

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,
JANUARY 23, 2007

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

Gregory Jeffries	Commissioner
------------------	--------------

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Spec.
JOHN NYARKU	Zoning Specialist
ESTHER BUSHMAN	General Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK
ARTHUR JACKSON
JOHN MOORE
TRAVIS PARKER

This transcript constitutes the
minutes from the Public Hearing held on
January 23, 2007.

<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>WELCOME:</u>	
Geoffrey Griffis	6
<u>PRINCIPALITY LLC</u>	
<u>APPLICATION NO. 17558 - ANC-8C:</u>	12
Request For Party Status:	13
Granted Party Status:	17
<u>WITNESSES:</u>	
Stephen Gell	17/45
Jack Merwin	19
<u>CROSS EXAM BY MS. EVANS:</u>	52
<u>OFFICE OF PLANNING:</u>	
Matt Jesick	55
<u>PARTY IN OPPOSITION:</u>	
Olivia Jackson Evans	66
<u>CLOSING REMARKS:</u>	
Stephen Gell	100
<u>SPECIFICALLY REQUESTED MATERIAL:</u>	102
<u>SET FOR DECISION MARCH 6, 2007:</u>	103
<u>NAUN SEGOVIA</u>	
<u>APPLICATION NO. 17553 - ANC-1B:</u>	113
<u>WITNESSES:</u>	
Fred Greene	113
Norman Beeke	121
<u>OFFICE OF PLANNING:</u>	
Arthur Jackson	146
<u>CROSS EXAM BY MR. GREENE:</u>	169
<u>PERSONS IN SUPPORT:</u>	
Cynthia Giordano	179
<u>CLOSING REMARKS:</u>	
Fred Greene	182
<u>SPECIFICALLY REQUESTED MATERIAL:</u>	183
<u>SET FOR DECISION ON FEBRUARY 6, 2007:</u>	185
<u>ERIE HOMES, INC.</u>	
<u>APPLICATION NO. 17557 - ANC-7E:</u>	193
Request For Party Status (Ex. 26):	194
Vote to Grant Party Status:	207
<u>WITNESS:</u>	
Ike Agbim	207
<u>CROSS EXAM BY MR. LOWE:</u>	226

<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>APPLICATION NO. 17557 (CONTINUED):</u>	
<u>OFFICE OF PLANNING:</u>	
John Moore	234
<u>CROSS EXAM BY MR. LOWE:</u>	248
<u>ANC-7E:</u>	
Naomi Robinson	255
<u>PARTY IN OPPOSITION:</u>	
Lonnie Lowe	258
<u>CLOSING STATEMENT:</u>	
Ike Agbim	268
<u>SET FOR DECISION ON MARCH 6, 2007:</u>	270
<u>SPECIFICALLY REQUESTED MATERIAL:</u>	270
 <u>BENEDICTINE FOUNDATION ON BEHALF OF ST.</u> <u>ANSELM'S ABBEY SCHOOL</u>	
<u>APPLICATION NO. 17552 - ANC-5A:</u>	279
<u>WITNESS:</u>	
Stephanie Baldwin	280
<u>OFFICE OF PLANNING:</u>	
Travis Parker	284
<u>ANC-5A REPORT - EXHIBIT NO. 25:</u>	285
<u>PERSONS IN SUPPORT:</u>	
Reverend David Turner	286
Father Peter Weigand	287
<u>MOTION TO APPROVE APPLICATION 17552:</u>	291
<u>VOTE TO APPROVE APPLICATION 17552:</u>	298
 <u>MUSTAFA GULDU</u>	
<u>APPLICATION NO. 17551 - ANC-3E:</u>	299
Request For Party Status:	299
Grant Party Status:	307
<u>WITNESSES:</u>	
Mustafa Guldu	307
Mehmet Ergene	309
<u>OFFICE OF PLANNING:</u>	
Matt Jesick	325
<u>CROSS EXAM BY MR. ERGENE:</u>	340
<u>ANC-3E REPORT - EXHIBITS 29 & 32:</u>	343
<u>PARTY IN OPPOSITION:</u>	
Michael Soghomonian	346
<u>CROSS EXAM OF MR. SOGHOMONIAN:</u>	361
Elaine Chan	365

<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>APPLICATION NO. 17551 (CONTINUED):</u>	
<u>CROSS EXAM OF MS. CHAN:</u>	378
<u>CLOSING REMARKS:</u>	
Mustafa Guldu	388
<u>MOTION TO DENY APPLICATION NO. 17551: .</u>	390
<u>VOTE TO DENY APPLICATION NO. 17551: . .</u>	404
 <u>ADJOURN:</u>	
Geoffrey Griffis	405

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

2 10:24 a.m.

3 CHAIRPERSON GRIFFIS: I call to
4 order our Public Hearing of the Board of
5 Zoning Adjustment of the District of Columbia.
6 It is still being the 23rd of January 2007 and
7 it is still the Board of Zoning Adjustment of
8 the District of Columbia. Chairman Geoff
9 Griffis is here. Thank you very much. Vice
10 Chair Ms. Miller is with us, Mr. Etherly,
11 Board Member, representing the National
12 Capital Planning Commission is Mr. Mann and
13 representing the Zoning Commission with us
14 today is Mr. Jeffries.

15 Very important elements I'm going
16 to go through very quickly, that will make up
17 a little time. Copies of today's hearing
18 agenda are available for you. They are
19 located at the table where you entered into
20 the hearing room. You can pick one up and see
21 where you are in terms of the chronology for
22 this morning or if you're here early for our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

(202) 234-4433

1 afternoon cases.

2 It should be very well understood
3 that we are being recorded and transmitted.
4 All our hearings, everything that we do is
5 done in the open and before the public. So
6 attendant to that, there are several very
7 important things.

8 First, I would ask that you turn
9 off cell phones, so that we don't disrupt the
10 transmission of our proceedings. Secondly, if
11 you would pick up two witness cards if you are
12 going to give us testimony or present evidence
13 to the Board today, you will need to fill out
14 two witness cards. They are located at the
15 table in front of us, also where you entered
16 into the hearing room. Those cards go to the
17 Court Reporter sitting to my right on the
18 floor.

19 The Court Report to my right is
20 creating the official transcript. Everything
21 that is said will go into the record. They
22 are recording it. So with that, after those

1 two cards come in, you can come forward when
2 you are ready to present to the Board, make
3 yourself comfortable. You're going to need to
4 turn your microphone on and you're going to
5 need to state your name and address for the
6 record. You only need to do this once,
7 obviously, we can then match up names and
8 addresses for the transcript.

9 The order of proceedings for
10 special exceptions and variances is as
11 follows: First, we hear from the applicant
12 and the presentation of their case and all
13 their witnesses. Secondly, we will go to all
14 Government reports attendant to each
15 application. Third, we will go to the ANC,
16 the Advisory Neighborhood Commission within
17 which the property is located.

18 Fourth, we will hear from persons
19 or parties in support of an application.
20 Fifth, we will hear persons or parties in
21 opposition to an application. Sixth, finally,
22 we return to the applicant. They are allowed

1 closing remarks or rebuttal witnesses,
2 depending on the case proceeding.

3 There is an extensive amount of
4 other things that I should tell you, but I'm
5 going to dispense with that and just say
6 briefly that parties and applicants are
7 allowed to cross examine in each case. Cross
8 examination is a privilege and it is also a
9 great art. There is great restrictions and
10 directions. I will give that as we proceed in
11 specificity with each of the applications as
12 is required.

13 It should be noted though for all
14 participants that the record will be closed at
15 the conclusion of our hearing. It's very
16 important to understand that, because we are
17 creating an official record here in this room
18 in the open and before the public. That is
19 the sole basis, that is all the information,
20 only the information on which the Board will
21 make its decision upon.

22 So if you believe that the Board

1 needs information, you should put it into the
2 record today, either orally or it should be in
3 the record in written form or we can, on
4 occasion, leave the record open to have
5 additional information submitted into the
6 record, as the Board sees it is needed. The
7 decision, as I say, on these contested cases
8 must be based exclusively on that record.

9 The Sunshine Act does require that
10 we hold our hearings in the open and before
11 the public. We do enter into Executive
12 Sessions sometimes during and often times
13 after the hearing of a case. We use these
14 only for deliberating on the facts of the case
15 and sometimes deliberating on the basis of the
16 case. All of which is in accordance with the
17 Sunshine Act and also in accordance with our
18 rules, regulations and procedures.

19 Let me say a very good morning to
20 Ms. Bailey on my far left for the Office of
21 Zoning, Ms. Bushman with the Office of Zoning
22 and also Ms. Monroe with the Office of

1 Attorney General, Mr. Moy with the Office of
2 Zoning is also with us this morning.

3 At this point, I would like to ask
4 all of you who are prepared or are thinking
5 about providing testimony and evidence to the
6 Board, if you would, please, stand and give
7 your attention to Ms. Bailey, she is going to
8 swear you in.

9 MS. BAILEY: Would you, please,
10 raise your right hand?

11 (Whereupon, the witnesses were
12 sworn.)

13 MS. BAILEY: Thank you.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Thank you all very much. Sit and at this time
16 then it would be appropriate for us to hear
17 any preliminary matters in relation to all the
18 cases that we have on our morning schedule.

19 Preliminary matters are elements
20 of which would preclude a case moving forward.
21 So if you are not prepared to go forward with
22 a case or you think a case on our schedule

1 this morning should not proceed, I would ask
2 that you come forward and have a seat at the
3 table in front of us as a note of a
4 preliminary matter for the Board's attention.

5 Ms. Bailey, are you aware of any
6 preliminary matters for the Board's attention,
7 at this time?

8 MS. BAILEY: Mr. Chairman, Members
9 of the Board, to everyone, good morning.

10 CHAIRPERSON GRIFFIS: Good
11 morning.

12 MS. BAILEY: No, sir, I'm not
13 aware of any.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Not seeing any indication then of any other
16 preliminary matters from anyone in the
17 audience, I think we're prepared to call the
18 first case for our session.

19 MS. BAILEY: And that is the
20 Application of Principality LLC, No. 17558,
21 pursuant to 11 DCMR 3103.2, for a variance
22 from the lot width requirements under section

1 401, and a variance from the side yard
2 requirements under section 405, to allow the
3 construction of a new single-family detached
4 dwelling. The property is Zoned R-2 and it's
5 located at 3357 Martin Luther King, Jr.
6 Avenue, S.E., Square 6004, Lot 12.

7 CHAIRPERSON GRIFFIS: Excellent.
8 Thank you very much. We do have one
9 preliminary matter that is case-specific in
10 this and that is a request for party status.
11 Would you introduce yourself, Mr. Gell, if you
12 wouldn't mind for the record?

13 MR. GELL: Yes, thank you, Mr.
14 Chairman. Good morning. My name is Stephen
15 Gell. I'm a zoning attorney and I'm
16 representing Principality and Mr. Jack Merwin,
17 who is here representing also Principality.
18 He is one of the owners.

19 CHAIRPERSON GRIFFIS: Excellent.
20 Thank you very much. Is Olivia Jackson Evans
21 present? Indeed. Excellent. Mr. Gell, are
22 you aware of the request for party status?

1 MR. GELL: As far as I know, there
2 was no request for party status that entered
3 the record in time. I did check the -- so I
4 am surprised that that came in, but --

5 CHAIRPERSON GRIFFIS: Ms. Bailey,
6 do you show this as timely filed? I have a
7 date as the 31st of December and it's logged
8 in on the 4th.

9 MS. BAILEY: Party status requests
10 are 14 days before the hearing, Mr. Chairman,
11 and we are showing that it is timely filed.
12 I'm not quite sure why --

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. BAILEY: -- when Mr. Gell
15 reviewed the file it was not there. Do you
16 have a copy of it, Mr. Gell?

17 MR. GELL: I don't have a copy and
18 it's -- I reviewed the file about 10 days ago.
19 But if it did, it did and as I understand it,
20 these people live next door, so we don't have
21 any basis on which to object to the party
22 status.

1 CHAIRPERSON GRIFFIS: Okay. Well,
2 we're getting you a copy. It does show by the
3 records that it is timely filed. I would
4 agree, Mr. Gell, that the party request is
5 from 3359, the adjacent property. Very well.
6 Comments? Board Members, any questions?

7 Very well. If there's no
8 additional questions or comments on that, let
9 me hear any opposition there would be to
10 establishing the party status in opposition
11 from the adjacent neighbor. It is Exhibit No.
12 21. I know we have reviewed it. The
13 substance of which we will get into, however,
14 the basis of which that sets them as
15 significantly, distinctly or uniquely impacted
16 if this was to be approved, I think is very
17 clear in terms of, one, the adjacency of their
18 property and also some of the other elements
19 of which are being proposed as a structure on
20 that property, unless there is any
21 disagreement with that?

22 VICE CHAIR MILLER: Mr. Chairman,

1 I might be jumping the gun, but just in case,
2 I think that she is definitely entitled to
3 party status. It's just often individuals
4 come in and don't understand the
5 responsibilities of party status and we
6 usually explain it. Often, this is very quick
7 because she is obviously entitled to party
8 status, but just in case to make sure she
9 actually wants to undertake those
10 responsibilities. Do you want to explain it?

11 CHAIRPERSON GRIFFIS: Why don't
12 you?

13 VICE CHAIR MILLER: I'll explain
14 it. Ms. Jackson Evans, is that your name? I
15 just want to say that party status is a higher
16 level of participation in these cases than all
17 individuals automatically have. And all
18 individuals automatically can give testimony
19 with respect to their concerns and issues in
20 a case.

21 When you are a party, then you
22 also are entitled to cross examine the

1 applicant, witnesses and present witnesses of
2 your own. So we just want to --

3 CHAIRPERSON GRIFFIS: What she is
4 asking is whether you wanted to participate as
5 a person and just provide testimony or whether
6 you wanted to maintain a party status?

7 MS. EVANS: Party status.

8 CHAIRPERSON GRIFFIS: Indeed.

9 VICE CHAIR MILLER: Thank you.

10 CHAIRPERSON GRIFFIS: She has
11 indicated that she wants to continue with her
12 request for party status. And let me hear any
13 Board Members in opposition to establishing
14 the party in opposition. Not noting any
15 opposition, we would take it as a consensus to
16 establish the Jackson Evans, 3359 Martin
17 Luther King, Jr. Avenue, S.E., as a party in
18 opposition to the case. We will call you
19 forward at the appropriate time.

20 Mr. Gell, why don't we turn to you
21 for Board presentation of the case.

22 MR. GELL: Thank you, Mr.

1 Chairman. I was just reviewing this rather
2 lengthy request for party status, which,
3 obviously, has some points that will come up
4 later and unfortunately I'm not prepared for
5 it. But in any event, we'll put on our case
6 and deal with it.

7 Actually, Ms. Bailey has very well
8 summed up what we are asking for. It's two
9 variances. One for side yard and the other
10 for lot width. Curiously, if this were a
11 duplex, one half of a duplex, it would fit
12 very nicely on the lot. And there are, in
13 fact, other duplexes, including, I believe,
14 the one next door.

15 CHAIRPERSON GRIFFIS: What do you
16 mean by duplex?

17 MR. GELL: In other words, two
18 houses side-by-side with a party wall.

19 CHAIRPERSON GRIFFIS: You mean
20 semi-detached?

21 MR. GELL: Each on a separate lot.
22 Hum?

1 CHAIRPERSON GRIFFIS: A semi-
2 detached house?

3 MR. GELL: Semi-detached, right.

4 CHAIRPERSON GRIFFIS: Right.
5 Okay.

6 MR. GELL: Exactly. But this one
7 is between two groups of semi-detached houses
8 and, therefore, it can't attach to either one
9 of them. And it becomes then a lot that
10 simply is not usable for anything, except for
11 use by the neighbor if they wish to buy it or
12 as a residence. And what we have proposed is
13 a very nice looking house that will fit very
14 well into the neighborhood and would fit on
15 the lot as well.

16 I would like to turn now to Mr.
17 Merwin who has a statement he would like to
18 make.

19 MR. MERWIN: Good morning, Mr.
20 Chairman, Members of the Board. My name is
21 Jack Merwin. I am a mortgage broker and
22 developer. My company, Principality LLC, owns

1 the subject site and we plan to develop it
2 with a single-family house.

3 The property is located at 3357
4 Martin Luther King, Jr. Avenue, S.E., in the
5 R-2 Zone District. This lot is one of the
6 last unbuilt lots on the block and falls a
7 little shy of being wide enough for
8 construction under the Code.

9 The Zoning Regulations require a
10 minimum 32 foot width and we have only 25
11 feet. In addition, to build a house with a
12 reasonable width, we need to reduce the side
13 yard requirement to 3 feet per side. Our
14 first application asked for 2.5 foot side
15 yards, but after conferring with the Office of
16 Planning, we redesigned the house to make due
17 with 3 foot side yards.

18 That leaves the house 19 feet
19 wide, which we think will be satisfactory.
20 You should have those new plans before you.
21 Fortunately, the lot has sufficient area to
22 build a reasonable sized house. Surrounding

1 this lot are lots that are nearly all the same
2 width, so our size lot fits in with the
3 neighborhood standard.

4 Moreover, our 3 foot side yards
5 are similar to the other houses on the block.
6 Other side yards vary from half a foot to 4
7 feet with most of them being less than the 3
8 feet we are proposing. Our lot is unique in
9 that it is one of only two unimproved lots in
10 the area and the other unimproved lot is in
11 the same ownership as the adjoining lot.

12 Moreover, there is evidence that
13 there had been a house on the other lot at one
14 time, whereas my lot has always been vacant.
15 The width of the lot results in an exceptional
16 practical difficulty, since no productive use
17 can be made of the property except a single-
18 family residential building or as an adjunct
19 space for one of the neighboring houses.

20 We have offered the property to
21 the adjacent owners for, approximately, one-
22 half of the listed price, but have not

1 received a response. Building a house on this
2 lot will not cause any adverse effects on the
3 neighborhood, in that all the houses on the
4 block have narrow side yards.

5 Building on the lot will actually
6 benefit the neighborhood, since vacant lots
7 have often become unsightly and an attraction
8 for dumping and other illegal activity.

9 Finally, there will be no burden
10 on the existing street parking, since there is
11 ample parking at the rear of the lot with
12 access from an alley. Thank you for your time
13 and I'll be happy to answer any questions.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Thank you very much. Two points of
16 clarification. You just stated that you have
17 made an offer to sell to the adjacent
18 properties or no?

19 MR. MERWIN: I did send an offer
20 via fax to the party to my south, south of the
21 lot, 3359.

22 CHAIRPERSON GRIFFIS: Okay.

1 MR. MERWIN: Martin Luther King.

2 CHAIRPERSON GRIFFIS: But you
3 haven't heard back?

4 MR. MERWIN: I have not received
5 an answer.

6 CHAIRPERSON GRIFFIS: Okay. The
7 other maybe for Mr. Gell is just for
8 clarification of the relief sought. There is
9 some discrepancy or maybe some detail that
10 could be addressed under 401.2 and that is if
11 this was in single ownership in, I think,
12 November 1957, that it would be allowed at 80
13 percent of that, which would be required under
14 the lot occupancy of 401.3.

15 And that's what you are saying in
16 terms of the 32 percent.

17 MR. MERWIN: That's right.

18 CHAIRPERSON GRIFFIS: So was this
19 of single ownership that your client has owned
20 it since 1957?

21 MR. GELL: As best as we could
22 determine, it was indeed under single

1 ownership.

2 CHAIRPERSON GRIFFIS: It's an
3 interesting reading of that. So what would it
4 mean? It wasn't owned by your client in 1957,
5 correct?

6 MR. GELL: No, that's correct.

7 CHAIRPERSON GRIFFIS: So what
8 would it mean? What does that provision mean
9 then? You couldn't have duplicate owners?

10 MR. GELL: If it were --

11 CHAIRPERSON GRIFFIS: One way to
12 read it, just to be clear.

13 MR. GELL: -- owned by people next
14 door.

15 CHAIRPERSON GRIFFIS: One way to
16 read it is if you owned it from 1957 to today,
17 it's obviously a single ownership of which
18 then you have a lesser requirement for the lot
19 size.

20 MR. GELL: I don't think they are
21 referring to the number of people who owned
22 the lot. I think they are referring to

1 whether the lot was owned by the people who
2 also owned the lot on either side. That's the
3 way I read that. In other words, if it was
4 part of the property of the house next door
5 and had always for a long time been used as
6 their side yard, no matter how wide it is,
7 then it probably would not come within the
8 exception for the 80 percent.

9 CHAIRPERSON GRIFFIS: Yes, I see
10 there is two provisions in that paragraph.
11 One is establishing that there is a single
12 ownership as of a date, obviously, prior to
13 the zoning being adopted, the current zoning
14 in '58. And then the second provision is,
15 okay, even if it was singly owned in '57, it
16 cannot invoke this aspect of the 80 percent of
17 the lot area if each of the adjacent
18 properties are also of the same ownership.

19 I think we understand why they
20 would say that, because if you owned all three
21 or two lots, you could combine them to make it
22 more conforming.

1 MR. GELL: Right.

2 CHAIRPERSON GRIFFIS: But it seems
3 to me that, first, I'm stumbling over the
4 first sentence.

5 MR. GELL: I don't have the
6 sentence in front of me, but if you would read
7 it to me again, I'll try to respond.

8 CHAIRPERSON GRIFFIS: It says
9 "Except as provided in 401.3," 401.3 is the
10 lot and area requirements, "in the case of an
11 unimproved lot," this is it, "in single
12 ownership on November 1, 1957 that has a width
13 of lot less than the specified in 401.3 for
14 the District in which it is located that does
15 not adjoin another unimproved lot in the same
16 ownership."

17 MR. GELL: Oh, I see. I see.

18 CHAIRPERSON GRIFFIS: "A structure
19 may be erected on the lot if both the lot area
20 and the lot width are at least 80 percent of
21 the lot area, the width of the lot specified
22 in 401.3."

1 MR. GELL: I understand what you
2 are saying and I, frankly, don't know what
3 they mean by single ownership or why it would
4 be in there, except as, you know, it relates
5 to what came afterwards, which is that it was
6 adjoining another lot owned by the same
7 people. I don't know why it should make any
8 difference, unless what they are saying is
9 that it had been combined later.

10 CHAIRPERSON GRIFFIS: Yes, I don't
11 know.

12 MR. GELL: And that it had been
13 two lots which were combined later into one,
14 those two lots having been in separate
15 ownerships, but, in fact, this has always been
16 a single lot. All the lots on the street are
17 the same width, so it's unlikely --

18 CHAIRPERSON GRIFFIS: No, I
19 understand.

20 MR. GELL: -- they were combined
21 at any time.

22 CHAIRPERSON GRIFFIS: But that

1 doesn't go to the reading in the regulations.
2 Any other comments from the Board? I'll note
3 that the Office of Planning, why don't we just
4 jump to Office of Planning in terms of their
5 comment on this, because they have addressed
6 it. And I would have you just introduce
7 yourself and then we'll get back into your
8 analysis, but if you want to just address that
9 specific issue?

10 MR. JESICK: Certainly. Good
11 morning, Mr. Chairman and Members of the
12 Board. My name is Matt Jesick. In relation
13 to that section of the regulations that you
14 are referring to, the part of that paragraph
15 that I focus on most is near the bottom of the
16 paragraph where it states "A structure may be
17 erected on the lot if both the area and width
18 of the lot are at least 80 percent of the area
19 and width specified under 401.3."

20 In this case, the area of the lot
21 is greater than 80 percent of the requirement,
22 the 4,000 square feet. However, the width is

1 less than 80 percent of the requirement.
2 Therefore, I don't think that paragraph would
3 apply to this lot.

4 CHAIRPERSON GRIFFIS: So you're
5 saying we don't even need to get into the 1957
6 and who owned it?

7 MR. JESICK: That's my opinion,
8 yes.

9 CHAIRPERSON GRIFFIS: Okay. Now,
10 we have a third element of the single
11 paragraph. Excellent. Let's dispense with
12 this very quickly. Comments from the Board?
13 Ms. Monroe?

14 MS. MONROE: I'm not sure I have a
15 comment. I just want to understand that, Mr.
16 Jesick, you're saying because the lot width is
17 too small, the lot area isn't 80 percent?
18 Because it's an or, it's not an and. How are
19 you reading that? "Has the lot area or width
20 of lot less than that specified."

21 So you think because --

22 CHAIRPERSON GRIFFIS: No, it's an

1 and. "A structure may be erected." He is
2 saying a matter-of-right development on this
3 site if both the lot area and width of the lot
4 are at least 80 percent.

5 MS. MONROE: Where are you reading
6 at this time?

7 MR. JESICK: Further down in the
8 paragraph.

9 CHAIRPERSON GRIFFIS: Further down
10 in the paragraph.

11 MS. MONROE: Okay. Oh, I see.

12 CHAIRPERSON GRIFFIS: They are
13 both and.

14 MS. MONROE: I see.

15 CHAIRPERSON GRIFFIS: That's why
16 it's actually a third element of this.

17 MS. MONROE: Right, right. Yes,
18 there is a lot of ways to interpret this.

19 CHAIRPERSON GRIFFIS: Right.

20 MS. MONROE: No question.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. GELL: Mr. Chairman, it does

1 say at least 80 percent.

2 CHAIRPERSON GRIFFIS: Um-hum.

3 MR. GELL: And it could be
4 greater.

5 CHAIRPERSON GRIFFIS: Oh, sure.

6 MR. GELL: I mean, at least means
7 it could be greater than 80 percent.

8 CHAIRPERSON GRIFFIS: Right.
9 Well, we need it to be greater than 80
10 percent.

11 MS. MONROE: Right. Okay. I
12 understand.

13 CHAIRPERSON GRIFFIS: Okay.
14 Others?

15 MR. GELL: And being conforming is
16 also greater than 80 percent.

17 CHAIRPERSON GRIFFIS: Conforming
18 in what aspect?

19 MR. GELL: The lot area is
20 conforming.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. GELL: It's only the lot width

1 that's not conforming, but the lot width is
2 not 80 percent, so we need a variance for
3 that.

4 CHAIRPERSON GRIFFIS: Right,
5 right. I mean, I think it packs a lot in this
6 paragraph, but obviously shows where
7 nonconforming could be a matter-of-right
8 development, which I think is exactly what you
9 are going to. And the Office of Planning's
10 position is the fact that if you can't do
11 matter-of-right, then you have to look at, if
12 I understand you correctly, what is the relief
13 that is being sought, if it's not matter-of-
14 right.

15 And they have gone to the full
16 compliance with 401.3 in terms of what the
17 relief would be needed for the width, because
18 it doesn't comply with that aspect. So the
19 question then gets up to the fact of really we
20 don't need to, I don't think, spend much more
21 time on this, but the point is whether there
22 is relief from the 80 percent requirement,

1 3,200 square feet or is it 4,000 square feet
2 in terms of the basis of the ownership and in
3 single ownership in '57.

4 Additional comments, perspectives,
5 analysis, a good joke?

6 VICE CHAIR MILLER: No, I think
7 this is something that we can give further
8 thought to, but was your point that it's
9 whether or not this provision is applicable
10 based on what that means in single ownership
11 on November 1, 1957 or whether that means that
12 the same entity has owned it or whether it has
13 always been in single ownership?

14 CHAIRPERSON GRIFFIS: Right.

15 VICE CHAIR MILLER: Correct?
16 Okay.

17 CHAIRPERSON GRIFFIS: Yes. I
18 don't think it makes any difference. For the
19 Zoning Regulations to --

20 VICE CHAIR MILLER: Yes.

21 CHAIRPERSON GRIFFIS: -- address
22 whether two people own it or one person owned

1 it seems to be meaningless. When I read that,
2 I would imagine 401.2 is a protection of an
3 owned piece of property. In '58, the Zoning
4 District was laid in and rendered it
5 noncompliant based on its size of a site and
6 they -- as our Zoning Regulations do in almost
7 every single case, it addresses somehow if
8 there was something in existence that became
9 not allowable and nonconforming when we
10 adopted our regulations.

11 So that provision 401.2, to me, on
12 the first reading for this particular specific
13 case, I see that as being able to be invoked
14 if this was of the same ownership, single
15 ownership today as it was on November 1, 1957.
16 Otherwise what does single and what does
17 ownership have to do with it or it could go to
18 Mr. Gell's point, which I think he was pushing
19 it to say no, what it means is that this was
20 in existence back then.

21 That it wasn't subdivided some
22 other way and created after '57, therefore,

1 creating a nonconformity, which I'll let Mr.
2 Gell just talk about it if I get it correctly,
3 but that to me becomes more problematic,
4 because I'm not sure we could -- I'm not sure
5 a subdivision would be allowed if it actually
6 created a nonconforming piece of property.
7 But go ahead.

8 VICE CHAIR MILLER: No, I was just
9 looking at the next regulation, because I was
10 thinking then that single ownership would
11 probably mean not also owning another
12 adjoining property, but that's addressed in
13 the next regulation, so I don't know.

14 CHAIRPERSON GRIFFIS: Or in the
15 next sentence in that section. Yes, that's an
16 interesting point.

17 VICE CHAIR MILLER: Because I
18 think single ownership, I don't know, after
19 time ownership is going to change since '57
20 and it is still, to me, just reading, just off
21 the cuff looking at it, to me, it would still
22 continue as long as it was only owned by one

1 owner that one piece of property.

2 CHAIRPERSON GRIFFIS: Right.

3 VICE CHAIR MILLER: Not next to
4 another one.

5 MS. MONROE: Mr. Chairman, could I
6 just say one thing quickly on this? Because
7 the very last clause of 401.2 says that the
8 structure must comply with all of the
9 provisions of this title, I don't think 401.2
10 applies at all. I tend to agree with OP. And
11 I think if there is a variance, it would be
12 from the 4,000 from the 401.3.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. MONROE: And that's the way it
15 is.

16 CHAIRPERSON GRIFFIS: Additional
17 comments on that? Anyone hold a different
18 position? Mr. Gell, do you want to address
19 that?

20 MR. GELL: I would say if Ms.
21 Monroe is right, then we would ask that this
22 be considered a variance from the 40 feet.

1 And I think we also would then be noncompliant
2 with respect to the lot area.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. GELL: So we would seek that
5 variance as well.

6 CHAIRPERSON GRIFFIS: Okay. Ms.
7 Jackson Evans, do you have a position on this?
8 It's a fairly detailed analysis of the
9 regulations. If you're going to address the
10 Board, you have to be on a mike, so you would
11 have to come forward and introduce yourself.
12 There is no reason, but, of course, I am
13 obligated to give you an opportunity to
14 address this as this is one of the major bases
15 of the case.

16 MS. EVANS: Good morning, Mr.
17 Chairman.

18 CHAIRPERSON GRIFFIS: Touch the
19 base of that. There is a button. Perfect.
20 If you state your name and address for the
21 record, it would be great.

22 MS. EVANS: My name is Olivia

1 Jackson Evans. I live at 3359 Martin Luther
2 King, Jr. Avenue, S.E., D.C. 20034. And I am
3 the -- I own the adjacent property to 3357,
4 obviously. I guess the thing I want to be
5 clear on, I think the only place where I'm not
6 quite sure, they are basing their request for
7 a variance on the 30 foot wide lot, but I see
8 R-2, in like current day, 4,000 square feet
9 and a 40 foot requirement.

10 So in my looking at the
11 regulation, it appears that the only variance
12 would be that whether or not if they had
13 something that was 32 feet wide, not
14 necessarily 25 feet wide. So I'm not quite
15 sure what the current standard that we're
16 talking about is right now, specifically in
17 401.3 on minimum lot dimensions.

18 CHAIRPERSON GRIFFIS: Right. I
19 guess I don't understand your question. What
20 is it?

21 MS. EVANS: So I guess the bottom
22 -- I guess my concern is if the minimum

1 standard that they would be held to is 32 feet
2 and they are only talking about a 25 foot lot,
3 then if they don't meet the minimum standard,
4 then I would be opposed to the variance just
5 based on those grounds.

6 CHAIRPERSON GRIFFIS: Okay.
7 Anyone want to address that? I think I
8 understand your question. I think we will get
9 to even more so the substance of the answers
10 of that question.

11 MS. EVANS: Okay, okay.

12 CHAIRPERSON GRIFFIS: But what I
13 think we're actually trying to establish is
14 what is the requirement of lot size and lot
15 width.

16 MS. EVANS: Okay.

17 CHAIRPERSON GRIFFIS: For a
18 conforming. So if it was looking at fresh,
19 what is the area and restrictions? Office of
20 Planning is indicating that they view this as,
21 in the R-4 Zone, 4,000 square foot is the
22 minimum lot area.

1 MS. EVANS: Um-hum.

2 CHAIRPERSON GRIFFIS: And the
3 dimension of width would be 40 feet. Let's
4 hear comments on that.

5 MR. GELL: Mr. Chairman, I would
6 just point out that that if one looks at the
7 regulatory scheme of the Zoning Commission and
8 the BZA, it seems to me these provisions
9 originally were put in place in order for the
10 BZA to look at an individual situation, an
11 individual block or area and see whether the
12 regulations really make sense given the
13 context or whether relief can be granted,
14 because after all there is underlying all of
15 this a desire not to deprive people of the use
16 of their property.

17 And so the BZA, I would argue, was
18 set up in order to enable people to use their
19 property, even if the right to use it had been
20 taken away by regulation. But they can look
21 at it in the context and determine whether it
22 would have an undue effect on the

1 neighborhood.

2 It seems to me here what you have
3 is perhaps -- and then, of course, the other
4 exception was brought in, because they
5 probably had so many cases in which there were
6 32 foot wide lots or 80 percent at least and
7 decided to reduce the amount of work that the
8 Board would have to undergo under those
9 circumstances.

10 But here you have a situation
11 where all of these houses were developed
12 really on the same sized lots. I say all,
13 nearly all on the same size lots. And this
14 last one was not developed in time, that is
15 before '58, before the regulations came in.

16 The consideration of whether it is
17 going to have an undue effect, negative effect
18 on the neighborhood, it seems to me, is where
19 we think we made a reasonably strong case and
20 that, therefore, the scheme really ought to
21 lead to a conclusion that this is a
22 permissible variance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Well, I
2 don't disagree that it's a permissible
3 variance. It's just what is the variance?
4 This is where I think it would be appropriate
5 to move ahead with one under expedition, but
6 also just reading of 401.2 and that would be
7 to include lot width and lot area variances in
8 this application as well as the side yard as
9 has been advertised.

10 I think it doesn't change the base
11 facts and material facts in this case. We,
12 obviously, have the dimensions that we have
13 set forth. However, I don't see that the
14 argument is made for the 401.2 to be invoked
15 to remove one of those elements of relief.
16 And so I think it would be appropriate to move
17 forward in that fashion. Do I hear comments
18 otherwise?

19 VICE CHAIR MILLER: So you're
20 saying that 401 applies. Is that correct?

21 CHAIRPERSON GRIFFIS: I'm saying
22 it does not.

1 VICE CHAIR MILLER: You do?

2 Because, I mean, when I look at 401 --

3 CHAIRPERSON GRIFFIS: 401.2 does
4 not apply.

5 VICE CHAIR MILLER: Okay.

6 CHAIRPERSON GRIFFIS: 401.3 does.

7 VICE CHAIR MILLER: And 401.1?

8 CHAIRPERSON GRIFFIS: 401.1 isn't
9 even part of what we are doing.

10 VICE CHAIR MILLER: Okay. Well,
11 we were looking at it before. I mean, it
12 seems to me, when I read that as part of the
13 regulations, it fits.

14 CHAIRPERSON GRIFFIS: 401.1?

15 VICE CHAIR MILLER: Yes. That it
16 was built before 1958.

17 CHAIRPERSON GRIFFIS: That's
18 talking about enlargement or replacement of a
19 new building.

20 VICE CHAIR MILLER: I'm sorry.
21 I'm looking at the wrong one. Okay.

22 CHAIRPERSON GRIFFIS: Yes, 401.2.

1 VICE CHAIR MILLER: 401.2.

2 CHAIRPERSON GRIFFIS: Right.

3 VICE CHAIR MILLER: Okay. 401.2.

4 And then you go to the chart in 401.3.

5 CHAIRPERSON GRIFFIS: Right.

6 VICE CHAIR MILLER: Okay. I think
7 that's it.

8 MS. MONROE: This one here.

9 CHAIRPERSON GRIFFIS: What I see
10 in the reading of the 401.2 in this particular
11 case is that I would -- I am more inclined to
12 agree with the analysis of the Office of
13 Planning, which is saying, look, it doesn't
14 meet all the provisions of 401.2 in order to
15 essentially exempt relief request for lesser
16 of the lot area width, but then not of the lot
17 area.

18 So that we go just directly to
19 401.3, which would require for a non-semi-
20 detached in an R-2 all the structures of 4,000
21 and 40 foot dimension. Again, the relief is
22 still a variance.

1 VICE CHAIR MILLER: Right.

2 CHAIRPERSON GRIFFIS: The base
3 material facts are the same. The site, the
4 area in existence is the same. So I think
5 it's appropriate to move forward on that,
6 unless there is great opposition in doing so.
7 Okay. Then we'll take it as a consensus of
8 the Board that we'll move ahead in that
9 fashion.

10 So what we are doing, of course,
11 is they are about to present their case
12 presentation for the variances, for the side
13 yard, lot width and lot area. So you guys can
14 make yourself comfortable again. We'll have
15 them present their case and then we'll call
16 you back up and appreciate your input on that.
17 Mr. Gell, why don't we turn it over to you.

18 MR. GELL: Mr. Merwin completed
19 his statement. I think we showed in our
20 written submission that we meet the uniqueness
21 test. This is the only lot that is in single
22 ownership and not adjoining a lot that's in

1 the same ownership. And that the practical
2 difficulty is simply that he can't do anything
3 with the lot, except sell it and he has tried
4 to do that.

5 None of the neighbors want to buy
6 it or build a single-family house. Otherwise,
7 he is deprived of all reasonable benefit from
8 the lot and we think that meets the test of a
9 practical difficulty.

10 I won't go into the issue of
11 whether this is -- the exemptions from 32 feet
12 or from the 40. I think it is satisfactory
13 that the Board consider this as a variance to
14 enable this, but as I read 32, it seemed to
15 me, and I read that provision, that one could
16 look at it as simply a variance from the
17 provision that says you can do it if you meet
18 these other exceptions. But I don't need to
19 press that point.

20 CHAIRPERSON GRIFFIS: It's a legal
21 argument, huh? So you are saying that a
22 variance from 401.2, rather than a variance

1 from 401.3?

2 MR. GELL: Again, I'm sorry, I
3 don't have it in front of me.

4 CHAIRPERSON GRIFFIS: Oh, I'm
5 sorry. Right. I think I understand what you
6 are saying.

7 MR. GELL: All right. In any
8 event, I think our case is submitted and
9 perhaps further information will come out
10 through questions and answers, but we're
11 satisfied.

12 CHAIRPERSON GRIFFIS: Excellent.
13 Thank you very much. Let me just be clear on
14 your testimony, in your written submission,
15 you have indicated that no conforming use or
16 structure could be built on this without some
17 sort of relief from the regulations. Is that
18 correct?

19 MR. GELL: Yes, that is.

20 CHAIRPERSON GRIFFIS: Okay. Any
21 other questions from the Board,
22 clarifications? Ms. Miller?

1 VICE CHAIR MILLER: Mr. Merwin?

2 MR. MERWIN: Yes.

3 VICE CHAIR MILLER: Yes. I wanted
4 to ask you when you purchased the property.

5 MR. MERWIN: Approximately,
6 September of 2006.

7 VICE CHAIR MILLER: Okay. And I
8 just want to explore a little bit the issue
9 about the neighbor being the right of first
10 refusal or the opportunity to buy the
11 property. When you purchased the property,
12 was it offered to Ms. Jackson Evans as well?
13 I ask this because she raises it in her party
14 status application.

15 MR. MERWIN: Yes, I have no first
16 hand information about that. I sent the -- my
17 understanding is the property was owned since
18 1920 something by a family named Porter and
19 the mother of the family died, is deceased,
20 and the son -- I sent him a letter and he
21 agreed to sell the property to me. If he had
22 made any other contacts with anyone else, I

1 don't know personally whether he did or did
2 not.

3 VICE CHAIR MILLER: And then you
4 said that you offered the property to Ms.
5 Evans by a fax?

6 MR. MERWIN: Well, we had had --
7 Ms. Evans and Mr. Evans and I have had a
8 discussion in November about my possibly
9 selling the property to them and I believe
10 about three weeks ago I sent them a fax offer
11 to sell the property, approximately, three
12 weeks ago. I may have a copy of it in here if
13 you would like the date of the contract. But
14 that's correct.

15 VICE CHAIR MILLER: Okay. And you
16 didn't receive any response? Is that what
17 your testimony is?

18 MR. MERWIN: Yes.

19 VICE CHAIR MILLER: Okay. For
20 half the price that you paid for it? Is that
21 correct?

22 MR. MERWIN: Well, if I can --

1 this may be the offer. I believe I offered it
2 to them for about \$32,000 or \$33,000 and I had
3 the property listed with a real estate agent
4 currently for \$75,000, so that's what I meant
5 by that.

6 VICE CHAIR MILLER: Okay. Thank
7 you.

8 CHAIRPERSON GRIFFIS: Any other
9 questions, clarifications? Very well. If
10 there's nothing further for the case in chief,
11 we'll turn it over to the party in opposition.
12 Ms. Evans, any cross examination? Do you have
13 any questions of the testimony of the
14 applicant that you have heard or in their
15 written submission?

