GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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Board of Zoning Adjustment

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PUBLIC HEARING

TUESDAY
FEBRUARY 26, 2002

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

BOARD OF ZONING COMMISSION MEMBERS PRESENT:

GEOFFREY GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

CURTIS ETHERLY, JR.	Commissioner
JAMES HANNAHAM	Commissioner
JOHN PARSONS	Commissioner

COMMISSION STAFF PRESENT:

SHERI M. PRUITT	Secretary, BZA
PAUL O. HART	Office of Zoning
JOHN K.A. NYARKU	Office of Zoning
BEVERLY BAILEY	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esquire

D.C. OFFICE OF PLANNING:

JOHN FONDERSMITH
DAVID McGETTIGAN

I-N-D-E-X

Preliminary Matters 7

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Ben Rowland 11
John Fondersmith 16

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Armin Kuder 48

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Andrea Ferster 90
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1 P-R-O-C-E-E-D-I-N-G-S

2 9:40 a.m.

1 CHAIRPERSON GRIFFIS: This is the February 26, 2002
2 Public Hearing of the Board of Zoning Adjustment in the District
3 of Columbia. My name is Jeff Griffis, and I am the chairperson.
4 Joining me today is the Vice-Chair, Ms. Anne Renshaw and we are
5 glad to have her back after one absenteeism last week. One of
6 very few if I am not mistaken. Mr. Curtis Etherly also is with
7 us. When I say his name he won't be announced by a ring anymore.
8 Mr. Levy representing the National Capital Planning Committee,
9 and representing the Zoning Commission is Mr. Parsons with us
10 this morning.
11 Copies of today's hearing are available to you they
12 are located to my left near the door. The door that you did enter
13 into, please be aware that this proceeding is being recorded so
14 that we ask you to refrain from any disruptive noises or actions
15 in the hearing room.
16 When presenting information to the board, speak
17 into the microphones and state your name and home address before
18 presenting your testimony, and we will walk you through all the
19 technicalities of turning mikes on and off.
20 All persons planning to testify either in favor or
21 in opposition are to fill out two witness cards, these cards are
22 located at the end of table in front of us; and I believe that
23 there is also a stack on the table where you came in.
24 As you come forward to speak to the board, we ask
25 that you give both cards to the reporter who is sitting to my

right at the table there. The order of procedure for special exceptions and variances will be first: statement and witnesses of the applicant; second, the government reports including Office of Planning, and any other submitted agency reports; third, would be the report from the Advisory Neighborhood Commission; fourth would be persons or parties in support, and fifth, persons or parties in opposition; sixth and finally, we will have closing remarks by the applicant.

Cross-examination of witnesses is permitted by the applicant or parties. The ANC within which the party is located is automatically a party in the case. The record will be closed at the conclusion of each case, except for any material specifically requested by the board. The board and staff will specify at the end of the hearing exactly what is excepted and the date when persons must submit evidence to the office of Zoning. After the record is closed no other information will be accepted by the board.

The Sunshine Act requires that the Public Hearing on each case be held in the open before the public. The board may consistent with its rules of procedure and the Sunshine act enter executive session during or after the public hearing on a case, for purposes of reviewing the record or deliberating on the case.

The decision the board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the board requests that persons

present not engage the members of the board in conversation. And at this time, I would ask that everyone turn off their beepers and cell phones so that we do not disrupt the proceedings.

The board will now consider any preliminary matters. The preliminary matters are those which relate to whether a case will or should be heard today, such as a request for postponement, continuance, or withdrawal or whether proper and adequate notice of the hearing has been given. If you are not prepared to go forward with the case today, or if you believe that the board should not proceed, now is the time to raise such matter. I would first turn to staff to see if there are any preliminary matters and if not I will look to the audience.

MS. BAILEY: Mr. Chairman, members of the board good morning.

CHAIRPERSON GRIFFIS: Good Morning.

MS. BAILEY: There is a preliminary matter but it is better taken up when the case is closed and that concerns Application 16831, and that is the only preliminary matter, Mr. Chairman, that the staff has.

CHAIRPERSON GRIFFIS: Great. Thank you very much. Is there any other preliminary matters from any of the other applicants that are here today?

In which case we may be ready to call the first case. Let me just introduce the staff that is with us today that is going to ably steer this board. It is Ms. Bailey, Mr. Nyarku,

Mr. Hart, and Ms. Pruitt are joining us and they are all on my right, starting from the farthest right up. So, we are ready to call the first case.

MS. BAILEY: The first case is application 16837 of Benjamin and Julia Rowland pursuant to 11 DMCR 3104.1for a special exception to allow an addition to a one-family dwelling under section 223, not meeting the rear yard requirement section 404 and subsection 2001.3.

The property is located in the R-1-B District at premises 5129 Macomb Street, N.W. Square 1446, Lot 7. All those wishing to testify please stand to take the oath.

(WITNESSES SWORN.)

MS. BAILEY: Please come forward.

CHAIRPERSON GRIFFIS: While you are getting ready also, I need to introduce, of course, on my far left next to Mr. Levy is Marie Sansone the Corporation Counsel. Gentlemen when you are ready.

MR. HOUSTON: Good Morning, my name is Andre Houston. I'm the architect for this case and this is Benjamin Rowland the owner of the house to my right. This case originally came before the board about a year ago, when it originally came as a special exception at the advice of the zoning technician that it could be considered as a special exception.

CHAIRPERSON GRIFFIS: Mr. Houston, let me just jump in here, the issue was in fact and I know you know this but you

did miss speak. The original was a variance. It was requested, it's actually under a year ago that it came and under Section 312611 which was then brought to our attention, it would be difficult to bring the same application back before the board before twelve years, I'm sorry twelve months, we are pushing our schedule out a little bit. I have discussed this with the board and also with Corporation Counsel and the issue, and I think this is all we need to say about it is that this is actually a different application.

MR. HOUSTON: Yes it is.

CHAIRPERSON GRIFFIS: The other was a variance. This is coming in for special exception so I don't think we need to be concerned. So we are ready.

MR. HOUSTON: All right very good, this is the subject property. It is a nonconforming property by virtue of the fact that it has side yards which are narrower, so consequently it requires a special exception from 20003 as well as the rear yard. The rear yard is here and the addition pokes into the rear yard that way. The house is located □

CHAIRPERSON GRIFFIS: Let me interrupt you for a second, you've held up what I see as labeled as SK2 and that was submitted in the record. Is that correct?

MR. HOUSTON: Yes.

CHAIRPERSON GRIFFIS: Let's just give the board a second to pull that out. I would like to get an exhibit number on

that, so that we can have it for the record. It appears to be a part of your total package submission.

MR. HOUSTON: Yes.

CHAIRPERSON GRIFFIS: I have a number two on mine also. Okay.

MR. HOUSTON: The subject property is this subject property here and its located abnormally far back on the lot, making the rear yard smaller than typical. These adjacent properties have larger rear yards. It is our belief that it was located far back on the lot to preserve a tree. Had the addition that we are requesting been added to these adjacent lots, it would not have needed a special exception or variance because it would have been a large enough rear yard.

It is best understood perhaps in this sketch, which is labeled A4 in your package, which shows a sort of bird's eye perspective. The property steps up and the addition noses into the part that steps up of the yard, so that the grade is not being disturbed and the actual part of the property which needs a special exception then, can be seen best in this sketch which you have and its this portion here which is mostly a skylight.

It's actually the area below the four foot line does not require a special exception because of the way the zoning ordinance is written. So it is just this section here. There was originally a chimney on the original submission. The chimney has now been eliminated, so that doesn't need a variance or a special

exception.

CHAIRPERSON GRIFFIS: So what you pointed to that actually needs a variance, is the peak of that small glazed area.

MR. HOUSTON: That is correct.

CHAIRPERSON GRIFFIS: Above the four feet, the raised site.

MR. HOUSTON: That is correct. There is ample back yard in all of these houses for air and light. There is only one house which really is from which this addition is really visible, and the owner of the house, the owner of this house went back to that property owner to reconfirm and I will let him testify about that.

MR. ROWLAND: Good morning. My name is Ben Rowland and I, along with my wife, are the owners of this property. I merely wanted to say that I have had running conversations with all my neighbors over the last several months. In particular, the neighbor immediately behind me the Thomas' and the wife whose name is Osie Thomas (phonetic). We've discussed this. She gave her consent to an earlier version of this which, as Mr. Houston pointed, out had a chimney.

We have now eliminated the chimney. She was delighted. She gave her form of consent a little bit reluctantly but, over tea and in the course of ANC meetings, she has fully concurred with this design and indeed looks forward to it, because she thinks it will improve the neighborhood. Thank You.

MR. HOUSTON: When this originally went forward, sign-offs from the neighbors were received and because Ms. Thomas' was the most evident of the neighbors, her signature was obtained again. And is part of, you have the original sign off from the continuous property owners and I believe in the ANC submission, you have the re-confirmation from Ms. Thomas that she has no objection. At least you should.

CHAIRPERSON GRIFFIS: Hold on, let's check that for a second.

MR. HOUSTON: All right.

CHAIRPERSON GRIFFIS: What would have been submitted do you have an actual independent letter from Ms. Thomas?

MR. HOUSTON: That's right yes.

CHAIRPERSON GRIFFIS: Did you see that? It's not marked as □

MR. HOUSTON: It should be in the ANC package.

CHAIRPERSON GRIFFIS: Okay so it is a part of the ANC.

MR. HOUSTON: And if you don't have it, I could perhaps find it in my file. It is just a handwritten note of a sentence or two.

MEMBER LEVY: Mr. Chair I believe we just have a letter from the ANC and nothing else.

CHAIRPERSON GRIFFIS: Okay, well let's get a copy of what you have then.

MR. HOUSTON: All right sure, do you want it now or do you want me to submit it later?

CHAIRPERSON GRIFFIS: Well that depends, do you want us to act on this now or do you want us to? Yeah, now would be great I think.

MR. HOUSTON: Let me see if I can find it.

MR. FONDERSMITH: Mr. Chairman, I in fact I have a copy about it is somewhat marked up and obtained from Mr. Houston if we need it.

CHAIRPERSON GRIFFIS: Okay, actually Mr. Houston let me get some clarification to about the signatures that you have on the petition.

MR. HOUSTON: Yes.

CHAIRPERSON GRIFFIS: Now I think I am clear about what you were saying. That was part of the variance application previous.

MR. HOUSTON: Just to make clear, because someone might object on a technicality. This was actually was submitted as a special exception so this is a sign off for the original special exception, which was then vetoed and was overridden by the board and said no you need a variance.

CHAIRPERSON GRIFFIS: Okay, then this is where I want total clarification.

MR. HOUSTON: Right.

CHAIRPERSON GRIFFIS: I want to act as if the first

application didn't exist, because for the board it does not.

MR. HOUSTON: However the signature sheet does.

CHAIRPERSON GRIFFIS: And that is fine and my question then is did you submit that as part of this application?

MR. HOUSTON: Yes, I believe I did.

CHAIRPERSON GRIFFIS: Okay.

MR. HOUSTON: I would have to go back to the file but I believe I did.

CHAIRPERSON GRIFFIS: Well either way I mean □

MR. HOUSTON: I can submit it again if you □

CHAIRPERSON GRIFFIS: Exactly as long as we just have quick count because I am not seeing that either, and I just want to make sure that we have everything in this file.

MR. HOUSTON: Here is a copy of that and I am sure I submitted it to planning.

CHAIRPERSON GRIFFIS: Okay may well be, may well be but just to make total insurance on that what you can do is when you find the other thing also give it to staff on the side. We'll make copies.

MR. HOUSTON: Okay why don't I do that?

CHAIRPERSON GRIFFIS: Yeah, but either way I don't think we need to take more time on that.

MR. HOUSTON: Thank you. As you'll see in the file it was reviewed by the ANC, it was reviewed by planning. Both groups concluded that it did not impinge on the light, air of

neighboring properties and did not degrade the neighborhood. Consequently, we are asking the board's approval for this special exception?

CHAIRPERSON GRIFFIS: Good okay. Board members questions?

MEMBER LEVY: One question, it would be helpful if you would just pass that up now? Has that been done?

MR. HOUSTON: What?

MEMBER LEVY: The signatures from the neighbors.

MR. HOUSTON: Yes.

MEMBER LEVY: If you would pass that up to staff and so that we can just see that. Are you alright? Does that include signatures from both adjacent neighbors as well as the neighbor to the rear?

MR. HOUSTON: Yes.

MEMBER LEVY: Great.

MR. HOUSTON: Yes. Yes it does.

MEMBER LEVY: Thank you.

CHAIRPERSON GRIFFIS: Okay any other questions under 223? Very well then, let's move on and go to Office of Planning.

MR. FONDERSMITH: Yes, Good morning Mr. Chairman, members of the board. I am John Fondersmith and I am giving the report of the Office of Planning. The Office of Planning recommends approval of this special exception under Section 223 to allow this addition of the rear of the single family residence.

We have gone through and hear the background on 223 and the background on this proposal, but I think the really critical thing is in looking at it and looking at potential impacts. Is the topography of the area and of course this specific lot and we've included, in the packet that we gave you, a larger aerial photograph of the several blocks around. That is attachment one.

And you can see from there with the topography overlaid, and you can see how Palisade Lane has a kind of a knoll here. Palisade Lane which is the top street where the neighboring property to the Northwest is located is really at the top of that knoll and then the topography falls off to Maining Place (phonetic) on the north essentially, and to the South or to the Southeast to Macomb Street.

So both looking at this and having visited the site, the really only significant case where there might be some impact from this small addition, would be the house to the North on Palisade Lane; but in fact, as you can see there is quite a topographical difference. This addition is going to, although it protrudes somewhat into the required rear yard as has been mentioned because the change in topography, it really is kind of partly varied into the hillside there. And then, the combination of the topography change and the vegetation that is on both this lot and the lot above, we believe there will be little, if any, impact on the house up the hill.

As we said in the report, if the occupants of the house at 5116 Palisade Lane were to kind of walk down to the edge of their property and look they would see this. But otherwise, it's certainly not going to be, I mean it's certainly not going to be cutting off light and air to that house.

So we think that this is a good example of the use of Section 223. It is the kind of case because of the non-conforming side yard dating from the original construction of the house, which is let's see, 1941 I think it was. But this is still really not going to have any impact as we see it and we've gone through the various requirements of 223 here and conclude that this is an appropriate kind of addition to allow. You have the letter from the ANC which I know will be noted. So we do recommend that the BZA approve this special exception, and of course, be ready to respond to any questions you may have on this.

CHAIRPERSON GRIFFIS: Good. Thank you Mr. Fondersmith and we do appreciate the analysis that was done as you have indicated. You've gone through every section of 223 and we don't need to go through all of that. I think that it is very clear, but it absolutely appreciated the analysis. Any questions for the Office of Planning at this time from the board?

MEMBER LEVY: Mr. Chairman quick question.

CHAIRPERSON GRIFFIS: Yes.

MEMBER LEVY: Mr. Fondersmith do you know or maybe the applicant knows the address of the property directly to the

West? Or the name of it? I am just trying to match it with the signature sheet that the applicant provided.

MR. FONDERSMITH: To the west? Which is the west?

MEMBER LEVY: West. Well it is west on this map from the Office of Planning. It is kind of more □

MR. FONDERSMITH: Yeah it is more, kind of southwest.

MEMBER LEVY: Southwest yes. So if you are standing on the street it would be to the left.

MR. FONDERSMITH: Yes, the family name is Gatti.

MEMBER LEVY: And the address? Okay 5137 Macomb?

MR. FONDERSMITH: Yes.

MEMBER LEVY: Okay.

MR. HOUSTON: It is the last signature.

MEMBER LEVY: Okay, thanks.

VICE CHAIRPERSON RENSHAW: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yeah.

VICE CHAIRPERSON RENSHAW: A question for Mr. Fondersmith, you said Mr. Fondersmith on page five that you do not believe that additional screening is needed. This is a, I am just referring to 223.2B about the privacy of use and enjoyment of the neighboring properties. If I am standing above on the Palisade Lane Property, 5116 Palisade Lane referring to your map in your report, and I am at the edge of the back yard, and I am looking down, I take it to the property at 5129 Macomb Street. Am I going

to be looking into the addition because the roof line of the addition, I take it is glass?

MR. HOUSTON: The roof line is glass.

VICE CHAIRPERSON RENSHAW: Right.

MR. HOUSTON: That back portion of the addition is.

VICE CHAIRPERSON RENSHAW: So am I looking down into their home?

MR. HOUSTON: Yes, you are.

VICE CHAIRPERSON RENSHAW: I am, and is there no screening in the back of 5116 Palisade to buffer the view?

MR. FONDERSMITH: There is □

CHAIRMAN GRIFFIS: Turn on your mike.

MR. FONDERSMITH: Yes, I'm sorry. There is existing screening in terms of vegetation on the site and, although it's hard to, I think it shows more on some of the plans. It is a little hard to see in the aerial photograph.

In the back of the house, there is this existing four or five-foot stone wall and the addition will be going into the hillside past that by some amount and then, the land rises several feet. There is some vegetation there. The land rises on up to about the property line where there is another stone wall, and you can see in the first photograph, attachment □ I'm sorry the second photograph, attachment two. There is a row of trees there, they are partly on the, there's trees on the property, the applicant's property. There is also some trees further up on the

back of the property up there.

I think, that is why we said in the report, that if the property owner up above came essentially to the back of their lot and were to look down, that yes they could see the addition and see in.

CHAIRPERSON GRIFFIS: Let's get to a couple of things on that Mr. Fondersmith. First of all, if they came to the back of their lot, they can look in the house, any of the windows also, correct?

MR. FONDERSMITH: That's right. They could look down.

CHAIRPERSON GRIFFIS: Now, Mr. Houston, in the section that, and I am holding it up but it is part of your submission, is that a fairly realistic slope?

MR. HOUSTON: Yes that is.

CHAIRPERSON GRIFFIS: Okay, so there is in fact an area running 35 feet from the existing house? Twenty-five feet is the rear yard, where it goes to which Mr. Fondersmith has pointed out another three to four foot stone retaining wall. What happens within that 25 feet? Is there growth? Is there any sort of □ it doesn't appear on this section that that's level enough for any real activity?

MR. HOUSTON: Why don't you speak to this.

MR. ROWLAND: I think that's correct, it's quite steep. I have only once seen my neighbor actually come down to the

edge, and that's when we were discussing this, and she almost lost her footing. So, it's very steep. It's covered with ivy and myrtle; and it's not space that one would normally spend much time at.

MR. HOUSTON: There are a lot of trees in there too, a lot of big shrubs and trees.

CHAIRPERSON GRIFFIS: To address Ms. Renshaw's concern of this is not where your adjacent neighbors are actually picnicking and having people over, and so they will be literally looking down on your area. Okay. Is that clear?

VICE CHAIRPERSON RENSHAW: Yes, thank you.

CHAIRPERSON GRIFFIS: Anything else?

MEMBER LEVY: Mr. Chairman another quick question.

CHAIRPERSON GRIFFIS: Yes.

MEMBER LEVY: Mr. Rowland or Mr. Houston, there is an existing addition on the house that's identified as an extension of a kitchen, I believe.

MR. HOUSTON: Yes.

MEMBER LEVY: In your drawing A3.

MR. HOUSTON: Yes.

MEMBER LEVY: Is that a one-story structure, or actually the photographs may show that.

MR. HOUSTON: Yes, it is.

MEMBER LEVY: What I am wondering is whether the new addition is going to be visible from the street beyond that

existing kitchen?

MR. HOUSTON: No.

MEMBER LEVY: Because?

MR. HOUSTON: It's all behind the house. I suppose that there may be some angles which you can catch a piece of the roof, but actually I would be surprised if there were. But there, in fact, may be over the one-story addition.

CHAIRPERSON GRIFFIS: There's a plan Mr. Levy that if you look at the addition on the existing condition, the back portion towards the rear is actually an angled corner. It looks like there was room being left for circulation on the exterior around that, and they are taking that from the farthest point of the angle, if I am reading this correctly, Mr. Houston, and then starting the new addition off of that.

MR. HOUSTON: That's correct.

CHAIRPERSON GRIFFIS: So, your concern Mr. Levy is that, that portion beyond the portion of the new addition might be visible from the street?

MEMBER LEVY: Well the applicant is making a case that, in fact, it is not visible from the street.

CHAIRPERSON GRIFFIS: Right.

MEMBER LEVY: So, I was wondering if in fact since it sits behind a one-story portion of the building, whether or not it would be visible from the street?

CHAIRPERSON GRIFFIS: But it is a one story addition

also correct?

MR. HOUSTON: Yes, it is, and whether technically some of the peak can be seen from some part of the street, frankly I am not sure, but it is a steep drop down to the street as well. I'd be very surprised if it were visible and if it is visible, it would only be just little pieces of the top of the peak of the roof.

MEMBER LEVY: Okay.

MR. HOUSTON: There is also a lot of planting, you couldn't really even check it. I mean, it's heavily wooded there.

MEMBER LEVY: Okay.

CHAIRPERSON GRIFFIS: Do you think that you need a photograph of that?

MR. HOUSTON: There should be pictures of the front.

MEMBER LEVY: No, I have a photograph here actually, Exhibit No. 3.

CHAIRPERSON GRIFFIS: Exhibit No. 3, the top photograph which is the front elevation, that is taken from the street?

MR. HOUSTON: Yes. I don't think you'd see it all.

MEMBER LEVY: All right, thanks.

CHAIRPERSON GRIFFIS: Okay anything else? Okay, we have an ANC report. Do you have that in front of you Ms. Renshaw? If you can summarize that. I see that they are unanimous.

VICE CHAIRPERSON RENSHAW: The letter from ANC 3D is

dated February the 12th, I think that is, either that or the date in the letter is wrong because the letter is dated February 12th, but the meeting it says was held on February 13th. So, if we go back to the OP Report, I think the ANC meeting was on the 6th.

MR. HOUSTON: It was before the 12th, I think it may have been the 3rd.

MR. FONDERSMITH: That is correct. There is that typo in the letter.

VICE CHAIRPERSON RENSHAW: Okay well it is signed by the new Chair John Finney (phonetic) a long time member of ANC 3D. He stated that the ANC held a meeting on say Wednesday, February 6, duly noticed, a quorum of three was present at all time, and they voted. This was on the agenda and they voted a unanimous 5-0-0 to support this exception request, and 3D asked that the decision be made part of the record and given the great weight. They noticed also that of the elimination of the wood-burning stove and the chimney.

CHAIRPERSON GRIFFIS: Good. Thank you very much. Is there anyone else here to testify in support or opposition of this application? In which case, I think we can, unless there is anything else we need to review, go to any closing statements you might have.

MR. HOUSTON: We request a bench decision.

CHAIRPERSON GRIFFIS: And I imagine a summary order with that.

MR. HOUSTON: And a summary order.

CHAIRPERSON GRIFFIS: Okay, board prepared to go forward? Any other questions we need of the applicant? In which case, I would move that we approve application Number 16837 of Benjamin and Julie Rowland for special exception to allow an addition to a one family dwelling under Section 223 not made a rear yard requirement which happens to be Section 404 and Subsection 2001.3 at premises 5129 Macomb Street, Northwest.

I think it has been fairly, clearly outlined and the ANC, and Office of Planning are also in support, that this is as the Office of Planning actually indicating this is actually an interesting point that for a variance it was not approved.

It was actually denied under 223, which is why this section was written was for cases much like this for non-conforming existing structures, so that they may have additions to them. Clearly it's been laid out of all the provisions in 223 that this meets those conditions, and I won't summarize all of them. But 223 obviously goes to minimizing any sort of adverse impact of adjacent areas and I think it has been clearly shown that it would not have negative impact and I would look for a second.

VICE CHAIRPERSON RENSHAW: Second.

CHAIRPERSON GRIFFIS: Thank you. Any discussions? Any additional comments? You know, we're going to get a bad reputation if we go this quickly through these cases, so we will just take a moment to delay a little bit. If there is no other

comments, then I would ask for all those in favor.

ALL: Aye.

CHAIRPERSON GRIFFIS: Any opposed?

Very good staff can record the vote when they are ready.

MS. BAILEY: The vote is recorded as 5-0-0 to approve the application. Mr. Griffis made the motion, Ms. Renshaw second, Mr. Levy, Mr. Etherly, and Mr. Parsons, in agreement. Summary order Mr. Chairman.

CHAIRPERSON GRIFFIS: Great, thank you very much. And good, thank you have and have an excellent morning. Let me just make one quick point of clarification, I am not sure if we got the letter or did you find that?

MR. HOUSTON: I didn't find it in the file. I know I have it.

CHAIRPERSON GRIFFIS: Just turn on your mike, so this will be the last piece of the record, if you would turn on the mike.

CHAIRPERSON GRIFFIS: Okay good, what we do is just have you submit that for a complete case file and then this will all go to the archives.

MR. HOUSTON: Submit it to staff.

CHAIRPERSON GRIFFIS: Indeed.

MR. HOUSTON: Very good.

CHAIRPERSON GRIFFIS: Thanks. I think we're ready to proceed.

MR. ROWLAND: Thank you.

CHAIRPERSON GRIFFIS: Thank you, Mr. Rowland. Have a great day. We can call the next case as soon as staff is ready.

MS. BAILEY: Application number 16829 of Rosa L. Smith, pursuant to 11 DCMR 3103.2 for a variance from the minimum lot area requirements under subsection 401.3, and for variance from the off-street parking provisions under subsection 2101.1 for the conversion of an existing nonconforming structure to a four-unit apartment house in an R-4 District at premises 1803 9th Street, N.W. (Square 394, Lot 810). Please come forward.

(WITNESSES SWORN.)

MS. BAILEY: Thank you.

MS. FOSTER: Good morning. My name is Jackie Foster, and I am here with Lavonda Martin and Rosa Smith. We are the daughters of Rosa Smith, and the managers of her property.

CHAIRMAN GRIFFIS: Could you give me addresses.

MS. FOSTER: 1803 9th Street, N.W.

CHAIRMAN GRIFFIS: And that's where you live?

MS. FOSTER: No, that's the property.

CHAIRPERSON GRIFFIS: Can you give me a home address?

MS. FOSTER: 6609 Woodley (phonetic) Road, Clinton, Maryland 20735.

CHAIRPERSON GRIFFIS: Okay and then that's similar all the way down. All right.

MS. MARTIN: My name is Lavonda Martin and I'm at 2362 Mail Coach Court, Waldorf, Maryland 20602.

CHAIRPERSON GRIFFIS: Okay, very good. And you are welcome to proceed.

MS. FOSTER: Okay. Forgive our ignorance. We're new to this. We are the property a note was held by our father and he is now deceased. We voluntarily there was voluntary repossession the property so now it's back in the ownership of my mother. We also inherited the problems of that building. We wanted to evict someone and we found out that there was no Certificate of Occupancy there, and there had been people living there as long as I am old.

And so we really couldn't we didn't want to put them out, so we figured we would go the steps to get whatever was necessary. So we've been going through this for a year now, and plans, we had to draw up plans and plans were lost and all that other good stuff. And now it's coming down to this point and we actually the eldest person that was living, and who's been living there the longest has now moved on, and the problems that were there, we've actually been able to get them to leave. They have not left yet, but they're in the process of leaving.

So we're kind of now we're kind of okay, because now we can actually use it for what it was zoned for, office space.

CHAIRPERSON GRIFFIS: Oh, so that's actually your

intention is to □-

MS. FOSTER: Well, we wanted to keep the apartments there if the tenants □ we either had them to sign letters and whatnot saying they wanted to stay, but now that the elderly gentlemen who we were really most concerned about has moved onto a retirement home, and the problems, problem tenants are leaving, we can pretty much use it as it was zoned for, which was commercial space.

CHAIRPERSON GRIFFIS: Okay, well let's get to the heart of the issues that are before us. Because although we'd love to be landlord-tenant, we're not.

MS. FOSTER: Well, I mean, I'd just tell you.

CHAIRPERSON GRIFFIS: The first piece of it is, how long has the property been in possession or owned by the family? When was it originally acquired? Do you know roughly? I don't need month and day, but was it `50s, `60s, `70s?

MS. FOSTER: It was in the `80s.

CHAIRPERSON GRIFFIS: We're at `84, and when it was acquired, to the best of your knowledge, it was residential?

MS. FOSTER: Yes.

CHAIRPERSON GRIFFIS: There have been no changes of that?

MS. FOSTER: Yes, he knew □

CHAIRPERSON GRIFFIS: You don't know previously before how far back it might have gone?

MS. FOSTER: Residential?

CHAIRPERSON GRIFFIS: Right.

MS. FOSTER: No, we just know that the settlement □

CHAIRPERSON GRIFFIS: There are four units.

MS. FOSTER: Right. We just know that the eldest gentlemen was there like 20 years, 20 plus years.

CHAIRPERSON GRIFFIS: Prior to `84?

MS. FOSTER: Yes, before we bought it he was there.

CHAIRPERSON GRIFFIS: Okay.

MR. LEVY: Mr. Chairman, just to clarify, I believe I heard that the applicant is wanting to use it for commercial space?

CHAIRPERSON GRIFFIS: Yes.

MEMBER LEVY: But the application is for residential. Did I hear that correctly?

CHAIRPERSON GRIFFIS: Right, I'm trying □ yes.

MS. FOSTER: See, this is the case. We wanted to use it as residential.

CHAIRPERSON GRIFFIS: Right.

MS. FOSTER: We want to continue to use it as residential, because it was built □ the people were there, you understand what I'm saying? The people were there the whole time. We just was in the process of evicting someone and we didn't know that we didn't have the right credentials.

CHAIRPERSON GRIFFIS: Right, that gets you into

where you needed a CFO?

MS. FOSTER: Exactly.

CHAIRPERSON GRIFFIS: And that's why you're here because you don't have a CFO for the four efficiencies?

MS. FOSTER: Exactly.

CHAIRPERSON GRIFFIS: I'm just trying to get the underlying whether, how long those actually may have existed or not. But then we need to get into well, I mean I guess I'm not sure how we.

MEMBER LEVY: I mean my concern is the application that's before us no longer represents the applicant.

CHAIRPERSON GRIFFIS: Yes, I understand that.

MEMBER LEVY: Okay.

CHAIRPERSON GRIFFIS: So what do we do? We can proceed and look at this for the residential, and I must say well, let me just speak to the record here. You have Office of Planning speaking towards denying this application. That obviously is given great weight by the board by regulations. It seems to be somewhat problematic in overcoming that, although we haven't heard everything, but this is a variance for a four-unit, so the issue would be how we substantiate the fact that this is not what you actually want to do with this.

MS. FOSTER: Well, we wanted to do that. It's just like as of, I would say, last night around 9:00 that we've been able to be sure that we wouldn't have to it wouldn't be a

problem for the tenants.

CHAIRPERSON GRIFFIS: For them to leave?

MS. FOSTER: Exactly.

