

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 19, 2006

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:50 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Vice-Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist

OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEVEN RICE

The transcript constitutes the minutes
from the Public Hearing held on September 19, 2006.

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

2 10:50 a.m.

3 CHAIRMAN GRIFFIS: Good morning ladies and
4 gentleman. Once again it is still the 19th of
5 September, 2006. Let's move directly in our public
6 hearing. I'm going to talk very quickly, but I need
7 to get through quite a few very important things in my
8 opening statement.

9 So of course I am Geoff Griffis,
10 Chairperson and the Vice Chair, Ms. Miller, is also
11 with me. Mr. Etherly will be back with us
12 momentarily, as he just stepped out. Representing the
13 National Capital Planning Commission, Mr. Mann and Mr.
14 Hood back with us, representing the Zoning Commission
15 on this morning's cases.

16 Copies of today's hearing agenda are
17 available for you. We're going to move right into our
18 schedule. I'll hold to this schedule as it was
19 published. We are being recorded and broadcast live
20 on our website. The court reporter sits to my right
21 attendant to that.

22 When you are ready and coming forward to
23 speak to the Board, you are going to need to have
24 filled out two witness cards. Witness cards are
25 available at the table where you came into the hearing

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1 room.

2 Also available at the table where you'll
3 present your testimony. Please take the time to fill
4 that out, and get them to the court reporter. Then
5 when you're ready, you will come forward, make
6 yourself comfortable.

7 You need to state your name and address
8 for the record. You only need to do this once, and
9 then you can proceed with the important information
10 that you will provide the Board in today's
11 proceedings.

12 Our proceedings for special exceptions and
13 variances will follow the following chronology.
14 First, we're going to hear from you, a statement of
15 the application, your case presentation.

16 Secondly, we're going to go to government
17 reports attendant to the application. The Office of
18 Planning, Department of Transportation, whoever has
19 put memos into the record for our consideration.

20 Third, we will hear from the Advisory
21 Neighborhood commissioners within which the property
22 is located. Fourth, we'll hear from persons or
23 parties in support of the application. Fifth, we'll
24 hear persons or parties in opposition to the
25 application.

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1 Finally, we will call you back, the
2 Applicant, to present any rebuttal testimony of that
3 information you've heard in the proceedings, or to
4 provide us with closing statements or conclusions as
5 you see fit.

6 Cross-examination of all witnesses is
7 permissible by parties in a case. We will decide
8 parties as a preliminary matter in every case. You
9 can be a person or a party in order to participate in
10 the case. I'll make very clear of that in specific
11 cases.

12 The ANC within which the property is
13 located is automatically a party in the case and
14 therefore, will be able to conduct cross-examination.
15 The record will be closed at the conclusion of this
16 hearing.

17 It's very important to understand this.
18 What we're doing today is in our hearing, we are
19 creating the record. That record is the only source
20 of which we will make our decisions on. So anything
21 that you feel is critically important needs to come
22 into the record today.

23 If you don't think you can put that into
24 the record today, you need to bring that to our
25 attention, and we will evaluate whether we keep the

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1 record open for that to be submitted at a later date.
2 So we will, as I will announce at the closing of each
3 case, that the record would then be closed. No other
4 information will be accepted into it.

5 The Sunshine Act requires that all our
6 proceedings be held in the open and before the public.

7
8 We do at times enter into executive session. We use
9 that executive session for the purposes of reviewing
10 the record, and also sometimes for deliberating on the
11 cases.

12 This is in accordance with our rules and
13 regulations. It is also in accordance with the
14 Sunshine Act.

15 The decision of this Board must be based
16 exclusively on this record that I've discussed. So we
17 ask that people present today not engage Board members
18 at any time during the hearings, so that we don't give
19 an appearance of receiving information that is outside
20 the public record.

21 Let me ask all those persons -- actually,
22 let me say a very good morning to Ms. Bailey, on my
23 very far left, of the Office of Zoning. Also, Ms.
24 Rose is with us from the Office of Zoning, and Mr. Moy
25 will be back with us momentarily, also with the Office

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1 of Zoning.

2 Our Attorney General this morning is
3 represented by Ms. Glazer. Let me ask all those
4 persons that are going to be providing testimony to
5 the Board or are thinking of providing testimony, if
6 you would please stand and give you attention to Ms.
7 Bailey. She's going to swear you in.

8 (Witnesses sworn in.)

9 CHAIRMAN GRIFFIS: Thank you all very
10 much. With that, let me ask if there are any
11 preliminary matters for the Board's attention.
12 Preliminary matters are those which relate to whether
13 a case will or should be heard today.

14 If you're not prepared to go forward with
15 a case, or you believe a case on our schedule should
16 not go forward, whether proper and adequate notice has
17 been provided, if there's any complications, I'd ask
18 if you'd come forward at this time as an indication to
19 having a preliminary matter.

20 I will ask Ms. Bailey if she's aware of
21 any preliminary matters that should be brought to the
22 Board's attention?

23 MS. BAILEY: Mr. Chairman, members of the
24 Board and to everyone good morning.

25 CHAIRMAN GRIFFIS: Good morning.

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1 Application No. 17511

2 MS. BAILEY: There is a preliminary
3 matter, and it has to do with Application No. 17511.
4 We have in the record a letter of authorization for
5 this project. However, this morning actually, we
6 received some correspondence questioning the ownership
7 of the property.

8 I'm not sure if the person is here at the
9 moment. That's Daryl F. White. But that was received
10 this morning. Do the Board members have a copy of the
11 letter? No? Okay.

12 CHAIRMAN GRIFFIS: There was a letter?

13 MS. BAILEY: It was a letter with some
14 attachments.

15 (Pause.)

16 CHAIRMAN GRIFFIS: Okay. Is the Applicant
17 here?

18 MR. MOODY: Yes.

19 CHAIRMAN GRIFFIS: Why don't you come up
20 for a moment? Or not for a moment. Why don't you
21 come up?

22 Have a seat. Make yourself comfortable.
23 We're going to get into this very quickly. I need to
24 dispense of this preliminary matter, and then if this
25 clears up, we'll call the case.

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1 So we're not talking about any of the
2 substance of the case and facts of the matter. We're
3 going to have you turn that microphone on and just
4 state your name and address for the record.

5 MR. MOODY: Good morning, Mr. Chairman and
6 other distinguished panel guests. My name is Kevin
7 Moody. Mailing address is 6713 Burch Hill Road,
8 Brandywine, Maryland, 20613.

9 CHAIRMAN GRIFFIS: And you are the
10 authorized agent; is that correct?

11 MR. MOODY: That's correct, sir.

12 CHAIRMAN GRIFFIS: Okay.

13 MR. BOLDEN: I am Carnell Bolden, 5558 B
14 Street, S.E., Washington, D.C., 20019.

15 CHAIRMAN GRIFFIS: Excellent. Are you a
16 contract purchaser of this --

17 MR. BOLDEN: Contract purchaser.

18 CHAIRMAN GRIFFIS: Okay.

19 MR. BOLDEN: Yes.

20 CHAIRMAN GRIFFIS: Excellent. Sir, why
21 don't you come up and state your name and address for
22 the record?

23 MR. WHITE: Sure.

24 CHAIRMAN GRIFFIS: Did you put in a letter
25 today. It is Exhibit No. 23. First of all, let me

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1 ask Mr. Bolden and Mr. Moody, do you have a copy of
2 this?

3 MR. MOODY: We received a copy this
4 morning, yes.

5 CHAIRMAN GRIFFIS: Okay, good. So you're
6 doing a quick study just like we are. Let me have you
7 state your name please?

8 MR. WHITE: Yes. Thank you, Mr. Chairman
9 and to other Board members. My name is Darryl White.
10 My address is the Law office of Darryl F. White, 4308
11 Georgia Avenue, N.W., Washington, D.C. 20011. I am
12 the attorney of record for New Mount Carmel Free Will
13 Baptist Church.

14 CHAIRMAN GRIFFIS: Splendid. Okay. You
15 bring up two issues. One, you talk about filing a
16 foreclosure action, and two, that they're not the
17 owner of the record and you've attached -- it looks
18 like the Office of Tax Revenue for the District of
19 Columbia, the owner status.

20 I think I've cleared up the owner status,
21 because they've indicated they're contract purchasers.

22

23 So my limited understanding of what this would be in
24 the property detail, they wouldn't obviously show up.
25 But why is this a foreclosure action? What else can

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1 you tell us?

2 MR. WHITE: Well, in my discussion with
3 Mr. -- I forget his last name, Mr. --

4 MR. MOODY: Moody.

5 CHAIRMAN GRIFFIS: Moody.

6 MR. WHITE: Moody, I'm sorry Kevin. It
7 appears that their ownership of -- the color of
8 ownership and my client's color of ownership may be
9 under the same process.

10 This is apparently a property that has had
11 delinquent taxes for some years, and it appears that
12 the contract that they hold now is the result of a
13 foreclosure action, possible foreclosure action on the
14 same property that my client is pursuing at this time.

15
16 The District of Columbia --

17 CHAIRMAN GRIFFIS: Do you have a contract
18 on it?

19 MR. WHITE: No. We have a foreclosure
20 action in court on the property. My client holds the
21 tax certificate for this particular property.

22 CHAIRMAN GRIFFIS: So they bought the tax
23 certificate?

24 MR. WHITE: Exactly, as you know, the
25 process --

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1 CHAIRMAN GRIFFIS: Who's your contract
2 with?

3 MR. BOLDEN: Europe, LLC.

4 CHAIRMAN GRIFFIS: Are they the owner?

5 MR. BOLDEN: I believe they're tax sale
6 also.

7 MR. MOODY: And from what we could gather
8 in a brief conversation with that gentleman that date,
9 if it's correct, was prior to theirs, which I think
10 was March of 2005, and my clients was two to three
11 years prior to that time.

12 CHAIRMAN GRIFFIS: Okay.

13 MR. MOODY: I'm not exactly sure if we're
14 going to be able to resolve it --

15 MR. WHITE: Oh, we'll be able to. I have
16 no idea actually. I'm being optimistic.

17 CHAIRMAN GRIFFIS: Mr. White, why does
18 this preclude them from bringing a zoning application
19 before this Board?

20 MR. WHITE: Well, there's no -- the person
21 he has a contract with is not the owner of record, and
22 does not have a deed on record. It appears that they
23 may have a court action pending which may entitle them
24 to a tax deed at some point in time.

25 But that clearly hasn't been done, and I

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1 know it hasn't been done for the mere fact that my
2 client's tax certificate would have had to have been
3 redeemed before they could get a deed on this
4 property. It has not been redeemed.

5 CHAIRMAN GRIFFIS: Ms. Glazer, a legal
6 opinion?

7 MS. GLAZER: I didn't realize the
8 microphone wasn't on.

9 As you know, the Applicant has to be the
10 owner of record, and the Board could hear from the
11 Applicant at this point, and then ask any questions
12 and follow up and require any additional submissions,
13 and make its determination at that point, about
14 whether it is the owner.

15 It's unclear to me at this point who
16 exactly the owner is, based upon what's before the
17 Board. I don't know if the Board is --

18 CHAIRMAN GRIFFIS: It's not unclear to me.

19 MS. GLAZER: --ready to make that
20 determination.

21 CHAIRMAN GRIFFIS: Mr. Cascemano, we will
22 assume, has had foreclosure action taken, the back
23 taxes essentially have been purchased. It sounds like
24 they've been purchased by a lot of folks and have
25 farmed out there. I shouldn't say on the record, but

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1 nonetheless --

2 MR. WHITE: If I could just briefly
3 interrupt to kind of verify the point you just made.
4 I included with my printout a copy of the current tax
5 bill, and I believe it's the fourth page in, and
6 you'll notice that there are significant taxes that
7 are still remaining unpaid.

8 Had the property been redeemed or a deed
9 assigned, those taxes would have been cleared up.
10 They're not cleared up at this time. So my guess is
11 that either the foreclosure action from the contract
12 purchaser that's represented by Mr. Bolden either has
13 not been done.

14 Clearly the property has not been
15 redeemed, and my client has not received a
16 reimbursement of either the legal fees or the tax
17 purchase.

18 CHAIRMAN GRIFFIS: Let me ask you this.
19 Mr. Moody, what's your anticipation of getting --
20 going to closing and having clear title on this?

21 MR. MOODY: First, I'm a little
22 dumbfounded to this. I can only speculate. Again,
23 had we learned about this prior to ten minutes before
24 the hearing, obviously we would have been able to
25 produce to you whatever documents that quote-unquote

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1 "the owner of the property" would have had, which
2 might have been able to clear these things up. I
3 honestly cannot address what your question was.

4 CHAIRMAN GRIFFIS: Okay.

5 MR. MOODY: But if I could, we can talk to
6 him, and I think he said that he had the documents,
7 but have not officially gone down to obtain the deed.

8 CHAIRMAN GRIFFIS: Do you have a closing
9 date? But do you have a closing date on this?

10 MR. MOODY: No. Our contract was
11 contingency upon approval of BZA.

12 CHAIRMAN GRIFFIS: Okay. With the
13 lienholder or the tax purchaser? I don't know.

14 MR. MOODY: Tax purchaser.

15 CHAIRMAN GRIFFIS: Correct.

16 MR. MOODY: I think, for whatever reason
17 he want to coincide, to assure that he could get the
18 -

19 -

20 CHAIRMAN GRIFFIS: Well, that's not
21 unreasonable. I understand that.

22 MR. MOODY: Okay.

23 CHAIRMAN GRIFFIS: I'm just wondering --
24 okay. When would the tax purchaser -- you don't have
25 any idea or do you recall in your conversations about

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1 the tax purchaser, when they thought they would close
2 and have clear title on it for sale?

3 MR. MOODY: I don't know.

4 CHAIRMAN GRIFFIS: Okay.

5 MR. WHITE: If I could add to that Mr.
6 Chairman?

7 CHAIRMAN GRIFFIS: I don't know.

8 MR. WHITE: I've represented individuals
9 in their position, and after you get an order from the
10 court, you have to take your order down to the
11 District of Columbia, and they issue your tax bill.
12 You pay that bill and then they issue a deed. It's
13 been my history that process has taken anywhere from
14 two months to six months.

15 CHAIRMAN GRIFFIS: It's still not
16 unreasonable they'd take an application through in
17 that kind of time frame. Okay. We've got a couple of
18 options here.

19 One is we proceed with this as it's on the
20 schedule. We hear the merits of the case. We
21 obviously can't decide it until we clear up ownership,
22 and then we could have the record open and have that
23 put in.

24 Or we just set this off and ask the
25 Applicant to come back when all that's cleared up. I

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1 think That we have the time availing us at this point.

2 The merits of the case will not change
3 based on the ownership status, unless the ownership
4 status changes from Mr. Bolden to somebody totally
5 different, in which case it would moot it. So let me
6 hear from Board members.

7 MR. ETHERLY: But if I understand
8 correctly from Mr. Moody and Mr. Bolden, there is a
9 decision that you would be desirous of getting from
10 this body, in order to facilitate you moving forward.

11 I agree with you, Mr. Chair. The utility
12 of moving forward today is very strong, in my opinion.

13
14 But you're still going to be at the end of the hearing
15 looking for some type of action, which if I understand
16 you correctly, Mr. Chair, would you agree that we
17 can't take without a resolution of the ownership.

18 CHAIRMAN GRIFFIS: But it's not so much
19 taking action, as I see this, because they won't close
20 on this property until they get something that is
21 amenable to them, in order to move forward.

22 But in order to get up to that level of
23 even entertaining closing or not, they're going to
24 have to have a clear delineation that they're
25 purchasing it from the owner. That's all we need.

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1 They have sign-off that they are duly
2 authorized by the tax purchaser. Now we just need to
3 take that back one more step, to make sure that that
4 is actually the current owner. Does that make sense?

5 MR. ETHERLY: I think so.

6 CHAIRMAN GRIFFIS: There's three entities
7 really involved. There's the current owner, that has
8 -- looks like it's being removed from them in
9 foreclosure. There's the person that bought up that
10 debt, and then there's the contract purchaser.

11 So we're at the contract purchaser. Now
12 we need to make sure that the lineage goes all the way
13 back to the actual owner. I may have just confused
14 everybody.

15 MS. MILLER: No. I don't think you just
16 confused me, but it goes way back. I mean, I think
17 there's confusion as to who will be authorized to
18 bring an action, if any action, and so I'm a little
19 bit uncomfortable going forward with it. It's not an
20 authorized action that's being presented to us.

21 CHAIRMAN GRIFFIS: Well, it's not
22 definitive that it is not authorized. There is
23 question that's been brought up by Mr. White,
24 asserting. I don't think the assertion that he's
25 presenting is definitive.

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1 MS. MILLER: No, I don't think it's
2 definitive. We're waiting for the court decision; is
3 that correct?

4 MR. WHITE: Well, it's really unclear
5 exactly at what point his -- the owner is or the
6 potential owner, the tax purchaser. I'll use the term
7 "tax purchaser."

8 It's unclear where the tax purchaser is
9 regarding Mr. Moody's application here. Clearly, it
10 is not one that gives him legal title to the property.

11
12 It's my understanding for this Board to make any
13 decision or even an authorized decision on any
14 property, the Applicant must be the owner. Not a
15 color title, not a potential title, but a recordholder
16 of title.

17 MR. MOODY: Or have authorization from the
18 owner.

19 MR. WHITE: We have authorization from the
20 owner.

21 CHAIRMAN GRIFFIS: We don't dispute that.

22 MR. WHITE: Clearly, from -- and I also
23 did a search on the title record from the Recorder of
24 Deeds, and the tax purchaser shows nowhere up on the
25 chain of title. So it's clear that there's no

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1 authorization for this Board to act on this particular
2 applicant.

3 Now my client wishes to have that property
4 for an extension of their church. So it very well may
5 be that if they somehow get ownership before the
6 Applicant does, then they would be back before this
7 Board on another particular matter.

8 So I guess I question whether this Board
9 has authorization, and in the absence of definitive
10 proof of ownership, to act on this particular
11 application.

12 CHAIRMAN GRIFFIS: No one's refuting that
13 we don't have clarity to act on it. But what I'm
14 asking is whether we utilize an administrative
15 efficiency and hear the case, and obviously we'd have
16 to postpone our decision or action on it.

17 Ms. Miller's bringing up the point of
18 should we even move ahead with hearing a case that may
19 not be properly before us. Good point. Follow-up.

20 MR. HOOD: Mr. Chairman, I would just
21 associate myself with Ms. Miller's comments, and leave
22 it at that. I don't think this is ripe or ready for
23 us to deal with at this time.

24 CHAIRMAN GRIFFIS: Understood. Thank you.

25

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1 Others?

2 MS. MILLER: I just want to follow up on
3 I believe Mr. White's comment, that if the church were
4 the ones to eventually get ownership of the property,
5 they would be seeking a different type of relief than
6 what we would have heard today if we go forward today.

7 So I don't think that would be
8 administrative efficiency in that, if that were the
9 case.

10 CHAIRMAN GRIFFIS: You have an interesting
11 point. Others?

12 MR. ETHERLY: I would be in agreement, Mr.
13 Chair. It's just, it's a little too uncertain for me
14 right now as to whether the property can be encumbered
15 by anybody in the absence of clarity about what the
16 ownership position is at this time.

17 I think I understand the pieces that are
18 on the checkerboard here, but it just -- I just don't
19 think we have that ownership piece clear enough to
20 move forward at this point. That's -- thank you, Mr.
21 Chair.

22 CHAIRMAN GRIFFIS: Excellent, good. Last
23 comments, Mr. Moody and Mr. Bolden?

24 MR. MOODY: No.

25 CHAIRMAN GRIFFIS: How much time do you

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1 think you need to clarify this?

2 MR. MOODY: I would hope that this should
3 be able to get clarified within the next ten days.

4 CHAIRMAN GRIFFIS: Really?

5 MR. MOODY: If he has the proof that, you
6 know, that he has the tax certificate years prior to
7 it, he should have the documents readily available.

8 CHAIRMAN GRIFFIS: Okay. Mr. Moy,
9 schedule?

10 MR. WHITE: Can I make a point, a comment
11 to that?

12 CHAIRMAN GRIFFIS: Yes, Mr. White.

13 MR. WHITE: I'm sorry. Clearly, if Mr. --
14 I'm sorry his name, the owner again?

15 CHAIRMAN GRIFFIS: Mr. Bolden.

16 MR. WHITE: The owner of the property.

17 MR. MOODY: Brian Ross?

18 MR. WHITE: Yes, Mr. Ross. If Mr. Ross
19 does have an order, then clearly they're not going to
20 be in a position to own this property in ten days,
21 just given the way the application process works.

22 CHAIRMAN GRIFFIS: Yes, I understand that.

23

24 We can't get them in in ten days, so you'll see.

25 You've got time to do it. And really, I think what we

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1 need to do, this Board is not of the knowledge and we
2 have no jurisdiction to get into the elements of
3 proper title and all, ownership.

4 Obviously, our regulations require the
5 owner to bring an application. That's where we start
6 it and take it. Behind that is something that has to
7 be done elsewhere.

8 So what I'm saying is I think you need to
9 be in touch with our attorney in the office, and also
10 the AG, but yours, just to make sure that it is
11 properly documented when you do come back. So what
12 I'd like to do is hearing from my Board, I understand
13 that they're not prepared to go forward today.

14 What I want to do is set this for another
15 date, and we will look to hear from you and note that
16 Eastern Europe, LLC is actually the titleholder, and
17 is giving proper authorization to you to bring the
18 application, and then we'll move ahead. So what are
19 we looking at for schedule, Mr. Moy? Do you have
20 that?

21 MR. MOY: Well Mr. Chairman, as the Board
22 has noted, we have an appeal case at every date. I
23 would tend to at least, given what I've heard, at
24 least a month, which then if the -- and to place it on
25 afternoon, knowing that there's an appeal case in that

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1 afternoon.

2 Of course, you could add another case in
3 the morning, which would give you four cases in the
4 morning, because typically we've got three cases on
5 any one of these days.

6 CHAIRMAN GRIFFIS: What date are you
7 looking at, the 17th of October?

8 MR. MOY: That looks good, sir, as good as
9 any.

10 MR. MOODY: That date is good for me.

11 CHAIRMAN GRIFFIS: Okay. I think we
12 should put it in the morning, Mr. Moy. Let's put it
13 the first case in the morning.

14 MR. MOY: That's good.

15 CHAIRMAN GRIFFIS: In the morning, are you
16 available?

17 MR. MOODY: Yes.

18 CHAIRMAN GRIFFIS: Yes?

19 MR. WHITE: Yes.

20 CHAIRMAN GRIFFIS: Okay. Let's do that
21 then. We're going to set this for the -- pardon me?

22 MR. MOODY: Would it be advisable to have
23 Mr. Ross here that day as well, just in case there's
24 any other pertinent questions?

25 CHAIRMAN GRIFFIS: We'll leave it up to

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1 you. I can't imagine this can't be done by paper, but
2 I mean I don't think we're going to have a lot of
3 debate on this. This not real testimony. It's going
4 to be it is or it isn't, I hope anyway.

5 MR. MOODY: Clearly.

6 CHAIRMAN GRIFFIS: Okay. What I'm going
7 to ask of you is to be in touch with the Office of
8 Zoning here, Mr. Moy, Ms. Bailey. Take their name,
9 contact information. You can get it from the lobby
10 across the way.

11 I'm going to ask you to check in a week
12 before, just to update, to make sure everything's
13 going okay, you have what you need. If you don't,
14 then we can reschedule it and you can give us dates of
15 when you want that to be put on the schedule.

16 But there's no sense in bringing you all
17 down here, us going through this again, and you saying
18 we just need a couple more days. So let's get it
19 together.

20 Be in touch with them. Mr. White, you're
21 going to give them your information of how they
22 communicate and get it all around, and you're also
23 going to be calling in to get updates.

24 You're not a party in this case, so you're
25 not going to be served with anything. So it's going

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1 to be your responsibility to make sure you follow what
2 happens on this, and when it's called or when it isn't
3 called, or if it's rescheduled.

4 We'll do our best to keep you informed,
5 but you can't rely on us to serve you. So any other
6 questions then?

7 MR. WHITE: I do not have any.

8 CHAIRMAN GRIFFIS: Mr. Bolden, Mr. Moody,
9 any questions?

10 MR. MOODY: We have no questions.

11 CHAIRMAN GRIFFIS: Excellent. We look
12 forward to seeing you again on the 17th, then, and
13 we'll put it first case in the morning.

14 MR. MOODY: Thank you.

15 CHAIRMAN GRIFFIS: Very well. Let's move
16 ahead and call the next case.

17 Application No. 17512

18 MS. BAILEY: Application No. 17512 of KC
19 Enterprises, pursuant to 11 DCMR 3103.2, for a
20 variance from the lot area and lot width requirements
21 under Section 401, and to a variance from the side
22 yard requirements under Section 405, to construct a
23 new semi-detached dwelling in the R-2 district and
24 premises, east of the 300 block of 58th Street, N.E.,
25 Square 5264, Lot 22.

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1 CHAIRMAN GRIFFIS: Excellent. Are we
2 ready? The Applicant ready?

3 MR. MOODY: Yes.

4 CHAIRMAN GRIFFIS: Are you the Applicant
5 again?

6 MR. MOODY: Yes.

7 CHAIRMAN GRIFFIS: Fabulous. Why don't
8 you state your name and address for the record?

9 MR. MOODY: Good morning again. Kevin B.
10 Moody, mailing address 6713 Burch Hill Road,
11 Brandywine, Maryland, 20613.

12 CHAIRMAN GRIFFIS: We have notes that this
13 actually is not in need of lot area relief; is that
14 correct?

15 MR. MOODY: That is news to me.

16 CHAIRMAN GRIFFIS: What's the total lot
17 area that you have?

18 MR. MOODY: The total lot area that we
19 have for this property is 22 by 140, and that is a
20 total of \$3,080 square feet.

21 CHAIRMAN GRIFFIS: And the among for
22 square foot?

23 MR. MOODY: 3,000.

24 CHAIRMAN GRIFFIS: So you wouldn't be
25 needing a relief of the lot area, but the lot width?

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1 MR. MOODY: Yes. The lot width and the
2 side yard of the two that we are for this particular
3 application.

4 CHAIRMAN GRIFFIS: Excellent. Let's move
5 ahead then.

6 MR. MOODY: Good morning. I have a brief
7 statement. The Applicant, KC Enterprises, the
8 contract purchaser of the in-fill vacant lot, Zone R-
9 2, and is located on the 300 block of 58th Street in
10 Washington, D.C., between known as Square 5264, Lot
11 22.

12 KC Enterprise is seeking relief from the
13 minimum lot width and side yard requirements. The
14 subject property is a vacant lot, which is only 22
15 feet wide by 140 feet long, and we plan to develop a
16 18 by 40 foot two-story semi-detached home, with brick
17 front, three bedrooms, two and a half baths, off-
18 street parking and several other amenities.

19 The width of the proposed lot and the
20 proposed four foot side yard is consistent with what
21 the adjacent property owner has provided, and is
22 consistent with the neighborhood. The proposed 18
23 foot wide provides for a beautiful design open-floor
24 plan that flows well, and provides decent-sized
25 useable bedrooms and living spaces for the intended

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1 use.

2 Anything narrower than 18 feet would prove
3 to be a sub-par architecturally designed home for the
4 family of four or more, which is the intended buyer.
5 In addition, the colonial style house will blend into
6 the neighborhood and is almost an exact replica of the
7 adjacent property that was renovated approximately two
8 years ago.

9 The two variances are minor requests, as
10 a redirect result of a narrow lot. Based upon the
11 unique and exceptional conditions of the vacant lot
12 and strict compliance to the zoning regulations, it
13 would create exceptional and practical difficulties to
14 KC in developing a much-needed affordable house on
15 this vacant lot.

16 Without the approval of these two
17 variances, it will make it almost impossible for the
18 owner or anyone to ever develop this property.
19 Lastly, the granting of the requested variances will
20 add a property to the tax rolls and will not have any
21 detrimental effects or impacts on the neighborhood for
22 adjacent property owners.

23 CHAIRMAN GRIFFIS: Thank you very much.
24 There's two questions. You mentioned that this would
25 be -- anything smaller would be a subpar architectural

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1 layout. What does that mean?

2 MR. MOODY: Certainly. Not that proclaim
3 to be an expert, but I've built and developed quite a
4 few homes, and typically any homes that are narrower
5 than 18 feet, they really do not flow well. They're
6 not useable room sizes.

7 It just does not make for a home, I guess
8 is what I'm trying to -- the point I'm trying to get
9 across.

10 CHAIRMAN GRIFFIS: Okay. So anything less
11 than 18 feet, you basically have a hallway and a small
12 room?

13 MR. MOODY: Exactly.

14 CHAIRMAN GRIFFIS: I see, okay. Then you
15 made a comment that this is almost an exact replica of
16 the building next door?

17 MR. MOODY: That's correct, sir.

18 CHAIRMAN GRIFFIS: Well, why don't we
19 start with what are the similarities? Let me put it
20 to you directly, so you can answer.

21 Relative to the house next door and of
22 course there's evidence in the record that I think
23 it's 111 years old, a stunning house. IT's raised up.

24

25 The first floor is anywhere from maybe four, four and

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1 a half feet above the grade, and there's a whole front
2 porch. It looks like it's a wood frame on the black
3 and white that I have.

4 The roof pitch is to its side, and there's
5 double-hung windows with shutters on the side. There'
6 percolation on that, columns and piers that hold up
7 that cupboard porch area. You are similar in what
8 way?

9 MR. MOODY: It's similar in the effect
10 that it is a colonial-style home. The house next
11 door, which is a rental property, basically the
12 basement sits approximately three and a half feet
13 above ground, and then you're basically having a front
14 porch.

15 If you were to look at the architectural
16 floor plans in the elevations that were provided, you
17 pretty much see the same style windows with the
18 shutters on the side, and it is an A-frame roof.

19 So obviously not exactly exact, but the
20 style and the similarities of the house will basically
21 make it mesh into the existing neighborhood.

22 CHAIRMAN GRIFFIS: Okay. Let me ask you.
23 I mean, you brought it up. Why don't you raise it up
24 and maybe get a cellar or a basement, and why don't
25 you have a porch all the way across, and why is your

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1 roof pitch towards the front of the house and not to
2 the side?

3 MR. MOODY: Certainly. The home that
4 we're putting there is a modular home, due in fact to,
5 you know, the size and trying to keep the cost down to
6 make it affordable home. So there's not but so many
7 changes that you can make to the modular home.

8 CHAIRMAN GRIFFIS: Understood.

9 MR. MOODY: In respect to why we do not
10 have a basement, when I had a conversation with the
11 ANC single person, as well as some of the adjacent
12 property owners, there appears to be water issues
13 adjacent to that alley.

14 CHAIRMAN GRIFFIS: So you were prepared to
15 put a basement in, but the ANC said "Hey, you might
16 get water in your basement," so you took it out?

17 MR. MOODY: Well, once you look at it and
18 I've been around there. Once we had heavy rains, it's
19 pretty much standing water there. So if you see a
20 standing water problem there now, why really introduce
21 something that could potentially be a major headache
22 for the ultimate purchaser of the property?

23 CHAIRMAN GRIFFIS: Sure. Not that it's
24 required. I'm interested.

25 MR. MOODY: Okay.

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1 CHAIRMAN GRIFFIS: Any other questions
2 from the Board?

3 MS. MILLER: Am I correct? Is this being
4 built for affordable housing?

5 MR. MOODY: That is correct.

6 MS. MILLER: And can you just elaborate a
7 little bit what that means in this context?

8 MR. MOODY: What affordable housing means
9 --

10 MS. MILLER: Is this a purchase at a
11 certain price or what?

12 MR. MOODY: Okay. When I say
13 "affordable," oftentimes some prospective purchasers
14 get the assumption that that means you're going to
15 sell the house for \$150,000. That's not the point
16 that I'm trying to get across.

17 When I'm referring to affordable, we will
18 basically take into consideration the acquisition
19 price, our construction costs, management fees and
20 things that goes in. Obviously, we will be able to
21 make a little bit of profit, and then market it to
22 clientele that fit somewhere between 80 to 100 percent
23 of AMI for the area.

24 The last that I checked, if I'm not
25 mistaken, the AMI for the Washington, D.C.

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1 metropolitan area, if I'm not mistaken, is about
2 \$91,000.

3 CHAIRMAN GRIFFIS: Is that outside of the
4 market in the area, that specific market right here?

5 MR. MOODY: Quite the contrary. If you
6 probably were to go up not even a quarter of a mile at
7 the intersection of 58th Street and East Capitol
8 Street, they are building attached townhouses that are
9 in the mid-350's.

10 CHAIRMAN GRIFFIS: So you're saying that
11 you are coming in below market?

12 MR. MOODY: Yes.

13 CHAIRMAN GRIFFIS: So you're saying that
14 if someone comes in and offers you \$400,000 for this
15 house, you won't take it?

16 MR. MOODY: I would gladly take it, sir.

17 CHAIRMAN GRIFFIS: So that there is no
18 really affordable lock on this?

19 MR. MOODY: Well, it's in error what you
20 just said, if a person would offer it. We would not
21 be marketing it, nor would I be listing it, because
22 I'm a licensed real estate agent, above 400,000.

23 But in the scenario you just said, if a
24 person just walked up and just said "I'll give you
25 400," I'm not going to tell a story and say we

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1 wouldn't.

2 CHAIRMAN GRIFFIS: Let me try to get to
3 the bottom. You made the representation that it be
4 affordable housing. But what keeps it at an
5 affordable level? I mean if you're going to put it
6 out -- you're going to get a decided list? I don't
7 understand that. But maybe I don't need to.

8 MR. MOODY: If I can maybe try to
9 elaborate. I've worked for Marshall Heights Community
10 Development Organization for the past eight and a half
11 years up until July, and I was the housing manager
12 there.

13 Our premise, whenever we are building
14 affordable housing, is it's related to the AMI of the
15 area. So I'm using the same rationale that one of the
16 premier non-profit organizations in the city uses in
17 determining what's affordable.

18 CHAIRMAN GRIFFIS: I understand that. I
19 understand how to set an affordable level on what you
20 price tag is. But you're not telling me that you're
21 going to maintain that at all.

22 MR. MOODY: Oh no.

23 CHAIRMAN GRIFFIS: I mean you can say
24 we're going to put it out at 80 percent of AMI, and 80
25 percent of AMI is going to be \$276,000. You're going

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1 to put it out there and you're a licensed broker and
2 you're going to list it.

3 Someone's going to come in and say "Fine,
4 I'll give you that" and you say "Good. We can say
5 we're going to sell it at an affordable level." Those
6 people aren't necessarily going to qualify as coming
7 in at a -- but it doesn't matter, that price part.

8 But then the next person walks up and says
9 "Hey, you know what? I really love that house, I love
10 the area. I grew up there, and I just won the
11 lottery. I'll give you 500,000 right now cash. I
12 want it," and you're saying you're not going to turn
13 that down.

14 So it's not really affordable, but you're
15 setting it at a price point which fits within the
16 parameters that might be called affordable.

17 MR. MOODY: That would be a logical --
18 again, that's not --

19 (Simultaneous discussion.)

20 CHAIRMAN GRIFFIS: It's not really
21 appropriate to get into it. Okay. Any other
22 questions? Follow-up. Let me -- yes, Mr. Hood?

23 MR. HOOD: Mr. Moody, it looks as though
24 one of the site drawings, it looks as though you're
25 going to be right up on the alley.

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1 MR. MOODY: That's correct, Mr. Hood.

2 MR. HOOD: So have we taken in
3 consideration -- I don't know if trucks come up and
4 down the alley, trash trucks. I believe they probably
5 pick up the alley. Have we taken into consideration
6 that turn into the alley to pick up trash and all?

7 MR. MOODY: Well, if you were to look from
8 where we're planning on siting the house, Mr. Hood, we
9 are 20 feet back from the property line. So before a
10 truck would end up having any radius, that truck would
11 have made their turn and be going in a straight
12 direction, much prior to even getting to the place of
13 the house, which sits back 20 feet sir.

14 MR. HOOD: Yes, I understand that. But
15 you know, everybody drives differently. They could go
16 over top of the curb. I know that's not your
17 responsibility, but I just want to know if that's been
18 taken into consideration.

19 But anyway, the rental property that you
20 said is next door, how many windows does it have on
21 that side?

22 MR. MOODY: Let me look at a picture, sir.

23 MR. HOOD: Okay. I'm trying to see a
24 picture, and I can't see it from where it is.

25 MR. MOODY: I'm not exactly sure if you

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1 have the ones that were submitted. But if you were to
2 take a look at the exhibit that says "Left side view
3 of vacant lot."

4 MR. HOOD: Right. I see that one window.
5 Is that a window behind the pole, that pole?

6 MR. MOODY: I'm not 100 percent sure, but
7 the owner of the property is here, and I'm sure that
8 he can elaborate. But it appears to be one there,
9 sir.

10 MR. HOOD: Two, okay. You know, when I
11 first looked at this, and I'll be frankly honest. It's
12 like me wearing a -- needing a size 38 and trying to
13 fit in a size 32. That's kind of what I looked at
14 when I looked at this.

15 I know there are other properties in that
16 area that are pretty much similar. But I would be
17 open to hearing the rest of the discussion.

18 MR. MOODY: If I could again elaborate.
19 If you were, for instance, the adjacent property
20 owner, the one that you're referring to in question,
21 when you look at the space between that one and the
22 other property that's adjacent to that one, it is very
23 much consistent and in line from what I'm proposing.

24 Obviously, I would love to have a wider
25 property that we're trying to seek, but this was

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1 zoned, I think, back in the early 1900's, even pre I
2 think 1958 when the zoning regs, you know, came about.

3 MR. HOOD: That would have been good for
4 us. I don't think we have a view that shows the -- on
5 the adjacent side of the rental property, on the
6 opposite site of yours, at least I don't see one.

7 But anyway, that would have been good for
8 us to look at, so we can get a relationship between
9 the two. Thank you, Mr. Chair.

10 CHAIRMAN GRIFFIS: Agreed. Good question.

11

12 Let's get right to the heart of the matter. All this
13 is somewhat getting to it, but let me ask you
14 directly. What are you asserting that the uniqueness
15 of this property is?

16 MR. MOODY: The narrowness of the property
17 is pretty much the spearheading factor.

18 CHAIRMAN GRIFFIS: And how do you
19 articulate the practical difficulties in complying
20 with the regulations based on that narrowness?

