

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 11, 2003

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID A. ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
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BZA STAFF PRESENT:

BEVERLEY BAILEY	Office of Zoning
CLIFFORD MOY	Office of Zoning
JOHN NYARKU	Office of Zoning

OTHER AGENCY STAFF PRESENT:

STEPHEN COCHRAN	Office of Planning
STEPHEN MORDFIN	Office of Planning
KAREN THOMAS	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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

10:20 a.m.

CHAIRPERSON GRIFFIS: At this time, I call, as previously called, to order our Public Hearing on 11 March 2003. This is, of course, the Board of Zoning Adjustment of the District of Columbia. My name is Geoffrey Griffis. I am Chairperson. Joining me is the Vice Chair, Ms. Renshaw, also, Mr. Etherly sitting on my right, representing the National Capitol Planning Commission is Mr. Zaidain to my far left, and representing the Zoning Commission with us today is Ms. Mitten.

Copies of today's hearing are available to you. They are located at the table near the door where you entered into the hearing room. There's a couple of things that I need to bring to everyone's attention. Please, be aware that all public hearings before the Board of Zoning Adjustment are recorded. Therefore, there are several things attendant to that.

First of all, we ask that anyone and everyone refrain from making any disruptive noises or actions in the hearing room. Also, I would ask that everyone turn off all their cell phones or beepers, at this time, so that we also don't have any potential for interruption of the hearing.

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1 When coming forward to speak to the Board,
2 it is very important that you fill out two witness
3 cards. Witness cards are available at the table where
4 you entered into the hearing room. They are also
5 available on the table in front of us. Prior to
6 coming forward to us, you need to deliver those to the
7 recorder, who is sitting on the floor to my right.

8 Let me run through our process today for
9 all special exceptions and variances. The order of
10 procedure will be: (1) We will hear the statement and
11 witnesses of the applicant; (2) We will hear any
12 Government reports attendant to the application.
13 Those include such reports from the Office of
14 Planning, Department of Transportation, Department of
15 Health and any other that are submitted into the
16 record; (3) We would hear a report from the Advisory
17 Neighborhood Commission, the ANC; (4) Would be parties
18 or persons in support of an application; (5) Would be
19 parties or persons in opposition to the application;
20 (6) We will have closing remarks by the applicant.

21 Of course, during that process, we will
22 have cross examination. Cross examination is
23 permitted by the applicant or parties in a case. The
24 ANC within which the property is located is
25 automatically a party in the case. The record will be

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1 closed at the conclusion of all hearings, except for
2 any information that the Board specifically requests,
3 and we will be very specific on what is to be
4 submitted and when it is to be submitted into the
5 Office of Zoning. Of course, it goes without saying
6 after that information is received that the record
7 would be finally closed, and no other information
8 would be accepted into the record.

9 The Sunshine Act requires that public
10 hearings on each case be held in the open and before
11 the public. The Board may, however, consistent with
12 its rules of procedure and the Sunshine Act, enter
13 executive session during or after a case for the
14 purposes of deliberating or reviewing the record on
15 each case. The decision of the Board in contesting
16 cases of which most cases before us are contested, we
17 must base all our decisions and deliberations on the
18 record. Therefore, we ask for people present today in
19 the hearing room not engage Board members in any
20 conversations, so we do not give the appearance as not
21 deliberating specifically on the public record and
22 that which is presented before us.

23 I think we are ready to consider any
24 preliminary matters, at this time. Preliminary
25 matters are those which relate to whether a case will

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1 or should be heard today, such as requests for
2 postponements, withdrawal or continuance or whether
3 proper and adequate notice of a case has been
4 provided. If you are not prepared to go forward today
5 or if you believe the Board should not proceed with a
6 case, now is the time to bring up such preliminary
7 matters.

8 If you have a preliminary matter, I would
9 ask that you come forward and have a seat at the table
10 in front of us as an indication that you will be
11 addressing the Board. I will ask staff, at this
12 point, whether they have any preliminary matters for
13 the Board, but before I have their answer, I would
14 like to wish them all good morning. Our able and
15 Office of Zoning staff that is out here with us today,
16 Mr. Moy, Ms. Bailey and Mr. Nyarku, who is in and out
17 of the hearing room. Ms. Monroe is representing the
18 corporation counsel with that.

19 MS. BAILEY: Mr. Chairman, members of the
20 Board, good morning. Mr. Chairman, staff does not
21 have any preliminary matters.

22 CHAIRPERSON GRIFFIS: Very well. Then
23 let's call the first case.

24 MS. BAILEY: Application #16983 of Richard
25 Nappi pursuant to 11 DCMR 3103.2 for a variance from

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1 the minimum lot area requirements under subsection
2 401.3 and the variance from the off-street parking
3 requirements under section 2101 to allow the
4 conversion of two contiguous row dwellings into a
5 single 7-unit apartment building in the R-4 District
6 at premises 505 and 507 O Street, N.W., Square 479,
7 Lots 36 and 37.

8 Please, stand to take the oath.

9 (The witnesses were sworn)

10 MS. BAILEY: Thank you. Mr. Chairman,
11 very briefly, the property has been sold since the
12 application was filed, and the new owner of the
13 property is Blue Sky Housing O Street, LLC, and
14 correspondence has been submitted to the file
15 regarding this.

16 CHAIRPERSON GRIFFIS: Good. So we're all
17 properly read and documented to proceed. Is that
18 correct?

19 MS. BAILEY: Correct.

20 CHAIRPERSON GRIFFIS: Very well. In which
21 case? Good morning, gentlemen. Sorry for the delay
22 this morning. I'm going to have you introduce
23 yourselves. I'm going to turn it over to you for
24 presentation of your case.

25 Now, one technical aspect of this, when

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1 you're speaking you have to have your microphone on.
2 There's a button right on the base, you can just push
3 it and the light will come on. Perfect.

4 MR. HORTON: Good morning, members of the
5 Board, staff. My name is Earle Horton. I am an
6 attorney and member of Blue Sky Housing 0 Street, LLC,
7 and the agent for Blue Sky Housing 0 Street, LLC
8 regarding this application before the Board of Zoning
9 Adjustment.

10 MR. KILLETTE: Good morning. My name is
11 James Killette. I am the architect representing the
12 client.

13 CHAIRPERSON GRIFFIS: Good. In which
14 case, I will turn it over to you to inform us on your
15 application.

16 MR. HORTON: I would first like to start
17 by submitting some, I guess, more material that was
18 requested by the Office of Planning. While I give you
19 an overview of the project, you can sort of digest
20 this.

21 CHAIRPERSON GRIFFIS: Okay. And has the
22 Office of Planning seen that prior to this?

23 MR. HORTON: Yes, they have.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. HORTON: Yes.

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1 CHAIRPERSON GRIFFIS: While he is putting
2 that into the record, you can hand that to staff on my
3 far right, and they will distribute that accordingly.

4 I know, if I'm not mistaken, there is indication of
5 the potential of having additional submissions from
6 Office of Planning. Is that correct?

7 MR. COCHRAN: That's correct, and that
8 potential was realized this morning.

9 CHAIRPERSON GRIFFIS: I'm sorry, I didn't
10 hear the last part.

11 MR. COCHRAN: That potential was realized
12 this morning.

13 CHAIRPERSON GRIFFIS: Okay. So there is
14 additional submission from the Office of Planning.

15 MR. COCHRAN: We're going to have to do it
16 orally.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. COCHRAN: I didn't bring my laptop.

19 CHAIRPERSON GRIFFIS: That's all I'm
20 asking, because I want to make sure. I had not seen
21 anything in writing, so I think we're all in the
22 understanding, if one can enter it.

23 MR. HORTON: Good morning again. It is my
24 pleasure to be before you this morning, even though it
25 is a little snowy and the middle of March. But this

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1 application 16893 is brought on behalf of Blue Sky
2 Housing 0 Street, LLC, which is requesting the
3 approval of the Board of Zoning Adjustment for a lot
4 area variance and a parking variance for Lot 36 and
5 Lot 37 in Square 0479.

6 The properties are known as 505 and 507 0
7 Street, N.W., Washington, D.C. 20001, defined as a
8 project. The applicant is seeking a lot area variance
9 and a parking variance to be able to develop these
10 properties into seven condominium unit dwellings. The
11 505 and 507 0 Street, Lot 36 and 37, will consist of:
12 505 will consist of four residential condominium
13 dwellings, hopefully, and 507 will consist of three
14 residential dwellings, hopefully.

15 The project will not have any parking
16 space units, because the project is located in a
17 square that does not have an alley. The project is
18 located in the 500 block of 0 Street where there are
19 only three row houses, which the project is two of the
20 three row houses. There is ample space for street
21 parking, and the applicant is seeking out land or
22 spaces in the surrounding area, so that each
23 condominium unit has a parking space, if possible.

24 The total square footage of the project
25 will be, hopefully, between 7,000 to 7,200 square

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1 feet. Construction shall commence 30 to 60 days after
2 March 1st, and each unit will have recess lighting,
3 track lighting, standard appliances, substantial
4 upgrades and amenities, dishwasher, granite
5 countertops, washer/dryer.

6 CHAIRPERSON GRIFFIS: Okay. Actually,
7 that is not of great importance. It's of great
8 interest.

9 MR. HORTON: Okay.

10 CHAIRPERSON GRIFFIS: But not importance
11 to us. We assume that there's going to be some
12 difference on that if this is approved, than what is
13 showing, which is one heck of a shell.

14 MR. HORTON: Right.

15 CHAIRPERSON GRIFFIS: More importantly and
16 direct is we need to just focus on the zoning issues.

17 MR. HORTON: Okay.

18 CHAIRPERSON GRIFFIS: And not necessarily
19 amenities that are going into each of these units,
20 unless it goes directly to the making of a case for
21 relief and approval. On that, I think we can pretty
22 much -- I would ask unless there's any opposition from
23 my Board members, that you can just stand on the
24 record in terms of parking. I think that's fairly
25 straightforward, and is logical if the first variance

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1 goes ahead. We may take a different route with that
2 depending, but I think it is sufficient in the record
3 of what you said.

4 MR. HORTON: So thank you. Well, I guess,
5 then dealing with the first lot area variance, there
6 are three conditions that have to be met to grant the
7 variance: (1) Is that the property is unique. Its
8 size, shape or topography or other extraordinary or
9 exceptional situation or condition. I think you can
10 clearly see by the photographs and the stuff submitted
11 in the application that the buildings are in
12 crumbling, deteriorating and condemned shape, and that
13 I would think that would, you know, go to the crux of
14 extraordinary exceptional situation, because the
15 applicant is seeking to restore the two row dwellings
16 to their historic nature, and that would be of
17 substantial cost.

18 The other one would be encounter practical
19 difficulties or undue hardship if the Zoning
20 Regulations were strictly applied. I think that if
21 the Zoning Regulations are strictly applied, and as I
22 submitted today sort of an analysis of what it would
23 cost to do it as a matter-of-right and with a
24 variance, and I think that if you look at the,
25 basically, summary or the comparison, it states that

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1 "If I was to develop this as a matter-of-right, the
2 total development costs would be \$1,785,110, which is
3 \$332 a square foot. The average condominium price in
4 the area is \$315 a square foot, and this was for the
5 past six months, which on its face would not allow the
6 applicant to make it fair and reasonable. Actually,
7 the project would be unfeasible. I couldn't even get
8 it financed.

9 If I was allowed, if the Board granted me
10 the variance, the total development cost would be
11 \$1,922,005, which is \$267 a square foot. If the
12 average condominium price again is \$315 a square foot
13 for the last six months, then that would allow me a
14 reasonable return and would make the project
15 financially and economically feasible, and the exact
16 return would be 15.27 percent."

17 Having said that, I would think that the
18 practical difficulties or undue hardship test would be
19 met. Then going to the third test, if the variance
20 would not cause substantial detriment to the public
21 good, it may be granted without substantially
22 impairing the intent, purpose and integrity of the
23 Zone Plan Map. I would say that that test would be
24 met, as well, because I think that improving these
25 vacant and abandoned and condemned properties in a

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1 neighborhood that has seen substantial rehabilitation
2 and improvement over the last seven years, and these
3 are probably the last couple remaining dwellings that
4 are in this state, that it would be of good intent.

5 Obviously, it would be going to the public
6 good and, actually, benefiting the community, and
7 everybody in the community is very much in support of
8 the project, considering that they have been really
9 wanting something to be done with these properties for
10 some time, and these properties do cause a nuisance
11 and attract the remaining, I guess, drug users or
12 dealers and vagrants in the area, and that would be my
13 case so far.

14 CHAIRPERSON GRIFFIS: Okay. Good. Let me
15 perhaps give you some indication of what you're about
16 to hear from the Board.

17 MR. HORTON: Okay.

18 CHAIRPERSON GRIFFIS: So that you might be
19 a little prepared. First of all, I think starting
20 with the last test of which you have to get through
21 the first to get there, but certainly the last test in
22 terms of integrity of the Zone Plan Map, I don't see
23 that there is evidence of any problem with that.

24 When we go to uniqueness, I think, as
25 you've stated, that there is a unique situation here,

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1 and that is the existing structure and its condition.

2 Also, I think in the record it talks a little bit
3 about the size of the lots. You're probably going to
4 need to talk a little bit more about the uniqueness,
5 and then how it relates to your second test, which is
6 the most important, and that is the practical
7 difficulty.

8 When we talk about undue hardship before
9 this Board in terms of granting variances, that is
10 attendant to a use variance of which you clearly don't
11 want to be in, and I do not believe are, so what we're
12 talking about is a practical difficulty.

13 Now, the concern I'm sure that will be
14 evidenced by the Board is this, it is very difficult
15 for us to get to the level of discussing the economics
16 of a project, in terms of practical difficulty,
17 because what you're fighting against is not self-
18 imposed, and I think what you're presenting and I
19 think we need a couple of minutes just to kind of
20 digest the information you've provided, and that is a
21 breakdown of cost comparison as a matter-of-right
22 development, which would be single-family homes, and
23 with the variances as proposed for the seven units.

24 Is it correct that if you took the land
25 acquisition cost out of this, that it would still hold

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1 your argument that it is not economically feasible to
2 build matter-of-right?

3 MR. HORTON: I would say that that would
4 probably be the case, because if you subtract that,
5 let me just do this real quick, that would be just say
6 I guess \$1,300,000, according to the numbers I've
7 presented. And I'm still coming up with \$333.57 a
8 square foot.

9 CHAIRPERSON GRIFFIS: Okay. So my
10 understanding of what you just said \$330, let's say?

11 MR. HORTON: \$330.

12 CHAIRPERSON GRIFFIS: Per square foot.

13 MR. HORTON: And .57.

14 CHAIRPERSON GRIFFIS: So if I understand
15 that correctly, even if you take off the land
16 acquisition cost, because we could come back to you
17 and say well, you paid too darn much for the land.

18 MR. HORTON: Right.

19 CHAIRPERSON GRIFFIS: If you took that
20 out, still you have a cost that you're saying is
21 beyond what is financiable?

22 MR. HORTON: Correct. Yes, sir.

23 CHAIRPERSON GRIFFIS: Okay. Are you
24 prepared for Board questions, at this time, or is
25 there other information you want to provide?

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1 MR. HORTON: Yes, and I must apologize,
2 I'm here, as he introduced himself earlier, with my
3 most able architect, James Killette, and I don't know
4 if it's appropriate for him to say something, at this
5 time?

6 CHAIRPERSON GRIFFIS: We always like to
7 hear from the architect.

8 MR. HORTON: Okay.

9 MR. KILLETTE: Okay. You stated a
10 question? Did you have a question?

11 CHAIRPERSON GRIFFIS: Did I?

12 MR. KILLETTE: You made a statement. Your
13 last statement in regards to the land area, the
14 smaller size.

15 CHAIRPERSON GRIFFIS: Oh, in terms of
16 uniqueness. I think there will be more questions from
17 the Board.

18 MR. KILLETTE: Okay.

19 CHAIRPERSON GRIFFIS: We have the
20 uniqueness of existing structures. There was some
21 mention of it in the written documentation that the
22 size also somehow went to uniqueness. That uniqueness
23 would create the practical difficulty of which you
24 would be here for relief from.

25 MR. KILLETTE: Okay. I don't have

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1 anything to say, at this time.

2 CHAIRPERSON GRIFFIS: Okay. That's all
3 right. I imagine there might well be questions.

4 Board members, any questions of the
5 applicant, at this time?

6 COMMISSIONER MITTEN: I have a few.

7 CHAIRPERSON GRIFFIS: Ms. Mitten?

8 COMMISSIONER MITTEN: You said in this
9 submission and today that there is significant cost
10 associated with the retention of some portion of the
11 existing structure. And I would like you to explain
12 exactly how much, but first I would like you to say
13 what is the incremental cost? What additional costs
14 are you incurring by making this choice?

15 MR. HORTON: Well, considerable, because
16 it would be easier for a person to tear down these
17 dwellings and just build a new dwelling, but the cost
18 of restoring and trying to do some other things to
19 keep with the unique and historic character of the
20 area, because there's no slab or concrete slate or
21 foundation for the properties any more, there's no
22 underpinnings any more. You have to redig out all of
23 the soil and everything else to restore the basement.
24 Most of the side wall, rear wall, masonry on the
25 front wall is gone. And if you look, the masonry on

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1 the front is very, I guess, unique. It's not your
2 plain brick facade, so there is characteristics that
3 would have to be restored to make it, you know, look
4 the way it was.

5 COMMISSIONER MITTEN: Right. And I guess
6 I understand all that. Since you've obviously done
7 some analysis of the feasibility of the project,
8 what's the additional cost that you are incurring by
9 making the choice to restore the structure as opposed
10 to just tearing it down, as you said, which would be
11 easier? What is that cost?

12 MR. HORTON: Oh, you want a number?

13 COMMISSIONER MITTEN: A number.

14 MR. HORTON: I would say, I don't know.
15 You're talking the contractor, and generally would
16 make \$200,000 or \$300,000 more.

17 MR. KILLETTE: Around \$250.

18 MR. HORTON: About \$250.

19 COMMISSIONER MITTEN: \$250,000?

20 MR. HORTON: Yes.

21 COMMISSIONER MITTEN: And these pro formas
22 that you've worked up, these budgets for a matter-of-
23 right development versus the development with a
24 variance, do those both include this additional cost
25 for retention of the facades?

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1 MR. HORTON: Yes.

2 COMMISSIONER MITTEN: And can you explain
3 why you would make the choice to spend an additional
4 \$250,000 as opposed to as you said doing what would be
5 easier, which is just to tear the buildings down and
6 design something that would fit in with the fabric of
7 the neighborhood, given that you're not being
8 compelled to retain the facade.

9 MR. HORTON: Right. I would say for
10 several reasons. One of the main reasons is that the
11 neighborhood and the ANC and neighbors really would
12 like to see that. The second reason is that the, I
13 guess, area has been consistent in restoring these
14 type of houses, and I would sort of want to keep up
15 with that consistency. Thirdly, that there is, I
16 guess, market force in the area that you have to have
17 something that is comparable with other properties in
18 the area for a, you know, saleable value.

19 Well, it's been determined that if you
20 restore these and keep the old fabrics, so forth and
21 so on, that it would be more feasible to do this type
22 of project.

23 CHAIRPERSON GRIFFIS: So you're saying
24 even if you build new, you would have to be doing
25 something of higher craft and uniqueness, so there

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1 would be some substantial cost to a new facade? And
2 if I take your point logically, if you just put a
3 concrete block, a couple of windows in front and slap
4 a door on it, that that would not necessarily be a
5 marketable product.

6 MR. HORTON: Yes, sir.

7 CHAIRPERSON GRIFFIS: And now, is it also
8 correct if you took the building down on lot, I don't
9 know which one it is, it's the one that has a
10 nonconforming side yard of 3 feet.

11 MR. HORTON: Yes.

12 CHAIRPERSON GRIFFIS: Which is not a
13 problem, because it's an existing structure prior to
14 1958. I'm looking at your, it looks like a Sanborne,
15 and it would be -- I can't tell. It's the deeper
16 building. No, I'm sorry. It's the Lot 36.

17 MR. HORTON: Okay.

18 CHAIRPERSON GRIFFIS: Now, if you were to
19 take that structure down, is it your understanding
20 that you could not put a structure back up on the same
21 similar footprint?

22 MR. HORTON: If you demolish the
23 structure, then you could not replace it in a
24 nonconforming state.

25 CHAIRPERSON GRIFFIS: Indeed.

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1 MR. HORTON: We would have to go to the
2 extent of the property line.

3 CHAIRPERSON GRIFFIS: Okay. Now, does
4 that go to your thought process and decision making of
5 wanting to keep the existing structure?

6 MR. HORTON: One of the design concepts is
7 that if we were to extend the additional 3 feet, then
8 it would kind of unbalance the harmony of the two
9 houses that exist, because they practically have the
10 same width.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. HORTON: It's almost like we don't
13 really want to disturb the historic context of the
14 structures.

15 CHAIRPERSON GRIFFIS: Okay. But are you
16 seeing anything in what would be in our jurisdiction,
17 zoning implications if you took this down, and that
18 was part of your factoring of why you would keep the
19 existing structure?

20 MR. HORTON: Honestly, no. Until you just
21 mentioned it, it's the first time, and I don't know if
22 that's what you wanted me to say, but, I mean, I want
23 to keep the structures. I guess that's just the
24 bottom line. And the neighbors have said that they
25 would want to keep the historic nature and that.

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1 CHAIRPERSON GRIFFIS: Yes, and I think
2 what Ms. Mitten is bringing up is very pertinent to
3 us, because what is clear, and I don't know if
4 everyone has the same opinion, but I think they would,
5 is it would be of great merit if you kept the existing
6 structures. There's no question about it. I mean,
7 they have the original type of fabric that the
8 townhouses have.

9 I think what Ms. Mitten is asking you and
10 pointing you to is, if I can be so blunt, but so what,
11 in terms of our zoning issues in the case that needs
12 to be presented. And so what she is leading you to is
13 if you have created this yourself and say it's so much
14 more costly to save this existing structure, so that's
15 why we need additional release, that doesn't -- I
16 don't want to talk for Ms. Mitten, but I think she
17 would say, and I will say that that may not meet the
18 test of the case, and that's what is of concern.

19 Ms. Mitten is perfectly capable of
20 correcting me if I have misspoken her opinions.

21 COMMISSIONER MITTEN: No, you've done a
22 fine job.

23 CHAIRPERSON GRIFFIS: Thank you. Any
24 other questions, at this point, clarifications? Is
25 there anything to add? You will have a time to

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1 respond. What we're going to do is go through our
2 Government reports. I would like to hear from Office
3 of Planning to see if they have new information,
4 because we haven't heard from them, in terms of their
5 supplemental report, and they've indicated that they
6 are attending to do so. We will go through also the
7 ANC, and then I will return to you and call any other
8 witnesses that are here.

9 COMMISSIONER MITTEN: Could I ask another
10 question?

11 CHAIRPERSON GRIFFIS: Yes.

12 COMMISSIONER MITTEN: Before we move on.
13 I know that you said it when you were testifying, but
14 you gave average per square foot prices for the
15 condominiums and the non condominium sales?

16 MR. HORTON: Yes.

17 COMMISSIONER MITTEN: Could you just
18 repeat those? What the average prices were.

19 MR. HORTON: Yes, ma'am. The average
20 price for condominium sales in a four block radius,
21 well, just say six block radius to combine both was
22 \$315 a square foot for the last six months.

23 COMMISSIONER MITTEN: Okay. And that's
24 based on this list that you gave us?

25 MR. HORTON: Yes, ma'am.

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1 COMMISSIONER MITTEN: Okay. And the
2 other, the non condominiums?

3 MR. HORTON: The non condominiums the
4 average sales price was \$320,535 for properties
5 located within a six block radius for the last six
6 months.

7 COMMISSIONER MITTEN: Okay. I think I
8 misunderstood what you said a second ago. Did you
9 give me a per square foot average on the condos?

10 MR. HORTON: Yes, I did.

11 COMMISSIONER MITTEN: \$315?

12 MR. HORTON: \$315.

13 COMMISSIONER MITTEN: Okay. And the
14 comparable per square foot number for the non
15 condominiums per square foot?

16 MR. KILLETTE: He's doing a total sale
17 price.

18 MR. HORTON: Yes.

19 COMMISSIONER MITTEN: And did you work up
20 a per square foot or not?

21 MR. HORTON: No.

22 COMMISSIONER MITTEN: Okay.

23 MR. HORTON: The real estate, they didn't
24 have a square footage on the houses for sale. They
25 just had sort of -- if you look at the townhouses,

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1 they have the levels and how many bedrooms and baths,
2 but they couldn't give me what the square footage is
3 on that.

4 COMMISSIONER MITTEN: Okay. And do you
5 know on these two lists which properties are historic
6 properties that have been renovated and which
7 properties are new construction, if any?

8 MR. HORTON: It's my belief because two of
9 the properties, 1719 and 5th Street are rehab
10 properties, and 11th Street, 223, 337 and 423 I am not
11 sure.

12 COMMISSIONER MITTEN: Okay. And how about
13 the single-family dwellings?

14 MR. HORTON: Single-family dwellings, the
15 only ones I can speak to are 2nd Street and 5th Street
16 that I know those are rehab.

17 COMMISSIONER MITTEN: Okay.

18 MR. HORTON: The other ones I'm not sure.

19 COMMISSIONER MITTEN: Okay. And when you
20 decided to pay \$400,000 for the land --

21 MR. HORTON: Yes, ma'am?

22 COMMISSIONER MITTEN: And presumably, you
23 did some kind of either comparable analysis looking at
24 what other properties of this type either shells or
25 vacant land were selling for or you did some kind of

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1 residual analysis. Were you thinking that you were
2 going to build 7 condominiums when you decided to pay
3 \$400,000?

4 MR. HORTON: No, I was actually thinking,
5 you know, I think you have some appraisal in your
6 background, as an appraiser, so what I did was just
7 look at the value of the land basically.

8 COMMISSIONER MITTEN: But on what basis?
9 I mean, there's what you can do as a matter-of-right,
10 which is one way to analyze it.

11 MR. HORTON: Right.

12 COMMISSIONER MITTEN: And come up with a
13 price, and then there's another way which is to
14 extrapolate and say well, maybe if I can get a
15 variance or variances from the Board of Zoning
16 Adjustment, then I might be willing to pay more,
17 because I could get a larger project. So I'm asking
18 you when you decided to pay \$400,000, what were you
19 thinking?

20 MR. HORTON: Well, two things. I was
21 thinking that was the price that was out there, but
22 the value for the land was reasonable, and I did do an
23 analysis of matter-of-right and if I had variance, and
24 that's where I came up with the number 7, because I
25 thought, looking at the Zoning Regulations and feeling

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1 that these properties met this test, but that's
2 nothing. I'm not coming here asking for 14 or 20 or
3 anything more. I'm just asking for something that
4 would make the uniqueness of the properties, that the
5 practical difficulties of developing them and making a
6 reasonable economic return, the risk would be
7 mitigated at 7, and so that's really where I came up
8 with the number 7 in condominiums.

9 COMMISSIONER MITTEN: Okay. So there's
10 some bit of gambling in the number, so that if you had
11 known that you would be restricted to matter-of-right,
12 you would have paid less? Is that fair to say?

13 MR. HORTON: Well, I would have loved to
14 have paid less. Trust me, yes, I would have loved to
15 have paid less. It wasn't my choice, honestly, and I
16 think that's, you know, my digress, but this is
17 probably why nothing has been done with them, because
18 of the, you know, price.

19 COMMISSIONER MITTEN: Okay. Thank you,
20 Mr. Chairman.

21 CHAIRPERSON GRIFFIS: Any other questions
22 of the applicant, at this time?

23 Let's go to the Office of Planning then.

24 MR. COCHRAN: Mr. Chair, my name is Steve
25 Cochran of Office of Planning. While you did get Ms.

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1 Mitten's statements paraphrased correctly, I regret
2 that I had been intending to say that we had
3 additional information from the applicant. OP does
4 not have an additional written report today. We just
5 got the information from the applicant this morning.

6 The Office of Planning has been concerned
7 that while the applicant has demonstrated that there
8 are exceptional conditions, and while the Office has
9 been able to determine that the relief can be granted
10 without detriment to the public good, the applicant
11 had not demonstrated practical difficulty, and that
12 therefore went to the question of whether granting the
13 relief without demonstrating or meeting the test would
14 impair the intent, purpose and integrity of the Zone
15 Plan.

16 So we had been working with the applicant
17 on getting that demonstration of practical difficulty.

18 We feel that the information that the applicant
19 presented this morning has gone a long way towards
20 demonstrating that practical difficulty. Some of the
21 comparables are very useful. They do not create an
22 entirely parallel transparent situation with which to
23 judge whether the applicant could, indeed, develop the
24 property on a square foot basis for less or the
25 applicant to develop them as single-family houses nor

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1 does it do an adequate comparison of what the cost per
2 square foot would go for on a single-family basis, as
3 opposed to the condominium basis.

4 If we're working with the assumption that
5 these are going to be multiple units, however, we feel
6 that this information is sufficient. The applicant
7 has factored in things like basements not being
8 developed should they go to the four or five units
9 that would be permitted by matter-of-right, the
10 possibility of not reconstructing some of the rear
11 portions of some of the existing structures, should
12 the variances not be granted.

13 It's always, as the Chair knows,
14 preferable to have authenticity rather than ersatz
15 historicism. The applicant has taken, as you
16 correctly said, a gamble on paying what might be seen
17 as a premium price for the opportunity to have an
18 authentic facade and some authentic party walls
19 remain. The Office of Planning is certainly prepared
20 to work with the applicant, should the applicant
21 choose to request that the record be kept open for the
22 submission of additional information that the Board of
23 Zoning Adjustment might be asking for today.

24 At this point, we are not prepared to
25 recommend that the variance be granted today, but we

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1 are optimistic that we would be able to make that
2 recommendation in the future, after the submission of
3 a bit more information.

4 CHAIRPERSON GRIFFIS: Good. Thank you
5 very much, Mr. Cochran.

6 Questions from the Board members?

7 BOARD MEMBER ETHERLY: Mr. Chair, not so
8 much a question for Mr. Cochran. I want to digest
9 ersatz historicism for a moment. That was a good one.

10 But I want to come back to the Office of Planning,
11 but a question that came up in my mind that I want to
12 direct to, perhaps, Mr. Killette is did you take a
13 look at the size? As you look at the comps, it looks
14 like a two bedroom, two bath seem to be a pretty
15 standard configuration in the neighborhood, in terms
16 of your condos, as well as the single-family homes.

17 What I'm interested in is did you take a
18 look at what the square footage per unit looks like
19 under your scenario with the variances and your
20 scenario without? Clearly, in the scenario with the
21 variances, you get what you're looking for, which is
22 the five two bedroom, two baths and two one bedrooms.

23 The scenario without the variance or as a matter-of-
24 right would be simply five units that are all two
25 bedroom, two baths.

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1 What I'm trying to get a sense of is if
2 you go the route of just simply doing this as a matter
3 of right, are those two bedroom, two bath units
4 smaller or do they grow in size, and if so, does that
5 keep you in step with, perhaps, and this might be hard
6 information to get at, what the square footage size is
7 of some comparable units in that community?

8 MR. KILLETTE: With the variance the unit
9 would pretty much remain the same somewhere between
10 900 and 1,100 square foot range. I have not gone that
11 far in terms of design to fully answer your question.

12 BOARD MEMBER ETHERLY: Okay.

13 MR. KILLETTE: But certainly trying to
14 keep the units, I'm working on several properties in
15 the neighborhood, so I know what I've designed for
16 them.

17 BOARD MEMBER ETHERLY: Yes.

18 MR. KILLETTE: So it would be the same for
19 him.

20 BOARD MEMBER ETHERLY: Okay. So under the
21 as a matter-of-right scenario, somewhere between 900
22 and 1,100 square feet per unit?

23 MR. KILLETTE: Yes.

24 BOARD MEMBER ETHERLY: Okay. Okay. Thank
25 you, Mr. Chairman. I'll come back to that in a

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1 moment, but I just want to kind of work up some
2 numbers real quick. Thank you.

3 VICE CHAIR RENSHAW: Mr. Chairman?

4 CHAIRPERSON GRIFFIS: Ms. Renshaw?

5 VICE CHAIR RENSHAW: A question for Mr.
6 Cochran. You stated that you can't give a definite
7 recommendation, at this point, or at least an
8 affirmative recommendation. Does that go for both
9 variances, the lot area and the parking?

10 MR. COCHRAN: Should the Board decide to
11 grant the requested area variance, we would, of
12 course, recommend for the parking variance. There's
13 no problem with that. OP does understand that the
14 applicant is in sort of a catch 22 situation with
15 respect to the existing structures. The applicant
16 incurs the additional costs of restoration of more
17 elaborate facades then might be constructed anew if
18 the applicant retains the existing structures.

19 On the other hand, the applicant loses
20 matter-of-right lot coverage if the applicant tears
21 down the existing structures, reconstructs something,
22 the applicant would then be forced into basically
23 having smaller structures than is permitted if the
24 applicant retains the pre-1958 structures, and would
25 get even less of a return. So there is sort of a

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1 catch 22 going on here. While the cost per square
2 foot might be less, you may well be able to look at a
3 graph, should the applicant choose to work it out,
4 that would show that we're below the intersection
5 point of whether there would be a return.

6 I think the applicant has stated that that
7 may well be why these properties have continued to
8 sit. OP would like to be able to make the judgement
9 call that it's worth granting the variances in order
10 to get these properties back into not just economic
11 use, but into a positive contribution for the
12 neighborhood. But we feel that while the applicant is
13 very close to having demonstrated that the tests can
14 be met, we're reluctant to set a precedent, that would
15 not be a precedent, of course, by suggesting to the
16 Board that it grant the variance without adequate
17 demonstration of this test having been met.

18 CHAIRPERSON GRIFFIS: Okay. Yes, Ms.
19 Renshaw?

20 VICE CHAIR RENSHAW: No.

21 BOARD MEMBER ZAIDAIN: I just had a
22 general question. You mentioned something about how
23 development in this area is somewhat stagnate possibly
24 because of the economic problems. Is OP is studying
25 that in any way?

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1 MR. COCHRAN: No.

2 BOARD MEMBER ZAIDAIN: Did I understand
3 you?

4 MR. COCHRAN: These shells have certainly
5 been vacant for at least 10 years.

6 BOARD MEMBER ZAIDAIN: Right.

7 MR. COCHRAN: The applicant has testified
8 and has submitted in his written testimony that they
9 are actually condemned, although I haven't seen a copy
10 of the condemnation records.

11 BOARD MEMBER ZAIDAIN: Yes.

12 MR. COCHRAN: Do we think that this
13 neighborhood is deteriorating? No. The Convention
14 Center is going to be opening soon.

15 BOARD MEMBER ZAIDAIN: Well, sure.

16 MR. COCHRAN: The value of the property
17 will certainly be going up. Someone may well be
18 trying to get more than \$200,000 per lot two years
19 from now, after the Convention Center is open.

20 BOARD MEMBER ZAIDAIN: Well, I mean, I'm
21 aware that there is going to be development pressure.
22 I'm just wondering if the zoning issue here is the
23 symptom of a bigger problem for the neighborhood, in
24 that it may require some tweaking in the zoning at
25 some point down the line by the Zoning Commission.

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1 And I was just trying to explore exactly if what's
2 going on here is related to a broader issue in the
3 neighborhood that would just remain a hardship.

4 CHAIRPERSON GRIFFIS: Well, actually,
5 before we go too far into that, I don't have any
6 problems blaming it on the Zoning Commission, but we
7 are going on to something else.

8 BOARD MEMBER ZAIDAIN: Well, that's what I
9 was going for, actually.

10 VICE CHAIR RENSHAW: Yes.

11 CHAIRPERSON GRIFFIS: And I think let's
12 stick directly to the report, at this point. Mr.
13 Zaidain, I think that's an excellent point. I think
14 that's a large conversation, unless that helps and
15 informs you to this.

16 BOARD MEMBER ZAIDAIN: I think it does.

17 CHAIRPERSON GRIFFIS: Okay. Then
18 continue.

19 MR. COCHRAN: I'm not sure that the same
20 ANC that's willing to recommend that the Board grant
21 the variance would be willing to recommend that the
22 Zoning Commission rezone this to R-5.

23 CHAIRPERSON GRIFFIS: Is that your point,
24 Mr. Zaidain, that you think that based on some of the
25 specifics of the neighborhood, that it maybe is

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1 appropriate to upzone it?

2 BOARD MEMBER ZAIDAIN: Potentially, but I
3 think the point has been exhausted.

4 CHAIRPERSON GRIFFIS: Okay.

5 COMMISSIONER MITTEN: Can I just remind,
6 Mr. Chairman, on this? Mr. Chairman, this is relevant
7 to this one little point. I believe that based on
8 everything we have heard, the problem with this
9 property is not the neighborhood and economic
10 conditions. It's that there was an owner who is
11 holding out for a higher price, that's what Mr. Horton
12 implied with his responses.

13 CHAIRPERSON GRIFFIS: Okay.

14 VICE CHAIR RENSHAW: Mr. Chairman?

15 CHAIRPERSON GRIFFIS: Yes, Ms. Renshaw?

16 VICE CHAIR RENSHAW: I have a another
17 question for Mr. Cochran. How much more information
18 do you need? You said you would be working with the
19 applicant or maybe working with the applicant, so how
20 much more work is it going to take to make you feel
21 comfortable with this application?

22 MR. COCHRAN: Well, I think that Ms.
23 Mitten, who I understand has a background in
24 appraisal, asked some very pointed questions this
25 morning, and suggested some comparisons that might be

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1 appropriate and that if we could see those, we would
2 be better able to evaluate and give a positive
3 recommendation.

