

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 13, 2015

+ + + + +

The Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:25 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
S. KATHRYN ALLEN, Vice-Chairperson
MARNIQUE HEATH, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
ALLISON MYERS, ESQ.

The transcript constitutes the minutes from the Public Hearing held on January 13, 2015.

NEAL R. GROSS

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

CONTENTS

<u>Application No. 18894</u>	3
Vote	7
<u>Application No. 18861</u>	7
Office of Planning	8
Vote	10
<u>Application No. 18893</u>	11
Office of Planning	12
Parties in Opposition	16
Applicant Rebuttal	25
Vote	36
<u>Application No. 18888</u>	37
Argument on First Motion	38
Argument on Second Motion	78
Board Decision	88
<u>Application No. 18898</u>	88
Office of Planning	93
Parties in Support	95
Parties in Opposition	102
Applicant Closing	112
Board Decision	117
Adjourn	117

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

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

(10:25 a.m.)

CHAIR JORDAN: Mr. Moy, would you please call 18894 please?

(Off record comments.)

Application No. 18894

MR. MOY: All right. To the witness table, Application No. 18894. This is the application of Mervin Richard and Judith Brodie. As advertised and publicly noticed, this is a request for a special exception under Section 223, not meeting the rear yard requirements, 404, and side yard requirements under Section 405. This is what has been advertised, Mr. Chairman.

CHAIR JORDAN: All right, thank you. Please identify yourselves please.

MR. RICHARD: I'm Mervin Richard, one of the home owners.

MS. BRODIE: Judith Brodie, home owner.

MR. CROSS: I'm Mark Cross with MJCI on behalf of the home owner.

MR. ENGEL: David Engel, Advisory Neighborhood Commissioner 3G-05.

CHAIR JORDAN: And who's for the Applicant?

MR. CROSS: I'm representing the Applicant, Mark Cross.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 CHAIR JORDAN: Okay. That's Cross did you say?

2 MR. CROSS: C-R-O-S-S.

3 CHAIR JORDAN: Oh Cross. Okay. Mr. Cross, it
4 appears that -- I don't know if you had a discussion with the
5 Office of Planning or anyone else, that this appears that it
6 only needs to relief from Section 404 and then 2001.3. Is that
7 your understanding?

8 MR. CROSS: It is.

9 CHAIR JORDAN: Okay. I know there was a request
10 for relief from 405 and then Section 199, the definitions,
11 which are not necessary. Let me turn to OP. Is that your
12 understanding too, Ms. Brown-Roberts, that --

13 MS. BROWN-ROBERTS: Good morning, Mr. Chairman.
14 Yes.

15 CHAIR JORDAN: Okay, very good. All right. So
16 then we'll deal with that issue. Does the Board have any
17 issues that they need to get drilled down with the Applicant
18 over?

19 In review of the documents that have been filed,
20 and we look at these things for hours before we come out here,
21 sometimes up to 12 hours of our own individual time, that the
22 documentation submitted on this file would support the request
23 for relief as is, and that the Board doesn't have any questions
24 that they need to ask you regarding this matter.

25 You have support from Office of Planning,

NEAL R. GROSS

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

1 Department of Transportation and the ANC on this. So you have
2 the opportunity to do a presentation to the Board if you think
3 it's necessary. But I'm saying it's not necessary, and the
4 only thing you can do is work yourself down.

5 (Laughter.)

6 CHAIR JORDAN: If you have to say something, and
7 then we say what, and then here we go. And we will take that
8 as you're waiving your part of the hearing, and we'll just move
9 on to the Office of Planning.

10 MR. CROSS: Okay.

11 MS. BROWN-ROBERTS: Thank you, Mr. Chairman, and
12 we stand on the record for recommendation of approval.

13 CHAIR JORDAN: Very good, thank you. Is there
14 any question the Board has of Office of Planning? Does the
15 Applicant have any questions of the Office of Planning? Okay.
16 Any questions of the Office of Planning or the ANC? No. Is
17 anyone here from the Department of Transportation for this
18 particular matter? Anyone here from the Department of
19 Transportation on this matter?

20 We do have a letter of no objection to the relief
21 being requested from the Department of Transportation, and
22 we do have a representative here from ANC 3 -- which ANC?

23 MR. ENGEL: 3G.

24 CHAIR JORDAN: 3G. I thought it was --

25 MR. ENGEL: ANC-4G, Mr. Chair.

NEAL R. GROSS

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

1 CHAIR JORDAN: Right. I thought that's what it
2 was. We do have the recommendation that was approved by a vote
3 of 7 to 0 in support. Is there anything you want to add to
4 that?

5 MR. ENGEL: No sir.

6 CHAIR JORDAN: Okay. Board, any questions of
7 ANC? Applicant, any questions of ANC? All right. Is there
8 anyone wishing to speak in support of the application? Anyone
9 wishing to speak in support? Anyone wishing to speak in
10 opposition? You two are here for -- it's your house. Okay,
11 got it. I was really missing it this morning. You can speak
12 against it if you want.

13 (Laughter.)

14 CHAIR JORDAN: All right. I did say anyone in
15 support, anyone in opposition. Going once, going twice, gone.
16 So then we will close the hearing based upon what's in the
17 record and what's been deduced here at this hearing, and I would
18 move that we grant the relief, the modified relief in Case
19 18894, that being relief from 404 and 2001.3.

20 VICE CHAIR ALLEN: Second.

21 CHAIR JORDAN: Motion made and second. Any
22 discussion?

23 (No response.)

24 CHAIR JORDAN: All those in favor aye?

25 (Chorus of ayes.)

NEAL R. GROSS

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

1 CHAIR JORDAN: Those opposed nay, and the motion
2 carries.

3 MR. MOY: Staff would record the vote as 4 to
4 0. This is on the motion of Chairman Jordan to approve the
5 amended relief, request for the amended relief. Second the
6 motion, Vice Chair Allen. Also in support Mr. Hood and Ms.
7 Heath. We have no other Board members present this morning.
8 The motion carries sir.

9 CHAIR JORDAN: Okay. Summaries please.

10 MR. MOY: Thank you.

11 MS. BRODIE: Thank you.

12 MR. CROSS: Thank you.

13 CHAIR JORDAN: Thank you. I appreciate it.
14 Let's call -- no, you know what? Let's call 18861 please.
15 Application No. 18861

16 MR. MOY: To the table would be Application No.
17 18861 of Justin and Margaret Kitsch. As advertised, and I
18 believe it may have been amended, but anyways this, as the Board
19 will recall, was continued from the November 18th hearing.

20 This is request for variances for from
21 non-occupancy, Section 403 and rear yard, Section 404,
22 requiring a rear deck addition.

23 CHAIR JORDAN: Yes. It's been modified.
24 Relief from a variance is a special exception, Mr. Moy.

25 MR. MOY: Yes, thank you.

NEAL R. GROSS

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

1 CHAIR JORDAN: Please identify yourselves.

2 MR. LAWRENCE: My name is Mark Lawrence,
3 architect of the owner.

4 MR. KITSCH: Justice Kitsch, Applicant.

5 CHAIR JORDAN: Okay. All right. This is a
6 matter which we've actually held a hearing on before, and we've
7 gone through and you went back and heard the discussion and
8 you've modified and amended your request for relief from a
9 variance to a special exception, and I think it's now ready
10 to proceed on.

11 I think -- yeah, I don't have any other questions
12 about it. Office of Planning has changed their
13 recommendation, based upon the modification. You've worked
14 this thing out. Board members, is there any questions you have
15 on this?

16 ZC CHAIR HOOD: And I'll just note that I have
17 reviewed the record. I'm not sure if I was here previously,
18 but I have -- I reviewed the case where the variance changed
19 from not supporting to being a supporter of the special
20 exception. I just want to put that on the record.

21 CHAIR JORDAN: Thank you. It was heard in
22 November. We actually had a hearing on it on November 18th,
23 2014.

24 ZC CHAIR HOOD: I just wasn't sure whether I was
25 here or not.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 CHAIR JORDAN: I appreciate that, I appreciate
2 it. So you have an opportunity to proceed on or, you know,
3 do a presentation. You've already done a presentation.
4 You've kind of cleaned up the act, and so I take it that we
5 can just move on. Is that right? Okay.

6 Good. Then we will turn to the Office of
7 Planning and see if there's -- Mr. Gyor, if there's anything
8 else you have first?

9 MR. GYOR: Good morning Mr. Chairman and members
10 of the Board. Stephen Gyor with the Office of Planning. We
11 support the modified application and we'll stand on the
12 record. Thank you.

13 CHAIR JORDAN: Good, thank you. All right. Is
14 there anyone here from ANC-6? ANC-6C has previously voted in
15 support of this application, and the Department of
16 Transportation has submitted a letter of no objection. We
17 also had three letters of neighbors in support.

18 So is there anyone here wishing to speak in
19 support of this application? Anyone wishing to speak in
20 support?

21 (No response.)

22 CHAIR JORDAN: Anyone wishing to speak in
23 opposition? Anyone in opposition?

24 (No response.)

25 CHAIR JORDAN: We will close the hearing based

NEAL R. GROSS

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

1 upon the record that's before the Board, and I would move that
2 we grant the amended relief under 18861 for the special
3 exception.

4 VICE CHAIR ALLEN: Second.

5 CHAIR JORDAN: Motion made and second. Any
6 discussion?

7 (No response.)

8 CHAIR JORDAN: All those in favor of the motion,
9 signify by saying aye?

10 (Chorus of ayes.)

11 CHAIR JORDAN: Those opposed nay. The motion
12 carries. Mr. Moy.

13 MR. MOY: Staff would record the vote as 4 to
14 0. This is on a motion by Chairman Jordan to approve the
15 amended relief for a special exception under Section 223, not
16 meeting the yard occupancy in the rear yard. Did I say that
17 right?

18 Also in support or rather supporting the motion,
19 seconding the motion, Vice Chairperson Allen. Also in support
20 Mr. Hood and Ms. Heath. A Board member not present. Motion
21 carries sir.

22 CHAIR JORDAN: All right. Summary please.

23 MR. MOY: Thank you.

24 CHAIR JORDAN: Let's do the first case please,
25 18893.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Application No. 18893

2 MR. MOY: Application No. 18893 of Ridge Lofts,
3 LLC. This is a request for a variance relief from the parking
4 requirements under Section 2101.1, as advertised.

5 CHAIR JORDAN: Okay. Please introduce
6 yourselves again for me please.

7 MS. REATIG: Hello. I'm Noonie Reatig from
8 Suzanne Reatig Architecture, representing Ridge Lofts, LLC.

9 MS. BARRINEAU: And I'm Erin Barrineau from
10 Suzanne Reatig Architecture.

11 CHAIR JORDAN: All right, okay. It's another
12 which I think, based upon the circumstances, which has been
13 already pled to the Board in the documentation, that there's
14 probably enough here to grant the relief. The Board takes
15 very, very seriously granting parking relief.

16 But I think this is one where the fact that it
17 doesn't have alley access, and you can't get curb cuts and
18 etcetera, and then it's so close to the Metro, that it's one
19 in which I can stand on what's already been filed. I don't
20 know if other Board members have questions, and it might be
21 the better way to do it, as opposed to you doing a full
22 presentation. Questions anyone?

23 (No response.)

24 CHAIR JORDAN: Wow, it must really be relief,
25 because I knew it couldn't get past you Kathryn.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 VICE CHAIR ALLEN: I'm sorry. Can you just --
2 I know it's stated that there's not support for new curb cuts.
3 But can you just talk to that for a second? Never mind.

4 (Off record comments.)

5 CHAIR JORDAN: Yeah, okay. So you have the
6 opportunity to do a presentation if you wish. I think we're
7 already at the point where you need to be for getting the relief
8 that's necessary.

9 MS. REATIG: Thank you, Chairman Jordan. I'll
10 be happy to answer any questions.

11 CHAIR JORDAN: And you'll also have the
12 opportunity to come back if anything comes up in the interim
13 for rebuttal. All right. So then let's move to Mr. Jessick
14 on the Office of Planning.

15 MR. JESSICK: Thank you Mr. Chairman, members of
16 the Board. My name is Matt Jessick. The Office of Planning
17 supports the application and rests on the record. I'd be happy
18 to take any questions.

19 CHAIR JORDAN: Board, any questions of Planning?

20 (No response.)

21 CHAIR JORDAN: The Applicant, any questions of
22 Planning?

23 (No response.)

24 CHAIR JORDAN: All right. We have a letter from
25 the Department of Transportation. There's no objection to the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 requested relief. Oh, I don't -- do we have anything from
2 ANC-6E? Did we -- okay. I'll check that. Do we?

3 MR. MOY: Yes, we do. Sorry. Yes, we do.

4 CHAIR JORDAN: Okay. I didn't see it when I went
5 through the record.

6 MR. MOY: It is -- it was submitted yesterday,
7 Mr. Chairman. I have a copy here somewhere.

8 CHAIR JORDAN: Ahh, that's the issue.

9 MR. MOY: And I think we were signed by Chairman
10 Padro.

11 CHAIR JORDAN: And while you're checking also,
12 did we get a letter of authorization? You filed a letter of
13 authorization in this case?

14 MS. REATIG: Yes, yesterday.

15 CHAIR JORDAN: Ah. See, let me tell you. These
16 things need to get in, you know, well in advance of these
17 hearings. We spend a lot of time going through these cases,
18 you know. Like I said before, some time up to 12-14 hours
19 individually, and I go through these things well in advance.

20 So to have the documentation is important, and
21 one thing this Board has not been trying to do is to get things
22 last minute. We used to get things, you know, 15-16 hundred
23 pages last minute, which can change the whole complexion of
24 what has been offered to the Board, and it's just not fair to
25 the citizens or to the Applicant to do that.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 So but the letter of authorization, we'll accept
2 that, and the ANC is saying what? Let me see what the bottom
3 line is for this.

4 (Off record comments.)

5 CHAIR JORDAN: Yeah. See, that's the other
6 thing. We just got this ANC letter yesterday, and you've got
7 to kind of read it over again to find out where they are. But
8 this letter's been out since October 11th, 2014. Did you have
9 a copy of the letter?

10 MS. REATIG: No, I did not.

11 CHAIR JORDAN: Okay, let me read this. "At the
12 Commission's meeting, duly noticed and with the case listed
13 in the notice, with a quorum present, four out of seven
14 Commissioners required to be in attendance to achieve a quorum,
15 ANC-6E voted 4 in favor, 2 opposed and no abstentions to oppose
16 the request for zoning relief at 448 Ridge, to allow
17 construction of a four family flat, okay, and that said
18 opposition be communicated in writing to the Board of Zoning
19 Adjustment.

20 "In consideration, the result of questioning the
21 Applicant's representative presented, the Commission
22 determined that the lot in question are located in a
23 single-member district 6E. The four lots are zoned R-4 and
24 are vacant.

25 "The applicant proposes to construct" -- that

NEAL R. GROSS

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

1 doesn't help me. All right. So the ANC has voted in
2 opposition to this. Is there anybody here from ANC-6E on this
3 matter? Yes, please come forward, uh-huh. Okay, good.
4 Welcome back, and give us your name again please?

5 MS. NIGRO: Rachelle Nigro. I'm the Advisory
6 Neighborhood Commissioner for ANC-6E04, which is the single
7 member district where this project is.

8 CHAIR JORDAN: Okay, and are you to speak for the
9 -- are you authorized to speak for the full ANC, or you're just
10 speaking for your single member district.

11 MS. NIGRO: Speaking for the single member
12 district.

13 CHAIR JORDAN: Okay, that's fine.

14 MS. NIGRO: But as you know, we didn't oppose --

15 CHAIR JORDAN: And I did not see in the letter
16 that they were designating you to speak for the Commission.
17 That's the only reason why I asked that.

18 MS. NIGRO: Correct, correct.

19 CHAIR JORDAN: Okay. But you -- well, let me do
20 this then. All right. So we have that. Now we're at a point
21 of asking anyone who wants to speak in support of this
22 application to come forward. Anyone speaking in support?

23 (No response.)

24 CHAIR JORDAN: Anyone to speak in opposition? Okay.
25 All right. We have two oppositions. Is that where we're at?

NEAL R. GROSS

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

1 Okay, come up. Okay, Please proceed.

2 MS. NIGRO: I just want to reiterate that the
3 Commission voted not to support the request for a variance,
4 and just to speak as a single member district representative,
5 when I became Commissioner over four years ago now, you know,
6 I had grandiose ideas that I'd be worried about education and
7 crime and all this type stuff.

8 My number one concern for our area is always
9 parking. I literally talk about it every day. I get emails
10 every day about it. I'm stopped on the street about it every
11 day, and I'm called about it every single day, for more than
12 four years. It is my number one concern for our area.