16 MR. GELL: Excuse me, Mr.
17 Chairman?

18 CHAIRPERSON GRIFFIS: Yes?

19 MR. GELL: While they are coming
20 up, there is one more point that I made in the
21 letter.

22 CHAIRPERSON GRIFFIS: Sure.

1 MR. GELL: The prehearing
2 statement which we didn't mention just now and
3 that was the Office of Planning was concerned
4 about the windows on the sides of the house
5 and asked us to redesign if, in fact, those
6 windows were opposite windows to any of the
7 other houses.

8 Mr. Merwin did get the architect
9 to redesign, so that those windows would not
10 be opposite those other windows and that was
11 the other condition that he had asked for and
12 we were happy to comply.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. GELL: Thank you.

15 CHAIRPERSON GRIFFIS: So you have
16 removed all of them? There looks to be about
17 four windows.

18 MR. GELL: We didn't remove
19 windows, but we --

20 CHAIRPERSON GRIFFIS: Repositioned
21 them?

22 MR. GELL: -- repositioned them so

1 they wouldn't --

2 CHAIRPERSON GRIFFIS: I see.

3 MR. GELL: -- look directly into
4 the ones next door.

5 CHAIRPERSON GRIFFIS: Gotcha.
6 Excellent. Okay. Cross?

7 MS. EVANS: A question for Mr.
8 Merwin. When did you become aware that this--
9 the status of the lot was considered to be
10 non-buildable?

11 CHAIRPERSON GRIFFIS: Could you
12 just turn the microphone on for him, Mr. Gell?

13 MR. MERWIN: Well, prior to
14 purchase of the property, I did as much
15 research on it as I could. As far as if
16 you're asking me did I -- I believed all along
17 that the property should be buildable. That
18 has been my theory in purchasing the property.

19 MS. EVANS: Okay. But what I want
20 to be clear on is that you were aware of the
21 status of the property when you purchased it
22 from Mr. Porter, right?

1 MR. MERWIN: That it would require
2 a variance.

3 MS. EVANS: Right.

4 MR. MERWIN: That we're seeking a
5 variance, that's correct.

6 MS. EVANS: Okay. And the next
7 question with regard to your offer to sell the
8 property to us, I believe our first
9 conversation about it was in October and after
10 having not heard from you for roughly two
11 months, almost three months, I requested that
12 information. I believe you faxed it to me
13 sometime after Christmas and pretty much gave
14 us four days to respond.

15 CHAIRPERSON GRIFFIS: Is that a
16 question?

17 MS. EVANS: Is that true?

18 MR. MERWIN: Um, yes, that is
19 true.

20 MS. EVANS: Okay. Do you know
21 what the assessed value of that lot was when
22 you bought it?

1 CHAIRPERSON GRIFFIS: I'm not sure
2 what pertinence it has to the variance case.

3 MR. MERWIN: I don't know.

4 MS. EVANS: Oh, maybe not.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. EVANS: Okay. All right. I
7 guess it goes more to the value of the
8 property. And what did you pay for the
9 property, for that lot when you purchased it?

10 MR. MERWIN: The purchase price
11 was \$20,000.

12 MS. EVANS: Okay. And I believe
13 in our first conversation, if I remember it,
14 you had agreed to sell it for roughly 5
15 percent over your purchase cost.

16 MR. MERWIN: Well, the way I
17 recall the conversation, I didn't want to take
18 a loss on the property and I believe that I
19 would have said that I would like to make a
20 small profit, which would include other costs
21 that I have incurred since purchase of the
22 property, architectural fees, attorney fees

1 and various other things, rather than just the
2 base purchase price itself, which would result
3 in a significant loss.

4 MS. EVANS: Okay. I think that's
5 it for right now.

6 CHAIRPERSON GRIFFIS: Excellent.
7 Thanks very much. Let's move ahead then to
8 the Office of Planning's full report and
9 analysis.

10 MR. JESICK: Thank you again, Mr.
11 Chairman, Members of the Board. Again, my
12 name is Matt Jesick. I'll keep this brief.
13 The Office of Planning does believe that the
14 applicant has met the three part variance test
15 to be granted the variance for lot width, side
16 yard and lot area.

17 The property is unique in that it
18 is very narrow and the hardship would be if
19 the variance was not granted, it would be very
20 difficult to build a viable use on the
21 property. With the 8 foot side yards on both
22 sides of the property, the structure that

1 would be built would be only 9 feet wide and
2 certainly not in character, not in keeping
3 with the character of the community and not
4 really a viable dwelling.

5 Also, the Comprehensive Plan
6 encourages in-fill development, including the
7 Ward 8 element, which encourages the
8 development of vacant properties.

9 In our review of the case, we did
10 have two concerns that the applicant
11 mentioned. One was the width of the side yard
12 that was proposed originally, which was 2.5
13 feet. In keeping with prior cases, we asked
14 the applicant to match what was done in
15 similar cases, which is have a side yard of 3
16 feet. This allows enough room for maintenance
17 of the side yard, if you needed to get a
18 ladder in there or a lawn mower or some other
19 maintenance concern.

20 Our second issue was the issue of
21 privacy, which the applicant mentioned. And
22 we asked the applicant to relocate windows, so

1 that they are not opposite the windows on the
2 adjacent properties and we asked that these
3 two issues be made conditions of the approval.
4 And I believe the applicant has already
5 submitted new drawings showing a new width of
6 the side yard, but we just wanted to be sure
7 that these items are taken into consideration.

8 And the only thing I was going to
9 mention in addition, which the Board has
10 already covered thoroughly, is that we do
11 believe relief is required for the minimal lot
12 area. I'll be happy to take any questions.

13 CHAIRPERSON GRIFFIS: Excellent.
14 Thank you very much. Are there questions from
15 the Board? Yes?

16 VICE CHAIR MILLER: Mr. Jesick, if
17 the neighbor were willing to purchase the
18 vacant property, would that change your
19 analysis of the variance?

20 MR. JESICK: No, our analysis is
21 not based on the ownership of the property.
22 It's just based on the proposal that has been

1 submitted by the current property owner.

2 VICE CHAIR MILLER: The 3 feet
3 minimum between the house and the property
4 line, is that a standard that OP finds is
5 minimum acceptable across the board or just in
6 this -- in the context of this neighborhood?

7 MR. JESICK: Well, of course, each
8 case we look at on a case-by-case basis. But
9 in similar cases where we have had these
10 extremely narrow lots, I think we have taken
11 3 feet as a minimum for maintenance purposes,
12 like I mentioned. So, yes, I guess that would
13 be yes. And unwritten standard for these
14 cases.

15 VICE CHAIR MILLER: Okay. Because
16 that's the amount of space that allows
17 maintenance to get in and out, etcetera.
18 Okay. And then I think my last question is if
19 the property were left vacant, would that also
20 be in character with the neighborhood?

21 MR. JESICK: Well, certainly it
22 has been a vacant lot for its entire history,

1 so, you know, I think the neighborhood has
2 grown up with it as a vacant lot, but we don't
3 feel that the construction of a home on that
4 property would detract from the character of
5 the neighborhood. It would be in keeping with
6 the character.

7 VICE CHAIR MILLER: Thank you.

8 CHAIRPERSON GRIFFIS: Any other
9 questions of the Board?

10 BOARD MEMBER ETHERLY: Yes, Mr.
11 Chairman, very quickly.

12 CHAIRPERSON GRIFFIS: Mr. Etherly?

13 BOARD MEMBER ETHERLY: Mr. Jesick,
14 thank you very much for your report. As my
15 colleagues know, I never miss an opportunity
16 to chime in with a question concerning any
17 property that is near my beloved high school,
18 Ballou Senior High School, but that has
19 nothing to do with the record or the case in
20 front of us, but I just wanted to throw that
21 at you.

22 Let me ask, if I could, very

1 quickly the issue of the side yard. As you
2 indicated, you took a look at data that was
3 provided by the applicant and I believe it is
4 represented on what is page 3 of the
5 applicant's submission at Exhibit No. 4, which
6 discusses a couple of the side yard widths, if
7 you will, for a number of properties along
8 that 3300 Block of Martin Luther King, Jr.
9 Avenue. So I'll give you a moment, if you
10 could, to get to that page perhaps.

11 Again, it's at page 3, for the
12 benefit of my colleagues, at Exhibit No. 4.
13 What I'm curious about is or I should say what
14 concerns me perhaps is, of course, I think
15 probably the crux of this case, and that is
16 their side yard that's going to be in place if
17 this -- should this application be approved.

18 With respect to the side yards
19 that are indicated there, based on your
20 assessment of the properties, are all of these
21 side yards that are indicated, are they
22 single-family residences or do some of these

1 side yards also involve properties that are
2 multi-family units or multi-unit dwellings?

3 MR. JESICK: There is no multi-
4 family units on the block. There are semi-
5 detached units. And I would also note that
6 the dimensions that are listed are actually --
7 I believe the way the applicant has submitted
8 this, they are actually the distances between
9 the homes. They are not actually the
10 measurement of the side yard.

11 BOARD MEMBER ETHERLY: The side
12 yard. Okay. So just straight distance
13 between the homes themselves?

14 MR. JESICK: Right, right. But
15 there is a mix of single-family attached and
16 detached. Sorry, single-family detached and
17 semi-detached on the block.

18 BOARD MEMBER ETHERLY: Okay. And
19 with respect to the issue of the windows being
20 set off, angled if you will, again should the
21 application be acted upon favorably, is it
22 your sense that that would help to eliminate

1 a privacy consideration or is that simply a
2 move towards, shall we say, mitigating some of
3 the privacy concerns that the Office of
4 Planning would have?

5 MR. JESICK: Well, certainly when
6 homes are this close and there is no sort of
7 physical barriers, such as a fence or
8 landscaping, there may always be privacy
9 concerns. But I think this goes towards
10 mitigating that concern, so you're not looking
11 directly into your neighbor's kitchen or
12 living room or whatever. You are actually
13 looking at the wall of the adjacent house.

14 BOARD MEMBER ETHERLY: An then
15 finally, with respect to, as you indicated in
16 your report, there were no other concerns or
17 reports provided by other District agencies,
18 so perhaps I'm just looking maybe for some
19 anecdotal response with regard to this
20 particular question, if there is any.

21 With respect to the issue of fire
22 safety, as you indicated, leaving a 3 foot

1 side yard does help to facilitate certain
2 things, such as maintenance, grass cutting and
3 what have you. Has there been any experience,
4 anecdotally perhaps, broadly speaking on the
5 Office of Planning's part with respect to
6 whether or not that side yard also raises any
7 issues or does not raise any issues around
8 fire safety?

9 MR. JESICK: You know, certainly I
10 have thought of fire safety when I was doing
11 my analysis. We did not receive comments from
12 any other agencies, including --

13 BOARD MEMBER ETHERLY: Fire and
14 emergency.

15 MR. JESICK: Yes, fire and safety.

16 BOARD MEMBER ETHERLY: Okay.

17 MR. JESICK: But I think approval
18 of this application would not preclude the
19 applicant from meeting all Fire Codes as they
20 go towards construction.

21 BOARD MEMBER ETHERLY: Okay.

22 Thank you. Thank you, Mr. Chair.

1 CHAIRPERSON GRIFFIS: Excellent.
2 Thank you. Any other questions from the
3 Board? Mr. Gell, do you have any cross
4 examination of the Office of Planning?

5 MR. GELL: No, we don't.

6 CHAIRPERSON GRIFFIS: Does the
7 party in opposition have any cross questions
8 of the Office of Planning?

9 MS. EVANS: No.

10 CHAIRPERSON GRIFFIS: Excellent.
11 Thank you all very much then. I don't have
12 any other Government reports attendant to this
13 application, unless the applicant and the
14 parties are aware of any. We can move ahead
15 to the ANC. Is ANC-8C present? Is the ANC
16 present? Very well.

17 I don't have record of a report in
18 the file, unless the applicant is aware of the
19 ANC report or the party in opposition?

20 MS. EVANS: The ANC did vote in
21 opposition. I was to understand that the
22 report should have been forwarded here.

1 CHAIRPERSON GRIFFIS: Do we have
2 anything? I don't show anything in my
3 records.

4 BOARD MEMBER ETHERLY: I haven't
5 seen anything in my record, Mr. Chair. I will
6 note that the party in opposition did
7 indicate, as she is testifying, in her written
8 submittal that there was, she believed, action
9 on the part of the ANC in December, was it?

10 MS. EVANS: October.

11 BOARD MEMBER ETHERLY: In October
12 of 2006.

13 MS. EVANS: In October, yes.

14 CHAIRPERSON GRIFFIS: Okay. Very
15 well. Well, not having that in the record,
16 we, obviously, can't call them forward to
17 present it. Let us move ahead then. Ms.
18 Miller?

19 VICE CHAIR MILLER: I just wanted
20 to ask did you, Ms. Evans, ever see a written
21 report from the ANC?

22 MS. EVANS: No, I attended the

1 meeting.

2 VICE CHAIR MILLER: You attended a
3 meeting and they voted on it?

4 MS. EVANS: Yes. Yes, Mr. Merwin
5 was there also.

6 VICE CHAIR MILLER: Okay. Thank
7 you.

8 CHAIRPERSON GRIFFIS: Good. Okay.
9 If there is nothing else, let me turn it over
10 to the party in opposition for the
11 presentation of their case.

12 MS. EVANS: Okay. Forgive me, I'm
13 -- you may already have what I'm going to read
14 from, so I am the property owner of the
15 adjoining property, 3359 Martin Luther King,
16 Jr. Avenue, Lot 13, Square 6004. The petition
17 of the current owner of 3357 Martin Luther
18 King, Jr. Avenue seeks a variance to build a
19 house on that lot.

20 The petitioner recently purchased
21 the property as an investment, not as one
22 desirous of becoming a member of the Congress

1 Heights community in which we reside. He, in
2 fact, seeks a variance in order to make a
3 tenable sales pitch to any potential buyer.
4 However, under the DCMR section 401.2, "A
5 structure may be erected on both the lot if"
6 -- I'm sorry. "On the lot if both the lot and
7 area width of the lot are at least 80 feet or
8 80 percent of the lot area and the width of
9 lot specified under the section 401.3 that is
10 specified area for the R-2 Zone and structure
11 is 40 feet."

12 CHAIRPERSON GRIFFIS: Good. Why
13 don't -- we do have that in writing.

14 MS. EVANS: Okay.

15 CHAIRPERSON GRIFFIS: You put it
16 in and it's regulations. Why don't we just
17 get directly to why you believe that hasn't
18 met the test for the variance. For instance,
19 why this property is not unique.

20 MS. EVANS: I mean, okay. I mean,
21 I don't know. It is unique, I suppose, with
22 regard to the width and the length. But I'm

1 not quite sure that I can address that
2 specifically.

3 CHAIRPERSON GRIFFIS: Okay. Well,
4 I just --

5 MS. EVANS: I just -- building on
6 that lot in that close proximity, I believe,
7 is detrimental to our well-being. As it
8 stands right now, our home at the end -- at
9 the rear of our lot, we have a garage. And
10 without at least 8 feet in between our houses,
11 my house is, approximately, 100 years old and
12 it would pose great difficulty accessing our
13 home.

14 The doors are narrow. Anything
15 that we do, pretty much has to be custom made
16 and we -- most things we take in, we take in
17 through the rear of the house, because of the
18 garage and the -- there is, approximately, a
19 5 foot hill at the back of the house and it's
20 impossible to take anything of any size or
21 width up those steps to -- into the house.

22 And right now, we use this. We

1 have to access -- take everything around the
2 side, from the front to the side of the house
3 to gain access through the back. If you start
4 -- the really narrow space in between the
5 houses. We're going to be landlocked. And we
6 probably would be forced to tear down our
7 whole garage and land -- and excavate the
8 whole rear of the house just to have access to
9 the rear of our house.

10 CHAIRPERSON GRIFFIS: So you get
11 access now by going on the adjacent property?

12 MS. EVANS: Well, we can still go
13 on our -- it's a walkway that goes around our
14 house, but we have enough space to move in
15 between the two spaces. Anything like if you
16 start getting into a really narrow space, like
17 exists on the other side of our house, it's
18 just an impossible space to get things in
19 between. So that was also a major
20 consideration as far as being able to access
21 our property. And it would be landlocked.

22 I'm not sure you could get

1 emergency equipment in between those spaces,
2 but what I hear today, they also -- but not
3 even looking, I personally am not looking at
4 the same plans that apparently Mr. Merwin is
5 talking about now.

6 CHAIRPERSON GRIFFIS: Okay.
7 Anything else?

8 MS. EVANS: Um-hum. All right.
9 The other thing, he seeks to sell the lot
10 based on plans for construction of a three
11 story lot. Our concern, too, is that
12 excavation at that point is potentially very
13 destabilizing and damaging to our home. You
14 know, most of the houses along -- well, at
15 least my house and the house to my immediate
16 right, those houses were built prior to 1957
17 and we just don't believe that they will
18 tolerate that degree of ground movement in
19 that close proximity.

20 There have been other types of
21 excavation that went on in our neighborhood
22 not next door to our house and it caused

1 cracks in our walls. And we see it as a
2 quality of life issue.

3 And another concern is houses
4 built that close, I know that houses such as
5 the row houses and such have firewalls in
6 between them. I know our house doesn't have
7 a firewall. I'm not sure what the plan would
8 be for another house, any other house built
9 that close to us.

10 We have had difficulty with people
11 when people have been trying to do work on our
12 house, especially on the far -- on the other
13 side. It's about 3.5 feet between our house
14 and the adjacent house and they have
15 difficulty with tilting ladders. Those houses
16 are relatively high. They have difficulty
17 tilting -- with the ladder tilt. They cannot
18 do scaffolding in there, because it's too
19 tight for them to work in that confined area.

20 That is a major concern for us. I
21 believe in looking even at some of the listing
22 of the special exceptions, this particular

1 structure doesn't fall under the special
2 exceptions listed under 301 -- 3104.1 and we
3 are -- I find that to be of a concern.

4 Other than that, we consider that
5 it will be an adverse -- it will adversely --
6 the building will be -- adversely effect us.
7 Not only our family but the neighborhood in
8 general has -- and the neighborhood advisory,
9 they have all voted against this structure
10 being placed there just because of the tight
11 access. And they feel that it would be out of
12 character with the neighborhood.

13 CHAIRPERSON GRIFFIS: Excellent.

14 MS. EVANS: Oh, and I guess the
15 final thing. I realize that Mr. Merwin did
16 purchase the property, but we were not given
17 right of first refusal from the original
18 property owner. And as far as that is
19 concerned, the, I guess, actual owner -- I'm
20 not sure what happened to them. I know that
21 their son sold the property. But we were
22 familiar with the owner prior to that.

1 We were under the understanding
2 that at some point they would sell that
3 property to us and we were unaware that the
4 property had even been sold at that point in
5 time until Mr. Merwin sent a letter saying
6 what his plans were with regard to the lot.
7 I think that's it.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Okay.

10 MS. EVANS: Oh, and one final
11 thing is that we have been at that location
12 for like 17 years and we have continuously
13 cleaned and taken care of that lot since we
14 have been there.

15 CHAIRPERSON GRIFFIS: All right.

16 MS. EVANS: Because we had
17 anticipated at some point the owner, who had
18 originally said that they were using it for
19 like, you know, tax purposes in their business
20 or whatever, that at some point they would
21 sell us that lot.

22 CHAIRPERSON GRIFFIS: Okay. I

1 appreciate you bringing that to your attention
2 and just for clarification, I don't think we
3 have any jurisdiction. In fact, I'm pretty
4 clear on the fact --

5 MS. EVANS: Right. I understand
6 that. I understand.

7 CHAIRPERSON GRIFFIS: -- of
8 establishing whether there was any right of
9 first refusal.

10 MS. EVANS: Okay.

11 CHAIRPERSON GRIFFIS: For a
12 purchase of an adjacent property owner to an
13 existing adjacent lot. I understand your
14 concern. Your point is well made here. But
15 I don't want to raise expectations that we
16 will even be addressing that in any substance
17 or form. Our jurisdiction would clearly stop
18 at the property line and wouldn't go into when
19 or how purchasing had taken place.

20 Let me get to a couple of quick
21 things though of substance for us. The other
22 piece, actually Office of Planning made a

1 great statement today in this hearing. The
2 fact that if this was to proceed successfully
3 and a variance was granted, it would not in
4 any way change the requirement of which the
5 building and structure would have to comply
6 with Building Codes.

7 So you talked about the fire
8 separation distance and also the fire rating
9 of your exterior walls. That would have to be
10 complied with in terms of the Building Code
11 that is prevalent for today and that wouldn't
12 be impacted here at all.

13 My concern is the plans. You
14 indicated that you don't have the plans that
15 you believe that we are looking at now.

16 MS. EVANS: No, they sound -- they
17 look -- the sound different.

18 CHAIRPERSON GRIFFIS: How do they
19 sound different?

20 MS. EVANS: The structure of the
21 windows.

22 CHAIRPERSON GRIFFIS: Oh, the

1 changing of the location of the windows?

2 MS. EVANS: The -- right.

3 CHAIRPERSON GRIFFIS: And the side
4 yards?

5 MS. EVANS: As far as the
6 basement.

7 CHAIRPERSON GRIFFIS: Yes, that's
8 have them. Do we have those?

9 MR. MERWIN: If I may?

10 CHAIRPERSON GRIFFIS: Yes.

11 MR. MERWIN: I gave the plans that
12 Ms. Jackson Evans has to her at the conclusion
13 of the ANC meeting several months ago, so
14 those are the plans that she is looking at,
15 but when the Office of Planning communicated
16 their concerns, we did revise the plans.

17 CHAIRPERSON GRIFFIS: That's fine.
18 I want to make sure she has the revised plans.

19 MR. MERWIN: The Board has the
20 revised plans.

21 CHAIRPERSON GRIFFIS: In front of
22 her. And I also want to make sure we do. Do

1 we have those, Mr. Gell?

2 MR. GELL: Those were delivered,
3 yes, about two weeks ago.

4 CHAIRPERSON GRIFFIS: All right.
5 We'll make sure we have them also. Thirdly,
6 maybe, fourthly, I'm not sure, you have
7 indicated that in your written statement and
8 today you said numerous times that you would
9 landlock your property. Landlock means there
10 is no access. So are you saying that if this
11 was constructed, you wouldn't have access to
12 the street or the alley?

13 MS. EVANS: Not the -- to the
14 rear. We have a gate that goes out to the
15 rear of the property, but it's about -- the
16 steps are like 5 feet they go up. You have a
17 photograph of the rear of 55 -- 3357, but
18 actually that's the adjacent lot, that's 3355.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. EVANS: 3357 and 3359, the
21 alleyway, there is an embankment and it's
22 about -- the embankment is about maybe 5 feet.

1 About 5 feet high, so let's say if I have to--
2 if I have anything, a refrigerator, anything
3 delivered, it could not fit through that
4 access.

5 CHAIRPERSON GRIFFIS: And so what
6 would you do? How would you get it into the
7 house?

8 MS. EVANS: I don't know. I said
9 -- I mean --

10 CHAIRPERSON GRIFFIS: No, right
11 now, what would you do?

12 MS. EVANS: I'm just saying to the
13 rear -- right now?

14 CHAIRPERSON GRIFFIS: Yes.

15 MS. EVANS: We could go along the
16 side of the house, we can get it in there.

17 CHAIRPERSON GRIFFIS: So would you
18 stay on your property or you would have to
19 access the adjacent property?

20 MS. EVANS: Well, I mean, sure if
21 I -- we can stay on the property, but I don't
22 know if you're pulling a truck along that way,

1 then I don't know. You don't have anything to
2 rub up against.

3 CHAIRPERSON GRIFFIS: I see.
4 Okay.

5 MS. EVANS: I mean, that's
6 currently. If it's -- if you have 8 feet in
7 between the houses, then it's not a problem.

8 CHAIRPERSON GRIFFIS: Okay. I
9 understand. Other questions, comments?

10 VICE CHAIR MILLER: Could you tell
11 me the distance between the side of your house
12 and the property line next to the adjacent
13 property?

14 MS. EVANS: I think it's like 2.5
15 feet.

16 VICE CHAIR MILLER: Okay. And on
17 the other side, how much do you have?

18 MS. EVANS: 3.5.

19 VICE CHAIR MILLER: Okay. Thank
20 you.

21 CHAIRPERSON GRIFFIS: Any other
22 questions?

1 BOARD MEMBER ETHERLY: Yes, Mr.
2 Chair.

3 CHAIRPERSON GRIFFIS: Yes.

4 BOARD MEMBER ETHERLY: Very
5 briefly if I could follow-up on Mrs. Miller's
6 question. First of all, thank you, Mr. and
7 Mrs. Evans, for your testimony today and your
8 presence. With respect to the issue, again
9 I'm following up on Mrs. Miller's question,
10 but also the line of questioning that I
11 entertained with the Office of Planning.

12 For me, I think, perhaps the chief
13 challenge in this case may very well be that
14 final prong of the variance test as it relates
15 to the issue of substantial detriment. I
16 believe the first two prongs of the test have
17 been fairly adequately satisfied. Of course,
18 we'll have some additional discussion and
19 testimony.

20 But with respect to the issue of
21 what the rest of the block, if you will, looks
22 like and this is not to suggest that okay, if

1 you got a 3 foot side yard or a distance of 3
2 feet on the other side of you, that means
3 well, 2.5 feet isn't that bad.

4 I'm not necessarily angling for
5 that kind of argument, but what I'm trying to
6 get a sense of, and I'm not articulating the
7 question well enough really, is what is the
8 rest of that block look like? Essentially,
9 you have heard the Office of Planning say, and
10 I'm going to put it very unartfully, in-fill
11 development is something that's encouraged by
12 the Comprehensive Plan.

13 Clearly, it's something that we
14 like to see happen, to see more of happen in
15 Ward 8 especially in addition to other parts
16 of the city. There are small distances
17 between properties currently on your block.
18 Is it your sense that that's an adequate
19 representation of what currently exists in
20 that block or is it the case that there is
21 more space than perhaps we have been -- we
22 have discussed between properties on your

1 block?

2 MS. EVANS: There is more space in
3 between the houses that are -- that have been
4 built since, I would say, the 1950s.

5 BOARD MEMBER ETHERLY: Okay.

6 MS. EVANS: The duplex that they
7 referred to a while ago that is like 3355,
8 that was -- Habitat for Humanity was -- the
9 community supported this, giving the variance
10 to build a duplex on the -- but that was a 2
11 acre lot some time ago. So that duplex -- and
12 I know there is 8 feet on both sides between
13 that particular structure.

14 As you go up and down the street
15 and it's a long block, the spaces vary, but
16 for the most part, I think the spaces are
17 greater than 3 feet on the average.

18 BOARD MEMBER ETHERLY: Okay. And
19 with respect -- fortunately or unfortunately
20 or not unfortunately, there is not a whole lot
21 of, shall we say, photographic evidence in the
22 record.

1 MS. EVANS: Right, right.

2 BOARD MEMBER ETHERLY: So, one,
3 I'm utilizing what is a helpful overhead from
4 the Office of Planning's report, which
5 hopefully you have a copy of and then Exhibit
6 No. 7 is a shot of three photographs that also
7 attempt to indicate some of the block and some
8 of the neighborhood context, if you will.

9 MS. EVANS: Okay.

10 BOARD MEMBER ETHERLY: I want to
11 be sure that I have a sense of your property
12 and it may or may not be represented on this
13 picture here.

14 MS. EVANS: It's there, right,
15 yes.

16 BOARD MEMBER ETHERLY: Is your
17 property the one --

18 MS. EVANS: No. The one --

19 BOARD MEMBER ETHERLY: It's on
20 this other side there?

21 MS. EVANS: Yes.

22 BOARD MEMBER ETHERLY: Okay. So--

1 MS. EVANS: And the lower -- and
2 also in the lower right hand corner --

3 BOARD MEMBER ETHERLY: Yes.

4 MS. EVANS: -- that's the space
5 between my house and 3361.

6 BOARD MEMBER ETHERLY: Under the--

7 MS. EVANS: So if you're facing my
8 house, the house to the left.

9 BOARD MEMBER ETHERLY: I see. I
10 see. I see. With respect to the orientation
11 of windows between your house and your next
12 adjacent neighbor, what is your experience
13 there in terms of the window orientation? Are
14 your windows off at an angle on that side or
15 are you looking essentially window-to-window,
16 if you will?

17 MS. EVANS: In the kitchen it's
18 pretty much window-to-window. Upstairs, I
19 don't -- they don't have an upstairs window.

20 BOARD MEMBER ETHERLY: Okay. And
21 what would be -- again if this application
22 were to be approved and now you've only just

1 had an opportunity today to take a look at the
2 revised plans, but what windows would be at
3 issue on the side of your property that would
4 be adjacent to the subject of this
5 application? Kitchen windows, basement
6 windows?

7 MS. EVANS: Kitchen windows, three
8 bedroom windows, two living room windows, so
9 it would be like six windows.

10 BOARD MEMBER ETHERLY: Okay. I
11 think that covers my questions. Thank you
12 very much, Mrs. Evans. Thank you, Mr.
13 Chairman.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Thank you very much. Excellent questions.
16 Any other questions from the Board?

17 COMMISSIONER JEFFRIES: Yes, I
18 have one question. Ms. Jackson Evans, I just
19 want to be clear. Your argument here is that
20 there really should not be a house built
21 because for a house to be built that would be
22 of appropriate size and scale for someone to

1 live in would enable you not to be able to,
2 you know, get through the gateway. I mean,
3 you're basically saying you need 8 feet
4 between your --

5 MS. EVANS: Um-hum.

6 COMMISSIONER JEFFRIES: And so
7 your argument here is that it really shouldn't
8 be building. Whether it's this applicant or
9 anyone else, there really should be no
10 building of a house next door to you.

11 MS. EVANS: You know, it's --
12 excuse me. Okay. I think the -- you know, I
13 don't know that I would have had quite an
14 objection if Mr. Porter, the previous owner,
15 had said I'm going to build a house, because
16 he had owned -- he had preceded us, but the
17 applicant is not going to be the person living
18 there and I'm not even sure he's the person,
19 he is actually the person that is going to be
20 building the house from my understanding.

21 So my concern is, of course, that
22 things can change and I guess the other

1 concern was if one were to adhere to what the
2 law states, then there probably shouldn't be
3 a house there, so right?

4 COMMISSIONER JEFFRIES: But, I
5 mean, you understand in those situations, I
6 mean, this is what this particular Board is
7 all about.

8 MS. EVANS: Um-hum.

9 COMMISSIONER JEFFRIES: You know,
10 allowing individuals where, you know, because
11 of the regs if you look at a strict
12 interpretation of the regs, you're right, they
13 can't, but they come here for some level of
14 relief, and so this is what this Board is
15 about.

16 So I guess I'm trying to
17 understand. I mean, so you don't have a
18 problem with a house being built next door to
19 you. It's just that you're not particularly
20 comfortable with events that led up to this
21 situation?

22 MS. EVANS: Perhaps that also, but

1 I'm more concerned about the spacing between
2 the houses.

3 COMMISSIONER JEFFRIES: Okay. But
4 you recognize for there to be 8 feet between
5 you and this house, that that would
6 effectively deem this house -- I mean, it just
7 wouldn't be an appropriate place for someone
8 to live in.

9 MS. EVANS: Um-hum.

10 COMMISSIONER JEFFRIES: I mean,
11 you recognize that?

12 MS. EVANS: Of course.

13 COMMISSIONER JEFFRIES: Okay.
14 Thank you.

15 CHAIRPERSON GRIFFIS: Excellent.
16 Excellent clarification. I think it's very
17 apparent that whether it be the previous owner
18 or this owner, relief would be required, of
19 course. Variances run with not the owner, but
20 rather the land and the uniqueness and
21 practical difficulty arising out of that.

22 Any other questions and

1 clarifications from the Board? Did you? Yes,
2 you had something further?

3 MR. EVANS: Yes. My name is
4 Andrew Evans. I am also the wife of Olivia --
5 husband of Olivia. I shouldn't say wife, too.
6 My concerns also is the -- structural damage
7 is a major concern. We just had work done in
8 the streets there.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. EVANS: In the last two to
11 five years. On both occasions, when there was
12 any development and digging, we had tremendous
13 cracks, cost us quite a bit to repair the
14 structure.

15 And given as close as this
16 property is going to be and the building and
17 especially a basement, I am not sure that if
18 there are -- unless there is some insurance or
19 some requirements that they are -- that the
20 builder has some type of insurance for
21 building and for structural damage, it almost
22 is impossible for me to believe that they can

1 build a house right next to us without us
2 suffering some property damage and some
3 serious property damage, because you're
4 talking 3 feet.

5 CHAIRPERSON GRIFFIS: Sure.

6 MR. EVANS: And you're talking --

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. EVANS: -- a lot of digging, a
9 lot of drilling and, like I said, the house is
10 about 100 years-old and we get vibration from
11 the airplanes that use that route, because
12 there is a change in routes from the National
13 Airlines right next to us. Because we're
14 located up on the hill where we are, any type
15 of vibration now we can feel in the house.

16 CHAIRPERSON GRIFFIS: Good.

17 MR. EVANS: Now, if we build, then
18 we're concerned about a whole lot of movement
19 and problems that we're going to have and it's
20 going to cost.

21 CHAIRPERSON GRIFFIS: Understood.

22 MR. EVANS: And --

1 CHAIRPERSON GRIFFIS: And I think
2 it's not a new item of the Board's perspective
3 and understanding, and that is the
4 construction means and methods and the impact
5 that that might be. It falls well without of
6 the jurisdiction of zoning, you know, what can
7 happen and how big and how wide it can be,
8 because it's the means of which you get to
9 that last element.

10 But I would also indicate that our
11 Building Codes and requirements of the city
12 address those elements. I don't believe that
13 it would be legal for anyone on adjacent
14 property to build something and destroy an
15 element or a structure on an adjacent
16 property.

17 So I guess the point would be I
18 know we heard that and you reiterated those
19 points. We need to factor that into the
20 variance criterion and if this was to move
21 forward, I would suggest that there is
22 certainly an understanding or a documentation

1 of existing conditions and, therefore, if
2 anything was to change, why that had changed
3 could be a fruitful discussion.

4 Any other follow-up on that or
5 other elements?

6 MR. EVANS: Also, as these are
7 plans that he has just recently given us that
8 we haven't had a chance to look at --

9 CHAIRPERSON GRIFFIS: Sure.

10 MR. EVANS: -- most of those
11 houses there in that neighborhood have --
12 don't have basements. They have dugouts.
13 They are -- I think the foundation there is
14 such -- they have cellars. I understand from
15 his original conversation there would be a
16 basement.

17 The type of digging that it takes
18 to go down, and if you look at that
19 neighborhood, there is no houses that we have
20 checked that have a basement, is going to
21 cause not only for the housing, but from the
22 land itself, we're not sitting on very stable

1 land over there.

2 And I'm not quite sure, it's clay
3 basically, you know, what that does and the
4 reasons for those houses not having basements,
5 I consider them as much a reason given that we
6 are sitting up on the hill there.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. EVANS: There is no guarantees
9 if he didn't sell the land that the next
10 person comes in, doesn't come and do whatever
11 he wants whether or not he agrees to relocate
12 the windows or dig further down for --

13 CHAIRPERSON GRIFFIS: But that's
14 not the case if we approve this. We would
15 approve the plans that we're looking at today.
16 There is no variation that could happen that
17 would be germane to our review of the variance
18 test. So in that sense, you would have
19 insurance that what was to be built was that
20 which we would approve.

21 MR. EVANS: So would he be
22 required to have some type of insurance to

1 guarantee if, in fact, there is structural
2 damage that the owners would be compensated
3 for?

4 CHAIRPERSON GRIFFIS: Not under
5 the Zoning Regulations. What I'm saying is I
6 believe that that needs to be addressed under
7 the Building Code and enforcement under DCRA.

8 MR. EVANS: So that leaves us in a
9 situation where what would happen if you guys
10 approved, that we then -- what actions would
11 we have to take to ensure that property damage
12 -- if we incur property damage, where would
13 that leave us?

14 CHAIRPERSON GRIFFIS: I think that
15 is something that you would have to address
16 under the Building Codes and under DCRA in
17 their review of the construction. None of the
18 Board Members up here can answer that
19 question, because that is not what we do. I
20 don't have expertise.

21 These Members don't have
22 expertise. Our attorneys can't tell you

1 because we're not in construction means and
2 methods, permitting. We're in the Zoning
3 Regulations, so it goes to the fact of the lot
4 size, the lot width and what is proposed
5 there.

6 MR. EVANS: Well, can you then
7 there limit as to what type of or what can --
8 you mean how far up or how far down this
9 structure will go in terms of -- I mean, my
10 concerns is it's -- once things start changing
11 there --

12 CHAIRPERSON GRIFFIS: Right.

13 MR. EVANS: -- is no way that we
14 guarantee that what Mr. Merwin is saying,
15 because if he just -- he just bought the
16 property within the last year. He has had it
17 less than a year. He sells it and all of a
18 sudden things start changing and --

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. EVANS: You know, the
21 neighborhood is changing now.

22 CHAIRPERSON GRIFFIS: Sure.

1 MR. EVANS: And I'm not sure just
2 because of what his intent --

3 CHAIRPERSON GRIFFIS: Right.

4 MR. EVANS: -- is good for the
5 neighborhood, and the Neighborhood Advisory
6 Committee with all their support is not here.
7 That was the concern that they had and that's
8 why they voted against it when he came and
9 spoke before, because we felt that it would
10 impact and we weren't trying to continue with
11 those tight houses.

12 We were trying to upgrade the
13 neighborhood in terms of its look. If we
14 continue to build that same way, I'm not sure
15 that it's conducive to the betterment of the
16 neighborhood, given what he is asking at this
17 stage.

18 CHAIRPERSON GRIFFIS: Understood.
19 Okay. Thank you. Follow-up questions? Good.
20 Yes?

21 VICE CHAIR MILLER: Mr. Gell, I
22 just want to follow-up on something you state

1 in your statement of explanation of reasons
2 supporting the application.

3 With respect to the practical
4 difficulty test, you state, number one, that
5 "No productive use can be made of the
6 property, except a single-family residential
7 building." And then you state "The property
8 has been offered for sale to the adjacent
9 owners and to the public, but there have been
10 no responses."

11 My first question is we didn't
12 really get on the record how and when this was
13 offered for sale to the public. I'm just
14 curious about that.

15 MR. GELL: I think Mr. Merwin
16 could testify as to the fact that he put signs
17 up. There had been signs prior to his
18 purchasing the property and he also put up
19 signs offering to sell the property.

20 VICE CHAIR MILLER: Okay. And my
21 next question is how do you think that relates
22 to the variance analysis with respect to the

1 practical difficulties test?

2 MR. GELL: Well, when one looks at
3 the practical difficulty test, it seems to me
4 you have two questions. One, could you sell
5 it to somebody who would be able to make some
6 use of it or can you make some use of it
7 yourself?

8 It has always seemed to me that
9 if, in fact, the property could be sold for a
10 reasonable price to a next door neighbor, that
11 that might inhibit your ability to say that
12 there is no other use that could be made of
13 the property.

14 And so it seemed to me that at
15 least to pass that test, we would have to at
16 least offer it or show that it had been
17 offered and that people simply had no interest
18 in purchasing. There was no effort to
19 negotiate or to make another offer or
20 whatever.

21 And then, of course, Mr. Merwin
22 actually went and sent a fax asking if they

1 wanted to purchase it for a price
2 substantially below what he was looking to
3 sell it for and, as Washington prices have
4 gone up in the last year, a \$33,000 price tag
5 is pretty reasonable anywhere.

6 So I just think we have met both
7 tests because we have shown that it can't be
8 sold to the next door folks and there is
9 nothing else we can do. We're not going to
10 put a garage on it.

11 CHAIRPERSON GRIFFIS: Good.
12 Anything else?

13 MR. GELL: That's not going to
14 work.

15 CHAIRPERSON GRIFFIS: Follow-up
16 questions?

17 MR. GELL: Does that respond? It
18 does? Okay. Oh, I have another picture if
19 the Board would like to see it. It's a little
20 bit closer.

21 CHAIRPERSON GRIFFIS: Not at this
22 time.

1 MR. GELL: No? Okay.

2 CHAIRPERSON GRIFFIS: Anything
3 else? Any other questions, clarifications of
4 the party in opposition or the case in chief?

5 I need to call forward any persons
6 here present to provide testimony on 17558 at
7 this time in support of this application, in
8 opposition to this application? Is anyone
9 here present to provide additional testimony
10 or testimony in this application?

11 Not noting any other persons, Mr.
12 Gell, we'll turn it over to you for closing
13 remarks.

14 MR. GELL: Mr. Chairman, I think
15 we have submitted the case. We had -- well,
16 I don't want to add any more facts to this
17 than you already have. It seems to me that as
18 people live in this house that would be built
19 there, that they would make arrangements with
20 the people next door to be able to mutually
21 exchange the use of the property in order to
22 put a step ladder up and so forth.

1 People do that all over the city.
2 Had there been an opportunity to do some cross
3 easements, that might have been reasonable.
4 I actually mentioned it and I was told that
5 that was not in the cards.

6 As far as the rear, Mr. Merwin is
7 going to have to do some work in order to
8 create an access from the back. If you look
9 at that picture at the lower left, it's not
10 level with the street and he is going to have
11 to actually take away some of that land in
12 order to make provision for parking in back
13 there off the alley, and there will also be
14 some steps and so forth that will enable him
15 to get access to the rear of his property. I
16 assume people next door will have to do the
17 same.

