GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

Tuesday,
April 9, 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 ADJUSTMENT MEMBERS PRESENT:

| | |
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| GOEFFREY H. GRIFFIS | Chairperson |
| ANNE MOHNKERN RENSHAW | Vice Chairperson |
| DAVID LEVY | Board Member (NCPC) |
| CURTIS ETHERLY, JR. | Board Member |

ZONING COMMISSION MEMBER PRESENT:

| | |
|---|---|
| PETER G. MAY | Commissioner |
| JAMES HANNAHAM | Commissioner |

COMMISSION STAFF PRESENT:

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|---|---|
| Jerrily R. Kress | Director |
| Sheri M. Pruitt | Secretary, BZA |
| Beverly Bailey | Office of Zoning |
| Paul O. Hart | Office of Zoning |
| John K.A. Nyarku | Office of Zoning |

OTHER AGENCY STAFF PRESENT:

| | |
|---|---|
| John Fondersmith | Office of Planning |
| David McGhettigan | Office of Planning |

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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(202) 452-1400

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(9:45 a.m.)

CHAIRPERSON GRIFFIS: I will now call this April 9th, 2002 public hearing of the Board of Zoning Adjustments of the District of Columbia to order. My name is Geoff Griffis. I am Chairperson. Joining me today, of course, is Ms. Renshaw, our Vice Chair, Mr. Curtis Etherly on my right and representing the National Capitol Planning Commission is Mr. Levy to my left and representing the Zoning Commission this morning with us is Mr. Hannaham.

Copies of today's hearing are available for you. They are at the table that you -- by the door that you entered into. Please be aware that these proceedings are being recorded. Therefore, when you do come forward to speak to the Board you will have to speak into the microphone. We will give you technical instructions on how that works and also try and cut down on any feedback.

Also let me just take a quick second to note that we will have a film crew in today for something that frankly doesn't relate to any of the applications. I will keep them at a very minimum of disturbance. If you case and application is before us, hopefully you won't even notice that they are here. Also, when coming forward to speak to us, of course, we will ask your name and ask you to give us your address.

All persons planning to testify either in favor or

in opposition are to fill out two witness cards. Witness cards are at the table that you can in through (sic) and they're also at the table in front of us. Upon coming forward, have those filled out. You can give them both to the recorder, who is sitting to my far right at the desk.

The order of procedure this morning for special exceptions and variances will be first, the statement and witnesses of the applicant, second would be the government reports, including the Office of Planning and any other reports that are in the case file. Third, would be the report from the Advisory Neighborhood Commission, fourth would be persons or parties in support. Fifth, we will have persons or parties in opposition and sixth, finally, we will have closing remarks by the Applicant.

Cross examination of the witnesses is permitted by the Applicant or parties. The ANC within which the party is located is -- or the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except for materials specifically requested by the Board and, of course, this Board and the staff will be clear and specific at the end of the hearing exactly what is expected and the dates, of course, for submissions of that information.

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 into executive session during or after the public hearing on a case for purposes of reviewing the record or deliberating on the case.

The decision of 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 Board in conversation. Please turn off all beepers and cell phones at this time so that we don't have any disruptions during these proceedings.

The Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today such as a request for a postponement, continuance or withdrawal or whether proper and adequate notice of a hearing has been given. If you are not prepared to go forward with case today or if you believe that the Board should not proceed, now is the time to raise such a matter. I'm first going to ask staff if they have any preliminary matters for us today.

MS. BAILEY: Mr. Chairman, members of the Board, good morning. There is a preliminary matter. It concerns the first case, Mr. Chairman, but perhaps that matter would be better taken up at the time the case is called.

CHAIRPERSON GRIFFIS: Good, I do appreciate that. Is there preliminary matters for the second or third case, the

1 Myers or the HQ Acquisitions? Okay, what I would suggest is that
2 we actually call this case and then get into the preliminary
3 matters. We have -- I think we'll probably have several
4 actually.
5 MS. BAILEY: Application Number 16854 of Mr. and
6 Mr. Charles Holliday, pursuant to 11 DCMR 3103.2 for a variance
7 from the lot occupancy requirements under section 403, and a
8 variance from the minimum lot width requirements under section
9 401 for the construction of a flat in the CAP/R-4 District at
10 premises 315 East Capitol Street, S.E., Square 787, Lot 35. All
11 those wishing to testify, please stand to take the oath. Please
12 raise your right hand.
13 (Witnesses sworn.)
14 MS. BAILEY: Thank you.
15 CHAIRPERSON GRIFFIS: Thank you all very much. And
16 let me also take Ms. Bailey, who is our staff member at the far
17 right who was just speaking. Mr. Hart is also with us and Ms.
18 Pruitt is with us on the right, and corporation counsel, Marie
19 Sansone is with us today, oh, and of course, Mr. Fondersmith will
20 be introduced from the Office of Planning when the time -- oh,
21 indeed, and Mr. Nyarku, who is behind me, just to introduce
22 everybody so everyone knows who the players are up here and Mr.
23 Nyarku, who is insuring that we will continually speak with a
24 clear voice by providing us water.
25 So that being said, let us get to the first case

1 and preliminary matters in this. Good morning, sir.

2 MEMBER ETHERLY: Mr. Chairman?

3 CHAIRPERSON GRIFFIS: Oh, yes, Mr. Etherly.

4 MEMBER ETHERLY: Thank you very much, Mr. Chair.

5 Just in the interest of disclosure, one of the attorneys who is

6 affiliated with the applicant in this matter, Mr. Blanchard and I

7 have a pre-existing relationship due to our time at the District

8 of Columbia Council. I wanted to bring it to the attention of my

9 colleagues and of course, the applicants and all parties that may

10 have an interest in this case so you're aware that we have not,

11 at any time in the past or present, discussed the particulars of

12 this case, nor would we going forward, but once again, I just

13 wanted to bring that to the attention of my colleagues and the

14 parties that have an interest in that case.

15 CHAIRPERSON GRIFFIS: Thank you.

16 MEMBER ETHERLY: Thank you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: And do you think you can be

18 impartial in hearing this case?

19 MEMBER ETHERLY: Absolutely, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Okay, Board members, any

21 comments?

22 VICE CHAIRPERSON RENSHAW: No problem.

23 CHAIRPERSON GRIFFIS: Why don't --

24 MR. DePUY: Mr. Chair.

25 CHAIRPERSON GRIFFIS: Yes, why don't you introduce

yourself and then we'll get comments on Mr. Etherly's comments quickly.

MR. DePUY: Jacques DePuy, attorney for that applicant.

CHAIRPERSON GRIFFIS: Okay, did you want to just comment on Mr. Etherly's disclosure?

MR. DePUY: No, no comment on that.

CHAIRPERSON GRIFFIS: So you don't have any opposition to him continuing the case?

MR. DePUY: No.

CHAIRPERSON GRIFFIS: Thank you. Why don't we have the other players introduced at this point, so that we can at least have them comment on Mr. Etherly continuing in this case?

MR. GILBERT: Good morning, Mr. Chair, my name is Cal Gilbert. I represent ANC-6B. I have no opposition to Mr. Etherly's disclosure.

CHAIRPERSON GRIFFIS: Okay.

MR. NETTLER: My name is Richard Nettler, I represent a number of individuals who own property or live next to the property. We're seeking to appear as a party and we have no objection to Mr. Etherly sitting in on this case.

CHAIRPERSON GRIFFIS: Okay, thank you, Mr. Nettler. Okay. Mr. DePuy.

MR. DePUY: Thank you, Mr. Chair, members of the Board, first I'd like to indicate that the applicant has

1 withdrawn one of the variances that was originally sought, that
2 is a variance from the lot occupancy requirements.
3 CHAIRPERSON GRIFFIS: Okay, and that's an
4 interesting point but before you go further --
5 MR. DePUY: Yes.
6 CHAIRPERSON GRIFFIS: -- let me take the motion
7 from the ANC because that is actually for a continuance of this,
8 if I'm not mistaken by a letter handed to us this morning.
9 MR. GILBERT: Mr. Chair, I'd like to modify our
10 request if I may, based on information that I did not have when
11 we made that request. If it is possible, we'd ask that the Board
12 keep the record open pending the ANC's review of the revised
13 plans. Our meeting is tonight and that review could be
14 accomplished and forwarded.
15 CHAIRMAN GRIFFIS: Okay, so what you're indicating
16 is that you're ready to proceed with this but you're asking the
17 Board to keep the record open to receive your report that comes
18 from tonight's meeting.
19 MR. GILBERT: Yes, sir.
20 CHAIRMAN GRIFFIS: What kind of time do you usually
21 have turning a report around?
22 MR. GILBERT: In this instance I feel confident we
23 could have it to you no later than Tuesday of next week.
24 CHAIRMAN GRIFFIS: Okay. I think that's the wise
25 thing to do unless Board members feel differently or not. Very

well, thank you very much.

MR. GILBERT: Thank you.

CHAIRMAN GRIFFIS: Okay.

MR. DePUY: And Mr. Chair, just to continue, the applicant has withdrawn the second application for a variance, namely from lot occupancy, which leaves this application seeking only a variance from lot width.

Secondly, it's not clear from various letters from persons who have requested party status that they understand that the applicant has modified its plans and I simply wanted to take 30 seconds to point out that the plans submitted with the pre-hearing statement show that the building has been reduced from 77 feet to 56 feet, that the height has been reduced from 37 to 33. Lot occupancy has now been reduced from 76.7 to 60 percent and I wanted any person who was seeking party status to understand that those plans have been filed as a part of our pre-hearing submission or will be filed today so that they can consider that with respect to any request for party status.

CHAIRMAN GRIFFIS: Now, this zoning summary that we're looking at in terms of the Board that's in front of us which will put an exhibit number on at some point, that is different than is submitted.

MR. DePUY: It's different on one respect, that is we've withdraw the lot occupancy variance. That's correct.

CHAIRMAN GRIFFIS: Right, I like to be redundant.

But for people that are here for this application, I think it might be important also unless you can grab numbers, which I can't, I need visuals, if you want to come around and take a look at it, that's fine, or we can even move this a little bit so that the rest of the audience can see it.

Mr. -- I'm not sure, but do you have copies of that for submission today?

MR. DePUY: We do. Mr. Chair and members of the Board, in the interest of time, the applicant would stipulate to the acceptance of Mr. and Mrs. Jones, who own the property to the east at 313 East Capitol Street as parties. We would stipulate -- it's 317, I'm sorry. We would stipulate to the request by Mr. Nettler on behalf of M. Warlick as a tenant of 313, property to the west as a party and we would object to any other request for party status in case those persons would continue to request party status and reserve the opportunity to specifically address any such request.

CHAIRMAN GRIFFIS: Okay, why don't -- first of all, let me just make clarification that Mr. and Mrs. Jones are here and that they are interested in still pursuing party status. Okay. And Mr. Nettler, you're representing Mr. Warlick.

MR. NETTLER: And the Jones.

CHAIRMAN GRIFFIS: Oh, indeed.

VICE CHAIRPERSON RENSHAW: Mr. Chairman, if I may break in for just a moment, this revised zoning summary that's

been handed to us --

CHAIRMAN GRIFFIS: Full size, I might add.

VICE CHAIRPERSON RENSHAW: -- full size is going to be Exhibit Number 46.

CHAIRPERSON GRIFFIS: Thank you. Okay, well, let's act on that Board, quickly, we all have the submissions.

MR. NETTLER: If I might, just for the record --

CHAIRMAN GRIFFIS: Sure.

MR. NETTLER: -- although I don't represent the party, Ms. Crenshaw had also sought party status and that wasn't referenced in the statement regarding the applicant's review. I understand she's here as well.

CHAIRMAN GRIFFIS: No, I understand that and what I'm going to do is take the first -- and what I'm looking at is a joined party, which will be represented by you. So we have our first request for party status which Mr. DePuy has taken no objection to, so that's obviously the easier one to get to.

And then I will go to the others. So do not be concerned, but I wanted to make sure that the Board had all of the information in front of them regarding Jones and Warlick. Any questions? Any concerns? Any objections? Any good jokes? All right, well, we'll dispense with the jokes and move on. I would say then unless the Board would like to object, I would take it as a consensus to the Board that we proceed and grant party status to Warlick and Joneses as a single party represented

by Mr. Nettler.

VICE CHAIRPERSON RENSHAW: Uh-huh.

CHAIRMAN GRIFFIS: Correct? Very good. Okay, let us go to Mr. and Mrs. Crenshaw, which is Exhibit Number 40. I have indication that their request was not timely filed. It was stamped in on March 27th. Actually, I'm going to have the Crenshaws come up to the table, if you don't mind, or whoever is going to speak for them.

Also let me just say, just for clarification and everyone here is probably well aware of it, but the fact that one is not granted party status does not preclude them from being part of any of the case and they are more than welcome, and everyone is more than welcome to testify as individuals.

The issue for party status and I think the big differentiation between being a person and being a party, is the opportunity to cross examine within the case. Obviously, parties do that, persons do not but again, to reiterate, there would be nothing stopping you from giving testimony. So I am assuming, Ms. Crenshaw is in front of me, so I would have you introduce yourself.

MS. CRENSHAW: My name is Margaret Crenshaw and I am here on behalf of my husband, Albert. And we have lived three doors down from the property for 30 years. We would like party status because we think the entire block is impacted by this proposal, not simply the neighbors because of the site lines and

because of the historic nature of our block.

And as for the timeliness of my application, my letter is dated March 18th, which should have been in plenty of time. I'm an employee of the U.S. Postal Service and I will report to my employer that it took 10 days to get across town. I don't -- I gather it is the postage stamp, you know, the day you receive it that is the deciding factor, but I will complain to my employer.

CHAIRMAN GRIFFIS: Good, all right, no Postal jokes today. Okay, well, frankly, we do have your letter and I think this Board can be, at times flexible in terms of the submission date and waiving that requirement. However, I have substantive concerns in terms of granting party status. As you have just indicated, in fact, the entire block is effected and if I'm sure you were given, and if not, I can give you a copy of this right now, but the excerpt of the zoning and the test it goes through for party status.

And what we obviously, look for is how you are more impacted than the general public and what I'm hearing you say and actually in your letter there are two points to it. You said now that the entire block is effected. You also indicate in your letter and I'll read it, that the ANC voting unanimously to oppose reflects your concerns and it says "reflects our concerns", but you wrote the letter, about the damage proposed to the structure.

1 So what I'm seeing two-fold is, one, we have a
2 party status that will represent your concerns and the ANC is
3 representing your concerns, so I'm not sure what is unique in
4 terms of granting party status to you.
5 MS. CRENSHAW: I would say what's unique is that as
6 a long term resident of the block and this is a very
7 controversial block, because as I pointed our in my letter, we
8 truly are the boundary between to overpowering buildings and
9 edifices of the Federal Government and the Folger Shakespeare
10 (phonetic) Library. We mark the boundary to the residential
11 neighborhood and we have come before the BZA in the past 30 years
12 on other attempts to change the residential character of that
13 block and we have continual problems, everything from tour busses
14 to using the properties for businesses and commercial purposes
15 and I don't think --
16 CHAIRMAN GRIFFIS: Okay, I don't question any of
17 that and I don't question --
18 MS. CRENSHAW: -- people are aware of that.
19 CHAIRMAN GRIFFIS: I don't question your commitment
20 either and as I said, we can hear your testimony, that's not the
21 problem.
22 MS. CRENSHAW: I understand that.
23 CHAIRPERSON GRIFFIS: But my concern is, how -- the
24 parties in granting party status should have something that will
25 not be redundant in terms of the other party status that are

granted. So are you saying that the ANC, in fact, will not reflect your concerns or the other parties will not reflect those concerns, and if not, how is it that you are uniquely impacted as opposed to those?

MS. CRENSHAW: I think the unique impact for those of us who are seeking party status which includes Mr. Burr, who is directly behind the property, is our historic position on the block and the fact that the ANC people who rotate in and out and have many cases to hear would not have the kind of interest --

CHAIRMAN GRIFFIS: But you have two neighbors that already have been granted party status, Jones and Warlick.

MS. CRENSHAW: Right, but they will speak, much more, I think to their personal impact, in the light, the other uses. We would speak to the additional congestion in the alley, to the fact that the lot occupancy in the block has been maintained over all of these years because it's already sufficiently congested and we would probably oppose any -- and ask for party status -- anything on the block.

CHAIRMAN GRIFFIS: Before we go into testimony, what I take from that is that the Joneses and the Warlicks would not then be effected by congestion in the alley.

MS. CRENSHAW: Oh, of course, they would.

CHAIRMAN GRIFFIS: Okay.

MS. CRENSHAW: I see what you're saying, but we just feel that this is such an important case that all of us

should have a right to make our points and to question the witness, if possible.

CHAIRMAN GRIFFIS: Indeed. Is it Constant Burr or Constant --

MR. BURR: She is not here but I'm Tim Burr.

CHAIRMAN GRIFFIS: Okay, you're going to have to speak into the microphone. No, you're not going anywhere Ms. Crenshaw. I want to get everybody up here because -- is there anyone else that's requesting party status at this time? Okay. Okay, Mr. Burr, Timothy Burr.

MR. BURR: Timothy Burr, right.

CHAIRMAN GRIFFIS: And you are a signator on the letter. Also yours is noted as not timely filed, although your letterhead is dated the 21st, Exhibit Number 39. You've indicated that the construction will have direct effect on the view and access to your parking and on the quality of the historic block and that's why you're requesting party status; is that correct?

MR. BURR: That's correct.

CHAIRMAN GRIFFIS: Can you briefly speak to how you are uniquely impacted as opposed to one, the general public, but also to the other parties that have been granted today?

MR. BURR: We are immediately behind this lot and therefore, we -- any activity that is going on right there as it will be for Mr. Warlick and the Joneses will directly impact us

1 because we are immediately across the alley from this property.
2 We also have -- our access into the alley is directly behind this
3 lot and we have sufficient problem with cars just parking
4 illegally back there to say nothing of construction equipment and
5 so on.
6 And if we are in our parking space, which we have
7 one space and we rent out one space --
8 CHAIRMAN GRIFFIS: Okay, I don't want to get into
9 the specifics of testimony at this point.
10 MR. BURR: It's just simply that there will be an
11 impact on access to that space.
12 CHAIRMAN GRIFFIS: Right, is the ANC aware of your
13 concerns and do you think the ANC can represent your concerns?
14 MR. BURR: This was not something we brought up at
15 the ANC meeting. We brought up other factors.
16 CHAIRMAN GRIFFIS: Is it conceivable that you could
17 talk to the ANC member that will be a party in this case to bring
18 up those issues?
19 MR. BURR: We can. We also have a historic view of
20 the block, because we have fought for that block for some 30
21 years in fighting Folger when they owned the block and were
22 trying to turn it into a campus. We also have memories of the
23 building that was there.
24 CHAIRMAN GRIFFIS: Right, okay. So we have a
25 historic view that you think or it's your opinion that the

Joneses and Mr. Warlick, as represented by Mr. Nettler would not represent. That's a yes or no.

MR. BURR: That's a no.

CHAIRMAN GRIFFIS: Okay. Right, they would not represent.

MR. BURR: They would not represent.

CHAIRMAN GRIFFIS: I got your meaning. Okay, and were you clear on what Mr. DePuy said this morning about the changes in this application?

MR. BURR: Yes.

CHAIRMAN GRIFFIS: And you're still wanting to request party status?

MR. BURR: Yes.

CHAIRMAN GRIFFIS: Ms. Crenshaw?

MS. CRENSHAW: Yes.

CHAIRMAN GRIFFIS: Mr. Levy, would you like to speak to this?

MEMBER LEVY: I would, Mr. Chair. It seems to me that being directly behind the lot in question that the Burrs are more likely candidates for party status than the Crenshaws.

CHAIRMAN GRIFFIS: Based on the adjacency to the property?

MEMBER LEVY: Exactly, and it seems to me that there's some overlap in issues that perhaps the Burrs would represent the issues that the Crenshaws are concerned about as

well as their own particular issues.

CHAIRMAN GRIFFIS: I think that does make some sense and let me put it to both of you whether you would want to join in party status request.

MS. CRENSHAW: Yes, that would be fine.

CHAIRMAN GRIFFIS: Okay, now just to be absolutely clear, that would mean one of you would be speaking and probably the same person.

MS. CRENSHAW: I will defer to Mr. Burr. He has about six more years in the block than we do.

CHAIRMAN GRIFFIS: Okay, Board members, any other comments? Okay, I take it as a consensus then that we will -- actually, let me give Mr. DePuy, I know you had spoken to the fact that you would not support -- did you want to speak specifically to this joint party request?

MR. DePUY: For the record, we'll object to it, Mr. Chair. We don't think that the party request has proved the unique status that's required by the rules. We think that in the case of the Burrs their property is approximately 150 feet away, the house, that is, is 150 feet away from the new structure proposed by Mr. and Mrs. Holliday, which is equivalent, of course, to being seven lots away.

CHAIRMAN GRIFFIS: This is not directly behind the applicant's property then?

MR. DePUY: It's across a 30-foot alley.

CHAIRMAN GRIFFIS: Correct.

MR. DePUY: And because this is a very deep lot, I mean, these lots are very deep, there is a very large separation which we calculate is 150 feet between the back --

CHAIRMAN GRIFFIS: The structure.

MR. DePUY: -- between the proposed Holliday house and the back of the Burr structure.

CHAIRMAN GRIFFIS: I see, but for clarity sake you said the lot is essentially directly behind the applicant's lot.

MR. DePUY: That's right.

CHAIRMAN GRIFFIS: Okay. And of course, the applicant did speak to the unique perspective that they are putting forward in terms of the historic and the history of the block, I might say also. Okay, so we do have that objection.

Does any other parties that have been granted want to speak to this party request? You can shake your head, now, put it on the record.

MR. NETTLER: Only to say we have no objection to them being parties.

CHAIRMAN GRIFFIS: No objection. Okay, thank you. All right, Board members, other -- okay, I think we have a consensus that we will grant the joint party status of the Crenshaws and Burrs.

Let me lay out first of all while everyone is paying attention to me, because it may lapse after awhile, but I

will be very vigilant in this case in terms of not having redundant testimony or cross examination. I think we can get through this and frankly, the most important thing for this Board is to get down to the facts and what we will have to deliberate on.

So I will perhaps -- well, I will be direct with everybody as they're going up and we will cut testimony or any direction that we're going to that doesn't relate directly to this zoning application. All of us on this board have great interest in many different aspects of the city, all very specific and unique. However, not all of them pertain to the zoning nor do they pertain to this specific case.

So that being said, I will ask you folks to sit back and I think we can start this case unless I'm missing other preliminary matters. Okay, oh, the other thing I would ask the parties to be vigilant about is if I move on without having you had the opportunity for cross examination or objections or questions, please you can interrupt me by raising a hand or coming to the table and -- excellent point Ms. Renshaw has brought to my attention.

We do have a letter in from the Capitol Hill Restoration Society. Is a representative from that organization here today? Okay. Then, I will turn it over to the applicant to begin their case.

MEMBER ETHERLY: Mr. Chairman, if I may, just to

clarify one final issue on the party status request --

CHAIRMAN GRIFFIS: Yeah.

MEMBER ETHERLY: -- on the understanding that Mr. Nettler will be representing -- I just want to be clear because I thought we had party requests from two sets of individuals with the surname Jones. Mr. Nettler is representing Mr. and Mrs. James R. Jones, correct?

MR. NETTLER: That's correct.

MEMBER ETHERLY: Okay. Mr. Nettler has expressed that it is correct. Did we have a separate request or is that the same as James and Olivia Jones?

MS. JONES: Same.

MEMBER ETHERLY: Same, okay, thank you. I just wanted to clarify that.

CHAIRMAN GRIFFIS: Indeed, and I appreciate that because we do have two letters, Exhibit 36 and 37 from the Joneses.

MEMBER ETHERLY: Okay, thank you, Mr. Chair.

MR. DePUY: Mr. Chair, members of the Board, good morning. Our witnesses this morning are Mr. Charles Holliday and Klaus Klatt, architect. Appearing with me as co-counsel is Lyle Blanchard of Greenstein, DeLorme & Luchs. This application is revised because of a sole variance from the lot occupancy -- from the lot width requirements. The lot occupancy variance has been withdrawn. This application has been supported in writing by the

Architect of the Capitol, by the Office of Planning.

There are four letters from individuals in support. It's been supported in writing by a letter from the Shakespeare Theater. The conceptual plans have been approved by the Historic Preservation Review Board.

And at this point, I'd like to call our first witness, Mr. Klaus Klatt.

CHAIRPERSON GRIFFIS: Touch the button on your mike and the light will come on. There it is.

MR. KLATT: Good morning, Mr. Chair, honorable members. My name is Klaus Klatt. I reside at 3533 Yuma Street, NW, Washington, DC. I am a registered architect in the District of Columbia. I was chosen as an architect by Mr. Holliday after a previous architect and a very famous one had presented to you, to the Board, with Case 15476, a submission for various deviations from the zoning code and was approved.

CHAIRMAN GRIFFIS: Having not had the pleasure to sit on that case, who was the famous architect?

MR. KLATT: Ms. Weinstein.

CHAIRMAN GRIFFIS: Fabulous, fabulous.

MR. KLATT: She is not here, unfortunately. However, I will have to say a few words which might have hurt her presentation at the time but I will come to that in a minute. When I was hired by Mr. Holliday, Mr. Holliday had purchased this piece of property which is -- was rezoned or how should I say, it

was -- it received a record lot designation of lot 35 instead of an 800 number at the time.

Mr. Holliday asked me to provide a house that would be in line with the previous architect's design, in other words, the design that was presented to you representing various requests for exceptions and variations from the Zoning Code initially. However, it turned out that the ANC and the neighbors would not go along with it.

Before I start with the actual design that I would like to present to you, I would like to show you some pictures, a row of pictures, the actual city scape within the 300 block of East Capitol Street. I hope that you will be able to see the length of the 300 block. On the north side of 300 Capitol Street, which has a silhouette of various higher building, mainly three-story buildings, and some, of course, are four-story. It appears to me that some of them are even apartment buildings. This is directly opposite the property.

CHAIRPERSON GRIFFIS: Let me just interrupt you briefly, and just to lay it out for you, we have a huge schedule this morning. So as you're not going for a height variance, context is very important but I'm going to ask you to just get us into it fairly quickly.

MR. KLATT: The -- I just want to point out the various adjacent properties on the southside and may I point to the property in question here is adjoining an alley which is 25

feet wide. The alley adjoins a 16-foot wide lot, 16 feet are the ones in question here.

CHAIRMAN GRIFFIS: And let me just -- I'm sorry, I have the propensity for interrupting but --

MR. KLATT: Please, please.

CHAIRMAN GRIFFIS: But the photographs are reading -- that's not the entire block and just for board members' clarification, the first two, we had the site and then we had the site again, correct?

MR. KLATT: Yes, yes, sir.

CHAIRMAN GRIFFIS: I see, actually it's --

MR. KLATT: It starts with 301 and ends with 339.

CHAIRPERSON GRIFFIS: I see, I see, and of course, we'll need these photographs in the record.

MR. KLATT: Please, yes.

CHAIRPERSON GRIFFIS: Okay.

MR. KLATT: The last row of pictures represents first of all, the property itself being empty surrounded by presently a chain link fence. To the left of the property is 313 East Capitol Street, a three-story building and it's carriage house to the left of that and at 311 a rather bulky structure which overlooks the other portion of the carriage house, to its left is a garage that belongs to the recently built of 311 -- no 317 East Capitol Street with the alley to its left.

Again, a quick picture of the carriage house at

313, in other words where we would like to build adjacent a single story garage and that is the front view, in other words, looking south and this is the south view, looking north with the carriage house having no window.

May I now refer to Sheet Number A-3 and not very consequential in this case, which shows the silhouette of the existing adjoining property of 313 East Capitol Street, showing in yellow what will be still exposed, showing in a red outline what I am proposing now for Mr. Holliday's new residence. In a section through it with a much smaller projection, the projection for 313 is shown in yellow and on top, that will stick out.

I will, however, mention again is here shown in a picture showing 313, this being the silhouette of it and the various heights indicated is still surrounded or actually overshadowed by 311, which continues further in the back, which I just didn't show because it is too far away. Here is a front view of our proposed 315 East Capitol Street and the existing 313 and the roof line being lower as I suggested only for a gable.

Quickly, I would like to continue with the proposed revised elevation from -- seen from the alley, again, 313 being the silhouette and the new or revised elevation which before was 76 feet, in other words, 29 feet longer as Ms. Weinstein had suggested. A picture, however, that I had given to Mr. Holliday at one time, showing the actually facade, the exposed facade of 313 --

CHAIRPERSON GRIFFIS: Yeah, I think we have the in the record.

MR. KLATT: Yes, it would be most important. I can't show it to you at the moment from here, brought to my attention a rather severe problem which exists with 313. Number 1, it indicates that there are stars made out of cast stone visible from that side view which indicate that the party wall, which it actually is, is severely compromised and should have a building adjacent to hold it up again.

These stars represent through braces through the entire building and have been put at a certain time into this building reaching right through the side on several levels and several horizontal locations indicating that if we did not put a building adjacent again, as Mr. Holliday would like to do, and use this party wall as part of his wall, of course, the side wall of 313 will be compromised.

CHAIRPERSON GRIFFIS: So your testimony is the fact that those stars are not original?

MR. KLATT: Oh, no, they would not necessarily have to be. If the timing of the construction would allow me to assess that the original building having been at 315 was a two-story structure, was there first and the 313 building was built second or after that, when however, 315 was razed for whatever reason, these stars became necessary.

CHAIRPERSON GRIFFIS: I see.

MR. KLATT: Another very serious matter is, of course, if I have a compromised party wall in the first place and my illustrious predecessor insisted on underpinning this wall, I could not go along with that because her structure would have been -- would have necessitated about two feet of being dug below this party wall, which already is structurally not too sound. This I just bring up on a side view. What I'm planning to do is in the basement, cellar, ground floor area to have a rental unit, which partially would be above grade in the zoning sense of 50 percent.

The front of the property being totally below grade or let's say more than 50 percent would house the exercise rooms and utilities for the Hollidays. The rental unit, this is drawing -- one shows in the rear a one bedroom flat and in the front exercise and storage areas and first floor reached, of course through a staircase from East Capitol Street with the living room, dining room, kitchen, a rather voluminous backyard surrounded, however, by a six-foot high brick wall, and a 21-foot deep garage with access from the alley and the rear.

CHAIRPERSON GRIFFIS: What's the interior width of the house?

MR. KLATT: 14 feet.

CHAIRPERSON GRIFFIS: Okay.

MR. KLATT: The second floor would house, again, the same footprint as the first floor and the basement in a

length of 56 feet, both master bedroom and the so-called boy's room with two baths and, of course, the staircase.

The garage roof is shown here being adjacent to the carriage house and opposite on the south side off another L where and still are existing garages as well. The third floor would house a guest bedroom and a library and a media room and one more bath. I would like to end my presentation if Mr. DePuy allows me and would be open for questions.

CHAIRPERSON GRIFFIS: One quick question, the overall length as proposed now just to reiterate is?

MR. KLATT: Fifty-six feet.

CHAIRPERSON GRIFFIS: Fifty-six feet, which is what we're showing in our -- and that is not, of course, including the bay front.

MR. KLATT: Correct.

CHAIRPERSON GRIFFIS: Okay. Did you have any questions for the witness?

MR. DePUY: No.

CHAIRPERSON GRIFFIS: Okay. Board members, questions? I do have a question, actually, has the height changed in what we had or in any of the written submissions of the building? There was obviously some questions to it, and my second piece is, and I don't know whether you have all the information that we do, although it certainly is accessible, but I have this and I'm going to hold it up and it's actually from

one of the parties' submissions, from Mr. Nettler, but it is a photograph that has an animation of the proposed building.

And in my view, this doesn't reflect what we're being shown on the architecturals.

MR. KLATT: I have seen this picture and vehemently object to it, because it does not represent what I've been proposing here.

CHAIRPERSON GRIFFIS: Okay, how does it differ?

MR. KLATT: It is much taller.

CHAIRPERSON GRIFFIS: Okay, and I think that can be seen by the -- actually, the outline that you gave us. So if I'm correct, the actual building proposed is lining up, there's essentially a corness line before you have the -- maybe I'm having trouble seeing it, but even looking at the elevation, hold up A-3 again, it appears to me that that top roof line -- can you see this? I'm going to hold it for you.

And I'm just trying to figure out, just to get clarification, but it seem to me that this line here is this line; is that correct?

MR. KLATT: Correct.

CHAIRMAN GRIFFIS: And I'm seeing this line up with this detail here which begins the kind of tower element and the corness. That's substantially lower in this section.

MR. KLATT: I would assume that this is drawn somewhat too high, this height here yeah, yeah.

CHAIRPERSON GRIFFIS: The heights off the existing structure, this dimension, this dimension of the chimney as well were taken by a civil engineer and I just copied them here.

CHAIRPERSON GRIFFIS: It's those civil engineers that cause all the problems. Well, why don't -- for clarification then, why don't you just speak to which is shown more correctly as what you're proposing? I mean, is our front elevation that we should be looking at or is it the section?

MR. KLATT: It's the front elevation, yes.

CHAIRPERSON GRIFFIS: Okay, and so if I'm -- and how would you call your roof? Would you call that a pent roof as it pitches back? Perhaps not. Well, the direct question is, how does that align with the roof behind the tower of the adjacent building?

MR. KLATT: The roof pitch for the majority of the roof rather than the gable portion in front would be somewhat flatter --

CHAIRPERSON GRIFFIS: Yeah, I don't care about that. I'm actually talking about the gable then, if you want to -- your gable roof as it relates to the adjacent property.

MR. KLATT: The gable roof would be a duplication of this part of the adjacent roof, minus the front gable that actually is on top of the projection.

CHAIRPERSON GRIFFIS: I see.

MR. KLATT: Am I answering the question?

CHAIRPERSON GRIFFIS: Yeah. I'm not sure, you say it would reflect that.

MR. KLATT: Reflect it, yes.

CHAIRPERSON GRIFFIS: It would have the same pitch?

MR. KLATT: The same pitch.

CHAIRPERSON GRIFFIS: Okay.

MR. KLATT: Yes.

CHAIRPERSON GRIFFIS: And if I'm not mistaken the information said it was going to be some sort of slate light material as the shingle.

MR. KLATT: Yes, correct.

CHAIRPERSON GRIFFIS: Okay. Board members, other questions?

VICE CHAIRPERSON RENSHAW: Mr. Chairman?

CHAIRPERSON GRIFFIS: Yeah.

VICE CHAIRPERSON RENSHAW: A question for Mr. Klatt; I'm holding up a picture from Exhibit Number 37 that was submitted by Mr. Nettler and it is a picture of the Jones' property right there and I'd like to know the 56 feet of the proposed home will cover these windows?

MR. KLATT: If you'll allow me, on sheet A-4 I am showing a break line -- pardon me, if I'm not directly answering you or what I'm coming to it -- a break line at about, oh, let's say two-thirds away south of East Capitol Street which is the end of the party wall of the adjacent property. What I marked here

in a different color represents the end of the party wall at which time a -- well, I would say open court starts for 313. Am I answering the question now?

In other words, the portion that I show here in yellow is not all in one plane. The vertical line shown on A-4 and on other drawings represents the exact extent or let's say assumed to the civil engineer's details that I received, off the party wall whereas, then there is a more or less I think four-foot recess that represents the next door neighbor's open court.

This court extends to a line about eight feet further than the 56-feet depth of the actual structure that I proposed for Mr. Holliday. It extends another eight feet.

VICE CHAIRPERSON RENSHAW: Okay, thank you.

CHAIRPERSON GRIFFIS: Any other questions? Just for clarification, it was in the application but this -- the rear yard is actually defined by a brick wall that runs on the property line, correct?

MR. KLATT: That's correct.

CHAIRPERSON GRIFFIS: Okay, and then what we're seeing in this elevation, the basement level windows actually are opening up onto the alley.

MR. KLATT: They do, yes, sir.

CHAIRPERSON GRIFFIS: Okay, anything else, clarifications? Okay, let us have -- and this is what I would like to establish as we proceed as what we will have as

witnesses, we will have Board questions of witnesses and then we will have cross examination of the witness and then redirect.

So if the parties can come up and be close to the table, what I'm going to have to do and I'm sorry, we're going to have to shift track because we don't have all these tables, but if you wouldn't mind just giving all the parties, you can stay, at the table, let's just give them a few chairs.

And if I can establish this, the parties, if you do not have cross examination, then you do not need to come up and I will actually take that as a fact that you don't have cross examination if you're not at the table. And if you come up with something, well, then you'll have to dash to the table.

Actually, Mr. Klatt, you're going to need to be at the table, because unfortunately but the reality is you are being cross examined. Good, Mr. Nettler?

MR. NETTLER: Thank you. Richard Nettler on behalf of Jones and Warlick. Let me ask you a few questions, Mr. Klatt. First of all, off of what Ms. Renshaw had asked you just a second; if you -- going back to the elevations on -- that you have on your plans that's marked as A-4, is -- your answer that 56 feet goes back to these second windows on the top floor of the building from the rear. Could you just mark exactly where 56 goes to?

MR. KLATT: The 56 feet represent the entire depth of the structure from East Capitol Street back towards the south.

MR. NETTLER: That's not my question.

MR. KLATT: Oh, I know, I'm getting to it. The 56 feet are to this point, however.

MR. NETTLER: To that point.

MR. KLATT: Yes, sir.

MR. NETTLER: So it covers both the windows that's in the court that you mentioned and the windows that are in the front of the building that are on the property line.

MR. DePUY: Objection, Mr. Chair. The witness did not testify the windows were covered. He indicated there was an open court.

MR. NETTLER: I'll rephrase it. So the structure goes -- from the front goes against the windows that are on the property line all the way back to the windows that are in the court that you described before.

MR. KLATT: I cannot answer that.

MR. NETTLER: Cannot. Okay.

CHAIRPERSON GRIFFIS: We're going to run into definitely technical problems because Mr. Klatt just indicated that he cannot answer that question. However, you're not on the record saying that, so I've put it on there for you. So I'm not sure how long this wire in on the middle mike, but that may be the one that if you need to speak, you can pick up or talk to. Yeah, let's do that. That's perfect.

There is a pointer here also if people need to use

it, someone sitting at the table.

VICE CHAIRPERSON RENSHAW: Mr. Chairman, I'd just like to ask Mr. Nettler to identify the windows on the property line.

CHAIRPERSON GRIFFIS: Actually, in cross examination I don't think that would --

VICE CHAIRPERSON RENSHAW: Or whomever.

CHAIRPERSON GRIFFIS: Well, okay, we're going to move one, thank you.

MR. NETTLER: Do you know how long the lot which your client hopes to build this structure has been vacant?

MR. KLATT: I have no idea, but the case that I mentioned before, the BZA case was a 1999 decision and I would assume that the lot has been vacant considerably prior to that.

MR. NETTLER: You're sure that was a 1999 decision?

MR. KLATT: Well, if you'll allow me, I can go through the records. I was not privy to --

MR. NETTLER: If I told you it was 1991, would that --

MR. KLATT: I certainly don't want to object to that.

MR. NETTLER: But you don't know how long that site's been vacant then.

MR. KLATT: No, sir.

MR. NETTLER: Okay, and you said that the stars on

the edge of the building -- let me show you a picture which I'll mark as -- do you want to mark this as Joiners Exhibit 1? It's a part of the pre-hearing submission that was made by --

CHAIRPERSON GRIFFIS: Yeah, it's part of your package. Okay. It is part of Exhibit Number 37, but we'll mark that, and just hold that up. That's good. It is, in fact, the side photograph from the alley which shows the fire escape.

MR. NETTLER: Let me show you that, Mr. Klatt. Could you point out where on that picture are the stars that you mentioned?

MR. KLATT: Let me first explain some of the picture details. The right portion of the picture represents the so-called party wall and through sort of the middle vertically is a break line. Directly underneath this break line which probably is a line of construction of 313, directly underneath are four rusty spots that represent four of these so-called stars or braces.

About I would say another story higher beyond the line that I've just mentioned is another row of four stars and above that within the rafter space of 313 are two.

MR. NETTLER: Okay, continue to look at the picture and look at the left side of the picture and on the portion of the building that will not sit -- does not sit on the property line, do you see stars there as well?

MR. KLATT: I sure do, yes.

MR. NETTLER: Okay, and do you -- on what basis are you saying that these stars are not original to the building?

MR. KLATT: I have actually no basis of fact. The only thing is when I would be involved in construction at this neighborhood I would put those in once a party wall has been compromised.

MR. NETTLER: Okay, so -- but you don't know for sure whether that's this -- I think as you testified before, that the purpose for the -- that these stars indicate a later construction on the wall or indicate to you that the walls themselves are in a condition that necessitates it being shored up by your building that you're proposed to construct.

MR. KLATT: Sir, my purpose in the District of Columbia is to provide safe housing. I have not mentioned that they have been there at a certain time, that they were put in later on. I am just assuming that the party wall is not structurally too sound.

MR. NETTLER: Okay, but you're not a structural engineer, are you?

MR. KLATT: I am only licensed as an architect.

MR. NETTLER: Okay, and your testimony is that it's in disagreement with Ms. Weinstein's suggestion earlier when the application was -- when a similar application was considered about underpinning the wall on the property line, that building this structure against that wall will provide safety for -- will

keep that wall from falling which would otherwise happen without that situation; is that what you testified to?

MR. KLATT: Yes, sir.

MR. NETTLER: Okay, so when this is constructed and this new building, supposedly this new building is constructed against that wall, there is nothing about the construction of this new building that will prevent in your view, I guess, using the same logic, from the rest of the building that's not on the property line from falling down.

MR. KLATT: How should I answer it? Of course, it will not fall down, hopefully, under normal circumstances. We are in Earthquake Zone 1 here. It's not zero. California is only three digits further up, so we are in an earthquake zone. We have to worry about shifting of earth and who knows under what circumstances the other stars were put in. I don't think that is a tremendous issue here.

MR. NETTLER: Well, but --

MR. KLATT: If you feel that the new structure that I am proposing depends on the justification of those stars, I can't quite agree with you.

MR. NETTLER: No, but wasn't your testimony -- wasn't the salient part of your testimony the fact that a benefit of having this new construction would be that it would prevent what you described as a unstable wall of an adjacent property 313 from falling down?

MR. KLATT: Absolutely.

MR. NETTLER: Okay, and building that -- if that was correct and it's based on your suppositions regarding the existence of those stars, that would do nothing to preserve or protect the wall that isn't on the property line. Is that what you're saying?

MR. KLATT: I have no idea how to answer that.

MR. NETTLER: Okay.

CHAIRPERSON GRIFFIS: Okay, if you don't have an answer, that's exactly what you should say.

MR. NETTLER: Mr. Klatt, you made reference to the decision, the prior BZA decision. Do you understand that your -- that there's been any argument that's being made that that prior decision in some way binds this Board with regard to the facts of this particular case?

MR. DePUY: He didn't testify to that, Mr. Chair. He did not testify to that, Mr. Chair. That's a legal conclusion.

CHAIRPERSON GRIFFIS: I don't think it would be appropriate to answer that anyway. I can set the record -- this Board, of course, did look at, because it was submitted the last BZA order, but it has no bearing on this case. This is a stand-alone, an individual case. I think all Board members are very clear on that. So, in fact, if we can -- we actually don't need to bring that up again unless there's other pertinent pieces that

we will be drawn to.

MR. NETTLER: Thank you. I have no other questions of this witness.

CHAIRPERSON GRIFFIS: Good.

MR. BURR: He covered what I was looking for, thank you.

CHAIRPERSON GRIFFIS: Very good, thank you, Mr. Burr. Any redirect?

MR. DePUY: No, Mr. Chair.

CHAIRPERSON GRIFFIS: Okay. And because we have the privilege, any further questions of the witness before we --

VICE CHAIRPERSON RENSHAW: Just checking the traffic up here, I'd like to ask where the windows are on the property line, ask Mr. Klatt.

MR. KLATT: There are no windows from 313 on the property line. They're adjacent to 315.

VICE CHAIRPERSON RENSHAW: Okay, thank you.

MR. KLATT: And pardon me for correcting myself. The windows in question have, as the picture shows itself, that we just put into the record, I guess, have been more or less obscured by a rather substantial fire escape which is in front and the distance between the let's say property line of 315 behind the party wall and the rear portion of the 313 property is five feet. I correct myself. It was not three feet. It's five feet and that represents the zoning permitted side yard and open

court in those. Thank you.

VICE CHAIRPERSON RENSHAW: Thank you.

CHAIRPERSON GRIFFIS: Mr. Klatt, is it your experience that these stars that have come under some interest, are structural anchors to tiebacks or some sort of structural element in the building?

MR. KLATT: Pardon me for circumventing that somewhat but in a recent construction where it became necessary to use those ties on 9th Street NW, each of these ties represents about $2500.00 in cost these days.

CHAIRPERSON GRIFFIS: Yeah, but that doesn't answer the question. Are these structural elements?

MR. KLATT: They are.

CHAIRPERSON GRIFFIS: Okay, and they were used -- they're used currently and they were used 150 years ago, correct?

MR. KLATT: Yes, sir.

CHAIRPERSON GRIFFIS: Okay, now that we have actually gone into new territory, I will revisit this entire process and ask if there's any cross examination on that. Very good, any redirect? Fabulous. Mr. Klatt, I absolutely appreciate it and I think we can move onto the next witness.

VICE CHAIRPERSON RENSHAW: Mr. Chairman, just to say that the strip drawings that were submitted are Exhibit Number 47.

CHAIRPERSON GRIFFIS: Good and actually the

panoramic photographs, I think is what you meant not drawings.

VICE CHAIRPERSON RENSHAW: Well, there are some architectural --

CHAIRPERSON GRIFFIS: Oh, are there drawings also?

VICE CHAIRPERSON RENSHAW: Uh-huh.

CHAIRPERSON GRIFFIS: Oh, indeed, thank you.

MR. DePUY: Our next witness is Mr. Charles Holliday. Mr. Holliday, would you identify yourself for the record and give your statement to the Board.

MR. HOLLIDAY: I'm Charles Holliday and with my wife Susan Holliday, we own the vacant lot at 315 East Capitol Street. First off, I'd like to apologize for my nervousness but --

CHAIRPERSON GRIFFIS: Oh, please don't be nervous. We'll make you nervous but don't come nervous.

MR. HOLLIDAY: I'd just like to start off with a brief history of how we came to get into this situation. First off, as they've suggested before, the lot is 16 feet wide by 128 feet deep. A row house -- it abuts a row house at 313 East Capitol and an alley 15 feet wide to the east. As Mr. Klatt demonstrated in his photos, the south side of 300 block of East Capitol Street is 12 buildings. Ten of the 12 buildings are three stories above ground. One is two stories and that's 305 East Capitol Street and 317 appears to be two and a half stories.

When we negotiated to purchase this property, we

noted that it was advertised as conveying with all variances, permits and plans to build a 3800 square foot house with a garage. On further review, I examined the previous BZA case from 1991 and saw that the variances were unopposed by the Board and that there was support from the neighborhood as well as the Architect of the Capitol and the Office of Planning and, indeed, Mr. and Mr. Jones at 317 supported the project in '91, as well as the then owner of 313 East Capitol Street.

Based on all of that, we felt comfortable proceeding forward towards the purchase of the property. In 1997, the previous owners were issued a building permit by DC. Based on all of that, we began our negotiations. We had a hard time collecting information from the sellers, from DCRA and wound up taking over a year to get to the settlement table.

During the negotiations, it became apparent to us that the previously issued three variances had lapsed, as well as the building permit. So my next goal was to discuss this with DCRA people and find out what we could do. DCRA suggested that they could recharge the variances, but we would have to go through the entire building permit process again.

Based on that information, we went to settlement. I went back through the building permit process as they had suggested at DCRA and I'm not sure what happens with regard to the variances but we were issued a building permit April of last year. At that point, I lined up my financing and my contractors

and prepared for construction. We were scheduled to break ground July the 3rd of last year, 2001, when I was approached by Mr. and Mrs. Jones of 317 East Capitol Street who had voiced concern about the project and just felt like they had been blindsighted by the project.

At that point, wanting to be a good neighbor, I waved off the construction crews and we stood down on the job. I felt that we had done nothing wrong. We followed the advice that we were given along the way and just tried to act in good faith. I sent a letter to Mr. and Mrs. Jones who were, I guess our contact people, our point people at that time, suggesting that we meet and discuss our differences and Mr. Jones was kind enough to invite us to his office July 30th.

We shared our plans with the Joneses and Mr. and Mrs. Jones suggested they thought the building was too tall. So we immediately contacted Mr. Klatt and commissioned him to design a shorter building which Mr. Klatt was happy to do for us.

I sent a note back to the Joneses on August the 5th, indicating that we had smaller plans or plans depicting a smaller house that we would like to share with them and I never heard back from Mr. Jones. In the meantime, apparently some of the neighbors had contacted the various entities in DC complaining about the project and Michael Johnson, Mr. Michael Johnson, the Zoning Administrator at that time, telephoned me to say that there was a problem.

Mr. Johnson, after asking me questions, determined that DC has indeed made a mistake at some point which was somewhat technical to me that I didn't understand and issued the permit. We -- at that point, he promised to help to do everything in his power to help us out. This is the project that was initially approved. It was almost 42 feet tall.

The building was 78 feet 11 inches long and it occupied 77.5 percent of the lot and had an FAR of 1.88 and required the three variances that are indicated; lot width, occupancy, floor to area ratio.

CHAIRPERSON GRIFFIS: And let me just interrupt you because I think the Board is fairly familiar with the previous one and I'm not sure how much you want to open yourself to this or how relevant it is to the Board on this but conceivably and I think conceptually, we can understand the fact that there were -- a previous approval by this Board that had the three variances. It was obviously a larger project in many respects from FAR to lot occupancy, et cetera.

MR. HOLLIDAY: If I can just take a second to --

Mr. Klatt's revised plans are depicted in these two posters. He reduced the building to 77 feet long and based on that we were able to reduce the number of variances that we were requesting to just lot width and lot occupancy. Based on the information from the neighbors we had contact with, the Joneses, we lowered the building five feet to give them a better site

line.

CHAIRPERSON GRIFFIS: Isn't the revised dimension 56 feet?

MR. HOLLIDAY: This is the middle revision and then there's one more subsequent to that.

CHAIRPERSON GRIFFIS: Let me offer you some advice and take it or not but it's probably best to stick with what's actually before us. Otherwise, frankly, you're going to confuse the parties, they're going to come out and the Board also.

MR. HOLLIDAY: All right.

CHAIRPERSON GRIFFIS: So if you stick to what you want and what you're actually applying for, we're all going to be better off.

MR. HOLLIDAY: Just one second.

CHAIRPERSON GRIFFIS: I mean, I think it can be noted and I think the Board is well aware that obviously, the process has gone through here and there are concerns that were brought up by the neighbors and other associations that I would imagine that you are trying to indicate you have taken into account and so the current submission is reflecting those.

MR. HOLLIDAY: Thank you for your advice. I would like to try to demonstrate that we tried to stay attuned to the neighborhood's concerns and the concerns that were voiced at the ANC meeting and the Capitol Restoration Zoning meeting to the point where we ultimately got to these plans. These plans are --

they depict a house that's 56 feet long which is significantly shorter than the original 78 foot 11 inch house, and as Mr. Klatt's colored drawings indicated earlier, it's significantly lower as well.

We went back through the process, the BZA process. We went through the Capitol Hill Historic District Committee or the Capitol Hill Restoration Society and the Historic Preservation Review Board and they approved our plans. I also went to the Capitol Hill Restoration Society Zoning Board as well as the ANC and there was significant neighborhood attendance and that's were they voiced concerns about still the size of the building that we had reduced already so that's when I commissioned Mr. Klatt again to reduce the building where we came up with this proposal which was 56 feet long and I believe 33 feet high.

I just wanted to point out that we tried to be good neighbors. We've tried to listen and we have, indeed, heard the community concerns, the ANC, the Capitol Hill Restoration Society and have whittled our house down in response to that so that we could provide a better project. Our revised home is shorter and less deep than the neighbor to the west which is 313 East Capitol Street. 313 East Capitol seems to occupy that 72 percent of its lot in contrast to ours which will only occupy 60 percent.

313 does have the light well that Mr. Klatt was pointing our where the windows in question are. The light wells

appear to be a typical phenomenon of Capitol Hill and I guess maybe urban areas so I feel like that's a typical vehicle to provide light when a building is put up and these light wells are typically against blank walls.

So I just want to recap that we revised our plans ultimately through a series of steps in response to various input to shorten the house from 78 feet 11 inches to 56 feet. We reduced the roof height. The initial house had a peaked roof on it or a roof like that, that was about 42 feet high from the ground to our current height which is 33 feet -- 33.65 feet and we've reduced the need for variances from the initial project that was approved in '91 of three variances to just lot width.

The lot width issue is -- we can't -- we're on the alley on one side, a 15-foot alley and then we have the house at 313 on the other side, so we're not in a position where we can acquire additional property to conform with the variance requirements. If this was a situation where we were 18 feet wide, we would comply in every other area. We've whittled the house down to the point where we comply with everything else.

So I'd just like to again, just direct your attention to the zoning summary and this just highlights what I've mentioned, that the initial house in '91 approved was 78 foot 11 inches. Our intermediate step brought it down to 77 and then finally, we brought it down to 56 feet. The height here suggests 40 feet. It was actually -- it seemed to be 42 when I

subtracted the elevations. The intermediate proposal had a 37 foot high roof. Our ultimate proposal has a 33-foot high roof.

The lot occupancy as you see has declined to 60 percent, to the point where we don't need a variance for that. The rear yard is now 51 feet long. We reduced the inside area to 3500 feet, we're not going to have a deck, and again, we just need the one variance.

CHAIRPERSON GRIFFIS: Great, thank you. I think that points out the fact of what we need to pay attention to, which is the lot width.

