

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JULY 18, 2006

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:28 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

JOHN PARSONS	Commissioner (NPS)
MICHAEL G. TURNBULL	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

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## OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
JOHN MOORE  
MAXINE BROWN-ROBERTS  
MATT JESICK

The transcript constitutes the minutes  
from the Public Hearing held on July 18, 2006.

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

10:28 a.m.

1  
2  
3 CHAIRPERSON GRIFFIS: Let's call to order  
4 our Public Hearing of the Board of Zoning Adjustment  
5 of the District of Columbia. It is the 18<sup>th</sup> of July  
6 2006. I am the Chairperson, Geoff Griffis. Joining  
7 me today is the Vice Chair, Ms. Miller, and Mr.  
8 Etherly, our esteemed Member of the Board.  
9 Representing the National Capital Planning Commission  
10 with us is Mr. Mann. And representing the Zoning  
11 Commission with us this morning is Mr. Turnbull, who  
12 will be joining us in about 10 seconds.

13 That being said, copies of today's hearing  
14 agenda are available for you. They are located at the  
15 table where you entered into the hearing room. We  
16 appreciate everyone's patience with us. Obviously, we  
17 had some business this morning in our Special Public  
18 Meeting, but we're going to get right into our already  
19 advertised agenda and we'll make up time very quickly.

20 To that though, I ask that everyone,  
21 please, be aware that we are recording all proceedings  
22 before the Board of Zoning Adjustment. They are done  
23 so in two fashions. The most important is the Court  
24 Reporter sitting to my right on the floor. He is  
25 creating the official transcript for all proceedings.

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1 We are also being broadcast live on the Office of  
2 Zoning's website.

3 Attendant to both of those, there are  
4 several things, I ask that everyone turn off their  
5 cell phones, beepers, at this time, so that we don't  
6 have a disruption of the transmission of all our  
7 important information and goings on in the hearing  
8 room.

9 Also, you will need to fill out two  
10 witness cards. Witness cards are available at the  
11 table in front where you will provide testimony. They  
12 are also available where you came into the hearing  
13 room. I would ask that those two witness cards be  
14 filled out prior to coming forward to speak to the  
15 Board and be given to the Court Reporter on my right.  
16 When coming forward to give testimony or address the  
17 Board, you will need to state your name and address.  
18 You only need to do this once and then you can  
19 proceed. Obviously, that is to put you on the record.  
20 You will need to turn the microphone on also. I'll  
21 give you an indication of how to do that, at the  
22 appropriate time.

23 The order of procedure for special  
24 exceptions and variances is as follows: First, we  
25 will hear from the applicant, their presentation of

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1 the case. Second, we will hear any Government reports  
2 attendant to that application, the Office of Planning  
3 or the Department of Transportation, if there are  
4 analyses in the record. Third, we will hear from the  
5 Advisory Neighborhood Commission within which the  
6 property is located.

7 Fourth, we will call for persons or  
8 parties in support of an application. And fifth would  
9 be persons or parties in opposition to an application.  
10 Sixth, finally, after all of that is accomplished, we  
11 ask the applicant to come forward again to either  
12 provide any rebuttal witnesses or to give us  
13 conclusion and summation remarks.

14 Cross examination is permitted of all  
15 witnesses by parties in a case and the applicant. The  
16 ANC within which the property is located is  
17 automatically a party in the case. I will give  
18 direction for cross examination, if we get into any of  
19 that area in the morning session.

20 The record will be closed at the  
21 conclusion of the hearings on a case. It is very  
22 important to understand that. What we are doing today  
23 is creating the official record. That official record  
24 is the basis and the sole basis of which all  
25 deliberations of this Board will be made. So any

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1 information that you find to be jurisdictional or  
2 important should be put into the record today, either  
3 in writing or orally, so that the Board will have that  
4 as part of the official record.

5 We will, of course, not accept any  
6 information after the record is closed. So when we  
7 close a case today, it is entirely closed. No other  
8 information, letters, factual basis would be taken  
9 into the record, unless we ask for specific things,  
10 and if we do, we will be specific and give you  
11 direction on that, when and how it should be submitted  
12 into the Office of Zoning.

13 The Sunshine Act does require us to  
14 conduct all our hearings in the open and before the  
15 public. We do on occasion enter into Executive  
16 Session, both during and after hearings on cases, and  
17 that is for the preparation to deliberate or to move  
18 forward and hear a case and at times it is used to  
19 have discussion on decisions of cases. However,  
20 everything that we do is then presented in the open  
21 and before the public in accordance with our rules,  
22 regulations and also in accordance with the Sunshine  
23 Act.

24 Let me say a very good morning to Ms.  
25 Bailey with the Office of Zoning on my very far left.

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1 Ms. Rose is also with us and Ms. Monroe with the  
2 Office of Attorney General is with his this morning.  
3 We are very pleased she is going to keep us out of any  
4 trouble, legally that is, and Mr. Moy with the Office  
5 of Zoning, also with us today. Thank you all very  
6 much.

7 At this time, I'm going to ask that  
8 everyone that is going to be presenting testimony to  
9 the Board to, please, stand and give your attention to  
10 Ms. Bailey. She is going to swear you in.

11 MS. BAILEY: Would you, please, raise your  
12 right hand?

13 (Whereupon, the witnesses were sworn.)

14 MS. BAILEY: Thank you.

15 CHAIRPERSON GRIFFIS: Excellent. Thank  
16 you all very much. With that then, we can go to any  
17 preliminary matters. Preliminary matters are those  
18 which relate to whether a case will or should be heard  
19 today, requests for postponements, withdrawals,  
20 whether proper and adequate notice has been provided,  
21 these are elements of preliminary matter or need of  
22 preliminary attention of the Board.

23 If you have a preliminary matter for the  
24 Board's attention, meaning if you are not prepared to  
25 move forward with a case that's on our agenda this

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1 morning or you believe a case on our agenda should not  
2 move forward, I would ask that you come forward and  
3 have a seat at the table as an indication of a  
4 preliminary matter.

5 I'll ask Ms. Bailey if she is aware of any  
6 preliminary matters for the Board's attention, at this  
7 time.

8 MS. BAILEY: Members of the Board, to  
9 everyone, good morning.

10 CHAIRPERSON GRIFFIS: A very good morning.

11 MS. BAILEY: Staff does not have any, sir.

12 CHAIRPERSON GRIFFIS: Very well. Not  
13 seeing any other indication of having a preliminary  
14 matter, why don't we call the first case for the Board  
15 this morning?

16 MS. BAILEY: The first case, Mr. Chairman,  
17 is Application No. 17499, of Debra A. Gustowski,  
18 pursuant to 11 DCMR 3104.1, for a special exception to  
19 allow a rear addition to an existing single-family  
20 semi-detached dwelling under section 223, not meeting  
21 the side yard requirements, that's section 405 of the  
22 regulations. The property is Zoned R-1-B. It is  
23 located at 2924 33<sup>rd</sup> Place, N.W., Square 2118, Lot 46.

24 CHAIRPERSON GRIFFIS: Excellent. Is the  
25 applicant here? Yes, come on forward. Excellent. A

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1 very good morning to you. If you can just pull that  
2 microphone a little bit closer to you, and there is a  
3 button on the base that you can touch once. Perfect.  
4 The microphone is on. If you wouldn't mind stating  
5 your name and address for the record?

6 MS. GUSTOWSKI: Debra Gustowski, 2924 33<sup>rd</sup>  
7 Place, N.W.

8 CHAIRPERSON GRIFFIS: Excellent. Thank  
9 you very much and you are here for a special exception  
10 under section 223. We have all of your information in  
11 the record. The record is entirely complete. You  
12 could stand on the record, if you would like, or I  
13 will let you address the Board with any opening  
14 remarks that you might have or highlights.

15 MS. GUSTOWSKI: Not really. I'll stand on  
16 the record.

17 CHAIRPERSON GRIFFIS: Excellent. Thank  
18 you very much. Is there any questions from the Board?  
19 I think this is a very straightforward case, so I  
20 think we can move through this diligently. It's  
21 fascinating in terms of the R-1-B and there is a lot  
22 of information in here about how this doesn't fit the  
23 criteria of a requirement for a conforming structure  
24 in the R-1-B, but it's an existing nonconforming  
25 structure.

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1           If there's no additional questions from  
2 the Board, at this time, let's go to the Office of  
3 Planning and say a very good morning to Mr. Moore.  
4 And I believe -- I don't believe, you have an  
5 excellent analysis in the record and I'll turn it over  
6 to you if you want to provide a summation of that.

7           MR. MOORE: Good morning, Mr. Chair and  
8 Members of the Board. I'm John Moore with the Office  
9 of Planning and we will stand on the record as stated.

10           CHAIRPERSON GRIFFIS: Excellent. Thank  
11 you very much. I do appreciate the analysis. It's  
12 excellent and always my favorite seeing these  
13 perspective aerial photographs. Do you have a copy of  
14 the Office of Planning's report?

15           MS. GUSTOWSKI: I do.

16           CHAIRPERSON GRIFFIS: Good. Okay. If I  
17 ever have an application before the Board, this would  
18 be the keepsake kind of thing. Okay. That being  
19 said, are there any questions of the application of  
20 the Office of Planning? Do you have any cross,  
21 harkening questions of the Office of Planning? Very  
22 well. Any questions from the Board? Not noting any  
23 questions of the Office of Planning, again, Mr. Moore,  
24 we appreciate it. We will take note of Exhibit No.  
25 23, which is in the record.

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1 I would move on to then ANC-3C. Is the  
2 ANC Member present, ANC-3C? ANC-3C08 had on May 15,  
3 2006 voted unanimously to approve the application.  
4 And I don't have the exhibit number right in front of  
5 me, but it is in the record. Is there any questions  
6 or statements from the Board in terms of the ANC?  
7 Exhibit 24, as Mr. Etherly is pointing out.

8 Very well. Moving ahead, I don't have any  
9 other attendant Government reports or association or  
10 ANC reports with this application. I would ask for  
11 anyone here present, persons to provide testimony in  
12 Application 17499 in support to come forward at this  
13 time. In opposition at this time. Not noting any  
14 persons present, we would take note in the record I  
15 have Exhibit 9 and also exhibit unknown, letters of  
16 the adjacent property owners in support of the  
17 application.

18 Good. We don't have anything else. Any  
19 other questions from the Board? Clarifications? Yes,  
20 Mr. Mann?

21 BOARD MEMBER MANN: A brief question. Is  
22 this in an Historic District? Is your home located in  
23 a Historic District?

24 MS. GUSTOWSKI: No.

25 BOARD MEMBER MANN: Okay.

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1 MS. GUSTOWSKI: No, it's not.

2 CHAIRPERSON GRIFFIS: Excellent. Anything  
3 else? Any other clarifications? I'll turn it over to  
4 you for any closing remarks that you might have, any  
5 highlights?

6 MS. GUSTOWSKI: No.

7 CHAIRPERSON GRIFFIS: Very well. We do  
8 appreciate it. I think, obviously, the record is full  
9 and absolutely clear, which is why this entire record  
10 can stand on, rather this entire application can stand  
11 on the record.

12 I will highlight a couple of things here  
13 that I think the tests to the 223 is very  
14 straightforward. There is numerous criteria that have  
15 to be made. It's very clear the fact that this  
16 application has met those criteria, meaning that if  
17 this was approved, the small addition in the back and  
18 rather it's kind of a reconfiguration of the existing  
19 court and then the small addition to the back,  
20 obviously, wouldn't impair and impact the light and  
21 air use or enjoyment, proper and adequate graphic  
22 representation has been presented for our  
23 understanding and, obviously, show what is being  
24 proposed.

25 This would not impair the Zone Plan or Map

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1 or in any way be detrimental to the surrounding area.  
2 And I think that all the criterium of 223 and special  
3 exception have been made. And I would move approval  
4 of Application 17499 under 223, which would allow the  
5 small addition to premises 2924 33<sup>rd</sup> Place, N.W., and  
6 would ask for a second.

7 BOARD MEMBER MANN: Second.

8 CHAIRPERSON GRIFFIS: Excellent. Thank  
9 you very much, Mr. Mann. I don't have any other  
10 deliberation to speak to the motion on this. I'll  
11 open it up to other Board Members if they have any  
12 comments. Very well.

13 Not noting any other additional comments,  
14 we do have a motion before us. It has been seconded.  
15 I would ask for all those in favor to signify by  
16 saying aye.

17 ALL: Aye.

18 CHAIRPERSON GRIFFIS: And opposed?  
19 Abstaining? Very well. Why don't we record the vote?

20 MS. BAILEY: Mr. Chairman, the vote is  
21 recorded as 5-0-0 to approve the application. Mr.  
22 Griffis made the motion. Mr. Mann seconded. Mrs.  
23 Miller, Mr. Etherly and Mr. Turnbull supports the  
24 motion, support the motion.

25 CHAIRPERSON GRIFFIS: Excellent. Thank

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1 you very much, Ms. Bailey. I don't see any reason why  
2 we wouldn't issue a summary order on this, unless any  
3 of the Board Members have an objection to that. Not  
4 noting any objections, we would waive our rules and  
5 regulations to issue a summary order.

6 Thank you very much. We do appreciate  
7 your patience. Good luck with this and actually it  
8 will be very interesting. I found it intriguing to  
9 see the kind of landscape in the rear yard, which had  
10 nothing to do with our application, your application,  
11 so we didn't talk about it. But the pond and all of  
12 that, I think it's going to be quite a delightful area  
13 in back. So good luck with that.

14 MS. GUSTOWSKI: Thank you.

15 CHAIRPERSON GRIFFIS: Thank you very much.  
16 Let's move ahead then to the next case.

17 MS. BAILEY: Application No. 17494 of  
18 Montello Avenue GP, pursuant to 11 DCMR 3103.2, for  
19 variances from the lot area and lot width requirements  
20 under subsection 401.3. This is to allow the  
21 construction of a single-family row dwelling. The  
22 property is Zoned R-4. It is located at 1325 Montello  
23 Avenue, N.E., Square 4063, Lot 800.

24 CHAIRPERSON GRIFFIS: Good morning.

25 MR. NUNLEY: Good morning, Chairman

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1 Griffis, Members of the Board and staff. I'm prepared  
2 to stand on the record with one exception. There is  
3 nothing in the record relating to our contact with the  
4 community. So I felt the need to bring that up. We  
5 did go to the ANC meeting on June 1<sup>st</sup> of this year.  
6 We made numerous attempts prior to that time to  
7 contact the Single Member representative, Mr. Lawrence  
8 Harris. I hand delivered a letter to him indicating  
9 what we planned to do and trying to get with him to  
10 discuss it prior to and we never got a response from  
11 him.

12 We arranged for the -- for our  
13 presentation to be -- for the ANC. We went to the ANC  
14 on June 1<sup>st</sup>. Unfortunately, they had no quorum.  
15 There were only two commissioners that showed up. One  
16 showed up -- a third one showed up briefly, but then  
17 left again. And we presented the case. I would note  
18 there was no opposition, only concern raised by an  
19 immediate neighbor as to protection of his property  
20 during the construction.

21 We spoke with him and let him know that  
22 the developer has been doing this for a long time in  
23 D.C. and is bonded and that all of the contractors  
24 that will work for him are licensed and bonded. So we  
25 did everything in our power to protect his property

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1 and he was quite comfortable with that.

2           Aside from that, we are ready to stand on  
3 the record and the report.

4           CHAIRPERSON GRIFFIS: Okay. Let me just  
5 get some clarity on what the appropriate plans we  
6 should be looking at.

7           MR. NUNLEY: The one that's labeled "Final  
8 Plan," that's the one with the garage. That was put  
9 in after the original submission. The reason that  
10 that was put in is we determined that there is no way  
11 to put parking there. We -- rather than go for a  
12 parking variance, we would try to mitigate some of the  
13 already difficult parking situation in that  
14 neighborhood by putting in at least the one space that  
15 the regulations require.

16           We felt that we could meet the test for  
17 variance for a parking space -- from the parking  
18 requirement, but we also felt that it would be better  
19 for us and for the community if we could get at least  
20 that one car off the street.

21           CHAIRPERSON GRIFFIS: Okay. Any questions  
22 on that, at this point?

23           VICE CHAIR MILLER: I'm just wondering,  
24 how many members are on the ANC or how many members  
25 make a quorum? If the two of them heard it?

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1 MR. NUNLEY: Well, see, there are nine  
2 members.

3 VICE CHAIR MILLER: Nine. And there were  
4 only two members?

5 MR. NUNLEY: There were two. As I said  
6 before, a third one showed up, but didn't stay for the  
7 full meeting. And our presentation was the last on  
8 the agenda, unfortunately, so they didn't even hear.  
9 One other thing, we did -- I did get a call from  
10 Wilhelmina Lawson, who is a member of the Commission.  
11 She unfortunately didn't show up either, but she  
12 called me a few days before the hearing and made a  
13 suggestion that we pass out flyers to the neighborhood  
14 and she said that she would help us get that done.

15 Well, it didn't happen right away. But in  
16 response to that, I did make a flyer. I did make a  
17 flyer that I personally hand delivered to property  
18 owners within a two block radius of the property all  
19 the way around. And we got the flyer, I have it here  
20 somewhere. The flyer had names, our names and  
21 addresses on it for someone to contact us if they did  
22 have concerns and neither I -- neither the developer  
23 nor I were contacted during that period.

24 CHAIRPERSON GRIFFIS: Okay. Do we have in  
25 the record a site plan that shows how this building is

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1 sitting on the site as opposed or in comparison to the  
2 adjacent? And here is my concern on several levels.  
3 One, I think, Office of Planning, we'll get to their  
4 analysis, because their's is very strict and  
5 straightforward. I mean, we obviously have a  
6 nonconforming lot.

7 I understand that your point is that well,  
8 you sure didn't want to add into a variance for  
9 parking. And as I'm looking at this, maybe we'll just  
10 take a brief time, I have some concern of the  
11 essential impact of this building on the rest of the  
12 area, but don't want to be overburdensome on it. One  
13 is just the kind of elevation and how it's -- it seems  
14 to be a little bit different than the adjacent  
15 buildings. And I think that there probably is a more  
16 marketable design that could be done for this.

17 The other is I got to tell you, I have a  
18 strong negative reaction to a garage door at the front  
19 of a row dwelling. And so I don't know how we address  
20 that, but we're going to try and just address it very  
21 quickly and briefly here today.

22 MR. NUNLEY: All right. Well, Jim -- I'm  
23 sorry.

24 CHAIRPERSON GRIFFIS: So the first  
25 question is is there a site plan that shows the

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1 massing of this? Because the adjacent buildings have  
2 a bay. Are those bays protected over the property  
3 line into the public parking area or are they on the  
4 property?

5 MR. NUNLEY: On -- they are on --

6 MR. WASHINGTON: They are on the property.

7 CHAIRPERSON GRIFFIS: So but this does not  
8 have a bay?

9 MR. NUNLEY: No.

10 CHAIRPERSON GRIFFIS: It's a flat front?

11 MR. NUNLEY: No, it's a flat front. There  
12 was -- the reason for the garage, another reason for  
13 going with the garage is there was an existing curb  
14 cut.

15 CHAIRPERSON GRIFFIS: I know.

16 MR. NUNLEY: And recently the city has  
17 come in and repaved and redone that curb cut. And  
18 when we saw that, that's what made us finally say  
19 well, let's just go with the garage. We have got the  
20 curb cut. It's existing. It takes another car off  
21 the street. And that's why we made that decision.

22 CHAIRPERSON GRIFFIS: Wow. Okay. All  
23 right. And so the site plan, we don't have anything  
24 that shows how this sets in relation to the adjacent  
25 property?

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1 MR. NUNLEY: Apparently we don't. The  
2 only site -- the only plan that we have is on the  
3 plans itself, the architectural's.

4 CHAIRPERSON GRIFFIS: Is the designer  
5 here?

6 MR. WASHINGTON: Yes, good morning. My  
7 name is William Washington. And I'm the designer for  
8 the site. We do have a site plan with the building  
9 located on the site. Just unfortunately, I don't have  
10 it with me today.

11 CHAIRPERSON GRIFFIS: Okay. I had another  
12 question of how you got the name of your organization,  
13 but now I understand, the Washington Design Group.  
14 Fascinating. Okay. Well, I think you can walk us  
15 through it. We have the existing photographs here  
16 that show, in a sense, the two level, maybe even a  
17 three level, I'm not going to try to deal with that,  
18 but row dwellings with bays, right? So you are  
19 proposing, if I hold this up, that your building would  
20 -- the entire facade would be, the front elevation  
21 would be flat and it would align with the further more  
22 point of the bay on these adjacent?

23 MR. WASHINGTON: Yes, yes, sir. But our  
24 projects will not have a bay. They will be flush  
25 right on line, right on property line.

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1 CHAIRPERSON GRIFFIS: On which property  
2 line?

3 MR. WASHINGTON: From property line from  
4 the next building to the other building.

5 CHAIRPERSON GRIFFIS: Right. But that's  
6 what these are, too.

7 MR. WASHINGTON: Right. Yes, we won't  
8 have a front bay.

9 CHAIRPERSON GRIFFIS: Right. And why not?

10 MR. WASHINGTON: Well, no particular  
11 reason. It's not zoned for a bay, so we just wasn't  
12 going to put a bay.

13 CHAIRPERSON GRIFFIS: Okay. Are there any  
14 other buildings on the entire block that have just a  
15 flat facade, no bay?

16 MR. WASHINGTON: Yes, my client said there  
17 is some property next door that doesn't have a bay.  
18 It's not in the photo, but there is a property down a  
19 couple of -- down the street that doesn't have a bay.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. NUNLEY: A very eclectic neighborhood.  
22 It has -- there is a lot of different types of design  
23 in the neighborhood.

24 CHAIRPERSON GRIFFIS: Sure. Sure. Yes,  
25 okay. Other questions, concerns?

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1                   VICE CHAIR MILLER: I just have a question  
2 about the garage and getting the car off the street.  
3 Is there a problem with parking in that neighborhood?

4                   MR. NUNLEY: Oh, yes. In fact, the times  
5 that I have been to visit, I've had to park on other  
6 streets and walk down. Oh, and there's only parking  
7 on one side of that street, so I should have put that  
8 in as well.

9                   VICE CHAIR MILLER: Okay. Thank you.

10                  CHAIRPERSON GRIFFIS: Okay. Another  
11 piece, if we look at the front elevation, it shows the  
12 third floor seems to have -- it's showing graphically  
13 as a shingled, this piece here, that top level. One,  
14 two, three.

15                  MR. WASHINGTON: Sir, this whole structure  
16 was going to be brick, brick veneer.

17                  CHAIRPERSON GRIFFIS: The third to roof,  
18 that's just to show kind of a brick? That's just a  
19 graphic? Oh, I gotcha. Okay. And just for context,  
20 do you know what the height or roughly the height of  
21 the buildings adjacent?

22                  MR. WASHINGTON: Yes, I think they are  
23 pretty much about the same height.

24                  CHAIRPERSON GRIFFIS: How tall are your's?

25                  MR. WASHINGTON: I'm sorry?

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1 CHAIRPERSON GRIFFIS: You're going to be  
2 27 to the top of the roof on the interior?

3 MR. WASHINGTON: Yes, roughly.

4 CHAIRPERSON GRIFFIS: Okay. Okay.

5 MR. NUNLEY: 27 plus a 2 foot rise.

6 CHAIRPERSON GRIFFIS: Right, right, right.  
7 I guess, you know, maybe it's just me. It's hard for  
8 me to envision this sitting in that lot, that's what  
9 I'm just trying to do, is trying to capture that. We  
10 have got these bays with a pent roof, so at the top of  
11 the second story or the top level of the adjacent, it  
12 pitches back. You have these bays that project out  
13 that each have different kind of roof lines. There's  
14 corner lines come around and you're telling me that  
15 your's is going to be as far affront as possible,  
16 totally flat with a parapet, totally flat.

17 I'm not sure. In fact, I wouldn't want to  
18 build it to attach to each of those buildings dealing  
19 with all of those, but I can't picture it, but maybe  
20 others can. So it's not worth trying to --

21 COMMISSIONER TURNBULL: Mr. Chairman?

22 CHAIRPERSON GRIFFIS: Yes, sir?

23 COMMISSIONER TURNBULL: I guess one  
24 question is, too, is it lining up with the end of the  
25 bay or is it lining up with the front of the building?

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1 CHAIRPERSON GRIFFIS: That's what they  
2 have indicated today when I asked the question, that  
3 actually their building would be in line, parallel  
4 with the further most projection of the bay.

5 COMMISSIONER TURNBULL: With the bay. I  
6 guess the other question for clarification --

7 CHAIRPERSON GRIFFIS: Is that not right?  
8 Okay. That's what we need to figure out, because that  
9 makes a huge difference. All right. I need you on  
10 the record. You're just going to need to state your  
11 name and address. That's why I was asking if we had  
12 a site plan that showed how this was setting.

13 MR. DAVIS: Yes, I'm Frank Davis. I live  
14 at 1501 Kenilworth Avenue, N.E., I am the developer of  
15 the project.

16 CHAIRPERSON GRIFFIS: Excellent. Thank  
17 you. A very good morning to you, Mr. Davis. So your  
18 indication is what?

19 MR. DAVIS: It would be face on line.  
20 Meaning, where the property lines are opposed to the  
21 bay, that is where it would be.

22 CHAIRPERSON GRIFFIS: Okay. So the bays  
23 on the adjacent properties are actually projecting  
24 over the property line?

25 MR. DAVIS: They would probably be a few

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1 inches, yes.

2 CHAIRPERSON GRIFFIS: No, they would be a  
3 few feet.

4 COMMISSIONER TURNBULL: No, no, no, they  
5 would be a few feet.

6 MR. DAVIS: I haven't looked at it  
7 recently.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. DAVIS: Yes, it appears they are in  
10 public space.

11 CHAIRPERSON GRIFFIS: Which is not  
12 uncommon. I mean all across the District they are in  
13 what are called the parking areas, the public space,  
14 so they project over the property line. It would be  
15 somewhat uncommon in this area. OP is not showing  
16 that. Do you have the property line in your analysis?

17 MR. JESICK: Good morning, Mr. Chairman  
18 and Members of the Board. My name is Matt Jesick.  
19 I'm with the Office of Planning. Yes, if you look on  
20 page 5 of 8 of the Office of Planning report, you can  
21 get some idea. This is from our GIS where the  
22 property lines are and you can also see the building  
23 footprints. It does appear that the bays project into  
24 the public space.

25 CHAIRPERSON GRIFFIS: Okay. They do

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1 project into public space?

2 MR. JESICK: Correct.

3 CHAIRPERSON GRIFFIS: Excellent. Okay.

4 So then now getting back to Mr. Davis' comment. You  
5 are citing your building on the flat side. Basically,  
6 on the property line.

7 MR. DAVIS: Yes.

8 CHAIRPERSON GRIFFIS: So it's going to be  
9 a face on line, property line and will rise straight  
10 up, which is why you are not putting a bay on yours in  
11 your property, because it would move your building all  
12 the way back and create all sorts of problems with  
13 courts and all that kind of complication. And you  
14 haven't taken the opportunity to build that out and go  
15 for public space, whatever type of relief you would  
16 have to get there. Now, I understand. It makes it a  
17 little bit more clear.

18 Okay. Any other questions,  
19 clarifications?

20 COMMISSIONER TURNBULL: Mr. Chairman?

21 CHAIRPERSON GRIFFIS: Yes, sir.

22 COMMISSIONER TURNBULL: I just wanted to  
23 clarify. I guess previously, I guess looking at what  
24 was called the revised set of drawings, which did not  
25 show a garage, which again looking at it when you saw

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1 the shingle, it looks like shingles, it looks like a  
2 faux mansard roof, but actually it's all brick.

3 In this set of drawings it would appear  
4 that there are again two apartments. One that had one  
5 on the first floor and then one that had one on the  
6 second and third floor. This now looks like -- and I  
7 just want to clarify this, that now the first floor is  
8 actually sort of the garage and storage area and that  
9 then you come in and you go up a long staircase and  
10 you get into the --

11 MR. DAVIS: Yes, sir.

12 COMMISSIONER TURNBULL: -- first unit on  
13 the second floor, then you go up again and then you  
14 get to the third floor.

15 MR. DAVIS: That is correct. That is  
16 correct.

17 COMMISSIONER TURNBULL: Am I understanding  
18 that right?

19 MR. WASHINGTON: Yes, yes, you are  
20 understanding correctly.

21 COMMISSIONER TURNBULL: Okay. I guess I  
22 would agree, I guess, with your comment. It's sort of  
23 like the concept of the revised set of drawings,  
24 rather than the garage. I like the front, the facade  
25 sort of looks more residential, but it looks more

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1 suburban now with the garage or part of it looks like  
2 a different character, but I just wanted to be clear  
3 on how the units actually work.

4 CHAIRPERSON GRIFFIS: Right.

5 COMMISSIONER TURNBULL: Thank you.

6 CHAIRPERSON GRIFFIS: Excellent. And good  
7 questions. A definite need for clarity. Maybe this  
8 is an odd question, but, Mr. Davis, in your  
9 performance in our all analysis, Mr. Nunley has given  
10 us an indication that parking is a problem. If you  
11 had, this was totally up to you, kind of an isolated  
12 vacuum decision, would you have that garage in the  
13 building or not? And you don't have to answer. I  
14 don't, you know --

15 MR. DAVIS: I haven't given a lot of  
16 thought other than I was told it was required.

17 CHAIRPERSON GRIFFIS: Right, right. Okay.

18 COMMISSIONER TURNBULL: Mr. Chairman?

19 CHAIRPERSON GRIFFIS: Yes?

20 COMMISSIONER TURNBULL: I just got a last  
21 question. As the applicant originally stated that  
22 they went with the garage because the curb cut was  
23 there. I mean, if this curb cut wasn't there, would  
24 you not go with the garage?

25 MR. DAVIS: If it weren't required, I

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1 wouldn't have gone with the garage.

2 MR. NUNLEY: If the curb cut were not  
3 there, then we would have sought a variance before  
4 this Board from the parking requirement.

5 COMMISSIONER TURNBULL: Oh, okay.

6 CHAIRPERSON GRIFFIS: Yes, it's an  
7 interesting piece. Okay. Other questions,  
8 clarifications? Let's move ahead and we'll get back  
9 to all this as we move ahead. With that though, let's  
10 move to the Office of Planning's report.

11 MR. JESICK: Good morning again, Mr.  
12 Chairman, Members of the Board. Again, my name is  
13 Matt Jesick. I'm with the Office of Planning. The  
14 applicant has requested variance relief from section  
15 401.3 which governs the minimum lot area and lot  
16 width. And the Office of Planning has no outstanding  
17 issues and recommends approval of the application.

18 Again, in the latest set of plans, the  
19 applicant is proposing a flat, which is a matter-of-  
20 right use in the R-4 District. However, the lot is  
21 only 17 feet wide and only about 1,300 square feet.  
22 18 feet is required for width and 1,800 square feet  
23 for lot area in the R-4 District for this use.

24 The Comprehensive Plan designates this  
25 area as moderate density residential and this would be

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1 in keeping with that designation. And we feel that  
2 the applicant has met the variance three part test.  
3 The property is unique. It was created before the  
4 Zoning Regulations were in place, and therefore, does  
5 not meet the Part 4 requirements of today.

6 This is the only vacant lot on this block  
7 on Montello Avenue. And therefore, because it does  
8 not meet the R-4 standards, some sort of variance  
9 relief is required for any use to be put on the site.  
10 We believe that relief could be granted without  
11 comparing the purpose of the Zoning Regs. Again, this  
12 is Zoned R-4, which is a District meant to preserve  
13 row houses and again also allows flats as a matter-of-  
14 right. And we believe the public would benefit  
15 through an enhanced streetscape.

16 As the applicant mentioned, they presented  
17 the case to the ANC, but there was no quorum,  
18 therefore, there is no official recommendation from  
19 the ANC. However, the Office of Planning has not  
20 received any letters or phone calls for or against the  
21 project. Again, we recommend approval and I would be  
22 happy to take any questions.

23 CHAIRPERSON GRIFFIS: Excellent. Thank  
24 you very much. Are there any questions from the  
25 Board? Ms. Miller?

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1                   VICE CHAIR MILLER: Is the structure as  
2 proposed out of character with respect to the garage  
3 or the bay with the rest of the neighborhood?

4                   MR. JESICK: I would say it is fairly rare  
5 to have a garage at the front of a house in this  
6 neighborhood. This property is in a unique situation  
7 that it does not have a rear alley, whereas most of  
8 the homes do have a rear alley. But yes, I would say  
9 it was fairly uncommon.

10                  VICE CHAIR MILLER: So it's uncommon.  
11 Would you say that it would take away from the  
12 character of the neighborhood or do you think that it  
13 could be made to blend in?

14                  MR. JESICK: I would say that it would not  
15 be in keeping with other homes in the neighborhood.  
16 However, since there is the existing curb cut and the  
17 applicant has the ability to provide parking, we do  
18 not object on a zoning basis.

19                  VICE CHAIR MILLER: And just because it  
20 came up in the discussion about the bays and we don't  
21 have a picture of what the rest of the neighborhood  
22 looks like, is it that some of them have bays and some  
23 of them don't, so that's really not an issue or is it?

24                  MR. JESICK: Yes. Again, looking at the  
25 vicinity map on page 5 of 8 of the report, the

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1 building footprints are shown. And there are some  
2 homes with bays, including the two immediate  
3 neighbors, and some other structures without bays in  
4 the surrounding area.

5 VICE CHAIR MILLER: Thank you.

6 CHAIRPERSON GRIFFIS: Okay. Any other  
7 questions from the Board? Does the applicant have any  
8 cross examination of the Office of Planning? Mr.  
9 Nunley, do you have any questions of OP?

10 MR. NUNLEY: No, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Okay. Excellent.  
12 Thank you very much. Appreciate it. Actually, just  
13 to -- I know we have now gone to our attention to  
14 this, page 5 of 8, but the vicinity map that was  
15 incredibly helpful showing the context of, you know,  
16 look I may be a big bay fan. But nonetheless, it's  
17 pretty clear on the specific block there are two other  
18 structures. Across the street it's a whole row of  
19 structures that are face on line, no bay, not that  
20 it's, you know, a typology that we're not familiar  
21 with.

22 It's just interesting of what makes  
23 decisions right in the middle of the block. But it's  
24 pretty clear to me at this point. Okay. Anything  
25 else then? If there's nothing further for the Office

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1 of Planning, let's move ahead. I would take note, and  
2 if I'm stating it correctly, Ms. Miller, this is not  
3 in the Historic District, but it is located in ANC-5B.  
4 Is a representative of the ANC present today, ANC-5B?

5 Not noting any representative of the ANC,  
6 you had addressed that a little bit in terms of the  
7 presentation to the community. I don't have any other  
8 Government reports or submissions on this application,  
9 so I would ask are there any persons present in  
10 Application 17494 to provide testimony in support of  
11 this application? Are there any persons present in  
12 opposition to this application that would like to  
13 address the Board, at this time?

14 Not noting any persons present to provide  
15 testimony, let's go to last questions from the Board,  
16 clarifications? Closing remarks?

17 MR. NUNLEY: No, Chairman.

18 CHAIRPERSON GRIFFIS: Okay. Well done.  
19 Good. First of all, I think this is very  
20 straightforward. Mr. Nunley is correct in standing on  
21 the record. I mean, we do have a variance for the  
22 minimum lot and minimum lot width. Clearly, it's an  
23 existing condition. It has existed for some time.  
24 There is substantial evidence in the record that there  
25 was a structure on this site before. Not much can be

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1 done in terms of changing that site. It was  
2 preexisting the regulations of 1958 which lends itself  
3 to that unique aspect, the preexisting nonconforming  
4 meets the threshold test of uniqueness.

5 And out of that practical difficulty, I  
6 think the Office of Planning in their report, but  
7 specifically today, said it directly and succinctly.  
8 Nothing could be built and they said no other use  
9 could happen there. But nothing could be built on  
10 this lot without some sort of relief. That's very  
11 clear.

12 And when we get into the last prong of the  
13 test, the left prongs of the test whether this would  
14 impair intent of the Zone Plan or Map or whether it  
15 would in any way burden or be against the public good,  
16 I think we have had some limited, but substantive  
17 discussion on that on some of the decisions that were  
18 made to move ahead with that.

19 You know, in one sense, maybe I'll speak  
20 on the record, perhaps I'll regret and think I should  
21 have kept it in my own head, but saying, you know,  
22 well, why don't we just grant you a parking variance?  
23 Because clearly the parking test could be made. We  
24 could do it pretty succinctly and quickly at this  
25 point and then leave it to the applicant's discretion

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1 on whether they provide that parking.

2 Because, quite frankly, the only  
3 difficulty I have is that garage in terms of the  
4 design elements of this. However, you know, maybe it  
5 isn't that difficult and, quite frankly, it was very  
6 helpful to be taken through this testimony the design  
7 of this, because the elevation, I understand these are  
8 great working documents and not, you know, great  
9 presentation documents and all that, but just some  
10 clarity of what was being presented was helpful. And  
11 it certainly is much more, what, interesting in terms  
12 of an elevation that I hadn't first thought.

13 But that's just me kind of streaming  
14 consciousness here. So let me let other Board Members  
15 speak to this if they have comments on it and then we  
16 can move ahead. Yes?

17 COMMISSIONER TURNBULL: Mr. Chairman, I  
18 just have maybe another point of clarification on  
19 sheet A4 of the final drawings.

20 CHAIRPERSON GRIFFIS: Yes.

21 COMMISSIONER TURNBULL: The section AA.  
22 It sort of shows that the grade level goes from -- it  
23 slopes up at the back of the proposed unit. And it  
24 looks like it's about at least halfway up. The plans  
25 don't really show and I guess that's what maybe a

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1 larger site plan might have clarified. I'm assuming  
2 there is going to be an area well with the stairs  
3 coming up to get out to grade or am I reading that  
4 correctly? And it looks like you are at least halfway  
5 up and is that right?

6 MR. WASHINGTON: Yes, you are right.

7 COMMISSIONER TURNBULL: Okay. So there  
8 would be an area well with stairs, steps coming up?

9 MR. WASHINGTON: That's right. That's  
10 correct.

11 COMMISSIONER TURNBULL: Okay. Thank you.

12 CHAIRPERSON GRIFFIS: Right. As opposed  
13 to the adjacent that have the kind of cellar in the  
14 front level that sets it up so the back --

15 COMMISSIONER TURNBULL: Yes.

16 CHAIRPERSON GRIFFIS: -- is even with the  
17 elevation.

18 COMMISSIONER TURNBULL: Yes. I didn't  
19 notice it until I -- after just going through here.

20 CHAIRPERSON GRIFFIS: Right.

21 COMMISSIONER TURNBULL: I couldn't really  
22 tell, but I see that there is a significant change in  
23 grade on that site. I guess when you were getting to  
24 that and a large site plan might have clarified and  
25 shown that.

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1 CHAIRPERSON GRIFFIS: Yes.

2 COMMISSIONER TURNBULL: Thank you.

3 CHAIRPERSON GRIFFIS: Okay. Anything  
4 else? Very well. If there's nothing further then  
5 from the Board and any other questions of the  
6 applicant and the applicant has rested in its case in  
7 chief, I think we don't need to dabble too much  
8 further into the specifics outside of that relief  
9 which has been requested.

10 One of the strongest pieces that I have in  
11 terms of my view is we get in as we address the design  
12 and lead the design is the fact that this is going to  
13 be brick on the front, which I think is going to be  
14 very, very successful for you in terms of the context  
15 and also in how you use and the sighting of this  
16 structure.

17 That being said, I think it's appropriate  
18 to move forward and I would move approval of the  
19 variance from the lot area and the lot width  
20 requirements under 401.3, which would allow the  
21 construction of the single-family, actually, flat, row  
22 dwelling at premises 1325 Montello Avenue, N.E., and  
23 would ask for a second.

24 BOARD MEMBER ETHERLY: Second it, Mr.  
25 Chair.

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1 CHAIRPERSON GRIFFIS: Thank you very much,  
2 Mr. Etherly. I think we have gone through clearly the  
3 test for the variances and, obviously, we are here  
4 based on an existing nonconforming lot, which is a  
5 direct link, obviously to the relief that's required.  
6 I think we can rely on our own analysis, but also that  
7 of the Office of Planning's, which was excellent, and  
8 also we do appreciate the graphic attachments that  
9 have been very useful in terms of the understanding of  
10 the full application on this.

11 I don't think I need to speak any more to  
12 the motion. I'll let others, if there are any  
13 additional comments to be said to this. Very well.  
14 Not noting any, my last comment, of course, is we have  
15 not had any discussion on conditions. The conditions  
16 of each order as is issued. Condition No. 1, whether  
17 stated or not, is this would be built in accordance  
18 with the plans and I would note that we do have the  
19 updated plans. I noted the final plan then and I only  
20 make note of that just because of the material choice,  
21 which I think were critical.

22 Obviously, if a bay projection or anything  
23 of that nature was to be entertained, that obviously  
24 wouldn't impact in any way that I could see in terms  
25 of the relief that was sought today. But that being

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1 said, if there's nothing further, we do have a motion  
2 before us. It has been seconded. I would ask for all  
3 those in favor to signify by saying aye.

4 ALL: Aye.

5 CHAIRPERSON GRIFFIS: And opposed?  
6 Abstaining? Very well. Why don't we record the vote,  
7 Ms. Bailey?

8 MS. BAILEY: Mr. Chairman, the vote is  
9 recorded as 5-0-0 to approve the application. Mr.  
10 Griffis made the motion. Mr. Etherly seconded. Mr.  
11 Turnbull, Mrs. Miller and Mr. Mann support the motion.

12 CHAIRPERSON GRIFFIS: Excellent. Thank  
13 you very much, Ms. Bailey. Is there any reason we  
14 would do a full order on this? If there's no  
15 objection, we could waive our rules and regulations  
16 and issue a summary order on this. Thank you very  
17 much, Ms. Bailey.

18 Mr. Nunley, thank you very much. Mr.  
19 Davis, good luck. We'll look forward to see it.  
20 Let's move ahead then.

21 MS. BAILEY: The final case of the morning  
22 is Application No. 17500 of Yigal Rappaport, pursuant  
23 to 11 DCMR 3103.2, for a variance from the minimum lot  
24 area requirements under subsection 401.3, to allow the  
25 conversion of an existing flat, that's a two-family

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1 dwelling, into a three unit apartment house. The  
2 property is Zoned R-4 and it's located at 1633 13<sup>th</sup>  
3 Street, N.W., Square 277, Lot 7.

4 CHAIRPERSON GRIFFIS: A very good morning,  
5 Mr. Gell. If you wouldn't mind stating your name and  
6 address for the record?

7 MR. GELL: Yes, Mr. Chairman, my name is  
8 Stephen Gell. I'm on the 5<sup>th</sup> Floor, 1101 30<sup>th</sup> Street,  
9 N.W., Washington, D.C. 20007. And with me is Mr.  
10 Yigal Rappaport and he can give you his address.

11 CHAIRPERSON GRIFFIS: Excellent. We'll  
12 just have you turn your microphone on. Perfect.  
13 Thank you.

14 MR. RAPPAPORT: I am residing at 200-H L  
15 Street, N.W., 20009.

16 CHAIRPERSON GRIFFIS: Good. Thank you  
17 very much. Okay. My goodness gracious, we have got  
18 an application that's based on a decision from 1988.  
19 Fascinating reading actually, but go ahead, Mr. Gell,  
20 we'll turn it over to you for opening remarks.

21 MR. GELL: Thank you, Mr. Chairman. This  
22 is a request for a variance to permit Mr. Rappaport,  
23 who is renovating this property, to have three units,  
24 instead of the two units that are currently permitted.  
25 And I'm going to have Mr. Rappaport give you some

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1 background on this and then I'll come back with some  
2 comments and we'll be happy to answer questions.

3 MR. RAPPAPORT: Mr. Chairman and Members  
4 of the Board, I'm Yigal Rappaport, the owner of 1633  
5 13<sup>th</sup> Street, N.W. I purchased the building in 2004  
6 intending to renovate it for three unit building. At  
7 the time, I was told that the building had been  
8 approved for three units. However, when I tried to  
9 get permits to continue the renovation, there was no  
10 way I could, that the previous owner had gotten  
11 permits in 18 -- 1989, the time required by the BZA  
12 order.

13 I'm told that in our district, we can have  
14 three units if we have 2,700 square foot of land. I  
15 have only 2,520 square foot of land, about 6.6 percent  
16 less than needed. The building is on east side of  
17 13<sup>th</sup> Street between Q and O Street. It has been  
18 vacant for about 15 years, the area below. 18 years  
19 ago, the previous owner began digging out the basement  
20 apartment and then abandon it.

21 The foundation is in bad shape and it will  
22 be difficult and costly to finish the job. It has to  
23 be underpinned carefully, as I continue to work.  
24 Basically, it's a big hole somebody started to work  
25 there. I paid \$900,000 for the building. The current

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1 budget is \$210,000, not including the cost of the  
2 position, financing cost and other such costs.

3 When I started the economic focus looked  
4 better than they do now. According to my latest study  
5 of comparables, as of last week, home in that  
6 neighborhood are selling for around \$400,000 and that  
7 unit will be below. Usually those are the inferior  
8 ones. I will not be able to get construction on  
9 unless I can show better revenue that I would be  
10 possible with only two units.

11 I am happy to report that the neighbors  
12 support this renovation. 35 nearby neighbors signed  
13 a petition that we submit to you, people on the right  
14 and left, etcetera. They would like to see the  
15 project completed as soon as possible. In addition,  
16 ANC-2F voted to support the project. They voted all  
17 of them.

18 Since I have space in the rear yard for  
19 four cars, the extra unit should not affect parking in  
20 the area. Thank you for your time, Chairman. I will  
21 be happy to answer any questions.

22 CHAIRPERSON GRIFFIS: Excellent. Thank  
23 you very much. I understand -- when you said it's a  
24 big hole, I didn't understand that.

25 MR. RAPPAPORT: Basically, it's somebody

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1 digging completely.

2 CHAIRPERSON GRIFFIS: Okay. So the work  
3 started, if I understand in the written testimony?

4 MR. RAPPAPORT: The whole thing is --

5 CHAIRPERSON GRIFFIS: They started digging  
6 out the basement level and stopped, but never pulled  
7 the permits after they were stopped in that work,  
8 came, got a variance, but never pulled the permits.

9 MR. RAPPAPORT: That would --

10 CHAIRPERSON GRIFFIS: Which would have  
11 effectuated the decision of the Board. Okay.

12 MR. RAPPAPORT: They started doing some  
13 work.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. RAPPAPORT: There is plumbing,  
16 etcetera.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. RAPPAPORT: And we have been to that.

19 CHAIRPERSON GRIFFIS: Right. Are the  
20 floors above habitable?

21 MR. RAPPAPORT: Yes.

22 CHAIRPERSON GRIFFIS: They are.

23 MR. GELL: Mr. Chairman, I was under the  
24 impression that it was not being rented, but I'm now  
25 told that it, in fact, was or has been. That we're

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1 really talking about the basement as not having been  
2 rented. I do have a couple of pictures of the  
3 basement. I didn't bring a lot of copies and we  
4 didn't file them, but I would be happy to circulate  
5 them.

6 CHAIRPERSON GRIFFIS: I don't know. Do we  
7 need them?

8 COMMISSIONER TURNBULL: I guess the only  
9 question is Mr. Rappaport mentioned about  
10 underpinning, because of the excavation. Is there any  
11 underpinning now done?

12 MR. RAPPAPORT: I am not construction  
13 person. It's hard for me to answer in certainty.

14 COMMISSIONER TURNBULL: Well, I guess I'm  
15 just worried. I mean, if there is a lot of excavation  
16 already done, is there a danger to the side walls?

17 MR. RAPPAPORT: I imagine there isn't,  
18 otherwise the two people who went and gave me very  
19 good builders that I know, who gave me estimate how  
20 much it would cost me. He not tell me that the  
21 building is in danger. But I obviously -- hopefully,  
22 you will grant me what I need and I will see that  
23 whatever I have to do to secure the building, I will  
24 do it.

25 COMMISSIONER TURNBULL: Okay. Thank you.

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1 CHAIRPERSON GRIFFIS: After 18 years, we  
2 probably would have seen it if it was in danger.  
3 Okay. Do any of you want to see the photographs? I  
4 don't think we need them, unless you want to put them  
5 in. Okay. Let's move on.

