional submittal
12 from the applicant just indicating where the
13 second space would be. But I would tend to
14 agree with my colleague, Mr. Mann. I'm not
15 overly animated about the need to condition
16 it. The applicant has indicated that they
17 would provide the second space and I think
18 that would be sufficient. Again, just at the
19 submittal indicating where the second space
20 would be.

21 CHAIRPERSON MILLER: Okay. I
22 mean, this is really -- yes, it could go

1 either way. So are you suggesting, Mr.
2 Etherly, then instead of making it a
3 condition, we just make reference in the order
4 that they will be providing parking?

5 VICE CHAIR ETHERLY: Yes.

6 CHAIRPERSON MILLER: For two
7 staff?

8 VICE CHAIR ETHERLY: Yes.

9 CHAIRPERSON MILLER: Okay. And
10 not requiring it to be designated.

11 VICE CHAIR ETHERLY: That is
12 correct, Madam Chair.

13 CHAIRPERSON MILLER: Okay. Do we
14 have any other comments on that? Okay. So if
15 this does become a summary order, we will just
16 kind of like -- that will just be rolled into
17 a part of it. Okay. Do we have some other
18 conditions? Oh, the ANC requested that two
19 slots for the child development center be
20 designated for the ANC-3E Members. We
21 explored that. And that isn't what the
22 applicant proposed to do, but they do propose

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1 to make ANC residents a priority after school
2 and church -- faculty and staff and school and
3 church families.

4 COMMISSIONER JEFFRIES: Are we
5 proposing like a tiered system?

6 CHAIRPERSON MILLER: Right.

7 COMMISSIONER JEFFRIES: Order
8 preference.

9 CHAIRPERSON MILLER: So that
10 sounded acceptable to me. I mean, I don't see
11 forcing them of who they are going to take in.
12 So again, I guess we have the choice of
13 putting that representation in the body of the
14 order or making it a condition. I think we
15 can put it as a representation of how they
16 will proceed. Okay.

17 MS. BAILEY: Madam Chair, did you
18 mention staff, 5 staff?

19 CHAIRPERSON MILLER: No. Thank
20 you very much, Ms. Bailey. Okay. That is
21 something we usually do put in as a condition
22 the number of faculty and staff, well, staff.

1 So that would be 5 staff, as advertised.
2 Okay. Anything else that we discussed?
3 Sometimes we do drop-off and pick-up, but I
4 don't think we need that in this case, since
5 they are already coming to the school most of
6 the faculty and staff, etcetera.

7 Okay. So I think that covers it.
8 Does anybody have any other discussion on
9 this? Okay. Then I think we could call the
10 vote then.

11 All those in favor say aye.

12 ALL: Aye.

13 CHAIRPERSON MILLER: All those
14 opposed? All those abstaining? Okay. Ms.
15 Bailey?

16 MS. BAILEY: The Board has voted
17 5-0-0 to grant the application. The motion
18 was made by Mrs. Miller, seconded by Mr.
19 Jeffries, Mr. Mann, Mr. Loud and Mr. Etherly
20 support the motion and the conditions are:
21 The application is approved for 16 children,
22 ages infant to 4 years-old; the hours of

1 operation are 7:30 a.m. to 6:00 p.m., Monday
2 through Friday; and 5 staff shall be employed
3 at the facility.

4 CHAIRPERSON MILLER: Thank you. I
5 did for get one thing, but let me say this.
6 I think that we can -- I would propose that we
7 waive our rules requiring findings of fact and
8 full conclusions of law and make this a
9 summary order. In that summary order we would
10 though represent about the tiered system and
11 we would represent about the two parking
12 spaces that will be designated for faculty and
13 staff.

14 The thing that I forgot to mention
15 that just occurred to me, and we can just
16 decide if we want to include this in the
17 representation as well, we were talking about
18 representing where they would be playing, the
19 playground. Is there a consensus on that just
20 to add that into the order? Okay. Not as a
21 condition, but in the representation section.
22 Okay. Then that's what it will be, Ms.

1 Bailey, a summary with those things. Okay.

2 Thank you very much.

3 MR. NEILL: Thank you very much.

4 MS. BAILEY: Madam Chair, are you
5 ready for the next case?

6 CHAIRPERSON MILLER: Yes, thank
7 you.

8 MS. BAILEY: All right.
9 Application No. 17604 of NJA Associates LLC,
10 pursuant to 11 DCMR 3104.1, for a special
11 exception for a waiver of the rear yard
12 requirement under subsection 774.2, to allow
13 the construction of an office building. The
14 property is Zoned C-3-C and it is located at
15 1111 New Jersey Avenue, S.E., Square 743-
16 North, Lot 78.

17 CHAIRPERSON MILLER: Thank you.
18 Would you identify yourself for the record,
19 please?

20 MR. GLASGOW: Sure. For the
21 record, my name is Norman M. Glasgow, Jr. of
22 the Law Firm of Holland and Knight here on

1 behalf of the applicant in this case. Here
2 with me are Mr. Bob Donohue, Jr. seated to my
3 immediate right, Mr. Steven Sher is going to
4 be our expert land planning witness and Siti
5 Rahman of the architectural firm of WDG, those
6 are the witnesses that we will have today.

7 CHAIRPERSON MILLER: Okay. Thank
8 you. And is there anybody here from the ANC?
9 Okay. I believe we will have one request for
10 party status in this case. Mr. Maxwell
11 Washington, is he here?

12 MR. WASHINGTON: Yes.

13 CHAIRPERSON MILLER: Would you
14 like to come forward, at this time?

15 MR. WASHINGTON: Yes.

16 CHAIRPERSON MILLER: Mr.
17 Washington, Mr. Washington?

18 MR. WASHINGTON: Yes.

19 CHAIRPERSON MILLER: As an
20 applicant for party status, that's the first
21 issue we would deal with to determine whether
22 to grant you party status. I'm not sure if

1 you know the difference between party status
2 and just testifying in a case as a person.

3 MR. WASHINGTON: No, I don't.

4 CHAIRPERSON MILLER: No, right.
5 Our rules aren't very clear about that, our
6 notices aren't and most people don't, so
7 that's what we need to decide first, because
8 if you become a party, you have this full
9 participation in the case with cross
10 examination and argument, just like the
11 lawyers make on behalf of the applicant.

12 As a person you have an
13 opportunity to testify, basically, as to your
14 views on the case. And if you choose to go
15 forward with the application for party status,
16 then we have to determine whether or not you
17 meet the requirements for that.

18 MR. WASHINGTON: No, I don't need
19 to do that.

20 CHAIRPERSON MILLER: Okay. So
21 you're just going to want to testify in the
22 case?

1 MR. WASHINGTON: Well, I mainly
2 came down to get some information, which I
3 think I have it now.

4 COMMISSIONER JEFFRIES: Excuse me,
5 can you get closer into the mike, please?
6 Thank you.

7 MR. WASHINGTON: I came down for
8 some clarification, which I now have and I am
9 a proponent. I support the application.

10 CHAIRPERSON MILLER: Okay.

11 MR. WASHINGTON: And I don't
12 desire to be a party status or anything like
13 that.

14 CHAIRPERSON MILLER: Okay. So
15 what we are going to do then, I think, is it
16 sounds like you are withdrawing your
17 application for party status.

18 MR. WASHINGTON: Yes.

19 CHAIRPERSON MILLER: And then, if
20 you would like, later on in the proceeding we
21 will call you, if you want to testify in
22 support.

1 MR. WASHINGTON: No, I would not.

2 CHAIRPERSON MILLER: You will not?

3 MR. WASHINGTON: No.

4 CHAIRPERSON MILLER: You just want
5 to let us know that you're a proponent?

6 MR. WASHINGTON: Yes.

7 CHAIRPERSON MILLER: Okay. That's
8 fine. Then you can go back, because only the
9 parties are going to be at the table and the
10 witnesses.

11 MR. WASHINGTON: Okay.

12 CHAIRPERSON MILLER: Thank you
13 very much. Okay. Mr. Glasgow, then I believe
14 that's the only application for party status
15 and you can go forward.

16 MR. GLASGOW: Okay. That's
17 correct. Thank you. One thing I wanted to
18 do, I wanted to confirm that the Board Members
19 do have a copy of our Statement of Applicant
20 that was filed two weeks prior to the hearing.
21 And within that, we have submitted how it is
22 that we meet the special exception criteria.

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1 We go through all of the
2 subsections there and give discussion as to
3 how it is that we meet the requirements for
4 the waiver request, including the proposed
5 building will be sufficiently removed from
6 adjacent structures. We go through how far we
7 are from different structures that we
8 confront, that the site lines and angle lines
9 penetration into habitable rooms are
10 sufficiently separated.

11 The apartment building that we
12 confront across the alley, the rooms that face
13 our direction are like 100 feet away. There
14 is a large courtyard that was designed into
15 that building and I represented the applicant
16 on that particular case, that there was a big
17 courtyard put in the back so that there would
18 be no window that confronted anybody else that
19 developed in the area around.

20 The project will provide adequate
21 off-street service functions. We meet our
22 requirements with respect to loading berths.

1 We have more than enough parking spaces. I
2 think there are about 68 parking spaces
3 required. We provide 114. And we provide the
4 two 12 x 30 foot loading berths and the
5 service delivery space. And the application
6 has been referred to the appropriate District
7 of Columbia agencies. We have the support of
8 the Office of Planning and then we -- and that
9 is all at pages 5 through 10 of the
10 application.

11 The only thing that we -- and we
12 also went to the Capitol Hill Restoration
13 Society. I don't know whether the Board
14 Members had gotten the email from that, but
15 the Capitol Hill Restoration Society was in
16 support of the application. Unfortunately,
17 the ANC did not support the application. We
18 believe they were looking at this case like it
19 was a Planned Unit Development with an
20 amenities package associated to it.

21 We tried to explain this is a
22 special exception, but we were not successful

1 in our explanation and they voted to deny the
2 application. I think when you read their
3 report, it comes through at the beginning and
4 the end of the report that, you know, where
5 are the community amenities and those that
6 were there tried to explain that there is no
7 community amenities package with a rear yard
8 waiver. So that is how that ended out.

9 But if there are no preliminary
10 questions, we are prepared to proceed with the
11 testimony of the witnesses or answer any
12 questions that the Board may have on this
13 case.

14 CHAIRPERSON MILLER: I don't think
15 we have an email from the Capitol Hill
16 Restoration Society. Do Board Members see
17 that?

18 MR. GLASGOW: Can you provide that
19 for the record? Jeff Johnson, who is also
20 here from Holland and Knight. I have a copy
21 of that and we did have the opportunity to
22 meet with Pastor Washington this morning as he

1 indicated in his testimony and he is in
2 support of the application.

3 CHAIRPERSON MILLER: Who was the
4 email to? Was it to you or is it to the
5 Board? The one with respect to Capitol Hill?
6 Oh, okay. Thank you. It's coming in.

7 MR. GLASGOW: Yes, it's coming in.

8 CHAIRPERSON MILLER: Mr. Glasgow,
9 I have one question about a statement that is
10 made in Exhibit No. 27, which is, I think,
11 your prehearing statement, which we all have.
12 And I'm not sure whether I'm reading it out of
13 context or what, but it says at the bottom of
14 page 9, last sentence, well, next to last
15 sentence, it says "If required to comply with
16 the rear yard requirement, the applicant would
17 simply add an additional story to the building
18 to recapture the density that would be lost by
19 pulling the rear wall away from the alley.
20 The FAR of the new building will be virtually
21 the same regardless of its compliance with the
22 rear yard requirement of section 774."

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1 I guess my question is I thought
2 that you had gotten all the height that you
3 could as a matter-of-right.

4 MR. GLASGOW: Yes.

5 CHAIRPERSON MILLER: So how could
6 you add another story?

7 MR. GLASGOW: We would reduce the
8 floor to slab on the ground floor, that site,
9 the first floor slab. Siti, do you want to
10 answer, give the height of that first floor
11 site? You need to push the button.

12 MR. RAHMAN: Right now, currently
13 the floor to slab height on the ground floor
14 which is on this whole thing here is 16 foot
15 6 inches, floor to floor.

16 COMMISSIONER JEFFRIES: I'm sorry,
17 I didn't hear that.

18 MR. GLASGOW: 16 feet 6.

19 COMMISSIONER JEFFRIES: Oh, oh,
20 okay.

21 MR. RAHMAN: 16 feet 6 inches
22 floor to floor.

1 MR. GLASGOW: So we have 16 feet 6
2 there and then you take a few inches out of
3 each floor and you come up with -- and you put
4 an extra story in the building.

5 COMMISSIONER JEFFRIES: And so how
6 much would you drop the ground floor?

7 MR. RAHMAN: Well, if we have 12
8 story, the ground floor would drop to about 12
9 feet, a bit more than 12 feet, but --

10 COURT REPORTER: Could you state
11 your name for the record, please?

12 MR. RAHMAN: My name is Siti Abdul
13 Rahman. I'm with WDG Architecture.

14 MR. GLASGOW: So we take about 4
15 to 5 feet out of the first floor, because of
16 the high ceiling heights that we have there.

17 COMMISSIONER JEFFRIES: Right.

18 MR. GLASGOW: And then take a few
19 inches out of each floor above and create an
20 additional story.

21 COMMISSIONER JEFFRIES: I don't
22 know whether 12 feet ground floor is great,

1 but that's not part of what we're looking at
2 here.

3 CHAIRPERSON MILLER: So what would
4 you be adding? So you would get more FAR by
5 doing that?

6 MR. GLASGOW: Yes, what we do is
7 the FAR that we would lose at the back of the
8 building, we would recapture by narrowing the
9 floor, the ceiling slabs in each floor of the
10 building by varying degrees and then just
11 shoving another floor into the building.

12 COMMISSIONER JEFFRIES: But that
13 would be inferior.

14 MR. GLASGOW: Yes, it would.
15 That's why we're here.

16 COMMISSIONER JEFFRIES: Yes,
17 that's the point they're making here that, you
18 know --

19 MR. GLASGOW: Right.

20 COMMISSIONER JEFFRIES: Because I
21 mean, a ground floor, 12 foot ground floor in
22 that area, to me, would be almost offensive.

1 Anyway --

2 MR. GLASGOW: Commissioner, you
3 put your hand -- that's why we're here,
4 because we think that we don't adversely
5 impact anybody and the FAR is the same either
6 way and you come up with a superior project
7 rather than an inferior project.

8 CHAIRPERSON MILLER: And that
9 would then hurt the possibility of retail on
10 that ground floor, correct?

11 MR. GLASGOW: Yes.

12 CHAIRPERSON MILLER: Okay. Thank
13 you. Any other questions before they proceed?
14 Okay. Go ahead. Thank you very much.

15 MR. GLASGOW: At this point, we
16 want to know how detailed a presentation do
17 the Board Members want or desire, at this
18 point? We can have Mr. Sher proceed and
19 discuss the burden of proof and how we meet
20 it. We can go through as much or as little as
21 the Board Members desire.

22 CHAIRPERSON MILLER: Oh, I don't

1 think we need a huge presentation. I think
2 you could go through the burden of proof and
3 then use the graphics to highlight what's
4 done.

5 MR. GLASGOW: All right. Mr.
6 Sher?

7 CHAIRPERSON MILLER: Thank you.

8 MR. SHER: Good morning, Madam
9 Chair and Members of the Board. For the
10 record, my name is Steven E. Sher, the
11 Director of Zoning and Land Use Services with
12 the Law Firm of Holland and Knight and
13 unaccustomed to public speaking, I'll have to
14 think of what to do next.

15 What is before the Board this
16 morning is an application for a special
17 exception. It is under section 774.2 through
18 774.6 of the Regulations and it allows the
19 Board to waive or reduce the rear yard
20 requirement in, among other zones, a C-3-C
21 District. The normal minimum required rear
22 yard is based on the height of 2.5 inches per

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1 foot of height measured from the mean finished
2 grade at the middle of the rear of the
3 structure to the high point of the roof.

4 In this case, the rear of the
5 building is only 124 feet, because the grade
6 changes and the rear yard required would --
7 based on that height is 25 feet 10 inches. In
8 a C-3-C District, the rear yard need not be
9 provided below a plane 20 feet above that mean
10 finished grade at the middle. So what we are
11 seeking here is relief above the 20 foot plane
12 for a distance of 18 feet 10 inches, because
13 we are also allowed to measure the rear yard
14 to the center line of the alley.

15 The alley is 14 feet wide, so from
16 the center line to our property line is 7
17 feet. The remaining 18 feet 10 inches above
18 the 20 foot plane is what we are seeking a
19 waiver from the Board on.

20 CHAIRPERSON MILLER: Can you
21 explain this or the architect? I understand
22 that you count into the alley or something, so

1 you may be building to the building lot, so
2 there is no what we would normally think of as
3 the rear yard, but the 7 feet goes into the
4 alley? Is that correct?

5 MR. SHER: Yes, in a C-3-C
6 District, not in all Commercial Districts, but
7 in this particular zone where a lot abuts an
8 alley at the rear, the depth of the rear yard
9 may be measured starting at the center line of
10 the alley rather than at the property line.
11 So since the alley is 14 feet wide, we have 7
12 feet from the center line of the alley to the
13 property line and that counts as rear yard,
14 even though it's in the alley and not on our
15 property.

16 The remaining 18 feet 10 inches to
17 get to the full 25 feet 10 is what we are
18 seeking a waiver from the Board for. But also
19 in this zone, you do not have to provide a
20 rear yard below a plane 20 feet above the mean
21 finished grade at the middle at the rear. So,
22 in effect, the first floor of this building

1 can occupy a 100 percent of the lot
2 regardless, whether we were here for this
3 waiver or not here for this waiver.

4 Above the 20 feet, we would have
5 to set back 18 feet 10 inches from the west
6 property line normally and that's what we're
7 seeking a waiver from the Board on. And on
8 this plan it is -- it would be this area in
9 here above the 20 feet foot plane where the
10 rear yard would be provided. Measured from
11 the center line of the alley to that higher
12 extension of the building.

13 Okay. All right. Standards under
14 the regulations basically fall into two and a
15 half categories. The first category is the
16 site lines and distances from windows within
17 this building compared to the buildings that
18 are at the rear. As you can see, New Jersey
19 Avenue, this is an interior lot. It doesn't
20 front on either L Street or M Street. It only
21 fronts on New Jersey Avenue.

22 New Jersey Avenue is one of those

1 diagonal streets that crosses the grid not at
2 a 90 degree angle. New Jersey Avenue is not
3 quite as skew as some of the other major
4 avenues are, but you can see here is M Street
5 running in the east/west direction here and
6 1st Street running in the north/south
7 direction here. New Jersey Avenue runs on the
8 diagonal.

9 So the rear wall of this building
10 does not directly face perpendicular or
11 parallel to the walls of the building that are
12 behind it. There are two buildings behind it,
13 both of which are under construction and both
14 of which are planned and will be in the
15 configuration as shown on this drawing. The
16 building at 100 M Street is an office
17 building. The building at 1100 1st Street is
18 an apartment house. Both uses permitted as a
19 matter-of-right.

20 Though the 100 M Street office
21 building had to get the Zoning Commission's
22 approval, because it fronts on M Street under

1 the Capitol Gateway Overlay, that approval was
2 obtained and the building is going forward.

3 With respect to the apartment
4 house, as Mr. Glasgow indicated, there are no,
5 let me go back a quick second, habitable rooms
6 in an office building. Habitable rooms are
7 only for residential use. So we don't have an
8 issue with habitable rooms between this
9 building and this building. There are
10 habitable rooms, of course, in an apartment
11 house, but as you can see from the design of
12 the apartment house, there is a wing along 1st
13 Street and a wing along L Street.

14 The closest point where our
15 proposed office building gets to those wings
16 is about 100 feet away. This low-rise portion
17 in the light gray on the first floor is not
18 habitable rooms. That sort of supports
19 functions for the office building and the
20 units are in the, I'll loosely call it, two
21 wings of the tower, the L-shaped wings that
22 are closest to 1st Street and L Street. So

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1 we've got 100 feet where those habitable rooms
2 are further away from our rear -- from the
3 rear of our building.

4 On the office building, at the
5 closest point, we are directly across the
6 alley here at 14 feet, but again because the
7 property lines diverge, as you get further to
8 the south, at this point we are about 30 feet
9 from the edge of our building to the wall of
10 this office building. There is actually an
11 intervening sort of wedged shaped lot here
12 that's currently vacant and is likely to be so
13 small that it's not likely to ever be
14 developed, certainly with anything of any
15 size.

16 You couldn't put an elevator in
17 there. You couldn't get in any parking at it.
18 If anything, you might put a one story
19 building in there for some kind of retail use,
20 but I don't even know if that's feasible given
21 the way that lot tapers at the back.

22 So the distances here between the

1 major wall of the proposed office building and
2 the major wall of the building at 100 -- M
3 Street again, start at 14 feet and get down to
4 as wide as 30 feet at the south end of our
5 building. That is not an atypical condition
6 for office buildings, windows across alleys
7 anywhere in the downtown area.

8 Frequently, alleys are 15 feet
9 wide. Some alleys are as narrow as 10 feet
10 wide and you generally have office building
11 walls on one side and office building walls on
12 the other side and you might be able to wave
13 to the guy across the way, but there isn't
14 generally perceived to be an adverse impact
15 because of that. So that explains the issues
16 of windows and light and air and privacy
17 between those buildings.

18 The other standard of the special
19 exception has to do with providing adequate
20 service facilities and I'll shift to the first
21 floor plan of the building. The parking
22 entrance is off of New Jersey Avenue, so not

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1 affected by whether we have a rear yard or not
2 at the rear of the building. The loading area
3 is at the north end of the building off the 14
4 foot alley.

5 Again, the first floor of the
6 building is allowed to go to the property
7 line. So whether we got a waiver on the
8 floors above it or not, this loading area
9 would essentially be in the same place. We
10 have angled or the architects have angled the
11 design of the two 30 foot loading berths, so
12 that one can enter from the south from M
13 Street, access the loading berths and then
14 upon exiting would go north to L Street.

15 So regardless of whether we had a
16 rear yard waiver or not, that would be the
17 condition for access to the loading berths.
18 We have the two 30 foot loading berths on the
19 120 foot service delivery space that are
20 required under the regulations. So granting
21 the rear yard waiver has no impact on any
22 requirement under the regs and the loading

1 scenario would essentially be the same.

2 Then the half point is that in
3 addition to those two, the Board must review
4 this to the Office of Planning and OP has
5 filed its report in support of the
6 application. So I think that is the sort of
7 simplest terms explanation of what we have
8 done, why we have done it and how we meet the
9 standards of the regulations.

10 CHAIRPERSON MILLER: Okay.
11 Looking at the graphics here, where is the
12 church? Is the church on here?

13 MR. SHER: The church is to the
14 north --

15 CHAIRPERSON MILLER: Okay.

16 MR. SHER: -- of our building on
17 this drawing. This is the church right here.
18 St. Matthew's Church.

19 CHAIRPERSON MILLER: So how much
20 space is between the church and your building?

21 MR. SHER: Well, our building is
22 built to our north property line. There is a

1 space where the church is actually set back
2 from its property, but it's on the church's
3 lot not on our lot. We're not required to
4 provide a side yard. We don't provide a side
5 yard. There is a space there. It's not a
6 very big space, but it is on the church's
7 property, not our's.

