

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 15, 2024

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA L. JOHN, Vice-Chairperson  
CARL BLAKE, Member

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice-Chairperson  
JOSEPH S. IMAMURA, PhD, AOC Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary to the BZA  
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

JOEL LAWSON, Associate Director  
RON BARRON  
SHEPARD BEAMON  
PHILIP BRADFORD

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.  
COMETRIA COOPER, ESQ.  
CARISSA DEMARE, ESQ.  
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from  
the Regular Public Hearing held on May 15, 2024.

## CONTENTS

Application No. 20824 of Rupsha 2011, LLC . . . . .	8
Application No. 21114 of Sharon Momenian-Schneider, Trustee and Betty H. Dinarte, Trustee . . . . .	17
Application No. 21116 of William Ford-01 . . . . .	28
Application No. 21117 of RSSN Associates, LP, and Atelier Verre . . . . .	42
Appeal No. 21082 of Wardman Hotel Strategy Team, M. Ramachandran, and R. Wallenberg Appeal . . . . .	51

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

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

9:39 a.m.

CHAIRPERSON HILL: Good morning, ladies and gentlemen of Board of Zoning Adjustment. Today is May 15, 2024, this hearing will please come to order. My name is Fred Hill, Chairman of the District of Columbia Board of Zoning Adjustment. Joining me today are Board members Lorna John, Carl Blake, and Chrishaun Smith, and Zoning Commissioners, I believe, Joe, Dr. Imamura -- and I'm not quite sure who's with us for the rest of the day, hold on one second.

VICE CHAIR JOHN: Mr. Chairman, I believe that's Mr. Miller.

CHAIRPERSON HILL: Great, thank you. And Vice Chair Miller.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The video of the Webex will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. And also, please be advised that we do not take any public testimony at our decision meeting sessions.

If you're experiencing difficulty accessing Webex

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 or with your call-in telephones, then please call our OZ  
2 Hotline number at 202-727-5471. Once again, 202-727-5471.  
3 It's also listed on the screen.

4           At the conclusion of a decision meeting session  
5 I shall, in consultation with the Office of Zoning, determine  
6 whether a full or summary order may be issued. A full order  
7 is required when the decision it contains is adverse to a  
8 party, including an affected ANC. A full order may also be  
9 needed if the Board's decision differs from the Office of  
10 Planning's recommendation. Although the Board favors the use  
11 of summary orders whenever possible, an applicant may not  
12 request the Board to issue such an order.

13           In today's hearing session, everyone who is  
14 listening on Webex or by telephone will be muted during the  
15 hearing, and only persons who have participated -- sorry,  
16 that sign to participate or testify will be unmuted at the  
17 appropriate time. Please state your name and home address  
18 before providing oral testimony or your presentation. Oral  
19 presentations should be limited to a summary of your most  
20 important points. When you're finished speaking, please mute  
21 your audio so that your microphone is no longer picking up  
22 sound or background noise.

23           All persons planning to testify either in favor  
24 or in opposition should have signed up in advance, they'll  
25 be called by name to testify. If this is an appeal, only

1 parties are allowed to testify. By signing up to testify,  
2 all participants completed the oath or affirmation, as  
3 required by Subtitle Y 408.7.

4           Requests to enter evidence at the time of an  
5 online virtual hearing, such as written testimony or  
6 additional supporting documents, other than live video which  
7 may not be presented as part of the testimony, may be allowed  
8 pursuant to Subtitle Y 103.13. Provided that the persons  
9 making the request to enter an exhibit explain how the  
10 proposed exhibit is relevant and the good cause that  
11 justifies the -- and the good cause that justifies allowing  
12 the exhibit into the record, including an explanation of why  
13 the requestor did not file the exhibit prior to the hearing  
14 pursuant to Y 206, and how the proposed exhibit would not  
15 unreasonably prejudice any parties. The order of special  
16 exceptions and variances are pursuant to Y 409, an appeal is  
17 pursuant to Y 507.

18           At the conclusion of each case, an individual who  
19 is unable to testify because of technical issues may file a  
20 request for leave to file a written version of the planned  
21 testimony to the record within 24 hours following the  
22 conclusion of public testimony in the hearing. If additional  
23 written testimony is accepted, then parties will be allowed  
24 a reasonable time to respond, as determined by the Board.  
25 The Board will then make its decision at its next meeting

1 session, but no earlier than 48 hours after the hearing.

2           Moreover, the Board may request additional  
3 specific information to complete the record. The Board and  
4 the staff will specify at the end of the hearing exactly what  
5 is expected and the date when persons must submit the  
6 evidence to the Office of Zoning. No other information shall  
7 be accepted by the Board.

8           Finally, the District of Columbia Administrative  
9 Procedures Act requires that a public hearing on each case  
10 be held in the open, before the public. However, pursuant  
11 to Section 405(b) and 406 of that Act, the Board may,  
12 consistent with its rules and procedures and the Act, enter  
13 into closed meeting on a case for purposes of seeking legal  
14 counsel on a case, pursuant to the D.C. Official Code Section  
15 2-575(b)(4), and/or deliberate on a case, pursuant to D.C.  
16 Official Code Section 2-575(b)(13), but only after filing  
17 necessary public notice in the case of emergency -- in the  
18 case of an emergency closed meeting, after taking a roll call  
19 vote.

20           Madam Secretary, do we have any preliminary  
21 matters today?

22           MS. MEHLERT: Good morning, Mr. Chairman and  
23 members of the Board. In terms of late filings today, the  
24 Chairman has reviewed and granted waivers to allow late  
25 filings into the applicable case records, pursuant to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Subtitle Y Section 206.7 and Section 103.13. Any other late  
2 filings during the course of today's live hearing should be  
3 presented before the Board by the applicant, parties, or the  
4 witnesses after the case is called. And any other  
5 preliminary matters will be noted when the case is called.

6 CHAIRPERSON HILL: Great, okay. Let's see. Well,  
7 good morning, everybody. If you would -- I think the first  
8 one we're going to do today is with Dr. Imamura, and if you  
9 want to go ahead and call that so we can take care of that  
10 issue, that would be helpful.

11 MS. MEHLERT: Yeah, so this is a case on the  
12 Board's hearing agenda, it's Application Number 20824 of  
13 Rupsha 2011, LLC. As amended this is a self-certified  
14 application for special exceptions pursuant to Subtitle X  
15 Section 901.2, under Subtitle U Section 421 to allow a new  
16 residential development, under Subtitle C Section 710.3 from  
17 the parking space location requirements of Subtitle C Section  
18 710.2©, and pursuant to Subtitle X Section 1002 for area  
19 variances from the new alley record lot requirements of  
20 Subtitle C Sections 306.1(a) and (b).

21 This is this subdivision of an existing tax lot  
22 into nine new record alley lots, to allow nine new two-story  
23 principle dwellings, seven attached and two semi-detached.  
24 The project is located in the RA-1 zone at 4226 Rear 6  
25 Street, Southeast, Square 6208, Lot 823.



1           This case was last heard on February 14 and was  
2 continued to the April 10 hearing, which was postponed due  
3 to a lack of quorum. Participating today are Chairman Hill,  
4 Vice Chair John, and Commissioner Imamura. And I'll just  
5 note that the, an updated ANC 8E report was filed late last  
6 night to the record, in Exhibit 94.

7           CHAIRPERSON HILL: Great. If the applicant can  
8 hear me, if they could introduce themselves for the record?

9           MS. WILSON: Hi. Alex Wilson from Sullivan and  
10 Barros, on behalf of the applicant in this case.

11           CHAIRPERSON HILL: Okay, great, Ms. Wilson. I  
12 guess -- this has been going on for so long I'm not really  
13 sure exactly where we were, so if you want to fill us in as  
14 to where you are currently with this application, and then  
15 I'm going to give you an opportunity to go ahead and make the  
16 argument as to why you believe that we should grant the  
17 relief. And I'll let you start whenever you want.

18           MS. WILSON: Absolutely, thank you. So, if you  
19 recall, this was pushed to today so we could also attend the  
20 ANC meeting on May 6, so, worked out that there wasn't a  
21 quorum, I guess. And we now have ANC support for the  
22 project. And then, at the hearing before that the primary  
23 directives were to work with the daycare across the street,  
24 and then to resolve the side setback issue for the  
25 northernmost lot.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           There is an agreement in the record with the  
2 daycare across the alley, and then again, with that  
3 agreement, the ANC is now in support of the project. And  
4 there is an updated report in Exhibit 94 reflecting the  
5 unanimous vote and the agreement with the daycare.

6           And then, for the side yard, this was the area of  
7 relief that OP was recommending denial for, it was -- we were  
8 not providing a setback for the northernmost lot, it abuts  
9 a non-alley lot. And so, we submitted new plans showing that  
10 five-foot setback for the northernmost lot and were able to  
11 remove the only area of relief that OP was recommending  
12 denial for. So now we have OP recommendations of approval  
13 for all areas of relief.

14           And we did have a full hearing related to these  
15 areas of relief, and I think we landed at a place last time  
16 where the Board, and clearly Office of Planning at least felt  
17 comfortable with the area variance. This is a single tax  
18 slot, so nothing can be built here by right. And even with  
19 a special exception, it would only result in one  
20 single-family home. And given the cost to bring utilities  
21 to the site, which is over \$1,000,000, a single-family home  
22 is not feasible nor a reasonable use of this large RA-1 site.

23           And again, the agreement with the daycare and  
24 adjustments to the side yard goes to prong three, as any  
25 potential impacts will be mitigated by the agreement or

1 through appropriate setbacks. So, in summary, we now have  
2 full ANC support and a recommendation of approval from the  
3 Office of Planning for all areas of relief.

4 And the other area of relief that I'll note is the  
5 relief for parking in the front setback, as opposed to the  
6 rear. And DDOT supports that, as it makes sense, it's right  
7 off the alley and wouldn't require cars to drive through the  
8 rear yards of all the other properties. And so, we're happy  
9 to take any questions.

10 CHAIRPERSON HILL: Is that, is the plans, the  
11 revised plans I see in the slide deck in A07 and in your  
12 slide deck in A08, those are the revised plans, correct?

13 MS. WILSON: Correct. And in Exhibit 81, as well.

14 CHAIRPERSON HILL: Okay, thank you. All right,  
15 does the Board have any questions with the applicant?

16 (No audible response.)

17 CHAIRPERSON HILL: I can't hear you, Vice Chair  
18 John, sorry.

19 VICE CHAIR JOHN: I'm trying to pull up Exhibit  
20 81, because that was the only outstanding issue for the  
21 Office of Planning. Okay, I see it now. And could you  
22 summarize, Ms. Wilson, the agreement with the daycare center?

23 MS. WILSON: I'm not sure if Mr. Sack is on, but  
24 I can pull it up. It's similar to a construction management  
25 agreement, it's a safety agreement and it deals with how the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 construction will proceed, and how they're going to protect  
2 the property and schedule construction to accommodate the  
3 daycare's hours. And they're -- yeah, that's the general --

4 VICE CHAIR JOHN: And that was in which exhibit?

5 MS. WILSON: So, that's in Exhibit 94a. And we  
6 also submitted an email detailing the communication and, I  
7 mean, it's reflected almost verbatim in 94a -- the email is  
8 in Exhibit 89.

9 VICE CHAIR JOHN: Okay, thank you.

10 CHAIRPERSON HILL: And that, you know, Ms. Wilson,  
11 your client did agree to that, correct?

12 MS. WILSON: Absolutely, yep. It's signed by both  
13 my client and then by Ms. Mack who runs Sunshine Early  
14 Learning Center.

15 CHAIRPERSON HILL: Great. Yeah -- what was I  
16 going to say -- because that construction management plan,  
17 or safety agreement, is not necessarily something we would  
18 put in as a condition, but I want to put on the record that  
19 your client has agreed to it. Okay, let's see, could I hear  
20 from the Office of Planning?

21 MR. LAWSON: Hi, good morning, Mr. Chair, members  
22 of the Board. I think OP can stand on the record of our of  
23 our latest report, at Exhibit 84 is our supplemental report  
24 indicating that we no longer object and we're supportive of  
25 the current application. I don't think I have much to add

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 to that, our earlier reports did indicate that we received  
2 comments from both DPW and DDOT, indicating that they were  
3 not in opposition to this application either. So, with that  
4 we would, again, stand on the record in support of this  
5 application.

6 CHAIRPERSON HILL: Great, thank you. Mr. Young,  
7 is there anyone here wishing to speak?

8 MR. YOUNG: We do not.

9 CHAIRPERSON HILL: Okay, does the Board have any  
10 questions of the Office of Planning?

11 VICE CHAIR JOHN: Just one clarification, Mr.  
12 Chairman. So, the supplemental report essentially says, if  
13 the request for side-back, side yard setback is removed, then  
14 OP would approve the application, did I get that right?

15 MR. LAWSON: Yes, Board Member John. At the time  
16 we filed the report, the applicant had not yet amended the  
17 application to indicate that the side yard relief was being  
18 eliminated. We talked about that with the applicant and we  
19 appreciate them making that change. That's now in the  
20 record, the information from the applicant is now in the  
21 record, so that condition is no longer really relevant.

22 VICE CHAIR JOHN: Okay, thanks. Just clarifying.

23 MR. LAWSON: Yes.

24 VICE CHAIR JOHN: Thank you.

25 CHAIRPERSON HILL: Okay, let's see here. Okay,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

1 does anybody have any final questions?

2 (No audible response.)

3 CHAIRPERSON HILL: Okay. All right, I'm going to  
4 go ahead and close the hearing and the record. Thank you all  
5 for your time.

6 Okay, I'm not actually sure who is on this with  
7 us. I guess we don't have Mr. Smith today, it seems like,  
8 but -- so this has been a long process and I'm glad that the  
9 applicant was able to work with the Office of Planning to  
10 accommodate that side yard in Lot A, and I would agree with  
11 the applicant in terms of their arguments for both the  
12 special exceptions for the residential development itself,  
13 the parking, and then the area variances. Because, again,  
14 as they had, you know, summarized, it's a lot that couldn't  
15 be used necessarily for anything, because of the impractical  
16 nature of bringing in all of the utilities to those lots.

17 I think it's actually a nice project and I'm glad  
18 that it actually seems to be moving forward, I'm going to be  
19 voting in favor. Dr. Imamura, do you have anything you'd  
20 like to add?

21 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
22 I'm in agreement with your analysis. And I think what's key  
23 here is the impractical nature of bringing in the utilities.  
24 I do appreciate the applicant working with the daycare and  
25 resolving the side yard setback, also appreciate the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 applicant working with the ANC. I do support the ANC's goal  
2 or desire for the applicant to at least make one unit  
3 affordable, but that certainly doesn't hold me back from  
4 supporting the rest of this application, so. And also, just  
5 want to make note that DDOT, OP, and DPW are in support as  
6 well, so I'm prepared to vote in favor.

7 CHAIRPERSON HILL: Thank you. Vice Chair John?

8 VICE CHAIR JOHN: Thank you, Mr. Chairman. I  
9 don't have a whole lot to add. I agree that the application  
10 meets the requirements for relief as amended, and I do  
11 appreciate the applicant's revision of the proposed project,  
12 from the 33 units that were originally proposed. And I think  
13 this new agreement makes more -- this new project makes more  
14 sense for an alley lot. And apart from that I have nothing  
15 further to add to what's already been said, and will give  
16 great weight to OP's analysis and recommendations, as well  
17 as the ANC. Appreciate the ANC working with the applicant.  
18 And so, that's it.

19 CHAIRPERSON HILL: Thank you. All right, I'm  
20 going to make a motion to approve Application Number 20824  
21 as captioned and read by the Secretary, and noting that the  
22 new plans are in Exhibit 81, and ask for a second, Ms. John?

23 VICE CHAIR JOHN: Second.

24 CHAIRPERSON HILL: Motion made and seconded. Ms.  
25 Mehlert, if you could take a roll call?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MS. MEHLERT: When I call your name, please respond  
2 to the Chair's motion to approve the application. Chairman  
3 Hill?

4 CHAIRPERSON HILL: Yes.

5 MS. MEHLERT: Vice Chair John?

6 VICE CHAIR JOHN: Yes.

7 MS. MEHLERT: And Dr. Imamura?

8 COMMISSIONER IMAMURA: Yes.

9 MS. MEHLERT: Staff will record the vote as three  
10 to zero to two to approve Application 20824, on the motion  
11 made by Chairman Hill and seconded by Vice chair John, with  
12 two Board members not participating.

13 CHAIRPERSON HILL: Thank you. All right, Dr.  
14 Imamura, I hope you have a nice day.

15 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
16 Thank you, everybody.

17 VICE CHAIR JOHN: Thank you. Bye. Have a good  
18 day.

19 CHAIRPERSON HILL: Thank you, bye-bye. All right,  
20 Ms. Mehlert, have we not heard from Board Member Smith? Was  
21 he not present today?

22 MS. MEHLERT: He's not participating today.

23 CHAIRPERSON HILL: Okay. I don't know, I must  
24 have missed that. Okay. All right, Vice Chair Miller, thank  
25 you for joining us. All right, good morning. You want to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 call our next matter of business, please, Ms. Mehlert?

2 (Whereupon, the above-entitled matter went off the  
3 record at 9:58 a.m. and resumed at 10:17 a.m.)

4 MS. MEHLERT: The Board is returning to its public  
5 hearing session, and the next case is Application Number  
6 21114 of Sharon Momenian-Schneider, Trustee and Betty H.  
7 Dinarte, Trustee. This is a self-certified application  
8 pursuant to Subtitle X Section 901.2 for a special exception  
9 under Subtitle G Section 5200.1, from the lot occupancy  
10 requirements of Subtitle G Section 210.1.

11 This project is to construct a rear stair addition  
12 to an existing three-story attached building, for use as a  
13 grocery store in the basement and restaurant on the first  
14 floor, and two dwelling units on the second and third floors.  
15 The project is located in the MU-4 zone at 3413 14 Street,  
16 Northwest, Square 2836, Lot 119.

17 CHAIRPERSON HILL: Okay, let's see, if the  
18 applicant can hear me, if they could please introduce  
19 themselves for the record?

20 MR. SULLIVAN: Thank you, Mr. Chairman and members  
21 of the Board. Marty Sullivan with Sullivan and Barros, on  
22 behalf of the applicant.

23 CHAIRPERSON HILL: Thank you, Mr. Sullivan. Mr.  
24 Sullivan, you want to walk us through your client's  
25 application and why you believe they are meeting the criteria

1 for us to grant the relief requested? I'm going to put 15  
2 minutes on the clock so I know where we are, and you can  
3 begin whenever you like.

4 MR. SULLIVAN: Thank you. If we could have the  
5 PowerPoint presentation loaded, please? So, the property's  
6 3413 14 Street, Northwest. Next slide, please. Property's  
7 in the MU-4 zone district that's improved with a four-story  
8 mixed-use building. The building currently has a C of O for  
9 four residential units, and the applicant intends to renovate  
10 the interior of the building to use the basement as a grocery  
11 store, the first floor as a restaurant, and to continue the  
12 residential use on the second and third floors.

13 And as part of this project, the applicant is  
14 bringing the building up to code and needs to add a rear  
15 egress staircase, and that staircase will increase the  
16 overall lot occupancy to 62.1 percent. So we're simply  
17 asking for lot occupancy relief for that 2.1 percent.

18 Office of Planning is in support, the ANC opted  
19 not. They said, if we don't hear any concerns from  
20 neighbors, we're just going to stay out of it, it's too small  
21 for us. Which was unusual, but I know they have filed some  
22 things in the last two days, which I haven't really read yet  
23 -- I have them up in front of me -- saying that there was a  
24 neighbor next door that had concerns about the future use of  
25 the space. The specific use is not identified yet because

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 there's no tenants, and they haven't even begun a tenant  
2 search.

3           The property is in bad shape and the objective of  
4 the owner is simply to get it back and clean it up and  
5 renovate it, and at that point they'll look for tenants. But  
6 the use of it has nothing to do with the relief being  
7 requested.   Also, I did, and I don't think the ANC  
8 Commissioner knew that I have communicated with the president  
9 of the condo association with the building at 3415, which is  
10 just to the north, abutting it.

11           I don't know if -- I didn't know what space this  
12 neighbor that Commissioner Layman referenced, I actually  
13 don't know what property they're from. Assuming it's from  
14 3415, so I've spoken -- or I've emailed a couple times with  
15 president of her condo association, if that's the same  
16 building, and let them know what was going on and he seemed  
17 satisfied with that. Because, if it's a restaurant use that  
18 they're concerned about, likely that will be an ABCA process,  
19 where the neighbors can get involved relevantly in that case.  
20 But this one is just related to the 2.1 percent lot  
21 occupancy.

22           And I'm going to look, there was one other, there  
23 were two filings in there, there's a letter with additional  
24 context. The neighbor's concern was related to the use of  
25 the ground floor -- this is from Max Ewart who's the chair

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 of the Housing Justice Committee for this ANC. While  
2 discussing with the neighbor, we explained that this is a  
3 by-right use and if the applicant chose to do so they could  
4 just rescind their request and operate a restaurant there,  
5 without BZA review. Our logic for not hearing this at the  
6 ANC level was because of the lack of voices of concern and  
7 because we are enthusiastic about an abandoned building  
8 becoming used in our neighborhood. So, that's the summary  
9 of where we are with the ANC. Next slide, please.

10 So, here are some photos of the building, front  
11 and back. It's the building in the middle, the building to  
12 the left is the building where I've had discussions with the  
13 Condo Association President. Next slide, please. Next  
14 slide, these are the existing floor plans. Next slide. And  
15 the proposed space. Next slide. The stairs are in the back,  
16 just in the back that added the lot occupancy, we're actually  
17 point-one percent over the minor deviation amount. Next  
18 slide, please.

19 And this is the rear elevation, showing the  
20 proposed stairway. Next slide, please. Next slide and next  
21 slide. So, granting relief will be in harmony with the  
22 general purpose and intent of the regulations, property is  
23 located in MU-4 which is intended to permit moderate density  
24 mixed-use development, this will be a moderate density  
25 mixed-use building and the additional 2.1 percent lot

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 occupancy will have no effect on the use of neighboring  
2 properties. Next slide, please.

3 And that's it because there's no specific criteria  
4 for a special exception in the MU-4 zone, it's just the  
5 general criteria. And if the Board has any questions for  
6 myself, and actually the property owner may be here as well,  
7 Sharon Momenian-Schneider, if you have any questions for  
8 her. Thank you.

9 CHAIRPERSON HILL: Okay, thanks Mr. Sullivan.  
10 Before I get to questions for my Board, could I hear from the  
11 Office of Planning?

12 MR. BARRON: Hello, good morning, Commissioners.  
13 For the record, my name is Ron Barron, development review  
14 specialist with the D.C. Office of Planning. OP recommends  
15 approval of the request for special exception relief, the  
16 proposal would be in harmony with the general purpose and  
17 intent of the MU-4 zone, it would be unlikely to affect  
18 adversely the use and privacy of neighboring properties. OP  
19 is content to rest on our report in the record and I'm  
20 available to answer any questions you may have. Thank you  
21 very much.

22 CHAIRPERSON HILL: Thank you, Mr. Barron. Does  
23 my colleagues have any questions for the applicant or the  
24 Office of Planning?

25 VICE CHAIR JOHN: No.

1 CHAIRPERSON HILL: Okay. Mr. Young, is there  
2 anyone  
3 here wishing to speak?

4 MR. YOUNG: Yes, we have two witnesses signed up.

5 CHAIRPERSON HILL: Okay, can you tell me their  
6 names, please?

7 MR. YOUNG: Yes, the first is Justin Schaber and  
8 he is calling in by phone and the second is Madalina Pruna.

9 CHAIRPERSON HILL: Okay, Mr. Geeber, can you hear  
10 me?

11 (No audible response.)

12 MR. YOUNG: Schaber I believe is his last name.

13 CHAIRPERSON HILL: Oh, Schaber. Mr. Schaber, can  
14 you hear me?

15 (No audible response.)

16 CHAIRPERSON HILL: Mr. Schaber, can you hear --

17 MR. SCHABER: I can hear you.

18 CHAIRPERSON HILL: Oh, great. If you could  
19 introduce yourself for the record. And as a member of the  
20 public you'll have three minutes to give your testimony, and  
21 you can begin whenever you like.

22 MR. SCHABER: Yeah, my name is Justin Schaber, I  
23 am the President of the HOA for the building directly to new  
24 north which is 3415 14 Street. Most of the concerns that  
25 have been expressed by the members of my HOA do relate to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 intended future use, specifically with the restaurant. And  
2 based on the presentation and the conversations that I've had  
3 via email, it does sound like the majority of those are more  
4 appropriately addressed through future concerns, when a  
5 actual tenant is going to be found.

6 CHAIRPERSON HILL: Okay. All right, let me see  
7 here. Ms. Pruna, can you hear me?

8 MS. PRUNA: Yes, I can hear you.

9 CHAIRPERSON HILL: Great, thank you. Could you  
10 introduce yourself for the record? And then, also as a  
11 member of the public you will have three minutes, and can  
12 begin whenever you like.

13 MS. PRUNA: Thank you. My name is Madalina Pruna,  
14 I'm a resident of the same building, like Justin Schaber, at  
15 3415 14 Street, Northwest, and I own a condo in the building  
16 north of the building that has applied. I welcome the  
17 development of the new building, however I am very concerned  
18 of the use of, proposed use of the building.

19 And I think that the current architectural plans  
20 are supporting the restaurant use, therefore -- and that will  
21 have negative externalities for our building, potentially  
22 including smells, noise, rats, and also it might negatively  
23 affect the value, the future value of the condos in the, in  
24 my building.

25 So, I would encourage the owners to seek Gloria's

1 Restaurant's approval and sort of like, letter of support for  
2 this. So this is one, a second, to consider a different use  
3 for the building before going ahead with this proposal. So  
4 therefore, I oppose this application.

5 CHAIRPERSON HILL: Okay, thank you, Ms. Pruna.  
6 Does the Board have any questions for either witnesses?

7 VICE CHAIR JOHN: No.

8 CHAIRPERSON HILL: All right. Mr. Young, if you  
9 could please excuse the witnesses. Thank you guys, for  
10 taking the time to give us your testimony. Okay, I mean,  
11 just to comment on some of the feedback that we heard from  
12 the witnesses there, again, this is not -- the use is not  
13 what is before us and if they, the applicant, they don't even  
14 know who they're going to get yet, but if they did get a  
15 restaurant I'm sure then, again, through the ABRA process  
16 there would be an opportunity for the condo owners to provide  
17 some feedback at the next phase.

18 I mean, what they're here for, again, is the rear  
19 stair and how it's taking them, you know, 2.1 percent over  
20 the lot occupancy. So does anybody have any questions for  
21 anyone before I excuse the applicant? Go ahead, Mr. Miller.

22 COMMISSIONER MILLER: I guess I have one  
23 question, to Mr. Sullivan. The purpose of the rear  
24 staircase, I mean, obviously it's a safe -- it'll improve  
25 safety for the building and access, but is there -- what is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com



1 the specific -- you can get to each floor from the rear  
2 staircase?

3 MR. SULLIVAN: Right, and I believe a separate --  
4 now that the work's being done, I believe the separate egress  
5 was required by building code as well.

6 COMMISSIONER MILLER: Okay, thank you.

7 CHAIRPERSON HILL: Okay, anyone else?

8 (No audible response.)