18 We think we have met all the
19 tests. I don't have to go over all of the
20 facts. I think the Board's questions have
21 been insightful and we think after the house
22 is built that the folks next door will see

1 that things can be -- can settle down and
2 actually be quite good. So thank you very
3 much for the opportunity.

4 CHAIRPERSON GRIFFIS: Excellent.
5 Thank you very much. Any follow-up questions,
6 clarifications from the Board? Very well. In
7 note of the time this morning, I want to set
8 this for a decision, but I would also like to
9 keep the record open and require the applicant
10 to submit actually a site plan that shows the
11 grade and how this house sits on it.

12 What we see is the basement level
13 that has -- or cellar level that has some
14 fenestration. Obviously, it's a bit above
15 ground. The plans that were submitted I think
16 adequately show the site location, but not the
17 actual sighting of the house as it will fit
18 into the grade. It's not the most critical
19 piece to this, but I think it starts to inform
20 the Board a little bit further on the
21 specificities of this.

22 With that, there was lots of talk,

1 written and then testimony, about the sale to
2 adjacent property and the like, none of which
3 I find any jurisdiction of this Board or
4 having any sort of pertinence to the variance
5 test. I totally disagree with Mr. Gell's
6 statement of the fact what one would look at
7 in a variance of whether one could sell it to
8 an adjacent property and, therefore, would
9 either substantiate or diminish a variance
10 case presentation.

11 However, even that being said, as
12 I set this for decision there is additional
13 time, so conversations can happen, of course.
14 We do have a nonconforming lot and we have
15 variances before us, and I think the record is
16 full on this.

17 So with that, I'm going to set
18 this for our special, rather, our scheduled
19 meeting and let me hear if there's any major
20 objections to doing that at our next
21 scheduled, which would be the 6th of March.
22 Yes?

1 COMMISSIONER JEFFRIES: We also
2 want to leave the record open for the ANC to
3 submit.

4 CHAIRPERSON GRIFFIS: I'm sorry.
5 Excellent point. Absolutely. While the
6 record is open, we can take in the ANC report
7 if there is one that is submitted into the
8 record. Mr. Gell, any difficulty with the
9 client in setting a decision on that?

10 MR. GELL: I would urge the Board
11 not to leave the record open for the ANC. It
12 seems to me the ANC had ample time to submit
13 any report that they wish to make and it seems
14 to me it does mean that they don't have great
15 weight. If they submit it and the record is
16 left open, that they would have great weight
17 and that would do a disservice to my client.
18 So I would object on that basis.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. GELL: But March 6th would be
21 all right. I just want to make sure that I
22 understand what the Board is asking. We do

1 have a picture that shows the lot and if what
2 the Board is asking is that we show how far
3 back the house will be from the street and --

4 CHAIRPERSON GRIFFIS: Actually,
5 I'm looking very specifically. Just take the
6 site plan that was submitted and put some
7 topography on it. I mean, this seems to be a
8 very standard -- this was easy to draw.

9 I got straight lines. I got
10 property lines. I put a rectangle on it, but
11 there is the reality of the site plan that
12 will obviously have to be part of any
13 permitting, but should, I would imagine, has
14 also been a part of any analysis in terms of
15 the design. So that is all I'm asking for,
16 whether there is -- yes.

17 MR. GELL: It's a fairly flat lot
18 so --

19 CHAIRPERSON GRIFFIS: Then I don't
20 understand it, because what I'm showing here
21 in your A3, if you would pull up your
22 elevations, I'm showing fenestration and a

1 level, but I'm showing a ground level that
2 it's below. How are these windows to the
3 outside if that's the ground level?

4 MR. GELL: I think that's the
5 basement.

6 CHAIRPERSON GRIFFIS: Then I don't
7 understand the front elevation, because I
8 don't see any basement level or anything above
9 grade, except the first floor. I see a dashed
10 line below grade that shows a deep foundation
11 labeled basement, but there are windows in the
12 basement that go to what, the ground?

13 MR. GELL: I do see your point and
14 we will have to talk to the architect to make
15 sure that that is corrected if there was a
16 mistake or at least that you have the
17 information you need.

18 CHAIRPERSON GRIFFIS: Okay. I
19 mean, whatever it is, it's just the
20 clarification that we need to -- and it does
21 somewhat arise from the level of what the
22 party in opposition has raised. I don't go to

1 the detail necessarily. I understand their
2 case presentation, but the premise of their
3 argument is we don't understand what is being
4 proposed.

5 Obviously, we absolutely have to
6 in order to review and approve or disapprove
7 this. So I'll look for that. However it's
8 represented, I think it would be good to have
9 an actual site plan though where the property
10 is located on it, and then we'll see whether
11 we have a basement, cellar, what it is. Okay.

12 Anything else? Any other
13 difficulties? Any other problems?

14 VICE CHAIR MILLER: I just want to
15 address Mr. Gell's remarks that we not leave
16 the record open for the ANC.

17 CHAIRPERSON GRIFFIS: Okay.

18 VICE CHAIR MILLER: I would
19 suggest that we leave the record open for the
20 ANC, but we not give the report great weight
21 since it doesn't comply with the requirements
22 of 3115 in that it wouldn't have been timely

1 filed.

2 MR. GELL: I have no objection to
3 that.

4 CHAIRPERSON GRIFFIS: Excellent.
5 Okay. Anything else? Any other
6 clarifications? Ms. Bailey?

7 MS. BAILEY: Mr. Chairman, when
8 would you want Mr. Gell to file those
9 documents?

10 CHAIRPERSON GRIFFIS: How much
11 time is needed to create those documents?

12 MR. GELL: I'm going to be out of
13 town from the 15th to the 25th, so I will have
14 to leave it to the architect and Mr. Merwin
15 perhaps to get it in to you if it's -- if you
16 want it during that period.

17 PARTICIPANT: And the hearing is
18 set for March 6th?

19 CHAIRPERSON GRIFFIS: Yes, it's a
20 decision making so there's no more hearings.
21 This would be it for the hearings. So all we
22 need is all this put into the record. There

1 is one other thing I'm going to add to that,
2 but so as quickly as possible, because what
3 we're going to do is serve that also to the
4 parties in opposition.

5 We would keep the record open for
6 any response to that and it goes directly just
7 to those plans that you will get, so direct
8 comments on that. So if we could have it two
9 weeks before the 6th, that would give a week
10 to respond for the party in opposition and Ms.
11 Bailey has the schedule in front of her, so
12 she would know what that actually is.

13 But it would appear to be on the
14 Wednesday at 3:00 on the 21st, February 21st.
15 And then we could go to -- does that work for
16 us, Ms. Bailey?

17 MS. BAILEY: Yes, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: February the
19 28th would be the response --

20 MS. BAILEY: Right.

21 CHAIRPERSON GRIFFIS: -- from the
22 party in opposition?

1 MS. BAILEY: Right.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MR. GELL: Well, I will have to
4 leave it to Mr. Merwin to meet that schedule,
5 but I think we can work that out.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. GELL: Thank you.

8 CHAIRPERSON GRIFFIS: Good. Very
9 well. Any other questions, procedural
10 questions I can answer? Ms. Jackson Evans,
11 are you clear on what is happening?

12 MS. EVANS: I think so.

13 CHAIRPERSON GRIFFIS: Good. Let
14 me run it down so I'm clear.

15 MS. EVANS: Okay.

16 CHAIRPERSON GRIFFIS: We're
17 keeping the record open. We're asking for
18 additional architectural documentation to show
19 what is being proposed here. That is to be
20 put in in a couple of weeks. There, when they
21 put that into the record, they are going to
22 serve it to you also.

1 Before you leave, you need to talk
2 to the applicant and ask -- and tell them how
3 you want to be served, whether you want it
4 mailed to you or dropped off at your door.
5 Whatever it is, you can accommodate whatever
6 that is. Then you're going to have a week,
7 which means you got to turn around pretty
8 quickly, pick up those documents, look at it,
9 do a short response and get it into the record
10 here.

11 All that is going to come together
12 with the Board and then on the 6th we will
13 call this for a decision. There will be no
14 other time for you to address the Board. No
15 other information is accepted, except for that
16 which I have just gone through. You will hear
17 our deliberation and decision.

18 Okay. If there's no other
19 questions of that --

20 MS. EVANS: No.

21 CHAIRPERSON GRIFFIS: Very well.

22 MS. EVANS: I'm good. Thank you.

1 CHAIRPERSON GRIFFIS: Thank you
2 very much. Thank you very much. We
3 appreciate it. We look forward to seeing that
4 in the record. If you have any difficulties,
5 of course, call the Office of Zoning and the
6 staff, Ms. Bailey and Mr. Moy, can assist you.

7 MR. GELL: Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Yes?

9 MR. GELL: Did you provide a date
10 for the party to get their response in?

11 CHAIRPERSON GRIFFIS: 28th, 3:00,
12 Wednesday.

13 MR. GELL: Thank you.

14 CHAIRPERSON GRIFFIS: Good. If
15 there's nothing further, thank you again.
16 Let's move ahead. Why don't we call the next
17 case for the morning session? Actually, while
18 they are moving, we're just going to take five
19 minutes, then we'll be back.

20 (Whereupon, at 11:58 a.m. a recess
21 until 12:07 p.m.)

22 CHAIRPERSON GRIFFIS: Very well.

1 Let's resume.

2 MS. BAILEY: Application No. 17553
3 of Naun Segovia, pursuant to 11 DCMR section
4 3103.2, for variances from the building height
5 and story limitations under section 400, a
6 variance from the rear yard requirements under
7 section 404, a variance from the open court
8 requirements under section 406, a variance
9 from the prohibition on enlarging a structure
10 devoted to a nonconforming use under
11 subsection 2002.5, to allow the expansion of
12 an existing apartment house from 20 units to
13 34 units.

14 The property is Zoned R-4. It is
15 located at 1327 Euclid Street, N.W. It is
16 located in Square 2861 and it consists of Lot
17 4, Lot 76 and Lot 77.

18 CHAIRPERSON GRIFFIS: Excellent.
19 Thank you very much. Let's move right ahead.

20 MR. GREENE: Thank you very much,
21 Mr. Chairman. My name is Fred Greene. Excuse
22 me. Let me say good afternoon. For the

1 record, my name is Fred Greene and my address
2 is 1625 Mass. Avenue, Suite 400, Washington,
3 D.C. And, Mr. Chairman, I am representing the
4 applicant in this case.

5 Our presentation, Mr. Chairman, is
6 organized to be as brief as possible. Norm
7 Beeke to my left will describe the project and
8 its relationship to the neighborhood, the
9 block and the surroundings. The architect,
10 Mr. Chairman, is Bill Maiden. He is to my far
11 right and he is available for questions
12 relating to the design.

13 Robert Cooper of the Law Firm
14 Jackson and Campbell is available to assist
15 with questions relating to the tenancy, as
16 well as the whole question of financials and
17 financial hardship. And, also, Mr. Chairman,
18 the owner, Mr. Segovia, behind me is here for
19 questions as well. And we have been sworn in
20 and we did submit two cards each.

21 Let me start, Mr. Chairman. The
22 project has been a design in progress kind of

1 exercise, meaning that we have made changes
2 along the way, changes as we have discovered
3 to make the project better and also changes as
4 identified by the D.C. Office of Planning.
5 The supplemental filing dated January 9, 2007
6 represents our most recent corrections to the
7 site and building plans.

8 Also, minor changes have been made
9 to the site plans even since then relating to
10 a comment that came from the D.C. Office of
11 Planning regarding the availability of I think
12 two parking spaces.

13 In summary, Mr. Chairman and
14 Members of the Board, we are actually seeking
15 four main variances. One, building height.
16 The R-4 Zone allows a maximum of 40 feet. We
17 are requesting a height of 60 feet. Number
18 two, number of stories. The zone allows three
19 stories and we're requesting six. Three, lot
20 occupancy. The code allows 40 percent maximum
21 coverage. We are requesting a coverage of 50
22 percent.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And, four, a variance from the
2 prohibition on enlarging a structure devoted
3 to a nonconforming use under section 2002.5,
4 to allow the expansion of an existing
5 apartment house from 20 units to 34 units in
6 an R-4 Zone District. Let me pass, Mr.
7 Chairman, a copy of my testimony has been
8 provided to the staff and, hopefully, it has
9 been circulated.

10 The supplemental filing we
11 provided on January the 9th details the
12 applicant's burden of proof for granting the
13 requested variance. I would just like to
14 highlight a few points. First, the property
15 is a nonconforming use, an apartment building
16 in an R-4 Zone District and R-4 Row House
17 District. A variance to allow the enlargement
18 of this building is necessary for the proposed
19 renovation to be economical.

20 Additionally, the granting of the
21 variance to extend the existing nonconforming
22 use vertically, and we're talking vertically

1 not expanded horizontally, within the
2 footprint of the existing building would make
3 the building in harmony with its existing
4 neighborhood and block.

5 The requested height variance is
6 not inconsistent with the existing multi-
7 family apartment buildings in the immediate
8 vicinity of the property, especially those
9 across the street. Second, the property is
10 rental and it's subject to the D.C. Rental
11 Housing Act.

12 The building if fully occupied is
13 and has been for some time operating at a net
14 loss of nearly \$90,000 per year. In addition
15 to the age of the building's components and
16 the low rent levels, the building also faces
17 an enormous competitive disadvantage. Most of
18 the multi-family buildings in the immediate
19 area have either recently been renovated
20 throughout or were recently constructed.

21 Now, alternatives provided the
22 applicant, alternatives by the Rental Housing

1 Act to minimize its loss, and these
2 alternatives for the most part have been
3 rejected by the applicant over the years.

4 For example, the Rental Housing
5 Act permits a 12 percent rate of return. The
6 applicant could file a hardship petition and
7 seek an upward adjustment in rent, but
8 unfortunately the vast majority of the
9 residents are elderly and the burden of a rent
10 increase would be too much for them to bear.

11 Also, the Act permits the owner to
12 file a substantial rehabilitation or a
13 capitalized improvement petition, which
14 permits an increase in rent to cover the cost
15 of major capitalized improvements and pass
16 those costs on to the tenants. Again, this
17 was also rejected for fear that it would have
18 an undue burden on the existing tenants.

19 Third point. The applicant has
20 been working with the existing tenants in the
21 building. The tenants are represented by
22 counsel. Counsel is present here today.

1 Seven tenants will be returning after the
2 renovations have been completed and when I say
3 renovations, complete renovations, new
4 elevator, new HVAC system, satisfying ADA
5 requirements and a complete substantial
6 renovation of the project as a whole.

7 Fourth, and notwithstanding the
8 negative and in many cases erroneous reporting
9 of the Office of Planning, the ANC by
10 unanimous vote, 10-0, supported this
11 application, Mr. Chairman. In fact, the
12 chairman of the ANC was here. He was going to
13 testify, but because of the land he had a
14 conflict and he had to leave, but I think a
15 copy of the ANC recommendation is on file.

16 Additionally, Council Member
17 Graham who was at the ANC meeting on January
18 5th where that vote was taken did voice
19 support for the project as well. And, in
20 fact, I understand he has or is in the process
21 of submitting a letter to the file in that
22 regard.

1 Finally, Mr. Chairman, and again I
2 always say as a former planning director here
3 for about 10 years, very involved in the
4 Zoning Regulations on the books, especially
5 the Comprehensive Plan. Contrary to what the
6 Office of Planning is saying, this project is
7 not harmful to the intent, purpose, integrity
8 of the Zone Plan and the public good. We will
9 discuss that, hopefully, in more details
10 later.

11 So, Mr. Chairman, that concludes
12 my opening comments and we will like to
13 proceed with a short presentation on the
14 project as it relates to the block, as it
15 relates to the surrounding area, and I would
16 ask Norm Beeke to do that.

17 CHAIRPERSON GRIFFIS: Excellent.
18 Just for quick clarification, you have amended
19 your application to reflect the variance for
20 the height to note 60 feet not the 51 feet
21 that you had in the original application, and
22 also to add a story, not for five stories, but

1 for six stories. Is that correct?

2 MR. GREENE: Yes.

3 CHAIRPERSON GRIFFIS: Okay. Let's
4 proceed.

5 MR. BEEKE: Good afternoon, Mr.
6 Chairman, Members of the Board. My name is
7 Norman Beeke. I have offices at 1625
8 Massachusetts Avenue, N.W., Suite 400,
9 Washington, D.C. and I am going to make a very
10 brief presentation on the status of the
11 building as we see it within the neighborhood.

12 CHAIRPERSON GRIFFIS: Do you have
13 new plans that reflect the changes, so that we
14 can park --

15 MR. BEEKE: Yes.

16 CHAIRPERSON GRIFFIS: -- station
17 11 and 12?

18 MR. BEEKE: Yes, yes.

19 CHAIRPERSON GRIFFIS: Excellent.
20 Are they in the record or are they right in
21 front of us?

22 MR. BEEKE: They are right here.

1 MR. GREENE: Actually, the site
2 plan is right here. Do you have a copy of it?

3 MR. BEEKE: Well, I have it right
4 here.

5 MR. GREENE: We have one. Okay.
6 Great. And the reason why we have -- we did
7 not --

8 MR. BEEKE: All right. The
9 property is an existing three story apartment,
10 rental apartment unit with 20 units in it plus
11 a manager's suite in the basement. It was
12 constructed in 1961 subsequent to a 1960 BZA
13 hardship hearing.

14 CHAIRPERSON GRIFFIS: Good.
15 Right.

16 MR. BEEKE: You know all --

17 CHAIRPERSON GRIFFIS: We got all
18 that.

19 MR. BEEKE: Okay.

20 CHAIRPERSON GRIFFIS: Fascinating
21 history that OP discovered for this.

22 MR. BEEKE: Yes, indeed.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. BEEKE: It was. What is being
3 proposed is simply a vertical extrusion of the
4 building.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. BEEKE: So if the courtyards,
7 if the rear yards, if the side yards are
8 nonconforming, those variances, it's a
9 technical cleanup.

10 We're not asking for a variance to
11 expand the footprint horizontally, simply
12 going up three more stories. I think I said
13 two floors and a penthouse, adding two floors
14 and a penthouse in the previous application,
15 and that is important, I think, as a
16 description, as you will see.

17 Addressing your parking question,
18 what we have done is removed the two walls
19 here which are not structural bearing walls.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. BEEKE: And the storage room,
22 so that our last two parking spaces now enter

1 here and --

2 CHAIRPERSON GRIFFIS: Understood.

3 MR. BEEKE: -- back out.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. BEEKE: So all the parking is
6 fully accessible.

7 COMMISSIONER JEFFRIES: Excuse me.
8 I just want to be clear. So you are not --
9 from what you just said, you're not increasing
10 a nonconformity here.

11 MR. BEEKE: Vertically.

12 COMMISSIONER JEFFRIES: Excuse me?

13 MR. BEEKE: Vertically we are.

14 COMMISSIONER JEFFRIES:
15 Vertically. That's it.

16 MR. BEEKE: Right.

17 COMMISSIONER JEFFRIES: That's the
18 only nonconformity.

19 MR. BEEKE: Right. We're not
20 going outward, yes. All right. The reason I
21 said --

22 VICE CHAIR MILLER: Could I ask a

1 question? The height wasn't nonconforming,
2 was it?

3 COMMISSIONER JEFFRIES: Was --

4 VICE CHAIR MILLER: The height, as
5 it is is not nonconforming.

6 COMMISSIONER JEFFRIES: Oh, yes,
7 right now it's --

8 MR. BEEKE: Since it's an R-4
9 Zone, 40 feet, three stories.

10 CHAIRPERSON GRIFFIS: I think the
11 only point they were trying to make is that
12 they are not impacting the rear yard setback,
13 the side yards or the lot occupancy.

14 VICE CHAIR MILLER: Right.

15 CHAIRPERSON GRIFFIS: Everything
16 happening vertically.

17 VICE CHAIR MILLER: Okay. Right.

18 CHAIRPERSON GRIFFIS: I think we
19 understand.

20 MR. BEEKE: Right.

21 CHAIRPERSON GRIFFIS: Let's go.

22 MR. BEEKE: But those are

1 technically part of the variance requests
2 though.

3 CHAIRPERSON GRIFFIS: Sure, sure.

4 MR. BEEKE: I wanted to make
5 sure --

6 CHAIRPERSON GRIFFIS: Existing
7 nonconformance.

8 MR. BEEKE: -- that was clear in
9 the record.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. BEEKE: This is the existing
12 building height, which is three stories above
13 grade. They are adding two more stories on
14 the facade, but a set back penthouse so that
15 it will --

16 CHAIRPERSON GRIFFIS: Let me just
17 -- Mr. Beeke, what is your role in this
18 project?

19 MR. BEEKE: My role in the
20 project?

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. BEEKE: I'm partners with Fred

1 Greene.

2 CHAIRPERSON GRIFFIS: Okay. Good.
3 All right. So you're part of the project
4 management, not the architect?

5 MR. BEEKE: No, no, no.

6 CHAIRPERSON GRIFFIS: Because
7 there was questions on --

8 COMMISSIONER JEFFRIES: You're the
9 architect.

10 CHAIRPERSON GRIFFIS: Okay.

11 COMMISSIONER JEFFRIES: Okay.
12 Yes, we got thrown.

13 CHAIRPERSON GRIFFIS: Let's use
14 the same understanding and specifics, because
15 you have now said two stories and a penthouse,
16 but we're actually talking about adding three
17 stories.

18 MR. BEEKE: Yes. The amended
19 application says three stories.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. BEEKE: The original one said
22 two stories --

1 CHAIRPERSON GRIFFIS: Right.

2 MR. BEEKE: -- and a penthouse.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. BEEKE: And the reason for
5 that was that this penthouse, it is occupied.
6 It is a story.

7 CHAIRPERSON GRIFFIS: Two units in
8 it.

9 MR. BEEKE: Yes, two units, but it
10 is set back sufficiently so that from the
11 street, the site line should obscure it.

12 CHAIRPERSON GRIFFIS: Okay. Do we
13 care about that? Okay.

14 MR. GREENE: Well, you don't see
15 the --

16 CHAIRPERSON GRIFFIS: Do the
17 regulations require that, except for the --

18 MR. BEEKE: Well, in terms of the
19 character of the neighborhood maybe.

20 CHAIRPERSON GRIFFIS: Okay. Good
21 enough.

22 MR. GREENE: Well, that's right,

1 and what's the character of the neighborhood.
2 Incidentally, Mr. Beeke has an architectural
3 background as well.

4 CHAIRPERSON GRIFFIS: No, no,
5 that's great.

6 MR. GREENE: Okay.

7 CHAIRPERSON GRIFFIS: There's no
8 question. It was just a clarification.

9 MR. BEEKE: Good. Now, this
10 building as it sits, the Office of Planning
11 submitted in their report several photographs,
12 several site plans and photographs. We did a
13 survey of the north side of Euclid Street in
14 this block and even though it is an R-4
15 Single-Family Row House Zone designation,
16 there are 14 other properties on that side of
17 the block in the R-4.

18 Three of them are two unit
19 apartment buildings. Eight of them are four
20 units. One of them is three unit. One
21 immediately to the east of this project is
22 eight units and the building immediately to

1 the west of it is 12 units.

2 Also, this is the property in the
3 OP report. This is our property. You can see
4 that the adjoining property has been expanded
5 horizontally in towards the alley as a multi-
6 family apartment building.

7 This is unrenovated, but has 12
8 stories, 12 units in it. Once you get past
9 here, you're into a C-2-B and on the south
10 side of Euclid Street, it's R-5-B. And we
11 also submitted some photographs that I think
12 help put the building in context. This is the
13 building, our current building. This is its
14 adjoining building which, as you can see, is
15 already four stories high. That is east.
16 That is west.

17 This is the property immediately
18 across the street, a very nice, handsome
19 series of apartment buildings lovingly
20 restored. This is immediately to the west of
21 those.

22 CHAIRPERSON GRIFFIS: Right.

1 Good.

2 MR. BEEKE: Now into the C-2-B
3 area, you have this new apartment building
4 which has been developed. And in our package
5 of photographs, we also show the addition to
6 the rear. So what looks right now like a
7 1950s state school dorm is hopefully going to
8 be able to be transformed to match its
9 neighbors both in appearance and economic
10 potential.

11 MR. GREENE: Thank you very much,
12 Mr. Beeke. Mr. Chairman, I would -- I want to
13 say that concludes our presentation,
14 especially for the sake of time, and we would
15 be happy to take questions at this point.

16 CHAIRPERSON GRIFFIS: Excellent.
17 Thank you very much. Questions? Let me see
18 if I understand. Based on the fact that there
19 is a certain cost required in accommodating
20 this building or upgrading this building, two
21 and a half levels or three levels are
22 required.

1 And the additional density, the
2 additional height, would be needed because
3 it's going to be maintained at a certain level
4 of rental affordability?

5 MR. GREENE: I would say yes, that
6 is true to a degree in order to make this
7 building work economically and to do the
8 substantial improvements that we have proposed
9 to do, new elevators, HVAC, satisfying ADA
10 requirements and, incidentally, this point has
11 not come out. This is one of the few
12 buildings, if not the only building, that is
13 providing on-site parking, satisfying parking
14 requirements on-site.

15 And the cost associated with that
16 coupled with the fact that seven tenants will
17 be returning to the building at a rent
18 structure pretty much at current, I think I
19 might have mentioned that, from \$355 to \$625
20 a month, and these will be new units.

21 CHAIRPERSON GRIFFIS: What happens
22 if they don't return? Say they decide that

1 whatever, their life changes, they don't
2 return, do you lop a floor off for every
3 tenant?

4 I mean, I guess I don't understand
5 the direct correlation of the program that is
6 being implemented, the choices that are being
7 made in terms of the ownership and then the
8 future use, and the permanent additions that
9 are being asked to the property.

10 MR. GREENE: All right. Let me
11 just -- I'm going to ask Mr. Cooper to respond
12 to that, but as it stands now they are
13 returning.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. GREENE: And they are
16 returning at a set rent level.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. GREENE: And the applicant is
19 anxious to start the renovation process for
20 this building.

21 CHAIRPERSON GRIFFIS: Good. Okay.
22 The last thing, just a comment on my

1 perspective. In reviewing this and also
2 reading the regulations specific to this, I
3 don't find that relief from 2002.5 is actually
4 required. We can get into that later perhaps
5 in our own deliberation, but the fact is that
6 in the record as provided was a variance from
7 this Board.

8 Therefore, there was nothing
9 nonconforming based on that relief as it was
10 built, and certainly not nonconforming use
11 which we could have a lengthy discussion, and
12 we will not, on whether it was a nonconforming
13 use or not. So in my sense, I'm not paying
14 much attention to a lot of the arguments,
15 except what is already in the record on
16 2002.5.

17 Okay. Yes, quick question and
18 we'll get a response to all this. Go ahead.

19 VICE CHAIR MILLER: Well, I'm not
20 sure whether Mr. Cooper is planning on
21 addressing the economic issues or waiting for
22 our questions on this, but just to state that

1 I know that Office of Planning raised the
2 issue about documentation. And I think when
3 we're looking at this, you know, how do we
4 know that, you know, you couldn't have just
5 added one story versus two or you could have
6 asked for less relief.

7 MR. COOPER: Yes. Well, in order
8 to answer that, we do have to deal with the
9 current scenario that it is a rent controlled
10 property and the current tenant base that is
11 there and we have to address them. Otherwise,
12 none of this could be possible or could in any
13 way make economical sense.

14 So the owner has to look at this
15 in the context of making the accommodation for
16 the existing tenant base which, you know,
17 although there is -- you know, I don't believe
18 this property specifically falls within any
19 kind of -- I don't know if it does or doesn't
20 fall within the inclusionary zoning
21 requirements recently contemplated by the
22 Zoning Commission.

1 I'm not sure if it does, but we
2 sort of looked at that as a model as well to
3 say, okay, well, these seven units we know.
4 We would maintain them as affordable housing
5 units and the amount, you know, the number of
6 units would exceed whatever the Zoning
7 Commission would mandate if this building were
8 to fall into the inclusionary zoning
9 requirements.

10 Whether or not any bonus densities
11 we -- would fall into that, I would leave that
12 to the others to determine that. But the
13 owners, as far as the financials, I would like
14 an opportunity to submit those financials.

15 There was some -- the accountants
16 are actually working on that for the year end
17 2006 and I was not able to get them by today,
18 so I'm hoping to have them. But as Mr. Greene
19 stated, these rent controlled -- the units in
20 the property are under rent control ranging
21 from the determined \$268 up to \$842.

22 CHAIRPERSON GRIFFIS: Right.

1 MR. COOPER: The amount of money
2 that it takes to operate this building, as the
3 accountants have told me, is approximately
4 \$215,000 a year, just the operating expenses.
5 So with \$215 less the maximum possible rental
6 income of \$126,000, you're at \$90,000 a year
7 loss.

8 I think the question that you
9 asked about the magnitude of the increased
10 density in relation to that, I don't have an
11 answer to that, but those are the facts and
12 those are the numbers that the developer --
13 the owner has looked at it, tried to determine
14 what would be an appropriate amount in order
15 to recoup those costs and expenses, maintain
16 the property to meet the needs of the existing
17 tenant base who have the absolute right to
18 return to the building.

19 Obviously, there has been some
20 political fallout of other owners and
21 developers forcing tenants out and not
22 allowing them the opportunity to move back in.

1 The tenants in this building are ably
2 represented by Arnold and Porter.

3 We have had numerous meetings with
4 them over the last year to reach a resolution
5 of how this could be accomplished, and I
6 believe that it meets the test as far as the
7 tenants are concerned and their assurances
8 that they have an opportunity to return back
9 to the building at their units now fully
10 renovated, up to code, up to standards of
11 modern buildings, putting this building in a
12 position to be competitive with the other
13 buildings in the community.

14 CHAIRPERSON GRIFFIS: Right. I
15 think, you know, it's an excellent proposed
16 program in terms of upgrading a rental
17 building and keeping it within rental, as
18 opposed to converting it to an ownership
19 opportunity or anything else, and I don't
20 think -- myself, I don't have any difficulty
21 with that. I think it's very exciting,
22 obviously very complex.

1 Now, we need to factor all of
2 those elements and how they get directly into
3 the Zoning Regulations. Ms. Miller, you had
4 follow-up?

5 VICE CHAIR MILLER: Just one more
6 follow-up. When you say they have an absolute
7 right to return, is that under a D.C. law or
8 is that pursuant to an agreement you have with
9 them?

10 MR. COOPER: My position is that
11 it is absolutely under the District of
12 Columbia law. I was perplexed last year when
13 the Council took the position that there were
14 owners out there who were taking the
15 substantial rehabilitation petitions and using
16 them as a means to actually oust the tenants.
17 When I have represented other owners in the
18 past, I have always taken the position that
19 the tenants have the absolute right to come
20 back, so that was kind of shocking to me.

21 However, having said that, in
22 order to accommodate any questions that the

1 tenant may have had that this was one of those
2 unscrupulous developers, we went the
3 additional length to have a year's worth of
4 discussions with the tenant base, again
5 represented by Arnold and Porter and they are
6 here today.

7 We have not reduced the agreement
8 to final documents, but I think we are about
9 98 percent there. We met with them on Friday
10 evening as a matter of fact and I believe they
11 had a meeting with their tenant base and their
12 clients on Saturday morning in anticipation of
13 this hearing.

14 VICE CHAIR MILLER: Thank you.

15 CHAIRPERSON GRIFFIS: Yes?

16 COMMISSIONER JEFFRIES: Just a
17 quick sort of question if you would just
18 oblige me, Chair.

19 Did the applicant seek other
20 financial subsidies given sort of the
21 complexion of, you know, the tenancy? I mean,
22 did you go to DHCD and others to somehow try

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to offset what you would see as lost
2 opportunity based on the rent levels?

3 MR. COOPER: I think that I'm not
4 100 percent sure on, but the DHCD programs
5 would probably head back and with other
6 clients that I have had, would lead back to
7 the same resolution. You can improve the
8 building. You have to set aside so many units
9 for affordable housing and then you would be
10 able to enhance the building with an
11 additional loan. The owner doesn't need an
12 additional loan. He needs increased revenue.

13 CHAIRPERSON GRIFFIS: I think what
14 Mr. Jeffries was doing, if you could get the
15 financial capabilities of renovating the
16 building as is, the tie of which most people
17 don't use the Housing Trust Fund or DHCD loans
18 or anything of that sense, would be the fact
19 that they would be restricted in the amount of
20 sale or rent that could be asked for.

21 But what we're hearing -- if I
22 understand his question is what we're hearing

1 is that that's all being done, so why wouldn't
2 you get essentially inexpensive financing to
3 do less work? I'm not sure you can answer
4 that actually.

5 MR. COOPER: I'm not.

6 CHAIRPERSON GRIFFIS: Is that your
7 question?

8 COMMISSIONER JEFFRIES: Yes,
9 that's absolutely my question. I just, you
10 know, wanted to --

11 CHAIRPERSON GRIFFIS: Mr. Greene,
12 Mr. Beeke?

13 MR. GREENE: Well, I -- whether we
14 went to DHCD, I don't think we did. We did
15 not go to get Government financing or
16 Government assistance. We handled it strictly
17 privately and also there was a time factor.
18 When you go into these Government programs, it
19 takes forever and the bottom line is that they
20 are going to require you to do exactly what
21 we're doing.

22 In fact, we're doing more than

1 what they probably would have required,
2 especially on the affordable housing side.
3 We're talking 20 percent affordable here. So
4 whether the cheaper financing would have
5 helped, yes, anything cheaper helps, but you
6 have to look at what comes with that. It's a
7 time factor.

8 COMMISSIONER JEFFRIES: Well, it
9 just might be interesting, I mean, obviously
10 looking at the development budget. I mean,
11 you know, financing costs.

12 MR. GREENE: Sure.

13 COMMISSIONER JEFFRIES: Maybe it's
14 right to the bottom line, so it just might be
15 interesting to figure out sort of how that
16 pairs with --

17 MR. GREENE: That's a good point.

18 COMMISSIONER JEFFRIES: You know,
19 I mean, just given, you know, the state of the
20 tenancy there.

21 MR. GREENE: Yes, right.

22 COMMISSIONER JEFFRIES: So --

1 MR. GREENE: It's an excellent
2 point.

3 COMMISSIONER JEFFRIES: And even
4 if you don't do it, just to know what that
5 looks like.

6 MR. GREENE: To know what it is,
7 absolutely, and the point is well-taken. The
8 owner in this case was just pretty much
9 aggressive with trying to fix the building up.
10 If you look at it, if you go by that block,
11 that's the one that sticks out the most in
12 terms of being run down, ugly, not functional,
13 under-performing, and I think this is a real
14 opportunity.

15 But it also is an opportunity in
16 this request, too, to add to the housing
17 stock. This is an opportunity to gain 14 more
18 units in an area that is a good area for
19 residential development. There is residential
20 development all around it. In fact, there are
21 varying heights all around it and we see it as
22 a win-win on all sides if we're allowed to go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 forward with it.

2 And I would have to say again, on-
3 site parking, which you don't see in any of
4 those buildings, not on the street, but on-
5 site parking, all 12. How many spaces?

6 MR. SEGOVIA: 12.

7 MR. GREENE: 12 spaces, which
8 satisfies the parking requirement.

9 COMMISSIONER JEFFRIES: The
10 Triangle project across the street didn't have
11 on-site parking?

12 MR. GREENE: I don't -- does it?
13 Does it?

14 MR. SEGOVIA: No.

15 MR. GREENE: The owner says
16 absolutely not.

17 COMMISSIONER JEFFRIES: Really?
18 Okay.

19 MR. GREENE: Well, if you're going
20 to say something, you need to get it on the
21 record. So the question is -- why don't you
22 just come forward here? Which building has

1 the parking and which one does not?

2 MR. SEGOVIA: That's the original
3 building.

4 MR. GREENE: For the record, state
5 your name.

6 MR. SEGOVIA: Yes. My name is
7 Naun Segovia, the owner of the building, 1327
8 Euclid Street. Only the building have a
9 parking space is the new building they made
10 last year from my building.

11 MR. GREENE: But the rest of the
12 buildings do not?

13 MR. SEGOVIA: Do not.

14 MR. GREENE: Thank you.

15 CHAIRPERSON GRIFFIS: Okay. Any
16 other questions? Very well. Anything else at
17 this time? If there is nothing further, let's
18 move ahead then and go to the Office of
19 Planning. Mr. Jackson is with us.

20 MR. JACKSON: Mr. Chairman,
21 Members of the Board, my name is Arthur
22 Jackson. I work with the D.C. Office of

1 Planning and I'm here to briefly summarize the
2 Office of Planning report on this application.

3 Essentially, you have heard the
4 proposal as presented by the applicant. This
5 is slightly different from what was originally
6 submitted for our review, but substantially
7 the same. As noted in the Office of Planning
8 report, we think that we did -- we think and
9 the applicant now agrees that this is a six
10 story building with three additional floors
11 being added in that there will be residences
12 on the top floor.

13 We also looked at this use as not
14 being allowed in the zoning district.
15 However, research by the Office of Planning
16 revealed that this was subject to a previous
17 BZA order that approved the construction of an
18 apartment building after a change in the
19 regulations back in 1961.

20 The existing building has been --
21 COs have been issued continuously for this
22 building for between 20 and 26 dwelling units

1 over the course of time since that
2 development, and the CO that is in the
3 applicant's application is for a change of
4 ownership.

5 We have also been looking at the
6 zoning relief, that there was a number of
7 reliefs issued for the development at the
8 time, and in our tabulation we looked at the
9 possibility of it obviously needing lot
10 occupancy relief, that it's the height relief,
11 of course, three floors and an additional 19
12 feet and possibly rear yard relief in that
13 there is more density of development within
14 the rear yard.

15 And, of course, they still have an
16 issue with the parking spaces. We would have
17 to refer the current plan or whatever final
18 plan they decided to present to the Office of
19 Transportation to see if they were comfortable
20 with the securities route you have to take to
21 get to the parking spaces in the back, so that
22 the question of -- we still have a question of

1 whether or not there were actually 12 spaces
2 there.

3 Then there are a couple of other
4 parking regulations that do not quite match,
5 but that is also -- that could be included in
6 the overall granting of a variance by the BZA.
7 We felt that it was subject to 2001.3 because
8 although it is not currently a nonconforming
9 structure, some of the changes they are making
10 would make it -- would bring it into
11 nonconformance with regard to the height and
12 the floor area ratio.

13 We think in terms of analysis,
14 this is an irregularly shaped lot. However,
15 the applicant has -- the case is based on the
16 fact that it was in an improving neighborhood
17 with high subsidy -- high property values and
18 associated taxes and has to be competitive.
19 I think this is fairly standard in the
20 District such that the presence of an existing
21 nonconforming building in a growing
22 neighborhood, even it was approved in 1960,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 does not merit an exceptional condition.

2 We think in terms of peculiar and
3 extraordinary difficulties, we encourage the
4 applicant to give us some sort of comparison
5 of what they are capable of doing with 20
6 units or what they are not capable of doing.
7 We were not directly given a copy of this, of
8 the additional submittal, but we did achieve,
9 look at a copy of it, and we had questions
10 about the whole issue of what would happen
11 under the rental -- under rent control.

12 So we contacted the DCRA, the
13 Department of Consumer and Regulatory Affairs,
14 and talked to staff there. They indicated
15 that there are a number of possible scenarios,
16 but what the outline was that the applicant
17 would be allowed to charge -- in essence, the
18 cost of renovating the building and of
19 maintaining the building would be entered into
20 a formula and then they could charge 12.5
21 percent over that cost advertised among all
22 the tenants.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Assumedly, if they went in and
2 used the additional -- okay. Let me back up.
3 The applicant has outlined that they would
4 keep granting -- in essence, granting a rent
5 reduction to the existing tenants, the seven
6 existing tenants that are there, says they
7 will continue to pay the existing rent.

8 It's conceivable that they could
9 capture the cost of that rent reduction as an
10 encumbrance and submit that as part of their
11 package to the -- for the waiver of rent
12 control. That is to say if they include a
13 package that included the debt that they would
14 be carrying over and then allow the -- the
15 Board could decide how much they could raise
16 the rents of the remaining 13 units to cover
17 those overall costs.

18 That is to say they will reduce
19 the overall cost of the project by just
20 dealing with 20 units. They could take into
21 account the additional reduction that they
22 would have for seven units within that

1 calculation and then include the cost for new
2 construction and renovation.

3 Now, when I talked to that office,
4 they indicated that it is conceivable that if
5 they submitted an application that requested
6 this, requested the rent reduction -- well, a
7 waiver, a reduction -- well, a waiver of the
8 rent control such that they could increase the
9 rents to get the 12.5 percent return that
10 included this reduction for keeping the
11 current tenants at the same rates, that it
12 could be considered by the Board.

13 Now, this is -- I'm really talking
14 calculus here and I'm not an expert with this
15 proposal, but it seems in the discussion with
16 that agency now, and I don't know if the
17 applicant has -- there is no application
18 pending requesting the waiver, but it seems as
19 if they wanted to go this route, as opposed to
20 going through DHCD or some other program, the
21 practical approach would be to take this, take
22 a proposal, an application to the Board, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Rent Control Board, and ask them to review and
2 improve it.

