

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 4, 2007

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 3:29 p.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson  
MARC D. LOUD, Board Member  
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING PRESENT:

STEPHEN RICE

The transcript constitutes the minutes from the Public Hearing held on December 4, 2007.

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P R O C E E D I N G S

3:29 p.m.

CHAIR MILLER: This hearing will please come to order. Good afternoon ladies and gentlemen. This is the December 4<sup>th</sup> Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I'm Chair of the BZA. Joining me today is Mr. Michael Turnbull to my right, Mr. Marc Loud to my left, and next to him Mr. Shane Dettman, members of the Board of Zoning Adjustment.

Next to Mr. Dettman is Mr. Cliff Moy from the Office of Zoning; Sherry Glazer from the Office of Attorney General, and then Ms. Beverley Bailey from the Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left on the wall bin near the door. Please be aware that this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly, we must ask you to

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1 refrain from any disruptive noises or actions  
2 in the hearing room. When presenting  
3 information to the Board, please turn on and  
4 speak into the microphone, first stating your  
5 name and home address.

6 When you're finished speaking,  
7 please turn your microphone off so that your  
8 microphone is no longer picking up sound or  
9 background noise.

10 All persons planning to testify,  
11 either in favor of or in opposition, are to  
12 fill out two witness cards. These cards are  
13 located to my left on the table near the door  
14 and on the witness tables.

15 Upon coming forward to speak to  
16 the Board, please give both cards to the  
17 reporter sitting to my right.

18 The order of procedure for special  
19 exceptions and variances is one, statement and  
20 witnesses of the applicant; two, government  
21 reports, including Office of Planning,  
22 Department of Public Works, DDOT, etcetera.

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1                   Three, report of Advisory  
2 Neighborhood Commission. Four, parties or  
3 persons in support. Five, parties or persons  
4 in opposition. Six, closing remarks by the  
5 Applicant.

6                   Pursuant to Sections 3117.4 and  
7 3117.5, the following time constraints will be  
8 maintained. The applicant, appellant, all  
9 persons or parties except an ANC in support  
10 will have 60 minutes collectively.

11                   Persons and parties except an ANC  
12 in opposition, including witnesses, 60 minutes  
13 collectively. Individuals, three minutes.  
14 These time constraints do not include cross-  
15 examination and/or questions from the Board.

16                   Cross-examination of witnesses is  
17 permitted by the Applicant or parties. The  
18 ANC in which the property is located is  
19 automatically a party in a special exception  
20 or variance case.

21                   Nothing prohibits the Board from  
22 placing reasonable restrictions on cross-

1 examination, including time limits and  
2 limitations on the scope of cross-examination.  
3 The record will be closed at the conclusion of  
4 each case, except for any materials  
5 specifically requested by the Board.

6 The Board and the staff will  
7 specify at the end of the hearing exactly what  
8 is expected, and the date when the persons  
9 must submit the evidence to the Office of  
10 Zoning.

11 After the record is closed, no  
12 other information will be accepted by the  
13 Board. The Sunshine Act requires that the  
14 public hearing on each case be held in the  
15 open before the public.

16 The Board may, consistent with its  
17 rules of procedures and the Sunshine Act,  
18 enter executive session during or after the  
19 public hearing or case, for purposes of  
20 reviewing the record or deliberating on the  
21 case.

22 A decision of the Board in

1       contested cases must be based exclusively on  
2       the public record. To avoid any appearance to  
3       the contrary, the Board requests that persons  
4       present not engage the members of the Board in  
5       conversation.

6               Please turn off all beepers and  
7       cell phones at this time, so as not to disrupt  
8       the proceedings. The Board will make every  
9       effort to conclude the public hearing as near  
10      as possible to six o'clock p.m.

11              If the afternoon cases are not  
12      completed at six o'clock p.m., the Board will  
13      assess whether it can complete the pending  
14      case or cases remaining on the agenda.

15              At this time, the Board will  
16      consider any preliminary matters. Preliminary  
17      matters are those that relate to whether a  
18      case will or should be heard, such as a  
19      request for postponement, continuance or  
20      withdrawal, or whether proper and adequate  
21      notice of the hearing has been given.

22              If you're not prepared to go

1 forward with the case today, or if you believe  
2 that the Board should not proceed, now is the  
3 time to raise such a matter. Does the staff  
4 have any preliminary matters?

5 Appeal No. 17645

6 MS. BAILEY: Madam Chair, yes we  
7 do, and it has to do with Appeal No. 17645,  
8 the Dexter Street Trust. That application was  
9 withdrawn, Madam Chair.