4 CHAIRPERSON GRIFFIS: Okay. Any other
5 questions of the Office of Planning?

6 COMMISSIONER MITTEN: I have one. I just
7 want to go back to Mr. Cochran's discussion with the
8 Board about the lot occupancy, and that somehow
9 demolishing and starting over the applicant would lose
10 something, and so you're going to have to point this
11 out to me, because I'm not getting it.

12 On page 3 of the report, of the Office of
13 Planning report, it says "Lot 36 has an existing lot
14 occupancy of 57 percent. Lot 37 has an existing lot
15 occupancy of 51.5, so combined they are somewhere in
16 between, and the maximum lot occupancy for row
17 dwellings and flats in Lot 4 are 60 percent." So I'm
18 not understanding what would be lost.

19 MR. COCHRAN: It's possible that the side
20 yard may impinge on the lot occupancy for a lot.
21 Well, it's a lot that would be 505.

22 COMMISSIONER MITTEN: Is that --

23 MR. COCHRAN: I have not calculated that
24 yet.

25 COMMISSIONER MITTEN: All right.

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1 MR. COCHRAN: That's where you do have the
2 separation between the units, where there's not just a
3 party wall.

4 COMMISSIONER MITTEN: I see. Okay. Mr.
5 Cochran, have you seen any drawings about what the
6 project would look like? Because we have, and I'll
7 ask the applicant this when we get done with Mr.
8 Cochran, row houses that are, as I understand them,
9 two stories, plus basement, and the completed project
10 will be three stories, plus basement, and we have, you
11 know, lots of expressions from the applicant about
12 historic preservation.

13 Have you seen anything about what this
14 project is going to look like and whether or not it's
15 the kind of thing that -- I mean, if we're talking
16 about a project that is superior, potentially
17 superior, because it's genuine historic preservation
18 and we don't know what it looks like, it's pretty hard
19 to really evaluate that.

20 MR. COCHRAN: No, I haven't seen any
21 facade drawings.

22 VICE CHAIR RENSHAW: Did the architect
23 bring anything today?

24 MR. KILLETTE: No.

25 CHAIRPERSON GRIFFIS: Any other questions

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1 of the Office of Planning? Does the applicant have
2 any cross examination of the Office of Planning?

3 MR. HORTON: No, he has been very helpful.

4 CHAIRPERSON GRIFFIS: He has been very
5 helpful?

6 MR. HORTON: Yes.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. HORTON: I mean, I guess, my point
9 being that he wanted this information submitted, and
10 I've tried to be timely, and hopefully we're getting
11 to a point where they're going to recommend it.

12 CHAIRPERSON GRIFFIS: Okay. But you are
13 in receipt of his report. Is that correct?

14 MR. HORTON: Yes.

15 CHAIRPERSON GRIFFIS: Okay. Very well.
16 Let's move on then to other attending reports. We do
17 have Exhibit 29, it's DDOT, which was recommending
18 approval of the application, based on their expertise
19 and I think it was more appropriately looking at
20 parking. ANC 2C.

21 Did you have any additional information?
22 Well, you don't have anything to add on the Department
23 of Transportation report, do you?

24 MR. HORTON: No.

25 CHAIRPERSON GRIFFIS: You have that memo?

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1 MR. HORTON: No, I do not.

2 CHAIRPERSON GRIFFIS: Have you seen it?

3 MR. HORTON: No.

4 CHAIRPERSON GRIFFIS: All right. We'll
5 get you a copy.

6 ANC 2C, Ms. Renshaw, did you pick that up
7 and distribute Exhibit 30?

8 VICE CHAIR RENSHAW: Yes, it is a letter
9 dated February 28th, signed by the Chair Leroy Thorpe,
10 and it has to be waived in.

11 CHAIRPERSON GRIFFIS: Very well. Is there
12 any objection to waiving in the report that was filed
13 late by ANC 2C? I take that as a consensus and accept
14 it into the record.

15 VICE CHAIR RENSHAW: The ANC met on
16 November 6, 2002 and a quorum was present, and the ANC
17 voted unanimously to support the application for the
18 area variance, and the variance for the parking
19 provision in an R-4 zone. There was no opposition
20 from the community. The letter cited that the
21 structures on the property are in such poor condition,
22 they almost appear to be unsalvageable. Does that
23 have to do with -- well, it went on to say the
24 applicant proposes to rehabilitate the structures,
25 which would make them consistent with the area, and

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1 they hope that we will give the ANC the great weight
2 it should be accorded.

3 CHAIRPERSON GRIFFIS: Excellent. Any
4 questions to the ANC report? The applicant received
5 that also?

6 MR. HORTON: Yes.

7 CHAIRPERSON GRIFFIS: Yes. I'm not sure
8 you'll get an answer from the letter, but we can
9 always ask questions. And you presented to the ANC,
10 that's correct?

11 MR. HORTON: Correct.

12 CHAIRPERSON GRIFFIS: Okay. In which
13 case, let's move on. That's all the Government
14 reports that I have attending to this application.
15 Are you aware of any other submissions that we are not
16 noticing?

17 MR. HORTON: Not at this time.

18 CHAIRPERSON GRIFFIS: Okay. Any Board
19 members?

20 BOARD MEMBER ETHERLY: Mr. Chair, a quick
21 question back on the ANC real quick. You just
22 mentioned the applicant had an opportunity to present
23 at ANC community meeting?

24 MR. HORTON: Correct. Yes, sir.

25 BOARD MEMBER ETHERLY: Mr. Horton, do you

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1 recall if there was any discussion at the ANC level
2 about the composition of the types of units at the
3 subject property? What I'm coming back to is do you
4 recall the question about square footage?

5 MR. HORTON: Yes.

6 BOARD MEMBER ETHERLY: And I'm trying to
7 get a flavor for what the impact is if you do this as
8 a matter-of-right versus doing this with the
9 variances. I still haven't worked through the numbers
10 yet, that's why I avoid doing anything technical with
11 my life, but I mean, I could just -- I mean you could
12 take a quick guess and just gloss it, and say well, if
13 you do seven units on one lot, they are probably going
14 to be smaller than if you do five.

15 MR. HORTON: Correct.

16 BOARD MEMBER ETHERLY: But, you know, I
17 want to be sure that I'm not just simplifying that too
18 much. The reason why I raise the ANC, and then I'll
19 let Mr. Killette come in, is I'm trying to get a sense
20 for whether or not there was any substantial
21 discussion about the preference for the type of
22 development that goes into this property.

23 Once again, I think the issue is
24 practical, kind of the practical difficulty here.
25 What I'm flirting with is whether or not there is an

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1 added argument here for having a certain size unit
2 preference, a certain mix. You know, is there more of
3 a preference from the ANC for two bedroom units as
4 opposed to one bedroom units. Do you recall any kind
5 of discussion along those lines at the ANC level?

6 MR. HORTON: A little bit. They
7 preferred, honestly, you know, like the home ownership
8 aspect of it. The unit mix was fine with them of 900
9 to 1,100 square feet, the 5 to 2. Their main concern,
10 honestly, most of the discussion was vacant and
11 abandoned.

12 BOARD MEMBER ETHERLY: Just do something?

13 MR. HORTON: You know, because of vagrant
14 events, too many problems with drug dealers and drug
15 users, even kids. There is a fence in front, because
16 children in the neighborhood go back there and then
17 you have other people. My understanding is the ANC is
18 pretty vocal sometimes, so it seemed to me some people
19 in the community actually said they have had
20 confrontations with some of the vagrants and other
21 people around there. So it seemed to be they were,
22 you know --

23 BOARD MEMBER ETHERLY: Okay.

24 MR. HORTON: There was more discussion
25 about the hazard it has been and everything else.

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1 BOARD MEMBER ETHERLY: Okay. Mr.
2 Killette, you had something you wanted to add on?

3 MR. KILLETTE: A good way to look at it is
4 the variance would allow approximately 1,800
5 additional square footage, which could translate into
6 two 900 square foot units in addition to five 1,000
7 square foot units.

8 BOARD MEMBER ETHERLY: Okay. And those
9 would be your one and one half bath units then?

10 MR. KILLETTE: Yes.

11 BOARD MEMBER ETHERLY: The two 900 square
12 foot units with that additional square footage. Okay.

13 Okay. Thank you. Thank you, Mr. Chair.

14 CHAIRPERSON GRIFFIS: Indeed. Yes, Ms.
15 Mitten?

16 COMMISSIONER MITTEN: I just had a few
17 follow-up questions for the applicant whenever you're
18 ready.

19 CHAIRPERSON GRIFFIS: Okay. Let me just
20 make sure is there anyone here attending to this
21 application to give testimony today, either in
22 opposition or in support of Application #16983? If
23 you are, you can approach the table, at this time.
24 I'm not seeing a mad rush to the table. I don't think
25 anyone is here to testify.

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1 Let's then take last questions. We'll
2 have conclusion, and let me just give an indication of
3 the Board to the applicant, at this point. I would
4 like to set this for decision making, unless other
5 Board members are so moved for action today.
6 Although, we can do that for our decision making in
7 April. That will give you some time just to provide
8 the Board with some additional information of which
9 some of which we have identified and more may come,
10 and also have time enough for you to work with the
11 Office of Planning.

12 Ms. Mitten, questions?

13 COMMISSIONER MITTEN: I'll ask you these
14 questions, and then you may need, in your additional
15 submissions, maybe to flush out the answers a little
16 bit better. Just looking at some of the numbers that
17 are included here, when I calculate the per square
18 foot cost for the matter-of-right building
19 rehabilitation item, which is the item that changes
20 the most, I suppose, in the analysis, I get \$148 per
21 square foot, and for the 7-unit project with the
22 variance, the \$900,000, I get \$125 a square foot,
23 which implies a pretty significant economy of scale
24 for not a big difference in the greater scheme of
25 things for the size of the project.

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1 Especially when you factor in that, you
2 know, there's going to be more bathrooms and more
3 kitchens in the other project, so I guess what I'm
4 looking for is an explanation of how there is such a
5 big difference in the per square foot rehabilitation
6 cost between the matter-of-right development and the
7 development with the variance. So I don't know if you
8 can answer that now or if you would like to answer
9 that later?

10 MR. HORTON: I'm sort of unclear. Okay.
11 So you're saying \$148 a square foot?

12 COMMISSIONER MITTEN: \$800,000, which is
13 the building --

14 MR. HORTON: Oh, you're just talking about
15 the rehab process?

16 COMMISSIONER MITTEN: Just isolating that
17 item.

18 MR. HORTON: Okay. And then \$120 square
19 foot for --

20 COMMISSIONER MITTEN: Right. What's the
21 explanation for that disparity, almost 20 percent?

22 MR. HORTON: Well, 800 to 900.

23 COMMISSIONER MITTEN: Not the 800 to 900,
24 but the \$148, that square foot cost versus \$125. Why
25 is it almost 20 percent cheaper to build two more

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1 units?

2 MR. HORTON: Well, in dealing with the
3 architect, you're getting an economy scale, because a
4 lot of the cost is, you know, your foundation, your
5 masonry, building the building, and doing two
6 additional units is extra cost, but I guess --

7 COMMISSIONER MITTEN: I guess I wouldn't
8 have expected it to be so significant.

9 MR. HORTON: I would --

10 COMMISSIONER MITTEN: If there's any
11 further explanation that you want to share with us
12 when you make an additional submission, I would be
13 interested in that.

14 MR. HORTON: Okay.

15 COMMISSIONER MITTEN: And then I would
16 also be interested in knowing why, by contrast, some
17 fees stay fixed between the two projects, and then
18 others go up, but they go up relatively small amounts.
19 Like the development fee goes up 7.7 percent.
20 Financing goes up 7.4 percent. The contingency goes
21 up 7.1 percent.

22 MR. HORTON: Right.

23 COMMISSIONER MITTEN: So those are, you
24 know, not going up in any proportionate way. If they
25 did, the disparity would be a higher cost associated

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1 with the project with the variance.

2 MR. HORTON: Well, under the scenario that
3 I've researched and feel comfortable with the numbers,
4 the fees that go up would be the development fee,
5 which would be, I think, pretty much 1 percent above,
6 because I think it was based on 90 percent. So 90
7 percent of the financing cost is what the development
8 fee is based on. It would basically be, with both
9 numbers, the financing fee is 1 percent and obviously
10 on the loan amount, you know.

11 That's 100 percent based on the loan
12 amount that I'm taking. The same with cap I, that,
13 you know, obviously a higher loan amount, a higher cap
14 I for a years construction. The same with
15 contingency, because the higher construction cost, the
16 higher contingency. You know, but the construction
17 cost is not, you know, substantially higher.

18 COMMISSIONER MITTEN: It just strikes me
19 that it's not proportional. The increases in those
20 fees strikes me as not being proportional, but maybe
21 it just requires more study on my part.

22 MR. HORTON: Yes, it sort of wasn't a
23 proportionate thing when I did the numbers. Just how
24 I get the first number, I base the second one on, and
25 that is sort of how I went forward. And then,

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1 obviously, I did financing fees and cap I or just, you
2 know, I ran a financial calculation, that's how I got
3 that. It wasn't really a proportionate type of number
4 whenever I ran the numbers at before I ran them on the
5 higher number, and that's what I came back with.
6 That's how I ran the, you know, financial numbers as
7 well.

8 CHAIRPERSON GRIFFIS: Okay. Other
9 questions, Ms. Mitten?

10 COMMISSIONER MITTEN: I don't think so.
11 Thank you.

12 CHAIRPERSON GRIFFIS: Okay. What I would
13 like to do is just give you an opportunity to give
14 closing remarks, at this point, and then we're going
15 to go through the list of things that we would like to
16 be submitted, and we'll give you an opportunity to
17 submit in written form a restatement of your case, and
18 then, obviously, the additional analysis based on the
19 new information that we'll be receiving.

20 So with that, I think directly that means
21 you can be fairly brief, at this point.

22 MR. HORTON: Okay. And again, I want to
23 thank you, and I will submit that further information.

24 I do believe that I have shown that the property is
25 unique and that there are extraordinary exceptional

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1 situations contained in this property, concerning this
2 property. That the owner would encounter practical
3 difficulties and that the variance would not cause
4 substantial detriment to the public good or the Zoning
5 Regulations.

6 The quite substantial discussion
7 concerning these issues have been reflected in the
8 record, so I don't think I need to comment any more.

9 CHAIRPERSON GRIFFIS: Okay. Thank you
10 very much. Board members, then I would suggest we set
11 this for decision making for our public meeting in
12 April, that is on the first Tuesday of every month is
13 when we do deliberations and decisions, that's what we
14 do in our meetings. We will have you submit to the
15 record the following information that will go into our
16 deliberative process. We won't have any more
17 testimony at the next meeting, but it is anticipated
18 that we'll have a decision, at that point.

19 So I have heard, and I will ask the Board
20 members and staff if I miss anything. First of all,
21 if there would be some submission of further drawings,
22 noting that they may well be in schematic or design
23 development form, but anything of pertinence to that.

24 The further development, as Ms. Mitten has
25 brought up, specifics and OP has talked a little bit

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1 about it, but further arguments on the economic aspect
2 of this.

3 Mr. Etherly has brought up an interesting
4 point that he would like explored, if you are so
5 inclined, and that is to unit size and how the unit
6 size plays into the uniqueness of the size of the
7 lots, and however else you want to deal with that.

8 I think of great importance is the
9 existing buildings. We need further discussion on how
10 the existing buildings play into this development
11 process. Mr. Cochran has ably said that there may be
12 a loss of certain amount of matter-of-right
13 development if the existing buildings come down. That
14 in a very direct and explicit form for our purposes
15 would be appreciated. Additional information, yes.

16 VICE CHAIR RENSHAW: Architectural
17 renderings.

18 CHAIRPERSON GRIFFIS: Yes. Ms. Renshaw
19 likes the computer generated fly-by, so if you could.

20 VICE CHAIR RENSHAW: In living color.

21 MR. KILLETTE: We can helicopter.

22 CHAIRPERSON GRIFFIS: Right.

23 VICE CHAIR RENSHAW: Good.

24 CHAIRPERSON GRIFFIS: Yes. I'm sorry, I
25 may not have been as explicit with that, Ms. Renshaw.

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1 The first thing I indicated was the drawing with
2 specific evaluations. We have in the record, of
3 course, the drawings that show the zoning issues. I
4 mean, that's important, but additional illustrations
5 would be important.

6 Others? Anything I've forgotten? Ms.
7 Bailey, do you have any other items that I've
8 overlooked?

9 MS. BAILEY: Not items, Mr. Chairman, but
10 just to note if Mrs. Mitten's questions were answered
11 satisfactorily or does she need additional
12 information?

13 COMMISSIONER MITTEN: Well, I heard what
14 they said, so but if there's anything else you would
15 like to add to it to make a more compelling argument,
16 I would be open to that.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. COCHRAN: Mr. Chair, did I hear Ms.
19 Mitten asking for a comparison with single-family,
20 also?

21 COMMISSIONER MITTEN: Well, if the numbers
22 could be worked up, if the sales numbers could be
23 worked up on a per square foot basis, but other than
24 that, I don't think that we need to see that.

25 MR. COCHRAN: Did you also need the

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1 comparisons of whether the comparables were historic
2 properties versus not? You had asked that question,
3 but I didn't know whether you wanted that.

4 COMMISSIONER MITTEN: Well, I guess just
5 to be perfectly honest about it, I don't know that the
6 applicant is going to be able to, to my satisfaction,
7 meet the burden of proof, and so I don't want to put
8 them through a lot of exercise needlessly on my
9 behalf, because I have a lot of concerns that this is,
10 notwithstanding the reasons that they've given, a self
11 imposed hardship in terms of saving the facades.

12 CHAIRPERSON GRIFFIS: I think, Ms.
13 Mitten's point is this. You've called this historic,
14 even the LLC is historic, and the historic fabric of
15 the buildings, and the point is if these were
16 historically designated, then you would be forced to
17 use what's there or somehow the Preservation Board
18 would tell you what to do.

19 That would bind you to certain things of
20 which we would then look at in terms of giving relief.

21 So when Board members talk about well, you know,
22 what's the comparison between historic properties and
23 non historic, that's, I think, what is at issue. I
24 think the importance is understanding that, and then
25 how you want to deliver that information to us is

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1 important. Is that clear?

2 MR. HORTON: That's clear. I think what
3 needs to be done on my behalf probably is to get a
4 comparison of what new construction would cost as
5 well.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. HORTON: And the analysis of the loss
8 of the square --

9 CHAIRPERSON GRIFFIS: Right.

10 MR. HORTON: You know, the zoning and put
11 that in some sort of pro forma and give that to you.

12 CHAIRPERSON GRIFFIS: Indeed. And I think
13 Mr. Cochran probably has a fine understanding of what
14 the Board would like to see, and also in what form, so
15 I would encourage continued communication with that.

16 Are you clear on what we're asking for, at
17 this point?

18 MR. HORTON: Yes, I am.

19 CHAIRPERSON GRIFFIS: Okay, very well.
20 Ms. Bailey, can we set dates for submissions on this?

21 MS. BAILEY: Mr. Chairman, you had
22 indicated that a decision would be made at your April
23 meeting, and that's April the 1st, Tuesday, April the
24 1st, and submissions would be due on March 25th. The
25 only party, to my knowledge, Mr. Chairman, is the ANC

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1 and they are in support, so no response from the
2 submission would be needed, unless you desire to make
3 a date for responses.

4 CHAIRPERSON GRIFFIS: Okay. First of all,
5 the first question is are you able to produce the
6 documentation that you think would be sufficient for
7 our requirements by the 25th?

8 MR. HORTON: Yes.

9 MR. KILLETTE: Yes.

10 CHAIRPERSON GRIFFIS: Okay. In which
11 case, I think that you could -- I don't think we need
12 to set it for the ANC response.

13 MR. COCHRAN: Mr. Chair, I'm sorry. If
14 their information is due on the 25th, do you want our
15 response to the information also on the 25th or do we
16 have additional time to respond to it?

17 CHAIRPERSON GRIFFIS: That's up to Ms.
18 Bailey and how she feels.

19 MS. BAILEY: All responses are due on the
20 25th.

21 VICE CHAIR RENSHAW: What?

22 MS. BAILEY: All responses.

23 VICE CHAIR RENSHAW: Okay.

24 MS. BAILEY: Mr. Cochran, did you want
25 another date?

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1 MR. COCHRAN: I'm confident the applicant
2 will be able to get it to us before the 25th.

3 CHAIRPERSON GRIFFIS: The 25th is what day
4 of the week?

5 MS. BAILEY: It's on a Tuesday, sir.

6 CHAIRPERSON GRIFFIS: Okay. I mean,
7 conceivably, we could have Office of Planning's report
8 of which hopefully things are happening simultaneously
9 in this discussion, but we could have that by what's
10 the latest date we could realistically have it?

11 MS. BAILEY: The 26th.

12 MR. COCHRAN: Thank you, Ms. Bailey. I'll
13 remember that.

14 MS. BAILEY: The reason, Mr. Chair, is
15 your packages come to you on Thursday.

16 CHAIRPERSON GRIFFIS: Exactly. Exactly.
17 And I appreciate humor, but it is realistic,
18 obviously, because that's when we get delivered
19 information, so we'll miss the delivery to the Board
20 for us to read and digest by the Tuesday. So let's do
21 our best, our able best and we will do everything we
22 can do accommodate the submissions and getting the
23 proper information to us.

24 So that being said, the faster you can get
25 information to the Office of Planning, Mr. Cochran,

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1 the better off everyone will be, because it will save
2 him some time in putting together the supplemental
3 report.

4 MR. COCHRAN: Good.

5 CHAIRPERSON GRIFFIS: Are you clear then?

6 MR. HORTON: Yes, sir.

7 CHAIRPERSON GRIFFIS: Anything else we can
8 answer, at this point? Good. Very well. You are
9 welcome to be here on the 1st of April. You are not
10 required. We will deliberate and announce. Thank you
11 very much. I appreciate your patience this morning.

12 MR. HORTON: Thank you.

13 CHAIRPERSON GRIFFIS: Let us take just two
14 minutes and get the next case ready, and we will
15 resume and get everyone out of here by 12:30, I am
16 certainly hoping. I will update that as we get to the
17 next case. So we're going to just take a quick recess
18 and we will return.

19 (Whereupon, at 11:29 a.m. a recess until
20 11:43 a.m.)

21 CHAIRPERSON GRIFFIS: Reconvened. Call
22 the next case of the morning.

23 MS. BAILEY: Mr. Chairman, the next case
24 is Application #16986 of Loder and Gravett, LLC,
25 pursuant to 11 DCMR 3103.2, for a variance from the

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1 floor area ratio requirements under section 402, a
2 variance from the lot occupancy requirements under
3 section 403, a variance from the rear yard
4 requirements under section 404, and a variance from
5 the closed court requirements under section 406 to
6 construct a 4-unit apartment house in the R-5-B
7 District at premises 2131 through 2133 10th Street,
8 N.W., Square 358, Lots 58 and 59.

9 All those persons wishing to testify,
10 would you, please, stand to take the oath?

11 (The witnesses were sworn)

12 MS. BAILEY: Thank you. Mr. Chairman, two
13 quick notes. It appears as if the closed court
14 requirement that was advertised should be an open
15 court width requirement. The section 406 is still
16 applicable, but rather than being a closed court, it
17 would be an open court. And then lastly, Mr.
18 Chairman, there are requests, two requests, in fact,
19 for party status in this case.

20 CHAIRPERSON GRIFFIS: Good. Thank you,
21 Ms. Bailey. And I know the staff has looked at that.
22 There were some questions of the plans and how that
23 showed. I think it has been established by our look
24 that it is, in fact, a closed court, but we'll have a
25 quick discussion on that, and we can proceed as Ms.

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1 Bailey has correctly stated the section and any sort
2 of announcement doesn't change, but we'll clear that
3 up.

4 Let's go to applications for party status.

5 Right. We have, first, Mr. Bowers, who is an
6 abutting property owner. It's Exhibit 25. His
7 request was timely filed. We do have a second request
8 that has come in untimely, and that is Tomasek. Is
9 that how you pronounce the name? Which is Exhibit 32.

10 Board members, let's just take up the
11 first questions, comments, discussion. I'll review
12 for everyone's identification, Mr. Bowers has stated,
13 I will say, two primary issues. One goes to
14 demolition and construction, and I think this Board is
15 well-aware the we may not have jurisdiction. Well, as
16 it's stated here, we do not have jurisdiction on that
17 aspect of it. But the second issues that come to play
18 in the request for party status, I find to be
19 compelling in granting the party status in the concern
20 of, of course, the placement of the property.

21 Frankly, Mr. Bowers being the abutting
22 property owner is substantial evidence to grant party
23 status, and the issue of how he might be significantly
24 or distinctly affected is compelling also, based on
25 the easement or the walkway in back, and some of the

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1 other concerns that he evidences in his application.

2 Is Mr. Bowers present today? Indeed, he
3 is present. Let me ask the applicant if they have any
4 objection to granting party status to Mr. Bowers. No
5 objection? Board members, any concerns, questions or
6 clarifications? Is there any objection to granting
7 party status?

8 VICE CHAIR RENSHAW: No.

9 CHAIRPERSON GRIFFIS: Not seeing any
10 objection I'll take it as a consensus of the Board we
11 will grant party status to Mr. Bowers.

12 Mr. Bowers, I'm sure you are aware, but I
13 will reiterate to you we have now bestowed the great
14 honor and responsibility of party status to you. You
15 are in integral participant in this case. You will
16 have cross examination privileges. You will be asked
17 to present a case, and at the conclusion of this, we
18 may request additional filings on your behalf, that is
19 not limited to, but may include findings of facts,
20 conclusions of law and any other additional
21 information that we will need for our own deliberative
22 purposes.

23 That being said, let's go to the second.
24 Is Mr. or Mrs. Tomasek present, T-O-M-A-S-E-K? Yes,
25 have you found it? It's in the morning submission,

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1 right? It was stapled to it. It had this one
2 covered, so the second page of it.

3 MS. BAILEY: Yes.

4 CHAIRPERSON GRIFFIS: The Board is just
5 going to take a brief moment. We were delivered this
6 application for party status this morning in our
7 executive session of which we had a full agenda, and I
8 am not convinced that the Board had time to actually
9 even review this. Is the applicant aware of this
10 application for party status? Have you seen this
11 application?

12 MS. HICKS: Yes.

13 MR. GRAVETT: Tomasek?

14 CHAIRPERSON GRIFFIS: Yes.

15 MS. HICKS: Yes.

16 CHAIRPERSON GRIFFIS: Okay.

17 BOARD MEMBER ETHERLY: Mr. Chair, after
18 reviewing it, I might almost be inclined to suggest
19 that this might be more appropriately received just as
20 testimony in support.

21 CHAIRPERSON GRIFFIS: I see.

22 BOARD MEMBER ETHERLY: The Tomaseks would
23 appear as proponents for the project, and would
24 probably be able to present all of these issues and
25 comments in support of the project and any testimony

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1 they might want to submit.

2 CHAIRPERSON GRIFFIS: I see.

3 BOARD MEMBER ETHERLY: That might be my
4 suggestion.

5 BOARD MEMBER ZAIDAIN: I agree, Mr.
6 Chairman.

7 VICE CHAIR RENSHAW: I agree.

8 CHAIRPERSON GRIFFIS: Well, how do you go
9 against that logic? Is that your understanding also
10 that these folks are in favor of your application?

11 MS. HICKS: Yes.

12 CHAIRPERSON GRIFFIS: Okay. In which
13 case, I think, we'll summarize the fact that we'll put
14 this in and we'll evidence it again in the hearing as
15 testimony in support. Very well.

16 Let's take up then the last preliminary
17 matter and that's the closed court, and I think we can
18 decide this pretty quickly. And the issue comes from
19 the plan that was submitted. It was read and probably
20 not inappropriately so, but I'll direct your attention
21 to what's listed on sheet 3, first floor plan. That
22 is as you enter into the structure, an interior stair.
23 Is that correct?

24 MS. HICKS: Yes.

25 CHAIRPERSON GRIFFIS: In which case that

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1 courtyard as shown has three walls and a property line
2 defining it. Is that correct?

3 MR. GRAVETT: That's correct.

4 MS. HICKS: Yes.

5 CHAIRPERSON GRIFFIS: Okay. Just so we
6 don't run into any other problems at any other time as
7 we proceed with this, if you say anything, your mike
8 has to be on.

9 MR. GRAVETT: Yes.

10 CHAIRPERSON GRIFFIS: And it's not that I
11 can't hear you, but our recorder can't hear you, in
12 which case you're not on the record, which means,
13 frankly, you didn't say it. So we want to make sure
14 we get everything in the record.

15 Are the Board members clear on that closed
16 court, open court? I think we can proceed as
17 advertised, and that is the closed court. Very well.

18 That's all I have on preliminary matters, at this
19 time. Any other questions, clarifications? If not,
20 then why don't we turn it over to the applicant for
21 presentation. Yes, that's an interesting point.
22 There is another preliminary matter. Exhibit 30,
23 which was the affidavit of posting.

24 MS. BAILEY: Mr. Chairman? Excuse me.

25 CHAIRPERSON GRIFFIS: Yes?

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1 MS. BAILEY: There was a revised list on
2 the table this morning, and the affidavit did come in
3 one day late, but we did receive it.

4 CHAIRPERSON GRIFFIS: Right. No, indeed,
5 and I appreciate that clarification and that's where
6 I'm going to. We still need to waive that information
7 in. Is that correct?

8 MS. BAILEY: Yes, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Okay. So this quick
10 question of clarification, was this physically
11 properly posted for the time requirements?

12 MS. HICKS: Yes, it was posted on February
13 the 5th at 2:00 p.m.

14 CHAIRPERSON GRIFFIS: And the reason for
15 not having the affidavit of posting filed?

16 MS. HICKS: Snow was a major reason.

17 CHAIRPERSON GRIFFIS: Okay. Any concern
18 from the Board on that? Any other further questions?
19 Well, I think, you know, it's obviously very
20 important that we get the property posted, that's the
21 integral piece of it. The affidavit we need into the
22 record and take very seriously, and it does, frankly,
23 raise concerns as we review a case as to its
24 efficiency. So I would strongly recommend in the next
25 opportunity that this not happen again. Perhaps get

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1 the Saint Bernards to get through the snow drifts and
2 make it on down here.

3 In any case, let's proceed then. I think
4 that we're all set on this, and I'll turn it over to
5 the applicant to begin presentation of their case.

6 MS. HICKS: Okay. My name is Gladys
7 Hicks. I'm a zoning consultant. I'm agent for Loder
8 and Gravett, LLC. With me today is Mr. P. D. Gravett,
9 who is an architect, and also Mr. Loder, who is a
10 developer and also a realty agent. This property is
11 currently zoned R-5-B residential. It was rezoned R-
12 5-B from CM-1, commercial light manufacturing. The
13 last posted certificate of occupant is still filed
14 with the Department of Consumer and Regulatory Affairs
15 for an auto repair and storage building, with the use
16 being on the first floor. It's clear that the use has
17 been abandoned for more than three years.

18 BOARD MEMBER ZAIDAIN: When was it
19 rezoned?

20 MS. HICKS: I don't have the date of the
21 rezoning, but it has been rezoned from CM-1 to R-5-B.

22 CHAIRPERSON GRIFFIS: I mean, is it in the
23 past decade, century?

24 MS. HICKS: I would say within the past 10
25 years.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MS. HICKS: And the property has now been
3 vacant for some time. At one time, it was fenced in
4 on the 10th Street and the W Street side. It looks
5 like someone has clipped the fence and the fence is no
6 longer standing. Loder and Gravett proposes to build
7 a 4-unit apartment house. They are able to provide
8 off street parking, which is kind of unique and
9 unusual, in the lower level of what they are
10 proposing. The property is 27.5 feet wide by 50 feet
11 in length, and it's 1,375 square feet, and it is a
12 corner lot with existing driveways on the W Street
13 side of the building. The existing driveways are more
14 than 25 feet from the intersection. To be exact, it's
15 27 feet.

16 CHAIRPERSON GRIFFIS: And you have a plan
17 that indicates that?

18 MR. GRAVETT: Yes.

19 CHAIRPERSON GRIFFIS: Okay. We'll get to
20 that when we walk through it, and, of course, anything
21 you can show us today that isn't in the record will
22 need to be presented into the record.

23 MS. HICKS: Three off street parking
24 spaces are proposed to be provided in the basement
25 level. This application would require variance from

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1 the maximum allowed lot occupancy, a variance from the
2 maximum allowed floor ratio, a minimum rear yard
3 setback requirement, and minimum width of area width
4 and area for a closed court.

5 There is an existing 3 foot wide easement
6 running north to south along the eastern boundary, and
7 this gives the adjoining neighbor, I think it's, a
8 21.29, the ability to come out of the rear of his
9 property and bring his trash out to the W Street side
10 of the property. The property we feel is unique,
11 because of its size and its corner situation. It
12 looks like it cannot be built to its highest and best
13 use as an apartment building without the
14 aforementioned variances that are requested.

15 The unique size of the property also
16 limits the ability of the architect to design and
17 comply with all provisions of the D.C. Zoning
18 Regulations, and there seems to be a significant
19 limitation in the overall utility of the lot due to
20 its small size.

21 I would like to turn everything over to
22 Mr. Gravett, so he can go over the floor plans and
23 also the lot configurations, and he can tell you also
24 how many times he tried to work with the lot
25 constraints.

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1 MR. GRAVETT: Yes, my name is P. D.
2 Gravett. I'm an architect and a builder. We're
3 asking for a ratio to go from 1.8 to 2.3, and a lot
4 occupancy of .6 to .82. The two lots combined are
5 1,375 square feet, and the plus to the site is that it
6 has access. The curb cuts off at W Street for on-site
7 parking. As far as I can tell, nothing can be built
8 on the property without requesting a variance, even
9 two single-family lots, because Lot 58 has no way for
10 parking. It has no alley access, so there would have
11 to be a variance to build even two single-family
12 homes.

13 So we felt the best use of the property
14 was to combine both lots and build an apartment
15 building, which will become condominiums. The
16 existing south face of the property adjoins the
17 existing house on 10th Street. In laying out the
18 units, what we attempted to do was create, again
19 because of smallness of the size, and because of
20 closeness to the neighbors, the courtyard to provide
21 less impact on the neighbor on the south, but to also
22 provide more light and air to the interior of the
23 units in that direction.

24 What we're proposing, basically, is to go
25 down 4 feet from the street for parking and one small

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1 unit in the basement or lower level there, and then
2 three floors of apartments on top of that. Both of
3 those three units about will be two bedrooms. By
4 going to the increased lot, the FAR and the increased
5 lot coverage, what we can end up doing is around 1,100
6 square feet of building. Where if you go by the .6
7 lot coverage, you can only build around 800 square
8 feet cover, total, a footprint.

9 So the request for the increase, although
10 it's small, allows us to get to the 1,100 square foot,
11 which we feel is adequate for the two bedroom
12 apartment that we're looking to do. And the rear yard
13 setback, the existing building right now goes to
14 within 3 feet of the property line on the east. By
15 meeting with Office of Planning, we were originally
16 looking at 3 feet. We pulled it back to 5 feet, so
17 that we were only requesting a variance, that is the
18 rear yard again because it's a corner situation.

19 We felt it helped everybody by backing off
20 two more feet from that property, helping the impact
21 on the Lot 60, on W Street and again, also by allowing
22 us to do windows and stuff on the side of our property
23 there. The courtyard, again, because it's small and
24 we felt it was important to create the courtyard, we
25 need relief from the variance, because it's smaller

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1 than 350 square feet.

2 I think that's pretty much it. I can walk
3 up and point out the plans.

4 CHAIRPERSON GRIFFIS: Yes, I guess, we can
5 walk quickly through it. Actually, before you start,
6 you always have to be on a microphone, so I don't know
7 if we have the cordless. If not, you can probably
8 pick up that. It may reach.

9 MR. GRAVETT: Yes. The main thing you can
10 see is the parking comes off of W.

11 CHAIRPERSON GRIFFIS: We're going to hand
12 you a pointer, too, so that will be a little bit
13 easier.

14 MR. GRAVETT: Okay. Yes, the parking
15 comes off of W, off the existing curb cuts that are
16 there, and the closed court that we're talking about,
17 this is the existing neighbor's house right here, Mr.
18 Bower, and by creating a 16 foot space that we're not
19 attaching to or coming up next to the party wall, it
20 helps our unit, and I think it helps his units by
21 lessening the physical impact on that.

22 CHAIRPERSON GRIFFIS: But there's no
23 fenestration on the adjacent property, is there, on
24 that side?

25 MR. GRAVETT: No.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. GRAVETT: No. And this is the 5 foot
3 rear yard that we're proposing with the access from
4 his property coming out to W Street.

5 CHAIRPERSON GRIFFIS: Okay. A couple of
6 quick questions then. Clearly, one of the issues that
7 comes into play, one of the issues the Board always
8 looks at specifically with corner lots, but where are
9 you having trash pick-up and placement?

10 MR. GRAVETT: Trash for the units will be
11 stored in a garage.

12 CHAIRPERSON GRIFFIS: So they are interior
13 dumpsters?

14 MR. GRAVETT: Correct.

15 CHAIRPERSON GRIFFIS: And then pick-up?

16 MR. GRAVETT: Pick-up?

17 CHAIRPERSON GRIFFIS: How is that service?

18 MR. GRAVETT: It will be under contract
19 from the Condominium Association to be pulled out of
20 the garage.

21 CHAIRPERSON GRIFFIS: Okay. But explain
22 that a little further. Your anticipation is it will
23 be a commercial pick-up? This is not a D.C. public
24 pick-up, so you would anticipate that the truck would
25 pull up and they would come in and pull the dumpster

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1 out the driveway?