9 CHAIRPERSON HILL: All right, going to go ahead  
10 and close the hearing and the record. I mean, for me, again,  
11 I think it's relatively straightforward. It's, again, a 2.1  
12 percent increase in the lot occupancy and about, above what  
13 is permitted, and they're doing that so that they can bring  
14 the building up to code. The building, it looks like, is in  
15 need.

16 And as far as the concerns of the neighbors, you  
17 know, they're not asking for a use variance or anything like  
18 that, so it's something that is a matter of right there, in  
19 terms of the project it being in the MU-4 zone. And that  
20 they would have an opportunity, the neighbors again, to,  
21 during the ABRA process, if there were a restaurant, to voice  
22 their concerns and see what they could negotiate with the  
23 owner at that time. So, I will be voting in favor of this  
24 application. Mr. Blake, do you have anything you'd like to  
25 add?

1           MEMBER BLAKE: I'll be voting in favor of the  
2 application as well. I do believe the applicant has met the  
3 burden of proof to be granted the relief. This is generally  
4 a matter of right project, regardless of the use of the first  
5 floor this relief is needed to provide the residential use,  
6 which is a permitted use in the zone for the upper floors to  
7 meet code. To the extent that the staircase, even though  
8 it's a modest increase of only 2.1 percentage points, the  
9 transient use of the stairs should not affect the privacy or  
10 light and air of the neighboring properties.

11           So, the modest increase in lot occupancy should  
12 not have an adverse effect on the use of neighboring  
13 properties. So, based on that, I give great weight to the  
14 Office of Planning's report, recommendation for approval, and  
15 I acknowledge the ANC's input. And, again, as you pointed  
16 out, there is, depending upon what happens later, there'll  
17 be opportunities once we do determine -- once the owner does  
18 determine what is there, for the neighbors to weigh in. So  
19 I'll be voting in favor of the application.

20           CHAIRPERSON HILL: Thank you. Vice Chair Miller?

21           COMMISSIONER MILLER: Thank you, Mr. Chairman.  
22 And I agree with the your comments and those of Board Member  
23 Blake, that the lot occupancy increase is pretty de minimis,  
24 as it's only point-one percent over the two percent  
25 discretion that would have been allowed without coming before

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 us. And that the stairs provide necessary access and safety  
2 for that building.

3 And I agree with you that the, with both of you,  
4 that the restaurant use, if that's what ends up happening  
5 there, would -- or a grocery store, or both -- would be a  
6 by-right use and likely would, the restaurant use  
7 particularly would trigger a review by another agency at the  
8 Alcohol Beverage Regulation Agency, and that is where any  
9 issues about noise, trash, rats, hours of operation can be  
10 worked out with the neighbors. So I'm supportive of this  
11 application going forward.

12 CHAIRPERSON HILL: Thank you. Vice Chair John?

13 VICE CHAIR JOHN: Thank you, Mr. Chairman. I'm  
14 in support, and I agree with all of the comments. I note  
15 that OP is in support and we don't have a formal report from  
16 the ANC, I believe, so.

17 CHAIRPERSON HILL: Okay, great. I am going to go  
18 ahead and approve, or make a motion to approve Application  
19 Number  
20 21114 as captioned and read by the Secretary, and ask for a  
21 second, Ms. John?

22 VICE CHAIR JOHN: Second.

23 CHAIRPERSON HILL: The motion made and seconded.  
24 Ms. Mehlert, if you could take a roll call, please?

25 MS. MEHLERT: Please respond to the Chair's motion

1 to approve the application. Chairman Hill?

2 CHAIRPERSON HILL: Here, yes.

3 MS. MEHLERT: Vice Chair John?

4 VICE CHAIR JOHN: Yes.

5 MS. MEHLERT: Mr. Blake?

6 MEMBER BLAKE: Yes.

7 MS. MEHLERT: Commissioner Miller?

8 COMMISSIONER MILLER: Yes.

9 MS. MEHLERT: Staff would record the vote as four  
10 to zero to one, to approve Application 21114 on the motion  
11 made by Chairman Hill and seconded by Vice Chair John, with  
12 one Board member not participating.

13 CHAIRPERSON HILL: Okay. You guys, let's just  
14 take a quick break, maybe 15 minutes and we'll come back.  
15 Thank you.

16 (Whereupon, the above-entitled matter went off the  
17 record at 10:35 a.m. and resumed at 10:54 a.m.)

18 CHAIRPERSON HILL: Okay. Ms. Mehlert, you can  
19 call our next one when you get an opportunity.

20 MS. MEHLERT: Okay. The next application in the  
21 Board's hearing agenda is Application No. 21116 of William  
22 Ford.

23 This is a self-certified application pursuant to  
24 Subtitle X Section 901.2, for special exception under  
25 Subtitle D Section 207.5, to allow the rear wall of an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 attached building to extend further than ten feet beyond the  
2 farthest rear wall of an adjoining principle residential  
3 building, on an adjacent property.

4           This is a rear cellar addition to an existing  
5 two-story attached principle dwelling located in R-3 Zone.  
6 It's located at 1306 Longfellow Street, NW, Square 2801, Lot  
7 58. And, just as a preliminary matter, I'll note that the  
8 affidavits of posting and maintenance were submitted  
9 yesterday.

10           CHAIRPERSON HILL: Okay. Thank you. If the  
11 Applicant could hear me, if they could please introduce  
12 themselves for the record.

13           MR. BANKS: My name is Andrei Banks. I'm an  
14 Architect with MWB Architects, and we're representing the  
15 owner.

16           CHAIRPERSON HILL: Okay, Mr. Banks. If you want  
17 to, go ahead and explain your project to us and why you  
18 believe you're meeting the criteria for us to grant the  
19 relief, and I'll let you begin whenever you like.

20           MR. BANKS: Okay. We have a PowerPoint slide  
21 that, if you have it, you could put up. Okay. This project  
22 is for an addition to the cellar level only of 1306  
23 Longfellow Street, NW, and it will include an addition of a  
24 recreation room, REC room, with a deck on, above it. The  
25 next two slides, please.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           So the owner is William and Bella Ford. The  
2 owners are William and Bella Ford. They're 18-year residents  
3 of this particular property, and they've been D.C. residents  
4 for more than 20 years.

5           And the project, again, is the construction of a  
6 15-foot addition at the cellar level only, with a deck above.  
7 The zoning allows a ten-foot addition beyond the neighbor's  
8 rear walls.

9           We're here at the BZA to get five feet additional  
10 space, additional approval for a 15-foot addition, which is  
11 five feet beyond what's allowed. We have presented our  
12 project to the ANC, and have obtained approval from the ANC  
13 for this project. Next slide, please.

14           This is photographs of the existing front of the  
15 building at 1306 Longfellow. You'll see it's a typical row  
16 house in the middle of the row of existing properties on  
17 Longfellow Street. There'll be no modifications to the front  
18 of the building, at all. Next slide, please.

19           The rear of the building is the beige building  
20 that you see here in these two photos. There is a recessed  
21 area below the first and second floor that you can see at the  
22 cellar level, of which, will be filled in, and then a 15-foot  
23 addition will be added beyond that point. All the units in  
24 this row are in alignment as you can see in this photo. Next  
25 slide, please.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           So, this is context of the rear row. You can see  
2 1306 is, again, is the beige unit. The neighbor at 1308,  
3 which is immediately to the west of our property, has built  
4 a deck. And to the rear of their unit, which is pretty much  
5 going to emulate what we're doing.

6           Though, we'll be filling in the space below as an  
7 enclosed space, and then the deck will be above. But, it  
8 will be very similar to what they've done at 1308. And then  
9 further down the road, you can see there has been some  
10 additions that, both the first floor and second floor of  
11 decks that are five or six units to the west. Next slide,  
12 please.

13           So this is the architectural drawing of the cellar  
14 addition. There will be no modifications within the existing  
15 building at the cellar, at the first and second floors, and  
16 the addition will be, again, at the cellar level only. Next  
17 slide, please.

18           So, this slide shows the cellar level. The grey  
19 area is the space that will be below the existing first and  
20 second floor. And then, the green space will be the 15-foot  
21 addition.

22           So, this again will be a family REC room addition.  
23 And then, at the first level will be the deck that'll be  
24 above the addition, the 15-foot addition. Next slide,  
25 please. So, these are architectural drawings of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 elevations of the addition. Next slide, please.

2 And the section that shows the space at the  
3 lower-right that we're filling in the space below the  
4 existing first and second levels, and then extending 15 feet  
5 beyond the rear wall for the addition, with a deck above.

6 Next slide, please. Next slide. So these are  
7 contextual drawings that show the addition in context with  
8 the adjacent units. This slide was taken, you know, standing  
9 on the roof of the vehicle we were in.

10 Because, there are many other garages and storage  
11 sheds and fences that, from the alley you, basically, won't  
12 be able to see very much, because of the other construction  
13 that the neighbors have. So, to get this view, we had to  
14 stand on our vehicle. So, you'll see that it's going to be  
15 minimal visual impact from this addition. Next slide,  
16 please.

17 So, this is the view from west looking back east  
18 at our addition. Again, there are quite a few privacy fences  
19 and, as a matter of fact, as a result of the ANC meeting, the  
20 neighbors requested that, the neighbor on the east side, at  
21 1304, requested that a privacy fence be put up to enclose the  
22 space.

23 And the owner, Mr. Ford, had anticipated to do  
24 that anyway. So, his fence will also be installed around his  
25 property, similar to what you'll see here at the other

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 neighbors. Next slide, please.

2 And so, this is the view from the rear, looking  
3 straight on. And again, a privacy fence will be put up to  
4 enclose his vehicles and his rear yard. Next slide, please.

5 So this is a view of the 3D rendering without any  
6 of the adjacent structures, just to give you an idea of what  
7 the actual addition will look like.

8 And the next slide is, is an MPD. I think if you  
9 scroll down towards the bottom, you can hit the go arrow.  
10 That'll show the shading that'll occur with this, with this  
11 addition.

12 So, this is in January, 8:30 a.m. in the morning,  
13 at 1:00 p.m., and at 5:00 p.m., I believe, the next morning,  
14 4:00 p.m. So it gives you what the shading is, and it's  
15 relatively minimal in most cases, especially, with the  
16 fences.

17 And this is in July and summer, you know, at 1:00  
18 p.m., the sun is pretty much directly overhead. And then,  
19 in the afternoon the buildings actually shade the entire  
20 rear. So, again, there's minimal impact from the shading.

21 And then the final slide. The next slide. So,  
22 basically, the project doesn't detract from the character of  
23 the neighborhood, you know, with the construction of decks  
24 and alleys and fences on the alley that the impact, visually,  
25 is going to be minimal, if at all.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           The light and air of his neighbors is not unduly  
2 affected. This construction immolates, basically, what has  
3 gone on along the rest of the row. So, again, no real  
4 negative impact on light or air.

5           The privacy, again, is not going to be adversely  
6 impacted. These row houses have windows at the first and  
7 second floor that can look across to each neighbor's yard.

8           So this addition, at just the cellar level, will  
9 not adversely affect the privacy of its neighbors. And,  
10 contextually, in the row, there's no real negative visual  
11 impact for the character of the row from the alley.

12           So, we'll take any questions that the Board may  
13 have.

14           CHAIRPERSON HILL: Thank you, Mr. Banks. Does the  
15 Board have any questions of the Applicant?

16           (No audible response.)

17           CHAIRPERSON HILL: All right. Unmute your mike.

18           MEMBER BLAKE: One quick question. Is the privacy  
19 fence in your renderings reflected in your renderings?

20           MR. BANKS: It was not. And it was, basically,  
21 a concession that, that was developed as a result of the ANC  
22 hearing. So, the privacy fence showed in the renderings that  
23 we prepared.

24           MEMBER BLAKE: Okay. Thank you.

25           CHAIRPERSON HILL: Okay. I'm going to turn to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Office of Planning.

2 MR. BEAMON: Good morning. Shepard Beamon, with  
3 the Office of Planning. We've reviewed the application for  
4 request of addition and we found that the request meets the  
5 special exception criteria for Subtitles D and X, therefore,  
6 we're recommending approval.

7 And I'll also note that, DDOT has notified OP and  
8 stated that they have no objection to the proposed addition.  
9 We stand on the record, and I'm available for any questions.

10 CHAIRPERSON HILL: Thank you, Mr. Beamon. Does  
11 the Board have any questions for the Office of Planning?

12 (No audible response.)

13 CHAIRPERSON HILL: All right.

14 Mr. Young, is there anyone here wishing to speak?

15 MR. YOUNG: We do not.

16 CHAIRPERSON HILL: Okay. Mr. Banks, I apologize  
17 if you went over this. What happened at the ANC meeting?

18 MR. BANKS: Basically, the neighbors were in  
19 support of the project. The neighbor to the east, at 1304,  
20 asked what the height, relative to her deck, which was  
21 actually a grade, was going to be, and suggested that if a  
22 privacy fence was put up that she would feel a little more  
23 apt to accept it.

24 And the owner then agreed that he was actually  
25 intending to put up a privacy fence, as a part of this, this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 construction, so then, then there was support on her part.  
2 But that was, basically, the only suggestion or concern that  
3 the neighbor at 1304 had. But, she did provide support and  
4 signed the neighbor notification, in agreement.

5 CHAIRPERSON HILL: Okay. Because, the ANC letter,  
6 it doesn't actually say what the vote was and it's not  
7 signed.

8 MR. BANKS: Mm-hmm.

9 CHAIRPERSON HILL: So did they vote?

10 MR. BANKS: Yes, they did.

11 CHAIRPERSON HILL: And they voted in favor?

12 MR. BANKS: Yes.

13 CHAIRPERSON HILL: Okay. All right. Okay.  
14 Anybody else?

15 (No audible response.)

16 CHAIRPERSON HILL: All right. Mr. Young, I can  
17 go ahead and close the hearing and the record. Mr. Banks,  
18 I hope you have a nice day.

19 MR. BANKS: Thank you.

20 CHAIRPERSON HILL: Okay. I will agree with the  
21 Applicant and how they're meeting the criteria, of course,  
22 should grant the relief requested. I don't -- I wasn't  
23 concerned about the shadowing.

24 I don't think there's going to be privacy issues.  
25 I think that, you know, it's five feet farther than they

1 would be allowed, matter of right. It's, kind of, an odd  
2 project in that it's, kind of, the cellar that's, kind of,  
3 going out.

4 And then, really, the deck is something that I  
5 think is more of a concern. But, I think that they -- I  
6 don't think that there's a whole lot of issue with this, in  
7 my opinion.

8 And that, the fact that the neighbors are  
9 comfortable with the project moving forward, and that the ANC  
10 apparently has given the testimony, did vote in favor.  
11 However, I don't think we have a full report in order to give  
12 it great weight.

13 I don't know why it wasn't signed and/or put the  
14 voting numbers in there. Maybe, in the future, the ANC would  
15 finish completing that. But, I'm going to be voting in  
16 favor. Mr. Blake?

17 MEMBER BLAKE: I'm comfortable. I believe, the  
18 Applicant has met the burden of proof to be granted the  
19 relief. The only thing I'm concerned about is the fence.  
20 It's not a -- it could -- we could include it as a condition  
21 of a proposal.

22 Even when I read the ANC's letter, it did not  
23 actually mention the fence. It talked about erode abatement  
24 and other things, but I don't see where the fence is actually  
25 mentioned.

1           And I do believe the fence, the ease, would be  
2 helpful, but it's not necessarily required, because we don't  
3 necessarily think that the testimony would not suggest in the  
4 ask, status, studies, and so forth, that there would be an  
5 issue with privacy, because of the low level of the addition.

6           So, for that reason, I think that I would like to  
7 get your thoughts on including that condition for the fence  
8 to the east.

9           CHAIRPERSON HILL: I don't have a, necessarily,  
10 an issue with including that as a condition. I'll let my  
11 other fellow Board Members give any feedback. Vice Chair  
12 Miller?

13           COMMISSIONER MILLER: Thank you, Mr. Chairman.  
14 And I thank the Applicant's representative for their  
15 presentation, and the Office of Planning report supporting  
16 the application.

17           Yes, I wish ANC 4-E, had submitted a signed letter  
18 with the vote count, and that if the privacy fence was an  
19 issue with their support, I wish it was included in that, in  
20 the text of the letter, which it isn't.

21           But, I mean, I tend to agree. So, I think the  
22 Applicant, in general -- not in general. The Applicant has  
23 methods and specific and general criteria for the special  
24 exception relief that's been requested.

25           I think I would be more comfortable, if we

1 included the privacy fence as a condition. We don't have a  
2 rendering. I don't want to delay this from going forward,  
3 to wait for a rendering.

4 So, I don't know what others think about that?  
5 I'd be more comfortable including it as a condition, if that  
6 would be appropriate. But, I'm supportive of this  
7 application.

8 CHAIRPERSON HILL: Thank you. Vice Chair John?

9 VICE CHAIR JOHN: I believe, I heard the Applicant  
10 state that they had planned to put in a privacy fence anyway.  
11 And so, they would've been okay with what the neighbor  
12 requested.

13 So, I am not opposed to putting it in as a  
14 condition, since there's nothing in the architectural plans  
15 to show the fence. So, I realize this is a little different  
16 than what we normally do, but in this case, the Applicant has  
17 agreed to including the fence.

18 CHAIRPERSON HILL: Okay. And, Mr. Young, is Mr.  
19 Banks still there?

20 MR. YOUNG: Yes, he is.

21 CHAIRPERSON HILL: Could you bring him back in?

22 MR. BANKS: I'm here.

23 CHAIRPERSON HILL: Hi, Mr. Banks. Can you hear  
24 me?

25 MR. BANKS: Yes.

1 CHAIRPERSON HILL: Okay. Just, for the record,  
2 could you reintroduce yourself, please?

3 MR. BANKS: Yes. Andrei Banks with MWB  
4 Architects.

5 CHAIRPERSON HILL: Thank you. Mr. Banks, what I'm  
6 looking at, in your slide deck, is Slide 13.

7 MR. BANKS: Mm-hmm.

8 CHAIRPERSON HILL: There's, like, a privacy fence  
9 that is when you were talking about the privacy fence, you  
10 made it seem as though you're going to be creating a privacy  
11 fence, just like the neighbor.

12 MR. BANKS: Yes.

13 CHAIRPERSON HILL: Is that correct?

14 MR. BANKS: Correct.

15 CHAIRPERSON HILL: So it's --

16 MR. BANKS: So the --

17 CHAIRPERSON HILL: -- six --

18 MR. BANKS: So the --

19 CHAIRPERSON HILL: -- feet tall, correct?

20 (Simultaneous speaking.)

21 MR. BANKS: Correct. Yes.

22 CHAIRPERSON HILL: And it goes all the way around  
23 the property, actually enclosing the cars, correct?

24 MR. BANKS: Correct. That's correct.

25 CHAIRPERSON HILL: And is that the intent of your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 client?

2 MR. BANKS: That's correct.

3 CHAIRPERSON HILL: Okay.

4 MR. BANKS: Yes.

5 CHAIRPERSON HILL: Then that would be included as  
6 a condition, it sounds like, from the Board.

7 MR. BANKS: That's fine.

8 CHAIRPERSON HILL: Okay. All right.

9 MR. BANKS: Yes. He intends to do it anyway.

10 CHAIRPERSON HILL: Okay. Great.

11 MR. BANKS: Yes.

12 CHAIRPERSON HILL: Does anybody have any final  
13 questions, since I've got Mr. Banks back?

14 (No audible response.)

15 CHAIRPERSON HILL: Okay. All right. I'm going  
16 to go ahead excuse you, again, and close the hearing, Mr.  
17 Banks. Thank you.

18 MR. BANKS: Okay. Thank you.

19 CHAIRPERSON HILL: Okay. So, again, I don't  
20 really need to re-describe what I think of this case, but I  
21 will add the condition, as such.

22 I'll make a motion to approve Application No.  
23 21116, as caption read by the Secretary, including a  
24 condition that a privacy fence, six feet high, to encompass  
25 the entire property, similar to the one that is in Slide 13

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 in the Applicant's PowerPoint presentation, be listed as a  
2 condition, and ask for a second, Ms. John?

3 VICE CHAIR JOHN: Second.

4 CHAIRPERSON HILL: The motion made and seconded.  
5 Ms. Mehlert, will you take a roll call, please?

6 MS. MEHLERT: Please respond to the Chair's motion  
7 to approve the application, with the privacy fence condition.

8 Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MS. MEHLERT: Vice Chair John?

11 VICE CHAIR JOHN: Yes.

12 MS. MEHLERT: Member Blake?

13 (No audible response.)

14 MS. MEHLERT: Commissioner Miller?

15 COMMISSIONER MILLER: Yes.

16 MS. MEHLERT: The Staff would recorded the vote  
17 as 4-0-1, to approve Applicant 21116, with a condition on the  
18 motion made by Chairman Hill and seconded by Vice Chair John,  
19 with one board member not participating.

20 CHAIRPERSON HILL: Thank you. If you want to call  
21 our next case, when you get a chance, Ms. Mehlert.

22 MS. MEHLERT: So, the next case is Applicant No.  
23 21117 of RSSN Associates, LP, and Atelier Verre, LLC. This  
24 is a self-certified application, pursuant to Subtitle X  
25 Section 901.2, for a special exception under Subtitle U

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Section 513.1(h), to allow a massage establishment in one  
2 unit, on the second floor of an existing building. This is  
3 located in MU-4 Zone, at 1228 1/2 31st Street, NW, Square  
4 1208, Lot 879.

5 CHAIRPERSON HILL: Okay. Thank you. If the  
6 Applicant can hear me, if they could please introduce  
7 themselves for the record.

8 MS. WILSON: Hi. Alex Wilson from Sullivan and  
9 Barrows, on behalf of the Applicant in this case.

10 CHAIRPERSON HILL: Great. Ms. Wilson, I guess,  
11 if you want to walk us through your client's application and  
12 why you believe they're meeting the criteria for us to grant  
13 the relief requested.

14 The one question, I guess, some of us, kind of,  
15 had was, like, we weren't clear as to who the owner was, and  
16 just wanted to make sure that all the proper paperwork had  
17 been signed, so that we can have this here before us. If you  
18 can clarify that, and make sure that, you know, we are all  
19 tidy, I suppose? And you can begin whenever you like.

20 MS. WILSON: Sure. Thank you so much. Mr. Young,  
21 could you please pull up the presentation? And, as he's  
22 doing that, Exhibit 28 and 30 should clarify the ownership.  
23 It's owned by Hamilton Court, LLC. And we now have a letter  
24 of authorization from that entity, to represent them in front  
25 of the Board of Zoning Adjustment.

1 CHAIRPERSON HILL: And where's that letter, I'm  
2 sorry, can you tell me again?

3 MS. WILSON: Sure. It's in Exhibit 30.

4 CHAIRPERSON HILL: Okay.

5 MS. WILSON: And we sent the deed to the Office  
6 of Zoning and, I believe, they submitted that into the  
7 record, as Exhibit 28.

8 CHAIRPERSON HILL: Okay.

9 MS. WILSON: Sorry that confusion.

10 CHAIRPERSON HILL: No, it's okay. All right. Go  
11 ahead, Ms. Wilson.

12 MS. WILSON: Great. Thank you so much. If Mr.  
13 Young could please go to the next slide. The property is  
14 located in Georgetown in the MU-4 Zone district, and is  
15 improved with a three-story office building.

16 And the Applicant is proposing to lease one of the  
17 existing commercial units to Global Wellness Options, an  
18 existing massage establishment in the Georgetown area. In  
19 the MU-4 Zone, massage as a principle use is permitted via  
20 special exception, subject to the conditions of U 513.1(h).

21 The Office of Planning is recommending approval.  
22 ANC 2-E voted unanimously to support, and there are three  
23 letters of support in the record.

24 Next slide, please. Global Wellness Options  
25 currently operates in Georgetown, but would like to relocate

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 operations to the subject property. The Applicant is  
2 proposing two treatment rooms with the total of three massage  
3 tables.

4 There are a variety of massage services offered.  
5 The hours of operation are 9:00 a.m. to 7:30 p.m., Monday  
6 through Friday, and 9:00 a.m. to 5:00 p.m., on Sunday. And  
7 Global Wellness is closed on Saturdays.

8 The unit is small, approximately, 450 square feet  
9 and will have a limited capacity, given there are only two  
10 massage rooms, and so even at peak intensity, the  
11 establishment would have a maximum of three massage tables,  
12 one to two guests in the waiting room, and a staff member in  
13 the waiting area.

14 Next slide, please. Providing the general special  
15 exception requirements, the property is located in the MU-4  
16 Zone, which is a mix-use commercial zone. There are no  
17 proposed changes to the building, as a result of this relief,  
18 only a change to one of the existing commercial units, in an  
19 existing commercial office building, located behind M Street,  
20 in Georgetown.

21 The property is an existing commercial office  
22 building. And so, the limited nature of the proposed use  
23 shall not adversely affect the use of neighboring properties,  
24 which appear to have more intense commercial uses than the  
25 proposed massage establishment.

1           Next slide, please.   Regarding the specific  
2 special exception requirements, the proposal safely meets the  
3 criteria, as it will be compatible with other uses in the  
4 area, will be contained in a small, existing commercial unit  
5 within an existing office building, have limited patronage  
6 and, therefore, limited foot traffic.

7           It's also located close to public transit bus  
8 stops and a parking garage.   The nature of a massage  
9 establishment is such that no noise should be expected. And,  
10 finally, Global Wellness is run by Ms. McLinden, a licensed  
11 professional, who operates in a professional manner, in  
12 Georgetown already.

13           Existing customers have written letters of  
14 support, in the record, attesting to her professional and  
15 capable operation within the community, and they look forward  
16 to watching her business continue to thrive in the Georgetown  
17 community.

18           Accordingly, the proposed use shall not have an  
19 adverse impact on religious, educational, or other  
20 institutional facilities in the area.   Next slide, please.  
21 That concludes my presentation.   I'm happy to answer any  
22 questions.

23           CHAIRPERSON HILL:   Okay.   Thank you.   Before I  
24 turn to my Board Members, can I turn to the Office of  
25 Planning?

1 MR. LAWSON: Hi. Good morning, again, Mr. Chair  
2 and Members of the Board. Joel Lawson with the Office of  
3 Planning.

4 I'm just here for a second to interview us a new  
5 staff member to the Board of Zoning Adjustment. Phillip  
6 Bradford joined OP, just a few months ago. Pretty recent  
7 recruit.

8 He has a ton of experience working in Oregon, in  
9 Ohio, and more recently and locally, in Arlington. He brings  
10 to us a lot of experience in review of large projects and  
11 small projects in development and preparing reports and  
12 presenting them to boards, such as the BZA, such as you.

13 So, we just want to welcome Phillip to the team  
14 and introduce him to you, and I'll turn it over to Phillip  
15 to give our report.

16 CHAIRPERSON HILL: Thank you, Mr. Lawson. Mr.  
17 Bradford, welcome. And, you know, I know that, you know,  
18 without the Office of Planning it would be very, very  
19 difficult to do this job.

20 And so, I appreciate all of the time that all of  
21 you put in and I hope you enjoy your time with them. Mr.  
22 Bradford, if you would like, give us your report.