13 Now I understand that a lot of projects in that
14 area, they've been smaller, lots of land. Clearly, there has
15 been room for cars, etcetera. This project is different. It
16 is a larger space. There are clearly room for some parking
17 spaces.

18 And as my constituents say with every new project
19 that comes up, where's the parking? Where's the parking,
20 where's the parking? You must support parking. So hence,
21 this is why I'm here to say, you know, for your support, that
22 this is what my constituents want.

23 With any larger project certainly, they would
24 like, you know, parking to be available. More than one car
25 helps, you have no idea. It's like it's literally off the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 chart in our area.

2 CHAIR JORDAN: Yeah, and we take very, very
3 seriously. Like I said in my little preamble, that we look
4 at parking hard. However, there's some situations here that
5 allow for this, and while I have you here, which gives me some
6 further concern about just getting the ANC letter, let me read
7 the last paragraph of the ANC letter.

8 "In considering the case, and as a result" -- and
9 I know you're not representing the full ANC -- "In considering
10 the case, and as a result of questioning the applicant's
11 representative present at said meeting, and at prior Zoning
12 and Planning Committee meetings, the Commission determined the
13 following:

14 "The lot in question are located in Single Member
15 District 6E04, and located in the Shaw Historic District. The
16 four lots are zoned R4 and are vacant. The applicant proposes
17 to construct four two unit flats on four lots for a total of
18 eight units.

19 "The lots have no alley access. As the lots are
20 located in a historic district, curb cuts will not be approved
21 by the D.C. Historic Preservation Office, and D.C. Historic
22 Preservation Review Board. It is therefore impossible for the
23 lots to be developed if the parking requirement is not waived."

24 "This is the finding of the ANC. In order for
25 this development to take place, an area variance under 11 DCMR

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 3101 from a parking requirement is necessary. 6. The ANC
2 Zoning and Planning Committee met and recommended that the
3 Commission support the granting of the parking relief, noting
4 that there is strenuous opposition to curb cuts at the location
5 in question.

6 "The Commission says" -- then it says number
7 seven, "The Commission opposes the grant of the requested
8 relief."

9 MS. NIGRO: The only way I can speak to that, I
10 did not write that, and as you stated, it doesn't really make
11 a lot of sense. It's not clear.

12 CHAIR JORDAN: Oh, I didn't say that.

13 MS. NIGRO: Okay. Well, I can say that. I can
14 say that because I know Commissioner Padro. But that said,
15 that the voting in the end did speak for itself, that there
16 was opposition for support. And I can't relate more.

17 CHAIR JORDAN: I understand, I understand.

18 MS. NIGRO: This is why I'm here. They say you
19 must go speak for us. This is all of my people I hear
20 constantly in my ear literally, and some of them really scream
21 about it.

22 CHAIR JORDAN: And we're hard on parking, and
23 certainly like I said, if Ms. Allen certainly agrees and she's
24 as tough as nails regarding parking, then we all are. But this
25 is one which, as I said earlier, might provide for it. We

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 appreciate it. Any questions Board?

2 (No response.)

3 CHAIR JORDAN: Thank you. Applicant any questions of

4 --

5 (No response.)

6 CHAIR JORDAN: No, all right. Mr. Kendrick, please.

7 MR. KENDRICK: I've prepared a written
8 statement. I can approach you and give you my text.

9 CHAIR JORDAN: Yes. Please give it to the
10 Secretary of the Board please. Okay. Please be seated.
11 We're giving you -- how much time do you think you need, three
12 minutes?

13 MR. KENDRICK: I have -- I mean this is like one
14 page, but I have a couple of questions that I'd like to probably
15 direct to the Office of Planning.

16 CHAIR JORDAN: You can't do that. You can read
17 your statement.

18 MR. KENDRICK: Okay. Thank you, Mr. Chairman,
19 for the opportunity to speak before you today at the Board of
20 Zoning Adjustments. It's been a long time since I've done
21 this, so I'm a little nervous today.

22 CHAIR JORDAN: Relax, we don't bite. Take your
23 time. Everybody's in the same boat.

24 MR. KENDRICK: Okay. You already shouted me
25 down one time today.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 CHAIR JORDAN: Oh no, no, no.

2 MR. KENDRICK: Okay. I'm here today to --

3 CHAIR JORDAN: Was it a pleasant encounter?

4 (Simultaneous speaking.)

5 MR. KENDRICK: I'm here today to speak in
6 opposition to the battle before you. I live at 444 Ridge
7 Street, which is directly next door to this project. I'm the
8 past president of the Mount Vernon Square Neighborhood
9 Association, which doesn't seem to be active anyone, and I've
10 been in the neighborhood for about 22 years.

11 I've advocated for planning and for development
12 in our neighborhood. So I'm not anti-development. I'm not
13 opposed to all development projects. To my comments, the
14 Applicant proposes to build eight unit houses -- can you still
15 hear me?

16 CHAIR JORDAN: Yes, we do.

17 MR. KENDRICK: Eight unit houses on four lots.
18 Based on the proposed plan, the Applicant would need four
19 parking spaces in order to comply with the parking requirements
20 outlined in Section 2101.1.

21 Realistically, four parking spaces for eight two
22 bedroom units won't be sufficient to meet the true demand. If
23 history is any indicator, if this project is completed as
24 planned, at the minimum eight cars will be added to an already
25 overcrowded street.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 460 through 462 Ridge Street, which is also down
2 the block from this location, is currently under construction.
3 The parking requirements there were also waived for that
4 project, and it will have approximately six units after it's
5 completed. It's already under construction.

6 This project further complicates the parking
7 situation on Ridge Street. I'm sure the Board reviews a lot
8 of project requests for parking variances. But what sets our
9 neighborhood apart, the Mount Vernon Square Neighborhood
10 Association, is that it's home to the Washington Convention
11 Center, as we all know.

12 And as the city markets the Convention Center as
13 the third largest convention center on the East Coast, and it's
14 also the eighth largest convention center in the country, and
15 to add to that, it has no parking.

16 Even though it sits atop the Metrorail,
17 convention goers still park in our neighborhood, for the health
18 fair that's very popular, the auto show, the defense contractor
19 fair, inaugural balls or whatever large show happens to be in
20 town.

21 Most of the neighborhoods where parking
22 variances might easily be approved don't face such repeated
23 inconveniences. I urge you not to add to our misery. Deny
24 this parking variance. The development site under
25 consideration is adjacent to a vacant lot, which undoubtedly

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 will be developed at some time.

2 This would be a great opportunity to day to set
3 a precedent for developing single lots with single structures.
4 Once again, I ask that you deny this variance. The record
5 should reflect that the ANC voted to oppose the variance, after
6 heeding the concerns of our residents.

7 If the scope of the project is reduced to four
8 units on four lots, the parking pressures on the neighborhood
9 would not be as great, and would address most of the concerns
10 about the project. I'll take any questions you might have.

11 CHAIR JORDAN: Board, any questions?

12 ZC CHAIR HOOD: So Mr. Kendrick, your assumption
13 is that each resident will have a vehicle. That's what your
14 assumption is your testimony?

15 MR. KENDRICK: Yeah. I mean to think that the
16 eight units that will actually be built, and I think they're
17 two bedrooms each, you know, the probability is probably going
18 to say that most people who usually move into our neighborhood,
19 they bring their cars with them. History hasn't shown us that
20 they automatically ditch their cars.

21 ZC CHAIR HOOD: Okay. So if we have eight units,
22 and what you're saying if you have eight units and four cars,
23 that's less of an impact. I mean that's common sense. But
24 suppose they don't have any cars, and there's no way you can
25 measure that, because I'm sure you're not going to knock on

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 doors and see who has a car and who doesn't have a car.

2 Mr. Chairman, let me go back to the ANC
3 Commissioner. I'm trying to understand this, because really
4 for granting the relief, Vice Chair, it looks as though the
5 letter, depending upon -- and Mr. Padro is seasoned. I know
6 Mr. Padro. It looks as though the letter makes the case.

7 MS. NIGRO: It might make the case in terms of
8 certain Commissioners, that voted for the project or for the
9 relief. But I can state that, and I am really apologetic that
10 Alex wrote the letter that way, because clearly it probably
11 should not have been written that way, because there is
12 absolutely opposition to this.

13 ZC CHAIR HOOD: These are your constituents,
14 though. This is --

15 MS. NIGRO: Right.

16 ZC CHAIR HOOD: Did you meet with your
17 constituents?

18 MS. NIGRO: Oh, I met with the constituents all
19 the time. I am known to be on the street. I talked to them
20 on the phone. I use social media, and I would like to just
21 -- as Tip referred to, when people come in the neighborhood,
22 you know, the mantra is everyone's walking, riding their bikes,
23 etcetera, etcetera. That is absolutely not true. Cars are
24 still being brought in.

25 ZC CHAIR HOOD: I understand.

NEAL R. GROSS

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

1 MS. NIGRO: And then as far as the Metro goes,
2 we are the Metro's parking lot. I have people parking on
3 sidewalks in my area. It is that bad sometimes.

4 ZC CHAIR HOOD: So the paid lots down there where
5 people park, you all don't object to people coming in with cars
6 and park in those lots?

7 MS. NIGRO: But if you're coming to the
8 Convention Center for XYZ food show, you're driving around,
9 you're going to look for the free parking spot and that is in
10 6E04.

11 ZC CHAIR HOOD: But my question is, you don't
12 object to people parking in the paid lots?

13 MS. NIGRO: Correct.

14 ZC CHAIR HOOD: Okay, because that's what I did
15 when I went to the ball. I just wanted to make sure.

16 MS. NIGRO: And we commend you for that.

17 ZC CHAIR HOOD: Thank you. Okay, thank you Mr.
18 Chairman.

19 CHAIR JORDAN: Yeah, go ahead.

20 VICE CHAIR ALLEN: Thank you for your testimony.
21 I have a question for the Applicant. Is it possible to reduce
22 the number --

23 CHAIR JORDAN: Let's go back to that when we get
24 to rebuttal.

25 VICE CHAIR ALLEN: Oh, okay.

NEAL R. GROSS

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

1 CHAIR JORDAN: Yeah. I thought you were going
2 to talk to -- but let me ask Mr. Kendricks a question. Is there
3 residential parking permits allowed in that area?

4 MR. KENDRICK: Yeah, I believe they are.

5 CHAIR JORDAN: Okay. Are there any parking lots
6 in short walking distance, for commercial parking lots?

7 MR. KENDRICK: I think that there's one on K
8 Street. That's the main one. That's probably the one that
9 you used. But on Ridge Street or M Street, there's nothing
10 around there commercially.

11 CHAIR JORDAN: Okay, okay. All right. I
12 appreciate that. All right. So any other questions for Mr.
13 Kendricks? Board. Then let's go to the Applicant for
14 rebuttal, and I certainly have some questions.

15 ZC CHAIR HOOD: I do have a question to the Vice
16 Chair again, I'm just curious. I'm just curious. Mr. Padro,
17 was he in favor? Where was he?

18 MS. NIGRO: Mr. Padro is for support of the
19 variance.

20 ZC CHAIR HOOD: Okay, thank you.

21 MS. NIGRO: He was one of the two that voted. So
22 it's clear how he wrote the letter.

23 CHAIR JORDAN: But he's a very diligent guy, and
24 he really works hard in regard to looking at these things.
25 Going to the Applicant in rebuttal, let me ask a couple of

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 things. One, these are flats?

2 MS. REATIG: Correct.

3 CHAIR JORDAN: And hearing the issues and
4 concerns, but I really do see the issue about the uniqueness
5 of this property and practical difficulty. One thing that I'm
6 thinking about and I'm sorry, did I cut you have to -- what
7 I'm thinking about is a couple of things, what we've done.

8 We're very serious about parking, the effect upon
9 the neighborhoods. But we also know we have four vacant lots
10 in this community too that can serve another purpose, etcetera,
11 to be built as flats. Let me tell you what I'm thinking, and
12 I want to hear your concern about it.

13 One, that this property would be listed, that it
14 cannot receive residential parking permits for any of the
15 people who may move in, live in this facility is one. Two,
16 I'm thinking that this should be -- by lease, this should be
17 a no car building. These should be no car properties. Let
18 me get your feedback on those.

19 MS. REATIG: Okay. First of all, I'd like to
20 explain the context, that it's four separate, four lots, and
21 originally we wanted to develop these lots by right completely,
22 and we first met with Historic Preservation to talk to them
23 about the pre-design, and see what was possible. We met with
24 Brendan Meyer (phonetic) from Historic Preservation, and he
25 -- first thing he told us was that no curb cuts would be

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 approved.

2 We've been working with him on the design, to have
3 something that would be compatible for the street. Each one
4 of these lots, according to zoning, only allows for one flat
5 per lot. So that's two units, and in order to satisfy the
6 parking requirement, the only way to satisfy it would be to
7 have one parking space per lot entered from the sidewalk, from
8 the Ridge Street front.

9 If that was the case, then four parking spaces
10 would be taking away from Ridge Street. Something that I did
11 want to mention --

12 CHAIR JORDAN: Excuse us. Actually, we are
13 listening, so -- we're listening.

14 MS. REATIG: Okay. So the previous life of the
15 site, there was a community service center there, and there
16 was a BZA case in 2004 that was approved and lasted for ten
17 years. That was prior to when we acquired the site. There
18 was a daycare community center there, which received parking
19 relief and was found to meet all the requirements to receive
20 parking relief.

21 CHAIR JORDAN: But let me -- I understand all
22 of that. My question was very pointed. I wanted your
23 feedback on the fact that if we may do this, I'm looking at
24 how do we litigate any impact upon the community? I think the
25 -- you're going back to the original argument, and I am with

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 you on that. Others may not be.

2 MS. REATIG: Okay.

3 CHAIR JORDAN: And I think even some of the ANC
4 is on that too. But there is uniqueness and the practical
5 difficulty here. So my questions to you were to look at some
6 aspect, if we were to go forward, how we mitigate it. The way
7 we've done it in the past on some properties is that the --

8 Either we can issue it by condition, or we
9 certainly want your input, and I'm thinking that we would make
10 these four lots. These four properties would be -- could not
11 receive residential parking permit and we would put that in
12 the order. The other side of it is that you would put in the
13 lease of these -- put in the lease of the tenants that they
14 could not have cars.

15 MS. REATIG: We hope that that is not the case.

16 CHAIR JORDAN: Well, why wouldn't you?

17 MS. REATIG: Because this site is different, in
18 the sense that it's not one site, it's not one big project,
19 but it's four individual houses and --

20 CHAIR JORDAN: That potentially impact the
21 neighborhood.

22 MS. REATIG: Yes and --

23 CHAIR JORDAN: And part of your argument in
24 support of this, in saying the mitigation of the issue is that
25 you're in a transportation-enriched area.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MS. REATIG: Correct.

2 CHAIR JORDAN: So why should it matter?

3 MS. REATIG: One second.

4 CHAIR JORDAN: You could go for a home run, or
5 you can go for a triple or double is what I'm saying to you.
6 I don't know if you watch baseball or in terms of football.
7 You can go for a touchdown on the one pass, or you can try to
8 get a first down.

9 ZC CHAIR HOOD: Mr. Chairman, can I just -- let
10 me just say this, and you can finish your case. But I will
11 tell you in your explanation, I would be in more support of
12 the latter, because the first statement that we mentioned about
13 RPP, and it's something we just dealt with them last night.

14 Unfortunately, Ridge Road is doable. It's not
15 enforceable by DDOT. So the latter part being the leases is
16 where we really should be aiming.

17 CHAIR JORDAN: And what we've -- and we also have
18 -- with DMV, we've had the conversation. We actually had these
19 things running with the land. So it would probably be a
20 combination of both if we do.

21 ZC CHAIR HOOD: I just know -- trust me. This
22 is tickler for me. I just know that DDOT and the city does
23 not enforce the first one that you mentioned about -- and trust
24 me. So I mean we can sit here and put it down. But guess what?
25 It won't work.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 CHAIR JORDAN: Does not, okay.

2 ZC CHAIR HOOD: It doesn't work.

3 MS. REATIG: I'd like to please add that this
4 street does not have a residential parking program in place,
5 and if there is a parking issue, we're very familiar with the
6 street. During the week, there's no issue finding parking
7 spaces. There's lots of empty spaces.

8 When there is an issue, it's during the weekend,
9 when there is events at the Convention Center or on Sundays,
10 when people come from out of town to attend many of the churches
11 in the neighborhood. We would argue that the parking issues
12 are not because of the residents in place.