6 MR. RAPPAPORT: They are very revealing.

7 CHAIRPERSON GRIFFIS: Indeed. Okay.  
8 Anything else?

9 MR. GELL: I think everything else is on  
10 the record. We did provide you the most recent  
11 comparables as of the 14<sup>th</sup> and they show that prices  
12 are, in fact, going down. So we're hoping to get this  
13 on the market with enough -- not to run into trouble  
14 at the far end.

15 CHAIRPERSON GRIFFIS: Okay. Any other  
16 questions? I mean, really the way I frame this out is  
17 -- and maybe I'm incorrect, but I don't look at this  
18 beginning to dive directly into a full variance test,  
19 but rather framing it with a previous decision. So,  
20 you know, I guess, I'm just -- today is the day I just  
21 speak my mind on the record, I guess, is what it comes  
22 down to. It's the fact that it looks like what would  
23 be persuasive enough for us to go in to overrule  
24 ourselves, and I mean we weren't the ones that made  
25 the decision back in 1988, but if there was a

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1 decision, the order that is provided, doesn't give us  
2 a lot of fact base of all the analysis and such.

3 I think in my opinion that we give some  
4 deference or a lot of deference to previous Boards and  
5 their decision. So again, as I say, I think we're  
6 looking -- I'm looking more towards what is it that is  
7 here that would be persuasive to move in opposition to  
8 the previous order, which is not -- which lends  
9 itself, quite frankly, to a uniqueness factor.  
10 Whether the practical difficulty rises out of that or  
11 not, I don't know. I'll pass these down and open it  
12 up to others for comments or questions, at this time.

13 Okay. Yes?

14 VICE CHAIR MILLER: I'm sorry. I mean, I  
15 have heard what Office of Planning says and I have  
16 certainly read the material in the record. But  
17 looking at the material in the record, I think it can  
18 stand on the variances test alone without the previous  
19 order. So far.

20 CHAIRPERSON GRIFFIS: I don't disagree.

21 VICE CHAIR MILLER: If I hear something  
22 different --

23 CHAIRPERSON GRIFFIS: Right, right.

24 VICE CHAIR MILLER: So it could be looked  
25 at both ways.

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1                   CHAIRPERSON GRIFFIS:   Okay.   Excellent.  
2                   If there's nothing further then, let's move to the  
3                   Office of Planning.

4                   MR. MORDFIN:   Good morning.   I'm Stephen  
5                   Mordfin with the Office of Planning.   And the subject  
6                   application is in conformance with the criteria  
7                   required for the granting of a variance, because the  
8                   property -- because the Board granted a variance to  
9                   permit a third unit and work had begun based on that  
10                  approval.   It would be a practical difficulty if their  
11                  request is not granted, because the owner will still  
12                  have to complete the work started, but not be able to  
13                  have the third dwelling unit.

14                  And the approval will impair the -- the  
15                  approval will not impair the intent, purpose and  
16                  integrity of the Zone Plan, because the application  
17                  proposed is to provide almost all of the lot area or  
18                  93.3 percent of the requirement and work had begun on  
19                  the third unit pursuant to the Board's previous  
20                  approval.

21                  Therefore,   the   Office   of   Planning  
22                  recommends approval of the application as submitted.  
23                  Thank you.

24                  CHAIRPERSON GRIFFIS:   Excellent.   Thank  
25                  you very much.   Ms. Miller?   Others questions?   I

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1 think that's excellent. I mean, that frames it  
2 perfectly as it was written, but, you know, even more  
3 succinctly as stated here. Actually, this morning we  
4 have had some clarity, obviously, in terms of what was  
5 started and not started, what was utilized in the  
6 building and not utilized. I mean, that has an impact  
7 persuasively in one direction or the other at this  
8 point.

9 Okay. Does the applicant have any cross  
10 examination of the Office of Planning?

11 MR. GELL: No, not at this time.

12 CHAIRPERSON GRIFFIS: Very well. Any  
13 other questions then? If there is nothing at this  
14 time, let's move ahead. Is this going through HPRB or  
15 has it already gone through HPRB?

16 MR. GELL: No, it hasn't. Nothing has  
17 been submitted and there may not be any change on any  
18 exterior of the building.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. GELL: So that may not be a problem.

21 CHAIRPERSON GRIFFIS: Okay. But it's  
22 anticipated at least it will be walked through steps  
23 of some sort. Okay. And the ANC, which is 2F, did  
24 you present to the ANC on this?

25 MR. GELL: We did, yes, sorry.

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1 CHAIRPERSON GRIFFIS: Excuse me.

2 MR. RAPPAPORT: They all approve it, all  
3 of them unanimously.

4 CHAIRPERSON GRIFFIS: Oh, they did?

5 MR. RAPPAPORT: Yes.

6 MR. GELL: Well, this was the CDC. They  
7 have a committee that reviews the plans before the  
8 ANC, full ANC.

9 CHAIRPERSON GRIFFIS: I see.

10 MR. GELL: It was a unanimous vote. We  
11 were told that that was tantamount to a final vote.  
12 At the ANC there was another vote and they confirmed  
13 the decision. I hope you have a letter. I was  
14 advised by the Single Member that, in fact, that was  
15 being done.

16 CHAIRPERSON GRIFFIS: I don't show any  
17 records of it in the -- we don't have it in the  
18 record. Okay. Very well. Anything else then? I  
19 think the ANC --

20 MR. GELL: That's all for us.

21 CHAIRPERSON GRIFFIS: Okay. Any other  
22 questions from the Board? Is anyone here present to  
23 provide testimony in Application 17500 in support of  
24 the application, in opposition to the application?  
25 Not noting any persons present to provide additional

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1 testimony, we're going to take final questions from  
2 the Board.

3 Any summations, Mr. Gell, anything else?

4 MR. GELL: No. I think the Board has the  
5 full information.

6 CHAIRPERSON GRIFFIS: Okay. Anything, any  
7 comments on the historic orders? Very well. If there  
8 is nothing further, I think the record is full on this  
9 and I think it's appropriate to move ahead and begin  
10 our deliberation under a motion.

11 I would move approval of application 17500  
12 for the variance from the minimum lot area  
13 requirements under 401.3. This would, of, course  
14 allow the completion of the conversion of the existing  
15 flat into a three unit apartment building at premises  
16 1633 13<sup>th</sup> Street, N.W. I would ask for a second.

17 COMMISSIONER TURNBULL: Second.

18 CHAIRPERSON GRIFFIS: Thank you very much,  
19 Mr. Turnbull. As I said, I think we can walk right  
20 into this. Ms. Miller made an interesting comment  
21 that this might be able to stand alone on its own  
22 variance test, because I think that that variance test  
23 for this particular application actually is framed in  
24 exactly the way that the Office of Planning presented  
25 it and that is, look, there is a beginning of

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1 uniqueness of circumstance here.

2 That circumstance arose out of the 1988  
3 order, so obviously there was the application, the  
4 intent, and out of that then the work started,  
5 although it was not effectuated, that variance or  
6 relief, because proper permits were not pulled or at  
7 least the record of which doesn't show that they are.

8 And so all of those aspects, confluence of  
9 factors, lend itself into this practical difficulty  
10 that that work has been started and it has to be  
11 finished and it's hard to get into that without taking  
12 on, as the applicant has stated today, some economic  
13 impact of sorts, but also the mere fact that there was  
14 a basis of an approval prior and that there was  
15 substantial work started.

16 Whether it would impair the intent and  
17 integrity of the Zone Plan or Map, it hasn't shown  
18 that it would in terms of the R-4 and, certainly, no  
19 persuasive evidence has been presented and the  
20 analysis of the Office of Planning concurs with that.  
21 Whether it would impair the public good, again no  
22 persuasive evidence has been proven or presented that  
23 it would and I think it can move forward.

24 I will open it up for others. Ms. Miller?

25 VICE CHAIR MILLER: Well, I just found it

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1 interesting, the old orders that were submitted in  
2 support of this application, and I do want to separate  
3 us to a certain extent from some of the older orders  
4 and that that is why I think it's important that  
5 Office of Planning and the Chair articulated the  
6 findings for the variance test, because I found it  
7 quite interesting in looking at Appeal No. 8631 in  
8 which the BZA in that case just decided they didn't  
9 see any compelling reason to adhere to the 900 square  
10 foot per unit rule and that was that.

11 And I think in our case, we're not saying  
12 anything of the sort, that we're finding that the  
13 variance test is met.

14 CHAIRPERSON GRIFFIS: Agreed and that is  
15 an excellent comment. Good. Anything else?

16 MR. GELL: Sorry. Could we make this a  
17 summary order?

18 CHAIRPERSON GRIFFIS: It's possible, if it  
19 goes ahead successfully. We should probably call a  
20 vote to see what is going to happen. Pins and needles  
21 actually here, could split. Well, there it is.

22 That being said, we do have a motion  
23 before us and it has been seconded. I would ask for  
24 all those in favor to signify by saying aye.

25 ALL: Aye.

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1 CHAIRPERSON GRIFFIS: And opposed?  
2 Abstaining? Very well. Why don't we record the vote?

3 MS. BAILEY: Mr. Chairman, the vote is 5-  
4 0-0 to approve the application. Mr. Griffis made the  
5 motion. Mr. Turnbull seconded. Mr. Etherly, Mrs.  
6 Miller and Mr. Mann support the motion.

7 CHAIRPERSON GRIFFIS: You know, I will  
8 talk to you about that. Thank you very much, Ms.  
9 Bailey, and I think it is appropriate to waive our  
10 rules and regulations and issue a summary order on  
11 this unless anyone has any objection.

12 I would just take note, although this case  
13 has been dispensed with with Ms. Miller's comment,  
14 because I think that was very important to put into  
15 the record, that I have -- in my years on this Board,  
16 I have never seen a decision based from the Members  
17 that I have sat with, based on the fact that, you  
18 know, we don't even understand why this regulation is  
19 in here, let's just grant the variance and move ahead.

20 But I also know, and this is why I don't  
21 think that we would go deeply into questioning a  
22 previous order, I also know that sometimes when the  
23 orders are written, things are written into the order  
24 that may not have been as important as in the  
25 deliberation, but somehow made it into the written

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1 piece which is the direct history of it which becomes  
2 more of the basis of the order.

3 So all of that being said, again, I think  
4 there was great deference in my position, one, on our  
5 own analysis today, the Office of Planning's analysis,  
6 but deference also to the review from the previous  
7 Board. But that is enough said on that.

8 With that, have a very good afternoon.  
9 Good luck with you. Do get a structural engineer and  
10 look at that. Oftentimes these row dwellings do have  
11 only about 26 below. If you have dug out about a  
12 foot, you're probably opening up that piece and you  
13 sure don't want to visit that in a couple of years.  
14 Indeed. Have a great day. Ms. Miller, I'm sorry.

15 VICE CHAIR MILLER: Also, I just want to  
16 clarify that I wasn't reading from the order that  
17 granted the variance in this case. I was reading from  
18 an order that may have been relied upon and the  
19 history of the case. That's all.

20 CHAIRPERSON GRIFFIS: Right.

21 VICE CHAIR MILLER: So it wasn't this  
22 particular -- that particular Board that I was -- I  
23 didn't mean to criticize at all. I just wanted to say  
24 that we were relying on the facts presented in this  
25 case.

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1 CHAIRPERSON GRIFFIS: Right, exactly so.

2 VICE CHAIR MILLER: Okay.

3 CHAIRPERSON GRIFFIS: Exactly. Well-said.

4 Okay. Anything else then? Any other business for the

5 Board in this morning's session?

6 MS. BAILEY: Not for the morning, Mr.

7 Chairman.

8 CHAIRPERSON GRIFFIS: Excellent. Thank

9 you very much, Ms. Bailey. We do appreciate it. If

10 there is nothing further then, let's adjourn.

11 (Whereupon, the hearing was recessed at

12 11:26 a.m. to reconvene at 1:16 p.m. this same day.)

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

1:16 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order our 18<sup>th</sup> of July 2006 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and our esteemed colleague, Mr. Etherly will be joining us shortly. Representing the National Capital Planning Commission with us is Mr. Mann. He has run to get another file. He will be out in a matter of seconds. And representing the Zoning Commission with us this afternoon is Mr. Parsons.

Copies of today's hearing agenda are available for you. They are located at the table where you entered into the hearing room, as are the witness cards. Hopefully, you have all picked up two of those.

I will get to that in a moment, but first it should be known that all proceedings before the Board are recorded. They are recorded in two fashions, most important of which is the Court Reporter sitting on the floor to my right. He is creating the official transcript. We are also

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1 broadcast live on the Office of Zoning's website.

2 Attendant to both of those, we ask that  
3 people, first, turn off cell phones and beepers at  
4 this time. Secondly, when coming forward to speak to  
5 the Board, you will need to state your name and  
6 address for the record. You only need to do this  
7 once. You will also, prior to coming forward, have  
8 filled out two witness cards.

9 As I say, they are located at the table.  
10 They should also be in front, yes, of where you will  
11 provide testimony, at the table right in front of us.  
12 Those two cards go to the Court Reporter prior to  
13 coming forward. We appreciate if we could take care  
14 of that, so that no one chases you out of the hearing  
15 room to get your name and address to get it correctly  
16 spelled on the record.

17 The order of procedure for special  
18 exceptions and variances is as follows: Well, let me  
19 dispense with that, because I think we all know.  
20 Essentially, we have one midstream, we have one appeal  
21 and we have a preliminary matter which we're going to  
22 take up in the first course, and then I will get to  
23 the order of where we are to make up a little time so  
24 we can get right into our afternoon here.

25 It should be known, of course, that cross

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1 examination is permitted by parties and applicant in  
2 a case. In one case this afternoon do we have  
3 established parties. This Board does have direct  
4 jurisdiction over limiting time, area, magnitude and  
5 anything else that relates to cross examination or to  
6 keep it on track and on schedule and keep it within  
7 the jurisdiction of the application that is before us,  
8 but we'll get to that specifically also as needed.

9 It should be noted that we are creating an  
10 official record before us today in this hearing room,  
11 be it orally in the testimony that is provided or in  
12 written submissions. It's important to understand  
13 that the record that we create here is the basis and  
14 the only basis on which the Board will make a  
15 decision, base its deliberation on.

16 So it should be very clearly understood  
17 that any material should come into the record under  
18 the course of our hearings. If there is material that  
19 is not in the record and the Board deems is required,  
20 we will make sure that everyone understands what is to  
21 be submitted and when it is to be submitted into the  
22 Office of Zoning. Again, we can get to that as needed  
23 in specificity.

24 The Sunshine Act does require that this  
25 Board hold its hearing in the open and before the

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1 public. We do enter into Executive Sessions both  
2 during and after hearings on cases. We use our  
3 Executive Sessions to review facts or material  
4 elements in the case and we also at times deliberate  
5 perhaps on cases.

6 This is in accordance with the Sunshine  
7 Act and it is also in accordance with our rules,  
8 regulations and procedures. It should be well-known  
9 that in all of our regulations and procedures under  
10 the Sunshine Act that all of our decisions are  
11 discourses in the public. So anything that would  
12 happen in Executive Session is clearly reflected in  
13 the open and before the public.

14 At this time, let me say a very good  
15 afternoon to Ms. Bailey, who is with us on my far left  
16 with the Office of Zoning, Ms. Glazer with the Office  
17 of Attorney General and Mr. Moy with us from the  
18 Office of Zoning.

19 At this time, let me ask all those who are  
20 present that are anticipating addressing the Board, if  
21 you would, please, stand and give your attention to  
22 Ms. Bailey. She is going to swear you in.

23 MS. BAILEY: Would you, please, raise your  
24 right hand?

25 (Whereupon, the witnesses were sworn.)

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1 MS. BAILEY: Thank you.

2 CHAIRPERSON GRIFFIS: Excellent. Thank  
3 you all very much. So many familiar faces today.  
4 Very well. Let's move ahead then and, at this time,  
5 I think we can go to any preliminary matters for the  
6 Board's attention. Preliminary matters are those  
7 which relate to whether a case will or should be heard  
8 today, requests for postponements, continuances or  
9 withdrawals, whether proper and adequate notice has  
10 been provided.

11 If there is anything that should come up  
12 to the Board's attention as a preliminary item,  
13 meaning before the case proceeds or the case is  
14 called, I would ask that you come forward and have a  
15 seat at the table in front of us indicating a  
16 preliminary matter.

17 I will also ask first, Ms. Bailey, if you  
18 are aware of any preliminary matters for the Board's  
19 attention.

20 MS. BAILEY: Mr. Chairman and Members of  
21 the Board, to everyone, good afternoon.

22 CHAIRPERSON GRIFFIS: Good afternoon.

23 MS. BAILEY: Yes, Mr. Chairman, it has to  
24 do with Appeal No. 17502. There is a request from the  
25 Department of Consumer and Regulatory Affairs for the

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1 continuance of the hearing on this case.

2 CHAIRPERSON GRIFFIS: Excellent. Thank  
3 you very much. And we have those in written form.  
4 The Board has reviewed them and I note that there are  
5 those present here today, so let's go to that. On my  
6 right we'll start. Mr. Gottlieb, if you wouldn't mind  
7 stating your name and address for the record. I'm  
8 sorry, the microphone is not on. There.

9 MR. GOTTLIEB: Jonathan Gottlieb, 4610  
10 Dexter Street, N.W.

11 CHAIRPERSON GRIFFIS: Excellent. Ms.  
12 Gates? I'm just going to have everyone introduce the  
13 panel down then we'll go to the substance.

14 MS. GATES: Alma Gates, Chair, ANC-3D.

15 CHAIRPERSON GRIFFIS: Excellent. Thank  
16 you very much.

17 MR. FREEMAN: Kyrus Freeman, Holland and  
18 Knight and to my right is Chris Price, a summer  
19 associate at our firm.

20 CHAIRPERSON GRIFFIS: Excellent. And  
21 you're representing?

22 MR. FREEMAN: Decor Development.

23 CHAIRPERSON GRIFFIS: Good. Mr. Gottlieb,  
24 your -- or, rather, whose motion is it? It's DCRA's.  
25 Is DCRA here? And their motion is, hey, we can't show

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1 up so they have proved themselves right. You always  
2 like that when the Government can do that. I got to  
3 turn my mike off when I start saying these things.  
4 Okay.

5 It's pretty clear in the written  
6 submission. Mr. Gottlieb, you actually addressed it  
7 in written form also in terms of the fact that they  
8 were scheduled to be out of town and the other backup  
9 attorneys, I guess, are scheduled also on leave.

10 Additional information addressed to this,  
11 Mr. Gottlieb?

12 MR. GOTTLIEB: Yes. I beg your  
13 indulgence. I would like to just comment on a few  
14 things. The statement filed on behalf of the city was  
15 not quite accurate. I never consented to a  
16 continuance. They emailed me. I emailed back. I'm  
17 happy to share the correspondence with you. A problem  
18 in this case and, unfortunately, in other cases that  
19 I have become familiar with is the city has failed to  
20 provide members of the public with the information  
21 that they are required to provide in the public  
22 record.

23 In this case, the permit that I am  
24 challenging was issued in January. In January I went  
25 to the Permit Office, which is supposed to be a public

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1 reference room where all documents are available to  
2 members of the public to review. That is the  
3 cornerstone of the system on which the zoning is  
4 based.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. GOTTLIEB: If the public can't look at  
7 the records, then they can't challenge them.  
8 Mysteriously, all the files relating to this case had  
9 disappeared and that is not a recent event. That  
10 dates back to January when the permit was issued. My  
11 every effort to try to get any documentation on this  
12 permit, including the actual permits themselves, has  
13 been frustrated and thwarted.

14 CHAIRPERSON GRIFFIS: When you say the  
15 permits themselves, what do you mean?

16 MR. GOTTLIEB: I mean there is no file --

17 CHAIRPERSON GRIFFIS: Right.

18 MR. GOTTLIEB: -- in the Permit Office.  
19 The permits are not there. The applications are not  
20 there. The plans are not there.

21 CHAIRPERSON GRIFFIS: I know.

22 MR. GOTTLIEB: And I have spoken with city  
23 officials repeatedly.

24 CHAIRPERSON GRIFFIS: I understand that,  
25 and in your submission it also is very clear on that.

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1 But when you say permits, what are you looking for the  
2 Government to hand you?

3 MR. GOTTLIEB: The building permit that  
4 was issued in January.

5 CHAIRPERSON GRIFFIS: Okay. So the  
6 little --

7 MR. GOTTLIEB: For this construction.

8 CHAIRPERSON GRIFFIS: The little card.

9 MR. GOTTLIEB: Right, that is not there.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. GOTTLIEB: The application is not  
12 there.

13 CHAIRPERSON GRIFFIS: And the drawings.

14 MR. GOTTLIEB: The environmental papers  
15 are not there. The drawings are not there. There is  
16 nothing. The files are gone.

17 CHAIRPERSON GRIFFIS: Right, right, right.  
18 Okay. Good. Let's hear -- so what is your position  
19 on the continuance today?

20 MR. GOTTLIEB: Well, I don't think I -- my  
21 feeling was I had no choice and I didn't consent to  
22 it, but I have no choice. But I would like to call  
23 this Board's attention to the fact that, you know, all  
24 the papers are missing in this case.

25 CHAIRPERSON GRIFFIS: Right, right. No,

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1 and I appreciate that and the fact that you have drawn  
2 the Board's attention to that.

3 MR. GOTTLIEB: Okay.

4 MS. GATES: Is the commission's letter on  
5 file?

6 CHAIRPERSON GRIFFIS: Yes.

7 MS. GATES: Thank you.

8 CHAIRPERSON GRIFFIS: Exhibit No. 15.

9 MS. GATES: We support the continuance and  
10 we did vote to support it.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. GOTTLIEB: I think the commission also  
13 took a position on the merits of the case as well.

14 MS. GATES: Yes.

15 CHAIRPERSON GRIFFIS: Right. Well, and  
16 additionally you asked that the work be stopped until  
17 the files are found.

18 MS. GATES: Correct.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. FREEMAN: We do not oppose a  
21 continuance. To the extent that anyone needs a copy  
22 of the building plans, we are certainly happy to  
23 provide a set of the building plans that show our  
24 project as approved by DCRA.

25 MR. GOTTLIEB: That would be great. If

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1 you can provide it to me, that would be great. Thank  
2 you very much.

3 MS. GATES: We would also ask that they be  
4 submitted to DCRA along with copies of the  
5 applications and the actual permits.

6 CHAIRPERSON GRIFFIS: Submitted to DCRA?

7 MS. GATES: There is nothing at DCRA to  
8 base --

9 CHAIRPERSON GRIFFIS: Right.

10 MS. GATES: -- an inspection on, which is  
11 why we have asked for a Stop Work Order to be issued.

12 CHAIRPERSON GRIFFIS: Right. Okay.  
13 Anything else then? Any questions? Good. This  
14 raises great concern for us actually, and the Board  
15 had a little bit of discussion on it. It was pretty  
16 clear just reading this, fundamentally it was kind of  
17 shocking. Ms. Gates just said it. How are they going  
18 to inspect? How would you get final approvals if  
19 there is no files to correspond with a permit that was  
20 issued?

21 So, in fact, that is what we were fully  
22 intending to do, is ask the owner to present their  
23 documents because, if I'm not mistaken, a stamped set  
24 would be required to be on-site. So clearly there are  
25 documents somewhere. Let's not waste everybody's time

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1 searching for things that are probably in existence  
2 somewhere.

3 I would suggest that we get those into the  
4 record. DCRA can pick them up out of the record. We  
5 don't lose our files anymore, I don't think, but  
6 anyway, if we have it in there. Obviously, these are  
7 going to be full size. We'll try and make  
8 arrangements to have reductions or whatever needs to  
9 happen, let's get it done.

10 Now, let's pick dates. It's disappointing  
11 to have this, although we have got a lot to do. We  
12 can always fill our time, but obviously everyone that  
13 is required to be here for this has something at  
14 stake, you know, and certainly the owner wants to  
15 continue on with their development or construction and  
16 we want to make sure everything is done correctly.

17 So we have looked at our schedule in  
18 preparation of this. We thought it was a little bit  
19 more of a consensus than it was, but that is on the  
20 record at this point. You know, unfortunately, we  
21 have an appeal every afternoon in September and  
22 October and probably November. I don't know what it  
23 is, but our October is clearly filled with appeals.  
24 The first date that we can fit this back in, as we  
25 don't have hearings in August, we are up to one of our

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1 last days in July, is the 26<sup>th</sup> of September.

2 Comments on that? Mr. Gottlieb, it's your  
3 appeal.

4 MR. GOTTLIEB: Do you have an alternate  
5 date?

6 CHAIRPERSON GRIFFIS: January '07?

7 MR. GOTTLIEB: Is that right?

8 CHAIRPERSON GRIFFIS: I don't know. Some  
9 realist -- the reality is, Ms. Bailey, we would be  
10 looking in November, am I correct, November/December?

11 MR. GOTTLIEB: You know, I guess my -- it  
12 depends on when I may see all the documents. If I  
13 don't see all the documents until Labor Day or after,  
14 you know, it really depends on when I get the  
15 documents.

16 CHAIRPERSON GRIFFIS: No, this should be  
17 two weeks away. Am I right?

18 MR. FREEMAN: We should be able to file  
19 the plans within two weeks at most.

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. FREEMAN: As you said, they are at the  
22 site. We just have to get a copy and try to figure  
23 out the best way to get them reduced, so maybe even a  
24 week.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. FREEMAN: At most.

2 CHAIRPERSON GRIFFIS: I think there is  
3 going to be all of August to look at these things.  
4 Now, obviously, this is incomplete. I am not sure  
5 what their files are and whether they have copies of  
6 the application forms and you said environmental. I  
7 mean, there's a lot of things that you kind of ticked  
8 off.

9 MR. GOTTLIEB: Right.

10 CHAIRPERSON GRIFFIS: Which is why I want  
11 you to focus on what you actually thought you wanted  
12 to get or need to get.

13 MR. GOTTLIEB: Whatever is usually in the  
14 public record.

15 CHAIRPERSON GRIFFIS: Well, right, and  
16 that is not what is going to be coming --

17 MR. GOTTLIEB: Right.

18 CHAIRPERSON GRIFFIS: -- from the owner,  
19 I wouldn't imagine, because they don't have the same  
20 entire file or, an EISF, the application forms. They  
21 will dig into whatever it is. The critical piece that  
22 I think, however, would be -- there should be copies  
23 of the permit on-site, the physical paper that says  
24 what the permit is and the drawings.

25 MR. GOTTLIEB: Right.

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1 CHAIRPERSON GRIFFIS: And from there we'll  
2 have to cobble together. Maybe that will also refresh  
3 the Government's recollection of the file.

4 MR. GOTTLIEB: Right. Mr. Chairman, I  
5 also submitted a FOIA request.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. GOTTLIEB: On the 29<sup>th</sup> of June. So,  
8 you know, if the city responds to it, which they  
9 haven't so far, great. If they don't respond to it  
10 then, you know --

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. GOTTLIEB: -- I'm not going to have  
13 the documents that I need.

14 CHAIRPERSON GRIFFIS: Yes, yes.

15 MR. GOTTLIEB: So, I guess, you know, can  
16 we tentatively say the 26<sup>th</sup> and if --

17 MR. FREEMAN: If I may. I think for the  
18 purposes of the appeal, our plans will clearly show  
19 that we complied with each of the applicable zoning  
20 requirements, which is what this appeal is based on.

21 CHAIRPERSON GRIFFIS: Right. I tend to  
22 agree. I mean, the substance of the matter of any  
23 basis of appeal is going to be found in these  
24 documents. There may be additional pieces in and out,  
25 but I think we can cobble it together or certainly

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1 try.

2 MR. GOTTLIEB: If there is a problem, I  
3 guess we can visit that on the 26<sup>th</sup>.

4 CHAIRPERSON GRIFFIS: Indeed.

5 MR. GOTTLIEB: Okay.

6 CHAIRPERSON GRIFFIS: Indeed. In terms of  
7 can we tentatively set, no. This would be our public  
8 notice. Obviously, we have requirements of notice so  
9 we would have to set this the 26<sup>th</sup>. Worst case, we  
10 would be looking at not proceeding on the 26<sup>th</sup>, but I  
11 certainly hope that we would not be in that frame.

12 MR. GOTTLIEB: Okay.

13 CHAIRPERSON GRIFFIS: This would be the  
14 second case in the afternoon on the 26<sup>th</sup>. It's the  
15 second appeal of the afternoon of the 26<sup>th</sup>. The first  
16 appeal is a continuance, a continuation I should say,  
17 so I'm not anticipating that it will take more than  
18 two hours and then we would be able to call this case.  
19 Yes?

20 COMMISSIONER PARSONS: I wondered when the  
21 structure was to be completed.

22 MR. FREEMAN: I'm not sure. I would have  
23 to check the file, but I think September is feasible  
24 in terms of having a hearing.

25 COMMISSIONER PARSONS: I'm sorry?

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1 MR. FREEMAN: I'm not sure of the expected  
2 completion date of the construction, but we don't  
3 object to a September 26<sup>th</sup> hearing date.

4 COMMISSIONER PARSONS: You don't know  
5 whether it is to be completed this year or next year?

6 MR. FREEMAN: It would be completed this  
7 year.

8 COMMISSIONER PARSONS: Okay. Thank you.

9 CHAIRPERSON GRIFFIS: Any other questions,  
10 clarifications?

11 VICE CHAIR MILLER: Well, I just have a  
12 question for either Ms. Gates or Mr. Gottlieb, whether  
13 or not Mr. Crews has responded as to what action DCRA  
14 is taking with respect to trying to locate the missing  
15 documents?

16 MS. GATES: I have not talked to him.  
17 Well, excuse me, Mr. Gottlieb, you go first.

18 MR. GOTTLIEB: I spoke to him in March  
19 after an ANC meeting and one of my neighbors actually  
20 has been in touch with him and Mr. Rogers since -- at  
21 least since January with persistent phone calls. And  
22 we have been told as recently -- I think Mr. Rogers  
23 called me about two weeks ago saying that he was going  
24 to try to locate them and we have gotten not a single  
25 document related to this development.

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1                   VICE CHAIR MILLER: I would just note that  
2                   in granting this continuance, which it seems obvious  
3                   we're doing, we need to get word out to DCRA that it's  
4                   in part based on the assumption that they are going to  
5                   be making a diligent effort to locate whatever  
6                   documents are only in their possession and not in the  
7                   intervenor's possession in a timely fashion.

8                   MR. GOTTLIEB: Right.

9                   VICE CHAIR MILLER: So that you can  
10                  prepare your case for the 26<sup>th</sup>.

11                  MR. GOTTLIEB: Thank you.

12                  MS. GATES: The ANC meets with Bill Crews  
13                  on a monthly basis and I had put this on the list for  
14                  review and decided the better course of action was not  
15                  to review it on Thursday, because it is now before the  
16                  Board. However, when I did ask him if he had received  
17                  the commission's letter, I didn't get a response. So  
18                  I will meet with him Thursday and know that, but that  
19                  doesn't help you now.

20                  VICE CHAIR MILLER: But you can  
21                  communicate to him the substance of this proceeding?

22                  MS. GATES: I would be glad to.

23                  VICE CHAIR MILLER: And I would also ask  
24                  that -- I would think that the ANC would want served  
25                  on the ANC the same papers that are being served on

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1 Mr. Gottlieb since you're a party?

2 MS. GATES: Absolutely.

3 CHAIRPERSON GRIFFIS: Okay. So do we have  
4 any difficulty with the 26<sup>th</sup> then, ANC, Mr. Gottlieb?  
5 Okay. Let's get into the technical aspects. As I  
6 said, these are going to be full size drawings. So I  
7 think what we are requesting, obviously, is that they  
8 be reduced, so that they can be served on everyone and  
9 also be put into the file. I think it would be  
10 appropriate.

11 MR. GOTTLIEB: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes?

13 MR. GOTTLIEB: I would be happy to pay the  
14 cost for getting the full size drawings, so that I can  
15 do the measurements as to just the size of the -- the  
16 lot area and the square footage --

17 CHAIRPERSON GRIFFIS: Sure.

18 MR. GOTTLIEB: -- are the two key issues.

19 CHAIRPERSON GRIFFIS: Excellent point and  
20 that's great. I'm going to send you guys out. You  
21 guys can arrange how you want to get them and what you  
22 want to get.

23 What I want to do is just not get 30 sets  
24 of full sized drawings, because it will drive everyone  
25 nuts here because we can't store them. And you know

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1 what? It might be productive if we had one full size  
2 for the Board, Mr. Gottlieb and then just reductions  
3 for the folder, for the file itself.

4 I would suggest just to be clear, if you  
5 get anything from DCRA of which is the basis of your  
6 appeal --

7 MR. GOTTLIEB: Yes.

8 CHAIRPERSON GRIFFIS: -- please, can you  
9 put it in the record?

10 MR. GOTTLIEB: I will put it in the  
11 record.

12 CHAIRPERSON GRIFFIS: And make sure  
13 everyone knows it's coming into the record or serve it  
14 on everybody. Let's come all prepared with all the  
15 same information on the 26<sup>th</sup>.

16 MR. GOTTLIEB: Okay.

17 CHAIRPERSON GRIFFIS: That will save us  
18 all a lot of effort and time. Okay. Anything else  
19 then? Any other quick questions? Good.

20 Just to be also clear, we often get  
21 complaints about our schedule. There is no way to  
22 predict when I will call this appeal in that  
23 afternoon, because I cannot predict how long that  
24 continued appeal will happen. Our afternoon starts at  
25 1:00 and so we will call that as close to 1:00 as

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1 possible. Obviously, you can check in on the website,  
2 call into OZ or be here at 1:00.

3 Okay. Anything else? Clarifications,  
4 questions? Very well. Thank you all very much.

5 MR. GOTTLIEB: Thank you for your help.

6 CHAIRPERSON GRIFFIS: We appreciate it and  
7 we will have this serve as official public notice that  
8 this will be called on the 26<sup>th</sup> of September 2006.

9 MR. GOTTLIEB: Thank you.

10 CHAIRPERSON GRIFFIS: In the afternoon  
11 session, 26<sup>th</sup> September '06. Okay. I think we're  
12 ready to move ahead then when Ms. Bailey is free.

13 MS. BAILEY: Ready, Mr. Chairman? Ready?  
14 Mr. Chairman, Members of the Board, the next  
15 application is No. 17309 and it's the Application of  
16 Dorchester Associates LLC, pursuant to 11 DCMR section  
17 3104.1, for a special exception under section 2516, to  
18 allow 13 detached single-family dwellings on a single  
19 subdivided lot, including approval of two 16 foot wide  
20 roadways rather than 25 feet wide roadways. This is  
21 under section 2516(d).

22 The property is located in the CBUT/R-1-A  
23 District in the 2800 block of Chain Bridge Road, N.W.  
24 It is also known as Square 1425, Lot 827, Parcels  
25 12/63, 12/293 and 12/294. As you know, Mr. Chairman,

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1 this is a continuation of previously held hearings on  
2 this case.

3 CHAIRPERSON GRIFFIS: Yes, indeed. Thank  
4 you very much, Ms. Bailey. Let's move ahead then. We  
5 have new submissions from the applicant and we would  
6 allow the time, at this point, if you wanted to  
7 address those. If not, we will move straight ahead as  
8 our schedule was laid out and that schedule would next  
9 be the Office of Planning and then the next Government  
10 reports. Then we would go into the ANC and then  
11 testimony. So yes?

12 MR. BROWN: Patrick Brown for the  
13 opponents of Chain Bridge Road. In opening up the  
14 record for the applicant's direct, I think we need to  
15 be careful to limit it. My recollection, having  
16 reviewed the transcript, is the Board left the record  
17 open simply for a landscaping plan.

18 And I think that based on the applicant  
19 having completed his presentation that any  
20 presentation now, separate and apart from their  
21 rebuttal rights, be limited strictly to that issue.  
22 Otherwise, the applicant, you know, after so many  
23 times is being given multiple bites at the apple and  
24 I think that's inappropriate use of the Board's time  
25 and resources.

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1 CHAIRPERSON GRIFFIS: Okay. I don't have  
2 any difficulty with that and we'll let Mr. Glasgow  
3 address that also, but I don't think there is any need  
4 to go well beyond the substantive changes that we  
5 have, although landscaping is a bit of a general term,  
6 because part of that landscaping actually goes into  
7 the storm water management.

8 MR. BROWN: Right.

9 CHAIRPERSON GRIFFIS: Which is also part  
10 of the new submissions.

11 MR. BROWN: Right.

12 CHAIRPERSON GRIFFIS: And so I understand  
13 exactly. I don't think we want to have a whole new  
14 case presentation and, frankly, we don't have the time  
15 allotted for that. Mr. Glasgow?

16 MR. GLASGOW: Yes, I think that you  
17 captured it when you said that the landscape plan and  
18 I think in the transcript it talked about there may be  
19 some impact on the Storm Water Management Plan and if  
20 there is, that the Board wanted to see that. So we  
21 were going to address both of those items.

22 We were suggesting probably about five  
23 minutes for Mr. Stan Andrulis to address the one part  
24 and then Ms. Lauren Wheeler, our landscape architect,  
25 to address for about 10 minutes the landscape plan.

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1 CHAIRPERSON GRIFFIS: Objections?

2 MR. BROWN: I'm not so sure how Mr.  
3 Andrulis fits into the picture, because he wasn't the  
4 witness with respect to storm water management. In  
5 fact, no witness was presented for storm water  
6 management. I can understand the landscape architect,  
7 but I'm not so sure what role Mr. Andrulis plays in  
8 it.

9 CHAIRPERSON GRIFFIS: Well, that's when we  
10 would find out if he addresses us. I don't  
11 understand. How could procedurally I not allow them  
12 to have a witness address the submission?

13 MR. BROWN: And I'm not saying that they  
14 shouldn't address the submission, but Mr. Andrulis  
15 wasn't the witness with respect to storm water  
16 management. They chose not to have a witness on  
17 direct and offered Mr. Afful for some questions from  
18 the Board.

19 So if we're talking about, and I think  
20 we're talking about, limiting the discussion to  
21 landscaping and the impact on storm water management,  
22 then Mr. Andrulis doesn't seem to be the correct  
23 witness, but maybe I'm jumping the gun.

24 MR. GLASGOW: Yes, I would think so. I  
25 think that it's up to us to present our case.

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1 CHAIRPERSON GRIFFIS: Okay. I think it's  
2 best to move forward with the witnesses that they are  
3 presenting. Obviously, they are open for cross. I  
4 believe we can move ahead. In fact, I think it's even  
5 more efficient than them coming in with rebuttal  
6 witnesses which would then open this all up at that  
7 point, which we would probably be a lot more tired at  
8 that hour of the afternoon by the time we got there.  
9 That being said, let's move ahead. About 10 minutes  
10 you said or rather, yes?

11 MR. GLASGOW: It will be 15 total.

12 CHAIRPERSON GRIFFIS: Sure, sure.

13 MR. GLASGOW: 5 for Mr. Andrulis and then  
14 10 for the landscape architect.

15 CHAIRPERSON GRIFFIS: Let's roll.

16 MR. GLASGOW: So I would like to first  
17 call Mr. Stan Andrulis and also Ms. Lauren Wheeler, if  
18 she could come up to the stand. And we will be  
19 introducing and submitting Ms. Wheeler as an expert in  
20 landscape architecture.

21 CHAIRPERSON GRIFFIS: And there is some  
22 information coming in on Ms. Wheeler?

23 MR. GLASGOW: There is coming --  
24 information coming in on Ms. Wheeler.

25 CHAIRPERSON GRIFFIS: Okay. And Ms.

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1 Wheeler is responsible for the landscape master plan  
2 that was submitted on the 30<sup>th</sup> of June?

3 MR. GLASGOW: She is.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. BROWN: Mr. Chairman, also,  
6 logistically, while we're setting up their boards, can  
7 we set up our PowerPoint presentation? We have got  
8 somebody IT capable of doing that now.

9 CHAIRPERSON GRIFFIS: Sure.

10 MR. BROWN: We don't want to lose them.

11 CHAIRPERSON GRIFFIS: Yes, if we can save  
12 time, that would be grand.

13 MR. BROWN: I appreciate that, the Board's  
14 system.

15 CHAIRPERSON GRIFFIS: Thank you. Any  
16 questions of Ms. Wheeler? Is Mr. Brodsky present?  
17 Excellent. Did you get a copy of Ms. Wheeler's  
18 resume? Okay. Do you have any -- good.

19 What I'm doing, I'm going to ask the  
20 parties and the applicant and the Board Members if  
21 they have any questions of Ms. Wheeler in regards to  
22 her being presented as an expert witness. So if you  
23 do, you can come forward to the table. Obviously, you  
24 will have to be on a mike.

25 Any questions from the Board? No

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1 clarification questions from the Board. Mr. Brown,  
2 any position or questions of Ms. Wheeler?

3 MR. BROWN: I have a question that goes  
4 back to the submission and perhaps it's just my copy,  
5 but what we received didn't bear any information that  
6 indicated that Ms. Wheeler or her company were the  
7 ones producing these drawings.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BROWN: So that was a question on my  
10 mind. They are blank except for the --

11 CHAIRPERSON GRIFFIS: Right. I'm sorry.  
12 Perhaps you missed it. I asked if Ms. Wheeler  
13 produced the master plan landscape plan and the answer  
14 was -- now on the microphone, if you turn it on, is  
15 Ms. Wheeler?

16 MS. WHEELER: Yes, Natural Resources  
17 Design produced the master plan and the planting plan  
18 for the Chain Bridge Road Project.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. BROWN: Is there some significance to  
21 the fact that -- I mean, architects who landscape or  
22 otherwise are generally the first to take credit for  
23 their work. Why that wasn't reflected on the plans is  
24 unusual.

25 CHAIRPERSON GRIFFIS: It is. You're not

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1 being proffered as an expert witness in marketing, I  
2 will tell you that, but why didn't you put your name  
3 all over this thing?

4 MS. WHEELER: We followed the format of,  
5 I believe, the March 24<sup>th</sup> submission by Mr. Andrulis'  
6 office in terms of what sort of information was  
7 provided on the plans in terms of the firm, so it was  
8 simply due to that.

9 CHAIRPERSON GRIFFIS: So formatting.

10 MS. WHEELER: Yes.

11 CHAIRPERSON GRIFFIS: Okay. Very well.  
12 Other questions, Mr. Brown?

13 MR. BROWN: I don't see any indication  
14 here, and my eyes are starting to fail me, of  
15 licensing of Ms. Wheeler or her company here in the  
16 District of Columbia, even though I do see some D.C.  
17 apparent experience. I don't think I'm missing it,  
18 but correct me if I'm wrong.

19 MS. WHEELER: We are licensed in the  
20 District of Columbia and our landscape architect,  
21 Greer Maneval, who is also providing the architectural  
22 services, landscape architectural services as well.  
23 Was that submitted as well?

24 CHAIRPERSON GRIFFIS: No.

25 MS. WHEELER: Okay. We have a submission.

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1 CHAIRPERSON GRIFFIS: Do we need it? Why  
2 are we getting that?

3 MR. GLASGOW: If there are all these  
4 questions, we're happy to put everything in the  
5 record.

6 CHAIRPERSON GRIFFIS: Right, but --

7 MR. GLASGOW: If there is a challenge as  
8 to plans and who prepared them and --

9 CHAIRPERSON GRIFFIS: Right, no.

10 MR. GLASGOW: -- what the criteria are, we  
11 can put it all in.

12 CHAIRPERSON GRIFFIS: I think it has been  
13 answered to my satisfaction, if there's others that  
14 need it, but I'm still not clear on the -- the  
15 question was the licensing, Ms. Wheeler, of you and  
16 then of the firm in the District.

17 MS. WHEELER: As a landscape designer, I  
18 don't need to be licensed in the District of Columbia.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. WHEELER: But we do have a registered  
21 landscape architect who provides services for Natural  
22 Resources Design who is.

23 CHAIRPERSON GRIFFIS: I see.

24 MS. WHEELER: Okay?

25 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

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1                   VICE CHAIR MILLER: Just I am a little bit  
2 confused based on your last answer. Are you a  
3 landscape designer or a landscape architect?

4                   MS. WHEELER: No, I'm glad that you're  
5 bringing up that question, because I have a master's  
6 in landscape design. I am a landscape designer.  
7 Greer Maneval, who also worked on this project, is a  
8 registered landscape architect and who is present  
9 today and we do have her information available to  
10 submit if needed.

11                   VICE CHAIR MILLER: Thank you.

12                   CHAIRPERSON GRIFFIS: Any other questions?  
13 Okay. And just very briefly, you have noted a couple  
14 of selected projects here. These are all projects  
15 that you were directly involved in in terms of design  
16 and management or one or the other?

17                   MS. WHEELER: I was directly involved in  
18 the majority of those projects. Greer Maneval was  
19 involved with the Merry-Go-Round Farms which is listed  
20 there. That project I was not directly involved in.

21                   CHAIRPERSON GRIFFIS: Okay. Very well.  
22 Any other questions?

23                   COMMISSIONER PARSONS: So it would seem  
24 that we should qualify her as an expert in landscape  
25 design and not landscape architecture.

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1 MR. GLASGOW: I agree, and if there is a  
2 need that we have a landscape architecture to be  
3 qualified as an expert witness, we have another one  
4 here and we can go through that qualification process  
5 if deemed necessary.

6 I think that what we will do, given the  
7 testimony, is I would like to have Greer's -- I would  
8 like to put that resume in the record, because there  
9 are all these questions about who prepared this and  
10 how and under what criteria.

11 CHAIRPERSON GRIFFIS: Very well. Mr.  
12 Parsons brings up the point that I think is pertinent,  
13 and Ms. Wheeler is being proffered as an expert  
14 witness in landscape design. I have no difficulty  
15 with that. Actually, we're talking about a master  
16 plan here as it's clearly labeled. It is conceptual  
17 in nature and designed. I don't have any difficulty  
18 with that.

19 Unless there is any objection to it, we'll  
20 take in the other CV or resume that is coming in at  
21 this point for the landscape architect and I think  
22 it's worth continuing. Yes, Mr. Brown?

23 MR. BROWN: And I noticed in Ms. Maneval's  
24 CV here that she is registered in Pennsylvania,  
25 Maryland and Virginia. And, again, perhaps I'm

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1 missing it, but I don't see any reference to the  
2 District of Columbia.

3 CHAIRPERSON GRIFFIS: We need you on a  
4 microphone. If you wouldn't mind just stating your  
5 name and address for the record.

6 MS. MANEVAL: Sure. Greer Maneval, 2507  
7 Plyers Mill Road in Silver Spring, Maryland and there  
8 is no licensure for landscape architecture in the  
9 District of Columbia. There is in Pennsylvania, there  
10 is in Maryland and there also is certification in the  
11 State of Virginia and I hold all of those.

12 CHAIRPERSON GRIFFIS: Funny. I thought we  
13 required everything of everybody in this town over and  
14 over again. Okay. Yes?

15 VICE CHAIR MILLER: Ms. Wheeler, I was  
16 wondering if you could just really briefly just state  
17 the difference between a landscape designer and a  
18 landscape architect and why, as the designer, you are  
19 going to be presenting the testimony.

20 MS. WHEELER: In the most basic of terms,  
21 I think a landscape designer has often worked from the  
22 ground up. In my personal background, I started off  
23 as a laborer. I was a landscape foreman. I was a  
24 designer's apprentice. I became a designer. I went  
25 to school to get a master's in landscape design and as

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1 a designer.

2 The landscape architect is involved in  
3 probably the broader picture. They are licensed.  
4 They have involvement, perhaps a greater spectrum of  
5 involvement in, you know, landscape issues that can  
6 involve much larger areas than what we're speaking of  
7 today.

8 But I have been involved in development  
9 projects with other developers for the past probably  
10 8 to 10 years of my professional career, as well as  
11 having been a design/build contractor for 10 years as  
12 a part of my past, so I have really had many phases of  
13 direct involvement with landscape projects including,  
14 as I think you note there, Leisure World in Lansdowne  
15 and currently River Gate. It's a new gateway project  
16 on the Aquapon, I-95.

17 VICE CHAIR MILLER: Thank you.

18 CHAIRPERSON GRIFFIS: Very well. Anything  
19 else? Any other questions? I think we should move  
20 ahead. We can take Ms. Wheeler as an expert witness  
21 in landscape design.

22 MR. GLASGOW: Thank you. I would like to  
23 have Mr. Andrulis address the changes to the plans  
24 just very briefly, and then we'll turn it over to Ms.  
25 Wheeler.

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1 MR. ANDRULIS: Good afternoon. Stan  
2 Andrulis. I want to just quickly go over the changes  
3 we made in the plans since the last meeting that deal  
4 sometimes directly, sometimes indirectly with storm  
5 water management, some of the Board's comments and,  
6 certainly, they deal with landscaping.

