

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

MAY 8, 2007

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> 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

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

9:58 a.m.

CHAIRPERSON MILLER: Good morning.

This meeting will come to order, this hearing. This is the May 8, 2007 Public Hearing morning of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller. I am the Chair of the BZA and to my immediate right is Mr. Curtis Etherly, BZA Mayoral Appointee, also is Mr. Jeffries representing the Zoning Commission, to my left is Mr. Marc Loud, Mayoral Appointee also of the BZA, to his left is Mr. John Mann representing NCPC on the BZA and then Mr. Clifford Moy and Beverly Bailey from the Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please, be advised that this proceeding is being recorded by a Court Reporter and is also webcast live. Accordingly, we must ask you to

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

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

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

18 The order of procedure for special  
19 exceptions and variances is: 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 6<sup>th</sup> 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 40<sup>th</sup>  
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.

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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 1<sup>st</sup> 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

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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 26<sup>th</sup>, 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

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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 26<sup>th</sup>.

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.

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.

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

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.

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."

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

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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup>  
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 1<sup>st</sup> 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

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

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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 1<sup>st</sup>  
11 Street.

12 Can you point to me, what are they  
13 referring to at L and 1<sup>st</sup>? 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 1<sup>st</sup>  
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

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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

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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

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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

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 1<sup>st</sup> 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

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 1<sup>st</sup> 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.

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

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.

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 day,  
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.)

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

1:29 p.m.

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

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

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

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

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 Kunlipe, 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.

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 23<sup>rd</sup>, 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

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 51<sup>st</sup> and 53<sup>rd</sup>  
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

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

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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

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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

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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 51<sup>st</sup> 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

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 percolate 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

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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

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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

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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?

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

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

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

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

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

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 opposal 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.

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

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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,

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 53<sup>rd</sup> 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

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

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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

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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

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          5<sup>th</sup>, 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 5<sup>th</sup>  
2 decision meeting, when would the documents be  
3 due?

4 MS. BAILEY: I would suggest,  
5 Madam Chair, May 22<sup>nd</sup>.

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 29<sup>th</sup>, 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 29<sup>th</sup>, just to make sure I can get the report  
5 in.

6 CHAIRPERSON MILLER: No, your's  
7 was the 22<sup>nd</sup>.

8 MR. WOODS: Okay. So three or  
9 four days before the 22<sup>nd</sup>.

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 22<sup>nd</sup> or the 21<sup>st</sup>? Is that date the 21<sup>st</sup> or the  
17 22<sup>nd</sup>?

18 CHAIRPERSON MILLER: The 22<sup>nd</sup>.

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 22<sup>nd</sup>,  
16 the responses from the ANC and the Office of  
17 Planning, all of the parties are to respond by  
18 May 29<sup>th</sup> and the Board will consider a  
19 decision on June 5<sup>th</sup>.

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

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 14<sup>th</sup> 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           20<sup>th</sup>.  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

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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

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

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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