2 MR. GRAVETT: That's correct.

3 CHAIRPERSON GRIFFIS: Okay. Going to
4 that, there's two issues attending to the basement
5 level as you've described. First of all, are you
6 aware of what the allowable grade is for the driveway
7 into the parking?

8 MR. GRAVETT: 12 percent, I think it is.

9 CHAIRPERSON GRIFFIS: And you matched the
10 12 percent on that?

11 MR. GRAVETT: Yes.

12 MS. BAILEY: Excuse me, sir. We're going
13 to need for you to use the other microphone on the --
14 hello, I'm over here.

15 MR. GRAVETT: Okay.

16 MS. BAILEY: The microphone on the table,
17 please. I'm sorry for the confusion. Yes, please.

18 MR. GRAVETT: Okay.

19 MS. BAILEY: Thanks.

20 CHAIRPERSON GRIFFIS: Go ahead.

21 MR. GRAVETT: Yes, I have 15 feet to drop
22 down the 3 and a half to 4 feet that I'm dropping
23 down.

24 CHAIRPERSON GRIFFIS: Okay. And then the
25 garage level, has that been factored into your FAR

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1 calculation or not?

2 MR. GRAVETT: No, because it doesn't
3 account into the square footage that I'm looking to
4 do.

5 CHAIRPERSON GRIFFIS: And how have you
6 removed it from your FAR?

7 MR. GRAVETT: The ceiling of the basement
8 unit is not greater than 4 feet from the ground level.
9 I think that's the approach.

10 COMMISSIONER MITTEN: I think it's showing
11 as 4.5 feet on your drawing, 7.

12 CHAIRPERSON GRIFFIS: You have a section
13 that's showing. You have a dashed lined that's going
14 across that there's a measurement. In fact, it gets a
15 little blurry on our copy. But there appears to be a
16 4/6 dimension.

17 MR. GRAVETT: That's due to the finished
18 floor of the unit above.

19 CHAIRPERSON GRIFFIS: Of the first floor,
20 correct?

21 MR. GRAVETT: Yes, right.

22 CHAIRPERSON GRIFFIS: There's a 4 foot
23 dimension and is that going all the way up to the
24 underside of that slab then?

25 MR. GRAVETT: Right. The fire separation

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1 is required. I have that. That goes to the 4 foot,
2 and then the finished ceiling of the unit is below
3 that 4 foot.

4 MS. HICKS: Also under section 402.5, if
5 the perimeter is no more than 50 percent exposed, then
6 you don't have to count the lower level in.

7 MR. GRAVETT: Right.

8 MS. HICKS: If it's used for a garage, and
9 that's under section 402.5. So we took that into
10 consideration, too.

11 CHAIRPERSON GRIFFIS: I'm sorry. You want
12 to restate that?

13 MS. HICKS: Yes. Under section 402.5.

14 CHAIRPERSON GRIFFIS: Yes.

15 MS. HICKS: It says "First floor or
16 basement areas designed and used for parking space or
17 for recreation space shall not be counted floor area
18 ratio, provided than not more than 50 percent of the
19 perimeter of the space may be comprised of columns,
20 piers, walls or windows or may be similarly enclosed."

21 CHAIRPERSON GRIFFIS: Right. It's the
22 first floor below the main level of residential use,
23 correct?

24 MR. GRAVETT: Right.

25 MS. HICKS: Yes.

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1 CHAIRPERSON GRIFFIS: Okay. But you also
2 indicated that there is a unit in the basement level.
3 Is that correct?

4 MR. GRAVETT: That's correct.

5 CHAIRPERSON GRIFFIS: Okay. So is that
6 part of your calculations in FAR or do you feel that
7 that, in fact, goes towards something of a function
8 below the main level of the residential use?

9 MR. GRAVETT: I see it as below the main
10 residence, level of residential use.

11 CHAIRPERSON GRIFFIS: Okay.

12 COMMISSIONER MITTEN: Mr. Chairman, before
13 we leave this point, it's only areas that are used for
14 parking space or for recreation space that are not
15 counted. Not other areas, just as a point of
16 clarification.

17 CHAIRPERSON GRIFFIS: Right. Do you
18 concur with that?

19 MR. GRAVETT: Yes.

20 MS. HICKS: Yes.

21 CHAIRPERSON GRIFFIS: So the unit,
22 essentially, in the basement would need to be added
23 into the FAR?

24 MS. HICKS: I would have to look at the
25 ceiling height to the grade.

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1 MR. GRAVETT: It's under -- the finished
2 ceiling is less than 4 feet from the grade.

3 MS. HICKS: It's less than. It is
4 considered cellar. Therefore, it would not be
5 calculated into the gross floor area.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. HICKS: Not with FAR.

8 CHAIRPERSON GRIFFIS: That is true.

9 COMMISSIONER MITTEN: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes?

11 COMMISSIONER MITTEN: Again before we
12 leave this point, I'm going to probably have trouble
13 putting my hand on this, but my understanding is that
14 livable space, living space, habitable room, here we
15 go, the term habitable room "Shall not include attics,
16 cellars, corridors, etcetera." So I don't know how
17 one can reconcile having an apartment in a cellar
18 under the zoning code definition of a habitable room.
19 Possibly, if you can get whatever is required under
20 the Building Code, as far as height requirement and
21 room size requirement.

22 Under section 199's definition a cellar,
23 the finished ceiling to adjacent braid is less than 4
24 feet. Anything 4 feet or more above in measurement is
25 considered a basement, and you calculate it into gross

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1 floor area for computing FAR. But a cellar, per
2 definition under section 199, gets subtracted out.

3 CHAIRPERSON GRIFFIS: Right. I think
4 we're clear on that.

5 MS. HICKS: But a cellar --

6 MR. GRAVETT: As long as it meets all the
7 Building Code requirements.

8 COMMISSIONER MITTEN: But there's no
9 reference in the Zoning Code that says oh, you go to
10 the Building Code for interpretation of what the
11 Zoning Code says, and the Zoning Code is clear that
12 you cannot have a habitable room in a cellar. There's
13 no ambiguity there. There's no reason to look outside
14 the ordinance.

15 MS. HICKS: Well, believe it or not, it
16 happens all over the city.

17 MR. GRAVETT: It's everywhere.

18 MS. HICKS: It's possible, yes.

19 MR. GRAVETT: It's everywhere.

20 COMMISSIONER MITTEN: I know that it's
21 been the practice.

22 MS. HICKS: Yes.

23 COMMISSIONER MITTEN: But I'm saying I
24 would like you to show me in the ordinance where
25 that's permitted, because I have had a longstanding

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1 view that that is an improper interpretation.

2 MS. HICKS: I would have to argue that
3 it's allowed, provided that you meet the D.C. Building
4 Codes under Chapter 32 before a building permit can be
5 issued. The structure must comply with not only
6 Zoning Codes but also Building Codes, so they go hand
7 in hand when trying to get a building permit issued,
8 as long as you have the proper amount of head room,
9 livable square footage.

10 MR. GRAVETT: Inquire that section.

11 MS. HICKS: Also whether you have ingress
12 and egress requirements. It's possible, also, to
13 excavate and get ingress and egress into what's called
14 cellar areas that are all on Capitol Hill. I think
15 they call them English basements.

16 MR. GRAVETT: English basements.

17 MS. HICKS: They are basically cellars
18 which have been dug out.

19 CHAIRPERSON GRIFFIS: Right.

20 MS. HICKS: And give an access.

21 CHAIRPERSON GRIFFIS: I think you
22 misunderstand Ms. Mitten's point though.

23 MR. GRAVETT: Yes.

24 CHAIRPERSON GRIFFIS: However, I think
25 what we need to do is go to where, in fact, habitable

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1 room would be a defining factor for gross floor area
2 or building area. A building area goes directly into
3 the gross floor area, which then is the factor of FAR.

4 Meaning that, it seems to me in reading this, in
5 gross floor area it is more concern for the
6 calculation of FAR the distinction between basement
7 and cellar.

8 Now, if it does come up the fact of
9 cellar, what can you put in a cellar? Can you put a
10 habitable unit? Well, according to perhaps
11 regulations, I think that it is taken out of the FAR
12 calculation, and I think it is stronger interpreted
13 and decided on the Building Code. But that issue is,
14 I think, somewhat moot for our intents and purposes
15 for FAR calculations, in that we ought to maintain and
16 stay with basement, cellar designation.

17 BOARD MEMBER ZAIDAIN: Can I address this
18 point real quick with Ms. Mitten?

19 CHAIRPERSON GRIFFIS: Yes.

20 BOARD MEMBER ZAIDAIN: To make sure I
21 understand your view, you're saying under the
22 definition of habitable room, that that excludes
23 habitable rooms from being in cellars?

24 COMMISSIONER MITTEN: That's correct.

25 MS. HICKS: Well, if you look at the

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1 definition of bachelor apartment, I think this more so
2 fits what has been designed, the definition of
3 bachelor apartment.

4 BOARD MEMBER ZAIDAIN: Let me finish my
5 point here real quick.

6 MS. HICKS: Okay.

7 BOARD MEMBER ZAIDAIN: I mean, it's an
8 ambiguous sentence at best. I do agree. However, if
9 you read it within the context of the sentence it says
10 "Habitable would exclude attics, cellars, corridors,
11 hallways or laundries." So it seems to me they are
12 taking your interpretation a step further. It's also
13 saying you can't have a habitable room in a hallway,
14 which doesn't make sense.

15 So I'm trying to understand exactly how
16 habitable room plays in a cellar. It seems to me that
17 it's trying to exclude it from calculations. However,
18 I'm not sure that I totally agree, at least at this
19 point, that it's saying that you cannot have a
20 habitable room in a cellar. To me it's saying you
21 cannot count a cellar as a habitable room. Just like
22 you cannot accept a hallway as a habitable room. Do
23 you follow me?

24 COMMISSIONER MITTEN: I see what you're
25 saying. But the point is is that we know, and I don't

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1 dispute the idea that if it is a cellar --

2 BOARD MEMBER ZAIDAIN: Yes.

3 COMMISSIONER MITTEN: -- that it should
4 not be counted in the FAR calculation. I don't
5 disagree with that.

6 BOARD MEMBER ZAIDAIN: Yes.

7 COMMISSIONER MITTEN: What I am saying is
8 we have to think beyond that, which is the definition
9 of habitable room precludes it from being located in a
10 cellar. We have an applicant coming to us saying they
11 want to put an apartment in a cellar, and the
12 definition of apartment is one or more habitable
13 rooms. So I'm saying here's someone who wants to put
14 in an apartment in and is that permissible in a
15 cellar?

16 BOARD MEMBER ZAIDAIN: Well, I mean, I
17 understand your point. I don't read the definition as
18 excluding it from being located in cellars.

19 COMMISSIONER MITTEN: You don't read the
20 definition as excluding?

21 BOARD MEMBER ZAIDAIN: I mean, I don't
22 read it as -- it says you cannot have a habitable room
23 in a cellar. I don't read that out of that
24 definition.

25 COMMISSIONER MITTEN: You don't?

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1 BOARD MEMBER ZAIDAIN: No, I don't.

2 COMMISSIONER MITTEN: Well, Mr. Chairman,
3 just so we can move along, perhaps the way to approach
4 this is that Ms. Hicks or somebody representing the
5 applicant could brief their view.

6 CHAIRPERSON GRIFFIS: Sure. No, I agree.

7 COMMISSIONER MITTEN: And then we could
8 have corporation counsel take a look at this.

9 CHAIRPERSON GRIFFIS: That's fine.

10 COMMISSIONER MITTEN: And also speak to if
11 there are two regulations that are in conflict and one
12 is more restrictive, which one takes precedence.

13 CHAIRPERSON GRIFFIS: I think that's
14 appropriate.

15 BOARD MEMBER ZAIDAIN: What would be the
16 two regulations? Just to make sure I understand where
17 we're going.

18 COMMISSIONER MITTEN: Building Code and
19 the Zoning Code.

20 BOARD MEMBER ZAIDAIN: Oh, okay.

21 CHAIRPERSON GRIFFIS: I mean, the issue
22 again that comes to me is this habitable room or is
23 the unit in the cellar, as being proposed, coming
24 before us for some type of relief? And in that it
25 doesn't factor into the FAR, which is before us, I

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1 think it diminishes its importance for us deciding
2 that. But I clearly understand your issue, and I
3 think we can have that addressed.

4 COMMISSIONER MITTEN: I guess, I
5 understand your point. If they're not seeking relief,
6 should we just put blinders on and pretend, you know?
7 but in the past, if we see something that is
8 potentially problematic, we don't just confine
9 ourselves to the very strict issues that are before
10 us, but we call them out and that's what I'm
11 attempting to do.

12 CHAIRPERSON GRIFFIS: Okay.

13 BOARD MEMBER ZAIDAIN: Well, I agree with
14 your approach, Ms. Mitten. I think the definition is
15 an ambiguous one. I would like to read briefs from
16 the parties you've named on the issue, so we can
17 decide it later.

18 CHAIRPERSON GRIFFIS: That being said, Mr.
19 Bowers, are you clear on the issue that's before the
20 Board, at this point? Why don't you come forward for
21 a moment?

22 MR. BOWERS: On the basement issue?

23 CHAIRPERSON GRIFFIS: Actually, I can't
24 have you say anything until you sit and have a mike in
25 front of you.

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1 MR. BOWERS: On the basement issue?

2 CHAIRPERSON GRIFFIS: That's correct. In
3 terms of the habitable unit in the cellar area.

4 MR. BOWERS: That is not a concern to me.

5 CHAIRPERSON GRIFFIS: Okay. In which
6 case, you will certainly have an opportunity to brief
7 the Board on that issue if you are so inclined, but
8 obviously you are not required. Okay.

9 Let's move ahead then. Where were we
10 last? We were looking at these plans.

11 MR. GRAVETT: Right.

12 CHAIRPERSON GRIFFIS: We've addressed
13 issue of the grade change to the drive isle into it,
14 the distance. Show us what documents are going to
15 indicate the dimension from the corner.

16 MR. GRAVETT: You have 15 feet of public
17 space.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. GRAVETT: And you have 12 foot, 6 of
20 sidewalk.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. GRAVETT: Before you hit that.

23 CHAIRPERSON GRIFFIS: My direct point is
24 you're going to be submitting a copy of that site
25 plan?

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1 MR. GRAVETT: That's correct.

2 CHAIRPERSON GRIFFIS: Landscape plan. Are
3 those dimensions on that?

4 MR. GRAVETT: On this predicament? No.

5 CHAIRPERSON GRIFFIS: Are there any
6 documents that you're showing us those dimensions?
7 Let me be direct. Submit a document that shows this.

8 MR. GRAVETT: Okay, okay.

9 CHAIRPERSON GRIFFIS: Those dimensions as
10 it has been brought up to our attention.

11 MR. GRAVETT: Okay.

12 CHAIRPERSON GRIFFIS: And it is clearly
13 the requirement.

14 MR. GRAVETT: Okay.

15 CHAIRPERSON GRIFFIS: Are you using the
16 existing curb cut?

17 MR. GRAVETT: Yes.

18 CHAIRPERSON GRIFFIS: Okay. And as shown,
19 there are two?

20 MR. GRAVETT: There are two existing curb
21 cuts now.

22 CHAIRPERSON GRIFFIS: And you are --

23 MR. GRAVETT: That are the length of the
24 property.

25 CHAIRPERSON GRIFFIS: You are anticipating

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1 that -- what from this?

2 MR. GRAVETT: From my design point of
3 view, the preference would be to eliminate the inside
4 turn and make it all one or end up with only 30 feet
5 of curb cut.

6 CHAIRPERSON GRIFFIS: Create a new that
7 kind of stands between the two?

8 MR. GRAVETT: Brand new. But what I
9 talked to Public Space about that was a design issue
10 that was reviewed.

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. GRAVETT: During permit process.

13 CHAIRPERSON GRIFFIS: Yes, okay. But I
14 guess that's where I was going. You're having those
15 discussions.

16 MR. GRAVETT: Correct.

17 CHAIRPERSON GRIFFIS: In order to rework
18 that and clearly be within the zoning.

19 MR. GRAVETT: Right.

20 CHAIRPERSON GRIFFIS: But what we have
21 before us is actually compliant with the distance away
22 from the corner.

23 MR. GRAVETT: Right.

24 CHAIRPERSON GRIFFIS: Okay. But we'll
25 need that document.

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1 MR. GRAVETT: Okay.

2 CHAIRPERSON GRIFFIS: Okay. Other
3 questions on the plans?

4 VICE CHAIR RENSHAW: Just for
5 clarification on the photograph, which is 10th and
6 which is W Street?

7 MR. GRAVETT: This is 10th on this side and
8 W is over here.

9 VICE CHAIR RENSHAW: Oh, all right.

10 MR. GRAVETT: The 3 foot access easement
11 out of the property is right behind that wall.

12 VICE CHAIR RENSHAW: Okay. Thank you.

13 MR. GRAVETT: And that's where we will be
14 increasing to 5 feet on our request.

15 MS. HICKS: On the plan for clarification
16 purposes on the basement, if you look under section
17 199, the definition of apartment, bachelor apartment
18 and apartment house, I think, we can resolve the issue
19 if you read through those three definitions. An
20 apartment house is "One or more habitable rooms with a
21 kitchen and bathroom facilities, exclusively for the
22 use of and under the control of the occupants of those
23 rooms." And to me the basement unit fits the
24 definition of an apartment unit.

25 MR. GRAVETT: Yes, I think the main thing

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1 we're saying is we've created a cellar, because of the
2 height from the grade to the ceiling.

3 MS. HICKS: Just for calculation purposes.

4 MR. GRAVETT: From the calculation point
5 of view only.

6 MS. HICKS: But it's going to be
7 considered, from Building Code wise, because these are
8 the Building Code requirements as a habitable unit.

9 MR. GRAVETT: Right. Correct.

10 MS. HICKS: One unit.

11 CHAIRPERSON GRIFFIS: Okay. Okay. I
12 think that in your brief is an excellent point, that
13 how you designate a habitable room would be based on
14 the Building Codes and that will be for proper
15 ingress, egress.

16 MR. GRAVETT: Right.

17 MS. HICKS: Yes.

18 CHAIRPERSON GRIFFIS: Penetration, light.

19 MS. HICKS: And also per the definition
20 under section 199 of the bachelor apartment and
21 apartment house.

22 CHAIRPERSON GRIFFIS: Okay. Well, but
23 let's look for that summation in your submission.
24 Okay. Other questions on the plans? Okay. What
25 else?

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1 MS. HICKS: I think that's basically all
2 that we have.

3 MR. GRAVETT: I don't have anything.

4 CHAIRPERSON GRIFFIS: Okay. Mr. Bowers,
5 this is your opportunity for cross examination. Cross
6 examination, of course, is just questions based on the
7 testimony or the record that you've heard to this
8 point.

9 MR. BOWERS: My two concerns being the
10 garbage and the easement, and in their plans they have
11 increased the easement to --

12 CHAIRPERSON GRIFFIS: Okay. Let me
13 clarify again.

14 MS. BAILEY: Okay.

15 CHAIRPERSON GRIFFIS: This is your
16 opportunity to ask questions of the witnesses. That
17 cross examination or questions of them is to elicit
18 information that's important for us that as one might
19 say poke holes in the case that they just presented.

20 MR. BOWERS: I have none.

21 CHAIRPERSON GRIFFIS: Okay. That's not a
22 problem. Let's go to then the Government reports.
23 Let's start with the Office of Planning report. Mr.
24 Bowers, are you in receipt of the Office of Planning
25 report? Have you seen it?

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1 MR. BOWERS: No.

2 CHAIRPERSON GRIFFIS: Okay. Let's see if
3 we have an extra copy, and we will provide it to you.

4 Does the applicant have an extra copy? Excellent.
5 Let's go to the Office of Planning presentation, their
6 memo.

7 MR. MORDFIN: Good afternoon, Chairman and
8 members of the Board. My name is Stephen Mordfin with
9 the Office of Planning, and this is for BZA
10 Application #16986 for 2131-33 10th Street, N.W. This
11 application is for the approval of five area variances
12 to allow for the construction of a 4-unit apartment
13 building. The subject property is located within the
14 R-5-B District and the site is currently improved as
15 an abandoned service station.

16 The application purposes a three story
17 plus basement apartment building with four units and
18 three garage parking spaces. The variances requested
19 are to increase the maximum FAR from 1.8 to 2.3.,
20 increase the lot occupancy from 60 percent to 82.72
21 percent, reduce the minimum rear yard setback from 15
22 feet to 5 feet, reduce the minimum size of a closed
23 court from 350 square feet to approximately 100 square
24 feet, and reduce the width of that same closed court
25 from 15 feet to 6 feet.

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1 The site is unusually small consisting of
2 only 1,375 square feet in area, less than the minimum
3 lot as required for a row dwelling within the R-4
4 District. Due to the small size, the building
5 proposed by the applicant, which is to increase the
6 footprint of the building by only 300 square feet,
7 requires variance to lot occupancy, rear yard setback
8 and FAR as the applicant proposes the development of
9 the three story building.

10 The applicant also proposes to reduce the
11 size of the closed court, which otherwise would be
12 required to occupy 25 percent of the property. The
13 reduced width of the closed court is consistent with
14 the reduced area of the court. The adjoining building
15 to the court has no openings out of the court, and as
16 such the privacy of the joining row house will not be
17 compromised by this proposal.

18 The Office of Planning recommends the
19 approval of the variances as requested in the
20 application. And that concludes the presentation by
21 the Office of Planning.

22 CHAIRPERSON GRIFFIS: Thank you very much.
23 Board members, questions of the Office of Planning?

24 COMMISSIONER MITTEN: Mr. Chairman, I had
25 a question. The uniqueness of the property, would you

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1 just -- I believe that the exceptional condition in
2 size, is that the only exceptional condition?

3 MR. MORDFIN: The unusual size of the
4 property. It's unusually small.

5 COMMISSIONER MITTEN: Okay.

6 MR. MORDFIN: Narrow property.

7 COMMISSIONER MITTEN: Let me just ask you
8 if you have anything. We have a colored plat that you
9 may have a copy of, that's what I'm looking at, and
10 there may be something else in the record. And I just
11 ask you to look in Square 358, the lots that are
12 immediately abutting the subject on either side, the
13 lots that are immediately across 10th Street, the lots
14 that are immediately across W Street, and I see many,
15 many small lots. I would venture to say that most of
16 those lots are actually smaller than the subject, and
17 so I'm wondering how this is an unusual condition.

18 MR. MORDFIN: I agree that there are
19 several lots surrounding it that are approximately the
20 same size. However, I think that within the R-5-B
21 District within the city as a whole, that these are
22 unusually small lots for that zoning district.

23 COMMISSIONER MITTEN: But aren't the rest
24 of the lots in this immediate area also zoned R-5-B?

25 MR. MORDFIN: Yes.

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1 COMMISSIONER MITTEN: So just if we were
2 to extrapolate from this request and we had similar
3 requests for folks that wanted to exceed the FAR
4 limitations and exceed the lot occupancy limitations
5 and exceed the setback requirements, do you think that
6 that would undermine the R-5-B Zone? I mean it's one
7 thing to have one that's isolated, but then if
8 everyone around here, given that it's not a historic
9 district, so there could be wholesale demolition, that
10 they could come in and make the same argument, then
11 that undermines the intent of the Zone District, does
12 it not?

13 MR. MORDFIN: Well, I'm not sure it
14 undermines the intent of the Zone District, because,
15 you know, you don't have this type or this sizeable
16 lot throughout the city throughout other R-5-B
17 Districts as the general or as the average lot size.
18 I mean, if the lot sizes in the R-5 District are
19 predominantly larger, in my experience of those, you
20 usually have larger lots.

21 In this immediate neighborhood there are a
22 lot of other lots that are the same size as the
23 subject property's lot, and although that makes it not
24 unusual at this immediate intersection of 10th Street
25 and W Street, N.W., I think it does make it an unusual

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1 situation within the District of Columbia, and that's
2 what I was basing my analysis on.

3 COMMISSIONER MITTEN: Okay. Thank you.

4 BOARD MEMBER ZAIDAIN: When you say
5 District of Columbia, you mean the R-5-B as applied
6 throughout the city, correct?

7 MR. MORDFIN: Correct.

8 BOARD MEMBER ZAIDAIN: Okay.

9 CHAIRPERSON GRIFFIS: Other questions from
10 the Board?

11 BOARD MEMBER ZAIDAIN: Well, I have a
12 general question, and this is just to kind of refresh.

13 Well, not refresh, but just to put the kind of relief
14 in focus here. The applicant stated that single-
15 family homes would require relief to build on these
16 lots. What is that turn on, in terms of the relief
17 requested? I guess, in essence, I'm asking why.

18 MR. MORDFIN: I'm sorry. Why relief would
19 be required to build a row house on there?

20 BOARD MEMBER ZAIDAIN: Yes.

21 MR. GRAVETT: I can answer that.

22 BOARD MEMBER ZAIDAIN: Okay.

23 MR. GRAVETT: To build new you have to
24 provide off street parking, and there is no way to
25 provide off street parking for Lot 58.

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1 BOARD MEMBER ZAIDAIN: Okay, so it's a
2 parking issue for that?

3 CHAIRPERSON GRIFFIS: How wide is 58 or
4 59?

5 MR. GRAVETT: 13.5.

6 CHAIRPERSON GRIFFIS: So you would have
7 your minimum lot requirement wouldn't be met, either,
8 correct?

9 MR. GRAVETT: That's correct.

10 BOARD MEMBER ZAIDAIN: Okay. That's what
11 I was looking for.

12 MR. GRAVETT: That's correct.

13 CHAIRPERSON GRIFFIS: So they're not even
14 conforming in terms of size.

15 MR. GRAVETT: Right.

16 CHAIRPERSON GRIFFIS: When we go to
17 uniqueness and size, they're not even conforming to
18 the R-4.

19 MR. GRAVETT: Size or anything. Nothing
20 conforms.

21 CHAIRPERSON GRIFFIS: The Zone District
22 below it.

23 MR. GRAVETT: Correct.

24 CHAIRPERSON GRIFFIS: Okay.

25 BOARD MEMBER ZAIDAIN: Okay.

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1 CHAIRPERSON GRIFFIS: Anything else?
2 Okay. Just to go back to an issue of question that I
3 had, and this may inform or it may not, but the zoning
4 on this property changed in 1989, and I give great
5 thanks to our very able staff in Office of Zoning, who
6 has produced this for me, and it did go from a CM-1 to
7 an R-5-B, and there is some happenstance as to why
8 that text amendment was, in fact, supported by the
9 Office of Planning and also the ANC. If people need
10 it, I can provide it into the record.

11 Does the applicant have any questions of
12 the Office of Planning?

13 MS. HICKS: No.

14 MR. GRAVETT: I would like to add that Ms.
15 Mitten brought up the question of are other lots in
16 that 10th and W covering more lot occupancy than 60
17 percent, and my guess is, from the research that I've
18 done just on 10th Street, there are five or six units
19 that are well over the .6 lot coverage, and Mr. Bowers
20 being one of them. 2102 and 2104 10th Street, which is
21 in the same block, my guess is there's a lot coverage
22 of .9.

23 CHAIRPERSON GRIFFIS: Was that your
24 concern, lot coverage, lot occupancy?

25 COMMISSIONER MITTEN: My concern is

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1 uniqueness.

2 CHAIRPERSON GRIFFIS: Right.

3 COMMISSIONER MITTEN: But what you raise
4 is a good point, which I would be interested in
5 knowing on these other factors, lot occupancy, FAR,
6 rear yard setback and these other factors, what is
7 typical of these small lots that would be informative.

8 Are you following my question?

9 MR. GRAVETT: No, I am not following.

10 COMMISSIONER MITTEN: You just said you
11 looked at lot occupancy for some of these small lots.

12 MR. GRAVETT: Right.

13 COMMISSIONER MITTEN: I would be
14 interested in knowing what their other characteristics
15 are for the improved properties in the immediate
16 vicinity on these relatively small lots for which you
17 are seeking relief.

18 MR. GRAVETT: The ones that I have seen
19 all had access to an alley, which we do not have, and
20 they have all been added onto in most cases. So they
21 are over the .6 lot coverage, which over the last 40
22 years, my assumption and I --

23 COMMISSIONER MITTEN: And I understand
24 that part. I got the lot occupancy.

25 MR. GRAVETT: Okay.

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1 COMMISSIONER MITTEN: And then I would say
2 I would be curious to know could you address FAR for
3 those other properties, and I am not asking you to do
4 it on the fly, I am saying that that would be of
5 interest to me. Where are they in terms of their rear
6 yard setback and so forth, so that if you were to show
7 that granting these variances is perhaps very
8 consistent with what exists or perhaps it's not. But
9 I am not in a position to address that at the moment.
10 Are you following me?

11 MR. GRAVETT: I can give two examples.
12 The rear yard on the --

13 CHAIRPERSON GRIFFIS: I think it's going
14 to be more pertinent in answering her question as to
15 substantiate it.

16 MR. GRAVETT: Okay.

17 CHAIRPERSON GRIFFIS: In a following
18 submission to the Court.

19 MR. GRAVETT: Okay. All right. Any other
20 questions of the Office of Planning, at this point?

21 Mr. Bowers, do you have any cross
22 examination of the Office of Planning? Have you had
23 ample time to review their memo?

24 MR. BOWERS: Yes, and I have no questions.

25 CHAIRPERSON GRIFFIS: Okay. So you are

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1 clear on everything? You don't need any clarification
2 on what they have stated?

3 MR. BOWERS: No.

4 CHAIRPERSON GRIFFIS: Okay. Very well.
5 Thank you to the Office of Planning. Let's go to the
6 ANC 1B report. It is in a letter of support, Exhibit
7 27. Ms. Renshaw?

8 VICE CHAIR RENSHAW: Yes, the letter is
9 dated February 7th and is signed both by Deborah
10 Thomas, the chair, and Philip Spalding, the secretary,
11 and they state that ANC 1B met on February 6th, 2003, a
12 quorum of eight of 11 members were present and notice
13 was properly given, and they voted unanimously 8 to 0
14 to support the application for all of the variances.
15 No negative sentiment was expressed by either the
16 commissioners present nor from the members of the
17 community present at the meeting.

18 CHAIRPERSON GRIFFIS: Good. Thank you
19 very much. That is all I have in terms of the
20 submissions, the Government report. Is anyone else
21 aware of the applicant parties? I do not think that
22 we had any other sent.

23 Is there anyone here to give testimony in
24 support of the application, support of the
25 application? Let's go through the written submissions

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1 before us. We do have, as Ms. Renshaw is pulling out,
2 the Cardoza-Shaw Neighborhood Association, Exhibit 28,
3 which had voted to formally support this application.

4 Also, as noted in the beginning, we do
5 have the residents of 919 W Street, N.W. in support of
6 the application and identifying some specific issues,
7 which are in the record, I don't need to read. Am I
8 missing anything else? Anyone else aware? Very well.

9 Let's go to then the party in opposition
10 and, Mr. Bowers, this is your opportunity to present
11 your case.

12 MR. BOWERS: Well, the main issue is being
13 the easement, which they are in the plans extending
14 from 3 to 5 feet, and the garbage. I was concerned
15 about having a dumpster next to my backyard, but that
16 will be taken care of in their basement, their garage
17 area, so I have no objection.

18 CHAIRPERSON GRIFFIS: Really? Now, that's
19 quite a turn of events. So you are withdrawing your
20 opposition in party status? You don't need to? I
21 mean, it's for clarification. You're removing your
22 opposition to the --

23 MR. BOWERS: Yes, with that plan, I have
24 no objection.

25 CHAIRPERSON GRIFFIS: Okay. You know this

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1 probably could have been done if you had seen the site
2 plan and talked to the applicant beforehand, but I
3 will let that just float there and no need for a
4 response, and I think they are excellent points you
5 were bringing up. I think it would be a concern for
6 anybody.

7 First of all, losing that access, who
8 holds, how was that easement created? Are you --

9 MR. GRAVETT: It's in the deed.

10 CHAIRPERSON GRIFFIS: It is in your
11 property?

12 MR. GRAVETT: Well --

13 CHAIRPERSON GRIFFIS: In the two lots?

14 MR. GRAVETT: Yes, that's correct.

15 CHAIRPERSON GRIFFIS: Okay. In which
16 case, for my naive understanding, you are not allowed
17 to build on that portion. Is that correct?

18 MR. GRAVETT: It doesn't say that. It
19 just says that you have to maintain the access. It
20 doesn't, I mean --

21 MS. HICKS: You can probably build over
22 it.

23 CHAIRPERSON GRIFFIS: Right.

24 MS. HICKS: But the applicant, you could
25 not block it.

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1 MR. GRAVETT: Correct.

2 CHAIRPERSON GRIFFIS: I guess even more
3 directly.

4 MS. HICKS: Yes.

5 CHAIRPERSON GRIFFIS: As I often have
6 trouble being. For Mr. Bowers' purposes, he will
7 always have the walk-ability from his property to W
8 Street.

9 MS. HICKS: Yes.

10 MR. GRAVETT: That is correct. We just
11 found out in the last three or four days about Mr.
12 Bowers' objection. We met with Mr. Bowers Saturday.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. GRAVETT: To go over our plan with
15 him.

16 CHAIRPERSON GRIFFIS: Good. Well, we
17 weren't going to punish you severely for it, but it's
18 good to know that that's happening. Now, the other
19 issue that you brought up, Mr. Bowers, which as I
20 stated in the beginning is out of our jurisdiction, it
21 really comes to building codes. it's means and
22 methods.

23 There is a jurisdiction that overlooks
24 that and certainly in permitting, you have the
25 applicant and you have the architect. I don't think

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1 it's beyond. You have probably already entered into
2 those discussions of how your property will be
3 secured. They are certainly required to do that.
4 They can't take your property down in the construction
5 of their own, and I would hope that those discussions
6 continue before they become a problem, and that is
7 contingent, of course, on the relief sought here being
8 properly approved. Any other issues?

9 MR. BOWERS: No.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. BOWERS: Thank you.

12 CHAIRPERSON GRIFFIS: In which case I
13 don't have any other submissions. Is there anyone
14 here to give testimony in opposition or in support of
15 this application? Not seeing anybody approach the
16 table, I think we can continue to any closing remarks
17 that the applicant might have. Let me just also
18 instruct.

19 It looks to be that we will have
20 additional submissions, so we are going to set this
21 for decision making, and we will do that as quickly as
22 possible. So we will allow you to have additional
23 time as we go through some of the other submissions to
24 rearticulate any arguments that you would like to
25 make. But let me give you an opportunity, at this

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1 point, to give closing remarks.

2 MR. GRAVETT: I don't think I have
3 anything else to add. I think I would like to be
4 clear on what your objections are or your concerns
5 are. The issue of the cellar, and whether it's
6 habitable or not. I think as an applicant, we're just
7 caught between two issues in the zoning and the
8 building, and if you meet both, then that's what you
9 can do.

10 I don't see that one can eliminate the
11 other from ever happening unless the District
12 Government chose to exercise that, which they haven't
13 done yet.

14 CHAIRPERSON GRIFFIS: Yes, I tend to agree
15 with you, and that's what I had stated, that if we
16 remove this apartment from what you are calling the
17 cellar --

18 MR. GRAVETT: Right.

19 CHAIRPERSON GRIFFIS: -- that it doesn't
20 impact, in fact, the relief. I don't think we're
21 setting this for a decision based on that.

22 MR. GRAVETT: Okay. Then the other issue,
23 I assume, is the question that Ms. Mitten had about
24 the FAR and the rear yard.

25 COMMISSIONER MITTEN: Right, about what is

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1 typical of these other small lots in the neighborhood.

2 MR. GRAVETT: Okay.

3 COMMISSIONER MITTEN: Thank you.

4 CHAIRPERSON GRIFFIS: I can be persuaded
5 to move ahead today for a bench decision. I just
6 noted some concern. Ms. Mitten has also brought up
7 the point that she would like rearticulated the
8 uniqueness. I think she said very clearly and
9 directly she didn't see how the uniqueness test was
10 made here. Now, that's one Board member and I
11 haven't heard that from others, but I would rather
12 rely on giving the opportunity for you to address that
13 rather than proceeding unless I can be persuaded.
14 Comments? Are you ready to --

15 VICE CHAIR RENSHAW: I am ready to go
16 ahead, Mr. Chairman, but if it is the decision of the
17 Board to have a decision postponed, that's fine.

18 CHAIRPERSON GRIFFIS: Well, let me hear
19 from others, people move to action today?

20 BOARD MEMBER ZAIDAIN: I'm not ready to
21 move forward today.

22 CHAIRPERSON GRIFFIS: Okay.

23 BOARD MEMBER ZAIDAIN: I would like some
24 additional submissions, and also a list of additional
25 information you were requesting was the decision about

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1 having a room definition included in there. I think
2 we --

3 CHAIRPERSON GRIFFIS: Right, that's the
4 big thing that we're looking at.

5 BOARD MEMBER ZAIDAIN: Right.

6 CHAIRPERSON GRIFFIS: Okay. But before we
7 step ahead of ourselves, so that there is an
8 understanding, I can give you an opportunity to make
9 closing comments, and then we will give you a list of
10 things that perhaps are going to be submitted.

11 MS. HICKS: I will just try to be as brief
12 as possible. We feel like the property is unique. We
13 can give additional information and elaborate further
14 on how we think this property is unique and the
15 practical difficulties that the developer is having in
16 reaching his objective, and also trying to reach the
17 District's objective and trying to provide additional
18 housing stock.