21 MR. MOODY: It pretty much boils down to
22 what I had alluded earlier, as far as the width of the
23 property.

24 If we're building right on the property
25 line, again that only allows 22 -- the lot, which is

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1 only 22 feet, and if we were to be in strict
2 compliance with the zoning regulations, then it
3 requires an eight foot side yard.

4 So if you take eight from 22, then that
5 basically will leave you a 14-foot house which I can't
6 say no person would build a 14-foot wide house, but it
7
8 just would not serve any purpose.

9 CHAIRMAN GRIFFIS: So you'd be 14 feet
10 exterior to exterior, plus let's say six inches on
11 each side. So you'd actually be a 13 foot clearance.

12 MR. MOODY: Exactly. Thirteen, I mean you
13 could -- I'm exaggerating.

14 CHAIRMAN GRIFFIS: How big is the common
15 hallway?

16 MR. MOODY: A typically common hallway
17 you're going to average three feet.

18 CHAIRMAN GRIFFIS: Okay, all right, and
19 it's your assertion that this would impair the
20 integrity of the zone plan, it wouldn't impair the
21 basis of what R-2 district is and wouldn't be in any
22 way in conflict with the public good?

23 MR. MOODY: Without a doubt, and I guess
24 to bring attention to the Office of Planning report,
25 they've also had language in their report that

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1 substantiates that assertion.

2 CHAIRMAN GRIFFIS: Okay. Questions?

3 (No response.)

4 CHAIRMAN GRIFFIS: Since there no
5 questions, let's move ahead. Anything else you want
6 to provide at this time? We'll obviously give you a
7 moment to close or give further information as we
8 finish this up.

9 MR. MOODY: No comment.

10 CHAIRMAN GRIFFIS: Good. Let's move
11 ahead. Very good morning.

12 MR. RICE: Good morning, Mr. Chair, Board.

13
14 My name is Steven Rice. The Office of Planning
15 recommends approval for the requested variances for
16 Application 17512 under Section 223. The non-
17 conforming lot has a rectangular shape, but is
18 narrower in area than what is currently required.

19 Plat records verify that the lot was
20 subdivided on May 22nd of the year 1900, prior to the
21 adoption of the 1958 regs. The uniqueness therefore
22 is that the lot's originally-created narrowness is --
23 that's the uniqueness, and the owner's inability to
24 bring this lot to conformance.

25 In the R-2 district, a semi-detached

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1 dwelling is required to provide one side yard with
2 eight feet of width, as the minimum of the width size.

3
4 The Applicant proposes a four foot wide yard. Given
5 the narrowness of the 22 foot lot, strict application
6 of the zoning regs could result, would result in a
7 practical difficulty, as the eight foot conforming
8 width would yield a construction of a house that would
9 have a minimum, a maximum of 14 feet of width.

10 To minimize the impacts to the adjacent
11 home, the side yard would be provided on the south
12 side lot line, as opposed to the north side, at the
13 border which borders the alley.

14 The requested relief, therefore, should
15 not harm the adjacent or nearby properties, as most of
16 the properties have similar side yard conditions. The
17 property will add value to the neighborhood, by
18 providing needed in-fill housing to a lot that is
19 currently vacant.

20 As such, grantee relief will promote the
21 housing objectives of the Ward 7 plan, and also
22 support the intent of the R-2 and the generalized land
23 use map. As of the day of drafting this report, OPA
24 had not received comment from the ANC, which is ANC
25 7C, or the neighbors.

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1 The OP does believe that the Applicant has
2 met the burden of proof, and recommends approval.
3 Thanks.

4 CHAIRMAN GRIFFIS: Excellent. Thank you
5 very much, Mr. Rice. Let me ask. Is the ANC 7C here?
6
7 Oh, indeed. Good. Then why don't we have you up?
8 Are There questions from the Board as she gets
9 prepared to present. Ms. Miller?

10 MS. MILLER: I'll ask a question, Mr.
11 Rice. It's kind of a hypothetical question, but in
12 essence, the variances are needed in this case because
13 the property was subdivided to a dimension too narrow,
14 according to our current regulations.

15 Are there properties that fall in that
16 category, that are just too narrow period, even though
17 they've been subdivided that way they're just too
18 narrow for a house to be built on anyway?

19 MR. RICE: Conforming?

20 MS. MILLER: They don't conform. They're
21 two narrow, because they've been subdivided pre our
22 regulations.

23 CHAIRMAN GRIFFIS: So they're existing
24 non-conforming dimensions.

25 MS. MILLER: They're existing non-

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1 conforming, and they're these vacant properties. It's
2 kind of hypothetical, but I just want to know if
3 you've seen this in the scheme of things, where a
4 property's been subdivided.

5 It's so narrow that you wouldn't put a
6 house on it, or you know, it wouldn't even be a
7 question of variance relief, because this is just like
8 too bad.

9 They made a mistake. They subdivided it
10 too narrow, or no. Or is it only -- it's always on --
11 can we just look at it on a case-by-case basis?

12 MR. RICE: I'm not sure what the question
13 is?

14 MS. MILLER: Sorry. It's a little bit --

15 MR. RICE: But I haven't seen a lot of
16 cases where lots were subdivided post-1958.

17 MS. MILLER: No, pre-1958. I mean we have
18 seen other cases, and it's probably just on a case-by-
19 case basis, where they were subdivided before our
20 current regulations, and they're narrow. So I guess
21 we just look at that and say "Okay, it could be."

22 I'm not saying this case. It could be
23 that well, it's just too narrow and you can't grant
24 variance relief because --

25 MR. RICE: I would assume so in some

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1 cases, but not for this case.

2 MS. MILLER: Right, because they're always
3 set up as unique, because it was before the
4 regulations that they were made so narrow. There's
5 going to be a practical difficulty.

6 So then do we look at the space
7 surrounding it and then make that decision?

8 MR. RICE: Yes. I think we would look at
9 also the character of the houses, the block, the
10 square. In this case, it's not uncommon for the lots
11 to be narrower than what's required. So that a side
12 yard reduction would not be anything out of the normal
13 in this area.

14 MS. MILLER: Okay, thank you.

15 (Pause.)

16 CHAIRMAN GRIFFIS: Any other questions
17 from the Board of the Office of Planning? Does the
18 Applicant representative, Mr. Moody, have any
19 questions of the Office of Planning?

20 MR. MOODY: I concur with all of their
21 comments.

22 CHAIRMAN GRIFFIS: Indeed. So you're not
23 going to rake them across the coals, give them hard-
24 hitting questions on their case analysis? Then we'll
25 move on.

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1 MR. MOODY: The only other thing, I guess,
2 just to put a feather in our cap. We did, you know,
3 recently sat down with the Office of Planning, and I
4 met with one of the officials at the Office of Zoning,
5 prior to even putting in a contract on the property,
6 to try to get a feel if they thought that this would
7 be something that would work, and all parties agree
8 that they thought that it was something that --

9 CHAIRMAN GRIFFIS: Understood, and now
10 they've brought that to us for our opinion. Okay.
11 Let me have the ANC introduce themselves for the
12 record? Your name and your address please?

13 MS. ANDERSON: Good morning. My name is
14 Wadelle Anderson, and I'm the ANC commissioner for the
15 single-member district 7C-05.

16 CHAIRMAN GRIFFIS: A very good morning,
17 Ms. Anderson. Good to see you back again. Let me ask
18 you first, you obviously are able to cross-examine Mr.
19 Moody on any testimony that you heard in his
20 presentation. You can do that now.

21 Also, we will avail Mr. Rice for cross-
22 examination of the ANC, and then you can move ahead
23 and present your presentation. We are going to ask
24 that anything you can say today, it's going to have to
25 be put into the record in writing, as authorized by

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1 the ANC as a position.

2 MS. ANDERSON: Okay. The only question I
3 have of Mr. Moody. You stated in your prior testimony
4 that when you spoke with me, which was approximately
5 three weeks ago, that I had apprised you of the fact
6 that that alley does have a problem with the drainage,
7 that was being addressed by D.C. WASA. You testified
8 just previously that you had spoken to me prior to
9 your plans for the building?

10 MR. MOODY: Well, if I said that I spoke
11 to you prior to, then that was not. But the present
12 owner of the property was a co-worker of mine for nine
13 years, and he had also mentioned that, because his
14 father -- I mean they've owned this property for years
15 and years. So he also mentioned it and you just
16 reaffirmed it.

17 MS. ANDERSON: All right, thank you.

18 MR. MOODY: So I apologize for any of that
19 confusion.

20 MS. ANDERSON: Okay, that's fine.

21 CHAIRMAN GRIFFIS: Anything for Mr. Rice?
22 That's okay. You have submitted your report. Okay,
23 Ms. Anderson.

24 MS. ANDERSON: I have not seen Mr. Rice's
25 report.

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1 CHAIRMAN GRIFFIS: Oh indeed. We'll get
2 you a copy of the report.

3 MS. ANDERSON: I must admit that when this
4 initial application came into 7C, it was not directed
5 to me directly. I must apologize also that I was
6 hospitalized with spinal surgery for a while, so I'm
7 just coming back and getting the application, and
8 that's why I couldn't give you the formal comments
9 prior to coming today. But I did speak with Mr. Moody
10 and I did with Mr. Muhammad, the owner of the property
11 next door.

12 CHAIRMAN GRIFFIS: Excellent. Well, I
13 hope everything is well, and we're glad to see you
14 here today.

15 MS. ANDERSON: Thank you.

16 CHAIRMAN GRIFFIS: What do you have for
17 us?

18 MS. ANDERSON: Oh. Well, I'm just here to
19 state that the ANC has spoken with Mr. Muhammad. I
20 have spoken with Mr. Moody and we have spoken with
21 some of the other property owners.

22 Their main concern is the proximity or the
23 variance that they're seeking relief of more than the
24 four feet. I mean, they need the four feet on the
25 side property. It is a very deep property.

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1 We do have concerns for it being directly
2 on the alley, because when the trash trucks and other
3 vehicles come through, it may pose a problem, in not
4 just making the turn, but I would be quite concerned
5 having a home right on the alley proper.

6 We have to take into consideration the
7 want of the community and their opinions, and their
8 opinions are that they do not want this relief granted
9 to the KC Enterprises.

10 CHAIRMAN GRIFFIS: Say that again about
11 KC?

12 MS. ANDERSON: They have made application
13 for the variance, and the community doesn't want --
14 it's not in agreement with taking more than --

15 Well, granting them the additional four
16 feet that they would need on the side of the proposed
17 house, because the owners of the home find it a little
18 too close, and they are here to speak on their behalf
19 as well.

20 CHAIRMAN GRIFFIS: Yes, absolutely. Okay.

21
22 Very well. Mr. Moody, do you have cross?

23 MR. MOODY: The only, I guess just
24 clarification. Obviously, I respect the concern, what
25 you're saying, with the property being on the property

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1 line. But it would be no different than on the other
2 side of the alley, where some of the people have a
3 fence.

4 For instance, if I wanted to put a fence
5 on the property line, whether it's a house or a fence,
6 the trash truck is going to hit it either way. So I
7 guess the significance of not putting it on the
8 property line, and against it was a fence.

9 I mean a truck driver just has to be able
10 to drive through a 15 foot width, and that's customary
11 in 90 percent of the alleys in the District.

12 CHAIRMAN GRIFFIS: Understood. Okay.
13 That's your understanding, as I understand?

14 MR. MOODY: Yes.

15 CHAIRMAN GRIFFIS: Questions from the
16 Board. Ms. Miller?

17 MS. MILLER: Ms. Anderson, I just want to
18 get a couple of things clear. Are you the chair of
19 your ANC?

20 MS. ANDERSON: Single-member district, not
21 of 7C, but of the single member district.

22 MS. MILLER: Okay, and was this
23 application presented to the ANC or no?

24 MS. ANDERSON: No. We did not get an
25 opportunity to present this and to tell -- it would

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1 have been in August. August the ANC's do not meet. We
2 met last Thursday, which was too late to file the
3 proper paper work which required the 30 days prior.

4 MS. MILLER: Okay. So your testimony is
5 just based on your interaction with your constituents
6 and your discussions with the neighbor and Mr. Moody?

7 MS. ANDERSON: Yes.

8 MS. MILLER: Okay. That's all I have for
9 you. Thank you. Mr. Chairman, I just wanted to ask
10 Mr. Rice a question, if I could go out of order for a
11 minute. Mr. Rice, I'm wondering if you could just
12 give an opinion about the building abutting the alley
13 in this case?

14 MR. RICE: Well, OP believes that they're
15 aren't many options with this property. For instance,
16 if the house was built towards the north property lot
17 line, it would provide a four foot side yard on the
18 alley. But it would be even closer to the adjacent
19 property, which could cause some sort of impact.

20 So given those two options, we think that
21 it's best or it would be better that the house is
22 built on the alley side, as opposed to the north side,
23 given the options. Or otherwise, you know, the lot
24 remains undeveloped.

25 CHAIRMAN GRIFFIS: Right. An interesting

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1 point.

2 MS. MILLER: I'm sorry, and are the
3 potential adverse impacts of it being on the alley
4 basically what's been stated here, with trash trucks
5 or things like that that we should be concerned about?

6 MR. MOODY: With my, I guess, limited
7 knowledge, I would say that the 20-foot setback, as
8 far as the turning radius, should be sufficient. You
9 know, the alley is 15 feet, so that's pretty standard.

10 MS. MILLER: Thank you.

11 CHAIRMAN GRIFFIS: I have a lot of
12 concerns with this, the building on the alley line is
13 not one of them. Living in an R-4 in a row dwelling,
14 my neighbors, both their houses are on a ten-foot
15 alley. They define the alley, and believe me those
16 trash trucks zoom through at 50 miles an hour.

17 Not that that's germane necessarily, but
18 the point being on a larger perspective, I think the
19 city is -- has a plethora of examples of structures
20 right on the alley, and 15 feet, I think, is a
21 substantial amount.

22 There are other concerns with this
23 application, and I think that was a good one to bring
24 up.

25 But in terms of turning radius, in terms

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1 of detrimental impact of the surrounding area or the
2 public good that it goes to of access in and out of
3 that alley, I don't see that being substantiated in
4 the information that's provided here.

5 Okay. Let's move ahead, then, to other
6 questions for the Board, of those folks that have now
7 presented. If there are none other -- yes, Mr.
8 Etherly.

9 MR. ETHERLY: Thank you very much, Mr.
10 Chair. Let me follow up on Mrs. Miller's question to
11 Mr. Rice. Mr. Rice, we might have talked a little a
12 bit about this earlier.

13 Did you have an opportunity or did you
14 have occasion to take a look at any of the adjacent
15 properties, in addition to the one immediately
16 adjacent to the subject property? I'm just trying to
17 get a sense of it.

18 MR. RICE: Yes, I did get a chance to, if
19 I recall correctly, the property that's north of the
20 adjacent property that's shown in the picture.

21 My understanding is that the conditions
22 are very similar. Maybe at most, eight to ten feet in
23 between those two properties. If that -- so it's --
24 I
25 think it's perfectly in this same sort of

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1 characteristic vein as the other properties on this
2 square.

3 MR. ETHERLY: Okay.

4 MR. RICE: I don't have a picture of it in
5 front of me, so I don't really recall exactly what's
6 there. But that's my recollection.

7 MR. ETHERLY: Okay, okay. Let me turn to
8 Mrs. Anderson. Thank you very much Mr. Rice, and Ms.
9 Anderson, thank you for testimony and of course that
10 of the Applicant.

11 I'm going to ask you the same question,
12 not to refute Mr. Rice's characterization of the
13 neighborhood, but of course as an ANC commissioner,
14 you're going to have very intimate familiarity with
15 kind of the context of the neighborhood.

16 So if you could talk a little bit to your
17 -- with regard to the distance between the side yard
18 of the house that's next to the subject property, and
19 the adjacent house, what is the size of that yard? Is
20 that fairly indicative of what you see along this
21 entire street, houses, in that type of close proximity
22 to one another?

23 MS. ANDERSON: Well, we have quite a few
24 row houses on the street surrounding that, and then on
25 58th Street to the south, further up, we have the

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1 Capital Gateway Development.

2 So those are all townhouses, and there
3 will be perhaps eight to 12 single family homes built
4 on that entire development. But most of those homes
5 that are coming are townhouses.

6 But other properties in the community do
7 have that at least eight feet between the houses. It
8 makes it hard to get around the side of your house, or
9 if you're moving anything such as lawn furniture. You
10 know, I have cast iron furniture and it's quite
11 cumbersome. So you have to turn it to an angle when
12 you're moving it.

13 But no less than eight feet, the majority
14 of the houses.

15 MR. ETHERLY: And it would appear from it,
16 I'm looking at Exhibit No. 7, the picture, the set of
17 four pictures that are included in the record, so it
18 will be this picture, these set of pictures noted
19 here.

20 With regard to, as the alley continues
21 away from 58th Street deeper, are there any houses
22 that abut that alley as you go deeper into it? It
23 appears at first glance no, it's a fairly clear
24 sightline. There's a large tree as you head back
25 along the alley.

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1 But to the best of your recollection, are
2 there any other houses that immediately about the
3 alley, where this proposed project would be?

4 MS. ANDERSON: The alley, the homes there
5 have a considerable amount of land in the back and on
6 the sides. So they don't -- they're not right on the
7 alley.

8 MR. ETHERLY: Okay, and then where the --
9 again, looking at the very first picture in Exhibit
10 No. 7, where there appears to be a vehicle parked at
11 the rear of the structure that's pictured, there's an
12 alley behind there as well; correct?

13 MS. ANDERSON: Okay, yes.

14 MR. ETHERLY: Okay, okay. Thank you.
15 Thank you, Mr. Chairman.

16 CHAIRMAN GRIFFIS: Yes?

17 MS. MILLER: I guess I'll ask you this
18 now, because I understand the neighbors are going to
19 be coming up and testifying, and you might say
20 something later. But with respect to the impact on
21 the adjacent property, their having a four feet side
22 yard instead of an eight, I guess I have two
23 questions.

24 One is I can see, I guess, they don't have
25 any windows there, so you might say that there's not

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1 a negative impact that way.

2 But did you evaluate other impacts of
3 being that close, and my second question is it sounds
4 like there aren't other properties that have less than
5 eight foot side yards in this block or neighborhood,
6 and doesn't that have an influence on the character of
7 the neighborhood?

8 MR. MOODY: Okay. Let me ask. When you
9 say "eight feet," do you mean eight feet on each side
10 or a total of eight feet between both properties,
11 because we --

12 MS. MILLER: I'm just talking about eight
13 feet between the adjacent property and the new
14 building that would be built.

15 MR. MOODY: Okay.

16 MS. MILLER: I'm sorry. I'm looking -- we
17 already talked about the alley, but it's now the
18 effect on the neighboring house.

19 MR. MOODY: I don't think that there will
20 be a negative impact on the property, given the
21 windows. Or if there are windows. I'm not -- I can't
22 really recall, maybe two.

23 If the site were perfectly, you know, a
24 perfect lot and there was eight feet, I don't think
25 the impact would be, you know, significantly different

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1 than what's proposed to those windows. Is that
2 answering your question? Or are you asking what other
3 impacts, aside from the windows?

4 MS. MILLER: Other impacts, such as the
5 access that Ms. Anderson was referring to?

6 MR. MOODY: That could -- I guess there
7 could possibly be some impacts, given you know, if you
8 decide to produce a fence or something. But if not,
9 I don't know, because I mean I don't know the layout
10 of the proposal, as far as if there will be any sort
11 of separating structure between the properties.

12 I guess my point is if there is a fence or
13 something to separate the lots, and I don't know the
14 actual size of the side yard of the property. That
15 wasn't provided. But it appears that the lot line is
16 fairly close, maybe three or four feet. So if there
17 is some sort of fence or some sort of separating thing
18 there, it could possibly.

19 MS. MILLER: Okay. You don't know how far
20 away the other house is from their lot line. Is that
21 what you're saying?

22 MR. MOODY: Not exactly.

23 MS. MILLER: Okay.

24 MR. MOODY: Just judging by, you know, the
25 image, it seems that it is within three or four feet

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1 of the property, the lot line.

2 MS. MILLER: Okay. I guess -- and my
3 final question really goes to, because I think the
4 third prong of this test is the most important,
5 because it seems to me, in this case, there's
6 uniqueness and there's practical difficulty.

7 So then we're looking at the impact on the
8 neighborhood and the character of the neighborhood.
9 So I'm wondering if you can comment on the design of
10 the modular house, in the context of the homes that
11 are there in this neighborhood?

12 MR. RICE: As the Applicant stated, I
13 think that it is somewhat or even considerably similar
14 to the style and the design of most of the properties
15 that are semi-detached or detached. I can't speak to
16 the row houses on the square, but at least for the
17 detached and semi-detached homes, I think it is
18 similar and consistent, rather.

19 MS. MILLER: Are there other modular homes
20 in the neighborhood, or is it just that you think that
21 this is designed to blend in with them, with the
22 existing homes?

23 MR. RICE: With the existing home?

24 MS. MILLER: This is a modular home;
25 correct?

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1 MR. RICE: Yes.

2 MS. MILLER: I'd just like -- my question
3 is are there others in the neighborhood, in the block,
4 or is it -- or do you think that this just blends in
5 with the other homes that are there?

6 MR. RICE: Are there other modular homes?
7 I don't recall. I'm not looking at, you know, a
8 square image of what's there. But it appears that it
9 does fall within the characteristics of the square and
10 the neighborhood.

11 MS. MILLER: Thank you. I'm finished.

12 CHAIRMAN GRIFFIS: Anything else from the
13 Board? Mr. Moody, you had a follow-up?

14 MR. MOODY: Yes. If I could try to
15 clarify one or two things, maybe to put Ms. Miller's
16 mind at ease. I have personally have built five or
17 six of these modular homes in less than a one-mile
18 radius of this property.

19 If you look at a modular home versus a
20 stick-built home, once the project was completed,
21 unless you are a trained architect or a builder, you
22 would not be able to differentiate the difference
23 between the two, and actually modular homes are
24 actually built more durable than stick-built. So to
25 try to put your mind at ease at that.

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1 I don't know if I can introduce this to
2 the record, which may answer some of the questions
3 that have been coming by, and if I can, if there can
4 be a way that a copy of it can --

5 CHAIRMAN GRIFFIS: Is that the base atlas?

6 MR. MOODY: But it's pretty much an aerial
7 view, which kind of shows where the property --

8 CHAIRMAN GRIFFIS: That's put in. That's
9 actually a base atlas, if I'm seeing that correctly,
10 which would show the footprint of the buildings on the
11 lot.

12 MR. MOODY: Correct.

13 CHAIRMAN GRIFFIS: Do you have any other
14 copies of that?

15 MR. MOODY: No.

16 CHAIRMAN GRIFFIS: When you have that
17 printed, if you wouldn't mind, why don't you give that
18 to Mr. Bailey. While she makes sure someone runs off
19 and makes copies for you to present to us to give to
20 the ANC, I want to call up the adjacent persons to
21 provide testimony.

22 MR. MOODY: If I could just finish my line
23 of thought with that please.

24 CHAIRMAN GRIFFIS: I know. But you know
25 you're not -- don't go through it until we have it in

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1 front of us.

2 MR. MOODY: Understood.

3 CHAIRMAN GRIFFIS: And then we'll get to
4 it, because it's going to be critical to show us where
5 the next property is. So you can hand that to Ms.
6 Bailey right now. She's going to do it. Let's move
7 ahead to a person to provide testimony.

8 Are there persons present to provide
9 testimony in support of the application? Opposition
10 to the application. Let's bring everyone up that's
11 here to present testimony. Is anyone else going to
12 present testimony on this case today?

13 Okay. I'll also note while the
14 individuals come up that we do have Exhibit No. 22,
15 which is the letter from Melissa Muhammad. And with
16 that, a very good morning to you both.

17 MS. MUHAMMAD: Good morning.

18 CHAIRMAN GRIFFIS: Could you just state
19 your name and address for the record, if you would?

20 MS. MUHAMMAD: My name is Melissa
21 Muhammad. Is this sufficient? My address is 332 -
22 58th Street, N.E., Washington, D.C., 20019.

23 MR. MUHAMMAD: My name is Albert Muhammad.

24

25 My address is 332 - 58th Street. I'm also the owner

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1 of the property.

2 CHAIRMAN GRIFFIS: Excellent.

3 MR. MUHAMMAD: Next door to the property.

4 CHAIRMAN GRIFFIS: Great.

5 MS. MUHAMMAD: We would like to voice our
6 vehement objection to this application. We purchased
7 this property in 2003, and we purchased this property
8 because of the revitalization that was happening in
9 the Deanwood Capital Gateway area.

10 Until September 1, this was our primary
11 residence. I suffered an accident where I fell down
12 a flight of stairs and injured my knee, and I have to
13 have surgery on my knee, which has required that I
14 live on one level and go into rehab.

15 So we offered to rent out the property --

16 CHAIRMAN GRIFFIS: Actually, I'm sorry to
17 interrupt you. But let me just clarify. It makes no
18 difference whether you live there or rent it out for
19 our purposes and jurisdiction. So we don't need to
20 spend --

21 MS. MUHAMMAD: Oh, okay.

22 CHAIRMAN GRIFFIS: And we certainly are
23 sorry to hear about your accident. But here it is.
24 I mean we have -- what we talk about is really the
25 physicality.

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1 We need to know what the uniqueness of the
2 Applicant's property is, what the particular
3 difficulty is, and now, we're going to hear from you
4 of why you think you don't think it should be
5 approved, based on the detrimental impacts that might
6 arise.

7 MS. MUHAMMAD: Right. We think that the
8 house is going to be built too close to where we
9 currently live. I mean we have the -- we actually
10 walk the distance between our house and this lot, and
11 we measure the distance from our house to the adjacent
12 house, which answers one of your previous questions,
13 which is about ten feet from where our property is
14 located to the property next door.

15 The distance between the houses in our
16 area is generally along that ten foot distance. There
17 are four properties that are located on our street,
18 our area, that particular block.

19 We talked with all of the residents, not
20 only not that block but also the residents that are
21 actually on Dix, 58th and Dix Street, and they
22 vehemently object as well.

23 One of the previous points was that the
24 alley, the obstruction in an alley may not be a major
25 issue, but we can definitely tell you that in fact

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1 trash trucks do run on that lot. My husband has done
2 a great job in rehabbing the way that the lot looks.

3 One of our objections to the application
4 is that this was a hangout or a place where trash was
5 dumped or that is an eyesore in the community, and
6 quite to the contrary, we've invested quite a bit in
7 making it very beautiful.

8 We actually have color pictures that we
9 wanted to provide to the Board to review and to
10 consider. So aesthetically, this would be very
11 detrimental to our community. One of the big pushes
12 is that we have invested a lot, as bringing young
13 professionals back to the area.

14 We really wanted to -- we worked with the
15 city in terms of the park that's across the street,
16 and really building up the aesthetics of the
17 community, and the city's investing \$11 million in
18 redoing 58th Street itself, as well as the park across
19 the street. So we think that it will be very
20 detrimental.

21 In addition to that, just plain quiet
22 enjoyment of our home. I mean, there's no way that we
23 can live in a house and have someone that lives that
24 close to us, and enjoy our house on a routine, on a
25 regular basis.

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1 One of the other issues that we're having
2 is that with the owner that lives next door to us,
3 which is -- there's a property that is currently on
4 the market. I think it's three doors down from us?
5 Three doors down from us, that's currently on the
6 market.

7 You know, one of the questions -- they
8 came up as we were talking as a group one day about,
9 you know, what's happening with this lot next door to
10 us. I think the comment that was made earlier is that
11 this house would be in keeping with the community.

12 Well, we have seen the houses that Mr.
13 Moody is referring to, the modular homes that are
14 built in the community, and it does not keep up with
15 the aesthetics of the community, and it's not
16 beautiful, I mean in our opinion, at all. So we would
17 really be in an adverse position if this house was
18 built, and if it was built that close to where we
19 live.

20 CHAIRMAN GRIFFIS: Excellent. Thank you.

21 MR. MUHAMMAD: Also, in the alley, my
22 neighbor on my far right, I remember a time he coming
23 around in the alley, his truck real close, almost on
24 the grass, next to where they're going to build the
25 house. He drove a F-150 truck, and he have to make

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1 that wide turn to go inside his gate.

2 So you imagine if a trash truck coming in
3 the alley and make that turn. We're impossible for a
4 house to be built there.

5 MS. MUHAMMAD: Then if I could also add,
6 you know, since we've come to the community, we have
7 really worked with the neighborhood, because a lot of
8 the neighbors have voiced a concern that they haven't,
9 the city has been non-responsive.

10 We worked, we actually worked on this
11 alley with Alicia Currie from DDOT, to have them to
12 come out and to WASA, to have them to come out and
13 repair the issue with the alley.

14 One of the questions was, you know, do
15 they need to widen the alley. That's why I was very
16 surprised when the comment was made that it was
17 sufficient space, because if you can see in one of the
18 pictures that we have, is that the way that the lot is
19 situated, we have to put two by fours along the
20 perimeter of the alley, to keep people from driving
21 onto the grass, because we put down sod ourselves on
22 that lot.

23 Because it was such a problem, we put down
24 the 2 by 4, because the traffic was coming onto the
25 lot so often. And I wanted to clarify a point

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1 earlier. I think Mr. Etherly asked about the picture
2 that has the truck in the background. You asked if
3 there was an alley behind that.

4 I want it to be clear that the way that
5 land is situated is that there, on the east side of
6 the alley, there's not a house. I mean, the east side
7 of the property there's no house. On the north side
8 of the property, there's not a house. On the south
9 side of the property, you will see there is a big
10 walkway. Then there is a huge shrub of trees. Then
11 there's another big space before you get to the
12 adjacent tenants, I mean adjacent home owners' home.
13 So there's not an alley behind that truck. I think
14 that was the question that you had. I wanted to
15 clarify that.

16 Another point that I wanted to clarify
17 with Mr. Rice, may I speak to that? Mr. Rice, I think
18 it is, indicated that there was no objection filed
19 from the community, which I thought was odd, because
20 I provided an objection.

21 I'm not sure of the date or the time that
22 he's referring to in his report, but I spoke with Ms.
23 Elaine Booth about filing the report and the timing,
24 because we didn't get notice of this --

25 CHAIRMAN GRIFFIS: Just a second. We'll

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1 get clarification of that. Mr. Rice takes on -- he
2 compiles all the official submissions, and that would
3 be from the ANC Or a civic association. That doesn't
4 -- as I said, we have Exhibit 22, which is your letter
5 and it's dated September 8th at 3:32 in the afternoon.

6 MS. MUHAMMAD: Okay.

7 CHAIRMAN GRIFFIS: Let's follow up with
8 additional questions. Let me ask you, your property
9 lands, as is abuts this site where? How much distance
10 is your house from your property line? What's your
11 side yard on that?

12 MS. MUHAMMAD: Our side yard is, I think,
13 six feet from our house to the property line.

14 CHAIRMAN GRIFFIS: So conceivably if this
15 was done, if this was built where they're proposing,
16 there would be ten feet between the two structures?

17 MS. MUHAMMAD: No, because one of our
18 questions was how were they proposing -- our numbers
19 are very different from their numbers, let me say
20 that, because the width of the lot that we determined
21 was 15 feet. So one of the issues that we had --

22 CHAIRMAN GRIFFIS: Whose lot was 15 feet?

23 MS. MUHAMMAD: The lot adjacent, Lot 21.

24 CHAIRMAN GRIFFIS: The application?

25 MS. MUHAMMAD: Lot 22, I'm sorry.

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1 CHAIRMAN GRIFFIS: This site?

2 MS. MUHAMMAD: Right.

3 CHAIRMAN GRIFFIS: Well, it's 22 feet.

4 MS. MUHAMMAD: Right. So what we did was
5 we had --

6 CHAIRMAN GRIFFIS: What is your house land
7 on that, on the common property line? How far away is
8 your structure from that property line?

9 MS. MUHAMMAD: Is that three feet? No,
10 it's three feet. It's the three feet line, from the
11 end of our house. From our wall to our property line
12 is three feet.

13 CHAIRMAN GRIFFIS: It's about three feet?

14 MS. MUHAMMAD: Correct.

15 CHAIRMAN GRIFFIS: Okay. So if it was
16 built as proposed, there would be seven feet in
17 between?

18 MR. MUHAMMAD: Correct.

19 MS. MUHAMMAD: I guess I would assume so.

20 CHAIRMAN GRIFFIS: Three feet plus four
21 feet.

22 MS. MUHAMMAD: Right.

23 CHAIRMAN GRIFFIS: Okay, understood. All
24 right. Other questions?

25 (No response.)

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1 MS. MUHAMMAD: It's on the side, but the
2 alley's all the way on the back. Yes, in the back.

3 CHAIRMAN GRIFFIS: Mr. Moody, do you have
4 cross?

5 MR. MOODY: Have all of the panelists
6 received a copy of this?

7 CHAIRMAN GRIFFIS: Yes.

8 MR. MOODY: A very, very brief
9 explanation. When you look at --

10 CHAIRMAN GRIFFIS: Do you have cross
11 questions of the testimony right now? Do you have
12 questions of them?

13 MR. MOODY: I guess my earlier comments,
14 so as to not to be repetitive about like the truck and
15 all of those things, still stands. So no other
16 objections.

17 CHAIRMAN GRIFFIS: Do you have any --
18 okay. Understood. Is there anyone else here present
19 in this Application 17512 that would like to provide
20 testimony, persons to provide testimony?

21 (No response.)

22 CHAIRMAN GRIFFIS: Since we don't have any
23 additional persons to provide testimony, let's move
24 ahead, then, Mr. Moody, with your view for closing
25 remarks.

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1 MR. MOODY: Certainly. As far as my
2 closing remarks, hopefully everyone has this in front,
3 and I guess I slightly beg to differ with the
4 comments, where they are saying that there is ten feet
5 between the other houses that are along 58th Street.

6 Per my tape measure that I put on there,
7 they vary anywhere from as little as six feet and as
8 much as eight feet, and that's not eight feet from the
9 edge of one person's property to the property line,
10 that's eight feet from the property to property. So
11 somewhere in the middle is the property line, so
12 they're averaging anywhere from two to four feet from
13 each one of the property lines.

14 So what I am proposing is very, very much
15 consistent with what the neighborhood has, and
16 hopefully the document that's in front of you will
17 substantiate that thought.

18 CHAIRMAN GRIFFIS: Excellent. Anything
19 else? Any other questions, clarifications, comments?

20 (No response.)

21 CHAIRMAN GRIFFIS: Okay. That being said,
22 Mr. Moody, let me ask you a couple of quick questions.

23

24 You're proposing to utilize what's called a pre-
25 engineered house, right?

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1 MR. MOODY: Yes.

2 CHAIRMAN GRIFFIS: And you've indicated
3 that that comes in, you know, somewhat standard issue,
4 sizes and dimension. Is there anything more similar
5 to, for instance, the roof pitch, the roof line and
6 the extended portion of the adjacent house that you
7 found?

8 MR. MOODY: Well for instance, if one of
9 the requirements, for instance, was to build a porch,
10 I can build a porch on site. That does not
11 necessarily have to come, you know, from the
12 manufacturer.

13 CHAIRMAN GRIFFIS: Right, okay. Let me
14 also ask you, and these documents are shown. It's
15 labeled "right elevation." I'm not really familiar
16 with that kind of terminology. But the right
17 elevation abuts the adjacent house?

18 MR. MOODY: Yes.

19 CHAIRMAN GRIFFIS: And then I look at the
20 left elevation, which abuts the alley.

21 MR. MOODY: That's the one with the alley,
22 and the reason that --

23 CHAIRMAN GRIFFIS: What's intriguing to me
24 is that you have windows abutting the adjacent house,
25 but no windows on an alley that has a 15 foot opening.

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1 Is there any way to adjust that?

2 MR. MOODY: I can adjust it accordingly,
3 but the reason that we did that was based upon my
4 initial meeting with the Office of Planning, and their
5 recommendations not to have windows on the side of the
6 alley.

7 CHAIRMAN GRIFFIS: And I can see why
8 they'd think that was a good idea. I would tend to
9 agree. However, you're caught between -- well, an
10 alley is a public area, which anyone could walk down
11 and your car, if you have that window right on the
12 property line, right on the alley, and it doesn't seem
13 to be very amenable to people opening their windows.
14 It's not safe.

15 MR. MOODY: Right.

16 CHAIRMAN GRIFFIS: It's on your side yard,
17 so it will be more controlled. It's on your property.

18
19 However, it's an interesting piece. I guess that's --
20 I mean one of the difficulties that I have is this is
21 a difficult site. Obviously, it's a unique site. I
22 don't think that's challenged at all.

23 And yet there isn't a unique address to
24 the site conditions. I mean I look at this, and the
25 more I get into this plan, this elevation, I see this

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1 house doesn't respond to this at all. It's not that
2 complicated, and there's some simple things that need
3 to be responded to.

4 I think it's more hindered by the fact
5 that it's driven the whole plan, the design of this
6 house is driven by the pre-engineering of it, to get
7 it there, rather than addressing just some of the
8 simple issues that the site is proposing.

9 You know, I wonder if that is something
10 that should be dealt with --

11 MR. MOODY: Could I maybe ask you like
12 what are some of those simple requirements? Because
13 maybe some of the things that you have in mind can be
14 accommodated.

15 CHAIRMAN GRIFFIS: Right, right. Well, I
16 mean right off, I think I've touched on a couple of
17 them. I think the roof line and the roof pitch could
18 be more in character with the adjacent house. I think
19 somehow animated the alley, whether it be even the
20 bedrooms on the second floor or maybe the first floor,
21 not having something on it.

22 I mean I don't find it's my jurisdictional
23 role to get in directly to the redesign of it. But I
24 think it is important putting it up on a base that
25 raises it a little bit higher, so it's more

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1 appropriately to scale of the adjacent.

2 I mean there's no question -- well, it's
3 somewhat of a subjective comment, but I think there
4 are great attributes to the existing adjacent house
5 that ought to be reflected in what happens, or in new
6 construction, to somebody that might, that is being
7 proposed to be in such close proximity.

8 Whether it has to be a replication of that
9 I don't agree with, but something that addresses it.
10 I'm not even sure that the roof line of this would
11 match the roof line -- well, I know it won't. The
12 floor to floor levels, that's an interesting point.

13 Entrance, access. I think another piece
14 that comes up now, what is the materiality of the base
15 on the alley level, and how would you define your
16 edge, define your property line? I mean I think that
17 we could hear testimony all day on open lots on
18 alleys, and you know I have familiarity with some in
19 this city.

20 If there's nothing there, people are going
21 to drive across it. If there's something there,
22 depends on what's there and how much they like their
23 car. They're either going to hit it or they're going
24 to miss it, you know what I mean?

