

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 31, 2000

+ + + + +

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., Robert N. Sockwell, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

ROBERT N. SOCKWELL	Vice Chairperson
RODNEY L. MOULDEN	Board Member
ANNE RENSHAW	Board Member

ZONING COMMISSION MEMBERS PRESENT:

KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

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COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Vincent C. Erondy, Office of Zoning
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Ellen McCarthy, Office of Planning
Maxine Brown Roberts, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS	5
<u>APPLICATION OF PENN CAPITAL, LLC</u>	
<u>16629 ANC-6B</u>	6
JACQUES B. DePUY, Esq.	7
Greenstein, DeLorme and Luchs, P.C.	
Suite 900	
1620 L Street, N.W.	
Washington, D.C. 20036-5605	
(202) 452-1400	
<u>WITNESS</u>	
JOHN SARGENT	8
LOU BALODEMAS	18
<u>APPLICATION OF MONIQUE FONTAINE</u>	
<u>16614 ANC-4C</u>	
<u>WITNESS</u>	
BEA BENJAMIN	39
JASON WASHINGTON	56
<u>APPEAL OF EDWARD M. POTTER</u>	
<u>16588 ANC-3D</u>	
PATRICK O'BRIEN	77
O'Brien and Hickey	
7307 MacArthur Blvd., Suite 206	
Bethesda, Maryland 20816	
(301) 263-9270	
EDWARD POTTER	90
LINDSLEY WILLIAMS	165
GEORGE WATSON	240

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

(9:54 a.m.)

VICE CHAIRPERSON SOCKWELL: The hearing will please come to order.

Good morning, ladies and gentlemen. This is the October 31, 2000 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Robert Sockwell, Vice Chairperson, substituting for Sheila Cross Reid, the Chairman. Joining me today is Anne Renshaw to my left, Rodney Moulden to my right, and representing the National Capital Planning Commission and representing the Zoning Commission is John Parsons.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exceptions and variances is: 1) statement and witnesses of the applicant, 2) government reports including Office of Planning, Department of Public

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1 Works, etcetera, 3) report of the Advisory
2 Neighborhood Commission, ANC, 4) parties or persons
3 in support, 5) parties or persons in opposition, and
4 6) closing remarks by the applicant.

5 The order of procedure -- let's see. We
6 don't have any appeals today in the morning session.

7 Cross examination of witnesses is permitted by the
8 applicant or parties. The ANC within which the
9 property is located is automatically a party to the
10 case.

11 The record will be closed at the
12 conclusion of each case except for any material
13 specifically requested by the Board, and the staff
14 will specify at the end of the hearing exactly what
15 is expected.

16 The decision of the Board in these
17 contested cases must be based exclusively on the
18 public record. To avoid any appearance to the
19 contrary, the Board requests that persons present not
20 engage the members of the Board in conversation.

21 Please turn off all beepers and cell
22 phones or set them to silent at this time so not to
23 disrupt these proceedings.

24 The Board will now consider any
25 preliminary matters. Preliminary matters are those

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1 which relate to whether a case will or should be
2 heard today such as requests for postponement,
3 continuance, or withdrawal, or whether proper and
4 adequate notice of the hearing has been given. If
5 you are not prepared to go forward with a case today
6 or if you believe that the Board should not proceed,
7 now is the time to raise such a matter. Does the
8 staff have any preliminary matters?

9 MS. PRUITT: Yes, we do, Vice Chair. On
10 Application 16592, application of Jemals/Cary
11 Carbarn, LLC, in your file we have a letter dated
12 October 20 requesting withdrawal of this application.

13 And that would be the last case on the morning
14 agenda.

15 VICE CHAIRPERSON SOCKWELL: Is there
16 anyone here representing them or is the letter all
17 that we need?

18 MS. PRUITT: The letter is sufficient in
19 and of itself.

20 VICE CHAIRPERSON SOCKWELL: All right
21 then. Do we--

22 MS. PRUITT: That's all the preliminary
23 matters staff has.

24 VICE CHAIRPERSON SOCKWELL: All right.
25 So then, unless we have to vote on that, it's

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1 withdrawn.

2 If there are no other preliminary
3 matters, let us proceed with the first case.

4 MS. PRUITT: Good morning. The first
5 case is Application 16629, Application of Penn
6 Capital, LLC, pursuant to 11 CDMR 3103.2 for a
7 variance from the floor area ratio limitation under
8 Section 771.2 for allowed commercial use for the
9 conversion of an existing mixed use structure in the
10 CAP/C-2-A District at 233 Pennsylvania Avenue, S.E.
11 (Square 762, Lot 839).

12 All those planning to testify, could you
13 please stand and raise your right hand.

14 (The witnesses were sworn.)

15 MS. PRUITT: Thank you. Please be seated
16 and proceed. Oh, I'm sorry. Mr. Chairman, just in
17 reference to this particular case, there is no
18 request for party status. There is an OP report.
19 There is no ANC report at this time, and the property
20 was posted timely and filed timely.

21 VICE CHAIRPERSON SOCKWELL: Thank you.

22 Persons requesting party status.

23 MS. PRUITT: Mr. Chairman, I stated that
24 there was none.

25 VICE CHAIRPERSON SOCKWELL: Oh, you said

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1 none.

2 MS. PRUITT: None. Yes. Correct. I'm
3 sorry.

4 VICE CHAIRPERSON SOCKWELL: I'm sorry. I
5 thought you said there was one.

6 MS. PRUITT: No. There is none.

7 VICE CHAIRPERSON SOCKWELL: Oh, I'm
8 sorry.

9 Mr. DePuy, good morning. You may
10 proceed.

11 MR. DePUY: Thank you. Good morning, Mr.
12 Chairman, Members of the Board.

13 For the record, I'm Jacques DePuy,
14 attorney with Greenstein, DeLorme and Luchs,
15 representing the applicant this morning. I have a
16 very brief opening statement.

17 As has been indicated, this is an
18 application for an area variance to allow office use
19 of the third floor of 233 Pennsylvania Avenue, S.E.
20 The subject property is located in a vibrant
21 commercial corridor that extends from 2nd to 4th
22 Street along Pennsylvania Avenue, S.E. It's located
23 in the Capital Interest Overlay Zone and the Capital
24 Hill Historic District.

25 The application or materials indicate,

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1 the pre-hearing statement indicates satisfies the
2 legal tests for a variance, and I'll very briefly
3 summarize those for the Board. First, the
4 extraordinary exceptional condition is the lot is
5 irregularly shaped. The building is, in addition to
6 being irregularly shaped, an unusually large property
7 compared to properties in the immediate area. It's
8 the only property, as the photographs indicate, that
9 contains a fourth floor, and this bears directly on
10 the FAR request since the building is larger than
11 most similar buildings.

12 Second, there are practical difficulties
13 to the owner that arise out of the shape and size of
14 this building. In particular, because of the fact
15 that it's narrow and the floors are fairly large.
16 There is a large amount of interior space which is
17 difficult for bringing in light and air and,
18 secondly, the building is configured and partitioned
19 in a way which makes it difficult to reconfigure for
20 alternative uses. There are also egress limitations
21 in dealing with a floor plate and size such as the
22 subject property.

23 And then third, the application can be
24 granted without adverse effects on the surrounding
25 community because there is no light or glare, no

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1 noise. There is adequate public transportation in
2 the area. Metro service is ample in this
3 neighborhood, and there are nearby commercial parking
4 lots for visitors to the site.

5 Finally, I'd like to point out that this
6 application has the support of the Capital Hill
7 Restoration Society, ANC 6-B, and the Office of
8 Planning, which is here to testify today, has
9 recommended approval.

10 With that, I'd like to call Mr. John
11 Sargent, our witness, and ask him to identify himself
12 for the record. I will also point out to the Board
13 that our architect is here with us and is available
14 for questions if necessary. That's Mr. Louis
15 Balodemas. Mr. Sargent.

16 MR. SARGENT: Good morning. My name is
17 John Sargent. I live at 5021 McComb Street in the
18 District. I run a real estate company, Retal Hagner,
19 that's been in the District for 96 years.

20 On July 12 we, through a partnership,
21 purchased 233 Pennsylvania Avenue, and just a quick
22 brief overview of this property. Our first mission
23 was to stabilize the building, and that's from the
24 top floor down. Roof was basically Swiss cheese. A
25 lot of -- tremendous amount of water penetration.

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1 The top three floors, including the third floor under
2 review today, top three floors had been vacant for at
3 least five years. It is our understanding that the
4 second and third floor had previously been used for
5 office, although we were never -- never had a permit
6 to do so.

7 And then the ground floor and basement
8 had tremendous amount of rodent infestation and, as a
9 matter of fact, we could not get a termite or pest
10 inspection until we secured the building, so that was
11 our first mission. Put a new roof on, secure the
12 basement and ground floor area.

13 Our desire or our goal here is to restore
14 the building to bring it back to the grandeur that we
15 see in the building, and that's our priority. We
16 have leased the ground floor to Ritz Camera. They
17 have received approval, I believe, from the D.C.
18 Historic Review Board and are quite sensitive to
19 restoration of the property which is compatible with
20 our desire, and that's one reason why we're pleased
21 that they're on the ground floor.

22 The second floor, we have executed a
23 lease with the Association of Former Members of
24 Congress. They again are quite pleased with the
25 building, and that will be their association

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1 headquarters.

2 When it comes to the third floor and how
3 we use the third and fourth floor, we gave serious
4 consideration, really had a careful review of the
5 entire building and its usage. We resolved that it
6 was appropriate and consistent within the
7 neighborhood that we designate the third floor for
8 office use. How did we reach that conclusion? In
9 the middle of August, actually August 15 to be exact,
10 an associate and myself walked all the third floor
11 buildings in that immediate block and also extended
12 our search into the 300 block and just above our
13 property.

14 In our immediate block there are six --
15 we inspected all the third floors that were occupied
16 and, out of that inspection, every single one on our
17 side of the street in the 200 block was occupied by a
18 commercial use, and that is what the board on the
19 left shows and it designates the different uses on
20 the third floors of each of those buildings in our
21 block. And our building is the one that sits up a
22 bit and has the spire, the little spire because of
23 the fourth floor.

24 Our search also went into the 300 block
25 and, while there were some exceptions, the

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1 predominant use on the floor were commercial, and I
2 have additional data on that if that were important
3 to bring up. So we personally went into 11
4 buildings, and that is our report. Since the
5 building is a four story building and there are no
6 other four story buildings in our block, it made
7 sense that we retain the residential use on the top
8 floor. Since it rises above the neighboring
9 buildings, it has wonderful light coming in off
10 Pennsylvania Avenue and it also has it on either
11 side, which makes it very desirable for an apartment,
12 which is what it used to be probably, five, six,
13 seven years ago. And that is our desire. We're not
14 asking for any consideration nor would we because we
15 believe it's very fitting to have an apartment on the
16 fourth floor.

17 So we feel it's appropriate and
18 consistent with the immediate neighborhood and that's
19 why we're here asking for permission for office use
20 on the third floor.

21 In coming up to this meeting, we've met
22 with the ANC and we had a very interesting meeting
23 with the Capital Hill Restoration Society. They
24 brought up a point that was very valid and asked us
25 to consider providing parking in our rear yard. We

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1 have a rear yard, and I must say we're doing
2 everything we can to investigate parking. It's a
3 very reasonable request, and we are exploring that.
4 We're exploring the parking in a number of ways.

5 But first, with their comment about using
6 the rear yard, our rear yard has -- in order to use
7 the rear yard, we must first obtain an easement from
8 a neighboring property owner because our rear yard
9 only has a seven foot frontage on the alley and
10 actually part of that frontage goes right into a
11 basement stairwell in the rear of our property. So
12 while there is -- and I believe the frontage, if I'm
13 not mistaken, is you must have a nine foot opening
14 and, while there is property next to us owned
15 separately by someone else, we are in contact and we
16 are trying to -- we will explore that fully to see if
17 we can obtain some type of easement.

18 I'm an optimistic person, but I think
19 practically that's going to be difficult because our
20 grade also is about a foot higher than the alley, so
21 there are some problems associated with that. Also,
22 the alley is a tremendous bottleneck. Cars are
23 double parked in the alley. It's got a circuitous
24 route to it. Whenever I've been in the alley, I
25 would never want to be the first one to be parked,

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1 even in our rear yard, because I don't think you'd
2 ever get out without some consternation.

3 As Mr. DePuy stated, we have met
4 personally with the parking people at 3rd and Penn,
5 950 Penn and also at 6th and Penn. They are always
6 available for daily parking. There is a list for
7 monthly parking, but we're encouraged that we can
8 certainly get on that list and actually my firm I'm
9 associated with used to do the leasing for 650 Penn
10 and we have a very good relationship with the owner
11 there. So we're going to pull all stops out to help
12 on the parking issue and meet the reasonable concern
13 by the Restoration Society and obviously we're a
14 proponent of Metro. There's a Metro bus on
15 Pennsylvania and the Capital Hill Metro Station is
16 within two and a half blocks.

17 Lastly, we are working with a neighbor
18 who owns six garages that front on the alley but,
19 again, several of them, we understand -- well, we
20 know -- are used for storage purposes. So maybe
21 there's some trading we can do with mini-storage
22 warehouses further out and see what we can do there.

23 The purpose of belaboring this is that we
24 are continuing to investigate and to research this
25 and will do so to meet the reasonable request by the

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1 Restoration Society but also for the benefit of the
2 building and the neighborhood. So that's what I have
3 to say this morning. Our request is to utilize the
4 third floor for office use. We believe it's
5 consistent. We believe it's a reasonable request
6 and, again, maintaining the residential use on the
7 fourth floor, and we thank you for your consideration
8 and review.

9 VICE CHAIRPERSON SOCKWELL: Do you have
10 any other witnesses to bring forward?

11 MR. DePUY: Mr. Chairman, we have the
12 architect with us in case there are questions. I
13 didn't know if there were any architectural questions
14 the Board might have, given that the building is
15 being proposed to be used in its current condition
16 and its current internal configuration, but he is
17 here in case there are questions.

18 VICE CHAIRPERSON SOCKWELL: All right.
19 Then I would want to start. First, it's possible
20 that you would require variance from parking under
21 Section 210.1 of the ordinance as the building is in
22 excess of 3,000 square feet.

23 MR. DePUY: Mr. Chairman, we have in the
24 file and submitted with the application a
25 certification from the Historic Preservation Division

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1 that this is a contributing building for which
2 parking has been waived.

3 VICE CHAIRPERSON SOCKWELL: You have not
4 provided a parking waiver to this Board.

5 MR. SARGENT: It was with the original
6 application, Mr. Chairman.

7 MS. PRUITT: Mr. Chairman, actually it's
8 Exhibit 8. We found it.

9 VICE CHAIRPERSON SOCKWELL: Oh, you did?

10 MS. PRUITT: Yes.

11 VICE CHAIRPERSON SOCKWELL: I didn't see
12 it in my package.

13 MS. PRUITT: It should be --

14 VICE CHAIRPERSON SOCKWELL: No. I saw
15 the Historic Preservation designation. I did not see
16 a parking waiver. Having filled out many of them
17 myself, I was looking for a specific form that would
18 have been signed by HP stating that the parking has
19 been waived for this property. I did not see it. Is
20 this it? Okay. Then we're covered on the parking.

21 Let me get to the next question. In
22 regard to the fourth floor, I assume that this is the
23 same Hagner Real Estate that's on Connecticut Avenue
24 in the 1300 block.

25 MR. SARGENT: Yes, sir. It is.

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1 VICE CHAIRPERSON SOCKWELL: Each side of
2 the street.

3 MR. SARGENT: Yes, sir.

4 VICE CHAIRPERSON SOCKWELL: The fourth
5 floor probably could not be used for commercial
6 anyway because it's already a residential unit. It's
7 too far above the level of egress to be converted
8 into commercial as a single exit location. I would
9 be sure the architect can answer that question.

10 MR. BALODEMAS: Good morning.

11 VICE CHAIRPERSON SOCKWELL: You did swear
12 in?

13 MR. BALODEMAS: I did. Yes.

14 VICE CHAIRPERSON SOCKWELL: Would you
15 identify yourself for the record, please.

16 MR. BALODEMAS: Sure. Lou Balodemas,
17 architect. I live at 4870 Chevy Chase Boulevard,
18 Chevy Chase, Maryland.

19 The fourth floor is connected by a fire
20 escape to the new rear exit stair on the building and
21 then there's an internal stairway as well.

22 VICE CHAIRPERSON SOCKWELL: Okay. So the
23 fourth floor as shown in these drawings has -- well
24 actually, you'd have to be able to egress. You can't
25 egress through a stair to get to another stair, if

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1 that's what you're showing.

2 MR. BALODEMAS: We have another board
3 that has the floor plan on it from the --

4 VICE CHAIRPERSON SOCKWELL: I mean the
5 floor plan that I'm looking at shows the fourth floor
6 that exits directly into the stair tower which is
7 surrounded by -- construction. Am I not correct?

8 MR. BALODEMAS: That's correct.

9 VICE CHAIRPERSON SOCKWELL: All right.
10 And it also shows that in order to access the roof,
11 you'd have to go through the stair to get to the
12 roof.

13 MR. BALODEMAS: That's to the roof of the
14 building, but through this side window through this
15 room, we have an easement with the neighbor, and the
16 fire escape connects to our fire stair. The easement
17 allows for them to egress through our property and
18 allows us to traverse their property to get back to
19 our stair from the fourth floor without having to go
20 up onto our roof.

21 VICE CHAIRPERSON SOCKWELL: That allows
22 you to egress through their property through the
23 window.

24 MR. BALODEMAS: Their building is only
25 three stories.

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1 VICE CHAIRPERSON SOCKWELL: I understand.

2 MR. BALODEMAS: When we come out this
3 window we're on their roof. There's a fire escape on
4 their roof that continues around and connects over to
5 our fire stair back here. They have a window from a
6 third floor level that comes out onto the stair and
7 also comes onto our fire stair.

8 VICE CHAIRPERSON SOCKWELL: I can have
9 some trouble with that, but I'm not the
10 representative of the building code for this issue.
11 But it's only good as long as this building is in
12 existence, and I don't know how to respond to that
13 one. But anyway, we'll leave that alone.

14 Now, you, Mr. Sargent, you spoke to the
15 provision of parking. You spoke to having explored
16 many avenues to achieve some parking, but you had not
17 shown any finalized relationship with any
18 organization to provide parking for your building.

19 MR. SARGENT: That's correct. But I
20 might add, with the association tenant on the second
21 floor, the lease that we have in place, they have
22 three full-time employees and one part-time
23 receptionist, I believe, a student from George
24 Washington University. One of the conditions in our
25 working together with them is to assist them with

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1 parking, and we are in contact with them and it
2 appears that there are several -- I believe at least
3 one of them -- two from the District and one is from
4 Virginia and I believe they have -- it looks like
5 they have been able to secure parking in a lot within
6 walking distance. Our building doesn't work unless
7 we can work with them for this issue.

8 VICE CHAIRPERSON SOCKWELL: One of the
9 issues in Capital Hill is that parking is not always
10 the easiest thing to secure, especially during the
11 business day.

12 I have a question about the plans. If
13 you can look at your exhibits, there is a window that
14 shows on the fourth floor, the third floor, and the
15 second floor drawings that I have, and that window
16 appears to be against a wall.

17 MR. SARGENT: Are you talking about this
18 side window?

19 VICE CHAIRPERSON SOCKWELL: Yes, sir.

20 MR. SARGENT: You're right. There's a
21 light well that's formed in a pocket of the
22 neighboring building that allows some light but no
23 egress from the third or second levels.

24 VICE CHAIRPERSON SOCKWELL: So with
25 regard to that light well and the assertion that the

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1 third floor would not be suitable for residential
2 use, in reality the third floor was residential
3 converted to commercial without a Certificate of
4 Occupancy issued more than likely.

5 But since there was no C of O and you're
6 only dealing with the information -- I'm only dealing
7 with the information that's been provided to me, I
8 would say that if one classifies English basement
9 efficiencies as unlikely units for habitation and
10 since the building code doesn't even require that you
11 have natural light or natural ventilation in a
12 residential unit, there's no way to really say that
13 this floor could not become effectively very
14 effectively residential.

15 MR. BALODEMAS: The building code does in
16 fact require egress from sleeping areas.

17 VICE CHAIRPERSON SOCKWELL: I didn't say
18 anything about egress. I said natural light and
19 ventilation, didn't I?

20 MR. BALODEMAS: Yes, you did.

21 VICE CHAIRPERSON SOCKWELL: Thank you.
22 Now, we can talk about egress. You may bring up the
23 egress issue, but that wasn't what the assertion was.
24 The assertion was natural light and ventilation,
25 things like that. Okay?

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1 MR. BALODEMAS: Apologies. The egress
2 issue -- you're right. The second and third floors
3 have the same layout. Exactly the same layout.
4 Originally the front two rooms, they are two very
5 formal rooms. They each have a fire place separated
6 by nice French doors that pocket into the walls.
7 Those would have been the main living areas. The
8 kitchen was in this one rear room, and these other
9 interior rooms were most likely the bedrooms. The
10 current building code wouldn't allow you to use those
11 as bedrooms because of the egress issue.

12 VICE CHAIRPERSON SOCKWELL: Unless they
13 were grandfather'd as existing units.

14 MR. BALODEMAS: I wouldn't know for
15 certain.

16 VICE CHAIRPERSON SOCKWELL: Well,
17 anything that's existing is grandfather'd. They
18 don't take it away from you once it's been offered
19 and utilized that way. It's when you want to modify.
20 Is your license in Washington?

21 MR. BALODEMAS: Yes, sir. It is.

22 VICE CHAIRPERSON SOCKWELL: Okay. So you
23 are familiar with the building code.

24 MR. BALODEMAS: Yes, sir.

25 VICE CHAIRPERSON SOCKWELL: Okay. Just

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1 wanted to make sure. Under the current building
2 code, anything that is existing and that would be in
3 use would be allowed to remain in use, even as a
4 nonconforming use, under the zoning ordinance and
5 under the building code would not have to be brought
6 up to current building code requirements unless
7 modified extensively. That's under the existing
8 structures aspects of the code.

9 MR. BALODEMAS: Agreed.

10 VICE CHAIRPERSON SOCKWELL: Thank you.
11 Okay. That's all the questions I have for you at the
12 moment. Thank you very much.

13 Board members?

14 All right. I guess we don't have any
15 cross examination at this point, so I would call for
16 the government reports. We do have a report from the
17 Office of Planning which will be given either by
18 Ellen McCarthy or --

19 MS. ROBERTS: Maxine Brown Roberts.

20 VICE CHAIRPERSON SOCKWELL: Maxine Brown
21 Roberts will give the report.

22 MS. ROBERTS: Thank you. Good morning,
23 Mr. Chairman and members of the Board. The Office of
24 Planning is recommending approval of this variance
25 request. The request will be consistent with retail

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1 and office use nature of this portion of Pennsylvania
2 Avenue. Many buildings have been converted leading
3 to the phasing out of residential uses along
4 Pennsylvania Avenue. This is not a suitable location
5 for residences due to the commercial nature.

6 The comprehensive plan also recommends an
7 amendment to the Zoning Ordinance to increase
8 commercial use up to .30 FAR along this commercial
9 corridor. Although this portion of Pennsylvania
10 Avenue was not specified, we think this was an
11 oversight which, as it has similar characteristics to
12 the other areas recommended for change. This change
13 in the zoning regulation would recognize a
14 transformation that has taken place.

15 Section 3103.2 outlines the standards to
16 be met for approval for variance. One is the
17 uniqueness due to shape. The lot is the largest on
18 the block and the building is attached. Due to the
19 shape of the building, light and air can not
20 penetrate directly through the building. Therefore,
21 it is not suitable for residential use.

22 The uniqueness of this building also
23 causes a hardship because of the lack of light and
24 air on the third floor which could render the space
25 unusable. Residential use is further affected by

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1 noise associated with traffic, pedestrian movements
2 due to the proximity of Pennsylvania Avenue.

3 Expansion of commercial use and FAR will
4 not be detrimental to the public good and will not
5 impair the integrity of the zone plan or zoning
6 regulation and map. The proposal furthers the aim of
7 the comprehensive plan, the zoning regulation and map
8 by providing additional commercial space along
9 Pennsylvania Avenue and helping to preserve adjacent
10 residential areas.

11 ANC-6B and the Capital Hill Restoration
12 Society recommend approval of this variance and
13 recommends that the proposed use is consistent with
14 the character of the neighborhood and they have
15 supported this type of conversion of upper floors to
16 commercial use above the recognized FAR in order to
17 encourage office uses in this location and minimize
18 legal uses in adjacent residential areas.

19 The Office of Planning recommends that
20 the variance be approved as the applicant met the
21 standards for approval and has the support of the
22 community. Thank you.

23 VICE CHAIRPERSON SOCKWELL: All right. I
24 would first ask Board Members if they have any
25 questions of the Office of Planning.

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1 BOARD MEMBER RENSHAW: Mr. Vice Chair, I
2 would like the Office of Planning to let us have a
3 copy of whatever it has from ANC 6-B. It states in
4 your report that ANC-6B voted to recommend approval
5 of the requested variance, but we don't have a copy
6 of that report.

7 MS. ROBERTS: We did not get an official
8 report, but I did speak to the Chairman and he
9 conveyed the vote at the hearing.

10 VICE CHAIRPERSON SOCKWELL: We would need
11 to have ANC 6-B's report in hand in order for it to
12 be given the great weight that the ANC is accorded in
13 these hearings. I would request that staff -- should
14 staff contact ANC 6-B or should the -- is their
15 report forthcoming? Have they made a statement as to
16 why it's not forthcoming?

17 MS. PRUITT: No. They have not made a
18 statement and I guess traditionally staff has not
19 contacted each ANC if there is no report coming in.
20 We check our records daily to see if a report has
21 come in late and a waiver is required.

22 VICE CHAIRPERSON SOCKWELL: So we don't
23 have anything from ANC 6-B.

24 MS. PRUITT: I think it's generally
25 assumed if you don't hear anything, there's no

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1 opposition.

2 VICE CHAIRPERSON SOCKWELL: Yes, the
3 assumption is but the assumption is also that they're
4 not accorded their great weight if the report is not
5 here.

6 BOARD MEMBER MOULDEN: Can the Board
7 waive that based on the information that we have from
8 the Office of Planning?

9 VICE CHAIRPERSON SOCKWELL: No. An
10 official report is --

11 MS. PRUITT: You don't need an ANC report
12 to make a decision.

13 VICE CHAIRPERSON SOCKWELL: A decision.

14 MS. PRUITT: It's just that if you have
15 it and it's done correctly, it does get great weight
16 and you have to address that in your decision but, in
17 this case, you don't have it.

18 VICE CHAIRPERSON SOCKWELL: So it's not
19 in the record.

20 Other Board Members, questions?

21 I have a question of the Office of
22 Planning's report. Ms. Brown-Roberts, in the
23 uniqueness description which is exceptional
24 narrowness, shallowness, shaped topography or other
25 extraordinary exceptional situation or condition, you

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1 stated that because the building has common walls on
2 two sides, light and air are filtered in only from
3 the front and rear. Due to the turn in the middle of
4 the building, light and air it not able to filter
5 straight through from front to back and, therefore,
6 make the second and third floor space not conducive
7 to residential use.

8 My question to you is that in an
9 apartment building, typical double loaded corridor,
10 you have apartments on one side of the building and
11 apartments on the other side of the building. There
12 is no penetration of light and air from one side of
13 the building to the other. What makes those
14 apartments suitable and the building that just has
15 one width between the walls as opposed to many
16 apartments different?

17 MS. ROBERTS: I'm not sure if I have a
18 direct answer for that, but I would say that if
19 someone had the choice in a situation like that where
20 they had more air coming in or light penetrating into
21 the building, I think they would make the choice of
22 going to --

23 VICE CHAIRPERSON SOCKWELL: Let me say
24 that most apartment buildings, most apartments and
25 most apartment buildings, don't have through

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1 connections from one side of the building to the
2 other in larger double loaded corridor situations.
3 It's generally the corner units that might have
4 windows on two sides, but very seldom are those
5 apartments going completely through the building.
6 And what I'm trying to state is that the contention
7 that this condition reduces the conduciveness of a
8 space to residential use is not one that can be
9 supported by the predominance of buildings in
10 residential use as apartments in this city. As well,
11 it tends to make Capital Hill's English basement
12 efficiencies look like very undesirable units when
13 they are probably one of the most desired units in
14 town.

15 MS. ROBERTS: Mr. Chairman, I don't think
16 we're saying that it's impossible. I just think
17 we're trying to state that it is not conducive or
18 it's less desirable.

19 VICE CHAIRPERSON SOCKWELL: Yes, and what
20 I'm saying is there's really no way to support that,
21 and I'm saying that you, if you're going to use a
22 justification, it should be one that can be supported
23 and the way the justification is written, it can't be
24 supported. There's just no reason to believe that
25 this makes any sense to me. So I would request that

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1 that particular statement be purged from your report
2 because it does not -- it's not supportable.

3 MS. MCCARTHY: Mr. Chair, I think -- I
4 mean we're not arguing with that. I think that's why
5 we said it wasn't conducive. We certainly didn't say
6 it was impossible. To a certain extent there's a
7 balancing test as to what constitutes undue hardship,
8 and in those instances where something is otherwise a
9 perfectly desirable land use where there would be
10 some impact to the zone plan or the comprehensive
11 plan, we would apply that test more stringently.

12 In this case, Capital Hill Restoration
13 Society, which has certainly been one of the primary
14 protectors of residential property against conversion
15 into commercial use, makes the case which, as Ms.
16 Brown-Roberts indicated, the Office of Planning has
17 some agreement that for those commercial nodes along
18 Pennsylvania Avenue there should be some leeway
19 granted.

20 In fact, they argue -- they have asked
21 that the Office of Planning look at doing an overlay
22 which would change the balance between commercial and
23 residential FAR in those B2A districts because they
24 argue, #1, it's Pennsylvania Avenue. It's a very
25 busy commercial area and not generally an attractive

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1 one for residential use and, secondly, that the age
2 of those buildings and the requirement among most of
3 them for investment in order to protect their
4 structural soundness and to have them continue
5 functioning effectively as part of healthy commercial
6 nodes along Pennsylvania Avenue require that the
7 amount of office space be sufficient to be able to
8 capitalize that investment in addition to the fact
9 that by providing more commercial area in those
10 nodes, it helps protect the rest of the neighborhoods
11 from the pressure for home offices, illegal
12 conversions and the kinds of pressures which are
13 experienced broadly on Capital Hill.

14 I realize that that is a context for
15 application of the zoning regulations and explains
16 why we were -- I'm only trying to explain, I guess,
17 why we were interpreting undue hardship liberally. I
18 think certainly if the architect -- if we had had
19 further conversation with the architect and had
20 pushed more and learned more about the egress issue
21 from the bedrooms, we would have mentioned that in
22 the report as one of the undue hardships that we
23 thought were applicable in this case.

24 VICE CHAIRPERSON SOCKWELL: Well, I just
25 want to say, Ms. McCarthy, that the Capital Hill

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1 Restoration Society's letter spoke not to the
2 undesirability of the space for residential units.
3 It spoke only to the protection of the surrounding
4 residential community from illegal uses. Therefore,
5 I'm sure the Capital Hill Restoration Society did not
6 expect the Office of Planning to so liberally
7 interpret what they said as to the point of putting
8 in elements that it did not mention at all.

9 MS. MCCARTHY: I'm relying --

10 VICE CHAIRPERSON SOCKWELL: You basically
11 say in the context of the Capital Hill Restoration
12 Society's support that they agreed with those
13 contentions, but they only spoke to one thing which
14 is over the years the Society supported variances to
15 allow commercial use of upper floors of buildings in
16 the C2A zones on Capital Hill. We have long
17 recognized the hardship faced by owners who can not
18 find residential tenants for walk-up apartments over
19 the store.

20 But in this market place, we have a 95 or
21 better percent rental rate on any apartment that's
22 available. This is not a discretionary condition.
23 This is if you can find it, get it. So I don't see
24 that under today's circumstances there is much
25 support for that situation. Of course, we can always

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1 say that back when Reston was built and they did the
2 residential over this retail in Lake Ann Center, it
3 was considered to be unique but it was also a
4 recharacterization of town planning and more in the
5 neoclassical but modern style of town planning.

6 But anyway, I don't want to get too
7 deeply into that, but I will say that beyond that
8 everything else that seems to have been presented
9 seems to be okay with me. Are there any questions of
10 the Office of Planning or is there any statement that
11 you'd like to make, Mr. DePuy?

12 MR. DePUY: No, Mr. Chairman.

13 VICE CHAIRPERSON SOCKWELL: I don't
14 believe we have any reports from anyone else or any
15 parties, no one else here in support or in
16 opposition, so if Board Members have no other
17 questions, I would suggest closing remarks by the
18 applicant.