19 We feel like there is no detriment to the
20 public good, and that this will be a cleaning up of
21 the site. I was quite angered when I had to go out
22 and post, walk across the lot, and post public hearing
23 notices, because people are using the lot as a dumping
24 bin, place to dump used motor oil, contaminating the
25 environment.

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1 I see liquor bottles, broken glass, you
2 name it, it's there, and I just think it's about time
3 that this lot be cleaned. And I don't think that it's
4 going to be anything that -- I think it will be a plus
5 for the neighborhood, and that's my conclusion.

6 MR. GRAVETT: My brief comment would be
7 that to build on Lots 58 and 59, even single-family,
8 by a matter-of-right, you have to get variances to do
9 that. As an architect, I feel that the best solution
10 to the two lots is the building that we are proposing,
11 and then to do that you have to get certain other
12 variances, but to build anything, you have to get a
13 variance. So that is the reason we chose this
14 approach.

15 CHAIRPERSON GRIFFIS: So these lots are
16 not buildable?

17 MR. GRAVETT: Lot 58 is not buildable.

18 CHAIRPERSON GRIFFIS: 58? Okay.

19 MR. LODER: I guess I would like to ask
20 Ms. Mitten how many lots that she would like to have
21 us research as far as coverage and FAR, etcetera? I
22 don't want to come up short if we have to come back
23 here.

24 COMMISSIONER MITTEN: Well, I think what
25 would be representative is, let me pull out my little

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1 lat again, you have it looks like four small lots
2 adjacent on the south and two small lots adjacent on
3 the east that are in Square 358, adjacent to the
4 subject property, and then there are four lots, a row
5 of four small lots across 10th Street at the corner,
6 and then there is a number of lots on W Street.

7 So I would say the immediately adjacent
8 lots to the subject, the four across the street and
9 perhaps four across W Street.

10 MR. LODER: So four across 10th and four
11 across W?

12 COMMISSIONER MITTEN: Yes, I think those
13 would be representative of the immediate vicinity and
14 they are all small lots.

15 CHAIRPERSON GRIFFIS: Any other questions?
16 Okay. And I think in the resubmission when you
17 package that, just to reiterate your argument, it
18 would be helpful for our deliberation, and what I have
19 heard today is quite a lot of uniqueness that is going
20 to these properties. Not only is it the size, but the
21 corner location, corner location giving its difficulty
22 in providing parking with essentially no alley access.

23 As you try and provide parking, that then
24 indicates where the massing has to be and how it is
25 configured on that property. I think it's integral in

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1 your application, what you have stated, that single-
2 families on either lots would require some relief, if
3 not additional relief, that you have not come in for,
4 meaning there are other things that would preclude it
5 from being matter-of-right development.

6 So as you go through that, I think it
7 would be important to do it. Believe me, the Board is
8 very well-aware of everyone's schedule, especially the
9 development schedule, and so we always keep that in
10 mind as we get through these things. I think this is
11 wise to have this additional information, so that you
12 will have a strong decision by this Board.

13 I know you certainly hope it would be a
14 strong decision in the affirmative, in which case, of
15 course, we won't know that until the 1st of April when
16 we have our decision making in public meeting. Now,
17 that would mean your submissions come in on the 25th.

18 Is that ample time for you to put this
19 together to provide to the Board?

20 MR. GRAVETT: Yes.

21 MS. HICKS: Yes.

22 CHAIRPERSON GRIFFIS: Okay. Is that
23 correct, Ms. Bailey?

24 MS. BAILEY: Yes, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: I don't know why the

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1 1st of April is a familiar date to me, but that's what
2 we're having it on, right?

3 MS. BAILEY: April Fools.

4 MS. HICKS: It's April Fools Day.

5 CHAIRPERSON GRIFFIS: That's what it is
6 exactly, but we will take everything we do seriously
7 on that Tuesday. Okay. Thank you very much.
8 Appreciate your patience.

9 MS. HICKS: Thank you.

10 CHAIRPERSON GRIFFIS: Mr. Bowers, you
11 understand everything that has happened? Excellent.
12 I will take that nod of your head as yes. And let's
13 proceed to the last application of the morning, and I
14 do appreciate everyone's patience. As we see sitting
15 here, some things take time to explore, but let us
16 call the last case of the morning.

17 MS. BAILEY: Application #16987 of Pablo
18 Martinez, pursuant to 11 DCMR 3104.1 for a special
19 exception to allow a rear deck addition to an existent
20 flat under section 223, not meeting the lot occupancy,
21 rear yard and court area requirements in the R-4
22 District at premises 1207 Clifton Street, N.W., Square
23 2865, Lot 41.

24 Please, stand to take the oath all those
25 persons wishing to testify.

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1 (The witnesses were sworn)

2 CHAIRPERSON GRIFFIS: Good. And while you
3 have a seat, I'm going to go through and have
4 introductions of everyone that is at the panel, and I
5 also just want to give an indication as we are getting
6 close to calling our afternoon session, people are
7 coming in for that.

8 We have not finished our morning. This is
9 the last case of the morning. We will take a lunch
10 break, and I do not anticipate calling the afternoon
11 session until 2:00 today. So if that helps peoples'
12 schedule, so be it.

13 MS. HANNA: Sir, if I may?

14 CHAIRPERSON GRIFFIS: Yes.

15 MS. HANNA: My name is Sandra Hanna and I
16 am here with Mr. Martinez and Ms. D'Amico, the
17 applicants. I have testimony or deposition scheduled
18 at my office rather soon. So if it's okay with the
19 Board, we would like to request a continuance, at this
20 time. We are prepared to proceed right now if you
21 would like to.

22 CHAIRPERSON GRIFFIS: Yes, no, I
23 understand. I am sorry for the delay. In fact, to no
24 fault of your own, actually you could have brought
25 that to our attention. We could have maneuvered some

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1 of the scheduling this morning.

2 MS. HANNA: If we're able to do that, then
3 that would allow your afternoon schedule to go forward
4 more on time.

5 MR. STOFFERSON: And, sir, I am taking the
6 day off from work to be here, so I would rather have
7 it done today.

8 CHAIRPERSON GRIFFIS: Okay. How much time
9 do you have before you have to leave?

10 MS. HANNA: 45 minutes.

11 CHAIRPERSON GRIFFIS: Zing, let's do it.
12 We will get you out of here in 45 minutes. That will
13 give you time to get to where you need to go, correct?

14 MS. HANNA: Yes, I hope that we're able to
15 finish in that time period.

16 CHAIRPERSON GRIFFIS: Well, we'll see
17 where we can.

18 MS. HANNA: Okay.

19 CHAIRPERSON GRIFFIS: I mean, we'll all
20 keep very aware of it. I mean, the facts of this are
21 going to be pretty simple to figure out, and so let's
22 move. Go ahead.

23 MS. HANNA: Thanks, I appreciate your
24 consideration.

25 MS. BAILEY: Mr. Chairman, not to

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1 interrupt.

2 CHAIRPERSON GRIFFIS: Yes?

3 MS. BAILEY: But there are two requests
4 for party status in this case.

5 CHAIRPERSON GRIFFIS: Whom? Yes, exactly
6 so. Let's take those up first. We have Mr. Ewers,
7 abutting neighbor, Exhibit 27, and Stofferson, A
8 abutting neighbor, Exhibit 23. These are the flanking
9 properties. Is that correct? Do you want to
10 introduce yourself?

11 MR. STOFFERSON: Yes, my name is Robert
12 Stofferson. I am at 1209 Clifton Street, N.W.

13 CHAIRPERSON GRIFFIS: And that's in how
14 proximity to the --

15 MR. STOFFERSON: I am the next door
16 neighbor on the west side.

17 CHAIRPERSON GRIFFIS: On the west side?

18 MR. STOFFERSON: Yes.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. EWERS: Do I need a microphone?

21 CHAIRPERSON GRIFFIS: Yes, you do.

22 MR. EWERS: Larry Ewers, abutting neighbor
23 on the east side.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. EWERS: 1205 Clifton Street.

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1 CHAIRPERSON GRIFFIS: Excellent. Both
2 have been timely filed. Does the applicant have any
3 objection to granting party status?

4 MS. HANNA: No, but I would like to note
5 that we haven't seen their applications or anything
6 else.

7 CHAIRPERSON GRIFFIS: You haven't seen the
8 applications for party status?

9 MS. HANNA: No.

10 CHAIRPERSON GRIFFIS: Okay. They are in
11 the file and they were timely filed.

12 MS. HANNA: It's a technicality. We're
13 ready to move on.

14 CHAIRPERSON GRIFFIS: Right. Let's go.
15 Do you want to see them right now?

16 MS. HANNA: I would like to see them,
17 please.

18 CHAIRPERSON GRIFFIS: Okay. Can you get
19 some of those down? Let's just get a copy out to the
20 table.

21 COMMISSIONER MITTEN: Just while we're
22 taking a moment, Mr. Chairman, I just would like to
23 note that the persons applying for party status are
24 not required to serve the applicant.

25 CHAIRPERSON GRIFFIS: Right, yes.

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1 COMMISSIONER MITTEN: Okay.

2 CHAIRPERSON GRIFFIS: Excellent point.
3 I'm sorry, and that's why I said they were timely
4 filed. They were in the application. It is the
5 burden of the applicant to review that. They meet the
6 criterium, of course, that we have to go through in
7 terms of how they might be significantly or distinctly
8 in terms of the location of the property, the two
9 abutting neighbors, one on the east, one on the west.

10 I have no objection to granting party status to both.
11 Are there any objections from the Board?

12 COMMISSIONER MITTEN: No objections.

13 BOARD MEMBER ZAIDAIN: Mr. Chair?

14 CHAIRPERSON GRIFFIS: Yes.

15 BOARD MEMBER ZAIDAIN: I don't necessarily
16 object. I do have a concern and I don't know if we
17 should take it up now, but it seems like the main
18 points of the party's objections, and correct me if I
19 am wrong, are the fact that you feel that the deck is
20 encroaching on or is on your property.

21 MR. STOFFERSON: Very much so.

22 BOARD MEMBER ZAIDAIN: That's not your
23 issue. That's your issue. Okay. I don't know if the
24 Board wants to get into this now, but it seems like I
25 don't think that we are going to be able to resolve

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1 that issue for this party, because it's more of a
2 civil nature.

3 CHAIRPERSON GRIFFIS: Okay.

4 BOARD MEMBER ZAIDAIN: So I don't know if
5 that changes.

6 CHAIRPERSON GRIFFIS: It's an excellent
7 point, and we'll give clear direction of what is in
8 our jurisdiction or not in our jurisdiction. The
9 other point that I think Mr. Zaidain is probably
10 continuing to is that as we have two parties, the
11 abutting neighbors, you may have similar issues, and
12 as stated, you have very similar issues. So of
13 course, we won't have in any case, but we won't have
14 any redundant cross examination or case presentation.

15 So if you guys kind of want to get a meeting of the
16 mind or listen to what one says and not repeat as we
17 go forward.

18 BOARD MEMBER ZAIDAIN: Okay. I have no
19 objection. I just --

20 CHAIRPERSON GRIFFIS: Okay.

21 BOARD MEMBER ZAIDAIN: I am noting that
22 concern before I am going to get into this.

23 CHAIRPERSON GRIFFIS: Good. In which
24 case, I can take that as a consensus of the Board to
25 grant party status to both abutting neighbors and we

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1 can continue, at this point.

2 MS. HANNA: Thank you. As a preliminary
3 matter, I just want to thank you for giving me these
4 applications, because you're right, they aren't
5 required to give us any notice, but we have never seen
6 them. They weren't at the ANC, and so we didn't know
7 what the basis of any of their objections were.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. HANNA: So thank you for giving it to
10 us before we started. Pablo Martinez is here before
11 you to ask for a special exception in order to be
12 allowed to keep the already existing deck in the back
13 of his house pursuant to 223.

14 We are here now only because the prior
15 owner and contractor didn't do what he was legally
16 obliged to do under zoning laws, and not because of
17 any attempts on Mr. Martinez' part to circumvent the
18 zoning laws or anger his neighbors.

19 CHAIRPERSON GRIFFIS: Who was the prior
20 owner and contractor?

21 MR. MARTINEZ: A gentleman by the name of
22 A. Sanni.

23 CHAIRPERSON GRIFFIS: Can you turn your
24 mike on?

25 MR. MARTINEZ: The previous owner was also

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1 the contractor to the renovations of the former --
2 this was a vacant house.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MARTINEZ: A. Sanni.

5 MS. HANNA: Mr. A. Sanni. We were never
6 really sure of the first name. He went by Sanni.

7 MR. MARTINEZ: He went by Sanni.

8 CHAIRPERSON GRIFFIS: S-O?

9 MR. MARTINEZ: S-A-N-N-I.

10 MS. HANNA: S-A-N-N-I.

11 CHAIRPERSON GRIFFIS: Okay. Go ahead.

12 BOARD MEMBER ZAIDAIN: Let me make sure I
13 understand that the deck was already constructed when
14 he purchased the house from or --

15 MS. HANNA: The deck was --

16 MR. STOFFERSON: That's not correct. I
17 have photos showing --

18 CHAIRPERSON GRIFFIS: Actually, we're
19 going to have their presentation first and then we
20 will give an opportunity for you, allowing you to sit
21 at the table on time constraints, but I ask you to
22 turn off your mike. Now is not the opportunity to get
23 involved. But let me see if I summarized this
24 correctly, and I think I can do this pretty
25 expeditiously.

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1 BOARD MEMBER ZAIDAIN: That's what I am
2 trying to understand.

3 CHAIRPERSON GRIFFIS: In the written
4 submission, what you can gleam, there was a purchase
5 of the house. The house was not fully completed.
6 There was a punch list, items left over from the
7 construction that needed to be remedied, a closing, in
8 fact, was delayed, a substantial amount of time for
9 that to be remedied.

10 They went to closing without the full
11 remedy. There was money withheld at the closing, and
12 they actually had to get an independent contractor to
13 come in and finish the work that had been proposed to
14 be finished at the purchase, meaning --

15 BOARD MEMBER ZAIDAIN: This was part of
16 the punch list.

17 CHAIRPERSON GRIFFIS: And then the punch
18 list did have interior and also the deck. That's
19 correct.

20 BOARD MEMBER ZAIDAIN: Right.

21 CHAIRPERSON GRIFFIS: So was it finished
22 at closing? It was not technically finished at
23 closing, but you purchased a house with a finished
24 work on the rear of the property. Okay.

25 MS. HANNA: If I may just add something?

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1 My understanding is that the deck was not finished at
2 the time of closing, but there was money saved in
3 escrow at the closing to complete the deck. The
4 original contractor, the former owner, was supposed to
5 do that and didn't complete his obligation. So Mr.
6 Martinez and Ms. D'Amico, his girlfriend who lives in
7 the property also, had to hire an additional
8 contractor and pay them an additional amount of money.

9 However, underlying all of this is the
10 fact that Mr. Sanni represented over and over and over
11 again that the appropriate permits, variances,
12 etcetera, had been gotten, received, prior to the time
13 that they entered the contract to purchase the house.

14 And so his continuing representations about what he
15 did and didn't do are why we are here today.

16 VICE CHAIR RENSHAW: Did Mr. Martinez ask
17 for a copy of those permits?

18 MR. MARTINEZ: They were plastered all
19 over the doors and the windows, and until the stop
20 work order was issued on the house, I was unaware of
21 what was the problem. I didn't know that was a
22 problem until after the stop work order was issued.

23 MS. HANNA: And the stop work order was
24 issued after the deck was substantially completed.

25 CHAIRPERSON GRIFFIS: Which was after

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1 closing?

2 MS. HANNA: Which was after closing.

3 CHAIRPERSON GRIFFIS: Okay. Does everyone
4 understand how we got here?

5 BOARD MEMBER ZAIDAIN: Yes, just for my
6 own, just to round it out, and not that the contract
7 issue plays a huge part in this, but I am assuming the
8 contractor is -- there was probably standard language
9 talking about that all permits, etcetera, etcetera,
10 are taken out before the contract is closed?

11 MS. HANNA: Yes.

12 BOARD MEMBER ZAIDAIN: Normally. Okay.
13 And that was in the contract?

14 MS. HANNA: Yes.

15 BOARD MEMBER ZAIDAIN: Okay.

16 MS. HANNA: So that's it in a nutshell.
17 That's what happened and that is why we're here. To
18 be honest, having not heard from either of the
19 neighbors before, I am a little unprepared to speak to
20 their specific concerns, because I didn't know that
21 they existed, and I would appreciate the time to -- if
22 the neighbors' concerns become a concern for the
23 Board, then we would appreciate the time to
24 additionally brief this body on those specific
25 concerns.

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1 CHAIRPERSON GRIFFIS: Okay.

2 VICE CHAIR RENSHAW: Could I have your
3 name again, please, over here?

4 MS. HANNA: Of course.

5 VICE CHAIR RENSHAW: Yes.

6 MS. HANNA: My name is Sandra Hanna, H-A-
7 N-N-A.

8 VICE CHAIR RENSHAW: Thank you.

9 MS. HANNA: And so the record is clear, I
10 have just moved back to the District of Columbia. I
11 was a resident of California, so my Bar application in
12 D.C. is pending. I am barred in California right now.

13 CHAIRPERSON GRIFFIS: Okay. If you want,
14 not if you want, if you would, there is the written
15 submission, but I think it would be helpful for you to
16 walk through the burden of proof for this application.

17 MS. HANNA: Sure. Under 223, we are
18 required to show that there is no substantial
19 detriment, which will be created by granting the
20 application for a special exception. That is no
21 substantial detriment to the public good.

22 We don't believe that the existing rear,
23 having not -- well, the caveat that I have not seen
24 anybody else's objections, we don't believe that the
25 existing rear deck affects the light and air available

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1 to neighboring properties or their privacy or use of
2 enjoyment of those properties.

3 We don't think that the deck visually
4 intrudes upon the character or the scale or the
5 pattern of the houses along the alley frontage. I
6 believe you all have photos.

7 CHAIRPERSON GRIFFIS: Yes.

8 MS. HANNA: Is that correct? Okay. We
9 also think that we also must show that the granting of
10 the special exception is not inconsistent with the
11 general intent of the Zoning Regulations and the map,
12 and by that we need to show, and I think that the
13 pictures do, that the residential character of the
14 community is not disturbed and the neighbors are not
15 substantially affected.

16 CHAIRPERSON GRIFFIS: Right, and you are
17 not changing the use in any way?

18 MS. HANNA: Yes, of course, there is no
19 change in the use. This is a residential home.

20 CHAIRPERSON GRIFFIS: Okay. Any questions
21 from the Board?

22 COMMISSIONER MITTEN: Just briefly. We
23 don't have very good photographs that show us the sort
24 of expanse of the rear of other properties. We just
25 have photographs that are focused primarily on the

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1 subject property, but it looks like this photo, which
2 is Exhibit 4, the deck looks quite large relative to
3 what is going on the property to the left here, which
4 doesn't appear to have a deck at all, and it appears
5 to be under construction and, I mean, this all appears
6 to be rear yard.

7 There does appear to be something on the
8 dwelling on the right in terms of an extension at the
9 rear, but without pictures that show, you know, the
10 adjoining properties at the rear, it's very difficult
11 to see the deck relative to the adjacent properties.

12 MS. HANNA: Well, we would be happy to
13 provide you with new, broader pictures and some
14 supplemental briefing materials to you, and I just
15 will note for the record that when you're facing the
16 deck from the back, the building on the left, some
17 would say, and we certainly consider abandoned. It is
18 a shell and it looks like there is nothing going on in
19 that house.

20 VICE CHAIR RENSHAW: Is that the house
21 with the visor, what looked to be a visor?

22 MR. MARTINEZ: Yes.

23 MS. HANNA: Yes.

24 VICE CHAIR RENSHAW: That's empty?

25 MR. MARTINEZ: Yes.

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1 MS. HANNA: Yes, I mean, I realize that
2 the owner for that house is here today. Maybe he can
3 speak to that. He has filed a party status
4 application.

5 CHAIRPERSON GRIFFIS: Yes, he is one of
6 the parties, so we'll hear.

7 VICE CHAIR RENSHAW: Looking at the
8 surveyor's map, just a question, I see the building
9 restriction line in the back. Have you built out or
10 is this deck out over the building restriction line?

11 CHAIRPERSON GRIFFIS: That's actually in
12 the front.

13 VICE CHAIR RENSHAW: That's the front?

14 MR. MARTINEZ: That's the front of the
15 house. That's the front of the house. The back of
16 the house, there's a 9 foot wide alley.

17 CHAIRPERSON GRIFFIS: This is the front.

18 VICE CHAIR RENSHAW: There is the alley.

19 MR. MARTINEZ: Right, there is the alley.

20 VICE CHAIR RENSHAW: Here is the line.

21 MR. MARTINEZ: The building restriction
22 line goes from here out to the street.

23 VICE CHAIR RENSHAW: Right, so this is the
24 deck back here?

25 MR. MARTINEZ: Yes.

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1 VICE CHAIR RENSHAW: Okay. You can remove
2 that question.

3 CHAIRPERSON GRIFFIS: Okay, okay. Any
4 other questions from the Board, clarifications? Not
5 being said, we will take the party's cross
6 examination, the testimony that you have just heard.
7 First of all, I am going to ask both parties, have you
8 -- no, let me just take cross examination, at this
9 point.

10 Any questions of the testimony that you
11 just heard?

12 MR. STOFFERSON: I believe so. I have a
13 statement. I am prepared.

14 CHAIRPERSON GRIFFIS: Okay. And we will
15 get to your case presentation. At this point, you
16 have heard testimony. As a party in the case, you
17 participate in cross examination. Cross examination
18 is questions that, I don't know if the lawyers would
19 say it the same way I do, but poke holes in the case
20 presentation that she has made.

21 MR. STOFFERSON: Sure.

22 CHAIRPERSON GRIFFIS: And you need to
23 elicit information from your questions that are
24 important to us, but this is just questions time,
25 question of testimony.

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1 MR. STOFFERSON: I am not too sure, you
2 know, what I am able to say at this point right now.

3 CHAIRPERSON GRIFFIS: You are just allowed
4 to ask questions of the applicant.

5 MR. STOFFERSON: Of the applicant?

6 CHAIRPERSON GRIFFIS: Right. For
7 instance, I will give you an example.

8 MR. STOFFERSON: Sure.

9 MR. STOFFERSON: You could say if they are
10 coming in for a height variance, you could say is it
11 true that you are going to build this at 110 feet, and
12 they would say yes. And you would say but your plans
13 show it 250 feet, and we have got a huge hole in their
14 case presentation.

15 MR. STOFFERSON: I have got one great
16 question.

17 CHAIRPERSON GRIFFIS: Excellent.

18 MR. STOFFERSON: Okay. And this is for
19 the lawyer.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. STOFFERSON: Was she aware that on
22 August 5th, 2002 I spoke to her client, Mr. Martinez,
23 regarding my questioning whether the deck was built
24 without a permit?

25 MS. HANNA: I was aware that on August 5th,

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1 2002, and on various other occasions, that you asked
2 my client to pay you money in response for --

3 CHAIRPERSON GRIFFIS: All right. But
4 actually, we're going to cool things down before they
5 get too hot here, a lot of stuff that we won't be able
6 to deal with anyway. But the direct question, and let
7 me see if I understand it for the pertinence of this
8 support, is that August 5th is the time that you
9 indicated?

10 MR. STOFFERSON: Yes, I heard from what
11 she said earlier that she did not, and whoever is
12 taping this may help me, she said that she didn't know
13 that there were issues with the neighbors.

14 CHAIRPERSON GRIFFIS: Okay. And we are
15 not going to quibble on that either. I mean, I
16 understand they weren't aware that the party
17 application came in. You know, in a lot of sense, it
18 doesn't matter to me what has happened before. We are
19 here now. So I am more concerned with let's get
20 issues on the table. Let's have them addressed.

21 The applicant should be able to address
22 your concerns for this project, and you should have
23 your concerns voiced and addressed, and then we will
24 take all that information in. So outside of what has
25 happened before, I thought you were going more to the

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1 fact of well, I am not going to say. What is the
2 pertinence for August 5th discussion about permits?

3 MR. STOFFERSON: From her earlier comment
4 saying that she did not know that there were issues
5 with the neighbors.

6 CHAIRPERSON GRIFFIS: Oh, okay.

7 MR. STOFFERSON: When, in fact, I would
8 think that her client would have told her that I had
9 an issue. It has nothing to do with money.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. STOFFERSON: It has to do with the
12 deck being quite large.

13 CHAIRPERSON GRIFFIS: Okay, okay. Any
14 other questions?

15 MR. STOFFERSON: I don't believe so.

16 CHAIRPERSON GRIFFIS: Okay. Well, let's
17 just get a quick answer to that. Mr. Martinez, you
18 had a discussion and your abutting neighbor, Mr.
19 Stofferson, had indicated that he was aware that this
20 was built without a permit?

21 MR. MARTINEZ: He probably was aware of
22 it, because there was a big orange sticker on my door
23 saying stop work, no permit. That was issued to my
24 door.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. MARTINEZ: That was -- so the question
2 is --

3 CHAIRPERSON GRIFFIS: You had that
4 discussion with him?

5 MR. MARTINEZ: Yes, I did.

6 CHAIRPERSON GRIFFIS: Okay. Good.

7 MR. MARTINEZ: It was actually an email, I
8 believe, if I remember correctly.

9 CHAIRPERSON GRIFFIS: Okay. At that
10 point, you were fairly aware that there were some
11 problems with permitting and construction on this?

12 MR. MARTINEZ: Yes, it was already done
13 and the inspector already came out, and I had already
14 started the application.

15 CHAIRPERSON GRIFFIS: I see.

16 MR. MARTINEZ: With the correct
17 everything.

18 CHAIRPERSON GRIFFIS: So you actually had
19 closed on this and were the owner of the property, at
20 that point?

21 MR. MARTINEZ: Yes.

22 CHAIRPERSON GRIFFIS: Okay. All right.

23 MS. HANNA: I think what Mr. Martinez was
24 getting to, if I may, is that in July, around July,
25 there were two stop work orders issued. The first one

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1 was in July and before he went on vacation to
2 California, Mr. Martinez was working with the
3 inspector and had filed an application to get
4 everything fixed. A second stop work order was posted
5 on his door August 1st when he was out of town in
6 California.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. MARTINEZ: Yes, I mean --

9 MS. HANNA: So he knew that there was an
10 issue in the beginning of July.

11 CHAIRPERSON GRIFFIS: For my purposes, the
12 record is fairly clear that, you know, you became
13 aware of a situation on a house you were trying to
14 buy, and then went through what you were trying to do
15 to remedy it. I perfectly understand the neighbors'
16 concerns of all this work going on.

17 We will not establish who was responsible
18 for some certain things, but what is before us is the
19 application. So that being said, good communication
20 is always appreciated, and I would hope that it
21 continues in this as we go through. Mr. Ewers, is
22 that --

23 MR. EWERS: Can I ask then is it not
24 relevant when the work was started or whether it was
25 started before they moved in? If it's not, I will

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1 just leave all of that. I will just ignore it.

2 CHAIRPERSON GRIFFIS: Whether it was
3 started? Why don't you ask the --

4 MR. EWERS: For example, in his
5 application he stated that there was a previous deck
6 that he was simply replacing. Is that relevant to
7 this material, to this hearing?

8 CHAIRPERSON GRIFFIS: Not really.

9 MR. EWERS: Okay.

10 COMMISSIONER MITTEN: I think the posture
11 that we want to be in, and you have to kind of divorce
12 yourself from all of the history, because you are all
13 very, you know, involved in it, but what is before us
14 is an application for a special exception as if there
15 is no deck. We don't care that you have a deck.
16 That's your problem.

17 CHAIRPERSON GRIFFIS: Right.

18 COMMISSIONER MITTEN: We want to evaluate
19 the plans as presented to us on the merits and being
20 put to the test that all special exceptions, additions
21 to single-family dwellings and flats have to be put
22 to. So think in those terms, and I think we will get
23 rid of some extraneous issues.

24 MR. EWERS: Yes, then I have no questions
25 of the applicant, the parties.

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1 CHAIRPERSON GRIFFIS: Okay. And I will
2 just reiterate that both of you have the opportunity
3 to present your case and it will be very quickly here.

4 Let's go then to the Office of Planning report. I
5 note that the Office of Planning, a staff member who
6 did the report, is not available due to illness, so we
7 will cover it, at this point.

8 First of all, have the parties seen the
9 Office of Planning report?

10 MR. STOFFERSON: No.

11 MR. EWERS: No.

12 CHAIRPERSON GRIFFIS: Has the applicant
13 seen the Office of Planning report?

14 MR. MARTINEZ: No.

15 CHAIRPERSON GRIFFIS: Well, this might be
16 a cherished piece of document that we are holding
17 here. All right. Well, let's get some copies and get
18 them out there. First of all, I will summarize the
19 planning document. First of all, their summary
20 recommendation is for approval of the special
21 exception from the lot occupancy rear yard and
22 courtyard requirements in accordance with the
23 provision of section 223.

24 They do describe the site and the area
25 description. Their project description indicates

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1 somewhat of the history of 1207 Clifton, and that
2 being a formally abandoned residential structure,
3 which they indicate also is still listed as improved
4 and abandoned. Why that is pertinent, I don't know,
5 but there it is.

6 And they go through the zoning
7 requirements in their matrix. Their analysis, the
8 subject property in the Columbia Heights section of
9 the city just north of original city boundary, this
10 dwelling and nearby row houses predate existing Zoning
11 Regulations. The north side of Clifton, including
12 this property, has a 30 foot right of way at the front
13 of the lot.

14 Given the building restriction line in the
15 front yard, it attempts to create off street parking
16 and create a usable space in the rear yard. The
17 applicant has constructed a parking pad and elevated
18 deck. The addition of the deck creates 63.24 percent
19 lot coverage, and I am going to skip some of this for
20 time.

21 They do go through all the provisions of
22 223, light and air available to the neighboring
23 property shall not be unduly affected. They believe
24 that the elevation of, approximately, 9 feet with this
25 and the elevated and open structure will not unduly

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1 affect available light and air to adjoining
2 properties.

3 B) "This privacy usage of neighboring
4 property shall not be unduly compromised." They
5 believe that adjacent and nearby rear yards have
6 elevated deck structures. This addition of this
7 elevated deck to nearby existing decks will not unduly
8 compromise privacy of use and enjoyment of neighboring
9 properties.

10 C) "The addition together with the
11 original building as viewed from the street, alley or
12 other public way shall not substantially visually
13 intrude upon the character, scale or pattern of the
14 houses along the subject street frontage," and they
15 state that the deck is located to the rear of the
16 property and is not visible from the street frontage
17 along Clifton or 12th Street, which means that it would
18 be in compliance with 223, section C.

19 "Demonstrating compliance with all A, B
20 and C of this subsection, the applicant shall use
21 graphical representations, such as plans, photographs,
22 an elevation section drawing sufficient to represent
23 the relationship of the proposed addition to the
24 adjacent buildings and the view," and they do indicate
25 that the applicant has provided photographs and site

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1 rear elevation drawings that depict the effect of the
2 deck on the property and the adjoining properties.
3 They surveyor's plat provided the dimensions of the
4 deck.

5 Are there other things that I missed in my
6 quick summation of the Office of Planning report that
7 Board members would like to bring to my attention?
8 Noting that the applicant nor the parties have
9 reviewed this, I will take comments right now if you
10 want in terms of the Office of Planning, but we'll
11 leave the record open for written submissions in
12 response to the Office of Planning report. Well,
13 there it is.

14 MR. STOFFERSON: I have a question.

15 CHAIRPERSON GRIFFIS: Actually, just to
16 set my own chronology, we'll start with the applicant
17 and then I will go to the parties.

18 MS. HANNA: I don't have anything.

19 CHAIRPERSON GRIFFIS: Okay. Thank you.

20 MR. STOFFERSON: Did the Office of
21 Planning receive a wall check from a surveyor?

22 CHAIRPERSON GRIFFIS: That I don't know.
23 I am not sure that they would have asked for it or
24 looked for that. In fact, oftentimes the Office of
25 Planning, if there are community issues that go beyond

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1 the jurisdiction of this Board in terms of zoning,
2 they would list it, but clearly, note the fact that
3 they were outside of our jurisdiction.

4 BOARD MEMBER ZAIDAIN: Just for whatever
5 it's worth, my understanding of their process, I think
6 they just use the surveyor plat.

7 CHAIRPERSON GRIFFIS: Oh, that's true.
8 Actually, I am sorry. I should have brought that up.

9 In the community comments, it does indicate they
10 contest that property line is a civil matter between
11 the adjoining property owners. The office of the
12 surveyor does not conduct wall examinations or
13 surveys. The contested property line would need to be
14 conducted by a D.C. registered surveyor.

15 VICE CHAIR RENSHAW: Just a question, Mr.
16 Chairman. Was there a survey done at the time of the
17 closing?

18 MR. MARTINEZ: I believe in the process
19 with the realtor and the bank. They do surveys or
20 they don't.

21 VICE CHAIR RENSHAW: And do you have that
22 information? Was the survey done for the closing?

23 CHAIRPERSON GRIFFIS: You would have a
24 plat. You would have the plat plan that would show
25 your lot dimensions and location, but they wouldn't

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1 necessarily stake the property. You know, surveying,
2 it's interesting, I mean, even the property lines that
3 show on the plat that's downtown, which you use for a
4 closing, well, this may be a digression, but sometimes
5 vary. There may be two.

6 So there is a difference between having it
7 surveyed and staked for the property lines, which
8 would not be a requirement. I mean, I am not an
9 expert, but I would not think that you actually paid
10 for that to happen. Is that correct? Okay. It looks
11 like that may happen in the near future, however.

12 VICE CHAIR RENSHAW: Oh.

13 CHAIRPERSON GRIFFIS: Mr. Zaidain, did you
14 have questions? Any of the Board? I'm sorry. Mr.
15 Ewers, did you?

16 MR. EWERS: Regarding the Office of
17 Planning's comment on 223(c), I believe that their
18 comment implies a faulty legal interpretation of what
19 the section requires. It refers to this view along
20 the street front.

21 However, I believe that the section
22 actually refers not just to the view along the street
23 frontage, but to the view from anywhere regarding
24 properties along the street frontage. In other words,
25 the view issue wouldn't be limited to the front of the

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1 property.

2 CHAIRPERSON GRIFFIS: Okay.

3 BOARD MEMBER ZAIDAIN: So are you saying
4 that this section C would apply to your view from your
5 house?

6 MR. EWERS: From the alley, the view from
7 the alley and from the rear yard.

8 BOARD MEMBER ZAIDAIN: Well, I see your
9 point. I think that is a pertinent issue. However, I
10 think that falls more under B.

11 MR. EWERS: Pardon?

12 BOARD MEMBER ZAIDAIN: I think that falls
13 more under B. You are talking about your own use and
14 enjoyment of your property.

15 MR. EWERS: I don't have the section
16 before me.

17 BOARD MEMBER ZAIDAIN: I mean, I kind of
18 disagree with what you are saying for C, but I think
19 your issue that you're bringing up --

20 VICE CHAIR RENSHAW: Is more B.

21 BOARD MEMBER ZAIDAIN: -- is more
22 pertinent for B if I understand you correctly.

23 VICE CHAIR RENSHAW: Well, that brings up
24 another point, Mr. Chairman. Since we're on B, on the
25 privacy and use, the adjacent and nearby rear yards

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1 have elevated deck structures, and I am wondering are
2 they the same size as this deck?

3 CHAIRPERSON GRIFFIS: How many special
4 exceptions have we seen on that block?

5 MR. STOFFERSON: Ms. Renshaw, could you
6 repeat your question?

7 VICE CHAIR RENSHAW: Yes, my question is
8 the Office of Planning report on page, what page am I
9 on, 3B, "The privacy of use and enjoyment of
10 neighboring properties shall not be unduly
11 compromised." That is the regulation. And then the
12 answer: "Adjacent and nearby rear yards have elevated
13 deck structures." And I want to know are those
14 elevated deck structures of adjoining properties,
15 neighboring properties, the same size as this?

16 MR. STOFFERSON: Not at all, much, much
17 smaller.

18 VICE CHAIR RENSHAW: Okay.

19 MR. MARTINEZ: Can I say --

20 VICE CHAIR RENSHAW: That isn't in the
21 report.

22 MR. MARTINEZ: Can I say something?

23 VICE CHAIR RENSHAW: Yes.

24 MR. MARTINEZ: His deck is two levels.
25 Mine is just one.

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1 BOARD MEMBER ZAIDAIN: Actually, I think
2 instead of arguing about it, one of the things I
3 wanted to see was photographs of the party's.

4 VICE CHAIR RENSHAW: Exactly.

5 BOARD MEMBER ZAIDAIN: Because, I mean,
6 the photographs that we have show the deck pretty
7 well, but you really can't tell what is going on with
8 the neighboring properties, and I think if we're going
9 to make an assessment of the impact that this deck
10 will have on these properties, I think it would be
11 pertinent to have alley shots of those properties with
12 the deck to the right of it, as opposed to in the
13 center of it.

14 CHAIRPERSON GRIFFIS: Okay. So they
15 already asked for it and everybody can submit those.

16 MS. HANNA: We would be happy to provide
17 those.

18 BOARD MEMBER ZAIDAIN: Rear view.

19 CHAIRPERSON GRIFFIS: Sure. Okay. Any
20 other discussion on the Office of Planning report as
21 we move away from our freeform? Yes?

22 MR. EWERS: I believe that the data that
23 the Office of Planning relied on for its calculations
24 of lot coverage and so on, I believe that those data
25 are incorrect. Based on my review of the file, which

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1 showed what appeared to me to be effectively a
2 misrepresentation of some of the dimensions.