23 MR. BRADFORD: Good morning, Commissioners. My  
24 name is Phillip Bradford with the Office of Planning. We  
25 find that the application meets the special exception

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 criteria for massage establishment in Subtitle U.

2 And we stand on the record of the report in  
3 support of the application. And I'm available for any  
4 questions you may have.

5 CHAIRPERSON HILL: Thank you. Does anyone have  
6 any questions for the Office of Planning?

7 (No audible response.)

8 CHAIRPERSON HILL: All right. Let's see, Mr.  
9 Young, is there anyone here wishing to speak?

10 (No audible response.)

11 CHAIRPERSON HILL: Thank you. Ms. Wilson, do you  
12 have anything else, are you at the end?

13 MS. WILSON: Thank you for your time today.

14 CHAIRPERSON HILL: Okay. Great. Thank you. All  
15 right. I'm going to go ahead and close the hearing and the  
16 record. Okay. I would agree with the application that the  
17 client -- I'm sorry. That the application that has been  
18 before us, I believe, is meeting the criteria for us to grant  
19 the relief requested.

20 I take comfort in the analysis the Office of  
21 Planning has provided, as well as that of ANC 2-E. And I  
22 didn't really have a lot of concerns with this. Also, being  
23 an establishment that is already there in the Georgetown  
24 community and is trying to expand, I'm going to be voting in  
25 favor.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com



1           Mr. Blake, do you have anything you would like to  
2 add?

3           MEMBER BLAKE: I agree with your assessment and  
4 I will be voting in favor of the application.

5           CHAIRPERSON HILL: Okay. Great. Let's see, Vice  
6 Chair Miller?

7           COMMISSIONER MILLER: Thank you, Mr. Chairman.  
8 Yes, I support the application and agree with your comments,  
9 and believe that the Applicant has met the specific and  
10 general criteria for special exception relief in this case.

11           And I give great weight to the Office of Planning  
12 and ANC 2-E's comments in favor of it, and the neighbors who  
13 have also used the establishment where it's previously been  
14 located, so I'm supportive. Thank you.

15           CHAIRPERSON HILL: Thank you. Vice Chair John?

16           VICE CHAIR JOHN: Thank you, Mr. Chairman. I have  
17 nothing further to add. I believe the application meets the  
18 criteria for relief, as explained by my colleagues.

19           CHAIRPERSON HILL: Thank you. All right. I'm  
20 going to go ahead to make a motion to approve Application No.  
21 21117, as caption read by the Secretary, and ask for a  
22 second, Ms. John?

23           VICE CHAIR JOHN: Second.

24           CHAIRPERSON HILL: Motion been made, and seconded.

25 And, Ms. Mehlert, if you'd take a roll call?

1 MS. MEHLERT: Motion to approve the application.  
2 Chairman Hill?

3 CHAIRPERSON HILL: Yes.

4 MS. MEHLERT: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MS. MEHLERT: Member Blake?

7 MEMBER BLAKE: Yes.

8 MS. MEHLERT: And Commissioner Miller?

9 COMMISSIONER MILLER: Yes.

10 MS. MEHLERT: Staff would record the vote as 4-0-1  
11 to approve Application 21117, on the motion made by Chairman  
12 Hill and seconded by Vice Chair John, with one board member  
13 not participating.

14 CHAIRPERSON HILL: Thank you. All right. So, we  
15 have an appeal before us. And I think that that will take,  
16 you know, some time. I'm not clear if we should go ahead.  
17 And I'm just looking at my fellow board members.

18 Go ahead and try to take lunch now, or go ahead  
19 and see how far we can get? I'm, kind of, curious as to what  
20 my fellow board members think? I don't have a preference.

21 (No audible response.)

22 CHAIRPERSON HILL: Okay. We'll just see. I mean,  
23 if nobody really has a preference, let's just go ahead and  
24 see how far we get. And if we want to take a break, we can  
25 go ahead and take a break. Okay?

1 (No audible response.)

2 CHAIRPERSON HILL: All right. Then, if that's the  
3 case, let us at least take a quick ten minutes and just get,  
4 you know, coffee, get whatever we want.

5 (Whereupon, the above-entitled matter went off the  
6 record at 11:25 a.m. and resumed at 11:49 a.m.)

7 CHAIRPERSON HILL: Okay. Ms. Mehlert, you may  
8 call our appeal.

9 MS. MEHLERT: Okay. So, the next and last case  
10 of the day is Appeal No. 21082, of Wardman Hotel Strategy  
11 Team, Madhusan Ramachandran, and Renate Wallenberg.

12 This is an appeal, pursuant to Subtitle X, Section  
13 1100, challenging decisions made on October 23rd and 26th,  
14 2023, by the D.C. Department of Building and Zoning  
15 Administrator, to issue building permits Nos. B2307474, and  
16 B2305655.

17 This is located in the RA-2 and RA-4 Zones, at  
18 2650 Woodley Road, NW, and 2601 Calvert Street, NW. It's  
19 Square 2132, Lots 855 and 856. As preliminary matters, both,  
20 the property owner and Department of Buildings have filed  
21 motions to dismiss.

22 CHAIRPERSON HILL: Okay. Great. Let's see.  
23 Let's wait until everybody gets put in here. Okay. Can the  
24 Appellant hear me? And, if so, could they introduce  
25 themselves for the record?

1 (No audible response.)

2 CHAIRPERSON HILL: I think it's Mr. Brown.

3 (Pause.)

4 CHAIRPERSON HILL: Okay. We'll wait for Mr. Brown  
5 to log in. I think, is possibly what's going on. Can DOB  
6 introduce themselves for the record?

7 MR. COX: Good morning. My name is Erik Cox. I'm  
8 the Deputy General Counsel for the D.C. Department of  
9 Buildings. With me today are Attorneys Brent Fuller, Colleen  
10 Smythe, and they will be presenting DOB's case in this  
11 appeal. And, also, on is Zoning Administrator Kathleen  
12 Beeton. Good morning.

13 CHAIRPERSON HILL: Yes. Okay. Give me one  
14 second, please. Good morning. Let's see. Okay. Okay.  
15 Great. Mr. Brown, can you hear me?

16 MR. BROWN: Can you see me and hear me?

17 CHAIRPERSON HILL: Yes, I can see and hear you.

18 MR. BROWN: Good morning. It's just, we're still  
19 barely morning, Mr. Chairman. Glad to be back to see you  
20 again, and ready to proceed.

21 CHAIRPERSON HILL: Okay. Great, Mr. Brown. You  
22 look like you're in better health than the last time we saw  
23 you.

24 MR. BROWN: That's correct.

25 CHAIRPERSON HILL: Let's see. Okay. Is the ANC

1 Commissioner here?

2 MS. PAGATS: I am, as well as Adam Prinzo, who's  
3 a single-member District Rep. I'm the Chair of the 3C.

4 CHAIRPERSON HILL: Okay. Great. Could you  
5 introduce yourself, Commissioner?

6 MS. PAGATS: I'm Janell Pagats, so the Chair of  
7 3C, and a single-member District 3C-03.

8 CHAIRPERSON HILL: Okay. And you said the SMD is  
9 with us?

10 MS. PAGATS: Yes. Commissioner Adam Prinzo.

11 CHAIRPERSON HILL: Commissioner Prinzo, if you can  
12 hear me, could you introduce yourself, for the record?

13 MR. PRINZO: This is Adam Prinzo, and I am the ANC  
14 Commissioner for 3C-02, which includes the Wardman property.

15 CHAIRPERSON HILL: Okay. Great. Let's see. Who  
16 else do we have with us that hasn't introduced themselves?  
17 Oh, the property owners. Is the property owner with us?

18 MR. AVITABILE: Yes we are, Chair Hill. This is  
19 David Avitabile, with Goulston and Storrs, on behalf of the  
20 property owner. I'm joined by Shane Dettman, our urban  
21 planner. My colleague, Liv Torres, is also with me.

22 Our Architect, Ari Blumenthal, is also available.  
23 I don't believe he'll be speaking directly, but we wanted to  
24 have him if questions arose.

25 CHAIRPERSON HILL: Okay. One moment, please.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 (Pause.)

2 CHAIRPERSON HILL: Okay. All right. So, I am  
3 going to look up something real quick here.

4 (Pause.)

5 CHAIRPERSON HILL: Okay. So, I'm just, kind of,  
6 going to go over this list again. So, we're going to deal  
7 with any preliminary matters. Then, we're going to have a  
8 statement from the Appellant and the Appellant's witnesses.

9 Then, we're going to have respective cases that  
10 the parties are interveners in support of the appeal, which  
11 would be, you know, if you would in support of the appeal,  
12 the owners, the effected ANC, any other party permitted to  
13 intervene in support of the appeal. Then -- and then, we'll  
14 hear from Department of Buildings and the property owner, if  
15 they're opposed to the appeal. And everyone will have a  
16 chance to go ahead and ask questions of one another, and  
17 we're just going to, kind of, move this as best we can.

18 So, welcome, Zoning Administrator. Another Zoning  
19 Administrator day, with us. So, let's see. There was a  
20 preliminary matter, and it was, and I'm like looking at my  
21 fellow board members.

22 I mean, there was, you know, a lot of information  
23 in the record about the dismissal, or the request to dismiss,  
24 because the Appellant wasn't able to appeal. Like, they  
25 aren't actually here before us correctly, and/or they are not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 putting anything forward that is a zoning issue, right?

2           And so, I'm just looking at my fellow board  
3 members. Because, if we're all in agreement on this same  
4 side, then we don't need to go through this process of  
5 presentations on this particular issue.

6           I did see the presentations on the PowerPoints  
7 from the DOB and the interveners. And so, I thought it was  
8 helpful. But, I mean, I was able to read everything. I  
9 think that, in terms of people bringing an appeal to us, I  
10 mean, the bar is relatively low, in terms of, you know, those  
11 that are able to bring an appeal to us.

12           It's not based on location. It's not based on the  
13 criteria that was argued, at one point, from the dismissal,  
14 as to, you know, how they're effected. And I think that in  
15 the past the Board has taken appeals from people that live  
16 outside the 200 feet.

17           In this particular case, there are a couple of  
18 people that are in this group that are within the 200 feet.  
19 In addition to that, there are a couple of zoning issues that  
20 had been brought up in the appeal, concerning, I guess, one  
21 of which, is being, you know, a meaningful connection that  
22 I think is something that we are going to be hearing from,  
23 if we get past this.

24           So, I wouldn't be voting to dismiss this appeal  
25 and I would be voting to just go ahead and hear it and see

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 where we get, and that would be my thoughts. I'm going to  
2 go around the table for my fellow board members, to see what  
3 their thoughts are, and I'm going to begin with Mr. Blake.

4 MEMBER BLAKE: Thank you, Mr. Chair. I would  
5 agree that, there is a relatively low bar for an appeal.  
6 It's certainly much lower than the bar that we've used to  
7 establish party status in our typical cases.

8 I do know that, recognize that there are a couple  
9 of people that are, any association that do reside, however,  
10 within the 200-foot range, and as you point out, a number of  
11 the issues that have been brought up, and for question, are  
12 zoning-related issues.

13 I'm not sure if this is a chartered entity, but I  
14 do not believe the zoning regulations require that, or  
15 preclude those, such an organization from doing that, and I  
16 do not believe that the level of aggrievement is met. That  
17 it's significantly, a significant requirement in this. I do  
18 see elements of that, here. So, I would be in favor of  
19 denying the dismissal of this, and hearing the appeal.

20 CHAIRPERSON HILL: Thank you. Vice Chair Miller?

21 COMMISSIONER MILLER: Mr. Chairman, yes, I think  
22 that I want to hear the substantive arguments on the appeal,  
23 and I concur with the comments that each of you have made.  
24 So, I am ready to proceed.

25 CHAIRPERSON HILL: Thank you. Vice Chair John?



1 VICE CHAIR JOHN: Thank you, Mr. Chairman. I  
2 would also agree that the Appellant has standing to file the  
3 appeal and that, the level, the degree of the aggrievement,  
4 for want of a better word, is not as high as for an appeal  
5 in the D.C. Court of Appeals.

6 That, the BZA has a much more relaxed standard,  
7 as has been the Board's practice in the past, which has been  
8 confirmed by the D.C. Court of Appeals. So, on that issue  
9 I would not dismiss for lack of standing.

10 I think there's some issues that were mentioned  
11 at some point that are not zoning issues. Like, the need for  
12 more IC units. And that's not a zoning issue. And that, the  
13 Appellant has to really cite a particular regulation, which  
14 was done in one of the amended filings.

15 So, on that basis, I believe there is a claim of  
16 error, a legitimate claim of error of a zoning regulation.  
17 And so, based on all of that, I would not dismiss the appeal,  
18 but would go ahead and hear the case.

19 CHAIRPERSON HILL: Okay. Thank you. All right.  
20 So, I'm going to make a motion then, to deny the dismissal  
21 of the appeals from both the Department of Buildings and the  
22 property owners, and ask for a second, Ms. John?

23 VICE CHAIR JOHN: Second.

24 CHAIRPERSON HILL: The motion made and seconded,  
25 Ms. Mehlert. If you could take a roll call.

1 MS. MEHLERT: Please respond to the Chair's motion  
2 to deny the motion to dismiss from the Department of  
3 Buildings and the property owner.

4 Chairman Hill?

5 CHAIRPERSON HILL: Yes.

6 MS. MEHLERT: Vice Chair John?

7 VICE CHAIR JOHN: Yes.

8 MS. MEHLERT: Mr. Blake?

9 (No audible response.)

10 MS. MEHLERT: Commissioner Miller?

11 COMMISSIONER MILLER: Yes.

12 MS. MEHLERT: And staff will record the vote as  
13 4-0-1, to deny the motions to dismiss on the motion made by  
14 Chairman Hill and seconded by Vice Chair John, with one board  
15 member not participating.

16 CHAIRPERSON HILL: That'll be great. Thank you.  
17 Let me see. Just one moment, please.

18 (Pause.)

19 MR. FULLER: Chairman Hill, Brent Fuller, on  
20 behalf of the Department of Buildings. I know you guys just,  
21 sort of, articulated on the record your rationale for denying  
22 the motion to dismiss.

23 Just for the record, there were a couple of bases  
24 indicated in the premise to substantiate the denial of the  
25 motion to dismiss. Just for the record and to clarify, I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

1 think there was a mention that there are board members, or  
2 members of this organization that live within 200 feet of the  
3 property.

4 I'm not aware of any indication on the record that  
5 there are members of this organization that reside within 200  
6 feet of the property. If possible, I would like some  
7 clarification on that issue.

8 Moreover, there was indication that the Reg does  
9 permit this type of organization to file an appeal. I'm not  
10 sure where in the zoning regulation this type of organization  
11 would be included as in person, entitled to file an appeal  
12 with the Board of Zoning Administration.

13 So, I'd just like to mention that, for the record,  
14 and to the extent that the Board might be willing to shed  
15 some light, or provide additional clarification on those  
16 issues. It could be appreciated, just for purposes of the  
17 record.

18 CHAIRPERSON HILL: That's fine, Mr. Fuller. And  
19 I might of misspoke. I thought there was a couple of people  
20 that were in the organization that were inside the 200 feet.

21 But, whether there were or not, it still doesn't  
22 change the opinions, I believe, of the Board, in terms of  
23 what they were thinking -- in terms of what we've had people  
24 before us with appeals.

25 And then, in terms of, with the organization and,

1 you know, whatever regulation was being cited, I can come  
2 back to you on that one, then. I have to ask legal. So, let  
3 me think here.

4 So, what I'm going to do is, I'm going to go ahead  
5 and start with the Appellant, Mr. Brown. And then, the owner  
6 was, like, kind of, confused. Is the Chair here, Chairman  
7 Pagats, can you hear me, again?

8 MS. PAGATS: Yes.

9 CHAIRPERSON HILL: It was unclear to me, from your  
10 letter, if you guys were in support of the appeal, or opposed  
11 to the appeal?

12 MS. PAGATS: We are very much opposed to the  
13 appeal.

14 CHAIRPERSON HILL: Okay. Got it. So then, I'm  
15 going to go ahead, Commissioner, and we'll hear the  
16 Appellant, and then we'll hear from you, and then we'll hear  
17 from the Department of Building.

18 Let me think, how are we going to do this? We're  
19 going to hear from the Appellant, we're going to hear from  
20 the Department of Buildings, then we're going to hear the  
21 property owner.

22 Then, we'll come back to you, Commissioner, at the  
23 end, okay? And, everybody will get a chance to give their  
24 presentation and ask questions. Mr. Brown, you may begin,  
25 whenever you like.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. BROWN: I ask Mr. Young to bring up my  
2 PowerPoint presentation, which is Exhibit 20. And I will --  
3 that's not it. Exhibit 20.

4 (Pause.)

5 MR. BROWN: Thank you. I'd like to just go  
6 through these slides as quickly as I can. This is a  
7 complicated case, and I need a little time to, sort of, lay  
8 the background for you.

9 If you could, next slide, please. Our basic  
10 principle claim is that, there's a violation in the issuance  
11 of these two building permits, because the property is  
12 subject to being in an RA-zoned area, is subject to the  
13 prohibition on multiple buildings on a single record lot.

14 The basic framework for our claim is that, there  
15 are already two principle buildings on record, Lot 32, and  
16 the permit would allow either one or two more, and that would  
17 be in violation of Section 3, Section 302.2.

18 Next slide, please. What's on record Lot 32,  
19 right now? There are two existing structures. One is the  
20 Wardman Tower. It used to be, until recently, it was on  
21 former, on Lot 833. I'm not sure exactly what has happened  
22 to that lot, but I think it's been subdivided up further as  
23 a condominium properties.

24 The Woodley Apartments are on ANT Lots 848 and  
25 852, and the proposed structures are going to be on ANT Lots

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 855. That's one of the permits. And the other one is going  
2 to be on ANT Lot 856. That's the other permit.

3 And I will show you, by diagram, exactly how that  
4 looks on the next slide. The property that the Applicant  
5 owns used to be ANT Lot 854. On the next slide, please. It  
6 used to be Lot, ANT Lot 854.

7 It's now been broken up into two other ANT Lots  
8 855 and 856, for purposes of construction of the two  
9 apartment buildings that are going to be joined together, one  
10 on each ANT lot.

11 Next slide, please. This shows you the complexity  
12 of the proposal. This is the zoning site plan from the  
13 permit documents, which I've colored up, a bit, to illustrate  
14 the points.

15 You see the overall plan is to show that most of  
16 this record lot is in the RA-2 zone, with a small portion of  
17 it at the south end in the RA-4 zone. The RA-2 portion is  
18 in what's called -- the purpose of the RA-2 zone is for  
19 moderate density apartments. And the purpose of the RA-4  
20 zone is medium to high-density apartments.

21 And what you see on this diagram is that, the  
22 claim that we are going to be challenging is that, we don't  
23 see how you can justify the notion that there's only going  
24 to be one building on record Lot 32.

25 The Woodley Apartments are owned by,

1 independently, by another entity. The Wardman Tower is owned  
2 independently, in part, the lower floors are owned by the  
3 Applicant and most of the upper floors are owned in  
4 condominium ownership.

5 And, if you turn to Slide No. 6, this is where the  
6 prohibition on multiple primary buildings on one record lot  
7 exists. It's a combination of A Section 301.3 and C 302.2.  
8 There are three exceptions that are allowed to that basic  
9 rule.

10 Providing a theoretical lot subdivision approval.  
11 Erecting primary buildings in accord with an approved campus  
12 plan, or erecting multiple buildings in accordance with an  
13 approved plan unit development.

14 There is no claim in this case that any of those  
15 three exceptions apply. So, we go back to the question of  
16 whether or not this is or is not more than one building.

17 And we say that, if you look at Slide No. 7, that  
18 right now, the Applicant is relying on Section B 309.1 to  
19 claim that multiple buildings can be deemed a single building  
20 for zoning purposes, if they meet the requirements of 309.1.

21 We do not dispute that. But, the dispute here is,  
22 whether or not they actually meet those requirements. So,  
23 on the next slide, Slide No. 8, I have quoted the exact  
24 language from Paragraph 309.1 that has to be met.

25 Now, at this point, some of the claims -- well,

1 Mr. -- if you'll go to Slide No. 9, you will see that, when  
2 our architect, Mr. Schulman, prepared his analysis of the  
3 permits, he concluded that the A/B connection between the  
4 Applicant's two segments was not fully above grade, and,  
5 therefore, failed at Section 309.1(a).

6 And, since that time, additional clarification  
7 information has come in from the Applicant, explaining why  
8 that segment will be fully above grade. We have decided not  
9 to challenge the Applicant on that basis, in light of this  
10 new information. So, our claim under 309.1 is being  
11 withdrawn.

12 In a similar fashion, we understand that it's --

13 CHAIRPERSON HILL: Mr. Brown, can you repeat that,  
14 again? I'm sorry. Can you repeat what you just said?

15 (Simultaneous speaking.)

16 MR. BROWN: I'm sorry?

17 CHAIRPERSON HILL: Can you repeat what you just  
18 said?

19 MR. BROWN: Yes. We made a claim that there was  
20 a violation of Section 309.1(a), because the two segments of  
21 the Applicant's building, Segment A and Segment B, were not  
22 joined with a connection that was fully above grade.

23 Now, the Applicant has submitted information to  
24 show that, when you evaluate that under the, what's called  
25 the grade plain method, the property is fully above grade.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com



1 And we have decided to withdraw that aspect of our claim.

2           So, we're not contesting that the Building  
3 Segments A and B have a connection that is fully above grade.  
4 We also do not contest that the connection between A and B  
5 is lacking in being enclosed and artificially heated and lit.

6           So, we also have no claim that, that in any  
7 respect, Building Segments A and B could not properly be  
8 treated as a single building, under Section 309.1.

9           What's left to consider is, whether or not the  
10 connection between the Woodley and these two segments and the  
11 connection between the Wardman and these two segments meets  
12 the test of Subparagraph D, of Section 309.1.

13           Mr. Schulman will explain that, just to use the  
14 shorthand that the Applicant has used, the connection between  
15 the Woodley and Building Segment B, is called a breeze-way,  
16 and the connection between the Wardman Tower and Building  
17 Segment A, is called arcade.

18           So I will refer to these two connections,  
19 respectively, as the breeze-way and the arcade. Mr. Schulman  
20 will explain from the drawings, why the connections do not  
21 comply with the requirements of D(1) and D(2), either one.

22           And that means that, neither, the Woodley nor the  
23 Wardman can be considered part of the Applicant's single  
24 building, whether they characterize it as one or two  
25 segments, and therefore, fails the test of Section 309.1(d).

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 But, if you will go back to Slide 8, I just,  
2 before Mr. Schulman explains from the drawings, why that is  
3 so, I just want to make a few comments about these  
4 requirements in Section 309.1(d).

5 First of all, I would note that, back in the day  
6 when there was a hotel on the property, this project, or  
7 these three buildings, the Woodley, the Wardman, and the  
8 Wardman Park Hotel qualified as a single building under  
9 zoning regulations that have been amended, since the time  
10 that happened.

11 Now, the hotel has been raised and those  
12 connections have been severed. And it's not being  
13 reconstructed as a hotel, it's being constructed as a  
14 two-segment apartment building.

15 The intervener does not claim any grand fathering  
16 from that earlier decision and recognizes that, to restore  
17 the single building status, the new connections must meet the  
18 current standards that were enacted in the 2016 zoning  
19 regulations.

20 Now, one of the things that came up in the process  
21 of getting approval for this single building was something  
22 called a single record lot covenant. A private agreement  
23 between the owners of the three buildings at that time, to  
24 maintain the single building status.

25 We argued and there's a legal analysis in the

1 record that, that a covenant of this sort is a private  
2 agreement that cannot override the requirements. And, now,  
3 in response, the intervener seems to agree.

4 But, the intervener will also tell you that, the  
5 single record lot covenant really played no part in the  
6 Zoning Administrator's determination that this was a single  
7 building, he just applied the law.

8 But, if you will look at Slide 12, you will see  
9 that, in the second paragraph that, our contingent is that  
10 the Applicant, nevertheless, sought and obtained the Zoning  
11 Administrator's non-binding preliminary agreement, with its  
12 baseless claim that the single building connection must be  
13 maintained, regardless of any development or redevelopment  
14 of the hotel property, pursuant to a recorded single record  
15 lot covenant.

16 This is a claim, as we understand it, that they  
17 were trying to get the Zoning Administrator to agree that the  
18 covenant, itself, would control. When, in fact, now the  
19 intervener is claiming, well we recognize that it doesn't  
20 control.

21 But that's why we said that the single record lot  
22 covenant was given an outside significance in the Zoning  
23 Administrator's determination.

24 The quote there on Page 12, is from a July 25th,  
25 2023 Email to legal counsel from the Zoning Administrator,

1 just two or three months before the final building permits  
2 were approved.

3           Going back to the plain language, on Slide No. 8,  
4 just a few additional comments about what this language  
5 means.

6           (Pause.)

7           CHAIRPERSON HILL: Mr. Young, could you pop back  
8 over to Slide No. 8, please?

9           MR. YOUNG: Yes.

10          CHAIRPERSON HILL: Thank you.

11          MR. BROWN: Our contention is that the Application  
12 of 309.1(d) should be guided the determination, by the plain  
13 language of this particular statute, which was new in 2016.  
14 Particularly, since the single building lot status of the  
15 property was effectively extinguished with the destruction  
16 of the hotel.

17          Turning to this plain language, there are two  
18 types of qualifying connections that you see there. Let me  
19 look at D(1), first. Common space shared by users of all  
20 portions of the building. This means all of the connected  
21 buildings segments.

22          Now, four not necessarily exhausted examples of  
23 such shared common space are provided. A lobby, a recreation  
24 room, a loading dock, and a service bay. In each case,  
25 however, the common space must be shared by users of all

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 portions of the building.

2           Then, turning to Subparagraph 2, the other  
3 possibilities is space designed and used to provide free and  
4 unrestricted passage between separate portions of the  
5 building. And, one, not necessarily exhaustive example is  
6 given, an restricted door, or passageway.

7           The lack of restriction must extend to the  
8 separate portions of the building. For example, for a  
9 three-tower building, the passageway must be unrestricted so  
10 as to get from Tower A to Tower B, and from B to C and, also,  
11 from A to C.

12           And if there isn't a direct connection from A to  
13 C, you've got to be able to get there through B. A to B to  
14 C. That's what Subparagraph 2 is all about. And the  
15 language is plainly about, either, the accessibility of to  
16 common space, under G-1, or the unrestrictiveness of the  
17 passageway from one building segment to the next, under D-2.

18           While, the language was adopted -- when this  
19 language was adopted in the 2016 zoning rewrite, an  
20 additional clarifying section was added, which is 309.2.  
21 Which, I'm sorry, is not on here.

22           But, what it says is that, it's okay,  
23 notwithstanding D-1 and D-2, for the individual segments to  
24 contain multiple uses or dwellings that do not share access.  
25 That's a pretty close paraphrase of what 309.2 says.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1           This is quite plainly about access within the  
2 building segment and not access to, from, or within the  
3 connection. For example, let me just give you a couple of  
4 common sense examples.

5           Two apartment towers might be connected by a  
6 passageway that provides unrestricted access from one tower  
7 to the other, and thus, meets the D-2 requirement, even  
8 though, every apartment in both buildings is locked and  
9 inaccessible to everyone using the passage, except the owner  
10 or occupant of the apartment.