13 CHAIR JORDAN: Okay. I'm confused. I thought
14 I asked a question and I think Mr. Kendrick, you said there
15 was RPP in the neighborhood. Am I wrong? Yeah.

16 MS. NIGRO: Technically we have --

17 MR. MOY: Make sure your mic is on please.

18 MS. NIGRO: Currently, we only have Zone 2, Zone
19 6. Right now we have -- in the DDOT system, we have four blocks
20 that are up for residential parking permits, and it's part of
21 the process with the DDOT. It's part of their examination
22 process.

23 So it has not -- it's far from approval, but how
24 we got to that point is that my constituents were so utterly
25 angry about parking that literally four blocks went ahead and

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 ran through the neighborhood with their petitions, and it's
2 sitting with DDOT currently, but not at approval status yet
3 but pending.

4 And literally, as I said, it's every day with me.
5 So as far as enforcement, with any parking I take care of that
6 for my constituents on a daily basis.

7 CHAIR JORDAN: Okay, thank you.

8 MR. KENDRICK: Can I answer that, Mr. Chairman
9 or I don't know how appropriate --

10 CHAIR JORDAN: Go ahead, go ahead.

11 MR. KENDRICK: I just wanted to say that I
12 understand it is -- this is something that we've faced with
13 other projects, because like she said, it is landlocked, and
14 so it creates certain difficulties. You can't do the curb cuts
15 because it's an historic district. But if we were allowed to
16 do curb cuts, the massing and the density on the site is what's
17 really the concern.

18 If you were able to do the curb cuts, you wouldn't
19 be able to do eight units on the sites, because you would have
20 to put the cars there. That's one of the reasons why I like
21 the idea of four units on four lots, because it brings down
22 the density and addresses some of our concerns about parking.

23 CHAIR JORDAN: Okay. Board, any other
24 questions? Anything else on rebuttal?

25 MS. REATIG: Yes. I would just like to add one

NEAL R. GROSS

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

1 more thing. When the site was acquired in 2013, there were
2 four dedicated on street parking spaces used with the community
3 service center, and they were immediately returned back to the
4 street.

5 CHAIR JORDAN: Okay, all right. Any other
6 questions Board? Anyone? Then we will close the hearing,
7 based upon what's been provided here today. Is the Board ready
8 to deliberate on this case? Okay. This is one where I think
9 there has been a showing of uniqueness, by all the things we
10 said, and the practical difficulty, clearly this is
11 land-locked property.

12 It probably can't allow for curb cuts. It's in
13 a vacant lot area, and there's really some need, as we've gotten
14 from Office of Planning, which we certainly give great weight
15 to, a need for development and it will support the community.

16 However, where this case might fall down on is
17 the impact upon the community. We've heard tons of evidence
18 in that regard about the impact of parking regarding this case,
19 and we have the ANC letter, which has voted in opposition,
20 saying there's going to be some impact to the community.

21 However, as far as giving great weight to the ANC
22 letter we will do so. But the rebuttable portion of that, I
23 think the letter contains in and of itself the portion about
24 why relief should be granted.

25 But I think that, based upon the argument of the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Applicant in its submissions, that this is an area which
2 doesn't encourage -- there's no need really for cars, because
3 it's so transportation-enriched, that they're so near the
4 Metro and all these other kind of things, that if we were to
5 grant this, that we would require the condition of this
6 building, that the lease be maintained and that a covenant be
7 placed to run with the land, that there can be no cars at this
8 facility by any of the tenants.

9 That would be the way I would -- if we were to
10 go forward with it, that I would offer the only way that I could
11 see it happen.

12 ZC CHAIR HOOD: I would concur, Mr. Chairman, and
13 I think that's how we really achieve and balance some of the
14 issues that are taken here, because you know, there's a tipping
15 point in this area from what we've heard from the testimony.
16 Even I know how the letter was written.

17 So if I wanted to write a letter and I didn't have
18 the votes, I might write it like that too. But I will tell
19 you that I think the tipping point is there. This community,
20 as the Vice Chair has mentioned, has talked to her constituents
21 who are most impacted, and I think it's our due diligence to
22 make sure we soften the load and not just keep piling on. So
23 I would concur with your way of moving forward, Mr. Chairman.

24 CHAIR JORDAN: Any other -- Ms. Allen.

25 VICE CHAIR ALLEN: I do agree with my colleagues.

NEAL R. GROSS

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

1 However, and if we vote to go forward or accept the application,
2 the obviously that would be acceptable. My concern has been
3 and continues to be, and is especially in this case when we
4 have an ANC, we have neighbors that are concerned.

5 We have a neighborhood that is, I think, past the
6 tipping point, and I personally think it's -- I cannot, in good
7 conscience, vote in support of this project, where there is
8 such opposition and validly so. So I'm glad to hear that
9 there's going to be an attempt to mitigate the issue if it's
10 voted by my colleagues, but I personally cannot support it.

11 CHAIR JORDAN: Yes.

12 MEMBER HEATH: I'll just add that I am tending
13 to be in support of this, with the condition that no parking
14 -- no cars are allowed by any of the tenants as a part of the
15 lease, because while I completely respect the arguments of the
16 neighborhood, and I get that this is a very vehicle dense and
17 transportation rich neighborhood, I feel like this is our way
18 of mitigating the issue, and I feel like we've satisfied the
19 ANC and the community's concerns.

20 I would hope that the community would support
21 development of these four sites, and wouldn't want to see the
22 four sites undeveloped and continue to be vacant land. So my
23 feeling is that we are meeting the community's request by
24 stipulating that there can't be any vehicles within the
25 tenant's leases.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 CHAIR JORDAN: Any other discussion? Then I
2 would move that we grant the relief requested in 18893, with
3 the condition that the -- on the four properties or the four
4 lots one, that the following condition should take place: That
5 the lease of all tenants must contain a provision to not allow
6 -- that they cannot have cars and be at the property, cannot
7 have cars, period.

8 Two, that a covenant should be filed to run with
9 the land, that the properties are not eligible to have cars,
10 and that they also have no RPP. Now that's -- if ever it gets
11 enforced, if it ever gets to that point, then it's already
12 there, Mr. Hood. That's the only reason why I'll put it there.

13 ZC CHAIR HOOD: Yeah, that's fine.

14 CHAIR JORDAN: That would be my motion.

15 ZC CHAIR HOOD: I'll second it.

16 CHAIR JORDAN: Motion made and seconded. All
17 those in favor of the motion, aye?

18 (Chorus of ayes.)

19 CHAIR JORDAN: Those opposed nay.

20 VICE CHAIR ALLEN: Nay.

21 CHAIR JORDAN: The motion carries. Mr. Moy.

22 MR. MOY: Staff would record the vote as 3 to
23 0, or rather 3 to 1. This is on the motion of Chairman Jordan
24 to approve the application for the relief requested, with the
25 two conditions as cited by the Chairman. Also seconding the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 motion Mr. Hood. Also support Ms. Heath, and we have Vice
2 Chair Allen opposed to the motion, and we have no member
3 present. So the motion carries, Mr. Chairman, 3 to 1.

4 CHAIR JORDAN: Very good, and we thank you all.
5 I appreciate it. Thank you. We're going to take a five minute
6 break and then we'll come back.

7 (Whereupon, the above-entitled matter went off
8 the record at 10:54 a.m. and resumed at 10:55 a.m.)

9 CHAIR JORDAN: Can we take 18888 next please?
10 Application No. 18888

11 MR. MOY: Yes sir. To the witness table,
12 representatives to Appeal No. 18888 of Adams Morgan for
13 Reasonable Development. This is an appeal of the Zoning
14 Administrator's decision to issue Building Permit No. B as in
15 Bravo 1309151, that allows mixed use residential building with
16 ground floor retail in the C2B district, at 1700 Columbia Road,
17 N.W.

18 CHAIR JORDAN: Okay. All right, please
19 identify yourselves.

20 MR. THOMAS: Make sure it is on, that's right.
21 Mr. Chairman and members of the Board, I'm Charles Thomas. I'm
22 the interim general counsel for the Department of Consumer and
23 Regulatory Affairs. Just taking this moment to bring to the
24 Board's attention that we have, in addition to Zoning
25 litigation staff, attorney Max Tondro, and he will be

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 presenting the government's case from today and onward to the
2 Board.

3 CHAIR JORDAN: Okay.

4 MR. LeGRANT: Good morning. I'm Matthew
5 LeGrant. I'm the administrator of DCRA.

6 MR. TONDRO: Maximilian Tondro, Assistant
7 General Counsel, DCRA.

8 CHAIR JORDAN: Tondro?

9 MR. TONDRO: Tondro.

10 CHAIR JORDAN: Okay.

11 MS. RODDY: Good morning. My name is Christine
12 Roddy, and I'm with Goulston and Storrs, representing the
13 property owner.

14 CHAIR JORDAN: Yes, and next we have?

15 MR. OTTEN: Excuse me, Chair. My name is Chris
16 Otten. I am the co-convener of Adams Morgan for Reasonable
17 Development.

18 CHAIR JORDAN: All right, thank you. We have
19 before us on this matter two motions. One is -- well, two
20 motions to dismiss. One's a motion to dismiss of
21 untimeliness. The other is before us on an issue of
22 substantive law, basically taken as a summary kind of judgment
23 to kind of move forward with this, to dismiss this matter as
24 I guess basic argument of law, that the requirement, as set
25 forth by the -- what the Applicant has alleged, is not correct.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 So I'm going to first -- I want to first handle
2 these motions. The motion for untimeliness is the argument
3 that this is outside of the 60-day window to file an appeal,
4 that the argument is that the Applicant knew or should have
5 known that the permit was approved on July 21st, 2014. That's
6 correct? Isn't that what the motion simply says?

7 MS. RODDY: Correct, that as of July 14th, Zoning
8 had signed off on the permit.

9 CHAIR JORDAN: Right, and there's supporting
10 documentation that based upon some emails from Mr. Otten and
11 others, and a shot of the DCRA system, the PIVS system, that
12 that exactly was correct. It actually was -- I think it was
13 approved on the 14th of July, if I'm not mistaken. Ms. Otten,
14 what is your response to that?

15 MR. OTTEN: Thank you, Chair. This permit was
16 approved by DCRA, which is what we're appealing on July 24th,
17 2014. As you --

18 CHAIR JORDAN: On July 24th, did you see that --
19 you're familiar with the July 14th issue?

20 MR. OTTEN: I am not familiar with that date.
21 All I know is that we're appealing the issuance of the building
22 permit.

23 CHAIR JORDAN: Yeah, but I'm asking you to deal
24 with the motion to dismiss on timeliness.

25 MR. OTTEN: That's correct.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 CHAIR JORDAN: Okay.

2 MR. OTTEN: We're appealing the building permit
3 issuance, which is what we're allowed to appeal, and that was
4 issued July 24th. We were not made aware of that issuance
5 until July 26th.

6 CHAIR JORDAN: And what are you -- what on the
7 building permit are you challenging? Are you challenging the
8 zoning issue on it or some other aspect of the building permit?

9 MR. OTTEN: Several issues. But we're
10 appealing the issuance of the building permit.

11 CHAIR JORDAN: I'm asking -- okay. But what --

12 MR. OTTEN: We believe the building permit was
13 incorrectly issued.

14 CHAIR JORDAN: And what do you believe was -- for
15 the sake of what comes within the jurisdiction of this Board,
16 what do you believe was improper in the issuing of the building
17 permit?

18 MR. OTTEN: We believe that this proposed
19 construction contravenes zoning regulations with regards to
20 the rear yard and to the rooftop structure.

21 CHAIR JORDAN: So your issue is a zoning issue?

22 MR. OTTEN: That's why I'm here.

23 CHAIR JORDAN: And the zoning was approved, the
24 allegations that zoning was approved July 14th, 2014?

25 MR. OTTEN: I don't know what was approved July

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 14th, 2014. All I know is the building permit --

2 CHAIR JORDAN: As you sit here -- let me ask you.
3 As you sit here today, you don't know what was approved July
4 14th?

5 MR. OTTEN: I know what the zoning regs allow us
6 to do as petitioners, and that is to appeal the issuance of
7 a building permit, not a subset of DCRA's disciplines.

8 CHAIR JORDAN: Well, the decisions of the Zoning
9 Administrator at any shape, form or fashion can be challenged.
10 It can be either by -- we've had many, many cases here, and
11 the cases are law, that it's a decision, a definitive decision
12 by the Zoning Administrator, that being sometimes in terms of
13 an email, sometimes in terms of a letter, and sometimes in
14 regards to permits.

15 So the argument by the Appellee is that the
16 decision, the definitive decision by the Zoning Administrator
17 was made July 14th.

18 MR. OTTEN: I am unclear of that. All I know is
19 as petitioners, we are allowed to appeal a building permit
20 issuance. A building permit was issued on July 24th. We were
21 not made aware of that until the 26th by certified mail from
22 the intervenor.

23 CHAIR JORDAN: Okay. So when you went -- it's
24 alleged by your documentation that you went out and looked on
25 the website, on or about July 24th or so; is that correct?

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MR. OTTEN: No.

2 CHAIR JORDAN: You did not?

3 MR. OTTEN: On July 24th, we actually sent an
4 email to Matthew LeGrant, who's the Zoning Administrator, as
5 well as some of the folks in DCRA. That's in the intervenor's
6 exhibits. We were asking if the building permit had been
7 issued yet. So that's in their exhibits. But the bottom line
8 is we were not --

9 CHAIR JORDAN: But my question was did you -- did
10 you make reference in your email on the 24th that said you had
11 been looking at the system?

12 MR. OTTEN: No. I think we were asking about the
13 fact that construction had started before the issuance of the
14 building permit.

15 CHAIR JORDAN: Okay.

16 MR. OTTEN: And that we were asking for a stop
17 work order to be issued. At that point, we didn't receive any
18 information from anybody at DCRA, saying hey, the building
19 permit has been issued today. We got that information two days
20 later by mail on the 26th, and we submitted that with our
21 initial application for this appeal.

22 CHAIR JORDAN: Okay. Ms. Roddy, do you want to
23 respond please?

24 MS. RODDY: Chairman Jordan, I would like to draw
25 your attention to the email from Mr. Otten dated July 24th.

NEAL R. GROSS

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

1 It states in the fourth paragraph, quote "We have checked the
2 PIVS web page at the DCRA website for information, and we see
3 that the building permit has not been issued."

4 And I continue "It is still under review by some
5 DCRA disciplines." I think it's without doubt that they
6 checked the PIVS website to see which disciplines had signed
7 off on the building permit. As you noted, the appeal period
8 does not run from issuance of the building permit. It runs
9 from issuance of the determination.

10 That determination was made July 14th, and we
11 have evidence in this email that he knew about it on July 24th,
12 and that makes his appeal untimely.

13 MR. OTTEN: Can I respond to that? That's the
14 exact email I'm talking about. That email points out that we
15 are writing to DCRA on July 24th --

16 CHAIR JORDAN: Excuse me one second.

17 MR. OTTEN: Oh sorry.

18 CHAIR JORDAN: All right. Go ahead please.

19 MR. OTTEN: Okay. That email -- I'm glad that
20 you bought that, Ms. Roddy. That email clearly shows that
21 we're writing to DCRA on July 24th, trying to determine if the
22 building permit has been issued. According to that email and
23 our review of the PIVS website that day, the building permit
24 had not been issued.

25 However, nobody responded from DCRA saying this

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 day we are issuing the permit. We got that notice. We had
2 knowledge of the notice of issuance of that permit two days
3 later. We're appealing the permit issuance, not a Zoning
4 Administrator decision. We cannot do that by the zoning regs.
5 We have to appeal according to an issuance of the building
6 permit. That's in the zoning regs.

7 CHAIR JORDAN: Okay. I won't argue that point
8 with you. But I think I've set forth what the law is, and I
9 understand your argument. So I'm clear, your argument is that
10 you physically or actually did not make notice that the
11 decision that was made.

12 But the standard is knew or should have known.
13 That's the standard that's before this Board. So the question
14 before the Board is for the Board to determine did you know
15 or should you have known that a decision, a definitive decision
16 was made by the Zoning Administrator on July 14th, 2014.

17 MR. OTTEN: So to that issue --

18 CHAIR JORDAN: No, I'm not asking -- I haven't
19 asked that.

20 MR. OTTEN: No information on the site was
21 providing what the Zoning Administrator did or did not do.
22 What we have --

23 CHAIR JORDAN: Let me stop you for a second, Mr.
24 Otten. I'm just putting forth what the issue is for the Board.
25 I wasn't asking for any response back to that, because I've

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 given you -- both sides the opportunity to talk about --

2 CHAIR JORDAN: We never got a letter from the
3 Zoning Administrator saying that he approved this. We can
4 only -- as the public, as the public is aware, can appeal a
5 building permit issuance. We cannot appeal otherwise.