19 BOARD MEMBER RENSHAW: Mr. Vice Chair,
20 yes, I do have a question. I'm referring to the
21 large board on our left which is the third floor
22 commercial tenants that block face, and I note that
23 there are 10 addressees which you did not survey.
24 About three or four of them seem to be two story
25 buildings, but I'd like to know if you do know

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1 whether or not the second and the third floors of the
2 three story buildings are commercial or residential.

3 MR. SARGENT: It was August 15, it was a
4 very hot day. I surveyed personally walking up to
5 all the third floors. I did not focus on the second
6 floor, but I certainly have a fairly good grasp, I
7 believe, on the second floor usage, and my
8 recollection is that -- I can not swear to it 100
9 percent but I would say without a doubt that pretty
10 much all of the second floor uses are commercial. We
11 really were focusing our attention on the third floor
12 and they are all -- all the ones occupied are in
13 commercial use in our block.

14 BOARD MEMBER RENSHAW: I take it that
15 your building and the other buildings don't have
16 elevators.

17 MR. SARGENT: I'm not aware of an
18 elevator in any -- no. We do not and we're the one
19 that should if we could.

20 BOARD MEMBER RENSHAW: Very aerobic style
21 building.

22 VICE CHAIRPERSON SOCKWELL: New York
23 style.

24 All right. Closing remarks.

25 MR. DePUY: Thank you, Mr. Chairman. Two

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1 points. First, I'd like to, in recognition of the
2 Chair's point, amend our justification with respect
3 to practical difficulty to refer, as Mr. Balodemas
4 testified, to the egress difficulty with respect to
5 the interior of the third floor.

6 Secondly, I'd like to emphasize that the
7 test is not undue hardship, which has been discussed
8 here today, but is in fact practical difficulty.
9 This is an area variance, and we do not need to prove
10 to the Board that residential use is not feasible.
11 We simply need to point out practical difficulty to
12 the owner arising out of the exceptional condition of
13 this particular structure.

14 Having said that, if the Board is so
15 disposed, given the status of this application, we
16 would request a bench decision and a summary order.
17 Thank you.

18 VICE CHAIRPERSON SOCKWELL: Thank you
19 very much.

20 Board Members.

21 MR. PARSONS: Move we approve the
22 application.

23 BOARD MEMBER MOULDEN: I second.

24 VICE CHAIRPERSON SOCKWELL: Discussion.
25 I personally believe that to the extent that an

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1 exceptional or extraordinary condition exists with
2 the building, it would be the fact that it is
3 uniquely four stories and that in the context of
4 other buildings which have top story residential
5 intermediate and lower story commercial uses, this
6 would be consistent with their condition.

7 While I disagree, and very much so, on
8 the light and ventilation issues which were raised in
9 various supporting documents, both by the applicant
10 and the Office of Planning, because the fourth story
11 and the third story all get the same amount of light
12 front and rear, the fourth story probably gets more
13 reflection off the roof than might be desirable but
14 there again, based on the appearance of the few
15 significant trees at the upper elevations, there
16 would be significant light to all.

17 But I do believe that on the basis of the
18 conditions prevailing within the contextual buildings
19 surrounding it that it would not be improper to allow
20 a commercial use on the third floor albeit the fact
21 that the third floor had not been given a certificate
22 of occupancy, at least not one that was found, for
23 its previous commercial occupants.

24 As well, with regard to parking, the
25 applicant has professed a desire to achieve some

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1 level of parking relief for street parking by having
2 at least approached parking operators within the
3 general area. Now, I don't know that -- because you
4 don't have to have any parking by virtue of your
5 historic preservation waiver of parking and loading
6 requirements, this Board can not condition you to
7 provide parking, I do not believe, because you are
8 exempt.

9 But it would be my hope that you would
10 attempt to provide some level of off street parking
11 through hopefully parking sources that have not been
12 totally utilized, in other words, that there is some
13 over capacity in some adjacent or nearby parking
14 facilities that could be made available, at least to
15 the employees of your property perhaps with some
16 contractual relationship that could occur. But
17 beyond that, I believe that your request is
18 reasonable and has met the tests required.

19 Any other?

20 So I would call for the vote. All in
21 favor say aye.

22 (Ayes)

23 VICE CHAIRPERSON SOCKWELL: Opposed.

24 MS. PRUITT: Staff would record the vote
25 as four to zero to approve motion made by Mr. Parsons

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1 and seconded by Mr. Moulden. Summary order.

2 VICE CHAIRPERSON SOCKWELL: Your order
3 should be prepared within two weeks. Thank you for
4 your time.

5 MR. DePUY: Thank you very much.

6 VICE CHAIRPERSON SOCKWELL: Next case.

7 MS. PRUITT: Next case on the morning
8 agenda is 16614 Application of Monique Fontaine
9 pursuant to 11 DCMR 3104.1 for a special exception
10 for the establishment and enlargement of a child
11 development center under Section 205 for 50 children
12 ages six weeks to 12 years of age with eight staff
13 persons and a before and after school program in an
14 R-4 District at 4514 13th Street, N.W., Square 2817,
15 Lot 48.

16 All those planning to testify, would you
17 please stand and raise your right hand.

18 (The witnesses were sworn.)

19 MS. PRUITT: Mr. Chairman, in reference
20 to this case, there is no request for party status.
21 We did receive an ANC report a little late, and that
22 should be in your supplemental information.

23 VICE CHAIRPERSON SOCKWELL: Yes, we have
24 it. Thank you.

25 Since there appear to be no persons

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1 present in either support or in opposition to your
2 case, I would ask you to hit the most salient points,
3 and you may be reasonably brief with your
4 presentation. We have read the documentation.

5 MS. BENJAMIN: Thank you, Mr. Chair,
6 Board Members.

7 My name is Bea Benjamin. I'm here
8 representing Monique Fontaine and her day care
9 center's expansion application. Ms. Fontaine, a 14
10 year resident of the community, is asking for a
11 special exception for enlargement of her child
12 development center from the presently authorized 15
13 children and two workers to a maximum of 50 children
14 and eight workers.

15 The facility is located at 4515 13th
16 Street, N.W., Square 2817, Lot 48. In accordance
17 with Section 205 of the District of Columbia
18 municipal regulations, the center has proven itself
19 capable of meeting all applicable code and licensing
20 requirements for it has met such requirements since
21 1996 on one level of the premises and is here seeking
22 to expand its use to the other two levels.

23 Having been inspected and granted
24 Certificate of Occupancy for 15 children on the
25 ground level, we therefore estimate that on the

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1 second level we would be able to get 20 children and
2 on the other level 15 thus approximating the 50
3 requested in the application. According to 205.3,
4 the question of traffic conditions, drop off and pick
5 up points were exhaustively addressed in two ANC
6 meetings held earlier this month on the 9th and 10th
7 of October. Those meetings resulted in an almost
8 unanimous citizen vote on the 9th and a unanimous ANC
9 Commission vote on the 10th of October with
10 exceptions which appear in the file to a few
11 conditions that the parties have agreed to meet.

12 At those meetings, we agreed to drop off
13 points primarily in the rear in the mornings and in
14 the evenings to front or rear exits given that
15 traffic and parking patterns permit easy parking in
16 the front of the building in the evening.

17 Also aiding in limiting traffic impact is
18 the fact that arrivals and departures are staggered.

19 The center is open from 6 a.m. until 6 p.m.
20 Additionally, a large number of the parents using the
21 center are within walking distance or take public
22 transportation. Further, the center operates and
23 proposes to continue operating as a before and after
24 school care facility in addition to its all day care
25 center for the youngest children. So the actual

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1 number of children that will be present throughout
2 the day is also staggered.

3 Concerning the parking issue, there is in
4 fact a two car garage in the rear of the building.
5 Additional side street parking is available on
6 Buchanon and Allison. However, presently neither of
7 these options are necessary because the workers at
8 the center are either already on site or within
9 walking distance. Further, many of the parents and
10 prospective teachers are also within walking distance
11 of the center.

12 205.5. The center has a fully fenced
13 yard. There's a privacy yard there which provides
14 outdoor play area with slides, playhouse, etcetera,
15 for the children and has operated with this without
16 disruption to or concerns from its closest neighbors
17 for years. There have been no complaints of noise or
18 trash as a result of the operation of this center.
19 Additionally, conveniently located approximately one
20 block from the center is a public play area to which
21 the children are taken with adequate supervision to
22 ensure safety and facilitate outdoor play.

23 While there are several schools in close
24 proximity to the address in question, we know of no
25 other such child development centers within 1,000' of

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1 this location. We'd also like to add that this
2 center offers highly skilled workers in the area of
3 education and child care development. The owner, Ms.
4 Fontaine, has a bachelor's degree in science with a
5 minor in nursing. She also has a master's in health
6 care administration and is presently enrolled in a
7 master's program in early childhood development. One
8 of her present workers has a bachelor's of education
9 as does another prospective employee.

10 Ms. Fontaine proposes not just child care
11 but good skilled child care and development. It is
12 appreciated and supported by the neighborhood
13 parents. The center is presently full to capacity
14 and has a 20 child waiting list. We therefore would
15 seek your approval of the expansion request before
16 you.

17 VICE CHAIRPERSON SOCKWELL: Thank you.

18 Board Members.

19 MR. PARSONS: Mr. Chairman, I'm a little
20 troubled by this case because we have no Office of
21 Planning report. We sought the advice of the Child
22 Care Branch of the Department of Health. We have no
23 report from them, and there are no plans for the
24 building, that is floor plans, and I would, in that
25 context, ask the applicant how it plans to

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1 accommodate 50 children in this relatively small
2 space.

3 MS. BENJAMIN: I do believe that there
4 were floor plans submitted by Ms. Fontaine with the
5 original application. Is that not correct, Ms
6 Fontaine? I was not with her at the time, but I do
7 believe those were submitted. Additionally -- you
8 did not? Did you submit it? Okay. Ms. Fontaine has
9 informed me that they were in fact submitted with the
10 original plans. One moment. I do believe I may have
11 a copy of such.

12 VICE CHAIRPERSON SOCKWELL: Apparently
13 the plans did not reach the master file or the Board
14 Members' review packages, so while those are being
15 copied --

16 MR. PARSONS: Maybe it would be best if
17 you describe how you came to the number 50.

18 MS. BENJAMIN: Okay. Basically at
19 present there is a child care and development center
20 being operated on the ground level of the building,
21 and there is a Certificate of Occupancy approving 15
22 for that level. We are proposing the use of the
23 first and the second floor for the same purpose.
24 Based on the inspector's review and selection as 15
25 as the number that can be accommodated on the ground

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1 level and the first level being larger than the
2 ground, we approximate. Of course, this would be
3 subject to the inspector's review and their election
4 of number, but we approximate 20 for the first floor
5 and with the second level being approximately the
6 same size as the ground level, we are therefore
7 assuming an additional 15. Therefore, we're coming
8 up with the number of 50, the total of 50.

9 VICE CHAIRPERSON SOCKWELL: Yes. Mr.
10 Parsons, if they haven't changed the name of it, the
11 Service Facilities people that would regulate
12 childcare and child development centers will make the
13 determination of how many children can be
14 accommodated, regardless of what the Board allows.

15 MR. PARSONS: Oh, yes. It won't be this
16 Board that does it.

17 VICE CHAIRPERSON SOCKWELL: Even if we
18 say 50, they could say 40 and that would be the
19 binding number based upon their evaluation.

20 MR. PARSONS: You've not made an
21 application because you haven't got any approvals
22 from us.

23 MS. BENJAMIN: An application was in fact
24 initially filed prior to coming here and then it was
25 determined that we had to come and get approval from

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1 your division.

2 VICE CHAIRPERSON SOCKWELL: Under the
3 normal referral process.

4 MS. BENJAMIN: Exactly.

5 BOARD MEMBER MOULDEN: Is there any
6 outdoor play area?

7 MS. BENJAMIN: Yes. There is a fenced
8 outdoor play area fully privacy fenced and there are
9 outdoor activities for the children, but there is
10 also a close by play ground that the children are
11 taken to.

12 BOARD MEMBER MOULDEN: Do you have it
13 broken down into out of the total 50 spaces that you
14 have allotted for the children, is there going to be
15 certain age groups?

16 MS. BENJAMIN: There would at that point
17 be, yes. The floors would be divided. The children
18 would be separated by age group on each floor.

19 BOARD MEMBER MOULDEN: How many in each
20 age group?

21 MS. BENJAMIN: Ms. Fontaine would better
22 be able to give you specifics as to the number of
23 children.

24 MS. FONTAINE: We have some infants.
25 What we plan to do is really to get them in small

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1 groups to play outside at a different time of the day
2 and also we will have preschoolers mainly and that's
3 when they will come and play, you know, outside,
4 different level, and we will take them in the
5 communities to play also. And when it comes to
6 before and after school, that's the next level.
7 Those children, we have computer classes for them and
8 the focus is not going to be on play only. When they
9 come from school, we expect them to really do their
10 homework which we are doing with them and help them
11 and really them to learn some other skill until their
12 parents come and pick them up. They will have snack
13 and play. It's not like play all the time.

14 BOARD MEMBER MOULDEN: Out of the total
15 50 spaces that you have allotted for children between
16 the ages of eight -- the maximum of 12 years old.
17 Right?

18 MS. BENJAMIN: The original application
19 was for up to a maximum of 12. One of the --

20 BOARD MEMBER MOULDEN: The age groups.
21 I'm talking about age groups.

22 MS. BENJAMIN: The age group. The age
23 group we originally requested was up to age 12.
24 However, one of the ANC suggestions was that it be
25 limited to age eight and we have agreed to that.

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1 However, just to point out the largest number of the
2 children presently in the center are in fact infants
3 and they would be the ones that would be accommodated
4 on the ground floor.

5 BOARD MEMBER MOULDEN: Right. To answer
6 my question, do you know specifically how many you
7 will have out of the 50? Will it be 25 infants
8 versus 25 age six or eight?

9 MS. BENJAMIN: At this point, she --

10 VICE CHAIRPERSON SOCKWELL: Mr. Moulden,
11 one of the things that's required is that infants be
12 housed on a ground floor, not on an upper floor. The
13 number of infants, the number of toddlers, is going
14 to be established on a square foot basis and based
15 upon certain recreation area, and that's not really
16 our call to get so deeply into that. As long as the
17 city approves them for their operation, we are really
18 here to approve the use of more than the accepted
19 portion of the building which is allowed under the
20 home care provisions of the code. The section that
21 is actually in question is -- it's legal now as an
22 accessory use in home with no outside staff allowed.
23 Immediate family only and their C of O is for 15
24 children, two staff, and that's as an accessory use
25 to the main use of the building. The people who

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1 operate it have to live there. Now they want to
2 create a complete change to day care where the
3 operators don't have to live there and they have now
4 a higher number of children to provide for, simply
5 because that's a requirement of the R1 zone and
6 carries forward into the R4 zone where they're
7 located.

8 So I think that what we really need to
9 focus on is whether or not the use is consistent with
10 the zone plan and isn't an objectionable use within
11 the area as opposed to more specifically things that
12 would be regulated by other agencies.

13 BOARD MEMBER MOULDEN: Yes. I understand
14 that, Mr. Sockwell, but sometimes in these cases when
15 they apply, the applicant breaks it down and has
16 detail so you can get a sense of the age group of
17 children versus the space that they're going to be
18 in. That's why I asked that.

19 VICE CHAIRPERSON SOCKWELL: I see. So we
20 know all infants will be on the first floor.

21 MS. BENJAMIN: Correct.

22 VICE CHAIRPERSON SOCKWELL: And the
23 second floor will have 15, as proposed, 15 non-infant
24 children.

25 MS. BENJAMIN: Correct.

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1 VICE CHAIRPERSON SOCKWELL: It's possible
2 that you can have infants in the basement because
3 that's what you have now, which is a ground floor
4 because of the egress directly from the rear of the
5 building.

6 MS. BENJAMIN: That is correct.

7 VICE CHAIRPERSON SOCKWELL: So I would
8 say that then to answer Mr. Moulden's question, you
9 will have infants on the basement level continuing
10 and you will add infants to the first floor.

11 MS. BENJAMIN: That is correct.

12 VICE CHAIRPERSON SOCKWELL: And you will
13 have something other than infants on the second
14 floor.

15 MS. BENJAMIN: On the second floor. That
16 is correct.

17 VICE CHAIRPERSON SOCKWELL: Okay. And
18 the numbers will be set finally by the District of
19 Columbia regulatory agency that deals with that and
20 that the proposed second and third floor use is 35
21 additional children.

22 MS. BENJAMIN: That is correct.

23 VICE CHAIRPERSON SOCKWELL: First and
24 second floors will be 35 additional children, 20 of
25 whom will be infants, 15 of whom will not, so there

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1 could be a total of 35 infants and 15 toddlers at a
2 maximum age of eight years.

3 MS. BENJAMIN: Correct.

4 VICE CHAIRPERSON SOCKWELL: Okay.

5 MR. PARSONS: The photograph shows a
6 third floor. Is that an attic or is it habitable or
7 what is its situation?

8 MS. FONTAINE: It's an attic.

9 MR. PARSONS: Just an attic?

10 MS. FONTAINE: Yes.

11 MR. PARSONS: So you do not intend to
12 live there?

13 MS. FONTAINE: No.

14 VICE CHAIRPERSON SOCKWELL: Where's the
15 Office of Planning now? All right. So I think we
16 have an understanding of what you're planning. There
17 had been a question in my mind. I was looking at the
18 photographs of the rear yard play area and, while it
19 was probably taken right after the children had
20 swarmed through there, it gave the appearance that
21 things were all over the place, but I'm sure that
22 those toys would normally be put away until they are
23 pulled out, and I noticed that you have ground cover
24 which looks like sort of wood chips.

25 MS. BENJAMIN: Correct.

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1 VICE CHAIRPERSON SOCKWELL: Which is
2 often used in play areas and the gated rear, it's
3 constantly under supervision. The gated rear which
4 we couldn't see the gate but we assume that there's a
5 fenced gate back there because you said so.

6 MS. BENJAMIN: That's right.

7 VICE CHAIRPERSON SOCKWELL: And that is
8 kept closed but not locked to the point that it
9 couldn't be used as egress if there were a need to
10 get the children out of there.

11 MS. BENJAMIN: Correct.

12 VICE CHAIRPERSON SOCKWELL: Yes. It's in
13 some form that you can get out of it if you have to.

14 MS. BENJAMIN: Oh, yes. It's usable.

15 VICE CHAIRPERSON SOCKWELL: All right. I
16 don't have any additional questions. We certainly
17 would have appreciated a report from the Office of
18 Planning on this, but the Advisory Neighborhood
19 Commission, which certainly represents the most
20 proximate neighbors and the community viewpoint on
21 extending uses which are such that they must come
22 before this board, the Advisory Neighborhood
23 Commission has shown unanimous support for you. So
24 unless there are further questions, I would ask for a
25 closing statement by Ms. Benjamin and --

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1 MS. PRUITT: Excuse me, Mr. Vice Chair.
2 I believe we do have the ANC.

3 VICE CHAIRPERSON SOCKWELL: Oh. I have
4 to read the ANC report. I'm sorry.

5 MS. PRUITT: Yes. Excuse me, sir. Are
6 you representing the ANC? But you're not here to
7 read the report. Okay. We do also need a waiver for
8 this report.

9 VICE CHAIRPERSON SOCKWELL: All right.
10 Then I move that we accept the ANC report having been
11 delivered late. I move that we accept it.

12 MR. PARSONS: I second.

13 VICE CHAIRPERSON SOCKWELL: All in favor.
14 (Ayes)

15 VICE CHAIRPERSON SOCKWELL: Opposed.

16 MS. PRUITT: Thank you.

17 VICE CHAIRPERSON SOCKWELL: Then I will
18 read the ANC report dated October 24, 2000 addressed
19 to Jerilyn Kress, Board of Zoning Adjustment. Dear
20 Ms. Kress, this letter is a formal response on behalf
21 of ANC-4C to the request for enlargement filed before
22 the Board of Zoning Adjustment by Fontaine Child Care
23 Center.

24 On October 10, 2000 a quorum of ANC-4C
25 Commissioners met in part to hear testimony and vote

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1 on the request for enlargement filed before the Board
2 of Zoning Adjustment by the Fontaine Child Care
3 Center. Pursuant to the recommendation of the ANC-
4 4C03 Commissioner Adrian Fenty, ANC-4C voted to
5 approve the request for enlargement with the
6 following conditions.

7 1) That the Fontaine Child Care
8 Development Center not enroll children over the age
9 of eight years old, and you have stated, Ms.
10 Benjamin, that that is acceptable to Ms. Fontaine.

11 MS. BENJAMIN: That is correct.

12 VICE CHAIRPERSON SOCKWELL: 2) That the
13 Fontaine Child Care Development Center encourage drop
14 off in the alley behind the Center to ease traffic on
15 13th Street, and you have spoken to that issue.

16 MS. BENJAMIN: That is correct.

17 VICE CHAIRPERSON SOCKWELL: And 3) That
18 the Fontaine Child Care Development Center work with
19 the District of Columbia government to improve the
20 condition of the alleyway behind the Center. In this
21 case, I assume that means cleaning up the alley
22 itself.

23 MS. BENJAMIN: Correct.

24 VICE CHAIRPERSON SOCKWELL: Okay. Now,
25 you didn't speak directly to that, but what is the

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1 condition -- well, let me finish.

2 The above conditions were agreed to by
3 the owner and agent of the Fontaine Child Care
4 Development Center and 11 out of 12 community members
5 at a separate meeting of ANC-4C03 on October 9. The
6 conditions were subsequently approved by way of
7 resolution at the October 10, 2000 meeting of ANC-4C.

8 See attached. And then they have the resolution,
9 whereas, and I could read all the whereases but I
10 think they pretty much cover everything that I
11 stated.

12 And it says -- well, there actually are
13 four conditions in the resolution. Oh. The
14 resolution adds the condition that the CDC, which is
15 the Child Care Development Center, agrees to keep all
16 children within the premises of the building unless
17 accompanied by an adult. Now, that means -- premises
18 of the building means building and yard.

19 MS. BENJAMIN: Correct.

20 VICE CHAIRPERSON SOCKWELL: So that would
21 be the only thing that was not in the three stated
22 conditions here, and it says that Ms. Fontaine agreed
23 to that condition, as well.

24 MS. BENJAMIN: Correct.

25 VICE CHAIRPERSON SOCKWELL: Okay. So --

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1 BOARD MEMBER RENSHAW: Mr. Sockwell.

2 VICE CHAIRPERSON SOCKWELL: Yes.

3 BOARD MEMBER RENSHAW: A point about the
4 ANC report. This letter is signed by Mr. Fenty, the
5 Commissioner for ANC-4C03, and we should have in our
6 file a letter signed by the Chairperson of 4C because
7 it says On September 10 a quorum of ANC-4C
8 Commissioners met in part to hear the testimony and
9 vote. It goes on to talk about a special meeting
10 with members of the community, but we should request
11 of 4C that its minutes be attached to a letter
12 showing that there was a quorum vote.

13 VICE CHAIRPERSON SOCKWELL: Yes. That
14 was the only thing that I had some question of
15 because this is not on ANC-4C stationary and if
16 Commissioner Fenty is the Chair of ANC-4C, that's one
17 thing. If he is signing for the ANC, then there
18 should be a letterhead and it should probably state
19 Commissioner ANC-4C034, ANC-43, something to that.
20 Now, the gentleman in the back who has not been sworn
21 in may wish to speak. We would have to swear him in
22 and bring him forward as he represents the ANC.

23 (The witness was sworn.)

24 VICE CHAIRPERSON SOCKWELL: Identify
25 yourself and your address.

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1 MR. WASHINGTON: My name is Jason
2 Washington. I live at 7546 Alaska Avenue, N.W.,
3 20012.

4 I work for Mr. Fenty. I just started.
5 Excuse me. I have a cold right now, so excuse me.
6 We can get this rectified. I don't know exactly how.

7 He signed it for C403. He is the Commissioner of
8 4C03. If it is needed that the Chairperson of 4C,
9 the letterhead or her signature or anything that's
10 needed, that can be rectified immediately.

11 VICE CHAIRPERSON SOCKWELL: Yes. Most
12 often we -- well, invariably we seek to have any ANC
13 communications on ANC letterhead stationary.

14 MR. WASHINGTON: Okay.

15 VICE CHAIRPERSON SOCKWELL: It would be
16 appreciated if you can get a statement that the vote
17 was either unanimous among the quorum present or was
18 three out of four or whatever of the quorum and have
19 that included in your letter to which you could
20 attach a resolution and if the resolution has a
21 signature line or four signature lines on it and they
22 should have been filled out, then that would be
23 appreciated as well. But it may not be necessary if
24 you attach it to 4C letterhead with that information
25 and that Mr. Fenty is signing for the Chair or that

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1 the Chair would sign.

2 MR. WASHINGTON: Okay.

3 VICE CHAIRPERSON SOCKWELL: If that can
4 be produced, then we could proceed to close this case
5 and hold the record open for provision of that
6 document.

7 MR. WASHINGTON: That's no problem.

8 VICE CHAIRPERSON SOCKWELL: All right.
9 Thank you, Mr. Washington.

10 BOARD MEMBER RENSHAW: Just to state, Mr.
11 Washington, you are not an ANC Commissioner.

12 MR. WASHINGTON: No, I am not. I am not
13 an ANC Commissioner.

14 BOARD MEMBER RENSHAW: Thank you.

15 VICE CHAIRPERSON SOCKWELL: Yes. I
16 realize that. You are a part of his campaign staff.

17 MR. WASHINGTON: Yes, I am.

18 VICE CHAIRPERSON SOCKWELL: Go ahead, Mr.
19 Moulden.

20 BOARD MEMBER MOULDEN: At the basement
21 level there's an entrance according to the plan.

22 MS. BENJAMIN: Correct. There is a rear
23 entrance.

24 BOARD MEMBER MOULDEN: There's also an
25 exit at that level.

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1 MS. BENJAMIN: There is one level --

2 MS. FONTAINE: It is an English basement.
3 It has two exits.

4 BOARD MEMBER MOULDEN: You have to turn
5 your mic on, please. It went off.

6 MS. FONTAINE: I'm sorry.

7 BOARD MEMBER MOULDEN: That's okay.
8 That's an English basement. You have two exits, back
9 and front.

10 BOARD MEMBER MOULDEN: Okay. I was just
11 asking that question for the safety reasons for
12 immediate ingress and egress.

13 MS. BENJAMIN: The front of the building
14 and the rear of the building. Correct.

15 BOARD MEMBER MOULDEN: Okay.

16 VICE CHAIRPERSON SOCKWELL: Any more
17 questions? Then I would recommend approval of the
18 special exception that the -- it appears to me that
19 this will not be an objectionable use nor have any
20 negative effects upon its immediate surroundings. In
21 fact, the clean up of the rear alley as a
22 participatory endeavor by both the Child Development
23 Center and others would be a good thing and, as well,
24 the intent to provide an off street loading condition
25 for the children using the alley will hopefully not

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1 present any problems to neighbors for their access,
2 and I would suggest that any access and egress be
3 considered when parents are dropping off their
4 children by car and others need to exit their garages
5 and driveways in the alley.

6 The four conditions contained in the
7 resolution by ANC-4C would be bound into this order
8 and have been agreed to by the applicant and I would
9 move that we approve this application on those bases
10 with the record remaining open for one week to allow
11 the ANC report to come in in the proper form.

12 BOARD MEMBER MOULDEN: One other
13 question. Office of Planning report. That wasn't
14 required.

15 VICE CHAIRPERSON SOCKWELL: No. We
16 request Office of Planning reports and other reports,
17 but they don't always come in. And I make this
18 motion. Do I get a second on that?

19 BOARD MEMBER RENSHAW: Second.

20 VICE CHAIRPERSON SOCKWELL: Is there any
21 further discussion on the motion? Mr. Parsons.

22 MR. PARSONS: I'm sorry.

23 VICE CHAIRPERSON SOCKWELL: Staff.

24 MS. PRUITT: Yes, Mr. Vice Chair.
25 Traditionally there are also other sort of conditions

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1 such as the exact hour of operation, the exact hour
2 of drop off and pick up, trash removal.

3 BOARD MEMBER RENSHAW: The length of the
4 approval.

5 MS. PRUITT: That was going to be my
6 other question. Sometimes you can approve these in
7 perpetuity or you can approve them for a certain
8 amount of time and then the applicant would have to
9 come back and reapply again at the end of that. So
10 those are traditional sort of conditions.

11 VICE CHAIRPERSON SOCKWELL: Let's take
12 those one by one. With regard to trash removal, how
13 is trash picked up?

14 MS. FONTAINE: We have a trash can where
15 we keep all the trash and city pick up every
16 Thursday.

17 VICE CHAIRPERSON SOCKWELL: Trash is
18 contained in an area outside of the play area or an
19 area that is separated off from the child's play
20 area?

21 MS. BENJAMIN: Separated.

22 VICE CHAIRPERSON SOCKWELL: And how is it
23 housed?

24 MS. FONTAINE: They are in trash can, big
25 one, and I have a two car garage to accommodate that.

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1 MS. PRUITT: Excuse me. Will you be
2 serving food for your kids?

3 VICE CHAIRPERSON SOCKWELL: Let's hope
4 so.

5 MS. PRUITT: I mean throughout the day
6 because the question -- I guess my question is,
7 you're increasing your children by almost 30, 35.
8 That's going to generate at least almost three times
9 the amount of trash. Do you think that the public
10 pick up once a week is going to be sufficient,
11 understanding that your garage needs to be available
12 for parking based on regulations and not for storage.

13 VICE CHAIRPERSON SOCKWELL: Not only for
14 storage.

15 MS. PRUITT: Yes. Not only for storage.
16 It can if it can accommodate both.

17 MS. FONTAINE: I can use private pick up
18 if that becomes necessary.

19 VICE CHAIRPERSON SOCKWELL: All right.
20 We'll state that trash will be picked up as needed so
21 as not to create a nuisance or objectionable odors
22 and will not be stored in close proximity to the
23 children.

24 BOARD MEMBER RENSHAW: Also, talking
25 about trash, your --

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1 VICE CHAIRPERSON SOCKWELL: It will be
2 stored in containers.

3 BOARD MEMBER RENSHAW: -- the parents who
4 are dropping their children off in the alley should
5 know what day of the week your trash pick up comes
6 along so that the trash truck and the cars don't meet
7 face to face, so to speak.

8 VICE CHAIRPERSON SOCKWELL: Is the trash
9 picked up from the alley or from the front?

10 MS. FONTAINE: From the alley.

11 VICE CHAIRPERSON SOCKWELL: From the
12 alley.

13 MS. FONTAINE: But I don't see any
14 problem with that, especially with the type of
15 parents that I serve these days. Most of them use
16 public transportation.

17 MS. PRUITT: Excuse me, Mr. Chair. Just
18 for clarification on the record, you indicated that
19 it not be stored near -- I didn't get the rest of
20 that.

21 VICE CHAIRPERSON SOCKWELL: It will not
22 be stored in the vicinity of the children's play area
23 basically.

24 MS. PRUITT: Thank you.

25 VICE CHAIRPERSON SOCKWELL: And that it

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1 be stored in proper containers. Covered containers.

2 Now let's talk about hours of operation.

3 We know that you have before school and after school
4 as well as the full day so, as Ms. Benjamin stated,
5 there is a staggered in/out flow of vehicles and
6 children. What are the hours that you plan to use as
7 your operating hours?

8 MS. FONTAINE: From 6 a.m. to 6 p.m.

9 VICE CHAIRPERSON SOCKWELL: All right.
10 And that includes no children to be dropped off
11 before 6 a.m., none to be dropped off after 6 p.m.
12 and only those whose parents don't get there in time
13 would be picked up after 6 p.m. That's why I didn't
14 say the other thing that Ms. Renshaw was getting
15 read.

16 MR. PARSONS: I think that's six days a
17 week. Is that correct? Monday through Friday.

18 MS. FONTAINE: Friday.

19 MS. PRUITT: Five days a week.

20 MR. PARSONS: I'm sure there was
21 something about Saturday operation here.

22 MS. BENJAMIN: No. She does not operate
23 on the week ends.

24 MR. PARSONS: All right. My mistake.

25 VICE CHAIRPERSON SOCKWELL: So operation

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1 will be Monday through Friday, 6 a.m. to 6 p.m.

2 BOARD MEMBER MOULDEN: I think you ought
3 to put the age group in there because it's different
4 than what's listed in the --

5 VICE CHAIRPERSON SOCKWELL: Yes. The age
6 group is part of the conditions as bound into the
7 ANC's conditions. It is condition #2, I believe.
8 And those are bound into any order.

9 BOARD MEMBER RENSHAW: Mr. Sockwell,
10 could we go back to the point that Ms. Pruitt had
11 raised about food and with perhaps twice as many
12 children or three times as many children. Are you
13 going to have food deliveries, milk? What do you
14 have delivered in the way of food?

15 MS. BENJAMIN: Presently, because most of
16 the children are infants, their parents are bringing
17 the food for the children, the formula, etcetera, for
18 the children. At the time of expansion, when we get
19 additional children in, there will be outside
20 catering services used to provide that which is
21 necessary.