CHAIRPERSON GRIFFIS: Okay, so tenants are not in the building.

MS. FOSTER: No, tenants are still in the building.

CHAIRPERSON GRIFFIS: I'm hypothetically saying, tenants are not in the building. It's Monday morning, what does the building look like? I mean what is the use in it?

MS. FOSTER: Nothing after that.

CHAIRPERSON GRIFFIS: Give me your best case scenario and describe how you want to use this building.

MS. FOSTER: Architectural offices.

CHAIRPERSON GRIFFIS: Okay, which is □ they had a previous CFO for that.

MS. FOSTER: Exactly.

CHAIRPERSON GRIFFIS: Yes. Well, I think we have a couple of ways to go with this. One, we can just continue this case and you could, you know, keep us informed in terms of how it develops. We could continue this if you want to try to get a variance for four-unit residential, or the third would be some unknown we can't predict at this point.

MS. FOSTER: In continuance, what do you mean exactly?

CHAIRPERSON GRIFFIS: Well, a continuance at this

point, we would set this for another date. You indicated that, in fact, late last night you got word of the change in residential units. You gave us an indication that you don't want to continue this nonconforming use of this building, and therefore, if you continue this, you could hold this date and this application.

But if you proceed in what you're anticipating changing in this, putting an office on top and whatever the mix is, then you may not need to be here today dealing with this application. Or, you could withdraw this altogether. If you withdraw it, it means you know obviously you would have to re-file if you decided to come back for it.

MS. FOSTER: There's no deadline on a continuance?

CHAIRPERSON GRIFFIS: I don't know. Is there a deadline on a continuance?

VICE CHAIRPERSON RENSHAW: No.

CHAIRPERSON GRIFFIS: No. At some point, if we keep continuing it, we can keep calling this up and you keep continuing it. We'll probably write a letter and say, "let's just drop the whole thing." I don't think that's official.

SECRETARY PRUITT: You probably wouldn't get back to this case until May, so I don't know if that would help or not. Your tenants would be still be there or not and you'd have a clear idea what you'd like to do.

MS. FOSTER: They will be gone.

CHAIRPERSON GRIFFIS: Right. I think the point is,

what we're saying is if we continue this, we'd give you a new hearing date.

MS. FOSTER: Right.

CHAIRPERSON GRIFFIS: The earliest would be May. By May, you will have an idea that's our question to you. You will have an idea of which way you need to go with this?

MS. FOSTER: Okay.

CHAIRPERSON GRIFFIS: Is that correct?

MS. FOSTER: Yes, that's good.

CHAIRPERSON GRIFFIS: Let's hear from corporation counsel.

MS. SANSONE: Mr. Chairman, it may be advantageous for the applicant to sit down the Office of Planning representative and the Zoning Administrator.

CHAIRPERSON GRIFFIS: Yes.

MS. SANSONE: And figure out exactly whether any zoning relief is needed and what that would be and have some agreement on that, and maybe they can proceed the way they are. Maybe they need to amend their application or something, but probably those are the two offices that would be in the best position to work with the applicant as their situation has changed and figure out what's needed.

CHAIRPERSON GRIFFIS: Is that clear?

MS. FOSTER: Yes.

CHAIRPERSON GRIFFIS: Okay, because I think what

corporation counsel is actually saying, even if you're proposing an office on the second floor, whatever the current uses below, you may need to have that reviewed by the Office of Zoning staff and the Zoning Administrator. Am I correct?

MS. SANSONE: And the Office of Planning.

CHAIRPERSON GRIFFIS: Office of Planning also. Okay, in which case, would you like to do that?

MS. FOSTER: Yes.

CHAIRPERSON GRIFFIS: Okay, so we'll continue this to, let's set up a May date and we'll give you a date before you leave here, and we would anticipate before we hear from you again that you would have talked to those three entities.

MS. FOSTER: Okay.

CHAIRPERSON GRIFFIS: Planning, Zoning and BZA.

MS. FOSTER: Okay.

CHAIRPERSON GRIFFIS: And what do we have in May?

MS. FOSTER: We may May 21st. We can put it on as one of the first cases in the morning.

CHAIRPERSON GRIFFIS: Yes. May 21st is that acceptable? Are you sure? Okay, it would be in the morning similar to today. There it is then. We will continue case 16829 to May 21st, and we will look for, we would absolutely appreciate, obviously you're going to be talking to staff here at Office of Zoning.

We would appreciate being kept informed to your

schedule as we get certainly closer to may, in that if this application changes, we're going to need to know that of course. If this application goes away, we'll need to know that because we can use the date to fill in another case.

MS. FOSTER: Okay.

CHAIRPERSON GRIFFIS: Great.

MS. FOSTER: That will be fine.

CHAIRPERSON GRIFFIS: Thank you very much.

MS. FOSTER: Thank you.

CHAIRPERSON GRIFFIS: Enjoy your day.

MS. BAILEY: Ready to proceed, Mr. Chairman?

CHAIRPERSON GRIFFIS: Yes, Ms. Bailey, I think we can call the next.

MS. BAILEY: Application 16831 of Jose R. Sanchez, pursuant to 11 DCMR . 3103.2 for a variance from the lot occupancy requirements under section 403, a vairance from the minimum width of an open court requirements under section 406, and a variance from the rear yard depth requirements under section 404 to allow a deck addition to a single family row dwelling in an R-3 District at premises 5022 7th Street, N.W. (Square 3148, Lot 131). Would you please come forward, Mr. Sanchez?

(WITNESS SWORN.)

MS. BAILEY: Thank you. Mr. Chairman, there is a preliminary matter and that is the property was posted on Friday, this past Friday, and the affidavit was filed yesterday, so it was

not properly posted as required.

CHAIRPERSON GRIFFIS: Okay, thank you. Good morning, Mr. Sanchez, how are you? Actually, if you would just push the button on the base of that mike, it will turn it on. You'll see the red. Good.

MR. SANCHEZ: Good morning, my name is Jose Sanchez, the owner of the property at 5022 7th Street. You know, I'm here for you know, I'm making construction there. I just bought it about one year ago, and you know, so it was too old so I decided to fix it.

CHAIRPERSON GRIFFIS: Mr. Sanchez, before you go too far, there's a few things we need to take care of first.

MR. SANCHEZ: Okay.

CHAIRPERSON GRIFFIS: But let me just make sure I understood exactly what you just said. There was an existing deck.

MR. SANCHEZ: Yes, before.

CHAIRPERSON GRIFFIS: Do you have any photographs or documentation of that.

MR. SANCHEZ: They're all decks.

CHAIRPERSON GRIFFIS: Wow. That would have made a nice clean deck. Do you know what the size approximately.

MR. SANCHEZ: It was like half of what I got now.

CHAIRPERSON GRIFFIS: Half, so you doubled the size?

MR. SANCHEZ: Yes.

CHAIRPERSON GRIFFIS: Okay now, that's getting into the case and that's not where I want to go with this. First of all, the posting. Do you understand what was required, and is it correct what we have on file that it was posted on Friday?

MR. SANCHEZ: Yes, the thing I received, the letter, but you know I don't know how to read much English.

CHAIRPERSON GRIFFIS: Okay.

MR. SANCHEZ: So the paper was for the hearing and I take it to somebody who can read for me.

CHAIRPERSON GRIFFIS: Okay.

MR. SANCHEZ: And they told me how to do this, so I came on Friday and I was flustered because it was a little late.

CHAIRPERSON GRIFFIS: Okay, let me ask one other thing before we deal with that. You had conversation, you talked with Office of Zoning staff?

MR. SANCHEZ: Yes.

CHAIRPERSON GRIFFIS: And it's my understanding that they gave you some referrals to lawyers?

MR. SANCHEZ: Yes, yesterday.

CHAIRPERSON GRIFFIS: Okay.

MR. SANCHEZ: But I called over and she said she's going to call me back and she never did.

CHAIRPERSON GRIFFIS: But you never heard?

MR. SANCHEZ: No.

CHAIRPERSON GRIFFIS: Okay. I have two □ well first

of all with the posting, let me just state. Posting is a very important notification for any case, large or small, and it is the signs that go out and that's where most of the people in the surrounding area get notification, become aware of this application.

I am reluctant to proceed, having had just a short period of posting and I'll look for board members' comments on that. But I also think that it may be an advantageous it may be a good situation that we continue the time period for posting and allow you to talk to the zoning staff here and possibly make contact with some of the referrals that they've given.

You know on the face of this, well clearly this is a variance and a variance is a fairly difficult test before this board to prove, and I think I can directly say that there would need to be, and it could happen today with your testimony, but there would need to be further argument made for this to be a successful variance. So board members posting, comments?

MEMBER LEVY: I think it would be necessary to re-post or to complete the posting requirements.

CHAIRPERSON GRIFFIS: Okay. I think that's probably going to be the consensus.

MEMBER LEVY: Yes.

CHAIRPERSON GRIFFIS: Okay, in which case Mr. Sanchez, unfortunately we've called you down here today, but we're going to have to continue this. What I'm going to ask you to do

is talk to the staff before you leave, is that clear?

MR. SANCHEZ: Yes.

CHAIRPERSON GRIFFIS: And then what we'll do, let's get a new date. In the meantime, you can work with some of the referrals that were given. I mean I also see this, please give me any comments that you have of continuing this case. I'm open to hearing it. It strikes me that this is a deck that's already been built. You're using it. There wouldn't be any real adverse impact to you or negative impact to you if we continue this further on.

MR. SANCHEZ: You know, like so I'm a new buyer of the house. I have to get permits. So what I know is when I see the sign and they say I got a permit, so when I come over here to the office, so they told me I couldn't get the permits because the deck was already built. But you know, I don't see the deck □ I see it's big for the rules but you know when I see the other decks around plus my house, it's even bigger than mine, so I didn't think it was a big problem, you know.

CHAIRPERSON GRIFFIS: Right. Okay. And I think we're very well aware of that. But let us do this. Let us pick a new date and we'll have you back here. In the meantime, you work with staff and referrals and hopefully it won't take long next time you're here. Is that clear to you?

MR. SANCHEZ: Yes, sir.

CHAIRPERSON GRIFFIS: Do you understand that?

MR. SANCHEZ: Yes.

CHAIRPERSON GRIFFIS: Okay.

MS. BAILEY: Mr. Chairman, the 21st the same date as we scheduled the last case, and this case would be the second case of the morning.

CHAIRPERSON GRIFFIS: May 21st.

MS. BAILEY: Yes.

CHAIRPERSON GRIFFIS: Second case in the morning.

MS. BAILEY: Yes.

CHAIRPERSON GRIFFIS: Is that great, Mr. Sanchez?

MR. SANCHEZ: Yes, that's great.

CHAIRPERSON GRIFFIS: What's the number? Okay, and I think this is going to be very beneficial for you also in terms of putting this together so we look forward to a very strong case when you come back. And we absolutely understand, you know, especially with single family owners and new purchasers that you look around and you see all these things that are done.

You're not doing anything different from what's already happened, but in fact, it would not be as a matter of right for zoning. So we look for this. We thank you for coming down here today and hopefully we'll see you on the 21st. I mean, we will see you on the 21st and hopefully with a very strong case.

MR. SANCHEZ: All right.

CHAIRPERSON GRIFFIS: Thanks, have a good day. Okay in which case, we can call the next case.

MS. BAILEY: The last case of the morning, Mr. Chairman, is Application 16840, Athena Wisconsin, L.L.C., pursuant to 11 DCMR 3104.1, for a special exception to allow motor scooter sales in an existing building (first floor) under section 727, and as provided for in section 1533 (Special Exceptions in the Naval Observatory Precinct District), in the NOPD/C-2-A District at premises 2233 Wisconsin Avenue, N.W. (Square 1299, Lot 1006).

(WITNESSES SWORN.)

CHAIRPERSON GRIFFIS: Okay. That's one of the technical difficulties we have. For some reason, we can't have all those mikes on. One at a time would be great. So you guys kind of shift around. I'm going to ask you to just introduce obviously everybody on the panel, and indicate that although we may have an hour and a half left in the morning, we don't anticipate that you'll be using all that.

MR. KUDER: That's welcome news.

CHAIRPERSON GRIFFIS: Yes, indeed.

MR. KUDER: Good morning, Mr. Chair. I'm Armin Kuder. I'm a lawyer in Washington, and with me this morning are, I'll start from the far right are, Mr. Philip Mitchell, Mr. Charles Betts. We do not anticipate their testimony, but it may be that there's something that they can answer for us. They are the proponents of the Vespa Agency, which brings us here this morning. They have been businessmen in this area with Fan Fair in Park

Place for many, many years.

The actual presentation for us this morning is going to be made by my colleague Kasasira Mwene. The titular applicant is Athena. We do not represent Athena. Their letter is in the file. We represent the tenant, not the landlord, but Athena supports this and that's why we're proceeding. So with that introduction as to who we are and why we're here, I'm going to turn it over to Mr. Mwene.

CHAIRPERSON GRIFFIS: Okay, actually let me just get, I'd like to reemphasize things. So Athena Wisconsin, L.L.C. is actually the building owner.

MR. KUDER: Correct.

CHAIRPERSON GRIFFIS: And you're representing the tenant, which we do have others in the record as you indicated that they are allowing the tenant to come forward. Okay.

MR. KUDER: Thank you.

CHAIRPERSON GRIFFIS: Okay.

MEMBER LEVY: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

MEMBER LEVY: Also a preliminary matter before we get too far along. This case, because it's in the Observatory overlay district, has been referred to the National Capitol Planning Commission for review and action, as required by the zoning regulations. So that's a preliminary matter in itself, given that NCPC won't act on the matter until their March meeting.

Additionally, I just want to make it clear, although I'm the NCPC representative on this board, I haven't seen any of the case materials except what's in the public record, and I'm not reviewing the case at NCPC.

CHAIRPERSON GRIFFIS: Okay, so you won't see this twice. Were you aware it was going to NCPC for review? Okay, so I would imagine that contact with NCPC and just to verify the schedule and process and all that, I'm not □ I have no idea what you need to do or if you need to do anything on that. But I think the point that Mr. Levy brings up is a good one. You are now aware of that and we are prepared to go forward, even without the NCPC which will happen separately, and that will just have to roll into your schedule.

And then let me also just briefly say this is special exception. It is coming under . 727, which is basically written for motorcycles. There are some submission on, and actually I need clarification, but I think there is some comparative information submitted on motorcycles, as opposed to vespas or motor scooters. My point all being, the board has all read this case, and I think we can expedite this fairly well and I don't think that we're going to run into a huge amount of detail because of the submissions that were very clear. So with that, I'll let you talk.

MR. KUDER: Thank you, Mr. Levy. Good morning. May it please the board, thank you for time to make this presentation.

1 We are here requesting a special exception because Title XI . 727
2 states that motorcycle sales and repair require a special
3 exception pursuant to 3104, and as is clear from our record under
4 Exhibit H under our submission, we do meet all the different
5 criteria under that particular section.
6 The retail sales of the Vespa motor scooters and
7 related accessories will be located in the building, pursuant to
8 727.3. Pursuant to 727.4, it is not within 50 feet of a special
9 purpose district and in response to 727.5, as is clear from
10 Exhibit B in our submission, these are urban vehicles.
11 They're motor scooters. They're half to one-third
12 the size and specification of motorcycles, and it's not a repair
13 facility. Their only operation of the motor scooters will be in
14 the parking lot area, where they'll be tested. They will not be
15 operated or repaired or in any way manufactured within the
16 premises or within the building.
17 So in terms of that process, it would have very
18 minimal impact on the neighborhood and the community, and in
19 furtherance of that claim and just to give sort of a bigger
20 indication of the fact that it is, in terms of the minimal impact
21 on the neighborhood and the community, the Office of Planning has
22 issued a resolution in support of our special exception and the
23 ANC has actually also issued, passed a resolution in support of
24 our special exception application.
25 CHAIRPERSON GRIFFIS: And do you have ANC report?

MR. KUDER: Yes, sir. We have the resolution from the meeting. I believe the Office of Planning also has a copy of it.

CHAIRPERSON GRIFFIS: Okay, good. My file is indicating that we did not have it on file as of Friday. So if you wanted to submit that, give that to staff and we'll put that right into the record.

MR. KUDER: So we have, in addition, you'll notice from our submission that we do actually have a series of signatures from neighborhood businesses and residents of the neighborhood basically since basically since a part of our special exception, and it is a retail area. There are a number of, as you might be familiar with, there's a number of retail outlets there. There's a number of restaurants and it is a commercial retail area. And in fact, the property was used for basically a retail showroom for an antique rug dealer, and there are also offices of course, in addition to it being a showroom.

But it is very consistent with the use of the neighborhood, as well as the use of the building, the previous use.

CHAIRPERSON GRIFFIS: Were you aware of any opposition? Did you talk to anybody?

MR. KUDER: There was no opposition as far as I'm aware.

CHAIRPERSON GRIFFIS: Okay.

MR. KUDER: The ANC voted unanimously 4-0-0 in support of the application.

CHAIRPERSON GRIFFIS: Right. Okay. And just for clarification, the specifications on stock, there was Harley Davidsons and Kawasakis and all that. It was for comparative analysis, is that correct?

MR. KUDER: Yes, it's an interesting situation. I mean the regulations were written in such a way that motor scooters are defined as motorcycles, but obviously there's a clear distinction there.

CHAIRPERSON GRIFFIS: Okay.

MR. KUDER: The distinction speaks to the fact that this is going to be less burdensome on the neighborhood, and I wanted to make sure.

CHAIRPERSON GRIFFIS: So for added clarity, you won't be selling motorcycles. You won't be adding Kawasaki Vulcans or Harley Davidsons?

MR. KUDER: That is correct.

CHAIRPERSON GRIFFIS: Fabulous. Those are monsters.

MR. KUDER: And I think that you'll note that also to substantiate our claim, that the specs in terms of it being one-half the size in dimension and specification of typical motorcycles.

CHAIRPERSON GRIFFIS: Right. I think you clearly said in the submission and again this morning, these are urban

vehicles. I mean well I'll save my personal comments to the end. Oh, and I also noted with some amusement that I believe it was in the written submission, that they would not be ridden on the sidewalk either, which I think was a good clarification and we'll absolutely hold you to that.

Why don't we turn, if you're finished for the time, why don't we turn to the Office of Planning for just a quick review and overview of their report.

MR. McGETTIGAN: Thank you, Mr. Chair. My name is David McGettigan from the Office of Planning. The applicant has met the special exception test as he testified this morning. We feel that this is compatible use. The only condition we're concerned about is one that they not repair, as claimed, things on the property, motorcycles, scooters, and that they're selling motor scooters and not motorcycles.

CHAIRPERSON GRIFFIS: Great, thank you very much and yes, your report was laid out. Oh, I should note, it was also timely, is that correct in my looking at that?

MR. McGETTIGAN: That's correct.

CHAIRPERSON GRIFFIS: Okay. I have been instructed to say that, in fact □ no, I haven't been instructed to say that. Okay, any questions for the Office of Planning?

MEMBER LEVY: Mr. McGettigan looking at your site map, attachment one to your report, is that actually the boundary of the Naval Observatory Property that the site backs up to?

MR. MCGETTIGAN: No, there is no □

MEMBER LEVY: Is it residential? I am trying to determine the land use behind the site.

MR. MCGETTIGAN: Yes, the Observatory is unzoned. It is federally owned property.

CHAIRPERSON GRIFFITH: No, his question is that the Observatory right at the rear of the parking of the applicant's site?

MR. MCGETTIGAN: Yes it is.

MEMBER LEVY: It is?

CHAIRPERSON GRIFFIS: Right. The inner white line is the square designation, and the dark line is the zoning designation.

MEMBER LEVY: Okay, thanks.

VICE CHAIRPERSON RENSHAW: Mr. Chairman.

CHAIRPERSON GRIFFITH: Yes, Ms. Renshaw.

VICE CHAIRPERSON RENSHAW: Question for OP which may bounced to the applicant. You talk about on page two of your report, that test driving of the motor scooters will take part in the parking lot behind the building, and yet in the map that you have provided as attachment one, there are quite a few cars in the parking lot. I wondered if you discussed with the applicant, and have a clear understanding of where this test driving is going to be done. Is it going to be weaving in and out of these parked cars? I just would like to clarify this for the record.

CHAIRPERSON GRIFFITH: Why don't we here from the applicant first, and then if OP has comments on that, if that's okay with you Ms. Renshaw or do you want OP?

VICE CHAIRPERSON RENSHAW: No, sure.

CHAIRPERSON GRIFFITH: Okay.

MR. MWENE: There will be ten designated parking lot area spaces, so it will be a designated area and they will not be weaving in and out of other parked cars. It will be a designated area, where the testing occurs.

VICE CHAIRPERSON RENSHAW: Further question, will you have definite hours during the workday when you would provide time for test driving? Or is it open ended when somebody comes in, wanders in and is interested, then you take them to the lot and they try it out? My point is to hone in on noise. How noisy are these vehicles and whether they are going to be a bother to those cars trying to get into parking spaces?

MR. MWENE: Madam Chairperson if you will I would like to let my colleague address that question if you would.

MR. MITCHELL: First off they meet all of the requirements, as far as EPA, the decibel level and I would say that probably a lawnmower is louder than these scooters. They purr. They really aren't very loud at all. So from a noise stand point, I doubt if you're going to consider them to be objectionable.

CHAIRPERSON GRIFFITH: And in terms of the testing

1 though, it would though it would happen within the retailing
2 hours, correct?
3 MR. MITCHELL: Absolutely.
4 CHAIRPERSON GRIFFITH: So you get somebody that's
5 desperate at two in the morning that has to have a vespa, you are
6 not bringing them down there to test drive it.
7 MR. MITCHELL: Right and we are not encouraging test
8 driving.
9 CHAIRPERSON GRIFFIS: Right.
10 MR. MITCHELL: I mean it is going to be one of
11 those things, that if someone has to do it and they are fully
12 licensed and insured. That is one of those requirements.
13 CHAIRPERSON GRIFFITH: Okay, so it wouldn't be like
14 buying a car where you take it out on the road and drive it around
15 like car dealerships do normally?
16 MR. MITCHELL: Exactly. Exactly.
17 CHAIRPERSON GRIFFITH: And you may even have, well I
18 don't know. Would you have just one demo of the models that you
19 have?
20 MR. MITCHELL: Absolutely.
21 CHAIRPERSON GRIFFITH: Just conceivably you are
22 looking at three or four that would actually be tested at most.
23 MR. MITCHELL: No one.
24 CHAIRPERSON GRIFFITH: Oh, just one.
25 MR. MITCHELL: Yes you wouldn't have a circus parade

going on. It would be one vehicle at a time period.

CHAIRPERSON GRIFFITH: Got you, I see, that would help.

MR. MITCHELL: That would be also the smaller of the two. I mean, we would not have the 150cc it would be the smaller of the two, which is just under 50, it's 49.4cc's.

CHAIRPERSON GRIFFITH: Okay.

MR. MITCHELL: It's a very small unit.

VICE CHAIRPERSON RENSHAW: The Office of Planning report says that this will be a retail sales boutique and you're not going to have any repair or maintenance of these urban vehicles at that site. But are you going to allow drop off of vehicles needing repair at the site to be held and then carted off to your repair facility?

MR. MITCHELL: If in fact the need arises where someone doesn't go or it's not convenient for them to go to our repair facility, which is going to be in Maryland, then we will in fact drop them off and put them in one of our parking spaces, and truck them to the service area and then bring them back.

VICE CHAIRPERSON RENSHAW: One other thing, how do you turn these vehicles on, are they fuel injected or electric?

MR. MITCHELL: You turn the ignition on and the electricity and you start it. It has an automatic starter, and that is it. I mean you just turn it just like a car.

VICE CHAIRPERSON RENSHAW: But they are not

gasoline?

MR. MITCHELL: No, no, no they are gasoline.

VICE CHAIRPERSON RENSHAW: They are gasoline.

MR. MITCHELL: Yes.

VICE CHAIRPERSON RENSHAW: Which leads to another question, where are you going to store the gasoline that you might have to keep on hand, to fuel up your models?

MR. MITCHELL: This would be in the parking lot area, one of the designated parking spaces and we would meet all of the requirements, as far as Fire Marshall, etc. when that happens.

VICE CHAIRPERSON RENSHAW: But the gasoline is under lock and key?

MR. MITCHELL: Oh, yes. There will be nothing in the show room. The vehicles in the show room will not have any batteries, they will not have gasoline in the units themselves in the show room. Strictly a showroom.

VICE CHAIRPERSON RENSHAW: Thank you.

CHAIRPERSON GRIFFITH: Following up on Ms. Renshaw and I think she brings up the importance of adverse impacts of surrounding areas. I note section 727.4 is that no portion of the building used by motorcycle sales/repair shop should be within fifty feet of residents or special purpose district. In terms of residents, I think that is really where we would go to. It has been stated by Office of Planning, I think, and also this

1 submission that this is not within fifty feet, so it is not
2 problematic in that sense. Mr. Etherly.
3 MR. ETHERLY: Thank you very much Mr. Chair. I just
4 wanted to follow up on a couple of the questions that were raised
5 by my colleague Ms. Renshaw. The submissions were excellent, it
6 really lays out very clearly what you're planning to do here. One
7 follow up question, will your customers be taking delivery of
8 purchased vehicles, purchased vespas at this location, or will you
9 be sending them to your Montgomery County location for actual
10 delivery of a product?
11 MR. MITCHELL: The current plan right now, Mr.
12 Etherly, is that we sell the vehicles, and then we prep them at
13 our service area, and then we would deliver the vehicles to the
14 customer.
15 MR. ETHERLY: Okay.
16 MR. MITCHELL: That is the plan right now.
17 MR. ETHERLY: All right and just to clarify on the
18 issue on test driving, it's your plan to have one or two models
19 available on site for actual test driving in the parking lot
20 portion. You won't have your full one vespa across your full
21 product line for customers to test drive.
22 MR. MITCHELL: The product line consists of two
23 vehicles in eight colors each.
24 MR. ETHERLY: Okay.
25 MR. MITCHELL: So we are just going to be offering

one vehicle to test drive and that will be the smaller of the two units.

MR. ETHERLY: Excellent.

MR. MITCHELL: And that's it. We won't be staffed to be able to have people out there.

MR. ETHERLY: To accomodate.

MR. MITCHELL: There you go.

MR. ETHERLY: That is eight colors correct?

MR. MITCHELL: Eight colors each.

MR. ETHERLY: Okay. My other question on the parking lot, thank you for that clarification, the parking lot that also falls under the purview of Athena is that correct?

MR. MITCHELL: That is correct.

MR. ETHERLY: Do you have a written agreement or any kind of writing that kind of spells out precisely the contours of your understanding as it relates to the ten or so parking spaces that you will have both for customer parking and also for use as that test drive area?

MR. MITCHELL: It's part of the lease agreement.

MR. ETHERLY: It's part of your lease agreement, okay. I'm just kind of thinking out loud, Mr. Chair. as to whether or not that might be something you want to have included in the record just to complete that picture. Thank you, Mr. Chair. Thank you, gentlemen.

CHAIRPERSON GRIFFITH: You don't have that lease

attachment with you today, do you? That's fine. I don't think that it's unreasonable, if there is no objections by the applicant that we just have, it's probably the lease attachment that goes to the parking provisions that may lay out the specificity of the number of spaces and we can add that into the file. Any other questions? Let's go to I don't see the ANC report which was just received by the applicant. Ms. Renshaw have you had time to review it?

VICE CHAIRPERSON RENSHAW: Well I'll be reading it as I am speaking about it. It was just handed to us, ANC-3B dated Thursday January 10th, a regularly scheduled meeting at the Guy Mason Recreation Center. The commissioners were present and constituting a quorum and they list the number of commissioners which it looks like it was a full complement of commissioners.

CHAIRPERSON GRIFFITH: Actually let's describe this as submission, because this is not a letter, it is actually the minutes of the entire meeting. If you go to the second to last page, it outlines the fact that there was a presentation. Noise was brought up as an issue of discussion.

VICE CHAIRPERSON RENSHAW: And also, the concern about the clients test driving on neighborhood streets.

CHAIRPERSON GRIFFITH: Pick up and delivery, and we do have responses from a representative that has been actually stated here today also in terms of issuance. Those requirements that they can form with all DMV regulations, deliveries, and repairs as stated by the applicant. So then, if I'm not mistaken

they resolved ANC-3B to support the vespa Washington's request for special exception.

VICE CHAIRPERSON RENSHAW: Yes, they adopted a resolution and the vote was 4-0-0.

CHAIRPERSON GRIFFITH: Fabulous. Okay so not having an official letter of ANC, I'm not sure we can give the great weight, but we will certainly take this under consideration.

MS. SANSONE: Mr. Chairman the requirements are set out in the regulation. It seems as though the minutes meet quite a lot of those. They state the quorum, the date of the meeting. So, I think that you could waive that technical requirement.

CHAIRPERSON GRIFFITH: I think we should then for the sake of great weight then.

MR. KUDER: We would so request.

CHAIRPERSON GRIFFITH: Unless there is any outrageous objections, they we will grant it the great weight, to which it is afforded. Any other reports that we have? I'm not seeing any indications that we had any other submissions of that, so we can go to not seeing anyone else in the hearing room for this application, I do not believe we have testimony in support or opposition. So I would turn it over for any closing remarks, that you might have.

MR. MWENE: Thank you Mr. Chairman. We would request a bench decision, and we'd request a summary order as well, please.

CHAIRPERSON GRIFFITH: Great. Any last summation. That's fabulous, okay. First of all board members last questions of the applicant? I would move that we approve.

MEMBER LEVY: Unfortunately and I hate to have to bring this up but this application requires NCPC approval.

CHAIRPERSON GRIFFITH: Before we have a motion.

MEMBER LEVY: Yes.

SECRETARY PRUITT: Correct, and that was what I was just going to raise. I believe that the first available decision date, based on what Mr. Levy's and the NCPC's action would be April 2nd.

MR. MWENE: Mr. Levy it is my understanding that pursuant to section □ pursuant to the regulations under Title XI . 15 that because it is an existing structure, it's an existing building, and was already existing as a retail outfit, that we did not need a particular NCPC approval. That is my understanding. That is what I was told.

CHAIRPERSON GRIFFIS: Let's take a look at it.

MR. MWENE: If you note from the record it is under □

CHAIRPERSON GRIFFITH: 1531 would start or is it 33 we need to look at? If I'm not mistaken the reason that NCPC is looking at it is because it is in the observatory precinct overlay, correct?

MR. MWENE: That's correct, if you look to the

regulations Title XI . 1533, if you look at Exhibit H, that provides our statement. The building is a pre-existing structure and it's in full requirements, full compliance with the requirements of 1531. Basically the regulations state that in the event that the special exception is met under 727, and it meets all the requirements of 1531, there is no additional special exception. So there would not be a special exception pursuant to the NCPC regulations.

