

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

MAY 15, 2007

+ + + + +

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., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER	Chairperson
CURTIS ETHERLY, JR.	Vice-Chairperson
JOHN A. MANN, II	Board Member (NCPC)
MARC LOUD	Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Spec.

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
JOHN MOORE
STEPHEN MORDFIN

This transcript constitutes the
minutes from the Public Hearing held on May
15, 2007.

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

9:30 a.m.

CHAIRPERSON MILLER: This hearing will come to order. Good morning, ladies and gentlemen, this is the May 15th morning Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller. I'm the Chair of the Zoning Board and to my right is Mr. Curtis Etherly, Vice Chair of the Zoning Board, and to his right is Mr. Turnbull representing the Zoning Commission. To my left is Mr. John Mann representing NCPC on the Zoning Board and to his left is Mr. Cliff Moy with the Office of Zoning, Sherry Glazer with the Office of Attorney General and Ms. Beverly Bailey with the Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please, be advised 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.

3 When presenting information to the
4 Board, please, turn on and speak into the
5 microphone, first, stating your name and home
6 address. When you are 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 or in opposition are to fill
12 out two witness cards. These cards are
13 located to my left on the table near the door
14 and on the witness tables. Upon coming
15 forward to speak to the Board, please, give
16 both cards to the reporter sitting to my
17 right.

18 The order of procedure for special
19 exceptions and variances is as follows: One,
20 statement and witnesses of the applicant.
21 Two, Government reports, including Office of
22 Planning, Department of Public Works, DDOT,

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1 etcetera. Three, report of the 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 Section 3117.4 and
7 3117.5, the following time constraints may be
8 maintained: The applicant, appellant, persons
9 and parties, except an ANC, in support,
10 including witnesses, 60 minutes collectively.

11 Individuals 3 minutes. Appellees, persons
12 and parties, except an ANC, in opposition,
13 including witnesses, 60 minutes collectively.

14 These time constraints do not
15 include cross examination and/or questions
16 from the Board. Cross examination of
17 witnesses is permitted by the applicant or
18 parties. The ANC within which the property is
19 located is automatically a party in a special
20 exception or variance case.

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

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1 examination, including time limits and
2 limitations on the scope of cross examination.

3 The record will be closed at the
4 conclusion of each case, except for any
5 material specifically requested by the Board.

6 The Board and the staff will specify at the
7 end of the hearing exactly what is expected
8 and the date when the persons must submit the
9 evidence to the Office of Zoning. After the
10 record is closed, no other information will be
11 accepted by the Board.

12 The Sunshine Act requires that the
13 Public Hearing on each case be held in the
14 open and before the public. The Board may,
15 consistent with it's rules of procedure and
16 the Sunshine Act, enter Executive Session
17 during or after the Public Hearing on a case
18 for purposes of reviewing the record or
19 deliberating on the case.

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

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1 the contrary, the Board requests that persons
2 present not engage the Members of the Board in
3 conversation.

4 Please, turn off all beepers and
5 cell phones, at this time, so as not to
6 disrupt these proceedings.

7 The Board will now consider any
8 preliminary matters. Preliminary matters are
9 those which relate to whether a case will or
10 should be heard today, such as requests for
11 postponement, continuance or withdraw or
12 whether proper and adequate notice of the
13 hearing has been given. If you are not
14 prepared to go forward with a case today or if
15 you believe that the Board should not proceed,
16 now is the time to raise such a matter.

17 Does the staff have any preliminary
18 matters?

19 MS. BAILEY: Madam Chair, Members
20 of the Board, to everyone, good morning.
21 Madam Chair, I'm hesitating because there is a
22 case for withdrawal and for the life of me, I

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1 can't think of whether it was this morning of
2 this afternoon.

3 CHAIRPERSON MILLER: It's in the
4 afternoon.

5 MS. BAILEY: Afternoon. Thank you.
6 Then there is no preliminary matters, at this
7 time.

8 CHAIRPERSON MILLER: In that case,
9 would all individuals who wish to testify
10 today, please, rise to take the oath? And,
11 Ms. Bailey, would you administer the oath?

12 (Whereupon, the witnesses were
13 sworn.)

14 MS. BAILEY: Thank you.

15 CHAIRPERSON MILLER: Thank you.
16 Would you call the first case, please?

17 MS. BAILEY: The first case is
18 Application No. 17607 of Ike Agbim, and it's
19 pursuant to 11 DCMR 3104.1, for a special
20 exception to construct a four unit apartment
21 building under section 353 at premises 721 49th
22 Street, N.E. The property is Zoned R-5-A and

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1 it's located in Square 5179, Lots 60 and 61.

2 And, Madam Chair, at the last
3 hearing, the Board had determined that -- no,
4 this is a new one. This isn't a carryover,
5 I'm sorry. There is a request for party
6 status and it's from Thomas K. Stephenson.
7 Mr. Stephenson lives on 49th Street, N.E.

8 CHAIRPERSON MILLER: Thank you. Is
9 Mr. Stephenson here? Would you come forward,
10 please? Good morning. Why don't we start
11 with Mr. Agbim. Could you just introduce
12 yourself for the record, please?

13 MR. AGBIM: My name is Ike Agbim,
14 9611 Cedarhollow Lane, Largo, Maryland 20774.
15 I'm the applicant.

16 CHAIRPERSON MILLER: Thank you.
17 And, Mr. Stephenson?

18 MR. STEPHENSON: My name is Thomas
19 K. Stephenson. I own two apartment buildings
20 at 719 and 711 49th Street.

21 CHAIRPERSON MILLER: Okay. And we
22 have a party status application from you. I

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1 always ask when we start out whether you are
2 aware that there are two ways to participate
3 in these hearings, for someone who is not an
4 applicant or an ANC, and that would be either
5 as a person or as a party. And you have
6 applied for party status.

7 As a party, to achieve party
8 status, you have to meet certain standards and
9 if you do, then you would be able to
10 participate in a more active way in that you
11 could cross examine, you could call witnesses,
12 you could submit evidence, things like that.
13 Otherwise, sometimes people just want to
14 submit testimony on a project. In that event,
15 you don't have to meet a certain standard, you
16 are automatically allowed to present
17 testimony.

18 So my first question is what is
19 your desire in this case? Do you just want to
20 present testimony or do you want to have full
21 party status? If you have any questions,
22 really, feel free.

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1 MR. STEPHENSON: I probably would
2 like to go the party status way, but I may not
3 have the time to present all the evidence and
4 documents that you guys may request from me,
5 because I'm constantly on travel.

6 CHAIRPERSON MILLER: Let me just
7 interrupt. The hearing is now for the most
8 part, so we're not necessarily going to be
9 requesting anything from you.

10 MR. STEPHENSON: All right. I'll
11 go party status.

12 CHAIRPERSON MILLER: Okay. Then we
13 need to look at your party status application,
14 Board Members, and see whether he meets party
15 status. Mr. Agbim, do you have any comments
16 on the party status application? Do you
17 oppose it? Are you neutral or what's your
18 position?

19 MR. AGBIM: No comments, at this
20 time.

21 CHAIRPERSON MILLER: Okay. Thank
22 you. You have two different addresses on the

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1 form. Are there two different buildings?

2 MR. STEPHENSON: Yes, there are.
3 There are two different buildings. One is
4 719. The other one is 711.

5 CHAIRPERSON MILLER: And are they
6 both -- are they related differently to the
7 project? Is one next to the project and
8 another one located somewhere else or what?

9 MR. STEPHENSON: Yes, 719 is right
10 next to the project.

11 BOARD MEMBER ETHERLY: Madam Chair,
12 if I may just as a follow-up to your question
13 to help kind of get oriented to where your
14 properties are, and, first of all, good
15 morning to you, Mr. Stephenson, as well, Mr.
16 Agbim. Mr. Stephenson, in our packages at
17 Exhibit No. 6, there is a picture of the
18 corner of 49th and Hayes, N.E. Are your two
19 buildings -- it may be difficult for you to
20 see from here, but are your two buildings kind
21 of immediately next to the parking lot?

22 MR. STEPHENSON: Could I approach?

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1 BOARD MEMBER ETHERLY: Yes, sir,
2 please. If you could just indicate.

3 MR. STEPHENSON: Yes, this building
4 and that building.

5 BOARD MEMBER ETHERLY: Okay.
6 Excellent. Excellent. Thank you very much.
7 For my colleagues, Mr. Stephenson indicated at
8 Exhibit No. 6 his two properties are the
9 properties that are pictured right next to the
10 parking lot. So in Exhibit No. 6 his two
11 properties are there and there. And I'm
12 pointing to the top photo labeled from 49th
13 Street looking east, those two. Yes.

14 CHAIRPERSON MILLER: Well, so my
15 question is is only one building affected then
16 by the view of being too close?

17 MR. STEPHENSON: Yes.

18 CHAIRPERSON MILLER: What's the
19 address of that building?

20 MR. STEPHENSON: 719 49th Street.

21 CHAIRPERSON MILLER: Okay, 719.

22 MR. STEPHENSON: That's the one

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1 right close to the parking lot, yes, that's
2 719.

3 CHAIRPERSON MILLER: Okay. Any
4 other questions?

5 BOARD MEMBER MANN: On the party
6 status application, you indicated that in
7 response to Question 1, "How will the property
8 owned by such person be affected by the action
9 requested of this Board?" And you said that
10 "It will affect the view of the tenants."

11 MR. STEPHENSON: Yes. And --

12 BOARD MEMBER MANN: Is that the
13 sole reason?

14 MR. STEPHENSON: No. I don't think
15 there -- from looking at the property or
16 knowing the property over a period of years, I
17 don't think there is enough space there to
18 really construct a four unit apartment
19 building. I don't know the exact measurement
20 for the land or the property. I was just
21 handed a copy of your paper here earlier
22 today. I didn't have time to read it.

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1 From my view, I don't think there
2 is enough space to construct a four unit
3 apartment building without obstructing the
4 view or the -- my tenants on that particular
5 side.

6 CHAIRPERSON MILLER: Okay. I just
7 want to review the regulation that gives us
8 the standard for considering applications for
9 party status and then if there aren't any
10 other questions or comments, we can then move
11 forward on it.

12 MR. STEPHENSON: Okay.

13 CHAIRPERSON MILLER: 3106.3 it says
14 "In considering any request for party status
15 pursuant to 3106.2, the Board shall grant
16 party status only if the person requesting
17 party status has clearly demonstrated that the
18 person's interests would likely be more
19 significantly, distinctly or uniquely affected
20 in character or kind by the proposed zoning
21 relief than those of other persons in the
22 general public."

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1 And often it's the case where we
2 have an abutting property owner. They are
3 more distinctly affected because they are
4 right next door. And it usually affects their
5 property more than the general public. So it
6 looks like that building falls in that
7 category to me, but do I have some other
8 comments from Board Members.

9 BOARD MEMBER ETHERLY: Thank you,
10 Madam Chair. I would tend to agree as the
11 property owner for the two abutting apartments
12 without getting into kind of the merits of the
13 impact, I think clearly given the adjacency
14 of, at minimum, the property located at 719, I
15 believe it is.

16 MR. STEPHENSON: Yes.

17 BOARD MEMBER ETHERLY: I would tend
18 to agree with you. Of course, we can get into
19 the substance of the impact with respect to
20 light and air, but I think clearly there is
21 going to be some adjacency there. If I may,
22 just as an additional follow-up, currently are

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1 both of your buildings at relatively full
2 occupancy, Mr. Stephenson?

3 MR. STEPHENSON: Yes, sir.

4 BOARD MEMBER ETHERLY: Okay, and--

5 MR. STEPHENSON: They --

6 BOARD MEMBER ETHERLY: I'm sorry,
7 go ahead.

8 MR. STEPHENSON: The one at 719 is
9 the seven unit apartment building. It's all
10 two bedrooms and it's fully occupied.

11 BOARD MEMBER ETHERLY: And how many
12 units at the other one?

13 MR. STEPHENSON: It's a 14 unit
14 apartment building and that's fully occupied.

15 BOARD MEMBER ETHERLY: Okay. And
16 from a parking standpoint, where do most of
17 your tenants currently park now for those that
18 may have vehicles?

19 MR. STEPHENSON: They park on the
20 streets and in that parking lot next door to
21 the 719 building.

22 BOARD MEMBER ETHERLY: Okay. Okay.

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1 Again, Madam Chair, I believe the application
2 meets the test for -- meets the standard for
3 party status.

4 CHAIRPERSON MILLER: Thank you.
5 Any other comments from Board Members? And is
6 it the consensus that we'll accept Mr.
7 Stephenson as a party? Okay. Thank you, Mr.
8 Stephenson. Okay. So at this point, the
9 procedure is that the applicant is going to
10 present his case first and then you will have
11 an opportunity to cross examine when he is
12 finished.

13 MR. STEPHENSON: Okay. Thank you.

14 CHAIRPERSON MILLER: Thank you.
15 Okay. If you can come forward? Thank you.

16 MR. AGBIM: Good morning. This
17 case is for a special exception for
18 construction for a four unit building on a
19 vacant -- on two vacant lots on 49th Street,
20 close to the corner of 49th and Hayes, N.E.

21 The proposal is a single building
22 with a two bedroom apartment on each level, a

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1 total of four levels, a cellar and three
2 stories above grade. On the south side of the
3 property are two apartment buildings, Building
4 No. 719 and 711 49th Street, N.E.

5 The site is generally flat with a
6 slight slope to the rear at which there is an
7 alley, which is now basically used for parking
8 by vehicles. We propose to create a parking
9 entrance from this alley for the four unit
10 building. There is also a vacant lot on the
11 north side of this property on the exact
12 corner of 49th and Hayes, N.E. This vacant lot
13 is about 2,000 square feet and it's currently
14 undeveloped.

15 The proposed building has a side
16 yard of 9 feet on the south side and on the
17 north side a minimum side yard of 9 feet. It
18 has a rear yard of 46 feet, about 38 feet
19 high. It is faced with brick veneer on the
20 front and, basically, is designed to fit into
21 the other buildings in the area. There is
22 also another apartment building across Hayes

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1 Street right along 49th Street.

2 This project complies with all
3 provisions of Chapter 4 of DCMR 11 and the
4 applicant is hereby requesting a special
5 exception per section 353 to allow this
6 construction. Thank you.

7 CHAIRPERSON MILLER: Thank you.
8 I'm sorry, I forgot to ask whether someone
9 from the ANC is here. Is anyone from the ANC
10 here right now? Okay. Thank you. Do you
11 have any questions right now?

12 BOARD MEMBER ETHERLY: Thank you
13 very much, Madam Chair. Good morning to you,
14 Mr. Agbim.

15 MR. AGBIM: Good morning.

16 BOARD MEMBER ETHERLY: We're going
17 to be spending quite a bit of time today on a
18 number of different cases.

19 MR. AGBIM: Sure.

20 BOARD MEMBER ETHERLY: But thank
21 you very much for your presence today and your
22 presentation. Very quickly, just two specific

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1 questions. The first one is just making sure
2 I understand your plans for parking. There
3 are a couple of very good overhead
4 representations as well as kind of site plan
5 presentations which give us a good sense of
6 the property.

7 I think perhaps the Office of
8 Planning's overhead might be the most
9 effective one, so I would like to ask if you
10 have a copy of the Office of Planning's
11 report, which is at Exhibit No. 25, and it's
12 the last page of that report. In terms of the
13 entrance to the parking areas for the proposed
14 building, the entrance would be off of Hayes
15 Street, correct?

16 MR. AGBIM: No, the entrance would
17 be off of the public alley that's off of Hayes
18 Street.

19 BOARD MEMBER ETHERLY: Okay. So
20 and it's currently, essentially, right at the
21 rear of the property on that overhead. Is
22 there currently a curb cut there for the

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1 alley?

2 MR. AGBIM: For the alley? I
3 believe so.

4 BOARD MEMBER ETHERLY: Okay.

5 MR. AGBIM: Yes.

6 BOARD MEMBER ETHERLY: Okay. And
7 your plan would be for, and I'm now jumping to
8 your site plan drawing, your plan would be --
9 how would the two cars that are, if you will,
10 parked north to south, again I'm looking at
11 your site plan, and I'm sorry, actually, I
12 guess, the two cars that are parked east to
13 west, how will they enter their two spaces?

14 MR. AGBIM: Directly from the
15 alley.

16 BOARD MEMBER ETHERLY: Oh, I see.
17 I see, I see. I stand corrected. I'm looking
18 at -- I'm not looking at the revised plan for
19 that. Okay. Let me make sure I'm clear.
20 Again, Mr. Turnbull and I were having a little
21 bit of a conversation just to make sure we
22 were both on the same page. You have four

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1 spaces that are at the rear of the property,
2 correct?

3 MR. AGBIM: That's correct.

4 BOARD MEMBER ETHERLY: Two of the
5 spaces are going to be oriented, essentially,
6 north to south?

7 MR. AGBIM: That's correct.

8 BOARD MEMBER ETHERLY: And then the
9 other two will be oriented east to west?

10 MR. AGBIM: That's correct.

11 BOARD MEMBER ETHERLY: So,
12 essentially, they are forming a T, if you
13 will?

14 MR. AGBIM: That's correct.

15 BOARD MEMBER ETHERLY: The two cars
16 that are going to be east to west, they will
17 be entering into those spaces off of Hayes
18 Street directly?

19 MR. AGBIM: No. All the -- the
20 entrance to all the spaces will be through the
21 alley.

22 BOARD MEMBER ETHERLY: Okay.

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1 MR. AGBIM: However, the spaces
2 labeled on the plat 3 to 4, which are the ones
3 that are arranged at east to west, will be
4 accessed directly from the alley, but the
5 other two spaces labeled 1 to 2 on the plat
6 will be accessed through a driveway, a 14 foot
7 wide driveway off the alley.

8 BOARD MEMBER MANN: Mr. Etherly?

9 BOARD MEMBER ETHERLY: Yes, Mr.
10 Mann?

11 BOARD MEMBER MANN: Could I perhaps
12 point out something which maybe you're
13 overlooking? This lot is not on the corner.
14 There is another lot to its north, which is on
15 the corner. Were you aware of that?

16 BOARD MEMBER ETHERLY: Correct.
17 No, I got that. I'm just still -- to me, the
18 thrust of my question was, to me, it looked
19 like two of the cars were kind of landlocked,
20 if you will, and so I was just trying to
21 figure out how they would get access to those
22 two spaces.

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1 I think I understand it. So I
2 think I'm clear. But yes, the other lot
3 wasn't the problem for me. I'm just, again,
4 trying to figure out how they were accessing,
5 but I think I'm clear on that. Now, let me
6 jump to my second and last question. And that
7 is with respect to the issue of the side
8 elevation, if you will, to an extent this is
9 anticipating some of the concern that you
10 heard in the conversation regarding party
11 status.

12 MR. AGBIM: That's correct.

13 BOARD MEMBER ETHERLY: So I wanted
14 to just get a sense of as I look at the side
15 elevation, could you perhaps speak a little
16 bit to how you anticipate those windows on
17 your proposed side elevation lining up with
18 the windows of the adjacent properties? And I
19 guess we probably should also maybe throw into
20 the conversation what's your sense of the rear
21 windows and how they will, if you will, line
22 up with properties to the rear?

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1 At the rear of your property, there
2 are single-family homes, correct?

3 MR. AGBIM: Yes, rear and across
4 the alley. They are quite a distance away.

5 BOARD MEMBER ETHERLY: Okay. So
6 from the standpoint of any concerns about
7 privacy, light and air, the impact on the rear
8 properties you would suggest will be
9 extraordinarily minimal, because of the
10 distance?

11 MR. AGBIM: That's correct.

12 BOARD MEMBER ETHERLY: Okay. Now,
13 with respect to the side of your property, and
14 I think again if I have my orientation
15 correctly, it would be the side that is
16 heading to -- it's always difficult trying to
17 get oriented on my map.

18 MR. AGBIM: The south elevation.

19 BOARD MEMBER ETHERLY: Would it be
20 the south side or the west side? Either way,
21 the side that's facing Mr. Stephenson's
22 building.

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1 MR. AGBIM: Right, that's correct.

2 BOARD MEMBER ETHERLY: That will
3 make it easy on that one. I'll get away from
4 the geography. Are your windows -- are you
5 anticipating those windows will be face on
6 with the adjacent property?

7 MR. AGBIM: No. Even though we
8 have not exactly calculated the distances, the
9 windows, first of all, not all are the same
10 elevation height above ground.

11 BOARD MEMBER ETHERLY: Um-hum.

12 MR. AGBIM: So that's one issue
13 that will preclude a lot of the windows from
14 lining up exactly with the windows on Mr.
15 Stephenson's property.

16 BOARD MEMBER ETHERLY: Okay. So
17 it's your sense that there will probably be
18 some offset, so to speak, such that they are
19 not going to be directly oppositional to the
20 adjacent property?

21 MR. AGBIM: That's correct, sir.

22 BOARD MEMBER ETHERLY: Okay. You

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1 are also not anticipating doing any type of
2 frosting or adding any opaqueness, if you
3 will, to these windows. These are going to be
4 standard windows that will be clear, see-
5 through, correct?

6 MR. AGBIM: That's correct.

7 BOARD MEMBER ETHERLY: Okay. Any
8 lighting that you are planning for the side
9 elevation area? There is nothing indicated on
10 the drawing, but I wanted to be sure that I
11 explored that just to make sure that you are
12 not suggesting the introduction of any
13 lighting on the side. Maybe you need it, but
14 I just wanted to be sure I'm clear on that.

15 MR. AGBIM: We do, in fact, have a
16 lighting plan, which is the sheet after the
17 site plan sheet. The left plan is the
18 landscape plan.

19 BOARD MEMBER ETHERLY: I see it.

20 MR. AGBIM: And the right one is
21 the site lighting plan. And we're using also
22 some very low pole mounted light fixtures

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1 about the same height as the fencing going
2 around the property.

3 BOARD MEMBER ETHERLY: Okay.

4 MR. AGBIM: And we believe very
5 strongly that this will not introduce any
6 light throwback into No. 719 49th Street.

7 BOARD MEMBER ETHERLY: So at this
8 juncture, you have one pole mounted light
9 fixture, which is represented on that side of
10 the property, correct?

11 MR. AGBIM: That's correct. Two
12 pole mounted light fixtures.

13 BOARD MEMBER ETHERLY: Would it be
14 one or two on that side? If I'm looking at
15 the site lighting plan, if I'm looking at the
16 correct drawing, I see, one, two, three, four
17 pole mounted light fixtures.

18 MR. AGBIM: Right.

19 BOARD MEMBER ETHERLY: And what
20 might --

21 MR. AGBIM: Two on the south side.

22 BOARD MEMBER ETHERLY: And there

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1 are two on the south side.

2 MR. AGBIM: Right.

3 BOARD MEMBER ETHERLY: And the
4 front of the building?

5 MR. AGBIM: One in about midway
6 through the building.

7 BOARD MEMBER ETHERLY: Um-hum.

8 MR. AGBIM: And then the other one
9 in the rear in the parking lot.

10 BOARD MEMBER ETHERLY: Okay. But
11 on the side between your property and Mr.
12 Stephenson's property only one pole mounted
13 light fixture? Is that correct or two?

14 MR. AGBIM: It's two, sir.

15 BOARD MEMBER ETHERLY: Right. But
16 Mr. --

17 MR. AGBIM: On the south side area,
18 two.

19 BOARD MEMBER ETHERLY: There are
20 two?

21 MR. AGBIM: Right.

22 BOARD MEMBER ETHERLY: But the

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1 second one is on the parking lot side?

2 MR. AGBIM: Exactly, correct.

3 BOARD MEMBER ETHERLY: Correct.

4 But in terms of where Mr. Stephenson's --
5 well, actually, let me ask this. This may be
6 a question better put to Mr. Stephenson, does
7 the adjacent apartment building stretch such
8 that that light at the parking lot, in your
9 opinion, does that light at the parking lot
10 bring any impacts to any of the adjacent
11 apartment units in Mr. Stephenson's property?

12 MR. AGBIM: No.

13 BOARD MEMBER ETHERLY: Okay. And
14 the height of that one would also be fence
15 height?

16 MR. AGBIM: 6 foot, right.

17 BOARD MEMBER ETHERLY: Okay. And
18 downward and downward adjusted?

19 MR. AGBIM: Right.

20 BOARD MEMBER ETHERLY: Okay. Thank
21 you. Thank you, Mr. Agbim. That concludes my
22 questions, Madam Chair.

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1 CHAIRPERSON MILLER: Thank you.
2 Any other questions?

3 COMMISSIONER TURNBULL: Madam
4 Chair, I just had -- just carrying on with Mr.
5 Etherly's line of questioning on the lighting.
6 I'm just curious then what does the light at
7 6 feet do on the fenced area of the lawn next
8 to Mr. Stephenson's building? I mean, I can
9 see the lighting in the parking lot is one
10 thing, but what are you lighting on the other
11 side that's only 6 feet high?

12 MR. AGBIM: The side yard.

13 COMMISSIONER TURNBULL: Just a
14 light on the side yard?

15 MR. AGBIM: Right.

16 COMMISSIONER TURNBULL: I'm just
17 curious.

18 MR. AGBIM: I'm referring to the--

19 COMMISSIONER TURNBULL: I'm just
20 curious that on your other side of your
21 building, you have these light bollards by the
22 entrance, which seem to be a nice low feature

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1 as you come in.

2 MR. AGBIM: Right.

3 COMMISSIONER TURNBULL: And then
4 you shift to another pole mounted light on
5 that side there, too.

6 MR. AGBIM: Right.

7 COMMISSIONER TURNBULL: I'm just
8 wondering why you didn't consider doing the
9 light bollards all the way down the little
10 walk there.

11 MR. AGBIM: Right. Yes, on the
12 north side of the property there are two light
13 -- pole mounted light fixtures. The one
14 that's closest the parking lot was originally
15 placed there to take care of illumination at
16 that area, especially if somebody parks in the
17 rear and is about to walk towards the front
18 entrance of the building. And then also the
19 one in the middle is provided to give the same
20 effect. But I do agree with you that bollards
21 will also be useful in those areas.

22 COMMISSIONER TURNBULL: Now, the

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1 trash will be picked up through the alley
2 then?

3 MR. AGBIM: Yes.

4 COMMISSIONER TURNBULL: So the
5 truck will back in and pick it up?

6 MR. AGBIM: Yes. The small truck
7 will back in, pick it up twice a week and take
8 it out.

9 COMMISSIONER TURNBULL: Okay. All
10 right. Thank you. Oh, and the fence, you
11 have on your revised detail, you do have a
12 fence detail. A 6 foot high wood fence which
13 has a 12 inch high lattice panel at the top.
14 Is that painted?

15 MR. AGBIM: Pressure treated stain.

16 COMMISSIONER TURNBULL: Pressure
17 treated stain, okay. Okay. Thank you.

18 MR. AGBIM: Thanks.

19 CHAIRPERSON MILLER: Thank you. I
20 have a few questions. With respect to the
21 parking lot and the landscaping, I'm looking
22 at the landscape plan. I can't see

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1 landscaping around the parking lot, but I
2 might be missing something. So is there any?

3 MR. AGBIM: Well, what we have done
4 here for tightness of space is we have used a
5 hedge on the south -- on the west side of the
6 parking areas. There is an evergreen hedging
7 plant placed to border that area. And then on
8 the --

9 CHAIRPERSON MILLER: Wait. I just
10 want to make sure that I'm following you.

11 MR. AGBIM: Oh, okay.

12 CHAIRPERSON MILLER: Am I looking
13 at the right diagrams at least? Is this
14 correct, what I should be looking at?

15 MR. AGBIM: No.

16 CHAIRPERSON MILLER: No? There is
17 something else?

18 MR. AGBIM: That's not the revised
19 plan. I'm sorry.

20 CHAIRPERSON MILLER: There is a
21 revised plan?

22 MS. BAILEY: A copy was placed in

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1 front of each Board Member and it's --

2 CHAIRPERSON MILLER: Ah, okay.

3 MS. BAILEY: -- just one sheet.
4 It's indicated 49th H Street, N.E., just one
5 sheet, 49th Street, N.E., proposed four unit
6 building. It was handed to us this morning.

7 CHAIRPERSON MILLER: Okay.

8 MR. AGBIM: Just minor difference.

9 CHAIRPERSON MILLER: Okay. This is
10 the revised plan?

11 MR. AGBIM: That's correct.

12 CHAIRPERSON MILLER: Okay. So now
13 I'm looking at the right plan.

14 MR. AGBIM: Right.

15 CHAIRPERSON MILLER: So --

16 MR. AGBIM: On the west side of the
17 parking area, we're using an evergreen hedging
18 plant, which is called out -- sort of crowded
19 out together and on the north and south side
20 of the parking lot, we're using a cinder block
21 wall in those areas to provide the screen, the
22 required screening of the parking areas.

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1 CHAIRPERSON MILLER: A cinder block
2 wall?

3 MR. AGBIM: Right.

4 CHAIRPERSON MILLER: And how tall
5 is that?

6 MR. AGBIM: 4 foot.

7 CHAIRPERSON MILLER: So two sides
8 have evergreens and two sides have walls? Is
9 that it?

10 MR. AGBIM: Sort of one side has
11 evergreens and the west side, the parking area
12 and around the trash enclosure and in the
13 north and south sides have a 4 foot retaining
14 wall, 4 foot wall.

15 CHAIRPERSON MILLER: So are the
16 evergreens where they are seen by the public
17 or why are they on one side versus another?

18 MR. AGBIM: Well, we're allowed to
19 use either evergreen hedging plants to provide
20 screening of the parking areas or a wall. You
21 know, a high wall. So just because of space
22 constraints, I have used a wall on the north

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1 and south sides and then on the west side use
2 evergreen plants.

3 CHAIRPERSON MILLER: Okay. I guess
4 my question goes to the aesthetics for the
5 neighborhood. I mean, a lot of times
6 neighbors would find a parking lot not that
7 aesthetically pleasing to look at.

8 MR. AGBIM: Right.

9 CHAIRPERSON MILLER: And so my
10 question, I guess, goes to, you know, are the
11 trees where they would be most seen by the
12 public or that's not an issue? Could you tell
13 me what's on the other side of the trees?
14 Where they are, what's on the other side of
15 the walls?

16 MR. AGBIM: Well, on the other side
17 of the walls is just a rear yard for the No.
18 719 49th Street. And that's on the south side.

19 And on the north side is an open vacant lot
20 over there. But these are decorative split
21 face blocks and usually pleasing to look at.

22 CHAIRPERSON MILLER: You have

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1 described the project in your application to
2 be affordable housing for-sale units. Is that
3 correct?

4 MR. AGBIM: (No audible answer.)

5 CHAIRPERSON MILLER: And I guess my
6 question is, and we often ask this question
7 when applicants come before us and say they
8 are going to do affordable housing, what do
9 you mean by that? How do you define it?

10 MR. AGBIM: Well, the idea is the
11 calculation of 80 percent of the AMI at the
12 time of sale of the units.

13 CHAIRPERSON MILLER: And what's the
14 distance between your property or where the
15 building is going to -- let's see, the side of
16 your building and Mr. Stephenson's building
17 next door?

18 MR. AGBIM: Mr. Stephenson's
19 building, by D.C. Office of Surveyor Records,
20 it's 8 feet from the property line. So we
21 have a total of 8 plus 9, 17 feet from the
22 proposed structure to Mr. Stephenson's

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1 building.