8 CHAIRPERSON MILLER: And I know
9 you're going for the rear yard.

10 MR. SHER: Right.

11 CHAIRPERSON MILLER: But are there
12 any issues though with respect to impact on
13 the church light and air?

14 MR. SHER: Well, the church south
15 facing wall and I think you can see that from
16 the photographs that were submitted with the
17 original application is basically a blank
18 brick wall with the exception of some windows
19 that enter onto a cellar. Those windows would
20 not be affected by granting the rear yard
21 waiver, because they are much further east of
22 the alley than where the rear yard would be if

1 we provided a rear yard.

2 So our building matter-of-right C-
3 3-C no side yards, don't have to provide them
4 and those windows, frankly, couldn't be
5 required windows for light and ventilation,
6 because they are just too close to the
7 property line and not there anyhow.

8 CHAIRPERSON MILLER: Okay. And
9 one other thing. I think Mr. Glasgow referred
10 to a courtyard. Which courtyard was he
11 referring to on that?

12 MR. SHER: He was referring to the
13 courtyard in the apartment building, which is
14 the sort of light gray and white area here.
15 Again, the L-shaped wings of the apartment
16 building are where the residential units are
17 located. This area is only at the ground
18 floor and provides the area over which there
19 is light and air as the building goes up.

20 CHAIRPERSON MILLER: Okay.

21 COMMISSIONER JEFFRIES: I have
22 one, Mr. Sher, and perhaps, Mr. Glasgow, can

1 respond. I'm looking at the letter, dated
2 April 26, from ANC-6D and while it's clear
3 from the letter that there's probably some
4 confusion about, you know, the difference
5 between a PUD application and a BZA
6 application, but the second paragraph does
7 talk about this concern about reduction of
8 light and sight, consequently, diminishing the
9 quality of life for people who live in the
10 proposed residential development on L and 1st
11 Street.

12 Can you point to me, what are they
13 referring to at L and 1st? Are they talking
14 about the L-shaped building there?

15 MR. SHER: Well, that -- this is
16 that building. This is L and this is 1st
17 here.

18 COMMISSIONER JEFFRIES: But that's
19 going to be a 130 foot building.

20 MR. SHER: It's a 130 foot
21 apartment house, permitted as a matter-of-
22 right under the C-3-C Receiving Zone

1 provisions, and there is a letter in the file
2 from the owner of that property in support of
3 this application.

4 COMMISSIONER JEFFRIES: Oh, okay.
5 Thank you.

6 MR. GLASGOW: That's in Attachment
7 D to the Statement of the Applicant. It's the
8 second letter there.

9 BOARD MEMBER MANN: Madam Chair,
10 that small wedge-shaped property on the west
11 side of the alley that, I think -- I don't
12 recall how many square feet it is, that's a
13 private ownership?

14 MR. SHER: Yes.

15 BOARD MEMBER MANN: All right.
16 And at its widest point it's how many feet?

17 MR. SHER: I don't think I know
18 that right off hand. Let me see if I can
19 figure that out.

20 BOARD MEMBER MANN: Well, I don't
21 need to know exactly how many feet it is.

22 MR. GLASGOW: I think it's about

1 25 feet. I'm using my recollection, because
2 I represented the owner of the office building
3 at 100 M Street and they had talked to that
4 owner, at some point in time, about acquiring
5 the property and it just didn't happen.

6 BOARD MEMBER MANN: And at its
7 northern edge it just --

8 MR. GLASGOW: It diminishes to
9 almost nothing.

10 BOARD MEMBER MANN: And that's
11 also Zone C-3-C?

12 MR. GLASGOW: Yes, it is.

13 MR. SHER: Yes, it is.

14 BOARD MEMBER MANN: So it could be
15 built as a matter-of-right to 6.5 FAR?

16 MR. SHER: Well, under the
17 Receiving Zone it actually could be built to
18 110 feet and 9 FAR if you wanted to build a
19 building that devoted 100 percent of the
20 building to core and stairs and elevators and
21 stuff, but just by scale looking at our site
22 plan and knowing that the alley is 14 feet

1 wide, I would guess that the property at the
2 front there probably gets between 20 and 25
3 feet wide and tapers down to just a couple of
4 feet at the very back.

5 BOARD MEMBER MANN: All right.

6 MR. SHER: To make a point.

7 BOARD MEMBER MANN: The Zoning
8 Regulations allow certain things to happen
9 there, but probably -- the Building
10 Regulations probably wouldn't.

11 MR. SHER: Yes.

12 BOARD MEMBER MANN: And the
13 practicalities of the situation wouldn't allow
14 much to be built there.

15 CHAIRPERSON MILLER: Any other
16 questions?

17 COMMISSIONER JEFFRIES: I just
18 want to -- these are 10 combined lots and so
19 it's now considered Lot 78?

20 MR. GLASGOW: Yes, subdivision has
21 been recorded.

22 COMMISSIONER JEFFRIES: Okay. Is

1 there anything in the file that actually
2 indicates that?

3 MR. GLASGOW: Yes, I think the
4 plat with the original application.

5 MR. SHER: At the multiple lots.
6 It doesn't have Lot 78 in it.

7 MR. GLASGOW: Let's see what we
8 have.

9 COMMISSIONER JEFFRIES: You know,
10 because we're looking from the Office of the
11 Surveyor that has the original lots.

12 MR. SHER: Yep.

13 MR. GLASGOW: Now, the subdivision
14 has been recorded. We're aware of that and it
15 is Lot 78 and Square N-743.

16 COMMISSIONER JEFFRIES: So, you
17 know, just get something for the --

18 MR. GLASGOW: We can submit a copy
19 of the plat for the record.

20 COMMISSIONER JEFFRIES: Yes.

21 MR. GLASGOW: But that is the
22 record lot number.

1 CHAIRPERSON MILLER: Okay. That
2 would be good if you would do that. Any other
3 questions? I just have one more. The ANC is
4 not here, right? Okay. So I just want to
5 follow up on one of their questions. I
6 understand that -- or statements. Mr.
7 Glasgow, that you read this as their -- and
8 you were at the ANC meeting, so you believe
9 that they were approaching this as a PUD,
10 which they were trying to get amenities for
11 and, in fact, that's not what happens with
12 respect to special exceptions.

13 MR. GLASGOW: Um-hum, right.
14 That's correct.

15 CHAIRPERSON MILLER: Which is
16 true. But I just have a question with respect
17 to one of their statements, I think goes to
18 they say "We believe that it is incumbent on
19 the Board, as well as on developers, to make
20 certain that the existing stakeholders and the
21 community derive some benefit from all this
22 new growth. It is for that reason and those

1 stated above that ANC-6D opposes this request
2 for a waiver."

3 And I guess my question is in the
4 larger scale, not talking about specific
5 amenities, do you think that this project
6 brings some community benefit?

7 MR. GLASGOW: Well, I think with
8 respect to the design and the floor to ceiling
9 heights and the ability to accommodate
10 reasonable retail in the space, that that's
11 the potential for an amenity to the community
12 that wouldn't otherwise exist if you -- that
13 would be tough space for retail if the special
14 exception were denied. You would be more like
15 to have a non-retail use on the ground floor.

16 CHAIRPERSON MILLER: And in
17 general, the retail would be serving the
18 community, correct?

19 MR. GLASGOW: I think at this
20 location with these size of spaces, I would
21 think so. You are right there by the Metro
22 Station.

1 CHAIRPERSON MILLER: Is it
2 premature to even ask you what kind of retail
3 might go there?

4 MR. GLASGOW: Yes, because
5 normally the retail comes last.

6 CHAIRPERSON MILLER: But with
7 these high ceilings it allows for an
8 opportunity for a greater variety of retail
9 then it would otherwise?

10 MR. GLASGOW: Yes.

11 CHAIRPERSON MILLER: Okay. Thank
12 you.

13 VICE CHAIR ETHERLY: Just as a
14 follow-up to that, Madam Chair. Would it be
15 your testimony, Mr. Glasgow, that it would
16 perhaps be consistent with what we are already
17 seeing along that corridor in terms of some of
18 the other properties in that immediate
19 vicinity? You are seeing CVSes, you're seeing
20 small, I don't want to use the word carryout,
21 because due to some case activity over the
22 last few weeks, that has become highly

1 charged, but you see Subways, you see bank
2 uses, you see that type of small almost
3 neighborhood-based retails?

4 MR. GLASGOW: I would see it more
5 along those lines just because of the nature
6 of the space and where it is oriented.

7 VICE CHAIR ETHERLY: Okay.
8 Excellent. Thank you. Thank you, Madam
9 Chair.

10 BOARD MEMBER LOUD: Just as a
11 quick follow-on question. How much retail
12 square footage will be available on that
13 ground floor?

14 MR. RAHMAN: It would be about
15 6,000 square feet.

16 CHAIRPERSON MILLER: Okay. Any
17 other questions? Then I think we can turn to
18 Office of Planning.

19 MR. JESICK: Thank you, Madam
20 Chair, Members of the Board. My name is Matt
21 Jesick. The Office of Planning reviewed this
22 application based on the criteria of section

1 774, which governs rear yards and relief to
2 rear yards.

3 Those criteria describe certain
4 conditions, such as provision of light and air
5 and privacy to both the occupants of the
6 subject site as well as occupants of adjacent
7 sites. The criteria also discusses the
8 provision of off-street facilities, such as
9 parking and loading.

10 Regarding privacy and light and
11 air, the Office of Planning feels that because
12 the adjacent building to the west is an office
13 building, there will be no undue impacts to
14 privacy. Given the large courtyard on the
15 residential property to the northwest, there
16 will be no impacts to light and air or
17 privacy.

18 And as the Board has heard, there
19 are no significant windows on the north -- or
20 excuse me, on the south side of the church,
21 which faces this property, so impacts to light
22 and air would be minimal due to the

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1 construction of this building. The applicant
2 is also providing more than adequate off-
3 street parking and they are meeting the
4 loading requirements for the C-3-C District.

5 Regarding retail, I would just
6 note one point on Sheet A-1.3 of the
7 applicant's prehearing statement plan set that
8 the ground floor spaces are labeled as office.
9 I just wanted to point that out to bring that
10 to the Board's attention. It's not really
11 material to whether the rear yard relief is
12 granted or not however.

13 But the Office of Planning has no
14 outstanding issues regarding the rear yard
15 relief and we recommend approval of the
16 application.

17 CHAIRPERSON MILLER: Do we have a
18 report from DDOT?

19 MR. JESICK: We contacted DDOT to
20 request comments, but we have not heard
21 anything from them.

22 CHAIRPERSON MILLER: Did you have

1 a conversation with anybody at DDOT with
2 respect to any impacts?

3 MR. JESICK: I have not been the
4 project manager on this case. I'm just
5 covering today for the project manager, so I
6 don't know if that person actually had a
7 conversation linked with anyone or not.

8 CHAIRPERSON MILLER: Okay. Thank
9 you.

10 COMMISSIONER JEFFRIES: Would
11 Metro, WMATA weigh in on this at all?

12 MR. JESICK: They are certainly
13 adjacent property owners. I know they are
14 aware of this application, but we have not
15 received any comment from them.

16 CHAIRPERSON MILLER: Do you know
17 whether we got anything from Department of
18 Housing and Community Development?

19 MR. JESICK: They did not review
20 this application, as it is not a housing
21 development.

22 CHAIRPERSON MILLER: Oh.

1 MR. JESICK: It's really an
2 office.

3 CHAIRPERSON MILLER: Okay. Thank
4 you. Okay. Any questions from Board Members?
5 Any cross examination?

6 MR. GLASGOW: No cross.

7 CHAIRPERSON MILLER: And do you
8 have a copy of the Office of Planning's
9 report?

10 MR. GLASGOW: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MR. GLASGOW: Yes, and we have
13 read that.

14 CHAIRPERSON MILLER: Thank you.
15 Okay. At this time, it would be appropriate
16 for the ANC Commissioner to come forward, but
17 I don't believe there is an ANC Commissioner
18 here, correct? So, therefore, anybody else
19 who is here who would like to testify either
20 in support or in opposition to the application
21 could come forward.

22 Okay. Not hearing from anybody,

1 then any last questions from the Board? Okay.
2 Then I'll turn to you, Mr. Glasgow, for
3 closing.

4 MR. GLASGOW: Just very briefly in
5 closing. I believe that we have met the
6 burden of proof for a rear yard waiver in the
7 nature of a special exception. If the Board
8 deems fit, we would like to get a decision
9 today, so that we can move forward and we will
10 submit a copy of the record for our
11 subdivision plat.

12 CHAIRPERSON MILLER: I have one
13 other question. I guess Office of Planning
14 noted about, I'm not sure which exhibit it
15 was, that the ground floor identified the
16 space for office as opposed to retail, I
17 guess. Could you address that?

18 MR. GLASGOW: Yes, we had --
19 office is a permitted use, retail is a
20 permitted use. We have no objection to
21 submitting a revised sheet that says office/
22 retail, because some of the spaces deep you

1 may not have a retailer that even would take
2 the entire depth of that space.

3 CHAIRPERSON MILLER: Okay. I'm
4 not sure which exhibit it is, but I think that
5 would be a good idea if this is something that
6 is going to be attached to your permanent
7 application and then which would be improving
8 plans as presented.

9 MR. GLASGOW: All right. We would
10 submit a revised Sheet A-1.3 that says office/
11 retail.

12 CHAIRPERSON MILLER: Okay. Great.

13 MR. GLASGOW: On those two spaces.

14 CHAIRPERSON MILLER: Great. Thank
15 you.

16 MR. GLASGOW: Okay.

17 CHAIRPERSON MILLER: Does that
18 conclude your presentation?

19 MR. GLASGOW: That concludes the
20 presentation.

21 CHAIRPERSON MILLER: Okay.

22 COMMISSIONER JEFFRIES: Well, just

1 a quick question. If you couldn't find
2 retail, what type of office users would take
3 that space? Are you looking at 16 foot floor
4 to ceiling or well, that's floor to slab.

5 MR. DONOHUE: Good morning. My
6 name is Robert Donohue. I'm with the Donohue
7 Companies. The tenants for the office portion
8 of the building could be Government agencies.
9 They could be associations. They could be --

10 COMMISSIONER JEFFRIES: On the
11 ground floor?

12 MR. DONOHUE: Oh, I'm sorry.
13 Ground floor specifically?

14 COMMISSIONER JEFFRIES: The ground
15 floor, yes. I'm saying that if you are unable
16 to identify retail tenants.

17 MR. DONOHUE: Yes.

18 COMMISSIONER JEFFRIES: Who would
19 the likely office users for that type of
20 space?

21 MR. DONOHUE: They would probably
22 be someone who would take other portions of

1 the building, so the groups that I mentioned
2 previously. There could be a law firm that
3 would take a big block of space. It could be
4 the Government GSA that would take a big block
5 of space and they may want the ground floor,
6 so ultimately it will be market-driven.

7 COMMISSIONER JEFFRIES: Okay.
8 Thank you.

9 CHAIRPERSON MILLER: I guess I
10 just want to ask a clarifying question,
11 because we were talking about the high ceiling
12 heights, which this special exception would
13 facilitate, because you -- okay. So we went
14 through that. Does that make that space much
15 more conducive to retail as opposed to office?

16 MR. GLASGOW: Yes, I think that's
17 what Commissioner Jeffries is driving at.

18 CHAIRPERSON MILLER: Okay.

19 MR. GLASGOW: Is that if you have
20 the higher ceiling heights, you're much more
21 likely to have retail in there.

22 CHAIRPERSON MILLER: Okay. Okay.

1 Thank you.

2 VICE CHAIR ETHERLY: Madam Chair,
3 if it's appropriate, at this time, I would be
4 more than happy to move approval of
5 Application No. 17604 of NJA Associations LLC,
6 pursuant to 11 DCMR 3104.1, for a special
7 exception for a waiver of the rear yard
8 requirements, under subsection 774.2, to allow
9 the construction of an office building at
10 premises 1111 New Jersey Avenue, S.E., and
11 would invite a second.

12 BOARD MEMBER MANN: Second.

13 VICE CHAIR ETHERLY: Thank you
14 very much, Mr. Mann, if I heard that correct.
15 I think the record is amply full and well-
16 developed on the issue of the rear yard waiver
17 as it relates to the requirements of 774.3,
18 which reads in relevant part "Apartments and
19 office windows shall be separated from other
20 buildings that contain facing windows, a
21 distance sufficient to provide light and air
22 and to protect the privacy of building

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1 occupants."

2 We have received ample testimony
3 which speaks to the orientation of the windows
4 of the subject property relative to both
5 existing and anticipated construction as
6 relates to the office building at 100 M
7 Street. No habitable rooms in either building
8 there. The orientation is such that buildings
9 do not directly face each other, as was
10 indicated with regard to the apartment house
11 at 1100 1st Street. The main tower of the
12 residential use is located in such an
13 orientation as to be, approximately, 100 feet
14 from the rear wall of the proposed office
15 building.

16 You will not have windows facing
17 directly each other. With respect to 774.4
18 "In determining the distance between windows
19 and buildings facing each other, the angle of
20 site lines and the distance of penetration of
21 site lines into habitable rooms shall be
22 sufficient."

1 Again, given the orientation of
2 the subject property and existing buildings
3 and anticipating buildings, you do not have
4 any of those considerations brought into --
5 brought to bear, if you will. We have had
6 some discussion about any impacts that may be
7 experienced by St. Matthew's Church and
8 clearly with the testimony that has been
9 provided by the pastor here today, we do not
10 have any opposition expressed by that adjacent
11 property owner.

12 So with respect to the
13 requirements of 774.3 and 774.4, I think we
14 are clearly confronted with a very well-
15 developed record. With respect to 774.5, "The
16 building plan shall include provisions for
17 adequate off-street service functions,
18 including parking and loading areas." Parking
19 and loading services are all provided on-site
20 within the building. Parking is accessed
21 directly from New Jersey Avenue and loading is
22 accessed off the north/south alley of the rear

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1 with loading berths angled to provide easier
2 access for trucks entering from the south and
3 exiting from the north.

4 As was indicated by the Office of
5 Planning in its report pursuant to 774.6, we
6 do not have any submittals from the District
7 of Columbia Department of Transportation, but
8 I don't think anything has been presented or
9 developed here in the record which would
10 suggest that such submittal would be
11 necessary. Similarly, there is not a
12 requirement in this instance for any
13 submittals from the Department of Housing and
14 Community Development, as this is entirely for
15 office use.

16 So I think pursuant to 774 and
17 it's pertinent sections, the record is very
18 full and complete and clear. With respect to
19 the issue of a little bit of the conversation
20 regarding that ground floor office/retail
21 space, I am pleased that the applicant has
22 offered to, shall we say, at least redesignate

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1 that in his drawings, but I am fairly
2 comfortable, I would say strongly comfortable,
3 that the applicant, consistent with their
4 testimony, will be endeavoring to ensure that
5 there is an adequate retail tenant, if
6 possible, for that space.

7 I am harking back to the question
8 of my colleague, the esteemed Mr. Jeffries, in
9 talking about the importance of ground floor
10 retail, but I think the testimony that I have
11 heard is very consistent with the belief that
12 this applicant is going to endeavor to get a
13 strong retail tenant for that ground floor, so
14 I wouldn't necessarily be compelled, if you
15 will, to, shall we say, speak more strongly
16 about the need for retail space there.

17 I think experience and the market
18 has borne out with respect to a lot of these
19 properties as they have risen up along both M
20 Street itself, but also some of the adjacent
21 side streets that the market continues to be
22 relatively robust for adequate retail in this

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1 area. Retail that although it is not, shall
2 we say, required as part of this application,
3 but as a resident over in this vicinity of
4 Ward 6, perhaps not as close as some of my
5 other colleagues, there are retail uses that
6 have sprouted out and sprouted up in some of
7 these office buildings that I have managed to
8 take advantage of.

9 I won't indicate Subway, Five Guys
10 Hamburgers and all this other stuff. Again,
11 this is what we call dicta and not necessary
12 to be a decision, Madam Chair. But for the
13 purposes of just that discussion about the
14 treatment of that ground floor space, I think
15 the applicant's testimony is more than
16 sufficient in terms of their desire to take a
17 strong solid retail tenant in that space.

18 That being said, Madam Chair, I
19 believe again that the requirements of section
20 774 have been adequately met with regard to
21 the special exception for the rear yard
22 waiver. Thank you, Madam Chair.

1 CHAIRPERSON MILLER: Thank you.
2 Are there other comments? I just have a few.
3 774.6, I think, even though we don't have a
4 report from DDOT it doesn't require us to
5 actually have the report. It requires us to
6 submit the application to DDOT for comment.
7 So I think that regulation was fulfilled by
8 our having submitted that.

9 I also want to note the support in
10 the record by adjacent property owners at 100
11 M Street and 1100 1st Street and then also
12 today, I was going to say, Mr. Washington has
13 indicated that he was in support, I believe,
14 on behalf of the church. And also, right,
15 Capitol Hill Restoration Society has
16 submitted, we have a copy of an email, and
17 it's from the Capitol Hill Restoration Society
18 Zoning Committee and Mr. Gary Peterson says in
19 this "I sent a letter in support. If they
20 don't have it, please, take this email as your
21 authority to represent that the CHRS supports
22 the application. So we have that.

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1 COMMISSIONER JEFFRIES: Madam
2 Chairman?

3 CHAIRPERSON MILLER: Yes.

4 COMMISSIONER JEFFRIES: Was there
5 also something from 6A?

6 CHAIRPERSON MILLER: Yes, that's
7 the last thing.

8 COMMISSIONER JEFFRIES: I thought.

9 CHAIRPERSON MILLER: The ANC
10 report is Exhibit No. 29 and they are in
11 opposition and the applicant has indicated, I
12 believe, that their understanding of the case
13 law is that because ANC-6D doesn't address the
14 issue, that we don't need to give it great
15 weight. And I just have a little bit of a
16 different take on it.

17 I think that if the ANC meets the
18 requirements for great weight and that they
19 hold their meeting, they have their quorum and
20 they have a vote, etcetera, that we give that
21 great weight, but that means that we address
22 their issues and it's not very different from

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1 what the applicant is saying in that if we
2 find their issues irrelevant, that's
3 addressing their issue.

4 But I did raise at the hearing
5 their issue about the community deriving some
6 benefit from the building. And I think that
7 Mr. Glasgow addressed it and we discussed how,
8 in fact, providing the special exception
9 relief in this case actually enables this
10 project to benefit the community by allowing
11 them to have the higher ceilings and creating
12 a better space for retail that could serve the
13 community.

14 So in that sense, I think we are
15 addressing their concern and I would also, I
16 guess, echo what Mr. Glasgow said though, a
17 special exception is different from a PUD and
18 we don't have any authority to grant
19 amenities. We just have to make sure there
20 are no adverse impacts and that it meets the
21 requirements of the specific relief that is
22 being sought.

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1 VICE CHAIR ETHERLY: I would
2 agree, Madam Chair, with respect to all of
3 your observations as relates to the ANC-6D
4 report. Two very quick matters relative to
5 the ANC. One is just a housekeeping matter.
6 I cannot recall if we waived our rules to
7 accept the ANC report as it was timed into the
8 office on May 3, 2007, and therefore not
9 timely. I would have no objection to doing
10 that, but I just wanted to indicate that for
11 the record.

12 CHAIRPERSON MILLER: Why don't we
13 just do that right now, just so we know it's
14 done. Okay. There is consensus.

15 VICE CHAIR ETHERLY: Sure.

16 CHAIRPERSON MILLER: It's waived.

17 VICE CHAIR ETHERLY: Terrific.
18 But your comments go specifically, I think,
19 and accurately to my understanding of the
20 record as it relates to a couple of the
21 observations that were made by the ANC with
22 respect to, in particular, the second

1 paragraph as the ANC talked or discussed light
2 and air or I should say light and sight
3 looking at the text of the ANC's report.