25 But how are you going to be dealing with

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1 that situation, in terms of the trucks coming down the
2 alley? Is there going to be a bollard put or is this
3 going to be, you know, a wood frame, you know,
4 aluminum sided on the alley, which would just get kind
5
6 of ripped down as the trucks roll by?

7 MR. MOODY: Well, the material that is on
8 the side of the house is vinyl siding.

9 CHAIRMAN GRIFFIS: Right.

10 MR. MOODY: If there's maybe some type of
11 curb that DPW would allow. But in similar situations,
12 they would never allow that. So I mean we're more
13 than happy to accommodate any of those things to
14 protect the property. But then if you start to add a
15 curb in there, then you're taking away another six
16 inches of the useable alleyway.

17 CHAIRMAN GRIFFIS: Yes. I'm not talking
18 about that. I mean you could put a more substantial
19 base there. You could put a bollard on your property
20 and not ask the government for anything. A bollard on
21 your property that would define an edge as it comes
22 down, a bollard at the corner, and that towards the
23 back. I don't know, you know.

24 MR. MOODY: Those are very reasonable
25 requests, and if that's what would make the

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1 difference, we would have no problem in providing
2 that. I guess the bollards in the back I could
3 understand. But if you put bollards in the front when
4 you're having that turning radius, it's questionable.

5 But we would have no problem in providing
6 that, if that was a request that you would like.

7 CHAIRMAN GRIFFIS: Very well. We're going
8 to set this for decisionmaking on the 3rd. So it will
9 be called for our public meeting that starts at 9:30.
10 We're going to call this and deliberate and make a
11 decision at that point.

12 To get us to that point, we're going to
13 ask for several things. First of all, the record's
14 been maintained open. If the ANC comes up with an
15 official position, obviously a notice meeting, the
16 presentation and all that by the 3rd, we will have --
17 we will obviously take that into the record as it's
18 written in the letter, according to our rules and
19 regulations, to be granted a great weight.

20 I'm going to keep the record open, Mr.
21 Moody, for additional design attributes that you see
22 fit, in terms of pursuing, and that you think would
23 substantiate your case, and also address frankly some
24 of the elements that have been brought up by the
25 Board, and also by that of the adjacent property

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1 owner.

2 We have additional information, am I
3 correct, that is requested? My Board members, I seem
4 to recall, you can correct me if I'm incorrect, were
5 requesting that there be more photographs of the
6 adjacent properties just up the way.

7 If we can just get a little bit more of
8 the context. I think really what is being assessed
9 here is not whether this fits. Can we find it
10 somewhere else, and we can therefore replicate it?
11 That's what I know these Board members to make the
12 decisions on.

13 They're trying to set scale. ?They're
14 trying to figure out what are we actually being asked
15 to address here. Because each application we look at,
16 specifically and individually, you have to make your
17 case.

18 What I'm hearing and my understanding is
19 that they're not seeing the case made for what the
20 fact is. So that's all. I think it might come up
21 with some context of other areas on the block that
22 this will -- Ms. Miller.

23 MS. MILLER: Specifically, from my point
24 of view, I mean I'm looking at the picture that we
25 have here. I can't tell what the exhibit number is.

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1 But I would like to know --

2 CHAIRMAN GRIFFIS: Seven.

3 MS. MILLER: Seven. I would like to know
4 how is this going to fit in with the other houses that
5 are fronting the alley? If this is in the character
6 of those houses, how is it going to fit in with
7 whatever picture of this block? I only see the house
8 next door.

9 I mean my concern here is that there's --
10 and this hasn't been addressed, but to a certain
11 extent, what are the aesthetics? Is it -- you know
12 when you say "modular," am I just thinking of things
13 that "Oh, that sounds terrible."

14 I don't want to just do what's in my
15 imagination. I really want to, obviously need to see
16 how it's a vision, how this is really going to look
17 here in this space.

18 And then also, I wouldn't want to preclude
19 Ms. Muhammad or whoever, I think she's referring to
20 some photographs or the ANC, of what does this
21 neighborhood really look like, and what do these
22 houses -- this may not be the same type of house that
23 Mr. Moody is doing here that he did elsewhere.

24 But whatever you have to, you know, give
25 us a fuller picture of the context of the neighborhood

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1 would be very helpful. Thank you.

2 CHAIRMAN GRIFFIS: You did mention that
3 you had photographs. Do you have those with you
4 today?

5 MS. MUHAMMAD: Yes.

6 CHAIRMAN GRIFFIS: You are prepared to
7 submit them into the record?

8 MS. MUHAMMAD: I am, but they are in
9 color, and what I would prefer to do is make them all
10 color, as opposed to if they make copies, they'll be
11 black and white.

12 CHAIRMAN GRIFFIS: I think you might be
13 able to do that on-site. If you go across, and speak
14 to a representative across the hall, you can do that.
15 Mr. Moody, you might be well-served to stay around and
16 get a copy of those, rather than having -- coming down
17 and getting them. So you guys can take your time and
18 do that also. I would provide some for the ANC.

19 Very well. We have that. The record's
20 left open. I'm going to have everything in a week
21 prior to the 3rd, so Ms. Bailey is going to tell you
22 that it is due at three o'clock on the 27th of
23 September in this office, and no later than that.

24 Any information that's received after that
25 time will not be put into the record, so we won't even

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1 be looking at it. When we call this case on the 3rd,
2 first in the morning, there will not be a time for
3 additional testimony.

4 You're welcome to be here and present.
5 However, we will not be calling you up, and you will
6 not be addressing the Board. You are welcome also to
7 stay in the comfort of your own homes and watch us on
8 the web, but then you don't get all my subtle jokes or
9 facial motions either.

10 So anyway, that's what we have. Ms.
11 Bailey?

12 MS. BAILEY: Mr. Chairman, just to
13 reiterate, the decision is scheduled for October of
14 3rd, and the Applicant is to file all submissions by
15 September 27th.

16 MR. MOODY: If I can just ask two
17 clarification questions so that I can try to at best
18 address your concerns.

19 When you look at the elevation, half of
20 the house has a covered porch. Am I understanding
21 from you that you would prefer that the porch not be
22 only half of the front, where the front door is, but
23 to extend it so that it is an entire front porch along
24 the front elevation, or am I understanding you wrong?

25 CHAIRMAN GRIFFIS: No. However, let me be

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1 clear in my evasiveness. I'm not telling you to go in
2 a design direction or not, except to say that I don't
3 find your statement as you opened up, that this is
4 almost an exact replica of the house next door, which
5 to me is a very strong statement and a great direction
6 to go.

7 In my opinion, what you've presented here,
8 you're not there yet.

9 MR. MOODY: Okay.

10 CHAIRMAN GRIFFIS: But that is not based
11 -
12 - that's not the basis of what this entire record
13 would be. However, it is rising to the level of
14 difficulty of a very strong application. So I'm not
15 telling you look, you know, you've got eight foot of
16 porch. I need to see ten feet.

17 I need you -- it's your house. It's your
18 application, it's your design and your construction to
19 address the problems that you've heard us tell you
20 today, and also prepare it to the point of which you
21 think is sufficient.

22 MR. MOODY: Okay. Maybe I used the word
23 too strongly when I said "replica." When I was
24 referring to replica, I was referring to the size, the
25 width, how it's sited on the --

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1 CHAIRMAN GRIFFIS: I understand, I
2 understand.

3 MR. MOODY: Okay.

4 CHAIRMAN GRIFFIS: Okay. Any other
5 clarifications?

6 MS. MUHAMMAD: Yes. We do have one.
7 There was one point about whether or not there were
8 windows on the north side of our home which would
9 abutting that. There are windows.

10 CHAIRMAN GRIFFIS: Two windows.

11 MS. MUHAMMAD: There are two windows.

12 CHAIRMAN GRIFFIS: Got it. I'll make sure
13 the Board members see that, because I saw it on the
14 second one that's a little bit oblique from the rear.
15 Those two -- very good. Anything else?
16 Clarification?

17 (No response.)

18 CHAIRMAN GRIFFIS: Very well. If there's
19 further questions or requirements for procedural
20 information, you're more than welcome to call the
21 Office of Zoning or their staff. They'll be well
22 aware. Ms. Bailey is available and Mr. Moy is also
23 available as needed.

24 Thank you all very much. I appreciate
25 your patience with us, and as I look at the clock, of

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1 course we're into our afternoon. However, the morning
2 session has not finished. We have one more case in
3 the morning. We will call that at this time. After
4 we've finished with that case this morning, we will
5 then break for lunch and then we will get to our
6 afternoon hearing.

7 Obviously, we will not be calling that one
8 o'clock. We'll see how long this next one takes, and
9 then I will assess the time at which we will call our
10 afternoon cases.

11 That being said, Mr. Hood, thank you very
12 much. We enjoyed seeing you this morning. Have a
13 pleasant day, and Ms. Bailey, when you're ready, we
14 can call our next case.

15 Application No. 17510

16 MS. BAILEY: Mr. Chairman, the next case
17 is Application No. 17510 of Bertha Tucker, pursuant to
18 11 DCMR 3104.1, for special exception to establish a
19 child development center that's for 60 children and 10
20 staff, under Section 205 at premises 3219 - 9th Place,
21 S.E., Square 5942, Lot 824.

22 Mr. Chairman, members of the Board, there
23 are several preliminary matters associated with this.
24 There is a request for party status in opposition to
25 the application.

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1 Secondly, the Board may want to consider
2 parking relief from one of the parking spaces. Three
3 are required. The Applicant is proposing to provide
4 two. Then lastly, we did receive an affidavit of
5 posting yesterday, and it appears that the property
6 was posted one day late.

7 We do have that in our record. Hopefully,
8 you have copies of that by now.

9 CHAIRMAN GRIFFIS: Excellent. Thank you
10 very much. We have three preliminary matters that she
11 has evidenced. Let me have the Applicant up, and Mr.
12 -- I'm not sure if I'm going to have it. Is it Mr.
13 Davin St. Paul or is it St. Paul Davin? Is he
14 present?

15 MR. WILLIAMS: I think he's left.

16 CHAIRMAN GRIFFIS: He left. Indeed.

17 MR. WILLIAMS: Good morning, Mr. Chairman
18 or good afternoon. I am representing --

19 CHAIRMAN GRIFFIS: Have a seat and make
20 yourself comfortable. If you would turn your
21 microphone on, if you would please. Actually, I
22 wouldn't use that one. Use the one on the table.
23 Just touch the -- there's a button on the base,
24 towards the center a little bit.

25 MR. WILLIAMS: Let me say again good

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1 morning, and thank you for an opportunity to speak
2 before you. I'm representing Tucker's Day Care
3 Center, located currently at 3215 - 11th Place, S.E.

4 Ms. Tucker has filed for an application
5 for a new building. Let me introduce myself before.
6 My name is Al Williams. I'm the executive director of
7 the Ward 8 Business Council, and a board member of
8 Main Street Anacostia.

9 While I'm not the current ANC, I was the
10 ANC at the time of the inception of the Tucker's Day
11 Care Center on 11th Place. I have in my package,
12 though however, consent forms from the current ANC
13 Commission 8E, from the chairperson and vice
14 chairperson, the chairperson being Sandra Seegers and
15 the vice chairperson being Mr. Leon Swain.

16 So I am here to talk about the
17 environments, and I'm also here to talk about the
18 history of Bertha Tucker's day care center. I don't
19 know what form or fashion that you that in.

20 CHAIRMAN GRIFFIS: Good. I appreciate
21 that. A good outline of what we're about to take on,
22 and I'd say we'd start with our preliminary matters.
23 First of all, can you speak to the effect of why it
24 was posted one day late?

25 MR. WILLIAMS: No, I can't. Why don't I

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1 called Ms. Bertha Tucker, here with me? Ms. Tucker.

2 MS. TUCKER: Good morning. I'm Bertha
3 Tucker, the owner of the property at 3219 - 9th Place,
4 S.E. I came down here September the 5th and got the
5 posters, and that was the day I put them up, September
6 the 5th. So I thought I was right on point, from the
7 5th to the 19th.

8 CHAIRMAN GRIFFIS: Okay.

9 MS. TUCKER: So if I was a day late, I'm
10 sorry. But I came down here September the 5th. I got
11 them that day and I put them up the same day.

12 CHAIRMAN GRIFFIS: Got it. Are you aware
13 of Mr. St. Paul Davin?

14 MS. TUCKER: Yes.

15 CHAIRMAN GRIFFIS: Okay. Let's take that
16 up next. I guess he was here and probably had to
17 leave. Board members questions on this. We do have
18 a request for party status. Do you have the request
19 for party status application in front of you?

20 MR. WILLIAMS: Yes sir.

21 CHAIRMAN GRIFFIS: Do you have an opinion
22 on whether the Board should move ahead and grant this
23 party status or not?

24 MR. WILLIAMS: Well, my inspection, it
25 looks like that we have answered every requirements

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1 that's necessary to move ahead.

2 CHAIRMAN GRIFFIS: Do you think that he
3 would be uniquely or distinctly affected in character
4 and time, based on his proximity and the issues that
5 he brought up, if this was to be approved?

6 MR. WILLIAMS: Quite frankly, Mr.
7 Chairman, I don't. I'm a resident of that -- I was a
8 resident of that neighborhood for 30 years, I know all
9 the boundaries. I don't see any obstacle that would
10 occur for the implementation --

11 CHAIRMAN GRIFFIS: Do you think he has a
12 unique position being here in his location?

13 MR. WILLIAMS: Well, define "unique" for
14 me, in the sense that will there be any obstacle or
15 will be there be any advantage, disadvantage? I just
16 don't see anything that would prevent or would cause
17 any problem to the residents.

18 CHAIRMAN GRIFFIS: Is he impacted
19 differently than someone of the general public if this
20 is approved?

21 MR. WILLIAMS: To my knowledge, no sir.

22 CHAIRMAN GRIFFIS: Okay. Board members?
23 Questions, comments?

24 MS. MILLER: Well, I guess at this point
25 I would oppose party status for two reasons, unless

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1 someone shed some other light on this for me. But
2 first of all, he's not here to participate. So that's
3 really -- a basic party status means he has the
4 opportunity to cross-examine and put on witnesses,
5 etcetera, and so that can't happen if he's not here.

6 So that's basically it. But also in the
7 party status application, he does talk about adverse
8 effects on the community as opposed to himself as
9 being unique affected. So party status is for those
10 who are going to articulate impacts that they are
11 uniquely impacted by.

12 CHAIRMAN GRIFFIS: Thanks a lot. I
13 absolutely agree with your second point. The fact
14 that he was here, I have a hard time holding that
15 against him, not being here, although we have and do
16 always look strongly at whether they can participate
17 in a case.

18 But I think we don't even need to reach
19 that. I appreciate you bringing it up. But the fact
20 of the matter is you're absolutely right. I think in
21 his own comments is saying overall, the general
22 community this will have impact.

23 I have no difficulty taking this into the
24 record as a written testimony of concern and
25 opposition to this application. I think that we ought

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1 to render Exhibit 20 and 21 in that fashion, and I
2 would not support establishment of party status at
3 this time. Others? Follow-up, Ms. Miller?

4 MS. MILLER: I just want to follow up and
5 say that often, people aren't clear what party status
6 means, and in fact they intend to submit testimony in
7 any event. He's not here for us to clarify that. But
8 I think that if the correct solution is to admit his
9 submission as testimony.

10 CHAIRMAN GRIFFIS: Perfect.
11 Appreciate it. Others? Any comments? Any opposition
12 to the direction we're going in for this submission?
13 At this time, the Board cannot grant party status.

14 We're moving ahead at this time, and now
15 have I have the third preliminary matter, and that is
16 the staff brought up the fact that in their
17 calculations and the review of this application, it
18 would appear that there are three parking spaces
19 required, 2.5 actually based on the employees. Is
20 that your understanding and calculations of the
21 regulations?

22 MS. TUCKER: Yes.

23 CHAIRMAN GRIFFIS: Okay. So you would
24 need then also for that to be reviewed under 205, as
25 part of this application. Okay. Let's move ahead

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1 then. Is that part of the submission, such as that we
2 could relieve that? It wouldn't. It would have to be
3 parking variance, would it not? Yes. Opinion?

4 MS. GLAZER: Well, I'm going to look at
5 the regulation again, but I believe 205 may talk about
6 adequate parking. I'll have to look it up.

7 MR. WILLIAMS: Mr. Chairman, could I get
8 a point of order for clarity here on that? We do have
9 two in the back and one in the front.

10 CHAIRMAN GRIFFIS: One in the front?
11 Where's the one in the front?

12 MR. WILLIAMS: It's in front of the
13 building.

14 CHAIRMAN GRIFFIS: You mean on the street?

15 MR. WILLIAMS: Yes.

16 CHAIRMAN GRIFFIS: Interesting. That's a
17 public space then?

18 MR. WILLIAMS: Yes.

19 MS. TUCKER: Yes.

20 CHAIRMAN GRIFFIS: Can't be counted
21 towards required parking, of course, because it's not
22 on your property. So Ms. Miller's point is that under
23 205.4, it reads "The Center shall provide sufficient
24 off-street parking space to meet the reasonable needs
25 of teachers and other employees and visitors," saying

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1 that we wouldn't need to go through a variance, but
2 rather we would assess whether it was reasonable on
3 the total amount. Other opinions?

4 (No response.)

5 CHAIRMAN GRIFFIS: I think the reading of
6 that does seem that it's sufficient review of the
7 Board, in terms of special exception in granting this
8 205 is based on. Obviously, a benchmark would be the
9 schedule in 2100, and certainly we can look to that as
10 we have.

11 I think the difficulty or not the
12 difficulty, perhaps the some of it we're weighing in
13 206.3. "In private schools, of course, ample parking
14 space but not less than that required in Chapter 21 of
15 this title shall be provided."

16 So we assess what's ample, and that it is
17 no less than what is the schedule. We can't go below
18 it, but that is not the same criterion by which we
19 look at 205 in the child development centers.

20 Very well. Let's move ahead, then. I
21 think that dispenses with our preliminary matters.
22 We're ready for you.

23 MR. WILLIAMS: Well, I am not an expert in
24 zones, first of all.

25 CHAIRMAN GRIFFIS: I'll move you along,

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1 then.

2 MR. WILLIAMS: Okay, help me, and
3 according to my inspection of the requirements that is
4 requested by the Board of Zoning, especially the
5 approval for five years. Do I need to go into that?
6 We certainly do --

7 CHAIRMAN GRIFFIS: Research for the BZA --
8 sorry to interrupt you. But let me get some clarity
9 and I think we can move this along a little bit
10 quicker. You have in front of you the Office of
11 Planning's report, if I'm not mistaken, which an
12 excellent reference of which this will need to
13 proceed.

14 However, don't start with their
15 recommendations and their conditions. Let's start
16 with actually the regulations at 205.

17 MR. WILLIAMS: Okay.

18 MR. PARSONS: Mr. Chairman?

19 CHAIRMAN GRIFFIS: Yes.

20 MR. PARSONS: (not on microphone)

21 CHAIRMAN GRIFFIS: First time in six years
22 anyone's said that. But thanks for your honesty and
23 directness. I'll proceed. 205.1, "Use as a child
24 early development center shall be permitted as a
25 special exception for an R-1 district." Of course,

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1 that's why we're here.

2 205.2 says "The center shall be capable of
3 meeting all applicable code and licensing
4 requirements." What is your testimony with regards to
5 whether you are capable of meeting all applicable code
6 and licensing requirements?

7 MR. WILLIAMS: Well, 205 indicates that
8 the center shall be capable of meeting all applicable
9 codes and licensing requirements.

10 The Applicant is an experienced child
11 daycare provider. She's operated a licensed child
12 development center at 3215 - 11th Place in the subject
13 community since 1994.

14 The Applicant is aware of the necessary
15 license and code requirements, and we are confident
16 that the proposed new center will meet the
17 requirements.

18 CHAIRMAN GRIFFIS: Okay. Don't read the
19 Office of Planning's report, because Mr. Moore wrote
20 it, and he's going to read it to you. Tell me what
21 your testimony. What is your testimony here? Are you
22 capable of getting a license? Is this facility, this
23 specific facility capable of getting licensed?

24 MS. TUCKER: Yes.

25 CHAIRMAN GRIFFIS: Okay. 205.3 "The

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1 center will be located and design to create no
2 objectionable traffic conditions, no unsafe conditions
3 for picking up and dropping off children." How do you
4 address that?

5 MR. WILLIAMS: Well actually most of the
6 children are walking. We only have about 15 children
7 that are picked up and delivered in cars. So most of
8 them are walking.

9 In Ward 8, we have mostly apartments, and
10 the people don't have cars. That's one of the values
11 of this particular daycare center, so they can walk to
12 this.

13 CHAIRMAN GRIFFIS: Excellent. So it's set
14 up to serve the families in close proximity?

15 MR. WILLIAMS: Close proximity.

16 MS. TUCKER: Yes.

17 CHAIRMAN GRIFFIS: So in terms of those
18 that aren't walking and those that are arriving by
19 car, how is that going to be safely dealt with?

20 MS. TUCKER: The way we're going to do it,
21 we're going to have a staff person. If somebody's
22 driving, we'll have a staff person down at the door to
23 take the child, you know, and the parents can just
24 pull on and go right on.

25 So there wouldn't be -- there will be no

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1 whole lot of cars parking out front. It would be
2 somebody there supervising, to supervise the child
3 into the daycare.

4 CHAIRMAN GRIFFIS: Okay.

5 MR. WILLIAMS: I might add too that they
6 come exactly about 6:30, 7:00, and someone is always
7 standing at the door waiting for them to depart, and
8 we escort them into the building.

9 CHAIRMAN GRIFFIS: So around about 7:00,
10 all those people that drive show up?

11 MR. WILLIAMS: They start at 7:00, you
12 know, because people have to get to work. Some of the
13 people there who are dropping off children have to get
14 to work.

15 CHAIRMAN GRIFFIS: How fast does it take
16 to unload 15 cars into the facility?

17 MS. TUCKER: Excuse me?

18 CHAIRMAN GRIFFIS: How fast? How quickly
19 do you unload cars? If you had one staff person and
20 15 people show up at 7:00 to 7:05?

21 MS. TUCKER: We've never had it like that,
22 but --

23 CHAIRMAN GRIFFIS: How does it happen
24 then?

25 MS. TUCKER: They come from 7:00, you

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1 know, they're coming from 7:00 to 9:30. Our cutoff
2 time is 9:30. Then everybody have to be there.

3 CHAIRMAN GRIFFIS: Okay.

4 MS. TUCKER: So I don't have too many
5 cars. Most of them are walking. But we do have some
6 cars, and what they do, the parents will stop by
7 there, and there will be a teacher or one of the
8 helpers there to take the child and bring the child in
9 the daycare.

10 CHAIRMAN GRIFFIS: Okay. So what you're
11 saying though is it's staggered over time.

12 MS. TUCKER: Yes.

13 CHAIRMAN GRIFFIS: So it's not as if
14 there's a whole big line of cars waiting to drop
15 children off?

16 MS. TUCKER: Oh no, no.

17 CHAIRMAN GRIFFIS: Just once in a while
18 maybe -- are there oftentimes two cars a time?

19 MS. TUCKER: Yes. There have been at
20 times two cars.

21 CHAIRMAN GRIFFIS: Okay. Three?

22 MS. TUCKER: Not at one time.

23 CHAIRMAN GRIFFIS: Okay. Let's go back to
24 205.2, which is "Applicable Code and Licensing
25 Requirements." The house, I don't believe I saw -- I

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1 mean I know I didn't see it; I think it's in the
2 record, a floor plan, which is fine. But what is the
3 occupancy load of the house?

4 MR. WILLIAMS: You mean in the sense of
5 numbers, of how many? Let me see what the occupancy
6 load is.

7 CHAIRMAN GRIFFIS: Right. Correct, in
8 terms of the building code, how many people, how many
9 children could be legally in this house?

10 MR. WILLIAMS: Sixty. That's what we are
11 designing, for 60.

12 CHAIRMAN GRIFFIS: I know you're designing
13 it for that.

14 MS. TUCKER: But it will only be 50 at one
15 time, because we have school-age children. So they'll
16 be at school during the day. So it will be 50 at one
17 time.

18 CHAIRMAN GRIFFIS: Have you been down to
19 DCRA to get a certificate of occupancy for 50 people
20 in this building?

21 MS. TUCKER: Have I been to what?

22 CHAIRMAN GRIFFIS: To the permitting
23 office, to get a certificate of occupancy for this?

24 MS. TUCKER: No, not yet. But I can get
25 one.

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1 CHAIRMAN GRIFFIS: Right, right, right.
2 You haven't gone through and looked at occupancy
3 loads, then, the egresses? Does that make any sense
4 to you at all?

5 MS. TUCKER: No.

6 CHAIRMAN GRIFFIS: Okay. That's
7 interesting. Is there a difference between where the
8 younger children, the 2-1/2 year-olds would have to be
9 in the house, as opposed to the 12 year-olds?

10 MS. TUCKER: Yes. We have three floors.
11 Now this is what I want to do. I've been talking to
12 employees and I've been talking to my monitors. On my
13 first floor, I want to have all infants.

14 On the second floor, that's where I want
15 to put the two and three years-old. Four and five
16 years old after school will be downstairs. That's the
17 way I want to do it.

18 CHAIRMAN GRIFFIS: Okay. So that takes of
19 four and five. Where do six to 12 year old go?

20 MS. TUCKER: Downstairs.

21 CHAIRMAN GRIFFIS: Where are the four and
22 five year olds?

23 MS. TUCKER: Second floor. Well, I want
24 all the infants to be on the first floor, and of
25 course, my group is going to be a mixed group. So I

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1 can have two and three years old, or four years old
2 together.

3 I can put them on the second floor, and
4 the after school would be in the basement, the school-
5 aged children.

6 CHAIRMAN GRIFFIS: I see, I see. Okay,
7 and you haven't had any opportunity to go in and talk
8 to anybody about the occupancy of the basement or any
9 of the floors of the house?

10 MS. TUCKER: No. I'm waiting to get my
11 occupancy permit. Then the license lady come out.
12 Then my marshals will come out, inspectors and fire
13 marshal, and then we go from there.

14 CHAIRMAN GRIFFIS: Okay. How many
15 bedrooms in the house originally?

16 MS. TUCKER: Three bedrooms.

17 CHAIRMAN GRIFFIS: So there's a second
18 floor with three bedrooms; first floor and a basement?

19 MS. TUCKER: Yes.

20 CHAIRMAN GRIFFIS: And there's one stair
21 into the basement?

22 MS. TUCKER: Yes.

23 CHAIRMAN GRIFFIS: Are you doing
24 sprinklers?

25 MS. TUCKER: Huh?

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1 CHAIRMAN GRIFFIS: Is there any sort of
2 fire alarm system in it?

3 MS. TUCKER: Yes. We have alarm systems
4 on each floor.

5 CHAIRMAN GRIFFIS: Is it like a pull
6 station or is it a smoke alarm?

7 MS. TUCKER: Smoke alarm.

8 CHAIRMAN GRIFFIS: Battery smoke alarms?

9 MS. TUCKER: Yes.

10 CHAIRMAN GRIFFIS: 60 kids in the house,
11 50 at one time?

12 MS. TUCKER: Yes.

13 CHAIRMAN GRIFFIS: Okay.

14 MS. TUCKER: Now if I need the other
15 alarms you were talking about, that's no problem. But
16 we don't have it right now.

17 CHAIRMAN GRIFFIS: Sure, sure, sure.
18 Okay. On the parking area, on the 205.4, of course
19 it's required that you provide sufficient parking.
20 The Office of Planning has an excellent photograph
21 showing where that's going to be. It appears to be
22 the wooden fences that open up.

23 Are you going to change the landscape of
24 that? Is that going to be a hardscaped surface? Is
25 that going to be paved at all, or are you just going

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1 to park on the grass?

2 MS. TUCKER: No. We was going to put some
3 little round stones or bluestones.

4 CHAIRMAN GRIFFIS: Like big stones? Rock
5 or gravel?

6 MS. TUCKER: Gravel.

7 CHAIRMAN GRIFFIS: All right, just some
8 gravel down.

9 MS. TUCKER: To separate the parking.

10 CHAIRMAN GRIFFIS: Sure, sure. And who
11 parks there?

12 MS. TUCKER: Two of the staff members will
13 be able to park there.

14 CHAIRMAN GRIFFIS: Okay. Who else on the
15 staff drives?

16 MS. TUCKER: Well, I don't have -- the two
17 of them I have will be driving. The other ladies,
18 they're walking in the community to the daycare.

19 CHAIRMAN GRIFFIS: I see, okay, and do you
20 go on site once in a while or often or --

21 MS. TUCKER: Yes.

22 CHAIRMAN GRIFFIS: Okay. Do you drive?

23 MS. TUCKER: Yes.

24 CHAIRMAN GRIFFIS: Where would you park
25 when you show up?

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1 MS. TUCKER: I can park in the back. I
2 have extra, you know, I have extra places in the back
3 to park. So I have a space for me too.

4 CHAIRMAN GRIFFIS: Where is that?

5 MS. TUCKER: In the back, in the backyard.

6 CHAIRMAN GRIFFIS: You mean you'd pull a
7 car into the backyard also?

8 MS. TUCKER: I can, yes. It's that much
9 space back there.

10 CHAIRMAN GRIFFIS: Well, I see. So you're
11 not -- how many spaces are in the backyard?

12 MS. TUCKER: Well, I could have four
13 there, but we're only fixing for two. But I got room
14 for four.

15 CHAIRMAN GRIFFIS: So, but you're telling
16 me, so if you need it, whenever you come in, you just
17 pull into the backyard?

18 MS. TUCKER: Or I can pull into one of the
19 spaces, you know. If one of the ladies ain't driving,
20 I can pull in there, or I just can pull around the
21 front, because we can use one of the spots around the
22 front. I'll just pull around the front.

23 CHAIRMAN GRIFFIS: Okay. Tell you what.
24 Don't try and answer what you think I want to hear.
25 I'm asking you what happens -- as you're laying this

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1 out and you're driving into the facility, what are you
2 doing? Where are you parking?

3 MS. TUCKER: I can park around the front.
4 I can park around the front.

5 CHAIRMAN GRIFFIS: Okay. So you'll park
6 on the street and then come in.

7 MS. TUCKER: Yes.

8 CHAIRMAN GRIFFIS: I see. So it's also
9 required, of course, that outside play area be
10 provided. 205.5, all the play areas on site; correct,
11 in the yard?

12 MS. TUCKER: Yes.

13 CHAIRMAN GRIFFIS: And you have some
14 equipment as part of the yard or no?

15 MS. TUCKER: I don't have equipment there
16 yet.

17 CHAIRMAN GRIFFIS: Yes.

18 MS. TUCKER: I have the space, you know,
19 and I'm going to have some shrubs to separate it, to
20 separate the playground from the parking.

21 CHAIRMAN GRIFFIS: Good, okay, and you
22 have a big back yard and a big side yard; is that
23 correct?

24 MS. TUCKER: Yes, yes.

25 CHAIRMAN GRIFFIS: Okay, and is there

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1 program in terms of outside play for different age
2 groups, or is it they all go out and when do the kids
3 go outside? Is there any sort of program?

4 MS. TUCKER: Yes. They'll be going out
5 different times. Usually we take the smaller children
6 out early. Then later on that day, they take the
7 other ones, and then when the school-age come that
8 evening, they'll be able to go outside and play, and
9 they'll be supervised by their teacher or a helper.

10 CHAIRMAN GRIFFIS: Okay. Then how do the
11 kids 12 years old, let's say, of a school age, say 5
12 to 12, 6 to 12. How do they get to the facility?

13 MS. TUCKER: They could walk. The school
14 is right, two blocks from the daycare center, public
15 school.

16 CHAIRMAN GRIFFIS: So there's no program.
17 They're responsible for getting that?

18 MS. TUCKER: Yeah, usually. Because we
19 don't have -- I think we have five school age
20 children, and they just come right to -- they will be
21 able to come right to the day care, because it's two
22 blocks from the day care.

23 CHAIRMAN GRIFFIS: So the ages, how do
24 they break down? You have five school-aged, and when
25 you say school-aged, you think 6 to 12?

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1 MS. TUCKER: No. We can take them from 6
2 to 12. I don't have no 12 years old yet. We just
3 have like five years old -- two five years old and
4 three six year-olds, and one seven years old. But we
5 can take them.

6 CHAIRMAN GRIFFIS: I understand that. But
7 we're looking at -- we're looking at three years down
8 the road. This is fully operational. It's a huge
9 success. How many school-aged kids are you
10 programming to have?

11 MS. TUCKER: Five to seven.

12 CHAIRMAN GRIFFIS: So the rest of the 50,
13 let's make it five, so I can do the math easily. So
14 the other 45 on site?

15 MS. TUCKER: All day, yes.

16 CHAIRMAN GRIFFIS: Are under five years?

17 MS. TUCKER: Yes.

18 CHAIRMAN GRIFFIS: Okay. Anywhere from 45
19 to 55 are two and a half to five years old. Is that
20 right?

21 MS. TUCKER: Well, the five year olds will
22 be at school.

23 CHAIRMAN GRIFFIS: Then they're not
24 invited. So it's two and a half to four?

25 MS. TUCKER: Yes.

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1 CHAIRMAN GRIFFIS: Okay. Okay. I don't
2 see anything else that I need to ask at this time. Do
3 you have any questions?

4 MS. MILLER: Good afternoon. I'm trying
5 to figure out where to begin. I think I want to just
6 ask you just to keep things straight, my understanding
7 is you have another child development center, and
8 there's such a demand that you want to start this new
9 one; is that correct?

10 MS. TUCKER: Yes.

11 MS. MILLER: Okay. How many children are
12 at your other one? I'm asking this because I think
13 that you're going to bring with you your experience
14 and some of what you know from there to this place,
15 because a lot of it's not written out for us and we're
16 trying to piece it together a little bit.

17 So for instance, when you're talking about
18 having 60 children at this new facility, 50 at one
19 time. What's your experience at the other facility?
20 How many children do you have total that you're
21 supervising there?

22 MS. TUCKER: Forty-six.

23 MS. MILLER: What?

24 MS. TUCKER: Forty-six.

25 MS. MILLER: Forty-six?

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1 MS. TUCKER: Yes.

2 MS. MILLER: Okay, so and how many staff
3 do you have there?

4 MS. TUCKER: Nine.

5 MS. MILLER: Okay, and do you have -- and
6 age what there?

7 MS. TUCKER: The age is from six weeks to
8 12 years old.

9 MS. MILLER: Okay, so it's similar;
10 correct?

11 MS. TUCKER: Yes.

12 MS. MILLER: So when we look at -- we've
13 been looking at child development centers, one of the
14 things the chairman was asking you about was drop off
15 and pick up and vehicles conflicting with pedestrians
16 and things like that.

17 So I'm wondering do you -- I don't think
18 you submitted to us a program for an organized drop
19 off system like some schools have, at most schools or
20 development centers where there are a large number of
21 children to watch.

22 I'm wondering at your current one, is it
23 just -- it just works, or do you have a protocol, a
24 written, you know, a system, where you have a certain
25 amount of staff, one at the door, one at the curb,

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1 anything like that?

2 MS. TUCKER: No, not at the other center.
3 At the other center, it's entirely different. That
4 center is entirely different from this center, because
5 at that center, we have a sign for 15 minutes, that we
6 can allow the parents 15 minutes, the ones that's
7 driving.

8 Because even there, most of them walk.
9 But we have a sign that came from planning. There are
10 posters in front of my building, where they can have
11 15 minutes if they want to get out of their car and
12 bring their child in and go back. So don't even have
13 a problem with that.

14 MS. MILLER: Okay. So that works. But
15 this is a different situation.

16 MS. TUCKER: Right, right. So the parents
17 come in and bring their child, and most of them bring
18 their children in themselves.

19 But we do have somebody there if they want
20 somebody to take the child. But they stop, because we
21 have got the sign up. So we have somebody right there
22 to take the child. But now --

23 MS. MILLER: Now which place are you
24 talking about right now? Are you operating right now
25 or this is going to be --

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1 MS. TUCKER: No. The other one, the 9th
2 Place, is not operating.

3 MS. MILLER: Right, okay.

4 MS. TUCKER: The other place, the 11th
5 Place, we are operating. I'm trying to explain to you
6 how we do it, you know. We've got a sign up. They
7 can stay there for 15 minutes if they need to. They
8 don't stay there more than 15 minutes, but they can if
9 they have to.

10 Then they either bring the child in, sign
11 the child in and then mom leaves.

12 MS. MILLER: Okay. But you say this one's
13 going to be different. How are you planning to
14 address this?

15 MS. TUCKER: It will be different because
16 of what needs the staff got together and thought about
17 doing, is having somebody out there. Mom won't even
18 have to come in and bring the child in. We was going
19 to do it. Well, not me, but I have somebody in there
20 to do it, you know.

21 Now if I have to, I'll do it if I'm there
22 and see the child, you know, parents pulling up. Then
23 I get the child and bring the child on in. So
24 therefore it wouldn't be a problem with traffic.

25 MS. MILLER: Okay. Do you expect a large

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1 number of dropoffs at a certain time, like before
2 parents go to work or something like that? I mean
3 your window is pretty big, like 7:00 to 9:30. Is that
4 what you said?

5 MS. TUCKER: Yes.

6 MS. MILLER: Okay. Based on your
7 experience, do you think that it's going to be heavier
8 between 7:00 and 8:00 or something like that, or no?

9 MS. TUCKER: Well, most times when it gets
10 heaviest, you know, when they know it's time closing
11 up, you know. So they'd get on there, in and out, in
12 and out like that.

13 I let them know, you know, you've got to
14 get in here and get out, because other parents have
15 got to come in and bring their children. So in 12
16 years, I haven't had no problem with them.

17 MS. MILLER: In your assessment, is one
18 staff person enough for that number of children being
19 dropped off?

20 MS. TUCKER: To bring the children in?

21 MS. MILLER: Yes.

22 MS. TUCKER: No. We got three peoples.
23 We're going to have three.

24 MS. MILLER: You're going to have three?

25 MS. TUCKER: Yes.

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1 MS. MILLER: Okay.

2 MS. TUCKER: To supervise the children in.

3 MS. MILLER: Do you have any written
4 description about what the program would be for the
5 different age groups? I mean not necessarily --

6 MS. TUCKER: I don't have it with me. I
7 could fax it to you.

8 MS. MILLER: But it's going to be a
9 similar program to what you do at the other place?

10 MS. TUCKER: Yes, yes.

11 MS. MILLER: So you've dealt with that age
12 group, so four to five year-olds, you have a Program,
13 okay. So you can submit that later.