10 CHAIR MILLER: Thank you, and I  
11 understand that no action is required of the  
12 Board. Am I correct?

13 MS. BAILEY: No action is  
14 required.

15 CHAIR MILLER: Okay. Then let us  
16 proceed with the agenda. Would all  
17 individuals wishing to testify today please  
18 rise to take the oath?

19 (WITNESSES SWORN.)

20 CHAIR MILLER: Thank you. Ms.  
21 Bailey, would you call the first case please?

22 Application No. 17689

1 MS. BAILEY: Application No. 17689  
2 of Taiwo Demuren, pursuant to 11 DCMR 3104.1,  
3 for a special exception to allow the  
4 construction of a four unit apartment building  
5 under Section 353, at premises 5139 Astor  
6 Street, S.E. The property is zoned R-5-A.  
7 It's located in Square 5309 on Lot 13.

8 CHAIR MILLER: Good afternoon.  
9 Would you identify yourself for the record  
10 please when you're ready?

11 MR. AGBIM: Yes, good afternoon.  
12 My name is Ike Agbim, 9611 Cedar Hollow Lane,  
13 Largo, Maryland, 20774, for the Appellant.

14 CHAIR MILLER: Okay. You're here  
15 for a special exception pursuant to Section  
16 353 of the zoning regulations. Do you want to  
17 make any preliminary remarks? Otherwise, the  
18 Board will have some questions for you.

19 MR. AGBIM: Yes. This is a  
20 special exception, R-5-A lot, 4,000 square  
21 feet lot area. It's a simple building, 18  
22 feet by approximately 54 feet deep. The

1 attached will revise the plans to accommodate  
2 the required DDOT-required driveway on the  
3 west side, and also we have, you know, an  
4 eight foot side yard.

5 So it's been revised from the  
6 semi-detached format that the original  
7 application had. Thank you.

8 CHAIR MILLER: Okay. So now in  
9 your assessment, it complies with all the  
10 zoning regulations; is that correct?

11 MR. AGBIM: Yes.

12 CHAIR MILLER: Okay. Are there  
13 questions from the Board? Mr. Turnbull?

14 MEMBER TURNBULL: Thank you, Madam  
15 Chair. Mr. Agbim, I'm trying to -- there are  
16 four units in the building and one of them is  
17 a cellar unit, which is reached from a side  
18 entrance?

19 MR. AGBIM: That's correct.

20 MEMBER TURNBULL: I guess what is  
21 not clear or is a little confusing, is that on  
22 the -- on your site plan and on your landscape

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1 plan, at least on both of them, the stairs in  
2 going to the basement access to it is not  
3 indicated.

4 There is actually on the landscape  
5 plan a trash compactor, which looks like it  
6 would be right up smack next to the stairs  
7 going to the basement.

8 (Pause.)

9 MR. AGBIM: Yes sir. The stair  
10 going to the basement is not clearly shown on  
11 the plan, the site plan.

12 MEMBER TURNBULL: Yes, and it  
13 would be good if you could indicate that,  
14 because I'm not sure then how that impacts  
15 where you're going to place your trash  
16 compactor, I mean your trash enclosure.

17 It looks like it's -- that may  
18 have to shift a bit, and right now you only  
19 have, it looks like, pre-cast pavers going  
20 through it. You may need an actual sidewalk  
21 going to that stair.

22 Maybe that comes off the main

1 stair or the main sidewalk. It's just a  
2 little unclear how you get in and out of that  
3 cellar unit.

4 MR. AGBIM: Yes, thank you. I  
5 also meant to indicate earlier that that  
6 basement unit entrance, in this case and the  
7 next one, has a few things that we're going to  
8 provide more clarification on.

9 MEMBER TURNBULL: Okay, yes,  
10 because you're also showing on the site plan,  
11 the first site plan shows window wells on the  
12 back and the side, which don't seem to line up  
13 or they do line up with the back one, but it  
14 doesn't match your landscaping plan.

15 It looks like you've got a window  
16 well on the side yard, but it looks like it  
17 would be for like a double window unit, but I  
18 don't see a double window unit on the  
19 basement.

20 So I don't know if you're really  
21 indicating that or -- it's a minor point.  
22 Architecturally, it just doesn't seem to line

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1 up on with what you're showing on one to the  
2 other.

3 MR. AGBIM: Yes, thank you sir.  
4 Yes, I do agree with you. The window well on  
5 the side yard is from a previous scheme. So  
6 it doesn't belong there at all.