MR. HOLLIDAY: I think that's all I have. Thank you. And I want to thank the Board and everyone here for allowing us to present this.

CHAIRPERSON GRIFFIS: There's plenty of time for thanks, so we'll hold it to the end. Let me ask a quick question just for clarification. I think the architectural plans show it but what you were calling a light well actually zoning-wise should be a court. Let's all talk about it as a court.

You do not have any windows on that side of your proposed structure, correct?

MR. HOLLIDAY: We do not.

CHAIRPERSON GRIFFIS: Oh, who conveyed the information that or who gave you the information that all the variances would convey with the property?

MR. HOLLIDAY: Well, initially, the realtors suggested that it was a turnkey operation, that I could just show up with a shovel and start building. However, when we investigated, and I have to confess my ignorance of the zoning and permit process, but in the course of that we were told that, indeed, they issued us a permit.

You know, I don't know what happens in the background where that goes on, but it appeared to my way of thinking that they had, indeed, recharged the variances to get us to the permit stage. I don't know who the people were and the staff there appears to be different than what I recollect.

CHAIRPERSON GRIFFIS: Okay. I'm not sure if that's the formal process of recharging but I like that.

MR. HOLLIDAY: Again, I apologize for not knowing the correct terms.

CHAIRPERSON GRIFFIS: I'll implement that. I'm not sure we need to go too far into it but obviously, the order would have followed. In order for the order to live, it would have to have a permit pulled on it, and then construction would have to follow that. So obviously, one of them expired which kicks them all out.

MR. HOLLIDAY: I would point out that Mr. Johnson, the Zoning Administrator, on his follow-up --

CHAIRPERSON GRIFFIS: The former Zoning Administrator.

MR. HOLLIDAY: Yes. The former Zoning Administrator had point out that, I guess, he had an idea for how the process happened and how there was an error and that it was DC's fault and, of course, committed to help us out but unfortunately is no longer there.

CHAIRPERSON GRIFFIS: Yeah, okay, well, obviously there's a little bit of complication there. Any other questions, Board members?

VICE CHAIRPERSON RENSHAW: Mr. Holliday, do you have a balcony on the third floor proposed?

MR. HOLLIDAY: There's a balcony on the front of the property.

VICE CHAIRPERSON RENSHAW: I just wanted to make it clear that it was in the front, not in the back. And on the second floor, underneath the balcony it is just a bay window effect?

MR. HOLLIDAY: Yes, ma'am, there's a projection on the front of the house here and then there's a balcony above that. I think there's a profile Mr. Klatt has provided. I don't see one that has the profile but it is in the projection in the front and the projection runs two floors and then the top floor, the projection falls back onto the facade of the house where there's a balcony, but it is in the front.

VICE CHAIRPERSON RENSHAW: Front, thank you.

CHAIRPERSON GRIFFIS: Any other questions? Mr.

Levy.

MEMBER LEVY: I guess, Mr. Chair, I'd like to ask the applicant at this point in time to more directly address the three-prong test for the variance. I'm not sure that I've heard very specifically what those items are.

CHAIRPERSON GRIFFIS: Good, Mr. DePuy, would Mr. Holliday be addressing that or is there another witness that's coming forward to do that?

MR. DePUY: We can ask Mr. Holliday to do that. I would ask him first to address the unique situation in this particular lot.

MR. HOLLIDAY: The lot is very narrow and long. It's 16 feet wide and 128 feet deep. And again, we're not in a position where we can purchase extra property to make it conform with the zoning requirements.

MR. DePUY: And as a result of this uniqueness, does this uniqueness cause a practical difficulty to you in terms of your ability to build on this site?

MR. HOLLIDAY: Yes, it does. We -- we're in a situation where, again, you know, we can't buy the extra property to make it conform. We have to apply for the variance.

CHAIRPERSON GRIFFIS: Meaning you can't put a structure on this because it's a non-conforming lot width.

MR. HOLLIDAY: That's right.

CHAIRPERSON GRIFFIS: I see. And can you speak to

and I assume that you can but to how this wouldn't have any sort of detriment to, well, the zoning plan but also to the public good, noise, traffic, light, anything of that nature?

MR. HOLLIDAY: Well, again, we went through a very laborious process of going to the various meetings and listening to the neighbors, hearing what they were saying and trying to respond, and our whole focus has been to build a habitable house that would be acceptable to the neighbors.

We tried at every step to accommodate those concerns so I feel that at this point, having reduced our house, we've gotten to a point where it would not effect site lines significantly or those kind of things.

CHAIRPERSON GRIFFIS: Okay. Mr. Levy, follow-up?

MEMBER LEVY: Not at this time.

CHAIRPERSON GRIFFIS: Okay, any other questions for the Board?

VICE CHAIRPERSON RENSHAW: Yes. Mr. Chairman, I would like to just clarify that the garage as proposed is a one-story garage. You do not anticipate --

MR. HOLLIDAY: Yes, ma'am, it's just one story. It will abut to that carriage house of 313. It will be significantly lower.

VICE CHAIRPERSON RENSHAW: All right, and I also see on your plans that you've got a six-foot high brick garden wall right on the line.

MR. HOLLIDAY: Yes, ma'am.

VICE CHAIRPERSON RENSHAW: And then you're excavating for stairs that go in the rear, that go down to the ground floor.

MR. HOLLIDAY: Yes, ma'am, that's how the apartment will be accessed is through the --

VICE CHAIRPERSON RENSHAW: Through the back.

MR. HOLLIDAY: -- rear of the house.

VICE CHAIRPERSON RENSHAW: Thank you.

CHAIRPERSON GRIFFIS: Other questions? Cross examination?

MR. DePUY: I do have one question for the witness in further response to Mr. Levy's question.

CHAIRPERSON GRIFFIS: Yes.

MR. DePUY: Mr. Holliday, if you can answer this question, is it your understanding that the purpose of the rear yard requirement and the lot occupancy requirement is to provide light and air not only for your property but for abutting properties?

MR. HOLLIDAY: That's one of the reasons we shortened the house to provide a greater backyard and to allow more air and light into the neighboring property at 313 East Capitol.

CHAIRPERSON GRIFFIS: That's it? Mr. Nettler and others if they want to. Have we established the process that Mr.

Nettler will start? Okay. Actually, I'm going to have you turn off your mike because we'll get feedback through your mike. Good.

MR. NETTLER: Mr. Holliday, I just have a few questions. When was it that you had contracted to purchase the property?

MR. HOLLIDAY: It was December 1998 when we initially began negotiations for the property.

MR. NETTLER: Okay, and at that time, it was represented to you that the property that was conveyed to you with these variances, correct?

MR. HOLLIDAY: That's correct.

MR. NETTLER: And when did you learn that that was not the case?

MR. HOLLIDAY: I don't know specifically but it was between the time when we first negotiated in December of '98 and we actually closed May of 2001. So in that stretch to time, it's earlier on, I imagine, we found out that the variances had lapsed.

MR. NETTLER: Okay, was there a reason why it took so long from the time that you learned about it until the time you closed?

MR. HOLLIDAY: Absolutely. I had a hard time extracting information from the sellers, the previous architect, Ms. Weinstein, as well as collecting information from DCRA.

MR. NETTLER: Did you end up suing the seller or the real estate agent over that?

MR. HOLLIDAY: Yeah, we were --

CHAIRMAN GRIFFIS: Is there relevancy to that?

MR. DePUY: I'll object to that. The witness didn't testify to that and it's irrelevant.

MR. NETTLER: First of all, whether he testified to it or not is for purposes of cross examination, one, it goes to credibility on a practical difficulty issue. One of the criteria with regard to practical difficulty which the Court of Appeals in Gilmartin v. the Board of Zoning Adjustment recognized was that while unlike a use variance, a self-created hardship is not a basis for denying -- solely a basis for seeking an area variance. It is a consideration with regard to a practical difficulty and we believe that if the lawsuit -- if there as a lawsuit that was filed, which we understand that there was, was brought prior to them purchasing the property, and it reflected a change in the purchase price of the property, then that change in the purchase price would reflect an understanding that the property was being conveyed without these variances and therefore, the self-created hardship aspect of the practical difficulty rule would certainly apply and you would be required to review that and give it consideration to all the other issues that are necessary for an area variance.

CHAIRPERSON GRIFFIS: Well, it's an interesting

position.

MR. DePUY: Mr. Chair, we don't agree with his representation of the Gilmartin case. We think the self-inflicted hardship standard does not apply in this case. It plays only in a use variance case.

CHAIRPERSON GRIFFIS: Right, and actually, Mr. Nettler, you have written a submission on this.

MR. NETTLER: That's correct. I'm sure your counsel can review or has reviewed the Gilmartin case to see precisely where the court applied it to an area variance situation.

CHAIRPERSON GRIFFIS: Ms. Sansone, do you want to speak to that?

MS. SANSONE: Mr. Chairman, I do believe the Board looked at this a few weeks ago in connection with another case. Originally, the Court of Appeals had held that the self-created hardship doctrine does not apply in area variance cases. However, beginning, I believe in the '80's, they reversed their position and have held it to apply in area variance cases including situations here purchases may have known of the situation of the property they were getting into.

But I think in this case we're looking at an area variance for a lot width substandard lot condition and perhaps, the practical difficulties go more to the actual dimensions of the lot which I don't believe we've had any testimony that the

applicant has had any role in creating that.

CHAIRPERSON GRIFFIS: Right, I tend to agree, that the self-created hardship would be that a subdivision, for instance, would be an example where you subdivided to a 16-foot non-conforming width that would then be asked for some sort of relief in order to build on. I think going to knowledge of the non-conformity of this is really what you're investigating. I think the testimony that we have at this point is fairly clear, that there was knowledge actually before closing that this was a non-conforming lot.

I'll hear one other thing based on why you think it would be important for us to establish the fact that there was further information that we need on this.

MR. NETTLER: Well, two reasons. One is actually in Gilmartin it was not a situation where applicant had created as with a subdivision the condition that resulted in the need for the area variance. It was a recognition that where there is an area variance unlike a use variance, it is a consideration of practical difficulty, while it's not controlling as it is with a use variance.

In addition to that, our position is that there's been a perception here, by the testimony that's given, is that the applicant was sort of misled and apparently was misled in initially purchasing this property with a situation that provided for the need for getting a variance today but I think it's

important for the Board to have a full picture of the options that were available to him before he acquired the site and whether he took measures that were -- or could have taken measures, or ultimately did take measures that reflected the issue that the need for the variance and the practical difficulty that he now finds himself in.

CHAIRPERSON GRIFFIS: Okay, and I'm all for clarity in terms of one's impression but I'll investigate that a little bit further. Yes.

MR. DePUY: Mr. Chair, there is nothing this applicant or any other owner could do to change the lot width of this particular lot.

CHAIRPERSON GRIFFIS: Right.

MR. DePUY: And Mr. Nettler's point is misguided.

MR. NETTLER: And actually, that's not the case. And if you'll allow me to cross examine further as to what he could have done, I think I can -- if you may allow me to angle back to that question in terms of the lot width of this property and dealing with --

CHAIRPERSON GRIFFIS: Your cross examination is going to evidence somehow how he could have changed the lot width?

MR. NETTLER: That's correct.

CHAIRPERSON GRIFFIS: That's stumped me. Well, let's take it just a few steps and then we'll see --

MR. NETTLER: Prior to you purchasing the property when you learned that the variances did not -- would not convey with the property, did you look into any other issues about building on this property that would have avoided obtaining a variance?

MR. HOLLIDAY: I'm sorry, Mr. Nettler, I'm not grasping the full question.

MR. NETTLER: Did anybody give you advice prior to you closing on the property as to what other measures you could take that would avoid you the need for you to get a variance?

MR. HOLLIDAY: Well, as I suggested, we went to the DCRA and the -- we were advised that that would not be a problem.

MR. NETTLER: What would not be a problem?

CHAIRPERSON GRIFFIS: Building on this lot.

MR. HOLLIDAY: Yeah, recharging the variances and issuing a permit, which is the process we went through.

MR. NETTLER: Okay, when you ultimately determined however -- when you ultimately found out however, that you couldn't do that because the lot width was -- because the width of the lot required you to obtain a variance, did you look into any other means of expanding the lot?

MR. HOLLIDAY: I never was told that I couldn't do that. I was actually issued a building permit of April 2001.

MR. NETTLER: Okay, did anybody ever suggest to you that you could close the alley next to the building or a portion

of that alley to expand that lot?

MR. HOLLIDAY: No, I was never advised that.

MR. NETTLER: Okay, and how wide is that alley?

MR. HOLLIDAY: The alley is 15 feet wide.

MR. NETTLER: Okay, and that the only -- is that alley access the only way to get into that square?

CHAIRPERSON GRIFFIS: Are you going now to the effect that he could have gone for an alley closing?

MR. NETTLER: He certainly could have.

CHAIRPERSON GRIFFIS: Okay. All right, I think we get that point. That adds its own difficulty. I mean, that's not something -- well, there is it.

MR. NETTLER: There is it.

CHAIRPERSON GRIFFIS: That certainly was an alternative to go for an alley closing. Is everyone clear on that? Okay.

MR. NETTLER: Did you -- are you -- do you have any experience in zoning matters?

MR. HOLLIDAY: No.

MR. NETTLER: Okay, are you a planner, an urban planner, have any degrees in urban planning?

MR. HOLLIDAY: No.

MR. NETTLER: Okay, do you have any degrees in architecture?

MR. HOLLIDAY: No degrees in architecture.

MR. NETTLER: I don't have any other questions of the witness.

CHAIRPERSON GRIFFIS: Okay. Mr. Burr? You just need to turn on your mike.

MR. BURR: Mr. Holliday, have you -- other than at the meetings for the Capitol Historical Restoration Society and the ANC, have you met with neighbors?

MR. HOLLIDAY: We had a meeting with the Joneses at various points. Like for example, we delivered a set of plans to the Joneses a couple of weeks ago and had hoped, based on the conversation I had with Mrs. Jones, that we could organize some type of meeting to discuss this, but other than that, we haven't.

MR. BURR: Had you met with the neighbor at all prior to your proposed building back in July?

MR. HOLLIDAY: No, I hadn't and that was just ignorance on my part. I wasn't away. I thought I was doing the right things. We thought we were acting in good faith. We went to DCRA. We did all those things and I assumed particularly since the lot had been on the market for a number of years, being advertised as having variances and permits in place that they neighbors were full apprised that that's what would happen with the property.

MR. BURR: Had you in any way notified the neighbors that you were going to the Historic Preservation Review Board?

MR. HOLLIDAY: I was called by Mr. Calcott several days before the hearing and told to secure 13 or 15 sets of plans and to be there at a certain time, so I had absolutely no opportunity to call anyone.

MR. BURR: Did you, in any way in redoing these plans after the ANC meeting and the Restoration Society meeting, present these other than to the Joneses?

MR. HOLLIDAY: I believe I sent you an e-mail, Mr. Burr, and indicating that the plans were at the Joneses and I can't tell if that's a set of the plans that I delivered so I certainly made what attempts I could. At the last meeting, I asked for names and addresses of people who wanted to be contacted and Mr. Burr and several others were kind enough to get me some business cards and I tried to contact those people.

MR. BURR: Have you at all looked at the air -- the court as far as the amount of space that is needed for them to -- those windows to get full light?

MR. HOLLIDAY: Well, as I addressed Mr. Nettler's question, I'm not an architect or urban planner or any of those things. I'm just a citizen and can only rely on professionals.

MR. BURR: Thank you.

CHAIRPERSON GRIFFIS: Thank you, Mr. Burr. Other redirect? Okay. Questions? Good. Let's move on. We are at 11:20 right now. We have three cases in this morning, so to give you a time period, our morning ends at 12:00 o'clock. That's

1 just for everyone's information.

2 MR. BURR: Excuse me.

3 CHAIRMAN GRIFFIS: Yes, Mr. Burr.

4 MR. BURR: I do have one other question. The

5 parking -- the garage that you have in the drawing indicates

6 space for one car; is that correct?

7 MR. HOLLIDAY: Yes.

8 MR. BURR: Are you planning to make any space

9 available for parking for the flat?

10 MR. HOLLIDAY: Again, I'm not an expert in those

11 areas, but I understand that the parking we provide could --

12 CHAIRPERSON GRIFFIS: That's a yes or no answer.

13 MR. HOLLIDAY: No.

14 CHAIRPERSON GRIFFIS: Okay. Anything else? Good.

15 I think we're ready to call the next witness then.

16 MR. DePUY: That concludes our case in chief, Mr.

17 Chair.

18 CHAIRPERSON GRIFFIS: Thank you very much.

19 MR. NETTLER: Mr. Chairman --

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. NETTLER: -- if that concludes the applicant's

22 case, prior to the Office of Planning on, I'd like to make a

23 motion.

24 CHAIRPERSON GRIFFIS: For lunch?

25 MR. NETTLER: No.

CHAIRPERSON GRIFFIS: Yes, go ahead.

MR. NETTLER: I'd like to move that the application be dismissed. As Mr. Levy had initiated in his questions, there's three criteria which the applicant must provide testimony here today in obtaining an area variance. One is the that property is unique. That's the just problem, one that the property is unique, two, the practical difficult issue and three, that it doesn't have an adverse impact on the zoning plan and things related to that.

I first note that no one testified -- no one who is competent to testify as to the uniqueness of the property in relation to the -- to that issue was presented to you. The fact that the property has a 16-foot -- is 16 feet wide does not demonstrate that it is unique. As you, the Chair, in questioning those who sought to be parties before you raised, to be unique, it has to be -- it has to be something that's different from other properties.

It has to be in conjunction or comparison with something else. There has been a complete absence of testimony today as to how this 16-foot wide property is unique. There is no intents to even demonstrate that it is unique in relation to other properties in the square, properties across the street, properties in Capitol Hill, properties anywhere within the surrounding area.

CHAIRPERSON GRIFFIS: Okay.

MR. NETTLER: So it fails to meet that criteria. As far as the practical difficulty issue is concerned, clearly if he's met that criteria, we still have to address why there's a practical difficulty here. And as we obviously, attempted to raise and apparently without somebody being a position to offer testimony either as an architect or planner or someone with expertise in zoning, as to the practical difficulties in relation to the zoning regulations, there's the complete absence of that testimony as well.

And as to the impacts of the property has on the zoning plan or surrounding properties or the zoning map, there's clearly been an absence of testimony on that since all that the testimony that was presented was the problems that are faced by this particular applicant and the fact, minimal as it may be, of responding to issues that were raised, not how it relates to the zoning plan, the zoning map or adjacent properties. And for those reasons, there's been a complete void in terms of the testimony that you would have to consider at this point if the application was to stop, which it has being presented to you in terms of compliance with the zoning criteria.

CHAIRPERSON GRIFFIS: However, Mr. Nettler, let me have Mr. DePuy quickly speak, but first let me just indicate that there are two important components to every case as you very well know. One is the public hearing of which we are in. The other is the submission. So it certainly -- well, we have additional

information that was submitted today.

MR. NETTLER: But that submission has never been moved -- is required to be moved into the record as evidence today which it hasn't been.

CHAIRPERSON GRIFFIS: It would be part of the record and it is evidence, unless my counsel can tell me differently.

SECRETARY PRUITT: Mr. Chair, actually it's already in the record. It's Exhibit Number 38. It came in March 26th.

CHAIRPERSON GRIFFIS: Okay, but that doesn't -- and I appreciate that, thank you very much. So let us go to Mr. DePuy if he wants to speak to the motion.

MR. DePUY: Mr. Chair, I was going to point out that the materials before the Board consist of the testimony and the documentation submitted with the application, with the pre-hearing submission and the pre-hearing submission and the application both contain adequate documentation of the relationship of this lot to other adjacent nearby lots, showing that this is a unique lot, that a 16-foot wide lot is not typical in Capitol Hill, but in fact, the only narrow lots on Capitol Hill are already developed.

In fact, Mr. Nettler's submissions themselves, which are also part of the record in this case, show that the narrow lots are all improved. So this is a rare unique situation in that it is a substandard narrow and deep lot. It's not only

narrow but it's deep. It's a very deep lot and that those conditions are unique in relationship to other properties on Capitol Hill.

The practical difficulty has been testified to with respect by both the architect and Mr. Holliday and the testimony has also been given with respect to the consistency with the zone plan and no substantial detriment to the public harm in that this project complies with rear yard and lot occupancy standards which are designed to provide light and air.

And so with respect to the only thing that we need to prove, namely that the lot width and the width of this particular property does not create adverse impacts, we have satisfied those tests. We do not need to prove anything with respect to those aspects of relief which are not requested, though we have done so by pointing out that the application complies with yard, lot occupancy and so forth in order to demonstrate light and air.

CHAIRPERSON GRIFFIS: Okay. Board members?

MEMBER ETHERLY: Mr. Chair, I would speak very quickly on that. I don't think there's quite enough there to support a motion for dismissal at this juncture. I will note -- so I would be inclined to oppose such a motion, but I would note that Mr. Nettler has raised some very crucial questions and I think the applicant would do good to speak to this as we move forward with presentation of other testimony as it relates to in

1 particular the uniqueness of the lot and also practical
2 difficulty.
3 And, of course there is some additional information
4 that may come to bear with regard to Mr. Warlick's efforts
5 regarding his own property. So that being said, Mr. Chairman,
6 I'd be inclined to deny the motion and continue to move forward
7 with the note that there are some critical questions that will
8 need to get answered before we're all the way there in terms of
9 approval.
10 CHAIRPERSON GRIFFIS: Thank you very much. Anybody
11 else?
12 MEMBER LEVY: Mr. Chair, I would say that Mr.
13 Etherly has well stated the situation and although I would be
14 looking for some additional information on the three-prong test
15 as well, I don't see -- I think we should move forward.
16 CHAIRPERSON GRIFFIS: Good, any comments? I would
17 say the consensus of the Board is to deny the motion to dismiss
18 and we can continue on with the Office of Planning and Mr.
19 Fondersmith, who has submitted a report --
20 SECRETARY PRUITT: Excuse me, Mr. Chair, for the
21 record, this motion was denied by consensus.
22 CHAIRPERSON GRIFFIS: Correct. Thank you. And Mr.
23 Fondersmith, I have indication that a waiver is needed to accept
24 your report and unless there's any objection from the Board
25 members, I would so waive the rules and accept your report and

welcome you this morning.

MR. FONDERSMITH: Thank you, Mr. Chair and members of the Board. I'm actually pitch hitting this morning for Mr. Moore, who is on this case but unfortunately had to be out of town on a family emergency. You have the Office of Planning report and I guess the best thing that I can do right at the beginning is go to a problem that has come up with it or an issue at least.

Because there is a -- as I understand it from Mr. Moore, there has been a lot of work in this case in trying to -- and as has been testified this morning on changes in plans to relate -- to reduce the size of what's proposed. And that was an effort to, in the Office of Planning report to address -- to deal with those changes and see how accommodations could be made.

On page 9, however, and I'm not quite sure how this is -- there is a statement that the depth of the proposed modified structure would be 56 feet including the garage and that it was reduced by the applicant from 77 feet. In fact, as has been testified here, the house is 56 feet really excluding the garage and was reduced from the 77 feet.

And so there's a further statement that then the proposed structure would be 34 feet which is not -- just is not correct, as has been proposed and shown on the plans. And what was suggested in the report was that there be a slight further reduction and in conversations I had, there was this

1 understanding that the previous proposal was slightly over the 60
2 percent and that efforts were underway, which now have been
3 accomplished to reduce that occupancy so it is 60 percent and
4 they don't have to ask for that variance.
5 So what we have, I'm sorry to say, is maybe a
6 little -- is a little confusion here because the report reads
7 that the building would be drawn back to adjusted here about 32
8 feet and in reality in testifying it's 56 feet. So what we --
9 what the Board has before it is a project that meets the lot
10 occupancy requirement, so that variance has been withdrawn.
11 Still it, of course, does not meet the lot width
12 requirement and overlaps as Mr. Klatts has indicated, the court,
13 the existing court, on the -- on the adjoining property. So that
14 we really have a situation here where there's a discrepancy in
15 what was -- unfortunately in what was being proposed here in the
16 report. And the Board just, I think, has to deal with this
17 through the reduction of the building.
18 It has gotten down to the 60 percent lot occupancy.
19 There is the over -- it does extend, as is shown on the plans,
20 beyond the adjacent setback in the building to the east. So, we
21 -- the report goes through the tests and concludes that the
22 variance should be granted but the conclusion of the 32 feet is
23 just -- is erroneous and apparently there was some confusion
24 there on the plans.
25 CHAIRPERSON GRIFFIS: Okay. So for total

clarification then, the Office of Planning, first of all, is not looking to revise based on the revisions that we've had today and secondly, it's standing by its recommendation to approve; is that correct?

MR. FONDERSMITH: Yes, we're standing by recommendation to approve but we just do have to make sure that we're clear with the Board that the length of the house is longer than indicated in the report.

CHAIRPERSON GRIFFIS: Right, right. Okay. Board member questions?

MEMBER ETHERLY: Yes, Mr. Chair, just to clarify, the holding pad on the recommendation to approve, at the very least the Office of Planning would still stand by the concern that has been identified in your report with regard to the impact on the light and air to the property that is adjacent to the subject lot. Would that be correct, Mr. Fondersmith?

MR. FONDERSMITH: I think clearly, as in contrast to the present situation with no building on the lot, there is, you know, there's some impact there without extending back the additional distance and that's shown in the plans, that overlap area.

MEMBER ETHERLY: Thank you, Mr. Chair.

VICE CHAIRPERSON RENSHAW: Mr. Chairman?

CHAIRPERSON GRIFFIS: Yes.

VICE CHAIRPERSON RENSHAW: A question for Mr.

Fondersmith; you state on page 9 of your report which is Exhibit Number not marked, that the new structure should be shortened so that it ends where the first set of windows appear on the abutting building to the west approximately 32 feet from the front or north line, north building line and that is your proposal, that is your --

MR. FONDERSMITH: No, it's not actually because that -- and I'm glad you asked that to clarify it because maybe I wasn't clear. That was based on -- you know, that was based on a situation, a misunderstanding apparently, that the structure as indicated in the report would extend approximately 34 feet from the north or front building line of the subject property.

So the assumption in this was that there could be some slight roughly two feet modification that would together with the other step of getting under the lot occupancy, also remove the overlap and unfortunately that's simply not -- you know, that's simply not true. And as you can see from plans, to do that would -- and I'm looking on sheet, let's see which one it is, I'm looking on sheet A-4 and there is a line there that says extend a party wall.

It appears that you would -- rather than two feet, it would lop off maybe a third of the -- a third of the house as proposed.

CHAIRPERSON GRIFFIS: So you think it's a mathematical error perhaps, or rather somewhat of a typo in terms

of the 30 feet is what we're trying to figure out.

MR. FONDERSMITH: I think there was --

CHAIRPERSON GRIFFIS: Okay.

MR. FONDERSMITH: -- I think there was some -- no, I don't think it's a typo, per se. I think it was unfortunately some misunderstanding of the plan. On the other hand, in the conversations I had and with Mr. Moore and this was brief, because he had to leave, there was this concern about meeting the 60 percent, getting -- reducing the size of the dwelling size to get down to 60 percent and meet that -- you know, meet that test.

So that now has been done and, in terms of that lot occupancy test, that's no longer before the Board.

CHAIRPERSON GRIFFIS: Right, okay. Well, what I would suggest is that we just have just a reclarification of the Office of Planning memo to us and they can correct that number and we would take that all out of any sort of ambiguity. Any other questions of Office of Planning at this time?

MEMBER LEVY: Mr. Chair --

CHAIRPERSON GRIFFIS: Yes.

MEMBER LEVY: -- I'd like to just weigh in on the issue of lot occupancy because I've done the calculations and by my calculations, using the drawings that have been submitted by the applicant, the revised drawings, the revised plan is somewhat over the 60 percent, slightly over the 60 percent lot occupancy

1 and ask the applicant, perhaps, to address that.

2 CHAIRPERSON GRIFFIS: Okay, if you wouldn't mind,

3 Mr. Levy, why don't we ask if there's any cross examination of

4 Planning and then we can recall that witness and have them speak

5 to that. So to that, any parties have cross examination of

6 Office of Planning report? Yes, Mr. DePuy, okay. Thank you.

7 MR. NETTLER: Yes, Mr. Fondersmith, I know that the

8 Board has directed you to get a clarification of the position of

9 the Office of Planning.

10 MR. FONDERSMITH: And we'll do that.

11 MR. NETTLER: And is your -- is your testimony

12 today based on your discussions with Mr. Moore? Were you

13 statement about there being some inconsistency in the report, the

14 written report based on your having read the report since your

15 having discussed it with Mr. Moore?

16 MR. FONDERSMITH: It's base on my conversation with

17 Mr. Moore about the problems in the making of this case which is

18 a narrow lot and the adjacent -- the design of the adjacent

19 building and trying to meet the lot occupancy test and what was

20 reasonable.

21 MR. NETTLER: Do you know --

22 MR. FONDERSMITH: And he -- excuse me, let me

23 finish.

24 MR. NETTLER: Sorry, sorry.

25 MR. FONDERSMITH: And he, as I understood in our

conversations on this, thought that this further slight reduction as indicated in here, would resolve the problem. And I don't quite understand it. I don't understand it exactly because obviously, it's -- it would be a substantial change, and in fact, coming down to what the report says would drop the occupancy to, by my quick calculations, 42.4 percent.

MR. NETTLER: Well, is that that you don't understand it because -- not because he told you that he only wanted a slight reduction, but just because of you reading the report in the context of what he was telling you about the project; is that what you're saying?

MR. FONDERSMITH: He told -- you know, we had a --

CHAIRPERSON GRIFFIS: Mr. Fondersmith, let me interrupt you and I understand what you're trying to do. Frankly, I don't want to investigate any further about his understanding. I think we've asked for the clarification which will render all of these questions moot, in terms of -- well, I don't want to project where you might be going but I think that's where we need to be at this point, unless there's anything further Mr. Fondersmith, you could speak to in terms of how other information that you've been given in order to report on this memo that was done by another staff person.

MR. FONDERSMITH: That's all. We were prepared to come here. We got a communication from Mr. DePuy that the 56 -- this was late yesterday afternoon, the 56 feet did not include

the garage and that's -- and so I talked to him, actually tried to reach Mr. Nettler this morning and we were able to speak briefly before the meeting about this.

It just -- so I think that the best thing to do as you suggest, is to -- is for the Office of Planning to clarify this.

CHAIRPERSON GRIFFIS: Okay, and what we'll do is we'll set a date for that, Mr. Nettler and I will let you continue, believe me, and but we will have -- we will issue all the parties, of course, and the parties can have written submissions that will address any of the changes that might come in on the Office of Planning.

So back to you, Mr. Nettler.

MR. NETTLER: I don't have any more questions since we're not going to get a chance to cross examine --

CHAIRPERSON GRIFFIS: And I hope you understand --

MR. NETTLER: I'm not going to get into --

CHAIRPERSON GRIFFIS: I don't see the reasoning behind cross examining right now when obviously, there are questions that can be specifically answered. So we might as well have clarity and then have cross on that and it will be written.

MR. NETTLER: May I ask one more question?

CHAIRPERSON GRIFFIS: Of course.

MR. NETTLER: Did Mr. Moore tell you -- we've got the report here. Did he tell you about any discussions he had

had with the different parties that are trying to reach a consensus on the development?

MR. FONDERSMITH: My impression from talking with him that he had had considerable discussions with both parties and the point is that he felt --

MR. NETTLER: I just wanted a yes or no, that was it.

MR. FONDERSMITH: Okay.

MR. NETTLER: Thank you.

CHAIRPERSON GRIFFIS: Great, thank you.

MR. NETTLER: I have no other questions.

MR. DePUY: Mr. Chair?

CHAIRPERSON GRIFFIS: Yes.

MR. DePUY: Could I ask one question on cross examination? Mr. Fondersmith, does the Office of Planning in its report indicate that the applicant has met the variance tests?

MR. FONDERSMITH: Yes, it does.

MR. DePUY: Thank you.

CHAIRPERSON GRIFFIS: Any other cross examination by any other parties, the ANC, Mr. Burr, anybody? Seeing no one rush the table, I will assume that there no other cross examination. And let us -- actually, let's get to the other government reports.

Help me Board members if I miss anything but we do have a letter from the Architecture of the Capitol which was

actually referred to already but it is Exhibit Number 42 dated March 25 and it is indicated that there would be no created adverse effect on the Capitol complex in the master plan and it is signed by the Architect of the Capitol.

ANC, no other government reports except for the ANC which we will move to next, yeah, as an association. Oh, HPRB, indeed, which was also part of the submission. Actually, the applicant can probably correct us if we're wrong, but I have a meeting date of February 28th, 2002 as -- at HPRB staff, the staff recommended the Board conceptual approval and that's as far as it's gone at this point; is that correct?

MR. DePUY: That's correct, Mr. Chair.

CHAIRPERSON GRIFFIS: All right, and in order to hopefully direct some confusion, there was passed HPRB applications and review from the past project which would have no bearing on this but we do have this current which would be dated as mentioned. Okay.

Mr. Levy, I haven't forgotten your question for clarification and I want to know whether you wanted to proceed to the ANC at this point or do you want to jump on that right now? Actually, if I might interject, it's probably a pertinent issue so that we don't have back and forth on that. Let's try to get clarification so Mr. DePuy, I would ask if you could bring some clarification on of course, our quick calculations up here in terms of lot occupancy.

MR. DePUY: Yes, Mr. Chair, the plans submitted in connection with the pre-hearing statement did show a lot occupancy in excess of 60 percent and those plans were filed with the Board. The plans which we have filed today show 60 percent by a reduction of the garage from 22 feet to 21 feet. And those plans were not in the record before today.

CHAIRPERSON GRIFFIS: Ah, okay. So that would be a reduction of 16 square feet if my math serves me with a 16-foot wide reduction of one-foot length.

MR. DePUY: If I could, Mr. Chair?

CHAIRPERSON GRIFFIS: Does that add up?

MR. DePUY: By my calculations, we're 35 square feet over the lot -- oh, excuse me, over the 60 percent, the plans that are in our files, and that was based on a 23-foot garage, 23 by 16, I believe. I'm sorry, I've been advised the garage was reduced from 23 to 21, so two feet.

CHAIRPERSON GRIFFIS: I see. How far over they were?

MR. DePUY: So I guess we're three feet over, three square feet.

MEMBER LEVY: Is there anything being submitted today that shows that change?

MR. DePUY: Yes, yes.

CHAIRPERSON GRIFFIS: Okay, and as we continue on then, we will have that documentation in the record, but the

application before us does have a compliant lot occupancy so just for total clarification, if this application was approved, it would be approved for a matter of right lot occupancy and therefore, anything outside of that would be not an approved relief.

So let us go to ANC at this time.

MS. BAILEY: Mr. Chairman, while the ANC representative is coming to the table, I just want to mention, it was mentioned previously, but just quickly that we do have a letter from the Architect of the Capitol and that document indicates that the project would not cause adverse impact on the Capitol Precinct.

CHAIRPERSON GRIFFIS: Thank you. Whenever you're ready.

MR. GILBERT: Again, good morning, Mr. Chair. For the record, my name is Cal Gilbert.

CHAIRPERSON GRIFFIS: You just made it saying good morning, let me tell you that. Okay, go ahead.

MR. GILBERT: Our correspondence dated March the 19th makes clear the ANC's position in opposition of the plans as they existed on that date. In preliminary matters on this case, you've agreed to keep the record open pending our review in our meeting tonight with submission date not later than Tuesday of next week. I'd like to point out that the -- in amplification of the current position on page 5 of the Office of Planning report,

the first paragraph, paragraph 3 on page 5, "The subject lot is exceptionally narrow being only 16 feet in width but there are other lots in the Capitol Hill neighborhood zoned R-4 and less than 18 feet in width", which goes to our position that he has not demonstrated the hardship necessary in order to grant the variance.

Are there any questions?

CHAIRPERSON GRIFFIS: Well, it goes to uniqueness, wouldn't it?

MR. GILBERT: Yes, sir.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIRPERSON RENSHAW: Mr. Chairman --

CHAIRPERSON GRIFFIS: Yeah.

VICE CHAIRPERSON RENSHAW: -- I'd like to know Mr. Gilbert, if you have been given a set of these plans to take to your ANC meeting?

MR. GILBERT: Yes, ma'am, I have.

VICE CHAIRPERSON RENSHAW: All right.

CHAIRPERSON GRIFFIS: That was an excellent question, actually if I can follow up on that; is that applicant presenting tonight or are you presenting this to the ANC?

MR. GILBERT: That would be -- I believe they're on the agenda as part of the planning and zoning report. I do not know if they have planned to present at this meeting and I would also like to say that the position that I have just articulated -

-

CHAIRPERSON GRIFFIS: Is the previous one.

MR. GILBERT: -- is based on previous information -

-

CHAIRPERSON GRIFFIS: Right.

MR. GILBERT: -- and may change.

CHAIRPERSON GRIFFIS: Which is why I'm not going to give you a lot of time.

MR. GILBERT: Yes.

CHAIRPERSON GRIFFIS: Okay, but for clarity, because I think it's an important point, let me just ask the applicant and you can give me a yes or no, are you anticipating being at the ANC or having some representative there?

MR. HOLLIDAY: This is my first knowledge of the meeting tonight but I'll be there with bells on.

CHAIRPERSON GRIFFIS: Okay. I don't know, do we require bells, Ms. Renshaw?

VICE CHAIRPERSON RENSHAW: Yes, we do.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIRPERSON RENSHAW: It's always a good idea to have a bell around.

CHAIRPERSON GRIFFIS: All right, then we will require bells to be presented tonight at the ANC. Any other questions of the ANC? And I absolutely appreciate your presence here today but also in terms of the accommodation of keeping the

record open for the ANC to come in rather than just moving for a continuance on this, because I think we are airing an awful lot to take the time that we have scheduled to do this.

So if there's nothing else, we'll let you go. I'm assuming that there's not cross examination of the ANC at this time. Anybody? I can have bad assumptions. You can come -- okay, thank you very much. Having consulted with my right side, let me -- how many -- can I just see a show of hands, I know a lot of people were sworn in today. Who is planning to testify today?

Okay, we have two hands right now, two and a half hands. I'm assuming the parties also, right? Right, okay, so there would be three at this point. Okay, then let's call -- are there -- let's call testimony for persons in support at this time.

Okay, it doesn't look like anyone is indicating that they will have public -- testimony right now. We do have letters of support in the record. Do you have them all there? That's great, Mr. Etherly.

MEMBER ETHERLY: Yes, Mr. Chair. Letters of support were submitted for the record. They were eluded to in the applicant's opening statement, Exhibit 30, 31, 32, 33 and 34, respectively. Just shortly, Exhibit 30 from the company manager, Susan Shu of the Shakespeare Theater in support; Exhibit 31 from resident Christopher Combs, 3 Library Court, SE; Exhibit

32, Mr. James Gorab, 314 Independence Avenue SE; Exhibit 33, Marie A. Finell, 509 Independence Avenue SE; and then finally, Exhibit 34, Larry Hotchsen, 506 A Street SE.

Please, my colleagues, if I've missed any other letters in support, please alert me.

CHAIRPERSON GRIFFIS: How many did you have total?

VICE CHAIRPERSON RENSHAW: There are six.

CHAIRPERSON GRIFFIS: Good, six in total, okay. Then why don't we call all those in opposition for testimony today and anyone that's undecided or in the middle also. Oh, oh, do we have enough chairs?

Let me also just establish, I'm not -- well, I guess we'll deal with it when we get there whether we're going to have cross examination of all or do we -- we won't have it. All right, well, we'll figure that out when we get there. Okay, why don't we do this; I'm going to start down on my right and have you introduce yourself unless you have another order that you would like to do.

MR. NETTLER: Yes.

CHAIRPERSON GRIFFIS: So I'm just going to have you give your name on down and then we can get into your testimonies but we're going to start on this side with testimony for the parties and then move down. Actually, we'll have the parties -- we'll start with Mr. Nettler, take it way, introduce yourself and then we'll have you introduce when you each give testimony.

MR. NETTLER: And I also unfortunately have an opening statement if you would allow me to do that as well.

CHAIRPERSON GRIFFIS: A brief one?

MR. NETTLER: Yes, it will be brief.

CHAIRPERSON GRIFFIS: Okay. Just for clarification, of course, what to anticipate. Go ahead.

MR. NETTLER: Almost good afternoon, but still good morning, my name is Richard Nettler and I represent two of the parties who are in opposition to this application. We've already had a discussion about what the issues are that must be addressed by -- with regard to this applicant and they are three-fold and I'm not going to belabor you with a thorough discussion of those. I think it's important to put a number of things into context here. You have already mentioned the fact that the Architect of the Capitol has submitted a letter that there is no adverse impact on the Capitol complex.

The HPRB has given conceptual approval to it while recognizing that there is variance relief that is necessary. In the broadest sense of the word, these are design issues and what we're concerned with here are significantly different types of issues in terms of granting zoning variances and that's because either as late as or as early as the 1980's involving Capitol Hill and the Capitol Hill Restoration matter. The Court has recognized that if you have properties that are similar to other properties within a certain area that providing a variance for

one where those conditions are the same as other properties, it's essentially a rezoning because there will be no due process basis for denying an application for a variance on any other similarly situated lots.

And similarly situated means dealing with the criteria that provides what the applicant says is unique about this lot. And what the applicant says is unique about this lot is; one, that it is narrow, 16 feet and has a great depth. I don't understand how the great depth to it provides something that either is unique or handicapped because it actually provides the opportunity for a greater FAR on the site, so let's deal solely then with the width of this lot.

And as will be testified to and as we have provided with you as exhibits to our statement seeking party status, it's hard to find a square in Capitol Hill in this area, across the street within this square that isn't 16 feet wide, including many of which, which have very large -- which go back very far as well, like this lot does. Whether they're occupied by a structure or not occupied by a structure, that's not the criteria in which the court or you are required to use in judging whether it's unique or not.

It is the factor that makes it unique because the consideration has to be for any of those other lots whether they are occupied by structures or not occupied by structures. That the basis upon which they would be seeking a variance from you

would be the area variance from a lot with requirement if they were intending to do anything on those lots which would require a variance because of the non-conforming nature of those lots.

The fact is that Capitol Hill is a historic district and an area that is -- was developed with very narrow lots, most of which are in fact, less than 18 feet wide. A substantial number are 16 feet wide but a substantial number are even less than 16 feet wide. And so that very premise upon which the applicant says that they're entitled to an area variance because the lot is 16 feet wide is essentially a characteristic that governs a substantial number of the lots in this area on a substantial number of the squares.

And in some of them if you look at the squares, it's almost half of the squares are in that situation and many of those squares, as well, have them as deep as this lot. The practical difficulty issue, I think is set forth in our submission and we will get to, I think -- some of that you've heard from a cross examination of the witnesses but I think what we're going -- our primary focus in addition to the uniqueness issue is going to be on the impacts of this development.

You see from some of the pictures and I think from the pictures actually that the architect had even -- was using in describing the situation, that there was an existing building on this site. I believe as far back as the late 1960's it was a residence that was on the site. It's our understanding that the

Office of Planning when we were discussing this with the assistant who was assigned to it, was trying to get the structure on the site back to the -- if not in the height, certainly in the depth, the size of the previous structure that was there so as not to have the type of impact it was having on the windows.

I did misspeak in terms of saying earlier that windows that were on the property line. What I meant was the windows on the portion of the building that was on the property line which faces the court, not -- don't face this lot that the applicant is seeking to develop.

I think when you've heard the testimony from the witnesses and the parties in opposition, you will conclude that the applicant simply has not met their burden and that, in fact, it will have a significant adverse impact on the neighborhood and the adjacent properties. And with that, I would like to call my first witness, Mr. Warlick.

MR. WARLICK: Good afternoon. My name is Jim Warlick. I reside at 313 East Capitol Street. I moved to this property in March of 1993. At that time the adjacent lot that Mr. Holliday owns now, the former property was -- the former property owner. The lot was in terrible condition. There was a lot of junk dumped in that lot. It had become a garbage pile there.

I cleaned up that lot and invested more than $7,000.00 in landscaping and resodding and cleaning that up for

1 myself and for the neighbors. It was an eyesore to the house I
2 live it even though I was renting the house I lived in, I do not
3 own it.
4 In June of 1998, I concluded an agreement with the
5 owner, a Mr. Jacob Kramp, to buy the property under a contract
6 for deed and that ensued until December of 2000 when Mr. Kramp
7 filed bankruptcy and the property, 313, was pulled into that
8 bankruptcy.
9 It is still --
10 CHAIRPERSON GRIFFIS: Let me interrupt you, sir.
11 Are you just establishing that you live next door and you have
12 ownership on that property?
13 MR. WARLICK: I'm establishing the ownership, the
14 contract of deed, we went to court in December of 2000 and won
15 with the court's agreement to give me 90 days to conclude the
16 financing for 313.
17 MR. NETTLER: Let me interrupt you a moment.
18 You're referring to the existing structure which you live in now.
19 You're not referring to the vacant lot.
20 MR. WARLICK: Correct, right.
21 CHAIRPERSON GRIFFIS: Right, and you currently
22 reside there and you --
23 MR. WARLICK: Yes, I've been there nine years.
24 CHAIRPERSON GRIFFIS: Okay, take me to the end.
25 Have you purchased it or not?

MR. WARLICK: The -- that brings me to the point that after December and my agreement in January, when Mr. Holliday then started to redevelop and came back again, we thought the issue was over or I did and the neighbors when he lost the permits last year to finish his building.

His construction signs has placed me in a terrible position because the lenders would not loan me the money of the appraised value that I had on the home to get my loan, pending the outcome of what was going to happen to 315. It was not until the ANC meeting on the 12th of March when they voted unanimously against the variance that I was able to conclude my mortgage agreement the next day on the 13th.

MR. NETTLER: Why did the lender tell you that they would not provide you with a commitment for purchasing the property because of the pending application?

MR. WARLICK: The structure itself at the time that it was proposed and still would block out 13 windows now. Originally it blocked out 19 windows but it would have put the house in a well, and there would have been no light at all, all the way up in the house, either in the kitchen, the living room, the bedrooms and the upstairs. So it would have blocked solely the light out.

They were concerned, or the broker was, that he could not get financing for it until there was some conclusion to the building of the home next door and to the size of that home.

MR. NETTLER: Was that because you told, that it would have had an impact on the value of your property?

MR. WARLICK: Yes, he felt that the value would drop considerably from the appraised value that was done last year in August to a new appraised value if the house next door was built.

MR. NETTLER: And were you told the amount of that drop in value?

MR. WARLICK: It was between 300 and $350,000.00. Essentially, it would wipe out the equity difference in what I was buying the home for and what the appraised value was for.

CHAIRPERSON GRIFFIS: Did you talk to other mortgage brokers?

MR. WARLICK: I spoke to -- I had one -- I had two mortgage brokers in Virginia and one investor here in Washington, DC and they all expressed the same concerns.

MR. NETTLER: Now, this property was being sold by the trustee in bankruptcy; is that correct?

MR. WARLICK: Yes.

MR. NETTLER: Okay, and when you were unable -- was there a time that you were given to close on the property as a result of any bankruptcy order?

MR. WARLICK: Right, in December, on December the 18th, the agreement was that I had until March the 15th, but then in January, when the applicant, Mr. Holliday, started that

actions again, my neighbors notified me, I wasn't even made aware of it. To this day, I have not had a meeting with Mr. Holliday. He has never --

CHAIRPERSON GRIFFIS: Let me ask you this for clarification, because I imagine we'll have a lot more testimony on that, and I don't have a problem with you stating that --

MR. WARLICK: Right.

CHAIRPERSON GRIFFIS: -- but, frankly, that's not a requirement that we have. There's two points of notification. One is the written one and it goes out in the mail for the residences within 200 feet, and the other is posting of the signs, both of which have been in compliance for this.

MR. WARLICK: But in terms of getting the financing, it was not until after the agreement in December that Mr. Holliday came back and started the building project again, that then led me to have a difficulty in getting the loan. If I had known in December before I did my agreement with the Court, I may not have purchased the property or made a commitment to, but I would not have --

CHAIRPERSON GRIFFIS: Any other specifics that your broker indicated that dropped the value over $300,000.00 than covering up of the windows?

MR. WARLICK: Well, the fact that you were going to have construction for a year to a year and a half at the location and --

CHAIRPERSON GRIFFIS: That would effect the value of the property?

MR. WARLICK: Yeah, I mean who wants to live in a house when --

CHAIRPERSON GRIFFIS: That must have been the broker from Virginia. Okay. It seems to me -- I'll let you continue. Go ahead.

MR. NETTLER: Well, if I could continue to ask questions.

CHAIRPERSON GRIFFIS: Yeah.

MR. NETTLER: Did you have a chance to talk with the -- anyone who had done the appraisal for the property?

MR. WARLICK: No, the appraisal was done last August. I haven't talked to that appraisal company since.

MR. NETTLER: Okay, and who was -- when the broker told you that the value had dropped, was the broker telling this on behalf of the lender that you were seeking financing from?

MR. WARLICK: Yes.

MR. NETTLER: Okay, do you know whether the lender had revisited the issue of the value of the property as a consequence of the development that was being proposed?

MR. WARLICK: Well, the lenders were -- in January, they were apprised then of the construction that was going to be going next door and that's why I could get a pre-approval but I couldn't get a commitment for the loan.

1 MR. NETTLER: Okay, so you ultimately --then you --
2 when the value dropped and you were unable to get a commitment,
3 you weren't able to purchase the property by the time required by
4 the Bankruptcy Court, is that correct?
5 MR. WARLICK: Right.
6 MR. NETTLER: Okay. Let's see the condition of
7 your property. Do you know how long those stars have been on the
8 walls that are -- that were referred to by the architect for the
9 applicant?
10 MR. WARLICK: I do not.
11 MR. NETTLER: Do you know whether there is a
12 structural problem with your property, with the property that you
13 live in?
14 MR. WARLICK: I've never been aware of that.
15 MR. NETTLER: Okay, and have you -- did you -- when
16 did you purchase -- when did you move into that property?
17 MR. WARLICK: In March of 1993.
18 MR. NETTLER: Okay, did you do any renovations
19 inside the property?
20 MR. WARLICK: Yes, painted some -- did a lot of
21 painting. We did -- replaced the air conditioning in the house,
22 a lot of electrical problems with the house. Had all the floors
23 refinished and plumbing work.
24 MR. NETTLER: Okay, and did any of the individuals
25 who did any of this work for you tell you that there was any

structural problems with your property?

MR. WARLICK: No.

MR. NETTLER: Okay, the --

CHAIRPERSON GRIFFIS: You wouldn't expect that from a floor refinisher, would you?

MR. NETTLER: Well, electrical or somebody else.

CHAIRPERSON GRIFFIS: I see, okay.

MR. NETTLER: And as far as you know from the appraisal that was done last summer, there wasn't any indication from the appraisal report that there were structural problems with your property.

MR. WARLICK: No, never.

MR. NETTLER: Okay. Could you describe to the Board how the modified proposal that they're considering today directly impacts the use of any of those particular rooms that have the windows that face on this property?

MR. WARLICK: Yes. You may have some photos in your package of those windows. The morning light is what fills that -- fills the house up from that side and so --

CHAIRPERSON GRIFFIS: Actually, do you know what you could do and it was probably stated before, but why don't you set directions for us? So the front of your property faces what?

MR. WARLICK: Faces East Capitol Street. No.

CHAIRPERSON GRIFFIS: East Capitol always throws me

1 off. So the rear of your property is south and so when you say
2 the morning light is coming in, it's coming in in the rear of
3 your property, correct?
4 MR. WARLICK: Well, it's coming in from the side,
5 the side windows from the east, yes.
6 MR. NETTLER: I have submitted to the Board an
7 additional packet of pictures which I'm going to ask him just --
8 CHAIRPERSON GRIFFIS: These?
9 MR. NETTLER: Yes.
10 CHAIRPERSON GRIFFIS: Okay.
11 MR. NETTLER: And those are in addition to the ones
12 that were a part of the submission that I had made two weeks ago.
13
14 Mr. Warlick, just looking at the first one on the
15 submission that was made today, does this show a -- the picture
16 depicting the proposed construction as modified by the applicant?
17 MR. WARLICK: Yes.
18 MR. NETTLER: And that has the roof line lowered
19 from what it was before?
20 MR. WARLICK: Well, I have some confusion about the
21 original drawings that they mentioned that the civil engineer had
22 drawn. Those were incorrect because it shows my roof line being
23 much higher than what it is. It's actually about four feet lower
24 than the drawing that they had there, so when they say they
25 dropped it, I don't know if they raised my roof to make it look

four feet higher or dropped theirs, but the --

MR. NETTLER: Okay, and how was this picture created with the representation of their building next to yours?

MR. WARLICK: It's correct.

MR. NETTLER: No, how was it created?

MR. WARLICK: This photo?

MR. NETTLER: Right.

MR. WARLICK: My neighbor was, Olivia Jones, the artist doing this.

MR. NETTLER: Okay, so --

CHAIRPERSON GRIFFIS: Is she here today?

MR. WARLICK: She's right here.

CHAIRPERSON GRIFFIS: Okay. Have her raise her hand. But I think it ought to be -- if you don't mind, Mr. Nettler, let me just explore this quickly, but this is taken off of the architectural drawings that you had in hand.

MS. JONES: Yes, yes.

CHAIRPERSON GRIFFIS: Okay. And it is -- I mean, I have some problems with it because if you look at the face -- what should be face to face elevations, they don't appear to be lining up. So if what you're talking about -- okay, we're going to get explanation on that, so I'm not going to say anything more. Okay.

MR. WARLICK: One added point on that photograph, the 311 house and the architectural drawings shows that to be as

high as my house at 313 which is untrue. It's actually a measure guessing. It's nine feet lower so when you look at the roof line across there, it gives the impression from their drawings that it's just the same and it continues. It's not, it's actually nine feet lower than --

CHAIRPERSON GRIFFIS: What's nine feet lower?