3 BOARD MEMBER ZAIDAIN: This wasn't self
4 certified.

5 MR. EWERS: Oh, the Office of Planning?

6 CHAIRPERSON GRIFFIS: No, it wasn't self
7 certified. Okay. And what I am going to do, as the
8 Office of Planning is not here to respond to this, I
9 did want to just kind of hear the issues, we are going
10 to have the opportunity for submissions in response to
11 the Office of Planning, and that would be an
12 appropriate time for you to look specifically at what
13 you are actually talking about. I am assuming that
14 you are talking about lot occupancy and area
15 calculations.

16 MR. EWERS: Yes.

17 CHAIRPERSON GRIFFIS: Okay. So it will
18 give you some time also to look at those. And I would
19 direct your attention to section 223, which allows
20 certain area relief to come under a special exception,
21 noting that there are certain parameters in which that
22 can happen, one being the lot occupancy. So just take
23 that into the whole factor as you look at that issue.
24 Okay.

25 Any other last pieces on the Office of

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1 Planning? Very well. Let's move on then to other
2 Government reports. I don't have any attendant to,
3 except ANC 1B, which also recommended approval of the
4 application, Exhibit 25. Ms. Renshaw, is there other
5 pertinent information on that?

6 VICE CHAIR RENSHAW: Oh, no.

7 CHAIRPERSON GRIFFIS: Okay. That being
8 said, it is very brief and doesn't go into the entire
9 issues of merit, but I would advise if any of the
10 parties or applicant doesn't have that, they can make
11 copies of it out of the record. I don't have note of
12 any other official reports into the record.

13 Is the applicant or parties aware of any
14 other reports?

15 MR. EWERS: Can I make a comment on the
16 ANC report?

17 VICE CHAIR RENSHAW: I was going to ask
18 you about that.

19 MR. EWERS: Yes.

20 CHAIRPERSON GRIFFIS: Actually, what I
21 want to do is we're moving very quickly to the
22 presentation of your cases, and I think you can roll
23 that into it if that's okay.

24 MR. EWERS: That's fine.

25 CHAIRPERSON GRIFFIS: So let's do that.

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1 Is there anyone here to provide testimony in support
2 of this application, support of the application? In
3 which case, let's go to the parties' cases in
4 opposition.

5 Mr. Stofferson, did you want to start
6 that?

7 MR. STOFFERSON: Sure.

8 CHAIRPERSON GRIFFIS: Okay. Noting we
9 have 15 minutes, so I want to hear from both of you,
10 so how long do you need do you suppose?

11 MR. STOFFERSON: I have a one page
12 presentation I created.

13 CHAIRPERSON GRIFFIS: Fabulous. And you
14 will submit that also, but let's go.

15 MR. STOFFERSON: Okay. Good afternoon.
16 My name is Robert Stofferson. I live at 1209 Clifton
17 Street, N.W., next door to Mr. Martinez. I am here to
18 request that the city not allow the exception for Mr.
19 Martinez' rear deck.

20 Mr. Martinez built his deck with no regard
21 to permits, with no regard to the District's lot
22 occupancy rule and what affects me personally, with no
23 regard to whether the deck encroaches on my property.

24 From the time Mr. Martinez bought the
25 house on May 30th, 2002, he has shown no respect for me

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1 or my property. On July 5th, 2002, I took photos of
2 the excavation Mr. Martinez had done to build on his
3 property. Due to the excavation, the walkway from my
4 basement door to the alley was cracked and chipped.

5 On July 23rd, 2002, I received a call from
6 my roommate who told me that a worker at 1207 Clifton
7 was punching holes in the cement between our houses to
8 secure a fence Mr. Martinez had put up. This fence
9 extended into my yard passed where the previous fence
10 had been.

11 On August 3rd, 2002, I spoke to one
12 appraiser and two surveyors about the cost of
13 determining whether the construction Mr. Martinez was
14 doing went past his property line and onto my
15 property. After calling six companies, I found one
16 that was able to give me a quote for the work, which
17 is called a wall check. The quote was \$850. Needless
18 to say, I didn't want to spend my own money for work
19 that Mr. Martinez was having performed.

20 On August 5th, 2002, I spoke, I didn't send
21 an email, I spoke with Mr. Martinez who told me that
22 he was sure that the permit for the deck in his
23 backyard was part of the master permit for the entire
24 house.

25 Late the same day, I went to the Office of

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1 D.C.'s Department of Consumer and Regulatory Affairs
2 and had all the permits on file pulled for 1207
3 Clifton Street, N.W., of which I have a copy. Nowhere
4 on the application for the master permit is there any
5 mention of the deck.

6 Furthermore, the space on the application,
7 which asks whether the earth will be disturbed, the
8 box is marked no. From photos I have with me, you can
9 tell that the earth was being disturbed.

10 One month and four days after Mr. Martinez
11 told me that he had a permit to build his deck, I
12 received an email of which I have a copy from Mr.
13 Robert Henry of D.C.'s Department of Consumer and
14 Regulatory Affairs who states "Our investigation
15 revealed that the owner, P. Martinez, was cited for
16 construction of rear yard deck without permits." On
17 September 11th and September 24th, 2002 --

18 CHAIRPERSON GRIFFIS: Actually, let me
19 interrupt you, because what you are doing is making a
20 great presentation for the appeal of a permit.

21 MR. STOFFERSON: Okay.

22 CHAIRPERSON GRIFFIS: We have a special
23 exception case in front of us.

24 MR. STOFFERSON: Okay.

25 CHAIRPERSON GRIFFIS: Everything you said

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1 to this point is interesting background and doesn't go
2 anything to what we are going to deliberate on.

3 MR. STOFFERSON: Okay.

4 CHAIRPERSON GRIFFIS: So if you want to
5 skip to where you get those points, that would be
6 good.

7 MR. STOFFERSON: I have got two more
8 paragraphs.

9 CHAIRPERSON GRIFFIS: Let's roll.

10 MR. STOFFERSON: Sir, I am not a legal
11 expert. I don't know where one thing ends and one --

12 CHAIRPERSON GRIFFIS: No.

13 MR. STOFFERSON: I really don't know.

14 CHAIRPERSON GRIFFIS: And that's why I am
15 trying to give you a little bit of direction. That's
16 all.

17 MR. STOFFERSON: Okay.

18 CHAIRPERSON GRIFFIS: And just to be --

19 MR. STOFFERSON: Thank you. Okay. On
20 September 11th and September 24th, 2002, I took photos
21 of the fence along with the support posts Mr. Martinez
22 had installed. The fence is not straight. From the
23 location of where the old fence was, sections of the
24 fence and the support posts are on my property.

25 In conclusion, Your Honor, I am asking

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1 that the Court, to right a wrong. It is in the public
2 interest that people obey the law and respect the
3 property of others. Mr. Martinez' unlawful
4 construction of his deck and his disregard for my
5 neighboring property are wrong.

6 Please, have the problem corrected by
7 having him remove his deck and, if possible, repair
8 damage done to my property.

9 CHAIRPERSON GRIFFIS: Good. Thank you
10 very much. I do need to make a clarification, because
11 what you are asking us to do is something we can't do
12 based on what you have just told us. We are not
13 righting a wrong. Even if we believe that it's a
14 wrong, we're not righting that wrong. We may. I
15 don't want you to get your expectations that that's
16 what we are hearing.

17 MR. STOFFERSON: No, I understand that,
18 and just from your comments up there and hearing for
19 the first time my other neighbor, Mr. Ewers' comments,
20 there are other issues that I am hearing for the first
21 time.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. STOFFERSON: That affect me.

24 CHAIRPERSON GRIFFIS: Okay. Very well.
25 Thanks. Questions?

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1 COMMISSIONER MITTEN: Mr. Stofferson,
2 absent the issue about precisely where the fence is
3 and so forth, let's just assume for a second that it's
4 completely on Mr. Martinez' property, can you address
5 any adverse impacts that you feel the deck caused your
6 property as it relates to light, air, view and so
7 forth?

8 MR. STOFFERSON: Well, one issue is the
9 deck is extremely large. It goes from one end of his
10 property to the other if not over.

11 CHAIRPERSON GRIFFIS: How does that impact
12 you?

13 MR. STOFFERSON: I think it impacts my
14 privacy. Mr. Martinez has parties all the time, well,
15 often on this deck and just by leaning over the deck,
16 I mean, it feels like it's on my property. There is
17 no barrier.

18 CHAIRPERSON GRIFFIS: So privacy is lost?
19 Okay.

20 MR. STOFFERSON: Yes, sir.

21 BOARD MEMBER ETHERLY: Mr. Stofferson,
22 from the couple of the pictures that are indicated, I
23 am going to hold up part of what is, I think, Exhibit
24 4, your property is that building there, correct?

25 MR. STOFFERSON: Yes, sir.

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1 BOARD MEMBER ETHERLY: Okay. As you look
2 at the picture, I am pointing to the building kind of
3 on the right from my colleagues, those series of
4 windows that kind of run down the back there, what are
5 those windows there? Are those bedroom windows or
6 bathroom windows?

7 MR. STOFFERSON: Okay. That one right
8 there, well, one is the window to a bedroom.

9 BOARD MEMBER ETHERLY: Okay.

10 MR. STOFFERSON: That one, and the one
11 below it would be to my dining room.

12 BOARD MEMBER ETHERLY: Okay, okay. Well,
13 what I am trying to get a sense of is what your view
14 is as you look out from your property to the deck,
15 because clearly there appears to be a site line there
16 for anyone that is on the deck looking backwards.

17 MR. STOFFERSON: Yes, sir.

18 BOARD MEMBER ETHERLY: And as you have
19 heard in terms of the test, part of what we look at is
20 considerations as they relate to privacy. Now,
21 additionally, we have heard a little bit of comment
22 regarding your deck, and could you describe the
23 decking that's on the rear of your property? It
24 appears that it is two level decking. So could you
25 just describe a little bit of that structure on the

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1 rear of your property?

2 MR. STOFFERSON: Okay. On my main floor,
3 which is the same level as the deck of Mr. Martinez,
4 that stems from my kitchen and it may be one third or
5 one half the size of the deck.

6 BOARD MEMBER ETHERLY: Okay.

7 MR. STOFFERSON: Or maybe even one
8 quarter.

9 BOARD MEMBER ETHERLY: Okay. And that's
10 the space that you use yourself for outdoor use and
11 enjoyment? You use that for your own entertainment
12 purposes or barbecuing, anything along those lines?

13 MR. STOFFERSON: Yes, I have the
14 opportunity, and above that deck is what some people
15 call a California room.

16 BOARD MEMBER ETHERLY: Similar. Okay.

17 MR. STOFFERSON: And it is enclosed and it
18 has glass jalousies on three sides. To me, I don't
19 really think of it as a deck. I think of it as like a
20 room to the house, because you can't go outside. It's
21 enclosed.

22 BOARD MEMBER ETHERLY: Okay, okay. And
23 then in terms of is there any access let's say from
24 the deck level on your property that is pretty much at
25 the same level of the adjacent deck? Is there any

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1 outside access from that space to a back patio or a
2 back yard space?

3 MR. STOFFERSON: Yes, sir.

4 BOARD MEMBER ETHERLY: Okay. Steps that
5 just lead down to the actual ground level?

6 MR. STOFFERSON: Yes, sir.

7 BOARD MEMBER ETHERLY: Okay. Part of what
8 will probably be very helpful is, as you have heard,
9 you know, just some rough photographic representations
10 of your back space or even if you have anything on
11 hand now, but that would probably be very helpful.

12 In terms of the space that you use at
13 ground level, your back patio, you also use that, as
14 well, for your own use and enjoyment, you know,
15 entertaining?

16 MR. STOFFERSON: Yes, sir.

17 BOARD MEMBER ETHERLY: Lounging? Could
18 you speak to, once again a picture would be very
19 helpful, but just verbally your sight line? As
20 someone is standing in the back of your patio and so,
21 essentially, you look up --

22 MR. STOFFERSON: Yes, sir.

23 BOARD MEMBER ETHERLY: -- to the deck?

24 MR. STOFFERSON: Yes, sir. My backyard
25 now is lower than the base of his deck. Beforehand,

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1 it was not lower. I mean, there was no deck there.
2 So my view is disturbed.

3 BOARD MEMBER ETHERLY: Okay. All right.
4 Thank you. Thank you, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Okay. We'll look
6 for that information to be submitted. Any other
7 questions?

8 VICE CHAIR RENSHAW: Do the pictures that
9 you have brought with you show the back of your house
10 in relation to the Martinez deck?

11 MR. STOFFERSON: I have got a whole bunch.
12 May I go through them for a minute?

13 CHAIRPERSON GRIFFIS: No.

14 MR. STOFFERSON: Okay.

15 CHAIRPERSON GRIFFIS: You're submitting
16 them into the record, right?

17 MR. STOFFERSON: I have a lot of photos
18 and I have just picked out three or four. I am not
19 too sure what other photos I have in my backpack
20 that --

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. STOFFERSON: -- aren't part of the
23 three or four.

24 CHAIRPERSON GRIFFIS: Let me just do this,
25 Board members, because we're going on 1:30. We want

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1 to conclude this at 1:30, which gives us now four
2 minutes. So I think rather than go through new
3 information, decide a piece that you want shown.
4 We're going to have that submitted in.

5 MS. HANNA: May I make a request?

6 CHAIRPERSON GRIFFIS: Yes.

7 MS. HANNA: When we're submitting new
8 photographs, you want to see pictures of the deck and
9 the alleged effect on his property, not of the fence.
10 You are not addressing the fence issue at all,
11 correct?

12 CHAIRPERSON GRIFFIS: Where is the fence?

13 MS. HANNA: The fence issue is not one
14 that --

15 COMMISSIONER MITTEN: Well, the fence is
16 what creates the mark forming the court.

17 MS. HANNA: To the line.

18 CHAIRPERSON GRIFFIS: The fence is part of
19 the wall that is creating a portion of the deck,
20 correct?

21 COMMISSIONER MITTEN: Yes.

22 CHAIRPERSON GRIFFIS: It's only as it
23 relates to the special exception.

24 MS. HANNA: Only as it relates to the
25 special exception.

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1 CHAIRPERSON GRIFFIS: Yes.

2 MS. HANNA: Which is about the deck.

3 CHAIRPERSON GRIFFIS: Exactly. All right.

4 MS. HANNA: Okay. Thank you.

5 CHAIRPERSON GRIFFIS: Just for total
6 clarity, the Board just needs to get a picture,
7 however that is to be decided, of what is happening in
8 back and its relation to the adjacent properties. So
9 obviously, the applicant was going to provide that.
10 We have the parties that will provide that also.
11 Okay. What else? Mr. Ewers, do you have -- oh,
12 indeed.

13 Do you have any cross examination
14 questions of the testimony you have just heard?

15 MS. HANNA: I don't.

16 CHAIRPERSON GRIFFIS: Very well. Mr.
17 Ewers?

18 MR. EWERS: No.

19 CHAIRPERSON GRIFFIS: Good.

20 BOARD MEMBER ETHERLY: Right.

21 CHAIRPERSON GRIFFIS: An excellent answer
22 to that question. Now, how long do you need to
23 present your case?

24 MR. EWERS: Five to 10 minutes, I guess.

25 CHAIRPERSON GRIFFIS: Okay. Ms. Hanna, do

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1 you have five or 10 minutes?

2 MS. HANNA: I do.

3 CHAIRPERSON GRIFFIS: Okay. This is what
4 I propose. We're going to get through yours. We're
5 going to have all the presentation of the case, and
6 then I will update you very quickly on what we are
7 going to do next.

8 MR. EWERS: Can my application for party
9 status be incorporated by reference into my testimony?

10 CHAIRPERSON GRIFFIS: Absolutely.

11 MR. EWERS: Okay.

12 CHAIRPERSON GRIFFIS: This is your case.

13 MR. EWERS: Okay. I will do that. I want
14 to address the ANC issue. First, regarding the
15 notice, I didn't have a chance to read the rest of the
16 statute regarding notice, but it would be my position
17 that there would be a constitutional burden on the
18 Government to specifically notify the two most
19 affected parties, the abutting neighbors, of the fact
20 that they were going to have a meeting and a vote on
21 this. I think that, based on some case law --

22 CHAIRPERSON GRIFFIS: You mean in terms of
23 the ANC?

24 MR. EWERS: Yes.

25 CHAIRPERSON GRIFFIS: Okay. And that is

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1 perfect. Bring it up with the ANC, nothing we can do
2 about it.

3 MR. EWERS: I don't agree with -- well, if
4 the Board is going to give great weight --

5 CHAIRPERSON GRIFFIS: We don't have
6 jurisdiction over the ANC.

7 MR. EWERS: I realize that, but if --

8 CHAIRPERSON GRIFFIS: We have our own
9 notification procedures and regulations.

10 VICE CHAIR RENSHAW: But we take note of
11 the fact that --

12 MR. EWERS: Well, are you going to ask for
13 briefs on these issues? I mean, if so, I can just
14 address it in a brief.

15 CHAIRPERSON GRIFFIS: Let me just get
16 clarity on your issue. Your issue is you were not
17 notified that there was an ANC meeting?

18 MR. EWERS: Yes, and I believe that the
19 statutory provisions, even though I haven't read them,
20 but obviously, they didn't notify me specifically, and
21 I believe that the statutory provisions don't meet the
22 constitutional mustard.

23 CHAIRPERSON GRIFFIS: But what I am saying
24 is I am not sure. We don't have jurisdiction over
25 whether --

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1 MR. EWERS: I realize.

2 CHAIRPERSON GRIFFIS: -- the proper
3 notification for ANC meetings were done.

4 VICE CHAIR RENSHAW: Well, the letter
5 states that notice of which was properly given, but I
6 think that's an issue that you might raise with the
7 ANC chairs.

8 CHAIRPERSON GRIFFIS: Exactly.

9 VICE CHAIR RENSHAW: And get that out,
10 both of you, if you have not been notified. Okay?

11 CHAIRPERSON GRIFFIS: Our procedures and
12 regulations for this application were followed.

13 MR. EWERS: I understand that, but if the
14 Board is going to give great weight pursuant to the
15 law --

16 VICE CHAIR RENSHAW: We understand, but
17 just make sure, are we going to be accepting any more
18 material into the record?

19 CHAIRPERSON GRIFFIS: Absolutely, yes.
20 You want to make a statement about --

21 VICE CHAIR RENSHAW: Then your letter to
22 the ANC would be entered into the record, I would
23 think, and we would take that into account as we weigh
24 the ANC's report.

25 CHAIRPERSON GRIFFIS: Yes, and then you

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1 want to make a statement about why we shouldn't give
2 great weight. That's appropriate. Don't ask us to
3 decide. Well, there is it. I will let it go at that.

4 MR. EWERS: Well, I will make a statement
5 about that also. The statute, 1-309.10, provides that
6 the --

7 MS. BAILEY: Sir, we can't hear you. You
8 need to speak directly into the microphone.

9 MR. EWERS: 1-309.10 of the D.C. Code
10 provides section --

11 CHAIRPERSON GRIFFIS: Which code?

12 MR. EWERS: D.C. Code.

13 VICE CHAIR RENSHAW: Chapter?

14 CHAIRPERSON GRIFFIS: All right. It
15 doesn't matter. Go ahead.

16 MR. EWERS: Government organizations
17 specify, like I said, I guess it's Chapter 3, section
18 D1 provides that the recommendations shall be in
19 writing and articulate the basis for its decision with
20 explicit reference to each of the issues, articulate
21 with particularity and precision the reasons why the
22 Commission does or does not -- well, no, that's for
23 the Board. But it's my position that the ANC decision
24 that I saw in the file does not meet that requirement.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. EWERS: And, therefore, it shouldn't
2 be given great weight.

3 CHAIRPERSON GRIFFIS: Excellent. Yes, we
4 do have in Title 11.

5 MS. MONROE: It is?

6 CHAIRPERSON GRIFFIS: Yes. Do we have the
7 outline of what establishes giving great weight to the
8 ANC in Title 11?

9 MS. MONROE: No, what he is referring to
10 is the D.C. Official Code of Statutes.

11 CHAIRPERSON GRIFFIS: I know what he is
12 referring to. Do we have anything in the Zoning
13 Regulations that indicate what establishes giving the
14 ANC great weight?

15 MS. MONROE: I do not think so.

16 BOARD MEMBER ETHERLY: My suggestion here,
17 Mr. Chair, is, I mean, I think clearly Mr. Ewers is
18 raising a point that, you know, can be taken under
19 consideration, but you might also do well just to
20 continue moving forward along the directions of some
21 of the discourse that you heard with Mr. Stofferson in
22 terms of some of the impacts on your property.

23 MR. EWERS: I think I have made my point
24 regarding the ANC.

25 BOARD MEMBER ETHERLY: Yes, sir. Yes,

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1 sir.

2 MR. EWERS: Yes.

3 CHAIRPERSON GRIFFIS: All right. This is
4 what I was talking about. You can look to 3115.1 and
5 you can see what we require to be submitted from the
6 ANC. That should be the crux of any piece that you
7 brief us on. Okay. Let's go to the heart and
8 substance and the fun stuff involved with this
9 application.

10 MR. EWERS: Yes, well, first of all, I do
11 have photographs, but you don't want to see those now.
12 Is that correct?

13 CHAIRPERSON GRIFFIS: You can submit them
14 into the record, absolutely, noting that you don't get
15 them back if you submit those in. So if you need
16 copies of it, you need to make copies and then submit
17 it.

18 MR. EWERS: Okay. I will submit it after
19 this.

20 CHAIRPERSON GRIFFIS: Good.

21 MR. EWERS: Well, okay, it's my position
22 that based on the testimony you have heard, I disagree
23 with the testimony of the applicant regarding the
24 consistency of -- this is really the only deck in that
25 row of houses that covers the entire rear yard and as

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1 such, it creates certain problems.

2 One which I just noticed recently when we
3 had a major snowstorm is that it and the egress
4 pathway from the basement apartment, I guess it is,
5 between the two, they cover the entire lot behind the
6 house, between the house and the alley.

7 As such, there is no place for them to put
8 their snow, so recently it all went into my yard,
9 which doesn't concern me now, but it may concern some
10 future owners. I think that it impacts on the
11 potential value of my property. Really, my concerns
12 are --

13 CHAIRPERSON GRIFFIS: Let me see if I
14 understand that though. If that was an entire parking
15 pad with no deck out there, where would they shovel
16 all the snow?

17 MR. EWERS: That gets into an issue that,
18 I guess, in my view, is not before the -- well,
19 certainly, I don't know.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. EWERS: I hadn't considered that
22 issue.

23 CHAIRPERSON GRIFFIS: Okay. Go ahead.

24 MR. EWERS: Okay. Also, the deck does
25 tower, as I said in my application, 12 feet above my

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1 yard at the grade level of my yard and 14 feet above
2 the grade level at the alley, and does create a
3 privacy issue because the deck is directly virtually
4 overhanging my property.

5 And to get privacy normally, one would
6 construct a fence as one has been constructed on the
7 other lot line, the other property, Mr. Stofferson's
8 property, but the fence does not do anything to
9 enhance the privacy in this case, because the thing is
10 towering 12 feet high and the deck still is looking
11 over the property.

12 And I feel that it's not consistent with
13 the intent of the Zoning Regulations, because again,
14 as was discussed in the previous case here, if
15 everyone were to do the same thing, well, my position
16 is, well, it basically corrupts the intent of the
17 Zoning Regulations, because it says we don't have to
18 have rear yards anymore. But there is no guarantee
19 now that, you know, I could do the same thing in five
20 years. Maybe the Board would turn me down in five
21 years.

22 So I think that the remedy, if people want
23 to dispense with requirements of rear yards, I think
24 that is a matter for the council to change the Zoning
25 Law. I don't think it's a matter for saying okay,

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1 well, this guy doesn't have to have a rear yard,
2 because he made a nice case, but 10 years from now,
3 who knows if the other neighbors are going to have the
4 same right?

5 CHAIRPERSON GRIFFIS: Okay. I understand.

6 MR. EWERS: And I think it impacts the
7 value of my property. That's actually my main
8 concern. It does impact my privacy. Actually, I am
9 not using my backyard much right now. My house needs
10 renovation and after it's renovated, that may be a
11 different story or in a few years, maybe I or someone
12 else might want to put a garden back there, but as I
13 explained in my application, now to put a garden next
14 to the lot line there, half of the day is going to be
15 shaded by this deck, and I think that is significant.
16 There are many things that this would interfere with
17 because of the grand scale of it, 12 feet high. My
18 lot is only 18 feet wide.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. EWERS: If the other neighbor puts up
21 one 12 feet high, then I am boxed in totally, 18 feet
22 wide and 12 feet high on both sides. What kind of a
23 yard is that? It's more like a canyon and it
24 materially affects the light and air and my view.

25 CHAIRPERSON GRIFFIS: Okay. I get your

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1 point.

2 MR. EWERS: And this affects my economic
3 value of my property, and I feel it's unfair for one
4 person to be able to, in effect, enhance the economic
5 desirability and value of their property at the
6 expense of other people who can't do the same thing
7 necessarily.

8 CHAIRPERSON GRIFFIS: Understood.

9 MR. EWERS: That's basically my case.

10 CHAIRPERSON GRIFFIS: Good. Cross
11 examination, questions?

12 MS. HANNA: I have many, many questions
13 that I am afraid that we are not going to have time to
14 go into. I am very curious, as a preliminary matter,
15 about this claim about economic value, I mean, about
16 the decrease.

17 CHAIRPERSON GRIFFIS: Yes, I don't want to
18 go into that too much, because first of all, we have
19 great difficulty in substantiating that. That is a
20 huge, huge research project of which the Board does
21 not often take up, because there is a balance on one
22 direction or the other.

23 So I would caution you and would request
24 that we don't pursue that unless other Board members
25 have great concern about leaving that out. I think

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1 the pertinent pieces of the 223 and the special
2 exception have been addressed and stand on their own.

3 MR. EWERS: Could I make a comment on
4 that?

5 CHAIRPERSON GRIFFIS: A very brief one.

6 MR. EWERS: Yes, I think that it would be
7 a mistake and erroneous to simply concentrate on what
8 the present owner is presently doing with his
9 property. I think that this is going to permanently
10 affect the status of the property, and I think that
11 even if for the sake of argument, granting that you
12 can't prove what the economic detriment is, if any.
13 Well, I think there would have to be some. If it
14 infringes on privacy and all those things, it has to
15 be some amount of economic detriment.

16 CHAIRPERSON GRIFFIS: Yes, I understand
17 your point and believe me, the Board has heard it in
18 every which way.

19 MR. EWERS: Yes.

20 CHAIRPERSON GRIFFIS: But here is an
21 argument that someone could make. Based on the fact
22 that you have a covered parking next door that the
23 market value would increase, would it also increase
24 the value of your property? It's an undefined,
25 unscientific argument that is very difficult to make,

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1 and so I really would question or ask that we limit
2 any further discussion on that.

3 In your submission, if I am not mistaken,
4 you actually put a dollar amount of how much you would
5 lose in your property. I think it's \$50,000. Is that
6 correct?

7 MR. EWERS: Based on --

8 CHAIRPERSON GRIFFIS: I know, I know, and
9 I have a great deal of difficulty looking at that and
10 understanding what that actually means. So I am not
11 asking for that clarification to be provided, at this
12 point. Any other questions?

13 MS. HANNA: On what do you base your claim
14 that there is a reduction in sunlight in the back of
15 your property?

16 MR. EWERS: Because it is shaded half the
17 day at the property, at the lot line there at the edge
18 of the deck.

19 MS. HANNA: And that shade is a result of
20 the deck and not the position of the sun relative to
21 the building?

22 MR. EWERS: In the morning, the sun is in
23 the west, no, I'm sorry, the east. In the evening,
24 it's in the west, and afternoon, it's in the west and
25 the deck will shade part of my yard.

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1 MS. D'AMICO: As the way the sun goes
2 though, all our homes on our street don't really get a
3 lot of backyard --

4 CHAIRPERSON GRIFFIS: Do you have a
5 question?

6 MS. D'AMICO: Oh, are you aware of --

7 MR. EWERS: Yes, I stated that in my
8 application, that the sunlight is scant anyway, but
9 this further reduces the scant amount that was
10 available to begin with.

11 CHAIRPERSON GRIFFIS: Okay. Other
12 questions?

13 MS. HANNA: None.

14 CHAIRPERSON GRIFFIS: Do you have any
15 cross examination? Okay. Here we are. I am going to
16 take, if it's amenable to the applicant, unless they
17 have time, we can take closure remarks in written
18 form, and we will go through some of the additional
19 pieces and again, closing and rebuttal remarks.

20 Let's run through what we're looking at
21 for submission and set this for a decision making.
22 This will not be in our 1st of April. We're going to
23 set this for a special public meeting, so we have
24 ample time as the information that is submitted in to
25 us will go to the parties for responses and vice

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1 versa.

2 Note that you are all serving each other,
3 meaning anything that any of the parties produce needs
4 to be served on the applicant, and the applicant needs
5 to serve it on the parties. Let's start with the list
6 of things. We're looking for all parties and
7 applicants to give graphic documentation of the rear
8 of the buildings, its adjacencies, size and scale and
9 let's be realistic. I mean, right, I am not going to
10 further address that.

11 So we'll look for it from each of you. It
12 seems to be fairly apparent that the picture will be
13 painted very quickly. What was the other information
14 that we were asking for? Well, there it is.

15 Ms. Bailey, did you have other lists?

16 MS. BAILEY: Yes, Mr. Chairman. You had
17 left the record open for the parties to provide a
18 submission to the Office of Planning, because someone
19 was not here today to testify from the Office of
20 Planning, that they could provide a response to that
21 report.

22 You just asked Mr. Ewers to provide a
23 submission stating why the ANC's report should not be
24 given great weight. And of course, you asked for
25 closing remarks in writing from the applicant.

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1 VICE CHAIR RENSHAW: Mr. Chairman, could
2 someone explain in writing why the deck is as high as
3 it is, a little history as to the size of this deck?
4 Don't answer me. Put it in writing.

5 MS. HANNA: We would be happy to do that.

6 COMMISSIONER MITTEN: There is one
7 additional piece of information that I would like to
8 have in the record, Mr. Chairman, and that is the
9 height of the front porch above the ground, because it
10 hasn't been included in the lot occupancy calculation.
11 We don't have any photographs or anything, but we
12 need a photograph and we need a measurement of the
13 height of the porch off the ground.

14 CHAIRPERSON GRIFFIS: The front porch?

15 COMMISSIONER MITTEN: Front porch. It has
16 not been included in the lot occupancy calculations.

17 CHAIRPERSON GRIFFIS: What front porch?

18 COMMISSIONER MITTEN: The front porch on
19 this house.

20 CHAIRPERSON GRIFFIS: You mean the bay?

21 COMMISSIONER MITTEN: It says P on the --

22 CHAIRPERSON GRIFFIS: Is there a new porch
23 on the front of the house?

24 COMMISSIONER MITTEN: I don't mean new. I
25 just mean a porch.

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1 MR. MARTINEZ: If you're talking on the
2 surveyors from the city, that's the original. That
3 was originally there. They wanted me to mark what was
4 originally there.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. MARTINEZ: It's no longer there.

7 COMMISSIONER MITTEN: Oh, there's no front
8 porch?

9 MR. MARTINEZ: No, no.

10 COMMISSIONER MITTEN: Okay.

11 MR. MARTINEZ: It wasn't there.

12 COMMISSIONER MITTEN: Okay. So never
13 mind.

14 CHAIRPERSON GRIFFIS: That's an
15 interesting question. Now, would it go to -- well, we
16 will discuss that at lunch. Okay. Other information
17 that we were looking at, submissions? Is everyone
18 clear on what is being submitted and what is being
19 asked of everybody?

20 BOARD MEMBER ZAIDAIN: Well, I mean, I
21 think we were clear on the photos. I mean, we need to
22 see some better depictions of the rear yards of the
23 parties and how this deck affects it. I would just
24 say, I mean, I appreciate the situation in terms of
25 time and the Chair is willing to swerve with them,

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1 work with the applicant to make sure we get all this
2 in today.

3 But I would just say, I mean, in your
4 closing remarks, you can, I mean, reiterate your
5 arguments and make it more clear. I mean, we will
6 read those and give them as much attention as we
7 possible can. So, please, don't take the fact that we
8 expedited this as curbing your arguments.

9 CHAIRPERSON GRIFFIS: No, that's very
10 true. Also, I will reiterate that it is the burden of
11 the applicant to prove these things. Now, there are
12 some very important things that have come up. There
13 is the detriment to the privacy. There is detriment
14 to light and air, and light that we just talked about,
15 the sun, the sun pattern.

16 The issue has been brought up by the party
17 in opposition. It is your burden to prove that that
18 is not necessarily the case or give substantiation to
19 us that we can deliberate and move in one direction or
20 the other. Oftentimes, we see sun diagrams, for
21 instance, how the sun is impacted by the porch and the
22 deck and anything of that nature. Okay. Anything
23 else? Everyone clear? My Board doesn't seem to be
24 clear.

25 COMMISSIONER MITTEN: I don't mean to get

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1 preoccupied about the porch, but what I am seeing, and
2 Mr. Etherly was kind enough to pull out the
3 photographs with the posting, and it looks like there
4 is a porch. Now, there may be a second floor above
5 the porch, but it looks like all the houses in the row
6 with their porch extensions are built out to the
7 building restriction line, including yours, which is
8 if we say the porch doesn't exist, then you are not
9 built to the building restriction line. So I would
10 like some clarification on that.

11 MR. MARTINEZ: Excuse me, that's the front
12 of the house.

13 COMMISSIONER MITTEN: Yes, I know. That's
14 where the building restriction line is, at the front
15 of the house, and that is set back 30 feet from the
16 right of way of Clifton Street, and it appears that
17 all of these houses with their porches sticking out,
18 and yours appears to be on the same line, are at the
19 building restriction line.

20 However, the survey that we have in the
21 record, if we ignore the porch, the little section
22 marked P, suggests that your property actually doesn't
23 start until -- your building doesn't start until 7
24 feet behind the building restriction line.

25 And I think, I mean, since that is part of

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1 the lot occupancy calculation, we really need to know
2 where the front of your house is. Is it on the
3 building restriction line or 7 feet behind, because
4 this photograph suggests that it's on the building
5 restriction line. So I think it's important. Thank
6 you.

7 CHAIRPERSON GRIFFIS: Understood? Okay.
8 Let's get dates then.

9 MS. BAILEY: Mr. Chairman, you said you
10 didn't want April 1st, so do you have a suggestion in
11 mind?

12 CHAIRPERSON GRIFFIS: What is our first
13 meeting day in May?

14 MS. HANNA: Sir?

15 CHAIRPERSON GRIFFIS: Yes?

16 MS. HANNA: Is there a way to do this in
17 April? That would be great. Mr. Martinez works for
18 the AP as a photojournalist and he may have to join AP
19 photographers in Iraq. So if we could do this in
20 April, if that works with your schedule, that would be
21 great so as to avoid further delay if he were in Iraq.

22 CHAIRPERSON GRIFFIS: Okay. It's going to
23 be close.

24 BOARD MEMBER ETHERLY: Just know, Mr.
25 Chair, that of course if the French and German take a

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1 little longer to sort their things out, perhaps things
2 won't get -- let's not include that in the record.
3 Thank you.

4 MS. HANNA: Yes. Well, unfortunately, the
5 AP has already sent somebody there in his stead.

6 CHAIRPERSON GRIFFIS: Right.

7 MS. HANNA: Because he had to do this
8 hearing.

9 CHAIRPERSON GRIFFIS: I think we
10 understand. So are you able to produce everything
11 that you need within a week, parties?

12 MS. HANNA: We are.

13 MR. STOFFERSON: Yes.

14 CHAIRPERSON GRIFFIS: Okay. So if we set
15 it up for a week, then we would have responses and
16 then we would have --

17 MR. EWERS: A week from now?

18 CHAIRPERSON GRIFFIS: Yes.

19 MR. EWERS: That's difficult for me. I
20 think I would need two weeks.

21 MR. STOFFERSON: Excuse me, is it because
22 of the camera?

23 MR. EWERS: No.

24 MR. STOFFERSON: Okay.

25 MS. BAILEY: That takes us to April 1st,

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1 two weeks.

2 CHAIRPERSON GRIFFIS: April 1st for
3 submissions.

4 MS. BAILEY: For submissions?

5 CHAIRPERSON GRIFFIS: Okay. The 1st of
6 April is the first submissions coming in. They are
7 served on all the parties and the applicant, and
8 then --

9 MS. BAILEY: Decision, April 8th?

10 CHAIRPERSON GRIFFIS: Can we do that,
11 April? Do we have responses to the submissions?

12 MS. BAILEY: That's true.

13 CHAIRPERSON GRIFFIS: I mean, we're asking
14 for, you know, basic summaries and conclusions and
15 cases and all that.

16 MS. BAILEY: So the responses will be due
17 the 8th, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Yes.

19 MS. BAILEY: And then the 15th will be the
20 decision at a special public meeting.

21 CHAIRPERSON GRIFFIS: 15 April, I think
22 that sounds good. Is everyone available?

23 MR. STOFFERSON: Yes.

24 MS. HANNA: We will be.

25 MR. EWERS: Yes.

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1 CHAIRPERSON GRIFFIS: You can meet that
2 schedule, too, correct? Okay. That is for a special
3 public meeting in which case what we will not have is
4 any additional testimony, but we will have our
5 deliberation and we will be able to decide on that.
6 Having filed our taxes the day before, we will be in
7 great moods.

8 MR. EWERS: Can any additional arguments
9 be made in --

10 CHAIRPERSON GRIFFIS: It's my
11 anticipation, at this point, no. We're going to ask
12 for everything to be put in writing.