2 CHAIRPERSON MILLER: I'm sorry. I
3 couldn't hear you.

4 MR. AGBIM: I'm sorry. A total of
5 17 feet.

6 CHAIRPERSON MILLER: 17 feet from
7 your wall to his wall?

8 MR. AGBIM: That's correct.

9 CHAIRPERSON MILLER: Basically,
10 okay.

11 MR. AGBIM: Right, based on what's
12 on the records.

13 CHAIRPERSON MILLER: Okay. And do
14 you know how tall his building is?

15 MR. AGBIM: No. I would guess
16 about 35 feet.

17 CHAIRPERSON MILLER: So your
18 building is going to be taller than his
19 building?

20 MR. AGBIM: Slightly.

21 CHAIRPERSON MILLER: Okay. I don't
22 have any other questions. Anybody else?

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1 COMMISSIONER TURNBULL: Madam
2 Chair, I just wanted to go back to your
3 question on the fence by the parking lot. And
4 I think the original -- it says on the
5 drawings there is a 4 inch high CMU retaining
6 wall, but it looks like there is a fence on
7 top of it?

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

9 COMMISSIONER TURNBULL: Is it the
10 same type fence all the way down the rest of
11 the yard?

12 MR. AGBIM: The rest of the
13 property. That's correct, sir.

14 COMMISSIONER TURNBULL: So you pick
15 up a foot of the lattice and then a foot of
16 the regular fencing sits on top of the block?
17 Is that --

18 MR. AGBIM: Well, yes.
19 Effectively, we're trying to keep the fence
20 all at the same height.

21 COMMISSIONER TURNBULL: Height.

22 MR. AGBIM: However, because the

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1 land slopes gradually to the back, that change
2 of grade will cause the fence height to be
3 slightly different. So even if the top of the
4 fence in the front is at 6 feet and the rear
5 is slightly over 6 feet.

6 COMMISSIONER TURNBULL: It will be
7 over 6 feet?

8 MR. AGBIM: That's correct.

9 COMMISSIONER TURNBULL: Okay. All
10 right. Thank you.

11 CHAIRPERSON MILLER: Thank you.
12 Mr. Stephenson, do you have any questions for
13 Mr. Agbim?

14 MR. STEPHENSON: Yes.

15 CHAIRPERSON MILLER: Okay. You can
16 come forward then.

17 MR. STEPHENSON: Mr. Stephenson
18 here again. You are proposing to build
19 driveways to the alley section. There is no
20 alley back there. There is an unpaved alley.
21 It's just raw land. Are you going to fix the
22 whole alley?

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1 MR. AGBIM: We did make a call to
2 DDOT. That alley is proposed and it's on
3 paper. However it's, like you said, not
4 paved. But what happens is that the section
5 of the alley that would lead onto the last
6 parking area will receive temporary paving
7 until DDOT comes through the final paving of
8 the alley.

9 MR. STEPHENSON: I remember Members
10 of the Board asked you whether or not there is
11 an entrance to that alley. As it is right
12 now, they just redid that whole sidewalk.
13 There is no entrance to that alley in the --
14 well, when they repaved the whole street and
15 build a curb. There is no entrance to that
16 alley right now.

17 MR. AGBIM: Yes, my recollection is
18 that the question was is there any curb cut
19 into the alley and I said I think so, but I
20 couldn't see it in any of the pictures and
21 knowing that it's an alley on paper, I would
22 think that there would be a curb cut on the

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1 new curbs that were recently placed over
2 there.

3 MR. STEPHENSON: One other question
4 I would like to ask you. You said your
5 building -- your proposed building is going to
6 be taller than my building?

7 MR. AGBIM: Slightly taller, by
8 less than -- by about 12 inches. And this is
9 a parapet height.

10 MR. STEPHENSON: You think that
11 would obstruct the view of my tenants?

12 MR. AGBIM: The additional
13 height --

14 MR. STEPHENSON: Yes.

15 MR. AGBIM: -- over your building,
16 does not contribute in any way to obstructing
17 the views, because the top of the window on
18 the last floor of your building it's there,
19 it's already set. So even if my building is
20 another 4 feet over your parapet, it does not
21 affect what somebody standing behind one of
22 the windows in your property can see.

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1 MR. STEPHENSON: How about sunlight
2 and wind circulating in that area?

3 MR. AGBIM: Yes. I believe that
4 the heights provided -- I mean, sorry, the
5 side yard provided are quite sufficient for
6 air circulation and also light into the
7 windows on the side of the property.

8 MR. STEPHENSON: You also say there
9 is going to be a 17 feet difference between --
10 separating my building from your building?

11 MR. AGBIM: Yes, based on the D.C.
12 Surveyor's Office of Surveyor's record, there
13 is -- from your wall side yard to the property
14 line is about 8 feet. So from my common
15 property line to the proposed structure is 9
16 feet. So that constitutes 17 feet side --
17 separation between the two buildings.

18 MR. STEPHENSON: I think there is
19 going to be more like an easement problem in
20 that particular area as far as the closeness
21 of my building. It wouldn't give proper
22 access to my tenants to walk from my building

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1 going towards the back of my property to
2 deposit their trash in the trash can. I can't
3 see how it's going to -- I think it's going to
4 be too close.

5 CHAIRPERSON MILLER: I just want to
6 tell you that, Mr. Stephenson, right now it's
7 time for you to ask him questions.

8 MR. STEPHENSON: Oh.

9 CHAIRPERSON MILLER: And then you
10 are going to have an opportunity to make
11 statements later.

12 MR. STEPHENSON: Okay.

13 CHAIRPERSON MILLER: Okay.

14 MR. STEPHENSON: Do you have an
15 idea as to how soon the city come and
16 construct that alley through there? Are you
17 saying that they are only going to come and
18 fix your part and the other part of the alley
19 is going to leave unpaved?

20 MR. AGBIM: No. They will allow us
21 to put temporary paving up to the last parking
22 stall, up until the time that the city has on

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1 their schedule for alley improvement to come
2 and put a final permanent paving or the
3 material on the whole alley.

4 MR. STEPHENSON: Do you have an
5 idea how soon that will be done?

6 MR. AGBIM: I don't have their
7 schedule, sir.

8 MR. STEPHENSON: All right. I
9 don't have any further questions.

10 CHAIRPERSON MILLER: Okay. Thank
11 you.

12 MR. STEPHENSON: Thanks.

13 CHAIRPERSON MILLER: Any other
14 questions from the Board?

15 COMMISSIONER TURNBULL: Madam
16 Chair, I just want to clarify one thing. The
17 alley we're talking about is the alley that is
18 going to adjoin Hayes Street? Is that the
19 alley that's going to adjoin Hayes Street?

20 MR. AGBIM: What happens is I think
21 you look -- I'm sorry. When you look at the
22 plat, it's a little bit misleading, because

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1 they have drawn a line that seems to chop off
2 Hayes Street, but what actually exists on-site
3 is from 49th Street you can make a right onto
4 Hayes Street and then a right into the alley.

5 But there's a line on the plat, which I'm not
6 sure why it was drawn like this, that seems to
7 suggest that Hayes Street gets chopped off
8 right there. It's sort of a diagonal line.
9 But Hayes Street actually continues and meets
10 49th Street.

11 COMMISSIONER TURNBULL: So right
12 now it's unpaved in that area?

13 MR. AGBIM: It's unpaved, that's
14 correct.

15 COMMISSIONER TURNBULL: And there
16 is no curb cut as far as we know right now?

17 MR. AGBIM: I'm not sure. I
18 couldn't see it any of the photographs, but I
19 know that not too long ago the -- some
20 contractor did some curb work in that area,
21 but I'm not sure if they actually made a
22 provision for a curb cut in that area or an

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1 apron in that area.

2 COMMISSIONER TURNBULL: Okay. And
3 so that alley, it ends --

4 MR. AGBIM: The alley --

5 COMMISSIONER TURNBULL: That alley
6 does not go all the way through to Nannie
7 Helen?

8 MR. AGBIM: It does run all the way
9 through to --

10 MR. STEPHENSON: It does.

11 MR. AGBIM: -- Nannie Burroughs.
12 It does.

13 COMMISSIONER TURNBULL: Okay.

14 MR. AGBIM: And on the Nannie
15 Burroughs' side there is a curb cut over
16 there.

17 COMMISSIONER TURNBULL: Okay.
18 Thank you.

19 MR. AGBIM: All right.

20 CHAIRPERSON MILLER: Just so I
21 understand this, how is this alley -- well, is
22 your project dependent upon this alley being

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1 paved all the way through or what?

2 MR. AGBIM: No. The project does
3 not depend on the alley being paved all the
4 way through. Usually, and I have been in a
5 similar situation whereby there is a paper
6 alley, it hasn't been paved, DDOT will, in
7 fact, allow the developers to put temporal
8 material down up and to their site entrance
9 and then they will then do a request for that
10 alley to be paved. Exactly, within what time
11 frame that happens, I'm not sure, but our
12 temporal material can be most of the materials
13 that I use in parking lots.

14 CHAIRPERSON MILLER: And do you
15 have something in writing from DDOT stating
16 that?

17 MR. AGBIM: No.

18 CHAIRPERSON MILLER: No. Do you
19 normally get something in writing on that?

20 MR. AGBIM: A permit is normally
21 procured before the work is done.

22 CHAIRPERSON MILLER: I'm sorry,

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1 could you repeat that?

2 MR. AGBIM: A permit is normally
3 procured before the work is done.

4 CHAIRPERSON MILLER: No, in order
5 to get the permit, DDOT at that point provides
6 you authorization to do that?

7 MR. AGBIM: Yes, it's called a
8 Public Space Permit.

9 CHAIRPERSON MILLER: Okay.

10 MR. AGBIM: We have to get a Public
11 Space Permit to do that work.

12 CHAIRPERSON MILLER: Okay. But how
13 is the alley related to -- is the alley
14 related to ingress and egress to the parking
15 lot?

16 MR. AGBIM: Yes. The alley is the
17 way to go into the parking areas.

18 CHAIRPERSON MILLER: Okay. So it
19 is dependent on the alley?

20 MR. AGBIM: That's correct.

21 CHAIRPERSON MILLER: Okay. Thank
22 you.

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1 COMMISSIONER TURNBULL: I wonder if
2 you could answer just one more question. I'm
3 looking at the pictures that Mr. Etherly had
4 pointed to before. It would appear that the
5 vacant lot next to your lot is -- is that a
6 paved parking lot?

7 MR. AGBIM: It does in fact look
8 paved, just like the alley back there looks
9 paved, but I'm not sure if it's officially
10 paved.

11 COMMISSIONER TURNBULL: Okay.

12 MR. AGBIM: There seems to be some
13 asphalt paving on it.

14 COMMISSIONER TURNBULL: And right
15 now, the picture shows a lot of cars parking
16 on what would be your property?

17 MR. AGBIM: That's correct.

18 COMMISSIONER TURNBULL: Is that
19 just neighbors in the area?

20 MR. AGBIM: Yes, neighbors,
21 abandoned vehicles.

22 COMMISSIONER TURNBULL: Oh.

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1 MR. AGBIM: Stuff like that.

2 COMMISSIONER TURNBULL: Okay. All
3 right. Thank you.

4 CHAIRPERSON MILLER: Any other
5 Board questions?

6 BOARD MEMBER ETHERLY: Just as a
7 quick follow-up to just reemphasize, I think,
8 the line of questioning that Mr. Turnbull was
9 going through. Mr. Agbim, you have no site
10 control whatsoever over, again, looking at
11 that top picture, where the curb cut and that
12 paved area looks to be next to your property,
13 that portion of this picture, correct?

14 MR. AGBIM: I'm not sure I
15 understand that.

16 BOARD MEMBER ETHERLY: Again, the
17 area where the vehicles are parked on what is
18 your lot now, the vehicles that are adjacent
19 to Mr. Stephenson's building.

20 MR. AGBIM: Right.

21 BOARD MEMBER ETHERLY: There
22 appears to be a curb cut and what may be some

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1 paved surface, driveway essentially, that area
2 where there is a curb and that darker asphalt
3 type pavement, that's not under your control
4 at all, correct?

5 MR. AGBIM: No.

6 BOARD MEMBER ETHERLY: Okay.

7 MR. AGBIM: That's not, right.

8 BOARD MEMBER ETHERLY: Okay. Where
9 does that lead to, that particular -- if I
10 were to turn into that curb cut and this may
11 be a question that Office of Planning can help
12 clarify when we get to their report, when I
13 turn in to that curb cut and go along that
14 asphalt area, where does that area lead to?

15 MR. AGBIM: It's Hayes Street and
16 it does continue down to the next street,
17 which is 50th Street.

18 BOARD MEMBER ETHERLY: Okay.

19 MR. AGBIM: But in between 50th
20 Street and 49th Street somewhere halfway there
21 is -- that's where this alley comes into Hayes
22 Street.

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1 BOARD MEMBER ETHERLY: Okay.

2 MR. AGBIM: All right.

3 BOARD MEMBER ETHERLY: Thank you.

4 CHAIRPERSON MILLER: Okay. I think
5 we can go to the Office of Planning. Good
6 morning, Mr. Moore.

7 MR. MOORE: Good morning, Madam
8 Chair and Members of the Board. I'm John
9 Moore with the Office of Planning. The Office
10 of Planning has indicated in its report and
11 stand on the record in support of this
12 application. It's a 353 case, which is
13 generally a referral. And if you look at the
14 referral agencies, such as the Department of
15 Education, we have done an analysis that says
16 the school can accommodate. It is consistent
17 with the housing goals from the Housing
18 Agency.

19 I want to spend a little bit of
20 time on the parking lot issue. After we
21 reviewed the applicant's parking plan, the
22 whole landscape plan, we then referred the

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1 applicant to go over to DDOT and meet with
2 them, because we had some of the same
3 questions. Example, the way the parking
4 spaces are stacked right now. We're
5 uncomfortable with that.

6 So we asked them to go to DDOT.
7 And I'm hoping that somewhere in your report
8 there should be a report from DDOT. We
9 indicated in our report that it's going to be
10 under a separate cover.

11 CHAIRPERSON MILLER: Ms. Bailey, I
12 don't believe we have a copy of DDOT's report,
13 do we?

14 MS. BAILEY: No, Madam Chair, I
15 don't think we received a report from DDOT.

16 CHAIRPERSON MILLER: Okay.

17 MR. MOORE: In any event, that's
18 one we have to get you. But if we were to
19 dissect that plan a little bit, the question
20 you raised, Mr. Turnbull, relative to the
21 height of lights is inappropriate. The lights
22 should be higher, although the illumination

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1 should definitely be only on the parking
2 surface itself.

3 The issue raised by Mr. Stephenson
4 about this light and air, keep in mind, ladies
5 and gentlemen, that the orientation in this
6 block is east/west, so, therefore, the sun is
7 up in the east and down in the west, so there
8 is no blockage of sunlight. And there is
9 adequate space between the two buildings,
10 since they both meet the side yard
11 requirements. One exceeded by about one being
12 9 feet and the other is 8, that's 17 feet.

13 An observation, yesterday when I
14 went home, I just drove by the location. I
15 drive by it often anyway. As you already
16 know, on the record, that although the Office
17 of Planning is on record in terms of approving
18 the future case that we're going to hear today
19 from this applicant, we've expressed some
20 reluctance relative to what is being built as
21 opposed to what is the desire of the Office of
22 Planning and the community, that is more low

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1 density housing.

2 At this location, historically for
3 those who may not know or may not visit the
4 area, this area is virtually a hangout. And
5 on yesterday afternoon, there were eight
6 people on the lot. I won't say what they were
7 doing. And it's always an area for abandoned
8 and parked cars to be on. Putting the
9 building here would be an improvement.

10 It's consistent with the housing
11 plan. It's consistent with the Comprehensive
12 Plan. And again, the Office of Planning would
13 stand on the record and support the
14 application. You may have some questions.

15 CHAIRPERSON MILLER: Mr. Moore, I
16 also don't think we have in the record a
17 report from the ANC and I'm wondering if you
18 can relay any communications you have had with
19 the ANC or other members in the community?

20 MR. MOORE: I have had extensive
21 conversations with Mrs. Robinson, the Chair of
22 the ANC. And where the ANC have some

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1 concerns, their issue is always going to be
2 that what is being built is not low density
3 housing, which is what they want. After some
4 painstaking discussion with them, they do
5 understand that this developer can build, if
6 this Board approves, the kind of housing he is
7 proposing.

8 I think that you don't have a
9 report, because the person who was the real
10 inspiration and the work person of the ANC,
11 not that they all don't work, is the Chair,
12 Mrs. Robinson. She has been extensively sick
13 over the last month or so, so you may not have
14 a report from the ANC. Whatever, it wouldn't
15 be favorable to multi-family housing, other
16 than a standard developer can build what he is
17 proposing there.

18 CHAIRPERSON MILLER: From what I
19 understand that there is a goal in the
20 Comprehensive Plan for more single-family
21 dwellings, but also it's still not
22 inconsistent with the plan or the plan's goals

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1 to have some apartment buildings of this size
2 in this area, correct?

3 MR. MOORE: You are correct, yes.

4 CHAIRPERSON MILLER: And so we're
5 looking at it location by location and from
6 what I hear from you, it sounds like in this
7 particular location, you think it's -- well, I
8 don't want to put words in your mouth, but I
9 also want to get more of a feel, but it looks
10 like it's more consistent in this location
11 than perhaps in others, that there are other
12 apartment buildings right next door.

13 MR. MOORE: That is totally
14 correct.

15 CHAIRPERSON MILLER: Okay. How are
16 you on the landscaping, the revised
17 landscaping plan?

18 MR. MOORE: Actually, I had some
19 input in the applicant's landscape plan.
20 Originally, they was just coming off the alley
21 that we now know is a paper alley and parking.
22 Being that there is some sensitivity to the

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1 fact that there are other active uses to the
2 rear and to the south of the site, and, of
3 course, the regulations require that, we
4 thought there should be some buffer.

5 If the applicant had put in the
6 evergreens say along the parking lot itself,
7 actually, the overhang would have been on to
8 the adjacent property. And so in consultation
9 with him, he decided to come up with putting
10 in the wall in the parking lot area as opposed
11 to just putting evergreens in. So we're
12 comfortable with that, although we did say, in
13 our report, we still referred that to DDOT for
14 their analysis.

15 CHAIRPERSON MILLER: Is Mr.
16 Stephenson's property buffered somewhat with
17 the landscaping?

18 MR. MOORE: No.

19 CHAIRPERSON MILLER: No. Does it
20 need to be, in your opinion?

21 MR. MOORE: Well, I think that's
22 more a question for you and your legal. It's

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1 an established property already and it's
2 probably done as a matter-of-right. So I know
3 if you can't impose any further restriction on
4 him, since the property is already based.

5 CHAIRPERSON MILLER: No, I don't
6 mean on him. I mean on this project's
7 property.

8 MR. MOORE: Okay.

9 CHAIRPERSON MILLER: Is there
10 enough buffering on the side yard to protect
11 from any adverse visual impacts or anything
12 from --

13 MR. MOORE: We believe the 17 feet
14 is appropriate.

15 CHAIRPERSON MILLER: No. Okay.
16 No, I understand that. I guess my question
17 is, there's 17 feet distance between the two
18 properties. So I heard you say that,
19 therefore, there is not an issue about light
20 and air or an adverse impact in that sense. I
21 was just asking with respect to the
22 landscaping. We were looking at buffering

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1 around the parking lot.

2 And my only question was we do have
3 this neighbor here who has come in to talk
4 about adverse impacts and we haven't heard his
5 testimony yet. I think he is going to go to
6 light and air and view, but I'm wondering, is
7 any landscaping needed on the side yard there
8 to protect, to mitigate any adverse impacts on
9 this view or his property, in your opinion?

10 MR. MOORE: Actually, I believe
11 that if this applicant establishes the
12 landscaping along the borders of his property,
13 it would actually serve both properties.

14 CHAIRPERSON MILLER: Right.

15 MR. MOORE: The one clear issue
16 that Mr. Stephenson raised in the statement
17 earlier or the applicant, I forgot which one,
18 is that the paper alley is actually being
19 used, currently used as a parking lot. And,
20 of course, that's a safety issue that would
21 have to be addressed at some point.

22 CHAIRPERSON MILLER: Okay. Thank

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1 you.

2 COMMISSIONER TURNBULL: Thank you,
3 Madam Chair. I just have one, if we're
4 looking at impacts, why is the Board's
5 questions regarding lighting not relevant?

6 MR. MOORE: I didn't say that the
7 question was irrelevant. I said given the
8 flow of light and air, of light, that is from
9 east to west, and the orientation of the
10 building, would mean --

11 COMMISSIONER TURNBULL: No, I think
12 we were talking about light fixtures.

13 MR. MOORE: Light fixtures?

14 COMMISSIONER TURNBULL: Right.

15 MR. MOORE: Oh, no.

16 COMMISSIONER TURNBULL: Regarding
17 the light fixture, I'm sorry.

18 MR. MOORE: If you'll, please, let
19 me correct that. I didn't say that the
20 Board's issue on that was irrelevant. I said
21 it was very relevant. The relevancy is that
22 the height, proposed height of 6 feet, I

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1 think, was appropriate. It should be height.

2 COMMISSIONER TURNBULL: Well,
3 that's what the applicant has proposed.

4 MR. MOORE: Well, that's what I
5 believe would be more appropriate.

6 COMMISSIONER TURNBULL: Okay.

7 MR. MOORE: First, a 6 foot fixture
8 is in the reach of --

9 COMMISSIONER TURNBULL: Right.

10 MR. MOORE: -- human activity.

11 COMMISSIONER TURNBULL: Right.
12 Okay. I just wanted to clarify that. Thank
13 you.

14 BOARD MEMBER ETHERLY: If I may,
15 Madam Chair. Thank you very much, Mr. Moore,
16 as always for your excellent and detailed
17 report, especially in terms of the context of
18 the community and the surroundings. My
19 question is coming to the issue, I think I'm
20 very clear that in terms of the space between
21 the two, the proposed structure and Mr.
22 Stephenson's property, it is the Office of

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1 Planning's position that there is more than
2 enough distance between the two properties to
3 create a satisfactory buffer from the
4 standpoint of light and air.

5 And I think I'm hearing you say
6 also even privacy. But I just wanted to
7 follow-up on that. You may have heard my
8 question to Mr. Agbim with regard to the
9 orientation of the windows on that side of his
10 proposed property. Recognizing that there is
11 substantial distance between the two
12 buildings, perhaps not as much as there is
13 between Mr. Stephenson's two buildings,
14 because it appears from the photograph that I
15 have referenced a couple of times at Exhibit
16 No. 6, there is a good amount of space between
17 Mr. Stephenson's two buildings.

18 The Office of Planning, however,
19 has no concerns about privacy issues from
20 window to window between Mr. Agbim's proposed
21 building and Mr. Stephenson's building. Is
22 that correct?

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1 MR. MOORE: No, because, A, there
2 is a distance and, second, the orientation of
3 the windows themselves will not match.

4 BOARD MEMBER ETHERLY: Okay.
5 Excellent. Thank you. Thank you, Madam
6 Chair.

7 CHAIRPERSON MILLER: Thank you.
8 Mr. Agbim, do you have a copy of the Office of
9 Planning report?

10 MR. AGBIM: Yes, I do.

11 CHAIRPERSON MILLER: Okay.

12 MR. AGBIM: But not right in front
13 of me, I'm sorry.

14 CHAIRPERSON MILLER: No, that's
15 fine.

16 MR. AGBIM: Yes.

17 CHAIRPERSON MILLER: I just wanted
18 to make sure you have it.

19 MR. AGBIM: Yes.

20 CHAIRPERSON MILLER: And do you
21 have any questions for Mr. Moore?

22 MR. AGBIM: No.

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1 CHAIRPERSON MILLER: Mr.
2 Stephenson, do you have any questions for Mr.
3 Moore? Okay. Okay. Then in which case, no
4 one from the ANC has come in, at this point,
5 have they? Okay. Mr. Stephenson, you can
6 come up and make your case if you would like.

7 Sorry, do you have a question? Mr.
8 Stephenson you can come forward. We're at the
9 point of parties or persons in support or in
10 opposition. Is there someone else who wants
11 to come forward? Did you want to testify in
12 support or in opposition? You need to speak
13 into a microphone. Mr. Stephenson, though,
14 you are next as a party, but you can stay at
15 the table, there's room. Oh, I'm sorry, you
16 want to introduce yourself?

17 MS. GORHAM: My name is Mary
18 Gorham. I live at 724 49th Street.

19 CHAIRPERSON MILLER: Okay. And
20 will you be testifying in support or
21 opposition?

22 MS. GORHAM: I wanted to. Well, I

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1 filled out a card. I put it up here.

2 CHAIRPERSON MILLER: You know what,
3 you can think about it while we hear from Mr.
4 Stephenson, how's that? Because he is next in
5 the procedure. Is that okay?

6 MS. GORHAM: I already did a card.
7 They asked me to do two when I came in.

8 CHAIRPERSON MILLER: Yes. You
9 don't have to do any more cards.

10 MS. GORHAM: Okay.

11 CHAIRPERSON MILLER: I'm just
12 saying you can think about whether you want to
13 testify while he makes his statement.

14 MS. GORHAM: I am opposing it.

15 CHAIRPERSON MILLER: Okay. Mr.
16 Stephenson, I think it's your turn, so if you
17 want to go.

18 MR. STEPHENSON: I'll let her go.
19 I'll wait.

20 CHAIRPERSON MILLER: You don't have
21 to leave the table.

22 MR. STEPHENSON: Okay.

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1 CHAIRPERSON MILLER: There's room.
2 Okay. You want to go? You are opposed.
3 What's your name?

4 MS. GORHAM: My name is Mary
5 Gorham. I live at 724 49th Street right across
6 from the vacant lot that there is concern
7 about today.

8 CHAIRPERSON MILLER: And do you
9 want to say why you are opposed?

10 MS. GORHAM: I oppose it because I
11 don't feel that another apartment building
12 should come there.

13 CHAIRPERSON MILLER: Okay.
14 Anything else?

15 MS. GORHAM: You know, I don't feel
16 that another apartment to come there, we
17 already have two apartments there and I live
18 in a private home right across the street from
19 that vacant lot that the young man there was
20 talking about, Mr. Moore. I live right across
21 the street from there. I open my front door
22 and I look at the parking lot. So I was here

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1 today, so I don't feel that another apartment
2 should be there.

3 CHAIRPERSON MILLER: And what --

4 MS. GORHAM: I oppose it.

5 CHAIRPERSON MILLER: And what is it
6 that you don't like about an apartment being
7 there?

8 MS. GORHAM: It's not that I don't
9 like apartments. Don't get me wrong. I lived
10 in an apartment. It's congested. I live in a
11 private home and by the help of the Lord I see
12 two apartment buildings and I had enough of
13 apartment buildings. A private home maybe. I
14 have had enough of apartment buildings. So I
15 just wanted to say that today.

16 CHAIRPERSON MILLER: Thank you.
17 Any questions from Board Members? Okay. Mr.
18 Stephenson?

19 MR. STEPHENSON: Yes. I beg to
20 differ with Mr. Moore in his comments about
21 the vacant lot where he says there was a lot
22 of people hanging out and congregating.

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1 CHAIRPERSON MILLER: You might want
2 to pull the microphone closer to you.

3 MR. STEPHENSON: Okay. I'm a
4 Metropolitan Police Officer. I've been a
5 Metropolitan Police Officer for 22 years. I
6 bought those buildings in that area over 18
7 years now, those two apartment buildings. And
8 before this lot was sold to this gentleman
9 here, the neighborhood was in bad shape. And
10 a lot of abandoned cars and stolen cars used
11 to be parked in that lot.

12 I used to take care of that lot. I
13 used to clean it up. I used to run the people
14 away from there. I stopped doing it when I
15 found out that the lot was sold unbeknown to
16 me, nobody told me that the lot was up for tax
17 auction and that it was going to be sold.

18 I got a notice on the property one
19 day saying that the lot was sold at tax
20 auction for \$3,000. Probably if I had known
21 about it, I would have bid on it. I was not
22 notified and didn't know about it. I think

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1 the area is quite congested right now.
2 Another apartment building with more people
3 parking there is going to be problems.

4 I'm totally opposed to the
5 apartment building or the area being rezoned
6 for a four unit apartment building, because of
7 congestion, because it's going to obstruct the
8 view for my tenants seeing both sides. I
9 don't think it's a good idea.

10 CHAIRPERSON MILLER: When you say
11 congested, you mean parking, you mean traffic?

12 MR. STEPHENSON: Parking.

13 CHAIRPERSON MILLER: What do you
14 mean?

15 MR. STEPHENSON: Parking, traffic.

16 Building a four unit apartment building there
17 would -- like we said two buildings, there is
18 going to be more people living there probably,
19 more people having vehicles, parking on the
20 street. There is not enough parking right now
21 for my tenants.

22 BOARD MEMBER ETHERLY: Thank you

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1 very much, Madam Chair. Mr. Stephenson and
2 Ms. Gorham, thank you both very much.

3 MS. GORHAM: May I speak?

4 BOARD MEMBER ETHERLY: Certainly.
5 Certainly, ma'am.

6 MS. GORHAM: I really have lived in
7 the area for 17 years. And I have a front
8 porch and I look at that vacant lot full of
9 cars every day for the 17 years. And I don't
10 know who parks there. I know I live at 724.

11 BOARD MEMBER ETHERLY: Um-hum.

12 MS. GORHAM: And my husband owns
13 two vehicles and I feel that with an apartment
14 building, it's not that many people, but when
15 I come home on Friday night, you couldn't get
16 a parking if you wanted to. So that
17 neighborhood is just full of cars. I don't
18 know it is. It's just completely congested
19 day and night.

20 BOARD MEMBER ETHERLY: Um-hum.

21 MS. GORHAM: So I feel I don't know
22 where the cars coming from. I have called

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1 downtown about the cars, but it's just a
2 congested, drug-infested neighborhood, I would
3 say.

4 BOARD MEMBER ETHERLY: Okay. Let
5 me ask two questions and I'll direct them to
6 Mr. Stephenson, but I would welcome your
7 comments as well, Mrs. Gorham. And one
8 perhaps gets to a little bit of the challenge
9 that this Board has, again not speaking for
10 the Board or my colleagues, but I just want to
11 kind of be clear on two things.

12 One, let me just deal with the
13 parking piece. In terms of the parking
14 currently on the street in front of either
15 your house or in front of your two buildings,
16 how is that? Is that parking currently
17 residentially zoned? Meaning, do you need to
18 have a zone sticker to park?

19 MS. GORHAM: No.

20 BOARD MEMBER ETHERLY: Or it's just
21 open parking at all times?

22 MR. STEPHENSON: It's open parking

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1 at all times and the people who live across
2 the street from my property, who lives in
3 single-family houses normally try to protect
4 their parking space from my tenants parking in
5 front of their property.

6 BOARD MEMBER ETHERLY: Okay.

7 MR. STEPHENSON: So this has been a
8 little issue here.

9 BOARD MEMBER ETHERLY: Okay.

10 MR. STEPHENSON: Every now and
11 then.

12 BOARD MEMBER ETHERLY: And just to
13 be sure I'm clear in terms of your residence,
14 Mrs. Gorham, are you right at the corner of
15 49th and Hayes or are you one house in?

16 MS. GORHAM: I'm in house -- I'm
17 right at the corner of 49th.

18 MR. STEPHENSON: Well, she's one
19 house in.

20 MS. GORHAM: Yes.

21 BOARD MEMBER ETHERLY: One house in
22 from the corner.

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1 MS. GORHAM: Yes.

2 BOARD MEMBER ETHERLY: We have --
3 at the Office of Planning report, there is an
4 overhead shot, so there is a house, it will be
5 hard for you to see if from where you all are
6 sitting, but there is one house on the corner
7 at 49th and Hayes.