4 I think the record has been
5 adequately developed to refute, rebut that
6 concern regarding the diminishment of the
7 quality of life for people who would live in
8 the proposed residential development by virtue
9 of both the orientation of this project and
10 its relationship to how that proposed
11 residential development will be set forward.

12 I think additionally, the ANC
13 specifically referenced St. Matthew's Church
14 and concerns that may had been raised by that
15 property owner and, clearly, we have testimony
16 on the record that those issues have been
17 addressed in that regard. And I think as you
18 ultimately spoke to the issue of community
19 benefits, both this applicant, its legal
20 counsel and this Board probably are very
21 familiar with some of the longstanding debates
22 about the issue of community benefits and

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1 community benefit agreements and where they
2 are appropriate and how do you go about
3 entering into them, structuring them and that
4 is clearly well beyond the purview of this
5 Board for the purposes of our special
6 exception.

7 But again, I think the record has
8 been amply developed that as the applicant
9 looks at this project and, in particular,
10 looks at its animation of the first floor, the
11 ground floor, that there is a commitment to
12 making sure that there will be both uses and
13 tenants that will enure to the benefit of both
14 residents and visitors in this, shall we say,
15 steadily growing and critical corridor of the
16 city.

17 So with that, Madam Chair, just to
18 round out our discussion on ANC. Thank you
19 for highlighting their report, because I did
20 neglect to note some of those concerns. Thank
21 you, Madam Chair.

22 CHAIRPERSON MILLER: Thank you.

1 Any other comments? Okay. Then I think we
2 can call the vote.

3 All those in favor say aye.

4 ALL: Aye.

5 CHAIRPERSON MILLER: All those
6 opposed? All those abstaining? Ms. Bailey?

7 MS. BAILEY: Madam Chair, the vote
8 is recorded as 5-0-0 to grant the application.
9 Mr. Etherly made the motion, Mr. Mann
10 seconded, Mrs. Miller, Mr. Loud and Mr.
11 Jeffries support the motion.

12 CHAIRPERSON MILLER: Thank you.

13 MS. BAILEY: Are we doing a full
14 order?

15 CHAIRPERSON MILLER: This is going
16 to be a full order, because we have opposition
17 in the case by a party. Mr. Glasgow, do you
18 want to submit a proposed order?

19 MR. GLASGOW: Yes, we would be
20 happy to submit a proposed order.

21 CHAIRPERSON MILLER: Okay.

22 MR. GLASGOW: Thank you.

1 CHAIRPERSON MILLER: Thank you.
2 Do you have any idea, not that there is any
3 requirement?

4 MR. GLASGOW: I would say,
5 approximately, what a week to 10 days, looking
6 at the draft order or the proposed order.

7 CHAIRPERSON MILLER: Okay. It's
8 just for a general idea. I mean, you're not
9 under an obligation.

10 MR. GLASGOW: Okay.

11 CHAIRPERSON MILLER: So okay.
12 Great. Thank you very much.

13 MR. GLASGOW: Thank you.

14 CHAIRPERSON MILLER: Ms. Bailey,
15 do we have anything else on the agenda?

16 MS. BAILEY: Not for the morning
17 session.

18 CHAIRPERSON MILLER: Okay. Then
19 this meeting is adjourned.

20 (Whereupon, the Public Hearing was
21 recessed at 11:44 a.m. to reconvene at 1:29
22 p.m. this same day.)

1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:29 p.m.

3 CHAIRPERSON MILLER: This hearing
4 will, please, come to order. Good afternoon,
5 ladies and gentlemen. This is the May 8, 2007
6 afternoon Public Hearing of the Board of
7 Zoning Adjustment of the District of Columbia.
8 My name is Ruthanne Miller. I'm Chairperson
9 of the BZA.

10 To my right is Mr. Curtis Etherly,
11 Vice Chair of the BZA, to my left is Mr. Marc
12 Loud, he is the Mayoral Appointee on the BZA,
13 in addition to us, and Mr. John Mann
14 representing NCPC on the BZA, Mr. Clifford Moy
15 with the Office of Zoning, Sherry Glazer with
16 the Office of Attorney General and Beverly
17 Bailey with the Office of Zoning.

18 Copies of today's hearing agenda
19 are available to you and are located to my
20 left in the wall bin near the door. Please,
21 be aware that this proceeding is being
22 recorded by a Court Reporter and is also

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

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

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

18 The order of procedure for special
19 exceptions and variances is: One, statement
20 and witnesses of the applicant. Two,
21 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 may be
8 maintained. The applicant, appellant, persons
9 and parties, except an ANC, in support,
10 including witnesses, 60 minutes collectively.
11 Appellees, persons and parties, except an ANC,
12 in opposition, including witnesses, 60 minutes
13 collectively. Individuals 3 minutes.

14 These time constraints 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 located is automatically a party in a special
20 exception or variance case. Nothing prohibits
21 the Board from placing reasonable restrictions
22 on cross examination, including time limits

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1 and limitations on the scope of cross
2 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 and before the public. The Board may,
15 consistent with its rules of procedure and the
16 Sunshine Act, enter Executive Session during
17 or after the Public Hearing on a case for
18 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. The Board will
7 make every effort to conclude the Public
8 Hearing as near as possible to 6:00 p.m. If
9 the afternoon cases are not completed at 6:00,
10 the Board will assess whether it can complete
11 the pending case or cases remaining on the
12 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: To everyone, good
5 afternoon. No, Madam Chair, staff does not.

6 CHAIRPERSON MILLER: Okay. Then
7 would all individuals wishing to testify
8 today, please, rise to take the oath? Ms.
9 Bailey, would you, please, administer the
10 oath?

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

13 (Whereupon, the witnesses were
14 sworn.)

15 MS. BAILEY: Thank you. The first
16 case is Application No. 17603, of Johnson
17 Kunlpe, pursuant to 11 DCMR 3104.1, for a
18 special exception to allow the development of
19 four 4-unit apartment buildings under section
20 353. The property is Zoned R-5-A and it is
21 located at premises 2506 and 2508 F Street,
22 S.E., and 5210 and 5212 F Street, S.E. The

1 property is also known as Square 5316, Lots 25
2 and 26 and Lots 805 and 807.

3 CHAIRPERSON MILLER: Thank you.
4 Would the parties in this case, please, come
5 to the table?

6 MS. BAILEY: Madam Chair, there is
7 a request for party status in this case.

8 CHAIRPERSON MILLER: Thank you.
9 Is Ms. Green here? You can come to the table
10 too, because you're applying for party status
11 possibly? And is the ANC representative here?
12 Why don't you come to the table as well,
13 because I think we have a report from you
14 which seems to indicate that you might be
15 seeking some kind of a postponement and we
16 want to clarify that as well. Why don't the
17 three of you identify yourself for the record
18 to begin with, because we might as well start
19 with the applicant.

20 MR. AGBIM: My name is Ike Agbim,
21 9611 Cedar Hall Lane, Upper Marlboro, Maryland
22 20774, applicant.

1 CHAIRPERSON MILLER: Thank you.

2 MS. HAMLETT: My name is Rosa
3 Hamlett and I'm the ANC Commissioner of 7E03.

4 MS. GREEN: My name is Rose Green
5 and I live at 5201 E Street and this
6 development will be in my -- adjacent to my
7 property.

8 CHAIRPERSON MILLER: Okay. Thank
9 you. I think that the first item that we want
10 to deal with as a preliminary matter is Ms.
11 Green's application for party status. That's
12 okay. Basically, we have different ways you
13 can participate in the hearings. And first
14 off, we want to let you know what that is,
15 because I don't think the notices are all that
16 clear, so that we know that you have an
17 understanding of the difference and how you
18 want to proceed.

19 So there are two ways to proceed.
20 One is as a person. Every person who wants to
21 testify on a case can testify on a case, so
22 you wouldn't need party status for that. If

1 you wanted to testify about the impact of this
2 project on your property, you don't need party
3 status for that. Okay.

4 But what party status allows you
5 to do, if you qualify it, and then if you seek
6 it, then we will determine whether you qualify
7 for it, it allows you to participate fully as
8 a party, like the applicant in that you could
9 present witnesses in the case. You can cross
10 examine the applicant's witnesses, things like
11 that, submit evidence.

12 So not everybody who fills out one
13 of these forms actually wants to do all that,
14 but some people do. So do you have a reaction
15 to how you would like to proceed?

16 MS. GREEN: I think I would like
17 to go ahead with the party status. I do hear
18 what you're saying, but to terminate that
19 opportunity now is something I'm not -- you
20 know, I wouldn't want to regret later on.

21 CHAIRPERSON MILLER: That's fine.
22 I just wanted to make sure you knew what you

1 wanted in this case. Okay.

2 MS. GREEN: Okay. Thank you.

3 CHAIRPERSON MILLER: Now, we're
4 going to evaluate your application. And in
5 that process, the other parties have an
6 opportunity to comment whether they think that
7 you should be granted party status in
8 accordance with our regulations. Are there
9 any comments from the applicant or the ANC?
10 Do you oppose party status? Do you have any
11 objections?

12 MR. AGBIM: I would defer that
13 decision to the Board.

14 CHAIRPERSON MILLER: Okay. Okay.
15 Do we have any comments from the Board then?
16 It appears that Ms. Rosa -- she says in her
17 party status application her property -- this
18 project would be behind her house, as I
19 understand it, approximately, 40 feet. So in
20 that way, I believe she is stating that she is
21 different from the general public with respect
22 to the impact, because of the proximity.

1 VICE CHAIR ETHERLY: If I may,
2 Madam Chair, I would tend to agree with your
3 initial reading of the application. If I
4 might, through you, I just have one question
5 for Mrs. Green, just to orient myself to where
6 you are located. You may not have a copy of
7 this. There is an Exhibit No. 6 in our
8 folder, there are a series of pictures of the
9 site and I just wanted to get a sense of where
10 your property is.

11 Again, because you may not have a
12 copy of this, there is a picture on the second
13 page which is looking from F Street towards
14 what's the rear of what this property -- what
15 the application would be. Is your property --
16 now, I see a green house. I see what appears
17 to be a larger yellow house with yellow
18 siding. Are either of those properties
19 representing your property? If I could
20 perhaps? And, Ms. Green, if you could just
21 turn on your microphone, we want to be sure
22 that we catch you on the record here. Thank

1 you, ma'am.

2 MS. GREEN: Okay. I do have a
3 picture of that, what you are referring to.
4 From -- are you looking at the one that you
5 said from F Street, S.E., looking northwest?

6 VICE CHAIR ETHERLY: That's on the
7 first page.

8 MS. GREEN: Okay.

9 VICE CHAIR ETHERLY: If you go to
10 the second page, there is a picture at the
11 bottom that says from F Street, S.E., looking
12 northeast.

13 MS. GREEN: Oh, okay. If you look
14 at the top of that sheet where it say from F
15 Street looking northeast.

16 VICE CHAIR ETHERLY: Yes, ma'am.

17 MS. GREEN: There is a portion of
18 my house there.

19 VICE CHAIR ETHERLY: I see.

20 MS. GREEN: There is a car in the
21 backyard.

22 VICE CHAIR ETHERLY: And there's a

1 car in the back.

2 MS. GREEN: Right. And if you
3 would --

4 VICE CHAIR ETHERLY: Okay.

5 MS. GREEN: -- look on the other
6 sheet where it say from F Street, S.E.,
7 looking northwest, the house is --

8 VICE CHAIR ETHERLY: There is --

9 MS. GREEN: -- brick with some --
10 an addition in the back.

11 VICE CHAIR ETHERLY: Excellent.

12 MS. GREEN: With siding.

13 VICE CHAIR ETHERLY: And there is
14 the blue, there is that blue recycling can
15 right at the side of your house on that
16 picture, correct?

17 MS. GREEN: Yes, I believe so.

18 VICE CHAIR ETHERLY: Okay. I see.

19 MS. GREEN: These are black and
20 white.

21 VICE CHAIR ETHERLY: Okay. I see
22 which one you are talking about.

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1 MS. GREEN: Yes.

2 VICE CHAIR ETHERLY: Thank you
3 very much. Just for the benefit of my
4 colleagues, I was trying to orient myself to
5 which property was Mrs. Green's. I would tend
6 to agree with the Chair. I believe the party
7 status application due to proximity and the
8 number of the concerns that have been raised,
9 some of which, a number of which speak to the
10 specific test that is at issue under this
11 case, I would be in support of party status
12 for Ms. Green, Madam Chair.

13 CHAIRPERSON MILLER: Thank you.
14 And I think what I would like to do also is
15 read the regulation that sets forth the
16 standard for our granting party status, so you
17 know what we are considering and in case you
18 want to offer anything in addition to what you
19 have provided.

20 3106.3 states "In considering any
21 request for party status pursuant to 3106.2,
22 the Board shall grant party status only if the

1 person requesting party status has clearly
2 demonstrated that the person's interest would
3 likely be more significantly, distinctively or
4 uniquely affected in character or kind by the
5 proposed zoning relief that those of other
6 persons in the general public."

7 So what I was saying was on the
8 face of your application, the proximity of
9 your home to the proposed project would tend
10 to support that, that you would be impacted
11 differently. I just have a question. Are you
12 impacted do you think different? This talks
13 about the general public, but how about the
14 other houses in this area? Are you impacted
15 differently, do you think, than other
16 neighbors?

17 MS. GREEN: Well, there are, you
18 know, some other neighbors that are, you know,
19 impacted in the same way that I am impacted.
20 One of the neighbors, Mrs. Spriggs, her house
21 is the house -- are you looking at the
22 picture? If you look at -- and she is present

1 here today. Her house is -- if you look at
2 the F Street, S.E., looking northeast, the
3 house, the rambler, the while rambler with the
4 black shutters, okay, she has a rambler. And
5 that's adjacent, too. She is, you know,
6 present here.

7 CHAIRPERSON MILLER: She is
8 present?

9 MS. GREEN: Yes, she is present.

10 CHAIRPERSON MILLER: Okay.

11 MS. GREEN: And I -- and then
12 there is another neighbor, Iris Scott, and her
13 -- you know, their house is the house that's
14 next to mine, the green house. They will be,
15 you know, impacted also. We do have a signed
16 petition from some of the neighbors, you know,
17 some of the residents in the, you know, area,
18 you know, who couldn't be here, but they, you
19 know, they want to, you know, let you know
20 that they are impacted by this development.
21 They would be impacted by this development.

22 CHAIRPERSON MILLER: So your case

1 would go to the impact of all these immediate
2 neighbors as being the same, but different
3 from the general public. Is that correct?

4 MS. GREEN: Would you repeat that?

5 CHAIRPERSON MILLER: Okay. I'm
6 sorry. That what you seem to be saying, at
7 this point, is that the concerns that you have
8 are also shared by the other immediate
9 neighbors, but this is still different from
10 the general public.

11 MS. GREEN: Most of the concerns
12 are the same. Mine is a little different, you
13 know, in that it would be -- well, I kinda sit
14 in my backyard and, you know, this would be a
15 towering, you know, structure. And it would
16 be with a four 4-unit apartment building, it
17 would -- you know, that would bring in 16
18 households.

19 CHAIRPERSON MILLER: Okay.

20 MS. GREEN: You know, where there
21 was, at one time, you know, none.

22 CHAIRPERSON MILLER: Okay. So now

1 it sounds like, I'm sorry, I got a little off
2 track, you are really going to be -- I just
3 want to get a feel for where your point of
4 view is going to be, and it sounds like it's
5 impact on your property, because it's like
6 your backyard. Even though others may have
7 some similar concerns, your case is going to
8 be about your property, impact on your
9 property. Is that correct?

10 MS. GREEN: Well, you know, also
11 well, we all, you know, are concerned about
12 our house value. We are concerned because
13 there is a lot of crime already in the area.
14 And that there, you know, does seem to be a
15 pattern that more apartment buildings -- that
16 apartment buildings bring in, you know, more
17 crime. Like only this year, two --

18 CHAIRPERSON MILLER: All right. I
19 don't want to get into the testimony.

20 MS. GREEN: Okay.

21 CHAIRPERSON MILLER: I'm sorry and
22 I don't want to spend too much more time on

1 this, because I think that the Board is
2 probably of the view that you live so close
3 that you are impacted and that you should be
4 granted party status, so I will make up an
5 official decision on that.

6 I just wanted to understand
7 whether you were, basically, representing the
8 impact on your house and others can talk about
9 the impact on the neighborhood in general.
10 Okay. Okay. Then any other questions? Is
11 the Board of a consensus to grant party status
12 to Ms. Rosa? Okay. Then we are granting you
13 party status. And you can stay at the table
14 right now.

15 We will go on to the next issue,
16 which I think is clarifying what the ANC is
17 asking us to do by their letter, dated April
18 23rd, Exhibit No. 26, which says on page 2 of
19 that letter that "We are asking that the
20 decision for this hearing be delayed, so that
21 our input may be considered for this and
22 future apartment buildings versus single-

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1 family homes being built on available land."

2 So this is somewhat of a
3 preliminary matter. I want to understand what
4 you are seeking, so do you want to address
5 that? I'm sorry, what's your name?

6 MS. HAMLETT: Rose Hamlett.

7 CHAIRPERSON MILLER: Hamlett, Ms.
8 Hamlett.

9 MS. HAMLETT: Yes.

10 CHAIRPERSON MILLER: Okay.

11 MS. HAMLETT: No, I was just --
12 what we were trying to do as a board is try
13 to, you know, sort of speak in the future,
14 just in case we couldn't do anything about
15 this apartment building being built, we was
16 just trying to get probably zoning and
17 planning to try to look at this, you know, if
18 it arises again.

19 And then the only other thing that
20 we had asked today was that the Board leave
21 the record open, so that we can give our
22 feedback from the ANC.

1 CHAIRPERSON MILLER: Okay.

2 MS. HAMLETT: You know, we always
3 give a feedback of what we vote for or what we
4 don't vote for, so that's part of what we are
5 asking, that if they will -- if the Board
6 would leave the record open until we submit
7 our paperwork, I guess, is what I'm asking.

8 CHAIRPERSON MILLER: The paperwork
9 is going to be based on what?

10 MS. HAMLETT: On our voting. When
11 he presents to the community.

12 CHAIRPERSON MILLER: Okay. Did
13 he --

14 MS. HAMLETT: Or do we have to
15 vote again or will we be allowed to put our
16 input into this project?

17 CHAIRPERSON MILLER: Okay. Right.

18 MS. HAMLETT: As the ANC
19 Commission.

20 CHAIRPERSON MILLER: Okay.
21 Usually, the process is, you know, months
22 ahead of time you get notice of an application

1 and the applicant presents to the ANC and then
2 the ANC submits their report to the Board
3 before the hearing. That's the normal
4 procedure. Sometimes that doesn't work
5 because the applicant doesn't show up or there
6 is something that happens and the ANC often
7 will ask to either postpone the hearing or
8 submit a report later.

9 So I just want to figure out
10 before we reach your specific request what
11 happened in this case. Did the applicant
12 present to the ANC?

13 MS. HAMLETT: No.

14 CHAIRPERSON MILLER: And why
15 didn't that happen?

16 MS. HAMLETT: Okay. Well, the
17 first time he came, he presented and the
18 community gave him a whole bunch of things to
19 try to correct. So then he was supposed to be
20 scheduled to come to our last month's meeting,
21 but he didn't. He couldn't come, so we
22 allowed the neighbors -- well, the community

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1 to present, so he has not presented to us yet.

2 CHAIRPERSON MILLER: He hasn't
3 presented on the new revised plans?

4 MS. HAMLETT: Right.

5 CHAIRPERSON MILLER: Okay.

6 MS. HAMLETT: Right.

7 CHAIRPERSON MILLER: Do you have
8 something? Do you want to respond to that?

9 MR. AGBIM: Yes. Yes, we did, in
10 fact, work back and forth with the ANC and the
11 neighbors who have concerns and also with the
12 recommendations by the Office of Planning.
13 And we came up with a revised plan which I
14 have copies of here today. Unfortunately, the
15 next ANC meeting is to this evening, so we
16 have not been able to present this new revised
17 drawings to the members of the community in
18 whole.

19 And what we're hoping is that you
20 can still hear this matter and leave the
21 record open so that this evening when we
22 formally present to the ANC, then they will

1 cast a vote and advise you of their decision
2 of their position.

3 CHAIRPERSON MILLER: So you don't
4 have any objection to our leaving the record
5 open at the end of this hearing today for them
6 to submit a report?

7 MR. AGBIM: Right. If you do for
8 the report from the ANC, I would be flexible
9 to that, because I will be attending the
10 meeting this evening to do the presentation.

11 CHAIRPERSON MILLER: Okay. And
12 would you want an opportunity to respond to
13 that report, if we choose to do that?

14 MR. AGBIM: I didn't hear you.

15 CHAIRPERSON MILLER: If we choose
16 to leave the record open for another ANC
17 report, would you want the record open also
18 for you to respond to that report?

19 MR. AGBIM: I would defer that
20 decision to you.

21 CHAIRPERSON MILLER: Okay. Okay.
22 Let me ask you, Ms. Hamlett, this ANC report

1 that we have, are these questions related to
2 this particular case that you would like to
3 pursue in this hearing? You have a series of
4 possible considerations.

5 MS. HAMLETT: Yes.

6 CHAIRPERSON MILLER: So you are
7 prepared to go forward today with the hearing,
8 you just want it left open for what happens
9 tonight in the community?

10 MS. HAMLETT: Yes, yes.

11 CHAIRPERSON MILLER: Okay. I'm
12 not sure we have to decide that now. It looks
13 like there probably wouldn't be a problem with
14 that.

15 VICE CHAIR ETHERLY: It sounds as
16 though the key question has been answered
17 here. The biggest concern was, obviously, the
18 ANC hasn't taken a vote yet. You have had
19 some discussions, but there are still some
20 things you need to talk about.

21 MS. HAMLETT: Yes, yes.

22 VICE CHAIR ETHERLY: I think the

1 biggest question for us was did you want us to
2 move forward today and still hold the hearing
3 or would you prefer the Board to consider
4 waiting until you have your ANC meeting
5 tonight, you get your presentation from Mr.
6 Agbim on behalf of the applicant and then the
7 Board would take your report into the record.
8 I'm hearing you say that you are comfortable
9 proceeding forward today.

10 MS. HAMLETT: Yes.

11 VICE CHAIR ETHERLY: As long as
12 the Board keeps the record open.

13 MS. HAMLETT: Keeps the record
14 open.

15 VICE CHAIR ETHERLY: To receive
16 your report, whichever way it goes.

17 MS. HAMLETT: Whichever way it
18 goes.

19 VICE CHAIR ETHERLY: I'm
20 comfortable with that then.

21 CHAIRPERSON MILLER: All right.
22 Okay. Actually, it's not an official motion

1 and I'm comfortable with that as well.

2 VICE CHAIR ETHERLY: Sure.

3 CHAIRPERSON MILLER: I think that
4 what we can -- just so you know what's going
5 to happen, I don't think we have any problem
6 leaving the record open then for your report.
7 I also think it's a good idea usually to let
8 the applicant have an opportunity to at least
9 respond, because he won't have the opportunity
10 to cross after this hearing, so at least I
11 think he could have the opportunity to
12 respond.