3 That would give us the basis for
4 really judging what can be done with 20 units
5 and what can be done with more units. At this
6 point, the applicant hasn't provided really --
7 they have provided some facts and figures and
8 some description of the situation that exists
9 on the site and in the surrounding area, but
10 has not really provided enough information for
11 us to determine whether there is any hardship
12 present or not.

13 Furthermore, we don't think three
14 stories -- six stories in a three story zoning
15 district is appropriate. That is just way
16 beyond anything that we would normally
17 consider to be appropriate, given the fact
18 that most of the existing buildings and, as
19 far as we can tell, all the apartment
20 buildings that are in the R-4 District were
21 established prior to the change in the Zoning
22 Regulations.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Now, there is one building that
2 was approved as a conversion. It was -- that
3 we did define in the records that was
4 originally a tenant, a rooming house that was
5 converted to apartments. But other than that,
6 we don't know of any new apartment
7 construction that is within this, the R-4
8 District.

9 Now, right across the street is a
10 higher intensity district, R-5-B, but their
11 development really exceeds what would be
12 allowed in an R-5-B Zoning District. And I
13 refer the Board to the Office of Planning's
14 report and look at Exhibit 1. On Exhibit 1,
15 we have -- hopefully you have a color aerial,
16 but it shows the C-2-B is at the eastern end
17 of the street. The R-4 takes up most of the
18 street frontage along Euclid and the R-5-B is
19 below.

20 They are not close to C-2-B. They
21 are in the middle of the block. Now, it may
22 leave -- this lot is split on the

1 Comprehensive Plan with being moderate density
2 and low density, but we still think that for
3 the purposes of maintaining the integrity of
4 the community and stabilization, we don't
5 think it's really appropriate to introduce, to
6 suddenly introduce a six story building on
7 this site.

8 Now, therefore, the only thing we
9 can conclude, based on the information that we
10 have been provided, was that this would have
11 a negative impact on the character and
12 stability of the surrounding neighborhood and
13 that these -- particularly since the
14 regulations specifically discourage this type
15 of development in this Zone District and, as
16 such, it could not be -- the relief requested
17 cannot be granted without substantially
18 impairing the intent, purpose and integrity of
19 the Zone Map as embodied by the Zoning
20 Regulations and Map.

21 Again, we know the Comprehensive
22 Plan is of two minds on the use of this

1 property, but we think that the more prudent
2 approach was to maintain the property in its
3 current state, no more than three stories. We
4 note that the Advisory Neighborhood Commission
5 voted both ways on the project. They voted to
6 oppose it and they voted to support it.

7 And I think the -- now, we don't
8 want this to seem to indicate that we are not
9 supportive of the applicant's efforts to
10 renovate the building. I think this is a very
11 aggressive and courageous effort to acquire
12 the building and try to make changes.

13 We just think that the case has
14 not been made for the extent of relief,
15 doubling the height of the building that the
16 applicant has asked for, and we think
17 additional work should be done to pursue if
18 they are going to go the route of working
19 within the rent control system, to use that
20 system to the fullest to see what could be
21 accomplished through a hearing with the Rent
22 Control Board to see about maintaining the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rent rates of the seven apartments and then
2 still accommodating the cost of renovating the
3 remaining -- the entire -- well, and what the
4 result would be in terms of the rates on the
5 remaining 13 in order to maintain the building
6 and bring it up to a standard they think is
7 appropriate for this market.

8 With that, the Office of Planning
9 regretfully recommends denial of the proposed
10 variances, and that essentially includes the--
11 because we don't think they have met the
12 standards of the three part test. With that,
13 that concludes the Office of Planning's -- my
14 summary of the Office of Planning's report and
15 we are available to answer questions.

16 CHAIRPERSON GRIFFIS: Excellent.
17 Thank you very much, Mr. Jackson. Ms. Miller,
18 questions?

19 COMMISSIONER JEFFRIES: So a
20 question.

21 CHAIRPERSON GRIFFIS: Or Mr.
22 Jeffries.

1 COMMISSIONER JEFFRIES: Oh, I'm
2 sorry. So in the Comprehensive Plan, the
3 conflict that you speak of is just sort of the
4 east and west conflict --

5 MR. JACKSON: Well --

6 COMMISSIONER JEFFRIES: -- along
7 Euclid?

8 MR. JACKSON: Well, it's just the
9 property is actually three lots. You have --

10 COMMISSIONER JEFFRIES: Um-hum.

11 MR. JACKSON: And two of them line
12 up behind each other, so that there are two
13 lot faces along Euclid. The Comprehensive
14 Plan splits, has one lot that is in, I
15 believe, medium density residential and the
16 other is in low density residential. Let me
17 see. Let me just check. One is in moderate
18 density residential and the other is medium
19 density residential.

20 COMMISSIONER JEFFRIES: East and
21 west.

22 MR. JACKSON: The medium density

1 residential, yes.

2 COMMISSIONER JEFFRIES: Right.
3 Okay. And then I think counsel brought up a
4 question about inclusionary zoning, and I
5 thought I should remember this by heart, but
6 I don't, but did you at all explore whether
7 this would fall under the purview of
8 inclusionary zoning, particularly given the
9 size of the addition?

10 MR. JACKSON: We did not address
11 that question.

12 COMMISSIONER JEFFRIES: Okay.
13 Thank you.

14 MR. JACKSON: Of course now, it
15 would be dependent on what was approved by the
16 Board of Zoning Adjustment. For instance, if
17 the Board should decide that there is some
18 merit to adding one floor, that could make a
19 difference because we're talking about five
20 units in a 20 unit building.

21 If the applicant should go back
22 and decide to break it up into instead of 20

1 units that they currently say they have to the
2 26 that has been approved on the site, that
3 could also make a difference. So it would all
4 depend on just what they decide to do
5 ultimately with the breakdown.

6 CHAIRPERSON GRIFFIS: Questions?

7 VICE CHAIR MILLER: Mr. Jackson,
8 it sounded like you were saying that this
9 building is out of character with the zone and
10 the neighborhood, because it's six stories
11 period, that a six story building is just out
12 of character. And what I hear from the
13 applicant sounds like, based on the buildings
14 that are existing, it's actually in character
15 with the neighborhood and I'm wondering if you
16 could address that.

17 MR. JACKSON: Well, I guess I said
18 a number of things, but let me just say that
19 the Office of Planning has consistently not
20 supported attempts to increase the size of
21 apartment buildings in R-4 Districts and we
22 think that is of character with the intent of

1 the Zoning Regulations as they are stated on
2 their face.

3 Again, when you even look at the
4 applicant's illustration, the six story, the
5 whole six story building would be taller than
6 anything on the north side of the street and
7 it could possibly be taller than the buildings
8 to the south in the R-5-B District.

9 We don't know exactly what the
10 height of the southern building is, but it
11 does appear that it would be a marked change.
12 It would be a marked change from what is there
13 now and from our perspective, we think it
14 would be again counter to what the actual
15 intent of the R-4 District is as envisioned by
16 the Zoning Commission.

17 VICE CHAIR MILLER: Is it your
18 position that they couldn't meet the practical
19 difficulty test by showing the economics
20 without going to the Rent Control Board?

21 MR. JACKSON: Well, at this point
22 they haven't shown any economics. They have

1 talked about it, but there has been no
2 comparison of the cost and the impact of
3 renovating a 20 story, the addition 20 story,
4 and the cost and the impact of renovating and
5 constructing a six story, given all the other
6 things they want to achieve, so just providing
7 the parking and, of course, keeping the rent
8 of the current residents the same.

9 They are particularly explaining
10 about what the regulations would allow, and so
11 numbers about what would happen under the
12 current building, how much money they would
13 lose with the current building, but there is
14 no further analysis of what would actually be
15 the result of getting what they are allowed
16 under the regulations in terms of the 12.5
17 percent return over the cost of the
18 investments and the encumbrances using the 13
19 units that are not -- that they would not be--
20 that are not occupied as carrying higher rents
21 and then keeping the same rents for the seven.

22 Remember, they have 20 units to

1 begin with and, at this point, they haven't
2 shown how what they have already doesn't work
3 or would not work, and this goes back to the
4 fact that their justification is essentially
5 economic.

6 VICE CHAIR MILLER: Right, and I
7 understand that they are going to be
8 supplementing their economic documentation.

9 With respect to this being a
10 nonconforming use, I think that the Chairman
11 alluded to the fact that I think this Board
12 has found in the past that an increase in area
13 where there is a change in residential use is
14 not a use variance, but an area variance.

15 And I brought this attention I
16 think to -- I brought this to Mr. Jesick's
17 attention. I think it's the Wolf case. I
18 don't know if you had a chance to -- have you
19 seen that case, Wolf v. D.C. Board of Zoning
20 Adjustment?

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

22 VICE CHAIR MILLER: Okay. But in

1 any event, my question is I think your -- when
2 you analyzed the first prong of the variance
3 test, you basically relied on the fact that
4 you couldn't use a nonconforming use as a
5 reason for exceptional circumstances. And my
6 point is if we don't find that it's a
7 nonconforming use, which I don't think we do,
8 then do you see any uniqueness about this
9 property?

10 MR. JACKSON: Well, again, based
11 on the applicant's statement, the uniqueness
12 that they are using is the fact that it's in--
13 as I recall, they said the uniqueness had to
14 do with the fact that it's in an area that is
15 growing, that there are high taxes, that the
16 costs are going up and they are in a
17 competitive market.

18 That in itself does not really
19 seem to create -- is not a unique situation in
20 the District. Now, the issues they placed on
21 themselves that they want to -- and to their
22 credit, would like to maintain the rents of

1 the current residents so they can come back.
2 They are willing to pay the difference in
3 their rents if they go someplace else. These
4 other particulars are very interesting and I
5 think should be -- and we support them in
6 those efforts.

7 But the last result is they
8 haven't done the -- they haven't provided the
9 documentation or computations to indicate.
10 They can't do that with having 13 dwellings,
11 13 units that they can charge whatever is
12 allowed under rent control, taking into
13 account what they are -- the amount of money
14 they are not going to charge for the units
15 that they are going to maintain at the current
16 rate and the cost of construction for a 20
17 story building -- for a 20 unit building.

18 If they go to 40, you know, then
19 that will be the issue. I'm sorry. If they
20 go to 34, you're talking about even more costs
21 and we still don't have any numbers for it.
22 So in order for us to do the appropriate

1 analysis, we need some sort of -- something to
2 compare. We haven't got anything to compare
3 at this point.

4 VICE CHAIR MILLER: My final
5 question is is this -- would you say that this
6 is an area that is changing and that that is
7 part of the reason that this building may have
8 to change? I mean, there is a question as to
9 how much or whatever, but is that a fact in
10 this case?

11 MR. JACKSON: I think the area is
12 changing in that it's becoming more popular
13 and people are looking to live here, looking
14 to live here, but I'm not sure if it has
15 changed to the point where you cannot
16 economically run a 20 unit apartment building
17 in this area.

18 I don't think we're at a point
19 where the only way you can make a profit in
20 this area, even if you have some -- a few
21 units that you want to maintain at a certain
22 rate, is to double the size up of your

1 building.

2 I think there are probably ways
3 that it can be done, but it has yet to be
4 proven that this existing dwelling, this
5 building, multiple dwelling that was approved
6 back in 1960, cannot be economically renovated
7 in its current state at the same time meeting
8 the requirements of the current tenants in the
9 current environment using rent control.

10 VICE CHAIR MILLER: I'm sorry. I
11 have one more question.

12 MR. JACKSON: Yes.

13 VICE CHAIR MILLER: And what is
14 the detriment to the public if this building
15 expands to this level?

16 MR. JACKSON: I think the whole
17 issue of increasing the pressure on -- okay.
18 Now, let's again look at the pattern that we
19 have on the street now. It's mostly
20 apartments and larger structures to the east
21 and then it gets more and more row dwellings,
22 more dwelling character, sorry, to the west,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 more row dwelling character to the east.

2 This is still an R-4 District. I
3 think it puts more pressure to increase the
4 density of development and redevelop the
5 street to the east. I think it puts more
6 pressure for redevelopment to a higher level
7 at the same time, at the same point where the
8 Comprehensive Plan basically says the moderate
9 density should stop. The medium density
10 should stop. It shouldn't go past this
11 property.

12 Again, recall that there is a
13 three story building, well, I think that's a
14 major renovation, only one, as far as we could
15 determine, new structure has been built on the
16 street that is an apartment building, but that
17 is in the R-5-B. Otherwise, there has been no
18 significant change on the property, on the
19 site, except for renovation of existing
20 buildings.

21 And as far as we know, there has
22 only been one conversion to an apartment

1 building and that occurred back in 1961. So
2 this is a stable street. We would like to see
3 it remain a stable street.

4 CHAIRPERSON GRIFFIS: Excellent.
5 Any other questions? Excellent report, very
6 full analysis, both written and oral today.
7 Is there cross examination from the applicant
8 of the Office of Planning?

9 MR. GREENE: Yes, Mr. Chairman.
10 Can I do it in the form of a statement?

11 CHAIRPERSON GRIFFIS: No.

12 MR. GREENE: Okay, good. Well,
13 let me say yes, I do have a couple of
14 questions for Mr. Jackson.

15 CHAIRPERSON GRIFFIS: Just put a
16 question mark at the end of it.

17 MR. GREENE: Yes, okay, a question
18 mark. Mr. -- I mean, it never ceases to amaze
19 me. Mr. Jackson, what knowledge or what
20 training do you have in construction financing
21 to the point where you're able to say that it
22 won't work, because if we did X, if we did Y?

1 I guess what I'm trying to say is
2 that, you know, you're making a lot of, you
3 know, comments about what they should do, go
4 to the rent control. If we increase -- if the
5 cost was \$100,000, it would have a negative
6 effect on the rent levels and I'm not sure if
7 we will even -- and that's just at \$100,000.

8 And we made the point that one of
9 our objectives is to be less of a burden on
10 the existing tenants. I guess I'm just trying
11 to understand your background here. I mean,
12 I know you work for the Office of Planning,
13 but do you have experience in construction?
14 Do you know what average construction per
15 square foot cost is today? Let me ask you
16 that direct question.

17 MR. JACKSON: No.

18 MR. GREENE: Do you know
19 construction financing? Direct question.

20 MR. JACKSON: No.

21 MR. GREENE: All right. Second
22 question. The Comprehensive Plan, you talk

1 about this is going to have a harmful effect
2 on the plan, on the Zone Plan. The
3 Comprehensive Plan has a number of elements,
4 correct?

5 MR. JACKSON: Correct.

6 MR. GREENE: And I don't recall in
7 your report or did in your report -- you gave
8 a complete assessment of the Comprehensive
9 Plan as it relates to this part. I mean, for
10 example, the housing element. The mayor has
11 a goal to increase by 100,000 housing units.
12 Does that factor into your report at all, Mr.
13 Jackson?

14 MR. JACKSON: No.

15 MR. GREENE: Okay. Does other
16 elements of the Comprehensive Plan factor into
17 your report, other than the fact that you're
18 saying that I don't like it because it's an R-
19 4 Zone and it might lead to more developments
20 of this type in that particular zone?

21 MR. JACKSON: Well, the -- my
22 reference in the Comprehensive Plan was to the

1 land use designation for the area and as it
2 affected this property. It's the lots
3 themselves that separate -- are in separate
4 designations, and that is the reference I made
5 in the Comprehensive -- to the Comprehensive
6 Plan.

7 MR. GREENE: And, Mr. Jackson,
8 what changes land use? I mean, what affects
9 land use designation? Let me ask you. Does
10 change affect land use designation?

11 MR. JACKSON: No.

12 MR. GREENE: Does not?

13 MR. JACKSON: No. The
14 Comprehensive Plan for 1999 and the proposed--
15 in the draft Comprehensive Plan that is
16 currently considered by the Zoning Commission,
17 by the City Council, have the same
18 designations.

19 MR. GREENE: Well, did you factor
20 in then the changes that have occurred on the
21 block, on the street, the fact that there are
22 varying heights. There are heights equal to

1 or greater than the heights that we are
2 proposing.

3 MR. JACKSON: Yes, but, as I said,
4 there haven't been any changes in the R-4 Zone
5 District. The R-4 Zone District continues to
6 be the same uses that were there before the
7 change in Zoning Regulation.

8 What the change was was the
9 subject property and the fact that it was
10 allowed to be constructed in the first place.
11 One that was there, it did change the
12 character but, again, as far as the R-4 Zone
13 District is concerned, the entire street
14 frontage was developed as it is today.

15 And getting back to your earlier
16 question about our knowledge about
17 construction, I think the important thing is
18 what I have been asking for.

19 MR. GREENE: I was finished with
20 that.

21 MR. JACKSON: Oh, I'm sorry. Go
22 ahead.

1 MR. GREENE: Okay. How does this
2 project rank with the urban design standard,
3 urban design elements of the Comprehensive
4 Plan?

5 CHAIRPERSON GRIFFIS: Why are we
6 saying so much about the Comp Plan though?

7 MR. GREENE: Well, he is trying to
8 make a point that this is so harmful on the
9 plan, and I'm just trying to --

10 MR. JACKSON: Well, I'm saying the
11 character --

12 MR. GREENE: I don't understand,
13 Mr. Chairman, that we're only talking about
14 increase of 14 units. What can 14 extra
15 people do? I mean, 14 toilet flushes extra?
16 The parking, we satisfied. We put in the
17 parking right on-site.

18 CHAIRPERSON GRIFFIS: Okay. I
19 mean, we understand the argument. You're
20 trying to get to the fact that the Office of
21 Planning took a strong stance that it was not
22 in conformance with the Comp Plan. Is that

1 correct?

2 MR. GREENE: Absolutely.

3 CHAIRPERSON GRIFFIS: Okay. I
4 think we understand that.

5 MR. GREENE: Okay. Good.

6 CHAIRPERSON GRIFFIS: I think we
7 understand the assertions of what has been
8 established and what the applications mean.

9 MR. GREENE: Then I'll stop.

10 CHAIRPERSON GRIFFIS: Okay.
11 Anything else on that?

12 MR. GREENE: No, sir.

13 CHAIRPERSON GRIFFIS: Very well.
14 Is the ANC -- well, you mentioned the ANC was
15 here, 1B. I believe they had to leave. Any
16 other questions then of the Office of Planning
17 for the Board, clarifications? Very well.

18 If there is not, let's move on to
19 -- there was a letter, a current letter of the
20 ANC in the record. Is that correct?

21 MR. GREENE: That is correct, Mr.
22 Chairman.

1 CHAIRPERSON GRIFFIS: Which is
2 dated -- do you have that?

3 MR. GREENE: And, Mr. Chairman,
4 while you're looking for that, the ANC did not
5 -- Mr. Jackson made it sound as though the ANC
6 took a vote and went one way and then took
7 another vote. The first meeting was a meeting
8 in which we were not there. There was no
9 presentation.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. GREENE: We got no notice.

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. GREENE: So I don't think it's
14 fair to say that.

15 CHAIRPERSON GRIFFIS: Do you have
16 a copy of the new one?

17 MR. GREENE: Okay. Yes, I do. I
18 have it right here, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Let's get it
20 in, because we don't have it in the record or
21 I don't have one.

22 MR. GREENE: And this also was

1 filed, so it should be in the record.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. GREENE: But we have copies.

4 CHAIRPERSON GRIFFIS: So the ANC,
5 of course, if they were here, Mr. Hunter would
6 have gone into great length to explain to us,
7 but you made a full presentation and all the
8 ANC members --

9 MR. GREENE: Absolutely.

10 CHAIRPERSON GRIFFIS: -- asked
11 questions?

12 MR. GREENE: Absolutely.

13 CHAIRPERSON GRIFFIS: And then
14 they voted unanimously 10-0, you said.

15 MR. GREENE: All 10 ANC members.

16 CHAIRPERSON GRIFFIS: And
17 recommend approval.

18 MR. GREENE: Including the Council
19 Member for the ward.

20 CHAIRPERSON GRIFFIS: Indeed. And
21 then they knew the -- there it is.

22 MR. GREENE: They knew about the

1 height.

2 CHAIRPERSON GRIFFIS: Thank you.

3 MR. GREENE: They knew all of
4 that.

5 CHAIRPERSON GRIFFIS: Brilliant.
6 Okay. Anything else on that? Any other
7 questions, clarifications? Very well. Not
8 noting any though, I don't have any other
9 Government reports, except that which is
10 attached to the Office of Planning's report.

11 Unless there are others that are
12 aware of Government reports attendant to this
13 application, let's move ahead to anyone here,
14 persons, to provide testimony? Are there
15 persons to provide testimony in support of the
16 Application 17553 can come forward, all
17 persons.

18 Is there anyone else here in
19 opposition to provide testimony on 17553?
20 Very well.

21 Don't know if you're aware, Miss,
22 but you're allowed three minutes as a person

1 to provide testimony. If you would state your
2 name and address for the record, please.

3 MS. GIORDANO: My name for the
4 record is Cynthia Giordano from the Law Firm
5 of Arnold and Porter. We represent the seven
6 remaining tenants in the building.

7 CHAIRPERSON GRIFFIS: Indeed.

8 MS. GIORDANO: And I just, you
9 know, have a very brief statement.

10 CHAIRPERSON GRIFFIS: I smile
11 because you're so familiar with our
12 proceedings that I was kidding telling you
13 what you're required, but there it is.

14 MS. GIORDANO: I don't even need
15 three minutes.

16 CHAIRPERSON GRIFFIS: Good.

17 MS. GIORDANO: I just wanted to
18 indicate to the Board that the remaining
19 tenants in the building do support this
20 application. We have been negotiating an
21 agreement with the owner and we expect to
22 complete the negotiation of that agreement if

1 the Board approves this project.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MS. GIORDANO: That's the sum of
4 my statement.

5 CHAIRPERSON GRIFFIS: Thank you
6 very much, and I think that is very important
7 for us to understand. I mean, as I said in
8 the beginning, maybe too quickly, but I won't
9 spend a lot of time, this is -- it's
10 incredible to see a project of this program
11 coming forward.

12 I mean, certainly, there is -- I
13 don't think anyone on this Board, certainly
14 not myself, would want to stand in any way of
15 providing this and upgrading a building and
16 making sure that the existing tenants can come
17 back in at the affordability, at the rate of
18 rent that they have, and actually providing a
19 new product. So I think it's important for us
20 to understand all of that.

21 But let me ask you, as you had the
22 discussion, what would happen if we didn't

1 approve and what would happen to the tenants?

2 MS. GIORDANO: That is really, you
3 know, completely up in the air right now.

4 CHAIRPERSON GRIFFIS: Sure.

5 MS. GIORDANO: I mean, but of
6 course there are rent control laws that
7 protect our interests.

8 CHAIRPERSON GRIFFIS: Right,
9 right, indeed. Okay. Any questions then?
10 Any questions from the Board of Ms. Giordano?
11 Appreciate you taking the time. Any cross,
12 Mr. Greene?

13 MR. GREENE: No.

14 CHAIRPERSON GRIFFIS: Indeed.
15 Very well. Thank you very much. We
16 appreciate you putting that on the record then
17 in terms of the representation and the
18 position of the tenants. If there is no other
19 persons here present to provide testimony on
20 this application, let's move ahead then, Mr.
21 Greene, if you have any closing remarks,
22 summations at this time.

1 MR. GREENE: Actually, very
2 briefly, Mr. Chairman. I just want to say
3 that -- just summarize. I think this is an
4 opportunity for the District.

5 I think change has occurred in the
6 area. I think there is a genuine effort on
7 the part of the owner to make it easier on
8 everyone, but at the same time in order to
9 complete the improvement, we need the extra
10 density and the extra density, one, is not all
11 bad. Secondly, the area is changing. Height-
12 wise, we are not talking about anything higher
13 than what is there for the most part.

14 But, thirdly, it would be a
15 hardship on the part of the applicant if we
16 were not granted these changes. In terms of
17 what would happen, we really don't know, but
18 we don't want to be in the newspaper putting
19 out tenants and trying to make things happen.
20 We're trying to work it out, Mr. Chairman. So
21 that's it. Thanks.

22 CHAIRPERSON GRIFFIS: Excellent.

1 Thank you very much. Very well. Anything
2 further? I think we'll set this for a
3 decision. My understanding is we would keep
4 the record open then for additional
5 substantiation of the economic impact. Is
6 that the Board's understanding?

7 Do you want to be more specific on
8 what kind of documentation you would need?
9 What?

10 VICE CHAIR MILLER: Well, I just
11 want to say I think that we were talking about
12 certainly the economics to substantiate the
13 amount or the magnitude of the relief that is
14 being requested. Is that clear?

15 MR. GREENE: Well, I wouldn't say
16 this is --

17 VICE CHAIR MILLER: Okay. It
18 sounds like it isn't.

19 MR. GREENE: Well --

20 VICE CHAIR MILLER: Let me just
21 say picking up from what Office of Planning
22 was saying --

1 MR. GREENE: Right.

2 VICE CHAIR MILLER: It's
3 basically, you know, if you're allowed matter-
4 of-right three stories --

5 MR. GREENE: Right.

6 VICE CHAIR MILLER: -- and you're
7 asking to go to six stories --

8 MR. GREENE: Right.

9 VICE CHAIR MILLER: -- then the
10 question is why do you need six stories to
11 make ends meet.

12 MR. GREENE: Right, right. Okay.

13 VICE CHAIR MILLER: Maybe you only
14 need four. Maybe you need five.

15 MR. GREENE: Okay.

16 VICE CHAIR MILLER: You know?

17 MR. GREENE: I -- yes, I
18 understand.

19 VICE CHAIR MILLER: I would expect
20 you would be saying yes, we need six and this
21 is why.

22 MR. GREENE: Right, exactly.

1 VICE CHAIR MILLER: But unless you
2 modify.

3 MR. GREENE: Okay. And that's
4 exactly right, and we will provide the
5 necessary pro formas to show that.

6 CHAIRPERSON GRIFFIS: All right.
7 This is what I would like to do is set this
8 for a decision on the 6th of February.

9 MR. GREENE: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes?

11 MR. GREENE: Is there any chance
12 of getting in earlier? I mean, we can respond
13 extremely quick. It's just that it took us
14 awhile to get here. We got construction.
15 Construction costs continue to go up and we
16 just got a crew ready to start, and to hold
17 this thing off until March -- any chance of
18 February? If you need us to respond in two
19 days, we can get it to you in two days.

20 CHAIRPERSON GRIFFIS: Oh, no, I
21 said we'll set it for the 6th of February.

22 MR. GREENE: Oh, I thought you

1 said March 6th. I'm sorry.

2 CHAIRPERSON GRIFFIS: Yes, that's
3 right.

4 MR. GREENE: Okay.

5 CHAIRPERSON GRIFFIS: We're going
6 to put it first in the morning unless you want
7 to do it for a Special Public Meeting, which
8 means we need all your stuff in today.

9 MR. GREENE: We can't do it today,
10 Mr. Chairman.

11 CHAIRPERSON GRIFFIS: At 1:10.

12 MR. GREENE: No, sir.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. GREENE: We'll take the 6th.
15 Thank you.

16 CHAIRPERSON GRIFFIS: Yes. And to
17 that though, let me give a little bit of
18 direction in terms of getting us substantially
19 towards the 6th and finalizing our decision.
20 I don't think this needs to be extensive. I
21 mean, I will leave the record open for as much
22 and what you want to put in, but I think

1 succinct explanation of -- for the Board's
2 understanding of how it relates to, as Ms.
3 Miller has put it, the economics or the pro
4 forma of this project, how it directly relates
5 to, one, the outgrowth of a unique aspect and
6 the practical difficulty and, therefore, the
7 provision of three additional levels would be
8 required.

9 MR. GREENE: Yes, thank you.

10 CHAIRPERSON GRIFFIS: Okay. Thank
11 you very much. Further?

12 COMMISSIONER JEFFRIES: I just --
13 I do want to add that, you know, just -- I
14 just want to make it clear I do think you have
15 a tall order here at least on my end.

16 So, I mean, I haven't made a
17 decision yet, but I just -- I don't want you
18 to walk out of here today, you know, perhaps
19 thinking this is -- I mean, it's looking good
20 necessarily at least on this end, so I just
21 wanted to at least manage expectations on my
22 end.

1 MR. GREENE: Well, Mr. Jeffries,
2 anything in addition to what has been asked,
3 is there anything else you need to get you on
4 the positive side?

5 COMMISSIONER JEFFRIES: I don't --
6 I think in terms of the economics, I think I
7 would be interested in seeing what you have to
8 show but, I mean, I live around the block from
9 this.

10 I mean, I know the block very well
11 and I just -- you know, I would like to, you
12 know, see more demonstration and I think what
13 the Office of Planning has set forth -- and,
14 by the way, I think that Mr. Jackson has done
15 a very good job from what I can see from the
16 memo, and the questions that he asked of you.
17 I don't think he needs to be a construction
18 financier to be able to ask those questions.

19 But, again, I just -- I don't want
20 you to walk out of here thinking that this is,
21 you know, shot out of the park here, I mean,
22 for me. I can't speak for the rest of the

1 Commission and I just don't want you to walk
2 out of here like that and I don't think there
3 is anything else you can do other than I would
4 look to -- look at the economics, what you're
5 going to submit. I will take a look at that.

6 CHAIRPERSON GRIFFIS: Right. I
7 think what you're really -- and I guess I
8 didn't want to be too brief on it, but really
9 what you're balancing is how is this -- how is
10 all this unique to this property and that is--
11 that to me is a critical aspect of the nexus
12 of the uniqueness that has then gotten you to
13 the point of three extra levels, and you have
14 all the pieces, but they need to be connected.

15 I don't disagree. It is a very
16 tall order. It's always a tall order in terms
17 of making an economic argument before this
18 Board if you know of any of our proceeding
19 deliberations. Being a 16 year resident of
20 this neighborhood, I am very familiar with the
21 changes that are always taking place. So if
22 there is a nexus also between the aspect of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 how this uniquely is impacted by certain
2 changes in the neighborhood, that needs to be
3 articulated and I don't disagree.

4 Mr. Jackson has done an excellent
5 job in terms of their required analysis and
6 the elements of which they needed to look at
7 for the provision of a recommendation to this
8 Board.

9 That being said, I don't want 50
10 pages of pro forma analysis or construction
11 costs or anything of that sort, because it
12 should not be at a level of which we need to
13 get to, but rather the summation of those that
14 would be important for our understanding. And
15 the last word by Ms. Miller.

16 VICE CHAIR MILLER: Well, this is
17 actually directed probably to my fellow Board
18 Members, but there was a question hanging
19 whether does the applicant need to address why
20 they don't -- they shouldn't have to go to the
21 Rental Control Board, in your opinion, or do
22 you think that they can just make their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 economic argument however they see fit?

2 CHAIRPERSON GRIFFIS: Right. I
3 think it's hard to answer that directly or
4 give that direction. Obviously, it's the case
5 presentation that's before us. If they
6 believe that is not an option for them, then
7 certainly that's a statement that's been made
8 here if they want to substantiate why that is
9 not a self-created option that they are not
10 doing that or there are other --

11 VICE CHAIR MILLER: Um-hum.

12 CHAIRPERSON GRIFFIS: -- or they
13 think it's valuable to address the different
14 directions they could go, so be it.

15 VICE CHAIR MILLER: Right.

16 CHAIRPERSON GRIFFIS: But no, you
17 know, I don't think giving specific direction
18 on addressing what other types of boards or
19 other elements of jurisdiction that are beyond
20 ours would be appropriate use of their time
21 and, frankly, our review time.

22 VICE CHAIR MILLER: Right. I

1 would agree.

2 CHAIRPERSON GRIFFIS: Okay.

3 VICE CHAIR MILLER: It just was a
4 question that was raised and I wanted to just
5 make sure it was clear that it is really up to
6 the applicant to make the economic argument.

7 CHAIRPERSON GRIFFIS: Good point.

8 VICE CHAIR MILLER: However you
9 see fit.

10 CHAIRPERSON GRIFFIS: Good point.

11 VICE CHAIR MILLER: Thank you.

12 CHAIRPERSON GRIFFIS: Further
13 clarification, questions?

14 MR. GREENE: No.

15 CHAIRPERSON GRIFFIS: Excellent.
16 Thank you very much then. We're going to set
17 this and then Ms. Bailey is going to tell you
18 exactly when this needs to be into the record.

19 MS. BAILEY: Mr. Chairman, if it's
20 appropriate with you, next Tuesday, which is
21 January 30th.

22 CHAIRPERSON GRIFFIS: Perfect. By

1 3:00 in the Office of Zoning. And obviously,
2 if you would serve that on the ANC also, so
3 that they are aware of that submission and
4 we'll go from there.

5 MR. GREENE: Okay.

6 CHAIRPERSON GRIFFIS: Very well.
7 Thank you all very much.

8 MR. GREENE: Thank you.

9 CHAIRPERSON GRIFFIS: Appreciate
10 your patience with us this morning. And let's
11 move ahead for those that are here now as it's
12 a little after the 1:00 hour, we have one more
13 case in our morning session and then we will
14 take a short break for a lunch recess. Let's
15 call the next case and we'll give a quick
16 assessment of how much time is required.

17 MS. BAILEY: Application No. 17557
18 of Erie Homes, Inc., pursuant to 11 DCMR
19 3103.2, for a variance from the floor area
20 ratio requirements under section 402, and
21 pursuant to 11 DCMR 3104.1, a special
22 exception to allow the construction of five

1 flats under section 353. The property is
2 Zoned R-5-A and it is located at 122 through
3 130 50th Street, S.E., Square 5327, Lot 800.

4 CHAIRPERSON GRIFFIS: Excellent.
5 Thank you, Ms. Bailey. Why don't I have you
6 introduce yourself for the record.

7 MR. AGBIM: My name is Ike Agbim.
8 My office is 1300 Mercantile Lane, Suite 122,
9 Largo, Maryland 20774.

10 CHAIRPERSON GRIFFIS: Excellent.
11 And is Ms. Lowe present? Mr. Lowe, I'm sorry.
12 We have a quick question. Let me ask the
13 applicant, Mr. Agbim, is that correct?

14 MR. AGBIM: Yes, sir.

15 CHAIRPERSON GRIFFIS: Are you
16 aware of a request for party status in this
17 application?

18 MR. AGBIM: No.

19 CHAIRPERSON GRIFFIS: All right.
20 Let's get that to Mr. Agbim if we have an
21 extra copy then, that would be tremendous.
22 And let me ask, Mr. Lowe, if you wouldn't mind

1 coming up and just state your name and address
2 for the record. And Ms. Bailey, am I correct
3 that this is not timely filed?

4 MS. BAILEY: Yes, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Okay.
6 Excellent. Perfect.

7 MR. LOWE: Actually, my name is
8 Lonnie Lowe and I reside at 115 Street, N.E.,
9 Washington, D.C., but I'm actually
10 representing my mother, who lives directly in
11 the vicinity of the project at 5004 Astor
12 Place, S.E., and she also owns property in the
13 rear of this project in lots, I'll give the
14 lot numbers later, and I happen to own a
15 parcel also in the rear of the project. So as
16 a party, I'm representing all of those.

17 CHAIRPERSON GRIFFIS: Excellent.
18 Okay. And this request for party status,
19 Exhibit 26, was not timely filed. Is there an
20 understanding you can provide the Board of why
21 it wasn't filed 14 days prior to the hearing?

22 MR. LOWE: Actually, it's a family

1 dynamic. My sister was actually going to
2 represent the party status for my mother. I
3 was going to represent my interest and she
4 obviously did not do that.

5 CHAIRPERSON GRIFFIS: I see.
6 Okay. So well, there it is. Did we get one
7 to you, Mr. Agbim?

8 MS. BAILEY: Mr. Chairman, I will
9 just a second.

10 CHAIRPERSON GRIFFIS: Oh, thanks.
11 Sorry to rush. We're going to give a quick
12 moment for the review of that. In the
13 meantime, are there questions from the Board
14 Members?

15 VICE CHAIR MILLER: Mr. Lowe, do
16 you understand the difference between
17 participating as a party and participating
18 just as a regular person?

19 MR. LOWE: Yes. I heard you
20 explain it in an earlier case this morning.

21 VICE CHAIR MILLER: Oh, okay.
22 Fine.

1 MR. LOWE: I got it.

2 VICE CHAIR MILLER: Okay. And you
3 want party status.

4 MR. LOWE: Thank you.

5 VICE CHAIR MILLER: Okay. Good.

6 CHAIRPERSON GRIFFIS: While there
7 is review of that, let me ask you direct
8 questions. I have always found the request
9 for party status application the last question
10 is really critical in terms of my evaluation/
11 deliberation of granting party status or not
12 and that goes to whether one person is
13 uniquely or distinctly impacted if this was to
14 be provided.

15 In your answer, you have indicated
16 that you are unique, because you, I believe it
17 is, are more vested in the community than
18 others. But talk to me about what the
19 physical attributes of if this was granted,
20 what the physical attributes would be to
21 impact you or your property, because I don't
22 want to get into a lot of discussion about

1 whether, you know, you are more active or
2 somebody else is more active or cares more or
3 cares less about the community.

4 MR. LOWE: Well, as I stated
5 earlier, I own the parcel in the rear of this
6 property.

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. LOWE: Which I think the
9 project is going to be directly on the
10 property line.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. LOWE: In addition to that,
13 you know, this is a family home where I was
14 raised in Marshall Heights itself.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. LOWE: It is my mother's home.
17 She is handicapped and limited in terms of her
18 physical ability to the house, so it has
19 direct impact on her, which has impact on me
20 as her older son and representing her family's
21 interest in this matter.

22 CHAIRPERSON GRIFFIS: Okay. So

1 for access and the other points that you bring
2 up here in terms of potentially some soil
3 erosion, etcetera.

4 MR. LOWE: Yes, drainage, yes.

5 CHAIRPERSON GRIFFIS: Distinctly.
6 Okay.

7 MR. LOWE: Okay.

8 CHAIRPERSON GRIFFIS: Any
9 questions? Mr. Agbim?

10 MR. AGBIM: No. I would like to--
11 I mean without doing the presentation, I would
12 like to say that some of the issues that he
13 brings forward are --

14 CHAIRPERSON GRIFFIS: Sure, sure.
15 Yes, you're going to address all his issues,
16 but do you have a position on whether we
17 should grant party status or not? Are you in
18 objection to having him a party in opposition?

19 MR. AGBIM: Yes, I'm in objection
20 to having him.

21 CHAIRPERSON GRIFFIS: And based on
22 what?

1 MR. AGBIM: Based on the fact that
2 his application was not timely filed for the
3 Board.

4 CHAIRPERSON GRIFFIS: I see.
5 Excellent. Okay. Comments? Ms. Miller?

6 VICE CHAIR MILLER: Can you
7 address how you might be disadvantaged by the
8 fact that this was untimely filed if party
9 status is granted?

10 MR. AGBIM: I have always check --
11 come in here to check, you know, if they are
12 within the 14 day time line. I came to check
13 to see if there was any party status
14 application filed, so that I can get a copy of
15 it and prepare for any rebuttals. But I
16 wasn't aware until today.

17 VICE CHAIR MILLER: Right. But
18 are there areas that you feel you wouldn't be
19 able to address adequately?

20 MR. AGBIM: Yes.

21 VICE CHAIR MILLER: Yes, really,
22 what?

1 MR. AGBIM: I'm not sure I heard
2 you very well.

3 VICE CHAIR MILLER: What areas
4 that he may be raising that you are not
5 prepared to address?

6 MR. AGBIM: Well, I'm just kind of
7 reading through it as we talk. I just haven't
8 really fully digested the contents.

9 VICE CHAIR MILLER: Okay.

10 CHAIRPERSON GRIFFIS: Other
11 comments, questions, clarifications? It does
12 raise the level. I mean, we take very
13 seriously both aspects. One, the
14 establishment of the party status for adjacent
15 properties specifically as we find that that
16 is the most critical impact or uniquely
17 distinct. But really what we see here is this
18 was actually stamped in on the 19th.

19 So it gives -- the 19th was Friday,
20 was it not?

21 MR. LOWE: Okay.

22 CHAIRPERSON GRIFFIS: So

1 conceivably with the office closed on Saturday
2 and Sunday, the applicant would have had to
3 have been here yesterday afternoon to prepare
4 for the comments that you are submitting as in
5 opposition. So I think there is some great
6 concern about the equitable situation. But
7 let me hear comments and brief ones, so that
8 we might move forward on this.

9 I think in substance, there is no
10 question the fact that there is a strong basis
11 to grant party status in this based on the
12 adjacency of the properties, the numerous
13 properties and I would be amenable based on
14 that, well, based on that to move forward with
15 it. However, I am noting great concern about
16 when this was filed. Others?

17 BOARD MEMBER ETHERLY: Very
18 briefly, Mr. Chair. I would tend to perhaps
19 agree with you, if I may through you, to Mr.
20 Lowe to fill out the record a little bit. Did
21 you, at any point, participate in the ANC's
22 proceedings regarding this application?

1 MR. LOWE: Yes.

2 BOARD MEMBER ETHERLY: Okay. And
3 in terms of the course of that participation,
4 you were at meetings that were hosted by the
5 ANC. At that time, did you question or
6 inquire with regard to the applicant's plans
7 regarding the subject property? Yes, sir.

8 MR. LOWE: Yes.

9 BOARD MEMBER ETHERLY: Okay.
10 Thank you. Thank you very much. I inquired,
11 Mr. Chair, not because, of course, that is not
12 dispositive of the issue of party status, but
13 just from the standpoint of balancing what I
14 think is a valid concern on the part of the
15 applicant regarding satisfactory notice to
16 prepare and respond to any issues that may be
17 raised by competing parties.