CHAIRPERSON GRIFFITH: Let's clarify what he just said, I think it's one special exception.

The problem is under our special exceptions, there is the requirement which Mr. Levy is about to read to you.

MEMBER LEVY: Right which is 1533.3 which requires that upon receipt of the application the board shall refer the application to the National Capital Planning Commission for review and report.

But actually there's something, we need to look at the specific paragraph that pertains to the Overlay District and this is not it.

MR. MWENE: The specific that would pertain to the overlay district, I don't have the regulations in front of me, but 1531 specifies that because it is a pre-existing structure that had already met with all of the requirements of being an overlay district, so I don't quite understand why that would be a problem. It's satisfied all of the requirements of being an overlay

1 district as an existing structure.

2 And the use, the proposed use is consistent with

3 the regulations, so there is no conflict in terms of the proposed

4 use. I was told and from my reading of the regulations, there

5 should not be a problem. It should be by virtue of satisfying the

6 special exception requirements. We would also meet any

7 requirements for NCPC approval is my understanding.

8 CHAIRPERSON GRIFFITH: When you indicate that you

9 were told, who were you told that by?

10 MR. MWENE: By Mr. Naro and the zoning board.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. MWENE: And he mentioned to me that there was no

13 additional filings. That this was the only submission given, our

14 mutual understanding of that regulation.

15 MEMBER PARSONS: Mr. Chairman, I don't know if the

16 zoning commission wrote this properly or not, but certainly the

17 intent was the genesis of this overlay district was building

18 heights, the view into the White House not the White House, the

19 Vice President's home. I don't recall it dealing with use at all

20 in an existing building. But I hope that, and certainly the zoning

21 commission ought to fix this. It required of Planning Commission

22 review of replacement of a retail use in an existing structure

23 that certainly wasn't the intent.

24 MEMBER PARSONS: Would an apology help?

25 CHAIRPERSON GRIFFITH: As a zoning commissioner

representative today.

MEMBER PARSONS: It's really too bad.

CHAIRPERSON GRIFFITH: Can we give you a list of things to apologize for or do you just want to stick with this one?

MEMBER PARSONS: That is why I'm only here for the morning.

CHAIRPERSON GRIFFITH: Okay, well I think yes, I think we need to get to the bottom and I think that's well said. Although I could imagine some uses that may not be appropriate, maybe I can't, but conceivably this, you know, even in 700 this doesn't really come up to the bar of what that was written for motorcycles that's reviewed by NCPC, I think that it doesn't really come up to the bar of why the regulations were written. But until they are changed, apology or not, we just need to make sure that we're not doing something that will, actually could come back and hurt the applicant in the long run anyway. So actually, let us take two minutes just to get quick clarification and I think we may have it coming in.

(Whereupon, the above entitled matter went off the record.)

CHAIRPERSON GRIFFITH: Thank you for a quick moment of advice and corroboration. There are a couple of things. First of all I just want to absolutely clear that as you had stated, that you had talked to the staff here and they had indicated that

there was nothing else further needed, which may be miscommunication.

I'm not sure what's happening. It's clear that you had a full application, which is why we are hearing it today, and if any statements were made to that effect that's what it spoke to, that further submissions were required by you, the applicant, is clear also and correctly stated. There were no other submissions needed. However, it has come to the fact that yes, NCPC does need to review this.

So this is what I propose, first of all for clarification, NCPC will provide a report and memo, however they do it, to us. It is an advisory piece to this board. Now one of the things that it could in fact bring up, is any sort of adverse impacts that would need to be addressed by this board in terms of conditions of an order if this went for approval. I can't anticipate, I can't predict any of that.

This board, I can say generally speaking has a very fine eye to any sort of adverse impacts, and has been not shy about putting conditions on orders. So my point being, I think this board is very capable of finding things that may have been there. However, again we cannot predict. Now I think our NCPC representative has given an indication that it is a March date that NCPC, March 21st, okay.

VICE CHAIRPERSON RENSHAW: Mr. Chairman, I was asking Mr. Levy if a decision would be made by NCPC on March 21st.

MEMBER LEVY: Yes, the commission would vote on the project on that date.

MR. PARSONS: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

MR. PARSONS: I wonder if there is a way that this board can take an action subject to NCPC's action. We do that at NCPC all the time, subject to other compliance activities. I'm not sure we ever have.

CHAIRPERSON GRIFFITH: It's one piece, and I think the issue comes up whether they would be knowledgeable of any sort of adverse impacts that we may need to condition. But clearly we could then, no actually we could go to corporation counsel to ask the legal view of it. Could we then add conditions to some sort of

VICE CHAIRPERSON RENSHAW: Mr. Chairman I would also ask whose vote is controlling?

CHAIRPERSON GRIFFITH: What do you mean?

VICE CHAIRPERSON RENSHAW: In other words

CHAIRPERSON GRIFFITH: Between us and NCPC?

VICE CHAIRPERSON RENSHAW: Yes.

CHAIRPERSON GRIFFITH: That is very clear, ours is and again I will state that NCPC gives an advisory report to us.

VICE CHAIRPERSON RENSHAW: Right, but I wanted to make very sure that that was in the record that our vote is controlling.

MS. SANSONE: Mr. Chairman I think you could use the procedure you just suggested. However, it may end up causing more confusion and redundancy in the process.

CHAIRPERSON GRIFFITH: Okay and that is what I am trying to do is just keep □ this seems to be very straightforward until we got to this point. And I want to keep it straight forward, as corporation counsel has said clean, make it a clean order and we can move on with this. So this is my suggestion. One, if it's the 21st of March, is that correct? That we would then not having a direct calender in front of me □

MS. PRUITT: 26th of March.

CHAIRPERSON GRIFFITH: So on the 26th, we would set this for a special meeting, which would □ Yes.

MR. MWENE: I would like to make one comment. As we did state in the application, time is of the essence for my client and given the nature of the motor scooter business, given a series of supply contracts that have already been executed, we would kindly request that if it's at all possible to issue a controlling vote today. To the extent that again, that it is a pre-existing building, and did comply with every respect with 1533.

We are under very tight time constraints, if there is any way we can expedite this. Given the fact that we were given advice, that in fact that, while an advisory was not in any way necessary because again the structure, and the use of the structure, the structure itself was completely in compliance with

1 those regulations.

2 CHAIRPERSON GRIFFITH: Right. Okay two things on

3 that, first of all I'm not sure, and again it might have been a

4 miscommunication, I'm not sure you were given the advice that you

5 wouldn't need NCPC. I don't want to discuss that anymore. Can you

6 just give me a few specifics of milestone dates in terms of like

7 opening, what the impact would be if we go the 21st? If you are

8 aware of those, I think those would be good to know.

9 MR. MITCHELL: There are several things that are in

10 the works right now. We have orders that we put in the end of

11 December, that will be coming into our warehouse. We have hired

12 personnel, both in the service as well as the sales area.

13 CHAIRPERSON GRIFFITH: When were you going to open

14 for business?

15 MR. MITCHELL: We are planning on opening the end of

16 March beginning of April.

17 CHAIRPERSON GRIFFITH: Okay, and conceivably if you

18 don't have this order, you don't have a CFO, you can stock the

19 store. Is that correct?

20 MR. MITCHELL: I am not sure what the requirements

21 are going to be in terms of the COO, and what we are able to do.

22 CHAIRPERSON GRIFFITH: Right, basically I'm not a

23 code expert, and I'm not giving you advice, but my understanding

24 would be that, you just would not be able to open for business

25 without a CFO. Obviously CFO comes after interior construction and

build out of any certain changes that are happening. So if you are looking at end of March, early April, we may be able to do something.

That is what I need to know, I believe that corporation counsel has a comment.

MS. SANSONE: Yes, Mr. Chairman. I just wanted to clarify. I appreciate the difficulty that applicant has. The oral vote on the application is not the ultimately controlling decision. It's the written decision. The issuance of the written decision is the board's vote and it becomes effective ten days after it has been signed. So even if the board were to give you a favorable vote today, it really has no legal significance until that written order is actually issued and takes effect.

CHAIRPERSON GRIFFITH: So they're going to be waiting for the written order actually to even pull the CFO.

MS. SANSONE: That would be correct.

CHAIRPERSON GRIFFITH: So that adds time actually.

MR. MITCHELL: If I could interrupt, and add some further information. In order, when you time openings, you also have to time marketing, and you have lead times as far as advertising, et etcetera. So for example deadlines for ads that will be breaking in April are coming up right now. So, you know, we have several dollars on contract with say Washingtonian Magazine to run ads. So any delay in there, those are dollars that are going to ad confusion to the public in terms of whether or not

we are open or not.

MS. PRUITT: Mr. Chairman. I'm sorry sir. Staff could probably get them a written order within a day or so of your decision. So that then it would only be thirteen days from the actual oral decision, that the order would become effective and you would be able to get your CFO. That's is sort of the crunchiest time we can give you.

CHAIRPERSON GRIFFITH: Well look, this is my thinking in that, as we've said this kind of just meets the requirements to be under certain sections that it is, the 700 is what I am talking about specifically, that there is no opposition, that there in fact is support.

I'm of the frame and that this is a retail and a new business for this city, so it's kind of breaking ground. We don't even have precedent to say, yes look there are ten other ones. They do this kind of stuff all the time and I know that may not have any bearing on this case. But the point being scheduling and how we don't create actually a problem that is non-direct to our case. So, I would like to somehow expedite this, in terms of the total time frame that's required. So I'll look down again for last comments and advice on this. Yes, I'm sorry Mr. Parsons.

MEMBER PARSONS: I must have missed something. Mr. Levy when is the Planning Commission taking this up?

MEMBER LEVY: My understanding, Mr. Parsons is March 21st, but if I am incorrect please correct me.

MEMBER PARSONS: Why wouldn't they do it at their March meeting on the 7th? Is it that they haven't had it in time?

MEMBER LEVY: No it's that I had the wrong date for the March meeting, so the 7th would be correct if that is the meeting date?

MEMBER PARSONS: Okay and then could this board then deal with it on the 12th the following Tuesday at a little special meeting?

CHAIRPERSON GRIFFITH: Absolutely.

MEMBER PARSONS: And then theoretically have the order on March 13th or 14th? Sounding better?

MR. KUDER: That sounds much better. I have one question and that is, I am not familiar, since we were told we didn't have to go to the NCPC, how soon do we have to have something to them before they will put it on there agenda?

CHAIRPERSON GRIFFITH: No it's on. They have your application.

MR. KUDER: It was referred?

CHAIRPERSON GRIFFIS: Right, it's not something, with my understanding, the process is not something you submit, it is referred by the Office of Zoning to NCPC per the regulations, so it's there.

MEMBER LEVY: It's being reviewed and my apologies for misstating the date.

CHAIRPERSON GRIFFITH: Okay, I'm sorry, I should

have done that because I was given two different dates but I was going with worst case scenario. So, I do believe it is the first meeting, that Thursday correct?

MEMBER LEVY: 7th, yes.

CHAIRPERSON GRIFFIS: First Thursday of March which would be the 7th, in which case that seems to satisfy everybody's or almost everybody's.

MEMBER LEVY: And also if I could just add the applicant, it's a public meeting, a public hearing so that the applicant is welcome to attend.

CHAIRPERSON GRIFFITH: Good. All right so to restate everything, one we are looking for the lease attachment, which can be submitted now we have the time. On the 7th we will look for NCPC to submit their report to us, and on the 12th we will set this for decision making. Correct? Is that absolutely clear. Our decision making happens at 9:00 in the morning, so it will be at 9:00 on the 12th, 2002. Is there anything further we need to discuss at this time? Fabulous, then we will see you on the 12th.

MR. KUDER: We thank the board for it's consideration and obvious work. Thank you.

CHAIRPERSON GRIFFITH: Good, thank you. Have a great day. This will end the morning session of the 26th of February, 2002.

(Whereupon, the above entitled matter went off the record.)

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

1:35 p.m.

CHAIRPERSON GRIFFITH: We will call this hearing to order. This is the 26th of February public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Jeff Griffis. I am the Chairperson and joining me today is Ms. Renshaw who is the Vice Chair. Also, Mr. Curtis Etherly is with us. Representing the National Capital Planning Commission is Mr. Levy and Mr. Hanahan this afternoon is representing the Zoning Commission.

Copies of today's hearing are available to you, they are at the table as you entered into the hearing room today.

Please be aware that this proceeding is being recorded and we must ask you to refrain from any disruptive noises or actions in the hearing room.

When presenting information to the board, speak into the microphones and state your name and home address before presenting your testimony, and we'll give you all the technical details once you get up here.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at the end of the table in front of us. They are also on the table as you entered into the hearing room. Upon coming forward to speak to the board, please give both cards to the reporter who is sitting to my right. The headphones give her away.

The order of procedures today, we do have two appeals this afternoon. I'll go through each of those. They will have different orders. One is a continuation of an appeal, which we will start with this afternoon. The other, I do believe is a variance.

So the order of procedure for special exception 10 variances will be: First, we will have statements of witnesses of the applicant; second we will have government reports, including Office of Planning and any other government reports that are submitted; third would be the report of the ANC; fourth would be persons or parties in support; fifth would be parties or persons in opposition; and sixth and in conclusion, would be closing

1 remarks by the applicant.

2 Cross-examination of witnesses is permitted by the
3 applicant or parties. The ANC of within the property is located
4 is automatically a party in the case. The record will be closed at
5 the conclusion of each case except for any materials specifically
6 requested by the board. The board and the staff will specify at
7 the end of the hearing, exactly what is expected and the date when
8 the persons must submit the evidence to the Office of Zoning.
9 After the record is closed, no other information will be accepted
10 by the board.

11 The Sunshine Act requires that the public hearing
12 on each case be held in the open before the public. The board may,
13 consistent with it's rules of procedure in the Sunshine Act, enter
14 into executive session during or after the public hearing on a
15 case for purposes of reviewing the record or deliberating on a
16 case. The decision of the board in these contested cases, must be
17 exclusively based on the public record. To avoid any appearance to
18 the contrary, the board requests that persons not engage the
19 members of the board in conversation.

20 I'd ask that everyone turn off any cell phones or
21 beepers at this time, so as not to disrupt proceedings. I think we
22 will look to any preliminary matters for this afternoon's
23 schedule. Preliminary matters are those which relate to whether a
24 case will or should be heard today, such as requests for
25 postponement, continuance, or withdrawal, or whether proper and

adequate notice of the hearing has been given. If you are not prepared to go forward with a case today, or if you believe that the board should not proceed now is the time to raise such a matter.

Let me first ask the staff, Ms. Bailey if you have any preliminary matters for us in this afternoon's sessions?

MS. BAILEY: No, Mr. Chairman we do not.

CHAIRPERSON GRIFFITH: Okay, thank you. Yes sir, a preliminary matter. If you wouldn't mind turning on your mike.

MR. GIESE: Hi, I was here on the Joyner Trautwine application for variance this afternoon.

CHAIRPERSON GRIFFITH: Yes, and your name?

MR. GIESE: My name is Robert Giese.

CHAIRPERSON GRIFFITH: Yes, Mr. Giese.

MR. GIESE: The other parties aren't here, so I was wondering if you might want to carry this over until the time that the matter is brought up?

CHAIRPERSON GRIFFITH: What is your preliminary matter?

MR. GIESE: Preliminary matter is that the matter isn't right for consideration, also there are procedural infirmities in the matter also.

CHAIRPERSON GRIFFITH: Okay are these included in some of these submissions that you already have on the record? Or are they additional?

MR. GIESE: Included in the submissions,

CHAIRPERSON GRIFFITH: It doesn't matter. Well this is the situation for the schedule today, we are starting with the continuation of the appeal of Southeast Citizens for Smart Development. We'll have them up first, then we'll have application 16810 is what you are speaking to.

MR. GIESE: Yes.

CHAIRPERSON GRIFFIS: I would suggest that yes, that when the rest of the participants show up we can bring everybody up to the table. When the case is called, we'll deal with any preliminary matters that you might have.

MR. GIESE: Good, thank you.

CHAIRPERSON GRIFFITH: Sure. Okay. In which case, let's call the first case of the afternoon.

MS. BAILEY: Appeal of Southeast Citizens for Smart Development Inc. and Advisory Neighborhood Commission 6B, pursuant to 11 DCMR . 3100 and 3101, from the administrative decision of Michael D. Johnson, Zoning Administrator, allowing the location of Father Flanagan's Boys Town home Phase I (a residential group home) in a C-2-A District at premises 1308, 1310, 1312, and 1314 Potomac Avenue, S.E. (Square 1045, Lots 134, 135, 136, 137). Mr. Chairman all of the witnesses have previously been sworn in, this is a continuation of the proper caring and it's ready to go forward.

CHAIRPERSON GRIFFITH: Thank you very much. So

everyone's clear, when you've been sworn in before you don't need to again. Very Good. In which case, two things and we may have more, first I appreciate the submissions by all the participants in regards to their position, on the board's suggestion that we might ask Office of Planning for some report or submission into the record.

The board has received all those memos, and clearly read them. I think I speak for the board, but it will correct me if I don't, again we'd absolutely appreciate it and I think it is very clear from our own looking at the regulations and the submissions that were provided to us, that this board has full and all jurisdictions to ask for a report or memo as we would define it from the Office of Planning.

The second issue to that is whether we actually invoke that authority on how we define any sort of request that we make of Office of Planning. To that, I am proposing unless the board feels differently, and I will hear comments of that if so, I will postpone any sort of decision on that on whether we look to Office of Planning or not.

So, bottom line I think the lawyers would say I reserve the right to ask for a report or memo. And at this point, I am not proceeding with that. So, any other comments? Okay, and if I don't recall, I started off with two issues.

Yes, let's run through the afternoon schedule, just so that everyone is clear. When last we left, we were coming to

today's session with two last and final aspects of this in terms of the public hearing, and that would be any sort of rebuttal testimony, and second would be closing remarks.

Ms. Ferster, I understand and why don't you come up to the table just to make total clarification. When we left, gosh was it only last week, you had indicated that you would not be having any rebuttal testimony today. Is that correct?

MS. FERSTER: That's correct.

CHAIRPERSON GRIFFITH: Have you changed your mind on that? This is to be direct, I am giving you again another opportunity to conduct any sort of rebuttal testimony that you would like at this time.

MS. FERSTER: No, we are not presenting any rebuttal testimony.

CHAIRPERSON GRIFFITH: Then we will move on and we are looking at closings. Correct me if I'm wrong, we had indicated that timing on the closings as the record would show that we have fifteen minutes for each of the participants. Is that everyone's understanding? Okay. What I am proposing at this is that we grant those fifteen minutes of closings.

I am going to afford Ms. Ferster an additional five minutes at the end for any other closing remarks so that you can follow up at the end. So, it would be a total of twenty minutes and if you want to move that time around, you can indicate to me that you want to do that, but at this point that's what I have

anticipated.

Any comments or anything on that, okay not seeing any indications of that. Board members questions? In which case, let us begin. Did we decide on an order for that? Ms. Ferster you'll be first, I think we'll take the government, and then the Father Flanagan's, and then we'll follow up with five minutes from you Ms. Ferster. So whenever you are ready.

MS. FERSTER: Thank you, I'll be presenting this closing both on behalf of the Southeast Citizens for Smart Development and the Advisory Neighborhood Commission who is a party to this proceeding.

CHAIRPERSON GRIFFITH: I am sorry, let me just interrupt and hopefully for the last time. As you recall also last week, the board has indicated that we may have questions that we would present today. We did discuss about having extra witnesses here, if those questions went to that. It was decided and clearly understood, it was my understanding from all of the participants that we would not need the extra witnesses here, but the advocates of each of the participants would be able to answer those questions.

So, just in preparation we obviously won't eat in to any of the time for your closings, I would suggest to the board we hold our questions to the very end, after each presentation of a closing remark, and then move on towards the end. Is that okay, or would you like to take all the closings and then have questions

of all three participants?

VICE CHAIRPERSON RENSHAW: Mr. Chairman, I would vote for having all of the closings plus Ms. Ferster's wind up and then have questions.

CHAIRPERSON GRIFFITH: Very good, I think that's logical. So we'll do that. Is that clear with everybody? Very good, that is the last time I say anything for a while.

MS. FERSTER: Okay, I'm going to put aside the legal argument for the moment about what the zoning administrator can or can not consider, and let's start first with the reality of this community based residential facility. The reality is that Boys Town's Capitol Hill project will be a self contained fenced compound housing 24 children accessed by a single driveway that's cut off from the surrounding community.

In all respects, the facility will resemble an institution, and one in which the children will largely interact with each other, and have little opportunity to interact with the surrounding community. Boys Town's own community update material, which was submitted to the Board last week, describes it's Capitol Hill facility as in the singular, for example, as "The Facility" or "The Residence" which provides longer term care for, and I "24 Children."

Now the issue for this board to decide an appeal is whether the zoning administrator is legally required to ignore this reality. That Boys Town intends to operate a single CBRF for

24 children, simply because it will be constructed on four separate lots of record. We believe that the regulations and established principles of zoning give the zoning administrator in this ward the authority and the discretion to consider this a single facility, regardless of accorded lot lines. Not only is this interpretation permitted, it is required in this case to prevent Boys Town from evading the occupancy limits on matter of right uses that are set forth in section 732.1 of the zoning regulations.

The zoning administrator's case rests on a single regulation section 3202.3 of the zoning regulations. This regulation is a red herring. Section 3202.3 just does what it says it does. It requires separate building permits for each structure proposed within each lot of record. This regulation does not deal at all with the area or use requirements that govern matter of right development in a particular zone.

Instead, as the zoning administrator acknowledged here, other provisions, specifically section 700 of the zoning regulations, gives the zoning administrator's determination about whether the particular use is permitted as a matter of right governs that determination, or whether zoning relief is required. And nothing in section 700 confines the zoning administrator's determination to the use of structure occurring within recorded lot lines. In fact, the owners own zoning expert, and former zoning administrator Armando Lorenzo (phonetic), conceded that a

single facility obviously conclude more than one building or structure, and presumably at least according to the district as a CBRF owner does chose a multiple building design for its CBRF section 3202 of the zoning regulations, would require that each of those structures be built on its own lot of record.

But it does not, however, follow that this is four separate facilities. The size of the facility for zoning purposes quite simply should not depend on a particular architectural design chosen by the CBRF operator. That would stretch the meaning of section 3202 well beyond the plain language and intent. And in fact, the zoning regulations support our position that the zoning administrator has the discretion to consider a CBRF that is spread out over several adjacent records lots, as a single facility.

First, we have pointed out that the definition of lot lines to the zoning regulations specifically recognizes that a lot for zoning purposes is different from and may not be coterminous with a lot of record. And thus, the lot that provides the reference for the zoning administrator's review may by definition may include several contiguous lots in common ownership.

Also, the use of the word facility also supports this discretion. The Webster Dictionary definition of facility, which would control in this case, and which was cited in the testimony of the Capitol Restoration Society, plainly focuses on the function to be served by something that is built or

established without regard to the number of structures used to serve that function. And you had asked for the citation for this definition, and according to the Restoration Society representative, this definition was taken from Webster's Third New International Dictionary, published by James T. Miriam Company 1971.

The discretion of the zoning administrator to consider a single facility as a single facility, regardless of whether or not it's spread over several lots of record, is also supported by basic principles of zoning law. My legal research has identified numerous cases in which the court has upheld and even required local governments to consider several adjacent lots of records that are or were in commonly □ in common ownership of a single lot.

And I quote from one case, this case is called Heald versus Zoning Board of Appeals of Greenfield. It's cited at 380 N.E. 2nd 170 from the Massachusetts Appellate Court dated 1978, and I have copies of the case, which I will distribute at the end of my presentation.

And in that case, the court specifically observed, and I quote: "In the absence of a specific zoning code provision defining a lot in terms of sources of title or assessor's plans, the supreme judicial court has consistently held that adjoining parcels may and indeed in certain instances, must be considered one lot for zoning purposes." And in that particular case, the

1 court held that the town was required to consider separate
2 commonly owned lots of record as a single lot.
3 This a well accepted principle that has substantial
4 case law support from other jurisdictions and in a variety of
5 context. And this should be applied here to insure that artificial
6 divisions of lots do not undercut zoning goals. Now as Mr.
7 Lorenzo conceded, the zoning treatment of multiple applications to
8 build CBRF structures on adjacent and commonly owned lots, seems
9 to have never before come up as a zoning issue here.
10 This case, therefore, will set new precedent in
11 this area and for any use really that is subject to occupancy
12 limits. And I'm going to give you a few examples. Let's take an
13 assisted living facility, or a nursing home which under section
14 201N, would be permitted as a matter of right in an R1 district if
15 it houses less than six persons. If you agree with this district
16 that the zoning administrator can not look beyond accorded lot
17 lines, the facility operator could buy a tract of land in an R-1
18 district subdivide in twenty lots of record and build a facility
19 for 120 persons that would normally be subject to BZA approval,
20 but due to the precedence set here, would have to be allowed as
21 matter of right.
22 And what about the many private schools that are
23 subject to enrollment cap, set by the BZA as a condition of their
24 special exceptions. These schools will now have a blueprint for
25 increasing their enrollment beyond those caps. Just acquire an

adjacent parcel and put more kids in a separate structure a demountable unit without any BZA review at all.

Just briefly, let me respond also to the argument advanced by Boys Town that treating record lots in common ownership as a single lot, for zoning purposes, somehow runs afoul of the principle that zoning pertains to property and cannot be made personal to the owners of property. That principle has no applicability here. That principle just bars this board from making zoning decisions that don't run with the land but pertain to a particular property owner.

For example, the case cited by Boys Town, they deal with conditions or variances or special exception conditions imposed by the board which have provided that if the applicant sells its facility to a new operator, the new operator must secure a variance, a special exception to make the same use of the property and can not take advantage of the same BZA order. That concern is clearly not implicated here, because no one is asking the BZA to limit any ordered issues to Boys Town.

But instead any zoning order that you would issue today would also apply to any other service provider who may subsequently operate the facility currently operated by Boys Town. In short, there is no regulation that specifically compels the zoning administrator of this board to ignore the reality here that four structures are part of a single community based residential facility.

To the contrary, there are strong policy reasons why the zoning administrator should not blindly focus on the occupancy level within a single lot of record. Since this limited focus would allow developers to use subdivided lots in a way that evades the BZA review under circumstances where the zoning regulations plainly contemplate this oversight. At the same time as Boys Town points out, the zoning administrator is not compelled in all circumstances to treat commonly owned adjacent lots as a single lot.

An example of the group's submission, by developer of several applications to build single family houses on adjacent lots certainly is one situation, where there is no reason why the zoning administrator would treat these applications as being a single facility.

In other words, the zoning administrator has the discretion under the zoning administrator □ under the zoning regulations to view a development that covers several lots of record as a single facility, where doing so would farther zoning and planning goals. And it also has the discretion to consider the permit application separately, where doing so would not undermine those goals.

Under these circumstances, the zoning administrator and this board must be guided by and must make the interpretation that is most consistent with the goals and objectives of the comprehensive plan. Now we are going to brief this issue

1 separately as directed by the board, but we can say right now that
2 our preliminary research has revealed moral support for Boys
3 Town's argument that the comprehensive plan is utterly irrelevant
4 to the zoning administrator's review of building permit
5 applications.
6 In fact, the District of Columbia in its response
7 to Boys Town's memo on the comprehensive plan issue, has conceded
8 and I am quoting: "It is unequippable that the comprehensive plan
9 may be used by the zoning administrator as a guide in rendering
10 decisions about zoning in the District of Columbia." And here, the
11 comprehensive plan goals would not be served by treating this
12 facility as four separate community based residential facilities.
13 We've referred particularly to the human services
14 element of the Ward 6 comp plan which states the following goal:
15 To prevent further concentration of Community Based Residential
16 Facilities in Ward 6 neighborhoods and require further development
17 of CBRF to be in accordance with the district-wide CBRF plan. And
18 the zoning regulations implementing this goal, in the C-2
19 district, specifically seek to encourage small disbursed CBRFs,
20 and provide CBRFs for more than 15 children, must be approved by
21 the special exception process.
22 So allowing the matter of right construction at a
23 CBRF for 24 children under a principle that, if allowed here,
24 would eventually allow unlimited expansion as a matter of right by
25 simply allowing the developer to acquire and build on separate

1 lots of record would directly undercut the goals of both the comp
2 plan and of the zoning regulations governing CBRFs.
3 Let me conclude by stating that we believe that the
4 views of the Office of Planning would be most instructive on this
5 issue, as set forth in our letter that we submitted on Friday, and
6 we believe that it would be useful to request OP's assistance in
7 resolving what is clearly here a matter not only of first
8 impression before this board, but of fairly substantial
9 precedential effect. And I'm just going to give you copies of
10 these cases that one of the cases that I've cited in my closing.
11 Thank you.
12 CHAIRPERSON GRIFFITH: Thank you very much. Ms.
13 Brown are you ready? And you all received copies of this
14 submission that just came in? And that would be Exhibit 62.
15 Whenever you are ready.
16 MS. BROWN: Good afternoon, Mr. Chair, members of
17 the board, Marie-Claire Brown, Assistant Corporation Counsel on
18 behalf of the zoning administrator. First of all, it should be
19 noted that counsel for the appellant stated that the District of
20 Columbia represented a matter in a document which has yet to be
21 filed. The District of Columbia has not yet responded to Boys
22 Town's statements, so I'm not sure based on her statement what she
23 refers to.
24 Notwithstanding, I think that Ms. Ferster actually
25 summarized this very well for the District of Columbia. She said,

1 "let's put aside the legal arguments." This case was not about
2 fact, it's about law, and the question before the board is simply,
3 whether or not the zoning administrator's decision was in fact
4 correctly made.
5 You've heard all the evidence in this case, and as
6 you deliberate, you must keep in mind that this case is about one
7 issue only; again, whether the zoning administrator properly
8 issued four building permits to Father Flanagan's Boys Home, to
9 construct four single family dwellings at 1308, 1310, 1312, and
10 1314 Potomac Avenue S.E..
11 In determining whether a permit is to be issued,
12 the zoning administrator is guided by one thing only, and that is
13 the zoning regulations that are in effect in the District of
14 Columbia. Those are the laws.
15 The evidence presented that is relevant to the
16 decision that you must make has been uncontroverted. The zoning
17 administrator followed the regulations that he is required to by
18 the book. That term was used more than once. The appellant expert
19 believes that he, the zoning administrator, should have done more.
20 He suggested that the zoning administrator should have bent the
21 rules a little, or used a different interpretation of the
22 regulations. But he suggested that he's required to do more than
23 he's obligated to.
24 The applicant has asserted that the zoning
25 administrator should have reviewed the application, in the context

of the nature of the project, in the final result of the project in making his determination as to whether or not to issue the permits. The laws in the District of Columbia, however, require that a building permit application be filed for each structure to be constructed.