7 MEMBER TURNBULL: Okay. Okay,  
8 thank you.

9 MR. AGBIM: Thank you.

10 MEMBER DETTMAN: Mr. Agbim, could  
11 you sort of clarify. You indicated a four to  
12 five foot retaining wall, and I'm particularly  
13 interested in the retaining wall that sort of  
14 surrounds the four open parking spaces. What  
15 is the retaining wall going to be constructed  
16 of?

17 MR. AGBIM: The retaining wall, as  
18 shown on the plans, will be made of masonry.

19 MEMBER DETTMAN: Is that poured  
20 concrete? Is it brick?

21 MR. AGBIM: Split face concrete  
22 units.

1                   MEMBER DETTMAN: Okay. I ask  
2 because 2117.12 in the zoning reg, which deals  
3 with the access, maintenance and operation of  
4 required parking, it states that "the open  
5 parking space, spaces shall be screened from  
6 all contiguous residential property located in  
7 R-1, R-2, R-3, R-4 and R-5-A district, that it  
8 needs to be screened using a solid brick wall  
9 on a stone wall at least 12 inches high and 42  
10 inches thick."

11                   So your retaining wall is going to  
12 be made of concrete with a wood fence, a six  
13 foot wood fence surrounding that as well?

14                   MR. AGBIM: Yes. The four to five  
15 foot high retaining wall will be made of  
16 concrete masonry units. I believe that an  
17 interpretation that that might suffice for  
18 brick masonry or, you know, poured concrete.

19                   CHAIR MILLER: Mr. Dettman, could  
20 you cite that regulation again?

21                   MEMBER DETTMAN: 2117.12. I  
22 suppose concrete CMUs could be interpreted as

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1 being stone. Solid brick or stone wall;  
2 that's what the reg says. So it doesn't say  
3 masonry.

4 CHAIR MILLER: So Mr. Dettman, is  
5 it your conclusion that the masonry is not in  
6 accordance with that regulation, 2117.12?

7 MEMBER DETTMAN: Perhaps I'm  
8 taking a pretty strict interpretation on what  
9 it means by solid brick or stone wall. Maybe  
10 it might be helpful for me to hear from DCOP  
11 has to say on their interpretation of that  
12 particular section in the regs.

13 Personally, I think that poured  
14 concrete or concrete masonry units don't  
15 qualify as a solid brick or stone wall.

16 CHAIR MILLER: Mr. Agbim, do you  
17 have a comment with respect to that?

18 MR. AGBIM: Yes. The comment that  
19 I have, replying to that strict application of  
20 that 2117.12, is that in fact, solid brick is  
21 masonry.

22 I'm not trying to be argumentative

1 about it, but brick is masonry, and there's no  
2 reason why the developer will not be able to  
3 also use a brick wall, as opposed to solid  
4 concrete masonry units and split-faced blocks.

5 So the plans currently just say  
6 four to five foot retaining wall. There's no  
7 reason why it cannot be a brick wall or, but  
8 perhaps not a stone wall.

9 CHAIR MILLER: Okay. So you're  
10 saying it could be one or the other?

11 MR. AGBIM: Yes. It could be a  
12 brick wall, to meet 2117.12 strictly, right.

13 CHAIR MILLER: Okay, good. Are  
14 there other questions for Board members? Yes,  
15 Mr. Dettman.

16 MEMBER DETTMAN: Just one comment,  
17 Madam Chair. If the Applicant is going to be  
18 required to submit revised plans to  
19 incorporate the comments that Mr. Turnbull  
20 brought up, maybe that could be -- maybe the  
21 material of the retaining wall could be  
22 pointed out and specified on the plans as

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1 well.

2 CHAIR MILLER: Yes. I think that  
3 would be a good idea. Anything else? Mr.  
4 Agbim, could you just explain to me a little  
5 bit about the landscape plan?

6 I see the area that's identified  
7 for hedging plants, and then I'm just  
8 wondering what the symbols represent. I guess  
9 near those stairs. Do you see? There are  
10 three circles drawn? We don't know if they're  
11 trees or what.

12 MR. AGBIM: Yes. The landscape  
13 plan is showing some small trees and some  
14 hedging plants around some of the areas, and  
15 some low shrubs. Those are the three main  
16 categories of plants employed in landscaping.