14 MS. TUCKER: Yes.

15 MS. MILLER: And as far as how much
16 outdoor time they spend, they would spend? Do you do
17 it in shifts with the different ages?

18 MS. TUCKER: We usually take them out in
19 the morning and in the evening, at least twice. At
20 least twice a day, if the weathers permit.

21 MS. MILLER: Okay. I mean do you think
22 the kids would be using the outside a lot of the day,
23 given the number of children?

24 MS. TUCKER: Right. Everybody won't go
25 out at the same time, you know. We don't do it now,

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1 so I probably won't do it when we get on the other
2 side, you know.

3 MS. MILLER: Okay. I think that's all I
4 have for now. Thank you very much.

5 MS. TUCKER: You're welcome.

6 CHAIRMAN GRIFFIS: Any more questions?

7 MS. TUCKER: I can fax you the program.

8 CHAIRMAN GRIFFIS: Anything else?

9 MS. MILLER: Sorry, I didn't hear that?
10 What?

11 MS. TUCKER: I was saying to you I will
12 fax you the program.

13 CHAIRMAN GRIFFIS: Good. Mr. Williams,
14 anything else?

15 MR. WILLIAMS: Yes sir. A lot has been
16 said about the rules and regulations, and of course
17 that's your job. I certainly respect the job that you
18 do here. I have sat here with interest as I watched
19 you care and I watched the questions from the staff
20 and the responses.

21 I am a community activist. I have served
22 with the Ward 8 community for a number of years. Ward
23 8 has the highest number of unwed mothers heading
24 households, the lowest number of home owners. They
25 can't afford cars a lot of them.

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1 Tucker's Daycare Center came into
2 existence in 1994. At that time, she had two
3 children. She came to the Ward 8 Business Council and
4 I petitioned the then-current mayor, Mayor Marion
5 Barry, to get us some assistance.

6 Subsequently, she got 25. Her service was
7 so excellent and grew so drastically that she wanted
8 to expand. I facilitated that expansion with a local
9 contractor. Now, Ms. Tucker is trying to open up
10 another daycare center a few blocks away.

11 It would be a great benefit to the parents
12 of Ward 8 who don't have cars and who want excellent
13 service, for whatever it takes or whatever you can
14 tell me we need to get, to make this facility a
15 reality, for it to happen.

16 Because this is truly a -- the nearest
17 daycare center that I know of, and I just about know
18 every one in Ward 8, is about a mile away. Now people
19 that are coming to her facility with no cars then
20 would have to be inconvenienced. They can't come to
21 where she is now because she's overcrowded, and they
22 have to go a mile away.

23 So I would appeal to the Board, while you
24 do have rules and regulations, to think about Ward 8
25 as the first in criticism and the last in service, and

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1 try to tell us what we need to make Tucker Daycare
2 Center a reality, because it is a service greatly
3 needed.

4 Last but not least, the two commissioners
5 that came after I left are probably one of the top in
6 the cities, Sandra Seegers and Leon Swain. I'm sure
7 if they sign off on the need for this daycare, then
8 there is a need.

9 I would like to thank you for constructive
10 thought, time and attention that you are giving to our
11 testimony, and I would pray that you would give us a
12 good decision. Thank you very much.

13 CHAIRMAN GRIFFIS: Excellent. Thank you
14 very much, the good thoughts and all of your testimony
15 are certainly that.

16 Let's move ahead and you will see, we will
17 take into consideration all of your comments and
18 facts. But we need to move on to the Office of
19 Planning's report. Mr. Moore, a very good morning to
20 you and we appreciate you being here.

21 MR. MOORE: Good afternoon, Mr. Chair and
22 members of the Board. I'm John Moore of the Office of
23 Planning. The Office of Planning is already on record
24 as in support of the application. I'd like to clear
25 up again a few of the questions that the Board had for

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1 the Applicant, starting with their occupancy load.

2 I've actually met with the Department of
3 Health on that issue. While the Applicant has 60 on
4 the application, I think we all know that the load may
5 not be that number, as determined by DOH.

6 I've discussed it with the Applicant
7 already. It's my estimation that the loads are going
8 to be somewhere around 45. When I sent a memoranda to
9 them asking at what point in the process is that
10 decision made, in terms of how many people can be in
11 the building, I didn't get a response yet. But
12 there's a question and they're aware of that.

13 I'd like to talk about the parking. The
14 Office of Planning and DDOT also has worked with the
15 Applicant. We visited the site, we stood in the yard
16 and looked at the constraints in terms of what the
17 requirements are and what she can actually do.

18 She could if she wanted to put four
19 parking spaces in the rear yard. However, she
20 couldn't do that and have a clear area for play. So
21 what we asked her to do was to on the south side of
22 the property, there's a walkway between, to put the
23 two nine by nine parking spaces.

24 By the way, the Applicant answered some of
25 your questions regarding her current facility, not the

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1 new one. Example, we've indicated to her that the
2 parking lot itself would have to be built in
3 accordance to DDOT standards. She's aware of that and
4 you'll see it in the OP report. So it won't be
5 gravel. It will be in accordance with the
6 regulations.

7 We only asked her to put two parking
8 spaces in because two spaces, in terms of the 9 by 19,
9 it was a natural separation for the play area on the
10 other side by the time you put a green buffer between
11 the two.

12 We then consulted DDOT, in terms of what
13 is the traffic load on 9th Place; will it lend itself
14 to the Applicant using one space in front of the
15 center for pick up and drop off, since 9th Place
16 probably is about one of the lowest volumes of traffic
17 of any block in Ward 8 and probably the city.

18 So there's not an issue if she's got a
19 parking space in front of the center, that it's going
20 to cause congestion in the rest of the block. There's
21 simply not that many cars that travel the block.

22 The pick up and drop off plan was again
23 something that I discussed with the Applicant. Given
24 the long history of pick up and drop off, and this
25 Board's recent experience with the last child care

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1 center in Ward 8 on Martin Luther King Avenue, it
2 appeared that the Board's preference was to have the
3 parents spend the least amount of time in and out of
4 their vehicles, because that could contribute to
5 congestion, as opposed to having the center take the
6 responsibility for getting the kid from the car into
7 the center and vice-versa in the afternoon.

8 So I discussed it with the Applicant, and
9 she was agreeable to do so. I believe that the
10 Applicant may have been a little nervous this morning
11 and didn't put that in the proper context.

12 If you look at the Office of Planning's
13 report, it's in there, and the Applicant has read the
14 Office of Planning's report, so she's aware of it.

15 With that, I would entertain any
16 questions, but we stand in support of the application.

17
18 It does meet the test.

19 CHAIRMAN GRIFFIS: Excellent, thank you.
20 Quick clarification, though. One of your conditions
21 is that they would at all times of operation have a
22 traffic plan. So what you're speaking to is just
23 that, that they would somehow --

24 MR. MOORE: A pick up and drop off plan.

25 CHAIRMAN GRIFFIS: Right.

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1 MR. MOORE: Yes.

2 CHAIRMAN GRIFFIS: Okay, good. Thank you
3 very much. I just want -- and again, I'm always
4 appreciative of the clarity that it brings in the
5 analysis of all applications, both written and
6 graphically.

7 MR. MOORE: Mr. Chair, one other point.
8 I think the Applicant's submittal this morning, it's
9 not an exhibit number on it, but there is -- they are
10 written in terms of what the parking spaces would look
11 like, as well as separating it from the parking, from
12 the play area.

13 CHAIRMAN GRIFFIS: Yes. No, and that's
14 good. We'll take it as graphic and not scaled
15 representation, as that shrubbery seems to be right in
16 the line of the stairs coming out the building. But
17 we get the picture. That's good information. Okay.
18 Anything else?

19 MS. MILLER: Good afternoon, Mr. Moore.
20 I have a question. Now I can see in your report that
21 there is a traffic plan, which is good to see. My
22 question on that is on page four, it says "no more
23 than two vehicles shall line up in front of the center
24 during drop off times."

25 What happens to the other vehicles? Do

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1 you know? What if four vehicles come along? What
2 happens to the other two?

3 MR. MOORE: I would daresay that there may
4 not be a time by which there may be four vehicles. I
5 think what we need to take into consideration is in
6 the Office of Planning discussion with the Applicant,
7 the number of 15 parents driving is not a hard number.
8
9 That was our best guesstimate, that it would max at
10 15.

11 It will probably be less than 15. By the
12 way, the Applicant also, I think mentioned, that some
13 of the kids will be arriving via public
14 transportation. So they won't all be walking.

15 Some will be getting the bus or the train.

16
17 The area has train services within four blocks, I
18 believe, and Alabama Avenue is a major bus route. I
19 don't know if that answers your question in detail.

20 MS. MILLER: Basically. That puts it in
21 context. We're not talking about is a big population
22 of drivers here, so --

23 MR. MOORE: No.

24 MS. MILLER: Okay. I guess I want to get
25 back a little bit to the point of a certificate of

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1 occupancy, because I was noticing Exhibit 5, wherein
2 they were denied the certificate of occupancy because
3 they needed to come to the BZA for special exception
4 approval.

5 You said that we're in a Catch-22, because
6 in our regulations we have to be convinced that they
7 can meet the licensing requirements, etcetera. We
8 have to give a number basically as to how many kids
9 they can have there at one time.

10 So I just wanted to follow up on the
11 number you threw out was 45, and I don't know if you
12 want to elaborate any more as to how solid a number
13 that is for us to be considering.

14 MR. MOORE: No. I'm just saying that
15 based on the formula I think they used, there's
16 somewhere between 35 and 50 square feet per child.
17 Given the overall square footage in the building, that
18 I don't think it would hardly get to 60. I think
19 that's the way DOH is going to make its determination.

20 MS. MILLER: Is that based just on your
21 own assessment, or did you refer --

22 MR. MOORE: That's my own assessment. I
23 did discuss that with them, yes.

24 MS. MILLER: Do you know? Does it matter
25 whether we're talking about space for infants versus

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1 space for 12 year-olds?

2 MR. MOORE: Yes.

3 MS. MILLER: Oh, okay. You factored that
4 in?

5 MR. MOORE: The space requirements, I
6 think, will be different for infants than it will be
7 for others in the building. I was hoping to have that
8 information back from DOH before this hearing took
9 place, so I can have definitive answers for you.

10 CHAIRMAN GRIFFIS: So you're saying you
11 referred it over to the Department, what the
12 regulations call Human Services?

13 MR. MOORE: Yes.

14 CHAIRMAN GRIFFIS: So you referred that
15 for their comment?

16 MR. MOORE: Yes, to the deputy, Mrs.
17 McCoy.

18 MS. MILLER: And so you're waiting for it;
19 is that correct?

20 MR. MOORE: Yes, I am, and I'll provide it
21 as soon as I have it.

22 MS. MILLER: Okay, that's great. Okay.
23 One other issue. I think the neighboring property
24 owner, I guess that was Mr. Davin, who was here to
25 testify and had to leave. Okay. Is that the property

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1 owner that would be most affected by noise from
2 children playing the yard?

3 MR. MOORE: No. As best I can determine,
4 I was little confused, because I thought there were
5 two different addresses that the gentleman said that
6 he owned. I don't know if he has leased properties or
7 what.

8 But they all -- both properties seem to be
9 on the opposite east side of the block, where the
10 facility's on the east side. So I couldn't be, I
11 wouldn't think that that was the one, the most
12 directly impacted.

13 I would think that the two abutting
14 dwellings, one on the south side and one on the north
15 side, would be the most affected, and the one on the
16 north side is vacant, under construction, and the one
17 on the east side is where the parking spaces will be,
18 but it won't be any noise generated by children.
19 They'll be on the other side of the building. So no,
20 I wouldn't think that that house would be the most
21 impacted.

22 MS. MILLER: Okay, and it sounds like you
23 don't think any neighboring properties would be
24 adversely impacted by noise?

25 MR. MOORE: No, I don't.

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1 MS. MILLER: Okay.

2 MR. MOORE: And I think you see that DDOT
3 also concurred with that position.

4 MS. MILLER: Oh, okay, and my other
5 question is, was this presented the ANC? I think you
6 made reference to that in your report, that it hadn't
7 been yet or something like that?

8 MR. MOORE: It's been presented to the
9 ANC.

10 MS. MILLER: Okay, okay. Thank you.

11 CHAIRMAN GRIFFIS: Any other questions
12 from the Board? Do you have any questions of the
13 Office of Planning?

14 MR. WILLIAMS: I would just like to tell
15 Ms. Miller that two ANC letters is in the package.

16 CHAIRMAN GRIFFIS: Yes. He provided it
17 this morning.

18 MS. MILLER: Oh, thank you very much. I
19 guess it just came in this morning. I hadn't seen it.

20

21 Thank you.

22 CHAIRMAN GRIFFIS: Okay. I don't have any
23 other government reports attendant to this
24 application. We can move ahead to testimony, persons
25 in support of the application. If there are there

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1 persons here to provide testimony in support of the
2 application, come forward.

3 If you wouldn't mind just stating your
4 name and address for the record, we can begin.

5 MR. SWAIN: Good afternoon. My name is
6 Leon Swain. I'm the ANC representative for the
7 single-member district 8A-05, where the facility will
8 be located.

9 CHAIRMAN GRIFFIS: Anything else?

10 MR. SWAIN: No. What I wanted to tell
11 you, I'm also retired D.C. police sergeant who
12 operated in that area. I live approximately three
13 blocks from both daycare centers, or one daycare
14 center on 11th Street and the proposed daycare center
15 on 9th Street.

16 I've been there since 1972, and I will
17 concur that even while on the police department, I've
18 only been down to that 3200 block of 9th Street maybe
19 five times in my entire career. It is one of the most
20 not traveled areas in Southeast.

21 So you won't have a parking problem. Her
22 current location is on a bus route, and what I did
23 when I found out that she was making an application,
24 I went over to the 11th Street location and I sat
25 there for approximately an hour and a half on several

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1 different occasions, and I timed the people coming in
2 and out.

3 It was less than three minutes turnaround
4 from the parents dropping off their kids. When you
5 have a bus route there, they were not interfering with
6 the traffic whatsoever.

7 Additionally, like I said, I've lived in
8 the 1200 block of Savannah Street in Southeast, and I
9 have watched their kids go by my house, six, seven,
10 eight at a time, with her employees going to the park.

11

12 I've never seen any time that they were not in
13 control.

14 I've made a number of visits to the
15 property on 11th Street unannounced. It's always been
16 clean, well-maintained. They've always been in
17 control. I mean she has kids. Don't get me wrong.
18 She has kids there, but they're always under control.
19 She knows where they're at. You always have someone
20 right there in the room where there are kids at.

21 On August the 15th, what we did, we had an
22 ANC meeting. We notified the entire neighborhood. We
23 put out 400 flyers in the immediate area of the
24 proposed daycare site. Forty-five people showed up
25 for our ANC meeting. Twelve people stood in support

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1 of Ms. Tucker. We did not receive one individual who
2 had anything to say against the daycare center.

3 CHAIRMAN GRIFFIS: I understand.

4 MR. SWAIN: Additionally, the women I went
5 out and I talked to a number of the constituents in
6 that area. Two of the people in that area thought
7 that the house that's under renovation or the house
8 that's being built right now, they thought that was
9 the daycare center.

10 When I told them that that was not the
11 daycare center, they had no problem with it. We've
12 never had -- I looked at the police reports. There
13 have never been any complaints at her property on 11th
14 Street.

15 She provides a great service, and the ANC
16 has unanimously considered at our public meeting to
17 issue a letter of support for her and the daycare
18 center. We could not find anybody that had anything
19 to say against it, and I walked the area.

20 CHAIRMAN GRIFFIS: Very good. Thank you
21 very much. Important information. Any questions from
22 the Board at this time? Let's move ahead then. Yes
23 sir.

24 MR. JENKINS: My name is Ralph Jenkins.
25 I'm a retired government employee and I live a block

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1 from Ms. Tucker's daycare on 11th Street. I work in
2 my yard in the morning, and I see mothers bringing
3 their kids from the subway station that's a block from
4 my house through the alley, taking them to her
5 daycare.

6 I see her employees out there with the
7 kids in the morning and the evening, when they be out
8 in their little field trips. I haven't had any
9 problems with the kids or anything. I think it will
10 be beneficial for the neighborhood and the parents
11 that's bringing their kids here.

12 Like they said, the old senior say it
13 starts from the womb when kids are born, that you know
14 they get nurturing and they get training. So some of
15 these -- I'm going to put it natural.

16 Some of these mothers, you know, they
17 don't train their kids. But when the kids are there
18 with Ms. Tucker's daycare, the kids are being taught
19 something. Not the negative thing. They're being
20 taught positive thoughts.

21 And two, the daycare is -- if this daycare
22 is approved, it's a one-way street. There's not --
23 this is not two-way traffic. It's one-way.

24 CHAIRMAN GRIFFIS: Is that right?

25 MR. JENKINS: Yes, and that wasn't bought

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1 up.

2 CHAIRMAN GRIFFIS: Yes, indeed. Excellent.

3

4 Thank you ver much. So 9th Street, you're saying, is
5 one-way?

6 MR. JENKINS: Right, one way.

7 CHAIRMAN GRIFFIS: Okay, good. Thank you
8 very much. Yes.

9 MS. ADAMS: My name is Pearl Adams, and I
10 am an employee at Tucker's Daycare Center, the present
11 one. It's two points that I would like to make.
12 Every day, we have three to four telephone calls,
13 wanting to know if we have any openings.

14 Of course, we have to say no. But we keep
15 a very long waiting list. As some of the parents know
16 that she's trying to open the second daycare, they are
17 already asking will you please put my child on the
18 waiting list.

19 By word of mouth and generation to
20 generation, you know, children come, you know, from
21 the same families.

22 The second thing I would like to say is
23 that she hires welfare to work parents. She works
24 with the seniors and she also works with the schools,
25 for the children to you know, make the community ours.

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1 I am in fully support of her new daycare.

2 CHAIRMAN GRIFFIS: Good. Thank you very
3 much, Ms. Adams. I appreciate that. Any question of
4 the Board?

5 MS. MILLER: Ms. Adams, I just wonder if
6 you knew how large the waiting list is?

7 MS. ADAMS: It's probably now, I would say
8 between 25 and 30 children, and out of that I would
9 say at least for 15 infant slots. We are one of the
10 few in Ward 8 that accepts infants and also children
11 under two that are not potty-trained.

12 MS. MILLER: Which population is the
13 demand greatest for?

14 MS. ADAMS: Infants.

15 MS. MILLER: Infants, okay. Thank you.

16 CHAIRMAN GRIFFIS: Anything else? Good.
17 Mr. Williams, do you have any questions of any of the
18 persons that provided testimony at this time?

19 MR. WILLIAMS: Well, I'm just glad they're
20 here, because I knew I was successful in getting her
21 started. But the staff that she has is really stand
22 up professionally, and there's a lady that's not here.

23
24 This lady here is just a jewel. So you know, I don't
25 just put my name on anything unless I know it's

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1 working. If it's not working, I try to find out why
2 and then I try to get them help.

3 CHAIRMAN GRIFFIS: Understood. Appreciate
4 that. Appreciate it. Thank you all very much. Thank
5 you, Ms. Adams. We appreciate you taking the time to
6 come down here out of your schedule. Let's move
7 ahead, then, to persons in opposition to the
8 application. Are there persons present in opposition?

9 (No response.)

10 CHAIRMAN GRIFFIS: Very well. Not knowing
11 any persons present in opposition, we will take note,
12 again, of Exhibit No. 21 and 20, that were stating in
13 written form positions of opposition at this time.
14 Mr. Williams, we'll turn it back over to you for any
15 brief closing remarks that you have.

16 MR. WILLIAMS: I'd just like to say
17 something. I grew up about -- and I know this is not
18 relevant, but I grew up about four blocks from here.
19 I used to come down to the courts every day and listen
20 to court cases. I'm always intrigued by lawyers and
21 courts.

22 I just looked at the way you handled
23 situations. You seem to be fair when possible, and
24 stern when necessary. So and the staff and Mr.
25 Etherly and everybody else, I just like the experience

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1 of coming down here talking to you. I thought I'd
2 just come down here to sit and listen. Thank you very
3 much.

4 CHAIRMAN GRIFFIS: You're always welcome
5 to come down and I'll let you know that some of us
6 aren't attorneys up here and we're all volunteers that
7 you're looking at. But we appreciate your comments
8 nonetheless. With that being said, we need to set
9 this for a decision for two things.

10 One, there's a couple of things that need
11 to come into the record. Two, we are well into our
12 afternoon and haven't closed our morning session.

13 So with that, don't go too far, Mr.
14 Williams, because this is to you. One, I'm going to
15 keep the record open and Mr. Moore is going to help
16 also in facilitating this.

17 But we need to have a base level of
18 occupancy allowed in this, so that we can start
19 setting it. It goes directly to the length of the
20 approval that we're looking at, in terms of setting an
21 enrollment but also an on-site.

22 I think we have met the standard letter of
23 the regulations, in terms of 205.10 and others, that
24 it can meet. Now we just need to put it into a
25 benchmark. I don't think that's too difficult to do.

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1 We are also going to have the record open
2 for Mr. Tucker and Mr. Williams, who are going to
3 assist her in this, in articulating the traffic plan,
4 however simple it is. Obviously, the more simple it
5 is, the probably better it is. But just to have that
6 put into the record so we have that for our
7 understanding.

8 Ms. Miller had also asked if there was an
9 actual program for children, and Ms. Tucker indicated
10 that there was. We'll have that into the record. I
11 don't have anything else noted that we would accept
12 into the record, unless Ms. Bailey, you're aware of
13 any or any of the other Board members. We'll hear
14 from Ms. Bailey.

15 MS. BAILEY: No, Mr. Chairman.

16 CHAIRMAN GRIFFIS: Good. Anything else
17 then? Very well. Not noting any others, let's set
18 this for a decision. That would be the first Tuesday
19 of the month, so that would be October 3rd. We'll put
20 this second on the schedule.

21 As I said before, I will say it directly
22 to you, that this is a time of which we will decide
23 this case. There is no other time for address to the
24 Board. So we won't be asking you to come and present
25 anything.

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1 We are asking that all that information
2 and the record it's held open for will be in the
3 record on the 27th by 3:00. That means it's delivered
4 into the Office of Zoning on that Wednesday prior by
5 3:00. Did I say -- what time did I say? 3:00. Okay,
6 yes. That way they can copy it and send it out to us.

7 If there's any problems with that, of
8 course, just coordinate with the Office of Zoning. We
9 would appreciate that. Very well. Mr. Williams, any
10 clarifying questions I can provide you?

11 MR. WILLIAMS: No sir, not at this time.

12 CHAIRMAN GRIFFIS: Excellent. Thank you
13 very much, and thank you for your kind words. We'll
14 make sure you said it slowly enough that the court
15 reporter has that exactly in the record.

16 I'm going to aks for the transcript to be
17 blown up and put into the lobby, or at least our
18 executive board room, for our interest and
19 edification. Is there any other business for the
20 Board this morning? Yes.

21 MS. GLAZER: Mr. Chair --

22 CHAIRMAN GRIFFIS: I've run into legal
23 problems. Let's hear from our attorney.

24 MS. GLAZER: Not our problem. I'm not
25 sure that you provided that the record would be left

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1 open to accept the Department of Health report, if
2 any, that came in.

3 CHAIRMAN GRIFFIS: I did. Specifically,
4 I actually was looking for the occupancy, but of
5 course any sort of agency report that comes in won't
6 be rejected. Anything else?

7 MS. GLAZER: No. Thank you.

8 CHAIRMAN GRIFFIS: Great. Ms. Bailey, any
9 other business for the Board?

10 MS. BAILEY: No.

11 CHAIRMAN GRIFFIS: Very well. Thank you
12 all very much. Let's adjourn our morning session.
13 With that being said, I can say anything, because
14 we're off the record. No, the mike's still on.

15 Let me address -- of course we're going to
16 take a brief lunch recess. It's 1:20. We'll call a
17 session in the afternoon at 2:15. Sir, you have a
18 question outside of that?

19 MR. RENARD: No. I just wondered whether
20 you have my case before the lunch break? I have a
21 postponement of my hearing.

22 CHAIRMAN GRIFFIS: Oh, that's exactly
23 right. I think you're exactly correct, and I
24 appreciate you bringing that to my attention. I think
25 we do need to do that. Mr. Moy, if it's amenable,

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1 Board members, I'd like to -- let me say this before
2 I actually do it.

3 But why don't we call to order the
4 afternoon session, and then we can call in the
5 Application 17509. Is that correct?

6 MR. RENARD: Yes. 17509.

7 (Whereupon, the morning session was
8 concluded.)

9
10

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

2 2:20 p.m.

3 Application 17509

4 CHAIRMAN GRIFFIS: Very well, in which
5 case let's call to order our afternoon session. I'll
6 dispense with the opening remarks so that we can get
7 directly to the preliminary matter in 17509.

8 I don't think Mr. Moy actually even needs
9 to read it into the record, since it is a preliminary
10 matter or postponement. Why don't you have a seat?
11 We need you to state your name and address for the
12 record.

13 MR. RENARD: My name is Bernard Renard.
14 I'm at 1012 East Capitol Street, N.E., Washington,
15 D.C., 20003.

16 CHAIRMAN GRIFFIS: Good, and the nature of
17 your request for a postponement?

18 MR. RENARD: Just confirming the letter by
19 which I requested the Board to hear my case at the
20 later date, due to the fact that I don't have the --
21 I made a change in the application, from an area
22 variance to a special exception.

23 The decision apparently has been -- is
24 ready from the Office of Zoning, but I still have to
25 go through Historical Preservation, and then to the

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1 ANC 6B.

2 CHAIRMAN GRIFFIS: So have you had any
3 objection from the ANC or the community or the Office
4 of Planning?

5 MR. RENARD: No. There were no objections
6 from the ANC, but I have to appear again, because I
7 modified the application to a special exception.

8 CHAIRMAN GRIFFIS: Right, okay.

9 MR. RENARD: And the dates were too tight
10 to be able to get it before this hearing.

11 CHAIRMAN GRIFFIS: Okay, fabulous. Any
12 questions from the Board, clarifications?

13 (No response.)

14 CHAIRMAN GRIFFIS: Is there anyone else
15 here present for Application 17509?

16 (No response.)

17 CHAIRMAN GRIFFIS: Okay. Is there any
18 opposition to the Board granting his postponement?

19 (No response.)

20 CHAIRMAN GRIFFIS: Not noting any
21 opposition, I will make note of course the file does
22 have other exhibits in it. It's a letter from the
23 Office of Planning that is also indicated that you had
24 requested a --

25 MR. RENARD: Yes. I spoke with the Office

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1 of Planning.

2 CHAIRMAN GRIFFIS: Right. In terms of
3 dramatically changing the nature of the application,
4 in terms of the relief that's required, I see no
5 reason why we wouldn't grant the request for
6 postponement. You had indicated that you wanted
7 something in January; is that correct?

8 MR. RENARD: January would be fine, if
9 that's possible.

10 CHAIRMAN GRIFFIS: Dates in January?

11 MS. BAILEY: Mr. Chairman, looking at the
12 schedule for January 30th. Did you want to look at
13 that date?

14 CHAIRMAN GRIFFIS: I'm sorry, the 30th?

15 MS. BAILEY: January 30th.

16 CHAIRMAN GRIFFIS: Absolutely. Is that
17 good for you?

18 MR. RENARD: That would be fine.

19 CHAIRMAN GRIFFIS: I think we can put it
20 the first in the afternoon.

21 MR. RENARD: Yes. That would be good.

22 CHAIRMAN GRIFFIS: Ms. Bailey, is that
23 what you were thinking, or do we need to do it in the
24 morning? You say this is going to a special
25 exception; is that right, from five variances?

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1 MR. RENARD: Right, yes. I don't know
2 whether this has been approved --

3 CHAIRMAN GRIFFIS: Kind of a traumatic
4 move, isn't it?

5 MR. RENARD: Huh?

6 CHAIRMAN GRIFFIS: Substantial move, okay.

7
8 I think we can put it in the morning.

9 MS. BAILEY: Morning?

10 CHAIRMAN GRIFFIS: We're going to put this
11 case second in the morning on January 3rd. We're
12 going to ask that you repost the property.

13 MR. RENARD: Right.

14 MS. BAILEY: January 30th, Mr. Chairman?

15 CHAIRMAN GRIFFIS: I'm sorry. What did I
16 say? 30th, yes. Add a zero to that. Okay. Anything
17 else?

18 MR. RENARD: That's fine.

19 CHAIRMAN GRIFFIS: You clear?

20 MR. RENARD: Yes.

21 CHAIRMAN GRIFFIS: January 30th, and he's
22 going to repost it. That's exactly right.
23 Repostings, of course, you can coordinate with the
24 Office of Zoning. You can get the correct relief
25 that's required, and we need to get that on record.

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1 MR. RENARD: That will give me plenty of
2 time.

3 CHAIRMAN GRIFFIS: Sounds like you know
4 exactly what you're doing.

5 MR. RENARD: Thank you very much.

6 CHAIRMAN GRIFFIS: More than I do on an
7 empty stomach.

8 MR. RENARD: I'm sorry that you postpone
9 your lunch.

10 CHAIRMAN GRIFFIS: I do, yes. Indeed, not
11 a problem at all. I'm glad you clarified that. With
12 that, is there any other information we need to take
13 up for preliminary matters in the afternoon schedule?
14 Anything else? Is anyone else have anything? Not
15 noting anything --

16 MS. BAILEY: Mr. Chairman, I do. Sorry.

17 CHAIRMAN GRIFFIS: Very good.

18 MS. BAILEY: It will be quick. Just to
19 mention on the record that the appeal of the Stanton
20 Park Neighborhood Association, Application 17434 was
21 withdrawn, and also that the Appeal of Kuri Brothers,
22 Application No. 17444, was rescheduled to October 3rd,
23 2006.

24 CHAIRMAN GRIFFIS: Those are all excellent
25 points, in which case we are calling as we return

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1 within a matter of 45 minutes, 17309, which is the
2 Dorchester Associates, which is a continued case. Is
3 that correct?

4 MS. BAILEY: Yes, Mr. Chairman.

5 CHAIRMAN GRIFFIS: Very well. We'll see
6 you all shortly.

7 (Whereupon, at 2:39 p.m., a luncheon
8 recess was taken.)

9 CHAIRMAN GRIFFIS: Good afternoon. The
10 hearing day is extensively over. However, we have
11 called to order already the afternoon public hearing.
12 However, I did not do my opening remarks, which are
13 critical to our proceeding this afternoon.

14 So a very good afternoon to you. I am
15 Geoff Griffis, chairperson. Ms. Miller, the vice
16 chair, is with me and Mr. Etherly. Also with us
17 present today representing the National Capital
18 Planning Commission is Mr. Mann, and representing the
19 Zoning Commission in our afternoon schedule and for
20 this case is Mr. Parsons.

21 Of course, you are all aware that we have
22 a schedule. It is located at the entrance where you
23 came into the hearing room today. I'm going to
24 dispense with the normal procedures for special
25 exceptions and variances, as of course this is a

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1 continued case.

2 I will note that for anyone that is not
3 familiar, we are being broadcast live on the Office of
4 Zoning's website. You should be attendant and aware
5 of that, and also critically aware that the court
6 reporter sitting to the right on the floor is creating
7 the official transcript.

8 Attendant to that is your hair must be
9 perfectly placed -- no. What we need you to do is
10 fill out two witness cards. Witness cards are
11 available for you where you entered in the hearing
12 room and also at the table up front.

13 Please have those to the reporter prior to
14 coming forward. It saves a little bit of time as we
15 get rolling. Then you will need to just state your
16 name and address for the record, so that we can put
17 you correctly on the transcript, which of course is an
18 official part of the record we're continuing to
19 create.

20 We're going to dispense with the cross-
21 examinations. We're getting to the end of this. We
22 should all be familiar with exactly what that is and
23 who's the available to conduct the cross-examination.

24 In fact, I'm going to move quickly onto
25 the rest, last pieces. Is there anyone here -- I need

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1 a show of hands. Is there anyone here that was not
2 previously sworn in in this case, that will be
3 providing testimony today?

4 (No response.)

5 CHAIRMAN GRIFFIS: Good. So everyone has
6 been sworn in. Of course, that continues on during
7 this case. Let me say a very good afternoon to Ms.
8 Bailey at my very far left, of the Office of Zoning,
9 Mr. Moy on my closer left. Ms. Glazer with the Office
10 of the Attorney General is with us.

11 I would say that if there are preliminary
12 matters, we can get to those as we call this case to
13 order. I believe I can address anything else that we
14 need to at the time as is appropriate. With that, Ms.
15 Bailey, if you wouldn't mind?

16 Application No. 17309

17 MS. BAILEY: Mr. Chairman, members of the
18 Board, good afternoon. This is a continued hearing,
19 and it's for Application No. 17309, which was last
20 heard on July 18th, 2006.

21 This is the Application of the Dorchester
22 Associates, LLC, pursuant to 11 DCMR 3104.1, for a
23 special exception under Section 2516, to allow 13
24 detached single family dwellings on a single
25 subdivided lot, including approval of two 16-foot wide

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1 roadways, rather than 25-foot wide roadways, under
2 Subsection 2516(d).

3 The property is located in the 2800 block
4 of Chain Bridge Road, N.W. It's zoned CBUTR 1A, and
5 it's Square 1425, Lot 827, Parcels 12/63, 12/293 and
6 12/294.

7 We last left off, Mr. Chairman, the
8 Applicant was to provide rebuttal witnesses today. We
9 understand that he is ready to go forward. A brief
10 discussion with the opposition indicates that there is
11 a preliminary matter from Mr. Brown at this time, Mr.
12 Chairman.

13 CHAIRMAN GRIFFIS: Good. Thank you very
14 much, Ms. Bailey. We appreciate that. So obviously
15 as she's indicated, and so do my records, that we
16 would have rebuttal witnesses, which will be called.
17 We're going to get an understanding of who they are
18 and how much time they're going to take.

19 Of course, they would then open to cross-
20 examination, only to that testimony that's presented
21 today. We won't be going back and revisiting other
22 testimony or other witnesses.

23 I would also note, Mr. Keys, you're here
24 with us on this case, and you're entering -- not that
25 you have to enter your appearance, but I think that's

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1 what you lawyers say when you show up to do something.

2 So other than that, we do have another
3 submission. It seems I didn't carry this out with me,
4 but there's something in front of me. Why don't you
5 address it?

6 MR. KEYS: Good afternoon, Mr. Chairman,
7 members of the Board. My name is George Keys. I'm
8 with the firm of Jordan and Keys, and we are the new
9 counsel for Dorchester Associates in concluding this
10 matter.

11 What I have delivered, we have four
12 witnesses in rebuttal. Those witnesses were
13 previously sworn in in this matter, previously
14 identified as experts in their respective areas.

15 What they have done is prepared for their
16 presentations, for their response, exhibits that are
17 pertinent to their testimony, that helps clarify the
18 issues that the opposition's witnesses put in
19 contention.

20 This case, as I found it, had as you know,
21 several days of testimony. There were many experts
22 involved. It's a complicated site, and we felt that
23 it would be impossible to provide a cogent rebuttal
24 absent exhibits that illustrated what our experts
25 believe to be the case about this site.

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1 CHAIRMAN GRIFFIS: Who are the rebuttal
2 witnesses today?

3 MR. KEYS: The rebuttal witnesses in order
4 would be Mr. Andrulis, the architect; Mr. Afful, the
5 civil engineer; Mr. Bonifant, who provided testimony
6 with respect to the tree preservation plan; and
7 finally Mr. George, Osbourne George, who is the
8 transportation engineer.

9 CHAIRMAN GRIFFIS: Okay. And so all the
10 exhibits that are submitted today are attendant to the
11 witness testimony we're about to hear?

12 MR. KEYS: They are. But I should add,
13 and I think this is an extremely minor matter, you
14 will see at the end of the list of exhibits tabs that
15 make reference to House No. 4, House B, and House H.

16 The only purpose of that was simply to
17 make sure the record is complete and reflecting the
18 fact that the Applicant has decided to shrink the
19 basements in those houses, and we don't think it's a
20 material issue. We're pulling about 400 feet on
21 average out of the basements.

22 We found that that would have a beneficial
23 effect in how we're handling the site, and really how
24 we're making the case about that this site can be
25 built and worked effectively, achieving the goals

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1 without undue disturbance to the land.

2 If you want Mr. Andrulis to address those
3 exhibits, he will. But I really don't think it's
4 necessary.

5 CHAIRMAN GRIFFIS: Okay. Comments?

6 MR. BROWN: Yes, Mr. Chairman. Patrick
7 Brown for the Chain Bridge Road University Terrace
8 Committee, in opposition.

9 The very issues and concerns I raised at
10 the conclusion of our last hearing, going to the
11 nature and scope of this proceeding and our
12 expectations of rebuttal, I think, have emerged in
13 quite a significant way.

14 First, the Applicant has filed, and I
15 think it's two separate things of a very extensive
16 nature today, which go well beyond the Board's
17 expectations and instructions that were given on the
18 record when we last met.

19 Mr. Chairman, and if I could, "I will say
20 that on September 8th, if we could get a list of
21 witnesses that you're anticipating calling, and let me
22 be clear on this."

23 Then you go on and say "I'm going to need
24 everything submitted in the record no later than 3:00
25 p.m. on September 8th, so that one piece would be in."

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1 So again, the Board's expectations were that they
2 would be expecting only a witness list, and it be
3 filed on September 8th.

4 We have a document, that depends how you
5 measure it, is two inches thick, detailed drawings
6 from Mr. Afful, all coming in on the day of the
7 hearing. One, they violate the timing and certainly
8 the scope of what the Board's expectations and
9 directions were.

10 In addition to that, Mr. Keys has
11 indicated to me that he expects that his rebuttal
12 testimony would take one and a half hours.

13 That exceeds the amount of time that he
14 would be allotted for his case-in-chief, and
15 notwithstanding Mr. Keys' entry into the case, the
16 Applicant can't come back now for a third time and try
17 to make their case.

18 We did in the initial hearing. At the
19 July hearing, the Applicant was able to come in and
20 bring in new information and spend a substantial
21 amount of time in excess of an hour presenting that
22 material. Now we're coming in and changing this case
23 in what I suspect is a fairly substantial and dramatic
24 way, in the nature of the evidence.

25 I'm not so sure one, it's not fair to

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1 sandbag the Board and my clients, and also it's
2 outside the scope of the Board's procedures. The
3 Applicant gets to present a case. In typical fashion,
4 if we hadn't had a two-month delay, he would have made
5 a very short rebuttal and the case would have been
6 done.

