

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JANUARY 24, 2006

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Chairperson
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OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN MORDFIN
TRAVIS PARKER
KAREN THOMAS

The transcript constitutes the minutes
from the Public Hearing held on January 24, 2006.

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

(9:50 a.m.)

CHAIRPERSON GRIFFIS: Good morning ladies and gentlemen. Let me call to order the 24 of January 2006 public hearing of the Board of Zoning Adjustments of the District of Columbia.

My name is Geoff Griffis, Chairperson. Joining me today is Vice-Chair, Ms. Miller, and Mr. Etherly, our other member will be joining us shortly as he is a bit delayed. However, representing the National Capital Planning Commission is Mr. Mann. And representing the Zoning Commission is Ms. Mitten.

Copies of today's hearing agenda are available for you. They are located at the table where you entered the hearing room. You can pick one up and see where you are in the chronology of cases before the Board today.

A couple of very quick things but important aspects in my opening remarks. First, I would ask that everyone present please turn off cell phones, beepers, or any other noise making devices at this time so we don't have a disruption of the transmission of our hearing, and more importantly interrupting the concentration of those individuals providing evidence before the board today.

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1 You will note that we are going to be
2 creating an official record. That of course entails
3 all of which you will be presenting to the Board and
4 most importantly everything that is said will be
5 recorded and it is recorded today in a single fashion;
6 that is by the court reporter sitting on the floor to
7 my right.

8 Attendant to that, I ask that everyone
9 please fill out two witness cards prior to addressing
10 the Board. Those witness cards then can be presented
11 to the Court Reporter on my right. When that is done
12 and you're prepared to present to the Board, I would
13 ask that you just state your name and address for the
14 record once and then we can move ahead with all of the
15 testimony to be provided.

16 The order of procedure for special
17 exceptions and variances is as follows: first, we
18 hear from the applicant, a presentation of their case.
19 Secondly, we will hear government reports attendance
20 to the application. Third, we will hear from the
21 Advisory and Neighborhood Commission within which the
22 property is located. Fourth, we will hear from
23 persons or parties in support of an application.
24 Fifth, would be persons or parties in opposition to an
25 application; and sixth, finally, we will return to the

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1 applicant for any rebuttal testimony, closing remarks,
2 and summations. Cross-examination of witnesses is
3 permitted by the applicant and parties in the case.
4 The ANC within which the property is located is
5 automatically a party in the case and, therefore, is
6 a full participant and will also be able to cross-
7 examine all witnesses.

8 The record will be closed at the
9 conclusion of the hearing on this case and we would
10 anticipate closing most hearings today, if not all of
11 them. The record would stay open only in the cases
12 which the Board decides that additional information is
13 required. And we will be very specific on what
14 additional information is required into the record and
15 when it is to be submitted into the record. After
16 that material is received, it should be very clear
17 that a record would then be finally closed and no
18 other information is accepted into the record. It's
19 important to understand that, of course, the record
20 that is created before us is exactly what the Board
21 will deliberate on, not anything outside of that, but
22 only on the record.

23 Accordingly, the Sunshine Act also asks
24 that we conduct all our hearings in the open and
25 before the public. This Board does enter into

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1 executive session both during and after hearings on
2 cases, and that is utilized for the purposes of
3 reviewing the record and/or deliberating on cases.
4 This is in accordance with our rules, regulations,
5 procedures, also in accordance with the Sunshine Act.

6 Let me at this time say a very good
7 morning to Ms. Bailey with the Office of Zoning on my
8 far left. Ms. Rose is also from the Office of Zoning
9 and OEG is represented with Ms. Glazer. Mr. Moy will
10 be sitting on my right and he is also going to be
11 joining us and he is with the Office of Zoning.

12 At this time I'm going to ask that all
13 those persons planning to testify in all the cases in
14 this morning's hearing to please stand and give your
15 attention to Ms. Bailey. She's going to swear you in.

16 (Whereupon, an oath was administered to
17 those persons present at the hearing who will be
18 testifying before the Board.)

19 CHAIRPERSON GRIFFIS: Thank you all very
20 much.

21 At this time then the Board will consider
22 any preliminary matters. Preliminary matters are
23 those which relate to whether a case will or should be
24 heard today. Requests for postponements, withdraws
25 where the proper and adequate notice has been

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1 provided, these are elements of preliminary matters.
2 I@m going to ask Ms. Bailey first if she's aware of
3 any preliminary matters for the Board's attention and
4 then turn to those present today.

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

7 CHAIRPERSON GRIFFIS: Good morning.

8 MS. BAILEY: There is -- it has to do with
9 one of the cases that was withdrawn, and that is
10 Application Number 17401, Ann Goodman. That case was
11 withdrawn, Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Excellent. So there
13 is no action required by the Board in that case?

14 MS. BAILEY: None at all.

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

17 Is anyone else aware of any preliminary
18 matters? You can bring that to the attention of the
19 Board now. You can come forward.

20 (No response.)

21 CHAIRPERSON GRIFFIS: Not noting any
22 indication of any preliminary matters, why don't we
23 call the first case of the morning.

24 MS. BAILEY: Application Number 17440, of
25 D.C. Water and Sewer Authority, pursuant to 11 DCMR

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1 3103.2 for a variance from the off-street parking
2 requirements under subsection 2101.1, and pursuant to
3 11 DCMR 3104.1, a special exception to allow the
4 construction of a new pumping station and related
5 facilities under section 207. The property is zoned
6 R-2 and is located at 1801 Minnesota Avenue,
7 Southeast, Square 5616, Lot 800.

8 CHAIRPERSON GRIFFIS: Thank you very much.

9 A very good morning.

10 MR. STILLWELL: Good morning, Mr.
11 Chairman.

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. STILLWELL: If I may begin.

14 CHAIRPERSON GRIFFIS: Please.

15 MR. STILLWELL: For the record, my name is
16 Garland Stillwell with the Law Offices of Pillsbury
17 Winthrop Shaw Pittman, representing the applicant, the
18 District of Columbia Water and Sewer Authority,
19 DCWASA.

20 I have a couple of preliminary matters but
21 I'd first like to introduce the proposed witnesses.
22 To my immediate right is Mr. Jerry N. Johnson, General
23 Manager for the District of Columbia Water and Sewer
24 Authority. Our next witness will be Ms. Karen Moran,
25 the Project Engineer with Whitman, Requardt and

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1 Associates. Our Project Architect is Mr. Victor
2 Wilburn. And we also have who may provide testimony
3 on an as needed basis, Mr. Roger Gans, Managers of
4 Planning and Design, Department of Engineering and
5 Technical Services for DCWASA, as well as Ms. Avis
6 Russell, DCWASA General Counsel.

7 Just a couple of preliminary matters, Mr.
8 Chairman, you should have entered into your record as
9 a last Exhibit item, the signed maintenance affidavit,
10 which was received by staff.

11 CHAIRPERSON GRIFFIS: Go ahead.

12 MR. STILLWELL: And secondly, at the
13 request of the Office of Planning, we do have two
14 Exhibits, which you have in front of you, which we do
15 have boards. And since they'll be referenced by our
16 first witness, I just ask that, request that they be
17 marked for identification at this time.

18 CHAIRPERSON GRIFFIS: Absolutely. They
19 have been submitted into the record.

20 Ms. Bailey, do you have an Exhibit number
21 on these?

22 MS. BAILEY: I can have one for you before
23 the --

24 CHAIRPERSON GRIFFIS: Excellent, no
25 problem.

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1 MS. BAILEY: -- hearings.

2 MR. STILLWELL: Also, Mr. Chairman, my
3 first witness will be speaking to a Powerpoint
4 presentation, which you should also have in front of
5 you, and I believe would appropriate to have that
6 Powerpoint, which will be verbatim to what we'll be
7 seeing on the screen identified as a separate Exhibit
8 item as well.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. STILLWELL: Thank you. Mr. Chairman,
11 as stated, this is a special exception application for
12 a proposed pumping station to be located at 1801
13 Minnesota Avenue, in the R-2 zone, in ANC 8-A.

14 Our team will cover all aspects of the
15 application. You should have also in front of you, in
16 addition to the original application, a detailed pre-
17 hearing statement. And all of the Exhibits that are
18 referenced will be referenced in either the original
19 application as an Exhibit or the pre-hearing
20 statement.

21 On that note, I'd like to call my first
22 witness, Mr. Jerry Johnson who will proceed.

23 CHAIRPERSON GRIFFIS: Excellent, and
24 before we have Mr. Johnson, just first of all, I think
25 this an excellent application in terms of its

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1 completeness and I can assure you that the Board has
2 read the entire file and is prepared to hear the rest
3 of the testimony today. With that note I would say
4 that we could probably highlight certain things that
5 the Board has already been able to digest. I noted
6 the Powerpoint is going to be an interesting vehicle,
7 what is already submitted, so we have been able to
8 review it, but we can go through and highlight some of
9 the additional facts that you want to make sure that
10 we understand. And secondly, one of those facts,
11 clarification of actual parking calculation. There
12 seems to be some discrepancy.

13 MR. STILLWELL: Yes.

14 CHAIRPERSON GRIFFIS: It doesn't seem like
15 it will take that much to get up to that and then
16 we'll spend some time on the landscape plan.

17 MR. STILLWELL: Thank you, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Good, thank you very
19 much.

20 And a very good morning, Mr. Johnson.

21 MR. JOHNSON: Good morning, Mr. Chairman.
22 Thank you very much.

23 My name is Jerry Johnson. I'm the General
24 Manager for the District of Columbia Water and Sewer
25 Authority, and we appreciate the opportunity to be

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1 able to come before you today to present this
2 application for this very important and critical
3 project for the improvement of a water system in the
4 District of Columbia.

5 The replacement of the existing Anacostia
6 Water Pumping Station is a key element of the District
7 of Columbia Water and Sewer Authority's plan to
8 improve water services east of the Anacostia River in
9 the service area shown on the map in this slide. And
10 I would note a couple of things; that we're creating
11 a new pressure zone as a part of this project that
12 will be south of W Street in the, if I can get this
13 little device to work, in this area; and a new pumping
14 station that will be built with the addition of a two
15 million gallon water storage tank to create this new
16 pressure zone. In addition, the pumping station will
17 pump into the two zones.

18 I would note that we have initiated this
19 project. It was moved up in the capital budget
20 because we had discussions with people in this
21 community and, in my very early years here at the
22 Authority, this was a project that was moved, way out
23 in the capital program. What we learned from
24 residents in that area is that they had, they were
25 constantly experiencing low water pressure and there

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1 was some water quality problems that existed in that
2 area as well. And so we began then to refocus our
3 efforts. Rather than using best practices and
4 engineering theories and that sort of thing, let's
5 listen to people in this community and what their
6 concerns are and what their issues are and begin to
7 address those more specifically. So this project has
8 been moved up by about six years in the capital
9 program so we could initiate it right now and get it
10 done. And you'll understand some of the other issues.

11 Also, it's interesting to note that there
12 are seven pressure zones in the District of Columbia
13 that serve the entire city. Three of these zones are
14 east of the river so that there are some very unique
15 challenges as you would note in trying to address
16 this. When we finish this project, there will be four
17 east of the river to ensure that we have adequate
18 water quality as well as water pressure in that area.

19 The next slide --

20 CHAIRPERSON GRIFFIS: And when you say six
21 pressure zones, sorry to interrupt you, what does that
22 mean, a pressure zone?

23 MR. JOHNSON: I'm sorry. The city is
24 divided into a variety of pressure zones in order to
25 either pump or to flow by gravity certain volumes of

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1 water. And so we carve those up basically based on
2 geography and topography.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. JOHNSON: To ensure that there is
5 adequate water pressure. And as we go through this
6 presentation you'll see some of the challenges that we
7 have in this particular area.

8 CHAIRPERSON GRIFFIS: Excellent.

9 MR. JOHNSON: The problems that we will be
10 addressing with this particular project are low water
11 pressure in the southern portion of the service area
12 south of W Street, low pressure at Saint E's campus.
13 One of the things that we found at Saint E's is that
14 there is inadequate fire protection on the campus as
15 it relates to water. They have augmented that and
16 taken care of that problem through the construction of
17 a 100,000 gallon water tank that is extremely aged and
18 has lived beyond its useful life. We have worked with
19 them very carefully to ensure that those facilities
20 continue to be operational but they are in desperate
21 need of replacing. And there is a further plan that
22 you will hear about at a later date for taking care of
23 that particular problem, but that is a major problem
24 for us. And this is where hospitals are being built
25 and the West Campus where major federal facilities are

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1 currently being planned.

2 Under utilization of the existing water
3 storage reservoirs that are located in Fort Stanton
4 Park, when the tank goes into service the pressure
5 will be maintained by that facility and the existing
6 reservoirs, which is below grade. A 13 million gallon
7 reservoir will be used for emergency and peak demand
8 storage, and this will improve circulation throughout
9 the area and will improve water quality. Currently we
10 have to keep that water storage facility full all the
11 time, monitor it very closely because that's part of
12 the system that we're using now to ensure that we can
13 maintain water pressure. And underground storage
14 facilities simply should not be used for that purpose
15 but rather ought to be used for pumping, and we'll
16 show you what would change once we have -- once we've
17 gone into this.

18 We're going to be replacing transmission
19 and distribution pipes that have aged and cannot
20 withstand the additional pressure that will be added.
21 Major water main replacements total about \$19 millions
22 and small main replacements total another \$17 million.

23 We will also be replacing aging equipment
24 in the old Anacostia Pumping Station that was
25 originally constructed in 1913.

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1 WASA's program involves over \$70 million
2 of improvement that will maintain water quality,
3 provide more reliable fire protection, improve
4 pressure, improve reliability of service, address
5 problems of water supply and maintenance in the Saint
6 Elizabeth's campus, and support future development in
7 the area, which I think is absolutely key. As you
8 know, the city is developing very rapidly in areas
9 where before there had not been very much development
10 and growth, and this water problem will be a major
11 issue for us if we don't go ahead and address it now
12 for we will not be able to do the condo development
13 that's planned for east of the river.

14 Major issues south of W Street where there
15 is low pressure at higher elevations, and this
16 pressure will be improved to optimum levels. And if
17 you look at the current system and configuration,
18 you'll note that right now the normal range is about
19 28 pounds per square inch in this area. And you'll
20 see that we're serving some very critical facilities.
21 You've got the Saint Elizabeth's campus, Greater
22 Southwest Community Hospital, Hadley Memorial
23 Hospital, and they very a great deal in elevation in
24 that particular area.

25 And 35 pounds of pressure is sort of the

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1 low end of the acceptable threshold, and we're more
2 frequently operating at about 28 pounds of pressure in
3 that area.

4 After the construction you'll see a
5 different configuration. You see the proposed water
6 storage facility and we'll see pressure in the normal
7 range of about 50 to 65 PSI, whereas the normal range
8 before had been 28 to 43. And the optimal pressure is
9 50 to 80 pounds of pressure and if need be we can push
10 the system once we've gotten it more robust to get it
11 into that range of other development in that area. So
12 we will be prepared for the long range and the future.

13 The next slide shows a full configuration
14 of what the plans are for this area in schematic form.
15 The reservoir that I just about, rather than being
16 used for water pressure purposes, would be used for
17 water storage as it should be intended to. Next you
18 see the proposed Anacostia Pumping Station that would
19 then fill the proposed elevated storage tanks. There
20 are several other storage facilities in the area, the
21 Good Hope Road tank and the Boulevard tank. Both have
22 been rehabilitated in recent years so we're maximizing
23 the use of them and making sure they're in good
24 operating condition.

25 We do have some dead ends in the system.

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1 Those dead ends cause water to stagnate and we have to
2 go flush those systems with a great deal of regularity
3 to ensure that water is fresh and flowing through the
4 area. We also plan, as a part of this project, to
5 eliminate those dead ends so that there is total
6 circulation in the system and water is fresh all the
7 time.