18 Hence, of course, the requirement
19 that party status applications be put in in a
20 timely fashion. But with that participation
21 on the part of the party applicant in prior
22 aspects of this case, i.e., in front of the

1 Advisory Neighborhood Commission, I am
2 somewhat comforted to an extent with regard to
3 moving forward favorably on the party status
4 application.

5 But I do share a little bit of the
6 concern that was expressed by the timeliness
7 of it, but I'm inclined to be favorable,
8 because there has been some evidence presented
9 that there has been prior participation, if
10 you will, in the broader aspect of the
11 community dialogue on this case.

12 CHAIRPERSON GRIFFIS: Excellent.
13 Well said. Others, comments, positions? Yes,
14 Mr. Jeffries?

15 COMMISSIONER JEFFRIES: Just a
16 question. Mr. Lowe, can you just walk me back
17 through sort of how you arrived at a late
18 application?

19 MR. LOWE: This whole process has
20 been -- involved our complete family and so we
21 divided actually parts of it up in terms of
22 representing our interest, because of the land

1 that's owned by our parents and
2 representations by me of my interest in my
3 land. So the actual party status was given to
4 my sister, who obviously was late. That's the
5 only reason I can give you right now.

6 COMMISSIONER JEFFRIES: Okay. Mr.
7 Chair, I will probably agree with Mr. Etherly.
8 I mean, just given the proximity of, I mean,
9 adjacent land and, I mean, it's not just one
10 parcel, but several parcels around this, I
11 just find it -- I just think that trumps even
12 the lateness of the application, I mean, from
13 where I sit, so I would be in favor of
14 granting party status.

15 CHAIRPERSON GRIFFIS: Excellent.
16 Are there others that want to speak to that?
17 Mr. Mann?

18 BOARD MEMBER MANN: Well, I think
19 I could go either way on this, but, I mean,
20 perhaps to the extent that the applicant
21 wasn't prepared to respond to some of these
22 items brought up today, we might give an

1 opportunity to review it afterwards and keep
2 the record open.

3 CHAIRPERSON GRIFFIS: Excellent
4 point. And I think Mr. Etherly really focused
5 us in on that in indicating that there has
6 been a participation throughout and
7 conceivably we will be able to address or the
8 applicant will be able to address the
9 representative of all the issues that arise.
10 But I totally agree if we need additional
11 time, we'll just leave the record open.

12 I would like to proceed then,
13 unless there is any other critical aspects of
14 this, and I would move approval of the party
15 status application and would ask for a second.

16 BOARD MEMBER ETHERLY: Second, Mr.
17 Chair.

18 CHAIRPERSON GRIFFIS: Thank you,
19 Mr. Etherly. Is there any other discussion,
20 deliberation on that? Not noting any other,
21 I would ask that all those in favor of the
22 motion to signify by saying aye.

1 ALL: Aye.

2 CHAIRPERSON GRIFFIS: And opposed?
3 Abstaining? Very well. Why don't we move
4 ahead. Thank you very much, Mr. Lowe. You
5 can have a seat. We'll call you back up in a
6 short moment. And, Mr. Agbim, if you wouldn't
7 mind, you can proceed.

8 MR. AGBIM: Yes, yes, thank you.
9 I would like to start by point that in the
10 course of filing the original application I
11 met with the Office of Planning and
12 subsequently revised the application to
13 exclude the request for a variance from the
14 FAR requirements, because we now have revised
15 the plans and do not any longer need any
16 relief from the FAR requirements.

17 CHAIRPERSON GRIFFIS: Excellent.
18 So what's before us and what the Office of
19 Planning actually has in their analysis and
20 what we are showing is a special exception
21 under section 353 is required?

22 MR. AGBIM: That's correct.

1 CHAIRPERSON GRIFFIS: Perfect.

2 Let's move ahead.

3 MR. AGBIM: This property is
4 located in the R-5-A Zone in the northeast
5 corner of Astor Place on 50th Street, S.E., in
6 Marshall Heights. It has never been
7 developed. The property is rectangle in
8 shape, measuring 80 feet along Astor Place and
9 100 foot along 50th Street. There is no
10 public alley. There is a single-family
11 dwelling on the east and on the north is a
12 vacant lot.

13 Around the block there are other
14 apartment buildings, a church and a block and
15 a half away a school. The single-family
16 dwelling next to this property which shares a
17 common property line is located, the actual
18 building structure, at about 35 feet from the
19 property line.

20 This site is characterized by huge
21 slopes, which presents a unique challenge in
22 developing the site. Existing grade ranges

1 from highest point to lowest point in excess
2 of 20 feet. In order to obtain flat areas for
3 placement of building and parking and
4 pedestrian circulation, we have to make use of
5 retaining walls to articulate the change of
6 elevations.

7 So we have two north/south
8 retaining walls each of 100 foot long. We
9 build a finished grade foundations and one on
10 the north side offset from the property line
11 next to the single-family dwelling. The
12 existing pavement along 50th Street slopes
13 down rapidly to the north. So because of this
14 change in grade and slope of existing
15 pavement, we have had to design the buildings
16 and use planter boxes, as they were
17 articulated, the step-down of the grades of
18 the portions of the building.

19 This proposal is for five separate
20 buildings. Five row buildings, each one four
21 levels. Each building is a flat style, each
22 flat is two levels. Pedestrian access to the

1 buildings are from landscaped front yards,
2 approximately, 7 x 16 feet and we have
3 proposed for entire project one curb cut on
4 Astor Place to enable us to provide the
5 required number of parking spaces in the rear.

6 This project, as I mentioned
7 earlier, now complies with all applicable
8 provisions of Chapter 4 of DCMR 11. The
9 building is 30 foot high above finished grade.
10 The exterior is faced with brick veneer and
11 it's pre-faced blocks.

12 CHAIRPERSON GRIFFIS: I'm sorry,
13 I'm going to interrupt you just to move it
14 along.

15 MR. AGBIM: Sure.

16 CHAIRPERSON GRIFFIS: It's very
17 clear, everything that you have put in.

18 MR. AGBIM: Right.

19 CHAIRPERSON GRIFFIS: Actually, we
20 understand the project. Really, obviously,
21 we're under special exception of 353.

22 MR. AGBIM: Right.

1 CHAIRPERSON GRIFFIS: The referral
2 section we'll get to with Office of Planning's
3 analysis. Why don't you get right to it,
4 because what I see the heart of the matter
5 here is as the required special exception, can
6 you just address will the special exception
7 tend to adversely affect the use of
8 neighboring properties in accordance with the
9 Zoning Regulations and Map.

10 What are the potential for adverse
11 conditions or impacts, negative impacts of the
12 surrounding area? If you address that, then
13 we can move on.

14 MR. AGBIM: Okay. One of the
15 things we have done on this project design is
16 to, first of all, provide off-street parking
17 in order to make the streets congested. And
18 that's why I mentioned earlier that we have
19 one curb cut on Astor Place, which provides
20 one parking space for each dwelling unit on
21 this project.

22 This parking space is located

1 lower than the grade elevation of the adjacent
2 property, so there will not be any issue of
3 water runoff, erosion problems onto adjacent
4 properties. I would also like to mention that
5 the paved areas are fully equipped with area
6 drains that will take any water runoff from
7 impervious areas into drainage systems and
8 away from the site.

9 Entrances are from 50th Street.
10 Right now, no buildings in this area face 50th
11 Street. And we chose 50th Street as entrance
12 into the buildings in order to, you know,
13 physically keep the entries into these
14 buildings away from the other adjacent streets
15 in order to avoid further congestion.

16 These units will be for sale as
17 condominiums and we hope that -- we plan to
18 deliver two of the units as affordable at 80
19 percent of the AMI. Thank you very much, sir.

20 CHAIRPERSON GRIFFIS: Okay. Thank
21 you very much. Let me bring up one other
22 detailed aspect. The Office of Planning has

1 indicated that the relief from 2117 is
2 required, that's for the drive aisles and, of
3 course, Office of Planning is here and they
4 can address that specifically before we get
5 into their full analysis.

6 MR. MOORE: Good afternoon, Mr.
7 Chair and Members of the Board. We did
8 indicate there was a relief from 2117
9 regarding the drive aisles, because there
10 isn't now there now. Originally, we asked the
11 applicant to build a drive aisle and convert
12 it to alley and, of course, that had to be
13 done. If you do that, it would cause change
14 of lot occupancy issue.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. MOORE: So it's just going to
17 be now a drive aisle provided by the
18 applicant, not dedicated. So the issue is no
19 longer there.

20 CHAIRPERSON GRIFFIS: Okay. Good.
21 Excellent. So we'll put that to rest that
22 there is an easement that is going to be

1 shared by all the properties that will access
2 the parking.

3 MR. MOORE: Correct.

4 CHAIRPERSON GRIFFIS: Okay. Good.
5 Any other questions then for the applicant,
6 clarifications on the presentation? Yes, Mr.
7 Jeffries?

8 COMMISSIONER JEFFRIES: A
9 question. So if someone is pulling out of
10 their parking space and someone is trying to
11 come in from Astor, they are going to have to
12 wait? I mean, will they -- I mean, they won't
13 be able to --

14 MR. MOORE: The drive aisle should
15 be a minimum of 15 feet wide.

16 CHAIRPERSON GRIFFIS: That's what
17 it shows.

18 COMMISSIONER JEFFRIES: So there
19 is enough clearance?

20 MR. MOORE: There should be enough
21 clearance.

22 COMMISSIONER JEFFRIES: That you

1 can get two-way?

2 MR. MOORE: Right. There should
3 be two-way, enough for two-way traffic.

4 COMMISSIONER JEFFRIES: Unless
5 someone is pulling out. Well, anyway, it's
6 per code, so let me add.

7 CHAIRPERSON GRIFFIS: Okay. And
8 then trash and everything is getting picked up
9 from the rear. Is that correct?

10 MR. AGBIM: Right.

11 CHAIRPERSON GRIFFIS: It would be
12 a commercial hauler. Is that right?

13 MR. AGBIM: Right.

14 CHAIRPERSON GRIFFIS: Is it?

15 MR. AGBIM: Well, this property
16 will qualify for city trash collection.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. AGBIM: Right.

19 CHAIRPERSON GRIFFIS: So that will
20 have to be arranged how they do it actually.
21 Let me ask you in terms of Unit 130 or
22 Structure 130, which is on the corner of Astor

1 and 50th Street.

2 MR. AGBIM: Right.

3 CHAIRPERSON GRIFFIS: Obviously,
4 on the elevations they are all similar. Is
5 that one dealt with any differently than the
6 others?

7 MR. AGBIM: Yes. The only
8 difference on the end unit is that it has an
9 opportunity to have windows on Astor Place
10 elevation.

11 CHAIRPERSON GRIFFIS: Are you
12 providing them?

13 MR. AGBIM: Yes.

14 CHAIRPERSON GRIFFIS: Are you
15 providing a bay on that side or just windows?

16 MR. AGBIM: Just windows.

17 CHAIRPERSON GRIFFIS: Okay. And
18 that shows in the plans or no?

19 MR. AGBIM: Yes, I believe there
20 is a not to that effect on the floor plans.

21 CHAIRPERSON GRIFFIS: Do you know
22 what sheet?

1 MR. AGBIM: It says end unit only.

2 CHAIRPERSON GRIFFIS: Oh, good.

3 MR. AGBIM: That would have those
4 side windows.

5 CHAIRPERSON GRIFFIS: Proposed. I
6 don't know how I missed that, but I will try
7 and find that.

8 MR. AGBIM: We got a floor plan
9 page. There is a note that says -- it shows
10 windows on the side, but it says -- I'll say
11 for clarification, it says end unit only.

12 CHAIRPERSON GRIFFIS: Oh, I see.
13 Okay. I see. Okay. One, two, I see.
14 Excellent. Excellent. Okay. What else? Any
15 other clarification questions of the Board?
16 Mr. Etherly?

17 BOARD MEMBER ETHERLY: Thank you
18 very much, Mr. Chair. Very quickly, Mr.
19 Agbim, if you could, could you speak a little
20 bit to what is happening at the rear of the
21 property behind the parking area? I just want
22 to get a sense of what that site line looks

1 like. Is there a wall at the rear of that
2 area?

3 MR. AGBIM: Yes, sir. What we
4 actually have is, if you look at the grades,
5 there is the land kind of slopes up. If
6 you're going north from the driveway into the
7 property.

8 BOARD MEMBER ETHERLY: Yes, sir.

9 MR. AGBIM: It slopes up, crowns
10 and then starts dipping down. And because
11 that is not conducive for, you know,
12 articulating the parking area, what we have
13 done is to use a retaining wall that is offset
14 from the property line in order to create a
15 more even grade in that area.

16 So at the highest point, which is
17 where you have between 180 and 180, we have a
18 wall height of about 5.5 feet. And in the
19 rest of the area we have, it tapers down
20 substantially.

21 BOARD MEMBER ETHERLY: Okay. And
22 what's the height of that? I might just be

1 missing where it is indicated on the plans.
2 What's the height of that wall? Not the
3 retaining wall, but the wall or the fencing
4 that would be at the rear of the property.

5 MR. AGBIM: When you say rear, the
6 north end of the property?

7 BOARD MEMBER ETHERLY: That would
8 be the -- I guess that would actually be the
9 east end of the property.

10 MR. AGBIM: Yes, that's the same
11 retaining wall that we're discussing, which is
12 the retaining wall in between --

13 BOARD MEMBER ETHERLY: I see. I
14 see.

15 MR. AGBIM: Right.

16 BOARD MEMBER ETHERLY: And it's
17 going to be a standard height all the way
18 along its length?

19 MR. AGBIM: No. It's --

20 BOARD MEMBER ETHERLY: >From north
21 to south?

22 MR. AGBIM: -- going to -- the

1 highest point is between the 180 point
2 elevation. And at that area, we have about
3 5.5 feet elevation above finished grade. Then
4 all the wall in the back, it's only 2 feet
5 high.

6 BOARD MEMBER ETHERLY: I see.

7 MR. AGBIM: Right.

8 CHAIRPERSON GRIFFIS: Yes.

9 BOARD MEMBER ETHERLY: Okay.

10 MR. AGBIM: It was the north end
11 of the property.

12 BOARD MEMBER ETHERLY: And the
13 plan page that you are looking at for that
14 height is the typical proposed site profile?
15 Is that the page that you are reading from?

16 MR. AGBIM: Right. That side
17 profile is at the highest point.

18 BOARD MEMBER ETHERLY: I see.

19 MR. AGBIM: Right.

20 BOARD MEMBER ETHERLY: In terms of
21 lighting at the rear of the properties, what
22 are your plans for the rear of the properties?

1 MR. AGBIM: Yes, what we have done
2 is we provided one, two, three, four, we have
3 provided four pole mounted light fixtures that
4 will basically be sufficient to provide
5 adequate lighting for the parking areas in the
6 rear of the property without doing any spill
7 over to existing properties.

8 BOARD MEMBER ETHERLY: And those
9 would be downward oriented lights?

10 MR. AGBIM: Right. Downward or
11 rear with the throwback reflectors.

12 BOARD MEMBER ETHERLY: Okay. And
13 it's your sense, based on your familiarity
14 with the area, that most of your ingress and
15 egress traffic to enter the site is going to
16 be coming, I would hazard a guess, of course,
17 you know, it's going to be coming from
18 everywhere, but you would typically expect
19 most of the traffic movements to come, would
20 that be northward on 50th Street?

21 MR. AGBIM: You mean pedestrian
22 traffic?

1 BOARD MEMBER ETHERLY: Let's talk
2 vehicular primarily.

3 MR. AGBIM: Right.

4 BOARD MEMBER ETHERLY: For
5 vehicular traffic, most of it is going to be
6 coming from 50th Street or will it be coming
7 from Astor Place to get to your site?

8 MR. AGBIM: Possibly from Astor
9 and possibly from 50th Street, too, but mostly
10 from 50th Street, because that connects to Old
11 Central Avenue and also to East Capitol.

12 BOARD MEMBER ETHERLY: Okay. And
13 these may also, as far as the vehicular side
14 of it, be some questions that I will extend to
15 the Office of Planning. But with regard to
16 your understanding of the area right now,
17 what's the current parking designation for
18 Astor and 50th? Well, let's just focus on
19 Astor for the moment.

20 Is that residentially restricted
21 parking?

22 MR. AGBIM: To the best of my

1 knowledge, there is no signs showing there is
2 residential restrictions.

3 BOARD MEMBER ETHERLY: Okay.
4 Thank you. And I'll come to Office of
5 Planning for that during their report. Thank
6 you, sir. Thank you, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Excellent.
8 Thank you very much. Excellent questions that
9 we were overhearing as we were trying to
10 understand the grade on this, but I think
11 we're pretty clear. Any other questions?
12 Yes, Ms. Miller?

13 VICE CHAIR MILLER: I just have
14 one question. I note that you are going to be
15 providing two units as affordable housing and
16 I'm just wondering is that in conjunction with
17 some specific Government program?

18 MR. AGBIM: No. What we have done
19 is we have based on research we found that,
20 and this is a paragraph in my statement that
21 I put out in order to get to the meat of the
22 matter, but what we currently have in this

1 area is that we see that renovated single-
2 family homes in this area, two or three
3 bedrooms or more, are selling well over
4 \$300,000.

5 And we project that by the time
6 these units are completed, they can be left
7 out of the standard price of around \$200,000.
8 So the two affordable units will come in at 80
9 percent of the AMI.

10 VICE CHAIR MILLER: Yes, my
11 question just goes to, this was something that
12 you just voluntarily chose to do?

13 MR. AGBIM: Yes.

14 VICE CHAIR MILLER: Okay. Thank
15 you.

16 CHAIRPERSON GRIFFIS: Anything
17 else? Any other questions, clarifications?

18 COMMISSIONER JEFFRIES: Just if I
19 could, is there a photograph of the existing
20 site where I could see the grade?

21 MR. AGBIM: Yes.

22 CHAIRPERSON GRIFFIS: Here.

1 COMMISSIONER JEFFRIES: Oh, see
2 I'm looking at -- well, how did you get it
3 color coded?

4 CHAIRPERSON GRIFFIS: I pay extra.

5 COMMISSIONER JEFFRIES: It's
6 colorful. Okay. Okay.

7 CHAIRPERSON GRIFFIS: Okay. While
8 he reviews that, do you have questions on
9 that?

10 MR. AGBIM: No.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. AGBIM: No, I don't.

13 CHAIRPERSON GRIFFIS: Very well.
14 If there's no other further Board questions,
15 Mr. Lowe, do you have any cross examination
16 questions, any questions of the testimony you
17 have heard?

18 MR. LOWE: I do.

19 CHAIRPERSON GRIFFIS: Good.

20 MR. LOWE: Now, as I understand
21 it, I get to ask Erie Homes questions
22 regarding his testimony he just gave.

1 CHAIRPERSON GRIFFIS: Right. Yes,
2 right now.

3 MR. LOWE: Okay. Right now.

4 CHAIRPERSON GRIFFIS: Good.

5 MR. LOWE: Erie Homes, Mr. Agbim,
6 are you the architect and designer of the
7 townhouses being proposed?

8 MR. AGBIM: Yes, sir.

9 MR. LOWE: And are you the agent
10 and owner of Erie Homes?

11 MR. AGBIM: Am I the what?

12 MR. LOWE: Agent and owner?

13 MR. AGBIM: I'm the agent. I'm a
14 member of the Erie Homes.

15 MR. LOWE: So you're the principal
16 owner?

17 MR. AGBIM: Yes.

18 MR. LOWE: Okay. So you designed
19 this project?

20 MR. AGBIM: Yes.

21 MR. LOWE: Okay. Let's talk about
22 the fence. The fence -- am I talking too

1 loud?

2 CHAIRPERSON GRIFFIS: No.

3 MR. LOWE: The fence actually, as
4 I understand it, is 2 feet away from our
5 property line and I have some -- did you
6 consider that in the design of this project?

7 MR. AGBIM: Yes, sir.

8 MR. LOWE: Okay. Did you consider
9 erosion and did you produce any reports or
10 analysis about erosion and soil shifting in
11 this process?

12 MR. AGBIM: Sir, what we have done
13 is there has been some preliminary just
14 technical investigation done on the site and
15 beyond that upon the --

16 COMMISSIONER JEFFRIES: Excuse me,
17 can you speak more closely into that mike?

18 MR. AGBIM: Oh, I'm sorry.

19 COMMISSIONER JEFFRIES: Thank you.

20 MR. AGBIM: Yes, there has been
21 some preliminary just technical investigation
22 done on the site, but beyond that, we have not

1 started to do any construction documents,
2 which will entail doing drawings for final
3 erosion control for review by DCRA.

4 MR. LOWE: So you're not quite
5 sure of the impact of this excavation?

6 MR. AGBIM: The usual construction
7 process in D.C. is to provide adequate
8 measures to control erosion during
9 construction, during exposure of any area of
10 excavation. And this project will definitely
11 comply with all DCRA requirements to that
12 effect.

13 MR. LOWE: The variance requested
14 that you have now satisfied, does that
15 actually reduce the floor area on the top
16 floor to add a roof deck?

17 MR. AGBIM: Yes, sir.

18 MR. LOWE: Okay. Getting back to
19 the other question, other than the
20 projections, you have no findings that would
21 actually address the potential impact of
22 erosion and drainage?

1 MR. AGBIM: Like I mentioned in my
2 presentation, we do have as follows the
3 finished product on this project. We do have
4 in the paved areas, we do have measures, area
5 drains that are supposed to collect water from
6 impervious areas and take them away from the
7 site without impacting neighboring properties.

8 MR. LOWE: That's your estimation,
9 at this point, right?

10 MR. AGBIM: Yes.

11 MR. LOWE: Okay. Final question.
12 Regarding parking, is there any alternative
13 design to this project that would put parking
14 entrance not on Astor Place to allow 10 to 20
15 cars entrance?

16 MR. AGBIM: Well, the only other
17 alternative, since we are on a corner at Astor
18 and 50th Street, the only other alternative is
19 to bring in parking on 50th Street. But in
20 order to provide parking on 50th Street, there
21 has to be other inside a building, as garages,
22 or the parking areas have to be in front of

1 the building, which is currently not allowed
2 in the District of Columbia.

3 MR. LOWE: If that took place, you
4 wouldn't be able to build this project as
5 designed.

6 MR. AGBIM: Can you say it again,
7 please?

8 MR. LOWE: If you did have parking
9 included in the front, which you said is not
10 allowed by current zoning, this project
11 wouldn't be feasible.

12 MR. AGBIM: I'm sorry, I really
13 don't understand. Are you saying if I have
14 parking on 50th Street?

15 MR. LOWE: Yes.

16 MR. AGBIM: Well, one of the
17 challenges of having parking on 50th Street,
18 if you look at one of the side profile
19 drawings, you'll see that in order to bring
20 vehicles in into any structure, there has to
21 be substantially more excavation done to lower
22 that section of the grade down further than

1 what has already been described in this
2 profile.

3 Additionally, what has to happen
4 is that each dwelling, in order to have two
5 parking spaces, each building -- in order to
6 have two parking spaces will occupy the whole
7 front footprint of the structure on the first
8 level. Because right now, the lot widths are
9 20 feet and each parking space will be 9 feet.
10 So that leaves just about 2 feet, which is
11 about a space that's taken up by the poly
12 walls on both sides of the structure.

13 The other reason why we don't have
14 parking on 50th Street is that once you do
15 that, then you're going to have the whole
16 length of the project from about 100 feet
17 long. There's going to be a widened curb cut.
18 So you're going to have a whole open area
19 between the northern most end of the property
20 and the corner of Astor Place and 50th cut out
21 and just leave it as a curb cut.

22 MR. LOWE: Okay. This really is

1 my final question for him. Mr. Agbim, did you
2 consider the current character of that block
3 and square with single-family housing in
4 designing this project and how did you include
5 that into your design?

6 MR. AGBIM: Yes, sir. One of the
7 things we have done is to break this thing
8 down. What you actually see is four -- I'm
9 sorry, five houses, five row houses, five
10 townhouses, each having two flats. And one of
11 the reasons why it has been done that way is
12 to retain a single-family townhouse look, so
13 that it blends in with the single-family
14 buildings in the area as well as the apartment
15 buildings in the area.

16 And I might add that the apartment
17 buildings in the area are about 80 percent and
18 the single-family dwellings in the general
19 vicinity are about 20 percent.

20 MR. LOWE: Could this project be
21 designed and built as single-family?

22 CHAIRPERSON GRIFFIS: You mean all

1 of the structures single-family?

2 MR. LOWE: Instead of --

3 CHAIRPERSON GRIFFIS: Instead of
4 duplexes?

5 MR. LOWE: Correct me if I'm
6 wrong, these are five row houses. Within each
7 row house structure, there are two flats of
8 two floors each.

9 MR. AGBIM: Top stories.

10 MR. LOWE: Which essentially are
11 apartments on top of one another.

12 CHAIRPERSON GRIFFIS: So your
13 question is could you do five single-family?

14 MR. LOWE: Yes.

15 CHAIRPERSON GRIFFIS: I think
16 that's pretty clear.

17 MR. LOWE: Okay. The culture and
18 the character of that neighborhood of single-
19 family and detached housing is sorely needed.
20 I just want to end my final question asking
21 you to reconsider that design of the project,
22 since that's totally within your purview. And

1 I'll hold any other questions I have when I
2 give my testimony.

3 CHAIRPERSON GRIFFIS: Excellent.
4 Thanks very much. Board, any questions,
5 clarifications? Very well. Let's move ahead
6 then to the Office of Planning for their full
7 analysis at this time.

8 MR. MOORE: Good afternoon, Mr.
9 Chair, and John Moore, Office of Planning.
10 The Office of Planning in looking at section
11 353 of this application since the variance was
12 removed finds that the application is
13 consistent with 353. We did an analysis based
14 on the school's capacity to handle the load
15 and that -- the needs that can be done.

16 We talked to the Department of
17 Housing Community Development. I believe they
18 have sent you a separate report.

19 CHAIRPERSON GRIFFIS: Yes, Exhibit
20 No. 22.

21 MR. MOORE: Their support has been
22 consistent with the housing policies of the

1 District of Columbia. We also coordinated
2 with the Department of Transportation relative
3 to the parking, as I mentioned already.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. MOORE: Where there won't be a
6 dedication, but an easement. And by the way,
7 the only entrance, all the traffic for the
8 parking lot will come off of Astor Place.
9 There won't be an entrance on the 50th Street
10 side.

11 Regarding the project's ability,
12 regarding harmony with the neighborhood
13 character, since there is a mixed single-
14 family, detached houses and apartment
15 buildings, obviously, it can fit into the
16 character, although it may not be one that is
17 desired in terms of what the load is.

18 We did address regarding the
19 impact of this site on the community, that
20 there will be some impact on that structure
21 that Mr. Lowe has already mentioned in the
22 rear of this property. And we asked the

1 applicant to sort of take a look at addressing
2 some of those issues a little better.

3 With that, we saw no reasons or
4 grounds for requesting that the application be
5 denied. So we are in support of the
6 application. I will answer any questions that
7 you have.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Thank you very much. We would appreciate the
10 full analysis. Obviously, section 353 is a
11 special exception that is more of a referral
12 special exception in many ways with the amount
13 of agencies and I thought it was excellent the
14 analysis you did to speculate on the demand
15 for the public education and facilities in the
16 area and the low impact that this would have
17 on that.

18 I don't have any other questions
19 for the Office of Planning, unless the Board
20 has any. Mr. Etherly?

21 BOARD MEMBER ETHERLY: Thank you
22 very much. Very, very briefly, thank you very

1 much for your report, Mr. Moore. Just very
2 quickly, I believe you have answered the
3 question on parking. So let me just perhaps
4 touch a little bit on the issue of the
5 retaining wall that is going to be built at
6 what is going to be the eastern edge of the
7 property and you reference it to a degree on,
8 I believe, page 6 of the report.

9 A third retaining wall will be
10 constructed on the rear property line which
11 separates the subject property from an
12 adjacent detached dwelling. Just to be sure
13 in terms of my orientation, that is the
14 property line that represents the edge of the
15 Lowe property, correct?

16 MR. MOORE: That is correct.

17 BOARD MEMBER ETHERLY: Okay. With
18 respect to -- I'm trying to get a feel, if you
19 will, for the visual impact of the rear of the
20 properties coming from the low property. If
21 you could, given the grade change from what is
22 east to west coming back down towards 50th

1 Street, does the low property with the low
2 property essentially still be looking at some
3 portion of the rear facade of the subject, of
4 the proposed application or more than likely
5 probably still somewhat overlooking?

6 MR. MOORE: To some extent. Let's
7 start at the rear of the proposed buildings.
8 This will be an area with excavation, of
9 course, to be relatively flat.

10 BOARD MEMBER ETHERLY: Um-hum.

11 MR. MOORE: And beyond that maybe
12 this is a 20 feet, that's where the parking
13 lot is going to be. There would be a small
14 retaining wall at the east end of the parking
15 lot between the easement and the rear of the
16 property where there would be more excavation.
17 I think the applicant mentioned that's the
18 highest point on the property.

19 BOARD MEMBER ETHERLY: Um-hum.

20 MR. MOORE: There would be a
21 retaining wall between this property and the
22 property of Mr. Lowe's mother living there

1 where the retaining wall will be built, I
2 think they said, within 2 feet of the property
3 line and will be somewhere between 5.5 to 6
4 feet high, if that addresses your question.

5 BOARD MEMBER ETHERLY: Yes, sir.

6 MR. MOORE: How the property will
7 rise.

8 BOARD MEMBER ETHERLY: Yes. And
9 based on your review of the subject property
10 and as was indicated by the applicant, the
11 applicant testified that there is some
12 geotechnical soil assessment or there is some
13 work underway on the applicant's part to kind
14 of assess the situation regarding soil. Is
15 there anything indicating a concern on the
16 Office of Planning's part about any measures
17 that might need to be taken to mitigate
18 concerns about erosion or any other integrity
19 issues, if you will?

20 MR. MOORE: Yes, again, under the
21 adverse impact on page 7 of our report at the
22 bottom. We mentioned some of those potential

1 issues, including potential emissions into
2 that property on the rear, especially when you
3 have a person in there who has some
4 debilitations.

5 We also mentioned the potential
6 that there could be erosion. And we asked the
7 applicant to just sort of do a better analysis
8 in terms of how his property is going to
9 affect the one adjacent to him.

10 BOARD MEMBER ETHERLY: Is it the
11 Office of Planning's sense that that analysis
12 would need to be completed to a satisfactory
13 extent before? Let me rephrase that another
14 way. Is it the Office of Planning's position
15 that that report would need to be completed
16 and satisfactorily done before this Board
17 moved forward with the decision?

18 MR. MOORE: I would think in light
19 of the coming testimony you're going to hear
20 from the person who represents the analysis,
21 that that conclusion should be made at that
22 point. We believe that, from our perspective,

1 as we have based as a courtesy it's something
2 the developer should simply sort of do as a
3 good neighbor coming into the community.

4 BOARD MEMBER ETHERLY: Understood.

5 MR. MOORE: And especially when
6 the developer has several other sites in the
7 community they want to develop. So I thought
8 some overture should be made without us
9 actually prodding him any further to do so.

10 BOARD MEMBER ETHERLY: I
11 appreciate that. And just to be clear, I
12 wasn't looking to kind of be coy with you. I
13 probably should have just simply asked would
14 you consider your approval of this application
15 subject to the receipt of that report.

16 And in part, I definitely was
17 motivated by anticipating the testimony that
18 we will hear from the party in opposition, so
19 to an extent I was trying to get a sense of
20 how serious is there in terms of the -- how
21 serious of a concern is there with regard to
22 issues around soil erosion or just the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 integrity of the -- of any other of the
2 existing properties around the subject area.

3 MR. MOORE: We do believe that's
4 going to be an issue that could be addressed.
5 As a matter of fact, at the ANC meeting that
6 I also attended, there were people in the
7 community who had been there for some years
8 who remember that site when there was erosion
9 on it and they are very concerned about it
10 developing now. So I guess from that
11 perspective, we would want to -- the Board to
12 request some further analysis in terms of how
13 this is actually going to work.

14 BOARD MEMBER ETHERLY: Excellent.
15 Thank you very much, Mr. Moore. Thank you,
16 Mr. Chair.

17 CHAIRPERSON GRIFFIS: Good. Thank
18 you. Any other questions from the Board?

19 VICE CHAIR MILLER: Mr. Moore, I'm
20 just wondering, do we have a landscape plan in
21 our record? I noticed that you talk about
22 extensive landscaping that's going to be

1 provided on the property. But is that
2 reflected in the record or is that something
3 that you anticipate the applicant to provide?

4 MR. MOORE: It's not fully
5 reflected in the record. In two meetings with
6 the developer, you see remnants of a landscape
7 plan there. Also, in the OP report we say
8 that like the parking will still be built in
9 accordance with DDOT standards and the
10 applicant has agreed to do that. So the rear
11 of the property and he mentioned some planter
12 boxes that will be up front.

13 There is not very much you can do
14 in some of the property, so we're pretty
15 comfortable that they meet the standards of
16 DDOT in terms of doing the rear parking lot
17 and we would be comfortable with that.

18 VICE CHAIR MILLER: Okay. So it's
19 going to be a little bit more than the
20 landscape plan we do have in the record?

21 MR. MOORE: Yes, definitely, yes.

22 VICE CHAIR MILLER: And the rear

1 where the parking lot is is going to be
2 beautified a little bit?

3 MR. MOORE: More than a little
4 bit.

5 VICE CHAIR MILLER: More than a
6 little bit.

7 MR. MOORE: Yes, especially given
8 the concerns of the neighborhood on the east
9 side.

10 VICE CHAIR MILLER: So it's going
11 to be beautified with these planter boxes and
12 what else?

13 MR. MOORE: No, the planter boxes
14 will be in front of the property.

15 VICE CHAIR MILLER: Planter boxes
16 in the front. Okay.

17 MR. MOORE: There will be
18 extensive landscaping in the rear at the
19 parking lot and beyond relative to the houses
20 in back of it that is impacted by the project.
21 And DDOT is full aware of that and they are
22 willing to work with the applicant.

1 VICE CHAIR MILLER: DDOT is going
2 to work with the applicant on that?

3 MR. MOORE: Yes.

4 VICE CHAIR MILLER: Okay.

5 COMMISSIONER JEFFRIES: Just a
6 question. Is there a drawing that really
7 indicates or a rendering or just something
8 that gives a sense of what this new
9 development will look like from the Lowe
10 house? I mean, I'm seeing the section here
11 and it's pretty steep and, you know, I'm just
12 wondering when we talk about beautification,
13 I mean, I'm concerned about the transition
14 from the Lowe house to this development. And
15 is that going to show up in this?

16 MR. MOORE: No, there has not been
17 a context drawing yet that shows how it's
18 going to look from the house in the rear. It
19 could be something that could ease some
20 concern in the community if it was submitted.

21 COMMISSIONER JEFFRIES: Okay. I
22 would like to see something like that. I

1 mean, I'm looking at this location here and,
2 I mean, in terms of in-fill construction, I
3 mean, I'm perfectly fine with that. But I am
4 sort of curious about exactly the retaining
5 wall and what they are going to be seeing. I
6 mean, it's going to be cars moving back and
7 forth here. I just, you know --

8 MR. MOORE: That's a concern.

9 COMMISSIONER JEFFRIES: Yes. So,
10 you know, I would like to see something to
11 that extent.

12 MR. AGBIM: Yes. Can I add
13 something real quick? I do appreciate your
14 suggestion. What I would like to point is
15 that that retaining wall when you look at the
16 picture you see that it grades.

17 COMMISSIONER JEFFRIES: Um-hum.

18 MR. AGBIM: It keep coming down
19 towards 50th Street. So the property in
20 question at 5004 Astor is on much higher
21 ground than this property. And at the end of
22 that property, there is an existing fence

1 right there.

2 COMMISSIONER JEFFRIES: Um-hum.

3 MR. AGBIM: So one of the things
4 that we plan to do is through the use of this
5 retaining wall, because our parking area is
6 going to be lower, because the ground -- the
7 line is --

8 COMMISSIONER JEFFRIES: Got it.

9 MR. AGBIM: -- coming down.

10 COMMISSIONER JEFFRIES: Got it.

11 MR. AGBIM: So in proposing that,
12 in preparing that context drawing, we can show
13 the relationship between the lowest property
14 and what they will probably see.

15 COMMISSIONER JEFFRIES: But I --
16 yes, I like that.

17 MR. AGBIM: Right.

18 COMMISSIONER JEFFRIES: In a plan,
19 but I also would like to see --

20 MR. AGBIM: In a drawing, right.

21 COMMISSIONER JEFFRIES: -- what
22 they will be seeing when they look out of

1 their house.

2 MR. AGBIM: Right.

3 COMMISSIONER JEFFRIES: I just
4 want to get a sense of what this looks like.

5 MR. AGBIM: Right, right, right.

6 CHAIRPERSON GRIFFIS: So just the
7 rear elevation is actually what you're looking
8 for.

9 COMMISSIONER JEFFRIES: Yes.

10 CHAIRPERSON GRIFFIS: Okay.
11 Anything else? Comments, questions,
12 clarifications? Actually, does the applicant
13 have any cross examination of the Office of
14 Planning? Do you have any questions of Mr.
15 Moore?

16 MR. AGBIM: No. No, sir.

17 CHAIRPERSON GRIFFIS: Mr. Lowe,
18 cross of OP?

19 MR. LOWE: Yes.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. LOWE: Mr. Moore, you're
22 pretty familiar with the area of the project.

1 And could you speak to the density levels of
2 the area and the character of single-family
3 housing in the area whether it is present or
4 not?

5 MR. MOORE: As the applicant
6 indicated, the character of the area is mixed
7 housing and right now apartment buildings out
8 number single-family houses. However, the
9 Comprehensive Plan that I pointed out to the
10 applicant and to you, I believe, designates
11 that area now where in the past it had been
12 moderate density residential, the
13 Comprehensive Plan actually split the square
14 in half and the part that this house is in,
15 that this project is in, is shown as low
16 density residential.

17 It not only shows that low density
18 residential, it also says that zoning should
19 be changed to be consistent with that
20 designation. That's also in the OP report.
21 So where the density levels and apartment
22 buildings would be what, I guess, you would

1 consider a great -- what we're trying to get
2 at is a more moderate density housing type in
3 the community.

4 To be more reflective, apartment
5 buildings in that community is a part of past
6 development and what we're looking for in the
7 future is something that's less dense.

8 MR. LOWE: With that said, we have
9 already been told that these five townhomes
10 are actually flats, apartments with a
11 townhouse.

12 MR. MOORE: Okay.

13 MR. LOWE: So they are in spirit
14 apartments.

15 MR. MOORE: That would depend on
16 if the owner is going to sell them or rent
17 them.

18 MR. LOWE: Okay. The other aspect
19 of it is, I'm going to just do the
20 environmental aspect of it, the retaining
21 wall. That retaining wall, I think, based on
22 your report is in excess of 100 feet long.

1 MR. MOORE: Yes, it runs from one
2 boundary to the other.

3 MR. LOWE: And it is,
4 approximately, 6 to 7 feet high at certain
5 points.

6 MR. MOORE: Well, that was the
7 contention of the applicant that they said
8 about 5.5.

9 MR. LOWE: Okay.

10 MR. MOORE: For that wall. They
11 have more than one there.

12 MR. LOWE: And a fence will be
13 placed on top of it?

14 MR. MOORE: I didn't hear that.

15 MR. LOWE: Okay. I'm asking.

16 MR. MOORE: I don't -- I didn't
17 hear that a fence is going to be placed on top
18 of it.

19 MR. LOWE: Okay. Okay.

20 MR. MOORE: Because of the height.

21 MR. LOWE: So based -- okay. So
22 based on the plans that you reviewed, there

1 was no fence going to be on top of the
2 retaining wall?

3 MR. MOORE: Not that I read.

4 MR. LOWE: Okay. That retaining
5 wall is actually supporting the foundation and
6 ground around the basement level of my
7 parents' home and yard and it also is on the
8 perimeter of the rear of the land that I own
9 in this parcel. So my question is the
10 environmental impact of it is what I have real
11 concerns about.

12 But let me move on to the
13 character question and then I'll just have two
14 more. The percentage of condos, apartments
15 and renovated apartments and vacant apartments
16 far outweighs single homes, single-family
17 homes in that area. Am I correct?

18 MR. MOORE: Without question.

19 MR. LOWE: The Comprehensive Plan
20 supports in-fill development.

21 MR. MOORE: Correct.

22 MR. LOWE: And it also supports

1 single-family home when the percentage is far
2 outweighed by the other.

3 MR. MOORE: The Comp Plan actually
4 says in-fill housing that is consistent with
5 the character of the -- existing character of
6 the neighborhood. And as I said earlier, that
7 character in the Comp Plan is low density
8 housing.

9 MR. LOWE: Could you give me a
10 general definition of low density housing?

11 CHAIRPERSON GRIFFIS: I think we
12 understand your point.

13 MR. LOWE: Okay.

14 CHAIRPERSON GRIFFIS: I don't
15 think cross examining OP is going to get you
16 much further.

17 MR. LOWE: Okay.

18 CHAIRPERSON GRIFFIS: Go ahead.

19 MR. LOWE: Thank you, Mr. Moore.

20 CHAIRPERSON GRIFFIS: But just to
21 be clear, I mean, we can talk about the
22 Comprehensive Plan and all that, but the

1 Comprehensive Plan hasn't changed the zoning.
2 It is still an R-5-A. So even though the Comp
3 Plan is saying some very straight things on
4 what should change in the future, that's not
5 what this special exception is under.