13 And, Ms. Rosa, you are a party as
14 well, so if you want to respond to the ANC
15 report, I don't have a problem with that
16 either. You get that opportunity as a party.
17 Okay. I think we can go forward with the case
18 then. Thank you. And at this time then, we
19 turn to the applicant to present the case.

20 MR. AGBIM: Thank you. This
21 application is for a special exception for
22 construction of four 4-unit apartment

1 buildings for-sale condominiums in this area.
2 This is on F Street between 51st and 53rd
3 Street, S.E.

4 We expect that all the buildings
5 will be managed by one homeownership or
6 management company, so issues about
7 landscaping, trash removal and auto
8 maintenance issues as it affects the neighbors
9 will be jointly taken care of. The revised
10 design makes provision for on-site parking.
11 One parking per unit for a total of 16 parking
12 spaces on the property.

13 CHAIRPERSON MILLER: Excuse me,
14 Mr. Agbim, do we have, does the Board have the
15 revised plans?

16 MR. AGBIM: I did send portions of
17 it to Mr. Nyarku, but I do have the whole
18 package, 13 copies of the whole package here.

19 CHAIRPERSON MILLER: Okay. Could
20 you give that to Mr. Moy, please? Thank you.
21 Did you need that in front of you or is that
22 a copy?

1 MR. AGBIM: No, I do have a copy.

2 CHAIRPERSON MILLER: Okay. Then
3 you can proceed. Thanks.

4 VICE CHAIR ETHERLY: Oh, Madam
5 Chair?

6 CHAIRPERSON MILLER: Yes?

7 VICE CHAIR ETHERLY: I also just
8 wanted to indicate if the Commissioner and
9 Mrs. Green wanted to just make themselves
10 comfortable in the audience and listen to the
11 presentation, you can do that. You don't need
12 to stay at the table, that way you can kind of
13 give Mr. Agbim the big eye from behind him,
14 but, please, feel free to just make yourselves
15 comfortable. I just wanted to indicate that.

16 CHAIRPERSON MILLER: Okay.
17 Whenever you are ready.

18 MR. AGBIM: Okay. the entire site
19 is relatively flat. There is very small or
20 minor elevation change from the highest point
21 to the lowest point, but we have provided in
22 the paved areas some area drains to collect

1 any water runoff before it gets into the
2 street. Like I mentioned earlier, the entire
3 site has been fully fenced in. We have a
4 landscaping buffer all the way around the
5 parking areas to reduce the impact to adjacent
6 properties.

7 We have for each building a trash
8 enclosure area that's placed towards the front
9 on the south side of the property to allow for
10 easy twice a week trash pickup. There is a 16
11 foot unimproved alley that runs through 5206
12 and 5208, which is Lots 807 and 805. We have
13 taken advantage of this 16 foot alley to
14 provide for parking entrance for the two
15 buildings that it is in between. This alley
16 will not continue onto Mr. and Mrs. Green's
17 property in the rear.

18 On the landscape plan, you will
19 notice that there is an evergreen hedge that
20 goes all around the rear of the property
21 enclosing the parking areas and next to the
22 hedge we would use a 6 foot high site-type

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1 plants to, you know, protect the rest of the
2 property.

3 Lighting is also provided. We
4 have offset the lighting from the property
5 lines and we have used a no-throwback light
6 fixture to ensure that we don't have light
7 spilling over to our neighboring properties.
8 On the revised plan, you will see a detail of
9 the cut sheet of the lighting being used and
10 two designs for a trash enclosure, which will
11 ensure that through this twice a week pick-up
12 that there will be no trash spill-over.

13 CHAIRPERSON MILLER: Let me ask
14 you while you are pausing, I don't know if you
15 are finished or you're pausing.

16 MR. AGBIM: Yes, I'm done.

17 CHAIRPERSON MILLER: You're
18 finished. Okay.

19 MR. AGBIM: Yes.

20 CHAIRPERSON MILLER: Could you
21 just tell me on the plan, the landscaping plan
22 where is Ms. Green's property?

1 MR. AGBIM: Ms. Green's property
2 is if you look at the 16 foot wide unimproved
3 alley, the center line of that alley or rather
4 that alley runs next to her property. If that
5 alley were to be projected backwards towards
6 E Street, her property would be on the top
7 left corner of the page.

8 CHAIRPERSON MILLER: Is it shown
9 on here? Is her property or not?

10 MR. AGBIM: Actually, if you look
11 on the cover page, you will see 53160807,
12 right behind that is Ms. Green's property. On
13 the cover page that shows the city map.

14 VICE CHAIR ETHERLY: Madam Chair,
15 if you are comfortable with questions at this
16 time, thank you very much for your
17 presentation, Mr. Agbim.

18 MR. AGBIM: Thank you.

19 VICE CHAIR ETHERLY: As you know,
20 of course, we are here under a special
21 exception, part of which speaks to
22 considerations of light, air and privacy.

1 What I wanted to perhaps walk through very
2 quickly, first, and some of this, of course,
3 is the result of some of the discussions that
4 you have already had with some of the adjacent
5 property owners, perhaps Mrs. Green, maybe the
6 ANC.

7 MR. AGBIM: Right.

8 VICE CHAIR ETHERLY: In terms of
9 some of the changes, I'm looking at kind of
10 the original plans and what you have just
11 submitted today, so I just wanted to kind of
12 highlight a couple of the quick changes. It
13 would appear that, and let me deal with the
14 rear parking area first, you have definitely
15 reduced -- have you reduced the number of
16 light fixtures that you are utilizing at the
17 rear of the property?

18 MR. AGBIM: Yes.

19 VICE CHAIR ETHERLY: As I look at
20 what is the new property, if I'm counting my
21 pole mounted light fixtures correctly, it
22 looks like you now have somewhere between 8 to

1 12 of the pole mounted light fixtures.

2 MR. AGBIM: That's correct.

3 VICE CHAIR ETHERLY: At the rear
4 of the property. Could you speak very briefly
5 to what you are anticipating in terms of the
6 level of illumination? Some of the concerns
7 that I would anticipate we may very well hear
8 would be considerations of the impact of the
9 lighting of the rear parking area on those
10 rear properties that are housed on E Street.
11 Do you have a sense yet? Have you made a
12 decision yet on what you are utilizing in
13 terms of illumines for those fixtures?

14 MR. AGBIM: Yes, yes. What we
15 have done is we have worked with the lighting
16 designer to determine that once you lower the
17 mounting height of the light fixtures and
18 increase the illumines, you will be able to
19 cover a greater area without spilling light
20 backwards onto neighbors' properties. So
21 that's exactly what has been done in this
22 design to reduce the amount of lights, provide

1 an evergreen hedge and plant that's going to
2 grow up to 4 to 5 feet and then increase the
3 illumines of the light fixtures, so that while
4 we're raising the parking areas properly,
5 we're not spilling over any light into our
6 neighboring properties.

7 VICE CHAIR ETHERLY: So do you
8 have a sense of how high, how tall, what
9 height you are looking at for those light
10 fixtures?

11 MR. AGBIM: Right now they have
12 been reduced down to 6 feet.

13 VICE CHAIR ETHERLY: To 6 feet?

14 MR. AGBIM: Right.

15 VICE CHAIR ETHERLY: Okay. And
16 what's the height of the fence at the rear of
17 the property?

18 MR. AGBIM: The fence shown on the
19 property is to be 6 foot high.

20 VICE CHAIR ETHERLY: Okay. So
21 you'll have a 6 foot fence and then the hedge
22 will be just somewhat below the size of that

1 fence?

2 MR. AGBIM: Right.

3 VICE CHAIR ETHERLY: 4 to 5 feet?

4 MR. AGBIM: That's correct.

5 VICE CHAIR ETHERLY: Thank you.

6 CHAIRPERSON MILLER: Does this
7 fence go all around the perimeter or three
8 sides or what? Because I didn't see the fence
9 where the evergreen is.

10 MR. AGBIM: Well, right. The --

11 CHAIRPERSON MILLER: I see it on
12 the sides.

13 MR. AGBIM: The plan currently
14 shows the fence stopping and then the
15 evergreen hedging going all the way around on
16 the three sides enclosing the parking areas.

17 VICE CHAIR ETHERLY: So the fence
18 would only -- so would the fence only cover
19 from the F Street to, essentially, the rear of
20 the property structures and then your hedge
21 picks up?

22 MR. AGBIM: Right. Right now the

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1 fence is shown coming from the frontage on F
2 Street up to about two-thirds way towards the
3 back.

4 VICE CHAIR ETHERLY: Okay. So you
5 will not have a fence at the rear of the
6 property?

7 MR. AGBIM: We can't have a fence.

8 VICE CHAIR ETHERLY: Okay.

9 MR. AGBIM: It will be fairly
10 redundant once the hedge matures.

11 VICE CHAIR ETHERLY: Gotcha.

12 MR. AGBIM: But we can't have a
13 fence all the way around the property.

14 VICE CHAIR ETHERLY: Okay. But at
15 this point, you don't have?

16 MR. AGBIM: Right.

17 VICE CHAIR ETHERLY: Okay.
18 Gotcha. Gotcha. Okay. And that would appear
19 to highlight or I should say mirror some of
20 the items that were noted in Exhibit No. 28,
21 which was the letter that you submitted to
22 Commissioner Hamlett in response to some of

1 the back and forth that you and community
2 members have had. I wanted to address there
3 was a point raised regarding the removal of
4 all windows facing Ms. Spriggs' property at
5 5214 F Street, S.E.

6 So that would be in reference to
7 the building that's labeled on your plans as
8 5212 F Street, S.E. There will be no -- is it
9 proper to understand that there will be no
10 lights on what is, I guess, the east wall
11 there. Is that correct?

12 MR. AGBIM: That's correct.

13 VICE CHAIR ETHERLY: There's no
14 windows.

15 MR. AGBIM: That's correct.

16 VICE CHAIR ETHERLY: On the east
17 wall. So for 5212 F Street, S.E., there will
18 be no windows on that east facing wall?

19 MR. AGBIM: Yes, and I would like
20 to add that we met with Mrs. Spriggs. I met
21 with the owner, Mrs. Spriggs, and in
22 discussion with her, she had mentioned that

1 one of our concerns was the fact that this
2 building was going to have windows that would
3 overlook our property and create the privacy
4 issue. So at that point, we pulled out the
5 floor plan and looked at it and found that we
6 could actually do away without those windows,
7 if that would make her happy.

8 VICE CHAIR ETHERLY: Okay. And
9 are you replicating that approach on what
10 would then be the west facing wall at 5206 F
11 Street?

12 MR. AGBIM: No.

13 VICE CHAIR ETHERLY: Okay. So you
14 will have windows on that wall?

15 MR. AGBIM: That's correct.

16 VICE CHAIR ETHERLY: Okay. So
17 when we look at what is labeled the side
18 elevation and I don't have a page number for
19 that, but I'm looking at this drawing here for
20 what is your side elevation, that side
21 elevation is in all likelihood referencing
22 5206 F Street, correct?

1 MR. AGBIM: That's correct.

2 VICE CHAIR ETHERLY: Okay. Could
3 you speak, and this will be my final question,
4 Madam Chair, again as a special exception
5 inquiry, we are considering issues of light,
6 air and privacy, so I wanted to just be sure
7 I'm clear, what is labeled your rear elevation
8 on that same page with the side elevation,
9 what is labeled as your rear elevation, that
10 is how you are intending to articulate the
11 rear of all four structures, correct?

12 MR. AGBIM: That's correct.

13 VICE CHAIR ETHERLY: Has there
14 been any discussion and I would anticipate
15 that this probably would be a very difficult
16 order to fill, has there been any discussion
17 or have you considered whether or not you can
18 limit the amount of fenestration on the rear
19 of the property? I would hazard a guess it
20 would be tough for you, because you would then
21 significantly impact the lighting that each of
22 the floors receive for the -- if you were to

1 eliminate windows back there, but had you
2 given some thought to it?

3 MR. AGBIM: It's possible to
4 eliminate some windows, one each per level,
5 but that will greatly reduce the amount of
6 lighting on the rear bedrooms.

7 VICE CHAIR ETHERLY: Um-hum.

8 CHAIRPERSON MILLER: Well, is
9 there a privacy question there?

10 VICE CHAIR ETHERLY: Well, I'm
11 anticipating just some of the concerns that
12 may be expressed by neighbors who are at the
13 rear of the property. Again, looking at
14 Exhibit No. 6 my colleagues will note that you
15 have a number of, including Mrs. Green's
16 residence, other residences back there, so
17 part of what I'm sure the Board will have to
18 weigh is the privacy issues or considerations
19 that might be raised by some of those top most
20 windows on the four buildings.

21 I'm not suggesting that I have a
22 problem with that, at this particular

1 juncture, because we're just beginning to get
2 into the case, but I am just kind of raising
3 it as an issue. To me, the fenestration looks
4 fairly standard and straightforward. So
5 again, I'm not suggesting that I have a
6 problem with it, but just kind of flagging
7 that as I'm sure it will be an issue that will
8 be raised.

9 Madam Chair, I think that covers
10 it for me in terms of my questions. I will
11 also note perhaps just very quickly, let me
12 come back to the light issue, if I may, you
13 also, Mr. Agbim have wall mounted light
14 fixtures that will be on the side of each of
15 the buildings. Is that correct?

16 MR. AGBIM: That's correct.

17 VICE CHAIR ETHERLY: Do you have a
18 sense at what height those fixtures will be
19 located? I don't currently see them
20 represented on your side or let's just say for
21 now, your side elevation. So where would
22 those particular wall mounted light fixtures

1 be placed?

2 MR. AGBIM: Those wall mounted
3 light fixtures will be at 10 feet and they are
4 downward grazing light fixtures. They are
5 placed on the blank portion of the side walls,
6 the side elevations of the building. So the
7 blank portion to blank portion, if you look at
8 the last -- on the drawing submitted, it will
9 be somewhat in between the small window and
10 the larger window.

11 VICE CHAIR ETHERLY: Okay. So
12 looking at the side elevation where you have
13 those four smaller windows.

14 MR. AGBIM: Right.

15 VICE CHAIR ETHERLY: You will have
16 a light fixture somewhere at the 10 foot level
17 between those small windows and would it be
18 that last --

19 MR. AGBIM: The last windows,
20 right.

21 VICE CHAIR ETHERLY: Gotcha.
22 Heading towards the rear of the property?

1 MR. AGBIM: That's correct.

2 VICE CHAIR ETHERLY: So somewhere
3 at the 10 foot level. Okay. Thank you, Madam
4 Chair, that concludes my questions for now.

5 CHAIRPERSON MILLER: Thank you. I
6 just want to pick up on Mr. Etherly's question
7 about the fenestration at the rear of the
8 building and make sure I'm looking at this
9 correctly. Looking at the landscaping plan,
10 is it correct that behind these buildings will
11 be a parking lot for the -- and then
12 evergreens and then behind that are
13 residences?

14 MR. AGBIM: That's correct.

15 CHAIRPERSON MILLER: Okay. Do you
16 know the distance between the rear of the
17 buildings and the nearest residence?

18 MR. AGBIM: Well, I'm not sure,
19 but from the rear of the building to --

20 CHAIRPERSON MILLER: The rear of
21 the building --

22 MR. AGBIM: -- the property line.

1 CHAIRPERSON MILLER: I'm sorry,
2 what?

3 MR. AGBIM: Is about 46 feet. We
4 have 46 feet from the rear of the building to
5 the property line.

6 CHAIRPERSON MILLER: To the
7 property line?

8 MR. AGBIM: To the rear property
9 line, yes.

10 CHAIRPERSON MILLER: Okay. So
11 that's the figure you have right now?

12 MR. AGBIM: That's correct.

13 CHAIRPERSON MILLER: Okay. And
14 could you describe in more detail the
15 landscaping that is being shown here? I can
16 see that there is evergreen hedging. What do
17 you envision by that?

18 MR. AGBIM: Well, the evergreen
19 hedging is a plant system that, you know,
20 initially planted 3 or 4 feet apart, but when
21 it matures and grows, it kind of, you know,
22 becomes a continuous greenery. It's an

1 evergreen plant, so it stays green with leaves
2 all year round and it can get trimmed to
3 various shapes and forms and can form a visual
4 barrier.

5 CHAIRPERSON MILLER: But are you
6 talking about pine trees? Are you talking
7 about shrubs? What are you talking about
8 exactly, do you know?

9 MR. AGBIM: Yes, this is a pine-
10 looking tree. I've seen pictures of it. It's
11 a pine-looking tree. But what it, basically,
12 does is that it's the design -- it's used
13 especially for hedges. It's got a needlepoint
14 leaf pattern and it's a perfect hedging plant.
15 And the hedge grows tall and very dense and
16 it's very appropriate for providing visual
17 barriers in landscaped areas.

18 CHAIRPERSON MILLER: Is it called
19 a perfect hedging plant or is that what you're
20 calling it?

21 MR. AGBIM: No. It's called the
22 American Arborvitae and the Latin name is

1 Thuja Occidentalis Nigra, that's the --

2 CHAIRPERSON MILLER: Oh, I see.
3 Okay.

4 MR. AGBIM: --botanical name for
5 it. I have the description of that plant on
6 the right hand side.

7 CHAIRPERSON MILLER: Right. I
8 just noticed that.

9 MR. AGBIM: On the third page.
10 Right.

11 CHAIRPERSON MILLER: Okay. So
12 that's going to be all along the back and the
13 perimeter of the parking lots?

14 MR. AGBIM: That's true.

15 CHAIRPERSON MILLER: On the sides?

16 MR. AGBIM: That's correct.

17 CHAIRPERSON MILLER: Okay. And
18 what else do we have here for landscaping?

19 MR. AGBIM: Besides that, we have,
20 you know, some paving into the areas and, of
21 course, the rest of the area on this revised
22 plan are left with sod, which it's a good

1 opportunity for playgrounds and recreational
2 use of the residents of this complex. Also,
3 we have some shade trees shown on the diagram,
4 especially flanking the buildings, the first
5 and last building, 5206 and 5212 and also in
6 between almost along the property line between
7 5208 and 5210.

8 We have some shade trees that will
9 help accentuate also and provide some shade
10 for recreational properties and also enhance
11 the landscape. In the frontage of the
12 building, we will have some low plants, some
13 magnolias, but small magnolia trees, don't
14 grow very tall. They used in the front to
15 also provide an opportunity for beautification
16 of the front of the building because those can
17 be trained very -- into various forms and
18 shapes.

19 CHAIRPERSON MILLER: Okay. And I
20 have one other question. All these buildings
21 are set back from F Street, S.E., 12 feet or
22 something like that?

1 MR. AGBIM: Right.

2 CHAIRPERSON MILLER: Correct?

3 MR. AGBIM: 6 feet from the
4 property line.

5 CHAIRPERSON MILLER: How does it
6 compare with the rest of the buildings on that
7 street or block or how does that setback
8 compare?

9 MR. AGBIM: Well, on the west side
10 of our block, the buildings are right on the
11 property line. There are two -- I'm not sure
12 how many units, but two condominium projects
13 on the corner of 51st and F and those are on
14 the property line. If you look at the cover
15 page again, you will see right on the corner
16 there is a parking lot. Then the next shaded
17 area is a building, the footprint of a
18 building. And then there is another parking
19 area and the next property is the next -- the
20 next shaded area is a footprint of the next
21 multi-unit condominium complex.

22 All the buildings on this side of

1 the street is Ms. Green's property. It's set
2 back up to 15 feet from the property line, it
3 appears.

4 CHAIRPERSON MILLER: Any other
5 questions?

6 BOARD MEMBER LOUD: Yes.

7 CHAIRPERSON MILLER: Go ahead.

8 BOARD MEMBER LOUD: Good
9 afternoon. How are you doing?

10 MR. AGBIM: Good afternoon, sir.

11 BOARD MEMBER LOUD: I'm looking at
12 the diagrams on the page that has the site
13 plan and it appears that there are two curb
14 cuts. I'm not sure if I'm looking at it
15 correctly. And then one of the curb cuts says
16 16 foot wide unimproved public alley. The
17 other one doesn't say anything. Is that where
18 the vehicles that are parked in the rear, do
19 they use that as a means of getting in and
20 out?

21 MR. AGBIM: Right.

22 BOARD MEMBER LOUD: The parking

1 spaces.

2 MR. AGBIM: The second curb cut
3 doesn't exist and our intention is to provide
4 a shared easement through which the parking
5 for 5210 and 5212 will be serviced. This area
6 is about 18 feet wide, face of property to the
7 face of property, and will be used for
8 entering into the parking area for 5210 and
9 12.

10 BOARD MEMBER LOUD: So that would
11 be paved over eventually?

12 MR. AGBIM: Yes, that's correct,
13 sir.

14 BOARD MEMBER LOUD: Now, where it
15 says unimproved public alley, again, that
16 would be paved over?

17 MR. AGBIM: Yes.

18 BOARD MEMBER LOUD: Okay.

19 MR. AGBIM: Yes, sir.

20 BOARD MEMBER LOUD: Thanks.

21 MR. AGBIM: Thank you.

22 CHAIRPERSON MILLER: Any other

1 questions from the Board?

2 VICE CHAIR ETHERLY: Very quickly,
3 Madam Chair. Pardon me, very quickly, Madam
4 Chair, just two other items I wanted to be
5 sure that we did not miss. Part of your
6 revised proposal, Mr. Agbim, also involves the
7 reduction of size in 5210 and 5212, correct?

8 MR. AGBIM: That's correct, sir.

9 VICE CHAIR ETHERLY: Okay. So
10 5206 and 5208 are remaining as they were
11 originally portrayed in your drawings, but you
12 are reducing the size of 5210 and 5212?

13 MR. AGBIM: That's correct, sir.

14 VICE CHAIR ETHERLY: Okay. With
15 respect to the -- I want to touch real quickly
16 on what is labeled as AD in our drawing. I'm
17 looking again at the landscape lighting plan,
18 those are area drains that you have
19 represented both in the parking lot and, if
20 correct, you have area drains between 5210 and
21 5212, correct?

22 MR. AGBIM: That's correct, sir.

1 VICE CHAIR ETHERLY: Is there any
2 other drainage plan between 5206 and 5208?

3 MR. AGBIM: No.

4 VICE CHAIR ETHERLY: Or between
5 5208 and 5210?

6 MR. AGBIM: No. One of the
7 reasons why we have not placed any other
8 drains, especially in between 5206 and 5208 is
9 because that's a public domain pretty much and
10 putting any structures there --

11 VICE CHAIR ETHERLY: Understood.

12 MR. AGBIM: -- will cause
13 maintenance issues.

14 VICE CHAIR ETHERLY: Okay. Do you
15 have any reason to believe that there will be
16 any drainage or storm water concerns as you
17 get to what is, essentially, the southwest
18 corner of the property? As you come down
19 towards 5206, I note so you don't have any
20 drainage on that side of the property, has
21 there been anything that would appear to
22 suggest a concern about the absence of any

1 drainage there or you're comfortable with your
2 drainage plan as it currently exists being
3 able to handle any of the storm water issues?

4 MR. AGBIM: Right. One of the
5 things, concentrations during the planning of
6 the project, we felt that the amount of
7 impervious area on the west most popular side,
8 which is the area right next to 5206 on the
9 left side, that amount of impervious area will
10 greatly reduce any runoff, water runoff into
11 the street.

12 Also, I would like to point that
13 there is a storm water management inlet on
14 this site. It's not currently shown on the
15 plans, but it's right there almost directly
16 below where there is a rectangle that says
17 trash enclosure, right below the stoop for
18 5206 F Street. So we're hoping again that
19 there will be minimal runoff due to the amount
20 of impervious area at the lowest point of the
21 site, which is this green area next to 5206.