11           The same would be true of a lobby between  
12 apartment towers, where residents of Tower 1 would not even  
13 have elevator access to the upper floors of Tower 2, and  
14 vice-versa.

15           In these cases, 309.2 makes clear that, such  
16 restrictions within the building segment do not disqualify  
17 the passageway or the lobby between them, so long as those  
18 passageways are not restricted.

19           In short, the clarification does not negate the  
20 requirements of shared or unrestricted use in, either, D-1  
21 or D-2. I mention all of this in some detail, because you're  
22 going to hear that the primary defense of these connections  
23 is 309.2. But, it is not about the connections, it's about  
24 access to parts of the building outside the connection.

25           But, let's look at what the axis is within the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 connections and to and from the building segments. They both  
2 fail the common space test. Intervener makes clear that the  
3 connection, the breeze-way connection will not be shared by  
4 users of all segments.

5           Access is denied to most of the Wardman residents.  
6 Similarly, access to the Wardman, through the arcade, is  
7 denied to both Woodley residents and most of the Wardman  
8 residents. This wasn't completely clear from the building  
9 permits, but the intervener has made it quite clear in their  
10 presentation that this is their plan.

11           Both of those connections also fail the  
12 unrestricted passageway alternative under D-2. The  
13 breeze-way connection is not passable by the users of all  
14 segments. All of the Wardman residents are restricted out.

15           Similarly, the arcade connection is to be denied  
16 to, both, Woodley residents and most of the Wardman residents  
17 above the first or second floor, which is controlled by the  
18 Applicant.

19           All of this analysis on how to properly apply  
20 these connections is explained in greater detail in our  
21 supplemental pre-hearing statement, Exhibit 32, Pages 9 to  
22 13.

23           In addition, this submission discusses in detail  
24 the two Boar cases that have dealt with a single building  
25 issue, under the current regulations. Those are cases BZA

1 19550 and 20183, one in which, I actually participated.  
2 Those are discussed in detail in our supplemental filing, at  
3 Pages 14 to 20.

4 I'm not going to go into detail on those. But,  
5 I believe, that our presentation, our supplemental  
6 presentation makes it quite clear that, neither one of those  
7 cases should be regarded as a precedent that provides any  
8 reliable justification for uploading the intervenor's single  
9 building claim in this case.

10 Let me to turn to Slide No. 13, now, please. This  
11 relates to our alternative claim that, even if the single  
12 building connection were upheld, there is still a problem.  
13 There is a setback problem, with regard to the buildings.

14 The majority of the project site, in our view,  
15 needs to be rezoned to RA-4, where the building height  
16 maximum is 90 feet and right now it's in the RA-2 zone,  
17 where 90 feet is not allowed, unless it qualifies for the  
18 setback exemption, or exception that you will find in Section  
19 3(f), 30203.6.

20 And the converse of that is, if this property, if  
21 that segment of the property were rezoned to RA-4, there  
22 would be no question about, either, the height or the  
23 setback. The height, the 90-foot building height, at the  
24 building height measuring point, we don't contest that, as  
25 being in anyway illegal.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1           And with no setback requirement in the RA, zone,  
2 there's no problem there, either. Our point is, they didn't  
3 ask for a rezoning, they're claiming by-right. But, you just  
4 don't get to by-right under rezoning, unless you qualify for  
5 the exemption under F 203.6.

6           And when you turn to Slide 14, and you see what  
7 you need to do to qualify for the exemption, under 203.6.  
8 You can go up to 90 feet, in compliance with the following:  
9 the building shall be removed from all lot lines of its lot,  
10 for a distance equal to the height of the building above the  
11 adjacent natural or finish grade, whichever is lower.

12           This language establishes a one-to-one setback  
13 ratio rule for the length of the setback that's required for  
14 the increase in the allowed maximum building height from 50  
15 feet to 90 feet.

16           So, the first question I have, we need to look at,  
17 is what does all along the lot lines mean? What is the plain  
18 language? What does that mean, in this context? Well, we  
19 say that it means what it says. The setback ratio has to be  
20 met all around the lot parameter.

21           If the project fails this test and places along  
22 the parameter, there are three possible fixes. One of them  
23 is to lower the building height in that location to match the  
24 distance to the lot line.

25           The second is, instead of lowering the building

1 in those places, remove the building further back from the  
2 lot line to match the height at that point. Or, the third  
3 possible fix, is a combination of those two.

4           Maybe, adjust the building height and adjust its  
5 location, so that it meets the one-to-one setback ratio.

6           The next question is, well, what is the distance  
7 from the building to the lot line? We say, it has to be  
8 equal to or more than the height of the building at each  
9 point along the lot line.

10           That's the plain understanding of this language.  
11 And if that means that the building has to be lower than --  
12 let me restate it this way. It means that, the horizontal  
13 distance can be greater than the legal maximum building  
14 height that's measured at the building height measuring  
15 point, if the building is higher at some points along the lot  
16 lines, as long as it meets the setback requirement.

17           That, this building height occurs if the zoning  
18 maximum height is measured at a higher elevation and the roof  
19 line is level. That's the natural effect of having a  
20 building height measuring point at a high point and a level  
21 roof.

22           But that is perfectly proper, as long as the  
23 exception is met. It doesn't invalidate the building height,  
24 and we make no challenge to the building height at the  
25 measuring point. But that's what the plain language of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Section 302 requires. And I show on Slide 15 how we  
2 interpret Section 203.6.

3 The intervener says no. This interpretation is  
4 all wrong. The requirement, it means simply that the setback  
5 must be at least the legal building height, as measured in  
6 just one place, at the building height measuring point.

7 But, if that was the intent of Section 203.6, it  
8 could've simply said, instead of this more complicated  
9 language, the building height shall be removed from all lot  
10 lines, if it's not by at least 90 feet, end of story.

11 Instead, we have this complicated, much more  
12 complicated one-to-one setback ration requirement. Mr.  
13 Schulman will go into detail about how Section 203.6 works  
14 in this section.

15 But, I want to, before I turn it over to him, on  
16 this score, I want to emphasize, well, does it really matter  
17 who's right on this, the intervener, or us? And, I would  
18 say, in many cases, it doesn't.

19 If the lot is level, or nearly level, just about  
20 everywhere, the setback requirement will be 90 feet  
21 everywhere, because the building height doesn't really  
22 change, because there's no slope in grade. It matters only  
23 when the land is sloping downward away from the building  
24 height measuring point.

25 And it should matter in these cases, because the

1 exception produces buildings, who's above grade elevation  
2 will run higher than 90 feet in the RA-2 zone, and it  
3 certainly does that in this case.

4           The overall slope of this property is at least 70  
5 feet from Woodland down to Calvert, and that means a whole  
6 lot of the elevations are going to show that the distance  
7 from the natural grade, or the finish grade, to the roof  
8 line, is going to be way, way more than 90 feet.

9           But, it's legal, so long as the building height  
10 measuring point is legal and so long as the building is  
11 adequately setback under the standards of F 203.6.

12           I just want to emphasize, and I'm saying -- I put  
13 this on Line 17, on Slide 17, or Slide 16. That, there just  
14 would be no problem with this complaint, if the property were  
15 properly re-zoned to the RA-4 zone.

16           But, of course, the reason the Wardman Hotel  
17 strategy team is complaining about this is because, the  
18 Applicant insisting on proceeding on a by-right basis, rather  
19 than go through a re-zoning.

20           And, in Slide No. 18, we point out that, if the  
21 Applicant had gone through a PUD map amendment process, it  
22 would've obligated all issues presented in this appeal, but  
23 would've required a demonstration of public benefits to  
24 justify zoning relief.

25           Instead, it went through the large track review

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 process. And I've shown very briefly in the concluding  
2 slides that, the large track review process didn't analyze  
3 this particular question.

4 In fact, the Office of Planning's LTR report  
5 lamented the fact that, that the Applicant should be  
6 encouraged to work with the District agencies to take  
7 advantage of existing programs to increase the number of  
8 dedicated affordable housing units, rather than just go with  
9 the legal minimum.

10 A similar concern, as you'll see on Slide 21, was  
11 echoed by DHCD, which was reflected in the OP letter, LTR  
12 report, and strongly encouraging the Applicant to provide  
13 additional licensed square footage.

14 That means above and beyond the eight percent  
15 minimum. That sentimentality is also reflected, you'll see  
16 in the next slide, about the Connecticut Avenue redevelopment  
17 guidelines, which are even newer than that, from last  
18 September, pursue opportunities for greater affordable  
19 housing for this particular project, if you could, if it  
20 doesn't exceed exactly as proposed, which is exactly what we  
21 would like to see happen.

22 It should not proceed exactly as proposed, because  
23 it's not a single building, when it's a combined with Woodley  
24 and the Wardman. Next slide, also, shows the same  
25 sentimentality with regard to the entire Rock Creek West

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 area, as reflected in PUDs that have come up.

2 I know from personal experience, how strongly the  
3 Commission regards the importance of the public benefit of  
4 exceeding the statutory minimum in inclusionary zoning.  
5 That's a number one basic, major public benefit.

6 And the comprehensive plan and everything about  
7 zoning policy is oriented to achieving a greater amount of  
8 affordable housing throughout the city, and particularly in  
9 the Rock Creek West area, and particularly on the Connecticut  
10 Avenue area, and particularly on this particular project.

11 That's why the strategy team is involved in this  
12 case. They are not saying that, that there is a violation  
13 of the amount of affordable housing being provided, they meet  
14 the legal minimum.

15 They want to see this project get out from under  
16 this claim that it's by-right, it's not by-right. It needs  
17 a re-zoning. It needs a PUD process, and that's exactly  
18 where they will have to face the Commission and the public's  
19 concern about providing more affordable housing, and that's  
20 where they're hope is and why they've been involved in this  
21 case from the beginning.

22 So, turning to Slide No. 24. This is the  
23 combination of what we think this case is about, even though,  
24 we have to base it on the single building claim.

25 The Applicant has done everything it can to bend

1 and distort and abuse the by-right process, with this single  
2 building claim, in an unspoken effort to minimize it's  
3 affordable housing commitment and evade all of these  
4 well-grounded entreaties of district agencies and like-minded  
5 residents --

6 VICE CHAIR JOHN: Mr. Brown.

7 MR. BROWN: -- to do more than the bare legal  
8 minimum --

9 VICE CHAIR JOHN: Mr. Brown.

10 MR. BROWN: -- for affordable housing.

11 (Simultaneous speaking.)

12 VICE CHAIR JOHN: Mr. Brown, can you hear me?

13 MR. BROWN: Yes.

14 VICE CHAIR JOHN: I know you've practiced before  
15 this Board, a lot, and you do know that we cannot consider  
16 the issues relating to the Plan Unit Development, or the  
17 motive, and we're just here to determine if the project  
18 complies with the zoning regulations. So, to the extent that  
19 you can focus your presentation on those issues --

20 MR. BROWN: I'm almost --

21 VICE CHAIR JOHN: -- that will be very helpful.  
22 And, you know, we can't consider those policy issues. So,  
23 it's --

24 MR. BROWN: I understand. But --

25 VICE CHAIR JOHN: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

1 (Simultaneous speaking.)

2 MR. BROWN: But, there is argument here about,  
3 whether or not they do or do not comply with the single  
4 building thing, and --

5 VICE CHAIR JOHN: So let's --

6 MR. BROWN: -- and --

7 VICE CHAIR JOHN: -- let's focus --

8 (Laughter.)

9 VICE CHAIR JOHN: -- let's focus on that, Mr.  
10 Brown, because this Board has a lot of experience dealing  
11 with that particular issue.

12 (Simultaneous speaking.)

13 MR. BROWN: Yes. All right. Let me -- if you  
14 like, I can go into more detail about why the two cases that  
15 have come up, since the enactment of the 2016 regulations  
16 should not be applied here.

17 That, the most important point I would make is  
18 that, the statute, Subparagraph 1 and Subparagraph 2, have  
19 differing requirements and you cannot mix and match them.

20 In the case, the 19550 case, what the Board did  
21 in that case, was to characterize a three-foot, eight-inch  
22 passageway between two segments, as a lobby. But, a  
23 passageway is not a lobby.

24 The plain language of the statute does not allow  
25 you to basically say that a three-foot, eight-inch passageway

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 that's barely wide enough for one person, let alone two  
2 people to pass each other, as if it were a sidewalk. It's  
3 a lobby. It just doesn't make any sense. That case was not  
4 challenged in the court of appeals.

5           The Applicant was not represented by counsel and  
6 it is, simply, an reliable precedent to be applied here.  
7 With respect to the other case, in which, I participated, we  
8 made no claim that there was a violation of Subparagraph D,  
9 either, 1 or 2.

10           Our claim was focused on, whether or not the  
11 passageway between the community center and, what I thought,  
12 was characterized as a homeless shelter, was or was not a  
13 fully above grade, and that's where this issue about the  
14 grade plain method for application of the fully above grade  
15 standard was at issue.

16           We lost on that issue, and I'm not reiterating it  
17 here. That we've dropped our claim. That, the connection  
18 between Building Segment A and Building Segment B, is not  
19 fully above grade.

20           Even though, It's pretty clear to me that it  
21 really isn't fully above grade, but we're not making an issue  
22 of that, we are focusing entirely on Subparagraph D, and  
23 Subparagraph D was not something that was looked at and  
24 carefully considered in that case.

25           It's not a precedent for this case. So, the only

1 precedent that you have from the 2016 regulations, which are  
2 the only cases where there was any adjudication of the new  
3 standards, should not apply.

4           Because, what the Board did in that case, without  
5 any judicial review, was to basically say, well it's going  
6 to be fine, because even though it's not a passageway and the  
7 Zoning Commissioner abandoned his claim that this was an  
8 unrestricted passageway, because the doors were locked at  
9 both ends.

10           There was, nevertheless, a three-foot, eight-inch  
11 lobby, and I say that this is just nonsense. With all due  
12 respect to the Commission's decision, and we've explained  
13 that in great detail in our supplemental memorandum.

14           And, with that, I would like to turn it over to  
15 Mr. Schulman, but I do want to take a moment to qualify him  
16 as an expert witness, if that's necessary?

17           CHAIRPERSON HILL: Mr. Schulman, can you hear me?

18           (No audible response.)

19           CHAIRPERSON HILL: All right, Mr. Schulman. Are  
20 you an architect, Mr. Schulman?

21           MR. SCHABER: I am registered, in D.C. and  
22 Maryland.

23           CHAIRPERSON HILL: All right. And that's the --  
24 was that -- Mr. Brown, was that 14, I think, where was his  
25 -- no. Where was his resume?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. BROWN: His resume is -- hang on a second.  
2 (Simultaneous speaking.)

3 MR. BROWN: Under the record.

4 MR. SCHABER: Number 10, yes. Number 10.

5 CHAIRPERSON HILL: Thank you. Thank you.

6 MR. BROWN: Mr. Schulman, have you testified in  
7 prior Board proceedings, or Zoning Agency proceedings?

8 MR. SCHULMAN: I have. I've not testified as an  
9 expert witness, before the BZA, but I have testified before  
10 the BZA just as a member of the Public.

11 MR. BROWN: Okay.

12 MR. SCHULMAN: The Zoning Commission and the --

13 MR. BROWN: That's it --

14 MR. SCHULMAN: -- Mayor to special --

15 MR. BROWN: -- Mr. Schulman --

16 MR. SCHULMAN: -- agent.

17 (Simultaneous speaking.)

18 CHAIRPERSON HILL: Mr. Schulman, I'm sorry. So  
19 you're a registered architect in the city?

20 MR. SCHULMAN: Yes.

21 CHAIRPERSON HILL: Okay. I'm fine with it. I  
22 mean, unless the rest of the Board has any issues? You know,  
23 we, again, have not had a -- there hasn't been a really  
24 processed way we've gone about this, I must say. And so, you  
25 know, him being a registered architect, I'm fine with him

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 being an expert in architecture. Does the Board have any  
2 issues with that?

3 VICE CHAIR JOHN: No.

4 CHAIRPERSON HILL: Okay. All right. Okay. So,  
5 Mr. Schulman, you have a slide deck, also?

6 MR. SCHULMAN: I do. But, I've made some  
7 revisions to it that I wasn't able to upload, and I'm  
8 wondering, if I might get permission to screen share a  
9 reduced and slightly revised PowerPoint?

10 CHAIRPERSON HILL: Yes, unfortunately, you can't  
11 share. So --

12 MR. BROWN: I think it's Exhibit 37, now.

13 MR. SCHULMAN: Oh. Maybe, it did pop up. Okay.

14 CHAIRPERSON HILL: Okay.

15 MR. YOUNG: Okay.

16 CHAIRPERSON HILL: Right. Mr. Young, and so if  
17 you could pull up that. But, before you pull that up, Mr.  
18 Young -- oh, never mind. Mr. Brown, so I'm just trying to  
19 get an idea as to where we are?

20 Like, you've gone on for about, like, 40 minutes  
21 now, right. And so, what other testimony? You're going to  
22 have your architect, and then, who?

23 MR. BROWN: Well, I have lined up two members of  
24 the Wardman Hotel strategy team to testify, but they were  
25 primarily to answer any questions or concerns about their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 ability to participate in this case. I am, unless you have  
2 questions of them, I'm perfectly happy to conclude with Mr.  
3 Schulman.

4 CHAIRPERSON HILL: Okay. All right. Great.  
5 Okay, Mr. Schulman. Mr. Young, you want to pull up that  
6 PowerPoint?

7 (Pause.)

8 MR. SCHULMAN: So, thank you and hello,  
9 Chairperson Hill, BZA Members, and Staff. My name is Jim  
10 Schulman and I've practiced architecture in D.C., since 1985.  
11 I will not repeat the whole argument, as laid out by Mr.  
12 Brown, but I concur with it, as an architect.

13 Next slide, please. So, again, here is the zoning  
14 site plan from the permit drawing sheet A2004. Please  
15 remember that, there are four tax lots and two different  
16 zoning designations divided between RA, to the north, and  
17 RA-4 to the south, divided by that dash blue line.

18 By the way, the tax lot lines, we depicted them,  
19 and not just the record lot lines, for the case where the  
20 interveners attempt to prove the project to be one building,  
21 in the case that attempt fails.

22 Next slide. So, there are two clear passageways  
23 in the design, one un-designated passageway partially  
24 underground, and none between the Wardman Apartments and the  
25 Woodley Tower that's illustrated by the dash line towards the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 top, in purple.

2 Much less, any passageways between Segment A , on  
3 the proposed new development on the right and the Wardman  
4 Tower on the left, or, nor between Segment B, the lowest new  
5 construction shown, and the Wardman Tower on the far right.

6 Next slide. So, we've conceded, as Mr. Brown has  
7 indicated that, the intervener's docket submissions have  
8 better demonstrated how the partially below grade fitness  
9 studio satisfies the zoning requirement that the passageway  
10 connections, for the purpose of qualifying a new  
11 construction, plus existing buildings on the lot, to be one  
12 building.

13 That, they are fully above grade, using the grade  
14 plain method of measurement. I also concede, based on our  
15 team having brought the matter of needing to heat and light  
16 the connections to the intervener's attention that they claim  
17 to have filed for building permit amendments to address those  
18 deficiencies.

19 Nevertheless, I concur with Mr. Brown that the  
20 project, as currently designed, fails those two significant  
21 zoning requirements to be considered one building on one  
22 record lot.

23 Next slide. So, let's focus for the moment on the  
24 southwest corner of the site, marked here in blue. Next  
25 slide. Next slide, please. There we go. And which, is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 enlarged here, the note, in red, indicates a required setback  
2 from the building to the lot line of 90 feet, with 91-foot,  
3 three inches provided.

4           Next slide. But, here, at the top of the screen  
5 is an excerpt from the zoning analysis, which was submitted  
6 for permits on Sheet A10003, and that excerpt clearly  
7 indicates a one-to-one setback, in addition to the base 50  
8 feet that are allowed in the RA-2 zoning.

9           And, below that, the box highlighted below, is the  
10 language referenced in Section, from the D.C. Zoning 11 DCMR.  
11 I guess that's Subsection F, Section 203.4.

12           The plain language interpretation of the  
13 highlighted portion, here, is that the setback from every  
14 point along the lot line, should equal at least the actual  
15 height of the building at the point on the new construction  
16 closest to that point.

17           Next slide. So, this is the site key plan that  
18 is from the intervener's drawings. And I've highlighted the  
19 east west site line from the project site key plan. So, next  
20 slide.

21           And so if you cut the building at the point I  
22 indicated in the last slide, you would see a Segment B  
23 construction in the upper left. So, we're looking at Segment  
24 B, from Sheet 2353.

25           Next slide. And what you see here, clearly, is

1 an extra 68 feet in height, between the zoning and minimum  
2 setback, which is 90 feet, and the 158-foot building height  
3 from grade to roof, shown at that left, which is the west  
4 side of Segment B, and it gives the project a disallowed  
5 seven extra stories, so this is where we believe the zoning  
6 is violated.

7           Next slide. And you can see that plotted and  
8 planned at one foot horizontally for each foot of height, as  
9 called for in the RA-2 zoning. So, please note that, I  
10 acknowledge that a portion of the setback violation at the  
11 very east end, the small, the smallest portion I've  
12 highlighted in orange, at the far right of the drawing, it  
13 in parts, represents an inadvertent measurement I took from  
14 the Segment A portion of the building that's in the RA-4  
15 zone.

16           The general point remains, however, that there are  
17 violations of, both, record lot and tax lot setbacks that  
18 ought to be addressed by redesign of the building, or  
19 re-zoning.

20           And the reason I mention tax lots is, in the case  
21 that the interveners claim that it's a single building fails.  
22 If that fails, then the tax lots would become record lots and  
23 they would be relevant.

24           Next slide. So here's a close end, where the  
25 construction violates setback requirements by 158 feet, minus



1 the 91-foot, three inches that they've identified, to leave  
2 a violation of 23-foot, nine inches.

3 The setbacks to lot lines are violated elsewhere,  
4 wherever the height of the roof above the grade at that point  
5 crosses beyond a lot line. This violation is an issue, even  
6 if the interveners were to prevail with their claim that the  
7 project is a single building.

8 Next slide. So, for lack of meaningful  
9 connections, the fact that it's not one building, and the  
10 nonconformance with the RA-2 zoning, which relates to the  
11 setbacks from the lot lines, the building permits issued  
12 authorize construction that is not in compliance with D.C.  
13 zoning regulations.

14 Next slide. And, you know, again, here's the same  
15 excerpt I showed you previously from the zoning analysis on  
16 Sheet A10003, and it clearly includes in the yellow portion  
17 a one-to-one setback requirement, in addition to the base  
18 50-foot building height allowable.

19 And highlighted in pink, at the top, you can see  
20 where if the project were rezoned properly to RA-4, that  
21 would free the project from an obligation to have a  
22 one-to-one setback, where the whole site rezoned is a PUD  
23 process to RA-4.

24 The 94-foot allowable height would be defined  
25 differently, without a setback requirement. And I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 acknowledge that, you know, maybe the BZA doesn't want to  
2 necessarily focus on those kind of what ifs, but I think it's  
3 important.

4           So, next slide, please. So at the north end of  
5 Building B, and this is from Bar 1 Section from Sheet A2355,  
6 from the submitted permit drawings. The building height is  
7 indicated to be less than 90 feet.

8           And so, with a hypothetical rezoning, this would  
9 mean that the building height would be established for the  
10 entire building, okay. And the --

11           VICE CHAIR JOHN: Mr. Schulman --

12           MR. SCHULMAN: -- only plan --

13           VICE CHAIR JOHN: Mr. Schulman, could you please  
14 just discuss the application that's in front of us. If you  
15 could tell us where you would put the building height  
16 measuring point?

17           And I had a hard time trying to figure out the  
18 setback, based on your previous diagrams. Remember, we're  
19 not architects, so try to, you know, explain this to me like  
20 I'm an 8-year-old.

21           So, if you could show me where you would put the  
22 building height measuring point and --

23           MR. SCHULMAN: Right.

24           VICE CHAIR JOHN: -- is --

25           MR. SCHULMAN: We're --

1 VICE CHAIR JOHN: -- what --

2 MR. SCHULMAN: We're not --

3 VICE CHAIR JOHN: -- is --

4 MR. SCHULMAN: Yes. We're not disputing where the  
5 developers have claimed the building height measuring point  
6 should be.

7 (Simultaneous speaking.)

8 VICE CHAIR JOHN: Okay. Thank you.

9 MR. SCHULMAN: And so, on basically this slide,  
10 and if you'll go to the next slide, you'll see the same  
11 thing. You'll see that, that point, which happens to be at  
12 the north end of Building A, of Segment A.

13 This is from Sheet A1302, the building height is  
14 shown to be less than 90 feet, or 90 feet precisely. So, and  
15 that's at the midpoint of the building facade nearest Woodley  
16 Road. So, I hope that helps. And I can go back to my  
17 earlier slide, if Vice Chair John --

18 VICE CHAIR JOHN: Yes. And, based on that  
19 measuring, building height measuring point and the height of  
20 the building, please explain to me, if this is one building,  
21 why the application does not meet the one-to-one setback?

22 (Simultaneous speaking.)

23 MR. SCHULMAN: Okay. The best slide for me to  
24 demonstrate that, is Slide -- well, it's a combination of  
25 Slide 16 and Slide 14. So let's go back to 16.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 VICE CHAIR JOHN: All right.

2 MR. SCHULMAN: Oh. That's 16? I'm sorry. I  
3 misspoke. I misspoke, I apologize. Slide 12. Yes. So, if  
4 you -- well, forgive me. I think it will help you, if we  
5 first got to Slide 10. Okay.

6 So, the one-to-one setback is different from  
7 building height. They're two separate requirements.

8 VICE CHAIR JOHN: Yes.

9 MR. SCHULMAN: The building has a height, which  
10 the Applicants have identified as 90 feet, at the appropriate  
11 building height measuring point.

12 VICE CHAIR JOHN: Right.

13 MR. SCHULMAN: But, it also has a one-to-one  
14 setback and the setback means that, from the base of the  
15 building where it meets the grade, to the roof, which in this  
16 case, is 158 feet, is well-beyond the 90 feet.

17 And so, if you go to this slide to Slide 12, you  
18 will see in detail what that 158-foot looks like on the site  
19 plan. And, lo and behold, it's past the record lot line.  
20 It violates zoning. I don't know if --

21 VICE CHAIR JOHN: Okay. So, you're saying that  
22 setback should be 158 feet, not 90 feet?

23 (Simultaneous speaking.)

24 MR. SCHULMAN: Correct.

25 VICE CHAIR JOHN: Okay.

1 MR. SCHULMAN: And that is what the clear language  
2 of the zoning indicates.

3 VICE CHAIR JOHN: Okay. All right. Thank you for  
4 that.

5 MEMBER BLAKE: Mr. Schulman, could you go back to  
6 Slide 10 and show me where the building height measuring  
7 point would be, on Slide 10?

8 MR. SCHULMAN: The building height measuring point  
9 is not shown on Slide 10, it's better shown on --

10 MEMBER BLAKE: Could you show it to me where it  
11 would be on slide? Would it be visible from Slide 10? Could  
12 you point it out where it would be on Slide 10?

13 (Simultaneous speaking.)

14 MR. SCHULMAN: Yes. This slide is not at the  
15 north end of the building, this is at the west end of the  
16 building. So, in order to see where the building height  
17 measuring point would be, you'd have to go to Slide 15.