17 Of course, the rest of the areas  
18 that are paved are carpet grass, pretty much.

19 CHAIR MILLER: Okay, and I mean is  
20 there some reason why those three circles  
21 aren't identified, or are they identified the  
22 key, because they don't need to be, because

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1 they're a universal symbol or --

2 MR. AGBIM: Yes. Those three  
3 circles in the front are low shrubs.

4 CHAIR MILLER: Oh, they're shrubs.

5 MR. AGBIM: Yes, shown on the key.

6 CHAIR MILLER: Is it in the key?  
7 I don't see it in the key. I see the little  
8 squiggle for the hedging.

9 MR. AGBIM: Yes.

10 CHAIR MILLER: It is or it isn't?

11 MR. AGBIM: Say it again?

12 CHAIR MILLER: I'm sorry. I'm not  
13 an architect, so but I certainly want to make  
14 sure that I'm understanding the plans, and  
15 that they're showing what they should show.

16 So I was just wondering, there's  
17 this key for the hedging which is clear around  
18 the building. Then there's, at the bottom,  
19 three circles that don't seem to be keyed  
20 anywhere. Is that correct?

21 MR. AGBIM: That's correct.

22 CHAIR MILLER: Can they be added

1 to the key?

2 MR. AGBIM: Yes. There will be a  
3 key, yes.

4 CHAIR MILLER: Okay, and they are  
5 shrubs; they're not trees?

6 MR. AGBIM: No. They're not  
7 trees, no.

8 CHAIR MILLER: Okay. So all this  
9 is shrubs; there aren't any trees?

10 MR. AGBIM: No. The trees are on  
11 the side yard, on the side yard of the  
12 property, on the -- I guess that will be the  
13 west side yard, not the side yard with the  
14 driveway but the side yard that has the trash  
15 dumpster, trash enclosure.

16 CHAIR MILLER: Okay. That doesn't  
17 show up on this plan though, right, or does  
18 it? I may be looking at older plans. I'm not  
19 sure now --

20 MR. AGBIM: Do you mind if I see a  
21 copy of the plan you have?

22 CHAIR MILLER: Can you see it?

1 Okay. I think there are some updated plans,  
2 sorry. Let me take a look at that.

3 (Pause.)

4 CHAIR MILLER: Okay. Now I'm  
5 looking at a different set of plans that were  
6 attached to November 13<sup>th</sup>, 2007 letter. Is  
7 that the most --

8 MR. AGBIM: That's correct, yes.

9 CHAIR MILLER: Okay. It is  
10 different, but it still looks to me like some  
11 of this is not in the key, the dark --

12 MR. AGBIM: The plants in the rear  
13 of the building, they are keyed S-5, and the  
14 ones on the west side yard are keyed S-3.

15 CHAIR MILLER: Good afternoon.  
16 Office of Planning wants to weigh in on this.

17 MR. RICE: Good afternoon. I  
18 think I understand what you're saying, and I  
19 just picked it up. The circles in the rear,  
20 if you look to the right, there's a little  
21 indicator that says "S-5."

22 If you go to the plant schedule,

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1 it tells you the name of the plant. But it's  
2 not indicated with a symbol. I think that's  
3 sort of the confusion. All of the trees and  
4 shrubs are indicated with letters and numbers,  
5 as opposed to symbols.

6 CHAIR MILLER: I understand what  
7 you're saying. Now then does that show up,  
8 though, with respect to the symbols, that we  
9 know what is S-1 or we know what is S-5 from  
10 this?

11 MR. AGBIM: Yes. On the plant  
12 schedule, the lower chart, S-5 is the last  
13 one, draft holly.

14 CHAIR MILLER: Okay. It must be  
15 my eyes, even with the glasses. I think it's  
16 hard to see those S numbers. Maybe you could  
17 make those a little clearer, since you're  
18 revising, so that it's easy for everyone to  
19 follow.

20 Okay. But now I see at least what  
21 you're intending to plant. Okay, thank you.

22 MEMBER TURNBULL: Madam Chair, I

1 just had two more questions for Mr. Agbim. On  
2 that same landscape plan, there's two  
3 references.

4 It says "Tree space future and  
5 SW," which appears means "sidewalk future"?  
6 Are they not in the project or what is --

7 MR. AGBIM: No. This project does  
8 have --

9 MEMBER TURNBULL: Sidewalk?

10 MR. AGBIM: A sidewalk, but the  
11 tree space is not there.

12 MEMBER TURNBULL: It's not there?

13 MR. AGBIM: No. In other words,  
14 the tree space, when you look at a picture of  
15 a site.

16 MEMBER TURNBULL: It's like the  
17 parkway.

18 MR. AGBIM: Right. It sort of  
19 like blends in with the property areas,  
20 because next to the curb on the street side is  
21 the sidewalk, and after the sidewalk it seems  
22 as if that tree space doesn't exist at all.