22 VICE CHAIR ETHERLY: And could you

1 indicate, it's noted in the Office of Planning
2 report, at what is page 6 and page 7, the
3 Office of Planning notes that there is --
4 "Water will drain," and I'm reading from the
5 bottom of page 6 to the top of page 7. "Water
6 will drain from the northeast to southwest to
7 area drains within the parking lots and to a
8 proposed swale between lots 25 and 805 and a
9 swale to the west of the building located on
10 Lot 807."

11 And of course, OP has no
12 objections to the grading plan as currently
13 proposed. Could you indicate where those
14 swales are located at? Those two swales that
15 are referenced?

16 MR. AGBIM: Yes, they are -- the
17 swales, if you look at the second page, which
18 is a grading plan, the site plan.

19 VICE CHAIR ETHERLY: Um-hum.

20 MR. AGBIM: The swales are located
21 in between 5208 and 5210. And what it does is
22 that it picks up any water in the -- on paved

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1 areas and gradually runs it to a lowest point
2 which is smack at the property line in between
3 those two properties and also, at the left
4 side of 5206 a swale is -- a gentle swale is
5 provided there to assist water to collect and
6 peculate down into the ground and perhaps with
7 very little runoff onto the public domain.

8 VICE CHAIR ETHERLY: Okay. All
9 right. I believe, Madam Chair -- oh, finally,
10 recreational space. The Office of Planning
11 indicated that you have, and it would appear
12 by virtue of the revised plans, increased your
13 green space, but at this point you are still
14 not providing any explicit recreational space
15 on the site. That's correct?

16 MR. AGBIM: That's correct, sir.
17 We feel that -- I'm sure the homeowner
18 association can take advantage of the amount
19 of greenery on the site to probably put some
20 picnic tables or things of that nature as the
21 tenants see fit to.

22 VICE CHAIR ETHERLY: So it would

1 be your -- you would suggest then that if
2 there is recreational usage of the property,
3 it would take place to the east of 5212 and
4 the west of 5206, kind of on the edges of the
5 property?

6 MR. AGBIM: Right. On those
7 flanks, those green areas would be very
8 appropriate for recreational activity.

9 VICE CHAIR ETHERLY: And then
10 between 5208 and 5210?

11 MR. AGBIM: That's correct.

12 VICE CHAIR ETHERLY: Okay. But
13 again, you are suggesting that that will be
14 left to the homeowner's association, rather
15 than programmed into your current plan?

16 MR. AGBIM: Yes. Right now, the
17 current plan has not explicitly set out any
18 areas specifically for recreation.

19 VICE CHAIR ETHERLY: Okay.

20 MR. AGBIM: But there is a lot of
21 opportunity on the site for such uses.

22 VICE CHAIR ETHERLY: Okay. And

1 you indicated presently, just to make sure I
2 put a pin in this, that you don't have a fence
3 at the north of the property, but you are open
4 to the introduction of a fence on the north of
5 the property behind the hedge. I understand,
6 of course, that, you know, it could
7 conceivably be somewhat redundant, but again,
8 we're probably going to hear some concerns
9 about the light issue at the rear of the
10 property.

11 OP also references and I'll
12 perhaps just be a little more direct in the
13 question, OP references at what is page 6 of
14 their report under parking at the bottom of
15 the parking paragraph. "In response to
16 neighbor concerns, the applicant is also
17 proposing fencing along the east," which I
18 believe we have seen, "the north and south of
19 the property to minimize pedestrian cut-
20 through."

21 So I want to be sure that we're
22 clear. You're not proposing fencing at the

1 north, but you are open to putting in place a
2 fence?

3 MR. AGBIM: Yes. Our intention is
4 to have the fence there and this is probably
5 a graphical omission.

6 VICE CHAIR ETHERLY: Okay. So
7 your intent is to have a fence?

8 MR. AGBIM: We will have the
9 fence.

10 VICE CHAIR ETHERLY: At the rear
11 of the parking area?

12 MR. AGBIM: Right. At the rear
13 and then on the east and west sides of the
14 property.

15 VICE CHAIR ETHERLY: Okay.
16 Excellent. Thank you, Madam Chair. That
17 concludes my questions, I promise.

18 CHAIRPERSON MILLER: Thank you.
19 Mr. Agbim, I just want to make sure I'm
20 visualizing this correctly. In looking at
21 Exhibit No. 6, which has our color photos, are
22 your buildings going next to this apartment

1 building, if this is an apartment building,
2 right here?

3 MR. AGBIM: No, there is actually
4 another vacant lot in between 5206 and the
5 apartment building.

6 CHAIRPERSON MILLER: Okay. And
7 that building.

8 MR. AGBIM: Right.

9 CHAIRPERSON MILLER: Okay. And
10 then how far back are they going with this
11 apartment building as, you know, the guide?
12 I mean, is your parking lot, does that go to
13 the rear of this existing apartment building
14 or does the parking lot go beyond it?

15 MR. AGBIM: No. The parking lot
16 stops at least 10 feet before the rear of the
17 apartment building.

18 CHAIRPERSON MILLER: Okay. Thank
19 you very much. Okay. At this point, if there
20 are no other Board questions, then each of the
21 parties can cross examine if you have cross
22 examination questions you want to ask of Mr.

1 Agbim. That would be Ms. Hamlett on behalf of
2 the ANC and Ms. Green. Do either of you have
3 any questions you want to ask based on his
4 testimony? You don't have to, but you can.
5 Okay. Now would be the time then to ask
6 questions, not to testify yourself. No? Yes,
7 come forward.

8 MS. GREEN: I would like to know
9 is there a reason why the fence and the plant
10 hedging in the rear cannot be put up at the
11 same time, instead of it being an intent?

12 MR. AGBIM: Yes, the fence can be
13 put up at the same time as the hedging.

14 MS. GREEN: So are you saying that
15 this will be done?

16 MR. AGBIM: Yes, we will put up
17 the fence and the hedging simultaneously.

18 MS. GREEN: Okay. Now, there was
19 an issue about the windows. The windows
20 facing to the split side. If you look on the
21 last sheet, there are one, two, three, four,
22 there are four sets of rear windows. I

1 believe a 6 foot fence would probably cover
2 the two at the -- the two lower sets of
3 windows, but what about the three upper
4 windows that would be facing my property and
5 the other houses that, you know, your
6 apartment building would be impacting? What
7 about those windows?

8 MR. AGBIM: Are you referring to
9 the windows on the rear elevation?

10 MS. GREEN: Well, yes, I suppose.
11 I'm not fully understanding about, you know,
12 what elevation and so forth mean, but I mean,
13 you know, I am speaking about the windows in
14 the rear.

15 MR. AGBIM: Yes, those windows are
16 there. However, I would like to state that
17 because of distance, for example, this rear
18 elevation, the rear of the building is at
19 least 46 feet away from the property line and
20 the closest property in the rear to the
21 property line is at least another 30 feet.
22 And I don't expect that a distance of 70 feet

1 will pose a lot of privacy concerns.

2 MS. GREEN: Well, you know, I am
3 pretty concerned if I, you know, go in my
4 yard, happen to go in any parts of my yard,
5 backyard or side yard. I would be in view,
6 you know. We would be in view of everything
7 that is going on, you know, in our yard. Our
8 privacy, you know, would not be there any
9 more.

10 CHAIRPERSON MILLER: It's really a
11 time for you to ask him questions and you can
12 testify to that later as well. I don't know
13 if you expected an answer on that, but he only
14 has to really respond to your questions.

15 MS. GREEN: And I didn't get a
16 full understanding on the recreation for
17 children. Now, you said -- now, how many feet
18 did you say that the play area was going to
19 be? Because I thought there were, what, 8 or
20 9 feet on the east side, you know, of the
21 house or how much, you know, of an area did
22 you say would be for recreation for the

1 children?

2 MR. AGBIM: Well, what I said is
3 that there is ample green area on the left
4 flank of 5206, which is the first property
5 right behind your's and also --

6 CHAIRPERSON MILLER: And she is
7 asking what is the distance there. What is
8 that?

9 MR. AGBIM: Oh, the total
10 distance? The distance varies. In between
11 5206 and the property line is about 12 feet by
12 72 feet and in between 805 -- I'm sorry. In
13 between 5208 and 5210, there is about 23 feet
14 by 75 feet available of green area and also in
15 between 5212 and the property line on the east
16 side of the property, it's about 11 feet by 75
17 feet.

18 MS. GREEN: Oh, I'm sorry. Would
19 you repeat that? I was trying to follow you,
20 but I guess I missed it. So you said it's --

21 MR. AGBIM: If you look at the
22 second page.

1 MS. GREEN: Okay.

2 MR. AGBIM: Which is the site
3 plan.

4 MS. GREEN: Okay.

5 MR. AGBIM: On the left side of
6 5206 F Street, there is a 12 feet wide green
7 area that's about 75 feet long. And also, in
8 between 5208 and 5210 there is about a 23 foot
9 wide green area that's about 75 foot long.
10 And in between 5212 and the next property or
11 the property line on the east side is about 11
12 foot by 75 foot, approximately. And this is
13 all green areas that are going to be sodded
14 with trees in spots and will be a good
15 opportunity for developing play areas or
16 recreational areas.

17 MS. GREEN: How much space would
18 your -- okay. The drainage that -- I didn't
19 fully understand what you said about the
20 drains. You said for property 80 -- I mean,
21 5206, the vacant lot that's next to the
22 property what I saw, you know, some of the

1 drainage?

2 MR. AGBIM: No.

3 MS. GREEN: Is that what you said?

4 MR. AGBIM: No. We're not
5 depending on the vacant lot. What we did was
6 within the property next to the building 5206
7 we created a swale. A swale is a low area
8 that water can run into and slope away to
9 other points from. And this swale will be an
10 opportunity for us to ensure that water
11 doesn't run into the adjacent property and
12 also that any ground water that's not in paved
13 areas will have an opportunity to percolate
14 down and reduce runoff onto the street.

15 MS. GREEN: I don't -- you know,
16 you let me know what I can ask. Okay. Has a
17 geotechnical report been done on this
18 property? There are reports of underground
19 springs. Has --

20 MR. AGBIM: Yes, to answer your
21 question, initial geotechnical investigation
22 has occurred. However, they have not found

1 any underground water systems in this
2 particular property. The soil in this general
3 area is made up of, in one area, there is some
4 type of clay. However, on this site, we have
5 a fairly comparatively good pervious soil in
6 some of the sections of the site.

7 MS. GREEN: May I ask when was
8 this report done?

9 MR. AGBIM: I believe it was --
10 I'm not sure, but about March of this year.

11 CHAIRPERSON MILLER: Who did this
12 report? Who did the report that you are
13 referring to?

14 MR. AGBIM: Geotechnical Engineer
15 Company.

16 CHAIRPERSON MILLER: Is that in
17 the record?

18 MR. AGBIM: No.

19 CHAIRPERSON MILLER: Do you have
20 that to put in the record? Do you have any
21 objection to putting it in the record?

22 MR. AGBIM: Oh, no, it's

1 available.

2 CHAIRPERSON MILLER: Okay. And
3 then that would be served on you as well, so
4 you can see this report.

5 MS. GREEN: Okay. Does the
6 District Government have -- you know, would
7 they have any, you know, part in this, you
8 know, in doing this --

9 MR. AGBIM: Yes, what normally
10 happens --

11 MS. GREEN: -- report also?

12 MR. AGBIM: Yes. What normally
13 happens is after we're done with the zoning,
14 the storm water management design,
15 comprehensive design for the entire site will
16 be done. And at that point, it will be passed
17 through DCRA for review and also the
18 Department of Environment. They will do the
19 final determination if more area drains are
20 required or if any other soil mitigation is
21 required for the site.

22 CHAIRPERSON MILLER: What he is

1 saying, if I can add-on, is that we do really
2 zoning here. We're not experts in that per
3 se, but that will be reviewed further on down
4 the road by DCRA. And if there are problems
5 with that, they will be addressed at that
6 point. Is that correct, Mr. Agbim, in your
7 view?

8 MR. AGBIM: Yes, that's correct.

9 CHAIRPERSON MILLER: Okay.

10 MS. GREEN: There is another --

11 CHAIRPERSON MILLER: Is your
12 microphone on?

13 MS. GREEN: There is another
14 question I would like to ask. Your proposed
15 buildings, you know, I have -- the concern I
16 have is not with the buildings that you're
17 doing, but it's where you want to do them and
18 where you want to build them. And I want to
19 know since this is a large area and in the
20 Comprehensive Plan they have, you know, stated
21 that in large areas like this that will be --
22 where you can put families, three and four

1 bedroom homes and bring families back into the
2 District, have you considered three and four
3 bedroom single-family homes that would be more
4 compatible with the neighborhood?

5 MR. AGBIM: Yes, the design for
6 this project and for the site is based on what
7 the developer, the intent of the developer,
8 and also to address your concern about meeting
9 the requirements, these type of for-sale units
10 are still encouraged in this area, because
11 they allow people who do not earn so much to
12 be able to have their own homes. So this is
13 what this is geared towards.

14 CHAIRPERSON MILLER: Okay. I just
15 want to help her out just a little bit. I
16 hear your answer, but I think your response is
17 that this type of building is allowed under
18 the regulations and still encouraged or
19 whatever. Her question was though did you
20 consider single-family homes? Yes or no in
21 making the decision here to building the
22 condominiums instead?

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1 MR. AGBIM: Right.

2 CHAIRPERSON MILLER: Can you
3 answer that?

4 MR. AGBIM: Yes. We did consider
5 various forms of housing, including
6 townhouses, single-family homes and also
7 condominiums, but upon design and requirements
8 analysis, the developer decided that the
9 condominiums will work to fit into the
10 project.

11 MS. GREEN: Are you aware of the
12 number of condominiums for sale in the area
13 now?

14 MR. AGBIM: I don't have the exact
15 figures or the number of condominiums for sale
16 here.

17 MS. GREEN: Okay. Well, you know,
18 there are quite a few. Okay. I think that's
19 it.

20 CHAIRPERSON MILLER: Okay. Thank
21 you very much.

22 MS. GREEN: Oh, one other

1 question.

2 CHAIRPERSON MILLER: Okay.

3 MS. GREEN: Because I would like
4 to -- I noticed that there was a letter that
5 was cced to -- well, in your letter that was
6 faxed to the Board on Friday, it said it was--
7 I notice it was you referenced that you had
8 spoken with neighbors concerning, you know,
9 your intent for a -- your intentions of using
10 the -- developing a condominium community.
11 And I see at the bottom it was cced to 5201 E
12 Street, to our house, and we have not received
13 that letter.

14 MR. AGBIM: Yes. We -- when we --
15 I came to the area with the property owner and
16 we did talk to some of the neighbors and we
17 did walk over to your property and met with,
18 who I believe is, Mr. Green, your husband.
19 And after we discussed with him, we told him
20 we were going to send out a letter to him
21 regarding what we have discussed and some of
22 the changes we're making to the plans. So

1 that letter was, in fact, sent out. Of
2 course, we don't have a fax number for him, so
3 we're not able to fax him a letter, but we did
4 put one in the mail on Friday.

5 MS. GREEN: This is -- okay.
6 Friday, I should have received it. We should
7 have received it at least on Saturday or
8 Monday for certain. But now, you said some of
9 the residents. Could you name some of the
10 others ones?

11 MR. AGBIM: Well, we did come
12 there during the day. We discussed with Ms.
13 Spriggs, who is the neighbor on the east side
14 of 5212. And we talked to her in detail about
15 her concerns on the project. And we then went
16 around the block to E Street where we talked
17 to -- you know, we knocked on doors and were
18 able to talk to your husband, who we also
19 discussed the project, and did tell him that
20 the alley was, in fact, not going to be
21 improved to run through your property and he
22 told us that he did not have any objections to

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1 the project. But we did, in fact, tell him
2 that we're going to send out a letter stating
3 that we met one or two of the neighbors and
4 tried to work their concerns into the plans.

5 MS. GREEN: My husband said that
6 someone approached him and said he was doing
7 damage, I think, control and if he had
8 anything to say and but my husband did not
9 respond. I don't understand where the
10 discussion, you know, came from. You know, he
11 said that any concerns -- you know, he would
12 say that in a -- you know, he would hold it
13 for the meeting. And he is not in -- you
14 know, he is not for the project, totally not.

15 MR. AGBIM: I have not stated that
16 your husband is for the project. All I'm
17 saying is that when we approached him that
18 day, we did come to him to discuss, just like
19 we did with Ms. Spriggs, who is here today,
20 and who can tell you we did approach neighbors
21 to talk to them about their concerns regarding
22 the project. And he told us that he did not

1 have any concerns.

2 So our meeting with him is not a
3 secret. It's something that was very
4 straightforward. If he reserved his comments
5 about the project or deferred it to the ANC,
6 that's a separate issue. But the person who
7 give us more feedback than any person else was
8 Ms. Spriggs, who we talked to and tried to
9 find out what her concerns were.

10 And the reason we did that was to
11 try as much as possible to incorporate or to
12 address those concerns before today and also
13 before the ANC meeting, so that hopefully we
14 would have everything covered. That was our
15 intention of coming out to walk the
16 properties.

17 CHAIRPERSON MILLER: Okay. Thank
18 you very much. Do we have any questions from
19 the ANC? We don't. Okay. I just want to ask
20 you though, there are questions in your
21 report. Wait, well, could you come to the
22 table? I just want to make sure they are not

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1 cross exam questions for the applicant before
2 we move on. Okay.

3 MS. HAMLETT: I don't think ours
4 is cross exam, because we were just trying to,
5 from the ANC perspective, throw out some
6 issues that we felt that was to be looked at
7 and he has already answered about the fence
8 and the parking lot. Then we asked about the
9 alley, if that would be opened up, so these
10 were just things that the ANC was trying to
11 do, you know, along with hearing the rest of
12 the community. So these are not --

13 CHAIRPERSON MILLER: Okay.
14 Because I --

15 MS. HAMLETT: He has already
16 answered them.

17 CHAIRPERSON MILLER: Okay. That's
18 good.

19 MS. HARDY: I mean, you know.

20 CHAIRPERSON MILLER: Because I
21 think they are very on-point questions and I
22 just wanted to make sure you got your answers.

1 MS. HAMLETT: Yes, we was trying
2 to give him on-point questions.

3 CHAIRPERSON MILLER: Um-hum.

4 MS. HAMLETT: As to, you know,
5 what was related to us and, you know, I live
6 over there, too, but, you know, I have tried
7 to -- you know, I did give an input, but I'm
8 saying I try to remain a little neutral,
9 because I am the ANC Commission and I have to
10 hear what the community wants, you know, and
11 everyone wants. So I have already -- you
12 know, these were the main bullets that we felt
13 that was to ask of him and he has already
14 answered them.

15 CHAIRPERSON MILLER: Okay. And
16 you are the ANC Commissioner for the Single
17 Member District?

18 MS. HAMLETT: Of 7E03, yes.

19 CHAIRPERSON MILLER: Right. Okay.
20 Thank you very much.

21 MS. HAMLETT: Yes, um-hum.

22 CHAIRPERSON MILLER: Okay. Do we

1 have any other questions from the Board, at
2 this point? Okay. We can move then to Office
3 of Planning.

4 MR. WOODS: Good afternoon, Madam
5 Chair, Members of the Board. My name is
6 Douglas Woods. I'm with the Office of
7 Planning. The Office of Planning recommends
8 approval of the special exception application.
9 The proposal will not tend to impact adversely
10 the use of the neighboring properties and will
11 be in harmony with the general purpose and
12 intent of the Zoning Regulations and Zoning
13 Map.

14 The applicant has worked with OP
15 to improve the overall design of the project,
16 including a significant reduction in the
17 amount of paving and improved landscaping and
18 screening and fencing along the property. The
19 applicant was able to do this by reducing the
20 size of the two eastern most buildings.

21 It was, however, OP's
22 understanding that the fencing would be along

1 the sides and to the rear in order to cut down
2 on what could be some cut-through traffic
3 going through the site. We continue to
4 encourage the applicant to enhance the
5 appearance of the sides and the rear of the
6 building with the addition of -- with
7 additional use of split face block that he
8 uses on the front of the building and
9 additional brick.

10 We think that that would enhance
11 the appearance and have it more in keeping
12 with the neighborhood character, which does
13 include a number of brick structures. We also
14 encouraged the applicant to enhance the
15 landscaping along the F Street frontage.

16 We did receive the letter from the
17 ANC stating that they were having a meeting
18 this evening and that the applicant was, I
19 believe, to present this evening, so we did
20 understand that. And that concludes my
21 testimony and it is my understanding that the
22 applicant is continuing to have dialogue with

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1 the neighborhood and will continue to try to
2 improve the project. If you have any
3 questions, I would be happy to answer them.

4 CHAIRPERSON MILLER: Do you have
5 anything to add with respect to landscaping
6 design? I'm not sure if we heard what kind of
7 fencing it's going to be and any other
8 comments you have about the landscaping.

9 MR. WOODS: The fencing, I
10 believe, the applicant could better explain
11 that, but it would be opaque fencing, so that
12 there would not be light penetration to the
13 rear and to the sides where the parking is
14 located. The actual landscaping, we had had
15 a discussion with the applicant and I would be
16 willing to work with him to try and come up
17 with a better landscape plan and perhaps
18 better evergreen planting materials that would
19 grow quicker to give a quicker taller screen
20 than what's being proposed.

21 And I think that the applicant has
22 been willing to work on these things. And we

1 also have had discussions concerning the
2 landscaping along the F Street frontage, just
3 to make it more in keeping with the
4 residential character of the neighborhood.

5 CHAIRPERSON MILLER: So we're
6 going to be leaving the record open in this
7 case anyway, so during that period, you could
8 work with the applicant so that when we
9 deliberate on the case we would have that
10 updated information in the record?

11 MR. WOODS: Yes, ma'am.

12 CHAIRPERSON MILLER: That would be
13 great. Okay. You cite the Comprehensive Plan
14 in somewhat detail on page 3 of your report.
15 And my question is how do you think we should
16 factor those provisions that you cite into our
17 analysis or did you factor that into your
18 evaluation of this project? You cite it. I'm
19 not sure how you actually used it to evaluate
20 the project.

21 MR. WOODS: Can you specify any
22 particular passage?

1 CHAIRPERSON MILLER: Yes. Okay.
2 I can go into specifics. For instance, I
3 think that this development is characterized
4 as moderate density. Is that correct? And
5 your first paragraph, you are talking about
6 the moderate density. I think we're getting
7 to the issue here that's come up with in the
8 neighborhood about it's an apartment building,
9 condominium versus a single-family dwelling.

10 And so when you cite the land use
11 provision, 1.4, which seems to talk about low
12 density, I believe, or it doesn't. And far
13 northeast and southeast area element talks
14 about new low density residential in the
15 Marshall Heights community. I'm wondering how
16 you used that for an example in evaluating
17 this project.

18 MR. WOODS: You are correct in
19 that the Marshall Heights area does have a
20 section which is north of this particular
21 neighborhood that is designated on the Future
22 Land Use Plan as low density. This particular

1 area is designated moderate density
2 residential, which then allows this particular
3 type of development in the Zoning Regulations.

4 CHAIRPERSON MILLER: Thank you.
5 That's an important clarification. Okay. And
6 then my next question goes to the reference in
7 the land use, 1.4, element, which talks about
8 high quality design standards. And did you
9 evaluate the project in that context?