8 MR. STEPHENSON: Right.

9 BOARD MEMBER ETHERLY: Across the
10 street from Mr. Agbim's property and then
11 there is another house.

12 MR. STEPHENSON: That's her house.

13 BOARD MEMBER ETHERLY: And I
14 believe that's --

15 MS. GORHAM: Right.

16 BOARD MEMBER ETHERLY: -- your
17 house, Mrs. Gorham?

18 MS. GORHAM: Um-hum.

19 BOARD MEMBER ETHERLY: Okay. Now,
20 my second question, part of what we have to
21 balance here and as you heard the Office of
22 Planning indicate is the issue of the

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1 Comprehensive Plan, generally being supportive
2 of new housing, new residential development.
3 Now, the question I'm going to ask you is a
4 somewhat -- not difficult for you, it may be
5 an easy question for you, but we have to
6 balance it with what the Zoning Regulations
7 enable Mr. Agbim to do.

8 And part of the tension that I hear
9 is the concern that there will be additional
10 parking, but there is also an issue of you
11 have a vacant lot that's been in front of you
12 for a number of years, as you indicated, Mrs.
13 Gorham, and you, of course, Mr. Stephenson
14 have experience with that as an adjacent
15 property owner and also as a D.C. MPD officer.

16 Is it your sense that this would
17 not be an improvement on what is currently
18 happening there? I think I understand that,
19 okay, maybe it would be, but you would rather
20 it be smaller. You would rather it simply be
21 a single-family home.

22 MS. GORHAM: You know, I would

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1 rather for it to be -- because right now, to
2 me, I deal with children, right, and I feel
3 that a single-family home wouldn't put a lot
4 of children, so that's why I really oppose the
5 apartment building.

6 BOARD MEMBER ETHERLY: Um-hum.
7 Okay. Okay. Thank you. Mr. Stephenson, I
8 mean, again, I think you have been very clear
9 on your perspective, so, you know, if you
10 don't feel the need to add anything further,
11 but I'm just struggling with that tension. I
12 mean, you have a vacant lot next to your
13 property.

14 MR. STEPHENSON: I would love for
15 it to be cleaned up and probably I totally
16 agree with her a single-family home would add
17 more credence to the place instead of a four
18 unit apartment building.

19 BOARD MEMBER ETHERLY: Okay.

20 MR. STEPHENSON: Believe me, I've
21 been fighting with that vacant lot for years
22 trying to clean it up, trying to run the guys

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1 off the lot. Now, they found out that I have
2 no interest. I don't own the property. They
3 tell me that I can't tell them anything about
4 the property or I can't get the cars towed or
5 removed, because they're going to sue me.

6 BOARD MEMBER ETHERLY: Understood.

7 MR. STEPHENSON: So I backed off.

8 BOARD MEMBER ETHERLY: Okay. Okay.

9 Well, thank you. I appreciate your
10 testimony. Thank you, Madam Chair.

11 CHAIRPERSON MILLER: Thank you. I
12 just have one other question for both of you.
13 Whether you have had a chance to look at the
14 landscaping plan and whether you have any
15 comments on that, should the project go
16 forward, whether you think any other
17 landscaping would be necessary to mitigate any
18 adverse impacts on you.

19 MR. STEPHENSON: No.

20 CHAIRPERSON MILLER: Okay. Mr.
21 Agbim, do you have any cross examination for
22 Mr. Stephenson?

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1 MR. AGBIM: Yes, a few questions,
2 please. Mr. Stephenson, I just have five
3 questions. How many of your tenants drive?

4 MR. STEPHENSON: I would say about
5 50 percent of them.

6 MR. AGBIM: How many parking spaces
7 on your property?

8 MR. STEPHENSON: There is no
9 parking space on my property right now.

10 MR. AGBIM: How many street parking
11 spaces are available in front of the property?

12 MR. STEPHENSON: That I can't
13 accurately answer. I know it could probably
14 hold at least 10 to 14 cars.

15 MR. AGBIM: Do you agree with me
16 that that parking lot next to your property
17 has been used for years for illegal activity,
18 car dumping, car repairs and has been a
19 nuisance, even the Neighborhood Stabilization
20 Program people have written of that lot for a
21 long time, because of the problems that the
22 community has with the nuisance that goes on

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1 the property.

2 MR. STEPHENSON: I agree with you
3 100 percent.

4 MR. AGBIM: Okay. Do you think
5 that a new building, a new well-landscaped,
6 well-constructed and well-protected building
7 will enhance not only the quality of life of
8 the neighbors, but also get rid of the
9 nuisance, encourage good home ownership and
10 also, you know, improve the quality of life of
11 your tenants, who will benefit tremendously
12 from the absence of the nuisance caused by the
13 uses which the lot is currently being used
14 for?

15 MR. STEPHENSON: Probably a house,
16 not a four unit apartment building.

17 MR. AGBIM: Thank you.

18 CHAIRPERSON MILLER: Okay. Any
19 other questions from the Board? Okay. Then I
20 think, at this point -- is anybody else here
21 in the audience who wishes to testify in
22 support or opposition on this application?

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1 Not hearing from anybody, then Mr. Agbim, it's
2 your opportunity for any closing remarks.

3 BOARD MEMBER MANN: Madam Chair?

4 CHAIRPERSON MILLER: I'm sorry.
5 You have a question?

6 BOARD MEMBER MANN: That's all
7 right. Well, if I could just briefly revisit
8 the question with Mr. Moore for one moment?

9 CHAIRPERSON MILLER: Absolutely.

10 BOARD MEMBER MANN: Mr. Moore, on
11 the last page of your report is, on page 7,
12 the aerial map. And at the northern portion
13 you have Hayes Street, N.E., labeled on its
14 eastern side.

15 MR. MOORE: Um-hum.

16 BOARD MEMBER MANN: I'm a little
17 bit confused by that. There is a green area
18 to the north of that and then what also
19 appears to be Hayes Street.

20 MR. MOORE: That's one odd
21 situation. They are both Hayes. There is a
22 median green -- median going between the two

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1 and they come -- sort of come to a point at
2 about Hayes and 50th where they become one, but
3 they are both Hayes, yes.

4 BOARD MEMBER MANN: I guess that
5 clarifies that. Thank you.

6 CHAIRPERSON MILLER: Thank you.
7 Any other Board questions? Okay. Mr. Agbim?

8 MR. AGBIM: Thank you. I would
9 like to add that the proposed project will
10 greatly enhance this area. It will bring in
11 four responsible homeowners. It will bring in
12 a well-kept lot, a well-fenced in lot, a well-
13 secured lot and it will bring in a newly
14 constructed building that will add pride and
15 value to all of the properties on the block.

16 The current state of the lot is
17 deplorable with the parking situation, with
18 the dumping situation and other types of
19 social and community evils occurring on this
20 property. This project will go a long way to
21 improving what current exists and really
22 transforming the area into a very, very

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1 pleasant environment for both the people that
2 live in the project and also the people that
3 live without -- outside the project. Thank
4 you.

5 CHAIRPERSON MILLER: Thank you.
6 Okay. I think that completes this hearing.
7 And I think what we ought to do is schedule
8 this for decision making and then also
9 identify what documents or other evidence we
10 want in the record prior thereto. One is we
11 talked about a DDOT report that hasn't come
12 in. I think that's pretty critical to address
13 the parking lot and the alley situation and I
14 think perhaps we could ask DDOT to address the
15 question of congestion, perhaps since that has
16 been raised in this hearing.

17 Secondly, I know there was some
18 discussion about the lighting. Mr. Turnbull,
19 is there an issue about different light
20 fixtures?

21 COMMISSIONER TURNBULL: No. I
22 think --

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1 CHAIRPERSON MILLER: Or taller
2 light fixtures?

3 COMMISSIONER TURNBULL: --
4 normally, we are looking for a light -- down
5 light. Any kind of lighting either on the
6 building or on a pole should be down lighting.
7 And as Mr. Moore pointed out, the applicant
8 had originally stated 6 feet, which is -- it
9 should be higher. I don't know what our
10 standard height is now. 10, it should be 10
11 or whatever, but not 6 feet.

12 I think Mr. Moore has pointed out
13 that, obviously, 6 feet is room for vandals to
14 get to the fixture or whatever. So I think
15 that's a big point.

16 CHAIRPERSON MILLER: So is that
17 something that would be reflected in the plans
18 and need to be changed?

19 COMMISSIONER TURNBULL: I don't
20 think the plans address the height of the
21 fixtures.

22 BOARD MEMBER ETHERLY: Yes, I would

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1 agree, Madam Chair.

2 CHAIRPERSON MILLER: Okay.

3 BOARD MEMBER ETHERLY: So I would
4 think consistent with the Office of Planning's
5 report, at minimum, the plan should be revised
6 to reflect a minimum of 10 feet in height.

7 MR. MOORE: Actually, it was done
8 according to DDOT standards. That was already
9 being proposed.

10 BOARD MEMBER ETHERLY: Okay.

11 MR. MOORE: So I'm hoping that the
12 DDOT report will cover that for us.

13 BOARD MEMBER ETHERLY: Will help to
14 address that.

15 MR. MOORE: Yes.

16 BOARD MEMBER ETHERLY: So what Mr.
17 Moore is saying is DDOT's report and/or
18 standards typically will cover that issue of
19 lighting, but for the purposes of either any
20 conversations Mr. Agbim may have in the
21 interim with DDOT or on his own, kind of on
22 his own undertaking, there probably should be

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1 a revisiting of the height for those light
2 fixtures to get them a little taller. Still
3 downwardly adjusted, so as to minimize
4 lighting impact on the adjacent properties,
5 but taller.

6 CHAIRPERSON MILLER: Okay. And
7 also, with respect to the alley, even though
8 Mr. Agbim was saying that down the road they
9 would need a Public Space Permit and have DDOT
10 look at that issue later, I think what we are
11 saying, because we're having this proceeding,
12 we would want DDOT to at least comment on the
13 pavement of the alley and all that stuff now.

14 Okay. Just to make sure that's clear.

15 So we're going to have DDOT look at
16 these issues which will probably impact the
17 plan, so that there would be one more
18 revision. So we would leave the record open
19 for the DDOT report and a revision of the
20 plans. Anything else that we talked about?

21 MS. BAILEY: Do you want to keep
22 the record open for the ANC?

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1 CHAIRPERSON MILLER: Yes. Do you
2 have any objection to that, Mr. Agbim?

3 MR. AGBIM: Yes. I really would
4 pray this Board to move forward with a
5 decision, because we have made several
6 attempts to contact the ANC on this project
7 and the other projects and they have just not
8 responded. In fact, last Thursday, I went to
9 the meeting that they held at the church and,
10 you know, made myself known, went there to do
11 a presentation, but was never called to
12 present.

13 They have always had notice about
14 this project, so I think that, please, we pray
15 that you move forward with a decision.

16 CHAIRPERSON MILLER: Okay. I think
17 what we are saying is we're not going to delay
18 decision making for the ANC's schedule.

19 MR. AGBIM: Right.

20 CHAIRPERSON MILLER: However, I
21 think what we will do, if my colleagues agree,
22 is just allow into the record and we can

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1 schedule this, you know, leave the record open
2 for an ANC report should they have a meeting
3 and address this issue within our time
4 schedule, at this point. And we can also
5 leave the record open for Mr. Stephenson, as a
6 party, if you want to comment on the revised
7 plan and DDOT's report.

8 So we just need to set up a
9 schedule now to allow those things into the
10 record prior to our decision making, which our
11 next decision making is June 5th, if this will
12 be enough time. I guess, Ms. Bailey, do you
13 have an idea of when the DDOT report would
14 definitely need to come in by for us to make
15 this June 5th meeting?

16 MS. BAILEY: Madam Chair, in order
17 to give the parties an opportunity to respond,
18 ideally, should be next week.

19 CHAIRPERSON MILLER: Mr. Moore, is
20 that realistic or do we need to postpone
21 decision making further? DDOT's report is
22 pretty important in this case.

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1 MR. MOORE: It's extremely
2 important. As I thought they had already
3 done, it may already be in progress. If not,
4 it's going to take a bit more than a week.

5 CHAIRPERSON MILLER: What?

6 MR. MOORE: If it's not already
7 done, I would think it would take at least two
8 weeks to do it.

9 CHAIRPERSON MILLER: Okay. You
10 said it might take two weeks?

11 MR. MOORE: It may take two weeks.

12 CHAIRPERSON MILLER: If it takes
13 two weeks then, are we into the next decision
14 making meeting?

15 MS. BAILEY: Or a Special Public
16 Meeting.

17 CHAIRPERSON MILLER: Okay. Let's
18 see, well, is there a problem, Mr. Agbim, if
19 we put this in in July? Any particular --

20 MR. AGBIM: What I would like to
21 ask is that the person from DDOT, they are
22 already familiar with this case, and I believe

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1 that it may not take them that long. Again,
2 I'm not 100 percent familiar with that
3 process, but I believe it may not take them
4 that long to generate a report, since they are
5 already familiar with the issues prior to this
6 time.

7 CHAIRPERSON MILLER: Okay. But I
8 mean, I don't really know. I mean, I hear on
9 the one hand Mr. Moore saying it might take
10 two weeks and this is critical to this case.
11 So if there's no great prejudice to putting it
12 off until July, I think perhaps we ought to do
13 that. Anybody else have any thoughts on this?

14 BOARD MEMBER ETHERLY: No, I would
15 have no objection, Madam Chair. I mean, for a
16 moment I was contemplating a Special Public
17 Meeting, but I think the time will be useful
18 and clearly with the party in opposition for
19 whom parking was a critical issue. And I
20 think even not withstanding Mr. Stephenson's
21 testimony, I think there probably is enough to
22 suggest the need for greater clarity on what

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1 the parking impacts would be. So I would be
2 in agreement with the July time frame.

3 CHAIRPERSON MILLER: Okay. Then,
4 Ms. Bailey, what would the dates be if you
5 have it?

6 MS. BAILEY: I would suggest, Madam
7 Chair, June 11th, which is on a Monday, for the
8 information that you have requested from the
9 applicant and DDOT. And the parties have
10 until the 25th of June to respond.

11 CHAIRPERSON MILLER: Okay. Any
12 questions from anyone? Okay. Then I think
13 that concludes this case. You understand that
14 as a party, Mr. Stephenson, let me just say
15 this, that you will be served with whatever
16 Mr. Agbim files as well as the ANC. And if
17 you file anything, you need to serve Mr. Agbim
18 and the ANC as well and then I guess the Board
19 gets 20 copies of whatever you file. And you
20 can -- Office of Zoning will help you with the
21 logistics. Okay. Thank you.

22 MS. BAILEY: Mr. Stephenson, would

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1 you be kind enough to leave us a correct
2 mailing address for you, sir? Yes, please.

3 CHAIRPERSON MILLER: You can call
4 the next case when you're ready.

5 MS. BAILEY: Thank you. The next
6 Application is No. 17608 of Taiwo Demuren,
7 pursuant to 11 DCMR 3104.1, for a special
8 exception to construct a 10 unit apartment
9 building under section 353 at premises 1430
10 Eastern Avenue, N.E., Square 5171, Lots 21 and
11 22. The property is Zoned R-5-A.

12 And there is also a request for
13 party status in this application. It's from
14 Reginald R. McNair.

15 CHAIRPERSON MILLER: The party
16 status application is by Mr. Reginald McNair.
17 Is that correct?

18 MS. BAILEY: I'm sorry, Madam
19 Chair, I didn't hear you.

20 CHAIRPERSON MILLER: Party status
21 application is by Mr. Reginald McNair?

22 MS. BAILEY: Yes, it is.

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1 CHAIRPERSON MILLER: Okay. Is the
2 person here today? Okay. Why don't you
3 introduce yourself for the record again, Mr.
4 Agbim and then we'll deal with this.

5 MR. AGBIM: My name is Ike Agbim.
6 9611 Cedarhollow Lane, Largo, Maryland 20774,
7 the applicant.

8 CHAIRPERSON MILLER: Okay. Thank
9 you. And is anyone from the ANC here for this
10 case? Okay. Not seeing anyone, so the first
11 matter we have before us is the party status
12 application and the applicant is not here. We
13 can look at it. Every once in a while, even
14 though the applicant is not here, we can
15 accept them as a party, but it looks like they
16 have indicated how they are going to
17 participate as a party in some way.

18 But looking at this application, I
19 don't see that, so I would suggest that we
20 treat this as written testimony and accept it
21 in the record as that and deny party status.
22 Okay. That's the consensus of the Board.

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1 Then we can move forward with the case. And I
2 would turn to you, Mr. Agbim to present your
3 case.

4 MR. AGBIM: Thank you. This
5 application is for -- under section 353 again
6 for a special exception for construction of a
7 10 unit apartment building on a single lot, on
8 a lot in Square 5171, Lots 21 and 22. And
9 this is on Eastern Avenue. Eastern Avenue is
10 the dividing line between the District of
11 Columbia and Prince Georges' County. The
12 property is on the west side. Of course, on
13 the D.C. side of Eastern Avenue between
14 Quarles and Minnesota Avenue, N.E., in the
15 Deanwood subdivision.

16 The lot is 50 feet wide and 174
17 feet deep. There is also a public alley to
18 the rear of the property. On the south side
19 of the property, there are two or three
20 apartment buildings. Then on the north side
21 are semi-detached dwellings. This is a single
22 building with three levels and a cellar. The

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1 building faces Eastern Avenue, even though the
2 entrance is a side entrance off of a walkway
3 and the side yard.

4 The project applies -- complies
5 with all applicable provisions of Chapter 4 of
6 DCMR 11. It is brick faced and it's going to
7 be delivered as condominiums. Thank you.

8 CHAIRPERSON MILLER: Any Board
9 questions, at this time? Okay. I think we
10 can go to the Office of Planning then. Good
11 morning.

12 MS. BROWN-ROBERTS: Good morning,
13 Madam Chairman and Members of the Board. I'm
14 Maxine Brown-Roberts from the Office of
15 Planning. This application is being reviewed
16 as a special exception under section 353. The
17 proposed development meets all the yard
18 requirements that are required under the R-5-A
19 District.

20 Regarding the special exception
21 criteria for the building, the provision of
22 light and air, the building is set back with

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1 the required side yard 9 feet on each side of
2 the building and it has -- also has a rear
3 yard that is set back from the alley. The
4 units on the building all have windows, which
5 should facilitate light and air circulating
6 into the buildings. I think there is
7 sufficient space between the building, the
8 proposed building, and the adjacent apartment
9 buildings to not significantly impact the
10 light and air for either building.

11 Regarding the parking, the
12 applicant is providing 10 parking -- the
13 required 10 parking spaces in the rear of the
14 property and the parking lot will be accessed
15 from the alley. No recreation facilities are
16 being provided on-site, however, there are
17 several recreational facilities in the
18 vicinity of the site that the residents would
19 be able to utilize.

20 The landscaping on the side is a
21 mixture of trees and shrubs and grasses and
22 the Office of Planning has worked with the

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1 applicant to make some additional landscaping,
2 to add some additional trees to further green
3 the property. And we are fairly satisfied
4 with what the applicant has presented to us
5 today.

6 One of the things that we had
7 emphasized is that the trash receptacle is in
8 the middle of a green area and so in order to
9 minimize its impact, we ask for some shrubs
10 and trees to be planted around it just to
11 minimize the site from the alley and any
12 portion that could be viewed from Eastern
13 Avenue.

14 The grading on the site, the site
15 is fairly flat and, therefore, there won't be
16 any extensive grading of the site, so we
17 didn't have a problem with that.

18 The application was sent over to
19 DDOT and we have not received any comments
20 from them, so I'm really not sure what the
21 status is. I have spoken to them a number of
22 times about it and were just told that they

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1 were working on it. I haven't seen anything,
2 so I don't -- they haven't raised any issues
3 about the application with me.

4 Also, I did try and contact the
5 ANC. I spoke to, let's see, the person was a
6 chairperson. She said that they were going to
7 talk about it and I haven't gotten any other
8 response. I have left messages and I haven't
9 gotten any other response. So that's where
10 that is.

11 The Office of Planning thinks that,
12 you know, based on the fact that they meet all
13 the requirements and they have improved the
14 landscaping, we don't -- it is consistent with
15 development in that area. There are a number
16 of other apartments along that street and even
17 to the rear of the property.

18 The community is a mixture of
19 apartments, single-family houses, duplexes, so
20 this is appropriate for that area. And based
21 on those things, the Office of Planning
22 recommends approval of the special exception.

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1 Thank you, Madam Chairman.

2 CHAIRPERSON MILLER: Thank you.
3 Any Board questions?

4 BOARD MEMBER MANN: I have a
5 question. Is that alley an improved alley?

6 MS. BROWN-ROBERTS: Yes, it is.

7 BOARD MEMBER MANN: Okay. Thank
8 you.

9 CHAIRPERSON MILLER: I have a
10 question about just on page 4 of your report,
11 when you note that the application is not
12 receiving funding through DHCD, what are the
13 ramifications of that? Is that anything that
14 we need to be concerned about?

15 MS. BROWN-ROBERTS: No, there is no
16 ramifications for that. Usually what happens
17 -- because, I mean, in the application, he
18 submitted to us that, I think, there were
19 going to be a few apartments that were going
20 to be affordable down at the 80 percent. And
21 so our next question was are you getting any
22 public financing, because usually with DHCD if

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1 they are giving public financing, they have
2 certain requirements that need to be met.

3 They may ask for less than the 80
4 percent or something like that. In this case,
5 he isn't getting any public financing, so
6 there is no way for us to sort of hold him to
7 a specific or a lower than 80 percent
8 percentage of the affordable units.

9 CHAIRPERSON MILLER: Okay. And
10 we've got -- and maybe I should ask this of
11 the applicant, but we've got various revisions
12 today of different plans. Was there a
13 revision to the original plans? I think in
14 your report you talk about an updated
15 landscape plan and I just want to make sure we
16 have the right plan.

17 MS. BROWN-ROBERTS: Yes. I think
18 you did receive the updated one.

19 CHAIRPERSON MILLER: Today?

20 MS. BROWN-ROBERTS: Yes.

21 CHAIRPERSON MILLER: Here we go.
22 Okay. All right. Thank you.

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1 MS. BROWN-ROBERTS: Yes.

2 CHAIRPERSON MILLER: And I guess,
3 at some point, this will be marked as an
4 exhibit and added to the record. In the
5 application for party status, one of the
6 concerns was also congestion, like in the
7 previous case. And so most likely this case
8 is going to also be scheduled for decision
9 making, though perhaps earlier than the other
10 case.

11 Can DDOT just also -- can you ask
12 DDOT just to consider that point as well?

13 MS. BROWN-ROBERTS: Okay.

14 CHAIRPERSON MILLER: I'm not sure
15 what -- they are probably considering the
16 alley.

17 MS. BROWN-ROBERTS: Yes. One thing
18 I would like to suggest, because, you know, we
19 have been, I mean, on DDOT and we have called
20 them and said, you know, I mean, I have made
21 numerous calls about this case to them, you
22 know, we need to have something. And so I

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1 don't know that calling them again, at this
2 stage, is going to bring -- you know, make it
3 any better.

4 My suggestion would be that if
5 there is a letter coming directly from the
6 Board to them, you know, I think we may have a
7 better response than -- you know, that's just
8 my opinion on that. So we may want to try
9 that tactic and see. But I will mention to
10 them, but the Board, you know, needs something
11 and also to address what you just requested.

12 CHAIRPERSON MILLER: Okay. And we
13 can consider that. And I just want to be
14 clear also what it is that we were going to be
15 waiting for from DDOT.

16 MS. BROWN-ROBERTS: I think my
17 request to them was to comment on the access
18 off of the alley. I mean, when I went out to
19 take the site visit, I didn't see any problems
20 with it, you know, but they are the
21 professionals on this, so that's why, you
22 know, I need to get something from them to

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1 know definitely if they have any concerns.

2 CHAIRPERSON MILLER: Now, in the
3 other case though, we heard about DDOT
4 commenting on the parking lot. Why wouldn't
5 they do that in this case or why wouldn't you
6 think you need that?

7 MS. BROWN-ROBERTS: I suppose they
8 could. I mean, from my experience, I looked
9 at it. I didn't see a problem. You know, I
10 have looked at a lot of other parking lots. I
11 didn't see a problem. I reviewed what the
12 requirements were. But again, you know,
13 that's why it was referred to DDOT for them to
14 take a look at it.

15 CHAIRPERSON MILLER: Right.

16 MS. BROWN-ROBERTS: This was just
17 my assessment.

18 CHAIRPERSON MILLER: And you worked
19 with the applicant on the landscaping?

20 MS. BROWN-ROBERTS: Yes, um-hum.

21 CHAIRPERSON MILLER: Okay. Okay.
22 I don't have any other questions.

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1 COMMISSIONER TURNBULL: Madam
2 Chair, I guess the comments regarding the
3 light fixtures on the last case carryover to
4 this case. And I guess the only thing on the
5 landscaping, since there are existing fences
6 on either side property, it looks like there
7 is, and I don't know which is which, a,
8 looking at the photograph, cyclone fence on
9 the one on the right.

10 CHAIRPERSON MILLER: Um-hum.

11 COMMISSIONER TURNBULL: And
12 something else on the left. Those are
13 existing fences of the other properties, I
14 would assume.

15 CHAIRPERSON MILLER: Um-hum.

16 MS. BROWN-ROBERTS: Yes.

17 COMMISSIONER TURNBULL: So they
18 will remain. And then the applicant is simply
19 picking up some hedges along --

20 MS. BROWN-ROBERTS: Right, in the
21 rear.

22 COMMISSIONER TURNBULL: -- both

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1 sides by the parking lot.

2 MS. BROWN-ROBERTS: Yes.

3 COMMISSIONER TURNBULL: So no other
4 treatment along the side yards. Okay. I just
5 wanted to clarify that.

6 MS. BROWN-ROBERTS: Is there a
7 question?

8 COMMISSIONER TURNBULL: No, I just
9 wanted to clarify.

10 MS. BROWN-ROBERTS: Oh, okay.

11 COMMISSIONER TURNBULL: If that was
12 your interpretation.

13 MS. BROWN-ROBERTS: Yes, yes.

14 COMMISSIONER TURNBULL: Okay.

15 CHAIRPERSON MILLER: Any other
16 Board questions? Mr. Agbim, do you have a
17 copy of the Office of Planning's report?

18 MR. AGBIM: Yes.

19 CHAIRPERSON MILLER: And do you
20 have any questions for them?

21 MR. AGBIM: No.

22 CHAIRPERSON MILLER: Okay. Is

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1 there anybody else here in the audience who
2 wishes to testify on this application? Okay.

3 Not seeing anybody and not hearing any other
4 questions from Board Members, I think, Mr.
5 Agbim, you can make any closing remarks, at
6 this time, that you would like.

7 MR. AGBIM: I would like to add
8 again that this development will greatly
9 enhance this property. As you can see on the
10 picture, the lot is basically what you see
11 there in the middle of two fairly well-kept
12 buildings. I think that approval of this
13 project would greatly fill in this gap on this
14 block and really enhance the quality of the
15 neighborhood. Thank you.

16 CHAIRPERSON MILLER: Mr. Agbim, are
17 you finished or are you pausing?

18 MR. AGBIM: Yes, I'm sorry, I'm
19 finished.

20 CHAIRPERSON MILLER: Oh, okay.
21 Fine. Okay. Again, I think in this case we
22 have outstanding DDOT's comments, so I would

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1 suggest that we schedule this for decision
2 making, but I would think we could do this one
3 for the next meeting. Yes, because we don't
4 have any indication that more time is really
5 going to help us get DDOT's comments.

6 Okay. So we don't have an ANC
7 report also. So we could leave the record
8 open for both DDOT report and an ANC report,
9 if it comes in, and for any revisions to the
10 plan as a result. What's the date of the next
11 decision making, June what?

12 MS. BAILEY: The next decision
13 meeting --

14 CHAIRPERSON MILLER: The 5th?

15 MS. BAILEY: June 5th.

16 CHAIRPERSON MILLER: Okay. So if
17 we schedule backwards, when would DDOT's
18 report be due and the revisions?

19 MS. BAILEY: I would suggest, Madam
20 Chair, the 29th of May.

21 CHAIRPERSON MILLER: 29th of May.
22 Do you need -- Mr. Agbim, does that work for

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1 you? I mean, you need to get the report and
2 then do your revisions or will you be working
3 with DDOT or how do you see this?

4 MR. AGBIM: Yes, I'll always be in
5 contact with them.

6 CHAIRPERSON MILLER: Okay. I mean,
7 can the date be the same?

8 MR. AGBIM: Yes.

9 CHAIRPERSON MILLER: Okay. So you
10 will get that in by May 29th. And the record
11 is open for the ANC to respond to it by what
12 date?

13 MS. BAILEY: Sorry, I wasn't aware
14 that you were leaving the record open for the
15 ANC. If you're leaving the record open for
16 the ANC, Mrs. Miller, I would suggest that we
17 do it on the 22nd and then have the ANC respond
18 by the 29th, because --

19 CHAIRPERSON MILLER: Is that too
20 tight for you though, Mr. Agbim? That might
21 be tight to get the DDOT report in. I mean,
22 the ANC isn't even here, so I'm not sure we

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1 have to make it that tight. Do you have a
2 comment, Mr. Agbim?

3 MR. AGBIM: No, I believe that the
4 29th, as far as I'm concerned, is the good --

5 CHAIRPERSON MILLER: You need that
6 time?

7 MR. AGBIM: Yes, I think the 29th
8 is fine.

9 CHAIRPERSON MILLER: Okay. Would
10 you hand deliver your revision to the ANC?

11 MR. AGBIM: Yes, if I'm allowed. I
12 can post -- have it postmarked for that date.

13 CHAIRPERSON MILLER: You can do
14 that. Okay.

15 MR. AGBIM: Right.

16 CHAIRPERSON MILLER: Then that
17 would help. And then we can let the ANC's
18 report come in by when? When is the last time
19 that could be in for the Board to get it?

20 MS. BAILEY: The Friday, which
21 would be June 1st. June 1st, yes, because a
22 decision will be scheduled -- will be

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1 considered that following Tuesday.

2 MR. MOY: Madam Chair, if I may
3 ask, I may have missed it during the hearing.

4 Do we know when the ANC is meeting in the
5 month of May? I mean, will they have an
6 opportunity to --

7 MR. AGBIM: Well, they just met
8 last Thursday, so --

9 CHAIRPERSON MILLER: Well, did they
10 consider your application or you don't know?

11 MR. AGBIM: No. I wrote them
12 before the meeting. I went out there. I was
13 there in the meeting and I did talk to the
14 chairperson that -- well, the person who was
15 acting on behalf of him and I wasn't called.
16 So that's where we are.

17 CHAIRPERSON MILLER: Ms. Brown, did
18 we ask you about the ANC? Have you talked to
19 them about this case?

20 MS. BROWN-ROBERTS: I'm sorry.
21 Yes, I did call and they said she doesn't know
22 when it is going to be heard. I told her what

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1 the public hearing date was. She said okay
2 and that was it.

3 CHAIRPERSON MILLER: Okay. Well,
4 you know, I think we're leaving the record
5 open for them. I think that they could submit
6 a report, even based on the information that
7 they have, but some of their issues might not
8 turn on some of these issues. But if you
9 would certainly make sure, Mr. Agbim, that the
10 chair has the revised plans as soon as
11 possible, if they are ready before May 29th, if
12 you could give it to them as soon as this is
13 all ready.

14 MR. AGBIM: Yes.

15 CHAIRPERSON MILLER: Okay. Thank
16 you.

17 MS. BAILEY: So, Madam Chair, just
18 to repeat the dates. May 29th are the
19 submissions from the applicant, DDOT. The
20 record will be left open until June 1st, if an
21 ANC report comes in, and then the Board's
22 decision is scheduled for June 5th.

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1 CHAIRPERSON MILLER: Correct.
2 Thank you. Anything else? Okay. Then I
3 think we can move on to the next case. Thank
4 you.