8 The map that you're looking at on the next
9 slide shows where the specific improvements are
10 located. And if you'd like I can go through these in
11 some detail, just to talk about the various things
12 that are attendant to or ancillary to the development
13 of the pumping station and other facilities. The
14 replacement of 6,000 feet of 20 and 30 inch pipe along
15 Minnesota Avenue, the replacement of existing pumping
16 station, which is the subject of this hearing today,
17 eight inch pipe in various locations. We talked about
18 the piping that simply is either old and is not in
19 good shape and won't sustain the new pressures that
20 we'll be putting in, 100 feet of 24 inch pipe along W
21 Street, the rehabilitation of the Good Hope tank,
22 which is completed as I just discussed, 4,800 of 20
23 inch pipe along Martin Luther King Avenue. That
24 project started this past year and is nearly complete,
25 and the rehabilitation of the Good Hope Road tank,

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1 also.

2 And on the next couple of slides you will
3 see pictorially some of the facilities that have been
4 completed, the two water tanks, which obviously
5 improves the appearance. They had -- it's amazing to
6 me that we have such acrobatic young artists in the
7 city. They had been graffitied and just not, had not
8 been very well maintained and were not in great shape.
9 These tanks were all sterilized, cleaned, relined, and
10 painted and so we're now in great shape with them.
11 And they provide some additional safety features as
12 well for the people that have to go in and operate
13 those.

14 Then the other -- we've completed the 20
15 inch improvements along Martin Luther King Avenue,
16 from Milwaukee to Upsell, which obviously replaces
17 some of that low pressure pipe with some of the better
18 pipe that we've talked about. Replacing the 6,000
19 feet of 20 inch pipe along Minnesota Avenue from
20 Pennsylvania to W Street, again because of the need to
21 have a pipe that will sustain the additional pressure
22 that will be there. And then there are some planned
23 improvements, other improvements which include the
24 5,300 feet of 24 inch pipe. And this basically gives
25 you the more specific locations of where these

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1 facilities will be installed.

2 Next is the 36 inch, 3,600 feet of 24 inch
3 pipe in the area will that will be done. Basically in
4 the -- for the pumping station along W Street. And
5 then we come to the actual improvements that are to be
6 done on-site and that are the subject of this hearing,
7 which you see the top slide is the existing 1913 era
8 building with a couple of diesel powered generators
9 sitting in the back of it, of the existing Anacostia
10 Pumping Station. And the bottom photograph shows a
11 rendering of the new proposed pumping station that's
12 to be constructed there.

13 And this is -- the next slide is very
14 interesting for a couple of reasons. One, it shows
15 where all of the facilities are on the existing site.
16 But I think more notably is the fact that prior years
17 wisdom we went in and basically made a huge concrete
18 pad of this whole block. And it's been used for pipe
19 storage and there's a huge crane on the site now that
20 has been used to move various piping and equipment
21 around. We've changed the way that we do some of our
22 operations now and don't have the need for that pipe
23 storage facility. We've eliminated its use some time
24 ago. We would then -- you also see the siding on the
25 next slide -- I'm sorry, go back one, yes, of the

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1 proposed pumping station and some very significant
2 changes. We have become very sensitive, obviously, to
3 issues around low impact development and improvements
4 to ensure that we don't have a whole lot of water
5 runoff and that we're taking more responsibility for
6 what occurs on the site. And one of the other
7 presenters will go into greater detail in discussing
8 that. But we've been very concerned with landscaping,
9 the appearance of the building and the way that it
10 fits into this community. When we build these
11 facilities, we're talking about the last one being
12 built in 1913, and perhaps at some point in the future
13 someone will be sitting in this chair or some other
14 chair or doing some electronic presentation showing
15 another facility to be built, but we know that's going
16 to be many, many years from now. So we try to be
17 sensitive as a long-term permanent fixture in this
18 community to ensure that we're sensitive and concerned
19 about the needs, environmentally, as well as
20 aesthetically when we've gone in and done these
21 various improvements.

22 You will note in the next slide the series
23 of improvements that total \$70.2 million that are to
24 be undertaken as a part of this project. They are
25 laid out here for you so that you can see the cost of

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1 each one of the proposed projects that are to be done.

2 The existing station will remain
3 operational during the construction with no loss in
4 service. There will -- we don't have any firm plans
5 with what we're going to do with that facility. We
6 would address that at a later point because of the
7 time that it's going to take to do the construction.
8 But one of the things that we have done in working
9 with the engineering staff is ensure that the site
10 presently has a series of pipes, huge pipes, that
11 traverse the site, and as we go through with our
12 planning efforts what we're doing is relocating those
13 pipes to the periphery of the site so that it will
14 maximize our ability to go in and flexibility to go in
15 and do something with the site at a later point,
16 rather than being restricted by the infrastructure
17 that's located out there. So that's certainly that's
18 one thing that we will be doing.

19 In summary, this facility is in the
20 planning process. Following discussion with the
21 residents in that community have identified the need
22 for major reinvestment in infrastructure east of the
23 Anacostia River. The project briefly described here
24 will greatly enhance the service in this area at a
25 cost of about \$70 million.

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1 I'd certainly be pleased to respond to any
2 questions that you might have. There are several
3 other presenters that will go into substantially more
4 detail regarding the facilities and the site as we go
5 forward.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you very much.

8 MR. JOHNSON: Thank you very much.

9 CHAIRPERSON GRIFFIS: Let me see if the
10 Board has quick questions at this point, but I think
11 it's very clear that this is a monumental project that
12 is of great need and requirement to deliver, as you
13 said, consistent quality and reliable water east of
14 the river.

15 A couple of things in my mind, the
16 existing station you said is described in the
17 submission as abandoned in-place. You're going to be
18 maintaining it, you just talked about it briefly, what
19 are the potential future uses for that?

20 MR. JOHNSON: Well, you know, the building
21 itself I guess would be, in terms of its structure, is
22 probably marginal in terms of the structural integrity
23 of the building. It was built to shelter the pumping
24 station. It's a Tudor style structure that we don't
25 think has an significant architectural or historical

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1 significance. And so we would be looking for
2 something that would be consistent with the
3 neighborhood and that community so that we're not
4 imposing on them as a residential community but would
5 service the needs of the authority.

6 CHAIRPERSON GRIFFIS: Okay. But in terms
7 of function, anticipating out and projecting, I know
8 you don't have one use designated at this point, but
9 would it be an additional pump station or would it be,
10 you know, maybe a back-up generator. Is there any
11 thought at all what it might be utilized for?

12 MR. JOHNSON: Not at this point, sir.

13 CHAIRPERSON GRIFFIS: Okay. Okay. And --
14 there it is, are there any other questions?

15 VICE-CHAIRPERSON MILLER: I just have one
16 question with respect to the landscaping. How visible
17 is this site to the neighborhood?

18 MR. JOHNSON: The latter part of the
19 presentation will get into those details, but we have
20 attempted to our best to get as much of the facility
21 into the ground as possible so that we don't have an
22 overwhelming site. And we've gone back and actually
23 redesigned a good bit of the initial design of the
24 facility so that it's more consistent with the
25 neighborhood and surrounding area. But the

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1 architectural presentation that's to be done this
2 morning I think will demonstrate that.

3 VICE-CHAIRPERSON MILLER: Okay.

4 CHAIRPERSON GRIFFIS: Excellent, thank you
5 very much. Any other questions?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Very well, let's
8 move ahead.

9 MR. STILLWELL: Thank you, Mr. Chairman.
10 My next witness is Ms. Karen Moran and she will be
11 setting up. We just need a brief moment while we set
12 up the presentation boards.

13 CHAIRPERSON GRIFFIS: While they do that,
14 Mr. Johnson, just to field time a little bit but also
15 for my edification, you talked about the importance,
16 of course, of fire protection and you laid it out
17 there. Am I correct in saying the fire protection
18 relates directly to the water pressure? Obviously
19 when you open up a fire pump or fire hydrant you'll
20 going to need that pressure there. So some of your
21 concern in upgrading this and servicing those areas
22 that areas of very low pressure would be that there
23 may not be enough pressure to fight a fire?

24 MR. JOHNSON: Well, I think both pressure
25 as well as having adequate supply of water because we

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1 have to pump into that reservoir and have to keep it
2 pretty full. And when you're drawing down for fire
3 protection it's going to draw down pretty quickly.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. JOHNSON: So that's been one of our
6 challenges, so we work very closely with the fire
7 department whenever there's an incident in the area to
8 ensure that we are keeping systems balanced and things
9 open that need to be open. So that has been a
10 challenge was both volumetric as well as pressure.

11 CHAIRPERSON GRIFFIS: Excellent, good.
12 Thank you.

13 MR. STILLWELL: I believe our next witness
14 is ready.

15 CHAIRPERSON GRIFFIS: Good.

16 MS. MORAN: Thank you. Good morning, my
17 name is Karen Moran. I'm a civil engineer and
18 associate with Whitman Requardt and Associates in
19 Baltimore. We are the design engineering firm for the
20 Anacostia Pumping Station project. And I'd like to
21 spend a few minutes talking about some of the
22 engineering features of the station.

23 As Mr. Johnson mentioned, the existing
24 station was constructed in 1913. It has eight booster
25 pumps, which are located within the existing sort of

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1 Tudor style building. There are also two diesel
2 backup drives for two of the pumps in the station,
3 outdoors, as well as a small backup generator for
4 lighting in the event of the loss of power at the
5 existing station. And there is an electrical
6 substation, and I'll give you an idea of what some of
7 these look like, an electrical substation on the site.
8 There's a photograph of it right here. It's located
9 on a pad and within chain linked fencing, but it does
10 house a significant amount of large and not very
11 attractive electrical equipment.

12 The existing station does pump to the two
13 higher pressured zones in the Anacostia area, the
14 first and second high service areas. And without the
15 operation of the pumping station, as Mr. Johnson
16 mentioned, water can't be provided, adequate pressure
17 can't be provided to the area for much period of time.
18 The station was last renovated in 1979 and since then
19 it's operated as an unmanned station, remotely
20 operated from the Bryant Street Pumping Station in
21 downtown D.C.

22 The replacement of the pumping station at
23 this point, rather than rehabilitation again, was the
24 option that was selected by DCWASA. There are a
25 number of reasons for that; among them, that the cost

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1 of replacement was approximately the same as the cost
2 to rehabilitate the station again. And replacement
3 allows us to avoid some complicated construction
4 phasing that would be needed if we were working within
5 the existing pumping station, replacing pumps, and
6 piping, and valves, while also maintaining service.
7 And as Mr. Johnson mentioned, the existing station
8 will stay online providing service the whole time that
9 the new station is being constructed on the site.

10 This is the location of the new pumping
11 station. It will be on the same block as the existing
12 pumping station, just to the east of it. And, as Mr.
13 Johnson mentioned, there are at present no firm plans
14 for what the eventual use of the existing pumping
15 station building might be.

16 One of the reasons for locating the new
17 station on the existing site is because of the major
18 piping that now comes into the site all around the
19 periphery of the existing station. We have piping
20 that comes into the station and piping that exits the
21 station after the water goes through the pipe. And
22 part of our engineering project is to connect up in a
23 generally east/west corridor and with some going
24 around the periphery of the site all of our new piping
25 that we need to come into our new station and exit

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1 from our new station and connect into the existing
2 network, transmission, and distribution mains that
3 exist.

4 The proposed replacement of the station
5 will, of course, provide us with state-of-the-art
6 pumping equipment as well as electrical and mechanical
7 equipment. And the control system will allow local,
8 remote, and automated operation of the pumping
9 station. Again, automated from the Bryant Street
10 Pumping Facility.

11 The new pumping station is anticipated to
12 house 12 booster pumps and a new electrical substation
13 will be constructed. That new substation will be
14 housed within sort of a garden wall if you will, and
15 Mr. Wilburn will talk a little bit more of the
16 aesthetic factors. But the rather unsightly
17 electrical equipment that you see now will be housed
18 within a walled area so it won't be visible to the
19 community once we're done with the construction.

20 The existing outdoor diesel generator and
21 diesel drives will also be -- will have a new
22 generator that will be housed within a building
23 enclosure in the new pumping station. So those will
24 no longer be outdoors and those structures are being
25 designed to improve the acoustics so that the noise

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1 transmission to the outside is minimal.

2 When we're complete, the existing
3 electrical substation will be demolished. With
4 respect to some of the other structures on the site,
5 there is an existing WASA storage facility. That's
6 this red prefabricated butler building if you will.
7 That will be removed from the site during the
8 construction project. There is an existing security
9 trailer, which is down in the southern part of the
10 existing site. That will be removed during the
11 construction project. And then the traveling bridge
12 crane, which you can see in a number of these photos;
13 it's a ten ton capacity crane that, as Mr. Johnson
14 referenced, used to be used to move pipes and other
15 equipment around the site, that, the supports, and the
16 traveling bridge crane, all of that structure will be
17 removed at the beginning of the construction because
18 it's located basically in the area where the new
19 pumping station will be located.

20 So, in summary, when the project is
21 completed, we will have removed four major structures:
22 the storage facility, the electrical substation, the
23 trailer, and the traveling bridge crane from the site.

24 Also, as Mr. Johnson had briefly
25 mentioned, we do have the opportunity to take what's

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1 basically an impervious site right now with a concrete
2 slab and to improve it in terms of its landscaping and
3 removing impervious areas. We estimate that on the
4 site that's just over two acres we'll be able to
5 provide an additional 20,000 square feet or
6 approximately 20 to 25 percent of the site will become
7 grassed and landscaped. And you can see, these areas
8 right now that are paved will be grassed and
9 landscaped. And we're providing landscaping to screen
10 the site from the northeast side, from the view that
11 one would have from the northwest side, and along the
12 southern side and into the southeast corner of the
13 site. And we'll be providing storm water management
14 devices that will basically collect the runoff from
15 the pumping station and the paving areas that we will
16 have and transmit them through these for treatment to
17 improve the quality and attenuate the peak flows of
18 the storm water on the site.

19 There are -- we do need to maintain some
20 of the area paved for access into the pumping station
21 as well as for parking of maintenance vehicles that
22 will need to be periodically parked at the site when
23 equipment needs to be maintained.

24 And then the last thing I'd like to
25 mention is that there is a small area here at the

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1 northern part of the site that's used by the
2 Department of Public Works through I think it's rather
3 informal agreement with DCWASA. But that area will
4 continue to be used by the Department of Public Works
5 going forward.

6 I think that concludes what I wanted to
7 talk about.

8 Pardon me -- the automation? Well, there
9 won't be any staff regularly assigned to man the
10 pumping station, if you will. It will be controlled
11 from the Bryant Street Pumping Station through what we
12 call a Scada System that monitors the pumps and the
13 pressure and transmits the data from the Anacostia
14 Pumping Station back to the Bryant Street Station.
15 The operators there can maintain control remotely of
16 the station and adjust things. So what will happen
17 periodically on-site would simply be maintenance of
18 the pumps, or the valves, or the electrical equipment
19 on site.

20 MR. STILLWELL: And how often would that
21 happen and how many people would that entail?

22 MS. MORAN: Depending on the significance
23 of it, the routine maintenance would probably only be
24 a couple people periodically, you know, maybe once or
25 twice a year you might do more major maintenance on

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1 the pumps and the valves that might involve a staff
2 of, you know, five or six people, but regularly I
3 would anticipate that you would only have a couple of
4 people on site.

5 CHAIRPERSON GRIFFIS: And are you aware in
6 your design of this how many cars are actually
7 proposed to be stored there? You mentioned as
8 maintenance vehicles.

9 MS. MORAN: I don't believe the intent is
10 to store any vehicles there. Those parking spots are
11 simply being provided for the times when the people do
12 need to come to the site.