1 MEMBER TURNBULL: Okay.

2 MR. AGBIM: Some of the retaining  
3 walls are actually in that tree space, but  
4 they property corners actually stop after the  
5 tree space.

6 MEMBER TURNBULL: Okay.

7 CHAIR MILLER: Any other Board  
8 questions at this time?

9 (No response.)

10 CHAIR MILLER: Okay. Then I think  
11 we can turn to Office of Planning.

12 MR. RICE: Good afternoon again.  
13 My name is Stephen Rice with the Office of  
14 Planning. The Office of Planning stands on  
15 the record in support of Application 17596, oh  
16 I'm sorry, 17689.

17 The Applicant has met the burden  
18 of proof pursuant to Section 353. We do  
19 recommend that the record stays open for the  
20 issues that were addressed earlier, concerning  
21 consistency with the drawings, specifically  
22 with the site plans and the floor plans, and

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1 any other landscaping issues as well.

2 But as far as the concept is  
3 concerned, the Office of Planning supports the  
4 project. Thanks.

5 CHAIR MILLER: Thank you. At the  
6 time you wrote your report, you hadn't  
7 received any word from the ANC. Have you  
8 since then?

9 MR. RICE: We have not received  
10 comments, but we have been indicated by the  
11 Applicant that the ANC is in support. I have  
12 not seen those comments, but that's our  
13 understanding. We have not received comments  
14 from any of the other agencies, DDOT, DHCD.

15 CHAIR MILLER: We have a copy of a  
16 report from DHCD in our files. You haven't  
17 seen it?

18 MR. RICE: I have not.

19 CHAIR MILLER: Okay. We'll give  
20 you a copy of it. It's in support of the  
21 application. Have you seen a copy of this?

22 MR. AGBIM: No.

1                   CHAIR MILLER: Okay. I believe  
2 Ms. Bailey would probably make you all copies.  
3 But it is in support, and it's dated October  
4 31<sup>st</sup>. Any questions for the Office of  
5 Planning? Mr. Agbim, do you have a copy of  
6 the Office of Planning report?

7                   MR. AGBIM: Yes.

8                   CHAIR MILLER: Okay, and did you  
9 have any questions for the Office of Planning?

10                  MR. AGBIM: No.

11                  CHAIR MILLER: Okay. Have you had  
12 any contact with the ANC with respect to this  
13 --

14                  MR. AGBIM: Yes. I did provide  
15 them with the revised plans, and they support  
16 it, and they told me they were going to send  
17 in a letter for all three cases that were  
18 filed simultaneously, which is 17689, 17690  
19 and I believe 17688, which hearing was last  
20 Tuesday.

21                  So my understanding was that they  
22 were going to send in one letter to cover all

1 three cases.

2 CHAIR MILLER: And the cases that  
3 you just listed, I didn't hear. 17689, which  
4 is this case.

5 MR. AGBIM: Yes, this case. 17688  
6 was 5323 D Street, and 17690 is 5131 Astor  
7 Place.

8 CHAIR MILLER: Okay. We can see  
9 if it's, you know, in another file or  
10 something. Sometimes that happens when they  
11 do three in one or something. Okay.

12 Well, I note that there isn't  
13 anybody else here in the audience, so that  
14 means that there's no one here from the ANC,  
15 and that means that there's nobody here to  
16 testify in support or opposition to this  
17 application.

18 I'm just going to take a moment to  
19 check my 17690 file, in the event there is an  
20 ANC report in that one.

21 (Pause.)

22 MEMBER LOUD: Mr. Agbim, while she

1 does that, I have a quick question on the  
2 person, if you can identify the person at the  
3 ANC that you spoke with, or provided the plans  
4 to?

5 MR. AGBIM: Her name is Ms. Naomi  
6 Robinson.

7 MEMBER LOUD: Thanks.

8 CHAIR MILLER: Okay. We're going  
9 to be getting to 17690 shortly. But I would  
10 note that there is an ANC report in that file,  
11 but it lists 17690 on it, just for the record.  
12 Have you seen that ANC report?

13 MR. AGBIM: No.

14 CHAIR MILLER: Okay. I think we  
15 can make copies of it and look at it in  
16 connection with 17690. Okay. But it doesn't,  
17 unfortunately with respect to what you've  
18 represented, doesn't list the other cases.