6 CHAIR JORDAN: Okay, thank you. Now the other
7 issue raised on the motion to dismiss was more on the
8 substantive issue of what's been alleged by the applicant
9 regarding the rooftop structures and rear yard structures, and
10 that motion to dismiss basically says that the law -- that these
11 things as a matter of law are within the zoning regulations;
12 is that correct? Would you like to make the argument for me
13 please?

14 MS. RODDY: Thank you. I'd also just like to
15 clarify that we would include the rooftop structures within
16 our motion to dismiss based on timeliness. That was not raised
17 until two weeks ago. That's 159 days after the issuance of
18 the building permit.

19 And we can get into this, but there was an
20 argument made that he did not have the requisite information
21 at the time he filed the appeal to make the argument regarding
22 the rooftop structures, and that is absolutely not true.

23 First of all, permit plans are available to the
24 public for review. I provided a full permit set on September
25 19th for his review and --

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 CHAIR JORDAN: Say that again?

2 MS. RODDY: I provided a full permit set to him
3 on September 19th for his review. And finally I would just
4 say that he included the rooftop structures in his appeal to
5 the Office of Administrative Hearings. The Office of
6 Administrative Hearings considered it, denied it. So he
7 absolutely had that information prior to December 30th.

8 So we would include that in the timeliness
9 dismissal. Based on the substantive with the rear yard,
10 Section 2502.3 permits structures less than four feet in the
11 rear yard. There's nothing greater than four feet within the
12 rear yard. So as a matter of law, there's nothing here to
13 contest.

14 CHAIR JORDAN: Mr. Otten, would you want to
15 respond to the issue of -- and what do you have to show that
16 the structure that your allegations in the rear yard is above
17 four feet, four feet above grade?

18 MR. OTTEN: So we're going to get into the merits
19 of that argument now?

20 CHAIR JORDAN: I'm asking you what do you have
21 to offset that?

22 MR. OTTEN: We have lots of exhibits that we're
23 willing to show today. We're prepared to show that. There
24 are several structures in the rear yard. Besides the garage
25 ramp, there's also a garage vent in the southeast corner of

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 the rear yard which we're prepared to show as well, and we have
2 that in our exhibits.

3 And that stands at 15 feet above grade, and we
4 have DCRA's own submission, Exhibit D, showing a structure
5 above the ramp retaining walls -- I shouldn't say retaining
6 walls. The ramp has three walls, and sitting on these walls
7 is a platform that will have a generator and associated diesel
8 gas tanks standing at eight, at least eight feet above grade
9 as well.

10 We could get into a lot more detail. We're
11 prepared to do that.

12 CHAIR JORDAN: I need you to do that. Go ahead,
13 proceed. Proceed.

14 MR. OTTEN: I mean that's -- there's at least two
15 structures in the rear yard.

16 CHAIR JORDAN: Well go ahead. Show it to us
17 please.

18 MR. OTTEN: You want me to show you that on the
19 exhibits?

20 CHAIR JORDAN: I want you to -- I'm asking you
21 to put on the proof that you have, that there are structures
22 in the rear yard area that are in violation of 2503, and what
23 was the other aspect of what you raised? That's what I'm
24 asking, okay.

25 MR. OTTEN: Okay. I can do that right now.

NEAL R. GROSS

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

1 MS. RODDY: Thank you.

2 (Pause.)

3 MR. OTTEN: Submitting into the record rear yard
4 exhibits. They're labeled RYE-1 through I believe 4, and what
5 you'll see here are plats from the DCRA file of the design
6 plans. RYE-1 shows the first floor plan mechanical, with the
7 ramp going down into and occupying more than half the rear yard,
8 which opposes some of the definition of rear yard or yard in
9 the Zoning Code.

10 And then on RYE-2, it's a blowup of that rear
11 yard, where you'll see in the southeast corner, along the rear
12 property line, a garage exhaust 15 feet above grade as well.
13 RYE-3 shows -- this photograph was taken on January 9th, as
14 a test. That's my photograph from the surrounding property.

15 What you'll see here is this ramp leading down
16 into the subterranean garage, with walls around it and a
17 platform piece above it that extends -- we believe will extend
18 higher than eight feet above grade, with the materials on top
19 of it, and that's shown in RYE-4 as well.

20 (Pause.)

21 MR. OTTEN: That's it for the rear yard. Those
22 are the two main structures there, and we believe that between
23 the height to them as well as the occupation of the yard itself
24 in terms of percentages, that it contravenes the basic zoning
25 codes surrounding rear yard structures, as well as the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 definition of yard.

2 CHAIR JORDAN: Is there anything else you want
3 to present to the Board?

4 MR. OTTEN: Did you ask about the rooftop
5 structures?

6 CHAIR JORDAN: Yes, go ahead.

7 MR. OTTEN: You want me to submit -- I have those
8 as well.

9 (Pause.)

10 MR. OTTEN: While we appreciate the DCRA
11 submission, it has helped clarify some of the rooftop issues,
12 it's still very clear by the plats on the DCRA file that we're
13 looking at rooftop structures that extend up at different
14 vertical heights. We're looking at rooftop structures that
15 extend to the edge of the building.

16 CHAIR JORDAN: Under what provision are you
17 challenging that the rooftop structure -- what part of the
18 regulations are you challenging?

19 MR. OTTEN: 11-411.3, .5 and .6.

20 CHAIR JORDAN: 411.3, .5, .6?

21 MR. OTTEN: Yes.

22 CHAIR JORDAN: I thought your pleadings
23 challenged 770. I thought that's what it was. Am I right or
24 wrong? No, that's --

25 MR. OTTEN: I got you, I got you.

NEAL R. GROSS

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

1 CHAIR JORDAN: All right, uh-huh.

2 MR. OTTEN: That refers back to 411.

3 CHAIR JORDAN: And it recites back to 770;
4 correct?

5 MR. OTTEN: Right, yeah, seven. That's the
6 commercial district.

7 CHAIR JORDAN: And is there an exception for a
8 C2B zone regarding those regulations?

9 MR. OTTEN: Yeah. That's where DCRA did
10 clarify, and that had to do with 411.8, with the number of
11 stories. There isn't a limit on number of stories, so we do
12 concede that that was corrected by DCRA.

13 However, it is unequivocal that we're looking at
14 a building with rooftop structures that are at unequal heights,
15 that extend to the edge of the building, and that do not have
16 a roof enclosing mechanicals and the penthouse structures
17 included that are up there.

18 We also have, in RTE-9, the last page of that
19 exhibit, a photograph from a few days ago of the rooftop, which
20 appears different than the plans that they've submitted to
21 DCRA, which also calls into question how many structures there
22 are up on the roof, separate and above what's allowed by the
23 zoning regs.

24 CHAIR JORDAN: So there's -- you're saying R-9
25 has other than mechanical equipment on the roof?

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MR. OTTEN: Yeah. The R-9 shows -- if you look
2 at the comparison -- sorry, I just put that away -- looking
3 at RTE-9, and then turn back to RTE-5, you'll see the revised
4 roof plan put on the record by the intervenor on RTE-5. It
5 kind of comes through you. It's an opening there at the end
6 of this U on the rooftop. Do you see this? This is RTE-5.

7 CHAIR JORDAN: Okay.

8 MR. OTTEN: So they have this. The rooftop
9 structure's apparently enclosed in these walls, in a wall
10 system now that goes around in a U, and this end is open.
11 However, the picture we took on Friday, that opening is a lot
12 smaller than how they depicted it, and now there's actually
13 a structure in the middle of where that opening was supposed
14 to be.

15 CHAIR JORDAN: What's the structure? What is
16 that?

17 MR. OTTEN: This box, this first box in the
18 middle.

19 CHAIR JORDAN: What is that? Do we know?

20 MR. OTTEN: I was hoping to get to examination.

21 CHAIR JORDAN: Mechanical equipment?

22 MR. OTTEN: It is unclear. If it's -- it looks
23 like the other stairwell structures. But that was where --
24 I mean part of what we wanted to get at today was a lot of --
25 to ask questions, to get a lot of information that has so far

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 been not transparently delivered.

2 CHAIR JORDAN: So you filed this appeal on the
3 decision of the Zoning Administrator, so you can get more
4 information, not that you're claiming error in this regard to
5 this allegation?

6 MR. OTTEN: We're saying just the prima facie
7 evidence of both the plans and the photographs that we've taken
8 show that this project is contravening the D.C. zoning regs.
9 The issuance of the building permit was made in error that
10 allows this to happen.

11 CHAIR JORDAN: But you just said that you didn't
12 have enough information to conclude what you just said. Is
13 that what -- am I confusing you or you confusing me?

14 MR. OTTEN: I don't -- I mean --

15 CHAIR JORDAN: I thought you just said that one
16 of the bases that you were doing this because you needed
17 additional information to understand. I asked you directly
18 what was that structure that you pointed to?

19 MR. OTTEN: You're asking me. I don't
20 necessarily know. I need to ask them what that structure is.
21 It looks like a separate structure. There's multiple
22 structures up there.

23 CHAIR JORDAN: And I think you also made the
24 statement that you wanted the basis of this so you can get
25 additional information, because you don't know what's there,

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 and that's the purpose of this. Is that correct? I mean --

2 MR. OTTEN: One of the things that we were going
3 to submit with our presentation today, our conclusion was to,
4 after we get the information from the intervenor and Appellee,
5 to determine a post-hearing submission that would summarize
6 all the information we get vis-a-vis the zoning codes.

7 CHAIR JORDAN: So when you filed the
8 application, you were not certain of what these things were.
9 Is that what I'm understanding you're saying?

10 MR. OTTEN: When we filed the application, we
11 looked at the prima facie evidence that was on the BZA record
12 in 18506, which we were granted party status in. That went
13 back to the Court of Appeals, and was remanded back to this
14 agency. That was rooftop structures.

15 We've been in the dark about the rooftop
16 structures since. Other than after the issuance of the
17 building permit, finally we have an understanding. In the OAH
18 hearing, we have an understanding of how they concluded that
19 these multiple rooftop structures are somehow one structure.

20 We've gotten that -- that came about in October.
21 So now we're here today to show you guys that there are multiple
22 rooftop structures here. They're at multiple heights that
23 seems to contravene directly the zoning codes, that we want
24 to ask questions to understand how the Zoning Administrator
25 decided this, and how the building permit was issued based on

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 what seems to be direct contradictions to the zoning regs.

2 CHAIR JORDAN: Does anybody have any questions
3 of the Appellant?

4 (No response.)

5 CHAIR JORDAN: Well, I'll kind of reverse this.
6 As I've contended to the Zoning Commission, the real party in
7 interest in these are not necessarily the government. The
8 real party in interest is actually the applicant, and I don't
9 know if we're going to deal with that in the zoning rewrite.
10 So I'm going to turn now, if that's okay with you, Mr. Thomas,
11 to let Ms. Roddy, any cross-examination questions you want to
12 ask.

13 MS. RODDY: So we'll do a cross-examination,
14 rather than just a direct rebuttal to his --

15 CHAIR JORDAN: I'm doing this the way I want to
16 get it done.

17 MS. RODDY: Okay, sure.

18 CHAIR JORDAN: So I'm just trying to get it all
19 wrapped up. Please stay with me. Go ahead.

20 MS. RODDY: Sure, no problem. Mr. Otten, let's
21 start with the rear yard. Can you tell me the date of the plans
22 that you were referring to?

23 MR. OTTEN: Can you refer to an exhibit for me?

24 MS. RODDY: When you referred to the louver,
25 let's say Exhibit 2 that you just handed out.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MR. OTTEN: This was in the plans. It's
2 stamped, I believe July 24th, 2014. That's what that stamp
3 is there, on the bottom right.

4 MS. RODDY: I'm sorry. Which plan are you
5 reviewing?

6 MR. OTTEN: On RYE-1, Exhibit RYE-1, down where
7 it says M-1.2 to the plat number.

8 MS. RODDY: Right, and tell me where you see the
9 July 24th?

10 MR. OTTEN: The stamp here was put on all the
11 pages, and I believe it says July 24th. You can't really
12 readily see it.

13 MS. RODDY: I believe that the date's 2013.

14 MR. OTTEN: I don't know.

15 MS. RODDY: Are you aware that that louver is no
16 longer included on the permanent set of drawings that you
17 referred to?

18 MR. OTTEN: I'm not. Can you show that? Can
19 you show that to us.

20 CHAIR JORDAN: Ms. Roddy, let me ask you. So the
21 document which is -- which will be exhibit number -- or not
22 an exhibit. It's not even -- what is this, RT --

23 MS. RODDY: RYE-1.

24 CHAIR JORDAN: RYE-1. Oh, that's what that
25 means huh, is the plans from -- is the plans from what date?

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MS. RODDY: It's June 23rd, 2014. I apologize
2 on my number, my date.

3 CHAIR JORDAN: 2014?

4 MS. RODDY: 2014.

5 CHAIR JORDAN: Okay, all right. Go ahead, Mr.
6 Otten, please stay in the chair. She's asking questions of
7 you please.

8 MS. RODDY: So just to confirm, you are not aware
9 that that louver no longer is in that location?

10 MR. OTTEN: None of the files that I've seen,
11 that you've given me, show that.

12 MS. RODDY: Can you point out what the rear yard
13 is?

14 MR. OTTEN: It's the 15 foot space between the
15 rear lot line and the principle building.

16 MS. RODDY: And can you point out the transformer
17 that you referred to?

18 CHAIR JORDAN: In the rear yard, what is alleged
19 to be in the rear yard?

20 MS. RODDY: What is alleged to be in the rear
21 yard. I'm sorry, the generator.

22 CHAIR JORDAN: Yeah, okay.

23 MR. OTTEN: Do you have an exhibit for me to point
24 to?

25 MS. RODDY: Do you have -- you know what? We'll

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 use our exhibit.

2 CHAIR JORDAN: No. Let's do this. Mr. Otten,
3 what exhibit did you use to say that there's a generator in
4 the rear yard?

5 MR. OTTEN: We can use DCRA's Exhibit D.

6 CHAIR JORDAN: Thank you.

7 MR. OTTEN: DCRA's Exhibit D.

8 CHAIR JORDAN: Okay. But I thought you pointed
9 out something to us in your exhibit, rear yard exhibits? This
10 is kind of hard to see because it's tiny, but you can -- there
11 is on the RYE-1, the ramp going down that's in the rear yard,
12 the rear yard extends the length of the lot along the southern
13 lot line. That's the definition of rear yard.

14 MS. RODDY: I'm asking the generator. Can you
15 please tell me where the generator is located?

16 CHAIR JORDAN: She asked you about the
17 generator.

18 MR. OTTEN: You asked me where the rear yard was.

19 CHAIR JORDAN: No. She asked you where the
20 generator was, what you're alleging is in the rear yard.

21 MR. OTTEN: Okay, regardless. I'm point that
22 out. The generator is if you follow the car on the right that's
23 going down into the ramp, it will actually proceed underneath
24 this platform with diesel gas generator above it, and that's
25 the pictures I took as well.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 CHAIR JORDAN: Is that the rear yard?

2 MR. OTTEN: That's in the rear yard.

3 CHAIR JORDAN: You're contending that's the rear
4 yard? I don't know if that's your question.

5 MR. OTTEN: I'm contending a portion of that is
6 in the rear yard, yes.

7 CHAIR JORDAN: Ms. Roddy, I'm sorry. I'll let
8 you handle it.

9 MS. RODDY: So you're testifying that the
10 generator is located within 15 feet of the rear lot line? And
11 we can refer to -- as you had recommended, we can refer to DCRA's
12 exhibit. It has the yellow line that depicts the rear yard.

13 MR. OTTEN: What I'm contending is the platform
14 by which this generator sits exists across the extent of the
15 ramp structure, and therefore it's in the rear yard, because
16 the ramp is in the rear yard.

17 MS. RODDY: How tall is the platform?

18 MR. OTTEN: All I know is what DCRA's website,
19 I mean Exhibit D says, that this will stand 8'6, eight foot
20 six inches above grade total.

21 MS. RODDY: Do you see the same notation that
22 says 42 inch high platform?

23 MR. OTTEN: I do, yes.

24 MS. RODDY: Thank you.

25 MR. OTTEN: And the generator itself will be

NEAL R. GROSS

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

1 standing above that; correct?

2 MS. RODDY: Yes. Oh, I'm sorry. I won't get
3 into it.

4 CHAIR JORDAN: Would you ask the questions and
5 answer the questions? I'm not going to allow you to banter
6 back and forth. She's asking questions, if you would.