The decision as to whether or not a permit is to be issued is based on each structure applied for. To do otherwise, would have been an improper use of the zoning administrator's discretion or authority.

The zoning administrator supported by the testimony of the owner's expert witnesses, and to an extent even the applicants expert, has shown that regardless of how inappropriate a particular project may appear to the members of the community, the only test is whether the use of the land is permitted by the laws in the District of Columbia, not the facts as they are presented, the laws in effect in the District of Columbia.

While the testimony about the manner of operations of the Boys Town facility or other Boys Town projects have been developed, whether this project is consistent with the District's comprehensive plan, the mayor's neighborhoods initiatives, or any other plans for the city, are all interesting facts. They are all facts that we should all be concerned about, but they are irrelevant to the zoning administrator's decision.

You heard testimony on the inappropriateness or the

appropriateness of the project, the operation of the project and the impact on the neighborhood, and its future. The fact remains, however, that while those are legitimate concerns, they do not have impact here. The bottom line is that the construction of those four buildings is permitted as a matter of law. Had those permits not been issued in this case, the zoning administrator would have been attempting to illegally rewrite the zoning laws of the District of Columbia and that power is reserved exclusively to the zoning commission.

To deny the four applications for building permits would have been in direct contravention of the law, and a clear error which this board would recognize. In fact, the testimony that we heard from the applicant's expert, or the appellant's expert is entirely consistent with the zoning administrator's decision. Mr. White testified that the zoning administrator followed the regulations by the book. That is what is required and that is what has occurred.

The acting zoning administrator walked you through the process that was required before a decision was made to issue the permits. This was also elicited from Mr. Lorenzo and to an extent from Ms. Hicks. Again, the bottom line, is that the zoning administrator is constrained to review the application in the context of the use of the land not the user of the land.

The evidence presented is clear, that the four building permits issued for four structures were properly issued.

1 You will recall that Mr. White in response to Mr. Hannaham's
2 question stated that the zoning administrator did not violate any
3 regulation in his decision. That is the law in the District of
4 Columbia, and that is what controls this case before the board.
5 Mr. Furness (phonetic) testified that the comprehensive plan and
6 the Ward 6 plan, should be respected.
7 The law of the District of Columbia, however, is
8 very clear that while we may respect the comprehensive plan, were
9 there is an inconsistency between the zoning regulations and the
10 comprehensive plan, or the Ward 6 plan, the zoning regulations
11 control as far as the actions of the zoning administrator. Only
12 the zoning commission can change that.
13 The issue has been presented before, we've briefed
14 this to an extent in our submissions to the board, and it's clear
15 that a decision has been made to leave things as they stand. Any
16 decision that would be made contrary to that would be inconsistent
17 with the Zoning Commission, and would be a mockery of the Zoning
18 Commission and the D.C. Court of Appeals that decided that.
19 The concerns raised and testified to by the
20 appellants are legitimate concerns that would be relevant in a
21 special exception hearing. They are not however, relevant to the
22 issue to before the board today. They are not relevant because the
23 property for which the building permits were applied are permitted
24 as a matter of law, and the Zoning Administrator was clearly
25 correct in his decision to issue those permits. Had those permits

1 not been issued, then it may have been a matter for special
2 exception before the board, and this testimony would have been
3 relevant.
4 Before I make my last conclusion, just to address
5 Ms. Ferster's remarks, in her closing she stated the Zoning
6 Administrative decision rested solely on one provision of the D.C.
7 Municipal Regulations, which I believe she said was section
8 3202.3. In fact, that is incorrect.
9 The Zoning Administrative's decision was based on
10 201.1N1, which provides that a property such as this, where there
11 are six or less residents, with two supervisors, the family □ go
12 back a second. Section 2101 provides that in this particular
13 situation, a community based residential facility with six or less
14 residents is permitted as a matter of law. It is clear. It has
15 been reviewed. It has been argued. It has not been changed, and
16 based on that the Zoning Administrator proceeded.
17 The section that Ms. Ferster referred to, in fact,
18 simply bolsters that position, and that the Zoning Administrator
19 in explaining how he got to the place that he got to by reviewing
20 all of the matter of right requirements for the various districts,
21 is in the final analysis required to look simply at the structure,
22 one structure per building lot. With respect to the issue of the
23 definition of facility, a quick glance at the last section of
24 section 199.1 will state that where the term is not defined in the
25 regulations, then you turn to the Webster's Unabridged Dictionary.

In fact, community based residential facilities is clearly defined in here. As to the Massachusetts case that was mentioned, the District of Columbia has not had an opportunity to review that case, and has no indication as whether or not there are regulations similar to the ones before the board today that would have any relevance in this case. And we'll brief that in it's submission to the board following this.

The Zoning Administrator simply asked that the board separate the facts from the law. You will then find, based on the law that the Zoning Administrator's decision was based on the laws in existence in the District of Columbia, and therefore the decision to issue the permits for 1308, 1310, 1312, and 1314 Potomac Avenue, S.E. were, in fact, properly issued.

CHAIRPERSON GRIFFITH: Thank you, very much. Mr. Feola.

MR. FEOLA: Mr. Chairman, thank you. For the record, Phil Feola of Shaw Pittman on behalf of Father Flanagan's Boys Home. I think just as a way of background, I think the allegation that the appellants have made in this case, taken individually, and collectively and their claims in this matter are without merit.

They're not based on the zoning regulations. They're not based on existing law, save the Massachusetts case, which we haven't had a chance to look at yet. They're not based on past precedents of this board, or the Zoning Administrator's

Office. They are, in fact, asking you to rewrite the zoning regulations to include a requirement that before issuing a building permit, the Zoning Administrator should investigate what's going on next door from a land use perspective, look at the use and operations of that perspective use, and treat the property owner differently because it happens to own the lot next door.

I think the law is quite clear. You can't do that. Only the Zoning Commission can rewrite the zoning regulations, and the commission did that in Zoning Order #725, when it created this category of the youth residential care home, which is the subject of this appeal. As we pointed out before, the regulations are clear.

In this zone, a youth residential home for six foster kids and a family resident supervisor is permitted as a matter of right. That's 201.1N1 doesn't say as a matter of right, but only if in separate ownership, or only if there's not another one next door, or only if there's not enough CBRF someplace in the vicinity. Now it says, this use is permitted as a matter of right in this zone period.

And in Order 725, the Zoning Commission explains why. It goes on to say, we created this category specifically to eliminate the spacing requirement and the special exception that had existed in the regulations before 725. They created this category as a matter of right, specifically eliminating spacing and special exception requirements for what had been required for

1 this use.

2 So you need to look at the evidence before you

3 before you in this record, as the chair correctly pointed out. So

4 what is that evidence? You have the written evidence, written

5 statements and the permits issued by Michael Johnson, along with a

6 very thoughtful letter that he wrote, explaining why he made his

7 decision to the appellants.

8 You have the testimony of the current Zoning

9 Administrator, which indicates the issuing of this permit was

10 correct as a matter of law in his opinion. You have the expert

11 testimony of Boys Town's two witnesses, both of whom were

12 previously acting zoning administrators recognized by this board

13 as experts, affirming not only that Mr. Johnson followed the law

14 in the issuance of these permits, but he was required, as a matter

15 of right, to issue these permits.

16 On the appellant side, his own expert, Kirk White,

17 indicated not once but twice in the record very clearly both times

18 that in his opinion the zoning administrator did not violate the

19 regulations. In fact, you can look at the transcript from

20 February 5th on Pages 55 and 75 when she says that.

21 So all zoning experts agree that the zoning

22 administrator follow the letter of the law and issue the permits.

23 And notwithstanding that the appellant has the burden here to

24 show by a preponderance of evidence that the zoning administrator

25 was at fault in issuing these permits, and have not provided any

1 statutory, regulatory authority to support its position.

2 There's not one D.C. case. There's not one BZA

3 ruling, nothing in all the filings except for this Massachusetts

4 case. There's no regulation, no precedent, and in fact, in Mr.

5 White's own experience, he stated that he was not aware of any

6 precedent. So their own expert even admitted, after almost 50

7 years in this field, and that's on Page 56 of that transcript,

8 that he doesn't recall any precedent.

9 So what does it come down to. The appellants are

10 making really two allegations in my opinion. One is that these

11 four homes will be operated together as a facility. We've heard

12 the definition from Webster's and therefore they have to be viewed

13 as one CBRF, and that somehow the Zoning Administrator must take

14 into account the comprehensive plan when it issues a building

15 permit.

16 So let's take them one at a time, the facility and

17 management. This is the crux of their argument. You look at the

18 transcript, Pages 82, 91, Page 65 from the December 4th hearing.

19 This is the crux of their argument, that this buildings are going

20 to be operated as a single facility in their words. They've

21 provided no credible evidence to support that allegation. They

22 provided speculative testimony from people who have no idea how

23 Boys Town runs its programs, that they think it's going to be

24 operated as a single facility.

25 The only credible evidence you had occurred last

week with the testimony of Connie Washington, the site director of Father Flanagan's Boys Home, and her testimony completed discredits this operational theory that this is going to be operated as a single facility.

She testified that each of the homes will be operated independently of each other. They will be true foster care homes, where the foster parents are in charge of the children's health, well-being, including their schooling, recreation, buying their groceries, preparing their meals, helping with their schoolwork, insuring that they get to school and church and activities in a safe, sound way. These will be foster families that run their homes as single family youth residential care homes.

She testified there's no operational reason or economies of scale, to use somebody's words, to having these homes next door to each other. She said they could easily operate in the best quadrants of the city and deliver the same programmatic results that Boys Town seeks. And, she testified as a matter of fact that only in Omaha and Washington, of the almost 50 homes that Boys Town runs in this country, have this situation living next to each other.

So you have four homes that are operating independently of each other. How can you call it a facility? They happen to be owned by the same owner, but that doesn't matter. We think that the appellant's argument here fails

1 miserably on the operations issue.

2 In regard to the comprehensive plan, again as

3 counsel for the appellant said, we're not going to go into the

4 details in our brief regarding the applicability of the plan, but

5 it's clearly not as simple as the appellants have made it. The

6 plan contains almost 600 pages of single spaced text. It would be

7 a daunting document for any administrative review.

8 But most importantly, I think when reviewing it,

9 you have to look at Section 112, and we spent a little time on

10 Section 112 and how you interpret it. Well, 112 specifically when

11 you read the entirety and not just 112-C3 or whatever that one

12 was, it says specifically that the comprehensive plan is intended

13 to be a guide to establish broad policy and goals and that it

14 should be studied and executed in concert with others.

15 It also says that the element in Section 112 says

16 the elements intentionally overlap and are sometimes

17 contradictory. But most importantly, the comprehensive plan, as

18 stated in the case law by the Court of Appeals, is not self

19 perpetuating. If in fact that section that we labored over the

20 last couple of days required the Zoning Administrator to look at

21 the comprehensive plan before issuing a permit, the proper and

22 legal way for that to take effect would be for the Zoning

23 Commission to adopt a regulation that required it. That's what

24 the Papek (phonetic) Cleveland Park case says.

25 The Zoning Administrator has no authority to

effectuate the comprehensive plan. Now if the Zoning Commission did that, then we would be talking about a different case before you today. In fact, the appellant's own witnesses stated that. Mr. Furness who testified admitted that the comprehensive plan does not, "to the best of my knowledge control it directly. That is done through zoning and through the licensing process of the District government. The comprehensive plan should provide a framework in which those things are considered." That's the transcript of February 5th at 1:43.

If that testimony is not sufficient, Mr. White had also agreed with Mr. Furness that the regulations, the zoning regulations not the plan directly control the subject lots. That's on Page 55 of the transcript.

Notwithstanding that we believe the zoning regulations govern, just to give you a way of example, the plan has a lot of overlapping, contradictory sections. We've heard appellants say their sections, but the plan also calls for the creation of additional youth residential care homes to help house foster kids. It encourages the compliance with the Fair Housing Act. It encourages many of the goals and policies that I think this project will fulfill.

And one final thing, it directly says that the land use element and the land use map, not the ward plans, not any other element, take precedent when evaluating decisions and balancing the comprehensive plan. And it's an absolute fact that

1 the land use element and the land use map on this property is
2 consistent with Boys Town's proposed uses. So we believe the
3 appellant element in this matter fails in the matter of law.
4 So what do we have left? The appellant's position
5 essentially is couched in with words like "spirit" and "intent" of
6 the zoning regulations. However, as you are well aware, the
7 Zoning Commission is perfectly capable when it creates a zoning
8 regulation to specify its intent. For if it wants the Zoning
9 Administrator to look at opener operations, it does so.
10 I'll give a couple of examples. In the zoning
11 regulations in the old SP zones, that allowed office use for
12 special purposes, but not general office. It allowed offices for
13 non-profit organizations. It was incumbent upon the zoning
14 administrator in those cases to determine whether or not the user
15 was a not-for-profit. And correctly, the Zoning Administrator
16 would require in filing for a building permit or certificate of
17 occupant, Articles of Incorporation of IRS 501-C3 certification,
18 that these proposed uses were indeed not for profit.
19 A medical clinic, look at the definition for a
20 medical clinic in the zoning regulations. It says a clinic is for
21 "joint practice of medical or dental professions, has a diagnostic
22 center with services rendered and established with a common
23 business office, without direct payment of fees, individual
24 practitioners, does not include a building in which a separate
25 individual practice of the above profession is conducted."

1 This definition requires the Zoning Administrator
2 to look at organizational documents of such a clinic to determine
3 whether it is truly a clinic or just a bunch of doctors in an
4 office building.
5 Fast food restaurants, the definition requires the
6 Zoning Administrator to look at the percentage of items that are
7 packaged and prepared before customers place their orders. That
8 looks at the operations of that restaurant before the Zoning
9 Administrator can make a determination.
10 Food delivery service, another example, where the
11 Zoning Commission directs the Zoning Administrator to determine
12 "derives more than 75 percent of the sales from delivery orders."
13 Those are specific examples and there are many more of
14 regulations which the Zoning Commission has asked the Zoning
15 Administrator to look past the building permit application and
16 look at operations. We'll submit that when the commission wants
17 the Zoning Administrator to look at operations. It states it very
18 explicitly.
19 What about looking beyond lot lines? Well, the
20 same thing. When the commission wants the administrator to look
21 beyond lot lines, it does so. Look at the neighborhood commercial
22 overlays for one example. The commission directs the Zoning
23 Administrator to not allow more restaurants within certain linear
24 footages. That means not just my property and Mr. Etherly
25 property. That means the whole block.

Well that's a direct instruction to the Zoning Administrator to look across lot lines. What these two examples show you is again, when the Zoning Commission wants the Zoning Administrator to look across lot lines or look at operations or their respective use, it requires it and requires it specifically.

Absent that delineation, there's no reason to believe that the intent of the zoning regulations is violated here because the Zoning Administrator in this case looked at record lots, which it has been doing for over 50 years, as it evaluated building permit applications.

Back to the facility. Again, it is the crux of the appellant's argument. No credible evidence to suggest that these are going to be run as one big 24-unit building. In fact, all the evidence suggests they are not. We already know and counsel can see that it's not proper for the zoning regulations to regulate use by property owner, and it's contrary to 50 years of practice to restrict permits on a specific basis, to not restrict it, and it's contrary to common sense.

Put yourself in the Zoning Administrator's position. I've used this example before. There were other townhouses built together on separate record lots with the same builder held in common ownership, that are being built for rental purposes, does not turn those townhouses into an apartment, no matter how much you want to stretch it.

1 If the Zoning Administrator can't rely on record
2 lot lines, what are the bounds then of his or her review of a
3 permit application? The regs have many cutoffs based on size.
4 For example, an apartment building, less than 50 units, does not
5 have a loading berth requirement, but an apartment of greater than
6 50 units does. It must provide at least on 55-foot dock.
7 So using the opponent's logic, if you had one
8 apartment building built by Mr. Griffis, and one built by me next
9 door to each other, both of 49 units, one of us would have to
10 provide a loading dock. It doesn't make any sense, and where does
11 it stop? What is there's a lot, a vacant lot between Mr. Griffis'
12 property and my property? What if there are two vacant lots? What
13 if it's on the other side of the block?
14 You have to draw the line someplace, and the zoning regulations
15 for 50 years have drawn lot lines on the upper lot lines.
16 Finally, just in conclusion, I said this case is
17 very simple and I still believe it is very simple, and the
18 question that I think you need to ask yourselves and answer is,
19 did the Zoning Commission when it created this category of youth
20 residential care homes of less than six kids in Order 725, require
21 spacing requirements or restrict how many youth residential care
22 homes can be sited next to each other or restrict the ownership of
23 those ones that are sited next to each other?
24 We believe the answer to that question is an
25 emphatic no, and you should read that Order 725 and find it. We

said early on in this appeal that this case is not about the Fair Housing Act, and it is not. It's not because that act was effectively taken care of by Order 725. In fact, that's what it says. That's what the Zoning Commission says.

However, we believe if the requirements of that order were followed and this board sustains this appeal, I think the city would be violating the Fair Housing Act, because this category was specifically created as a matter of right, in order to bring the zoning regulations into conformance with the Fair Housing Act.

In summary, the last sentence is, we just don't think there's any credible evidence in the record to sustain the boding that the appellants have, which is to show by a preponderance of evidence that the Zoning Administrator erred in this matter, and we respectfully request that the board deny this appeal. Thank you.

CHAIRPERSON GRIFFIS: Thank you, Mr. Feola. Ms. Ferster when you're ready, we can give you your last five minutes. Do you need to take a break to reassemble?

MS. FERSTER: I'm sure a break would have helped.

CHAIRPERSON GRIFFIS: If you need five minutes, 10 minutes, that's fine. We have business that we can get done. It's not a waste of our time and better off if you're better articulated for these last five minutes. Okay, we'll be back then in 10 minutes, which will put is to 25 of 3:00.

(Whereupon, the above-entitled matter went off the record.)

CHAIRPERSON GRIFFIS: So, Ms. Ferster, when you're ready let me know and we'll continue.

MS. FERSTER: Whenever you're ready.

CHAIRPERSON GRIFFIS: Go ahead.

MS. FERSTER: I think I said most of what I wanted to say in my initial opening and closing statement. But I'd like to take maybe one minute to respond to just a couple points that were made by the opposing parties.

I think probably the most notable point that I observed from the statements from the district and from Boys Town is what they did not say, and what they did not say is that Boys Town is operating four separate community based residential facilities. Instead we're still observing and they are very formally observing the fiction of what the Zoning Administrator, or the distinction I guess you would say, the distinction is not what this is but what the Zoning Administrator has to treat it as.

So I think that is important to point out is, I don't think Boys Town, I did not hear Boys Town say that this is not a single facility or that this is four separate CBRFs. Instead, the question is, is the Zoning Administrator required to treat this as four separate community based residential facilities without regard to what it is or isn't, because it happens to be

1 located on four separate lot lines, four separate lots of record.
2 The other point that I noted is that it seems that
3 all the parties are on equal footing in believing that nothing in
4 the zoning regulations compels the Zoning Administrator to take
5 one view or another with respect to the treatment of several
6 adjacent commonly owned lots as a single lot. The regulations
7 simply are silent on that subject, and that our position is
8 therefore that this is a matter for the Zoning Administrator's
9 discretion, in which there is a matter which there is no
10 precedent.
11 So the issue, it seems, that's before the board is
12 two sort of competing views of what this project, how this board
13 needs to view this project. We have Regulation 201 on the one
14 hand, which the district and Boys Town both believe govern this
15 project, and if in fact this were a single CBRF for six or fewer
16 people, it certainly would govern this project. And on the other
17 hand, you have Section 732.1 of the zoning regulations, and if in
18 fact, this is a CBRF of more than 16 people, Section 732.1 would
19 govern.
20 So there's no regulation that provides direct
21 specific guidance that tells the Zoning Administrator which they
22 need to choose in this case, and that's why we argue that the
23 Zoning Administrator needs to take its guidance from general
24 principles of zoning law, and from the zone plan and comprehensive
25 plan, all of which say that when you have an institution for a

large number of people that looks, feels, and smells like a large institution that would house more people than the zoning regulations say should be housed on a single site, it's fenced, it looks like a single facility.

It is a single facility, according to their own material that the Zoning Administrator should treat it the way it is regardless of the formalities of recorded lot lines and I've cited the precedent that I think supports that viewpoint.

The only other point that I wanted to specifically respond to is the comprehensive plan issue because, again, it is one of those issues again that we're arguing over each other's heads in this matter. There is no question that if in fact we were arguing that there is an explicit inconsistency between the zoning regulations and the comp plan, the zoning regulations would govern. The comp plan said this should be an R-1 District but the zoning regulations say it's C-2. It's a C-2, and that's what controls.

That's not what this is about. This is not about an inconsistency between the comp plan and the zoning regulations. This is an area in which there is no specific guidance from the zoning regulations on this topic and it is exactly in that type of area where this board should take its guidance from the comp plan and from the principles that are implemented in the zoning regulations governing CBRFs that strongly prefer small, neighborhood based CBRFs that are dispersed throughout the

1 community, rather than a larger institution.

2 And then finally, the counsel for the district said

3 that I was quoting from something that hadn't been filed, and I

4 just want to give the title and stamp date of their filing that I

5 was quoting from. This is the statement of the District of

6 Columbia Zoning Administrator in opposition to the introduction of

7 a report of the Office of Planning, and this is dated February

8 22nd, and in the second to the last paragraph is the statement that

9 it is unequivocal that the comp plan may be used by the zoning

10 administrator as a guide in rendering decisions. That's the

11 document that I was quoting from.

12 So there's really no dispute. If you believe that,

13 in fact, the zoning regulations and the only regulation that's

14 really been quoted here that would control how you treat a

15 facility as a single versus four separate facility as 3202.3, if

16 you believe that that regulation does not compel the Zoning

17 Administrator to focus just on what occurs within lots of record,

18 then there is no clear guidance in the zoning regulations. There

19 is no precedent.

20 I don't think that's a failing of our case here,

21 the fact that you know this just hasn't happened before and that's

22 what this board is here to do is to establish some of those

23 principles that are going to guide how this type of, what we could

24 call an invasion of the zoning regulations will be treated in the

25 future and we think that you should take your guidance from the

comp plan itself.

CHAIRPERSON GRIFFIS: Thank you. And let me just be clear, you've gone over five minutes, but you had two minutes 39 seconds from the last, so it was a total of 20 minutes. We appreciate you being within that time frame. Okay, that concluding our closing remarks, let us reiterate for the participants of what the board now expects and anticipates in terms of a schedule.

Do you have that? Thanks. Okay, let me run down our entire list of things that we had. We had several things of which two we have received. Oh no, actually not. Okay. Why don't we do that, go over the architectural plans, which we have in. They were supposed to be in today. One of the other indications we had was the parties were to provide the brief on the board's ability to disavow any portion of BZA Order 165131, addressing the portions of the order which were stated and we quoted that in the last.

That was in □ I'm not sure if we defined when that was coming in. So that is still out there. We are looking for 26 we would have done, and then the first of March, we're looking for responses, correct? Give me a second on this.

Sorry for that delay, hope I didn't lose anybody here. We would like to set this for decision making May 1st □ it's not May 1st. The first meeting is May 7th, the first meeting in May. We are looking for the simultaneous opening briefs, which

we've discussed, and we'll get dates on this. And then what we'll look for is simultaneous responses. At the same submission, we'll have facts and conclusions of law, and then we'll go to May 1st. I'm sorry, let me write that down. Okay, May 7th.

So, let's start picking dates for those submissions. First of all, do any of the participants have opinions on the first submission, the briefs, how long a period you need? Two to four hours? Six to eight? Okay, so what if we did two weeks on that three weeks. I just need an indication. Why don't you come up.

MS. FERSTER: Can you just remind me what the topic of this brief is going to be?

MR. GRIFFIS: I think, if I'm not mistaken we're leaving kind of open some of the issues, and frankly leaving it open to what you want to brief. We're also asking several pieces. One was the past BZA order, and refresh my memory of other things that we specifically asked for to be briefed on this. I think that was it to my knowledge. Right, the 16531. So what are we talking, two weeks, three weeks?

MS. BAILEY: Staff has a suggestion, given the time frame that we have a couple of months. The first briefs will be due March 22nd with responses like April 5th, and then findings of fact could be due April 26th. It's about a three week kind of interval between each of those for a May decision. Does that give everybody enough time?

MS. FERSTER: Yes.

MR. GRIFFIS: Satisfactory, okay. Participants seem to be satisfied with that. Yes, unless they're thrown out again.

MS. BAILEY: Simultaneous opening briefs will be due March 22nd. Responses are due April 5th, with the findings of fact due April 26 for a May 7th decision.

MS. FERSTER: Mr. Chairman.

MR. GRIFFIS: Yes.

MS. FERSTER: At our last meeting, we talked about my responsive brief on the comprehensive plan issue being due on Friday, and I'd just as soon respond in the opening brief on March 22nd, unless you for some reason wanted my response earlier.

MR. GRIFFIS: No, I think that's fine. We have time for follow-up. Yes, that's fine. We'll lump that in from March 1st to the 22nd. Okay, anything else we're missing? It can't go this smooth this afternoon. Okay, so there we are. I think that's set. We'll be looking for things on the 22nd and we will proceed from there and see all of you perhaps on the 7th, in which case I thank you very much, and we can continue with our next case.

(Whereupon, the above-entitled matter went off the record.)

MS. BAILEY: The next case is 16810 of Jeffrey Joyner and Lori Trautwine, pursuant to 11 DCMR 3103.2, for variances from the minimum lot dimensions requirements under

1 section 401, lot occupancy requirements under section 403, side
2 yard requirements under section 405, court requirements under
3 section 406, rear yard requirements under section 404, and the
4 nonconforming structure requirements under subsection 2001.3, to
5 allow an addition to a single-family dwelling in an R-3 District
6 at premises 1324 27th Street, N.W. (Square 1236, Lot 818).
7 Is anyone here testifying that was not previously
8 sworn in? Anyone testifying who was not?
9 MR. GRIFFIS: When we called this case previously,
10 if you recall, that's what she's talking about. Yes, so she would
11 have sworn people in for that. So if you want sworn in again, if
12 you have any question you can get sworn in again. There's no
13 extra charge for that, so if you have questions you can do that.
14 If not, we have one person indicating.
15 (Witness sworn.)
16 MR. GRIFFIS: Okay, the board has two preliminary
17 issues, not necessarily matters. When this case was begun, the
18 Zoning Commission representative was Mr. May. He was unavailable
19 for this. He will receive the entire case in transcripts to read
20 and will be, it is anticipated at this point, part of the
21 deliberations on that. But we have not introduced Mr. Hannaham to
22 change players on this. So we will continue that way.
23 And secondly, I will ask Mr. Etherly to fill us in.
24 MR. ETHERLY: Thank you very much, Mr. Chairman.
25 Good afternoon, ladies and gentlemen. I did not have the good

fortune of being sworn in officially in time to hear the first portion of this case. I have read the record and would be prepared to sit and adjudicate on the matters presented, Mr. Chairman. Thank you.

MR. GRIFFIS: In which case, that is board issues unless I know of others. Okay, then why don't we take up any other preliminary matters in this case today.

MR. GIESE: Mr. Chairman, I have a preliminary matter.

MR. GRIFFIS: Yes.

MR. GIESE: Once again, this case is not ripe for consideration, and I suggest that it be carried over, and there are two reasons for that. One is that the board does not have the necessary information to reach an informed decision on this, and then the second one is that there are serious procedural infirmities that are part of this case up until now that need to be cured to move forward on it.

On the necessary information item, the ownership of the property is seriously clouded. All through the record, we have different applicant's names coming in and out of who the ownership of this property is. This is not something to be sorted out the day of the hearing. It's something that I think, as a party to this, I should at least know who the owner of the property is, prior to coming in to the hearing here.

Second, the record doesn't contain boundaries, as

required by the board's rules. The plot provides a width and a length but no boundaries.

MS. BAILEY: Mr. Chairman, excuse me for interrupting.

MR. GRIFFIS: Yes.

MS. BAILEY: The gentleman who is speaking did not identify himself and we need that for the record.

MR. GIESE: I'm sorry. I'm Bob Giese.

MR. GRIFFIS: And you want to give us an address?

MR. GIESE: Sure, 1101 Connecticut Avenue.

MR. GRIFFIS: Is that home or business?

MR. GIESE: That's business. Do you want a home address?

MR. GRIFFIS: No, well.

MR. GIESE: Okay, 3811 Garfield Street, 20007. As I was saying, the plat provides width and length but no boundaries as required by the rules and the application itself. I can't determine □ it makes a difference in this case of how the addition is going to be located and where those boundaries are. At this time, it's some undetermined place on the property and that's not good enough.

On the procedural flaws □ let me go back to the other one also. Mr. Gell just handed us three documents here, I guess a half an hour before this hearing that apparently have some significance in his mind to go to some major issues in the case.

But anyway, there appear to be new items that are popping up every minute on this, and I assume the rules are that the applicant has had their case in place 14 days beforehand on this.

And furthermore on that, on the affidavit of the posting, I don't mean to be picky, but it came in late, but more to the point on that, it came in on Friday instead of Thursday. I'm not going to make a big deal out of that. But more to the point on this is that the posting here says Lori Trautwine. The posting itself says application of Jeff Joyner and Lori Trautwine. We still can't seem to get this straightened out of who's where on this thing.

A more serious procedural flaw on this, the only BZA 2 on the record is for a special exemption on the eight-foot addition for a home owned by Jeff Joyner and Lori Trautwine. It now appears what we're considering is a project 50 percent longer, under a different legal standard for a different owner, and the only similarity between the two appears to be the address.

We're way off on this. This board has noticed a hearing for an application. There is no application. This board has noticed a hearing for an application that doesn't exist. The public hasn't received adequate notice of this project. Anyone going to the public file as late as the morning of February 12th would not have found anything on that record dealing with variances, any plan for a 12-foot addition, or any indication of who the true owner was at this point and, it would seem to be that

more notice is needed to the public in dealing with this. That's all I have to say.

MR. GRIFFIS: Okay, thank you Mr. Giese. It seems like an awful lot goes back to the ownership of this, that the posting and several other issues that you just looked at. First of all, did that change in any way your understanding of this case?

MR. GIESE: The ownership?

MR. GRIFFIS: The ownership.

MR. GIESE: It does in a sense, because Mr. Gell has made a large measure out of that a couple owned this property and they want to have future children. They need more room. I think it's significant to the case.

MR. GRIFFIS: Okay, is that something that you think you could perhaps bring up in cross-examination, if that became critical to the basis of their case? Let me also just state, how many names you found out the fact that ownership and Trautwine is on the posting, and the Joyner Trautwine application are different things, and you have that written, and I'm fully aware of the details. How many more names or variances were there in the whole mix of differences of labeling?