19 MR. AGBIM: Oh, okay.

20 CHAIR MILLER: Okay. But we'll  
21 make a copy of it. Ms. Bailey, can you do  
22 that as well?

1 MS. BAILEY: You need copies?

2 CHAIR MILLER: Yes, of the ANC  
3 report. We're going to need it for the next  
4 case.

5 (Discussion off the record.)  
6 Pause.)

7 CHAIR MILLER: The Applicant  
8 doesn't have a copy. Does the Office -- you  
9 don't need it? You need it?

10 (Discussion off the record.)

11 CHAIR MILLER: Okay. Mr. Dettman  
12 has located a separate one in the 17689 file,  
13 that lists 17689. Do you want to just  
14 identify it? I didn't see it in my file.

15 MEMBER DETTMAN: It's Exhibit 21,  
16 for Application 17689. It's the ANC report  
17 dated October 11<sup>th</sup>, 2007. It says  
18 "Recommendation of the ANC as to the  
19 application" and written in it says "none."

20 (Pause.)

21 CHAIR MILLER: Okay. So we do  
22 have a report from the ANC in this case, but

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1 they have not taken a position on the  
2 application.

3 They don't have any concerns.  
4 Well, they say they don't have any concerns  
5 with respect to the application. We'll give  
6 you a copy of this report.

7 MEMBER LOUD: Madam Chair, I'm  
8 unclear on whether they voted or not. It says  
9 beneath the line that reads "Recommendation of  
10 the ANC," it says "none." And then "Vote on  
11 the motion to adopt the report." Does that  
12 mean that they voted 6 to 0 not to recommend?

13 CHAIR MILLER: That's the way I  
14 read it, that they voted to -- they voted that  
15 they didn't have any concerns about the  
16 application, and not to make any  
17 recommendations to the Board. That's how I  
18 interpret it. Do you interpret it to  
19 otherwise?

20 MEMBER LOUD: I guess a thought  
21 just shot through my mind quickly, that they  
22 were not recommending any conditions or

1       specifics.

2                   CHAIR MILLER: I think that's  
3 true.

4                   MEMBER LOUD: Anything specific  
5 about the application, but that they were  
6 voting to approve the application. But it's  
7 unclear, it's a little bit ambiguous.

8                   MEMBER DETTMAN: Madam Chair, I  
9 noticed in the DCOP report, it states that ANC  
10 7E is in support.

11                   So I was just wondering of DCOP  
12 actually had conversations with the ANC and  
13 it's just sort of -- it's just that this  
14 document is a little bit vague, as to whether  
15 they support or take no position.

16                   MR. RICE: That comment was based  
17 on the information supplied by the Applicant,  
18 not based by a report. We were informed that  
19 they were in support.

20                   CHAIR MILLER: I think that we  
21 have to go with the report, and basically I  
22 read the report at least as saying that the

1       ANC doesn't have any concerns about the  
2       application that they want this Board to  
3       consider.

4                       (Pause.)

5                       CHAIR MILLER:   Okay.   Where I see  
6       we're at is Mr. Agbim, do you want to make any  
7       final remarks?

8                       I think that we have heard from  
9       Office of Planning, heard from you, and the  
10      Board noted a few issues with the plans that  
11      you have agreed to revise the plans, you know,  
12      to correct.   We can review those before we end  
13      today.

14                      But I don't think there are any  
15      other issues that the Board has per se with  
16      respect to the application.   What we would do  
17      is set this for decision-making for another  
18      day, after we receive the revised plans.   Do  
19      you have any final comments you want to make?

20                      MR. AGBIM:   Yes.   Thank you for  
21      your questions and recommendations.   I will  
22      provide all the copies of the final plans by

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1 this Friday, end of business, to the Office of  
2 Zoning.

3 CHAIR MILLER: Okay. I think that  
4 the Board looked at the schedule before we  
5 came out here, anticipating that there might  
6 be need for you to revise the plans.

7 I think what we're going to do is  
8 set this for decision-making on December 18<sup>th</sup>,  
9 when we already have scheduled a public  
10 meeting.

11 Okay. Ms. Bailey, do you want to  
12 reiterate how the plans are going to be  
13 revised?

14 MS. BAILEY: The document that I  
15 have, Madam Chair, the Applicant is to take a  
16 look at the site plan, look at the landscaping  
17 and match the key with what plans are to be  
18 provided.

19 In other words, make all of the  
20 key that's identified on the plans readable,  
21 so that they match what plans are to be  
22 provided.