13 CHAIRPERSON GRIFFIS: I see.

14 MR. JOHNSON: Mr. Chairman, I would point
15 out with regard to the automation of this facility, we
16 did a very thorough look at most of our facilities
17 shortly after 9/11 with respect to the direction that
18 we were moving, which was to have mostly unmanned
19 facilities around the city, and made a very conscious
20 decision that we would continue to pursue that course
21 of action to have unmanned facilities based on the
22 state of technology and our ability to remotely
23 operate. But we have significantly enhanced our
24 security and there are a number of electronic kinds of
25 other types of security measures that will be taken as

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1 we go about the operation and obviously the
2 surveillance of this facility.

3 CHAIRPERSON GRIFFIS: Excellent, thank you
4 very much.

5 One last question, in your understanding
6 of the functioning, you may not know all of it, but
7 the daily noise level of the pumps, what is it
8 analogous to for our understanding?

9 MS. MORAN: Well, the pumps will be housed
10 inside a new building and Victor will talk a little
11 bit more about it. But we are using sound-dampening
12 block in the construction of the pumping station where
13 the pumps will be located and as well the louvers are
14 noise-attenuating louvers. So it's all designed to
15 absorb the sound before it really emits to the
16 neighborhood.

17 I guess I would equate it to sort of a low
18 hum.

19 CHAIRPERSON GRIFFIS: Okay, good. And
20 when those generators, if those generators kick in
21 that would be a whole different level, wouldn't it?

22 MS. MORAN: Well, the generator room will
23 have the same noise dampening.

24 CHAIRPERSON GRIFFIS: Right.

25 MS. MORAN: But the generator is a

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1 slightly louder piece of equipment. But I would also
2 note --

3 CHAIRPERSON GRIFFIS: So the generators
4 would be kicked on in an emergency, in a loss of
5 power?

6 MS. MORAN: Right. There are two feeders,
7 two electrical feeders to the station now and there
8 will be two feeders to the station in the future.

9 CHAIRPERSON GRIFFIS: So if they're
10 starting up we're more concerned with why than noise,
11 is that correct?

12 MS. MORAN: Probably so.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. MORAN: And they'd be necessary to
15 maintain water pressure, which is also a critical
16 element.

17 CHAIRPERSON GRIFFIS: So they come in as
18 backup if there wasn't enough power --

19 MS. MORAN: Correct.

20 CHAIRPERSON GRIFFIS: -- even if it wasn't
21 an emergency.

22 MS. MORAN: If both feeders to the pumping
23 station were out, which I would note I think has
24 rarely if ever happened at the existing station, the
25 generator would provide power that would be necessary

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1 to maintain the water pressure in the area.

2 CHAIRPERSON GRIFFIS: And are the
3 generators fired up for maintenance purposes?

4 MS. MORAN: They will be periodically
5 exercised, yes.

6 CHAIRPERSON GRIFFIS: That is --

7 MS. MORAN: Once a month, approximately.

8 CHAIRPERSON GRIFFIS: Okay, good. I don't
9 have any other questions unless any others do.

10 (No response.)

11 CHAIRPERSON GRIFFIS: Excellent.

12 MR. STILLWELL: Thank you, Mr. Chairman.
13 My next witness is the Project Architect, Mr. Victor
14 Wilburn. It's my understanding that we do not have a
15 traveling mic, so Mr. Wilburn will be referring to the
16 Exhibits to my left, so I'm going to change seats so
17 he can refer to his Exhibits and still stay on the
18 mic.

19 CHAIRPERSON GRIFFIS: Excellent.

20 MR. WILBURN: Thank you, Garland.

21 I'm Victor Wilburn, the lead architect of
22 the firm Victor Wilburn Architects. And I want to
23 talk a little bit about our design intent in this
24 project.

25 This project has two characters. It has

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1 a residential element. It also has a heavy industry
2 element, which is being eliminated mainly in the form
3 of the crane. And we wanted to do this to be a better
4 neighbor in the neighborhood because it's a
5 residential neighborhood. The two have coexisted for
6 quite awhile, nearly 100 years. So what we're trying
7 to do architecturally is to be sure we improve that
8 relationship.

9 And you've heard some of the major
10 elements. We have removed the crane, which was a
11 large and formidable appearance item so that it looks
12 more residential than it has in the past. We're using
13 the same materials that the neighborhood has, slate in
14 the slate roofs, brick that matches the walls of most
15 of the housing and of the lodge building.

16 The lodge building referred to is a Tudor
17 construction and has been there for some time. It's
18 a little whimsical in that there's not heavy snow in
19 this area, but at the same time it's a little charming
20 for the area. And while its use is uncertain, its
21 visible presence is clear and we're trying to make the
22 most of that appearance.

23 We do that by placing the new building in
24 the area where there hasn't been any construction.
25 And we do that because the new building will be a

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1 light-industry building. And basically what I think
2 that should be interpreted to mean is that much of its
3 activities are interior. The crane is interior.
4 There is a crane but it's completely out of site. The
5 pumping station has an emergency generator, which is
6 completely out of site and enclosed. And these are
7 the features that make it a better neighbor than it's
8 been in the past.

9 Now, a feature that defines this site is
10 its surrounding wall of brick and ornamental iron.
11 And I'd like to show some illustrations. At the
12 moment this is what the wall is like and it surrounds
13 the site. And on top of it there is ornamental arms
14 and about approximately four to five feet high is a
15 brick wall. Now, we would extend this character
16 around the entire site. What that means, what that
17 means in this illustration is the property is
18 contained and protected from eye-level inspection. We
19 would alter the existing fence and wall so that the
20 spikes on the top are cutoff and the cap of the piers
21 is flattened so that it's weather resistant.

22 One of the things that identifies the new
23 building is the fact that it's very tall. And we try
24 to mitigate that by a pre-cast panel that has windows
25 and recessions in it that break the monotony of nearly

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1 100 feet of wall. The entire wall uses the materials
2 that have been used in the neighborhood so that
3 there's a harmony in that end.

4 The size of the building is approximately
5 20,000 square feet and these exterior walls have been
6 designed so that they're not monotonous. And let me
7 illustrate with one of the renderings. Instead of a
8 large flat surface that runs for approximately 100
9 feet, we have recessed panels; there are six or seven
10 of them, so that some are in, some are out, and they
11 break the rhythm of this large wall. They have shadow
12 lines that are useful to give it scale, and that's on
13 the vertical side. On the horizontal side we stop the
14 brick approximately 20 feet above the ground and use
15 the precast panel, which has windows in it, to give
16 scale. And these are the devices that tame the
17 building in spite of its size. You see them at work
18 in this view, which is the principle entrance into the
19 building and the in and out effect, again, at shadow
20 lines and gives scale, and takes such a large building
21 and makes it less formidable. There is an entry point
22 off of the southeast that is very much in scale with
23 the neighborhood because it's a one-story building,
24 but it also performs a function of providing toilets
25 and other needed facilities.

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1 This breaks down the scale so that the
2 neighbors that are surrounding don't have to walk
3 immediately next to a 20 foot or 30 foot wall.

4 The louvers have been mentioned and they
5 are acoustic louvers and they are sound-deadening
6 louvers. And they are acoustic louvers not only for
7 the pumping station itself but also for the emergency
8 generators, a very large and very effective in this
9 yard.

10 The interior walls are sound treated and
11 sound absorbing, and the building itself is reinforced
12 concrete, which is very substantial in mass and is
13 resistant to sound transmission in and of itself, and
14 we think that that's an important addition.

15 One of the features that the design
16 stresses is to take heavy industry elements out of
17 site. It's been mentioned earlier, but I want to
18 stress the importance of it. This view shows that the
19 substation, the electrical substation that is part of
20 the project is behind a ten foot wall, so that most
21 eye-level approaches, as you walk around the building,
22 you don't see the equipment and it's better in scale
23 with the neighborhood.

24 I'm mentioned that we use the same
25 materials. And we do have one challenge that we tried

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1 to resolve here with the roof system. The building
2 itself from grade to top of building is approximately
3 30 feet. And we find that by using a hip roof we give
4 the illusion that it's not quite so high, because the
5 roof recedes at about the 20 foot level and the top 8
6 to 10 feet is in the hip construction. That is more
7 in keeping with the scale of the surrounding area, and
8 the intent is to be a good neighbor, a good visual
9 neighbor. And we believe that this will be a vast
10 improvement over what's been there for nearly 100
11 years, and we think that this will respect the needs
12 of the residents.

13 And that concludes my comments.

14 CHAIRPERSON GRIFFIS: Excellent, thank you
15 very much and very thorough. We will need to have
16 those renderings into the record because I don't think
17 they are in the file at this point.

18 MR. STILLWELL: Actually, they are in the
19 record in the original submission. If you bear with
20 me a second, they are referenced as Exhibit number 5
21 in the original application package.

22 CHAIRPERSON GRIFFIS: Fabulous, all right,
23 very well done.

24 Good, let's move ahead.

25 MR. STILLWELL: Mr. Chairman, unless there

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1 are questions of this witness, this concludes the key
2 presentation. I will remain -- I'll reserve my
3 closing for after the next phase, but I would want to
4 state since you're going to go into it you've
5 mentioned at the outset that you've had a couple of
6 questions concerning landscaping and discrepancy in
7 the parking calculation.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. STILLWELL: The landscaping, if I can
10 address that first, as addressed by Mr. Johnson and
11 Ms. Moran is reflected in the two Exhibits that we
12 asked to be marked, but it was a direct result of the
13 request made by the Office of Planning I believe that
14 they will address that during their presentation.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. STILLWELL: With regard to the parking
17 calculation, I also have consulted with the Office of
18 Planning, and I believe what happened is in the
19 original application submission we were counting not
20 only the proposed pumping station building but all
21 existing buildings just to be safe.

22 CHAIRPERSON GRIFFIS: Sure.

23 MR. STILLWELL: But we concur with the
24 Office of Planning with regards to the 20,612 square
25 foot pumping station, which would result in, under

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1 normal conditions, 35 parking spaces. And the relief
2 that we're requesting is to reduce that number, via
3 variance request, from 35 to 14.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. STILLWELL: So we are in accordance
6 with the Office of the Planning with regards to that
7 number.

8 CHAIRPERSON GRIFFIS: Good, and just for
9 clarification you're calculating off of the new
10 structure that will be utilized, and that's the 20,000
11 plus square feet. I think that makes sense.

12 Regarding just to address the landscape
13 plan. You've listed the type of tree or landscaping.

14 MR. STILLWELL: Yes.

15 CHAIRPERSON GRIFFIS: And is there anymore
16 -- I guess there wouldn't necessarily need to be
17 anymore definition on that, unless the Board Members
18 had any questions on that.

19 MR. STILLWELL: We had -- our engineer has
20 done a tree count so she can speak to that more detail
21 if you'd like.

22 CHAIRPERSON GRIFFIS: Yes, I don't see any
23 need to unless any of the Board Members need it. It
24 may come up in Planning but we can address it at that
25 point.

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1 I don't have any other questions, does the
2 Board have questions?

3 Ms. Miller?

4 VICE-CHAIRPERSON MILLER: I just have one
5 question. The Office of Planning, on page 3 of their
6 report when they talk about the landscaping.

7 MR. STILLWELL: Yes.

8 VICE-CHAIRPERSON MILLER: It said that you
9 were waiting approval of a storm water management plan
10 before submitting your landscaping plan. So does that
11 mean you have gotten approval of that?

12 CHAIRPERSON GRIFFIS: No, at the time, and
13 I'll let the consultant speak to that in more detail,
14 but at the time of the Office of Planning and Review
15 there were two concepts that were being proposed. But
16 since then one concept is being proposed and will be
17 reviewed by the Department of Health. But that
18 approval is still pending, but the only difference now
19 is we know what that concept application or the
20 concept presentation will be. And that is what has
21 been presented in front of you.

22 CHAIRPERSON GRIFFIS: But for the
23 landscape plan purposes it would have minimal impact,
24 is that correct?

25 MR. STILLWELL: Yes, it would have minimal

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1 impact.

2 CHAIRPERSON GRIFFIS: In terms of where
3 you're planting.

4 MR. STILLWELL: That is correct.

5 CHAIRPERSON GRIFFIS: The other was more
6 of where, perhaps, the underground storage might be.
7 --

8 MR. STILLWELL: It would have some impact,
9 but with regards to the amount of impervious area
10 those figures would remain the same.

11 CHAIRPERSON GRIFFIS: Right.

12 VICE-CHAIRPERSON MILLER: Thank you.

13 CHAIRPERSON GRIFFIS: Okay, anything else?
14 (No response.)

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

17 Let me ask is the ANC represented today,
18 ANC 8A, is any representative from the ANC here?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Very well. Not
21 noting any, let us proceed. We'll move on to the
22 Office of Planning.

23 MS. BROWN-ROBERTS: Good morning, Mr.
24 Chairman and members of the Commission -- members of
25 the Board. I am Maxine Brown-Roberts from the Office

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1 of Planning.

2 This application is for a special
3 exception under Section 207 and also for a variance
4 from the parking requirements. The proposal is for a
5 public utility pumping station, which is -- and it is
6 considered a public facility because the applicant, DC
7 Water, is an independent authority of the District of
8 Columbia.

9 Regarding the need for setbacks,
10 screening, and other safeguards, the new building will
11 be made of materials that are compatible with the
12 architecture of the houses and other buildings within
13 the area, which are mainly bricks, slate, and precast
14 concrete.

15 As part of the redevelopment of the
16 station some of the items on the site will be removed.
17 The applicant has agreed to reduce the amount of
18 impervious surface on the site and replace it with
19 grass and OP is satisfied with the landscape plan that
20 was presented by the applicant this morning.

21 And I just wanted to say that the
22 applicant -- we talk about, have a discussion about
23 the storm water management and there were two options
24 at that time. And I asked them to see if they could
25 bring it down to one option so we could get a really

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1 good concept of what are the landscaping options that
2 would be required. And from what they presented I
3 think this is satisfactory.

4 One of the concerns that we had was that
5 the new building was being located closer to the
6 residential area to the south. And so although they
7 had a higher wall we still wanted to have some trees
8 that would buffer that area. So I think what they
9 presented is satisfactory to us.

10 The replacement fencing will be more
11 consistent with the surrounding residential use and
12 will be more attractive than the chain-linked fence
13 that is there currently.

14 The proposed development meets all the
15 requirements, required setbacks of the R-2 district.
16 In addition, the houses across the alley are
17 approximately 75 feet away and would be buffered by
18 improved fencing and landscaping around the rear
19 property line.

20 Regarding the requested variance from the
21 number of parking spaces, a total of 35 spaces are
22 required and 14 are proposed. The property is unique
23 due to an exceptional situation. The location of the
24 pumping station as its location is based on the
25 geography and topography of the area that makes it

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1 ideal for a pumping station to serve the Anacostia
2 area. And it's an institutional use in a residential
3 area. Due to the automation of the facility
4 operations, there are only a few people who come to
5 the site for maintenance purposes and will not be
6 there for extended periods of time. If the applicant
7 were to meet the parking requirements, it would be
8 difficult to accommodate the 35 parking spaces on the
9 site. It would require an unnecessary number of
10 parking spaces because of the automated operations.
11 There would be more impervious surface on the site.
12 The reduction in the number of parking spaces will
13 allow the facility to become more integrated into the
14 community as it will eliminate large areas of surface
15 parking and allow for more landscaping on the side.
16 The proposed number of parking spaces will be more
17 than sufficient to accommodate workers who come to the
18 site and they will not have to park off-site.

19 Therefore, the reduction in parking on the
20 site will be an asset to the residential neighborhood
21 and will meet the intent of the zoning regulations to
22 provide required parking on-site.