7 MR. OTTEN: I mean I could -- I mean I'm supposed
8 to be making the presentation today.

9 CHAIR JORDAN: Mr. Otten, I've been very
10 respectful for you, and I'm going to request that you be
11 respectful to the Chair or to this Board.

12 MR. OTTEN: We haven't even started the case yet.

13 CHAIR JORDAN: Mr. Otten.

14 MR. OTTEN: Have we started the case yet?

15 CHAIR JORDAN: I gave you the opportunity to
16 present to the Board that which you wanted to say. I'm now
17 giving Ms. Roddy the opportunity to cross-examine the
18 statements that you made. So that's where we are.

19 MR. OTTEN: This is an unfair process. I'm
20 supposed to be making a presentation and then they're supposed
21 to cross-examine me on that. I don't think this is how it's
22 supposed to unfold.

23 CHAIR JORDAN: Okay. I'm sorry you don't think
24 that. Now Ms. Roddy, do you have any more questions?

25 MS. RODDY: I just wanted to confirm that the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 platform is less than four feet tall; correct?

2 MR. OTTEN: I don't know.

3 CHAIR JORDAN: What platform are you referring
4 to?

5 MS. RODDY: The one that we just discussed,
6 that's 42 inches high?

7 MR. OTTEN: The one that extends across the ramp
8 structure?

9 MS. RODDY: Correct.

10 ZC CHAIR HOOD: Mr. Chairman, let me just
11 interrupt. I think this is very fair process. I agree with
12 the leadership in how you're handling this. I think the issues
13 are being fleshed out here. So for the record, I want to put
14 that in the transcript also. I think this is very fair
15 process. So let's continue. Thank you.

16 CHAIR JORDAN: So would you respond to Ms.
17 Roddy's question please?

18 MR. OTTEN: I'm just confused. Are we a party
19 to this case right now? We're going right into
20 cross-examination and I don't get to present. This is
21 supposed to be an appeal process, where if I am deemed a party,
22 then I get to present and then they get to cross-examine --

23 CHAIR JORDAN: We're actually discussing the
24 substance of the motions to dismiss, based upon what has been
25 submitted by the Respondents in regards to this. I'm not going

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 to say the grouping, because it's not necessarily Appellee's
2 situation, and based upon what your statement is, to try to
3 justify what she said.

4 You've made alleged factual statements, and now
5 I'm asking questions, having the other side to ask you
6 questions in regards to that. Now if we get to a point we can
7 get past this motion to dismiss, then you will be allowed to
8 make a presentation, if we can get past that point. But we're
9 dealing with these motions to dismiss.

10 MR. OTTEN: I see.

11 CHAIR JORDAN: And it's not a one-way situation
12 where you're allowed to say what you want to say, and not be
13 able to be asked questions. So out of fairness, which you keep
14 trying to push, we're being fair to the opposition also. So
15 that's where we are. So I hope you're clear about where we
16 are in this process.

17 MR. OTTEN: I'm trying to understand it. Thank
18 you.

19 CHAIR JORDAN: Okay, thank you. So the question
20 that was asked by Ms. Roddy -- I'm sorry.

21 (Pause.)

22 CHAIR JORDAN: So would you repeat your
23 question, your very direct question to Mr. Otten please?

24 MS. RODDY: Is the platform that is in the rear
25 yard less than four feet tall?

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MR. OTTEN: The platform that extends cross the
2 ramp structure, as shown in RYE-4, along iron beams it looks
3 like, in this picture is taller than four feet. It's above
4 the ground more than four feet.

5 MS. RODDY: And what are you using as your basis
6 for the measurement of height in what you're looking at?

7 CHAIR JORDAN: Excuse me, Ms. Roddy. Let me ask
8 a question. How tall is it above the ground?

9 MR. OTTEN: I am not sure, but it's more -- looks
10 like more than four feet to me.

11 CHAIR JORDAN: Did you measure it?

12 MR. OTTEN: No. Again, I would just point to
13 Exhibit D of DCRA.

14 CHAIR JORDAN: I'm going to ask a question. And
15 do you have a document that says what the height is?

16 MR. OTTEN: Yeah. DCRA's Exhibit D says that
17 this platform and generator, with associated diesel tanks,
18 will be standing at eight feet, six inches above grade.

19 MS. RODDY: Well, let's look at that comment that
20 you're reviewing. It says that -- would you mind just reading
21 it to me? It's a five foot generator. That's where I'm
22 looking.

23 MR. OTTEN: Yes.

24 MS. RODDY: And what comes after that?

25 MR. OTTEN: On a 42 inch high platform.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MS. RODDY: Thank you.

2 MR. OTTEN: Right.

3 MS. RODDY: Now --

4 MR. OTTEN: But you asked me about whether or not
5 that platform was in the rear yard.

6 MS. RODDY: I'm going to ask another question.

7 CHAIR JORDAN: Okay please.

8 MR. OTTEN: And I think it is.

9 MS. RODDY: Now you would contend that the garage
10 and the garage ramp are illegally in the rear yard; is that
11 correct?

12 MR. OTTEN: Yes. They occupy more than 50
13 percent of the yard.

14 MS. RODDY: Can you tell me what the definition
15 of a yard is?

16 MR. OTTEN: Yes.

17 MS. RODDY: I have an excerpt here, if you'd like
18 to use that.

19 MR. OTTEN: I have my own. Thank you.

20 (Pause.)

21 MR. OTTEN: "Yard, an exterior space other than
22 a court on the same lot with the building or other structure.
23 A yard required by the provisions of this title shall be open
24 to the sky from the ground up, and shall not be occupied by
25 any building or structure, except as specifically provided in

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 this title. No building or structure shall occupy in excess
2 of 50 percent of a yard required by this title."

3 MS. RODDY: So the definition of a yard says that
4 it should be open to the sky from the ground up. Are you aware
5 that the garage is a below grade garage?

6 MR. OTTEN: The garage is a subterranean garage,
7 with a ramp that has walls on three sides of it going down into
8 that garage.

9 MS. RODDY: And is the ramp at grade?

10 MR. OTTEN: The ramp walls are not at grade.

11 MS. RODDY: And how tall are the garage ramp --
12 the walls that you refer to?

13 MR. OTTEN: They are -- this ramp, which occupies
14 more than 50 percent of this yard, has walls that go up 42 inches
15 according to the plans.

16 MS. RODDY: And is that less than four feet?

17 MR. OTTEN: It is.

18 MS. RODDY: Thank you.

19 CHAIR JORDAN: Okay, all right. Did you want to
20 deals with roofs? You can cross on the rooftop please.

21 MS. RODDY: Sure, thank you. Now --

22 MR. OTTEN: Excuse me. Chair, can I clarify the
23 process here? It's their motion to dismiss. When do I get
24 to cross-examine them on this motion?

25 CHAIR JORDAN: What we're doing, you made the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 presentation. I asked you to provide your defense of the
2 motion. They're asking questions of the motion. They have
3 not presented any other evidence regarding their motion, other
4 than what we're doing, what appears to be obvious to me.

5 So the burden now -- I believe their submission,
6 from what -- I'm giving you the opportunity to rebut what they
7 have said, so that you have in fairness the opportunity to
8 challenge that which they have said.

9 MR. OTTEN: I can't ask questions of what they've
10 said in the motion?

11 CHAIR JORDAN: No, we're not at that point. No.

12 MR. OTTEN: When do I get to ask questions?
13 They're saying that --

14 CHAIR JORDAN: They've made a definitive
15 statement in their motion.

16 MR. OTTEN: When do I get to ask questions of that
17 statement?

18 CHAIR JORDAN: You don't get a chance to answer.
19 They've made a definitive motion. They have not presented
20 anything other than that which they already submitted. I
21 asked you what in your submission -- I was very clear about
22 what was in their submission, what was your thoughts on it?
23 Where are they wrong?

24 You then brought these documents and said this
25 supports your basis for going forward. That's what you said;

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 is that correct? So that's where we are. So your next
2 question was -- did you ask a question?

3 MS. RODDY: I did not, but I will.

4 CHAIR JORDAN: Okay. We're on --

5 MR. OTTEN: I would like a legal explanation of
6 the process.

7 CHAIR JORDAN: It's a decision of the Chair, and
8 you don't have a right to ask --

9 MR. OTTEN: I would like to cross-examine. This
10 is their motion.

11 (Simultaneous speaking.)

12 CHAIR JORDAN: Excuse me a second.

13 MR. OTTEN: They're presenting their motion. I
14 should be able to cross-examine them on this motion now. I
15 would like a legal --

16 CHAIR JORDAN: You have the legal opinion. No.
17 This is the Board of Zoning Adjustment, which I chair.

18 MR. OTTEN: The BZA is --

19 CHAIR JORDAN: You don't have authority to ask
20 or the right to ask.

21 (Simultaneous speaking.)

22 CHAIR JORDAN: I am the chair. I am the chair,
23 and I don't choose to ask for anything further than going
24 forward with this hearing.

25 MR. OTTEN: Well then this is unfair to tell us

NEAL R. GROSS

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

1 as a party.

2 CHAIR JORDAN: I'll tell you what. I'm sorry
3 you feel that way. Ms. Roddy, do you have a question?

4 MS. RODDY: Yes.

5 MR. OTTEN: I'm putting that on the record.

6 MS. RODDY: Yes. With respect to the roof
7 structures, it's your contention that there's more than one
8 roof structure; is that correct?

9 CHAIR JORDAN: Mr. Otten, Ms. Roddy asked you a
10 question.

11 MR. OTTEN: I don't know if I want to participate
12 in this unfair process.

13 CHAIR JORDAN: Okay.

14 MR. OTTEN: It is clear the exhibits show more
15 than -- multiple rooftop structures at various heights, and
16 we'll get into that if we get into this appeal.

17 CHAIR JORDAN: Let me do this for the sake of the
18 record. There are two motions pending. One was a motion to
19 dismiss based upon timeliness. The other was pending based
20 on the substantive of the issue moving forward.

21 The motion to dismiss, we're having a hearing.
22 We discussed the motion to dismiss. We understood clearly
23 what the movement has said in regards to their motion. In
24 order to give Mr. Otten or the Appellant the opportunity to
25 rebut those allegations contained in the motion to dismiss.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 We asked Mr. Otten to prepare and to submit to
2 this Board anything in opposition to the motion. During that
3 time, Mr. Otten presented factual basis by submitting
4 documents and exhibits of what he contends was in opposition
5 to the motion.

6 Because he then put evidence into play, we gave
7 the opponent the opportunity to ask questions regarding the
8 factual evidence that Mr. Otten has placed before this Board,
9 in defense of the motion to dismiss. So I just want that for
10 the record.

11 Mr. Otten has now decided that he did not want
12 to participate in that level of discussion, because he believed
13 it was not fair and that he should have the right to
14 cross-examine the movant in regards to their motion. The
15 movant has not placed any other evidence before this Board,
16 other than what they have placed in their motion submitted to
17 this Board. That's where we are.

18 So we're now on the issue of discussing the
19 rooftop structure, the motion to dismiss on the rooftop
20 structure.

21 MS. RODDY: Thank you. Let's refer to Exhibit
22 E in the DCRA submission. Do you see a trellis on the rooftop
23 structures?

24 MR. OTTEN: A trellis not a roof.

25 MS. RODDY: I'm sorry. Do you see the trellis

NEAL R. GROSS

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

1 on the rooftop structures?

2 MR. OTTEN: If a trellis is there, it is not a
3 roof, which is what is required by the zoning regs.

4 MS. RODDY: Does the trellis connect each of the
5 rooftop structures?

6 MR. OTTEN: A trellis is not a roof.

7 MS. RODDY: Does the trellis connect the
8 structure?

9 MR. OTTEN: I'm not sure. All I know is a
10 trellis is not a roof, which is what the zoning regs require.

11 MS. RODDY: Are you aware of the precedent set
12 in the *Lester* case, as well as the *JPI* case?

13 MR. OTTEN: No.

14 MS. RODDY: In that, we won't get into that.
15 We'll save that. But can you tell me the height of the trellis?

16 MR. OTTEN: A trellis not a roof.

17 MS. RODDY: Can you tell me the height of the
18 trellis?

19 MR. OTTEN: No, I cannot.

20 MS. RODDY: Can we refer to your rooftop exhibit?

21 MR. OTTEN: Yes.

22 MS. RODDY: On RTE-3, can you confirm that the
23 trellis extends over each stairway, as well as the elevator
24 overlay?

25 MR. OTTEN: So RTE-3 is this image here?

NEAL R. GROSS

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

1 CHAIR JORDAN: Would you use the hand mic please?
2 Thank you.

3 MR. OTTEN: Thank you Secretary for the mic. So
4 this is RTE-3, a true and correct copy from DCRA's files, dated
5 June 23rd, 2014, and then stamped July 24th, 2014.

6 CHAIR JORDAN: Well let me -- what was the
7 question again?

8 MS. RODDY: I wanted to confirm that the trellis
9 connected above each of the stairwells, as well as the elevator
10 penthouse?

11 MR. OTTEN: So what I'm seeing is a trellis that
12 connects the stairwell structures, which has a wall that
13 extends to the edge of the building this way, and continue
14 around in a U-shaped to each of the stairwell structures here,
15 and connecting again all of these walls that go to the edge
16 of the building, and then keep this open here.

17 So not all the mechanical structures on the roof
18 are enclosed. It's just this U shape right here.

19 MS. RODDY: Thank you. Now let's refer to
20 RTE-6.

21 MR. OTTEN: Okay.

22 MS. RODDY: And can you tell me the height of the
23 trellis?

24 MR. OTTEN: It looks to be 14 feet, six inches.

25 MS. RODDY: Now are there any other structures

NEAL R. GROSS

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

1 that protrude above that height?

2 MR. OTTEN: Of the height of the trellis, which
3 is not a roof? Well, the separate structure of the elevator
4 overrun is the same height as the trellis.

5 MS. RODDY: Thank you, and are you aware of
6 Section 411.17 of the zoning regulations?

7 MR. OTTEN: Yes.

8 MS. RODDY: And what does that section say?

9 MR. OTTEN: It has to do with the floor area ratio
10 of the rooftop structures.

11 MS. RODDY: .17?

12 MR. OTTEN: .17? No, I'm not aware of that.

13 MS. RODDY: Do you know how tall the mechanical
14 equipment that you pointed out is?

15 MR. OTTEN: The mechanical equipment that's
16 within the --

17 MS. RODDY: I'm sorry, the HVAC?

18 MR. OTTEN: The not entirely enclosed mechanical
19 equipment area. I think these are less than four feet tall.

20 MS. RODDY: Thank you.

21 MR. OTTEN: I'm not sure about what the platform
22 height is.

23 MS. RODDY: Can you tell me what the FAR of the
24 enclosed rooftop structure is?

25 MR. OTTEN: That's part of what's at play here.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 So we have the enclosing walls now connecting the stairwells,
2 as well as the enclosing walls that go to the edge of the
3 building?

4 MS. RODDY: I'm just asking a straightforward
5 question. Do you know what the FAR of the roof structure is?

6 MR. OTTEN: I do not.

7 MS. RODDY: Thank you.

8 CHAIR JORDAN: DCRA, any questions?

9 MR. TONDRO: Yes, thank you. Mr. Otten, can I
10 refer to your Exhibit RTE-9?

11 MR. OTTEN: Yes.

12 MR. TONDRO: Does that look like it is a finished
13 structure?

14 MR. OTTEN: Does that look like it's a finished
15 structure?

16 MR. TONDRO: Does the construction appear to
17 have been finished and completed? Is that the final
18 appearance of the construction?

19 MR. OTTEN: That looks to be several rooftop
20 structures, one included right in the smack middle that's not
21 on these plans. This structure right here, right in the middle
22 (gesturing).

23 MR. TONDRO: What I would like -- what I'm
24 seeking to ask is whether or not that photo represents what
25 will be the final product, or is this something that is still

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 being built and therefore other things may be added to it?

2 MR. OTTEN: Good question. All I can go with is
3 the plans that were approved for this construction by DCRA.

4 MR. TONDRO: And those are the plans that you are
5 appealing I believe, yes?

6 MR. OTTEN: There is no structure right here.
7 But yet in the picture there is. So I don't know if that means
8 that it's going to be torn down to meet the plans that were
9 actually approved by DCRA or not. But that structure that's
10 in the middle of this picture, in the foreground of the rooftop
11 structures, is not in the DCRA plans that were approved.

12 MR. TONDRO: Could you show me what exactly you
13 mean by that? What viewpoint or can you relate to me -- show
14 me on the plans where exactly you took that picture from?