13 MR. EWERS: Someone mentioned something
14 about closing argument. Could I say one sentence,
15 yes, basically one or two sentences as a closing
16 argument? I mean, something I didn't address
17 previously, but related to what was addressed
18 previously?

19 CHAIRPERSON GRIFFIS: Yes, go ahead.

20 MR. EWERS: Regarding the snow removal
21 issue, the driveway is about 3 feet below my yard, so
22 it's less likely that somebody is going to shovel snow
23 up into my yard, and particularly, I can put a fence
24 there to prevent that.

25 CHAIRPERSON GRIFFIS: I understand.

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1 MR. EWERS: But the deck, there is nothing
2 that could ever prevent anybody from shoveling snow
3 from the deck, I mean, these owners or future owners,
4 from shoveling from the deck into my yard. So with my
5 having the right to put a fence, I can solve the snow
6 issue as far as the driveway is concerned.

7 CHAIRPERSON GRIFFIS: Okay. Very well.
8 Anything else? Everyone clear?

9 MR. STOFFERSON: Excuse me, you mentioned
10 just a closing summary, whatever?

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. STOFFERSON: Yes, just real quick.
13 May I or no?

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. STOFFERSON: You know, I bought my
16 house three and a half years ago, and up until a year
17 ago everything was just so harmonious. We all got
18 along. There were no problems, and then all of a
19 sudden you have this construction in the back of my
20 neighbors house, and then everything was flipped on
21 its end and it's just so sad, because it's a beautiful
22 block in Columbia Heights.

23 You know, all the neighbors liked each
24 other. We worked really well together, and then all
25 of a sudden there is this problem, because, you know,

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1 poor communication and people not working together,
2 and it has really, you know, hurt the feel of
3 community with this one little block. I think it's
4 really sad.

5 CHAIRPERSON GRIFFIS: Good. I appreciate
6 that comment. And with that, I will close by saying
7 you have time. You guys are doing submissions. This
8 is not a war. This is not a battle. We need very
9 specific facts. I have made it very clear on what we
10 will deliberate on and what we have to look at.

11 I would refer you all to the Zoning
12 Regulations and 223 to look at the test of which
13 special exception comes before us. In addition to
14 that, I think you should take the opportunity, as you
15 serve each other all this information, to communicate
16 and see if we can't solve some of the other issues
17 that aren't before us, but hopefully solve some of the
18 issues, if not all of the issues that are before us.

19 To be quite frank, I don't care if it's
20 solved between all of you or not. It doesn't matter.

21 I know exactly what we have to look at and what we
22 deliberate on, but you guys have to live with it. So
23 whether that is words of wisdom or not, I don't know.

24 I am probably too hungry to tell.

25 Anything else, clarification? If there is

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1 any question on schedule, absolutely feel free to call
2 the Office of Zoning, the Office of Zoning staff, and
3 get clarification on what is being done.

4 MR. STOFFERSON: What's that number?

5 CHAIRPERSON GRIFFIS: That's an
6 interesting question.

7 COMMISSIONER MITTEN: 727-6311.

8 CHAIRPERSON GRIFFIS: There it is. Good.

9 MR. STOFFERSON: Thank you.

10 CHAIRPERSON GRIFFIS: Anything further? I
11 thank you all very much, appreciate your patience
12 today, and this will adjourn then our morning session
13 of 11 March, '03. All right. We are off the record,
14 but clearly, the afternoon case --

15 (Whereupon, the hearing was recessed 1:54
16 to reconvene at 2:50 p.m. this same day.)
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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2:50 p.m.

CHAIRPERSON GRIFFIS: Good afternoon to everybody. Let me call to order the 11 March, 2003 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoffrey Griffis, chairman. With me today is Ms. Anne Renshaw, the Vice Chair, also, Mr. Etherly, representing the National Capitol Planning Commission, Mr. Zaidain. Representing the Zoning Commission this afternoon is Ms. Mitten. Also with us from the Office of Zoning is Ms. Bailey, Mr. Moy and Mr. Nyarku who is in and out, ably assisting us.

Copies of today's hearing are available to you. They are located at the table where you entered into the hearing room. It looks as though there are plenty of copies left over. Let me run through very quickly, as I am sure many of you are very aware, all public hearings for the Board of Zoning Adjustments are recorded. Therefore, we ask that several things happen.

First, when addressing the Board, that you speak into a microphone. Let's make sure those microphones are on. Secondly, you will need to fill out two witness cards. There are witness cards in

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1 front. Those do go to the recorder who is sitting to
2 my right, and I don't think I need to say this, but I
3 have to. We will have no disruptive noises or actions
4 in the hearing room, so that we don't have any
5 disruptions of the hearing, and I would ask that
6 everyone turn off cell phones and beepers, so that we
7 don't have those types of interruptions.

8 The procedures for special exceptions and
9 variances will be first, a statement and witnesses of
10 the applicant, second, will be any Government reports
11 attendant to the application. Third, we'll have the
12 ANC reports. Fourth, we'll have persons or parties in
13 support of the application. Fifth would be persons or
14 parties in opposition. Sixth, we will have closing
15 remarks by the applicant.

16 Cross examination of witnesses is, of
17 course, permitted by the applicant and parties in the
18 case. The ANC within which the properties are
19 located, or property I should say, is automatically a
20 party in the case.

21 The record will be closed at the
22 conclusion of each case, except for any materials that
23 is specifically requested by the Board, and we will be
24 specific on what is to be submitted and when it is to
25 be submitted into the Office of Zoning. Of course,

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1 when we have received those, the record will be
2 finally closed and no other information will be
3 accepted into the record.

4 The Sunshine Act requires that public
5 hearings on each case be held in the open and before
6 the public. The Board may, however, consistent with
7 its rules and procedures, enter into executive session
8 during or after a public hearing in order to
9 deliberate on a case or to review the record of the
10 case.

11 Decisions of the Board in contested cases
12 must be based exclusively on the public record.
13 Therefore, we ask that people present today not engage
14 Board members in any type of conversations, so that we
15 do not give the appearance of deliberating on ex parte
16 information.

17 We will make every effort to conclude this
18 afternoon by 6:00. I think we can probably make it.
19 I will update people if we are getting close to that
20 hour and it looks like we're going way over. Of
21 course, we were hoping for a sellout crowd today, but
22 it looks like our announcements didn't make it far
23 enough around the city.

24 In all seriousness now though, we can take
25 up any preliminary matters. Preliminary matters are

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1 those, which are whether a case will or should be here
2 today, such as withdraws, continuances or whether
3 proper and adequate notice of a case has been
4 provided.

5 If you do not believe the Board should
6 hear a case today or you are not prepared to go
7 forward with the case, you can bring that up now as a
8 preliminary matter for the Board to discuss. I will
9 first though ask if staff is aware of any preliminary
10 matters for our attention?

11 MS. BAILEY: Mr. Chairman, the staff does
12 not have any preliminary matters.

13 CHAIRPERSON GRIFFIS: Very well. Any
14 preliminary matters for those present today?

15 MR. DONOHUE: No, sir, we're ready.

16 CHAIRPERSON GRIFFIS: Excellent. Then
17 let's jump right into it.

18 MS. BAILEY: Application #16988 of the
19 Government of the District of Columbia, Office of the
20 Chief Technology Officer, pursuant to 11 DCMR 3104.1
21 for a special exception to replace an existing
22 telecommunications tower and poles with one lattice
23 tower and equipment shelter as part of the District's
24 emergency communications network under section 212 and
25 also section 2520.

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1 Section 212 is the antenna other than
2 commercial broadcast antenna in the R-1 District. The
3 property is located in the R-5-B District of premises
4 320 McMillan Drive, N.W., and it's on Parcel 108/6.

5 Please, stand to take the oath. Please,
6 raise your right hand.

7 (The witnesses were sworn)

8 CHAIRPERSON GRIFFIS: First, let me just
9 say I thank you for your patience this afternoon.
10 Clearly, our morning went quite long with
11 unanticipated information coming in. Secondly,
12 however, we have two applications and it's being
13 represented by the same party. Is that correct?

14 MR. DONOHUE: That is correct, Mr.
15 Chairman, and I might make a suggestion that might
16 move things along in the way of our presentation.

17 CHAIRPERSON GRIFFIS: That's exactly where
18 I was going. Why don't you introduce yourself for the
19 record and then we can address you?

20 MR. DONOHUE: My name is Edward Donohue,
21 Law Firm of Cole, Raywid and Braverman, on behalf of
22 the applicant, District of Columbia, Office of Chief
23 Technology Officer or OCTO.

24 CHAIRPERSON GRIFFIS: Excellent.

25 MR. DONOHUE: And are you about to propose

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1 that we combine these applications for the
2 presentation?

3 MR. DONOHUE: I am, Mr. Chair. The
4 applications are very similar. The applicant is the
5 same. In large part, the discussion of the network
6 and the preliminary discussion that we would propose
7 to do in the next few minutes applies to both
8 facilities.

9 What I would suggest is by way of
10 overview, Mr. Rick Burke with OCTO would explain the
11 network and the interrelationship of the sites, and
12 then I would like to ask Chief Short and Officer
13 Campbell with the fire and police department,
14 respectively, to explain the urgencies and the nature
15 of the upgrades for their facilities.

16 And then should there be site specific
17 questions or nuances that the Board would want to go
18 over, we could go through them, McMillan and then 1700
19 Rhode Island. The reason I ask that, Mr. Chair, a
20 couple reasons, one, I think it's an efficient use of
21 the Board's time. Secondly, both the chief and
22 Officer Campbell have had to re-jiggle schedules, and
23 if possible, I would like to be able to get them out
24 on the early side.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. DONOHUE: Thank you.

2 CHAIRPERSON GRIFFIS: Let's do it. I
3 think we can take this as combined then, and I think
4 we're aware enough of the issues and make it specific.

5 Right, in which case we're going to, just for the
6 record, call the second case, at this point, and that
7 way we can hear them both.

8 MS. BAILEY: Application #16991 of the
9 Government of the District of Columbia, Office of the
10 Chief Technology Officer pursuant to 11 DCMR 3104.1
11 for a special exception to replace and operate a
12 support structure that is a 150 foot monopole and
13 telecommunications facility as part of the District's
14 emergency communications network under section 212 and
15 section 2520. The property is located in the C-2-A
16 District at premises 1700 Rhode Island Avenue, N.E.,
17 Square 4134, Lot 800.

18 CHAIRPERSON GRIFFIS: Excellent. We are
19 now ready to proceed.

20 MR. DONOHUE: Are they considered sworn
21 for the second case, as well, or is that necessary?

22 CHAIRPERSON GRIFFIS: Well, we will hold
23 them to their promise of telling the truth for the
24 second case.

25 MR. DONOHUE: Excellent. Thank you, Mr.

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1 Chairman. Again, for the record, Ed Donohue on behalf
2 of the applicant, D.C. OCTO. As I said just a minute
3 or so ago, what I would suggest is that we ask Mr.
4 Rick Burke from Office of Chief Technology to run
5 through the network. You will see up there on the
6 easel a couple of exhibits, and a word on that. We
7 have used these by way of explanation through the ANC
8 meetings.

9 We have used these as a way to explain the
10 interrelationship of the network. And what I would
11 like to do while the network isn't at issue, per se, I
12 would like Rick to explain how these sites fit into
13 the upgrade of the network. It is a combined network
14 for both fire, police and emergency medical services,
15 and we are going to ask Rick to explain that, and also
16 to talk about the urgencies frankly involved.

17 Secondly, as I mentioned, I am going to
18 ask first Chief Short and then Officer Campbell to
19 explain why this is so important to both fire and the
20 police department. There are things involved here in
21 terms of timing and in terms of need to address the
22 existing network that are really, frankly, quite
23 urgent. As I mentioned, we can certainly go through
24 site specific. We have the site plans. We are
25 prepared to go through a full blown analysis of the

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1 site plans down the road.

2 Lastly, we have submitted a radio
3 frequency or RF emissions report from Mr. Jules Cohen.

4 I submitted his resume, as well. Mr. Cohen is with
5 us today to answer any questions. We thought it was
6 prudent to bring to your attention what the RF
7 emissions levels were.

8 I think the reports speak for themselves,
9 but certainly, Mr. Cohen is available to respond to
10 any questions. We hadn't planned on calling him as a
11 witness both by way of time and also by way of -- as I
12 said, I think the reports speak for themselves.

13 Briefly, I will mention that these are
14 both special exceptions. As the Board well knows,
15 there are uses that are deemed to be compatible in the
16 zone provided we meet certain burdens of proof and
17 criteria, and I think we do, and I think you will see
18 as evidence in the Office of Planning report and also
19 the testimony that you will see here today that we do
20 meet the criteria involved in both instances.

21 The facilities are slightly different and
22 I will mention that, and I will ask Rick to explain.
23 In the one case, the first one, I guess, the first one
24 called 16988, it is, in fact, a replacement tower.
25 There is a tower of 180 feet height at the McMillan

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1 Reservoir. The other one is also a replacement
2 structure. It is, in fact, a pole. So in some cases,
3 you will hear us say the towers or the poles. Please,
4 understand that these are slightly different.

5 Lastly, I will say that we have read the
6 Office of Planning reports and are quite pleased to
7 have the support of OP. We have worked carefully with
8 OP since before filing, and we're very pleased to have
9 Karen Thomas, who is here, and Jennifer Steingasser
10 was also involved, had their support throughout the
11 process. It has really been very beneficial.

12 We did ask this Board to expedite our
13 calendaring and our hearing, and I think OP was very
14 instrumental in helping us, getting us to a hearing in
15 very short order, but we do thank the Board for
16 bringing us here today. And without anything further,
17 unless there is questions for me, I will ask Rick to
18 begin the explanation of the network. Rick?

19 MR. BURKE: My name is Rick Burke and I
20 have the pleasure of serving as the program manager
21 for this public safety wireless network enhancement
22 and upgrade for the District of Columbia. I work in
23 the wireless programs area of the Office of the Chief
24 Technology Officer.

25 I have a 20 plus year career in radio

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1 technology, wireless technologies in both commercial
2 and radio venues, and I have had the pleasure of
3 making similar presentations and feel free to ask any
4 technical questions related to the project.

5 My responsibilities include not just the
6 radio performance, but the construction and the
7 budgetary and the interface with our critical
8 customers, fire, police, EMS and EMA and I appreciate
9 your taking the time to review our case, and I hope
10 that I can provide you sufficient information to allow
11 you to come to a decision on this network and our
12 request.

13 The program really begins back in March of
14 2002 when the District received federal appropriations
15 to enhance our communication networks or our critical
16 communication networks. At that time, OCTO put
17 together a plan as we put our requirements together
18 with our public safety agencies to put together a
19 robust network. There were a couple of very critical
20 deficiencies in the existing public safety network.

21 First, the fire network, the fire EMS
22 network, which also is being used by EMA, as well as
23 other non District agencies, for example, campus
24 police in various universities in the District are
25 using our 800 megahertz network. That network is an

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1 800 megahertz trunk network and in public safety
2 communication, it is the latest technology. It's
3 termed digital radio communications, and that network
4 was put in in 1999 and it serves as a good foundation.

5 The problem that we face today, and are
6 attempting to cure with these sites that we are
7 proposing here and others, are that the coverage of
8 that network are inadequate for 800 megahertz users,
9 police, fire, EMS, EMA. The system provides
10 ineffective and inefficient coverage within District
11 buildings where most of the work of those critical
12 agencies and first responders are done and need to be
13 applied.

14 So, you know, the users of the radio
15 network go in a building and can no longer use that
16 radio network. So the first problem that we address
17 with this design was to provide additional radio sites
18 in a network in order to provide a robust coverage in
19 reliability within the entire District, including
20 better coverage within buildings.

21 The second objective was to replace an
22 outdated and failing MPD radio network. The MPD UHF
23 network is a conventional radio network. Therefore,
24 it's older technology. It's 30 plus years old, and it
25 is failing in the sense that the manufacturers don't

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1 even provide equipment for that. So we have to
2 replace, we have to repair our equipment in third
3 party providers.

4 It also is not a secure network. There is
5 no encryption on it. It's easy for the bad guy to
6 listen into communications, so that there is no
7 ability for MPD to provide secure communication. So
8 with those two critical requirements to address, we
9 worked with our customer and our vendors and our
10 project team to put together a robust design to go
11 from, you know, very poor, and in some cases some of
12 the worst communications in the nation, to be the best
13 communications in the nation, and the funding was
14 available. The spirit of the team was there, so all
15 we had to do was build the foundation for that.

16 What it required was going from four sites
17 in the existing network, and I do have maps, I don't
18 know if you want to pass them around. Do we have
19 enough or on this top board I can show you. From this
20 top board if you can see, the coverage of the existing
21 network, 800 megahertz network, is really just not
22 effective enough. So we came back from a four site
23 design. We increased that to a 10 site design.
24 That's a combination of existing facilities primarily
25 using building tops and a couple of new towers.

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1 We tried to minimize the impact on the
2 environment by reducing the number of towers and using
3 as many rooftops as we could in our design. So
4 effectively, we have gone from four sites in 800 to
5 10, and to aggregate police and fire at the same
6 locations in order to improve their coverage, as well,
7 and to allow us to improve maintenance for the future,
8 we put both networks on the same 10 facilities, which
9 actually adds to a net reduction of sites for MPD.
10 They basically have 40 sites, seven transmit and 30
11 plus receive. So we have really a net reduction on
12 the MPD side.

13 We still wind up with a much better and a
14 more robust network. MPD will have a similar network
15 to fire. They will have similar coverage footprints.

16 They will be digital. Police will be encrypted and
17 we will have much better in-building communications.
18 Our goal really from the direction of OCTO and our
19 customers was to give, you know, the best network in
20 the nation, which in the capital really deserve.
21 Public servants and the people they serve certainly,
22 you know, need that system.

23 So with that in mind, the design or
24 objective was to use as many existing District
25 facilities as we have. Six of our sites are District

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1 facilities, buildings and/or towers, and the others
2 are sites that are partners of the District, hospitals
3 and universities, you know, and so with that design,
4 there were two requirements.

5 One, in order to enhance coverage in the
6 1700 Rhode Island Avenue, we chose to use an existing
7 MPD site. That existing site was an 80 foot tower
8 with a 20 foot antenna, and it just wasn't providing
9 sufficient coverage into the central business district
10 and external to that area. So our proposition was to
11 increase the height of that tower to 150 foot and
12 place some of our antennas on the top of that antenna.

13 So we came up with a monopole design. We
14 moved the tower that was fronting the road to the back
15 of the property and we designed our network assuming
16 that. We received FAA approval and, as Mr. Donohue
17 pointed out, we met with BZA, and I met with the ANC
18 and SMD and, you know, explained our needs to them.
19 So that explains the rationale for Rhode Island. It
20 will be a joint radio network site for police, fire,
21 EMS, EMA and another critical campus police and other
22 agencies to use the network.

23 The second site was McMillan at McMillan
24 Reservoir, which is the Public Safety Communications
25 Center. It's really the heart of our communication

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1 network in the District. All calls, fire, police,
2 emergency calls, are processed through that center.
3 It's extremely critical, that center, and while we,
4 you know, didn't need that site specifically in our
5 trunked radio network, because Rhode Island was a
6 better site, we did need that network for
7 interoperability and backhaul.

8 So we had to have a noncontentious
9 backhaul, so we have fiber. We have a combination of
10 fiber, T-1 and some microwave in the network. So we
11 have some sites critical, four sites that we want as
12 microwave in the event that we have a failure of T-1
13 or fiber from our partners, Verizon and others. We
14 really wanted to make sure that we had no failure. So
15 we needed a microwave backbone.

16 It's very standard practice to have a
17 noncontentious interconnected site. So at McMillan
18 right now, there is. Also at McMillan, we have a
19 couple of antennas that provide us with coverage to
20 both federal and surrounding municipalities. We have
21 a couple of systems there already, and they really
22 require the height that we have asked for. So we have
23 some interoperability channels at McMillan today that
24 we will maintain and put on the new facility.

25 The rationale in requirement for a new

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1 tower at McMillan or thus, the tower that is currently
2 there is not strong enough to support our microwave
3 and our interoperability antenna system. There is
4 also three towers there today. There are two
5 monopoles and an existing self supporting tower.

6 So we really felt that we, you know, would
7 combine those three towers into one self support
8 tower, so we'll enhance the strength of the tower,
9 replace the existing self supporting tower with a
10 stronger self supporting tower, move all existing
11 antenna systems that are there over to the one tower,
12 and eliminate three towers. So we want it with one
13 new tower, eliminate the existing three towers and
14 aggregate our design onto that one system.

15 CHAIRPERSON GRIFFIS: If I understand you
16 on the McMillan site, it's being provided? The
17 microwave is part of the redundancy in the system, in
18 case parts go down. Is that correct?

19 MR. BURKE: Yes, sir.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. BURKE: Yes.

22 CHAIRPERSON GRIFFIS: And that's why it
23 doesn't show up on the graph as one of the sites?

24 MR. BURKE: Yes, sir, that's exactly
25 right.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. BURKE: It will not be used in the
3 trunked radio network.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. BURKE: As part of the radio network,
6 but it will serve as the prime site for the microwave,
7 the backup microwave network.

8 CHAIRPERSON GRIFFIS: I see.

9 MR. BURKE: So in reality, all 10 radio
10 sites are backhauled through the center, to the PSCC,
11 because that's where we manage and dispatch calls. So
12 all of the sites have to interface through the PSCC,
13 and we are using a combination of T-1s and fiber and
14 microwave to achieve that.

15 Our goal is to have fiber and microwave,
16 but we have to start out with T-1s, because the fiber
17 network isn't quite ready. So we're going to T-1s,
18 microwave, fiber, microwave, and that will be the
19 progression of that network again to have the greatest
20 reliability.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. BURKE: So as a benefit of the overall
23 network in addition to these sites, or benefits
24 really, are multi fold. We get the coverage we need
25 for public safety and the citizens. We will have very

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1 robust coverage. Second, we will increase the
2 capacity particularly of the MPD network. Because MPD
3 is conventional, they don't get the benefits of the
4 capacity of trunking, so trunking increases their
5 capacity.

6 We get interoperability, which is very
7 important. Police and fire will be able to
8 communicate to one another over this network, an
9 extremely important benefit of the system. Today they
10 can't communicate, except for patching of dispatch,
11 and even then that's not very robust.

12 Interoperability also extends to the
13 federal government. We are able to tie in federal
14 agencies, as well as local police, fire, first
15 responder agencies into our network. So we really
16 got, you know, a first grade network.

17 In addition, we add security and
18 encryption that we haven't had. So, you know, the
19 overall benefits to replace an antiquated,
20 conventional system and to, you know, increase the
21 coverage and reliability on the exiting 800 network,
22 you know, are extremely important benefits that the
23 overall design supports, and these two towers play a
24 very important role in the overall system performance.

25 CHAIRPERSON GRIFFIS: Good. Questions,

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1 Ms. Renshaw?

2 VICE CHAIR RENSHAW: Yes. Thank you for
3 that very interesting explanation of this whole
4 network upgrade of your maps with, I believe, 10
5 sites.

6 MR. BURKE: Yes, ma'am.

7 VICE CHAIR RENSHAW: Are all 10 sites up
8 and running now and these are the last two?

9 MR. BURKE: No, ma'am. Today in the 800
10 megahertz --

11 VICE CHAIR RENSHAW: You need to turn your
12 mike back on.

13 MR. BURKE: Sorry. No, ma'am, the answer
14 is that of the existing 800 megahertz sites, these
15 four sites are operational today.

16 VICE CHAIR RENSHAW: Useful?

17 MR. BURKE: Yes, I don't have with me the
18 MPD network, a copy of the coverage map of that, but
19 it's fairly similar, except they are using seven
20 transmit sites and 40 receive sites because of the
21 disparity of the conventional network over the digital
22 network. We actually need, you know, in the area of
23 50 sites in order to provide this level of coverage,
24 but what we wind up doing is going to 10 sites, and
25 we're in the process of constructing these sites, of

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1 course, with the exception of the two that we are
2 discussing today, there is a schedule and these sites
3 are all in various progress along the schedule, later
4 phases of leasing, pricing negotiations, construction
5 planning, permitting, zoning, of course, and they are
6 following the succession of the schedule.

7 We cannot order, you understand, in order
8 to procure the towers that we need, you know, we
9 certainly need your approval. We need BZA's approval
10 or we can't procure the towers. So I have got, you
11 know, actually in my folder here, you know, the
12 procurement documents to purchase towers as soon as we
13 have an agreement.

14 We have received FAA approval, so we have
15 -- the Federal Aviations Commission has agreed to our
16 towers and so, therefore, then we will go into
17 procurement on the two towers as soon as -- or adjust
18 them and mend them according to, you know, the wills
19 of the Board.

20 VICE CHAIR RENSHAW: What is your schedule
21 for getting all 10 up and running, if and when?

22 MR. BURKE: Our objective at this stage is
23 to have the police network completely cut over at the
24 end of September, and we are turning on these sites
25 for the fire department as made available.

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1 Our objective is to begin turning on sites
2 in April/May time frame, and to turn on sites right up
3 through the end of September. So our goal is just to
4 be complete with the network upgrades at the end of
5 September completely for the MPD site of the shop, and
6 to turn on sites, radio sites, in the 800 megahertz
7 network as they are available.

8 The rationale behind that is that in order
9 to covert the police over to this new network, we have
10 to redesign their use of the system, because they are
11 conventional, so we have what we call in the trade, we
12 have to design a new fleet map. We have to procure
13 the software and program the radios, and then we have
14 to train the users on the new network. So we have a
15 cut over plan in transition to get us to that
16 objective, which we're planning for mid to end of
17 September, and we're working closely with Ms. Campbell
18 and others to make that happen.

19 VICE CHAIR RENSHAW: And I believe we'll
20 hear from our fire representative how bad it is now
21 for the fire department in this communications
22 network?

23 CHIEF SHORT: That's an affirmative,
24 ma'am. Good afternoon, Board. My name is acting
25 Deputy Fire Chief James N. Short, Jr. I am a 31 year

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1 member of the D.C. Fire and Emergency Medical Services
2 Department, and I can truthfully tell you this a
3 Godsend for the ladies and men who serve you as first
4 responders, going into burning buildings and other
5 disasters.

6 I can tell you when I came on in 1971, the
7 first piece of apparatus I learned how to drive was a
8 1957 Mack truck, no power steering, no power anything.

9 At that time, each officer, only one member of the
10 company, had a radio. At this particular time, every
11 member of every company has a radio and the radios
12 aren't working so well.

13 It's one thing to order someone into a
14 burning building. I can't tell you how many I have
15 been in, but for me to order the younger men now in
16 the department that work under me into these buildings
17 and they can't talk, it's deafening. I guess that's
18 the only word I can use right now. But we need your
19 help, and I would like to ask if you would just
20 consider if we don't have these 10 towers in place, we
21 won't be able to have another 9/11 situation like we
22 had in New York and at the Pentagon.

23 And it was mentioned earlier by Rick, we
24 now can talk to the police officers. We couldn't do
25 that then, and we now can talk to the neighboring

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1 jurisdictions. We couldn't do that then. This system
2 is actually a Godsend for the men and women of the
3 police, fire, EMA and all the other persons who will
4 be using these towers.

5 We are going to call these campuses now.
6 We will be able to talk to the security people without
7 a whole lot of patching over, and this can save lives.

8 Since I do have your ear now, I guess I am having a
9 chance now for all of the fire fighters to express to
10 you the urgency that we feel that we need this. We
11 are going to war at any day now, apparently, and if we
12 don't, we are still going to need it for everyday
13 things that we do.

14 To be able to communicate in a building,
15 if there were fire right now in this room, I wouldn't
16 even be able to hold my hand up and be able to see it.

17 I would be able to hear the other guy's respirators
18 breathing, but as an incident commander outside of
19 that building, it's critical that I be able to talk
20 with the men and women inside of this building who are
21 here to save maybe your lives or mine.

22 So give us, please, what we need and thank
23 you very much for your consideration in this. Also, I
24 would like to mention that we have been out to the ANC
25 1B and 5B, and we had some very good dialogue with the

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1 citizens. They did provide some letters for us. They
2 knew the urgency after we spoke with them as we are
3 speaking with you now in getting this system in place.

4 There were a lot of questions that were
5 asked and I was glad the citizens did ask those
6 questions. We were very happy to be able to answer
7 those questions for them. Some people thought there
8 may be some inconveniences, but I said when the sirens
9 come down the street, that's a small inconvenience,
10 you know, to help us come in if we really need it, and
11 these towers, when they were thinking about what they
12 would look like in their communities and all.

13 It's something that we must have. There
14 is no if, ands or buts about it. We need them and we
15 need them as soon as possible, and also there is a
16 deadline for some of the federal funds for the system.

17 We are told if we don't spend these funds by the end
18 of September, you get the system up and running, the
19 federal government may take some of the money back.
20 That would be disastrous, and I know our Government
21 hears our pleas and knows what we need. So with that,
22 I will thank you very much for allowing me to speak to
23 you this evening.

24 CHAIRPERSON GRIFFIS: Good. Thank you
25 very much.

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1 VICE CHAIR RENSHAW: Just to add to that,
2 isn't it true, Chief Short, that the fire fighters
3 often speak by cell phone?

4 CHIEF SHORT: That is true.
5 Unfortunately, we had a fire on Capitol Hill, a
6 congressman's home caught fire, and without the system
7 we have in place now with the four antennas, we had
8 what they call a fail-soft. The system failed and we
9 had to talk to communications by cell phone, very
10 unfortunate. Luckily, no one lost their lives and
11 luckily, we were able to overcome that, at that time.

12 VICE CHAIR RENSHAW: My community has long
13 asked the fire department, and we have testified so
14 before, Chairman Patterson's committee, judiciary
15 committee, that we wanted to get an idea of the dead
16 zone buildings in our area, those where the fire
17 fighters cannot communicate from the street inside and
18 we have never received that.

19 So I am looking at the map and I am seeing
20 a site, Sibley Hospital, not subject of today and UDC,
21 not the subject of today, and Hughes 4D, not today's
22 subject, and just to reassure me, are those going to
23 be in the works by September?

24 CHIEF SHORT: I can address that, Ms.
25 Renshaw. Ms. Renshaw, forgive me. We have been

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1 testing a new component of the system also. It is
2 called the Vehicle Repeater System, VRS, where each
3 one of our man buckets with the chief officers in it
4 has a set of antennas that can boost the power and the
5 signal in areas such as Sibley area.

6 I can remember fire on Sherrier Place when
7 I was working on Engine 29 where we couldn't talk at
8 all, but those situations have been remedied now by a
9 new system, and once we get all the towers in place, I
10 understand we have some new ones coming up on Military
11 Road in Ward 3 and some other areas, so there are a
12 lot of things happening with our new system, and you
13 will be getting that information. We will make that
14 provided for you.

15 VICE CHAIR RENSHAW: Whereabouts on
16 Military Road?

17 MR. DONOHUE: Let me clarify, Ms. Renshaw.

18 VICE CHAIR RENSHAW: Yes.

19 MR. DONOHUE: I passed a note to the chief
20 to let him know where you were asking about, because I
21 happen to know where your ANC is.

22 VICE CHAIR RENSHAW: Upper northwest.

23 MR. DONOHUE: Right, let me roll back just
24 slightly if I can. The other sites that are shown on
25 the map, for example, Sibley, Georgetown University,

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1 those are sites that are going on rooftops, and it's
2 the position of the Office of Planning and the
3 Department of Consumer and Regulatory Affairs that
4 those are by right. In fact, we are waiting for a
5 sign off from OP on Sibley Hospital as we speak.

6 When those are permitted through normal
7 building permit and process, as Rick explained, those
8 are going into construction and going just as soon as
9 they can. Only two sites in the 10 site network
10 require special exception review, McMillan and 1700,
11 so that the others are literally on a fast track. And
12 you can ask Ms. Thomas, because we're on the phone
13 with her about every day asking where the OP sign off
14 is on those antenna applications.

15 CHAIRPERSON GRIFFIS: But as indicated,
16 this should all be done by September, all of these?

17 MR. DONOHUE: God willing, it will be done
18 before that, Mr. Chair.

19 CHAIRPERSON GRIFFIS: Right, exactly.
20 Okay.

21 MR. BURKE: Let me just clarify also,
22 these two maps, I think, are hardly illustrative of
23 the problems that both police and fire have in this
24 region here. Red means no coverage, so right now up
25 in that area that will be served, again, a co-locative

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1 facility at Sibley Hospital, both police and fire
2 frequencies and networks and we are resolving that
3 problem.

4 This problem is real today for all public
5 safety network users, and so we have to revert to a
6 talk around. And so what the chief indicated earlier
7 is that we all work together to find an intermediate
8 resolution to the problem, and that is the Vehicle
9 Repeater System, the VRS, that fire is using, so that
10 we can get better coverage into buildings today, and
11 that system has been deployed and is being used now.

12 CHAIRPERSON GRIFFIS: Those are the white
13 cubes that are on the side of your red van?

14 CHIEF SHORT: That's affirmative. They
15 are very effective and the firemen are just pleased.
16 We are tickled pink that we can now talk. Most of the
17 buildings in the area on K Street, L Street, downtown,
18 around 19th Street, mostly we go through the doors,
19 our radios would do what we call honk out.

20 CHAIRPERSON GRIFFIS: Right.

21 CHIEF SHORT: We would get noise and we
22 couldn't communicate any longer, very dangerous inside
23 of buildings, and it would happen also in basements in
24 a lot of areas and when we go down to the Metro
25 tunnels.

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1 CHAIRPERSON GRIFFIS: Oh, indeed.

2 VICE CHAIR RENSHAW: Are they on the
3 engines and the trucks or just the trucks?

4 CHIEF SHORT: They are on the --
5 presently, we have them on all of the fire chiefs'
6 buckets and on the engines. We are going to put them
7 on the trucks also.

8 VICE CHAIR RENSHAW: Okay.

9 CHIEF SHORT: I think we have six
10 companies now with them that we tested, but we are in
11 the process now of having them added to all of the
12 fire trucks.

13 VICE CHAIR RENSHAW: And that will be done
14 by September also or before?

15 CHIEF SHORT: Actually, way before
16 September we should have that done. I am going to
17 step on a number and say at least before 60 days is
18 up. We'll have them all hooked up.

19 VICE CHAIR RENSHAW: All right. This is
20 an issue that is critical, our mutual aid compacts
21 with surrounding jurisdictions, and the fact that we
22 have to be able to communicate with these folks across
23 the river or nearby, have your designs been reviewed
24 by these other departments in surrounding
25 jurisdictions or do you plan to do so?

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1 MR. BURKE: A couple of answers to that.
2 First of all, our mutual aid antenna is at McMillan.
3 It's one of our mutual aid antennas. The others that
4 we use are existing 800 megahertz networks today. So
5 we have in place a fleet map and talk groups where we
6 maintain mutual aid over the 800 megahertz network, so
7 that is only going to be enhanced.

8 Our coverage will be enhanced for our
9 first responders on the fire and EMS side. Most, with
10 the exception of one county in the surrounding area,
11 are on 800 megahertz network. We work diligently to
12 try to get police and fire on 800 megahertz network
13 together, but unfortunately there are no channels
14 available.

15 They have all been gobbled up by our
16 surrounding communities and, you know, we did whatever
17 we could to get them to relieve for the FCC and the
18 Region 20 and the COG, you know, to release some 800
19 megahertz channels to us, so we could have both fire
20 and police on a single network. We couldn't, so what
21 we came up with was the next best thing.

22 Everything is controlled. We have a
23 single controller that allows patching through the
24 switch, and that still maintains our mutual aid
25 compacts and enhances them and, you know, it's major

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1 improvement and, you know, we're all pleased with
2 heading in this direction.

3 VICE CHAIR RENSHAW: But my question was
4 whether or not your plans had been reviewed by any of
5 our mutual aid partners. You said that the mutual aid
6 antenna is at McMillan, but have you shared your plans
7 and your progress reports with the partners in the
8 mutual aid areas of surrounding jurisdictions?

9 MR. BURKE: Indirectly, we have met with
10 Region 20 and explained to them our design. Our goal
11 for the next month is to invite them into our fleet
12 mapping planning session, because we haven't needed
13 their input until we got to the fleet map.

14 So essentially, our 800 megahertz design
15 wouldn't change, except we would have better coverage
16 in the city. There will be some better external, but,
17 you know, internal, you know, it improves. So there
18 hasn't been a need to, at this point, but we are now
19 in the process with our MPD customers to plan for that
20 and, in fact, a meeting tomorrow to set this.
21 Tomorrow and Friday we meet with MPD to invite the
22 proper people from the region to participate in our
23 planning exercise.

24 VICE CHAIR RENSHAW: I have another
25 question. We have a big problem in this area with 911

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1 calls on cell phones. Is this upgrade going to help
2 in any way at all with cell phone coverage of 911?

3 MR. BURKE: No, this network is really
4 noncontentious public safety. It's our frequencies,
5 District's public safety frequencies. This improves
6 our ability to respond to 911 requirements, but it
7 isn't tied at all to the commercial industry
8 whatsoever.

9 VICE CHAIR RENSHAW: So with this new
10 technology, if someone were to call in 911 on a cell
11 phone, you could not track them at all?

12 MR. BURKE: Well, that call will come in
13 through the dispatch center.

14 VICE CHAIR RENSHAW: Right.

15 MR. BURKE: And then from dispatch, it
16 would be, you know, sent out, so the probability of it
17 being received increases with the network. The E 911
18 that you are referring to is being worked on through
19 another department and OCTO, who are pursuing
20 enhancing the E 911 center, and I think Carolyn may be
21 able to speak more to that than I will, but it's
22 certainly not, you know, a topic that we came prepared
23 to discuss for today's meeting.