MR. GIESE: In the mix of labeling? At one point, I guess Joyner was the owner. At another point, Joyner Trautwine, and at another point Trautwine, so I guess we have three.

MR. GRIFFIS: But it's always Joyner or Trautwine,

is that correct?

MR. GIESE: It's always.

MR. GRIFFIS: Would that be totally confusing in terms of what would be needed in terms of being a party in this case?

MR. GIESE: Confusing, I wouldn't say confusing, no. But it's certainly hard I think it goes to the overall of no application. It's pretty hard to get your arms around something that keeps slipping away from you. To begin with an applicant or applicants or you know where things might be.

MR. GRIFFIS: Okay, would that curtail you from being a participant and party in this case?

MR. GIESE: Curtail me from being?

MR. GRIFFIS: Does that throw your whole possibility of putting on a strong case in your mind, that it may be Joyner, it may be Trautwine, it may be Trautwine, it may be Joyner, it may be Joyner Trautwine?

MR. GIESE: No, I can't honestly say it throws out my whole case, but what it does is it goes to the fabric of this whole item and the decision part.

MR. GRIFFIS: It's part of your own case.

MR. GIESE: And the decision makers on this of who the owners of the property are. I think as I stated in my letter, we're really going to the most basic items of this case, coming into the hearing where those are clouded, and I'm certainly

interested in hearing everything about this, but I think the day of is not appropriate.

MR. GRIFFIS: And what I'm trying to get to is the basis of frankly how, for our purposes, certainly the owner has to bring an application.

MR. GIESE: I think it's cumulative.

MR. GRIFFIS: And that's fine, and I think that may go to your case, rather than stopping us from hearing the case, which is all I'm trying to decide right now is whether to hear it.

MR. GIESE: Right. I think the combination of the owner and the boundaries to me makes it difficult to argue what's taking place here.

MR. GRIFFIS: Okay, was it not in your submission, I have it marked. I'm not looking at it yet, but was it not your submission that stated on the title of the property who the owner was?

MR. GIESE: Right.

MR. GRIFFIS: So you clearly knew who the title holder of this property was?

MR. GIESE: I know who the record holder is, sure.

MR. GRIFFIS: Okay.

MR. GIESE: Right.

MR. GRIFFIS: And it is one of the names Joyner or Trautwine?

MR. GIESE: It is one of the names.

MR. GRIFFIS: Okay, let's go to boundaries. You're saying that the property lines are not adequately evidenced, or not evidenced at all in the plat.

MR. GIESE: They're not evidenced at all.

MR. GRIFFIS: Okay, it seems to me we looked at this also beforehand. The board is not going to take comments on this, but I'm inclined to proceed with this case.

I think the exact property lines will be important to this board in its own deliberation, and that conceivably, we may ask for submission of that information and we can continue this case if we find out we can't continue to proceed in hearing testimony, if that is evidence that we just have to see today. I don't see that as monumental enough to stop from just even beginning to proceed through this case.

MR. GIESE: I think, Mr. Chairman, it's very significant because it goes to whether there are shared walls, where the lines are, institution of walls.

MR. GRIFFIS: Okay.

MR. GIESE: It goes to many matters that really go to the heart of this. It would be different if we were locating a small structure on a large property, but the structure goes across

MR. GRIFFIS: Instead of you and I bantering about this, can you give me the cite of the regulations that state that its part of a submission for an application for the property lines

to be shown.

MR. GIESE: I can if you just give me a minute.

MR. GRIFFIS: Take your time.

MR. GIESE: It says in your application form, it says boundaries are to be shown, and I can find the rule that you have that says that the form is to be filled out and completed by the applicant.

MR. GRIFFIS: Okay, does it say boundaries or does it say property lines? I don't fill out a lot of applications, so I'll ask.

MR. GIESE: It says □ I've got to pull it out here. I believe it says boundaries. Mr. Chairman, it says "survey showing the boundaries and dimensions of the existing buildings."

MR. GRIFFIS: Okay, and is it your understanding or your exact knowledge that a plan was actually submitted as part of the record?

MR. GIESE: Well, it depends on what the record is, because then I think we go to the second one on this. It was part of the original BZA 2 that was filled. It was a plat filed by the applicant or applicants that are here.

MR. GRIFFIS: Okay, and that plat would show the boundaries, would it not?

MR. GIESE: No, it shows the dimensions. It doesn't show the boundaries.

MR. GRIFFIS: What is its dimension?

MR. GIESE: It just says that it's 10 feet 9 inches wide, and it is 46 and some feet long, and then it tells how long the house is. It doesn't say where the 10 foot 9 inches exists.

SECRETARY PRUITT: Mr. Giese, what are you reading from?

MR. GIESE: I'm reading from the instructions to filling out the BZA 2.

SECRETARY PRUITT: Thank you. Does it have a number on it? Any kind of form number?

MR. GIESE: It's #1, excuse me, #A, 4A.

MR. GRIFFIS: Okay, 4A, information required to be submitted at the time making application is for. Item A is a plat drawn to scale and certified by a licensed engineer or architect and D.C. surveyor showing the boundaries and dimensions of the existing building and the accessory building and plan and elevation in sufficient detail to clearly illustrate any proposed building to be erected or altered. And your issue goes to the first plat drawn to scale and certified. What I have in front of me seems to be just that.

MR. GISSEN: There is a plat certified, but it does not show boundaries on it. It shows dimensions.

MR. GRIFFIS: Okay.

MR. GISSEN: And if you want me to get further into it, the detail of this, the importance of it is we didn't get into

the last one, because we went off on this variance item. But I can □

MR. GRIFFIS: I'm just having trouble finding □

MR. GISSEN: Finding why there aren't boundaries there?

MR. GRIFFIS: No, trying to understand what you're looking for.

MR. GISSEN: I'd like to know.

MR. GRIFFIS: I mean I shouldn't say that.

MR. GISSEN: I'd like to know where the property line is. This was raised □

MR. GRIFFIS: My issue with this, I think you're asking more of a plat plan than is a plat plan.

MR. GISSEN: I don't know. I've been shown another submission to this board that had the boundaries on it. You could tell where the property is.

MR. GRIFFIS: And I can show you hundreds of cases where people even draw even detail on plat plans but that doesn't go to your issue of why this case should not be heard today, given the fact you're stating that they did not submit what was actually required in the application.

MR. GISSEN: Right.

MR. GRIFFIS: I'm reading what's required in 4A as submitted and it's complete. So, if we want to get into, again it goes to, if we want to get into it as part of your case and

1 testimony that there is information that is not clear, that may go
2 to the larger picture of what we're going to get into. But
3 frankly I can't get into it, unless we proceed with the case.
4 MR. GISSEN: I understand. If anything, I
5 respectfully disagree with you that the boundaries are there.
6 MR. GRIFFIS: Okay, let's take the area to of
7 posting. My memo from staff that I get for all cases indicates
8 that this was properly posted and the affidavit of posting was
9 timely filed. Because you brought that up, I did not trust my own
10 memo, and had staff go and investigate. The assistant whispered
11 in my ear that, in fact, it was timely filed.
12 MR. GISSEN: I can be off on the day. It was filed
13 on Friday, and Friday is five days and Friday is five days.
14 MR. GRIFFIS: How are you establishing it was filed
15 on Friday?
16 MR. GISSEN: February 22, 4:09 is the date stamp I
17 have. Is that Friday? Yes, that's the date stamp I've got.
18 MS. BAILEY: Mr. Chairman, the property was posted
19 properly. The affidavit was filed on Friday. Five days are
20 required for the affidavit for the submission of the affidavit in
21 the Office of Zoning. Five days are required, and it was filed
22 four days. But the property was posted and it was posted on
23 February 11th, and that is the required number of days for the sign
24 to be up.
25 MR. GRIFFIS: Okay, I see, and that is an important

issue to bring up. One, as I always state when we issues of posting, the board takes very seriously. The posting, the physical posting of any property, that is unequivocally the most important way notices for adjacent neighbors, community neighbors, and anyone else interested in that.

Of lesser import, I would say, is the actual affidavit that comes into this posting. We have to have rules and regulations and dates due. Otherwise, it would be more chaos than when we're in control here. So, but the point in fact is that the date that was properly posted is the most important, and I would say the only issue I would look at in terms of this case and not hearing the case, that the affidavit came in a day late. Again, just to go through, it was indicating that it was properly posted.

MR. GISSEN: Mr. Chairman, I agree with you and as I said in the beginning and I agree with Ms. Bailey. I'm not saying the case shouldn't be heard, but the reason I raised it is □

MR. GRIFFIS: Okay.

MR. GISSEN: □ different name on the affidavit than is on the posting.

MR. GRIFFIS: Right.

MR. GISSEN: That's, I think, more of an indicator of the, you know, that the posting was 30 days ago and then the hearing and we're still changing names.

MR. GRIFFIS: And the name of the posting is?

MR. GISSEN: Jeff Trautwine □

1 MR. GRIFFIS: The name on the affidavit.

2 MS. GISSEN: I'm sorry, Jeff Joyner and Lori
3 Trautwine. The affidavit says in re: Lori Trautwine as the
4 applicant name.

5 MR. GRIFFIS: Okay, we're still talking about the
6 same two names?

7 MR. GISSEN: Yes.

8 MR. GRIFFIS: All right, and I was writing fast,
9 trying to write everything down that you were saying. Any other
10 issues that go to that ownership, boundaries, posting?

11 MR. GIESE: I was going to say this is cumulative.
12 There are a myriad of issues of forms being filled out properly,
13 of you know, that end. And I'm not going to waste your time here,
14 but it's cumulative. If you look at the record, and the record is
15 full of either, you know, things that don't jibe. There are
16 inconsistencies in the record. But I think more importantly I'd
17 move to the broader procedural issue of the application itself.

18 MR. GRIFFIS: Okay, and you also brought up an
19 issue of Mr. Gell handing you things today. We'll have to see
20 what those are. They will obviously be submitted unless it's
21 personal correspondence or other business between you two. I
22 would imagine once we see it, it goes directly to his testimony
23 today, which is not uncommon, and in fact, expected by this board
24 in written submissions. We'll see what it is and then we can
25 determine at that point.

1 May I make this remark, that if it in fact is
2 perhaps either written testimony or issues that are being brought
3 up as part of their testimony, and he's handing it to you now. I
4 would say that's a very friendly gesture. Oftentimes there aren't
5 enough copies made for parties in opposition, so we take time to
6 make copies. So that being said, we'll determine what it is.
7 Board members, maybe comment on the issues at hand.
8 We have several, I would say motions, to continue this case.
9 MEMBER LEVY: Mr. Chair, I don't see any issues that
10 will present a justification for continuing the case at this
11 point. I think we should go forward.
12 MR. GRIFFIS: Okay.
13 VICE CHAIRPERSON RENSHAW: Mr. Chairman.
14 MR. GRIFFIS: Yes.
15 VICE CHAIRPERSON RENSHAW: Just to add that Mr.
16 Giese's concern about the inconsistencies in the application, I
17 would hope that during Mr. Giese's presentation to the board,
18 these further inconsistencies would be pointed out in your
19 testimony, and matched to any exhibits that may have been
20 presented or might be presented, so that you can further bolster
21 your case that there are inconsistencies in this application.
22 MR. GRIFFIS: Very good. Yes, I think that would
23 absolutely be important, and hopefully I was direct in saying, I
24 think a lot of things you're bringing up may go to your own case
25 or in terms of the critical nature of the applicant's case. So

let us do keep that in mind. It appears to be the consensus of the board that we move ahead with this, and so I would □

MR. GIESE: Mr. Chairman are you separating out the issue of there not being an application on this case?

CHAIRPERSON GRIFFIS: Not being an application in terms of variance?

MR. GIESE: There is no application on this case at this point. There's no application for a variance at this point. If there is one, then there wasn't notice of that application.

SECRETARY PRUITT: Actually, if you may remember, at the January meeting, this case was amended, so the office on January 6th, we noticed everybody.

MR. GIESE: Right.

SECRETARY PRUITT: For an application and it's Exhibit □ in fact, it starts with Exhibit 37 through I believe 34, and then also was re-noticed of this application now for a variance. So it was re-noticed, and we don't require applicant to actually physically fill out a new application all together.

CHAIRPERSON GRIFFIS: Okay, yes and that is very clear. The last we obviously changed, looking at when the case was moving forward from special exception to variance because of the side yard, it went to lot occupancy. But we also, and let me be clear on what you are asking for in terms of application. You're asking for □

MR. GIESE: Well, first of all if there is an

application, and what that application is. If the application is Mr. Gell's submission, which he said this was an application, then it's not on the BZA 2. It's a new application.

There was notice that went out that said application for a variance, and anyone who came in there after that notice, anybody who came in on January 16, January 20th, January 29th and went to the file, they would not be able to find an application for a variance anywhere. They wouldn't be able to find anything in the file dealing with a variance anywhere.

CHAIRPERSON GRIFFIS: Okay, because I have Exhibit 40 in the case from Mr. Gell, February 12, 2002.

MR. GIESE: Exactly.

CHAIRPERSON GRIFFIS: Is the date of the application.

MR. GIESE: That is the application.

SECRETARY PRUITT: So you have Exhibits 36 to 34, dated January 10th, which state that this is an application for a variance of a hearing notice.

MR. GIESE: If that's the application. If that's the start of a new process and that's the application, then where are the materials that go with that application that are attendant?

SECRETARY PRUITT: It was amended process.

MR. GIESE: Well, perhaps we should ask Mr. Gell what he intended when he filed it. That would probably be the

best.

CHAIRPERSON GRIFFIS: I will take comments on all your motions, but what I want to get to the bottom of where we are with your motion before we hear from him.

MR. GIESE: Mr. Gell said this is an amendment. I mean, he didn't say it was an amendment. He said this is an application and we have three of those in the file. We have a BZA 2. We have a December 19th filing, which says this is an application that was defective but we didn't get to that at the last hearing, because we moved on on the variance. Then we have a February 12th filing that says this is an application. You know, where does this begin, where does it end, what's part of the application? What isn't part of the application? Where's the BZA 2 for any of these?

SECRETARY PRUITT: The filing that I believe, Mr. Giese, you stated was December, like?

MR. GIESE: 19th.

SECRETARY PRUITT: 19th, that was the pre-hearing submission. It was incorrectly titled, but the applicant 14 days prior to the hearing is supposed to put in a pre-hearing submission. That was what Mr. Gell submitted but he submitted it titled as an application.

MR. GIESE: And then he did the same thing again.

SECRETARY PRUITT: And that was also raised at the hearing on January 2nd.

MR. GIESE: He did the same thing on the 12th, so I guess Mr. Gell hasn't been in this practice. He's a regular practitioner with this. I think he knows the difference between an application and an amendment.

CHAIRPERSON GRIFFIS: Okay, I think what we need to do is understand what is issue for you, Mr. Giese, and then we'll let Mr. Gell speak. Obviously I don't process the application, so.

MR. GIESE: No. You know, I'm sorry to raise these matters.

CHAIRPERSON GRIFFIS: It's okay.

MR. GIESE: I just need to know what's the beginning and end and what's part of the record and what isn't. What we have, whether it was timely filed and where we are with this.

SECRETARY PRUITT: Okay, the board amended this application.

MR. GIESE: Correct.

SECRETARY PRUITT: At the January hearing, at which time we noticed people, and we don't normally □ we don't technically have to do so. We don't actually have to mail out. If we announce it at the hearing, that is proper notice.

MR. GIESE: Right.

SECRETARY PRUITT: However, we chose to go the extra step and re-notice people through the mail also. Fourteen days prior to the hearing □

CHAIRPERSON GRIFFIS: Oh, I'm sorry. The re-noticing happened on January 10th, correct?

SECRETARY PRUITT: Correct, and the hearing was on the 2nd so, it happened on the 10th. Fourteen days prior to the hearing, the applicant is supposed to submit a pre-hearing submission; however, the applicant has a right to submit information into the record up to and including at the hearing.

MR. GIESE: Right.

SECRETARY PRUITT: So information is coming in all the time. It does not cease at one point in time.

MR. GIESE: Right.

SECRETARY PRUITT: Seven days before the hearing there's an ANC report required, as well as an OP report, and that's basically the major □ those are the major milestones, and the updated posting was timely. It was posted on the 11th.

CHAIRPERSON GRIFFIS: And Mr. Gell had a submission that was received on the 12th.

SECRETARY PRUITT: Yes.

CHAIRPERSON GRIFFIS: Which is actually his pre-hearing submission, which was labeled application.

SECRETARY PRUITT: Correct.

CHAIRPERSON GRIFFIS: And that's the only thing of technical detail that may be wrong, correct?

SECRETARY PRUITT: Correct.

CHAIRPERSON GRIFFIS: Do you agree with that?

MR. GIESE: Well, that sounds fine. If it's an amendment to an application though, I'd like to know what it's amending. We have a long record here. What is part of the new section.

CHAIRPERSON GRIFFIS: Let me clarify that. When Ms. Pruitt indicated that it was an amended application.

MR. GIESE: Right.

CHAIRPERSON GRIFFIS: It was amended by this board, because when we started the proceedings in the special exception, it became clear that the applicant had put together □ the entire case file had come before this board. Actually it needed to come as a variance, so we amended the application, and as Ms. Pruitt adequately stated, we've set a new date for that.

That is all the public notice we need to; however, this office did go to extra length and re-notified the adjacent neighbors within the 200 distance boundary. You being a party to the case were also here and knew of it, but you also should have been submitted information by Mr. Gell, I believe. In any case, it's very clear to me that although it is not a clean new application, the history and why we're here and why it's a variance now is clear. Is it clear to you?

MR. GIESE: It's not, because if we want to □ I can always go by what Mr. Gell calls it. If we're going to call it an amendment for now.

CHAIRPERSON GRIFFIS: No, you can go to what

1 happened in the previous hearing also.

2 MR. GIESE: What happened in the previous hearing,

3 my recollection was, is the applicants were given a choice of

4 whether they want to continue with the special exception item or

5 whether they wanted to reapply for a variance in the matter, and

6 they decided they would like to reapply in the matter doing that.

7 That's my understanding of what occurred.

8 If we're talking about what's been labeled, what

9 was labeled and submitted as an application as an amendment to the

10 application, then we're into a different set of issues on whether

11 you can go to something that's a special exception for eight feet

12 and with two different owners into something that is 12 feet, a

13 different legal standard, and a different owner.

14 I don't think under that scenario, I don't think

15 that the notice is sufficient to the public. Certainly within the

16 inner circle here have some idea what's going on with this, and I

17 certainly don't attest here that I don't have some idea. But I'll

18 tell you, I'm very confused about what is part of this application

19 and what is not part of it. Is the plat part of it that's part of

20 the original BZA? Is the second application part of this? Is the

21 I don't know where this begins and you know, where this ends on

22 here. And Mr. Gell is he's a very skillful advocate.

23 CHAIRPERSON GRIFFIS: We don't need to describe Mr.

24 Gell. He's right here.

25 SECRETARY PRUITT: Mr. Chairman, I just counted. It

was a 40-day notice when we remailed.

CHAIRPERSON GRIFFIS: Right, well I think we □ the key piece that you went to is that there wasn't proper public notice. Now, public notice first of all of all the issues, if I'm not □ well, I'll read the sign. It seems to me that adequate public notice was given by the posting. The relief sought was adequately illustrated, and the file, the case file that would have been available to anybody that wanted to come down here would have shown what was now up for variance.

MR. GIESE: It says in here on the posting and on the letters that went out, it says there's an application for variance. If somebody came down here looking for an application for a variance, they wouldn't find anything until February 12th, late in the afternoon. Excuse me, midday.

If they wanted to look in that file and they wanted to find some idea of a plan of what the variance was, if they wanted to find a description of the variance, if they wanted to find a BZA 2 that described variances, if they wanted to find anything along that line, it would not exist in the file during that period. Mr. Chairman, I don't feel □ I feel constrained.

CHAIRPERSON GRIFFIS: Mr. Gell, do you have anything to say? You don't have to. I'm giving you the opportunity here.

MR. GELL: Maybe just a couple of things.

CHAIRPERSON GRIFFIS: Okay.

MR. GELL: I won't touch all the points. I think the board has adequately dealt with many of them. But I will say as far as the material in the files, an application was filed before I got into the case. That application was amended by the board and we subsequently two weeks before this hearing, found a pre-hearing statement. It's labeled clearly as a pre-hearing statement. We incorrectly said something about an application in the letter to you, but that did not appear anywhere on the statement itself. In fact, the statement starts, "this is a statement of explanation of reasons supporting the application of Lori Trautwine."

CHAIRPERSON GRIFFIS: Okay, and that's the February 11, 2002.

MR. GELL: February 12th.

CHAIRPERSON GRIFFIS: Right. It was received by your date on the 11th.

MR. GELL: It was delivered on the 12th. It wasn't here in the morning. It doesn't have to be and I regret anybody who came down in the morning before I submitted it and didn't get a copy of it or didn't see it.

CHAIRPERSON GRIFFIS: Okay.

MR. GELL: As far as the size of the property, Mr. Giese has known from the date of the ANC meeting that we are asking for 12 feet, and that also is in our amended pre-hearing statement. It is also in the plans, which were submitted property

at that time, so that anybody would have had an opportunity to see it clearly. The variances were listed in the next notice. People would know that they were variances. I don't really have to go into all that. But all of this has been known.

As far as the boundaries are concerned, we submit it when we're supposed to and everything else has to be done afterwards just before construction when we actually get a survey of the property done which, of course, we're going to do to make sure we don't build on somebody else's property.

Finally, since I explained all this to Mr. Giese, I'm really sorry he brought it up. The statement you have before you about Lori Trautwine being the owner of the property is true. The fact that she is going forward by herself is also true. Unfortunately, Ms. Joyner is not in the picture anymore, and is not part of this, was never an owner of the property. I was not aware of this prior to this all coming about, but they were in fact a couple at the time and it seemed reasonable to have them submit this together.

CHAIRPERSON GRIFFIS: Okay.

MR. GELL: And I'm really sorry he had to get into it. It wasn't necessary.

CHAIRPERSON GRIFFIS: Okay, this is what I understand and for technical specificity, Mr. Gell, we're just going to ask you to submit a new form, a new self certification form and we're ready to proceed on this case.

1 MR. JOHNSON: Mr. Chair.

2 CHAIRPERSON GRIFFIS: Yes.

3 MR. JOHNSON: May I bring up very briefly □

4 CHAIRPERSON GRIFFIS: Yes, do you want to give me

5 your name and address.

6 MR. JOHNSON: It's Vernon Johnson, and I'm counsel

7 for Doctor and Mrs. Joyner. My address is 1120 20th Street, N.W.

8 The question I have deals with the fact that we abbreviated the

9 proceeding the last time we were in front of the board and there

10 were three witnesses who testified. There was Mr. Joyner, Mr.

11 Pulsifer (phonetic) the chairman of ANC-2E and then there was Mr.

12 Zapatka.

13 Both parties had full opportunity to question Mr.

14 Pulsifer. No one had the opportunity to cross-examine Mr.

15 Zapatka, but I know he's here and we'll have that opportunity

16 today. So I certainly don't have a problem with his testimony

17 remaining part of the record.

18 The concern I have is Mr. Joyner testified. We

19 agreed not to cross him in the interest of trying to get Mr.

20 Pulsifer on and out of there, so we never did have the opportunity

21 to cross him, and I think it would be inappropriate to allow his

22 testimony to remain in the record under those circumstances, since

23 we are entitled under the statute today.

24 CHAIRPERSON GRIFFIS: Right, Mr. Gell, do you have

25 any objection to that?

MR. GELL: No, I don't. I think that's a reasonable objection.

CHAIRPERSON GRIFFIS: Okay. Would you restate that witness' name for me please?

MR. JOHNSON: That was Jeffrey Joyner, J-O-Y-N-E-R.

CHAIRPERSON GRIFFIS: I thought you meant someone else, okay. So we will strike Mr. Joyner's testimony regarding this case in the beginning. Okay. Anything else?

MR. GELL: That's it.

CHAIRPERSON GRIFFIS: Fabulous. Then gentlemen, I'll ask you to step back Mr. Gell. You can start your statement.

MR. GELL: Thank you, Mr. Chairman. We're back before you with essentially the same project we had before. There were some minor differences, actually the only differences that hit us now, 12 foot project instead □ are you going to stay here, Mr. Giese?

MR. GIESE: Excuse me?

MR. GELL: Are you going to continue to sit here?

CHAIRPERSON GRIFFIS: Yes, actually why don't you sit back at the other table.

MR. GELL: Thank you, Mr. Chairman. It is now a 12-foot project, which it had been at a much earlier time prior to our talking with Mr. Giese and on the assumption or on the belief that he would not interpose objections. We, in fact, agreed with him to move the realign back a foot and a half approximately to

1 the 10'3" and as you know, that was not the case.

2 He, in fact, did object quite strenuously and will

3 continue to do so and we see no reason at this point to have it at

4 10'3". We think 12 feet is the actual minimum for a project of

5 this size. The rooms are going to be very small anyway, as Mr.

6 Zapatka is going to explain to you.

7 I'm not going to go into anything lengthy at this

8 point. I would like to make a few comments after the two witnesses

9 have spoken, except to make the assumption and to have it

10 confirmed that the previous testimony and documents that have been

11 submitted, with the exception of Jeff Joyner's statements are all

12 part of the record and will be considered by the board.

13 CHAIRPERSON GRIFFIS: Okay, you're asking for a

14 comment on that?

15 MR. GELL: Am I right in assuming that that is the

16 case?

17 CHAIRPERSON GRIFFIS: My base assumption is yes,

18 that is the case. There are obviously several things that won't

19 be relevant and rather than go through it striking documents and

20 exhibits, I think they just remain in. Anyone have comment on

21 that? Ms. Sansone, do you have any problem with that?

22 MS. SANSONE: No, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Okay, good.

24 MR. GELL: Thank you very much then. We will start.

25 Christian Zapatka who has been recognized by this board as an

expert witness, is going to lay out the project as it exists now. Thank you.

MR. ZAPATKA: Yes, I'd like to first refamiliarize the board with the context of the project at hand, and then go through the drawings to refamiliarize everyone with the plan and then add a few remarks. So, this scale model, which of course is a model. The drawing have the accurate dimensions, the model doesn't.

CHAIRPERSON GRIFFIS: And forgive me, but I have the problem of interrupting constantly.

MR. ZAPATKA: No problem.

CHAIRPERSON GRIFFIS: But quick question. This is the model we saw last time, isn't it?

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: Now that I'm seeing it again and my issue is whether we could get photographs of that just for the case file.

MR. ZAPATKA: Certainly.

CHAIRPERSON GRIFFIS: You know, even Polaroid shots that can be copied would be great.

MR. ZAPATKA: We can do that and I'd like to emphasize again that while it is built at one-quarter inch scale drawings, numbers are always the definitive dimensions to follow.

CHAIRPERSON GRIFFIS: So this is diagrammatic.

MR. ZAPATKA: The accurate documents are the

drawings, not the model but it's close enough for work. Again, this is 1324 27th Street. It's the end unit of a row of houses built in the 19th Century, measuring less than 11 feet wide each, and approximately 26 feet in depth. Two houses were combined at one end. Another house immediately adjacent, the property owned by the Giese family, has an addition on it as well, and the one at the corner is the one we're looking at with the proposed addition to match the depth of the neighboring addition, the Giese property.

These houses are 18 feet high and perpendicular to them on Dunbarton (phonetic) are a series of houses that are three stories high and 28 feet high. So again, 18 feet, 28 feet. And I want to show you □

CHAIRPERSON GRIFFIS: Just for clarification.

MR. ZAPATKA: Yes.

CHAIRPERSON GRIFFIS: I understand the relationship, so we're talking about a 10 foot difference?

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: That's from what? What are you measuring to, the top of the roof line on each of them?

MR. ZAPATKA: Yes, the top of the roof line for each, 2810.

CHAIRPERSON GRIFFIS: But the comparison of the difference between the two not the exact dimensions.

MR. ZAPATKA: Correct. These are three-story

houses, two-story houses. And then again, a photograph showing the existing conditions when I first started working on the project. You can see there's a very large tree, a weed tree that had been growing in the back of the house very close to its foundations for quite some time.

I know that the Joyners at 2704 Dunbarton were quite concerned about it and mentioned it to me when I first met them and the tree was removed in the summer and it's a welcome change I know in the neighborhood to not have this giant weed tree there.

CHAIRPERSON GRIFFIS: Okay, two things.

MR. ZAPATKA: Yes.

CHAIRPERSON GRIFFIS: One, you're going to submit that, correct, that montage photograph? Is that already done? Yes, that's what I □

MR. ZAPATKA: That is in the record, yes.

CHAIRPERSON GRIFFIS: All right, and you just stated that that tree which you previously talked about, you just mentioned now, is gone over the summer?

MR. ZAPATKA: Yes, it was removed. Right. I'm going through material I went through last time to refamiliarize everyone. Here's a view again of the back of the Trautwine property and you can see on the left the house, white brick with the peeling paint, sort of white brick. That's the Joyner house, and the lower photograph shows similar. It's just to give

everyone the context.

CHAIRPERSON GRIFFIS: And that's a montage that's actually continuous?

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: We're seeing a perspective photograph from the property?

MR. ZAPATKA: Right, this is the back of the 27th Street houses, and then the back of the Dunbarton houses.

CHAIRPERSON GRIFFIS: Okay, is clear board members?

MR ZAPATKA: Yes, okay. I'm going to take you through the drawings. Oh very quickly, this is something, a drawing that was not submitted but I found from the December 4th set of drawings for the ANC, which shows that relationship again between the two-story houses and the three-story houses, just for clarification on the relative height between the Dunbarton houses and the 27th Street houses, and I can make copies and submit them too.

CHAIRPERSON GRIFFIS: Okay, yes we'll need that.

MR. ZAPATKA: Okay so I'm going to go through the drawings and then back through the photographs and a couple of comments. So this is the February 11 set that you've received but just in a larger form there, showing again the footprint of the proposed addition to the house at 1324 27th, and this time 12 feet back, rather than 10'3". And I'd like to remind the board that

the 12 foot, this footprint is what had been excepted at the December 4th ANC meeting and approved, 12-foot rear addition.

As well, and I'll bring this up now and refer to it again, in the December 4th drawings that were approved, there are also side windows on the projecting L, so those were approved December 4th by the ANC. This again the February 11th drawings which you have, showing the roof plan with the proposed addition projecting 12 feet. The first three feet, the full width of the property, then stepping back by three feet in order to accommodate the Joyner's request for the addition not being right on their property line.

And in the plans, the first floor, there's a kitchen added. The interior dimensions are six and a half by 11'4" and the upstairs is the same, a bedroom. I don't have the big one here. It's in your small package, but the second floor bedroom that's added, it's barely reasonable to call it a bedroom. It's six and a half, 6'5" by 11'4", very small extra room. This is not a project to introduce a multi-bedroom house to the neighborhood.