5 MS. BAILEY: Application No. 17596
6 of Taiwo Demuren, pursuant to 11 DCMR 3104.1,
7 for a special exception to construct a four
8 unit apartment building under section 353 at
9 premises 5131 Astor Place, S.E. The property
10 is Zoned R-5-A and it's located in Square 5309
11 on Lot 9.

12 Additionally, Members of the Board,
13 the Board had determined that the application
14 does require additional area variance relief
15 from section 2117.8(c) of the Regulations.
16 This case is a continuation from the April 24th
17 hearing.

18 CHAIRPERSON MILLER: Is there
19 anyone from the ANC here on this case? Okay.
20 I don't believe we have any party status
21 applicants, do we? No, okay. And is there
22 anybody here who wants to testify in this case

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1 in support or opposition? Okay. So I guess
2 it's Mr. Agbim it's you and the Board and
3 Office of Planning.

4 Let me say this, I believe that
5 this is a continuation that we just talked
6 about this case a little bit on April 24th,
7 though we didn't get into any of the
8 substance. However, the Board did point out
9 different issues for you to think about
10 addressing as well as -- yes, okay.

11 And this one, am I correct, does
12 this one also not seek variance relief?

13 MR. AGBIM: That's correct.

14 CHAIRPERSON MILLER: Okay. And
15 that was one of the issues that we wanted you
16 to address that wasn't in your papers, I don't
17 believe, maybe it was, but to address more
18 fully the variance test. And do we have
19 revised plans on these as well?

20 MR. AGBIM: Yes.

21 CHAIRPERSON MILLER: And perhaps,
22 you know, when you get to this, how you want

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1 to do it, you should point out to us the
2 revisions, so we will know what's different.

3 BOARD MEMBER ETHERLY: Madam Chair,
4 if I may, I just wanted to reemphasize what
5 you just indicated. I think it would be very
6 helpful if we take a very slow walk through
7 the revisions for this case. And then as we
8 proceed through the remainder of the returning
9 cases, you've got a couple of new ones in with
10 us today, Mr. Agbim, and now we're in that
11 section of the day where we come back to some
12 familiar friends, if you will.

13 But I think for this case, as well
14 as the others, if you could really walk us
15 through very slowly and deliberately, because
16 we want to get a sense of what the changes are
17 since we last talked about this plan. I think
18 that would be very, very helpful just to make
19 sure we don't miss anything.

20 So I just wanted to really
21 emphasize that, Madam Chair, because I think
22 it's going to be really helpful, especially as

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1 we start to discuss the ANC a little bit
2 later. Thank you, Madam Chair.

3 MR. AGBIM: Thank you.

4 CHAIRPERSON MILLER: Thank you.
5 Okay.

6 MR. AGBIM: My name is Ike Agbim,
7 9611 Cedarhollow Lane, Upper Marlboro,
8 Maryland 20774, applicant. To summarize, this
9 case is for a variance from the strict
10 requirements for drive aisle of 14 feet, we
11 have only 10 feet for this project, and also
12 for a special exception for section 353.

13 This is a four unit building, three
14 levels and one cellar, one unit per level.
15 What we have revised on this project is as
16 follows:

17 No. 1, we have provided a 6 foot
18 sized pipe fence around the property.

19 No. 2, we have provided a 4 foot
20 wall, especially in the parking areas to meet
21 screening requirements of parking.

22 Currently, we have done some minor

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1 shifting of the landscaping as other parts of
2 the project shifted, but very minor.

3 Those are the key changes to this
4 project. So you see on the west -- on the
5 north side there is a 6 foot high fence, a 4
6 foot retaining wall and --

7 CHAIRPERSON MILLER: I'm sorry.
8 You submitted revised plans, correct, these?

9 MR. AGBIM: Yes.

10 CHAIRPERSON MILLER: Okay. Could
11 we number the pages perhaps and then we can
12 easily refer to the different pages?

13 MR. AGBIM: Oh, okay. I'm
14 currently dwelling on the second page, which
15 is the site plan.

16 CHAIRPERSON MILLER: Okay. That's
17 2. The landscaping plan we can call 3. Is
18 that okay?

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

20 CHAIRPERSON MILLER: Site lighting
21 plan 4. What's this one? Level plans 5 and
22 elevation plan 6 and then we have rear

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1 elevation 7. Is that correct?

2 MR. AGBIM: That's correct.

3 CHAIRPERSON MILLER: Okay. So you
4 want us to look at which page now?

5 MR. AGBIM: Page no. 2.

6 CHAIRPERSON MILLER: Okay.

7 MR. AGBIM: The key changes on page
8 no. 2, 6 foot high fence around the property,
9 a 4 feet retaining wall in the parking area in
10 the rear and, I believe, an addition of an
11 area drain also in the parking area.

12 On page no. 3, I have provided a
13 detail of the trash can area, which in this
14 project is slightly different due to grade
15 issues. That's it.

16 CHAIRPERSON MILLER: Is there
17 landscaping in the parking lot or just along
18 the side of the building?

19 MR. AGBIM: No.

20 CHAIRPERSON MILLER: No landscaping
21 in the parking lot?

22 MR. AGBIM: No, just what's shown

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1 on the page no. 3. All we have done is we
2 have screened in the parking area with a 4
3 foot wall and we have a 6 foot high fence all
4 around.

5 CHAIRPERSON MILLER: You have a 4
6 foot wall around and a fence on top?

7 MR. AGBIM: That's correct.

8 CHAIRPERSON MILLER: And what's
9 behind those walls and fences? What's on the
10 other side?

11 MR. AGBIM: On the left side facing
12 the bay is a four unit building. On the right
13 side facing the building is a, I believe,
14 single-family dwelling. And on the rear also,
15 I believe, a single-family dwelling.

16 BOARD MEMBER MANN: Madam Chair, I
17 think I'm going to ask a question that you
18 just asked, but I guess I wasn't paying
19 attention. Did you say that there was a 6
20 foot fence above and beyond the 4 foot
21 retaining wall in the back for a total of 10
22 feet?

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1 MR. AGBIM: In the rear of the
2 property, yes.

3 BOARD MEMBER MANN: Okay. So if
4 you were standing in the parking lot looking
5 towards that wall and fence what you would
6 have in front of you is a total of 10 feet? A
7 10 foot structure from grade to the top?

8 MR. AGBIM: You mean standing on
9 the parking lot side?

10 BOARD MEMBER MANN: Yes. If you're
11 standing on the parking lot from grade -- from
12 the grade of the parking lot to the top of the
13 structure would be a total of 10 feet then?

14 MR. AGBIM: I'm sorry, no. It will
15 be 7 feet if you are standing on the parking
16 lot side.

17 BOARD MEMBER MANN: So it's a 4
18 foot retaining wall with a 3 foot high fence?

19 MR. AGBIM: No. The fence has a 12
20 inch lattice panel on top, so basically, the 6
21 foot minus 4 foot it's about a 2 foot ledge.
22 So if you're standing on the parking lot, the

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1 highest point on the lattice will be at 7
2 feet.

3 BOARD MEMBER MANN: Okay. So 7
4 feet. So the 4 foot retaining wall has a 3
5 foot fence over it?

6 MR. AGBIM: Right.

7 BOARD MEMBER MANN: Thank you.

8 CHAIRPERSON MILLER: What kind of
9 fence is it?

10 MR. AGBIM: It's a pressure treated
11 wood fence.

12 CHAIRPERSON MILLER: It's opaque,
13 correct? You can't see through this at all?

14 MR. AGBIM: No.

15 CHAIRPERSON MILLER: Is that right?
16 Except the top is lattice, you can see
17 through that?

18 MR. AGBIM: Right. Minor view from
19 the top.

20 CHAIRPERSON MILLER: Okay. Thank
21 you.

22 COMMISSIONER TURNBULL: So it's the

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1 same that we have seen on the other drawings?

2 MR. AGBIM: That's correct, sir.

3 COMMISSIONER TURNBULL: On your
4 site plan on page 2, you show window wells.

5 MR. AGBIM: That's correct.

6 COMMISSIONER TURNBULL: But looking
7 at page 5 on your cellar plan, they -- I'm not
8 sure what they are windows for. I mean, you
9 have really got seven windows or something
10 there and you're only showing two window
11 wells. Are these -- your elevation, site
12 elevation on page 6 shows that you don't need
13 window wells, that these are just low windows.

14 I don't see any indication that those windows
15 are going down below grade. They simply look
16 like short widows.

17 MR. AGBIM: That's correct. Page
18 no. 6, the site elevation does, in fact, show
19 the windows, the sill of the windows almost at
20 grade level. However, the reason why the
21 window wells are shown is because in order to
22 meet the egress requirement from the bedroom,

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1 the two bedrooms, in fact, the rear bedroom on
2 the cellar level and also the middle bedroom
3 on the cellar level, just for the egress
4 requirements.

5 And I do understand that maybe the
6 elevation could have shown those window wells.

7 COMMISSIONER TURNBULL: Yes, I
8 think you should need to indicate that there.

9 MR. AGBIM: Right, right.

10 COMMISSIONER TURNBULL: Okay. So
11 it's an egress requirement?

12 MR. AGBIM: That's correct.

13 COMMISSIONER TURNBULL: So those
14 would be fully operable windows that would
15 open up so that if someone had to, they could
16 go out?

17 MR. AGBIM: Right. That's correct.

18 COMMISSIONER TURNBULL: Okay. The
19 trash area, the enclosure in the front, if I
20 was to look at elevation on page 6, the front
21 elevation, that's all brick front. The stairs
22 are brick and then comparing that back to the

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1 landscape plan on page 3, is there going to be
2 brick then in the front of the enclosure or
3 what? Is it just exposed concrete with a gate
4 on it?

5 MR. AGBIM: Yes. The wall that you
6 see that is enclosing the trash area is made
7 of split face blocks. So, yes, it's, in fact,
8 concrete masonry units.

9 COMMISSIONER TURNBULL: So it's CMU
10 units?

11 MR. AGBIM: CMU, that's correct.

12 COMMISSIONER TURNBULL: Okay. And
13 how high would that enclosure be?

14 MR. AGBIM: The total height is 3.5
15 feet.

16 COMMISSIONER TURNBULL: How much?

17 MR. AGBIM: 3.5 feet.

18 COMMISSIONER TURNBULL: 3.5 feet?

19 MR. AGBIM: Right.

20 COMMISSIONER TURNBULL: So almost
21 as high as the landing of the stairs then
22 going in?

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1 MR. AGBIM: That's correct.

2 COMMISSIONER TURNBULL: I just
3 wanted to point out that on your -- on page 4,
4 your site lighting plan. The entrance to the
5 building is from another -- it looks like it
6 hasn't been changed to match the way the
7 entrance is on the other sheets.

8 MR. AGBIM: That's correct.

9 COMMISSIONER TURNBULL: Okay.

10 CHAIRPERSON MILLER: I think at
11 this point, we want to take a 10 minute break
12 and then we'll pick up where we have just left
13 off.

14 MR. AGBIM: Okay.

15 CHAIRPERSON MILLER: Okay. Thank
16 you.

17 MR. AGBIM: Thank you.

18 (Whereupon, at 12:11 p.m. a recess
19 until 12:26 p.m.)

20 CHAIRPERSON MILLER: I think we're
21 ready to go back on the record. Mr. Agbim, do
22 you want to pick up where you left off?

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1 MR. AGBIM: Yes.

2 CHAIRPERSON MILLER: Okay.

3 MR. AGBIM: I think I was actually
4 receiving questions from Members.

5 CHAIRPERSON MILLER: I'm sorry,
6 what?

7 MR. AGBIM: I was receiving some
8 questions.

9 CHAIRPERSON MILLER: Are you asking
10 if we have any questions?

11 MR. AGBIM: Yes.

12 CHAIRPERSON MILLER: Okay. You're
13 finished with your initial presentation?

14 MR. AGBIM: That's correct.

15 CHAIRPERSON MILLER: Okay. My
16 question is do you want to address the
17 variance test?

18 MR. AGBIM: Yes.

19 CHAIRPERSON MILLER: Go right
20 ahead.

21 MR. AGBIM: Okay. Chapter 4 -- I'm
22 sorry. Section 2117.8(c) requires a 14 foot

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1 drive aisle for parking areas for multi-unit
2 buildings. And this project we provide only a
3 10 foot drive aisle. We hereby do request a
4 variance from this section of the code for
5 specific reasons. And in addressing the
6 variance test, I'll discuss it under three
7 headings.

8 Physical characteristics of the
9 property. These lots are 40 feet wide. This
10 property in question is 40 feet wide. And,
11 you know, when we have to provide two side
12 yards like we do have to in this project,
13 basically, when you subtract two side yards of
14 9 feet, which is 18 feet from 40 feet, it
15 leaves you with a balance of 22 feet.

16 You further have to provide a 14
17 foot drive aisle, it makes it impossible for
18 the owner to develop this property, because
19 the result which is so narrow, and this makes
20 it impossible for the owner to develop this
21 property and still comply with this section of
22 the code. So this --

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1 CHAIRPERSON MILLER: I'm sorry,
2 it's impossible for the owner to do what?

3 MR. AGBIM: To develop the
4 property.

5 CHAIRPERSON MILLER: Impossible to
6 develop the property?

7 MR. AGBIM: Right. It makes it
8 difficult or it's a hardship for the owner,
9 because the building, the resulting space that
10 can be used for placing a building would be
11 very small and would, therefore, be a very
12 small structure that would be difficult to
13 plan effectively.

14 CHAIRPERSON MILLER: It's difficult
15 for this type of building. Is that correct?

16 MR. AGBIM: That's correct.

17 CHAIRPERSON MILLER: But is it
18 difficult for any type of matter-of-right
19 building on this property?

20 MR. AGBIM: Yes, for matter-of-
21 right use on this property, this section of
22 the code may not apply at all, this

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1 requirement, DCMR 2117.8 does not apply for
2 matter-of-right, single-family dwelling.

3 CHAIRPERSON MILLER: I think what
4 you are saying is if you were to do a single-
5 family dwelling, you wouldn't need to get
6 special exception relief under 353, correct?

7 MR. AGBIM: Yes, we wouldn't need
8 to have a 14 foot drive aisle also, because --

9 CHAIRPERSON MILLER: Right.

10 MR. AGBIM: -- then we would be
11 required to have only one parking space.

12 CHAIRPERSON MILLER: Right. So
13 could you put a single-family dwelling on this
14 lot without variance relief?

15 MR. AGBIM: In the R-5-A Zones, in
16 general, single-family dwellings are allowed
17 in the R-5-A Zones, in general.

18 CHAIRPERSON MILLER: And my
19 question is this lot that you are seeking a
20 variance for --

21 MR. AGBIM: Right.

22 CHAIRPERSON MILLER: -- in order to

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1 build the multi-family dwelling, would you
2 need a variance for a single-family dwelling?

3 MR. AGBIM: Not that I know of.
4 The owner of this property has, however,
5 applied to construct a four unit building on
6 this property and is coming to the Board to
7 seek a special exception and that's where the
8 variance came up, the issue of the variance.

9 CHAIRPERSON MILLER: Okay. What I
10 hear you saying is that in just going to the
11 practical difficulty test that there is a
12 practical difficulty to put a multi-family
13 dwelling on this lot, but there isn't a
14 practical difficulty to put a single family
15 dwelling on this lot, which is allowed as a
16 matter of right.

17 MR. AGBIM: Right. And I agree
18 with you. What I'm saying is that for a
19 single-family construction, the variance from
20 this section would not be necessary, because
21 then only one parking space would be needed
22 and the side yard could be -- a 9 foot side

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1 yard could constitute the 9 x 19 parking
2 space.

3 CHAIRPERSON MILLER: How is this
4 property unique or exceptional?

5 MR. AGBIM: Well, in terms of
6 physical characteristics, one of the things
7 that I have mentioned earlier is the size of
8 the property being unique for this purpose in
9 that --

10 CHAIRPERSON MILLER: Being unique
11 for what? This purpose?

12 MR. AGBIM: Yes, being unique in
13 the sense that the dimensions of the lot, the
14 dimensions of the lot and also complying with
15 the requirements of this section of the DCMR
16 2117.8 makes it difficult to utilize the lot
17 to do this construction for this.

18 CHAIRPERSON MILLER: I understand
19 the problem, why you need to seek relief to do
20 what you want to do.

21 MR. AGBIM: Right.

22 CHAIRPERSON MILLER: But this case

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1 is different from the previous cases that we
2 have had this morning, in that you need
3 variance relief and under the variance law,
4 there are three tests that have to be met.
5 And the first one now is that it has to be
6 unique or exceptional and so that's kind of
7 what I'm asking you. How is it unique from
8 other properties in the surrounding area or in
9 some way exceptional in order to get this kind
10 of relief?

11 MR. AGBIM: Yes. For two way
12 circulation, which is what is required for
13 this parking area, we need a total of 14 feet
14 drive aisle for two way circulation. Now,
15 what happens is on a scenario whereby that 14
16 foot is provided and another side yard of 9
17 foot is provided, a total between the 14 foot
18 and the 9 foot is 23 feet.

19 So that leaves only 17 feet width
20 for the usable space on the lot where the
21 structure can actually be. And based on that,
22 the other option is to have one way

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1 circulation, which will also involving having
2 two 14 foot -- two 12 foot aisles which would
3 then result into 24 feet. So I don't know if
4 I'm answering your question.

5 CHAIRPERSON MILLER: Okay. Now, we
6 understand what your problem is and why you
7 want to get the variance. At the last time we
8 met, I directed you and the Office of Planning
9 to take a closer look at the variance test and
10 referred you to one of the Court of Appeals'
11 cases, which is just one of the first, which
12 was Palmer, to get a better understanding of
13 the law.

14 Because if this is not a special
15 exception, this is a variance and it's not --
16 it's a much higher standard. It's not just
17 like there is no adverse impact and we need to
18 do it or it's in the character of the
19 neighborhood. It's you have to actually show
20 why your particular property is so different
21 from all these other properties so that it's
22 not like we're rezoning.

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1 Like we can't just decide that you
2 don't need to meet that requirement. That's
3 really -- that would be for the Zoning
4 Commission to decide. But if your property
5 has some unique circumstances, then we are
6 authorized to grant the relief. That's the
7 first test and so that was my question. Does
8 this property have some unique topography,
9 which I didn't see in the record, that creates
10 a difficulty for you to develop the property
11 as a matter-of-right and that's why you need
12 this relief.

13 MR. AGBIM: Right. Well, there is
14 some unusual topography, that's -- the main
15 essence of our seeking this variance relief is
16 the size of the property, the dimensions. The
17 property dimensions being on the -- the width
18 of the lot being 40 feet.

19 CHAIRPERSON MILLER: Okay. Is that
20 an unusually narrow lot?

21 MR. AGBIM: Yes, I would say that's
22 a narrow lot for this requirement.

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1 CHAIRPERSON MILLER: Is it
2 unusually narrow from other lots in the
3 neighborhood?

4 MR. AGBIM: No. It's fairly
5 consistent with other lots in the
6 neighborhood.

7 CHAIRPERSON MILLER: It's
8 consistent?

9 MR. AGBIM: Yes.

10 CHAIRPERSON MILLER: So it's not
11 unique in that sense?

12 MR. AGBIM: It's unique in the
13 sense that based on the dimensions of the lot,
14 meeting the strict provisions of this
15 requirement becomes challenging. And this is
16 just under the physical, because I'm still
17 going to go through the other sections of the
18 test for variance.

19 CHAIRPERSON MILLER: Okay.

20 MR. AGBIM: Okay. The second,
21 granting the application would not be a
22 substantial detriment to public good, in terms

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1 of traffic, noise, lighting. In this
2 instance, I'm stating that this variance,
3 since it affects just one property and since
4 it would just be four vehicles that will be
5 going in and out on this drive aisle, that the
6 variance is being sought for, that this will
7 not in any way affect the public, the general
8 public in terms of noise, traffic, pollution
9 or lighting.

10 We believe that even with four
11 parking spaces that it's possible to affect a
12 one way use of this drive aisle, if approved
13 for a 9 foot drive aisle.

14 No. 3, granting the application
15 will not be inconsistent with the general
16 intent and purpose of the Zoning Regulations
17 and Map. And here again, we're trying to
18 adhere to one of the requirements, which is to
19 provide one parking space per unit. And we
20 believe that once this is done and once the
21 project is approved, that there will not be
22 any inconsistency provided due to the approval

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1 of this variance to the Zoning Regulations,
2 Zoning Map and the qualities in the
3 neighborhood.

4 CHAIRPERSON MILLER: Any questions
5 from Board Members? Okay. Let's turn to Mr.
6 Moore, Office of Planning.

7 MR. MOORE: Good afternoon, Madam
8 Chair and Members of the Board. John Moore,
9 Office of Planning. Again, the Office of
10 Planning after reviewing this application, we
11 are in support of it and I'll stand on the
12 record in that regard. I am anticipating that
13 you will ask me the same questions you just
14 asked the applicant.

15 CHAIRPERSON MILLER: Yes. How does
16 it meet the variance test?

17 MR. MOORE: As we honestly reviewed
18 this application, we had to start from premise
19 that the variance is only applicable behind
20 the applicant's desired development of the
21 site. In other words, the site can be
22 developed as a matter-of-right. The applicant

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1 chose to develop the site with a multi-family
2 building, such is his right if the Board
3 approves it, of course.

4 If you accept his selection in
5 terms of what he wants to do with the site,
6 then there is support for the variance.
7 Example, as is already mentioned, the lot is
8 40 feet in width, not unusual for the
9 community or the city. The uniqueness is what
10 he want to do with the lot, because if he
11 wants to put the multi-family on it knowing
12 that you got to make the side yard
13 requirements and you need the drive aisle
14 width, if you're now down to 23 feet, which
15 means a 17 feet building, the Office of
16 Planning said no.

17 In some case, we don't mind a row
18 house to be 17 feet in width, but not a multi-
19 family building. When you think about the
20 impact of the users of that structure,
21 especially children, the narrowness, keep in
22 mind there is no recreation on-site here,

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1 what's the likelihood that the building will
2 still be standing five years from today? And
3 then we have to go back through this whole
4 process again.

5 So the applicant's selection in
6 terms of putting the multi-family building on
7 there is supportable under the variance test,
8 if you accept that that is his right to do.

9 CHAIRPERSON MILLER: Well, let me
10 ask you. I understand, I think, I'm following
11 your argument that if you accept that there is
12 a practical difficulty if he puts a multi-
13 family dwelling on this site, there is a
14 practical difficulty.

15 MR. MOORE: Yes, because it's got
16 to meet other --

17 CHAIRPERSON MILLER: I got that.
18 Okay. But I don't see what you see as the
19 uniqueness here or the exceptional condition.

20 MR. MOORE: If you don't accept an
21 argument, I don't see --

22 CHAIRPERSON MILLER: I don't see

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1 it. No, maybe you can just tell me. I
2 understand what you are saying about the
3 practical difficulty. Like he is entitled to
4 seek a 353 in this zone and by doing so, there
5 is a practical difficulty in building this
6 multi-family dwelling, because of the
7 narrowness of the lot.

8 MR. MOORE: Yes.

9 CHAIRPERSON MILLER: I get the
10 second prong, just at least what you are
11 saying. My question goes to the first prong
12 though, what is unique here? What is
13 exceptional for the first prong of the test?

14 MR. MOORE: If you don't accept the
15 applicant's desired building type, there isn't
16 one.

17 BOARD MEMBER ETHERLY: I mean,
18 perhaps to bridge, I believe, where the Chair
19 is coming from, would it perhaps be a stretch
20 to characterize this particular parcel as for
21 the purposes of a multi-family unit for multi-
22 family structure, is this particular parcel

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1 narrow in an unusual way compared to other
2 narrow parcels? I think I understand
3 precisely what you're saying. I'm just kind
4 of trying to bridge to the Chair's question.

5 I think the bottom line is he wants
6 to build a multi-family unit, a multi-family
7 structure on the property. It is what it is.

8 If you put a multi-family structure on this
9 property, there is not enough space to do most
10 of what you need and get the right size drive
11 aisle.

12 MR. MOORE: That's very accurate.

13 BOARD MEMBER ETHERLY: Okay.

14 MR. MOORE: Keep in mind in terms
15 of characterizing the immediate area as well
16 as the Marshall Heights community, there are
17 many other multi-family buildings in the
18 community. All of them are not held to 40
19 foot requirements. There are some larger mid-
20 rise buildings in the area at over 100 feet in
21 width.

22 So again, that's why I said that

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1 given the applicant's desire to what he want
2 to put on the site, it --

3 CHAIRPERSON MILLER: I mean, Mr.
4 Moore, picking up on what you were saying
5 about other multi-family buildings being on
6 larger lots.

7 MR. MOORE: Yes.

8 CHAIRPERSON MILLER: There is some
9 logic to that. Does that mean that that's a
10 preferable situation?

11 MR. MOORE: No.

12 CHAIRPERSON MILLER: As far as --

13 MR. MOORE: No, that's the -- in
14 terms of the community perspective and the
15 dreaded Comprehensive Plan, it actually calls
16 for lower densities in that community as
17 opposed to the higher densities. So, no, is
18 the answer.

19 CHAIRPERSON MILLER: Are you
20 satisfied with the landscaping around the
21 parking lot or the lack thereof?

22 MR. MOORE: No, some of the same

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1 comments made on the earlier cases are
2 applicable here. And again, we anticipated
3 DDOT doing a report and they did do one in
4 this case. I had to pull it back, because it
5 didn't address the area that should be
6 addressed. If you have a copy of it, it
7 actually pays more attention to a one way 12
8 foot drive aisle without saying how it stood
9 with respect to the 14 foot drive aisle, which
10 has been asked for here.

11 So I pointed out to them and asked
12 them to pull it back and correct that part of
13 their report. So you'll be getting a
14 different copy of that.

15 CHAIRPERSON MILLER: Thank you.

16 COMMISSIONER TURNBULL: But aren't
17 we just trying to shoehorn the building in
18 with such a narrow drive next to the building?
19 And isn't there a health safety issue? And
20 aren't we a little bit concerned about what we
21 are trying to -- I think, because people are
22 going to walk also back there to get to their

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1 car and it just seems like we're trying to
2 make a reason or make a case for putting this
3 type of a structure on this kind of a site and
4 saying well, in order to do it, it needs a
5 variance.

6 But aren't we just -- it seems like
7 we are almost trying to create that rationale
8 to do it. And it just seems like 9 feet is a
9 very narrow drive aisle.

10 MR. MOORE: That is a fair
11 assumption. And to be honest, after we waived
12 the applicant's ability to ask for all what he
13 wanted to do there, our question then became
14 one of do you have the applicant seek relief
15 from parking period, therefore, further
16 impacting the public space for parking or do
17 we try to adjust the fact that he has only got
18 a maximum, in this case, 10 feet, especially
19 since minimum width of some of our own alleys
20 are only 10 feet.

21 Do we try to make the case here as
22 opposed to having him have his cars park on

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1 public space, thereby creating more
2 circulation and safety problems by competing
3 for parking with other users? And we figured
4 we would just error on the side of trying to
5 support that narrow space, that it does exist,
6 since there is a minimum number of cars that
7 are going to be using it.

8 I mean, if it was 10 or 20 cars,
9 we, obviously, couldn't support that.

10 COMMISSIONER TURNBULL: Right.

11 MR. MOORE: But with four cars we
12 figured that a gentleman's agreement would say
13 if I'm coming, somebody back up and let
14 somebody else come in.

15 BOARD MEMBER ETHERLY: I mean, I
16 think part of the tension is it's a familiar
17 question for the Board and that is when an
18 applicant comes to us with a particular
19 project, to an extent there is tension between
20 what the applicant has a right to want to do
21 with the property and whether or not it fits
22 on the subject property at hand. But to an

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1 extent, the Board can't control what an
2 applicant brings to us, other than saying I
3 want to do a multi-family dwelling here, sort
4 out whether it can fit within the zoning
5 context.

6 And what I'm hearing the Office of
7 Planning say is if you accept that the
8 applicant is here asking for a multi-family
9 unit, obviously, we are trying to struggle
10 with the question of can they do it here? I
11 think the question is yes, you can do a
12 single-family dwelling here and not need the
13 relief, but that's not what the applicant is
14 bringing to us.

15 So acknowledging that the applicant
16 is here with a multi-family structure, we then
17 have to figure out well, can it work on the
18 subject property? And I think Mr. Turnbull's
19 question is a good one, you know. To an
20 extent you probably can characterize it,
21 roughly so, but I think you can, are we
22 shoehorning in a structure that would be

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1 better suited elsewhere?

2 But from my standpoint, that gets
3 us very close to that tension of, you know,
4 how far do we go in terms of telling an
5 applicant hey, I know you want to do a multi-
6 family dwelling here, but, you know, it's just
7 kind of not going to work.

8 MR. MOORE: Thanks for the
9 explanation. Keep in mind that when we meet
10 an applicant in a case like this, the first
11 thing we do is remind them of what you can do
12 as a matter-of-right.

13 BOARD MEMBER ETHERLY: Correct.

14 MR. MOORE: That's the first thing
15 we do. It's still the applicant's --

16 BOARD MEMBER ETHERLY: Choice.

17 MR. MOORE: -- own position if they
18 want to do something different, such is the
19 case now.

20 BOARD MEMBER ETHERLY: Um-hum. And
21 what you were saying is conceivably, the
22 applicant could say I'm just going to seek

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1 relief from parking all together and could not
2 include any parking.

3 MR. MOORE: It could have been
4 that.

5 BOARD MEMBER ETHERLY: But then
6 that, of course, raises other issues around
7 impacts to the surrounding community and from
8 a planning standpoint, that might be a less
9 desirable outcome than one of providing some
10 parking, however constrained it may be, so we
11 don't create other impacts. So there is a
12 little bit of tension between all of that, but
13 yet, we're still here with what we have, which
14 is the variance question.

15 And I'm not saying it answers your
16 question, which is what's unique about this
17 property. I think to an extent the
18 applicant's argument is part of the uniqueness
19 is driven by the fact that I am trying to --
20 my client is putting a multi-family structure
21 on the property. That may not get you where
22 you need to be, Madam Chair, or deal with the

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1 answer to your question, Mr. Turnbull, but to
2 an extent my long-winded soliloquy here is it
3 is what it is.

4 CHAIRPERSON MILLER: Okay. Let me
5 say this and we're taking these cases one by
6 one, but we're all on the same cases and I
7 know that coming right after this one is
8 another one and another one and I think
9 another one where the circumstances are the
10 same. So I'm very much stuck on what
11 uniqueness we're talking about. So I don't
12 know if anyone has anything else to add, at
13 this point.

14 BOARD MEMBER ETHERLY: It's an
15 excellent question that's right on target. I
16 don't know if -- I'm pretty sure I'm probably
17 not going to have an answer to convince you
18 and I'm not trying to, because, obviously,
19 we're not in deliberation here. I think I
20 understand that applicant's case here and what
21 they are trying to suggest as the answer to
22 that question. And I think we're just going

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1 to have to grapple with whether it is
2 sufficient or not.

3 MR. MOORE: May I make one more
4 comment on this one? As stated before, again,
5 we got this project and I'm taking them
6 individually now. One of the very first
7 considerations we gave this application was
8 that the lot had historically been vacant and
9 an eyesore on the community. If you look
10 individually at each one of these cases,
11 that's what you find on the lots that are
12 being developed.

13 So, of course, we support the
14 development of those lots. That's when it
15 became an issue of what can we live with now
16 in negotiating terms of putting on there?
17 What do you want to do versus what we can do
18 as a matter-of-right and how -- is there a
19 median point by which we can reach.

20 If you remember on the one we did
21 on W Street, two or three -- about a month
22 ago, in that case, we negotiated the applicant

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1 as opposed to having four floors of units
2 combined the first and second, the basement
3 and the -- or the cellar and the first level
4 to create a townhouse with an appropriate home
5 front facade on it and put the two units
6 upstairs.