18 Right. So, there, the building height measuring  
19 point is shown as 88-foot, four inches, okay? So, it's valid  
20 there, for height, but not for setback.

21 VICE CHAIR JOHN: So please explain, why it's not  
22 valid for setback?

23 MR. SCHULMAN: Because, setback --

24 VICE CHAIR JOHN: Or, assuming --

25 MR. SCHULMAN: -- is measured --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

1 VICE CHAIR JOHN: -- assuming we have one record  
2 lot, why isn't it valid for the setback?

3 (Simultaneous speaking.)

4 MR. SCHULMAN: Because, setback is a horizontal  
5 measure --

6 VICE CHAIR JOHN: Yes.

7 MR. SCHULMAN: -- and building height is a  
8 vertical measure.

9 (Simultaneous speaking.)

10 VICE CHAIR JOHN: Yes.

11 MR. SCHULMAN: Okay. So, the building has,  
12 according to the zoning in RA-2, in the RA-2 zone there are  
13 two criteria for the building to satisfy its zoning, and  
14 those are both the height and the setback. The building --  
15 we're not disputing that the building height is correct,  
16 we're disputing that it doesn't meet the setback requirement.

17 VICE CHAIR JOHN: The setback from the lot line.

18 MR. SCHULMAN: Correct.

19 VICE CHAIR JOHN: Needs to be 90 feet, or I'll  
20 call it 90 feet?

21 MR. SCHULMAN: Correct. Now, I don't know if this  
22 violation on the west side of the building was inadvertent,  
23 or if it was a sneaky way to add seven extra stories to the  
24 building. Don't know that, for sure. But, it is a  
25 violation. It's a clear violation.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 VICE CHAIR JOHN: Can I ask you, if that's on the  
2 Woodley side? The building point measuring point is on the  
3 building height measuring point is on the Woodley side,  
4 right? That's the front of the building?

5 MR. SCHULMAN: Yes. Thank you for mentioning  
6 that. I don't have a section drawing in my presentation that  
7 shows the Woodley. But, I understand, I think that the  
8 Woodley building point, measuring point, was 89 feet --

9 VICE CHAIR JOHN: Okay.

10 MR. SCHULMAN: -- is my recollection. Paul, do  
11 I have that correct?

12 (No audible response.)

13 MR. SCHULMAN: In any case, my argument here is  
14 that, even if the development team and the interveners prove  
15 their point that it is one building, it still fails on this  
16 setback issue.

17 VICE CHAIR JOHN: Thank you.

18 MR. SCHULMAN: And, to clarify for you,  
19 Commissioner John, if the building is not one building, but  
20 four separate buildings, then they would necessarily be for  
21 building height measuring points.

22 So, let me return, if I may, to Slide 17 to  
23 conclude my remarks. So, primary points are that, the zoning  
24 is clear in stating that the maximum 90-foot building height  
25 is allowed, if the height of the building is removed from all

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 lot lines at its lots, for a distance equal to the height of  
2 the building or structure above the adjacent natural, or  
3 finished grade, and is not the building height.

4 Those are two separate things, which is determined  
5 at the building height measuring point. And I've already  
6 stated that we concede. That, the intervenor team is in the  
7 process of rectifying the connections issue related to  
8 whether the arcade and breeze-way are heated and artificially  
9 lit.

10 Once our team brought those deficiencies to their  
11 attention. Nevertheless, the project fails a plain language  
12 reading of Subtitle B309.1, which states that the common  
13 space be shared by users of all portions of the building, and  
14 Mr. Brown has explained that.

15 Or, alternatively, that the space is designed and  
16 use to provide free and unrestricted passage between separate  
17 portions of the building, and without the caveat of Section  
18 309.2 that a single building may, nevertheless, contain  
19 multiple uses or dwelling units that do not share access.

20 That caveat pertains to the rest of the building,  
21 not to the connections, themselves, the arcade and the  
22 breeze-way and the fitness center. So, our fundamental  
23 argument here is, unless the fitness center is accessible to  
24 the people who use the Wardman and the Woodley, this building  
25 fails to be meaningfully one building.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com



1           Next slide. And I just want to leave you with the  
2 language, actually, from Subtitle B309.1. The development  
3 -- and this is critical. The development team is certainly  
4 entitled to build a by-right project.

5           We don't dispute that, okay? But, only if they  
6 get the zoning right. Thank you. I concluded my testimony  
7 and am open to any further questions.

8           CHAIRPERSON HILL: Okay. Thank you, Mr. Schulman.  
9 Okay. Mr. Brown, are you guys done?

10          MR. BROWN: Yes. Let me just ask, I'd like to ask  
11 Mr. Schulman one more question, if I might?

12          CHAIRPERSON HILL: Sure, go ahead.

13          MR. BROWN: Mr. Schulman, do you agree that, if  
14 this property is re-zoned to R-4, at least the parts that are  
15 right now RA-2 go to RA-4, that this whole question about the  
16 setback requirements just vanishes entirely, because there's  
17 no setback requirement in the RA-4 zone?

18          MR. SCHULMAN: That's correct.

19          MR. BROWN: Thank you.

20          CHAIRPERSON HILL: Okay. All right. So let me  
21 think, what should we do? I think, I'm not sure what should  
22 we do? Meaning, I don't know whether to hear everybody's  
23 presentation, or go ahead and do questions now.

24          Like, I'd rather, actually, I'm looking to my  
25 Board Members. I'd rather hear the presentations and then

1 have everybody ask questions, because then it'll be clearer  
2 for us, I think.

3 And so, I see at least one Board Member shaking  
4 their head. So, I'm going to go that route. So DOB's going  
5 to speak next, and who's going to speak for DOB?

6 MR. FULLER: Chairman Hill, I'm going to have a  
7 , just a short, sort of, opening. I'm not putting on any  
8 sort of slide presentation, it's probably going to be, like,  
9 two minutes. And then, we're going to call Kathleen Beeton  
10 to testify on behalf of Department of Buildings.

11 CHAIRPERSON HILL: Okay. Great.

12 MR. FULLER: I think, I would say, I would say  
13 this, and sorry to interrupt, there's been a lot of it seems  
14 to be, sort of, narrowing of the, sort of, issue, contested  
15 issues in this case, pursuant to the Appellant's supplemental  
16 filing, submitted two to three days ago, and also, pursuant  
17 to their testimony here.

18 If the Board would be willing to give us, like,  
19 five to ten minutes, at a minimum, we might be able to  
20 shortcut some of Ms. Beeton's testimony.

21 CHAIRPERSON HILL: That's fine.

22 MR. FULLER: If that makes sense?

23 VICE CHAIR JOHN: Mm-hmm.

24 CHAIRPERSON HILL: Yes.

25 VICE CHAIR JOHN: Sure.

1 CHAIRPERSON HILL: Let me think here, now, then.  
2 So, we're, are we going to have -- I'm looking at my fellow  
3 Board Members, are we going to have lunch, or did you all  
4 sneak away and have lunch already, while I was taking a  
5 break?

6 And so, if we're going to have lunch, then it's  
7 1:10 p.m., so maybe, we'll come back at like 1:30 p.m.,  
8 right, 1:40 p.m., 1:40 p.m., 1:40 p.m., okay?

9 And so, DOB, what, you know, I'm just pointing  
10 out, as you also now know, and we all know, like, we're not  
11 the Zoning Commission. We don't do PUDs and we don't have  
12 anything to do with PUDs, right?

13 If this did get to a PUD, then all these people  
14 could come back before the Zoning Commission and do whatever  
15 they needed to do. I think, Mr. Fuller -- and, I know, Mr.  
16 Fuller, sorry.

17 And the Zoning Administrator, you know, there are  
18 some claims that we have been familiar with in our past,  
19 which is, the meaningful connection, the common space, the  
20 heated lit, all the stuff that they're bringing up, you know,  
21 the height issue, right?

22 And then, if you want to talk about the tax lots  
23 and the lots, you know. So, we're here, again, did the  
24 Zoning Administrator -- I hate the way that this is even  
25 done, Zoning Administrator Beeton.

1 But, I love how it's always like, did you err?  
2 And so, it's always, like, did you make a mistake? So, we're  
3 trying to figure out, whether you made a mistake on these  
4 things.

5 So, with that, let's go have lunch. We'll come  
6 back at 1:40 p.m., I hope. Oh. Sorry, Ms. John, you had  
7 your hand up?

8 VICE CHAIR JOHN: May I add something to your  
9 comments, Mr. Chair?

10 CHAIRPERSON HILL: Yes, please.

11 VICE CHAIR JOHN: I just want to make it clear  
12 that, the Board is not going to consider that private  
13 covenant, so it would not factor into our decision. We're  
14 looking, solely, at the zoning issues. And, to the extent  
15 that you can make it understandable, as if you're talking to  
16 an 8-year-old that would be great. Thank you.

17 CHAIRPERSON HILL: And, just as a note, we're  
18 probably not going to make a decision today, I would think,  
19 because I have to consult with all my 8-year-olds after this  
20 is over and try to make sure I understand, okay?

21 VICE CHAIR JOHN: Thank you.

22 CHAIRPERSON HILL: So, everybody just -- okay.  
23 All right. Anybody else, before we go?

24 VICE CHAIR JOHN: No.

25 (Whereupon, the above-entitled matter went off the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

1 record at 1:13 p.m. and resumed at 1:50 p.m.)

2 CHAIRPERSON HILL: Okay. Ms. Mehlert, if you want  
3 to call us back?

4 MS. MEHLERT: Sure. The Board is back to its  
5 public hearing session after a lunch recess and is returning  
6 to Appeal Number 20182 of Wardman Hotel Strategy Team,  
7 Madhususan Ramachandran and Renada Wallenburg.

8 CHAIRPERSON HILL: Okay. So where I think we left  
9 us off was with Mr. Fuller at DOB. Then we're going to hear  
10 form -- we're going to hear from everybody, and then we're  
11 going to let everybody ask questions of everybody. And then  
12 there will be a rebuttal from the appellant because it's  
13 their appeal. And then we will conclusions and then along  
14 the way, we'll have questions from the Board as well. Mr.  
15 Fuller, you may begin whenever you like.

16 MR. FULLER: Thank you very much and again,  
17 appreciate everybody's time this afternoon. Again, we're  
18 here today because appellants were challenging DOB's issuance  
19 of building permits B2305655 and B2307474, again, related to  
20 a project at 2650 Woodley Road, NW, and 2601 Calvert Street,  
21 NW. Reality is that we're really here today because  
22 appellant, WHST, believes the property should have been used  
23 to provide affordable housing yet there's no actual  
24 regulation specific to affordable housing that's fully being  
25 disputed here.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           Nonetheless, appellant's May 13, 2024 response  
2 brief and really, in its argument today, appellant  
3 effectively concedes what were the majority of the issues  
4 initially raised by appellants. And I guess to some extent,  
5 we appreciate that and that led us to -- sort of led us to  
6 spend a little bit time here this afternoon.

7           It's -- appellant's appeal now relies on what are  
8 still two mistaken premises; one, it seems that their belief  
9 that the required building setback in the RA-2 Zone should  
10 be effectively varying distances throughout the perimeter of  
11 the building dependent on the adjacent slope, one it doesn't  
12 -- that's not the reading of the regulations; and two, that  
13 just doesn't make practical sense from a sort of a regulation  
14 standpoint, really a building standpoint.

15           Two, they believe that the connections are not  
16 compliant with 11B DCMR 309.1 and 309.2. There's really no  
17 legal or other support that would justify the illogical and  
18 counter practical suggestion raised by appellants that the  
19 setback should be based on a measurement taken at each  
20 individual segment of the building. Again, it doesn't --  
21 it's just not sensible or, quite frankly, practical. And  
22 again, it doesn't comport with applicable regulations, maybe  
23 more importantly, for purposes of this appeal.

24           The regulation clearly specifies that the height  
25 of the building is measured according to the HMT, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 appellants are not actually here contesting -- and again, we  
2 appreciate it. They're not contesting the BHM calculation,  
3 the location utilized for establishing BHMP or the  
4 measurement methodology utilized by DOT. They're just  
5 contesting that the height of the building established by  
6 BHMP should not be used for -- to apply the one-to-one  
7 setback under 203.6 for the entirety of the single building  
8 at issue here. But again, that's exactly what the regulation  
9 requires. It says the structure shall be removed from all  
10 lot lines of its lot for a distance equal to the height of  
11 the building. 308.6 specifies how you measure height of the  
12 building, and that's not being disputed here.

13           Really, in sum, appellants sort of just ignore and  
14 sort of hope the Board and, quite frankly, DOB, would have  
15 ignored 308 -- 11B DCMR 308, which specifies how you actually  
16 calculate the height of the building. And that's how you  
17 determine also the one-to-one setback relative to 11F DCMR  
18 203.6.

19           Moreover, the connections at issue, I know there's  
20 been discussion on those. Those connections, as planned,  
21 they comport with the requirements of DCMR 309.1 and 309.2.  
22 The -- and really, with the prior decisions, quite, frankly,  
23 of the Board applicable to those two issues, it seems to be  
24 here that the appellants are disputing two prior BZA  
25 decisions discussed at some point by appellant's counsel.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Those decisions that are sort of being disputed by  
2 appellants, they haven't been appealed, they haven't been  
3 overturned. Appellants are basically suggesting that the  
4 prior decisions of the Board were just flat wrong. And quite  
5 frankly, that's wrong and DOB, as it should, considered those  
6 decisions when approving these permits and this project.

7           Despite all of this, DOB was -- is going to  
8 aggress appellant's unsupported contentions and will  
9 elaborate on the Zoning Administrator's determination in  
10 approving the permit applications relative to the applicable  
11 zoning requirements. Again, the determinations were based  
12 upon a thorough review, careful consideration, and the  
13 correct application of the Zoning regulations.

14           Again, in support of the agency's position, I call  
15 Ms. Kathleen Beeton, the Zoning Administrator, to testify at  
16 this time. And I'd also ask if we could pull up the DOB  
17 slide presentation sort of on the merits of the case. And  
18 Ms. Beetman, could you just go ahead and please state your  
19 name?

20           MS. BEETMAN: Sure. My name is Kathleen Beetman.

21           MR. FULLER: And what is your position with the  
22 Department of Buildings?

23           MS. BEETMAN: I'm the Zoning Administrator.

24           MR. FULLER: And roughly how long have you been  
25 in the position of, as a zoning administrator with the



1 Department of Buildings?

2 MS. BEETMAN: Thank you. I was appointed to this  
3 position in November 2023.

4 MR. FULLER: Actually, if we could go ahead and  
5 turn to, I think, slide 2? Thank you. And prior to your  
6 position as the zoning administrator with the Department of  
7 Buildings, you were the deputy zoning administrator, correct?

8 MS. BEETMAN: Yes, I was.

9 MR. FULLER: And how long were you the deputy  
10 zoning administrator with the Department of Buildings?

11 MS. BEETMAN: For 13 years.

12 MR. FULLER: Could you just generally describe --  
13 and feel free to refer to the slide presentation but just  
14 generally describe sort of your duties and responsibilities  
15 as a zoning administrator for the Department of Buildings?

16 MS. BEETMAN: Sure. Thank you. Very briefly,  
17 role of the zoning administration is to administer,  
18 interpret, and enforce the zoning regulations for the  
19 District of Columbia. We do that primarily through the  
20 review of building permit applications, certificates of  
21 occupancy applications. My position covers the subdivisions  
22 for compliance with the zoning regulations. We also spend  
23 a lot of our time talking with customers about the zoning  
24 regulations to help them understand how they apply to their  
25 particular projects, and we also, of course, make sure that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the staff is trained in the zoning regulations as they  
2 evolve. You know, they're constantly being modified and  
3 changed, and so we want to make sure that we're up to date  
4 with the current zoning regulations. Lastly, and this, it's  
5 most applicable in this case, we partner with you, the -- our  
6 Office of General Counsel, to represent the Office of Zoning  
7 Administration in appeals before the Board of Zoning  
8 Adjustment.

9 MR. FULLER: And sort of I guess more specific to  
10 this case and this appeal, could you describe sort of the  
11 Office of the Zoning Administrator during the process and  
12 approval of a building permit?

13 MS. BEETMAN: Sure. So for building -- when  
14 building permit applications come into our office, they  
15 vetted to the different -- throughout the Office of Zoning  
16 Administration for our review to verify that they comply with  
17 the zoning regulations. And the way we do that is we look  
18 at the application that's submitted, the plans that come  
19 along with the application, the DC surveyor's plat which  
20 shows the footprint of the building. We use that to verify  
21 that the plans are consistent. We also use the plat to  
22 verify setbacks, lot occupancy, pervious surface, anything  
23 that we can -- need to calculate based upon a plan view we  
24 use that for.

25 We verify setbacks, height, lot occupancy, FAR,

1 or area ratio where that's applicable, parking standards, off  
2 street parking and bicycle parking, loading, and pretty much  
3 all the development standards that would apply to a  
4 particular project. We ensure that those are complied before  
5 we sign off on a building permit.

6 For the building permit, also, I'd like to review  
7 we do review orders of the Board of Zoning Adjustment or the  
8 Zoning Commission. If there is an order that's associated  
9 with a particular project, we verify the exhibits and the  
10 conditions that are imposed to make sure that the plans that  
11 we're reviewing are consistent with our approval.

12 MR. FULLER: And Ms. Beetman, I know you weren't  
13 the zoning administrator for DOB necessarily at the time that  
14 the, I guess, relevant determinations were made. Have you,  
15 as part of this process, reviewed Mr. LeGrant -- Matt  
16 LeGrant's representing the administrative of DOB, his  
17 determinations related to a single record lot connections and  
18 height requirements relative to this particular project?

19 MS. BEETMAN: Yes, I have.

20 MR. FULLER: And based on your review, you would  
21 agree with those determinations and their consistency with  
22 the applicable zoning regulations, would that be correct?

23 MS. BEETMAN: Yes. I would agree with them.

24 MR. FULLER: Could we please turn to slide 3? And  
25 Ms. Beetman, could you just sort of generally describe your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 understanding of the Wardman Park Project?

2 MS. BEETMAN: It's an record as a split lot, it's  
3 split-zoned RA-2 and RA-4 have formerly developed where the  
4 Wardman Park Marriott has since been demolished and existing  
5 buildings, the Wardman Tower and the Woodley Tower. The  
6 project is a matter front project consisting of new  
7 residential development -- sorry -- to constructing new  
8 residential development consisting of 867 units including 72  
9 inclusionary zoning, or IZ units, with the required bicycle  
10 and off street parking and moving, and the attendant building  
11 permits are attached there. References shown there.

12 MR. FULLER: Thank you. Could we get the next  
13 slide, please? And Ms. Beetman, with respect to the issuance  
14 of building permits, what lot lines are relevant to  
15 Department of Buildings?

16 MS. BEETMAN: So the zoning regulations require  
17 that building permits be issued on a record lot, and a record  
18 lot is actually defined in the zoning regulations and that  
19 recorded on the records of the survey of the District of  
20 Columbia. So we use the record lot to make our  
21 determinations about compliance with setbacks. We measure  
22 the setback from the record lot to the building wall, so the  
23 tax lots have no bearing on zoning compliance when we're  
24 looking at a set of plans.

25 MR. FULLER: And if we turn to the next slide,

1 please? And would it be correct that the Wardman Park  
2 Project -- I think this is technically agreed to by the  
3 appellants, though -- do you agree that the project would lie  
4 within record lot 32?

5 MS. BEETMAN: Yes. I agree with that.

6 MR. FULLER: And the slide that's sort of before  
7 us, is that just -- does that sort of show the record lot in  
8 square 2132?

9 MS. BEETMAN: Yes. That's shows the boundaries  
10 of record lot 32 and square 2132.

11 MR. FULLER: Okay. Now if we turn to the next  
12 slide, please? And then you sort of mentioned earlier the  
13 fact that this is sort of a split-zone, I guess, project.  
14 What zones does this project lie in?

15 MR. FULLER: Okay. So the property lies in the  
16 RA-2 Zone and the RA-4 zone, and the black line that you see  
17 lay -- overlay the zoning map is actually the boundaries of  
18 the record lot subdivision that we saw just a moment ago.

19 MR. FULLER: And can we turn to the next slide,  
20 please? And why is sort of the -- sort of this split-zone  
21 aspect of this project relevant to the building height and  
22 setbacks related to the applicable regulations, 203.2 and  
23 203.6?

24 MS. BEETMAN: Okay. So as I said a few minutes  
25 ago, the property is zoned RA-2 and RA-4. There are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 different height limitations in these zones. Pursuant to Act  
2 203.2, maximum height in the RA-2 zone is 50 feet; maximum  
3 permitted height in the RA-4 zone is 90 feet. However,  
4 maximum height of 90 feet is permitted in the RA-2 zone if  
5 the building provides a setback equal to the height, its  
6 height from the record lot lines must pursuant to Act 203.6.  
7 There is no setback from the RA-4 zone because the RA-4 zone  
8 permits a maximum height of 90 feet as a matter without the  
9 need for a setback requirement.

10 MR. FULLER: And could we then turn to the next  
11 slide, please? And based on the Department of Buildings'  
12 review, what are the measured setbacks in this particular  
13 instance?

14 MS. BEETMAN: So thank you. So this graphic shows  
15 the setbacks of the project as the site plan was taken from  
16 the approved plans. Up at the top, you'll see a designation  
17 of a minimum of 90 feet. It's the circle up at the very top  
18 near Woodley Road. To your left, that dimension, which is  
19 sort of hard to see but is captured outside of the circle,  
20 the measures reads as 91 feet 3 inches; again, measured from  
21 the building wall to the record lot line. And then on the  
22 other side, off to the right-hand side, that measurement is  
23 91 feet 7 inches. All those requirements -- those minimums  
24 meet the minimum 90-foot setback that's required in the RA-2  
25 zone.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. FULLER: And sort of when you're saying the  
2 required 90-foot setback, again, that's, in part, based on  
3 the building height measuring point pursuant to the  
4 application of 30 -- it's 11F 308.2?

5 MS. BEETMAN: Right. So height is measured, the  
6 BHMP, which in this case is located on the Woodley Road  
7 front. It is that that has pegged the height of that number,  
8 that amount back to the Sub. So BHMP, building height  
9 measuring point, is measured at a set location on the  
10 property. That height then dictates the setback requirements  
11 that are required by Sub -- F Sub at 6.3. And so this visual  
12 representation is showing how those -- that minimum 90-foot  
13 setback is provided on the site plan.

14 MR. FULLER: And sort of staying on the slides,  
15 how did we go about or I should say how did Department of  
16 Buildings go about determining the accuracy of the setbacks  
17 as depicted on the plans?

18 MS. BEETMAN: Okay. So we have a measuring tool  
19 in the software that we use to review building plans and  
20 plats, and we are able to take the measuring tool and measure  
21 from the lot line to the wall of the building to verify that  
22 the setbacks that were provided on this plan are, in fact,  
23 accurate. So that is something we did with this project,  
24 that we do with every other project that we review to verify  
25 that the setbacks are, in fact, complying with the minimum

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 zoning requirements.

2 MR. FULLER: If we turn to the next slide, please?  
3 And I apologize. To some extent, this may be a bit of a moot  
4 point, but it's a little bit, I guess, still unclear, so  
5 we'll address it briefly. Just can you describe how is the  
6 height of the building determined based on BHMP?

7 MS. BEETMAN: Sure. So pursuant to B-308.2, the  
8 building height measuring point, which is BHMP for short, is  
9 established either the adjacent natural or finished grade,  
10 whichever is lower in elevation with the midpoint of the  
11 building facade of the principal building that's closest to  
12 the street lot line.

13 In this case -- the BHMP for this record that was  
14 established at elevation 179. And that point is along the  
15 Woodley Street lot line frontage. That BHMP was determined  
16 by the prior zoning administrator and his review of the plans  
17 for the Woodley Tower, which is the most recently-constructed  
18 building on the property, back around 2013.

19 So in his review of the plans for that, Mr.  
20 LeGrant determined that the grid for that project was  
21 determined to be at elevation -- the ground level rather was  
22 determined to be at elevation 179 and, therefore, the BHMP  
23 for that building and the record lot at elevation 179. So  
24 in his determination of the -- this particular project, he  
25 advised that that BHMP would be -- could be used for the new

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com



1 construction that we have -- that was the subject of the  
2 building permit that had already been issued.

3           So again, the BHMP establishes height in the  
4 location where height is measured. It's used for the  
5 purposes of measuring height. Setbacks for this particular  
6 zone are tied to F-203.6, which is -- those are measured at  
7 the wall of the building and the record lot line based upon  
8 the height that is determined at the BHMP height.

9           MR. FULLER: And that height of the building,  
10 that's sort of spoken -- so in 203.6, it refers to the  
11 setback shall be sort of one-to-one in accordance with the  
12 height of the building. And so here this is what we're using  
13 to measure the height of the building relative to 203.6?

14           MS. BEETMAN: Yes. That's correct because the  
15 height of the building is determined at the BHMP, which in  
16 this case is elevation of 196, and the height of the building  
17 at that elevation site is 90 feet, yes, to answer your  
18 question.

19           MR. FULLER: Can we turn to the next slide,  
20 please? Is -- I guess let me ask you this, is there a -- is  
21 there any zoning requirement that the height of a building  
22 on sloping sites be measured at multiple points along the  
23 building?

24           MS. BEETMAN: No. There's no requirement in the  
25 zoning regulations that the height of a slope -- a decreased

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 sloped or sloping site be measured at any location other than  
2 the established BHMP.

3 MR. FULLER: I apologize. I don't know that this  
4 slide is necessarily applicable to that line of questioning.  
5 If anybody's focused on the slide, we're sort of going to  
6 skip this because I think somebody can definitely see it.  
7 But if we could turn to the next slide, please? And did we  
8 verify the height of the building, us -- I'm saying "we," the  
9 question is did DOB verify the height of the building based  
10 on the plans submitted by the Wardman folks?

11 MS. BEETMAN: Yes, we did. As I had said a few  
12 minutes ago, one of the things -- one of the development  
13 standards that we always kind of follow when we're reviewing  
14 a set of plans is height, and we did. We confirmed the  
15 height of the structure is not higher than 90 feet at the  
16 BHMP and just reflected in the drawing you have in front of  
17 you.

18 MR. FULLER: And sort of switching gears here and  
19 sort of focusing now, I think, more on the connections issue,  
20 the appellant's are sort of disputing, I think, sort of prior  
21 decisions of the Board of Zoning Adjustment and potentially  
22 the application of the prior zoning regulations. What is  
23 your understanding of the genesis of the language included  
24 in 30 -- actually, let me just brief -- I think it's  
25 11B-309.1 and 309.2.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 MS. BEETMAN: Right. Okay. So my understanding  
2 is that in the mid 2000's, as the Office of Planning was  
3 starting to consider revision to the zoning regulations, one  
4 of the things that they were considering was in the 1958  
5 zoning regulations, many of the definitions actually include  
6 requirements. So setback, sometimes lot occupancy,  
7 oftentimes lot coverage in the case of the definition of  
8 building what it meant to have a single or separate building.  
9 And so the Office of Planning, in thinking about how to  
10 rewrite the zoning regulations wanted to create a section  
11 or an area that had the standards of measurement that were  
12 codified in a single location, not within the definitions  
13 section itself.