And then finally, a utility cellar below the space of the addition, and this is for the mechanical equipment, washer and dryer, hot water heater, furnace and so on, and it has no windows and it's approached solely by an exterior door, from a set of exterior stairs, and this is done in order to take that mechanical equipment out of the first floor and put it in a utility cellar below so there's more room again, room upstairs.

Keep in mind again the interior of this house is only 10' wide, so it's quite narrow. Any kind of provision for eliminating bulky mechanical equipment would be welcomed, so that's the reason for the utility cellar, and I will bring up at this point as well, because I know the neighbors owning these houses are, of course, concerned about structural foundation questions.

Ms. Trautwine and I met with Dr.Joyner and his wife and a contractor that may build the project or would build the project if we were to do it, and we reviewed this question of an exterior stair alongside the property of the Joyners, and indeed currently the back of the Joyner property has a stockade fence built upon a low brick wall. That brick wall is just one row of brick. So in digging below on the side for the exterior stairs, we would need to reinforce that neighboring wall and we had this discussion with a possible contractor of Dr. Joyner and his wife.

It was stated at the time that indeed that would be necessary to reinforce the wall with an 8" thick wall with proper footings and so forth. So and the owner would bear the cost of that. So that's one issue related to that side of the house.

On the other side, again we're showing a nine-inch gap again only following the plat plan given of 10'9" wide and taking it from the exterior corner. This is all we can go by right now before having an actual survey made, simply the plat plan; and of course, any change in information will be addressed.

But in terms of structural issues between these two additions, certainly in digging below the utility cellar under this proposed addition, we would have a structural engineer plan an underpinning for the neighboring house so as not to hurt the foundations of the neighboring addition. Also if this gap is to remain that nine-inch gap, that is something that can easily be covered by roofing that continues across to the neighboring house, and then flashing details and so on can be introduced.

This is a situation that I've seen in a house we just finished working on, where for about, I guess it must have been 60 years, since `39, there had been a gap covered with roofing, and then on the face with plywood and then there was gaps in it to let air circulate and I actually took photographs of that inside when that was going on, and it was perfectly dry. The original clapboard of the original house was still intact, unpainted, and perfectly dry.

I'm bringing up these two points because I want to assure the owners of these neighboring houses that we'll do everything we can to make sure that everything is structurally correct and appropriate for the site. I also want to emphasize quite, quite clearly that again this is a schematic set of drawings being submitted at the concept stage only for a zoning variance, as well as for concept approval from the Old Georgetown Board.

The next step, if we are to proceed, would be to

submit to the Old Georgetown Board working drawings for their review, and I've done this a number of times, and it's an extremely closely watched process where eery detail has to be addressed; structural, drainage, material, and so on. So I want to assure again the Joyners and the Geises that this is at a schematic level. This is where we are in the process for obtaining zoning variance and concept approval from the Old Georgetown Board.

When, if indeed we get to the point of construction documents, all of those have to go before the Old Georgetown Board in a very rigorous approval process.

CHAIRPERSON GRIFFIS: Is there a reason why you didn't go to the Old Georgetown Board first?

MR. ZAPATKA: We did. We submitted the initial concept to the Old Georgetown Board in June. They verbally stated that they had no objection the concept of the project, to make an addition to this house. They then, after going to the ANC and the ANC expressing some reservations, the Old Georgetown Board asked that we get a reaction from the Board of Zoning Adjustment before they could write any.

CHAIRPERSON GRIFFIS: Who said that?

MR. ZAPATKA: The Old Georgetown Board. They asked that the Board of Zoning Adjustment make their response to this before they could give a written response to the concept. But again, they verbally approved the concept in the first go-round

back in June.

CHAIRPERSON GRIFFIS: Well, just to be clear, obviously we get □

MR. ZAPATKA: Right, and that was the full width addition.

CHAIRPERSON GRIFFIS: Right.

MR. ZAPATKA: Going back 10 feet.

CHAIRPERSON GRIFFIS: Okay. Either way, my question goes to this. You know, there's not specific requirements. We have our submissions, but most ofte we look for even permit submitted drawings in terms of BZA review. Now that obviously is on much larger projects and they are a little bit different.

But just to be clear to the applicant so that we know, and I'm sure Mr. Gell is well aware, anything we approve now will be very specific. It's not schematic in its stage of drawing. It will be □ if we deny it, then it's not an issue. If it's approved, it will be, depending on the issue, to the square inch or inch though.

MR. ZAPATKA: Right, let me clarify. When I say schematic, I mean not construction documents, the initial design. Of course, all of the dimensions would be accurate. When I refer to the structural or the construction documents, the working drawings, that's where we're looking at wall sections, foundations, underpinning, draining and so on.

CHAIRPERSON GRIFFIS: Yes, okay.

MR. ZAPATKA: And then finally, right again it's a 558 square foot house. We're proposing to add 204 square feet, and I also at an earlier stage of the process, I had my structural engineer visit the site, who determined that the rear inside walls were in questionable condition, and indeed □

MR. JOHNSON: I'm sorry, I need to object at this point. He's talking about what somebody else said, which is hearsay, plus he was accepted as an expert for the limited purpose, as I understood it, of explaining the design, not talking about structural engineering issues.

MR. ZAPATKA: I think this actually refers to the design of the project.

CHAIRPERSON GRIFFIS: Well, let's be clear. First of all, an approved expert witness in design doesn't preclude the fact that he can speak of the structure and possibly the structural problems. He can't give us an analysis of the structural or the remedies for it. But what he's doing, what I've heard so far is outlining some of the issues. And then, where are you going with this?

MR. GIESE: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

MR. GIESE: I need to object also.

CHAIRPERSON GRIFFIS: Okay.

MR. GIESE: He's going to documents that were given to us today. I think as we stay here by the rules, they've had

these documents for a long time.

CHAIRPERSON GRIFFIS: Are you looking at this document?

MR. GIESE: Right.

CHAIRPERSON GRIFFIS: EMC 2, Inc.

MR. ZAPATKA: That's my structural engineer.

CHAIRPERSON GRIFFIS: I don't see any reason why they couldn't bring this up today and submit it today. Is there any reason why that can't happen?

MR. GIESE: This all goes to the cumulative item of this. It's not one document. It's several documents that, at least according to the rules anyway, that the applicants are supposed to have their items in.

CHAIRPERSON GRIFFIS: Okay.

MR. GIESE: If the hearing is ended and they want to submit something, then the parties should have an opportunity to comment on those and have time to reflect on them.

CHAIRPERSON GRIFFIS: And frankly, the board would need time too; however, at a lot of cases, freshly contested cases, testimony in cases are developed, even at the last minute. I don't see any problem. I would rather err on the side of getting all the information than not getting it. And so, let me just review this. Is there an objection to this letter being submitted to the file?

MR. GIESE: The objection is a general objection.

1 That letter does not have to be a complex document, but they've
2 submitted cost figures which are very complex, which none of us
3 could absorb in 20 minutes.
4 MR. JOHNSON: May I be heard briefly. My issue is
5 not with the fact that this was presented today and I understand
6 that does happen. But my issue really is it is, as I see it, an
7 essential part of the applicant's claim that there is a unique
8 problem that she's dealing with that justifies these five
9 variances that the rear of the structure is about to collapse, and
10 we've got some question about whether that is the case, and I
11 don't think coming in with a letter from a structural, from
12 someone who may be a structural engineer is enough to meet the
13 burden. I mean there should be live testimony from a witness
14 who's going to say that, that we can cross-examine.
15 So my objection is a hearsay objection, not an
16 objection on the lack of notice. This recently has come up as
17 part of the applicant's plan that there's a suggestion that the
18 rear wall is unstable, and I think we should be allowed to
19 challenge that if that is presented in the form of competent
20 evidence.
21 MR. ZAPATKA: May I respond to that?
22 CHAIRPERSON GRIFFIS: No, not right yet. Okay, Mr.
23 Zapatka.
24 MR. ZAPATKA: Just to clarify this whole business of
25 the structural, in this many stepped process, at one point we had

presented a scheme to both the ANC □

CHAIRPERSON GRIFFIS: Wait a second. That's going beyond the motion that's in front of us right now.

MR. ZAPATKA: I was just trying to give the background of how we got to this.

CHAIRPERSON GRIFFIS: Right.

MR. GELL: Mr. Chairman, I think what Mr. Zapatka is trying to indicate is that this document is not a new document. Although it is just now being submitted to the BZA, it was in fact submitted to the Old Georgetown Board, and we thought that Doctor Joyner also had a copy of it, although he said earlier that he had not seen it before. But it has been around, and it was our mistake that we didn't put it into the record earlier.

CHAIRPERSON GRIFFIS: Okay.

MR. GELL: It is a document that's been around, and the issue has been stated many, many times and has never really been objected to. I thought we really ought to have the original document though just in case there was a question later on.

MR. JOHNSON: I think we have objected to that and also, I would point out, this is an October 15, 2001 letter. We were actually in from of the OJB on October 4th, which is the last time the OJB considered and rejected one of the proposals that was being offered, so this is after that.

CHAIRPERSON GRIFFIS: Yes, but correct me if I'm wrong, your motion is that there isn't sufficient documentation

for you, basically you would like a witness here to cross-examine on the structural integrity of the back wall and you're indicating that this letter is not sufficient and you've alluded to the fact that this may not be a structural engineer that wrote this letter. That can happen in cross-examination of the parties here today, can it not?

MR. JOHNSON: No, I don't see how it can because there's nobody here who can testify with the expertise of a structural engineer.

CHAIRPERSON GRIFFIS: My point is you can cross-examine the participants that are here today to establish whether this has sufficient documentation for us to consider the case of a structural integrity of the rear wall.

MR. JOHNSON: I don't see how that's the case, because they're offering the opinion of this person who's not here that the wall is unstable.

CHAIRPERSON GRIFFIS: And you have to take it at face. We accept government reports that can't be cross-examined. We can accept testimony. I think you can cross-examine in terms of the facts of who and what these folks are and that can be determined by this board whether it's sufficient, or it may come out that it isn't sufficient for us to make a determination or agree to the fact that there are structural problems.

MR. JOHNSON: Well, let me just say the statute says we have the right to cross-examine evidence that's presented.

This is not competent evidence. It's hearsay and we have no opportunity to cross-examine this because the person who wrote it is not here. That's the objection.

CHAIRPERSON GRIFFIS: Okay, and so your motion would be to not have this submitted then. I can't have a motion that calls a witness for the applicant. So the only motion of action that you'd like me to do is not accept this letter?

MR. JOHNSON: Correct.

CHAIRPERSON GRIFFIS: Board members.

COMMISSIONER ETHERLY: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

COMMISSIONER ETHERLY: Counsel raises an interesting point. I would be inclined, however, to allow the letter. As you noted, the board and its members, of course, would just have the opportunity to determine what kind of evidentiary value and weight to add to the letter. Cross-examination would be helpful in terms of helping to ascertain the grounds or the rationale for the letter but I'm inclined to allow the letter, Mr. Chair. Thank you.

CHAIRPERSON GRIFFIS: Thank you, Mr. Etherly. Anybody else?

VICE CHAIRPERSON RENSHAW: Yes, I'll weigh in with the opposite point of view. I would rather have the structural engineer before us to answer questions. I think that the attorney for the Joyners, it's Mr. Johnson, is that correct?

MR. JOHNSON: Yes.

VICE CHAIRPERSON RENSHAW: He is on point when he states that he would need to cross-examine this witness or this potential witness, and we don't have any background information on the person who signed the letter, as to whether or not he indeed is merely a CEO and/or a structural engineer, who would be competent to write such a letter and sign it.

So I would opt that this not be included in the record, or in some way if the applicant can produce a witness at a later hearing, then that would be the route to go. But until such time, to strike this.

MEMBER LEVY: Mr. Chair.

CHAIRPERSON GRIFFIS: Yes.

MEMBER LEVY: I'd be inclined to accept the letter. Frankly, if the applicant is intending to use this as part of the case in meeting the variance test, I would agree that Mr. Zapatka has not been accepted as an expert witness in structural engineering, and so I don't know what kind of weight I would ultimately give to it. But I don't see a problem with it being submitted.

CHAIRPERSON GRIFFIS: Okay, and I frankly separate the two, because the designer is discussing a letter that's submitted does not move him to being an expert in structural engineering.

VICE CHAIRPERSON RENSHAW: But, Mr. Chairman, in so

doing the board almost makes it a requirement for the opposing parties to submit a structural engineer who would be able to talk to this issue, and I don't think that that is quite fair. If you submit something, you should at least attach the credentials of the person. If you submit something that is supposedly expert testimony, you should submit the resume of the person that's on that letter.

CHAIRPERSON GRIFFIS: I'm not sure that this is coming in as expert testimony in the submission of the □

VICE CHAIRPERSON RENSHAW: But it is □ we are being asked to take this evaluation of the house at point value.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIRPERSON RENSHAW: In other words, here it is. This is what this man says.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIRPERSON RENSHAW: But we don't know the credentials of that man.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIRPERSON RENSHAW: And so, if we accept it, we are almost forcing the opponents to say well, we're going to get, we're going to have to spend money and get a structural engineer to talk to this issue also.

CHAIRPERSON GRIFFIS: Well, I'm not sure it would absolutely be necessary. If you burden one, you burden the other. I mean why are we burdening the applicant for □

VICE CHAIRPERSON RENSHAW: Well, I have made my point.

CHAIRPERSON GRIFFIS: □ their submission to bring in structural engineers, which probably bill out at $200 an hour.

VICE CHAIRPERSON RENSHAW: Right, but I have made my point. This is not an acceptable piece of evidence.

CHAIRPERSON GRIFFIS: Okay, this is what I see. I've now read the letter that was submitted today. This is no unequivocal in terms of its analysis of the back wall, and frankly, I don't find this as incredibly □ it's not showing one way or the other.

This is not a structural analysis. It is indicating that the person that did the analysis of this, and we can get to the bottom of what their expertise is, says that the structural integrity is in question. That to me is not strong enough to sway it one way or the other.

I believe that the information, in terms of establishing the basis and possibly the basis of analysis can be, if not determined today by those present in this hearing, can be requested by this board for further submission by the applicant. I think if the opponents and the parties in opposition want to hire structural engineers to refute the integrity of that back wall, I think that can be worked out with the owner of the property.

Let me also just say, we have color photographs of

this. I've looked at this back wall. You can see structural cracks in the photographs that were just submitted. So I think the designation, I as Chairman of the BZA and no other authority can go back there and question the structural integrity of that rear wall. Okay, this is quite an awful lot of time to spend on this.

So I would submit this and I believe we don't have an exhibit number on this yet. Do I have the case up here? Okay. It is going to be Exhibit 49. All right.

We're at 4:10 folks. Hold on a second. We've got an appeal that we're calling this afternoon also. I'm getting to all the cases today. Again, I made this statement before and maybe it's not appropriate, but I think there is a point of scale of any application.

Certainly an appeal we've just finished this afternoon is taking over 30 hours of our public hearing time with good reason. It's complicated. It's incredibly involved. I don't put this kind of application on the same level as something as that, and perhaps I will get in trouble for saying all of this, but we are looking at an addition of 88.5 square feet, and I do not want to take all afternoon and have to postpone another appeal.

If we have to continue this case, I think we would if we need additional time for everyone involved to say what needs to be said. But to that, I want to be judicious in what we're

doing and getting to the fact of the matters. I will revisit the schedule at 5:00 and see how far we are with this, and if we need to continue this to another day, we will do so. If we can finish this in terms of its hearing today and testimony by five o'clock, then so be it. Okay.

MR. ZAPATKA: I have one more point. I have one more point to make about the question of light in relation to the neighboring house on Dunbarton, the Joyner property. This photograph on the right shows, it's a photograph taken from the roof of the existing house at 1324 27th, this photograph right here. And what it shows below are the houses on Dunbarton, 2704 the Joyners, as well as 2702 next to it, and this shows the light.

CHAIRPERSON GRIFFIS: Do you want to turn those so everyone can see them? You might want to step back so the board and parties can see.

MR. ZAPATKA: This thing is heavy.

CHAIRPERSON GRIFFIS: I understand that. I just need to position you so everyone can see it while you're talking.

MR. ZAPATKA: I want to make the point with these photographs that the light falling on the face of the houses, the back of the houses at Dunbarton are the same, whether they're behind the existing house or not. There's an addition beyond here, and so I've had this from several different times of day. This is through the summer and then again in the winter down here.

In each case it shows that the house at 2702 is

getting just as much light as the house at 2704, and the house at 2702 is already behind the existing house. So that existing house stretching is not going to change the amount of light that 2704 gets. And in addition to that, we also pulled it back three feet from the property line.

CHAIRPERSON GRIFFIS: So your point if the addition was there when you took that photograph, you would see the same sunlight.

MR. ZAPATKA: Correct.

CHAIRPERSON GRIFFIS: On both the properties, and you indicate that the top are summer and the bottom are winter, and what time of day approximately?

MR. ZAPATKA: I did several times of day. This is Friday, July 27th at 3:30 p.m. I don't have the date. This is Sunday 22nd at 2:30. I had one at 9:30. These are then, yes, in the winter just recently, and those were in the late morning. So I was taking it sort of calibration, late morning, mid afternoon, late afternoon.

CHAIRPERSON GRIFFIS: Could you just hold them up a little bit. I can't see the bottom one. Thank you.

MR. ZAPATKA: And this shows in the winter view that the existing house is casting a shadow. This is in the late morning about 11:30, casting a shadow on both of these houses, so even if this addition weren't there, that shadow would still be there and the existing or the addition would just stretch the

shadow across to the next house and the house in question opposite. This is slightly earlier actually.

VICE CHAIRPERSON RENSHAW: Would you point out the Joyner house?

MR. ZAPATKA: Yes, right here. So at 10:30 in the morning in the winter light, the house is absolutely covered with light, and then at 11:30 a shadow starts to pass over the lowest level, as it does the neighboring houses behind the existing.

So I guess what I'm arguing is that a projection of that which is side-by-side with the existing projection beyond, is not going to change that degree of shadow, and again emphasizing that there's this third floor in every case, goes beyond the addition. The addition is always lower than the Joyner house. But yes, these are to show the light studies. And that's everything for my presentation.

CHAIRPERSON GRIFFIS: Okay.

MR. GELL: One question, Mr. Zapatka. I wonder if you would just indicate the distance from Doctor Joyner's windows to the windows that we would be putting into the addition?

MR. ZAPATKA: Right. This side yard for these houses, this is 16 feet in depth, and that's the minimum depth required between windows opposite one another, and the windows that would be introduced here in the side wall would be at 19 feet, another three feet beyond, and zoning calls for the windows to be at least 30 feet in from the property line when they're on

the side, which is what that's showing.

MR. JOYNER: Three feet?

MR. ZAPATKA: Three feet, at least three feet.

MR. JOYNER: Do you have a citation on that?

CHAIRPERSON GRIFFIS: Hold on. Do you want to sit down and introduce yourself and give your name? Are you a party in this case?

MR. JOYNER: Yes, I'm Doctor Joyner.

CHAIRPERSON GRIFFIS: Okay, aren't you represented?

MR. JOYNER: Yes.

CHAIRPERSON GRIFFIS: Okay, do you want to have your representative state your objective, or are you going to be speaking today?

MR. JOYNER: I'm going to be speaking as well as he.

CHAIRPERSON GRIFFIS: I see. I would rather have one speak. If you're represented, I would have your representative speak for you.

MR. JOYNER: Well, all right we can do that.

CHAIRPERSON GRIFFIS: Okay. Is there an objection?

MR. JOHNSON: Well, he's referred to the zoning regulations without citing the regulation several times.

CHAIRPERSON GRIFFIS: Okay, and you object to that?

MR. JOHNSON: Yes, and he's not an expert.

CHAIRPERSON GRIFFIS: You can cover that on cross-examination.

MR. JOHNSON: Okay, he's not an expert on it either.

CHAIRPERSON GRIFFIS: No, but that doesn't preclude people from speaking about things. Just because he's not an expert on zoning doesn't mean he can't cite the zoning regulations, would you not agree?

MR. JOHNSON: Well exactly, but he didn't cite the zoning regulation.

CHAIRPERSON GRIFFIS: Well perhaps even better then that he's not an expert in zoning. He just mentioned the zoning. If you want under cross-examination to get the cite from him and get the specificity, I think we can do that. Okay, other questions? Mr. Gell, do you want to continue?

MR. GELL: Yes, I'd like to just ask Mr. Zapatka if he has a written estimate for the cost of the work that's going to be done?

MR. ZAPATKA: Yes, the estimate that we got from Kelly Vogen and Associates, a reputable firm doing a lot of work in Georgetown -

MR. JOHNSON: I object to this as well. His opinion as to this firm, he's going to offer a document that is another document that's hearsay that the person who prepared it is not going to be here for us to cross-examine, plus he's already said this is only a possible contractor. So, I object.

CHAIRPERSON GRIFFIS: Right in which case they're submitting it as an estimated pricing on this.

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: And this goes to what in terms of the variance test?

MR. ZAPATKA: Just to answer the question, the first estimate we got on this project is $121,000.

CHAIRPERSON GRIFFIS: Wait a minute. There's an objection I have to deal with first.

MR. ZAPATKA: Oh, sorry.

MR. GELL: Sorry, Mr. Chairman.

CHAIRPERSON GRIFFIS: Mr. Gell, can you tell me, there's an objection about the submission. Before the board looks at this, why don't we get through this motion. There's an objection to either Zapatka, but I'm taking it as an objection to the submission of the estimated pricing on this, is that correct?

MR. JOHNSON: Correct, and to the statements he had made about who prepared it and the qualifications of the person who prepared it.

CHAIRPERSON GRIFFIS: Is that your only problem? Can we get through the numbers? Do you have any problem with them saying there's an estimated pricing of $2.5 million to build this thing?

MR. JOHNSON: Well, I don't think that's the estimate.

CHAIRPERSON GRIFFIS: No, it's not the estimate because I haven't taken it.

MR. JOHNSON: I guess the issue is if they are having him testify that this is a reputable firm and this is a reasonable estimate, he can't testify to that because he's not competent, or at least it's not been shown that he's competent to testify to that.

CHAIRPERSON GRIFFIS: Okay. I agree with that. I would uphold that motion that you don't, that we can not hear testimony unless there's more information in terms of the background and the expertise of the association that put these numbers together. But that doesn't mean that I can't hear the pricing estimate, and frankly to get to the bottom of it, why do I want to hear this? Does it go to any of the tests of the variance?

MR. GELL: We've indicated that there might be a problem in funding the rear wall if we can't get the addition. We took the trouble to ask a contractor how much it would cost for the addition and he supplied this estimate. We submit it only as saying that this is an estimate that was handed to us, and I really hope we can get it done for less. But this is what we were told. It was only for that purpose, because we've made the statement in other places that it's going to cost this much. We thought we at least should provide a copy of this estimate. We'll withdraw it if the board really wants us to.

CHAIRPERSON GRIFFIS: Okay. Do you have an affidavit that shows this is a licensed contractor in the District

of Columbia?

MR. GELL: I don't have any such documentation.

CHAIRPERSON GRIFFIS: Can you get that?

MR. GELL: Oh, certainly.

CHAIRPERSON GRIFFIS: I'm going to accept the pricing for your □

MR. GIESE: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes. Do you have a new objection?

MR. GIESE: Actually it's a continuation of the same objection before. As I said before, the other document is fairly simplistic. This is a fairly complex document, which is hard to go through and hard to respond to on □

CHAIRPERSON GRIFFIS: You'll have time to respond, believe me.

MR. GIESE: On 10 minutes notice, to analyze, to look at.

CHAIRPERSON GRIFFIS: I'm not asking for your response in 10 minutes. I'll give you adequate time to respond to this. I'm not sure what kind of response you're going to need for this.

MR. GIESE: I have no idea. It's a long document.

CHAIRPERSON GRIFFIS: I'm accepting this in as a preliminary pricing exercise done by what will be documented as a licensed contractor in the District of Columbia. If they are not

licensed in the District of Columbia, where they're licensed, and then we will value that as credentials for what prices we have. Okay, let's move on.

MR. JOHNSON: I assume that's not a ruling that this is relevant to the criteria for obtaining a variance?

CHAIRPERSON GRIFFIS: Oh, no. We get an awful lot of submissions that have nothing to do with the test for a variance.

MR. JOHNSON: I understand.

CHAIRPERSON GRIFFIS: We just hope to get more that go to the test of the variance on every case. Hold on, I'm sorry. This is my problem. I need to keep up with this stuff. This is Exhibit 50.

MR. GELL: I have just one more question for Mr. Zapatka. I wonder □ I'm sorry, should I start.

CHAIRPERSON GRIFFIS: Yes.

MR. GELL: I wonder if you'd just explain the reason for extending the addition three feet to the full width?

MR. ZAPATKA: Right, again initially we wanted the full width all the way back and then accommodated the Joyner's request for a setback from their rear yard, and that setback is where it goes beyond the three feet allowable, and we're retaining the three feet full width allowable for the reason □ two reasons. One, the door into the back bedroom.

I've done these designs a number of times and it's

very, very compact, and we need the turning ability to get into the bedroom, and you have to be able to get in there. The bathroom is at a standard size. Every room, the front room is 10' x 10'9". There's a side hall that's 2'3". The bathroom 8' in one direction. These are all very minimum sizes and the rear component, that three-foot full width, I believe as a designer it's necessary for getting into that back bedroom that's 6'5" x 11'4" really, as I said, an extra bedroom.

So at least the approach would be gracious and from the hall that runs between the bedrooms on that upper level, you have a window at the far end, so it brings in light. So it's very much an exercise in making a minuscule space feel a little more gracious with the use of light and a tiny vestibule before getting to that extra bedroom.

MR. GELL: Thank you. I'd like to, unless the board has some questions of the witness.

CHAIRPERSON GRIFFIS: I can't imagine you'd question that. Let's begin a couple of things. First of all, I want to go to the separation of walls. My understanding is the nine inches, which is the dimension that's thrown out, is basically set on building this entire addition within the property line, is that correct?

MR. ZAPATKA: What I understand to be the property line.

CHAIRPERSON GRIFFIS: Right, exactly. So if you put

that down, I have some concerns. First of all, you indicated you could seal that off the top, correct? The roof straight across, isn't that common as a lot of townhouses do with a party wall, the roof would come up and over, flash down and be a nice seal.

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: Are you conceivably closing off the other, the vertical separation or is that going to be all open?

MR. ZAPATKA: That could be closed off also. And again, I raise this simply to say that in placing the addition where I believe the width of the property to be, we're left with a nine inch gap, and if that nine inch gap presented a problem in any sense for the neighbor, there are ways to accommodate that situation. I mean, in some cases, of course, there would be a discussion about joining the properties. But if that's not agreeable, there's also the possibility of just bridging it, closing the gap and the vertical face.

CHAIRPERSON GRIFFIS: And certainly meeting to a common wall on the property line would mitigate the separation or the opening.

MR. ZAPATKA: It would.

CHAIRPERSON GRIFFIS: Or you could close it off if that mitigated any other problems that may be anticipated. That being said, there's been I'm hopefully going to get through a lot of things and then the opposition will not necessarily have to

take up because I'm using some of their documents.

So going to drainage, roof drainage and that kind of issue, what's your anticipation for dealing with that?

MR. ZAPATKA: At this point, again the drainage, the close details of drainage would be studied in the construction documents. But at a preliminary level, I'm planning that the drainage go to the well at the base through any in-ground system connecting back out to the city system.

CHAIRPERSON GRIFFIS: Okay, but your testimony is clear that probably the construction will provide for an adequate drainage off the roof.

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: Okay, now venting, vent stacks, chimneys, how many? Where are they?

MR. ZAPATKA: There's currently a common chimney, what appears to be a common chimney between 1324 and 1322 as see in the plan here.

CHAIRPERSON GRIFFIS: Which also shows the elevations.

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: Are you interested in using that?

MR. ZAPATKA: Well, the proposal is to introduce a fireplace to the front room in the existing house, which would mean tapping into that chimney with a flue. But again, these is a

design concept, and if we get to structural, then of course we'll look at that more closely.

CHAIRPERSON GRIFFIS: I spend just a moment on it because it may only go to adverse impact and some of the other smaller tests that have nothing to do with the zoning jurisdiction for us. But obviously and frankly, it's going to be more of a building code issue than it is a zoning.

MR. ZAPATKA: Sure.

CHAIRPERSON GRIFFIS: How you use that, how you seal it and actually the extension of it above the roof line and the vents back that you'll have to have for your plumbing.

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: So, okay. Now if I understood you correctly in looking at any sort of sight greeting and group planning and excavation and all that, that it was clear in your mind and it is clear in terms of the law what the responsibilities would be bearing on the property owner that's doing the construction, is that correct?

MR. ZAPATKA: Absolutely.

CHAIRPERSON GRIFFIS: Okay, meaning you would safeguard, as you say shore up anything that would be required in terms of the construction phase of this, and then anything would be created in terms of the new construction that would continue the viability of the existing condition, correct? Okay. Any other questions. Yes.

VICE CHAIRPERSON RENSHAW: I take it from the drawing, I don't have an exhibit number on it, but it shows the block and where the property is located and your neighbors. This is the plat, thank you. All right, we have a definition for it. I noted that the property is not accessible from the rear, is that correct?

MR. ZAPATKA: Correct.

VICE CHAIRPERSON RENSHAW: It's □

MR. GIESE: Excuse me. I hate to interrupt you but that is not the submitted plat here. Since we've been technically talking about plats that are here, that's not what was submitted as part of the plat for the application of location and so on. Frankly, I think that was submitted by Mr. Joyner perhaps, Doctor Joyner excuse me of the location of this spot. But that is not the applicant's document.

VICE CHAIRPERSON RENSHAW: I just wanted to identify for the record what I was referring to, and my question dealt with whether there's any access to the property from the rear, and the answer is no.

MR. ZAPATKA: Correct.

VICE CHAIRPERSON RENSHAW: All right. Have you determined and discussed with the neighbors how you're going to handle the removal of dirt, and where you're going to be placing the dirt while you are under construction?

MR. ZAPATKA: No, I haven't but in the discussion

with the potential contractor, we talked about bringing everything through the existing house, which is something that I've done already for a house on O Street successfully to a dumpster in front of the house.

VICE CHAIRPERSON RENSHAW: All right.

MR. ZAPATKA: The existing house is unoccupied and the middle wall between the two rooms on the first floor will be opened up, so that will, in fact, be the access to and fro the rear yard.

VICE CHAIRPERSON RENSHAW: All right. Thank you.

MR. JOHNSON: For purposes of making the record clear, what you were referring to was Exhibit A to the submission that Dr. and Mrs. Joyner made by letter dated February 19th, 2002, just so it's clear.

VICE CHAIRPERSON RENSHAW: Thank you for clarifying that.