22 BOARD MEMBER RENSHAW: All right. It is
23 always very sensitive having commercial trucks using
24 residential alleys, and the need to make sure that
25 these commercial trucks don't have their engines

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1 idling to disturb the neighbors. You need to be very
2 attentive to that.

3 MS. PRUITT: Mrs. Renshaw, would you like
4 a condition that all deliveries be between a certain
5 time frame?

6 BOARD MEMBER RENSCHAW: That certainly
7 would be a regulation that would be beneficial to the
8 neighborhood, I would say.

9 VICE CHAIRPERSON SOCKWELL: I would think
10 that deliveries should not be -- well, the trash
11 trucks are going to come down the alley once a week
12 probably in the morning, but food deliveries probably
13 should be restricted to the hours of I'd say 8 a.m.
14 to 6 p.m. basically, not before 8 a.m.

15 BOARD MEMBER RENSCHAW: And you may have
16 to be very firm about this because we have commercial
17 deliveries in a residential area where I live and the
18 trucks like to hover before 6:00 just waiting because
19 they come early to get out of traffic and it has
20 caused a lot of distress.

21 MS. FONTAINE: Thank you for your advice.

22 VICE CHAIRPERSON SOCKWELL: And rather
23 than food deliveries, we'll just say commercial
24 deliveries shall be between 8 a.m. and 6 p.m.

25 Let's see. There were a couple of other

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1 things.

2 MS. PRUITT: For the drop off and pick
3 up.

4 VICE CHAIRPERSON SOCKWELL: Well, I think
5 we stated that --

6 MS. PRUITT: Usually it's like between 6
7 a.m. and a certain time.

8 VICE CHAIRPERSON SOCKWELL: No drop offs
9 before 6 a.m. because that's when they start.

10 MS. PRUITT: Well, I guess my question is
11 sometimes we have drop off between 6 a.m. and 10
12 a.m., pick ups starting no sooner than 3:00 to 6:00
13 or something like that.

14 VICE CHAIRPERSON SOCKWELL: Your
15 preschools or pre-care, before care starts at 6 a.m.
16 so people would start dropping off at 6:00. What is
17 typically the last drop off for your all day? I
18 assume that you get drop offs in the morning and you
19 get pick ups in the afternoon but nothing in the
20 middle of the day.

21 MS. FONTAINE: No. I don't have half
22 day.

23 VICE CHAIRPERSON SOCKWELL: Okay. So
24 let's assume --

25 MS. FONTAINE: And most of the parents

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1 are working parents really. They just come to bring
2 their children so they can get to work and pick them
3 up after work and go home.

4 VICE CHAIRPERSON SOCKWELL: All right.
5 So if you have -- to the extent that you will have
6 drop offs in the morning, we'd like to restrict the
7 drop offs to the hours of 6 a.m. to 10 a.m. which
8 should meet your requirements and pick ups from say 4
9 p.m. or would you want them to be 3 p.m. to 6 p.m. as
10 a typical pick up period.

11 MS. FONTAINE: I would say 4:00.

12 VICE CHAIRPERSON SOCKWELL: Okay. 4:00
13 to 6:00 p.m. And we certainly understand that if a
14 parent can't reach their child in time, that you
15 can't tell them hey, you've got to keep him there
16 until tomorrow.

17 BOARD MEMBER RENSHAW: Is there a phone
18 number that you allow the abutters to have in case of
19 disturbances or in case they need to reach you about
20 whatever? Do you advertise a phone number to the
21 community? And how is that advertized? Just through
22 the phone book?

23 MS. BENJAMIN: Yes. She's in the book.
24 She's in the phone book and, of course, all the--

25 VICE CHAIRPERSON SOCKWELL: You turned

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1 your mic off.

2 MS. BENJAMIN: Excuse me. And there is
3 also the phone number on the outside of the sign
4 that's outside the building.

5 BOARD MEMBER RENSHAW: All right. Thank
6 you.

7 VICE CHAIRPERSON SOCKWELL: Ms. Pruitt,
8 additional --

9 MS. PRUITT: The last question is whether
10 or not you want to put a time frame.

11 VICE CHAIRPERSON SOCKWELL: Well, let's
12 think about that one. This is not a new child care
13 center. It is one that has existed in the community
14 for some time, since '96, your Certificate of
15 Occupancy was issued, and I think that the community
16 is knowledgeable of your operation and, had there
17 been any negative responses or opposition to your
18 application, perhaps a three year order would have
19 been appropriate. I would think that we should allow
20 this operation a five year time period and, at the
21 end of five years, you would have to return for
22 recertification of your exception and then we would
23 look to see how the community enjoys the improved and
24 extended services that you're providing and we would
25 have you here for another half hour.

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1 MS. BENJAMIN: Thank you.

2 VICE CHAIRPERSON SOCKWELL: Does anyone
3 have any objection to a five year period? Then
4 lacking any further questions and having covered all
5 of the items that I believe would be important to the
6 approval of your application, I would call for the
7 vote.

8 MS. PRUITT: I don't believe we have a
9 second.

10 VICE CHAIRPERSON SOCKWELL: Did we get a
11 second? We didn't get a second.

12 MS. PRUITT: No, we did not.

13 BOARD MEMBER RENSHAW: Second.

14 VICE CHAIRPERSON SOCKWELL: We have a
15 second. Ms. Renshaw. Then barring any further
16 questions and with all of the agreed upon conditions
17 by the ANC and the additional conditions as requested
18 by the Board, agreed to by the applicant, I would
19 call for the vote. All in favor.

20 (Ayes)

21 VICE CHAIRPERSON SOCKWELL: Opposed.

22 MS. PRUITT: Staff would record the vote
23 as four to zero to approve motion made by Mr.
24 Sockwell, seconded by Ms. Renshaw.

25 I'd just like to read over the

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1 conditions. Do you expect this to be a summary
2 order?

3 VICE CHAIRPERSON SOCKWELL: Yes.

4 MS. PRUITT: Because we sometimes do not
5 get transcripts. We're getting them like a month
6 late. In order to sort of get them out earlier, if
7 we have the conditions straight, we can get this to
8 you.

9 VICE CHAIRPERSON SOCKWELL: All we need
10 is to make sure that Commissioner Fenty's
11 representative, Mr. Washington -- is that right?
12 Jason Washington gets this information back to the
13 ANC quickly and that they can act quickly.

14 MS. PRUITT: And once the letter comes
15 in, the order can be issued. But just to review the
16 conditions, we're going to include all the conditions
17 in the ANC report which includes changing the age
18 range to eight weeks to eight years of age, drop off
19 being in the alley, and the working with the District
20 to clean that up. Hours of operation --

21 VICE CHAIRPERSON SOCKWELL: The fourth
22 condition which was in the resolution.

23 MS. PRUITT: Fourth condition in the
24 resolution.

25 VICE CHAIRPERSON SOCKWELL: Right. The

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1 ANC--

2 BOARD MEMBER RENSHAW: Better read it
3 into the record.

4 VICE CHAIRPERSON SOCKWELL: Yes. The
5 children would always be within the premises
6 boundaries except when accompanied by adults.

7 MS. PRUITT: Okay. Thank you. Hours of
8 operation, 6 a.m. to 6 p.m. Monday through Friday.
9 All deliveries between 8 a.m. and 6 p.m. Drop off
10 hours between 6 a.m. and 10 p.m. Pick up between
11 4:00 and 6:00 p.m. Trash removal as needed so not to
12 create an objectionable or nuisance to the community
13 and not stored near the children's play area and also
14 stored in proper containers.

15 BOARD MEMBER RENSHAW: Covered.

16 MS. PRUITT: Covered or proper?

17 BOARD MEMBER RENSHAW: Covered
18 containers.

19 VICE CHAIRPERSON SOCKWELL: Ms. Renshaw
20 suggested the term covered.

21 MS. PRUITT: Okay. And this is approval
22 for the period of five years.

23 BOARD MEMBER RENSHAW: Just to clarify.
24 Drop off is from 6:00 to 10:00 a.m.

25 MS. PRUITT: I'm sorry. That's what I

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1 thought I said.

2 VICE CHAIRPERSON SOCKWELL: That's what
3 she said.

4 BOARD MEMBER RENSHAW: She said p.m.

5 VICE CHAIRPERSON SOCKWELL: Oh, you said
6 p.m.?

7 MS. PRUITT: So I believe those are the
8 conditions that I have.

9 VICE CHAIRPERSON SOCKWELL: I believe
10 you're correct.

11 MS. PRUITT: Thank you.

12 VICE CHAIRPERSON SOCKWELL: All right.
13 We thank you very much for your time. Your order
14 will be issued within two weeks of the time that the
15 record closes.

16 MS. BENJAMIN: Thank you very much.

17 VICE CHAIRPERSON SOCKWELL: Thank you.

18 This concludes our morning's hearings.
19 Board is adjourned.

20 (Whereupon, off the record at 11:26 a.m.
21 to reconvene at 1:37 p.m.)
22
23
24
25

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

(1:37 p.m.)

VICE CHAIRPERSON SOCKWELL: Good afternoon, ladies and gentlemen. This is the October 31, 2000 public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Robert Sockwell, Vice Chairperson, sitting in for Sheila Reid, the Chair.

Joining me today is Anne Renshaw to my left and representing the National Capital Planning Commission, Rodney Moulden, and representing the Zoning Commission is Kwasi Holman.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure, this is an appeal application, the order of procedure for appeal applications will be as follows. Statement and witnesses of the Appellant, Zoning Administrator or other government officials, owner, lessee or operator

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1 of the property involved if not the Appellant, the
2 ANC within which the property is located, the
3 Intervenor's case, rebuttal and closing statement by
4 the Appellant.

5 Cross examination of witnesses is
6 permitted by the applicant or parties. The ANC
7 within which the property is located is automatically
8 a party in the case.

9 The record will be closed at the
10 conclusion of each case except for any material
11 specifically requested by the Board, and staff will
12 specify at the end of the hearing exactly what is
13 expected. The decision of the Board in these
14 contested cases must be based exclusively on the
15 public record. To avoid any appearance to the
16 contrary, the Board requests that persons present not
17 engage the members of the Board in conversation.

18 Please turn off all beepers and cell
19 phones or set them to silent operation at this time
20 so as not to disrupt these proceedings.

21 The Board will make every effort to
22 conclude the public hearing as near as possible to 6
23 p.m. If the afternoon case is not completed at 6
24 p.m., the Board will assess whether it can complete
25 the pending case or case remaining on the agenda.

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1 At this time, the Board will consider any
2 preliminary matters. Preliminary matters are those
3 which relate to whether a case will or should be
4 heard today such as request for postponement,
5 continuance or withdrawal or whether proper and
6 adequate notice of the hearing has been given. If
7 you are not prepared to go forward with a case today
8 or if you believe that the Board should not proceed,
9 now is the time to raise such a matter.

10 Does the staff have any preliminary
11 matters?

12 MS. PRUITT: No, Mr. Vice Chair. We have
13 some particular to this case but none for
14 continuance.

15 VICE CHAIRPERSON SOCKWELL: Okay.

16 MS. PRUITT: I'll do it when you call it.

17 VICE CHAIRPERSON SOCKWELL: All right.
18 Then let's proceed with the first case, with the only
19 case of the afternoon.

20 MS. PRUITT: The case for this afternoon
21 is 16588, appeal of Edward M. Potter pursuant to 11
22 DCMR 3100 and 3101 from the administrative decision
23 of Armando Lourenco, Acting Zoning Administration,
24 Building and Land Regulations Administration,
25 Department of Consumer and Regulatory Affairs, made

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1 approximately on December 7, 1999 to the effect that
2 the construction of a garage complies with the zoning
3 regulations. Appellant alleges that the construction
4 of the garage does not conform to zoning regulations
5 and has caused severe damage to their property
6 destroying portions of their shared driveway and
7 limited access to their driveway in an R-1-A district
8 at 4900 Indian Lane, N.W., Square 1512, Lot 33.

9 All those planning to testify, would you
10 please stand and raise your right hand.

11 (The witnesses were sworn.)

12 MS. PRUITT: MR. Vice Chair, in reference
13 to this, this is a continued hearing from July 11.
14 At the July 11 hearing, party status or Intervenor
15 status was granted to Mr. Ghafoorian. The sort of
16 players in this are the Appellant, Mr. Potter,
17 Intervenor for Mr. Ghafoorian and court counsel.

18 There are two motions on the floor that
19 the Board has decided to sort of defer until after
20 hearing the case. That was a motion concerning
21 jurisdiction and the second one was a Motion to
22 Dismiss as a result of timeliness. And the Board had
23 determined that they would decide that after hearing
24 the merits of the case.

25 The Board also requested that a

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1 chronology be -- requested chronologies from the
2 Appellant, the Intervenor, Mr. Ghafoorian, and the
3 ANC, and we have received those three things.

4 VICE CHAIRPERSON SOCKWELL: Thank you.

5 I guess if we have all the documentation
6 in hand, we should proceed.

7 MR. O'BRIEN: My name is Patrick O'Brien.

8 I'm the attorney representing Edward Potter, who is
9 present. Mr. Potter owns a residence at 4852 Indian
10 Lane, N.W. Last April, April of 1999, he returned
11 from a vacation in South Carolina where he also has a
12 vacation home, and discovered that the slope that
13 used to be next to his property had been excavated
14 along virtually the entire side and rear yard of the
15 property at 4900 Indian Lane and his driveway, which
16 he shares with the adjoining land owner, had been
17 undermined and torn up. Footings had been laid at
18 that point, and it appeared that some sort of
19 construction was going to occur.

20 Mr. Potter brought this matter to the
21 attention of the neighboring landowner, Mohammad
22 Ghafoorian, who is present today. Mr. Ghafoorian
23 allowed as how he had permits and that he was going
24 to proceed with the construction of a garage.

25 Mr. Potter investigated the matter and

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1 discovered that there were no permits and, upon
2 further investigation, he discovered that what
3 appeared to be going on was in violation of the
4 applicable zoning laws and regulations.

5 He therefore filed a Motion for Temporary
6 Restraining Order in the D.C. Superior Court after
7 having made a number of phone calls to the DCRA which
8 were unanswered. They did send out some inspectors
9 who placed stop work orders on the project but only
10 because the building permits were not being
11 displayed. As soon as Mr. Ghafoorian went out and got
12 a building permit which was on April 6, 1999 for the
13 construction of simply a garage, he posted the
14 permits and the stop work orders were lifted.

15 A Temporary Restraining Order was issued
16 by Judge Werthhiem of the D.C. Superior Court in
17 April of 1999 applying only to that portion of the
18 apparent project for which there was no building
19 permit. Ten days later, a motion was set to convert
20 that Temporary Restraining Order into a preliminary
21 injunction, as is the normal court procedure, and Mr.
22 Ghafoorian represented before Judge Dixon that all he
23 was building was a rear yard garage.

24 Subsequent permits were issued and
25 additional construction was made, and it became

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1 apparent that what Mr. Ghafoorian was building was
2 actually a parking platform, an elevated structure
3 extending throughout the entirety of the side yard
4 and to within 10 to 12 feet of the rear yard and
5 within four feet of the side yard. No permits were
6 ever issued nor was any application ever made for a
7 parking platform. The regulations under which we're
8 operating define a structure specifically to include
9 a platform. You have a copy of that definitional
10 regulation in the materials that we provided.

11 Mr. Potter will testify that he made
12 literally dozens of telephone calls, emails. He
13 attempted to visit the responsible DCRA officials in
14 their offices. He estimates the number of contacts
15 made by he and his wife to be something in the order
16 of 50.

17 Finally, in December of 1999 and I
18 believe it was Pearl Harbor Day 1999, a stop work
19 order was issued by building inspectors based upon
20 apparent zoning violations with respect to the
21 parking platform and the fact that it was not in the
22 plans, no permits had been issued for a parking
23 platform. Mysteriously, the order was lifted without
24 explanation. Upon information and belief, we
25 understand that that was done by Mr. Lourenco.

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1 We immediately filed an appeal,
2 specifically on December 10, 1999, as required by the
3 procedures, to Mr. Lourenco. Mr. Lourenco never
4 answered it, and it wasn't until after the first
5 meeting that we had here that Mr. Potter received a
6 letter saying that upon advice of counsel, he was
7 never going to answer it.

8 What has been built, despite all the
9 representations that have been made, is a structure
10 which extends and it's conceded it extends within
11 four feet of the side yard of the property line
12 between the Potters and the Ghafoorians. It is
13 approximately in total surface 2,000 square feet. It
14 has four auger walls, according to Mr. Ghafoorian,
15 and three internal support walls. If you look at the
16 plans, the most recent plans, the total surface
17 square footage is about 2,000 square feet, and it
18 comes to within 10 or 12 feet of the rear lot line.

19 In that respect, it violates both the
20 side and the rear yard setback requirements and,
21 unless you can come to the conclusion that this is
22 not a structure and it is in fact an unsupported
23 patio, despite the fact that there's a 10 feet
24 stairwell leading up to it, or that it is somehow
25 slab on grade, even though it has internal support

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1 walls, then this structure clearly violates both the
2 side and the rear yard setbacks.

3 Now, on top of the platform Mr.
4 Ghafoorian has placed a wood frame garage. This
5 garage is approximately 900 square feet. There is a
6 regulation that is specific to R-1 districts, and
7 I've supplied it in the brief, which limits the
8 square footage of a garage to 450 square feet and
9 makes no mention of whether it's an accessory use or
10 a principal use. It simply says garages. Two car,
11 450 maximum in an R-1 district. The statute under
12 which these zoning regulations have been promulgated
13 and the zoning regulations themselves clearly state
14 that the most restrictive interpretation always
15 applies.

16 Nevertheless, the DCRA has taken the
17 position that because 900 square foot garages are
18 available in certain parts of the district, not R-1
19 districts, but because they're allowed elsewhere,
20 that therefore they should be allowed here and by
21 administrative interpretation, what they are
22 attempting to do is simply overrule the language of
23 the statute and the regulations. So the garage
24 itself violates the square footage requirements.

25 If you look at the photographs and if you

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1 look at the plans and if you look at the permits,
2 this becomes a fairly black and white matter. He
3 never applied for a permit to build a platform. He
4 deceived the D.C. government as to the nature of the
5 product, as to the nature of the project. On the
6 second set of permits, he seems to have represented
7 to the District of Columbia government that he had
8 the consent of the adjoining land owner, which would
9 be Mr. Potter. Of course, that never occurred.

10 He has taken the position that this is
11 slab on grade, even though it's elevated six feet in
12 the air and it requires a staircase to get to the top
13 of it, and he's denied that it is connected to the
14 house, even though it is manifestly clearly connected
15 to the house, as the photographs we've submitted
16 demonstrate. That being the case, I don't think
17 there's any possible argument that he's been
18 proceeding in good faith. I don't think there's any
19 possible argument that this structure, the parking
20 platform, does not violate the setback requirements,
21 and I don't think there's any credible argument that
22 the garage on top of the parking platform does not
23 violate the 450 square foot requirement of the
24 regulation.

25 Chairman Sockwell, I can call the first

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1 witness or would you rather hear opening statement
2 from opposing counsel?

3 VICE CHAIRPERSON SOCKWELL: Why don't
4 you-- how many witnesses do you have?

5 MR. O'BRIEN: I have a total of three,
6 Mr. Potter, Lindsley Williams, the former Chairman of
7 the Zoning Commission, and then about two minutes
8 from Mr. Webster of the Wesley Heights Historical
9 District.

10 VICE CHAIRPERSON SOCKWELL: Why don't you
11 continue.

12 MR. O'BRIEN: In that case --

13 MR. PARKER: Excuse me. Could I raise a
14 preliminary matter?

15 VICE CHAIRPERSON SOCKWELL: You may.

16 MR. PARKER: My name is Arthur Parker.
17 I'm Assistant Corporation Counsel here on behalf of
18 the PLRA and the Zoning Administrator in this matter.
19 As part of our presentation, we had planned to
20 present Mr. Armando Lourenco as a witness in this
21 matter. We also have Mr. Johnson from the BLRA here
22 this afternoon also.

23 The procedural issue I was going to bring
24 up is that -- and it's a little premature because Mr.
25 Lourenco has not arrived. What we wanted to bring to

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1 the Board's attention was that Mr. Lourenco was an
2 employee of the BLRA. He is no longer an employee,
3 but he has testified in that capacity before, and
4 that Mr. Johnson is the official representative right
5 now and my official client, but he, Mr. Lourenco and
6 I have met to discuss this matter and he is confident
7 that the positions as Mr. Lourenco has already
8 testified to and what he expects him to testify to
9 would be what my current client would adopt as the
10 official position.

11 I guess what we're moving toward here,
12 although I'm not going to let Mr. Johnson go until
13 Mr. Lourenco gets here, is that at some point I would
14 like to excuse Mr. Johnson and just proceed with Mr.
15 Lourenco when it becomes my turn unless the Board
16 determines that it thinks it needs to address Mr.
17 Johnson in his official capacity.

18 VICE CHAIRPERSON SOCKWELL: So what
19 you're saying is that Mr. Johnson is a substitute in
20 the event that Mr. Lourenco does not arrive.

21 MR. PARKER: That's correct.

22 VICE CHAIRPERSON SOCKWELL: And yet we
23 understand that Mr. Lourenco's testimony is in the
24 file and that he was the one who was responsible at
25 that time for representing the position of BLRA in

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1 the matter.

2 MR. PARKER: I believe that's correct.
3 Well, the one thing that's not -- his complete
4 testimony is not in the file. And there's portions
5 also from testimony in another court matter.

6 VICE CHAIRPERSON SOCKWELL: All right.
7 The testimony that he provided to us is in the file.

8 MR. PARKER: Correct. But it was not
9 comprehensive because at that point we were only
10 dealing with timeliness issues, as I understand it.
11 WE never got to the full presentation on the merits.

12 VICE CHAIRPERSON SOCKWELL: So you're
13 saying that Mr. Lourenco has further testimony--

14 MR. PARKER: Correct.

15 VICE CHAIRPERSON SOCKWELL: -- that has
16 not yet been provided to this Board.

17 MR. PARKER: That's correct.

18 MR. JOHNSON: If I may interject.

19 VICE CHAIRPERSON SOCKWELL: Identify
20 yourself.

21 MR. JOHNSON: I'm Michael Johnson, Zoning
22 Administrator, and also Acting BLRA Administrator.

23 I think Mr. Lourenco would be willing to
24 provide testimony. However, we strongly believe that
25 there's a preliminary matter about the timeliness as

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1 to, 1) the timeliness and, secondly, whether or not
2 this is the proper venue that needs to hear this
3 case. I think, if my memory serves me correctly, I
4 think that was an issue that the Board had taken
5 under advisement earlier but had not fully ruled
6 upon. I think that issue really needs to be decided,
7 even before any additional testimony is taken any
8 further because I strongly feel that, based upon
9 those two issues, that until they're resolved, that
10 we should not move any point further than where we
11 are.

12 MR. O'BRIEN: Mr. Chairman, may I be
13 heard briefly? We would object strenuously to Mr.
14 Lourenco's testimony because he is a former employee
15 of the District of Columbia. He's no longer employed
16 by the District. His testimony would obviously be
17 for the benefit of the one of the parties to this
18 dispute, specifically Mr. Ghafoorian, and I believe
19 there are statutory prohibitions on him doing that.
20 I think there's an Ethics in Government Act, a local
21 D.C. Ethics in Government Act that would preclude his
22 testimony.

23 VICE CHAIRPERSON SOCKWELL: I'm not sure
24 what the corporation counsel's position on that would
25 be, but I know that he is probably restricted from

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1 receiving remuneration for any testimony that he
2 might give and, therefore, representing a client.

3 MR. PARKER: i could represent he's not
4 being compensated for his testimony. He's not
5 appearing -- there is no subpoena power. He's not
6 appearing under obligation either. He's coming
7 forward to complete what he considers his
8 responsibilities in this matter --

9 MS. PRUITT: Mr. Sockwell, this has
10 occurred before.

11 VICE CHAIRPERSON SOCKWELL: However, on
12 the other hand, Mr. Lourenco is not any longer
13 responsible and, therefore, testimony given at this
14 time doesn't carry the weight of testimony that he
15 might have given in the past when he was the official
16 overseeing the operations of the Building and Land
17 Regulation Administration. At this point, his
18 testimony does not carry as much weight of
19 credibility as it would have were he still that
20 official. However, I don't know that we can state
21 that he is not able to testify on events that took
22 place during his tenure.

23 MS. SANSONE: Mr. Chairman, I believe Mr.
24 Lourenco can testify fully as to what happened during
25 this permitting process, the decisions he made, the

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1 reasons why DCRA's position at that time, and I think
2 you would give that full credibility, full weight as
3 to what was before DCRA at the time of his decision
4 making. If there's been any change in position, that
5 would be for Mr. Johnson to address here today.

6 MR. O'BRIEN: If I may be clear on Ms.
7 Sansone's position. He would be permitted to testify
8 as a fact witness only. Is that correct? Or would
9 he be permitted to voice an opinion as to the proper
10 interpretation of the regulations?

11 MS. SANSONE: Mr. Chairman, I believe he
12 could give an opinion as to the proper interpretation
13 from the standpoint of his position as the Acting
14 Zoning Administrator at the time or, if he is
15 otherwise qualified as an expert, he could give
16 opinion testimony.

17 VICE CHAIRPERSON SOCKWELL: I think that
18 we can accept testimony from Armando Lourenco should
19 he arrive.

20 Mr. Johnson, yes.

21 MR. JOHNSON: Mr. Chair, hearing that
22 statement, please correct me but I'm presuming then
23 that the Board has decided on the two questions that
24 I rose initially which were, 1) --

25 VICE CHAIRPERSON SOCKWELL: The Board has

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1 not responded to those questions.

2 MR. JOHNSON: Okay.

3 MS. PRUITT: The Board determined at the
4 July meeting that they were going to defer decision
5 on that until after they heard the merits of the
6 case.

7 VICE CHAIRPERSON SOCKWELL: I think the
8 Board is going to stand by that decision.

9 MR. PARKER: I would like to preserve at
10 the end, with all due respect to the Board's pressing
11 on with the merits, at the conclusion of the merits--
12 I'm new counsel to this case, and I would like to
13 make a couple of arguments at the end that are of a
14 policy nature with regard to this timeliness issue,
15 but I want to be respectful of the position that the
16 Board staked out and let us proceed with the merits
17 at this point.

18 VICE CHAIRPERSON SOCKWELL: I think that
19 could be included in his closing.

20 MS. SANSONE: Mr. Chairman, I think we
21 have an order of procedure in our rules. The
22 Appellant would go first, presenting his full case
23 and he will address timeliness and jurisdiction in
24 his case, and then the Zoning Administrator's case
25 would come next and Mr. Parker could address his

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1 position as to the motions at that time, and then we
2 go to the Intervenor and the ANC is also a party in
3 the appeal cases. But we do have the order of
4 procedure in the rules and we should adhere to that.

5 VICE CHAIRPERSON SOCKWELL: And we will.

6 MS. PRUITT: Mr. Chair, I think a lot of
7 this is confusing because the preliminary issues were
8 very -- we spent a great deal of time on preliminary
9 issues on July 11 which actually kind of slipped into
10 the merits of the case, so it was kind of back and
11 forth. But we've not really started the case.

12 VICE CHAIRPERSON SOCKWELL: Right. We
13 talked in depth about things that would have been
14 part of the presentation of one or the other or both
15 the Appellant and the Intervenor. So let's proceed
16 as per the rules, which would be the continuation of
17 the Appellant.

18 MR. O'BRIEN: Mr. Chairman, I'd like to
19 call Mr. Potter if I may.

20 VICE CHAIRPERSON SOCKWELL: You may.

21 MR. O'BRIEN: Would you like us any
22 particular place?

23 VICE CHAIRPERSON SOCKWELL: Not
24 necessarily. Just as long as you're close to a
25 microphone so that the recorder has access to all of

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1 your words.

2 MR. O'BRIEN: Mr. Potter, can you state
3 your, full name, address and occupation for the
4 record.

5 MR. POTTER: My name is Edward Potter. I
6 live at 4852 Indian Lane, N.W., Washington, D.C. I
7 am a teacher, high school science teacher.

8 MR. O'BRIEN: Can you describe the events
9 that occurred in the spring of 1999 beginning with
10 your return from your spring vacation.

11 MR. POTTER: We returned from spring
12 vacation in April 1999 and, upon my return, we found
13 that there was a large excavation project going on on
14 Mr. Ghafoorian's property. We share a common
15 driveway between the two houses with the property
16 line going down the middle of a driveway. We have a
17 dedicated right of way that includes the entire
18 driveway.

19 The driveway, as you move up the driveway
20 down towards Mr. Ghafoorian's old garage was
21 completely excavated and back towards the back
22 portion of the property approximately 30 to 40 feet
23 of the right of way 4' into the right of way, 4'
24 deep, had been excavated. There were barricades and
25 concrete footings with metal bars protruding out of

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1 the footers of the garage that he said he was
2 building on that site had been poured. We came back
3 on Easter Sunday which I believe is April 4 of 1999.

4 I talked to Mr. Ghafoorian at that time
5 on that day when we returned. He said he was
6 building a garage. He said he was permitted to do
7 what he was doing. Later afterwards I checked. The
8 first permits were applied for the next day and
9 permits were granted on a walk through basis on April
10 6. Evidence --

11 MR. O'BRIEN: Let me ask you to -- let me
12 direct your attention to the photographs that appear
13 behind what has been marked Tab 7 and ask you to
14 describe what these photographs show. That would be
15 Tab 7 of the brief of the Appellant.

16 First of all, let me ask you if you took
17 those photographs.

18 MR. POTTER: Yes. I took this one.

19 MR. O'BRIEN: Do you recall when you took
20 that photograph approximately?

21 THE WITNESS: April when I came home.

22 MR. O'BRIEN: For the record, which
23 photograph are you referring to?

24 MR. POTTER: I'm referring to the one
25 that's taken out of the window from the second floor.

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1 This is the first one.

2 MR. O'BRIEN: That's the first photograph
3 behind Tab 7.

4 MR. POTTER: This is a photograph taken
5 from the window of my house taken in early April
6 approximately the time when I came home from spring
7 vacation and represents the excavation with the small
8 bulldozer. In the corner you can see towards the
9 pool wall, you can see a styrofoam, white styrofoam
10 rectangular block that is in place that represents
11 the pouring of the concrete footers. The excavation
12 extends all the way down from the shared driveway to
13 the old garage of the house at 4900 Indian Lane. It
14 extends all the way back to almost the edge of the
15 property where the bulldozer is located and extends
16 forward, which can not be seen in the picture,
17 extends forward approximately 10 to 15 feet.

18 MR. O'BRIEN: What does the next
19 photograph show?

20 MR. POTTER: The next photograph shows a
21 picture that I took standing within the right of way
22 within the extension. The driveway did not extend
23 back that far, but I am standing within the right of
24 way looking back down my driveway. On the right hand
25 side is my pool wall. It's a wood wall which

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1 surrounds my pool.

2 MR. O'BRIEN: Is that your property line
3 where the fence sits on the right hand side of the
4 photograph?

5 MR. POTTER: The property line is a
6 little bit on the left or the west side of the fence.

7 BOARD MEMBER RENSHAW: Mr. Vice Chair,
8 could we have Mr. Potter just hold up each picture
9 that he's referring to and just point to where his
10 property line is, please.

11 MR. POTTER: This structure right here is
12 my pool wall, my fence that goes right down here.
13 The property line is a few inches on the other side
14 of the pool wall.

15 VICE CHAIRPERSON SOCKWELL: Your property
16 line occupies --

17 MR. POTTER: The property line runs right
18 down the middle of the driveway and extends when the
19 driveway ends all the way to the end of the property
20 which is behind where I'm standing where I take the
21 picture. There's a dedicated right of way that runs
22 the entire length of the property, even though the
23 driveway does not.

24 MR. O'BRIEN: What is that in the middle
25 of the photograph?

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1 MR. POTTER: This represents, when I
2 returned in early April, this represents the concrete
3 footers and metal posts that were in place at that
4 time for the construction of the platform and a
5 garage.

6 MR. O'BRIEN: And to the best of your
7 knowledge, was there a permit that had been issued at
8 that point in time?

9 MR. POTTER: No, there was not a permit
10 issued at that point in time.

11 MR. O'BRIEN: Turning to the next
12 photograph in sequence. Could you hold it up for the
13 panel.

14 MR. POTTER: This third photograph is
15 taken from the opposite direction the last one was
16 taken. It's looking back towards the back portion of
17 the property line. The pool fence is on the left.
18 The property line is a little bit to the right of
19 that, so the excavation shows the concrete footings.
20 It also shows in the front portion of the picture
21 that part of the driveway has been excavated.
22 Approximately 10 feet of the shared driveway
23 extending outwards from the pool wall towards the
24 center of the driveway has been excavated.

25 MR. O'BRIEN: What about the sub-surface

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1 of the driveway?

2 MR. POTTER: The sub-surface of the
3 driveway at this point has been partially damaged by
4 the construction that took place.

5 MR. O'BRIEN: Directing your attention to
6 the first photograph appearing behind Tab 8. Can you
7 describe that and tell the panel what it represents.