7 First off, Lauren's firm has designed an  
8 entirely new naturalistic landscape design, which we  
9 feel is much better. It extends, essentially, the  
10 park into our development. It uses native plant  
11 material and it is much improved over our last.

12 We have refined our Storm Water Management  
13 Plan slightly. Its major changes are moving some of  
14 our devices like dry wells slightly so that they work  
15 with our Storm Water Management Plan better or, sorry,  
16 work with our landscape plan better, meaning that the  
17 observation wells of these dry wells aren't in the  
18 middle of a yard, but they are in the planting beds so  
19 they are not seen, that kind of thing.

20 We have made one kind of last minute  
21 change also. This pipe here which was meant to be in  
22 the submission is trenched. We realized that it was  
23 harming the root systems of some of the smaller trees  
24 it goes by, so we are now going to bore this line as  
25 well as the ones in our submission that we showed

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1           bored as there, there and there.

2                       We have taken Mr. Bonifant's, our  
3           arborist, Tree Protection Plan and made a drawing of  
4           it. The orange areas are areas that are fenced off to  
5           protect the root systems of either individual trees or  
6           groups of trees, root systems and canopies, but this  
7           is what in pros is in his report when you make a plan  
8           out of it it looks like.

9                       CHAIRPERSON GRIFFIS:       Was that one  
10          submitted? Do we have a copy of that?

11                      MR. ANDRULIS:    Yes.

12                      CHAIRPERSON GRIFFIS:    Okay.

13                      MR. ANDRULIS:    I believe it is.

14                      COMMISSIONER PARSONS:    It's in the tab  
15          called tree protection.

16                      MR. ANDRULIS:    Tree protection.

17                      CHAIRPERSON GRIFFIS:    Okay.

18                      COMMISSIONER PARSONS:    It's in the larger  
19          book.

20                      CHAIRPERSON GRIFFIS:    Ah, right, right,  
21          right. Got it.

22                      MR. ANDRULIS:    And then we have made  
23          changes to individual houses and lots, again mostly to  
24          deal with storm water management and protection of  
25          trees. And I will just go through those quickly. Lot

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1 A, we decreased the amount of basement. It's only in  
2 this area. Previously, the basement was up to here.  
3 We have done this to further protect the root system  
4 of Tree 40. The root system is somewhere there.

5 The driveway of this property we have also  
6 moved. It previously curved that way more toward the  
7 tree on Lot 40. We have curved it away to give more  
8 of a free area for the root system of that.

9 CHAIRPERSON GRIFFIS: What is the  
10 dimension on the narrow end of that driveway?

11 MR. ANDRULIS: At the street entry?

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. ANDRULIS: I don't know precisely, but  
14 I think it's in the neighborhood of 8 to 10 feet.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. ANDRULIS: On Lot B we have made one  
17 change and that is to lengthen the bridge from the  
18 entry drive so that our slope will be limited to 12  
19 percent. That bridge used to go to about here. We  
20 have lengthened it to come to about there, so our  
21 slope is again limited to 12 percent on that drive.

22 On Lot C we have raised the basement and  
23 garage a foot and we have lengthened that bridge a  
24 foot or two in that range, again so that that bridge  
25 slope can be limited to 12 percent.

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1           On Lot D we have done several things. We  
2           have removed a fairly large portion of the basement  
3           from here to here. Previously, this was on piers.  
4           Now, all this is on piers that allows the roof system  
5           of 29 more freedom. We have now installed, designed,  
6           a bridge that gets us from the drive to the -- from  
7           the public drive to our driveway which allows 353,  
8           which is over here, and 329, their roof systems to go  
9           below that bridge and not be disturbed.

10           In doing this we have also raised the  
11           basement about a foot, which allows us to after this  
12           bridge come on to natural grade here and then have a  
13           retaining wall from there to there. Previously, we  
14           had to have a retaining wall from there to there and  
15           from there to there to get this drive to work. So we  
16           have disturbed less ground in this process.

17           CHAIRPERSON GRIFFIS: Let me ask you  
18           before you take that one down, the graphic which is  
19           represented on all the bridges at the beginning and  
20           then in the mid-span, which is the area in which  
21           you're calculating your percentage slope, what is the  
22           darkened area supposedly representing? Yes, I  
23           understand. Yes, there is two of them.

24           MR. ANDRULIS: Right here and right here.

25           CHAIRPERSON GRIFFIS: Right, exactly.

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1 MR. ANDRULIS: Well, that might be or that  
2 is meant to be -- I'm not sure what you would call it,  
3 a cattle barrier that you might see on a barn or a  
4 country road where --

5 CHAIRPERSON GRIFFIS: So to allow the  
6 water to flow through it?

7 MR. ANDRULIS: Water to flow through it,  
8 but it takes less depth to build than a concrete  
9 structure.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. ANDRULIS: Concrete structure of the  
12 bridge, so that's both the top and the bottom.

13 CHAIRPERSON GRIFFIS: And that will tie  
14 into what? Where does the water go that is running  
15 down?

16 MR. ANDRULIS: It will flow just  
17 underneath the bridge naturally.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. ANDRULIS: As that grade is not  
20 disturbed.

21 CHAIRPERSON GRIFFIS: Okay. So it  
22 basically -- it collects on the road.

23 MR. ANDRULIS: It appears --

24 CHAIRPERSON GRIFFIS: And then it  
25 disperses.

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1 MR. ANDRULIS: Will flow down through the  
2 site, sheet flow.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. ANDRULIS: Or be absorbed or flow off.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. ANDRULIS: On Lot E we have increased  
7 or decreased the area of basement and this area here  
8 that was formerly basement is now supported on piers  
9 again to help the root system of 329 be freer. We  
10 have also -- unfortunately, in the process we have  
11 realized that Tree 31, which we were previously  
12 saving, that we can't do that so that adds to our tree  
13 remove list, one tree. We had eight. We now have  
14 nine and by ordinance we're allowed 12.

15 On Lot 2 we have raised the ground floor  
16 and the garage here that was previously slab on grade  
17 because we didn't think we were disturbing tree roots,  
18 we have now made a supported slab on piers to give a  
19 little bit more relief to the room system of Tree 11  
20 there.

21 And Lot 4, previously -- there is a beech  
22 tree here and a beech tree here, 15 and 16.  
23 Previously, this drive was a little bit further toward  
24 Tree 15, about in the neighborhood of 3 or 4 feet. We  
25 realized that we were disturbing the root system of 15

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1 a little bit too much, so we have moved the road  
2 closer to 16 where both root systems now have an  
3 acceptable disturbance level and you can still get to  
4 this house, obviously, through the new drive.

5 The other thing we have done in this house  
6 and the house on Lot F is just to cut down on runoff.  
7 These are both our contemporary houses that have flat  
8 roofs. We're going to do green roofs on both of them  
9 and that's it.

10 COMMISSIONER PARSONS: Mr. Andrulis, the  
11 retaining wall alongside the driveway appears to be 16  
12 feet high. Is that correct?

13 MR. ANDRULIS: Here on Lot 4?

14 COMMISSIONER PARSONS: Yes.

15 MR. ANDRULIS: It's in that neighborhood,  
16 sure. I don't know if it's 15 or 18. It's in the  
17 neighborhood of 16, yes. That -- it starts low here  
18 as being only a foot or two high. By the time you're  
19 getting here, it's in the neighborhood of 16 feet  
20 high.

21 COMMISSIONER PARSONS: I'm wondering about  
22 the aesthetic of that, but it's pretty severe. I  
23 mean, you're right on the property line so --

24 MR. ANDRULIS: Well --

25 COMMISSIONER PARSONS: I wonder how

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1 marketable that lot becomes with that kind of an  
2 entrance, but maybe that is not a question for you.  
3 It just seems --

4 MR. ANDRULIS: Right. There is a  
5 tradition if you walk around the area there, the  
6 greater area, of stone walls. Most of them are not in  
7 the neighborhood of 16 feet high.

8 COMMISSIONER PARSONS: Right.

9 MR. ANDRULIS: But if that is done with a  
10 quality stone and done nicely, it could be very  
11 attractive.

12 COMMISSIONER PARSONS: Thank you. Are you  
13 completed, your presentation?

14 MR. ANDRULIS: Yes.

15 COMMISSIONER PARSONS: Oh, because I had  
16 a couple of questions. Have you done any calculations  
17 as to how much water will be discharged from the site  
18 on various storms into the head wall that is shown  
19 here on your plan?

20 MR. ANDRULIS: Down here, the outlet here?

21 COMMISSIONER PARSONS: Yes.

22 MR. ANDRULIS: Well, I personally haven't.  
23 Our storm -- our civil engineer has and if I -- James,  
24 if you would correct me if I'm wrong.

25 Its current condition, about 8.6 cubic

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1 feet per second flow out of that outlet and by  
2 ordinance we are required to design the storm water  
3 management system for our site so that no more than  
4 the pre-development storm flow goes off the site and  
5 that is -- before that, there was an old house here  
6 and before the driveway. That figure is something  
7 like 6.5?

8 MR. AFFUL: 6.07.

9 MR. ANDRULIS: 6.07 cubic feet per second  
10 we're allowed, so our design for the whole site, maybe  
11 I should put this up, cuts the storm -- the maximum  
12 rate of storm flow that is now 8.67 --

13 COMMISSIONER PARSONS: Right.

14 MR. ANDRULIS: -- to 6.07 cubic feet per  
15 second. The difference, you know, obviously we have  
16 more impervious area, we're retaining it and we're  
17 retaining and infiltrating the rest of it. So the  
18 amount of storm water going down, you know,  
19 downstream, is only 70 percent when we're finished of  
20 what it is today.

21 COMMISSIONER PARSONS: Well, I'm looking  
22 at your storm water management conceptual plan, which  
23 that's the one you have there, and I see a series of  
24 dry wells that seem to be accommodating the flow from  
25 the individual houses' roofs and so forth.

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1                   What are you doing to retain the runoff  
2 from the road and the cul-de-sac, the entrance road,  
3 the cul-de-sac?

4                   MR. ANDRULIS: Again, James, stop me when  
5 I make a mistake here, but from the road we're  
6 collecting into a baysaver. It's coming down here.  
7 There is a rain storage unit here that that is being  
8 stored at and then let out slowly. On several of the  
9 drives there are sand filters that have both the  
10 storage --

11                   MR. AFFUL: Storm filters.

12                   MR. ANDRULIS: Storm filters that have  
13 both a bit of a storage capacity and an infiltration  
14 capacity.

15                   MR. AFFUL: Yes. I mean, just for the  
16 record --

17                   COURT REPORTER: Identify yourself.

18                   MR. AFFUL: Yes, my name is James Afful  
19 and I work for AULtec, Inc. and I was here the last  
20 time to testify. And for that question there, the  
21 answer is that we are putting in storm filters, as was  
22 required by the D.C. Government.

23                   We met with them a couple of times and one  
24 of the control features that they required was for us  
25 to put in a storm filter which is for quality purpose

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1 and for quantity purpose and that is the reason why,  
2 you know, they are there in the driveways, because  
3 there are certain areas that we can put the partial  
4 exfiltration system, so they recommended those  
5 features. I mean, that we can use.

6 COMMISSIONER PARSONS: Thank you. Last  
7 time I can't remember who was talking about this. We  
8 were talking about the entrance road, the beech trees  
9 and whether a curb and gutter was going to be used to  
10 capture the water here. I see drain inlets. What is  
11 the design of that road now?

12 MR. AFFUL: Yes. To that question, we  
13 went out there. There is 2 to 4 inch curb on that  
14 road, so that road for all intents and purposes is a  
15 closed drainage system and it's going to be overlaid  
16 with asphalt. So be it 1 inch asphalt or 2 inch  
17 asphalt, we can overlay it and pitch it in a way as to  
18 direct drainage into the storm water inlets that we  
19 are placing there, so it's going to catch the water,  
20 the runoff, that is generated from the road.

21 COMMISSIONER PARSONS: I'm sorry. Are  
22 those curbs there now?

23 MR. AFFUL: Yes.

24 COMMISSIONER PARSONS: Oh, I didn't  
25 understand that.

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1 MR. ANDRULIS: Yes. There is an existing  
2 about 2 inch high curb that for awhile we didn't even  
3 know existed until we went looking for it.

4 COMMISSIONER PARSONS: Oh.

5 MR. ANDRULIS: Because it was all covered  
6 with leaf litter.

7 MR. AFFUL: Right.

8 COMMISSIONER PARSONS: I see.

9 MR. AFFUL: Yes, that's why we are putting  
10 it there.

11 COMMISSIONER PARSONS: So you won't have  
12 to excavate for a curb. It's there.

13 MR. AFFUL: It's there.

14 COMMISSIONER PARSONS: So you're just  
15 having to excavate for the pipe and drain inlets.

16 MR. AFFUL: Yes.

17 COMMISSIONER PARSONS: And you have  
18 located those in such a way that it won't intrude on  
19 the trees?

20 MR. AFFUL: It won't intrude on the tree  
21 root system based on what our arborist has said.

22 COMMISSIONER PARSONS: Okay. Thank you.

23 CHAIRPERSON GRIFFIS: Anything else?

24 COMMISSIONER PARSONS: I also wanted to  
25 ask -- excuse me, Mr. Chairman. I should have

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1 captured it when we were there, but Lot A, you have  
2 moved the driveway into a circumstance that, by  
3 looking at the topography, seems like a very, very  
4 dangerous situation getting out of that, the kind of  
5 thing you would need to put mirrors up or something.

6 The previous location was down the road to  
7 the left of the drawing and at least had some site  
8 distance, but as I read the topo it's going to be very  
9 difficult. Would you agree?

10 MR. ANDRULIS: I would agree there would  
11 be less site lines and less view up or down the road,  
12 sorry, up the road in our new position than the old,  
13 but we do this to save Tree 40.

14 COMMISSIONER PARSONS: But you're not  
15 proposing laying back the slope as shown on your  
16 drawing?

17 MR. ANDRULIS: No, we were proposing a  
18 retaining wall there thinking the retaining wall would  
19 be less of a topography disturbance than regrading  
20 that whole slope. There are also some smaller trees  
21 on this slope that we affect by regrading.

22 COMMISSIONER PARSONS: Right. Mr.  
23 Glasgow, I don't know the answer to this. Maybe you  
24 do. Who has control over this curb cut, DDOT?

25 MR. GLASGOW: DDOT would have control over

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1 the curb cut as to where it's placed. My recollection  
2 is this is one of the houses that directly faces onto  
3 Chain Bridge Road.

4 And what we have done in an overall  
5 context here is we have decided to take all of the  
6 property and have it come, you know, before the Board  
7 in an overall site plan, because we thought if we took  
8 two or three lots out and say we can subdivide this  
9 lot as a matter-of-right, we have a right to a curb  
10 cut, that that would cause consternation also.

11 COMMISSIONER PARSONS: What I meant by my  
12 question is even if we were to say this new curb cut  
13 or this entrance is a good idea because it protects  
14 the trees, when they get to DDOT and DDOT looks at the  
15 potential safety hazard here, I mean, have they got  
16 control over this and say move that downstream 20  
17 feet?

18 MR. GLASGOW: Right. They can say move it  
19 down and then the question is is given the -- because  
20 we have said that if the Board approves this site plan  
21 and there are deviations, it's in the transcript  
22 before, I think you and Mr. Bender had a discussion  
23 about that, that we said that we would come back if  
24 there is a change.

25 If DDOT says that the curb cut cannot go

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1 there, I guess we would have two choices. We would  
2 have to come back and then, otherwise, what you say is  
3 okay, we have several lots that we could just carve  
4 out of here as a matter-of-right. We just thought it  
5 was better to come to the Board with the whole  
6 property.

7 COMMISSIONER PARSONS: I understand.

8 MR. GLASGOW: And deal with it that way.

9 COMMISSIONER PARSONS: Okay. Thank you.  
10 That's it for me. Thanks.

11 CHAIRPERSON GRIFFIS: Okay. The root line  
12 of 40 on that driveway -- I'm sorry, but we ought to  
13 get this clarified a little bit, because 8 feet seems  
14 very small just for ingress and egress, and then right  
15 onto Chain Bridge Road. So that actual kind of  
16 bottleneck of that is for just the one tree, number  
17 40? Is the drippage that far out or --

18 MR. ANDRULIS: It's mostly for that one  
19 tree, 40. It's a large, mature poplar, right, about  
20 120 inch diameter. But there also are --

21 CHAIRPERSON GRIFFIS: Smaller.

22 MR. ANDRULIS: -- smaller trees. Let me  
23 grab a plan.

24 CHAIRPERSON GRIFFIS: Because I think Mr.  
25 Parsons' point is a correct one. There is no sense in

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1 looking at this if it won't be accommodated by other  
2 realities, so we ought to look at something that  
3 might.

4 MR. ANDRULIS: If you look at the all tree  
5 plan which is here, it's in your book, there are  
6 additional trees, small trees, here, A19, A20, A21 --

7 CHAIRPERSON GRIFFIS: Right.

8 MR. ANDRULIS: -- that might be affected  
9 by that slope, so the retaining wall helps save those.

10 CHAIRPERSON GRIFFIS: But in the same  
11 idea, I had that up a second ago, it looks like there  
12 is a large space in between it looks like A11 and A16,  
13 a larger opening that might naturally lend itself to  
14 accommodating an ingress. Am I reading that  
15 correctly?

16 MR. ANDRULIS: You mean A11 and A18?

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. ANDRULIS: It may, but then we're  
19 moving the drive closer to the tree and disturbing  
20 more of its critical root zone. We could look at that  
21 to see if that extra disturbance is enough to affect  
22 the health of that tree. In fact, we could look at  
23 that.

24 CHAIRPERSON GRIFFIS: Okay. Okay. Any  
25 other questions? What else do we have Mr. Glasgow?

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1 MR. GLASGOW: We have Ms. -- our  
2 landscape, Lauren Wheeler, landscape design expert.

3 MR. BROWN: Mr. Chairman, would you like  
4 to do cross examination as the witnesses go through  
5 individually or --

6 CHAIRPERSON GRIFFIS: Why don't we get it  
7 all together? I think it probably -- we'll try not to  
8 disrupt much either.

9 MS. WHEELER: May I begin, Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Please.

11 MS. WHEELER: Good afternoon, Members of  
12 the Board and interested parties. My name is Lauren  
13 Wheeler and I am the principal of Natural Resources  
14 Design Incorporated. We are the firm that provided  
15 the landscape architect and design services for Chain  
16 Bridge Road Project and this afternoon I would like to  
17 present the landscape design objectives, the landscape  
18 plan, its phases, relevant points to the Board for  
19 your approval.

20 The Chain Bridge Road Project Landscape  
21 Plan is based upon the concept of naturalized  
22 landscape design with a focus in maintaining or  
23 reestablishing the woodland layers. The design  
24 objectives are to respect the existing land form and  
25 horticultural history of this property, to integrate

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1 tree and shrub species found in the neighboring park  
2 providing a diverse native plant community, and to  
3 restore the woodland layers with native and non-  
4 invasive plants.

5 I would like to take this opportunity to  
6 orient you to the plan before you, since I will be  
7 using it in describing the landscape design. This  
8 plan scale is 1 inch equals 20 feet. North is on the  
9 top of the plan and I'm sure everyone is aware that  
10 Chain Bridge Road runs north/south more or less.  
11 Battery Kemble Park is to the east of Chain Bridge  
12 Road and the property is to the west of Chain Bridge  
13 Road.

14 If you go south on Chain Bridge Road, you  
15 will intersect with Macarthur Boulevard and the Chain  
16 Bridge Road Project site consists of a variety of  
17 topographic and vegetative features. There are three  
18 rather large, flat, grassy areas and there are wooded  
19 slopes. The upper flat area is located at the north  
20 of the property, in this area. South of that is a  
21 second large, flat area below a wooded sloped area,  
22 which you can see that is denoted by the tree canopy  
23 coverage that currently is there.

24 And to the west side of the property is  
25 another large, flat area which slopes down in a

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1 western direction of the property and on the east side  
2 of the property there is a slope from the property  
3 down to Chain Bridge Road. This sloped area is  
4 distinguished by a stand of large, native canopy trees  
5 such as tulip poplar.

6 Other sloped areas have plant materials  
7 such as at the perimeter of the southeast side is  
8 primarily hemlocks along this side of the property,  
9 which were in conjunction with mostly native trees  
10 along the southern perimeter of the property,  
11 southern, southeast and perimeter of the property.  
12 And, finally, there is a beech allee on each side of  
13 the lower entrance road.

14 It's important to note that a healthy  
15 eastern deciduous forest consists of layers of plant  
16 materials, commonly referred to as the  
17 overstory/understory shrub and ground cover layers.  
18 The site has a well-established community of mature  
19 overstory trees. The understory layer of plants  
20 includes small endemic trees like Cornus Florida and  
21 commonly known as Flowering Dogwood or Florida  
22 Dogwood, but much of the vegetation is invasive exotic  
23 plants like multiflora rose and English ivy.

24 The landscape design supports the existing  
25 woodlands by using native plants in all of the layers,

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1 overstory trees, understory trees, shrubs, native  
2 grasses and ground covers. The suggested plantings  
3 around the houses are a blend of indigenous non-native  
4 materials which transition into the woodland edge.  
5 Any proposed woodland plantings are native. Very  
6 little space is devoted to lawn.

7           You can see at the end of both cul-de-sacs  
8 we have some -- a pocket of lawn around the end of the  
9 cul-de-sac on the upper entrance road and a pocket of  
10 lawn along the lower entrance road at the end of the  
11 cul-de-sac. In the woodland areas, the plans intend  
12 for fallen leaves to work, be left as mulch, and tree  
13 saplings to be preserved to provide for the next  
14 generation of shade trees.

15           Overall, the landscape plan relies on  
16 natural systems to enhance the experience and  
17 environment of Chain Bridge Road Project. The plan  
18 works in conjunction with the Tree Preservation Plan  
19 where the main objective is to maintain existing  
20 trees. To this end, the plan will be implemented in  
21 two stages.

22           The first phase is the one before you, the  
23 minimal disturbance plan. It primarily restricts  
24 plantings to previously disturbed areas along the  
25 foundation of houses and on level grassy spaces. You

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1 can see in front of Lot E the foundation plantings, in  
2 front of Lot E, and in many of the other lots or,  
3 alternately, the trees planted along the east side of  
4 Lot C, a mixture of evergreen and deciduous trees that  
5 will provide screening between the two lots or the  
6 trees on the east side of Lot 3, which act as a screen  
7 from Chain Bridge Road.

8 As Stan pointed out beforehand, the green  
9 roofs on Lot 4 and 5 will also enhance the green space  
10 here on Chain Bridge Road Project. If we can flip  
11 down the asphalt. This is the Woodland Restoration  
12 Plan. This is the second phase and this portion of  
13 the plan is designed to be installed three to five  
14 years after construction and after an arborist's  
15 approval, excuse me, evaluates a tree's health.

16 At that time, our first goal is to remove  
17 invasive plant materials. Our second goal is to help  
18 restore the natural woodland protected by the existing  
19 trees by reestablishing the understory trees, shrubs  
20 and ground cover such as dogwoods, witch hazel,  
21 spicebush or our native azalea, pinxterbloom.

22 This area right behind on Lot 1 and Lot 2,  
23 there is our native azalea, pinxterbloom, or some of  
24 the flowering dogwoods, witch hazel that are also put  
25 in the woodland area of existing large canopy trees.

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1 The Chain Bridge Road Project Planting Plan utilizes  
2 a wide diversity of plant materials with over 60  
3 species of trees, shrubs and native grasses.

4 Plant material diversity encourages a  
5 healthier landscape environment by minimizing the risk  
6 of disease and pest infection. The diversity of  
7 native plants also is beneficial to the establishment  
8 of wildlife habitat. In this plan we have over 67  
9 percent of the introduced plants are indigenous and in  
10 terms of quantity, 95 percent of the overstory trees  
11 and 60 percent of the understory trees are also  
12 native.

13 Our company is committed to providing  
14 ecologically sound landscape design. We want to be  
15 involved in this sort of innovative project because of  
16 its dedication to the preservation of mature trees.  
17 The Chain Bridge Road Project is a unique development  
18 because of its emphasis on tree preservation, woodland  
19 restoration and the extensive use of native plants.  
20 Thank you.

21 CHAIRPERSON GRIFFIS: Thank you very much.

22 MR. GLASGOW: That concludes our  
23 discussion of the most recent filing.

24 CHAIRPERSON GRIFFIS: Excellent.

25 Questions on the design, landscape design?

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1 COMMISSIONER PARSONS: I would just like  
2 to say it's a vast improvement.

3 VICE CHAIR MILLER: I just want to second  
4 that because we had asked before that the previous  
5 plan didn't look at all like it fit in with the  
6 terrain in this area, and it looks like you have done  
7 an excellent job with respect to that. Thank you.

8 MS. WHEELER: A number of our plant  
9 materials have been selected based upon what is in the  
10 park across Chain Bridge Road.

11 CHAIRPERSON GRIFFIS: Okay. Anything  
12 else? Mr. Brown, all you.

13 MR. BROWN: Not for Ms. Wheeler.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. BROWN: But for Mr. Andrulis.

16 CHAIRPERSON GRIFFIS: Good. We'll have  
17 Mr. Andrulis come back up. While he is getting ready,  
18 Ms. Wheeler, you made a comment and I don't know if I  
19 heard it correctly. You were talking about overstory  
20 and understory. It was 95 percent over and 60 percent  
21 under or what did you say?

22 MS. WHEELER: Right. Of the introduced  
23 plants in the planting plan, over 95 percent of the  
24 trees that we're introducing that are considered  
25 canopy overstory trees would be considered native

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1 trees.

2 CHAIRPERSON GRIFFIS: Okay. Yes. I was  
3 just -- I wasn't sure I heard the percentages  
4 correctly. Okay.

5 MS. WHEELER: It is our objective to use  
6 as much native plant material on this site as  
7 possible, and that in our mind is one of the reasons  
8 why this project in terms of landscape plan is  
9 incredibly innovative.

10 CHAIRPERSON GRIFFIS: Thank you. Okay.  
11 Questions?

12 MR. BROWN: Not for Ms. Wheeler.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. BROWN: But for Mr. Andrulis. And  
15 going back, I need to clarify something from the  
16 earlier testimony or earlier hearing. There was some  
17 question about whether you were licensed in the  
18 District of Columbia. If you could clarify that.

19 MR. ANDRULIS: I am not licensed in the  
20 District of Columbia. My firm is.

21 MR. BROWN: Are you licensed in one of the  
22 local jurisdictions?

23 MR. ANDRULIS: I am licensed in the State  
24 of Michigan.

25 MR. BROWN: Did somebody from your firm

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1 work on this project who was licensed in the District  
2 of Columbia?

3 CHAIRPERSON GRIFFIS: Have you had to  
4 stamp anything to this point?

5 MR. ANDRULIS: No.

6 CHAIRPERSON GRIFFIS: What is the  
7 relevancy of getting into licensure?

8 MR. BROWN: Well, and certainly the  
9 question -- and this goes to how the Board weighs it,  
10 but, one, a licensed D.C. architect is better  
11 qualified even at this stage than a non-licensed one.

12 CHAIRPERSON GRIFFIS: Interesting.

13 MR. GLASGOW: Yes, I was going to say I  
14 object to that characterization, because this isn't a  
15 stamped set of drawings yet at this point in time.

16 MR. BROWN: But he is being held out not  
17 just as the architect, who is certifying and stamping  
18 the plans, but as an architect in the plans.

19 MR. GLASGOW: No, we never said that. We  
20 never said that and that's --

21 MR. BROWN: But I'm saying it goes to his  
22 background and his expertise in developing a District  
23 of Columbia plan where, in fact, I don't believe he  
24 has had anybody with a D.C. license work on the  
25 project and his license is from Michigan.

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1           So I just -- I think it goes to the level  
2 of expertise he brings to it and I just clarified that  
3 for the record, because I think the Board and  
4 certainly I was, until it was brought to my attention,  
5 under a different impression as to his qualifications  
6 and background.

7           CHAIRPERSON GRIFFIS: Okay.

8           MR. BROWN: I will leave it at that.

9           CHAIRPERSON GRIFFIS: Understood,  
10 understood.

11          MR. GLASGOW: I was going to say before  
12 any drawings are submitted to the District of Columbia  
13 for a permit, Mr. Andrulis has said that members of  
14 his firm are licensed in the District of Columbia and  
15 we will have properly stamped and certified drawings--

16          CHAIRPERSON GRIFFIS: Right.

17          MR. GLASGOW: -- to submit to the  
18 District.

19          CHAIRPERSON GRIFFIS: Yes.

20          MR. BROWN: And that is not a concern of  
21 mine, because that is a requirement --

22          CHAIRPERSON GRIFFIS: Right.

23          MR. BROWN: -- that none of us can get  
24 around, but it goes as to his expertise and  
25 qualifications at this stage of the project for which

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1 he is being offered as an expert.

2 CHAIRPERSON GRIFFIS: Sure.

3 MR. BROWN: I don't want to belabor the  
4 point.

5 CHAIRPERSON GRIFFIS: No.

6 MR. BROWN: The other thing --

7 CHAIRPERSON GRIFFIS: Just one last point  
8 on that though. I mean, I think it's an interesting  
9 point as an opening in terms of a preliminary matter  
10 for the Board to have understood and that's fine that  
11 it is now. I think we have so much information.

12 To actually get into the substance to make  
13 judgment on whether there was expertise or  
14 qualification, that goes well beyond that which is  
15 whether they are licensed or not, not to mention  
16 specifically whether 2516 would require anything of  
17 that nature or not. But let's move ahead.

18 MR. BROWN: And this may -- since Mr.  
19 Andrulis has been offered up on the question of the  
20 revised Storm Water Management Plan, Mr. Bender at the  
21 original hearing indicated that the plan had been  
22 approved by the Department of Health and the Board  
23 asked for some sort of documentation to that effect.

24 I haven't seen that come in, so I would  
25 ask again, Mr. Andrulis being the offered party for

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1 storm water management today, offer -- has some  
2 written documentation of approval been produced and,  
3 two, has this revised plan -- well, I'll let him  
4 answer that question.

5 MR. GLASGOW: We will call back up Mr.  
6 Afful.

7 MR. AFFUL: Yes. I believe at the last  
8 hearing before, I think the previous two hearings,  
9 there were some comments that were -- that came up.  
10 We addressed those comments and we took it into D.C.  
11 Watershed Protection. Mr. Tim Carrie and Apti  
12 reviewed it and then they emailed Ms. Maxine that the  
13 storm water management concept, you know, meets their  
14 approval. They sent her an email. I mean, is that  
15 right?

16 MS. BROWN-ROBERTS: That's correct.

17 MR. BROWN: At some point it would be nice  
18 to have that put into the record. I certainly haven't  
19 seen that email. And then, Mr. Afful, please, perhaps  
20 -- I think he was talking about previous iterations  
21 and we have got a revised plan before us today, and if  
22 he could update all of us on the status of that  
23 approval or review.

24 MR. AFFUL: Yes. The last time that I was  
25 with them, what they told me or what they told us was

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1 that the concept --

2 CHAIRPERSON GRIFFIS: When were you there  
3 the last time?

4 MR. AFFUL: The last time, the time when  
5 it was the -- before the previous submittal. I don't  
6 know exactly when that was submitted, not this  
7 submittal. Now, they told us that the concept hasn't  
8 changed. Basically, we are putting in infiltration,  
9 I mean, exfiltration devices, you know, by way of  
10 modified dry wells, details that they gave us.

11 The rain store device is still the rain  
12 store device. Nothing has changed. So, you know, the  
13 letter that was written was based on that. So, I  
14 mean, we are not changing anything by way of concept.  
15 It's the same thing.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. AFFUL: Okay.

18 CHAIRPERSON GRIFFIS: That's what they  
19 told you?

20 MR. AFFUL: Yes, that's what they told us  
21 and it was reflected in the letter.

22 CHAIRPERSON GRIFFIS: All right. I guess  
23 I'm a little confused because you said you met with  
24 them prior to the revision, but they told you that  
25 nothing was being changed in concept.

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1 MR. AFFUL: Right. That means that --

2 CHAIRPERSON GRIFFIS: Did they ever look  
3 at the revision or did they have an idea of what the  
4 revisions were?

5 MR. AFFUL: Yes, they looked at the  
6 revision.

7 CHAIRPERSON GRIFFIS: Oh, okay.

8 MR. AFFUL: And based on the revision,  
9 they said the concept is still the same.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. AFFUL: We have infiltration devices  
12 which they strongly recommended. We provided them  
13 with the perc test. You know, we take everything else  
14 that they had recommended.

15 CHAIRPERSON GRIFFIS: So at this level  
16 they are just looking at the overall concept.

17 MR. AFFUL: Right.

18 CHAIRPERSON GRIFFIS: Not the specifics of  
19 what we're talking about.

20 MR. AFFUL: Right, absolutely.

21 CHAIRPERSON GRIFFIS: And they will get it  
22 when it's done or supposedly ready for submission if  
23 it gets to that level.

24 MR. AFFUL: Right.

25 CHAIRPERSON GRIFFIS: And then they will

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1 do their analysis then.

2 MS. BROWN-ROBERTS: Mr. Chairman, I just  
3 wanted to sort of concur with what you just said. The  
4 letter basically said that they have reviewed it and  
5 in concept they agreed with what the applicant has  
6 provided.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. BROWN-ROBERTS: However, they would  
9 not approve anything until it goes through the  
10 building permit process.

11 CHAIRPERSON GRIFFIS: Right. Good. Okay.  
12 And that's an excellent point. We're not looking at  
13 an approval. I don't think it's too burdensome for  
14 Mr. Brown's request to be met if you have  
15 correspondence from DOH that we haven't put into the  
16 record. If you have emails or anything like  
17 correspondence --

18 MR. AFFUL: Oh, yes, we do.

19 CHAIRPERSON GRIFFIS: -- just put it in.  
20 Okay.

21 MR. BROWN: And for the Office of  
22 Planning, what was the date on both the letter or the  
23 email?

24 CHAIRPERSON GRIFFIS: Are you aware, Ms.  
25 Brown-Roberts?

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1 MS. BROWN-ROBERTS: I don't remember the  
2 exact date and I don't have it here with me, but it  
3 was prior to -- it was I think just prior to when we  
4 had the hearing.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. BROWN-ROBERTS: The original date.

7 CHAIRPERSON GRIFFIS: So March or  
8 beginning of April.

9 MR. BROWN: Are you ready for me to  
10 continue?

11 CHAIRPERSON GRIFFIS: Sure.

12 MR. BROWN: Mr. Andrulis, my understanding  
13 in this plan is that this property will be subdivided  
14 into a single record lot?

15 MR. ANDRULIS: I would ask --

16 MR. GLASGOW: Actually, that's not his  
17 area of expertise.

18 MR. ANDRULIS: Yes, I would ask Chip to do  
19 that.

20 MR. GLASGOW: Yes, we are under that  
21 section of the regulations for theoretical lots with  
22 a single record lot.

23 MR. BROWN: And then based on that single  
24 record lot, and this may be -- and this is Mr.  
25 Andrulis' question because he has testified to it.

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1 What would be the limits on tree removal for that  
2 single lot?

3 MR. GLASGOW: Yes. Just technically, I  
4 would want the Board to know that their main -- Chain  
5 Bridge Road, because I have done some projects along  
6 it over a period of time, a lot of it is Highway Plan  
7 affected which means under the regulations that you  
8 don't end up with a single record lot. We may end up  
9 with an assessment and taxation lot or a series of  
10 assessment and taxation lots depending upon how the  
11 District wants to deal with it.

12 MR. BROWN: Well, for theoretical lots you  
13 will, by definition, have to come up with A&T lots.  
14 But there is going to be a single underlying lot, is  
15 that correct, a single underlying property?

16 CHAIRPERSON GRIFFIS: What is the  
17 relevancy to us?

18 MR. BROWN: Well, it goes to the overlay  
19 and how we're calculating at least for the moment  
20 compliance and the level of trees that can be removed.  
21 Let me ask if --

22 MR. GLASGOW: We have taken the number of  
23 lots that presently exist, which is four. If the  
24 comment is that, well, since you're going to require  
25 one record lot, you only get, you know, instead of --

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1 I think it's three trees per lot, instead of 12 you  
2 only get three, then we would say, well, then if we're  
3 Highway Plan affected and we're not going to have a  
4 single record lot, then we have 13 lots and we get  
5 four times 13.

6 I mean, we have taken the lots as they  
7 exist right now without trying to say we get more tree  
8 removal because of what will be created in the future,  
9 and I think similarly it would have the same type of  
10 impact to say, well, you're going in for a record --  
11 for either a record lot or an A&T lot and you're  
12 creating one under the theoretical lot subdivision, so  
13 you only get three trees. We have taken the existing  
14 number of lots times three.

15 CHAIRPERSON GRIFFIS: And those are the  
16 four existing. They are lots, correct? Actually,  
17 they are parcels.

18 MR. GLASGOW: Yes, we have got some  
19 parcels which were the precursors of lots.

20 CHAIRPERSON GRIFFIS: Got you. Okay.

21 MR. BROWN: And I don't think we need to  
22 belabor the point because at the end of the day,  
23 regardless of what number you use, our experts will  
24 indicate that the level of tree removal will greatly  
25 exceed even the 12 that they -- their self-imposed

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1 limit.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. BROWN: I would like to follow-up on  
4 some of the changes you have made.

5 BOARD MEMBER MANN: If we could interrupt,  
6 excuse me, before we go on actually, because it sounds  
7 like maybe this is something that could be relevant,  
8 so I need to understand what highway lot affected is.  
9 I don't know what that means.

10 MR. GLASGOW: Where you have a property  
11 that is Highway Plan affected, under District of  
12 Columbia Code you cannot get a record lot so that you  
13 use assessment and taxation lots instead of the record  
14 lot. Normally, when you get a building permit, a  
15 building permit must be associated with a record lot.  
16 When you're Highway Plan affected, since you can't  
17 have a record lot, you have building permits that are  
18 associated with assessment and taxation lots.

19 MR. BROWN: We call that paper streets,  
20 but I don't think it's really relevant here because  
21 under any scenario Mr. Glasgow has to get theoretical  
22 lots, individual A&T lots, so I'm not so sure. And I  
23 would be surprised if Mr. Glasgow doesn't know whether  
24 he has a highway planned paper street issue at this  
25 point.

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1 MR. GLASGOW: We have been told that we  
2 have a Highway Plan affected street, but I don't see  
3 the relevance for the approval that we have requested  
4 from the Board of Zoning Adjustment.

5 MR. BROWN: I am ready to move on.

6 CHAIRPERSON GRIFFIS: Me, too.

7 MR. BROWN: So if I could, following up  
8 with Mr. Andrulis, I forget all the lots she  
9 referenced where you have made changes, but several of  
10 them.

11 CHAIRPERSON GRIFFIS: Well, they are  
12 listed in the submission.

13 MR. BROWN: Yes. No, but I mean, specific  
14 to the new bridges or the changes in the bridges.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. BROWN: I think there are four lots.  
17 But I'm asking a general question, at least as a  
18 starting point. You indicated that underneath those  
19 bridges and the holes where water is to runoff that  
20 there would be no system for collecting and channeling  
21 that water. Is that correct? No constructed system?

22 MR. ANDRULIS: Yes.

23 MR. BROWN: Okay. And does that raise a  
24 one -- the water will flow without control. Is that  
25 correct? The water that is syphoned off at the end?

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1 MR. ANDRULIS: I think the water will flow  
2 in the manner it flows now.

3 MR. BROWN: Okay. So doesn't that create  
4 problems with the flowing into the various houses?

5 MR. ANDRULIS: No.

6 MR. BROWN: So it will require additional  
7 or your plan does rely on some sort of control that  
8 may not be related to that water, maybe not directly  
9 related to the bridge, but that water is going to have  
10 to be controlled in some manner.

11 MR. ANDRULIS: Well, not much water. I  
12 believe not much water is going underneath those  
13 bridges and I would believe most of it would  
14 infiltrate. Only in larger storms would any move out  
15 from underneath the bridge itself. And in terms of  
16 the houses near it, any water that would get near the  
17 foundations will be taken away by waterproofing  
18 systems and sumps.

19 MR. BROWN: So and just to quickly close  
20 the loop, any grading or other kind of storm water or  
21 the swales or whatnot that may be associated, you  
22 factored that into the Tree Preservation Plan and  
23 particularly protecting the roots and the root systems  
24 of the trees adjacent to that?

25 MR. ANDRULIS: Yes. In fact, there are no

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1 -- any longer, there are no traditional swales as they  
2 will disturb root systems of trees if they are  
3 constructed underneath. We substituted for the swales  
4 low stacked stone walls. I think I neglected to  
5 reference those when I was talking about the Storm  
6 Water Management Plan, just updating the changes.  
7 Those are going to be integration of storm water  
8 management and landscape.

9 What those do in the instances where we  
10 have them is they help to direct water away from  
11 certain house foundations and then arms of these low  
12 walls, we're thinking like they are something like 2  
13 4 inches high, no foundations, just as if stones were  
14 -- you know, the remnants of an old stone wall kind of  
15 thing, that the arms of these stacked stone walls that  
16 flare out from the larger portion of the wall that  
17 help slow the water flow between those houses.

18 If you would like, I could point to those  
19 on a drawing and make that point clearer.

20 MR. BROWN: Thank you.

21 CHAIRPERSON GRIFFIS: What's the question,  
22 Mr. Brown?

23 MR. BROWN: I guess, are those walls  
24 really aesthetics or are they measured to achieve or  
25 to accommodate levels of storm water that you are

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1 anticipating?

2 CHAIRPERSON GRIFFIS: Are they functional?

3 MR. ANDRULIS: Yes, they help direct some  
4 water away from foundations of houses and they slow  
5 the water flow so more of it will infiltrate.

6 CHAIRPERSON GRIFFIS: What else?

7 MR. BROWN: I think I'm finished.

8 CHAIRPERSON GRIFFIS: Yes?

9 MR. BROWN: Yes.

10 CHAIRPERSON GRIFFIS: Okay. Why don't you  
11 point those out? That's actually one of the elements  
12 that the Urban Forestry brought up in terms of the  
13 changes, so we ought to understand as we move into  
14 those reports where they are being anticipated. As I  
15 understand your description there, maybe I don't  
16 understand your description. It will be these nice  
17 round stones that are sitting precariously loose in  
18 the area?

19 MR. ANDRULIS: No, I don't think. They  
20 are not round at all. They are probably more  
21 rectangular like you -- when you go through the  
22 countryside of Middleburg, you see old stone walls,  
23 slat stone walls, stone stacked upon stone, which are,  
24 you know, 3 feet high or something.

25 CHAIRPERSON GRIFFIS: I see.

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1 MR. ANDRULIS: Here we're only doing the  
2 first two courses of that.

3 CHAIRPERSON GRIFFIS: Oh, I see. Okay.

4 MR. ANDRULIS: So they are these red -- in  
5 the Storm Water Management Plan here, these red lines.  
6 So as water -- you can see there is a fairly steep  
7 slope between these two houses here.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. ANDRULIS: And the area that the water  
10 flows goes from a large area to a narrow area. So  
11 there could be surface drainage in some storms.  
12 These, that wall and that wall are keeping some of  
13 that water from getting to the foundations of our  
14 houses directing it down this channel, like you would  
15 traditionally do a swale. You know, you would cut  
16 into the earth, we would harm root systems of trees.  
17 What we are doing is piling two layers of stone up, so  
18 that most of that water gets deflected and then these  
19 wings that come off are also slowing the water.

20 It has to go over a little waterfall. So  
21 in some ways it is aesthetic, but mostly it's to  
22 replace the function of a swale to keep water away  
23 from houses and slow it down, so it will infiltrate.  
24 I guess the second part isn't the function of a swale,  
25 but it is a storm water management function.

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1 CHAIRPERSON GRIFFIS: Do you get an  
2 owner's manual for that when you buy the house? I  
3 mean, in reality, you know, it's interesting, because  
4 I'm struck with this. I don't even know where it was,  
5 but in this subdivision probably way out in the suburb  
6 somewhere and someone was complaining, this new home  
7 owner that every time it had a heavy rain, he got this  
8 little pond at the back. So he had his people come in  
9 and fill it, so that the water would move away.

10 It turns out that was one of the storm  
11 water management. So in this, like so, you know, I  
12 buy the house and I don't like stone walls and I like  
13 them much more flat. What's going to keep people from  
14 recreating all of that and changing this kind of  
15 precise signage?

16 MR. GLASGOW: Mr. Chairman, we have done  
17 that in the past through our covenants.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. GLASGOW: That's -- depending upon --  
20 we had some of this discussion the last time.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. GLASGOW: Depending upon what the --  
23 you can make it as strict as you want.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. GLASGOW: There are certain

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1 subdivisions where you can't change the house color  
2 without getting an approval.

3 CHAIRPERSON GRIFFIS: Yes. I don't want  
4 to do that. But, I mean, this is a functional  
5 element.

6 MR. GLASGOW: That's right.

7 CHAIRPERSON GRIFFIS: And this is  
8 fascinating.

9 MR. GLASGOW: And I think that we would --  
10 yes, and because it's a functional element, we  
11 probably on that -- subject to what Mr. Bender would  
12 say, we probably would say these type of functional  
13 elements you don't change.

14 CHAIRPERSON GRIFFIS: Well, it seems like  
15 this one in particular you couldn't. I mean,  
16 especially if it's -- I mean, that's what is  
17 fascinating about these in terms of storm water  
18 management. It goes beyond the kind of design  
19 elements. It's very functional. You know, you  
20 couldn't plug up all your storm drains here. Right?

21 MR. GLASGOW: Right.

22 CHAIRPERSON GRIFFIS: You couldn't remove  
23 them all. It would seem like this is fitting within  
24 all of that.

25 MR. GLASGOW: Yes.

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1 CHAIRPERSON GRIFFIS: Okay. But it's a  
2 fascinating piece that I think we have to address.  
3 Okay. Anything else?

4 MR. BROWN: But, Mr. Chairman, it sounds  
5 like this is something that could be physically picked  
6 up and removed.

7 CHAIRPERSON GRIFFIS: Absolutely. Just  
8 like all of this could be regraded.

9 MR. BROWN: But I mean, I could go out and  
10 do this with my limited resources. I would have a  
11 hard time regrading and I think it goes to the -- it  
12 raises the question of the functionality, the long-  
13 term viability of this as part of their plan.

14 MR. GLASGOW: I object to that  
15 characterization. I mean, if it's a Board's order,  
16 either we're in compliance or we're not.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. GLASGOW: Just like every BZA order  
19 with conditions in the city.

20 CHAIRPERSON GRIFFIS: Right. Okay.  
21 That's an interesting thought. Okay. Any other  
22 questions, Mr. Brown? Follow-up on that?

23 MR. ANDRULIS: Could I just follow-up a  
24 little bit? These devices are more for our own on-  
25 site storm water management. We don't want water to

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1 get -- you know, keep water away from the foundations  
2 as much as possible. We want to slow it down, so more  
3 of it infiltrates. So you wouldn't get, you know, a  
4 natural swale formed here. It has little affect on  
5 what happens off this property.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. ANDRULIS: That's -- you know, perhaps  
8 infiltration will be increased slightly from what it  
9 would be without these walls, but probably not to a  
10 measurable effect.

11 CHAIRPERSON GRIFFIS: Right. Right.  
12 That's an interesting point also. Can you just point  
13 out other areas that are similar to that?

14 MR. ANDRULIS: Sure.

15 CHAIRPERSON GRIFFIS: I mean, there is a  
16 lot of red there that geographically --

17 MR. ANDRULIS: Sure. Here, here, this  
18 side of that house there and then right through here.  
19 There is one other part on the back of Lot 4 here.

20 CHAIRPERSON GRIFFIS: Okay. Okay. Good.  
21 Anything else? Any other follow-ups? It sounds like  
22 there is --

23 COMMISSIONER PARSONS: Yes.

24 CHAIRPERSON GRIFFIS: Yes, Mr. Parsons?

25 COMMISSIONER PARSONS: He pointed to that

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1 last wall on Lot 4. Where is that directing the water  
2 to? The serpentine wall.

3 CHAIRPERSON GRIFFIS: On Lot 4, you said?

4 COMMISSIONER PARSONS: Yes.

5 MR. ANDRULIS: Lot 4 is here.

6 CHAIRPERSON GRIFFIS: The serpentine.

7 MR. ANDRULIS: The topography of this lot  
8 is it's a fairly -- and the back part of it is it's a  
9 fairly steep hill going from the property line down  
10 to, basically, the back of our house. This serpentine  
11 wall is doing two things. It is some of the water is  
12 being deflected around our foundation under the area  
13 here, which is the, what is that, eastern end of the  
14 house, which is raised on -- supported on piers. So  
15 that's going to basically feed the groundwater there.