MR. ZAPATKA: This was also discussed at the meeting we had with Doctor and Mrs. Joyner onsite, the means of removal of earth.

CHAIRPERSON GRIFFIS: Okay, any other questions? Okay. Cross-examination. Who would like to go first? Mr. Giese.

CROSS-EXAMINATION

BY MR. GIESE:

Q I'd just like to ask Mr. Zapatka, are the plans that have been submitted and these lines that are submitted, is

1 that what you're committing to here? We went through he was
2 talking about concept. The Chairman said he his looking for
3 something exact to be submitted.
4 A (No response).
5 CHAIRPERSON GRIFFIS: I think that's been
6 established. I don't think I need him to answer that. These
7 drawings are what we're basing our deliberations and any sort of
8 weight that we would grant or deny.
9 BY MR. GIESE:
10 MR. GIESE: All right. Let me go from here. Mr.
11 Zapatka, the item you have up there now, it would appear that □
12 CHAIRPERSON GRIFFIS: You need to be at a mike or
13 you won't be on the record.
14 MR. GIESE: Thank you. It appears to go to the
15 center of the wall.
16 CHAIRPERSON GRIFFIS: Okay, so you're indicating on
17 A2 that the addition wall □
18 BY MR. GIESE:
19 Q The addition wall appears to go to the center of
20 the wall between the houses, is that correct, Mr. Zapatka?
21 A The proposal for an addition here is for a 10'9"
22 width. This is 3 feet. That's 7'9". So that's starting from the
23 outside corner of the house, three in and that 7'9". That's
24 10'9". Where that falls on the face of the brick wall is still to
25 be determined by a surveyor stake. That's all I can respond to.

Q Okay. I think it's more where these lines go.

A (No response.)

CHAIRPERSON GRIFFIS: Let me say two things. First of all, convention but more importantly Mr. Zapatka, when he stated the dimensions rule on the drawings he's submitting, and I think you would find in most architectural drawings, that would be the case that the drawings and the lines show one thing and the dimensions are what regulate.

So what's being stated, if I'm not incorrect, is that when the exact within inches, and if not exact property line is stated, they are anticipating that the addition that they're proposing today is 10 feet off of that line, which would be toward the common wall, meaning that that wall that he's drawing in terms of the two lines and the thickness that you're indicating may go halfway to the property line may not.

MR. GIESE: That's fine, but.

CHAIRPERSON GRIFFIS: What are you looking for?

MR. GIESE: I'd look to plan A3, which is the next one there. There seems to be inconsistencies.

CHAIRPERSON GRIFFIS: All right, but now we're into testimony which you can bring up later. This is cross-examination. Ask questions of his testimony.

BY MR. GIESE:

Q Does this go to the, right to the interior wall?

A Again, the proposed addition will be 10'9" wide.

The width of the property given in the plat plan, which is three feet off the property line and 7'9", where it hits the brick wall there is yet to bet determined. When the surveyor puts the stake in, then we'll know.

MR. GELL: May I say something, Mr. Chair. I'd like to explain where the nine inches came from. We know that the property width is 10'9". It is apparently difficult to measure from the front and it appears that there are nine inches more in the front than what we know the lot to be.

Therefore, when Mr. Giese said he wanted to be absolutely sure that we were on our property line, we offered to pull it back nine inches away from his property line. Now that was a mistake because we don't know where that line is. It could very well be that his wall is on the property line, and that the fence that Doctor Joyner has is not. And we're all going to be 10'9", whatever that may be.

We may be building right up against his wall. We may be nine inches or some other, whatever the decision of the surveyor is. We can't at this point tell you whether we're going to be nine inches from his property or whether we're going to be right against the property wall or what.

CHAIRPERSON GRIFFIS: Okay. Is that clear to this board?

BY MR. GIESE:

Q Mr. Zapatka, what is the distance from the edge of

this wall across to the end of your addition there?

A That's 10'9" and another 9".

Q Then another nine inches, right?

A Well, just in measuring the face of the brick from here to here, that's what I measure. But again, all of the proposals call for a 10'9" addition. Where that falls against the existing brick wall is yet to be determined.

Q Okay, so from the north wall right here to the interior of the south wall is 10'9", correct?

A Incorrect.

Q What's incorrect?

A It's 10'9" plus 9" to the neighboring wall.

CHAIRPERSON GRIFFIS: To the interior of the neighboring wall, not including the neighboring wall. The north wall from the north side of the north wall to the interior portion of the wall that's shared, what is the distance of this?

MR. ZAPATKA: Again, I measured the face of both the front of the house and the back of the house. On the front, I got 11'4" from the outside edge to the painted line between the houses; whereas the plat gives 10'9". On the rear at the base, where the foundation of this addition, it measures 11'4", and up higher towards the siding, it measures 11'6". But once again, 10'9" is the width of the property given the plat plan, so all drawings are based on 10'9".

BY MR. GIESE:

Q All right. Mr. Zapatka, on your plan here, it says from the north wall to the interior of the south wall it's 10'9", is that incorrect?

A Our plan is 10'9".

CHAIRPERSON GRIFFIS: I don't think that huge foundation needs to be laid. Ask the question you want him to answer.

MR. GIESE: The question of the day is, is if you place that 10'9" where he has it here, then he doesn't own any of the south wall. If you move that down toward the south wall □

CHAIRPERSON GRIFFIS: But I need you to ask. You can testify all you want when you get to that point.

BY MR. GIESE:

Q The question I want to ask is, is does Ms. Trautwine own all of the north wall?

A The plat plan gives the property width as 10'9". A surveyor will determine where those points are.

MR. GIESE: Don't you □

CHAIRPERSON GRIFFIS: Let me clarify the question. I think I know where you're going. Are you anticipating right now in the drawings that are shown the addition wall is completely on Mr. Joyner's property?

MR. ZAPATKA: That is the intention.

CHAIRPERSON GRIFFIS: So yes is the answer.

MR. ZAPATKA: Ms. Trautwine.

1 CHAIRPERSON GRIFFIS: So let's move on.

2 BY MR. GIESE:

3 Q Is your intention as part of this to extend the

4 north wall?

5 A I'm sorry would you repeat that?

6 Q Is your intention as part of this project to extend

7 the north wall?

8 A (No response.)

9 CHAIRPERSON GRIFFIS: Extend the existing wall, is

10 that what your point it?

11 BY MR. GIESE:

12 Q Extending the existing north wall. The idea is to

13 move that three feet out, right?

14 A That's the idea at the property edge, it would go

15 another three feet and then it sets back by three feet and then it

16 continues.

17 Q Now, does Ms. Trautwine own that wall?

18 A I'm not a surveyor, so I can't tell you.

19 Q Okay, if you move this down some, let's say that

20 you use that wall and that would me □ tell me, let's say the

21 surveyor comes up with 10'9", that would mean you don't own any of

22 the south wall then, is that correct?

23 A Again, I can't tell you because I'm not a surveyor.

24 Q You don't have to be a surveyor.

25 A I'm also not a property lawyer. Maybe a

prescriptive is more involved here. I guess I don't understand your question, but I can repeat again and again that the property is given as 10'9" wide and the intention is to build an addition that is 10'9" wide at its maximum point here. Where that falls, is yet to be determined, and indeed, Mr. Giese to assure you, if that falls for example right against your structure, we would take every precaution to make that a very clean and precise and structurally sound ceiling.

If it's not, if it fell 9" before your wall, we would do everything necessary to close in that gap. So in any case, wherever that addition is located, we will be very responsive to your needs for your house, of course.

MR. GIESE: Did you present these to me for me to analyze the harm to my house for your construction?

CHAIRPERSON GRIFFIS: That's a yes or no.

MR. ZAPATKA: No.

BY MR. GIESE:

Q Is it feasible for me to analyze the harm to 1322 from these plans?

A These plans are schematic drawings, which means the first stage of design. It does not mean they're inaccurate. All dimensions are given as accurate. If the design as a concept is approved by zoning and the Old Georgetown Board, a set of construction documents will commence, at which point neighbors will be contacted and discussions of provisions for safety of the

neighboring property will be discussed.

CHAIRPERSON GRIFFIS: Okay, so you anticipate having those discussion in terms of means and methods of construction?

MR. ZAPATKA: Absolutely.

BY MR. GIESE:

Q Mr. Zapatka, does the foundation in the wood structure protrude outside of that wood structure?

A The foundation of the wood structure does protrude, yes.

Q To the north.

A To the north right, and that's what I was saying earlier that the base, when I tape measure from the corner of 1324 to the base of the addition of 1322, I get 11'4". When I measure from the corner of 1324 to the wood siding of the addition of 1322, I get 11'6". So yes it does project by two inches down there.

Q Mr. Zapatka, if you put the addition directly up against the wood structure, what would that mean for the foundation?

A All structural issues would be addressed at the time of construction documents. This is a zoning and design phase that we're in right now. Of course, we would address those. I can't tell you any of that right now. I would call on my engineer, my structural engineer, who is indeed a licensed structural engineer, who does stamp my drawings to plan out how we

1 would address that. So again, these are concept drawings, not
2 construction documents.
3 Q Mr. Zapatka, if you were to put the existing wood
4 for the addition right up against the existing wood structure, and
5 keeping in mind that there is a protrusion of the foundation which
6 I don't know whether it's two inches or three inches or five
7 inches or six inches, would that harm the foundation?
8 A I can't answer that question right now.
9 CHAIRPERSON GRIFFIS: Hold on a second actually
10 before you answer that. Not only has several of the parties
11 objected to structural discussion from this gentleman, I can't
12 have him answer a question that's been objected to when he has no
13 first of all, it's a hypothetical.
14 It's not being proposed at this point and I think
15 he's answered the fact that there will be mitigation of any sort
16 of means and methods once they get to that point. If in fact we
17 were looking at the addition, what's now being proposed to create
18 a party wall, a common wall, then this would be a pertinent issue,
19 but more than three questions on this goes beyond the need.
20 MR. GIESE: Mr. Zapatka, then this is a hypothetical
21 plan? It's not a true plan. This is a hypothetical plan to place
22 this maybe nine inches from the existing structure, maybe one
23 inch?
24 CHAIRPERSON GRIFFIS: Are you talking about his
25 plans?

MR. GIESE: I'm talking about his plans that he submitted.

CHAIRPERSON GRIFFIS: Let me just be clear. This is hypothetical. You are posing a hypothetical situation for him to answer and speculate on a structural issue, which is not appropriate, and frankly it wouldn't mean anything to us if he even answered it. He is not proposing hypothetical plans but schematic design plans, which he's indicated, which there is a difference.

BY MR. GIESE:

Q Moving on. Mr. Zapatka, when did you start advising Jeff Joyner and Lori Trautwine about the property, do you have any idea?

A It was June.

Q June, so was this before they contracted the property? They contracted the property in May and they closed on the property in July. So you weren't advising them on the property prior to their contracting the property?

A I'm a designer, not a realtor, so I don't know.

Q What do you mean you don't know? Had you met them before they contracted for the property?

A I'm only aware of design issues, because I'm a designer not a realtor. So I have no idea.

CHAIRPERSON GRIFFIS: His question is going to, when you met Ms. Trautwine, was it to discuss this project?

1 MR. ZAPATKA: Yes.

2 CHAIRPERSON GRIFFIS: And the question is whether

3 she owned it at that point?

4 MR. ZAPATAKA: Right, I don't ask potential clients

5 their financial business.

6 BY MR. GIESE:

7 Q Was it in May?

8 A I remember making a submission to the Old

9 Georgetown Board in June.

10 Q Did you inspect the property at one point?

11 A I looked at the property. I'm not an inspector.

12 Q When you looked at the property, I imagine you

13 looked at the exterior of the property and the interior of the

14 property, is that correct?

15 A Certainly.

16 Q When did you do that? When did you first do that?

17 A I couldn't tell you what day it was, but I do

18 remember, as I said, making a submission to the Old Georgetown

19 Board in June.

20 Q So the submission in June.

21 A Yes.

22 Q So this was contracted May 18th, so □

23 A What's May 18th?

24 Q May 18th is the day they contracted for the

25 property, and I guess you can't recollect whether you had met with

1 them to discuss the project prior to them contracting?

2 A (No response.)

3 MR. GELL: We have to object to a statement of fact.

4 I'm told that the property was not contracted for until July.

5 CHAIRPERSON GRIFFIS: Let's get our statements in

6 clarification. If I'm not mistaken □

7 MR. GELL: I'm sorry, the closing was in July.

8 CHAIRPERSON GRIFFIS: Closing in July. Mr. Giese, I

9 think is going to try and establish that Mr. Zapatka, your

10 designer, walked through this building before they actually closed

11 on the property, is that correct?

12 MR. GIESE: That's one item, exactly.

13 CHAIRPERSON GRIFFIS: Okay. That's not a mystery.

14 You wrote that and submitted it in the case. Okay.

15 BY MR. GIESE:

16 Q Mr. Zapatka, did you advise Ms. Trautwine or Mr.

17 Joyner or both of them the difficulties of getting zoning relief

18 in a densely populated historic district like this?

19 A When I first met with them and looked at the house,

20 we discussed some possibilities for improving the property, and I

21 said that I would look into the necessary steps to take in

22 proposing an improvement, both with the DCRA and OGB, which I did.

23 Q Did you caution them on the difficulties of getting

24 this type of zoning relief of this long line we've gone through

25 here?

A (No response.)

CHAIRPERSON GRIFFIS: Let's establish something for my identification. When you walked in there, did this have a glaring idea in your mind that there were zoning problems with this?

MR. ZAPATKA: No, it didn't.

CHAIRPERSON GRIFFIS: That there were code □ I mean, that's where you're going with this, correct? You're trying to establish he walked in there. He knew that there were zoning problems, that relief was required and they discussed it, so somehow they've kept that from everybody.

MR. GIESE: I'm not suggesting they've kept it from everybody. I'm just trying to get on the record that there was a lot of knowledgeability here of what was going forward.

CHAIRPERSON GRIFFIS: I think it would be important for me and frankly, I think for everyone listening, and the board most importantly, ask it directly. Did you know on your first initial walk through on this when you started your designs, or when did you know that zoning relief was required on this property?

MR. ZAPATKA: I certainly didn't know in walking in to the house and into the rear garden, and I saw a neighboring addition. And without knowing about zoning, I could see that there was already a precedent for that. I didn't know when that was built and let's see, when did I find out about the zoning? I

1 can't remember when, but it was not, certainly not when I walked
2 in.
3 So I don't know. But I can say for sure that when I
4 walked into the property, into the house and the rear yard, I did
5 not know any zoning restrictions related to this property.
6 BY MR. GIESE:
7 Q You said you met with the OGB in June and at that
8 time you were aware of zoning issues.
9 A That was an eight foot wide proposal with a 10 foot
10 rear addition. Okay, here we go. I remember speaking to, and I
11 actually wrote this in a letter to. I remember speaking to
12 somebody at DCRA about lot coverage, and I brought this up with
13 Jose Martinez, the staff architect at the Old Georgetown Board who
14 said, if you need to apply for a variance, you can apply for a
15 variance at the same time that you're applying for review from the
16 Old Georgetown Board.
17 Q Did you recommend contractors to either Mr. Joyner
18 or Ms. Trautwine, prior to their closing on the property?
19 A The only contractor I've recommended is Kelly Vogen
20 who came to the site a few weeks ago.
21 Q When did you realize that the side and rear wall
22 were in serious need of repair?
23 A Oh, okay. At a certain point we made a submission
24 to the Old Georgetown Board, first to the ANC and then to the Old
25 Georgetown Board, which called for, rather than an addition, a

rear addition, we would take the three feet that was allowed in the rear and then excavate the earth under the existing house to make a basement level, so that the needed extra space would be in a new basement rather than in the rear.

This proposal was approved by the ANC, but then rejected by the OGB, and it was actually that very day that the OGB rejected it because they said by putting a basement under the existing house, it would seriously undermine the structural integrity of the house, and that very afternoon, I brought my structural engineer to the house to look at it and he said, indeed, he would recommend building the rear wall and the side wall.

Q What's the cost of that?

A One contractor that I've been speaking with would estimate the cost for replacing those walls at $50,000 to $60,000, the rear and the side walls.

Q The rear and the side wall?

A Right.

Q But your plans don't include any replacement of the side wall, is that correct?

A These plans don't indicate, they have no reference to the side walls at this point.

Q The repair of the rear wall, you're suggesting that's going to cost $50,000?

A (No response.)

CHAIRPERSON GRIFFIS: I'm not sure why we need to go too much further in this. What I really need to do is focus on the variance test, of which we have an awful lot written submitted today so far. I've heard about 10 minutes of valuable information for me.

MR. GIESE: Let me through your model here, is this representative of the project?

CHAIRPERSON GRIFFIS: Wait. He's already established the fact this is a massing model. If you have questions on what a massing model is, maybe I can give an explanation for it. It is a scale model, but if you're going to the details on it, I don't want to walk into that discussion.

This is for an illustrative purpose only and in terms of he's already indicated that it's showing a massing of the rear addition, the massing of the existing and the difference of heights between the lower townhouses and the adjacent higher townhouses.

If there's a question that goes specifically to the variance test that can be illustrated by that model, I ask you to ask that question and we can get there.

MR. GIESE: It seems to me the model is misleading and I think it should be stated that it is.

CHAIRPERSON GRIFFIS: Okay, and that is perfectly appropriate in the testimony, but not cross-examination, unless you want to rephrase it. Ask him whether he thinks it's

1 misleading.

2 BY MR. GIESE:

3 Q Mr. Zapatka, do you think the model is misleading?

4 A No, I do not. I've stated earlier that it's a

5 model built, a massing model at one quarter inch scale, primarily

6 to show the context of the project and, again, not to scale off of

7 it. All the dimensions are provided on the drawings, and I might

8 add too that this is the model we brought in January 2nd, where the

9 addition □

10 CHAIRPERSON GRIFFIS: Don't. I'd like you to answer

11 the question, and we move on.

12 MR. ZAPATKA: That's it, yes.

13 MR. GIESE: Mr. Chairman, could you just let him

14 finish that one sentence.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. ZAPATKA: Just to emphasize that this is the

17 model that's the same depth as the mass of the addition, not

18 inclusive of the chimney, the 10'3" version from January 2nd. Now

19 it would extend back full depth, including that chimney, so 12

20 feet brings it out to the chimney line.

21 CHAIRPERSON GRIFFIS: Okay, and board members, did

22 everyone understand that, that this model would actually show a

23 little bit larger.

24 MR. ZAPATKA: That's the 10'3".

25 CHAIRPERSON GRIFFIS: Good point. Thank you for

finishing that sentence. Next.

BY MR. GIESE:

Q How much higher will the roof line of the addition be at the highest point than the wood structure that's currently on the back of 1322?

A I don't think I have that. Hang on one second.

Q If you want to concede to it, it's a little under two feet. Does that sound reasonable to you?

A There's a difference, if you look at A8 in the existing building section, the wooden addition at 1322 is one foot four inches lower than the existing roof at 1324.

Q But I'm talking about at the highest point, because the □ do the roof lines run the same slope?

A The addition would be in the same line, that's correct.

Q The same slope at 1322?

A No □ well yes, the main part of the house.

CHAIRPERSON GRIFFIS: Do you know what the slope of the adjacent house is? Do you know the slope of the roof?

MR. ZAPATKA: Not of the addition.

CHAIRPERSON GRIFFIS: That's what you're asking right? Let him answer that question.

MR. GIESE: I'm asking if they're the same slope.

CHAIRPERSON GRIFFIS: Do you know?

MR. ZAPATKA: No.

1 CHAIRPERSON GRIFFIS: Okay, let's move on.

2 BY MR. GIESE:

3 Q All right. What is the width of your addition

4 there in the back?

5 A Again, 10'9" is the width of the property. The

6 first segment is 3' wide.

7 MR. GIESE: What's the width of the wooden structure

8 on 1322?

9 CHAIRPERSON GRIFFIS: Have you surveyed the adjacent

10 property?

11 MR. ZAPATKA: I asked Mr. Giese a couple months ago

12 when we met on site if I could do that and he indicated it

13 wouldn't be convenient.

14 CHAIRPERSON GRIFFIS: Have you surveyed it, yes or

15 not?

16 MR. ZAPATKA: No.

17 CHAIRPERSON GRIFFIS: Okay, so you don't know the

18 dimension?

19 MR. ZAPATKA: No.

20 MR. GIESE: So

21 CHAIRPERSON GRIFFIS: Let me just also, Mr. Giese,

22 we need to get somewhere with all this. You're cross-examining

23 the entire documentation of what's being presented, elevations and

24 dimensions. I need to get to a point.

25 MR. GIESE: How much longer is the addition than the

wood structure?

MR. ZAPATKA: The proposed addition is 12 feet from the face, the back face of the house. The neighboring addition is 10'3" in the wooden volume part and then another 17" for the chimney, so that's 11'3" plus 7'11", so it's two inches past.

CHAIRPERSON GRIFFIS: It's two inches past the existing wood structure?

MR. ZAPATKA: Adjacent chimney.

CHAIRPERSON GRIFFIS: Chimney.

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: Okay.

MR. GIESE: Let me turn to Mr. Gell. In your filing of February 12th, in your conclusion there, you start talking about a special exception. You talk about the property being on an alley. Is that a typo again?

MR. GELL: It's not in an alley. If I said that, then that was a mistake, but I don't recall saying it.

MR. GIESE: And the item about it being a special exemption, that was a typo also in there in the last conclusion of your submission?

MR. GELL: Of the 12th?

MR. GIESE: Of the 12th, yes.

MR. GELL: If you'd like, I'll review what I wrote, but I certainly would be happy to say that we do need a variance. If I said something different, then that may have been a mistake.

MR. GIESEN: We all make mistakes.

MR. GELL: I'm sorry I confused you.

MR. GIESEN: I just want to make sure that it was a mistake.

CHAIRPERSON GRIFFIS: Okay, we're all clear. We're here for a variance, right?

MR. GELL: Right.

MR. GIESE: Mr. Gell, you say that it's unlikely that the property would have been purchased without gaining some zoning on this. What's your basis for that statement?

MR. GELL: I don't believe that I said it would not have been purchased. I think that you could certainly ask Ms. Trautwine why she purchased the property. I think there was some anticipation because there are other additions on the block that they would indeed be able to build an addition. That was prior to their getting any zoning information about it, or any other kind of information. But that's all I can answer to that.

MR. GIESE: Well, it's included in your statement.

MR. GELL: What page.

MR. GIESE: I've got to find it. It's the third sheet and it's in the location of the description of the property. It says, "it's unlikely that the small house would have been purchased, not for the probability of adding additional space."

MR. GELL: Okay, that certainly is a conclusion I may have drawn.

MR. GIESEN: Where did you come up with that conclusion? Is there any basis for that?

MR. GELL: No, it's just an assumption. That's based upon my knowledge that the property is only about 500 square feet. It's extremely small. In fact, it's very hard to imagine people living there but, of course, people do.

MR. GIESE: You also make a statement going to the salability of the house. It wouldn't be salable without the house being enlarged. What' your basis for that?

MR. GELL: Information has come to light since the house was purchased. In fact, the rear and side walls have to be replaced. I don't see that the house would be salable, certainly not at the price it was purchased, without adding some value to the house. Yes, the house could be sold. Somebody would come along and pay $1 or $10 for it or some number, way short of the $240,000 that it went for.

But I don't think it would be salable for the same price that they actually purchased it, because whoever bought it would not know that they had to spend $50,000 plus dollars just to fix the house up in order to live in it in the size it's in.

MR. GIESE: Ms. Trautwine, did you have the house inspected?

MR. GELL: She hasn't testified yet, so I don't think it's proper.

MR. GIESE: I guess I'll ask Mr. Gell, are you

knowledgeable, Mr. Gell, if the house was inspected prior to purchase?

CHAIRPERSON GRIFFIS: Could you enlighten me perhaps a little bit about what you're trying to establish?

MR. GIESE: I think what Mr. Gell is saying is that this is a new insight, that there's something wrong with these walls. I think that was a statement in his document.

CHAIRPERSON GRIFFIS: And somehow that goes to the zoning test?

MR. GIESE: Mr. Gell seems to think it goes to the zoning test.

CHAIRPERSON GRIFFIS: Okay.

MR. GELL: I think the test can be made without it, but I think it certainly adds a great deal to our case that the house can't be lived in now because of the need for this additional work.

CHAIRPERSON GRIFFIS: And, Mr. Giese, you're trying to establish the fact that having knowingly bought this house with that problem is a difference than having the problem in existence without knowing until now that there was a problem?

MR. GIESE: Exactly.

CHAIRPERSON GRIFFIS: Okay, I'm clear now. Board members, are you clear on that? We need to move on then.

MR. GIESE: All right. I'm done.

CHAIRPERSON GRIFFIS: Thank you very much. We're

going to take a break. I'm going to come back and establish a schedule for the rest of the afternoon. We'll be back at 5:20.

(Whereupon, the above-entitled matter went off the record.)

CHAIRPERSON GRIFFIS: Appeal Case 16811, come up to the table for a brief moment. You don't move any of this here. It's just going to take two seconds. I just need to go schedules, and I have great apologies. The situation is this, we will not be able to continue a quorum past 6:00 tonight, although I've been trying my darndest to keep people here later, in which case we need to continue.

And you absolutely have to forgive the fact that we're at this late hour and I've had you sit here all afternoon, waiting for this to happen. This is obviously unpredictable on my part in terms of timing. And so, I am suggesting that we continue this to next week, which would be the 5th if I'm not mistaken in the afternoon.

We have no cases in that afternoon because of scheduling changes. We have, and I'm going to be realistic with you, we have a long morning which may start our afternoon a little bit late. But I would think we'd have ample time. Is that date available?

MS. PRITCHARD: It would have to be contingent on my arranging child care which I hope I can do, but I have no regular, reliable arrangements. So I assume so yes, but I'll have to get

back on that.

CHAIRPERSON GRIFFIS: Okay.

MS. BROWN: Unfortunately, I don't have my calendar with me. I know I have a hearing on that morning. If necessary, I can run up to the fourth floor and grab it.

SECRETARY PRUITT: So the case that was continued was the Ulina Rena case.

MS. BROWN: Right, but something might have been scheduled on my calendar. I'm almost willing to bet that it's open.

CHAIRPERSON GRIFFIS: Okay, and how soon would you be able to confirm that?

MS. PRITCHARD: I could make some inquiries tonight and tomorrow. This is somewhat short notice, given I don't have any regular arrangement.

CHAIRPERSON GRIFFIS: I understand. Let's do this. We'll wait for both of you to respond to the office to confirm that and we'll confirm with both of you in terms of whether it's doable or not.

MS. PRITCHARD: When would you expect me to verify it, by noon tomorrow or end of the day tomorrow?

CHAIRPERSON GRIFFIS: Well, as soon as possible. Give us an indication by the end of the day tomorrow, I mean any indication, even if it's the fact that it isn't possible at that point but you anticipate. Just keep us informed. We have an

opportunity, it doesn't happen much, that we have the whole afternoon free, so if we could slide you in then, let's do it.

If we can't, then it will push it off weeks, and that's pretty much guaranteed. So, all right that being said, you will be in contact with Ms. Pruitt on that and we'll keep everybody informed, and again accept my apologies for keeping you here this late. So on the 5th then in the afternoon.

SECRETARY PRUITT: You will let me know tomorrow or today? Okay, thank you.

CHAIRPERSON GRIFFIS: Okay, continuing now, we have cross-examination right now. We have, as I've indicated, we will lose a quorum soon after 6:00, so conceivably this case wraps up by 6:00 and we'll call to close. If not, we will stop at 6:00 and set for a new schedule. Let me also say, I'm sure I don't need to tell you this but we don't need any requestioning of the previous rebuttals. I'm also going to be somewhat pointed in keeping things on track in terms of the variance test. So that being said, let's proceed.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q I'll try to make brevity the order of the day for me. Mr. Zapatka, I'd like to first talk a little bit about the process of submission before the OGB. There was a hearing before the OGB in June, is that correct?

A Yes.

1 Q And the OGB typically hears these cases on the
2 first Thursday of the month, is that right?
3 A Correct.
4 Q And that would have been early June if there was a
5 hearing where the OGB considered an initial design concept,
6 correct?
7 A Yes.
8 Q And in order to get that scheduled before the OGB,
9 you would have had to make a filing in early May in order to get
10 that on the OGB docket, correct?
11 A Its usually a couple weeks before, so I would guess
12 May.
13 Q And you made that initial filing to get that before
14 OGB, correct?
15 A Right.
16 Q And Dr. and Mrs. Joyner did not receive notice of
17 that initial filing, correct?
18 A I don't know.
19 Q You don't remember sending them a notice of that
20 hearing in front of the OGB,correct?
21 A I don't remember doing that.
22 Q And you said earlier that the OGB gave verbal
23 approval to your design concept at that time, is that your
24 testimony?
25 A That is.

Q And isn't it true that the OGB indicated that nothing that it did or said was to be given any weight for zoning purposes, isn't that correct?

A I heard the Old Georgetown Board members say that □

Q No, actually □

A I would like to clarify. In June, the old Georgetown Board verbally approved the project. They said they had no objections to it and shortly thereafter we had to bring the project before the ANC. And it was at the ANC meeting that a number of issues came up.

I think you were there and others, and what happened was, when we went back to the old Georgetown Board in July, we were told that they could not give a written approval for the design concept at that point. They could not provide a written approval without getting a response from BZA first.

So in other words, the advice was to go to BZA first, that they weren't going to give written approval.

Q Okay, so the point is OGB has never given any approval that's to be given any weight by this board to any design concept or other concept that the applicant has submitted?

A Again in June, the Georgetown Board stated they had no objections to the concept. In July, they said they could not give □ they could not make a written response before the BZA had a chance to look at the project.

Q When the OGB rules, you get a verbal indication, is

that right?

A At the time of the review, there's a verbal indication of no objection, or please make the following amendments and come back.

Q And then there are written appendices that are prepared to reflect what the ruling is?

A (No response.)

CHAIRPERSON GRIFFIS: And the heart of what the importance for us would be?

MR. JOHNSON: Right. As I think there were statements about what the OGB did and said, and those are incorrect, and we're going to ask that the record be held open so we can supplement, because what the OGB actually did □

CHAIRPERSON GRIFFIS: Due to the fact that they gave verbal approval of the concept in June?

MR. JOHNSON: We do dispute that. We did not have notice of that.

CHAIRPERSON GRIFFIS: Let's look for a submission on that.

MR. ZABATKA: The recordings provide, Old Georgetown records all of its meetings, so if you had the recording of the meeting on June 6th, you would probably hear that.

CHAIRPERSON GRIFFIS: Okay.

BY MR. JOHNSON:

Q Now, with respect to the portion of this project

that's being done on the north side of the Trautwine property, I want to ask you some questions about that. For the first three feet of the extension, that will be right up on the property line, is that right?

A That's correct.