8 MR. POTTER: This picture is several
9 months later in time. It's taken in the summer of
10 1999. What it shows, it is taken from Mr.
11 Ghafoorian's property. It is directed towards the
12 driveway. There is a concrete structure on the
13 right. It represents the top portion of his parking
14 structure. What has happened is for several months
15 this particular structure was in place in this form
16 and, because of the slope of the platform that he has
17 built slopes towards the driveway towards my property
18 away from his house, water accumulated in the crack
19 between the concrete and the asphalt of the driveway
20 and extensive erosion has been in evidence underneath
21 my driveway and the hole in the center represents a
22 portion of the erosion that has taken place.

23 MR. O'BRIEN: Directing your attention to
24 the next photograph in sequence, I hope. Can you
25 show me what that photograph represents.

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1 MR. POTTER: This photograph is taken
2 from my property towards the parking platform and
3 garage. What it shows is that the water from rain
4 flows from his platform towards the driveway itself.

5 It slopes down towards that front right corner of
6 the platform and pools there. At this particular
7 time and for approximately five months or so, there
8 was absolutely no drain at that corner of the
9 driveway and the water was eventually either
10 evaporated or went down through the driveway. I have
11 taken pictures of the water seeping underneath the
12 driveway through the crack in the driveway down his
13 property. On the far right hand side, you can see
14 the extent of the soil erosion that has taken place.

15 MR. O'BRIEN: Directing your attention to
16 the lower right hand quadrant of the photograph, what
17 is the shaded area?

18 MR. POTTER: The shaded area represents
19 the front concrete wall of the elevated parking
20 platform which extends down approximately four feet.

21 MR. O'BRIEN: Is that where the staircase
22 later was placed?

23 MR. POTTER: The staircase is placed a
24 little bit farther to the right closer to the front
25 end of the structure on the right.

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1 MR. O'BRIEN: What is the object or the
2 structure in the upper right hand corner of the
3 photograph?

4 MR. POTTER: It represents the front face
5 of the old garage which has been converted into what
6 I believe is a laundry room. It represents a built
7 out portion of the roof of that old garage. It
8 represents part of the house that is on top of the
9 wall that is part of this parking structure.

10 MR. O'BRIEN: And what's the object in
11 the upper left hand quadrant of the same photograph?

12 MR. POTTER: The upper left hand quadrant
13 represents the garage, the three car garage that he
14 is building.

15 MR. O'BRIEN: Directing your attention to
16 the next photograph in sequence. Can you tell me --
17 first of all, did you take this photograph?

18 MR. POTTER: I took this picture also.
19 This is a picture taken from my house which shows the
20 extent of the parking platform before the building of
21 the garage itself. What you can see on the right
22 hand side is the right hand wall of the elevated
23 parking structure as it extends from my property from
24 almost the edge of the driveway all the way down
25 towards his house. The concrete stairs which access

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1 the top of this parking structure are at the very
2 right hand side towards the house.

3 The old garage door with those windows
4 are represented there, but they are gone and the
5 slats that are on the house have been built out in
6 the picture that we previously saw.

7 MR. O'BRIEN: Is this area where the
8 front end of the parking platform appears, is that
9 the side yard between your residence and the house on
10 the Ghafoorian property?

11 MR. POTTER: That is the side yard of his
12 property and the height is approximately the height
13 of the old garage minus the roof.

14 VICE CHAIRPERSON SOCKWELL: Let me ask
15 you. You're saying, Mr. Potter, that the -- would
16 you restate -- just state again the issues related to
17 the old garage as --

18 MR. POTTER: The old garage has been
19 converted to another room in the house. The front of
20 the old garage is gone and the wall of the house now
21 is the wall of this parking structure. So the wall
22 you see in front of the windows is the inside wall of
23 the house. It is physically permanently attached to
24 the house and the top portion of the garage sits on
25 top of it.

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1 VICE CHAIRPERSON SOCKWELL: So you're
2 talking that those are high windows that rest on top
3 of that wall.

4 MR. O'BRIEN: Mr. Chairman, I'm
5 attempting to do this kind of in sequence so you can
6 get a feel for how the construction progressed
7 because --

8 VICE CHAIRPERSON SOCKWELL: Okay. I'll
9 let you continue.

10 MR. O'BRIEN: There are pictures towards
11 the end which better show the way it stands at the
12 moment.

13 VICE CHAIRPERSON SOCKWELL: All right.
14 Continue.

15 BOARD MEMBER RENSHAW: Mr. Vice Chair,
16 just clarification. In this picture that we've been
17 discussing, are the stairs to the house on the
18 lefthand side of the picture or on the right?

19 MR. POTTER: They're on the wall on the
20 righthand side.

21 BOARD MEMBER RENSHAW: Would you hold up
22 the picture and just point.

23 MR. POTTER: The stairs are right here.

24 BOARD MEMBER RENSHAW: Oh. All right.

25 MR. POTTER: So the righthand side of the

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1 wall closest to the house are where the stairs are
2 located.

3 BOARD MEMBER RENSHAW: Thank you.

4 MR. O'BRIEN: The stairs were added
5 fairly late in the project, and you will see
6 photographs that will show where they're placed more
7 or less from the same angle.

8 Directing your attention to the next
9 picture in sequence, Mr. Potter, can you show where
10 that is.

11 MR. POTTER: This is again taken from
12 basically my garage looking towards Mr. Ghafoorian's
13 property. It shows the extent of the water build up
14 which at times is up to six inches in depth at that
15 point.

16 MR. O'BRIEN: Okay. Did there come a
17 time when a drain was placed in that corner?

18 MR. POTTER: A drain has been inserted.
19 Approximately a foot by a foot drain has been
20 inserted at that point sort of at the junction
21 between.

22 MR. O'BRIEN: And the water which used to
23 pool to a depth of about six inches now pools to a
24 depth of how much?

25 MR. POTTER: Two. It's not as extensive,

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1 but it certainly pools there.

2 MR. O'BRIEN: Directing your attention to
3 the next picture in sequence.

4 MR. POTTER: This is a picture taken from
5 Mr. Ghafoorian's property that shows not only the
6 water pooling above the construction which has taken
7 place at that time, it shows the structure and the
8 water which is slowly but surely seeping out and
9 eroding underneath the structure that he has built.

10 MR. O'BRIEN: Directing your attention to
11 the next picture in sequence. Can you tell the panel
12 when that was taken.

13 MR. POTTER: This picture is taken
14 approximately December of 1999. This picture is
15 taken from halfway up the driveway looking towards
16 the back of the property. The pool wall is on the
17 left, and the garage is on the right.

18 MR. O'BRIEN: And what's the approximate
19 distance between the pool wall and the garage?

20 MR. POTTER: Pool wall and the garage
21 itself is approximately four feet.

22 MR. O'BRIEN: Now, Mr. Potter, in the
23 course of the construction which you discussed in the
24 period, say, from May 1999 through December 1999, did
25 you attempt to contact the District of Columbia to

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1 express your concerns and, if so, could you describe
2 for the panel what you've done -- what you did.

3 MR. POTTER: I have contacted several
4 times members from the District of Columbia in an
5 attempt to clarify what was occurring at that time.
6 The original case which we were involved in
7 represented a single garage was being built which was
8 approximately five to six feet lower than this
9 structure. Mr. Ghafoorian was building this elevated
10 structure at the time of the trial and testified that
11 he was building something that he wasn't doing.

12 MR. PARKER: Objection. Hearsay
13 statements.

14 MS. PRUITT: Mic, please, just so we can
15 get you on the record.

16 MR. PARKER: Objection to hearsay
17 statements unless they're going to prove it up with
18 transcripts or something like that.

19 MR. O'BRIEN: Your Honor --

20 MS. PRUITT: Mr. O'Brien, you need to
21 either get closer to the mic or sit down because our
22 reporter is not catching your voice. Okay?

23 MR. O'BRIEN: I apologize, but this would
24 not be hearsay because the declarant is actually in
25 front of you. That would be Mr. Ghafoorian.

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1 MR. NIEDERMAYER: My name is Roy
2 Niedermayer and I represent Mr. Ghafoorian in this
3 matter. I would join in that objection. The
4 exception for hearsay doesn't apply just because the
5 person is present.

6 VICE CHAIRPERSON SOCKWELL: We can
7 sustain the objection.

8 MR. O'BRIEN: Returning to the question,
9 Mr. Potter. Prior to December of 1997, what measures
10 did you take to alert the District of Columbia
11 government to your -- the DCRA officials to your
12 concerns regarding this project?

13 MR. POTTER: I was concerned about the
14 fact of the water build up. I was concerned about
15 the fact that the driveway was not filled or
16 completed or repaired. The construction that
17 originated back in March on the portion of the
18 driveway that was excavated was still there. A four
19 foot rebar rod which dates back to the original
20 construction was protruding from the driveway. It
21 endangered not only the workers who were building the
22 garage -- and I have pictures of workers standing on
23 top of the garage over the structure -- it also
24 endangered my kids.

25 MR. O'BRIEN: Perhaps I'm not making

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1 myself clear. How many times did you contact the
2 District of Columbia to express your concerns?

3 MR. POTTER: The entire --

4 MR. O'BRIEN: During that period between
5 May and December. How many times would you estimate
6 you tried to -- you contacted them?

7 MR. POTTER: Twenty.

8 MR. O'BRIEN: Did you email them?

9 MR. POTTER: I have emailed them.

10 MR. O'BRIEN: Approximately how many
11 times?

12 MR. POTTER: Five. I have contacted
13 through a formal protest with Mr. Lourenco.

14 MR. O'BRIEN: How many times did your
15 wife call or email?

16 MR. POTTER: My wife didn't email. She
17 contacted about 10 times over the phone. She
18 attempted to call the members of the government.

19 MR. O'BRIEN: Did there come a time when
20 you actually went to Mr. Lourenco's office?

21 MR. POTTER: I've been down to Mr.
22 Lourenco's office five, six, seven, eight times.

23 MR. O'BRIEN: And what happened in each
24 of those occasions?

25 MR. POTTER: I have talked to a series of

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1 inspectors down there. I have talked to Inspector
2 James Shelton. I've talked to a Mr. Nunley down
3 there. I've talked to other officials in the office,
4 but I never contacted Mr. Lourenco.

5 MR. O'BRIEN: Did Mr. Lourenco ever
6 refuse to see you?

7 MR. POTTER: Yes.

8 MR. O'BRIEN: Could you explain the
9 circumstances of that refusal.

10 MR. POTTER: I had -- Mr. -- we had
11 contacted the office. Mr. Shelton and Mr. Nunley
12 came out to our house to inspect what was going on in
13 December of 1999. We looked at the structure. Mr.
14 Shelton and Mr. Nunley declared that the structure
15 was a side yard structure, that Mr. Ghafoorian was
16 not building to plans. We did that in front of an
17 ANC member, one of the commissioners of our local
18 ANC. Mr. Nunley and Mr. Shelton went back and issued
19 a stop work order at that time in December. One day
20 later the stop work order was vacated without a
21 statement whatsoever.

22 Approximately a day or two after that, I
23 wrote a letter which is included in the papers in
24 front of you where I formally protested to Mr.
25 Lourenco and the grounds of my protest are stated in

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1 that letter.

2 MR. O'BRIEN: What response, if any, did
3 you get to your appeal?

4 MR. POTTER: I received on January --
5 July 28 of this year, approximately eight months
6 later, a approximately one paragraph response saying
7 that he could not comment on this situation. He
8 refused to meet with me down in his office when I
9 went down there.

10 MR. O'BRIEN: Directing your attention to
11 the next photograph in sequence. Can you tell the
12 panel what that represents.

13 MR. POTTER: This is a picture taken from
14 my property towards the -- it's of the top of the
15 parking platform towards the old garage. The door
16 that you see in the middle of the picture represents
17 the old door to the old garage and the structure on
18 top of the door represents the extension outward from
19 the old garage and the extension of where it meets
20 the top of the platform.

21 MR. O'BRIEN: Directing your attention to
22 the next photograph in sequence which is really dark,
23 and I apologize for that.

24 MR. POTTER: What you're looking at is
25 the remains of my driveway. This picture is taken in

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1 the fall of approximately October/November of 1999,
2 seven, eight months, whatever, after the initial
3 excavation began. It represents not only the hole in
4 the driveway that still exists, it also represents
5 the four foot rebar structure that's extending out of
6 that hole.

7 MR. O'BRIEN: Given the problem with the
8 reproduction, and I apologize although I believe the
9 original color is in the record, there is a tubular
10 sort of object coming from the lower left hand corner
11 of the photograph extending about two-thirds of the
12 way across it. Can you describe what that is.

13 MR. POTTER: That is the four foot rebar
14 that's extending out of the excavation site that's
15 been there from March when the excavation began and
16 was finally removed in the middle of December.

17 MR. O'BRIEN: Why was it removed?

18 MR. POTTER: Because I finally went down
19 there after repeated phone calls and visits, I
20 finally went down there and made them remove it
21 because of the safety issue with my children.

22 BOARD MEMBER RENSHAW: Made who remove
23 it?

24 MR. POTTER: I went down to the city and
25 talked to Inspectors Nunley and Shelton and said

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1 there certainly is a safety issue here. I wrote in
2 my letter to Mr. Lourenco about the safety issue was
3 there and, as a response from that, it was red tagged
4 and was removed by Mr. Ghafoorian.

5 MR. O'BRIEN: Let's skip the next.
6 Directing your attention two photographs in. There
7 appears to -- this appears to be a photograph of the
8 parking platform and a garage from a different angle.
9 Can you describe for the panel what this photograph
10 represents.

11 MR. POTTER: Yes. This photograph was
12 taken from Mr. Ghafoorian's property looking back
13 towards my property through the garage and parking
14 structure that's being built. My house is
15 represented in the background with the basketball
16 hoop over my garage. Mr. Ghafoorian's garage is the
17 middle portion of the picture. On the left hand side
18 is Mr. Ghafoorian's house with his garage.

19 MR. O'BRIEN: Directing your attention to
20 the first photograph that appeared behind Tab 9.
21 This appears to be a different stage in the
22 construction process. Can you describe what is in
23 that photograph?

24 MR. POTTER: This is a picture taken from
25 my driveway towards the house. What you see, the

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1 main structure on the right is his house. The
2 structure in the middle represents his old garage
3 with the new extension that extends over the parking
4 platform which is on the left. What you see is the
5 initial stage of connection between the platform and
6 the house. So the lower lefthand portion represents
7 the parking platform. That's approximately the point
8 where the stairs go up to the house. There is a --
9 there are some metal bars, one of them is evidenced
10 in the foreground, that represented the footings of
11 the stairs that were being built.

12 MR. O'BRIEN: Can you describe the next
13 photograph. Actually, the next --

14 VICE CHAIRPERSON SOCKWELL: Let me ask
15 you to skip the photographs that just show damage and
16 leakage and things like that because where we are
17 really going is an appeal of the Administrator's
18 decision on something.

19 MR. O'BRIEN: This is the next one we'll
20 be looking at which is, I think, the third one,
21 fourth one in sequence. Behind Tab 9.

22 VICE CHAIRPERSON SOCKWELL: Yet. Got it.

23 MR. POTTER: This is a picture taken from
24 my pool looking towards Mr. Ghafoorian's house which
25 is on the right and the garage which fills the middle

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1 portion of the picture. So it's a picture looking
2 towards his garage. The pool wall or fence, lattice
3 fence, is in the front and you can see the garage
4 through the fence and over the fence.

5 MR. O'BRIEN: Could you describe next
6 picture in sequence.

7 MR. POTTER: This is a picture not only
8 of the house taken from my driveway but it's a
9 picture of the stairway that goes up from the walkway
10 up to the top of the parking structure. The people
11 are workers on the property, so you can see the
12 height of the stairs. It's approximately 11 -- it is
13 11 step stairway going up, brick, concrete on both
14 the sides of the stairs. The date is stamped on the
15 picture which is 9-11.

16 MR. O'BRIEN: Of this year.

17 MR. POTTER: Of this year.

18 MR. O'BRIEN: Can you describe what the
19 next picture in sequence shows.

20 MR. POTTER: It shows a picture of the
21 staircase on the right. It was taken on 9-11 of this
22 year. It also shows a picture of the driveway and --

23 MR. O'BRIEN: The driveway appears in the
24 lower left hand corner.

25 MR. POTTER: Yes.

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1 MR. O'BRIEN: That's the shared driveway
2 we were talking about before.

3 MR. POTTER: That's the shared driveway.

4 MR. O'BRIEN: And what is the object --
5 the structure with the window on the righthand side
6 of the photograph?

7 MR. POTTER: That's the old parking
8 garage.

9 MR. O'BRIEN: This is the residence.

10 MR. POTTER: That's the residence.

11 MR. O'BRIEN: And that's the staircase
12 next to it.

13 MR. POTTER: Yes.

14 MR. O'BRIEN: This is essentially viewed
15 from Indian Lane looking towards the house.

16 MR. POTTER: Yes.

17 MR. O'BRIEN: Directing your attention to
18 the next photograph in sequence, particularly with
19 reference to the area more or less directly in the
20 center between the window and the staircase. Can you
21 show what that shows.

22 MR. POTTER: That shows the attachment of
23 the parking structure to the house. They are joined.
24 They are one. The roof of the house sits on top.

25 MR. O'BRIEN: And they are now physically

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1 attached.

2 MR. POTTER: They are physically --
3 there's no question. They are physically attached.

4 MR. O'BRIEN: Directing your attention to
5 the next photograph in sequence.

6 MR. POTTER: Taken from my property and
7 shows the wall which is part of the parking structure
8 and it shows the stairway going up from the ground
9 all the way up to the top of the parking structure.

10 MR. O'BRIEN: Now, Mr. Petter, did there
11 come a time when you were able to review the permits
12 that were issued for this project?

13 MR. POTTER: Yes.

14 MR. O'BRIEN: And what I'd like to ask
15 you is if the documents appearing behind Tab 4 -- I'd
16 like you to take a minute to review the documents
17 behind Tab 4 actually.

18 (The witness examines the documents.)

19 MR. O'BRIEN: To the best of your
20 knowledge, are those true and accurate reproductions
21 of the permits and applications applicable to the
22 garage and parking platform?

23 MR. NIEDERMAYER: Objection. I object.
24 I don't know how this witness can know that. He
25 can't testify to the fact whether they're accurate

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1 reproductions from the records of the agency.

2 VICE CHAIRPERSON SOCKWELL: Well, they
3 certainly look like accurate reproductions from my
4 point of view, having seen more of them than most
5 people. I would not state that they look like
6 they've been doctored unless you can, Mr.
7 Niedermayer, show that you believe that information
8 pertaining to them is incorrect, and that would be
9 because your client produced those documents and
10 submitted them to the District. So I'm sure that if
11 you feel that they are incorrect, then you would want
12 to tell us immediately that these have been doctored.

13 MR. NIEDERMAYER: Mr. Chairman --

14 VICE CHAIRPERSON SOCKWELL: Please step
15 forward.

16 MS. PRUITT: I'm sorry. You have to come
17 to the mic.

18 MR. NIEDERMAYER: The characterization of
19 doctored would be your word. I didn't say they were
20 doctored. I said --

21 VICE CHAIRPERSON SOCKWELL: No. You said
22 accurate. Accurate means that there's something
23 wrong with them. Either they didn't come out of the
24 Xerox machine properly or there's something that's
25 been modified. Would you not say?

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1 MR. NIEDERMAYER: Yes. I would say that
2 the accuracy relates to whether the copies that were
3 made are the copies of the documents that are in fact
4 here. I don't know whether they are or not.

5 VICE CHAIRPERSON SOCKWELL: You should
6 know.

7 Continue.

8 MR. POTTER: This represents a certified
9 copy -- a copy of a --

10 MR. O'BRIEN: The question before you was
11 to the best of your knowledge, are these true and
12 accurate reproductions of the permits and
13 applications applicable to the platform and garage at
14 4900 Indian Lane?

15 MR. POTTER: This represents an accurate
16 copy of the first permit that was issued.

17 MR. O'BRIEN: That would be the April --

18 VICE CHAIRPERSON SOCKWELL: Mr. Potter,
19 would you state for the record where these copies
20 were obtained and whether or not you made the copies
21 or whether or not BLRA staff made the copies for you.

22 MR. POTTER: I went down to 941 -- was it
23 East Capital Drive?

24 VICE CHAIRPERSON SOCKWELL: North Capital
25 Street.

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1 MR. POTTER: North Capital Street to the
2 Permit Office on the second floor and obtained
3 certified copies of the permits for this construction
4 at 4900 Indian Lane.

5 VICE CHAIRPERSON SOCKWELL: For which you
6 paid a fee.

7 MR. POTTER: Yes.

8 VICE CHAIRPERSON SOCKWELL: So you have
9 receipts.

10 MR. POTTER: Yes.

11 VICE CHAIRPERSON SOCKWELL: Thank you.
12 You may want to submit those to the record to satisfy
13 Mr. Niedermayer.

14 MR. O'BRIEN: Mr. Chairman, just for
15 clarification. The ones that are -- these particular
16 copies are -- these permits and applications were
17 received by me from Mr. Lourenco pursuant to a
18 subpoena.

19 VICE CHAIRPERSON SOCKWELL: Okay. So
20 then we can assume that they are accurate copies.

21 MR. O'BRIEN: If they're inaccurate --

22 VICE CHAIRPERSON SOCKWELL: They would
23 not be your responsibility.

24 MR. O'BRIEN: Yes, Your Honor -- Mr.
25 Chairman.

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1 VICE CHAIRPERSON SOCKWELL: Thank you.

2 MR. O'BRIEN: Sorry.

3 VICE CHAIRPERSON SOCKWELL: Mr.

4 Niedermayer, is that enough to satisfy you?

5 MR. NIEDERMAYER: That's fine. Yes.

6 VICE CHAIRPERSON SOCKWELL: Thank you.

7 Please continue, Mr. Potter.

8 MR. O'BRIEN: Directing your attention to
9 the April 4 permit -- or the April 6 permit and the
10 application behind it. Does the April 6 permit say
11 anything at all about a parking platform?

12 MR. POTTER: No.

13 MR. PARKER: Objection at this point. It
14 seems to me we've got -- the presentation is getting
15 far afield here in terms of what was appealed. What
16 was appealed was the stop work order. In other
17 words, framed at that period of time in December 9,
18 there was a structure that was in existence and my
19 client or representatives of the client were called
20 out to make a determination as to whether the
21 building at that point should continue on or whether
22 there was some sort of basis to take any kind of
23 administrative action against it.

24 VICE CHAIRPERSON SOCKWELL: I think that
25 in --

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1 MR. PARKER: If I could just finish my
2 thought.

3 VICE CHAIRPERSON SOCKWELL: Please, go
4 right ahead.

5 MR. PARKER: It seems to me that to go
6 back into the permit question and to whether the
7 permit was properly filed or whether the permit
8 properly states what took place is reopening that
9 issue, an appeal that should have taken place on the
10 permit itself as opposed to an appeal on the stop
11 work order. That's the point I'm trying to make.

12 VICE CHAIRPERSON SOCKWELL: Well, I think
13 that you have chickens and eggs here and you don't
14 get many chickens without some eggs. So in order to
15 establish whether or not the chicken was plucked, you
16 have to find out where the chicken came from and, in
17 my belief, we need to continue somewhat on this line
18 because it is illuminating to us as to what should
19 have been permitted and how it was permitted in order
20 to determine whether or not a stop work order was
21 necessary or even desirable in this case.

22 MR. PARKER: Well, that's presuming that
23 at the final analysis when the building is completed
24 or at the point the stop work order is issued, the
25 building itself could not have been in compliance

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1 with the zoning regulations at that point.

2 VICE CHAIRPERSON SOCKWELL: When a stop
3 work order is issued, it may be issued for various
4 reasons and the determination of the validity of a
5 stop work order may be made here on whether or not it
6 was issued correctly or not but, at the same time, we
7 have to determine, I think, that we are approaching a
8 stop work order for a valid permit or a stop work
9 order with regard to an invalid permit.

10 I mean there are issues here that I think
11 we just need to follow a little bit further and I
12 know that you may not appreciate this but you have a
13 great appreciation for the process of issuing
14 building permits and that building permits do have to
15 state what is to be constructed. A stop work for
16 noncompliance with certain regulations is one thing.

17 A stop work order for not having a permit issued for
18 the construction being undertaken is another thing.
19 But let's just continue on this basis and, if we find
20 another reason to object, then I may entertain it
21 but, at this point, I'd like to continue with what is
22 being expressed.

23 MR. PARKER: Very well.

24 MR. O'BRIEN: And directing your
25 attention, Mr. Potter, to the April permit. Is there

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1 any reference to a parking platform or a structure
2 like a parking platform in the permit or in the
3 application?

4 MR. POTTER: No.

5 MR. O'BRIEN: Directing your attention to
6 the second permit which appears behind Tab 5 which is
7 dated May 24, 1999. Would you please take a minute
8 to look at that and tell me if it or the application
9 addressees a parking platform.

10 MR. POTTER: No.

11 MR. O'BRIEN: I'd like to direct your
12 attention to the space on the bottom of -- this would
13 be the fourth page in but at the top of the page it
14 says page two and it's box 89 and 91 of the
15 application for the May permit. Can you tell me what
16 is supposed to go in box 89?

17 MR. POTTER: Signature of adjoining
18 owner.

19 MR. O'BRIEN: And who would be the
20 adjoining owner of the 4900 Indian Lane?

21 MR. POTTER: Me.

22 MR. O'BRIEN: Is that your signature?

23 MR. POTTER: No.

24 MR. O'BRIEN: Underneath that there's the
25 address of the adjoining owner. Is that your

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1 address?

2 MR. POTTER: No.

3 MR. O'BRIEN: Do you recognize the
4 signature?

5 MR. POTTER: Yes.

6 MR. O'BRIEN: Do you recognize the
7 address?

8 MR. POTTER: Yes.

9 MR. O'BRIEN: Whose is it?

10 MR. POTTER: Mr. Ghafoorian's.

11 MR. O'BRIEN: But it's not yours.

12 MR. POTTER: No.

13 MR. O'BRIEN: And you never consented to
14 this project.

15 MR. POTTER: No.

16 MR. O'BRIEN: Directing your attention to
17 the materials appearing behind --

18 MR. PARKER: I'm sorry. Could you recite
19 the last exhibit for me, please, that you were just
20 referring to.

21 MR. O'BRIEN: That would be Tab 5.

22 MR. PARKER: And which sheet of Tab 5,
23 please?

24 MR. O'BRIEN: If you look at the top of
25 it, page two and it's box 89 and 91 at the bottom in

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1 the lower righthand corner.

2 VICE CHAIRPERSON SOCKWELL: Go ahead.
3 Continue.

4 MR. O'BRIEN: Directing your attention,
5 Mr. Potter, to the material appearing behind Tab 6.
6 Did Mr. Ghafoorian ever represent himself to you or
7 to the District of Columbia as a licensed architect?

8 MR. POTTER: Both to me and the District
9 of Columbia as a licensed architect in the city.

10 MR. O'BRIEN: And did he declare himself
11 in a sworn affidavit to be --

12 MR. HOLMAN: Mr. Chairman, why are we
13 pursuing this particular line of questioning? I'm
14 trying to understand.

15 VICE CHAIRPERSON SOCKWELL: Actually, the
16 issue of whether or not Mr. Ghafoorian would actually
17 have to be licensed in order to either produce
18 drawings or undertake the work is generally not --
19 it's generally not a requirement for single family
20 residential construction and, therefore, any
21 assertions he may have made would not have had an
22 effect on the issuance of this particular type of
23 permit.

24 MR. O'BRIEN: With all due respect, Mr.
25 Chairman, both these permits were issued on a walk-

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1 through basis.

2 VICE CHAIRPERSON SOCKWELL: And that is
3 possible without a licensed architect's stamp on the
4 drawings.

5 MR. O'BRIEN: This may explain why he was
6 able to get these permits because he did represent
7 himself as an architect on the drawings and,
8 secondly, Mr. Chairman --

9 VICE CHAIRPERSON SOCKWELL: You could
10 have done the same thing, sir.

11 MR. O'BRIEN: I wouldn't have.

12 VICE CHAIRPERSON SOCKWELL: But you could
13 have because it's legal.

14 MR. O'BRIEN: It does go to whether or
15 not he's proceeding in good faith, I think.

16 VICE CHAIRPERSON SOCKWELL: Well, as long
17 as it doesn't affect the issuance process materially,
18 I believe that it's not relevant.

19 MR. O'BRIEN: Then in that case, we'll
20 move on.

21 Returning, Mr. Potter, to the essential
22 chronology. You said that you filed your appeal on
23 December 10.

24 MR. POTTER: Yes, with Mr. Lourenco.

25 MR. O'BRIEN: With Mr. Lourenco. And you

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1 did not receive a response to that appeal until July
2 12 or thereabouts of the year 2000.

3 MR. POTTER: I think it's July 28.

4 MR. O'BRIEN: In the intervening period,
5 did you or your wife do anything to encourage the
6 District of Columbia to respond to your appeal and,
7 if so, could you describe for the Board what you did.

8 MR. POTTER: I don't understand the
9 question.

10 MR. O'BRIEN: After December, after you
11 filed your appeal, did you ever wonder what had
12 become of it, whether or not it was going to be
13 answered? Did you ever contact the District to see
14 what they were doing with your appeal?

15 MR. POTTER: Well, I contacted the mayor.
16 I wrote the mayor. I wrote a letter to Mr. Vincent
17 Ford stating the same issues and wanting a response.
18 I went down to Mr. Lourenco's office trying to seek
19 an answer to this problem.

20 MR. O'BRIEN: Did you email him?

21 MR. POTTER: I emailed Mr. Lourenco.

22 MR. O'BRIEN: Did you phone his office?

23 MR. POTTER: I phoned his office, and I
24 went down there.

25 MR. O'BRIEN: Could you tell the Board

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1 approximately how many times you contacted Mr.
2 Lourenco's office in one form or another regarding
3 this appeal?

4 MR. POTTER: Oh, I was down there just on
5 this particular issue at that time at least 10 times
6 trying to find permits and all kinds of diagrams and
7 I tried to contact his office and get in touch with
8 him.

9 MS. PRUITT: Excuse me, Mr. O'Brien. Are
10 you trying to -- I'm trying to understand this line
11 of questioning. Are you going towards timeliness?

12 MR. O'BRIEN: Apparently we're covering
13 both timeliness and the merits.

14 MS. PRUITT: The timeliness goes to Mr.
15 Potter and not to DCRA as to when Mr. Potter knew
16 that the building permit was constructed, not when
17 DCRA responded to him but when he understood --

18 MR. O'BRIEN: Well actually, with all due
19 respect, Ms. Pruitt, you can not appeal here unless
20 it's right.

21 MS. PRUITT: Excuse me?

22 MR. O'BRIEN: You can not appeal to the
23 BZA unless it's right.

24 MS. PRUITT: But you still have a motion
25 on timeliness which deals with Mr. Potter's

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1 understanding and not DCRA's understanding.

2 MR. O'BRIEN: All right. Mr. Potter, at
3 what point did you come to the conclusion that Mr.
4 Lourenco was never going to answer your appeal?

5 MR. POTTER: Within several months after
6 that time. I mean no response ever came from him. I
7 went down to his office. He wouldn't meet with me.
8 I couldn't get in touch with him.

9 VICE CHAIRPERSON SOCKWELL: Let me
10 interrupt for a moment. With regard to permits, and
11 this speaks back to your discussions here and the
12 Intervenor's. With single family construction
13 generally, a licensed architect or engineer would not
14 be required. However, if a structure that is
15 considered to be an elevated structure or a
16 significant structural design might be attempted,
17 there is often a requirement that the structural
18 drawings be stamped by a structural engineer and/or,
19 in the more extreme cases, that a structural
20 certification form be submitted to the District of
21 Columbia in the name of that structural engineer.

22 It is only apparent to us at this Board
23 what was constructed based on the drawings that we
24 have seen and they are piecemeal at best, and there
25 is a possibility that those drawings might not have

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1 shown sufficiently certain parts of the work, but we
2 have no way of knowing that. So I want to temper my
3 statement on whether or not the permits could be
4 issued without a valid architect or engineer stamping
5 them on the basis of not knowing what was submitted
6 specifically in terms of drawings relevant to the
7 construction and particularly the elevated platform.

8 MR. O'BRIEN: Very good.

9 VICE CHAIRPERSON SOCKWELL: Which is a
10 concrete reinforced structure.

11 MR. O'BRIEN: I understand. Thank you.

12 Going back then to Ms. Pruitt's point, at
13 which point -- you filed your appeal in December.

14 MR. POTTER: Yes.

15 MR. O'BRIEN: How many months there --
16 you said some months thereafter you became convinced
17 that it was not going to be answered, and could you
18 state to the best of your recollection when that
19 occurred. When did you become convinced that Mr.
20 Lourenco was not going to address the appeal, if you
21 know.

22 MR. POTTER: I can't put a date on that.

23 I mean --

24 MR. O'BRIEN: Very good.

25 I have nothing further with this witness,

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1 Mr. Sockwell.