15 MR. OTTEN: Okay.

16 MR. TONDRO: And then if you can show me where
17 there is not -- where it should be located on the plans, if
18 it's not there?

19 MR. OTTEN: I see. So I took this photograph
20 from the roof of the building by where our participating
21 members live, two of them at least, which is approximately
22 10-15 feet southeast of this property.

23 So looking this way, this shot is looking this
24 way. The pointed corner of this exhibit is this pointed corner
25 right here.

NEAL R. GROSS

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

1 MR. TONDRO: And if you were to draw a straight
2 line down, does that not intersect with the penthouse for the
3 elevator and the stairwell?

4 MR. OTTEN: For almost the entire length of the
5 building, this is where the elevator and stairwell here is.
6 I don't believe I could get that in this shot. That's too far
7 down.

8 MR. TONDRO: You don't believe?

9 MR. OTTEN: Yeah, because what I'm seeing --

10 CHAIR JORDAN: Wait a minute. We're not going
11 to have the banter back and forth. Ask the question again very
12 directly, and Mr. Otten, would you please respond to the
13 question directly. Go ahead, please. You ask the question,
14 yes.

15 MR. TONDRO: Thank you, sir. From the vantage
16 point of the photo, looking from where you've indicated it was
17 taken from that corner, that on the plan is on the upper
18 left-hand corner, and a straight line down, there is a gap
19 between the -- on the plan. Let's say on the photograph, there
20 is a gap in the structures.

21 Does that not correspond with what you would see
22 on the plan if you start from the upper left-hand corner and
23 go down diagonally toward the lower right-hand corner, in which
24 case --

25 MR. OTTEN: Okay. Let me respond to that. What

NEAL R. GROSS

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

1 I'm seeing in RTE-9, our exhibit, are -- it's hard to hold this
2 up at the same time. Basically looking at the left side of
3 the photograph, this structure right here we're presuming is
4 this stairhouse structure on this plat.

5 The structure all the way to the right is going
6 to be this stairwell structure right here. There's a
7 structure that we're pointing out in the middle, that as far
8 as we can tell, there's no stairwell structure here on this
9 plat. It's all mechanical here.

10 Further, we are presupposing that this iron --
11 this is an iron beam that extends up above the stairwell
12 structures. That's the elevator override. That's further
13 down in the building here. That's the taller structure.

14 MR. TONDRO: And Mr. Otten, just to clarify,
15 these are your observations or presuppositions, based on
16 construction that has not been completed, not based on what
17 has been filed and been approved, which is the subject of your
18 appeal?

19 CHAIR JORDAN: What was that question again?

20 MR. TONDRO: I just wanted to confirm that your
21 observations are based on construction that has not been
22 completed, not based on what was actually filed with the
23 building permit, which is what you are appealing; is that
24 correct?

25 MR. OTTEN: Yes. We're trying to appeal this

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 before the construction is completed, because we don't want
2 this building to be built in contrapositive to the Zoning
3 Codes. This structure here doesn't appear on this plat that's
4 in the foreground. I don't know if it's temporary or not.
5 Maybe you would know. I don't know. We're also concerned --

6 CHAIR JORDAN: So in essence, Mr. Otten, the
7 question that is being presented, and I'm trying to be a little
8 bit more direct with it, is that the building is still under
9 construction. There are items that you have placed in the
10 picture that are maybe not there permanently, but that these
11 things can change. So that's the question.

12 The final building, what you see now; those
13 things could change. Is that what your question is?

14 MR. TONDRO: Yes. Thank you, sir.

15 MR. OTTEN: And we want them to change so they
16 meet the zoning regs.

17 CHAIR JORDAN: No, no, no. Would you answer my
18 question? I'm trying to -- so those things could change is
19 what his question is. What you see now in the picture, you
20 recognize that the building is not complete. What you see
21 there could be temporary, could be permanent. But they could
22 change; correct?

23 MR. OTTEN: They would have to reflect this, or
24 I hope they change, and I hope they reflect the zoning regs.

25 CHAIR JORDAN: So the basis of your argument and

NEAL R. GROSS

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

1 the appeal is that what you -- what you're observing right now
2 do not meet what you see in the plans. Is that what you're
3 saying?

4 MR. OTTEN: Right. The plan evidence here does
5 not meet the Zoning Code, where mechanical equipment should
6 be fully enclosed, as well as the penthouses, that they should
7 be at equal heights and rise vertically through a roof. We're
8 not seeing that. We're also seeing walls extending out from
9 the structure to the edge of the building, which one for one
10 setback we know should not happen.

11 CHAIR JORDAN: All right. Is there any other
12 questions?

13 (No response.)

14 CHAIR JORDAN: Then I'm going to turn to -- Ms.
15 Roddy, I want you to go ahead and to summarize your motion to
16 dismiss.

17 MS. RODDY: Thank you. As we've stated and as
18 we've briefed, we believe that this appeal should be dismissed
19 as untimely. That would be our first basis for appeal.
20 Section 3112.2 states that any person --

21 CHAIR JORDAN: We're good on that one. Go to the
22 second one.

23 MS. RODDY: Thank you, and I just would like to
24 reiterate that the same argument that we would apply to the
25 roof structures, is that is most definitely untimely at this

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 point. We would further then state that this should be
2 dismissed on a substantive basis, because there's no evidence
3 in the record that there are any structures above four feet
4 in the required rear yard.

5 As the Zoning Code allows in Section 2503.2,
6 structures less than four feet in height are permitted under
7 the zoning regulations within the rear yard. With respect to
8 the rooftop structures -- well, let me actually go into a little
9 bit more detail.

10 The louver that he had referenced is not located
11 in the rear yard. The generator that he referenced is not
12 located in the rear yard. The platform that he referenced,
13 as well as the walls that surround the garage entry, are located
14 within the rear yard, and are less than four feet in height.
15 His testimony today confirmed that.

16 We would also submit that this appeal should be
17 dismissed on the substance of the roof structures. We'd first
18 state that this was actually brought to the Office of
19 Administrative Hearings, this precise question, and the Office
20 of Administrative Hearings also confirmed that there was a
21 single rooftop structure.

22 He confirms that the trellis connects the
23 structures. The precedent set forth by this Board in the *JPI*
24 and more recently in the *Lester* cases, confirms that a trellis
25 can be a unifying structure and roof, if it is more than 51

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 percent enclosed, as it is in this instance.

2 Mr. Otten testified that the trellis is at 14 foot
3 6 inches, and that is a uniform height. He confirmed that the
4 condensers on the roof are less than four feet in height, which
5 is permitted by 411.17.

6 Mr. Otten testified that he was not aware of what
7 the FAR was of the roof structure, therefore obviating any need
8 to discuss 411.6, I believe, because there's no evidence in
9 the record to suggest that it exceeds the .37 FAR that is
10 permitted by the zoning regulations, and it in fact is nowhere
11 near the .37 that is permitted by the zoning regulations.

12 So I think the evidence that he submitted today
13 confirms that there's a single structure. It is of uniform
14 height and it does not -- there's no evidence to suggest it
15 exceeds .37.

16 CHAIR JORDAN: All right. Mr. Otten, your
17 response to that, to the motion to dismiss based upon the
18 structure in the rear yard and the rooftop structure?

19 MR. OTTEN: Thank you. In response, this motion
20 is not based on evidence in the record. It does not flow from
21 evidence in the record that would allow this appeal, and if
22 this case would move forward, we would be able to really explain
23 and show how, as we have already, the rear yard exhibits show
24 that the platform by which extends across the ramp structure
25 is holding up equipment that's going to stand eight feet above

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 grade.

2 That equipment is a diesel gas generator holding
3 gas in tanks, which according to the definitions, excuse me,
4 to the zoning regs, a structure is anything constructed, the
5 use of which requires permanent location on the ground, or
6 anything attached to something having permanent location on
7 the ground.

8 This is that platform that extends into the rear
9 yard, that crosses across the ramp. The platform has on top
10 of it a tank and gas holders as part of the generator, and stands
11 at eight feet above grade. So that is a structure in the rear
12 yard.

13 With regard to the garage vent that stands 15 feet
14 above grade, according to the plans that we were given, we have
15 not seen evidence showing that that has been moved and
16 relocated to somewhere else, and the intervenor has not shown
17 this Commission that to be true.

18 Further, we are arguing that the ramp structure
19 itself, with the associated platform on it and the generator
20 on top, exists in the yard and occupies 50 percent of that yard,
21 which is against the definition of the yard.

22 That is affirmed by the D.C. Office of Planning
23 report from the BZA case 18506, which states that the majority
24 of the rear yard is occupied by this ramp structure. Regarding
25 the rooftop structures, it is clear by the exhibits that we

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 have placed on the record today, that there are at least two
2 heights to this rooftop structure, as seen in RTE-1 and 2, that
3 there is no roof extending over the mechanicals. The
4 mechanicals are not fully enclosed on the roof, either with
5 a roof above them or with louvers above them.

6 That contravenes directly 411.3, which says all
7 penthouses and mechanical equipment shall be placed in one
8 enclosure. The enclosing walls from the roof level shall be
9 of equal height and raised vertically to a roof. On top of
10 that, we know we have six foot high privacy walls that extend
11 from this rooftop structure to the edge of the building. We
12 know there should be a setback from the edge of the building
13 of one to one ratio. That also is not the case here.

14 So there are several issues with the rooftop
15 structures, which we would be glad to get into in a full appeal
16 presentation. Therefore, we believe the motion to dismiss,
17 based on the facts of the structures in both the rear yard and
18 the rooftop, should be not granted.

19 CHAIR JORDAN: Does DCRA have anything
20 additionally they want to add to the motion?

21 MR. TONDRO: Yes, thank you. Mr. Chairman,
22 members of the Board, I would like to just point out that under
23 Subsection 411.14, that provision states, provides for curtain
24 walls that are going to be without a roof, that are going to
25 give the appearance of a unified structure. So I present that

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 as an alternative, that there does not have to be always an
2 enclosure with a roof over it. Thank you.

3 CHAIR JORDAN: Let me ask just one other
4 question, Mr. Otten. The plans, is your argument that the
5 plans that you got from DCRA, and what the Applicant is now
6 doing is not the same? Is that what you're saying?

7 MR. OTTEN: That's one issue, that we've -- in
8 terms of just visible observation of the rooftop structures.

9 CHAIR JORDAN: So, but I'm asking the plans that
10 DCRA had, what's wrong with those plans, that violate the
11 zoning regulations?

12 MR. OTTEN: That violate the zoning regs?

13 CHAIR JORDAN: The plans, yes.

14 MR. OTTEN: Well, in terms of rooftop
15 structures?

16 CHAIR JORDAN: Just start with that, the rooftop
17 structure.

18 MR. OTTEN: First of all, the mechanicals are not
19 enclosed within the so-called curtain walls that we've heard
20 today.

21 CHAIR JORDAN: On the plans they're not showing
22 that?

23 MR. OTTEN: Right. So partially -- sorry.

24 CHAIR JORDAN: And you're including the trellis?
25 Those things that are connected by the trellis, you're saying

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

--

MR. OTTEN: Yes. So this trellis goes around in a U. Some of the mechanicals extend beyond this enclosed U. Further, the walls that -- the curtain walls that extend between the stairwell structures also extend out to the edge of the building.

According to these plans, they're at least six feet high, which is greater than four feet, which makes them part of this structure as well. That juxtaposed to the zoning regs does not comport, both the mechanicals not being entirely enclosed and there's the lack of the one for one setback on the rooftop structure as a whole.

CHAIR JORDAN: Okay. Is there anything else DCRA?

MR. TONDRO: No thank you.

CHAIR JORDAN: Okay. Excuse us. For the sake of consolidating time, and so that we can proceed on, let me do it this way. I'm going to hold a ruling on the motions at this particular point. Mr. Otten, let me go to the substance of your appeal. Is there anything else you can present, you want to present to the Board on the substance of your appeal?

MR. OTTEN: On the substance of my appeal?

CHAIR JORDAN: Yes.

MR. OTTEN: Okay. So you've seen -- I just handed this to cliff. I'll make sure that the lawyers --

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 CHAIR JORDAN: What is it and what are you
2 talking about?

3 MR. OTTEN: I mean essentially the conclusion of
4 the appeal, the two claims of the rooftop --

5 CHAIR JORDAN: Which document are you talking
6 about?

7 MR. OTTEN: It's dated January 13th. At the top
8 it says "Appeal Claims, Part 1 and 2."

9 CHAIR JORDAN: Okay.

10 MR. OTTEN: Okay. So that's -- I want to make
11 sure that was in on the record, and also we have the --

12 CHAIR JORDAN: Okay, all right. So what are we
13 passing out? What is this? Okay, okay.

14 MR. OTTEN: Okay. Besides the actual factual
15 evidence, I wanted to make sure that the Board knew what Zoning
16 Code I was working off of for the appeal, to represent Adams
17 Morgan for Reasonable Development. I just submitted that, and
18 then --

19 CHAIR JORDAN: Okay. We accept that in the
20 record.

21 MR. OTTEN: Thank you, and then the exhibits just
22 in regards to our standing.

23 CHAIR JORDAN: And Mr. Moy, what we need to do
24 is catch up on those exhibit numbers. But go ahead. All
25 right. What else did you submit to us?

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 MR. OTTEN: And just the exhibits regarding
2 standing, and with regards to our members who live from where
3 I took that picture.

4 CHAIR JORDAN: I don't think standing was an
5 issue before the Board. But go ahead. What else do you have,
6 you're going to present to us on substantive?

7 MR. OTTEN: And we presented in our initial
8 Exhibit 2 was the timeliness issue, which shows that we were
9 delivered the issuance of the building permit on July 26th,
10 to show that we did appeal within the 60 days after having
11 knowledge of that issuance of the building permit.

12 CHAIR JORDAN: Is there anything else you want
13 to present to the Board supporting your appeal?

14 MR. OTTEN: So this -- yeah. I think you have
15 everything. I could give these plat exhibits in as well.

16 CHAIR JORDAN: But they're the same things that
17 you submitted, actually that we reduced in 8-1/2 by 11. Would
18 that be correct?

19 MR. OTTEN: Chair, there's actually two plats on
20 here that are not -- that I didn't reduce these two. This is
21 the sheet titled A-136, Penthouse Finished Plan dated June
22 23rd, 2014.

23 CHAIR JORDAN: So it would be the Applicant's
24 architectural plans, Exhibit 13 what is it?

25 MR. OTTEN: A-136.

1 CHAIR JORDAN: Okay.

2 MR. OTTEN: That's the sheet title, Penthouse
3 Finished Plan, again showing the interconnected structure here
4 that has an opening with the mechanicals falling out. And then
5 just some of the roof elevations, and that's A-303, which shows
6 the trellis, the privacy walls that stand at six feet coming
7 off this structure, off the curtain walls. That I did not
8 reduce. This last one --

9 CHAIR JORDAN: But that's -- we have those in the
10 record. You can --

11 (Simultaneous speaking.)

12 MR. OTTEN: Okay. I'd like to add that as well.

13 CHAIR JORDAN: Okay.

14 MR. OTTEN: That's it.

15 CHAIR JORDAN: Good. All right, thank you.
16 Let me turn to the opposition, both the lack of -- because he's
17 not really an intervenor. You're a party as a matter of right.
18 Outside of what you presented on the motion to dismiss, do you
19 believe that you need to present something else to the Board,
20 to offset the substantive complaint of the Appellant?

21 We already went through a series of
22 documentations. Is there anything else?

23 MS. RODDY: No. Thank you.

24 CHAIR JORDAN: DCRA?

25 MR. TONDRO: No. Thank you.

NEAL R. GROSS

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

1 CHAIR JORDAN: All right. Then we will close
2 this record. Based upon what's been deduced on the motion to
3 dismiss and including the additional substantive submission
4 by the Appellant. I'm going to ask that all parties present
5 a findings of fact and conclusions of law to the Board. We're
6 going to set this for decision, Mr. Moy.

7 MR. MOY: I'm sorry. Just a second Mr.
8 Chairman.

9 CHAIR JORDAN: Oh, that's okay. I ain't got
10 nothing else to do.

11 MR. MOY: I'm being buried in paper work. I
12 know you didn't want to hear that.

13 CHAIR JORDAN: He's buried in paper work.

14 (Pause.)

15 CHAIR JORDAN: Mr. Moy, I need you.

16 MR. MOY: Yes, yes, yes. Okay, okay, here I am.
17 Here we go. Okay. Today is January the 13th. Give time for
18 draft orders, let's say two weeks to write draft orders.