7 We're starting all over here with this,
8 notwithstanding Mr. Keys --

9 CHAIRMAN GRIFFIS: Mr. Keys, very briefly,
10 why is there a need for such a substantial amount of
11 evidence in rebuttal?

12 MR. KEYS: Well, the obvious reason is
13 that the testimony that was presented in opposition
14 came from a number of witnesses that were qualified as
15 experts. The objections were technical in nature. In
16 large part, they rested on misunderstandings and
17 misapprehensions on what the plans actually were.

18 CHAIRMAN GRIFFIS: Are there major changes
19 in the information --

20 MR. KEYS: There are not. These are not
21 changed plans. What we're trying to do is to
22 emphasize by use of colors, what our plans actually
23 showed, actually depicted.

24 They need exhibits to respond to, and I
25 think these are not -- it's not changing the record,

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1 it's not creating a new record. We're not designing
2 a new site.

3 CHAIRMAN GRIFFIS: Okay, understood.

4 MR. KEYS: There are still the same number
5 of houses. They have the same configuration. They're
6 located in the same way.

7 CHAIRMAN GRIFFIS: Good.

8 MR. KEYS: The road is the same. There's
9 nothing that's really changed in these plans.

10 CHAIRMAN GRIFFIS: Can you respond to Mr.
11 Brown's comment, and I think it was pretty or was
12 trying to be clear about it. The Board's direction
13 was to get as much information, certainly the list of
14 witnesses in, prior to --

15 I don't think that was set up to be a
16 preclusion from hearing the rebuttal. But I also
17 think it was to refine and have good utilization of
18 time. With that, I think we need to get in this,
19 rather than discuss whether it was actually
20 anticipated or not.

21 You know, we always say that when we get
22 stuff the day of. It doesn't serve anybody well.
23 We're going to be reading through this. We may not
24 have questions to answer because we haven't got into
25 the detail that we need, we may just delay a decision.

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1 So that being said, however, I think we
2 need to proceed. We're lucky today that someone's
3 dropped off. Otherwise, we would have been pressed to
4 get this done and out of the way for our next two
5 cases in the afternoon.

6 It doesn't mean you get more time.
7 However, I'm not as panicked that we don't have our
8 hour to give you. That being said, I don't see any
9 reason why we would need 15 minutes at most for each
10 of the presentations of the witnesses. Is that
11 outside of what you're anticipating?

12 MR. KEYS: I think it would be difficult
13 in the case of the architect and the civil engineer,
14 to do what they need to do by way of rebuttal in that
15 period.

16 I think I could stick to that with regard
17 to Mr. Bonifant, the arborist. I think I could do
18 that, to some extent --

19 CHAIRMAN GRIFFIS: I think let's get into
20 it, and I'm going to be fairly interruptive and moving
21 him along if I don't think that we're being productive
22 and getting into some of the issues. Obviously, we'll
23 also do the same with cross.

24 But we've got a lot of opportunities here.

25

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1 I should say we have a lot of people that will want to
2 take opportunities to cross, and that will take some
3 time.

4 Let's get to it, unless there's any strong
5 objections to continue today, Mr. Brown.

6 MR. BROWN: Well, I mean I have -- and I
7 have very strong objections, because I think that from
8 what those who have had a cursory opportunity to look
9 at this material, the plans have changed and they've
10 been supplemented.

11 CHAIRMAN GRIFFIS: I don't disagree with
12 you bringing up your objection. But let me ask you.
13 In your objection, can you also add a solution? Tell
14 me what is the best way in your mind then?

15 MR. BROWN: Well, and I think the logical
16 and appropriate suggestion is that what's being
17 submitted and the Applicant's attempt to basically re-
18 enter his case, is inappropriate. The filings should
19 be excluded, and the testimony should be limited to
20 rebutting what was presented previously.

21 I mean I think we open it up, and if we go
22 forward, the response I'm going to have to make is
23 one, do we go forward today, in which case we've
24 wasted. To be honest, I'm not comfortable going
25 forward, given the volume of material and the

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1 substantial nature of what we're talking about today.

2 So I'm not comfortable going forward.

3 Alternatively, to require my clients to limit their
4 cross-examination on material that they're just
5 receiving now is unfair. So we're looking at, to some
6 extent, either through the whole extent of this
7 hearing or to our cross-examination, extending this
8 matter.

9 That was clearly not the Board's
10 intention. The Board is desperate to resolve this
11 matter, and we just keep opening the door further and
12 further. The Applicant's rebuttal is going to exceed
13 the time that my clients were given to present their
14 case, and that's just --

15 I mean after presenting the case twice
16 before, the whole system has gotten out of whack. I
17 think that we ought to exclude the filing and limit
18 the testimony, so that we're not introducing new
19 plans, which apparently there are new plans in here.

20 The Applicant can't come back and try to
21 save his case by creating plans that didn't exist
22 previously, which I'm told is the case here. I mean
23 that's what we're looking at.

24 CHAIRMAN GRIFFIS: I somewhat understand
25 that, but then I would need to go substantially to the

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1 regulations, where it tells me I need to, and the
2 rules of which I preclude evidence being entered in
3 rebuttal testimony.

4 You know, I don't understand -- I tend to
5 agree with the amount, and I don't think that rebuttal
6 is an appropriate time when we look at process, to
7 argue a new case.

8 But then where is that I'm precluded from
9 accepting evidence or information on witnesses that
10 have already been part of the case, and have already
11 been taken in as experts?

12 MR. BROWN: Well, but I think the
13 distinction that needs to be drawn is that an expert
14 who's already been in the case, and you also have to
15 remember that at least two of the experts did not
16 provide direct testimony.

17 CHAIRMAN GRIFFIS: Right. I'm not saying
18 that that does anything to it, except that that's a
19 fact in this case.

20 MR. BROWN: But an expert could be brought
21 back on rebuttal to explain his earlier testimony,
22 his earlier presentation, his earlier materials.

23 CHAIRMAN GRIFFIS: But also to counter the
24 case presentation from the opposition. That's the
25 critical point of rebuttal, not to revisit what has

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1 already been told us --

2 (Simultaneous discussion.)

3 MR. KEYS: If he can do that by
4 interjecting new plans, different plans, and basically
5 saying that the Applicant has a chance to revisit his
6 earlier plans.

7 CHAIRMAN GRIFFIS: I understand your
8 point. I understand Mr. Keys. Here's where I am. I
9 want to hear from my Board members, because they're a
10 lot more logical than I am. But I hate arguing things
11 on technicalities. I want to get to the substance,
12 and I understand that it's harder, that this is not a
13 good situation to get into.

14 But on the technicality of it, it takes us
15 more time just arguing about it, and that just means
16 we're going to do all this later. But let me hear
17 other logical people on this. We'll start with you,
18 Ms. Miller.

19 MS. MILLER: This is difficult, because we
20 haven't even been able to look at this whole notebook.

21
22 So it's hard to parse out what might be exhibits that
23 support clearly allowable rebuttal testimony from what
24 might be totally new plans.

25 The other thing that's hard to sort out is

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1 what's in exhibit here, just to help explain and
2 support as a visual aid, the rebuttal testimony we
3 might hear, versus what should have been filed by
4 September 8th, so that the opposing parties had an
5 opportunity and the Board to prepare for knowledgeable
6 cross-examination.

7 So that being said, I'm not sure what the
8 solution is. I think on the one hand we have this
9 whole afternoon that's left, where we could hear it.
10 One possibility is to hear it, and knowing that the
11 opposition is at a disadvantage, and allow the
12 opposition to submit something afterwards to further
13 address the rebuttal testimony, which might be an
14 unusual situation.

15 But I think this is an unusual situation,
16 and we have to be cognizant that on the one hand it
17 looks like this was filed late, but on the other hand,
18 some part of it might be allowable as a prop almost,
19 for the rebuttal testimony.

20 We don't know what that is, and we don't
21 have time to figure that out. So we could proceed and
22 then try to make some kind of accommodation to the
23 opposing party to cure that problem, or we could not
24 proceed, in my view.

25 MR. ETHERLY: Mr. Chairman if I could --

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1 CHAIRMAN GRIFFIS: Let me hear from Mr.
2 Parsons.

3 MR. PARSONS: Mr. Chairman, our time is
4 valuable. I think we should proceed, and just based
5 on what I've flashed through here like the rest of us,
6 there is new information here, and I don't think it's
7 fair to Mr. Brown and his experts to conduct
8 successful cross-examination.

9 So I would recommend we proceed only with
10 the rebuttal and our questions, and schedule another
11 hearing.

12 MR. BROWN: Mr. Chairman, picking up on
13 Mr. Parsons' comment, and I think his assessment,
14 there is new material there is obviously troubling for
15 us all.

16 I'm really not very comfortable and my
17 clients are even less comfortable going forward today.

18
19 I think that we all -- I mean I think --

20 While I think the materials should be
21 excluded, I think that the better course of action is
22 to reschedule this matter, allow my clients --
23 typically, you'd have 14 days before a hearing to
24 review the material, and the Board provided for a week
25 in this case.

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1 But given the volume, we reschedule the
2 hearing and we do the matter once and for all in
3 conclusion in one sitting. The rebuttal occurs, the
4 cross-examination occurs, my clients be allowed to
5 submit written materials and expert material in
6 rebuttal to this, so that we're on an even playing
7 field and do it in one day. Because we're talking
8 about --

9 MR. PARSONS: Wait a minute.

10 MR. BROWN: What, what?

11 MR. PARSONS: You're going to take this
12 material and then present your own material in
13 rebuttal to the rebuttal?

14 MR. BROWN: But again, Mr. Parsons you've
15 said, and I'm not being argumentative, but you have
16 said that there's new material in here. In which if
17 we're going to go beyond the scope of rebuttal, which
18 doesn't anticipate new material, which I think you're
19 talking about, then fairness would indicate there has
20 to be some ability to rebut.

21 MR. PARSONS: Yes.

22 MR. BROWN: Certainly not -- we're not in
23 a position to do that through cross-examination or any
24 other manner today.

25 The Board is not familiar with this

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1 material, so you're at a disadvantage. I mean one
2 thing about this Board that is -- you can, the gospel
3 truth is this Board is well-prepared when you go into
4 a hearing.

5 All of the sudden, the substance of your
6 hearing is put on your desk. I don't think the Board
7 is prepared to go forward as well, but I'll leave
8 that.

9 I would suggest, and this is the only
10 thing that I'm really comfortable with, is that we set
11 a further date, allow us to look at the material and
12 be prepared for the hearing, and we conclude the
13 matter in one hearing.

14 Because we're automatically, under almost
15 any scenario we're talking about, we're talking about
16 two hearing dates. Doing something today, which I
17 think will be unfulfilling, certainly from my clients'
18 standpoint and perhaps for the Board's, and then
19 coming back again to allow us to do rebuttal.

20 So we're looking at two hearing dates. I
21 think we ought to do one hearing where the playing
22 field is level. Everybody, the Board included, is
23 prepared, and we can put this matter, close the record
24 and move on I think is the --

25 MR. ETHERLY: If I could, Mr. Chair, let

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1 me ask this question, because I am inclined to agree
2 with Mr. Parsons. But I would perhaps like to invite
3 a response from Mr. Brown, in terms of what's the
4 disadvantage to making use of the time that we have
5 today, recognizing to an extent that there would be a
6 disadvantage in trying to shoehorn your cross-
7 examination of arguably what is some new material to
8 a substantial extent. What's the disadvantage in
9 still making use of the time that we have today as
10 Scenario A.

11 Scenario B would be are you disadvantaged
12 if you submit rebuttal testimony in writing, rebuttal
13 to the rebuttal. Which is an unusual step granted,
14 but it still gives you the ability to respond.

15 MR. BROWN: Even as a passive participant
16 today, my clients, as well as the Board, are in a
17 disadvantaged situation, where we would be under a
18 typical scenario even in this case, where the Chair
19 asked for submissions by September 8th.

20 We're asked to digest and deal with
21 material that we've never seen before. So our ability
22 to digest and make sense of that material is limited,
23 unlike you would find in any other circumstance before
24 this Board, because quite frankly, written materials
25 of this nature and detail, you typically get 14 days

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1 before a hearing.

2 In this case, it arguably could have been
3 abbreviated to one week. But still, technical,
4 detailed information would have been subject to review
5 prior to sitting down and having the hearing. That's
6 not going to happen. Under no circumstance is that
7 going to happen today for anybody here.

8 The Board hasn't had that opportunity. My
9 clients and our experts certainly haven't had that
10 opportunity. So that's an enormous disadvantage.
11 Again, I think in dealing with issues about whether in
12 fact material that's being presented is within or
13 without the scope of rebuttal, none of us can make
14 that decision without having looked at the material.

15 I'm not sure that the Board's in a
16 position to do that any more than I am, other than
17 just hearing it. So I would -- and this pains me to
18 no end, because my expectation was that we were going
19 to have a limited rebuttal, our cross-examination and
20 conclude this case.

21 But I don't think there's any scenario
22 where it would be appropriate or my clients and I
23 would be comfortable going forward today. So I'd ask
24 the Board's support and indulgence.

25 MR. PARSONS: Mr. Chairman?

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1 CHAIRMAN GRIFFIS: Mr. Parsons.

2 MR. PARSONS: And I don't want to debate
3 it with you anymore, Mr. Brown. I cannot imagine why
4 everybody wouldn't benefit from a verbal presentation
5 this afternoon, rather than taking our books home and
6 trying to figure out what they mean. Certainly, we
7 will not be able to schedule a second hearing for
8 cross-examination within 14 days.

9 So I think the opposition is advantaged by
10 having a presentation, going home and sleeping on it,
11 and coming back at another time. I just think we
12 ought to move forward.

13 CHAIRMAN GRIFFIS: Last word, Ms. Miller?

14 MS. MILLER: Well, I just want to suggest.

15
16 If we go Mr. Parsons' route and just hear it today,
17 hear the rebuttal testimony, I think he might be
18 saying this, but I'm not sure, but the opposition
19 would have an opportunity.

20 They could submit something in writing
21 that would basically rebut the rebuttal, which is not
22 normally the case that they have that opportunity,
23 because they would have been disadvantaged by not
24 being -- having the documents to prepare a good, well
25 thought-out cross-examination.

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1 And also I think I want to throw out this
2 possibility of the opposition having the opportunity
3 to file a motion to exclude some evidence, in the
4 event it doesn't fall within the parameters, whatever
5 they were, of what should have been presented in
6 rebuttal testimony, that maybe that could count as a
7 disadvantage that they are under today.

8 MR. KEYS: Mr. Chairman, may I speak to
9 that?

10 CHAIRMAN GRIFFIS: Yes.

11 MR. KEYS: I'm mindful of the Board's
12 concerns, but I think the opposition protests a little
13 too much about their disadvantage. This is absolutely
14 no different than the situation that the Applicant is
15 put in when they walk into a hearing room and are
16 confronted with expert witnesses and testimony and
17 exhibits for the first time.

18 I'm sorry for the length of this volume.
19 But if you would look at a couple of the tabs, that
20 you'll understand that a significant amount of it is
21 simply cumulative. For example, the Board has asked
22 -
23 -

24 CHAIRMAN GRIFFIS: I don't want you to
25 start on that. Then we're going to get back and forth

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1 about what's new, what isn't new. We're either going
2 to get into it or we're not.

3 I tend to agree. I mean on a couple of
4 tabs I've opened up are, you know, stuff we're not
5 even going to get into. It's kind of supportive of a
6 graph up front.

7 So that being said, Mr. Parsons, is there
8 anyone else who wants to briefly indicate this? I
9 think we need to go forward today, and I think we need
10 to assess how we will then get to the next level, if
11 we have the opposition not afforded the due process
12 that they in fact need.

13 We have in fact, in the past, taken in
14 written submissions, almost as towards the
15 conclusions. So it's not so much cross-examination
16 but actually, I think perhaps even stronger, in terms
17 of putting together the last minute evidence or
18 conclusions of the opposition.

19 The Board takes it all in. I mean really
20 what we need to do is get back on focus of what the
21 end of the day is here, and that is us getting all the
22 information that we need to logically start to
23 deliberate on what we're being requested to deliberate
24 on.

25 And so I think we're served if we move

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1 ahead today, and do it as expeditiously as possible.
2 I think what we ought to do is take an assessment at
3 the end, after cross-examination is afforded, so you
4 know our position, to see if it was availed enough or
5 there is more information that's needed on some of
6 this.

7 I don't even think we can even assess what
8 that's going to be at this time until we get into
9 this. As I'm opening up some of this, I think most of
10 us are quick studies. We can get to it. Even though
11 we may understand that the record will need to be left
12 open for address by the opposition, and we'll figure
13 out what form that comes in.

14 Then the other -- let's put it into
15 rationality or not rationality, to reality. If we
16 were to take the one option as to just call this again
17 at another time, I can put it all out to you. I don't
18 really want to. But I think the closest date we're
19 looking at is the 30th of January.

20 So it doesn't seem very rational for us in
21 our schedule to start looking at trying to do all of
22 this at a future time. So let's get what we can now.
23 If we need and we find at the end of an hour or so
24 that we need to set another time, maybe that makes it
25 more appropriate to slip it in somewhere on our

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1 schedule.

2 But let's get into it and figure out what
3 magnitude we're actually talking about. Last comment,
4 Mr. Brown.

5 MR. BROWN: Well, and going forward, I
6 would like to, and I think this is Mr. Parsons' and
7 Mrs. Miller's collective wisdom, is to allow us to
8 defer our cross-examination, and also the opportunity
9 to file something in writing.

10 If that's your expectation going forward,
11 I think we're more comfortable with that or can be
12 made comfortable with that. So is that the
13 understanding that we're under?

14 CHAIRMAN GRIFFIS: That's my
15 understanding, that the record will be kept open for
16 some form, and I would anticipate it's going to be
17 written. I don't preclude the fact that we'll have
18 limited cross-examination now while we have the expert
19 witnesses here, and then we'll refine what will then
20 be open to submit.

21 MR. BROWN: But again, if for a variety of
22 reasons, including the newness of some of this
23 material that, you know, I don't want to be in the
24 uncomfortable position or using or losing my cross-
25 examination rights.

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1 CHAIRMAN GRIFFIS: I understand.

2 MR. BROWN: I would do myself and my
3 client a disservice, and the Board in the process, if
4 I just go through the motions in cross-examination
5 without the kind of preparation that you would
6 typically have. You would typically have this
7 material 14 days in advance.

8 CHAIRMAN GRIFFIS: I understand. I think
9 we are in agreement with what you're requesting.

10 MS. MILLER: I just want to say, it's
11 probably obvious, but because of the disadvantage that
12 we recognize the opposition is in, you're really
13 getting two bites at the apple.

14 CHAIRMAN GRIFFIS: How about potential
15 disadvantage --

16 MS. MILLER: Potential. I don't know
17 what's in this notebook. But yes, you can ask
18 questions now and you'll have a further opportunity
19 once we assess what's necessary afterwards.

20 CHAIRMAN GRIFFIS: Let's roll.

21 MR. KEYS: All right. I think we'd start
22 with Mr. Andrulis.

23 CHAIRMAN GRIFFIS: May I ask this in
24 rebuttal. A very good afternoon to you, sir. If you
25 can, just give me a brief outline of where we're

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1 going, so we kind of understand, and then we get right
2 into it.

3 MR. KEYS: Are you asking me to provide
4 that, Mr. Chairman?

5 CHAIRMAN GRIFFIS: Either way. I mean
6 that's fine.

7 MR. KEYS: Mr. Andrulis is going to
8 testify and respond to material put in the record
9 recently by the Applicant, concerning the context on
10 Chain Bridge Road, in which this application fits.

11 You asked for the backup material with
12 respect to lot size and building size, which we
13 believe is substantially in error and misleading. He
14 is also going to take that material and put it into
15 context of how this project looks in relation to
16 projects on either side of it.

17 He will also show you what would happen if
18 you were in fact comparing apples and apples, as
19 opposed to apples and oranges, how this site exists in
20 relation to the development in its immediate
21 neighborhood. That's the first element of his
22 testimony, and we can go on from there.

23 Next, he'll turn to the site. The issues
24 in this case involve whether or not the site lends
25 itself to the kinds of construction that's been

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1 proposed. We've been told that it cannot be done,
2 that our construction plans are antithetical to our
3 tree preservation plans.

4 He is going to show how the construction
5 works, how this site works. He's prepared to go into
6 whatever level of detail on that you would like, in
7 terms of construction techniques that are available
8 for this site.

9 Most importantly, I think that a
10 substantial amount of the confusion in this case has
11 rested on any lack of experience by experts and
12 otherwise in this case, for the opposition, with
13 boring techniques.

14 It's a new approach to working on sites in
15 the District, and I think there's a lot that can be
16 entered into the record about how we are doing this,
17 that mitigates many of the objections that were
18 raised, coming from several different witnesses.

19 That's basically where I'm asking Mr.
20 Andrulis to go.

21 CHAIRMAN GRIFFIS: Excellent.

22 MR. BROWN: Case in point of how we've
23 gone beyond the scope of rebuttal. I mean this is
24 information that was never discussed, never part of
25 the record. Now he purports to give my experts a

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1 lesson in boring, as well as the Board.

2 I can't imagine that the Chair or the
3 other Board members who sat through the pervious
4 hearings anticipated this type of presentation.

5 CHAIRMAN GRIFFIS: We'll get to it when we
6 get into it. We'll see how they address it. That's
7 why we have a good outline. I don't disagree with
8 you. Go ahead.

9 MR. KEYS: Mr. Andrulis, would you state
10 your name for the record?

11 MR. ANDRULIS: My name is Stan Andrulis.
12 I'm the architect for the project.

13 MR. KEYS: Mr. Andrulis, I'm going to
14 dispense with the usual preface and formalities. He's
15 been in this case before. Mr. Andrulis, there's a
16 recent exhibit that was submitted by the opposition in
17 this case on September 8th to the Board. Have you
18 seen that exhibit?

19 MR. ANDRULIS: Yes, I have.

20 MR. KEYS: Have you reviewed that Exhibit?

21 MR. ANDRULIS: Sure. It's here on the
22 easel here.

23 MR. KEYS: Would you -- I would like to
24 ask you. Is that an accurate depiction of the
25 surrounding --

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1 CHAIRMAN GRIFFIS: I'm sorry, Mr. Keys.
2 Let me interject. This one's right here. He doesn't
3 need to answer that. You can put it in.

4 MR. ANDRULIS: Yes. This is Opposition's
5 exhibit from the last meeting. It proposes to tell
6 the story of the context of the size of neighboring
7 properties, versus the size of our proposed
8 properties, the size of our houses, in relation to the
9 size of the existing houses on Chain Bridge Road.

10 What it does do is mislead us. Our square
11 foot -- our Bender proposal number is 9,900 square
12 feet for the lot size is correct. 7,700 square feet
13 for the house size is a total building area. Also
14 think of it as a gross area.

15 They've compared that to a livable area
16 figure they've gotten from tax documents. The livable
17 area is substantially less than total building area.

18 MR. KEYS: Mr. Andrulis, I'd like you to
19 specifically refer to the exhibit in question, the
20 most recent exhibit that was added to the record.
21 Would you indicate to the Board, you know, which
22 column you're talking about and what you're referring
23 to?

24 MR. ANDRULIS: Sure. In this exhibit,
25 there was recently entered -- the second column is

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1 dwelling size. This was the backup for this chart, as
2 I understood it. These numbers, saying for the first
3 property for Christopher Butler being 600 square feet,
4 that's a livable area. This happens to be so small
5 because it's the caretaker house on the cemetery.

6 They're comparing that, again, to our
7 total building area. So they're making a false
8 comparison. I've gone through and researched tax
9 records as well. The first page of -- it says "Area
10 Comparison." That first page is my breakout of the
11 tax information that I found.

12 I went and looked for properties from on
13 Chain Bridge Road, from MacArthur to Loffborough.
14 There were something like 48 properties there, 45 of
15 which I could find both a year built, a lot size and
16 a total building area for. So I've used those 45
17 properties to do my analysis, leaving ones out, the
18 several out that had total building area not recorded.

19 If you turn to the next page, which is
20 called "Average Lot and House Size, Comparison 919
21 Proposal," we do a graph that shows when I have done
22 the research in tax records, that the average for
23 those 45 lots existing is 19,000 for the lot size.
24 Our lot size remains at 9,900 square feet.

25 Here's where the difference is. Their

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1 average total building area for those 45 houses is
2 almost 6,500 square feet, as opposed to the 3,900
3 square feet that their exhibit shows.

4 That compares favorably to our 7,300
5 square feet. Let me just explain the 7,300 a little
6 bit, how it differs from the 77. Mr. Keys at the
7 beginning said that we had made some of our basements
8 smaller, by an average of about 400 square foot, to
9 move those basement walls away from critical root
10 zones of trees.

11 The design we had previous to making the
12 basement smaller saved all the trees, was an
13 acceptable situation. We've changed it to make it a
14 better than acceptable situation.

15 Now the Board also asked last meeting for
16 instead of the average, the mean of the property
17 sizes. The next chart gives you that. The mean
18 property size is 14,000 square feet of context. Ours
19 is about 9,600. The mean house size, total building
20 area again of context is 5,600, and we're at 6,700.

21 Now the next exhibit, which is called
22 "Average Lot Size Built this Millennium," is probably
23 the most important exhibit here. This tallies the
24 construction on Chain Bridge Road, that it was done
25 under the same statutory requirements as we're

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1 building under.

2 The tree and slope overlay went into
3 effect in 1999. So this compares houses in the area
4 built after 1999, to our proposed houses. You can see
5 the chart changes tremendously. The average lot size
6 of context goes down to 12,500 square feet. That
7 compares to our 10,000 essentially.

8 But look at the size of the house. The
9 average house goes up to over 12,000 square feet.
10 We're only at 7,300. We're substantially smaller than
11 all the development that's happened on Chain Bridge
12 Road since the tree and slope overlay went into
13 effect.

14 We should be judged on how we're dealing
15 with context in today's world.

16 The opposition also talked about
17 percentage of lot area occupied by house, or kind of
18 an FAR number. In these houses, the existing
19 condition or context of new houses built since the
20 tree and slope went into effect is occupied -- the
21 house area is 98 percent of lot area, where we're only
22 74 percent of lot area.

23 Now the next two charts, I think for
24 brevity we can skip. One shows how we've gone from
25 7,700 to 7,300 square feet in reducing those basements

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1 and where they're taken. Actually, that one we can
2 skip, I think.

3 The next one I think is important. I went
4 through and took our -- on the first column here, we
5 have the house number of letter. Second column we
6 have our total building area. Third column we've
7 converted that number to living area, so that it would
8 be equivalent to their 3,991.

9 When I calculate livable area, our average
10 is 4,800, not 7,700. Again, the difference between
11 these two areas are in livable area basements,
12 cellars, garages, thicknesses of exterior walls are
13 all excluded. In our houses, that range, that
14 deduction ranges from about 2,000 to over 3,000 square
15 feet per house.

16 The next 40-some pages are the tax
17 documents that I looked at. So you can verify that
18 the charts are correct, and my charts are correct.

19 MR. KEYS: Mr. Andrulis, I'm going to ask
20 you to shift from that and I'd like you to go from
21 those numbers to a different way of looking at the
22 context for this. I think you've prepared some
23 drawings that depict what Chian Bridge Road and our
24 segment looks like, and I'd like to ask you to explain
25 those.

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1 MR. ANDRULIS: Sure. If the Board would
2 turn to the tab that says "Context." The first
3 exhibit, which is that guy, is one that's already been
4 entered into evidence. But I put it here for your
5 convenience. This is our property, about three and a
6 half acres. We have 13 houses on that.

7 This is the next three and a half acres
8 downhill from us. There are 12 houses on that
9 property and two partial houses. To me, that averages
10 13 houses on that 3-1/2 acre parcel. We're proposing
11 13. The immediate context downhill has 13 houses in
12 the same amount of area.

13 It sounds like we're, in terms of number
14 of houses per acre, we're pretty contextual.

15 The next exhibit is a modification of one
16 that you saw previously. What I've done is added some
17 additional information to it. Again, in the center
18 here, our four houses that line the street. I give
19 you the lot number and the size of each house in total
20 building area.

21 I also give you the average, which is
22 about 7,400 square feet for those four houses. If I
23 go downhill for the four existing houses next to me --

24 MR. PARSONS: How far downhill do you go?

25 MR. ANDRULIS: This whole dimension that

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1 I've drawn is 550 feet. So I'm going down the whole
2 250 or --

3 MR. BROWN: Can I interject, Mr. Chairman?

4 CHAIRMAN GRIFFIS: Yes.

5 MR. BROWN: This comparison was made in
6 the case-in-chief, and quite frankly the chair and
7 others weren't interested in hearing it then, I mean
8 because you didn't understand or support or concur
9 with the rationale being offered. It was apples and
10 oranges.

11 I mean that's why this hearing is going to
12 take an hour and a half. We're revisiting things that
13 we've been through before already. So that's --

14 MR. KEYS: Well, that wouldn't be the case
15 had you not introduced into the record in response a
16 misleading exhibit that was based on faulty
17 information. I think we're entitled to correct the
18 error that you've put into the record.

19 MR. BROWN: But this is the same
20 presentation he made previously, that quite frankly
21 was ill-received by the Board, and we're wasting time,
22 and it's certainly not -- we never entered any kind of
23 comparison of this nature. We entered a comparison of
24 a very specific nature.

25 So again, he's trying to recreate his case

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1 that he did previously.

2 CHAIRMAN GRIFFIS: Understood. The
3 September 1, 2006 context diagram, that's new for
4 today, right?

5 MR. KEYS: Yes. There's new information
6 on it.

7 CHAIRMAN GRIFFIS: Good. I think it's
8 clear what it is. Address, square footage, dimensions
9 around. Next.

10 MR. ANDRULIS: So again, to recap, our
11 four properties average 7,400 square feet.

12 CHAIRMAN GRIFFIS: No, you don't have to
13 recap. I mean it's all right there.

14 MR. ANDRULIS: Okay.

15 CHAIRMAN GRIFFIS: I got it. Next, are
16 these the photographs that are attendant to the graph?

17 MR. ANDRULIS: Exactly. The first four
18 are the four houses downhill. The next four are the
19 four houses uphill.

20 CHAIRMAN GRIFFIS: Let me ask you, let's
21 look at the last one, 50, kind of monumental house.
22 18,848 square feet. If I look at your chart, how do
23 I know where that house is and what I'm looking at?

24 MR. ANDRULIS: Let me look at the chart.
25 That's, on my chart House 37. It's 3101 Chain Bridge

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1 Road, built in 2004. Lot size 15,648. Total building
2 area, 18,848, and the recorded owner is Brian Logan.

3 CHAIRMAN GRIFFIS: But where am I seeing
4 it on the context September 1, 2006?

5 MR. ANDRULIS: You are not.

6 CHAIRMAN GRIFFIS: What are these
7 photographs?

8 MR. ANDRULIS: Well, I was in the process
9 of explaining that, sir. The first four were the four
10 houses downhill on that exhibit. The next four,
11 ending with 2946 or the 8th photograph, are the four
12 uphill.

13 These last four, that are old Exhibits 45,
14 46, 47 and 50, are the four houses built since the
15 tree and slope overlay protection zone went into
16 effect.

17 CHAIRMAN GRIFFIS: And where are they?

18 MR. ANDRULIS: Where are they on the map?
19 I can get up and show you approximately.

20 CHAIRMAN GRIFFIS: Okay. I mean they're
21 on Chain Bridge, a ways down or up.

22 MR. ANDRULIS: I mean their addresses are
23 right here. 2960 Chain Bridge Road; 2962, right next
24 door; 2970; and 3101.

25 CHAIRMAN GRIFFIS: Good. That's

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1 clarification on those. 18,848, that's gross square
2 feet?

3 MR. ANDRULIS: That's total building area,
4 which is equivalent to gross, yes.

5 CHAIRMAN GRIFFIS: Wow.

6 MR. ANDRULIS: So again, these last four
7 houses were built under the same statutory
8 requirements we're building under. The average size
9 of twelve and a half thousand square feet gross, or
10 12,000 square feet gross. We are proposing 7,300
11 square foot gross.

12 MR. KEYS: Mr. Andrulis, the first four
13 photographs, the four houses immediately to the south
14 of the property, you're showing us the front of these
15 houses, with Chain Bridge Road in between?

16 MR. ANDULIS: Yes, I am.

17 MR. KEYS: And where are you standing when
18 you take this photograph?

19 CHAIRMAN GRIFFIS: I don't need the direct
20 on that. We can tell where those photographs are.

21 MR. ANDRULIS: Well, I'd like to answer if
22 I could.

23 CHAIRMAN GRIFFIS: No, let's move ahead.
24 I already know that. What else?

25 MR. KEYS: Well, I think you need to know

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1 it, because where he's standing it's material, because
2 one of the elements in this case is the visual impact
3 of our development on Battery Campbell.

4 CHAIRMAN GRIFFIS: And the photographs of
5 these houses, where they're taken, is going to have an
6 impact on that?

7 MR. KEYS: I think it will. Mr. Andrulis,
8 where are you standing when you're taking these
9 photographs?

10 MR. ANDRULIS: I'm actually standing in
11 Battery Campbell Park for these first four houses.

12 CHAIRMAN GRIFFIS: Okay. So the first
13 four photographs that I'm looking at, number 32 is
14 listed at 2722 Chain Bridge Road?

15 MR. ANDRULIS: Correct.

16 CHAIRMAN GRIFFIS: 2720 Chain Bridge Road?

17 MR. ANDRULIS: Correct.

18 CHAIRMAN GRIFFIS: What kind of lens are
19 you using?

20 MR. ANDRULIS: A normal point and shoot
21 lens.

22 CHAIRMAN GRIFFIS: Good, so the same as I
23 use when I photograph, right?

24 MR. ANDRULIS: I would think so.

25 CHAIRMAN GRIFFIS: I have no idea what

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1 that means. Okay. This doesn't tell me scope of view
2 or anything from the park. Your frame -- this is
3 cropped.

4 It's only the house in there. There's no
5 scale of distance. Let's just move on. I mean we're
6 pretty smart. We can figure out what these
7 photographs say or not say.

8 MR. KEYS: All right. Mr. Andrulis,
9 there's testimony in the record with respect to the
10 site, that the area of disturbance that is attendant
11 on the construction of 13 houses would lead to an
12 impossible situation, of not being able to fulfill our
13 other commitments with respect to keeping natural
14 slopes with respect to tree protection. Could you
15 respond to that objection, to the original plan?

16 Yes. Let me just get that exhibit please.

17
18 If the Board would turn to the tab that is entitled
19 "Disturbance area," the first page is the same as the
20 exhibit here. I went through and mapped the five
21 different types of disturbance that we judged this
22 site had.

23 The dark green line is a shoring wall; I
24 can explain that in more detail later. The stippled
25 orange is basement footprint. Overdig is the orange

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1 hatch. Blue is what is required for roads, drives and
2 walks, and the red is what is required disturbance to
3 install the storm water management system and the
4 utility installation.

5 Now let me just explain each one of these
6 in more detail. The shoring wall is -- we had a lot
7 of discussion about we could not build these houses
8 without a lot of space around them for construction
9 equipment, for overdig, for laying back soil.

10 Well, it's been our intention all along to
11 not do normal residential construction all along for
12 all these houses, all parts of these houses. So when
13 you see the dark green line, that's a sheeted and
14 shored walls.

15 There's other ways of doing this. You can
16 do soil mailing to achieve the same effect. But
17 essentially what we're doing, if I could quickly turn
18 you to the next exhibit, which is called foundation
19 walls. It will get into a fairly technical discussion
20 here, but I think that's important to understand how
21 we intend to build.

22 A good example of how we intend to build
23 is all over in downtown D.C. Office buildings are
24 built without any space on one side or the other.
25 They go up 12 floors, they go down 12 floors. You do

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1 that by sheeting and shoring basically the property
2 lines.

3 You drop piles, but breast boards in --

4 CHAIRMAN GRIFFIS: Where are we getting
5 at? Are we talking about trees?

6 MR. ANDRULIS: I'm explaining how we can
7 have no disturbance outside those walls, those green
8 walls that we call shored walls.

9 CHAIRMAN GRIFFIS: Let me see if I follow.

10

11 But what disturbance then are we talking about, soil
12 disturbance?

13 MR. ANDRULIS: No soil disturbance and
14 therefore no tree root disturbance in the critical root
15 zone of trees.

16 CHAIRMAN GRIFFIS: Okay.

17 MR. KEYS: I think, Mr. Andrulis, it might
18 be helpful if you at this point explain the
19 significance of these circles, in relation to the
20 underlying colors of the foundations and the
21 overdig.

22 MR. ANDRULIS: Sure, I'm sorry. On this
23 plan, the area disturbance plan, there's 40-some black
24 circles. Each of those is the critical root zone of
25 the larger trees that we're saving.

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1 That critical root zone for the beech
2 trees along the road is 1-1/2 feet of radius for each
3 inch of diameter of the trees. For the other trees on
4 site, it's one foot of radius for each inch of
5 diameter. Ideally --

6 CHAIRMAN GRIFFIS: Weren't we concerned
7 about those beech trees. Wasn't there testimony and
8 concern about what the road was going to do, not
9 sheeting and shoring for the houses. I guess --

10 MR. ANDRULIS: I will be getting into the
11 road eventually.

12 CHAIRMAN GRIFFIS: You made the analogy of
13 an office building downtown, and I can kind of
14 visualize what that is. But the office building in
15 one sense doesn't flow over into the other portion of
16 a lot. I mean you have a vertical line.

17 And you're talking about sheeting and
18 shoring. I'm not sure what that does for us in terms
19 of anything, except that you're not in the critical
20 root zone. Is that what you're saying?

21 MR. ANDRULIS: These are construction
22 methods we're employing to limit the ground
23 disturbance, and especially in areas where if we did
24 traditional construction methods, we would be
25 disturbing critical root zones of trees, yes.

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1 CHAIRMAN GRIFFIS: Okay. Wow. I'm sorry.

2

3 You're saying that sheeting and shoring is less
4 disturbing than a normal residential construction
5 might be, like --

6 MR. ANDRULIS: We're talking about -- yes.

7

8 We're talking about basement construction. If for
9 instance in a normal residential construction, if your
10 basement footings are nine foot below grade, you're
11 going to excavate an overdig and add a one to one
12 slope.

13 If you're going down nine feet, that means
14 you've disturbed soil nine feet out from the face of
15 the building. When I sheet and shore, I'm driving my
16 piles on that foundation wall, and I'm not disturbing
17 any of the soil outside of that.