MR. WARLICK: The 311 is nine feet lower. Their drawings show it to be --

CHAIRPERSON GRIFFIS: Oh, I see, and you're saying. I mean, and we appreciate, A-3 has been put back up and what you're pointing to is then the building facing your building to the right of your building.

MR. WARLICK: Correct.

CHAIRPERSON GRIFFIS: So it's not really shown.

MR. WARLICK: Well, here is both -- here is 313 and here is Shakespeare house, next door, 311, they're showing it --

CHAIRPERSON GRIFFIS: Oh, I see they're showing it --

MR. WARLICK: It's not, it's down here. It's nine feet lower.

CHAIRPERSON GRIFFIS: Right. Well, I think -- I think the Board is smart enough to --

MR. WARLICK: Also on this, since we put this back up, this roof line does not go to the top. It's actually about six feet lower than this. The roof line is right in here. So

when he says he's lower and exposed out. That's not true. That's not exposed. It's going to be level, because it comes actually right to this section of the front of the house.

CHAIRPERSON GRIFFIS: Okay, actually, let me make sure that there's clarification on the Board for that. Do you understand what that's -- okay.

MR. NETTLER: Why don't we go back to the interior of your property then that's being impacted. What are the uses made of those rooms?

MR. WARLICK: On the lower level it's the -- or in the first level up, it's the dining room. It's the only light the dining room would get. Adjacent to that is the kitchen. It impacts the light considerably in the kitchen. You go up another floor and it's the bedroom, so it's the lighting for the bedroom and the bathroom would be totally blocked.

When you go up to the top floor, the same, you have a bedroom that is blocked and you have a bathroom that is blocked. On the lower level, it is that back bedroom or lower basement apartment and the doors -- there are two doors in that basement apartment, two windows, so all of those would be blocked.

MR. NETTLER: I think what you have are copies of them. I've got the color copies of those that were just described and I'll keep them. Oh, you do? These are the windows that he was talking about, the rooms. Do you have those in color

or I can give you this.

CHAIRPERSON GRIFFIS: No, I don't think we have that.

MR. NETTLER: Let me give you this.

VICE CHAIRPERSON RENSHAW: We have marked Mr. Nettler's submission of eight and a half by 11 photographs as Exhibit 48.

MR. NETTLER: I'm going to give you color copies of the ones that you don't have color and the first ones are the ones that have just been described in terms of the uses of those rooms. Is there any other windows on those rooms?

MR. WARLICK: There are no windows on the dining room level and there are no other windows in the two bathroom on the upper two levels. There are -- there is one window left on the kitchen back side and the upper bedrooms. There is a back window. Originally, all of those would have been covered up on the 77-feet proposed house.

If I can show this photo, the 56-feet of Mr. Holliday's proposed building would come all the way back to this point, so it blocks everything from the top all the way down to the basement on that side. This is only between this wall and the -- this section, that is only four feet eight inches.

CHAIRPERSON GRIFFIS: I'm sorry, but can you repeat that?

MR. WARLICK: It's even better here. The

1 difference between the wall with the windows and then the wall
2 that he would come in six inches here, is only four feet eight
3 inches, so it's very narrow to begin with.
4 CHAIRPERSON GRIFFIS: Okay.
5 MR. WARLICK: And this is -- you can see from
6 these, and one is an exhibit.
7 CHAIRPERSON GRIFFIS: Okay.
8 MR. WARLICK: So my concern is that if I were
9 coming in to buy this home now and I knew that all of the light
10 would be lost out of that house, I wouldn't have -- I wouldn't
11 have agreed to purchase it in December and I don't think anyone
12 else would now with the value that it's appraised at. It's got
13 to lose considerable amount of value in a house that has no light
14 in most of the rooms.
15 MR. NETTLER: And what's the status of your
16 contract now with the Bankruptcy Court?
17 MR. WARLICK: We're in negotiations with the
18 trustee pending outcome of the petition for building the house
19 next door at 315.
20 MR. NETTLER: I have no other questions of Mr.
21 Warlick.
22 MR. WARLICK: If I could make one comment, this
23 house, my house was built in 1892. For 110 years these windows
24 have been open to get the light and they've been opened for
25 people how live there, including myself recently to look out of

those windows. I do think it should be pointed out that when Mr. Holliday builds his house he says on that wall against my windows he wouldn't put any windows. Why, because it would be blocking out the light that he would have coming in my house window. So if my light's going to be blocked out with his building, it just -- it seems unfair the damage is being done to me and I've been there nine years.

CHAIRPERSON GRIFFIS: Okay, Board members, questions? Yeah, Mr. Hannaham?

MR. HANNAHAM: I was just wondering whether you considered purchasing this property, whether you -- you knew that the alley was there. Did you ever thing that perhaps something would go up, understanding that there was a structure there at one time? You were aware that there was a possibility.

MR. WARLICK: That's a good question. No, because when I moved in there, the former owner decided not to build. Then -- and I was always aware and the realtors always said there's, you know, going to be trouble with the variance next door. I don't have any trouble with Mr. Holliday building his home back to the wall when there windows start. I mean, I think it's -- you know, it's his property and he should be able to do what he would want to do and if it's shores up my wall on that side, that's fine. I'll take that, but I wouldn't be opposed to his building, just not blocking my light out.

And so I knew maybe some day somebody would build

but I didn't think they would be allowed to build that narrow or particularly that far back.

MR. HANNAHAM: Okay, do you think he's in compliance with the -- with zoning space between his proposed new design and where you are?

MR. WARLICK: When it comes to the air and light in my house, no, I wouldn't think he could be in compliance. I would like if Mr. Holliday in this two year's time he's been doing this, would come to my house and see what the effect would be inside that light, but he hasn't. I've never had an opportunity to speak to him. He has never presented me with any of these proposals, not once. And when he says that he's worked with the neighbors, I'm the most effected neighbor and I have never had an opportunity to sit down with him and go over any of these plans and express to him other than at public meetings, the damage to my home.

There hasn't been any concern on his part that's been obvious to me that he cares he blocks my home?

CHAIRPERSON GRIFFIS: Are you going to the ANC meeting tonight?

MR. WARLICK: Yes, I am.

CHAIRPERSON GRIFFIS: Fabulous. Okay.

MR. NETTLER: And with bells.

CHAIRPERSON GRIFFIS: No, he's not allowed to have bells.

MR. HOLLIDAY: I have the bells.

CHAIRPERSON GRIFFIS: It's bells back there. Okay. Any other questions? Yes, Mr. Etherly.

MEMBER ETHERLY: Sure, thank you. Two questions; one which I think can go directly to Mr. Warlick and the second one probably will need to get addressed to counsel. I apologize for not having the exhibit number handy but Mr. Warlick, you reflected two pictures and you tried to identify where the 56 -- the depth kind of comes back. Could you show that picture again and kind of indicate once again, where that lift will kind of end as far as your property is concerned?

MR. WARLICK: It brings it actually to the very back of my property.

MEMBER ETHERLY: Okay.

MR. WARLICK: Yeah, the 56 feet comes to here. The original 77 was going to come into here --

MEMBER ETHERLY: Go back.

MR. WARLICK: -- and cover even those windows up. I don't have a problem with it coming to here and I've even said that if you want to extend it three feet because I've looked at it and see what damage it would do to the light and three more feet wouldn't hurt. So I'm not opposed to it, just not blocking my light.

MR. HANNAHAM: Okay, okay, thank you. The second question, is was raised in terms of Mr. Warlick's -- I'm sorry

1 not Mr. Warlick's, some of the counsel's comments as related to
2 the uniqueness issue and I think it's the most appropriate time,
3 Mr. Nettler, thank you, it's probably Mr. Nettler that I want to
4 address this to.
5 When we look at this issue of uniqueness, you've
6 done very well to lay out in your exhibits additional squares in
7 the vicinity and speaking to this issue of width and depth. What
8 I want to run by you a little bit is we also have the issue with
9 regard to the subject lot that is adjacent to an alley. If you
10 take that into consideration, looking through Exhibits A and B of
11 your submission, which we've numbered Exhibit 37, I count by my
12 rough estimation, out of the lots that you've highlighted only 12
13 that then becomes similar to the lot in question meaning that
14 width is similar and they're adjacent to public alleys.
15 Does that necessarily cause you any concern? Does
16 that -- should the Board react any differently to your statement
17 regarding uniqueness?
18 MR. NETTLER: No, it shouldn't. I can respond in a
19 couple of ways to that. One is only 12? I mean, it's still 12
20 that you've identified that are next to alleys. The question I
21 have is why being adjacent to alley do anything really in terms
22 of making this property unique because of a condition with regard
23 to its width when what the alley does is that would provide more
24 of an opportunity for him because it allows him to have the
25 windows on one side where you couldn't if you were simply dealing

with a lot that was between other buildings.

Two, and I know this was dealt with somewhat facetiously by Mr. Griffis, but -- by the Chair, but the reality is alley closings and we look at this square, the reality is if you -- you can do an alley closing today a lot faster and a lot easier than it used to be and you could present a situation. This actually is what happens very frequently with alley closings that are done now, is you can give back an easement to the city if there's a concern about having continued access in to that square.

And in this square, you have another access into it anyway but what it does is provide you with a basis for getting -- for not having to need a variance, plus you could then build on the lot with the half of the alley that then goes to you when it's closed, which those other lots don't have. So the reality is having an alley next to this property is probably a benefit for this property owner as opposed to something that's adverse and therefore, it's even more important that when you're focusing in on the width of this property and you look at the number of the properties that are similar to it that don't have that benefit that you really see and even though 12 of them are adjacent to alleys, you really see just how this application lacks uniqueness and just how lacking that is when you consider what's going on on Capitol Hill in this area.

And Ms. Jones is going to testify about those facts

and the conditions in this neighborhood.

MR. HANNAHAM: The reason why I broached that subject is to an extent there's a very -- and this is more of just a comment for my colleagues. I mean, it sounds like we really have a very focused inquiry which is just this issue of lot width. There's a lot of additional conversation that we've had that I think has been very helpful in terms of laying out the context of the subject lot, but the question before us is a very specific one as it relates to lot and I believe the applicant has made an interesting presentation with regard to -- I'm going to flip to Exhibit 38, Mr. Nettler, which was submitted by counsel for the applicant on page 7 where the applicant notes that with regard to additional lots that front on East Capitol Street in the same square, the applicant identifies -- I didn't do a rough count but it appears to be one, two, three, four, five, six, seven, eight, nine, ten, eleven -- eleven, maybe 12 lots that are all sub -- I won't say substantially but range in width from 19.5 feet respectively up to what appears to be a high of 51.72.

I'm not saying that's necessarily dispositive here but you know, once again, in terms of this issue of uniqueness, it -- I'm getting an interesting picture here with regard to the subject lot that, you know, could conceivably be somewhat compelling. So that's why I wanted to kind of probe a little bit as to kind of where you came out on that.

MR. NETTLER: Well, and what we tried to give was a

much broader picture of the conditions rather than a slice of one portion of the square because even if you go to the rest of the square, you'll find that there are alleys that are less than 18 feet and 16 feet and less. And that's why merely looking at a lot as if -- or looking at a street frontage of a lot right next to that lot, is not in our view, what you need to do when looking at the impact of granting of variance on the basis of the 16-foot wide lot.

Not only do you have to look at the square, but you have to look at what's going on across the street, you have to look at what's going on down the street because you are -- and I think the Court was serious about this or obviously wouldn't say if it wasn't serious about it, you are creating -- now, assuming the fact that every case is similar, the Court said, "As a due process, for due process purposes, once you make a decision that this lot is unique because of this factor, it's going to be very difficult for you to say with anybody else in an area that they could argue is a comparable area to this, whatever that area then gets described as, that you could ever deny a variance for it, and essentially what you're doing then is you're acting as the Zoning Commission.

You're rezoning that area because all of them would be entitled to variances for -- because of the width of our lots.

MR. HANNAHAM: All right, thank you, Mr. Chairman.

CHAIRPERSON GRIFFIS: Any other questions? I would

like to move on also, Ms. Renshaw. Let me just say for the other two applicants that were here. We have now reached the milestone of 12:30. We will be breaking for lunch after this case, so I would suggest -- actually, we're going to call one more case after this which will be the Myers case, 16856 and we will call application HQ Acquisitions, LLC, 16857 after our lunch break.

So if those applicants are in the room, they can plan accordingly. It's 12:30, if we finish this up in half an hour, we will be back here by 2:00 o'clock to finish our morning session and then start a rough afternoon. So all updates being said, let's turn back, and you have other witnesses, right, Mr. Nettler?

MR. NETTLER: Just one other witness.

CHAIRPERSON GRIFFIS: Okay, good, thank you.

MR. NETTLER: And the other witness was Ms. Jones and -- oh, did you want to do cross examination?

CHAIRPERSON GRIFFIS: Yeah, see that, that's exactly why I say in the beginning to interrupt me. Cross examination.

MR. DePUY: Thank you. For the record, Jacques DePuy. Mr. Warlick, would you support an alley closing if the effect of the alley closing were to allow Mr. Holliday's project to go forward?

MR. WARLICK: Probably not, no. It's an historic alley.

1 MR. DePUY: Thank you. Isn't it a fact that the
2 order of the Bankruptcy Court which your counsel has provided to
3 the record, dated January 23rd, 2002, indicates that if your
4 purchase of the property does not close by March 15th, 2002, that
5 you'll have no further claim against the estate and that you
6 waive any and all claims against the estate you may have
7 including any interest in the property and that, therefore,
8 should you choose to, you can walk away from this property?
9 MR. WARLICK: Yes, that's true and the attorney for
10 the trustee of the Court is here today and will acknowledge that
11 we're still in conversations regarding my continuing to purchase
12 the home.
13 MR. DePUY: Okay, thank you. You testified with
14 respect to the height of the structure, Mr. Holliday's structure.
15 Is it your testimony that the structure exceeds the allowable
16 height?
17 MR. WARLICK: No, I didn't testify it exceeds
18 anything other than the fact that the drawing exceeds the reality
19 of what the building is right now.
20 MR. DePUY: So it's not your testimony that the
21 revised plans exceed lot occupancy or any other zoning
22 requirements other than lot width; is that correct?
23 MR. WARLICK: Yes, and that's not -- you know, I'm
24 not the zoning expert, so --
25 MR. DePUY: I understand.

MR. WARLICK: -- whether it exceeds it or not, that's left up to the Board itself.

MR. DePUY: With specific requests, or excuse me, with specific respect to the relief that's requested here today, namely a variance from the lot width requirement, how does the granting of a variance from the lot width requirement to allow a building of 16 feet in width effect you as opposed to a building which is 18 feet in width? Where everything else to be equal, how does a 16-foot building effect you adversely as opposed to an 18-foot wide building?

MR. WARLICK: The 16 feet, if it would come back in length to the 35 feet, it would not effect me at all.

MR. DePUY: So it's the length of the building which you object to, but which you've acknowledged does not exceed any zoning requirements or does not violate any zoning requirements that you know if.

MR. WARLICK: Well, I didn't know if it violated any zoning requirements. It's not up to me to decide. Whether or not it's 16 feet or 18 feet, you know, is not the issue for me at this point.

MR. DePUY: Thank you.

CHAIRPERSON GRIFFIS: Any other cross examination? Redirect?

MR. NETTLER: Just two questions.

CHAIRPERSON GRIFFIS: I'm sorry, okay.

MR. NETTLER: Just two questions. You don't know whether you have any standing to oppose or support an alley closing, do you? Do you personally know that?

MR. WARLICK: No.

MR. NETTLER: Okay, and with regard to the if it was 18 feet wide, if a building -- if someone was to construct a building on a site that was a matter of right, would you have a forum in which to address the concerns that you're addressing today?

MR. WARLICK: I guess at the ANC or the historic review meeting, yes.

MR. NETTLER: Okay, but not with regard to any zoning issue if it was a matter of right.

MR. WARLICK: No, no.

MR. NETTLER: So it's just the fact that he's seeking a variance and has to address these issues that gives you this opportunity.

MR. WARLICK: Absolutely.

MR. NETTLER: Okay, no other questions.

CHAIRPERSON GRIFFIS: Thank you very much.

MS. JONES: Good morning, Chairman Griffis and members of the Board. My name is Olivia Jones. I'm here as a joint tag team with my husband James Jones. We suffer quite disability. I'm the shy one and he had surgery yesterday, so this is why we're both doing this.

CHAIRPERSON GRIFFIS: So you get the hard work. Just for clarification, is this one of your witnesses?

MR. NETTLER: Yes, she's one of the parties.

CHAIRPERSON GRIFFIS: Okay, good.

MS. JONES: Yes, we -- my husband and I reside at 317 East Capitol Street, which is the little gray house located directly across the alley from the subject property. We've owned the house since 1973. I summarized -- our occupation of this house is summarized in this. I'm going to try to move it along for you.

MR. NETTLER: If you could, when you're doing this, just make -- when you're making mention of where you are located or making reference to certain exhibits, if you can do that as well.

MS. JONES: Okay, I'll do that.

MR. NETTLER: And D-1 is the exhibit which shows where their house is located.

MS. JONES: Yes, I'm sorry, Exhibit D-1 shows the little gray frame house. That's ours.

MR. NETTLER: That was attached to our statement.

MS. JONES: Okay, I'll try to stick to this a little better then. From 19 -- we lived in this property until 1978 at which time we bought another property in the same square, 325 East Capitol Street. We then moved to 325 and rented out 317. Later in 1989 we moved to New York and subsequently to

1 Mexico. We returned to Capitol Hill in 1998.

2 We retained ownership of this property throughout -

3 - both of these properties throughout all of this time and since

4 1998 we have lived at 317 East Capitol and we've been renting 325

5 East Capitol. The 25 years of our property ownership on the Hill

6 has made us very familiar with the nature of the Hill and the

7 properties that are there.

8 It is our understanding that the applicant's

9 request for this variance, he has to -- with his request he

10 should demonstrate that there is something unique about the

11 property that he requests the variance for. My understanding is

12 that he claims that being 16 feet wide, he's unique on the Hill.

13 It simply isn't. In answer to Mr. Etherly's request or question,

14 I thought for a minute about it and it seemed pretty logical but

15 it seems to me that the zoning rules tell you a minimum, not a

16 maximum.

17 So I don't know that there should be an objection

18 that there are others that are larger. The question is whether

19 16 feet is unique and it seems to me that it isn't. I have an

20 exhibit for you. If you'll turn Exhibit A of our March 26th

21 submission, you'll see that Lot 28 in Square 767 has a lot width

22 of 16 feet, also Lot 17 in Square 817 which is located across 4th

23 Street SE, has a lot width of 15 feet.

24 Exhibit B is really a telling exhibit because it

25 demonstrates the intense communality of lot route plans on

Capitol Hill. There are many, many narrow lots on Capitol Hill. The applicant also argues that the depth of his lot is unique and creates a unique hardship but I don't understand that because it simply creates a larger footprint for improvements to the site and deep lots are certainly not uncommon on Capitol Hill also.

I'm very happy to have this chance to speak with you all today. Unfortunately, we missed the opportunity before the Preservation Review Board and I think along with that I'm going to try to give you a little rapid background because before Mr. Holliday closed on this property, we advised him that the variance obtained by the previous owner had expired and that we, as well as our community, would oppose any re-application for variances and I -- to the extent that there's any equity involved here, I just wanted to say that we did that in writing and he had phone notice and that was before he bought the property.

It's our understanding that he paid a reduced price for that property based on the risk that he might not obtain variances in order to develop the property. We tried to obtain the records for this, the suit. They were sealed at the request of the applicant and we were not able to actually get them to bring them to you.

CHAIRPERSON GRIFFIS: Okay, and I'm not sure it would have much bearing in terms of -- and it wouldn't be appropriate to make an economic hardship argument on this.

MS. JONES: Okay, okay. Now, I'd like to explain

one thing because it may seem a little odd that we're in opposition to the current proposal, when we have submitted a statement of support as the other -- the applicant has pointed out for the first variance.

We were not living in the property at the time. There had been two fires on the property. It was abandoned, basically, overgrown and we had a neighborhood itinerant named Sam who took up residence there and used the yard for his cooking facilities. It was very nervous making for people who owned the 150-year old frame house next door. So this -- when some -- and we weren't here.

And when someone wanted to build there I can tell you, we were thrilled.

CHAIRPERSON GRIFFIS: The scarecrow in the Wizard of Oz, right?

MS. JONES: Yes, yes. All right, I'm trying to see -- oh, I wanted you also to know that Mr. Warlick has taken such good care of this even though it wasn't his. He completely changed the whole property. Despite his knowledge that variances for the property expired, applicant managed to secure building permits and in 2001 commenced construction activities at the property.

We were concerned because we hadn't received any notification of hearings related to historic preservation or zoning and, of course, Mr. Warlick (sic) knew our interest in

this and so we had rather hoped we would have heard some of this. Instead what happened was that a bulldozer arrived and in a wonderful Perils of Pauline fashion, the neighbors were out there trying to slow them down a little.

Anyway I will say that Mr. Warlick (sic) when we were able to find him -- not Mr. Warlick, when we were able to find him, Mr. Holliday, called off the dogs, removed the construction and then things proceeded. Unfortunately, at this time, after -- we did have a meeting. Mr. Holliday indicated that he really did want to work with us. I want you to understand, we are not a closed door society by any means and if this sounds like a finger-pointing match, we don't want that and we're trying to avoid that.

CHAIRPERSON GRIFFIS: I've seen worse.

MS. JONES: Okay, but we're really -- we are really open to working with him on this property.

CHAIRPERSON GRIFFIS: And I think that's appreciated, I mean, for sure from the Board's perspective, but for the long-term perspective really the only thing that matters is, you know, the people that are going to live there.

MS. JONES: Yes, absolutely. The problem is that our communication has been spotty at best and we've been presented again and again with things that have been past the administrative level, though not to Board level, but a lot of times decisions are made preliminarily that are difficult to

influence later. And we lacked notice time and time again of every succession of plans.

And by the way, when we talk about earthquake zones, sometimes seeing the way these plans keep shifting, it's very hard to keep track of what we're building here at any given moment and that has put us at a substantial disadvantage in trying to convene a group of people to look it over and have discussions.

CHAIRPERSON GRIFFIS: Indeed, let me speak and interrupt you on this because first of all, as I stated before, there are certain regulations of announcements that have to happen and I don't know anything about HPRB but they must have some sort of notification. If I'm not mistaken, the Capitol Hill Restoration Society letter or there was something in the record that had indicated that a lot of neighbors hadn't been notified about the preservation.

They, in fact, were going to take steps to make --

MS. JONES: Yes.

CHAIRPERSON GRIFFIS: I think that is an excellent idea. That is the most appropriate way. There are an awful lot of committees and associations that do that in order to notify the community. So --

MS. JONES: Yeah, this was not on their website. We looked at the website.

CHAIRPERSON GRIFFIS: Right, right.

MS. JONES: We thought we were tracking and we weren't.

CHAIRPERSON GRIFFIS: Okay.

MS. JONES: Anyway, we have in here that while this notice was not given to us, it was given, however, to neighbors who are more distant. In fact, that was how we also heard about this, was through the rumor mill, because the neighbors who are immediately in contact with the property were not informed of plans that had been distributed elsewhere for support and approval.

CHAIRPERSON GRIFFIS: Okay, plans but you saw the orange signs out front and --

MS. JONES: Yes, we did see that. We are not objecting to the lack of formal notice.

CHAIRPERSON GRIFFIS: All right.

MS. JONES: This is only because it seems to me in listening to the earlier testimony that was some indication that we had not been trying to work with Mr. Holliday.

CHAIRPERSON GRIFFIS: Oh, right.

MS. JONES: I just want you all to know that.

CHAIRPERSON GRIFFIS: Okay.

MS. JONES: Okay. As indicated in our March submission, we are greatly troubled by the proposed building for the property. We think it will have a negative impact on the light and air to surrounding properties, including our own. The

negative impact of the proposed building results from the building's incompatibility with the surrounding neighborhood. The proposed building, even at its reduced height, is too high and I would like to comment briefly on these photographs.

These -- I am not -- the first time I ever used the program that came with my Microsoft on cutting and pasting photographs was for this and ironically it was not done as a tool to argue in a Board. It was done because I was trying to figure out whether or not the tremendous amount of energy it takes to oppose something was really worth it.

So I really wanted a representative example of what this was going to do to our neighborhood. And I basically cut and pasted the drawings, the architectural drawings and then superimposed them and they looked pretty awful because they were all white and black and that wasn't fair. So I tried to color them in and this is just the best I could get it to be.

I do believe I understand the problem that was expressed here about the different heights of this property. One of the problems we've had is trying to get an actual sense of how tall it is, because I do know that Mr. Warlick's property as represented -- I couldn't adjust these plans to show on the photograph what they showed on the construction plan because the construction plan over-emphasized the height of Mr. Warlick's and so it made it look -- if I tried to align the tops, it would be an inaccurate representation of Mr. Warlick, so I tried to align

the windows because that seemed the fairest way.

CHAIRPERSON GRIFFIS: All right, where there it is. I mean, and I think we appreciate your effort and certainly as you say, it was diagrammatic for your own use. We do have it in front of us.

MS. JONES: Okay, great.

CHAIRPERSON GRIFFIS: But we will reference, obviously, the architectural plans in looking at all of this.

MS. JONES: Well, but that's why I worry about because I'm not sure the architectural plans are accurate. I'm not casting aspersions. It's just I see some things that look to me like internal conflicts when you're trying to actually draw them.

CHAIRPERSON GRIFFIS: Right, and I would agree. I mean, we brought up several. Now the issue for us will be where does it -- does it go directly to the relief sought?

MS. JONES: Absolutely, and I do have one question or one observation in line with that, this is that I think by far the building most profoundly effected is Mr. Warlick's. And --

CHAIRPERSON GRIFFIS: We have his testimony.

MS. JONES: Yes, but what I want -- what is confusing to me is whether or not when you're talking about the width of the property, you are then permitted to consider because of variances required, the impact on those other properties. Are you or not? The light and air impact.

CHAIRPERSON GRIFFIS: I don't think I'm following your question.

MS. JONES: Yeah, in other words, what is the difference between being 16 feet wide and 18 feet wide, do you see and it seems to me that once you're in this court, then you -- or this hearing, you then can consider those things.

CHAIRPERSON GRIFFIS: Let me do this; I'm going to ask that Mr. Nettler at our lunch break explain that to you.

MS. JONES: Okay.

CHAIRPERSON GRIFFIS: Because I think the Board is clear, there is a variance -- well, conforming the lot has to be -- in the R-4 zone has to be 18 feet wide. This is 16 feet. Therefore, to put any building on this lot there's a variance requirement and that's why we're here.

MS. JONES: And then -- but you are allowed to consider the impact on Warlick's light and air.

CHAIRPERSON GRIFFIS: Well, yes, the test for the application for relief.

MS. JONES: All right. Let me see, the size of the various improvements -- let me see, I'm trying to go faster. The proposed building, even at its reduced height, is too high. If you turn again to the first three photographs submitted today, you will note that the proposed building towers over the alley and our property.

As pointed out by the Crenshaws in their

1 submission, which I think you have before you, the previous
2 improvements to the property were much shorter and along with our
3 residences created bookends to the alley. There is -- we tried
4 to generate following the outline on the wall, the height of the
5 older building. Mr. Burr will be able to tell you actually how
6 high it was. He's actually seen it.
7 This is illustrated in Exhibit C-1 and C-2 to our
8 March submission. Exhibit C-1 shows the outline of the previous
9 structure and C-2 is a computer generated graphic, illustrating
10 the street scape of the block. With a structure the size of the
11 previous improvements, to be compatible with the neighborhood,
12 and so as to avoid any negative effect to the light and air
13 available to surrounding parties, any improvements to the
14 property should step down from 313 East Capitol Street.
15 This will create a transition to the taller
16 buildings on the block and continuity along the street front. As
17 illustrated by the first three photographs submitted today, if
18 the proposed building is constructed, it will tower over our
19 residences and look directly into our bedroom. With regard to
20 building height, I would like to point out -- I think I've
21 already done this -- that the applicant's plans are disingenuous
22 at best. It's very hard to even get a good picture of what that
23 height is going to be.
24 Although the applicant has revised his plans, we do
25 not approve of the revised plans if there is any undo hardship.

The building is not compatible with the surrounding neighborhood and would adverse effect light and air available to the two surrounding properties. Any development to the property should be no more than two stories high and no more than 32 feet deep. For these reasons we request the Board deny the request for the variance.

CHAIRPERSON GRIFFIS: Thank you very much, Ms. Jones. Board members, any questions? Cross examination?

MR. DePUY: Ms. Jones, Jacques DePuy for the applicant. You indicated in your review of various lots on the Hill that there are lots that are 16 feet or less. How many of those lots are improved?

MS. JONES: Just one minute. I believe most of them are. In fact, when I saw this, it made me think about the purpose of zoning when you transit from having no zoning to having zoning. I suspect that the zoning people actually looked at how many were improved and understood that those were largely smaller buildings and that they would live with it, and I think that they probably wanted anything new not to be built upon and that that's why they made that rule since they already knew there were so many that were 16 feet wide.

MR. DePUY: I wasn't asking for your speculation on what the Zoning Commission might have done. I was asking how many are improved and your answer is most of them; is that correct?

MS. JONES: I believe so, yes.

MR. DePUY: Is it possible that they're all improved, or substantially all of them are improved?

MS. JONES: I don't know. I'm working from plots in the neighborhood.

CHAIRPERSON GRIFFIS: Okay, that's fine.

MR. DePUY: Do you know whether or not existing properties can occupy by special exception their lot occupancy up to 70 percent?

MS. JONES: Of course they can, if they're existing.

MR. DePUY: If they're existing.

MS. JONES: Uh-huh.

MR. DePUY: You testified with respect to light and air. How wide is the alley separating the subject site from your property?

MS. JONES: Well, it's an interesting question because I have been reading that it's 15. I think it's actually somewhat smaller. Mr. Burr will speak to that.

CHAIRPERSON GRIFFIS: So you don't know.

MS. JONES: No.

CHAIRPERSON GRIFFIS: Okay.

MR. DePUY: And is it common on Capitol Hill for properties to be separated one lot from the other by an alley?

MS. JONES: Well, if there's an alley there, it's

separated. Maybe I misunderstand your question.

MR. DePUY: Assuming that the alley was 15 feet --

MS. JONES: Yes.

MR. DePUY: -- is it common for a 15-foot separation from one property to another to exist on Capitol Hill?

MS. JONES: With an alley there? Yes.

MR. DePUY: And if there are no alleys, is there such a separation?

MS. JONES: There are some. It depends if there's semi-detached or not. I'm not -- I may not -- I may be missing what you want here. Could you ask me again so I understand?

MR. DePUY: No, that's fine. With respect to the height, is it your testimony that this building exceeds the allowable height?

MS. JONES: No, I don't believe it exceeds the allowable height if there's no regrading.

MR. DePUY: You testified that there's no uniqueness and that there's no undue hardship. Is it your testimony, is it your knowledge that the hardship test applies in this case?

MS. JONES: I am not a zoning lawyer.

MR. DePUY: You testified that you would support a house of no more than two stories high and no more than 32 feet deep. Do you know what the lot occupancy of such a structure would be?

MS. JONES: It would be very small. It would also duplicate the original.

MR. DePUY: Thank you.

CHAIRPERSON GRIFFIS: Any other cross examination? Board members, any questions? Okay.

MR. NETTLER: That concludes this party's presentation.

CHAIRPERSON GRIFFIS: Okay.

MR. NETTLER: Except for maybe some final remarks by myself, but unless you want to immediately go over into the other individuals and we move away, that's fine.

MR. BURR: Mr. Chairman, my remarks will be short.

CHAIRPERSON GRIFFIS: Okay, yes, why don't you finish up and then we'll have the table filled with those that are remaining.

MR. NETTLER: Yeah, just wanted to be extremely brief because I think, you know, there's always an issue living in an urban environment as to whether there's going to be development or not development and you tend to expect that there's going to be development. There are going to be changes. There's going to be uses made of property and I don't think as you've heard testify by my clients, that they're not opposed to there being some development on the site. The problem is, is that once you have a situation where a variance is required, you

sort of open up a variety of different issues that never get addressed in the normal run of the mill situation, so if this was 18 feet wide, you have to deal with certain issues notwithstanding the fact that they may have impacts on you and you can't do anything about it.

You can petition the Zoning Commission to change the situation or the District of Columbia to change the building codes, all types of things that you might be able to do but you can't deal with what is permitted as a matter of right in the same sense that you can when you find yourself in a position of having a variance that's sought because the variance opens up the -- a whole panoply of issues that the Zoning Commission has, in its wisdom, decided you need to resolve and it has in this case.

And it's causes us to look at those issues and their impact, not because we look at what could be done as a matter of right on this site, not because of what impact a matter of right building would have on this site, because of the fact that there is a property owner who's seeking a variance from a zoning requirement that the Zoning Commission recognized needs your addressing in a different context.

It's unlike the situation in Virginia and other states where you have planning review of almost every project that's developed where you have a whole bunch of considerations that go into the ultimate development that's produced. That's

not the way the situation exists in the District of Columbia.

And so while we have that urban environment and we have a situation where there's expectations of new construction and we have a situation where that new construction is going to have impacts that are going to be adverse, it's only in the context as we have here where those adverse impacts really get addressed. And while even my clients may be willing to accept a development here that has lesser impacts, it's not to lose sight of the fact that there is a criteria here, the uniqueness of the site that also intrudes upon even having that situation presented before you.

And to avoid those situations, like in 1991 many property owners try and work out arrangements with the community to have a much more abbreviated process before the Board of Zoning Adjustment which may not get into certain issues that ultimately should be gotten into if it was a -- not to distract from your responsibility but sometimes they just get lost in the fact that everybody wants something to happen.

Well, in this case, they're not lost, not everybody wants the same thing to happen. And we're before you because we don't think what's being presented to you is the thing that should happen.

CHAIRPERSON GRIFFIS: Okay. We Appreciate that, Mr. Nettler.

MR. NETTLER: And I would move my exhibits into

evidence that we've passed up to you.

CHAIRPERSON GRIFFIS: Yeah, it's already done. I don't think a motion actually is needed for that, but technically. Anyway so that concludes yours with your witnesses. You folks can free up those tables and we'll center you a little bit. Get some blood moving.

SECRETARY PRUITT: Chairman, I believe you said Mr. Burr to testify.

CHAIRPERSON GRIFFIS: Oh, he's not going anywhere. I'm just asking the other folks to step down so that Mr. Burr might get a more central seat. And while we have this brief moment, I can already assume that the afternoon applicants are coming in and I just want to reiterate the fact that we are finishing up the first case of the morning at 1:00 o'clock and will be recessing for lunch after the second case of the morning and anticipate being back here by 2:00 o'clock if that helps anybody's schedule.

Mr. Burr.

MR. BURR: Yes, my name is Timothy Burr. My wife and I have lived on Capitol Hill since 1966. We have lived in the house at 316 A Street, directly behind this lot since 1971. We remember the house that was in this particular lot. It was a small frame house, very similar to the one that is in the same position on A Street NE at the alley and it was a wood house, two stories, with a dog leg. The dog leg went along the 315 side,

excuse me, the 313 side. so that the light that was blocked by any part of that house was granted some additional light because of the dog leg making a court, in fact.

The house was small an it was very much in line with the size of the lot. We would see that there would be some unique value in replacing that house, in rebuilding or reconstructing something similar to that house.

CHAIRPERSON GRIFFIS: How long was the original house?

MR. BURR: I don't know exactly, sir.

CHAIRPERSON GRIFFIS: Okay, but just for clarification, what we see obviously is the impact on the common wall.

MR. BURR: Right.

CHAIRPERSON GRIFFIS: Right? But you're saying there was actually a dog leg that extended that building down which was not connected --

MR. BURR: It probably was about 20 feet more but I'm not sure.

CHAIRPERSON GRIFFIS: Twenty feet more. So it may have had an original depth of upwards of 50 feet.

MR. BURR: More like I would say 40, 45, but I don't know -- I don't have any drawings or anything like that to be able to say exactly.

CHAIRPERSON GRIFFIS: Okay, that's fine.

MR. BURR: But it did have a dog leg on the 313 side.

CHAIRPERSON GRIFFIS: Right.

MR. BURR: We are concerned about the size of this property, about the impact it will have on parking in our area because this is a two-flat building and there is parking provided only for one, one car if --

CHAIRPERSON GRIFFIS: But Mr. Burr, you're aware that that is within the zoning regulations.

MR. BURR: I am.

CHAIRPERSON GRIFFIS: Okay.

MR. BURR: We are also concerned about the impact that this will have on the appearance. And I realize that this is a Historic Preservation Board comment. Our concern, too, is that it will in fact, block light and air for Mr. Warlick. It does also have an impact during the process of building on our access to our parking because we are assuming that there will be all sorts or construction vehicles that will be in there over a considerable amount of time.

This morning I measured. There is a curb which is original to the lot that goes along the front part prior to where the construction would begin. That curb was installed by the District, I'm assuming probably 100 years ago. It goes along side the fence that is in place there. Measuring out from 313 to that curb from the common wall is approximately 15 feet.

Figuring that there is approximately six inches of the common wall that is considered to be part of the lot, it seems to me that this is less than a 16-foot lot.

I'm not a surveyor, I don't know exactly what it is, but it seems to me that perhaps this is not a full 16-foot lot, in which case, there are some questions about the size of this building on this lot.

CHAIRPERSON GRIFFIS: Okay, well, frankly, if this was approved, obviously, they would have to build within conformance of the law. They couldn't build outside of their property line.

MR. BURR: Right.

CHAIRPERSON GRIFFIS: And where we have for evidence today and unless you can refute that definitively, is 16 foot.

MR. BURR: Okay. The -- our hope is that this lot will -- that this property will provide a dog leg as most Capitol Zone houses have, to help to alleviate some of the problems for Mr. Warlick and that if it does have to be this size and if you do approve it at this size, that you will include that as a request so that it will meet those requirements. I realize that the zoning is not considering the height of the building other than that it meet the height requirements.

CHAIRPERSON GRIFFIS: So we wouldn't have any jurisdiction over it. Whether we consider it or not is something

else.

MR. BURR: Right, and basically that is my comment on it. We have lived there for, as I say, 30 years. We fought the Folger when they were planning to turn it into a campus and build a huge building there as a second Folger and we hope to keep this as a residential area and we hope to keep it as a residential area that matches the rest of the block.

CHAIRPERSON GRIFFIS: Okay, thank you, Mr. Burr. Board members, questions?

VICE CHAIRPERSON RENSHAW: Mr. Burr, was the dog leg one story or two story?

CHAIRPERSON GRIFFIS: Don't guess.

MR. BURR: This is 34 years ago.

VICE CHAIRPERSON RENSHAW: Oh, you can do it.

MR. BURR: I'm sorry, this is 34 years ago. I think it was two story but I'm not sure.

VICE CHAIRPERSON RENSHAW: And did that dog leg then block some or all of those side windows of 313?

MR. BURR: The dog leg was on the 313 side and as I say, I don't remember whether it was one or two stories.

VICE CHAIRPERSON RENSHAW: But were those windows blocked?

MR. BURR: Somewhat, but considerably less than this was.

VICE CHAIRPERSON RENSHAW: All right. Thank you.

CHAIRPERSON GRIFFIS: Anything else? Cross examination? You were thinking about it though?

MR. NETTLER: Well, Ms. Renshaw asked the question I was going to ask and since there has been a request by the ANC to leave the record open, I will see if I can try and answer the question, if possible, so it's really a comment, not a question.

CHAIRPERSON GRIFFIS: Good, well, that might be very appropriate if you find that. Okay, thank you very much, Mr. Burr.

MR. BURR: Okay.

CHAIRPERSON GRIFFIS: Who do we have left for testimony, opposition, support? Nothing.

VICE CHAIRPERSON RENSHAW: Capitol Historic Preservation.

CHAIRPERSON GRIFFIS: No, we've gone through everything. It's in the record. Okay, I'm going to do this. I'm sorry.

A VOICE: Ms. Crenshaw had to leave.

CHAIRPERSON GRIFFIS: Ms. Crenshaw had to leave.

A VOICE: Can she submit her testimony for the record?

CHAIRPERSON GRIFFIS: Absolutely. Well, I say absolutely. We'll allow that now in that we will keep the record open to receive Ms. Crenshaw's also. Okay, then last, what we have to conclude this case would be closing remarks by the

1 applicant, and Mr. DePuy, I'm going to ask your indulgence and
2 give the Board five minutes just to stretch our legs and we will
3 return for your closing.
4 We will call Myers and get through Myers and then
5 we're going to have some lunch. Thanks. We'll be back in five.
6 (Off the record at 1:07 p.m.)
7 (On the record at 1:17 p.m.)
8 CHAIRPERSON GRIFFIS: I may have been abbreviated
9 in my comments upon leaving but we will have rebuttal now and
10 then closing statement by the applicant. So, Mr. DePuy, we'll
11 turn it over to you.
12 MR. DePUY: Mr. Chair, members of the Board in lieu
13 of any rebuttal, we'll simply make a closing statement in
14 recognition of the hour.
15 CHAIRPERSON GRIFFIS: Well, take what you need.
16 MR. DePUY: I understand. I understand you're
17 giving me that right.
18 CHAIRPERSON GRIFFIS: Okay.
19 MR. DePUY: Mr. Chair, members of the Board, the
20 parties in opposition would essentially have this Board rewrite
21 the zoning rules for Mr. and Mrs. Holliday and this lot. They
22 would essentially have a lot occupancy of approximately 40
23 percent. They would essentially ask for a height of well less
24 than 40 feet. We're not exactly sure what height they would
25 accept but less than 33 feet and a house which is less deep than

is allowed as a matter of right.

We think that that is unfair and inappropriate. We believe that the only relief being requested today is from lot width, that the lot width is, in fact, a unique condition. That the lots of this width on Capitol Hill that are not improved number on the fingers of one hand.

Mr. Nettler's clients submitted exhibits which showed a number of lots less than 16 feet, less than 18 feet. There is no question that Capitol Hill, as other areas in the city have -- that are densely developed have narrow houses and narrow lots. All of those lots, however, or essentially all of them are improved. This lot, by contrast is unimproved.

The consequences of the denial of an application that seeks essentially to build a matter of right house on a substandard lot would be to deprive this owner of the beneficial use of its property. Essentially, nothing could be built on this property if a variance from the lot width were not to be granted.

We submit that the variance tests have been met, that in fact, this is a unique situation. It's a substandard lot, that it is not a typical situation on Capitol Hill because it is an unimproved lot, not an improved lot and, of course, as was said, there are different rules applying to properties that are improved, namely that can seek larger lot occupancy by special exception.

A practical difficulty clearly occurs as a result

of this condition, namely as was testified to, the interior of this house is only 14 feet because of the narrow lot, which is 16 feet. A 14-foot house on the interior is a very narrow house. It's a difficult house to work with and work around. That is the practical difficulty that results from the unique situation.

With respect to the third test, namely a consistency with the zone plan and no adverse substantial impact to the public harm, we submit that a project that complies with lot occupancy and rear yard provides all the light and all the air that is required and is appropriate for both the subject property and adjacent properties. And in fact, that the lot occupancy and the rear yard requirements are designed for that particular purpose.

The revised plans are in conformance with those requirements and therefore, this project as revised requires with all the applicable requirements and therefore, satisfies not only requirements but the intent of the zoning regulations with respect to light and air. And we submit that as a result of that, this application should be granted. Thank you very much.

CHAIRPERSON GRIFFIS: Thank you very much. Okay, let us set dates on this. I would propose that we have a decision on the 7th of May. Staff will inform me if that is correct and then why don't we walk through what we have, in fact, requested in terms of submission to the record and then the dates for submission of originals and then --

MS. BAILEY: Mr. Chairman --

CHAIRPERSON GRIFFIS: Yeah.

MS. BAILEY: -- my notes are indicating that we've asked the Office of Planning to revise or clarify the inconsistencies in the report that was presented today. We're also expecting a report from Advisory Neighborhood Commission 6-B and I'm sorry, but Mr. Nettler is to answer a question and I didn't get what the question --

CHAIRPERSON GRIFFIS: Mr. Nettler was going to look to what the original building footprint was.

MR. NETTLER: Correct.

CHAIRPERSON GRIFFIS: We're also going to receive Ms. Crenshaw's testimony.

MS. BAILEY: Was that something that was to be presented today?

CHAIRPERSON GRIFFIS: Yes.

MS. BAILEY: And those were the submissions that I have, Mr. Chairman.

CHAIRPERSON GRIFFIS: Okay, Board members, anything that we've left out?

VICE CHAIRPERSON RENSHAW: No, just to note that the Capitol Hill Restoration Society submitted a report that was based on a larger building and I'm wondering if the revised plans are going to be submitted back to Capitol Hill for --

CHAIRPERSON GRIFFIS: Oh, you know and --

VICE CHAIRPERSON RENSHAW: -- an additional report.

CHAIRPERSON GRIFFIS: -- you were indicating that we were going to go through that. I may have skipped over that totally, but it is in the record. They were in opposition to this. Let -- I think we could request the applicant to submit revised plans to Capitol Hill Restoration and request a -- if it is possible, I'm not sure what their schedule is or how they would have meeting or what it is but if it were possible to revise their own report on this application. Anything else?

Any of the parties think I'm missing anything that was asked for? Okay, let's run through schedule on when these will come in.

MS. BAILEY: April 22nd, Mr. Chairman, unless someone has a concern, that submissions are supposed to be filed with the Office of Zoning by April 22nd and I just remind the participants that the submission are to be served on the parties and then the response to the submissions would be due on April 29th, that's a week later.

CHAIRPERSON GRIFFIS: Right, one we did forget or maybe I didn't hear but the Office of Planning. See, I need food in my stomach.

MS. BAILEY: That's it, Mr. Chairman. Do you want me to go through it one more time?

CHAIRPERSON GRIFFIS: No, I think we're find. Does anyone need clarification on that? You can raise your hand if

you need clarification or raise your hand if you can't hear me. Wait a minute, that never works, does it?

All right, a good suggestion by the Board member that I think that we would request from the parties findings of fact and conclusions of law. We can have those in by the same date. No, actually, that wouldn't work. give me a date of when we would have submissions of those?

MS. BAILEY: The 29th, Mr. Chairman.

CHAIRPERSON GRIFFIS: The 29th, okay, and is that acceptable?

MS. BAILEY: April 29th, that is.

CHAIRPERSON GRIFFIS: Right, also -- okay, great, and I think that would be it, correct? Fabulous. I thank you all for your patience today, and let me just underscore the fact that although this did take a long time and we wanted to fit all three cases into the morning session, I think it is absolutely important and this Board feels very strongly that it's important to flesh out all of the pertinent information in order for us to correctly deliberate.

So, as you see, we have made it through this and we will hopefully come to a fair and just decision on the 7th of May.

Okay, let's call our next case.

MS. BAILEY: The second case of the morning is Application Number 16856 of Diana K. Myers, pursuant to 11 DCMR

31-4.1 for a special exception for an addition to a one-family dwelling under Section 223, not meeting the rear yard requirements, that's section 404. The property is located in an R-1-B District of premises 3204 Jocelyn Street N.W. Square 2026, Lot 38. Please raise your right hand.

(Witnesses sworn)

MS. BAILEY: Thank you.

VICE CHAIRPERSON RENSHAW: Mr. Chairman, I'd like to state before this case gets underway, that this application is in my ANC area 3-G. It was brought before a public meeting on March 11th. I stepped out of the room and was not a party to the proceedings.

CHAIRPERSON GRIFFIS: I thought I saw your name on something in here.

VICE CHAIRPERSON RENSHAW: Yes, it was that the material was sent to the ANC.

CHAIRPERSON GRIFFIS: Right, indeed.

VICE CHAIRPERSON RENSHAW: And to me as chair.

CHAIRPERSON GRIFFIS: And so you didn't hear anything during the ANC meeting about this case?

VICE CHAIRPERSON RENSHAW: No, I did not.

CHAIRPERSON GRIFFIS: You don't know anything in particular about what's in the case.

VICE CHAIRPERSON RENSHAW: No, I do not, I have no other interest in it other than it's in my ANC.

CHAIRPERSON GRIFFIS: Will you be able to impartially hear this case?

VICE CHAIRPERSON RENSHAW: Of course.

CHAIRPERSON GRIFFIS: Good, any objections by the Board?

MEMBER ETHERLY: Mr. Chair, I have no objections, just one quick question for my esteemed colleague and Member Renshaw, you've had no conversations with any other ANC commissioners regarding the --

VICE CHAIRPERSON RENSHAW: I have not.

MEMBER ETHERLY: -- outcome of their deliberations or conversations.

VICE CHAIRPERSON RENSHAW: No.

MEMBER ETHERLY: Thank you. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Uh-huh. Anyone going to have any problem with Ms. Renshaw staying on? Okay. Are you clear of what she just said? Yeah, you can put on your mike if you're going to -- okay, that's fine. No objection being observed, I think we can continue on then. Why don't I have you both introduce yourselves.

MS. MYERS: I'm Diana K. Myers, the applicant. I reside at 3204 Jocelyn Street N.W.

MR. duPONT: I'm Stephen duPont, the architect.

CHAIRPERSON GRIFFIS: Okay. This is, as stated, a special exception. You don't have any boards of the drawings or

anything of that nature, right? Okay.

MR. duPONT: I've provided some colored drawings to make it clearer for you.

CHAIRPERSON GRIFFIS: Fabulous.

MR. duPONT: I don't know where they are.

MEMBER ETHERLY: Is that color photographs of existing --

MR. duPONT: No, they're colored architectural drawings.

CHAIRPERSON GRIFFIS: They were not duplicated for our files and distribution. That's why I pulled the original case out. So, I'm going to pass these down.

MR. duPONT: The black and white ones were so hard to read.

CHAIRPERSON GRIFFIS: Well, I have three-dimensional perspectives, is that correct?

MR. duPONT: Yeah.

CHAIRPERSON GRIFFIS: Okay, and those were color?

MR. duPONT: There were some -- I gave five sets of color and the rest in black and white.

CHAIRPERSON GRIFFIS: All right, well, there it is. You guys start looking at that special exception, hopefully not too nervous having listened to the entire morning session on this other case. However, we appreciate your patience on this. How -- just give me an idea of how you want to proceed in this because

I think we can move this on very quickly.

This is under section 223 and it's a special exception which is totally different than a variance and what we will go to and having no opposition there is obviously not any -- that we see, any community evidence of detriment which would obviously impede a special exception and let me also just be totally clear, I'm buying time so my Board members can look at your plans actually.

But I think it's an important piece to say that the Board takes very seriously that there is no opposition in this case but we do not deliberate as a popularity contest and how many you can line up for and against. That being said, why don't I just let you jump into it. It's probably going to be quicker, and as I said, you can be abbreviated.

MS. MYERS: And although you said there was time for thanks, I want to especially thank you for hearing this case before lunch.

CHAIRPERSON GRIFFIS: That's right, you don't often get us back before we go to lunch.

MS. MYERS: I think as you'll see from the color photographs, my lot is on a hill and there's a very -- well, there's virtually no connection between the rear of the dwelling and the backyard. The fact that the lot is substandard in size means that the actual footprint of the house already extends a few inches beyond what would be the required setback and I'm here

requesting the special exception in order to provide, essentially a balcony that will connect two parts of the deck on the rear of the house and that will extend about, well, between two and five feet from the house, so that the exception is required.

My neighbors on, let's see, the west side of the house, thank you, actually have a deck that is about 13 feet deep, so much in excess of this one. I also have attended the ANC meeting. I did obtain a page of signatures of neighbors whose backyards also have site lines into my backyard and I think those are in your record as well.

VICE CHAIRPERSON RENSHAW: Ms. Myers, we don't have a copy of the petition in our records, but we're going to check the original to make sure, because I made a note to ask you about that.

CHAIRPERSON GRIFFIS: Okay. I think it's fairly clear from the drawings and from your now testimony that this is an exterior deck off the back which is actually off the first floor but because your site drops a full story, it is substantially above the grade. It looks as though there's a small trellis aspect of it but there's nothing with a roof or enclosure or anything like that. It's an open deck. How deep is the deck off of the rear, roughly.

MR. duPONT: Four feet, four feet and the part with the trellis on it is not really in the variance. Well, a very small part of it is extending into the variance but most of the

stuff -- all the work on the sides is by right.

CHAIRPERSON GRIFFIS: Right, a four-foot deck, folks. Okay.

VICE CHAIRPERSON RENSHAW: I'd like to ask the applicant, I'm holding up Exhibit Number 4 and it shows the rear of the house with white brick, painted brick on the lower part and then red brick and then white siding, I suppose on the upper level. Is the deck to wrap around where the lower level meets the red brick?

MS. MYERS: Yes.

VICE CHAIRPERSON RENSHAW: Right at that point just about.

MS. MYERS: Yes.

VICE CHAIRPERSON RENSHAW: The ANC had mentioned a bathroom. Are you constructing a bathroom also?

MS. MYERS: Yes, that's to the side of the house, but that's within rights. If you'll refer to the lower photograph where there's an existing pantry and stairs coming down, that will be replaced with the bathroom.

VICE CHAIRPERSON RENSHAW: The bathroom, thank you. I wondered where it was.

MR. duPONT: There's 15 feet on the west side yard and seven feet would go to the bathroom.

VICE CHAIRPERSON RENSHAW: Uh-huh.

CHAIRPERSON GRIFFIS: The special exception, if it

wasn't clear, it goes to the rear yard and it's going to be five feet under because a 25-foot is required. So you'd be providing 20 feet.

MS. MYERS: And as I mentioned, the house itself is already beyond what the standard setback would require. I think it's over by what, four inches?

MR. duPONT: Something like that.

MEMBER LEVY: Mr. Chair, just to clarify, you're saying that the one-story addition of the bathroom does not require a special exception?

MR. duPONT: It's in -- it's to the side of the house. It's clear of the rear yard and clear of the required side yard.