16 There is also in the kind of hollow here,  
17 right there, is a storm inlet. So some of the water  
18 will be collected here and then piped away. Or sorry,  
19 actually, those inlets are here and here, so some of  
20 it that gets by this wall will be collected by those  
21 inlets.

22 COMMISSIONER PARSONS: Isn't there a large  
23 tree, 4C, right there? I'm looking at the plot plan  
24 on the landscape plan.

25 MR. ANDRULIS: 4C is not a large tree. If

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1 it has got a letter, a number and a letter, it's a  
2 small tree. I would have to check what it is. It's  
3 a 16 inch circumference elm.

4 COMMISSIONER PARSONS: But that is where  
5 the drain inlet is right there?

6 MR. ANDRULIS: I'm sorry. I misspoke.  
7 The inlets are here within this, behind the wall, so  
8 some of that water is going to be directed by this  
9 wall around the house. If that gets through, it will  
10 get to these inlets here and here. The 4C, I misspoke  
11 when I said that that was the inlet.

12 COMMISSIONER PARSONS: And that --

13 MR. ANDRULIS: At one point in the design  
14 process, we were having an inlet there.

15 COMMISSIONER PARSONS: All right.

16 MR. ANDRULIS: You know. I forgot.

17 COMMISSIONER PARSONS: And those inlets  
18 are directed down into the --

19 MR. ANDRULIS: Down in the storm water  
20 drainage system, yes.

21 COMMISSIONER PARSONS: Yes, under the  
22 driveway?

23 MR. ANDRULIS: Well, under the driveway.

24 COMMISSIONER PARSONS: Yes. Okay. Thank  
25 you.

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1 MR. BROWN: Mr. Chairman, if I could just?

2 CHAIRPERSON GRIFFIS: Follow-up? Yes.

3 MR. BROWN: And based on Mr. Parsons'  
4 question and further elaboration, it does appear that  
5 these are part of, you know, and have an impact beyond  
6 just the individual properties, but do -- in fact, are  
7 part of a system that may, in fact, affect off-site --

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BROWN: -- storm water so --

10 CHAIRPERSON GRIFFIS: What's your question?

11 MR. BROWN: Mr. Andrulis, I'm asking the  
12 question that these are intended to produce results  
13 that limit or reduce the production of off-site storm  
14 water management -- storm water?

15 MR. AFFUL: Yes. Mr. Griffis, Members of  
16 the Board, and then the interested party. I would  
17 like to draw your attention to D.C. Storm Water  
18 Management Manual. If you look at the manual, page --

19 CHAIRPERSON GRIFFIS: If we must. Go  
20 ahead.

21 MR. AFFUL: -- 17 of the manual, you see  
22 the order in which preference of storm water  
23 management structures had to be, you know, considered  
24 in the District of Columbia. Number one on the list  
25 is infiltration of runoff off-site, where applicable.

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1 Infiltration. If you look at concept basically, this  
2 is what we have carried through, because they,  
3 basically, walked the site with us. They went their  
4 on their own about two or three times. They called  
5 us. We met them on the site and we went through this.

6 And basically, what they recommended,  
7 basically, is what we have worked with them to come up  
8 with this. Now, number two is flow iteration by use  
9 of open vegetated swales and natural depressions. We  
10 have good infiltration rates on the property right  
11 now. So most of the runoff that is not captured by  
12 the dry wells or the partial exfiltration systems or  
13 the storm filter, would naturally flow through, you  
14 know, the green, as is there right now. And it gets  
15 polishing. Most of it will infiltrate and that's what  
16 D.C. mandates and that's what we have done. Thank  
17 you.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. GLASGOW: Because I think it has been  
20 helpful to have a lot of discussion with respect to  
21 the storm water management and runoff, but this is all  
22 covered by DOH when we go through the -- and the --  
23 when we go through the permit process. I know we are  
24 going in a whole lot more detail on this than I guess  
25 any case I have been involved with and I know that

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1 there are a lot of issues and questions that have been  
2 raised. But that's why we have the professional  
3 engineers at DOH.

4 In their manual, they say that DOH and  
5 their -- and the Department is who reviews the plans  
6 and who has the review authority and approval  
7 authority for storm water management in the District  
8 of Columbia. It's not in several different places.

9 CHAIRPERSON GRIFFIS: Understood. We're  
10 studying up though to try and become experts.

11 MR. GLASGOW: I can tell. We can see  
12 whether or not you all can stamp the drawings.

13 CHAIRPERSON GRIFFIS: That's right.  
14 That's right. Okay. Anything else, Mr. Brown?

15 MR. BROWN: No, no.

16 CHAIRPERSON GRIFFIS: Okay. Any other  
17 questions from the Board? Very well. Let's move  
18 ahead. I was actually looking, because I think Mr.  
19 Brown and Mr. Glasgow had addressed something  
20 interesting about how much detail we are getting into  
21 all of this, and I don't think it is outside of what  
22 we need to look at under 2516. I mean, there will be  
23 a level of which our expertise will end and somebody  
24 else's will pick up, which is I think your point.

25 But I think it's absolutely critical for,

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1 one, the beginning of a larger understanding of  
2 impacts and then getting into the specifics of all of  
3 this. And I think a lot of our questions, just to put  
4 it into context, are a basis of trying to understand  
5 what is being proposed and, therefore, then being able  
6 to address any potential adverse conditions that might  
7 arise.

8 That being said, let's get to some more of  
9 the experts and move ahead to the Government agencies  
10 and their reports, unless there are any other  
11 questions from the Board. If not, let's move to the  
12 Office of Planning.

13 MS. BROWN-ROBERTS: Good afternoon, Mr.  
14 Chairman and Members of the Board. I am Maxine Brown-  
15 Roberts from the Office of Planning. I would also  
16 like to introduce to you Earl Eutsler from DDOT's  
17 Urban Forestry Administration. And he will be  
18 addressing the portion of the report that deals with  
19 the Chain Bridge Overlay District.

20 The proposal is to subdivide the property  
21 into 13 lots. Three lots would be accessed off of  
22 extended driveway that currently serve the adjacent  
23 historic building from Chain Bridge Road. The  
24 existing driveway will be widened to 20 feet. The  
25 second driveway that formally serves a single-house

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1 will be extended to serve nine lots. The width of the  
2 driveway currently varies between 13 and 16 feet wide  
3 and will be widened to varying widths of 12.5, 18.5  
4 and 20 feet.

5 The internal driveways have been laid out  
6 to reflect, to some extent, the existing topography.  
7 The applicant submitted that they are utilizing the  
8 existing driveways to limit additional driveway cuts  
9 onto Chain Bridge Road, new driveways proposed for Lot  
10 A, which is accessed directly from Chain Bridge Road.  
11 The new lots vary in size from 9,500 square feet to  
12 12,200 square feet and each lot will be developed with  
13 a house, specifically designed for that lot permitting  
14 the variety of house size, architecture, form,  
15 materials and landscaping.

16 Each lot provides a conforming building  
17 envelope and the applicant will construct the house on  
18 each lot consistent with the design approved for each  
19 lot. A homeowners association would be created to  
20 handle, among other things, the maintenance of the  
21 storm water management system for each individual lot  
22 and the rights of which trash collection and  
23 landscaping.

24 The landmarked Chain Bridge Road School is  
25 adjacent to the subject property and is served by the

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1 current driveway that runs from Chain Bridge Road  
2 around and in front of the building. The existing  
3 driveway will be extended and widened to serve three  
4 lots.

5 The Historic Preservation Review Board has  
6 reviewed the proposed extension and repaving of the  
7 roadway at its April 20, 2005 meeting and stated that  
8 the roadway extension will not impact the historic  
9 building. DDOT regulates the Urban Forestry  
10 Preservation Act of 2002 that restricts the removal of  
11 healthy trees with a circumference of 55 inches and  
12 greater. DDOT noted that all trees that have a  
13 circumference greater than 55 inches are required by  
14 the Urban Forestry Preservation Act of 2002 to get a  
15 permit for removal.

16 The applicant has submitted a plan that  
17 identifies trees with circumferences of over 12 inches  
18 and highlights those that would be removed and those  
19 that will be retained. The Overlay District outlines  
20 limitations of the removal of trees on properties  
21 within the overlay.

22 The applicant submitted an inventory and  
23 an assessment of condition of each tree with a  
24 circumference greater than 12 inches on the site. The  
25 applicant has also provided Tree Preservation Plan for

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1 the Chain Bridge Road Project, which outlines methods  
2 of protection for trees during construction and  
3 identifies those that would be impacted by  
4 construction. This will be addressed by the Urban  
5 Forestry Administration.

6 Water and sewer lines would be located  
7 below the roadways and under driveways and the trees  
8 should not be impacted by the excavation to install  
9 these facilities. Similarly, the location of trees is  
10 also taken into consideration in locating the storm  
11 water management facilities.

12 The overlay limits the impervious surface  
13 areas on the lots to 50 percent. The submission shows  
14 impervious surfaces on the lots ranging from a low of  
15 34.31 percent to a high of 47.8. The total impervious  
16 surface on the entire lot is 44.68.

17 The Office of Planning continues to  
18 encourage the applicant to investigate using  
19 appropriate pervious materials on driveways to further  
20 lower the coverage on this sensitive area. The  
21 applicant submitted a concept Storm Water Management  
22 Plan to the Watershed Protection Branch. In a letter  
23 dated November 7<sup>th</sup>, the concept plan showed -- stated  
24 that the plan shows a broad range of best management  
25 practices to treat anticipated runoff from the

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1 pervious areas.

2 Field percolation tests were also  
3 conducted. The results show that infiltration system  
4 far exceeded the minimum allowable infiltration rate  
5 requirement for the system if it was fully implemented  
6 and the proposed development will meet the District's  
7 storm water management requirements.

8 The Department of Health also noted that  
9 they did not review the plans for erosion and sediment  
10 control plans, as they were not provided. The subject  
11 site is off Chain Bridge Road and the units will all  
12 have internal parking spaces per -- two internal  
13 parking spaces per unit, with additional for service  
14 and loading possibly on the driveways. The main  
15 driveways do not conform to the required 25 foot width  
16 and the applicant has requested a deviation from this  
17 requirement.

18 DDOT supports the proposed reduction in  
19 the driveway width. The width that would be provided  
20 to accommodate two vehicles when passing each other,  
21 the approved right-of-way of 18.5 feet at the entrance  
22 to the subdivision for distance of 48.5 feet with a  
23 lay-by, a right-of-way of 12.5 feet for distance of  
24 146 feet and a right-of-way of 20 feet for distance of  
25 62 feet.

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1           DDOT has stated that the development will  
2           have only a minor impact in traffic in the level of  
3           service on Chain Bridge Road. The right-of-way on the  
4           northern portion of the site will have a driveway of  
5           20 feet wide and a radius of 30 feet at the cul-de-  
6           sac.

7           Regarding the special exception to have a  
8           number of print buildings per lot, the applicant is  
9           proposing to subdivide to create 13 lots with all but  
10          one fronting a private road. As outlined in our  
11          report, the application meets most of the requirements  
12          of section 2516.

13          However, I would like to highlight some  
14          areas that the Office of Planning has concerns. The  
15          applicant has tried to minimize the impact of  
16          development on the character of the neighborhood by  
17          limiting the removal of trees and grading of the site  
18          as required by the overlay. Further landscaping and  
19          additional trees would be added to create a buffer  
20          around houses as well as to have retained the rural  
21          wooded character of the area.

22          The majority of the houses aren't in  
23          sight, and therefore will not be visible while  
24          traveling along Chain Bridge Road. The houses along  
25          Chain Bridge Road will be more visible and to minimize

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1 their visibility, the houses have been setback from  
2 the property line and the landscaping plans show the  
3 retention of existing trees in addition to trees that  
4 will be added to buffer those houses.

5 The Office of Planning is concerned about  
6 the impact to houses on the side Lot F and Lot 3. Lot  
7 3 is located on the edge of a hill and towers over  
8 Chain Bridge Road. The applicant has removed this  
9 house 8 feet back from the property line and reduced  
10 its height by, approximately, 2.5 feet. Additional  
11 plantings are also proposed along Chain Bridge Road.

12 However, the Office of Planning still  
13 believes that even with the additional trees along the  
14 property line and within the right-of-way, the houses  
15 will still be towering over the roadway and further  
16 reduction of the height of the house may be required  
17 to lessen that impact.

18 The location of the house on Lot F is in  
19 close proximity to the house on an adjacent lot.  
20 Currently, there is an abundance of bamboo between the  
21 properties, which the applicant has agreed to replace.  
22 Lot F slopes steeply down to the adjacent property and  
23 the applicant proposed to replace the house on top of  
24 the hill. Although the height of the house has been  
25 lowered, the basement there has been more exposed and

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1 it has been extended further into the ground.

2 OP is still concerned about the minimal 11  
3 foot slope distance between the houses. We believe  
4 that within this area of large lot and large houses,  
5 the distance between these houses is too narrow. OP  
6 recommends that Lot F be deleted. The applicant has  
7 lowered the height of the house by 10 feet to address  
8 our concerns.

9 However, as we do appreciate this, we  
10 still do not believe it is sufficient to minimize the  
11 impact of such a large new house so close to the  
12 existing neighbor and it's inconsistent with the  
13 surrounding character. OP believes that by removing  
14 Lot F more space can be created between the houses  
15 proposed for Lot C and D and also for more sensitive  
16 treatment of the topography on Lots G and H and I by  
17 changing their lot lines and slight rear line in the  
18 proposed house locations.

19 The Battery Kemble Park is located  
20 directly east of the subject property. The National  
21 Park Service has said that they will provide comments.  
22 The Office of Planning is concerned that the rear of  
23 the building on Lot 3 adjacent to the Chain Bridge  
24 Road isn't -- which is a narrow two-lane 30 foot  
25 right-of-way and because of the topography of the site

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1 of the buildings will be on top of the hill. The  
2 house is located close to the property line and towers  
3 over the roadway.

4 There are other homes along Chain Bridge  
5 Road that are located close to the property line, but  
6 their impact is less, because they are much smaller  
7 and their entrances face Chain Bridge Road.

8 Regarding the Chain Bridge Road/University  
9 Terrace Overlay District, this was established to  
10 preserve and enhance the park-like setting of the  
11 Chain Bridge Road/University Terrace area by  
12 regulating alteration or disturbance of terrain, the  
13 destruction of trees and ground coverage of permitted  
14 buildings and other impervious surfaces by providing  
15 for widely spaced residences.

16 To reach its goal, the overall specific  
17 lot occupancy and ground coverage restrictions that  
18 work in conjunction with the requirements of the R-1-A  
19 Zone and limitation on theoretical lots, the purposes  
20 of the overlay is outlined in section 1565.2. The  
21 applicant has provided an inventory of trees and  
22 identified those with circumferences greater than 12  
23 inches and as identified as those trees that would be  
24 removed due to construction and those that are  
25 hazardous or dying.

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1           The applicant has provided a Tree  
2 Preservation Plan that outlines measures to be taken  
3 to preserve the trees during construction and will be  
4 commented on by the Urban Forestry.

5           All the lots provided exceed the minimum  
6 lot size of 9,500 square feet. DDOT, Fire Service and  
7 DOH all state that the proposal will have no adverse  
8 impacts and achieve the purposes of the overlay. The  
9 large lot sizes allow for a few units and the  
10 underlying R-1-B would allow, which helps to minimize  
11 impact on water and sewer services, traffic, the  
12 preservation of trees and natural topography.

13           The proposed development generally meets  
14 the requirements of the Zoning Regulation. Generally,  
15 the lot sizes are compatible with those in the  
16 community as outlined in the overlay. The conceptual  
17 Storm Water Management Plan that has been approved by  
18 DOH would prevent runoff from the site. The Office of  
19 Planning is generally supportive of the application,  
20 but still has concern.

21           And in addition, the Office of Planning  
22 also concurs with those stipulated by the Urban  
23 Forestry Administration. The Office of Planning,  
24 therefore, recommends that the applicant reduces the  
25 number of lots to 12 to better accommodate the

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1 remaining interior lots, provide information on  
2 remediation of trees removed, provide for a storm  
3 water and sediment -- I'm sorry. Provide a Soil and  
4 Sediment Control Plan, prohibit a gated community,  
5 plans approved for each house will be the unit built  
6 for some -- with some flexibility to allow minor  
7 changes where more detailed plans are finalized and  
8 monitor the protection of trees during construction.

9 Thank you, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Excellent. Thank  
11 you very much. Can I ask you in your statement, I  
12 note your last filing and the statement today, there  
13 was concern with Lot E. Could you just restate that?  
14 Has that been accommodated in this or is it still --  
15 I think you were saying, it's placement was too close  
16 to Chain Bridge? I'm sorry, you said Lot 3 today, if  
17 I was not mistaken, and then Lot E was a past  
18 condition.

19 MS. BROWN-ROBERTS: Right.

20 CHAIRPERSON GRIFFIS: Is that right?

21 MS. BROWN-ROBERTS: Yes, those were the  
22 two lots that we had the greatest concern with, Lot 3  
23 and Lot E.

24 CHAIRPERSON GRIFFIS: F?

25 MS. BROWN-ROBERTS: Lot F, I'm sorry.

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1 CHAIRPERSON GRIFFIS: F today, right.

2 MS. BROWN-ROBERTS: Right.

3 CHAIRPERSON GRIFFIS: And what was the  
4 concern with E or rather, I don't know why I'm doing  
5 that, Lot 3?

6 MS. BROWN-ROBERTS: Lot 3 was its  
7 location. That lot -- that house was pretty close to  
8 the street. It is right on top of the hill and we  
9 were concerned about its impact from the park -- from  
10 across the park.

11 CHAIRPERSON GRIFFIS: Okay. So the visual  
12 impact?

13 MS. BROWN-ROBERTS: That's correct.

14 CHAIRPERSON GRIFFIS: Okay. Which would  
15 be the -- okay. Any other questions from the Board?

16 COMMISSIONER PARSONS: Yes, Mr. Chairman?

17 CHAIRPERSON GRIFFIS: Yes?

18 COMMISSIONER PARSONS: MS. Brown-Roberts,  
19 I'm wondering why you didn't feel the same about Lot  
20 4 along Chain Bridge Road that you do about Lot 3?

21 MS. BROWN-ROBERTS: I think Lot 3 is at a  
22 lower elevation than Lot -- Lot 4 is at a lower  
23 elevation than Lot 3 and we didn't think that it would  
24 have the -- and it was a little more setback from the  
25 roadway also.

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1 COMMISSIONER PARSONS: So this shows the  
2 ground grade level of 290 on Lot 3 and 266 for 4. So  
3 it's that 30 foot difference?

4 MS. BROWN-ROBERTS: Yes, I think when we--  
5 when I went out and looked at it, did the site visit,  
6 the impact, I thought, was going to be greater from  
7 Lot 3 than Lot 4.

8 COMMISSIONER PARSONS: And you feel that  
9 can be cured by taking a story off the building?

10 MS. BROWN-ROBERTS: Yes, and actually the  
11 applicant did reduce the height, but we still felt  
12 that that was sort of not enough.

13 COMMISSIONER PARSONS: You mean change the  
14 roof design or something?

15 MS. BROWN-ROBERTS: Yes.

16 COMMISSIONER PARSONS: But it still --

17 MS. BROWN-ROBERTS: Yes, they did lower  
18 the height, yes.

19 COMMISSIONER PARSONS: It's still a two  
20 story building?

21 MS. BROWN-ROBERTS: Yes.

22 COMMISSIONER PARSONS: I guess it's two  
23 stories. Well, it's a basement as well. Thank you.

24 CHAIRPERSON GRIFFIS: That was dealing  
25 with Lot 3. Is that correct?

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1 MS. BROWN-ROBERTS: Lot 3.

2 CHAIRPERSON GRIFFIS: Mr. Parsons?

3 MS. BROWN-ROBERTS: That's correct.

4 CHAIRPERSON GRIFFIS: Okay. Let me  
5 follow-up, because you listed your concerns at the end  
6 of your oral report today, which were excellent, which  
7 were very closely of the conditions that you had  
8 listed in the previous submission. However, in the  
9 last, is there a change in your -- the Office of  
10 Planning's position on retaining walls would be  
11 constructed of concrete?

12 MS. BROWN-ROBERTS: No, I think we still  
13 recommend that.

14 CHAIRPERSON GRIFFIS: Okay. Retaining  
15 walls of concrete. I went to whether a revised site  
16 plan showing approved changes be submitted. I think  
17 that's accomplished today.

18 MS. BROWN-ROBERTS: That's taken care of,  
19 yes.

20 CHAIRPERSON GRIFFIS: Okay. And then the  
21 height of buildings we have talked about the two  
22 impacts, but you have listed E, F, G be limited to two  
23 stories?

24 MS. BROWN-ROBERTS: Right, uh-huh.

25 CHAIRPERSON GRIFFIS: And that, you are

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1 still maintaining?

2 MS. BROWN-ROBERTS: We're still  
3 maintaining those, yes.

4 CHAIRPERSON GRIFFIS: Okay. And those go  
5 to?

6 MS. BROWN-ROBERTS: I think those go to  
7 their views from the -- from adjacent -- from the  
8 adjacent lots.

9 CHAIRPERSON GRIFFIS: On E.

10 MS. BROWN-ROBERTS: Off-site lots, not  
11 lots on --

12 CHAIRPERSON GRIFFIS: And if you want  
13 removed all together --

14 MS. BROWN-ROBERTS: That's correct.

15 CHAIRPERSON GRIFFIS: -- E, you want  
16 reduced in height and also G.

17 MS. BROWN-ROBERTS: That's right, yes.  
18 We're saying that if we take Lot F out, then we could  
19 reorient Lots G and E. I'm sorry, if we take Lot E  
20 out, then we can rearrange Lots F and G.

21 CHAIRPERSON GRIFFIS: I thought you wanted  
22 F out?

23 MS. BROWN-ROBERTS: Yes.

24 CHAIRPERSON GRIFFIS: So you take F out  
25 and you reorient E and G?

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1 MS. BROWN-ROBERTS: Right, right.

2 CHAIRPERSON GRIFFIS: Okay. And G is  
3 towards the -- you know, G is towards the very back  
4 and what's the proximity of the -- do we have anything  
5 that shows the proximity of the off property houses  
6 that you are concerned with? I look at your  
7 submission after your written with the aerial  
8 photograph. It's labeled the Chain Bridge Road  
9 Project Aerial Photograph, approximate boundary of the  
10 site.

11 G it seems to me doesn't have an adjacent  
12 property or structure.

13 MS. BROWN-ROBERTS: Yes, I think there is  
14 a house. It's lower than this.

15 CHAIRPERSON GRIFFIS: Okay. But it's  
16 closer to University Terrace or am I reading this all  
17 wrong? I mean, I guess the next question would be if  
18 you want G reduced in height, why not H? Isn't is  
19 just as approximate to or is it in proximity to the  
20 adjacent lot and structure that's similar?

21 MS. BROWN-ROBERTS: I think what we were  
22 trying to get at is to have the houses in this corner  
23 be away from the property lines a little further,  
24 because the houses that are to the northeast of this  
25 corner will be -- are much lower and then with these

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1 new houses, you can see them directly up the hill.

2 CHAIRPERSON GRIFFIS: Okay. So  
3 essentially, the view lines or the view shed of those  
4 particular ones were of concern?

5 MS. BROWN-ROBERTS: Of concern, yes.

6 CHAIRPERSON GRIFFIS: Okay. Okay. All  
7 right. Anything else from the Board? Any other  
8 questions, follow-up? Ms. Miller?

9 VICE CHAIR MILLER: And what's the  
10 rationale for the retaining walls being of concrete?

11 MS. BROWN-ROBERTS: There was some concern  
12 in the community that some of the retaining walls, the  
13 material that was being used, was not sturdy enough  
14 and we talked to the people at DOH and they said, you  
15 know, yes, we could go ahead and say concrete is fine.  
16 They thought that other materials was fine also, but--

17 VICE CHAIR MILLER: So they couldn't be  
18 stone walls. Is that correct? If this condition  
19 were --

20 MS. BROWN-ROBERTS: Yes, I -- I don't  
21 remember.

22 VICE CHAIR MILLER: You don't have an  
23 objection to stone walls?

24 MS. BROWN-ROBERTS: No, I don't, no.

25 VICE CHAIR MILLER: Okay.

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1 MS. BROWN-ROBERTS: I think it's the  
2 durability that we're trying to get at.

3 CHAIRPERSON GRIFFIS: Okay. Anything  
4 else? Any other questions from the Board? Mr.  
5 Glasgow?

6 MR. GLASGOW: I just wanted to -- a couple  
7 of clarifications, Ms. Brown-Robert, just on Lot F.

8 MS. BROWN-ROBERTS: Yes.

9 MR. GLASGOW: Could you possibly recheck  
10 the most recent plans? I think we have a setback of  
11 25 feet now.

12 MS. BROWN-ROBERTS: Okay.

13 MR. GLASGOW: With the revised plans. And  
14 whether if it were a 25 foot setback, whether that  
15 would address your concern along with one of the  
16 reduction in the height of that building.

17 MS. BROWN-ROBERTS: I think that, you  
18 know, as we went along and the applicant did make  
19 some, you know, revisions by setting the building back  
20 and also doing some additional landscaping, but I  
21 think that overall, you know, we have been saying this  
22 from the beginning that we still think that we could  
23 lose one of the lots in this area, because we think it  
24 will make for a better design and address a lot of the  
25 concerns that we have.

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1 MR. GLASGOW: All right. Thank you. And  
2 then the next question. With respect to the retaining  
3 wall construction, I believe the applicant's plans  
4 are, at this point in time, to build the retaining  
5 walls out of concrete and then face them with stone.

6 MS. BROWN-ROBERTS: Okay.

7 MR. GLASGOW: And I understand that that's  
8 acceptable?

9 MS. BROWN-ROBERTS: Yes, I think that's  
10 acceptable.

11 MR. GLASGOW: All right. And then my  
12 understanding is the conclusion of your report is that  
13 we have generally met the requirements of the  
14 regulations with the reduction of the number of units  
15 to 12 units total on the site. >From 13, that would  
16 be the reduction of the one unit.

17 MS. BROWN-ROBERTS: Right. I think what  
18 our recommendation is is that we think generally the  
19 requirements have been met. However, we still do have  
20 some concerns about the intent of the requirements.  
21 So that's where the gray area comes in.

22 MR. GLASGOW: Okay. But we have asked for  
23 the special exception relief and to the extent that we  
24 have variances, my understanding is that you have  
25 supported the variance request that we have to narrow

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1 the roadway.

2 MS. BROWN-ROBERTS: Right, right.

3 MR. GLASGOW: And then with respect to the  
4 special exception criteria.

5 MS. BROWN-ROBERTS: Yes.

6 MR. GLASGOW: You testified that we  
7 generally met that criteria if we reduce the number of  
8 units.

9 MS. BROWN-ROBERTS: Well, that's correct.  
10 That's correct.

11 MR. GLASGOW: And then you recommend that  
12 we submit a Soil and Sediment Control Plan as part of  
13 this application?

14 MS. BROWN-ROBERTS: That's correct.

15 MR. GLASGOW: Even though that's generally  
16 done as part of the building permit process?

17 MS. BROWN-ROBERTS: Yes, but there were  
18 still under, you know, the evaluation of the plan, I  
19 think that is something that would help in our review.  
20 Again, it doesn't have to be your final plan, but just  
21 a general plan about how that's going to be taken care  
22 of.

23 MR. GLASGOW: All right. So the record  
24 would be open for the submission of that type of plan  
25 is what that part of the recommendation is?

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1 MS. BROWN-ROBERTS: The Chairman will  
2 address that.

3 MR. GLASGOW: Yes.

4 CHAIRPERSON GRIFFIS: But his question is  
5 that's what you are recommending?

6 MS. BROWN-ROBERTS: Yes, yes.

7 MR. GLASGOW: That's true. Exactly.

8 CHAIRPERSON GRIFFIS: And are you looking  
9 to have a supplemental report addressing that?

10 MS. BROWN-ROBERTS: I think that's  
11 something that we had asked DOH to take a look at and  
12 they said that they were not given the plans, so, you  
13 know, they could not comment on that.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. GLASGOW: I think, Mr. Chairman, that  
16 goes to the point of we don't have objection to  
17 submitting that type of information, but we don't want  
18 to get around the building permit reviews with the  
19 Board of Zoning Adjustment when normally what you do  
20 is you submit that to the engineers. They review it.  
21 Either you comply with the criteria or you don't  
22 comply with the criteria. And if you don't, you have  
23 to comply or you don't get a permit. As opposed to  
24 making that part of the BZA process.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. GLASGOW: We're looking for direction  
2 on that.

3 CHAIRPERSON GRIFFIS: Right. Exactly.  
4 You want to address just what the intent is? What was  
5 the kind of information that would be illuminated with  
6 that?

7 MS. BROWN-ROBERTS: I think it's the same  
8 sort of intent we look for when we are looking at the  
9 Storm Water Management Plan, that it is not a final  
10 plan, but it gives us some direction of how these  
11 things are going to be addressed. I mean, you know,  
12 2516 talks about, you know, environmental impacts and  
13 all that.

14 CHAIRPERSON GRIFFIS: Right.

15 MS. BROWN-ROBERTS: And I think that's  
16 where we're trying to see -- at least get some idea of  
17 how is -- you know, this area that's going to be  
18 graded, you know, how is the soil and sediment control  
19 going to be addressed. So I think it's mostly to give  
20 us some idea or direction of, you know, where we are  
21 going and not the final plan.

22 CHAIRPERSON GRIFFIS: Okay. What impact  
23 would be shown in that that isn't shown in grading,  
24 storm water management or landscape plans to date?

25 MS. BROWN-ROBERTS: I think for the

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1 sediment control, I suppose -- I'm not sure how -- to  
2 what extent they addressed that in the grading plan  
3 that they submitted. But as I said, that was  
4 something that DOH commented on that they had not  
5 received.

6 CHAIRPERSON GRIFFIS: Okay. Okay.

7 MR. BROWN: Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Yes?

9 MR. BROWN: Can I ask a question regarding  
10 those plans?

11 CHAIRPERSON GRIFFIS: Sure.

12 MR. BROWN: Is that Sediment Control Plan  
13 something that is just applicable during the  
14 construction process or is that an ongoing long-term  
15 plan?

16 MS. BROWN-ROBERTS: I am not -- yes, I  
17 think it may be during construction.

18 CHAIRPERSON GRIFFIS: Okay. Anything  
19 else? Any other questions of the Office of Planning  
20 from the Board?

21 MR. GLASGOW: I have no further questions  
22 of the Office of Planning.

23 CHAIRPERSON GRIFFIS: Any cross, Mr.  
24 Brown?

25 MR. BROWN: Sure. In following up, I'm

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1 having a hard time reconciling your report and  
2 generally acceptable. It's kind of like kind of  
3 pregnant and then basing -- relying upon Mr. Eutsler  
4 and his report. How do you reconcile your position  
5 with the fact that the applicant hasn't reduced the  
6 number of houses to 12? Hasn't agreed to --

7 MS. BROWN-ROBERTS: Well, as I said, you  
8 know, the 13 lots that are here, if you look at the  
9 requirements that are outlined in 2516, you know, the  
10 setbacks and all that, they do meet that. However,  
11 there are some other areas where we think that meeting  
12 the minimum is not enough, because this is a special  
13 area. We may need to go a little bit beyond the  
14 minimum. And so that is where our concern is. So  
15 we're generally supportive of the application, but we  
16 think that if it's reduced to 12 lots, then we have a  
17 better development and that's what we're looking for.

18 MR. BROWN: I don't follow. But how do  
19 you reconcile? In Mr. Eutsler's report, which  
20 hopefully everybody has read, because it is actually  
21 one of the most well-written professional reports I  
22 have been in a while.

23 CHAIRPERSON GRIFFIS: Question?

24 MR. BROWN: How do you reconcile your  
25 position of general approval with his report, which is

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1 really unequivocal in his opposition to the special  
2 exception?

3 MS. BROWN-ROBERTS: Well, I mean, I think,  
4 you know, he will give his report, but I'm sure the  
5 Board will say to the applicant, you know, how are you  
6 going to answer his concerns, so that is something.  
7 I mean, I don't think that it's something that is not  
8 -- that we can't overcome.

9 MR. BROWN: Earlier you indicated that  
10 you, that OP needed to defer to the Urban Forestry  
11 Administration for their expertise in tree  
12 preservation matters. Is that your position now that  
13 you need to defer to their expertise, Mr. Eutsler's  
14 expertise?

15 MS. BROWN-ROBERTS: Yes, I mean, I did say  
16 that, yes.

17 MR. BROWN: And the applicant has shown no  
18 willingness to reduce the number of units. Is that  
19 correct?

20 MS. BROWN-ROBERTS: Yes.

21 MR. BROWN: All right. And that has been  
22 -- that condition/concern has been publicly stated  
23 since at least January of this year?

24 MS. BROWN-ROBERTS: Um-hum.

25 MR. BROWN: Don't you think it's too late

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1 to, you know, make that change?

2 CHAIRPERSON GRIFFIS: Is that something  
3 she --

4 MS. BROWN-ROBERTS: I don't think that's  
5 my judgment to make, no.

6 CHAIRPERSON GRIFFIS: I'm not sure she can  
7 answer that, either.

8 MR. BROWN: Well, because then it raises--  
9 it's a domino effect. The applicant -- and this goes  
10 to one of the greater concerns is the applicant very  
11 proudly says he has been working on this project for  
12 three or four years.

13 CHAIRPERSON GRIFFIS: Right. No, I  
14 understand where you're going to go. But the question  
15 to her was not posed that she could even answer it.  
16 Can I interject here briefly?

17 MR. BROWN: Yes.

18 CHAIRPERSON GRIFFIS: Because I want to go  
19 back to your first question, because it will matter  
20 directly to our own deliberation.

21 Mr. Brown asked you -- you have, as stated  
22 today in your written report, that OP is generally  
23 supportive of the application and recommends approval  
24 with the following conditions.

25 MS. BROWN-ROBERTS: Um-hum.

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1 CHAIRPERSON GRIFFIS: So posed a different  
2 way. If those conditions weren't all adhered to, what  
3 would the OP's position be? Would it actually not be  
4 of approval?

5 MS. BROWN-ROBERTS: Right. And I think it  
6 would not be of approval.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. BROWN-ROBERTS: Yes.

9 CHAIRPERSON GRIFFIS: Next question?

10 MR. BROWN: It would be disapproval? I  
11 mean, I just want to make sure.

12 CHAIRPERSON GRIFFIS: One not of approval,  
13 yes, she said. All right.

14 MR. BROWN: I would like to reserve  
15 perhaps the chance to follow-up after Mr. Eutsler  
16 has --

17 CHAIRPERSON GRIFFIS: With OP?

18 MR. BROWN: Yes.

19 CHAIRPERSON GRIFFIS: Yes, I don't have  
20 any problem with that. Nothing else at this time?

21 MR. BROWN: No.

22 CHAIRPERSON GRIFFIS: Okay. Thank you  
23 very much. Let's move directly into it. And to  
24 answer Mr. Brown's indirect question to the Board,  
25 yes, we have read your report substantially. Let's

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1 move ahead and you can present it.

2 MR. EUTSLER: Mr. Chairman and Members of  
3 the Board, thank you for the opportunity today to  
4 present the --

5 CHAIRPERSON GRIFFIS: I'm sorry. Hold on  
6 just a second. Did you have cross questions of Office  
7 of Planning and if you wouldn't mind just introducing  
8 yourself for the record?

9 MR. RICHTER: I have -- yes.

10 CHAIRPERSON GRIFFIS: Your microphone?  
11 I'm sorry. Just touch the base there. Keep going,  
12 there is a button right there on the base. Excellent.

13 MR. RICHTER: My name is Richard Richter.

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. RICHTER: And I'm a resident of  
16 Battery Place, which is just behind this property.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. RICHTER: And we currently have  
19 drainage from this property.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. RICHTER: Into the stream behind us  
22 and a letter from the chairman of our organization has  
23 been sent to you saying that we are very concerned  
24 about this project for the reason that the drainage  
25 from the property --

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1 CHAIRPERSON GRIFFIS: Okay. Before we go  
2 too far into your substantive, it sounds like,  
3 testimony, you're not representing the ANC or any  
4 party in this case, at this point. Is that correct?

5 MR. RICHTER: Yes, I am.

6 CHAIRPERSON GRIFFIS: Right. Who are you  
7 representing?

8 MR. RICHTER: No, I'm not representing  
9 anybody.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. RICHTER: But I'm representing an  
12 organization that is involved and concerned about  
13 this.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. RICHTER: 15 homes.

16 CHAIRPERSON GRIFFIS: Excellent.  
17 Excellent.

18 MR. RICHTER: Okay.

19 CHAIRPERSON GRIFFIS: Okay. However, now  
20 would not be the time for you to address the Board.

21 MR. RICHTER: Okay.

22 CHAIRPERSON GRIFFIS: And let me just  
23 reiterate, because it's possibly a great time to do  
24 this. What we're going to go through is the rest of  
25 the Government agency reports of which these are the

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1 two that will be presented today. The parties will  
2 cross each of those and then we'll move on to the  
3 ANC's presentation of their case. I know the ANC will  
4 avail themselves, if they have cross, to come up and  
5 ask questions, so I won't keep asking if they do.

6 MR. RICHTER: Okay.

7 CHAIRPERSON GRIFFIS: So at that point  
8 then after all of those Government reports, then we'll  
9 go to -- we may assess where we are in terms of the  
10 next presentation. We may take persons' testimony,  
11 your testimony or we may get into the parties  
12 presentation.

13 MR. RICHTER: Okay.

14 CHAIRPERSON GRIFFIS: But after this part,  
15 we'll probably take a quick break and then we'll come  
16 back for others. So I will call you up.

17 MR. RICHTER: Thank you.

18 CHAIRPERSON GRIFFIS: Indeed. Thank you  
19 very much.

20 MR. BROWN: Mr. Chairman?

21 CHAIRPERSON GRIFFIS: Yes.

22 MR. BROWN: Quickly following through and  
23 to add my confusion, we have a witness. It's a person  
24 who unfortunately she is on a very short time frame.  
25 I think this is her second visit and would like

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1 briefly to make an opportunity to speak. Is it --  
2 would the Board be willing and the applicant be  
3 willing to accommodate this person? She is a direct  
4 neighbor and she is actually the author of one of the  
5 Out-Bed pieces on this.

6 CHAIRPERSON GRIFFIS: Right now?

7 MR. BROWN: Or shortly. She has got a  
8 very narrow window of opportunity.

9 CHAIRPERSON GRIFFIS: I'm flexible. I'm  
10 here for the day. So, Mr. Glasgow?

11 MR. GLASGOW: Is she one of the witnesses  
12 that he -- out of his direct presentation?

13 MR. BROWN: No, it's a neighbor and I  
14 guess she would fall --

15 CHAIRPERSON GRIFFIS: Persons to provide  
16 testimony?

17 MR. BROWN: Yes.

18 CHAIRPERSON GRIFFIS: Okay. Here is what  
19 I would like to do. We can do that now if everyone is  
20 on a tight schedule, as we certainly like to  
21 accommodate. Obviously, we always are here processing  
22 cases and, you know, we can't call everyone up all at  
23 once, it would be chaos. I wouldn't -- I think it's  
24 probably more productive to go through the Urban  
25 Forestry, DDOT's presentation of their case, do the

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1 cross and then I am perfectly open to actually having  
2 persons testimony. Then we can get into parties case  
3 presentations and witnesses.

4 I think that probably works out for  
5 everyone's schedule a bit better. Okay. If there's  
6 no objection or questions of procedure with that,  
7 let's move ahead.

8 MR. GLASGOW: No, Mr. Chairman, there was  
9 just one brief clarification.

10 CHAIRPERSON GRIFFIS: Yes?

11 MR. GLASGOW: I thought part of what we  
12 did during the last case was have all the persons in  
13 opposition were supposed to have testified during  
14 that. That was part of what I thought we were doing  
15 that --

16 CHAIRPERSON GRIFFIS: We did follow that  
17 up.

18 MR. GLASGOW: -- to get --

19 CHAIRPERSON GRIFFIS: Right.

20 MR. GLASGOW: -- it moving, so that this  
21 case just doesn't keep going on and on and more people  
22 come in. I thought that's what we had done.

23 MR. BROWN: And unfortunately, this  
24 person, in particular, had to leave last time and will  
25 have to leave again. And again, we're talking about

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1 a very brief period of --

2 CHAIRPERSON GRIFFIS: Yes, we'll see. How  
3 many folks are here today, persons not involved in  
4 this, that were anticipating providing testimony to  
5 the Board today? Show of hands. How many persons?  
6 So we have what two or three? Okay. We'll assess.  
7 We'll assess. I think it's an excellent point, Mr.  
8 Glasgow. We'll get to that.

9 Let's move ahead though and finish with  
10 this and then we'll all digest those elements and get  
11 to it. Go ahead.

12 MR. EUTSLER: Thank you for the  
13 opportunity for allowing us to present our review of  
14 the project. I feel it's beyond any dispute that the  
15 notion of tree preservation mandated in the Chain  
16 Bridge University Terrace Overlay District Regulations  
17 is to be applied as a strict measure of protection of  
18 and for existing specimen trees.

19 CHAIRPERSON GRIFFIS: Good point.

20 MR. EUTSLER: As such, if any property  
21 within this District is preparing to undergo  
22 alterations, those existing specimen trees must be  
23 protected and preserved in such a way that they not  
24 only survive the immediate construction phase, but  
25 also emerge with as good a chance of long term

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1 survival as they would have had had no construction  
2 occurred in their immediate vicinity.

3 CHAIRPERSON GRIFFIS: Excellent. Very  
4 powerful. However, would you state your name and who  
5 you are representing today?

6 MR. EUTSLER: Earl Eutsler, Urban Forestry  
7 Administration.

8 CHAIRPERSON GRIFFIS: Good. Thank you  
9 very much.

10 MR. EUTSLER: The District's Department of  
11 Transportation. Picking up where I left off. The  
12 property at issue on Chain Bridge Road is well-suited  
13 for low density residential development. There are  
14 three distinct relatively flat plateaus exist. And  
15 it's conceivable that a development design could be  
16 implemented in such a way that disturbance could be  
17 minimized.

18 However, certain elements of this proposal  
19 do not meet the threshold of credibility required, in  
20 my view, to be granted a special exception. I have  
21 three main concerns and I'll review them right now.

22 CHAIRPERSON GRIFFIS: Good.

23 MR. EUTSLER: The first involves Mr.  
24 Bonifant's tree report relative to the installing of  
25 storm water management devices. His report nowhere

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1 describes how his Tree Protection Plan will manage the  
2 threat posed by the installation of storm water  
3 management devices next to and directly under several  
4 protected trees.

5 This is alarming as he has gone so far as  
6 to recommend design changes to several homes in an  
7 attempt to better protect many of the trees. Yet, he  
8 never once discusses, much less even mentions,  
9 managing this other element of proposed infrastructure  
10 design and limitation. And let me say the Tree  
11 Preservation Plan I'm describing is the submission  
12 from June 26, 2006, which I believe is the most  
13 recent.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. EUTSLER: As a result, it's quite  
16 conceivable that any protection from home construction  
17 provided trees 32 through 34, 36 and 37 and 48 through  
18 53 could be undone by a poorly planned or implemented  
19 tunneling operation. As stated in my previous  
20 submission, it would appear as though he does not  
21 consider the installation of the system directly under  
22 and/or adjacent to several trees a conflict worth  
23 protecting against.

24 As a result, it's my opinion that the  
25 integration of the storm water management system has

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1 not been thoroughly explored or satisfactorily  
2 explained.

3 Second, I believe the estimates regarding  
4 the extent of preconstruction pruning to occur to the  
5 stand of beech trees currently along the existing  
6 drive is quite conservative. The elevation of the  
7 lowest branches to accommodate driveway ramps and  
8 vehicular traffic and the proximity of several homes  
9 will necessitate removing closer to 8 to 15 percent of  
10 the total foliage of trees 48 through 53. This is  
11 based on my site visits with the architect and the  
12 arborist for Mr. Bender.

13 While this is still within the industry  
14 accepted limit of 25 percent, referred to by Mr.  
15 Bonifant, it must be remembered that we are discussing  
16 old and mature beech trees. This species is known for  
17 its general intolerance to disturbance and alteration,  
18 both to it and its surroundings. The importance of  
19 preserving these trees cannot be overstated.

20 As I stated in my previous submission to  
21 the surrounding community as well as visitors to the  
22 area, these trees stand out as an exceptional example  
23 of the species and contribute mightily to the park-  
24 like character of the neighborhood. Preservation of  
25 these trees should be held as a non-negotiable element

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1 of any proposed development.

2 As proposed, the beech trees along both  
3 sides of the existing driveway would appear to suffer  
4 incursions both above and below ground. I remain  
5 unconvinced that the amount of disturbance proposed  
6 remains sufficiently below the threshold of protection  
7 outlined in the Tree and Slope Overlay District  
8 Regulations. Considering that these regulations were  
9 established, "established to preserve and enhance the  
10 park-like setting of the Chain Bridge University  
11 Terrace area," and recognizing that these trees more  
12 than any other group on the property contribute so  
13 extensively to the park-like character of the area, it  
14 is of the utmost importance that every protection and  
15 accommodation be made to ensure their long-term  
16 preservation.

17 To date, I don't see any evidence that  
18 this will occur. In fact, I say that more than --  
19 that these trees more than any other group on the  
20 property are -- I afford them almost a certain status,  
21 is because you -- not only are they -- is it rare to  
22 see such an intact and well-established allee of beech  
23 trees, but also these trees are readily viewable from  
24 off-site. You can see these from several different  
25 vantage points. From the park, you see them driving

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1 by on Chain Bridge Road.

2 As such, I think that in the regulations  
3 where it describes the preservation and enhancement of  
4 the park-like setting, this is exactly what is being  
5 described as something to be protected.

6 On the third and also continuing with the  
7 beech trees and the storm water management, the plan  
8 shows for tunneling to go under the driveway. And  
9 correct me if I'm wrong, but in the last hearing, Mr.  
10 Bender testified that the driveway was going to remain  
11 intact as is, which based on what we have heard today  
12 seems to have changed. And while that is not  
13 necessarily problematic, it's not reflected in the  
14 Tree Preservation Plan, either. A note perhaps to be  
15 discussed.

16 The third concern I have is that despite  
17 at least four years of planning and perhaps more, I'm  
18 only aware of four years, no effort has been made to  
19 prepare the site and the trees for the extensive  
20 development which is proposed. For instance, not a  
21 single preconstruction preservation technique has been  
22 employed, much less even proposed, by any of the  
23 arborists involved with the project. With the  
24 exception of the unfulfilled statement of Mr.  
25 Bonifant's report that "supplemental watering or other

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1 necessary steps will be taken to maintain tree health  
2 if dry weather or a drought occurs immediately  
3 preceding or during the construction."

4 We certainly had a drought earlier this  
5 spring and the -- certainly no watering -- no  
6 additional water resources were provided to the trees  
7 on the property. We, in fact, discussed it during our  
8 site visit. In addition, Mr. Bonifant's report calls  
9 for post-construction aeration and watering in an  
10 effort to ameliorate the effects of any soil  
11 compaction.

12 While I applaud this recommendation, it  
13 should be noted that where proper tree preservation is  
14 not implemented as an afterthought and where adequate  
15 lead time allows, several steps are frequently  
16 recommended. Among these are the very steps Mr.  
17 Bonifant proposes as a follow-up treatment. There is  
18 no doubt that almost any mature tree would benefit  
19 from soil aeration following nearby construction.  
20 However, that same tree would stand an even better  
21 chance of enduring the effects of construction if the  
22 soil was aerated well-prior to construction as well as  
23 after.

24 In this case, the developer has four years  
25 time in which to implement a proactive Tree

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1 Preservation Program, yet has done nothing of the  
2 sort. Furthermore, the lack of such long-range  
3 thinking detracts from the developer's credibility in  
4 terms of attempting to preserve and enhance the park-  
5 like setting of the area as required by the Zoning  
6 Regulations. I'm finished.

7 CHAIRPERSON GRIFFIS: Excellent. Thank  
8 you very much. Questions from the Board? Ms. Miller?

9 VICE CHAIR MILLER: Okay. You expressed  
10 some very serious concerns with respect to the tree  
11 protection and the way I read your testimony is that  
12 for that reason, you would suggest that we deny the  
13 application. My question is can any of your concerns  
14 be transformed into conditions or requirements for  
15 ways in which the property could be developed and the  
16 trees protected?