18 CHAIRMAN GRIFFIS: Okay.

19 MR. ANDRULIS: That gets back to the
20 foundation wall plan. I could go into detail how
21 we're waterproofing that, how we're directing water
22 away, how we have two lines of Defense.

23 But I think I'll stop and not do that, but
24 just explain how we're going to construct the building
25 without walking on the ground around it that's in a

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1 critical root zone.

2 Just like a commercial building downtown,
3 you don't often build scaffold from the ground up to
4 construct the exterior wall of a building. You
5 cantilever off floor slabs, as we're doing here,
6 scaffold and you --

7 We are using normal construction platform
8 for anything. We're going to frame the floor. We
9 build the walls on that platform. We tilt them up.
10 So we're not touching ground around the house at all.

11 The issue comes when you start to have to
12 clad that building, in brick, in stone, stucco,
13 whatever we're going to do. This happens to be drawn
14 from one of the brick houses. Instead of putting
15 scaffold on grade, we cantilever off the floor slabs
16 or the floor framing of the house.

17 Workman are standing on that slab to do
18 the brick work, to install the windows, to do all that
19 kind of thing. They don't have to touch grade around
20 the house at these green shoring walls.

21 Now the last bit of construction no each
22 of the houses, the stone base, which is here, there's
23 no practical way to install that without standing on
24 grade. So what we're going to do is move this -- the
25 tree disturbance fence that was a foot away from the

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1 wall, move it back to about four foot away.

2 We're going to put eight inches of mulch
3 and tree protective padding on top of the mulch, and
4 only allow masons and their hand equipment to access
5 that area. You know, the big mortar mixing thing is
6 going to be off site.

7 So the whole house can be built with only
8 this minimal one week intrusion into the critical root
9 zone, and again, Mr. Bonifant will testify, I'm sure
10 later, as to these measures that he's prescribed,
11 mulch and protective padding for human traffic. We'll
12 do no harm to the critical root zone of the tree.

13 CHAIRMAN GRIFFIS: Okay.

14 MR. KEYS: Mr. Andrulis, could you shift
15 a little bit in talking about this diagram, and focus
16 on the main driveway, which I think --

17 MR. ANDRULIS: Sure. I'd like to grab an
18 old exhibit from the opposition. If I could, this is
19 from the opposition. It proposes to tell where areas
20 of disturbance are, and in red, which trees will be
21 killed because of it or won't survive, or destroyed is
22 a good word.

23 This is a misleading document, or at least
24 a document that doesn't understand our design in our
25 construction process. One of the misleading things is

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1 this existing road, the existing drive 12-1/2 foot
2 wide by about I think it's 180 feet long, we're not
3 doing anything to.

4 We're adding maybe a two-inch topping slab
5 to it. But we're not disturbing its -- we're not
6 doing anything below grade. We're not adding a base
7 course. Whatever roots are there, we're not harming.

8 CHAIRMAN GRIFFIS: Where is the storm
9 water management going?

10 MR. ANDRULIS: I can explain that to you
11 in a few minutes. So we are not disturbing the tree.
12 I'm sorry. Let me be more specific. We are not
13 disturbing the soil at tree root level under this
14 road. That's not a disturbance. They have it as a
15 disturbance.

16 These three entrances to House B, C and D,
17 they have as a disturbance, as if it were a normal
18 driveway. Those are bridges that are spanning across
19 the root zone. They also haven't accommodated, in
20 these diagrams, what part of the houses are on piers
21 and what aren't.

22 They have assumed that the entire
23 footprint of the house is the entire footprint of the
24 basement. So if there's a house there, it has to be
25 a disturbance.

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1 That's not true. If you look at our old
2 plans that we submitted, you would understand how much
3 of the houses are on piers, how much of the terraces
4 are on piers, and now how the basements have actually
5 stepped back as well.

6 CHAIRMAN GRIFFIS: Right. Actually, you
7 pointed to that one house on the top, right?

8 MR. ANDRULIS: Right.

9 CHAIRMAN GRIFFIS: And you pointed at it
10 as if it wasn't sheeting and shoring but piers; is
11 that correct?

12 MR. ANDRULIS: Well, we could go to that
13 house here.

14 CHAIRMAN GRIFFIS: Just are you saying
15 that there's different varieties of construction then?

16 MR. ANDRULIS: Yes.

17 CHAIRMAN GRIFFIS: Some of the houses you
18 drop piers down, where you have obviously that
19 critical root zone was within the construction of that
20 house, right?

21 MR. ANDRULIS: Yes. Some of the houses,
22 like this one, are all conventional -- have a
23 conventional foundation wall. You know that by
24 reading this diagram. We have ten foot of disturbance
25 around the house.

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1 CHAIRMAN GRIFFIS: Conventional. So
2 that's what you're talking about, cutting back the
3 earth eight foot? That's what you're going to do?

4 MR. ANDRULIS: Right, right.

5 CHAIRMAN GRIFFIS: You're going to pour a
6 concrete wall and then --

7 MR. ANDRULIS: And I'm doing that, because
8 I'm a long way away from any critical root zones. I
9 can afford to do that. Where I can't afford to do
10 that in terms of harming tree roots, on the house you
11 used as an example, is this one wall I'm shoring.

12 The rest, on the backside, away from the
13 critical root zones of these trees, I can do the less
14 expensive more traditional foundation wall.

15 CHAIRMAN GRIFFIS: Put that diagram up
16 again. You see that big red circle that comes in,
17 that one? Where's that on your diagram?

18 MR. ANDRULIS: Well, this is a tree that
19 is being removed.

20 CHAIRMAN GRIFFIS: Right, right.

21 MR. ANDRULIS: But they've included it to
22 make the case that we're destroying trees.

23 CHAIRMAN GRIFFIS: Understood, okay. The
24 driveways, going back to the driveways, you're
25 draining them on -- you're catching the water on top

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1 and on bottom again?

2 In other words, there was some testimony
3 about dripping down; also, that there was too close to
4 the edges? What is -- as the bridge launches, there's
5 a couple of trees that you enter in those?

6 You're saying there's no impact based on
7 the construction that you're proposing?

8 MR. ANDRULIS: Yes. I'm happy to go over
9 that. In fact, in this same section of disturbance,
10 if you go to the third drawing, which is called
11 "bridge sections," it explains how those bridges
12 conceptually are going to be built, and I'm happy to
13 go through that.

14 CHAIRMAN GRIFFIS: But just take that for
15 me, I don't know, No. 48. Let's take an example.
16 Tree 48.

17 MR. ANDRULIS: Okay. That's an excellent
18 example. I think that that is specifically the object
19 of a number of the tree experts, as being a tree that
20 will be destroyed by what they're doing.

21 CHAIRMAN GRIFFIS: I should get a prize
22 for picking the right number. Okay. So we're on 48,
23 right? Where's the bridge when it launches, because
24 it's right next to -- I think Mr. Parsons was on this
25 seriously when we last left?

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1 The No. 48 goes to -- so if I go to the
2 construction, what it appears to be --

3 Let me just say it appears to be maybe a
4 curb line for the bridge. That's actually showing
5 something that's leaving the grade. Is that right?

6 MR. ANDRULIS: Yes, correct. If you're
7 talking about that, that's the sidewall of the bridge.

8
9 In fact, when I go over the detail you'll understand
10 that that's actually the structure of the bridge.
11 It's not below the road surface. It's above the road
12 surface.

13 CHAIRMAN GRIFFIS: Okay.

14 MR. ANDRULIS: And the face of this bridge
15 is about two foot from the center line of Tree 48.
16 That's the closest we come to one of the beech trees
17 we're saving. The detail in here, if you turn to the
18 tree protection section, the second drawing is called
19 "Tree trunk protection."

20 This is a detail developed with our
21 arborist. On the right side here we show the stone
22 wall of the bridge, and then the paving of the bridge,
23 which is actually -- I'd like to discuss that as it
24 impacts our saving the trees.

25 CHAIRMAN GRIFFIS: Is this -- I'm sorry.

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1 Is this a plan I'm looking at?

2 MR. ANDRULIS: It is a planned view of the
3 tree. You see the darkest gray area, that's the tree
4 with its tree rings.

5 MR. PARSONS: What tree are we talking
6 about on this plan?

7 MR. ANDRULIS: This is Tree -- well, this
8 is Tree 48 specifically, but it's also would be for
9 Tree 49, I think it's Tree 52, those that are near the
10 -- any kind of construction, very near any kind of
11 construction, and specifically the bridges.

12 MR. PARSONS: So we heard last time that
13 bridging over one-half of the tree roots would deprive
14 them of water. Is your arborist going to come forward
15 and talk about that?

16 MR. ANDRULIS: Sure. But I'll give you a
17 little primer on that.

18 MR. PARSONS: That's all right. You're
19 not an expert.

20 MR. ANDRULIS: Because it goes to
21 construction technique and the construction of the
22 bridge, which I'm more expert at than our arborist.
23 So we'd both like to address it.

24 There's an exhibit in the disturbance
25 area, the third one, called "Bridge Sections." I had

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1 started explaining that. The bridges are going to be
2 -- if you look at the bottom diagram, you can see the
3 steel beam section.

4 We clad that steel beam with stone on the
5 outside, so it looks like a traditional stone wall.
6 You only get a glimmer of its modernity once you're on
7 the bridge.

8 That's being supported by concrete piers
9 in -- which are in the critical root zones of the
10 trees, but they are placed ten foot, 12 foot on
11 center. When we get to engineering it, I can give you
12 a specific number for that. They only come up to
13 grade level.

14 From grade level, we have a steel post,
15 probably a 4 by 4 tube posting up from those, to
16 support the bottom of the steel beam. That steel beam
17 is spanning between -- our foundation is here. So
18 you're spanning from here to here, and the curve is
19 going from there to there.

20 The bottom flange of that theme actually
21 supports a more traditional construction type. We're
22 going to do like an old covered, wood-cover bridge.
23 We're going to do a wood deck. The beautiful thing
24 about a wood-planked deck is wood is a natural
25 material, which shrinks and grows, absorbs moisture

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1 and --

2 COURT REPORTER: It's off again.

3 MR. ANDRULIS: Wood's a wonderful
4 material. It's natural, it shrinks and grows with
5 temperature difference. So one of the things you do
6 when you construct with wood, you leave gaps, so that
7 if you build it in the winter and the summer, you
8 know, that gap's not going to close and you're going
9 to destroy your construction.

10 But those gaps allow light -- I'm sorry,
11 light. Allow air to get through under the bridge, and
12 they also allow moisture to get under the bridge. So
13 I think Mr. Bonifant would testify that instead of
14 being an inhospitable place for tree roots, that it
15 would be actually a very favored place for tree roots.

16 MR. PARSONS: Okay.

17 CHAIRMAN GRIFFIS: What else?

18 MR. KEYS: This might be a good
19 opportunity to look at exhibits you prepared, to sort
20 of isolate individual trees, to show how the impact of
21 construction can be measured.

22 MR. ANDRULIS: Sure. Happy to do that.
23 If you turn to the section called "Critical Root
24 Zone," there are 40-some diagrams there. Each of
25 those diagrams plots at the prescribed radius the

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1 critical root zone of the individual trees.

2 It also plots any disturbance, whether
3 it's a driveway, whether it's a house, whether it's
4 storm water management equipment or devices, whether
5 it's sanitary, sewer. Whatever impinges upon that
6 critical root zone is shown in dark, a darker stipple.

7 I think do a calculation. We've actually
8 made a distinction between a temporary disturbance and
9 a permanent disturbance, a temporary disturbance being
10 overdigging to build a foundation wall. Sure, you're
11 cutting the roots, but when you backfill, those roots
12 can go back into that area.

13 Now some arborists might say that's a
14 distinction without merit, but we've done that
15 calculation. But the most important one here is the
16 total disturbance number.

17 MR. KEYS: Mr. Andrulis, just to make this
18 more concrete, can we choose a specific tree, and
19 since the Chairman has identified Tree 48, let's use
20 48 as an example?

21 MR. ANDRULIS: Sure. You can look at the
22 exhibit or turn to Tree 48 in your book. Tree 48 has
23 several disturbances. It has two, those two circular
24 objects or the gray area in the road are two manholes
25 that one is for storm water, one is for sanitary

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1 sewer.

2 The manhole's four foot diameter on the
3 inside, where we drill a six-foot diameter hole. So
4 we have a six-foot diameter disturbance for the
5 installation of that manhole.

6 You can see just north of that the
7 installation of the retaining wall for Lot 4 and for
8 the roadway for Lot 4 is a bigger disturbance. Each
9 of the piers of the bridge, there's one pier on Lot C
10 and a number of piers of Lot D that are additional
11 disturbances, and the sidewalk that gets you from the
12 front porch of D to bridge is also a disturbance.

13 All those added together come up to 7.4
14 percent of that critical root zone, which is 37-1/2
15 feet in diameter, which is disturbed by our
16 construction. Again, Mr. Bonifant will testify to
17 this much more expertly than me, but as long as you're
18 below 30 percent root disruption, he's pretty
19 confident of a tree surviving.

20 Now I could also go on to -- we could talk
21 about any other trees. There were a couple of trees
22 that the opposition had spoken about a lot, so I
23 thought we might go over those two.

24 MR. KEYS: I think we can do that with Mr.
25 Bonifant. But I'd rather redirect your attention to

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3 MR. BROWN: Mr. Chairman, I hate to
4 interrupt, but we're going on like 40 minutes, and
5 exactly what I think we were all concerned that this
6 would happen. One, it's new material. It's gone
7 beyond the scope of rebuttal, both in subject matter
8 and time. I mean this is endless, and we're just on
9 the first witness.

10 So I just -- I hate to interrupt, but
11 we've fallen into the trap that we wanted to avoid.

12 MR. KEYS: Mr. Chairman, this is the
13 witness that would take the most time.

14 CHAIRMAN GRIFFIS: Indeed. He's entering
15 an awful lot of these handouts, so let's wrap it up.
16 But I think this has been productive in terms of
17 explaining this information.

18 MR. KEYS: Mr. Chairman, I think the next
19 thing that Mr. Andrulis could do that would useful,
20 the focus has been this roadway. The focus has been
21 this avenue of beech trees, and the question has been
22 raised repeatedly in the opposition, how do you do it?

23 You can't do it. You can't do it without
24 killing these trees. I think Mr. Andrulis can explain
25 the approach to this problem.

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1 MR. ANDRULIS: I'm about to. If you turn
2 to the section of your binder called SWM, Storm water
3 Management/Utility Install, here we explain how we do
4 that.

5 First, I'd like to introduce you to the
6 Ditch Witch 920-L. This is the piece of equipment
7 that we'll probably be using most to do our
8 directional drilling.

9 That's instead of drilling down in a --
10 vertically to the center of the earth, we're going
11 horizontally. That's called directional drilling or
12 boring horizontal drilling.

13 This particular piece of equipment should
14 be able to do all the drilling required on our site.
15 Our civil engineer anticipates that the biggest
16 diameter pipe will be in the neighborhood of six or
17 eight inches for sanitary sewer and for storm sewer,
18 electrical, gas. That's all much smaller. This
19 machine can do that all.

20 It's about 8,000 pounds. You can see it's
21 a tract vehicle, and its only connection the outside
22 world is a hose for water. So this is what we have to
23 maneuver around the site, in ways that we don't
24 disturb trees, and make a hose connection to a truck
25 far away to get water, to make it work.

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1 It's controlled by a beacon at the
2 drillhead, that sends -- the drillhead is underground
3 here -- that sends information to a computer on the
4 machine and another computer somewhere else, that
5 gives all kinds of information, pitch, roll,
6 direction, depth, heat of the drillhead, so you can
7 control exactly where that drilling is going on.

8 Now that's important when we're in or near
9 our trees. These two exhibits are the same as the two
10 in the book, just blown up, and this issue
11 unfortunately, you thought you were in for a complex
12 discussion.

13 This is so complex that one drawing can't
14 do it. So what I've done is isolate, and this first
15 drawing I've shown where are storm water devices are,
16 where our installation equipment is, and where our
17 other utilities are, and where their installation
18 equipment is, with the trees -- sorry -- with the
19 house footprints and the topography on the plan.

20 I would have loved to layer on the
21 critical root zones of trees. When I did that, it was
22 totally incomprehensible. So I've done that as a free
23 body diagram over here.

24 I still have the same storm water devices.

25

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1 I have the same utilities. I have the same
2 installation equipment. But I've only shown it in
3 relationship to the critical root zones of trees.

4 Now this exhibit's too far away to tell
5 one big distinction that we need to draw, or we need
6 to make. So if you look at the first foldout, this
7 guy, I can start to explain it.

8 Directional drilling obviously is more
9 expensive than trenching to install storm water
10 management or utilities. So we want to limit that to
11 where we absolutely have to do it.

12 So in this plan, if you look closely --
13 well, let's start with utilities. The utilities are
14 the magenta color. The lines, you know, long,
15 horizontal lines are the different runs of utilities,
16 gas, electric, sanitary, storm. I can talk about --
17 I'll explain that in more detail in a few minutes.

18 But if they're dotted or dashed, they're
19 trenched. That's, you know, at the top part of the
20 site here, where there are no tree roots to worry
21 about, we can trench. At the back part of the site
22 here, where there are no trees to worry about, we can
23 trench.

24 Where we have to bore is through the
25 existing drive, and when we go perpendicular to that

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1 drive to get utilities or storm water management to
2 the houses.

3 CHAIRMAN GRIFFIS: I get that. Let's look
4 at Tree 13, that diagram. Is your calculations of
5 this percentage of total disturbance? Is there any
6 calculation, even though you're drilling this, or are
7 you just not calculating that there'd be any
8 disturbance of that?

9 MR. ANDRULIS: Let me turn to 13.

10 CHAIRMAN GRIFFIS: Just any typical one on
11 the --

12 MR. ANDRULIS: When we're directional
13 drilling, you need to understand how trees in this
14 area grow. I'll touch on it quickly; Tom will explain
15 it in more detail. We have clay-based area. Trees
16 grow in topsoil. Topsoil around here is typically
17 about 18 inches. The root system is, most of it is
18 confined to --

19 CHAIRMAN GRIFFIS: You're going to drill
20 under the roots?

21 MR. ANDRULIS: We're going to drill under
22 the roots, exactly. The roots are within the first 18
23 inches. Our minimum depth for drilling is going to be
24 three feet, simply because we want to be below frost
25 line.

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1 Well, moreover, we want to be below the
2 tree roots. We can do that at 20 inches, 24 inches.
3 But we want to be even lower than that for frost
4 protection.

5 So yes. Whenever there's a solid line for
6 utility installation, that means a bored line. There
7 is no tree root disturbance because we're under the
8 tree roots.

9 MR. KEYS: I think it would be useful at
10 this point, Mr. Andrulis, if you went right to the
11 section, I think, that really depicts what you're
12 trying to describe verbally.

13 MR. ANDRULIS: Sure, thanks. If in this
14 section of Storm water Management/Utility Intsall, the
15 third diagram and the fourth diagram, but look at the
16 third. That is this schematic of the road, with
17 dashed-in below, all the storm water piping and all
18 the utilities.

19 We have accounted for natural gas,
20 electric, cable and telephone, storm sewer, sanitary
21 sewer and domestic water. Mr. Afful will, I'm sure,
22 touch on the requirements of those more. But these
23 are, in concert within, these are spaced at the
24 required distances apart.

25 There was a lot of talk from the

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1 opposition about not being able to fit all this stuff
2 under the roadway, even though we are boring it.

3 Well, we're almost right. We can't fit it all
4 including the storm sewer and sanitary sewer manholes
5 within the 12-1/2 feet, and get the clearance we want.

6 But when we move the sanitary sewer
7 manholes to areas where the road is wider than 12-1/2
8 feet, at the labi and when the road gets to be 20 feet
9 wide -- that's about 150 feet in -- we have enough
10 room. If you look at the next section, that's a
11 vertical section or a cut through the ground, through
12 the roadway.

13 You can see the steep slope on the uphill
14 side of the road, the steep slope on the downhill
15 side. The first bit of kind of darker stipple is our
16 topping slab, somewhere in the neighborhood of an inch
17 and a half or two inches.

18 We'll use that to rebuild the curbs that
19 are there, and also direct water to a kind of two-
20 thirds point at the center of the road that will --
21 the manhole covers will become inlet covers, and will
22 direct the water there. So we minimize the
23 disturbance.

24 You can see the black dots. The black
25 circles are the various utilities and storm water

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1 management piping. Natural gas, electric, telephone
2 and cable, those are about three foot down. The sewer
3 at the section that I'm drawing here is about ten foot
4 down. The manhole goes down to the bottom of that.

5 Sanitary sewer in this section it varies,
6 but it's about eight foot down, and domestic water can
7 actually be -- can be placed right above it, as long
8 as we're separated by four feet.

9 So in fact you can see we can fit
10 everything under the road, without disturbing that
11 first 18 inches of tree roots.

12 CHAIRMAN GRIFFIS: Okay. That was an
13 interesting thing, a boulder.

14 MR. ANDRULIS: Well, I've spoken to a
15 number of directional drilling consultants and
16 manufacturers about that. Washington is not known for
17 rock outcroppings. It is known for soil, compacted
18 soil and low PSI rock. So we're unlikely to hit high
19 PSI rock.

20 This machine can go through the first
21 three. If it's a small, high PSI rock, it would
22 normally we can redirect around it, or it will also,
23 depending on how it hits, the attack angle and the
24 size of the rock, it will push that rock out of the
25 way.

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1 The worse case, if we did hit substantial
2 rock that's not native to this area and not
3 anticipated by any of the contractors or any of the
4 consultants I've spoken to, we can get larger rigs
5 that will go through it.

6 Those larger rigs have harder to keep them
7 in their movements on the site from having detrimental
8 impact. So we want to go with the smallest unit that
9 we anticipate would be acceptable.

10 CHAIRMAN GRIFFIS: Well, okay. Questions?

11

12 Mr. Parsons?

13 MR. PARSONS: I can't believe that this
14 storm sewer is six inches in diameter. I think that's
15 what you said.

16 MR. ANDRULIS: Right.

17 MR. PARSONS: That machine would handle
18 six inches in diameter?

19 MR. ANDRULIS: It handles up to at least
20 eight inches. We have in my discussions with the
21 civil engineer, we thought that it would be six or
22 eight inches for storm and sanitary sewer, and this
23 machine will do that. I'm not quite sure what the
24 upper limit is. I believe it's something like a foot
25 diameter it will do.

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1 MR. PARSONS: Now along this road, you had
2 drain inlets. Maybe I should be talking to the
3 engineer. But how do you get the water into the storm
4 sewer?

5 MR. ANDRULIS: Sure. Well, we've
6 eliminated -- well, in a sense we've eliminated the
7 drain inlets as a separate entity -- well, let me back
8 up. We've combined our drain inlets with our
9 manholes. Manholes are necessary to make connections
10 when you go off at angles and so forth in the plumbing
11 system.

12 Instead of having other inlets that feed
13 into these manholes and drain from there, the manhole
14 cover at the top, instead of being a solid piece of
15 cast iron or cast steel, is an inlet.

16 It has slots in it. We are going to slope
17 the road to the manhole so that rain water that falls
18 on the road will go into the manhole and so it's a
19 dual purpose manhole.

20 So we're saying that extra class of
21 disturbance, the inlets that we have.

22 MR. PARSONS: So you've got three existing
23 manholes, is that it?

24 MR. ANDRULIS: No, they're not existing.
25 They're new, and in fact when you turn back to --

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1 where is it, the disturbance diagrams, the next
2 section past there, it's this drawing. That guy, and
3 it's -- well, it's here. You can see in the road
4 there's red circles, some fairly big.

5 There are a total of five manholes in that
6 12-1/2 foot wide road. I believe three are for storm
7 sewer and two are for sanitary. There are a number of
8 other small circles, if you can see. They're so small
9 at scale you can barely see them.

10 But those are 18-inch diameter holes for
11 control valves or meters for natural gas, cable.
12 There are other disturbances there, but they're
13 minimized.

14 MR. PARSONS: So which ones of these are
15 storm sewer, the big ones?

16 MR. ANDRULIS: Let me grab the big drawing
17 and I can show you. Is this on? Okay. I'll bring it
18 over here.

19 These large circles, which are six foot in
20 diameter, are the six-foot diameter hole we drill to
21 put a four-foot diameter manhole in, a cast concrete
22 four-foot diameter interior; five foot exterior. We
23 slip it into the six foot hole, backfill with gravel.
24 So we have a six-foot diameter disturbance there.

25 MR. PARSONS: Are those shown on these

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1 tree diagrams --

2 MR. ANDRULIS: Yes, they are.

3 MR. PARSONS: Individual tree --

4 MR. ANDRULIS: Let's use Tree 48 as an
5 example. Here it is. That's the tree root, critical
6 root zone. That's the tree. That is a storm sewer
7 manhole disturbance, and this is a sanitary sewer
8 manhole disturbance.

9 MR. PARSONS: Okay. Then you say you're
10 going to drill these, drill a six-foot diameter hole?

11 MR. ANDRULIS: Yes.

12 MR. PARSONS: What kind of a vertical does
13 that have? Does it get into the tree branches?

14 MR. ANDRULIS: Well, if I could draw your
15 attention to an old exhibit, let me go grab it here.
16 I think this one, but I think there's a better one in
17 here as well.

18 MR. PARSONS: I guess my point is wouldn't
19 it be easier to dig this by hand?

20 MR. ANDRULIS: Let me use this. It's not
21 as good as the other one that I'm having trouble
22 finding. There's a picture of their lay of trees, and
23 I'd ask Tom to discuss this in more detail. But you
24 can see in the roadway, there are, except at the very
25 far end, there are no low-hanging branches.

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1 That's a natural occurrence when you plant
2 trees very close together. They're reaching out for
3 the sky. We have lots of room.

4 MR. PARSONS: Okay, answered.

5 CHAIRMAN GRIFFIS: What else?

6 MR. KEYS: Well, I think that really --
7 well, there's one other further thing. Mr. Peterson,
8 if you recall, was the transportation engineer that
9 testified, and one of the things he submitted with his
10 report was a diagram that showed a crest in the
11 driveway.

12 Mr. Peterson's contention was, by his
13 calculations, you couldn't see from one end to the
14 other. For him, that was a critical measure of
15 safety. Mr. Andrulis, did you look at Mr. Peterson's
16 diagram and verify the measurements?

17 MR. ANDRULIS: Sure, I did, and if the
18 Board would please look at the section marked
19 "Traffic," I have a couple of exhibits that will
20 support what I'm going to say.

21 That first fold-out plan is called
22 "Driveway Profile." I took the opposition's exhibit
23 and redid it. They had spaced points along this chart
24 that they measured at 20-foot intervals, starting from
25 the back of the cul-de-sac, going 340 feet later to

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1 the roadway.

2 There is a rise in grade along the section
3 of the 20-foot wide road. That is there to there on
4 your diagram. So then what I did, after I did that
5 background work, I went and redid their chart.

6 Here it is. It's the first chart called
7 "Preservation Committee Exhibit." The blue here are
8 a plotting of grade levels, so that's ground. The
9 magenta are a plotting of the eye level of a driver 3-
10 1/2 foot up in a car.

11 In fact, they were right. In that static
12 exhibit they presented, from the back of the cul-de-
13 sac, the very back of the cul-de-sac, the edge of the
14 cul-de-sac, where no car would ever be, you cannot see
15 the middle of the labi. Ground interrupts, but again,
16 you can't even get a car there.

17 So I did a few other investigations. So
18 if I just grab a plan here -- oh. Here's the right
19 plan. So this back here, where you're on the curve
20 essentially, is not a decision point in deciding
21 whether you can, you know. The issue here is you have
22 a 12-1/2 foot drive. How do cars get by one another?

23 Well, the decision point is not here.
24 It's anywhere along until you get to the 12-1/2 foot
25 drive. So you make the decision in other parts of the

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1 cul-de-sac, or on the 20-foot road, whether you need
2 to stop to let someone by. That's the first decision
3 point.

4 The second decision point is when you're
5 on this 12-1/2 foot drive, you can actually see the
6 road. So you choose to stop and let someone get fully
7 into the labi.

8 So getting back to these exhibits, the
9 second one, called "20 Feet Back from Cul-de-sac," you
10 can see 20 feet from the back of it, this is the
11 furthest back that you can get a car, practically
12 speaking. You can see to the middle of the labi. You
13 continue on.

14 When you get to the 20-foot wide road,
15 again, you can see to the middle of the labi. By the
16 time you get to the end of the 25-foot road, again
17 you're seeing the labi. When you get to the 12-1/2
18 foot road, you can in fact see the middle of Chain
19 Bridge Road. You can wait on that 12-1/2 foot road
20 for that car entering, to get into the labi.

21 So I don't see -- you know, I'm not a
22 traffic consultant, and Mr. George, I'm sure, will
23 address this. But that chart presented by the
24 opposition was a red herring. I mean it doesn't -- it
25 was a static point in time or a static location that

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1 really doesn't exist in your decision of whether to go
2 or to yield to another car coming in.

3 MS. MILLER: Mr. Andrulis, I have a
4 question on your earlier testimony, before we get too
5 far. Okay, just I'm not an architect obviously. I
6 wanted to ask you about the drilling you were talking
7 about, and you referred to non-traditional
8 construction methods.

9 My question is are these things new that
10 you're referring to, and do you have personal
11 experience with contractors doing those things, or is
12 this somewhat academic or, you know, someone has
13 explained it to you?

14 MR. ANDRULIS: Sure. If you're talking
15 about the construction type of sheeted and shored
16 wall, lots of personal experience. I've had
17 experience with doing buildings within coffer dams,
18 which is no ground around them. You're holding back
19 the water to build the building.

20 My experience until about six or seven
21 years ago was in large scale commercial buildings here
22 and in Europe, lots of experience with that kind of
23 construction.

24 MS. MILLER: And have you had experience
25 with it in the residential context?

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1 MR. ANDRULIS: I have had no direct
2 experience in residential, with that construction
3 type, no.

4 MS. MILLER: And how about with the
5 drilling?

6 MR. ANDRULIS: The drilling, I have not
7 worked on a project with directional drilling. I've
8 spoken with what I understand are all the world's
9 manufacturers of drilling equipment. There are two.

10 I've spoken with a number of drilling
11 consultants. If you want to drill a gas line under
12 the Potomac River, I can tell you who to talk to.
13 I've spoken and spent a lot of time on site with our
14 arborist and our potential contractor for directional
15 drilling.

16 That's why I could say the 920-L. This
17 contractor owns the 920-L. We spent a lot of time
18 talking about how we would accomplish our goals. We
19 didn't leave that site until our arborist was
20 satisfied that we could do it.

21 MS. MILLER: So has there been directional
22 drilling in this type of situation, with protection
23 trees, etcetera, in a residential setting?

24 MR. ANDRULIS: Yes. In fact, you know,
25 once you see a directional drilling machine, you know,

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1 this was new to me a year ago. I've seen three or
2 four in various parts. Not in Washington, but in
3 cities like suburban Michigan, suburban Detroit. I've
4 seen a couple.

5 Utilities and cable companies use them a
6 lot to get their services to houses, when they don't
7 want to disturb trees. They're used a lot in large-
8 scale construction, going under rivers, finding oil in
9 Kuwait. This scale, you know, this is a totally
10 different scale, but it's also done a lot.

11 MS. MILLER: Thank you.

12 MR. KEYS: I think that's all I need from
13 Mr. Andrulis. I'd like to move on, unless the Board
14 has further questions.

15 MR. PARSONS: I just had one question.
16 There are three tabs at the back, House 4, House B,
17 House H. What were those for?

18 MR. KEYS: I think we explained at the
19 beginning of the hearing that those were simply to
20 complete the record. We decided we could modify
21 basements, to reduce disturbance. It doesn't change
22 the house in a material respect. We shrank basements
23 by about 400 feet. If you want Mr. Andrulis to speak
24 more precisely --

25 MR. PARSONS: So only on three houses?

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1 MR. ANDRULIS: No. We shrunk basements on
2 nine houses. These three houses are the only houses
3 that had a visual impact from this reduction in
4 basement size. For instance, House B, we reduced the
5 basement I forget how many square foot.

6 But there was a room there, a bedroom that
7 we got rid of in the basement. So we therefore got
8 rid of a door and a couple of windows on the outside,
9 and a walkway down to that bedroom.

10 That's why -- that was the only change to
11 the exterior, but that's why those nine drawings are
12 there, to show you how that followed through.

13 MR. PARSONS: Okay.

14 MS. MILLER: I just want to clear
15 something up. When you say you reduced these
16 basements or you reduced nine houses, when? When are
17 we talking about? Not since the last hearing? What
18 are you referring to?

19 MR. ANDRULIS: Sure. Let me refer you to
20 in the area comparison. I think I might have
21 forgotten to address this. I thought I touched on it.

22
23 I think it's the fifth drawing back, "Reduction in
24 Gross Area."

25 CHAIRMAN GRIFFIS: But her question is

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1 timing. It's not something that she's seen before.
2 This happened after the last hearing?

3 MR. ANDRULIS: Right. This reduction was
4 done after the July 18th meeting.

5 CHAIRMAN GRIFFIS: Right. So nine houses
6 reduced in size.

7 MR. ANDRULIS: Right. I'd like to just
8 reinforce what I said earlier about that, that our
9 arborist was satisfied with our protection of tree
10 roots, the critical root zones of trees before we made
11 this reduction. We have made a good situation better.
12
13 We also happen to have reduced construction cost.

14 CHAIRMAN GRIFFIS: Right, okay. Any other
15 Board questions? Let's move ahead then. Go ahead,
16 Mr. Parsons.

17 MR. PARSONS: I just wanted to ask what
18 these are for?

19 MR. ANDRULIS: That will come with the
20 next witness.

21 (Pause.)

22 CHAIRMAN GRIFFIS: Sure. Call my office
23 too. We're going to get to the witnesses, and then
24 we'll break. We'll keep an eye on that.

25 MR. BROWN: As we transition to whoever's

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1 next, we're at an hour and 20 minutes already, and
2 we're one of how many witnesses through?

3 CHAIRMAN GRIFFIS: I'll be mindful of the
4 time. We've got a lot of tabs left.

5 MR. KEYS: Yes. As I indicated, Mr.
6 Andrulis was the longest witness, and I think we can
7 speed up now.

8 CHAIRMAN GRIFFIS: Excellent. Made me
9 think about it.

10 (Pause.)

11 CHAIRMAN GRIFFIS: Let's go. Yes sir.

12 MR. KEYS: We're waiting for Mr. Mann, are
13 we?

14 CHAIRMAN GRIFFIS: No.

15 MR. KEYS: I'd like to bring Mr. Afful,
16 Mr. James Afful, who's our civil engineer. Mr. Afful,
17 would you just state your name and affiliation?

18 MR. AFFUL: Yes. My names is James Afful,
19 and I'm a civil engineer, and I'm on this project for
20 Dorchester.

21 MR. KEYS: All right. Mr. Afful, quickly
22 I'm going to ask you -- we got testimony from Mary
23 Sears in the record, and Mary Sears indicates that
24 your storm water management concept failed to take
25 into account off-site flows.

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1 For example, from the tennis court I
2 believe was the focus of her attention. Can you
3 respond to her criticism of your storm water
4 management scheme?

5 MR. AFFUL: Yes, I can. I'd like to do
6 that on the board, you know, partly on the board and
7 partly from the second page of this diagram. Yes. As
8 you look at the site, we do have an upper terraced
9 area, and then a lower terraced area.

10 Now that's separated by the main road that
11 comes in between these. You look at it again, you see
12 the terrain sloping towards one end, at the western
13 side, the northwestern side, and then you see on the
14 eastern side it slopes towards Chain Bridge Road.
15 Then at the southeast side, it slopes with the
16 southwestern corner of the 3.5 acre lot.

17 Now a lot has been said about off site
18 storm water coming over to the site, and I'd like to
19 take this opportunity to let the evidence show that
20 indeed it's not.

21 Now if you take a look at this sheet, this
22 is an official D.C. topographic survey, five-foot
23 contour. Now on this sheet -- am I on? Yes.

24 COURT REPORTER: Sorry. The microphone is
25 breaking up.

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1 MR. AFFUL: I think I can do it from here.

2

3 Now as you look on that sheet, you can see we've put
4 the contour elevations, 290, 275, 250 on it to show
5 you what the terrain characteristics are, where the
6 slope is to. I'm talking about -- it looks like, Mr.
7 Griffis, you are having problems. Are you okay with
8 it?

9 CHAIRMAN GRIFFIS: I always look like I
10 have problems, but I don't.

11 MR. AFFUL: Okay. Now we have also
12 located the position of the historic building so as to
13 give a reference point. Now when you look at it, all
14 the contours go the other way, all right.

15 All the contours are going from 290
16 contour to basically 250. Then you have a swell that
17 conveys the water all the way down to MacArthur
18 Boulevard.

19 On this drawing, you see a blue line. The
20 blue line is the direction of any water that would
21 flow in that sway. Now there is no --

22 CHAIRMAN GRIFFIS: How about across Chain
23 Bridge?

24 MR. AFFUL: Excuse me?

25 CHAIRMAN GRIFFIS: Which way does it flow

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1 across Chain Bridge?

2 MR. AFFUL: Chain Bridge is over your left
3 side, as you look at it. As you look it, it would be
4 over to your right side, okay. That will be Chain
5 Bridge Road. To the left side, you have Eskridge
6 Road.

7 CHAIRMAN GRIFFIS: Across that Chain
8 Bridge, is that down?

9 MR. AFFUL: No. Chain Bridge Road, I
10 think I need to show you where --

11 CHAIRMAN GRIFFIS: No, no, no. I know
12 what I'm asking. You're showing me 290 is the high
13 point next to the historic building; correct?

14 MR. AFFUL: Yes.

15 CHAIRMAN GRIFFIS: That's flowing
16 downhill, to the left.

17 MR. AFFUL: It's flowing downhill. I'm
18 making a point, and the point is that --

19 CHAIRMAN GRIFFIS: I know your point.
20 Listen to my question. When you cross Chain Bridge
21 Road, is it going downhill? Is that a high point?

22 MR. AFFUL: Yes. We are sitting on it
23 now, so we're at a high point.

24 CHAIRMAN GRIFFIS: Okay.

25 MR. AFFUL: All the drainage flows one

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1 over to your north --

2 CHAIRMAN GRIFFIS: You want us to follow
3 down your blue line?

4 MR. AFFUL: Right.

5 CHAIRMAN GRIFFIS: I got you.

6 MR. AFFUL: Okay.

7 CHAIRMAN GRIFFIS: I think we're all
8 there. We're all there? Good, done. No need to talk
9 about it any more. Now the other side, Chain Bridge.