MEMBER LEVY: So we're just looking at --

MR. duPONT: And it does not go back to the corner of the house even. It's set forward.

MEMBER LEVY: So we're just looking at the rear portion of the deck.

MR. duPONT: It's only the narrow balcony section across the back that is in issue.

CHAIRPERSON GRIFFIS: Anything else you think is pertinent to our deliberations at this point? Everyone has had time to review the perspectives? I think there were some plans on there also.

VICE CHAIRPERSON RENSHAW: I'd like to just take a

1 look at the petition that should be in the file.

2 CHAIRPERSON GRIFFIS: The addition?

3 VICE CHAIRPERSON RENSHAW: Petition.

4 CHAIRPERSON GRIFFIS: Yeah, it doesn't look like it

5 was logged in, so I think we asked for --

6 MS. MYERS: The petition was really this a one-page

7 submission to the ANC. They have the original. I can obtain a

8 copy for you but I assumed it would be forwarded as I had

9 requested.

10 CHAIRPERSON GRIFFIS: Oh, I see. Oh, okay.

11 MS. MYERS: And it simply stated that the

12 undersigned neighbors had seen the plans as proposed with the

13 date of the plans and have no objection to the proposed project.

14 CHAIRPERSON GRIFFIS: Okay, so the ANC has it. So,

15 I guess, we could -- I think we have a line into that ANC, so we

16 could request it.

17 VICE CHAIRPERSON RENSHAW: It will be requested,

18 yes.

19 CHAIRPERSON GRIFFIS: And we can add to the file.

20 MEMBER LEVY: Just to follow up on that, did the --

21 I believe Ms. Myers, you testified that the neighbors directly

22 behind your property signed the petition supporting the project

23 or not opposing the project?

24 MS. MYERS: I sought signatures from all the

25 neighbors whose backyards have site lines into mine and I

obtained, I think 12 or 13 signatures. There were two neighbors who I was unable to meet with. One of them is one of the back door neighbors and then somebody on the other side of those, the residents of 5318 Broad Branch.

MR. duPONT: And they do not occupy the house. It's vacant.

MS. MYERS: That's correct.

MEMBER LEVY: The neighbors on 32nd Street directly behind your property.

MR. duPONT: That house is vacant. The children keep the parent's house a memorial kind of and they don't live there.

MS. MYERS: I misspoke. It's 5318 32nd, those are the neighbors they are referring to. And I was not able to find any homes.

MEMBER LEVY: Okay.

CHAIRPERSON GRIFFIS: Oh, I think we can -- it was clear that -- well, anyway the ANC report indicates that the ANC's report was due in part to the fact that the neighbors supported the project.

VICE CHAIRPERSON RENSHAW: And also that the neighbors' existing trees are not going to be impaired.

CHAIRPERSON GRIFFIS: Right.

VICE CHAIRPERSON RENSHAW: And since we're touching on the ANC, it was a meeting of March 11th, 2002 and they voted

six to zero, a quorum is four, to support the deck. They also mention the bathroom but obviously, that was not necessary to vote on, but they like to be thorough, those commissioners, I know them.

CHAIRPERSON GRIFFIS: Indeed. I think it's appropriate actually to move approval of the application 16856, pursuant to 3104.1 for a special exception for the addition of one family dwelling under Section 223 which, of course, is not meeting the rear yard requirement of Section 404 at the premises at 3204 Jocelyn Street NW. I think the record shows and the testimony here today that this would be in harmony with the general purpose and intent of the zoning regs and it has not been in evidence that there would tend to be any adverse effect to the use of neighboring properties.

And I would ask for a second.

VICE CHAIRPERSON RENSHAW: Second.

CHAIRPERSON GRIFFIS: Thank you very much, any discussion?

MR. duPONT: Mr. Chair, I would just add that it's clear that the addition that requires a special exception does not have any visual impact from the street.

CHAIRPERSON GRIFFIS: And I appreciate you bringing that up. And that is very important. Good, any other discussion? All those in favor?

(Aye)

CHAIRPERSON GRIFFIS: Opposed? We thank you very much for sitting through the morning, Ms. Myers and --

MS. MYERS: It was very educational.

CHAIRPERSON GRIFFIS: Yeah, indeed. That's kind.

VICE CHAIRPERSON RENSHAW: Summary order?

CHAIRPERSON GRIFFIS: Yeah, I imagine you want a summary order on that.

MS. MYERS: Yes, please.

CHAIRPERSON GRIFFIS: Okay, thank you, Ms. Renshaw, we can do that then, summary order, and wish you a very pleasant day and enjoy the deck.

Okay, we will now break for lunch, folks and return at 2:00 o'clock. For those of you left in the audience, at 2:00 o'clock, we will be calling our last case of the morning which is HQ Acquisitions LLC.

(Whereupon, at 1:41 p.m. a luncheon recess was taken.)

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

(2:16 p.m.)

CHAIRMAN GRIFFIS: Okay, let's jump right into this and call the last case of the morning.

MS. BAILEY: Application Number 16857 of HQ Acquisitions, LLC pursuant to 11 DCMR 3103.2 for a variance from the height requirements under section 770, a variance from the residential recreation space requirements under section 773, a variance from the parking aisle width requirements under subsection 2117.5, and pursuant to 11 DCMR, 3104.1, for a special exception from the off-street parking requirements under subsections 2107.1 and 2101.1, for a mixed use residential and retail development at premises 4500 Wisconsin Avenue, N.W., Square 1730, Lot 15.

In addition, the site is C-3-A. All those wishing to testify, please stand to take the oath. Please raise your right hand.

(Witnesses sworn)

MS. BAILEY: Thank you.

CHAIRPERSON GRIFFIS: Thank you all. Let me just also say and I believe Mr. Gell is also here. I want to just lay out the rest of the day's schedule and I appreciate this application and people sticking around all day for their morning session. But I think we can get word, if we don't hear from everybody but we will call the afternoon cases at 4:00 o'clock.

So we're at 2:15 now. I think we can get through everything that we need with this application.

I will be a little bit flexible but we will have to assess as that goes because we can't put off the rest of these cases. So, I am excited to see that we may have some visuals to get us moving in our chairs today so we'll stay awake and I will actually just turn it over to you for introduction and to put on your case.

MR. DAVIDSON: Absolutely, Chair Griffis, yes, I was going to delay for a moment so that my clients could arrive.

CHAIRPERSON GRIFFIS: Yeah, I took care of that for you.

MR. DAVIDSON: Thank you very much. My name is Nestor Davidson. Members of the Board, I appreciate you hearing us today. I want to introduce the members of our team and I think we're going to need to pause for a minute to get our folks sworn in who missed the swearing in.

CHAIRPERSON GRIFFIS: Great, we'll do that and as you may not have been here when I went through all the opening remarks for the morning early on in the session, so, of course, we'll just have cell phones off and beepers so we don't get disrupted and with that, anyone who hasn't been sworn in that will testify will now rise with their attention down to the end with the staff.

MS. BAILEY: Please raise your right hand.

(Witnesses sworn.)

MR. DAVIDSON: Thank you very much. As I mentioned, my name is Nestor Davidson with Latham and Watkins. I am representing the applicant, HQ Acquisition LLC. To my right, we have for the owner and the developer, Richard Lake and Armand Spikell and from Shallone Barriness (phonetic) Architects, we have Robert Sponseller and Jung N. Kim.

The order we would like to make our applicant's presentation briefly is that Mr. Lake will give a brief description of the project and then we will hand it over to Robert for -- to walk the Board quickly through the project so you can understand what we're seeking and then Armand and I will walk through the actual specific variances and the special exception.

CHAIRPERSON GRIFFIS: Okay, then before you jump into it, I understand that you may have had some communication with staff in terms of calculations.

MR. DAVIDSON: Yes, Robert, do you want to jump in on that?

CHAIRPERSON GRIFFIS: No, we don't have to jump into it.

MR. DAVIDSON: Okay.

CHAIRPERSON GRIFFIS: I just want to make sure that we're going to hear that.

MR. DAVIDSON: Absolutely. We will address there.

1 There are a few points of clarification we will address when we
2 get to that point. Thank you.
3 CHAIRPERSON GRIFFIS: Great and then just for the
4 other folks and, again, as -- we need to take as much time as we
5 need to get to the facts of this matter as pointed as we might
6 be, that would be absolutely appreciated.
7 MR. DAVIDSON: Absolutely.
8 MR. LAKE: Mr. Chair, members of the Board, my name
9 is Richard Lake. I'm a principal of Roadside Development, the
10 development partner for the applicant HQ Acquisitions, LLC which
11 is the owner of 4500 Wisconsin Avenue. Thank you for the
12 opportunity to present our vision for the restoration and
13 redevelopment of an important building in our community.
14 We seek your approval of three variances and one
15 special exception that will allow for the adapted reuse of a
16 historic commercial building. I'm testifying today on behalf of
17 the partnership of the property. Our experience has been
18 primarily in the development and leasing of retail properties
19 throughout the Washington region and elsewhere in the country.
20 We were excited about the prospect of participating
21 in the renovation of this retail building. Prior to our
22 acquisition, we met with the area neighborhood commissioners and
23 other citizen groups to hear what uses they believe would best
24 fit the community and the building. They initially told us they
25 wanted another major hardware store. We spent a year and a half

trying to make that happen. We pursued the leading hardware retailer and entered into a lease with Home Depot, which was contingent only on environmental matters, review of the physical plant and the proposed changes being proposed by HPRB and this Board.

Home Depot spent over a year trying to figure out how to adapt this 1941 building to work for a modern large format retailer. During that year, we also discussed the building with other potential large format retailers. They also expressed their concerns about the building. In the end, Home Depot concluded as did the others, that the building could not fit their needs. It lacked sufficient parking and had inadequate truck loading.

The combination of the short column spacing, ceiling height and its irregular shape resulted in a very inefficient layout. For Home Depot, the floor load capacity was far below the requirement. Their final conclusion was that in order to proceed, they would have to knock down the building and start again. This is something that we were not going to pursue.

After this disappointment, we explored what other direction we could take to make this building come back to life once again, and be a successful retail destination. Other options available included a data center, low level office space, calling center, auto repair and of course, the plan before you, a

mixed use project incorporating quality retail with first rate apartments above. We chose to pursue the latter because residential is most complimentary with the retail use.

The DC comprehensive plan calls for residential as part of the higher density mixed use development on this site and the community representatives told us that they would support a retail project with a residential addition.

The residential component makes it possible for us to achieve our goals of creating a successful retail project, enables us to restore the original historic store fronts and liven the street, provide adequate parking and minimize the traffic impact on the neighborhood. Our proposal is precisely what the comprehensive plan calls for. This project takes full advantage of the building's direct access to the metro station below.

We believe the proposal combines the best of historic preservation, city planning and smart growth. Once the direction was clear, we assembled an experienced design team led by Shallone, Barriness and Associates to study the building and create the design. We asked Shallone and Robert and his colleagues to create a plan that provides enough residential density to make the project economically feasible, to stay within the FAR or the existing C-3 zoning, to respect and enhance the important historic elements and minimizing the impact of an addition to the building.

We have refined our plan, we then put it before the community and their designated committee which included members of the Tenley Town (phonetic) Historic Society and representatives of the Iona Center and nearby church and also the ANC commissioners.

Discussions with HBRB and Office of Planning staff have shaped our direction and plan. We deliberate chose not to present a plan calculated to be reduced. In fact, our plan does not maximize the FAR allowable under the zoning. Our proposal presents a thoughtful, creative and realistic approach to bridging the needs of a viable project with the goals and high standards of historical rehabilitation.

This projects enjoys overwhelming support from the community including the unanimous support from ANC commissioners in ANC-3-E and nearly unanimous support from ANC-3-F, as well as the Tenley Town Neighbors Association. The Office of Planning confirmed that this project fits squarely in the comprehensive plan for the site which calls for higher density above the metro station with mixed use and residential urban life.

I would now like Robert Sponseller to present the building and the plans for redevelopment.

CHAIRPERSON GRIFFIS: Actually, let me see of the Board has any questions at this point. Okay. A quick question, you indicated that this is coming under the required FAR. Do you know what the FAR is?

MR. DAVIDSON: The FAR --

MR. SPONSELLER: I can speak to that if you'd like.

CHAIRPERSON GRIFFIS: Okay.

MR. SPONSELLER: The allowable FAR on the site -- I'm Robert Sponseller from Shallone, Barriness Architects. The allowable FAR on the site is 4.0 total and we're providing 3.82 FAR.

CHAIRPERSON GRIFFIS: Okay, and the existing is 3.71, so you're only increasing by a minimal .1?

MR. SPONSELLER: The existing is -- what did you say the existing was?

CHAIRPERSON GRIFFIS: I have it listed in your application that the existing is 3.71.

MR. SPONSELLER: No, that -- I think that's the previous minimum perhaps that we made. The existing is below 1.0, I would say.

CHAIRPERSON GRIFFIS: That's what I was going to say. I can't imagine you're adding all these units and it's only a .1 FAR. I may be slow in the afternoon but not that slow. All right, so you're below 4 which is the important piece, okay.

MR. SPONSELLER: Yeah, I would also mention, I'm below 4 and our parking which we're providing is counting in that FAR. So that's both sides, on the roof deck and it's 7 FAR which is being dedicated to residential parking.

CHAIRPERSON GRIFFIS: Okay.

MR. SPONSELLER: That's part of that number. I'd like to begin with the site plan for a moment and Richard has given a good overall picture of the site but I just want to touch on a couple of important factors on the site and part of our development process. These issues are important.

The project, as you know, is one block north of Tenley Circle which is located approximately here and it consists of two compounds, an existing historic landmark building, the Sears Building, 1940's era cultural resource, really, which fills the entire site and is approximately one story high. This project, this building was a landmark for a couple of reasons. First, it's a beautiful art deco style, but secondly, it was a landmark because of its incorporation of automobile into its design.

CHAIRPERSON GRIFFIS: Do you believe that -- no, we won't investigate that. I'll tell you DC is a little lacking if that's our epitome of art deco design. But thank God that's probably why I wasn't appointed to the HPRB. All right.

MR. SPONSELLER: Beauty is in the eye of the beholder.

CHAIRPERSON GRIFFIS: Right, right, right.

MR. SPONSELLER: But the other reason that it was landmarked is because of its avant garde thinking in terms of the incorporation of the automobile into its design. One of the striking, perhaps the most striking feature of the design is the

ramp network which affords access to the rooftop parking. As opposed to the traditional suburban model that Sears used at the time where the building was a dot in a sea of parking, this one put their parking on top of the roof scape and the development of the ramp system to get up to it is part of the design and part of our incorporation into our project. That's significant.

This is an image of the building at the time of its construction. You can see its very clean horizontal lines. Unfortunately a lot of the renovation that has happened to the building over time has been detrimental. The store fronts and other aspects of the building which were original had been somewhat compromised over time and we're going to restore that to its original deco grandeur.

You can also see in the slide where some of the ramping systems come into play in the site. This is images of the building as it stands today. The last occupant was the Heckinger (phonetic) Store. Obviously, you can see the signage here. These are views from south on Wisconsin, further south of Wisconsin and then from the north, you can see in some of these slides, some of that additions, in unfortunate additions which were added to the building to allow the Heckingers to use the project for their use.

Next slide, please. I show you this slide because as Richard mentioned, we -- the resultant design that you see today is an iterative -- it was an iterative design process. We

met with the Historic Preservation Review Board a number of times and the neighbors a number of times and sort of in-house and with the client. We started with a very simple donut scheme which you can see here and over time and through review with the Historic Preservation Review Board we sort of made our way down to this final massing scheme which is shown in the lower right-hand corner what's significant about it is that the final scheme minimizes the bulk of the building above the existing Sears store.

And the way it accomplishes that is by providing a series of setbacks on the periphery. Additionally to providing setbacks, it distinguishes itself formally from the building below. You can see with the introduction of a curving element here, the building really sets itself apart and part and parcel of that distinction which was really mandated by the Historic Preservation Review Board, is the provision of setbacks from the exterior of the site. You can see these series of courtyard spaces which sit above the building and are back from the edge of the existing Sears building.

I'd like to quickly just walk you through the floor plans. As you know, in a mixed use project, which this really is, it provides the retail activities for street activation and the residential density. What's important in a project of this type is the disbursal of the entries and exists in the project so that it will work well on a circulatory system, traffic system.

So what we've done is we've placed this -- on the plans on the wall here Wisconsin Avenue is running along the bottom. So north is to the right on this plan.

Albermarle Street is to the left located here and what we've done is we've placed all the access to the retail, which will encompass the existing building in its entirety, all the access to the parking for the retails off of River Road located at this juncture and the access to the residential component which is above the building, four stories above, is located off of Albermarle Street at this juncture here. Those are very important points to mention because the timing of the uses and the traffic that will be coming in for these various uses. The residential address is an evening type use and the retail is a day type use. They're on opposite sides of the project and they're disbursed as far apart from the other as they can be on the project.

The plan to the right shows the residential parking level which we're providing. This is on top of the existing building. This is, again, per the original design of the project. The cars were allowed to come up on top of the project and this is one of the issues that I'll talk about in a minute in terms of one of the variances we're requesting and that is that in order to afford space for the parking to actually function and provide the handicap clearances needed, we needed a slightly more additional height above the building to allow it to happen. Next

slide.

Below the -- I mentioned the retail parking. The basement level which is currently used for parking -- was used for parking by the Heckingers scheme, is where we're proposing to put all of our retail parking. Again, it's accessed from the River Road juncture right here.

CHAIRPERSON GRIFFIS: The green that you're showing on that level, you don't need to go back, that's proposed retail now?

MR. SPONSELLER: This is a proposed 11,000 square foot new retail tenant on that level, yes.

CHAIRPERSON GRIFFIS: Okay, and actually that would connect to the upstairs.

MR. SPONSELLER: Yeah, it would link through, yes.

CHAIRPERSON GRIFFIS: That's in your written submission.

MR. SPONSELLER: Yeah.

CHAIRPERSON GRIFFIS: And let me just get clarification. I mean, obviously, you're showing a demising wall with two retailers. It's been called some sort of specialty retail. Do you have tenants at this point?

MR. SPONSELLER: We have tenants we're in negotiations with, before we announce the retailer and we're going to hold off announcing retailers until we're firm on the leases with them.

CHAIRPERSON GRIFFIS: Okay.

MR. SPONSELLER: Continuing on with the floor plans, the plan on the left is a typical residential level, there are four of these. Our section, if you recall, is six stories; the existing building, parking for the residential and then there are four of these plates being provided as part of our proposal. That's a six-story total building.

The plan on the right is the roof plan for the project and you can see where we're providing all of the court spaces per zoning requirements. There are really no issues with that. One of the things I want to mention a little bit is the mixed use nature of the project. When you're combining uses in an urban site, the juncture between the uses is always the critical juncture and section architecturally.

In the sandwich, these are the four -- in our architectural sandwich, if you will, these are the four residential levels and this is the parking level that we're providing for the residents, all above the retail. At this juncture, between the residential and the retail we have a whole series of mechanical systems, electrical systems which need to be transferred out in order for the retail plate to work and to function and in order for us to be able to provide the parking that we need.

The height of the given historic building and the height of its exterior parapet edge here, which is really sort of

a datum above which we needed to start the residential, all of these lead us to request a slightly additional height for the project in order to provide the parking that we need here and to provide enough space in the development of the building in terms of construction and mechanical systems that we can actually make it work.

Next, I'd like to run you through a series of animations which we did which are the best way to really understand the building as it's been designed. We'll begin with walking up Wisconsin Avenue to the north. You're at Tenley and you're moving north. And you can see how the formal juxtaposition of the curved new addition versus the harder edges of the existing building more angular building and the material differences that we've delineated architecturally serve to contrast the two buildings so that there's a very strong distinction between the two architectural styles.

I think you also get a feel for the setbacks as they're provided in terms of allowing this to read as almost a separate building. The neighbor to the project to the northwest is Elbrook United Methodist Church and we've provided a strong setback at the boundary with that church in deference to it. The next animation is heading in the opposite direction, walking down Wisconsin Avenue. The building addition is to your right.

CHAIRPERSON GRIFFIS: If you're walking, you're in the middle of the road.

MR. SPONSELLER: Driving, I'm sorry.

CHAIRPERSON GRIFFIS: That's kind of a busy road, too.

MR. SPONSELLER: Driving.

VICE CHAIRPERSON RENSHAW: Is your building taller than the building on the right as we are now walking past?

MR. SPONSELLER: Yes, it is. Yes, it is, but one of the things that the animation shows is the by providing the setbacks that we have, approximately 110 feet at the primary corner, it affords a deference in the massing. The building will read as actually being set back from the street and shorter than the building to the north because it does not come out to the property line. All of these setbacks negotiated with the Historic Preservation Review Board I think afford the reading of a building which is almost separate from that which is below it.

CHAIRPERSON GRIFFIS: So your point is that your tower won't be as --

MR. SPONSELLER: It won't be as heavy on the street. It won't be as overpowering on the street.

CHAIRPERSON GRIFFIS: Right.

MR. SPONSELLER: The first mass schemes that I showed you, which was the donut scheme if you remember the slide, would have been a quite different reading.

CHAIRPERSON GRIFFIS: Right.

MR. SPONSELLER: But by setting back on all the

sides and allowing really just edges and fingers of the massing to come out to the street, it provides an accent of vertical elements to the strong horizontal base of the existing deco building.

Okay, this last animation is heading west on Albermarle Street. This is the main intersection of the existing building and you can see here 100 feet set back from the corner is one face of our project coming out to the -- of the addition coming out to the Albermarle frontage. The setbacks, again, from the existing building edge to our main body on Albermarle Street there's a 30-foot setback which really eliminates -- now we're going to head up the ramp to the residentials as if we lived there -- eliminates the presence of that massing from the street entirely. And here finally you see -- once you're inside the ramp, you see the massing of the addition appearing.

VICE CHAIRPERSON RENSHAW: This ramp you propose to be a walkway, not an entrance?

MR. SPONSELLER: This is actually the residential entrance, if you remember the site plan. This is Albemarle Street. This is where the residents will enter their parking level.

VICE CHAIRPERSON RENSHAW: Oh, okay.

CHAIRPERSON GRIFFIS: It's the front one that is not going to be used.

MR. SPONSELLER: And this slide also serves to show

how we're going to distinguish materially and formally the new from the old.

CHAIRPERSON GRIFFIS: What are the materials?

MR. SPONSELLER: The materials that we're proposing is a metal panel system that's somewhat industrial panels. You can seen it as a strong horizontal pattern to it and grain to it. But the finish of it will be such that it is very distinct from the poured in place concrete structure that the Sears building is.

CHAIRPERSON GRIFFIS: Is that coloration in the hew that you're proposing?

MR. SPONSELLER: No, we're actually still working on coloration. This is just a model to represent the two materials.

CHAIRPERSON GRIFFIS: I just wanted to be clear on that.

MR. SPONSELLER: These are just a series of stills, stills walking around the project again, curved versus straight, setbacks and then the deference to the Elderbrook Church. And the reason I'm spending a lot of time talking about the HPRB process is that what we've ended up with is really a building which has had considerable exterior pressures put on it in terms of aesthetic, view sheds if you will, to the project. And all of these issues, all of these processes, resulted in a limited, a much limited footprint above the existing building that we've had

to work with for our residential component.

This is a slide that represents the materials that we're thinking of here. You can see an industrial panel system on various -- used on various buildings, in various ways. The net result will be a building, as you can see, a combination here of the heavy masonry base with a modern top to it. That's the basic style we're looking at, the basic contradiction we're looking at architecturally.

So as I mentioned briefly, the issues of -- there's one other thing I want to mention in terms of the vertical section and the requirements for additional height that we're seeking. The project is -- in addition to an existing building, you know, it sounds great, sounds easy but if the building was not designed to hold the additional loads that are being proposed, reinforcement of the footings is required.

In this case, we're having to redo the footings on the existing building to add our additional structure. This has a tendency to put a lot of pressure on the structural system used and has led to the decision to use a very light structural system for our residential addition. What this requires though, in exchange for light weight is additional height.

The floor system in a lightweight structure is about a foot thicker than a traditional concrete structural system and this is one of the reasons that we need the additional height on the project.

MR. DAVIDSON: Thank you very much. I would now like to introduce Armand Spikell, who will talk briefly --

CHAIRPERSON GRIFFIS: Actually, if I may interrupt --

MR. DAVIDSON: Sure, I'm sorry, I apologize.

CHAIRPERSON GRIFFIS: -- while we still have these images, why don't we have other Board questions, and my first question is, whether you had any from the rear and the height differential from the Iona is it?

MR. SPONSELLER: The Iona Health Center.

CHAIRPERSON GRIFFIS: Right.

MR. SPONSELLER: Yeah, we have an elevation here to show you that.

CHAIRPERSON GRIFFIS: Okay, and clearly, if -- I was reading and frankly, I live in the District so I'm familiar with a lot of areas, but yeah, their site, it obviously, drops off very quickly on Albemarle.

MR. SPONSELLER: Yeah, this is the Albemarle elevation.

CHAIRPERSON GRIFFIS: I see. And what is -- it's probably in here somewhere, but what is the dimension of the alley and then the setbacks between the two buildings?

MR. SPONSELLER: Okay, the alley at this point is 20 feet -- 25 feet wide actually, between our project and the Iona Center and you can see our building. The slide is somewhat

1 misleading. These two -- it's important to look at these two
2 slides in conjunction with each other. This lower elevation is
3 actually the west elevation of the project. This is -- if you're
4 standing on the Iona site, this is what you see and because of
5 the way we developed the massing, you can see how little of the
6 facade actually comes out to the alley side. These two elements
7 are all that appear on the western side of this site.
8 And that's -- as I was going over the massing
9 schemes, and I started with the donut scheme and we went to the
10 more linear finger schemes, the main result of that change and
11 that conceptual change in the massing is that on the periphery of
12 the site you have small elements which come out to the perimeter
13 and have the result of massing down the project.
14 Instead of having a continuous ring of massing,
15 you're seeing small fingers of the mass which come out to the
16 edge. I think that's best understood in the animations.
17 CHAIRPERSON GRIFFIS: Well, what's misleading about
18 that piece is that there's actually a portion of the building
19 beyond the two that are in elevation. Maybe it's just too late
20 and I can't see it.
21 MR. SPONSELLER: There is a line that represents
22 that. It's about 50 feet back.
23 CHAIRPERSON GRIFFIS: Okay, so they look into the
24 first court.
25 MR. SPONSELLER: Uh-huh, they look into a court

here.

CHAIRPERSON GRIFFIS: Almost like a court niche that's 65 feet wide.

MR. SPONSELLER: Sixty-five feet, right.

CHAIRPERSON GRIFFIS: All right. And that's -- what we're looking at also on the alley level is your loading bays, correct?

MR. SPONSELLER: That's right.

CHAIRPERSON GRIFFIS: Okay.

MR. SPONSELLER: All of the services for the building, for the residential and the retail, are tucked in off of the alley in the west.

CHAIRPERSON GRIFFIS: Okay.

MR. LAKE: I'm sorry, I just want to make a clarification on the loading. One of the things in our discussion with the Iona Community Center is that when Heckingers operated the building there was a problem with the alleys and the loading. We've actually added loading docks and have reduced some of the leasable area by recessing the loading into the building, so a 55-foot truck can go into the loading dock and not obstruct the 25-foot alley.

And we worked with them to make sure there would be no blockage of any of their life safety vehicles because that's the only place -- that's the only direction that the life safety vehicles can get to the Iona Center and we spent a number of

hours with them going over the plan, making sure that that would not impact it. So I just wanted to bring up that point.

CHAIRPERSON GRIFFIS: Good, and is it correct, you're adding two 55-foot loading docks for a total of four and two at 30 feet?

MR. SPONSELLER: That is correct.

CHAIRPERSON GRIFFIS: Okay.

MR. LAKE: Plus, aren't we also including the loading dock that's off of the -- that --

MR. SPONSELLER: That includes that one, that's right.

CHAIRPERSON GRIFFIS: And obviously, we're not looking for any relief in terms of the loading dock size.

MR. SPONSELLER: No.

CHAIRPERSON GRIFFIS: Okay, did you have, Ms. Renshaw?

VICE CHAIRPERSON RENSHAW: Yes, I just wanted you to point out the school that's across the street so that we get the full picture.

MR. SPONSELLER: Okay, I might have rushed a little bit on the site plan, but one of the things that was very important to us was how we dealt with the Janny School (phonetic). This is a large drop-off component in the mornings. The last thing we wanted to do was have the retail entrance across from that. So by keeping the ramping network on the north

corner of the project for the retail, there won't be retail traffic buzzing up and down Albemarle Street.

Instead the ramp that used for the residential will be used returning from work at the end of the day after school has been picked up. And in the morning, the residential also exits onto River Road. Okay, so the residential entry, I might not have been clear about the -- the residential entry is the pedestrian entry into the lobby and then a ramp up only on Albemarle Street.

VICE CHAIRPERSON RENSHAW: And in reference to this diagram, isn't River Road, that leg of River Road leading up to where your retail parking is going to be, isn't that one way?

MR. LAKE: No, you can't turn left onto River Road from Wisconsin right now but it is two-way.

VICE CHAIRPERSON RENSHAW: That's right.

MR. LAKE: So if you come out, you can turn left from out exit onto River Road.

CHAIRPERSON GRIFFIS: So you can take a right if you're coming south on Wisconsin.

VICE CHAIRPERSON RENSHAW: That's it.

MR. LAKE: Yes.

VICE CHAIRPERSON RENSHAW: Okay, all right, because I recall that intersection when Heckingers was in operation and it was a chore.

CHAIRPERSON GRIFFIS: Yeah, I used to come out of

there with my two by fours on my roof.

VICE CHAIRPERSON RENSHAW: Sure.

CHAIRPERSON GRIFFIS: Everyone gave me a lot of space.

MEMBER LEVY: Mr. Chair, if I could just follow up on that --

CHAIRPERSON GRIFFIS: Yeah.

MEMBER LEVY: -- on that line of questioning, how is -- how do you anticipate that vehicular traffic would get from northbound Wisconsin Avenue into the retail parking garage? Would they be using the street in front of the school?

MR. SPIKELL: No, one of the reasons that we want to separate the residential from the retail is that we wanted to keep the retail and commercial traffic off of Albemarle Street. When Heckingers was in operation, we understand, and I know I experienced personally, a long backup on Wisconsin Avenue from northbound traffic turning left onto Albemarle.

So to avoid that, we're envisioning that the northbound traffic would turn left right now onto Brandywine and go around which is the way that you would have entered the Heckinger store lower level parking. So the only traffic -- northbound traffic on Wisconsin that would turn left on Albemarle would be the residential.

MEMBER LEVY: So you would be left on Brandywine, left on River Road.

MR. SPIKELL: Yes, uh-huh.

MEMBER LEVY: Okay, thanks.

CHAIRPERSON GRIFFIS: But how does one accomplish that?

MR. SPIKELL: At Brandywine --

CHAIRPERSON GRIFFIS: I mean, I know how you'd drive it, but how do drivers know that that's the way -- I mean, is this a learned behavior that's going to have to get used to?

MR. SPIKELL: Yes. One of the differences about the retail that we're envisioning for this project from what we had there before with the Sears or Heckingers or what we tried to do with Home Depot, is, this is really going to be a lot more neighborhood serving. We're not going to be putting in retailers who are going to be drawing people from very far outside the neighborhood. So I think most of the shoppers will be familiar with the traffic pattern.

CHAIRPERSON GRIFFIS: Okay.

MR. SPIKELL: As a matter of fact, that's a good lead-in to the three variances and one special exception that we're seeking and I'd like to address those a little bit out of order. First, I wanted to talk about the residential recreational space requirement. The amount of space that we have available is constrained by the historic preservation factors, that is the setback, and by the fact that we're building this project, in effect, on top of an existing parking area.

And one of the things that we have been striving not to do is restrict in any way, the amount of parking that we can provide and I'll talk a little bit more about that later. I'd also like to point out, I mean, under the guidelines that govern the C-3-A zoning that we're in, we would be required to have about 30,000 square feet of recreational space and given the constraints of the site, it's just now possible to provide that much.

CHAIRPERSON GRIFFIS: You don't happen to have some breakdown of that and how you actually calculated that out?

MR. SPIKELL: No, because there's still some flexibility in the plan. Most of the space is in the courtyard in the center of the building. And that courtyard, I'd like to point out from a light and air standpoint is three times the width that's required and about 10 times the area that would be required, but still because of the setbacks, it's fairly constrained and not large enough to incorporate all of it.

We are --

CHAIRPERSON GRIFFIS: The requirements that it's 10 times is for a court requirement, a closed court?

MR. LAKE: Yes.

MR. SPIKELL: Yes.

CHAIRPERSON GRIFFIS: Okay, but what about the actual calculations? How did you come up with a 30,000 square foot required residential rec.

MR. SPONSELLER: I can speak to that. What zoning --

MR. LAKE: Robert, if you could also speak to the update on the numbers.

MR. SPONSELLER: Sure, absolutely.

MR. LAKE: Thank you.

MR. SPONSELLER: Okay, the first -- getting back to the update before I get into the specific plans, there's a question from the Office of Planning regarding the change in percentage between the first submittal and the second submittal on the amount of recreation space we're providing and John has concurred that it has actually gone up from the previous submittal a couple tenths of a percentage point.

But getting to the residential recreation space requirement, it is a 15 percent of gross residential floor space provided, so on our site, which is just over 200,000 square feet translates into approximately 30,000 square feet of footprint area. Now, that footprint area, the whole site is 90 -- roughly, 90,000 square feet, would be in total -- it would be about a third of the floor plate. You can see how just looking at the roof plan, how that's an impracticality, given that we're providing the parking for the residential on top of the roof.

So what we've done is we've taken the next best strategy and put it inside the building and again, if you'll go back to the massing schemes we studied, we started with a large

donut scheme. Through the HPRB process, that was negotiated down to providing U-sheds (phonetic) on the exterior. Our court slowly got smaller through that process such that we've wound up providing close to the five percent of recreation space which is accepted in other parts of the city, I might add. We're providing close to the five percent of gross residential square footage in recreation space and it's provided in a couple spots.

It's provided inside the building in a courtyard, on the courtyard to the west and I want to add that we've noted on our plans that we are going to be landscaping and treating the ramps as a pedestrian access up to the residential building. And the only reason those ramps don't count as recreation space, and this is a technicality, is that they're less than 25 feet wide.

So technically, one could argue that they do not count. I think that the ramp is transitional zone between the ground plane and the roofscape so that I think you could make an argument that the ramps should count. It's sort of like a linear walkway being provided. If you include the ramp area, we are above the five percent, we're closer to seven and a half percent or roughly half what is required.

CHAIRPERSON GRIFFIS: Well, I think the point would be for the ramps in the spirit of the zoning would if they were articulated or animated somehow for actual use. I think there's a letter in the file, you guys are pretty familiar with it, that someone said do some terracing there. I always picture it like

the San Francisco Road.

MR. SPONSELLER: Yeah, exactly, a winding pathway, yeah.

CHAIRPERSON GRIFFIS: But, you know, I think it might be important just to put scale in perspective here, that court is 73 feet by 104 feet.

MR. SPONSELLER: Yeah, and --

CHAIRPERSON GRIFFIS: See, I picked that up off the slide.

MR. SPONSELLER: And, of course, some of that is private terraces for the residents at the lowest level.

CHAIRPERSON GRIFFIS: Let me get to my point, the actual importance of perspective is that's a little over 7,000 square feet and so for a 30,000 square feet recreation space, you're looking at over three times that amount. It's almost -- I mean, what's your residential floor square footage, do you know?

MR. SPONSELLER: It's 50,000 square feet roughly on the floor, yeah.

CHAIRPERSON GRIFFIS: Okay.

MR. SPONSELLER: It's going to be a large open space and the reason we mention the -- how it pertains and relates to the closed court provisions is to emphasize how open and airy it will be, it's only four stories tall.

MR. SPIKELL: And as a practical matter, I'd also like to point out that there is a lot of recreation area close by

the project. Directly across the street, there's a public elementary school with playgrounds and other facilities. Within two blocks is Wilson High School that has a public swimming pool, a track. There's Fort Reno Park, so there are plenty of opportunities and it's not a tremendously dense neighborhood, so it's a nice place to take a walk.

CHAIRPERSON GRIFFIS: But for clarity also, you're not presenting any sort of signed agreement for use on the elementary school.

MR. SPIKELL: No, no.

CHAIRPERSON GRIFFIS: That is DC public school property, so believe me, we've seen fights about shared space and things like that, although I did think -- and I mean, I know in your application, you spoke to the adjacency of the park that's north which obviously is very open.

MR. SPIKELL: Yes, yes.

CHAIRPERSON GRIFFIS: And a good dog park, I've heard so --

MR. SPIKELL: Yes.

CHAIRPERSON GRIFFIS: Okay.

MR. SPIKELL: And then as to the height variance, I think Robert covered some of the issues that are faced when you're transitioning from one use to another and there again, our major concern is we did not want to lose rooftop parking to provide space for plumbing pipes, so the extra height gives us

the ability to not have to sacrifice any spaces that are underneath that residential structure.

The greater height also gives us flexibility in the type of construction. One of the challenges that we face with this project is we can't overload the existing foundations, and so by having the extra height, it gives us the flexibility to use different systems if that becomes necessary. The height variance that we're seeking is really not great. It's five feet and in the neighborhood recently the Tenley Hill project just north on Wisconsin Avenue got a 10-foot variance and, in fact, added an additional story.

Now, we're starting out on top of a historic structure and in 70 feet, we're not doing seven stories, we're doing six stories. So it really is more to accommodate the peculiarities of the structure than anything else. The -- we're asking for a variance from the minimum parking aisle width.

CHAIRPERSON GRIFFIS: Can I address the issues as you bring them up?

MR. SPIKELL: Sure.

CHAIRPERSON GRIFFIS: Do you mind? Okay, first of all, let me just -- for total clarification of course, every application is non-precedent setting for us so that even if you wanted to submit the entire application, the other would have no bearing on your case. The minimalness, also, it's the same test, but I think impact we can talk about.

1 But going right to it, is there anything about the
2 historic structure that mandates the use?
3 MR. SPIKELL: The use as retail?
4 CHAIRPERSON GRIFFIS: Retail, right.
5 MR. SPIKELL: No. As a matter of fact, some of
6 the alternatives that we looked at, one which was from a
7 financial standpoint was very interesting, was as an auto
8 dealership.
9 CHAIRPERSON GRIFFIS: Oh, right, I can imagine
10 which one we're looking at.
11 MR. SPIKELL: Yeah, it would make a great auto
12 dealership because of the metro, you could devote the entire
13 lower level which is served by three ramps, to sort of --
14 CHAIRPERSON GRIFFIS: But it would be some sort of
15 -- American Tile, some sort of service off-street. My point
16 getting to is that you're indicating that the systems required in
17 order to fully utilize the retail are increasing your demand for
18 plenum space or whatever kind of space you need on the parking.
19 MR. SPIKELL: It's not really the retail, it's the
20 residential above.
21 CHAIRPERSON GRIFFIS: I see.
22 MR. SPIKELL: You know, the comprehensive plan
23 calls for mixed use and calls for density in the metro site and
24 here in accomplishing that, we do have the problem that it's not
25 all residential. We're not building a residential tower on top

of a commercial base. We are doing the mixed use and so we can't stack, as you normally would in an apartment building, all the toilets one on top of the other so there's one drainpipe because the retailers don't want those drainpipes in their stores.

So we have to then run them horizontally and that requires a little bit more height.

CHAIRPERSON GRIFFIS: Okay, so that goes to -- I think that brings much more clarity to me in that you have this historic structure. In order to utilize it as a matter of right within the existing zoning, you can -- I mean, you can conceivably put a commercial office building or residential on top of it.

MR. SPIKELL: Yes.

CHAIRPERSON GRIFFIS: But the point in fact of mixing the uses with the historic structure creates this peculiar situation.

MR. SPIKELL: Right, exactly. Keep them separate. We studied the parking quite a bit and we studied it and restudied it and planned it and drew it and in the end, the irony is we came up with a plan that when we looked at the original Sears plan, we had come up with the same exact layout and I think that's primarily because it's dictated by the column spacing and it's the way to maximize the number of spaces on the roof.

That, however, calls -- that plan calls for one way aisles and angled parking spaces. Now, if we were not angling

the spaces, I guess our spacing would be different but we can fit more spaces on by angling them and using the one way but the aisles in this case are fourteen and a half feet wide rather than I think 17 is what -- 17 is what's usually required. Fourteen and a half is not unusual in many jurisdictions and, in fact, we have provided pathing plans showing a 19-foot long vehicle pulling in and out of these spaces without going over the lines. And we've provided that to staff.

In addition, most of the spaces, because there will be columns that are supporting the residential above, most of the spaces are going to have a space between spaces. As you see, there's double lines on there and those columns will be another almost two feet. So the spaces will actually be wider than the striped area. So that helps.

CHAIRPERSON GRIFFIS: Now what we're seeing here is actually introduction of new columns; is that correct?

MR. SPIKELL: Well, in this particular plan, these are the existing columns. We're looking at the basement plan. On the roof --

CHAIRPERSON GRIFFIS: This is your parking layout.

MR. SPIKELL: This is the parking layout and frankly, the layout is pretty much the same on the roof as it is in the basement because we're dealing with the same shape and the same column spacing.

CHAIRPERSON GRIFFIS: But then the connection that

you stated is that you came up with pretty much the same thing that Sears had come up with. Did they have the 14-foot widths?

MR. SPIKELL: Yes, and, you know, it's interesting and I was going to get to this in the next discussion of the number of spaces.

CHAIRPERSON GRIFFIS: Okay.

MR. SPIKELL: When Sears operated the building, they had parking only on the roof. They had no parking in the lower level. The lower level was furniture and washing machines and Craftsman tools and I shopped there many times. On the roof, they had a mixture of parking, garden center, a key shop, a little building. In later years it was Meadow Farms. We don't know exactly without further study how many spaces Sears had on the roof. It may have been as few as 60.

When the building was designated historic in 1995, the required number of spaces was frozen at whatever there was at that time and we don't know how many it was. A year later when Heckingers got their occupancy permit in 1996, they got an occupancy permit showing 113 spaces on the roof and 92, I think maybe -- 98, 98 spaces in the lower level.

I doubt very seriously that Sears had 100 spaces on the roof but anyway because it was unclear and because we want to -- we want to clearly allocate the rooftop parking strictly for residential and the lower level strictly for retail, we wanted to clarify the issue. Now, the amount -- the number of spaces that

we're providing is far in excess of what is likely to be required if you assume that let's say Sears had 100 spaces on the roof and that our 180 or so units would be required to have one space for every two units, so that's another 90, so we'd be required to have about 190, but we're providing 320.

In discussions with the community and being primarily in the retail development business, we always think that we want to give every space that we can to retailers and their customers but there were several issues. The issue we discussed on the left turn from Wisconsin onto Albemarle, the issue regarding the conflicts with drop-off and pick-up at the Janny School, and then the other issue is when we went to community meetings, people would say, "Well, where are these people going to park? Are they going to park in front of my house"?

Well, we answered, "Well, you know, most of these people are going to be attracted to this building because there's a metro and they're going to be commuters and we, of course, want to encourage everyone to ride the metro and people's response was, "Yeah, but they'll all own cars".

So our thought was, we're probably better off providing more spaces for the residents, recognizing the fact that, yes, many of them and most of them will commute by metro, but they will own cars. And if we don't provide parking for them, then they'll park down the street, because they don't use their

car every day, in front of somebody's house and leave their car there for days at a time. So our thinking is let's provide more parking for the residential and the retailers, I think, we'll be fine with.

We've discussed the parking arrangement with the retailers and we're relying on a couple of factors. Number one is again, these are retailers that are geared to serving the neighborhood. They'll be selling things smaller than an eight-foot two by four and so a number of their customers can arrive on the metro and take their purchasers home with them.

The other thing that we're counting on is that there will be cross shopping with the neighborhood shopping that's across the street. Across Wisconsin Avenue, there's a parking garage with a Fresh Fields in it and I've been in that garage many times and I've never seen the top level even half full, let alone full. So we're counting on our customers shopping there and their customers shopping in our store and so we think the combination of those three factors will reduce the requirement for parking.

And one other factor is that a lot of retail parking requirement comes from the fact that the employees drive to work and park in the lot, usually far away from the front door if they're good employees. In this case, we're thinking that the employees more than usual will be arriving by metro, so that will also be a mitigating factor. So we're pretty comfortable that

we'll be able to handle the retail parking requirements with the lower level parking.

So we would like the ability to make that allocation and therefore, we're seeking a special exception to clarify this point.

CHAIRPERSON GRIFFIS: All right, there's a couple of things on that. The first, if we can get definitively how you're breaking out your retail requirement parking and then request and then how you're breaking out your residential requirement and I'm -- if I'm understanding you correctly, there is no request for relief on that.

There was something -- oh, two other things actually. I guess for my purposes, I think I need a little bit more -- well, I'm not sure how I get this but there needs to be some more guaranty that the testimony you're giving us based on the paradigm of who your retail tenants are will then translate into use and parking and all that. I'm not sure how we deal with that.

MR. SPIKELL: Well, let me address that because that's been a point of discussion with every retail that we've talked about. And one of their biggest concerns and you can only imagine that if you were a retailer about to open a store that's in a building with a metro station, that your biggest concern would be that someone would come and park in your parking lot, not shop in your store but get on the metro.

Every one of our leases with the retailers will have to provide for a control system for the parking. What it will probably be is the first hour to hour and a half will be a validation and after that you're going to pay dearly if you leave your car in that lot and that's very similar to what they have across the street in the Fresh Fields garage. So the retailers will insist that we control that.

And parking is always a concern for retailers and you know, we're looking to clarify that we're going to be providing 150 spaces for the retail portion and the retailers can be very well aware of that.

CHAIRPERSON GRIFFIS: And I don't question that in the control but your own testimony has said that there's a difference between specialty retail, which we're going after, and neighborhood retail which you directly said and someone insinuated and a big box retailer which is a destination retailer and your testimony, if I'm correct, is that there are different driving habits, there are different parking requirements, but again, it's just your testimony that we have.

MR. SPIKELL: Well, let me make this point on the number of spaces. We have in our -- I think we've provided in our package a letter from our traffic engineer, Grove Slade, and their point is that the amount of traffic that we're going to be generating with this retail and with the residential combined, is far less than what was generated by a large home center or

department store before.

CHAIRPERSON GRIFFIS: But that goes directly to my point. Is that's your testimony that your retail is different. I mean, Home Depot has just announced that they're doing little boutique shops and they're opening one in Manhattan or something, great idea. But if that comes back here, is your parking paradigm different?

MR. SPIKELL: Well, it's different in that if we were to lease the entire first floor to that concept for Home Depot, it would still be considerable less because originally the whole building was for that use and the Home Depot project that we were trying to make work there with tremendous community support, by the way, would have involved the whole building. So just on a square footage basis, we're devoting a lot less of the space to retail than we were before.

CHAIRPERSON GRIFFIS: Okay, and that's a very pertinent point and I bring up Home Depot. I think it's a great idea.

MR. SPIKELL: So do I.

CHAIRPERSON GRIFFIS: And I'm not -- you know, if I could call the shots, but nonetheless, okay, so it's a reduction actually of retail use or high intensity use that you're really testifying to. Okay, then let's get specifically to the parking numbers because I'm not sure I'm clear. Maybe other Board members are clear on that, maybe we can move on. And the other

piece, I think, we need to look at actually, you know, I'll put this in for thoughts here but my review of the regulations, if you look at 2108, gives, of course, this Board the jurisdiction to reduce the amount of parking spaces required for non-residential use but if we look to 2109 and 2109.1, non-residential building structure includes any building structure where 80 percent or more of the gross floor area is devoted to use other than residential and it breaks those out.

And I'm not sure whether you've looked at that or not. I won't let that go but I want to get the numbers first for clarification for us and then we can get to that.

MR. SPONSELLER: Let me speak to the parking issues again. As you know, by zoning, we are -- because we're a historic landmark building here that we're adding onto, we're not required to provide any parking for the residential. We are, as Armand mentioned, for marketing purposes, providing 170 spaces for the residential. That's more than twice what would be required by zoning.

On the retail side, we're providing 100 -- what's mandated for a historic structure, again, in terms of the retail is that we replace what was there at the time of the landmark application. The owner's best understanding of that is that it was the 211 spaces in the building at the time of designation.

What we're providing for the retail on the B-1 level is 150 and that's the special reduction that we're asking

for.

CHAIRPERSON GRIFFIS: So it's a reduction in --

MR. SPONSELLER: So in totem, we're above what would be required by zoning if you include the residential and retail numbers together, but on the retail side, we're asking for a special reduction.

MR. LAKE: And can I just add, what we're really looking for is our ability to allocate the abundance of parking that we have. We have 320 that we're providing to this project --

CHAIRPERSON GRIFFIS: Right.

MR. LAKE: -- which is over what's required. We wanted to keep the residential and the retail parking separate for a number of reason; one for security, two for the work that we did with the community about having more parking for the residential and also keeping the retail trade and retail traffic off of Albemarle, which is the only way you can get up to the roof. So we really think that it's a better plan to keep it separated.

The other thing is I don't know if you've ever driven to Heckingers when they had parking on the roof and in the basement. And if you went one place and they didn't have parking, you had to leave and go around the lot and come back and it was very frustrating.

CHAIRPERSON GRIFFIS: Right, and you know, I don't

1 think this Board would take any exception, in fact, I think it's
2 an excellent plan to segregate the parking. I mean, obviously,
3 the use, the time, the circulation is a heck of a lot easier to
4 manage doing that. Again, I'm just trying to get down to what
5 we're actually looking at. Now, there was a statement and
6 clearly this is what you're pursuing, the fact that this is a
7 historic building, that there's actually no requirement to the
8 addition of the historic building.
9 That's an interesting discussion to get into and
10 maybe briefly. Mr. Levy, did you want to speak to that?
11 MEMBER LEVY: No.
12 CHAIRPERSON GRIFFIS: Okay. I saw him move so I
13 thought --
14 MEMBER LEVY: Not yet.
15 CHAIRPERSON GRIFFIS: Okay.
16 MR. DAVIDSON: Just one point of quick
17 clarification to your question; we are up for the special
18 exception relying on 2107, not 2108. 2107 gives the Board
19 authority with respect to buildings on top of metro access.
20 CHAIRPERSON GRIFFIS: Right.
21 MR. DAVIDSON: And just a point of clarification
22 for the special exception.
23 MR. SPONSELLER: To speak to the article that you
24 brought up about the percentage, the 80 percent, our retail is 66
25 percent of the total gross, so we would comply with that

provision that you mentioned earlier about the 80 percent. We're below that.

CHAIRPERSON GRIFFIS: It would have to be 80 percent or above non-residential.

MR. SPONSELLER: Oh, to be non-residential, I'm sorry. Okay, okay.

CHAIRPERSON GRIFFIS: Sixty-six percent.

MR. SPONSELLER: Okay.

CHAIRPERSON GRIFFIS: All right, let me just -- I'm sorry if I'm not grabbing this as quickly, but we have retail, 211 essentially is what's out there. It's going down to 150 and then retail, I said that? And then residential is how many spaces?

MR. SPONSELLER: We're providing 170 spaces.

CHAIRPERSON GRIFFIS: Indeed, which total up to 320.

MR. SPONSELLER: 320.

MR. SPIKELL: I'd like to make a point again about the 211. The 211 number is actually what Heckingers had. And Heckingers didn't create the 211 until a year after the building was designated. So at the time the building was designated, the lower level had not yet been turned into parking. So the only parking was whatever there was on the roof.

Now, when Heckingers put their parking and garden center on the roof to replace Sears parking and garden center on

the roof, Heckingers had 113 spaces. We think, but don't -- haven't produced the evidence yet, that Sears probably had less than that but rather than arguing that point, we thought it would make more sense to clarify the whole issue by seeking the special exception.

CHAIRPERSON GRIFFIS: I think it does all make sense, but you know, for our purposes we need to flush out all the issues.

MR. SPIKELL: Absolutely.

CHAIRPERSON GRIFFIS: And what you've done is touch on a very important issue which not only will go to this site, I mean, obviously, it's huge on this site, it goes to a lot of other sites as historic buildings are brought back to modern and conventional uses. And you have the adaptation of those, how do we deal with modern requirements of parking. And certainly there is the argument that goes to the no increased parking would be required.

Okay, Ms. Renshaw.

VICE CHAIRPERSON RENSHAW: Well, just a couple of things. We're looking at 185 residential units; is that it?

MR. SPONSELLER: Yes.

VICE CHAIRPERSON RENSHAW: And approximately 170 spaces. I counted 182 on the residential plan. 3F counted 188.

MR. SPONSELLER: We have more spaces currently on the plans than we are counting. We're being conservative.

VICE CHAIRPERSON RENSHAW: You're being conservative.

MR. SPONSELLER: Yes.

VICE CHAIRPERSON RENSHAW: So there is possibly --

MR. SPONSELLER: There's possibly more. We don't want to promise that because --

VICE CHAIRPERSON RENSHAW: That would be very good if you have 185, you might have about 15 cars wandering around the neighborhood looking for a place to park if you didn't have a space per apartment.

MR. SPONSELLER: We think that, because again of the metro issue, the fact that we're above a metro tunnel, our experience on other sites where there's a metro stop in the building or in the block even, is that 20 to 30 percent of those occupants of the residential portion will use metro.

VICE CHAIRPERSON RENSHAW: Well, they may use metro, but they may also have cars that they park there so again, I just bring that up.

Do you have -- even though you don't want to tell us who you're negotiating with, do you have any idea of how many employees your project is going to bring into the neighborhood with the retail and the residential side and could you compare that to Sears/Heckingers.

MR. SPONSELLER: True, well, I don't know about the total number on the different shifts. I can probably give you a

sense of how many would be on site at a given time during like one shift, one eight-hour shift how many employees would actually be there. It would be approximately around 50 to 60 employees and a lot of the retailers I've talked to heavily encourage metro use for their employees.