23 The Office of Planning therefore
24 recommends approval of both the special exception and
25 the variance request.

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1 I also wanted to make one correction. In
2 my report I stated that the applicant had met with the
3 ANC twice, and actually it is once.

4 Thank you, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Excellent, thank you
6 very much. And that's an excellent report and
7 analysis.

8 A particular note, the requirements, of
9 course, for the special exception under 207, which is
10 one of the reasons why the applicant is here today,
11 the Board has jurisdiction over screening and
12 setbacks, and setbacks on something particular like
13 this. And I think it's important to note the Office
14 of Planning indicating that it actually complies with
15 those which would be required in the R-2. And I know
16 we haven't had a lot of discussion on those, certainly
17 this screening.

18 So thank you very much, Ms. Brown-Roberts.

19 Is there any other questions from the
20 Board at this time?

21 BOARD MEMBER ETHERLY: Very briefly, Mr.
22 Chair, if I could.

23 Thank you, Ms. Brown-Roberts for your
24 report. There was a reference to the informal, if you
25 will, summary agreement with DPW regarding their use

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1 of the smallest structure on the site. Did you have
2 occasion to assess whether or not there were any shall
3 we say parking issues that arose out of the use of
4 that particular site, in terms of the traffic that
5 comes to that site?

6 MS. BROWN-ROBERTS: No, I didn't, but from
7 when I went out there, there were a few parking spaces
8 that DPW uses. And I think I got from the applicant
9 that that situation was not going to change but I
10 didn't see there was a problem there.

11 BOARD MEMBER ETHERLY: Okay. If I could,
12 Mr. Chair just very briefly while I raised it, through
13 you to either Mr. Johnson or Ms. Moran, could you
14 speak very briefly too. I don't have any major, major
15 concerns about it, but I just wanted to, for the
16 record, get a sense of what the usage of those
17 particular spaces and just confirm that we're talking
18 about this area here.

19 BOARD MEMBER MANN: Currently, DPW has a
20 small street sweeper operation in that, on that site.
21 There is a small building there and an entrance off
22 Minnesota Avenue that they use to service that
23 facility. And we're working with them to see if we --
24 we have some other operational needs, as does DPW, and
25 we would be looking over the long-term to try to make

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1 some arrangements with them to try to clean that
2 portion of the site up as well. We just have not been
3 able to reach an accord at this point because of the
4 lack of availability of that kind of property around
5 the city.

6 BOARD MEMBER ETHERLY: Okay and thank you
7 very much for that. Based on your experience with
8 that arrangement, however, you would -- it would be
9 safe to say that you don't expect there to be any
10 major expansion use of that building that might
11 introduce additional vehicular needs?

12 MR. JOHNSON: Absolutely not.

13 BOARD MEMBER ETHERLY: Excellent, thank
14 you, sir.

15 Thank you, Mr. Chair.

16 CHAIRPERSON GRIFFIS: Good, thank you.

17 Any other questions for the Office of
18 Planning from the Board?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Does the applicant
21 have any cross-examination of the Office of Planning?

22 MR. STILLWELL: No, Mr. Chairman, we
23 concur with the Office of Planning's conclusions and
24 findings.

25 CHAIRPERSON GRIFFIS: Excellent, I don't

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1 have any other government reports that pertain to the
2 application, unless the applicant is aware that I have
3 not taken notice of.

4 MR. STILLWELL: I'm not aware of any.

5 CHAIRPERSON GRIFFIS: Excellent. We can
6 move on then to the ANC if they are present. ANC-8A,
7 attendant to 17440.

8 (No response.)

9 CHAIRPERSON GRIFFIS: Not noting the
10 presence of an ANC member, the Office of Planning did
11 note that you met with the ANC. I am not in receipt
12 of a report from the ANC, unless you are aware of any
13 reports that have been submitted.

14 MR. STILLWELL: No, we have not received
15 one.

16 CHAIRPERSON GRIFFIS: Very well. At this
17 time, let's ask that anyone here present that would
18 like to provide testimony -- persons to provide
19 testimony on 17440, application of DC Water and Sewer
20 Authority to come forward at this time in support of
21 the application or opposition of the application.

22 (No response.)

23 CHAIRPERSON GRIFFIS: Not noting any other
24 persons present, we'll turn it over to you for any
25 closing remarks you might have.

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1 MR. STILLWELL: I'll be brief in my
2 closing remarks.

3 Mr. Chairman, unless there are no further
4 questions of my team, in closing I would just state
5 that we believe that based on the testimony provided
6 and the evidence presented in the application and
7 included in our pre-hearing statement, that the
8 pumping station pursuant to the required findings for
9 special exception approval is not only clearly a
10 public utility under Section 207 of the zoning
11 ordinance, but we believe that based on the testimony
12 presented the pumping station is necessary to support
13 the activities of DCWASA and will not have an adverse
14 affect on the surrounding neighborhood, with regard to
15 buffering, with regard to setback, and also find that
16 there's been no evidence that would indicate that it
17 is not -- that it is incompatible with the master
18 plan, zoning map, or zoning regulations.

19 With regards to -- and we have discussed
20 this previously, the variance request, we believe that
21 the 14 spaces that we are providing are more than
22 adequate to accommodate what will primarily be an
23 automated use. And even with whatever number, the 51
24 number or the 35 parking spaces that are calculated
25 based on the existing square footage of the proposed

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1 pumping station, all that would do is add more
2 impervious surface, which is the opposite direction
3 which this applicant is trying to go.

4 We also believe that the efforts of the
5 applicant to de-institutionalize the use by removing
6 the crane, by removing a number of the structures, by
7 removing one electrical substation, by housing a
8 second one so that it is effectively screened also
9 goes a long way towards making the use very compatible
10 with, or very compatible with the surrounding
11 neighborhood.

12 On top of that, the applicant has
13 committed, pursuant to the two new Exhibits presented
14 to do significant landscaping, particularly along the
15 single family residence on S Street.

16 And we believe that given that and the
17 fact that this is an exceptional situation with
18 regards to the fact that this pumping station really
19 needs to be located at this site that the requirements
20 for the variance, a variance request, has been met.

21 We are in full concurrence with the office
22 of planning and unless there are any specific
23 questions, we believe that we respectfully request a
24 summary order, pursuant to the testimony presented and
25 the fact that there's been no opposition presented in

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1 this case.

2 CHAIRPERSON GRIFFIS: Excellent, thank you
3 very much, Mr. Stillwell.

4 Are there any other follow-up questions
5 from the Board at this time?

6 (No response.)

7 CHAIRPERSON GRIFFIS: If not, I would
8 thank Mr. Johnson, Ms. Moran, and also Mr. Wilburn.
9 I appreciate all the testimony. The application that
10 was preliminarily sent in was very substantial and
11 today I think answered any remaining questions that
12 the Board might have had. Mr. Stillwell's closing
13 remarks I think summarized it very well and I think I
14 am prepared to move forward unless there is any
15 disagreement from Board Members. And I think it might
16 be extrajudicial to do so under a motion.

17 I would move approval of 17440, the DC
18 Water and Sewer Authority, that it'd be, pursuant to
19 the special exception and the variance for the use and
20 also for the parking reduction, I'd ask for a second.

21 MS. MITTEN: Second.

22 CHAIRPERSON GRIFFIS: Thank you,
23 very much, Ms. Miller.

24 I think the witnesses have provided very
25 persuasive testimony for the special exception and also

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1 the Office of Planning's report and analysis; 207 is
2 small but has a huge requirement in two small
3 paragraphs the world is open for our eyes. And our
4 judgment that may be good and may not be, in some
5 cases. But in this case, it seems to have worked out
6 fairly well in terms of the requirements of something
7 like this; of course, in the special exception criteria
8 with the utilities, if the use is deemed compatible,
9 but we have to make sure that it won't actually create
10 some undue negativity to the surrounding area. And I
11 think that there has been a great effort here in terms
12 of the setbacks and in terms of the landscaping. I
13 think it's excellent to be at an era of which we have
14 an agency that's concerned with water, that's not only
15 concerned with water getting it across the city, but on
16 their own site, and how it's dealt with and how not
17 only the visual impact, the storm water management
18 impact, and then the overall functioning and security.
19 It's a new day and age where we have so many different
20 elements that we need to be concerned with. With that,
21 I think the special exception has been adequately and
22 more than adequately addressed and is persuasive for my
23 support of it.

24 In terms of the variance, of course, higher
25 threshold is a level of what we need to look at. And

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1 that is basically on uniqueness and out of that
2 uniqueness what sort of practical difficulty is there
3 in complying fully with the zoning regulations. And of
4 course if you reach that you need to establish that it
5 would not impair the integrity of the zone plan map or
6 go against the public good.

7 I think it's very clear that there are
8 several elements of uniqueness here and special
9 circumstances. The most compelling, of course, is the
10 use, the already established use, the critical nature
11 of the functioning of it, and then our modern day
12 functioning is; that meaning the remoteness of
13 operation and control, obviously going directly to how
14 many people we would need to adequately park on the
15 site is very persuasive and clear, the fact that there
16 will be minimal and certainly not consistent flow or
17 demand of parking on the site. It has not been crossed
18 or given other information that would indicate that we
19 would want to look at more than 14, and I think that as
20 it plays out it seems to be very adequate in terms of
21 the space utilization adequately provided to the
22 parking that is there today.

23 That's my comments and we'll open it up to
24 others for additional comments on the motion.

25 Yes, Ms. Miller?

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1 VICE-CHAIRPERSON MILLER: I just want to
2 comment on the variance. It seems that were we to
3 impose the compliance with the parking requirements it
4 would actually be counter to the zone plan and counter
5 to the interests of making this site compatible with
6 the community. And it would be a practical difficulty
7 in that they would have to reconfigure and delay their
8 project for a purpose which would be counter to the
9 public interest.

10 That's the only addition I would make. I
11 think it's a very strong case here.

12 CHAIRPERSON GRIFFIS: Excellent point and
13 I appreciate that input. Let me step back just a brief
14 moment and make sure that there's a concurrence of the
15 Board and a consensus. I would assume that the
16 conceptual landscape plan is part of the application of
17 course, but it is part of our condition of approval of
18 this that it would be as its built out, the conceptual
19 plan would be also fulfilled.

20 (No response.)

21 CHAIRPERSON GRIFFIS: Okay. If there's no
22 other concerns, any other comments then?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Very well. We do
25 have a motion before us. It has been seconded. I ask

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1 for all those in favor signify by saying aye.

2 (Chorus of ayes.)

3 CHAIRPERSON GRIFFIS: And opposed?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Abstaining?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Very well, Ms.
8 Bailey, if you wouldn't mind recording the vote.

9 MS. BAILEY: Mr. Chairman, the vote is
10 recorded as 5-0-0 to approve the application. Mr.
11 Griffis has made the motion, Mrs. Mitten, second, Mr.
12 Mann, Mrs. Miller, and Mr. Etherly are in support of
13 the motion.

14 CHAIRPERSON GRIFFIS: Excellent. And we
15 also have a request for a summary order on this and let
16 me hear any objections from the Board in issuing a
17 summary order.

18 (No response.)

19 CHAIRPERSON GRIFFIS: Not noting any
20 objections from the Board Members, we can waive our
21 rules and regulations and issue a summary order on this
22 case.

23 MS. BAILEY: Just to let you know, sir,
24 that the existing and proposed conditions are labeled
25 as Exhibit 29.

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1 CHAIRPERSON GRIFFIS: Excellent.

2 MS. BAILEY: And the document entitled
3 planning improvements of the water system
4 infrastructure located east of the Anacostia River in
5 Washington, D.C. is Exhibit Number 30.

6 CHAIRPERSON GRIFFIS: Excellent. Thank you
7 very much, Ms. Bailey.

8 Mr. Stillwell, I appreciate it. Excellent
9 presentation today. Is there any other questions of
10 procedure?

11 MR. STILLWELL: No, Mr. Chairman, thank you
12 very much.

13 CHAIRPERSON GRIFFIS: Very well, thank you
14 all very much. I appreciate you being here.

15 MR. STILLWELL: Thank you, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: With that we'll give
17 them a moment to get their boards together.

18 But in the meantime, Ms. Bailey, if you
19 wouldn't mind calling the next case for the Board's
20 consideration.

21 MS. BAILEY: Mr. Chairman, I will be
22 calling the case as its advertised, but keeping in mind
23 that there's a request from relief from another
24 section.

25 CHAIRPERSON GRIFFIS: Excellent.

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1 MS. BAILEY: Application Number 17404 of
2 Wilbur Mondie, pursuant to 11 DCMR 3103.2 for a
3 variance from the lot width and lot area requirements
4 under section 401.3 to allow the construction of four
5 plats at premises 410, 412, 414, and 416 Richardson
6 Place, Northwest. The property is zoned R-4.

7 CHAIRPERSON GRIFFIS: Let me just make sure
8 that the court reporter has gotten the information he
9 needed. You're all set, okay.

10 (Whereupon, the above-entitled matter went
11 off the record at 11:02 a.m. and went back on the
12 record at 11:05 a.m.)

13 CHAIRPERSON GRIFFIS: Very well, are we
14 ready?

15 MR. MCCANTS: We are ready.

16 CHAIRPERSON GRIFFIS: Excellent.

17 MR. MCCANTS: Mr. Chairman and members of
18 the Board, my name is Leonard McCants. I'm an
19 attorney. I represent Mr. Wilbur Mondie, who is the
20 applicant in this case.

21 Mr. Mondie is an applicant and he's filed
22 his application pursuant to 11 DCMR, Section 3103.2 for
23 -- well, previously filed for variance relief from the
24 minimal lot and area requirement, but that application
25 was subsequently amended. And now he is seeking

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1 relief, special exception relief, under Section 410, to
2 permit construction of a single building consisting of
3 four single-family dwelling units on a single
4 consolidated lot, inclusive of the following lots:
5 lots 411 -- I mean 811, 12, 13, 14, and 15 at 418
6 Richardson Place, Northwest, Square --

7 CHAIRPERSON GRIFFIS: I'm sorry. Hold on
8 a second. Did you --

9 MR. LA COUR: With respect --

10 CHAIRPERSON GRIFFIS: I was going to say,
11 if you're going to address the Board then you need to
12 be on the record. So you need to be --

13 MR. LA COUR: It's probably important
14 procedurally --

15 CHAIRPERSON GRIFFIS: Here, take your time.
16 Have a seat. You want to have the microphone on.

17 MR. LA COUR: It's probably important
18 procedurally --

19 CHAIRPERSON GRIFFIS: Just touch, touch the
20 mic. There it is.

21 MR. LA COUR: How about that? Is that
22 better?

23 CHAIRPERSON GRIFFIS: Good, now we're
24 ready.

25 MR. LA COUR: I'm not really too familiar

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1 with --

2 CHAIRPERSON GRIFFIS: That's fine.

3 MR. LA COUR: -- your procedural rules, but
4 I think it's important that the Board and for the
5 record that Mr. McCants is sworn in. He was not here
6 in the morning when we had the swearing in process and
7 I think if he's going to give testimony --

8 CHAIRPERSON GRIFFIS: We're going to do two
9 things. First of all, if you can just state your name.

10 MR. LA COUR: Sure, I'm Karl La Cour at
11 1722 Fourth Street.

12 CHAIRPERSON GRIFFIS: And you are the party
13 in opposition of this application.

14 And it is my understand, Mr. McCant that
15 you are the attorney representing --

16 MR. MCCANTS: I'm the attorney; that's
17 correct.

18 CHAIRPERSON GRIFFIS: You wouldn't be sworn
19 in then.

20 MR. MCCANTS: That's correct.

21 CHAIRPERSON GRIFFIS: Okay. He's not going
22 to be providing any testimony.

23 MR. LA COUR: Okay, great.

24 CHAIRPERSON GRIFFIS: He provides the legal
25 analysis and he is not sworn in.

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1 MR. LA COUR: The other two items is there
2 are two items that I don't know if we, they can be
3 dismissed or dealt with regarding the ANC.
4 Unfortunately, he's at a funeral and I'm authorized to
5 speak on his behalf. I have that paperwork. I think
6 it's been provided to the Board, but I was asked to
7 submit it at the beginning of the hearing. And I don't
8 know if I do that at this time.