6 Okay. What else? Any other
7 questions? Very well. Nothing else for
8 Office of Planning? As indicated, special
9 exception under 353 does refer this to
10 extensive other agencies. We have made note
11 of all those that have submitted into the
12 record, I believe. I don't think there are
13 any other agency representatives here for
14 their reports.

15 We can move, I think, steadily
16 ahead noting DHCD. Is ANC-7E represented
17 today? We should hand out medals for
18 patience.

19 MS. ROBINSON: My name is Naomi
20 Robinson, ANC-7E. I'm the Chairperson.

21 CHAIRPERSON GRIFFIS: Good to see
22 you, Ms. Robinson.

1 MS. ROBINSON: I just have a few
2 words I would like to say.

3 CHAIRPERSON GRIFFIS: Please, go
4 ahead.

5 MS. ROBINSON: On January the 9th,
6 the ANC-7E held its regular monthly meeting at
7 Jones Memorial Church, 4625 G Street, S.E. At
8 the meeting, Mr. Agbim, Ike Agbim, made a
9 presentation to the community for an
10 application for a variance from the floor area
11 ratio requirement under section 402 and
12 pursuant to 11 DCMR 3104, a special exception
13 to allow the construction of five flats, two-
14 family row dwellings under the section 353 in
15 the R-5-A District at premises 122 to 130 50th
16 Street, S.E., Square 5327, Lot 800.

17 ANC were given proper notice of
18 the hearings. The number of ANC constitutes
19 a quorum is four. There were several
20 commissioners present. Mr. Agbim did not show
21 pictures or photos to the community and there
22 were some changes that the ANC was not aware

1 of until that night.

2 The Community became very hostile
3 and the evening was getting late. Some very
4 nasty things was said, so me, as Chairperson,
5 dismissed the meeting without the
6 commissioners voting on the -- on his
7 proposal. However, Mr. Agbim sent the
8 corrections to the ANC the following day.

9 He said he will come back with the
10 pictures and any other corrections we request.
11 So therefore I am here now asking if the Board
12 would leave the record open for the ANC report
13 which we will meet on February 13, 2007.

14 I hope you will consider this
15 request, because we need more time. Thank
16 you.

17 CHAIRPERSON GRIFFIS: Thank you
18 very much. We do appreciate it. Very well.
19 Board questions? Does the applicant have any
20 cross examination of the ANC representative?

21 MR. AGBIM: No. No, sir.

22 CHAIRPERSON GRIFFIS: Mr. Lowe?

1 Very well.

2 VICE CHAIR MILLER: I was just
3 going to ask what the applicant's position is
4 on the ANC's request.

5 MR. AGBIM: Yes, I would be more
6 than willing to provide more pictures of the
7 site to members of the community at the
8 meeting of the 13th of February. I would be
9 willing to do that.

10 CHAIRPERSON GRIFFIS: Excellent.
11 Okay. Very well. If there's nothing further
12 for the ANC, thank you very much.

13 MS. ROBINSON: Thank you.

14 CHAIRPERSON GRIFFIS: We do
15 appreciate it. It appears that we will be
16 hearing from you again once you get the
17 additional information from the applicant and
18 if the Board moves in that direction as we end
19 this or come to a conclusion of this hearing.

20 Let me ask if there is any, just
21 to note, persons present to provide testimony
22 in 17557? Very well. Mr. Lowe, if you

1 wouldn't mind coming forward, we will hear
2 your case, at this time.

3 MR. LOWE: Can I begin?

4 CHAIRPERSON GRIFFIS: Yes, please.

5 MR. LOWE: Okay. I'm really going
6 to dense this out.

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. LOWE: I've given to Ms.
9 Bailey --

10 CHAIRPERSON GRIFFIS: We have a
11 little PowerPoint?

12 MR. LOWE: Right.

13 CHAIRPERSON GRIFFIS: Excellent.

14 MR. LOWE: And a statement, which
15 is pretty extensive, which we tried to pull
16 together. Let me just say for the record, our
17 family, we own land in that neighborhood,
18 Marshall Heights, which I grew up in. I have
19 to say that, because that's the character
20 connection for me.

21 CHAIRPERSON GRIFFIS: That is an
22 important one.

1 MR. LOWE: And so change is
2 coming. Our family recognizes that. An in-
3 fill development of housing nature, we
4 support. We're going to be pursuing it
5 ourselves with our own property. We just want
6 to support single-family homes. Single-family
7 homes, that area is saturated with apartments,
8 condos, conversions, duplex and new apartment
9 housing.

10 And in the handout you have, it
11 has the photos of everything surrounding
12 within a three block area of the area. The
13 project that is being proposed is basically
14 more of the same. It's just got a different
15 cover on it.

16 So what I want to do is to really
17 go on record in saying we support single-
18 family in-fill development, even to Erie
19 Homes. We just don't want condos, apartments,
20 high density development, especially in close
21 proximity to our home. We think that would be
22 better for the community, for the neighborhood

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and in keeping with the character of single-
2 family housing over the last 20 years that has
3 been demolished or vacated and now vacant land
4 is present.

5 So we feel very strongly about
6 that and want to go forward. Now, with that
7 said, let me just go over some main points.
8 The site is challenged excavation. It's going
9 to take significant excavation for this
10 project to take place. Our family, my
11 interests, we feel it is going to have
12 negative impact on us.

13 Visually, peace, quiet, enjoyment,
14 noise and drainage. The other thing is this
15 insufficient parking, basically, two parking
16 spaces per unit in reality is insufficient
17 with the parking needs of homeowners today
18 with two and three vehicles and no parking as
19 it is on 50th Street. I hope we can get a
20 clarification from DDOT about the parking
21 designation on 50th Street.

22 Currently, there is no parking

1 except on Sundays for church. Otherwise, that
2 is a main thoroughfare for safety, fire and
3 law enforcement officials and they transverse
4 it regularly, based on the sirens that I hear
5 and that my mother complains about.

6 Second, noise, air quality and
7 safety will effect the enjoyment of the home.
8 And I think also this project, there's only a
9 7 foot setback from the curb on the 50th
10 Street side. There is no landscape plan for
11 that basically that I have seen in the plan.
12 I know Erie Homes says it is, but I haven't
13 seen it.

14 And basically, with the idle of
15 cars emission and the egressing in and out of
16 that parking lot and the use of the parking
17 lot by children, if they are there, and
18 pedestrians, we see it as a safety issue. We
19 would very much like to see parking
20 alternatives to this plan.

21 The project is high density when
22 compared to lot size. The project is

1 approximately -- the actual lot is actually 80
2 feet by 100 feet and the project takes up the
3 entire lot. And basically, we see the
4 proposed project shoehorn 10 families into a
5 small congested place. We don't see that as
6 peace, quiet and enjoyment or maintaining the
7 character of Marshall Heights and what it
8 should be, not what it has been in the past.

9 In the past, apartment developers
10 and renovators have marched to Ward 7 or
11 Marshall Heights specifically with those types
12 of proposals. The new proposals, I think, in
13 conjunction with the DC Comp Plan that I have
14 reviewed is trying to encourage families and
15 single home development. Especially in in-
16 fill development of vacant land.

17 Okay. The damage and erosion and
18 stability of the fence line on my mom's
19 property we see as eminent with this project.
20 And also projecting basement erosion problems
21 and leakage. Second, we see the project as
22 aesthetically unattractive. There was mention

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 about the view of -- my mom's view from her
2 side to the rear.

3 As we see it, it will be looking
4 directly into the rear of a parking lot with
5 lighting that will shine at night into our
6 home. We also will hear noise from the
7 pedestrians, because of the close proximity,
8 because recreation facilities are limited in
9 that area and so if children are involved in
10 it, they will be playing in that area and the
11 noise level again will be impacted.

12 One moment, please, my nervousness
13 always come out in dryness. I just want to
14 get on the record that Marshall Heights is
15 located at southeast Capitol Street and on the
16 far east side of the District of Columbia.
17 There are a lot of major projects going on in
18 that area. East Gate Complex is on-line.
19 There are -- it's in my submission, so I'm not
20 going to go through all of that.

21 But the point is development,
22 especially in-fill development needs to be

1 appropriate to the neighborhood and its
2 character, because the neighborhood's
3 character was single-family, semi or detached
4 homes. They have all been torn down. And
5 what's encroaching upon us is this avalanche
6 of high density development.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. LOWE: Okay. So we support
9 development that's going to attract families
10 and homes of a three to four bedroom size. We
11 think that can be designed. We encourage Erie
12 Homes to consider that and still make a
13 profit. We think it can be done.

14 The other part to that is past
15 zoning practices has got Marshall Heights
16 where it is today. And we think we need a
17 shift in how it is viewed to make Marshall
18 Heights what it can be, because we see what's
19 marching upon us, which is this whole
20 avalanche of high density development.

21 CHAIRPERSON GRIFFIS: Good.

22 MR. LOWE: Now, the alternatives

1 that we really wish Erie Homes would consider
2 would be single-family homes.

3 CHAIRPERSON GRIFFIS: I think
4 that's pretty clear to us.

5 MR. LOWE: Okay. I've got three
6 more.

7 CHAIRPERSON GRIFFIS: And then --
8 right. Go very quickly.

9 MR. LOWE: Okay.

10 CHAIRPERSON GRIFFIS: Get off the
11 broad changing zoning and the entire
12 neighborhood. Let's talk about this project.

13 MR. LOWE: Townhomes with garages
14 and for the rest to be -- for the block to be
15 wrapped at the corner with front facades of
16 housing, not sides or rears.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. LOWE: The corner of 50th and
19 Astor. With that, that sort of capsulizes
20 what I really have to say. I hope the Board
21 considers the spirit and energy of what a long
22 time family is trying to do in that area and

1 how this -- even though I think it's a good
2 thing about development, it's just not in
3 keeping with the character of what was there.

4 CHAIRPERSON GRIFFIS: Right.
5 Excellent.

6 MR. LOWE: Thank you all.

7 CHAIRPERSON GRIFFIS: Thank you
8 very much and we will review everything that
9 you submitted in. I think you were very clear
10 and direct on your position in terms of what
11 the character is and should be in the
12 neighborhood. Any cross?

13 MR. AGBIM: Yes. I would just
14 like to --

15 CHAIRPERSON GRIFFIS: Mr. Lowe,
16 would you mind coming back, please?

17 MR. AGBIM: Just a few things real
18 quick. Sir?

19 CHAIRPERSON GRIFFIS: Do you have
20 cross questions of Mr. Lowe?

21 MR. AGBIM: No, but just --

22 CHAIRPERSON GRIFFIS: Okay.

1 That's fine. Any questions? Oh, dear. Mr.
2 Lowe?

3 VICE CHAIR MILLER: Just a couple
4 of questions.

5 CHAIRPERSON GRIFFIS: Ms. Miller
6 has questions.

7 VICE CHAIR MILLER: I just have a
8 couple of quick, yes, follow-up questions. I
9 just wanted to know where you were referring
10 that you thought the children would be
11 playing? Were you referring to the parking
12 lot or were you referring to another part of
13 the development?

14 MR. LOWE: The parking lot.

15 VICE CHAIR MILLER: The parking
16 lot. Okay. And then my other question is do
17 you anticipate that families won't live in the
18 project as proposed that there will be other
19 types of residents?

20 MR. LOWE: I think as the project
21 has been revised to meet FAR, is that the
22 correct term, FAR, it's very small, very small

1 and if families are there, they're going to be
2 drawn to the outside to enjoy the property and
3 that will mean children playing in yards and
4 everything. So that's what I meant by that.

5 VICE CHAIR MILLER: Thank you very
6 much.

7 MR. LOWE: Um-hum.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Thank you. Very well. If there's nothing
10 further then, closing statements?

11 MR. AGBIM: Yes, I would like to
12 add that I do appreciate his comments and
13 concerns, but on a few issues I would like to
14 state specifically that right now, and I'm not
15 trying to say that he doesn't -- he shouldn't
16 have any concern, because that's his family
17 home. But I would love to do anything to make
18 this project work, you know, without really
19 making it impractical, you know, because of
20 the amount of site work that has to be done.

21 One of the things I would like to
22 -- specific things I would like to address is

1 erosion. There should not be any erosion
2 impact onto their property, because this
3 property is much lower ground than their
4 property. So any water flowing anywhere, even
5 during or after construction is being handled
6 by the design and by construction standards.

7 So there will never be any need
8 for water to flow uphill to their property.

9 CHAIRPERSON GRIFFIS: Understood.

10 MR. AGBIM: The second thing I
11 would like to say is that, you know, a lot of
12 effort has been made to design and articulate
13 this project to fit into even a single-family,
14 typically single-family townhouse dwelling
15 environment. A similar project to this has
16 been successfully constructed on D Street, a
17 few blocks away, even though that single-
18 family style, but this has the same scale.

19 And that block is a beautiful
20 block. The residents there are both to enjoy
21 the houses and environment properly. The
22 corner of 50th and Astor is not a blank wall.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 It's not -- you know, it's a wall that has
2 windows. And also, I want to clarify that the
3 building is not 7 feet from the curb.

4 The building is, in fact, 7 feet
5 from the property line, but it's a total of
6 about 15 feet from the curb along 50th Street.
7 So I hope that alleviates some of this
8 complication will -- I mean, clarifications
9 will help in perceiving the project and I'm
10 sure once the rendering comes out, it will
11 show a better light on the -- and the quality
12 of the finished product.

13 CHAIRPERSON GRIFFIS: Excellent.
14 Thank you very much. Any other comments,
15 questions from the Board, clarifications?
16 Good. We'll set this for a decision making
17 then for the Public Meeting on the 6th of
18 March 2007. In the meantime, we're going to
19 have submitted in, you were going to put in
20 the rear elevations. Is that correct?

21 MR. AGBIM: Yes.

22 CHAIRPERSON GRIFFIS: We're

1 keeping the record open also for the ANC and
2 any other documentation. Well, that's all I
3 have actually, unless there is anything else?

4 VICE CHAIR MILLER: Are the
5 submittals with respect to the rear elevation
6 going to be showing the view from the
7 neighbor's behind? And will it also be
8 showing some landscaping designs?

9 MR. AGBIM: Right, right.

10 VICE CHAIR MILLER: Okay.

11 COMMISSIONER JEFFRIES: In other
12 words, it's not a view by just standing in the
13 parking area and just looking at the building.

14 MR. AGBIM: You're looking from
15 their property. Right.

16 BOARD MEMBER ETHERLY: And I would
17 also add, Mr. Chair, I don't think a full
18 scale piece is necessary, but to the extent
19 you can just further outline or detail what
20 you are doing in terms of your mitigation
21 efforts around erosion and soil, that would be
22 helpful also, sir.

1 MR. AGBIM: Right. All right.

2 BOARD MEMBER ETHERLY: Thank you.

3 MR. AGBIM: Thank you very much.

4 CHAIRPERSON GRIFFIS: Good.

5 That's an excellent point in terms of the
6 slope down and the paved area and the rear.
7 You might want to just indicate where you --
8 you show a trench there.

9 MR. AGBIM: Right.

10 CHAIRPERSON GRIFFIS: Obviously,
11 you are taking water. But you might want to
12 show where you anticipate it in concept your
13 storm water management drain is.

14 MR. AGBIM: Right.

15 CHAIRPERSON GRIFFIS: Excellent.
16 I think it's a great, very full record. I
17 look forward to reviewing the additional
18 information and proceeding with deliberation
19 on the 6th. Last?

20 VICE CHAIR MILLER: I just have
21 one other statement. I don't know whether you
22 think it's appropriate or not, but you made a

1 remark that this project would be similar to
2 one on D Street in style and I'm wondering if
3 you might submit a photograph of that if that
4 would --

5 MR. AGBIM: Right.

6 VICE CHAIR MILLER: That might
7 help me visualize what this might look like.

8 MR. AGBIM: Okay.

9 CHAIRPERSON GRIFFIS: Good. We'll
10 get all that in.

11 VICE CHAIR MILLER: Thank you.

12 CHAIRPERSON GRIFFIS: Of course,
13 we're going to on the 6th hear the
14 deliberation on the special exception under
15 353 and a matter of -- rather, in a Zone
16 District of R-5-A. That being said, thank you
17 very much. We appreciate everyone's
18 participation and patience this morning in
19 getting through this case.

20 And we will have those submissions
21 in by, Ms. Bailey?

22 MS. BAILEY: February 27th, Mr.

1 Chairman.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MS. BAILEY: Which is the week
4 before.

5 CHAIRPERSON GRIFFIS: Any
6 difficulty in making that?

7 MR. AGBIM: No, sir.

8 CHAIRPERSON GRIFFIS: Very well.
9 We will look forward to receiving those. Is
10 there any other business for the Board this
11 morning, Ms. Bailey?

12 MS. BAILEY: Not that I'm aware
13 of, sir.

14 CHAIRPERSON GRIFFIS: Very well.
15 Then let's adjourn the morning session and
16 while people are here, obviously, for the
17 afternoon, let's update. We're going to take
18 a 40 minute break just for some business and
19 some lunch and then we will return and call
20 the afternoon.

21 I'm going to be calling 17552
22 first, Benedictine Foundation, and then 17551,

1 and we will proceed in that fashion this
2 afternoon.

3 (Whereupon, the Public Hearing was
4 recessed at 2:25 p.m. to reconvene at 3:14
5 p.m. this same day.)

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

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

2 3:14 p.m.

3 CHAIRPERSON GRIFFIS: Good
4 afternoon, ladies and gentlemen. Let me call
5 to order our afternoon session of the 23rd of
6 January 2007. This is the Board of Zoning
7 Adjustment in the District of Columbia. My
8 name is Geoff Griffis, Chairperson. Joining
9 me today is the Vice Chair walking up to her
10 seat, Ms. Miller.

11 Also, our other esteemed Board
12 Member is Mr. Etherly, who I have now lost
13 track of, but we will get them all corralled
14 shortly. Our Zoning Commission Member is
15 going to be Mr. Jeffries and representing the
16 National Capital Planning Commission is Mr.
17 Mann.

18 Copies of today's hearing agenda
19 are available for you. They are located where
20 you entered into the hearing room. You have
21 obviously had ample time to review that. I'm
22 going to really rip through these and,

1 frankly, dispense with everything except those
2 that are of utmost critical nature.

3 All proceedings before the Board
4 are recorded and they are also transmitted, so
5 I ask that people, please, turn off their cell
6 phones, beepers at this time. When coming
7 forward to present testimony or evidence to
8 the Board, we will need you to do several
9 things.

10 First, have filled out two witness
11 cards. Witness cards are available at the
12 table where you will provide testimony. Get
13 those to the Court Reporter. Also, just have
14 a seat, make yourself comfortable, but state
15 your name and address for the record.

16 The Sunshine Act in our
17 requirements, regulations and procedure
18 require that everything we do be in the open
19 and before the public. That is what we're
20 about to enter into in terms of our hearing.
21 These are contested case, so anything that the
22 Board bases its decision on must be based on

1 the record that is created before us today.

2 At this time, let me say a very
3 good afternoon to Ms. Bailey, Ms. Bushman with
4 the Office of Zoning, Ms. Monroe with the
5 Office of the Attorney General and Mr. Moy
6 will be joining us also on the dias with the
7 Office of Zoning. It would be appropriate for
8 us to go into any preliminary matters
9 attendant to any of the cases this afternoon.

10 Preliminary matters are basically
11 whether a case is ready and able to proceed.
12 If you believe you are not ready to proceed,
13 you can come forward. I will ask Ms. Bailey
14 if she is aware of any preliminary matters for
15 our attention.

16 MS. BAILEY: Mr. Chairman, staff
17 does not have any preliminary matters at this
18 time.

19 CHAIRPERSON GRIFFIS: Excellent.
20 Thank you very much. Not seeing any other
21 indications, let's call the first case and I
22 would like to change the order and call 17552

1 first, Ms. Bailey.

2 MS. BAILEY: Thank you, sir. And
3 that's the Application of the Benedictine
4 Foundation, on behalf of St. Anselm's Abbey
5 School, No. 17552, for a special exception
6 pursuant to 11 DCMR section 3104.1, to allow
7 the construction of an addition to a private
8 school building and to increase the number of
9 students from 260 to 280, and the number of
10 employees from 50 to 70, under section 206.
11 The property is Zoned R-1-B and it's located
12 at 4501 South Dakota Avenue, N.E., Square
13 3977, Lot 133.

14 And, Mr. Chairman, I'm sorry, but
15 should I swear the witnesses in at this point
16 also?

17 CHAIRPERSON GRIFFIS: Indeed.
18 That is one very important thing I missed. If
19 you would all, please, stand. Give your
20 attention to Ms. Bailey. She is going to
21 swear you in.

22 MS. BAILEY: Would you, please,

1 raise your right hand?

2 (Whereupon, the witnesses were
3 sworn.)

4 MS. BAILEY: Thank you.

5 CHAIRPERSON GRIFFIS: Excellent.
6 Thank you all very much. With that --

7 MS. BALDWIN: Good afternoon. My
8 name is Stephanie Baldwin. I am with the Law
9 Firm of Greenstein, DeLorme and Luchs and here
10 with me today I have Father Peter Weigand, the
11 headmaster of St. Anselm's Abbey School, Mark
12 Commins, who is the director of finance for
13 the school, and William Spack from Cox Graae
14 and Spack Architects.

15 The premises is located at 4501
16 South Dakota Avenue, N.E., in an R-1-B Zone
17 District and the applicant is here today to
18 request special exception approval pursuant to
19 section 206 for permission to construct a
20 small addition to an existing building on the
21 school's campus and to amend two conditions
22 from a previous application in order to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 reflect the correct current numbers of
2 employees and the potential maximum number of
3 students who could attend the school.

4 Oh, I should note that the
5 applicant has received support from the ANC,
6 as well as the Queens Chapel Civic
7 Association, who is here with us today, and
8 the North Michigan Park Civic Association, and
9 the Office of Planning is recommending
10 approval.

11 CHAIRPERSON GRIFFIS: Excellent.
12 Very well-said and the record is entirely full
13 on this. I think we could expedite this and
14 move forward this afternoon, but let me just
15 ask are there persons present that are going
16 to provide testimony in this case, 17552,
17 other persons? Is the ANC present, 5A?

18 MS. BALDWIN: No, he stopped by
19 earlier.

20 CHAIRPERSON GRIFFIS: Sure.

21 MS. BALDWIN: He works up on the
22 fifth floor, the Single Member District

1 representative.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. BALDWIN: Tim Thomas, but --

4 CHAIRPERSON GRIFFIS: Not a
5 problem. Just trying to make a clarification.
6 Of course, the ANC is Exhibit No. 25 and the
7 letters of support are Exhibit No. 28 and 26.
8 I think the Board is fully prepared for you to
9 stand on the record unless you want to proceed
10 with some case presentation at this time.

11 MS. BALDWIN: If you're good, we
12 can be good.

13 CHAIRPERSON GRIFFIS: I think
14 that's language straight from the regulations.
15 Any preliminary questions from the Board then
16 in terms of the clarifications or any of the
17 elements and issues? I mean, 206 is very
18 clear in terms of the requirements that are
19 set forth and which need to be met.

20 This obviously has come in
21 previously for special exceptions over the
22 past couple of decades and we're looking at

1 this request as increasing the enrollment and
2 also the staff in order to reflect, one,
3 elements that have increased, but also to
4 reflect, and my understanding is, the
5 flexibility of the changes and ups and downs
6 through the years. Is that correct?

7 MS. BALDWIN: Yes.

8 CHAIRPERSON GRIFFIS: Excellent.
9 And a part and attendant to that, this also is
10 the addition. One of the critical pieces that
11 I see in 206 review oftentimes is the -- how
12 do you say it, but ingress and egress, drop-
13 off and pickup, parking.

14 Clearly, the evidence in the
15 record of this shows here that there is not
16 only as we're required to assess, a good
17 amount of parking appropriate in the Board's
18 respect. This obviously meets and far exceeds
19 that which is required by the regulations. I
20 don't think it's really even an issue to get
21 into in terms of parsing.

22 We're going to get quickly through

1 this if there are any other questions of the
2 Board, because the Office of Planning's report
3 is an excellent one and it is appropriate for
4 us to review that shortly. But let me take
5 any other questions from the Board,
6 clarifications.

7 Not noting any then, let's go
8 straight to the Office of Planning's report
9 and we'll return for questions.

10 MR. PARKER: Good afternoon. For
11 the record, Travis Parker with the Office of
12 Planning. I am happy to follow the Board's
13 lead and stand on the record as well.

14 CHAIRPERSON GRIFFIS: Thank you.
15 Questions? Does the applicant have any
16 questions of the Office of Planning?

17 MS. BALDWIN: No.

18 CHAIRPERSON GRIFFIS: One of the
19 key pieces for this, it's really fascinating
20 actually to take a short note, but this, the
21 aerial photograph that is in the Office of
22 Planning's report, but also in the record

1 itself, it really gives, I think, an excellent
2 context of where this is, which obviously
3 folds into part of the test or, rather, the
4 requirements under 206 in the review.

5 But if there is nothing further
6 for Office of Planning then, we do appreciate
7 it. There is a lot said in the Office of
8 Planning's report and that is in what is not
9 said, I might say. It is very succinct and
10 appropriately so. Okay. If there is nothing
11 further then, we have taken note of the ANC,
12 which is Exhibit No. 25. They were
13 recommending approval of the application.

14 At this point then, I don't have
15 any other Government reports attendant to this
16 application. I would open it up for any
17 persons present to provide testimony attendant
18 to this application, 17552.

19 REV. TURNER: Good evening, ladies
20 and gentlemen.

21 CHAIRPERSON GRIFFIS: Good
22 evening.

1 REV. TURNER: My name is Reverend
2 David Turner, Jr. I am a retired Army
3 chaplain and I have worked with the school
4 since about 1985, and I am here today to
5 confirm our continued support that this
6 application be approved. Thank you very much.

7 CHAIRPERSON GRIFFIS: Thank you
8 very much. Any questions from the Board? Any
9 cross?

10 MS. BALDWIN: No.

11 CHAIRPERSON GRIFFIS: Indeed.
12 Very well. Thank you very much. We
13 appreciate you putting your support in today
14 for this, on this application. If there is
15 nothing further, no other persons present to
16 provide testimony, we'll go to other questions
17 from the Board. Ms. Miller?

18 VICE CHAIR MILLER: I just have a
19 question for the applicant. In that this is
20 an application for an increase in enrollment
21 and an increase in staff, I'm wondering, I
22 mean, it looks to me like on the record, and

1 that's why this is going so fast, that clearly
2 the school and the grounds can accommodate
3 this without an adverse impact on the
4 community.

5 My question just goes to the
6 history. Like how did you pick those numbers
7 that became part of your previous order?

8 FATHER WEIGAND: My name is Father
9 Peter Weigand, 4501 South Dakota Avenue. We
10 have seven years of study from grade 6 through
11 12. We like to take ideally in 40 students in
12 each grade, giving you the 280. We have never
13 met that ever.

14 This year, for example, we only
15 have 24 grade 6 boys. We would like to be
16 nearer 40, two sections of 20 each teaching.
17 In all the years, I have been teaching since
18 1968, we have never met our quota on any of
19 these because our standards are so high with
20 the applications for entrance exams.

21 And for the number of faculty, we
22 have a lot of part-time faculty because we

1 teach 26 advanced placement courses. Some of
2 the teachers come in for the one course. Some
3 teachers only teach in the morning one course.
4 Some teach one course in the afternoon, and we
5 have a lot of coaches that do part-time work
6 that come in.

7 That is how we would like to reach
8 70. If you put it in terms of full-time
9 people, you're more closely around 50 people
10 and that is how the original number was there.

11 VICE CHAIR MILLER: Just as a
12 follow-up, I mean, you might have estimated
13 too low years ago. Otherwise, you wouldn't
14 have to come in were you not doing the
15 addition. And how certain are you that these
16 numbers now will, you know, last for a long
17 time?

18 FATHER WEIGAND: Well, because we
19 like to keep the school relatively small, so
20 we have personal attention to the students,
21 that there would be no reason to go beyond the
22 40 in each section really. Occasionally, we

1 might get 41 or 42 in one grade, but you never
2 have that many in all the grades.

3 CHAIRPERSON GRIFFIS: There is a
4 statement in your written submission, in the
5 application, that actually indicates that 280
6 is the maximum amount of students that this
7 school can support.

8 FATHER WEIGAND: Yes.

9 CHAIRPERSON GRIFFIS: Does that
10 help answer Ms. Miller's question in another
11 way? What makes that level of support? Is
12 it --

13 FATHER WEIGAND: Well, the number
14 of classrooms.

15 CHAIRPERSON GRIFFIS: Okay.

16 FATHER WEIGAND: Yes, really, and
17 we're not --

18 CHAIRPERSON GRIFFIS: So you're
19 going to have to have an addition of
20 classrooms, physical space, in order to have--

21 FATHER WEIGAND: Yes, in order --

22 CHAIRPERSON GRIFFIS: -- further

1 enrollment.

2 FATHER WEIGAND: However, we have
3 to come back to get another zoning exemption
4 to build more classrooms to go larger than
5 that, yes.

6 CHAIRPERSON GRIFFIS: Okay.
7 Excellent. Anything else? Any other
8 clarifications, questions? Very well. I kind
9 of lost track on where we were. I think we're
10 at conclusions.

11 FATHER WEIGAND: Well, we're fine.
12 We're good.

13 MS. BALDWIN: We're good.

14 CHAIRPERSON GRIFFIS: I think
15 we're back to you for any closing remarks.

16 MS. BALDWIN: Oh, I think we're
17 going to ask for this. We're hoping to get a
18 summary order, Bench decision. It seems to be
19 where we're headed.

20 CHAIRPERSON GRIFFIS: Excellent.
21 Okay. Any other questions? Any other
22 questions of what is being proposed for the

1 addition, construction? I thought it was
2 well-documented in the record, which is
3 excellent for our review, obviously, as we
4 move forward with this.

5 Very well. Is there further
6 discussion, deliberation? I think we can move
7 forward then. I think it's appropriate to
8 further any other comments if there are any
9 under a motion.

10 I would move approval of
11 Application 17552 of the Benedictine
12 Foundation on behalf of the St. Anselm's Abbey
13 School, and that is for the enrollment
14 increase as stated in the application, relief
15 sought, 260 to 280, and employees from 50 to
16 70. Those are -- well, there it is. Under
17 section 206 for 4501 South Dakota Avenue,
18 N.E., I would ask for a second.

19 VICE CHAIR MILLER: Second.

20 CHAIRPERSON GRIFFIS: Thank you
21 very much. I think it's very clear just
22 standing on the record.

1 Obviously, the record is entirely
2 full on this and how meeting the threshold
3 special exception requirements in terms of the
4 use of the private school is a permitted use
5 in the R-1 as 206 lays out, and whether this
6 would be located or in its location or in its
7 increases or changes might create any
8 objectionable conditions or elements through
9 adjoining properties.

10 There has been absolutely no
11 showing of that in the record and on our own
12 review and looking for things, it's obvious
13 that there was not any that had been brought
14 to our attention or came up with our own
15 deliberation and review.

16 And, lastly, the ample parking
17 space and certainly not less than chapter 21,
18 which is of course the required parking in the
19 regulations is far exceeded in terms of what
20 is provided, and it certainly would be a great
21 disservice to the city as a whole, but also
22 the property, if we decided to require more

1 parking than that. It seems to be a great
2 campus, one might say.

3 That being said, I don't think I
4 have any other comments on the motion, except
5 for the fact that I think great reliance on
6 the Office of Planning's report, which is
7 Exhibit No. 29 in the record, is a basis and
8 important aspect of my deliberation and
9 decision. I will open it up for others.

10 VICE CHAIR MILLER: I just want to
11 note that this school has a history of
12 operating in this location in the community
13 without any adverse impacts whatsoever,
14 evident in our record, and that these changes
15 appear to be quite modest without any
16 likelihood of adverse impacts.

17 CHAIRPERSON GRIFFIS: Excellent.
18 Thank you. I think the only element to really
19 discuss under this motion, I think it's a very
20 supportive one, is any conditions. I think it
21 goes without saying that in the summary order,
22 if that was the way this goes, that the first

1 two conditions would identify the enrollment
2 and the staff number.

3 The question would be whether we,
4 as in the past order, stipulate a number of
5 parking spaces to be provided. I believe the
6 last was 76. As I review it here, I don't
7 think there is any reason to change that even
8 based -- or rather, we could base it on the
9 new calculation based on the number of staff
10 and students required, and so also change that
11 to reflect it would be 87 if I'm not mistaken.

12 Is there any objection or
13 discussion on that? Okay. Just --

14 COMMISSIONER JEFFRIES: Are you
15 increasing parking spaces though the applicant
16 did not?

17 CHAIRPERSON GRIFFIS: Well, the
18 applicant actually provides and stipulates in
19 their submission that 144 spaces are provided
20 on-site.

21 COMMISSIONER JEFFRIES: Right.

22 CHAIRPERSON GRIFFIS: And that

1 originally with the cap of whatever it was,
2 250, 260, there were 76 parking required. The
3 increase, of course, is based on the number of
4 seats in the classrooms and the staff number.

5 COMMISSIONER JEFFRIES: Um-hum.

6 CHAIRPERSON GRIFFIS: As
7 calculated out, it would be, if I understand
8 correctly, 87 parking spaces required. So we
9 could have that as a condition, that a minimum
10 of 87 spaces --

11 COMMISSIONER JEFFRIES: A minimum.

12 CHAIRPERSON GRIFFIS: -- would be
13 required. You know, it's always great to give
14 some flexibility. I'm not sure we need to.
15 That's why I bring it up to this point. Quick
16 discussion.

17 VICE CHAIR MILLER: Well, I'm not
18 sure we need to because they are there.

19 CHAIRPERSON GRIFFIS: Well, it
20 would come --

21 VICE CHAIR MILLER: I guess we
22 need to reflect at least that they are there

1 one way or the other.

2 CHAIRPERSON GRIFFIS: Right,
3 right. Insurance, no matter, who knows what
4 happens, but that they wouldn't go away or
5 whatever it is. I don't see any harm in just
6 indicating. We could say. Frankly, let me
7 put it to you this way, directly, is do we
8 keep it maintaining at 76 or do we increase it
9 to 87?

10 VICE CHAIR MILLER: Well, I guess
11 you would increase it to comply with the
12 regulations.

13 CHAIRPERSON GRIFFIS: Okay. Any
14 opposition to that? Any concern? Therefore,
15 we will move ahead with the motion, which has
16 been seconded and would indicate the number of
17 students not exceed the 280 enrollment, the
18 number of employees and the number of parking
19 provided would be 87, a minimum of 87 parking.
20 Yes?

21 VICE CHAIR MILLER: I have one
22 more question. I might have to refresh my

1 recollection, but if we're trying to put all
2 the conditions in one order that is still
3 valid, is there a condition that talks about
4 their hours of operation that we might want to
5 consider?

6 CHAIRPERSON GRIFFIS: No, not that
7 I'm aware of.

8 VICE CHAIR MILLER: Okay. Let's
9 see.

10 CHAIRPERSON GRIFFIS: Any other
11 elements? I'll give you a moment to review
12 that.

13 VICE CHAIR MILLER: Okay. I don't
14 see it in a previous order and I don't think
15 that it's really at issue in this case. I
16 don't think there have been any adverse
17 impacts on the community.

18 CHAIRPERSON GRIFFIS: Would tend
19 to agree. Very well. If there is nothing
20 further then, we do have a motion before us.
21 It has been seconded and conditioned. I would
22 ask for all those in favor of the motion to

1 signify by saying aye.

2 ALL: Aye.

3 CHAIRPERSON GRIFFIS: And opposed?
4 Abstaining? Very well. Ms. Bailey, if you
5 wouldn't mind recording the vote.

6 MS. BAILEY: Mr. Chairman, the
7 vote is recorded as 5-0-0 to grant the
8 application with three conditions. Mr.
9 Griffis made the motion, Mrs. Miller second.
10 Mr. Mann, Mr. Etherly and Mr. Jeffries support
11 the motion. And the conditions are enrollment
12 shall be limited to 280 students. The number
13 of staff shall be limited to 70 employees. A
14 minimum of 87 on-site parking spaces shall be
15 provided for use by the school.

16 CHAIRPERSON GRIFFIS: Excellent.
17 Thank you very much, Ms. Bailey. I don't see
18 any reason why we wouldn't waive our rules and
19 regulations and issue a summary order on this
20 unless there is any opposition from the Board
21 or the applicant. Not noting any opposition,
22 thank you very much. Have a great afternoon.

1 Enjoy.

2 Why don't we move ahead then and
3 call the next case for the afternoon?

4 MS. BAILEY: Application No. 17551
5 of Mustafa Guldu, pursuant to 11 DCMR section
6 3103.2, for a variance from the lot occupancy
7 requirements under section 403, a variance
8 from the side yard requirements under section
9 405, and a variance from the prohibition on
10 enlarging a structure devoted to a
11 nonconforming use under subsection 2002.5, to
12 allow a two story addition to an existing
13 flat. The property is located at 4323 River
14 Road, N.W. It is Zoned R-2 and it's located
15 in Square 1653 on Lot 16.

16 CHAIRPERSON GRIFFIS: Very well.
17 Let's proceed. It is my understanding in
18 reviewing the entire record of the last
19 proceeding, as I was not present in that
20 hearing, that we are beginning anew and I
21 believe that we do have two requests for party
22 status in this in opposition, and are those

1 still current. Let me have you introduce
2 yourself for the record if you wouldn't mind.

3 MR. GULDU: My name is Mustafa
4 Guldu. I am the owner of the Lot 16 at 4323
5 River Road, N.W.

6 MR. ERGENE: I am Mehmet Ergene.
7 I am an architect, his friend for 45 years.
8 I live and work in D.C. My address, 3211
9 Quesada Street, N.W., 20015.

10 CHAIRPERSON GRIFFIS: Excellent.
11 Thank you. And the two requests for party
12 status, Chan? Are they present? Indeed. And
13 then how do you say the next name?

14 MR. GULDU: I believe it's Mr.
15 Soghomonian.

16 CHAIRPERSON GRIFFIS: Soghomonian?

17 MR. SOGHOMONIAN: Soghomonian.
18 Ms. Chan was here with her mother, but she
19 hasn't come back in after your break.

20 CHAIRPERSON GRIFFIS: Oh, okay,
21 but we'll assume that they are both present.
22 Excellent. Do we have questions at this time?

1 Does the applicant have any position on the
2 request for party status? Are you aware of
3 their request for party status?

4 MR. GULDU: What does that mean in
5 simple terms, please?

6 CHAIRPERSON GRIFFIS: Okay. The
7 two parties have requested that they be
8 granted a higher participation in this case.
9 There's two ways to participate. One is as an
10 individual and give testimony.

11 The other is almost as an equal to
12 the applicant in a party in opposition. They
13 will put on a case. They will cross examine.
14 The Board would need to establish the fact
15 that they are somehow uniquely or distinctly
16 impacted in order to grant party status, but
17 I would take your position on it if you had
18 one.

19 MR. GULDU: No, I think they
20 deserve to be.

21 CHAIRPERSON GRIFFIS: Indeed.
22 Okay. Board Members, any comments?

1 VICE CHAIR MILLER: I would be in
2 favor of granting party status.

3 CHAIRPERSON GRIFFIS: To both? I
4 note Ms. Chan has joined us. Is that correct?
5 Okay.

6 VICE CHAIR MILLER: Ms. Chan is
7 the owner of the eastern half of the duplex
8 which is at issue, so she is certainly
9 immediately impacted. I know that Mr.
10 Soghomonian has stated that his property is
11 zero feet away, that he is a back door
12 neighbor. So because of their close
13 proximity, they seem to be uniquely impacted
14 from the general public.

15 CHAIRPERSON GRIFFIS: Excellent.
16 Any other comments, questions?

17 BOARD MEMBER MANN: Yes.

18 CHAIRPERSON GRIFFIS: Yes?

19 BOARD MEMBER MANN: I have a
20 question.

21 CHAIRPERSON GRIFFIS: Yes.

22 BOARD MEMBER MANN: Perhaps Ms.

1 Miller can remind me of this since I believe
2 she was presiding over the hearing when this
3 started. Did we discuss the merits of why
4 they may or may not want to join together as
5 a single party and did we allow them to
6 discuss that or perhaps we should just
7 directly ask them?

8 VICE CHAIR MILLER: No, I don't
9 recall. I don't recall that point, because we
10 didn't get that far. I think they walked out
11 to decide whether or not they were going to
12 seek party status and we didn't really develop
13 the issues.

14 CHAIRPERSON GRIFFIS: We can get
15 right to the heart of the matter. Have you
16 discussed at all in joining in one single
17 party in opposition and coordinating efforts?
18 Come on up. Sorry. Yes, just --

19 PARTICIPANT: Is it on?

20 CHAIRPERSON GRIFFIS: That one's
21 not.

22 MS. CHAN: Well, for my part,

1 since we have --

2 CHAIRPERSON GRIFFIS: Hold on.
3 Have a seat. I'm sorry. For clarity, you
4 have to be on a microphone. Otherwise, you're
5 not on the transcript.