2 VICE CHAIRPERSON SOCKWELL: All right.
3 Thank you.

4 MS. PRUITT: Excuse me, Vice Chair. Are
5 you going to have the Appellant put on this whole
6 case and then cross examine or are you going to do
7 witness by witness?

8 VICE CHAIRPERSON SOCKWELL: In this case,
9 it actually might be more appropriate to deal with
10 this witness by witness because it's very detailed.
11 So --

12 MR. O'BRIEN: That would actually be our
13 preference, if possible.

14 VICE CHAIRPERSON SOCKWELL: So then I
15 would ask for the Board to make any comments and then
16 we would get cross examination. Does the Board have
17 any questions of this witness?

18 Mr. Potter, at the present time, how much
19 of your access has been permanently removed in your
20 easement area?

21 MR. POTTER: As of this date today?

22 VICE CHAIRPERSON SOCKWELL: As of this
23 date.

24 MR. POTTER: As of this date today, the
25 hole that was excavated has been pretty much filled

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1 with rocks. The hole still exists there, but it's
2 been filled with rocks. There's a several inch piece
3 of that rebar still exists in that hole and it's
4 basically an inch below the surface.

5 VICE CHAIRPERSON SOCKWELL: But the area
6 has not been restored?

7 MR. POTTER: The area is not -- if I
8 drive on the area, the tires will crumble the portion
9 of the driveway that has been excavated.

10 VICE CHAIRPERSON SOCKWELL: Okay. So it
11 was never restored to its existing condition -- pre-
12 existing condition.

13 MR. POTTER: To this day, it has not been
14 restored to its existing condition.

15 VICE CHAIRPERSON SOCKWELL: Thank you.
16 That's all.

17 BOARD MEMBER RENSHAW: Mr. Vice Chair,
18 just a question for Mr. Potter. Were you the first
19 resident and Mr. Ghafoorian followed you in ownership
20 of his house or --

21 MR. POTTER: I purchased my house in
22 1992. He purchased his house in 1997, so I was the
23 first person there.

24 BOARD MEMBER RENSHAW: All right. Now,
25 did you explain to Mr. Ghafoorian or did you feel

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1 that he understood that the driveway was a shared
2 driveway and that you each had rights on the other
3 person's side of the driveway?

4 MR. POTTER: We have talked about that,
5 and he knows and I know about the shared driveway.

6 BOARD MEMBER RENSHAW: All right. He
7 understood that he had half of the driveway and you
8 have the other half and you had an easement on his
9 half and he had an easement on your half.

10 MR. POTTER: We both have access to the
11 driveway.

12 BOARD MEMBER RENSHAW: Access.

13 MR. POTTER: Yes.

14 BOARD MEMBER RENSHAW: And did Mr.
15 Ghafoorian at any time leading up to the point where
16 you went on vacation in March/April of 1999, did you
17 mention to you at all, did he ask your permission to
18 utilize your side of the driveway? In other words,
19 that he was going to have some work done and he would
20 need to have access to the driveway for this purpose
21 of construction?

22 MR. POTTER: No. He never talked to me
23 at all about the construction prior to the
24 construction beginning.

25 BOARD MEMBER RENSHAW: So you left on

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1 vacation not understanding, not knowing, not having
2 been approached by Mr. Ghafoorian that anything was
3 going to happen on his property?

4 MR. POTTER: Yes. I left on vacation
5 without any notification from him.

6 VICE CHAIRPERSON SOCKWELL: Cross
7 examination.

8 MR. PARKER: Thank you.

9 Mr. Potter, with regard to the stop work
10 order in December of 1999. There came a time when --
11 was it Mr. Nunley and Mr. Shelton came back out?

12 MR. POTTER: We called them up and they
13 came out to our property.

14 MR. PARKER: All right. I'm talking
15 about when the stop work order was set aside. Did
16 you receive a copy of the stop work order with some
17 signatures on the back?

18 MR. POTTER: Not that I'm aware of. No.

19 MR. PARKER: Okay. At some point in
20 time, you became aware that the stop work order had
21 been set aside. Correct?

22 MR. POTTER: Basically 24 hours later
23 when they continued work on it, I bumped into Mr.
24 Ghafoorian and he said it had been lifted.

25 MR. PARKER: And at that point, that's

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1 when you attempted to write to Mr. Lourenco.

2 MR. POTTER: Yes.

3 MR. PARKER: All right. At any time
4 thereafter did anyone from DCRA, including Mr.
5 Lourenco, say to you that the matter was under review
6 and was pending?

7 MR. POTTER: No.

8 MR. PARKER: So as far as you knew,
9 nobody in DCRA was taking any action on your request
10 for an appeal. Correct?

11 MR. POTTER: As far as I know, I really
12 wasn't contacted by anybody. I contacted the mayor.
13 The mayor emailed me back and said thanks for the
14 heads up was his email. So I knew that he received
15 it.

16 MR. PARKER: But the critical point here
17 is no one led you to believe that your appeal or what
18 you call your appeal, your letter, was under active
19 review.

20 MR. POTTER: I went down to --

21 MR. O'BRIEN: Your Honor, I'm sorry but I
22 really have to object to this. The letter, if
23 counsel will review it, says it's a formal appeal.
24 There is an administrative procedure which gives him
25 the right to appeal that was on the bottom of the

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1 stop work order. The responsible officials within
2 the DCRA have an obligation to hear the appeal. It's
3 not like -- I mean the real problem we have here is
4 that the DCRA has been acting like they're doing Mr.
5 Potter a favor.

6 MS. PRUITT: Mr. O'Brien, do you have a
7 copy of that letter?

8 MR. O'BRIEN: Yes, I do. It's attached
9 actually at the back of --

10 MS. PRUITT: If you just tell us, we can
11 turn directly to it.

12 MR. O'BRIEN: I believe it is behind Tab
13 1 but I'll check that.

14 MR. PARKER: I'd like to respond to
15 counsel's statements, please.

16 VICE CHAIRPERSON SOCKWELL: The favor
17 part should be stricken from the record, and you can
18 respond now.

19 MR. PARKER: The point of the questions
20 are that there is a procedure for appeals from stop
21 work order decisions and one of the provisions of the
22 appeal is, the appeal procedure is, once you file an
23 appeal, if the agency takes no action for three days,
24 you then are on notice to take further administrative
25 actions, and that is what the point of my questioning

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1 is and you have the testimony now that no one from
2 DCRA led or lulled Mr. Potter into believing that his
3 appeal was under review. That's the point I'm trying
4 to make.

5 MR. O'BRIEN: If I may, the appeal letter
6 appears immediately behind Tab 10.

7 VICE CHAIRPERSON SOCKWELL: When you say
8 lulled, would you explain lulled to the Board.

9 MR. PARKER: Well, in other words, I
10 would think Mr. Potter would have some sort of an
11 argument here. If he had filed this letter, somebody
12 had called him back and said, we've got your letter,
13 we're considering it, we're thinking about it, we'll
14 get back to you.

15 VICE CHAIRPERSON SOCKWELL: Have you had
16 much experience with DCRA?

17 MR. PARKER: I have had some experience
18 with them. Yes.

19 VICE CHAIRPERSON SOCKWELL: Then you
20 shouldn't be in the position to make the statement
21 that you just made with any belief in it because
22 there have been many instances where DCRA has not
23 responded in a three day period to certain requests.

24 MR. PARKER: The point is --

25 VICE CHAIRPERSON SOCKWELL: So what I'm

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1 saying is that --

2 MR. PARKER: I'm sorry.

3 VICE CHAIRPERSON SOCKWELL: You say that
4 there was no reason to believe they lulled Mr. Potter
5 into the belief of such and such, and I'm saying
6 there's no reason to be certain that DCRA would have
7 been able to respond within the three day period.

8 MR. PARKER: Right, but that doesn't
9 change--

10 VICE CHAIRPERSON SOCKWELL: There's no
11 certainty.

12 MR. PARKER: That doesn't change what his
13 rights are based on that eventuality.

14 VICE CHAIRPERSON SOCKWELL: Okay. And as
15 well, it might be somewhat proper to expect that Mr.
16 Potter, who may not retain counsel or may not have
17 been working with counsel at the time, would not have
18 been 100 percent sure of his rights and
19 responsibilities under that stop work order
20 situation.

21 MS. SANSONE: Mr. Chairman, if I might
22 just interject for a minute. We're in the middle of
23 cross examination now and, to the extent the Zoning
24 Administrator wishes to present testimony about
25 appeal procedures, it would be appropriate to his

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1 case, and we should just stick with the questioning.

2 VICE CHAIRPERSON SOCKWELL: All right. I
3 apologize. Please go forward.

4 MR. O'BRIEN: If I may, getting back to
5 the question. The letter that Mr. Potter filed
6 behind Tab 10 is dated December 10, 1999 and the
7 first sentence of which says that it's a formal
8 appeal. The response of Mr. Lourenco is the last
9 document behind Tab 10 and it is --

10 MS. PRUITT: Mr. O'Brien, we just asked
11 for the letter, not an explanation, just so that the
12 Board could read it. We're still in cross
13 examination of DCRA.

14 MR. O'BRIEN: Excuse me.

15 MR. PARKER: Mr. Potter, referring to the
16 permits that were issued and are part of your various
17 tabs, starting with Tab 4, the first sheet in Tab 4
18 is one of the permits issued in this case. Correct?

19 MR. POTTER: Yes.

20 MR. PARKER: For the record, it's permit
21 B-422926.

22 MR. O'BRIEN: Excuse me. Is that the one
23 dated April '99?

24 MR. POTTER: April 6, '99.

25 MR. PARKER: This permit indicates that a

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1 retaining wall under separate permit was going to be
2 part of this structure. Correct?

3 MR. POTTER: Three foot -- yes.

4 MR. PARKER: All right. On Tab 5 the
5 permit B-423964, that's a permit -- I'm looking for
6 the date on that -- 5-24-99. It says, "A revision to
7 the prior permit" and then it says "Finish slab
8 elevation of the new garage to be 107.50. Correct
9 all plans section. Elevation based on slab
10 elevation." And then, "Fence at the east side of the
11 retaining wall." So this permit -- my question to
12 you is this permit references a slab, an elevated
13 slab and a fence and a retaining wall. Correct?

14 MR. O'BRIEN: I don't know where we're
15 going with this but I believe the permits and the
16 applications speak for themselves. He's just simply
17 asking what they say.

18 VICE CHAIRPERSON SOCKWELL: Where are you
19 going with this?

20 MR. PARKER: The question -- he was
21 questioned on direct about whether the permit
22 application contained references to a platform, a
23 parking platform, and I'm pointing out the things
24 that are contained in the permits that he had notice
25 of. I have two more questions.

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1 VICE CHAIRPERSON SOCKWELL: Please go
2 ahead.

3 MR. PARKER: Two more questions. In any
4 event, based on that permit, there is references to
5 new slab elevations, retaining walls and finished
6 slab elevations on that permit. Correct?

7 MR. POTTER: Yes.

8 MR. PARKER: And indeed, at the top of
9 it, it says type fence retaining wall. Correct?

10 MR. O'BRIEN: Objection. It says what it
11 says. If counsel has a question --

12 MR. PARKER: Well then I'll ask him. You
13 had no -- you were aware of this permit. You
14 obtained this permit at some point. Correct?

15 MR. POTTER: Yes.

16 MR. PARKER: I guess this would be
17 further down in Section 5 there's a permit fee
18 422926. I'm sorry. That looks to be a repeat of the
19 original April 6, '99.

20 MR. O'BRIEN: For point of clarification.
21 That's the permit that was being modified which is,
22 again, the April permit. It's the same thing.

23 MR. PARKER: Okay. My last question to
24 you is did you ever file any kind of an
25 administrative action to challenge these permits

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1 other than your court cases?

2 MR. POTTER: I obtained a TRO.

3 MR. PARKER: No.

4 MR. POTTER: That's not an administrative
5 action?

6 MR. PARKER: No. Let me restate the
7 question and be more clear. Did you ever file any
8 objections to the permits other than through your
9 TRO, your court case?

10 MR. O'BRIEN: I'm going to object. Mr.
11 Potter has already testified that he and his wife
12 contacted and made complaints dozens of times.

13 MR. PARKER: Let me be more clear. Did
14 you file -- as you did with the stop work order, you
15 asked for a hearing or an appeal after that stop work
16 order was rescinded. Correct? You recall that
17 procedure you used.

18 MR. POTTER: I have obtained, I think,
19 three stop work orders.

20 MR. PARKER: All right. And did you --
21 and you were aware at some point that there were
22 appeal rights after those stop work orders. Correct?

23 MR. POTTER: I don't know. I'm very --
24 at the time that this was initiated, I'm very unsure
25 exactly what the procedures. I would think that the

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1 people, the neighbors would deal in good faith.
2 Coming down and --

3 MR. PARKER: Objection. That's
4 unresponsive.

5 VICE CHAIRPERSON SOCKWELL: Sustain that.

6 I think that the issue here is whether or not Mr.
7 Potter knew exactly what the procedures were and it's
8 obvious that Mr. Potter was working with the
9 situation as best he could. He may not have
10 understood fully some of the details of the
11 procedures.

12 MR. PARKER: Well, let me ask you, were
13 you represented by counsel during all this time?

14 MR. O'BRIEN: Specifically with reference
15 to what?

16 MR. PARKER: Can I have an answer to my
17 question from the witness.

18 MR. O'BRIEN: I'm going to object to it
19 because it's vague because, frankly, Mr. Potter is
20 represented by a major law firm with regard to estate
21 matters.

22 VICE CHAIRPERSON SOCKWELL: Well, whether
23 Mr. Potter was represented by counsel or not may be
24 relevant to his knowledge of certain things at the
25 time that this was going on, so you may answer the

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1 question.

2 MR. PARKER: I'll be more specific. From
3 April of '99, I believe, through December of '99,
4 were you represented by counsel in this matter?

5 MR. O'BRIEN: I'm going to object to the
6 term "this matter." Is counsel referring to the
7 administrative procedures that he referred to
8 earlier?

9 MR. PARKER: I'm referring to any matter
10 that involves his challenge to the construction of
11 Mr. Ghafoorian's --

12 VICE CHAIRPERSON SOCKWELL: Let me just
13 request that maybe the way to ask the question is did
14 Mr. Potter seek the advice of counsel before filing X
15 or filing Y. Then you can get a direct answer yes or
16 no.

17 MR. PARKER: All right. With regard to
18 your pursuing temporary restraining orders in
19 relation to this case, did you seek the advice of
20 counsel in those matters?

21 MR. POTTER: Yes.

22 MR. PARKER: Did you also at any time
23 discuss with counsel the ability to file
24 administrative appeals in this matter?

25 MR. O'BRIEN: I'm going to object.

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1 Attorney/client.

2 VICE CHAIRPERSON SOCKWELL: Well, since
3 that was --

4 MR. O'BRIEN: May I have an opportunity--

5 VICE CHAIRPERSON SOCKWELL: That was an
6 advisory issue.

7 MR. O'BRIEN: Could I have an opportunity
8 just to confer because he may want to answer this.

9 VICE CHAIRPERSON SOCKWELL: Sure.

10 (Off the record briefly.)

11 MR. O'BRIEN: One of the reasons why I'm
12 being cautious about this is because I was not
13 representing Mr. Potter at the time. Mr. Potter--

14 VICE CHAIRPERSON SOCKWELL: Excuse me. I
15 didn't hear you.

16 MR. O'BRIEN: I'm sorry. Mr. Chairman, I
17 was not representing Mr. Potter at the time. He had
18 other counsel with respect to the litigation. I just
19 wanted to make sure he was comfortable going into
20 this.

21 VICE CHAIRPERSON SOCKWELL: All right.

22 MR. O'BRIEN: Mr. Potter, go ahead.

23 MR. POTTER: Could you repeat the
24 question, please.

25 VICE CHAIRPERSON SOCKWELL: So he was not

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1 represented by the counsel that's in the room.

2 MR. PARKER: During the time you were
3 represented by counsel in this matter, did you ever
4 have any discussions with counsel about filing
5 administrative appeals to challenge these building
6 permits?

7 MR. POTTER: No.

8 VICE CHAIRPERSON SOCKWELL: Gentlemen,
9 I'm going to ask for a five minute break. We have an
10 issue with our recorder that we have to take care of,
11 if you don't mind. Thank you.

12 (Off the record for a seven minute recess
13 at 3:06 p.m.)

14 VICE CHAIRPERSON SOCKWELL: We'll
15 continue. Mr. Moulden will be right back in the
16 room. I believe you, Mr. Potter, were mulling over
17 an answer.

18 MS. PRUITT: Whether or not he was being
19 represented by counsel.

20 MR. POTTER: I'm sorry. I've already
21 answered that question.

22 MR. O'BRIEN: I thought he did. Do you
23 need to have it re-read?

24 VICE CHAIRPERSON SOCKWELL: No.

25 MR. PARKER: I would ask, along the same

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1 lines, at the time the stop work order in December of
2 '99 was issued, were you represented by counsel?

3 MS. PRUITT: Mr. Parker, you need to put
4 your mic on.

5 MR. PARKER: Every time I ask the
6 question clearly, I don't have the mic on.

7 At the time of the stop work order in
8 December of 1999, were you represented by counsel at
9 that time?

10 MR. POTTER: Yes.

11 MR. PARKER: Did you consult with counsel
12 regarding your rights when the stop work order was
13 terminated?

14 MR. POTTER: Basically yes.

15 MR. PARKER: I don't have any further
16 questions.

17 VICE CHAIRPERSON SOCKWELL: Thank you.
18 Mr. Niedermayer.

19 MR. NIEDERMAYER: Thank you. I do have a
20 couple of questions. Mr. Potter, I understand you
21 returned from a vacation in South Carolina in the
22 beginning of April to discover the construction that
23 was going on at the site, and then you went down to
24 check on whether there were any building permits. Is
25 that correct?

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1 MR. POTTER: At some time after that.
2 Yes.

3 MR. NIEDERMAYER: When you went down to
4 look at the building permits, did you take the
5 opportunity to look at any plans that were on file?

6 MR. POTTER: No.

7 MR. NIEDERMAYER: Did you know whether
8 there were any plans on file?

9 MR. POTTER: I did not know and I did not
10 know exactly where to look. No.

11 MR. NIEDERMAYER: And your immediate
12 response was to communicate with the District of
13 Columbia to see if you could get an inspector out
14 there to look at what was going on. Is that right?

15 MR. POTTER: My first response was to
16 talk to your client and ask him what he was doing.
17 That was the response when I came back from vacation.

18 MR. NIEDERMAYER: Okay. And then after
19 that, you were not happy with what the response you
20 got perhaps and you called the District of Columbia
21 to have them come down and inspect it.

22 MR. POTTER: After he threatened to build
23 a fence to restrict all my passage up my driveway, I
24 became somewhat concerned.

25 MR. NIEDERMAYER: Mr. Potter, could I ask

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1 you if we could just stick to the question so we can
2 do it. That really wasn't what my question was
3 about. I just wanted to know whether after you spoke
4 with Mr. Ghafoorian, then you then contacted the
5 District of Columbia to have an inspector come out
6 and look at what the construction was.

7 MR. POTTER: Yes.

8 MR. NIEDERMAYER: And is the next thing
9 you did after the District of Columbia inspectors
10 came out was to file a lawsuit and seek a TRO?

11 MR. POTTER: A stop work order was
12 issued. That was the first response. We wrote a
13 letter to your client asking him to get together to
14 talk about it, which he ignored. So we made a
15 friendly gesture to see if we could reconcile a
16 situation which was never responded to.

17 MR. NIEDERMAYER: After the inspectors
18 came out and they had the stop work order, I take it
19 the stop work order was lifted. Is that right?

20 MR. POTTER: Stop work order was lifted.

21 MR. NIEDERMAYER: And then the next thing
22 you did was to file a lawsuit and seek a TRO.

23 MR. POTTER: I think a second stop work
24 order was issued.

25 MR. NIEDERMAYER: Okay. And then after

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1 that stop work order, the next thing you did was to
2 file a suit and seek a TRO.

3 MR. POTTER: Basically, yes.

4 MR. NIEDERMAYER: Okay. So you didn't
5 appeal either of the stop work orders that had been
6 issued or vacated before you filed your lawsuit.
7 Isn't that right?

8 MR. POTTER: I basically was unaware you
9 could appeal the stop work order.

10 MR. NIEDERMAYER: Okay. So I guess the
11 answer to my question is --

12 MR. O'BRIEN: I'm going to --

13 MR. NIEDERMAYER: -- yes, you didn't do
14 that.

15 MR. O'BRIEN: I'm going to object because
16 it assumes matters that are not in evidence. In
17 fact, the two stop work orders that Mr. Potter refers
18 to were issued because Mr. Ghafoorian failed to
19 display his building permit.

20 MR. NIEDERMAYER: Mr. Chairman, this is a
21 speech, not an objection. I think if we could stick
22 to the point. It is in evidence because Mr. Potter
23 himself has testified that these two stop work orders
24 were issued. So that puts it in evidence.

25 MR. O'BRIEN: If I could -- the fact is,

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1 Mr. Ghafoorian simply posted his permits.

2 MR. POTTER: He did not post his permit.

3 MR. NIEDERMAYER: I would object.
4 There's no question pending.

5 VICE CHAIRPERSON SOCKWELL: I think the
6 issue is there are certain things that are hearsay as
7 we don't have so much evidence to support them, and
8 there are other things that we know are factual based
9 on the events that have been taken place and the
10 individuals and agencies that have participated. So
11 if we can try to keep the hearsay and he was a bad
12 guy/good guy thing away from this and just speak to
13 what did happen and what did not happen and, if the
14 questions could be confined to listing that
15 information, it would certainly be helpful.

16 MR. NIEDERMAYER: I have a simple
17 question. Mr. Potter, did you file any
18 administrative appeal after either of the stop work
19 orders that were issued in April of 1999 were vacated
20 by DCRA?

21 MR. POTTER: No.

22 MR. NIEDERMAYER: Mr. Potter, I'd like to
23 show you a photograph that's contained among the
24 materials that Mr. Ghafoorian submitted. It's a
25 photograph which was, I'll represent to you, which

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1 was taken in April of 1999. It has that date on the
2 front of it as part of our submission and looks like
3 this. There should be a color copy of this in the
4 materials I submitted. Unfortunately, I didn't have
5 more than one at the time, so the other copies are
6 more -- yes. It gets that funny computer look to it
7 when it's xeroxed, but that's the photograph.

8 MR. O'BRIEN: Excuse me. Could I ask
9 counsel what he's looking at. Is this the one you're
10 referring to?

11 MR. NIEDERMAYER: That's it.

12 Mr. Potter, as best as you can recall,
13 did the site where the wall was look like this in
14 April of 1999?

15 MR. POTTER: No. Absolutely not.

16 MR. NIEDERMAYER: Didn't look like that
17 at all?

18 MR. POTTER: No.

19 MR. NIEDERMAYER: Okay.

20 MR. POTTER: This picture was not taken
21 April of '99.

22 MR. NIEDERMAYER: Let me show you another
23 photograph.

24 MR. POTTER: I'm sorry. This is dated
25 incorrectly.

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1 MR. NIEDERMAYER: Okay. I understand
2 that's your testimony. Let me show you another
3 photograph which has got a date on it of May of 1999
4 and that should be the second one in the group of
5 photographs for Mr. Ghafoorian. Looks like this.

6 MR. POTTER: I see it.

7 MR. NIEDERMAYER: Mr. Potter, let me show
8 you this photograph and ask you whether the site of
9 Mr. Ghafoorian's property looked like that in May of
10 1999.

11 MR. POTTER: No.

12 MR. NIEDERMAYER: Okay. Let me show you
13 a third photograph that has a date of January of 2000
14 on it. It looks like this. It's got the pipes in
15 it. Let me ask you whether in January of 2000 you
16 observed these pipes being installed at all.

17 MR. POTTER: No.

18 MR. NIEDERMAYER: By the way, Mr. Potter,
19 are you still living at 4852 Indian Lane right now?

20 MR. POTTER: I own the house.

21 MR. NIEDERMAYER: Okay. But you don't
22 live there now, do you?

23 MR. POTTER: I'm not at the house right
24 now. No.

25 MR. NIEDERMAYER: Okay. You moved out

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1 several months ago indeed, didn't you?

2 MR. O'BRIEN: Objection.

3 VICE CHAIRPERSON SOCKWELL: Is the issue
4 of his residency, immediate residency, predicated on
5 him being able to identify the pictures or is this
6 for another purpose?

7 MR. NIEDERMAYER: It's for another
8 purpose. It's for the purpose that he's been
9 testifying about what it looks like out there and
10 driving over the rocks and such, and I think this
11 goes to the issue whether he's there to do that, not
12 to any other issue.

13 VICE CHAIRPERSON SOCKWELL: Well, whether
14 he's there to do it or not, the question would more
15 likely be whether the conditions exist.

16 MR. NIEDERMAYER: That is true, Mr.
17 Sockwell, but the record only reflects that the
18 witness just testified he drove over these rocks. We
19 don't know when, where --

20 VICE CHAIRPERSON SOCKWELL: Well, he owns
21 the property. He could visit the property, even if
22 he doesn't live there.

23 MR. NIEDERMAYER: That's true but, as I
24 said, since you've already advised us it'll be made
25 on the record and there's no evidence in the record.

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1 VICE CHAIRPERSON SOCKWELL: Well, you're
2 asking the questions. Let's see what we get out of
3 your answers.

4 MR. NIEDERMAYER: Mr. Potter, do you have
5 any written documents that you sent to the District
6 of Columbia between April 1999 and your letter of
7 December 10, 1999?

8 MR. POTTER: Any written documents
9 outside of filing for the TRO and --

10 MR. NIEDERMAYER: Yes. No. I mean sent
11 -- let me clarify my question. You're quite right.
12 Do you have any documents, letters or anything else,
13 that you sent to anyone at DCRA between April of 1999
14 and your December 10, 1999 letter?

15 MR. POTTER: No.

16 MR. NIEDERMAYER: Mr. Potter, may I ask
17 you to look at the materials behind your Tab 4 of
18 your submissions. April 6, 1999 Building Permit
19 B422926 materials.

20 MR. POTTER: Yes.

21 MR. NIEDERMAYER: When you looked at this
22 building permit, did you understand that it was to
23 build a three car garage of 900 square feet?

24 MR. POTTER: It's approximately what it
25 says.

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1 MR. NIEDERMAYER: Okay. Now, you
2 testified a little earlier that Mr. Ghafoorian, when
3 he submitted his building permits, wrote on them that
4 you had consented or that someone who is the
5 adjoining land owner had consented to the
6 construction that was being asked -- for which a
7 permit was being asked. Do you remember that?

8 MR. POTTER: Yes.

9 MR. NIEDERMAYER: Okay. Let me ask you
10 to look at the materials that are behind that
11 Building Permit B422926. Do you see those materials?

12 MR. O'BRIEN: Again, this is the April
13 permit?

14 MR. NIEDERMAYER: This is the April
15 permit.

16 MR. O'BRIEN: Okay. Now, Mr. Potter
17 never testified that anybody had written in consent
18 with regard to the April permit.

19 MR. NIEDERMAYER: I understand that.

20 MR. O'BRIEN: Okay.

21 MR. NIEDERMAYER: And I think you told us
22 that you went down and actually got copies of these
23 documents yourself from the agency.

24 MR. POTTER: Yes.

25 MR. NIEDERMAYER: Okay. The application

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1 has a place also, it's the same application, on the
2 fourth page, third page behind Tab 4 but it's marked
3 page two at the top, whereas the same box is 89 and
4 91, 90, etcetera, where it says "Signature of
5 adjoining owner." There's no signatures in any of
6 those boxes, are there?

7 MR. POTTER: No.

8 MR. NIEDERMAYER: Okay. In fact, the
9 whole section is crossed out, isn't it?

10 MR. POTTER: Yes.

11 MR. NIEDERMAYER: Did you happen to see
12 the originals when you got these copies?

13 MR. POTTER: Yes.

14 MR. NIEDERMAYER: Did it have the cross
15 out on that original, too?

16 MR. POTTER: Can't remember.

17 MR. NIEDERMAYER: Okay. Now let me ask
18 you to turn to Tab 5 which is the next permit of May
19 24, 1999. Now, this is the one where you, I believe,
20 testified that Mr. Ghafoorian was indicating that an
21 adjoining land owner had given his consent to the
22 construction that was being sought to be done for
23 which a permit was being sought down there at the
24 bottom of page two.

25 MR. POTTER: Yes.

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1 MR. NIEDERMAYER: Now, was the cross out
2 that you see on this copy on the copy that was given
3 to you by the person who made the copy at the agency?

4 MR. POTTER: I don't know. I can maybe
5 look, but I don't know.

6 MR. NIEDERMAYER: Well, you didn't put
7 that on there, did you?

8 MR. POTTER: No.

9 MR. NIEDERMAYER: Okay.

10 MR. POTTER: I didn't cross it out or
11 write the signature.

12 MR. NIEDERMAYER: You don't remember
13 whether it had that cross out when you got your copy
14 from the agency.

15 MR. POTTER: I don't know.

16 MR. NIEDERMAYER: All right. I'd like to
17 just draw the Board's attention to the printed part
18 of the statement just above Box 88 which says, "If
19 party wall, owner of the adjoining property must
20 agree to the erection of the retaining wall and this
21 application." And have you looked at the permits to
22 see whether there is an adjoining -- a retaining wall
23 that in fact adjoins the property against it?

24 MR. O'BRIEN: If --

25 MR. NIEDERMAYER: Excuse me. I'm doing

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1 my cross examination, Mr. O'Brien. There's no
2 pending question.

3 MR. O'BRIEN: I thought there was a
4 pending question, Mr. Niedermayer.

5 MR. NIEDERMAYER: No. I --

6 MR. O'BRIEN: You were asking him to --
7 you were directing his attention to some printed
8 words on the application and then asked him if the
9 permit referred -- was covered by that statement, did
10 you not?

11 MR. NIEDERMAYER: And he gave his answer,
12 I thought. Was I mistaken?

13 VICE CHAIRPERSON SOCKWELL: I thought you
14 asked the question, Mr. Niedermayer, regarding the
15 plans, if he saw -- I thought -- okay. But I thought
16 you said something about plans. Maybe I
17 misunderstood you.

18 MR. NIEDERMAYER: No. What I did was I
19 just drew the Board's attention to the printed part
20 of the form. There was no question. I was just
21 directing your attention to it.

22 MR. O'BRIEN: In which case I'm going to
23 ask that further argumentation of this nature be
24 limited.

25 MR. NIEDERMAYER: I have no further

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1 questions.

2 MR. O'BRIEN: Mr. Chairman, may I do
3 redirect?

4 VICE CHAIRPERSON SOCKWELL: Yes. Go
5 ahead.

6 MR. O'BRIEN: Mr. Potter, did you
7 understand what the basis for the stop work orders in
8 April of 1999 were? Why those stop work orders were
9 issued.

10 MR. POTTER: For failure to display
11 permits.

12 MR. O'BRIEN: And did Mr. Ghafoorian
13 correct that failure to display the permits at some
14 point?

15 MR. POTTER: At some point, yes.

16 MR. O'BRIEN: Okay. You were asked to
17 identify certain photographs that have been labeled
18 respectively April and May of 1999.

19 MR. POTTER: Yes.

20 MR. O'BRIEN: The first one that you were
21 asked to identify has been marked April of 1999 and
22 you said that that is not what the property looked
23 like in April of 1999.

24 MR. POTTER: Yes.

25 MR. O'BRIEN: Can you tell the Board why?

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1 MR. POTTER: Because in April of '99,
2 that's when the construction began. This is a year
3 later approximately. So I mean the date on it is
4 fraudulent. We got the construction of the entire
5 elevated platform at that time. It couldn't have
6 taken place within a couple of days.

7 VICE CHAIRPERSON SOCKWELL: So what
8 you're saying, Mr. Potter, is that to the best of
9 your knowledge, the construction that is shown could
10 not have been there at that time.

11 MR. POTTER: The first permit that was
12 obtained was April 6, 1999.

13 VICE CHAIRPERSON SOCKWELL: True.

14 MR. POTTER: All right. Construction
15 began at the end of March of 1999.

16 VICE CHAIRPERSON SOCKWELL: Construction
17 began while you were out of town.

18 MR. POTTER: While I was out of town.

19 VICE CHAIRPERSON SOCKWELL: How long were
20 you out of town, sir?

21 MR. POTTER: I was out of town for two
22 weeks.

23 VICE CHAIRPERSON SOCKWELL: Okay. So
24 it's obvious that the construction began during the
25 time that you were away.

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1 MR. POTTER: I have seen pictures
2 presented by them and dated by them that said March
3 of '99 is when the construction began because I've
4 seen the vehicles and the excavation --

5 VICE CHAIRPERSON SOCKWELL: Well, let's
6 put it this way. In two weeks, they couldn't have
7 done that much construction. I think we can all
8 agree to that.