17 MR. EUTSLER: Certainly. When I visited  
18 the property, I walked its perimeter several times.  
19 I think that there -- because this area has these  
20 current existing plateaus, these three plateaus, it's  
21 fairly conceivable to build several homes. I'm not  
22 certain how many or what size, but you could actually  
23 build several of these homes and preserve many of the  
24 trees.

25 But I don't think you can build the homes

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1 -- I don't think you can build homes on Lot B, C and  
2 D or especially B and C in proximity to the southern  
3 side of the existing driveway and preserve the beech  
4 trees nor do I think you can retain the existing drive  
5 as the main entrance way for the preponderance of the  
6 proposed home sites.

7 I think, if I were to make a single  
8 recommendation that would substantially change my  
9 perspective on the proposal, it would be to abandon  
10 that as a vehicle route and very carefully remove the  
11 asphalt that's currently in place and turn it into a  
12 footpath. I think it would be a wonderful addition to  
13 any well-designed home site.

14 VICE CHAIR MILLER: Just looking  
15 specifically and not in the whole general though,  
16 would you -- are you saying that if you took out the  
17 lots B and C and possibly D, but certainly B and C,  
18 that the other lots are okay?

19 MR. EUTSLER: Many of the lots, I think,  
20 actually through various supporting sections of homes  
21 on piers and so on and so forth, I think, you can  
22 actually preserve many of the trees or several anyway  
23 that they are hoping to preserve. The problem in  
24 specific with Lot B and C, there is a handful of  
25 problems.

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1           One is the proximity of the driveway going  
2 to Lot B. If you look on your All Trees Map, this  
3 driveway is -- I mean, I measured it and it appears as  
4 though it will be, I don't know, between 18 and 20  
5 inches from the stem of the tree, from the main trunk.  
6 That's tree no. 48, that is. And not too much further  
7 from tree no. 49. Some of the problems associated  
8 with that would be continued tree growth in terms of  
9 additional diameter in years to come. And how that  
10 could conflict with the proposed infrastructure, as  
11 well as just the proximity of vehicles driving by  
12 these trees in relation to the branches that are  
13 currently there and that may develop over time.

14           CHAIRPERSON GRIFFIS: Did you look at the  
15 reoriented drive aisle or driveway on, oh, gosh, which  
16 slide was that, the one we were talking about with the  
17 small entrance in off Chain Bridge?

18           MR. EUTSLER: Down at the bottom?

19           CHAIRPERSON GRIFFIS: Right.  
20 Approximately, to no. 40, tree 40.

21           MR. EUTSLER: Lot A?

22           CHAIRPERSON GRIFFIS: Yes.

23           MR. EUTSLER: To tree 40. Yes, I did look  
24 at that. I have looked at --

25           CHAIRPERSON GRIFFIS: The question is is

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1 there -- can you give an assessment of what impact,  
2 say that was to enlarge by 2 or 4 feet closer to A11,  
3 is there a severe negative impact, in your opinion, to  
4 tree 40 and/or A11 or any other?

5 MR. EUTSLER: Well, it would be my opinion  
6 that A11 would be able to accommodate the disturbance  
7 to a greater extent than tree 40.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. EUTSLER: Possibly because for two  
10 reasons. It's species accommodates disturbance more  
11 readily and it's less established.

12 CHAIRPERSON GRIFFIS: But the impervious  
13 surface as it moves closer to 40, was that looked at  
14 at all?

15 MR. EUTSLER: I didn't consider as  
16 problematic as the impact on trees 44 through 48, 49  
17 through 52 and 53.

18 CHAIRPERSON GRIFFIS: Okay. So there  
19 might be some flexibility of that dimension? I mean,  
20 within reason?

21 MR. EUTSLER: Of that, sure, certainly.

22 CHAIRPERSON GRIFFIS: Okay. Okay. Okay.  
23 And then you have concerns with Lot B, C and D and did  
24 I understand that you would like to see them removed?  
25 That was your testimony?

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1 MR. EUTSLER: No. I don't think that they  
2 need to be removed. I think that the access to these  
3 lots has to be -- should be gained through a different  
4 route. What I'm suggesting is that the existing  
5 drive, which is proposed to be the drive for most of  
6 these home lots which runs right between this row of  
7 beech trees be abandoned as the main vehicle entrance  
8 to this development.

9 CHAIRPERSON GRIFFIS: And that would be  
10 the footpath?

11 MR. EUTSLER: That would become -- that's  
12 one potential alteration.

13 CHAIRPERSON GRIFFIS: Right. Okay. And  
14 then how would -- and so conceivably, what? You would  
15 have another road from Chain Bridge accessing these  
16 lots?

17 MR. EUTSLER: Certainly. It would --  
18 don't get me wrong, no doubt it would require  
19 extensive redesign of the overall project.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. EUTSLER: But I think that the  
22 regulations to a certain extent require just that.

23 CHAIRPERSON GRIFFIS: Okay. And is there  
24 an area as you look at this, you were talking about  
25 the level areas and plains and sorts which were

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1 accommodating the development. Is there an area that  
2 naturally lends itself to some sort of access deep  
3 into the site?

4 MR. EUTSLER: Well, I think it's -- I  
5 think that it's feasible to consider the proposed  
6 access on Lot A, if you were to remove the home, Lot  
7 A, and use that as an access that would come through  
8 the bottom of the property and enter these homes on  
9 home sites at -- to some extent from the south, as  
10 opposed to coming from the north down.

11 CHAIRPERSON GRIFFIS: Interesting. Okay.

12 MR. EUTSLER: It's simply one suggestion.  
13 There are other options perhaps that could be devised.

14 COMMISSIONER PARSONS: In that  
15 circumstance Lot 4 becomes a little problematic,  
16 doesn't it? That's the first one on the right after  
17 you come in in what is now proposed as the main  
18 entrance.

19 MR. EUTSLER: Yes. Yes, it would, it  
20 would. Although it's conceivable that the driveway  
21 for that could be realigned to exist closer to the  
22 road, I'm not sure that that would be, aesthetically,  
23 pleasing, but I don't --

24 COMMISSIONER PARSONS: But it would have  
25 its own entrance off of Chain Bridge Road?

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1 MR. EUTSLER: Well, it could actually use  
2 the beginning of what is the existing drive perhaps.  
3 I think that my opinion on the matter is that there is  
4 sufficient resources available to design a project  
5 that can accommodate the existing trees. And I'm  
6 happy to provide as much suggestion as possible, but  
7 it's not my project either.

8 CHAIRPERSON GRIFFIS: Right. No, we  
9 understand that. I think we're just looking for just  
10 an indication of your thought process and assessment.  
11 So going directly to that now, let's talk about this  
12 drive aisle a little bit more. The impact that you  
13 see as being detrimental, you laid out some of them in  
14 here, but is there any way that this could be  
15 accommodated and still maintain that row of beech  
16 trees or do you think just the surfacing and the  
17 trenching and possibly the other Storm Water  
18 Management Plans and the traffic on that would be too  
19 detrimental?

20 MR. EUTSLER: Um, I think as proposed,  
21 it's too detrimental in its current state. As I  
22 mentioned, the trees, the beech trees, especially on  
23 the southern side, are going to have to be pruned, I  
24 think, relative to their age and species in relatively  
25 severe fashion, for one, beyond that. And that's

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1 because you have got the homes are awful close to  
2 where the lowest branches actually end currently.

3 So the trees have to be limbed up. The  
4 limbs are rather low currently on the southern side.  
5 And then in addition to that, you do have this  
6 tunneling that's going right through the center of the  
7 -- proposed to go right through the center of the  
8 driveway. And it's not to say that you can't do that  
9 or that it can't be done. I just have seen nothing in  
10 the report to suggest how it would be done.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. EUTSLER: In such a way that the  
13 trees, you know, are going to be protected.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. EUTSLER: And correct me if I'm wrong,  
16 but to me it's alarming that the arborist would  
17 suggest modifications to several home sites, but not  
18 suggest, in his written report anyway, in neither of  
19 his written reports, modifications to the Storm Water  
20 Management Plan or describe how his Tree Protection  
21 Plan is going to accommodate the installation of this  
22 equipment.

23 And bear in mind, it's not just the actual  
24 like the devices themselves, it's also how do you get  
25 those devices in there? Where is the equipment when

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1 you're installing it? Where is it staged? How is it  
2 done? There are ways that it can be done, but we have  
3 no idea how they plan to do it.

4 CHAIRPERSON GRIFFIS: Okay. Very well.  
5 Any follow-up questions from the Board? If not, Mr.  
6 Glasgow, cross?

7 MR. GLASGOW: Yes. With respect to  
8 section 1565, are you aware of the applicant asking  
9 for any relief under those provisions for the overlay  
10 relative to the overlay? Have we asked for it? As  
11 far as I'm aware of, the notice of the application, we  
12 haven't asked for any relief from the overlay.

13 MR. EUTSLER: The overlay insists that the  
14 preservation of the trees be a part of the project.  
15 So it's a stipulation of developing in that area. If  
16 I understand your question correctly.

17 MR. GLASGOW: No, you must not, because  
18 the Board of Zoning Adjustment, we have a set of  
19 regulations and either you comply or you don't. We  
20 haven't asked for any relief from section 1565 of the  
21 regulations.

22 MR. BROWN: Mr. Chairman, if I could  
23 interject?

24 CHAIRPERSON GRIFFIS: Why?

25 MR. BROWN: I think it's important.

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1 CHAIRPERSON GRIFFIS: I think the question  
2 is -- let's go to where you actually address it and  
3 it's in your conclusion, if I'm not mistaken, Mr.  
4 Glasgow.

5 MR. GLASGOW: Fine.

6 CHAIRPERSON GRIFFIS: And it reads that,  
7 I'll read it, "I do not feel as though the  
8 requirements described in 11 DCMR 1565 have been  
9 credibly satisfied."

10 MR. GLASGOW: Yes, and I don't --

11 CHAIRPERSON GRIFFIS: So your question is?

12 MR. GLASGOW: I don't understand what that  
13 means in the context of this Board and how it decides  
14 cases where you have criteria that are set forth in  
15 the regulations.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. GLASGOW: Either you meet them or you  
18 don't.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. GLASGOW: If you don't meet them, you  
21 need a variance or special exception, depending upon  
22 the provisions that you are in. We haven't asked for  
23 any provisions. And under 1569 of the regulations,  
24 there is a whole section on special exceptions and  
25 what it is that you ask for when you do not comply

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1 with the provisions of these regulations. We haven't  
2 asked for any relief from that.

3 CHAIRPERSON GRIFFIS: Right. Let's  
4 follow-up though. Your assertion of making that  
5 statement was on what specific element in 1565?

6 MR. EUTSLER: Where the regulations  
7 describe the intent of their establishment.

8 CHAIRPERSON GRIFFIS: Okay. So you're  
9 going into the intent of the overlay itself, in terms  
10 of finding that it doesn't adequately address or  
11 satisfy that?

12 MR. EUTSLER: Correct.

13 CHAIRPERSON GRIFFIS: Okay. And just  
14 because the follow-up from Mr. Glasgow, cross is going  
15 to be this, are you an expert on the Zoning  
16 Regulations or is your analysis based on those  
17 provisions or is your analysis based on the  
18 submissions of the criterium that was laid out in the  
19 application?

20 MR. EUTSLER: The latter.

21 CHAIRPERSON GRIFFIS: Okay. Mr. Glasgow?

22 MR. GLASGOW: No, I'll save that part for  
23 closing argument.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. GLASGOW: But I do want to go through

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1 part of the report.

2 CHAIRPERSON GRIFFIS: Let me just address  
3 that, because I don't -- I understand the statement  
4 and I think the cross is good to bring out the  
5 clarification of it. I mean, we are in a site that is  
6 under the requirements of the overlay. But I want to  
7 be specific, because as I read this, it is not the  
8 analysis. Your analysis is done on the specific  
9 information that was submitted in the application, not  
10 on the basis of the criterium set forth in the  
11 overlay.

12 MR. EUTSLER: Well, perhaps I misunder --  
13 perhaps I'm not understanding your question. I'm  
14 reviewing the specifics of their submission relative--  
15 the submission in and of itself.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. EUTSLER: One, but also relative to  
18 what I view as the purpose and intent of the  
19 regulations.

20 CHAIRPERSON GRIFFIS: Okay. Okay. Let's  
21 continue.

22 MR. GLASGOW: All right. Next, I  
23 understand that in your report you have stated and in  
24 your testimony that the tunneling under and adjacent  
25 to trees can be a successful method for installing

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1 necessary underground infrastructure. Now, what I  
2 understand is the problem, as you say, nowhere in the  
3 submission is the actual process to be employed  
4 described. I think we do have some drawings that do  
5 show where we are going to stage the equipment and the  
6 type of equipment. And we can get into detail on that  
7 and provide --

8 CHAIRPERSON GRIFFIS: But the question of  
9 him is what? Has he reviewed those?

10 MR. GLASGOW: Yes.

11 CHAIRPERSON GRIFFIS: That are in the  
12 record?

13 MR. GLASGOW: Well, he would have seen  
14 those today. So I guess the question is going to be  
15 is assuming that we can work out a staging area and  
16 show how it is that we tunnel and have the  
17 specifications for the tunneling, my understanding is  
18 that that tunneling is an acceptable method of going  
19 underneath established trees with lines that have to  
20 be done.

21 MR. EUTSLER: I would assert the tunneling  
22 is the only method of going under established trees.

23 MR. GLASGOW: Yes. And so it's acceptable  
24 pursuant to your testimony?

25 MR. EUTSLER: Well, that would be

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1 contingent on the plan that you propose.

2 MR. GLASGOW: Right. And the  
3 specifications. Is there a standard set of  
4 specifications for doing that? How deep you go  
5 underneath the roots?

6 MR. EUTSLER: There would be -- you would  
7 have to implement some sort of a best management  
8 practice.

9 MR. GLASGOW: All right. But there's no  
10 criteria? Because what I would like to do in the  
11 course of the examination is to the extent that there  
12 are criteria that we can either meet or not meet, we  
13 would like to be advised of that as we go through the  
14 process, so we can, on a technical basis and on an  
15 objective basis, either meet criteria or not meet  
16 criteria.

17 MR. EUTSLER: I imagine that the expert  
18 that you hire to develop the plan for you would be  
19 able to guide you in that.

20 MR. GLASGOW: All right. We would like  
21 that, but if the District has criteria, we would like  
22 to know what that is and have that be submitted for  
23 the record.

24 MR. EUTSLER: Well, the Urban Forestry  
25 Administration being primarily a group that manages

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1 public street trees, it's not something that we are in  
2 a position to provide you a set of guidelines with.  
3 I would be happy to review whatever submission it is  
4 that you --

5 MR. GLASGOW: Oh, so you don't have an  
6 objective set of criteria for these comments?

7 MR. EUTSLER: I don't have a specific set  
8 of guidelines that your plans would have to -- I don't  
9 have -- I don't have a document for you that you can  
10 use to guide your -- the development of your tunneling  
11 plan.

12 MR. GLASGOW: So the comments on this are  
13 subjective? There's not objective criteria?

14 MR. EUTSLER: Um, I wouldn't say that. I  
15 think that there is certain generally accepted  
16 practices relative to tree care that we can use to  
17 sort of discern whether your plan is credible and  
18 effective or not.

19 MR. GLASGOW: Can a copy of that be  
20 submitted to the record in this case?

21 MR. BROWN: Mr. Chairman, it's the  
22 applicant's burden to do this, not the Urban Forestry  
23 Administration.

24 CHAIRPERSON GRIFFIS: But isn't the  
25 question of how is the Urban Forestry Administration

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1 reviewing and producing this comments?

2 MR. BROWN: No. He is asking to be told  
3 what he needs to do. The applicant, I believe --

4 MR. GLASGOW: No, that's not what I'm  
5 saying.

6 CHAIRPERSON GRIFFIS: Clarification?

7 MR. GLASGOW: Yes, sir. I would like to  
8 know what our criteria and standards are. There have  
9 been a number of comments in this report that just,  
10 taken on their face value, obviously, are very adverse  
11 to applicant's case. I want to know where they come  
12 from. How they are derived. If this is just  
13 somebody's subjective view or do we have a set of  
14 objective criteria that we can deal with? Because we  
15 want to be on the basis of dealing with objective  
16 criteria.

17 We found that in dealing with this site,  
18 when we do have issues and concerns like with DOH and  
19 some of the other agencies, they have criteria. They  
20 say, you know, what's the present flow. You have to  
21 be at that present flow.

22 CHAIRPERSON GRIFFIS: Understood.

23 MR. GLASGOW: And all of that. We want to  
24 have the same type of criteria to match with respect  
25 to this type of report.

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1 CHAIRPERSON GRIFFIS: Oh, I'll find your  
2 objection --

3 MR. GLASGOW: So with respect to tunneling  
4 and all of that, we want to have criteria that we need  
5 to meet.

6 CHAIRPERSON GRIFFIS: Right. Follow-up?

7 MR. BROWN: Well, again, I don't know how  
8 that helps the Board here and now in considering the  
9 applicant's case.

10 CHAIRPERSON GRIFFIS: Okay. Understood.

11 MR. EUTSLER: If I may just respond for a  
12 moment?

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. EUTSLER: My concern is with the fact  
15 that you don't address in your Tree Protection Plan  
16 how you will implement a tunneling plan, not the  
17 specifics of your tunneling plan. Because I don't  
18 actually have the specifics of your tunneling plan.  
19 I don't believe that they are in your final  
20 submission.

21 CHAIRPERSON GRIFFIS: Okay. But let's put  
22 this to rest. The question is when you get these  
23 tunneling plans, it could be this one, it could be the  
24 next one we see, it could be the next one we don't  
25 see, but you should see, is there specific criteria?

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1 Is there specific design elements that you look at as  
2 base review? Is it this is the engineering, you know,  
3 of the standard Federal Engineering Guidelines for  
4 tunneling under trees?

5 MR. EUTSLER: There -- I believe that the  
6 International Society of Arboriculture publishes a  
7 Best Management Practice Handbook on tunneling around  
8 trees, around and under trees. And I will happily  
9 obtain a copy of that.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. EUTSLER: And provide it.

12 CHAIRPERSON GRIFFIS: So that's something  
13 that you would go to.

14 MR. EUTSLER: Certainly.

15 CHAIRPERSON GRIFFIS: In terms of the  
16 basis of your understanding. If you looked at this  
17 and said look, I got to figure out what the best  
18 practices are, because I've got to refresh my  
19 experience and review of this, that's what you would  
20 base it on?

21 MR. EUTSLER: Certainly. But I think that  
22 before you get to that technical -- that level of  
23 technicality or technical review, you can look at a  
24 proposal and say all right, they are going to place a  
25 large machine right next to a tree under which they

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1 wish to tunnel. Well, this clearly, without referring  
2 back to some technical document, flies in the face of  
3 any notion of tree protection. And this is what I'm  
4 talking about.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. EUTSLER: Is that we haven't gotten,  
7 to my knowledge, to a point where we can even provide  
8 a technical review of the submission.

9 CHAIRPERSON GRIFFIS: Excellent. So  
10 principle number one, don't kill the tree before you  
11 try and save it. Okay.

12 MR. EUTSLER: Well --

13 CHAIRPERSON GRIFFIS: Understood.

14 MR. EUTSLER: All right.

15 MR. GLASGOW: And so what you would -- my  
16 understanding is in order to address this part of your  
17 report, you would want to see staging areas, that type  
18 of thing, that type of equipment that we would be  
19 using?

20 MR. EUTSLER: I believe that's what I  
21 stated in my report.

22 MR. GLASGOW: All right.

23 CHAIRPERSON GRIFFIS: Good. And because  
24 I caught a lot of those also and I think this is  
25 excellent cross, because it brings up some clarity,

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1 but really what's coming down to the fact and it's  
2 stated several times, the plan concept may be okay,  
3 it's the implementation of the plan that is of  
4 question. Is that correct?

5 MR. EUTSLER: By and large. I look at the  
6 Tree and Slope Overlay Regulation as a document that  
7 tries to do as much up front, to provide as much  
8 success afterwards. The way I see it is this, if you  
9 grant the special exception and the project moves  
10 forward as proposed, there is not really much that my  
11 organization can do to govern the process. And if two  
12 years later people are living happily in homes  
13 surrounded by dead trees, who has failed? Has the  
14 regulations failed? Has their implementation failed?

15 And I think that since there is no way to  
16 turn back the clock and undo the development, we have  
17 to be particularly ardent and stringent in the way we  
18 apply the regulations, both stated and intended, in  
19 the -- to the project, to the greatest extent  
20 possible.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. GLASGOW: With respect to the  
23 construction and preconstruction activities, is there  
24 a time frame or a best management process that you  
25 would point the applicant to with respect to how we

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1 preserve and enhance the viability of the trees?

2 MR. EUTSLER: I would think I would  
3 suggest that you think of it much as you might like a  
4 human life. If you want to live longer, you might  
5 want to start taking care of yourself as early as  
6 possible and the same holds true for these trees.

7 Now, are there best management practices  
8 in place for sort of preconstruction practices?  
9 Beyond saying you should if available, as I mentioned  
10 in the review, if the time allows, do it as early as  
11 possible. This is generally held to be the standard  
12 practice.

13 MR. GLASGOW: All right. So there is  
14 nothing like six months prior to construction anything  
15 like that, which is something that the Board can  
16 readily deal with? Certainly, the applicant can more  
17 readily deal with if somebody says six months prior to  
18 construction you do X.

19 MR. EUTSLER: My point in mentioning  
20 preconstruction -- certainly to answer your question  
21 directly, yes, if your project is proposed to break  
22 ground in six months and you start implementing some  
23 of the techniques and practices available tomorrow,  
24 then you will be preparing the trees for better  
25 success in the future.

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1           My point in bringing this up is that the  
2 first report or the first document I reviewed pursuant  
3 to this project was Lubalox Inventory and Survey from  
4 July of 2002. And it strikes me as unfortunate that  
5 some of these practices hadn't been implemented over  
6 the last four years preparing the site for the  
7 construction that is proposed.

8           MR. GLASGOW: But there is no standard.  
9 I'm looking for objective standards to meet.

10           MR. EUTSLER: I'm not certain that -- I'm  
11 not certain that that question specifically is  
12 appropriate for the criticism and whatnot of that  
13 third concern I list. What I'm saying is that there  
14 is not going to be -- there is no document that says  
15 when installing a tunnel under six mature beeches and  
16 three homes within close proximity, start aerating two  
17 years in advance.

18           That document doesn't exist, but you can  
19 say with assurance -- well, let me reverse it. Well,  
20 I can tell you with some assurance that the earlier  
21 you start, the better chance you have. What I'm  
22 saying is you're asking to do a lot to this property  
23 and as I review the regulations, I think that there  
24 are steps you could have taken that would have shown  
25 sort of good faith effort and intent on your part to

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1 prepare the site as properly as possible for the  
2 proposed development.

3 MR. GLASGOW: But without any stated  
4 criteria as to that and nothing in the -- did you find  
5 anything in the regulations that talked about that?

6 MR. EUTSLER: No, there is nothing in the  
7 Tree and Slope Overlay District Regulation, per se,  
8 that says that. I'm saying though in an effort to  
9 meet statements such as preserve and enhance the park-  
10 like setting, preserve the natural topography and  
11 mature trees to the maximum extent feasible, these are  
12 some -- that is a suggestion for doing that. Having  
13 implemented -- having done simply what the Bonifant  
14 report calls for in its introduction.

15 It says here if "supplemental watering or  
16 other necessary steps will be taken to maintain tree  
17 health if dry weather or drought occurs immediately  
18 preceding or during the construction."

19 MR. GLASGOW: Right.

20 MR. EUTSLER: We had a drought this spring  
21 and not a drop of water was provided by the developer  
22 or the arborist.

23 MR. GLASGOW: Except that that statement  
24 says immediately preceding or during construction.

25 MR. EUTSLER: Okay. Well, okay.

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1 MR. GLASGOW: And without standards it's  
2 hard for -- because we are getting criticized heavily  
3 for our actions.

4 MR. EUTSLER: Proposed actions.

5 MR. GLASGOW: Yes, proposed actions and  
6 inactions for not watering trees.

7 MR. EUTSLER: For inactions.

8 MR. GLASGOW: Where there are no standards  
9 set out and the question is is given the regulations  
10 and what they say, then the regulations possibly need  
11 to be amended, but there is -- I don't -- and I'm  
12 asking did you find anything in here as to when all of  
13 this should be implemented under the regulations?

14 MR. EUTSLER: No, no.

15 MR. GLASGOW: Because your report is on  
16 the regulations.

17 MR. EUTSLER: My report is a review of how  
18 well the Tree Preservation Protection Plan allows for  
19 the long-term survival of the trees on the property  
20 relative to the proposed development. And if this  
21 project has been going on for over four years, and I  
22 don't know when you would presume to -- I mean,  
23 relative is -- if you want to speak about relativity,  
24 what is immediately preceding?

25 I mean, if we have gone four years and you

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1 propose to break ground in six months, a month ago  
2 seems fairly immediate to the beginning of the  
3 construction phase. Where is the standard on that?  
4 Where is the standard on what that means?

5 MR. GLASGOW: Well, the question is we're  
6 not cross examining the report of the applicant as to  
7 immediately preceding, but if the Board were to  
8 approve the application and say that six months in  
9 advance of the commencement of construction you shall  
10 do A, B and C with respect to preparing these trees  
11 and this other part of the site for the construction  
12 activities, we can understand and manage to that.

13 MR. BROWN: Mr. Chairman, I'm going to  
14 renew my objection. The applicant has done nothing.  
15 I mean, there is no disagreement on that issue and he  
16 is looking for a road map of what he should have done,  
17 and that is not where we are now.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. BROWN: And I think Mr. Eutsler has  
20 made it very clear and I think we're wasting time and  
21 energy.

22 CHAIRPERSON GRIFFIS: I think we're ready  
23 to move on. I will note the objection. I don't agree  
24 with it. I think the cross questions have been  
25 exhausted at this point just through questioning, what

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1 is the criterion.

2 And as I understand it, to phrase it a  
3 different way, Mr. Eutsler, is if a different arborist  
4 in the Urban Forestry Administration was to have  
5 reviewed this, would they have come up with the same  
6 conclusion? And I put that out rhetorically. I think  
7 the point has been made and the Board will take it  
8 under advisement. Let's move ahead to the next  
9 question.

10 MR. GLASGOW: I have no further questions  
11 of this witness.

12 CHAIRPERSON GRIFFIS: Okay. Mr. Brown?

13 MR. BROWN: Mr. Eutsler, based on all the  
14 information you have in front of you, you have  
15 determined that this project would violate the  
16 restrictions of the Chain Bridge Road/University  
17 Terrace Overlay, correct?

18 MR. EUTSLER: I don't think that it would  
19 fulfill the requirements.

20 MR. BROWN: So that you think at the end  
21 of the day this project would result in the  
22 destruction of more protected trees than is permitted?

23 MR. EUTSLER: I think yes, yes.

24 MR. BROWN: Okay. Now, putting aside the  
25 change --

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1 MR. GLASGOW: Mr. Chairman, I'm going to  
2 object. He didn't testify to that in his direct.

3 MR. BROWN: I think his report says that.  
4 He goes and lists the number of trees. But putting  
5 that aside for a second, you have the Chain Bridge  
6 Road/University Overlay standard that, in your view,  
7 is violated by this proposal. But putting that  
8 standard aside, is the end result the damage to these  
9 trees?

10 Again, beyond the overlay, is that going  
11 to be an adverse impact of this project?

12 MR. EUTSLER: Will the damaging of the  
13 trees be an adverse impact?

14 MR. BROWN: Yes, the destruct -- as part  
15 of -- and we consider in special exceptions adverse  
16 impacts of all kinds and will the changes that result  
17 at this site and the death of trees and the harm to  
18 trees, will that be an adverse impact or adverse  
19 effect on this property and the community and the  
20 neighborhood?

21 MR. EUTSLER: Yes.

22 MR. BROWN: Okay. I note that, Mr.  
23 Chairman, because while the applicant has to comply  
24 with the overlay, it's inherent in his obligations.  
25 He also, under the special exception test, has to meet

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1 the adverse impact test. And so I want to --

2 CHAIRPERSON GRIFFIS: Understood.

3 MR. BROWN: They both head in the same  
4 direction, but slightly different paths.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. BROWN: Based on what you have before  
7 you, this plan cannot satisfy the overlay and the  
8 adverse impact question that I have raised before?

9 MR. EUTSLER: In my opinion, I don't feel  
10 as though it can.

11 MR. BROWN: The Office of Planning has  
12 indicated that -- as a condition that Lot F, I  
13 believe, should be removed, the house not built on Lot  
14 F. Would that minor change be enough to change your  
15 opinion about the consequences for the trees on the  
16 site?

17 MR. EUTSLER: No.

18 MR. BROWN: You testified earlier, and you  
19 will hear it from others, that there are several  
20 plateaus on this property which are better suited for  
21 development in the context of tree preservation.

22 Is that correct? Would it be a better  
23 idea to abandon 13 or even 12 lots and go back with  
24 tree preservation in mind and design a different  
25 project? Would that achieve better tree preservation

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1 results?

2 MR. EUTSLER: Well, I think to achieve the  
3 results that I think are mandated in the regulations,  
4 a redesign would be required.

5 MR. BROWN: And not tinkering with the  
6 current 13 planned?

7 CHAIRPERSON GRIFFIS: I think he answered.

8 MR. BROWN: I'm trying to --

9 CHAIRPERSON GRIFFIS: Push the limits.  
10 Yes, I understand. Okay. Next question. Yes? Okay.  
11 You want to go to OP. I have a follow-up while you  
12 think about that.

13 His first question went to did this  
14 violate the number of trees to be removed. And I do  
15 want to follow-up, because that is not an assertion  
16 you make in your report. Is it that you have counted  
17 the numbers of trees and found that, in fact, they  
18 would violate based on the limitations as stated in  
19 the overlay?

20 MR. EUTSLER: I misunderstood his  
21 question.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. EUTSLER: What I understood him to  
24 mean was as a byproduct of the development.

25 CHAIRPERSON GRIFFIS: Right, and I think

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1 the second one you answered probably addressed  
2 directly his question. Okay. I don't -- well, there  
3 it is. Anything else? Follow-up from the Board,  
4 questions? Yes, Mr. Parsons?

5 COMMISSIONER PARSONS: Mr. Eutsler, I  
6 would just like to thank you for your testimony and  
7 your report. It was excellent.

8 MR. EUTSLER: My pleasure.

9 COMMISSIONER PARSONS: And I find your  
10 statement, your conclusions about the beech trees, to  
11 be in line with some of the concerns I expressed at  
12 the previous hearing. So I just wanted to thank you  
13 very much for that.

14 MR. EUTSLER: You're welcome.

15 CHAIRPERSON GRIFFIS: Very well. Anything  
16 else? Okay. Does the ANC have any cross? Good.  
17 We're making great headway, 4:12. How many people are  
18 left that actually want to give testimony, persons?  
19 Have we any attrition? Okay. We have three. I have  
20 checked back to my notes and I have indicated that we  
21 did hear from others in opposition.

22 We had called those that were present and  
23 I believe we had four people. I do want to set aside  
24 time for those persons that are present to provide  
25 testimony. Why don't we do that when we return from

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1 our quick 10 minute recess so we can all get our blood  
2 flowing, get back to the legs, and then we are  
3 endeavoring to finish this today. So we're going to  
4 keep rolling very quickly on all that.

5           Excellent. You're going to make sure your  
6 PowerPoint is all up and running. Okay. We'll be  
7 back in 10 minutes.

8           (Whereupon, at 4:13 p.m. a recess until  
9 4:41 p.m.)

10           CHAIRPERSON GRIFFIS: Very well. Let's  
11 reconvene. Everyone take their seats. What I would  
12 like to do right now is fill the tables up front with  
13 those that need to provide testimony, persons. If you  
14 would start coming forward and as the chairs are  
15 filled, I am going to tell you -- please, anywhere  
16 you're comfortable with.

17           What you need to do is just state your  
18 name and address for the record as we start. Then I  
19 would also like you to state whether you are opposed  
20 or supportive of the application and then we will  
21 begin your testimony. You will note that the clock  
22 has three minutes on it. It will run down so you can  
23 keep an eye on that.

24           How many more do we have? We have one  
25 more person? Is anyone else here that wants to

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1 provide testimony? Okay. Excellent. Let's begin.  
2 We'll start on my left. Perfect. There is a button  
3 on the base there that turns it on. Good.

4 MS. MITCHELL: Thank you. My name is  
5 Andrea Mitchell. I am a 30 year resident of 2710  
6 Chain Bridge Road and, therefore, I am directly  
7 impacted and I am opposed to the development.

8 CHAIRPERSON GRIFFIS: Excellent.

9 MS. MITCHELL: Thank you, sir.

10 CHAIRPERSON GRIFFIS: Go ahead.

11 MS. MITCHELL: Do you want me to proceed?  
12 Okay.

13 CHAIRPERSON GRIFFIS: Yes.

14 MS. MITCHELL: I come here, Mr. Chairman  
15 and Members of the Commission, not as a technical  
16 witness, but as a resident and as someone who lives on  
17 Chain Bridge Road by choice, has participated actively  
18 with the Chain Bridge Road/University Terrace  
19 Preservation Committee to apply successfully for the  
20 Tree and Slope Overlay, which we thought was going to  
21 preserve the character of our neighborhood.

22 And, unfortunately, over the years it has  
23 not really met that test and we are hoping that this  
24 will not be one more disappointment and, in fact, what  
25 we think is the gravest challenge yet to the character

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1 of the street and the park, the historic graveyard to  
2 the south on Chain Bridge Road, the winding nature of  
3 the street.

4 I, as a resident who uses the park, lives  
5 there, has watched the runoff, knows the problems of  
6 overburdened sewage. We have lead pipes. The city  
7 has not managed to handle what would be considered  
8 normal runoff erosion and sanitation concerns. We  
9 have seen great degradation. The street that some of  
10 my neighbors will refer to the stream rather is behind  
11 my house, directly behind my house, which we have seen  
12 change in character dramatically since previous  
13 construction projects.

14 And so we came together a number of years  
15 ago for the desire, for the express purpose of trying  
16 to protect the park and our community. We think it is  
17 an extraordinary jewel in terms of a woodland park  
18 within the confines of the city available to the  
19 sledders, to dog walkers. That park is used by men,  
20 women, children of all ages.

21 It is a great resource for the city and  
22 there are other places to develop. And we know that  
23 development will occur, but if we could plead with you  
24 to consider the impact on all of us and all residents  
25 of the District of Columbia of changing the nature of

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1 this historic park.

2 The elevations, if you walk in our park  
3 the elevations are extreme and if you can imagine  
4 walking in Battery Kemble Park and imagine buildings  
5 of this height and scale on top of those existing  
6 elevations, it is hard to imagine how the trees could  
7 survive that and hard to imagine how -- the nature of  
8 that park for people on our street and actually on W  
9 Street and other adjacent streets. So thank you very  
10 much for hearing my concerns.

11 CHAIRPERSON GRIFFIS: Thank you very much.  
12 We do appreciate it. Yes, sir?

13 MR. RICHTER: My name is Richard Richter.  
14 I live on Battery Place, which is one of the 15  
15 cooperative dwellings, directly behind the property in  
16 question and I would like to speak in opposition to  
17 the builder's proposal to get satisfaction.

18 We have already experienced severe erosion  
19 of the stream as a result of the stream behind us,  
20 which is essentially no more than a trickle most of  
21 the time. But when it rains severely, there is kind  
22 of a rush of water and it's hard to imagine the  
23 possibility that 13 homes on this previous site, on  
24 this site, can make anything but a significant  
25 difference in terms of the problems it will create for

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1 the homes on Battery Place.

2 And I don't think I need to say any more.  
3 We have sent you a letter stating our position and a  
4 petition with signatures of most of the people in our  
5 -- on our street. And so thank you very much for  
6 allowing me to testify.

7 CHAIRPERSON GRIFFIS: Excellent. Thank  
8 you very much. Yes?

9 OFFICER McELWEE: Good afternoon, ladies  
10 and gentlemen of the Commission. My name is Anthony  
11 McElwee. I'm a police officer for the Metropolitan  
12 Police Department and I'm assigned as the traffic  
13 officer for PSA 205. I have been a police officer for  
14 18 years, and the last five in the capacity of the  
15 traffic officer and I do oppose this proposed  
16 development on the location along Chain Bridge Road.

17 Back in March, the first week of March  
18 2006, I was approached by the ANC-3D Commission and I  
19 was asked to conduct a traffic study along Chain  
20 Bridge Road for three reasons. One for speeding, two  
21 for the volume of vehicles, the number of vehicles  
22 that are traveling along that stretch and offer an  
23 opinion about the proposed driveway along Chain Bridge  
24 Road.

25 I will first address the speeding. I did

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1 on numerous occasions run lidar out there for the  
2 speed enforcement. We really don't have a speeding  
3 problem out there, so I'm not going to address that  
4 any further. The volume of vehicles from 7:00 a.m.  
5 until 6:00 p.m. Monday through Friday, I conducted my  
6 traffic study from 7:00 a.m. to 9:00 a.m. which is  
7 rush hour. There was three to four vehicles per  
8 minute that travel down that roadway between Loughboro  
9 and Macarthur.

10 From 9:00 to 3:00 there was one car per  
11 minute and from 4:00 to 6:00 there were three to four  
12 cars per minute. As far as the proposed driveway that  
13 is located at -- I feel is located at a blind spot  
14 along Chain Bridge Road, the sight distance is very  
15 poor and will without a doubt present a hazard to  
16 vehicles exiting from the development onto Chain  
17 Bridge Road.

18 It was also brought to my attention that  
19 there was a remedy that was being kicked around as far  
20 as utilizing mirrors to assist the vehicles as they  
21 exit from the development. I would be concerned about  
22 the use of mirrors. Using mirrors to judge other  
23 vehicles' exact location could and would be deceiving.  
24 Objects can appear to be closer and/or farther away  
25 than they actually are.

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1           Most residents back there could probably  
2 master their mirror skills. It's the nonresidents  
3 that I would be concerned about. Therefore, it is my  
4 opinion for the safety purposes that the roadway at  
5 the proposed exit and entrance site should be  
6 reconsidered. Quite honestly, you couldn't find a  
7 worse location along that stretch of road, because of  
8 the bend, to have a driveway there placed in. And the  
9 utilization of mirrors is not going to be a resolution  
10 to the problem. Thank you.

11                   CHAIRPERSON GRIFFIS: Thank you very much.

12                   MR. BARNARD: My name is William Barnard.  
13 I live at 2700 Chain Bridge Road and last week I filed  
14 an opposition to the application and I filed the  
15 requisite 20 copies, so I hope that you each have a  
16 copy of that.

17                   My primary concern is the stream that runs  
18 along the west edge of my property. It is -- in its  
19 natural state it was a spring-fed stream, but sometime  
20 in the last 25 or 30 years it was connected to a pipe,  
21 the famous terra cotta pipe that runs under the  
22 roadway and down into the stream to Mr. Bender's  
23 property.

24                   And the initial point of that discharge  
25 into the stream from the Bender property has been a

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1 pit of about 3 by 4 feet, 2 feet deep, that drained a  
2 small portion of the property into a pipe that went  
3 under a roadway and under a development and then came  
4 out of a culvert into the stream that passes my  
5 property, passes over my property.

6 The amount of water coming through when  
7 the stream is in its natural state is just a trickle,  
8 but the water that comes through after a rain,  
9 including the runoff from the Bender property and a  
10 couple of other properties, is substantial and has  
11 caused really severe erosion on my property.

12 That has increased over the years. It's  
13 true of all the property in this little valley down to  
14 Macarthur Boulevard. In fact, at the bottom of  
15 Macarthur Boulevard it forms a floodplain and  
16 inundates parts of the African-American Cemetery.

17 So we understood from the testimony at the  
18 previous hearing that Mr. Bender's understanding is  
19 that he can discharge into this stream as long as he  
20 doesn't increase the amount of water flow into the  
21 stream. I don't know where that understanding comes  
22 from and I don't know whether it's right or not, but  
23 intuitively we cannot accept the 13 big roofs up  
24 there.

25 50 percent impervious property no matter

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1 how you manage the storm water is going to create a  
2 substantial new outflow into the stream and that is  
3 our basic concern. Your concern, I suppose, is how do  
4 you assure yourself that that doesn't happen and you  
5 don't give Mr. Bender, in effect, an easement on our  
6 property forever? So that is our concern and I hope  
7 you address it.

8 CHAIRPERSON GRIFFIS: Excellent. Thank  
9 you very much.

10 MS. JONES: My name is Elliot Jones, 2810  
11 Battery Place. I live on the opposite side of the  
12 stream from Bill Barnard here. The stream itself is  
13 about to that wall from my back door and I'm watching  
14 it steadily get closer and closer. I have lived in  
15 this place for 30 years, so I have observed very  
16 keenly the flow of the water behind there.

17 And it was initially not -- it was more  
18 than a trickle, but a kind of steady flow, as Bill  
19 said, from a clear spring. Then there was a  
20 development right behind me. Now, what you have is  
21 barely a trickle, but when it does rain, oh, my  
22 goodness, it gushes through there.

23 My next door neighbor actually had built  
24 somewhat of a retaining wall with railroad ties and  
25 wire and so forth. I myself in the last year have

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1 lost probably a foot deeper than the ditch was and a  
2 foot into my yard. The day lilies which used to be in  
3 my yard are now in the middle of the stream and this  
4 has taken place just over a year's time.

5 I will go on to say there certainly have  
6 been a lot of -- so much for the water, but I still  
7 think there is no question that this development is  
8 going to affect the runoff behind our houses. There  
9 is just no question that it is, no way it couldn't be.

10 Brief comments. There have been changes  
11 along Chain Bridge. Mr. Bender would change the whole  
12 character of the neighborhood. Let's call his  
13 proposal what it is, a housing development such as the  
14 congested Virginia and Maryland. I won't go as far as  
15 to say expensive tract housing, but that is what I'm  
16 implying, isn't it?

17 The District has become something of a  
18 refuge from this and restoration of the neighborhood  
19 continues. The BZA should keep this economic value in  
20 mind always. Chain Bridge Road is an old, historic  
21 farm to market road, one of the last in the District  
22 where you can actually see the lines, and they brought  
23 the cattle down to slaughterhouses along Macarthur  
24 Boulevard.

25 Along this narrow, winding way one can

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1 almost imagine the rattle of wagons, the sounds of  
2 cattle, the march of union soldiers and the mourners  
3 to the cemetery below. It would be really a shame  
4 historically for the entire city, not just as  
5 neighbors, to change the character of this.

6 CHAIRPERSON GRIFFIS: Excellent. Thank  
7 you very much. Good. I appreciate all those  
8 comments, Ms. Jones, and I think that is an eloquent  
9 description of Chain Bridge. However, I don't think  
10 that you want troops marching down the street today  
11 and I didn't take that as your comments, but I think  
12 that is excellent inputs of character and how that  
13 should be maintained. It's also interesting to get  
14 the feel of how the stream is changing.

15 Mr. Barnard, I appreciate also your  
16 testimony. Your letter actually is in the record as  
17 Exhibit No. 138 and talking about the discharge and  
18 the impervious surfaces of the property, obviously as  
19 you have heard today and probably were here last time,  
20 is a critical element that we're looking at in terms  
21 of this application and our review of it. We wanted  
22 to get a firm understanding of what is being proposed  
23 and, two, what those remedies might end up being.

24 In your experience, and the question for  
25 you is you have been there for some time and you see

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1 the changing of that stream in terms of after heavy  
2 rains and the rain runoff from the locale, you  
3 indicated that it's changing. I think all of you kind  
4 of touched on that a little bit, but it's changing in  
5 terms of the volume now today, as opposed to five  
6 years ago?

7 MR. BARNARD: Well, I think it changed  
8 somewhat when the pipe was put from the Bender  
9 property down to the culvert and a couple of -- four  
10 houses were built in between.

11 CHAIRPERSON GRIFFIS: I see.

12 MR. BARNARD: So there is a little bit of  
13 runoff there.

14 CHAIRPERSON GRIFFIS: And how long ago was  
15 the Bender pipe put in?

16 MR. BARNARD: Well, we don't know.

17 MS. JONES: Well, I --

18 CHAIRPERSON GRIFFIS: I mean, was it 10  
19 years ago? Was it five years?

20 MS. JONES: This is the stream I'm  
21 referring to, directly behind my house. I can tell  
22 you exactly. It's about 1976 and a developer named  
23 Joey Kemper, which was a kind of -- it was a kind of  
24 a swamp down there behind my house.

25 CHAIRPERSON GRIFFIS: Right.

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1 MS. JONES: And he built it up a story  
2 high literally, this wall, and instead of the stream  
3 being there he put a culvert and then piled stone and  
4 dirt on top of it.

5 CHAIRPERSON GRIFFIS: Okay. Okay.

6 MS. JONES: But it literally, the natural  
7 -- it's a story higher than what the natural lay of  
8 the land is. And suddenly, instead of having a normal  
9 stream back there, you had a culvert, you know?

10 CHAIRPERSON GRIFFIS: Right. Understood.  
11 And you have seen it, since then '76 you have seen  
12 changes?

13 MS. JONES: Yes.

14 CHAIRPERSON GRIFFIS: Gradually occurring.

15 MS. JONES: And even after that, of course  
16 before that.

17 CHAIRPERSON GRIFFIS: Sure.

18 MS. JONES: As I said, the stream used to  
19 be clearer and kind of wider and kind of a more  
20 constant --

21 CHAIRPERSON GRIFFIS: Sure.

22 MS. JONES: -- kind of flow then, but in  
23 the last three or four years we have had a fair bit of  
24 development up University Terrace.

25 CHAIRPERSON GRIFFIS: Right.

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1 MS. JONES: Battery Place enters onto  
2 University Terrace. There have been several houses  
3 built up there and that is when I first began to  
4 notice the change and I have no doubt in my own mind,  
5 I'm not a hydrologist by any means, that the changes  
6 in the flow has to do with those developments uphill  
7 from -- all these problems with this whole thing,  
8 which I think they have --

9 CHAIRPERSON GRIFFIS: Okay. So you have  
10 seen more impact in the last five years?

11 MS. JONES: So that has happened in the  
12 last three or four years.

13 CHAIRPERSON GRIFFIS: Right.

14 MS. JONES: And when the kind of more  
15 severe erosion began.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. JONES: As I said, my neighbor has had  
18 part of hers bulwarked and I'm trying to decide how  
19 soon I should start getting anxious about my back  
20 there. But that is when I really noticed it because  
21 it was sluggish, but then when the rains would come,  
22 oh, it would just shoot through there.

23 CHAIRPERSON GRIFFIS: Right.

24 MS. JONES: You know, like crazy. You  
25 didn't want to get a child or a dog caught in it, you

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1 know?

2 CHAIRPERSON GRIFFIS: Sure. Good for  
3 launching little leaf boats then.

4 MS. JONES: Right, yes.

5 CHAIRPERSON GRIFFIS: Okay. Excellent.

6 MS. JONES: As I said, unless you lost  
7 your child in it.

8 CHAIRPERSON GRIFFIS: Right. Excellent.  
9 Good. I think that's clear and I appreciate that kind  
10 of snapshot of the chronology of change, Ms. Jones,  
11 and I think that's critical.

12 Mr. or Officer McElwee, I also appreciate  
13 the three elements that you looked at, speeding, the  
14 volume of traffic and also the location of the  
15 entrance. And my understanding is, correct me,  
16 speeding wasn't a problem which I'm shocked. On my  
17 little block it's a problem, but I will take your word  
18 for it.

19 Volume didn't seem to be either, three to  
20 four, one per minute. It seemed to be -- I'm not sure  
21 how we compare it or whether you made a direct  
22 comparison of that. Really, as you have said, your  
23 opinion to the driveway location is one of the worst  
24 it could be because of, essentially, the view line.  
25 There isn't enough view from oncoming traffic or from

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1 traffic ingressing and egressing. Is that correct?

2 (Whereupon, at 5:00 p.m. the Public  
3 Hearing continued into the evening session.)

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 OFFICER McELWEE: Correct. The sight  
4 distance there was very poor.

5 CHAIRPERSON GRIFFIS: Right.

6 OFFICER McELWEE: And anything over 20  
7 miles an hour could present a problem coming around  
8 that bend.

9 CHAIRPERSON GRIFFIS: Okay.

10 OFFICER McELWEE: Especially if you're an  
11 elderly person and take time to look, you know?

12 CHAIRPERSON GRIFFIS: Right.

13 OFFICER McELWEE: Your reaction time would  
14 be a lot slower than the average person.

15 CHAIRPERSON GRIFFIS: Okay. Or you're  
16 putting your handheld device into your ear trying to  
17 get -- okay. What is the speed on the street?