9 CHAIRPERSON GRIFFIS: Do we have that in
10 yet? If not, yes, if you wouldn't mind providing it to
11 the applicant. We can get that into the record. What
12 else do you have?

13 MR. LA COUR: And the other item is in
14 respect to the seven day rule. And I don't know if you
15 received the paperwork with respect to that; however,
16 as you know, the ANC meeting did not meet until -- so
17 we wouldn't have met the seven day rule and we ask for
18 a waiver of that seven day rule.

19 CHAIRPERSON GRIFFIS: Indeed and I
20 appreciate you bringing that to our attention.

21 MR. LA COUR: Right.

22 CHAIRPERSON GRIFFIS: We are aware of that.
23 We often times take that up in the chronology when we
24 call opposition.

25 MR. LA COUR: Okay. I didn't know when

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1 that was.

2 CHAIRPERSON GRIFFIS: That's fine.

3 MR. LA COUR: And I didn't want to lose the
4 opportunity to say.

5 CHAIRPERSON GRIFFIS: Yes, we won't lose
6 opportunities here.

7 MR. LA COUR: The copies I have were to be
8 presented to Mr. Moy. That's what I was given.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. LA COUR: Is it okay to approach Mr.
11 Moy?

12 CHAIRPERSON GRIFFIS: Absolutely.

13 MR. LA COUR: Thank you. I'm sorry to
14 interrupt Mr. McCants.

15 MR. MCCANTS: Mr. Chairman, as I understand
16 it, you're waiving the rule with respect to the ANC
17 filing its report on time?

18 CHAIRPERSON GRIFFIS: That's correct. I'll
19 take comments from the Board if they have any concern
20 on that.

21 Board Members, comments on waiving our
22 rules and regulations and accepting the ANC report?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Noting there's no
25 opposition the Board would accept that in, so that will

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1 be part of the record, of course, and then it will be
2 presented.

3 MR. MCCANTS: All right. I would just like
4 to object for the record that we have not seen the
5 report. We don't have any evidence of the report.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. MCCANTS: So it's a total surprise as
8 to the ANC report, so we are at a disadvantage in that
9 respect.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. MCCANTS: But I understand the court's
12 ruling.

13 CHAIRPERSON GRIFFIS: No, I appreciate your
14 position on that, of course, in having the ANC member
15 not here today; however, it is presented for your
16 review today and we will, if needed, allot for more
17 time or submission as that is required to address the
18 ANC report.

19 Okay. Then we were back at the revision of
20 the relief being requested.

21 MR. MCCANTS: Yes, sir. That's correct.

22 CHAIRPERSON GRIFFIS: And, as you've
23 indicated, you requested special exception from 410.

24 MR. MCCANTS: That's correct.

25 CHAIRPERSON GRIFFIS: Let me ask, first of

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1 all, the Board is very familiar with it, is it as a
2 single lot to be viewed as separate buildings as one
3 building for purposes of the regulations.

4 Let me ask, is this a single lot?

5 MR. MCCANTS: No, it's not a single lot.
6 It's under one ownership but there are four different
7 lots.

8 CHAIRPERSON GRIFFIS: And your legal
9 opinion is that 410 would be --

10 MR. MCCANTS: Applicable?

11 CHAIRPERSON GRIFFIS: Applicable to address
12 the situation where you actually have multiple lots?

13 MR. MCCANTS: Yes, sir. I don't believe
14 that the regulation prohibits that.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. MCCANTS: And I believe the regulation
17 does not in any way prohibit that nor does it speak to
18 that one way or another. But since these lots are all
19 owned by the same person and he intends to consolidate
20 them under one building, I don't think it's a problem
21 with the regulation with respect to that.

22 MS. MITTEN: I think the issue is still
23 outstanding, but can I just get you to repeat one more
24 time which lots are included in the application,
25 because documents -- you just mentioned four lots, but

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1 I think you said five -- I think you kicked off five
2 lots. I just want to be sure that I understand the
3 subject.

4 MR. MCCANTS: I'm sorry. There are five.
5 They are lots 811, 812, 813, 814, and 815.

6 MS. MITTEN: Okay. The issue still remains
7 that the Chair brought up.

8 CHAIRPERSON GRIFFIS: 811, I didn't have
9 that noted.

10 Okay. I think it's important to take a
11 quick moment to look at 410 just for clarification.

12 Noting special exceptions, the title 410 of
13 course is for groups of residential buildings in R-5
14 and R-4.

15 Okay. Let's move ahead then with that, in
16 terms of 410. We may have additional information or
17 questions as we get into the testimony today.

18 MR. MCCANTS: All right then.

19 CHAIRPERSON GRIFFIS: I noted a couple of
20 things as we were reading and I think the other Board
21 Members have a couple of preliminary questions on it.

22 The other aspect, and I think it came up
23 either from the party in opposition or one of the
24 submissions from the ANC of ownership. And you've
25 indicated that in fact these are all under single

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1 ownership?

2 MR. MCCANTS: That's correct.

3 CHAIRPERSON GRIFFIS: And the applicant is
4 the owner of all of these?

5 MR. MCCANTS: That's correct.

6 CHAIRPERSON GRIFFIS: 811, 812, 13, 14, and
7 815? One other question from Board Members, is there
8 additional relief required.

9 Ms. Mitten, I don't know if you want to
10 address that?

11 MS. MITTEN: The issue that the Office of
12 Planning had noted that I think is relevant is that
13 when you consider this a single structure then it
14 becomes sort of impossible to consider it individual
15 road dwellings and invoke the lot occupancy limitation
16 for a road dwelling at 40 percent, or at 60 percent,
17 I'm sorry, where as the Office of Planning's view and
18 I'm open to be persuaded otherwise, but based on their
19 arguments, that this would come under Aall other
20 structures@, which is at 40 percent, sort of like you
21 can't have it both ways. So what's your response to
22 that?

23 MR. MCCANTS: Well, my response to that is
24 that this clearly does come under 410. It is one
25 structure. The whole purpose of 410, obviously as you

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1 know, is to allow the builder or developer to build
2 multiple properties under one structure as long as
3 certain thing are done; that they're built
4 simultaneously, that they have front entrances, and so
5 on and so forth. Both items are set forth in the
6 regulations.

7 In terms of whether these comply with 410,
8 I think it's quite clear that they do. The Office of
9 Planning's position seems to be that well, it comes
10 under the regulation which states and say **A**all other
11 structures~~@~~. That is not my interpretation of the
12 regulation and I think others who have looked at this
13 also have concluded that that's not a part of it.

14 What is relevant is that 60 percent lot
15 occupancy, which shows that it's road dwellings, plats,
16 church, or public school. In this case we're talking
17 about plats.

18 Now, how do they become plats? They become
19 plats once it's built we come back to the Board and we
20 say Board please subdivide these into four different
21 properties. And that's a special exception and it can
22 be done with minimal involvement of the Board and
23 minimal requirement, as long as certain things are met.
24 And I just have a copy which shows that. Under 410.6,
25 we come back after we've been approved to ask for a

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1 subdivision of the property, and no subdivision of the
2 property shall be authorized until the Board has
3 determined that the following requirements are met:
4 there shall be adequate free access to the street from
5 each separate dwelling; in this case, we conform with
6 that and that's the way we're going to build it, group
7 of dwellings or building resulting from the
8 subdivision; adequate access for fire protection and
9 other purposes will be provided by easement, alley, or
10 street, and obviously that will be the case because
11 we're building on a street and be fronting on a street,
12 on a public street that's already there. It's no
13 different from any other property on that street.
14 There shall be adequate yard, court light, for each
15 dwelling, group of dwelling, or group of buildings
16 resulting from the subdivision. And obviously that
17 will be provided as well. These will be real houses or
18 plats. The idea is that it will be no different from
19 any of the other buildings on that street.

20 MS. MITTEN: Here's my issue with it, which
21 is that you are selectively drawing on provisions of
22 the ordinance. So for purposes of the flexibility
23 that's afforded by 410, which is allowing you to
24 consider these structures as a single building for
25 zoning purposes there's flexibility built into that.

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1 That's why you amended your application. You found out
2 that you don't have to apply for all these individual
3 lot variances; so there's flexibility built into it.
4 But one of the trade-offs for that is you're no longer
5 a road dwelling, a plat, or so forth. But then you're
6 saying but when we come back then we will be a series
7 of road dwellings. Well, if you want to look at it
8 that way, then those series of road dwellings won't
9 have lots that conform to the minimum lot width and the
10 minimum lot size. So what I'm trying to say is there
11 needs to be a consistent interpretation when you're
12 invoking 410.

13 So, this structure that you -- or this
14 building that we will consider under 410 contains a
15 series of road dwellings or plats, which means that it
16 is itself that building, not a road dwelling or plat.
17 So it's an Aother structure@. That's my view.

18 CHAIRPERSON GRIFFIS: And there's a whole
19 other aspect to that, and I tend to agree with where
20 you're going with that. But it seems that we're
21 missing a step too. And I don't think it's even the
22 intent. I think it's the direct reading of 410 that
23 you're assuming that it's a single lot and then all
24 these structures are going in there and how they're
25 dealt with will be dealt with in 410. And then the

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1 next step is, and I think we can authorize in one
2 special exception, it's not two steps, the next step is
3 a subdivision. But we've stepped over that without any
4 sort of --

5 MS. MITTEN: True.

6 MR. SHER: -- dealing. And I think that's
7 where 410 in my reading and my experience in other
8 cases have been that 410, the intent and the direct
9 letter of it is to give some flexibility, as Ms. Mitten
10 has said, if you have a larger lot and you want to
11 create something that one, is in character with the
12 rest of the area, which may be on the fringe of an R-4,
13 or in an R-4 and R-5 and do numerous buildings. The
14 regulations allow us to look at it as single structure
15 for our purposes. But this seems to be stepping,
16 dancing over, and as Ms. Mitten adequately said, I
17 think selectively utilizing aspects that I'm not sure
18 it's all clear in my head how or whether that's
19 appropriate at this point.

20 Ms. Miller?

21 VICE-CHAIRPERSON MILLER: Just following up
22 on what you're saying, when I'm looking at 410, and we
23 have to determine whether or not it complies, the
24 application complies with 410, I see lot only referred
25 to in the singular, such as in 410.8 and 410.9. I

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1 don't see anywhere, unless I'm missing something, where
2 this provision applies to several lots under one
3 ownership. And so my question is, do you have any
4 authority for that or do you think it's a reasonable
5 interpretation for some reason?

6 MR. MCCANTS: In terms of what -- I'm
7 sorry, I didn't get the question.

8 VICE-CHAIRPERSON MILLER: I think the
9 question is whether 410 can apply to property that's
10 consisting of more than one lot.

11 MR. MCCANTS: I think it does apply because
12 it's all in one ownership. The building --

13 VICE-CHAIRPERSON MILLER: Is there any
14 authority for that in here where it says it's all under
15 one ownership.

16 MR. MCCANTS: No, but putting it another
17 way there's no prohibition to it.

18 VICE-CHAIRPERSON MILLER: I guess --

19 MR. MCCANTS: And the --

20 VICE-CHAIRPERSON MILLER: -- do the
21 regulations read in terms of lot? I mean I don't see
22 under 410 anywhere where it says lots in the plural.

23 MR. MCCANTS: It doesn't even speak to
24 lots. And I don't think -- the regulation that I read
25 says in an R-5 that approved by the Board of Zoning

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1 Adjustment as a special exception under 3104, a group
2 of one family dwellings, plats, or apartment house, or
3 combination of these buildings with division walls
4 erected from the ground up, from the lowest floor up,
5 may be erected and deemed a single building for the
6 purpose of this title.

7 VICE-CHAIRPERSON MILLER: But if you go
8 further and look through the provisions; for instance,
9 410.8 and 410.9 reference lot. It doesn't say anything
10 about more than one lot.

11 MR. MONDIE: If I may just comment. My
12 name is Wilbur Mondie, for the record, and I have
13 walked through a lot at the zoning offices,
14 particularly with Ms. Faye and here in this building.
15 And there's never been an objection between moving the
16 building lots between 12 feet and 14 feet, or closer as
17 needed and is required. And with single ownership,
18 we're taking that a step further and moving them to the
19 extremities so as to create this one lot. And there's
20 never been a problem and I was very poignant in asking
21 Ms. Faye, I guess you all know her, could we do this --
22 as far as there is a problem about since I own all five
23 lots to move them as needed for property line purposes.
24 And there was categorically no exception, no problem
25 with that.

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1 CHAIRPERSON GRIFFIS: Well, I think
2 generally I would tend to agree but are you creating
3 one lot?

4 MR. MONDIE: Yes, just for this purpose so
5 that we can build, you know, apply 410. Instead of
6 moving them from 12 feet to 14 feet or 11.6, we're
7 moving it to the extreme east, west, north, and south
8 could get. That's one lot.

9 CHAIRPERSON GRIFFIS: And how are you doing
10 this. I mean where are you in the process?

11 MR. MONDIE: Where are we in the process?
12 By, as you say ownership, now that we have the one and
13 the two to move those lot lines --

14 CHAIRPERSON GRIFFIS: Have you pulled the
15 plat and submitted for the subdivision into a single
16 record lot?

17 MR. MCCANTS: No, that hasn't been done yet
18 and it won't be done until we get the Board's approval
19 because that's one of the things. I mean because
20 that's one of the things -- I mean if you did that
21 before it gets the Board's approval and if the Board
22 disapprovals, then he has one gigantic lot and wouldn't
23 be able to build.

24 CHAIRPERSON GRIFFIS: That's right.

25 MR. MCCANTS: So that's the problem. So

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1 that's why the first step was to get your approval.
2 Then the second step was to go back to the subdivision
3 office to get them to consolidate them as one lot.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. MITTEN: I think the bigger point is
6 the one that the Chair was getting at though, which is
7 that we should decide what the proper interpretation
8 is. But for the purpose of the presentation to the
9 Board, it is a single lot. It is a single entity. And
10 I think what the Chair was getting at is that if you
11 have that single entity already subdivided into
12 individual lots, then doesn't that sort of -- does that
13 impair the Board's ability to invoke the requirements
14 of 410.6, which is -- we may not -- the fact that
15 there's already an existing subdivision that may not be
16 the subdivision that we would approve if we had a blank
17 slate and it were a single lot. So I think we have to
18 assume we have the blank slate and the fact that
19 there's an existing subdivision of lots is of no
20 concern of ours.

21 CHAIRPERSON GRIFFIS: Right. Yeah, it's an
22 interesting -- it's kind of -- I think we can move on.
23 Actually, I'd like to hear the position of the party in
24 opposition and the ANC parties also with this to see if
25 they have any additional comment, or position, or

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1 clarification for the Board.

2 MS. MONROE: Mr. Chairman, can I comment a
3 second on this.

4 CHAIRPERSON GRIFFIS: Yes.

5 MS. MONROE: Because I just want to mention
6 because it might help to put things a little bit in
7 perspective, but traditionally I think 410 is seen as
8 an exception to 3202.3, because 3202.3 is the summation
9 set and that says every building has to have a separate
10 lot. And in this case, what 410 is trying to do is say
11 if you have one large lot, not several multiple lots,
12 but one large lot, each one of these individual row
13 buildings doesn't need to have its own lot. It can be
14 considered one building on one lot. Which is why I
15 think it might not be clear in 410, but I think what
16 410 is after is that you have one lot, not individual
17 tax lots or individual whatever, just one lot and one
18 ownership. And that's what I think kind of a
19 fundamental part of 410, you need to have one lot to
20 start with because it's an exception to 3202.3.