6 MS. CHAN: Okay.

7 CHAIRPERSON GRIFFIS: So if you
8 wouldn't mind, sir, just turn that on and then
9 point it towards her.

10 PARTICIPANT: Sure.

11 CHAIRPERSON GRIFFIS: Brilliant.

12 MS. CHAN: Thank you. Elaine Chan
13 speaking for the owner, Florence Chan. From
14 my perspective at least, since we have
15 prepared separately, it might not be the most
16 efficient way to present if we had to present
17 jointly at this point.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. CHAN: So if it please the
20 council, we would just do it separately.

21 MR. SOGHOMONIAN: Can I just make
22 a note for the record? I'm the son of the

1 property owner and I do have a paper.

2 MS. CHAN: You want a mike?

3 MR. SOGHOMONIAN: Well --

4 CHAIRPERSON GRIFFIS: That's a
5 light. That's not a mike actually.

6 MR. SOGHOMONIAN: It's a light?

7 CHAIRPERSON GRIFFIS: Yes,
8 confusing. We're going to move that one right
9 all the way over, excellent, and then we can
10 move these down. Perfect.

11 MR. SOGHOMONIAN: Can you hear
12 now? No? Is it on? Is it on?

13 CHAIRPERSON GRIFFIS: Can you pull
14 it close?

15 MR. SOGHOMONIAN: I am the son of
16 the property owner, but I do have a paper in
17 front of me stating that my father gives me
18 authorization to speak on his behalf.

19 CHAIRPERSON GRIFFIS: Excellent.

20 MR. SOGHOMONIAN: And I just want
21 that noted.

22 CHAIRPERSON GRIFFIS: Right.

1 MR. SOGHOMONIAN: Okay.

2 CHAIRPERSON GRIFFIS: Actually, we
3 should put that into the record. You can give
4 it to Ms. Bailey on your far right. Very
5 well. Other comments on that? Board Members,
6 questions? Any additional concerns?

7 Based on the adjacencies and the
8 issues that have arisen, it seems to me that
9 they both meet the threshold of approval of
10 party status in opposition based on their
11 distinct and unique positions.

12 They each are talking about
13 differing issues and elements. I think
14 joining would have been excellent. However,
15 I think I tend to agree with the fact that
16 just for expedition today, we could move ahead
17 as separate parties in opposition and take
18 your time.

19 Of course, I will try to limit any
20 redundancy of issues and elements or cross.
21 But with that, unless there is any opposition
22 from the Board, very well. Having no

1 objection, we'll take it as a consensus, the
2 Board will establish two parties in
3 opposition.

4 You can make yourselves
5 comfortable again in the back. We'll turn it
6 over to you for a case presentation. We'll
7 call them up at the appropriate time. So I
8 will turn it over to you.

9 MR. GULDU: The purpose of the
10 addition, I am getting ready to get retired
11 and I live from 1964 to 1980 in Washington,
12 D.C. Since then I have been living someplace
13 near Annapolis, Maryland and as I get older,
14 I like to be close to my physicians, to my old
15 friends and live someplace that I don't have
16 to drive eight miles to get a lemon or
17 something like this.

18 So that is my intention, so live
19 in the place that I own, to make an addition
20 to have more comfortable living. And, also,
21 one of the problems that this building has
22 right now, it's a two bedroom unit and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 bathroom is between the two bedrooms. So when
2 you have a guest or visitors, they have to go
3 through the bedroom to get to the bathroom, so
4 it's slightly inconvenient for someone living
5 in a place.

6 So I assume that if I remove one
7 of the bedrooms, make a passageway to a
8 proposed new addition, I am not going to
9 increase the number of bedrooms. I am going
10 to include -- add a den probably, but I will
11 have the luxury of not having people walking
12 through my bedroom to go to the bathroom.

13 So this is in a nutshell the
14 reason why I want to have this addition.

15 CHAIRPERSON GRIFFIS: Thank you.
16 Additional comments, questions?

17 VICE CHAIR MILLER: Well, you're
18 seeking a variance to do your addition. Can
19 you address the tests for a variance?

20 MR. ERGENE: You will have to
21 repeat that. I'm sorry.

22 VICE CHAIR MILLER: In order to do

1 your addition, you're seeking a variance from
2 this Board. Isn't that correct?

3 MR. ERGENE: Yes.

4 VICE CHAIR MILLER: Okay.

5 MR. ERGENE: That is correct.

6 VICE CHAIR MILLER: There is a
7 three part test to the variance.

8 MR. ERGENE: Exactly.

9 VICE CHAIR MILLER: Can you
10 address those elements?

11 MR. ERGENE: All three? Yes,
12 definitely, as advertised.

13 CHAIRPERSON GRIFFIS: Please, put
14 your microphone on if you don't mind.

15 MR. ERGENE: I'm sorry. Yes, you
16 are absolutely right. We are asking for a
17 three part variance, as is advertised, and we
18 are asking for a side yard variance in
19 addition to a nonconforming structure and also
20 lot coverage.

21 VICE CHAIR MILLER: Okay. Let me
22 ask you. How is your property unique, which

1 is one of the tests of a variance?

2 MR. ERGENE: It's an odd shape.
3 About 90 some odd percent of the lots in D.C.
4 are rectangular in shape and this way we do
5 have an odd shape, and it's a small piece and
6 that is the oddness. We are trying to add
7 onto it and it is being done in a very
8 inefficient way. I admit it, but that is the
9 only way we can add to it, other than going
10 up.

11 VICE CHAIR MILLER: Well, I --

12 MR. ERGENE: That's a possibility,
13 too. We can add another floor to it, which I
14 haven't even told him that yet.

15 VICE CHAIR MILLER: Why can't you
16 add to it without needing a variance? In
17 other words, why can't you comply with the
18 regulations and do an addition?

19 MR. ERGENE: Because we are
20 already above the lot coverage. That's number
21 one. Number two, the side yard we're asking
22 for is near the front of the building.

1 Because of the shape of the building, we are
2 going for a 5 foot setback from the property
3 line. That is to the building restriction
4 line.

5 If we had asked for an 8 foot
6 setback from that line, then we wouldn't have
7 asked for a side yard variance. We need those
8 3 feet, but that is from the building to the
9 south. No, to the west, which is not really
10 affecting anybody. And the other one is we
11 cannot change it, but it's an R-2 Zone and
12 it's, as you call it, a flat.

13 CHAIRPERSON GRIFFIS: So it's two
14 units?

15 MR. GULDU: That's correct.

16 MR. ERGENE: It's not a single-
17 family home. It's a duplex building situated
18 on an R-2 Zone lot. So it is unique that we
19 have to get a special exception at least in
20 adding to it, to a nonconforming use. And the
21 lot coverage, it's small. We are going from
22 about 40 percent allowable to almost 50

1 percent.

2 CHAIRPERSON GRIFFIS: I guess I'm
3 not following this. 4323 --

4 MR. GULDU: That's correct.

5 CHAIRPERSON GRIFFIS: -- is two
6 units?

7 MR. GULDU: That's correct, up and
8 down duplex.

9 CHAIRPERSON GRIFFIS: Oh.

10 MR. GULDU: So is 4321.

11 MR. ERGENE: So when we walk in,
12 we --

13 CHAIRPERSON GRIFFIS: Can we see
14 the entry level plan? You walk in. If you
15 went up those stairs, it's another unit.

16 MR. GULDU: Correct.

17 CHAIRPERSON GRIFFIS: Now I
18 understand. Okay.

19 MR. ERGENE: And sorry for
20 interrupting, but there is also another
21 building attached to it on the other side.

22 CHAIRPERSON GRIFFIS: Sure.

1 MR. ERGENE: That is two units as
2 well.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. ERGENE: Mrs. Chan's unit.

5 CHAIRPERSON GRIFFIS: 4321.

6 MR. ERGENE: Exactly.

7 CHAIRPERSON GRIFFIS: Okay. Okay.
8 And well, there it is. Are you in agreement
9 with the Office of Planning's position that
10 this would be a use variance?

11 MR. ERGENE: It will be a use?

12 CHAIRPERSON GRIFFIS: Yes, of an
13 expanded nonconforming use. It says --

14 MR. ERGENE: It's a nonconforming
15 use. Yes, we are agree with that.

16 CHAIRPERSON GRIFFIS: You are?

17 MR. ERGENE: Oh, yes. Yes, we do
18 agree with that.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. ERGENE: It is a flat in an R-
21 2 Zone and we are well-aware of what R-2 Zone
22 is for, a single-family detached homes. We

1 are not arguing with that. That's the reason
2 why we are asking for exception.

3 CHAIRPERSON GRIFFIS: Okay.
4 Excellent. All right. Let's move ahead. Any
5 other questions then? Anything else you would
6 like to provide on that? So the addition that
7 you're putting on is the kind of odd shape
8 triangular, but it runs parallel with the
9 property line at that angled property line
10 towards the side yard, essentially?

11 MR. ERGENE: Yes. It actually
12 turns the corner and in a way in urban design
13 terms, our planning friend may not agree with
14 it, we positively turn the corner.

15 CHAIRPERSON GRIFFIS: Um-hum.

16 MR. ERGENE: It may have some
17 merit and it may not.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. ERGENE: That is what we are
20 doing and though, in a single-family home, you
21 don't really look for these things that much.

22 CHAIRPERSON GRIFFIS: Right,

1 right. Okay.

2 MR. GULDU: I may add something if
3 you don't mind.

4 CHAIRPERSON GRIFFIS: Yes, please.

5 MR. GULDU: The building is an
6 ugly building and I am going to do my best to
7 make it look better and nicer and I agree with
8 the ANC meeting, with the neighborhood
9 committees to work together to put something
10 that they would also happen to like to see it
11 over there.

12 So we are open to work with the
13 neighborhood committees for the architectural
14 looks of the building and changes that I
15 intend to make for its appearance, so it's
16 going to be more appealing to the
17 neighborhood.

18 CHAIRPERSON GRIFFIS: Okay. What
19 do you find wrong with the appearance now?

20 MR. GULDU: It's a kind of, how do
21 you call it, institutional look with some
22 artificial stone on it.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. GULDU: Bit different colors.

3 MR. ERGENE: Excuse me. It has
4 the fake Baltimore stone pasted onto it and it
5 doesn't have -- really, at one point in the
6 '50s, late '50s, they started putting these on
7 the buildings in D.C. and in Baltimore.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. ERGENE: It doesn't really fit
10 with the neighborhood visually.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. ERGENE: And he would be
13 willing to take his part off, but the other
14 part of the building, I don't think we can
15 force the owner to do that.

16 CHAIRPERSON GRIFFIS: Sure.

17 MR. ERGENE: And it will really
18 look awful.

19 CHAIRPERSON GRIFFIS: Okay. All
20 right. Anything else? Questions at this
21 time? Anything else you would to present?
22 Sure.

1 MR. ERGENE: I don't know if it's
2 in the record at the moment, but we got an ANC
3 approval on this and then ANC Commissioner
4 Carolyn Sherman sent a letter to BZA. I don't
5 know whether you got it. It's in there. And
6 then I answered it and it was supposed to be
7 in the record, too. I talked to one of your
8 staff members.

9 Unfortunately, Ms. Sherman is not
10 around and we will like to know why we're
11 getting this refusal, but we can find out from
12 the person who objected to it.

13 CHAIRPERSON GRIFFIS: Okay. So
14 you said you think you have another ANC letter
15 that voted in favor of it, right?

16 MR. ERGENE: We have, exactly. A
17 letter was sent to you. If not, I have a copy
18 of it. We had a meeting and it was a very
19 heated meeting. Many people were against it
20 and it was discussed for over two hours and in
21 the end, they said okay.

22 COMMISSIONER JEFFRIES: So after

1 the two hour meeting --

2 MR. ERGENE: At the ANC.

3 COMMISSIONER JEFFRIES: -- you won
4 them over?

5 MR. ERGENE: Yes. They said yes,
6 we're accepting it.

7 MR. GULDU: More than objections,
8 there were lots of questions. They were
9 concerned what is going to go. That was a
10 question. Really, it's going to be higher
11 than the existing building. It's going to be
12 -- that kind of questions.

13 MR. ERGENE: I don't know whether
14 I should repeat it for the Chair. With the
15 ANC, we had a meeting. We went to the first
16 meeting and we couldn't provide the support
17 from the neighborhood.

18 CHAIRPERSON GRIFFIS: I saw all
19 that.

20 MR. ERGENE: Oh, it's all in the
21 record.

22 CHAIRPERSON GRIFFIS: Yes.

1 MR. ERGENE: Okay.

2 CHAIRPERSON GRIFFIS: Yes,
3 absolutely. Okay.

4 VICE CHAIR MILLER: But which
5 meeting were you referring to that lasted two
6 hours just now, the December meeting or the --

7 MR. ERGENE: It's a December
8 meeting.

9 VICE CHAIR MILLER: December
10 meeting?

11 MR. ERGENE: Yes.

12 VICE CHAIR MILLER: Okay. But
13 then in the later letter from the ANC, they
14 say they didn't have all the information.

15 MR. ERGENE: Information was one
16 neighbor talking to them and that was about
17 not getting enough notice about a meeting.

18 VICE CHAIR MILLER: Okay. In any
19 event though, the ANC is still outstanding now
20 at this point on their position?

21 MR. ERGENE: Unfortunately, Ms.
22 Sherman cannot answer it, because she is out

1 of town. And the notification in question as
2 your standard sign, the orange sign, and no
3 where it says on it anything about an ANC
4 meeting, and the owners were contacted at
5 least twice.

6 CHAIRPERSON GRIFFIS: All right.

7 BOARD MEMBER ETHERLY: Yes. I
8 would suggest, Mr. Chair, that we just
9 continue to kind of move forward. I
10 understand what the applicant is stating with
11 respect to the ANC. I think I agree with Mrs.
12 Miller. It's just at best it's probably an
13 open question at this point, but I would say
14 we just continue to proceed forward with the
15 case presentation.

16 MR. ERGENE: Please.

17 BOARD MEMBER ETHERLY: And just
18 deal accordingly.

19 CHAIRPERSON GRIFFIS: Agreed.
20 Let's move ahead. Is there anything else in
21 clarification, anything else you would like to
22 provide in substance going to the variance

1 tests, what the practical difficulty is fully
2 complying with or whether this would impair
3 the intent and integrity of the Zone Plan or
4 Map?

5 MR. ERGENE: Really no comments, I
6 mean.

7 CHAIRPERSON GRIFFIS: Okay. Good
8 enough. Let's allow the parties in opposition
9 to have any cross examination. Do you have
10 any questions of the testimony you have heard
11 or that which is in the record? Any
12 questions?

13 MR. SOGHOMONIAN: Concerning any
14 statements he just made?

15 CHAIRPERSON GRIFFIS: Yes. No?
16 Any cross, Ms. Chan?

17 MS. CHAN: In relationship to the
18 ANC meeting, in conversations with --

19 CHAIRPERSON GRIFFIS: Okay. Just
20 to be clear. Anything you say has got to be
21 up here, so take your time, come on up and be
22 on a microphone.

1 MS. CHAN: I wanted to clarify in
2 the record that the representations concerning
3 the ANC meeting were inconsistent with those
4 related to me by Carolyn Sherman when I spoke
5 to her afterwards, so I'm not in a position to
6 say what happened in the meeting because I
7 wasn't there.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. CHAN: However, her
10 representation of their deliberations were
11 significantly different from that represented
12 here.

13 CHAIRPERSON GRIFFIS: Okay. Any
14 questions of the applicant or questions of any
15 of the testimony facts that they presented?

16 MS. CHAN: I believe the applicant
17 mentioned that he had contacted the neighbors
18 at least twice and I believe at the last
19 session of this group, I had stated and
20 testified that Mrs. Chan, the owner of the
21 property had not received the notice claimed
22 by the -- Mr. Guldu and his representative and

1 that because of that we had not known about
2 the -- this proceeding until the sign was
3 posted and that we went through a large
4 discussion.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. CHAN: About the lack of
7 notice.

8 CHAIRPERSON GRIFFIS: Sure.

9 MS. CHAN: And we did not have any
10 notice of the ANC Commission meeting either,
11 but when we found out from the record after we
12 copied the record of this proceeding,
13 determined what the ANC had before it, I
14 contacted the ANC and presented them with
15 information.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. CHAN: That had not been
18 available to them earlier, which I believe
19 that information and the information provided
20 by Mr. Soghomonian was the basis for Ms.
21 Sherman's subsequent letter.

22 CHAIRPERSON GRIFFIS: Good.

1 MS. CHAN: Saying they had the --

2 CHAIRPERSON GRIFFIS: Tell you
3 what. Let's get into the facts of that.

4 MS. CHAN: Okay.

5 CHAIRPERSON GRIFFIS: I don't
6 really --

7 MS. CHAN: That's fine.

8 CHAIRPERSON GRIFFIS: I'm not that
9 concerned with all that got us up to today.

10 MS. CHAN: Okay.

11 CHAIRPERSON GRIFFIS: Because
12 we're here today.

13 MS. CHAN: I understand.

14 CHAIRPERSON GRIFFIS: Let me just
15 make a statement now in terms of the
16 announcements or notice. And that's why our
17 regulations are well-stated in terms of the
18 two types of notices provided. One is the
19 mailing, because, you know, frankly, we hear
20 over and over and over again I never got a
21 mailing notifying us. When we check our
22 records and it was mailed out. A lot of

1 people maybe just discard it or don't know
2 what it is.

3 However, when the placard goes up,
4 everyone knows. That's something they take
5 great interest in. That's why we do both,
6 which is a great thing, because we sort of get
7 the crowds out and that's what balances our
8 budget. No, it doesn't at all.

9 That being said, if there's
10 nothing further, do you have any other cross
11 questions of any of the testimony that they
12 have provided? You don't -- you can cover it
13 all in your case presentation?

14 MS. CHAN: I'll cover it in my
15 case.

16 CHAIRPERSON GRIFFIS: That's
17 perfect. I think it would be appropriate for
18 us to go to the Office of Planning and have
19 them present their analysis and we'll move
20 forward.

21 MR. JESICK: Thank you, Mr.
22 Chairman, Members of the Board. Good

1 afternoon. My name is Matt Jesick. The
2 applicant had originally applied for lot
3 occupancy and side yard variances and the
4 Office of Planning also believes that a
5 variance is needed to the rear yard setback
6 and to the prohibition on the expansion of
7 nonconforming uses.

8 I understand that the applicant
9 disagrees with our analysis regarding the rear
10 yard setback and I have not seen any new
11 calculations from the applicant regarding
12 that, but we're willing to listen to what they
13 have to say on that issue.

14 On all the variances, though, we
15 analyzed them, of course, using the three part
16 test. And certainly, we can say that the
17 property is uniquely shaped. In fact, it's
18 very strangely shaped. And so it passes the
19 first part of the variance test.

20 On the second point, however, does
21 that uniqueness cause an undue hardship on the
22 applicant? We believe that the variances fail

1 that part of the test. There is an existing
2 viable use on the property. It could be
3 renovated in its current size and
4 configuration. And as I said, it is viable,
5 so we feel that the applicant has not shown a
6 nexus between the unique shape of the lot and
7 any hardship.

8 The hardship is a result of this
9 proposal that they have submitted and that is
10 why the proposal did not meet the zoning
11 requirements, but the existing nonconforming--
12 excuse me, the existing use is nevertheless
13 viable. So we feel that the applicant has not
14 adequately met the three part test of the
15 variance and that's why the Office of Planning
16 recommends denial of the application.

17 CHAIRPERSON GRIFFIS: Excellent.
18 Thank you. Let me just ask, are you assuming
19 that they need to make the variance test for
20 a use variance on this?

21 MR. JESICK: Well, I guess I would
22 -- the legal interpretation of the difference

1 between a use and area variance up to OAG, but
2 regardless of what type of variance, we feel
3 that the applicant has not met the second part
4 of the test.

5 CHAIRPERSON GRIFFIS: Sure, sure.
6 Okay. I'm not sure how OAG would fall on
7 this. However, the vernacular you used was
8 for a use variance and you're talking about
9 hardship and other productive uses for this.
10 And obviously, in 2002.5, I have always found
11 that to be a bit cumbersome in terms of the
12 requirements for the regulations as we talk
13 about a residential use in a residential zone
14 and how it is not complying therefore.

15 I don't think that -- and then
16 going specifically to this, I perfectly
17 understand and perhaps even agree with your
18 analysis of all the variances, but I think
19 they are all area variances. Notwithstanding,
20 I think your analysis is excellent and I
21 appreciate it. Others, comments, questions,
22 clarifications?

1 VICE CHAIR MILLER: I'm not sure
2 whether you addressed this or not, but just in
3 case you didn't. If you treat this as an area
4 variance, and the second prong would -- the
5 test would be practical difficulty, would your
6 analysis -- would you come to the same
7 conclusion that they don't meet the practical
8 difficulty test that you came to with respect
9 to concluding that they didn't meet the undue
10 hardship test?

11 MR. JESICK: Well, it's my
12 understanding in discussions with OAG that
13 there is a difference between those two tests
14 for area and use variances and in reading the
15 case that you referred to in the last meeting,
16 the Wolf v. BZA case, but in our analysis, we
17 did not differentiate between practical
18 difficulty and undue hardship. We kind of
19 grouped those into one test for variances in
20 general.

21 So regardless of if it was
22 practical difficulty or undue hardship, we

1 felt that the applicant did not meet the test.

2 VICE CHAIR MILLER: Okay. And
3 also, I'm pretty sure you have addressed this
4 in your report, but if you could just
5 highlight it here, didn't you also find that
6 there would be substantial detriment to the
7 public if relief were granted for these
8 requests?

9 MR. JESICK: Well, certainly it
10 can be said that in general the lot
11 occupancies in the neighborhood are much lower
12 than what the applicant is proposing. They
13 are proposing a 55.9 percent lot occupancy.
14 And while I don't have the figures for the
15 adjacent properties, just from a view, even of
16 an aerial photo, I think it can be seen that
17 lot occupancies in the neighborhood are
18 generally much lower than that.

19 VICE CHAIR MILLER: Could you just
20 take that one step further and, therefore, why
21 is that detrimental if they were to have a
22 much greater lot occupancy than the

1 surrounding properties?

2 MR. JESICK: Well, we're looking
3 to the character of the neighborhood and how
4 the lot occupancy would affect the character.
5 I think when you start getting into the higher
6 lot occupancies, that starts to change the
7 character of the neighborhood.

8 VICE CHAIR MILLER: Thank you.

9 MR. ERGENE: May I be allowed to
10 say something, at this point?

11 CHAIRPERSON GRIFFIS: In two
12 seconds. We'll get through the Board's
13 questions.

14 MR. ERGENE: I'm sorry. I
15 apologize.

16 CHAIRPERSON GRIFFIS: And then
17 we'll go to you.

18 MR. ERGENE: I apologize.

19 CHAIRPERSON GRIFFIS: Go ahead,
20 Mr. Etherly.

21 BOARD MEMBER ETHERLY: Thank you
22 very much, Mr. Chair. Thank you to the Office

1 of Planning for your report. I would hazard
2 a guess that I'll follow the Chair's lead and
3 I agree with it that it's perhaps not even
4 necessary to kind of parse out the use
5 variances versus area variance here.

6 I think either way with the facts
7 that we currently have, we're -- this is going
8 to be a difficult case to make. But what I
9 want to kind of walk through very, very
10 quickly is is it the Office of Planning's
11 position that especially as you get to what is
12 the final, and I think perhaps the most
13 daunting prong under either analysis here, and
14 that is the granting of relief without
15 substantial detriment to the public good, is
16 it the Office of Planning's position that with
17 respect to lot occupancy, especially, is this
18 simply a function of degree?

19 And by that I mean, if it weren't
20 an increase to 55.9 percent, but rather, and
21 of course hypotheticals don't necessarily do
22 us a bit of good in terms of the final

1 outcome, but I think my sense here is it's the
2 Office of Planning's position that this is not
3 simply just a matter of degree. If it were a
4 smaller increase, maybe you would be inclined
5 to go for it.

6 This goes in the Office of
7 Planning's opinion more directly to the heart
8 of what the Zoning Regulations are attempting
9 to do in this particular District. Would that
10 be an accurate assessment of the Office of
11 Planning's position?

12 MR. JESICK: I think that's an
13 accurate assessment. I mean, certainly, there
14 would be options where a smaller addition
15 could be made to the home. Whether that would
16 be useful or not to the applicant is the
17 question. But getting back to this particular
18 location and arrangement of building on this
19 property and adjacent properties, they are
20 very close, so that also factors in.

21 And given the fact that this is
22 already a nonconforming use in the R-2

1 District, that added some extra weight to our
2 consideration of what's happening with the
3 character of the neighborhood.

4 BOARD MEMBER ETHERLY: Okay. I
5 would like to ask and I would perhaps not
6 expect the Office of Planning to have had an
7 opportunity to do so, but had you had an
8 opportunity to review either of the party
9 status requests that the Board considered at
10 the top of this hearing?

11 MR. JESICK: I looked at them
12 briefly. I can't say I know the contents of
13 them in depth.

14 BOARD MEMBER ETHERLY: Okay.
15 Excellent. Excellent. The reason why I
16 inquire along that line is with respect to
17 some of the, what's the word I'm looking for,
18 impacts that are discussed in both of those
19 party applications, would you envision, and
20 just as an example, concerns about, of course,
21 impact on light and air, concerns about storm
22 water runoff, concerns about proximity to

1 adjacent properties?

2 Would it be the Office of
3 Planning's sense that these are precisely the
4 types of impacts that are -- that the Zoning
5 Regulations are attempting to, if you will,
6 avoid or mitigate in the R-2 District?

7 MR. JESICK: I think those are
8 some of the impacts that the R-2 District is
9 looking at. Certainly things like light and
10 air get into gray areas about how much they
11 affect neighbors and things like storm water,
12 I would think, could be mitigated in a way
13 that wouldn't impact adjacent neighbors. But,
14 yes, I think you are correct in saying that
15 the R-2 District is looking for a certain type
16 of development in general.

17 BOARD MEMBER ETHERLY: Okay. And
18 just to be sure that I'm clear, because I
19 don't want to put the Office of Planning in a
20 position that it hasn't explored expressly, so
21 I want to be sure I'm clear in asking you, the
22 Office of Planning has not in any way reviewed

1 any of the claims that have been made by the
2 party opponents, so you're not taking a
3 position on whether those claims are, in fact,
4 valid?

5 MR. JESICK: No, we have not
6 reviewed their claims.

7 BOARD MEMBER ETHERLY: Okay.
8 Excellent. And I'm not necessarily taking
9 that just for the purposes of our party
10 opponents. I'm not taking that testimony to
11 mean that your claims are not valid. But what
12 I'm getting at and perhaps as we begin to move
13 forward in the hearing as a signal to the
14 applicant, the concern is obviously there is
15 some considerations that are being raised by
16 the party opponents.

17 I think the Office of Planning's
18 opposition gets to the very nature of what the
19 R-2 District is all about and why the R-2
20 District is structured the way it is from a
21 zoning standpoint and why the test is probably
22 so high for you, in this particular instance,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to satisfy the burden of the variance relief
2 request.

3 But I understand clearly that the
4 Office of Planning is not taking a position on
5 the validity of any of the party opponent
6 positions, but I think the Office of
7 Planning's testimony is very daunting and sets
8 a very high bar here.

9 Thank you, Mr. Chair. That
10 concludes my questions. I appreciate it.

11 CHAIRPERSON GRIFFIS: Excellent.
12 Thank you very much. I appreciate you taking
13 us down that road. Any other questions of the
14 Office of Planning from the Board? Very well.
15 Did you have any cross?

16 MR. ERGENE: Thank you, sir.
17 Actually, thank you very much, Mr. Etherly,
18 for your questions. They started bringing up
19 stuff. Nobody has ever defined what R-2
20 District characteristics are. I mean, when
21 the Planning Board is looking at it or the
22 planners, what this District is like, they are

1 looking at it from up above. The plan and
2 what the land around it is like.

3 But if you drive through it, walk
4 through this neighborhood, there's usually
5 most of the buildings are about 8 feet apart.
6 That's what the side yard requirement is, if
7 they have been there for some time.

8 Other than that, in this
9 particular property, we are going around a
10 long distance which is really the area
11 photograph from your report, as you can see
12 it. And more than that, this building, though
13 there is two sections to it, one is owned by
14 Ms. Chan, it's really small with respect to
15 the lot.

16 I'm sorry, not with respect to the
17 lot. With respect to other buildings in this
18 zone. It's one of the smaller footprints,
19 1,000 square feet. The rest are far bigger
20 than this. So that is where the hardship is
21 coming in. We have a small building and we
22 want to increase this to make it economically

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 viable, because the taxes are constantly going
2 up.

3 CHAIRPERSON GRIFFIS: Sure.

4 MR. ERGENE: And the District Tax
5 Department is not listening to this.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. ERGENE: Sorry.

8 CHAIRPERSON GRIFFIS: At this
9 point though -- no, that's okay. But just to
10 be clear, we have the Office of Planning's
11 analysis and you can ask them questions that
12 essentially poke holes in their analysis.

13 MR. ERGENE: Sorry.

14 CHAIRPERSON GRIFFIS: So maybe you
15 want to -- I don't know if you have any
16 questions of that nature. Your statement is
17 well-taken and we're going to give you at the
18 end also a time to respond to everything that
19 you have heard. So if you have questions of
20 the report, clarification questions or more
21 questioning their assertions, that would be
22 appropriate at this time.

1 MR. ERGE: Well, then my
2 question would be wouldn't it be more viable
3 to look at the characteristics, rather than
4 looking at it directly from the top on a plan
5 view? In which case, we are trying to
6 complete the fabric. It's a continuous
7 fabric, because what happens with the corner
8 of 44th Street and River Road, it's broken.
9 By turning that corner, we are making it a
10 continuous fabric, urban fabric. That's all
11 we're trying to do and therefore there is, I
12 think, a problem in my mind.

13 MR. JESICK: Well, I'm not sure I
14 understand your question, but I'll try to
15 address it. I think there are different types
16 of urban fabric, however, in the R-2 District
17 the residential uses that are permitted are
18 detached single-family homes and semi-detached
19 single-family homes. So when you start mixing
20 in flats or other higher density residential
21 uses, I think that also affects the urban
22 character.

1 You know, whether or not the
2 corner is rounded onto 44th Street or not, I
3 mean, we didn't really look at the layout of
4 the addition, so to speak, or, you know, the
5 exterior design. We were just looking at the
6 parameters of the lot in terms of lot area,
7 side yard, etcetera, and that's how we reached
8 our conclusion.

9 BOARD MEMBER ETHERLY: If I could
10 follow-up on that question, Mr. Chair, pardon
11 the interruption, but maybe let me ask it this
12 way, if I understand where the applicant is
13 trying to go. Does the Office of Planning
14 have a sense as to whether or not this
15 particular subject property is materially or
16 fundamentally different from any of the other
17 R-2 properties in the immediate vicinity?

18 I mean, the Office of Planning
19 talked, spoke, of course, to kind of the
20 uniqueness of the layout of the particular
21 lot, it's shape if you will, but other than
22 that perhaps are there any other material

1 differences that you would say make this
2 property stand out compared to other R-2
3 properties in the immediate vicinity?

4 MR. JESICK: I mean, really the
5 only thing that makes this property different
6 is its size. It is -- and, of course, the
7 relationship of the building to the property
8 lines. But it is smaller than other lots in
9 the neighborhood and, you know, in those cases
10 it's unfortunate for the owner, but there are
11 limits to expansions that can be made to a
12 structure.

13 BOARD MEMBER ETHERLY: Okay.
14 Thank you. Thank you, Mr. Chair.

15 CHAIRPERSON GRIFFIS: Thanks.
16 Other questions, clarifications of OP? Do the
17 parties in opposition have any cross of Office
18 of Planning? Any questions?

19 MR. SOGHOMONIAN: I can say as
20 much as has been stated.

21 CHAIRPERSON GRIFFIS: Yes, okay.
22 Ms. Chan?

1 MS. CHAN: No.

2 CHAIRPERSON GRIFFIS: Any
3 questions?

4 MS. CHAN: No questions of the
5 Office of Planning.

6 CHAIRPERSON GRIFFIS: Okay.
7 Excellent. Thank you very much. It's a lot
8 to get through. And the analysis of the
9 Office of Planning is well done for our
10 review, I believe. Let's move ahead then. I
11 don't have any other Government reports
12 attendant to this. We have addressed the ANC,
13 which I understand is not present today, and
14 we have Exhibit 29 and also Exhibit 32 in
15 association with the ANC.

16 I will note that there are no
17 other --

18 BOARD MEMBER ETHERLY: Mr. Chair?

19 CHAIRPERSON GRIFFIS: Yes, sir?

20 BOARD MEMBER ETHERLY: Pardon me,
21 Mr. Chair. If I could just say perhaps just
22 to put a pin into the ANC piece, because I

1 think it's going to be a useful use of our
2 time as we go forward into the party opponent
3 cases. I just want to clarify or be sure
4 that, I think my colleagues do, but I want to
5 be sure for the record that everyone is clear.

6 I think what we have with the ANC
7 report is just going to be -- clearly, there
8 may still be some work that needs to be
9 undertaken by the ANC. But I don't think that
10 is going to be very material to how we are
11 proceeding today. So I think from just this
12 one Board Member's perspective, I would say
13 I'm not going to be too concerned or
14 interested in necessarily getting into a lot
15 of detail about what the ANC did or who
16 testified in front of them or what have you.

17 If the Board decides to allow an
18 opportunity for the ANC to provide more
19 testimony or more submissions for the record,
20 of course, I'm sure that we will direct that.
21 But just from my perspective, Mr. Chair, I
22 think as we begin to move forward into the

1 party opponents' case, I don't think it's
2 going to be a big huge determining factor. I
3 just wanted to kind of single that.

4 CHAIRPERSON GRIFFIS: Right. No,
5 I think it's an excellent point of we really
6 need to get down to the facts of the matter
7 here and the variance test and we'll look to
8 the parties in opposition to bring that to
9 light, so that's well put and positioned.

10 To that, unless there are any
11 clarification questions from the Board
12 Members, why don't we move right into the
13 parties in opposition case presentation. If
14 you are ready, you can come forward. Ms.
15 Chan, do you want to go first? There it is.
16 All right.

17 And just to be clear, of course,
18 you're going to open, give us your case
19 presentation and you will close. You are all
20 now, afterwards we'll have Board questions of
21 that and then you will have cross examination
22 and then we'll move on to Ms. Chan.

1 MR. SOGHOMONIAN: Okay. I'm not
2 really familiar with your procedures, so I
3 don't know what goes on. I wasn't really
4 prepared to make a statement or say a lot, but
5 I guess as far as if everyone has read -- I
6 mean, I can reread my party application.

7 CHAIRPERSON GRIFFIS: No, that's
8 not --

9 MR. SOGHOMONIAN: Okay. Because
10 basically all my feelings are stated in the
11 party application.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. SOGHOMONIAN: Concerning
14 basically everything. I mean, but if it's not
15 necessary, I won't read it. I think a couple
16 of comments I do wish to add is the applicant
17 stated his building is ugly, which he can
18 believe that or assume that if he wishes, I
19 don't think his building is ugly. So I think
20 part of it to me is beauty is in the eye of
21 the beholder.

22 So we can all have our own

1 opinions as far as what's ugly or what's not.
2 I think as far as the two story addition he is
3 wishing to build though, I don't think -- I
4 think the gist of it is it just fits the space
5 that he has. It just fills the hole. There
6 is nothing in it as far as aesthetics to the
7 neighborhood or bringing any character to the
8 neighborhood. It just fills the space upon
9 the side line and rear line.

10 It's the triangle just pushed onto
11 the side of the building. I just wanted that
12 to be stated. Also, as far as the variance
13 for -- I think if you are in a nonconforming
14 use and you are applying to be conforming,
15 which I think he partially is trying to do
16 stating that he intends to live there, I think
17 that gives a little bit of weight to that they
18 would like -- OP would like to make it
19 conforming.

20 But my thing in the long run is I
21 don't think the intentions of him moving there
22 may change and the repercussions of that, I

1 think, will have a negative effect on me as a
2 property owner and on the neighborhood as a
3 whole if something happens and he doesn't end
4 up moving into the space. Meaning, it would
5 be a larger rental property, but it would just
6 add more to his income, but it wouldn't
7 benefit the neighborhood at all.

8 Okay. Do you understand what I
9 was saying there? Okay. I think everything
10 else is basically in my application as far as
11 my concerns and feelings.

12 CHAIRPERSON GRIFFIS: Okay.
13 Excellent.

14 MR. SOGHOMONIAN: Okay.

15 CHAIRPERSON GRIFFIS: Questions?

16 MR. SOGHOMONIAN: Yes, does
17 anybody have any questions?

18 VICE CHAIR MILLER: I do.

19 MR. SOGHOMONIAN: Okay.

20 VICE CHAIR MILLER: I'm holding up
21 the Office of Planning report, Attachment 2.

22 MR. SOGHOMONIAN: Yes.

1 VICE CHAIR MILLER: Do you have a
2 copy of this?

3 MR. SOGHOMONIAN: Yes.

4 VICE CHAIR MILLER: Just for a
5 greater understanding of your testimony, is
6 your house --

7 MR. SOGHOMONIAN: Yes, ma'am.

8 VICE CHAIR MILLER: -- this house
9 on Ellicott Street?

10 MR. SOGHOMONIAN: Yes, ma'am.

11 VICE CHAIR MILLER: Okay. So the
12 addition, how would the addition exactly
13 encroach upon you? How close does it get to
14 your property?

15 MR. SOGHOMONIAN: It would be 8
16 foot from our rear property line. Okay. Our
17 building now sets -- I think it was built in
18 1924, old just like his, but ours has a
19 property line of -- I think we are about 11 to
20 12 feet from our rear property line and our
21 building runs parallel to our property line.
22 That's why I stated in my application that if

1 the addition he proposed is built, our two
2 buildings will be run parallel at a distance
3 of 25 some odd feet with less than 20 feet
4 between our two buildings.

5 And I just think that with the two
6 story structure he is proposing, it's just too
7 huge for the space. Now, as far as he is
8 crying about he doesn't have enough space or
9 enough room and he wants to enlarge, part of
10 it is well, maybe he is lucky now that he is
11 already over the limit of 40 percent lot
12 occupancy, which was done way back when. But
13 in today's standards, he is already at a plus.

14 Seeking 55.9 is pretty close to 60
15 percent and that almost reverses what the
16 standards everyone is trying to maintain of 40
17 percent building, 60 percent land. And I had
18 pictures to my application. I don't know if
19 they made copies for everybody.

20 CHAIRPERSON GRIFFIS: Yes, they
21 are in there.

22 MR. SOGHOMONIAN: Okay.

1 VICE CHAIR MILLER: Thank you.

2 CHAIRPERSON GRIFFIS: Okay. Any
3 other questions from the Board? Does the
4 applicant have any cross examination?

5 MR. ERGENE: I do have a question
6 for the Board.

7 CHAIRPERSON GRIFFIS: Mike.

8 MR. ERGENE: Sorry.

9 CHAIRPERSON GRIFFIS: Sure.

10 MR. ERGENE: I do have a question.

11 CHAIRPERSON GRIFFIS: We don't
12 often get cross, but go ahead.

13 MR. ERGENE: Is it possible to see
14 the application from the opponent?

15 CHAIRPERSON GRIFFIS: Oh, yes,
16 absolutely.

17 MR. ERGENE: All right.

18 CHAIRPERSON GRIFFIS: Do you have
19 another copy of yours?

20 MR. SOGHOMONIAN: I'm sorry, what
21 did he say?

22 CHAIRPERSON GRIFFIS: Your party

1 status application.

2 MR. ERGENE: Is it possible to
3 have a copy of it?

4 MR. SOGHOMONIAN: Sure. You can
5 have mine if you want or you can look at mine.

6 CHAIRPERSON GRIFFIS: Great.
7 We'll give you a minute to take a look at it.
8 Of course, it is, as the applicant, your
9 responsibility to check what is put into the
10 record and all that.

11 MR. SOGHOMONIAN: Okay.

12 CHAIRPERSON GRIFFIS: But take a
13 moment.

14 MR. SOGHOMONIAN: So I can --
15 okay.

16 CHAIRPERSON GRIFFIS: Sure.

17 MR. SOGHOMONIAN: Okay. Okay.

18 CHAIRPERSON GRIFFIS: That would
19 be great. Thank you.

20 MR. GULDU: The only thing that I
21 could mention, if I may, building is getting
22 larger, but the bedroom numbers are not

1 increased. So it's not something that's done
2 to add another bedroom to the flats. The
3 bedroom numbers remain the same, because one
4 of the bedrooms is taken out of circulation
5 and it becomes a passageway to the proposed
6 addition.

7 CHAIRPERSON GRIFFIS: Okay. Is
8 that your understanding?

9 MR. SOGHOMONIAN: I understand he
10 is still going to maintain two bedrooms as his
11 current plan is, but one will be turned into
12 a den. In my application, I state that can be
13 fine, but if it turns out he doesn't live
14 there and it is turned into a rental property,
15 that could be assumed by renters as three
16 bedrooms and two baths as there is a house
17 right next to our property now, a single-
18 family house, that is now occupied by six
19 girls and they are using one of the dining
20 rooms as a bedroom.

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. SOGHOMONIAN: Which I don't

1 think was the intention of the dining room.
2 But that's how things can change. So I just
3 wanted to bring it to your attention and his.

4 CHAIRPERSON GRIFFIS: Okay. Other
5 questions? What's the impact on your property
6 or in your position of a rental or an owner
7 occupied unit?