VICE CHAIRPERSON RENSHAW: All right, and it will be up to the retailers, for instance, to perhaps look into some kind of incentive program.

MR. SPONSELLER: Or disincentive as it relates to --

VICE CHAIRPERSON RENSHAW: Incentive meaning using the metro.

MR. SPONSELLER: Yes, or disincentive in the fact that they won't be allowed to -- they won't be able to afford to park in the garage. I mean, what we've done, we've engaged with Walker and Associates to come up with a parking management plan, and basically the systems they're looking at is you get a card that gets validated as you go through the checkout and that gives you the time.

If you don't have that validation, then you're going to get hit and the real issue is not that we don't want people to be in our building. We just want to really reserve those spaces for customers and not make it a metro commuter parking lot.

VICE CHAIRPERSON RENSHAW: Okay, so you're saying

50 to 60 employees for both residential and the retail.

MR. SPONSELLER: Yeah, the residential is not going to have much at all, probably just a few in the office.

VICE CHAIRPERSON RENSHAW: Well, maintenance, security people, desk type.

MR. SPONSELLER: Right.

VICE CHAIRPERSON RENSHAW: And you're going to have what, three shifts?

MR. SPONSELLER: On the retail, probably two, two to two and a half. On a weekend you'll have two and a half, during the week probably only have two.

VICE CHAIRPERSON RENSHAW: And on the residential, you'll just have one shift?

MR. SPONSELLER: No, you'll probably have two shifts.

VICE CHAIRPERSON RENSHAW: Two shifts, okay.

MR. SPONSELLER: You may have one person as a porter that floats around the building at all times.

VICE CHAIRPERSON RENSHAW: All right, and will you have some kind of a security system whereby there are shall we say, some people going around the neighborhood to make sure that employees are not parking on neighborhood streets?

MR. SPIKELL: Well, it's my understanding in the neighborhood, there's a zone sticker program in effect, so we're hoping that we do employ -- that the retailers do employ people

from the neighborhood, but if they aren't from the neighborhood, they probably won't get away with parking on the streets if there's typically --

CHAIRPERSON GRIFFIS: They'll have to leave the store every two hours.

MR. SPIKELL: What's that?

CHAIRPERSON GRIFFIS: They'll have to leave the store every two hours and move their car.

MR. SPIKELL: Yes.

VICE CHAIRPERSON RENSHAW: Feed the meter. One other thing, the pictures that were provided don't show much, if any traffic. We know that that's not the case. Were those pictures from animations?

MR. LAKE: Which -- the hard pictures?

VICE CHAIRPERSON RENSHAW: Yeah.

MR. LAKE: No, they were taken by our office.

VICE CHAIRPERSON RENSHAW: What year?

MR. SPONSELLER: Actually, I think the pictures were taken by my office and those were taken during the day.

CHAIRPERSON GRIFFIS: I think the point that she's getting to is that she's familiar with Wisconsin Avenue being very busy but you would have photographed the building, not the traffic, so you would have waited for a light to stop the traffic; is that a fair representation?

MR. SPONSELLER: That's quite fair to say, yeah.

VICE CHAIRPERSON RENSHAW: Well --

MR. SPONSELLER: We can't exactly clear the roads.

VICE CHAIRPERSON RENSHAW: -- that's the Chair's interpretation. Perhaps you would like to interpret it for me.

CHAIRPERSON GRIFFIS: Well, look at that one.

VICE CHAIRPERSON RENSHAW: One car, one, two three --

MR. SPONSELLER: They were taken at 10:00 a.m. in the morning and we didn't have any police help or anything.

VICE CHAIRPERSON RENSHAW: Ten o'clock in the morning?

MR. SPONSELLER: Yeah.

VICE CHAIRPERSON RENSHAW: What month, what year? In any case --

CHAIRPERSON GRIFFIS: I mean, I think it's not -- Wisconsin Avenue is a busy avenue and it's certainly up in that area.

VICE CHAIRPERSON RENSHAW: It does not look like that at all and what I thought --

CHAIRPERSON GRIFFIS: Well, he's photographed it.

MR. SPONSELLER: We did not doctor these photographs.

VICE CHAIRPERSON RENSHAW: That's on the record, too, but I wanted to just make note of the fact that the traffic report that you have submitted is more of a comparison to the

Heckinger/Sears. It does not give us a picture of what the traffic situation is like at the moment, so that we can get a feel for what the impact of this building is going to be at that location and have you thought of or are you now doing a traffic impact study?

MR. SPIKELL: Well, we've thought of it a lot and the reason primarily was when we started out, we were -- our original plan was to bring a 180-square foot Home Depot store, and so we gave lots of thought and had lots of discussions with people in the neighborhood about ways to change the traffic patterns and there are still some things that we are thinking about but as far as the impact goes, I think the main point from an approval standpoint is the this is a lot less traffic intensive use than what was there before when it was Heckingers or even what was there when Sears was a healthy business.

MR. LAKE: Excuse me, are you asking compared to it now as a vacant building?

VICE CHAIRPERSON RENSHAW: What the scene looks like right now before you get going on this project.

MR. LAKE: Well --

VICE CHAIRPERSON RENSHAW: And then compare your project to what is there now.

MR. LAKE: Well, the issue is what there is now is a retailer in there operating a business right now on a temporary basis, but the building -- has always been occupied except for

the last two years as a retail building over 140,000 square feet.

Sears was 186,000 feet and Heckingers was 146,000 square feet of occupied space.

CHAIRPERSON GRIFFIS: And what are you proposing?

MR. LAKE: We're proposing 88,000 feet of retail and then residential above that. So, I think the letter that Lou Slade wrote does compare to what the building is. To say what it is compared to a vacant lot or a vacant building is not -- I don't really believe it's relative. It's not a fair comparison.

I'd like to go to the first slide or the first form because I think one of the things it points to is very important, when we talk about smart growth and we talk about encouraging metro use. At this point, this is the main pedestrian entrance to the residential with two elevators. There's another elevator bank that serves here that will serve the residential bays.

We've also made available for metro riders to be able to pass through into these elevator banks, a card access for security. So Resident 724 can come up and go upstairs and get to these elevators. I think that is a great way of encouraging metro traffic and encouraging our residents to use metro and leave their cars behind. And I think that makes the building a lot more convenient. They get a residential street, a feel of a residential street with no commercial traffic but they also have access to a metro and they can be covered and away from the

elements at all times when they need to be.

VICE CHAIRPERSON RENSHAW: Well, when I asked about the traffic study, I am also referencing or wanting to reference the suggestion that ANC-3-F had stated in its report about a traffic study to determine whether the road system can absorb traffic from 185 residential units and three retailers, but the Chair is here and could address that perhaps, when the ANC report comes to the table.

CHAIRPERSON GRIFFIS: Okay, the last thing.

MR. DAVIDSON: One point of clarification, I just wanted to also note that I hope the Board has had a chance to look at the last item, I believe added to the record, which was a memorandum from Ken Laden from the Transportation Planning Office addressing some of the -- basically addressing these concerns and signalling the Office of Planning's specific approval in that aspect of our proposal.

CHAIRPERSON GRIFFIS: No, we have not seen that but we will get that. I'm sure it's brief so we will look at that right now. We'll see if we can get copies down here.

Now, Mr. Laden's report was referenced in the Office of Planning, so we knew what the upshot of it is, but if there are any detail -- you can give that right down to staff on the far side.

All right, 88,000 square foot of retail is what's being proposed in the project right now and then I believe a

reference for a residential was given but I didn't write it down, the total square footage.

MR. SPONSELLER: I'm sorry, could you ask your question again?

CHAIRPERSON GRIFFIS: Yeah, the residential square footage.

MR. SPONSELLER: Gross?

CHAIRPERSON GRIFFIS: Yeah.

MR. SPONSELLER: Okay, the FAR is, if you exclude the covered parking area which is below the residential it's about 2.2. It's roughly 210,000 square feet or 2.2 FAR.

MR. SPIKELL: Residential.

CHAIRPERSON GRIFFIS: Residential, right, that's excluding the --

MR. SPONSELLER: It excludes the residential deck which technically counts because it is covered as FAR.

CHAIRPERSON GRIFFIS: Okay, and when you make the statement that the 320 parking required actually is above what would be required by current zoning; is that a correct statement?

MR. SPONSELLER: Yeah, that is correct.

CHAIRMAN GRIFFIS: Okay, so if you're doing that, then you have broken out your parking requirements at 88,000 for retail and 210 for residential.

MR. SPONSELLER: Yes. I'm sorry, say that again.

MR. SPIKELL: 88,000 feet but the residential is

1 based on units.

2 MR. SPONSELLER: Yeah, the residential is one for

3 two units, it's roughly, 93 spaces, yeah.

4 CHAIRPERSON GRIFFIS: But those are the space

5 requirements. Okay.

6 MR. SPONSELLER: Yeah.

7 CHAIRPERSON GRIFFIS: There it is then. All right,

8 sorry for interrupting your flow here but I think actually this

9 will go much quicker if we get to the points we need.

10 MR. DAVIDSON: I think at this point, Armand if you

11 have nothing else to add --

12 MR. SPIKELL: No, we've covered the three variances

13 and one special exception.

14 MR. DAVIDSON: I would just note one or two formal

15 points. One, we are prepared to submit into the record today and

16 we would move to submit hard copies of the slides other than the

17 slide show -- other than the animation but the --

18 CHAIRPERSON GRIFFIS: We get the laptop.

19 MR. DAVIDSON: Exactly, we will donate the laptop.

20 One other small point just to clarify in the record, there is on

21 the site a covenant that was entered into in 1940 with the old

22 Board of Commissioners for the District of Columbia and it has

23 been subsequently superseded by actual multiple zoning

24 regulations. We have been working with corporation counsel and

25 with the Zoning Commission to get that authorized to be

rescinded.

When we met with the Zoning Administrator, he recommended that we make it part of the public record for this hearing and we were happy to do that, but I just wanted to clarify that we are not seeking any relief with respect to the covenant but mainly to make it a point of public record.

CHAIRPERSON GRIFFIS: Good, and I think that was wise advice that you got is to make -- to disclose it. Certainly, it would have probably encumbered our time if nothing else if we had found it and you hadn't disclosed it but Ms. Sansone, I don't believe that that encumbers us in our own deliberations. That's obviously, something for the Zoning Commission; is that correct?

MS. SANSONE: Mr. Chairman, that's correct. The covenant related to a map amendment by the Commission and therefore, the Commission would be the entity that would have to take action to rescind it.

CHAIRPERSON GRIFFIS: It was an interesting font that it's written in. It kind of looks old, I mean, just by seeing it but anyway so there is it, so I don't think we need to spend time on that at all. Okay. That's it.

MR. DAVIDSON: Our case is submitted, thank you.

CHAIRPERSON GRIFFIS: Good, don't go anywhere. All right, let's go to Office of Planning.

MR. FONDERSMITH: Thank you, Mr. Chairman. John

Fondersmith to give the Office of Planning report and would like just to ask for a waiver because this was late, a waiver to accept the report into the record.

CHAIRPERSON GRIFFIS: Yeah, I believe you had an excuse even, but I don't -- I don't need to recall that. I don't have any problem. If anyone has an objection, I think we'd waive the rules to accept the report. Very well.

MR. FONDERSMITH: Thank you. In summary, the Office of Planning does recommend approval of the three variances and one special exception that had been requested here today. We note, of course, that this is right in the heart of the Tenley Town commercial area, described the project, the importance of it, both as a historic landmark and I'll just repeat what was said, that there had been an awful lot of work with the Historic Preservation staff and of course, with the community and with the Board in getting what we think is an important adaptive use project here.

It's also, as you know, a major element in the urban landscape of the Tenley Town commercial area along Wisconsin Avenue and, of course, has excellent transportation access both metro rail and bus. We describe the site and the surrounding area. I think the applicant has done that well, so unless there's any questions, we won't go through that in detail again.

I would just -- I would just mention and you might

look at the aerial photograph with our report, as we work through this and I guess we're all familiar with the Tenley Town area and this building, but it just struck us what a unique combination of this commercial corridor and civic and community building there are here, when you start looking at it in terms of the library, Janny School, the churches the Iona Senior Citizen Services, Wilson High School, Fort Reno Park and so on, it really is a very nice combination of what is a multi-neighborhood center in the comprehensive plan.

I would note in the last sentence there under adjacent area or in the first paragraph Fort Reno Reservoir and Park, of course, are east of Wisconsin Avenue, not west and we note here and later that this is designated as a special treatment area in the comprehensive plan. We wanted to note the topographic location of this site also. It's -- Tenley Town is one of the highest points in the city and the high point on Wisconsin Avenue is just to the north. It's right at the tip of the blue building, if you want to describe it that way, elevation about 405 feet there.

And so this makes this a prominent site. It also means that the -- certainly the views from the upper stories of the residential use are going to be great views. So we've gone through the applicant's proposal and outlined the standards for a variance. And so I would just go through those quickly.

The first one is the height variance. The

applicant has described the problems or the issues they have to do with the putting the apartment units over the parking deck and the need for this special structure there. And so they're requesting an increase, a variance of five additional feet. The Historic Preservation staff worked with them a lot on this in terms of dos and so on.

We think that can be granted and recommend that the height variance be granted. We think it is unique in terms of the preservation requirements and what the developer is trying to do with the mixed use.

The residential recreation space variance, and let me just note that we have in this report the figures form the first submission and as the applicant noted, they have changed slightly and you have their submission, not substantially but they have increased from 9300 to 9900 total and from 8,000 outside to 9100 outside, most of that on the roof. Some of it in the recreation space inside the fitness room and the club room. And we noted also as they noted, their plans to use the ramps, but not -- that they're not actually counted in the recreation space.

We believe that the way the second level is being used for residential parking with the residential building element above it, creates a unique condition. There would be a practical difficulty in creating additional residential recreation space and additional recreation space on the ground

level, that is indoors, would require reducing retail space and retail space A, which we don't want, we don't think is desirable either.

We think therefore, that there are practical difficulties here in providing this recreation space. We don't believe that reducing the recreation space will cause substantial detriment to the public good or impair the purpose of the zone plan. And we note that one advantage of this site is that there are other recreation spaces nearby and that's been talked about and is, I think, pretty clear in the aerial photograph with Fort Reno Park two blocks, block and a half to the north and the Wilson Athletic Field. So we recommend approval of variance for the reduction of the recreation space.

On the parking aisle variance, we believe that the applicant was wise to separate the two parking areas with the retail parking on the B1 level and the residential parking on the roof. And in each case the applicant has sought the maximize the number of parking spaces within the constraints of the site. They put 60 degree angle parking in for most of the spaces and that really ties in as was testified to, from the location of the columns.

This does require their aisle width down to fourteen and a half feet from 17, requires a parking variance. We note that the 14.6 does meet minimum national standards. So we believe that there is a hardship in terms of the layout of the

building and the need to try to arrange the parking to fit that columns. I'm not sure if that's a hardship but just the way you've got to do it as a -- I mean, it is a hardship, you couldn't do it practically many other ways.

So we recommend approval of this variance for the reduced parking aisle width for the 60 degree parking. And then on the special exception requested which is tied into the metro rail station and of course, the west entrance to the Tenley Town AU metro rail station is arcaded right there into the building. We go through the description of the parking spaces which you have heard and note that they seek to reduce it from 211 to 150 spaces.

The applicant has told us, as he testified here today, that the retail parking will be controlled in order to insure that the retail -- that the parking for the retail use doesn't get used by longer term commuters. And there is additional parking spaces available to them in the parking garage across the street. They have said that they think and, in fact, want to encourage that shoppers whether parking on one side of the street or the other, will park once and use the whole Tenley Town area. We place -- this gets back to the special treatment area and the whole idea of Tenley Town commercial area.

We place -- the Office of Planning places the priority on achieving a significant retail development on this site. We think it has a potential to stimulate the retail

vitality of the Tenley Town commercial corridor and I think I skipped over some of the strengths of the existing commercial center but obviously those who know the area and this is antidotal rather than a rigorous economic study but there are some signs of retail weakness there and having additional -- three additional retailers at this site plus the residential certainly will be -- bolster that.

So we recommend that the Board of Zoning Adjustment approve the request of special exception to reduce the amount of retail parking to 150 spaces. However, we do suggest that there be a parking program for, as the applicant has said, to control the parking to utilize the additional parking spaces as needed on the east side and one more step, to work toward a coordinated parking program for the Tenley Town commercial area.

Obviously, they've got to get in there and be a part of that retail community before they can start doing that. Relationship to the comprehensive plan, we note that this is a special treatment area and if you'll turn to the second attachment back of the aerial photograph, you see what's outlined in the land use section of the comprehensive plan for the Tenley Town metro rail station special treatment area.

And under the policies, you can just go down there and essentially every one of them relates to this project. A well-planned economic activity center utilizing the public transit infrastructure enable merchants to upgrade existing

1 businesses and track new customers and so on, provide for the
2 development of substantial new housing, protect and preserve the
3 existing low density residents in the vicinity and the
4 surrounding institutions from adverse effects, I think the
5 applicant has tried to do that and then maintain heights and
6 densities at appropriate levels, which we think they have done
7 working through a pretty rigorous review.
8 So in all respects, this project, which is the key
9 project in Tenley Town, meets, we think, the policies outlined in
10 the comprehensive plan for this area and for that special
11 treatment area which is a little box which includes this site, of
12 course.
13 CHAIRPERSON GRIFFIS: Good, thank you very much,
14 Mr. Fondersmith.
15 MR. FONDERSMITH: And I think that's probably
16 enough. We mentioned the covenant. We are going to, you know,
17 write to the Zoning Commission indicating our approval of that.
18 You'll get the ANC report. You've got attached also the Historic
19 Preservation Review Board report and finally, the report of the
20 DDOT, the DC Division of Transportation is what you're just
21 getting.
22 CHAIRPERSON GRIFFIS: Yeah.
23 MR. FONDERSMITH: And we just -- we have talked to
24 them. We have been discussing this with DDOT and with the
25 applicant for some time. We just got the report also and then

1 unfortunately there is just a transposition in the DDOT report
2 and if you -- and I've talked to them and they asked me to make
3 this statement for the record, just to correct it.
4 On the first page, at the end of the first
5 paragraph, that should be 170 parking spaces on the roof for the
6 residential component and 150 spaces on the basement level for
7 the retail space. Those just got twisted around.
8 CHAIRPERSON GRIFFIS: Well, we'll send them back
9 the report then.
10 MR. FONDERSMITH: And so again, as I say, we have
11 our recommendation that the three variances and the special
12 exception be approved. We do suggest that these additional steps
13 be taken with respect to the parking program. And that concludes
14 the Office of Planning report, Mr. Chairman.
15 CHAIRPERSON GRIFFIS: Very good, thank you. We did
16 receive and all the Board members have copies of Mr. Laden's
17 report and I must say it is -- it speaks well to the application
18 and, of course, it does say that they support the request for
19 parking reduction and the aisle.
20 MEMBER LEVY: I just want to make sure you're
21 covered.
22 CHAIRPERSON GRIFFIS: Yeah. Mr. Fondersmith, is it
23 the Office of Planning's opinion that the residential recreations
24 phase actually doesn't fit this area and would not and may even
25 detract from the purposes of the comp plan as you've indicated in

1 1129.2?

2 MR. FONDERSMITH: I'm not quite --

3 CHAIRPERSON GRIFFIS: Just turn on your mike.

4 MR. FONDERSMITH: Yes, I'm not quite following the

5 question.

6 CHAIRPERSON GRIFFIS: Let me state it again.

7 MR. FONDERSMITH: Yeah.

8 CHAIRPERSON GRIFFIS: Would it be Office of

9 Planning's opinion that in order to stimulate well planned

10 economic activity, which is Item A and B, upgrade existing

11 businesses and development of substantial new housing of course,

12 but mostly economic activity that you spoke to and the metro rail

13 there, would Office of Planning's position be that residential

14 recreation actually would not support that goal?

15 MR. FONDERSMITH: No, I wouldn't say that. I mean,

16 there may be in some different arrangement of the building that -

17 - say a different building at this site, it might be that the

18 recreational space could be met.

19 CHAIRPERSON GRIFFIS: But wouldn't that keep people

20 off the street and not rejuvenizing these economic activities on

21 these premises?

22 MR. FONDERSMITH: Well, maybe so. There's

23 certainly -- there certainly -- even if it were there, the

24 contribution to Tenley Town of this many residents here is that

25 they are going to be in the street and at the restaurants and so

on. We simply looked at this building which has -- you know, you've got to save the historic structure. Then the applicant has put the -- has used the roof for the parking, put the residential on the -- so the only way to get -- I mean, it's like trying to have all your cake and eat it too. The only way to get -- that we saw in a practical way, to get more recreational space would be to put at some cost, a deck on up above the parking but then that interferes with the -- I mean, that would have a cost factor and interferes with the historic nature of the building.

I mean, so I think basically, in looking at it, all this project does, we were not disturbed with granting a variance for the recreation --

CHAIRPERSON GRIFFIS: Right, okay, and then if I'm hearing you correctly, you don't want to make overall statements to the recreation requirements in the city based on this application which I appreciate. I have a question in terms of the special exception requested in that in your report and actually I'm going to point this question to corporation counsel, perhaps, but you've stated that Section 2107.1 authorizes the Board to reduce or eliminate the amount of required parking space for non-residential buildings.

We've kind of, I think, clarified the fact that this would not, under that, come under a non-residential building. Would this not be, in fact, a variance and not a special exception for parking? And I think Ms. Sansone may be

more versed in answering that, unless Mr. Fondersmith, that has something pointed you wanted to respond to.

MR. FONDERSMITH: I would only -- I would only say that we, at least, have seen that the special exception under 2107 is tied to -- it tied to a specific situation which is the direct connection to the metro rail system and which occurs -- I started to count up the other day the number of such cases in the city and there are others but you know, not a whole lot, and so we really relied on that connection there.

CHAIRPERSON GRIFFIS: Okay.

MR. DAVIDSON: If I could interject one point on just the legal question, just to clarify our position on this, I think it's fair to say that the regulations are not crystal clear on this but I think that --

CHAIRPERSON GRIFFIS: I find that hard to believe.

MR. DAVIDSON: -- but I think it's clear that if you treated the building as a whole given its historic preservation, it's historic designation, rather, we would be only required to provide 211 spots. In treating the residential element of the building separate from the retail element, we wanted to just -- we wanted to clarify which is the only reason we sought the special exception, to clarify that if we allocated in that -- on that basis, and 211 was allocated purely to the retail, we would still be able -- we would be fine, even if the total number of parking spots went to 320, that we could allocate

150 to the retail, so just as a point of clarification on that.

CHAIRPERSON GRIFFIS: That's the problem with clarifications, sometimes it isn't the way we would have attacked it but I absolutely hear you and I think that's an important point. I think one of the first things and I do want to hear from corporate counsel on it, but I'm wondering whether we need to, whether we could attack this by not separating the parking by use. I mean, but we have to because that's the way we break it down.

MS. SANSONE: Mr. Chair, I'd suggest it's actually easier to separate it by use and it's very clear from the notice, public notice that went to that a reduction in parking spaces was required and that that reduction applies to the retail uses and I think in this case the Board could probably avoid a lot of difficult legal issues about the regulations by simply dealing with -- this is a request for a variance that would allow the applicants to provide 150 retail parking spaces without having to address how many might have been grandfathered or how many might have been protected as a historic landmark or how many, you know, are being split between residential and retail, just it seems like that might be the easiest approach.

It would give the applicant the relief that they're seeing which is just simply to provide 150 retail spaces. And I believe they've addressed the variance criteria in connection with their other requests in terms of the uniqueness to the

1 property, practical difficulties, and so forth.

2 CHAIRPERSON GRIFFIS: And those go actually to the

3 parking also, I mean, they're very inter-twined, okay. Does that

4 make sense? There's some clarity I can grab onto. Okay. Mr.

5 Levy, did you have something to say? Okay, well, then Office of

6 Planning. Let me -- we do have HPRB, of course, which was

7 recommending approval of the revised conceptual plans. For

8 clarity sake, that is the plans that we've actually seen, which

9 is the introduction of that curve in the front with the setback

10 and actually it's quite nice in terms of that front elevation how

11 it addresses Wisconsin Avenue.

12 Okay, ANC, do we want to address that quickly. Ms.

13 Renshaw, you mentioned the DC member is here. Are you planning

14 to testify today? Okay, good.

15 MS. WISS: This is Cathy Wiss from ANC-3-F. We are

16 not the ANC in which this project is located but we are within

17 two and a half -- we are less than two blocks away. I reside at

18 3810 Albemarle Street and I can see the project from my house.

19 I'm about two and a half blocks from there.

20 I believe you all have our resolution that was

21 submitted and I can make just a few points from that. Yes,

22 indeed, the owners of the project have come to the community,

23 have worked with the community since at least July 2000. We have

24 gone through all of this. Yes, we very much did want a hardware

25 store. We have lost two hardware stores in the community.

CHAIRPERSON GRIFFIS: Everybody wants a hardware store. Where do they all go?

MS. WISS: I don't know, they went to the suburbs. Most of the residents of ANC-3-F have not said they were opposed to the variance in height and I think that's important. People said, you know, that it will be set back. They're not opposed to it. They want the space occupied. They are in agreement with the idea of putting residential on top and but very much do want to continue having retail there because this is a very important retail space and again, there's a lot of feeling in the community that the retail needs to be revitalized. We've been without this space for a long time.

But one of the issues that has come up in our community because as you said, it's a prominent site in the District of Columbia is that often antennas -- well, we have several towers with a whole lot of antennas hung on them, so that our ANC talked with the owners of the project and said that we would not object to a five-foot variance in height for the residential portion provided that the variance is conditioned on an agreement the applicant not lease or sell air rights above the site without first obtaining approval from the residential tenants of the building and the ANCs and they have said they had no intention of doing that but that they would agree to that and I assume that that's still the case.

CHAIRPERSON GRIFFIS: If we give them a height

variance, are they going to have any air rights? Well, and of course, I love to make jokes but nonetheless, this is a serious issue, I mean, in that neighborhood and around the city and believe me, we're seeing a lot of these, but let's get clarification on the process. If they were actually going to put an antenna it would be my understanding you'd be coming here. Is that correct, Ms. Sansone, or is that not necessarily correct?

MS. SANSONE: Mr. Chairman, I'm not up to speed on the antenna regulations.

CHAIRPERSON GRIFFIS: Well, don't think anyone is. Are they writing the regs on that one right now?

MS. SANSONE: I think they're under revision besides.

MS. WISS: In any event, we would like this to be reviewed and I think this came up because we have residential buildings in our area where tenants have no say as to what's being put on top of their roof and they're quite concerned with it. And in fact, in one case, we have some concern about the structure itself and how they're having to bore through the building in order to put the antennas up there.

CHAIRPERSON GRIFFIS: Right, and you're talking about the large broadcasting antennas, the ones that have, you know, all sorts of different things attached to it, not necessarily the cell --

MS. WISS: No, these are cell antennas too. I mean,

they're are multi-different kinds.

CHAIRPERSON GRIFFIS: Yeah, yeah.

MS. WISS: We also recommended that the applicant explore using the unused ramps to the rear for recreational purposes. There was a discussion that HPRB wanted them kept fairly pristine as ramps although they would not be used as ramps but that this has been a fairly creative project all along. The idea of terracing could be one use of it.

We suggested possibly an exercise course going up and down the ramps, so --

CHAIRPERSON GRIFFIS: Can we condition that they have to landscape the ramps and then they go back to HPRB and they have to take it out? All right, we'll move on.

MS. WISS: And we also recommended that the fire marshall approve the one-way parking lanes because of concern that they might -- the aisle width of the one-way parking lanes might be an impediment to access by emergency vehicles. We could not answer that question.

CHAIRPERSON GRIFFIS: Yeah, that's an -- and that's also an interesting point. I'm not sure emergency vehicles would be going through the entire parking deck.

MS. WISS: Yeah.

CHAIRPERSON GRIFFIS: Because my understanding is there's access right at the entrances. There's actually the curb cut and pull off.

1 MR. LAKE: There's five sides access to all around
2 --
3 CHAIRPERSON GRIFFIS: Just turn on your mike.
4 MR. LAKE: There's actually the access around the
5 building on five sides.
6 CHAIRPERSON GRIFFIS: Okay.
7 MR. LAKE: And emergency vehicles don't go into
8 garages.
9 CHAIRPERSON GRIFFIS: Right.
10 MR. LAKE: In case of fire --
11 CHAIRPERSON GRIFFIS: Yeah, they would have a
12 height problem of getting in.
13 MR. LAKE: Yeah.
14 CHAIRPERSON GRIFFIS: You can get an ambulance I
15 would think --
16 MS. WISS: But we wanted to raise the question
17 because we are not experts and they know their equipment. They
18 know the way they fight fires and that was the only thing.
19 CHAIRPERSON GRIFFIS: It's an excellent point and I
20 think -- frankly, I think Mr. Laden can speak to that if we need
21 to as part of the record, but it's been my experience on
22 applications and outside my other profession that you create
23 access from the street access and how it gets right to the
24 building whether it be fire, whether it be emergency vehicles and
25 such and that's where I think they would look to it.

MR. LAKE: Correct, and --

SECRETARY PRUITT: Excuse me, Mr. Chair, I would just like to say, through the rest of the permitting process it would be picked up there and they are the experts actually, so if there was any need to be -- any issues that needed to be -- or any concerns like that, it would be picked up during permitting and building codes.

MS. WISS: I raise the point because we do have tenants at buildings that do believe that buildings have been built larger apartment buildings, that are not accessible by emergency equipment and the way this tends to slip through the whole process by the time you get to the permit, it's sort of hard to say, "Well, gee, we can't". So I just -- we have this feeling particularly because of the residents in our big apartment buildings that we don't expect it to be a problem by we're just not the experts, that's why we raised it.

CHAIRPERSON GRIFFIS: Well, it's an excellent point and I think it's a valuable concern and it certainly is good that you bring it up here and well, in addition on this, any sort of adaptive use or renovation of a historic building, you would think this is going to be somewhat of a problem coming up to date in terms of current codes and requirements. But being that we've seen here first of all, new elevator courts, that's going to be your access and the elevators are obviously, going to come under great scrutiny in terms of stretcher size and availability and

access up, so -- but I think it's well said.

That actually is out of our jurisdiction. It goes to other permitting areas.

SECRETARY PRUITT: And excuse me, just for a point of information, there is a task force of people working to get the building codes and zoning codes closer together so that they're not as in odds with each other, and it's actually ongoing now. So that it will sort of resolve some of the inherent conflicts that are existing at this point.

CHAIRPERSON GRIFFIS: Yeah, that's a great point.

MS. WISS: Uh-huh, thank you.

CHAIRPERSON GRIFFIS: Okay.

MS. WISS: And finally, we did ask for a traffic study to determine whether the road system can absorb traffic from 185 residential units and three retailers, whether the parking is adequate and whether adjustments should be made to traffic signals and patterns surrounding the site to mitigate any adverse impacts from the development. I think one thing we should consider is what will be happening on Saturdays, which would be the time where the retail use might be heaviest and also the residential use, people would be going in and out.

And I know that the day that Heckingers opened traffic was backed up from Wisconsin Avenue to Reno Road. Now, that fell off as Heckingers' business fell off for any number of reasons but again, I think that we in the community have talked

with the owners about the need to consider how this routing system to get into the garage will work and how we can make sure that we don't have this great big traffic backups on Wisconsin or Albemarle.

CHAIRPERSON GRIFFIS: Well, are you -- do you have an understanding of what the circulation patterns is as proposed in this application?

MS. WISS: Yes.

CHAIRPERSON GRIFFIS: Okay.

MS. WISS: You go up to Wisconsin and Brandywine, take a left, take a left, sharp left at Brandywine and River, then a right into the garage.

CHAIRPERSON GRIFFIS: Right.

MS. WISS: But it's -- the question is how long that left turn bay is -- at Brandywine and Wisconsin, how long that signal is, you know, how this will work. And we at one point also talked about possibly having a -- removing the traffic light that's mid-block which allows access into the Fresh Fields parking garage to River and Wisconsin with a left turn arrow so that people could access this building better and not have to keep going around the block.

CHAIRPERSON GRIFFIS: Right.

MS. WISS: Which presents some problems, solves some and presents others.

CHAIRPERSON GRIFFIS: Okay, I think we can take

that into consideration in terms of traffic. My hesitancy is I'm not sure what we study yet.

MS. WISS: This may not be in your purview.

CHAIRPERSON GRIFFIS: Well, we can always take liberties, but, I mean, I think it's an important piece -- I mean, for one thing, it does -- obviously it will have a -- you know, as well as anybody, once that fills up as retail again, you're going to have increased traffic. So the point is not how do we maintain it as an empty building with the traffic that is now there, but how we mitigate any sort of problems when the retail is incredibly successful as opening day at Heckingers.

So I guess until we get a little bit more specific on exactly who's going in, I'm just trying to figure out what kind of timing we can do because I guess my point here is, it not only helps the community but it's going to help the building owner and the retailers because if there is a heck of a lot of traffic -- there's a lot of reasons why the District people didn't go to that Heckingers is because they went to the suburbs because it was easier to park and there wasn't such a hassle getting in and out.

So we don't want that which may lead to retail turnover. So let's keep that in mind and we absolutely -- is there anything else you wanted to bring up?

MS. WISS: No, that's all, thanks.

CHAIRPERSON GRIFFIS: Okay. And we absolutely

appreciate you being here today. Is there any cross examination?

MR. DAVIDSON: We don't have any cross examination but we would like to make a few points in rebuttal if it's the appropriate point. We certainly appreciate the testimony. Would not be the appropriate time?

CHAIRPERSON GRIFFIS: Let's take it as it's fresh unless I get.

MR. DAVIDSON: You know, I just want to thank Ms. Wiss for her time because she's been very actively involved in working with us and bringing up the issues of the community and I think by her being here, shows a lot about how much she cares about her community. We did talk about the antennas and we did agree that if we were going to propose technology changes and we were going to propose a third party agreement, we don't want to limit our residents from receiving signals or sending signals or our retails from sending signals or receiving signals, but for third party licensees or leasing of the air rights, we did agree with her and the community that we would come back to the ANCs and remember, we've been working with ANC-3-F because they are so close and ANC-3 is really our ANC.

So we will be working with both ANCs again and also the residents. So we have no problem with that and we would have to come back to BZA anyways for those approvals.

As it relates to the ramps, we are looking at ways to enliven the ramps, but as the Chair has spoken to, HPRB sees

these ramps very sacred and we would really like to continue to work with staff from HPRB without creating any more conflicts. We have several more trips to HPRB before this building becomes a reality and staff is already very much aware that we are trying to soften some of the edges of the building. We are looking at landscaping, looking at some lighting. We are trying to come up with ways of making this building a lot more breathable and a lot more appealing not just from the curb but actually as you touch and feel the building.

So I would like to leave that to staff if that's possible. I just can't say that I can put those things there because I have no control of that area. As it relates to -- I think the emergency vehicles was discussed. Permit process will take care of that issue. These are going to be to code, both handicap access and also for emergency vehicle access. The fire marshall are very, very good and especially in new construction. I think some of the problems you've had have been some older construction. This is all going to be under new construction regulations as relates to life safety issues.

The traffic, we -- as discussed with ANC-3-F, we have had meetings with Mr. Laden and with DDOT with Lou Slade, and that's what ended up as a product. He believed that both our traffic engineer and the District's expert felt that the traffic generated by this proposed development is far less than the impact of what was there before, of course, not what's there now

as a vacant building, but what was there. So they felt very comfortable.

We are open to any ways as the Chair has mentioned, to make this a success. Retail -- one of the issues about making retail successful is that you don't create barriers and you don't violate certain things that retailers like to have and one is access. One is comfort of drive, not just to, but also when you leave. So when you go home, you're satisfied with your experience.

So as we develop the building and open the building, we do want people to understand that we will be making adjustments and if at that time we feel or the community feels that there are some things that need to be done to mitigate some of the traffic concerns we are very much willing to meet with them, DDOT and other members of the city to make this a successful project.

The other thing, just to know, we have spent a lot of time with the community and there are other issues that the community has raised that we are addressing, like the Janny Elementary School students not having a safe haven to go to, their after day program. We are proposing if we get approval from the property owner of putting a sidewalk along that alley so the children have a safe haven. Right now they walk through a loading alley which is dangerous for them and not a tenable situation.

And the other is we have agreed that we would work with Janny Elementary School to mitigate construction vehicle traffic during their drop-off and pick-up for their children. So we are working with them and also their landscape architects to try to tie their plan for landscaping their property with ours. So there's a number of things we've been working with the community and again, we welcome their comments.

VICE CHAIRPERSON RENSHAW: Mr. Chairman?

CHAIRPERSON GRIFFIS: Yeah.

VICE CHAIRPERSON RENSHAW: It's really great to see a developer, an applicant, who has such a feel for community input and the need to reach out to the community and have the ANCs and other civic organizations a part of the process. I just wanted to point out one thing as almost a point of information.

We have difficulties in northwest Washington with high rise buildings and dead zones as far as the fire department is concerned. That's buildings in which fire department people, firefighters, cannot transmit on radios. So I'm hoping that you will work with the fire department in having a non-dead zone building so that your residential -- well, your residents can feel comfortable in that if something happens, the fire fighters will be able to -- can communicate within the building.

CHAIRPERSON GRIFFIS: Does that mean they have to rip down the towers up the street?

VICE CHAIRPERSON RENSHAW: They may have to do

that. No, I'm --

CHAIRPERSON GRIFFIS: Have you noticed your remotes don't work up there on your car?

VICE CHAIRPERSON RENSHAW: But this is a very serious problem and --

CHAIRPERSON GRIFFIS: Oh, it is indeed.

VICE CHAIRPERSON RENSHAW: And the city, throughout the city but we have taken note of it and for instance my ANC has been after this dead zone issue for quite a few years now.

CHAIRPERSON GRIFFIS: But is it part of the building that cuts communication?

VICE CHAIRPERSON RENSHAW: It is the lay of the building. It's the antenna sites within in the city where the radios cannot beam from one to another but the radios don't work, and you want to make sure that the fire department can get to your building, and once inside the building, can communicate one with another and this is a very serious problem, so work with the fire department and that would be just great if we could hear back through the newspapers that you are doing so.

CHAIRPERSON GRIFFIS: Indeed. Okay, and is anyone here from ANC-3-E?

VICE CHAIRPERSON RENSHAW: No, but we have a report.

CHAIRPERSON GRIFFIS: I know, we do have a report and there was a resolution. It is -- we have two exhibits, 26

and 27, a resolution in support of the application. Of course it was timely filed, so we will be giving it the great weight so afforded the ANC.

VICE CHAIRPERSON RENSHAW: There was also a March 8th letter from the Tenley Town Neighbors Association.

CHAIRPERSON GRIFFIS: Yes, good.

VICE CHAIRPERSON RENSHAW: But it stated that they adopted a resolution but I don't have a copy of the resolution in support.

CHAIRPERSON GRIFFIS: Does anyone have that?

VICE CHAIRPERSON RENSHAW: This would be -- should be attached to Exhibit Number 24 in the main folder.

CHAIRPERSON GRIFFIS: Yeah, I don't have the -- is that the resolution? Here it is.

VICE CHAIRPERSON RENSHAW: We do have a copy -- this is ANC-3-E and then we have ANC-3-E.

CHAIRPERSON GRIFFIS: Well, that's the one I read. All right, well, we'll get a handle on that.

VICE CHAIRPERSON RENSHAW: All right, this is --

CHAIRPERSON GRIFFIS: Actually, you can bring up any pertinent points if we need to hear it but let me just state that what we have submitted from the ANC-3 is actually not signed and not by the Chair so it isn't given great weight but it is still on file and in support and we will review quickly the resolution and put that one back in.

VICE CHAIRPERSON RENSHAW: I have a copy of 3-E's resolution that is signed by Thomas B-a-c, the secretary. We need to have a resolution signed by the Chair or Vice Chair, so we will request of Jill Discon (phonetic), the Chair, to sign the document and get it back to us.

CHAIRPERSON GRIFFIS: Okay, and we'll get that put in. Any other government reports? Okay, is anyone else here to testify at this third case in the morning in support or opposition? Not seeing any, why don't we go to closing remarks?

MR. DAVIDSON: I will be brief as we have taken up, I think, far too much of your time. Chair Griffis, Vice Chair Renshaw, members of the Board, I just want to thank you for your time. I think we have established clearly both in the record and in our testimony that for each of the elements of relief we seek we meet the statutory test and we would just respectfully request that the Board exercise the authority that it has to close the record and vote on the application at the hearing today. Thank you very much for your time.

CHAIRPERSON GRIFFIS: Thank you. Okay, there's a request for a bench decision. Let me just get a quick indication of the Board. First of all, I thought we had things we were taking into the record. Maybe we can close the record to accept certain items.

VICE CHAIRPERSON RENSHAW: We're taking in the signed ANC-3-E, the Chair to sign.

CHAIRPERSON GRIFFIS: Right, okay.

SECRETARY PRUITT: Excuse me, Mr. Chair, is that the only item you're waiting for?

CHAIRPERSON GRIFFIS: Oh, right, we have slides.

SECRETARY PRUITT: I would just suggest that since we already have a favorable report, that it does not prejudice the ANC not to have a signed report in.

CHAIRPERSON GRIFFIS: Right.

SECRETARY PRUITT: And so, therefore, you could do a bench decision without leaving the record open.

CHAIRPERSON GRIFFIS: All right, a little conoitering there and I think we can resolve this ANC thing, and I think it is appropriate, as obviously we have both ANCs which are closely aligned here and having met numerous times, it seems like they are all in favor, with obviously the conditions or rather the issues of importance that 3-F has brought to light, but I would waive the requirements for the signing of the ANC in order to give that the great weight that it does and we can dispense with that. In which case, Board members, if everyone is so inclined, I would move that we approve application number 168574, the HQ Acquisition LLC for a variance from the height requirements under Section 770, a variance from the residential recreation space under 773, a variance from the parking aisle width requirements under subsection 2117.5 and a variance from the off street parking requirements to allow for 150 spaces of

retail parking for this mixed use residential and retail development, of course at the premises of 4500 Wisconsin Avenue, NW and would ask for a second.

MEMBER ETHERLY: Second, Mr. Chair.

CHAIRPERSON GRIFFIS: Thank you very much, Mr. Etherly. In the brevity of time, I am going to not say a lot. No, I think the submissions that we have today have obviously gone to the requirements and the test of the variance. I think the aspects of the historic building, the preservation of that historic, the adaption of mixed use and residential on top of it, have created as stated, not to mention just the structural issues but also the design and urban setting issues have created a uniqueness and obviously the practical difficulty in all of these variances and frankly, they're all very tied together.

So other discussion? Any other comments?

VICE CHAIRPERSON RENSHAW: Just to ask, Mr. Chairman, how we might should we say pinpoint some of these issues of ANC-3-F, how are we going to handle them?

CHAIRPERSON GRIFFIS: Yeah, I am open for a brief discussion on that because as I -- I was trying to figure out how we would do that. My hesitancy is always conditioning our orders with either things that are not either realistic or enforceable. What I would like to do is have an understanding and if you feel it's strong enough to have an understanding in writing from the applicant, it could be put into the order as established.

VICE CHAIRPERSON RENSHAW: Uh-huh.

CHAIRPERSON GRIFFIS: I don't think -- I mean, I think the applicant has made it very clear the fact that they are and will continue to work with the community as their issues come up. It is in their best interest and the community's to accommodate the appropriate parking.

SECRETARY PRUITT: Excuse me, Mr. Chair. Just for clarification, are you talking about the things such as the agreement about the antennas and issues of that nature?

CHAIRPERSON GRIFFIS: Yes.

SECRETARY PRUITT: The Board really wouldn't have any jurisdiction on enforcement of that. I mean, that's the concern I would have if you attach it to the order. I would suggest just maybe make it part of the record as opposed to being attached with the order.

CHAIRPERSON GRIFFIS: Yeah, I think that's well-said.

MEMBER ETHERLY: Pardon me, Mr. Chair. I would definitely be amenable to that approach as opposed to attempting to condition in any hard and fast way. I believe the applicant has stated on the record that they are amenable to some type of agreement along those lines, perhaps tweaking the language a little bit so as not to impair any of their options with regard to communications access for residents but I do think, Ms. Renshaw, that to the extent we can at least reflect in the record

that there are some outstanding issues that hopefully the applicant and members of ANC-3-F will continue to work through, I think the record demonstrates very strongly how consistently the applicant has endeavored to work with the community through various forms, task forces, what have you and I think that the applicant should be commended to some extent for helping to set that standard. Thank you.

CHAIRPERSON GRIFFIS: I absolutely agree. And quite frankly, at first look at this application, I was anticipating quite a large line of opposition based on all of the issues that it was touching and I think it's clearly said and doesn't need to be overly repeated but the applicant has done a great job in terms of working with the community and mitigating any sort of adverse impact that might have developed on this.

So I would -- if there aren't further questions, ask for all those in favor signify by saying aye.

(Aye)

CHAIRPERSON GRIFFIS: And opposed? And why don't we record the vote and then I have a few things to go through.

MS. BAILEY: The vote is recorded as five, zero, zero to approve the application. Mr. Griffis made the motion, Mr. Etherly second. Mr. Hannaham, Ms. Renshaw and Mr. Levy in agreement and I'm assuming this is a summary order, Mr. Chairman.

CHAIRPERSON GRIFFIS: No, in fact, what I'd like to do is ask for a draft order from the applicant to be put in. I

would anticipate that this would incorporate 3-F's issues and how you want to deal with those. And the draft order obviously will be reviewed and rewritten by us and we should put that out fairly quickly. Obviously, the more detailed yours are in terms of findings of facts and conclusions of law, the faster we can turn it around.

And is that acceptable?

MR. DAVIDSON: Absolutely.

CHAIRPERSON GRIFFIS: Okay, very well.

SECRETARY PRUITT: Mr. Chairman, do you have a time frame you want to establish or just when the applicant gets it to us?

CHAIRPERSON GRIFFIS: I think their schedule is going to be faster than ours, so --

SECRETARY PRUITT: Okay, great, so whenever you can --

CHAIRPERSON GRIFFIS: Yeah, that's what I would do. Fabulous. All right, thank you all very much. This would, of course, conclude the morning session of April 9th, 2002. Now, we are at 4:20. We're going to take 10 minutes and be back, 4:30.

We're going to call the afternoon. We have, if I'm not -- well, we're going to call the Trautwine application first in the afternoon.

(Off the record 4:22 p.m.)

(On the record 4:45 p.m.)

CHAIRPERSON GRIFFIS: All right, good afternoon, ladies and gentlemen. And believe me, we do appreciate your patience in staying so long this afternoon waiting for the first case of the afternoon to start but I will ask that the hearing please come to order, and this being the 9th of April 2002 public hearing of the Board of Zoning Adjustments, District of Columbia. My name is Geoff Griffis and I will be the Chair today.

And joining me today is the Vice Chair, of course, Ms. Anne Renshaw. On my right and behind me is Mr. Curtis Etherly. Representing the National Capitol Planning Commission is Mr. David Levy and representing the Zoning Commission is Mr. May. Copies of today's hearing are available to you. They are at the table as you entered into the hearing room. Please be aware, of course, that these proceedings are being recorded. So we will ask that you speak into the microphone with the microphone on so that we can get you on the record.

I will, indeed, ask you to turn off all cell phones and beepers at this time so that we don't disrupt the proceedings. All persons planning to testify, of course, either in favor or in opposition will fill out two witness cards and you may have for this application fill out witness cards before, but we will need to do that again, and upon coming forward give them to the recorder to speak.

This is the continuation of the case, but just let me run through the order again. Of course we would have the

beginning statement and witnesses of the applicant of which I don't think, and I will be refreshed on my recollection, but I do not believe we've made it through that. We have government reports, Office of Planning, et cetera, get to the ANC reports. We will move onto parties or persons in support and parties or persons in opposition and then, of course, have closing remarks by the applicant.

Cross examination by the witnesses is permitted by the applicant or parties. The ANC in which the property is located is automatically a party in the case. The record will be closed, of course, at the conclusion of each case, except for any materials specifically requested by the Board. The Board and staff will specify what materials we are requesting and the dates which we will need those submitted 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 in each case be held in the open before the public. The Board may, consistent with the rules of procedure and Sunshine Act, enter executive session during or after the public hearing on a case for purposes of reviewing the record and deliberating on the case.

The decision of 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 members of the Board in conversation and we will -- well, it is

quarter to 5:00 now starting this and we have reworked our afternoon schedule to have the in the afternoon. I will update people as we are close to 6:00 o'clock. It is my full intention to finish this case today, so let's see if we can do that and why don't we call the first case of the afternoon?

MS. BAILEY: Mr. Chairman, prior to calling the case, I just wanted to put on the record that appeal number 16849 of Robert Lehrman, the appeal has been rescheduled, it has been rescheduled to September 24th, 2002, first case in the morning. That being said, Application Number 16810 of Lori Trautwine, pursuant to 11 DCMR 3103.2 for variances from the minimum lot dimensions requirements under Section 401, lot occupancy requirements under Section 43, side yard requirements under section 405, court requirements under section 406, rear yard requirements under section 404 and the non-conforming structural requirements under subsection 2001.3 to allow an addition to a single family dwelling in the R-3 district at premises 1324 27th Street NW, square 1236, lot 818.

Mr. Chairman, all of the witnesses were sworn in previously. I don't see anyone here who was not here before and so the case is now ready to go forward.

CHAIRPERSON GRIFFIS: Good, thank you very much.

MR. GIESE: Mr. Chairman, I have a preliminary matter. Is now the time to bring that?

CHAIRPERSON GRIFFIS: Yes.

1 MR. GIESE: The -- as you know, there was a
2 recently filed application and the Board should reject this
3 application not only because it was late but also because it was
4 defective. For these reasons, and also because it's the first
5 item to even come close to an application that's put in the file
6 since the public notice was issued on January 10th, that this
7 matter should be dismissed.
8 At the first hearing, all members of this Board
9 admonished Mr. -- at the last hearing, excuse me, all members of
10 this Board admonished Mr. Gell to get his act together by
11 submitting an appropriate application and a final plan by the
12 26th of last month. Mr. Gell chose to ignore this Board's
13 direction by not filing an application till late last week and
14 even then filing a defective application. How much more leeway
15 can this Board give such an experienced practitioner. These my
16 dog ate my homework excuses are too much.
17 His tardiness prejudiced my client in that she had
18 to file a response to what is essentially a guessing game. Mr.
19 Gell was duly warned and enough is enough. On top of the
20 lateness, the application just like the five that preceded it, is
21 defective. He states that with the exception of one point, this
22 application is identical to the previous one. The question is,
23 however, what is the previous one.
24 Last time he dropped in two at the same time and
25 then there were three others. This application is not identical

to any of the five even accepting his one point. The numbers on the self certification are incorrect to the benefit of the applicant and some are otherwise admitted. This is that item there, and this application references past filings, which we are somehow supposed to modify.

The February 12th item cited contains facts that are simply not accurate any longer. I'm not interested in doing his work for him. He's just muddying this whole thing up once again. I see no indication of other materials that are part of the BZA2 application being made a part of this application. There's no detailed statement of intended use, names, mailing addresses, pictures. Now, I know that maybe those are somewhere in the file, but someone is supposed to search for and piece together for Mr. Gell when he puts his application in?

The only plot in the record contains dimensions but no boundaries as required by the BZA 2. The applicant first did not want to get a survey because there wasn't time, then it was because of cost, now it appears to be because someone might contest it. How can this Board judge harm in this case without knowing where the addition will be placed? We have at two-foot setback, two feet from where? Where is the south wall? Where is all this?

This is the first of the four applications in the record since the Board noticed the public application for variances on January 10th, 2002 that actually even comes close to

reflecting that notice. The public has been without a cognizable variance application for nearly four months. This is not proper notice and it should be dismissed on this point alone.

The application is late and defective and Dr. Joiner and I have been here four times already only to have the applicant not meet his obligations. We've carried this over three times for the applicant to regroup. Now is the time to dismiss. The Board has been more than patient and so have the opponents.

CHAIRPERSON GRIFFIS: Okay, thank you. We have a motion to dismiss in front of us, Board members, if anyone wants to speak to that. First of all, actually I'm going to have, you, Mr. Gell, respond first before we do but let me just get clarification. You were talking about notice and you were talking about names, list of names that were not in the file. Did I hear that correctly?

MR. JOHNSON: Yes.

CHAIRPERSON GRIFFIS: Okay, and the names were in terms of like the labels, the adjacent neighbors?

MR. JOHNSON: The labels and so on, exactly. There --

CHAIRPERSON GRIFFIS: So it was your anticipation that this would have been remailed and readvertised?

MR. JOHNSON: Not necessarily. My expectation, though, is that we would have a package that would show an application as it sits and not have bits and pieces scattered

1 throughout the record.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. JOHNSON: And let me tell you, Mr. Chairman,

4 that really depends also I guess I'd like to hear Mr. Gell say if

5 this is a new application and perhaps, it does have to be

6 renoticed. I think we went through this before of whether it was

7 supposed to be an amendment of an application but the original

8 application was for a special exception, I think you'll remember.

9 Then it went to a variance. Then it was change of ownership.

10 Then it went this, it went that, there is nothing left in here

11 otherwise.

12 So I think the point you raise is a good one, is

13 that there is a real question here of whether -- you know, once

14 again, who knows what this is. Maybe, Mr. Gell, as we do every

15 time --

16 CHAIRPERSON GRIFFIS: Okay, let's hear from Mr.

17 Gell and then I want to respond to that. Yeah, Mr. Gell.

18 MR. GELL: Mr. Chairman, I was writing furiously,

19 and I hope I have all of the points down so that I can respond to

20 each one of them. First of all, I need to ask whether the Board,

21 indeed, got both submissions, the March 26th and the April 4th

22 submissions. There was some question apparently, as to whether

23 that had all gone to the Board.