10 MR. WOODS: When you start to
11 evaluate something based on design without
12 having design criteria, then it becomes a very
13 subjective viewpoint. In looking at this
14 particular case, when you look at this
15 particular square and squares that are
16 adjacent, you do find a hodgepodge of single-
17 family detached homes, some vacant lots, some
18 usually four story brick apartment buildings
19 that were probably built in the '60s,
20 something like that, some in better repair
21 than others.

22 And so in this particular case, I

1 had to take that into account and by working
2 with the applicant to try and improve some of
3 the materials, especially on the sides and
4 rear, I do believe that the quality of the
5 design, of this particular project, would be
6 in keeping with the Comprehensive Plan.

7 CHAIRPERSON MILLER: And do you
8 think that this type of condominium building
9 is in accordance with the scale and character
10 of the neighborhood?

11 MR. WOODS: Well, I think that I
12 would have to respond that based on what the
13 current zoning is, this particular use and the
14 height and scale is allowed. And since it is
15 a special exception, the Zoning Regs are
16 saying that this use is a use that is
17 allowable and appropriate in this area.

18 CHAIRPERSON MILLER: That's true,
19 but it's not exactly a matter of right and so
20 I guess my question goes to when we grant a
21 special exception, we can consider, and I
22 think we're supposed to consider, whether it

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1 fits within the character and scale. So even
2 if something is allowed as a use in that area,
3 we could still deny a special exception, if it
4 required a special exception, on the basis
5 that it was out of character with the
6 neighborhood.

7 MR. WOODS: Looking at it from
8 that viewpoint, I would say that it is in
9 scale with the neighborhood, realizing, of
10 course, that there are single-family detached
11 homes in the neighborhood, but directly to the
12 west are two, I believe, four story condo
13 buildings, each larger in footprint than the
14 4-unit buildings that are being proposed.

15 Across the street, across F Street
16 and to the west is another, I believe, four or
17 five story apartment building that also has a
18 much larger footprint than the individual 4-
19 unit buildings that are being proposed. And
20 also to -- across F Street and to the
21 southeast is another four story apartment
22 building with two wings. And if you looked at

1 each wing, they approximate the footprint of
2 what is being proposed, but each wing is
3 actually still a little bit larger than what
4 is being proposed by the applicant.

5 CHAIRPERSON MILLER: Do you think
6 that there is a privacy issue with respect to
7 the rear windows on the higher floors?

8 MR. WOODS: Well, I think that, I
9 believe, there is, approximately, 40 feet
10 between the rear of the building to the rear
11 lot line. And if you can put in a privacy
12 fence and put in additional landscaping, that
13 will over time provide perhaps a 20, 25 foot
14 continuous hedge. Then I think that you can
15 mitigate any possible privacy problems.

16 CHAIRPERSON MILLER: Well, it's
17 just the question that Ms. Green asked. I
18 mean, it certainly does for the lower floor.
19 So if you have these 20 foot evergreens, can
20 the people on the top floor still looking into
21 the backyards of the homes behind the
22 building?

1 MR. WOODS: I think that they
2 probably could, but I think the distance also
3 mitigates any kind of privacy problem.

4 CHAIRPERSON MILLER: Okay. Thank
5 you. Any other questions?

6 VICE CHAIR ETHERLY: Very quickly,
7 Madam Chair, you covered everything I wanted
8 to hit with the Office of Planning. Mr.
9 Woods, just with respect to a little bit of
10 the discussion about storm water management,
11 your report doesn't indicate that there are
12 any concerns on the part of OP with regard to
13 storm water management. So I just wanted to
14 kind of reemphasize that you are not concerned
15 that additional drains might be necessary or,
16 in particular, as we look towards what is the
17 southwest corner of the property, as you
18 heard, Mr. Agbim did reference the storm water
19 inlet that is currently on-site, at least at
20 the curve towards that end of the property.

21 You don't have any concerns about
22 storm water issues?

1 MR. WOODS: No, sir.

2 VICE CHAIR ETHERLY: Okay.

3 MR. WOODS: No, sir. That
4 particular area, the swale to the west of the
5 5206 is actually draining a fairly small area
6 of the site.

7 VICE CHAIR ETHERLY: Okay.

8 MR. WOODS: But as the applicant
9 stated, he will be working with DCRA and the
10 Department of Environment and if additional
11 area drains are needed, then he would be
12 putting those in.

13 VICE CHAIR ETHERLY: Okay. One
14 final question. You heard the applicant and
15 myself discuss a little bit the issue of there
16 not being any programmed recreation space.
17 And while I'm not necessarily overtly animated
18 or concerned about that, Mr. Agbim did suggest
19 potentially that some of the green space on
20 the wings of the property, if you will, and
21 perhaps even the green space between 5210 and
22 5208 could be utilized for recreational space.

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1 Does the Office of Planning have
2 any concern about, at minimum, the use of the
3 wing space as recreational space? Because I
4 am thinking a little bit about the
5 conversation regarding windows on the eastern
6 side of that property relative to Ms. Spriggs'
7 property.

8 And as you indicated, as Mr. Agbim
9 indicated, while there is an additional lot
10 that is not subject to the applicant's control
11 moving westward back towards the existing
12 building, potential residential, I should say
13 potential recreation usage of that space,
14 could create privacy or impact issues. Would
15 you agree with that?

16 MR. WOODS: I would assume that
17 based on the narrow width of the eastern side
18 and the western side, that there would be
19 limited recreational opportunities there. One
20 of the reasons that we worked with DDOT and
21 the applicant to break up the parking lot, at
22 one point, the parking lot covered the entire

1 rear of the lot.

2 And by breaking that up, we were
3 able to get the landscape screening along the
4 edges and then create more or less a
5 continuous probably maybe 25 foot wide center
6 landscaped area.

7 VICE CHAIR ETHERLY: Okay.

8 MR. WOODS: That could then
9 possibly be used for recreational purposes.

10 VICE CHAIR ETHERLY: Okay. Thank
11 you. Thank you, Madam Chair.

12 CHAIRPERSON MILLER: I just want
13 to follow-up. Is there recreation area in the
14 vicinity? I mean, are there parks or
15 something else for these residents?

16 MR. WOODS: I believe there are.
17 I would need to look into the staff report to
18 check on that.

19 CHAIRPERSON MILLER: Let's see,
20 I'm not sure it's in the staff report, but if
21 it isn't, you could always supplement, okay,
22 since we're keeping the record open anyway.

1 It just doesn't show up under recreation,
2 which is on page 6.

3 MR. WOODS: I will need to get
4 back to you on that.

5 CHAIRPERSON MILLER: Do we have a
6 DDOT report?

7 MR. WOODS: We do not have a DDOT
8 report. I did receive an email from them and
9 it concerned the access driveways and breaking
10 up the parking lot. And they were in full
11 support of the applicant breaking the parking
12 lot into two with each building having the
13 appropriate four spaces on the appropriate
14 lot. But getting rid of as much pavement as
15 possible. DDOT was very supportive of that.

16 CHAIRPERSON MILLER: Great. And
17 you indicated you worked with DDOT and the
18 applicant on that.

19 MR. WOODS: Yes, ma'am.

20 CHAIRPERSON MILLER: Okay. Great.
21 Thank you. Any other questions? I just have
22 a question for the applicant before I forget.

1 We were talking about the fencing. Can you
2 describe what kind of fencing is going to be
3 used?

4 MR. AGBIM: Yes. This is a side
5 type fence that's, you know, very common.
6 It's the wood opaque fence with a 12 inch
7 lattice, the creative lattice planned on the
8 top level. It's made of pressure-treated
9 wood.

10 CHAIRPERSON MILLER: It's wood
11 opaque. What does that mean?

12 MR. AGBIM: I'm sorry. I mean,
13 it's side-type. You can't see through it.
14 It's a privacy fence. 6 foot tall with a 12
15 inch decorative lattice on top.

16 CHAIRPERSON MILLER: Okay. Thank
17 you. Do you have any questions for the Office
18 of Planning?

19 MR. AGBIM: No.

20 CHAIRPERSON MILLER: No. Okay.
21 Do any of the other parties have questions for
22 the Office of Planning? Do you have the

1 Office of Planning's report? Okay.

2 MS. GREEN: Okay. First, I would
3 like to ask that when I spoke to you and
4 addressed my concern to you about the
5 underground springs and you told me to contact
6 the Department of Environment or the Consumer
7 Regulatory Affairs. I would like to know why,
8 you know, which I did, and I wanted to know
9 why was this not -- I don't know what to say,
10 a form filed with the Water Protection
11 Division and Sediment and Storm Water, since
12 this was, you know, a concern?

13 And speaking with Mr. Kerry Carey,
14 who is chief of that division, he said that,
15 you know, the Office of Planning usually
16 would, you know, send them a -- you know,
17 would contact them and they would file, you
18 know, their form with you, so that I guess
19 that you would have -- you know, would have
20 been able to put in your notes, your
21 correspondence, your memorandum or, you know,
22 it would have been able to be presented at

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1 this time now before the Board.

2 MR. WOODS: Generally, when we
3 have a project come in, we forward the project
4 to various District agencies. Offhand, I
5 wouldn't be able to say whether I actually
6 forwarded it to the Department of the
7 Environment, but I can check to see if it was
8 done. Usually all of the appropriate agencies
9 are notified of the developments.

10 MS. GREEN: And speaking with the
11 Department of the Environment, let's see,
12 okay, and following up on what you, you know,
13 told me to do about my concerns about the
14 water, about the underground springs, you
15 know, because, you know, remember I spoke to
16 you that we don't have any flooding, basement
17 flooding or mole problems and so forth, so we
18 -- you know, before any of that land would be
19 developed, you know, that there is a major
20 concern.

21 And let's see, I spoke -- I'm
22 trying -- in my notes, I'm trying to find who

1 I spoke with for the Department of
2 Environment.

3 CHAIRPERSON MILLER: Ms. Green?

4 MS. GREEN: But he said that he --

5 CHAIRPERSON MILLER: Wait, Ms.
6 Green, I just want to remind you that we kind
7 of had this discussion before with the
8 applicant.

9 MS. GREEN: Oh, okay.

10 CHAIRPERSON MILLER: That OP isn't
11 doing the final sign-off on, you know,
12 underground.

13 MS. GREEN: Okay.

14 CHAIRPERSON MILLER: Storm water
15 management, that that happens later on after
16 zoning, when it is going to be permitted. So
17 that will be looked at.

18 MS. GREEN: Okay.

19 CHAIRPERSON MILLER: But we don't
20 do a final sign-off on that.

21 MS. GREEN: Okay. Also, you were
22 mentioning in the area earlier about what was

1 facing to the north, south, east and west.
2 And in the back where I am, I think, that's
3 the north. It's mostly -- well, it's all
4 houses, single-family homes. And on one side
5 is Mrs. Spriggs' house, which is a rambler.
6 And then there is a three story apartment
7 building. And then facing what would be the
8 project site are two other houses.

9 There is a three story apartment
10 building on the corner, but well, you can't
11 see it in the picture on the opposite side of
12 the street on the corner, but you can't see it
13 because of the apartment building that's in
14 the picture. And then there is an apartment
15 building facing Mrs. Spriggs' house. I just
16 wanted to clarify that.

17 Okay. Now, with all of these
18 other apartments, there is a part where you
19 addressed the parking. And I know there are
20 four parking spaces for, you know, each
21 occupant there. What about the on-street
22 parking, parking for the visitors and so

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1 forth? There is a fire hydrant, you know,
2 that would be -- that's right in front of
3 there, so that's 25 feet taken away on each
4 side. Okay. So what about that parking?

5 MR. WOODS: Well, as far as
6 parking, the applicant is providing the
7 required number of spaces that the Zoning
8 Regulation requires him to.

9 MS. GREEN: Right. One -- so the
10 on-street parking is not addressed here?

11 CHAIRPERSON MILLER: Okay. What
12 Office of Planning is saying is they meet the
13 zoning requirements for the number of parking
14 spaces they need to provide. However, yes,
15 your question goes to well, what happens with
16 visitors or whatever, correct?

17 MS. GREEN: Right.

18 CHAIRPERSON MILLER: So let me ask
19 him.

20 MS. GREEN: Okay.

21 CHAIRPERSON MILLER: Is there
22 enough on-street parking for visitors? Did

1 you evaluate the parking here?

2 MR. WOODS: That I did not
3 evaluate that, no.

4 CHAIRPERSON MILLER: Okay.

5 MS. GREEN: Yes. And, you know,
6 also, I would like to add that most households
7 have two cars, most households.

8 CHAIRPERSON MILLER: This is the
9 time for questions. You know, you will be
10 able to come and testify to all of your points
11 in a little while. Okay.

12 MS. GREEN: I want to know how
13 much -- again, how much space was -- I know it
14 was asked before, but I just need a little
15 more clarity on it. How much space for the
16 parking lot again is there for the parking
17 lot?

18 MR. WOODS: For the actual parking
19 spaces or the entire lot?

20 MS. GREEN: The space behind one
21 of -- you know, like the four parking spaces.

22 MR. WOODS: Um-hum.

1 MS. GREEN: Yes.

2 MR. WOODS: How many feet between
3 the edge of the parking and the property line?
4 No?

5 MS. GREEN: No. How much space
6 for the actual parking?

7 MR. WOODS: Oh, okay. Well, each
8 building is required to have four spaces. And
9 the spaces are 9 feet, I believe, by 19 feet
10 and then there is a 20 foot drive aisle in
11 between, 90 degree parking, and so 19 and 19
12 is, what 38 and 20, so 58 feet from edge of
13 parking lot to edge of parking lot.

14 MS. GREEN: No, that's not what
15 I'm saying. Okay. Do you see the one, two,
16 three, four?

17 MR. WOODS: Yes, ma'am.

18 MS. GREEN: All right. How much--
19 you know, how many feet is that?

20 MR. WOODS: Well, each space is 9
21 feet wide.

22 MS. GREEN: Okay. So 4 times 9.

1 Oh, okay. So that's where you're getting.
2 Okay. So 4 times 9 is 36. Okay. So you said
3 it's 36 feet, okay. 36, I guess, I'm still
4 not -- when you brought in the -- okay. Okay.
5 I --

6 CHAIRPERSON MILLER: Okay. Okay.
7 You will have an opportunity and you'll have
8 time to gather your thoughts together to
9 testify a little later on. Okay. Thank you
10 very much. Any other questions that we have
11 at this point? Okay. Then it's time for the
12 ANC to testify, if you have any testimony.

13 You don't have to. I understand
14 there is an ANC report in the record right now
15 and that you will be submitting a later report
16 after tonight's meeting. So I'm just checking
17 to see if you had anything else you were going
18 to offer today. Okay. That's fine.

19 And then, at this point, we can go
20 to any persons here who have testimony either
21 in support or in opposition. Is there anybody
22 here in support of this project who wishes to

1 testify? Okay. Anybody in opposition? Yes,
2 please, come forward. Okay. Can you identify
3 yourselves for the record, please?

4 MS. SPRIGGS: My name is Carnelle
5 Spriggs. I live at 5214 F Street, S.E., next
6 to the property.

7 MR. PAYTON: My name is Earnest
8 Payton and I own the property at 5207 E
9 Street, adjacent to the property in question.

10 CHAIRPERSON MILLER: Okay. At
11 this point then, you can give your testimony
12 if you would like.

13 MS. SPRIGGS: Okay. I did talk to
14 the contractor who made the architecture last
15 Friday and expressed some of my concerns. And
16 one of them was the fact that I felt that they
17 should have put four single-family homes on
18 these properties instead of the condominiums,
19 because the majority of the condominiums in
20 that area has been -- persons have stayed
21 there maybe a year and they moved on and
22 Section 8 those condominiums.

1 So it's beginning to be just a
2 bunch of Section 8 condominiums in this area.
3 So the same thing could happen there, unless
4 something was written in the wording of the
5 condominium that they cannot Section 8 them
6 all to the Government.

7 And another concern was, which I
8 did have the concern about the windows if the
9 property was going to take place, that my
10 development, my house is a rambler style home
11 on one level and it had a concern of all of
12 the windows looking down on my property and
13 the privacy, which he did address that in the
14 change of plan, but I was also under the
15 assumption that there was going to be a
16 privacy fence around the whole property.

17 But listening today and I haven't
18 seen the revised plan that the -- on my side
19 it seemed like the privacy fence is not going
20 to take place. It's going to be like an open
21 area for either recreation or some type of
22 table and chair setting or something like

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1 that. I'm not sure, because I haven't seen
2 the revised plans.

3 And about the water issues, I did
4 have a concern, because I do have sump pump in
5 my basement and there are plenty of springs
6 over in Marshall Heights. And whether we have
7 water for 30 days or 40 days, my pump is
8 steadily going off because of the springs.
9 And I didn't want to get it overrun, which I'm
10 already getting from my back from the
11 properties in question. That took care of
12 most of my concerns.

13 CHAIRPERSON MILLER: Okay.

14 MS. SPRIGGS: I probably have some
15 more, but I just can't think offhand.

16 CHAIRPERSON MILLER: Okay. Do you
17 know what the distance is between the building
18 closest to you and your property line or your
19 house or what distance are we talking about?

20 MS. SPRIGGS: Well, there is no --
21 there are no homes on the side of my house.
22 There is just vacant lots on both sides of my

1 house. And if they would put -- I mean, maybe
2 eventually another development may come in and
3 put another development on the side of my
4 house, which I'll be closed in from both
5 sides.

6 CHAIRPERSON MILLER: Did you see
7 Exhibit 6, which has the photographs?

8 MS. SPRIGGS: As I said, I haven't
9 seen the revised plans today, but I did see
10 some older plans that I had looked in Office
11 of Planning or Zoning, one of the two, that I
12 had looked at earlier.

13 CHAIRPERSON MILLER: Right. Yes,
14 I just want to clarify if that's what we
15 think. We think your house is this one, this
16 white house. Is that correct?

17 MS. SPRIGGS: Yes, yes.

18 CHAIRPERSON MILLER: So am I
19 correct, you don't have a good understanding
20 of what this fence is going to look like?
21 Because you haven't seen the revised plans or
22 what the landscaping is going to look like?

1 MS. SPRIGGS: Well, speaking to
2 the architecture, he told me that there would
3 be a fence around the whole perimeter of the
4 property. But listening today, it seemed like
5 I heard on the east side, which I'm on the
6 east side, there will be no fence as far as
7 the back of my fence line. I'm not sure. I
8 mean, like I said, I haven't seen the revised
9 plans.

10 CHAIRPERSON MILLER: Okay. So
11 that's one of your concerns that there be a
12 fence there, right?

13 MS. SPRIGGS: Yes.

14 CHAIRPERSON MILLER: Okay. And
15 with respect to the windows, you are concerned
16 about your privacy, but --

17 MS. SPRIGGS: The privacy and the
18 fact that with the balance in that area in the
19 last couple of years, my concern of, I guess,
20 just the balance and the privacy period.

21 CHAIRPERSON MILLER: Okay. Any
22 other questions? Okay. Thank you. Okay.

1 MR. PAYTON: Okay. My proposal to
2 this project is the fact that, like it was
3 stated, the violence used to be in abundance
4 in the area. It has decreased tremendously
5 since they closed down some of the apartments
6 in the area. To allow new apartments to come
7 in, there is no way of guaranteeing that those
8 apartments aren't going to be rented out,
9 they're going to be turned into Section 8
10 properties or what have you and so we don't
11 know who is going to move in there and what
12 type of people are going to move in.

13 And I plan to make that my
14 retirement home. And no way do I want to make
15 a retirement home in an area that's going to
16 be infested with drugs and prostitution. So
17 those are my major concerns. And the next
18 problem is that the elevation of those
19 buildings is going to decrease the air flow in
20 the area, which means it's going to cost you
21 more to run your air conditioners, because
22 it's going to get hotter.

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1 MS. SPRIGGS: Yep.

2 MR. PAYTON: So and then, of
3 course, the privacy. I have very much
4 concern, because I'm right next door to Ms.
5 Green. And it's like Ms. Spriggs says, they
6 will be able to monitor anything from the
7 upper floors that goes on in the backyard.
8 Those are my concerns.

9 CHAIRPERSON MILLER: Thank you.
10 So I gather it's your view, in general, that
11 there shouldn't be any more apartment
12 buildings or condominium buildings in your
13 neighborhood? And you have expressed that to
14 the Office of Planning?

15 MR. PAYTON: Yes, ma'am.

16 MS. SPRIGGS: Yes.

17 CHAIRPERSON MILLER: In general,
18 in addition to and specific to this case or
19 just specific to this case, but explaining
20 that that's your general --

21 MR. PAYTON: Yes.

22 MS. SPRIGGS: Well, we were part

1 of the petition that went out in this area on
2 this particular project and one of the other
3 projects that has come in this area, because
4 we have so many apartment buildings in this
5 general area. So, I mean, Ms. Green is
6 speaking for the neighborhood.

7 CHAIRPERSON MILLER: And did you
8 talk to the applicant about your concern about
9 the units reverting to Section 8 rentals?

10 MS. SPRIGGS: Yes, I did.

11 CHAIRPERSON MILLER: Yes.

12 MS. SPRIGGS: Yes, I did.

13 MR. PAYTON: I have never had the
14 opportunity to do so.

15 CHAIRPERSON MILLER: Well, I guess
16 the applicant can respond to that here. Okay.
17 Any other questions for these witnesses?
18 Okay. Thank you very much. Okay. At this
19 point, I think we can return back to the
20 applicant and I just want to follow-up just
21 with do you have a response to their concern
22 about the Section 8 housing and the violence

1 issues?

2 MR. AGBIM: Yes. In discussing
3 with Ms. Spriggs, she had mentioned that
4 knowing that the project is designed for for-
5 sale condominiums that it may, in fact, not be
6 a problem, but she mentioned that in the past
7 she has seen, you know, projects that were
8 conceived as condominiums and get delivered as
9 condominiums get, I guess, the people that
10 bought the units would then eventually like
11 rent them out to Section 8.

12 And usually, in her opinion, the
13 quality of people from the Section 8 pool are
14 not the quality of people who care about the
15 environment and the community and the
16 neighborhood and all that. I did mention to
17 her that I have seen condominium projects put
18 as part of their bylaws stipulations that the
19 owners of record actually do have to occupy
20 the units.

21 Again, I'm not a lawyer or a
22 registered attorney, so I don't know the full

1 implications of that, but I did mention that
2 as a way to control what happens to the units
3 in terms of occupancy subsequent to delivery.
4 I also did mention the fact that since this is
5 condominium units that are going to have a
6 responsible homeowner association and also a
7 responsible management company, some of the
8 issues of crime or -- well, not crime, but
9 some of the issues of, you know, disruptive
10 behavior to neighbors and also environmental
11 standards will be greatly improved.

12 And there may not be a lot of the
13 issues that would typically occur on a regular
14 rental housing project, because this is going
15 to be a well-managed, well-fenced in and well-
16 maintained complex. So on those notes, I, you
17 know, hope to, you know, assure her that this
18 project will not, in fact, be a nuisance
19 project.

20 CHAIRPERSON MILLER: Okay. Any
21 other questions? Okay. Then at this point,
22 do you have any other closing remarks you want

1 to make?

2 MR. AGBIM: No.

3 CHAIRPERSON MILLER: Okay. Well,
4 we are going to -- I'm sorry, I'm sorry. What
5 you didn't do your -- did you do your
6 testimony?