18 OFFICER McELWEE: It's 25 miles an hour.

19 CHAIRPERSON GRIFFIS: Okay. Excellent.  
20 Thank you very much.

21 COMMISSIONER PARSONS: Mr. Chairman, could  
22 I follow-up on that?

23 CHAIRPERSON GRIFFIS: Yes, please.

24 COMMISSIONER PARSONS: Officer, you're  
25 aware that there is another proposed entrance to three

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1 houses up the street?

2 OFFICER McELWEE: Yes.

3 COMMISSIONER PARSONS: Do you have the  
4 same concerns about that one from a sight distance  
5 standpoint? I mean, is this a better entrance?

6 OFFICER McELWEE: I don't have any  
7 concerns about up there. The main entrance is a real  
8 extreme concern.

9 COMMISSIONER PARSONS: Yes.

10 OFFICER McELWEE: Because it's right -- I  
11 mean, if you look at it you can see it's right on the  
12 bend.

13 COMMISSIONER PARSONS: Yes.

14 OFFICER McELWEE: And when you're there in  
15 person, and there are some pictures here, the --  
16 Stephen Petersen had put in his little footnote here.  
17 It kind of shows the area there. It's very, very  
18 poor.

19 COMMISSIONER PARSONS: But the other  
20 entrance, you don't see the same problem?

21 OFFICER McELWEE: According to the way  
22 they are depicted out here, no, I don't see a problem.  
23 I don't know exactly where they are going to be out  
24 there, but the curve where this one is is the problem.

25 COMMISSIONER PARSONS: Thank you.

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1 CHAIRPERSON GRIFFIS: Excellent. Mr.  
2 Richter, again, we appreciate your comments also in  
3 terms of the erosion and in terms of the stream and  
4 the impact that is proposed. I would make note your  
5 letter is in the record. It's Exhibit No. 137.

6 MR. RICHTER: Okay.

7 CHAIRPERSON GRIFFIS: The Board has  
8 reviewed it and we will again as part of our  
9 preparation for deliberation.

10 And, Ms. Mitchell, thank you very much for  
11 your testimony also, an intriguing description of the  
12 value of the park that is across the way. I don't  
13 think any of us can attest to that description. And  
14 note that in many ways we are assessing the impact of  
15 that as well as just the impact, as well as the impact  
16 on the surrounding area. And let me ask you that  
17 directly.

18 Do you believe that the use of the park is  
19 changing? You used several times character and I  
20 understand that, but I would like to hear more of what  
21 that means to you. How is the character changing or  
22 how might the enjoyment of the park actually be  
23 impacted?

24 MS. MITCHELL: Well, the neighborhood is  
25 a green space largely because of the park, but also

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1 because of the way the homes were originally built and  
2 the amount of landscaping. And there are a number of  
3 us who have deliberately foregone construction on our  
4 properties and reduced the density of what we  
5 otherwise might have done precisely because this is an  
6 area that is rural in nature.

7 No pun intended. It really is a unique  
8 place within the city, within the District of  
9 Columbia, and perhaps there are other places around  
10 Rock Creek and Normanstone Drive, but it is a very  
11 special place and people are in that park enjoying it  
12 all the time, not just on weekends. It is a dog park.  
13 It's known as the city's dog park.

14 It is the sled magnet. I think the  
15 officer knows this. Maybe it causes more problems  
16 that he would like at times, but there are times when  
17 it's wonderful just to see the way there are runners,  
18 there are hikers. It is a wooded area.

19 CHAIRPERSON GRIFFIS: Would those stop if  
20 there were houses along Chain Bridge?

21 MS. MITCHELL: Well, right now you don't  
22 see houses in most -- when you pass that elevation  
23 where the Bender property is, you see trees. You see  
24 the wonderful beech trees that Mr. Eutsler referred  
25 to, but it's very high. It towers. The Bender

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1 property towers over the wooded trails in the park.

2 CHAIRPERSON GRIFFIS: Right.

3 MS. MITCHELL: And so right now what you  
4 have is really a nature experience within the confines  
5 of the District of Columbia available to all, and it  
6 has been there since it was a Civil War battlement and  
7 there have been people who have found arrowheads. I  
8 mean, it is a joy to everyone, a potential joy to  
9 everyone in this city.

10 And, I mean, our street is -- as the  
11 officer knows, it's basically a slightly larger one  
12 lane rural road with many bends and curves and not  
13 ideal. When you talked about the volume of three to  
14 four a minute, I think those of us who live there,  
15 especially people with dogs and kids, are concerned  
16 even about that amount of volume, because it is a very  
17 -- it is a twisty, high risk road and it's hard to  
18 imagine that the servicing of 13 very large houses  
19 with the people who would live in such a large  
20 building -- these houses would be larger by far than  
21 almost anything that this neighborhood has  
22 experienced.

23 That is why we first sought the overlay,  
24 you know, a decade ago. The density alone of what is  
25 contemplated is far more than I think this

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1 neighborhood can sustain.

2 CHAIRPERSON GRIFFIS: Excellent. Okay.  
3 Thank you very much. That's all I have. Ms. Miller?

4 VICE CHAIR MILLER: I just want to follow-  
5 up on that because what I hear you saying is this plan  
6 as it's presented right now is too dense as far as  
7 you're concerned with respect to having a negative  
8 impact on the neighborhood and the enjoyment of the  
9 park, and I'm wondering if you have a vision at all as  
10 to what kind of development would be compatible or if  
11 you're -- I don't believe that you're necessarily  
12 against any development on that property.

13 MS. MITCHELL: I am not against any  
14 development. I think it's logical that that property  
15 will be developed. I am not an expert on the  
16 economics of using that size property and making it,  
17 you know, profitable for the developer, but I could  
18 imagine a half dozen homes which respect the wooded  
19 nature of the community.

20 And I know that is not necessarily a  
21 technical standard. I know that more can be done  
22 legally, but I think without considering the overlay,  
23 which is really a principled statement of the concerns  
24 of our community and of the District of Columbia, it  
25 was agreed to right here, that overlay really creates

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1 a value of this kind of environment in terms of the  
2 trees, the wooded nature, the lack of density and I  
3 cannot imagine how 12 or 13 houses could comply with  
4 the overlay.

5 CHAIRPERSON GRIFFIS: Follow-up?

6 VICE CHAIR MILLER: No, I think that part  
7 of our job here is to try to pick out the points that  
8 we need to focus on --

9 MS. MITCHELL: I understand.

10 VICE CHAIR MILLER: -- for adverse impact.  
11 For instance, you know, and you live there so that is  
12 why we're trying to, you know, pull your concerns.  
13 But, for instance, when I looked at the plans last  
14 time and the Board looked at them, the landscaping  
15 plans didn't seem at all compatible with the overlay,  
16 and so they then came back with new plans that, in my  
17 view, are certainly much better and respect the  
18 overlay.

19 So in scrutinizing these plans, I mean,  
20 part of the things I'm trying to look at is, well,  
21 what is it about it? Is it that you can see the  
22 houses from the park and if you couldn't see the  
23 houses from the park, would that make this much more  
24 acceptable, compatible, you know, in the neighborhood?

25 MS. MITCHELL: Well, I think that is a

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1 very fair point, that if you could not see the houses  
2 from the park, if they were not as large, as high,  
3 because they will be built not on the green space that  
4 is set back, but some of the houses will really be  
5 built very close to the edge and they would be visible  
6 from those wooded trails, and so I think that that has  
7 an impact on everyone in this District.

8 VICE CHAIR MILLER: Is the fact that the  
9 houses are large, in your view, does that make them  
10 incompatible or out of character with the  
11 neighborhood?

12 MS. MITCHELL: It certainly makes them  
13 incompatible with the neighborhood as originally -- as  
14 even five years ago. Now, there is one house at the  
15 top of the street which is sort of on the outer skirts  
16 and not really part of the community, which somehow  
17 escaped notice and there has been a great deal of  
18 resentment of that, because we all in the neighborhood  
19 do feel that it has had a negative impact in terms of  
20 site lines and I believe in terms of the watershed  
21 itself and in terms of Battery Kemble Park.

22 VICE CHAIR MILLER: Okay. And I have just  
23 one other question. If you have -- you know, the  
24 houses are on various parts of the property. If you  
25 have a large house on the part of the property that is

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1 not really visible from the road or the park, then is  
2 that something that would bother you?

3 MS. MITCHELL: It would depend entirely on  
4 the impact on the trees and the soil and the ability--  
5 and believe me, I am far from an expert on this, but  
6 the ability of the water management system, so I think  
7 the density in and of itself. And that's why the  
8 overlay contemplates density as well as tree  
9 protection, because there is an understanding that the  
10 environment is impacted negatively by too much  
11 density.

12 I mean, we all restrict our driveways and  
13 find ways around putting down too much asphalt. I  
14 mean, that is part of the concept of what -- of the  
15 relief that we won from the District so many years  
16 ago.

17 VICE CHAIR MILLER: Thank you.

18 MS. MITCHELL: Thank you.

19 CHAIRPERSON GRIFFIS: Excellent. Any  
20 other questions from the Board? Mr. Glasgow, any  
21 cross?

22 MR. GLASGOW: No cross.

23 CHAIRPERSON GRIFFIS: Mr. Brown, ANC? Ms.  
24 Gates, any cross? Excellent. Thank you all very  
25 much. We do appreciate it. Are there others, persons

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1 present?

2 MS. MITCHELL: We thank you for hearing  
3 us.

4 CHAIRPERSON GRIFFIS: Oh, indeed, indeed.  
5 We appreciate you coming down.

6 MR. RICHTER: Thank you.

7 CHAIRPERSON GRIFFIS: Agencies,  
8 associations? Yes?

9 MR. MURPHY: Good afternoon, Mr. Chairman.  
10 My name is David Murphy. I am representing the  
11 National Park Service. I wanted to indicate that the  
12 National Park Service is the manager of the land  
13 across the road, across Chain Bridge Road, but it's  
14 more than that because we were an active participant  
15 in the Tree and Slope Overlay for this area.

16 We are very much involved in the storm  
17 water management because the drainage of this area,  
18 even though it does not ostensibly drain across the  
19 road, obviously, it drains into the creek that the  
20 neighbors just indicated. Well, that drainage ends up  
21 in Macarthur Boulevard into a storm sewer that then  
22 diverts the water into Maddox Run and Maddox Run is  
23 the creek that most folks know as Discovery Creek down  
24 behind the Conduit Road Schoolhouse.

25 And the metaphor for their program is to

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1 have schoolchildren explore that creek and explore the  
2 fauna and flora in that creek bed, so that this is  
3 very much the upstream source of most of the waters  
4 that are ending up into Maddox Run below Macarthur  
5 Boulevard. Obviously, that is combining with the  
6 drainage from Battery Kemble Park.

7 One of the issues on storm water  
8 management is that the applicant is presenting a Storm  
9 Water Management Program that he indicates is  
10 complying with the District regulations, but it also  
11 indicates to superficial review that it will require  
12 meticulous management by, I presume, the homeowner's  
13 association at a level to make sure that it does not  
14 degrade and then produce additional waters or  
15 additional flows or a lower quality of water, which is  
16 exactly into the area that the neighbors have just  
17 been talking about.

18 And I think it's gratifying that the Park  
19 Service doesn't necessarily have to speak for the  
20 anecdotal deterioration of the waters. The community  
21 itself is speaking to that and that is very  
22 heartening. But, again, park land downstream and that  
23 is the ultimate receiver of the storm water and then  
24 we will watch that water conveyed down under the C&O  
25 Canal and into the Potomac River.

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1 I think that the issue is unintended  
2 consequences, the concept of storm water management,  
3 the concept of driveway cuts. You have heard  
4 testimony about the sight distances. What I hear and  
5 what is the intent of my testimony is that driveway  
6 can continue. The development gets built and then  
7 somebody gets hurt and the sight distance has to be  
8 modified, and so all the best laid plans get modified  
9 in the name of safety, which is laudatory, but it  
10 could be and should be looked at ahead of time.

11 The reason for the concern on Chain Bridge  
12 Road, and I think it was pointed out that it is a farm  
13 to market road. It's interesting enough that that  
14 road has every indication, according to the Columbia  
15 Historical Society records, that it predates -- even  
16 though it's named Chain Bridge, it predates Chain  
17 Bridge which then means that it would also predate the  
18 District of Columbia.

19 So there is very clear evidence that this  
20 is what would be wrote of the colonial period.  
21 Whether it was authorized and managed by the colony is  
22 not known at that point, sometimes makes for confusion  
23 as to its history. In any event, it is a deeply  
24 incised road that looks, acts and feels like a classic  
25 rolling road, as the Virginia fourth graders all learn

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1 about.

2 It did serve the primary access from what  
3 was McGees Ferry, which is at Little Falls, and that  
4 would be the way to get to Georgetown, so that its  
5 setting, its terrain, its topography is very much an  
6 interest not only to the Park Service, because of the  
7 adjoining park land, but also to the community.

8 There has been comments about the  
9 buildings and how visible they are from the park. I  
10 think there's probably two perspectives. One, a  
11 number of the cross sections in the applicant's  
12 submission indicate this. If you look at people  
13 standing in the park looking at this development, they  
14 will be looking essentially as I am over a dip, so  
15 there is a proximity of elevation.

16 But the other view is from driving up  
17 Chain Bridge Road and looking at these buildings and  
18 that will be even a stronger presentation. I would  
19 call your attention to the cross sections for Lot No.  
20 4, which is a very strong concern to the Park Service.  
21 That building is set so that as you're coming up Chain  
22 Bridge Road, it will be a massive presentation of the  
23 full face.

24 There was testimony of a 16 to 18 foot  
25 retaining wall to accommodate access. We would

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1 suggest that it will be again too -- despite the  
2 architecture, I'm sure it's refined, it's basically a  
3 billboard presentation. You could not see more of  
4 that building as presented to the folks coming up  
5 Chain Bridge Road.

6 CHAIRPERSON GRIFFIS: Good. If I could  
7 just have you conclude.

8 MR. MURPHY: Yes. We are concerned about  
9 Lot 4. We understand Lot 3 has been set back and  
10 reduced. It will, as indicated -- as the Office of  
11 Planning indicated, there is some impact, but we are  
12 actually more concerned about Lot 4. Thank you very  
13 much.

14 CHAIRPERSON GRIFFIS: Thank you very much.

15 MR. MURPHY: We appreciate it.

16 CHAIRPERSON GRIFFIS: Did you have  
17 testimony submitted into the record?

18 MR. MURPHY: No, I did not.

19 CHAIRPERSON GRIFFIS: Written?

20 MR. MURPHY: No, I wanted to hear what the  
21 applicant presented today.

22 CHAIRPERSON GRIFFIS: Okay. Are you  
23 intending on having submissions?

24 MR. MURPHY: Yes, we will follow-up.

25 CHAIRPERSON GRIFFIS: Okay. We will look

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1 for that, and I appreciate you bringing into your  
2 testimony the sections, because I think those are very  
3 illuminating for myself anyway and they are taken on  
4 all the -- everyone that gave testimony today and  
5 previously, the points of which they are talking about  
6 have been graphically illustrated, so it's good to  
7 bring that.

8 MR. MURPHY: I think the applicant has  
9 presented very detailed documentation.

10 CHAIRPERSON GRIFFIS: Absolutely,  
11 absolutely. Okay. Any follow-up questions? Very  
12 well. If there is nothing, Mr. Glasgow? Oh, yes?

13 VICE CHAIR MILLER: I'm sorry, and I know  
14 some of your -- you left out some of your testimony,  
15 but in general I hear you're concerned about Lot 4 and  
16 you're concerned about the storm water management. Is  
17 that basically your position?

18 MR. MURPHY: That is basically it. And,  
19 again, the long-term unintended impacts onto Chain  
20 Bridge Road itself. If we have to open it up for more  
21 traffic or sight distance, that would be a very  
22 unfortunate impact. The other is that if it became  
23 used, as one of the earlier iterations, for storm  
24 water management, to put curb and gutter and drains in  
25 Chain Bridge Road would destroy it and how to do

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1 something other than that remains to be seen.

2 VICE CHAIR MILLER: Thank you.

3 CHAIRPERSON GRIFFIS: Good. Other  
4 questions? Mr. Glasgow?

5 MR. GLASGOW: I think Ms. Miller cleared  
6 it up.

7 CHAIRPERSON GRIFFIS: Oh, good. Okay.  
8 Mr. Brown, any cross? Ms. Gates? Very well. Thank  
9 you very much, Mr. Murphy.

10 MR. MURPHY: Thank you, Mr. Chair.

11 CHAIRPERSON GRIFFIS: Always good to see  
12 you. Let's move ahead then. Ms. Gates, are you  
13 ready?

14 MS. GATES: Yes, I am. While you're  
15 getting your copies, I just would like to go on record  
16 right now as saying how important it was for us to  
17 have Earl Eutsler here today and how important it  
18 would have been to have someone here from the  
19 Department of the Environment to address storm water  
20 problems.

21 The trenches that are being proposed are  
22 not working in our area of the city, and I would like  
23 to be able to have the opportunity to address that  
24 rather than have them approved after the fact when Mr.  
25 Bender will not be coming back here to address that.

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1 It will be done with the Department of the  
2 Environment.

3 CHAIRPERSON GRIFFIS: Okay. Actually,  
4 what do you mean by trenches?

5 MS. GATES: They said filtration trenches  
6 that are used for storm water management.

7 CHAIRPERSON GRIFFIS: And where do you see  
8 them not working in your area?

9 MS. GATES: There are four of them at the  
10 intersection of Macarthur and Macomb that were put in  
11 by Frank Economides. There are some up above Arizona  
12 Avenue where the neighbors have just literally been  
13 flooded.

14 They are not -- the homeowners have a  
15 covenant that is filed with their deed that requires  
16 them to take care of them, but when you have maybe  
17 three people working at the Department of the  
18 Environment, they can hardly do the checks. They are  
19 not being checked.

20 CHAIRPERSON GRIFFIS: Okay. Let me  
21 understand because what is it that gets into the fact  
22 that they don't work? Is it the design or is it that  
23 they fill up, they are not cleaned or is that -- I  
24 don't -- what is it?

25 MS. GATES: All I can tell you is when

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1 there is a heavy rain, and we seem to be having more  
2 and more heavy rains, they just flood. They cannot  
3 drain quickly enough. So what happens is they fill up  
4 and overflow.

5 CHAIRPERSON GRIFFIS: Okay. Good.

6 MS. GATES: Good afternoon, Chairman  
7 Griffis and Members of the Board. My name is Alma  
8 Gates and I live at 4911 Ashby Street, N.W. A quote  
9 of the day in the Washington Post caught my eye. "As  
10 density grows, that creates issues. It comes down to  
11 rage, tremendous human rage."

12 Much of the angst surrounding this  
13 application might have been avoided had the developer  
14 worked positively with the community. The recent  
15 Friends of St. Patrick's application is an outstanding  
16 example of community and applicant working through  
17 controversial aspects that allow the case to be  
18 brought to the table without context. It was a  
19 pleasure for the ANC to be a part of that application.

20 The application put forward by Dorchester  
21 Associates is about density. It is about development  
22 in an R-1-A District protected by a Tree and Slope  
23 Overlay. It is about the subdivision of a single lot  
24 into 13 parcels and it is about covering those lots  
25 with a substantial amount of impervious surface.

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1                   Mr. Bender met with ANC-3D on three  
2 occasions. Two letters outlining the deliberations  
3 and vote of the commission are on file with the Office  
4 of Zoning. Both letters oppose the proposed  
5 development, because it maximizes lot coverage and  
6 impervious surface coverage, removes more trees  
7 protected by the overlay than permitted, does not  
8 address the public safety of Chain Bridge Road.

9                   It does not adequately address slope  
10 protection, fails to provide information on the  
11 integrity and capacity of the drainage pipe that will  
12 carry water off the subject property, fails to address  
13 erosion and sediment control and fails to address the  
14 impacts of the development on adjacent neighbors,  
15 Battery Kemble Park and Chain Bridge Road.

16                   At a minimum, the applicant has not  
17 submitted material that discusses the phasing of  
18 construction where vehicles will be stored on-site,  
19 provisions to ensure tree roots will not be compacted  
20 as heavy equipment travels across the site, how boring  
21 for the installation of the proposed storm water  
22 management system will not impact critical root zones.

23                   An Erosion and Sediment Control Plan is  
24 missing, as is an outline of the provisions of a  
25 homeowners association with covenants, conditions and

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1 restrictions, and street lighting within the  
2 development, the potential impacts from lighting on  
3 adjacent neighbors on Chain Bridge Road.

4 These elements should be fully addressed  
5 prior to application approval. A letter requested at  
6 the April 11<sup>th</sup> hearing from Mr. Bender's engineer  
7 certifying that the hill behind Lots F and G has not  
8 been provided.

9 There was concern about the integrity of  
10 that hill and whether it could sustain the  
11 development. Several other areas of this application  
12 that appear to be in -- several other issues of this  
13 application appear to be in conflict with the overlay  
14 or lacking. The February 6, 2006 DDOT second  
15 supplemental letter approving this site for two 20  
16 foot wide laybys only addresses changes to the  
17 development driveway.

18 The letter is incomplete as DDOT does not  
19 address public safety on Chain Bridge Road, a narrow  
20 former Indian trail that has existed in its current  
21 form since colonial times. DDOT based its approval on  
22 driveways that are wider than provided.

23 The intersection formed by the main  
24 driveway from the property on Chain Bridge Road should  
25 be of serious concern for DDOT, because sections of

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1 this road, especially near the proposed site, are so  
2 narrow that two cars can just pass each other and most  
3 cars use the center of the roadway in this area.

4 The main entrance to the property is on a  
5 blind curve and, from a public safety perspective,  
6 requires further study by DDOT. The houses proposed  
7 for Lots 3, 4, A and B may well impede lines of sight  
8 along this narrow roadway. The house on Lot 3 exceeds  
9 100 feet in length and Lot A will have an 8 foot wide  
10 driveway that exits directly onto Chain Bridge Road.

11 These facts were not addressed in the DDOT  
12 report. Title 11, section 1565, is explicit on tree  
13 preservation and removal. This application requires  
14 the removal of eight trees larger than 38 inches and  
15 today I think we learned another tree is going. While  
16 only three trees of that size are permitted to be  
17 removed on this single lot in this Overlay District,  
18 it appears the Office of Planning based its opinion on  
19 the subdivided property, but there are four separate  
20 parcels and eight trees are proposed for removal.

21 On Parcel 12/294 where Lots A through I  
22 are located, four trees are slated to be removed. And  
23 on Parcel 12/293 where Lots 1 through 4 are located,  
24 four more trees are slated to be removed. While the  
25 demise of these trees is known, it seems fairly clear

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1 that many of the trees left standing may ultimately  
2 succumb to the undue stress placed on them over a  
3 lengthy construction period.

4 The applicant has been given an  
5 opportunity to present a newly created Urban  
6 Restoration Plan where some replacement hardwood trees  
7 are listed. Given the proposed development is in the  
8 Tree and Slope Overlay, replacement of hardwood trees  
9 is essential and critical to the preservation of the  
10 area's character. So a total of 28 circumference  
11 inches in hardwood trees is proposed for replacement  
12 across the 13 lots. That is 14 2 inch trees. These  
13 new trees in total do not equal the circumference of  
14 one of the 38 inch trees proposed for removal.

15 A review of the revised Storm Water  
16 Conceptual Plan dated June 20, 2006 shows the same  
17 pipes crisscrossing the development site that were  
18 shown in the April submission. Their implementation  
19 will likely permanently damage the delicate root  
20 systems of many trees identified for preservation.  
21 Therefore, it is reasonable to conclude that the  
22 proposed Storm Water Conceptual Plan is in direct  
23 conflict with the overlay meant to preserve the  
24 natural topography and mature trees to the maximum  
25 extent feasible in a residential neighborhood.

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1 Major surface areas will be disturbed as  
2 the Storm Water Management Plan is implemented, water,  
3 sewer and utilities are installed and houses and  
4 driveways are constructed. A diagram of the limits of  
5 disturbance is absent. The Bureau of Environmental  
6 Quality visited the site last July and signed off on  
7 the proposed best management practices provided the  
8 following conditions are incorporated into the  
9 project's final design.

10 To prevent sheer stress of the soil, the  
11 partial infiltration/exfiltration systems should be  
12 placed away from slopes and to prevent in-stream  
13 erosion and stream bank erosion, the post-development  
14 peak discharge should not exceed the two year pre-  
15 development peak discharge.

16 That review considered the capture of  
17 water resulting from an increase in impervious surface  
18 area, its flow off-site, the placement of trenches,  
19 etcetera, and whether or not the soil would percolate,  
20 but there is no indication that a full geotechnical  
21 report was performed that would indicate whether or  
22 not the proposed infiltration trenches would be  
23 located in fill-dirt or if they will perform as  
24 predicted.

25 In testimony on April 11<sup>th</sup>, Mr. Afful, the

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1 applicant's civil engineer, spoke about water from the  
2 front of the properties sheeting onto Chain Bridge  
3 Road. As you know, this road is rather fragile,  
4 narrow, winding and does not have any curb or gutter.  
5 Water from additional impervious surfaces that is not  
6 properly managed will have impacts on the road  
7 integrity and the edges of Battery Kemble Park.

8           Impacts to the visual enjoyment of Battery  
9 Kemble Park are of concern just as visual impacts of  
10 park land were of concern in the recent Economides  
11 case. It is obvious from the site sections that  
12 anyone on the park path directly across the road will  
13 be looking into a solid wall of houses rather than the  
14 woodland that currently lines the opposite side of  
15 Chain Bridge Road.

16           The four houses planned along the front of  
17 Chain Bridge Road will tower over the park and road.  
18 Remember the house on Lot 13 will exceed 100 feet in  
19 length and have the impact of a large billboard  
20 perched on the hillside above the park. The proposed  
21 development is in conflict with the purpose of the  
22 Overlay District that is meant to prevent significant  
23 adverse impact on adjacent open space park land,  
24 stream beds or other environmentally sensitive natural  
25 areas.

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1                   One year ago the Board of Zoning  
2 Adjustment considered another theoretical lot  
3 subdivision within ANC-3D, Phillips Park. While  
4 smaller in scale, the Dorchester subdivision is  
5 situated on a narrow, winding road. It abuts federal  
6 park land. The property is steeply sloped in areas  
7 and boasts many mature trees. However, the major  
8 difference is the subject theoretical lot subdivision  
9 is located in a Zone District protected by a Tree and  
10 Slope Overlay.

11                   In the Phillips Park BZA order, the  
12 applicant was required to establish a tree  
13 preservation and screening area adjacent to the  
14 national park lands. To help mitigate impacts, the  
15 Chain Bridge Road/University Terrace Preservation  
16 Committee has suggested the creation of a peripheral  
17 greenway. They note "The BZA has embraced a  
18 considerable greenway in approving the Phillips Park  
19 project on Foxhall Road, which is essentially notable  
20 inasmuch as this site is not subject to the  
21 restrictions of a Tree and Slope Overlay."

22                   Application No. 17309 presents the BZA  
23 with a unique, yet excellent test base. Its outcome  
24 will determine whether or not Tree and Slope Overlays  
25 are meaningful. In making its decision, the Board

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1 must exercise substantial discretion to ensure the  
2 provisions of section 1565 are met, consider what is  
3 reasonable and recognize there are ways to preserve  
4 what is unique about this property while balancing the  
5 stresses that exist between good planning and  
6 overdevelopment.

7 In conclusion, the ANC found the proposed  
8 development is too intense for the property. It  
9 proposes maximizing density where minimizing is  
10 indicated. It fails to respect the natural topography  
11 of the area and to protect the natural slopes that  
12 surround a major portion of the property. It will  
13 destroy a significant number of mature trees. It will  
14 have significant impact on adjacent neighbors, Chain  
15 Bridge Road and federal park land.

16 It is in conflict with the purpose of the  
17 Overlay District that is meant to prevent significant  
18 adverse impact on adjacent open space, park land,  
19 stream beds or other environmentally sensitive natural  
20 areas. The applicant has failed to meet its burden of  
21 proof and approval should not be granted.

22 CHAIRPERSON GRIFFIS: Very well. Thank  
23 you very much. Very substantive. We'll take that  
24 into consideration and we appreciate having the  
25 written submission in. You made one note of a lot.

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1 I believe you meant to say Lot 3 not 13 and I will  
2 take it as that.

3 MS. GATES: Did I say Lot 13?

4 CHAIRPERSON GRIFFIS: I believe so, yes.

5 MS. GATES: I'm sorry.

6 CHAIRPERSON GRIFFIS: That's okay.

7 MS. GATES: I did mean Lot 3.

8 CHAIRPERSON GRIFFIS: The attachment, we  
9 have specs on lot -- Bender revisions to plans for  
10 2800 Chain Bridge Road. Did you want to address that  
11 briefly or actually just tell us what it is?

12 MS. GATES: Well, for the ANC purposes  
13 with each submission we have prepared one of these  
14 sheets so that we sort of had everything on one page.

15 CHAIRPERSON GRIFFIS: I follow.

16 MS. GATES: That is basically what it is.

17 CHAIRPERSON GRIFFIS: Excellent. Okay.  
18 And it's very understandable. As we read it down, it  
19 goes from lot size per lot, lot occupancy, surface  
20 shared, lot building area, height. Excellent. Okay.  
21 Questions from the Board? If there's no questions,  
22 cross?

23 MR. GLASGOW: Just very briefly. Are you  
24 aware that the four houses that front on Chain Bridge  
25 Road could all be developed as a matter-of-right?

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1 MS. GATES: Yes.

2 MR. GLASGOW: All right. Next, with  
3 respect to your chart, I guess isn't that the -- the  
4 chart shows how the development is in compliance with  
5 all the provisions of the overlay with respect to lot  
6 size, lot occupancy and pervious surface?

7 MS. GATES: If you're talking about the  
8 parts, the top part, yes. Well, what it's showing is  
9 that you do meet that, yes.

10 MR. GLASGOW: Right. We meet all the  
11 requirements and those requirements, as part of the  
12 overlay, were increased to provide lower density such  
13 as the lot area was increased from 7,500 square feet  
14 to 9,500 square feet. Lot occupancy was reduced from  
15 40 percent to 30 percent in order to decrease density  
16 as to what otherwise would be permitted in the  
17 overlay. Isn't that correct?

18 MS. GATES: Yes.

19 MR. GLASGOW: I have no further questions.

20 CHAIRPERSON GRIFFIS: Thank you. Follow-  
21 up? Is there significance to what is highlighted in  
22 green or are they just the high numbers?

23 MS. GATES: If you look at the square,  
24 lots square, the first piece.

25 CHAIRPERSON GRIFFIS: Uh-huh.

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1 MS. GATES: It shows that they have  
2 occupied that percentage of the lot.

3 CHAIRPERSON GRIFFIS: Right.

4 MS. GATES: What is allowed.

5 CHAIRPERSON GRIFFIS: And then some of  
6 them are highlighted. They have a green -- at least  
7 my copy, they have a green -- that is just to  
8 highlight the higher percentages?

9 MS. GATES: Yes.

10 CHAIRPERSON GRIFFIS: Okay. Okay.

11 MS. GATES: To show where they are pretty  
12 much maxed out.

13 CHAIRPERSON GRIFFIS: I see. Excellent.  
14 Okay. Anything else? Cross? Very well. Thank you  
15 very much. Let's move ahead.

16 MR. BROWN: Mr. Chairman, Patrick Brown on  
17 behalf of Chain Bridge Road Committee.

18 CHAIRPERSON GRIFFIS: Good. We haven't  
19 gotten our surround sound done yet, but we do have all  
20 the monitors working so far. So wherever you are, you  
21 had better be able to see, right? Okay. Let's go.

22 MR. BROWN: Again, Patrick Brown on behalf  
23 of the opponents to Chain Bridge Road. I would like  
24 to introduce our witnesses briefly, Mr. Bob Sussman,  
25 who is president of the committee. Next to me, Ed

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1 Milhous, our arborist expert, Mary Sears, our storm  
2 water and civil engineering expert and Steve Petersen,  
3 our traffic expert.

4 I would like to have each recognized as an  
5 expert in their various fields. Oh, where was Allen?  
6 Oh, I almost forgot. Mr. Neyman as an architect and  
7 then also our final witness is Rudi Djabbarzadeh, who  
8 is an expert in being a neighbor. If I could submit  
9 to the Board the resumes for Mr. Neyman and his  
10 testimony which I will submit, and a resume for Mary  
11 Sears and also Ed Milhous.

12 CHAIRPERSON GRIFFIS: Ms. Sears and Mr.  
13 Milhous, have you been established as expert witnesses  
14 before?

15 MR. MILHOUS: Have I?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. MILHOUS: Yes.

18 CHAIRPERSON GRIFFIS: If you wouldn't mind  
19 turning your microphone on. You have in the past been  
20 taken in as an expert witness in traffic engineering.  
21 Is that correct?

22 MR. PETERSEN: That's correct.

23 CHAIRPERSON GRIFFIS: Ms. Sears?

24 MS. SEARS: Yes.

25 CHAIRPERSON GRIFFIS: Okay. Ms. Sears,

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1 you were established as an expert witness how so  
2 previously?

3 MS. SEARS: As relating to this case or  
4 other cases?

5 CHAIRPERSON GRIFFIS: Other cases.

6 MS. SEARS: I worked on the Phillips  
7 Park/Dunmarlin project.

8 CHAIRPERSON GRIFFIS: Subject matter?

9 MS. SEARS: Oh, storm water management,  
10 civil engineering.

11 CHAIRPERSON GRIFFIS: Where is Mr. DeBars?  
12 He is not on the panel, is he? Oh, okay. There is  
13 going to be some serious voir dire with you.

14 MR. DJABBARZADEH: Yes.

15 CHAIRPERSON GRIFFIS: Better get your  
16 resume together and tell us where you have lived for  
17 your entire life to be an expert as a neighbor, how  
18 neighborly you have been, the kind of things you do  
19 around the holidays, you know, this kind of stuff.  
20 Okay. I'm just killing time while we get all this  
21 paperwork.

22 Mr. Sussman, were you being offered as an  
23 expert witness also?

24 MR. SUSSMAN: No.

25 CHAIRPERSON GRIFFIS: Right. How many do

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1 we -- well, I'll wait for him to settle. Can you give  
2 me a list again, Mr. Brown? We have Mr. Neyman as the  
3 architect, Ms. Sears, storm water management.

4 MR. BROWN: Yes, Sears as --

5 CHAIRPERSON GRIFFIS: Newman. What did I  
6 say? I'm sorry.

7 MR. BROWN: Allen.

8 CHAIRPERSON GRIFFIS: Neyman.

9 MR. BROWN: Neyman.

10 CHAIRPERSON GRIFFIS: Correct? Did I say  
11 Newman? Sorry. Okay. I wrote Neyman. Sears,  
12 Milhous, who else?

13 MR. BROWN: Petersen for traffic.

14 CHAIRPERSON GRIFFIS: Petersen. Okay.  
15 Four then. Is that correct?

16 MR. BROWN: That's correct.

17 CHAIRPERSON GRIFFIS: Thank you. Okay.  
18 Mr. Neyman, you have been established as an expert  
19 before. Is that correct?

20 MR. NEYMAN: That's correct.

21 CHAIRPERSON GRIFFIS: What case was it in?  
22 Do you recall? Can you turn your microphone on if you  
23 don't mind?

24 MR. NEYMAN: Within this past year on  
25 Mozart Place.

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1 CHAIRPERSON GRIFFIS: Yes, that's right.  
2 Okay. Mr. Glasgow, you have copies of all these? Ms.  
3 Gates, do you have this package? Do you want this  
4 package? You can have my package. Okay. What is  
5 this one? Did these just come in from you, Mr. Brown?

6 MR. BROWN: That's from Mr. DeBars.

7 CHAIRPERSON GRIFFIS: Oh, okay. We'll  
8 wait for that, that statement. Okay. I have Mr.  
9 Milhous, Ms. Sears and Mr. Neyman, three. Mr.  
10 Petersen, were you also mentioned?

11 MR. PETERSEN: Yes.

12 CHAIRPERSON GRIFFIS: Do we have --

13 MR. BROWN: I think his resume is attached  
14 to his report that was submitted earlier.

15 CHAIRPERSON GRIFFIS: How earlier? Today,  
16 for today's?

17 MR. BROWN: No, it was submitted I think  
18 in one of the April filings.

19 CHAIRPERSON GRIFFIS: Okay. Mr. Petersen,  
20 why don't you -- this is Mr. Petersen, correct?

21 MR. BROWN: Mr. Petersen is down here.

22 CHAIRPERSON GRIFFIS: Oh, I'm sorry. Mr.  
23 Petersen. Okay, right, and we have had him. So Mr.  
24 Milhous is -- very well. Okay. That's a heck of a  
25 lot easier. Okay. Let's move ahead then. What is

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1 the difference between Mr. Petersen's and Mr. Milhous'  
2 expertise?

3 MR. BROWN: Mr. Milhous is an arborist and  
4 Mr. Petersen is traffic.

5 CHAIRPERSON GRIFFIS: I have really got to  
6 look at these, don't I? Okay. Good. That's some  
7 serious difference, let me tell you right now. Okay.  
8 Right. Okay. Questions? Mr. Glasgow, any objections  
9 to register with these? Board Members? Yes, Ms.  
10 Miller?

11 VICE CHAIR MILLER: Could you just  
12 specifically say what each one is being proffered as  
13 an expert, yes.

14 CHAIRPERSON GRIFFIS: Yes, sure.

15 VICE CHAIR MILLER: Like architect,  
16 arborist.

17 CHAIRPERSON GRIFFIS: You're going to poke  
18 fun at me, right?

19 VICE CHAIR MILLER: I mean, is it  
20 architect, arborist, storm water management?

21 CHAIRPERSON GRIFFIS: That's right.

22 VICE CHAIR MILLER: What am I missing?

23 CHAIRPERSON GRIFFIS: Mr. Neyman is the  
24 architect. Ms. Sears is storm water management.  
25 You're a civil engineer. Is that correct?

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1 MS. SEARS: Yes.

2 CHAIRPERSON GRIFFIS: We have Mr. Milhous  
3 as the arborist and Mr. Petersen is a traffic  
4 engineer.

5 VICE CHAIR MILLER: Okay.

6 MR. BROWN: Correct.

7 CHAIRPERSON GRIFFIS: Phew, lucky. Okay.  
8 Anything else? Any other questions? We have  
9 established all, every one of you, as expert witnesses  
10 before except for Mr. -- yes, all before. Am I  
11 correct? Have you all been established before? Okay.  
12 Let's move ahead. Whoa, more stuff. Okay. All you,  
13 Mr. Brown. We're ready.

14 MR. BROWN: And I would like to speak as  
15 little as possible and turn it over to the experts.  
16 I would note first that I think we can do this in  
17 under an hour, but a little flexibility given the  
18 number of people and that we have tried to incorporate  
19 Mr. DeBars today into the overall presentation.

20 CHAIRPERSON GRIFFIS: We'll talk fast.  
21 Here's a couple of realities. We're going to lose  
22 Board Members because of prior commitments, which we  
23 have no control over. They will get testimony. They  
24 will get the entire record and the transcript, but  
25 more importantly, technically, we are going to run out

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1 of tape. So we have to stop when the tape stops,  
2 unfortunately. Otherwise, we would go all night. So  
3 let's move ahead and get to this.

4 MR. BROWN: All right. I would just note  
5 before we start that -- and this is a critical element  
6 in how we need to put this into context. This case  
7 has been going on for quite sometime, probably almost  
8 a year and a half before the Board, and by the  
9 applicant, by his own admission, for three or four  
10 years in total.

11 The burden of proof is on the applicant.  
12 My clients have gone to extraordinary lengths to  
13 provide expert testimony. But, again, the applicant  
14 bears the burden of proof and not what this project  
15 could be or should be, but what he is asking for so  
16 that, again, I spent lots of time objecting or being  
17 concerned about that we were trying to redesign the  
18 project here before the Board.

19 This is an application for 13 houses based  
20 on the plan he submitted and I think we need to judge  
21 it that way up or down or not what it could be or  
22 should be or if you had only told me or given me more  
23 time to find out what the standards are and I could  
24 submit something better in the future. I think we  
25 need to look at it as a snapshot as it is now and move

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1 from there.

2 With that, Mr. Sussman, I will let you  
3 start.

4 MR. SUSSMAN: Okay. Great. Can we dim  
5 the lights a bit?

6 CHAIRPERSON GRIFFIS: Certainly. Ms.  
7 Bailey will take care of us when she gets a moment,  
8 but why don't you proceed and we'll wait for that.  
9 Thank you.

10 MR. SUSSMAN: Okay. Good afternoon,  
11 Chairman Griffis and Members of the Board. Actually,  
12 they are a little too dim.

13 CHAIRPERSON GRIFFIS: We get on or off  
14 around here.

15 MR. SUSSMAN: Right. Okay. Well, we'll  
16 go with what we had because I think the pictures --

17 CHAIRPERSON GRIFFIS: We'll adjust.

18 MR. SUSSMAN: -- are more important than  
19 what I have to say. My name is Bob Sussman. I live  
20 at 2824 Chain Bridge Road and I am appearing today as  
21 chair of the Chain Bridge Road/University Terrace  
22 Preservation Committee. As you have heard, the  
23 committee was instrumental in creating the 1999 Chain  
24 Bridge Road/University Terrace Overlay District and  
25 one of our main missions is enforcing the overlay's

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1       protections on behalf of the 70 or so families that  
2       live in the Overlay District.

3               I have submitted for the record a detailed  
4       written statement, which I am going to summarize  
5       today. I have also submitted copies of the overheads  
6       that we're presenting, and so you will have those for  
7       the record as well.

8               Many of the speakers here today have  
9       emphasized the special character of the Overlay  
10      District and, as you have heard, this is a unique  
11      rustic enclave in the District of Columbia. It is  
12      heavily wooded and hilly. Chain Bridge Road, as you  
13      can see, is a narrow, windy and undulating country  
14      lane that, in fact, as we heard before, dates back to  
15      colonial times.

16              The eastern side of the road is occupied  
17      by Battery Kemble Park and here you see a few vistas  
18      looking into the park which will give you a sense of  
19      its topography and ambience. It's really very  
20      beautiful and, as we have heard, it is a popular  
21      gathering spot for all kinds of people, dog walkers,  
22      joggers, hikers from really all over the D.C.  
23      Metropolitan area.

24              The historic significance of the  
25      neighborhood derives not only from the park, which was

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1 the site of a former civil war battery, but from the  
2 community of freed slaves that settled in the  
3 neighborhood after the Civil War. The legacy of that,  
4 of the African-American community, is evident in a  
5 number of different ways in the neighborhood.

6 You have heard about the historic 19<sup>th</sup>  
7 Century African-American Cemetery at the base of Chain  
8 Bridge Road and here it is, and you have also heard  
9 about the historic African-American Schoolhouse. And  
10 this schoolhouse is now a D.C. and national-registered  
11 landmark due to the efforts of our group to secure  
12 landmark status.

13 I would like to talk a bit about the  
14 topography of the property. We have covered this  
15 before, but I think pictures can be very illuminating  
16 here. The property is characterized by distinct north  
17 and south plateau areas that are separated by an  
18 abrupt change of grade and here you can see one of the  
19 plateaus and it is relatively flat, relatively  
20 treeless.

21 Longstanding residents of the neighborhood  
22 recall that these plateaus were constructed from fill  
23 which was removed from other portions of the property  
24 or trucked onto the site to create this flat terrace-  
25 type quality that you see that is really very

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1 different from the overall topography of the  
2 neighborhood.

3 Now, the plateaus are bounded by steep  
4 slopes on all sides of the property. In other words,  
5 there is a drop in grade pretty much from all four  
6 boundaries of the property down to the surrounding  
7 areas. And, in particular, the slopes along the  
8 western and northern boundaries of the property are  
9 unstable and poorly retained and have a history of  
10 erosion and collapse during heavy storms.

11 This slope that you see here is the slope  
12 that Alma Gates referred to in her testimony. It's  
13 the same slope that was the subject of discussion at  
14 the last hearing. And, as you can see, this slope  
15 here is in a condition of severe disrepair and  
16 instability. Among other things, we think there needs  
17 to be a retaining wall here, but there is not one  
18 which is provided in applicant's plans.

19 And here is another side of that slope and  
20 you can see that there is rubble, there is loose soil,  
21 there are railroad ties. You can't see them in this  
22 picture. You can also see the unstable root system of  
23 one of the trees. The stability of this slope is only  
24 going to be more severely compromised when a house is  
25 built directly above it.

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1           As I said before, in contrast to the  
2 plateaus which are generally treeless, the border  
3 areas of the property are heavily wooded. Here you  
4 can see a view from the south border of the property.  
5 Here is a view of the trees on the property as you  
6 come up the road from the south, and really as you go  
7 around the property you will find that the slopes are  
8 not only relatively severe, but they also have a lot  
9 of trees on them.

10           Now, there has been a lot of discussion of  
11 the historic beech trees that line the main driveway  
12 and here they are. This is a winter view so they are  
13 not flowering, but you can get a sense of the allee of  
14 trees and the relationship between the trees and the  
15 driveway itself.

16           This driveway is slightly wider than 12  
17 feet at its entrance, so it's pretty darn narrow and  
18 it maintains that width for most of its length. And  
19 also important about this driveway is how it meets the  
20 road. By the way, here is another view of the beech  
21 trees from a distance, and I think when you see the  
22 beech trees from a distance you can kind of appreciate  
23 the way they define the character of the property in  
24 a very beautiful way.

25           As I was saying, it has been remarked that

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1 there is a blind curve approaching the entrance to the  
2 property both from the north and south and there's the  
3 entrance right over there. In other words, one can  
4 see how it's -- there's an interesting entrance right  
5 over there. You'll get a sense of the way the road  
6 slopes and here is another example of the blind curve  
7 approaching the property from the south.

8 I would like to turn to the issue of  
9 density, which has been discussed quite a bit in this  
10 proceeding. And I think what we heard from Mr.  
11 Andrulis at the last day of hearing that we had is  
12 that the proposed lot enhanced sizes are consistent  
13 with and compatible with the existing density of the  
14 neighborhood.

15 In order to see whether that was really  
16 true, we went back and we reviewed District records,  
17 District tax records for all the houses on the road  
18 and we calculated the average size of each single  
19 owner lot and the average square footage of the  
20 houses. And here is what we find. Basically, and I  
21 want to make clear this analysis excludes applicant's  
22 property, which is a 3.5 acre property.

23 This is an analysis that focuses only on  
24 the other houses on the road. And we found through  
25 this analysis that the average size of each single

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1 owner site is 22,778 square foot -- feet, which is  
2 about half an acre. And this is over twice the  
3 average size of the Bender lots.

4 On the other hand, the average interior  
5 size of the existing homes on the road is 3,991 square  
6 feet or about half the size of the applicant's houses,  
7 which average 7,731 square feet. Another way to look  
8 at this is in terms of the ratio of house size to  
9 property size. And this, I think, shows a very  
10 dramatic difference in density. Basically, for the  
11 applicant's houses, the ratio of square footage to lot  
12 size is 78 percent, in contrast to 24 percent for the  
13 existing houses. So the increase in density is really  
14 very, very substantial.

15 As one climbs Chain Bridge Road from  
16 Macarthur Boulevard, the houses are modestly  
17 proportioned and in some cases very old. And I wanted  
18 to show you a few of these houses. In general, the  
19 houses are spaced far apart, although a few are  
20 clustered together. And again, we tried to get some  
21 data on this issue.

22 So we looked at the first half mile of the  
23 road as it comes off Macarthur Boulevard and there are  
24 13 houses along the first half mile of the road or an  
25 average of one house per 203 feet. And again, some of

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1       them are close together. Some of them are further  
2       apart. But on average, as you go up the road, you  
3       will see one house for every 203 feet.

4                Another very important point is that most  
5       of these houses are designed to the rear to take  
6       advantage of large hilly and wooded back lots. And  
7       this is really very important to the character of the  
8       neighborhood. And I wanted to give you a feel for the  
9       relationship between the houses and some of the  
10      properties on which they sit.

11              This is -- as it happens, this is our  
12      house. We're right next to the school house and we  
13      have a generous back yard which you can see here.  
14      Here is another example, the rear garden at 2700 Chain  
15      Bridge Road and here is another example here. By  
16      contrast the combination of large houses in small lots  
17      in applicant's plan would leave virtually no green  
18      space and that, we would submit, will change the  
19      character of the neighborhood by substantially  
20      altering the relationship between the houses and  
21      surrounding terrain.