9 MR. NIEDERMAYER: Mr. Sockwell, I would
10 object to that because I can't agree to that because
11 construction proceeds quite quickly when you have --
12 put up the concrete forms. Mr. Potter, I understand,
13 disputes what's done --

14 VICE CHAIRPERSON SOCKWELL: Let's say
15 this. As a licensed architect, I have certain
16 feelings about it, but I'll accept -- I'll sustain
17 your objection to how much construction could be
18 done.

19 BOARD MEMBER RENSHAW: Mr. Sockwell --

20 MR. POTTER: I could present pictures,
21 dated pictures as to what was done.

22 BOARD MEMBER RENSHAW: Could I ask a
23 question, please. I just want to clarify that these
24 photographs dated 4-99 going 5-99, 100, 300, 400,
25 these photographs were submitted by Mr. Niedermayer.

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1 Is that correct?

2 MR. POTTER: Yes.

3 BOARD MEMBER RENSCHAW: And these were
4 dated by who? Who dated these photographs?

5 MR. POTTER: Mr. Niedermayer or Mr.
6 Ghafoorian. I don't know.

7 BOARD MEMBER RENSCHAW: I just wanted to
8 clarify that.

9 MS. PRUITT: Let Mr. Niedermayer answer
10 that.

11 VICE CHAIRPERSON SOCKWELL: Let Mr.
12 Niedermayer answer the question.

13 MR. NIEDERMAYER: The writing on the
14 photographs is my writing as to the dates based on
15 the information supplied to me as to when they were
16 taken.

17 VICE CHAIRPERSON SOCKWELL: Mr.
18 Niedermayer, let me ask you one quick question. When
19 were you retained as counsel?

20 MR. NIEDERMAYER: I was retained in these
21 matters in April or May of 1999.

22 VICE CHAIRPERSON SOCKWELL: All right.
23 So you've been Mr. Ghafoorian's counsel for that
24 period of time, yet are you attesting to the fact
25 that from your observations these photographs are

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1 correct to what was existing because you put your --

2 MR. NIEDERMAYER: What I'm telling you is
3 that I put the dates on them based on the information
4 supplied to me. I wasn't out at the site.

5 VICE CHAIRPERSON SOCKWELL: Okay. That's
6 what I wanted to know.

7 MR. NIEDERMAYER: I was not at the site
8 in April and May of 1999. I don't have my own
9 observations as to what --

10 VICE CHAIRPERSON SOCKWELL: So you dated
11 them. That's all.

12 MR. NIEDERMAYER: I just dated them.
13 That's all. I didn't take them. They were just
14 supplied to me and we used the dates that are in the
15 photographs from the information that we had as to
16 when they were taken.

17 VICE CHAIRPERSON SOCKWELL: Okay. So
18 there's no way for counsel to substantiate the
19 accuracy of the photographs, just the assignment of
20 dates, beyond what was presented to you. So to the
21 best of your knowledge, these photographs were taken
22 on the dates that were supplied to you, and I
23 understand that.

24 MR. NIEDERMAYER: I personally can't do
25 it but there is a witness who I wasn't intending to

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1 call who obviously can do that, and he's present here
2 and, should it become important, then I guess we
3 could do that, but I wasn't intending to call him
4 because substantively the issues which we're here
5 today about, the merits of it were not something he
6 was going to testify on. The timeliness was
7 something which had been deferred.

8 VICE CHAIRPERSON SOCKWELL: Okay. So I
9 assume that you're just trying to indicate to this
10 Board that there was substantial completion of
11 portions of the construction long before the building
12 permit was issued because you said that this was --
13 all of this existed at that time and the building
14 permit, original building permit, was not issued
15 until some time in April.

16 MR. NIEDERMAYER: No, I didn't. Mr.
17 Sockwell, what I said was that these are photographs
18 of the condition of the site in April of 1999 and May
19 of 1999. The building permit, we know, was issued on
20 April 6, 1999. April has, as we all know, 30 days
21 and there's lots of time to do construction during
22 April.

23 VICE CHAIRPERSON SOCKWELL: Right, but
24 the permit was issued -- it's been established that
25 the permit was issued on April 6. The application

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1 was initiated on April 5 and that it was a walk
2 through permit and your statement is that the
3 photograph is accurate for April of '99.

4 MR. NIEDERMAYER: Yes.

5 VICE CHAIRPERSON SOCKWELL: And there are
6 other photographs that have been submitted which show
7 other conditions and you are in effect stating that
8 those conditions also existed some time around the
9 same time because you said construction takes place
10 very quickly and, if that is the case, then there was
11 substantial construction perhaps prior to -- well,
12 there had to have been some construction in order for
13 Mr. Potter to have had an objection. There had to
14 have been some construction. Otherwise, Mr. Potter
15 would have come home and he would not have had a
16 problem.

17 MR. NIEDERMAYER: Mr. Sockwell, the
18 evidence in the case is this. There is a photograph
19 by Mr. Potter that he says he took from his house
20 that shows a tractor and some excavation and he says
21 it already shows --

22 VICE CHAIRPERSON SOCKWELL: We saw that.

23 MR. NIEDERMAYER: He says it already
24 shows footings. We know the building permit was
25 issued on April 6, 1999.

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1 VICE CHAIRPERSON SOCKWELL: Yes, we do.

2 MR. NIEDERMAYER: And construction
3 obviously continued during April of 1999. There's
4 nothing inconsistent in what all the evidence is as
5 to what the construction was in April 1999 by the
6 photographs I've submitted. The construction process
7 obviously went forward, as you know, and it reached
8 different stages at different times. In the
9 beginning of April, it was at the stage that Mr.
10 Potter said he observed it at, if we accept that at
11 face value. It just means that some time later in
12 the month it achieved the state that it was showing
13 in the photograph. Then there's another photograph
14 in May that shows a further state.

15 Now, the angles and the photographs only
16 show this area of the retaining walls. They were
17 poured concrete. They were poured, as you know, with
18 the forms set up and poured, it can be poured very
19 quickly and put up and that's when, in fact --

20 VICE CHAIRPERSON SOCKWELL: Do you know
21 anything about concrete construction?

22 MR. NIEDERMAYER: I know a little bit
23 about concrete construction.

24 VICE CHAIRPERSON SOCKWELL: Not much.
25 Not much. But let's continue.

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1 MR. O'BRIEN: Mr. Potter, did you sleep
2 at your house on Indian Lane last night?

3 MR. POTTER: Yes.

4 MR. O'BRIEN: Did you walk the premises
5 today?

6 MR. POTTER: Yes.

7 MR. O'BRIEN: And yesterday?

8 MR. POTTER: Yes.

9 MR. O'BRIEN: One final question. You
10 said you and your wife had done some emails to DCRA.

11 MR. POTTER: Yes.

12 MR. O'BRIEN: Do you know whether or not
13 any copies of those still exist or do you have any
14 reason to know one way or the other?

15 MR. POTTER: They might exist. Copies of
16 them might exist.

17 MR. O'BRIEN: I have nothing further.

18 VICE CHAIRPERSON SOCKWELL: It would be
19 helpful also if necessary that DCRA has a main server
20 system that normally maintains a record of emails for
21 a period of time. How long? It might be six months,
22 it might be six weeks. It depends on how the
23 administrator of the network handles it and how the
24 software is designed. But there may be a way to
25 substantiate additional information on correspondence

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1 if it still exists as records, but it might be
2 difficult to get it.

3 MR. POTTER: I saved everything. I don't
4 have it all with me today, but I've saved basically
5 everything and copied everything that I've done, so I
6 may have records of email that I sent.

7 MR. O'BRIEN: I have nothing further, Mr.
8 Chairman.

9 MR. PARKER: Nothing further.

10 VICE CHAIRPERSON SOCKWELL: Call your
11 next.

12 MR. O'BRIEN: At this time, I'd like to
13 call Ms. Lindsley Williams, if I may.

14 Mr. Williams, would you state your name,
15 address, profession, and professional background,
16 particularly as it relates to zoning matters.

17 MR. WILLIAMS: Good afternoon, Members of
18 the Board and Mr. Sockwell, Mr. Holman, Ms. Renshaw.
19 My name is Lindsley Williams. I live at 3307
20 Highland Place, N.W. where I've lived for more than
21 the past 10 years and I've been a resident of the
22 District of Columbia since 1970 when I moved here
23 following the completion of graduate studies in urban
24 and regional planning at the Master's level at the
25 University of North Carolina.

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1 I've been associated with community
2 organizations ever since I've been in this town and
3 became active in citizen organizations concerning--

4 MR. PARKER: Excuse me. I would accept
5 Mr. Williams as an expert in zoning matters, and so
6 if we can --

7 VICE CHAIRPERSON SOCKWELL: Mr. Williams
8 has appeared before this Board in the past and is
9 well known to the Board.

10 MR. PARKER: I'm just saying we could
11 save ourselves the repetition of his qualifications.
12 They're probably known to you and I accept him.

13 VICE CHAIRPERSON SOCKWELL: Is there
14 anyone on the Board who would not accept Mr. Williams
15 as an expert?

16 MR. O'BRIEN: I've never been in this
17 situation, but I would proffer Mr. Williams as an
18 expert on zoning matters.

19 VICE CHAIRPERSON SOCKWELL: Thank you.
20 Continue, please.

21 MR. O'BRIEN: Mr. Williams, have you had
22 occasion to visit the project at 4900 Indian Lane and
23 to review the plans and the applications and the
24 permits with respect thereto?

25 MR. WILLIAMS: Yes. I began to be -- I

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1 was retained by the Potters to help them in their
2 study of this matter at the very early part of this
3 year and, in the course of that, reviewed the stamped
4 plans and the underlying permits, the written out
5 narratives that were associated with those
6 applications, and I have formed some conclusions and
7 I've shared them with you in the form of a report.
8 Those conclusions are --

9 MR. O'BRIEN: How many times have you
10 been out to visit and inspect the site since the
11 beginning of this year?

12 MR. WILLIAMS: Half dozen times. Most
13 recently this morning.

14 MR. O'BRIEN: And have you seen it in
15 various stages of construction?

16 MR. WILLIAMS: I have seen it in the
17 stages of construction that were in evidence from a
18 point in last winter when I first was retained when
19 it was covered with ice and snow including a layer of
20 ice in the area where Mr. Potter said it often went
21 to a depth of six inches or more when it was warmer
22 weather.

23 MR. O'BRIEN: Have you formed an opinion
24 regarding this project with respect to its legality
25 or permissibility under the zoning regulations?

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1 MR. WILLIAMS: I have formed an opinion.

2 MR. O'BRIEN: And is your opinion
3 embodied in a letter to me which was attached behind
4 Tab 1 of the brief that the Potters submitted?

5 MR. WILLIAMS: I believe the answer to
6 that is yes. Technically, that is a letter that I
7 provided you, but it's addressed to the Board of
8 Zoning Adjustment, etcetera, etcetera.

9 MR. O'BRIEN: And could you state orally
10 for the panel your opinion and the basis thereof.

11 MR. WILLIAMS: Well, in my opinion,
12 Members of the Board, this permit should not have
13 been granted in the first place because I construe
14 and find that there are a number of departures from
15 the applicable zoning regulations. In my opinion,
16 the project results in an addition that violates the
17 side yard requirements of the zoning regulations. It
18 violates the rear yard requirements of the zoning
19 regulations. The garage itself, even in the later
20 plans, exceeds two standards of area. It exceeded in
21 plan the 900 square foot rule that's been referred to
22 at times, and it absolutely exceeds, more than doubly
23 exceeded, the 450 square foot rule that has been
24 brought to your attention.

25 In addition, that latter 450 foot square

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1 rule also is accompanied by another limit, and that
2 limit is that the garage be limited to two vehicles,
3 and this particular garage has a double door along
4 with a single door suggesting that it's designed to
5 house three vehicles, and it certainly could. But I
6 believe that that's in violation of the applicable
7 zoning standards.

8 And so I find at least four bases on
9 which this particular permit should not have been
10 granted. It is significant that the whole structure
11 on which this thing sits includes sidewalls that
12 extend by more than four feet above the ground and
13 that, to me, is what makes it part of a structure
14 that must be governed by the side yard requirements
15 as distinct from a structure which is exempt from the
16 side yard rules, and it's a key understanding to have
17 and a key area of difference between the April and
18 May plans, if you examine them.

19 MR. O'BRIEN: Let me stop you right here.

20 Just for clarification, you're talking about two
21 separate structures, the parking platform being one
22 structure and the garage being a second structure.
23 Is that correct? The garage on top of the platform.

24 MR. WILLIAMS: Yes.

25 MR. O'BRIEN: Okay. Why don't we start,

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1 just so we can keep this clear. You've been through
2 the square footage requirements and limits, and those
3 are applicable to the garage on top of the platform.

4 MR. WILLIAMS: Yes.

5 VICE CHAIRPERSON SOCKWELL: Mr. O'Brien,
6 would you turn your mic a little bit toward you. I
7 know that the reporter is getting it, but it would
8 make a little bit easier.

9 MR. O'BRIEN: I apologize.

10 VICE CHAIRPERSON SOCKWELL: That's okay.

11 MR. O'BRIEN: Let's talk about the
12 parking platform itself. What design characteristics
13 does it have? Is it attached to the residence?

14 MR. WILLIAMS: It is attached to the
15 residence as it was built. It is a structure which
16 in plan shows a set of exterior foundation walls to
17 be constructed of concrete, and it is capped by
18 concrete which is integrally attached to those
19 foundation walls. It is not a free-standing area in
20 the manner of a strip of asphalt laid across a yard
21 serving as a driveway. It is an integral part,
22 complete with reinforcing rods and mesh. These were
23 in evidence from what I saw and, to me, it all
24 constitutes a single structure, portions of which --
25 it only takes one extending above that four foot mark

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1 so that the entire structure, the platform on which
2 the garage now sits, must be one that is regulated by
3 the requirements for side yards and rear yards, and
4 that it is not.

5 Then in addition, the way it was actually
6 built. And here I'm making a distinction between
7 because the plans to me are ambiguous about the
8 connectivity as what you would see in reviewing the
9 plans down at DCRA. But the connectivity, while
10 vague in plan, if you go out and look right now, they
11 are stitched together so that that whole parking
12 platform, deck, whatever you wish to call it, is
13 absolutely bonded to the house, both at the front,
14 along the portion where the roof now comes from out
15 from the area above the former garage and is now
16 joined in, and there is just no question in my mind
17 at all but that this is now a single structure
18 starting from the rear most portion of this platform
19 or deck, extending across the open area of the deck
20 and then through the rest of the house. Makes it for
21 purposes of zoning a single structure, and that
22 single structure extends too close by four feet to
23 the side yard and violates the expectation the
24 Potters could have had of a reasonable side yard. It
25 also violates by more than 50 percent the rear yard

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1 requirements or at least awfully close to 50 percent
2 because the measurements in back are a little bit
3 unclear. But the requirement is a 25 foot one and
4 this is a tapered rear yard line and the distances
5 there extend between 12 and 15 feet.

6 So it's in violation there, too.

7 MR. O'BRIEN: Let me ask you one other
8 question. Are you aware of any internal walls in
9 this platform that support the weight of the top
10 surface?

11 MR. WILLIAMS: I have seen photographs of
12 them. By the time I was asked to be a part of this,
13 I could not say that I had been to the job site and
14 seen those with my own eyes. But I have seen
15 photographs.

16 MR. O'BRIEN: Did you review Mr.
17 Ghafoorian's deposition where he talks about internal
18 support walls inside the platform?

19 MR. WILLIAMS: Yes, I did.

20 MR. NIEDERMAYER: I'm going to object to
21 that. Let me object to that. I'd like to have that
22 point pointed out in the thing so we've got the exact
23 words that were used rather than Mr. Williams'
24 characterization of what the witness said or may have
25 said.

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1 MR. O'BRIEN: Mr. Ghafoorian's deposition
2 is attached as an exhibit behind Tab 11 and directing
3 your attention to pages 26 through, say, 28. Will
4 you review this for me. Referring specifically again
5 to page 26 through 28, it makes reference to Exhibit
6 2 to the Ghafoorian deposition.

7 MR. WILLIAMS: Yes, sir.

8 MR. O'BRIEN: It's a diagram that he
9 drew.

10 MS. PRUITT: Mr. O'Brien, you need to
11 stay closer to the mic. I know you're used to
12 walking around. Unfortunately, we don't have a
13 portable.

14 MR. O'BRIEN: I should try decaf, I'm
15 sure.

16 Mr. Ghafoorian's testimony refers to an
17 exhibit he drew which is attached again as Exhibit 2
18 to this deposition which shows three internal support
19 walls in addition to the four outer walls of the
20 platform.

21 MR. NIEDERMAYER: i'm going to object to
22 that again. Same objection. There is testimony in
23 the deposition but Mr. O'Brien continues to supply
24 additional adjectives to the testimony. It says --
25 it does say there are two walls, but those walls are

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1 not defined as he's defining them or does not contain
2 any adjectives as he's supplied them.

3 MR. O'BRIEN: Having reviewed Mr.
4 Ghafoorian's testimony and the diagram that Mr.
5 Ghafoorian drew, have you formed an opinion as to the
6 structural characteristics of the parking platform?

7 MR. NIEDERMAYER: I'm going to object to
8 that. This witness was offered as an expert in
9 zoning, not construction.

10 VICE CHAIRPERSON SOCKWELL: Mr.
11 Niedermayer, we have in the file detailed structural
12 drawings of Mr. Ghafoorian's project, and we can from
13 those detailed drawings, make our own conclusions
14 and, since they are part of the record, Mr. O'Brien
15 may proceed.

16 MR. O'BRIEN: You may answer.

17 MR. HOLMAN: I was just trying to follow
18 what was being said. How does what you just said
19 qualify him as an expert in construction?

20 VICE CHAIRPERSON SOCKWELL: It's not. A
21 third grade child can see from a drawing like this
22 that there are intermediate vertical supports
23 underneath the slab that forms the surface of the so-
24 called raised platform, and since they are detailed
25 in the drawings that were supplied, it's assumed that

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1 they are existing since these were the drawings of
2 Mr. Ghafoorian's project and carry the address of
3 his home on them and were submitted to the record.

4 MR. HOLMAN: I understand what you just
5 said and that's a heck of a third grade child, but
6 the point I'm trying to make is --

7 VICE CHAIRPERSON SOCKWELL: It's all what
8 they watch on TV now.

9 MR. HOLMAN: Right. I'm just trying to
10 follow what's being said. How does that qualify him
11 to speak as --

12 VICE CHAIRPERSON SOCKWELL: Well, let's
13 put it this way.

14 MR. HOLMAN: Okay. That's what I'm
15 trying to find out.

16 VICE CHAIRPERSON SOCKWELL: Mr. Williams
17 did not in fact see the construction prior to its
18 completion to a certain level. So Mr. Williams can
19 only state from his observation of the drawings what
20 he believes exists, which is based on the fact that
21 those are assumed to be the drawings from which the
22 deck was constructed.

23 MR. HOLMAN: Right, which is a different
24 kind of answer from the answer we're getting. That's
25 all I was trying to get clear.

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1 VICE CHAIRPERSON SOCKWELL: So let's
2 adjust the answer then slightly.

3 MR. NIEDERMAYER: Mr. Sockwell, could you
4 point out to me, because I didn't see them when you
5 held them up, which are the drawings on which those -
6 - they're part of the submissions and I could find
7 them if you could give me a minute.

8 VICE CHAIRPERSON SOCKWELL: I have
9 drawings A0, A1, A2, A3, and A4 of the architectural
10 set.

11 MR. NIEDERMAYER: Was it behind --

12 VICE CHAIRPERSON SOCKWELL: These were
13 submitted some time in the past.

14 MS. PRUITT: They may have been part of
15 the July submission.

16 VICE CHAIRPERSON SOCKWELL: These are
17 part of the July submission. The Board tries not to
18 lose its materials and yet, we get so many that
19 sometimes we don't find these things.

20 BOARD MEMBER RENSHAW: We received them
21 on July 10.

22 VICE CHAIRPERSON SOCKWELL: Thank you.

23 MR. O'BRIEN: Just for clarification,
24 Member Holman, where I'm going with this is that a
25 structure, the definition of a structure in the

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1 regulations contains specifically a platform.

2 VICE CHAIRPERSON SOCKWELL: Well, a
3 structure doesn't have to contain a platform.

4 MR. O'BRIEN: No. I'm speaking
5 specifically of the definition within the
6 regulations. it says a structure --

7 VICE CHAIRPERSON SOCKWELL: Maybe a
8 building. A building is a structure.

9 MR. WILLIAMS: Actually, Mr. Sockwell, it
10 says and it provides a number of illustrations of
11 what a structure might be and one of the words that's
12 in that list is the word platform.

13 VICE CHAIRPERSON SOCKWELL: Okay.

14 MR. O'BRIEN: Whether it is considered a
15 building or not is utterly irrelevant. It's either a
16 structure or it's not.

17 VICE CHAIRPERSON SOCKWELL: Right. But
18 you're talking in terms of occupying a yard as
19 opposed to the other definition in --

20 MR. NIEDERMAYER: Could I object. Could
21 we have it pointed out where in the definitions in
22 the zoning regulations under building it says a
23 platform is a building.

24 MR. O'BRIEN: No, it does not, Mr.
25 Niedermayer.

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1 VICE CHAIRPERSON SOCKWELL: It's not in
2 the definition section that he is referring to. I was
3 referring to the definition section, and he's
4 referring specifically to miscellaneous zoning
5 requirements, I believe, for the section on yards and
6 what not.

7 MR. NIEDERMAYER: That's what I wanted to
8 clarify, that it's not in the definitional section.
9 I thought that's what he said.

10 MR. O'BRIEN: If I may, on page I-24 of
11 the definitions behind Tab 1 that I submitted, if you
12 look at the definition of a structure it states
13 "Anything constructed including a building, the use
14 of which requires permanent location on the ground or
15 anything attached or something having a permanent
16 location on the ground and including, among other
17 things, radio and television towers, reviewing
18 stands, platforms, flag poles" --

19 MR. NIEDERMAYER: Excuse me. What page?

20 MR. O'BRIEN: One twenty four under the
21 definition of structure. It includes specifically
22 platforms as an illustration of what a structure is.

23 VICE CHAIRPERSON SOCKWELL: Right. Page
24 124 of the zoning ordinance has been reproduced in
25 the Appellant's submission. The 1-24 as opposed to

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1 page 124.

2 MR. NIEDERMAYER: I just wanted to know
3 where it was.

4 MR. O'BRIEN: The setback regulation
5 specifically referred to structures. There is some
6 dispute as to whether or not this thing that was
7 built that we've been calling a platform is in fact a
8 structure or whether it's slab on grade. If it has
9 supporting walls, both external, outer walls and
10 inner supporting walls and it's elevated, it is by
11 definition a platform.

12 MR. NIEDERMAYER: Objection. How about
13 we get an expert opinion on that as opposed to a
14 statement from counsel on this.

15 VICE CHAIRPERSON SOCKWELL: To be honest
16 with you, the way the zoning ordinance reads, it
17 would be considered a structure for zoning purposes
18 only if it rises more than four feet above grade.

19 MR. O'BRIEN: At any point.

20 VICE CHAIRPERSON SOCKWELL: At any point,
21 not including railings and other --

22 MR. O'BRIEN: Which I guess gets us to
23 the ultimate question. Are any of these walls, outer
24 or inner walls, based on your observation, over four
25 feet?

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1 MR. WILLIAMS: The outer walls are over
2 four feet on at least two now exposed face -- three
3 faces that are now exposed. First, the face of the
4 wall, particularly to the west of the new stairway
5 that has been added from the platform down to the
6 ground is at least six feet in height. That would be
7 the eastern -- the northern face of the addition.
8 Second --

9 MR. O'BRIEN: What does it face?

10 MR. WILLIAMS: It faces Indian Lane.

11 MR. O'BRIEN: Okay.

12 MR. WILLIAMS: Sorry. The second face of
13 the structure that is more than four feet and it is
14 more than four feet for the entire distance that is
15 exposed is the western face of the addition which
16 faces the remainder of the rear yard. It is the part
17 of the building that --

18 MR. O'BRIEN: The rear yard at the
19 Ghafoorian residence.

20 MR. WILLIAMS: At the Ghafoorian
21 residence. Yes. And I have been in that area
22 myself. I am 6' tall and it is taller than I am over
23 the entire stretch. I estimate it to be on the order
24 of 7' but it varies slightly as a function of the
25 topography. The final face that has portions that

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1 are more than four feet is much but not all of the
2 rearmost portion of the addition. The topography on
3 the site --

4 MR. O'BRIEN: This would be the face that
5 faces the rear property line.

6 MR. WILLIAMS: The rear property line.

7 MR. O'BRIEN: Thank you.

8 MR. WILLIAMS: The topography slopes with
9 the highest point of the rear yard on that axis being
10 at the Potter/Ghafoorian boundary and it then
11 descends and becomes lower as you move further toward
12 the main residence and on to the next property. And
13 while I believe at the -- let me get my bearings --
14 southeast corner, it is something on the order of 2
15 1/2 - 3'. It then tapers so that it becomes 4' at
16 some point along the rear property line.

17 MR. O'BRIEN: Based on the outer
18 structure, do you have any opinion about the height
19 of the interior support walls?

20 MR. WILLIAMS: The only wall that I can
21 speak to with any certainty now on the interior is
22 the portion that is now in effect constructed and
23 affixed to the house in front of the former garage
24 where you can see pictures directly in evidence of
25 the height of that wall rising up to the entire

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1 height of an old style garage door which is in excess
2 of 6'.

3 MR. O'BRIEN: We just went through
4 looking at Mr. Ghafoorian's diagram of three internal
5 walls.

6 MR. WILLIAMS: Yes.

7 MR. O'BRIEN: Do you have any basis for
8 forming an opinion as to how high those internal
9 support walls would be?

10 MR. WILLIAMS: They would be a function
11 of the underlying original topography which I
12 couldn't speak to. They would be probably in -- I--

13 MR. NIEDERMAYER: Objection.

14 VICE CHAIRPERSON SOCKWELL: If you don't
15 know --

16 MR. WILLIAMS: I saw photographs, Mr.
17 Sockwell, and the photographs were unclear as to the
18 depth, so I couldn't even make an estimate from them.
19 By the time I really got on the job, it was poured
20 over.

21 MR. O'BRIEN: So the answer would be no,
22 you can't.

23 MR. WILLIAMS: I can't form an opinion.

24 MR. O'BRIEN: Okay. Let me reverse it.
25 Do you have an opinion with regard to the

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1 characterization of the garage on top of the platform
2 as to its legality with respect to its overall size?

3 MR. WILLIAMS: It is too large.

4 MR. O'BRIEN: What is the basis for that?

5 MR. WILLIAMS: The basis for that is the
6 provision in the regulations relating to the R-1
7 District which permits garages but limits them to 450
8 square feet and two cars.

9 MR. O'BRIEN: What happens when
10 regulations conflict?

11 MR. WILLIAMS: When regulations conflict,
12 any number of things can happen, but the
13 administrative course to take on the part of a zoning
14 administrator is to take the most conservative
15 interpretation.

16 MR. O'BRIEN: Is that what the statute
17 and the regulations require?

18 MR. WILLIAMS: The statute and the
19 regulations require that the most conservative
20 treatment be applied when there is a conflict between
21 regulations and, thus, in that spirit, I would also
22 say it applies when it is within the regulations.

23 MR. O'BRIEN: All right.

24 MR. PARKER: Excuse me. Can you restate
25 that, please.

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1 MR. WILLIAMS: Can I restate it?

2 MR. PARKER: Can you restate that,
3 please.

4 MR. WILLIAMS: Sure.

5 MR. PARKER: Because I don't want to
6 cross examine you on something you didn't say.

7 MR. WILLIAMS: Okay. In the letter I
8 wrote to the Board, I suggest and state, "The Board
9 should recall the zoning regulations state that when
10 there are varying standards between or among several
11 regulations, then the more or most restrictive
12 provisions apply. There's a key principle, in my
13 view, that the Acting Zoning Administrator should
14 have followed but did not, and I would urge the Board
15 to follow that course now.

16 MR. O'BRIEN: What do you think of the
17 characterization of this parking platform as slab on
18 grade?

19 MR. WILLIAMS: I disagree with that
20 interpretation.

21 MR. O'BRIEN: Why is that?

22 MR. WILLIAMS: This is not a slab on
23 grade situation. It is a situation where a
24 foundation wall has been built up and then the deck
25 or surface has then been extended out to over

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1 crossing onto and is a part of and I saw rebars that
2 made me feel like this was not just kind of laid on
3 there and floating as a slab on grade would. This is
4 not a driveway situation. This is not the type of
5 concrete pad that is allowed in the zoning
6 regulations for an air conditioner compressor to be
7 put in a side yard and have something to rest on.
8 This is an integral part of that structure. It is
9 not slab on grade.

10 MR. O'BRIEN: Have you ever known slab on
11 grade to require a six foot staircase?

12 MR. WILLIAMS: I haven't known it but I
13 wouldn't say it doesn't exist.

14 VICE CHAIRPERSON SOCKWELL: Let's say
15 this. A slab on grade could have a six foot
16 staircase rising up to it if it were built against
17 the side of an incline or hill or slope and,
18 therefore, yes, the situation could exist normally.
19 So I think that the question is difficult for you to
20 put into context of where you're trying to take that.
21 Thank you.

22 MR. O'BRIEN: In the District of
23 Columbia, have you ever known a six foot staircase to
24 lead up to a slab on grade?

25 MR. WILLIAMS: Not in my experience.

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1 MR. O'BRIEN: Thank you.

2 I have no further, Mr. Chairman.

3 VICE CHAIRPERSON SOCKWELL: All right.
4 Board Members?

5 BOARD MEMBER RENSHAW: Mr. Williams,
6 based on your reading of the plans, what is the
7 percentage of lot occupancy with this improvement to
8 Mr. Ghafoorian's residence?

9 MR. WILLIAMS: The Ghafoorian property is
10 a very large one, Mrs. Renshaw, and I did some early
11 calculations on it and it made me feel that the
12 standard that applies to that area was not even
13 beginning to be approached, even with the addition.
14 So I don't know the answer because I studied the
15 question. I just didn't produce anything adverse to
16 Mr. Ghafoorian, and I tried to only identify the
17 things that were flawed.

18 VICE CHAIRPERSON SOCKWELL: Mr. Williams,
19 and this is just to clarify one issue about slab on
20 grade. In the event that a slab were built on a site
21 that had a knoll or plateau and the remaining portion
22 of the site was at a lower level, then in order to
23 reach the upper portion one might install a staircase
24 within the slope of the hill to reach the upper
25 level, and that could achieve a height of six feet or

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1 even more.

2 MR. WILLIAMS: You're absolutely right,
3 Mr. Sockwell. It could. The question that I
4 responded to from Mr. O'Brien was whether in my
5 experience I had seen such a thing, and I said no, I
6 hadn't because in my memory I hadn't come across it.
7 I didn't say it didn't exist or couldn't.

8 VICE CHAIRPERSON SOCKWELL: And the thing
9 is that with sloping sites, it is not impossible to
10 have a stair rising, and that is strictly to put that
11 particular question in context. Thank you. That's
12 all. I don't have any other questions so, if we can
13 proceed with cross.

14 Now, Mr. Niedermayer, you have questions
15 to ask Mr. Williams.

16 MR. NIEDERMAYER: I do.

17 VICE CHAIRPERSON SOCKWELL: And you have
18 questions to ask Mr. Williams.

19 MR. PARKER: Yes, sir.

20 VICE CHAIRPERSON SOCKWELL: Is it safe to
21 assume that you will not ask the same questions?

22 MR. NIEDERMAYER: I'll try. I certainly
23 will hear the questions where he asks them first and
24 endeavor, if I think the answers are --

25 VICE CHAIRPERSON SOCKWELL: If you pay

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1 close attention to Mr. Parker and he says something
2 that you want to feel comfortable with, just take
3 notes on what he said and then proceed with another
4 question that will be different when you get your
5 chance.

6 MR. NIEDERMAYER: I always listen very
7 carefully to Mr. Parker.

8 VICE CHAIRPERSON SOCKWELL: Thank you.

9 MR. PARKER: Mr. Williams, let me discuss
10 first this last statement you made regarding the
11 genera principle that if there's bearing standards
12 that the most significant standard -- or most
13 restrictive standard should be applied. You recall
14 that.

15 MR. WILLIAMS: I certainly do.

16 MR. PARKER: All right. Now there's also
17 a corollary principle in interpreting regulations or
18 statutes and that's that all elements of regulations
19 or all elements of a statute should be construed to
20 give them the greatest effect. Correct?

21 MR. O'BRIEN: I'm sorry. That's asking
22 for a conclusion of a lawyer. He's not a lawyer.

23 MR. PARKER: He's made a statement here
24 that there's a -- there's some guiding principle here
25 in terms of zoning.

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1 VICE CHAIRPERSON SOCKWELL: There is
2 within the zoning ordinance a principle.

3 MR. PARKER: All right. But there's also
4 the principle -- my question to him is he also
5 familiar with the principle that all the regulations
6 should be given the fullest effect possible?