10 MR. AFFUL: Yes. The other side of Chain
11 Bridge flows towards the Clark property, okay, and you
12 can see the contour elevations on that side. It is
13 clearly delineated, what is on that side so you can
14 see the difference in elevation between our side and
15 the other side.

16 CHAIRMAN GRIFFIS: You could have put
17 little red arrows on the other side of Chain Bridge
18 going downhill there too, right?

19 MR. AFFUL: Yes, we could have done that,
20 because --

21 CHAIRMAN GRIFFIS: No, no, not now. We
22 got it all clear. What's next?

23 MR. KEYS: I think it's important, Mr.
24 Afful, if you would just -- if we're dealing with the
25 movement of water onto the site, and you're saying

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1 it's not because it drains the other direction, how
2 does water move from this site and where are the
3 critical paths for water movement, sheet water from
4 storm water, exiting the site?

5 MR. AFFUL: Well, sheet water from our
6 site, which is relatively flat, okay. Points up, and
7 then it flows down onto the road, okay. Then it flows
8 from there on further onto the southwestern part.

9 Now part of the water, that is on the
10 ridges of Chain Bridge Road. Flows onto Chain Bridge
11 Road, okay, on the slopes of Chain Bridge Road. It
12 flows onto Chain Bridge Road.

13 Now everything that falls on the slopes in
14 the back is going to flow over on the other side.
15 Anything that falls within this area flows down to the
16 lowest point, which is in the area of the 18-inch
17 terra cotta pipe.

18 CHAIRMAN GRIFFIS: So you're anticipating
19 sheeting water going off the site?

20 MR. AFFUL: Yes. The water flow --

21 MR. KEYS: Mr. Afful, are you describing
22 the current condition?

23 MR. AFFUL: Yes. This is the current
24 condition, and for that model, in the proposed
25 condition, this is what we anticipate we're going to

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1 do, because we don't want a lot of disturbance on the
2 site.

3 Because Mr. Bender has always maintained
4 that, you know, this is a critical area. You have an
5 overlay. You can't disturb roots. So we're going to
6 use the natural terrain characteristics to do most of
7 what we're trying to do and achieve that.

8 MR. KEYS: Okay. Mr. Afful, what can you
9 tell us about the condition of soil in this site? Did
10 you do any testing?

11 MR. AFFUL: Yes. Soil percolation test
12 was done, based on -- that was what was required by
13 D.C. Watershed Protection, when we submitted our plans
14 for review. They required that we go out there and
15 then do soil percolation test. So Mr. Bender
16 contracted --

17 CHAIRMAN GRIFFIS: Okay. Let's cut to the
18 chase. What does it tell us?

19 MR. AFFUL: Well, it tells us that we have
20 good infiltration rates. We have 2.6 as a minimum on
21 Lot, I believe it's A, to about 80 inches per hour on
22 the --

23 CHAIRMAN GRIFFIS: So the soil itself can
24 absorb the water when it rains?

25 MR. AFFUL: Yes.

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1 MR. KEYS: Did you conduct tests on each
2 of the lots?

3 MR. AFFUL: Yes, each of the lots. We
4 conducted tests on each of the lots at the exact
5 location of where the infiltration drywall structures
6 were supposed to be.

7 CHAIRMAN GRIFFIS: Okay. That of course
8 would be areas that aren't -- that are permeable,
9 right?

10 MR. AFFUL: Yes, yes.

11 CHAIRMAN GRIFFIS: Okay.

12 MR. KEYS: Were you able, from the basis
13 of the perc test, to determine the flow of water from
14 this site in its current condition?

15 MR. AFFUL: Yes. Currently --

16 CHAIRMAN GRIFFIS: I don't know why we
17 need anything on current condition. Aren't we trying
18 to assess what the impact is going to be of proposed?

19 MR. KEYS: Well, I think we need a
20 baseline, Mr. Chairman, because the opposition has
21 complained about the existing condition, and that
22 development would exacerbate that situation. So I
23 simply want to measure what this site contributes by
24 way of flow, to an existing condition.

25 Then Mr. Afful can testify as to the storm

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1 water management system, and how it does in affecting
2 that flow.

3 CHAIRMAN GRIFFIS: Sounds like two
4 sentences. Tell me.

5 MR. AFFUL: Right. Yes. Currently, using
6 the tools of the trade, we have computed the run of
7 four, the two-year conditions are to the 6.07. This
8 has been on our chart since day one.

9 Now what we assumed in coming up with that
10
11 was at 60 percent imperviousness. Realistically, the
12 site is now 60 percent imperviousness. With the
13 development, we have about 45 percent imperviousness.

14 CHAIRMAN GRIFFIS: What's the 6.07? Is
15 that inches?

16 MR. AFFUL: The 6.07 cubic feet per
17 second. That is the rate at which the water leaves
18 the site.

19 CHAIRMAN GRIFFIS: Okay, I'm with you.

20 MR. AFFUL: Okay. Now for the proposed as
21 they are currently, we're leaving the pristine
22 conditions to what happens right now. Now we have
23 eight point, I believe, 8.41 cubic feet per second
24 leaving the site. I believe it's 8.6-something. I
25 need to look. 8.67 leaving the site.

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1 Now the requirement of D.C. Watershed
2 Protection is for us to control the difference between
3 the 15-year post and then the two-year pristine
4 conditions, store as much as we can on site and
5 release not more than the 6.07 CFS that flows out of
6 the pristine --

7 CHAIRMAN GRIFFIS: Now that's close to
8 three cubic feet per second that you're trying to
9 control.

10 MR. AFFUL: Yes. If you look at 6.07 and
11 then for the 15-year developed condition, we have
12 about 14.91. That has been on my chart ever since we
13 started this. We are supposed to store the difference
14 between 6.07 and then 14.91.

15 CHAIRMAN GRIFFIS: Okay.

16 MR. AFFUL: Now that is why we've sized
17 our storm water management structures the way they
18 are. In the first place, they are sized using a 60,
19 .60. We're using a 60 percent impervious rate, as
20 opposed to the 45. Then also, we've oversized them.

21 The concept hasn't changed. It's been
22 like that since the beginning, because we -- based on
23 our meeting for the review, where they suggested to us
24 that because of the percolation rate of the soil, the
25 nature of the soils, infiltration practices would be

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1 the best to use on the site.

2 So if you look at what we've done, we've
3 used infiltration, storm filtering. Then we've also
4 used detention. The rest of the system that was
5 downstream, that quote-unquote -- because of that, Ms.
6 Sears came up with the idea that it's so small.

7 That is a detention system. It doesn't
8 necessarily need to be as big as the rest of them.
9 Now we put the correct size on it, and that's for you
10 all to see.

11 CHAIRMAN GRIFFIS: Okay, what else?

12 MR. KEYS: Mr. Afful, I think you
13 described a number of storm water devices, and I think
14 that they play specialized functions in your plan.
15 Could you direct the Board's attention to the
16 placement of the particular devices, and explain how
17 you decided that device was appropriate for that
18 particular house?

19 MR. AFFUL: All right. Now if you look at
20 the drawing, on the top side, that is around Lot --
21 that's around Lot F. Now you will see drywells, these
22 drywells. Because they're supposed to be placed about
23 15 feet away from the building, that issue came up.

24 It came up because for concept, you know,
25 they were saying that we didn't place our drywells 15

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1 feet. Now we've placed them 15 feet. That is what's
2 required. So we have a combination of drywells, okay.

3

4 These drywells are connected to the roof runoff.

5 Realistically, if you look at our site,
6 about 70 percent of the site, the imperviousness on
7 the site is due to the roof area. So we are taking
8 the roof area and we are capturing the roof area into
9 this exfiltration system. We size them based on a 60
10 percent imperviousness, and then we've oversized them
11 also.

12 MR. KEYS: Mr. Afful, there are two green
13 roofs in this project, aren't there?

14 MR. AFFUL: Yes sir.

15 MR. KEYS: Have you factored the fact that
16 there are green roofs into your calculations?

17 MR. AFFUL: To be conservative in the
18 design, we didn't look at them as though they are
19 green areas. We looked at them as pure impervious
20 areas so that we can size our structures bigger than
21 what they should actually be.

22 Now coming from that south side, we have
23 some filters, I'm sorry. In areas where we could not
24 put the drywells, we have placed storm filters. What
25 they would do is that realistically if you look at

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1 them, we have placed them in the driveways.

2 The reason we did is that the drywells,
3 you have a potential of spilling on some antifreeze or
4 something. So what we've tried to do is to capture
5 any runoff that comes from the driveway, and then from
6 the trench drains that are associated with them, and
7 then funnel them right through the storm filters and
8 then have them clean it before you go south.

9 Now we've done that in combination with
10 infiltration systems also, because that is what the
11 reviewers recommended. They said you might as well
12 take advantage of the infiltration on the side and sag
13 as much water into the ground. So if you look at it,
14 that's what we've done.

15 The top side, we have three roofs that are
16 -- I mean four roofs that are connected. On the right
17 side, you have three roofs that's connected.

18 CHAIRMAN GRIFFIS: Can I interject? Is
19 this different than what you presented before?

20 MR. AFFUL: Well, you know, we are going
21 over it because of the concerns that we have.

22 CHAIRMAN GRIFFIS: But it's no different
23 than what you presented before. We don't need to
24 spend time on this. Can you tell me what an IT is?

25 MR. AFFUL: What's that?

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1 CHAIRMAN GRIFFIS: What's the IT that's in
2 the top corner?

3 MR. AFFUL: IT is an infiltration trench.
4 There's a legend on it.

5 CHAIRMAN GRIFFIS: Yes. I don't see it on
6 the legend. Thank you much, though. So how is that
7 different than -- and what does it connect to? What
8 does it do? How does it correspond to what --

9 MR. AFFUL: Now we've placed this
10 infiltration trench at the northwestern end of it.

11 CHAIRMAN GRIFFIS: Is an IT an MDT also?

12 MR. AFFUL: NDT?

13 CHAIRMAN GRIFFIS: MDT? MTD, I'm sorry.

14 MR. AFFUL: MTD is modified trench drain.

15 CHAIRMAN GRIFFIS: Okay. I'm looking at
16 your drawings. I'm trying to figure out what the IT
17 is. I don't see it in the legend, and I don't see a
18 section that labels it. I may have missed it, but
19 just let me know. Oh, the top one.

20 MR. AFFUL: Right.

21 CHAIRMAN GRIFFIS: So, okay. So how is --
22 it's this one, right. It's this on the top left?

23 MR. AFFUL: Yes.

24 CHAIRMAN GRIFFIS: Corresponds to this.
25 So why -- and this was here before, and I think I may

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1 have even asked the same darn question. But that just
2 captures it and then it infiltrates into the area
3 where it is, right?

4 MR. AFFUL: Right.

5 CHAIRMAN GRIFFIS: It's not piped away or
6 anything, or is it?

7 MR. AFFUL: Well, yes. You see, that is
8 an infiltration trench. What we are doing is that
9 because of potential concerns that because of the
10 development, there's so much water --

11 CHAIRMAN GRIFFIS: I don't care about all
12 that. Just tell me what it is.

13 MR. AFFUL: We are trying to intercept as
14 much water, if there's any at all, on those slopes.
15 We will intercept it.

16 CHAIRMAN GRIFFIS: Okay. So all that
17 water you're anticipating comes down, you need to grab
18 it before it leaves the property?

19 MR. AFFUL: Yes, it leaves the property.

20 CHAIRMAN GRIFFIS: I see. So and from
21 there, it just infiltrates into there? It's a storage
22 tank that then seeps into the ground?

23 MR. AFFUL: Yes. It seeps into the
24 ground.

25 CHAIRMAN GRIFFIS: Okay. All right. I

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1 don't have any other questions. Mr. Parsons,
2 questions on this?

3 MR. PARSONS: Mr. Afful, we've got to
4 complete the record. Mrs. Sears felt that water --
5 you had -- your plan called for water to run towards
6 the houses, and that she thought that was a
7 deficiency. Can you explain how you're dealing with
8 the topography that slants towards the houses?

9 MR. AFFUL: Yes. Any water that flows
10 towards any of the houses, we've installed a modified
11 trench drain to intercept the water, and then funnel
12 the water right through the storm filter.

13 Now if you look at the area or the size of
14 these driveways, we're talking about a small area.
15 Yet we provided, you know, an extensive capture and
16 then a treatment system to intercept the water and
17 prevent any potential flooding.

18 CHAIRMAN GRIFFIS: Okay. That brings up
19 an interesting point. Let me see if I follow what you
20 just said. So you started us with this slope, right,
21 and everything's kind of going downhill on this site,
22 right?

23 MR. AFFUL: Yes.

24 CHAIRMAN GRIFFIS: And your main storm
25 water management piping is up in the road? Is that

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1 correct to say?

2 MR. AFFUL: No. The main -- that's not
3 the main.

4 CHAIRMAN GRIFFIS: Let me ask it directly.

5
6 When you said the water comes towards the house, you
7 pull it into a trench drain and then pull out into the
8 storm water management, is it going to hit -- I seem
9 to recall one of the questions was, aren't you asking
10 it to go back uphill? So show us just briefly how it
11 connects into the system.

12 MR. AFFUL: All right. Now if you look at
13 this drawing, okay, now this is the top side. We are
14 capturing water from the rooftop with the drywells.
15 Now we provided an overflow system, so in case the
16 drywells get, how do you call it, soggy, there's some
17 overflow system that funnels water.

18 Before it does that, the first flush, so-
19 called an issue that Ms. Sears brought up, that first
20 flush would have been over. So you expect clean water
21 to be diverted to what this detention system. So that
22 flows out, right through this big service system, and
23 the whole thing rides down here.

24 Now before it goes out, we've also
25 provided a backup system, and the backup system is a

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1 rain storm device. This is an open system made of
2 HDPE. It has holes in it, with terra cotta around it.

3

4 It backs up the water, and then it allows you to
5 infiltrate.

6

Now we are sizing the outfall of it, we
7 are sizing that to release less than the 6.07 cubic
8 feet per second.

9

COURT REPORTER: Your mike has gone off.

10

MR. AFFUL: Okay, all right. So in
11 combination with what is coming from here, we will not
12 be releasing any more than the 6.07 that is required.
13 Okay, so we are coming from the top --

14

COURT REPORTER: The microphone.

15

MR. AFFUL: Do we need a battery in it or
16 something?

17

COURT REPORTER: I'm not sure. It just
18 keeps cutting out.

19

MR. AFFUL: No, I'm not pressing it.

20

CHAIRMAN GRIFFIS: Why don't you use this
21 mike? What else do we have to know.

22

MR. AFFUL: Okay, all right.

23

CHAIRMAN GRIFFIS: That answers my
24 question. What else?

25

MR. KEYS: Mr. Afful, Ms. Sears also

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1 stated that you incorrectly sized the rain storage
2 tank, and that the location of your devices are too
3 small to allow for the proposed excavation. Can you
4 respond to that?

5 MR. AFFUL: Well, to talk about the rain
6 storage, we need to again go back to where we started
7 from, that we started with .60 imperviousness, which
8 is way higher than what it actually is.

9 So this drywell structures are all
10 oversized, you know, for the quality treatment. Now
11 you can't separate quality from quantity, because the
12 amount of runoff is being treated and whatever backs
13 up goes into the system.

14 Now if you look at the rain storage
15 system, it's a device that we put in to make sure,
16 based on Mr. Bender's concerns, that we ensure that
17 whatever is flowing out of the site after putting that
18 eight-inch pipe, not any more than eight-inch pipes,
19 regulate actually what is coming down.

20 We back up water in that area, and allow
21 it time to infiltrate, okay. So that storage device
22 is an additional backup system that we put in, in
23 order to ensure that, you know, we are releasing not
24 more than what D.C. Department of Health --

25 CHAIRMAN GRIFFIS: How deep are those

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1 infiltrations?

2 MR. AFFUL: As of right now, we sized it
3 to be about five feet deep.

4 CHAIRMAN GRIFFIS: Okay. But didn't we
5 just hear that tree roots aren't going down, it's kind
6 of clay soil?

7 MR. AFFUL: No. That is not in a tree
8 root zone area.

9 CHAIRMAN GRIFFIS: No, I know that. I'm
10 not concerned about that. But wouldn't tree roots
11 follow areas that were kind of pervious and filled
12 with water? I guess I'm asking about -- I guess you
13 started all this infiltration of that soil.

14 The percolation of it you've talked about,
15 but when you're down that deep, are we getting
16 infiltration there?

17 MR. AFFUL: Yes. Infiltration depends on
18 the character of the soil. What we know, based on --

19 CHAIRMAN GRIFFIS: Where my question
20 began.

21 MR. AFFUL: Yes. Based on the tests that
22 has been performed on the site for the various lots.

23 CHAIRMAN GRIFFIS: So you size those tanks
24 based on the time it will take to infiltrate into the
25 exact soil type that you have it in?

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1 MR. AFFUL: No. Based on the difference
2 between the 15-year and 15-year post --

3 CHAIRMAN GRIFFIS: I understand. That
4 gives you the quantity of water you have to deal with.

5 MR. AFFUL: Right.

6 CHAIRMAN GRIFFIS: But how do you size
7 your tank, your storage area?

8 MR. AFFUL: Yes. I sized the tank based
9 on taking all the areas, the storage areas that are
10 required, and then I took about 40 percent of that
11 additional, you know, to size that tank. So that tank
12 is about 40 percent more, as a backup. Basically,
13 that's what I did.

14 CHAIRMAN GRIFFIS: Okay.

15 MR. KEYS: Mr. Afful, is it your testimony
16 that you have overdesigned the system to meet the
17 objectives?

18 MR. AFFUL: Yes. Those are the tools that
19 we have available, and based on the -- what the
20 proposed imperviousness will be, as opposed to what we
21 have used in calculating this, I believe that the
22 system is somehow overdesigned, and that has been
23 something that has been said by D.C. Watershed
24 Protection.

25 But I mean we choose to do it this way,

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1 so as to make sure that, you know, the downstream
2 section is protected, and we don't have any situation
3 where things happen, the flooding as they've been
4 complaining about.

5 MR. KEYS: In your professional opinion,
6 will the result of this system improve or worsen
7 conditions for neighbors that are downflow from this
8 site?

9 MR. AFFUL: Yes. Currently what is
10 happening with the two-year storm is 8.47 CFS, cubic
11 feet. 8.67, I'm sorry, that's coming out. Now we are
12 supposed to treat all -- what we will do is to treat
13 it to 6.07 or lower.

14 Now we are reducing what goes out by about
15 30 percent. In other words, bring the storm water
16 that is leaving the site to 70 percent of its current
17 volume. I think that is an improvement.

18 CHAIRMAN GRIFFIS: Is it going to be
19 dirtier?

20 MR. AFFUL: No, it's not going to be
21 dirtier, because we have filters on the site.

22 CHAIRMAN GRIFFIS: All right. Let's move
23 on.

24 MR. KEYS: All right. The final comment
25 I wanted to make is that you've got something up there

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1 called a French drain, and that is outside of the
2 storm water system. What's the purpose of that French
3 drain, where it is?

4 CHAIRMAN GRIFFIS: I think we've been
5 through that. We can move on. We're all familiar
6 with a French drain, right? Do we need to know that?
7 Yes. Let's go ahead. What's next?

8 MR. AFFUL: Yes. I would also like to
9 highlight on this issue that Ms. Miller she has
10 brought up, about doing a spray calculation on the
11 site. Mr. Griffis, members of the Board, we are not
12 doing a highway. We are not designing a highway
13 through the site.

14 If you're talking about a spray, you're
15 talking something about 45 miles an hour speed limit,
16 and I have the evidence, you know, to show that you
17 can do spray calculations for anything, for two miles
18 an hour, three miles an hour.

19 But we've not been asked to do any spray,
20 to present any spray. When we're asked to, we will
21 produce a spray. But it wasn't an issue that should
22 have come up at all. I mean it's totally ridiculous.

23 MR. KEYS: A final question, Mr. Afful,
24 about the site. It's been contended that we can't get
25 utilities into the roadway. Have you examined that

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1 plan showing the utilities?

2 MR. AFFUL: Yes. We made some calls to
3 D.C. WASA, and I made some calls to very good friends
4 of mine, in addition to what I know, just to validate
5 it. Now we are required four foot of separation
6 between water and sewer horizontally.

7 If the sewer is below the water, you can
8 put a minimum of, I think, about six inches or so
9 above it. Yes. It's been shown that we don't have
10 enough room there. But what Mr. Andrulis showed, we
11 went through it, and then we put everything in the
12 right perspective, the way it's supposed to be when
13 it's laid out.

14 The water will have the four foot minimum
15 cover.

16 CHAIRMAN GRIFFIS: So it does work.

17 MR. AFFUL: It does work.

18 CHAIRMAN GRIFFIS: Okay.

19 MR. KEYS: I've got no further questions
20 for Mr. Afful.

21 CHAIRMAN GRIFFIS: Quick questions?

22 MR. ETHERLY: Very quickly, Mr. Chair.
23 Mr. Afful, could you speak a little bit. In this
24 Sears report and the one that I'm looking at is the
25 report that was dated July 11th, 2006, there was quite

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1 a bit -- I won't say "quite a bit."

2 There was a little bit of discussion
3 regarding the terra cotta pipe, and we might have had
4 some discussion about that pipe in terms of some of
5 the presentations from the party in opposition.

6 Could you speak a little bit to the
7 viability of that pipe as it relates to the storm
8 water management system that's proposed by the
9 Applicant?

10 MR. AFFUL: Yes. Terra cotta pipe is
11 basically hardened clay pipe, you know, and durable in
12 my opinion because it was put in. I don't know when
13 it was put in.

14 But if you look at it and you inspect it,
15 you see that for all this time that it's been there
16 with the loading, traffic loading going on it, you
17 don't see any evidence of destruction at all.

18 MR. ETHERLY: Okay. Now in particular,
19 and I'll just read from the report directly, she notes
20 that "Downstream capacity analysis has not been
21 addressed to ensure the existing 18-inch terra cotta
22 pipe can accommodate the proposed storm drain design.
23 The proposed storm water management system appears to
24 be designed to reduce the 15-year post development."

25 Do you disagree with that statement, or do

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1 you think that statement is in error?

2 MR. AFFUL: Yes, I disagree with it, and
3 this is the reason. On the 27th of January, 2006, we
4 went out there to the site with Ms. Mary Sears. She
5 said that she believed there was storm water flowing
6 from the upside area. We went up there. We looked at
7 it. She couldn't find out where it was coming from.

8 Downstream, what we did is we took it upon
9 ourselves to measure the invert of this terra cotta
10 pipe. We had a whopping, I believe, five percent
11 slope on it. Now if you check the capacity, this pipe
12 has more capacity than what we are going to release
13 into it.

14 So the pipe can do what it's doing now,
15 and it can do what we are going to do when this
16 project is over. We are bringing the release rate,
17 what is currently happening, we are lowering it by
18 about 30 percent. That is very significant.

19 Now if you look -- just a minute. Let me
20 go on here. Now if you look at most of the evidence
21 that is discussed, you hear a lot being said about
22 flood plain. This shows you that we are in an area,
23 Zone C, minimal flooding.

24 From the Mall where we are to the
25 downstream, and we are talking about 40 feet of -- I

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1 don't know what storm it's going to take, you know, to
2 flood that area.

3 Unless somebody has done something to an
4 existing pipe structure and it's backing up water, I
5 don't see how, you know, we end up in a situation
6 where the whole place is flooded.

7 MR. ETHERLY: Okay. Thank you. Thank
8 you, Mr. Chairman.

9 CHAIRMAN GRIFFIS: Thank you.

10 MR. KEYS: Thank you, Mr. Afful. I'd like
11 to ask Mr. Bonifant to come forward.

12 MR. BROWN: Are we going to take a recess
13 at 5:15?

14 CHAIRMAN GRIFFIS: 5:15? Yes. We'll get
15 there.

16 MR. KEYS: Mr. Bonifant, would you
17 introduce yourself for the record please?

18 MR. BONIFANT: My name's Tom Bonifant.
19 I'm with Bonifant Tree Service.

20 MR. KEYS: Mr. Bonifant, you were present
21 for the testimony on July 18th, and both Mr. Wetzler
22 from the Urban Forestry Administration and Mr. Milhous
23 expressed the view that your tree production plan was
24 unrealistic, and that you failed to take into account
25 the extensive storm water management being proposed.

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1 Is this an accurate reading of the report you
2 submitted?

3 MR. BONIFANT: No, of course it's not.
4 Stan has already testified, shown lots of diagrams
5 that clearly show things have been taken care of in
6 that area.

7 MR. KEYS: Do you think that the location
8 of storm water management at the depth that's being
9 indicated is consistent with the health and well-being
10 of the trees that we're talking about?

11 MR. BONIFANT: All of the experts have
12 agreed that tree roots are very shallow. They're
13 within the first 12, 16 inches of soil. There's
14 exceptions to every rule, of course.

15 But any time that your disturbance is
16 below that zone, this is the misconception, this is
17 the truth, okay, basically your disturbance is zero.
18 A tunnel at three feet to six feet will have no impact
19 on that tree or any tree.

20 MR. KEYS: Mr. Milhous is on record in his
21 testimony and in his report at page ten, in saying
22 that the beech trees, among others, have no chance of
23 survival. Do you agree with that?

24 MR. BONIFANT: Well, no I don't agree, of
25 course. Again, it's been shown several times already

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1 the disturbance to those critical root zones on those
2 trees is well within acceptable limits.

3 Also, the fact that these trees are very
4 sensitive, etcetera, has been pointed out. I think
5 that we have gone well beyond what would be standard
6 to protect these trees.

7 MR. KEYS: Mr. Uetzler claimed that the
8 American beech is peculiarly sensitive, and that we're
9 coming so close to these trees that we can't protect
10 them. I'd like you to comment on that, and I'd like
11 you to use your own professional experience to suggest
12 whether Mr. Uetzler knows what he's talking about on
13 this?

14 CHAIRMAN GRIFFIS: Why don't you address
15 the beech trees?

16 MR. BONIFANT: Okay, yes. Everyone's
17 concerned about the beech trees. Basically, we've
18 shown already how the critical root zone is going to
19 be impacted, how it's going to be impacted and to what
20 degree. We have also proposed doing some pruning on
21 these trees to allow for the construction.

22 My calculations show that it's between
23 five and ten percent, again well under the limit of 20
24 to 25 percent, which is acceptable in one season. So
25 you could revisit the site a year later and actually

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1 prune more off the tree, which would put you above the
2 20.

3 But in the report that you all have seen,
4 we have a calculation --

5 MS. MILLER: Excuse me. What's your
6 percentage speak to? Twenty percent what? What are
7 you referring to?

8 MR. BONIFANT: Oh, foliage reduction
9 during pruning.

10 MS. MILLER: Okay, thank you. So in the
11 report, it clearly shows which trees are five percent,
12 which ones are going to be ten percent, etcetera. I
13 think ten percent was the max.

14 He also had a problem with the bridge next
15 to Tree 48, which we've already discussed, and he was
16 concerned that that tree would outgrow its space in a
17 short time. Well, in fact the beech tree at that age
18 and size grows very slowly, and it would probably take
19 40 years for that tree to take up an additional ten
20 inches in radius.

21 Conditions could alter that some. Lots of
22 rainfall, lots of sunshine, too much fertilization.
23 But on average, it would be quite a while.

24 CHAIRMAN GRIFFIS: Okay.

25 MR. KEYS: We looked at diagrams of Tree

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1 48, and I think Mr. Milhous indicated that Tree No. 9
2 was also an example of a tree that was threatened by
3 our construction. Have you examined the disturbance
4 zone for those trees, No. 48 and No. 11?

5 CHAIRMAN GRIFFIS: Number nine.

6 MR. KEYS: Number nine, sorry.

7 MR. AFFUL: Well, of course we have gone
8 over every tree numerous times. Every time a new plan
9 is submitted, they would have to consult with me to
10 see if it would work with the trees.

11 So we have constantly gone back and forth
12 about what's acceptable and what isn't acceptable for
13 those trees, all of the trees on the property. So
14 number nine is a large tree that has a patio built
15 around it.

16 That patio is being built on piers. It's
17 more like a deck. Now as far as I know, it's going to
18 be a masonry patio, which it is possible to build that
19 type of patio on piers at little or no impact on that
20 tree.

21 Water moves through the soil in every
22 direction, not just up and down. So when a surface is
23 covered, whether there are slats between the boards or
24 not, moisture will move through the soil to that area.

25

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1 It moves much less slowly through clay. The upper
2 layers of the soil are more porous. You actually have
3 a lot of horizontal flow.

4 CHAIRMAN GRIFFIS: Okay.

5 MR. AFFUL: Gases also move through the
6 soil, which may be more important than the water. So
7 Tree No. 9 was the one with the patio that is actually
8 going to have little impact.

9 MR. KEYS: Do you see a conflict between
10 our driveway construction and the trees, Tree No. 48
11 as a particular example? Do you have any experience
12 with trees similar to these, that suggests that we are
13 within limits of tolerance?

14 MR. AFFUL: Well, I think you're talking
15 about a beech tree that Bonifant Tree Service has
16 worked on for many years in Takoma Park, that was
17 damaged extensively during construction, with little
18 chance of survival.

19 Actually, we figured that it was 75
20 percent damaged. This tree has survived. It's still
21 alive today. I have lots of photographs.

22 CHAIRMAN GRIFFIS: Is there a bridge near
23 it?

24 MR. AFFUL: There is a driveway. There is
25 excavation on the other side. There are various

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1 things that have been a good example for this
2 situation.

3 CHAIRMAN GRIFFIS: Okay. What else?

4 MR. AFFUL: The fact that this bridge is
5 not on the surface or excavated is on the surface
6 makes it a much better situation.

7 MR. KEYS: I have no further questions for
8 Mr. Bonifant.

9 CHAIRMAN GRIFFIS: Any questions?
10 Clarifications? Good. We're going to take 15. We'll
11 be back.

12 (Whereupon, a short recess was taken.)

13 CHAIRMAN GRIFFIS: So Mr. George is going
14 to tell us about vehicle view lines, ingress and
15 egress out of the site; correct?

16 MR. KEYS: Mr. George, please introduce
17 yourself.

18 MR. GEORGE: Good afternoon Mr. Chairman
19 and members of the Board. For the record, I'm
20 Osbourne George, address at 10210 Greenbelt Road in
21 Lanham, Maryland. I'm a principal of the firm O.R.
22 George and Associates, and we represent the Applicant
23 in this case.

24 MR. KEYS: Mr. George, you were present
25 for the testimony of Officer McCalway, weren't you?

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1 MR. GEORGE: I was.

2 MR. KEYS: Officer McCalway concluded that
3 there's no speeding problem on Chain Bridge Road. Do
4 you concur with that assessment?

5 MR. GEORGE: I do.

6 MR. KEYS: What method did Officer
7 McCalway use to measure speed?

8 MR. GEORGE: In Officer McCalway's
9 testimony, he noted that he had performed radar speed
10 studies along that roadway on a number of occasions.

11 CHAIRMAN GRIFFIS: I'm sorry. If he's
12 going to repeat it, why should we go even further? I
13 mean they're in agreement, right? Is that what I
14 understood?

15 MR. KEYS: That's correct.

16 CHAIRMAN GRIFFIS: Let's move onto the
17 next.

18 MR. KEYS: The radar issue.

19 MR. PARSONS: Mr. Keys, unfortunately I
20 have to leave at 5:30. I'm particularly interested in
21 the site distance analysis. Mr. Peterson, I thought,
22 made some pretty persuasive remarks. Is he going to
23 deal with this, Mr. George?

24 MR. KEYS: Yes. We were going to talk
25 about site distances. But it needed to come after the

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1 context of the speed and the traffic on the road.

2 MR. PARSONS: Oh good. You're done with
3 that, right?

4 MR. GEORGE: Right.

5 CHAIRMAN GRIFFIS: You've got him for ten
6 more minutes, if you want him to hear it. It doesn't
7 seem that complicated, right?

8 MR. GEORGE: Would you like me to go
9 ahead? On the matter which Mr. Parsons raised, of
10 speed relative to available site distance of the site
11 entrance, I think it's very important to note the
12 character and service function of Chain Bridge Road.
13 It's a very local roadway currently serving 48 houses.

14 I think a primary consideration in Mr.
15 Peterson's testimony was the fact that perhaps only a
16 third, 35 percent of the traffic that uses Chain
17 Bridge Road is locally generated.

18 Our data shows perhaps completely the
19 opposite, and we came to that conclusion by looking at
20 the number of houses, and I'd repeat, there are 48
21 houses. We looked at vehicle ownership data citywide.

22
23 We looked at vehicle ownership for home owners, and
24 then we looked at Census tract data for the Census
25 tract within which the property is located.

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1 I'd like to cite those statistics.
2 Citywide, vehicle ownership is .88 vehicles per
3 household.

4 For home owner-occupied houses, it is
5 1.26. For the Census tract in which Chain Bridge Road
6 is located, it's 1.90. So it's over 50 percent
7 greater than the average for home ownership within the
8 District.

9 Now this is very significant, because the
10 profession recognizes vehicle availability as
11 correlating very strongly with vehicle trip
12 generating.

13 So using the 48 houses, and I think you
14 heard that from Mr. Andrulis' testimony, the 48 houses
15 from his detailed investigation, and using the average
16 trip generation per household that the Institute of
17 Transportation recommends, but allowing a 25 percent
18 overage as opposed to a 50 percent based on the auto
19 ownership, we compute that the average traffic that is
20 actually generated by houses along that roadway is
21 over 600, 625 out of the average of 700, that both Mr.
22 Peterson and I agree is the average daily traffic.

23 So again, I think we can prove
24 statistically by vehicle ownership. I can mention
25 casual observation of vehicles parked in driveways.

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1 But I don't think I need to go that far.

2 MR. KEYS: Mr. George, what's the
3 significance of this being both a low volume road and
4 a low volume road that has a high percentage of local
5 drivers?

6 MR. GEORGE: Right. I think it's very
7 significant, in that two of the principles that govern
8 driver behavior are driver expectation and driver
9 familiarity.

10 All of the agencies that have to do with
11 analysis, planning and design of highways recognize
12 those two factors. They give penalties for lack of
13 familiarity.

14 In other words, if you were analyzing a
15 roadway along the Grand Canyon, where perhaps 90
16 percent plus of the drivers are visitors, you would
17 allow for lower speeds. You would allow for less
18 capacity. You'd allow, perhaps, for compromised
19 safety situations.

20 So it is an accepted fact that driver
21 familiarity contributes to the safety situation along
22 a roadway.

23 Now familiarity goes -- we can take the
24 issue of familiarity one step further, and it's for
25 this reason that I prepared an exhibit, which I

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1 believe Mr. Keys has been handing to the members of
2 the Board.

3 This exhibit shows the 1.0 mile
4 approximately section of Chain Bridge Road between
5 Loffborough Road to the north, and MacArthur Boulevard
6 to the south. We of course know that Battery Campbell
7 Park pretty much abuts the property for most of its
8 length, for perhaps nine-tenths of a mile.

9 Perhaps what is even more instructive is
10 the fact that to the north of the entrance to Battery
11 Campbell Park, which to Loffborough Road is
12 approximately .5, less than half of the distance,
13 considerably less than half, but that the greatest
14 number of houses occupy that section of roadway.

15 You'll also note, Mr. Chairman and members
16 of the Board, that this is the most curved, the most
17 windy portion of the roadway.

18 Again, there are 27 houses within perhaps
19 a quarter mile section. That compares to -- and I
20 lost mine -- I think approximately ten houses fronting
21 along the portion of the roadway to the south. I had
22 to give up my exhibit, so if I misquote those numbers,
23 please excuse me. I'll be happy to correct them.

24 As far as speeds, I think it's noteworthy
25 that Mr. Peterson measured his speeds within the

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1 straighter portion of roadway, which is not occupied.
2 The very fact that 90 percent of the users, and keep
3 in mind I didn't count those who used Battery Campbell
4 Park regularly.

5 The people who use that roadway recognize
6 that the driveways along the frontage of the property
7 are inactive. They're not being used. That, combined
8 with the fact that traffic volumes are extremely, may
9 be conducive to some level of speeding.

10 Again, I'd like to go back to the issue of
11 volume. Officer McCalway cited perhaps three to four
12 vehicles per minute using that roadway. I wouldn't
13 take -- I think a traffic engineer would take three to
14 four vehicles per minute any way.

15 However, I'd point out that Officer
16 McCalway's information was very anecdotal, based on
17 a casual observation. His purpose was to measure
18 speeds using radar. That's what he's trained to do.

19 We conducted volume studies along that
20 roadway in the vicinity of the site in January 2005.
21 We repeated it in April 2006. We repeated it again in
22 September 2006. We repeated it this morning. It
23 continues to be less than one vehicle per minute in
24 both directions.

25 MR. KEYS: Did either Officer McCalway or

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1 Mr. Peterson discuss or cite any accident statistics
2 for Chain Bridge Road?

3 MR. GEORGE: They did not, and I thought
4 this was quite significant.

5 MR. KEYS: Did you do any research on the
6 accident statistics for Chain Bridge Road?

7 MR. GEORGE: We did.

8 MR. KEYS: Could you summarize your
9 results?

10 MR. GEORGE: We obtained accident data
11 from DDOT, the District Department of Transportation,
12 through the normal source. We actually went through
13 and through a special request got reports of all
14 accidents that the city has logged against Chain
15 Bridge Road, which as you know extends to the south of
16 MacArthur Boulevard.

17 There were no accidents recorded along
18 Chain Bridge Road over the four-year period, 2002,
19 January 1st, 2002 through January 31st, 2005. We
20 think
21 that the traffic engineering profession, the
22 transportation planning field being largely empirical,
23 where you look back in order to look forward. We
24 think this was a serious omission.

25 We think this helps us say quite

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1 conclusively that the situation along Chain Bridge
2 Road, which we've heard from many of the citizens, is
3 a rural roadway within an urban context, one with
4 environmental features which you do not want to
5 change.

6 We think that gives us comfort in saying
7 that we see the Applicant's proposal as having no
8 detrimental impact upon the safety situation along
9 that roadway.

10 But Mr. Keys, I think I can go one step
11 further. Again, I can talk for the rest of the
12 afternoon, as long as you'd care to listen, on the
13 question of driver expectation and familiarity.
14 What's likely to happen as Mr. Bender begins to clear
15 his site and activate the drivers?