22              I would like to go on to the issue of tree  
23      preservation, which is really the heart of the case.  
24      I'm not an arborist. You will hear from our arborist  
25      a little later on, but I think there are two issues

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1 when it comes to applying the overlay to this  
2 property. The first issue is whether the literal  
3 requirements of the overlay have been met. That is to  
4 say whether the intentional removal of trees by Mr.  
5 Bender is out of compliance with the overlay.

6 In fact, we think that it is, but when you  
7 get beyond that question, the bigger issue is whether  
8 construction activities stress on the trees that we  
9 can expect during the life of the project and beyond  
10 is reasonably likely to destroy the trees. And we  
11 would say that if there is a reasonable likelihood  
12 that trees will be destroyed, notwithstanding the  
13 applicant's belief that they will be saved, then there  
14 has been a violation of the overlay, because trees  
15 that the overlay protects have, in fact, disappeared  
16 over time.

17 So I'm going to talk very briefly about  
18 the issue just of literal compliance with the overlay.  
19 And to look at the big picture, at least as I count  
20 there, there are 145 trees on the property that are  
21 within the protection of the overlay, because they are  
22 over 12 inches in circumference. 38 of those trees  
23 are proposed to be removed. I think it's actually 39,  
24 because we heard about a new one today.

25 19 of those trees are over 38 inches in

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1 circumference and, of course, under the overlay you  
2 can only remove three trees in that category. Of the  
3 19 that are going to be removed, 10 are described by  
4 Mr. Bender as hazardous and another 9, I think, 10 or  
5 so he puts in the category of trees that are going to  
6 be removed, because of construction.

7 Now, if you look closely at the trees in  
8 question, you will find that 9 of the trees -- there  
9 are 9 trees that are described as hazardous. But, in  
10 fact, of those trees 5 of them are given a rating, a  
11 health rating by applicant's arborist of 50 percent or  
12 greater, which I believe is a rating which indicates  
13 that the trees are reasonably likely to survive.

14 So at least as to those 5 trees, I would  
15 submit that they aren't really hazardous, at least  
16 based on the rating that has been assigned to them by  
17 applicant and, therefore, they are subject to the  
18 overlay. Now, the interesting thing about all of  
19 these trees is that their circumference is above 75  
20 inches and under the overlay there is an absolute  
21 prohibition on cutting down trees that are over 75  
22 inches in circumference. The only way you can cut  
23 them down is if they are hazardous and, at least based  
24 on our review, 5 of these trees, by applicant's own  
25 description, would not be considered hazardous.

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1           Then we have 10 that are going to be  
2 removed for construction and I honestly think that the  
3 only way to justify the removal of these 10 trees is  
4 under an interpretation of the overlay, which really  
5 doesn't make any sense. I think what we are hearing  
6 is that there are four separate parcels on applicant's  
7 property. And therefore, if you can remove three from  
8 each parcel, that gives you a total of 12. But the  
9 key question as Alma Gates was saying is how many  
10 trees are being removed from a particular parcel?

11           Two of the parcels are very small and as  
12 I read the plans, no trees are going to be removed  
13 from those parcels. So that leaves 9 or 10 trees that  
14 are going to be removed from the two remaining  
15 parcels. Any way you do that math, that is more than  
16 the three which the overlay permits you to remove.

17           I'll stop there and leave it to our  
18 arborist to talk more about the unintended destruction  
19 of the trees. I want to shift gears and talk about  
20 storm water management and show you some pictures  
21 which I think graphically illustrate the concerns that  
22 we have been hearing from several of the neighbors.

23           This is the famous terra cotta drainage  
24 pipe and this sits literally on the south boundary of  
25 the property. And the pipe then passes under the

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1 driveway on Mr. Djabbarzadeh's property. It continues  
2 underground through additional properties and then it  
3 resurfaces as a stream bed that ultimately flows under  
4 Macarthur Boulevard, joins with Maddox Run and empties  
5 into the Potomac River.

6 Here are some shots of the stream bed and  
7 the pipe. This is actually the area where the pipe  
8 comes out and empties into the stream bed, which is  
9 probably 30 or 40 feet to the south of the Bender  
10 property and you can get a sense of how narrow this  
11 stream bed is, at least at the point where the pipe  
12 empties into it.

13 Here is stream bed down further towards  
14 Macarthur Boulevard and you can see that when there  
15 are heavy rains, this stream bed does get quite full  
16 of water. And then if you go even further down  
17 towards Macarthur Boulevard, you can see with a heavy  
18 rain, this stream bed can turn into a pretty massive  
19 type of flow.

20 Now, I want to make one point here which  
21 is very, very important coming back to the terra cotta  
22 pipe. This pipe is not on Mr. Bender's property.  
23 This pipe is essentially on Mr. Djabbarzadeh's  
24 property and so the question I think is what is the  
25 basis for allowing Mr. Bender to basically discharge

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1 overflow into a pipe which is owned by his neighbor?

2 In my understanding of the D.C.  
3 Regulations is that there does need to be an easement  
4 in place and filed with the Recorder of Deeds before  
5 one property owner can intentionally discharge onto  
6 the property of a neighbor. We have no record of such  
7 an easement. Nobody has produced it. Maybe it exists  
8 somewhere, but none of the people in the community  
9 know anything about it and we haven't been able to  
10 find a copy.

11 I want to close, but before I do, there's  
12 one final comment I want to make. And it relates to  
13 the many disturbing uncertainties in applicant's  
14 plans. We don't know whether he will develop the  
15 proposed subdivision himself or sell the lots to other  
16 developers. We don't know whether he will build all  
17 13 houses simultaneously or one at a time. We don't  
18 even know whether these lots are marketable, whether  
19 purchasers are going to pay \$4 to \$5 million for huge  
20 houses on postage stamp lots that sit in the middle of  
21 a construction site for three or four years.

22 We are also told that the Storm Water  
23 Management and Tree Preservation Plans are a work in  
24 progress, that there is going to have to be a lot of  
25 trial and error adjustment as we go down the road

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1 here. But who is going to oversee that process and  
2 make sure that all of these mid-course corrections are  
3 acceptable?

4 Remarkably, Mr. Bender said at the last  
5 hearing that we would implement his plans to the T.  
6 He would not address them in any way and I say that's  
7 remarkable because of the very nature of these plans.  
8 There will have to be mid-course corrections. And the  
9 question is what are those mid-course corrections  
10 going to do to storm water management? What are they  
11 going to do to the trees? What are they going to do  
12 to traffic?

13 And the final uncertainty here is we hear  
14 that the implementation of the landscape plan, the  
15 implementation of the Storm Water Management Plan, the  
16 implementation of the Tree Protection Plan, all of  
17 these things are going to depend in crucial ways on  
18 the homeowners association, which is set up. But we  
19 have absolutely no details about this homeowners  
20 association, how it is going to operate, what type of  
21 restrictions are going to be imposed and whether those  
22 restrictions are at the end of the day realistic.

23 So there are many, many uncertainties here  
24 and I think with a site this sensitive and with  
25 potential environmental and other impacts which are

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1 potentially so significant, I think the Board should  
2 be sobered by these uncertainties and should very  
3 carefully consider whether this application should be  
4 granted or not. Thank you.

5 CHAIRPERSON GRIFFIS: Let's move ahead.

6 MR. BROWN: Just keep going?

7 CHAIRPERSON GRIFFIS: Yes.

8 MR. BROWN: Okay. Ms. Sears, do you want  
9 to put up one of the drawings, the applicant's  
10 drawings? Could we do that?

11 MS. SEARS: I guess I should say good  
12 evening. Mary Sears, I work for Greenhorne and  
13 O'Mara, the civil engineer contracted to perform a  
14 peer review of the applicant's Storm Water Management  
15 Plan. When looking at this plan, I did read the D.C.  
16 DOH did submit a letter of approval of this Storm  
17 Water Management Conceptual Plan. However, in review  
18 of the plan, I feel that the plan has various  
19 conflicts and areas of concern with regards to  
20 grading, storm water management construction,  
21 maintenance, erosion and sediment control and design  
22 capacity.

23 Just to talk about grading initially of  
24 the site and the layout, most of the site is shown as  
25 being graded, houses being graded into the slopes and

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1 there aren't any limits of disturbance shown on the  
2 grading plan or the Storm Water Management Conceptual  
3 Plan. There is a tree conservation line or  
4 preservation line, but that doesn't necessarily  
5 coincide with the limits of disturbance.

6 You can grade a house and a basement not  
7 just right at the face of where the foundation wall  
8 will be. There will be over-dig to excavate for that  
9 basement. In addition to basement excavations, the  
10 driveways, some of which have been revised to show  
11 bridging and retaining walls, don't just have limits  
12 of disturbance right at the edge of those walls.

13 For example, on Lot 4, the driveway slopes  
14 down to a grade from existing grade to proposed low  
15 elevation. It's a good 18 feet max height at points.  
16 So to grade and build a wall 18 feet high, you will  
17 have more disturbance than shown to the limits of just  
18 that driveway itself and the wall line.

19 As well for grading beyond the buildings  
20 and drainage through the buildings, there hasn't been  
21 shown on the Storm Water Management Conceptual Plan  
22 any off-site grading. However, on the -- I believe  
23 it's the existing topography plan or existing grading  
24 plan, there is shown some adjacent topography off-site  
25 that would show more drainage than just to the

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1 northeast that comes onto the property, not just the  
2 property itself which will drain into the storm  
3 system.

4 It begs the question this off-site  
5 drainage from the tennis court and the school, will  
6 that need any additional inlets to pick up that water  
7 prior to coming onto the site? And if so, it may  
8 impact more trees than are shown today.

9 Secondly, erosion and sediment control.  
10 There has never been a plan actually submitted. It  
11 has only been talked about in text only, but this plan  
12 would show limits of grading and disturbance for these  
13 areas that I just mentioned around houses, any  
14 trenching that is going to end up being done and not  
15 just boring of the pipes, but as well as the retaining  
16 walls. It will also show staging and phasing of  
17 construction.

18 There are areas on this site which will  
19 have areas of coverage to stage the excavated material  
20 coming out of basements once it is taken out or the  
21 haul-off methods, the construction vehicles access,  
22 all of these things aren't shown on any plan today,  
23 but will be outside of the limits of just the standard  
24 access drive. And on a lot-by-lot basis, depending on  
25 how this development is built out, that could lead to

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1 more impacts to treat areas which we don't see as --  
2 which are shown as saved today.

3 New testimony was provided earlier about  
4 some of the driveways being bridges and the Board  
5 asked on some of the darkened areas what are those and  
6 it was the answer that those were the openings for  
7 water to drain through the drives. It leads to  
8 further question that once this water falls through  
9 this bridge driveway, where does it go? If later on  
10 in the driveway that meets existing grade and water  
11 falls through up here, it's going to drain towards the  
12 house.

13 Some of these bridge driveways do not have  
14 additional storm drainage associated with them to pick  
15 up that water and may lead to low points or ponding in  
16 front of the house, which has to be addressed.  
17 Putting in storm drain to pick that up would require  
18 additional grading and excavation, as well even if  
19 storm drainage structures aren't needed per se and it  
20 just flows on the surface, that's swale drainage.

21 Right now, the site pretty much sheet  
22 flows from one side to the other. And to build two  
23 houses and have water fall through and come through  
24 house to house with on a sheet flow, should centralize  
25 that through some kind of grading. And to show -- to

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1 not show limits of disturbance in that grading is  
2 slightly a misconception as to what trees may or may  
3 not really be impacted.

4 But I would really like to focus on storm  
5 water management. This plan does meet and show all  
6 the types of devices and best management practices  
7 that are acceptable to D.C. DOH per the design manual  
8 for water quality and water quantity. The problem is,  
9 from my review of the plan, the implementation of the  
10 constructability of these devices and their locations  
11 and capacity.

12 Infiltration devices. These are proposed  
13 throughout the site by dry wells or partial  
14 infiltration/exfiltration systems. And the D.C. DOH  
15 letter did confirm that infiltration was feasible on  
16 this site. But there wasn't a full geotechnical  
17 report that was submitted, which would define and  
18 characterize the soils that are present on this site.  
19 One stipulation in D.C.'s design manual is that  
20 infiltration devices cannot be proposed on fill soils.

21 And from the history of this site, it  
22 would appear that through several plateaus on this  
23 site that that was through a grading effort at one  
24 point in time with fill activity. Without a full  
25 geotechnical report to define whether the soils

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1 actually act as fill today or not, has not been  
2 presented. If it was and they were determined to be  
3 fill soils, a lot of these devices would not be  
4 approvable by D.C. DOH.

5 Also regarding infiltration of the dry  
6 wells, there is other requirements that they need to  
7 comply with, one being setbacks from houses. This is  
8 typically a 15 foot minimum for devices that are  
9 greater than 3 feet deep. And of the dry wells shown  
10 on the site, seven of them do not meet building  
11 setbacks on Lots 1, 3, C, D, E, G and H. The  
12 applicant did say that they pushed these away, these  
13 devices, in certain locations away from steep slopes,  
14 but when doing that they didn't meet building  
15 setbacks. They were to be pushed back in steep  
16 slopes.

17 They would also have to meet some other  
18 criteria as far as depth of the devices, horizontally  
19 away from the building and horizontally away from the  
20 slope. Because one of D.C.'s criteria is to prevent  
21 seepage and slope failure.

22 As far as piping goes for the devices  
23 shown, the Storm Water Management Conceptual Plan  
24 shows piping of the storm drain only. There hasn't  
25 been a plan submitted that shows water and sewer

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1 utilities and most likely these would be located in  
2 the main drive through the center of the site.

3 If you were to show a proposed water and  
4 sewer pipe network lateral and parallel to the storm  
5 drain piping, there would not be -- while maintaining  
6 minimum clearances from outer diameter pipe-to-pipe,  
7 all three pipelines would not fit underneath the road,  
8 which raises serious concerns on whether the location  
9 of the storm drain proposed can even fit in the road  
10 with these other utilities and the saved beech trees  
11 that are supposedly not going to be disturbed.  
12 Without a plan submitted, that can't be verified.

13 Previous iterations of this plan showed  
14 that the grate inlets in the road were going to pick  
15 up the sheet flow runoff condition onto the main  
16 access aisle. Through today, it has been clarified  
17 that there is a curb along the existing paved drive  
18 through the site which will then be used in  
19 conjunction with warping of the drive aisle overlay in  
20 order to drag drainage into these low points where the  
21 drainage inlets are.

22 However, this, as stated, was only about  
23 a 2 inch lip kind of curb, which does not meet curb  
24 standards of today. And I haven't seen any  
25 calculations, if they were to use that, whether the

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1 capacity of runoff that will be captured from the lots  
2 upstream of it into the road, which gets directed into  
3 these inlets, would actually not overtop the curb due  
4 to spread and how much capacity a curb in the roadway  
5 could hold.

6 If that was not obtainable and you had to  
7 move the inlets outside of the road where they were  
8 originally proposed with swales, that would cause even  
9 further destruction of the trees due to piping.

10 But there are two main areas of concern  
11 where I feel that there is not enough room to fit the  
12 facilities. One is at the low end of the storm water  
13 management at the rain storage system. This shows --  
14 it's at the back of Lot A, C and D. And the rain  
15 storage has been proposed to manage a 15 year post-  
16 development runoff back to a 2 year predevelopment  
17 runoff condition.

18 Based on the proposed storm drain system  
19 discharging into this device, it will serve 10 lots  
20 for quantity control. Although detailed calculations  
21 have not been provided to verify the required storage  
22 device dimensions, I feel it is inadequate and shown  
23 too small. I reason this because the rain storage  
24 device shown is, approximately, half the size in plan  
25 view of an infiltration dry well, which treats only

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1 water quality.

2 And this rain storage device shown half  
3 the size of a dry well serves 10 lots. However, the  
4 dry well dimensions, which I feel are shown correct,  
5 serve the rooftop of only one lot at a 40 percent void  
6 space. So 40 percent of a much bigger dry well in  
7 plan view is treating only quality of one house, while  
8 half the size device is treating many more lots for  
9 water quantity.

10 I feel this area alone without dry wells  
11 may not even be able to be the size needed to put in  
12 a rain storage device. This then leads to the  
13 construction of these devices. There is three dry  
14 wells and a rain storage device in this area all which  
15 will need to be excavated to be built. Even if some  
16 of these pipes do get bored and are successfully  
17 bored, there are many areas through the pipe network  
18 where you have to have excavation. You can't bore  
19 this entire thing. Wherever there are main bends,  
20 devices, all those require excavating to build and  
21 then backfilling.

22 This area, in particular, will be  
23 completely excavated and then backfilled. Another  
24 area is where the baysaver unit is at the driveway of  
25 Lot B and Lot 4. This baysaver and a couple inlets in

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1 the center of those driveways all mirror the precious  
2 beech trees that have been talked about extensively  
3 throughout this hearing. That whole area will be one  
4 big excavated hole to build.

5 Even if the pipe is successfully bored  
6 through the center of the street, anywhere there is a  
7 structure in that street will require a big excavated  
8 hole to install the structure itself and the pipe  
9 connections to it.

10 We have heard about a homeowners agreement  
11 to cover maintenance of these facilities. While that  
12 is true, what we also need to consider is when  
13 maintaining these facilities, even if trees were,  
14 during construction phase, saved and not disturbed  
15 initially, if ever maintenance on this system had to  
16 take place, that would be excavation, even if where  
17 the pipes were bored. And you would dig up that area.  
18 There would be an excavated hole and those tree roots  
19 then would be impacted.

20 So to look at an impact just at initial  
21 construction, even if successful, you really should  
22 look at it in the ultimate build-out condition and  
23 future condition for maintenance.

24 As far as capacity of the system  
25 downstream and to the adjacent property owners, there

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1 hasn't really been any true calculations presented as  
2 part of this storm water concept plan. The swales  
3 along the southwest boundary that seem to be using  
4 existing grades and very minimal grading, we don't  
5 have any calculations to show what kind of storm event  
6 those carry.

7 Will they -- will no grading be sufficient  
8 with the existing swales for only a 15 year event,  
9 which they should capture on-site due to D.C. Regs and  
10 bring to that 18 inch existing terra cotta pipe? We  
11 don't know. The calculations have not been provided.  
12 But due to some existing drainage problems downstream,  
13 it is not unlikely that D.C. DOH would not ask for  
14 requirements that exceed the standard 15 year back to  
15 2 to be addressed.

16 They could require more excessive designs,  
17 storm water management designs and taking it back to  
18 a smaller storm event predeveloped condition and not  
19 just a 2 year, depending on the existing downstream  
20 erosion condition. As well, the 100 year storm event,  
21 bigger storms. Lately, we have been having a lot of  
22 smaller, but very large events. And if there is an  
23 existing flooding problem downstream, D.C. can warrant  
24 that 100 year storm be accommodated by the proposed  
25 storm water management and underground system.

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1 I do want to address one thing. The  
2 applicant's storm water -- or civil engineer mentioned  
3 that any runoff on-site would be infiltrated. I just  
4 want to clarify that that is true for what we term a  
5 first flush event. And the ground can only absorb so  
6 much in a rain storm and that first flush event is  
7 less than a 2 year storm. So what gets directly  
8 through rain right on the surface will infiltrate only  
9 a certain amount, first flush, but anything else will  
10 runoff the site in sheet flow and not absorb into that  
11 ground. So there are measures on surface flow that  
12 should be addressed to pick up that water.

13 All in all, I think, if the plan itself  
14 were to be constructed, limited disturbance shown, you  
15 would see a much bigger impact to the trees, more tree  
16 root zones impacted, based on excavation and  
17 construction of these facilities and future  
18 maintenance excavation efforts that may be needed in  
19 order to maintain the system to keep functioning  
20 properly.

21 CHAIRPERSON GRIFFIS: Good. Thank you.  
22 What else?

23 MR. BROWN: Chip, did you get this? Each  
24 of the Board Members should have one of these.

25 CHAIRPERSON GRIFFIS: Yes. Trees, Please.

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1 MR. MILHOUS: Good evening, ladies and  
2 gentlemen. My name is Ed Milhous. I'm a consulting  
3 arborist in the Metropolitan D.C. Region. I have been  
4 working at this for over 18 years now. I live in  
5 Haymarket, Virginia and my company is Trees, Please.

6 A little bit of basic tree biology to get  
7 us started. The question comes up where are trees  
8 roots? Well, they aren't deep. They are on the  
9 surface and just below the surface, at least some of  
10 them. And the critical roots that absorb nutrients  
11 and water are in the top few inches of soil. The tree  
12 roots can grow a long distance away from the tree.  
13 The drip line of the tree, the canopy edge does not  
14 define where the tree's roots are.

15 In the application, there is a statement  
16 made the tree roots don't grow up hill and this simply  
17 is not true. Tree roots grow where conditions are  
18 favorable for them to grow. And the two primary  
19 conditions that are necessary are adequate moisture  
20 and adequate aeration. If either of these is lacking,  
21 most trees don't tolerate the conditions. Their tree  
22 roots either decline and die or don't grow there in  
23 the first place.

24 That's very important if you consider  
25 obviously if you cut the soil, you cut the roots, but

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1 you also damage the roots if you bury them. They  
2 won't tolerate that more than a couple of inches of  
3 soil and roots are going to decline. It should be  
4 obvious also that they aren't going to grow under a  
5 crawlspace where there is no moisture. That's very  
6 important when you look at this plan.

7 Now, earlier today in cross examination of  
8 Mr. Eutsler, Mr. Glasgow kept asking him for standards  
9 about trees. What are standards for this and  
10 standards for that. The fact is we don't have many  
11 standards as a civil engineer, such as Ms. Sears would  
12 have. Working with trees, it becomes more of a  
13 question of due care and the standard of care. We  
14 can't apply numbers to many things.

15 But there is one that we can apply and I  
16 think it's a good one to look at. It's the critical  
17 root zone. The critical root zone is defined in the  
18 literature as being a range of 6 inches to 18 inches,  
19 a radius, per inch of trunk diameter. Okay. The 6  
20 inch, the lower end of that scale applies to trees  
21 that are young, trees that are tolerant of change,  
22 trees that are in good condition.

23 The upper end of that range applies to  
24 trees that are intolerant, trees that are a little  
25 older, trees that are not in good condition. When I

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1 look at this project, there are 48 large trees  
2 scheduled to be preserved. Of those, 21 have a  
3 rating, a health rate of less than 50 percent. Those  
4 trees can hardly be considered in good condition.

5 Of the trees that are most sensitive to  
6 change, three species notorious for being intolerant  
7 are American Beech, Tulip tree and Canadian Hemlock.  
8 Obviously, these trees cannot be considered young.

9 Now, the applicant has used a 12 inch  
10 critical root zone and that's used by some  
11 jurisdictions in this area. But some jurisdictions  
12 also use the 18 inch critical root zone criterium.  
13 Montgomery County Maryland, Falls Church, Virginia use  
14 18 inches to determine whether a tree is going to  
15 survive or not. So it's not unheard of.

16 What I have done here -- I should also say  
17 looking at an established tree, it's one thing to take  
18 a little tree and plant it in a space that's confined  
19 and say this is your world, get used to it. Live or  
20 die, as you will. It's quite a different thing to  
21 take a large old tree and suddenly say to it you've  
22 got to shrink your root system into this space and put  
23 up with it. You just can't do that with old trees.  
24 It doesn't work that way.

25 Now, this diagram that I have handed out

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1 is a marriage of two of the applicant's submissions.  
2 One is the impervious surface and one is the tree  
3 preservation areas. And I just overlaid those with  
4 each other, so that you could see a few of the  
5 conflicts. I outlined some of the conflicts in red.  
6 These are places where the applicant has indicated  
7 that he is going to preserve the tree roots by piers  
8 and post and beam construction. We're going to bridge  
9 over the root system. Again, folks, there is going to  
10 be no moisture in there and the tree roots are not  
11 going to live in that situation.

12 Looking at the grading plan it kind of  
13 struck me. No grading lines are shown, so the  
14 applicant would have you think that they are going to  
15 build these huge houses, as Ms. Sears said, without  
16 any kind of over-dig. There is going to be no  
17 drainage swales around them. There is no equipment  
18 access shown. There is no grade change at all. I  
19 just don't think that is realistic.

20 I also don't see the limits of clearing  
21 and grading shown. I didn't realize until today  
22 during testimony that the Tree Preservation Plan, the  
23 yellow or orange lines, indicates the limits of  
24 clearing and grading. And that struck me as  
25 interesting, because I've done over 500 Tree

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1 Preservation Plans in my career. Not one time have I  
2 set the limits of clearing and grading. That's the  
3 engineer's job.

4 The engineer tells me what he has to do,  
5 he or she has to do, to implement the plan and then I  
6 say whether the tree is going to survive or not. I  
7 might get to tweak the limits of clearing and grading  
8 a little bit, but I have never set them on a project.  
9 I don't think that's a realistic parameter here.

10 Now, previously, in previous hearing, Mr.  
11 Andrulis made a few statements I want to go over.  
12 Slightly paraphrased here. We are building on the  
13 flats and staying away from the trees. You can't have  
14 this density and stay away from the trees. And you  
15 can look at these and see that there is construction  
16 directly adjacent to some trees. Look at Lot A and  
17 tree 40, a tulip tree, one of the most sensitive  
18 species and we are about 10 feet away from it.

19 There was some discussion earlier about  
20 realigning the driveway and would that affect it? No,  
21 I don't think it would affect it. But the foundation  
22 of that house is going to cover up at least 25 percent  
23 of the tree's root system just by itself. That tree  
24 is not going to put up with it. Trees 42 and 43, they  
25 are dramatically affected by the structure there, the

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1 garage. Look at the beeches, 13 and 15 have been  
2 squeezed into a very narrow space. They are not going  
3 to put up with that. I just don't think that's  
4 realistic.

5 Mr. Andrulis said we are meeting the Tree  
6 and Slope Overlay requirements by not removing any  
7 trees. I think this is the classic mistake that  
8 developers make. In my experience, they say we are  
9 going to save all the trees and in the end they save  
10 none of them, because they can't prioritize what is  
11 realistic to save and what isn't. If we find roots,  
12 we will just move the catch basins.

13 I excavated American Beech once. It was  
14 smaller than any of these on the site. It was a solid  
15 mass of wood for roots 20 feet from the base of the  
16 tree. How are we going to excavate and not disturb  
17 the roots? It's just not realistic folks.

18 So I look at this plan and I see so many  
19 conflicts and such an unrealistic presentation that,  
20 in my opinion, the vast majority of these trees are  
21 going to be gone within a few years of completion.

22 CHAIRPERSON GRIFFIS: Thank you.

23 MR. NEYMAN: I'm Allen Neyman, principal  
24 of NS Architects on Research Boulevard in Rockville,  
25 Maryland. NS Architects is a full service

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1 architectural practice specializing in residential/  
2 commercial projects. I am licensed in and practice  
3 architecture in the District of Columbia and six  
4 states.

5 I have reviewed the proposed design and  
6 related documents for the Dorchester proposal. The  
7 site design for the Dorchester is, in my opinion,  
8 seriously flawed. It is incompatible with and will  
9 result in adverse effects in the neighborhood and  
10 community.

11 My critique is comprised of three simple  
12 points. No. 1, the level of disturbance is too high  
13 to protect the natural environment. 2, the proposed  
14 pattern of development is dissimilar to the existing  
15 neighborhood. And 3, the claim that lots will conform  
16 to subdivision and overlay standards is simply  
17 disingenuous.

18 No. 1, the level of disturbance. I'm  
19 going to present some graphics here to demonstrate  
20 another way to look at this. We have heard some  
21 testimony about critical root zones and the tree  
22 protection and so on and so forth. And what we have  
23 done here is diagramed what, in fact, we predict and  
24 what we believe will be the ultimate effect of the  
25 development on the critical root zone.

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1           Again, if we look at this graphic here  
2           which shows, in the red circles, the critical root  
3           zone of principal trees. And what we have done here  
4           is we have portrayed the worst case that Mr. Petersen  
5           indicated is, in fact, the standard in many local  
6           jurisdictions. This critical root zone in which at  
7           least a third is affected by either the building  
8           itself or a driveway or other impermeable surfaces,  
9           not including this does not take into effect or into  
10          consideration what the effect of storm water  
11          development and other utility development would have  
12          on the same critical root zones.

13                 In this graphic, the green circles show  
14          what is predictably the remaining trees as a result of  
15          the development. Again, not in consideration of storm  
16          water or other utility development. It has been  
17          proposed by the applicant that tree cutting would be  
18          kept to a minimum, but the graphic shows that the  
19          level of disturbance is, in fact, very high. The  
20          proposed development will have an adverse effect on  
21          the neighborhood by permanently altering the natural  
22          environment. It has not been suggested nor do I  
23          believe that this environment could even be restored  
24          after construction.

25                         No. 2, the pattern of development. This

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1 plan design is about maximizing development. This is  
2 not about creating a neighborhood. It was suggested  
3 wrongly in the proposal that this plan is based on the  
4 existing pattern of development in the existing  
5 neighborhood, that existing houses are as large and  
6 larger on tiny lots and that properties are densely  
7 packed, perhaps more so than proposed.

8 Mr. Sussman presented some statistics that  
9 countered this. The contention that existing houses  
10 are crowded close together is based on a very  
11 selective and misleading sample of properties. As you  
12 have already seen, the record shows that on the  
13 average, lots are about 22,000 square feet, houses  
14 about 3,500. Based on the stats, there just is no  
15 comparison between what is proposed and what exists.

16 The development presented is not  
17 compatible with the existing pattern. Not all of the  
18 existing patterns may be -- houses may be to  
19 everyone's taste, but then none exploits the limits of  
20 development as this proposal intends to do with such  
21 conspicuous dissimilarity. To justify the design, the  
22 applicant characterized the neighborhood as large  
23 houses built close together. But this is generally  
24 not the case.

25 While many houses are constructed close to

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1 the Chain Bridge Road, these houses are actually  
2 spread along the road in many cases and have large and  
3 private rear yards preserving the open space as we  
4 have seen in Mr. Sussman's presentation. This  
5 historic pattern of development started long before  
6 zoning was in effect in Washington.

7 The high density development proposed  
8 compounded by the scale and bulk of structures is just  
9 foreign to this neighborhood. Rather than ease into  
10 a difficult site, this enclave will stand out for its  
11 dramatic differences.

12 We all have grave concerns about a storm  
13 water plan, the basis of which is a bad idea to use  
14 this existing driveway as a principal part of. That  
15 driveway was never intended to drain water from an  
16 acre and a half of impermeable surfaces. The so-  
17 called curb that is going to be utilized is a -- it  
18 looks like a rolled asphalt that will not meet any  
19 D.C. standard or any jurisdiction standard for a curb.  
20 It will be destroyed by driveways, will be destroyed  
21 by tires running over the edge of it. That driveway  
22 would require radical reconfiguration to serve the  
23 purpose.

24 Absent is the assertion that the  
25 Dorchester Plan helps solve some urban problems

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1 dealing with sustainability, affordability or health  
2 and welfare of the community. So the plan needs to be  
3 proven to be at least compatible with the community  
4 and to protect the environment. No such proof is  
5 offered. The evidence presented shows only how to  
6 exploit this area to the maximum.

7 I am amused by the contention that the  
8 design holds off from achieving the ultimate maximum  
9 permitted by the code. My opinion is they couldn't  
10 possibly build any larger houses on these tiny lots.

11 No. 3, the claim that the proposed lots  
12 conform to subdivision and overlay for lot size and  
13 impervious surface is disingenuous. As I understand  
14 it, the theoretical subdivision regulations look at  
15 compatibility with the neighborhood protection of the  
16 environment. Something is missing here. All  
17 complying plans do not make good neighborhoods. And  
18 that determination is why we are all here.

19 Minimal compliance is insufficient. The  
20 Office of Planning calls for some general conformance,  
21 but added that minimum compliance was not enough. I  
22 would like to echo that again. When houses are placed  
23 on terraces overlooking one another, an additional  
24 story or two of bulk and mass are created. Woe is the  
25 neighbor who is overlooked and overwhelmed,

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1 figuratively and literally, by any of these proposed  
2 buildings.

3 The applicant boasts the plan is a  
4 proposal to leave the site in its natural state. This  
5 lacks candor as well. When a so-called naturalized  
6 landscape plan is required that would replant most of  
7 the site, destroyed by development both directly and  
8 indirectly, I'm reminded of the old poetic song, "Cut  
9 down the trees and put up a tree museum naturally."

10 The applicant said that there would be no  
11 grass on heavily wooded lots. And if there are no  
12 trees, where are these heavily wooded lots? The plan  
13 does not conform to the intent of zoning and overlay  
14 which provides for the accommodation and preservation  
15 of the existing environment.

16 In conclusion, I ask the Board to consider  
17 the value of a concept subdivision shown in this  
18 graphic. Not that one. This one over here. Oh, I'm  
19 sorry. Before we move on to the other, we have these  
20 graphics. We have showed here what we surmise to be  
21 the most developable parts. We heard testimony  
22 earlier by Mr. Sussman and by D.C.'s tree expert on  
23 the best areas. We have the R-3 relatively flat areas  
24 that are largely removed from the important tree  
25 zones. I would like to call your attention to those.

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1           Let's relegate construction only to these  
2           less sensitive areas. Develop these areas and these  
3           areas only. Preserve the natural setting, have less  
4           of the adverse impact on the neighborhood. Graphic 4  
5           shows a series of lots that would be -- could be  
6           developed as a matter-of-right. Unfortunately, these  
7           also show two big houses. Okay. I'm not suggesting  
8           that we build such large houses. But I am suggesting  
9           that as a matter-of-right, we can carve out seven and  
10          inside of the less sensitive areas.

11           I strongly recommend whatever happens that  
12          the number of lots be reduced. Graphic 5 over here  
13          shows theoretical lots in which we achieved, I  
14          believe, eight and a more sensibly sized houses. As  
15          soon as we see a more sensibly scaled structure in  
16          these properties, it begins to feel like this makes  
17          sense, begins to feel like we're using the property  
18          intelligently and preserving the neighborhood that is  
19          so much loved and so much -- in which the neighborhood  
20          finds so much value.

21           There is one problem with both of the  
22          plans that we're showing here, and that is they both  
23          rely on this historic driveway as a principal means of  
24          access. We are not hired as designers for this and I  
25          disclaim that this is the correct way to service these

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1 lots. It is not. That is a shortcoming both of what  
2 we have shown here, but particularly in the  
3 applicant's proposal. What we are trying to show is  
4 that it is possible to have more sensitive and  
5 intelligent approach to the development of this  
6 property.

7 I also recommend that the effects of the  
8 retaining walls and terrace contouring be assessed  
9 relative to building height and reduce those heights  
10 accordingly, especially at the edge of the  
11 neighborhoods. With this, I strongly recommend  
12 reducing the coverage and the extent of impermeable  
13 surfaces, whatever the final plan would be.

14 And in conclusion, I still have more  
15 questions and I want to direct these questions to the  
16 Board. When the Board of Appeals is asked for a  
17 special approval, does giving the minimum and taking  
18 the maximum with regard to central metrics, coverage,  
19 setbacks, etcetera, really meet the intent of the law?  
20 Should the applicant bring something more than the  
21 minimum requirements to this special and very unique  
22 place?

23 And finally, should we not expect more  
24 than another high density, high end deal that benefits  
25 only the developer?

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1 CHAIRPERSON GRIFFIS: Thank you.

2 MR. PETERSEN: For the record, I'm Stephen  
3 G. Petersen, Traffic Planning and Engineering  
4 Consultant, Street Traffic Studies, located in  
5 Gaithersburg, Maryland. There are two reports that I  
6 have prepared that have been in the file for a  
7 significant period of time. The police officer, who  
8 testified earlier, did address some of the concerns  
9 that I expressed in my first report, which is access  
10 to the site from the two proposed driveways.

11 The report does contain photographs which  
12 demonstrate that the sight distances at both driveways  
13 are extremely restricted. In fact, the one that you  
14 asked about, Mr. Griffis, at the north end has  
15 stockade fencing on either side limiting the sight  
16 distance in the order of 30 to 50 feet for somebody  
17 desiring to egress from there. The sight distance at  
18 the curb is somewhat better, but it's still, as the  
19 officer said, no better than what would be required  
20 for a speed approach of no more than 20 miles an hour.

21 Now, he indicated that speeding is not a  
22 problem. That depends on how you define speeding as  
23 a problem. When we measured the speeds on that road  
24 and we did it for, approximately, 2,700 vehicles over  
25 a period of five days, we found that 40 percent of the

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1 people coming down the hill exceed the 25 mile an hour  
2 speed limit. And those going up, 30 percent of those  
3 going up the hill exceed the 25 miles per hour speed  
4 limit.

5 Now, it is true that the most common speed  
6 is between 20 and 25, but I suspect that the officer  
7 is thinking in terms of what he enforces and he  
8 probably gives 5 miles an hour leeway, but that is --  
9 but in terms of what the speed limit, the posted speed  
10 limit and the operation traffic, there are 30 to 40  
11 percent of the people exceeding the speed limit.

12 This contrast with the recommendation in  
13 the applicant's consultant's report that you go out  
14 and lower the speed limit on the street to 15 or 20  
15 miles an hour. Now, speed limit signs don't force  
16 people to adhere to what is posted on that sign. So,  
17 in effect, he is recommending a speed limit that will  
18 be exceeded by 70 to 90 percent of the people that are  
19 using the street, which is unrealistic.

20 In terms of the sight distance at those  
21 driveways, the recommendation of the consultant  
22 supported to my chagrin by the D.C. Department of  
23 Transportation is that we have just put up some  
24 mirrors and this will provide the adequate opportunity  
25 for people exiting those driveways to be able to

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1 determine if there is a car approaching.

2 I think the officer very clearly stated  
3 that mirrors should not be a primary source of trying  
4 to provide safety at these two points. So, in my  
5 opinion, from the perspective of access to the site,  
6 the applicant has not met his burden of proof in terms  
7 of adverse impact on other uses of the street as well  
8 as people who would live on this site.

9 The second report that I prepared came  
10 about as a result when we finally saw a plan with  
11 contours on it. And that central driveway that is  
12 shown on the plans that are before the Board there has  
13 a crest in it. So that when you enter from Chain  
14 Bridge Road, you cannot see the far end of the  
15 driveway. So if somebody is approaching from the --  
16 if two people happen to enter simultaneously and are  
17 both trying to get on the 12 foot section of the  
18 driveway, one or the other are going to have to back  
19 up.

20 And the layby that is at the beginning of  
21 the entrance is not sufficiently far up the hill, so  
22 that they can see over the crest. So I think the  
23 comment and recommendation from the forestry, Urban  
24 Forestry that the driveway be removed and an alternate  
25 driveway be considered was a -- is at least one way to

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1 overcome that kind of a problem. Obviously, it  
2 requires relaying out the entire site.

3 So again, in my opinion, there are adverse  
4 impacts on the site itself in terms of the safety of  
5 the people who would live in those houses. Thank you.

6 CHAIRPERSON GRIFFIS: Excellent. Thank  
7 you very much. What's next? Good. And I note we  
8 have a submission from you, so --

9 MR. DJABBARZADEH: Yes.

10 CHAIRPERSON GRIFFIS: -- let's get right  
11 to it.

12 MR. DJABBARZADEH: Good evening. My name  
13 is Rudi Djabbarzadeh. I own three properties adjacent  
14 to the Dorchester property. I live at 2740 Chain  
15 Bridge Road and I own 2730 and 38 Chain Bridge Road.  
16 My properties join the entire southern length of the  
17 Dorchester property, which is about 475 linear feet.  
18 My statement will cover the following points: First,  
19 I will explain my relationship to the Preservation  
20 Committee. Second, I will address my concern in  
21 reference to storm water management. Third, I will  
22 talk about the enormous problem that Lot F and D cause  
23 for my properties. Finally, I want to express my  
24 general objection to the granting of theoretical lots  
25 for the development of the Dorchester property.

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1           First, my relation to the Preservation  
2           Committee. I'm a developer and a builder and usually  
3           find myself on the other side of this procedure. I  
4           have been in the community since 1987 and own my own  
5           construction companies employing a staff of 19.

6           Since 1990, we have completed nine  
7           multimillion dollar homes, new homes on Chain Bridge  
8           Road and University Terrace and currently have one  
9           under construction. All these projects are within 800  
10          feet from the Dorchester property. In fact, the Chain  
11          Bridge Road/University Terrace Preservation Committee  
12          was created to oppose the development of five by-right  
13          recorded lots I had purchased in 1997.

14          The committee's initial opposition  
15          resulted in a constructive dialogue which led me to  
16          reduce my development from five to four lots. Both  
17          sides considered this a successful process and  
18          outcome. The reason I explain this to you is to  
19          highlight that the committee as well as the  
20          neighborhood is knowledgeable with regard to process  
21          and understanding the necessity of development, but  
22          wants it to take place within a parameter of reason.

23          My second point, which is on the storm  
24          water management issue, I will follow on what Ms.  
25          Sears' presentation was concerning storm water

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1 management. I would like to add the following  
2 concerns: First, it is important that storm water  
3 management studies consider not only the property for  
4 which the Storm Water Management Plan was devised, but  
5 also include the impact to the adjacent properties as  
6 well as review of the prior storm water management  
7 history of these properties.

8 As far as prior history is concerned, I  
9 can tell you that my neighbors, Mr. Olson, Swift,  
10 Wallace and Bags and myself have been working  
11 continuously on perfecting our storm water system,  
12 since we are flooded after heavy rains in August of  
13 '91. And although the hydrostatic studies called for  
14 an 18 inch pipe, we increased it to a 24 inch pipe.  
15 We also adjusted the pipe system after reviewing the  
16 runoffs from the properties to the north of us  
17 upstream, including the Dorchester property and still  
18 we had to deal with floods of two houses in 2001 and  
19 some of us last month.

20 And if you allow me, I'll go to the board  
21 here.

22 CHAIRPERSON GRIFFIS: Just take your  
23 microphone with you. Okay.

24 MR. DJABBARZADEH: When we did our pipe  
25 system, we went over and calculated the drainage

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1 system that counted about 12.5 acres. You'll see the  
2 green area as the area that covered the study. And  
3 this sort of the darkened area is part of the  
4 Dorchester property that we included into the drainage  
5 that would affect these properties downstream.

6 My belief is that the Dorchester needs to  
7 review their storm water management, not only from  
8 their property, but from a much larger, including the  
9 impact on their neighbors to the west and south and  
10 the runoffs on the Chain Bridge Road, which is what we  
11 had done before.

12 Second, the holding tanks. The tanks that  
13 are supposed to collect water from roofs and dry wells  
14 are controversially the sense that they are not  
15 affected. If not perfectly and meticulously  
16 installed, there is a series of regulation that needs  
17 to be followed. Unfortunately, as it was said  
18 earlier, D.C. Department of Health does not have  
19 enough person to follow the installation of these  
20 systems. And once they fill, they do sheet over and  
21 they percolate over and the water comes over.

22 Basically, what will happen, I think, this  
23 will shorten the life span of the system considerably  
24 and will render it obsolete, if it's not perfectly  
25 installed. Mr. Bender claimed that all runoff from

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1 roofs and driveway will be contained in holding tank.  
2 I think it's very precarious, considering the size of  
3 some roofs we have and the number of driveways we  
4 have.

5 Thirdly, incidentally here, I will just  
6 show you the other -- when we did those studies, we  
7 took what was the original land without any  
8 construction. We followed it by the first house that  
9 was put there, which was Mr. Swift's house, and did a  
10 calculation of what the effects of the 2 year, 10  
11 year, 100 year would be. Following that, we had the  
12 first system of pipe installed which is highlighted,  
13 with the inlets here, in dark blue and dark blue here.

14 This was the effect of the water that  
15 would come down there. And finally, we added more to  
16 the system. When I say we added more pipings, we  
17 added these pipes to this inlet and then through the  
18 Bags' property that already had a 14 inch pipe.

19 Okay. Thirdly, I feel all the water that  
20 runs off from the currently undeveloped Dorchester  
21 property is channeled to one location on the south  
22 side of the property. That has a 36 inch headwall.  
23 We have seen that in pictures before. That headwall  
24 leads into an 18 inch clay pipe that goes underground  
25 at my driveway. The headwall is right on the property

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1 line. And then it exits about 200 feet further  
2 downstream.

3 Under the current system, properties at  
4 Macarthur Court have been flooded during tons of heavy  
5 rains. Needless to say that the current system would  
6 be totally inadequate for the water runoff of any  
7 extra houses, no matter how many. And incidentally,  
8 those two layers of stone walls that Mr. Andrulis was  
9 considering as holding tanks, you know, if we can't  
10 keep a 2 inch driveway sidewall, I don't know how  
11 these will be implemented and kept in shape.

12 Fourthly, Mr. Bender assumes that it is  
13 right to use the other properties to channel his storm  
14 water. He never approached us to discuss an easement  
15 for the transit of his storm water. The fact that the  
16 pipe exists to serve one house with over 3.5 acres of  
17 now pervious land does not mean that it will be  
18 effective for the number of houses and the pervious  
19 surfaces Mr. Bender proposes.

20 Only if adequate measurements are  
21 undertaken by Mr. Bender can the possibility of an  
22 easement be considered. Even if we were to agree to  
23 an easement, the current storm water management system  
24 would have to be totally revised and adapted,  
25 otherwise, my property as well as the houses on Lot A

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1 and D, which I believe are these two, of the  
2 Dorchester proposed development would be subject to  
3 serious flooding.

4 One cannot drain so many houses on 3.5  
5 acres into a single outlet. I don't think it's wise.  
6 Incidentally, you know, all of my properties are  
7 located downstream from the Dorchester property. I'm  
8 all along here.

9 The proposed Lot D and F. The first set  
10 of plans for Lot F, which were submitted, I believe,  
11 back -- this is the section of Lot F that shows the  
12 embankment that is fill dirt and this is the  
13 Dorchester property from this point. Original  
14 presentation back in January, I believe, it was for a  
15 house that culminated over this house by something  
16 like 52 feet in height.

17 And the mass of the house seen from a  
18 different angle would have been, approximately, this.  
19 It was set on a special axis. Since the -- so, yes,  
20 the first look, as I show you, is continuous to my  
21 house. It showed the house to be built within 10 feet  
22 of my property and to tower over my residence by 52  
23 feet.

24 After the Office of Planning raised  
25 multiple objections as we heard today again, the

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1 proposed Lot F, more specifically suggesting the  
2 elimination of Lot F and the absorption of its 9,569  
3 square feet into the adjacent lots. Two different  
4 revised schematic plans were submitted, which somewhat  
5 relocate the footprint of the house and reduce its  
6 size by about 200 square feet to about a 6,622 square  
7 feet home.

8 But the footprint of the presently  
9 proposed house disturbs the steep slope considerably  
10 and increases the risks of collapse of earth. The  
11 slope consists mainly of fill dirt. And if this is  
12 the last submission that was basically a schematic on  
13 paper when we blew it, it just didn't come through  
14 very well, the house actually has a larger mass than  
15 this. And it goes into that embankment of fill dirt.

16 The pitch of this slope here is 50 percent  
17 incline, which means that for every 12 inches of  
18 horizontal distance, you are dropping 6 inches. The  
19 slope is currently maintained by a dense, but  
20 controlled, when I say controlled growth of bamboo,  
21 which also serves as a privacy screen. The argument  
22 that the bamboo is invasive can be easily addressed by  
23 implementation of a concrete barrier to stop the  
24 bamboo from spreading. Even without the existence of  
25 such a barrier, the present situation there is not a--

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1 is no problem containment.

2 The part that I'm a little astonished is  
3 the submitted landscape for Plan F. To me, it's mind  
4 boggling that -- to disregard of my property if you  
5 want. It suggests to plant southern Magnolias,  
6 Hemlocks and the Black Oak to be planted right on the  
7 edge of the property on top of my 8 foot retaining  
8 wall. The canopies of these trees would invade by  
9 property depriving of light and causing major  
10 maintenance issues.

11 The existing bamboo, however, would serve  
12 the privacy for both Lot F and my property, while  
13 affectively controlling the slope. Why replace that  
14 is perfectly functional with something inadequate?

15 I'll switch to Lot D, which the southern  
16 exposure of Lot D is this one here. And what happens  
17 when that lot is constructed if you take it from a  
18 site section, you are having a difference here of 57  
19 feet in height. And the distance between these two  
20 houses is just barely 50 feet. So I think as you see  
21 the picture of the house on Lot D, which is over  
22 10,000 square foot would tower by 57 feet over the  
23 house here at 2730. And the horizontal distance, I  
24 repeat, is just about 50 feet.