14 So part of what drove them to look at this, to  
15 think about changes to single or separate building was taking  
16 it out of the definition section and providing a location  
17 within the zoning regulations that provided standards for  
18 measurement. And then also, codifying past zoning  
19 administrator interpretations. So those sort of goals and  
20 underlay the creation of what we have as 309.1 today and  
21 309.2. In particular, my understanding about 309.2 is that  
22 that was something that was brought forward by Holland &  
23 Knight around the time of 2015 when the Office of Planning  
24 and the Zoning Commission were seeking public input into the  
25 draft regulations that were being discussed. And so that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 letter was reviewed by the Zoning Commission and adopted into  
2 what became the 2016 zoning regulations.

3 MR. FULLER: And what is DOB's determination  
4 regarding whether the project, as planned, technically  
5 results in a single building?

6 MS. BEETMAN: We believe that the building -- the  
7 construction is planned with the connections that are  
8 probably the proposed or existing compliance with the  
9 requirements of a single building in B-309.1.

10 MR. FULLER: I guess just not only do we believe  
11 that the DOB's determination is that this does comprise a  
12 single building under the zoning regulations, is that  
13 correct?

14 MS. BEETMAN: Yes -- yes, that's correct.

15 MR. FULLER: Can we then turn to slide 12? I'm  
16 sorry. Actually, I say that that but I don't think these  
17 slides are -- I don't know if any of them are actually  
18 numbered. I apologize.

19 And could you just elaborate on specifically why  
20 DOB's determination, this comprises a single building  
21 according to the zoning regulations?

22 MS. BEETMAN: Sure. So this section of the code  
23 B-309.1 which has been discussed quite a bit today, has four  
24 requirements for something -- for a connection to be for a  
25 section to be considered a single building if they're joined

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 by a connection, that the connection have these following  
2 features. So it's fully above grade, enclosed, heated and  
3 artificially lit, and either a common space shared by users  
4 or operations of the building such as a lobby or recreation  
5 room, floating dock or service bank; or space is designed and  
6 used to provide free and unrestrictive passage between  
7 separate portions of the building such as n unrestricted  
8 doorway or walkway.

9           So we believe, based upon our review of the plans,  
10 that the existing connector for the arcade -- the Wardman  
11 arcade, the posed enhanced connection between the Woodley  
12 Tower and the new construction, which has been referred to  
13 as Segments A and B, or Towers A and B, variously, but those  
14 connections meet these standards, fully above grade,  
15 enclosed, heated and artificially lit, and that they either  
16 function as shared space among all users or space is just  
17 designed to provide free and unrestricted passage.

18           In the case of new construction for the Towers A  
19 and B, the fitness center, I think, definitely meets the  
20 standard of one, as a shared space, but the other connectors,  
21 I would say, that these connectors provide free and  
22 unrestricted passage between separate portions of the  
23 building, meaning you can get from the Woodley to -- the  
24 Woodley Tower to the new construction, you can get from that  
25 arcade to the new construction. You may not be able to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 travel from the Woodley Tower all the way through to the  
2 Wardman Tower, but this provision, 309.2 -- D2 rather does  
3 not require that you have completely unfettered access  
4 through all portions of the connection by a single person,  
5 just that that passage exists between the connections. So  
6 we would argue that the connection between -- the passageway  
7 between the connections has been made and, therefore, that  
8 and the requirements of the new connector, the existing  
9 connection, and certainly the connection between Towers A and  
10 B.

11 MR. FULLER: And could we move to slide 13,  
12 please? Or actually, could we move to the next slide,  
13 please? And again, is it your understanding that the Woodley  
14 Tower, Wardman Tower, and what's been referred to sort of as  
15 part of this appeal as Towers A and B are connected via  
16 zoning regulation -- or via zoning regulation compliant  
17 connections for purposes of establishing a single building?

18 MS. BEETMAN: Yes. That is my understanding of  
19 the termination, and this bracket just shows sort of visually  
20 those connections I described a minute ago in writing, the  
21 one on the far left being the Woodley Tower connection, the  
22 central circle there being the connection -- the fitness  
23 center between Towers A and B, and then the one over on the  
24 right-hand side adjacent to the Wardman Tower that's been  
25 referred to as Historic Arcade.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. FULLER: And the regulations don't require a  
2 person have free and unfettered access to all portions of the  
3 single background, correct? It's more so that the  
4 connections exist and that they can allow free passage, is  
5 that accurate?

6 MS. BEETMAN: Yes. That's correct.

7 MR. FULLER: And common ownership is not a  
8 requirement of the zoning regulations, correct?

9 MS. BEETMAN: No. There's nothing in the zoning  
10 regulations in B-309.1 that requires common ownership of all  
11 the buildings as a requirement for providing either the  
12 common space or the unrestricted passage.

13 MR. FULLER: Could we move to the next slide,  
14 please? Is it part of your understanding that this -- that  
15 DOB's application is consistent with prior to determinations  
16 on how to apply the BZA? And I think those have been  
17 discussed already to some extent by the appellants in this  
18 case?

19 MS. BEETMAN: Yes. That is my understanding.

20 MR. FULLER: Next slide, please? And actually,  
21 I guess before we sort of focus on this, is it generally  
22 DOB's practice to consider, as part of its analysis, prior  
23 zoning administrator determinations and BZA decisions related  
24 to those determinations?

25 MS. BEETMAN: Yes, absolutely. We are guided by

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 the zoning regulations for sure, but we are also mindful and  
2 aware of any prior zoning administrator interpretations or  
3 determinations and certainly the cases that the BZA has  
4 considered and the outcome of perhaps appeals in those  
5 particular cases.

6 MR. FULLER: And so unlike the appellants are  
7 doing in this case, we don't -- DOB just doesn't ignore prior  
8 decisions of the Board of Zoning Adjustment? We actually  
9 appreciate and incorp-- and -- appreciate those decisions and  
10 incorporate those into our analysis?

11 MS. BEETMAN: Yes, absolutely. It becomes part  
12 of the volume of knowledge we use when we're reviewing plans  
13 for determining compliance with the zoning regulations.

14 MR. FULLER: Could we move to the next slide,  
15 please? Actually, I'm sorry. Could we go back to the other,  
16 the last slide? I apologize. And could you just sort of  
17 describe again sort of why in DOB's determination did the  
18 proposing plan connections comply with the zoning  
19 regulations?

20 MS. BEETMAN: Okay. Sure. So as I said a few  
21 minutes ago, the graphic I saw up earlier -- you had up  
22 earlier, the Wardman Tower has the existing arcade that will  
23 connect Woodley construction. The Woodley Tower is  
24 proposing we do a closed connection that will be fully  
25 conditioned and lit to provide the connection to the new

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 construction. The new towers themselves, A and B, will be  
2 connected by a fitness center that meets the standards of  
3 B-309.1.

4 And as I said previously, unrestricted access with  
5 buyers passage between separate portions of the building,  
6 such as an unrestricted doorway or walkway, that does not  
7 require continuous passageway from one building to another,  
8 one portion of the building to another, just that there is  
9 the possibility of moving between those connections.

10 And then as I also testified earlier, there's no  
11 requirement in B-309.1 that the property be under common  
12 ownership to constitute a single building.

13 MR. FULLER: And is it DOB's conclusion that this  
14 project, as planned, is compliant with the applicable zoning  
15 regulations?

16 MS. BEETMAN: Yes, it is.

17 MR. FULLER: And that's why the zoning  
18 administrator's office approved the building permits, at  
19 least as it relates to the compliance with the zoning  
20 regulations?

21 MS. BEETMAN: Yes. That is correct.

22 MR. FULLER: And the building permits, they were  
23 properly approved by the Office of the Zoning Administrator,  
24 correct?

25 MS. BEETMAN: Yes, they were.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. FULLER: I don't have any further questions  
2 on my end. I think that concludes effectively the DOB  
3 presentation.

4 CHAIRPERSON HILL: I said is the property owner  
5 here again? Okay.

6 MR. AVITABILE: Yes, we are.

7 CHAIRPERSON HILL: Okay. Would you like to, Mr.  
8 Avitabile, go ahead and give us your testimony?

9 MR. AVITABILE: Certainly, we'd be happy to do so.  
10 Again, David Avitabile with Goulston and Storrs here on  
11 behalf of the property owner. Chair Hill, Members of the  
12 Board, thank you for your time this afternoon. As you know,  
13 we filed a detailed prehearing submission that walks through  
14 the contested issues on the merits in this appeal. In a few  
15 minutes, my colleague, Shane Dettman, Urban Planner, will  
16 review the remaining issues at play and affirm why the two  
17 building connections and the height setback each conform to  
18 the requirements of the zoning regulations. His presentation  
19 is, I believe, Exhibit 35 of the record if we want to start  
20 bringing that up.

21 Before we do so, I did want to ask for Mr. Dettman  
22 to be qualified as an expert. He's been qualified many times  
23 before the Board. I was going to reference the exhibit in  
24 the record where his resume is located, but it looks like  
25 although we uploaded it --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 CHAIRPERSON HILL: It's okay. Mr. Dettman's been  
2 before us many, many times.

3 MR. AVITABILE: Right. Good. I just wanted for  
4 the record make it clear we had served it on the parties, but  
5 that's great, and the Board knows Mr. Dettman was a -- before  
6 he was in this practice, he was a member of the National  
7 Capitol Planning Commission and also served on the board for  
8 a number of years. In fact, the first appeal I handled was  
9 an appeal involving building connections and height setbacks,  
10 so -- and Commissioner Miller, Ruth Ann was the vice chair  
11 at that time. So I feel like I'm going back in time. But  
12 we're happy to be here today.

13 So I have a couple of introductory thoughts to  
14 help organize us. You know, Mr. Brown started this hearing  
15 by saying this is a very complicated case. We disagree. We  
16 actually believe it's a very simple case. The zoning  
17 regulations have permitted the ability to connect otherwise  
18 separate structures for building connections for decades.  
19 There's nothing new or unusual at play here. And the same  
20 is true for this site. Record Lot 32 has been developed as  
21 a multi-structure complex that operates as a single building  
22 for zoning purposes for many decades as well, as long as I  
23 have been alive. And all this project does is remove and  
24 replace the middle piece with a new structure that complies  
25 with the current zoning regulations and with a more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 conforming use that is more set back than the prior  
2 convention hotel.

3           We think it's a simple case for two reasons.  
4 First, all of these elements meet the plain language of the  
5 zoning regulations. And second, our application of the  
6 zoning regulations is fully consistent with the Board's prior  
7 precedent and the application of those regulations to this  
8 property. Regarding the building connections, the building  
9 connection requirements of Subtitle B Section 309.1.d, as we  
10 all talked about today, give you two paths to compliance.

11           First, you can provide a common space shared by  
12 users of all portions of the building such as a lobby or  
13 recreation room. By definition, this section is discussing  
14 a connection between two structures, and so the clear focus  
15 is on the shared use of that common space by users on both  
16 sides of that connection. And as we've explained, both the  
17 Woodley and the Wardman connectors, the arcade and the  
18 breezeway meet this requirement. Both operate as secondary  
19 lobbies for residents traveling from the south, which is  
20 exactly the type of connection that the Board concluded was  
21 sufficient in BZA Appeal Number 19550.

22           The appellants offered nothing to rebut the clear  
23 application of this requirement other than to challenge the  
24 Board's own conclusions in that appeal as the wrong outcome.  
25 I'll add that our two connectors are substantially larger,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 in all respects, than the one that was approved in that case  
2 and they include seating and other functional uses that  
3 really make them operate as secondary lobbies. Just like the  
4 fitness center between Towers A and B, which the appellants  
5 concede complies with the zoning regulations, the arcade and  
6 the breezeway spaces are, in all respects, shared common  
7 space connecting separate building segments.

8           The second path that you can choose is to provide  
9 a quote, "corridor that is designed and used to provide free  
10 and unrestricted passage between separate portions of the  
11 building." Appellants get passed the first part of this  
12 regulation, but it's important because the regulation focuses  
13 on the physical corridor itself, not the operation of the  
14 connection. Unrestricted does not mean unlocked doors.  
15 Unrestricted refers to the corridor itself. It's there. The  
16 word is there to ensure that the corridor actually connects  
17 the two buildings through doorways that allow you to pass  
18 directly from one to the other. And nothing in this  
19 provision requires the passageway is open to, quote, "users  
20 of all portions of the building."

21           Again, both connectors meet this requirement as  
22 there are doors at either end through which the authorized  
23 building occupants may pass. And again, this is exactly the  
24 type of connection that the Board concluded was sufficient,  
25 this time in BZA Appeal Number 2183. Contrary to appellant's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 recollection, the limited access of the corridor was a  
2 material contested issue in that appeal. Mr. Brown expressly  
3 raised locked doors a couple of times in his presentation on  
4 that case. So in affirming that permit, the Board also  
5 affirmed zoning administrator's consistent conclusion that  
6 limited access passageways were allowed in mixed use and  
7 multi-use buildings as connections so long as the authorized  
8 users had free and unrestricted passageway.

9           And then finally, regarding the last issue in this  
10 appeal, which is the height setback requirement, the plain  
11 language of Subtitle F, Section 203.6 clearly requires a  
12 setback equal to the height of the building. This makes  
13 sense because the 90-foot height provision is, at bottom, a  
14 height requirement. It makes perfect sense to tie the extent  
15 of the setback to the measured height of the building. It  
16 is not a yard or an open space requirement, and there's no  
17 mention of height at, quote, "the adjacent property's  
18 property line," height at, quote, "the rear of the  
19 structure," or any of the other ways in which the Zoning  
20 Commission signals that you should measure height adjacent  
21 to yards, open spaces, or other transition points.

22           The appellants offered no support or justification  
23 for their interpretation that runs counter to the clear  
24 application of this requirement to the property for over a  
25 century. And I think when we get to that part of Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Dettman's presentation, you see building-by-building how  
2 everything has complied with that 90-foot requirement. It  
3 just makes it absolutely clear.

4           The appellants have tried to defend their  
5 interpretation by arguing that no sites are flat sites, but  
6 anyone who's developed land in the District knows most sites  
7 have some slope. And further, plenty of sites slope upwards.  
8 And so the appellant's interpretation would result in less  
9 setback for those properties. Again, that's not the way the  
10 regulations have been interpreted or applied by the Board or  
11 the Commission. The setback requirement is tied to the  
12 measured height of the building from its measuring point.  
13 Full stop.

14           And then finally, I know that we -- John, you  
15 indicated that the single wide covenant is irrelevant and we  
16 agree, but I just want to, for the record, address it. The  
17 zoning administrator, as we all know, is responsible for  
18 administering and enforcing the zoning regulations, which are  
19 the public land use controls that require building  
20 connections, and that is what the zoning administrator has  
21 done here, a single record lot covenant is a separate private  
22 land use control. And in the prior zoning determinations,  
23 particularly the first one, which is Exhibit W of our  
24 prehearing submission, it's clear that the zoning  
25 administrator understood that, quote, "the single building

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 condition is required under the zoning regulations," end  
2 quote. And the single lot covenant was only cited to note  
3 that there was a separate private agreement requiring the  
4 same thing.

5 To the extent that subsequent determinations may  
6 have only referenced the single lot covenant, it doesn't  
7 matter because the public land use regulation still controls,  
8 and the zoning administrator's approval of the permits here  
9 was in accordance and based on those regulations.

10 So with that opening statement, thank you for  
11 indulging me, and I will now turn the presentation over to  
12 Mr. Dettman.

13 MR. DETTMAN: Thank you, David. Good afternoon,  
14 Mr. Chairman, and Members of the Board. Can you all hear me  
15 okay? Thank you. For the record, again, Shane Dettman,  
16 Urban Planner with Goulston and Storrs. Mr. Young, can you  
17 move on to the next slide, please?

18 My testimony will detail how the project is fully  
19 consistent and compliant with the two areas of zoning that  
20 the appellants have raised in this case. My testimony will  
21 show that the project is fully compliant with applicable  
22 height and building connection requirements based on a plain  
23 reading of the regulations and will show how the plain  
24 language of the regulations is supported by the record relied  
25 upon by the Zoning Commission in adopting ZR 16, by decisions

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 made by the Board in past and recent appeals on the very  
2 issues raised by the appellants including on this very site,  
3 and by the longstanding consistent application of these  
4 specific areas of the zoning regulations, again, on this very  
5 site.

6           Before getting into the substance of the issues,  
7 it's necessary to take a minute to provide some context about  
8 the site and the project. Some of this has already been  
9 covered, so I won't spend too much time on it, but I think  
10 it's important in order to lay this all out in as clear and  
11 simply as possible. And I think at the end of the testimony,  
12 you will find, as Mr. Avitabile has stated, that this is not  
13 a very complicated case.

14           As mentioned, the project is located on Record Lot  
15 32 and specifically on the site of the former Marriott  
16 Wardman Park Hotel. The Record Lot contains approximately  
17 16 acres and contains the Historic Wardman Tower on the east  
18 and the Woodley Apartments on the west. The Wardman Tower  
19 was constructed in the 1920's as an addition to the original  
20 Wardman Hotel. And in 2015, the Historic Wardman Tower was  
21 converted to 32 individually-owned condominiums. Notably,  
22 as it relates to this proceeding, when Wardman Tower was  
23 converted to condos, Marriott retained ownership of the first  
24 two floors which intervenor acquired together with the former  
25 hotel. The Woodley was constructed as a matter of right in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 2014 and contains approximately 212 rental dwelling units.

2 Both the Wardman Tower condos and the Woodley  
3 Apartments were connected to the former hotel through above  
4 grade meaningful connections as interpreted under the zoning  
5 regulations in effect at the time of their construction thus  
6 making them a single building for purposes of zoning. As my  
7 testimony will cover, these two structures will continue to  
8 be meaningfully connected to the intervenor's project in full  
9 in accordance with the current zoning regulations. Next  
10 slide.

11 The last point I wanted to reiterate about the  
12 Record Lot is the significant change in grade that's already  
13 been mentioned that occurs across the site. Specifically,  
14 the grade of the site slopes downward from Woodley Road on  
15 the north to Calvert Street on the south by approximately 70  
16 feet. It is this substantial change in grade that the  
17 appellant brings its challenge of the project's height  
18 setback. However, as our submissions clearly demonstrate,  
19 while there are provisions within the zoning regulations that  
20 consider changes in grade when determining a particular  
21 requirement, the height provision being challenged by the  
22 appellant is not one of those provisions. Next slide.

23 The overall site has an interesting and, at times,  
24 complicated development history that helps demonstrate how  
25 the height setback requirement has consistently been

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 interpreted and applied for over a century and that the  
2 appellant's interpretation is not correct. The image on the  
3 top left shows the original Wardman Hotel which was  
4 constructed in 1918, prior to the adoption of zoning. This  
5 was followed by the construction of the Historic Wardman  
6 Tower addition in 1928 which by that time, zoning had been  
7 adopted. In fact, it was constructed under the first adopted  
8 set of zoning regulations, the 1920 zoning regulations.

9           The 1950's and 60's brought significant change to  
10 the site with large portions of the original hotel being  
11 demolished and replaced with what was known as the Sheraton  
12 Park Hotel and the Motor Inn. And notably, the BZA  
13 specifically granted variance relief from this very height  
14 setback requirement for that development. We'll touch upon  
15 that a little bit later. The late 1970's brought another  
16 significant period of development to the site with the  
17 construction of Center Tower or what we refer to in our  
18 pleadings as the Replacement Hotel. And while the  
19 Replacement Hotel was constructed as a matter of right, its  
20 compliance with the same height setback requirement  
21 challenged in this case was appealed to the BZA. The BZA  
22 denied that appeal.

23           The most recently completed development on the  
24 site is the Woodley Apartments on the west side in 2014 which  
25 again was a matter of right project.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           Mr. Young, I'm going to try to make up a little  
2 time because I know we've been at this for a while. So Mr.  
3 Young, could you skip to slide 9? Perfect. Following the  
4 submission of its supplemental prehearing statement at  
5 Exhibit 32, the appellant, as has already been explained, no  
6 longer is challenging the whether the arcade, breezeway, and  
7 the fitness center connections are fully above grade,  
8 enclosed, heated and artificially lit. In addition, the  
9 appellant no longer is challenging anything related to the  
10 fitness center. Next slide.

11           Since the appellant is no longer challenging  
12 anything related to the fitness center, my testimony on the  
13 building connection issue will focus on the arcade and the  
14 breezeway. The appellant's remaining question related to the  
15 arcade and the breezeway is whether they serve as shared  
16 common space and/or a walkway providing passage between  
17 separate portions of the building as required under  
18 B-309.1.d. Next slide.

19           The arcade and the breezeway both serve as shared  
20 common space and as a walkway that is designed to provide  
21 passage between the parts of the building or uses located on  
22 either side of that connection. The arcade is a shared  
23 common space and walkway providing passage between the  
24 Wardman Tower and Tower A. The breezeway is a shared common  
25 space and walkway providing passage between the Woodley and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Tower B. It's important to note that the requirements for  
2 building connections have always focused on the physical or  
3 structural aspects of a connection. Thus, the ability to  
4 limit access between separate structures that are connected  
5 in a manner that makes them a single building has always been  
6 permitted and continues to be permitted under the current  
7 zoning regulations. Not only has this been the consistent  
8 interpretation of the ZA, but there are multiple BZA appeals  
9 brought under both ZR 58 and ZR 16 that support this as does  
10 the Zoning Commission's record for the adoption of the  
11 current single building connection requirements under ZR 16,  
12 which Ms. Beeton just testified codified prior ZA  
13 interpretations. Next slide.

14           Understanding that the project, including the  
15 arcade and the breezeway connections, are being reviewed  
16 under the requirements of ZR 16, understanding how the single  
17 building requirements evolved from ZR 58 is instructive to  
18 the remaining questions in this appeal. Under ZF 58, there  
19 is no prescribed building connection criteria but rather the  
20 criteria or the requirement arose from the definition of  
21 building and specifically the portion of the definition  
22 stating "the existence of communication between separate  
23 portions of a structure below the main floor shall not be  
24 construed as making a structure one building." In the  
25 absence of specific physical connection criteria like what

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 exists today, the meaning of what constituted, quote,  
2 "communication between separation portions of a structure"  
3 was debated on occasion, particularly in cases involving  
4 questions around building height and around connections that  
5 are access controlled.

6           Our prehearing statement cites to multiple cases  
7 where the ZA, the BZA, and the Commission had discussed and  
8 approved building connections that were designed to allow  
9 passage but had limited limitations on access. One example  
10 is BZA Appeal Number 18735, 18737 where the Board stated that  
11 communication need only allow passage from one portion of the  
12 building to the other. The Board goes on to say here the  
13 proposed connections not only meet the basic test for passage  
14 but actually will be actively used by occupants of the  
15 existing building to cross over into the project. Net slide.

16           And so leading up to the development of ZR 16, it  
17 was well-established that single building connections were  
18 allowed to have limited access to address instances where  
19 there were multiple uses and/or ownerships and to address  
20 typical security considerations. Much of the debate really  
21 was around the physical aspects of a building connection and  
22 what should be required from a structural perspective to be  
23 considered a, quote, "meaningful connection." Up to that  
24 point, connections like the unenclosed covered walkways that  
25 you see on the slide here were deemed adequate to make two

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 otherwise separated structures a single building under  
2 zoning, the image on the left being the previous connection  
3 between the Woodley Apartments and the former hotel, which  
4 connected two secure access doors, and the image on the right  
5 showing an existing connection that quite literally leads to  
6 two solid walls.

7           And I want to call your attention, Board Members,  
8 to the image on the left again cause again, that was the  
9 connection that connected the Woodley to the hotel before the  
10 hotel building was torn down. And I want to particularly  
11 point out the height of the Woodley from this vantage point.  
12 This is from an access road or a motor court road that leads  
13 up from Calvert Road into the site. It's from this specific  
14 point where the appellant is raising its issues with the  
15 height of the proposed project. And from this proposed  
16 height, you can see the height of the Woodley building, which  
17 is measured from the same elevation as the proposed project,  
18 elevation 196, which is up on Woodley Road. The Woodley is  
19 a 90-foot building, and the elevation at this point is about  
20 50 to 60 feet lower than the building height measuring point.  
21 And I want to just sort of point that out again in terms of  
22 the height of the Woodley from this vantage point. Next  
23 slide.

24           So again, the idea of connections allowing, you  
25 know, limited access, whatnot, that was the lay of the land

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 when OP and the Zoning Commission set out to rewrite the  
2 zoning regulations. As a docket, the Commission maintained  
3 the same definition of the term "building" under ZR 16 and,  
4 as you know, adopted a new set of general rules of  
5 measurement relating to single or separate buildings that are  
6 set forth in B-309 which Ms. Beetman very clearly  
7 articulated. The process of adopting ZR 16 started with OP  
8 and the Commission first evaluating general topics without  
9 any actual zoning text.

10 And in Case Number 08061, OP and the Commission  
11 specifically focused on height and specifically looked at the  
12 issue of single versus multiple buildings. In reviewing the  
13 record for this case, the outcome of which informed the ZR  
14 16 text that was ultimately adopted, it is clear the intent  
15 of the new building connection rules was to strengthen the  
16 physical aspects of a connection and not require absolute  
17 unfettered access without any limitations. We see this very  
18 clearly in the case record. For example, the image on the  
19 left is an excerpt from OP's final height worksheet that I've  
20 provided to the Commission, which provided three conceptual  
21 options for the new set of building connection criteria.

22 The first option, which was adopted by the  
23 Commission, strengthened the physical aspects of the building  
24 connections and set forth the general parameters for shared  
25 common space and passage that we have today under ZR 16. The

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 second option was essentially to continue the existing  
2 practice of allowing unenclosed covered walkways that the  
3 Commission was trying to get away from. Notably, the third  
4 option, which would have established a more restrictive  
5 standard that included, quite, requirements for shared  
6 functionality between and among structures and/or shared  
7 footplate requirements, the idea that both sides of the  
8 connection had to have unfettered access between the two,  
9 that was the third option, and that option was rejected by  
10 the Commission.

11           OP also clearly states the intent of the new  
12 building connection rules in its testimony when the  
13 Commission was considering these three options. They state,  
14 "And we would like to start the discussion on these options  
15 by saying to be considered a single building, the building  
16 must have one of two things, either an enclosed connection  
17 that permits passage between two halves of the structure, for  
18 example, a hallway between the two, or a connection between  
19 one common area and another common area, and/or a common  
20 usable space in the middle, a lobby in the middle, for  
21 example, for a function room in the middle that is accessible  
22 to both sides of the building." And they go on to say, "not  
23 that in a mixed use building the residents could get into the  
24 office side or the office could get into the residents but  
25 that both could use the common space in the middle." Next

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 slide -- next slide, please? Perfect.

2           Again, the Commission's guidance on height in Case  
3 Number 08061 -- slide 15, back -- yes, thank you, Mr. Young  
4 -- the Commission's guidance on height in Case Number 08061  
5 was the basis for the Commission's consideration of actual  
6 zoning text in Case Number 0806A, a case that eventually  
7 resulted in the adoption of ZR 16. During ZR 16 proceedings,  
8 the Commission provided further clarification on the intent  
9 of the new building connection rules by adding B-309.2, which  
10 specifically allows multiple uses in dwelling units within  
11 a single building shell that do not share access despite the  
12 requirements of 309.1. The provision states,  
13 "Notwithstanding B-309.1, a single building shell may contain  
14 multiple uses or dwelling units that do not share access."  
15 Next slide.