16 Ninety-plus percentage of the users of
17 this roadway will know. They will use the same
18 caution, the same speed that they do in the northern
19 portion of the site, which has the majority of the
20 houses, and again which I've shared with the Board.

21 Based on the city's records of reported
22 accidents, are zero.

23 MR. KEYS: Mr. George, what types of
24 traffic signage and signals are evident on Chain
25 Bridge Road, or a number of portions of Chain Bridge

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1 Road?

2 MR. GEORGE: Oh yes. There are a number
3 of different traffic signs. There are, of course,
4 within the straighter portions of Chain Bridge,
5 there's a standard 25 miles per hour posted speed.

6 But there are also, in the vicinity of the
7 curve section, advisory speeds indicating 15 miles per
8 hour. There are also signs indicating "Hidden
9 Driveway Ahead."

10 That's a standard sign that's recommended
11 the Manual of Uniform Traffic Control Devices, to warn
12 drivers of situations just like we have. There are
13 curved roadway signs.

14 We of course, as any responsible
15 professional, would be concerned. Chain Bridge Road
16 is narrow. There are trees. It's curved in many
17 situations.

18 So we took what I believe is the unusual
19 step of in addition to visiting the site ourselves, we
20 invited DDOT, the District Department of
21 Transportation, the Department of Policy and Planning,
22 as well as the Traffic Services Administration, to
23 visit the site with us, to sit at the driveway
24 entrance, to do informal speed surveys along Chain
25 Bridge Road.

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1 We find no evidence that the signs are
2 inadequate, and DDOT in their report have recommended
3 the use of mirrors, which is a feature that's along
4 the road. Our study documents that, and they have
5 supported that. Mr. Keys, I believe I've answered
6 more than my share of that question.

7 MR. KEYS: Is the use of mirrors for the
8 purposes that they're being used on Chain Bridge Road,
9 are those endorsed by national authorities on traffic
10 safety, highway safety?

11 MR. GEORGE: Yes. I think I would say two
12 things in response to this. First of all if I may,
13 Mr. Peterson cites very prominently the AASHTO Design
14 Handbook, generally referred to as the Green Book.
15 It's about perhaps two inch thick book that covers
16 traffic flow conditions from cul-de-sacs to freeways.

17 AASHTO also publishes a very thin primer
18 called "Guidelines on Design of Very Low Volume
19 Roads," and it says from less than 400 vehicles per
20 day. This doesn't quite meet 400. It's in the
21 vicinity of 600 to 700, and we are in agreement to
22 that.

23 But what this manual says, that it
24 recommends that in situations such as this, that this
25 strict application of the AASHTO Guidelines should not

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1 be adhered to.

2 As far as mitigative measures such as
3 mirrors, I would quote to the Board, and I think this
4 is new information that's indicated as Appendix H of
5 our study, and I do know where our study is in the
6 report, but the traffic study we submitted.

7 At Appendix H-5, we have extracts from a
8 document called "Low Cost Traffic Engineering
9 Improvements: A Primer." That's published by the
10 U.S. Department of Transportation, Federal Highway
11 Administration, Office of Traffic Management.

12 CHAIRMAN GRIFFIS: Excellent, thank you.
13 Mr. Parsons, do you have questions before you go?

14 MR. PARSONS: You're saying 90 percent of
15 the traffic will be familiar with the road. So the
16 rest are delivery trucks or through traffic,
17 maintenance vehicles, people servicing people's lawns
18 and furnaces and so forth?

19 MR. GEORGE: Yes. All of the above would
20 be included.

21 MR. PARSONS: That's only 60 vehicles a
22 day? Through traffic and service vehicles? It just
23 doesn't seem possible to me that -- especially when
24 this project is completed, that we would be dealing
25 with only 60 vehicles a day, whether it's Federal

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1 Express or whoever it is. I mean the unfamiliar, the
2 ones I'm worried about obviously.

3 MR. GEORGE: Yes. We estimate 90 percent.

4

5 Again that's, I think, the computation actually comes
6 out to be a little bit less than that, 89 point
7 something percent. That's close enough to 90. Ten
8 percent of 700 is 60, 70, yes.

9 Of course, the FedEx, the gentleman who
10 comes to my office every day, is the same one. We
11 know him and we give him Christmas gifts, and he's
12 familiar. As is the postman and so on. As is the
13 maintenance person who comes to cut the lawn in my
14 condominium and so on.

15 So again, we can go further in the
16 direction of familiarity.

17 MR. PARSONS: You think those folks fit
18 into the 90 percent, service vehicles who are coming
19 routinely? Not the Maytag repairman, because he
20 doesn't come very often. But the lawnmower guy is
21 familiar. So he fits into the 90 percent?

22 MR. GEORGE: I think it's quite likely so.

23

24 I cannot testify categorically, but --

25 MR. PARSONS: All right. I understand.

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1 Thank you.

2 MR. KEYS: Officer McCalway objected to
3 the reliance on convex mirrors, because he thought
4 that it distorted distance, and Mr. Peterson agreed
5 with that. Do you have a reaction to those judgments?

6 MR. GEORGE: Yes.

7 MR. KEYS: What's the purpose of a convex
8 mirror in this instance?

9 MR. GEORGE: Yes. I think essentially a
10 convex -- if I may just have a moment. I think the
11 way a convex mirror is utilized, is that it warns
12 someone who is using it to perceive vehicles along the
13 roadway they are entering, that a vehicle is within
14 that zone, and you do not judge distance within the
15 view of the mirror.

16 In other words, once you see a vehicle
17 within the mirror, you stay put. You don't say it is
18 at the edge of the mirror and so I have .05 of a
19 second. Once the vehicle is within the coverage of
20 the mirror, you do not move.

21 So I don't think the issue of being
22 misadvised as to the distance arises. I think Mr.
23 Peterson did point out or Officer McCalway made
24 reference to the mirrors that exist, and said that
25 those folks well, they're familiar with it.

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1 That's the whole idea. The folks who use
2 it are the people who live there, and they will use it
3 every day and perhaps multiple times per day. So I do
4 not believe that that's an issue.

5 MR. KEYS: I want to ask you about the --
6 Peterson's contention that the main driveway as an
7 access point was an unsafe situation, because of the
8 crest in the road. You've examined Mr. Andrulis'
9 computations of elevation and distance?

10 MR. GEORGE: I do, I did.

11 MR. KEYS: Do you have a judgment as to
12 whether we've got a problem on that main driveway for
13 safety?

14 MR. GEORGE: I think Mr. Andrulis did an
15 excellent job. He did more, in fact, than I would
16 typically do. I can summarize the situation by saying
17 that the distance of the restricted width, the 12-1/2
18 foot width, is approximately 180 feet in length.
19 That's between the labi and the point where the road
20 narrows.

21 We did similar drafts, and we showed that
22 vehicles within that portion would be entirely
23 visible. I think the fact that he did in 20-foot
24 increments on the score is the case. I think his
25 point regarding the need to see a vehicle at the back

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1 of the cul-de-sac makes the case.

2 You do not. At the back of the cul-de-
3 sac, you've got a lot of room between the cul-de-sac
4 and the narrow portion --

5 CHAIRMAN GRIFFIS: We got that.

6 MR. GEORGE: Okay.

7 CHAIRMAN GRIFFIS: What else?

8 MR. KEYS: Do you have a professional
9 conclusion as to what the addition of 13 homes and the
10 associated vehicles and families, whether that in
11 itself represents a condition in this context that is
12 potentially unsafe?

13 MR. GEORGE: The additional 13 homes? For
14 the reasons stated, the preponderance of locally-
15 generated traffic, the conditions of the road, the
16 signage that's available, and which the city has
17 accepted as being within their normal guidelines and
18 the service that they provide, I think the addition of
19 those homes and the vehicles they generate would not
20 change the situation materially.

21 MR. KEYS: Yes. If you're wrong in that,
22 and if DDOT perceived that there were traffic
23 problems, what measures, what steps could be taken
24 that might address that, that are being taken already?

25 MR. GEORGE: Yes. It's my experience in

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1 dealing with DDOT that they respond to issues that are
2 raised by citizens. One of the questions we asked the
3 Traffic Services Administration when we visited the
4 site was whether they had had complaints from citizens
5 regarding unsafe conditions or regarding traffic
6 volumes, and the answer would be no.

7 I would say that it's the city's
8 responsibility to continue evaluating traffic and
9 roadway conditions, the physical and operational
10 conditions. I do not know that I can say what DDOT
11 would do, except to do additional studies.

12 That's what they would do off the
13 situation, looking at volumes, looking at speeds,
14 exactly the things they've done with us here and that
15 we have done.

16 MR. KEYS: Those advisory speed signs and
17 those hidden driveway signs that are so frequent in
18 the upper reaches of Chain Bridge Road, are those
19 supervised by DDOT?

20 MR. GEORGE: It's my understanding that
21 they are.

22 MS. MILLER: Mr. Keys, I'm sorry. Can I
23 just jump in for a minute, because it's getting late.
24 I wonder if you could help me at least see the focus
25 of this cross, as to what's being rebutted from

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1 before?

2 MR. KEYS: What's being rebutted from
3 before is the assertion, number one, that Mr.
4 Peterson, I think, is strongly of the view that the
5 speeds in this area are such that it creates an unsafe
6 condition.

7 I think he's of a view that mirrors can't
8 be used effectively to mitigate the consequences of
9 not perfect site lines.

10 I think Mr. George's testimony says that
11 mirrors, advisory speed signs, are commonplace on
12 Chain Bridge Road, and the mere fact that we have no
13 accidents, and that no one in opposition referenced
14 the fact that we're not dealing with a situation that
15 is already perilous, and that the volume of traffic --
16 oh, and that the mix of local traffic. That's the
17 other thing.

18 MS. MILLER: Okay. Is there --

19 MR. KEYS: This is a very key indicator,
20 because it determines behaviors. People know roads --

21 MS. MILLER: Okay. I heard that. Is
22 there something else now?

23 MR. KEYS: I was about to say that I had
24 finished my questions of Mr. George. So I would turn
25 it back to the Board, if you had questions of him.

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1 CHAIRMAN GRIFFIS: Questions?

2 MS. MILLER: I have a question.

3 CHAIRMAN GRIFFIS: Go.

4 MS. MILLER: Mr. George, I'm not sure --
5 maybe I don't have my numbers correct, but did I hear
6 you say that 27 households on this road are
7 responsible for 625 vehicle trips?

8 MR. GEORGE: No. They're actually 48
9 hours along that roadway. Forty-eight houses.

10 MS. MILLER: Forty-eight houses?

11 MR. GEORGE: Yes.

12 MS. MILLER: And I think you said that --
13 you're saying that given the conditions, I know they
14 have 1.9 vehicles per household, so almost two
15 vehicles per household. That means that they generate
16 all those trips.

17 That seems hard to believe, that 48
18 households on Chain Bridge Road generate 625 trips.

19 MR. GEORGE: Well, I think I can only cite
20 the statistics view, based on you know, ages of
21 surveys done nationally, that the average single
22 family household generates in the vicinity of 10 trips
23 per day.

24 So if we take 48 times 10, that 's 480.
25 I'm saying that there's a strong correlation, a strong

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1 relationship between vehicle availability and vehicle
2 trips that are made.

3 MR. KEYS: Mr. George, let's make clear.
4 What's a trip?

5 MR. GEORGE: Okay. A trip would represent
6 one movement of the vehicle having an origin or a
7 destination within the house. So in other words,
8 someone leaving that site to go to Whole Foods on
9 Wisconsin Avenue and come back would generate two
10 trips.

11 MS. MILLER: Well, does it matter where
12 these houses are located? I mean if you had a house
13 on Reno Road that had two cars and you had a house on
14 Chain Bridge Road that had two cars, would the traffic
15 -- would they be responsible for the same number of
16 traffic trips? I mean doesn't matter what kind of
17 road you're on?

18 MR. GEORGE: No. I'm saying as a traffic
19 engineer, that we have to come up with estimates.
20 They're not absolute numbers. They're guides that we
21 use for planning, and that is the number that is
22 recognized.

23 MS. MILLER: Okay. But also if you're
24 looking to really determine that fact say in this
25 particular instance, I can't remember you said you had

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1 observations. I mean wouldn't someone be observing,
2 you know, out of state license plates or anything like
3 that, to determine whether that was accurate?

4 MR. GEORGE: License plate surveys is a
5 frequently used. Origin/destination surveys are
6 frequently used. I think --

7 MS. MILLER: Delivery trucks, they're
8 obvious, right?

9 MR. GEORGE: Right.

10 MS. MILLER: But that wasn't done in this
11 case, is that right?

12 MR. GEORGE: I don't think it was called
13 for, given the low volumes of traffic. I don't think
14 It was called for at all.

15 MS. MILLER: Okay. So your testimony is
16 based on just average based on statistics, not
17 observation? Is that right?

18 MR. GEORGE: No, no. Yes, yes.

19 MS. MILLER: Okay.

20 CHAIRMAN GRIFFIS: Anything else?

21 MS. MILLER: No. Thank you.

22 CHAIRMAN GRIFFIS: Any other Board
23 members? Any other witnesses?

24 MR. KEYS: We have no further witnesses.
25 Now I assume, Mr. Chairman, about the way you've

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1 structured this case, that we're not going to do
2 cross-examination of these witnesses, and that you're
3 going to reserve the opportunity to the opposing
4 parties to respond in some way to this rebuttal
5 testimony. I have to further assume --

6 CHAIRMAN GRIFFIS: I thought I was
7 directly unclear, last I left this one off. So
8 there's a couple of things and I think we need to
9 decide that right now. We have some time. First of
10 all, Mr. Brown, I wonder if you have limited cross of
11 these witnesses while they're here, and I mean limited
12 just time-wise, your honest assessment.

13 There also is some concern on the Board
14 that we set this up for a cross-examination hearing.
15 That's not something I particularly would like to do.
16 Then we need to assess what and how we would take
17 additional information into the record if needed.

18 MR. BROWN: I think we're more comfortable
19 not getting into cross-examination at all. Just if
20 we're going to do it, we want to do it well-informed,
21 and we're just not there. So we defer.

22 CHAIRMAN GRIFFIS: Okay. Then let's take
23 you what form it is. We could -- here's what I would
24 suggest for discussion, that we set a date of filing,
25 and that filing is your, essentially not cross but

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1 assertions on the testimony, rebuttal testimony that
2 you've heard.

3 So rather than posing a question, it will
4 be posed in statements, and directly on point of
5 course. We would then have those served all around at
6 a timely point. There is no response to that. The
7 final, then, submission of that we would set off for
8 however much time would be anything else that we want,
9 and draft orders essentially.

10 MR. KEYS: Mr. Chairman, but thereby I
11 would have lost the opportunity to close the case.

12 CHAIRMAN GRIFFIS: Well, and that's what
13 I'm assessing now in terms of timing when we close,
14 and whether we close now or actually that's something
15 we set for a different time.

16 MR. BROWN: Mr. Chairman, have we--

17 CHAIRMAN GRIFFIS: Let me first address
18 this. Is there any difficulty in closing this
19 evening?

20 MR. KEYS: Yes, there is, if mine is not
21 the final word in the case, and the party opponents
22 get to add to the record, I can't be sort of making
23 closing statement.

24 CHAIRMAN GRIFFIS: I somewhat agree.

25 MR. BROWN: Well, but we have to look at

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1 the context, Mr. Chairman.

2 CHAIRMAN GRIFFIS: Actually the other
3 option is we're having statements in, we could have a
4 closing in writing, and that could come in also with
5 or without, for that matter. But a closing and then
6 have draft conclusions and findings, findings and
7 conclusions.

8 MR. KEYS: That's possible. I mean if I
9 have the opportunity to examine what you're
10 substituting for a cross-examination on rebuttal, I'd
11 be certainly prepared to make a closing statement that
12 sums the case up.

13 CHAIRMAN GRIFFIS: So now we have three
14 last submissions.

15 MR. BROWN: Well, and let me ask, Mr.
16 Chairman, whether we've totally abandoned the concept
17 of live cross-examination? I'm not so sure we're
18 prepared to, under the circumstances, to surrender our
19 right to cross-examine. But we're certainly not --
20 we've not been put in a position to do that today.

21 I also look at the time. I mean, we
22 conservatively we spent two hours and 45 minutes on
23 the rebuttal case, on top of all the time the
24 Applicants had.

25 I mean the weight of this is so heavily

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1 weighted toward the Applicant that I think fairness
2 would indicate the ability for us to one, comment in
3 writing on/ this submission, because I think there are
4 places that we all identified went well beyond the
5 scope of rebuttal. Then also our ability to respond
6 in a cross-examination format.

7 CHAIRMAN GRIFFIS: So what are you saying?

8
9 You want to do it in person?

10 MR. BROWN: Well, I think we would like
11 the right to respond in writing to the submission.
12 Again, typically we would have that right to respond
13 in writing to an Applicant's submission.

14 I mean, and I think unfortunately we have
15 got a long history here. But if you look at what
16 happened today, the Applicant made a very substantial
17 filing, much like you do 14 days before your
18 prehearing statement.

19 Then the opposing parties, and for that
20 matter, and I don't want to leave out the Office of
21 Planning and particularly Mr. Uetzler, because one of
22 the fundamental issues here is the trees. We've seen
23 new and different construction methods, storm water
24 management, all impact on the tree preservation issues
25 in Mr. Uetzler's participation.

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1 So I mean having opened this up,
2 unfortunately in fairness we need to allow it to play
3 out, both in our written form and potentially cross-
4 examination.

5 CHAIRMAN GRIFFIS: Two things. When do we
6 assess whether you want to cross in person or not, and
7 two, I mean getting to this here, it took us a long
8 time. There seems to be a lot of paper here.

9 But you know, I wasn't struck by the fact
10 that there was a monumental amount of new information.

11
12 In fact, most of this went pretty much to the point of
13 elements that we brought up in opposition, or frankly
14 in questions from the Board.

15 I'm overly-aware of giving you an
16 opportunity now to respond to those. I'm just to
17 figure out what the form is. I mean there was no
18 fundamental -- means and methods. I mean means and
19 methods came directly from a question of how we were
20 going to get storm water in on all these graphs, all
21 these layers we're laying in.

22 You know, there's only so much earth
23 there. So now they've shown us. So now is your
24 opportunity to take at them. How do you want to do
25 it?

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1 MR. BROWN: Well, and again you're asking
2 me to choose, and I don't think it's appropriate for
3 me to have to choose. I mean, typically I have a
4 right to respond in writing, and typically I have a
5 right to cross-examination. Why should I, in this
6 circumstances, have to accept one or the other?

7 MR. KEYS: He does not have an opportunity
8 to respond in writing unless the Board permits him to.
9
10 I mean, he's got a right to cross-examine, and I
11 thought what you were offering, Mr. Chairman was I'll
12 give you the right to respond, but it will be a
13 written submission instead of cross.

14 CHAIRMAN GRIFFIS: Right.

15 MR. KEYS: I think he now is arguing that
16 he needs two bites at the apple.

17 MR. BROWN: Well, Mr. Chairman, we've gone
18 well beyond the scope of rebuttal, I mean, just by
19 nature of the filing, which was not anticipated by the
20 Board.

21 CHAIRMAN GRIFFIS: Okay. So let's leave
22 that. Let's do that, because actually, you know,
23 we've done a little research up here in a limited
24 amount of time. What is the scope of rebuttal? So I
25 don't want to argue all that.

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1 I mean and again, I go back to the fact
2 that there wasn't -- this wasn't a whole new case
3 presentation, just based on the volume of paper, a lot
4 of paper. Let's get to the fact of what do you want,
5 and how do we facilitate that?

6 Are we going to do -- are we going to set
7 this for another live cross, or do you want to take
8 the opportunity for a written submission? I'll do
9 either one.

10 MR. BROWN: I want to do both. I think
11 I'm entitled to both.

12 MS. MILLER: Mr. Brown, can I ask you
13 this? With respect to what we're talking about a
14 written response, do you have in your mind your
15 experts looking at the expert testimony that was
16 presented today and almost rebutting it in some way,
17 or certainly responding to it?

18 In which case that's more than you
19 normally have, because that's almost like evidence.
20 Am I correct? Usually at the end of the case,
21 everyone is just addressing the record.

22 So I think we're talking about additional
23 evidence. Now I'm not sure, and if Mr. Keys is not
24 objecting to that, then that is substantially
25 different.

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1 MR. BROWN: Well, and one, in the context
2 of written response, the first issue we want to
3 address is whether in fact items in this thing are
4 appropriately part of rebuttal, that whether in fact
5 -
6 - and then also to respond to them substantively.

7 But again, we're -- and a situation has
8 been created that's unusual. Typically rebuttal,
9 number one typically rebuttal comes right on the heels
10 of our presentation, and there would have been no
11 opportunity for preparation of this and two and a
12 half, three hours of testimony.

13 We've gone beyond that circumstance, and
14 fairness requires that we respond appropriately. One,
15 the ability to respond in writing to a written
16 submission, and two, without giving up your right to
17 cross-examination in a well-informed manner.

18 MS. MILLER: I'm just exploring. It's the
19 end of the day and I'm a little bit tired. But it
20 seems to me that we are talking about something
21 unusual, and if the parties come to an agreement that
22 that's fair in this case, that's great.

23 But it seems to me that if you have the
24 opportunity to actually rebut the rebuttal in writing,
25 with time for your experts to look at that, that

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1 that's a lot more valuable than cross-examination.
2 I'm not sure why you need, after the hearing today, to
3 do much more cross-examination.

4 MR. KEYS: Mr. Chairman, I think your
5 observation that their filing, though a little
6 voluminous, did not represent a change --

7 CHAIRMAN GRIFFIS: Well, we're not going
8 to that point. Let's stay on point on where we're
9 going from here.

10 MR. KEYS: Well, I think the point is that
11 that suggests that there is nothing that catches us by
12 surprise here, that cross-examination is the
13 appropriate position right now. If we can't do it
14 today, set a time for a later cross-examination.
15 We'll have these people back. They can conclude their
16 cross, and we're out of the case.

17 MR. BROWN: Mr. Chairman, I'm going to
18 make it very easy for you and your fellow Board
19 members. Rather than get into actual cross-
20 examination, we will proceed on a written submission.

21 We'd like time for the transcript to be
22 prepared, and then file a written format that goes to
23 both whether we think the scope of the rebuttal was
24 appropriate, and then also substantive issues.

25 We could certainly do that -- you

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1 mentioned January dates for the next hearing date. We
2 could certainly conclude that, subject to the
3 transcript being available.

4 CHAIRMAN GRIFFIS: You can meet the end of
5 January, a hearing? I appreciate that.

6 MR. BROWN: Well, Mr. Chairman, I mean a
7 great deal of this probably could have been avoided by
8 the simple act of the Applicant providing all of us a
9 copy of the submission when they had to.

10 CHAIRMAN GRIFFIS: I don't disagree with
11 that. I mean it pains me to be in positions like
12 this. I just now need to find an as far as possible
13 remedy to it.

14 MR. KEYS: Mr. Griffis, could I make a
15 suggestion, and I think looking at what has just been
16 said --

17 CHAIRMAN GRIFFIS: Go ahead.

18 MR. KEYS: Mr. Brown is going to have an
19 opportunity to look at the materials that were
20 submitted. I don't see why scheduling an opportunity
21 to cross-examine the witnesses, given that opportunity
22 to examine the materials that were submitted, why that
23
24 is not an unfair situation.

25 In fact, it really balances the

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1 circumstances, because his complaint is well, we
2 should have had more time to study this, to be ready
3 to cross-examine. Well, give him the time he needs to
4 study it, and let him cross-examine. We'll bring the
5 witnesses back.

6 That way, you can get this thing resolved.

7
8 I can make a short closing, and the case is done. I
9 think you've given him substantively all he's entitled
10 to.

11 MS. MILLER: So Mr. Keys, are you backing
12 away from your original agreement that they could
13 submit a response in writing?

14 MR. KEYS: I think that your concern seems
15 to be wrestling with putting him in a position that is
16 at least what he should have had, by not being
17 surprised by exhibits.

18 I don't think these exhibits surprise, but
19 I'll concede that. Give him a chance to look at these
20 exhibits. They can prepare their cross. Yes. I'm
21 going to walk way --

22 MS. MILLER: I understand what you're
23 saying now. You are changing your mind?

24 MR. KEYS: Yeah. I think -- because
25 there's no way to confine the written response, and

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1 you yourself acknowledged it. What he's going to do
2 is create more of a new record, and we're going to
3 have another procedural problem, and that is that
4 stuff comes into the record with no opportunity for
5 any examination of it.

6 MR. BROWN: It seems like it puts us
7 pretty much in the same position. We've each had to
8 maintain some flexibility. We're prepared to proceed
9 on a written submission, waive our right to cross-
10 examination, and move forward on that basis.

11 (Pause.)

12 CHAIRMAN GRIFFIS: Excellent, okay. I
13 appreciate you conceding that, Mr. Brown. I think
14 it's getting too complicated in all the elements.

15 We're going to go as we would if we were
16 doing this all at once, and we're going to set for the
17 afternoon of the 24th of October to reconvene this.

18 We're going to start off with cross-
19 examination. After that cross, we're going to go
20 straight to closings, and then we'll lay out any
21 information that's required by the Board, if there is
22 additional submissions to go into.

23 Once we start getting transcripts and we
24 start laying that out, it doesn't at this point
25 facilitate the Board's needs, if we push it off for so

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1 many months. I think that actually will maybe make it
2 more confusing if we start to do that.

3 So there it is. Is there any catastrophic
4 problems with that scheduling?

5 MR. KEYS: The date's fine with me. I'd
6 like to verify that all the witnesses could be here.

7 CHAIRMAN GRIFFIS: They're all going to be
8 crossed, yes.

9 MR. BROWN: Without any opportunity for us
10 to file any written document. I mean that I object
11 to. I mean I strenuously object to that. The only
12 written document we might take is a motion to strike
13 information that wasn't somehow correctly put into the
14 record.

15 Other than that, I don't see anything --
16 pardon me?

17 MS. MILLER: Proposed findings of fact.
18 Are you doing conclusions --

19 CHAIRMAN GRIFFIS: No, no. But we'll get
20 to that actually close the case. We're still on the
21 hearing.

22 MS. MILLER: They will have an
23 opportunity, yes.

24 CHAIRMAN GRIFFIS: Right. You're saying
25 you want to have a written submission that addresses

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1 the new submission today. Am I correct?

2 MR. BROWN: That's correct. I mean I
3 think the scope of the new documents goes so far
4 beyond what would typically occur in rebuttal.

5 CHAIRMAN GRIFFIS: I know. That's my
6 problem. I mean it may not be typical, but I'm not
7 sure why would --

8 MR. BROWN: We're talking fundamental
9 fairness. I mean, in a typical case, you have an
10 established procedure.

11 CHAIRMAN GRIFFIS: Tell you what? Let's
12 do this. I'll entertain a motion to that effect, if
13 you want to articulate what that is. We have time to
14 get ready for the actual cross. Then the record will
15 be open, of course, for additional filings.

16 If you want to bring a motion prior to, so
17 that we have that for the brief preliminary matter of
18 that day, and I'm saying very brief. We're not going
19 to take a lot of time on that, then we'll entertain
20 it.

21 Obviously, if it's in before, we can start
22 to understand what the basis on which we could grant
23 you an ability to submit directly on it. I think when
24 we're all finished with this, there's ample time to
25 submit that. I mean you're going to be submitting in

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1 the proposed findings and conclusions, which will
2 obviously take into any impact of what this was.

3 So I think it's fairly covered. I'm not
4 concerned that I'm not giving opportunities, but I
5 don't have difficulty in taking a motion on that, and
6 a motion to strike anything that's there.

7 Let's be very clear, though, that I may
8 have been liberal on time today. I will not have the
9 ability on the 24th. We're going to have stick fairly
10 close to cross-examination and being precise in
11 answers. We'll get to that.

12 But closings, I'm going to need no more
13 than 20 minutes on a closing for this. I'm going to
14 have the rest --

15 MR. BROWN: Mr. Chairman?

16 CHAIRMAN GRIFFIS: Yes.

17 MR. BROWN: I mean, and with all due
18 respect, once again, my --

19 CHAIRMAN GRIFFIS: You don't like being
20 limited on time?

21 MR. BROWN: Well, we essentially had
22 unlimited time today for the Applicant, and then I'm
23 being restricted in filing a written submission, and
24 then I'm being limited on time in cross-examination --

25 CHAIRMAN GRIFFIS: You're not being

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1 restricted. We're not creating a new process for you
2 to submit written submissions after rebuttal
3 testimony, that's all.

4 MR. BROWN: But at the end of the day,
5 when you come down to it, when we're weighing this,
6 the amount of time and ability for the Applicant to
7 present his case --

8 CHAIRMAN GRIFFIS: But that doesn't show
9 fairness. I mean we don't sit there and say "My God,
10 we've got -- it's so -- you know, we've got ten pounds
11 of paper here and you've only got five that
12 something's unfair."

13 MR. BROWN: Well, if you go back to how
14 hearings typically proceed, you give the applicant a
15 period of time and you give the opposition a similar
16 period of time. We're so far out of whack now, both
17 in the time and the ability to present material to the
18 Board, that I mean we've really reached -- there's not
19 even close to parity or fairness.

20 CHAIRMAN GRIFFIS: Fairness is what you're
21 arguing with. You're arguing with me that you want an
22 equal amount of time to rebut?

23 MR. KEYS: Can I be heard?

24 CHAIRMAN GRIFFIS: Take the time to be
25 prepare.

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1 MR. SUSSMAN: Can I be heard on this just
2 very briefly? Because what we're talking about here,
3 in the interests of the community, which I represent.
4 We have all in our community put hundreds of ours and
5 tens of thousands of dollars into this case.

6 We are looking for a fair shake from the
7 Board. The opposing party in this case --

8 CHAIRMAN GRIFFIS: I understand. Sir, I
9 understand.

10 MR. SUSSMAN: I would like to finish. The
11 opposing party in this case made a submission which
12 was directly in violation of the order that you issued
13 at the end of the hearing. You said you wanted all
14 the submissions in by September 8th.

15 It didn't come in. You allowed it. You
16 allowed two and a half hours of testimony. He has had
17 eight hours of testimony cumulatively. We have had
18 one and a half.

19 I will tell you for a fact that plans were
20 significantly changed today that were submitted, and
21 all our experts advised us of that. These are new
22 plans, and we would like the opportunity to have our
23 experts examine those plans which are new, and provide
24 their views to the Board.

25 I would submit that anything short of that

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1 is a gross unfairness to the community.

2 CHAIRMAN GRIFFIS: Very well. This
3 doesn't help. so you want -- we need to schedule
4 eight hours, is what you're saying. We'll do equal
5 and equitable time. I've got no difficulty with that.

6 MR. KEYS: We'll take that and bring our
7 witnesses back.

8 CHAIRMAN GRIFFIS: Mr. Brown, you can take
9 your time on cross. We'll see you on the 24th.
10 You're first in the afternoon. What else?

11 MR. BROWN: Okay, let me just verify with
12 my experts. October 24th? I'd like them to be here,
13 and that's all right. Do you have any time table for
14 my submitting my motion?

15 CHAIRMAN GRIFFIS: You'd obviously like it
16 before the hearing. I'd say we have it in the
17 Wednesday before, three o'clock in the Office of
18 Zoning.

19 If it isn't in at that time, I would just
20 suggest that we probably hold it in abeyance, because
21 I won't have time to deliberate on preliminary matters
22 on that. We're going to get right into cross.

23 MR. KEYS: So the prior -- the 18th?

24 CHAIRMAN GRIFFIS: Whatever it is.

25 MR. KEYS: No, the 17th.

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1 CHAIRMAN GRIFFIS: Well, the 18th is the
2 Wednesday, so at three o'clock on Wednesday, the 18th.

3 MR. KEYS: Okay.

4 CHAIRMAN GRIFFIS: What else?

5 MS. MILLER: Mr. Brown, can I ask you a
6 question?

7 CHAIRMAN GRIFFIS: Go ahead.

8 MS. MILLER: I understand that what the
9 first part of your motion's going to be with respect
10 to whether certain evidence should be stricken as
11 beyond rebuttal.

12 But I'm even more interested, though, in
13 the second part of it, and I just want to see if this
14 is what you're going to be doing, because I'd be
15 interested in that.

16 That is, I think we would be going towards
17 submitting additional evidence in your case, because
18 that's what it sounds like we were talking about, and
19 that is unusual to submit additional evidence after
20 rebuttal.

21 I understand that the circumstances here
22 are somewhat unusual. I just wanted to ask you if you
23 would be addressing that. Is that what you had in
24 mind?

25 MR. BROWN: Are you saying including of --

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1 I think that the --

2 MS. MILLER: But it seems to me what you
3 want to do, that you're saying they had so much time
4 and I just want to know that that's what you're doing?

5

6 That's what -- is that correct?

7 MR. BROWN: Yes. I suspect that will be
8 part of it.

9 CHAIRMAN GRIFFIS: What, submitting new
10 evidence?

11 MR. BROWN: No, no.

12 MS. MILLER: I think that's what they were
13 saying, that they had so much time and there was new
14 material.

15 CHAIRMAN GRIFFIS: Well, we'll give them
16 equal time.

17 MS. MILLER: Well, equal time may mean --

18 CHAIRMAN GRIFFIS: For cross-examination.

19 MS. MILLER: Is that what you're asking
20 for?

21 MR. BROWN: Well, it goes just beyond the
22 time in cross-examination, and quite frankly if the
23 quality of time -- I mean, I suspect nobody would
24 disagree that the quality of presentation time versus
25 the quality of cross-examination time were different.

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1 I mean, I think my motion will go to those
2 portions that I believe were improperly in the
3 submission, that go beyond. But also the role or the
4 ability of my clients to meaningfully participate
5 through the hearing process and an additional written
6 submission.

7 MS. MILLER: And I'm not saying that
8 that's what we're inviting you to do or whatever. I'm
9 just saying that if that's what you want to do, I hope
10 that you address that in your motion, with your
11 authority and reasons and okay, so we have that in
12 writing. Okay.

13 CHAIRMAN GRIFFIS: Right. Okay. Let's
14 review. When we meet again on the 24th of October at
15 one o'clock, we'll call first the case. We're going
16 to jump right into cross-examination. All the
17 witnesses are going to be present, Mr. Keys, is that
18 correct?

19 MR. KEYS: That's correct.

20 CHAIRMAN GRIFFIS: Very well. You're
21 going to be conducting cross or you said you're not
22 going to be here?

23 MR. BROWN: No, I'll be here.

24 CHAIRMAN GRIFFIS: Okay, good. So you'll
25 be conducting cross.

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1 MR. BROWN: Where else would I be?

2 CHAIRMAN GRIFFIS: Okay. In which case
3 after that cross-examination concludes and when it
4 concludes -- yes. No, you can take after me in there
5 -- on the 24th at one o'clock. What 31st? All right.

6

7 You find that. I'm going to continue.

8 In which case we're going to go to
9 closings. At the end of closings, our hearing will
10 come to an end. At that point, we will then address
11 obviously any additional written submissions.

12 Those written submissions at this point
13 are not outside of what will normally look for, and of
14 course the record may be kept open for anything else
15 that the Board sees fit.

16 All right. If there's nothing further
17 then, I'm struck by some humorous that I might have
18 said at one point. Well, Mr. Brown.

19 MR. BROWN: Well, I can't interrupt humor.

20 CHAIRMAN GRIFFIS: I know. I lost my
21 timing. Ms. Sears.

22 MS. SEARS: You have managed to ignore the
23 ANC today. Do we have a role here?

24 CHAIRMAN GRIFFIS: I thought you'd pop up
25 when you wanted it. Absolutely have a role. Are you

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1 available on the 24th also?

2 MS. SEARS: Yes, I am.

3 CHAIRMAN GRIFFIS: You're going to be
4 conducting your cross-examination at that time also?

5 MS. SEARS: If that's what's decided, yes.

6

7 I would like to do that.

8 CHAIRMAN GRIFFIS: Okay. I think we've
9 decided that.

10 MS. SEARS: I wasn't sure whether just
11 these guys go to do cross, or whether the ANC had a
12 role here.

13 CHAIRMAN GRIFFIS: Oh absolutely,
14 absolutely. Forgive me. I should have asked you all
15 along in the way of these major decisions. I will
16 offer to you now, would you like to submit your cross
17 in writing?

18 MS. SEARS: I think I'll do it verbally.

19 CHAIRMAN GRIFFIS: Excellent. Okay. In
20 which case, we're searching for a lost day in October
21 are we?

22 (Pause.)

23 CHAIRMAN GRIFFIS: Ms. Bailey, are you
24 showing cases scheduled on the 31st of October?

25 MS. BAILEY: No, Mr. Chairman.

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1 CHAIRMAN GRIFFIS: We don't know why that
2 is?

3 MR. MOY: It's Halloween.

4 CHAIRMAN GRIFFIS: It sure is. Something
5 spooky's happening already. We don't have anything
6 scheduled on that day. Can we find that out tonight?

7 MR. MOY: The bulk of the staff has
8 already left for the evening, sir. Well, I can call.
9 Let me -- if you'd give me a moment.

10 CHAIRMAN GRIFFIS: Can we take ten
11 minutes. We may have some better resolution on this,
12 as it's obviously very odd we don't have that showing
13 on our schedule, and that way we would have a morning
14 that we could take the time and get a way here. Is
15 there any conflicts with the 31st?

16 (Pause.)

17 CHAIRMAN GRIFFIS: We're going to be here
18 at 9:30 on the 31st. At 9:35, we're going to flip a
19 coin to see which side buys lunch, and we're all going
20 to be out of here by 12:00. Good?

21 MR. KEYS: Very good.

22 CHAIRMAN GRIFFIS: We'll go trick or
23 treating all the way home. Okay, excellent. Anything
24 else then? Clarifications? Ms. Bailey, am I missing
25 anything?

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1 MS. BAILEY: No, Mr. Chairman. Are we
2 still holding Mr. Brown to file his submissions on
3 October 18th?

4 CHAIRMAN GRIFFIS: We're going to do the
5 Wednesday before.

6 MS. BAILEY: The Wednesday before the 31st
7 is the 25th. So October 25th.

8 CHAIRMAN GRIFFIS: Fine. I don't think
9 costumes are prohibited but they're not required.
10 We'll see you all at 9:30 on the 31st. If there's any
11 other questions, clarifications, we can do it at this
12 time.

13 (No response.)

14 CHAIRMAN GRIFFIS: Very well. If there's
15 nothing further, let's adjourn and have a great
16 evening.

17 (Whereupon, at 6:15 p.m., the hearing was
18 adjourned.)
19
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21
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23
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25