7 MR. O'BRIEN: I'm going to object.

8 VICE CHAIRPERSON SOCKWELL: Actually, the
9 way the Zoning Act reads, if any requirement of the
10 Zoning Act or any other act is more restrictive, then
11 that one would be assumed to be the one that bears,
12 which is the issue of more -- is one issue of more
13 strict or more conservative enforcement. And that's
14 within the Zoning Act itself which was dated 1938.

15 MR. HOLMAN: But Mr. Chairman --

16 VICE CHAIRPERSON SOCKWELL: Yes. I think
17 what he's asking --

18 MR. HOLMAN: But there

19 VICE CHAIRPERSON SOCKWELL: But there are
20 rules of statutory construction and how he, 1)
21 interprets statutes and regulations that Mr. Williams
22 may or may not be as familiar with --

23 VICE CHAIRPERSON SOCKWELL: This is true.

24 MR. HOLMAN: -- that also may apply. I
25 think that's --

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1 VICE CHAIRPERSON SOCKWELL: Depends upon
2 which ones he's speaking to.

3 MR. LOVE: Absolutely.

4 VICE CHAIRPERSON SOCKWELL: I mean in a
5 general sense --

6 MR. HOLMAN: And I'm not expressing an
7 opinion one way or the other.

8 VICE CHAIRPERSON SOCKWELL: In a general
9 universal sense, one always tries to look at
10 everything, but if you could narrow it down to a
11 specific area, it might be of a little bit more
12 relevance.

13 MR. O'BRIEN: Well, if I may, Mr.
14 Chairman, there is a statute that says the most
15 restrictive alternative applies. There is a
16 regulation which says the most restrictive
17 interpretation applies.

18 MS. PRUITT: Mr. O'Brien --

19 MR. O'BRIEN: What is going on in --

20 MS. PRUITT: -- that should be put in
21 your testimony in closing. You're beginning to
22 testify. Mr. Williams, you either answer yes or no
23 and we can move on and then you can address that
24 whole issue about your statute in your closing
25 remarks.

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1 VICE CHAIRPERSON SOCKWELL: And Mr.
2 Williams, if you'll --

3 MR. O'BRIEN: What I'm getting to is that
4 his question is irrelevant.

5 VICE CHAIRPERSON SOCKWELL: Well, Mr.
6 Williams can answer the question in context of the
7 ordinance that is being dealt with here as opposed to
8 in a universal sense.

9 MR. WILLIAMS: Members of the Board, I
10 drew the statement in my letter from the principles
11 that are contained in Chapter One of the Zoning
12 Regulations which speak to their setting out certain
13 minimum standards. They also speak in Section 101.3
14 that say that the provisions of this title should
15 govern the regulations whenever -- the provisions of
16 this title shall govern whenever the regulations
17 require larger yards, lower height or more
18 restrictions in the bulk of buildings and the number
19 of stories require larger percentage of the lot to be
20 unoccupied.

21 Provisions of other statutes, it goes on
22 to say in 101.4, shall apply when they do the same
23 thing. So that basically the zoning regulations are
24 not going to trump others and they're not going to
25 have others be trumping them. It's going to try to

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1 say the ground rules for development in this city are
2 set to the minimum set of standards that are provided
3 by the panoply of laws and regulations that are in
4 the environment. Thank you.

5 MR. PARKER: The point of that, however--
6 let me ask you this question. The point of that is
7 to make clear between statutes and regulations as
8 you've said, is to make sure that if there's a
9 conflict between statutes and a regulation, you use
10 the most restrictive regulation or the most
11 restrictive statute. Correct?

12 MR. O'BRIEN: I'm going to object insofar
13 as the question asks for a legal conclusion.

14 MR. PARKER: Well, he's just stated three
15 legal conclusions. I'd like him to answer my
16 question. He's trying to relate his testimony as
17 basing his opinion on his interpretation of legal
18 issues.

19 MR. O'BRIEN: He's quoted the statute,
20 he's quoted the regs, that that's what he bases his
21 opinion on period. Anything beyond that is
22 irrelevant and I'm going to object to it.

23 MR. PARKER: All right. I'm going to
24 withdraw the question. I'll save it for argument.

25 VICE CHAIRPERSON SOCKWELL: Thank you.

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1 MR. PARKER: Let me ask you another
2 question -- well, let me ask you more specific
3 questions. There is at least two provisions in the
4 zoning regulations that deal with private garages.
5 Correct? There's one in 11201.1(h) which is what I
6 think you primarily rely on which states a private
7 garage designed to house no more than two motor
8 vehicles not exceeding 400 square feet in area and
9 subjects that provisions of Chapter 23 of this title.
10 That's what references private garages in one
11 instance. Correct?

12 MR. WILLIAMS: That's one instance.

13 MR. PARKER: And that's talking, as you
14 said, as a matter of right. Correct?

15 MR. WILLIAMS: That's under --

16 MR. PARKER: Would you also consider that
17 to be something of a principal use, those areas
18 listed in uses of matter of right?

19 MR. WILLIAMS: I would --

20 MR. PARKER: As opposed to an accessory
21 use.

22 MR. WILLIAMS: I would not exclude
23 accessory.

24 MR. PARKER: No. That's not my question.
25 My question is that 201.1(h) when it talks about a

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1 private garage under the heading of use as a matter
2 of right, that that would imply that garages that
3 meet that criteria are principal uses.

4 MR. O'BRIEN: I'm going to object.

5 MR. WILLIAMS: No, it's --

6 MR. O'BRIEN: I'm going to object. It's
7 not a -- he's not -- he's asking what this thing
8 implies. In fact, the regulation says what it says.

9 MR. PARKER: Let me respond to that.
10 He's asking this witness to give interpretations of
11 regulations and I'm challenging his interpretations.

12 VICE CHAIRPERSON SOCKWELL: All right.
13 Repeat your question again. I think I missed a piece
14 of what you said.

15 MR. PARKER: All right. Very well.

16 MR. O'BRIEN: Just so I'm clear, we're on
17 2.101(h), use as a matter of right in an R-1
18 District. Correct?

19 MR. PARKER: That's correct.

20 MR. O'BRIEN: Okay. And we're addressing
21 specifically sub-part H, private garages.

22 MR. PARKER: Right.

23 MR. O'BRIEN: Which I think is in page 2-
24 2 of the materials that we supplied. I think it's
25 the same thing.

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1 MR. PARKER: Okay. Let's start with the
2 top. It talks about uses as a matter of right.
3 Correct?

4 MR. WILLIAMS: Yes.

5 MR. PARKER: And it prefaces all the list
6 of uses by saying, "The following uses shall be
7 permitted as a matter of right in an R-1 residential
8 district -- or residence district." Correct?

9 MR. WILLIAMS: That's what it says.

10 MR. PARKER: And then it gives A through
11 P as various uses as a matter of right.

12 MR. WILLIAMS: Yes.

13 MR. PARKER: Okay. Now, these uses, if
14 you go through each and every one of them, would be a
15 list of primary uses of a particular property. Isn't
16 that correct?

17 MR. WILLIAMS: It includes a number of
18 uses which are potential primary uses. It does not
19 restrict it only to primary uses, Mr. Parker.

20 MR. PARKER: All right. Let me then ask
21 you to take a look at accessory buildings which is
22 204.1. And that regulation talks about, "The
23 following buildings shall be permitted as accessory
24 buildings in R-1 Districts incidental to the uses
25 permitted in this chapter" and it says there, "A) A

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1 private garage subject to the special provisions of
2 Chapter 23." Correct?

3 MR. WILLIAMS: It says that.

4 MR. PARKER: All right. Now, in this
5 particular instance, would you consider the private
6 garage that was built in this case to be an accessory
7 building to the principal residence of this property?

8 MR. WILLIAMS: I would consider it to be
9 an accessory building. Yes.

10 MR. PARKER: And would you therefore
11 concede that the accessory building, if it's a
12 private garage and it's accessory building, it's
13 subject to the special provisions of Chapter 23?

14 MR. WILLIAMS: The garage itself is
15 subject to the Chapter 23 provisions as a building.

16 MR. PARKER: All right. And would you
17 also -- is it also correct that private garage has
18 its own definition in the definition sections of 199?

19 MR. WILLIAMS: It does.

20 MR. PARKER: And private garage, I
21 believe, I guess it's under garage, private is where
22 you have to find it. That would be on page 1-17
23 garage, private. It's "A building or other structure
24 or part of a building or structure not exceeding 900
25 square feet in area used for the parking of one or

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1 more motor vehicles and having no repair or service
2 facilities." Correct?

3 MR. WILLIAMS: That's the definition.

4 MR. PARKER: All right. And in there it
5 talks about having it not exceeding 900 square feet.
6 Correct?

7 MR. WILLIAMS: That's what it talks about
8 there. Yes.

9 MR. PARKER: Okay. Let me go to the side
10 yard, rear yard portions of your opinion. Would it
11 be proper to say that the objections to the placing
12 of the parking area and the garage within four feet
13 of the property line flow from your conclusion that
14 the addition parking area and garage are all one
15 structure?

16 MR. WILLIAMS: Mr. Parker, I do not
17 understand your question.

18 MR. PARKER: All right. I'll try it
19 again. I believe you testified that in your view
20 there's a violation of the side yard requirements of
21 the zoning regulation because the portions of this
22 construction are within four feet of the property
23 line. Correct?

24 MR. WILLIAMS: They are not only within
25 four feet of the property line, they are part of a

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1 structure, portions of which rise more than four feet
2 above the grade triggering the requirement that the
3 whole area be examined for conformity to side and
4 rear yard requirements. This is not a low lying
5 configuration that would be removed from that
6 requirement by virtue of the language of the
7 provision in the 2300s.

8 MR. PARKER: And what I was asking you is
9 that within that statement is the conclusion that
10 this is all one structure. Am I correct in that
11 conclusion?

12 MR. WILLIAMS: It is all one structure.
13 Yes.

14 MR. PARKER: And that's your -- now, if
15 your opinion was different, if you had concluded that
16 the addition to the house, the parking area and the
17 garage, were not all one structure, would you have a
18 different conclusion as to side yard and rear yard
19 violations?

20 MR. O'BRIEN: I'm sorry. Isn't this
21 asking for speculation?

22 MR. PARKER: No.

23 VICE CHAIRPERSON SOCKWELL: Well, the
24 pint is that he didn't conclude that and you're
25 asking him to vacate his conclusion under some other

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1 circumstance. His analysis as he has reported it to
2 the Board in the hearing is that it's all one
3 structure and that is his opinion as the designated
4 expert brought forth by the Appellant. For you to
5 ask if he would have concluded otherwise with another
6 set of circumstances, those circumstances were not
7 his to achieve. They would be some other criteria.
8 You don't have -- his criteria or the way he
9 evaluated what he saw was to say that it is one
10 structure. That is his opinion.

11 MR. PARKER: Could I respond to that?

12 VICE CHAIRPERSON SOCKWELL: Go ahead.

13 MR. PARKER: At some point I'm going to
14 have a chance to put on my own case.

15 VICE CHAIRPERSON SOCKWELL: You certainly
16 are.

17 MR. PARKER: And I would expect you to
18 hear certain types of testimony which I think would
19 set a foundation for the question that I just asked
20 which I believe, as an expert and an adverse expert,
21 I'm allowed to question him on relevant hypotheticals
22 to challenge the basis of his opinion. So what I
23 would be suggesting to you is that you will
24 eventually hear testimony that will set a foundation
25 for the question that I am posing at this point.

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1 VICE CHAIRPERSON SOCKWELL: Okay. So I
2 mean you're not going to continue and ask him if the
3 lot were four times the size, would it still be this
4 or if the elevations were different. I mean you
5 could carry this out infinitum and I don't think it's
6 relevant.

7 MR. NIEDERMAYER: Mr. Sockwell, may I be
8 heard?

9 VICE CHAIRPERSON SOCKWELL: You certainly
10 may.

11 MR. NIEDERMAYER: I would join in support
12 of Mr. Parker. Mr. Williams has made certain factual
13 assumptions that underlie his opinion. Now, it's
14 perfectly proper to ask him as an expert if the facts
15 were different, would his opinion be different
16 because I would suggest that I know that he will
17 testify honestly that if the facts were different and
18 they weren't all connected, as he believes them to
19 be, that he will testify that that would give him a
20 different conclusion because he has testified to that
21 effect previously in the court cases.

22 So I believe that it would be a fair
23 question to ask him. Then the Board will be in a
24 position to make a determination on what the facts
25 are and then reach a conclusion based upon what Mr.

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1 Williams says.

2 VICE CHAIRPERSON SOCKWELL: Let's do it
3 this way. Perhaps you might just ask a general
4 reference question to Mr. Williams. Under the
5 circumstance of your testimony, if you found some
6 facts to not be as you have examined them and
7 determined them to be, would you have different
8 conclusions? And then he can answer yes or no. Then
9 we can go on to the next thing.

10 MR. PARKER: All right. Let me try it
11 that way then. If your examination had led you to
12 the conclusion that the garage, the parking area, and
13 the new addition were not all one structure, would
14 that have affected the conclusions you reach with
15 regard to the rear and side yard violations?

16 MR. WILLIAMS: Potentially.

17 MR. PARKER: All right. And could you --
18 assuming for the sake of a hypothetical here,
19 assuming that you had reached that conclusion that
20 they were not one structure, could you tell the Board
21 how that would have affected your opinion?

22 MR. O'BRIEN: Could I ask for
23 clarification?

24 VICE CHAIRPERSON SOCKWELL: I think that
25 that would require a set of circumstances to be

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1 defined rather than a general reference, and I don't
2 think you've asked enough, and I think you should go
3 on to the next question because you're not going to
4 get there with what you asked.

5 MR. PARKER: Well, let me try one more.

6 VICE CHAIRPERSON SOCKWELL: Well, I'm not
7 sure I want you to try one more.

8 MR. PARKER: Very well. I'll defer to
9 the Board.

10 MR. HOLMAN: Mr. Chairman.

11 VICE CHAIRPERSON SOCKWELL: Yes, sir.

12 MR. HOLMAN: I obviously don't want to
13 prolong this, but I actually am following what's
14 going on and it might be helpful to -- because
15 actually, the way Mr. Williams is testifying is
16 almost as if he were the zoning administrator, so I
17 think --

18 VICE CHAIRPERSON SOCKWELL: He's
19 testifying as an expert.

20 MR. HOLMAN: As an expert. I understand,
21 but experts are allowed --

22 VICE CHAIRPERSON SOCKWELL: In D.C.
23 zoning.

24 MR. HOLMAN: Yes. Understood. But
25 experts nevertheless are allowed to offer opinions on

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1 hypotheticals and --

2 VICE CHAIRPERSON SOCKWELL: Well --

3 MR. HOLMAN: I mean one or two more
4 questions might not kill us.

5 VICE CHAIRPERSON SOCKWELL: I'll defer to
6 you in this case and let Mr. Williams answer the
7 question in any way he sees fit.

8 MR. HOLMAN: Sure.

9 MR. O'BRIEN: Could we restate the
10 question, please, because I think I lost it.

11 MR. PARKER: Let's assume everything that
12 you've observed remains the same. All right?

13 MR. WILLIAMS: So far.

14 MR. PARKER: All right. The only thing
15 that changes is that in some manner you have
16 concluded that the buildings do not aggregate as one
17 structure. However that would have taken place. If
18 there had been a separation between the wall in some
19 manner or some other observation that you made that
20 led you to the conclusion that they are now not all
21 one structure, but everything else remains the same.

22 MR. WILLIAMS: That is not what I
23 observed. Let's be clear.

24 MR. O'BRIEN: If I may --

25 VICE CHAIRPERSON SOCKWELL: You may -- I

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1 think that what Mr. Parker is asking you is with
2 regard to the universe of situations, whether or not
3 if it were determined that the two buildings did not
4 reside as one structure in your mind, in your
5 observation from your conclusions, would you
6 something.

7 MR. O'BRIEN: Excuse me. Just for
8 clarification. Is the question --

9 VICE CHAIRPERSON SOCKWELL: The something
10 is would he have potentially -- and I don't see why I
11 should ask the question myself, but would he
12 potentially have a different opinion about the side
13 and rear yard issues revolving around the structure
14 and, if you say it in that general term, Mr.
15 Williams has a way of answering it.

16 MR. PARKER: I'll adopt that question if
17 you understand it.

18 MR. WILLIAMS: I think I'll answer the
19 question as I understand it, and we'll see how close
20 that comes to being relevant to the way you posed it.

21 I believe that had Mr. Ghafoorian gone about this
22 project in a different manner and a different
23 fundamental design manner, that the garage portion of
24 the project could have been built in a manner that
25 would not have triggered this in the first place. If

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1 it had been on its own foundation, separate and apart
2 from the rest with a slab of some sort providing a
3 means of access to it -- however that would have been
4 affected on the topography I don't know -- but the
5 garage itself, if it were not an integral part of the
6 connective tissue that flows all the way through, not
7 only the platform but now into the house, then it
8 would have been a garage which, in its entirety,
9 would have rested on a foundation that would have
10 been an accessory structure, an accessory garage. It
11 could have been located in any portion of the rear
12 yard from one side to the other without triggering
13 rear yard setback rules and without getting into the
14 same types of problems, even on the side yards.

15 It is simply the manner in which this
16 came about with the elevation and grade changes and
17 everything. It led me to conclude, as I stated
18 earlier, with the facts as I saw them, with the
19 photos as I saw them, with the plans as I examined
20 them, this is now one composite structure from the
21 far end of the house to the far end of the addition
22 to the back of the garage. One structure. And taken
23 as such, it must meet the applicable standards. It
24 must meet the lot occupancy, and it does, Mrs.
25 Renshaw. It must meet the height, and it does,

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1 Members of the Board. It must meet the use, the
2 primary uses as a residence. It is that. It has an
3 accessory garage. But in toto, it is too close on
4 the side yard to the Potters and too close to the
5 neighbors on the rear.

6 VICE CHAIRPERSON SOCKWELL: Thank you.
7 You got an answer, Mr. Parker.

8 MR. PARKER: I'm not sure I did because I
9 asked -- the question was --

10 VICE CHAIRPERSON SOCKWELL: Yes. You
11 asked -- we know what the question was, Mr. Parker.

12 MR. PARKER: Right.

13 VICE CHAIRPERSON SOCKWELL: The answer
14 that he gave was the answer that he saw fit to give.

15 MR. PARKER: And the Board wants me to
16 move on. He doesn't want me to probe any further on
17 this.

18 VICE CHAIRPERSON SOCKWELL: The Board
19 assumes that you are going to testify as to a set of
20 conditions that differ from the ones to which Mr.
21 Williams testified.

22 MR. PARKER: All right. I think that's
23 fair.

24 VICE CHAIRPERSON SOCKWELL: Are there any
25 more questions for him?

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1 MR. PARKER: I just want to just review.
2 No, I don't have any further questions. That takes
3 care of all four issues.

4 VICE CHAIRPERSON SOCKWELL: Mr.
5 Niedermayer, would you step to the plate.

6 MR. NIEDERMAYER: Mr. Williams, I'm
7 obviously not as educated in this subject as you, so
8 I'd like to go over a couple of basic concepts to see
9 if I can understand them. Could you tell me what is
10 meant in the zoning regulations by a principal use of
11 a lot.

12 MR. WILLIAMS: Principal use is a use
13 that is the majority -- it is the major reason for
14 the activity that takes place there. There may be
15 additional uses that take place which are separately
16 recognized and, in some situations, they would be, in
17 a commercial setting typically. This would not
18 happen in a residential zone where the use is a
19 dwelling of one sort or another.

20 MR. NIEDERMAYER: And what is an
21 accessory use?

22 MR. WILLIAMS: It is a use that is
23 incidental to the primary use. A home occupation for
24 an example is an example of an accessory use.

25 MR. NIEDERMAYER: So I think your

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1 previous testimony was that the garage at 4900 Indian
2 Lane is an accessory building. Is that correct?

3 MR. WILLIAMS: Yes. It meets the
4 definition of an accessory garage. It is an
5 accessory building and the use itself is accessory to
6 the principal use.

7 MR. NIEDERMAYER: Isn't it true that it
8 is also that the garage meets the definition of a
9 private garage under the zoning regulations?

10 MR. WILLIAMS: The garage portion does, I
11 believe, meet the definition in terms of the uses,
12 but it does not have the authority in light of the
13 provisions at Chapter Two, to go up to the upper
14 limit of what a private garage may be of 900 feet.

15 VICE CHAIRPERSON SOCKWELL: Mr. Williams,
16 I think that it would be fair for you just to answer
17 the question in this case yes or no without
18 elaboration.

19 MR. WILLIAMS: Certainly, Mr. Sockwell.

20 VICE CHAIRPERSON SOCKWELL: Thank you.

21 MR. NIEDERMAYER: So Mr. Williams, could
22 you go ahead and just answer the question the way Mr.
23 Sockwell posed it, yes or no.

24 VICE CHAIRPERSON SOCKWELL: From a use
25 standpoint, it is intended to be used as a private

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1 garage and I think that you can answer it one way or
2 the other, whether you agree that it, from what you
3 know of it, that it is for private garage use.

4 MR. WILLIAMS: I'm going to answer it as
5 an accessory private garage because a private garage
6 can be an independent principal use and it can also
7 be an accessory use, and here it is not contemplated
8 that this garage will be used by others remote from
9 the site. It is to be used by the occupants of the
10 site and is thus accessory.

11 VICE CHAIRPERSON SOCKWELL: I think
12 that's fair.

13 MR. NIEDERMAYER: Okay. Haven't you
14 previously testified that the garage at 4900 Indian
15 Lane is within the definition of private garage in
16 the zoning regulations?

17 MR. WILLIAMS: I believe I testified to
18 that. Yes.

19 MR. NIEDERMAYER: You did that in the
20 court case. You remember that?

21 MR. WILLIAMS: I believe so. Yes.

22 MR. NIEDERMAYER: Okay. Mr. Williams, is
23 there a definition of the term grade in the zoning
24 regulations?

25 MR. WILLIAMS: Not that I remember.

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1 MR. NIEDERMAYER: Do you have a
2 definition of the term grade?

3 MR. WILLIAMS: If you're referring -- do
4 I have a definition?

5 MR. NIEDERMAYER: Yes. I'm just asking
6 do you have a definition of the term grade?

7 MR. O'BRIEN: I'm going to object to the
8 question. I'm going to object to the form and I'm
9 going to object the vagueness of it.

10 MR. NIEDERMAYER: It's a pretty simple
11 straightforward question, I thought. What -- does he
12 have a definition of the term grade?

13 MR. O'BRIEN: Of milk? Of --

14 MR. NIEDERMAYER: Okay. I agree, Mr.
15 O'Brien, that we're talking about milk, so I'll try
16 to clarify it.

17 Mr. Williams, in terms of building
18 construction, do you have a definition of the term
19 grade that you understand? I presume it to mean the
20 place where the earth ends and the air begins. That
21 is where you are at grade and, if there is adjacent
22 points and they are not at the same relative height,
23 then there is a slope which is sometimes what is also
24 referred to as the grade. It's the angle between one
25 place and another.

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1 MR. NIEDERMAYER: Okay. So would you
2 accept the definition that the grade -- I mean excuse
3 me. I would accept your definition that the grade is
4 where the dirt ends around the building. Is that
5 fair? And the sky begins.

6 VICE CHAIRPERSON SOCKWELL: Mr.
7 Niedermayer.

8 MR. NIEDERMAYER: Yes.

9 VICE CHAIRPERSON SOCKWELL: I know where
10 you're going with this, and I think that you are
11 stepping on very, very soft soil. So I hope that
12 you're not going where I think you're going. But I
13 am willing to listen.

14 MR. NIEDERMAYER: Well, Mr. Sockwell, I
15 don't know where you think I'm going.

16 VICE CHAIRPERSON SOCKWELL: I know where
17 you're going, sir, but please continue.

18 MR. NIEDERMAYER: Well, I think I'm
19 entitled to ask a few questions and make a record.
20 You may disagree with me, Mr. Sockwell.

21 VICE CHAIRPERSON SOCKWELL: No. I just
22 know where you're going. I didn't say anything
23 except that the soil was soft.

24 MR. NIEDERMAYER: Okay. Mr. Williams,
25 could you tell me what is meant by finished grade in

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1 the construction trades.

2 MR. WILLIAMS: Absolutely not. I do not
3 have expertise in the construction.

4 MR. NIEDERMAYER: Okay. Do you know what
5 the term finish grade means in the zoning
6 regulations?

7 MR. WILLIAMS: I don't believe that term
8 exists in the zoning regulations. In Section 2503.2
9 the term is only above the grade at any point.

10 MR. NIEDERMAYER: Okay. Can I ask you if
11 you would, do you have a copy of the zoning
12 regulations?

13 VICE CHAIRPERSON SOCKWELL: Actually,
14 let's not go further with this. Mr. Williams, the
15 term finished grade is used in the zoning ordinance,
16 in particular in the definition of height and where
17 height is taken.

18 MR. WILLIAMS: You're right.

19 VICE CHAIRPERSON SOCKWELL: And it varies
20 from one situation to the next.

21 Mr. Niedermayer, continue.

22 MR. NIEDERMAYER: Mr. Sockwell, do I
23 understand that I shouldn't ask any more questions
24 about this?

25 VICE CHAIRPERSON SOCKWELL: The finished

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1 grade, I understand what finished grade is. The
2 Board understands what finished grade is. Mr.
3 Williams may have forgotten because he's dealing with
4 a specific issue, but neither here nor there.
5 Continue on your line of questioning.

6 MR. NIEDERMAYER: Could I make a proffer
7 then for the record?

8 VICE CHAIRPERSON SOCKWELL: You may
9 proffer. Yes.

10 MR. NIEDERMAYER: Okay. I would proffer
11 that my questioning line would be about the finish
12 grade with respect to the height measuring point for
13 a building which I think is very pertinent to the
14 issues about how tall the building is here, and I
15 understand that the Board is requesting me to
16 discontinue these questions and I will do it.

17 VICE CHAIRPERSON SOCKWELL: I'm not
18 asking you to discontinue the questions. I'm asking
19 you to continue the questions. If you pay attention
20 to what I tell you, you will understand that I didn't
21 want you to continue to ask Mr. Williams about his
22 understanding of the term finished grade. Beyond
23 that, you may continue.

24 MR. NIEDERMAYER: No. I understand I may
25 continue with other questions. I have --

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1 VICE CHAIRPERSON SOCKWELL: No. You can
2 continue along your line.

3 MR. NIEDERMAYER: Well, I just wanted to
4 ask Mr. Williams if he would look at Section 2500.5
5 which has the term finished grade and ask him if he
6 understood what it meant in that section.

7 MR. WILLIAMS: Twenty five hundred point?

8 MR. NIEDERMAYER: Five, if I have the
9 section correct.

10 MR. O'BRIEN: As I understand it, an R-18
11 District, an accessory private garage may have a
12 second story use for sleeping or living quarters.

13 MR. NIEDERMAYER: I'm sorry. 2500.7.

14 MR. WILLIAMS: Well, I'll do my best, Mr.
15 Sockwell, to answer the question if you'd like but I
16 don't remember in these remarks that I've made to the
17 Board today or any correspondence I have with this
18 Board taking up the issue of height of the building.

19 VICE CHAIRPERSON SOCKWELL: I do not
20 believe that it was your testimony that the building
21 violated the height requirements. In fact, I believe
22 it was your testimony that the building met the
23 requirements for height, and that is true.

24 MR. NIEDERMAYER: Okay. I will then
25 continue on a different line then.

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1 Mr. Williams, is the reason that you
2 conclude that there is no height issue because you
3 deem the garage, the structure on the parking access
4 that you call a platform and the building to be one
5 structure?

6 MR. WILLIAMS: The rules permit an
7 accessory building to have a height of 15 feet, as I
8 remember it, Mr. Niedermayer, and this building
9 height measured from the surface or the top of the
10 poured concrete which is sometimes called the slab
11 but not the slab on grade, I hasten to add, is not in
12 excess of 15 feet. There is an ambiguity in the
13 zoning regulations about what side you measure from.

14 I just didn't take it there because I had enough
15 other points that I thought the Board would have to
16 look at that it could make a decision.

17 MR. O'BRIEN: Mr. Chairman, just for
18 point of information. We're not contesting the
19 height of the garage.

20 VICE CHAIRPERSON SOCKWELL: I understand.

21 MR. NIEDERMAYER: Mr. Williams, is there
22 any covered portion of the structure that connects
23 above grade the residence with the parking garage?

24 MR. WILLIAMS: The last time I was close
25 enough to establish that, in fact, the answer was no.

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1 I went past the property today, as I earlier
2 reported to this Board. I did not examine the
3 connective linkage that may or may not exist as of
4 this time. But the last time I was there, there was
5 no roof, if you will, that went from one to the
6 other.

7 MR. NIEDERMAYER: Mr. Williams, would you
8 agree that a retaining wall may be located in any
9 yard, side yard, rear yard, front yard of a lot under
10 the zoning regulations?

11 MR. WILLIAMS: There is a provision to
12 that general effect. Yes, Mr. Niedermayer.

13 MR. NIEDERMAYER: And there is no
14 restriction on the height of a retaining wall located
15 in any yard on a lot, is there?

16 MR. WILLIAMS: There is no zoning
17 restriction that I know of that would apply to the
18 limit on that retaining wall. I would presume that
19 the other sections that we discussed earlier, other
20 building codes, might impose such restrictions and
21 they then of course would apply.

22 MR. NIEDERMAYER: Well, I'm only asking
23 as to the zoning code whether you can point us to any
24 section in the code --

25 MR. WILLIAMS: No, I can not.

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1 MR. NIEDERMAYER: Okay. Mr. Williams, is
2 it your view that it is not proper -- let me withdraw
3 that.

4 Mr. Williams, what does a retaining wall
5 retain?

6 MR. WILLIAMS: Materials that are located
7 on one side or the other side of the wall that would,
8 but for the existence of the wall, flow through the
9 perimeter, the line the wall demarks.

10 MR. NIEDERMAYER: Is it your contention
11 that it's not proper under the zoning regulations to
12 build retaining walls and fill them in with dirt to
13 raise the level of the finish grade around a
14 building?

15 MR. WILLIAMS: If you need to retain
16 something for structural reasons, then it is proper
17 to do. If you are creating a topography that was not
18 there before that is to make -- on -- to deal with
19 situations that you're facing in design, then I think
20 it's a matter of interpretation.

21 MR. NIEDERMAYER: Okay. So it's a matter
22 of interpretation whether under the zoning
23 regulations you could build the type of structure
24 that Mr. Ghafoorian built with retaining walls and
25 fill it in with dirt. Is that your testimony?

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1 MR. O'BRIEN: I'm going to object to the
2 form of the question. It's argumentative, and Mr.
3 Williams never characterized the parking platform as
4 unrelated retaining walls. He's always characterized
5 it as a structure.

6 MR. NIEDERMAYER: I'm not asking him to.
7 I'm just asking my question whether Mr. Ghafoorian
8 could build this. I'll defer to Mr. Sockwell.

9 MR. O'BRIEN: I object to it as
10 speculative.

11 VICE CHAIRPERSON SOCKWELL: The issue of
12 retaining walls and their general uses is within the
13 description that Mr. Williams gave. Where are you
14 trying to go with the retaining wall issue?

15 MR. NIEDERMAYER: Mr. Sockwell, I think
16 that the testimony is going to be that these walls
17 that we have on this area where there's the concrete
18 for the access to the garage are retaining walls and
19 that, under the regulations, there is no restriction,
20 either on the height or the placement of retaining
21 walls in any particular yard and, under that
22 interpretation, this would be legal. I just wanted
23 to ask Mr. Williams whether he would agree that there
24 isn't anything -- that it's his position that to
25 build that kind of a structure violates the zoning

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1 regulations. I'm just trying to understand where
2 he's coming from.

3 MR. O'BRIEN: In that case --

4 MS. PRUITT: Mr. Sockwell, he was put
5 forward as an expert in zoning and his interpretation
6 has been asked before.

7 VICE CHAIRPERSON SOCKWELL: Yes. The
8 thing is that within the limits of the zoning
9 ordinance's description of retaining walls there is
10 no prohibition for locating retaining walls. Now,
11 one has to transfer oneself over to the building code
12 to begin to discuss other aspects of retained earth
13 structures and what one structure versus another
14 might be. I don't think we were going there
15 immediately. I think that we're going to get there
16 with Mr. Niedermayer's testimony. But I think that
17 the foundation has been laid for the description of a
18 retaining wall to be that which holds back earth on
19 one side or another.

20 MR. NIEDERMAYER: I'm trying to restrict
21 myself to just the zoning regulations and not the
22 building code at this point because Mr. Williams
23 hasn't been qualified as an expert in construction.
24 I'm just trying to find out what his views are on
25 this particular subject in terms of the zoning

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1 regulations.