Q And after that three-foot extension that's on the property line, then there will be a stairwell that's also on the Joyner property line, correct?

A It's on the Trautwine property, but yes, adjacent to the Joyner property.

Q In fact, right up to the Joyner property line?

A That's correct.

Q Now, on the drawings that you've submitted, it shows a reference to a garden wall, and I want to know, is that garden wall on the north sideor on the south side of the Trautwine property?

A Pardon?

Q Drawing #9?

A Oh, that brick wall, that's beyond at the south side.

Q Okay, so that's on the side with the Giese property?

A Okay.

Q So this drawing doesn't show any wall or anything else being built on the north side of the Trautwine property,

correct?

A This drawing does not show that.

Q Do any other drawings show that?

A (No response.)

CHAIRPERSON GRIFFIS: Let me interrupt here. First of all, that's a section and that's looking, it would only show the south, so it's not an indication that there's not work going on. The direct question goes to whether there is a new wall being built. What I need to do is get to the fact, is that part of the variance being sought? That's the impact of a wall there, and if not, it becomes a little frivolous to walk through all these and cross-examine all these documents.

This board is fully capable of reading all these and understanding the information that's on it. We have our own questions about them, and frankly I think your point will be very well and much stronger made in testimony. So with that note, let's proceed.

BY MR. JOHNSON:

Q Well, I'm not sure what testimony I can offer about the plan. That's why I'm asking him. I'm not trying to drag things out but I want to know what's being done on the north side. We know there's a three-foot extension, there's a stairwell. Is there also a wall being constructed on the north side? That's the question.

A The intention is that the brick wall at the

1 property line, at the line where the Joyners' fence is and I can't
2 tell you, since I'm not a surveyor, I can't tell you whose
3 property that's actually on, but the intention is to the north
4 side of the stair to the cellar, there would be a retaining wall,
5 starting at the base of the cellar level with footings, going all
6 the way up and, in fact, Dr. Joyner and Ms. Trautwine and I were
7 just discussing at the break the height of that wall ultimately
8 would be in line with the height of the brick wall of 2706
9 Dunbarton to make a continuous brick wall on both sides.
10 Q Now, where is that shown on any of the drawings
11 that have been submitted?
12 A If you look at the plan of A3.
13 Q That shows a retaining wall on the north side?
14 A Right.
15 Q Okay, so inside □ let me just get this
16 straight, the Joyner property has a wooden fence built on top of a
17 brick footing at the back of the property, correct?
18 A That's correct.
19 Q And so inside of that, you're going to build a
20 retaining wall, correct?
21 A I'm sorry, this is confusing to me. I guess I'm
22 going to state as I did with the earlier questions, we're given a
23 10'9" plat plan to work with as a property. All the work, the
24 intention is all the new work would be within that 10'9".
25 Any shared garden wall is open to negotiation

between the neighbors. Again, I'm not a surveyor so I can't tell you to the inch. As far as I know, the Joyner rear wall is on the Trautwine property. We don't know this until we have a surveyor.

Q But is it your intent to build a separate wall or to build a new shared wall, that's the question?

A My advice to my client and her neighbor is to reach an agreement for a shared wall that would follow the same line as the Joyner wall.

Q And that would require Doctor and Ms. Joyner to permit construction personnel onto their property, correct?

A If they want their side of the wall to be brick probably, but it's just cinder block now.

Q And with respect to the three foot extension that's being built right on the property line, they'd have to allow construction personnel onto their property for that as well, wouldn't they?

A If they want that outside faced in brick.

Q And what would the alternative be?

A Cinder block.

Q Now you mentioned that the digging to create the stairwell is going to require you to reinforce or replace the brick footings on which the Joyners have their back patio fence, is that right?

A Any excavation in that area would, yes call for a new brick wall that has appropriate reinforced concrete footings

below grade.

Q What you're saying is when you did for the stairwell, the Joyner's back patio wall is going to collapse, aren't you? That's why it needs to be reinforced or replaced?

A No, I wouldn't use the word collapse. There are a few rows of single wide brick, which would have to be removed to rebuild it clearly, yes.

Q Well if those are removed, then the wall is going to collapse, correct?

A I think collapse is a dramatic word for two rows of bricks to be removed.

CHAIRPERSON GRIFFIS: That's for a structural engineer also.

BY MR. JOHNSON:

Q Now you indicated in your testimony that the windows on the side, there are certain zoning requirements calling for three foot distance between windows and the property line, is that right?

A I checked with the zoning department at the DCRA. I was told that windows on a side setback wall, that wall has to be □ those windows have to be at least three feet from the property line.

Q I'm asking when you testified, did you have a discussion with DCRA since you testified?

A What do you mean?

Q When you testified, you talked about two specific things. You said that the minimum depth required is that there by 16 feet from a window to another window, right, 16 feet between windows?

A (No response.)

MR. GELL: Can I just clarify something here. The rule you're referring to was the fact that an eight foot side yard all over the district is what's required between buildings. That means a 16 foot distance between the windows on one side of one house and the windows on the side of another. That's a standard, it seems to me, that's pretty well accepted in the district, and here we have 19 feet. It seems it is not unreasonable to suggest, windows could be on the side of this addition. That's where the 19 feet came from.

CHAIRPERSON GRIFFIS: You wrote it in your submission, correct? Conforming sides of eight feet would have 16 feet. Was it not also the testimony that the rear yard adjacent is 16 feet, is that not correct?

MR. ZAPATKA: It happens to be, it's about 16 yes it is.

CHAIRPERSON GRIFFIS: The comparative analysis is understandable?

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: Okay.

BY MR. JOHNSON:

Q You said the zoning regulations call for a certain depth and a certain distance. What were the specific zoning regulations that you were citing to if there were any?

A I can't recall now the exact words I used, but I'll just repeat when I □

Q I just want the zoning regulations, the cites.

A I don't know the zoning regulation.

Q Okay, and just so it's clear, there's not an eight foot setback for the windows on the Trautwine addition. There were only be three feet, correct, because there's three feet from those windows?

A Correct.

Okay. Now you were asked some questions about the drainage and you indicated that the drainage coming off on the addition and draining under the ground. Is there a plan that drainage is going to come off the house and be funneled underground somehow?

A Right now, there is a downspout along the north edge of the 1324 property that goes into a drain that goes into the ground, and then that I assume connects to the sewer. So I was planning, or I am imagining we would have a similar system, but I would also like to repeat the drainage system isn't being addressed at this point in these drawings. They would be addressed at the level of construction documents.

Q Okay. Now the proposed addition is going

1 to actually be higher at the roof level than the addition on the
2 Giese property, correct?
3 A Hold on, please. Yes, it will be.
4 Q Actually it's about a foot and 10 inches higher, is
5 that right?
6 A A foot, four inches where the existing house meets
7 the addition, up against the property, one foot four, yes.
8 Q So from the Joyner property looking over at the
9 Trautwine property, once the addition were built, you wouldn't be
10 able to even see the addition
11 on the Giese property, correct? This addition is going to be both
12 deeper and higher than the addition on the Giese property,
13 correct?
14 A That's correct. All you would see is the top of
15 the chimney on the Giese property.
16 Q And you've never done an actual analysis where
17 you've blocked off the same area that would be
18 covered by the addition and taken photographs to show
19 what effect that would have on the sunlight onto the Joyner
20 property, correct? You've never done that kind of exercise?
21 A (No response.)
22 CHAIRPERSON GRIFFIS: I think it's pretty clear with
23 the sun diagrams that we've got, but answer the question yes or
24 no.
25 BY MR. JOHNSON:

A No.

Q Okay, that's correct you haven't done that, right?

A Correct.

Q Now you talked a little bit about the differences between the houses on Dunbarton and the houses on 27th Street. On that section of 27th Street, there are actually 27 lots, correct?

A Yes.

Q And those seven lots are all roughly exactly the same size and shape, correct?

A Yes.

Q And the structures on those lots, with the exception of the Giese addition, are all roughly the same size and shape, correct?

A There are two pairs where two were joined, so there's a pairing at the end. So two are joined at the end. Then there's one that's alone. Then the next two are paired. The next one is the Giese property with its addition, and the next one is 1324.

Q Well, let me ask you □

A As far as I can tell, they're all the same width. The original, individual units as far as I can see are all the same widths, yes.

Q And the only house on that 27th Street section that has any addition to the rear is the Giese property, correct?

A Correct.

Q Now you indicated at some point a set of working drawings is going to be submitted to the OGB, is that your intention?

A A set of working drawings would be submitted to the OGB if we are granted concept approval and, yes.

Q Okay now, you've got a hearing scheduled in front of the OGB on March 7th, correct?

A That's right.

Q And you haven't submitted working drawings in connection with getting that hearing scheduled?

A That's concept only.

Q So is it your intention as we sit here today to move forward on the 7th with some sort of proposal in front of the OGB?

A We're going for the concept review and then we'll see.

Q Is that a yes?

A Repeat the question, please.

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

Q Is it your intention as we sit here today to present something to the OGB on March 7th for approval by the OGB?

A At the concept level, yes.

Q Now I asked you about the garden wall and I asked you about the retaining wall on the north side. I just want to know, on the drawings it shows that the garden wall will be brick, is that right?

A The intention is that any walls, garden or structure, would be brick.

Q And that would be the same for the retaining wall on the north side? That would also be brick?

A Right, but again I'd like to point out in order to apply brick to the north side, we would need permission to go into the Joyner property to apply that.

Q Now you have billing records that would indicate the first time that you met with Ms. Trautwine and Mr. Joyner about this house and about the potential addition, would you not?

A I do have a file for everything related to this project.

Q So to answer the question about when you first became involved, you'd be able to check that and figure out

exactly the first date that you were out there?

A Yes. I don't know if I can get the exact date, but I can certainly go back through my calendar and papers for this project and provide an approximate date, yes.

Q Is that something you're willing to do and supplement the record?

A (No response.)

MR. GELL: I'm not sure I see the relevance of that. People go to architects all the time sometimes before they decide to buy property, sometimes after they bought property. I'm not sure it really matters before or after as to whether or not we've met our burden.

MR. JOHNSON: I'll tell you why it matters, because there's a hardship argument being made and a financial argument being made. To the extent that those were assumed by the applicant and she took the risk of that and it's a self-imposed hardship, that is one of the factors that the board looks at.

CHAIRPERSON GRIFFIS: Yes, I can see your point in terms of bringing this up, but certainly there would be no way to determine whether they knew to the extent that they know now whether there would a date that they met or started looking at this. What are you proposing or a submission?

MR. JOHNSON: Well, the question that I was following up on was a series of questions earlier about the process of putting the contract in on the house, buying the house,

and when Mr. Zapatka was involved, because I suspect that what happened here is the applicant made a decision to take a risk to buy this house, assuming that the zoning approval could be obtained.

And part of the relevant facts for that would be when she met with Mr. Zapatka and when they went and looked at the house and determined that there was a way to at least make a proposal to expand the house.

CHAIRPERSON GRIFFIS: Well, I think we're trying to establish something we may not be able to establish. What you're trying to get to is when did they know that there was zoning relief required, and just by mere fact of even when a designer brought under contract, would not necessarily mean they knew exactly what sort of relief, if any relief.

I think the testimony we heard today was the fact that it was not assumed that relief was, when a walk through of the building happened, they looked to adjacent properties and saw an older addition on the adjacent property and assumed, or had not thought that there would be zoning relief required.

MR. JOHNSON: I think there was something there too about whether that was before or after the contract was put in, and this applicant decided to put in a contract to buy this house for $240,000, and you know, that's now part of the rationale being offered to the board for why a variance or five variances should be granted. I think it's relevant whether they knew or should

have known before putting the contract in, that they shouldn't have paid the price that they did, or that this □

CHAIRPERSON GRIFFIS: How are you going to establish whether she bought the property and knew it or not? That's where I'm going. You're trying to establish that. I'm just trying to help you establish, if that is what you want to do. I don't know how you do that.

MR. JOHNSON: Well, I'd be able to if we knew the date that Mr. Zapatka □

CHAIRPERSON GRIFFIS: That's my point. I don't think that you can assume. I would say, if it's available submit the date that Mr. Zapatka came under contract. Do you have a signed contract for this?

MR. ZAPATKA: Yes.

MR. GELL: We'd be happy to do that. I'd just point out to the board that people who have owned property for many years went for variance relief, and the mere fact that they knew at the time they bought it and have lived in it for a long time, that they may need some relief, doesn't mean that they can't meet their burden. If you need the addition, you need it.

It's also pretty clear that before they bought the property or put a contract on it, not even gone to settlement, they saw an addition. They may well have assumed that an addition was something that could be gotten. Clearly they didn't have any hard zoning decision in mind when they did that, but since have

1 come to realize that that was necessary.

2 I think the situation became even worse when they

3 found out that they needed to replace the rear and side walls.

4 CHAIRPERSON GRIFFIS: Okay, that being said and

5 established, we'll have something with just the contract date, and

6 the board will take under consideration all of those factors, and

7 I might also add that this board sees an awful lot of cases that

8 well, I won't. So there it is.

9 BY MR. JOHNSON:

10 Q Okay, one final area of question. The

11 various plans that have been offered at various stages, every

12 single plan has included destroying the rear wall of the existing

13 structure, correct?

14 A (No response.)

15 Q There's never been a plan that didn't

16 involve that?

17 A No, that's actually not the case. The

18 very first plan, and I can also check back on the others, but in

19 the very first plan, I was making wider openings within the rear

20 wall, but certainly not destroying it.

21 Q Well, you'd agree with me that the plan

22 that was submitted in September, before ANC-2E and rejected by

23 ANC-2E, that called for tearing out the existing rear wall,

24 correct?

25 A I'd have to look at that again. I don't

have it in front of me.

Q Well, do you recall that when we went in front of the OGB on October 4th, one of the elements of the plan was to tear out the existing rear wall?

A No. I think that that as I □ I don't. As I was developing the design, I was making □

Q That's fine. Mr. Zapatka, isn't it true that in front of the OGB on October 4th, you represented that it was necessary to tear out the rear wall in order to give enough space to make it economically viable to do this addition, isn't that true?

A You know, I really don't remember to say for sure. It's entirely possible, but I'd have to look at the drawing.

MR. JOHNSON: Okay, that's all I have.

CHAIRPERSON GRIFFIS: Okay. Well, we are at 6:00, so let us □ Mr. Gell, how much more time do you think you need in terms of your case and testimony?

MR. GELL: I only have two more people to speak. One of them is Lori Trautwine. The other is myself. Her statement not to take more than about 10 minutes. There will obviously be cross-examination after that. My statement would be approximately the same. I could talk very fast and make it quicker.

CHAIRPERSON GRIFFIS: No, and I don't want to cramp

things. I want to get everything that's pertinent, and I want to hear it, the pertinent aspects of it. Let's check schedules. Is everyone, parties and applicant available on the 5th in the afternoon?

MR. JOHNSON: I'm not available on the 5th. I apologize.

CHAIRPERSON GRIFFIS: Are you out of town? I mean are you □

MR. JOHNSON: Actually, I'm in a trial during that day in Montgomery County.

CHAIRPERSON GRIFFIS: Okay. What kind of alternatives can you offer on that? Can anyone else cover for you?

MR. JOHNSON: Both of these cases, I've been pretty much handling myself, so.

CHAIRPERSON GRIFFIS: Well, we've got a problem. The next available date is the end of May.

MR. GELL: Mr. Chairman, that would obviously be a very serious blow to Ms. Trautwine. I hope that it's not necessary to go that far.

CHAIRPERSON GRIFFIS: Yes, I don't want to either. I don't like continuing cases for very long once we've started them. We did continue this one. We had to give it 40 days, which means, as you saw, we couldn't get another board member back here, and also just for reading and being familiar with the case to set

it off another four or five months, et cetera, is problematic for our own deliberations.

SECRETARY PRUITT: You have a full schedule on the 12th, but there does not appear to be anything really, really controversial, but it is a full day already.

MEMBER LEVY: What date was that?

SECRETARY PRUITT: March 12th. There are a conversion and two house additions in the morning and in the afternoon is a parking variance. There is a church. That could potentially be controversial, and another residential office, private club, which actually is requesting a continuance □ not it is continued from another day. Because on the other days you have appeals and heavy or else very controversial cases.

CHAIRPERSON GRIFFIS: Ms. Pruitt, you just indicated something, but do you know anything else on 16815?

SECRETARY PRUITT: That's what Ms. Bailey was just asking me. I have not seen it cross my desk, but we can check the mail to see if there was a continuance. There may be a request, but then it also determines who the request is from and if the other parties agree.

CHAIRPERSON GRIFFIS: Right, we're going to wait for some information on that and see if the 12th is possible.

SECRETARY PRUITT: I guess the other would be maybe the 19th in the morning.

CHAIRPERSON GRIFFIS: Okay, is everyone available on

the 12th, or are we spinning wheels here.

MR. JOHNSON: I'm pretty sure that I'm available and we can assume I'm available on both days, the 19th as well.

CHAIRPERSON GRIFFIS: Excuse me, I'm assuming you're not saying anything because you're available.

MR. GIESE: I'm available. The 19th could be a problem.

CHAIRPERSON GRIFFIS: Okay, I think we shoot for the 12th, afternoon. Now what I would do is check with the office in terms of how we shuffle that. Right now, as we leave, you're the last case of the day. That is subject to change, even to the morning and afternoon of, but we will try to be as explicit as possible, so obviously if you're not the first in the afternoon, we probably won't get to anything before 2:00. But again it's very difficult to predict any of these, as our day today has indicated.

So, the 12th, 4th in the afternoon. We start at 1:00. Okay, for the 12th, okay. We have some good news for the 12th. So that seems to be confirmed. Let's see then, we will start up on the 12th, depending on the schedule where you are. We will start off with your second witness and then also go into you Mr. Gell.

I think the board would like to strongly focus when next we meet and hear this on the test for the variance, and not to get too sidetracked with issues that do not go to that test. I

think the board will strongly look for that test to be presented to us, and look for very strong cross-examination of that testimony, and we'll base our deliberations clearly on that.

Secondly, it would be my strong advisement at this point that the applicant put in and have done a survey of the property so that we might establish more definitively the exact property lines, if that's not a problem. I will not require it in terms of the 12th.

I also understand that timing is difficult to get that done by the 12th, but at least inquiries to that so that we might in many respects, but in most respects just limit the speculations and questions that are coming up in terms of the plans and the issues involved, and frankly bring some clarification for us in terms of deliberations and rulings on anything that might go forward.

So one more think, I think. No, I think that's it. If you're going to Mr. Giese, why don't you come up and speak into the mike.

MR. GIESE: Just very quickly, I appreciate your item on the survey. If they're going to put a survey in, we would like an opportunity to answer that survey if the survey seems odd to us, because the property lines down there are unusual to say the best.

CHAIRPERSON GRIFFIS: Okay, and you know what, I think that's a fabulous idea, but the only way you're going to be

able to cross-examine a survey in this proceeding is to get your own. There's no way. You can question it and we can look at it, but I have no idea how you could. There it is. That would be the 100 percent security if you had your own, and I don't think □ yes.

VICE CHAIRPERSON RENSHAW: If I may just ask a question about the survey, because it states on the form that it is certified by a licensed engineer or architect, or a D.C. surveyor.

CHAIRPERSON GRIFFIS: That's the plat plan.

VICE CHAIRPERSON RENSHAW: That's the plat plan. I know it is. The D.C. surveyor for them to have a survey of their property, I understood it to be that they must have a D.C. license.

CHAIRPERSON GRIFFIS: Oh yes, absolutely. They wouldn't spend the money. I'm sorry, it's my assumption, but it's an excellent point. You wouldn't spend the money to have some, guy in a pickup measure your property. You're going to want an official survey, so it would obviously be by a licensed and stamped survey of that, and they'll peg the property too, so it will all show.

MR. GELL: Mr. Chairman, is it fair to ask if the other party is going to go ahead with a survey at this point, or if they could give us notice at the time they decide to go with a survey or engage a surveyor?

CHAIRPERSON GRIFFIS: Well, we're meeting next week.

They'd got a lot to do to get that together.

MR. GELL: Week after next.

CHAIRPERSON GRIFFIS: Oh, that's right.

MR. GELL: Two weeks from now.

CHAIRPERSON GRIFFIS: My mind is already at the 5th.

MR. GELL: Mr. Chairman, considering how expensive a survey is □

CHAIRPERSON GRIFFIS: How expensive is a survey?

MR. GELL: It could be thousands of dollars.

CHAIRPERSON GRIFFIS: Thousands of dollars for this property?

MR. GELL: Don't hold me to it. I don't know exactly, but I know that something far less than this is $500, and this is going to be □ so we're talking at least over $1,000. I don't want the surveyor's time taken up by people who are opposed to his completing his work, and I make an assumption here which may be unfair. But I don't think it's necessary for anybody to know when the survey is done.

This is not a decision by a committee. It's by an expert who is going to do his job, and he will provide a survey which can then be looked at by whoever wants to see it. But I hope the board won't have us require the surveyor to interview or to permit Mr. Giese to go along with him as he does his work.

CHAIRPERSON GRIFFIS: No, I don't think that would be appropriate, one for us to make that ruling, and two, to have

that actually happen. I think what we're looking for, and as I said, I'm not requiring it. You can show up on the 12th without it, but it would be my strong advice to have it done. That's something that needs to be decided by the applicant. If it's money that isn't worth risking spending at this point, then that's the decision they make. Other than that □

MR. GELL: I'm not so concerned about that because obviously eventually, we hope that we will get our approval and we'll need it. The other problem is getting somebody who is able to spend the time and they're weeks behind, but we will make an attempt to get somebody immediately. At least we will interview somebody immediately and find out what the possibilities are. That's the most I can promise at this point.

MR. GIESE: Mr. Chairman, it's not my intention to troop around with any surveyor. My intention was that they would commit to give me a phone call if they have entered into an engagement with a surveyor, that they're going to go forward with the survey, so I'm on notice that a survey is being done.

If they're not going to do a survey, then that's their business. But if they are going to do a survey, I'd like to have notice that we're going to start doing surveys here.

CHAIRPERSON GRIFFIS: Why?

MR. GIESE: Because I'd like to prepare myself to respond to that, to what they do.

CHAIRPERSON GRIFFIS: Okay, March 5th is next

Tuesday? Okay. Mr. Gell, why don't you submit next Tuesday to this office indication whether or not you anticipate presenting a survey on the 12th.

MR. GELL: I'm sorry, by what time?

SECRETARY PRUITT: Next Wednesday.

CHAIRPERSON GRIFFIS: Within a week.

SECRETARY PRUITT: Within a week.

MR. GELL: We will certainly do that and we'll be glad to let Mr. Giese know. I hope he understands that this doesn't authorize him to approach or discuss anything with the surveyor. If all he wants is to know when it's happening.

MR. GIESE: I have some time on this. I'll get this Wednesday evening.

CHAIRPERSON GRIFFIS: Let's do this. Why don't you assume that you have a survey that you're going to have to look at on the 12th.

MR. GIESE: It's very expensive for me, Mr. Chairman, as it is for Mr. Gell, and I don't want to engage in it. They have the burden of proof on this matter.

CHAIRPERSON GRIFFIS: What's the expense to you?

MR. GIESE: The expense to me is to engage somebody else to decide how to approach this. If I'm going to do my own survey, if I need to come up with an expert witness, if I need to have some expertise in reviewing that survey. I need to have somebody engaged to do that. I can't come up with □ I think we

all know the difficulty in getting surveyors in this city. It's not something I can come up with in 48 hours.

Now if somebody committing to, as you said, you know, don't cross-examine it yourself. Have someone else here. I would have to make arrangements for somebody to be here. I would have to make arrangements for somebody to do a survey.

CHAIRPERSON GRIFFIS: You were saying that you'd do your own survey. But wow, cross-examining a survey.

MR. GIESE: I don't know how I would respond to it, but I'd certainly like the opportunity to know whether that's going to take place at all, have the opportunity to discuss it with surveyors, other experts, architects. I don't know whom. But the way this has gone thus far is things always sort of plop down at the last minute on this, and this is not a last minute item. It is a very important item of where the lines fall according to this project. These are small properties and inches make a lot of difference.

CHAIRPERSON GRIFFIS: Okay. I think it's fair enough, of course I may change my mind any second. Mr. Gell, I think I'm clear on Mr. Giese now. Obviously, it's preparation in terms of what to anticipate. I would suggest you give an indication by □

SECRETARY PRUITT: March 5th is next Tuesday. That would then give you another week.

CHAIRPERSON GRIFFIS: So all we're looking for on

1 the 5th is an indication that you are pursuing a survey or not.

2 MR. GIESE: It could be a phone call from Mr. Gell

3 to me on Tuesday, right?

4 CHAIRPERSON GRIFFIS: He's submitting it to this

5 office and will serve all the parties. Whatever he puts in here.

6 MR. GIESE: That's mail service. I fax my

7 submissions to Mr. Gell and to them.

8 MR. GELL: I already indicated that within a week, I

9 will let the office know and I would also let Mr. Giese know.

10 CHAIRPERSON GRIFFIS: You can do that by fax?

11 MR. GELL: I'll make sure they know.

12 CHAIRPERSON GRIFFIS: Okay, so you'll know on

13 Tuesday. That's what you're saying, right?

14 MR. GELL: That's right.

15 MR. GIESE: Thank you.

16 MR. GELL: Sure. Assuming we can find out from the

17 surveyor. We'll probably start that process immediately.

18 MS. BAILEY: Mr. Chair

19 CHAIRPERSON GRIFFIS: Let's be absolutely clear. On

20 Tuesday, all I'm asking for to be served and to be notified to

21 this office is where you are with this.

22 MR. GELL: Okay.

23 CHAIRPERSON GRIFFIS: And if it is the fact that

24 you're pursuing it, we need an indication that yes, you'll have

25 one on the 12th. That's definitive. Or, you're going to indicate

that you won't have one on the 12th, or you're halfway in between. I just need to know where we are.

And now we'll give you a level of preparation and I can tell you, at this point I'm not assuming that we'll get something definitive. Hopefully we will and then you can prepare that way. Okay. Yes.

MS. BAILEY: Mr. Chairman, assuming that we're finished. I just wanted to wrap up the submissions.

CHAIRPERSON GRIFFIS: See how silly assumptions are at times?

MR. JOHNSON: Mr. Chairman, may I just say I gave Ms. Bailey the last item that we were going to present.

CHAIRPERSON GRIFFIS: Oh, yes.

MR. JOHNSON: And I was going to distribute it so that everybody has plenty of time to look at it.

CHAIRPERSON GRIFFIS: Okay.

MR. JOHNSON: I've already given copies.

CHAIRPERSON GRIFFIS: So you have these copies. This is Exhibit 51, and I have no clear idea what it is; however, it is titled First Pacific Financial, dated February 26, 2002.

MR. JOHNSON: It's from a mortgage broker.

CHAIRPERSON GRIFFIS: Okay.

MR. GIESE: Is that the company that has the note on the property or is it just a company?

CHAIRPERSON GRIFFIS: All right. Why don't we pick

1 up the □

2 MR. JOHNSON: No, this company does not have the

3 note on the property.

4 CHAIRPERSON GRIFFIS: Okay but we're not going there

5 yet. You can ask that question on the 12th. And there it is.

6 Anything else? Let's just reiterate what we're doing. Ms. Bailey

7 is excellent at that.

8 MS. BAILEY: Mr. Chairman, you asked for a revised

9 self-certification form and also revised BZA form. You asked for

10 photographs of the model. You asked for information about a

11 licensed contractor in the District of Columbia. This is the

12 person, let's see.

13 CHAIRPERSON GRIFFIS: That was the exhibit, the

14 pricing. We just need to know □ thank you for bringing that up.

15 We need to know where this entity is licensed.

16 MS. BAILEY: Okay. You asked for a copy of the

17 minutes of the Old Georgetown Board meeting that was held

18 previously, and you just finished discussing the survey of the

19 property. The architect is to provide the contract that, that is

20 the date when the contract was signed with the applicant. And,

21 just finally all of the copies are to be served on the parties,

22 and those are the items I have listed, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Okay, do you recall who asked

24 for copies of the minutes of the Old Georgetown Board.

25 CHAIRPERSON GRIFFIS: You asked for the minutes.

MR. JOHNSON: I think I did and we can supply that.

CHAIRPERSON GRIFFIS: Right, okay. I just want to make it clear. You're supplying those in order to go to the questions of whether there was verbal approval. Okay, and the rest is the applicant, is that correct? Is that clear Mr. Gell?

MR. GELL: Yes.

CHAIRPERSON GRIFFIS: You got your list. Okay, and when are we getting all that.

MS. SANSONE: There was also a copy of the drawing that shows the difference in elevation between the Dunbarton houses.

CHAIRPERSON GRIFFIS: You have this massing section.

MR. GELL: That's already been given to Ms. Bailey.

CHAIRPERSON GRIFFIS: And just to reiterate, we should have copies of everything we're seeing and I think we do. But we will actually need those as part of the record.

MR. LEVY: Mr. Chair, I don't believe we have the drawing showing the 12-foot deep addition.

MR. ZAPATKA: That was submitted on the 12th. That's your packet.

CHAIRPERSON GRIFFIS: Do you see discrepancies, Mr. Levy?

MR. LEVY: The one I have shows the old.

CHAIRPERSON GRIFFIS: Where would it be on the drawing?

MR. LEVY: Actually it's the one from December.

CHAIRPERSON GRIFFIS: Yes, both of you pulled those up and I have the February 11th drawings.

VICE CHAIRPERSON RENSHAW: Xeroxed.

CHAIRPERSON GRIFFIS: Yes. Okay, let's be clear then, the dates on the drawings that we're reviewing at this point is February 11th. Now that may have more to do with how our packages were assembled for our review.

MR. LEVY: Okay, if they've been submitted, that's fine.

CHAIRPERSON GRIFFIS: It would be in the February 11th submission by Mr. Gell, the issue that we've been talking about. They're attached. Okay, so we're clear. What else? Fabulous. Everything set, Ms. Bailey? When do we want everything?

MS. BAILEY: Next Friday, Mr. Chairman.

CHAIRPERSON GRIFFIS: Next Friday for all of that.

MR. GELL: I'll certainly do my best. I'll get you everything I can by Friday.

CHAIRPERSON GRIFFIS: Okay.

MR. GELL: This Friday, right?

MR. JOHNSON: Next Friday, March 8th.

CHAIRPERSON GRIFFIS: March 8th, right.

MR. GELL: Oh, okay. That's fine.

CHAIRPERSON GRIFFIS: Great. And anything that comes in early would be probably appreciated, but if not, we will

1 see you all on the afternoon of the 12th. Am I correct?

2 MR. JOHNSON: Thank you, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Thank you all, and this then

4 adjourns the afternoon session of the 26th of February, 2002.

5 (Whereupon, the above-entitled matter was adjourned

6 at 6:22 p.m.)