25 The development of this lot requires the

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1 removal also of a 48 foot high healthy magnolia tree,  
2 which is no. 35.

3 Finally, my general objections to granting  
4 the theoretical lots for the development of the  
5 Dorchester property -- well, incidentally, maybe I  
6 should show you this first also. What this is is just  
7 a little bit of assemblage of what you see. This is  
8 the bamboo growth. It's that hill that you see the  
9 slope better here, which is a 6 inch drop for every 12  
10 feet.

11 CHAIRPERSON GRIFFIS: Good.

12 MR. DJABBARZADEH: This is the four houses  
13 that are along my properties here. And here what I  
14 show is from the -- pictures from the floods, prior  
15 floods. I think both this one and this one was from  
16 1991 and this one was from 2001.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. DJABBARZADEH: As you can see, you  
19 know, a standard seat height is about 18 inches and  
20 this is how much water came up. So my general  
21 objections to granting theoretical lots for the  
22 development of the Dorchester property. The street  
23 frontage of the Dorchester property allows for a  
24 subdivision of seven by-right lots. Based on a  
25 purchase of \$6 million, including the schoolhouse

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1 which is on .5 acre lot, this would mean that the lot  
2 value would be close to \$750,000.

3 In today's market, that would be  
4 considered close to windfall for Mr. Bender. This  
5 means that Mr. Bender would not suffer any financial  
6 hardship based on by-right subdivision. On the other  
7 hand, the quality of life of the existing residents  
8 and future residents would be preserved as well as the  
9 environmental balance of the neighborhood.

10 Chain Bridge Road is a very unique street  
11 as you have heard today in the city. Admiring city  
12 life with rural qualities, the subdivision of the  
13 Dorchester property according to by-right laws would  
14 protect the qualities of the street for future  
15 generations. Specifically, it would allow protection  
16 of important healthy trees. It would avoid an  
17 upheaval of the storm water management, facility of  
18 the construction management of the site, allow for  
19 these larger homes to be set on appropriate size lots,  
20 curtail the length of time that the development would  
21 be under construction and control traffic and parking  
22 issues on Chain Bridge Road, which is a street without  
23 any parking options nor sidewalks.

24 When the property was offered for sale, I  
25 offered to purchase the property with a guarantee

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1 close not to exceed five lots, including the  
2 schoolhouse. Our reasoning was that the families  
3 living on Chain Bridge Road would live quietly and  
4 privately with the National Park on one side of the  
5 street and the thought of putting in an intensive  
6 subdivision across the street is contrary to the  
7 natural setting of this very old historic street. And  
8 that need to be preserved and to maintain it's a  
9 logical balance with the Battery Kemble Park.

10 To me these are mindless approaches,  
11 arrogant with no desire to communicate with the  
12 community, other than by intimidation and the  
13 depletion of the resources. At the end of the day,  
14 all may look fine on paper, but in reality no plan is  
15 ever implemented to perfection, given climatic  
16 surprises and job site conditions. The end result  
17 often defers from the intended plan.

18 Problems are bound to surface at the time  
19 of construction and the neighborhood will have to take  
20 the brunt of the aggravation, be it flooding or  
21 collapse of retaining walls. You have seen them in  
22 the pictures. It's not a far fetched tradition as  
23 this has already been happening on the western side of  
24 the property. Experiences taught me that Mr. Bender  
25 will not be forthcoming to resolve such issues.

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1           For example, in 2003, a 19 foot tree on  
2 the Dorchester property crashed onto my property and  
3 caused major damage. This tree is subject to the same  
4 risk, but Mr. Bender has ignored all my requests based  
5 on the advice of expert arborists to remedy this risk.  
6 The removal of that tree was over \$20,000. The  
7 density of the proposed design will make the surviving  
8 trees powerless on the development and to the  
9 neighbors.

10           I think we are here before you  
11 collectively to voice a very strong surpassing, strong  
12 objection surpassing mere community concern. It's  
13 about what is feasible and what is not. What is right  
14 and what is wrong. The result of development if  
15 implemented as proposed would be a very scarred area  
16 with a disaster environmental impact.

17           I hereby strongly urge the Board to deny  
18 Mr. Bender the theoretical lot subdivision for the 13  
19 lots, which can only be achieved at the direct expense  
20 and damage to the immediate neighbors and to the  
21 entire community. If the Board was to defer on  
22 discretion, and hard to imagine would not see the  
23 major storm water management problems and tree  
24 preservation issues, any subdivision over the by-right  
25 count would cause good cause.

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1           The Board must not accept Lot F as a  
2 buildable lot and must insist on a different design of  
3 the lot, of the house on Lot D. At any rate, the  
4 current growth of bamboo on the steep slope of Lot F  
5 should be preserved to prevent major problems. I  
6 sincerely hope that the Board will curtail the  
7 maximized subdivision to a more reasonable,  
8 comprehensive subdivision plan that will provide  
9 quality of living for present and future homeowners.  
10 Thank you.

11           CHAIRPERSON GRIFFIS: Thank you very much.  
12 Mr. Brown?

13           MR. BROWN: I think that concludes our  
14 remarks with the exception of the Board and cross  
15 examination, and then I would like to make closing  
16 remarks briefly.

17           CHAIRPERSON GRIFFIS: Okay.

18           MR. BROWN: At your --

19           CHAIRPERSON GRIFFIS: Let's get a tape  
20 check. Yes, I will have him do that. How much time  
21 do we actually have?

22           COURT REPORTER: An hour.

23           CHAIRPERSON GRIFFIS: We do? Well, I can  
24 sit back and relax. I was stressing on that one. All  
25 right. We're not going to use all the hour. We're

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1 going to have closing remarks now and then we're going  
2 to have Board questions and cross examination. That  
3 will do it for tonight. So why don't you move ahead?

4 MR. BROWN: Certainly, and I will go back  
5 to where I started. The burden of proof is on the  
6 applicant. The applicant missed the opportunity in  
7 several respects. One, he has missed the opportunity  
8 to work with the community and that is of his own  
9 choosing. It's unfortunate. Can you imagine what  
10 this group could accomplish working together, but that  
11 is not to be.

12 And having chosen to follow through even  
13 with the Office of Planning making recommendations,  
14 follow through with the 13 unit project, that is what  
15 we're talking about and that is all we're talking  
16 about today and I think the Board ought to judge it in  
17 that light. It's critical.

18 One, the applicant, inherent in all of  
19 these applications, has to comply with the Zoning  
20 Regulations and I think a very strong argument both by  
21 the Urban Forestry Administration as well as Mr.  
22 Milhous that the applicant doesn't comply with the  
23 tree removal elements of the Chain Bridge Road  
24 Overlay.

25 Additionally, and perhaps more

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1 importantly, is the context of the special exception.  
2 It's clear from that testimony that the tree removal  
3 and destruction is an adverse and dramatic impact on  
4 the neighborhood and the resources.

5 Also, the storm water management and the  
6 seemingly disconnect between storm water management  
7 and tree preservation ends up with not achieving any  
8 of the objectives. The Storm Water Management Plan  
9 doesn't really work as it should and the trees are  
10 going to be killed or destroyed as a result of that,  
11 again tremendous adverse impacts.

12 And then, finally, you heard both from the  
13 police officer, but also Mr. Petersen. We're creating  
14 an unsafe traffic situation where one doesn't exist  
15 now and not just for a single home that existed  
16 previously, but for multiple homes serving on a road  
17 that -- I think it is becoming readily apparent both  
18 from a tree preservation standpoint as well as storm  
19 water management and others, that perhaps that road is  
20 no longer useful to be used in that capacity.

21 So I think on just about every substantive  
22 element we have discussed, the applicant hasn't met  
23 his burden of proof and, in fact, the adverse impacts  
24 that have been demonstrated are rather dramatic. And  
25 that is how I will leave it.

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1 I would urge the Board again to focus in  
2 on that this is a 13 house case and the applicant's  
3 desire to perhaps submit additional information or  
4 somehow modify his plan at this late date is not  
5 appropriate and should be rejected by the Board.

6 CHAIRPERSON GRIFFIS: Okay. Thank you  
7 very much. Questions? Ms. Miller?

8 VICE CHAIR MILLER: I just want to  
9 clarify. When you say that the applicant doesn't  
10 comply with the tree removal elements, are you  
11 referring to any specific regulations that the  
12 applicant is not complying with or are you just saying  
13 that in general the actions are going to result in the  
14 death of more trees than is being presented and, in  
15 general, that won't comply with the overlay?

16 MR. SUSSMAN: I think I addressed that in  
17 my testimony, but let me try to be clearer. First,  
18 the overlay contains very explicit prohibitions on the  
19 removal and destruction of trees. We think that  
20 looking solely at the trees which application proposes  
21 intentionally to remove, there is noncompliance with  
22 the overlay because the limits on the removal of trees  
23 have been violated. So, in that sense we think the  
24 overlay has not been complied with.

25 But beyond that, the prohibitions of the

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1 overlay apply whether applicant intends to cut down a  
2 tree or whether the logical consequence of his  
3 activities on the site would be the destruction of a  
4 tree. And if the combination of grading, excavation,  
5 storm water management, utilities and construction  
6 creates conditions which arborists believe are  
7 reasonably likely to result in destruction of the  
8 tree, that is as much a violation of the overlay as  
9 the deliberate removal of the tree.

10 VICE CHAIR MILLER: Thank you.

11 CHAIRPERSON GRIFFIS: Anything else?  
12 Follow-up? Board questions? Mr. Etherly?

13 BOARD MEMBER ETHERLY: Thank you very  
14 much, Mr. Chair. I want to kind of spend just a brief  
15 amount of time with you, Mrs. Sears, on the storm  
16 water piece. I just want to be sure I'm clear. There  
17 were three pieces that you mentioned in your testimony  
18 that I kind of took away that I think you were  
19 emphasizing, and I just want to be sure I have it  
20 clear in my head. One was location. I also heard  
21 capacity and I also heard constructability.

22 MS. SEARS: Correct.

23 BOARD MEMBER ETHERLY: Okay. Let's talk  
24 a little bit first about constructability, because I  
25 just want to be sure I understand the point there. Is

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1 the argument on your part that the plan as it's  
2 proposed by the applicant just simply isn't realistic  
3 from an application standpoint? I just want to be  
4 sure I understand that term, constructability.

5 MS. SEARS: Constructability implies the  
6 way the plan is shown now, I think it lacks  
7 representing limits of disturbance and grading which,  
8 if shown, would show that to construct these  
9 facilities and the number of those facilities and the  
10 locations of them, there would be greater impacts  
11 which aren't reflected in the trees. So to say that  
12 the trees as shown in this plan can be implemented in  
13 my opinion is not correct.

14 BOARD MEMBER ETHERLY: Okay. Thank you.  
15 That actually covers all of it in one swoop. Thank  
16 you. Thank you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: Excellent. Anything  
18 else? Any other questions? Quick follow-up question.  
19 Mr. Sussman, you gave us an average of the lot sizes  
20 compared to the average of the development.

21 How many were in your pool of averages?  
22 How many properties did you actually survey?

23 MR. SUSSMAN: Well, we looked at every  
24 single --

25 CHAIRPERSON GRIFFIS: Can you turn your

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1 microphone on, please?

2 MR. SUSSMAN: We looked at every property  
3 on Chain Bridge Road from Macarthur Boulevard up to  
4 Loughboro, so there must have been maybe 30, 30  
5 properties that we looked at. I would have to check.

6 CHAIRPERSON GRIFFIS: Do you know the  
7 minimum and the maximum range on those? I ask these  
8 questions, because you actually posed it as more of  
9 what I would look at, not being a statistician, but  
10 more of wanting us to look at the median, what was the  
11 kind of average of the size of the sites, because I'm  
12 not sure the average of all calculated tells us  
13 anything.

14 MR. SUSSMAN: Well, the distribution is  
15 important and we can submit that for the record. I  
16 thought we had it here.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. SUSSMAN: And I'm not sure we do, but  
19 I would say in terms of the house sizes, there is one  
20 house which is a distinct outlier. That is the so-  
21 called Logan house, recently constructed on upper  
22 Chain Bridge Road adjacent to the park, and that is a  
23 14,000 foot square, 14,000 square foot property.  
24 There is --

25 CHAIRPERSON GRIFFIS: That's okay. Why

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1 don't you put that in or somehow pull it together?

2 MR. SUSSMAN: Yes, we'll provide that.

3 CHAIRPERSON GRIFFIS: For our  
4 understanding. I don't think I have anything else on  
5 this. Let's move ahead then for cross. We're going  
6 to pull a chair up. We're going to give Mr. Glasgow  
7 a mike at the end of the table. We're going to keep  
8 the panel where they are and you can just pull these  
9 mikes down and share them as the questions are asked.  
10 Excellent. That's all right. No one needs to move.  
11 Have a seat.

12 MR. GLASGOW: I would like to start with  
13 Ms. Sears. You did acknowledge in your testimony that  
14 D.C. DOH did give the concept approval of the proposal  
15 of the applicant. Is that correct?

16 MS. SEARS: The -- I stated that I did see  
17 that DOH did submit a letter of approval. However,  
18 that letter I have only seen since the very initial  
19 Storm Water Management Conceptual Plan. I have not  
20 seen any correspondence since the plan had been  
21 revised even after the April hearing.

22 MR. GLASGOW: Would you say that the plans  
23 as they have been revised would be an improvement over  
24 the original plans?

25 MS. SEARS: Actually, I think the plans as

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1 shown right now show devices, even as the applicant's  
2 storm water management engineer spoke of, as the same  
3 devices shown in the original one. However, D.C. DOH  
4 still had a stipulation in their approval letter  
5 stating that an Erosion and Sediment Control Plan  
6 would still have to be submitted and was not reviewed,  
7 as well as the technical design of this system.

8 MR. GLASGOW: So then your testimony is  
9 that even though that letter went to the prior plan,  
10 that the principal components of the prior plan were  
11 the same as this plan?

12 MS. SEARS: The type of devices are the  
13 same, yes.

14 MR. GLASGOW: Thank you. And with respect  
15 to the flow underneath the, I will call them, ramp  
16 areas or the bridge areas, is your testimony that  
17 there is somehow some difference in the amount of  
18 storm water that is generated by one type of device or  
19 another?

20 MS. SEARS: I don't think the storm water  
21 management devices generate runoff. I think the  
22 runoff I was speaking of from the driveway bridges, I  
23 was concerned where that runoff goes after it falls  
24 through the drive because, as I see it, with the  
25 grading if they -- as proposed as no grading, I think

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1 that would flow towards many houses and create sump  
2 areas where grading would have to be provided or  
3 drainage inlets of some kind to pick up that water to  
4 take whatever flowed under the driveway and tie it  
5 into the system.

6 MR. GLASGOW: Now, was it your testimony  
7 that the water and sewer pipe network would not be  
8 able to fit underneath the existing road?

9 MS. SEARS: Correct.

10 MR. GLASGOW: Next, I would like to ask  
11 Mr. Milhous. You testified that there were not many  
12 standards in the arborist industry concerning this  
13 type of project.

14 MR. MILHOUS: Relative to comparing with  
15 the civil engineers' profession, no, there are not.

16 MR. GLASGOW: I would like to next go to  
17 Mr. Neyman. Was it your testimony that the lot sizes  
18 did not comply with the specifications in the overlay?

19 MR. NEYMAN: No, that was not my  
20 testimony.

21 MR. GLASGOW: Would you -- I had in my  
22 notes that one of your statements was that you  
23 challenged the claim of the applicant that the lots  
24 conform with the criteria of the overlay.

25 MR. NEYMAN: No, I did not.

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1 MR. GLASGOW: Next, I would like to ask  
2 Mr. Petersen. Are you aware that on the northernmost  
3 entrance that the stockade fence is on Mr. Bender's  
4 property where you were talking about site lines?

5 MR. PETERSEN: They are there.

6 MR. GLASGOW: Yes, and that Mr. Bender  
7 could remove those stockade fences?

8 MR. PETERSEN: I don't see why he  
9 couldn't, but there has been no proffer or statement  
10 from any of your witnesses, Mr. Glasgow, that would  
11 suggest that he was going to address the sight  
12 distance issues in any way. So my testimony is based  
13 on what is existing and the lack of what is in the  
14 record.

15 MR. GLASGOW: Right. And you have read  
16 the D.C. DOT recommendation that recommends that there  
17 is -- that they have no objection to this proposal?

18 MR. PETERSEN: I have read it and disagree  
19 with it, and I think our police officer that was here  
20 earlier also disagrees with the fact that that is an  
21 appropriate primary method of providing sight distance  
22 for people exiting from the site driveway,  
23 particularly the central one with the nine houses on  
24 it where you have much more activity than was there  
25 with a single house.

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1 MR. GLASGOW: Then, Rudi, since I have  
2 problems pronouncing your last name, would you find  
3 that without admitting on your part that the house on  
4 Lot F should stay, it's your testimony that you would  
5 rather have the bamboo kept than be replaced on the  
6 landscape plan?

7 MR. DJABBARZADEH: Yes, I do, because I  
8 was trying to rush through this, but actually I think  
9 if you look at the proposed landscape plan, the growth  
10 of those trees being so close on the property line  
11 would just basically deprive us from light and will  
12 just grow well over into our front yard, and the  
13 bamboo is I think ideal, because it's vertical and  
14 it's holding the slope. The rhizome system is really  
15 acting as a very good slope retention.

16 MR. GLASGOW: Okay. And then the  
17 photographs that you had were prior floods that  
18 occurred in the years 2001 and 1991?

19 MR. DJABBARZADEH: Yes, one was 1991. I  
20 believe it was August 9<sup>th</sup> or 11<sup>th</sup> actually. Mr. Harry  
21 Carrie from Storm Water Management came to the site to  
22 take a look at it and then the second flood was in, I  
23 believe, July 2001. The 1991 rainfall was close to 7  
24 inches, so that really overwhelmed the system that was  
25 designed to an 18 inch pipe, so we decided to go to a

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1 24 inch pipe.

2 MR. GLASGOW: Okay. Let me check with my  
3 client very quickly. With respect to the comments of  
4 Ms. Sears, you testified that the DOH requirements for  
5 water quality and water quantity were met by the  
6 proposal?

7 MS. SEARS: I want to clarify. I said  
8 that those type of devices were proposed on the plan,  
9 but I do not agree that those proposed devices meet  
10 the capacity and sizing that is required.

11 MR. GLASGOW: And that also it was part of  
12 your testimony that DOH said that infiltration systems  
13 were feasible on this site.

14 MS. SEARS: Their report gave approval  
15 that infiltration was feasible as a soil  
16 characteristic, but that infiltration devices, they  
17 didn't address whether they could be implemented based  
18 on fill soils. That part and a full geotechnical  
19 report was never provided.

20 MR. GLASGOW: And are you aware of whether  
21 or not DOH has requested a full geotechnical report on  
22 this?

23 MS. SEARS: All projects, at the time of  
24 a technical review, will have to submit a full  
25 geotechnical report.

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1 MR. GLASGOW: Correct, and we're not -- we  
2 have not filed for a building permit.

3 MS. SEARS: Correct. But to propose a  
4 concept as good, I think it would be warranted to  
5 request confirmation that fill soils were or were not  
6 applicable since a majority of the water quality  
7 devices on this site are infiltration devices.

8 MR. GLASGOW: I think at this point --  
9 well, not at this point. We have no further cross  
10 examination. What we would want to do, since it's  
11 7:40, is we would submit our rebuttal and closing  
12 statement in writing if the Board were amenable to  
13 that.

14 CHAIRPERSON GRIFFIS: No, not necessarily,  
15 but I think that might work. Although, let me just  
16 assess what we have. That's the last that we have.  
17 I don't have any difficulty with that. We could have  
18 that written. We'll just need to get a schedule on  
19 that. You kind of took me by surprise. I was getting  
20 to it.

21 MR. GLASGOW: I think I'm looking at all  
22 the witnesses that we have and it could be awhile.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. GLASGOW: On rebuttal.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. BROWN: Mr. Chair, with a brief  
2 opportunity also in writing for us to respond.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. GLASGOW: Wait a minute. That's not  
5 the way rebuttal works, Mr. Chairman. We get rebuttal  
6 and we do a closing statement and that's the end of  
7 the hearing.

8 CHAIRPERSON GRIFFIS: Right. They get to  
9 cross on the rebuttal testimony. That's the only  
10 issue I'm trying to address.

11 MR. GLASGOW: Yes. Well, if we want to do  
12 rebuttal --

13 MR. BROWN: I would be willing to reach  
14 the compromise where we each trade off a little, I  
15 think.

16 CHAIRPERSON GRIFFIS: What are you  
17 trading?

18 MR. BROWN: I'm giving up my right to  
19 cross examine your witnesses in return for the right  
20 to submit.

21 CHAIRPERSON GRIFFIS: Okay. Putting it  
22 all on the table here, I think that it's fairly  
23 advantageous to get written submissions. Now, the one  
24 hurdle that we'll need to -- as the rebuttal witnesses  
25 would have presented in person, they would avail

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1 themselves for cross examination. How we deal with  
2 that is one element and just to -- the other option of  
3 this is that we set this for another day, which is  
4 September 19<sup>th</sup> in the afternoon, which doesn't --  
5 right, which is the -- clearly the day marked on the  
6 calendar is the one.

7 MR. BROWN: Mr. Chairman, the other  
8 alternative is to do the rebuttal now.

9 CHAIRPERSON GRIFFIS: How much time do you  
10 think you're going to take? How many witnesses are  
11 you calling? Let's hear the issues. If we had this  
12 put down in writing, what you would have to do is  
13 avail yourself to cross, essentially, in writing. We  
14 have done this very limitedly, not on this kind of a  
15 substantive testimony.

16 MR. GLASGOW: If he submits his cross in  
17 writing and we respond in writing, we don't have any  
18 objection to that.

19 CHAIRPERSON GRIFFIS: Mr. Brown?

20 MR. BROWN: Mr. Chair, I think there is a  
21 real premium on trying to go forward with rebuttal and  
22 closing it out now to avoid further give and take.  
23 We're certainly prepared to go forward now, exercising  
24 our right to cross examination very judiciously.

25 CHAIRPERSON GRIFFIS: Okay. If we were to

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1 proceed tonight, Mr. Glasgow, what are the witnesses  
2 you're calling?

3 MR. GLASGOW: I guess it will be to  
4 continue our testimony of dueling experts. They have  
5 their set of experts. We have our set of experts.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. GLASGOW: As to highlight where the  
8 issues are, where we think that they --

9 CHAIRPERSON GRIFFIS: So you're going to  
10 call your arborist?

11 MR. GLASGOW: Yes.

12 CHAIRPERSON GRIFFIS: You're going to call  
13 who else?

14 MR. GLASGOW: We're going to call --

15 CHAIRPERSON GRIFFIS: Your civil, storm  
16 water management?

17 MR. BROWN: Mr. Griffis, Chairman, calling  
18 the arborist, they did not call them on direct so I  
19 don't think it's appropriate for them to call them on  
20 rebuttal.

21 CHAIRPERSON GRIFFIS: Never heard that.

22 MR. GLASGOW: This is our rebuttal.

23 CHAIRPERSON GRIFFIS: Yes.

24 MR. GLASGOW: Yes.

25 CHAIRPERSON GRIFFIS: I don't know what

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1 would prohibit them from putting on rebuttal  
2 witnesses. Oh, man. All right. This is not a great  
3 situation either way. I don't see how we can continue  
4 tonight. We wouldn't be able to finish, probably  
5 better to be fresh in hearing all of this. It looks  
6 like the written submissions won't facilitate all that  
7 we need to, so we are left with a choice to move this  
8 to the 19<sup>th</sup> to finish. Right, indeed.

9 What I'm going to do is put this first in  
10 the afternoon on the 19<sup>th</sup>. We have two other cases.  
11 I was actually anticipating putting it after all  
12 those, but we'll call this first and we're going to  
13 finish it. What I'm going to ask is that the rebuttal  
14 -- can you what? I'm sorry, what? Sure. If I lose  
15 my train of thought, I have to start the entire day  
16 over so we're going to be here for a long time.  
17 Rewind the tape and do it over again. Great.

18 MR. BROWN: Perhaps an alternative  
19 approach would be to allow Mr. Glasgow to submit his  
20 rebuttal testimony presentation in writing. We can --  
21 on a fairly short time frame, allow us to assess  
22 whether we need cross examination at all and then, at  
23 that point, we make a determination whether we do  
24 September 19<sup>th</sup> or close the record.

25 CHAIRPERSON GRIFFIS: Good. We actually

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1 have been talking about something of that nature. The  
2 first thing, Ms. Sears, is your testimony in writing?  
3 Do you have it?

4 MR. GLASGOW: Yes, it was submitted.

5 CHAIRPERSON GRIFFIS: It was? Okay, good,  
6 so that all the witnesses today have submissions in  
7 writing, except for Mr. Petersen. Is that correct?  
8 He had previous reports that were submitted that were  
9 addressed today. Okay. Good. All right. There it  
10 is.

11 Mr. Glasgow, timing on your submission for  
12 rebuttal if we were to go this way, in which case then  
13 what we would hold the 19<sup>th</sup> for is Board  
14 clarifications and questions and we would have the  
15 submissions of the cross. No, you're going to assess  
16 whether you would actually need to even cross. So,  
17 essentially, we're setting it for the 19<sup>th</sup> anyway.  
18 It's just two steps. No, that's not going to work.

19 MR. BROWN: Mr. Chairman, the other thing  
20 that we ought to -- as we lay out the schedule is the  
21 scope of rebuttal. Rebuttal is just that, limited  
22 to --

23 CHAIRPERSON GRIFFIS: That's right.  
24 That's why I asked if it's all in the record in  
25 writing. Okay. What do we have? What do we know?

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1 MR. GLASGOW: Well, I think our preference  
2 would be is if we are going to break tonight that we  
3 have a hearing, we bring back our witnesses on  
4 rebuttal on the 19<sup>th</sup>.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. GLASGOW: And go forward and get cross  
7 and have it all done at that point in time.

8 CHAIRPERSON GRIFFIS: Good. I mean, to do  
9 it any other way would take your consent. So we'll  
10 take your lead on that. We're going to put this first  
11 in the afternoon of the 19<sup>th</sup>. To note, as I have  
12 stated, we do have two other cases that will be --  
13 that are scheduled that will be very, very angry at me  
14 as they are pushed off a little bit later in the  
15 afternoon and they will probably show up timely at  
16 1:00 as everyone is noticed to do.

17 However, with all seriousness, I did ask  
18 specifically that all of the witnesses that we have  
19 today had their testimony in writing so that we could  
20 have it addressed succinctly and directly to that  
21 which was presented today. I think we understand all  
22 the issues and I think it breaks down well in certain  
23 ways, and I will look for those to be addressed as  
24 needed.

25 Certainly, Mr. Etherly I thought

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1 summarized well the location, the capacity and the  
2 constructability on Ms. Sears' testimony. If we even  
3 keep it in that frame of mind as we look at it, there  
4 has been a lot of questions of implementation.  
5 Obviously, we're talking about concept plans here. I  
6 don't want to hear a lot more about things that would  
7 be approved or not approved. We have devices that  
8 have been talked about that may not be allowed.

9           These are specificities that we're aware  
10 of at the level we need to be aware of it. If they  
11 would not actually be approved by a review agency,  
12 then that is what will happen. If they somehow impact  
13 the overall plan and what we should be looking at in  
14 terms of special exception or theoretical lot or the  
15 overlay, then that is what we need to hear.

16           That may seem general, but it shouldn't.  
17 It's very specific and so I want to get directly into  
18 those elements and issues. If one says that we're  
19 just looking at adverse impacts, the world is huge.  
20 Let's really be substantive and specific as to the  
21 adverse impacts that we're talking about with the  
22 creation of these concept plans and the creation of  
23 this theoretical lot.

24           Oh, so going to that, implementation. The  
25 Board has removed itself substantially from getting

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1 into any sort of construction means and methods and  
2 construction plans, because we have never -- well, we  
3 have not found in most cases that there is a nexus  
4 directly into the Zoning Regulations. That is not the  
5 case here, as I see it.

6 There is an awful lot of information that  
7 would need to be continued to be addressed of the  
8 constructability of this as it relates to what is  
9 being proposed in the concept, and that is obviously  
10 the tree preservation.

11 If what is being proposed in concept is to  
12 work, we need to make sure that it does work and this  
13 doesn't fail before it's even implemented. So I think  
14 some address to implementation is needed and that kind  
15 of focus, obviously well within the scope of what we  
16 are capable, but also jurisdictionally able to  
17 address.

18 I don't have anything else open for the  
19 record to be brought in. There was one piece of  
20 material and we talked about the soil and sediment  
21 control.

22 MR. GLASGOW: Sediment Control Plan.

23 CHAIRPERSON GRIFFIS: Right, which I have  
24 not been persuaded that we need it in the record at  
25 this point, unless other Board Members feel that it's

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1 required. I think the substantive elements of the  
2 entire application is understood and I don't think  
3 that that is actually a document that would add to our  
4 deliberation.

5 But I'm going to ask Ms. Bailey if you're  
6 aware of anything else that was mentioned that I  
7 should be aware of.

8 MR. BROWN: Mr. Chairman, can I interject?

9 CHAIRPERSON GRIFFIS: After Ms. Bailey.

10 MS. BAILEY: Mr. Chairman, the only thing  
11 that I can recall is you had asked Mr. David Murphy to  
12 provide his written testimony, so I don't know if you  
13 still want that.

14 CHAIRPERSON GRIFFIS: Excellent. Yes,  
15 indeed. We'll keep the record open for that. Lastly,  
16 there were, as I'm recalling, Mr. Neyman, you had a  
17 lot of plans that were shown. I note that they were  
18 attached to the submission, it's our Exhibit 101, but  
19 I wasn't sure if all those that you showed were  
20 actually in the record. Perhaps I misplaced one of my  
21 own. But be that as it may, whatever obviously was  
22 shown today is going to need to come into the record.  
23 Yes?

24 MR. BROWN: I have two points. One, the  
25 Board requested Mr. Sussman's calculations on --

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1 CHAIRPERSON GRIFFIS: Oh, right.

2 MR. BROWN: -- the average lot and house  
3 size which we will provide to everybody. The other  
4 thing is -- and, again, so I understand, as we  
5 reconvene on the 19<sup>th</sup>, we're talking about rebuttal  
6 and limited to the plan and the testimony that we have  
7 heard to date in this case.

8 CHAIRPERSON GRIFFIS: That's exactly  
9 right.

10 MR. BROWN: The expectation that we need  
11 to prepare for is that it's so limited and wouldn't  
12 include changes in the plan. That is again an ongoing  
13 concern of ours, that rebuttal not become revised  
14 plans and then if we get into a spiral back and forth,  
15 that we need to cut off. I mean, I think --

16 CHAIRPERSON GRIFFIS: Understood. I don't  
17 need an endless hearing either. That is exactly  
18 right. The tool of rebuttal is to address all those  
19 elements that were brought up and those that are  
20 actually going directly to the jurisdictions of the  
21 Board and directly to the application. There it is.  
22 We'll leave it at that.

23 VICE CHAIR MILLER: I have two questions.

24 CHAIRPERSON GRIFFIS: Oh, yes.

25 MS. GATES: Thank you. I had -- I think

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1 earlier we had talked about a letter from the  
2 applicant's engineer regarding the stability of the  
3 slope. It's in my testimony. It's noted as a  
4 footnote. It was in the --

5 CHAIRPERSON GRIFFIS: In the first  
6 hearing?

7 MS. GATES: -- transcript.

8 CHAIRPERSON GRIFFIS: In the first  
9 hearing?

10 MS. GATES: Yep, yes.

11 CHAIRPERSON GRIFFIS: Okay. In the first  
12 hearing we were talking about the same area that Mr.  
13 Sussman showed a photograph of.

14 MS. GATES: That's right, and Mr. Bender  
15 agreed to furnish a letter from his engineer.

16 CHAIRPERSON GRIFFIS: Okay. Good. I am  
17 glad you bring that back up. Yes, we did keep the  
18 record open for that, so it's still open for that.

19 MS. GATES: I just didn't want it to slip  
20 through the cracks.

21 CHAIRPERSON GRIFFIS: Right. Indeed.  
22 This is a cumulative list. Mike.

23 MR. BROWN: One of the things the Board  
24 was also looking for was the email communication  
25 between --

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. BROWN: -- the Department of Health  
3 and the Office of Planning.

4 CHAIRPERSON GRIFFIS: See that? It's all  
5 coming back.

6 MR. GLASGOW: So is the Office of Planning  
7 going to submit that for the record?

8 MS. BROWN-ROBERTS: Yes.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. BROWN: And that's it, Mr. Chairman?  
11 Otherwise, the record is closed?

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. GLASGOW: Well, we have a closing  
14 statement.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. GLASGOW: After rebuttal.

17 CHAIRPERSON GRIFFIS: Right. I mean,  
18 we'll assess. For the 19<sup>th</sup> in preparation, yes,  
19 that's all we're looking for. I mean, obviously, the  
20 record is not closed. This isn't the end of the  
21 hearing, we have the 19<sup>th</sup> of which.

22 MR. GLASGOW: Yes.

23 CHAIRPERSON GRIFFIS: But for what we will  
24 take into the record right now. Anything else that  
25 would come in right now, we would have to assess

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1 whether it comes into the record or not, and then the  
2 19<sup>th</sup> opens it up again.

3 I mean, obviously, we're in a public  
4 hearing forum again. So in terms of the written  
5 submission, that is what we're doing. I think it  
6 facilitates everybody if we keep focused now on all  
7 the issues that have been clearly, clearly put forth  
8 and now will be redressed in your rebuttal.

9 Okay. Procedural questions or any other  
10 questions I can answer at this time? Do you have --

11 VICE CHAIR MILLER: Well, the soil  
12 erosion. I don't know if this is quite what it's  
13 called, Soil Erosion and Sediment Control Plan, and  
14 what you're saying is that it's not required for them  
15 to produce. But I thought there was also testimony  
16 about, you know, perhaps them addressing those issues  
17 without necessarily submitting that formal type of  
18 plan. Now, that is not precluded, is it, or do you  
19 mean to preclude that information?

20 CHAIRPERSON GRIFFIS: No, I'm not  
21 precluding that. What I'm not requesting is that  
22 actual soil and erosion plan.

23 VICE CHAIR MILLER: Right.

24 CHAIRPERSON GRIFFIS: The control plan,  
25 which would be part of a permit submission at that

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1 level. No. Taking into account those elements that  
2 have been brought up in the opposition's case, as the  
3 applicant wants to address those elements, absolutely,  
4 the record is open for them to address those elements.  
5 Does that make sense?

6 VICE CHAIR MILLER: My --

7 CHAIRPERSON GRIFFIS: They can rebut all  
8 the testimony that came up today. My point was as the  
9 elements that the opposition brought up today in your  
10 case presentation, that is what is open for rebuttal  
11 and that is what will be addressed.

12 MR. BROWN: But it's not an opportunity to  
13 enter new areas that weren't otherwise covered in --

14 CHAIRPERSON GRIFFIS: Absolutely, it would  
15 be prohibitive. I would --

16 MR. GLASGOW: Yes, but you brought up the  
17 issues of soil erosion control and we want to  
18 understand what it is that the Board is looking for on  
19 that because obviously, as discussed earlier today, we  
20 didn't think it was appropriate that we get into all  
21 the types of plans that you have for a building permit  
22 like a soil erosion control plan.

23 But we certainly don't want to be hampered  
24 by issues out there, what we consider to just be  
25 questions and concerns raised about a soil erosion

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1 control plan, where that is going to be handled by the  
2 Department of Health and they have their criteria and  
3 standards and we either meet them or we don't.

4 CHAIRPERSON GRIFFIS: Right, okay. Sorry.  
5 We'll get this cleared up by the time the tape runs  
6 out. I think what I was talking to the Board Members  
7 for and actually is what I was in the hearing trying  
8 to address, this whole -- and, well, my question to  
9 the Office of Planning is what would it show us, this  
10 erosion and soil, Soil and Sediment Control Plan?

11 What would it show us? What is the  
12 substance that we're actually being asked to judge and  
13 to ascertain? And I think the point is that there may  
14 not be a full understanding on the Board of what that  
15 actual plan or concept would show.

16 So I think I can speak for the Board in  
17 saying what we would be looking for is if there was --  
18 and I'm going to be hypothetical here, but if there  
19 was testimony in opposition's case that, my gosh, I  
20 have a house and it's going to be destroyed, because  
21 there is going to be a mud slide, because of all the  
22 water that is created on the site, that is something  
23 that needs to be addressed.

24 So it is part of, I think, the Storm Water  
25 Management Plan, but also the impact of all of the

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1 elements that we're talking about, the impervious  
2 surface, the retaining walls, the regrading. It's  
3 all-encompassing of what we have already addressed  
4 substantially. So the point is is the record closed  
5 for these elements or not these elements?

6 We're not asking for the Soil and Sediment  
7 Control Plan. We're asking for in rebuttal, if  
8 required, by the applicant's opinion and their  
9 representatives' opinion if they need to address these  
10 issues as they came up then.

11 MR. GLASGOW: Well, I guess the conundrum  
12 that we find ourselves in is there is not a request  
13 for a Soil Erosion Control Plan, which I understand  
14 perfectly because, otherwise, we might as well get a  
15 set of building permit plans and say here.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. GLASGOW: Start stamping the drawings  
18 if you agree. But what I'm concerned about is then we  
19 don't get into what is considered to be enough detail  
20 and then we're penalized in the Board's deliberation  
21 saying, well, they haven't addressed all of these  
22 issues, because every time we turn around we're saying  
23 that there is not enough detail, there is not enough  
24 detail.

25 As far as detail and a set of plans that

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1 the Board has, this is probably one of the more  
2 detailed set of drawings with respect to a site that  
3 you have ever seen. I know Mr. Parsons indicated that  
4 with respect to PUDs, this is the most detail he has  
5 seen. Putting aside whether everybody agrees with the  
6 project or doesn't --

7 CHAIRPERSON GRIFFIS: Right, right.

8 MR. GLASGOW: -- there has been a lot of  
9 information. Yet, we keep getting to oh, there needs  
10 to be more information and there are comments and  
11 testimony critical of the amount of information that  
12 we have given with respect to the opposition. I'm  
13 concerned that every time we turn around --

14 CHAIRPERSON GRIFFIS: Right.

15 MR. GLASGOW: -- we have a new bar --

16 CHAIRPERSON GRIFFIS: Right.

17 MR. GLASGOW: -- that we have to try to  
18 hurdle.

19 CHAIRPERSON GRIFFIS: And I guess that --  
20 I think we need to address that directly, because some  
21 of the things that we -- and substantively, some of  
22 the things -- well, two things. On the 19<sup>th</sup> you're  
23 going to have to rely also on the Board's questions to  
24 get clarification --

25 MR. GLASGOW: Yes.

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1 CHAIRPERSON GRIFFIS: -- on anything that  
2 we don't have at that point. Secondly, I think we  
3 want to look at specifically things that we have  
4 looked at in other cases, what kind of water flow  
5 there is off-site and what kind of impact there is for  
6 that.

7 I think some of the elements that came up  
8 previously of Board concerns, it continues to be today  
9 elements whether it has been addressed fully or not,  
10 but certainly the element of how this would be  
11 constructed, if there is going to be borings, if there  
12 is going to be trenching in terms of the Storm Water  
13 Management Plan.

14 Other elements that were brought up today  
15 that the applicant hasn't addressed to date is what  
16 other elements would be below grade that would impact  
17 the same pieces.

18 MR. SUSSMAN: Mr. Chairman?

19 CHAIRPERSON GRIFFIS: Yes?

20 MR. SUSSMAN: Could I just make a brief  
21 comment here? The need for a soil, a Sediment and  
22 Soil Erosion Plan has been on the table now for well  
23 over a year. It was something that was highlighted in  
24 the original report of the Department of Health. It  
25 was something that was highlighted in the report of

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1 the Office of Planning.

2 Applicant made a decision in the face of  
3 a longstanding request for a Soil and Erosion Plan not  
4 to provide one, and I think the --

5 MR. GLASGOW: Mr. Chairman, I'm going to  
6 object to that characterization.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. SUSSMAN: May I finish?

9 CHAIRPERSON GRIFFIS: Well, what is the  
10 point?

11 MR. SUSSMAN: I think my point is that we  
12 need to place some boundaries and limits on rebuttal  
13 testimony and I don't think that rebuttal testimony  
14 should be an opportunity to fill longstanding  
15 information gaps that all of us have known about for  
16 many, many months. That should have been part of the  
17 applicant's case in chief. And if he decided not to  
18 provide it for whatever reason, I think it is too late  
19 in the game to let him generate new data and provide  
20 new plans.

21 CHAIRPERSON GRIFFIS: Okay. Good. So  
22 we're all in agreement. No Soil and Sediment Control  
23 Plan will be submitted. What I'm trying to do is  
24 actually limit and focus what we're going to see in  
25 rebuttal for the Board's interest because, quite

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1 frankly, we have to take all this paperwork home and  
2 make sense of it, and so I need it to be addressed to  
3 specific elements.

4 Let's talk about any other specifics if we  
5 can give direction in terms of what we're going to  
6 see. Well, you know what, I don't know how we address  
7 that unless you want to bring it up. This one I can  
8 deal with. Okay. Anything else?

9 VICE CHAIR MILLER: Okay. I guess I do.  
10 I just wanted just to explore this restriction because  
11 I'm not sure I have seen it in other cases where we're  
12 saying that the applicant can't respond to concerns  
13 that have been raised by making changes, and I think  
14 that is what Mr. Brown has requested, that we limit  
15 the applicant from doing that.

16 And I guess I would like to hear a little  
17 more from both sides, whether that is something that  
18 is wise to do. I think I heard from you, Mr. Brown.  
19 I guess I would like to hear from Mr. Glasgow first.

20 MR. GLASGOW: Well, we plan on responding  
21 in our rebuttal to anything that has been raised. And  
22 in rebuttal testimony, I mean, if somebody raises an  
23 issue and says that this won't work because of X, Y  
24 and Z and we say, well, it will work because this is  
25 what it is that we're planning on doing -- I don't

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1 understand.

2 VICE CHAIR MILLER: Okay. That's not my  
3 question. My question is if you heard things tonight  
4 and you go back and you say, well, they have a good  
5 point, maybe 13 houses is too many and Mr. Brown is  
6 saying no, you can't change, and I'm just interested  
7 in --

8 MR. GLASGOW: It's our application and we  
9 can submit whatever it is that we wish to submit and  
10 the Board will either accept it or reject it.

11 MR. BROWN: But then that goes beyond the  
12 scope of rebuttal.

13 CHAIRPERSON GRIFFIS: And let's deal with  
14 that.

15 MR. BROWN: And that makes the case --

16 CHAIRPERSON GRIFFIS: No, but I can  
17 address it, Mr. Brown. Let me just get to this.  
18 Look, the next step is the rebuttal. Mr. Glasgow  
19 knows that. You know that, Mr. Brown. If there is  
20 something else that comes into the record, we're going  
21 to have to take it up as part of the hearing and  
22 whatever that is.

23 We may have a motion of who knows what the  
24 substance is and if this was substantively changed,  
25 then obviously we're going to have to deal with that,

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1 but we can't spend the rest of this evening trying to  
2 address or not address it because it's beyond  
3 hypothetical. It's all in our imagination at this  
4 point.

5 So let's get back to focusing on what  
6 we're preparing for on the 19<sup>th</sup> and I think you all  
7 know. The other elements I think that -- I mean,  
8 really, as Mr. Etherly had boiled it down, but we have  
9 the other elements that boil down here, and I think  
10 this helps everyone focus, but we do have the access  
11 to the site that was substantially talked about.

12 The case has been presented on that. We  
13 have opposition. Obviously, it's open for rebuttal.  
14 We have, you know, all the elements that basically --  
15 well, I won't -- tree preservation obviously is a  
16 critical aspect to it. Well, I lay these out because  
17 they are big topics, but anyway, the other is there  
18 was a substantial amount of opposition case  
19 presentation on character, character of density,  
20 character of layout and, obviously, that is an element  
21 that we might look to having witnesses speak to.

22 Okay. With that, what else do we have?  
23 Okay. We have the submissions that have been laid  
24 out. We can restate those if needed. I want to get  
25 a schedule for those submissions, that they should

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1 come in no later than.

2 And, Mr. Glasgow, are you anticipating as  
3 part of your rebuttal having any formal submissions  
4 into the record prior to the 19<sup>th</sup>?

5 MR. GLASGOW: I don't -- I am not  
6 understanding the question.

7 CHAIRPERSON GRIFFIS: I wasn't aware of --  
8 maybe in your mind you might have some written  
9 submissions that you wanted to put into the record  
10 prior to the 19<sup>th</sup>.

11 MR. GLASGOW: I think we were just going  
12 to come to the hearing and just do rebuttal.

13 CHAIRPERSON GRIFFIS: And just go ahead.

14 MR. GLASGOW: Like we normally do.

15 CHAIRPERSON GRIFFIS: Understood,  
16 understood. I'm going to ask one thing of you. On  
17 September 8<sup>th</sup> if we could get a list of witnesses that  
18 you're anticipating calling, and let me be clear on  
19 this.

20 It's for everyone to focus, for our minds  
21 to focus, for the opposition to focus. If that  
22 changes, that would be understood. However, I would  
23 hope that we're pretty clear on what we're doing on  
24 the 19<sup>th</sup> that wouldn't -- but it will give us some  
25 heads up and also give me some availability or

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1 thoughts on how we run the rest of the afternoon after  
2 this.

3 I'm going to need everything submitted  
4 into the record no later than 3:00 on September 8<sup>th</sup>,  
5 so that one piece would be it. The other elements  
6 that we have asked to be put into the record, I would  
7 like those to be put into the record by then also.  
8 Obviously, everything can come in earlier if need be.  
9 Okay. Lastly then?

10 MR. BROWN: Mr. Chairman?

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. BROWN: Clarification.

13 CHAIRPERSON GRIFFIS: Sure.

14 MR. BROWN: In putting together their  
15 witnesses for rebuttal, my expectation will be that  
16 the applicant wouldn't present new witnesses, that  
17 they wouldn't -- they wouldn't go out and bring in a  
18 third arborist to provide --

19 CHAIRPERSON GRIFFIS: I don't know. Is  
20 that a question to me?

21 MR. BROWN: Yes. I'm asking the question  
22 because, again, my concern is that we limit the scope,  
23 width and depth and breadth of cross examination.

24 CHAIRPERSON GRIFFIS: But it is limited.  
25 It's limited to rebutting your testimony.

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1 MR. BROWN: Well, if we were doing it  
2 contemporaneously, right at this -- now.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. BROWN: The applicant would not have  
5 the position to bring in new witnesses, people who are  
6 not --

7 CHAIRPERSON GRIFFIS: Sure, I understand  
8 that.

9 MR. BROWN: And my concern is that we let  
10 this thing get out of control.

11 CHAIRPERSON GRIFFIS: Okay. I will try  
12 not to let it get too much more out of control. You  
13 know, I can't control everything. I mean, I cannot  
14 prohibit them from calling certain people or demanding  
15 that they call certain people as witnesses. I don't  
16 know if that's a reality that they will bring in  
17 somebody else or not. I mean, the other -- well, I  
18 won't say it.

19 Any address to that? Okay. Anything  
20 else? Okay. And let me just be clear on this. I  
21 mean, whatever restrictions I have put on Mr. Glasgow  
22 tonight I have to put on everyone and have always put  
23 on everyone else. I can't make up the rules outside  
24 of what is given to us in terms of our own procedures  
25 and those that are in accordance with the procedures

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1 of our Public Hearings.

2 So I have never and I have never been  
3 shown anywhere that I could prohibit somebody calling  
4 a witness in their expertise, unless it was not  
5 jurisdictional or not germane to our case  
6 presentation. If he shows up with witnesses that I  
7 find aren't germane, then of course they are not going  
8 to be heard from.

9 MS. GATES: Chairman Griffis?

10 CHAIRPERSON GRIFFIS: That may be the  
11 first motion we hear on the 19<sup>th</sup>, that they are not  
12 germane. That's very funny, but not at this late  
13 hour. Okay. Anything else then?

14 MR. BROWN: We'll wait and see and have  
15 faith.

16 CHAIRPERSON GRIFFIS: Indeed. I  
17 appreciate that. Okay. Anything else? Very well.  
18 If there is nothing else, I do thank you all for being  
19 very patient and diligent and sitting through this  
20 this evening. The 19<sup>th</sup> will bring this to an end is  
21 our anticipation.

22 (Whereupon, the hearing was concluded at  
23 8:16 p.m.)

24

25

**NEAL R. GROSS**

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