21 CHAIRPERSON GRIFFIS: Right.

22 MS. MONROE: I don't know if that helps.

23 CHAIRPERSON GRIFFIS: Yes, I absolutely
24 agree. And then you wonder when 2516 kicks in. What
25 is the exception to building lot control.

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1 MS. MONROE: Because this only applies --
2 410 only applies in R-4 and R-5, or questionably; 2516
3 and 2517, one I think is commercial districts and one
4 is residential, but 410 these are kind of separated out
5 even more.

6 CHAIRPERSON GRIFFIS: Right.

7 MS. MONROE: And those other ones are more
8 general special exceptions.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. MONROE: I think that's the way it
11 works.

12 MS. MITTEN: Well, and 2516 relates to
13 properties that don't have street frontage too. So
14 that's one of the requirements of 410.

15 MS. MONROE: Right that was for lots
16 originally.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. MCCANTS: Mr. Chairman, I believe --
19 do you have any further questions on that?

20 CHAIRPERSON GRIFFIS: I don't think so at
21 this time.

22 But does the party in opposition have a
23 position on this?

24 MR. LA COUR: May I approach?

25 CHAIRPERSON GRIFFIS: Yes. And is the ANC

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1 present, ANC representative for 5-C?

2 MR. LA COUR: No, Mr. Berry is at a
3 funeral. He's going to try to make it here but he's
4 just running very late so he asked me to appear for
5 him.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MR. LA COUR: I guess the first thing that
8 I'd like with respect to Mr. McCants about not being
9 able to respond to the report that we're requesting to
10 waive, as he may recall --

11 CHAIRPERSON GRIFFIS: Actually, I'm just
12 asking if you had a position on this particular,
13 specific --

14 MR. LA COUR: Yes, our understanding and
15 our position has always been is that we don't think
16 that you can combine lots that have already been
17 subdivided pre-57 and get a 410 exception to it. We
18 always assumed that it had to be a single lot and that
19 if you're going to do a single lot it's going to be
20 another structure here because they're not going to
21 meet the width and they're not going to meet the
22 minimum size requirements. So it's a backdoor way to
23 cleverly try to make apartment buildings where in an R-
24 4 where it should be single family homes. And we think
25 that's what was going on here.

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1 CHAIRPERSON GRIFFIS: Okay. I appreciate
2 that. Thank you.

3 MR. MCCANTS: Mr. Chairman, I just want to
4 make one thing for the record clear.

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. MCCANTS: These are not going to be
7 apartments. These are single-family homes. These are
8 town homes. And the only difference between building
9 them individually and building them the way we're
10 building them is 410 allows us to do that, building
11 them simultaneously --

12 CHAIRPERSON GRIFFIS: No, we're clear on
13 why you're here.

14 MR. MCCANTS: You know, so it's not an
15 apartment. So I just want the record to be clear.

16 CHAIRPERSON GRIFFIS: I understand.

17 MR. MCCANTS: No apartments.

18 CHAIRPERSON GRIFFIS: Understood. 410 is
19 a little precarious in the utilization of this and I
20 think you understand what we're investigating here.

21 MR. MCCANTS: Yes, sir.

22 CHAIRPERSON GRIFFIS: I don't think the
23 Board has -- I know the Board has not taken a position
24 on this but obviously is gaining the advice and wisdom
25 of all those that have looked at this, because in the

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1 flip side and in your comments these are townhouses or
2 plats, and in that case then they would have to come in
3 compliance with different dimensional requirements in
4 the regulations.

5 Okay. That being said I don't think
6 there's any position of definitive nature at this
7 point. I think we ought to proceed, hear the facts of
8 the case, and then the Board can in its deliberation
9 and time appropriate make a definitive stance.

10 Ms. Mitten?

11 MS. MITTEN: I would just like to remind
12 you that there was the issue that was raised by the
13 Office of Planning that I think we do have to decide
14 because it speaks to the relief that's being requested
15 and the applicant didn't advertise for variance from
16 the lot occupancy to the extent that we agree with the
17 Office of Planning's interpretation.

18 CHAIRPERSON GRIFFIS: Right, and as I
19 understand the Office of Planning's position on that,
20 and I think it's important to address it now if we can,
21 the point is in the R-4 district road dwellings and
22 plats are allowed at 60 percent lot occupancy. There
23 are other structures, specifically enumerated that, or
24 rather a conversion into an apartment building, which
25 would be an existing, has no lot occupancy prescribed,

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1 and then those of other categorization would be
2 required to comply with 40 percent lot occupancy, if I
3 have my percentages correct.

4 The question then is, is this Aother@ or
5 is this a townhouse flat. And I guess the difficulty
6 in understanding the aspect is in one sense you're
7 asking us to look at it as a single building and then
8 in the next, as Ms. Mitten says, in the next iteration
9 we look at it individually. How do we reconcile that,
10 in terms of the regulations.

11 MR. MCCANTS: Well, I think you look at it
12 as one building pursuant to 410, which does not have
13 these requirements. I mean that's why 410 was there.
14 It's not, it's not for the purpose of looking at it as
15 individual buildings but to look at it as one
16 structure. And even if we looked at it as one
17 structure, this property will occupy 59.7 percent of
18 the lot, so it will be in compliance in accordance with
19 the regulation, as we deem it to be a road dwelling or
20 flat. And I think that's what we are here about and
21 that's what we are saying and that's what our testimony
22 will be, that it is in fact one building occupying 59.7
23 percent of the lot.

24 CHAIRPERSON GRIFFIS: Okay. If I
25 understand you correctly, you're reading 410.1 which is

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1 talking about a group of types of structures. And
2 you're saying this is a group of road dwellings or
3 flats?

4 MR. MCCANTS: That's correct, in one
5 structure being built simultaneously.

6 CHAIRPERSON GRIFFIS: Right and 410 look at
7 that as one structure.

8 MS. MITTEN: I mean I understand -- I think
9 I understand the differences between -- I mean this is
10 clearly just an interpretation question. My
11 interpretation would be consistent with what the Office
12 of Planning had suggested because I think that you
13 can't -- if you're going to invoke 410 then it's a
14 building that is comprised of a group of individual
15 buildings. And that group cannot be anything but
16 another structure under the lot occupancy rules because
17 it's not a single road dwelling, flat, and so on. So
18 you either invoke 410 or you don't. That's kind of my
19 deal.

20 CHAIRPERSON GRIFFIS: Others?

21 (No response.)

22 CHAIRPERSON GRIFFIS: Let's hear from the
23 Office of Planning and since it is their analysis, if
24 they have anything they want to contribute in that?

25 MS. THOMAS: I'm Karen Thomas with the

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1 Office of Planning. If it's -- for this situation of
2 all other structures is it one -- if you don't look at
3 it as Aall other structure@, what is it? Is it a big
4 giant row house? Is it a big giant plat? What exactly
5 is it? There are four regulations that contain road
6 dwelling plats, if you have churches. Everything else
7 is lumped into all other structures. When the zoning
8 regulations were being contemplated prior to 1958,
9 everything that didn't conform to a road dwelling or
10 plat was lumped into the category of Aall other
11 structure@ and put in allowed occupancy of 40 percent
12 because it probably/possibly didn't want it to expand
13 because already it would've been a non-conforming use
14 or a non-conforming structure within the R-4 zone. So
15 you couldn't have -- it sort of tampers that expansion
16 of these Aall other structures@ by putting in a 40
17 percent. So this, we believe, is an Aall other
18 structure@ because it doesn't comply with either a row
19 house or a plat. What is it? Is it a big giant row
20 house?

21 MR. MCCANTS: Mr. Chairman, it's one
22 building that's being built that's going to have four
23 different townhouses. Under 410 -- that's why 410 was
24 there so as to allow you to do that without going
25 through the very imagination that one would have to go

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1 through and then an individual to build the property on
2 an individual lot. That's why they have it.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MCCANTS: And actually in the preamble
5 to the Zoning Commission Order 19 of November 17, 1970
6 when this was created it says the proposed text
7 amendment is to provide for improved site planning and
8 mix of housing types commensurate with that of
9 community facilities and encourage ownership in the R-4
10 and 5 districts.

11 MS. THOMAS: Can I just add one more thing.
12 Also, we looked to the definition of what exactly is an
13 apartment. One building of various units, more than
14 three units. You're having four units. The R-4 zone
15 regulation does not account for having apartments in
16 the R-4 district. So if you're erecting a new
17 structure from the ground up, this is not even a
18 conversion, you are in fact de facto erecting an
19 apartment building. Three units all together, three or
20 four units all together in one building where it looks
21 like a row house it is an apartment building.

22 MR. MCCANTS: Mr. Chairman --

23 CHAIRPERSON GRIFFIS: Yes, I understand the
24 difficulty because 410 is asking us to look at it as
25 one structure. But in terms of program, in terms of

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1 utilization, it is being proposed as not being an
2 apartment building. I guess it doesn't seem to be
3 clear on either -- I don't think the regulation is
4 unclear, I think the facts and specifics in this case
5 make it more difficult to easily decide it should be
6 distinctly in one and not the other, based on the fact
7 that we have numerous lots but we're being asked to
8 look at it as a single lot. I don't have difficulty in
9 getting into a building. I'm not so sure I'm persuaded
10 that it should be utilized in all the requirements as
11 an apartment building in an R-4, only because 410 seems
12 to intend us to look at it and then intends us to look
13 at it as to what the specifics are required in that
14 section. But it's just not clear that we should be
15 invoking only 410 in my mind.

16 Others, quick questions?

17 VICE-CHAIRPERSON MILLER: No, I just want
18 to comment. I think I agree with the Office of
19 Planning and Ms. Mitten. I don't see how the 60
20 percent can apply to this situation because it refers
21 to row dwelling, like one row dwelling, and this is
22 four row dwellings and we can't divide them up and see
23 if each one is 60 percent because then that takes away
24 from the whole 410 concept. So it looks to me if it's
25 410, it's not a row dwelling and you would have to

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1 apply the 40 percent.

2 MS. MITTEN: I think, you know, just in you
3 articulating it that way it just kind of gelled even
4 more in my mind, which is about the selectivity, which
5 is if you're going to call it a row dwelling then row
6 dwellings require a certain lot width and all of that.
7 So they're not individuals because it's a selective
8 interpretation. You can't pluck something you like out
9 of lot occupancy and ignore something you don't like
10 out of rear yard, or lot width, or minimum lot size.

11 MR. MCCANTS: Mr. Chairman, may I just say
12 one thing. If I can ask Board Members to look at 410.1
13 in the regulation. It specifically says that in the R-
14 4 district, approved by the Board of Zoning Adjustments
15 as a special exception under 3104, a group of one
16 family dwellings; here we have a group of one family
17 dwellings, all right? Plats or apartment houses or a
18 combination of these buildings, so it could be plats
19 and apartment buildings all at the same time, with a
20 division wall erected from the ground up, same as here,
21 or from the lowest floor up, may be erected and deemed
22 a single building for the purpose of this title,
23 provided the requirements of 410.2 and 410.11 shall be
24 met. That's all the regulation requires. I mean we
25 cannot --

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. MCCANTS: Please don't change the
3 regulations on us. I mean we rely on the regulations.
4 We're complying with the regulations. And we're
5 complying with the regulations to their respect and
6 that's all we've got to go by. No matter what the
7 regulation says it's quite clear, it says that a group
8 of one family dwellings, and that's all we have here.
9 These are townhouses that are grouped together.

10 MS. MITTEN: That's exactly the point. The
11 point is, the point is that 403.2 says that the 60
12 percent maximum percentage of lot occupancy applies to
13 a row dwelling, not a group of row dwellings. When you
14 go into 410, you are saying we want to be considered a
15 group of row dwellings. And the ordinance is clear
16 that 60 percent lot occupancy applies to a row
17 dwelling.

18 MR. MCCANTS: Now, we are talking about a
19 group of one family dwellings, which the regulation
20 says right here. That's what we are.

21 MS. MITTEN: Mr. Chairman, I think the
22 issue is real clear. I don't know that there's a whole
23 lot more to say. We're just debating back and forth
24 the same words.

25 CHAIRPERSON GRIFFIS: Right.

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1 VICE-CHAIRPERSON MILLER: No, I think the
2 attorney raises the question of whether 403 even
3 applies or whether you just have to follow what's
4 written out in 410 period.

5 Is that your point?

6 MR. MCCANTS: That's exactly my point. The
7 only thing we have to do is follow the requirements
8 under 410. And what they say, all buildings in a group
9 of buildings shall be erected simultaneously. So it
10 contemplates that there are more than one building
11 going to be built at the same time.

12 CHAIRPERSON GRIFFIS: Right, I intend to
13 agree with that assertion; however, then I go back to
14 the original assertion that we made that 410 is written
15 for a single lot and multiple dwellings are looked at
16 on a single lot, and therefore combined for our
17 purposes under 410. But we haven't met that threshold
18 and that's why -- believe me, I think we're bright
19 enough because we've been through numerous aspects of
20 this and that's the confusion. It's like we have a
21 little piece, I think Ms. Mitten said it succinctly, we
22 have a little piece of this and a little piece of that
23 but I'm not sure we're 100 percent where we need to be.
24 So it's either we're looking at a lot occupancy for an
25 apartment building in an R-4 under 410, in which case

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1 we're looking at 40 percent lot occupancy, or we need
2 to have some substantiation that there's a single lot,
3 or we need a subdivision that shows that there's, or a
4 variance from the lot width.

5 And I guess I don't really know how to
6 force which way to go in this but that's where I am.

7 MR. MONDIE: If I might offer a comment.
8 Mr. Chairman, something you said at the beginning, what
9 character of the buildings were going to be an
10 essential point. Part of our presentation goes to that
11 because we noted in our rehearsals of getting to that
12 that character was a part and when you mentioned that
13 the light went on and I said, oh, yeah, that was our
14 whole -- we under -- and the way it was presented to me
15 in discussions with zoning is there is a metamorphoses
16 of a sort that Chapter 6 give us that reason and
17 requirement to come back to the Board to see if these
18 three things have been met, and one of which and the
19 most essential is now is it in character with this
20 particular neighborhood. And part of our presentation
21 is driving to try to get that, to address those issues.

22 CHAIRPERSON GRIFFIS: Okay. I think I
23 understand what you're saying. I want a couple
24 clarifications on 410.6. I don't know anything in the
25 regulations that has you come in for one special

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1 exception and hold out for the next step. We don't do
2 a two-step process. I think 410 reads **Atogether@**.
3 And so if you came in for a special exception it would
4 be, and then it would be presented to the Board as part
5 of this single lot it was to be subdivided. We would
6 look at that potential subdivision. That's not a case
7 that we have before us today. And that just -- that
8 actually reinforces my own confusion because if we
9 can't even look at a major section of 410 what are we
10 doing in 410. But I've said all that and I'm not sure
11 we have consensus in that direction.

12 Yes?

13 MR. MCCANTS: Mr. Chairman, I see your
14 point on 410.6, however, we were going to address that
15 today.

16 CHAIRPERSON GRIFFIS: I understand.

17 MR. MCCANTS: Yes, in terms of the
18 subdivision of the property.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. MCCANTS: So that's going to be
21 addressed.

22 CHAIRPERSON GRIFFIS: Okay. The party in
23 opposition has their hand of. And I'll just make note
24 if you want to address the Board you just need to come
25 forward. I mean I'm not going to stop process, but you

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1 are a full participant in this, so if there's
2 additional comments you can be here.