24 Secondly, I did apologize and I do apologize again

25 for having missed the fact that the Board had asked for an

application to be filed that would accord specifically with the relief that we were asking for. The application that we had previously submitted did ask for a number of variances and a special exception. What we did in this most recent, the latest application, which I believe is a correct application, indicates that in fact, technically we do not have to ask for special exception because all of the issues that we need relief from are included within the variances.

That, it seems to me, is an issue not that should not confuse the parties in that it is a technical variance. In fact, the special exception requirements are all included within the variance requirements and having indicated the variances, I think that the parties certainly should have known what we were asking for and could have been ready to come today to oppose our application.

Notwithstanding that, I realize that because there was a lateness in submitting that part of the application, again, it was a goof, a screw-up on our part, I didn't have it in my notes and it wasn't until I saw the transcript that I was able to, in fact, see that we had missed giving you a new application form. But those issues of whether it was a special exception or a variance might lead to some legal memorandum saying that in fact, that was not the relief that we were asking for but it should not deprive the parties from knowing where we were building, what we're building and how it might effect them, which

I believe is Mr. Giese's greatest concern.

I would, therefore, suggest and I would recommend that the record be left open so that Mr. Giese can, in fact, make those representations on the legal basis but I don't think it should stop or delay this hearing or result in a dismissal.

CHAIRPERSON GRIFFIS: Okay.

MR. GELL: We'll get into the issue of the boundaries and so forth, but all of the information had been submitted previously. And as I say, on March 26th, you have the plans, all of the details of the plans were there. People could know exactly what they are fighting.

CHAIRPERSON GRIFFIS: Good, thank you, Mr. Gell. Yes. And I think speaking of the clear intent of the Board, what we were looking for was the submission of documents that we could review in order to approve or deny and we had, in fact, gone through several sessions where there was obviously changes, for numerous reasons, and so there were changes within the plans and the applications were updated. I think our specific request to have documentation submitted into the file was to bring clarity and specificity so that we might proceed in this.

I am of the inclination to deny the motion to dismiss and continue with this, unless Board members have any other comments or questions or opposition to this. I do recall that we spent upwards of two hours one day figuring out whether we were going to continue this or not. Secondly -- well, I don't

1 want to spend the time doing that because I think we've been
2 through an awful lot to flush out the details of this.
3 Mr. Giese, your own written submission where you
4 are saying that the waters are muddy and that you have, in fact,
5 been led astray down a non-specific path, but then goes to
6 outline 10 points of specificity of why you oppose this
7 application and I would just say that the small scope of this
8 project lends itself to a very clear understanding and I think
9 the details of which only come out within the public hearing and
10 the submissions and I think we only get to how to deal with this
11 by continuing with this case.
12 So let me hear from Board members if you have any
13 comments.
14 MEMBER ETHERLY: No comment, Mr. Chair, I think
15 you've summarized it excellently. We are prepared to proceed
16 forward.
17 CHAIRPERSON GRIFFIS: Okay, thank you.
18 MR. MAY: Pretty much the same, ready to move
19 forward.
20 CHAIRPERSON GRIFFIS: Okay. I would say the motion
21 to dismiss is denied. Let's continue and let us -- is there any
22 other preliminary matters at this time?
23 SECRETARY PRUITT: Mr. Chair, that was a motion to
24 dismiss by consensus?
25 CHAIRPERSON GRIFFIS: Correct. Okay, and let us

now quickly, Mr. Gell, if you would outline your day for us. When last we had been through, I believe the architect which was your first witness and I think that's as far as we actually proceeded.

MR. GELL: That is true, Mr. Chairman. I'm going to keep this -- obviously, it's to our interest to keep this as short as we possibly can. I'd like to recall Mr. Zapatka, however, because he can update you on some recent developments both at the ANC and at the OGB, and perhaps mention a couple of things that we think are important points that ought to be reiterated.

CHAIRPERSON GRIFFIS: Yeah, I think --

MR. GELL: We'll do it very briefly.

CHAIRPERSON GRIFFIS: Let me not -- we need to take the time we need. This is the last time we'll be having a public hearing on this. But I think the clarification of just what we have -- I mean, we have the submission. We have the drawings. We actually have the breakdown, which is very helpful, but if you want to summarize quickly through the points, because we've had things in and out, that would be helpful.

And then let me also just clarify, in terms of we had lengthy discussions about other approval processes that this application will have to go through based on its location in the city. However, I want to be very clear, I don't want to spend our time deliberating on matters of, for instance, the Old

Georgetown Board that you brought up. We will take into any formal action that they have done but other than that, we will have our points of deliberation that we will need to accomplish and that's the importance of our utilization of time.

MR. ZAPATKA: Do I need a microphone?

CHAIRPERSON GRIFFIS: Yes. That one does stretch a little bit and then we have a pointer right here if you need to hit the boards. Okay, can you make it?

MR. ZAPATKA: Yeah, thanks. What I'm going to do again, for the sake of brevity, is simply describe the plan that we have before us today which is for an addition to the existing house at 1324 27th Street whose footprint, the addition -- the footprint of the addition 10.3 front to back 8.9 side to side, which includes a two-foot side yard setback.

The roof plan -- that's the block plan, roof plan, shows the same. On the first floor, this setback again, is two feet from the property line, what we understand to be the property line, the corner of the house here. This thickness of wall measures nine inches, the internal space 10 feet so 10.9 from there to there. Two feet in for the side yard for the setback from the property line and again, 10.3 front to back which is matching the body of the neighboring addition, not including the chimney beyond and the 8.9.

Internally, it leaves rooms of 9.6 wide, 7.3 -- or 9.6 deep, 7.3 wide, kitchen and mechanical laundry and so forth

on the first floor and on the second floor, an extra bedroom, 9.6 by 7.3.

I'd like to point out also that in these plans, the intention is to preserve as much of the internal structure of the house so that the existing chimney stays but perhaps, could be made into a working fireplace using the existing flu. The existing stairway is kept. The wall between the front and the back rooms is kept but the opening shifted and in the rear, the back window sealed and the door shifted, so there's some slight shifting things going on within those walls but otherwise pretty much the same as what's there in terms of maintaining the composition of the original house.

On the second floor this rear bathroom is reconfigured for a linear bathroom on one side and closets on the other and its existing window becomes the opening into this rear bedroom.

And just for further clarification at a much larger scale, you see the kitchen with a bank of appliances and countertop on this side, refrigerator, countertop, furnace on this side and then upstairs, room for a twin sized bed, a dresser and a chair again within that 9.6 by 7.3 internal footprint.

The front, same as always, the crumbling concrete stoop replaced with a brick stoop to match that of the neighboring houses. The rear elevation, the exterior of the addition in brick, the rear elevation showing the door from the

kitchen and a window above for the bedroom.

The profile through the house showing once again, the addition following the same depth of the body of the neighboring addition but not going past the brick chimney which extends beyond in that case, kitchen below, small bedroom above. This profile shows the back of the house with its 18-foot height and a profile through the houses of the -- the three story houses of Dunbarton in relation to the two story houses of 27th Street. The front of the Dunbarton Street houses measure 28, the back of the 27th Street houses, 18.

This design is produced in response to the last Old Georgetown Board's comments which were the following. One is the Board expressed an interest in seeing a full width addition on the back of this house as opposed to an L shape. We gave that serious consideration but ultimately felt that it was important to respond to the neighbors' concern on Dunbarton, that the property line not be built so it's held back two feet.

The other recommendations on the part of the Old Georgetown Board were to eliminate the north window, which was eliminated which would allow for privacy as well as allowing for brick facing to go up here if necessary, as there's a two-foot width available. The other request was that the rear yard be a little bit bigger, so by pulling the addition back to this line, the rear yard became bigger and then finally, the exterior stairs to a lower utility cellar were taken out all together. Any

excavation for such a project would be rather minimal and involve the excavation needed for introducing a slab on grade or footing type foundation 30 inches below grade.

So this is where we are with the design. Again, there's this question about a gap between the additions. There are a couple of things that can be done with that. First of all, it could be covered over if the neighbor wanted to maintain that gap. It's been done in other cases in Georgetown that I've seen and the interior stays dry. This is covered on the top and on the front. It seems more practical to actually join the two if the neighbor of this house would be willing to consider that option.

CHAIRPERSON GRIFFIS: So you're saying you would continue the party wall on the existing structure all the way down to the addition.

MR. ZAPATKA: Yes, I mean, that would seem to be the most logical and prevent any discussion about a gap left over, but it means joining the two walls, right but continuing the existing party wall.

And yes, so again, the response was to eliminate exterior stairs in the three-foot side court, eliminate the utility cellar below, eliminate the north window on the side and bring the addition back and then the only area which we did not conform to that request was by not making it a full width addition but keeping two feet back from the property line for the

sake of the Dunbarton Street houses.

And then very quickly to remind you with photographs, the -- originally, the house had a very large weed tree behind it, a towering weed tree, that cast quite a bit of shadow over everything. The owner had that removed shortly after purchasing the property. And then in terms of sunlight on the faces, the rear faces of the Dunbarton Street houses, you can see from the roof of the existing house at 1324 an equal amount of light on both 2702 and 2704 Dunbarton despite the fact that 2704 Dunbarton is not behind the existing house but 2702 is.

And that in the winter light, when the sun is lower, the shadow of the existing house slides across the Dunbarton houses during the course of the day. This upper one shows the shadow at 11:00 a.m. and below at 1:00 p.m. So the light is a little bit different in the middle of the winter. In the middle of the summer, July 27th, again, you can see that the light, when the sun is much higher is equal on both sides regardless of what is in front of it.

MR. GELL: And I might add, that's without the tree that has been shading those properties for many, many years.

CHAIRPERSON GRIFFIS: The photographs are taken after the tree was removed? Is that your point?

MR. ZAPATKA: In these photographs the tree is still there behind the blue wall. It's kind of a gigantic weed tree as I said, yeah, casting a shadow over everything which is

1 far greater than any shadow that the two-story house on 27th
2 casts on the rear of the Dunbarton Street houses in the middle of
3 winter when the sun is quite low and the shadow is traveling
4 across the base of those houses.
5 CHAIRPERSON GRIFFIS: Okay.
6 MR. ZAPATKA: But again, this summer view again, in
7 the middle of the summer, the sun is very high and it's
8 indifferent as to what's in front of it.
9 MR. MAY: Can we look at those up close, get those
10 passed around?
11 CHAIRPERSON GRIFFIS: We got those submitted in at
12 one point, did we not?
13 MR. GELL: Yeah.
14 MEMBER LEVY: Those are in the record.
15 CHAIRPERSON GRIFFIS: My stack of file here. I'm
16 just -- it's fine to take a look at them right here, pass them
17 around.
18 MR. ZAPATKA: And finally, after presenting this
19 scheme last Thursday, we had approval from the Old Georgetown
20 Board for the design concept. We have the -- yeah, okay. Yeah,
21 and the ANC did not support that proposal on April 2nd. The Old
22 Georgetown Board gave a concept, a design concept approval April
23 4th.
24 MR. GELL: I might point out that the ANC is not
25 opposed to an addition. In fact, had approved a three-foot

setback which also included a three-foot part of this addition which would have been at the property line, that is full width, plus the basement and other things. And they specifically did not supersede their earlier approval. They were simply saying that as far as the two-foot submission, they couldn't see their way to supporting it.

We were, of course, in a bind because we knew that what the ANC wanted was not satisfactory for the OGB and it wouldn't have done us any good to get that approval and then go to the OGB and get turned down. So we did the best we could and we don't think -- we think the difference of a foot is not going to make that much difference but in fact, the ANC did approve three feet.

MR. JOHNSON: Well, actually to clarify that, the ANC was told that --

CHAIRPERSON GRIFFIS: Why don't you keep it for cross examination. Let him finish with his witness.

MR. JOHNSON: Cross examination of Mr. Gell, because that's just something that Mr. Gell just said.

CHAIRPERSON GRIFFIS: That's fine but I think we can incorporate it -- well, well-said, but why don't we do it under the auspice of the witness that was there that brought up the ANC and the OBG, if you don't mind? I just want to finish with him.

MR. JOHNSON: Okay.

CHAIRPERSON GRIFFIS: We'll keep it logical and then we'll move on, unless he's all done now, in which case we can bring it up.

MR. GELL: I'd like Ms. Trautwine to have an opportunity to submit some information for the record.

CHAIRPERSON GRIFFIS: Okay, let's have questions of the architect first from the Board. Then let's go to cross examination and then we'll move onto the other witness. Board members, questions?

VICE CHAIRPERSON RENSHAW: Mr. Zapatka, you said that the Old Georgetown Board approved on April the 2nd a conceptual?

MR. ZAPATKA: April 4th, on Thursday --

VICE CHAIRPERSON RENSHAW: Thursday, design concept.

MR. ZAPATKA: -- a design concept was approved, right, with the understanding that of course, there's another round to go with the permit set of drawings to approve construction details, all the details of actually building, such as structure.

VICE CHAIRPERSON RENSHAW: It says that it is just an early draft, all right, and they recommend further study of the nine-inch gap.

MR. GIESE: Can I ask what you're looking at? Are you looking at -- has that been submitted, the OGB item?

VICE CHAIRPERSON RENSHAW: Did you get a copy of that?

MR. GIESE: I got a copy from somebody else, yeah. I didn't see --

CHAIRPERSON GRIFFIS: You don't have a copy of it?

MR. GIESE: It wasn't in the record.

VICE CHAIRPERSON RENSHAW: It has no exhibit number.

MR. GIESE: No, there's no exhibit number.

VICE CHAIRPERSON RENSHAW: It was just submitted.

MR. GIESE: Oh, I see.

MR. GELL: Earlier today I did offer it to Mr. Giese. He said he had a copy of it. I know that the OGB sent copies to me and to Mr. Johnson and Mr. Giese, so we all have them. I would be happy to hand him a copy as well.

MR. GIESE: No, no, I have a copy of it, but I thought he wouldn't even submit that there. It's not even a draft. They refer to it as an initial draft. It doesn't look like it's approved by anybody. It looks like something maybe some staff member there put out and you know, it's unclear what it is. It's a -- what does it say there for draft? It says, "Initial, initial draft" or something, very, very early draft.

VICE CHAIRPERSON RENSHAW: The appendix recognition is only an early draft.

MR. GIESE: Yeah, I think it's emphasized there, it

1 says here, "A very early draft" of this. I don't know what
2 that's supposed to mean. I think we -- don't we look at things
3 that the OGB has done is --
4 SECRETARY PRUITT: Mr. Chairman, excuse me, I'd
5 just like to make a point. The Board acts independent of OGB.
6 It is also -- it's often very good to have their advice, but you
7 can make a decision independent of them having a completed
8 process.
9 CHAIRPERSON GRIFFIS: Okay.
10 MR. GELL: Mr. Chairman, we did include the cover
11 letter, which makes it clear that this was not a final decision
12 by them, because it does have to go to the Fine Arts Commission
13 for final approval. It is a reflection, however, of what
14 happened Thursday night, Thursday afternoon, which was, in fact,
15 the Board looked at our plans and said, "We think this is
16 approvable and went onto the next case. So -- and heard, by the
17 way, heard from the other parties as well.
18 MR. GIESE: Mr. Chairman, when he says that, this
19 isn't even approved by the OGB yet --
20 CHAIRPERSON GRIFFIS: Well, I think it goes --
21 MR. GIESE: -- let alone the Commission of Fine
22 Arts. Let alone anything.
23 CHAIRPERSON GRIFFIS: Right. Mr. Giese, you
24 brought up that point, I think staff, and actually we've said it
25 numerous times, and in fact, when we sent -- when we continued it

from the last case, we asked that they prioritize how they were going to go after their approvals. We are independent of the Commission of Fine Arts and OGB.

I think this is what it is. You've brought up your questions. Clearly this is a conceptual recommendation -- or a recommendation on the conceptual design. I think this Board is adept enough to take this for what it actually is. So we don't need to spend more time on it.

Anything else, Mr. Gell or Board members, questions of the architect, clarifications?

MR. MAY: I have one quick question.

CHAIRPERSON GRIFFIS: Yes.

MR. MAY: I was looking at the photos there from the winter and it seems to me that the 11:00 o'clock in the morning and the 1:00 o'clock in the afternoon may be reversed. You might want to take a look at that because we're seeing sunlight on the west face at 11:00 o'clock but we're not seeing it at 1:00 o'clock and that's -- yeah, I'm looking at -- yeah, I think those two are reversed. If you look at the back of the property that we're reviewing here.

MR. ZAPATKA: It's possible. I might have written it on -- it's possible. They were very close to each other.

MR. MAY: Okay.

MR. ZAPATKA: It's possible. The point of the exhibit is to show the sun travels and a shadow travels across it

and again this is between 11:00 and 1:00. And so it is possible that it is reversed.

MR. MAY: Okay, and what it shows us is essentially the roof line of the existing house blocks the sunlight from the lowest floor of those properties on Dunbarton fairly consistently at that time of year and that an addition would extend that line further to the -- it would essentially block more to that lowest level. What we're really talking about in January is that lowest level of that house.

MR. ZAPATKA: Right, and eventually the whole thing sweeps over at the side of the house. Right, and so in the middle of the summer, it's more likely the time that people are using the exterior patio.

CHAIRPERSON GRIFFIS: Anything else for the architect? Okay. Let's go to cross examination of the architect's testimony. Mr. Johnson, did you want to start? You had a question of --

MR. JOHNSON: Yes, thank you, Mr. Chair. Mr. Zapatka, let me clarify to start with, what we're talking about here is moving at least one foot closer to the Joiner property line than the prior application that we were talking about last month, right? There's a two-foot setback instead of a three-foot setback.

MR. ZAPATKA: Right, that is correct.

MR. JOHNSON: Okay, and --

MR. ZAPATKA: Well, it's partially correct, right, because originally we had three feet worth of full width extended, then another nine feet set in by three feet, so now it's 10 feet three inches set in by two feet, whereas before we had three feet on the property line, three feet stretch -- a three foot stretch right on the property line and then nine feet, set back three feet.

MR. JOHNSON: Okay, and when the three-foot portion of the extension, the one that was full width was presented before the ANC, isn't it true that it was presented as something that you could do as a matter of right? In other words, you could go back three feet as a matter of right and you didn't need any zoning approval to do that.

MR. ZAPATKA: My understanding from studying the plat and the square footages and the lot occupancy is that the house could go a full width another few feet and still be within the 60 percent --

CHAIRPERSON GRIFFIS: Haven't we covered that ground?

MR. JOHNSON: Well, it was suggested that the ANC had approved a three-foot extension and my point is that the argument that was made to the ANC was that that could be done as a matter of right and it wasn't submitted as something for the ANC to pass judgment on, that's all.

And there's been a suggestion here that the ANC

approved something and I don't think it's a fair suggestion given what actually happened.

MR. ZAPATKA: If I might just remark, my understanding is that ANC doesn't approve or reject, but rather reflects concerns within the neighborhood and passes that information on to the Old Georgetown Board.

CHAIRPERSON GRIFFIS: I wouldn't go there. So but I think the reality of fact, and I think you've made your point and that is it presented as a matter of right a three-foot setback, I don't question the validity of that belief if that was so presented to the ANC because, in fact, if you recall this Board was the one that actually discovered the fact that that went to FAR and that's why, I think we are at some of the generations that we have it, but I think we can take that under consideration in terms of looking at the ANC's report.

Mr. Gell, did you want to speak to that?

MR. GELL: Well, yes, Mr. Chairman. While it's true that it was presented as -- the three foot was presented as a matter of right, the ANC was looking at a much larger project than just a three-foot full width project and they did approve that and they could have insisted that that first three feet be set back as well, but they didn't.

CHAIRPERSON GRIFFIS: Right, and what I don't want to do is get into the workings of the ANC.

MR. GELL: Well, that's not what was presented to

the ANC. I mean, the ANC was told it didn't have any choice, so that's wrong.

CHAIRPERSON GRIFFIS: Well, again, I don't think that's something we can solve here and what I want to do is make sure the Board fully understands what your point is and I think it's well-taken but our experience on this Board is that the ANC doesn't necessarily directly speak to all the zoning regulations. If they like a project or an aspect of it, I have found that they are very free in talking about those whether it's a matter of right or not.

So I think it's well-said and not -- I don't think, Mr. Gell, that you're disputing the fact that it may have been -- as the overall project, it was a different configuration, a larger addition, but it may have been presented to the ANC or not -- it may have been presented not as requiring any sort of zoning relief; is that correct?

MR. GELL: Maybe this will shorten it. We did make the statement that we could have three feet as a matter of right.

CHAIRPERSON GRIFFIS: Okay, there it is.

MR. JOHNSON: Okay, and on the remainder of it, I think we're all clear that we're moving a foot closer in at least than we were the last time; is that correct?

MR. ZAPATKA: From this point forward, so we're actually going in two feet away from the Joiner property for the first three feet and then two feet in from the property line

after the first three feet.

MR. JOHNSON: Two feet instead of three feet. That's all, simple question, right?

MR. ZAPATKA: Well --

MR. JOHNSON: It's two feet instead of three feet.

MR. ZAPATKA: I think that's simplifying it because --

MR. JOHNSON: So then no, you don't agree with what -- with the way I just stated it.

MR. ZAPATKA: I don't.

MR. JOHNSON: Okay, let me ask --

MR. ZAPATKA: You have an L shape.

MR. JOHNSON: Let me ask you a different question --

MR. ZAPATKA: Sure.

MR. JOHNSON: -- which is you're assuming that there will be a two-foot setback between the Joiner property line and where the addition starts, correct?

MR. ZAPATKA: That's the idea.

MR. JOHNSON: And that depends in part on the location of the actual property lines in question at the south and at the north, correct?

MR. ZAPATKA: Correct.

MR. JOHNSON: Because the width of the addition is going to be eight foot nine inches; is that right?

MR. ZAPATKA: Correct.

MR. JOHNSON: And that isn't dependent on where the property line boundary actually ends up to be, correct?

MR. ZAPATKA: The width of the addition will be eight feet nine inches, two feet given over to a setback from the property line.

MR. JOHNSON: Okay, and it's going to be eight feet nine inches no matter where you find by survey that the actual boundary lines are located, correct?

MR. ZAPATKA: The intention is that there's a two-foot setback from the property line.

MR. JOHNSON: And that's not what I'm asking you about. I'm not asking about the intention. I'm saying, just to clarify that the plan is that it will be eight feet nine inches wide and that's not going to change no matter where the survey determines that the boundary line is located.

MR. GELL: Mr. Chairman, may I make a quick statement?

CHAIRPERSON GRIFFIS: You want to object to that question?

MR. GELL: I'm sorry?

CHAIRPERSON GRIFFIS: You want to object to the question?

MR. GELL: What I wanted to say was that we've agreed to a two-foot setback. If it turns out that we have less

than 10 feet nine inches, which we're assuming because all of the surveys and plats and everything else tells us we have that, we're still stuck with a two-foot setback. Even if we'd like to have an eight foot nine inch width, we obviously, are not going to be able to have an eight foot nine inch width because we agreed to a two-foot setback.

CHAIRPERSON GRIFFIS: That was my understanding of where he was going but that was your question, Mr. Johnson. Does that answer it?

MR. JOHNSON: I think that answers it.

CHAIRPERSON GRIFFIS: Okay.

MR. JOHNSON: So then it would be shorter -- I mean, it would be less wide if it ends up that the property line is located in a different place than you think it is. That's the answer.

With respect to the excavation that's going to be required, I think you spoke to this a little bit but I want to get into some detail here to understand exactly why is going to require excavation and what is the extent of the excavation.

Now, can you describe for me with putting in the footings, what sort of excavation is going to be required in order to put this addition in?

MR. ZAPATKA: All of the excavation information will be provided in the permit set of drawings that will be presented to the Old Georgetown Board for review but I can say

that the excavation will be far less significant than if we had an actual basement. We don't know yet if it will be a slab on grade or a perimeter footing 30 inches below grade. Thirty inches below grade is the front line and that's typical.

CHAIRPERSON GRIFFIS: So at this point you don't know if it's a full wall.

MR. ZAPATKA: No, no, one or the other, I don't know yet.

MR. JOHNSON: And if it is a slab on grade, how much excavation would be required to do that as opposed to placing footings?

MR. ZAPATKA: It's pretty similar actually because even with the slab on grade, you'd need a turned in perimeter footing about four inches.

MR. JOHNSON: And so that would be at least what, 30 inches of excavation that you're going to have whether you're doing footings or whether you're doing a slab on grade?

MR. ZAPATKA: I think it's safe to assume in that neighborhood, yeah, two to two and a half feet of excavation.

CHAIRPERSON GRIFFIS: Well, let's be very clear. I mean, obviously, any of the foundation that goes here are going to have to go below the frost line which is where he's getting his 30-inch dimensions.

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: And it matters on what kind

of structural -- based on cost and design what you can choose. If you have a slab on grade, you can have a turned down slab.

MR. ZAPATKA: Correct.

CHAIRPERSON GRIFFIS: And you'd essentially have the entire perimeter of a 30-inch trench that would then be poured solid concrete. You could have footings, you could have round, you could have square, you could have concrete block. The bottom line, there's a minimum of -- where's our structural engineer -- at least three holes in the backyard.

SECRETARY PRUITT: Excuse me, Mr. Chairman, I was just going to say, this -- that's a permitting issue and it comes under building codes.

CHAIRPERSON GRIFFIS: No, but I think I'm allowing a little bit of latitude here because I think Mr. Johnson is thinking is -- I imagine you're going to turn this into something else. So I just wanted to get to that so that we can get on.

MR. JOHNSON: All right.

CHAIRPERSON GRIFFIS: But is that clear? Does that answer your question?

MR. JOHNSON: Well, I think it's as clear as it can be right now, which is that there will be some significant excavation as part of this.

CHAIRPERSON GRIFFIS: Yes.

MR. ZAPATKA: I wouldn't call it significant, but there will be some excavation required, yes.

CHAIRPERSON GRIFFIS: Don't make me get the Webster and define --

MR. JOHNSON: We, obviously, would think it's significant --

CHAIRPERSON GRIFFIS: Right.

MR. JOHNSON: -- two feet from the property line. With respect to the OGB now, you know that the OGB hasn't taken any official action at this point, correct?

MR. ZAPATKA: On Thursday, April 4th after making my presentation --

MR. JOHNSON: It's just a yes or no. I mean, do you agree with me that there's no official OGB action at this point, right?

MR. ZAPATKA: My understanding is that there's no finalized action until it's in writing. I was verbally told that we have a concept of approval, approval for the design concept.

MR. JOHNSON: Now, do you disagree with me that there's no official action by the OGB as we sit here today, just yes or no?

MR. ZAPATKA: Would you repeat that question, please?

MR. JOHNSON: Well, I'm asking --

MR. ZAPATKA: I agree, yes, absolutely.

MR. JOHNSON: And in the fax that Mr. Martinez sent, he also emphasized that zoning concerns are not the purview

of the Commission, correct?

MR. ZAPATKA: That is correct.

MR. JOHNSON: All right, and let's talk about the photographs for a moment, that you have handed up, that show the sunlight coming over the existing house. And I think this is clear. You looked at the sunlight that's reflected onto the houses on Dunbarton during the wintertime, correct? That's what one of those sets of photographs shows.

MR. ZAPATKA: That's correct.

MR. JOHNSON: And those particular photographs don't focus on the sunlight that's on the ground at that point. They just focus on the sunlight that's on the back and upper portions of those houses, correct?

MR. ZAPATKA: Actually, a shadow of this is -- it can't -- wherever it hits a vertical surface, it also comes across the horizontal below it. It can't just hit a vertical. It also crosses a horizontal.

MR. JOHNSON: And that will be true when the addition comes 10 feet three inches back as well. That will cast a shadow across onto the ground of those Dunbarton houses, correct?

MR. ZAPATKA: Absolutely.

MR. JOHNSON: And that's true no matter what time of the year you're talking about, whether it's wintertime or summertime, correct?

MR. ZAPATKA: That's not true. It's true in the winter. In the summer the sun is very high and these photographs show from the middle of July that the sun is -- these houses are so insignificant in height in the summer. Let me go to the model. See, in the winter the sun is doing this, so it's making these buildings -- the sun is low in the winter so it makes these buildings cast a shadow against these buildings.

But in the summer it's quite high and 18-foot houses on the ground are not going to prevent the sun from going down here into all of these backyards.

CHAIRPERSON GRIFFIS: Can you give me directions on this again?

MR. ZAPATKA: This is south, this is north.

CHAIRPERSON GRIFFIS: Okay.

MR. JOHNSON: Well, have you taken photographs that show the sunlight on the ground in any of these periods of time?

MR. ZAPATKA: Yes, these are the photographs from the summer, if you look there. See the sun reaches the ground.

MR. JOHNSON: Well, I see it reaching the houses but where is the sunlight on the ground?

MR. ZAPATKA: Here on this patio at 2702.

MR. JOHNSON: Okay, just a couple of spots where it's coming through the trees, is that what you're talking about?

MR. ZAPATKA: Yeah, when the giant weed tree was still there, the leaves are sort of dappled over the sunlight

that's hitting the floor of this patio and remember, too, this is from the roof of the existing house at 1324, so that sun is coming right down onto that patio. Yeah, that's 2706.

MR. JOHNSON: Okay, let me ask you a couple of questions about the height. Now the height of the addition is going to be 18 feet; is that right?

MR. ZAPATKA: At the very back, the roof slopes.

MR. JOHNSON: And what would be at the front of it?

MR. ZAPATKA: I think it's 18.6 where it meets the existing house.

MR. JOHNSON: And is it possible to build a wall that's 18 feet to 18 feet six inches high and a little two-foot setback without coming onto the Joiner property to the north?

MR. ZAPATKA: I've seen walls built in tighter spots, actually.

MR. JOHNSON: So that's possible?

MR. ZAPATKA: Yeah.

MR. JOHNSON: All right, and what is your plan to confine that construction to the Trautwine lot and avoid any incursion onto the Joiner lot?

MR. ZAPATKA: Yeah, there's really no reason that anyone would have to go into the Joiner property. The concrete block can be laid up from within the addition and then the brick facing that would go on the outside which is purely decorative, would be applied by very shallow scaffolding.

And, again, if the Joiners did not want to see brick on that wall, it could be parched or painted but the concrete block, which is the structure, is built all from -- you know, within the volume of the addition.

MR. JOHNSON: Well, if they put scaffolding, is the scaffolding going to be two feet wide or less? Is that what --

MR. ZAPATKA: I'm sure -- you can have scaffolding that are planks of 14 inches in width. I mean, it depends on how you make it. It's -- there isn't a standard size.

CHAIRPERSON GRIFFIS: You can build from the inside. Let me ask a quick question, just reiterating on the roof height, I think there as previous testimony and let me make sure that it's staying the same, that you're maintaining the same pitch of the original roof and the addition would be roofed with the same roofing system.

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: So you would have one roof which would extend all the way down.

MR. ZAPATKA: Right.

CHAIRPERSON GRIFFIS: Now, you've just testified that the rear height -- the lowest point at the addition is 18 feet.

MR. ZAPATKA: Eighteen here, 18.6 there.

CHAIRPERSON GRIFFIS: Okay, all right, where are you measuring to there, is that to the top of -- I'm assuming

that there's a -- well, maybe I shouldn't but --

MR. ZAPATKA: It's where the addition meets the existing roof.

CHAIRPERSON GRIFFIS: Okay but --

MR. ZAPATKA: And this continuous --

CHAIRPERSON GRIFFIS: -- and you're measuring 18 feet at -- to the top of the structure and the membrane or the top of the joist?

MR. ZAPATKA: The top of the structure.

CHAIRPERSON GRIFFIS: Okay. Are you indicating that it's exactly 18 feet or do you want to be not as clear on that?

MR. ZAPATKA: Well, again, I'll repeat what I guess said in the last hearing, which is that again these are schematic drawings, not vague drawings but schematic drawings.

CHAIRPERSON GRIFFIS: Okay, and that's where I'm going here because what I'm looking at is your drawings on the back have 18 feet one and an eighth inch, God bless your accuracy with that but it seems to be computer generated.

MR. ZAPATKA: Yeah.

CHAIRPERSON GRIFFIS: And your other rear elevation section is showing 18 feet eight inch and seven-eighths of an inch which is even more precise.

MR. ZAPATKA: Yeah.

CHAIRPERSON GRIFFIS: So I just want to make sure,

we're talking in a ball park of 18 feet within a matter of inches if not fractions of inches.

MR. ZAPATKA: Yes, yes, we are.

CHAIRPERSON GRIFFIS: Okay. And the maintain -- the exact dimension is going to be based on the original slope of the existing structure.

MR. ZAPATKA: Absolutely.

CHAIRPERSON GRIFFIS: Okay.

MR. ZAPATKA: Right, and that is all brought forward again with exact precision in the permit set of drawings.

CHAIRPERSON GRIFFIS: Well, right.

MR. ZAPATKA: Yeah, but 18 give or take a few inches, right.

CHAIRPERSON GRIFFIS: Right.

MR. JOHNSON: Have you discussed this particular plan with the contractor?

CHAIRPERSON GRIFFIS: For what purposes?

MR. JOHNSON: Well, to see if a contractor's been asked whether it's possible to built an 18-foot wall it two feet of space.

CHAIRPERSON GRIFFIS: Okay, I understand your point there. I think that's going to have to be left to our discretion on whether we're reviewing something that seems to be impossible, because that doesn't go the zoning regulations or, in fact, any other relief that's being sought whether it's buildable. I let

you have a little bit of latitude in terms of scaffolding because I thought you were going somewhere else with it, but I don't want to spend a lot of time trying to figure out whether they can build this or not because none of here can figure that out, nor do we require that.

MR. JOHNSON: Well, I think the question is also --

CHAIRPERSON GRIFFIS: Would you agree? The Board members disagree with me.

MEMBER ETHERLY: I agree. Mr. Chair, I would prefer that we move on from this line of questioning.

CHAIRPERSON GRIFFIS: Okay.

MEMBER ETHERLY: I don't see it as an impossibility, and frankly, if we approve this and they build the house and they don't want them on the neighboring property, it would be trespassing and you know, it's not a matter of zoning.

CHAIRPERSON GRIFFIS: Okay, I agree. Mr. Johnson?

MR. JOHNSON: Thank you. And I'll move on. The only point I wanted to make was that the impact on the adjoining property is something to be considered, but let me ask, Mr. Zapatka, with respect to utilities that were previously going to be in the basement, are all of those in the new plan inside the house somewhere? Are there any utilities being placed in the backyard?

MR. ZAPATKA: No, they're all inside.

MR. JOHNSON: And that includes that there's not

like a heat pump or an air conditioner out in the backyard?

MR. ZAPATKA: If there is central air conditioning, there has to be an exterior condenser which can either be in the backyard or on the roof of the house.

MR. JOHNSON: And is that part of this plan anywhere?

MR. ZAPATKA: It's not shown in this.

MR. JOHNSON: Is it part of the plan?

MR. ZAPATKA: I just haven't gone out into the mechanical yet.

SECRETARY PRUITT: That's not before the Board. It's a building code issue.

CHAIRPERSON GRIFFIS: Okay.

MR. JOHNSON: Well, it's not okay. I don't agree with that, but I'll move on.

CHAIRPERSON GRIFFIS: If you want to speak quickly to how we would actually incorporate that into any sort of regulation of control we'd have over this, I think I'll allow you to do that.

MR. JOHNSON: The issue is, if you're going to put noisy utility equipment in the backyard right in back of the --

CHAIRPERSON GRIFFIS: The fact of the matter, if the addition didn't happen, they could put central air in there and put a condenser on the property. I mean, we don't have jurisdiction over regulating that.

MR. JOHNSON: Well, then we'd have a nuisance claim potentially in that situation, but here we're talking about the impact on the adjacent property which is a necessary part of the review of this plan.

CHAIRPERSON GRIFFIS: Are there condensers anywhere else in the neighborhood?

MR. JOHNSON: I don't know the answer to that. I don't think so. Most of the houses don't have it.

CHAIRPERSON GRIFFIS: So there is no central air conditioning in this neighborhood.

MR. LAKE: Not in 1322, I've never seen anything in 1316, the one next door.

MR. JOHNSON: Window units, I mean, window units make noise also.

CHAIRPERSON GRIFFIS: Yeah, okay, let's move on.

MR. JOHNSON: Is there a regrading going on in the backyard at all?

MR. ZAPATKA: The rear garden would be, yes, regraded, brought down, so earth would have to be pulled out from the back and taken through the house to a dumpster or truck.

MR. JOHNSON: And how far is it going to be brought down?

MR. ZAPATKA: This profile drawing shows that this little stretch here, the idea is to flatten that so that both the occupants of this house have more privacy as well as the

neighbors, so that's two feet 10 inches there. So this segment of earth would be brought down so that there's a level patio in the rear.

MR. JOHNSON: All right, it's two feet 10 inches on the -- I guess it would be the west side. What is it on the east side?

MR. ZAPATKA: That's the east. On the west side it's not marked but four and a half feet maybe. So there's a fair amount of earth to be removed in order to level that.

MR. JOHNSON: And the last question, with respect to the rear wall of the existing dwelling, I just don't think it was clear, is that rear wall coming out or is it being retained in this plan?

MR. ZAPATKA: In these plans, no walls are being removed. All existing walls will be retained as much of possible with the advice of a structural engineer specializing in historic preservation. The rear wall, in particular, the window in the back would be filled and the door shifted to the side and upstairs the window remains the same. So I would say it's a shoring up of an existing wall. It's not removal of an existing wall.

MR. JOHNSON: That's all I have.

CHAIRPERSON GRIFFIS: Thank you.

MR. ZAPATKA: Depending -- I'm not a structural engineer but if a structural engineer says it has to be removed,

then -- but I don't think that's the case.

MR. JOHNSON: And that's not part of the plan.

MR. ZAPATKA: No, only if required by a structural engineer.

CHAIRPERSON GRIFFIS: Okay. Mr. Giese?

MR. GIESE: Mr. Zapatka, the north wall of the present house is nine inches, correct?

MR. ZAPATKA: I'm sorry?

MR. GIESE: The north wall of the present house is nine inches, correct, nine inches wide?

MR. ZAPATKA: That's right, yes.

MR. GIESE: Okay. The interior space of the house it 10 feet.

MR. ZAPATKA: That's what I measured, right, nine and 10.

MR. GIESE: Right. The plat that we have which was -- to make sure there's no confusion here, when we say plat, that doesn't include any survey or any boundaries or anything else, it doesn't tell you where it is.

MR. ZAPATKA: Right.

MR. GIESE: It just tells you that it's 10 feet nine inches wide.

MR. ZAPATKA: That's right.

MR. GIESE: So the way you have it laid out there, the -- and I guess what you claim anyway is that you wouldn't own

1 any of the south wall; is that correct?

2 MR. ZAPATKA: No. The plan shows a -- if you look

3 all the way to the right, do you see the 10 foot nine inches?

4 That is inclusive of the entire addition, all of its walls and

5 the two-foot setback from the north property line.

6 MR. GIESE: That's not my question. My question

7 is, is this wall is nine inches; is that correct, it's nine

8 inches wide?

9 CHAIRPERSON GRIFFIS: Approximately.

10 MR. GIESE: You measured it earlier, it's nine

11 inches wide. The interior space is 10 feet wide, correct?

12 MR. ZAPATKA: Yes.

13 MR. GIESE: So if you go across 10 feet nine from

14 the edge of this wall across 10 feet 9, then you have no

15 ownership of this wall; is that correct?

16 Ms. Trautwine doesn't have any ownership of that wall.

17 MR. ZAPATKA: That's what it appears to be.

18

E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

MR. GIESE: So when we're talking about a party wall, and you come and you say something to me about a party wall, what are we talking about?

MR. ZAPATKA: A party wall is a wall that is shared by two properties.

MR. GIESE: Shared in ownership.

MR. ZAPATKA: In structure.

MR. GIESE: I would think the technical definition would be shared in ownership.

MR. ZAPATKA: Okay.

MR. GIESE: So when we're talking about a party wall here, at least the way you have this laid out now, there is no party wall, correct?

MR. ZAPATKA: Right, this -- the --

CHAIRPERSON GRIFFIS: I think we may have some clarification on some historical data with the 10 foot nine and the lot. Let's go to Ms. Kress and see if she can enlighten us.

MS. KRESS: Good afternoon, I've walked in a little late and quite frankly, I'm not up exactly on where you are but it did become obvious to me as I was studying the plot plan, and the survey that there was a dimensional difference between and I believe it was 10.9 and 11.4 which is what was measured on the front of the building versus what the plot plan said what's the

width of the property and I did go back and I'm going by my recollection, so forgive me if I'm not completely accurate, but I did go back and tracked it back to the base map. Went back to 1958 and followed it through and it appeared that these properties were 10.9. Both the property that is in question and the one adjacent to it are both 10.9 properties, irregardless of how the architect measured them on the front of the building. That is the surveyed and legal, I believe, property dimension.

What that does is basically say, if you have an eight-inch wall on one side which is reasonable, if you have masonry construction, and you have a 10-foot interior space, you're only one inch into what is then the party wall. Party walls, as all architects know, range from 16 inches to 18 inches, so it appears as if the first property at 10.9 has only one inch into the major joining party wall.

It appears to go up the street or down the street as one may define it, I believe that's -- which direction am I -- okay, north or south, excuse me, and it appears that the neighbor actually then who has taken in the rest of the wall if you follow the dimensions, then takes it in from the property again, is it north or south?

A VOICE: South.

MS. KRESS: South, north? The other direction that then the neighbor who shares the immediate adjacent wall, appears to be taking the dimension from the party wall -- from the next

building as it moves up the block. This is not uncommon and should not be viewed as uncommon. In Washington, as things were built in years past, and dimensioning was not quite as appropriate as perhaps, it is so carefully watched today, you can't build, as you know, without having a double check on your survey. It's called a wall check to make sure it's in the right position, but years ago, that wasn't done.

I don't know --

CHAIRPERSON GRIFFIS: All right, for clarification, I think what was about to be gone to is how we get a 10 foot interior dimension and conceivably then a nine-foot wall which is totally on the property. If you're saying that conceivably, the applicant's house is built with two party walls, that would put the property line in the middle of that wall; is that correct?

MS. KRESS: I'm sorry, this is built with one wall as a party wall, the other wall not. The wall that's not the party wall would have been built at about eight inches. The wall that is the party wall --

CHAIRPERSON GRIFFIS: But if you're looking at Sheet A-4, on the bottom, second floor plan, it doesn't really matter, on the sheet south the bottom side of it --

MS. KRESS: Yes, uh-huh.

CHAIRPERSON GRIFFIS: -- could conceivably the property line land in the middle of that wall?

MS. KRESS: No, because if I can't believe that --

CHAIRPERSON GRIFFIS: It would be on the very southern portion of that wall.

MS. KRESS: That's what I'm saying, here is my assumption. I am assuming that the surveyor and the architect are correct in how they've put their dimensions together. And I'm sorry, I say 10.9, 10.9 in order to have a clear 10-foot interior, means you probably have an eight-inch wall and again, we're guessing, on what is the north side and on the south side you're one inch into what is probably a 16-inch party wall.

And I am saying that this particular property has had the benefit of an additional dimension. And I'm going to say even further if, in fact, the dimensions as presented as 11.4 and 11.6 are correct, so does the neighboring what is labeled neighboring house, they have also benefitted enormously and that if their interior dimensions are and exterior are as presented, then they are well into the party wall of their southern more neighbor, the double lot.

I don't think that is an issue, let me just quickly summarize. I don't think that's an issue. I think the survey plots at 10.9 are correct. I think that whatever you want to build, if you approve it within that 10.9 is correct. I do have a concern about the inches, be they eight or nine, between the properties, because that could be a place for vermin, et cetera. And I do think that space should be taken care of in some kind of way, but I do believe 10.9 is the legal dimension and I do

1 believe that's their dimension to build within and hopefully,
2 with neighbors helping neighbors, they can fill in that nine-inch
3 space so that there is not that crevice between the building.
4 CHAIRPERSON GRIFFIS: Okay, we'll see how that
5 moves along. Thank you, Ms. Kress for everyone's information.
6 MR. GIESE: Could I just add something to that,
7 could I ask Ms. Kress something. I think that when she came in,
8 I think you probably missed that Mr. Zapatka testified about I'd
9 say eight times that that's a nine-inch wall there, that he's
10 measured it as nine inches. He started out his presentation that
11 it's nine inches. It was nine inches on the plan.
12 CHAIRPERSON GRIFFIS: Right, nine inches.
13 MS. KRESS: Which wall is nine inches?
14 MR. GIESE: The north wall, the wall that is not
15 attached to anything else. So if you go 10 foot nine across
16 there, you're going to -- you're not getting there. He's
17 testified to this I guess --
18 MS. KRESS: I agree. I'm sorry, I guess I didn't
19 make myself clear. I do believe there is a gap there and I
20 believe it should be filled. And if this applicant is approved,
21 I am suggesting that that gap be filled.
22 CHAIRPERSON GRIFFIS: Okay, let's get a quick
23 clarification, Ms. Kress, and then I think we need to move on.
24 MS. KRESS: I'm sorry, I see.
25 CHAIRPERSON GRIFFIS: Right, if you incorporate the

nine inches and you go an interior 10 inches, then you're at that line.

MS. KRESS: Because you've got --

MR. ZAPATKA: I have no way of boring through that north wall, so I can't tell you if it's eight or nine but based on my external dimensions, I was coming up with nine. It might be eight but I can't get through the thickness of it, so it might be eight.

MR. GIESE: I don't disagree with you. I think I'm just trying to point up the ridiculousness of trying to do this without knowing where the lines are, just as you say here is we're all sitting here trying to guess where these lines are. Where does two feet start from that he's away from. He wants to go from the property line to the south. Is that right next to my house, is it nine inches away from my house, my mother's house.

CHAIRPERSON GRIFFIS: I think the importance of Ms. Kress' information and the reason she came out here was to establish the fact that she had done some research as is her purview as the Director of the Office of Zoning, to establish the 10 foot nine dimension for the lot and that's all --

MR. GIESE: I appreciate that very much. I think that's very helpful.

MS. KRESS: I'm sorry, that is exactly the issue.

CHAIRPERSON GRIFFIS: Okay, so let's go back to Mr. Giese. You may have questions on --

MR. GIESE: Okay, so I guess what I'd say at least from what Mr. Zapatka has told this Board and what he's told me, I think there is some suggestion talking about a party wall, well, that doesn't fit. That's not part of this at all.

MR. GELL: Mr. Chairman, perhaps I need to clarify. We have said many times we're going to build on our own property. We're not planning on building on Mr. Giese's property. He may very well want us to build a party wall on his property that would extent to his addition to fill in that gap. If he does and gives us permission to do so, and the kind of cooperation we'll need to have, we're willing to do that.

If he doesn't, we're willing to build on our own property and fill that gap by covering both the side and the top to avoid the problems he's referring to, the water the vermin, whatever and that apparently has worked in other places. We're willing to do either one. It seems to me we've covered the issue either way and that that should not any longer be an issue for Mr. Giese and I hope that he'll be cooperative so we can --

MR. GIESE: May I respond to that? I think that would only be fair. He's made his statement in doing it. Mr. Gell keeps harking back to where we started on this was building on the property because they had an 11 foot five inch plan for a 10.9 inch plot on this which is -- you know, didn't work. But then what we did is we moved to the problem of where this is. Is there really a gap?

Mr. Gell has said over and over again, "Gee, maybe there won't be a gap". I don't know, this is -- this goes to the foundation. The --

MS. ZARTMAN: May I ask a procedural question?

CHAIRPERSON GRIFFIS: Yeah, a quick one, Ms. Zartman.

MS. ZARTMAN: I'm under the assumption that we're not going to get through the remaining witnesses in the applicant's case, the city reports and the opposition case by 6:00 o'clock tonight.

CHAIRPERSON GRIFFIS: No, not by 6:00.

MS. ZARTMAN: Can we note -- since I'm at the very end of the que of whoever is going to speak, may I know what the plan is?

CHAIRPERSON GRIFFIS: Certainly.

MS. ZARTMAN: Thank you.

CHAIRPERSON GRIFFIS: As soon as there is one. I'm going to think about that while we finish this questioning so we don't further interrupt Mr. Giese's flow in cross examination and while that happens, we'll figure out what it was because you're absolutely right. I was going to update us before we got to 6:00 o'clock.

MR. GELL: Mr. Griffis, I believe Ms. Zartman has to leave, and I think that's what prompts her question.

CHAIRPERSON GRIFFIS: I see.

MR. GELL: If it would help her and if indeed would help the Board to get through this whole thing today, I'd be willing to let her get her testimony out of turn.

MR. GIESE: Mr. Gell beat me to it. I'd certainly be happy to let her speak. I'd just be jealous that she could get out of here.

CHAIRPERSON GRIFFIS: I won't even touch that one. However, Ms. Zartman, we'll have them move over to give you a chair. Are you finished with your cross examination?

MR. GIESE: No, not at all. I have much more to go unfortunately.

CHAIRPERSON GRIFFIS: Well, Ms. Zartman is going to sit through your cross examination, so when you're done, we'll bring her on.

MR. GIESE: I'm willing to -- as you realize, you've experienced me enough. I have no flow. It's fine with me if she wants to go now. I have no problem with that.

MS. ZARTMAN: Mr. Chairman, we've been through 15 hours in this room on this case or waiting for it. I'm willing to come back at another time.

CHAIRPERSON GRIFFIS: We're not coming back on this.

MS. ZARTMAN: You're going to continue it until whenever tonight?

CHAIRPERSON GRIFFIS: Yes. I'm going to see how

long my Board can stay and how long we have a quorum. I will ask that if there are any emergencies to go on but I can tell you right now, we've scheduled this and we've just rescheduled something from this morning and we're out to September, so there is no other time. We finish this now or we don't finish it.

So with that being said, Mr. Giese, I hope that will maybe --

MR. GIESE: Can I ask you, Mr. Chairman, is that a fair way to proceed here, to keep us in the room in the evening?

CHAIRPERSON GRIFFIS: Fair to who?

MR. GIESE: Fair to the -- I guess I would say fair to the opposition. I think I've made the point several times. I think it's --

CHAIRPERSON GRIFFIS: Well, we can all be a little --

MR. GIESE: I feel a bit set upon on this that I'm not out here making money on this at all. I'm just trying to protect some property here.

CHAIRPERSON GRIFFIS: Neither are we.

SECRETARY PRUITT: Mr. Chairman, excuse me.

MR. GIESE: Sure.

SECRETARY PRUITT: I hate to interrupt but may I make a suggestion? I know that there's a lot of design issues that have been bantered around and a lot of questions still left to be answered but maybe if the applicant actually goes to how

they have met their burden of proof of a variance, it may reduce some of the questions that both Mr. Campbell -- Mr. Campbell, I believe --

MR. JOHNSON: Johnson.

SECRETARY PRUITT: -- Johnson of Campbell and Johnson, Mr. Johnson and Mr. Giese have and it may help shorten the process because if they do meet the burden of proof for one of the variances requested, then they meet the burden of proof for all of the variances requested and that might be a more efficient way of doing so.

MR. GIESE: I think that's a nice idea and I think efficiency is good here, but there are many facets to this and I think this is --

CHAIRPERSON GRIFFIS: Okay, then with that and with our time constraints, Ms. Zartman, why don't you come up, give us what you have. Mr. Giese, you revisit your cross examination and we're going to revisit our schedule for tonight, and also I'm going to ask everyone involved to give me a time that they can go till tonight after Ms. Zartman has finished.

So, please if you wouldn't mind introducing yourself for the record.

MS. ZARTMAN: I do thank you for the courtesy on both sides and at the Board. My name is Barbara Zartman and I'm the Zoning Chair of the Citizens Association of Georgetown. On behalf of the Association and its more than 1,000 members who are

1 residents of the Historic District, we ask that you reject the
2 application for multiple variances at 1324 27th Street because we
3 believe the applicant has failed to meet the burden of proof of
4 the three-prong test required for any variance.
5 While the property in question is small, there are
6 literally hundreds of other small properties throughout the
7 historic Georgetown community as well as other historic
8 districts. They reflect an important part of our history and of
9 the richness of social and economic experience in our many
10 community's formation. Many of these small homes are successful
11 residences for empty nesters, for young couples without children
12 and single professionals.
13 Some have been joined with appropriate zoning and
14 architectural review to make larger houses but that has not been
15 necessary for their success. In this case I must be blunt, the
16 applicant either knew or should have known the limits on the use
17 of this property at the time she purchased it. She chose to buy
18 the property nonetheless. Her ignorance of or inattention to the
19 consequences of zoning strictures should not and cannot entitle
20 her to a variance, nor should it punish the neighbors and violate
21 their property rights.
22 As to the condition of the house, CAGS strongly
23 objects to the argument that having allowed a property to fall
24 into poor maintenance the seller should be rewarded with recourse
25 to variances for a new purchaser. Surely this is a reverse

incentive and works to undermine the standards for historic preservation which is a critical goal not only of CAGS but of the comprehensive plan.

Moreover as to this particular property, at no time during the many months of repeated reviews of a series of alternative architectural plans for different rear additions, was any evidence ever offered that the structural integrity of the rear wall was in doubt. Yet according to the record of this case, it is the replacement of the rear and the side walls that makes for an economic necessity that the addition be constructed so that the property's value will be increased and a loan can be obtained. That is an argument lynch pin for the addition.

If you go there, you have to deal with the question of whether, in fact, the side and rear walls will be replaced. At the OGB hearing last Thursday the project was presented without such a replacement until CAG asked in the public comment period whether such replacement was still intended. The answer was that an engineer had recommended that all be replaced but that an engineer with competence in historic preservation had not yet been consulted.

It was left before the Board that all three replacements might be required. This is a critical issue for the Board to consider. Now, the applicant may have a cause of action against the professional who conducted the inspection when she purchased the home, but neither she nor the architect has ever

presented evidence of structural weakness.