16           Ms. Beetman already mentioned this but shown on  
17 this slide, it sort of shows the genesis of B-309.2. And as  
18 Ms. Beetman mentioned, it was a direct response to comments  
19 that were submitted expressing concern with the unrestricted  
20 passage language of B-309.1.d. in mixed use buildings. Next  
21 slide.

22           Since ZR 16 took effect in September of 2016,  
23 there have been multiple appeals brought to the Board that  
24 involved challenges to whether a building connection complied  
25 with the criteria of B-309 and specifically the shared common

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 space and passage criteria of 309.1.d. In Appeal Number  
2 19550, which some of you may recall, the Board affirmed that  
3 a breezeway connecting two residential lobbies satisfied  
4 309.1.d as shared common space similar to a lobby because it  
5 could be accessed and used by occupants on either side of  
6 that connection.

7           The Board's conclusion as to the breezeway's  
8 compliance with 309.1.d is provided on the slide for your  
9 convenience. To paraphrase, the Board concluded that the  
10 breezeway constituted a common space shared by users of all  
11 portions of the building such as a lobby noting that a lobby  
12 does not require all users to travel to all parts of the  
13 building served by that lobby.

14           The Board stated that just because occupants of  
15 the units on either side of the breezeway would walk in  
16 different directions once inside the breezeway, that does not  
17 convert the single common area lobby into two functionally  
18 separate abutting corridors. And the Board agreed with the  
19 ZA's determination that, quote, "The presence of locked doors  
20 at the individual units would not negate the shared nature  
21 of the use of the breezeway as a lobby." Next slide.

22           In Appeal Number 20183, an ZR 16 case that Mr.  
23 Brown already mentioned he was involved in, the appellant  
24 specifically challenged a proposed connection to compliance  
25 with 309.1.d and specifically questioned the controlled

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 access of the proposed connection both in its prehearing  
2 statements and during the hearing. At the hearing, Board  
3 Members engaged in a dialogue with the ZA on how they  
4 interpret the unrestricted passage language of 309.1.d during  
5 which the ZA explained, it's never been my understanding that  
6 the doorways would allow any person at any time to travel to  
7 and from. The key here is that the operators of the  
8 facilities would have access to be able to go through, and  
9 whether that's keys or door fobs or whatever, to go through  
10 those separate doors.

11           The ZA went on to say, I've never taken the view  
12 that they had to be open and unlocked doors and that they had  
13 to have equal access for the authorities that are in control  
14 of the buildings. I believe it's a programmatic decision of  
15 the operator. Board Members did not question the ZA's  
16 interpretation. They expressed on concerns and proceeded to  
17 deny the appeal thus affirming issuance of the building  
18 permit in that project and again confirming that connections  
19 with limited access is acceptable under 309.1.d. Next slide.

20           I think the plain language of 309.1(d) and 309.2  
21 is clear and unambiguous. To the extent that one might think  
22 it isn't unambiguous, I believe the record and transcript  
23 supporting the adoption of the current building connection  
24 requirements under ZR 16 and subsequent ZA interpretations  
25 and appeals that have been brought to this Board make it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 abundantly clear that to satisfy the criteria of 309.1(d),  
2 the connection need only be able to allow passage between the  
3 portions of a building on either side, like a hallway, or the  
4 connection serves as a shared common space that is accessible  
5 to residents, occupants on both sides of the building, on  
6 both sides of the connection, that separate portions of a  
7 single building shell can contain uses and units that do not  
8 share access, and the presence of locked doors or other means  
9 of access control is permitted without running afoul of  
10 B-309.1(d).

11           And based upon all that, the arcade and breezeway  
12 connections of intervenor's project are fully compliant with  
13 B-309.1(d) as soon on the diagrams on this slide. They are  
14 both designed to provide passage between the parts of the  
15 building or uses located on either side of the connection.  
16 They both will serve as shared common space that is  
17 equivalent to a lobby, that will provide residents with, on  
18 either side, access to their respective portions of the  
19 building and a means of egress to reach a destination. To  
20 that end, I believe the ZA did not err in their determination  
21 that the arcade and breezeway connections fully comply with  
22 the criteria under B-309. Next slide.

23           The appellant's second claim is that the project  
24 violates the height requirement of F-203.6. It's there. The  
25 text is there. I won't read it verbatim. According to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 appellant, to achieve a height of 90 feet, the project must  
2 be set back from all lot lines a distance equal to the height  
3 of the building measured all along the perimeter of the  
4 project. The appellants make this assertion even though the  
5 structure and plain language of the regulations say otherwise  
6 and that this specific height requirement has been  
7 consistently interpreted and applied for over a century on  
8 this very site in projects built matter of right, in a BZA  
9 application seeking a variance from this specific height  
10 requirement, and in a BZA appeal involving this specific  
11 height requirement. Next slide.

12           The appellant focuses solely on F-203.6 but as Ms.  
13 Beeton testified, you can't read this provision in isolation.  
14 Like every height provision in the regulations, it must be  
15 read together with the rules of measuring building height in  
16 Subtitle B and in this instance, the rule of measurement for  
17 building height in residential zones under B-308. When you  
18 do that, you will clearly see there is a parody between the  
19 height requirement provisions including the one at issue  
20 here, F-203.6, and the rules of measurement, the parody being  
21 that building height always ties back to the building height  
22 measuring point unless the regulations expressly state  
23 otherwise. Next slide. I'm sorry, Mr. Young. Could you go  
24 back?

25           This parody, this is the case in the current

1 regulations and as we will see, this is the case that has  
2 always existed in the regulations. You see it here on the  
3 slide before you. F-203.6 states that the setback shall be  
4 equal to, quote, "the height of the building or structure  
5 above adjacent natural or finished grade, whichever lies  
6 lower in elevation." The language in this height regulation  
7 directly ties back to the rule of measuring building height  
8 in B-308.2, which states the BHMP shall be established at,  
9 quote, "adjacent natural or finished grade, whichever is  
10 lower in elevation." The language is exactly the same.

11 Further, B-308.6 specifically tells you where the  
12 height of the building must be measured when a building is  
13 removed from all lot lines equal to the building height as  
14 is the case in this situation. That provision states, "where  
15 a building is removed from all lot lines by a distance equal  
16 to its proposed height above grade, the height of the  
17 building shall be measured from the building height measuring  
18 point to the highest point of the roof or parapet." B-308.6  
19 is proof in and of itself that the appellant's interpretation  
20 of F-203.6 is erroneous. Again, measurement of building  
21 height and requirements based on background height always tie  
22 back to the building height measuring point unless the  
23 regulations specifically state otherwise. A clear example  
24 of this is shown on the slide for rear yard requirements in  
25 certain mixed use zones where the height used to calculate

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the required rear yard is measured, quote, "from the mean  
2 finished grade at the middle of the rear of the structure."  
3 It is a deviation from the measurement of height from the  
4 building height measuring point. Next slide.

5           To further demonstrate that the building height  
6 used to determine the setback under F-203.6 is tied to the  
7 height of the building at the building height measuring  
8 point, we prepared the next series of slides to show that  
9 this specific provision has been applied this way on this  
10 very site for over a century. As we'll see, while the  
11 language of this provision has been modified over time to  
12 provide clarity, it has continued to be applied the same  
13 exact way since this requirement first appeared in the 1920's  
14 regulations with no indication whatsoever that the height  
15 setback requirement was ever intended to be interpreted any  
16 other way. Notably, the appellant has also not provided any  
17 evidence or precedent that substantiates its own  
18 interpretation of this provision. Next slide.

19           Just to sort of kind of bring us back to the site  
20 and kind of its conditions, it's been stated that the record  
21 lot has a significant change in grade of approximately 70  
22 feet sloping down from Woodley to Calvert. As it has  
23 throughout the development history of the site, this change  
24 in grade is evident around the perimeters of all structures  
25 on the site including the Wardman Tower and the Woodley.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 Next slide.

2           So this slide shows the footprints of the existing  
3 Wardman Tower on the east, or on the right, the Woodley  
4 Apartments on the left, and the former Marriott Hotel Park  
5 -- Marriott -- Wardman Park Hotel. What is also show in the  
6 hatched area is a 0-foot setback along the lot lines within  
7 the R A-2 portion of the record lot. Now as I mentioned, the  
8 height setback provision has existed in the regulations since  
9 1920. Thus, if the required setback was intended to be  
10 derived from the height around the perimeter of the building  
11 rather than from the building height measuring point, you  
12 would expect to see other buildings on the site, all of which  
13 were constructed to a height of 85 or 90 feet, to provide  
14 setbacks of greater than 85 or 90 feet due to the changes in  
15 grade that occur from north to south. Next slide.

16           So what this next few slides show is you're going  
17 to see the buildings sort of pop in on the site when they  
18 were constructed. And on the left, you're going to see the  
19 regulation that was in effect, the building height setback  
20 regulation that was in effect at the time the building was  
21 constructed. And so again, in the 1920's regulations, the  
22 regulation says that, you know, in the 40- or 55-foot height  
23 district, you could actually exceed that. You could go to  
24 85 feet if the building was removed from all lot lines by a  
25 distance at least equal to the height of the building. The

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Wardman Tower, which was built in 1926, 1928, under the  
2 regulations when it was constructed, it was allowed to go to  
3 85 feet. It is an 85-foot structure, and you can see that  
4 even though the grade tapers off as you move to the south of  
5 the building, you can see that it is consistent with that  
6 90-foot setback, 85-foot setback, cause that was the maximum  
7 height at the time. Next slide.

8           In the 1950's and 60's, the Sheraton Park Hotel  
9 and the Motor Inn was constructed, and you can see on the  
10 left, that's what the regulations said at the time. In terms  
11 of measuring height, the height shall be measured from the  
12 natural grade of the middle of the front of the building.  
13 The height setback requirement, which was Section 3201.24 at  
14 the time, says that the -- you can achieve a height of 90  
15 feet so long as the building is removed from all lot lines  
16 equal to the height of such building or structure above the  
17 natural grade. Again, you can see that parody between the  
18 rule of measurement from the natural grade and the height  
19 setback from the natural grade. Notably in this case, in  
20 this project, this is the case where the BZA granted a  
21 variance from the height setback requirement. That was BZA  
22 Case Number 6750 in 1962. The prehearing statement for the  
23 applicant, which we pulled from archives, summarizes how the  
24 height setback provision was to be measured and applied. And  
25 it says, "If Sheraton Park is erected to a height of 90 feet,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 and it is located in part of the R5-B District, and therefore  
2 all portions of the structure located in the R5-B District  
3 must be set back a distance of 90 feet from the lot line.  
4 It is a 90-foot building and so the setback was 90 feet. But  
5 the Board -- you can see how that blue portion goes into the  
6 90-foot setback because the Board granted a variance from  
7 that specific provision. Next slide.

8           In the 1970's, Center Tower was constructed or  
9 what we refer to in our pleading as the Replacement Hotel.  
10 Center Tower was constructed as a matter of right, but what's  
11 interesting about this case, two things. We found the zoning  
12 computation sheet for this specific project in the archives,  
13 which is at Exhibit 26Q of the record. And the zoning  
14 computation sheet clearly says that the building's  
15 constructed to 90 feet, and the side yard requirement is 90  
16 feet. Again, that parody.

17           This project was also challenged in BZA Appeal  
18 Number 13112 specifically on the height setback requirement,  
19 and the Board upheld the challenge of that project's  
20 compliance on the height setback requirement ruling in favor  
21 of the zoning administrator's interpretation of this  
22 regulation. Next slide.

23           And there's the Woodley. The Woodley was  
24 constructed in 2014. Again, there is the language of the  
25 regulations showing that parody between the rule of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 measurement, that the building shall be measured from the  
2 natural grade to the middle of the front of the building and  
3 then Section 400.4 showing that the setback removed from all  
4 lot lines equal to the height of the building above the  
5 natural grade. I want to recall attention to that image of  
6 the old connector from that previous slide and the  
7 appellant's argument that the project all along the west side  
8 has to be set back much greater than 90 feet. Well, the  
9 height of the Woodley from that same point that the appellant  
10 is arguing in connection with this project, the Woodley is  
11 much higher than 90 feet from that point. But nonetheless,  
12 you can very clearly see on this diagram that front -- at  
13 that point, about midpoint up the west lot line of the site,  
14 the Woodley is only set back 90 feet despite if you were to  
15 measure the height of that building from that point, it being  
16 much higher than 90 feet. Next slide.

17           When the Zoning Commission adopted ZR 16, it kind  
18 of got things -- the language got a little bit jumbled in  
19 terms of the rules and measurement and whatnot. But a later  
20 case came forward in ZR in Case Number 17-18 to make  
21 clarifications to the zoning regulations. And you can see  
22 here this is where we see that language about adjacent  
23 natural or finished grade, whichever is lower in elevation.  
24 On the right, these are excerpts from the Office of  
25 Planning's reports, and you can see it reestablishes that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 parody between the rules of measurement for height in 308.2,  
2 that image on the top. You can see in the highlighted area  
3 OP specifically saying that the proposed change is just a  
4 clarification. There is no intent to change the way that  
5 this height setback provision was intended -- was being  
6 interpreted for 100 years; right? But you can see because  
7 they changed the rule of measurement to introduce that  
8 language of adjacent natural or finished grade, whichever is  
9 lower, they make a similar change to Subtitle F, and at the  
10 time, 203.4. That parody is still there, and it all ties  
11 back to the building height measuring point. Next slide.

12           And so here we are with the language today, and  
13 you can see clearly in this diagram that the proposed  
14 project, as approved, as being constructed in accordance with  
15 building permits issued by the Department of Buildings,  
16 satisfies that 90-foot setback requirement, because it is a  
17 90-foot project from the building height measuring point at  
18 elevation 196. Next slide.

19           This is my last slide, Board Members, and I really  
20 appreciate your time letting me get through all that, but I  
21 want to go back to my point that the structure of the  
22 regulations and the plain language of the regulations make  
23 it very clear that the way that the Department of Buildings  
24 applied the height setback requirement to this project and  
25 how iterations of that same provision over the past 100 years

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 were applied. I want to get back to sort of the plain  
2 language, and that if you look at Subtitle F-203, which are  
3 the height requirements for the RA zones and applicable to  
4 RA-2 zones, they sort of tier off one another. And you find  
5 this all throughout the regulations.

6 In 203.4, if you were to build a public recreation  
7 or community center in the RA-2 zone, you can have a maximum  
8 height of 45 feet. Notably, and so in the side yard, which  
9 would be along the west side of this property, the side yard  
10 requirement would only be 4 feet, not 90 feet, but it be 4  
11 feet. And the rear yard is based upon the principal building  
12 height, again, tying back to that building height measuring  
13 point. The RA-2 zone for any other building allows matter  
14 of right 50 feet, and if you build a 50-foot building, again,  
15 you just have to a 4-foot side yard and your rear yard is  
16 based upon principal building height at the building height  
17 measuring point. You build a place of worship, you can get  
18 to 60 feet and again, it's just a regular side yard and rare  
19 yard requirements. But then, again, working our way through  
20 height provisions, these are all height provisions.

21 In 203.7, it says that an institutional building  
22 could be constructed to a height of 90 feet provided the  
23 building is set back from all lot lines of its lot a distance  
24 equal to the height above the matter of right height. So if  
25 you were to build a 90-foot institutional building, the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 setback along the west side of this site would only need to  
2 be 40 feet, because it ties back to the building height  
3 measuring point to determine 40 feet above the 50 foot.  
4 203.6 is the provision that's at issue here, and it makes no  
5 logical sense to read that provision any differently than the  
6 other four height requirements that are under 203.3. The  
7 other four tie directly back to the building height measuring  
8 point. So the read the fifth one any differently would --  
9 makes no logical sense and actually sort of resulted in sort  
10 of an absurd outcome to suggest that literally the same  
11 building could be constructed on this site and if it was  
12 institutional, the side setback on the west side would only  
13 have to be 40 feet, but if it's a non-institutional building,  
14 that setback has to be well in advance of 90 feet. Again,  
15 it kind of goes to the absurd result of the appellant's  
16 interpretation of that single provision amongst all four  
17 height requirements.

18 Board Members, again, thank you for your time.  
19 I appreciate you taking the time and spending all this time  
20 on this hearing. So I'll hand it back to Dave. Thank you.

21 MR. AVITABILE: Thank you. That concludes our  
22 presentation and we're happy to answer questions.

23 CHAIRPERSON HILL: Okay. AS I mentioned, let's  
24 continue hearing from everyone, and then we'll start with  
25 Board Member questions and then have others question each

1 other. Commissioner, are you still there, Commissioner  
2 Pagats?

3 MS. PAGATS: I am.

4 CHAIRPERSON HILL: All right. Great.  
5 Commissioner, you can give your testimony as a party with  
6 standing, and you can begin whenever you like.

7 MS. PAGATS: Great. My name is Janell Pagats.  
8 I'm the Single Member District Commissioner for 3C03 and the  
9 Chair of ANC3C, and I'm representing the ANC in that capacity  
10 today. I'm also serving in my second term and -- my second  
11 term as an ANC and as such, I've been involved with this  
12 project since the beginning.

13 At a regularly scheduled and properly noticed  
14 public meeting on February 20, 2024, with a quorum present,  
15 quorum being five commissioners, ANC3C voted 8 to 0 to 0 to  
16 submit written comments on this matter, and you have them in  
17 your record. ANC3C is in firm opposition to the appeal filed  
18 by the Wardman Hotel Strategy Team against the issuance of  
19 the building permits for the proposed development at the site  
20 of the former Wardman Hotel. ANC3C believes that the appeal  
21 lacks merit and undermines the significant benefits that the  
22 approved development would bring to our community.

23 We have a few points on this, the first being  
24 community and governmental review. The redevelopment of this  
25 site has already been the subject of numerous reviews by

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 various D.C. Government agencies and bodies include ANC3C.  
2 The project went before HPRB twice and was also the subject  
3 to the large tract review by the Office of Planning. The  
4 project was the subject of multiple community meetings  
5 through both the Woodley Park Community Association as well  
6 as various ANC committees. The ANC also held a large tract  
7 review community meeting in January 2023. The project has  
8 also been the subject of other various community-based  
9 meetings. ANC3C has supported the project in the past and  
10 continues to support the project now.

11 Our second point is WHST's affordable housing  
12 plan. The project meets the IZ requirements of a buy right  
13 building under existing zoning and use reservations. If the  
14 WHST desires to change the requirements, the correct avenue  
15 for that is the DC Council. Further, the 72 affordable units  
16 will be higher than the zero that the property is currently  
17 offering.

18 Three, good neighbors. The property owner, Carmel  
19 Partners, has gone above and beyond in terms of being good  
20 neighbors offering kids the opportunity to paint the wooden  
21 fence around the property during art all night, properly  
22 salting sidewalks during winter weather events among other  
23 things and including being incredibly responsive to neighbors  
24 who have complained about dust and noise and all of the like.

25 Four, the standing of the Wardman Hotel Strategy

1 Team. As the ANC has stated in the letters to the record,  
2 the standing of the Wardman Hotel Strategy Team in its filing  
3 appears should be further investigated. We can skip over  
4 that right now since that's already been kind of settled.

5 Safety concerns. As of today, the project site  
6 is currently half-ish built. Should this appeal move  
7 forward, it could lead to the property sitting idle and  
8 unused and would become a lingering safety hazard in the  
9 neighborhood. Also, as we note, this property is surrounded  
10 by schools further exacerbating the safety risks if the  
11 project is ultimately abandoned due to this nuisance appeal.  
12 That would be troubling for our community and the neighbors.

13 In conclusion, ANC3C urges the Board to uphold the  
14 decision to issue building permits for the redevelopment of  
15 the Wardman Hotel site. The appeal by the Wardman Hotel  
16 Strategy Team should be denied as the project is in full  
17 compliance with regulatory requirements. Thank you for  
18 considering the ANC3C input and testimony. I'm confident you  
19 will recognize the substantial advantages of this project and  
20 the lack of substantive grounds for the appeal.

21 I would also like to point out that cases like  
22 this actually tend to lead to less housing overall, market  
23 rate and affordable getting built. We are talking about  
24 passageways, passageways. The vast majority of people in the  
25 neighborhood are thrilled that this project is getting done

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 and includes a significant number of affordable units. While  
2 not perfect, it is good. This also strangely group who  
3 claims to want more affordable units seems to be arguing that  
4 a smaller building needs to be built. I'm not an expert, but  
5 it would seem to result in less housing overall. There are  
6 a number of reasons why Rock Creek West Planning Area is so  
7 far behind in reaching the Mayor's housing and affordable  
8 housing goals, and this appeal is one of the reasons.

9 I'm happy to answer any questions you may have and  
10 thank you for your time.

11 CHAIRPERSON HILL: Okay. Thank you, Chair Pagats  
12 and thank you so much for your service as well. The ANC is  
13 a monthly battle that everybody goes through. All right.  
14 So let me see. Okay. I'm going to first start with my  
15 fellow Board Members, if anyone has any questions for  
16 anybody.

17 (No response.)

18 CHAIRPERSON HILL: Okay. I'll let you all think  
19 about it. Then in that case, I'll go ahead and start with  
20 the appellant. Mr. Brown, do you have any questions for  
21 anyone? You're on mute, Mr. Brown.

22 MR. BROWN: Couple of questions for the applicant.  
23 I want to make sure --

24 CHAIRPERSON HILL: I'm sorry, the property owner  
25 or DOB?

1 MR. BROWN: I'm sorry, the property owner.

2 CHAIRPERSON HILL: Okay. Sure.

3 MR. BROWN: All right. I want to make sure I  
4 understand what you've said in your submission. I want to  
5 make sure that there's no -- that I'm clear with regard to  
6 certain points. I want to talk first about the use of the  
7 arcade and the breezeway as common space shared by users of  
8 all portions of the building. Am I correct in reading what  
9 you have said as saying, number one, the arcade will not be  
10 common space shared with Woodley residents or with the upper  
11 floor occupants of the Wardman Tower?

12 MR. AVITABILE: That's what the word said. We --  
13 as we explained --

14 MR. BROWN: Yes. My question was --

15 MR. AVITABILE: No. I'm answering the question  
16 -- I'm answering the question. Each connector provides a  
17 shared space for the users on either side of that connector.

18 MR. BROWN: That means that this is correct, the  
19 arcade will not be common space shared with Woodley residents  
20 or with the upper floor occupants of the Wardman Tower?

21 MR. AVITABILE: Each connection provides shared  
22 common space for the users on either side of the connection.

23 MR. BROWN: Would you please answer my question?

24 CHAIRPERSON HILL: That's okay. I'm just trying  
25 to understand also. So -- and this is what we, the Board,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 are going to -- you know, like I'm going to go back -- just  
2 so you all know, I'm going to go back and look at all those  
3 cases again and getting back to again this whole point of  
4 this. And we're done this many times before. And Mr. Brown,  
5 you would know, because you also have been involved in some  
6 of these appeals now, as to whether or not a -- the  
7 connection is, you know, heated, enclosed, and whether or not  
8 those doors have to be locked. I mean there are some things  
9 that I'm going to kind of go back on.

10 And so what Mr. Brown, I think, is asking -- and  
11 I'm just trying to understand your question also -- is that  
12 are all the people on those floors going to have access to  
13 that arcade; is that what your question is?

14 MR. AVITABILE: Yeah. So let me just --

15 CHAIRPERSON HILL: Wait a minute. I just want to  
16 make sure I understand the question, Mr. Avitabile. Mr. --

17 MR. AVITABILE: Sure.

18 CHAIRPERSON HILL: -- that's your question?

19 MR. BROWN: Yes.

20 CHAIRPERSON HILL: Right. So your question is  
21 will all the people in all the different buildings -- I'm  
22 sorry -- just for the -- you're currently talking about the  
23 arcade, right, so will those condo units all have access to  
24 that passageway? That's the question, correct, Mr. Brown?

25 MR. BROWN: No, it's not.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

1 CHAIRPERSON HILL: Oh.

2 MR. BROWN: This is common space. This is the  
3 common space requirement, and that is that it is shared by  
4 users of all portions of the building, which in the case of  
5 a single building means all three parts. Is it common space  
6 that will be shared by users of all three parts of the  
7 building? And what I read Mr. Avitabile statement to say is  
8 that the arcade will not be common space shared by -- with  
9 Woodley residents or with the upper floor occupants of the  
10 Wardman Tower. And I want to make sure I'm reading his  
11 statement correct.

12 CHAIRPERSON HILL: So let me try responding to  
13 that again. I'll take each one in turn. Let's start with  
14 the arcade. So that's the connection that connects the  
15 Wardman Tower to Tower A of the new construction. That's  
16 been there, the arcade, in some form or another, since 1928.  
17 It will be used as shared common space for people who live  
18 in the new construction, Tower A and Tower B, and at a  
19 minimum, people who are on the first two floors Wardman  
20 Tower, so people within Wardman Tower and people within the  
21 new construction will be able to use that as a shared common  
22 space.

23 The condo owners, at this point in time, to my  
24 knowledge, do not have the access to that space just as they  
25 do not have the access to that space when the Wardman Tower

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 building was converted to a condominium in 2014. Under the  
2 58 regulations, that states function as a valid building  
3 connection simply allowing passage for the lower two floors  
4 back and forth. Yes.

5 MR. BROWN: I got my hand up. So your answer is  
6 no, right? The upper floors of that Wardman do not have  
7 access?

8 MR. AVITABILE: At this time, I don't believe they  
9 do, no.

10 CHAIRPERSON HILL: That's fine. Okay. Mr. Brown,  
11 so you got that question answered.

12 MR. BROWN: Is that also true, Mr. Avitabile, with  
13 regard to the Woodley residents?

14 MR. AVITABILE: Yes. At this time, the Woodley  
15 residents don't have access to that portion of the building  
16 as -- and now again, I think your question is asking a  
17 specific question but ignores the broader context of what we  
18 have said, which is that we believe that 309.2 is an  
19 important qualifier to that language about shared common  
20 space, all users of the building, and makes it clear that  
21 some portions can't. I recognize you disagree, but I just  
22 want the Board to understand that what we are --

23 CHAIRPERSON HILL: Okay. I'm just -- everybody  
24 -- how should I say this? I'm trying to get through  
25 questions, which always seem to be the most difficult thing.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 If everyone can ask their questions in a way that the other  
2 person can understand them and get some answered, you guys  
3 will have a chance to write a -- I think what's going to  
4 happen is I'm going to get a conclusion from everybody, and  
5 if everybody wants to restate whatever they want the Board  
6 to remember most about this, we're going to get that in  
7 writing, and we're going to read that before we make a  
8 decision. Okay. But what Mr. Brown is saying and what he's  
9 pointing out is that everybody in all these buildings are not  
10 going to have access to all these different corridors and  
11 whether or not that's something, again, that matters, I guess  
12 we'll have to figure out later. But that was Mr. Brown's  
13 first question about the -- I'm sorry -- about the arcade.  
14 And I --

15 MR. AVITABILE: Correct.

16 CHAIRPERSON HILL: -- guess you, Mr. Avitabile,  
17 are just saying you're -- you're cutting to the chase. Not  
18 everybody in all the buildings will have access to all these  
19 corridors?