3 MR. LA COUR: Thank you.

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. LA COUR: I have a question. I
6 downloaded from your website a code section. I checked
7 with somebody else who had downloaded it, and under
8 410.1 it specifically says in an R-5 district, I
9 noticed Mr. McCants keeps saying R-4 district, this is
10 -- but it says R-5. I think there is a significant
11 distinction there. If it wanted to say R-4, it
12 would've put R-4 in there.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. LA COUR: I understand that the header
15 says R-5 and R-4, but in that section itself it only
16 says R-5. R-5 is contemplating apartment buildings,
17 which is exactly what our confusion was and our concern
18 all along, and I just wanted to bring that to the
19 Board's attention so that maybe I'm misled, I have the
20 wrong statute, I'm understanding you have the same
21 statute as me.

22 CHAIRPERSON GRIFFIS: Right, I think you've
23 hit a very critical aspect that, in fact, the Board in
24 this case and previous cases has been wrestling with.
25 In fact, we've pulled the entire legislative history,

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1 the writings on this and understanding. And I know our
2 attorneys at OAG are working on this because there are
3 differing understandings of why this is. But for our
4 purposes today, I will hear others if they disagree,
5 410 does cover R-4, based on the fact that the
6 regulations read it in the title. But I think you're
7 absolutely correct, it then specifically identifies R-5
8 all the way through it. So one could logically come up
9 with the question of is R-4 actually even covered in
10 410. But it's been the process of the Board to date
11 and it hasn't been established from our attorneys or
12 any applicants persuasively that it would not cover R-
13 4. But you're absolutely correct that it does raise
14 the confusion factor even higher.

15 MR. LA COUR: My other question is under
16 the General Provisions under 3102.3, it says in any
17 conflict between this chapter 31 and any other
18 provisions of the title, which would be title 11, which
19 is what 410 would fall under, it says the other
20 provisions of this title should govern. In any
21 conflict with this chapter between the general and
22 specific rules, the special rules shall govern. It
23 would seem to me arguably then that even if he got his
24 410 exception he would still have to meet the width and
25 the lot use requirements, or am I miss something?

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1 CHAIRPERSON GRIFFIS: No, I would
2 absolutely disagree with you there because 410 is
3 actually more prescriptive or more specific. It would
4 be required to comply fully with 410 but not go back to
5 the general provisions of the zone district.

6 MR. LA COUR: So what would be the purpose
7 of having an 18 foot rule. How less specific can you
8 get? Can you make it any width you want to then?

9 CHAIRPERSON GRIFFIS: Well, that goes into
10 a very large picture of the regulations, but there are
11 general requirements in the zone district and then
12 there are specific requirements, and then there are
13 exceptions and special exceptions laid out for those
14 perimeters.

15 MR. LA COUR: This has been quite an
16 education process for me, so.

17 CHAIRPERSON GRIFFIS: It is indeed.

18 MR. LA COUR: I appreciate it. One other
19 thing that I wanted to add that was brought to me by
20 one of the other opposition group members is that we
21 fully concur with OP's analysis of this.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. LA COUR: If that's of any help for the
24 record.

25 CHAIRPERSON GRIFFIS: It is indeed.

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1 MS. MITTEN: Can I just --

2 CHAIRPERSON GRIFFIS: Yes.

3 MS. MITTEN: I@m glad Mr. La Cour asked
4 the question because there -- for whatever this is
5 worth and I think it is worth something in terms of
6 guidance to the Board, if you then -- if there is some
7 uncertainty about whether this should apply in R-4,
8 then what was intended in R-5, you know, just by way of
9 lot occupancies since that seems to be an issue. Well,
10 in R-5A, the only distinction that's made among uses
11 that are given 60 percent lot occupancy are church or
12 public school. Road dwellings, plats, they fall into
13 Aall other structures@ in R-5A. In R-5B, all
14 structures have a 60 percent lot occupancy requirement.
15 So I think there may be something there for the Board
16 to use as guidance. I think the choice we need to make
17 is what was the level of intensity intended in R-4
18 versus the R-5 zones. And that may help us sort
19 through this. I don't know.

20 CHAIRPERSON GRIFFIS: Good, I think that
21 does help in terms of analysis and in my position,
22 which perhaps I have not been clear. But the clarity
23 of my position is this: I don't see 410 as being read
24 or the intent of 410 to do away with the general
25 perimeters of the 410 requirement, meaning there is a

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1 density that is controlled with our lot width, minimum
2 lot width, and dimensions and lot occupancy. 410, in
3 my mind, is not to be read of if you have one large
4 site you can actually increase your density. No, it
5 allows you the flexibility of placement of them within
6 a certain reason.

7 So, I guess succinctly I would tend to
8 agree that there would be a lot occupancy perimeter in
9 this specific case that would need to be adhered with.

10 VICE-CHAIRPERSON MILLER: Just to follow up
11 on that because I think I had paraphrased applicant's
12 attorney interpretation and I think he agreed and I
13 don't think it's correct. He was saying that if you
14 just read 410 you don't have to look at the other
15 regulations. And that's not correct because you don't
16 just disregard lot occupancy you have to figure out
17 which one applies and that's in 403. And there's
18 nothing in 410 that specifically addresses which one
19 should apply. So we're left then to interpret what
20 kind of building this is and apply the right lot
21 occupancy.

22 CHAIRPERSON GRIFFIS: And where do you see
23 410 directing you to comply with lot occupancy?

24 VICE-CHAIRPERSON MILLER: You don't ignore
25 a regulation just because it's not addressed in another

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1 one. For instance, 403.2 is pretty strong. It says no
2 structure including its accessory building should
3 occupy its lot in excess of the percentage of lot
4 occupancy set forth in the following tables.

5 CHAIRPERSON GRIFFIS: Good, I think that's
6 an excellent point; 410 is a special exception that
7 does not relieve you of lot occupancy and that's
8 exactly where we are is then therefore, what is it that
9 has to be complied with and then obviously we look at
10 where we are. Is this a larger structure than a one-
11 family dwelling, group of one-family dwellings, is this
12 too something that would be designated in the R-4 as
13 Aall other@.

14 MR. MONDIE: And if I may, Mr. Chairman,
15 the last document as my attorney was explaining to me
16 just yesterday as we were rehearsing, our presentation
17 is somewhat geared to bring in other parts of the code
18 of Zoning Regulations to address that. So I think if
19 we went through it would maybe be a lot clear.

20 CHAIRPERSON GRIFFIS: Okay. I think we
21 should -- let's move ahead. We will hear the case and
22 the facts in the case and then we will obviously have
23 you address that issue if you find it persuasive and
24 the party in opposition can obviously position them in
25 the same respects, and at the end, obviously, before we

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1 decide this we will be definitive of what relief is
2 required.

3 MS. MITTEN: I just want to be clear. So
4 we're going to proceed with the hearing even though at
5 the conclusion of the hearing or when we deliberate on
6 the case we may decide that, in fact, they didn't see
7 k all the relief that they're required to and perhaps
8 have to have an additional hearing?

9 CHAIRPERSON GRIFFIS: No, absolutely not,
10 but the substance of it what I'm directing the
11 applicant to do is to address the issue of lot
12 occupancy. If they want to address it in terms of
13 making a variance case that's their prerogative. If
14 they want to address to the fact that they do not have
15 to have that relief, then that's also their case
16 presentation.

17 MS. MITTEN: I guess I think it -- I would
18 think it would be fair for the Board to make a ruling
19 at this time as to what the appropriate interpretation
20 is so it's not for them to continue to argue what the
21 standard is, but for us to tell them what the standard
22 is.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. MITTEN: I mean that's what I would
25 advise. And then, in fact, depending on what we think

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1 if a variance is required we should do what we always
2 do, which is have someone advertise for the proper
3 relief and come back.

4 CHAIRPERSON GRIFFIS: Well this case we
5 wouldn't necessarily need to because they have the
6 variance already advertised. I think we could get away
7 with that.

8 MS. MITTEN: Okay.

9 CHAIRPERSON GRIFFIS: But that's a good
10 point. But let's hear from others on this as to a
11 definitive position of the Board that would like to be
12 stated that we could move ahead with?

13 VICE-CHAIRPERSON MILLER: I guess
14 alternatively I hear them saying that they have a case
15 that might influence this issue and that we ought to
16 hear that. So I guess I see this as an application
17 under 410. We put the applicant on notice of the
18 concerns that we have and we could hear their case.

19 And I guess the same with the variance. If
20 they have the opportunity, if they've advertised, to
21 make an alternative case and we can just hear it and
22 then decide at the end.

23 CHAIRPERSON GRIFFIS: All right, we're
24 going to take five minutes and just address this very
25 quickly and we will be back.

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1 (Whereupon, the above-entitled matter went
2 off the record at 11:56 a.m. and went back on the
3 record at 12:40 p.m.)

4 CHAIRPERSON GRIFFIS: All the great minds
5 on the Board have focused on this and tried to derive
6 something. We have not come up with anything
7 definitive in terms of how 410 or lot occupancy should
8 be utilized or applied for in this application. This
9 has very specific characteristics and unique facts.

10 So, what I am going to instruct you to do
11 is to proceed with the special exception under 410,
12 noting the comments of the Board and the concerns that
13 we have in terms of one, not being a single lot of
14 record, thereby having us look at a single lot of
15 record of individual structures deemed as one
16 structure for the purpose of 410. With that and
17 directly attendant to it, what other relief and
18 requirements would be -- should be addressed? Because
19 410 does not relieve you, it's not a special exception
20 like 223 that relieves you of other aspects in the
21 regulation under one umbrella of a special exception.
22 No, 410 instructs how to look at certain aspects and
23 has those perimeters but doesn't relieve you and
24 there's no address of lot occupancy. And so I will
25 instruct you also to address the variance of lot

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1 occupancy, as you are not meeting the 40 percent if
2 this was look at or definitively decided by the Board
3 as this would fall under the category of all other
4 structures. I think that would expedite our, if I can
5 use that word at 12:30, our proceedings today. And I
6 will open it up to you to give you obviously the
7 opportunity not to proceed today, to reevaluate the
8 application of what I'm saying, or to proceed full
9 speed ahead. We would not need to re-advertise this
10 as it's fairly clear that it was originally advertised
11 for a variance relief, difference specifics but the
12 variance relief was there. So I'll answer any quick
13 questions that you might have.

14 Why don't you pull a seat up around here?
15 I'm just going to take questions just on that piece.
16 If you have --

17 MR. LA COUR: I just had -- is this on?

18 CHAIRPERSON GRIFFIS: There it is, sorry.

19 MR. LA COUR: Just one more quick
20 observation and I know there's counsel in the wisdom of
21 many. However, I looked at section 410 again, the
22 special exception, it says in R-5 and R-4 and our
23 concern is, and maybe I'm not articulating this well
24 enough but I wanted this to be very clear, but our
25 concern is if you allow a single building to go up that

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1 has three or more units, then by definition it becomes
2 an apartment in an R-4 zone. And what you're doing is
3 you're changing the character of an R-4 zone, which is
4 single family homes, into an R-5.

5 CHAIRPERSON GRIFFIS: I'm going to have you
6 do that in your case presentation --

7 MR. LA COUR: Okay.

8 CHAIRPERSON GRIFFIS: And let me just try
9 and assure you, if I can or not, that we are very aware
10 of all the issues attendant to this and probably more
11 so than actually have been addressed here. So the
12 motion will not go unnoticed, anything I doubt will go
13 unnoticed. But again, we need to gather all the
14 information.

15 MR. LA COUR: I appreciate that. I don't
16 want to second guess the Board. I just reread the OP
17 report and I noticed that wasn't mentioned in there and
18 it is a major concern of the opposition group.

19 CHAIRPERSON GRIFFIS: Excellent, and we'll
20 look for that in the case presentation because I think
21 that will probably be of substance.

22 MR. LA COUR: Thank you.

23 CHAIRPERSON GRIFFIS: Okay.

24 And Mr. McCants, you're prepared to go
25 forward today?

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1 MR. MCCANTS: Yes, sir.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MR. MCCANTS: We're prepared to go forward
4 today.

5 CHAIRPERSON GRIFFIS: Then let's move
6 ahead.

7 MR. MCCANTS: At this time, given the
8 amount of time that we've spent so far, I'm going to
9 call Mr. Mondie and ask him a few questions.

10 Mr. Mondie, would you please state for the
11 record your name.

12 MR. MONDIE: My name is Wilbur Mondie.

13 MR. MCCANTS: And what is your address,
14 sir?

15 MR. MONDIE: 1311 Delaware Avenue,
16 Southwest, Washington, D.C.

17 MR. MCCANTS: And what do you do for a
18 living?

19 MR. MONDIE: I am a realty specialist. I
20 work for the Department of Veterans Affairs. I'm over
21 170 medical centers. I do their real estate issues.
22 I do easements, some acquisitions and disposal of real
23 estate.

24 MR. MCCANTS: And you are the applicant in
25 this case?

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1 MR. MONDIE: I am the applicant.

2 MR. MCCANTS: And would you tell the Board,
3 you own I believe four or five lots, lots 11, 12, 13,
4 14, and 15 on Richardson Place, Northwest?

5 MR. MONDIE: That is correct.

6 MR. MCCANTS: All right. Now, you're
7 seeking from the Board relief under 410 of the zoning
8 regulation, is that correct?

9 MR. MONDIE: That is correct.

10 MR. MCCANTS: Now, have you prepared plans
11 in connection with how you propose to develop this lot?

12 MR. MONDIE: Yes, I have.

13 MR. MCCANTS: All right, do you have an
14 Exhibit there that will show that?

15 MR. MONDIE: Yes, I do.

16 MR. MCCANTS: All right, would you show
17 that to the Board, please?

18 MR. MONDIE: Yes.

19 Mr. Chairman --

20 CHAIRPERSON GRIFFIS: You're just going to
21 have make sure you're on a mic.

22 MR. MONDIE: On a mic, okay.

23 Mr. Chairman, members of the Board, what we
24 have here is a presentation of this project. We start
25 with a photograph, and by the way, this is part of the

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1 submission we made earlier.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. MONDIE: If you get to those Exhibits,
4 Exhibit 1 of 3, it shows in particular the houses, the
5 residences that are on Richardson Place. At the top
6 you see the first 1, 2 --

7 VICE-CHAIRPERSON MILLER: You're not being
8 picked up by the court reporter.

9 MR. MONDIE: If you look at the top of
10 Exhibit A-1 of 3, you'll see the first three houses
11 going from west to east, facing north on Richardson
12 Place. At the bottom you would see, taking again that
13 we started at residence number two through six. So
14 there are six residences on the north of Richardson
15 place, four on the south. Of interest, all of these
16 particular units are, if we had to characterize them as
17 being twins, they are ten-tuplets. They are virtually
18 identical. They vary only in the way they are painted
19 basically, and the width. And all of the widths are
20 between 11 and 12 feet.

21 CHAIRPERSON GRIFFIS: So the lot widths are
22 11 and 12 feet?

23 MR. MONDIE: 11 and 12.

24 CHAIRPERSON GRIFFIS: And how tall are
25 they?

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1 MR. MONDIE: They are, as shown here, they
2 are two story.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. MONDIE: What we're proposing is a
5 development that matches the facade of that particular
6 building. That's been a great concern. We worked with
7 the various groups appointed the citizens of the
8 community. They were concerned that as you look out to
9 the right there, Exhibit A-3 of 3, we first came with
10 a building that was a lot more modern, for lack of a
11 better word, it had pitched roofs and a lot features
12 that were out of character with the neighborhood, and
13 we told them we were proposing to change that. And as
14 you look in the drawings we have come to that same
15 character that they have with those ten buildings. And
16 we have repeatedly made the adjustment and we will
17 continue to. We will get it as close to matching
18 exactly; they'll become instead of ten-tuplets, it will
19 be fourteen-tuplets if you will.