We believe that OGB has to condition its approval based on this and they said as much during the hearing. It was a last minute addition to the understanding of the package before them. Taken at face value, these replacements and the construction envisioned would represent a demolition of all of this little historic house except for parts of the facade. This is not acceptable.

More fundamentally the effort to establish an economic argument for the granting of multiple variances is inconsistent with the intent of the zoning plan. Specifically regarding the three prongs of 3103, we argue there is no case for unique size, shape or topography of the lot unless the definition is changed to mean minor variations of the dimensions or perhaps GPS signature identifying each property as unique.

Otherwise the considerable number of similar sized lots in historic communities would all be, by precedent, entitled to multiple variances. Clearly this amounts to rezoning and is beyond the province of this Board. I do not believe treating each property separately as the Board sometimes has eluded to, is defensible against the 14th Amendment for equal protection.

Second, the practical difficulties and hardships asserted were known at the time of purchase and therefore, constitute a self-imposed hardship. They stem more from the desire of the applicant to turn a tiny house into something that

it is not rather than from an inability to use the property as it presently is. Far from seeking to preserve a historic structure, the plans have called for destruction of at least large parts and in one iteration complete demolition of everything except portions of the front facade with excavation in the plan of a complete basement level all of which would be conducted through the tiny front door of the house. It's a landlocked parcel.

Third, the variances would indeed cause substantial detriment to the adjoining neighbors, as they argue, in considerable specificity in their filings. They cite loss of air and light, privacy and useful enjoyment; indeed, they cite the very real threat to the physical integrity of the walls of their own adjoining homes, the likely nuisance of debris and vermin in the channel at the side of the new construction and the stunning impact during construction of this landlocked parcel. To that extent we are all harmed when the matter of right use of our properties is threatened by multiple variances from the established purpose, intent and integrity of the zone plan as embodied in the zoning regulations and map,

I would not have been here on three separate occasions if CAG did not believe that there are big questions in this little house. The Citizens Association of Georgetown appreciates the opportunity to comment on the case and respectfully asks the Board to deny all five requested variances. Thank you. I would be pleased to try to answer any questions

you might have.

CHAIRPERSON GRIFFIS: Thank you, Ms. Zartman. Board members, any questions?

MEMBER ETHERLY: Mr. Chair, no questions, but I'll just note that Ms. Zartman's testimony I believe is following closely her February 25th submission which is in our record so for --

MS. ZARTMAN: As much as things have changed, the big questions have not.

MEMBER ETHERLY: Exactly, so that would be Exhibit Number 48 for my colleagues.

CHAIRPERSON GRIFFIS: Thank you. Anything else?

VICE CHAIRPERSON RENSHAW: Are you submitting what you have testified to today, Ms. Zartman?

MS. ZARTMAN: I have not, I can do that if you would care to --

VICE CHAIRPERSON RENSHAW: I think so.

CHAIRPERSON GRIFFIS: Any cross examination? I can't believe you silenced them all. You're sure you have to go?

Okay, then we were happy to have you here, Ms. Zartman. Thank you for being here numerous times and I guess you're absolutely welcome to stay and listen to the rest as we proceed.

MS. ZARTMAN: I'll rely on faithful recorders.

CHAIRPERSON GRIFFIS: Indeed. Let me take a minute

here.

(Pause)

CHAIRPERSON GRIFFIS: Okay, we want to continue, Mr. Giese, with your cross examination but let's do talk. We would like, obviously -- well, this Board is prepared to stay tonight to finish this. That does not mean we stay all night. Mr. Giese, just to make total clarification -- well, anyway, we take this out of our days and our professions, so we're not sitting here making money on how many hours we continue on this. The importance is that we do our duty while we're here and get all the information that we need.

I would like to revisit the rest of the evening at 7:00 o'clock and hopefully we'll be finishing up by then. That's 45 minutes from now. To that, we're going to finish the cross examination of yours, Mr. Giese, we're going to go back to Mr. Gell. We will do your entire rest of the case. Then we'll have the further cross examination if there any, and proceed from there and I will have some instruction when we get to that point.

Let me just verify that everyone is without emergencies or family obligations and able to stay at a minimum till 7:00.

MR. GIESE: I would be -- I just -- maybe this is unfair, Mr. Chairman, but one distinction is that I didn't ask for this duty. I didn't volunteer for this.

1 CHAIRPERSON GRIFFIS: And no one is forcing you to
2 stay either.
3 MR. GIESE: No, no one's forcing me to stay.
4 CHAIRPERSON GRIFFIS: Okay.
5 MR. GIESE: There's no doubt about that and I
6 think, as you've seen, in my dedication to this, this is an
7 important project for may family. The house is important.
8 CHAIRPERSON GRIFFIS: Which I assume you would then
9 stay.
10 MR. GIESE: Well, the balance on that is, is as
11 long as your conscious will allow you to withhold myself from my
12 youngest son's birthday this evening. If that's the choice of
13 this Board, then that's fine. I will stay. I'm going to stay
14 till this is done. He's 15 years old today. You know, if that's
15 what you all want, I'm not trying to make a sympathy plea, I've -
16 - this is impinged on -- I know it's impinged on Dr. Joiner.
17 Bringing Vernon down here is not cheap and having four visits
18 down here to simply try and protect an onslaught of your property
19 is --
20 CHAIRPERSON GRIFFIS: Right, I understand.
21 MR. GIESE: -- is a true imposition.
22 MR. MAY: Mr. Chairman, may I interject here.
23 CHAIRPERSON GRIFFIS: Yes, sure.
24 MR. MAY: We can all keep this very efficient at
25 this point. We're all very well versed in this case. If we can

keep all of the questions from the Board and from the parties involved to the point, I believe that we can finish this in an expeditious manner. And I think it's incumbent on all of us staying focused on it and we can all get home to all of our families.

CHAIRPERSON GRIFFIS: Indeed, I would agree. Okay, let's proceed on then. Mr. Giese, we will take into account if you cannot stay through the rest of it. Let me make one final statement. The numerous times that we have continued it, several of the aspects and the issues actually were accommodating a lot of your concerns, so you are not independent of the continuing and the numerous times that are coming down here. We are all joined in that. So --

MR. GIESE: I think I respond to that in my statement, Mr. Chairman. I think we've been back here for this -- the parties can, so we can clean up their work every time.

CHAIRPERSON GRIFFIS: Indeed, you're welcome to continue.

MR. GIESE: I think you mentioned the issue of the slope of the existing structure or of the new structure that has come on and I was trying to figure what you were getting at. Mr. Zapatka, you said that your addition comes straight down from your present roof and back from there. And those roofs are -- the roof between Mr. Trautwine's house and my family's house is on the same slope, correct?

MR. ZAPATKA: The existing houses, the two masonry houses, have the same roof slope and then your addition is set down slightly.

MR. GIESE: And my addition is set down. It's four inches down below that.

MR. ZAPATKA: Right.

MR. GIESE: Correct.

MR. ZAPATKA: It's actually more. It's about a foot.

MR. GIESE: Okay, it's a foot down below.

MR. ZAPATKA: Right.

MR. GIESE: And then it runs at a much steeper slope than your addition coming down.

MR. ZAPATKA: I don't know if it's a steeper slope.

MR. GIESE: I'll tell you what it is, if you want to get it for the sake of time --

MR. ZAPATKA: Right.

MR. GIESE: The plans that I've seen, it's four inches down below and then it's 10 inches. That's the difference in the slopes, as they run. Is that clear to you all? There's a four-inch difference and then there's a 10-inch difference so the slopes run differently. And I think the Chairman was trying to make the point that there is -- that these are beautifully go-extensive here and you sort of gather them together. They're not at the same slope and also they're not at the same height.

SECRETARY PRUITT: Mr. Giese, I'm asking you what's the question because a height issue is not before the Board, a variance for height.

MR. GIESE: The only reason I brought it up, it wasn't part of my question, is that Mr. Griffis brought it up. He seemed to think that it was of interest to him of what the slope was here and I asked Mr. Zapatka what the slope was and I think what that goes to is how you cover between the houses maybe.

CHAIRPERSON GRIFFIS: Right, okay.

MR. GIESE: That they're just beautifully done together. Well, they aren't, they're off.

CHAIRPERSON GRIFFIS: And that wasn't my point. I wasn't concerned with the adjacent property. I was taking the height of the roof of the addition based on the slope of the existing building. All right, next.

MR. GIESE: Okay, the tree issue also that you took down, that tree was harming the Trautwine house; wasn't it?

MR. ZAPATKA: I was told by a tree remover that it should be removed as quickly as possible.

MR. GIESE: Exactly, It was falling on the roof of the Trautwine house. It was also -- the roots of this tree were all over the backyard and also going into the foundation of the Trautwine house.

CHAIRPERSON GRIFFIS: You need to ask a question

and tie it to the variances.

SECRETARY PRUITT: Mr. Zapatka didn't testify at all, I believe, about the tree.

CHAIRMAN GRIFFIS: Yes, there was --

MR. GIESE: Mr. Zapatka did testify about the tree in relation to the shadows. His pictures go to the shadows.

CHAIRPERSON GRIFFIS: We got this, don't worry. Let's move on.

MR. GIESE: All right.

CHAIRPERSON GRIFFIS: I mean, get to the direct question of what the tree -- the issue of the tree is.

MR. GIESE: Okay. The last issue I want to cover goes to the knowledgeability of the applicant. At the February 26th, hearing, Mr. Zapatka, you were asked to submit the date you contracted with the applicant to represent her on this project and you chose not to submit that date and when you were asked at the last hearing, you responded orally that it was June 30th, 2001. Do you want to change that answer now?

MR. ZAPATKA: I don't understand what this question is. What is the question?

MR. GIESE: The question is, is when did you contract with the applicant --

MR. ZAPATKA: I believe --

MR. GIESE: -- when did you start representing the applicant?

MR. ZAPATKA: I believe we have a contract signed June 30th. I put that in a fax cover sheet to the BZA and then repeated that information at the subsequent hearing.

MR. GIESE: Did you start representing her before that period of time?

CHAIRPERSON GRIFFIS: Can you help me understand how that's going to go to the --

MR. GIESE: This goes to the knowledgeability of -- the applicant has claimed that she is -- as was just pointed out in the previous testimony of how she was unaware of all these things going on, that the rear wall was in danger of falling down, that there were zoning issues or anything else here.

CHAIRPERSON GRIFFIS: Okay, and you're referring to Ms. Zartman, what Ms. Zartman just said.

MR. GIESE: Well, that's the issue.

CHAIRPERSON GRIFFIS: And that is that the applicant knew or could have or should have known --

MR. GIESE: If there's any hardship, it was self-imposed.

CHAIRPERSON GRIFFIS: -- about the problem.

MR. GIESE: Exactly.

CHAIRPERSON GRIFFIS: Well, I think we ought to be careful with that because that -- the applicant can address that if they want, but I don't think the applicant has created the condition or the existing non-conformities on this structure.

However, I understand your point. Board members, I think you are clear in the fact that Mr. Giese is trying to establish that the applicant may have known of the condition or the non-conformity of this.

Okay, let's move on.

MR. GIESE: All right, is it clear or are you stipulating that she didn't know the --

CHAIRPERSON GRIFFIS: I'm not stipulating to anything, but what's important for us is your understanding of what you're trying to establish. I don't think you can establish that. I think we've spent a lot of time trying to do that.

MR. GIESE: All right. Mr. Zapatka, as I say, you testified before that you contracted on June 30th. You wrote a letter to the Old Georgetown Board dated August 8th and in that letter what you did is you ran by -- ran through a lot of actions that you took in relation to this project, that you investigated the site at the surveyor's office, that you told the -- you were told by the zoning people that a variance to the building behind three feet would be necessary, that you were told -- that you told the --

MR. MAY: Mr. Chairman, the relevance of correspondence of the Old Georgetown Board to Mr. Zapatka's testimony today.

CHAIRPERSON GRIFFIS: We need to get to that quickly. What's the relevance, is what he's asking.

MR. GIESE: The relevance is, Mr. Zapatka has said that he didn't start interacting with her before June 30th.

CHAIRPERSON GRIFFIS: All right, let's move on from that, Mr. Giese. I really -- I don't see how that establishes --

MR. GIESE: All right, Mr. Chairman, if you'd give me the opportunity to establish it, this is the problem with trying to rush this thing along and keep us locked in the room.

CHAIRPERSON GRIFFIS: Well, whether we had all day or all night, we'd be in the same problem. We need to go to establish how this cross examination gets to --

MR. GIESE: All right. Mr. Zapatka, did you file schematic drawings at the Old Georgetown Board on June 13th?

MR. ZAPATKA: I don't have --

MR. GIESE: On this project.

MR. ZAPATKA: I don't have those records with me, but I did make a --

MR. GIESE: Unfortunately, I don't have another copy of this document.

MR. ZAPATKA: I did make a presentation to the Old Georgetown Board in June.

SECRETARY PRUITT: Once again, Mr. Chairman, the Old Georgetown Board's decisions and operations are totally independent of us.

MR. GIESE: This has nothing to do with their decisions. This goes to --

CHAIRPERSON GRIFFIS: He's establishing the time line in order to establish that the applicant knew of the condition that she was about to engage. Mr. Giese, we're all very well aware of that, what your point is trying to make. I'm not sure it goes to the test for the relief that's being sought here.

MR. GIESE: Maybe, Mr. Chairman, if you'd let me go further on this, if you would give me the opportunity to put the materials forward, then we can get there.

CHAIRPERSON GRIFFIS: Why don't -- can you put the materials forward in your testimony?

MR. GIESE: I don't believe so. I think I need to ask Mr. Zapatka whether this is the case.

CHAIRPERSON GRIFFIS: It seems to me you have documents that you're trying to have him evidence, you can evidence in your own testimony.

MR. GIESE: They go beyond the evidence of the documents. Mr. Zapatka has told us that he started on June 30th. That was a major issue in here two hearings ago.

CHAIRPERSON GRIFFIS: For you, yes.

MR. GIESE: Well, thank you very much. You know, I think that it's a major issue in this case isn't it?

MR. MAY: Having just read the transcript from that hearing, I believe that it was stated that Mr. Zapatka admitted that he started in June, so --

MR. GIESE: Well, June 30th.

MR. MAY: June. He did not say June 30th in the transcript. June.

MEMBER ETHERLY: And Mr. Giese, just to clarify here, I think what you're hearing is this may very well not be fertile ground for you to plow much longer. I think we -- as the Chair said, we understand the point you're trying to get at, but I think the message you're hearing is that it's not necessarily a very compelling point to make, not because of the interest of time or not because of a desire to rush our proceedings here, but given the issues that are --

MR. GIESE: It is compelling that it was clear before the property was purchased that the applicant was aware that a variance was required for this property?

CHAIRPERSON GRIFFIS: I'll ask corporation counsel because I do not believe that that would establish a self-created hardship in terms of the variances that are being sought.

MR. GIESE: It's the knowledgeability of the --

CHAIRPERSON GRIFFIS: You're saying if someone is knowledgeable about non-conformity or potential variance relief that it would then disavow an application for it?

MR. GIESE: No, what I'm saying is, is the argument is being made that the applicant was ignorant of the condition of the rear wall and that also that she was ignorant of the applicability of the difficulties of having the house before she

purchased it.

CHAIRPERSON GRIFFIS: Well, you know, I can speak to that directly because on our first -- I think it was our first hearing, there was a question about the applicability of some of the zoning regulations and this Board found and actually changed the application, so if that's your question, I think it was answered here before us live on the record that the entire regulations were not understood or the difficulty for the relief sought understood. Ms. Sansone, did you have something to add? Not necessarily.

MS. SANSONE: Mr. Chairman, the only thing I would add is the self-created hardship doctrine can look at whether the applicant knew or stated the property or the need for zoning relief prior to purchasing the property but that's only one facet of whether or not that doctrine would apply or even bar relief.

CHAIRPERSON GRIFFIS: Right, it wouldn't bar relief and it wouldn't preclude someone from putting an application for relief. Okay. Is there further that you want to explore in that?

MR. GIESE: If I could take the last point that the -- Mr. Zapatka, in acting as Ms. Trautwine's agent in this case, you filed for a -- on June 13th, with the Old Georgetown Board, when you answered the question, "Will the proposed work required a variance from the BZA", and you answered, "Yes", is that something that you made Ms. Trautwine aware of as her agent in

filing this document?

MR. ZAPATKA: I don't recall. I mean, I filed that in June for the Old Georgetown Board review in June and I guess, I mean --

MR. GIESE: So she was aware of that. She was aware there was a variance that was necessary.

MR. ZAPATKA: I mean, I definitely told Ms. Trautwine that there would be zoning issues to address.

CHAIRPERSON GRIFFIS: This is a non-conforming structure, isn't it?

SECRETARY PRUITT: Yes.

CHAIRMAN GRIFFIS: Actually, I was asking the architect. So by definition, if you were going to do anything, you would think that there would be some relief sought. Okay, Mr. Giese, any other questions?

MR. GIESE: The structural engineer -- the numbers on the application, is that appropriate to ask you, Mr. Zapatka, for -- or is that Mr. Gell's? The numbers on the application?

MR. GELL: What is the question?

MR. GIESE: The calculations on the application.

MR. GELL: What is the question?

MR. GIESE: The question is, is and if you want to speed this, you can just say it's all right with you is I come up -- you have a calculation for lot you see it's less than 75 percent. I have one that is greater than 75 percent. What it

is, is I come up with 75.3 percent. We can stipulate to that if you wish, if you want to move on.

MR. GELL: I came up with 74.8.

MR. GIESE: Right, I come up with 75.3. Do you want to just stipulate to it or --

CHAIRPERSON GRIFFIS: Why don't you present us your calculations and your --

MR. GIESE: All right, the calculation is the --

CHAIRPERSON GRIFFIS: No, in your testimony.

MR. GIESE: Well, all right.

SECRETARY PRUITT: Mr. Chair, if I may make -- this case was self-certified, so whatever Mr. Zapatka came up with is what he came up with. When it goes to the Zoning Administrator, the Zoning Administrator will go through and verify those numbers. If they are wrong, it has to come back through the whole process again.

MR. GIESE: If these numbers are wrong, it all has to go through the same process again.

SECRETARY PRUITT: Correct, yes. Self-certification was a mechanism to help speed along the process. It is a risky thing. The applicant takes the responsibility that if the numbers are wrong, they have to go through the process again, and that's known.

CHAIRPERSON GRIFFIS: Thanks for that clarification. We certainly see how this has speeded things

1 along.

2 MR. GIESE: That's good. I take it the -- for the

3 court items on here, that was omitted on purpose?

4 CHAIRPERSON GRIFFIS: Are you --

5 MR. GIESE: I'm still at the numbers here.

6 CHAIRPERSON GRIFFIS: Right, okay.

7 MR. GIESE: Were those admitted on purpose?

8 CHAIRPERSON GRIFFIS: Do you have a court on this?

9 MR. GIESE: There are no court items in here.

10 CHAIRPERSON GRIFFIS: Do you have an open court or

11 a closed court?

12 MR. ZAPATKA: No, the calculations are based on the

13 assumption that the -- that two foot setback.

14 SECRETARY PRUITT: Mr. Chair --

15 MR. GIESE: There's a court variance involved in

16 this.

17 SECRETARY PRUITT: Mr. Chair, when this -- excuse

18 me, I'll start from the beginning. I'm a little tired here, too.

19 Originally this was advertised as a special

20 exception. They came back in. In order to cover all bases as an

21 overkill because I was just talking to Ms. Kress about this --

22 CHAIRPERSON GRIFFIS: Okay.

23 SECRETARY PRUITT: -- we advertised for a court.

24 And it is not --

25 CHAIRPERSON GRIFFIS: All right, but I don't want

to revisit the last application.

SECRETARY PRUITT: So there's some relief that isn't required.

CHAIRPERSON GRIFFIS: I want to get the direct answer right now whether we have a court. He doesn't have one filled in here. I think we've established this, let's just get that answer.

MR. GIESE: So there's no court?

CHAIRPERSON GRIFFIS: The answer, for goodness sakes.

MR. GELL: Mr. Chairman, there is indeed a court. However, the significance of the court and we have admitted that we need a variance because the court is not sufficiently wide under court -- normal court requirements, but the calculations for the court were included in the calculations for the entire building as we were advised we had to do. If we didn't have to do that, we wouldn't need a variance because we could do all of this by special exception. And we have a court --

CHAIRPERSON GRIFFIS: So you're saying it was it's incorporated within the lot occupancy.

MR. GELL: That's correct, yes. And we only have a court because we have been trying to meet the needs of our neighbors. That's --

CHAIRPERSON GRIFFIS: So it includes the court.

MR. GIESE: Could I clarify that? So there is a

court.

MR. ZAPATKA: The numbers here include the court.

MR. GIESE: Where -- so there's no reason to fill in these bottom lines on a court. There's no reason to designate the size of the court. We don't need that; is that --

MR. ZAPATKA: It's clearly shown in the plans.

MR. GIESE: It's not a matter of clearly shown in the plans. We're talking about an application here that is going to go to the Zoning Commission.

SECRETARY PRUITT: Mr. Giese, what you really need to look at is what was advertised. That is the legal definition of what is being reviewed by the Board, not what is -- it doesn't include -- it includes what is on here but there is also additional information. So what it was advertised is actually the standard that they have to meet or have to prove.

MR. GIESE: Right.

SECRETARY PRUITT: Which does include a court.

MR. GIESE: Which does include a court. What is the measurement of the court and if there is none are you omitting it on purpose? Is there a court or isn't there a court?

MR. ZAPATKA: The addition would be set back two feet from the property line and the full 10 feet three inches from the back.

MR. GIESE: Okay, so are you saying that the court is two feet?

MR. ZAPATKA: I'm -- yes, yes, two by 10.3.

MR. GIESE: Okay, are the -- Mr. Hearing Officer, I don't know how you go from here. Do they correct this or do they --

CHAIRPERSON GRIFFIS: I think the point is that it will not necessarily be corrected. What will be is what is advertised and then what is actually proved or denied in the order. So if you want to get to the substance without the application --

MR. GIESE: Okay. Is there any other court that is here? That is the only court, correct?

MR. ZAPATKA: Yeah, sure.

MR. GIESE: Yes?

MR. ZAPATKA: Yes.

MR. GIESE: Yes? So forget the rest of the numbers. All right. The south wall of the addition, this wall of the addition, we've gone back and forth on this thing. Is this where this is going to be located. Is that the exact location of that south wall, supposedly nine inches from the --

CHAIRPERSON GRIFFIS: Wait a minute. We're revisiting an issue that you've gone over extensively.

MR. GELL: And I must add, Mr. Chairman, that Mr. Giese's family has been on this property for 44 years. He's presumed to know where this property line is. We had told him that when we survey we are going to know ourselves.

CHAIRPERSON GRIFFIS: Right.

MR. GELL: If he wants to object to that at some future time, take us to court over whether our line is right and our survey is right, I assume he's going to want to do that but that doesn't have to come into this --

CHAIRPERSON GRIFFIS: No, and I absolutely agree and I think Ms. Kress also stated that you will do a wall test.

MR. GIESE: Mr. Griffis, my understanding is and it doesn't go to whether he's building on my property or not, what it goes to is that my understanding is the plan that he submitted to is the plan that he needs to stick to. Is that what we're talking about?

CHAIRPERSON GRIFFIS: They've already established that. They've established a two-foot setback on that side and they will have the addition that will be accommodated at 10 foot nine inches, which is the property.

MR. GIESE: That's -- we don't know where the property lines are.

CHAIRPERSON GRIFFIS: It doesn't matter. If you have 10-foot nine inches as your given, and you subtract two feet, then the addition comes within that. So we'll put a plus or minus eight feet.

MR. GIESE: So in other words, it will be plus or minus nine inches. Is that the --

CHAIRPERSON GRIFFIS: Isn't that your testimony?

MR. GIESE: Plus or minus nine inches? So we don't know where the wall is going, correct?

CHAIRPERSON GRIFFIS: It's going on their property.

MR. ZAPATKA: The intention is to build an addition within the 10-foot nine inch allotted for the width of the property.

CHAIRPERSON GRIFFIS: Okay.

MR. GIESE: So we don't know where the wall is going.

CHAIRPERSON GRIFFIS: That's right.

MR. GIESE: A structural engineer visited you on October 4th; is that correct?

MR. ZAPATKA: Yes.

MR. GIESE: And littered throughout here are lines saying that you have to replace the wall. Is there anything in this -- have to replace the rear wall and the side wall. Is there anything in the letter that you submitted, the October 15th letter that's in the record, that says that the walls have to be replaced?

MR. ZAPATKA: You can read the letter also. Based on my visual observations, it is my opinion that the structural integrity of the exterior walls is questionable. It is my recommendation that the house should not be occupied until structural repairs are carried out. I don't understand that

question.

MR. GIESE: Well, it says here, "The side and rear walls may have to be rebuilt or restored". Is there anything in here that says that they must be rebuilt and restored?

MR. ZAPATKA: Yes, I'd like to emphasize again that this is a letter from my structural engineer. He's not specializing in historic preservation. The letter recommends replacement. There's nothing saying it must and --

MR. GIESE: Where does it recommend replacement?

MR. ZAPATKA: "The side and rear walls may have to be rebuilt to restore their structural integrity". So again, for clarification, this is the opinion of one structural engineer on one site visit and it's --

MR. GIESE: Mr. Zapatka, they have expressed a lot of interest in moving forward on this in the interest of time. Where in here, in this letter does it say that you have to replace the rear and side walls?

MR. ZAPATKA: I'm not saying it does.

MR. GIESE: It does not say that, correct?

SECRETARY PRUITT: I think he's answered that question.

MR. GIESE: Is that -- I haven't heard the correct answer to it. You can give a yes or no answer. Is there anything in this letter that says that the walls have to be rebuilt? If you see that, could you please point it out to us?

MR. ZAPATKA: I mean, you can read the letter also. "The side and rear walls may have to be rebuilt to restore their structural integrity". This is the opinion of one structural engineer. I'd like another structural engineer who --

MR. GIESE: Mr. Zapatka, I just want a yes or no answer. Is the answer yes or no, do they have to be -- does this say --

MR. ZAPATKA: I'm not a structural engineer. I'm not answering that question.

CHAIRPERSON GRIFFIS: And I think we've heard what's actually in the letter. Mr. Giese, I mean, dancing --

MR. ZAPATKA: Regardless of whether it's replaced or reinforced, it's a considerable cost to either rebuild the walls or reinforce them with tie rods, any number of devices. Again, I'm not a structural engineer. When we get to that point, we will have a competent structural engineer advise is and we'll have -- it will be a considerable cost, particularly if neighbors are not cooperative and --

MR. GIESE: Mr. Chairman, all through the statements they've said they have to replace the walls. I'm just trying to find out where that comes from.

MEMBER ETHERLY: And Mr. Giese, your point is well-taken. Keep in mind that we do have the benefit of Exhibit 49, which the Board, of course can take a look at, so I think you'd do well to move forward but your point is taken with regard to

1 what the letter speaks to, "must remove or may repair".

2 MR. GIESE: Okay. Is there some eminent danger to

3 these walls that we're all unaware of that you're aware of? Is

4 there some reason that nobody should be --

5 CHAIRPERSON GRIFFIS: Let's get off the walls. I

6 think the Board is well aware of what you're trying to establish

7 and their argument. We're really not as simple minded as you

8 might assume.

9 MR. GIESE: Mr. Chairman, I realize I completely

10 was just trying to develop a record here as normally done in an

11 orderly process.

12 CHAIRPERSON GRIFFIS: One anticipating other

13 adventures beyond us. Okay.

14 MR. GIESE: At the February 26th hearing you put a

15 cost estimate in the record that's undated. And this cost

16 estimate has no application any longer to this case. This is for

17 a different project, correct? This cost estimate included a

18 cellar and a 12-foot extension.

19 MR. ZAPATKA: Sure, right, right.

20 MR. GIESE: So this has no application any longer,

21 correct?

22 MR. ZAPATKA: That -- no, it doesn't have any --

23 it's not in relation to this. That was for an earlier scheme

24 that included a cellar. Without the cellar, it's less cost.

25 There is still a considerable cost in structural reinforcement or

replacement as may be necessary.

MR. GIESE: That's not what I asked you, Mr. Zapatka. What I asked you was whether this cost estimate has any validity any longer and you answered that no, which I take that answer to be that it has no validity.

MR. ZAPATKA: No.

MR. GIESE: In moving the mechanicals around the furnace now is in the back of the new addition; is that correct?

MR. ZAPATKA: Uh-huh.

MR. GIESE: How do you plan on venting the furnace? Are you building a chimney?

CHAIRPERSON GRIFFIS: That doesn't have anything to do with us, does it?

SECRETARY PRUITT: It's a building code issue which is not related to zoning.

CHAIRPERSON GRIFFIS: I'll handle it. Thank you.

SECRETARY PRUITT: Okay.

MR. GIESE: Mr. Zapatka, all right, I'm done.

CHAIRPERSON GRIFFIS: Thank you. All right, let's take a five-minute brief recess. When we come back and I'm sorry, refresh my recollection, Mr. Johnson. You've already cross examined Mr. Zapatka, have you not?

MR. JOHNSON: I have.

CHAIRPERSON GRIFFIS: Thank you very much. I know it's in my notes but when we get back, Mr. Gell, what I'm going

to ask you to do is bring us up to date and quickly summarize as you will calling your witnesses, but a brief statement addressing the test of the variances so that we all might focus as the hour goes on, on those and on that specific criteria that we are, in fact, here to hear and deliberate on. And then you can proceed with your case. We will then go to government reports and get through the rest of the testimony.

So let's all stretch our legs, get some fresh water and be back in let's say 10 minutes.

(Off the record at 6:47 p.m.)

(On the record at 7:00 p.m.)

CHAIRPERSON GRIFFIS: Okay. So Mr. Gell, is it yours to continue. We're going to have you finish up your witnesses and rethinking with some quick time that after you go through your witnesses, what we will have you do is just summarize the legal arguments and tie it all together. We would ask you, at your discretion, not to introduce new evidence yourself so you wouldn't be open to cross examination.

The witnesses, of course, will be but what we're looking for obviously, is the legal arguments based on the testimony that has been presented to this point in a nice little package and we'll continue from there. So it's all yours, sir.

MR. GELL: Thank you, Mr. Chairman, in that case I'll call on Lori Trautwine to provide some additional evidence.

MR. TRAUTWINE: Good evening, my name is Lori

Trautwine. I am the owner of 1324 27th Street. I bought my house after looking for some time, bought my house after looking for some time in various locations in the city. I was attracted to Georgetown and 27th Street as being one of the prettiest streets in Georgetown. When I bought the house, no one assured me that I could build an addition. My decision to purchase was not dependent on the ability to build the addition. In fact, I was aware that I had to get approval from the BZA.

Nevertheless, I believed that given the size of the house, I had a reasonable case to present in anticipation of having a family, needing more space and noticing that there was an addition on the house next door to me. That was when I hired Mr. Zapatka. When the Old Georgetown Board expressed its concern about excavation in the area, we sought the services of a civil structural engineer and that was when I learned that the rear walls were not sound.

I had many contacts with the neighbors on other side of me. This proposal accommodates nearly all of their concerns. We are eliminating the basement and the stairs. We are eliminating the three-foot wall, three foot full width portion, excuse me. We are eliminating the windows on the north side. And we are reducing the length from 12 feet to 10 feet three inches.

I arranged for Dr. Joiner to speak to a contractor who advised him how the excavation could be undertaken without

endangering his rear yard. That was at a time when we were contemplating a basement. The contractor advised Dr. Joiner that we could rebuild the wall next to his rear yard and in fact, make it stronger than it currently is. The cost of replacing the rear and the side walls in significant. Obviously, there is some question as to what exactly that expense will be and whether the walls will be entirely replaced or shored up.

We haven't consulted a historic engineer but we consulted a regular structural engineer. I have gotten estimates from contractors that have indicated the cost for total renovation could be up to $100,000.00. The original purchase price that I paid was 240,000 and the house was mortgaged. I mortgaged the house for 95 percent of its value at that time which is the best loan that I could get.

I am told by my mortgage broker that in order to obtain a second mortgage that there would have to be an increase in the value of the house that justified the increase in the loan. Values may have increased some but not enough. Given the severe opposition to my addition, I have to assume that there may be an appeal which will take months or possibly years as I understand it.

No one will assure me that the house value will continue to go up. It seems logical that they may level off or even go down again, as they have in the past. It seems logical -- excuse me. Therefore, I have no option but to seek to increase

the size of this already very small house and therefore, its value. Otherwise, it will be impossible for me to make the needed repairs and live in the house. I currently don't live there.

The new configuration benefits the neighbors in that there is no need for substantial excavation. The new addition will not block Dr. Joiner's view much more than the Giese addition that already exists and certainly far less than the tree which I removed in anticipation of building my addition.

The situation is dire. I cannot make needed repairs to the structure of my house and save it from ruin without some enlargement. Even if I'm forced to sell it now, someone else will have to fix it up before they can live in it and the potential purchasers will be substantially to those who are willing to take on the structural problems that exist. Thank you.

CHAIRPERSON GRIFFIS: Thank you, Ms. Trautwine.

MR. GELL: Should I make my statement?

CHAIRPERSON GRIFFIS: Sure.

MR. GELL: Mr. Johnson in his brief, made a number of points about what the test for variance is and think we all know the test. I don't want to spend substantial time talking about the legal issues. I think we can accept the fact that we have to show a practical difficulty here, that we have an

exceptional condition and that the house has some uniqueness to it that requires the relief that's being sought.

We agree that mere convenience or profit are not sufficient justification for a variance but we have shown the Board that there is far more here at stake than mere convenience. Indeed the question is whether, without the variances, the applicant can use her property sufficiently as a residence for a number of reasons.

I wanted to make a very -- as a strong point here, that we can make this case for a variance and have made the case for a variance even if there were no damage to the walls. The test of exceptional narrowness, shallowness or shape of the property or other extraordinary or exceptional situations certainly is at work here in a 520-square foot property, a 500 square foot house or thereabouts, when the minimum lot size in R3 are 2000 square feet and the minimum width is much greater than the 10-foot nine inch width that we have.

We're only adding about 20 square feet to a 500-square foot house and we're going to wind up with something which is also going to be very, very tight. I would refer the Board to Mr. McGhettigan's memorandum and the OP memorandum which makes a very good point about a relationship between this property and the size and other properties. In fact, regardless of Ms. Zartman's testimony, it's not a case that there are hundreds and hundreds of houses that are in this condition or in this

1 situation. This is an extraordinarily small lot for Georgetown,
2 even for Georgetown.
3 I've already made the point that we would be below
4 the 70 percent lot occupancy if we were trying to accommodate Dr.
5 Joiner. We wish we could accommodate him more. We're not
6 unmindful of the effect of this addition on him but the best we
7 could do is a two-foot setback and which is very close to where I
8 think he would have been satisfied but obviously, not close
9 enough.
10 The house is a contributing building in a historic
11 district. Traditionally for buildings in historic districts, the
12 Board has exercised more leniency in helping non-conforming
13 buildings adapt to current needs. I would also point out that
14 this is not a self-imposed hardship. The applicant has testified
15 that she didn't base her decision to buy the house on whether or
16 not she could enlarge it. Had she done so, she would have
17 insisted that the seller go through this process instead of her
18 having to do so.
19 But we believe that we will find, when we start
20 the construction process and we're not going to know this
21 absolutely until we do, we're probably going to find that there
22 will be substantial need to replace the side and rear walls.
23 Whether we have to do that or not, the cost of fixing up the
24 property are going to be extraordinary and they are going to be
25 expensive enough so that she's going to have to get an additional

loan on her property.

You have the letter from the bank, from a mortgage broker saying that without increasing the value of the property, he didn't see how she'd be able to add to the loan she already has. I would just refer to some of Mr. Giese's complaints. He's shown that there are issues on the roof water runoff, rain collecting between the buildings and so forth. We think these can be resolved by the measures that we've already testified to.

We've offered him the option of having the party wall extended on his property if that be the case. He obviously, would have to approve it and that's still an option that he can take.

I want to just way a word about the survey and perhaps it's not necessary to do so, but the Board did make a strong recommendation that we get a survey and as we -- and at one point we certainly tried very hard to find somebody who would do a survey quickly. We realized, however, that the question of whether our survey or Mr. Giese's survey is the correct one would simply become another issue before the Board and that's not where that matter ought to be resolved. It may ultimately go to court. We have no doubt that we haven't heard the end of this even if the Board agrees with us and grants our request. We think we have further fights down the road. We're willing to take them on but I didn't want the decision of the Board on the survey to be

1 another issue that Mr. Giese could then say to a court, they
2 should overturn the Board's decision to grant the approval.
3 I think it should be handled quite out of the -- of
4 this Board's process. And, again, he's presumed to know where his
5 line is. It shouldn't be for us to tell him where his property
6 line is. I think the other points I was going to make have
7 already been made. I would like to have a couple of minutes at
8 the end to make some final comments but that concludes our
9 testimony.
10 CHAIRPERSON GRIFFIS: Okay, thank you. All right,
11 let's get into cross examination based on the exclusive testimony
12 that you have just heard from Ms. Trautwine.
13 MR. GELL: I don't have any cross for this witness,
14 thank you, Mr. Chair.
15 CHAIRPERSON GRIFFIS: Thank you. Mr. Giese?
16 MR. GIESE: Yes, I do. Are we doing Ms. Trautwine
17 and then Mr. Gell?
18 CHAIRPERSON GRIFFIS: Actually, I don't think Mr.
19 Gell introduce any new evidence. So there's nothing to cross
20 examine there. He made statements.
21 SECRETARY PRUITT: Mr. Giese, your microphone.
22 MR. GIESE: He can't be crossed on those
23 statements?
24 CHAIRPERSON GRIFFIS: I think he was tying together
25 the legal arguments of his whole case based on the testimony of

the two witnesses. I may be mistaken in what I heard, Board members. Do you concur? Okay. So, no, he would not be cross examined.

MR. JOHNSON: It was our understanding as well that he wasn't offering any evidence. He was just making argument, so we --

CHAIRPERSON GRIFFIS: Right, exactly, thank you for that clarification.

MR. GIESE: I guess the first question would be, you're not aware of anything wrong with the wall in the back.

MR. TRAUTWINE: Aware when?

MR. GIESE: That's --

MR. TRAUTWINE: I mean, I am now.

MR. GIESE: Prior to the structural engineer coming.

MR. TRAUTWINE: No, definitely not, never.

MR. GIESE: Did you have the property inspected?

MR. TRAUTWINE: Yes.

MR. GIESE: What did the inspector say?

MR. TRAUTWINE: I have the inspection report here with me and there was never any mention of there being structural problems with the rear wall.

MR. GIESE: With the rear wall, nothing bad.

MR. TRAUTWINE: Nothing.

MR. GIESE: Okay, and Mr. Zapatka never said

anything about it either.

MR. TRAUTWINE: He never said a word.

MR. GIESE: And he was -- I'm not trying to trap you, this is actually probably a very good conversation. The -- he -- Christian was advising you from the start, I take it.

MR. TRAUTWINE: From the start of what?

MR. GIESE: Prior to purchasing the house from the beginning of this project, prior to purchasing the house all the way through. I'm not trying to trap anybody here. It's just you closed on the house in July. He started talking to you in early June or May.

MR. TRAUTWINE: Are you asking when I started to have conversations with Christian? Is that the question?

MR. GIESE: Sure, just when he started -- I guess it would be -- the question is, is when did he start advising you to the extent that you were relying on him, that he was part of this project?

MR. TRAUTWINE: Probably about the same time that I started to look at the property seriously which was in June, I think, maybe May. I can't remember exactly but it was about the same time that I started to actually consider that I may buy the property. Regardless of whether I was going to add an addition, I was still going to need Christian.

MR. GIESE: On the bank letters, he sent you two letters, correct?

1 MR. TRAUTWINE: Oh the bank letters?

2 MR. GIESE: Yeah, the mortgage letters.

3 MR. TRAUTWINE: Uh-huh.

4 MR. GIESE: There were two that were sent, this is

5 your mortgage broker; is that it?

6 MR. TRAUTWINE: No, it's not.

7 MR. GIESE: Oh, okay. This is a mortgage banker?

8 MR. TRAUTWINE: Yes.

9 MR. GIESE: Somebody who offers mortgages?

10 MR. TRAUTWINE: Yes.

11 MR. GIESE: All right, and he's not your present

12 lender, right?

13 MR. TRAUTWINE: I'm sorry, I thought I just

14 answered that, no.

15 MR. GIESE: No, he's not your present lender. He -

16 - and he sent you two letters, correct? The first letter was

17 similar to the second letter. The second letter had a figure of

18 $50,000.00.

19 MR. TRAUTWINE: That may be the case.

20 MR. GIESE: Do you want to look at a copy of the

21 letter? Would that be helpful?

22 MR. TRAUTWINE: Well, you said "letters". I guess I

23 want to make sure I know plural, letters.

24 MR. GIESE: There's a letter from the bank of

25 February 26th that you put on the record and a letter from the

bank of March 12th that you put on the record.

MR. TRAUTWINE: Uh-huh.

MR. GIESE: And they seem to be similar in all respects except in the March 12th letter it says -- well, I'll read the line from the February 26th one. It says, "I understand that you learned that the rear side walls of the property must be replaced". The other line reads, "I understand that you have learned that the rear walls of the property must be replaced at a cost of $50,000.00".

MR. TRAUTWINE: Uh-huh.

MR. GIESE: Why did he send the second letter? He already told you that --

MR. TRAUTWINE: You want to know why the 50,000 wasn't in the first letter? Is that it?

MR. GIESE: No, I want to -- well, I'd like to know why he sent you a second letter.

MR. TRAUTWINE: Because I realized that the 50,000 wasn't included in the first letter and I thought that was important.

MR. GIESE: Important for what -- for this -- for this --

MR. TRAUTWINE: Important to place some type of understanding on the financial figure that may be associated with that type of work.

MR. GIESE: Okay, where did the $50,000.00 figure

1 come from?

2 MR. TRAUTWINE: From the contractor.

3 MR. GIESE: You gave that to him, is the it?

4 MR. TRAUTWINE: Did I give the cost of what -- yes.

5 MR. GIESE: You gave that to this banker right, the

6 $50,000.00 figure?

7 MR. TRAUTWINE: Correct.

8 MR. GIESE: Okay, it came from whom now?

9 MR. TRAUTWINE: A contractor.

10 MR. GIESE: Do we have anything from that

11 contractor on this or anybody that says anything about

12 $50,000.00?

13 MR. GELL: You have an estimate, I think. It was

14 based on the estimate that we've already submitted. You pointed

15 out that that estimate was based -- also included excavation but

16 when we asked -- well, perhaps I should let Ms. Trautwine talk to

17 that, but there are also further attempts to find out what it

18 would cost just to do those walls.

19 MR. GIESE: We could go back to the estimate if you

20 want. Where is it in the estimate that it tells you what it's

21 going to cost to replace the wall?

22 MR. GELL: I don't think the side wall was part of

23 it.

24 MR. GIESE: Pardon me?

25 MR. GELL: I don't think the side wall was part of

that estimate. I think we went into that maybe even at the first hearing.

MR. GIESE: I guess my question is, is what's the basis of the $50,000.00 figure? Is it a contractor who whispered it to you at some point or is it -- you know, do we have something hard on what the figure is?

CHAIRPERSON GRIFFIS: Let me try and -- Mr. Giese, you're trying to establish how that figure was produced and calling it a cost estimate by a contractor isn't sufficient?

MR. GIESE: You know, I would hope that this Board would want something more than somebody saying, "Gee, I heard from somebody that maybe it will cost $50,000.00". We'd like to know, is that the rear wall, the side wall? What is -- what's exactly involved here? There's no proof. There's nothing hard in here about what it costs. There's nothing in the structural engineer's letter about cost.

CHAIRPERSON GRIFFIS: But you don't refute the point that it would cost something?

MR. GIESE: Well, I think Mr. Gell in his statement, is basing his case on that this is going to be very, very expensive to do and it doesn't make sense to rehab the house as it is.

CHAIRPERSON GRIFFIS: Okay.

MR. GIESE: But the only way you can do that is if you have the addition. That's really what we're down to here.

CHAIRPERSON GRIFFIS: Right.

MR. GIESE: The numbers just don't work out there otherwise and they've cited this letter from a mortgage banker who says, "Oh, I can't loan you that money because it's going to cost you $50,000.00 to do that".

CHAIRPERSON GRIFFIS: I understand.

MR. GIESE: Where does that come from?

MR. GELL: We have a chicken or egg problem here. A structural engineer has told us we may have to replace the rear wall. We're not going to know that until we get into the -- into the situation, into the property. Ms. Trautwine certainly doesn't want to be in a position where she thinks it's going to cost her 5,000 or 10,000 and it turns out to cost 50.

Moreover, I think Mr. Zapatka has already testified to the fact that even if the walls don't have to be replaced because of the nature of those walls and the difficulty of shoring them up and securing them without being able to tie into the neighboring property and we assume we're not going to be able to do that, but that is going to be a very, very high cost, perhaps approaching the 50. I don't know what the range is. I'm not an expert in that, but the cost is undetermined right now but we do know that we may have to replace and we have testified and there is material in the record that says that it could be 50,000.

MR. GIESE: Where is the material in the record

that says it could be 50,000? Where is it, if it's the banker's letter --

MR. ZAPATKA: Yeah, I think I mentioned in an earlier hearing that the contractor estimated replacing, repairing, addressing the structural issues of both side and rear wall would be a significant expense approaching 50,000. That's a preliminary estimate. We're not again at structural documents. We don't have that in writing.

MR. GIESE: It would seem to be awfully important to this that we have something there, but you haven't been able to come up with it.

MR. JOHNSON: Mr. Chair, may I make a suggestion? I don't want to prolong this, but I think the testimony that's in the record will be part of the record and it will be clear and I think that this was gone into actually at the February 26th hearing. And better than referring to what might have been said then, I think we can, at the appropriate time, just look at what was said then and that's the way to deal with that issue.

CHAIRPERSON GRIFFIS: I appreciate your advice. Mr. Giese?

MR. GIESE: On the bank letter, is Mr. Jeffries an expert on Georgetown of some type or is he -- he's in Millersville, right, Maryland?

MR. TRAUTWINE: What do you mean is he an expert in Georgetown?

MR. GIESE: Well, he says, "I understand you've learned that the rear and side walls of the property must be replaced. Unfortunately, there's not sufficient additional equity in the house to justify a loan for such work".

MR. TRAUTWINE: Uh-huh.

MR. GIESE: How does he make that judgment?

MR. TRAUTWINE: I guess not being a mortgage banker, I'm not sure.

MR. GIESE: Well, he -- you must have had a conversation -- did you have a conversation with him that said, "Gee, can I borrow enough money to redo the house as it is", and he said, no, apparently, right?

MR. TRAUTWINE: Yes.

MR. GIESE: What did he base that answer on?

CHAIRPERSON GRIFFIS: I think she answered that, didn't she?

MR. GIESE: I don't have anything on that. Oh, you mean the $50,000.00 plus?

CHAIRPERSON GRIFFIS: No, she can't tell you how her mortgage banker came up with the value. He must have done an assessment or something if they had information on it. But I mean, her answer was she doesn't know how he did it.

MR. GIESE: You didn't -- you're giving an answer, is that --

CHAIRPERSON GRIFFIS: That's what she said.

MR. TRAUTWINE: That's what I said. I'm not a mortgage banker. I don't know how he derived that.

MR. GIESE: All right, he simply told you that he wasn't going to loan you -- how much was the amount of money you asked for to rehab the house?

MR. GELL: Excuse me, we've already testified to the fact that is was a 95 percent loan. I think it doesn't take a genius to figure out that 95 percent doesn't leave you a whole heck of a lot of room to get a second trust, especially since even a second trust wants to have some value in the house before they're willing to loan, some buffer. So I think it's self-evident and I think you're getting into areas that Ms. Trautwine really can't address.

MR. GIESE: I think that the whole basis that Mr. Gell has made in his argument is, is that you simply can't do this unless you have the additional space there, unless -- you simply can't get the money, she's not going to be able to repair the house, it's not going to be livable, it's not going to be there, and he's based all of that on this letter from a mortgage banker that says, "Gee, if" -- you know, "there's not enough there but if you send me" --

CHAIRPERSON GRIFFIS: I think the only substantive piece of it is the fact that there was a 95 percent mortgage taken. I think it was just clearly stated again by Mr. Gell, that puts five percent equity into the value of the property.

1 That must have been established at some point.

2 MR. GIESE: Well, Ms. Trautwine, you got your most

3 recent tax assessment, correct?

4 MR. TRAUTWINE: Yes.

5 MR. GIESE: How much was that for?

6 MR. TRAUTWINE: I'm currently appealing it, and it

7 was for 350.

8 MR. GIESE: Three hundred and fifty thousand,

9 right?

10 MR. TRAUTWINE: Yes.

11 MR. GIESE: That's a lot, right? So that puts a

12 lot of equity in there.

13 MR. TRAUTWINE: I'm assuming that it could be

14 purchased for that price.

15 CHAIRPERSON GRIFFIS: I think we ought to

16 differentiate. I'm sorry, Ms. Trautwine, to cut you off, but --

17 MR. TRAUTWINE: Excuse me.

18 CHAIRPERSON GRIFFIS: -- I happen to own property,

19 too. Tax assessment has little to do with the appraised value

20 for financing. Are you familiar with the --

21 MR. GIESE: I think I'm looking at you vacantly

22 because last time, actually the two assessments I've had, the

23 first question the assessors that have come buy has asked me what

24 my tax assessment was.

25 CHAIRPERSON GRIFFIS: And did he base your

assessment on the tax assessment?

MR. GIESE: It was a large part of what he was doing there. I live in a neighborhood where most of the houses are very similar.

CHAIRPERSON GRIFFIS: Mr. May.

MR. MAY: Mr. Chairman, I think that given all of the controversy surrounding tax assessments in the city at the moment and the process by which they have been derived, that it is a -- we're really just fishing at -- in the dark here. I don't know what you could possibly prove by going in that direction.

CHAIRPERSON GRIFFIS: Okay.

MR. MAY: And I think anybody here who owns property in the District and has been recently reassessed could testify to that.

MEMBER ETHERLY: And just as a follow-up there, Mr. Giese, I think it would seem that the point you're making is perhaps a well-taken one, that I think the issue is the matter of expense for the repairs that have been identified through a couple of different mechanisms that Mr. Gell and his -- and the applicant have identified, that's one thing.

What we have to speak to that, and I don't want to speak for any of my colleagues, but we have two letters from First Pacific which probably we can take at face value or we can make some other type of determination individually as to what

kind of merit and weight we want to give to those two letters. So I think your point is somewhat well taken. Once again, I'm not speaking to the ability of the argument, but if you're attempting to make the point that we only have two letters on the record, which attempt to speak to the value of the repairs that have been identified, if that's it, then that's what the applicant is going to stand on, then I think we've established that and we probably can move on.

MR. GIESE: I guess it would be then, what they're saying is the letters is if you gave him an appropriate appraisal, he would loan you the money for whatever you wanted; isn't that the case?

MR. TRAUTWINE: I don't know how a mortgage banker decides what money they'll loan, whether it's strictly based on an appraisal.

MR. GIESE: I guess what I'm going on, is on the second paragraph where he says, you'll need another appraisal to get -- he says he'll loan you the other money as long as you'll give him the other appraisal, as long as you give him an appraisal.

MR. TRAUTWINE: I don't know, is that a question?

MR. GIESE: I guess the -- all right, all right. You just said you appealed your tax assessment.

MR. TRAUTWINE: Yes.

MR. GIESE: When did you do that?

MR. TRAUTWINE: The letter I happen to have it with me here today, March 13th.

MR. GIESE: I had asked why you haven't had a survey done on this property? I guess the first item was the expense. The second item was the no time, the third item was somebody else was supposed to do it.

MR. GELL: The fact is we haven't had it done. I think I addressed that issue.

CHAIRPERSON GRIFFIS: I would agree.

MR. GIESE: Was the home uninhabitable when you purchased it.

MR. TRAUTWINE: I guess you'd have to define uninhabitable but --

MR. GIESE: Could it be lived in when you first -- could it be used?

MR. TRAUTWINE: I wouldn't choose to live there and if you'd seen the inside, I don't know if you would either.

MR. GIESE: Is it your principal residence?

MR. TRAUTWINE: No.

MR. GIESE: Do you have a homestead exemption?

MR. TRAUTWINE: Excuse me?

MR. GIESE: Do you have a homestead exemption for the property?

CHAIRPERSON GRIFFIS: I don't think there was any testimony that takes us down this road.

MR. GIESE: Well, I think Mr. Gell was talking about how there was no use for this property at all.

MR. GELL: She's already testified she's not living there. It's the only property she owns. I think she'd like to live there and it be her principal residence as soon as possible.

CHAIRPERSON GRIFFIS: Let's move on.

MR. GIESE: I'm done.

CHAIRPERSON GRIFFIS: Thank you very much. Okay, let us go to Office of Planning. Are they still here?

MR. McGHETTIGAN: Thank you, Mr. Chair. I have a report in the record. I would just like to stand on my report and answer any questions that you have.

CHAIRPERSON GRIFFIS: Good, let me just take then quickly. This did come in late and I would, if there's no objection accept the report of the Office of Planning.

MEMBER ETHERLY: No objection, Mr. Chair.

CHAIRPERSON GRIFFIS: Thank you very much. The Board has -- all Board members have received this in a timely fashion for us in terms of our package and have read it thoroughly. Let me just make sure that the parties also were served the Office of Planning report.

MR. JOHNSON: Yes.

CHAIRPERSON GRIFFIS: Yes, okay, Mr. Giese, do you have an Office of Planning report?

MR. GIESE: I do, thank you.

CHAIRPERSON GRIFFIS: Okay. Very well, we do appreciate the Office of Planning putting together and standing on the record. Is there any questions from the Board of the Office of Planning report?