7 Some of you may remember that case.

8 We didn't go that far in this case thinking
9 that the greater good was to get the vacant
10 lots into some active development that could
11 reflect positively on the community.

12 COMMISSIONER TURNBULL: No, I think
13 your point is well-taken and it's got a lot of
14 value to it in trying to develop lots like
15 this. And I think the only question that I
16 think concerns me is stretching the variance
17 rule to a point where it comes back to haunt
18 us later on where someone else comes in for
19 something else that's maybe not quite the
20 same, but they refer back to this case and say
21 well, you let so and so do it because of this.

22 So I think there is a little

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1 ambivalence on our part to jump into this and
2 make sure that we are not setting up something
3 that later on may set another precedent for
4 us. So I think we are just a little concerned
5 about how to read that. At least I am anyway.

6 CHAIRPERSON MILLER: I am very
7 concerned. I don't -- it's different from a
8 special exception. It's not just that there
9 aren't any adverse impacts that fits within
10 the quality and characteristics of the
11 neighborhood. It has to be unique and there
12 has to be a practical difficulty arising out
13 of that uniqueness. That's our charge to
14 find. So there it is.

15 Okay. Anything else from the
16 Board? Mr. Agbim, do you have a copy of the
17 Office of Planning's report? And did you have
18 any questions for the Office of Planning?

19 MR. AGBIM: No.

20 CHAIRPERSON MILLER: Okay. Did the
21 ANC in this case -- are they here? Is anybody
22 else here to testify in support or opposition?

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1 Okay. Then it's up to you, Mr. Agbim, for
2 any closing remarks.

3 MR. AGBIM: Yes, I would like to
4 close by stating that during the coordination
5 sessions with Office of Planning, we had
6 looked carefully at the options of this
7 project. We had also looked carefully at
8 other options in terms of site planning for
9 the project. And like Mr. Moore said, all the
10 other avenues we have to avoid going through
11 this variance or seeking a variance would
12 create further adverse impacts.

13 I'll try to highlight one of the
14 situations. One of the options was to pull
15 the property to the property line and make it
16 a semi-detached structure with only one side
17 yard. In that case, really removing any need
18 for special exception. However, when we do
19 this, we begin to create other problems with
20 proximity to the next door properties and
21 other situations of affecting quality of air
22 and light will come in, because we can't then

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1 have windows on that site, that's on the
2 property line.

3 So I pray the Board to take these
4 factors into consideration in making a
5 decision on this case. Thank you.

6 CHAIRPERSON MILLER: Are you
7 referring to do a multi-family dwelling?

8 MR. AGBIM: Yes, the same design,
9 but placed --

10 CHAIRPERSON MILLER: The same
11 design, but placed differently?

12 MR. AGBIM: -- on the lot line, so
13 it becomes a semi-detached structure.

14 CHAIRPERSON MILLER: Um-hum.

15 MR. AGBIM: With only need for one
16 side yard. Now, that side yard will
17 effectively be more than 14 feet and the need
18 to seek a variance will go away, but again,
19 the reason why we did not go that route is
20 just because we know that it's going to create
21 adverse impacts, possible adverse impacts on
22 the next door neighbors having this wall, 30

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1 foot high wall on the property line. So we
2 chose to still have two side yards and seek
3 this relief.

4 CHAIRPERSON MILLER: And what about
5 the issue of single-family dwelling?

6 MR. AGBIM: The owner of the
7 property came up with the -- what they want to
8 use the property for.

9 CHAIRPERSON MILLER: Okay.
10 Anything else?

11 MR. AGBIM: That's it.

12 CHAIRPERSON MILLER: Okay. Then I
13 guess we can schedule this for decision making
14 also for June 5th. Are we leaving the record
15 open though for something, Mr. Moore?

16 MR. MOORE: There is a revised DDOT
17 report.

18 CHAIRPERSON MILLER: There is a
19 revised DDOT report that is going to be coming
20 in? And does that effect the plans to be
21 revised? No? Okay. But the applicant might
22 want to respond to the revised DDOT report,

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1 correct? Okay. Ms. Bailey, can we schedule
2 that so that there is time for both, the
3 report to come in and then the response?

4 MS. BAILEY: I'm going to schedule
5 for the same date as we did the previous
6 application and that is the submissions by May
7 29th and then the applicant can respond by June
8 1st.

9 CHAIRPERSON MILLER: Okay.

10 MS. BAILEY: And, Madam Chair, I
11 just wanted to bring to your attention that
12 the --

13 CHAIRPERSON MILLER: The ANC
14 report? No, I'm sorry, I was just recalling
15 that I wanted to note for the record that we
16 did get a report from the ANC or a letter,
17 dated May 9, 2007, signed by Mr, David Inoue,
18 Advisory Neighborhood Commissioner, for Single
19 Member District 7E06. Do you have a copy of
20 that Mr. Agbim?

21 MR. AGBIM: No, it was mailed to
22 me, but I haven't received it.

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1 CHAIRPERSON MILLER: You don't have
2 it yet?

3 MR. AGBIM: No.

4 CHAIRPERSON MILLER: You haven't
5 seen it?

6 MR. AGBIM: I know what it
7 contains, but I --

8 CHAIRPERSON MILLER: Okay.

9 MR. AGBIM: -- just haven't
10 received it.

11 CHAIRPERSON MILLER: Okay. Okay.

12 MR. AGBIM: All right.

13 CHAIRPERSON MILLER: I just want to
14 note that that's in our record, even though
15 the ANC is not here today.

16 MS. BAILEY: Mr. Agbim?

17 CHAIRPERSON MILLER: So the record
18 really is only open for DDOT's revised report
19 and then any responses to that by Mr. Agbim.
20 I guess the ANC could respond, but there is no
21 requirement. It would be open though to them,
22 too. Any other comments by Board Members?

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1 No? Okay. I think that concludes that case.

2 We can move on to the next one.

3 MS. BAILEY: The next Application
4 is No. 17597 of Taiwo Demuren, pursuant to 11
5 DCMR 3104.1, for a special exception to
6 construct a four unit apartment building under
7 section 353 at premises 5323 D Street, S.E.
8 The property is in Square 5300, Lot 6. It is
9 Zoned R-5-A and the Board had indicated that
10 variance relief is required from section
11 2117.8(c) of the Regulations.

12 CHAIRPERSON MILLER: Is this the,
13 Mr. Agbim, same ANC, correct?

14 MR. AGBIM: That's correct.

15 CHAIRPERSON MILLER: Okay. So they
16 are not here. So okay, I'm going to turn it
17 over to you then if you want to briefly
18 summarize.

19 MR. AGBIM: Right. My name is Ike
20 Agbim, 9611 Cedarhollow Lane, Upper Marlboro,
21 Maryland 20774, applicant. This proposal is
22 for a four unit building on R-5-A Zone, 4,000

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1 square foot lot. It meets all applicable
2 provisions of Chapter 4 and, basically, also
3 seeks a variance besides the special exception
4 for the drive aisle width. Thank you.

5 CHAIRPERSON MILLER: Is there
6 anything different about this case that you
7 want to address? I know we went through the
8 whole variance discussion the last time for
9 the other case. I assume the arguments are
10 similar, but I don't want to presume it
11 necessarily, if there is something else you
12 need to add for this case.

13 MR. AGBIM: This is perhaps, from a
14 site planning perspective, identical, other
15 than the fact that the grade issues are
16 somewhat different. This is a fairly level
17 lot with some steep slope in the rear. So
18 because of the steep slope, we have done some
19 grading in the rear and enclosed the rear area
20 also with a retaining wall.

21 This time the 5 foot retaining wall
22 will, in fact, house the 6 foot fence. So we

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1 have a possible resulting height on the
2 parking lot side of more than 7 feet.

3 CHAIRPERSON MILLER: Okay. I do
4 want to bring up something different in that I
5 mentioned in the previous case that we just
6 finished that we got an ANC letter, but we
7 really didn't get into the substance of the
8 letter, but it applies to all four cases,
9 17596, 97, 98, 99, so why don't we look at it
10 in this case? And I believe Ms. Bailey gave
11 you a copy of the letter just now, right?

12 MR. AGBIM: That's right.

13 CHAIRPERSON MILLER: Okay. They
14 mention in this letter that the owners --
15 well, I'll read it. I'll read this line and
16 see if you want to respond to it. It says
17 "Given the owner's willingness to cooperate on
18 the issues named above, reduction of the size
19 of the buildings or apparent size of the
20 buildings relative to adjacent buildings,"
21 let's just stop there right now.

22 Have you changed the height of the

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1 buildings?

2 MR. AGBIM: No. There was no
3 agreement to change the height of the
4 building.

5 CHAIRPERSON MILLER: So what are
6 they referring to? Is there some agreement?

7 MR. AGBIM: They actually did
8 suggest that we reduce the height of the
9 building by reducing the number of units. And
10 I did mention to them that I was going to let
11 the owner know and see what he decides to do.

12 The owner has -- however, we have reviewed
13 all the other buildings on the block and I
14 have pictures of the rest of the buildings on
15 the block. And we feel that this structure at
16 this height is still going to be very -- will
17 fit in very well to the rest of the buildings
18 on the block.

19 CHAIRPERSON MILLER: This is not
20 really germane to our decision making in the
21 zoning context, but just so that I understand
22 the other thing that was submitted in

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1 connection, I think, with this letter is a
2 Memorandum of Understanding. Do you have
3 that?

4 MR. AGBIM: Yes.

5 CHAIRPERSON MILLER: That was
6 agreed to by the owner?

7 MR. AGBIM: Yes.

8 CHAIRPERSON MILLER: Okay. So
9 whatever is in that Memorandum of
10 Understanding, that's not at issue. Okay.
11 Because I think that's referenced in this
12 letter as well. Okay. Thank you.

13 BOARD MEMBER ETHERLY: So just to
14 be very clear, if I may, Madam Chair, with Mr.
15 Agbim, while there has been some discussion
16 with the ANC and/or members of the community
17 around height-related concerns that they may
18 have, at this point the plans, as presented,
19 contain no changes whatsoever to building
20 height?

21 MR. AGBIM: That's correct.

22 BOARD MEMBER ETHERLY: Okay. And

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1 I'll take the unusual step of saying that will
2 be true in all of the other similar cases that
3 we're dealing with today?

4 MR. AGBIM: That's correct.

5 BOARD MEMBER ETHERLY: Okay. And
6 as far as you are aware, there is no ongoing
7 consideration to changing the plans in that
8 regard? Your building height is what you are
9 presenting?

10 MR. AGBIM: That's correct.

11 BOARD MEMBER ETHERLY: Excellent.
12 Thank you, Madam Chair.

13 CHAIRPERSON MILLER: Thank you.
14 Any other questions? Okay. I think then we
15 can turn to the Office of Planning.

16 MR. MOORE: Good afternoon, Madam
17 Chair and Members of the Board. John Moore
18 again. This application, as previously
19 stated, meet the requirements of section 353,
20 which simply states that new construction must
21 be approved by this Board in the R-5-A and the
22 section is mostly referral and the referrals

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1 are there in terms of it meeting the school's
2 capacity to accommodate whatever students can
3 be worked that meet the housing goals.

4 It is consistent with the
5 Comprehensive Plan. Beyond that, I make the
6 same comments. Well, I won't make them. The
7 same comments apply that applied to the last
8 case. In this one is a little slightly
9 different issue. Remember, on the case this
10 morning, I said we actually support an
11 apartment building in the location in the case
12 this morning.

13 In this case, if you look at the
14 drawing provided in the Office of Planning's
15 report, you can clearly see that there are two
16 single-family houses on both sides of the site
17 and, of course, we then tried real hard to get
18 the applicant to do similar, but again, it was
19 his position that this is what the owner
20 wanted to do with the property and we can't
21 tell him he can't do that with the property,
22 if the law says you can.

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1 BOARD MEMBER ETHERLY: If I may,
2 Madam Chair, perhaps not wanting to
3 necessarily stumble again into what I think
4 was in large part important, philosophical
5 kind of a question in the prior case in terms
6 of that tension that I referred to, I want to
7 be very sure that it is, however, the Office
8 of Planning's position that with respect to
9 the Comprehensive Plan, there is nothing
10 within the Comprehensive Plan which would
11 suggest that a multi-family structure at this
12 location would be inappropriate.

13 MR. MOORE: No.

14 BOARD MEMBER ETHERLY: Okay. But
15 from a, shall we say, contextual standpoint,
16 because you have existing single-family homes
17 on either side of the subject property, it was
18 something that was broached by the Office of
19 Planning, just from the standpoint of the
20 current context of the immediate neighborhood?

21 MR. MOORE: That also is true,
22 especially when you add to that that there is

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1 a large contingency in the community that
2 says, as I mentioned earlier, more low density
3 housing, fewer apartment buildings.

4 BOARD MEMBER ETHERLY: Um-hum.

5 MR. MOORE: That's just the
6 sentiment in the community right now.

7 BOARD MEMBER ETHERLY: Yes, sir.
8 Okay. Thank you, Madam Chair. Thank you,
9 sir.

10 CHAIRPERSON MILLER: Mr. Moore?

11 COMMISSIONER TURNBULL: Madam
12 Chair?

13 CHAIRPERSON MILLER: Oh, I'm sorry,
14 go ahead.

15 COMMISSIONER TURNBULL: I just
16 wanted -- Mr. Moore, in the OP report you
17 mentioned 9 foot side yards.

18 MR. MOORE: Yes.

19 COMMISSIONER TURNBULL: Although,
20 on the applicant's drawings, he has got a 10
21 foot and an 8 foot.

22 MR. MOORE: That was in the first

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1 case 96, the applicant did change from the 9
2 and 9 to 10 and 8 trying to get closer to the
3 14 foot aisle width. Now, I don't know if
4 that is consistently done throughout all four
5 or not.

6 COMMISSIONER TURNBULL: Well, he
7 has done it again.

8 MR. MOORE: Okay. Then it could
9 be. Then our report would be in error.

10 COMMISSIONER TURNBULL: Okay. I
11 mean, what's the minimum he needs?

12 MR. MOORE: 14 feet for aisle
13 width.

14 COMMISSIONER TURNBULL: Okay.

15 MR. MOORE: Not side yard.

16 COMMISSIONER TURNBULL: What about
17 side?

18 MR. MOORE: 8.

19 COMMISSIONER TURNBULL: 8 feet for
20 the side yard. Okay. Thank you.

21 MR. MOORE: Um-hum.

22 CHAIRPERSON MILLER: Mr. Moore,

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1 we're waiting for a DDOT report in this case
2 as well? Do we have one? We do? Okay. Mr.
3 Etherly is looking. Are you aware of one?

4 MR. MOORE: I think it's the one I
5 mentioned to you that was in error.

6 CHAIRPERSON MILLER: This one is in
7 error?

8 MR. MOORE: That's the one where
9 they focused on the one way circulation being
10 12 feet as opposed to --

11 CHAIRPERSON MILLER: Oh, okay.

12 MR. MOORE: And I have asked them
13 to revise that.

14 CHAIRPERSON MILLER: So we're
15 waiting for a revision?

16 MR. MOORE: Yes, on all four.

17 CHAIRPERSON MILLER: On all of
18 them.

19 MR. MOORE: Yes.

20 CHAIRPERSON MILLER: Okay. Okay.
21 Okay. I wanted to make sure about that. And
22 now, am I correct that you didn't address the

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1 variance test in the OP report?

2 MR. MOORE: Yes, we did.

3 CHAIRPERSON MILLER: You did
4 address it?

5 MR. MOORE: Um-hum.

6 CHAIRPERSON MILLER: I'm not
7 correct. Okay. I see all the 353, page 7,
8 okay. I just want to understand in this
9 case, it may be the same, but it undermines
10 the -- what is unique? Anything unique that
11 you want to add about this case, this lot,
12 this property?

13 MR. MOORE: The closest I can get
14 to a uniqueness would be the existing
15 condition of these lots.

16 CHAIRPERSON MILLER: Well, I just
17 don't understand what -- the existing
18 condition of these lots. Why is this unique
19 compared to the existing condition of any lot
20 that we would be looking at?

21 MR. MOORE: Because --

22 CHAIRPERSON MILLER: Is every lot

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1 unique, because it's its own lot under that?

2 MR. MOORE: No. First, you would
3 be hard pressed to find this many lots
4 probably in any community in the city west of
5 the river, west of the Anacostia River where
6 you have this many lots that's developable.
7 Notwithstanding they had been historically
8 undeveloped and unsightly. It's one thing to
9 say that applies to a lot in a neighborhood.
10 It's a different thing to say that applies to
11 10 lots in the neighborhood, because that
12 begins to affect the character of that
13 neighborhood.

14 That's as close as I can come. And
15 again, as I said earlier, it's if the Board
16 accepts that the applicant has the right to
17 develop the property according to regulations
18 as he sees fit as opposed to what we recommend
19 they do with it. And again, we did recommend
20 developing the site as a matter-of-right.

21 CHAIRPERSON MILLER: You know,
22 we're going to deliberate on this later, so I

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1 just want to make sure that I understand your
2 point. Are you saying because there are 10
3 vacant lots that there is something unique
4 about the lot or are you saying it's unique
5 because it's historically vacant in and of
6 itself?

7 MR. MOORE: I guess some of both,
8 but more or less it's because the lots have
9 been historically vacant and created gaps in
10 the community fabric. And of course, we
11 wouldn't be planners if we didn't want to see
12 those lots come to --

13 CHAIRPERSON MILLER: I can see how
14 you want to see that problem addressed and
15 those lots developed. I'm just trying to look
16 at the uniqueness argument.

17 MR. MOORE: The argument loses a
18 lot of weight at that point. The argument
19 loses a lot of weight beyond that point,
20 that's why I mentioned earlier it depends upon
21 what this Board accepts in terms of the
22 applicability to develop the property like

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1 they want to.

2 CHAIRPERSON MILLER: Okay. Because
3 I just think we're almost finished discussing
4 it, but, you know, we hear lots of cases, so
5 weeks from now someone is going to come
6 forward and say this has been a historically
7 vacant lot. And so -- I mean, we have heard
8 that in the past, so I just was wondering if
9 that was the Office of Planning's position
10 that just because a lot has been historically
11 vacant, does that make it exceptional?

12 MR. MOORE: No, that's not what I'm
13 trying to say.

14 CHAIRPERSON MILLER: Okay. Okay.

15 MR. MOORE: What I'm actually
16 saying is that if you look at neighborhoods,
17 communities in the city, pick any neighborhood
18 name you want to, you would be hard pressed to
19 find 10 undesirable lots in any one particular
20 neighborhood that cry out for development or
21 historic, because it has not been developed
22 given the premium on development and land in

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1 the city. That does exist in neighborhoods
2 east of the river. But I think that you need
3 for the rest of the city.

4 CHAIRPERSON MILLER: I see. So
5 what you are saying is this neighborhood is
6 unique because it has so many undeveloped
7 lots?

8 MR. MOORE: All of these properties
9 are within a quarter mile of each other.

10 CHAIRPERSON MILLER: Okay. Thank
11 you. Okay. Anybody else here to testify in
12 support or opposition on this case? Not
13 seeing anybody come forward then, Mr. Agbim,
14 you can make any closing remarks you would
15 like, at this time.

16 MR. AGBIM: I wish to close by, you
17 know, praying the Board again to consider the
18 situations we have around this property and
19 approving this special exception and variance.
20 Thank you.

21 CHAIRPERSON MILLER: Thank you very
22 much. Okay. Ms. Bailey, I believe we can set

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1 the same schedule as the last time. We are
2 waiting for a revised DDOT report.

3 MS. BAILEY: Sure, Madam Chair.

4 CHAIRPERSON MILLER: And then the
5 applicant can respond to that.

6 MS. BAILEY: And that is the
7 decision of the Board is scheduled for June 5,
8 2007. The DDOT report should be filed by May
9 29th and the applicant may respond to that
10 report by June 1st.

11 CHAIRPERSON MILLER: I don't see
12 any reason not to allow the ANC to respond as
13 well if they choose. Does anybody else?
14 Okay. So you can leave the record open for
15 them to respond, if they so choose.

16 MS. BAILEY: The ANC as well.
17 Thank you.

18 CHAIRPERSON MILLER: Okay.

19 MS. BAILEY: Are we on to the next
20 case?

21 CHAIRPERSON MILLER: I think we
22 are.

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1 MS. BAILEY: Application No. 17598
2 of Taiwo Demuren, pursuant to 11 DCMR 3104.1,
3 for a special exception to construct a four
4 unit apartment building under section 353 at
5 premises 5139 Astor Place, S.E. The property
6 is in Square 5309 on Lot 13. It is Zoned R-5-
7 A and the Board has determined that the
8 application does require area variance relief
9 from section 2117.8(c) of the Regulations.

10 CHAIRPERSON MILLER: Okay. Is
11 there anything in particular you want to point
12 out about this application, you know, that
13 might be different from what we have been
14 discussing with respect to the preceding ones?

15 MR. AGBIM: Yes, this is identical
16 to the --

17 CHAIRPERSON MILLER: It's
18 identical?

19 MR. AGBIM: -- license cases.

20 CHAIRPERSON MILLER: And the
21 revised plans are identical to the preceding
22 ones?

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1 MR. AGBIM: That's correct.

2 CHAIRPERSON MILLER: Okay.

3 MR. AGBIM: The preceding one on
4 Astor Place.

5 CHAIRPERSON MILLER: I'm sorry,
6 what?

7 MR. AGBIM: The preceding project
8 on Astor Place.

9 CHAIRPERSON MILLER: Okay.

10 MR. AGBIM: With the exception that
11 the trash enclosure is not placed on the front
12 property line. The trash enclosure is set
13 back to the building line and the detail is
14 attached for the trash enclosure area on the
15 right side of the building.

16 CHAIRPERSON MILLER: Okay. Shall
17 we go to the -- does anybody have any
18 questions? Yes, Mr. Turnbull does. Okay.

19 COMMISSIONER TURNBULL: Madam
20 Chair, I guess, again looking at the drawings,
21 once you get past the site plan, which if you
22 want to call it page 2, page 3 and 4 don't

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1 match up with the entrance to the house. It's
2 from another plan. It's not the same. And I
3 guess, you know, we didn't get into it on the
4 other one we just had, but this one again
5 shows area wells for the bedroom units.

6 But on the previous plan there were
7 no area wells. And what concerns me is that
8 the area well for one of the bedrooms would be
9 in the driveway. We're mixing up. I mean,
10 these things are running together here. But
11 in the previous one, the bedroom window was on
12 the driveway side, which if I understand what
13 we did in the previous one, then we have a
14 problem.

15 And if I go back to the 96, the
16 bedroom has a 3 foot window. There is one
17 bedroom on the back and there is a bedroom
18 window on the side, but it's by the -- it's on
19 the driveway side. And we never picked that
20 up, but going back to seeing the area wells
21 now on this one, seeing how it is flipped that
22 the -- on this case, he has got -- the

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1 bedrooms are flipped, so that it's on grassy
2 area.

3 So if he's having a window well,
4 you could do it, but on the one we just
5 discussed, there were no area wells showing
6 and the window for the one bedroom is on the
7 driveway. So, I mean, unfortunately, these
8 things are running together and we're looking
9 at them so much that we're -- I think we're
10 sometimes go over -- I mean, we sort of gloss
11 over them. I didn't pick it up on the last
12 one. But I'm assuming you need area wells on
13 all of them.

14 MR. AGBIM: That's correct. The
15 floor prints on the project 5323 D Street,
16 actually, we present a mirrored version of the
17 actual floor plan, so you are right. Based on
18 what you see on this floor plan, the area
19 wells will coincide into the driveway and
20 that's not intent. The intent is to have the
21 area ways on the grass, on the landscaped side
22 of the property.

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1 In that case, the elevations will
2 hold true. The front elevation, the entrance
3 as shown on the front elevation on Project
4 5323 D Street, the front elevation will hold
5 through. However, the floor plan will be a
6 mirrored version of what you see on that set.

7 COMMISSIONER TURNBULL: So what you
8 are saying is you've got the wrong floor
9 plans, that they are --

10 MR. AGBIM: Right. The floor plan
11 is a mirror image, right.

12 COMMISSIONER TURNBULL: I think
13 we're going to need corrected floor plans.

14 MR. AGBIM: That's true. I can
15 provide that.

16 CHAIRPERSON MILLER: Is that for
17 all the cases, Mr. Turnbull, or are you
18 referring to --

19 COMMISSIONER TURNBULL: No, just
20 these two.

21 CHAIRPERSON MILLER: -- the two.
22 These two cases or just this case?

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1 COMMISSIONER TURNBULL: Well, no.
2 The area wells are needed on all the bedrooms.
3 But on the last set of drawings we looked at
4 for the last case, the elevation showed one
5 thing and we didn't pick it up, but the floor
6 plans are reversed. They should be flipped
7 over. And then he says they will be on the
8 grassy area. But I think it's only on 97.

9 MR. AGBIM: Right. It's on D
10 Street, right.

11 COMMISSIONER TURNBULL: On D
12 Street.

13 CHAIRPERSON MILLER: Okay. So we
14 would be expecting revised plans?

15 MR. AGBIM: We'll provide a mirror
16 image of the floor plan to match.

17 CHAIRPERSON MILLER: In 17597?
18 Okay.

19 MR. AGBIM: Right.

20 CHAIRPERSON MILLER: Ms. Bailey, do
21 you have that? I know we're not in that case,
22 but it's the same applicant. Okay.

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1 COMMISSIONER TURNBULL: And on this
2 one only it's sheets 3 and 4 that do not have
3 the entrance in the right location.

4 MR. AGBIM: On D Street?

5 COMMISSIONER TURNBULL: No. Yes,
6 on Astor Place, 5139, 98, 17598. If I'm
7 looking at that, your first plan shows the
8 entrance on the left, but the landscape plan
9 and the lighting plan show the entrance on the
10 right.

11 CHAIRPERSON MILLER: I was
12 wondering, I was waiting to see, I guess, if
13 you were responding any further to Mr.
14 Turnbull or not?

15 MR. AGBIM: Oh, okay, no. I'm
16 sorry. I was looking at the next project
17 which is E Street and I found that there might
18 be a need to sort of reverse the floor plan,
19 but these floor plans can be easily mirrored
20 on the CAD.

21 CHAIRPERSON MILLER: Oh, okay,
22 okay.

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1 MR. AGBIM: So it shouldn't be a
2 problem to provide revised drawings.

3 CHAIRPERSON MILLER: Okay.

4 MR. AGBIM: Yes.

5 CHAIRPERSON MILLER: All right. So
6 we can move on to the Office of Planning now?

7 MR. AGBIM: Yes.

8 CHAIRPERSON MILLER: Okay. Mr.
9 Moore?

10 MR. MOORE: Good afternoon. Again,
11 John Moore with the Office of Planning. We
12 will again stand on the record on this
13 application. Just one point of clarification
14 for Mr. Turnbull. On 97, we asked the
15 applicant to flip the parking, because as you
16 can see there is a parking lot on this lot
17 already, so we asked him to flip it on the
18 other side for signature on the block. So it
19 may not have been picked up in the drawings
20 yet. I'll entertain any questions you have.

21 CHAIRPERSON MILLER: Mr. Moore, are
22 we waiting for DDOT comments on this case as

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1 well?

2 MR. MOORE: Yes, we are.

3 CHAIRPERSON MILLER: Okay. Any
4 Board questions? Okay. No, I think we have
5 covered the issues. Any questions from the
6 applicant for the Office of Planning?

7 MR. AGBIM: No.

8 CHAIRPERSON MILLER: No, okay. Is
9 the ANC in this case here or is anybody else
10 here to testify in support or opposition to
11 this application? Not hearing from anybody, I
12 guess we'll turn to you, Mr. Agbim for any
13 closing remarks.

14 MR. AGBIM: Yes, like in the other
15 cases, we have paid attention to the scale of
16 properties on the block and we feel that this
17 building will fit in very well into the area.
18 Thank you.

19 CHAIRPERSON MILLER: Thank you very
20 much. Ms. Bailey, shall we set a similar
21 schedule as in the last case?

22 MS. BAILEY: Certainly, Madam

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1 Chair. And should I just repeat those dates
2 for consistency? The decision is scheduled
3 for June 5th at the Board's Public Meeting.
4 Submissions are due May 29th and the applicant
5 may respond by June 1st.

6 CHAIRPERSON MILLER: Okay. I guess
7 that concludes this case, correct?

8 MS. BAILEY: This concludes this
9 case and there's one more.

10 CHAIRPERSON MILLER: Oh, did you
11 leave the -- oh, I'm sorry, did you say that
12 the ANC could also do an additional report if
13 they want to, but it's not required certainly.

14 MS. BAILEY: Right. Yes.

15 CHAIRPERSON MILLER: Yes, okay. So
16 that concludes this case. Do we have any
17 other cases on the agenda for the morning?

18 MS. BAILEY: Not for the morning,
19 but we do have a similar case for the
20 afternoon.

21 CHAIRPERSON MILLER: Correct. I
22 think at this point, the Board and probably

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1 the Court Reporter, we all need a break. So I
2 think that we will be adjourning the morning
3 session and come back at about 2:20 for the
4 afternoon session. I know this is similar to
5 the other cases this morning. Mr. Agbim has a
6 case in the afternoon, but we were looking at
7 the schedule and I think that we should
8 probably, or Mr. Mann and I were just
9 discussing this, whether to keep it scheduled
10 as is and I think we ought to keep it as
11 scheduled as is, because I think 17609 seems
12 to have a lot of people here who are expecting
13 to start at 1:00. So I think that we ought to
14 start with them. Okay.

15 MR. AGBIM: Thank you very much.

16 CHAIRPERSON MILLER: Okay. Thank
17 you. So we'll see you a little later in the
18 afternoon.

19 MR. AGBIM: Thank you.

20 CHAIRPERSON MILLER: Okay. Thank
21 you very much. And this morning meeting is
22 adjourned.

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1 (Whereupon, the Public Hearing was
2 recessed at 1:31 p.m. to reconvene at 3:53
3 p.m. this same day.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 3:53 p.m.

3 CHAIRPERSON MILLER: This hearing
4 will come to order. I apologize that there
5 has been such a delay this afternoon. It's
6 very unusual that we lost two Board Members
7 and we just cannot convene for a hearing
8 without at least three. So we have our
9 quorum.

10 My name is Ruthanne Miller. I'm
11 the Chair of the Zoning Board and to my left
12 is Mr. Marc Loud, a mayoral appointee, to his
13 left is Mr. John Mann representing NCPC on the
14 Board, next to Mr. Mann is Mr. Clifford Moy
15 from the Office of Zoning, Sherry Glazer from
16 the Office of Attorney General and Ms. Beverly
17 Bailey from the Office of Zoning.

18 Copies of today's agenda are
19 available to you and are located to my left in
20 the wall bin near the door. Please, be aware
21 that this proceeding is being recorded by a
22 Court Reporter and is also webcast live.

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1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

4 When presenting information to the
5 Board, please, turn on and speak into the
6 microphone, first, stating your name and home
7 address. When you are finished speaking,
8 please, turn your microphone off, so that your
9 microphone is no longer picking up sound or
10 background noise.

11 All persons planning to testify
12 either in favor or in opposition are to fill
13 out two witness cards. These cards are
14 located to my left on the table near the door
15 and on the witness table. Upon coming forward
16 to speak to the Board, please, give both cards
17 to the reporter sitting to my right.

18 The order of procedure for special
19 exceptions and variances is: One, statement
20 and witnesses of the applicant. Two,
21 Government reports, including Office of
22 Planning, Department of Public Works, DDOT,

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1 etcetera. Three, report of the 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 Section 3117.4 and
7 3117.5, the following time constraints may be
8 maintained: The applicant, appellant, persons
9 and parties, except an ANC, in support,
10 including witnesses, 60 minutes collectively.