1                   Secondly, the stairs that are  
2 going to the basement are not correctly shown  
3 on the plans, especially as it is related to  
4 the trash receptacle. So that is to be  
5 clarified. Those are the two items that I  
6 have that was discussed.

7                   CHAIR MILLER: Okay. I mean and I  
8 think in general, that the plans are to be  
9 revised to make sure that they're all  
10 consistent. Is there anything else?

11                   (No response.)

12                   CHAIR MILLER: Do you have any  
13 questions about that, Mr. Agbim?

14                   MR. AGBIM: I'm okay, thanks.

15                   CHAIR MILLER: I think also the  
16 brick wall was going to be identified on the  
17 plans, that the retaining wall would be in  
18 brick? Okay.

19                   MS. BAILEY: Madam Chair, the Applicant  
20 indicated that he could have the plans ready  
21 by this Friday, which is December the 7<sup>th</sup>.  
22 Did you want for him to serve the ANC with a

1 copy of those plans?

2 CHAIR MILLER: Yes.

3 MS. BAILEY: Okay. Then the  
4 record would be left open. Mr. Moy, do you  
5 have a preference for the date when the  
6 response is to come in?

7 CHAIR MILLER: You're saying the  
8 record would be left open for in the event the  
9 ANC has a response?

10 MS. BAILEY: Exactly, or not?

11 CHAIR MILLER: Well, sure. We  
12 could leave the record open for a week, I  
13 think, because I think the way it's scheduled,  
14 there's time, is there not, in between?

15 MS. BAILEY: There is sufficient  
16 time, and if there is no additional dates  
17 recommended, I would suggest December 14<sup>th</sup> for  
18 the response from the ANC.

19 CHAIR MILLER: Okay, okay. I  
20 don't anticipate a response, but they should  
21 have that opportunity if they so choose.  
22 Okay.

1 MS. BAILEY: Did you need for me  
2 to repeat those dates or is that sufficient?

3 CHAIR MILLER: Do you have the  
4 dates, Mr. Agbim?

5 MR. AGBIM: Yes.

6 CHAIR MILLER: Okay. No, that's  
7 sufficient then. Okay. Anything else on this  
8 case?

9 MR. AGBIM: That will be all.  
10 Thanks.

11 CHAIR MILLER: Okay. Then we can  
12 turn to the next case when you're ready, Ms.  
13 Bailey.

14 Application No. 17690

15 MS. BAILEY: Application No. 17690  
16 of Taiwo Demuren, pursuant to 11 DCMR 3104.1,  
17 for a special exception to allow the  
18 construction of a new four-unit apartment  
19 building under Section 353 in the R-5-A  
20 district. The premise is 5131 Astor Street,  
21 S.E., Square 5309, Lot 9.

22 CHAIR MILLER: Why don't you

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1 identify yourself for the record?

2 MR. AGBIM: My name is Ike Agbim,  
3 9611 Cedar Hollow Lane, Largo, Maryland,  
4 20774, for the Applicant.

5 CHAIR MILLER: Thank you. Do you  
6 have any preliminary remarks on this  
7 application, which is also pursuant to 353?

8 MR. AGBIM: Yes. What I'd like to  
9 point out is that on this application, we will  
10 have a need to also revise plans, especially  
11 the side plan and the landscape plan,  
12 specifically for basement and tree indication  
13 and clarification, and trash enclosure, and  
14 also coordinating the plat on the side plan  
15 and landscape plans, as we experienced in the  
16 last case. Thank you.

17 CHAIR MILLER: So basically it's  
18 the same issues on this plan as we saw in the  
19 last plan?

20 MR. AGBIM: Yes. The same issues,  
21 except that on this location, there's a more  
22 rapid grade change compared to the last one.

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1 So in the front, for example, you'll notice  
2 that there is a rectangular plant-shaped  
3 retaining wall that we're using to enclose the  
4 trash area, as opposed to having it on the  
5 side yard.

6 So that condition, which is a  
7 change in grade, will invariably affect the  
8 entry into the basement, in the cellar unit,  
9 and also affect the placement of the trash  
10 enclosures. So when we revise the plan, we  
11 should be able to clarify those better.

12 CHAIR MILLER: Questions from the  
13 Board?

14 (No response.)

15 CHAIR MILLER: Anything else you  
16 want to say before we go to the Office of  
17 Planning?

18 MR. AGBIM: We also will be  
19 changing the wall to a brick wall.

20 CHAIR MILLER: Okay. Mr. Rice?

21 MR. RICE: Good afternoon again.  
22 The Office of Planning stands on the record in

1 support of the application, pursuant to  
2 Section 353. Thank you.