7 MS. GREEN: No.

8 CHAIRPERSON MILLER: I'm sorry.
9 Yes. You know, not really, but I just
10 realized that I didn't call you up to testify.
11 Do you have any testimony? Come on up then.
12 I'm sorry. Or witnesses, this is your case,
13 you can either offer witnesses or testify.
14 What are you doing? You have to speak on the
15 microphone.

16 MS. GREEN: Okay. I was not, you
17 know, certain how, you know, the proceeding
18 would go and, you know, I did file -- you
19 know, I did state a lot of my views when I
20 filed the party status. And but I did -- you
21 know, I wrote out some issues last night, so,
22 you know, do I pass them out to you all? You

1 know, they are kind of revised in a way.

2 CHAIRPERSON MILLER: Okay. I
3 don't think we need to look at it right now,
4 but you have a choice. I mean, first of all,
5 what you submitted already is in the record
6 and when we go to deliberate on this case, we
7 will be reading what you attached to your
8 party status application.

9 MS. GREEN: Okay.

10 CHAIRPERSON MILLER: So that's in.
11 You can either submit in writing what you have
12 there additionally or you can and/or verbally
13 give some more testimony, if you choose.

14 MS. GREEN: Well, maybe I'll just
15 submit this --

16 CHAIRPERSON MILLER: Okay.

17 MS. GREEN: -- to you all, because
18 there is a copy of the petition, you know, in
19 this.

20 CHAIRPERSON MILLER: Okay. You
21 need to also give copies to the other parties
22 in the case, which would be the applicant and

1 the ANC.

2 MS. GREEN: Okay.

3 CHAIRPERSON MILLER: And then they
4 could cross examine you on that, if they
5 choose. Okay. So you should give our copies
6 though to Mr. Moy. Mr. Moy? Okay. Thank
7 you. Ms. Green, what I want to ask you is are
8 you submitting this to be your testimony in
9 writing or are you planning on testifying now,
10 in addition?

11 MS. GREEN: No.

12 CHAIRPERSON MILLER: This is it?

13 MS. GREEN: Well --

14 CHAIRPERSON MILLER: It's okay. I
15 mean, if this is it, what we would do is --

16 MS. GREEN: Can I do both?

17 CHAIRPERSON MILLER: Well, I'm not
18 sure where you are -- how would you do that?
19 What do you mean can it be both?

20 MS. GREEN: Submit that and then
21 say something also?

22 CHAIRPERSON MILLER: Okay.

1 MS. GREEN: I can?

2 CHAIRPERSON MILLER: But the
3 applicant would be able to ask you questions
4 on what you have submitted, because this is --

5 MS. GREEN: All right.

6 CHAIRPERSON MILLER: Okay?

7 MS. GREEN: Yes, right.

8 CHAIRPERSON MILLER: All right.

9 MS. GREEN: I don't mind.

10 CHAIRPERSON MILLER: Okay. So go
11 ahead.

12 MS. GREEN: One of our concerns is
13 the population density. You know, all --
14 well, you know, as stated here, you know,
15 already on E Street there are at least two
16 apartment buildings or -- and on some streets
17 there are -- you know, it's all apartment
18 buildings. There are no houses. And this
19 area is zoned for R-5-A, which is houses.
20 Well, you know, maybe you all know.

21 Well, you know, for the -- you
22 know, you all -- well, R-5-A which is houses,

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1 detached or semi-detached with special
2 exception for row houses and flats and
3 apartment buildings, but there are just as
4 many apartment buildings in this area as there
5 are houses. And to bring in more apartment
6 buildings, you know, there is a population
7 issue and there -- you know, there is nothing
8 for the children to do.

9 There is one -- you know, there's
10 one swimming pool and which is overcrowded, so
11 in the summer they -- you know, the fire
12 hydrants have to be turned on in order to keep
13 the children cool. And then, you know, that
14 makes the driving hazardous, you know, and
15 also teaching the children how to play in the
16 streets.

17 And also, you know, our streets
18 are busy, you know, the cars, you know, they
19 fly, you know, down my street. And I did
20 submit a copy of the petition that has been
21 signed by some of the residents. It's -- we
22 don't have that many homeowners in the area,

1 so, you know, the petition, you know, is kind
2 of small. Well, you know, it's not as large
3 as we would like.

4 And we're concerned about the
5 safety, because, you know, right now there's
6 drugs, there's theft, there's homicides,
7 murders, car thefts and there's prostitution.
8 You know, they walk up 53rd Street and also
9 Southern Avenue and sometimes in broad
10 daylight.

11 And to build -- you know, to bring
12 in more -- you know, we do have a concern
13 about more apartment buildings can bring more
14 crime. And also, the -- you know, our, you
15 know, investment as homeowners, a lot of
16 times, you know, if the area is stigmatized,
17 you know, it can decrease our house value.
18 And well, you know, I did speak already about
19 the hydrological, you know, issues.

20 You know, I did speak about the
21 recreation. Well, you know, in the summary
22 that I have, I would ask that the Board -- if

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1 the Board would consider section 1807-2(a) of
2 the Comprehensive Plan, that the low density
3 character that typifies most for northeast and
4 southeast neighborhoods be maintained.

5 While it is recognized that the
6 area contains much vacant lot with the
7 potential for in-fill development, this
8 development should generally be similar in
9 density to what exists today. And, you know,
10 that's single-family homes that these
11 apartments would be adjacent to.

12 This is one of the few areas in
13 the city with opportunities to build three and
14 four bedroom homes suitable for families with
15 children. Building three and four bedroom
16 homes on this site would be compatible and
17 more in character with the neighborhood and
18 would attract families with children. Section
19 1808.2 of the Comprehensive Plan recognized
20 the value and importance of the far and
21 northeast and southeast stable single-family
22 neighborhoods to the character of the local

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1 community and to the entire District of
2 Columbia.

3 Insure that the Comprehensive Plan
4 and zoning designation for these neighborhoods
5 reflect and protect the existing low density
6 land use pattern while allowing for in-fill
7 development that is compatible with
8 neighborhood character. Building three and
9 four bedroom homes in this site would be
10 consistent with the density of what now
11 exists, as you can see on the attached photos.

12 There are only single-family homes
13 behind this site and on the side, except for
14 an apartment building on one side. In section
15 307.3 in both residential and commercial
16 settings, in-fill development must be
17 sensitive to neighborhood context. High
18 quality design standards should be required.
19 The privacy of neighboring structures should
20 be respected and density and scale should be
21 respected.

22 And density --

1 CHAIRPERSON MILLER: We can take a
2 break if you want us to take a quick break.
3 Why don't we do that? Why don't we take a 10
4 minute break. Okay.

5 (Whereupon, at 3:40 p.m. a recess
6 until 3:58 p.m.)

7 CHAIRPERSON MILLER: Okay. We're
8 back on the record. Mr. Etherly had to leave,
9 but he will read the record before we decide
10 the case. Ms. Green, are you ready to
11 proceed? I know this is -- you are doing a
12 fantastic job. I think this is a very
13 difficult situation for somebody who is new to
14 the process just to step in and act as a party
15 and do all that you are doing. So if you are
16 ready, you can continue.

17 MS. GREEN: Okay. Thank you very
18 much. First, I would like to apologize to the
19 Board. I'm not going to continue with the
20 summary. I would ask, you know, that if you
21 all would read, you know, the rest of it. I
22 have -- in coming to the end, in the past few

1 weeks or months or so, I have spoken to -- I
2 have done quite a bit of research and I have
3 spoken to quite a few people.

4 The only one I have not had the
5 opportunity to speak with was Mayor Fenty.
6 And I didn't get an answer to my emails
7 either, but I was still working on that, but
8 I do know that affordable housing is needed
9 and I know what affordable -- I learned on
10 Thursday what affordable housing is. And I do
11 know that condominiums are only apartments.
12 There is a process to say that you are
13 building condominiums. It's not a condominium
14 until you go through the Condominium Division
15 of the Consumer and Regulatory Affairs.

16 In the applicant's initial
17 application, it was said that two units would
18 be used for condominiums. Not two units, two
19 buildings would be used for condominiums. And
20 so that leaves two for -- that was in the
21 initial application. And I do know that the
22 Mayor has 2,000 supportive housing that needs

1 to be filled. And I know that these
2 apartments would be in building -- apartments
3 in these in-fill areas would help alleviate
4 that problem.

5 And I guess at the end, I was --
6 the applicant has a right by the law for his
7 land and we have a right for our land. And I
8 didn't know, I was mostly thinking that I was
9 working against the system. We're against a
10 system and can we actually fight that system?
11 And I do feel that we are, you know, within
12 the law, that according to the Zoning
13 Regulations, that -- well, anyway, if you
14 could read the rest of the summary and I would
15 like to conclude at that time -- at this time.

16 CHAIRPERSON MILLER: Okay. I
17 haven't had a chance to read your whole
18 summary and I don't want to put you on the
19 spot too much longer, but is it, basically,
20 that is it your view that a condominium would
21 be inconsistent with the Comprehensive Plan in
22 this spot?

1 MS. GREEN: Yes, yes, because the
2 Comprehensive Plan says that an area where
3 there is large lots in order to attract
4 families back into the city, that these large
5 lots should be used for three and four bedroom
6 homes.

7 CHAIRPERSON MILLER: Okay. And
8 also, when you cite the Comprehensive Plan,
9 there was a new Comprehensive Plan that was
10 recently enacted and I'm wondering whether
11 these cites are to the old plan or the new
12 one?

13 MS. GREEN: No, that is the plan
14 that was revised on December 19, 2006.

15 CHAIRPERSON MILLER: Okay. And
16 one more question I guess is, you know, I hear
17 a lot of worry about condominium turning into
18 an apartment building. And so I just want to
19 clarify, is your concern based on that aspect
20 of the condominium building? It's ability to
21 turn into an apartment building or is it also
22 based on being opposed to a condominium

1 building, even if it remained a condominium
2 building?

3 MS. GREEN: My concern is the tall
4 -- you know, is the --

5 CHAIRPERSON MILLER: Is the
6 height?

7 MS. GREEN: The height and the
8 privacy, you know, and so forth. I don't have
9 an issue of what the applicant wants to do.
10 It's where he wants to do it. And, you know,
11 in our area now, it would actually adversely--
12 you know, it would -- all houses and then you
13 have this great big building, you know, even
14 though there are one, two, three, four
15 buildings, there are still, you know, like
16 walls against, you know, a small backdrop.

17 CHAIRPERSON MILLER: Um-hum.

18 MS. GREEN: And a -- may I say
19 something? In speaking with the Condominium
20 Division, there are -- in the condominiums in
21 the District, you can either sell a unit and
22 rent, you know, all of them under the same

1 roof. And, you know, which is, you know, sort
2 of different and, you know, which is, you
3 know, kind of different, you know, so that
4 even though you say this is to be condominium,
5 you can also rent.

6 CHAIRPERSON MILLER: Okay. I
7 gotcha. Okay. One other question. Do you
8 know the distance between your property line
9 and the unit that is next to you that's being
10 proposed? Is it next to you?

11 MS. GREEN: Right.

12 CHAIRPERSON MILLER: Okay.

13 MS. GREEN: It's without a fence,
14 it's right next to our backyard. You know, a
15 fence.

16 CHAIRPERSON MILLER: It abuts your
17 backyard?

18 MS. GREEN: Yes.

19 CHAIRPERSON MILLER: Okay.

20 MS. GREEN: Yes.

21 CHAIRPERSON MILLER: The rear
22 abuts your backyard or the side?

1 MS. GREEN: It would be the rear.

2 CHAIRPERSON MILLER: The rear.

3 Okay.

4 MS. GREEN: Right.

5 CHAIRPERSON MILLER: Then we have
6 looked at that.

7 MS. GREEN: Right.

8 CHAIRPERSON MILLER: Okay.

9 MS. GREEN: The side, one side
10 abuts Mrs. Spriggs' property.

11 CHAIRPERSON MILLER: Oh, that's
12 right. Okay.

13 MS. GREEN: Okay. May I say
14 something that I forgot to say? Affordable
15 housing, I was told by -- I spoke to quite a
16 few directors, you know, heads up there, and
17 affordable housing, I was told, is housing for
18 low income, no income, ex-offenders and
19 homeless. I do know that, you know, they have
20 -- you know, everyone needs a place to stay.
21 And, you know, we are looking at our safety
22 also. I know everyone is not bad. It only

1 takes one.

2 CHAIRPERSON MILLER: Thank you
3 very much. Any other questions? Okay. I
4 don't believe there is anybody else here who
5 didn't testify. Okay. Then do you have any
6 final closing remarks? Okay.

7 MR. AGBIM: I would like to close
8 by just mentioning a few things for the record
9 and also to, you know, assure the neighbors
10 who have concerns that this project is not
11 designed to increase drugs, theft, homicides,
12 crime, dumping, race-style driving or some of
13 the other ills.

14 In fact, this project will, if
15 developed, inject responsible homeownership
16 into this community. This area, especially on
17 this block, this lot has been vacant. The
18 middle part of this block is mostly vacant,
19 sort of abandoned at night especially. And
20 you can see by properties on the other side of
21 the street there is a lot of dumping that goes
22 on and this is because there is a vacancy.

1 So when you have vacancy being
2 replaced by a project, which brings with it,
3 you know, responsible homeownership, a nice
4 clean, well-maintained environment, it will
5 help dilute the stigma of having your house in
6 an area that there is a lot of vacancy, in
7 terms of abandoned buildings or vacant lots
8 that are currently being dumped upon or the
9 grass not cut and all those kind of things.

10 So I think that vacancy and lack
11 of responsible homeownership is part of the
12 contributing factor to some of the things that
13 happen in the area. To address some of the
14 concerns about renters, I can almost tell you
15 that, you know, being that these are going to
16 be sold as condominiums, in most cases, there
17 is not going to be enough incentive for the
18 owners to rent the units out, because except
19 for the two units that are going to be
20 affordable, the mortgages and payments for the
21 other units may be higher than what is current
22 attainable as rent for two bedrooms in the

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1 area.

2 So I don't see how for a new
3 constructed building somebody would buy it and
4 then turn back around and rent it and lose
5 money every month or pay out of pocket every
6 month. Also, I would like to mention that, in
7 fact, all the units in this project plan to be
8 delivered as condominiums, for-sale units.
9 And only two of the units are going to be
10 offered as affordable housing.

11 And what this really means is that
12 the sales price is going to be pegged at 80
13 percent of the AMI to make it easier for
14 people who earn a little bit less to be able
15 to afford them or people who are already
16 living in the community, but cannot afford to
17 buy them at market rate.

18 So to summarize, I will, in fact,
19 say that this project will add to the quality
20 of life of the neighbors and if there is
21 anything that the developer or myself can do
22 to, you know, reduce other impacts that these

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1 buildings will have on the community, would be
2 more than likely -- we would be willing to do
3 that.

4 But I feel very strongly that
5 delivering this building of condominiums will,
6 in fact, you know, increase the -- you know,
7 will help the neighborhood and if the project
8 is approved, it will greatly enhance the
9 quality of other properties on the block and
10 surrounding areas. Thank you.

11 CHAIRPERSON MILLER: Thank you.
12 Any other questions from the Board? Okay.
13 Well, what we said at the beginning of this
14 hearing was that we were going to leave the
15 record open for specific documents. And I
16 think, at this point, perhaps we should -- and
17 that got expanded upon during the hearing. So
18 we could go over what documents we are keeping
19 the record open for and then we could set
20 dates. Did you have a question, Ms. Green?

21 MS. GREEN: Yes. I wanted to say
22 that there was no dumping, you know, on that

1 lot. If you look in the picture, you know, if
2 you look in the picture, we kept the lot
3 clean, us and, you know, my husband and Mrs.
4 Spriggs.

5 CHAIRPERSON MILLER: Okay.

6 MS. GREEN: You know, we were the
7 ones that have been cutting that grass.

8 CHAIRPERSON MILLER: Okay.

9 MS. GREEN: There was no dumping.
10 It's not a bad site.

11 CHAIRPERSON MILLER: Okay.
12 Actually, we have a procedure, basically, but
13 you don't know, and so the applicant gets the
14 last word here. However, we're leaving the
15 record open for additional submissions. So if
16 there is more that you need to say on issues,
17 you will have that opportunity. I think I'll
18 just start what I think that we already said.

19 We're going to leave the record
20 open for an ANC report. They are meeting
21 tonight, correct? Okay. I'm not setting a
22 date yet until we see what we're going to

1 have. And then we said that the parties could
2 respond to that. We talked about Office of
3 Planning continuing to work with the applicant
4 and submitting, I guess it would be, somewhat
5 of a revised plan, landscaping plan showing
6 some different or additions or a revised
7 version of the evergreens and whatever other
8 planting.

9 MR. WOODS: I could submit a
10 supplemental report with whatever design
11 revisions, including materials on the
12 building, the landscape features, things like
13 that.

14 CHAIRPERSON MILLER: Okay. And I
15 think the fencing detail would be good as
16 well.

17 MR. WOODS: I'm sorry?

18 CHAIRPERSON MILLER: If you could.
19 The fencing.

20 MR. WOODS: Oh, yes.

21 CHAIRPERSON MILLER: We talked
22 about it.

1 MR. WOODS: Yes.

2 CHAIRPERSON MILLER: But just so
3 that we can understand it better.

4 MR. WOODS: Okay.

5 CHAIRPERSON MILLER: And but I
6 would think that the applicant would need to
7 revise the landscaping plan to reflect as
8 well.

9 MR. WOODS: Yes.

10 CHAIRPERSON MILLER: Okay. I just
11 want to ask Office of Planning, also, there
12 has been a lot of discussion today from the
13 community about the Comprehensive Plan and
14 whether or not this project might be
15 inconsistent with it. And I was just
16 wondering in your supplemental report maybe
17 you could address that further, because I
18 wasn't exactly sure myself when I read the
19 report about the reference in here on page 3
20 where you talked about, you know. low density
21 in the plan and single-family houses. And so
22 if you can look at that.

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1 Also, I just want to broaden this
2 just a little bit. Basically, what was
3 addressed was -- I mean, what came up was, you
4 know, there isn't enough recreation in the
5 area, because they weren't providing anything
6 on their grounds, except open space. If when
7 you go back to do that, if there are other
8 services that you think are relevant that
9 weren't addressed before, since you're doing
10 a supplemental report, I think you should feel
11 free to do that.

12 So I think we should schedule this
13 so that the ANC report perhaps and the Office
14 of Planning report come in first and then
15 there can be responses to both of them. So we
16 often schedule backwards from the decision
17 meeting and I want to see whether that's
18 enough time, otherwise, we'll go a meeting
19 ahead of that.

20 The next decision meeting is June
21 5th, so I guess I want to hear from Office of
22 Planning and the parties whether when we start

1 -- well, Ms. Bailey, if we did a June 5th
2 decision meeting, when would the documents be
3 due?

4 MS. BAILEY: I would suggest,
5 Madam Chair, May 22nd.

6 CHAIRPERSON MILLER: For what?
7 The first -- the reports or the responses?

8 MS. BAILEY: The reports to come
9 in from the Office of Planning.

10 CHAIRPERSON MILLER: ANC?

11 MS. BAILEY: And the ANC.

12 CHAIRPERSON MILLER: And then the
13 responses would come in when?

14 MS. BAILEY: The response is just
15 from the applicant, correct?

16 CHAIRPERSON MILLER: No, from all
17 the parties.

18 MS. BAILEY: All of the parties?
19 May 29th, a week, would that be sufficient?

20 CHAIRPERSON MILLER: Okay. So in
21 hearing that schedule, I want to hear from the
22 parties whether they could meet that.

1 MR. AGBIM: I think that's okay
2 with me.

3 CHAIRPERSON MILLER: Okay. Okay
4 with the applicant. Can Office of Planning
5 meet that?

6 MR. WOODS: I think as long as I
7 have the relevant documents, the changes in
8 hand from the applicant.

9 CHAIRPERSON MILLER: Okay.

10 MR. WOODS: Concern the fencing,
11 the landscaping, the building materials,
12 things like that.

13 CHAIRPERSON MILLER: Right.

14 MR. WOODS: Then I can have it
15 ready.

16 CHAIRPERSON MILLER: Okay. And
17 the applicant, you're saying that you can do
18 that?

19 MR. AGBIM: Yes.

20 CHAIRPERSON MILLER: Okay.

21 MR. WOODS: But I would need it
22 from the applicant --

1 CHAIRPERSON MILLER: Prior.

2 MR. WOODS: -- at least, I don't
3 know, maybe three or four days before the
4 29th, just to make sure I can get the report
5 in.

6 CHAIRPERSON MILLER: No, your's
7 was the 22nd.

8 MR. WOODS: Okay. So three or
9 four days before the 22nd.

10 CHAIRPERSON MILLER: Okay. Mr.
11 Agbim, can you do that?

12 MR. AGBIM: Yes.

13 CHAIRPERSON MILLER: Okay. Is
14 that --

15 MR. AGBIM: Excuse me, is that the
16 22nd or the 21st? Is that date the 21st or the
17 22nd?

18 CHAIRPERSON MILLER: The 22nd.

19 MS. BAILEY: Madam Chair, there
20 was some discussion about the applicant
21 providing a copy of the geotechnical study.
22 I think he indicated that a preliminary one

1 was prepared. Is the record to be left open
2 for that?

3 CHAIRPERSON MILLER: Thank you,
4 yes.

5 MR. AGBIM: Yes.

6 CHAIRPERSON MILLER: Thank you.
7 Thank you very much. Did we forget anything
8 else?

9 MS. BAILEY: Those are the things
10 that I have.

11 CHAIRPERSON MILLER: Okay. Okay.
12 Can the ANC meet that schedule? Okay. Ms.
13 Green? Okay. There we go. Do you want to
14 repeat it, Ms. Bailey?

15 MS. BAILEY: The dates May 22nd,
16 the responses from the ANC and the Office of
17 Planning, all of the parties are to respond by
18 May 29th and the Board will consider a
19 decision on June 5th.

20 CHAIRPERSON MILLER: Perfect.
21 Okay.

22 MR. MOY: Madam Chair, I would

1 like to add for the Board's consideration, I
2 think that the elevation drawings were typical
3 drawings and I recall during the hearing the
4 building at address 5212 F Street was going to
5 custom tailor the east elevation to show no
6 windows. For the record, you may want to
7 resubmit just that east elevation for the
8 property at 5212 F Street.

9 MR. AGBIM: So in other words,
10 create a separate elevation, east elevation
11 for 5212?

12 MR. MOY: For our record drawings.

13 MR. AGBIM: All right. Thank you.

14 CHAIRPERSON MILLER: And also, you
15 would be submitting a revised landscaping plan
16 and the geotechnical report. Okay.

17 MR. WOODS: And if I may add, the
18 elevations would also need to include if the
19 applicant is planning on changing the
20 materials of the side and rear of the
21 buildings, then the elevations would need to
22 indicate the changes in materials.

1 CHAIRPERSON MILLER: That's
2 correct. Do you have a --

3 MR. AGBIM: Are we to change the
4 materials on the sides and the rear?

5 CHAIRPERSON MILLER: I understand
6 -- I thought that the Office of Planning was
7 working with you.

8 MR. AGBIM: Right.

9 CHAIRPERSON MILLER: And that you
10 had agreed to do that.

11 MR. AGBIM: Okay.

12 CHAIRPERSON MILLER: If you have
13 agreed to do that, whatever is presented by
14 those dates is going to be the final plans for
15 our consideration. So whatever has been
16 changed needs to be reflected on those.