19 CHAIR JORDAN: No, no, no. Give me a decision
20 date.

21 MR. MOY: Okay. February the -- February the
22 10th.

23 CHAIR JORDAN: February 10th?

24 MR. MOY: Let's go February 10th.

25 CHAIR JORDAN: February 10th is when we have the

NEAL R. GROSS

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

1 hearing?

2 MR. MOY: February 10th, yes we do.

3 (Simultaneous speaking.)

4 CHAIR JORDAN: Okay. Finding of facts,
5 conclusions of law submitted by February 3rd, okay, and that's
6 going to resolve this matter. Thank you very much. Thank you
7 very much. I appreciate it. Let's call 18898 please.

8 Application 18898

9 MR. MOY: All right. To the witness table --

10 CHAIR JORDAN: All right. We're going to take
11 three minutes.

12 MR. MOY: Yes sir. That would be Application
13 No. 18898 of Ingleside Presbyterian Retirement Community.
14 I'm not going to read the multiple requests for relief, but
15 I'll leave that up to the Applicant if there's any amendment
16 to that.

17 CHAIR JORDAN: Very good, there we go. Please
18 introduce yourselves.

19 MS. PRINCE: Allison Prince with Goulston and
20 Storrs here on behalf of the Applicant, Ingleside at Rock
21 Creek.

22 CHAIR JORDAN: Uh-huh.

23 MS. PRINCE: Would you like me to introduce my
24 whole panel?

25 CHAIR JORDAN: Well, they can introduce

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 themselves. I don't know if we're going to need a panel, but
2 go ahead.

3 MR. STEINER: Harry Steiner, Perkins Eastman
4 Architects on behalf of Ingleside.

5 MS. O'CONNOR: Lynn O'Connor, president and CEO.

6 MR. VAN PELT: Dave Van Pelt with Grove Slate
7 Associates (phonetic).

8 CHAIR JORDAN: The last name again?

9 MR. VAN PELT: Van Pelt.

10 CHAIR JORDAN: Okay.

11 MR. SPECK: And I'm Randy Speck, Chair of ANC-3G.

12 CHAIR JORDAN: Very good. Okay. We've kind of
13 called this up before, and I hope you've had the opportunity
14 to one, take care of the other preliminary matter of how you're
15 going to make -- what the ANC's concerns were and make that
16 into an agreement. Mr. Speck, you guys, you're comfortable
17 with that?

18 MR. SPECK: Yes, Mr. Chair.

19 CHAIR JORDAN: And I just wanted to give you
20 time, because this is a matter which I think that it speaks
21 for itself in regards to the relief being requested. I think
22 there's -- certainly I want to congratulate and commend the
23 neighborhood and community for all working together and trying
24 to get this thing worked out.

25 It's something that it's so important for this

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Board that people live together as best as they can, and
2 sometimes it's discussion. A lot of times there's not
3 discussions. But there's been so much discussion here, and
4 I really appreciate that, and a very comprehensive agreement
5 in regards to this.

6 A couple of things. I don't really have any
7 issue or questions regarding the application. I think I
8 understand what's going on. I see the issues. I think OP's
9 supportive and the ANC is supportive in regards to the -- in
10 light of the conditions, which are now an agreement. Board,
11 is there any questions you need to get drilled down in regards
12 to this project?

13 (No response.)

14 CHAIR JORDAN: Let me go over what some of the
15 conditions that I actually pulled out, and if there is some
16 opposition that comes up, Ms. Prince we can deal with that in
17 regards to rebuttal. I would suggest that to be the process.

18 But I pulled out for conditions that we would
19 incorporate in our document, and that would be your number one,
20 that they -- "Ingleside shall designate a project manager as
21 a single point of contact, who will be responsible for
22 receiving and addressing revolving -- involving and resolving
23 any complaints and concerns that might arise out of this
24 relief.

25 "Ingleside project manager shall keep a log of

NEAL R. GROSS

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

1 any outstanding questions and issues, and respond back to the
2 ANC." Your Condition No. 1, Communications, I think it's C.
3 "Ingleside shall prepare and provide to the task force for
4 comment its plan for trees, shrubs and vegetation." That
5 provision, keep that in place, that we will put in our order.

6 Your Section No. 2 under design, your paragraph
7 E and F regarding the "Ingleside shall not place any permanent
8 structures, facilities or structures in the ravine area," as
9 you already have there.

10 2-F, we'll keep that provision. Then your
11 Section No. 4, Temporary Facility, and I don't know if these
12 are your numbers or my numbers, because the computer might have
13 done something crazy. The first one, the one that says that
14 5314 - 29th Street, N.W. is to be temporary housing. No more
15 than ten current assisted living residents until construction
16 of the new assisted living facility is complete, whatever that
17 sub is. My machine went a little crazy.

18 Then your 4-F, "Within 30 days after the issuance
19 of a certificate of occupancy, the necessary licensing for the
20 building contain the permanent assisted living facility.
21 The temporary facility should be terminated."

22 And G, that during -- then your 4-G. "During the
23 period when Ingleside uses a temporary facility, there should
24 be no more than ten assisted living residents. Staff shall
25 consist of two persons during the day and the evening shift,

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 up to two persons during the night." "No Ingleside employee
2 shall park on the street."

3 That whole provision that you had there was at
4 4-G, at 4-G, okay? Those I would incorporate that affect
5 zoning directly, into any order if we do that. As I said, I
6 don't know if the Board has any questions about the
7 application or anything that you think you need to -- yes, yes,
8 Ms. Allen.

9 VICE CHAIR ALLEN: I really just want to make a
10 comment. I really did appreciate the plan itself and
11 certainly the parking provisions that you made in this plan,
12 which we really actually have you people increase the parking.
13 I just wanted to say I appreciate that.

14 CHAIR JORDAN: So Ms. Prince, is there anything
15 that you wanted to present to the Board, or can we proceed on
16 and you can handle anything in rebuttal if necessary?

17 MS. PRINCE: I'd like to do whatever you'd like
18 me to do. I'm prepared to make a statement. We have a full
19 presentation of the architecture. We have the director here.

20 CHAIR JORDAN: We're good, uh-huh. So then
21 let's turn to Mr. Gyor.

22 MR. GYOR: Good afternoon Mr. Chairman, members
23 of the Board. Stephen Gyor with the Office of Planning. We
24 support the project and rest on the record. Thank you.

25 CHAIR JORDAN: Good. Any questions, Board, of

NEAL R. GROSS

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

1 Mr. Gyor?

2 (No response.)

3 CHAIR JORDAN: The Applicant, any questions?

4 MS. PRINCE: No questions for Mr. Gyor.

5 CHAIR JORDAN: Where's my DDOT note? What did
6 I do with my DDOT note? I can't find my DDOT. Anyone here from
7 Department of Transportation on this matter?

8 (No response.)

9 CHAIR JORDAN: Where's my note on DDOT? What
10 did DDOT do with this? Okay. Department of Transportation
11 has no objection to the requested relief. I don't know how
12 I drove past that. I guess I got caught up on all the
13 conditions. All right.

14 (Pause.)

15 CHAIR JORDAN: That's what I get for doing these
16 things so far in advance, right? I've got to go back and read
17 my notes sometimes. All right. Mr. Speck, do you want to add
18 anything else into the record for the ANC?

19 MR. SPECK: I'd just reiterate, Mr. Chairman,
20 the effort that went into producing these -- this agreement
21 that we have with Ingleside. It's the product of literally
22 hundreds of hours of community people meeting together with
23 Ingleside.

24 I think this could be a model, really, for how
25 a developer and the community could work together, to resolve

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 a lot of very, very difficult problems that initially concerned
2 the community very greatly, and there was, I think, a
3 groundswell in the community that they didn't want this
4 project.

5 But after a great deal of effort and a willingness
6 to compromise on both sides, we were able to reach an agreement
7 and I'm actually quite proud of this agreement that we've
8 reached.

9 CHAIR JORDAN: Very good. Thank you, and again,
10 I thank you for the effort. Board, any questions of ANC?

11 (No response.)

12 CHAIR JORDAN: Okay. Ms. Prince, any
13 questions?

14 MS. PRINCE: No questions.

15 CHAIR JORDAN: Is there anyone here wishing to
16 speak in support of the application? Anyone wishing to speak
17 in support? Yes, please.

18 MS. PRINCE: May I note that the supporters who
19 happen to be residents of Ingleside were not sworn in. If
20 you'd like to swear them in.

21 CHAIR JORDAN: Oh, they weren't? Okay. Mr.
22 Moy. If you're going to -- let me -- if you have not been sworn,
23 please stand and get sworn, anyone. If you haven't been sworn.
24 Please Mr. Moy.

25 [WITNESSES SWORN.]

NEAL R. GROSS

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

1 MR. MOY: Thank you.

2 CHAIR JORDAN: Thank you. Come in and take a
3 seat. Are you -- you're going to present a statement too?
4 Please take a seat here please, and let's make sure that those
5 microphones are turned on. You'll get a bright, glowing green
6 light. So yeah. Push the button. I think you have to push
7 it. Yeah, there we go. Okay. Please identify yourselves.

8 MS. ANGUS: Jayne Angus, a resident of
9 Ingleside.

10 MS. HARRIS: Ruth Harris, resident of Ingleside.

11 MS. AGLER: I'm Ellen Agler, the executive
12 director of Temple Sinai, representing Temple Sinai.

13 CHAIR JORDAN: Okay. So each one of you have
14 three minutes if you would like to address the Board and tell
15 us what's on your mind. Ms. Agnes is it? Agnes?

16 MS. ANGUS: Angus.

17 CHAIR JORDAN: Angus? Please, uh-huh.

18 MS. ANGUS: Like the black cow.

19 CHAIR JORDAN: I gotcha. Go ahead, uh-huh.

20 MS. ANGUS: I just would like to say my husband
21 and I have lived at Ingleside for over 14 years, and we are
22 kind of overstayed our actuarial welcome, because we're still
23 in good health and active. My husband is currently president
24 of the residents association, and I am a regular member of the
25 board of directors.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 We as a community of residents care very much for
2 the whole community, and always have. So we were very much
3 involved in the process of communicating back and forth with
4 other residents.

5 We have a serious concern to replace two of our
6 older buildings that are not providing our assisted living
7 residents and skilled nursing residents the quality of life
8 that the rest of us have. They need to be upgraded
9 considerably.

10 We have currently 127 units of independent living
11 which are full, and 199 people or couples on the waiting list,
12 which we're part of the problem, because we're clogging the
13 pipeline. But we have a wonderful community, and we want the
14 community to stay a small enough size that we can all still
15 now each other and care for each other.

16 This is important. We from the outset told the
17 administration that we did not want to go, to take full
18 advantage of market conditions. The conditions are strong.
19 We wanted only what we needed to provide for our more helpless
20 residents, and to increase enough of our independent living,
21 to bring us into balance for a sound financial future.

22 This is what we have worked through over the
23 months, and this is what we're asking for.

24 CHAIR JORDAN: Very good. Thank you. Next
25 please.

NEAL R. GROSS

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

1 MS. HARRIS: Thank you. I've been a D.C.
2 resident since 1965 and a little bit before that time I was
3 in Maryland. When my husband and I decided to leave our single
4 family home, we were really grateful to be able to find
5 Ingleside, which is right in the neighborhood where we were
6 living, and it's been a very happy move for us.

7 As Ms. Angus said, we definitely need to replace
8 our health care center and our assisted living center. They
9 are very antiquated by today's needs, and that's something that
10 we're concerned, because we don't know when we're going to need
11 them.

12 We have another concern, which is about our own
13 investment in the place. I think as I understand, and I only
14 read -- this is from my reading, not from any expert position,
15 we really need to enlarge the financial base by building new
16 units.

17 Since there is a need and a baby boomer group
18 coming, we are pretty sure that those units will be filled.
19 But that will help us keep these other facilities up to
20 standard.

21 Then the other thing, it's nice to still be in
22 my own community, where we can continue to be in touch with
23 the groups that we have known earlier, and to keep our
24 connections with the Lafayette School and all the ANC, bless
25 their hearts.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 We have a lot of coming and going in our building
2 of people who are coming on for their AA meetings or their
3 practice meetings for rehearsals that they're doing for shows,
4 that kind of thing, and a lot of us going out into the community,
5 where we do participate in community efforts to do tutoring,
6 for instance, and that kind of thing.

7 So I feel like we're very much a part of the
8 community, and are grateful to be that way, and I hope you will
9 see fit to --

10 CHAIR JORDAN: Thank you. Appreciate it.
11 Thank you for coming.

12 MS. HARRIS: Approve this application.

13 CHAIR JORDAN: Thank you for coming.
14 Appreciate it. Next we have -- yes.

15 MS. AGLER: Hi. Ingleside is our immediate
16 neighbor, and we share a property line that spans the entire
17 length of our campus. Our institutions have enjoyed a
18 positive relationship, characterized by having good,
19 responsive and open communication.

20 We've also had a cordial relationship with the
21 ANC and have appreciated all of Randy Speck's time and
22 commitment to establish the conditions for approval of
23 Ingleside's BZA application.

24 We were treated as a respected stakeholder
25 throughout the process, and appreciate that our input was heard

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 and responded to. We support the programmatic improvements
2 that Ingleside is seeking to accomplish by their campus
3 redesign.

4 Our concerns relate to the impact that years of
5 construction will have on our temple operations. The
6 conditions for approval document addresses these concerns, and
7 we hope that the BZA will require adherence to those terms as
8 a part of any approval.

9 There are five key areas of concern for Temple
10 Sinai that I'll mention just briefly. The first has to do with
11 construction-related parking. Parking for our temple
12 members, guests, preschool families is extremely limited, and
13 we rely, particularly during our nursery school drop off and
14 pickup times and other peak times, the ability to access on
15 street parking in the adjacent neighborhood.

16 It's very important, as a part of Ingleside's
17 project, that an enforceable plan results in having no
18 construction-related parking spilling over onto neighborhood
19 streets.

20 Next, the traffic flow on Military Road. Access
21 to our main driveway on Military Road is a daily necessity.
22 The alternative entrance is off of a narrow stretch of Jocelyn
23 Street adjacent to the Carnegie Institution. The need for
24 restrictions or temporary closures on Military Road near our
25 entrance should be minimized, and advanced notification

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 provided, so that we can plan to mitigate potential problems
2 with access to our campus.

3 Next, construction-related noise, dirt and
4 odors. We hope that every effort will be made to erect
5 construction barriers along our shared property line, and to
6 set up construction staging in a way that minimizes disruption
7 to the experience of members, guests and children have as they
8 move about our campus, both outside and inside.

9 Next, communication. Proactive communication
10 with Temple Sinai will be a key to enduring the lengthy
11 construction period in the best way possible. Consistently
12 receiving advance notice about when work will be especially
13 noisy or disruptive will provide the opportunity to address
14 our schedule if necessary.

15 Finally, our high holy days. We are seeking
16 Ingleside's particular sensitivity to the Jewish high holy
17 days each fall. We notify them well in advance of our service
18 schedule each year, and asked the District for relief from
19 parking restrictions during this time.

20 We hope that Ingleside will keep adjacent and
21 surrounding streets accessible and maintained to quorum during
22 these holiest days of the year.

23 In summary, Temple Sinai is supportive of
24 Ingleside's proposed programmatic changes, and we support
25 their application if, and only if our concerns noted above are

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 addressed through the BZA's inclusion in a binding fashion of
2 the ANC-3G's carefully crafted conditions into the BZA's order
3 to approve the application. Thank you for the opportunity to
4 participate.

5 CHAIR JORDAN: All right, thank you. Is there
6 anyone else wishing to speak in support of the application?

7 (No response.)

8 CHAIR JORDAN: Is there anyone wishing to speak
9 in opposition? All right. Please come forward. I'm going
10 to ask you three -- thank you so much, if we can --

11 (Pause.)

12 CHAIR JORDAN: Please identify yourselves.

13 MR. CARLSON: I'm Richard Carlson. I'm
14 director of the Department of Terrestrial Magnetism of the
15 Carnegie Institution.

16 MR. COLLINS: Christopher Collins, Holland and
17 Knight, here on behalf of Carnegie.

18 MS. RENSHAW: Anne Renshaw, 40 year resident
19 adjacent to Ingleside's property.

20 CHAIR JORDAN: Okay. Whoever wants to begin.
21 Do you want to begin, Ms. Renshaw?

22 MS. RENSHAW: Mr. Carlson?

23 CHAIR JORDAN: Okay.

24 MR. CARLSON: I'd be happy to. I'd like to give
25 a little background on Carnegie. It's a research non-profit

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 institution incorporated by an act of Congress.