8 MR. SOGHOMONIAN: I'm sorry, the
9 impact of?

10 CHAIRPERSON GRIFFIS: Yes. You
11 have several times commented about the
12 difference between if the applicant lived
13 there or if it was --

14 MR. SOGHOMONIAN: No, I think that
15 has to do with the conforming and
16 nonconforming use variances. Whereas, I think
17 is it OP would prefer if someone in a
18 nonconforming use changed it to conforming,
19 meaning if he -- since he doesn't live there
20 now, but if he lived in there --

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. SOGHOMONIAN: -- later, that

1 would be in his benefit in getting a variance.

2 To me, I don't have a problem with it.

3 CHAIRPERSON GRIFFIS: I think
4 that's a little misconception, so we ought to
5 clear that up.

6 MR. SOGHOMONIAN: I have a
7 misconception?

8 CHAIRPERSON GRIFFIS: Yes.

9 MR. SOGHOMONIAN: On that? Okay.

10 CHAIRPERSON GRIFFIS: First of
11 all, the conforming use has nothing to do with
12 whether an owner lives there or not. If you
13 were to move out of your property and rent it,
14 it would not --

15 MR. SOGHOMONIAN: Okay.

16 CHAIRPERSON GRIFFIS: -- change
17 the use designation of your property. What is
18 nonconforming of use here is that it's two
19 units. It's what is called a flat.

20 MR. SOGHOMONIAN: Okay.

21 CHAIRPERSON GRIFFIS: In an R-2
22 Zone. So this should be -- it was built prior

1 to the Zoning Regulations in 1958, young city,
2 young zoning, so the nonconformity is that.
3 But it has nothing to do with renter or
4 homeowner.

5 MR. SOGHOMONIAN: Okay. Okay.
6 And just to stipulate that the property we own
7 is a four unit apartment building, two
8 stories, so it's nothing about people who
9 rent.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. SOGHOMONIAN: So you know what
12 I mean.

13 CHAIRPERSON GRIFFIS: Good.
14 Right. And for our understanding --

15 MR. SOGHOMONIAN: Yes.

16 CHAIRPERSON GRIFFIS: -- I mean,
17 everything we hear is what we're basing our
18 decisions on. So I bring no --

19 MR. SOGHOMONIAN: Okay.

20 CHAIRPERSON GRIFFIS: -- outside
21 knowledge or anything to this, except what is
22 in here, so that's why I asked.

1 MR. SOGHOMONIAN: That's why I had
2 asked if you had read my --

3 CHAIRPERSON GRIFFIS: No, no, I
4 read yours.

5 MR. SOGHOMONIAN: Yes.

6 CHAIRPERSON GRIFFIS: No,
7 absolutely.

8 MR. SOGHOMONIAN: If you had read
9 it or if you just skimmed it, I'll read it
10 entirely.

11 CHAIRPERSON GRIFFIS: We have read
12 it in great detail.

13 MR. SOGHOMONIAN: Okay.

14 CHAIRPERSON GRIFFIS: But I also
15 need to understand, what in your mind now with
16 your clarification of that, what is the impact
17 that you foresee whether this is --

18 MR. SOGHOMONIAN: I don't see
19 any --

20 CHAIRPERSON GRIFFIS: -- rented or
21 not.

22 MR. SOGHOMONIAN: I don't see any

1 impact.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. SOGHOMONIAN: Any benefit if
4 this gentleman lived there or not.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. SOGHOMONIAN: He has -- we
7 have owned our property for 16 years and we
8 have been neighbors for 16 years.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. SOGHOMONIAN: He hasn't taken
11 care of or maintained his property. And I
12 don't see why that would change, even if he
13 moved there.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. SOGHOMONIAN: But nothing, you
16 know --

17 CHAIRPERSON GRIFFIS: But let's
18 take it to the next level then, because you
19 are opposing the addition.

20 MR. SOGHOMONIAN: Sure. Correct.

21 CHAIRPERSON GRIFFIS: And the
22 variances of that. So how does that fit into

1 -- what is the impact that you foresee in your
2 position of that addition?

3 MR. SOGHOMONIAN: Okay. So what's
4 the impact?

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. SOGHOMONIAN: To me?

7 CHAIRPERSON GRIFFIS: Yes.

8 MR. SOGHOMONIAN: Basically,
9 personally? Your application said social. I
10 don't see any social impact as far as any of
11 this. Economic, it may cost me or my family
12 more money, because of maybe what he does in
13 the future concerning his property.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. SOGHOMONIAN: Yes, besides
16 having to look out a back window and see
17 another window.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. SOGHOMONIAN: You know, in
20 other words, where other people have an
21 alleyway or some sort of other buffer between
22 the two houses, we're not going to have that,

1 you know.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. SOGHOMONIAN: Is that what --

4 CHAIRPERSON GRIFFIS: Good.

5 Anything else? Clarifications?

6 VICE CHAIR MILLER: If you are
7 impacted, it's going to be this encroachment
8 upon your open space in the back?

9 MR. SOGHOMONIAN: Yes.

10 VICE CHAIR MILLER: That's what I
11 gleaned from your --

12 MR. SOGHOMONIAN: Yes, yes.

13 VICE CHAIR MILLER: -- plea.
14 Okay.

15 CHAIRPERSON GRIFFIS: All right.

16 MR. GULDU: For the --

17 CHAIRPERSON GRIFFIS: Go ahead.

18 MR. GULDU: For the last 16
19 years --

20 CHAIRPERSON GRIFFIS: This is
21 going to be a question of him, right?

22 MR. GULDU: Yes.

1 CHAIRPERSON GRIFFIS: Okay. Go
2 ahead.

3 MR. GULDU: Okay.

4 MR. SOGHOMONIAN: Sure.

5 MR. GULDU: Why -- ever put that
6 fence to prevent your people coming and
7 playing in the backyard of my property or made
8 any kind of suggestion that you should do that
9 or something like this? It was an open space
10 for all the tenants.

11 MR. SOGHOMONIAN: No, sir, you
12 never did.

13 MR. GULDU: Your place --

14 MR. SOGHOMONIAN: I think I have
15 seen you once.

16 MR. GULDU: -- and my place.

17 MR. SOGHOMONIAN: Once in the 16
18 years. But have we ever stopped any of your
19 tenants from placing their trash cans on our
20 property in the 16 years we have been there?
21 No. It was basically a common open space that
22 I basically maintained and cut and took care

1 of, because your tenants never did, so I think
2 it was a stipulation that your tenants when
3 they rented your properties would take care of
4 your property.

5 MR. GULDU: Right.

6 MR. SOGHOMONIAN: Okay. Okay.
7 Nobody was there to do any maintenance. Okay.
8 So instead of seeing it as an eyesore, I would
9 try to clean it up and take that
10 responsibility on myself, because I had to
11 live next door to you.

12 CHAIRPERSON GRIFFIS: Anything
13 else?

14 MR. GULDU: It's not the time to
15 discuss this.

16 MR. SOGHOMONIAN: That's fine. It
17 has nothing to do --

18 CHAIRPERSON GRIFFIS: Understood.

19 MR. SOGHOMONIAN: -- with any of
20 this.

21 MR. ERGENE: May I ask a question,
22 too?

1 CHAIRPERSON GRIFFIS: Certainly.

2 MR. ERGENE: Please. How is this
3 addition going to encroach on your open space?
4 Because that was your question, your open
5 space is at -- and it's not getting built into
6 his space. Maybe his view, I agree, but his
7 open space is not touched. So he said yes,
8 and I'm also trying to figure out what the
9 economic hardship on you would be.

10 CHAIRPERSON GRIFFIS: Yes, he is
11 not going to prove any kind of hardship, but
12 do you want to just decide whether this
13 impacts or how it impacts your open space,
14 light, air?

15 MR. SOGHOMONIAN: Sometimes I
16 don't think economic impact should mean that
17 much.

18 CHAIRPERSON GRIFFIS: You're not
19 being asked --

20 MR. SOGHOMONIAN: I can understand
21 your consideration for it, but whether or not
22 that has anything to do with it doesn't make

1 any difference. The building is just too big,
2 you know. Your building already occupies 42
3 percent. They like to keep the max of around
4 40.

5 CHAIRPERSON GRIFFIS: But talk
6 personally about -- we understand what the
7 regs are.

8 MR. SOGHOMONIAN: Okay.

9 CHAIRPERSON GRIFFIS: And what is
10 required.

11 MR. SOGHOMONIAN: Right.

12 CHAIRPERSON GRIFFIS: When you say
13 too big, what does that really mean? What are
14 you talking about? Why is it too big for you
15 and your property?

16 MR. SOGHOMONIAN: It would like be
17 overbearing. You are putting two stories 5
18 feet away from our side yard, 8 feet away from
19 our backyard. It just seems overbearing.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. SOGHOMONIAN: Too large.

22 CHAIRPERSON GRIFFIS: Okay.

1 Understood.

2 MR. SOGHOMONIAN: You know.

3 CHAIRPERSON GRIFFIS: Anything
4 else?

5 MR. ERGENE: That's it. Thank
6 you.

7 CHAIRPERSON GRIFFIS: Okay. Any
8 other questions? Very well. Thank you very
9 much.

10 MS. CHAN: Good afternoon, my name
11 is Elaine Chan and I'm representing Florence
12 Chan and I wanted to first offer a copy of my
13 party status application, if you would like to
14 look at it. I appreciate this opportunity to
15 present additional information for your
16 consideration in this matter.

17 I wanted to start just with my
18 understanding of the purpose of the zoning for
19 R-2 was to -- is to protect one-family semi-
20 detached dwellings from the invasion by denser
21 types of residential development. And my
22 mother has owned this property for over 20

1 years and has sought to maintain it and
2 although it's on a small lot and it has a
3 small yard, we have managed to keep it well
4 and to not impose on our neighbors.

5 I wanted to start my presentation,
6 if I could, to share some photographs of the
7 property and a map that shows the direction
8 from which they were taken. I have two copies
9 if you could share, would that be possible?
10 I used one of Mr. Guldu's diagrams to show the
11 placement of the photographs. Perhaps I
12 should have labeled that Exhibit 1A, but I
13 have Exhibits 1 through 5.

14 And I just wanted to address the
15 tests, the three tests for the variance, the
16 granting of a variance. And the one that I am
17 primarily addressing is can the relief be
18 granted without substantial detriment to the
19 public good and without substantially
20 impairing the intent, purpose and integrity of
21 the Zoning Regulations and Map?

22 And if you will look at the

1 photographs, the first exhibit is a view of
2 4323, the side yard and that of the rear
3 neighbor. There have been a number of
4 questions about how close the buildings are
5 and I think you can tell from the photograph
6 how the buildings are situated relative to
7 each other.

8 And also, in the photograph behind
9 this -- these three large trash cans is a
10 wooden fence made of 2 x 4s and that, I
11 believe, shows where the proposed building is
12 going to be. And it extends over to the left
13 side of the photograph, so this view will be
14 blocked if the proposed addition is added.
15 And you can see these trees here.

16 One of the main problems that the
17 owner has is the problem of lot coverage.
18 There are some present impacts as a result of
19 lot coverage, mostly resulting is a problem of
20 drainage. The -- Mrs. Chan's property is on
21 the lowest point on that part of the block, so
22 that topographically, all the water from both

1 the Ellicott Street properties and 4323 drain
2 toward her property. And that is bordered by
3 an alley.

4 And at the present time, what
5 happens is that if you will look at Exhibit 2,
6 is a picture of the downspout and gutter
7 system on 4323 where all the water from the
8 entire roof, the rear half of the roof drains
9 on -- into this piece of a downspout on the
10 left side of the picture at an angle and it's
11 supposed to be feeding into the gutter above
12 it, but it's not. It's just shooting off into
13 the ground.

14 And that water lands on a broken
15 patio between the -- that is shared by the two
16 properties, only my side is not broken, and
17 the water flows downstream and there is a
18 basement stairway at the rear of 4321 on the
19 left side of the protrusion, if you look at
20 this diagram here. And the water goes down
21 the stairway into the basement.

22 And numerous times we have had to

1 pump it out even after mild rainstorms or have
2 had up to 800 gallons of water that has
3 accumulated in a matter of hours in the
4 basement from runoff and also from the yards
5 and also from the roof, because all the
6 downspouts in the neighboring properties drain
7 onto the ground. And, in particular, 4323
8 drains right next to the house. So the water
9 accumulates next to the building.

10 The flooding of the basement not
11 only causes problems for the emergency pumping
12 out of the basement to avoid the loss of hot
13 water and heat, because both the hot water
14 heaters for both units 1 and 2 and the
15 furnaces for those units are in this small
16 unfinished basement. It is about 8 feet wide
17 and it quickly fills up with water.

18 So my tenants on numerous
19 occasions have been displaced, because they
20 have no hot water or they have no heat until
21 we can pump it out and get someone to come
22 back and repair, make the repairs.

1 In replacing hot water heaters and
2 furnaces, we have tried to raise them as high
3 as possible to the floor above.

4 CHAIRPERSON GRIFFIS: Let me just
5 get clarification. Are you asserting that if
6 this addition goes through that this flooding
7 will become worse or --

8 MS. CHAN: Well, I think --

9 CHAIRPERSON GRIFFIS: I mean, this
10 is an existing situation.

11 MS. CHAN: Yes.

12 CHAIRPERSON GRIFFIS: Where we
13 have no control over.

14 MS. CHAN: Right. I understand.

15 CHAIRPERSON GRIFFIS: It doesn't
16 seem to be zoning-related at all.

17 MS. CHAN: If the addition is
18 added, it increases the lot coverage, so that
19 there is less open land, porous land in which
20 to absorb the runoff that comes from the
21 impervious surfaces.

22 CHAIRPERSON GRIFFIS: Okay.

1 MS. CHAN: And when you reduce the
2 green space and you have to remove trees and
3 vegetation --

4 CHAIRPERSON GRIFFIS: Right.
5 We're aware of that.

6 MS. CHAN: -- you have less
7 ability to absorb runoff.

8 CHAIRPERSON GRIFFIS: If you have
9 800 gallons of water in your basement, there
10 is more than just open green space that's
11 needed to absorb that.

12 MS. CHAN: Right.

13 CHAIRPERSON GRIFFIS: But go
14 ahead.

15 MS. CHAN: That happened after the
16 ground was frozen and it rained.

17 CHAIRPERSON GRIFFIS: Understood.

18 MS. CHAN: And the water --

19 CHAIRPERSON GRIFFIS: Understood.

20 MS. CHAN: I mean, that was
21 unusual, but it does flood up to the depth of
22 1 foot on occasion and we can control that,

1 but repeated flooding has significantly
2 increased the cost of maintenance and
3 premature replacement of various mechanisms.

4 CHAIRPERSON GRIFFIS: Okay. I
5 just don't see how it's a zoning issue right
6 now.

7 MS. CHAN: And mechanic systems.
8 Well, if the exemption is given for the
9 increased lot coverage, it will reduce the
10 amount of open space available to absorb
11 runoff and that's a concern. I assume that
12 there are engineering mitigation means that
13 can be employed, but to date, there hasn't
14 been anything done despite sharing of the
15 problem with the neighbor.

16 So if he does -- if the Board does
17 approve the various variances that he is
18 requesting, I would hope that it would be with
19 the condition that he control storm water
20 runoff.

21 The setbacks, proposed setbacks,
22 reduction of both rear and side yard setbacks

1 change the configuration of the side yard and
2 limit access for emergencies, for example, for
3 fire suppression and fire safety. And since
4 the occupants are tenants, it's a particular
5 concern for liability purposes.

6 And the two buildings built in
7 1923 did not have a firewall between them, so
8 the attic is a shared space. It's open
9 between the two buildings. So that's a
10 significant concern that fire safety equipment
11 would be able to access the yard to suppress
12 fires.

13 Part of the problem with expanding
14 lot coverage is that the deleterious effects
15 to the adjoining neighbor result in loss of
16 revenue if there is any additional flooding,
17 because in the past we have appealed property
18 tax assessments and been granted lower
19 property values due to the condition of the
20 property and part of that is because of the
21 apparently unsolvable problem of runoff.

22 The other concern in adding an

1 additional bedroom to the space is the
2 potential for increased occupancy. While the
3 proponent of the change suggests that he would
4 live in one of the units, it would still have
5 an additional bedroom added to a second unit
6 and our experience is that the number of
7 tenants matches at least the number of
8 bedrooms and often more.

9 And at the current time, if you
10 have two bedrooms, two two bedroom units, you
11 probably have four tenants and four cars. And
12 if you have two three bedroom units, changes
13 are you will have three tenants and six cars.
14 In the block, that entire block lots both 16
15 and 15, his building and ours, 1211 and 800,
16 I think it's five units -- four units on that
17 side of the street are all four unit flats
18 with at least two bedrooms.

19 So each building has the potential
20 to have eight occupants and eight cars. And
21 there is only enough space for two cars in
22 front of each building. So all that parking

1 demand imposes on the single-family residences
2 across the street and around the block. If
3 you look at the configuration of the block,
4 there is very limited parking, because it's a
5 little triangle and you have to stay far
6 enough away from stop signs, so there is less
7 parking space than on a normal block that
8 would be square.

9 And Exhibits 3 and 4 show the
10 difference in elevation between the adjoining
11 lots, both the Soghomonian property on
12 Ellicott Street and 4323 and it is between 6
13 and 9 inches on that side. And Exhibit 4
14 shows the measuring tape to show the distance.

15 And then on Exhibit 5, the other
16 property on Ellicott Street, the second rear
17 yard neighbor, you can tell it's about 2 feet
18 higher and from the debris accumulated on the
19 fence, you can tell that that's where the
20 water flows, because it has carried all the
21 debris again the chain link fence above that
22 stone wall where Mrs. Chan is standing.

1 In short, I don't want to go on
2 and on, but I wanted to just go through the
3 things of our primary concerns are the problem
4 of lot coverage. The increased occupancy
5 capacity and hence the density of occupancy in
6 the neighborhood. And the result is parking
7 problems and also the use and enjoyment of the
8 rear yards.

9 Since there are no front yards and
10 by this addition will eliminate the side yard
11 on 4323, it will only leave a small portion of
12 the rear yard. And since all three backyards
13 face each other, are adjoining, it would
14 increase the use in the limited, more limited
15 green space.

16 And also in the photograph, the
17 first photograph, you can see the trash
18 containers and Mr. Soghomonian and I have
19 witnessed that the trash cans don't tend to
20 stay on the 4323 property and they are on the
21 street or on the sidewalk, because there is no
22 other space, no other place to put them. He

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 has no access on the right side of the
2 property, because that's my mother's property
3 and the alley is on the other side of Lot 15.

4 So there is no place to really put
5 those containers and with additional occupancy
6 or a family occupancy, you would probably end
7 up with more trash.

8 In summary, we believe that the
9 proposed addition is inconsistent with the
10 character of the surrounding neighborhood and
11 that the Zoning Regulations have been imposed
12 with minimum lot sizes and widths and lot
13 occupancy and floor area ratios and the size
14 of side and rear lots -- yards for a reason
15 and that's to maintain the character of the
16 neighborhood.

17 And since it is primarily a
18 single-family neighborhood, I think it would
19 behoove us to be good neighbors and try to
20 preserve that environment by not adding large
21 bulky structures that cause problems to the
22 neighbors. I appreciate the time to present

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this information and if you have any
2 questions, I am happy to respond to them.

3 VICE CHAIR MILLER: Thank you. Do
4 the Board Members have any questions? I don't
5 either. I was going to ask you your opinion
6 about the character of the neighborhood, but
7 you did address that in addition to your own
8 personal impacts. So I don't.

9 Does the applicant have some
10 questions?

11 MR. GULDU: Do you have the first
12 pictures? Ms. Chan showed that, you know,
13 saying that affecting the view of the
14 property. But it's not her property, the
15 picture that she presented has nothing to do
16 with her property.

17 VICE CHAIR MILLER: I'm sorry,
18 what's your question?

19 MR. GULDU: Picture No. 1.

20 VICE CHAIR MILLER: Your question
21 is for Ms. Chan though?

22 MR. GULDU: Ms. Chan?

1 MS. CHAN: Yes.

2 MR. GULDU: The first picture that
3 you showed.

4 MS. CHAN: Um-hum.

5 MR. GULDU: And you explained it,
6 if I put an addition there, it's going to
7 block the view of the building behind. That's
8 not your building.

9 MS. CHAN: No, what it does is it
10 reduces the green space.

11 MR. GULDU: No, but at that time,
12 you said it's going to --

13 MS. CHAN: And it's very limited.

14 MR. GULDU: -- block the view.
15 And it has nothing to do with your property.

16 MS. CHAN: It was for the benefit
17 of the Board to see where the structure would
18 be placed relative to the building behind it
19 and to the limited green space, that's all.

20 MR. GULDU: All right.

21 MS. CHAN: That was the sole
22 purpose of the photograph.

1 VICE CHAIR MILLER: Okay. Just to
2 clarify what the picture is showing.

3 MS. CHAN: Um-hum.

4 VICE CHAIR MILLER: This is the
5 applicant's project, the red brick building?
6 Is that correct?

7 MR. GULDU: No, this is existing
8 foundation, ma'am. And there is a building --

9 MS. CHAN: Yes, that's -- yes.

10 MR. GULDU: -- a gray building
11 behind. And Ms. Chan suggested when I put the
12 addition, if I ever put the addition over
13 there, it's going to block --

14 VICE CHAIR MILLER: It will cover
15 this.

16 MR. GULDU: -- the view of that
17 building behind.

18 VICE CHAIR MILLER: I understood
19 her to say it's going to block the view.

20 MR. GULDU: Yes.

21 VICE CHAIR MILLER: Of this open
22 space --

1 MR. GULDU: But it's not her
2 building.

3 VICE CHAIR MILLER: -- where the
4 trash cans are.

5 MR. GULDU: It's not her building.

6 VICE CHAIR MILLER: It's not her
7 building?

8 MR. GULDU: Yes.

9 BOARD MEMBER MANN:

10 VICE CHAIR MILLER: And whose
11 building is this?

12 MR. GULDU: It's --

13 MR. SOGHOMONIAN: That's Lot 14.

14 VICE CHAIR MILLER: The next lot.
15 That's your building?

16 MR. GULDU: Yes, behind the
17 building.

18 VICE CHAIR MILLER: That's Lot 14.
19 Okay.

20 MR. GULDU: It has nothing to do
21 with Ms. Chan's property.

22 VICE CHAIR MILLER: Just so we

1 know what it depicts.

2 MR. GULDU: Yes, yes.

3 VICE CHAIR MILLER: Okay.

4 MS. CHAN: It's to show where the
5 proposed building will be. It will be across
6 the back parallel and over to where that
7 little wood fence is, so that you can see the
8 bulk. And as to the aesthetics of it, the
9 building is as -- is stucco or whatever it is
10 called, Baltimore Brick, and whatever he does
11 to addition it would look strange unless he
12 copied what was existing.

13 So any claims that it would make
14 the building more attractive or more
15 consistent with the neighborhood, I think
16 would be disingenuous, unless it matched what
17 was already there.

18 VICE CHAIR MILLER: Are you saying
19 the building is going to go all the way to
20 where this fence ends in the picture?

21 MS. CHAN: Yes.

22 MR. SOGHOMONIAN: That's my fence.

1 MS. CHAN: That's his fence.

2 MR. GULDU: No, it's going to be
3 inside the fence. It's not going to go all
4 the way to the fence. The fence is the
5 property line.

6 MS. CHAN: Perhaps Mr. Soghomonian
7 can show where the --

8 MR. GULDU: It's not going to the
9 fence, ma'am.

10 MR. SOGHOMONIAN: That line in the
11 party application, I had some photos attached
12 to the application.

13 VICE CHAIR MILLER: Okay.

14 MR. GULDU: If it goes to the
15 fence, his fence is in my property then.

16 MS. CHAN: I believe it's going to
17 be less than 8 feet from that little white
18 fence post. It will go within 8 feet of the
19 fence post, according to this diagram.

20 VICE CHAIR MILLER: Did you want
21 to bring our attention to one of your photos?

22 MR. SOGHOMONIAN: Yes.

1 VICE CHAIR MILLER: Okay. Do you
2 have a copy you can just point to?

3 MR. SOGHOMONIAN: I don't have a
4 copy. It's on your copy.

5 VICE CHAIR MILLER: Oh.

6 MR. SOGHOMONIAN: On your
7 application. I have attached photos. I don't
8 know if you have a copy.

9 CHAIRPERSON GRIFFIS: Yes, we have
10 the photos.

11 VICE CHAIR MILLER: We have a copy
12 here.

13 CHAIRPERSON GRIFFIS: Which ones
14 do you want us to look at?

15 VICE CHAIR MILLER: You need to
16 find it. It will show on here where their
17 building is going to be.

18 MR. SOGHOMONIAN: Actually, you
19 know, what, here is a picture.

20 VICE CHAIR MILLER: You're not on
21 the microphone.

22 CHAIRPERSON GRIFFIS: Yes, you

1 can't approach. Just have a seat right there
2 and then you can just point to us, just
3 describe what you want us to look at and we
4 can take it up.

5 MR. SOGHOMONIAN: Okay. He made a
6 comment before as far as the fence goes.
7 That's my fence.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. SOGHOMONIAN: We're erecting
10 and have a permit to erect. His building will
11 be 5 feet from the side.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. SOGHOMONIAN: 5 feet from the
14 side of that fence that is going to run
15 parallel to that fence, which will give him
16 his 5 foot side yard. Okay. They don't have
17 a -- I mean, that's my property on the other
18 side. You can see as far as the lot is
19 configured. Here is my building behind his,
20 which you will no longer be able to see.

21 I have also attached two pictures
22 here which show my building here, which goes

1 back 8 foot to the property line. His
2 building, the corner is right here, but his
3 will go 8 foot from his building to my
4 building. So there will be this alleyway of
5 less than 20 feet, is something I thought
6 should be brought to your attention or assumed
7 that you had seen, but these pictures didn't
8 turn out very nicely.

9 CHAIRPERSON GRIFFIS: That's good.
10 No, I think it's pretty clear. You can hold
11 on to that. All right. Anything else?

12 VICE CHAIR MILLER: No, not from
13 me. Thank you.

14 CHAIRPERSON GRIFFIS: Any other
15 questions? Cross?

16 MR. GULDU: Well, most of the
17 things were not in my opinion about the
18 zoning, the questions or complaints.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. GULDU: As I mentioned, the
21 building is not going to become more bedrooms,
22 more people.

1 CHAIRPERSON GRIFFIS: Right.

2 MR. GULDU: We are eliminating a
3 bedroom and the picture over there is not your
4 property. And I think the one time that -- it
5 has nothing to do with just -- the drain
6 didn't work. Your drain didn't work. That's
7 why you got flooded, for the record.

8 CHAIRPERSON GRIFFIS: Okay. Well,
9 let's leave this to the conclusions and,
10 unless you have any cross of Ms. Chan's case
11 presentation, is there anything else you need
12 to address in that?

13 MS. CHAN: I just want to make
14 sure that Mr. Guldu's representation just now
15 about the clogging of the drain is not entered
16 as a matter of fact, because I would like to
17 counter that if that --

18 CHAIRPERSON GRIFFIS: Sure.

19 MS. CHAN: -- is going to be
20 considered.

21 CHAIRPERSON GRIFFIS: Let me just
22 restate the fact that I'm not sure where a

1 drain or non-drain is a zoning issue, so there
2 is nothing we could do with it, fact or not
3 fact. We could pretty much guarantee that it
4 won't be listed as a finding of fact in any
5 order that we issue, unless somehow it evolves
6 into an element of which we need to establish
7 that for zoning purposes. Okay.

8 If there is nothing further then,
9 let's move ahead. Any Board questions,
10 clarifications of all the information we have
11 had to date? Not noting any, let's move to
12 final remarks, closings, conclusions that you
13 might have.

14 MR. GULDU: It is true that I
15 wasn't a very good landlord. I didn't really
16 take care of the building and I think I owe it
17 to the community to make it look better and
18 better taken care of and I intend to live over
19 there. So the concern about the looks of the
20 building and upkeep of the area is going to be
21 very much on the better side of what is going
22 on right now. That's all I can say.

1 CHAIRPERSON GRIFFIS: Okay. Of
2 course, that has nothing to do with whether
3 you get an addition or not, correct?

4 MR. GULDU: If I don't get
5 addition, I don't think it's feasible to
6 invest that much money into the building.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. GULDU: So it's completely
9 different. I mean, I may -- I am going to
10 renovate the building, but it may not be as
11 extensive as I intend to do it.

12 CHAIRPERSON GRIFFIS: Right,
13 right. Understood. Okay. If there's nothing
14 further then, what is the Board's pleasure at
15 this hour? Would we like to move forward or
16 I would take recommendations of setting this
17 for a decision. Is there action proposed?

18 BOARD MEMBER ETHERLY: Mr. Chair,
19 I'm comfortable at this point. I would
20 perhaps offer that I think the record is
21 fairly full on this particular matter. I
22 think we have had kind of extensive testimony

1 both from the party applicant with respect to
2 what they are endeavoring to do and I think we
3 have had very helpful testimony from the party
4 opponents in opposition to the case with
5 regard to where we are.

6 I think it would be appropriate at
7 this point. I am prepared to move forward and
8 deliberate under a motion if my colleagues
9 would feel so inclined. It would, however, be
10 my motion to move denial of Application No.
11 17551 of Mustafa Guldu and I would invite a
12 second.

13 COMMISSIONER JEFFRIES: Second.

14 BOARD MEMBER ETHERLY: Thank you
15 very much, Mr. Jeffries. Again, Mr. Chair, if
16 it is appropriate just to continue forward in
17 deliberation.

18 CHAIRPERSON GRIFFIS: Absolutely.

19 BOARD MEMBER ETHERLY: Again, I
20 understand entirely what the applicant is
21 endeavoring to do. And as is always the case,
22 but perhaps not easy to see when you're an

1 applicant sitting in the position that you
2 are, looking forward at this Board, it's
3 oftentimes perhaps difficult to glean why the
4 Board may move in the direction that it
5 oftentimes does.

6 Variance is a very high standard.
7 It is an incredibly high standard whether
8 you're talking about an area variance or a use
9 variance, and I think in this instance the
10 Office of Planning's report was very much on
11 target in terms of the rationale for denying
12 the variances that are requested.

13 It is one of the highest standards
14 in the Zoning Regulations. That being said,
15 I would simply like to go first to perhaps the
16 first prong of the variance test, which I felt
17 was perhaps the closest to being most
18 straightforward for you.

19 I think as was testified to by the
20 applicant, and to an extent by the party
21 opponents, there is some, if you will,
22 irregularity to the parcel that you're dealing

1 with, to the property that you currently find
2 yourself sitting on top of.

3 The shape of it, the location of
4 the property lines relative to the structure,
5 relative to other portions of the surrounding
6 properties, if you will, I think did speak
7 somewhat to -- if I may, Mr. Jeffries, do
8 speak somewhat to, if you will, a uniqueness
9 as it related to the shape and the topography
10 of your property.

11 I think where the challenge came
12 with regard to the case, however, was both in
13 terms of the second and third prongs of the
14 variance test.

15 As you may recall from the
16 discussion of the Office of Planning, and I
17 perhaps would invite some discussion from my
18 colleagues if there is a need to, shall we
19 say, be very specific, but I will just utilize
20 the language as it exists with regard to the
21 issue of an area variance, but if there is a
22 need to clarify, I will rely on my colleagues

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to help me kind of parse that out.

2 But I think in terms of looking at
3 whether or not the extraordinary or
4 exceptional situation imposes a practical
5 difficulty on the applicant, I simply didn't
6 find the testimony to be convincing in that
7 regard.

8 And, in part for me, it worked
9 very much in tandem with what is the third
10 prong of the variance test, and that is can
11 the relief be granted without substantial
12 detriment to the public good and without
13 substantially impairing the intent, purpose
14 and integrity of the Zoning Regulations and
15 Map.

16 It is there that I think the
17 Office of Planning's work is most applicable
18 in this particular instance with regard to
19 what the Zoning Regulations endeavor to do in
20 the R-2 District. That was a very, very high
21 bar for you to meet and I simply did not find
22 the testimony to be convincing that that bar

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 was met here.

2 That is not to say that your
3 desire to improve and maximize the utility of
4 your property was wrong, was inappropriate or
5 ill-chosen, but the Zoning Regulations are
6 there for a reason and they are there with
7 respect to particular areas for a reason. And
8 I think many of the issues that were discussed
9 by the party opponents, and I'm going to touch
10 upon those in a moment because, at least from
11 my standpoint, I want you to be very clear how
12 I dealt with those particular issues.

13 But I think as the Office of
14 Planning's report indicated with respect to
15 the R-2 District, there are certain things,
16 there are certain elements of spacing, of
17 layout that I think the R-2 District endeavors
18 to protect, to ensure, and I think the
19 variance in this case, if it had been granted,
20 would have worked to undermine those
21 particular issues, be it again spacing, be it
22 the ability to have light and air.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I'm not using that in terms of
2 applying a test, but from the standpoint of
3 the types of experiences, the type of property
4 enjoyment that I think the R-2 District seeks
5 to maximize. I believe with respect to the
6 party opponents and their testimony, I want to
7 be very clear that I think it was instructive
8 and helpful and highlighted a number of
9 concerns.

10 I think a number of those concerns
11 were outside of the purview of the variance
12 test, but not from the standpoint again that
13 they were wrong, but from the standpoint of I
14 think they perhaps spoke more to the symptoms
15 of what was at issue with regard to this
16 variance application, the variances that were
17 sought in this application.

18 I think the things that both of
19 the party opponents spoke to with respect to
20 concerns about impacts on light and air, with
21 respect to concerns about water, storm water
22 runoff, while I'm not necessarily saying that

1 I was convinced wholeheartedly, the issues
2 that you spoke to I think in part reflect
3 again some of the concerns that the R-2
4 District tries to speak to with regard to how
5 it approaches the establishment of certain
6 parameters and boundaries with regard to
7 properties.

8 That is a very broad, if you will,
9 articulation, Mr. Chair, of why I felt the
10 variance test in this particular application
11 wasn't met. But, again, I want to emphasize,
12 oftentimes it's difficult for an applicant to
13 perhaps separate, shall we say, an adverse
14 ruling from a recognition that it's not a
15 statement on whether or not you had a good
16 idea about what you wanted to do with your
17 property.

18 I entirely understand the desire
19 to maximize to the fullest possible extent
20 your ability to utilize your property, add a
21 bedroom, add a kitchen, add a bathroom, but
22 the Zoning Regulations are in place to ensure,

1 I believe, certain fundamental things in
2 different districts and I think you ran up
3 against -- again, I think you ran up against
4 a very high bar with respect to the R-2
5 District here.

6 I will pause there, Mr. Chair, and
7 invite comment from my colleagues.

8 (Whereupon, at 5:00 p.m. the
9 Public Hearing continued into the evening
10 session.)
11
12
13
14
15
16
17
18
19
20
21
22

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 CHAIRPERSON GRIFFIS: Excellent.
4 Very well done. Others?

5 VICE CHAIR MILLER: I agree with
6 Mr. Etherly and I just want to address this
7 case from a different analysis though, and
8 explain one aspect that we were exploring that
9 Mr. Etherly didn't touch upon.

10 I don't think that -- about
11 whether this was a use variance or an area
12 variance and, as Mr. Etherly said, the
13 standard for a variance is high to begin with.
14 The standard is a little bit higher for a use
15 variance. It goes to hardship versus
16 practical difficulty and then we get into,
17 well, what is practical difficulty?

18 But I want to say that I don't
19 think there is any question that it's a
20 nonconforming structure in that it is already
21 above the lot occupancy limit. And so the
22 issue was only well, is it a nonconforming

1 use? It's still a residential use. That is
2 why some of us have a question that maybe this
3 is not a nonconforming use, per se, or a
4 variance for a nonconforming use.

5 In any event, it's a lower
6 threshold with respect to practical
7 difficulty. If you don't make the practical
8 difficulty test, it doesn't matter. You
9 wouldn't make the hardship test. That is a
10 higher level. So in any event, as I see it,
11 it falls under 2001 which says that
12 nonconforming structures devoted to conforming
13 uses, assuming it's a conforming use because
14 it's residential.

15 It's still our regulations
16 prohibit an enlargement to a nonconforming
17 structure, unless you have a variance, so here
18 we are back at this variance test and it's
19 just another layer for all the variances
20 you're seeking.

21 I agree with the Office of
22 Planning and Mr. Etherly that you make the

1 test for uniqueness. The lot is an irregular
2 shape. But then you need to show how that
3 irregularity gives rise to a practical
4 difficulty in complying with the regulations.
5 And you presented your reason, which I
6 understood was that the way the bedrooms were
7 configured, it made more sense or was a better
8 layout for you to do this addition to have
9 access to the bathrooms, etcetera.

10 Okay. So that is a factor that we
11 consider and it's one judgment that is tied
12 to, okay, well, what else do we consider?
13 What do we consider that in context with? And
14 the courts have said that we then consider the
15 severity of the variance requested and the
16 severity here is there is a big leap in the
17 lot occupancy relief that you're asking for.

18 You are already over. It's at
19 41.9 and you're seeking to go to 55.9 percent,
20 so that is severe in the context. It's not
21 like you're asking for like a 1 percentage
22 deviation.

1 And then the next is the effect
2 the proposed variance would have on the
3 overall Zone Plan. And I think that that also
4 ties into substantial -- is there a
5 substantial detriment? And I think that the
6 case was made that, in fact, there is. When
7 we talk about a greater lot occupancy, we are
8 talking about elimination of the open space
9 and the green space, and I think that the
10 applicant was saying, well, you know, that is
11 not his neighbor's green space. That is his
12 space.

13 But, in fact, the way that the
14 Zone Plan is laid out, it's to protect this
15 openness in general for neighbors and for the
16 community and, therefore, it is a substantial
17 detriment to take up that much of the lot
18 occupancy. And that was also validated by the
19 Office of Planning and by the neighbors that
20 this, in fact, would have an adverse impact on
21 the community.

22 So when I weigh all those factors,

1 it comes down to an owner can't always do or
2 reconfigure their property with the way that
3 they want to, that may make sense. It has to
4 be weighed in the context of the other factors
5 and when weighing those factors here, I think
6 that they outweigh the relief.

7 CHAIRPERSON GRIFFIS: Very well.
8 Others? I don't disagree with a lot of the
9 direct and indirect discussion regarding,
10 first of all, the use and 2002.5. I think
11 both Mr. Etherly and Ms. Miller has adequately
12 assessed the facts of the case.

13 I don't agree that we are under a
14 use variance in that a structure devoted to a
15 nonconforming use shall not be enlarged,
16 except if the enlargement is to be devoted to
17 a conforming use. That is 2002.5. How would
18 we argue the fact of whether it be an
19 extension of a conforming use?

20 So included in that, I think it
21 does go to the area and that is exactly what
22 we're looking at in terms of the variances and

1 the area for the R-2.

2 It was interesting when I started
3 the assessment of this and looked at 2001.3,
4 which is the additions to nonconforming
5 structures, and even 223 wondering, well,
6 maybe this could even fit within the
7 parameters of a special exception, and you
8 realize this eclipses all of those thresholds
9 which would bring it into that lot occupancy
10 being the most critical, as Ms. Miller and Mr.
11 Etherly have touched on.

12 Then when you look at the
13 uniqueness of the odd shaped lot, again I
14 don't see the nexus from that shape going to
15 the practical difficulty in complying with the
16 area restrictions in the regulations, and that
17 is the setbacks. And I wouldn't even get
18 into, although I think it's informative, we
19 get into the level of amount of relief sought.

20 I think it's part and parcel of
21 what -- of the presentation of the case that
22 is not substantiated, the real practical

1 difficulty in asserting an addition that would
2 not be able to comply fully with the
3 regulations. So I would support the motion at
4 this time, but I will allow others to address
5 any of the other issues that are before us.

6 VICE CHAIR MILLER: I just would
7 state that I agree with your analysis with
8 respect to 2001.3. I don't know whether you
9 thought I disagreed.

10 CHAIRPERSON GRIFFIS: No, I
11 didn't.

12 VICE CHAIR MILLER: Okay.

13 CHAIRPERSON GRIFFIS: I just
14 wanted to clarify it. It's an interesting --
15 well, there it is. Anything else then? If
16 there's no further comments from the Board, I
17 would note that we do have a motion and it has
18 been seconded, so I would ask for all those in
19 favor of the motion to signify by saying aye.

20 ALL: Aye.

21 CHAIRPERSON GRIFFIS: And opposed?
22 Abstaining? Very well. Why don't we record

1 the vote?

2 MS. BAILEY: Mr. Chairman, the
3 vote is recorded as 5-0-0 to deny the
4 application. Mr. Etherly made the motion.
5 Mr. Jeffries second. Mr. Jeffries, you did
6 second, correct?

7 COMMISSIONER JEFFRIES: I
8 seconded.

9 MS. BAILEY: Second, thank you.
10 Mr. Griffis, Mr. Mann and Ms. Miller support
11 the motion. And that's a full order, Mr.
12 Chairman.

13 CHAIRPERSON GRIFFIS: Indeed.
14 Excellent. Is there any other business for
15 the Board today?

16 MS. BAILEY: Not that I'm aware
17 of, sir.

18 CHAIRPERSON GRIFFIS: Very well.
19 Thank you all very much. We appreciate it,
20 appreciate your time and everyone here today.
21 If there is no further business, let's
22 adjourn.

1 (Whereupon, the Public Hearing was
2 concluded at 5:07 p.m.)
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22