24 CHAIRPERSON GRIFFIS: Yes, I say we stick
25 to the topic at hand, and maybe you could provide us

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1 with --

2 VICE CHAIR RENSHAW: But this is all very
3 valuable information for the record.

4 CHAIRPERSON GRIFFIS: Yes, no, indeed, it
5 is. It's all fascinating and I sure would like one of
6 those radios to talk to everybody all around the
7 place.

8 VICE CHAIR RENSHAW: Yes, well, we might
9 just mention here that through the Emergency
10 Management Agency, we were able to get on an almost
11 permanent loan basis, enough 800 megahertz radios for
12 the Bethesda, Chevy Chase Rescue Squad that comes into
13 the District on a regular basis and could not talk to
14 the fire department here, and this was done several
15 years ago through the good efforts of my ANC and the
16 Emergency Management Agency. So we do have that
17 connection. Did you know about that?

18 MR. BURKE: No, ma'am, I wasn't aware of
19 it.

20 VICE CHAIR RENSHAW: Aha, see.

21 MR. BURKE: But the folks, our customers,
22 are certainly aware of it, and if they requested our
23 support in designing, we would be happy to support
24 them. EMA is working directly with those additional
25 users of the network, and I am sure if we made a

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1 request to Andrew Jackson that he could make available
2 those radios for this group. He might ask you to
3 write a check or two, but --

4 CHAIRPERSON GRIFFIS: Yes, they are pretty
5 expensive, aren't they? Okay. Before we get too out
6 of hand, why don't we focus back on section 212 and
7 what we are doing here? This is all very informative
8 and sets the picture and the stage for our
9 understanding now, looking at the special exception.

10 MR. DONOHUE: There is one other piece to
11 it, as I introduced at the outset, and that is the
12 police department.

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. DONOHUE: If I can very briefly ask
15 Officer Campbell to speak to MPD's role in the
16 process.

17 CHAIRPERSON GRIFFIS: Excellent.

18 MR. DONOHUE: Thank you.

19 OFFICER CAMPBELL: I'm Officer Campbell.
20 I am also a 30 year veteran of the Metropolitan Police
21 Department and unlike Chief Short, my first vehicle
22 was a Plymouth Fair 1972.

23 CHAIRPERSON GRIFFIS: Yes.

24 OFFICER CAMPBELL: For us it's really
25 critical that we are able to talk to surrounding

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1 jurisdictions, as well as our police officers in the
2 field. As having been a field officer and a
3 dispatcher, I can speak from both ends, especially in
4 the 7th District and the kind of coverage we have in
5 the 7th District, because we have peaks and valleys.

6 There are points where officers cannot
7 hear or transmit to the dispatcher and vice versa, and
8 this system will enhance our capabilities of being
9 able to do that. Also, the encryption part is very
10 important, because a lot of our citizens complain
11 about calling to report incidents or crimes of that
12 nature and the bad guys having radios or having
13 scanners where they pick up the information and even
14 their names.

15 So encryption would be a very critical
16 part to completing our mission, both from a tactical
17 standpoint for operations that we may do on alternate
18 channels, as well as coverage around the city and in
19 buildings, as well for us. So the ANCs that we
20 visited were very supportive and asked that we
21 expedite or you all expedite your decision on this
22 matter, and we appreciate it. Thank you.

23 CHAIRPERSON GRIFFIS: Great.

24 OFFICER CAMPBELL: Short and sweet.

25 VICE CHAIR RENSHAW: I have a question on

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1 these towers, monopoles, towers we are talking about
2 here. Are you going to rent out any part of this to a
3 private company, co-location?

4 MR. BURKE: At this time, I have no
5 knowledge of that being part of the interest, so, you
6 know, our goal is to build the network today for
7 public safety usage. What may become of these towers,
8 we anticipate the need for, you know, more enhanced
9 public safety communication requirements. So our
10 needs on these towers, you know, for the future would
11 be there for 700 megahertz for high speed data and for
12 others.

13 So I anticipate that there will be a need
14 to use these facilities and we plan for expansions, so
15 that we don't have to go back and request an expansion
16 of the rooms or new facilities. Regarding commercial
17 users, I don't have an answer for you there. It's not
18 part of our planning process today.

19 VICE CHAIR RENSHAW: Okay.

20 MR. DONOHUE: Rick, maybe I should add to
21 that. Well, let me back up. As Ms. Mitten knows,
22 during the process in which we were prepping and
23 filing for these applications, the Zoning Commission
24 was considering the Zoning Text Amendment as related
25 to cell towers, bowls and broadcast towers, etcetera,

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1 and I asked the question of OCTO when I came on board.

2 I think the answer is no, there are no
3 plans. These are not designed for nor should they be
4 designed for co-location of Sprint or Nextel or AT&T
5 Wireless. There are security issues. There are
6 future use issues. There is capacity of the steel.
7 There is probably a dozen reasons why it's really not
8 an appropriate site for co-location.

9 It was also important to the citizens, and
10 at least one ANC, 5B, that it not be made available
11 for co-location, and that question had to do with
12 possibilities for interference or possibilities for
13 who knows what. So I think the answer is probably no,
14 but if the Board were to condition its approval as
15 such, I think that would be an appropriate condition.
16 You certainly have that when you purview.

17 CHAIRPERSON GRIFFIS: Thank you. It's my
18 understanding, looking at a couple of these before,
19 that there is a capacity structurally, as you say, but
20 also in terms of transmission capacity for these
21 towers. Is that correct?

22 MR. BURKE: Yes, that is correct. In
23 fact, at an existing tower, for example, St.
24 Elizabeth, which is our tower, the District's tower
25 that is used exclusively for public safety

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1 communications, we also have ATF as an agency using
2 that site.

3 They are a partner of our first responders
4 and we need to communicate with them. So in that
5 particular situation, in order to add additional
6 antennas, we have to enhance the tower. So it isn't
7 to our long term best interests to allow commercial
8 users on there, because it would require us to upgrade
9 the towers and expend funds to allow for additional
10 tenants. So it isn't part of our objective on this
11 particular program.

12 CHAIRPERSON GRIFFIS: Good. And a quick,
13 perhaps more technical, but there has been a lot of
14 talk about this encryption capability for the police.

15 So what do regular commercial scanners pick up? How
16 is it different now and what the capacity of the new
17 system will do?

18 OFFICER CAMPBELL: Currently, they can
19 pick up everything we say.

20 CHAIRPERSON GRIFFIS: Is that right?

21 OFFICER CAMPBELL: Everything, absolutely
22 everything. The news media can arrive at a scene
23 simultaneously.

24 CHAIRPERSON GRIFFIS: I always wondered
25 how they did that.

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1 OFFICER CAMPBELL: Oh, yes, so they pick
2 up.

3 VICE CHAIR RENSHAW: They listen, yes.

4 OFFICER CAMPBELL: We were doing a
5 training exercise on one of our alternate channels and
6 we usually repeat every 15 minutes that it's a
7 training exercise, trying to train new dispatchers.
8 So we simulated an incident where we had a shooting, a
9 bank robbery and something else, and they were calling
10 our PIO office to find out where it was, because we
11 were saying any street, northwest.

12 CHAIRPERSON GRIFFIS: Right.

13 OFFICER CAMPBELL: Or something like that,
14 but they didn't pick that up. They just heard
15 shooting, robbery, everything, so they wanted to
16 respond. So this would give us the ability for them
17 not to hear. They may hear blurbs of something, but
18 not of the conversation.

19 CHAIRPERSON GRIFFIS: I see. Okay.

20 VICE CHAIR RENSHAW: And then the police
21 cars would have better transmission?

22 OFFICER CAMPBELL: Yes, ma'am, they would,
23 excellent, yes.

24 VICE CHAIR RENSHAW: All right.

25 CHAIRPERSON GRIFFIS: Good.

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1 VICE CHAIR RENSHAW: That would be nice.

2 CHAIRPERSON GRIFFIS: I think we're clear
3 on that then.

4 MR. DONOHUE: Mr. Chairman, if you would
5 like, what we can do now is shift over to site
6 specific and go through the site plans in both cases
7 if that's appropriate. We have submitted for the
8 record the testimony that is responsive to section 212
9 and also section 2520, and I think OP correctly
10 addresses some of the issues that are relevant there,
11 too, but if you would like, I have got the story
12 boards up. We can go through the sites if that's
13 appropriate.

14 CHAIRPERSON GRIFFIS: Yes, let's do that
15 briefly and we'll just see if there is any questions.

16 If there are pertinent pieces to point out to begin,
17 that's excellent, and then if there are any questions.

18 I think it is important to reiterate what is in the
19 file and what has been said today about the McMillan
20 site, and that is that there are three towers, one
21 monopole or maybe there are two, well, whatever they
22 are, going down into one.

23 MR. DONOHUE: Whatever they are, they are
24 going to be gone.

25 CHAIRPERSON GRIFFIS: Yes, exactly.

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1 VICE CHAIR RENSHAW: Three into one.

2 MR. DONOHUE: This is an elevation. This
3 is the point as we submitted it in the record. This
4 is an elevation of the existing tower at McMillan. If
5 your back is to the reservoir and you are facing
6 towards the south, the existing tower at 100 -- can
7 you pick me up, at a 180 feet and the mutual aid
8 antenna located slightly above, pipe mounted above the
9 180 feet, the building located obviously over here.

10 The equipment shelter is located right
11 adjacent to the building in a screened compound. I
12 should say at the outset that the entire campus of
13 McMillan is secure. None of us can get in there to go
14 and take a look at this, except the folks motto, of
15 course.

16 The location is enormous. McMillan is a
17 large campus. I was explaining to Cliff Moy earlier
18 when we were talking about the existing tower, I said
19 one of the challenges is to get a view of the existing
20 tower, and really the only good view shed is from the
21 VA, because you got an opportunity to look down and
22 you can see the tower from the north.

23 So obviously, setbacks were a great
24 consideration. It is an R-5 Zone District, but it is
25 a secure campus. It's an enormous campus and when we

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1 went out to talk to the community, ANC 1B, there was
2 an awful lot of folks that said, you know, what tower?

3 Surely there is not a 180 foot tower there. That's
4 the kind of reaction that we got and, frankly, that's
5 what we're looking for.

6 So it's a swap, 180 foot tower for 180
7 foot tower. The two poles are located actually offset
8 of the existing tower, and the antennas located on
9 that pole would go onto the proposed new tower, and
10 the microwave dishes located as shown here.

11 A word about the microwave dishes, and if
12 there is questions about this, I am going to defer to
13 Rick, but microwave in its present plan is a bit
14 fluid. There is some testing that needs to be done.
15 There is some funding, I believe, that needs to be
16 done with respect to microwave, so we have shown the
17 locations here. In fact, we asked Mr. Cohen to run
18 his calculations at a couple different heights just to
19 be sure.

20 It's very important for microwave to have
21 a clean line of sight, even more important than
22 cellular, PCS. It's literally got to have a clean
23 shot or it doesn't work, so the microwave dishes may
24 move slightly, but otherwise, that's essentially it
25 for McMillan, I believe. Are there any questions on

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1 McMillan?

2 CHAIRPERSON GRIFFIS: Mr. Zaidain?

3 BOARD MEMBER ZAIDAIN: Yes, one of the
4 special exception tests is removal of all
5 nonconforming antennas. I mean, obviously, the only
6 nonconforming antennas are the monopoles and the
7 lattice tower that is going to be removed there,
8 right?

9 MR. DONOHUE: That's correct.

10 BOARD MEMBER ZAIDAIN: Okay. I understand
11 that HPRB is reviewing the application?

12 MR. DONOHUE: Yes, we have actually met
13 with and talked with HPD prior to filing as we did
14 with the Office of Planning. I spoke with David
15 Maloney. I spoke with Nancy Cassner about this.
16 Historic Preservation has got to look at this one more
17 time, but they didn't get anything on file for the BZA
18 prior to today.

19 BOARD MEMBER ZAIDAIN: Okay. Do you
20 expect any changes in the site plan at that level?

21 MR. DONOHUE: No, in fact, when we met
22 with all the folks that were involved with McMillan,
23 there was really no criticism of the -- it was more
24 questions, what about this, what about that?

25 BOARD MEMBER ZAIDAIN: Okay.

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1 CHAIRPERSON GRIFFIS: They are still
2 studying the 100 year-old antennas to try and get
3 informed on how our new design might impact that,
4 right?

5 BOARD MEMBER ZAIDAIN: That's kind of
6 weird bringing new case scenario antennas.

7 CHAIRPERSON GRIFFIS: The technology in
8 antennas.

9 MR. DONOHUE: I'm not going to comment,
10 Mr. Chair.

11 CHAIRPERSON GRIFFIS: Right, right.

12 MR. DONOHUE: We thought it was important
13 to do something with the equipment cabinet, because
14 it's rather cluttered.

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. DONOHUE: The yard next to the
17 building, so this is a slight redesign, but it is on
18 file with the Board.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. DONOHUE: The equipment is now
21 actually snug up against the building as close as we
22 thought was appropriate. It looks a little better,
23 but it's not the most attractive part of the property.

24 BOARD MEMBER ZAIDAIN: Well, I am glad
25 that they are not going to try to make you retain the

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1 existing monopolies, because they are historic.

2 CHAIRPERSON GRIFFIS: They are
3 historically significant is what they're trying to
4 say.

5 MR. DONOHUE: But I just said that.

6 VICE CHAIR RENSHAW: We should ask if the
7 new monopoly is going to be similar to an evergreen
8 tree.

9 MR. DONOHUE: Not this one, the next one
10 will.

11 VICE CHAIR RENSHAW: Not this one?

12 MR. DONOHUE: No, the next one.

13 VICE CHAIR RENSHAW: The one over on the
14 Rhode Island site?

15 MR. DONOHUE: Well, I just said that.
16 Rhode Island is slightly different, if there are no
17 questions on McMillan.

18 CHAIRPERSON GRIFFIS: Yes, any questions
19 on McMillan?

20 COMMISSIONER MITTEN: Yes, comparing Mr.
21 Cohen's report and the drawing of the tower and noting
22 the different antennas and microwave dishes on there,
23 my reading, and perhaps I am just missing something,
24 it looks as if on McMillan, Mr. Cohen looked at four
25 antennas and two microwave antennas, and there are 11

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1 on your drawing, 11 antennas altogether. So I am just
2 wondering, there seems to be a disconnect for me in
3 terms of the number of antennas that were examined.

4 MR. DONOHUE: Yes, in part that has to do
5 with my reference to the microwave being somewhat
6 fluid.

7 COMMISSIONER MITTEN: Yes.

8 MR. DONOHUE: What Mr. Burke explained as
9 Mr. Cohen was doing his report was that the microwave
10 dishes were more than likely going to go up and be at
11 165 to 175 feet in height, I believe that is correct,
12 necessitating some relocation of the mutual aid
13 antennas.

14 COMMISSIONER MITTEN: Yes.

15 MR. DONOHUE: It was a later filed report.
16 When we asked Mr. Cohen to analyze it, we gave him
17 what OCTO's best judgment is today. He, in fact, ran
18 the numbers, preliminarily ran the numbers at a much
19 lower elevation, in fact, this elevation, and it
20 didn't move the numbers at all in terms of the RF
21 emissions.

22 COMMISSIONER MITTEN: Well, based on my
23 little tutorial from Mr. Cohen at a previous hearing,
24 I would have expected that, but I am also concerned
25 about the number of antennas, because it's not the

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1 same number. For instance, the total in the text is
2 mentioned to be four dishes and seven whips, and
3 notwithstanding the microwaves, all the whip antennas
4 don't seem to be included in the, you know --

5 MR. DONOHUE: Rick, what exactly is the
6 number on McMillan in terms of dish and the mutual
7 aid?

8 MR. BURKE: We are anticipating up to four
9 microwave dishes at McMillan, and just to clarify what
10 Mr. Donohue mentioned earlier, because we haven't had
11 the time yet to shoot the path, what we call shoot the
12 path, either mirror it or run lasers to determine
13 where we will see from each site.

14 We have estimated, you know, using our
15 planning tools, so we have planning tools for
16 predictions, so we predicted, but to go to the next
17 step, of course, would, you know, require your
18 approval before we expend the time and funds to go
19 ahead and shoot the path to determine the exact
20 antenna location. You know, we really need to have
21 your approval for this tower.

22 So at that point, you know, then we will
23 finalize on the appropriate location for the microwave
24 antennas. The actual number of whips that we will
25 need on this site, we gave ourselves some -- you know,

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1 there are a number of antennas there now that are used
2 for mutual aid, and we have tried to balance our needs
3 for the future, as well.

4 I am not exactly sure where the
5 discrepancies are, so, you know, we were saying the
6 discrepancies are between Mr. Cohen's study and our
7 drawing, and so I am not sure how to respond, because
8 I am not aware of the discrepancy.

9 COMMISSIONER MITTEN: Okay.

10 CHAIRPERSON GRIFFIS: Can you point out
11 just the site that you are referencing?

12 COMMISSIONER MITTEN: Sure, I am looking
13 at, and as I said perhaps I have missed something, but
14 I am looking at page 2 of Mr. Cohen's report on the
15 McMillan Reservoir, and I am then comparing that to
16 the drawing number three of four, which is the lower
17 drawing that's on the front corner, and I look at
18 those antennas and on the drawing I see four microwave
19 dishes and I see one, two, three, four whip antennas,
20 which the four whip antennas Mr. Cohen analyzed along
21 with two microwaves.

22 But in the text, and this may be from the
23 OP report or perhaps it was from Mr. Donohue's
24 submission, if I can find it, there were supposed to
25 be a total of 11 antennas, four microwaves and seven

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1 whip antennas. So I am just wanting to clarify what
2 exactly has been analyzed and what exactly is going to
3 go there.

4 CHAIRPERSON GRIFFIS: Let's find that, the
5 last thing, because I was looking at the first. They
6 correspond to the drawings.

7 COMMISSIONER MITTEN: Okay.

8 MR. DONOHUE: Mr. Chair?

9 CHAIRPERSON GRIFFIS: Yes?

10 MR. DONOHUE: I think the confusion maybe
11 is as follows. There is some rejiggering in the
12 microwave and on the whips, I think as Mr. Burke
13 spoke, there may be four. There may as many as seven.

14 The special exception application is for the tower.
15 We tried to concentrate ourselves on that. The Cohen
16 report really deals with a perception or a question
17 about health effects.

18 So what we told Mr. Cohen was take worst
19 case, if you will. What does OCTO think it's going to
20 be putting on there ultimately, and to try to give a
21 number that is aggressive, if you will, so that if
22 someone were to challenge us and say well, there are
23 now five, do a new report, it didn't seem to make
24 sense to proceed incrementally, if you will.

25 COMMISSIONER MITTEN: I understand that,

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1 and I just want to -- you know, it's a little bit
2 difficult to be under the old regs and have them
3 thinking very much about the new regs, but under the
4 old regs, we're processing the tower as under just
5 this generic thing about an antenna, because we don't
6 have something that relates to non broadcast towers,
7 correct, so we're under section 212?

8 MR. DONOHUE: That's correct.

9 COMMISSIONER MITTEN: Okay. And then
10 within that, aren't we as well processing the
11 individual antennas, because they would fall, as well,
12 under 212 or am I wrong about that?

13 MR. DONOHUE: If we were proposing these
14 antennas, microwave and whip, on this existing tower,
15 it would be Office of Planning and D.C. area review
16 only. It would not be before the Court.

17 COMMISSIONER MITTEN: But that has been
18 the practice, correct?

19 MR. DONOHUE: That has been the practice.
20 In fact, that is the case for the rest of the
21 network.

22 COMMISSIONER MITTEN: Okay.

23 MR. DONOHUE: The same tower. That is co-
24 location, the whips on the tower.

25 COMMISSIONER MITTEN: Okay.

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1 MR. DONOHUE: That was my point. I
2 understand the discrepancy, and I think --

3 COMMISSIONER MITTEN: Okay.

4 MR. DONOHUE: It may have been our
5 confusing them and saying to Mr. Cohen be aggressive.

6 COMMISSIONER MITTEN: Okay.

7 MR. DONOHUE: Show as many as they think
8 may go there.

9 COMMISSIONER MITTEN: Okay. And now I am
10 remembering there has been a practice of how
11 individual antennas get approved versus maybe very
12 strict reading of the ordinance, so I will just leave
13 it at that and we can move on now.

14 MR. DONOHUE: Thank you, Ms. Mitten.

15 COMMISSIONER MITTEN: Okay. I did have
16 one other. These are somewhat generic and I don't
17 want -- it seems like perhaps trivial questions to
18 trivialize the importance of this, because I am not
19 trying to. I am very aware of the urgency of all
20 this, but can you speak to, and this can be both or
21 just this one, lighting on the tower?

22 MR. DONOHUE: The existing tower is lit,
23 the 180 foot tower is lit with a blinking light.

24 COMMISSIONER MITTEN: And it's just
25 directed at horizontally or how is that light

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1 directed, because we have heard in the past about the
2 direction.

3 MR. DONOHUE: My recollection is it's a
4 bulb without any kind of a deflector up there.

5 COMMISSIONER MITTEN: Okay.

6 MR. DONOHUE: Again, when we went to the
7 ANC who presumably knows it quite well, I think one
8 person asked a question, well, you know, will it be
9 lit, and we said the existing one is lit, and there
10 was a lot of disbelief. It's that kind of a thing.

11 COMMISSIONER MITTEN: Okay.

12 MR. DONOHUE: It will be lit as is the
13 existing one.

14 COMMISSIONER MITTEN: In the same manner
15 that the existing tower is lit?

16 MR. DONOHUE: That's correct.

17 COMMISSIONER MITTEN: Okay.

18 MR. DONOHUE: So just to complete, on the
19 other tower, the determination came back no lighting.

20 COMMISSIONER MITTEN: Okay. So that would
21 be a condition for the other tower, that there would
22 be no lighting on the tower, 1700 Rhode Island?

23 CHAIRPERSON GRIFFIS: The monopole?

24 MR. DONOHUE: The monopole is 1700 Rhode
25 Island.

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1 COMMISSIONER MITTEN: The monopole, yes,
2 sorry.

3 MR. DONOHUE: The FAA did not require
4 lighting. There is no airfield in the proximity. It
5 doesn't break the 200 foot plane, so we didn't expect
6 it to be required to be lit.

7 CHAIRPERSON GRIFFIS: What about
8 helicopters that go flying around there?

9 MR. DONOHUE: Go ahead, Rick.

10 MR. BURKE: Yes, the FAA's determination
11 was one of no lighting or painting, and basically what
12 we have to do is in applying for the tower height that
13 we did, we had to do a study, which indicated the
14 location of helipads and airports and there is, you
15 know, nothing of concern to them in that vicinity, and
16 in close proximity to --

17 CHAIRPERSON GRIFFIS: Yes, but they don't
18 fly around there. That's why.

19 MR. BURKE: Right.

20 CHAIRPERSON GRIFFIS: So just to be clear,
21 the FAA is not requiring any type of lighting, as
22 opposed to McMillan in which they are?

23 MR. BURKE: Yes.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. BURKE: That's correct.

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1 CHAIRPERSON GRIFFIS: That doesn't
2 preclude you from putting it on there?

3 MR. BURKE: No, it doesn't.

4 COMMISSIONER MITTEN: I guess that's the
5 point.

6 CHAIRPERSON GRIFFIS: Right.

7 COMMISSIONER MITTEN: Is that people are
8 sometimes concerned that there will be lighting that
9 is intrusive to them. It's not going to happen at
10 McMillan certainly, because it's so far away from
11 anyone.

12 CHAIRPERSON GRIFFIS: Right.

13 COMMISSIONER MITTEN: But at 1700 Rhode
14 Island, it's a potential adverse impact if you were to
15 light it. So is there any reason why you would not
16 accept a condition that there would be no lighting on
17 the monopole?

18 MR. DONOHUE: The only thing I have is
19 that if, for example, the FAA changed its rule of
20 thumb, so that the 150 foot mark was the point at
21 which they would typically require a light.

22 COMMISSIONER MITTEN: So we could just
23 write this condition to accommodate that?

24 MR. DONOHUE: Unless required by the FAA,
25 yes, ma'am.

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1 COMMISSIONER MITTEN: Okay, okay.

2 CHAIRPERSON GRIFFIS: Hold on. I mean, I
3 think we ought to talk about that a little bit.

4 COMMISSIONER MITTEN: Okay.

5 CHAIRPERSON GRIFFIS: Because my sense is
6 I would be greatly concerned about that. If there is
7 a single accident that happens or a near miss, why
8 would we need to have another special exception just
9 to put a light on it?

10 COMMISSIONER MITTEN: That's what --

11 CHAIRPERSON GRIFFIS: And at 180 feet,
12 first of all, we don't have anything to compare in
13 this city on what that height is, but just to have a
14 blinking beacon, I can't imagine that it's getting
15 into a 40 foot high row house, but there is a
16 discussion for us.

17 VICE CHAIR RENSHAW: And I would think
18 with occasional bad weather that we do have in this
19 region, that it would be necessary to light that just
20 in case we get socked in with fog and we have
21 helicopter traffic, whatever.

22 MR. DONOHUE: Mr. Chair and Ms. Renshaw, I
23 think it's a very sensitive issue and Ms. Mitten can
24 tell you, we talked about it a lot during the Zoning
25 Commission proceedings. The FAA takes it very, very

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1 seriously. The significance of the 200 foot mark is
2 an important one, and by that I mean if you light
3 something that is less than 200 feet, it's an
4 indication to the folks that have these on their
5 charts and know what the grade point is, that that
6 structure is at 200 feet.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. DONOHUE: And it may cause some
9 confusion.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. DONOHUE: Now, the structure will be
12 registered, so the folks that fly helicopters, I hope
13 they're not at 150 feet at 1700 Rhode Island, but --

14 CHAIRPERSON GRIFFIS: They come real close
15 to my house.

16 MR. DONOHUE: Well, but they know about
17 the height and they know about the structure. It's
18 registered.

19 CHAIRPERSON GRIFFIS: Right. Okay.

20 MR. DONOHUE: The lighting itself, Ms.
21 Mitten can tell you, it's a sensitive issue and you
22 ought to proceed carefully on that score.

23 CHAIRPERSON GRIFFIS: Right, I guess my
24 point is I would rather err on other folks that look
25 at this and regulate it than us putting a condition on

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1 it that may just need to be reworked. Okay. Well,
2 there it is.

3 COMMISSIONER MITTEN: Okay. And then if
4 you are amenable to a condition that would prohibit
5 co-location by commercial users, would you also be
6 amenable to a condition that would preclude any
7 advertizing, any signs or advertizing?

8 MR. DONOHUE: Yes, ma'am.

9 COMMISSIONER MITTEN: Yes, that's all. I
10 would just like to --

11 BOARD MEMBER ZAIDAIN: Have you seen that
12 before?

13 CHAIRPERSON GRIFFIS: I can just imagine
14 the view of the slogans that might go on these things.

15 BOARD MEMBER ZAIDAIN: Are there examples
16 of that somewhere?

17 COMMISSIONER MITTEN: You never know.

18 CHAIRPERSON GRIFFIS: No, I think that's a
19 pretty good one.

20 COMMISSIONER MITTEN: Actually, I mean, we
21 think, you know, this is clearly a special case, but
22 then this case will be used to --

23 CHAIRPERSON GRIFFIS: Right.

24 COMMISSIONER MITTEN: -- set up other
25 cases, so I am just asking these questions.

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1 BOARD MEMBER ZAIDAIN: No, I see where you
2 are going and I agree with it. I am just curious if
3 that has ever been an issue before.

4 CHAIRPERSON GRIFFIS: Well, if it isn't,
5 it would be guaranteed to be one.

6 BOARD MEMBER ZAIDAIN: Oh, yes.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. DONOHUE: It does --

9 CHAIRPERSON GRIFFIS: Right.

10 MS. BAILEY: Mr. Donohue, is it possible
11 to use the microphone that's on the table, rather than
12 the one you are holding? It's going in and out.

13 MR. DONOHUE: Okay.

14 CHAIRPERSON GRIFFIS: I think we could
15 probably move the easels closer then if we are going
16 to have to do that.

17 MR. DONOHUE: That could be risky. Are
18 these new?

19 CHAIRPERSON GRIFFIS: They were provided
20 by the Historic Preservation Board. I am going to get
21 myself in a lot of trouble.

22 MR. DONOHUE: This is the site for 1700
23 Rhode Island Avenue, and the location is on the
24 northeast corner. This is northeast D.C. This is the
25 northeast corner, the quadrant, 17th Rhode Island,

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1 Rhode Island Avenue, traveling east and west and 17th
2 Street, traveling north and south.

3 The site is Zone C-2. It's a part of the
4 commercial corridor that occurs on a lot of Rhode
5 Island Avenue. It does have an MPD police station
6 there. In fact, it's the youth services division. It
7 has been there for as long as anybody can remember.
8 There is also a pole that is located on the street
9 side, on the 17th Street side, right over here
10 immediately adjacent to the building. I have got some
11 pretty good photographs, I think, that will show you
12 what I mean, but the pole has been there for many
13 years.

14 Structurally, it can't hold much of
15 anything. The proposed relocated site is in the
16 northeast corner of the property, the extreme
17 northeast corner over here. There is an alley
18 immediately east and there is a vacant lot immediately
19 north. Our hope is that we're not going to take out
20 any parking spaces. This site is rather tight with
21 respect to parking, and the idea is for us to be in
22 the extreme corner and hopefully not take out any
23 spaces, as few spaces that are necessary, I should
24 say.

25 Under the original design, there was an

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1 overhead connection, what is known as an ice bridge,
2 connecting the pole to the police station, and at the
3 suggestion of Office of Planning, that is off the
4 plans. I submitted a new set of plans to the BZA.
5 Those connections are going to be made below ground
6 now. You might think well, it's silly when we're
7 talking about 150 foot pole to deal with an 8 foot ice
8 bridge, but, in fact, it's pretty unsightly and at
9 OP's suggestion, we have made that move and put those
10 facilities below ground.

11 CHAIRPERSON GRIFFIS: The function of the
12 ice bridge, obviously, is to break the ice as it's
13 falling off the pole. Is that correct?

14 MR. DONOHUE: Well, it's ducked back to
15 carry the cables. That's the primary feature.

16 CHAIRPERSON GRIFFIS: I see.

17 MR. DONOHUE: But it's an ice bridge,
18 right, so that the ice doesn't form on the coaxial and
19 cause failure.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. DONOHUE: So those will be below
22 grade. We are going to trench to connect the two
23 buildings, the pole and the building, I should say.
24 The existing pole would be removed, so the
25 nonconforming question, I suppose, gets addressed.

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1 We do have a pole elevation. This is a
2 little different configuration than what you saw at
3 McMillan, but it does indicate, and they are called
4 out here, the MPD transmit and receive antennas and
5 fire and EMS transmit and receive antennas and so on
6 up the pole. Okay. The ice bridge is taken off, so
7 that change has been made here, as well.

8 As Chief Short and Officer Campbell
9 mentioned, we did have a series of meetings, as a
10 matter of fact, with the ANC. By coincidence, we
11 literally ran into a redistricting, so we originally
12 were meeting with ANC 5A and subsequently went to 5B,
13 but we did have some, I think, very productive
14 conversations. We had a separate SMD meeting, and
15 then got unanimous support of the ANC, and that letter
16 is in the record, and I believe it does evidence that
17 they would like to see expedited treatment of this.

18 It was very interesting. When we went out
19 to the ANCs, there was an awful lot of conversation in
20 this neighborhood about coordination among MPD and
21 community policing and what the fire has done or
22 hasn't done for the community. It was a great
23 situation, frankly, to walk into as counsel for OCTO,
24 because they were clearly interested in talking about
25 communication and we were proposing a communications

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1 facility. We do have some photographs of the existing
2 pole and the proposed pole, I think.

3 CHAIRPERSON GRIFFIS: Those are the same
4 as in the record, correct?

5 MR. DONOHUE: That's correct.

6 CHAIRPERSON GRIFFIS: Yes. And that is
7 the 100 foot pole, the existing?

8 MR. DONOHUE: That's correct.

9 CHAIRPERSON GRIFFIS: And you're
10 dimensioning it to the top of the two antennas or how
11 many there are on the proposed new -- the 100 feet is
12 to that the top of what is appearing as a white?

13 MR. DONOHUE: It's an 80 foot pole.

14 CHAIRPERSON GRIFFIS: Gotcha.

15 MR. DONOHUE: Total height.

16 CHAIRPERSON GRIFFIS: Right, tip to the
17 width.

18 MR. DONOHUE: Exactly. But as we
19 identified the first couple of times we went out
20 there, it's a rather tough location, especially for
21 the folks that live right on 17th Street. There is
22 also a generator here in the right of way. It was
23 built. I think it was part of the Y2K. The generator
24 is, in fact, in right of way and MPD is -- well, it is
25 what it is. It's not part of this application, but it

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1 is shown on a few of your photographs.

2 This is the proposed facility and a shot
3 taken from across the street. This is a simulation of
4 the pole in the extreme northeast corner, and I don't
5 know if you can pick it up here in the corner, but
6 this is part of the used car lot and commercial
7 activity that continues on eastbound on Rhode Island
8 Avenue.

9 There is a 16 foot alley, as I mentioned,
10 immediately east of the facility. It's a secure
11 facility today. It's fenced off. It's a police
12 department facility, so we feel pretty confident that
13 it's not going to be any kind of an attracted
14 nuisance, and as we saw in the Office of Planning
15 report, I think they recognize that moving it more
16 interior, if you will, really was an enhancement of
17 the existing condition.

18 CHAIRPERSON GRIFFIS: Right. Well, I
19 doubt that you are ever going to hide these things,
20 and that's the whole point of it, correct? Although,
21 you have framed it nicely with that tree branch in
22 front.

23 MR. DONOHUE: Thank you, thank you.

24 VICE CHAIR RENSHAW: It would make a nice
25 evergreen tree.

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1 CHAIRPERSON GRIFFIS: Yes, actually --

2 VICE CHAIR RENSHAW: A tall one, but it
3 could be done.

4 CHAIRPERSON GRIFFIS: You mentioned
5 something about FAA regulating painting.

6 MR. DONOHUE: They typically run the two
7 determinations. It's called a determination. They
8 typically run the two together, but it can vary, and
9 where this occurs is oftentimes in the big --
10 Tenleytown, for example. Above the 200 foot mark,
11 there is a certain lighting requirement.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. DONOHUE: Above another break point,
14 there is a striping.

15 CHAIRPERSON GRIFFIS: I see.

16 MR. DONOHUE: You will often see towers
17 that are red and white.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. DONOHUE: Neither is required here, so
20 galvanized is what is proposed.

21 CHAIRPERSON GRIFFIS: Okay.

22 VICE CHAIR RENSHAW: Is it necessary to
23 run guy wires, I think that's what they call it, to
24 stabilize the pole?

25 MR. DONOHUE: No.

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1 VICE CHAIR RENSHAW: It isn't? Good.

2 MR. DONOHUE: No, in fact, by definition
3 this type of structure, monopole, means no guys. A
4 guy tower would be a different type of a structure.

5 CHAIRPERSON GRIFFIS: What actually
6 determines doing a monopole or a frame construction?

7 MR. DONOHUE: Well, a couple of different
8 things. It might be a soil situation. A monopole
9 goes deep into the ground, and these have secure
10 footings. It might be load. A lattice structure will
11 carry a good deal more load. At certain heights, the
12 monopole is just, frankly, inappropriate. You know,
13 well above this height is not a good idea to be using
14 a pole, but it's oftentimes a design choice.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. DONOHUE: Many of the surrounding
17 jurisdictions that looked at this said well, stay away
18 from the lattice structures. Those are unsightly.
19 Use the poles. It's a different application, I guess.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. DONOHUE: A different fit.

22 CHAIRPERSON GRIFFIS: Good. Any questions
23 then on site specific, McMillan or Rhode Island by the
24 Board? Any other questions on that, clarifications?

25 VICE CHAIR RENSHAW: Just curious, with

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1 the ANC meeting, first ANC 5A as numbered and then 5B,
2 at that public meeting, were there any fire and police
3 or do you want to call them lines people, in other
4 words who would be on the front line, I am not talking
5 about officers or shall we say headquarter type
6 people, but those who would be on the line to hear
7 about this enhancement of the communication system and
8 to interact with the public?

9 CHIEF SHORT: Rank and file officers, you
10 mean, the members?

11 VICE CHAIR RENSHAW: Yes.

12 CHIEF SHORT: At the meeting? No.

13 VICE CHAIR RENSHAW: From the local
14 firehouses.

15 CHIEF SHORT: No, they were not there.

16 VICE CHAIR RENSHAW: Or from the station
17 house?

18 OFFICER CAMPBELL: No, ma'am, but my
19 dispatchers are informed of the new changes, so on our
20 side, and once we start the training, then our
21 officers in the field will know about the
22 enhancements.

23 VICE CHAIR RENSHAW: Okay.

24 MR. DONOHUE: The ANC meeting at 5B, I'm
25 sorry, chief -- the ANC meeting at 5B was, in fact, at

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1 the MPD station on Bladensburg Road.

2 VICE CHAIR RENSHAW: I just think it's a
3 missed opportunity. We always try to encourage as
4 much as possible, the people from the firehouse or the
5 people from the station to interact with us at an ANC
6 meeting, if possible, if their schedules allow, and
7 this would have been a great topic, so anyway. I just
8 wanted to ask.

9 CHAIRPERSON GRIFFIS: Good. Anything
10 further in presentation of the case?

11 MR. DONOHUE: No, Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Excellent.

13 MR. DONOHUE: Unless there are any
14 questions.

15 CHAIRPERSON GRIFFIS: I think we have
16 satisfied our questions. We can move ahead with other
17 Government reports. I noted that you did indicate
18 that folks may have other scheduling problems, and so
19 I would leave it to your discretion whether you want
20 to maintain your witnesses here. I don't anticipate,
21 if it's okay with the Board, that we would have any
22 further questions for the witnesses, so at your
23 discretion. Let's go then to Office of Planning's
24 report. I think we can summarize.