17 MR. AGBIM: Thank you.

18 CHAIRPERSON MILLER: Okay. And,
19 Ms. Green, I just want to say you're not
20 obligated to respond, you are a party. You
21 have the privilege of responding if you would
22 like to. You have the opportunity to respond

1 to the ANC report and the revised OP report or
2 supplemental OP report. Okay. But you are
3 not obligated to, you may. Okay.

4 And all of the papers have to be
5 served on all of the parties, so whatever you
6 file needs to be, and I think the ANC probably
7 knows this and the applicant knows this, but
8 you have to file all your papers on each other
9 as well as on the Board.

10 And, Mr. Moy, how many copies have
11 to be served on the Board?

12 MR. MOY: Well, for the Zoning
13 Office we ask for 20 copies.

14 CHAIRPERSON MILLER: Okay. Any
15 other questions? Okay. Well, thank you very
16 much. And, Ms. Bailey, you can call the next
17 case when you are ready.

18 MS. BAILEY: Application No. 17606
19 of Dakota Points LLC, pursuant to 11 DCMR
20 3104.1, for a special exception from the roof
21 structure uniform height provisions under
22 section 411, to construct a four story

1 residential building in the C-2-A District at
2 premises 5545 through 5549 South Dakota
3 Avenue, N.E., Square 3760, Lot 10 and 5553
4 through 5575 South Dakota Avenue, N.E., Parcel
5 137/86.

6 MR. UTZ: Good afternoon, Members
7 of the Board of Zoning Adjustment. My name is
8 Jeff Utz of Pillsbury Winthrop Shaw Pittman.
9 And with me today is John Epting, also of
10 Pillsbury Winthrop. We are appearing before
11 you on behalf of Dakota Points LLC, the
12 applicant in BZA Case No. 17606.

13 The applicant is currently
14 redeveloping the property located at 5545 to
15 5549 and 5553 to 5575 South Dakota Avenue,
16 N.E., for residential use. Dakota Points LLC
17 is requesting a special exception relief under
18 sections 411.11 and 3104.1 of the District of
19 Columbia Zoning Regulations from section 411.5
20 requiring roof structure of uniform height.

21 CHAIRPERSON MILLER: Could I ask
22 you a question right there?

1 MR. UTZ: Sure, um-hum.

2 CHAIRPERSON MILLER: Can you tell
3 me why you are not seeking relief from 411.3
4 as well?

5 MR. UTZ: Regarding the number?

6 CHAIRPERSON MILLER: Yes, right.
7 "All penthouses and mechanical equipment shall
8 be placed in one enclosure until harmonized
9 with the main structure in architectural
10 character, material and color."

11 MR. UTZ: Right.

12 CHAIRPERSON MILLER: Yes, the
13 issue about the one enclosure.

14 MR. UTZ: Right. It's because of
15 section 411.4, that allows for, basically, one
16 roof structure per elevator core and there are
17 two elevator cores, although only one of our
18 cores goes to the roof. And that's what leads
19 to this differing height.

20 CHAIRPERSON MILLER: Okay. Thank
21 you.

22 MR. UTZ: Okay. Sure. The

1 applicant is proposing to construct a four
2 story residential structure that will include
3 this roof structure of varying heights. The
4 building will conform to the D.C. Zoning
5 Regulations in all other ways.

6 The applicant has attempted to
7 include all possible information in the record
8 of the case and if the Board would like, we
9 would be happy to stand on the record. We
10 would also be more than willing to present our
11 case to you today.

12 CHAIRPERSON MILLER: I think we
13 would like to go somewhere in between.

14 MR. UTZ: Okay.

15 CHAIRPERSON MILLER: Close to
16 standing on the record.

17 MR. UTZ: Okay, sure.

18 CHAIRPERSON MILLER: But, you
19 know, summarize what you are doing and why you
20 meet the criteria.

21 MR. UTZ: Okay.

22 CHAIRPERSON MILLER: Okay.

1 MR. UTZ: Under section 411.5 of
2 the Zoning Regulations, "A building's roof
3 structure must be of uniform height up to a
4 maximum amount of 18 feet 6 inches." We are--
5 basically, we have a roof structure that one
6 portion of it has the elevator override and
7 some mechanical equipment in it, that space is
8 13 feet 9 inches. The remainder of the roof
9 structure is 10 feet 9 inches. This basically
10 allows for some access to the roof from some
11 of the areas, some of the residential areas.

12 We can go into some more of the
13 architectural details of the case, if you
14 would like us to, and some of kind of the
15 history and some of the community background
16 of the case, as well, if you would like us to.
17 Okay.

18 CHAIRPERSON MILLER: I would say I
19 don't think you need to go into the history,
20 but just maybe flag again why this makes
21 sense, you know, and why there is no adverse
22 impact and why it might actually be a better

1 impact than the alternative.

2 MR. UTZ: Okay.

3 CHAIRPERSON MILLER: Okay.

4 MR. UTZ: Well, let me turn it
5 over to Laurence Caudle then. He is the
6 project architect and we turned in his resume,
7 his expert resume on the 14 day submission, so
8 it's in the record. He was also qualified as
9 an expert in Case 17600.

10 CHAIRPERSON MILLER: Okay. Let me
11 just ask my Board. Do you have any concerns
12 in qualifying as an expert witness? Okay. I
13 don't either. Okay. By consensus then, we're
14 accepting you as an expert witness.

15 MR. CAUDLE: All right. Thank you
16 very much. I will try to keep my testimony
17 brief. I'm going to jump right into the
18 architectural issues about this. We did, by
19 the way, bring an aerial just to show you the
20 location of the site, which is this long site
21 here, which in this oversized plan, you can
22 see the length of the site here. We ended up

1 with a building of about 584 feet in length.

2 And given that the context of the
3 neighborhood is really single-family and semi-
4 detached homes, I would point out that this
5 project, nonetheless, is all matter-of-right
6 except for the relief that we are asking
7 today. That from an urban design standpoint,
8 we have always been trying to break down the
9 mass of the building and the length of the
10 building and another caveat to that is that in
11 doing that, the way we did this was to break
12 up the length of the penthouse, which is
13 easily seen in the plan.

14 This is the first penthouse
15 structure, the second penthouse structure and
16 I'll just point out that there is an elevator
17 over around here and this is our elevator that
18 comes up to the roof for maintenance. But
19 this hatched area is the only part of the roof
20 that is the taller structure at 13 foot 9
21 inches. The rest of all of the penthouse roof
22 and enclosure is at 10 foot 9 inches.

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1 So architecturally, we kept it in
2 keeping with the massing of the building. You
3 can see the higher pieces at this end of the
4 building where the main lobby entrance is.
5 You can see that other than that the entire
6 length of the penthouse it is a single height.

7 We felt that that helped to break
8 down the length of the building. You can see
9 we did a lot of architectural features along
10 the way to help do that and treated the
11 penthouse that way also helped. And then the
12 last thing I'll point out is that it's also
13 built with the same materials. It will have
14 the same finish, the same color as the major
15 walls of the building itself.

16 MR. UTZ: We would also like to
17 have the applicant speak to you a bit
18 directly. With us today is Mark Rivers of
19 Dakota Points LLC.

20 MR. RIVERS: Thank you, Jeff.
21 Good afternoon, my name is Mark Rivers with
22 Low Enterprises. I'm the development manager

1 for the Dakota Project. Presently, the
2 property consists of a three story apartment
3 building and two small single story retail
4 buildings. All these buildings were built in
5 the 1950s and '60s. Because the buildings are
6 vacant, the apartment building is boarded and
7 the retail store fronts are shuttered and the
8 site is fenced.

9 The development of this property
10 is part of a coordinated mixed-use development
11 on the neighboring parcels, all of which are
12 Zoned C-2-A. The development program is
13 responsive to the plan realignment of the
14 Riggs Road/South Dakota Avenue intersection
15 and will include below grade parking, retail
16 space anchored by a grocery store and several
17 hundred residential units.

18 Because of its large scale,
19 significant topography, adjacency to the
20 development of a busy intersection, and nature
21 of the mixed-use development, this is a very
22 complex project. We have assembled a large

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1 team of very well-qualified professionals to
2 plan design and construct the project.

3 For nearly two years we have
4 expended considerable time and effort on
5 community relations, including a number of
6 meetings with the ANC-4B, with the latest
7 meeting being in February of this year. We
8 also conducted a bus tour of other mixed-use
9 projects in the area and that was attended by
10 over 20 people from the community. This
11 served as a great forum for community input.

12 We are very pleased to have the
13 support of the ANC-4B for this project. This
14 is the first phase of our project and we are
15 scheduled to begin construction in the third
16 quarter of this year. We appreciate your
17 considering this application today.

18 MR. EPTING: I'm John Epting. If
19 I could just say one thing. When Mr. Caudle
20 talked about the plans, he talked about the
21 length of the plans and that's why we have to
22 have the two cores. You probably aren't used

1 to seeing buildings this long, because we are
2 not, so therefore we need the two cores and,
3 therefore, we need the two elevator overrides.
4 So that's why 411.4 doesn't come up very
5 often. And we're just trying not to do a
6 penthouse all the way across. It would be
7 huge.

8 CHAIRPERSON MILLER: Thank you.
9 Okay. Anything else? Do you have any
10 questions?

11 BOARD MEMBER LOUD: Yes, a couple
12 of brief questions. Good afternoon. How are
13 you.

14 MR. RIVERS: Okay.

15 BOARD MEMBER LOUD: Just a couple
16 of questions on the make-up of the project.
17 Is this a mix between market and subsidized
18 units?

19 MR. RIVERS: It is not subsidized.

20 BOARD MEMBER LOUD: Okay. And in
21 terms of the bus, that's very commendable that
22 you took the time to take the community groups

1 on that tour. What were some of the sights
2 that you guys took a look at?

3 MR. RIVERS: We looked at Bethesda
4 Row in Bethesda and Pentagon Row and some of
5 the projects up and down the 14th Street
6 corridor.

7 BOARD MEMBER LOUD: Was the
8 thinking there that some of the retail would
9 mirror the retail in some of those projects?

10 MR. RIVERS: Not so much did we
11 look and say this is what it's going to be,
12 but we showed projects and were able to look
13 at specific elements of them and get feedback
14 on those.

15 BOARD MEMBER LOUD: Okay. And
16 about how much retail are you envisioning on
17 the ground floor?

18 MR. RIVERS: On this particular
19 parcel that we are speaking of today, there is
20 no retail. Of the project overall, there is
21 about 100 to 120,000 feet of retail, including
22 about a 60,000 foot grocery store.

1 BOARD MEMBER LOUD: Thanks.

2 MR. RIVERS: You're welcome.

3 CHAIRPERSON MILLER: Mr. Epting,
4 you said this was an unusually long building
5 and that's why you needed to break up the
6 penthouses?

7 MR. EPTING: I think Mr. Caudle
8 told me yesterday it was the largest --
9 longest building he has designed yet, except
10 for the first iteration of this building.

11 CHAIRPERSON MILLER: Yes, it looks
12 pretty long.

13 MR. EPTING: So it has Building
14 Code issues in terms of how far you can be
15 from a stairwell in the corridor.

16 CHAIRPERSON MILLER: And what went
17 behind creating such a long building and why
18 do we have such a long building?

19 MR. CAUDLE: Well, because -- just
20 by the nature of the site itself. I mean, the
21 site in this piece of it, you can see that we
22 don't even get the opportunity to show the

1 entire length of the property line. This
2 curve continues on and hits square off here,
3 but obviously, as it narrows, it's a little
4 too difficult to plan for the buildings.

5 So even by doing this, we don't
6 even maximize the lot occupancy. We're
7 certainly not maximizing the FAR for this lot,
8 just the length of the building. You get a
9 single run corridor, excuse me, a double
10 loaded corridor and a single corridor down the
11 whole length of the building.

12 There are jogs in the building
13 that break it up from a planning standpoint.
14 And just by the nature of the one level
15 underground garage, it was too impractical to
16 have one central lobby. People would have to
17 go too far to get to their cars and up to the
18 building. So that's why we end up with the
19 two elevator cores that Mr. Epting was
20 mentioning.

21 I hope that helps and elaborates a
22 little bit. Early in the beginning of the

1 project, we often showed the Washington
2 Monument and we joked at how close this
3 building was in length in terms of the
4 Monument's height and I don't remember any
5 longer how long the Washington is tall any
6 more, but it was pretty darn close and similar
7 to the length of this building.

8 CHAIRPERSON MILLER: Thank you.
9 It's just a curiosity question. Okay. Any
10 other questions? Is the ANC here by any
11 chance on this case? No, okay. We do have a
12 report from ANC-4B, but we're not 100 percent
13 sure whether we have the right report or not.
14 Maybe you can take a look at this. It's our
15 Exhibit No. 29 and it refers to Cases 17600
16 and 17606, but the discussion seems to be
17 addressing 17600.

18 I myself didn't sit on that case,
19 so I'm not particularly sure whether some of
20 this might go to this case at hand or not.
21 And I'm wondering if you would know whether we
22 have the right report.

1 MR. EPTING: Basically, here is
2 what happened. That is the only report. We
3 presented to the ANC and that all along we
4 presented both projects. And Jeff Utz was
5 there that night presenting both projects.
6 They wrote their report about the first
7 project, which we had our hearing on March
8 20th. When we asked whether we needed to come
9 back last Thursday, they said no and so we
10 didn't go back. We have had so much contact
11 with them all along, so that's the only report
12 that they have done.

13 CHAIRPERSON MILLER: Okay. The
14 one that is dated February 22, 2007?

15 MR. EPTING: Right. And Mr.
16 Rivers' testimony was clear, their support was
17 for the project. And we're considering the
18 whole thing one project. Mr. Caudle will
19 again show you the other portion of the
20 project.

21 CHAIRPERSON MILLER: I see. Okay.
22 So these two projects are connected and so --

1 MR. EPTING: Well, they have
2 always been talked about all along. We just--
3 for what --

4 CHAIRPERSON MILLER: How are they
5 connected? I wasn't on the other case. I was
6 out of town that time.

7 MR. EPTING: Same developers, same
8 architects, they had been planned at the same
9 time, the land was put together at the same
10 time, so the other part of the project has the
11 retail component and residential. Now, we
12 need a loading variance. We just -- the way
13 we filed the BZA variance relief, we just got
14 different hearing dates.

15 CHAIRPERSON MILLER: Okay. And I
16 know you can't exactly speak for the ANC, but
17 it certainly indicates in the heading that
18 they support both projects. Is the discussion
19 though that follows primarily about -- is it
20 only about the other project or is this
21 project actually touched upon in there?

22 MR. EPTING: As I remember it from

1 the other hearing, it's only about the other
2 project. And for whatever reason, they put
3 both numbers down.

4 CHAIRPERSON MILLER: Okay. And
5 one other question. You know, when they took
6 their vote, did they vote on them together, do
7 you know?

8 PARTICIPANT: I don't know.

9 MR. EPTING: It wasn't clear to
10 us.

11 PARTICIPANT: Yes.

12 CHAIRPERSON MILLER: Okay. All
13 right. Any other questions? Okay. I think
14 we can turn to the Office of Planning then.

15 MR. MORDFIN: Good afternoon,
16 Chair and Members of the Board. I'm Stephen
17 Mordfin with the Office of Planning. And the
18 subject application is in conformance with the
19 provisions of section 411.11 in that requiring
20 the height of the penthouse structures to be
21 equal would only serve to increase the height
22 of the entire building increasing the

1 exception of mass from the one-family
2 neighborhood to the east and the additional
3 construction necessary to increase the height
4 of the entire penthouse would serve to
5 increase the cost of the building and then the
6 cost of the individual units.

7 Therefore, the Office of Planning
8 finds it to be impractical to require that one
9 roof structure height be provided and
10 recommends approval of the application as
11 submitted by the applicant. Thank you.

12 CHAIRPERSON MILLER: Thank you.
13 Excellent report. Do we have any questions
14 from the Board? Okay. I don't either. I
15 think it's a pretty straightforward issue and
16 your report was very comprehensive, so I don't
17 have any questions. Does the applicant have
18 any questions of Office of Planning?

19 MR. UTZ: No.

20 CHAIRPERSON MILLER: Okay. You do
21 have their report?

22 MR. UTZ: Yes.

1 CHAIRPERSON MILLER: Okay. The
2 ANC, they are not here. Is that correct in
3 this case? Okay. Is there anybody here in
4 the audience who would like to speak in
5 support or in opposition to this application?
6 Okay. Not seeing any, then I'll turn to you
7 for closing remarks.

8 MR. UTZ: Okay. Under section
9 411.11 of the Zoning Regulations "The Board is
10 authorized to grant relief from strict
11 compliance with the roof structure
12 requirements. The Board can grant such
13 special exception relief regarding roof
14 structures if strict application of the Zoning
15 Regulations would be impracticable because of
16 operating difficulties, the size of the
17 building lot or other conditions relating to
18 the building or the surrounding area.

19 That would tend to make full
20 compliance unduly restricted, prohibitively
21 costly or unreasonable as long as the intent
22 and purpose of the Zone Plan are not

1 materially impaired by the structure and the
2 light and air of the adjacent buildings are
3 not adversely affected."

4 As Mark and Laurence have
5 described, the applicant meets all of these
6 standards of special exception relief under
7 section 411.11. As stated, strict compliance
8 with the uniform height requirements of
9 section 411.5 is impracticable for a variety
10 of reasons.

11 First, such a roof structure would
12 be impractical due to the elongated size of
13 the proposed building and the shape of the
14 lot, including the sloped topography of the
15 property. In addition, the building has a
16 close proximity to the residential areas and
17 as a result minimizing the effect of the
18 height on the neighborhood as a key
19 consideration in the design of this building.

20 Further, the dual height of the
21 roof structure allows for a more efficient
22 building design and ongoing operation. The

1 impacts of the differing heights of the roof
2 structure do not cause any negative
3 consequences and the intent and purpose of the
4 Zoning Regulations and Zoning Map are not
5 impaired.

6 The Zoning Regulations allow a
7 much taller roof structure of 18 feet 6 inches
8 which would have a much greater appearance of
9 height and mass. With a dual height roof
10 structure, the applicant is attempting to
11 minimize the appearance of building height and
12 mass and therefore the requested relief will
13 actually enhance the Zone Plan.

14 Given the location of the
15 requested relief, it will not impact the
16 surrounding neighborhood nor adversely affect
17 the use of neighboring property in accordance
18 with the Zone Plan. The special exception
19 will not change the overall permitted density
20 or height and the light and air of any
21 adjacent property are not adversely affected.

22 In addition, this project advances

1 the intent and the goals of the Comprehensive
2 Plan for the area. As a whole, the project is
3 an important investment in the neighborhood
4 and a vibrant site for property that is
5 currently under-utilized.

6 It will contribute to more active
7 streetscape at the Riggs and South Dakota
8 intersection along with the rest of this wider
9 project and offer more residential options
10 while strengthening and improving the physical
11 and aesthetic character of the surrounding
12 neighborhood.

13 That brings our presentation to a
14 close and we greatly appreciate the
15 opportunity to present our case to you.
16 Thanks.

17 CHAIRPERSON MILLER: Thank you. I
18 just wanted to ask you just to complete the
19 record. I thought I read somewhere either in
20 your application or Office of Planning that it
21 also would be very costly to do it the other
22 way. Is that a factor as well or not?

1 MR. UTZ: Is it?

2 MR. CAUDLE: Well, pardon me. I
3 mean, since this is a condominium building and
4 it ought to be part of the project owners and
5 future maintenance of structure itself, we
6 were encouraging them to minimize it, because
7 it would be less costly. This is a simple
8 product, but it's also painted, so there is
9 painting issues. There is waterproofing
10 issues for the roofing system that this would
11 have to penetrate if it had kept growing and
12 growing and growing. So it was our point to
13 make that, yes.

14 CHAIRPERSON MILLER: Thank you.
15 Anything else?

16 MR. UTZ: We would like to request
17 a Bench decision if that is possible and also
18 a summary order. Thanks.

19 CHAIRPERSON MILLER: Thank you.

20 MR. UTZ: Sure.

21 CHAIRPERSON MILLER: Okay. I
22 think we're ready to deliberate this issue.

1 I think I'll make a motion and then we can
2 deliberate on the motion. I would move to
3 grant Application No. 17606 of Dakota Points
4 LLC, for a special exception from the roof
5 structure uniform height provisions under
6 section 411, to construct a four story
7 residential building at premises 5545-5549
8 South Dakota Avenue, N.E., and 5553-5575 South
9 Dakota Avenue, N.E. Do I have a second?

10 BOARD MEMBER LOUD: Motion
11 seconded.

12 CHAIRPERSON MILLER: Okay. I
13 think this is really pretty simple and
14 straightforward. We have an application for
15 a special exception under 411. We just heard
16 the applicant articulate the standard and how
17 they meet it, but I'll rearticulate some of it
18 for our deliberation purposes.

19 The criteria as set forth in
20 411.11 which says "Where impracticable because
21 of operating difficulty, size of building lot
22 or other conditions relating to the building

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1 or surrounding area that would tend to make
2 full compliance unduly restrictive,
3 prohibitively costly or unreasonable. The
4 Board of Zoning Adjustment shall be empowered
5 to approve as a special exception under 3104,
6 the location design number and all other
7 aspects of such structure regulated under
8 section 411.3 through 411.6."

9 I'm not going to go through all of
10 that, but, basically, we can do this if it
11 meets those criteria on the basis that it's
12 impracticable and provided that the intent and
13 purpose of this chapter and this title should
14 not be materially impaired by the structure
15 and the light and air of adjacent building
16 shall not be affected adversely.

17 So basically, we have an
18 exceptionally long building where it does
19 appear to be impracticable to have one
20 enclosure going the whole length of the
21 building. And therefore, they are breaking it
22 up, which is actually beneficial to the

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1 surrounding area there or adjacent to a
2 residential neighborhood.

3 It provides for lower heights. It
4 provides for less massing. It provides for
5 greater efficiency. So I think that it meets
6 that criteria, the impracticable criteria.
7 Let's see, what else. Strict compliance would
8 actually be negative. We would have this huge
9 massing and greater height next to the
10 neighborhood. It doesn't have an adverse
11 impact at all. In fact, it doesn't impact the
12 Zone Plan at all.

13 I think that basically covers it.
14 We do have the support of the Office of
15 Planning and we do have the support of the
16 ANC, though we don't have any specific issues
17 to address within it, but they support it, so
18 there probably wouldn't be issues anyway.

19 Does anybody have any comments? I
20 just want to review the record for a minute
21 and see if I'm forgetting anything. It's not
22 located in a Historic District. Okay. I

1 think it meets the criteria for 411.11 and for
2 those reasons, does anybody else have any
3 comments? Okay. I guess we're ready for a
4 vote then.

5 All those in favor say aye.

6 ALL: Aye.

7 CHAIRPERSON MILLER: All those
8 opposed? All those abstaining? Ms. Bailey?

9 MS. BAILEY: Madam Chair, the vote
10 is recorded as 3-0-2 to approve the
11 application. Mrs. Miller made the motion, Mr.
12 Loud seconded the motion and Mr. Mann supports
13 the motion.

14 CHAIRPERSON MILLER: At this
15 point, I would also move that we waive our
16 rules and regulations requiring full findings
17 of fact and conclusions of law and that we
18 issue a summary order in this case. Okay.
19 All right. We have that by consent? And that
20 does it. Okay.

21 MR. UTZ: Thanks.

22 CHAIRPERSON MILLER: Thank you

1 very much.

2 (Whereupon, the Public Hearing was
3 concluded at 4:48 p.m.)
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