11 Appellees, persons and parties, except an
12 ANC, in opposition, including witnesses, 60
13 minutes collectively. Individuals 3 minutes.

14 These time constraints do not
15 include cross examination and/or questions
16 from the Board. Cross examination of
17 witnesses is permitted by the applicant or
18 parties. The ANC within which the property is
19 located is automatically a party in a special
20 exception or variance case.

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

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1 examination, including time limits and
2 limitations on the scope of cross examination.

3 The record will be closed at the
4 conclusion of each case, except for any
5 material specifically requested by the Board.

6 The Board and the staff will specify at the
7 end of the hearing exactly what is expected
8 and the date when the persons must submit the
9 evidence to the Office of Zoning. After the
10 record is closed, no other information will be
11 accepted by the Board.

12 The Sunshine Act requires that the
13 Public Hearing on each case be held in the
14 open and before the public. The Board may,
15 consistent with it's rules of procedure and
16 the Sunshine Act enter Executive Session
17 during or after the Public Hearing on a case
18 for purposes of reviewing the record or
19 deliberating the case.

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

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1 the contrary, the Board requests that persons
2 present not engage the Members of the Board in
3 conversation.

4 Please, turn off all beepers and
5 cell phones, at this time, so as not to
6 disrupt these proceedings.

7 The Board will make every effort to
8 conclude the Public Hearing as near as
9 possible to 6:00 p.m. If the afternoon cases
10 are not completed at 6:00, the Board will
11 assess whether it can complete the pending
12 case or cases remaining on the agenda.

13 At this time, the Board will
14 consider any preliminary matters. Preliminary
15 matters are those that relate to whether a
16 case will or should be heard today, such as
17 requests for postponement, continuance or
18 withdraw or whether proper and adequate notice
19 of the hearing has been given. If you are not
20 prepared to go forward with a case today or if
21 you believe that the Board should not proceed,
22 now is the time to raise such a matter.

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1 Does the staff have any preliminary
2 matters?

3 MS. BAILEY: Madam Chair, the staff
4 does and it has to do with Application No.
5 17612 of Square 673 Apartments LLC. That
6 application was withdrawn.

7 CHAIRPERSON MILLER: And therefore
8 there's nothing for the Board to do on this
9 matter. Is that correct?

10 MS. BAILEY: No further action is
11 required by the Board.

12 CHAIRPERSON MILLER: Thank you. Is
13 that the only preliminary matter?

14 MS. BAILEY: Just swearing in the
15 witnesses.

16 CHAIRPERSON MILLER: Okay. At this
17 point then, would all individuals wishing to
18 testify today, please, rise to take the oath?

19 MS. BAILEY: Would you, please,
20 raise your right hand?

21 CHAIRPERSON MILLER: That's for any
22 other cases this afternoon if you're going to

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1 testify, this is the time to be sworn in.
2 Okay. Thank you, Ms. Bailey.

3 (Whereupon, the witnesses were
4 sworn.)

5 MS. BAILEY: Thank you.

6 CHAIRPERSON MILLER: Thank you.
7 Would you call the first case, please?

8 MS. BAILEY: Application No. 17609
9 of First Baptist Church, Inc., pursuant to 11
10 DCMR 3103.2, for a variance from the
11 limitation on the number of stories under
12 section 400, a variance from the lot occupancy
13 provisions under section 403, a variance from
14 the court requirements under section 406 and a
15 variance from the nonconforming structural
16 provisions under subsection 2001.3, to allow
17 the construction of a four story addition to
18 an existing church at premises 79 Randolph
19 Street, N.W. The property is Zoned R-4 and
20 it's located in Square 3131, Lots 41 and 823.

21 CHAIRPERSON MILLER: Thank you.
22 Good afternoon.

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1 MR. GELL: Good afternoon, Madam
2 Chair.

3 CHAIRPERSON MILLER: Would you
4 identify yourselves for the record, please?

5 MR. GELL: I am Stephen Gell. I'm
6 a zoning attorney representing the First
7 Baptist Church. With me is Mr. Sam Malone,
8 who is the chair of the board of trustees.
9 Also, the architect, Tom Raithel, who will
10 deal with the architectural questions and the
11 Reverend Frank Tucker, who is the senior
12 pastor at First Baptist Church. Dana
13 Anderson, superintendent of the Sunday school
14 and Leroy Taylor, who is vice chairman of the
15 board of trustees. We had a couple of other
16 people who unfortunately had to leave, but
17 they stayed as long as they could.

18 CHAIRPERSON MILLER: Okay. Thank
19 you.

20 MR. JONES: Yes, my name is Timothy
21 Jones. I reside at 737 Rock Creek Church
22 Road, N.W., and I am the Advisory Neighborhood

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1 Commissioner for Single Member District 4C08.

2 CHAIRPERSON MILLER: Thank you. We
3 did hear that there were individuals here who
4 wanted to testify.

5 MR. GELL: Fortunately, Mr. Jones
6 was able to rearrange his schedule, so he will
7 be able to be with us.

8 CHAIRPERSON MILLER: Okay. Before
9 we start, I want to make sure there is nobody
10 else here who wants to testify right now who
11 has to leave. Are you aware of anybody else
12 who is in that situation?

13 MR. GELL: I haven't been told.

14 CHAIRPERSON MILLER: Is there
15 anybody else here? Okay. All right. Then we
16 can proceed. Oh, let me just ask you
17 something, sorry, as a preliminary question.
18 I believe in numbered Exhibit 27, I think it
19 was that, you recently filed something which
20 said you no longer need a variance for court
21 relief. And is there something else?

22 MR. GELL: Or the stories.

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1 CHAIRPERSON MILLER: And stories,
2 correct. Are you withdrawing your request for
3 variance relief for the stories? I'm not even
4 sure --

5 MR. GELL: We are.

6 CHAIRPERSON MILLER: -- you
7 actually put one in for court.

8 MR. GELL: We didn't, but the
9 Office of Planning mentioned that as one of
10 the variances --

11 CHAIRPERSON MILLER: Okay.

12 MR. GELL: -- they believed we
13 needed and then recalculating and redoing the
14 measurements, the architect found that we were
15 within the three story height, which is
16 permitted in that zone district. And that had
17 to do with taking the grade and determining
18 that, in fact, the first story is really a
19 cellar, not a basement and, therefore, it's
20 not counted as a story.

21 The other one had to do with
22 recalculating the court, which it turns out

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1 because we reduced the height of the building
2 at the rear where the court is, that we should
3 be taking the 4 inches per foot of height off
4 of that reduced height, rather than off of the
5 height at the front of the building, because
6 it does say in the regulations that you take
7 the height of the court, which means you stand
8 at the court and take the height that you see
9 from there.

10 So we realized that we could do
11 with only two variances. That is a variance
12 for extending or expanding a nonconforming
13 building and a variance for lot occupancy.

14 CHAIRPERSON MILLER: I just want to
15 ask office of Planning whether they have any
16 comments on that.

17 MR. MORDFIN: I do have the memo
18 that speaks of reducing the height and the
19 first story is less than 4 feet out of the
20 ground and it doesn't count as a basement,
21 it's a cellar and it doesn't count as a floor,
22 and so that leaves them with three stories,

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1 which is in conformance with the Zoning
2 Regulations.

3 As for the court, if their
4 measurements show that they don't need it,
5 then I'll go by their measurements that the
6 height of the building is reduced in the back
7 and therefore the court variance is not
8 necessary.

9 MR. GELL: Unless I messed up, I
10 thought I had sent you the May 9th letter to
11 the Board. If not, I would be glad to give
12 you a copy.

13 MR. MORDFIN: Yes, I received the
14 letter from you that talked about the number
15 of stories and things like that. Is that the
16 letter you're talking about?

17 MR. GELL: This was May, it's May
18 9th, amendments to application.

19 MR. MORDFIN: Let's see.

20 MR. GELL: The second paragraph
21 deals with the stories and the third paragraph
22 deals with the court. I thought I had emailed

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1 it. If I didn't, I'm sorry.

2 MR. MORDFIN: Okay. I did have the
3 information about the four stories, but if the
4 variance -- if you're saying that the number
5 of feet is reduced for the court because of
6 the height of the building, then I'll accept
7 your calculations that you are measuring it
8 correctly.

9 MR. GELL: Right. If we're wrong,
10 we'll be in big trouble when we got for
11 permits, but the architect has redone the
12 measurements and is convinced that they fall
13 within the guidelines.

14 CHAIRPERSON MILLER: Okay. So the
15 Board is not going to be making a ruling on
16 whether you need variance relief or not on
17 that. I gather that you just are withdrawing
18 it, because you don't believe that you do, at
19 this point. Is that correct?

20 MR. GELL: That's correct.

21 CHAIRPERSON MILLER: Okay.

22 BOARD MEMBER MANN: Madam Chair, to

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1 follow up on that, wasn't there also a change
2 in the number that you gave us as lot
3 occupancy?

4 MR. GELL: I think at one point
5 somewhere we mentioned the 90 some percent
6 number, yes, that was incorrect, that was
7 78.6.

8 BOARD MEMBER MANN: And so that
9 occurred just because you, in recalculating,
10 realized that the other number was incorrect,
11 not because -- or was it because there was a
12 change in the plans?

13 MR. GELL: No, we haven't really
14 changed the program. It's just that the other
15 number was incorrect. I had the architect go
16 back through all of the numbers and realize
17 that we had incorrectly stated it in our
18 original application. So we believe it's
19 correct now and sorry for the confusion that
20 may have come from several different changes,
21 but I think we're there where we want to be
22 now.

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1 BOARD MEMBER MANN: All right.
2 Thank you.

3 MR. GELL: Oh, should I?

4 CHAIRPERSON MILLER: Go right
5 ahead.

6 MR. GELL: I would just remind the
7 Board that this application or something
8 similar to it has been up before you twice
9 before. In 1989, the Board actually granted
10 all of the variances, more variances than we
11 are asking for now, because it also included a
12 variance to -- or a special exception to
13 expand the child development center from 86 to
14 121 and the variances for lot occupancy in
15 addition to a nonconforming structure and the
16 four stories and also to reduce the rear yard
17 requirement.

18 Now, it's based on -- and I wasn't
19 involved at the time, but it's based on the
20 belief that there was a rear yard. In fact,
21 there is no rear yard. I think the Office of
22 Planning's report makes that very clear, but

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1 there is a court. And now, we think we have
2 satisfied the court requirements based on the
3 height of the addition.

4 February 13, 2004, the church filed
5 Case 17150 requesting roughly the same
6 variances, but that was withdrawn in 2005,
7 because of significant neighborhood
8 opposition. Since then, we have scaled back
9 the project. We have, essentially, lopped off
10 a third of the top story, because one of the
11 issues was light and view and so forth for the
12 neighbors who are next to the church and the
13 view that they can see and the light and so
14 forth that would be coming into their
15 backyards. And so we substantially improved
16 that situation and the architect will show you
17 that in a bit.

18 So I would, at this point, like to
19 call on Mr. Sam Malone to give a statement
20 which goes into some of the issues that we
21 would like to bring before the Board. Mr.
22 Malone?

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1 MR. MALONE: My name is Samuel
2 Malone and I reside at 4661 Cherry Valley
3 Drive in Rockville, Maryland. Madam Chair and
4 Members of the Board, First Baptist Church,
5 S.W., Inc. is a religious institution in
6 existence for 144 years. It ministers to the
7 temporal as well as the spiritual needs of,
8 approximately, 900 members.

9 It's social service program served
10 the needs of the entire community. There is a
11 child development program for 100 students and
12 a senior citizens' day or program for 75
13 seniors. The church serves the neighborhood
14 and its members with financial planning
15 seminars, health and wellness seminars, an
16 after school program for teens that enhance
17 academic training, support and social
18 development, legal aid workshop for seniors,
19 AA meetings, computer training courses, the
20 scouting program, Bible study classes, adult
21 physical exercise classes. In addition to
22 Christian education classes and vocation Bible

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1 school for all ages.

2 Our plan is to expand the church to
3 include the house and lot next door on the
4 east side in order to house multi-purpose
5 classrooms, church offices, storage and
6 mechanical rooms and restrooms. Among other
7 things, this expansion will enable some of the
8 programs that are currently housed in a
9 building across the street at 715 Randolph
10 street to be brought into the main church
11 structure.

12 The property on which the church
13 will be built is adjacent to the church and
14 has improved with a residential building that
15 has been in use by the church for its programs
16 and administrative purposes for many years.
17 The R-4 Zone District permits 60 percent lot
18 coverage for our church and the lot coverage
19 with the expansion will cover 78.6 percent of
20 the combined lot.

21 The church is built on an odd fan
22 lot, which fronts on the intersection of New

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1 Hampshire Avenue and Randolph Street. The
2 structure has always been a church and the
3 other buildings surrounding it are private
4 residential buildings. For the disabled,
5 there is currently very limited access to the
6 sanctuary. The administrative offices are
7 classrooms.

8 The addition will house an elevator
9 to correct this serious problem. As the
10 church's population ages, accessibility
11 becomes a more serious problem for many of the
12 congregants. Moreover, many of the activities
13 in the church are carried out in cramped and
14 undesirable quarters in multi-use areas.
15 The church has grown slowly, but steadily over
16 the years. And the program for church
17 members and for the general community have
18 grown along with it.

19 Children and adult church school
20 classes are shoehorned into inadequate space.
21 Social service programs have to be conducted
22 off-site or in parts of the church where they

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1 conflict with the educational program.

2 Like many other churches in the
3 city, our function has broadened over the
4 years to deal with many social problems,
5 including alcoholism, HIV AIDS, youth
6 offenders and gangs. The First Baptist Church
7 has taken its responsibility seriously and has
8 established 12-step programs and AA meetings.

9 A substance prevention program specifically
10 for teenagers, in addition to the HIV AIDS,
11 supportive service programs for the
12 neighborhood. These are essential components
13 of the church's Christian education program,
14 which is a primary mission of the church.

15 While we have no intention to
16 expand these programs beyond our present
17 operation, we desperately need the additional
18 space to accommodate the programs we have.
19 Because there are no proposed programmatic
20 activities that will take place in the
21 expanded facility, there should not be an
22 increase in traffic/parking problems following

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1 construction.

2 Nonetheless, the church has
3 undertaken a parking program on Sundays which
4 has had some positive effect on the traffic
5 and parking problems in the neighborhood. The
6 church will continue to work with the
7 community and the D.C. Department of
8 Transportation to devise appropriate programs
9 and improvements to further lessen the parking
10 impact from church activities.

11 One of the concerns of the
12 neighbors in 2004 was loss of sunlight in
13 certain sections -- in certain seasons and in
14 certain parts of the day. Since the church is
15 west of the residential properties in the 700
16 Block of Randolph Street, some light would
17 have to be blocked in the later part of the
18 day.

19 Accordingly, the church has asked
20 the architect to redesign the upper floor, so
21 that the addition will not appreciably block
22 more light from the neighbors' rear yard than

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1 the existing building. The result was the
2 removal of nearly one-third of the top floor.

3 The windows in the east wall have been
4 designed so as to protect the privacy of
5 neighbors. There are few windows on the east
6 wall and those will be placed above eye level
7 so as to allow light in the church, but
8 prevent anyone in the church from looking into
9 the neighbors' rear yards.

10 While we met with neighbors to hear
11 their concerns about damage to their homes
12 from construction and parking problems after
13 the building is up, we have put our promise
14 into a letter agreement and we will be happy
15 to have the Board include the undertakings as
16 conditions in the Board's order.

17 In closing, if the proposed
18 expansion should not be perceived as a desire
19 of First Baptist Church to change its facade
20 for aesthetic purposes, this proposed
21 expansion represents a real need of First
22 Baptist Church whose devoted members continue

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1 to serve as we perform our Christian duties
2 both in our sanctuary and in our neighborhood.

3 Thank you.

4 MR. GELL: Thank you, Mr. Malone.
5 I wonder if Reverend Tucker could join us at
6 the front for just a moment? I'm going to ask
7 Reverend Tucker to speak a little bit to the
8 issue of parking and some efforts that are
9 underway to try to alleviate the parking
10 problem and anything else he wants to say.

11 REVEREND TUCKER: Thank you, Madam
12 Chairman and to the Board. We have engaged in
13 conversation/discussion with the officials of
14 the city's Department of Transportation and
15 Planning to address the problem of parking.
16 We know that that's a critical area, a
17 critical concern in the city throughout and
18 certainly it's an issue that has been our's to
19 address as well.

20 And so we have been talking to them
21 about how we can restructure, rearrange the
22 parking arrangement around our church. There

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1 has been discussion about making an island in
2 the New Hampshire Avenue aisle way and the
3 discussions have been that it would make it
4 possible for us to extend some parking
5 opportunities on both sides of that island,
6 which would assist in this process.

7 We are doing -- continuing to
8 participate in discussions as to how various
9 arrangements have been made in and around
10 other churches in other areas of the community
11 to seek to address this problem. I guess the
12 other thing is that we do not anticipate
13 through the development of this particular
14 facility, we do not anticipate any greater
15 strain in the area of parking than we already
16 have, but we would be better able to service
17 and serve those and provide the services as
18 necessary with this new facility.

19 CHAIRPERSON MILLER: Thank you.
20 Just on that note, is it correct that none of
21 the programs are being expanded or no new
22 programs are going to be added as a result of

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1 this expansion? And that's why there won't be
2 an increase in traffic or is that not correct?

3 REVEREND TUCKER: There will be no
4 new programs that has not been sought and
5 embraced by the congregation on a -- from a
6 historical standpoint. We have been serving
7 the community in a variety of ways reaching
8 out for more than 49 years now addressing the
9 needs of the community children, seniors and
10 people of all ages. And the whole idea is to
11 wrap around people, those needs that they have
12 to foster a healthy and wholesome life and
13 that's what we have attempted to do.

14 The conditions of people, of
15 course, and the needs of people shift from
16 time to time in the area of health, which is a
17 serious problem in our city now, that we are
18 taking on to address and make at least those
19 people who are a part of the fellowship more
20 healthy and more health conscious in providing
21 the services they need that they may be not a
22 burden, even on the city, in that context.

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1 CHAIRPERSON MILLER: No, I hear you
2 and I'm not saying, you know, oh, you should
3 limit your programs at all. I just remember
4 in the package it seemed like that's not --
5 that was one of the reasons that it wasn't
6 going to be a big increase in traffic. You
7 weren't going to be doing something so totally
8 different.

9 I understand that part of the
10 reason that you are even seeking a variance
11 and seeking expansion is because you are
12 responding to the needs of the community and
13 your services have grown as a result of that.

14 I guess this question might be for Mr.
15 Malone, but either one. As of now though, you
16 are performing these services to the community
17 out of a residence that's occupying the
18 property that you want to expand on to? Is
19 that correct? And did you say also a
20 residence across the street?

21 MR. MALONE: Yes, we have a senior
22 center/facility across the street, which we do

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1 accommodate some of our programs. We have at
2 least two Sunday school classes and it's used
3 for auxiliary meetings that take place there.

4 They are not totally conducive for that type
5 of environment, but we do have them there.
6 And in the house next door, we have
7 accommodated one of our departments, Sunday
8 school department classes in that building,
9 but it's just not sufficient to adequately
10 accommodate our needs.

11 MR. GELL: Let me ask, may I? The
12 senior center is not going to move across to
13 the new building?

14 MR. MALONE: Oh, no, no.

15 MR. GELL: That's going to --

16 CHAIRPERSON MILLER: I'm sorry, I
17 couldn't hear. We couldn't hear, I don't
18 think.

19 MR. GELL: That's okay.

20 CHAIRPERSON MILLER: Could you
21 repeat that? What was the question and the
22 answer?

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1 MR. GELL: Mr. Malone was saying
2 that the senior center is not moving across
3 the street. That's going to stay where it is
4 in the property owned by the church, but not
5 part of this expansion.

6 REVEREND TUCKER: What is taking
7 place, Madam Chairman, is that we have a
8 limited amount of space. And what we are
9 doing is using the space for multiple purposes
10 and it's not always convenient. It's not
11 always effective to use places that you have
12 youth activities and services going on to come
13 right behind that and do the adult activities.

14 We need, for instance, computer
15 space and that's a designated kind of a space.

16 When you have to have a classroom on top of
17 that, it is not conducive to effective
18 instructions in that way. Just the way in
19 which you are using the space that you have.
20 This will enable -- the added space will
21 enable us to just be more effective and
22 efficient in the use of the space that we

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1 have.

2 CHAIRPERSON MILLER: Okay. Yes,
3 I'm asking these questions because they really
4 go to the test that we have to apply to this
5 case being a variance and I guess it goes to
6 the practical difficulties that you are
7 experiencing. And it often arises in cases
8 like your's in which your services are
9 expanding, because of changes in the
10 community. But then we need to just explore,
11 you know, well, what are the actual
12 difficulties you are experiencing, because why
13 can't you just use the property that you have
14 and not get the variance?

15 And so one of the things I'm
16 hearing is well, certainly, there weren't
17 computers years ago and didn't have computer
18 rooms and so what you are saying is if you
19 designate a room for a computer, you can't
20 necessarily have other things using the room.

21 REVEREND TUCKER: It poses a
22 serious challenge for you.

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1 CHAIRPERSON MILLER: So those are
2 the kind of things. If there are more of
3 those kind of things you want to tell us, I
4 would just encourage you to do that.

5 MR. GELL: The parking issue is
6 usually mostly a Sunday issue and that is
7 controlled very largely by the size of the
8 sanctuary. In this case, the church is not
9 enlarging its sanctuary and is not planning on
10 enlarging its membership. I did want Reverend
11 Tucker to talk about what they are even trying
12 to do about the Sunday parking issue, which
13 really doesn't go to the heart of this case.

14 But in other words, just to say
15 that they are taking every -- making every
16 effort to make things a little bit better for
17 the neighborhood, we realize that it's
18 difficult living next to a church. I live
19 next to two of them. Within a few houses of
20 me, there are two churches and on Sunday it's
21 -- parking is just impossible, but that's
22 fine.

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1 I mean, we have lived there for
2 about 25 years and we have not found it to be
3 that bad of an issue and the rest of the week
4 it's not a serious problem in any way at all.

5 So that was the reason I asked him to talk a
6 little bit about what they are doing. Not
7 that it goes to the issue of whether expanding
8 the facility is going to bring more parking.
9 It's not going to do that.

10 If I -- should I continue? I just
11 -- I had submitted to the Board some examples
12 of cases and Board cases as well as court
13 cases, which go to the issue of practical
14 difficulty and we think we have met the test
15 of uniqueness. We also believe we met the
16 test of practical difficulty. I would be
17 willing to discuss those cases with you at
18 greater length.

19 But just to point out that
20 practical difficulty is no longer simply an
21 issue of the size or shape or slope of the
22 land, which had been the case, I think, some

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1 time ago. But the courts have expanded that
2 definition to talk about issues affecting the
3 operation of the people living or working or
4 using the space.

5 And even to some degree to the
6 economic issues involved, that's not a case
7 here, but just to illustrate that slope and
8 shape and so forth of land is not the sole
9 consideration for practical difficulty. The
10 case about the Clerics of Saint Viatar was an
11 issue of the church simply not needing the
12 space for housing priests, because there was a
13 fall-off in the recruitment of priests and
14 they wanted to change to a different use and
15 they had to show a hardship. And, in fact,
16 the court did say that they had done that,
17 even though it had nothing to do with the land
18 itself.

19 And there were other cases that
20 were mentioned. Two cases which I gave copies
21 to the Board or at least cited to the Board
22 were cases involving churches in which

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1 expansion was permitted, one in an R-4 Zone,
2 as this one is, and one in an R-5-B Zone,
3 where just as in this case the church needed
4 more space to operate.

5 In one case, they even needed to
6 uproot some families that lived in that area,
7 so that their houses could be demolished and,
8 of course, they would be relocated. We are
9 not relocating any families. That's not a
10 need, because the church has owned the
11 property and has used the property for
12 nonresidential purposes.

13 CHAIRPERSON MILLER: Which case is
14 that where they were uprooted?

15 MR. GELL: I'm sorry?

16 CHAIRPERSON MILLER: Which case is
17 that?

18 MR. GELL: I think that was in the
19 Vermont Baptist Church. It indicates that
20 some families would have to be relocated.
21 Yes, on page 3, Application No. 14380, No. 12,
22 "The expansion will require the relocation of

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1 several families living in two or three of the
2 row houses, which will be razed to make room
3 for the expansion."

4 We don't have that issue. That
5 simply goes to show that, in fact, there may
6 have been more reason to deny Vermont Baptist
7 Church the right to expand than in this case.

8 The other case is also very similar to ours,
9 the Walker Memorial Baptist Church where the
10 needs of the church really were permitted to
11 give them the variances and the Board
12 permitted them to have the variances for
13 purposes of carrying out their programs.

14 Again, nothing to do with the land
15 shape and so forth of the land. So I'm sure
16 we will come back to this after the Office of
17 Planning testimony.

18 CHAIRPERSON MILLER: Well, what do
19 you say the exceptional condition or
20 uniqueness is in this case?

21 MR. GELL: The exceptional
22 condition is that the church has -- over the

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1 years, churches have been called upon to do
2 much more than they did in the past. I know
3 churches always serve the poor. Churches
4 always help the community, certainly their own
5 members and very often neighbors. And this
6 church has done the same.

7 More recently, we have seen
8 Government cutting back on some of the social
9 services and really depending on the private
10 sector, i.e., churches to do much more in
11 those areas. Things like counseling, like the
12 gang, trying to stop gangs, that sort of
13 activity, other social service issues have
14 traditionally been done by Governments.

15 Through faith-based initiatives and
16 so forth, we have seen churches doing more.
17 This church has taken up its responsibility
18 and in the course of doing that has found that
19 it was so squeezed in trying to carry out its
20 Christian education program, which it also has
21 to continue, obviously, that it simply can't
22 do it effectively within the space that it

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1 has. And that's the difficulty that it has.
2 That's the exceptional difficulty.

3 CHAIRPERSON MILLER: Okay. I have
4 another question. I don't know whether you're
5 going to be called Mr. Raithel to testify or
6 not, because it goes to the massing issue, but
7 in 2004, even though there wasn't a written
8 decision in this case, there was a decision
9 from the Bench in which the variance was
10 denied. And I was wondering if you might want
11 to address why things are different now or why
12 the analysis should be different?

13 MR. GELL: Certainly. One of the
14 big differences, of course, is that the top
15 floor is no longer as big as it was. It has
16 been carved out in a significant way, so that
17 the massing is smaller than it was and it also
18 addresses some of the other issues that the
19 Board had talked about or the people had
20 testified to, which was light and air and view
21 and so forth to people who live near the
22 church whose backyards may be in view of the

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1 church.

2 Now, we might also point out, and
3 this will be clearer through the architect's
4 testimony, that the church, the existing
5 church is very large right now, so that this
6 new addition is not going to cut off much
7 more, maybe a little bit, but not much more of
8 the view than would already be cut off.
9 People instead of seeing the old church will
10 now see the new church. It's closer.

11 We're not denying that. We're not
12 saying that it's going to be exactly the same.

13 There is, in fact, going to be some
14 differences. We don't think the difference
15 are going to be significant enough that it
16 will, in any way, change the quality of life
17 of people living nearby.

18 Oh, in the other case, I believe,
19 there was a concern about the front of the
20 addition being extended out from the rest of
21 the church. Now, that's not the case. It has
22 been brought back, so that it is in line with

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1 all the townhouses next to it. In fact, I
2 think the existing church, fairly close to
3 where this would be, is actually a little bit
4 further out.

5 There is a bay that seems to extend
6 a little bit further out toward the sidewalk.

7 So in those ways, we think we have a new
8 project, sufficiently new so that the Board
9 need not be constrained to come to a different
10 conclusion.

11 CHAIRPERSON MILLER: Thank you.
12 Any other questions from the Board?

13 BOARD MEMBER LOUD: Yes, just a
14 couple quick questions and good afternoon,
15 everybody.

16 MR. GELL: Good afternoon.

17 BOARD MEMBER LOUD: Sorry that you
18 had to wait to get started. On the issue of
19 practical difficulty, Mr. Malone, I wanted to
20 see if you could just walk me through the
21 current uses, I guess, across the street and
22 the proposed uses in the new addition?

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1 MR. MALONE: Across the street at
2 715 Randolph Street, which is across a busy
3 arterial --

4 BOARD MEMBER LOUD: Can you speak
5 in the mike? I think with the air
6 conditioning --

7 MR. MALONE: The facility that we
8 speak of across the street is the senior
9 center at 715 Randolph Street, which is across
10 a very busy arterial, we have some Sunday
11 school classes which our youth are required to
12 cross that street and to -- in order to access
13 that building. Under the new building, those
14 classes would be housed in the expanded part
15 of the church. They would all be there at the
16 one location. We wouldn't have to separate
17 them. They wouldn't be separated by a major
18 arterial. They would be in the same building.

19 And in that building, it is not
20 conducive for us to teach there and maintain
21 the audio visuals that are required. In a
22 real sense, we feel that we are doing an

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1 injustice to our teachers who spend
2 considerable time in their preparation and
3 then they don't have the facilities in order
4 to teach and to provide that teaching, share
5 that with their students and we feel that we
6 are failing our students by not having those
7 facilities.

8 The new building, the expanded
9 building would allow us to better accommodate
10 those facilities. We would have multi-purpose
11 rooms that would be set aside and could be set
12 up, could have the audio visuals and the
13 classrooms attire that would allow us to more
14 adequately serve. We have six departments in
15 our Sunday school ranging from beginners to
16 adults.

17 And in those six departments, we
18 have about 14 to 15 classes. And now those
19 classes are just so sprawled out throughout
20 the church, some are in the sanctuary, others
21 are in the large auditorium where they are
22 constantly being interrupted by people, early

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1 arrivers or late -- those who are leaving late
2 and they are just not conducive and we just
3 don't feel that we are doing an effective job
4 under the conditions. And we can't do that
5 under the conditions that we have.

6 And we feel that this expanded
7 facility would allow us to begin to address
8 those in a more efficient and effective
9 manner.

10 BOARD MEMBER LOUD: Okay.

11 MR. GELL: May I, Mr. Loud?

12 BOARD MEMBER LOUD: So --

13 MR. GELL: I think --

14 BOARD MEMBER LOUD: I'm sorry.

15 MR. GELL: If I could just add to
16 your question.

17 BOARD MEMBER LOUD: Um-hum.

18 MR. GELL: Are you planning any new
19 programs in the building across the street? I
20 know you have a senior citizens center there.
21 Any new or expanded programs across the
22 street that are not being done now by the

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1 church?

2 MR. MALONE: Nothing new that's on
3 the horizon, no.

4 BOARD MEMBER LOUD: Okay. So from
5 my count then in the new building what you
6 propose are restrooms, storage space,
7 elevator, the senior center.

8 MR. MALONE: No.

9 BOARD MEMBER LOUD: No?

10 MR. MALONE: No, the senior center
11 will remain at 715 Randolph Street across the
12 street.

13 BOARD MEMBER LOUD: Okay. Thanks
14 for that clarification. And all of the above
15 that I just said minus the senior center and
16 then you will be transferring over the Sunday
17 school program, which has the six departments
18 and the 14 or 15 --

19 MR. MALONE: Some portions of it.
20 Some of it can still be accommodated in the
21 church.

22 BOARD MEMBER LOUD: Okay.

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1 MR. MALONE: We will be able to
2 better accommodate that portion which remains
3 in the church. We may have one department
4 that now has three classes and they may be in
5 the same room today. With the new facility,
6 we hope to have at least about 12 rooms that
7 would be available to them for multi-purpose
8 use and they will be assigned those classes
9 and that's going to alleviate the cramped
10 conditions that we currently have to live
11 with.