25 MR. DONOHUE: Mr. Chairman?

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1 CHAIRPERSON GRIFFIS: Yes?

2 MR. DONOHUE: The folks who are sitting at
3 the table here are going to make up their own mind.
4 Specifically, if there is nothing from Mr. Cohen, he
5 does have a rather pressing engagement. Great, thank
6 you.

7 CHAIRPERSON GRIFFIS: Absolutely.

8 MR. DONOHUE: Sorry to interrupt.

9 CHAIRPERSON GRIFFIS: Good. Office of
10 Planning, which if you want to start with McMillan, if
11 you see differences, and then we will go to Rhode
12 Island.

13 MS. THOMAS: Good afternoon, Mr. Chairman,
14 members of the Board. I am Karen Thomas with OP's
15 recommendation concerning the request by the Office of
16 the Technology Officer to upgrade its existing
17 emergency communication system by installing new
18 lattice towers for the co-location of antennas and
19 microwave dishes at 320 McMillan Drive and 1700 Rhode
20 Island Avenue.

21 With respect to the telecommunications
22 site at 320 McMillan Drive, OP has no objection to the
23 applicant's proposal to consolidate their existing
24 system with a new lattice tower at 180 feet. The
25 existing and proposed lattice tower location is

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1 insider of the secured campus of the McMillan
2 Reservoir. The tower will not be located near any
3 residences and the health and safety of the
4 residential neighborhood is not adversely affected.

5 The older monopoles and lattice tower will
6 be removed and this represents a visual improvement on
7 the site. The location of the tower is necessary to
8 support the required coverage area. The tower will
9 not be readily visible from the immediate residences
10 along Bryant Street since the area behind the tower is
11 a steep tree lined hill, which slopes up from Bryant
12 Street.

13 The tower needs the elevation to clear
14 terrain and existing structures, and a new system will
15 not detract from the neighborhood's street-scape or
16 the future development of the neighborhoods abutting
17 the reservoir.

18 OP supports the approval of the
19 installation of the replacement lattice tower, which
20 will encourage co-location to limit the visual
21 intrusion of antennas. Could I go on to Rhode Island?

22 CHAIRPERSON GRIFFIS: Yes, let's run
23 through them both and then we'll take questions.

24 MS. THOMAS: Any questions?

25 CHAIRPERSON GRIFFIS: Go through both.

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1 MS. THOMAS: Okay.

2 CHAIRPERSON GRIFFIS: And then we can
3 combine them all.

4 MS. THOMAS: At the other location on 1700
5 Rhode Island Avenue where OCTO proposes to replace the
6 existing 100 foot tower monopole with a new one, 50
7 foot tall pole, the new site will include three
8 microwave dishes, three panel antennas and 10 whips at
9 various heights on the pole.

10 According to 212, the proposal does meet
11 the requirements as follows: The replacement poles in
12 the location is an improvement to the current
13 situation where the existing pole detracts from the
14 street-scale along 17th Street and Rhode Island Avenue.

15 The proposed new location is at the northeast corner
16 of the property, abutting an alley and is less of a
17 compromise to the safety of the neighborhood.

18 The new pole will be taller than the
19 existing by 50 feet and structurally able to
20 accommodate more antennas than what currently exists.

21 No review by the Historic Preservation Board is
22 required for this site. The new location will be
23 screened and protected from unauthorized access since
24 it will be located in a secured compound.

25 Upon installation of a new structure, the

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1 older tower will be dismantled and removed from its
2 current location. No increased traffic is expected to
3 the site, except for routine maintenance. OP believes
4 that a new tower represents an improvement in terms of
5 reduced visibility of antennas in the immediate
6 neighborhood and enhanced communication for the
7 District.

8 In conclusion, OP has no objection to the
9 upgrade of the telecom system at this location, and
10 recommends approval of OCTO's special exception
11 request. Thank you.

12 CHAIRPERSON GRIFFIS: Good. Thank you
13 very much. One quick clarification, you heard the
14 applicant's representative indicate that the McMillan
15 was, in fact, zoned. They are 5B and I know you did
16 your analysis based on that. Do you concur with that?

17 MS. THOMAS: Yes.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. THOMAS: We did concur that it was.

20 CHAIRPERSON GRIFFIS: Okay. It's a small
21 matter that wouldn't hold anything up, but I wanted to
22 get clarification. Also, in 212.3, it is part of our
23 requirement that if review of Historic Preservation
24 Board is required, that it is done before the hearing
25 before this Board. Is it your understanding that

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1 actual HPRB is required?

2 MS. THOMAS: Well, they are only subject
3 to review per the Federal 106 regulation.

4 CHAIRPERSON GRIFFIS: The section 106?

5 MS. THOMAS: Section 106, and all that
6 really is, in this instance, it would require them to
7 just have a written statement to that effect. Usually
8 what happens is that they will just sign off on it
9 when the review comes in, and in this case, there was
10 nothing for them to sign off on, so they will provide
11 us with a written statement and we will submit that
12 for the record.

13 CHAIRPERSON GRIFFIS: Okay. But it's
14 section 106, which is Federal Historic Review.

15 MS. THOMAS: That's correct.

16 CHAIRPERSON GRIFFIS: Okay.

17 BOARD MEMBER ZAIDAIN: I don't know why
18 that would apply.

19 CHAIRPERSON GRIFFIS: Me neither, but the
20 feds get involved in everything.

21 BOARD MEMBER ZAIDAIN: I know, and
22 speaking of that, was CFA required to review the
23 McMillan?

24 MS. THOMAS: CFA, no.

25 BOARD MEMBER ZAIDAIN: Okay.

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1 MS. THOMAS: No.

2 BOARD MEMBER ZAIDAIN: Mr. Chair, I will
3 point to -- excuse me, and 212.3 does talk about
4 concept review and approval. I mean, I am not
5 intimately familiar with HPRB's process, but it seems
6 to me that the way counsel was describing his meeting
7 with HPRB, that he did get concept approval.

8 CHAIRPERSON GRIFFIS: Okay.

9 BOARD MEMBER ZAIDAIN: Would you dispute
10 that? Is that true?

11 MR. DONOHUE: Well, they do have an
12 informal, if you will, concept review. This has been
13 more of a partnership. We have worked closely with OP
14 and with HPD, and my expectation is that when Ms.
15 Thomas gets back after today that HPD is going to sign
16 off, at OP's recommendation that HPD will sign off on
17 the application.

18 BOARD MEMBER ZAIDAIN: So you have got
19 HPRB waiting on you and you have got OCTO waiting on
20 you to sign off on the other antennas.

21 MS. THOMAS: Right.

22 BOARD MEMBER ZAIDAIN: So you have got a
23 lot of pressure on you.

24 MR. DONOHUE: She is quite popular these
25 days.

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1 MS. THOMAS: Right.

2 CHAIRPERSON GRIFFIS: All right. For our
3 purposes just to be clear on it though, I think we can
4 establish, and if everyone is comfortable, that, in
5 fact, the conceptual review is in process and we have
6 had confirmation that there is no problem, so that we
7 don't have anything, you know, that comes out later.

8 MS. THOMAS: There is no problem with the
9 application from historic office.

10 CHAIRPERSON GRIFFIS: Okay. Because even
11 for conceptual review and approval, you are going to
12 have to go on a consent calendar before the Board. I
13 mean, it would take Board actions to have that. The
14 staff couldn't just sign off on it.

15 BOARD MEMBER ZAIDAIN: So they have a
16 formal concept?

17 CHAIRPERSON GRIFFIS: Absolutely.

18 BOARD MEMBER ZAIDAIN: Okay.

19 CHAIRPERSON GRIFFIS: And so I would
20 imagine this goes to the consent, but I think we can
21 proceed with the assurances that that is happening.

22 BOARD MEMBER ZAIDAIN: Okay.

23 CHAIRPERSON GRIFFIS: Okay. Any other
24 questions from the Board of the Office of Planning?
25 Applicant have any cross examination of the Office of

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1 Planning?

2 BOARD MEMBER ZAIDAIN: I think we had to
3 waive in the Rhode Island report.

4 CHAIRPERSON GRIFFIS: Is that so? My
5 records don't indicate that.

6 BOARD MEMBER ZAIDAIN: I think so.

7 MS. THOMAS: That's not correct.

8 BOARD MEMBER ZAIDAIN: Easy. All right.

9 CHAIRPERSON GRIFFIS: See, it may not be
10 so easy to get on these sign offs. They obviously
11 have some battles going on.

12 BOARD MEMBER ZAIDAIN: Well, now, see, I
13 am upset, because that was going to be the first time
14 I was going to recommend denial over waiver.

15 CHAIRPERSON GRIFFIS: Yes.

16 BOARD MEMBER ZAIDAIN: But since I can't
17 do that --

18 CHAIRPERSON GRIFFIS: Okay. I have
19 indication that they were both, Exhibit 28 and 26 in
20 the Rhode Island, were timely filed, so I think we
21 will proceed with that. We do need to waive in the
22 ANC reports, which we can go to now. You need to get
23 your revised master ANC reports 1B attendant to the
24 McMillan site and also 5B.

25 5B would need to be waived in. If I don't

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1 hear any objections from the Board, I think we can
2 waive that in and accept it for what it is, Exhibit
3 27. As indicated, the applicant has already stated
4 that they have met with two ANC's and also based on the
5 redistricting, so we can only assume that some of the
6 delay was based on that.

7 You wanted just to review those briefly,
8 Ms. Renshaw?

9 VICE CHAIR RENSHAW: ANC 1B met with the
10 applicant on February 6, 2003. This is in a letter of
11 February 7, 2003, signed by Deborah Thomas, the chair,
12 and Philip Spalding, the secretary, this is Exhibit
13 26C, and there were a quorum of nine of 11 members
14 voting, and they voted unanimously 9 to 0 to support
15 the application, and it stated in the letter that the
16 commissioner's questions regarding public safety of
17 microwave installations were allayed by Lavell
18 Saunders of the Chief Technology Offices.

19 Understanding the importance of the system
20 to the public's welfare, ANC 1B requests that the
21 Board of Zoning Adjustment act on this request
22 expeditiously. ANC 5B met with the applicant on March
23 6th, and the Commission voted to take action, 11
24 commissioners present and voting. A motion was made
25 to improve the antenna structure at 1700 Rhode Island

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1 Avenue, N.E., and to expedite the processing of this
2 application because of the urgent need for antenna
3 structure relative to public safety in the District of
4 Columbia, and the motion passed unanimously.

5 CHAIRPERSON GRIFFIS: Good. Thank you.
6 That's also your understanding? There is no
7 additional information you would like to provide
8 regarding ANC's?

9 MR. DONOHUE: No, Mr. Chairman, I think
10 that's all.

11 CHAIRPERSON GRIFFIS: Good.

12 MR. DONOHUE: Self explanatory.

13 CHAIRPERSON GRIFFIS: Okay. I did skip
14 over, there was one DDOT report attendant to the
15 McMillan site, and they are, in fact, recommending
16 approval. Of course, they review this for any
17 transportation issues or aspects of the proposal, and
18 they didn't see any in consolidating the existing
19 towers, and they also just point out the fact that the
20 current transportation use in the District poised to
21 access the site will not change. That is all the
22 notes I have in terms of the agency reports.

23 Are you aware of any other reporting
24 agencies on the application?

25 MR. DONOHUE: No, I am not.

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1 CHAIRPERSON GRIFFIS: Okay. Very well.
2 Then I can ask for anyone else, at this point, that is
3 here to testify either in favor or in opposition to
4 either application. We would have Application #16988
5 or #16991. Is that correct? Now that I have shuffled
6 all these papers indeed. Anyone else here to give
7 testimony today?

8 Not seeing anyone approach the table, I
9 think we can move on to any concluding remarks you may
10 have.

11 MR. DONOHUE: I will be very brief, Mr.
12 Chairman, because I know you have had a long day. I
13 am very pleased at the cooperation and collaborative
14 effort between the Office of Planning and the various
15 agencies that have helped OCTO along in this process.

16 When we first looked at it, we looked at
17 the time frames that they were giving us, it didn't
18 look very likely, but I think that the folks at OP
19 were very, very helpful and I think the staff at
20 Office of Zoning were certainly very helpful, and the
21 Board accommodated us in our request to be heard and
22 heard expeditiously. It is certainly very much
23 appreciated.

24 The urgencies that were articulated by
25 Rick Burke, Chief Short and Officer Campbell are very

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1 real. They talk about a September date to spend the
2 money. Construction takes a lot more than just
3 writing a check, and there are approvals and there are
4 sign offs and procurement, all kinds of things have to
5 happen.

6 The rooftop installations are, as stated
7 by Mr. Burke, going forward right now, but these
8 applications that have a much longer lead time were,
9 frankly, a real worry when we first looked at their
10 scheduled. So I am very pleased to have been hurried
11 here today and we're pleased to be through today,
12 especially considering how long you went in your
13 morning agenda.

14 I would submit that we have met the burden
15 of proof and satisfy the criteria contained in the
16 code. I think we have been sensitive to the issues
17 that were identified during the text amendment. You
18 may recall that I submitted some information to the
19 Zoning Commission in connection with the OCTO work,
20 but we have treated these two separately as BZA
21 special exception cases.

22 I don't really have anything further, but
23 I certainly appreciate your time this afternoon and
24 thank you.

25 CHAIRPERSON GRIFFIS: Good. Thank you

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1 very much. Is there any last questions from the
2 Board, any clarifications? Okay. I think it would be
3 best then to move ahead with action, and what I would
4 like to do is propose two motions and we can take
5 those simultaneously.

6 The first motion, of course, would be for
7 the approval of Application #16988, which is the
8 special exception to replace the existing
9 telecommunications tower, poles and one lattice tower
10 and equipment shelter as part of the District's
11 emergency communications network under section 212,
12 and that is for the premises at McMillan Drive, 320.

13 Let me post the two motions in general,
14 and then we can have deliberative discussion on the
15 motions and on conditions in order to gain final
16 action by this body.

17 The second would be approval of
18 Application #16991, and this would be for the monopole
19 at premises 1700 Rhode Island Avenue, N.E, and which I
20 might add is a much more attractive design. Do I have
21 a second on those motions?

22 VICE CHAIR RENSHAW: Second.

23 CHAIRPERSON GRIFFIS: Thank you very much,
24 Ms. Renshaw. Let me first speak generally to the
25 motion. I think it has been clear, and I think even

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1 before we started this hearing, the importance of
2 emergency preparedness and the communication network
3 that facilitates that in its preparedness and in its
4 action in our daily lives in the city and also,
5 hopefully never, but in any sort of catastrophic
6 event. So we were clearly attentive to the issue.

7 I think that the Zoning Regulations that
8 need to be addressed in terms of 212 have been
9 adequately broached in the written form and in the
10 oral testimony that we have heard today in terms of
11 satisfying the special exception case, so I will not
12 reiterate the entire arguments with that.

13 However, as all special exceptions, there
14 are potentially adverse impacts that need to be
15 conditioned, so that we can either eliminate or
16 mitigate those, and so with that, I would open the
17 discussion for potential conditions to each of these
18 applications.

19 VICE CHAIR RENSHAW: Mr. Chairman, I go
20 back to my request that there be no co-location, and I
21 believe Ms. Mitten has added to that no signs.

22 CHAIRPERSON GRIFFIS: Okay.

23 COMMISSIONER MITTEN: I think we need to
24 clarify co-location by commercial users.

25 VICE CHAIR RENSHAW: Commercial users,

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1 correct.

2 COMMISSIONER MITTEN: But encouraging co-
3 location among agencies.

4 VICE CHAIR RENSHAW: Correct.

5 CHAIRPERSON GRIFFIS: Rather that
6 precluding something, can we not make a condition that
7 is addressing what we actually want? I guess my point
8 would be in the future, in five years, what happens if
9 this whole system is privatized, but provides the same
10 service?

11 I mean, I don't know that that's a
12 potential, but that's where my thought process goes.
13 Is there a condition that would adequately address
14 both of your concerns and perhaps the Board's
15 concerns, and that is that these poles be used
16 exclusively for -- I will probably need help with the
17 specific language, but for the District's emergency
18 communications network?

19 COMMISSIONER MITTEN: To be honest with
20 you, I think the preclusion is probably better,
21 because let's say that some other non-emergency, but
22 still District function should want to co-locate
23 there, I mean, I don't think you would want to
24 preclude that or make them come back for some kind of
25 zoning action.

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1 CHAIRPERSON GRIFFIS: All right.

2 VICE CHAIR RENSHAW: And even --

3 CHAIRPERSON GRIFFIS: I guess what are we
4 trying to stop? What are we trying to mitigate?

5 VICE CHAIR RENSHAW: Mr. Chairman, even if
6 privatized, it would be best for the private operator
7 to understand that on these very crucial monopoles,
8 towers, that there be no commercial co-location and no
9 commercial signs. So that is not going to restrict a
10 private company if it is the operator of these
11 facilities. Do you get my drift?

12 CHAIRPERSON GRIFFIS: Yes, I guess I
13 wonder will we know what the difference is between if
14 that's privately owned or that's publicly owned?

15 BOARD MEMBER ZAIDAIN: Why don't you just
16 say no antennas for commercial use, so if a commercial
17 provider puts on up there that's for public use, it
18 would still be okay. I don't know. I am just trying
19 to --

20 CHAIRPERSON GRIFFIS: Yes, indeed. I
21 guess we can open this discussion a little bit for
22 clarification. Office of Planning?

23 MS. THOMAS: Yes, from my experience in
24 the industry and having been with OP, we are trying to
25 encourage co-location on existing structures as a way

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1 of reducing the visual intrusion of antennas all over
2 the city.

3 CHAIRPERSON GRIFFIS: Right.

4 MS. THOMAS: That said, there is also
5 another issue that you could look at is that
6 commercial carriers, let's say the Sprints and the
7 Nextels of the world, do provide revenue when they
8 locate at these sites. Would we be preventing a
9 source of income to the District if they own these
10 towers? I don't know.

11 BOARD MEMBER ZAIDAIN: What I was going to
12 say, I don't want to get into the second point, but I
13 think the first point is a good one in terms of the
14 co-location. I think she brings up a good point, I
15 mean.

16 CHAIRPERSON GRIFFIS: Yes, what are we
17 trying to --

18 BOARD MEMBER ZAIDAIN: The more I think
19 about it, if a commercial carrier wants to locate in
20 that general area, then there's a service need for a
21 private area. Do we want to force them to try to get
22 up an antenna on their own or to work out an agreement
23 with the a District agency to get an antenna up there?

24 CHAIRPERSON GRIFFIS: Let me hear from Ms.
25 Mitten, because she brought it up, also, Ms. Renshaw,

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1 but what are your concerns with -- what are we trying
2 to safeguard in terms of co-location?

3 COMMISSIONER MITTEN: Well, I mean, the
4 point Ms. Thomas raises is true about the fact that we
5 are encouraging co-location and, you know, we want to
6 have as few towers and monopoles as possible.

7 CHAIRPERSON GRIFFIS: Right.

8 COMMISSIONER MITTEN: I think in this
9 particular instance, because the facility being
10 erected, the tower or the monopole, is meant to
11 provide for expansion in the future and I dare say
12 that with these facilities, you know, there is a
13 public safety issue and, you know, there is, you know,
14 municipal responsibility issues here that are
15 different from commercial demands.

16 And I think that we should be involved in
17 safeguarding the capacity of these for use by the
18 city, because a structure for commercial use is going
19 to be scrutinized much more heavily, because it
20 doesn't have the weight behind it of meeting this very
21 essential public service, notwithstanding that
22 everyone uses their wireless devices, and that's a
23 very important public purpose also, but it's not in
24 the same category as life safety.

25 MR. DONOHUE: Could I make a suggestion,

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1 Mr. Chairman? I am not here to pitch for co-location,
2 but I think Karen is right. It may be that the
3 determination is co-location of, for example,
4 additional whips on here would be appropriate. You
5 could allow that by an amendment of the special
6 exception. Clearly, OCTO would have to consent. They
7 would have to consent in any event.

8 CHAIRPERSON GRIFFIS: Right, right.

9 MR. DONOHUE: The District would have to
10 weigh in. OP would weigh in, and if the Board felt it
11 was appropriate or more appropriate than a proposed
12 new structure, you could amend and that doesn't cause
13 an awful lot of hardship.

14 VICE CHAIR RENSHAW: However, in that
15 regard, there would be community concerns or there
16 could be community concerns because of possible
17 emissions from the co-locators and also community
18 review. The community would want to take a look at
19 this and whether or not this commercial co-location
20 would, shall we say, erase the need to go before the
21 ANCs and make a pitch for.

22 MR. DONOHUE: Well, if you were to amend a
23 special exception, you would proceed to the ANC and
24 you would satisfy their questions about emissions or
25 interference.

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1 CHAIRPERSON GRIFFIS: Your point is we
2 could condition it and if there has to be change for a
3 co-location, they would come back in.

4 MR. DONOHUE: Come back to the Board.

5 CHAIRPERSON GRIFFIS: Right.

6 COMMISSIONER MITTEN: Right, I think
7 that's good.

8 MR. DONOHUE: Which always means back to
9 the ANC.

10 COMMISSIONER MITTEN: Right.

11 MR. DONOHUE: So I think it would be
12 addressed in that case. It would put an additional
13 step on a commercial user and have to --

14 CHAIRPERSON GRIFFIS: Right. I don't have
15 a strong concern. I just think we need to be cautious
16 about how we become the regulating body for an
17 expertise that we may not necessarily be able to
18 predict where its changes will be, but to that, that's
19 fine. I think it's good, definitely the signage.
20 Although, there might be some nice banners on there,
21 but nonetheless, is it appropriate?

22 BOARD MEMBER ZAIDAIN: I have a suggestion
23 for another condition. Just as a safeguard, a
24 catchall, that any and all nonconforming antennas and
25 poles be down before a C of O's issue.

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1 COMMISSIONER MITTEN: Well, first of all,
2 I think the spirit of what you are saying we can
3 capture, but there aren't certificates of occupancy
4 issued for --

5 BOARD MEMBER ZAIDAIN: Really?

6 COMMISSIONER MITTEN: -- antenna towers
7 and monopoles, only building permits, but I think that
8 the condition could be not nonconforming, but the non
9 functioning towers and monopoles.

10 BOARD MEMBER ZAIDAIN: Yes.

11 COMMISSIONER MITTEN: That in each case,
12 that these facilities are meant to replace shall be
13 removed once they are out of service. That could be a
14 condition that I was going to suggest, as well.

15 MS. THOMAS: Could I add just one more
16 thing?

17 BOARD MEMBER ZAIDAIN: You can suggest.

18 MS. THOMAS: Yes, on that same note of
19 adding more antennas and stuff, if you look at the
20 height of these poles let's say at 180 feet or so,
21 they could only take a certain amount of antennas, and
22 structurally they would only be able to support a
23 certain amount of antennas and they need height,
24 spacing at various heights, required spacing.

25 So, you know, it's not as if we're going

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1 to have a whole -- or it could allow a whole
2 proliferation of any other types of antennas in any
3 event, and it would require some structural approval
4 before that could be determined anyway.

5 BOARD MEMBER ZAIDAIN: Are you speaking
6 towards the co-location issue?

7 MS. THOMAS: Yes, I'm sorry, co-location.

8 BOARD MEMBER ZAIDAIN: Okay.

9 MS. THOMAS: And if you are considering
10 adding more antennas to this, it might require an
11 increase in height, which would require, you know, a
12 different set of approvals in any event, which may not
13 happen.

14 CHAIRPERSON GRIFFIS: Okay. Mr. Zaidain,
15 did you understand all that?

16 BOARD MEMBER ZAIDAIN: Yes, I --

17 MS. THOMAS: Sorry if I confused you, but
18 that was just in summation.

19 BOARD MEMBER ZAIDAIN: You didn't confuse
20 me. You might have confused the chair. Did she
21 confuse you? Don't answer that.

22 MR. DONOHUE: Right. You know, frankly, I
23 was paying a bit more attention to your --

24 BOARD MEMBER ZAIDAIN: It seems to be
25 boiled down to if there is going to be any co-location

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1 on this structure, it has to come back first.

2 CHAIRPERSON GRIFFIS: Right.

3 VICE CHAIR RENSHAW: Exactly.

4 BOARD MEMBER ZAIDAIN: A special
5 exception.

6 COMMISSIONER MITTEN: For commercial use.

7 BOARD MEMBER ZAIDAIN: Right, for
8 commercial use.

9 CHAIRPERSON GRIFFIS: That's what we had
10 in terms of certain --

11 BOARD MEMBER ZAIDAIN: Are you okay with
12 that?

13 CHAIRPERSON GRIFFIS: Mr. Zaidain, I want
14 to go to your concern about the removal of the
15 nonconforming antennas and it is a very pertinent part
16 under 212.5.

17 BOARD MEMBER ZAIDAIN: Nonconforming and,
18 I guess, there would be --

19 CHAIRPERSON GRIFFIS: My point would be
20 that our order would not necessarily need to be
21 conditioned, but would evidence that the approval of
22 this, of the new towers, is with the understanding
23 that as shown in the plans by the applicant, the
24 removal of the existing towers. Would that satisfy
25 you?

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1 BOARD MEMBER ZAIDAIN: Yes, that's fine.
2 It's just that this may not be something that you guys
3 want to get into, but I know, and I am not -- at
4 NCPC's office, we regulate GSAs, telecommunications on
5 federal buildings and we tell them we also have a
6 condition on our approval saying if technology changes
7 and you put an antenna up that is different and the
8 other one becomes inoperable, just as a catchall we
9 say you have to bring that one down even though it may
10 be conforming. Obviously, we don't do zoning, but --

11 CHAIRPERSON GRIFFIS: Right.

12 BOARD MEMBER ZAIDAIN: I think we ought to
13 include that there be operating antennas, as well. Do
14 you follow what I am saying?

15 MR. DONOHUE: Mr. Chair?

16 BOARD MEMBER ZAIDAIN: Well, maybe that
17 doesn't need to be addressed. I just wanted to bring
18 it up as something to discuss.

19 COMMISSIONER MITTEN: I think the
20 suggestion is good and it's something that is being
21 incorporated into the new antenna regs --

22 BOARD MEMBER ZAIDAIN: Yes.

23 COMMISSIONER MITTEN: -- about removal of
24 non functioning antennas, and that is what they are
25 going to do. They have no objection to that condition

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1 and it also, given that this perhaps is going to be a
2 set of conditions, is going to be looked to in the
3 future. That's the kind of thing that we want to
4 incorporate.

5 CHAIRPERSON GRIFFIS: Okay.

6 COMMISSIONER MITTEN: And it's just
7 ridding the landscape of, you know, needless pieces of
8 metal.

9 BOARD MEMBER ZAIDAIN: Right.

10 CHAIRPERSON GRIFFIS: Right. I don't have
11 any problem with it. If we need it as a condition, so
12 be it. It is what it was provided as at the
13 submission of the application.

14 BOARD MEMBER ZAIDAIN: I think counsel
15 wanted to say something.

16 CHAIRPERSON GRIFFIS: Okay. Other
17 conditions?

18 COMMISSIONER MITTEN: I would like to
19 propose a condition.

20 CHAIRPERSON GRIFFIS: I thought we were
21 going to have one or two here.

22 COMMISSIONER MITTEN: That's only three.

23 BOARD MEMBER ZAIDAIN: Did you want to
24 speak to that?

25 MR. DONOHUE: If we can go back to the

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1 other condition, I apologize, but I am a little
2 concerned about -- there is really two things. There
3 is removal of antenna and removal of structures in
4 both cases.

5 COMMISSIONER MITTEN: Right.

6 MR. DONOHUE: In both cases, the new
7 structure will have to be constructed and then the
8 antenna relocated to the new structure before the
9 other structure can be taken down. Is that understood
10 or is that --

11 COMMISSIONER MITTEN: That's understood.

12 MR. DONOHUE: Okay.

13 BOARD MEMBER ETHERLY: So at some point,
14 you will have possibly two structures up while you are
15 transitioning?

16 MR. DONOHUE: That's correct.

17 BOARD MEMBER ZAIDAIN: Right. That is
18 why. Are you talking about the removal of the
19 nonconforming while the other one is being built?

20 MR. DONOHUE: In both cases --

21 BOARD MEMBER ZAIDAIN: In both cases?

22 MR. DONOHUE: -- there will be new
23 construction.

24 BOARD MEMBER ZAIDAIN: Right.

25 MR. DONOHUE: And then there will be

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1 antenna physically relocated from other structures to
2 the new structure.

3 BOARD MEMBER ZAIDAIN: Right.

4 MR. DONOHUE: Then the decommissioning and
5 removal of the poles.

6 BOARD MEMBER ZAIDAIN: Right. That's why
7 I suggested the C of O, because I figure you get
8 permits, but there is no C of O issued for this. So
9 whatever the Board's pleasure is fine with me. I just
10 thought it was something we should work out.

11 COMMISSIONER MITTEN: The reason this is
12 so messy is normally we would ask you to write the
13 proposed conditions, and then we would come back
14 another day and vote, but we are trying to do it now,
15 so it's messy.

16 MR. DONOHUE: Understood.

17 CHAIRPERSON GRIFFIS: I don't see a
18 difficulty for this specific -- is to put a time, you
19 know, by six months after the new pole being
20 operational that the existing structures, as proposed
21 in the application, would be removed. Is that a time
22 frame that is realistic?

23 MR. BURKE: Yes, sir.

24 CHAIRPERSON GRIFFIS: Six months?

25 MR. BURKE: Yes, sir, that would be more

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1 than adequate for our needs.

2 CHAIRPERSON GRIFFIS: Okay.

3 COMMISSIONER MITTEN: I would propose a
4 condition that on the 1700 Rhode Island monopole that
5 there will be no lighting on the monopole, mounted to
6 the monopole, unless otherwise required by federal
7 regulations, which would accommodate Mr. Donohue's
8 concern about if the FAA regulations were to change,
9 that they wouldn't have to come back to us in order to
10 install lighting on the monopole.

11 CHAIRPERSON GRIFFIS: Right. I would just
12 add federal or local regulations. I mean, some
13 regulatory body may -- I don't know if there is a
14 local aviation administration.

15 COMMISSIONER MITTEN: All right.

16 CHAIRPERSON GRIFFIS: But they darn well
17 better start one if there isn't. Anything else?

18 BOARD MEMBER ZAIDAIN: Curtis, do you want
19 to add more?

20 BOARD MEMBER ETHERLY: Oh, no, I am ready
21 to vote.

22 BOARD MEMBER ZAIDAIN: Okay.

23 CHAIRPERSON GRIFFIS: Will you put a
24 condition that it has to be painted as approved by the
25 BZA all the way up the monopole?

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1 VICE CHAIR RENSHAW: Yes, okay, now we'll
2 take 20 minutes discussing color.

3 BOARD MEMBER ZAIDAIN: I'm thinking
4 periwinkle.

5 CHAIRPERSON GRIFFIS: All right. Before
6 we lose total control --

7 BOARD MEMBER ZAIDAIN: It's the last case
8 of the day. We get punchy.

9 CHAIRPERSON GRIFFIS: Everyone clear on
10 what it is?

11 VICE CHAIR RENSHAW: That's appropriate.

12 CHAIRPERSON GRIFFIS: Then I would ask for
13 all those in favor of both motions, I will call the
14 vote on both motions simultaneously, so all those in
15 favor, please, respond by saying aye.

16 ALL: Aye.

17 CHAIRPERSON GRIFFIS: And opposed? Excuse
18 me. Very well.

19 MS. BAILEY: Mr. Chairman, just so that I
20 can be clear about the conditions that were approved
21 just one final time. The non functioning structures
22 shall be removed when they are out of service. That's
23 one condition, and that is for both applications?

24 COMMISSIONER MITTEN: Actually, I think
25 the language was modified that the non functioning

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1 antennas and the structures on which they are located
2 will be removed within six months of the respective
3 tower or monopole becoming operational.

4 MS. BAILEY: Thank you. Did we make a
5 final determination about the co-location or co-
6 locators? There shall be no commercial co-locators or
7 signs on the poles or tower. Is that a condition for
8 both applications?

9 CHAIRPERSON GRIFFIS: Yes, that's my
10 understanding.

11 MS. BAILEY: And then lastly for the Rhode
12 Island Avenue project, there shall be no lighting on
13 the pole unless designated or by federal or local
14 regulations.

15 VICE CHAIR RENSHAW: Designated or
16 required.

17 CHAIRPERSON GRIFFIS: Yes, then we'll just
18 say required.

19 COMMISSIONER MITTEN: And then there was a
20 condition about no advertizing or signage on the tower
21 or monopole.

22 CHAIRPERSON GRIFFIS: We should put that
23 in with the co-location.

24 COMMISSIONER MITTEN: Oh, I'm sorry.

25 CHAIRPERSON GRIFFIS: No, but it may be

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1 effective to separate those out.

2 MS. BAILEY: For both applications, the
3 vote is recorded as 5-0-0 to approve. That is
4 Application #16988 and #16991, motion made by Mr.
5 Griffis, seconded by Ms. Renshaw. Ms. Mitten and Mr.
6 Zaidain and Mr. Etherly are in support. And these are
7 summary orders, Mr. Chairman, I am assuming.

8 CHAIRPERSON GRIFFIS: Yes, unless there is
9 any objection to making summary orders, I think we can
10 proceed in that fashion. Very well. Is there
11 anything else?

12 MR. DONOHUE: Mr. Chairman?

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. DONOHUE: I beg your pardon, because I
15 never want to snatch defeat away from victory. The
16 language I thought the Board agreed to was no co-
17 location of commercial users unless by amendment of
18 the Board.

19 COMMISSIONER MITTEN: That goes without
20 saying, really.

21 CHAIRPERSON GRIFFIS: Yes.

22 COMMISSIONER MITTEN: Because you can
23 always amend a special exception.

24 CHAIRPERSON GRIFFIS: That was my
25 understanding. Would it be effective to put that in?

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1 Is there a time requirement for amendments to a
2 special exception? I just want clarification. That's
3 what I am doing.

4 MS. MONROE: Mr. Chairman?

5 CHAIRPERSON GRIFFIS: Yes.

6 MS. MONROE: I think it would be a good
7 idea to put it in just to make it clear. I mean, it
8 may go without saying, but why not say it?

9 CHAIRPERSON GRIFFIS: Because we have
10 gotten in trouble before by stating the obvious in
11 conditions, but I don't think we need to belabor the
12 point. I would be satisfied that if we add that in,
13 that unless it's by amendment, noting a relief
14 possibility for that specific condition, and I think
15 it may also identify the fact that we took that under
16 consideration as one might look at it.

17 BOARD MEMBER ZAIDAIN: I have just been
18 informed that the time limit to amend a condition is
19 six months.

20 CHAIRPERSON GRIFFIS: You see that? It
21 makes it all the more pertinent for us to include
22 that.

23 COMMISSIONER MITTEN: Oh, it would be a
24 new --

25 CHAIRPERSON GRIFFIS: A new special

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1 exception.

2 COMMISSIONER MITTEN: Let me just say one
3 thing if I could on that.

4 CHAIRPERSON GRIFFIS: Okay.

5 COMMISSIONER MITTEN: Which is if you were
6 to create this language that would seemingly allow an
7 amendment of a special exception beyond six months,
8 then you are rewriting the zoning ordinance and going
9 beyond your jurisdiction.

10 CHAIRPERSON GRIFFIS: Good, and I will
11 take that as a good housekeeping seal from the Zoning
12 Commission as we proceed, which gets to the point
13 where I was in the discussion of we are trying to
14 anticipate, and I am not sure what that condition was
15 actually trying to mitigate, so how do we get out of
16 this one?

17 VICE CHAIR RENSHAW: We could get out.

18 CHAIRPERSON GRIFFIS: No, I think we need
19 to remedy this condition, because right now what we're
20 leaving it as is a total new special exception.
21 Although, the proceedings for an amendment to a
22 condition wouldn't be any less time consuming than a
23 new application.

24 MR. DONOHUE: Mr. Chairman, I don't feel
25 strongly about this. I think it's unlikely that there

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1 is going to be an amendment in order to co-locate, so
2 if it's the judgment of the Board to leave it as it
3 is, I think we will rest on this point.

4 BOARD MEMBER ZAIDAIN: Well, as you said,
5 if they need to amend it, it's the same process
6 essentially.

7 CHAIRPERSON GRIFFIS: Right, and you look
8 at the special exception requirements. I mean, the
9 case could be easily made. Okay. So if there is no
10 major objection, I think we can let it stand as it is,
11 and we may see that at some point. Who knows?
12 Anything else then, anything from staff?

13 MS. BAILEY: Did we determine summary
14 order, did you say?

15 CHAIRPERSON GRIFFIS: Yes.

16 MS. BAILEY: Yes? Okay.

17 CHAIRPERSON GRIFFIS: On both unless there
18 is any objection for summary orders.

19 MR. DONOHUE: None.

20 CHAIRPERSON GRIFFIS: Indeed. Very well.
21 Then I think that takes care of everything this
22 afternoon, unless the applicant has anything of note.

23 MR. DONOHUE: Thank you all for your time.

24 CHAIRPERSON GRIFFIS: Good.

25 MR. DONOHUE: We certainly appreciate it.

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1 CHAIRPERSON GRIFFIS: And thank you and
2 thank you for your patience, and I can adjourn the 11
3 March '03.

4 (Whereupon, the hearing was adjourned at
5 4:43 p.m.)
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