3 CHAIR MILLER: Any questions from  
4 the Board from Mr. Rice? Mr. Agbim, do you  
5 have any questions for Mr. Rice? Do you have  
6 a copy of the Office of Planning report?

7 MR. AGBIM: Yes.

8 CHAIR MILLER: And as I noted  
9 before, we do have an ANC report. Do you have  
10 a copy of that now?

11 MR. AGBIM: Yes.

12 CHAIR MILLER: Okay.

13 (Pause.)

14 CHAIR MILLER: To any of my Board  
15 members, if you have that report handy, is it  
16 the same language as in 17689? I'm looking  
17 for my 17690 one now. Yes. This is basically  
18 the same, saying that they don't have any  
19 concerns about the application related to the  
20 zoning regulations, and they don't have any  
21 recommendation with respect to the  
22 application, and the vote was 6 to 0, at a

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1 regular monthly meeting on October 9<sup>th</sup>, 2007.

2 So it looks like it meets the  
3 great weight requirements, but they don't have  
4 any concerns for us to address. Okay.

5 And we also have a report from the  
6 Department of Housing and Community  
7 Development. I don't know if the -- the  
8 Office of Planning doesn't seem to have that  
9 report. I will get it to you.

10 Mr. Agbim, do you have a copy of  
11 that, the report from Department of Housing  
12 and Community Development?

13 MR. AGBIM: No, but I saw it in  
14 the files.

15 CHAIR MILLER: Okay, right. It is  
16 dated November 26<sup>th</sup>, and it is in support of  
17 the application. Okay. Anything else? Any  
18 other final -- oh. I'll just note for the  
19 record that there is no one in the audience,  
20 other than Mr. Agbim here.

21 So that the ANC's not here and  
22 there are no persons here at this time in

1 support or opposition to this application. Do  
2 you have any final comments, Mr. Agbim, before  
3 we again make a note as to how the plans will  
4 be revised?

5 MR. AGBIM: Yes. I'll be able to  
6 submit the revised plans and copies to Office  
7 of Zoning by Friday the 7<sup>th</sup>.

8 CHAIR MILLER: Great, okay. Ms.  
9 Bailey, do you want to reiterate for us what  
10 will be coming in on this case by Friday?

11 MS. BAILEY: Madam Chair, the  
12 documents, as indicated, as to be provided by  
13 this coming Friday, December the 7<sup>th</sup>. The  
14 Applicant is to serve a copy to the ANC.

15 The ANC should respond by December  
16 14<sup>th</sup>, and the Board will consider a decision  
17 on the application on December the 18<sup>th</sup>.

18 CHAIR MILLER: Okay, but I also  
19 would like to note exactly what the revisions  
20 will address.

21 I believe, and Mr. Agbim you can  
22 correct me if I'm wrong, it sounds like the

1 same issues that are being addressed in 17689,  
2 plus the basement entry and trash enclosures  
3 were specifically going to be revised on these  
4 plans, in part to take into consideration the  
5 grade. Is that correct?

6 MR. AGBIM: That's correct.

7 CHAIR MILLER: Okay. Anything  
8 else?

9 MR. RICE: I would add that with  
10 this case, the reconfiguration of the front  
11 retaining wall should also be expressed on the  
12 record, because the trash enclosure is a part  
13 of the retaining wall.

14 So once he changes that, it will  
15 also change the retaining wall. Well, it  
16 should.

17 CHAIR MILLER: Do you have any  
18 comments on that, Mr. Agbim? Would you agree  
19 with that?

20 MR. AGBIM: Yes.

21 CHAIR MILLER: Okay, good.

22 Anything else on this case?

1 (No response.)

2 CHAIR MILLER: Okay. Then there  
3 is that schedule for submission of the  
4 revisions, and the comments thereto, and then  
5 we will deliberate on this one as well on  
6 December 18<sup>th</sup> at our public meeting. Okay.  
7 Any other questions?

8 MR. AGBIM: No. Thank you very  
9 much.

10 CHAIR MILLER: Okay. Then thank  
11 you very much, and that concludes this case.  
12 Ms. Bailey, do we have anything else on  
13 today's agenda for the afternoon hearing?

14 MS. BAILEY: No, Madam Chair.  
15 That's it.

16 CHAIR MILLER: Okay. Then this  
17 hearing is adjourned.

18 (Whereupon, at 4:15 p.m., the  
19 hearing was adjourned.)

20

21

22