20 MR. AVITABILE: Correct.

21 CHAIRPERSON HILL: Okay. Go ahead, Mr. Brown.

22 MR. AVITABILE: And shared common space, correct.

23 MR. BROWN: Let me move on to the breezeway and  
24 the question of common space. Is it correct, looking at your  
25 statement on page 14, the breezeway will not be common space

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 accessible to Wardman Tower condominium owners?

2 MR. AVITABILE: At this time, yes, that's correct.  
3 As far as I know, they would not have the ability to access  
4 that space.

5 MR. BROWN: Right.

6 MR. AVITABILE: Residents of the Woodley,  
7 residents of the new construction would have access to that  
8 common space.

9 MR. BROWN: All right. Now, let's go on to the  
10 question of free and unrestricted passageway under paragraph  
11 d.2. And again, is it correct -- I'm again looking at your  
12 statement, page 14 and 15 -- that Woodley residents and upper  
13 floor occupants of the Wardman Tower will not have access to  
14 the arcade?

15 MR. AVITABILE: As far as I know, that's correct.

16 MR. BROWN: And this is also correct --

17 MR. AVITABILE: Hold on --

18 MR. BROWN: -- as far as you know --

19 MR. AVITABILE: -- let me answer the question.  
20 That's correct but that corridor will provide passage for  
21 residents on the lower floors of the Wardman Tower into the  
22 new construction and vice versa, so it is providing  
23 passageway between the otherwise separate portions of the  
24 structure.

25 MR. BROWN: Will it provide free and unrestricted

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 passageway for Wardman Tower condominium residents through  
2 the breezeway?

3 MR. AVITABILE: I'm sorry, can you repeat the  
4 question. I didn't quite follow.

5 MR. BROWN: The breezeway, will it provide free  
6 and unrestricted passage between the buildings for the  
7 Wardman Tower condominium owners?

8 MR. AVITABILE: No, though there's nothing in the  
9 definition of B-309.2 that says that the connector has to be  
10 open to all residents of the building.

11 MR. BROWN: I'm talking now about compliance  
12 with Section d.2.

13 MR. AVITABILE: Yes, the free and unrestricted  
14 passage. There's nothing in that definition that says it has  
15 to be open to all residents of a single shared building.

16 MR. BROWN: Mr. Chairman, you'll be glad to hear  
17 my questions are done.

18 CHAIRPERSON HILL: That's fine, Mr. Brown. Mr.  
19 Brown, I mean like -- I guess -- I think it's pretty  
20 straightforward what the Board's going to have to figure out,  
21 and so thankfully, I think it is actually pretty  
22 straightforward. So okay, Mr. Schulman, you have a --

23 MR. SCHULMAN: Just wanted to, if I may -- I know  
24 this is unusual, but I'd like to piggyback on Mr. Brown's  
25 questions about the breezeway and the arcade.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON HILL: I'm sorry. One second.  
2 Everybody, just hold on. So Mr. Schulman, what unusually  
3 happens is that all questions come through the person who is  
4 the appellant, right, who is giving the testimony. However,  
5 since we've been in this Zoom world, when we -- I can't  
6 believe it, like I actually remember when we weren't in the  
7 Zoom world -- so you could have told your person, Mr. Brown,  
8 what your questions were, right, or what your question is,  
9 okay. So as long as this doesn't get too far afield, if you  
10 have a question, what would normally have happened is you  
11 would have told Mr. Brown, and Mr. Brown would have asked his  
12 questions. Okay. So what question do you have and who is  
13 it for?

14 MR. SCHULMAN: Again, to Mr. Avitabile, just even  
15 though we've acknowledged that the fitness center is,  
16 according to the definition, above grade, we haven't  
17 acquiesced to the understanding that the fitness center  
18 satisfies Section 309 point whatever. So the question is  
19 with regard to the fitness center, will access to the fitness  
20 be open to residents of the Wardman and the Woodley?

21 CHAIRPERSON HILL: Okay. So this is -- Mr.  
22 Avitabile, this is what we're going to get to, and this is  
23 what we're always going to get to. So Mr. Schulman's asking  
24 if everybody in all these three buildings will have access  
25 to this fitness center. And I would imagine the answer is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 no, correct?

2 MR. AVITABILE: Yes. That's correct though, Chair  
3 Hill, again, it's mostly just for the record, and I'll point  
4 out I'm not going to have any questions for anyone, so  
5 there's some good news at the -- light at the end of this  
6 tunnel. But I want to point out on page two of their reply  
7 that was filed on Monday, the bottom, they say they've  
8 withdrawn their B-309.1 claim as to the connection. They --  
9 and they did not go on to address it in their presentation.  
10 They said the fitness center is fine.

11 CHAIRPERSON HILL: Okay. So again --

12 MR. AVITABILE: As I've ready it anyway.

13 CHAIRPERSON HILL: -- so now I'm asking the  
14 question. Who will have access to the fitness center?

15 MR. AVITABILE: The residents of the new  
16 construction, at a minimum. So on either side of the fitness  
17 center, Tower A and Tower B.

18 CHAIRPERSON HILL: So will -- the Board will  
19 figure out -- again, I have to go back. It hasn't been that  
20 long ago that we did this, right -- whether -- how the  
21 meaningful connection is actually analyzed, right, in terms  
22 of whether the doors have to be locked, or if everybody has  
23 to get in there, and so that we can work through, the Board.

24 Okay. So I did that. Okay. Oh, Mr. Avitabile,  
25 you don't have any questions?

1 MR. AVITABILE: No.

2 CHAIRPERSON HILL: DOB, do you have any questions?

3 MR. FULLER: I have a couple of -- two or three  
4 questions for, actually, Mr. Schulman.

5 CHAIRPERSON HILL: Okay, Mr. Fuller.

6 MR. FULLER: Mr. Schulman, you would agree that  
7 the building height is calculated according to and pursuant  
8 to 11B DCMR 308, is that correct?

9 MR. SCHULMAN: Yes, but not the setback.

10 MR. FULLER: Right. I understand. Your  
11 contention is that somehow the building height measurement  
12 from 11-B DCMR 308 somehow doesn't apply to 11-B DCMR 203.6;  
13 is that -- that's basically your case or your argument?

14 MR. SCHULMAN: Yes. And the zoning rewrite gave  
15 more opportunity for that separation even if it historically  
16 had been the case.

17 MR. FULLER: And you would agree that -- and I  
18 think it's in -- was in your slide 15 -- you would agree that  
19 the building height using BHMP and 11 DCMR 308 is, I think  
20 you said, 88 feet 4 inches; is that correct?

21 MR. SCHULMAN: Yes. I can find it to confirm it  
22 here. Give me one second. Yes. That is the height of the  
23 building at that point, so it's under 90 feet.

24 MR. FULLER: Okay. And I know -- I don't think  
25 this is your argument or your point, but just to clarify

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 since you're sort of speaking as the expert on behalf of  
2 WHST, you're not contending that the Board erred in deciding  
3 cases 19550 and 20183, correct? I'm saying you personally.

4 MR. SCHULMAN: I believe that their -- as I  
5 believe Mr. Brown has indicated, that those cases are not  
6 directly relevant because they're not directly germane to the  
7 question being raised today.

8 MR. FULLER: But that's not your contention,  
9 correct?

10 MR. SCHULMAN: It is. I would say that as an  
11 architect having read them.

12 MR. FULLER: And you would agree that those cases  
13 haven't been -- and since then you're going to speak to those  
14 cases, you would agree that those cases haven't been either  
15 appealed or overturned; is that correct?

16 MR. SCHULMAN: Correct.

17 MR. FULLER: Okay. And you are -- have been put  
18 up by WHST as an expert and representative to speak  
19 specifically to the zoning regulations that DOB purportedly  
20 incorrectly applied when issuing the building permits.  
21 You're not contending that the project violates any  
22 affordable housing regulations, is that correct?

23 MR. SCHULMAN: That's correct. The -- I checked,  
24 actually, the IZ distribution of units and how many  
25 three-bedroom apartments there are, and I -- from my cursory

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 examination, I believe it complies with IZ rules as they  
2 stand.

3 MR. FULLER: And you would agree that generally  
4 speaking, the grievance of WHST with this project is that --  
5 is with the sort of amount of affordable housing available  
6 in the District of Columbia, is that correct?

7 MR. SCHULMAN: Not fully. The grievance, as I  
8 understand it, is that the developers were unwilling to work  
9 with the community on community benefits.

10 MR. FULLER: Okay. And so that's your  
11 understanding of WHST's --

12 CHAIRPERSON HILL: No. Just to -- I mean I don't  
13 know, Mr. Schulman, again -- he was just giving -- and I'm  
14 saying this for the record -- he was giving his opinion on  
15 nothing that had been necessarily talked about yet. So I  
16 don't even know, you know, whether or not -- I don't know  
17 whether the question was asked correctly, I suppose, like  
18 whether or not these guys have done anything with community  
19 benefits or anything, that's not anything we have been  
20 talking about. And so, Mr. Fuller, I'm trying to understand  
21 your question a little bit more. We are all here for the  
22 zoning issues that we have been talking about for five hours,  
23 and so, you know, what was your question again, Mr. Fuller?

24 MR. FULLER: Sure. And my only point -- and  
25 Chairperson Hill, just to give you some context, my only

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 point is just to verify that the zoning regulations at issue  
2 and that we're addressing as part of this hearing have  
3 nothing to do with affordable housing. That was the basis  
4 of my question.

5 CHAIRPERSON HILL: Okay.

6 MR. FULLER: And I think Mr. Schulman agreed with  
7 that. Is that correct, Mr. Schulman?

8 (No audible response.)

9 MR. FULLER: I don't have any further questions.

10 CHAIRPERSON HILL: That's all right. Mr.  
11 Schulman's nodding his head yes. Okay. And I can see the  
12 Commissioner also nodding her head, so I mean she's been  
13 involved in this thing now for eight years or however long,  
14 you know, in dog years the ANC Commissioner actually, you  
15 know, works.

16 So let's see. Okay. So DOB. Okay. All right.  
17 You guys have all asked your questions. Mr. Brown, do you  
18 have any rebuttal?

19 MR. BROWN: Very quick.

20 CHAIRPERSON HILL: Okay. And then what they're  
21 going to do again is have an opportunity to ask questions on  
22 your rebuttal just to make sure everybody understands. And  
23 then I'm going to ask for written conclusions. So ahead, Mr.  
24 Brown.

25 MR. BROGAN: Did you say are or are not going to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309



1 ask?

2 CHAIRPERSON HILL: I am going to ask for a written  
3 conclusion.

4 MR. FULLER: Oh. I'll be happy to provide a  
5 written conclusion and that pretty much obviates what I would  
6 say in rebuttal, because all I would do in rebuttal is talk  
7 about the arguments that have been made. I have no new  
8 information --

9 CHAIRPERSON HILL: That's fine. That's great.

10 MR. FULLER: -- to present.

11 CHAIRPERSON HILL: That's great. So then I guess  
12 what I would need -- and the ANC is welcome to put something  
13 in the record, but what I'm looking for is a conclusion and  
14 really what I'm looking for a conclusion is anything you  
15 might want the Board to think most about. I don't know what  
16 else to say. Like, you know, it doesn't have to be more than  
17 a page. You know, I mean we know exactly what these issues  
18 are, right, in terms of what zoning issues we are now talking  
19 about. And, you know, I know I'm going to go back and do my  
20 homework again on meaningful connection and whether the --  
21 you know, the -- who has access to that and doors being  
22 locked and then the building height measuring point which  
23 we've talked about ad nauseam, you know, in a lot of other  
24 cases, to be quite honest, and then the setbacks. So those  
25 are the things that I, you know, am going to be looking for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 in the conclusion, and if my fellow Board Members have  
2 anything else that they might feel -- like to hear in the  
3 conclusion, I'll go around the table and see if, you know,  
4 they'd like to add anything about that. And I'm going to  
5 start with Mr. Blake, do you have anything else you'd like  
6 to maybe have further clarification on for you to chew on?

7 MEMBER BLAKE: Mr. Chair, at this point, I think  
8 the record's pretty full, and I don't have anything else that  
9 I need other than a conclusion and a summary, yes.

10 CHAIRPERSON HILL: Okay. And let's see. Oh, Vice  
11 Chair Miller?

12 COMMISSIONER MILLER: THANK YOU, Mr. Chairman.  
13 I just want to thank all the participants today, the  
14 appellant, Wardman Hotel Strategy Group representatives,  
15 David Brown and Jim Schulman, and presentations by Department  
16 of Buildings, Kathleen Beetman and Brent Fuller. And Colleen  
17 Smyth, did you talk? Your present so we appreciate it. And  
18 the intervenor, the property owner, David Avitabile and Shane  
19 Dettman.

20 I found the review of the legislative history of  
21 ZR 16, which was a long case, interesting and pretty  
22 persuasive in terms of my recollection of what we were trying  
23 to accomplish. And that was a question I had at the outset,  
24 about the non-reference to the building height measuring  
25 point when talking about setbacks for the RA-2 zone versus

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the RA-4, and why did we use -- we did we go to the task of  
2 defining the building height measuring point definition in  
3 that regulation rather than just refer to the building height  
4 measuring point. And that just triggered in my mind the  
5 recollection that we didn't want people to have to go back  
6 and forth through different sections of the zoning  
7 regulations, and so we were proceeding -- and maybe we should  
8 have included both given that there's five hours that we've  
9 debated this today. But the language is pretty similar in  
10 terms of what the building height measurement, all lot lines,  
11 and all that.

12           So I appreciate that height setback discussion.  
13 I appreciate all the meaningful connection discussion, and  
14 maybe add a little reference to an earlier case, almost 20  
15 years ago, I think, that my wife was involved with when she  
16 was on the BZA. I didn't review that case for today and talk  
17 about it with her, but I think she might be interested in  
18 watching because of that. I knew it was coming up, but I  
19 think she had grandparent duties to -- double duty since I  
20 wasn't available. So appreciate all of that information.  
21 I appreciate the Advisory Neighborhood Commission's work on  
22 this.

23           You know, I live in ANC3C. I'm not in the single  
24 member district, and I'm in North Creek West which, as we all  
25 know, and the data has a dearth of the affordable housing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 that we need in this -- in our neighborhood and throughout  
2 the city, and -- but this case is not about how we get to  
3 that unfortunately. That might be a zoning condition case  
4 that we've had before us which we have increased set asides  
5 in certain types of map amendment situations. Maybe there  
6 should have been a map amendment that somebody should have  
7 applied for that might have triggered IZ plus 20 percent.  
8 That didn't happen. I think, you know, maybe it's a missed  
9 opportunity by the executive to purchase a very expensive  
10 piece of land with our limited housing dollars. That's not  
11 all -- that's not before the Board today. It's the zoning  
12 issues, the interpretation of the zoning, and I will  
13 carefully review again -- I've read everything in the record  
14 thus far -- maybe what might have just come in today,  
15 although I saw the PowerPoints, and so -- and I'll read the  
16 conclusions and rebuttals that are in the conclusion that you  
17 all provide.

18 I appreciate the discussion, and there's nothing  
19 I'm specifically asking for beyond what my fellow Board  
20 Members have already asked for, but appreciate your all being  
21 here today. So thank you very much for your time. Thanks,  
22 Mr. Chairman.

23 CHAIRPERSON HILL: Thank you, Vice Chair Miller.  
24 Vice Chair John, do you have anything you'd like to add?

25 VICE CHAIR JOHN: Yes. This is for Mr. Brown.

1 I believe I saw this in the record, but I wanted to be sure  
2 that it's there; that is the discussion concerning the  
3 relationship of the two witnesses that were listed in the  
4 application who -- are they -- what is their connection to  
5 WHST? Is there an affirmative statement that they are  
6 members of WHST?

7 MR. BROWN: The only people that I am -- that I  
8 will represent to you are members of WHST are the witnesses  
9 that I had lined up for today, Mr. Delladonne and Ms.  
10 Touston. The other two individual plaintiffs, there is no  
11 claim that they are members of the organization.

12 VICE CHAIR JOHN: Okay.

13 MR. BROWN: They are just neighbors.

14 VICE CHAIR JOHN: Okay. And since they did not  
15 testify, can you put something in the record with your  
16 closing statement? I thought they were going to testify, and  
17 I would have asked them questions. But since they're not  
18 testifying, I would like to see something in the record.

19 MR. BROWN: Is there anything in particular you  
20 would like them to address?

21 VICE CHAIR JOHN: What is their relationship to  
22 WHST? Are they members?

23 MR. BROWN: There is no --

24 VICE CHAIR JOHN: Are they members of WHST?

25 MR. BROWN: No -- no. I will clarify that in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 closing statement that they are not.

2 VICE CHAIR JOHN: Okay. Is there any discussion  
3 about who are the members of WHST in the file?

4 MR. BROWN: Yes. I believe that the testimony of  
5 Mr. Delladonne and Ms. Touston explain basically what the  
6 membership is comprised of and what they do and how they  
7 operate. That testimony is in the record.

8 VICE CHAIR JOHN: Okay. I thought I saw  
9 something, but I wanted to make sure it's there.

10 MR. BROWN: Okay.

11 VICE CHAIR JOHN: Thank you.

12 CHAIRPERSON HILL: I guess, Mr. Brown -- and this  
13 is what Vice Chair John is trying to also clarify -- like  
14 there are couple of people here, like Mr. Delladonne -- I  
15 guess Mr. Delladonne and then -- and I'm sorry, the gentleman  
16 who's turned his camera on, and I would have a hard time with  
17 her last name right now -- before you guys even speak,  
18 because now you've been here, I don't know, I'm trying to  
19 clarify, Mr. Brown, that you've presented your case. All the  
20 people that you wanted to testify have testified, correct?

21 MR. BROWN: That is correct.

22 CHAIRPERSON HILL: So then the other people that  
23 are in the hearing room right now, who are they?

24 MR. BROWN: There are probably a lot of people who  
25 wanted to listen to this, but the individual plaintiffs would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 be available to answer questions that you might have had  
2 concerning their injury and standing. But since you decided  
3 that matter at the beginning, I saw no need for anyone to  
4 testify.

5 CHAIRPERSON HILL: Right. That's fine. I just  
6 want to be clear for the record, because the only people that  
7 are allowed to testify are those that have standing. And the  
8 only people that have standing are you as the appellant and  
9 your team and then, you know, whoever brings the appeal, and  
10 then the ANC and the property owner and the DOB. So your  
11 team consisted of these other individuals, and you were going  
12 to use them as witnesses if there was an issue about  
13 standing; is that correct?

14 MR. BROWN: That's correct.

15 CHAIRPERSON HILL: Okay. So they don't have  
16 anything to add at this point that they're being -- that you  
17 would have used them as witnesses, correct?

18 MR. BROWN: No, because our case is based upon  
19 application of law to the facts of the case, the zoning  
20 regulation violation claims. It's not about the strength or  
21 significance of the injury. That's all that they could have  
22 addressed.

23 CHAIRPERSON HILL: That's all right. Yes. Mr.  
24 Brown, I -- you understand what I'm saying? I just want to  
25 make sure that you have gotten your say, that's -- and all

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the people that you had wanted to talk have talked, correct?

2 MR. BROWN: That is completely correct.

3 CHAIRPERSON HILL: Okay. Great.

4 VICE CHAIR JOHN: And Mr. Chairman, my question  
5 about clarification went to the organization, who is the  
6 appellant, to make sure that there is information in the  
7 record concerning at least one of -- one member of that  
8 organization, and my understanding is that there is something  
9 from Mr. Delledonne which I may have missed. Is that  
10 correct, Mr. Brown?

11 MR. BROWN: Yes.

12 VICE CHAIR JOHN: Okay. That's it for me, Mr.  
13 Chairman.

14 CHAIRPERSON HILL: Okay. Thanks, Ms. -- go ahead,  
15 Mr. Blake.

16 MEMBER BLAKE: The names on the appeal -- and I  
17 see a fellow here on the dais is consistent with a name on  
18 the appeal. Could you just -- I'm just trying to reconcile  
19 that. Mr. Brown, maybe you can help me?

20 MR. BROWN: The two individual appellants are Mr.  
21 Ramachandran and Ms. Wallenberg and basically, they had  
22 nothing to add on the merits except to explain their claims  
23 of injury aggrievement. And since the standing motions have  
24 been denied, I simply did not see any reason for them --  
25 although I represent them unquestionably, I didn't see any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 need for them to testify.

2 CHAIRPERSON HILL: Okay.

3 MEMBER BLAKE: Okay. But those -- excuse me, just  
4 one second. At that beginning of the hearing, Department of  
5 Buildings asked us to clarify the people that were in a  
6 certain zone. Would those two people be -- would that person  
7 be within that 200 feet?

8 MR. BROWN: There -- I -- my position with respect  
9 to the 200 feet is that both of them live in apartment  
10 buildings that are within 200 feet of the property.

11 MEMBER BLAKE: Okay. So that -- Mr. Fuller, would  
12 that answer your question about those two people?

13 MR. FULLER: He just indicated that they live in  
14 an apartment building that may be within 200 feet of the  
15 property. The question -- I think the -- I think is what was  
16 said at the beginning was that these two individuals reside  
17 and live within 200 feet of the property. That's not correct  
18 nor has that ever been represented or asserted, to my  
19 knowledge, by WHTS. And the only reason that that's  
20 conceivably -- and I know I'm -- you guys have made a  
21 decision already. I'm sort of beating a dead horse. I  
22 understand that but these folks, you know, to the extent that  
23 like people are talking about this 200-foot thing, these  
24 folks wouldn't receive -- are required to receive notice in  
25 relation to like a special exception, receiving a variance

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 between -- anything to that effect. These folks, as far --  
2 there's been no representation by WHST that they actually  
3 live -- reside within 300 feet of --

4 CHAIRPERSON HILL: Okay.

5 MR. FULLER: -- the --

6 CHAIRPERSON HILL: Mr. Fuller, I'm going to way  
7 sidetrack all this also, and I appreciate that everybody's  
8 trying to clear up whatever has gone to screen, right, and  
9 so -- and I'm going to make another statement which is,  
10 again, as far as people able to bring appeals, they haven't  
11 necessarily had to be within the 200 feet. So I just want  
12 that to be very clear for the record; okay? So all this is  
13 getting started again because there's two people on the  
14 screen that haven't said anything. And all I want to make  
15 sure -- and Mr. Brown said that he has -- that everyone has  
16 had their opportunity to speak. Is that correct, Mr. Brown?

17 (No audible response.)

18 CHAIRPERSON HILL: Thank you. Okay. So now I'm  
19 trying to get the conclusion statement, okay, as we have  
20 asked for with -- from the appellant and then also the DOB  
21 and the property. And if the ANC wants to, they're fine.  
22 Okay. And I think -- I can't -- if Ms. John is going to get  
23 the information she wants from you, Mr. Brown, so I just want  
24 to make sure that Ms. John has had a chance to clarify what  
25 information -- no, not Ms. John? I'm sorry.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 VICE CHAIR JOHN: No. I think I asked the  
2 question, and Mr. Brown assured me that the information was  
3 there, and so I'm fine with that. Maybe I missed it.

4 CHAIRPERSON HILL: Okay. All right. Okay. I'm  
5 sorry, you guys. I'm also -- I'm just tired. It's been five  
6 hours now. So if we can get a conclusion from everybody.  
7 All right. And Ms. Mehlert, you're going to tell me when  
8 works out for getting conclusions.

9 MS. MEHLERT: So would you like to schedule this  
10 for a decision or do you --

11 CHAIRPERSON HILL: I -- unless my fellow Board  
12 Members have any other need for a continued hearing, then I'd  
13 just have a decision.

14 VICE CHAIR JOHN: Decision is fine for me.

15 CHAIRPERSON HILL: Okay. Thank you, Vice Chair  
16 John. And then -- so then, you know, I mean give them a  
17 little time, I guess. Like we could come back around the  
18 29th for a decision if they want to submit some conclusions  
19 before then.

20 MS. MEHLERT: We could -- I believe that those are  
21 hearings that are usually on the 29th, but we could put it  
22 on June 5th --

23 CHAIRPERSON HILL: Okay.

24 MS. MEHLERT: -- and so they could submit  
25 conclusions perhaps by Friday, May 24th, next Friday. There

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 is the holiday but.

2 CHAIRPERSON HILL: Or if you want to give them til  
3 the 29th?

4 COMMISSIONER MILLER: 29th is fine with me.

5 CHAIRPERSON HILL: Okay. All right. Then we'll  
6 have conclusions on the 29th and we'll come back for a  
7 decision on the 5th. Mr. Miller, you can come for that I  
8 assume?

9 COMMISSIONER MILLER: The 29th?

10 CHAIRPERSON HILL: No, the 5th.

11 COMMISSIONER MILLER: The 5th, June 5th, is that  
12 what you said?

13 CHAIRPERSON HILL: Yes.

14 COMMISSIONER MILLER: Yes. I can be there and as  
15 long as I have the mic, I shouldn't have started naming names  
16 cause I think I left off a few names and I apologize if I  
17 left off your name, like Erik Cox, who I gave a hard time  
18 with the last time I think we were here, a different appeal.  
19 So I just want to acknowledge that and then Janell Pagats,  
20 I don't think I mentioned your name although I mentioned your  
21 agency but -- and any other today else, I appreciate  
22 everybody's participation.

23 CHAIRPERSON HILL: Thanks, Vice Chair Miller. All  
24 right. I'm going to go ahead and close this hearing and the  
25 record except for what we've asked for, and I will echo

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Commissioner Miller and thank you for your time. Bye-bye.

2 VICE CHAIR JOHN: Thank you.

3 CHAIRPERSON HILL: Have a good day.

4 MR. BROWN: Mr. Chairman, one quick question?

5 CHAIRPERSON HILL: Sure. Just hold on. Mr.  
6 Young, don't lose everybody now.

7 MR. BROWN: It's my understanding that the  
8 submissions on May 29th are more or less contemporaneous or  
9 simultaneous, is that right?

10 CHAIRPERSON HILL: Yes.

11 MR. BROWN: Could we have a fixed time by which  
12 the submissions must be submitted?

13 CHAIRPERSON HILL: Sure. By 5:00.

14 MR. BROWN: Sounds good to me.

15 CHAIRPERSON HILL: Okay. 5:00 on the 29th.

16 MR. BROWN: Thank you.

17 CHAIRPERSON HILL: Okay. Great. Thank you. All  
18 right.

19 MR. BROWN: And with the record closed, no  
20 additional non-record information is to be submitted, just  
21 summation from what's in the record, is that correct?

22 CHAIRPERSON HILL: Exactly, just clarity that you  
23 want the Board to take a look at while we're making our  
24 decision.

25 MR. BROWN: Thank you, sir.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W., STE 200  
WASHINGTON, D.C. 20009-4309

1 CHAIRPERSON HILL: Okay. Thank you.

2 MR. BROWN: One page.

3 CHAIRPERSON HILL: Okay. Bye-bye. See you all.

4 MR. BROWN: Bye-bye.

5 (Whereupon, the above-entitled matter went off the  
6 record at 3:50 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Public Hearing

Before: DC BZA

Date: 05-15-24

Place: teleconference

was duly recorded and accurately transcribed under  
my direction; further, that said transcript is a  
true and accurate complete record of the  
proceedings.

  
-----  
Court Reporter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1716 14TH ST., N.W., STE. 200

WASHINGTON, D.C. 20009-7831

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)