MR. GIESE: Are we skipping over Mr. Gell? Mr. Gell's not testifying?

CHAIRPERSON GRIFFIS: Actually, I'm at the Board questions right now.

MR. GIESE: I'm sorry.

CHAIRPERSON GRIFFIS: Oh, Mr. Gell, I don't anticipate he's going to testify. Are you testifying, Mr. Gell? He closed his case.

MR. GELL: I closed with the exception of maybe having some comments at the end, but I'm not going to give any more testimony.

CHAIRPERSON GRIFFIS: He did his closing. Okay, back to Board questions. First of all, I think the Office of Planning for I think putting together an excellent memo. Let's be clear so that everyone has the same understanding that Office of Planning is recommending approval and based on their findings that I will not go through, they also have put together the variances test and how it is established and I want to just make a very interesting note because it was, in fact, addressed, the spread sheet on page 4 which establishes a number of lots and lot areas which is very informative.

1 So if there's no questions from the Board, we can
2 go to any cross examination questions. And we'll start with the
3 applicant. Mr. Gell, did you have any of the Office of Planning?
4 MR. GELL: No, Mr. Chairman.
5 CHAIRPERSON GRIFFIS: Okay, Mr. Johnson.
6 MR. JOHNSON: Thank you, Mr. Chair. Good evening,
7 Mr. McGhettigan.
8 MR. McGHETTIGAN: Good evening.
9 MR. JOHNSON: Now, at the time you prepared this
10 report, you had done a site visit to the Trautwine residence at
11 some point; is that correct?
12 MR. McGHETTIGAN: Yes, that's correct.
13 MR. JOHNSON: And in fact, you reviewed and had
14 done a report on a couple of the other prior proposals as well as
15 this one, correct?
16 MR. McGHETTIGAN: Yes.
17 MR. JOHNSON: And every time you've reviewed any of
18 the proposals, it's been the recommendation of the Office of
19 Planning that the application be approved, correct?
20 MR. McGHETTIGAN: That's correct.
21 MR. JOHNSON: And you've never recommended that it
22 not be approved, correct?
23 MR. McGHETTIGAN: That's correct.
24 MR. JOHNSON: And actually after you issued this
25 report, a couple of days after that, you did have the opportunity

to make a site visit to the Joiner property on April 5th; is that right?

MR. McGHETTIGAN: That's correct.

MR. JOHNSON: And that's the first time that you had actually been to the Joiner property during this entire process; correct?

MR. McGHETTIGAN: That's correct.

MR. JOHNSON: And as a result of the site visit to the Joiner property, is there anything that you need to amend or change or add to your report?

MR. McGHETTIGAN: No, there is not.

MR. JOHNSON: Okay. One of the conclusions that you had made is that you don't believe that there would be an adverse impact on the Joiners, the residence to the north, if this addition were constructed; is that a fair summary of one of the things that you've concluded?

MR. McGHETTIGAN: Yes, that is one of the things that I concluded in my report.

MR. JOHNSON: And tell us what you relied upon in coming to that determination, that there would be no adverse impact on the Joiners.

MR. McGHETTIGAN: The -- on my site visit my observations of where the sun was striking the buildings and Mr. Zapatka's photographs entered into the record, I don't believe that there would be a substantial detriment to the Joiners

because of the addition.

MR. JOHNSON: Now, other than the effect of the sunlight, did you consider anything else in making the determination that the Joiners would not be adversely effected?

MR. McGHETTIGAN: No.

MR. JOHNSON: Let me ask about a couple of different points in your report and I think I'll just -- it would probably be easiest to just go through it. On page 2 at the bottom of the page, it's --

CHAIRPERSON GRIFFIS: Okay.

MR. JOHNSON: It's your calculation that the lot occupancy here with the addition would be 75 percent; is that right?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And as part of coming to the 75 percent determination, and I know we discussed this, I think at the first hearing but did you count any portion of the setback as part of the lot occupancy?

MR. McGHETTIGAN: Yes, I did.

MR. JOHNSON: Okay, and so that's included within the 75 percent?

MR. McGHETTIGAN: Yes, it is.

MR. JOHNSON: And that would be a variance of 15 percent total from the maximum lot occupancy there, correct?

MR. McGHETTIGAN: That's correct.

MR. JOHNSON: And the amount of that variance would actually be 25 percent in excess of what is permitted; is that right? I'm probably not asking it very clear, but 15 percent in excess of 60 percent is really a 25 percent variance from the 60 percent limit, correct?

MR. McGHETTIGAN: That sounds correct, yes.

MR. JOHNSON: Fifteen percent is 25 percent of 60 percent is what I guess I'm trying to say.

MR. McGHETTIGAN: Yes, yes, right.

MR. JOHNSON: All right.

CHAIRPERSON GRIFFIS: It's a little late for math like that.

MR. McGHETTIGAN: That's right.

MR. JOHNSON: Moving on to page 3, and I just want to be clear, you've calculated that there are five variances that are required here, a total of five.

MR. McGHETTIGAN: No, I don't think so.

MR. JOHNSON: How many are there?

MR. McGHETTIGAN: There are the rear yard, the court, the section 2001.3 and the lot occupancy, that would be four.

MR. JOHNSON: Okay. And one of those is the court requirements.

MR. McGHETTIGAN: Yes.

MR. JOHNSON: Now, at one point in your report, you

refer to an alley to the rear of the Trautwine property; is that right?

MR. McGHETTIGAN: That's correct, I did.

MR. JOHNSON: And you're aware now that there is no alley behind that property, correct?

MR. McGHETTIGAN: That's generally correct, yes.

MR. JOHNSON: Okay, is there some part of that that's not correct?

MR. McGHETTIGAN: Yes, if I could just to clarify the situation, if I could pass out a graphic that shows the alley.

CHAIRPERSON GRIFFIS: That would be good.

MR. McGHETTIGAN: The first sheet of the graphic just shows where the second page comes from. It's from Volume 3 of base maps, series of Washington. The second page shows square 1236 and you can see on the map it shows a three-foot alley behind the lots. So at one point in time, there was a three-foot alley.

These -- I'm told by Historic Preservation that these kinds of alleys were common in Georgetown. They were used to pick up trash and what Historic Preservation called night soil, which I guess was emptying chamber pots. This third page shows the survey plat which labels that little strip of land that's three-foot wide as lot 847. The next page shows that lot 847 is existing lot on the tax records owned by B.C. Tolley

(phonetic), and just to clarify the last page shows the lot adjacent to it, opposite the subject property which is lot 159 and is owned by Robert B. Williams.

So there is an undevelopable lot three-foot wide between Mr. Williams' property and the subject property which --

MR. JOHNSON: And that's not a -- I'm sorry, go ahead.

MR. McGHETTIGAN: -- which was an old alley and was probably a private alley at one -- at the property.

MR. JOHNSON: So it's not an alley any more.

MR. McGHETTIGAN: No.

MR. JOHNSON: Is that correct?

MR. McGHETTIGAN: Yes, it's not an alley any more.

MR. JOHNSON: Okay. Now, let me ask you about on the third page of your report, the last paragraph, where you talk about the shape of this particular lot, the Trautwine lot. Do you see where I'm looking at?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: You've made a statement in the first sentence of that paragraph that includes the language, "Though there are certainly many R3 row house lots that are less than 2,000 square feet in the Georgetown Historic District, only a handful are as small as the subject property". Do you see that?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And did you consider the size and

shape of the other lots on 27th Street in making a determination that this property is exceptionally narrow, shallow or has a unique shape?

MR. McGHETTIGAN: Yes, that would be an R3 lot, row house lot in the Georgetown Historic District, there were 1900 such lots that were under 12,000 (sic) square feet.

MR. JOHNSON: Okay, and those other lots focusing for a second on the lots that are on 27th Street, the other lots on 27th Street are the same size and shape as the Trautwine lot, correct?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And the houses on those lots are the same size and shape as the house on the Trautwine property, correct?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And in making the determination concerning the numbers of lots that are within this range, where did you get that information?

MR. McGHETTIGAN: The tax records are incorporated into our geographic information system and I made a query in our geographic information system of all of the R3 lots in the Georgetown Historic District that were less than 2,000 square. feet.

MR. JOHNSON: And you determined that there are 1900 such lots?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And that determination of those 1900 square lots, I just want to be clear, that's only in the Georgetown Historic District? Is that right?

MR. McGHETTIGAN: Yes, these are only in the Georgetown Historic District, that's right.

MR. JOHNSON: And that doesn't look at for example, lots of similar size in other parts of the city, correct?

MR. McGHETTIGAN: That's correct.

MR. JOHNSON: And if we just focus on those, we've got about 1900 of those lots, correct?

MR. McGHETTIGAN: Correct.

MR. JOHNSON: And you say that about one percent of those are below 520 square feet, correct?

MR. McGHETTIGAN: That's correct.

MR. JOHNSON: And one percent of 1900 would be 19 lots, correct?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And so there are at least 19 lots that are the same size or smaller than the lot we're talking about here, correct?

MR. McGHETTIGAN: Around that number, one percent is a rounded figure, but yeah, around that number, give or take a few lots.

MR. JOHNSON: Okay. And it would be possible using

the computer program that you have to do it, for example 600 square feet or less or 700 square feet or less and to get those numbers, correct?

MR. McGHETTIGAN: That's correct.

MR. JOHNSON: In other words, you don't have to stop at 520. You could go and look above 520 and see, you know, for example, 530, 540, lots that are bigger but approximately the same size, correct?

MR. McGHETTIGAN: Yes, as a matter of fact, if you look on the next page, that's what I've done is I prepared a graph showing the number of lots in groups of 50 square feet and crossed the data that way.

MR. JOHNSON: And so for example, if we go up to 600 square feet, we see what approximately 13 or 15 lots that would be within that range?

MR. McGHETTIGAN: That's correct.

MR. JOHNSON: Okay. Moving on -- or sticking on that page, now that we're on page 4, on the last paragraph I want to ask you a couple of questions about a couple of the conclusions there. You've made a number of conclusions about practical difficulties with respect to the Trautwine lot; is that correct?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And one of the central assumptions that you're making here is that there will be a need to stabilize

the rear wall and rehabilitate the interior that will require a significant amount of investment, correct?

MR. McGHETTIGAN: That's correct.

MR. JOHNSON: And you're not breaking down there the investment that would be required to rehabilitate the existing interior from any of the other work that's being contemplated; is that true?

MR. McGHETTIGAN: Yes, that's true.

MR. JOHNSON: And one of the other things that you say is that these situations along with the character of the neighborhood, combine to create peculiar practical difficulties for the reasonable single family use of this property. What did you mean by the character of the neighborhood and how does that create practical difficulties? Do you know, do you remember?

MR. McGHETTIGAN: I don't recall.

MR. JOHNSON: Okay, moving onto the next page, the top paragraph, it is your conclusion that the applicant here requires a variance because of concerns from the ANC and the neighbors to the north, Dr. and Mrs. Joiner. Is that your understanding of why we're here on a variance application?

MR. McGHETTIGAN: Yes, that's basically my understanding of the record and what we're here for.

MR. JOHNSON: And where did you get that information from, that it's in response to concerns from the ANC and the neighbors to the north?

MR. McGHETTIGAN: From the record.

MR. JOHNSON: Okay. Now, we've discussed the fact that if there is less than a certain setback for this addition, then the setback counts as part of the lot occupancy percentage, correct?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And that's true no matter what size of setback we're talking about all the way up to five feet, correct, or is it six feet?

MR. McGHETTIGAN: I think it's five feet is a minimum with of a court.

MR. JOHNSON: Okay, so for any amount of addition that's closer than five feet to the Joiner property line, we have to count that whole setback as part of the lot occupancy percentage, correct?

MR. McGHETTIGAN: Correct.

MR. JOHNSON: And that would be true no matter what concerns had been expressed by the ANC or by Dr. and Mrs. Joiner, correct?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And so isn't it true that there really isn't any way to build this addition without at least getting a variance from the lot occupancy requirements? I mean, at least if you did build it, it would be much smaller than any of the versions that we've seen at any of the hearings here

before.

MR. McGHETTIGAN: I think if there was an addition that was within the 60 -- within 70 percent lot occupancy, then a special exception would be permitted and it would have to be built from property line to property line so it didn't create a court which is what is creating the need for a variance.

MR. JOHNSON: But the only way to do that and stay within the 70 percent would be to do it with at least a five-foot setback; is that right, because otherwise the setback counts as part of the lot occupancy.

MR. McGHETTIGAN: You could provide no setback and build an addition.

MR. JOHNSON: But then you'd still be requiring a variance from the lot occupancy, correct?

MR. McGHETTIGAN: No, you can get a special exception from the lot occupancy.

MR. JOHNSON: Okay, so what you're saying there though, is it would have to be shorter, right? It couldn't go out as far. I mean, it certainly couldn't go out 10 feet three inches, correct?

MR. McGHETTIGAN: That's correct. I think the first application that came in was for a special exception that met this requirement and it was a little over eight feet.

MR. JOHNSON: And that was less than 70 percent?

MR. McGHETTIGAN: I believe so.

MR. JOHNSON: Okay, I mean, I believe there's never been an application before the BZA that's been less than 70 percent but is it your belief that there was one that was lower than 70 percent?

MR. McGHETTIGAN: I believe that the initial application was -- met the special exception conditions.

MR. JOHNSON: Okay. The last section of your report you've titled "Adversely Effect Use of Neighboring Property". Now, I asked you about that before and so I just want to clarify. Is the only thing that you considered the effect that you thought it would have on the sunlight to the Joiner property?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: I don't have any further questions.

MR. McGHETTIGAN: Light and air.

MR. JOHNSON: Okay, well, air is something different from sunlight, right?

MR. McGHETTIGAN: Yes.

CHAIRPERSON GRIFFIS: They kind of travel in the same space, though.

MR. JOHNSON: So I just want to be clear. You said you looked at the sunlight and that was the only thing you looked at. Did you look at something else?

MR. McGHETTIGAN: Well, there's no really much to look at in air except to --

CHAIRPERSON GRIFFIS: That's a good point.

MR. JOHNSON: Well, if there's --

CHAIRPERSON GRIFFIS: Did you can take in to consideration the air flow in the back with the addition and the Joiner and the other adjacent properties?

MR. McGHETTIGAN: Well yes.

MR. JOHNSON: And how did you take that into account?

MR. McGHETTIGAN: I think it would be just a subjective decision, looking at what the situation is.

MR. JOHNSON: And so it was your subjective decision that the air flow would not be effected as well?

MR. McGHETTIGAN: That's correct.

MR. JOHNSON: And can you point to anything specific that you did to test that subjective conclusion?

MR. McGHETTIGAN: I observed the distance between the -- rear yard and the position of the buildings in the vicinity.

MR. JOHNSON: Anything else?

MR. McGHETTIGAN: Not that I can recall.

MR. JOHNSON: When you were out and visited the Joiner property did you have the opportunity to go on to their back patio?

MR. McGHETTIGAN: Yes, I did.

MR. JOHNSON: And did you look at the sunlight and

the air flow at that point?

MR. McGHETTIGAN: Yes.

MR. JOHNSON: And at that point did you obtain any new information or different information about the effect on the sunlight or the air flow from the addition?

MR. McGHETTIGAN: No, not really.

MR. JOHNSON: I don't have any further questions for this witness at this time.

CHAIRPERSON GRIFFIS: Thanks very much. Let me just do a little quick follow-up of the Office of Planning for my own clarification. I think you made the statement that looking at 27th Street, all the buildings were the same and the parcels or plots were the same and that's based on the recent submission or today's submission of the space plan. Did I understand that correctly?

MR. McGHETTIGAN: That's not correct.

CHAIRPERSON GRIFFIS: All right, but looking at this from what you've given me, I see only two parcels that are actually -- well, one parcel that's similar to that applicant's parcel which is 10.75 feet and you also indicated that all the buildings were the same but I mean, I don't know what the buildings are now. These are obviously old. I guess I could do it this way, but the adjacent property isn't similar to the applicant's property or the building, the structure. Is that correct?

MR. McGHETTIGAN: That's correct.

CHAIRPERSON GRIFFIS: Okay.

MR. JOHNSON: Well, as far as, if you're talking about the Giese addition, that's something that isn't on the plat.

CHAIRPERSON GRIFFIS: No, I understand that but I thought his direct answer was all the buildings and all the properties were the same and I didn't see that, so I wanted to make sure I wasn't missing something.

MR. JOHNSON: Well, I mean, it is true. The other witnesses have testified that as well, but that's something for argument, I guess.

CHAIRPERSON GRIFFIS: I think -- well, yeah, indeed it would be. In terms of your comment about the character of the neighborhood, on page 4 which was what was referenced, it says that, "These situations along with the character of the neighborhood combine to create a peculiar practical difficulty". In the above paragraph, you're indicating that adding a second floor to this structure would not be in character with the neighborhood. So are you not asserting in that sentence that the difficulty is that it can't go up, it has to go back?

MR. McGHETTIGAN: Yeah, that's correct.

CHAIRPERSON GRIFFIS: Okay.

MR. JOHNSON: You mean adding a third floor because there's already a second floor?

MR. McGHETTIGAN: Yeah, a third floor.

CHAIRPERSON GRIFFIS: Right, I mean, I think the exact words, "adding an additional story", I don't have it right now. Yeah, "For example, the construction of an additional story would not be in character with the surrounding historic properties".

Okay, yes, Mr. Giese.

MR. GIESE: The -- for exceptional shallowness, narrowness or unique shape, when I read the cases I think they're just talking about how unique the property is; is that correct? Is that your view? It's the uniqueness of the property, that you're really not -- in the action you're taking, you're really not amending the zoning laws. You're taking very peculiar situations; is that reasonable?

MR. McGHETTIGAN: Yes.

MR. GIESE: So when you make these statements here, you say it's exceptionally narrow, exceptionally shallow, it's not really the shallowness or the narrowness you're going after, it's really the size of the lot. Is that correct? That's really what we're talking about here that's unique.

MR. McGHETTIGAN: Yes.

MR. GIESE: It's the size of the lot. The -- and you say that there are 1900 lots under 2000.

MR. McGHETTIGAN: Yes.

MR. GIESE: Okay. And what did this chart come

from, the chart?

MR. McGHETTIGAN: The chart?

MR. GIESE: Yeah.

MR. McGHETTIGAN: It came from the geographic information system which is based on the tax records of lot sizes.

MR. GIESE: So you just punch something in said how many under 2,000 and it gave it to you and you had a great Excel software package and it put these bars out and did everything else for you; is that pretty much it?

MR. McGHETTIGAN: Yes.

MR. GIESE: So you picked it up yourself.

MR. McGHETTIGAN: Yes.

MR. GIESE: Just to make sure I'm reading it properly, there's one little number at the bottom here which I think is 450 and it's only one house that's 450 or below, is that it?

MR. McGHETTIGAN: Yes, that's correct.

MR. GIESE: So and that's incredibly scarce, that's like hen's teeth, right?

MR. McGHETTIGAN: Right.

MR. GIESE: Okay, I just -- as an aside, Mr. Zapatka was in a house that was 440, so we just found the hen's tooth in this chart. Now, those 2,000 were all represented in this chart, correct, I mean those 1900, excuse me.

MR. ZAPATKA: I was going to say, that's mine.

MR. McGHETTIGAN: That's correct, yeah.

MR. GIESE: There are 32 bars on this chart, so to have 1900 houses on this chart, there would have to be an average of 60 houses per bar. I don't see any 60-house bars. I see one 50. I see one 40 or a couple of 40s. I see -- how many houses are there under 2,000 square feet on here? They certainly -- there aren't 1900 houses on this graph.

MR. McGHETTIGAN: I think -- I think yeah, I think that the 1900 is the whole population --

MR. GIESE: All the houses, right?

MR. McGHETTIGAN: -- all the houses that are in the R3 row house lots in the Historic District, yes.

MR. GIESE: All right, so how many are there under 2,000? In other words, how many non-conforming houses -- how many -- so we can judge how many are being changed when you set this precedent.

MR. McGHETTIGAN: Probably seven or 800.

CHAIRPERSON GRIFFIS: That's an interesting line for the record.

MR. McGHETTIGAN: I don't have that number right now.

MR. GIESE: Do we know how many there are -- so we have no idea how many there are under 2,000 square feet in the Georgetown Historic District. We just don't know. When we look

at your graph, if we were looking at it here, what's -- I take it, is it the medium of the graph is under 1100 or is it 800 or 750 or where do we --

MR. McGHETTIGAN: Well --

MR. GIESE: Would 800 be exceptionally small? Would 700 be exceptionally small?

MR. McGHETTIGAN: When you're evaluating data, the -- you can statistically look at things that would help you find that out. One is the standard deviation of the value from -- the standard deviation of the population from the mean and I think I state in here that --

MR. GIESE: I think 850, is that what you said?

MR. McGHETTIGAN: -- subject lot is barely within two standard deviations of the mean.

MR. GIESE: Okay, so the mean is -- so anything under 1350 would probably be a small, very small lot. Let's say --

MR. McGHETTIGAN: I think probably anything over one standard deviation.

MR. GIESE: What would that be, would the be 800, 900, 1,000?

MR. McGHETTIGAN: I don't have that number, but I could get that number for you.

MR. GIESE: Okay. So you've said that if -- you know, one percent of the houses are exceptionally small and

that's exceptional. That's not -- that would be considered unique. That wouldn't be changing the zoning laws. What if you raise that percentage up a bit, aren't we changing the zoning laws when we say change five -- make five percent of the non-conforming houses conforming -- five percent of the non-conforming lots are suddenly conforming? That the BZA rules --

MR. McGHETTIGAN: I think that each case has to be looked at but this addresses a concern that there's a lot of lots that are small and there's not a lot of lots that are this small, and I don't think that it sets and precedent to make that decision, well, hey, there's not a lot of lots that are this small and the -- this is simply an exercise to support the conclusion that there's not a lot of lots that are that small.

MR. GIESE: The -- now, you've looked at this on a broad Georgetown perspective. Don't we also looked at this as changing -- you also talked about the character of the neighborhood and changing the character of the neighborhood. If the BZA makes a decision that they're going to set a precedent that they're going to change the character of that neighborhood, did you take that into account at all?

MR. McGHETTIGAN: Yes.

MR. GIESE: Okay, what did -- would it change your opinion at all if -- really we said that there are, I think in the 600 range, tell me if I'm right, I think there are 25 houses under 600 square feet. Does that sound right? Sound about right?

MR. McGHETTIGAN: Yeah.

MR. GIESE: All right, what if I told you that this lot is under 600 square feet, it's 597. This lot is under 600 square feet. This is 1306 Dunbarton. This is 1304 Dunbarton. This is 1302 Dunbarton, under 600 square feet, 1326, even though this is up here, this has a 27th Street address, has 520 square feet or something, I think. And then the Trautwine house and then I guess maybe you'd call these double lots, but then you'd have the rest of these lots and particularly you have the lone lot here, 1316.

So you really right in this one little area, one, two, three, four, five, our lot, seven, you have eight houses, I guess. Is that -- does that change your opinion at all?

MR. McGHETTIGAN: No. This is a series of small lots in the R3 zone.

MR. GIESE: Well, was it -- if you make these small lots -- you say that these small lots are suddenly conforming because of their uniqueness. Isn't that a dangerous --

CHAIRPERSON GRIFFIS: I think he stated he's not setting precedent, nor do we have the jurisdiction to write the zoning regulations.

MR. GIESE: Well, I think the issue, Mr. Chairman, is whether you're undercutting the zoning regulations because it's not unique.

CHAIRPERSON GRIFFIS: And that is well-heard.

MR. GIESE: It's the test of uniqueness. Let me go on to practical difficulties, which at least all the case law that I read for a use variance anyway they speak in terms of whether the application of the zoning laws would be unduly burdensome.

CHAIRPERSON GRIFFIS: Clearly this isn't a use variance, correct?

MR. GIESE: Excuse me, an area variance. A use variance would be hardship and this is an area variance, so whether it would be unduly burdensome to the applicant, the application of the laws and I guess the question there is, and this would go to, I guess Mr. Etherly has a problem with this, though, is whether if you take, and I think that we're all in DC and we're dealing with the DC government and I would hope that the DC government would stand behind what they assess people's tax property at.

But if you were to take that assessment, is it unduly burdensome for the applicant to reside in a one-bedroom house worth nearly $400,000.00 in Georgetown and that's what she can do under the zoning regulations.

CHAIRPERSON GRIFFIS: That's an awful lot of assumptions for him to make. I'm not sure that was part of -- perhaps a clarification; was that part of your assessment for the burden, the assessed price for the value of the property?

MR. McGHETTIGAN: No, it was not.

CHAIRPERSON GRIFFIS: You can rephrase that if you want to go in a different direction, but I don't think that he can answer that.

MR. GIESE: Is it an undue burden -- I won't go there.

On the historic preservation end of this, I think we've heard some testimony that there is hardly anything being saved from this house. I think Ms. Zartman expressed that considerably. And I was wondering what the basis of this is, that it would impair the historic quality of the structure in some sense. Is this your idea that you can't put a third floor on?

MR. McGHETTIGAN: Yeah, you can't add any additional spaces at the rear and still keep the historic character of the --

MR. GIESE: Okay, but the house can certainly be rehabbed as it is and maintain the historic character, certainly, right?

MR. McGHETTIGAN: Yes.

MR. GIESE: On the -- I know Mr. Johnson asked you about -- this is the bold line here, is that the need to stabilize the rear wall of the existing structure and rehabilitating the interior requires a significant amount of investment in the structure that could only be reasonably justified by an owner if additional floor space were added to the

house. What do you base that judgment on? What's the basis of that statement? How much -- what's the investment that needs to be made here?

MR. McGHETTIGAN: Well, I think it's been entered into the record. It's just based on what was presented by the applicant.

MR. GIESE: Well, I think we had that discussion that there isn't anything in the record. What's the -- what did you base this on in the record, if you did? Mr. McGhettigan, let me tell you also, i apologize for pinpointing through this thing with you and I don't mean to take you through line by line. There are many important points you make and if they are strong points I'd like you to make them with strength. And obviously, if they're not --

CHAIRPERSON GRIFFIS: I think he's doing fine.

MR. GIESE: What did you base that on? What is considered to be -- what's the considerable investment?

MR. McGHETTIGAN: I can only say that I based it on the applicant's statements and the record that I made that comment.

MR. GIESE: So in other words, they said it often enough that there's a considerable investment and you just sort of took that to be the case.

CHAIRPERSON GRIFFIS: I don't think that's what he said.

MR. GIESE: Well, that's what I'm asking.

CHAIRPERSON GRIFFIS: Did you base that on a specific dollar amount or was it based on the testimony from -- and the information and the testimony of the applicant that it would cost additional money to do the work that was proposed.

MR. McGHETTIGAN: It was based on the applicant's statement.

CHAIRPERSON GRIFFIS: Right, thank you.

MR. GIESE: The -- I think you figured out character of the neighborhood, I really didn't understand that. If we go to the top of page 5, and you talked -- I really don't understand this paragraph at all. You're talking about how this is an exceptional practical difficulty. Is what you're trying to say here is that because they couldn't go for the special exception for some reason, that that's a practical difficulty?

MR. McGHETTIGAN: Yeah, and that combined with other things. I mean, there's a whole lot of factors that are weighing in here, too. And that's one among many.

MR. GIESE: Mr. McGhettigan, if they could have gotten their original proposal, don't you think they would have gone for that? Does that mean because they were turned -- because they didn't go for one proposal they didn't get, that now it's a practical difficulty?

CHAIRPERSON GRIFFIS: Aren't you asking him to speculate what the applicant was trying to do?

MR. GIESE: No, I'm asking what he's basing his judgment on that this is a practical difficulty.

CHAIRPERSON GRIFFIS: No, but you asked him --

MR. GIESE: Well, he says -- he says here that, "The original proposal for the addition to the structure could be granted by a special exception.

CHAIRPERSON GRIFFIS: Right.

MR. GIESE: I guess the proper question is, why do you believe that could be granted?

CHAIRPERSON GRIFFIS: Well, we covered that with Mr. Johnson and if you aren't clear on it, it was stated and correct me if I'm wrong, but it was stated the fact that if you build lot line to lot line under the 70 percent lot occupancy, it would come in under a special exception.

MR. GIESE: Right, and they chose not to pursue that avenue.

CHAIRPERSON GRIFFIS: Right.

MR. GIESE: Is that correct?

CHAIRPERSON GRIFFIS: And you're asking him what the calculation and why he did that?

MR. GIESE: No, I guess the statement is, they chose not to pursue that which would infer that it wasn't approvable so --

CHAIRPERSON GRIFFIS: I don't know if it would infer that, but are you asking him whether it would infer that it

was approvable?

MR. GIESE: No, I'm asking him -- let's go back to the original item. Why is that a practical difficulty that they didn't pursue that alternative and that they're now pursuing the new alternative. I really don't -- I couldn't figure this one out.

MR. GELL: I didn't hear that in the statement. I don't understand what Mr. Giese's going for here.

MR. GIESE: I'm going for the clarification of what this paragraph says. It says there's an exceptional practical difficulty here and I'm asking what is that exceptional practical difficulty.

MR. GELL: It seems to me Mr. McGhettigan laid out in several pages what the exceptional practical difficulty was. It was not only because of what the applicant chose to do in response to the concerns of the neighbors. It had to do with many things.

CHAIRPERSON GRIFFIS: Right, and I think a clarification comes and Mr. Giese is going to the fact that under the heading of this paragraph of practical difficulties but clearly this paragraph starts out, "The need for this variance arises out of concerns". I think you're changing -- you can clarify if need be but I think you're giving the basis for why we're in the variance and therefore, it goes to -- not goes to the practical difficulties but goes to why one would speak to the

1 practical difficulties. Is that correct?

2 MR. McGHETTIGAN: Yes.

3 MR. GIESE: Okay. Pardon me?

4 CHAIRPERSON GRIFFIS: Go ahead.

5 MR. GIESE: On to adversely effect the neighboring

6 property, the -- you say in the beginning in your project

7 description that this abuts, the addition abuts the property to

8 the south. Where does it abut the property to the south? Where

9 does it sit?

10 MR. McGHETTIGAN: I assume at the property line.

11 MR. GIESE: At the property line. Okay.

12 MR. McGHETTIGAN: Yes.

13 MR. GIESE: Do we know where that is?

14 MR. McGHETTIGAN: We don't.

15 MR. GIESE: I won't go any further. We don't know

16 where that is. Will you just give it to me that we don't know

17 where it abuts the house? We don't know the exact location. Is

18 that correct?

19 MR. McGHETTIGAN: That's probably correct, yes.

20 MR. GIESE: Well, is it correct or not correct?

21 CHAIRPERSON GRIFFIS: Well, by your own statement,

22 if we don't know where this property line is, he can't answer

23 whether it abuts it or not.

24 MR. GIESE: Well, that's what I'm saying and he

25 says here it abuts it. I'm reading it out of his paper.

CHAIRPERSON GRIFFIS: I understand that.

MR. GIESE: Yeah, he says it abuts it, and I'm asking -- and he's made a judgment about harm here. I'd like to know whether he knows where the addition is going to fall in relation to the south property. And it's a very valid answer to say, no, since nobody in this room does, but that's up to you. No?

MR. GELL: I think the question has been answered many, many times. I don't think Mr. McGhettigan has to be peppered with the same thing. I think Mr. Giese is making a point that's been made, that's been answered. And we're just trying -- I don't know why he's trying to extend this hearing. I really don't.

CHAIRPERSON GRIFFIS: I agree, okay.

MR. GIESE: Mr. Gell, nobody would like to be at home more than me right now, I promise you. The question is a reasonable question of Mr. McGhettigan has made a judgment concerning harm here. I'm asking him whether he knows where the wall falls in relation to the property.

CHAIRPERSON GRIFFIS: Thank you. It's a simple answer.

MEMBER LEVY: I'm sorry, Mr. Chair, are we looking at the paragraph we're talking about the rear property line?

MR. GIESE: No, we're talking about the property line to the south.

MR. GIESE: What I see rear property line abuts an alley. Is there somewhere else where you're looking?

CHAIRPERSON GRIFFIS: What page are you on for that?

MR. GIESE: No, I'm sorry, I'm at page two, the description, project description.

CHAIRPERSON GRIFFIS: That's where you are.

MR. GIESE: The addition will be 8.75 feet wide and abut the property to the south.

Now, Mr. McGhettigan, you --

MR. GELL: I really have to question this line of questioning, frankly.

MR. GIESE: I'm moving on to harm now. I'm done there.

MR. GELL: Well, but I think it has to be answered. I don't think it's up to Mr. McGhettigan to decide whether our building on our property line is going to injure your property. That's not what he is asked to do. That's a question for a structural engineer, for a contractor. It's something not an issue for this body because we take on the responsibility for building this thing without injuring the properties near us.

And if we do injure them, we're going to have to pay for it and we understand that and we're going to have to have insurance to make sure that we very well can pay for it. I just don't see how this becomes an issue.

MR. GIESE: The way it becomes an issue, Mr. Gell, if you build on top of my foundation, it's going to injure my foundation.

CHAIRPERSON GRIFFIS: Okay, but what we were doing --

MR. GIESE: That's pretty clear.

CHAIRPERSON GRIFFIS: -- we're asking a question of Office of Planning which I think we can get a quick answer to. In the project description on page 2, you indicated the addition will be 8.75 feet wide, abut the property to the south. That's the sentence in question, correct?

MR. GIESE: Well, I'm just --

CHAIRPERSON GRIFFIS: Just yes or no, that's the one you're talking about, right?

MR. GIESE: Yes.

CHAIRPERSON GRIFFIS: Okay, and that's based on the information that you had and the assumption that you made that you were looking at the wall that was on the property line?

MR. GIESE: Yes.

CHAIRPERSON GRIFFIS: Okay. Mr. McGhettigan, going to the specific harms, you say here, "As discussed in the original report, the proposed addition will not adverse effect the neighboring properties. The proposed addition will still provide", so you reference the earlier report, the December, I guess, it's 28th report.

"The proposed addition will still provide a small garden. The rear line -- the rear property line abuts an alley". So you make the conclusion because it abuts an alley, "The proposed addition will not unduly limit light and air". So that's your reason for this not effecting the air here, because it abuts that alley. Is that the case? That's what it appears to say here.

MR. McGHETTIGAN: Yes.

MR. GIESE: Okay, so if there were no alley, then there's no conclusion.

MR. McGHETTIGAN: No, it would have to be re-evaluated.

MR. GIESE: It has to be re-evaluated. All right, and do we agree there is no alley back there?

MR. McGHETTIGAN: Yes, but there's a lot that's undevelopable that is the same width as the alley I observed on the plot.

MR. GIESE: Let me show this to you.

SECRETARY PRUITT: Are these all the same?

MR. GIESE: They're all the same. So, Mr. McGhettigan, you see in the picture there, that's the back of the garden at 1322 and so you can see there, there's a brick wall and then there's a fence there and it goes up about 12 feet behind. So as you can see, there's no alley and there's really no -- there's no air flow back there at all. If you look down at the

model here you can see if I put this -- this is the west side, we're looking at.

And if you put this piece of paper up here, which I guess none of you can see, you can see that this backs up right here. There's no air flow that will come from here. The only air flow comes from -- and maybe I'm using the wrong terminology but this court of backyards; is that correct?

MR. McGHETTIGAN: I think my concern in making the comment was that there couldn't be a structure built there of several stories that would, in effect, wall in that area. The fence and wall is not as high as a three-story building.

MR. GIESE: It's certainly not as high as a three-story building but as you can see from the picture, it cuts off all the air from the west to the back of that yard. And as you can see also from the model here, the only --

CHAIRPERSON GRIFFIS: Let's stick to the -- you can bring it up in testimony that -- you're testifying about your exhibit that you've -- you can ask him questions. Did you answer the question of whether it cuts off all air?

MR. GIESE: I didn't suggest it cut off all air.

CHAIRPERSON GRIFFIS: Well, that's what you said actually.

MR. GIESE: Well, the rear cuts off the air to the back.

CHAIRPERSON GRIFFIS: Right, right.

VICE CHAIRPERSON RENSHAW: Is that your -- Mr. Giese, is that your fence?

MR. GIESE: No, no, that's the Roberts' fence.

A VOICE: Mr. Williams' fence.

MR. GIESE: Mr. Williams' fence, a painter back there, a painter. It's a large property that runs all the way down here and down past one or two more houses down and has the large fence and wall that runs all the way back across this property. So the west is blocked off here, the east is blocked off by the houses.

CHAIRPERSON GRIFFIS: We've got to stick to cross examination.

MR. GIESE: This is across -- I'm sorry, I'm just trying to respond to --

VICE CHAIRPERSON RENSHAW: Yes, I just had a --

CHAIRPERSON GRIFFIS: I understand.

MR. GIESE: So anyway, the only ground air flow that could get in here is through these backyards; is that correct?

MR. McGHETTIGAN: No, I still think there would be air flow from other directions.

MR. GIESE: Where would those directions be, where would they come from?

MR. McGHETTIGAN: Like I said, I don't think that the fence is high enough to be that restrictive to the air flow.

1 My concern would be for a large building being constructed back
2 there.
3 MR. ZAPATKA: How much air --
4 CHAIRPERSON GRIFFIS: Mr. Zapatka.
5 MR. GIESE: Anyway, and then for the rest of the
6 harm issues, you refer to your earlier piece; is that correct?
7 MR. McGHETTIGAN: Yes.
8 MR. GIESE: Your December 28th item. Okay. And
9 here we talk about light and air again. Let me ask you this;
10 when you did this, it says you made a site visit, right?
11 MR. McGHETTIGAN: That's correct.
12 MR. GIESE: And in here you say on page 3, "The
13 proposed addition will not be visible from the street, alley or
14 other public way". Is that correct? Do you want me to show it
15 to you? Would that be of help? What you're going is you're
16 talking about the privacy of the use and enjoyment of neighboring
17 properties from not being duly compromised.
18 SECRETARY PRUITT: Excuse me, Mr. Giese, for
19 clarification, what case -- I mean --
20 MR. GIESE: What am I looking at?
21 SECRETARY PRUITT: Yes.
22 MR. GIESE: I am looking at -- Mr. McGhettigan, as
23 you can see, here what is does is for all the other harms on page
24 5, he says, "As discussed in the original report, the proposed
25 addition will not adversely effect the neighboring properties".

SECRETARY PRUITT: And the original report is dated?

MR. GIESE: It's December -- the one I have is dated December 28th.

SECRETARY PRUITT: So that would be based on the other design.

MR. GIESE: It would be based on the other design.

SECRETARY PRUITT: Okay.

MR. GIESE: Exactly, so he has referenced his basis based on the other design, exactly. Is that the case, Mr. McGhettigan? Your reference is to the earlier design?

MR. McGHETTIGAN: My reference in my report references the same arguments.

MR. GIESE: I'll give you that. I'm not worried about that. But anyway though, you say in this December 28th letter, and I'm on page 3, that -- and this goes to, "The addition together with the original building is viewed from the street, alley or other public way so not substantially visually intrude upon the character, scale and pattern of houses along the street frontage".

And you say, "The proposed addition will not be visible from the street, alley or other public way".

MR. McGHETTIGAN: Right.

MR. GIESE: Is that correct?

MR. McGHETTIGAN: That's what I said.

MR. GIESE: Okay, and that's on a site visit, right? You were taking a pretty close examination of all of this; is that --

MR. McGHETTIGAN: Yes.

MR. GIESE: Okay. The proposal at this time was an extension of the north wall. It went beyond the north wall. I think as you can all see here, that court of back rear yards is created there. When you look through there, you can see the whole of that wall and the continuation of that wall. It would be pretty hard to conclude --

CHAIRPERSON GRIFFIS: Is there a question?

MR. GIESE: The question is, is how could you -- how could you make all these other assumptions if it wasn't even clear that this was visible from the street?

MR. McGHETTIGAN: I think visible from the street is, you know --

MR. GIESE: Not important?

MR. McGHETTIGAN: No, is -- you know, has variations of visible from the street. It's far enough back that you wouldn't necessarily notice it. I mean, you'd have to be looking for it. I think that it just to the question that it shall not substantially visually intrude upon the character, scale and pattern of houses and I think that it's safe to agree with that statement.

MR. GIESE: Would you stay with the statement?

A VOICE: He just said so.

MEMBER ETHERLY: Mr. Chair, we're pretty close to being asked and answered on that particular point.

MR. GIESE: When you look at that picture, you can see from the street, you can see that whole side wall. Does that change your opinion at all?

MR. McGHETTIGAN: Where were you standing when you took this picture?

MR. GIESE: Across the street.

MR. GELL: Mr. Giese, could I have a look at that picture, please?

MR. GIESE: Oh, I'm sorry, Mr. Gell. I apologize. I'm giving away some of the party favors. There it is.

CHAIRPERSON GRIFFIS: Is that the official OP vehicle in this photograph?

MR. McGHETTIGAN: I wish.

CHAIRPERSON GRIFFIS: I think it is a red Porsche convertible. I've got to get a job there.

MR. GIESE: It's a very fancy neighborhood, with very expensive houses, Mr. Griffis.

CHAIRPERSON GRIFFIS: So your investment has paid off well then, next door.

MR. GIESE: So I just -- once again, I'm not trying to pick at you but I was reading through the report and I was looking and I saw how can somebody come to these judgments if

they couldn't even see that the addition would be back there because it's -- you know, you could see it. I don't see how you could look at the building without seeing that the addition is back there.

CHAIRPERSON GRIFFIS: Do you agree with that? I'll take that as a question, whether you agree or not. Can you -- looking at this photograph, can you envision the addition that's set back two feet?

MR. McGHETTIGAN: Yes, I can.

CHAIRPERSON GRIFFIS: Do you think it's visible?

MR. McGHETTIGAN: No, I don't think it --

CHAIRPERSON GRIFFIS: Okay.

MR. GIESE: The -- so what you did is you considered privacy and you considered latent air. Did you take into account harm to the side wall of the house to the south at all, of the wood wall?

MR. McGHETTIGAN: No, that's not one of the tests that I look at.

MR. GIESE: Okay, did you take into account maybe harm to the foundation to the house to the south?

MR. McGHETTIGAN: That's a construction issue, not a zoning issue. I did not look at it, no.

MR. GIESE: Did you take into account the possible harm to the rear wall, the rear brick wall, of the house next door if they take that wall down?

MR. McGHETTIGAN: No.

MR. GIESE: Excuse me, did you say that the wood wall was a construction issue?

MR. McGHETTIGAN: Any issues related to damage during construction or because of the construction are things that are construction related issues. They're not zoning issues.

MR. GIESE: So you didn't take into account any of the other issues that I raised as far as harm goes in --

MR. GELL: That's a very broad statement, Mr. Chairman.

CHAIRPERSON GRIFFIS: I would agree.

MR. GIESE: Well, I would guess that what Mr. McGhettigan did when he was doing his April 4th report is he went to the record to see what harms had been claimed so he could make a judgment of whether those harms were, in fact, the case.

CHAIRPERSON GRIFFIS: I'm not sure I follow.

MR. GIESE: Well, I'm just -- Mr. McGhettigan is making a judgment concerning the variance, one of the test for the variance of whether there is any harm here. He's making that really in, I don't want to say support of but balancing between the opponents and the moving party on this. The moving party has the burden of proof to show this. The -- I would think that what Mr. McGhettigan did is to -- is before making his report, would go and before making a site visit also, would go to the record and see what harms have been claimed by these parties.

CHAIRPERSON GRIFFIS: Uh-huh.

MR. GIESE: Was there any light, was there any --

CHAIRPERSON GRIFFIS: Right, I get that point.

MR. GIESE: All right. And my question is, is did you take into consideration any other harms than what you've listed here?

MR. McGHETTIGAN: No, the only harms I took into consideration are zoning harms, which are related to height, bulk, light and air, zoning harms, not construction harms.

MR. GIESE: Okay, would the impossibility of being able to maintain and repair the wood wall to the south --

MR. GELL: That's already been asked, Mr. Chairman.

MR. GIESE: I think Mr. Gell is diving in here because he's not going to like the answer but can I continue on?

CHAIRPERSON GRIFFIS: Yeah, quickly. I mean, I think I tend to agree but we can hear from him on this last issue in terms -- continue with the question in terms of the maintenance and --

MEMBER ETHERLY: I mean, Mr. Chairman, I don't want to prolong where we are but, once again, Mr. Giese has established through his questions that there were certain items that were not taken into account. Mr. McGhettigan has tried to explain what I think is very admirable precision what he did take in to account. I anticipate that Mr. Giese's next question is going to take us outside the scope of Mr. McGhettigan's prior

response.

CHAIRPERSON GRIFFIS: Let's have this one last question answered in terms of the way Mr. Giese phrased it and I appreciate that Mr. Etherly. I think we'll continue after that, going to the maintenance and whatever it is.

MR. GIESE: I can skip the question if you'd wish, whichever you would like.

CHAIRPERSON GRIFFIS: Of course I wish to but I want to give you the opportunity to ask it and have it answered.

MR. GIESE: I'll skip it. I'm all done.

MR. JOHNSON: Mr. Chair, I need to make a quick follow-up to one of your questions.

CHAIRPERSON GRIFFIS: You want to ask me?

MR. JOHNSON: No, I need to ask Mr. McGhettigan if I might. I'll keep it very brief. I appreciate it.

Mr. McGhettigan, the materials that you handed up from -- it is Base Survey of Washington --

MR. McGHETTIGAN: Yes.

MR. JOHNSON: I'm not sure if we had that marked as an exhibit for purposes of just making a record. Should I refer to the number or --

CHAIRPERSON GRIFFIS: What's the exhibit number on that?

MR. GELL: Mr. Chairman, this is a document that's in the Zoning Office. It can be given -- it can be taken into

1 account without being made a specific exhibit in this case.

2 CHAIRPERSON GRIFFIS: Okay, let's just trying to

3 refer to it as what was just submitted.

4 MR. JOHNSON: Here's my question. Mr. McGhettigan,

5 this is not the official plat that would have the correct lot

6 dimensions on it, correct?

7 MR. McGHETTIGAN: That's correct.

8 MR. JOHNSON: Okay, and the official plat, just for

9 purposes of making the record, we've reproduced the relevant

10 portion of it, it's in the record as Exhibit A to my letter of

11 February 19th, 2002 to the Board and that will have the correct

12 lot dimensions on there, to the extent that there's a question

13 about whether the other lots on 27th Street are similar in size

14 to this lot.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. JOHNSON: That's the only point I wanted to

17 make.

18 CHAIRPERSON GRIFFIS: Good, thank you.

19 MR. JOHNSON: Oh, also, do you know, is the person

20 who owns the -- what used to be the alley, paying tax on that?

21 Were you able to determine that?

22 MR. McGHETTIGAN: No, I don't know.

23 MR. JOHNSON: You don't? Okay. Thank you.

24 VICE CHAIRPERSON RENSHAW: We logged that in as

25 Exhibit 72, 7-2.

MR. JOHNSON: Okay, thank you.

MR. GELL: Mr. Chairman --

CHAIRPERSON GRIFFIS: Yes.

MR. GELL: My copy of the February 19th letter has several pictures attached. For some reason it doesn't have the plat that he's referring to and I'd like to take a quick look at it, if I might.

CHAIRPERSON GRIFFIS: What was the date on that again?

MR. JOHNSON: February 19th. That's the official plat from the surveyor's office.

MR. GELL: I might point out that this is dated 1918. It may have been official at one time, but I don't know how official it is now.

MR. JOHNSON: I could probably find it in the file.

CHAIRPERSON GRIFFIS: Okay, it is Exhibit 54. Oh, dear. Yeah, that's what I have. All right, well, it looks like we're going to need that submitted so that it's in the record. I can't find it in the case file here. Of course, it is awfully late in the evening and I could --

MR. JOHNSON: Do you want me to try to find it?

CHAIRPERSON GRIFFIS: Wait a minute, court counsel has a copy. Ah, it's Exhibit 45. Oh, indeed, okay. Good. Mr. Gell, did you get clarification on that and take a look at it?

MR. GELL: I'm sorry, Mr. Chairman?

CHAIRPERSON GRIFFIS: I thought you were looking for the -- you hadn't seen this. Did you find the clarification, that you have this, a copy of it?

MR. GELL: I have a copy of his February 19th letter, but that map was not attached.

CHAIRPERSON GRIFFIS: Right, so now you have copies, correct?

MR. GELL: I don't, no. I looked at one that Mr. Johnson handed me, but I don't have it.

CHAIRPERSON GRIFFIS: Okay, well, it is Exhibit Number 45, so we can make a copy in here if they don't produce a copy.

MR. GELL: Thank you. Thank you very much.

CHAIRPERSON GRIFFIS: Right, and it's all there, confirmed. Okay, let's take a look at where we are. It's 20 of 9:00. Let me get an assessment of time for the two parties to put on their cases.

MR. JOHNSON: Mr. Chair, we have testimony to offer from Dr. Joiner, which won't be too long. He's got a prepared statement to hand up to try to save some time. He does want to make some points then, depending on cross examination, but that will be our case.

CHAIRPERSON GRIFFIS: Okay. So 15 minutes. Mr. Giese?

MR. GIESE: I would think 15 minutes. I don't

know.

CHAIRPERSON GRIFFIS: Right, and then we're going to have rebuttal and closing. Okay, this is what I propose. It's too darn late to say any more and I would propose that we meet next week Tuesday, the 16th, first case in the morning. So I'll need everyone to check schedules and while you're checking schedules, I want you to realize that we're fitting you into a schedule that cannot be expanded; however, we are. And so we're going to be -- I will have a time limit, not on each of the individuals, but a time limit that we can go and it's going to be, I would imagine, less than an hour.

MR. GELL: Ms. Trautwine can't be here. We're willing to go forward nonetheless. I think she's given her testimony and she's been cross examined.

CHAIRPERSON GRIFFIS: Right.

MR. GELL: If that's satisfactory, then I'll be happy to represent her.

CHAIRPERSON GRIFFIS: Okay, it actually is at your discretion. I mean, we can be flexible. What I want to do is get this as soon as we can and that's obviously, next Tuesday. I can put it on, on the 30th of April if you feel -- and it's totally up to you whether you need Ms. Trautwine here or not.

MR. GELL: And I can assure the Chair that I only have a few questions of each of the people that have testified. I don't anticipate I'll be adding any to that, possibly one or

two when I hear their testimony, so we're not going to be taking much time in cross examination.

CHAIRPERSON GRIFFIS: Okay. So you'd be open to meeting then next week Tuesday?

MR. GELL: I would be open to meeting on, yeah, on April 16th and I think Ms. Trautwine, although she can't be here, she can agree to have a continuation on that date.

CHAIRPERSON GRIFFIS: Okay, Mr. Johnson.

MR. JOHNSON: I have a meeting that I will cancel at noon, so that I can be here.

CHAIRPERSON GRIFFIS: Thank you. Taking into consideration that we did take into your schedule a court case that you were in, if I recall correctly.

SECRETARY PRUITT: Just for clarification, so this is continued to April 16th, the first case at 9:30?

CHAIRPERSON GRIFFIS: Yeah, see, I'm getting a hard time from the staff.

MR. GIESE: 9:30 is it?

CHAIRPERSON GRIFFIS: Yeah.

MR. GIESE: The morning is fine. I cannot do the afternoon. I'm just --

SECRETARY PRUITT: I believe it will be the first case at 9:30.

MR. GIESE: I'm just getting it on the record now.

SECRETARY PRUITT: Oh, okay.

MR. GIESE: So I can't -- afternoon is out.

SECRETARY PRUITT: That's all right, afternoon was not offered.

MR. GIESE: Okay, so we'll finish by --

SECRETARY PRUITT: I believe the Chairman said he didn't really want this to take more than an hour.

MR. GIESE: Well, I understand that --

SECRETARY PRUITT: Hopefully.

MR. GIESE: -- but we'll finish by midday, is that -- there are other cases on in the morning.

SECRETARY PRUITT: We have two very, very controversial cases on after this, a detention center and St. Patrick Episcopal Church, so I mean, the Board has a very full schedule that day, too, so we need to be as efficient as possible.

MR. GIESE: May I --

CHAIRPERSON GRIFFIS: Yeah, let me speak to what the staff was saying. We will not -- we will have less than an hour allotted for time. And as I indicated, I will not put the clock on people's testimony but we will end at approximately 10:30 on that morning. We will call the next case. Is that clear? We'll have an hour to use.

MR. GIESE: So but we're not limited to 15 minutes necessarily.

CHAIRPERSON GRIFFIS: Nope.

MR. GIESE: The -- I was going to submit some documents.

CHAIRPERSON GRIFFIS: Tonight?

MR. GIESE: Well, I was going to submit them as part of when we were winding up to --

CHAIRPERSON GRIFFIS: That's fine.

MR. GIESE: Go ahead and do that?

MS. BAILEY: Mr. Johnson, did you want to submit your document as well, the testimony of your client?

MR. JOHNSON: I can wait and maybe I can streamline it further.

MEMBER LEVY: Streamlining is always encouraged, Mr. Johnson, thank you.

CHAIRPERSON GRIFFIS: Anything else? We have the documents in, we'll get those copied, get them out to everybody. Everyone is okay on the 16th, then.

MR. GELL: I'm grateful for the fact that Mr. Giese will have additional time to look at our submissions and if he has questions or matters to bring up that he will be able to do so. He'll have a week to formulate those questions or comments. And thank you very much to the Board for spending this time with us. I really appreciate what you all tried to do about finishing tonight and giving us this opportunity next Tuesday as well. Thank you very much.

CHAIRPERSON GRIFFIS: Well, we appreciate that.

MR. GIESE: I would make the same statement also is that we certainly want to all get this finished. It is difficult on everybody this time of night in doing this. I understand your restraints, all of our constraints and I just hope we can move this along. Thank you.

CHAIRPERSON GRIFFIS: Thank you, and you all enjoy the rest of the evening. This will then conclude the 9th of April 2002 afternoon hearing.

(Whereupon, at 8:50 p.m. the hearing in the above entitled matter was concluded.)

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