12 BOARD MEMBER LOUD: And this
13 question may have been asked, and asked
14 differently, but let me ask it again anyway.
15 Will there be any additional uses in the new,
16 the proposed building, apart from what you
17 offered testimony on earlier?

18 MR. MALONE: The new expansion is
19 being designed to better accommodate the
20 present programs that we have and we operate
21 in the church today. We don't have on the
22 horizon any new programs that we are planning

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1 to accommodate in the expanded facility.

2 BOARD MEMBER LOUD: You had
3 mentioned earlier, perhaps your lawyer had
4 mentioned earlier, perhaps Reverend Tucker had
5 mentioned earlier an MOU that had been
6 drafted, which you offered as conditions on
7 the grant of variance. Does the MOU speak to
8 a finite use for the proposed facility into
9 the foreseeable future?

10 MR. MALONE: No, it does not. It
11 more or less speaks to the conditions that we
12 would guarantee our neighbors during
13 construction.

14 BOARD MEMBER LOUD: During
15 construction, okay.

16 MR. GELL: That was --

17 BOARD MEMBER LOUD: Is it something
18 you had thought about?

19 MR. GELL: -- left out. I drafted
20 the MOU and left out anything relating to
21 that. It could have gone in, but it was not -
22 - it's not what we heard as the biggest

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1 problems that people --

2 BOARD MEMBER LOUD: I'm having
3 problems hearing you.

4 MR. GELL: It was not what we heard
5 as the biggest problems facing people. We
6 tried to address those.

7 BOARD MEMBER LOUD: Got you. Okay.

8 MR. GELL: And unfortunately, we
9 didn't address that. It could have been.

10 BOARD MEMBER LOUD: All right.
11 Thank you, sir.

12 CHAIRPERSON MILLER: Are you
13 referring to what's attached to Exhibit 27
14 with respect to an agreement with neighbors?

15 MR. GELL: That's right.

16 CHAIRPERSON MILLER: It's dated
17 April 27, 2007?

18 MR. GELL: That's correct.

19 CHAIRPERSON MILLER: Okay.

20 MR. GELL: It's on the church
21 letterhead. May I ask --

22 CHAIRPERSON MILLER: Can I ask you

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1 about that? Just looking at that agreement,
2 for instance, it talks about, I would say No.
3 3 in that letter talks about, things that will
4 be designed or whatever. Are those already
5 reflected in the plans that are before us or
6 are these changes that will be made to the
7 plans that are before us?

8 MR. GELL: I would have to ask the
9 architect to --

10 CHAIRPERSON MILLER: Okay. All
11 right.

12 MR. GELL: -- speak to that.

13 CHAIRPERSON MILLER: We can hold on
14 that until you call the architect.

15 MR. GELL: I --

16 CHAIRPERSON MILLER: Until you are
17 ready to proceed.

18 MR. GELL: That's fine. I don't
19 know what windows are planned, but what we
20 said was that to the extent are windows that
21 can overlook any of the neighborhood yards,
22 they will be set high, so that people couldn't

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1 just look out them. They could get light
2 coming through, but they wouldn't be able to
3 use them to see into the neighbors' yards.
4 There was a privacy issue that we thought the
5 neighbors had been concerned about, so we
6 promised that.

7 CHAIRPERSON MILLER: Mr. Johnson, I
8 know that you are going to have an opportunity
9 to cross examine. We haven't forgotten about
10 you, just in case you're wondering. But
11 should we go through your panel and then we
12 can do that. So are you ready to call Mr.
13 Raithel?

14 MR. GELL: I am, yes.

15 CHAIRPERSON MILLER: Unless Board
16 Members have any other questions, at this
17 point? No? Yes, okay. Okay. I wanted to
18 ask, I guess we can all see it, right?

19 MR. RAITHEL: I can bring it closer
20 to you.

21 CHAIRPERSON MILLER: Okay. But
22 don't you need to be on a microphone for the

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1 Court Reporter? Yes, does he have a
2 microphone for the -- okay.

3 MR. RAITHEL: Hello, my name is
4 Thomas Raithel, 2714 Quebec Street, N.W. I
5 was retained by the First Baptist Church to
6 create a conceptual development that would
7 accommodate their program. And over time and
8 meeting with neighborhood groups, the design
9 has evolved somewhat.

10 This is the current property line.

11 This is all existing. The hatched portion is
12 the proposed addition. We will be maintaining
13 the coverage that we proposed. It is a
14 trapezoidal, slightly trapezoidal sliver here,
15 so we will maintain that coverage level no
16 matter what. And we will have a 12 foot
17 setback from the front property line, which
18 lines up exactly with the adjacent residences.

19 There is, approximately, a 4.5 foot
20 rear setback from the property line at this
21 corner. This is the courtyard that we were
22 talking about before. At the narrowest point,

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1 it will be 12 feet wide at the throat and
2 wider inside. This building, just for the
3 record, is 29.8 feet. This building is 23.8
4 feet and the addition in the back is 34 feet
5 off the pavement here.

6 In front of the building is 40 feet
7 from adjacent grade. We have come down. In
8 order to best accommodate physically disabled
9 and ramping in order not to have to place an
10 additional lift in front of the building as
11 well as one in the building, we did extensive
12 ramping here and stepping down, approximately,
13 3 feet from the sidewalk to the front
14 entrance, so that the entry level is the
15 cellar level grade, ground floor.

16 This is the -- well, let me go
17 backwards just once. Right here, the adjacent
18 structure here does not belong to the church.

19 This structure here is the one that we would
20 be proposing to demolish in order to
21 accommodate the addition. The addition would
22 go right up to the property line. We would

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1 underpin the existing foundation and it would
2 again -- we would have to underpin the
3 existing structure of the church.

4 Again, the ramping was done. I
5 even have a ramp inside, so that we can make
6 the lower level via another ramp from the
7 inside on the ground floor. This is the
8 Randolph Street elevation with the existing
9 steeple, the sanctuary structure is here and
10 this is the side of the existing structure as
11 well with a side entrance. This is not the
12 front entrance. The front entrance is
13 actually here on the corner.

14 The addition would be, again, flush
15 with the existing adjacent structure of the
16 residence. This dashed line right here is
17 actually the level of the public sidewalk on
18 Randolph Street. So again, we're going down
19 into the main entrance. It is 40 feet above
20 adjacent grade.

21 The sanctuary height is roughly the
22 same height as the addition with the steeple

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1 going significantly higher. This is a view
2 from the sanctuary through that lower portion
3 of the existing building looking at the
4 western wall. This is the front of the
5 building and this is the alley. We did knock
6 off the top floor, the rear portion of that
7 top floor in concern -- to address the concern
8 about light and view. We do have windows
9 facing west and a service door to get out onto
10 the roof.

11 This is the rear view. Again, this
12 is the alley. This is the existing building
13 with the sanctuary here. I do not show the
14 steeple, that is actually higher on this side.

15 We do have windows in the back. These will
16 most probably be secured windows, perhaps
17 glass block, but there is an existing
18 retaining wall. It is, approximately, 7 feet
19 high from the alley to the rear yards of these
20 properties here. So the grade is actually up
21 here.

22 Seen from the east, this is the

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1 adjacent residence with the steeple that you
2 can see beyond. This is the actual height of
3 the sanctuary and the distance towards the
4 back it goes and again, this is where we
5 knocked off that upper floor level. In fact,
6 I did eliminate all the windows on the east
7 side, all of them. It turned out that there
8 wasn't enough reason to have east facing
9 windows and there was a privacy concern, so I
10 just simply got rid of them.

11 Again, here is the -- this is the
12 approximate ground floor level here which
13 would be near the basement level of the
14 adjacent structure. The alley back here, the
15 retaining wall. This is the ground entry
16 level. Again, it's oriented the same way as
17 the site plan. Coming off the public
18 sidewalk, either by ramping or steps down into
19 the entry level, there will be -- I made
20 accommodation for a finance office here.

21 The computer classroom, computer
22 education classroom is right here on the

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1 entry. And classroom multi-purpose rooms in
2 the back. Due to the size of the structure, I
3 need to provide two means of egress, two
4 stairs. I need bathrooms. The elevator was
5 an integral part of the program. And as you
6 can see, the core is rather enormous for a
7 structure this size, but it's something I had
8 to accommodate for. It's, approximately, a 50
9 percent core factor, which is very large.

10 So again, as you come in, there is
11 another ramp down to make the basement floor
12 level of the existing structure. On the first
13 floor up that you get to either by stair or
14 elevator, there is another access corridor
15 that goes into the hallway office/sanctuary
16 right here. And again, we have a church
17 office, a pastor study and multi-purpose
18 classrooms in the back.

19 Here is the second floor, very
20 similar to the first floor. It's adjacent to
21 the rooftop over here and this is the top
22 floor, the third floor where the back area is

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1 just roof and there will be some mechanical
2 units up there and then the roof above. Is
3 there anything that I have -- that you have
4 any questions about?

5 CHAIRPERSON MILLER: Sure. Did you
6 say that it's flush against a neighboring
7 property?

8 MR. RAITHEL: Yes.

9 CHAIRPERSON MILLER: A residence?

10 MR. RAITHEL: Yes, this structure
11 here. It's a townhouse, masonry townhouse.

12 CHAIRPERSON MILLER: And I don't
13 know, is that neighbor here today to testify
14 about their position on that? It seems like
15 they could be impacted. Do you know? Anyone?

16 MR. MALONE: She's here.

17 CHAIRPERSON MILLER: You didn't
18 come prepared to testify? Okay. Well, you'll
19 have the opportunity later if you want to,
20 because we're just looking at, you know,
21 impacts on neighbors. So, Mr. Raithel, I
22 guess you can address it and then if she wants

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1 to say anything later, she can as well. But
2 how does this impact that residence, if at
3 all?

4 MR. RAITHEL: Well, the -- I would
5 be almost entire sure that we would have to
6 underpin the party wall, the masonry party
7 wall. This procedure is done many, many times
8 in the city. We would have to go -- extend
9 the existing footing here down level with our
10 proposed footings and we would be using -- the
11 contractor would use crack monitors to
12 determine if there is any unplanned
13 settlement. A qualified contractor for
14 sheeting and shoring and underpinning would be
15 used.

16 CHAIRPERSON MILLER: Okay. I don't
17 really mean that, though I'm sure that you
18 would do that.

19 MR. RAITHEL: Um-hum.

20 CHAIRPERSON MILLER: That's kind of
21 a construction issue. But in the zoning
22 sense, for instance, is one of the buildings

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1 taller than the other? Is there an issue
2 about a view obstruction, of light and air?
3 Anything like that?

4 MR. RAITHEL: This is the
5 structure, the adjacent residence that we are
6 talking about and yes, this structure would be
7 above the roof line and this is the height of
8 the building in the rear yard.

9 CHAIRPERSON MILLER: So is there
10 any obstruction to her light and air?

11 MR. RAITHEL: It's immediately
12 adjacent to her yard.

13 CHAIRPERSON MILLER: Okay. In the
14 previous decision in 2004, there was an issue
15 about massing and I know that you have made
16 some changes. I was wondering if you might,
17 though, just address more specifically why
18 massing is either not an issue this time or
19 should be less of an issue?

20 MR. RAITHEL: Well, the thing that
21 we could do that -- and it wasn't taken
22 lightly is to reduce the usable square footage

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1 of the multi-purpose rooms and the classrooms
2 on the top floor. If -- certainly we could
3 knock the whole entire back off, but then
4 there is very little left of the building,
5 except core. And at that point, there would
6 be very little use to constructing this.

7 CHAIRPERSON MILLER: I know Mr.
8 Gell already addressed somewhat how the
9 project has changed and, therefore, there is
10 less massing. I just didn't know if you, as
11 an architect, wanted to add anything else.

12 MR. RAITHEL: I think the diagram
13 speaks for itself. It is, you know, as large
14 as it has to be to accommodate the program and
15 it's not the most efficient building in the
16 world, so it's -- we could keep knocking off
17 classrooms, yes.

18 CHAIRPERSON MILLER: It sounds like
19 what you are saying is you have reduced it to
20 the greatest extent possible for it to be
21 worthwhile doing.

22 MR. RAITHEL: That would be better

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1 directed to the church.

2 CHAIRPERSON MILLER: Okay. Yes,
3 and I don't want to put words in your mouth,
4 sometimes I like to try to rephrase it just to
5 see if I'm understanding it correctly. There
6 was the letter that we referenced. It's
7 attached to April 27th in which there are
8 design issues that are represented. Do you
9 know what I'm referring to?

10 MR. RAITHEL: Can you --

11 CHAIRPERSON MILLER: Okay.

12 MR. RAITHEL: -- brief me on that?

13 CHAIRPERSON MILLER: It's a letter
14 to the neighbors from the church making
15 certain commitments. And I'm bringing this up
16 and I'll read the commitments, but, basically,
17 I want to know whether those commitments have
18 already been incorporated in the plans we are
19 looking at now or whether something different
20 is going to come in.

21 For instance, No. 1 says "The front
22 of the new addition will be constructed in the

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1 same plane with the front of the adjacent
2 house at 708 Randolph Street, N.W., and
3 therefore will not extend or project beyond
4 the front wall of 708 Randolph Street as
5 originally proposed."

6 MR. RAITHEL: That's correct.
7 That's addressed.

8 CHAIRPERSON MILLER: That's already
9 in the plan we're looking at?

10 MR. RAITHEL: Yes, that is in the
11 plan.

12 CHAIRPERSON MILLER: Now, should I
13 read the others ones?

14 MR. RAITHEL: Certainly.

15 CHAIRPERSON MILLER: Okay. No. 2,
16 "The entire area for the multi-purpose and
17 classroom spaces originally planned for the
18 rear of the proposed top floor will be
19 eliminated to soften the visual impact to our
20 neighbors looking west from the rear yard
21 areas."

22 MR. RAITHEL: That was done.

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1 CHAIRPERSON MILLER: Okay. 3,
2 "Some windows on the rear of the proposed
3 building will be eliminated from the plans,
4 others will be designed to be installed high
5 above eye level, so that people will not be
6 able to see neighboring properties from the
7 upper floors."

8 MR. RAITHEL: I have eliminated all
9 the windows.

10 CHAIRPERSON MILLER: "The proposed
11 elevator for the building will be installed on
12 the church side of the proposed building and
13 will not pose a noise problem to our
14 neighbors."

15 MR. RAITHEL: That's correct.

16 CHAIRPERSON MILLER: Okay. That's
17 represented that way in the plans we have?

18 MR. RAITHEL: Yes, it is.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Any other Board questions? Okay. Mr.
21 Gell?

22 MR. GELL: I would just ask Mr.

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1 Raithel to show where the sun is most of the
2 time and the degree to which this building is
3 going to shutout sun to the rear yards.

4 MR. RAITHEL: North being straight
5 up on the drawing right here, all the
6 townhouses face due south, so that aside from
7 the rising sun, the midday sun is really not
8 really affected with the exception of the
9 corner here perhaps. The summer setting sun
10 is actually going to be at this angle, so that
11 actually the houses themselves cast a shadow
12 in their own back yard against the setting
13 sun.

14 And as well, this structure --
15 frankly, there is no setting sun to be seen
16 from the back yards of these houses with the
17 existing structure in place. It's just as
18 tall as the proposed practically. It's a few
19 feet lower, but it's practically the same
20 height.

21 The winter setting sun is off at
22 that angle, so that for the most part once --

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1 with the height of this building and the
2 height of these buildings, again there is no
3 setting sun to be seen in the winter time.

4 CHAIRPERSON MILLER: Anything else?

5 MR. GELL: No, that's fine.

6 CHAIRPERSON MILLER: Okay. Mr.
7 Johnson, do you have any cross examination
8 questions for any of these witnesses? You're
9 entitled to it, but you don't have to.

10 MR. JONES: I guess I could ask
11 some questions with the issues raised by the
12 testimony before the Commission.

13 CHAIRPERSON MILLER: Can't hear you
14 at all. I'm sorry.

15 MR. JONES: Excuse me. I guess I
16 would just ask you with the questions that
17 were raised before the Commission, that being
18 parking, architectural integrity and
19 environment and --

20 MS. BAILEY: Excuse me, sir, would
21 you give him the microphone, so he could maybe
22 hold it a little closer to him?

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1 MR. JONES: Yes, I guess I'll just
2 deal with the issues that were placed before
3 the Commission and those being parking,
4 architectural integrity, environmental and
5 possible vermin and rodent infestation during
6 construction. So as far as parking, I guess,
7 the variable in the parking issue would be the
8 percentage of residents -- I mean, the church
9 members who reside within the community. And
10 I would like to know something about that.

11 CHAIRPERSON MILLER: Do you think
12 you could be a little bit more specific?

13 MR. JONES: Well, I'm --

14 CHAIRPERSON MILLER: You have a
15 question? First of all, the topic is parking.
16 You have a question about parking, right?

17 MR. JONES: Right.

18 CHAIRPERSON MILLER: Okay. And
19 what aspect of parking related to this
20 addition concerns you?

21 MR. JONES: People raised the issue
22 related to the addition is that if parking is

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1 a problem and this issue will not-- nothing
2 will be done with this to alleviate the
3 possible parking -- the existing parking
4 problem, the parking problem will still be
5 there.

6 CHAIRPERSON MILLER: We're having
7 trouble hearing you. But let me say, are you
8 saying if there is an existing problem anyway,
9 isn't --

10 MR. JONES: Right, right.

11 CHAIRPERSON MILLER: -- the
12 addition going to exacerbate that? I mean, is
13 it going to be adding on to the parking
14 problem?

15 MR. JONES: No, I'm not saying
16 adding on to the problem.

17 CHAIRPERSON MILLER: No.

18 MR. JONES: The parking problem
19 would not be diminishing.

20 CHAIRPERSON MILLER: It won't be
21 diminishing?

22 MR. JONES: Right.

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1 CHAIRPERSON MILLER: Who wants to
2 answer the question about whether parking will
3 be diminishing?

4 REVEREND TUCKER: I don't see how
5 this project would have the burden to diminish
6 something that already exists. And it's --
7 the question suggests the same thing that we
8 have already articulated and that is the
9 parking is an issue, that we together have to
10 work at, but the facility itself will not
11 enhance or diminish the issue of parking in
12 the area.

13 CHAIRPERSON MILLER: Okay?

14 MR. JONES: Um-hum.

15 CHAIRPERSON MILLER: Anything else?

16 MR. JONES: Okay. I guess as far
17 as the question is what if something
18 mysterious falls damage to adjacent property,
19 which is a question that I believe you had
20 opened as far as Madam Chair and it was the
21 neighboring resident to address and she came
22 unprepared to address that.

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1 CHAIRPERSON MILLER: Well, is your
2 question is there --

3 MR. JONES: Well, I was going
4 through --

5 CHAIRPERSON MILLER: -- going to be
6 a --

7 MR. JONES: -- concerns that were
8 raised by the one being damage to adjacent
9 properties. And I guess the one would be the
10 work would be done on the party line and --

11 CHAIRPERSON MILLER: Okay. Yes, we
12 did address that earlier. I don't know if you
13 have something more, but this Board doesn't
14 have jurisdiction over construction issues.
15 So when Mr. Raithel started to go into what
16 was going to be done to protect the property
17 during construction, we really didn't pursue
18 it, because we don't have any jurisdiction
19 over that.

20 So then we went into well, what
21 about impacts on light and air, which we do
22 have jurisdiction over.

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1 MR. JONES: Okay.

2 CHAIRPERSON MILLER: Did you have a
3 question about that?

4 MR. JONES: As far as light and
5 air, I think he made the -- just stated the
6 property faces south. I thought the front of
7 the property faces north, as I see it, and the
8 property is on the odd side of the street be
9 the one -- would be the ones that face south,
10 which are the ones across the street from the
11 proposed project.

12 CHAIRPERSON MILLER: Okay. So your
13 question is the impact on which property? Do
14 you have a question about the impact of light
15 and air on some property?

16 MR. JONES: That was just a comment
17 on the presentation that was just made. I
18 think he stated that the properties face
19 south, but the properties on this side as the
20 proposed project, they face north, but the
21 ones across the street from that property face
22 -- are the ones that face out.

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1 CHAIRPERSON MILLER: Okay. So is
2 your question for the architect?

3 MR. JONES: Yes.

4 CHAIRPERSON MILLER: And is it
5 about which --

6 MR. JONES: Well, the clarification
7 would be needed.

8 CHAIRPERSON MILLER: Clarification
9 of which way the property faces?

10 MR. JONES: Right.

11 MR. RAITHEL: Maybe I misspoke or I
12 don't -- I'm not sure. The existing
13 residences here to the east front -- the rear
14 of those properties face south and the front
15 faces north, yes.

16 MR. JONES: Okay. Okay. Excuse me
17 while I get the Commission letter. Thank you.

18 Okay. There's parking, okay. Parking,
19 environmental issues, I'm assuming that the
20 environmental issues that are raised in the
21 Commission letter is for dust and debris
22 generated through the demolition project to

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1 the demolition of the -- for the proposed
2 project. And so I guess that is something I
3 have heard nothing in regards to.

4 CHAIRPERSON MILLER: That's again
5 something that is related to construction that
6 this Board doesn't have jurisdiction over.

7 MR. JONES: Okay, yes. And there's
8 also potential for vermin and rodent
9 infestation that would apply for -- as well,
10 something that the Board would not have any
11 jurisdiction over?

12 CHAIRPERSON MILLER: If that's
13 related to the construction.

14 MR. JONES: Yes.

15 CHAIRPERSON MILLER: Correct.

16 MR. JONES: Okay. So you just --
17 just as far as air, light and --

18 CHAIRPERSON MILLER: Well, it's
19 adverse impacts from the building itself
20 having been built. If it's all there and
21 then, you know, there could be parking, there
22 could be noise, there could be whatever, but

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1 it's not the impacts related to getting the
2 building built.

3 MR. JONES: Okay.

4 CHAIRPERSON MILLER: Okay.

5 MR. JONES: Um-hum. Okay. Then I
6 guess that would be the only questions I would
7 have, at this time.

8 CHAIRPERSON MILLER: Okay. Thank
9 you.

10 MR. JONES: They all have been
11 raised.

12 CHAIRPERSON MILLER: Thank you.
13 Any other Board questions, at this time?
14 Okay. Then why don't we go to the Office of
15 Planning?

16 MR. MORDFIN: Good afternoon. I'm
17 Stephen Mordfin with the Office of Planning.
18 And the subject property is unique in
19 comparison with the surrounding lots in that
20 it is substantially larger and is fan-shaped.
21 However, this uniqueness has not resulted in
22 the inability to use the property. The

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1 existing building is developed in excess of
2 the maximum lot occupancy permitted.

3 Therefore, this uniqueness has not
4 resulted in a practical difficulty to the
5 owner in achieving the maximum lot occupancy
6 permitted in the R-4 District. Therefore, the
7 Office of Planning recommends denial of the
8 application. Thank you.

9 CHAIRPERSON MILLER: Thank you.
10 Does the Office of Planning have a comment
11 about exceptional condition being related to
12 the church being on the property already and
13 the growing services that it is doing? That
14 being not necessarily uniqueness of the
15 topography, but uniqueness of the situation.

16 MR. MORDFIN: Well, I don't know.
17 I mean, calling that a uniqueness, that's any
18 situation where you have run out of space
19 within your building would then qualify as a
20 uniqueness where anyone has -- doesn't have
21 enough space in his building to do all the
22 programming that he needs to do.

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1 And so therefore the Office of
2 Planning does not consider that to be
3 uniqueness that their responsibilities cannot
4 be accommodated within their existing
5 building, because that would relate to anyone
6 whose building is too small or anyone whose
7 residence is too small to accommodate their
8 existing family.

9 CHAIRPERSON MILLER: Well, I think
10 there have been some cases that actually
11 differentiate between non-profits serving the
12 community and the rest of the community.

13 MR. MORDFIN: Yes, I did see the
14 letters that were submitted from the, I guess,
15 agencies, from Mr. Gell that he submitted into
16 the record for the church that had obtained
17 variances in the rationale that they use in
18 order to be able to accommodate the programs
19 within their building. But in the way that
20 the Office of Planning reviews these
21 applications, we do look at the property. We
22 treat all the properties the same and we look

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1 at them all equally as to whether or not there
2 is a uniqueness there.

3 And what we do is we look at the
4 property to see is there something unique
5 about this property. And what it has is it's
6 unusually large and it's developed in excess
7 of the maximums that are permitted. And so
8 from that it's hard for us then to move on to
9 say well, this uniqueness creates practical
10 difficulty, because it's already developed in
11 excess of the maximums, because the bulk
12 regulations contained in the Zoning
13 Regulations are maximums, not minimums.

14 So they have already gone beyond
15 that indicating that they are getting adequate
16 use out of the property as envisioned by the
17 Zone District.

18 CHAIRPERSON MILLER: What do you
19 mean adequate use?

20 MR. MORDFIN: Well, what I mean is
21 it has been developed as envisioned by the
22 Zone District. The Zone District says you can

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1 go up this high and you can accommodate -- use
2 this portion of the land at 60 percent of the
3 lot occupancy and maybe however many stories
4 and however many feet. And this building
5 that's already there now achieves all of that
6 and in some cases more.

7 So the existing situation does not
8 preclude them from using their property. They
9 are using the property as envisioned by that
10 Zone District, because they have maximized.
11 It has been maxed out as per the R-4 District.

12 So, therefore, they are -- the unique
13 situation of the property is not preventing
14 them from using any part of it.

15 CHAIRPERSON MILLER: Okay. It
16 might preclude them from performing all the
17 services they might want to perform, correct?

18 MR. MORDFIN: It might preclude
19 them from doing all the services that they
20 want to do, but then that also can lead into
21 maybe they don't have a large enough piece of
22 property for everything that they want to do.

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1 Every piece of property is going to have some
2 limitations on to it as to how much use you
3 can get out of it and how many things you can
4 do on it and that's going to be directly
5 related to the size of the piece of property
6 that you have.

7 CHAIRPERSON MILLER: Can you
8 address what adverse impacts there might be if
9 the project is built and the variance granted?

10 MR. MORDFIN: Well, the only
11 adverse impacts is there will be more massing
12 on the building than is in the R-4 District.
13 The R-4 District is a Row House District and
14 limits the sizes of the buildings to an extent
15 in conformance with what an R-4 District is, a
16 Row House District is. And this building will
17 be much larger than that. It will occupy
18 much more of the land than is typically found
19 in the R-4 and will not have the rear yards as
20 typically is found in the R-4.

21 There will be very little open
22 space on this piece of property after it is

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1 developed. And in the R-4 District, there is
2 presumably, approximately, 40 percent open
3 space, because the building may occupy up to
4 60, so there is at least 40 percent open
5 space. This building will have about 21.5
6 percent open space. So that is almost half of
7 what's envisioned by the R-4 District.

8 CHAIRPERSON MILLER: Okay. That's
9 what I was wondering, because then the last go
10 around here of massing was an issue. And now
11 they have reduced the massing. So do you see
12 a difference in the impact as a result of that
13 reduction?

14 MR. MORDFIN: Well, by reducing the
15 height of the building in the back, they
16 reduce some of the impact on the neighborhood,
17 because there will be some light that will be
18 able to come through from the portion in the
19 back where, I guess now, it's a three story
20 building where it's only two stories, so that
21 will reduce the impact. We still have the big
22 wall that will be on the east side of their

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1 property against the common property line with
2 the row house that's immediately adjacent on
3 Randolph Street. And so you still have that
4 impact on the adjoining property with the big
5 wall that will be there.

6 One of the drawings that the
7 applicant had put up showed the extent of that
8 wall, which will be the side wall with the
9 church.

10 CHAIRPERSON MILLER: I'm sorry,
11 that's not the party wall? It's a different
12 wall on the other side?

13 MR. MORDFIN: The party wall.

14 CHAIRPERSON MILLER: The party
15 wall.

16 MR. MORDFIN: On Randolph adjacent
17 to, I think he said, 708 Randolph Street.
18 Right. It would be the east wall of the
19 building, which will be the east wall of the
20 new building addition that extends further
21 back now than the existing row house does.
22 And so that will create a different

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1 environment in the rear yards of those houses
2 to the east.

3 CHAIRPERSON MILLER: So it will be
4 adjacent. It will touch the other house, but
5 it will go further back, so there will then be
6 a wall next to the neighbor's yard? Is that
7 what you're saying?

8 MR. MORDFIN: Correct. There will
9 be --

10 CHAIRPERSON MILLER: Okay.

11 MR. MORDFIN: -- the side wall of
12 the building, the east wall.

13 CHAIRPERSON MILLER: And how high
14 will it be?

15 MR. MORDFIN: It will be -- I don't
16 know how many feet. It's two stories or two
17 and a half stories. I don't -- the applicant
18 probably knows how many feet high that is. I
19 don't know that that is indicated on the
20 drawings. I don't know the height of that
21 wall.

22 CHAIRPERSON MILLER: Okay. I mean,

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1 do you see that -- is that an issue if this
2 project were to go forward for the abutting
3 neighbor?

4 MR. MORDFIN: I think that it
5 relates to the lot occupancy. If the lot
6 occupancy were strictly to 60 percent, there
7 would be much less building on the church
8 property and there would be fewer -- I mean,
9 although how they configure their building
10 changes, you know, can be figured differently,
11 but that does impact if they were restricted
12 to 60 percent, that wall would most likely be
13 smaller because of the existing church
14 building that is already there. So there
15 would be less or perhaps it wouldn't go as far
16 back, perhaps it would, however they determine
17 to pull it back.

18 CHAIRPERSON MILLER: Okay. I was
19 just wondering, you know, if the project does
20 go forward if you identified any adverse
21 impacts?

22 MR. MORDFIN: Well, we felt that it

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1 was not in conformance with the R-4. That,
2 you know, this is a much bigger building than
3 is envisioned by the R-4 and does not lend
4 itself to the preservation of Row House
5 Districts, which is what this is because of
6 the size of the structure. This is so much
7 bigger than what is permitted. Even though
8 they have backed the rear of the building to
9 two stories, it is still a much larger
10 building that would otherwise be permitted.

11 CHAIRPERSON MILLER: Okay. I got
12 that, the impact on the Zone Plan, but you
13 don't have any issues with respect to light
14 and air or privacy or anything like that?

15 MR. MORDFIN: Well, I don't think
16 it adversely affects privacy, because there's
17 a wall there and the applicant did indicate
18 that all the side windows were to be removed.

19 So it doesn't adversely impact privacy, but I
20 think it does have an affect -- I don't know
21 if it will affect air, but -- or mostly what
22 it will affect is direct sunlight, I think,

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1 just because you have a wall there as opposed
2 to having open space there.

3 CHAIRPERSON MILLER: And how about
4 parking? We heard some remarks about perhaps
5 a parking issue.

6 MR. MORDFIN: All right. Now, the
7 existing church is grandfathered in. The
8 applicant has indicated that they are not
9 going to increase the size of the sanctuary,
10 which is the single largest generator in this
11 church for the parking and so, therefore, this
12 application doesn't have an effect on the
13 parking requirements for the church. So the
14 parking it remains the same what is required
15 of the church.

16 CHAIRPERSON MILLER: And finally, I
17 just want to make sure I understand Office of
18 Planning's position with respect to the
19 variance test. Is it that you don't think
20 that the practical difficulty arises out of
21 the uniqueness of the topography?

22 MR. MORDFIN: Right.

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1 CHAIRPERSON MILLER: That there may
2 be a uniqueness of the topography, but
3 whatever practical difficulty they have
4 doesn't arise from that?

5 MR. MORDFIN: Right. There may be
6 uniqueness of this property. It's unusually
7 large compared to the ones surrounding it and
8 it is fan-shaped. However, that has not
9 prevented them from developing this property
10 in accordance with the requirements or the
11 provisions of the R-4 District. So it doesn't
12 let -- lead to a practical difficulty. It
13 hasn't caused them a problem to build on parts
14 of their land.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. Other questions from Board Members? Mr.
17 Gell, do you have -- oh, wait one second. Mr.
18 Gell, do you have a copy of the Office of
19 Planning report?