2 VICE CHAIRPERSON SOCKWELL: All right.
3 Well, I think if you can quickly get down the road on
4 this.

5 MR. NIEDERMAYER: I'm trying.

6 MR. O'BRIEN: Mr. Chairman.

7 VICE CHAIRPERSON SOCKWELL: Yes, sir.

8 MR. O'BRIEN: I'm going to have to
9 object. He stated his characterization of this thing
10 as a structure. Mr. Niedermayer is asking him to
11 assume that it is retaining walls.

12 VICE CHAIRPERSON SOCKWELL: A retaining
13 is, by definition, a structure and it is a structure
14 that, by definition, is allowed to exist in yards.
15 Now, beyond that, where do we want to go with this?

16 MR. NIEDERMAYER: I just wanted to ask
17 the one question whether Mr. Williams' view under the
18 zoning regulations is that to build the retaining
19 wall that Mr. Ghafoorian has built and to fill it in
20 with dirt in this area he calls a platform violates
21 any provision of the zoning regulations.

22 VICE CHAIRPERSON SOCKWELL: Now, the
23 question is you're stating to fill it in with dirt.
24 How is Mr. Williams to know that the retaining walls
25 are filled in with dirt?

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1 MR. NIEDERMAYER: Well, I'll ask him to
2 assume as an expert for the first question that
3 they're filled in with dirt.

4 VICE CHAIRPERSON SOCKWELL: Why should he
5 assume that?

6 MR. NIEDERMAYER: Because I'm asking him
7 a hypothetical question.

8 VICE CHAIRPERSON SOCKWELL: Oh, you're
9 just asking hypothetically. You didn't say they were
10 filled in with dirt.

11 MR. NIEDERMAYER: I'll try and clarify.

12 VICE CHAIRPERSON SOCKWELL: Okay.

13 MR. NIEDERMAYER: Mr. Williams, let me
14 ask you to assume that the walls surrounding this
15 area you describe as a platform are retaining walls
16 and that the area within those retaining walls is
17 filled in just with dirt for the moment. Would that
18 constitute a violation of any provision of the zoning
19 regulations?

20 MR. WILLIAMS: No.

21 MR. NIEDERMAYER: If -- my same question.
22 If in the inside there were additional retaining
23 walls in the interior of this area you call a
24 platform, would that violate any portion of the
25 zoning regulations?

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1 MR. WILLIAMS: No.

2 MR. NIEDERMAYER: Does it say anywhere in
3 the zoning regulations that you can't level your lot
4 by the building of retaining walls and filling them
5 in with dirt?

6 MR. WILLIAMS: There is no such
7 provision.

8 MR. NIEDERMAYER: Would it be fair to say
9 under the zoning regulations if you have a hilly lot
10 and wish to level out a portion of it, you could use
11 a retaining wall, then fill it in?

12 MR. WILLIAMS: There is no guidance
13 provided on that subject. What there is, Mr.
14 Niedermayer, is guidance that says once the wall,
15 whatever wall it is, retaining or otherwise, projects
16 by more than four feet and then is part of this
17 overall larger structure that's bonded to it, that
18 then the yard requirements apply. It's not a
19 violation. It's just it triggers it to be
20 scrutinized under the yard requirements.

21 MR. NIEDERMAYER: I understand your
22 interpretation, Mr. Williams, but could you point to
23 me a section in the zoning regulations where it says
24 the height or the limited height to which a retaining
25 wall can be.

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1 MR. WILLIAMS: It says wall. It doesn't
2 say retaining wall. It would include retaining walls
3 and other walls.

4 MR. NIEDERMAYER: Okay. I think we've
5 agreed that a retaining wall -- in the section
6 dealing with retaining walls that I pointed to you
7 previously, there's no restriction on height, is
8 there?

9 MR. WILLIAMS: I stated before and I'll
10 repeat. There is no stated restriction there. Not
11 in the zoning ordinance.

12 MR. NIEDERMAYER: Thank you. I think
13 we've already agreed that if this garage was, in your
14 view, was on its own separate footings and it had no
15 communication above grade with the residence, that
16 that would not be a violation of the --

17 MR. O'BRIEN: Objection. That's a
18 mischaracterization of his testimony. He said it's
19 on--

20 MR. NIEDERMAYER: Could I finish my
21 question first. Then you can tell me it's a
22 mischaracterization. I think --

23 MR. O'BRIEN: I'm going to object to the
24 form of your question.

25 MR. NIEDERMAYER: Can I finish it first

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1 so we know what the form is?

2 MR. O'BRIEN: It's leading and it's
3 multiple.

4 VICE CHAIRPERSON SOCKWELL: Let's hear
5 the entire question. If you'd start from the
6 beginning, please.

7 MR. NIEDERMAYER: Mr. Williams, do I
8 understand you correctly that there would be no side
9 yard or rear yard violations if the garage was on its
10 own separate footings and had no communication or
11 touching of any of the other structures on the lot?

12 MR. O'BRIEN: Object. His testimony was
13 entirely contained in the rear yard and on its own
14 foundation.

15 VICE CHAIRPERSON SOCKWELL: We have
16 allowed Mr. Parker to ask hypothetical questions of
17 this sort. I will allow Mr Williams to answer this
18 particular question of Mr. Niedermayer.

19 MR. WILLIAMS: If the garage structure,
20 its foundation, the wood frame garage above it, were
21 on an independent foundation, all portions of which
22 were behind the rear-most portion of the principal
23 residence as it is configured on that lot, then it
24 would be able to sit anywhere within that rear yard
25 which runs from one side yard to the other and

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1 anywhere from the back edge of the house to the back
2 edge of the property. It can float. But this is not
3 the fact situation there that we have before us and
4 it would not address the question of the size of the
5 garage, which Mr. Niedermayer didn't get to in this
6 question.

7 MR. NIEDERMAYER: Mr. Williams, is the
8 basis of your opinion about the violation of the side
9 yards and the rear yards based upon this garage
10 sitting on this structure that you've described?

11 MR. WILLIAMS: No.

12 MR. NIEDERMAYER: Would you agree that
13 under the zoning regulations if there is not a roof
14 connecting the principal residence with this garage,
15 that the garage is not deemed to be connected to the
16 principal residence and that there's no communication
17 above grade otherwise?

18 MR. WILLIAMS: That's about right.

19 MR. NIEDERMAYER: Excuse me. Did you say
20 not right?

21 MR. WILLIAMS: That is about right. Yes.
22 If I could clarify a previous question, Mr.
23 Niedermayer. Let's imagine this structure that I'm
24 calling a platform and let's imagine it without a
25 garage. It would then be an area of about 2,200

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1 square feet, give or take, a large area and, if it
2 had no garage on it, you could sort of visualize it
3 as being large enough for a basketball court or a
4 tennis court. It would still have around its
5 perimeter the stairs. It would still have on its
6 face a height in excess of four feet on the front
7 that faces Indian Lane, on the side that faces the
8 rear yard, and in the rear facing the property to the
9 rear, and that would trigger the fact that that
10 structure, whether it has got retaining walls around
11 it or wall walls, built as it has, placed where it
12 is, that structure would be part of the principal
13 residence and it would trigger the necessity to
14 review it under the applicable rear and side yard
15 situation and it would fail then whether it had a
16 garage on top of it or not.

17 MR. NIEDERMAYER: Okay. So the reason it
18 fails is because what is under the garage, not the
19 garage itself.

20 MR. WILLIAMS: The garage itself triggers
21 additional problems, in my view.

22 MR. NIEDERMAYER: Okay. Now, is it
23 accurate in your interpretation that the mere
24 touching of two elements does or does not constitute
25 connection of those elements?

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1 MR. O'BRIEN: I'm going to object.
2 Relevance. I'm totally failing to see where we're
3 going with this.

4 MR. NIEDERMAYER: I would respectfully
5 suggest that your failure to see it is not the
6 measure of whether it's relevant or not. But I'll
7 proffer what it is relevant. It is relevant because
8 Mr. Williams' theory is that these elements are all
9 connected, and I'm trying to explore whether simply
10 touching means connected or there has to be some
11 other aspect of connection.

12 MR. O'BRIEN: Perhaps you could ask that
13 question then.

14 MR. NIEDERMAYER: Well, I'm trying to.
15 I'm getting a lot of interruptions, and I apologize
16 for that remark.

17 Mr. Williams, does the fact that two
18 elements of two separate structures touch each other
19 make them connected under the zoning regulations?

20 MR. WILLIAMS: No. But if I may add --

21 VICE CHAIRPERSON SOCKWELL: Actually,
22 that does make them connected if it is a roof.

23 MR. NIEDERMAYER: Right, that's what I
24 wanted to know, Mr. Sockwell, and I've already asked
25 the questions about roof, so I'm not going to repeat

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1 that.

2 MR. WILLIAMS: This was not a roof
3 question, as I understood it. The --

4 VICE CHAIRPERSON SOCKWELL: He said a
5 general reference and the general reference should be
6 specified.

7 MR. NIEDERMAYER: I want to make it
8 specific because your point is very well taken. Mr.
9 Williams, if two structures touch each other but they
10 are not connected above grade by a roof, are they
11 connected for purposes of the zoning regulations?

12 MR. WILLIAMS: They are connected.

13 MR. NIEDERMAYER: Even if they're not
14 communicating with each other above grade for the
15 roofed in area?

16 MR. WILLIAMS: They are not to be seen as
17 the same building, but they are to be seen, in my
18 view, as part of the same overall structure.

19 MR. NIEDERMAYER: Okay.

20 MR. WILLIAMS: Might I add, Mr.
21 Niedermayer, that the analysis that we seem to be
22 looking at is whether the touching part of the
23 addition and the old house is posing -- whether they
24 are now fused in some way, and I believe they are.
25 What is indisputable in the plans and in the drawings

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1 is that the platform on which the garage sits has a--
2 is itself a single structure that has no breaks in it
3 whatsoever below the level of the slab and the
4 surrounding walls and the interior retaining walls
5 that have been testified to.

6 That is one, and even if I didn't reach
7 the conclusion I did about the house and the addition
8 being connected, the total addition itself would, if
9 looked at separately, also be in violation because of
10 the same principles that I've talked about. So
11 either way, you're in violation.

12 MR. NIEDERMAYER: Would Mr. Potter's
13 house be connected to Mr. Ghafoorian's house if his
14 garage, Mr. Potter's garage, is connected to the
15 asphalt in front of it which is connected to the
16 driveway which is connected to the concrete in front
17 of Mr. Ghafoorian's house which is connected to his
18 house? Would that make all those structures
19 connected under your definition?

20 MR. O'BRIEN: I object to the form. I
21 object to the fact that it's calling speculation. I
22 object to the fact that it's argumentative and I
23 object to the fact that it's utterly irrelevant to
24 the issues before the Board.

25 VICE CHAIRPERSON SOCKWELL: Let me get to

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1 this. The term connected and the term abutting are
2 two different terms. Connected is generally referred
3 to as a structural connection. Abutting would be
4 more like you and me leaning against one another
5 unless we shared umbilical cord fluids.

6 MR. NIEDERMAYER: But if the --

7 VICE CHAIRPERSON SOCKWELL: Now, let me
8 say this. The circumstance of properties below grade
9 that do not extend above the level of grade at any
10 point connected to one another makes them connected
11 structures but does not make them considered lot
12 occupancy. So I'm not sure where you're trying to go
13 with this, but I would certainly like for you to get
14 there as quickly as possible.

15 MR. NIEDERMAYER: I'm trying to. Maybe
16 it's because of my lack of understanding, which is
17 why I'm asking Mr. Williams questions as to try and
18 explore what his understanding is.

19 VICE CHAIRPERSON SOCKWELL: I hope you
20 understand.

21 MR. NIEDERMAYER: Mr. Williams, you said
22 that in the R-1 zoning that the area of the garage
23 can not exceed 450 square feet. Am I correct about
24 that?

25 MR. WILLIAMS: That's what I said.

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1 MR. NIEDERMAYER: Okay. Under the
2 definitions of private garage in the zoning
3 regulations, it states that a zoning -- a private
4 garage may be up to 900 square feet. Are you
5 familiar with that definition?

6 MR. WILLIAMS: Intimately.

7 MR. NIEDERMAYER: Okay. Is it -- I'm not
8 sure if I understand this, but the zoning regulations
9 of the R districts, R-1, R-2, R-3, R-4, and R-5,
10 incorporate by reference, as I read them, the prior
11 zoning permissible uses. Is that an accurate
12 reading?

13 MR. WILLIAMS: The zoning regulations are
14 generally written in a cumulative fashion and they
15 incorporate by reference as the restriction levels
16 diminish as you proceed later through the chapters.

17 MR. NIEDERMAYER: Okay. So let me ask
18 you this. Where in any of the R zoning
19 classification could there be located a private
20 garage of 900 square feet if they're all cumulative
21 from the R-1?

22 MR. WILLIAMS: Nowhere.

23 MR. NIEDERMAYER: So that definition of
24 private garage can't exist in the District of
25 Columbia in an R zone?

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1 MR. WILLIAMS: No. The definition exists
2 in Chapter One. It limits the size of a garage, a
3 private garage, to 900 feet. Anything larger than
4 that is some other type of a garage, but it is not a
5 private garage. In the residential zone districts,
6 the use, the accessory use, the primary use, the use
7 is limited to 450 square feet and two cars. That's
8 what it says.

9 MR. NIEDERMAYER: So your answer is that
10 you can't have a private garage as it's defined in
11 the definitional section of 900 square feet in any of
12 the residential zoning classifications.

13 MR. WILLIAMS: The definition is more
14 generous than the residential zone district
15 regulations permit.

16 MR. NIEDERMAYER: Is there any place in
17 the District of Columbia where a private garage of
18 900 square feet could be located?

19 MR. WILLIAMS: Not at this time.

20 MR. NIEDERMAYER: So that section of the
21 zoning code is meaningless -- zoning regulations is
22 meaningless.

23 MR. WILLIAMS: I beg to differ with you,
24 Mr. Niedermayer. It's not meaningless. There is a
25 difference between the two provisions and the most

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1 restrictive provision must apply and if it's not what
2 the Zoning Commission intended, there's at least one
3 member of this Board that's in a position to evaluate
4 that question in another forum. But that's what the
5 regulation states.

6 MR. NIEDERMAYER: Mr. Williams, I believe
7 you testified in a March 2000 hearing before a judge
8 in Superior Court about these same matters, did you
9 not?

10 MR. WILLIAMS: Yes, I did.

11 MR. NIEDERMAYER: Okay. And at that
12 time, was it not your conclusion that you told the
13 court that the parking garage and the platform as you
14 described it in the residence were not a single
15 structure?

16 MR. WILLIAMS: I think at that point I
17 concluded that they might be separate. Yes.

18 MR. NIEDERMAYER: Okay. So you've
19 changed your view since March of 2000?

20 MR. WILLIAMS: I gave that as an
21 alternative at that time, Mr. Niedermayer. I didn't
22 make it as a firm conclusion. I stated there were
23 multiple ways of looking at this. I have since
24 evaluated it and I've now concluded, based on later
25 construction in which some of the seams that were

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1 then open and have now been bricked over in one
2 continuous expanse so that the previous connectivity
3 is now bonded and fused with no visible joint, that
4 it is one, whereas before it was ambiguous.

5 MR. NIEDERMAYER: In your letter to the
6 Board of October 16 in the next to last paragraph,
7 you say that the April and May plans -- those are the
8 plans for the construction at 4900 Indian Lane --
9 should have been rejected on the grounds you state
10 above. Do you mean it should have been rejected in
11 April and May of 1999 if you'd looked at the plans?

12 MR. WILLIAMS: Yes, they should have been
13 rejected by the DCRA one stop walk through permit
14 people.

15 MR. NIEDERMAYER: Okay. So that the
16 items about the side yards, the rear yards, the area,
17 those things were all obvious from the plans in April
18 and May of 1999.

19 MR. WILLIAMS: I believe they were
20 evident and particularly in the May plans when the
21 considerable grade difference was made clear in the
22 plans as to the amount by which the platform extended
23 above the ground level.

24 MR. NIEDERMAYER: Okay. Mr. Williams, I
25 think you testified that as of the time of the trial

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1 in March of 2000 you had been paid about \$4,000 to
2 \$6,000 for your testimony. Is that correct?

3 MR. O'BRIEN: I object to, first of all,
4 the relevance of this. Secondly, I believe it
5 mischaracterizes his testimony and, as Mr.
6 Niedermayer well knows, it wasn't a trial.

7 MR. NIEDERMAYER: I'm not going to
8 quibble about the part whether it was a trial. It
9 was a hearing. Whether it was a trial or a hearing,
10 my point was simply this. I was asking Mr. Williams
11 how much he was paid for his testimony at that time,
12 and I think I'm entitled to ask that because it goes
13 directly to --

14 MR. O'BRIEN: It was asked and answered
15 in March.

16 VICE CHAIRPERSON SOCKWELL: I don't know
17 that the amount of money that he may have been paid
18 is important. No one is asking how much money you're
19 being paid by your client and I don't think that that
20 is germane to this discussion.

21 MR. NIEDERMAYER: Mr. Sockwell, may I --

22 VICE CHAIRPERSON SOCKWELL: It is
23 understood perhaps that Mr. Williams may have been
24 paid for his services in one situation or another and
25 you can ask that question by either asking were you

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1 under contract or were you retained by, but how much
2 he was paid should not enter this discussion.

3 MR. NIEDERMAYER: Okay.

4 VICE CHAIRPERSON SOCKWELL: And I will
5 not accept any argument. Any argument.

6 MR. NIEDERMAYER: Mr. Sockwell, I will
7 not ask any further questions, but for the record, I
8 will just proffer that I would have asked several
9 more questions about that because I believe it
10 relates to bias and credibility.

11 VICE CHAIRPERSON SOCKWELL: Well, bias
12 and credibility are not necessarily -- bias is based
13 on who you represent in some instances. Bias and
14 credibility are also based on who a person is. I
15 don't think that how much money one gets paid should
16 become germane to our discussions here. I don't mind
17 you asking if someone was retained. That's fine.
18 But the amount of fee is not necessarily relevant to
19 anything other than an individual's ability to
20 request money and to be paid the amount that he
21 requests. If he asks for \$5 and he gets paid \$5,
22 that's one thing. Does that make him more or less
23 credible than a person who asks for \$105? Not
24 necessarily.

25 MR. NIEDERMAYER: I agree with you, Mr.

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1 Sockwell, but I agree that I would respectfully
2 suggest that the stake one has and how much one is
3 being paid in a proceeding where you're offered as an
4 expert witness to give guidance is to be judged in
5 terms of how much you're being paid for your
6 testimony.

7 VICE CHAIRPERSON SOCKWELL: Okay. I'll
8 ask you this one question, Mr. Niedermayer. Have you
9 ever represented a client and lost?

10 MR. NIEDERMAYER: Of course I have, Mr.
11 Sockwell.

12 VICE CHAIRPERSON SOCKWELL: Did you give
13 the money back?

14 MR. NIEDERMAYER: Not when I was paid for
15 my services. No.

16 VICE CHAIRPERSON SOCKWELL: All right.
17 Then we've finished the discussion. Thank you.

18 MR. NIEDERMAYER: As a lawyer, if I might
19 add, as a lawyer, I am an advocate --

20 VICE CHAIRPERSON SOCKWELL: You're
21 finished.

22 MR. NIEDERMAYER: Since Mr. Sockwell said
23 I'm finished, I won't ask any further questions.

24 VICE CHAIRPERSON SOCKWELL: No, we're
25 finished with that. You may continue. You may ask

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1 any more questions you'd like. Please don't restrict
2 your representation of your client who is paying you
3 because I have said something that you don't like.
4 That is not fair to Mr. Ghafoorian.

5 MR. NIEDERMAYER: I'm trying to do that,
6 Mr. Sockwell. I'm honestly trying to do that.

7 VICE CHAIRPERSON SOCKWELL: Then take
8 this merely as the situation of you being before the
9 Board and some things you don't agree with. Please
10 don't take it out on Mr. Ghafoorian.

11 MR. NIEDERMAYER: I'm not trying to take
12 it out on Mr. Ghafoorian. I hope you'd agree I'm not
13 taking it out on him.

14 Let me ask one last question. Mr.
15 Williams, are two townhouses which touch each other
16 one building?

17 MR. O'BRIEN: I object. It's utterly
18 irrelevant. We're not talking about townhouses that
19 touch each other.

20 MR. NIEDERMAYER: I'm sorry. I thought I
21 was waiting for your ruling on his objection.

22 VICE CHAIRPERSON SOCKWELL: You can
23 answer the question.

24 MR. WILLIAMS: Two townhouses on separate
25 lots would be seen as separate buildings.

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1 MR. NIEDERMAYER: I guess I'm just
2 ignorant on this, Mr. Williams, because I thought
3 townhouses were on sort of the same area and touched
4 each other.

5 VICE CHAIRPERSON SOCKWELL: They're not
6 on the same area. For your information, Mr.
7 Niedermayer, a townhouse is a row house. I row house
8 may exist as any house within the row all on separate
9 lots. They are considered separate buildings for the
10 purpose of ownership, taxation, etcetera, and if you
11 have never lived in a row house, you should still
12 know that because I'm sure that you know someone who
13 does.

14 MR. NIEDERMAYER: I have lived in a row
15 house, Mr. Sockwell.

16 VICE CHAIRPERSON SOCKWELL: Well, good.

17 MR. NIEDERMAYER: I have no further
18 questions. I'm sure the Board will be happy to hear
19 that.

20 VICE CHAIRPERSON SOCKWELL: Not really.
21 I'm having a good time with this. I'm perfectly
22 satisfied until we have to leave.

23 MR. O'BRIEN: Mr. Chairman, I've got one
24 more extremely brief witness.

25 MS. PRUITT: Actually, that was what I

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1 was going to say, Mr. Sockwell. Do you want to make
2 an assessment of what's left.

3 VICE CHAIRPERSON SOCKWELL: He said
4 brief. Brief is fine.

5 MS. PRUITT: About how much time?

6 MR. O'BRIEN: Can I make a proffer? I'm
7 about to lose Mr. Potter who needs to catch an
8 airplane and I'd like to ask that he be excused.

9 VICE CHAIRPERSON SOCKWELL: Certainly.

10 MS. PRUITT: The other thing is it
11 doesn't appear that we will finish today.

12 MR. O'BRIEN: I can certainly in about
13 five minutes, depending on how brief the cross is,
14 finish my case in chief.

15 MS. PRUITT: Right, but we still have
16 both the DCRA to put on their case and Mr.
17 Ghafoorian.

18 MR. O'BRIEN: Oh, I understand that. If
19 you want to get to a good place to rest, that would
20 be it.

21 VICE CHAIRPERSON SOCKWELL: Let's get
22 through the Appellant's case.

23 Thank you, Mr. Potter, for your
24 participation.

25 MR. POTTER: Thank you very much for

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1 listening to us.

2 MR. O'BRIEN: At this time, Mr. Chairman,
3 I'd like to call Mr. Watson.

4 VICE CHAIRPERSON SOCKWELL: Mister Whom?

5 MR. WEBSTER: Actually, I ought to
6 clarify. George Watson.

7 MR. WATSON: George Watson. I live in
8 Wesley Heights at 4323 Cathedral Avenue. I've lived
9 there for approximately 31 years. I'm also President
10 of the Wesley Heights Historical Society.

11 Mrs. Craiglow, the former owner of the
12 property in question, was a client of my wife's and
13 I've been in that house several times. I was also a
14 colleague of --

15 MR. O'BRIEN: For clarification, what was
16 the address of the Craiglow house?

17 MR. WEBSTER: 4900 Indian Lane.

18 MR. O'BRIEN: Okay.

19 MR. WEBSTER: And I was also a colleague
20 of Mr. Potter's at a local boys school.

21 MR. O'BRIEN: Were you present at the ANC
22 meeting where this particular dispute was considered
23 by ANC-3D?

24 MS. PRUITT: Mr. O'Brien, you got to move
25 closer to the mic. I'm sorry. We're losing you.

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1 MR. O'BRIEN: Pardon me.

2 Were you present at the ANC meetings of
3 Advisory Neighborhood Commission 3D where this
4 particular dispute and these particular projects were
5 considered by the ANC?

6 MR. WEBSTER: I was.

7 MR. O'BRIEN: And could you state --
8 could you describe for the Board what happened at
9 these proceedings?

10 MR. NIEDERMAYER: I would like to object
11 that this is entirely hearsay.

12 MS. PRUITT: Mr. O'Brien, is he reporting
13 for the ANC?

14 MR. O'BRIEN: Mr. Watson was present at
15 the ANC meetings.

16 MS. PRUITT: But we do have an ANC report
17 that we will get to later.

18 MR. O'BRIEN: Thank you. I didn't know
19 whether that was --

20 MS. PRUITT: Unless he's authorized to
21 represent the ANC.

22 VICE CHAIRPERSON SOCKWELL: It would only
23 be important for him to rebut the ANC testimony in
24 one way as your --

25 MR. O'BRIEN: Mr. Chairman, my major

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1 concern was making sure that the ANC's letter was
2 made part of the record. Mr. Watson -- I didn't know
3 whether it was or not frankly. I haven't received a
4 copy of it.

5 VICE CHAIRPERSON SOCKWELL: Oh, you have
6 not?

7 MS. PRUITT: Excuse me?

8 VICE CHAIRPERSON SOCKWELL: Counsel for
9 the Appellant has not received a copy of the ANC's
10 letter.

11 MR. O'BRIEN: Oh, I have received a copy
12 of it. I didn't know whether it was proper or not
13 for me to file it or make it --

14 MS. PRUITT: It has been filed by the
15 ANC.

16 MR. O'BRIEN: Wonderful. Thank you.

17 MR. O'BRIEN: Go ahead, Mr. Watson.
18 Forget about the ANC.

19 MR. WEBSTER: I've just got a few
20 remarks, some of which are, I think, very pertinent
21 to the discussions we've had or I've heard earlier.
22 I'm talking now about the Wesley Heights Historical
23 Society, and I've given this statement several times.

24 It was established in 1989 in response to what was
25 perceived as community over-development that

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1 threatened the open tree lined streets and park land
2 aspect of lots in our community.

3 We sponsored the Wesley Heights overlay
4 district that the Zoning Commission adopted in 1992
5 that called for reduced density and new setbacks
6 while still allowing residents liberal leeway to make
7 improvements to their homes while keeping those
8 additions to a reasonable level. We are, therefore,
9 extremely interested in seeing to it that the
10 existing zoning provisions, including the Wesley
11 Heights overlay district, are applied and enforced in
12 an even-handed manner.

13 How fitting that this hearing is held
14 today, and I wore a necktie for it specially, on
15 Halloween because a number of past ghosts are being
16 talked about, both people and properties. I want to
17 call your attention to one ghost in Wesley Heights in
18 particular that is very relevant to this case and
19 that is the notorious over-large pool house at 4524
20 Garfield Street that towers over a back yard fence
21 and invades the privacy of the next door yard and the
22 pool. It, too, was built on an artificially raised
23 baseline with a retaining wall in an attempt to
24 subvert the 15 foot limit, overall limit. That 900
25 square foot poolhouse is now being called a

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1 garage/pool house.

2 In that case, the zoning officials leaned
3 over backwards to try to justify that building by
4 grotesque interpretations of the zoning regulations
5 rather than the most restrictive interpretation. The
6 BZA and the Court of Appeals have seen the illegality
7 of that building but appeals and litigation over the
8 past 10 years -- 10 years -- have cost that injured
9 neighbor more than \$50,000 to try to get the city
10 and, in particular, DCRA to be responsive -- i.e.,
11 respond to questions and letters and so on -- and to
12 apply and enforce the existing zoning regulations.
13 Why should private citizens have to pay lawyer fees,
14 hourly fees, to try to get DCRA to do their job?
15 Thank you.

16 VICE CHAIRPERSON SOCKWELL: Thank you.

17 Questions of Mr. Watson by the Board?

18 Cross.

19 MR. NIEDERMAYER: None.

20 MR. PARKER: None.

21 VICE CHAIRPERSON SOCKWELL: Thank you.

22 Thank you, Mr. Watson.

23 MR. O'BRIEN: I have nothing further, Mr.

24 Chairman.

25 VICE CHAIRPERSON SOCKWELL: All right.

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1 Does the Board have any immediate questions? We are
2 then at the conclusion of the Appellant's case and
3 would proceed next with government reports.

4 MS. SANSONE: Mr. Chairman, it would be
5 the Zoning Administrator's case.

6 VICE CHAIRPERSON SOCKWELL: Oh, I'm
7 sorry.

8 MS. SANSONE: And the appeal.

9 VICE CHAIRPERSON SOCKWELL: I'm sorry.
10 I'm looking at the wrong thing. Forgive me. Give us
11 a second.

12 (Off the record briefly at 5:14 p.m.)

13 VICE CHAIRPERSON SOCKWELL: Mr. Parker.

14 MR. PARKER: Yes.

15 VICE CHAIRPERSON SOCKWELL: The Zoning
16 Administrator and the former Acting -- well, the
17 Acting Zoning Administrator -- the Zoning
18 Administrator and the former Acting Zoning
19 Administrator are both here. How long do you think
20 that it will take you to put on your case?

21 MR. PARKER: I think that what I
22 anticipate is my case would be to have Mr. Lourenco
23 testify and all I would expect Mr. Johnson to do
24 would be under oath to adopt what his statements --
25 what the testimony of Mr. Lourenco are as the current

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1 position of the Zoning Administrator. I think we
2 could probably get our direct done in a half an hour.

3 I don't know what we can do in terms of -- I can't
4 make a representation about cross examination. I'm a
5 little reluctant -- frankly, I'm reluctant to have
6 him testify and then stop and then have the other
7 side have the opportunity to have however long
8 they're going to have to prepare the cross
9 examination. I don't think that's tremendously fair.

10 So we either have to make a commitment to go through
11 the cross or I would ask to come back.

12 VICE CHAIRPERSON SOCKWELL: In the past,
13 we've gone as late as 11:00 at night, but we won't
14 subject -- oh sure. We've done that. I'm making a
15 statement and, believe me, if it were necessary, I
16 would take the hearing to 7:00 but it is Halloween
17 night and it is a time when many of us want to be
18 home to feed the kiddies and another time for us to
19 go home and protect ourselves from them, depending on
20 where we reside. So I would suggest that we
21 reschedule the Zoning Administrator's portion and the
22 rest for another time. This hearing has taken a
23 tremendous amount of time and will likely take
24 another session or two, depending. I would like not
25 to have to bring city officials and others back but

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1 one time, and I apologize for the time spent today,
2 but I would like to find a date certain that we can
3 reconvene the hearing, continue it to that date.

4 MS. PRUITT: Based on your schedule, it
5 appears that January 16 in the afternoon will be your
6 first available date.

7 MR. PARKER: That would be 1:00 again?

8 MS. PRUITT: Correct. And we can devote
9 the whole afternoon.

10 MR. PARKER: Let me check with the
11 witnesses. Everybody shrugs their shoulders. That's
12 as good as any day.

13 VICE CHAIRPERSON SOCKWELL: All right.
14 So I am, as acting chairperson in this case, allowing
15 you Thanksgiving and Christmas and New Year's to
16 yourselves and we will reconvene on a date certain
17 January 16 at 9 a.m.

18 MS. PRUITT: No. 1:00.

19 VICE CHAIRPERSON SOCKWELL: I mean 1:00
20 a.m.

21 MS. PRUITT: 1:00 p.m.

22 VICE CHAIRPERSON SOCKWELL: I gave you
23 three holidays. Come on.

24 MR. O'BRIEN: I hope we're talking 1:00
25 p.m.

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1 VICE CHAIRPERSON SOCKWELL: 1:00 p.m.

2 MR. O'BRIEN: Thank you.

3 MS. PRUITT: Mr. Sockwell, let me just
4 check the calendar for holidays. I haven't done the
5 calendar for year 2001 yet. I can pull it up though.
6 I don't want us -- Mr. Niedermayer brought it to my
7 attention it might be Martin Luther King. That's a
8 Tuesday though, so it wouldn't be.

9 VICE CHAIRPERSON SOCKWELL:

10 VICE CHAIRPERSON SOCKWELL: Yes. Monday
11 is the holiday.

12 MS. PRUITT: I'm just trying to think.
13 That is a Tuesday, so we would be safe.

14 VICE CHAIRPERSON SOCKWELL: So I'm giving
15 you four holidays. Yes, I'm being very liberal.

16 All right. So Tuesday, the 16th of
17 January at 1:00 p.m. we will -- let's see. Ms.
18 Pruitt, what do we have on the docket for that date?

19 MS. PRUITT: In the morning you have
20 Sibley Hospital Cancer Center, Tomorrow's Gateways, a
21 parking variance for right now.

22 VICE CHAIRPERSON SOCKWELL: And what do
23 we have on the afternoon schedule?

24 MS. PRUITT: This would be the only thing
25 on the agenda. That's why I suggested that.

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1 VICE CHAIRPERSON SOCKWELL: Then we can
2 do this and hopefully we'll get through the morning
3 agenda so that we will be able to start at 1:00.
4 There's no guarantee of that but we certainly will
5 try. So we look forward to seeing you then, and
6 thank you very much.

7 Hearing is now adjourned.

8 (Whereupon, the hearing was adjourned at
9 5:19 p.m.)
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