2 CHAIR JORDAN: You might want to save yourself
3 some time. We're aware of what you've already submitted. I
4 just want to help you with your three minutes so --

5 MR. CARLSON: Okay. Well, I should get there.

6 CHAIR JORDAN: Okay.

7 MR. CARLSON: I wanted to make the point that our
8 research, we have been on this campus since 1914 in residence.
9 We have two research departments on this campus. We do
10 research on earth and planetary sciences, and I'd just like
11 to convey some of the types of work that we do.

12 One is that the chief scientist of the MESSENGER
13 spacecraft that's currently orbiting Mercury is a member of
14 our department. We do research relevant to the prediction of
15 earthquakes and volcanic eruptions. We analyze mineral
16 grains from other stars that have implications for the
17 formation of the solar system, and our staff is among the first
18 to detect planets around other stars.

19 So we range widely. We bring in last year \$13.4
20 million in federal grant support, which in part is of short
21 duration grants, usually on the order of two to five years,
22 and obviously lack of completion of this promised work would
23 have dire consequences for our future ability to receive such
24 funding.

25 We have on order of 70 staff, who are there for

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 a long time, and then about 50 postdoctoral fellows who come
2 for two year stints, and there are 70 visiting scientists from
3 pretty much all around the world, that come for very short
4 research stints.

5 We share many of Temple Sinai's concerns with the
6 general issues about construction, although we appreciate the
7 efforts that were put in the ANC effort to address these.

8 Our particular concern is that our research is
9 supported by a number of instruments that are very sensitive
10 to ground vibration. The Ingleside construction is planned
11 right along the border of our property, much closer to our
12 property than any past structures on the Ingleside property.

13 So we've considered what the options are if their
14 activities would shut down the operation of our
15 instrumentation. To achieve these kind of analyses by
16 contract, buying at other institutions that have similar
17 equipment, we're looking at charges on the order of \$900 an
18 hour.

19 If the vibrations are too high, it will
20 compromise service contracts that we maintain on the
21 instruments, that run on the order of \$400,000 a year. The
22 vibration specs that we have for these instruments are clear,
23 well-documented. We have documentation that our facility
24 actually meets these specifications.

25 They were presented to Ingleside in October, and

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 apparently of some concern, they only appreciated the
2 significance of these vibration specifications in a meeting
3 that we held yesterday. So we're after here simply more time
4 in order for discussions with Ingleside, including some
5 measurements of the transmission of vibration from Ingleside
6 to our property, to see how big of a problem this is really
7 going to be. Thank you.

8 MR. COLLINS: Mr. Chair and members of the Board,
9 Ingleside is asking for a special exception, and the
10 requirement for a special exception includes a showing that
11 the relief will not tend to adversely affect the use of
12 neighboring property.

13 If this application is approved without
14 consideration of Carnegie's issues, it will have an adverse
15 impact on Carnegie. Among the proposals is a building that
16 is adjacent to Carnegie's property line, that includes a four
17 level below grade parking garage.

18 There is a number of issues that Carnegie has.
19 They have boiled down two construction-related issues. As Dr.
20 Carlson mentioned, Ingleside only focused on the severity of
21 these issues yesterday. Ingleside has admitted that
22 Carnegie's issues are legitimate, that Ingleside has not paid
23 sufficient attention to those issues, and Ingleside has asked
24 for the record to be left open for six weeks, in order to address
25 those issues and to also set a further hearing in case the

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 parties cannot agree. But all parties, we believe that we can
2 reach agreement.

3 The Board has incorporated construction
4 management plans on other institutional cases, to address
5 adverse impacts during construction, and I'll give you a couple
6 of examples. *The Lab School*, Case No. 18663, January of 2014;
7 *The Field School*, Case No. 18431, December 2012.

8 The Zoning Commission, also using the special
9 exception provisions for universities, has imposed a CMP most
10 recently, among others, American University in Case No. 11-07A
11 of March of 2012. So for these reasons, our position is that
12 if you approve this application, it will have an adverse impact
13 on the Carnegie.

14 It will be a short-term impact on the Carnegie.
15 We think that it will be construction-related only, but we need
16 six weeks or Ingleside needs six weeks to perform vibration
17 monitoring on their property and our property, because they
18 only just focused on this yesterday.

19 We're simply asking for six weeks for the record
20 to be left open, to allow that to occur. What we hope is that
21 at the conclusion of that, we can then convert our opposition
22 to support. We just don't know that at this point. Thank you.

23 CHAIR JORDAN: Thank you. Ms. Renshaw.

24 MS. RENSHAW: Mr. Chairman and members of the
25 BZA, and guests and residents of Ingleside, my name is Anne

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Renshaw. I'm a 40-year resident and owner of 2910 Military
2 Road, which abuts the Ingleside retirement community.

3 I was chair of ANC-3G in 1996, when Ingleside,
4 then called the Presbyterian Home, petitioned the BZA for a
5 special exception to build 102 active senior apartment units.
6 I did not champion the expansion back then, fearing that the
7 home's appetite for growth would eventually overwhelm the
8 surrounding Military Road neighborhoods. I have not been
9 proven wrong.

10 As a veteran Ingleside abutter, I come before
11 the BZA on which I served some years ago, to express reasonable
12 opposition to its current application for yet another, but far
13 greater, expansion. Grounds for this opposition are sixfold
14 and relate to the buildings and the land only, not its
15 residents.

16 First, what's the rush? On December 1st, 2014,
17 I appealed to the ANC to request a postponement, citing project
18 reports not yet submitted to the ANC or BZA. That request was
19 denied. Four reports, we note, were only filed with the BZA
20 in the last two weeks.

21 Moreover, the Carnegie Institution has requested
22 on January 9th a modest delay, which would allow time for the
23 community to catch up with the case filings and discuss the
24 conclusions that could either, in the DDOT report or OP report,
25 that could definitely be rebutted or clarified.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 Second, I want to touch on the big business of
2 aging. Ingleside's application is more about expanding,
3 albeit non-profit business and its bottom line. Private
4 continuing care communities, including Ingleside, compete for
5 residents via advertising and aggressive marketing. To stay
6 competitive, more and better amenities must be part of the
7 sales package.

8 Moreover, we note that the buildings come next to
9 house the additional senior population, which according to OP
10 desires support and amenities. More occupants require extra
11 staff, that may or may not use public transportation to and
12 from work.

13 However, OP maintained, some nine times in its
14 report, that the impact on the surrounding neighborhoods
15 should be minimal, or may not be or should not be adverse. If
16 Ingleside's huge expansion goes forward, complete with a life
17 care center building extending down Military Road from 30th
18 Street to 30th Place, the immediate residential area will
19 become even more identified as an institutional zone than a
20 series of appealing neighborhoods nestled in Ingleside's
21 shadow.

22 Third, the building height and the Tunisian
23 Ambassador's residence. In 1996, the community killed the
24 Holiday Inn high-rise design floated by the home as its new
25 Ingleside apartment building. We note for the record that

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 nearby Forestside and St. John's College High School at
2 Military Road and 27th Street, N.W., are both low-rise
3 buildings in keeping with the residential area.

4 This time, Ingleside is proposing not one but two
5 eight-story buildings, far out of character with neighboring
6 private homes. I requested a balloon test to prove or disprove
7 the actual sight lines of these high-rise buildings, but that
8 was summarily rejected.

9 Not to worry said Ingleside to the community.
10 We'll plant trees. The trees Ingleside planted along the 29th
11 Street alley to hide the view of the senior apartments some
12 18 years ago, however, have either died or are drawing their
13 last breath.

14 Moreover, one eight story high-rise will loom
15 over the front door of the official residence of the Tunisian
16 Ambassador, jeopardizing his and his family's privacy.
17 Moreover, during this time of great international tension, the
18 Ambassador's security could be compromised, given that an
19 entrance to a new underground garage may be located directly
20 adjacent to the Ambassador's residence.

21 Fourth, the environmentally sensitive ravine.
22 A former Tunisian Ambassador wrote to the BZA a letter back
23 in 1996, stating his Embassy's objections to Ingleside's
24 expansion along the west ravine, and I quote that in my
25 testimony.

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 The protection of the east ravine, which backs
2 up to homes along the 2900 block of Military Road --

3 CHAIR JORDAN: I'm going to ask you -- we're
4 already now two minutes, almost 2 minutes and 30 minutes (sic)
5 over, if you can probably use the next 30 seconds to wrap up
6 for us.

7 MS. RENSHAW: It's going to be a little
8 difficult, but I'll skedaddle through this.

9 CHAIR JORDAN: Thank you.

10 MS. RENSHAW: I just wanted to point out in this
11 objection paragraph, that what the abutters want is permanent
12 not incremental protection against Ingleside's acquiring more
13 property, such as the 3000 block of Military Road south side,
14 all properties of which are now owned by Ingleside, save one
15 home, which it would like to acquire.

16 I talk about construction in the 30 months of six
17 day a week demolition and pile driving and earth moving. It
18 will be 30 plus months during which the quiet enjoyment of our
19 homes will be lost and never recouped. The residents will be
20 awarded by amenities. Outlier senior citizens may only get
21 a bed in which to recuperate after breaking a hip.

22 We have multiple conditions from the ANC, but I
23 remember back in 1996 that there were conditions that were
24 promised that did not work out. They rather fizzled. We feel
25 that there will be parking in the neighborhood. It's going

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 to happen.

2 Ultimately, the Broad Branch grassy area across
3 from a shared driveway of Ingleside and the Tunisian Ambassador
4 will become a prime construction parking area, hopefully this
5 time with the approval of both public space and Rock Creek Park.

6 Lastly and importantly, Military Road and
7 traffic. The conditions are terrible on Military Road, and
8 the traffic is worse and worse. It suffers from the absence
9 of permanent traffic enforcement, faulty traffic signals and
10 uneven sidewalks, which impact pedestrian safety.

11 And we have the prospect of more high frequency
12 buses traversing the roadway. We suffer from vibrations and
13 emissions from construction and commercial vehicles which
14 permeate the area. But DDOT approved Ingleside's application
15 in any case, with only the caveat for Ingleside to provide
16 bicycle parking.

17 CHAIR JORDAN: I've --

18 MS. RENSHAW: Please, just I --

19 CHAIR JORDAN: I've already done that. I've
20 gone and I have to be fair to everyone.

21 MS. RENSHAW: All right. But I just want to say
22 please, in conclusion, that Ingleside may meet its burden of
23 proof, but we ask at what expense. Regardless of having its
24 acreage, Ingleside should limit future high- and mid-rise
25 construction, so that the charm of surrounding neighborhoods

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 will not be devalued due to Ingleside's institutional
2 ambitions. Thank you.

3 CHAIR JORDAN: Thank you. All right. Does the
4 Applicant have any questions they want to ask any of the
5 witnesses?

6 MS. PRINCE: I do not.

7 CHAIR JORDAN: All right, good. All right.
8 Then we will turn back to the Applicant. Is there any rebuttal
9 that you'd like to present to the Board?

10 MS. PRINCE: No rebuttal. I just have some
11 remarks in closing.

12 CHAIR JORDAN: Yes. Go ahead, please.

13 MS. PRINCE: In this case, we would like to rest
14 on the record. We have a very, very complete record that
15 reflects literally over a year of work with the community. We
16 have signed off is a Planning report, as well as a good report
17 from DDOT.

18 But there's one thing missing, and I want to
19 reiterate what Mr. Collins said, because this is a matter of
20 commitment that Ingleside has made to Carnegie. We want to
21 reiterate the importance of the record being left open for an
22 agreement with the Carnegie Institute.

23 We underestimated the magnitude of their issue.
24 We have committed to working on it. We have hired the
25 appropriate consultants to do that, and we will work in

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 incredibly good faith to try to achieve an agreement. We've
2 made that commitment to Carnegie.

3 In the event that we are not able to reach an
4 agreement, we believe a further hearing would be required to
5 allow this new information into the record and a full vetting
6 of it.

7 That's of course your call. We believe all the
8 other issues have been addressed exhaustively, but we did not
9 want to leave this Board with the impression that we feel we
10 need to honor the commitment that we made to Carnegie, to
11 continue to work on an agreement.

12 So we would ask that you consider that in your
13 -- as you think further about this case. Other than that, we
14 believe that the record is complete.

15 CHAIR JORDAN: Let me say this. When cases get
16 filed and they get on the docket and they're moving at a certain
17 pace, either we operate on those cases. We push cases back.
18 We sometimes are not fair to others, because we have other
19 things pushing and going forward.

20 So it's for the applicants to know that their
21 cases are ready to go. It's also something that's important,
22 that the applicants do reach out and talk to the community as
23 soon as possible and not the last minute, because people should
24 have the opportunity to weigh in.

25 MS. PRINCE: Uh-huh.

NEAL R. GROSS

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

1 CHAIR JORDAN: So this is what I'm going to
2 suggest to the Board we're going to do in this case at this
3 time, because I've really got some concerns about keeping this
4 record open, doing all this, when I'm hearing that this
5 conversation, there was an offer up by the Carnegie earlier
6 on to be part of the discussion.

7 It wasn't taken seriously until the other day,
8 which gives me great concerns. I know you were working with
9 the ANC and others in the community. I understand that, and
10 I appreciate that. But backing up the dockets because the
11 Applicant may not be ready to go, for something that could have
12 been taken care of a long time ago just gives me some rub.

13 Mr. Moy, we're going to put this on for a decision
14 in eight weeks or 12 weeks, because we're going to make it
15 comfortable for the Board where we're going to place this.
16 Submission at least one week before of any agreement that's
17 worked out, and if there's an issue that you think we may need
18 to take up.

19 But I'm not right now comfortable in keeping this
20 open for a hearing, because I don't see the basis of it. So
21 Mister --

22 ZC CHAIR HOOD: Mr. Chairman, I would concur.
23 When I first read that was line laid out by Ms. Prince, and
24 possibly in six-seven weeks we might have to come back and have
25 a limited scope hearing. I think from what I'm hearing, I

NEAL R. GROSS

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

(202) 234-4433

www.nealrgross.com

1 think you all will come back working together so we won't have
2 to have a scope hearing, because I'm not favorable in having
3 another hearing.

4 I'm going to operate on the merits and what was
5 discussed here. But I would also ask, Mr. Chairman, that we
6 also take into consideration, include Ms. Renshaw, an
7 Ingleside abutter, in some of those conversations, and see how
8 we can try to mitigate some of those concerns from her and her
9 neighbors as well.

10 So I would concur. Ms. Prince, we're not looking
11 forward to another hearing. We're looking forward to everyone
12 coming in holding hands, singing Kumbayah, and then that way
13 we can make an informed decision and we can move on. So I
14 associate myself with your comments, Mr. Chairman.

15 CHAIR JORDAN: Thank you. Mr. Moy.

16 MR. MOY: For eight weeks, we're looking at
17 March the 10th, a Tuesday, for a decision.

18 CHAIR JORDAN: Okay, all right. Then we want
19 information back no later than March 3rd.

20 MS. PRINCE: Thank you.

21 CHAIR JORDAN: So we'll conclude this hearing,
22 and this on March -- what was the date we're using for this?

23 MR. MOY: March 10th.

24 CHAIR JORDAN: March 10th. All right. Thank
25 you very much. Thank you all for coming. Thank you for taking

NEAL R. GROSS

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

1 times out of your day and sitting here, and see how much fun
2 we have here on Tuesday. As you know Ms. Renshaw, it can be
3 -- this one was not -- this wasn't a bad day at all, you know.
4 We can, you know, have some very interesting things come here.
5 Wow, a reality show.

6 Is there any other business that needs to come
7 before the Board at this time?

8 VICE CHAIR ALLEN: Yes.

9 CHAIR JORDAN: Ms. Allen.

10 VICE CHAIR ALLEN: I would like to move in the
11 course of business that for this upcoming year, is that the
12 time frame, the upcoming year, I move that Lloyd Jordan be chair
13 of the BZA. I'd like to also move that Marnique Heath be the
14 new vice chair of the BZA.

15 CHAIR JORDAN: Second?

16 ZC CHAIR HOOD: Oh, do you all need me? The way
17 I get treated when I come to BZA. I'll second that motion.

18 CHAIR JORDAN: Motion made and seconded. Any
19 additional discussion?

20 (No response.)

21 CHAIR JORDAN: All those in favor of the motion
22 aye?

23 (Chorus of ayes.)

24 CHAIR JORDAN: Those opposed, nay. Mr. Moy, any
25 other business coming before the Board?

NEAL R. GROSS

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

1 MR. MOY: Not today, sir.

2 CHAIR JORDAN: Very good. Then we're
3 adjourned. Thank you again. Thank you all.

4 (Whereupon, the above-entitled matter went off
5 the record at 12:49 p.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