20 MR. GELL: I do, yes.

21 CHAIRPERSON MILLER: Okay. Would
22 you like to cross examine the Office of

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1 Planning?

2 MR. GELL: Just a couple of
3 questions.

4 CHAIRPERSON MILLER: Okay.

5 MR. GELL: Would you agree, Mr.
6 Mordfin, that in that district that churches
7 are allowed to be 60 feet high?

8 MR. MORDFIN: Yes.

9 MR. GELL: And so --

10 CHAIRPERSON MILLER: I'm sorry,
11 we're going to take a pause for a second. We
12 lost our quorum, so I guess we ought to take a
13 5 minute, up to 5 minute break. Usually one
14 Member steps out and we continue going, but
15 Ms. Bailey just reminded me we are operating
16 on a skeleton, so we'll take a break.

17 MR. GELL: I could use a drink.

18 CHAIRPERSON MILLER: Okay. Fine.
19 Why don't we take a 5 minute break.

20 MR. GELL: Thank you.

21 (Whereupon, at 5:18 p.m. a recess
22 until 5:29 p.m.)

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1 CHAIRPERSON MILLER: Okay. We're
2 on the record again. It has just been brought
3 to my attention that we're going to lose our
4 quorum at 6:00, so hopefully we might be able
5 to get through this case, in any event, but I
6 wanted to let you know that, so everyone is
7 aware of the time constraint. So we were
8 where we left off was, were you asking the
9 Office of Planning some questions, Mr. Gell?
10 Is that where we were?

11 MR. GELL: I was.

12 CHAIRPERSON MILLER: Okay.

13 MR. GELL: I asked Mr. Mordfin --

14 CHAIRPERSON MILLER: If we don't
15 finish, we can continue, but I just wanted to
16 let everybody know. Okay.

17 MR. GELL: Well, I asked Mr.
18 Mordfin if we had the right to build 60 feet.
19 We're only going up a little over 40 and so,
20 therefore, the massing is not as great as it
21 might be as a matter-of-right. It's true that
22 it extends further back, but if we were -- if

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1 we stayed within the lot occupancy
2 requirements, then we could go up to 60 feet
3 as a matter-of-right.

4 CHAIRPERSON MILLER: Did he have an
5 answer?

6 MR. GELL: I think he agreed to
7 that, but --

8 MR. MORDFIN: I agreed that it
9 could go up to 60 feet, but I think that going
10 up to 60 feet on 60 percent lot occupancy is
11 different from going up to 60 feet on 78.6
12 percent lot occupancy, I believe it is. So I
13 think there is a different impact, although
14 that might be the maximum height permitted and
15 those are maximums. It's also meant to be in
16 coordination with the maximum lot occupancy
17 permitted.

18 MR. GELL: Sure. When you talked
19 about uniqueness, you talked -- you seem to be
20 conflating the uniqueness issue with the
21 practical difficulty. And I was wondering if
22 -- well, perhaps I shouldn't ask, but maybe

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1 just state that my understanding was that it's
2 really -- they are really two separate tests.

3 The uniqueness is a question of
4 whether the property itself is different from
5 all the other properties around it, because
6 the Board shouldn't be granting something to
7 one property that then it will have to grant
8 to every other property in the square, because
9 that's really an issue for the Zoning
10 Commission to either rezone the property, the
11 square or to take some other action that would
12 permit people to do it, rather than have the
13 BZA, in effect, changing zoning.

14 So they do ask you whether the
15 property itself is unique and I think there is
16 no question that this is a church, which makes
17 it different from everything else in the
18 square. It also is on an odd shaped lot and
19 so forth. And I think that even in the Office
20 of Planning report, it does state that the
21 subject property is unique in that it is
22 unusually shaped and larger and so forth.

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1 The practical difficulty issue is -
2 - can really be seen as something separate.
3 And the uniqueness isn't necessarily related
4 to it. But I -- and we talked about what
5 practical difficulty test is, exceptional,
6 undue hardship or exceptional problem that
7 needs to be addressed. That's really all I
8 have to say on that issue.

9 CHAIRPERSON MILLER: So that's not
10 really a question for the Office of Planning.
11 Is that right?

12 MR. GELL: Forgive me, I could have
13 saved that for later, but it occurred to me as
14 --

15 CHAIRPERSON MILLER: I would
16 comment though that I think what Office of
17 Planning was saying was -- and I think that
18 there is support for this in the case law that
19 the practical difficulty is usually related to
20 the exceptional condition.

21 MR. GELL: Sure.

22 CHAIRPERSON MILLER: That it arises

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1 from the uniqueness. That's what I believe
2 that Office of Planning was saying, too.

3 MR. GELL: I don't think that's the
4 way it has normally been interpreted. It
5 doesn't necessarily arise from the uniqueness.

6 There has to be an exceptional difficulty, an
7 exceptional condition. But I mean, there are
8 lots of cases in which a property is
9 considered unique, but the variance isn't
10 granted because the practical difficulty
11 arises from that uniqueness.

12 Well, I would be glad to do that
13 research. And if you look at the law itself,
14 it doesn't specifically say it that way.
15 Okay. Okay. No, I think we have covered,
16 with your questions and mine, the issues I
17 wanted to bring up.

18 CHAIRPERSON MILLER: Mr. Johnson,
19 do you have any cross examination for the
20 Office of Planning?

21 MR. JONES: The questions raised as
22 far as architecture and integrity which I

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1 think is something Mr. Mordfin had alluded to,
2 I think at the Commission meeting, and the
3 resident who spoke out in opposition to the
4 project, he said about it being an office
5 building and church/office structure in a
6 block that has existing row houses. So he had
7 a concern as to the architectural integrity of
8 the project, which is referenced in the
9 Commission's letter.

10 CHAIRPERSON MILLER: Okay. Do you
11 have any specific question for the Office of
12 Planning?

13 MR. JONES: No, that's more an
14 addendum to it -- to cross examination I had
15 made earlier, that's something I had omitted.

16 And that's all if he -- the question is they
17 feel that it would impact upon the architect--
18 architectural integrity of the block this
19 proposed project, I guess, would be a way of
20 putting it in question.

21 CHAIRPERSON MILLER: Okay. That's
22 good. Okay.

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1 MR. MORDFIN: Well, the proposed
2 building is going to be classrooms and office
3 spaces, accessory to a church and that is
4 customarily accessory to a church that there
5 will be office space in support of the church.

6 There will be classrooms in support of the
7 Christian education that the church would do.

8 And I think that the architecture
9 is accessory to a church. I don't think --
10 it's not an office building. It's accessory
11 space to the church. The main use of the
12 property is still the church. And I don't
13 think -- I don't see that as an issue.

14 CHAIRPERSON MILLER: Anything else?

15 MR. JONES: Oh, I guess I'll know
16 if -- I think in the Comprehensive Plan, I
17 think it is, it was referenced it is for -- I
18 don't know the exact language, but I think
19 there's the issue that is raised in the
20 Comprehensive Plan as to structures within
21 certain districts being altered to such effect
22 that they would cost -- contrast with the

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1 existing townhouses within the block.

2 I'm uncertain as to the exact
3 language. Maybe perhaps Mr. Mordfin could
4 address that.

5 MR. MORDFIN: I didn't understand
6 the question. I'm sorry.

7 MR. JONES: The question being I
8 think is brought in the Comprehensive Plan.
9 There was some language about buildings in the
10 block not conforming to existing townhouses.

11 MR. MORDFIN: Within the existing
12 Comprehensive Plan?

13 MR. JONES: Yes.

14 CHAIRPERSON MILLER: Mr. Johnson,
15 do you have a copy of the Office of Planning's
16 report?

17 MR. JONES: Yes, I do. It is Jones
18 for the record.

19 CHAIRPERSON MILLER: Because he
20 does -- they do address the Comprehensive Plan
21 in their report.

22 MR. JONES: That is -- okay. A

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1 recommendation. Yes, that's clarified.

2 CHAIRPERSON MILLER: Just
3 generally, Mr. Mordfin, I guess, is there
4 something about this addition that would be
5 inconsistent with the Comprehensive Plan?

6 MR. MORDFIN: I don't believe it
7 would be inconsistent. The generalized Land
8 Use Map recommends moderate density
9 residential, which says that row houses and
10 garden apartments are the predominant uses.
11 Predominant meaning not all of them. Churches
12 are something that are permitted as a matter-
13 of-right within the R-4 District, so they
14 don't need any special exception approval.
15 They can just pull their building permit if
16 they conform to everything else.

17 And I think it's something that
18 compliments a church and something that can
19 compliment a residential neighborhood. So I
20 don't see this as a conflict with the
21 residential neighbors or with an R-4 row house
22 neighborhood.

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1 MR. JONES: I guess that would be
2 it then. I guess that would be it then.

3 CHAIRPERSON MILLER: Okay. Thank
4 you. Any other Board questions? Okay. At
5 this point then, I think, Mr. Johnson, if you
6 would like to present any testimony on behalf
7 of the ANC, you can. We do have a copy of the
8 ANC report and it's marked as Exhibit No. 29.
9 It's dated May 14, 2007.

10 MR. JONES: It's Jones.

11 CHAIRPERSON MILLER: Jones. I'm
12 sorry.

13 MR. JONES: None other than this
14 matter was voted both at the Single Member
15 District level and as well as the Commission
16 level and the response at both levels was the
17 same. So I guess I would just -- I guess I
18 could hang my hat on that.

19 CHAIRPERSON MILLER: Okay. I'm
20 just looking at this letter. It looks like it
21 should be afforded great weight, because you
22 had voted on this at a publicly noticed

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1 meeting, a quorum was present, you gave the
2 vote, so we'll do that. In our deliberations
3 we will address the issues that have been
4 raised in this report.

5 MR. JONES: Thank you.

6 CHAIRPERSON MILLER: Okay. Is
7 there anybody else here who would like to
8 testify in support or opposition of this
9 application?

10 MR. GELL: Could I ask Mr. Jones
11 some --

12 CHAIRPERSON MILLER: I'm sorry.
13 You want to ask him some questions?

14 MR. GELL: -- questions about --

15 CHAIRPERSON MILLER: On the ANC
16 report?

17 MR. GELL: Yes, please.

18 CHAIRPERSON MILLER: Okay.

19 MR. GELL: Mr. Jones, I just wanted
20 to ask you what was the motion that was voted
21 on by the ANC? How was it phrase?

22 MR. JONES: I would be uncertain as

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1 to -- because at this point in time I was-- I
2 has been recovering from a head injury and I
3 fatigue very easily minimally and it has been
4 a long day for me, so plus that was some
5 distant time, so I couldn't want to commit to
6 just what the language was and the degree of
7 certainty at this time.

8 MR. GELL: Would it jog your memory
9 if I were to suggest that the motion was made
10 to approve the project?

11 MR. JONES: It wouldn't improve my
12 -- I wouldn't be able to refute or accept
13 that, at this point in time.

14 MR. GELL: May I call on Mr. Malone
15 to speak to that issue?

16 CHAIRPERSON MILLER: Sure.

17 MR. MALONE: I was at attendance at
18 that meeting and the motion was made to
19 approve after some suggesting as to what the
20 motion should be. And the other commissioners
21 there did assist the ANC Commissioner in
22 coming up with the motion and the motion

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1 specifically said to approve, was made to
2 approve the action.

3 MR. GELL: And what was the vote?
4 Did they vote for or against?

5 MR. MALONE: They voted against
6 approval.

7 MR. GELL: All right.

8 CHAIRPERSON MILLER: I'm sorry,
9 what did you just say?

10 MR. GELL: He said --

11 CHAIRPERSON MILLER: What was --

12 MR. GELL: -- they voted against
13 approval.

14 CHAIRPERSON MILLER: They voted
15 against approval?

16 MR. GELL: Right.

17 CHAIRPERSON MILLER: Of what?

18 MR. GELL: Of the application. In
19 other words, the motion was voted down. And I
20 would ask Mr. Jones if any other motions were
21 raised during the meeting on this issue.

22 MR. JONES: There's only one motion

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1 raised and it is indicating the -- in the
2 Commission letter the motion -- the vote was
3 in opposition to support to the proposal.
4 That's the only thing.

5 CHAIRPERSON MILLER: Does the ANC
6 keep minutes of its meetings?

7 MR. JONES: Yes, we keep minutes.
8 That is correct.

9 CHAIRPERSON MILLER: Um-hum.

10 MR. JONES: But no, we have a
11 contract. We have a contract secretary who
12 was not in attendance, so the minutes were
13 being taken by an outsider, so I know that
14 minutes were being taken.

15 MR. GELL: Mr. Raithel was also at
16 the meeting. I could ask him if he would come
17 forward and testify as to what he heard the
18 motion to be.

19 MR. RAITHEL: The motion was to
20 approve the application and the vote was taken
21 that they -- that no one raised their hand to
22 approve.

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1 MR. GELL: They actually -- didn't
2 they actually vote it down?

3 MR. RAITHEL: They voted not to
4 approve.

5 MR. GELL: Right.

6 MR. RAITHEL: To my recollection.

7 MR. GELL: Okay. Mr. Jones?

8 CHAIRPERSON MILLER: I don't
9 understand, maybe because it's getting late.
10 But the report says they voted against the
11 application. And what you seem to be saying
12 is they voted not to approve the application.
13 That's almost the same thing. I was
14 concerned that maybe you were --

15 MR. GELL: No.

16 CHAIRPERSON MILLER: That they
17 voted the other way, you were trying to say,
18 but I don't hear that.

19 MR. GELL: Well, no. What I'm
20 saying is that they -- the motion was made to
21 approve and the commissioners rejected that
22 motion. No motion was made to reject the

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1 application. And therefore, I would suggest
2 that we do not have formally a vote against
3 the project.

4 CHAIRPERSON MILLER: Okay.

5 MR. GELL: They might, in fact,
6 have voted, if somebody had raised it, not to
7 take a position. So I realize it's a
8 technical point, but I think it's one that
9 goes to the question of whether great weight
10 should be given. Mr. Jones?

11 CHAIRPERSON MILLER: Why does it go
12 to that? Because it's inaccurate? Is that
13 what you mean?

14 MR. GELL: No. It's only because
15 no -- the Commission did not, in fact, vote
16 against the project.

17 CHAIRPERSON MILLER: Great weight
18 goes --

19 MR. GELL: They voted against the
20 motion.

21 CHAIRPERSON MILLER: Great weight
22 goes to our addressing the issues that are of

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1 concern as set forth in the ANC report. So in
2 our deliberation, we would be addressing, you
3 know, parking, for instance, regardless of how
4 this was phrased. Do you know what I'm
5 saying?

6 MR. GELL: Um-hum.

7 CHAIRPERSON MILLER: That's what
8 great weight means. It means just addressing
9 the issues.

10 MR. GELL: Right. But in order for
11 the Board to give great weight, the Commission
12 has to take the proper steps to vote either
13 for or against the proposal. They did not
14 vote against the proposal. They voted against
15 the motion to approve. And that's different
16 from voting -- in other words, what should
17 have happened is that somebody should have
18 then proposed that they vote down the
19 application and then if they wanted to approve
20 that, then you would have a proper vote.

21 How many people testified at the
22 ANC meeting in opposition to this project?

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1 MR. JONES: I believe there was
2 only one.

3 MR. GELL: And that was Mr. Day?

4 MR. JONES: I believe so.

5 MR. GELL: And how far away from
6 the project does he live?

7 MR. JONES: I know he lives in the
8 block on the other side of the Errington's
9 house, which is, I think it's, 2312, two doors
10 over. I'm not sure.

11 MR. GELL: Is he, in fact, four
12 properties away from where the addition would
13 be built?

14 MR. JONES: Well, as I just stated,
15 I know he lives on the -- next to the
16 Errington's, so I mean, let me see, that's
17 one, two, I would have to see. I really
18 couldn't say off the top of my head, at this
19 time.

20 CHAIRPERSON MILLER: Mr. Gell, did
21 you give Mr. Jones a copy of this?

22 MR. GELL: Yes, I did.

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1 CHAIRPERSON MILLER: Okay.

2 MR. GELL: I gave him one earlier.

3 CHAIRPERSON MILLER: Thank you.
4 Okay.

5 MR. GELL: Were construction
6 problems the primary concerns and parking the
7 primary concerns of Mr. Day?

8 MR. JONES: What were parking
9 problems? I know he said something in regards
10 to parking. Just that his primary concern was
11 something that I could not ascertain one way
12 or the other. I know it was addressed in the
13 testimony that he gave was parking.

14 MR. GELL: The vote that was taken,
15 was that on the original application?

16 MR. JONES: The vote was -- that is
17 correct, yes.

18 MR. GELL: So it didn't consider
19 any of the changes that had been made?

20 MR. JONES: Well, no changes were
21 made at the meeting other than you had stated
22 that there had been changes also on the story,

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1 but the -- all the Commission had before it
2 was the initial application that had been
3 submitted. So that's the only thing we could
4 note on was the original application that had
5 been submitted. The Commission knew of no
6 other change, no changes.

7 MR. GELL: Fair enough. Did
8 anybody who lives north of the property
9 testify?

10 MR. JONES: North of the property,
11 being on the other side of the street.

12 MR. GELL: That is across the
13 street.

14 MR. JONES: Across the street, no,
15 I don't believe there was anyone in attendance
16 who lives north of the property.

17 MR. GELL: All right. That's all I
18 have for Mr. Jones.

19 CHAIRPERSON MILLER: Thank you.
20 I'm going to ask one more time if there is
21 anyone in the audience who wishes to testify
22 on this application, please, come forward.

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1 MR. GELL: The lady just said she
2 hasn't been sworn in.

3 CHAIRPERSON MILLER: You haven't
4 been?

5 MS. HARRIS PHILLIP: No, I didn't
6 stand up. I didn't intend to --

7 CHAIRPERSON MILLER: Okay. Ms.
8 Bailey can swear you in. Could you stand and
9 raise your hand?

10 MS. HARRIS PHILLIP: Okay.

11 (Whereupon, the witness was sworn.)

12 MS. BAILEY: Thanks.

13 CHAIRPERSON MILLER: If you will
14 put on your microphone and introduce yourself
15 for the record and then you can testify.

16 MS. HARRIS PHILLIP: Oh, okay. Mae
17 Phillip, Mae Francis Harris Phillip, 708
18 Randolph Street, N.W., and that's in
19 Washington, D.C. Okay.

20 CHAIRPERSON MILLER: Go right
21 ahead.

22 MS. HARRIS PHILLIP: I just wanted

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1 to make a statement that we have had several
2 meetings with the church and we were opposed
3 to several things. They did come forward with
4 some alterations, variations that they were
5 making to satisfy us. And there was a group
6 of us that did meet and so we were still kind
7 of hesitant on if we wanted to agree with the
8 church and the new building structure.

9 But as the meeting that did take
10 place that Mr. Jones did attend and that was
11 one person that was speaking for us and that
12 was Joseph Day and he lives five doors down
13 from the church. So he was speaking for us
14 saying that we are still against, but I'm not
15 sure if the new variations were given to us,
16 at that time.

17 So our main concern was the back
18 wall. It was pretty far down. They did say
19 that they had alleviated some of it. So we
20 were kind of in agreement with that, but it
21 was still the thought of not enough sun or not
22 enough air coming through. And then the other

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1 part that they did make adjustments to was the
2 front and they did state that the front would
3 be flushed to our entrance at 708. So we were
4 kind of in agreement with that.

5 And I think the major problem
6 existed was the construction part. And as you
7 stated before, that that's not addressed here.

8 But as far as the other part, I think it's
9 just maybe something new for us. And being
10 next door to the church, it is a row house.
11 It has been there over 50 years. So the
12 structure was our main concern.

13 They did state that they would be
14 able to alleviate any problems that we would
15 have giving us that MOU and if they would
16 satisfy that or, you know, stick to that, show
17 something happen, I don't see where we should
18 have much of a problem there. But the main
19 problem is the construction, tearing down, us
20 being next door, the home being an old home
21 and we did think about, you know, a new
22 building that would have more people coming in

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1 to the block, there would be more traffic.

2 And any time that you do build a
3 new place, you know, more people will say oh,
4 I can come to church now, because we do have a
5 place to be. So that may create more traffic,
6 I'm thinking, you know, more traffic as far as
7 the parking, that's our thought on the
8 parking.

9 But as far as the zoning lawyer
10 asking Mr. Jones what Mr. Day said, I think
11 really that Mr. Day needs to be, you know,
12 present here, because Mr. Jones did say that
13 he had, you know, an accident and he wasn't
14 clear on his thoughts as far as what did
15 happen in that meeting. If you could, you
16 know, retrieve those minutes, I think that
17 would clearly state how he feels and how we
18 felt at that time.

19 CHAIRPERSON MILLER: So would you
20 like the opportunity to put those minutes into
21 the record?

22 MS. HARRIS PHILLIP: How would I do

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1 that? I just ask that you ask the --

2 CHAIRPERSON MILLER: We can't go
3 get information. We can receive information.

4 MS. HARRIS PHILLIP: Oh.

5 CHAIRPERSON MILLER: So that if the
6 ANC keeps minutes and you would ask the ANC
7 for a copy of their minutes and then you would
8 submit, we could leave the record open for
9 that. We would need 20 copies, we'll go
10 through this later, and the other parties
11 would need to be served with it. You're not a
12 party, but this seems to be an important issue
13 and we could leave the record open for that.
14 But have you seen the final plans?

15 MS. HARRIS PHILLIP: Right. Yes,
16 he did bring that forward, did have a meeting
17 and we did view those plans.

18 CHAIRPERSON MILLER: And you are
19 not opposing the project?

20 MS. HARRIS PHILLIP: Well, it's
21 like it's almost 75/25. You know, still there
22 is not 100 percent. But the more they tell us

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1 about it, the more that it does seem feasible
2 for them to make that addition to the church.

3 So I'm just not quite 100 percent sure.

4 CHAIRPERSON MILLER: Okay. And
5 that wall, does that abut your property?

6 MS. HARRIS PHILLIP: Yes, it is.

7 CHAIRPERSON MILLER: Okay.

8 MS. HARRIS PHILLIP: Um-hum.

9 CHAIRPERSON MILLER: And did you
10 have any specific concerns about that or have
11 you talked to them about mitigating anything,
12 you know, the harshness of a wall with
13 greenery or did you have any of those
14 conversations?

15 MS. HARRIS PHILLIP: Well, we did.
16 We did speak about that.

17 CHAIRPERSON MILLER: Um-hum.

18 MS. HARRIS PHILLIP: And at that
19 point, they did say that they would cut half
20 of the wall, not half of the wall, but
21 redesign the wall so the sun could come in or
22 that, you know, we would be able to see. But

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1 as far as I can see now, the wall is going to
2 go straight down and it's still going to block
3 more than we normally are used to, because the
4 back yards are there. So it's going to go all
5 the way down to the alley.

6 But as far as the cut -- I mean,
7 you reconstruct that, I'm not sure how far
8 that will come down, because now we can look
9 out the window. We can see clearly up the
10 alley and you can see down to the left quite a
11 ways. But once the building is there, then,
12 you know, you have to come all the way
13 outside. You never know what's going to go
14 happen -- what's happening on the other side.

15 So they did -- I'm not sure how
16 much of the building will allow that, you
17 know, coming out and looking to our right. So
18 I guess that's what, you know, hinders that
19 100 percent.

20 CHAIRPERSON MILLER: Do you want to
21 say -- we're running out of time, but did you
22 want to say something about that issue, Mr.

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1 Gell?

2 MR. GELL: As we said before, it's
3 not going to be exactly the same as it was.
4 We hope it's something that people will get
5 used to and that they will find that it's not
6 going to impact their light in an undue way.
7 That there will be some impact, but it's not
8 going to be that great. That they will see
9 the addition of the church, rather than the
10 existing part of the church.

11 As far as large vistas, the church,
12 existing church, really blocks a lot of that
13 now. But clearly, it's going to be a little
14 bit different and -- but I did hear Ms.
15 Phillip saying that she felt with some of the
16 assurances that we gave her on construction
17 and parking and so forth, that her -- most of
18 her concerns are alleviated. There's just a
19 little bit that she is still concerned about,
20 but basically she is not opposed to the
21 construction.

22 MS. HARRIS PHILLIP: And that's

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1 true. The biggest part comes when the
2 construction starts, should this go forward,
3 because, you know, you do bring in a lot of
4 little people that's not welcome, because of
5 the building tearing down and they rolled
6 around, so you have the rodents.

7 CHAIRPERSON MILLER: Yes, that's
8 something we can't do anything about.

9 MS. HARRIS PHILLIP: And that's
10 right, exactly.

11 CHAIRPERSON MILLER: This body,
12 anyway.

13 MS. HARRIS PHILLIP: Um-hum.

14 CHAIRPERSON MILLER: So we can just
15 do something about the permanent building, if
16 there is anything else. Okay.

17 MR. GELL: Well, I can assure Ms.
18 Phillip that in order to get a demolition
19 permit, there would have to be a baiting for
20 rats and rodents. The District has very
21 strict guidelines and rules really for that
22 very same reason, not to find the rats leave

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1 one building and then go inhabit most of the
2 others. So that's all I have.

3 CHAIRPERSON MILLER: Thank you.
4 Any other questions from Board Members? Okay.
5 Anything else? Ms. Randolph, anything else?

6 MS. HARRIS PHILLIP: No. Ms.
7 Phillip.

8 CHAIRPERSON MILLER: Okay. Thank
9 you very much.

10 MS. HARRIS PHILLIP: Not Randolph.
11 Thank you.

12 CHAIRPERSON MILLER: What's your
13 name?

14 MS. HARRIS PHILLIP: Ms. Phillip.

15 CHAIRPERSON MILLER: You live at
16 Randolph Street.

17 MS. HARRIS PHILLIP: Right.

18 CHAIRPERSON MILLER: Right. Okay.

19 MS. HARRIS PHILLIP: All right.

20 CHAIRPERSON MILLER: Thank you.
21 I'm sorry.

22 MS. HARRIS PHILLIP: Okay.

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1 CHAIRPERSON MILLER: It has gotten
2 late. Okay. Any closing remarks, Mr. Gell?
3 I think that's where we're at.

4 MR. GELL: You know, I think, I
5 don't want to rehash what you have already
6 heard. It is late and again, we're willing to
7 abide by the agreement if Ms. Phillip would
8 like to sign it, she'll have a piece of paper
9 which gives her a little margin, an extra
10 margin of ability to enforce, but we are going
11 to live by all of those rules anyway.

12 And if the Board wants to add them
13 as conditions to the order, we'll be happy to
14 see that happen. But I'll leave it at that, I
15 think.

16 CHAIRPERSON MILLER: I have just
17 one question. Is there anything that can be
18 done to soften the impact of a wall on her
19 property or there is not anything that can be
20 done, that's just reality?

21 MR. GELL: I would turn to the
22 architect.

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1 CHAIRPERSON MILLER: Oh, the
2 architect is gone. Okay.

3 MR. GELL: Oh, he had to leave.

4 CHAIRPERSON MILLER: Okay.

5 MR. GELL: I think, you know, about
6 the only thing you can do is to alter the
7 materials in some way. You know, color, you
8 suggested some sort of ivy or some plantings.
9 We would be happy to work with Ms. Phillip on
10 that and find a way to accommodate that. But
11 it will be a wall, yes. So we can meet
12 afterwards. Thank you.

13 CHAIRPERSON MILLER: Okay. I
14 think, at this point, we can set this case
15 then for decision. We do our decisions the
16 first Tuesday of every month. We were just
17 conversing about the fact that our June
18 decision making already has seven decisions,
19 which is somewhat of a lot of decisions, but I
20 want to ask if there is any prejudice or
21 anything if we were to put this off to July?

22 If there is, then we will squeeze

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1 it into June. So I'm not sure, you know, what
2 your circumstances are. June 5th is our
3 decision making day.

4 MR. GELL: Yes, well, I have to be
5 here for a case anyway, but I don't want to
6 press the Board. I could ask the church
7 whether that is going to put them back too
8 far, but I suspect not.

9 REVEREND TUCKER: That won't be a
10 problem.

11 MR. MALONE: I think we're flexible
12 with that.

13 MR. GELL: July will be okay.

14 CHAIRPERSON MILLER: All right.
15 Why don't we do that then. We will be fresher
16 for the decision making. Okay. Okay. Then--

17 MR. GELL: July 3rd?

18 CHAIRPERSON MILLER: Yes, July 3rd.
19 I had said that we could leave the record
20 open if Ms. Phillip or anyone else wanted
21 those minutes put into the record.

22 MS. BAILEY: Yes. Mr. Jones, could

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1 you supply us with a copy of the ANC minutes.

2 MR. JONES: I will.

3 CHAIRPERSON MILLER: Okay. So we
4 will leave the record open for that and there
5 is plenty of time. Ms. Bailey will say when
6 they need to be in, since we are having this
7 decision making July 3rd.

8 Also, since we are leaving the
9 record open, I would just say if there is any
10 other information you want to submit with
11 respect to that wall, if you come to any other
12 kind of resolution about that, that also could
13 be submitted to the record. I'm not requiring
14 it, I'm just saying the record would be open
15 for that.

16 And I think that's it, unless
17 somebody has something else they want to bring
18 to our attention. Okay. Ms. Bailey, when you
19 are ready, you could get the dates.

20 MS. BAILEY: Madam Chair, I would
21 suggest that the documents come in by June 11th
22 and if there are any responses, that would be

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1 due by June 25th.

2 CHAIRPERSON MILLER: Great. Thank
3 you very much. And is it correct that the
4 Board needs 20 copies of whatever is submitted
5 to the Board?

6 MS. BAILEY: Yes.

7 CHAIRPERSON MILLER: Okay. 20
8 copies to the Board and then every other party
9 needs to be served, so that would -- you know,
10 it depends on who is doing the, okay,
11 submitting. And any questions?

12 Okay. Then thank you very much.
13 I'm sorry we kept you waiting so long today.
14 Ms. Bailey, I believe that we do have another
15 matter on the agenda that we may need to
16 reschedule, because we're losing our quorum.
17 That's Case No. 17599, correct?

18 MS. BAILEY: Let's see, yes, Madam
19 Chair, that is correct.

20 CHAIRPERSON MILLER: And is someone
21 here for that case? Why don't you come
22 forward?

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1 MS. BAILEY: Mr. Agbim, you may
2 have a seat. Okay. Let me finish this and
3 then I'll talk to you. Just give me a few
4 minutes to finish this.

5 CHAIRPERSON MILLER: Okay. Mr.
6 Agbim, I'm sorry about this. It's an unusual
7 day today.

8 MR. AGBIM: It's okay.

9 CHAIRPERSON MILLER: We were
10 wondering if you could come next Tuesday
11 afternoon? Does that work in your schedule?

12 MR. AGBIM: Yes.

13 CHAIRPERSON MILLER: Okay. So
14 we're going to have to schedule you for the
15 last case, that would be the third case in the
16 afternoon. Okay?

17 MR. AGBIM: Yes.

18 CHAIRPERSON MILLER: All right.
19 Any other questions or anything?

20 MR. AGBIM: No, that's it.

21 CHAIRPERSON MILLER: Okay.

22 MR. AGBIM: Thank you very much.

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1 CHAIRPERSON MILLER: Thank you.

2 MR. AGBIM: All right.

3 CHAIRPERSON MILLER: We will see
4 you next week. Any other business for the
5 Board?

6 MS. BAILEY: No other business,
7 Madam Chair.

8 CHAIRPERSON MILLER: Okay. Then
9 this meeting is adjourned.

10 (Whereupon, the Public Hearing was
11 concluded at 6:06 p.m.)

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