20 CHAIRPERSON GRIFFIS: Does that mean you're
21 going to reduce it to two stories?

22 MR. MONDIE: No, we're going to match the
23 facade, and the facing, and the fenestration, et
24 cetera.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. MONDIE: The materials and the --

2 CHAIRPERSON GRIFFIS: The materials and the
3 fenestration?

4 MR. MONDIE: Yes, sir. Yes, sir. Right
5 now we're trying to match what the code permits and
6 that is what it permits as far as the height and number
7 of stories.

8 Exhibit C-1 -- by the way, Exhibit B is
9 showing that we are, we were converting from a variance
10 to this 410 and we have the signature of Attorney
11 McCants there and myself indicating this way. That was
12 Exhibit B.

13 Exhibit C-1 of 3 is showing the new site
14 plan. As you look through you can see these lots,
15 which were, by the way, 12 feet wide as they're
16 currently recorded, plus or minus 12 feet. There are
17 a few inches. If you look to the plat plan from the
18 district, which is Exhibit C-3, they are shown as being
19 plus or minus three feet. And there again, the same --
20 we've had no problem moving, as a matter of fact, the
21 Office Planning has suggested we move the lot line to
22 make it two separate lots. So these lot lines to be
23 moved has not been ever an issue; that we moved ours
24 from 12 feet to get the maximum permitted for these
25 residences since they were, there's a lot of stress to

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1 make them as wide as possible. Twelve feet is what was
2 allowable without going over the boundaries and giving
3 comfortable placement of the buildings on that.

4 CHAIRPERSON GRIFFIS: I don't understand.
5 You've moved the boundary lines? You've subdivided
6 this already?

7 MR. MONDIE: Not subdivided.

8 CHAIRPERSON GRIFFIS: How do you move the
9 boundary line? What's the boundary line? Are you
10 talking about the property line?

11 MR. MONDIE: Yes, the property lines are
12 shown on the plat plan.

13 CHAIRPERSON GRIFFIS: I have that. Those
14 are the originals.

15 MR. MONDIE: Those are the originals.

16 CHAIRPERSON GRIFFIS: So what are you
17 moving?

18 MR. MONDIE: So they have been designed to
19 be 14 feet wide now for the construction purposes. For
20 the new project that we are building --

21 CHAIRPERSON GRIFFIS: For the structures
22 themselves. If you look at Exhibit C-1, they are now
23 14 feet each. We have, and I stress again, we have
24 gone through planning. There was never a question, one
25 of my specific questions to Ms. Faye, who was the head

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1 over there, was can we do this. Can we move this 12
2 feet to 14? Absolutely yes. We've talked to people in
3 this building of zoning, and I believe what Ms. Karen
4 Thomas is suggesting is that instead of having four
5 buildings we should have two-two story structures on
6 two lots.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. MONDIE: Again, we would be moving
9 these property lines to accomplish that.

10 CHAIRPERSON GRIFFIS: But in your
11 discussion, you mentioned several times now down at the
12 DCRA and the Office of Zoning here, is it your
13 testimony that you were told that you could do this as
14 a matter of right?

15 MR. MONDIE: If you are the owner of those
16 properties, yes.

17 CHAIRPERSON GRIFFIS: Then why are you
18 here?

19 MR. MONDIE: Because when they are moved
20 they do not become 18 feet wide to get four units.

21 CHAIRPERSON GRIFFIS: So it's not matter of
22 right? So Ms. Faye told you that you could put a 14
23 foot structure there, correct?

24 MR. MONDIE: Yes.

25 CHAIRPERSON GRIFFIS: But did she say that

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1 --

2 MR. MONDIE: If we go through -- if we had
3 gone through the variance process we would've done
4 that.

5 CHAIRPERSON GRIFFIS: Okay. So she didn't
6 say it was a matter of right, but rather of course you
7 could do that.

8 MR. MONDIE: Yes, yes.

9 CHAIRPERSON GRIFFIS: But you've got to
10 come to the Board to get release to do it?

11 MR. MONDIE: Yes, sir. Yes, sir.

12 CHAIRPERSON GRIFFIS: That's true. I mean
13 you could put the Chrysler Building on this, just as
14 long as you got a height variance from us.

15 MR. MONDIE: Yes, sir.

16 CHAIRPERSON GRIFFIS: Okay, I understand.

17 MR. MONDIE: Sorry, sir.

18 VICE-CHAIRPERSON MILLER: And I just want
19 to ask a follow-up question to make sure I understand.
20 In Exhibit C-1 where they're divided into 14 feet
21 widths, is that just a drawing or have you actually
22 changed the boundaries already?

23 MR. MONDIE: We have not changed the
24 boundaries officially with going through procedure, but
25 as owner of the lots we would theoretically make it one

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1 building as Ms. Thomas is suggesting, we could combine
2 two of these into a 28 foot wide lot and easily meet,
3 but we'd be building less buildings so to speak.

4 VICE-CHAIRPERSON MILLER: Okay. So this is
5 just how you intend to divide it?

6 MR. MONDIE: Yes, yes, indeed, indeed.

7 VICE-CHAIRPERSON MILLER: Okay. Thank you.

8 MR. MONDIE: And that has never been an
9 issue, a question of having to go and officially do it.
10 That's why I was trying to point out there.

11 CHAIRPERSON GRIFFIS: I'm sorry because I
12 want to put this to rest. I cannot believe or it's not
13 my understanding that you could actually go subdivide
14 these into 14 feet. And you said that you would have
15 had to -- the district, DCRA cannot and the Zoning
16 Administrator will not approve a non-conforming lot in
17 a subdivision.

18 MR. MONDIE: Oh, I'm sorry, I mis spoke, it
19 would have to go to variance to build the buildings on
20 that lot.

21 CHAIRPERSON GRIFFIS: Right, okay, so with
22 approval certainly it could be subdivided.

23 MR. MONDIE: Yes, and that's why we are
24 here for approval for the 410 and we're doing the same
25 virtual movement of lot lines to accomplish this.

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1 Exhibit C-2 is the mailing map that was
2 provided by the D.C. Government showing how they were
3 -- where the 200 foot radius was. And if you look at
4 it, the bulls eye is right in the middle and that 200
5 foot radius, there was a lot of questions raised by the
6 community as to they were not notified. I do not see
7 any of those people. Are any people here from the
8 community now, I mean other than the focus group?
9 Because there was a lot of questions and issues. They
10 did not get notified and --

11 CHAIRPERSON GRIFFIS: That's fine. We can
12 move ahead.

13 MR. MONDIE: So we got that squared ahead.
14 I'd love to clear that up every chance I get because
15 some people feel very -- like we're at fault for not
16 notifying them and I'd like to point that out that it's
17 not our responsibility or duty.

18 So this gives a picture of the lot as the
19 project as we contemplate it. We want to build four
20 units, and as I go through I'll be pointing out --

21 MR. MCCANTS: Go ahead, I wanted to ask a
22 few questions so we could kind of move on. What type
23 of --

24 MR. MONDIE: Well, in that case I have a
25 list of questions that was presented by the focus

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1 group, which is Exhibit D. We've gone through A, B, C,
2 and now D.

3 CHAIRPERSON GRIFFIS: You need to get
4 closer to a mic.

5 MR. MONDIE: Sorry about that.

6 CHAIRPERSON GRIFFIS: And we note that
7 actually Exhibit D is the response to questions?

8 MR. MONDIE: yes.

9 CHAIRPERSON GRIFFIS: Do you just want to
10 highlight that for us? I know the Board has looked at
11 it and reviewed.

12 MR. MONDIE: You want me to just highlight
13 it and go through it briefly, is that what you mean?

14 CHAIRPERSON GRIFFIS: Absolutely.

15 MR. MONDIE: Yes, okay.

16 CHAIRPERSON GRIFFIS: I mean we've read it.

17 MR. MONDIE: Okay. What's happening there
18 is there were questions asked that basically wanted
19 certain aspects of this building changed and we met and
20 changed it to their requirements. Most noteworthy was
21 the parking issues. And for that response we made the
22 buildings with a three and a half foot easement area to
23 the rear parking area that allows access not only for
24 the residents who will live here but for fire, and
25 safety, and the like. So they can have ease of aspects

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1 to get and service these buildings.

2 CHAIRPERSON GRIFFIS: Good. Going directly
3 to the parking, which goes to question number three of
4 that, the new layout you just addressed, the three and
5 a half foot access easement, slanted spaces provides
6 easy access, it seems to make some sense, on lot 4, the
7 rear parking space, does that meet the requirement of
8 9 by 19 space?

9 MR. MONDIE: Number 4? The length and the
10 width, yes, yes, sir.

11 CHAIRPERSON GRIFFIS: So on the left side
12 of the sheet there is a clear 19 foot that is
13 consistent that is consistently 9 feet wide?

14 MR. MONDIE: Oh, if you -- from this to 9
15 feet wide? Well, if you're talking at the very base of
16 it I would have to research that.

17 CHAIRPERSON GRIFFIS: Okay, well let's take
18 -- we'll keep the record open for that dimension.

19 MR. MONDIE: Yes, yes, but the width, the
20 length is definitely over 20 feet.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. MONDIE: So the questions they asked we
23 -- especially for changes to be made, by and large we
24 complied with all of them. There was a question, as
25 mentioned earlier, about changing from the modern look

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1 to the traditional look; we've made those changes and
2 we've worked what we think very diligently and given
3 them basically everything they've really asked for in
4 this process. We are -- Exhibit E are some of the
5 people who have signed saying they support this
6 construction, we went through the neighborhood. And
7 one issue --

8 MR. MCCANTS: I just want to ask you one
9 question, Your butting property owner, does he support
10 your application?

11 MR. MONDIE: Yes, he does, a Mr. Jim
12 Norris, as a matter of fact we are purchasing the
13 property from him that adjoins the property.

14 MR. MCCANTS: All right, go ahead.

15 MR. MONDIE: Okay. Next was the quality of
16 construction. One was we are building with
17 manufactured home and it is embraced by the District of
18 Columbia. And we have an example at 1380 Tuckerman
19 Street, Northwest, just a mere four blocks from Walter
20 Reed in a very exclusive neighborhood. And not knowing
21 I would need this for these demonstration purposes but
22 I did take photographs while it was under construction,
23 just kind of a hobby of mine, and we see where the
24 foundation walls were built. These are trucked in from
25 Pennsylvania. They were placed on top of the

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1 foundation. And I might mention in passing the Board,
2 when we were meeting with the opposition party, I found
3 that Mr. La Cour had quite a bit of knowledge about
4 this, which was beneficial because we'll talk about it
5 later, if needed, that this was well received by the
6 citizens group, Mr. La Cour being head of that.

7 CHAIRPERSON GRIFFIS: Well, I'm a little
8 perplexed on why you're showing us this and also I know
9 you have some kind of advertising cut sheets from
10 Deluxe Building Systems.

11 MR. MONDIE: Yes, sir. Only to show that
12 this was a quality construction building that we're
13 placing.

14 CHAIRPERSON GRIFFIS: Okay. These are all
15 detached homes, is that correct?

16 MR. MONDIE: Yes, sir

17 CHAIRPERSON GRIFFIS: And you're building
18 row dwellings?

19 MR. MONDIE: I'm sorry?

20 CHAIRPERSON GRIFFIS: I guess I'm having a
21 difficult time looking. That's a beautiful house,
22 sure, but that's a detached home and you're proposing
23 to do row dwellings, which is a whole different type of
24 structure.

25 MR. MONDIE: And the only way of presenting

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1 these is to say you can get them of all stripes, all
2 shapes, all heights.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MONDIE: In our case, they do build
5 specifically these particular homes. And these are
6 redesigned as needed.

7 CHAIRPERSON GRIFFIS: Well, why wouldn't
8 you give us a picture then of a row dwelling?

9 MR. MONDIE: Actually, I could have but
10 this was most handy right of the Internet.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. MONDIE: And it was kind of way to show
13 you can do a laundry, like a shopping list.

14 CHAIRPERSON GRIFFIS: Sure, sure.

15 MR. MONDIE: If you want a cape cod, if you
16 want a row house.

17 CHAIRPERSON GRIFFIS: And I'm sure these
18 are over at Fairfax; however, let's move ahead.

19 BOARD MEMBER MANN: Okay. So this is a
20 sample of the direction and the quality of construction
21 we're going.

22 MR. MCCANTS: Now, let me just ask you a
23 couple of questions.

24 Are all the buildings in the group of
25 buildings going to be erected simultaneously?

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1 MR. MONDIE: Yes, they are.

2 MR. MCCANTS: All right, and when they're
3 erected simultaneously, will they be attached, those
4 building -- an example of a building that showed in
5 Exhibit, what is that Exhibit number there? The
6 pictures?

7 MR. MONDIE: That's Exhibit F, I believe,
8 yes.

9 MR. MCCANTS: They will be similar
10 buildings that will be built, they will come together
11 as -- with no separate walls or space between the
12 buildings, is that correct?

13 MR. MONDIE: That is correct.

14 MR. MCCANTS: Okay. So it will be in
15 effect four buildings?

16 MR. MONDIE: That is correct, sir.

17 MR. MCCANTS: Will all the front entrances
18 of the group butt the street?

19 MR. MONDIE: Yes, they will. Yes, they
20 will. They will be abutting Richardson Place.

21 MR. MCCANTS: Will there be any rear or
22 service entrance, no rear or service entrance shall
23 abut a street, front yard, or the main floor, do you
24 comply with that?

25 MR. MONDIE: We have complied with that,

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1 and the rear is an alley.

2 MR. MCCANTS: No exterior stairways shall
3 be constructed above the level of the joists of the
4 main flow unless located entirely within the building
5 area?

6 MR. MONDIE: That is correct. We meet
7 that. We conform to that building requirement.

8 MR. MCCANTS: There shall be adequate free
9 access to the street from each separate dwelling?

10 MR. MONDIE: Yes, there is.

11 MR. MCCANTS: Adequate access for fire
12 protection and other purpose shall be provided by
13 easement, alley, or street?

14 MR. MONDIE: That is correct.

15 MR. MCCANTS: Will there be adequate yard,
16 lights, courts, and air for each dwelling?

17 MR. MONDIE: That will be provided. We
18 conform with that.

19 MR. MCCANTS: Will your property, will the
20 height of the building be in conformance with the
21 height of your other buildings in the area?

22 MR. MONDIE: Yes, the height and we have
23 examples of some buildings, other buildings. In this
24 photograph they are virtually 80 feet away, 100 feet
25 away.

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1 MR. MCCANTS: The front entrance of the
2 dwellings shall face the street or abut -- that's on
3 the street on the lot will abut the street and face the
4 street?

5 MR. MONDIE: That's correct, will abut and
6 face Richardson Place.

7 MR. MCCANTS: Will there be any exterior
8 stairways above the level of joist?

9 MR. MONDIE: there will be no exterior
10 stairways above the level of the joist, no.

11 MR. MCCANTS: Will the erection of the
12 proof of building that we propose here adversely affect
13 the present character or future development of the
14 neighborhood?

15 MR. MONDIE: No, we are absolutely
16 committed to making where there exists ten-tuplets, for
17 lack of a better word, fourteen-tuplets. They will be
18 matching and in all form and character.

19 MR. MCCANTS: Will these be apartments?

20 MR. MONDIE: These absolutely will not be
21 apartments. I have reiterated and said that to Mr. La
22 Cour, the opposition group on many occasions, and
23 that's our commitment. And even if the Board wanted to
24 make it a requirement to go with the building when we
25 sell it, as indicated as a concern, we would submit to

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1 that. It's a bit of overkill. I don't think any other
2 developments would make those kind of requirements, but
3 we are so committed we would take that drastic step.

4 MR. MCCANTS: I have no further questions
5 of him at this time.

6 VICE-CHAIRPERSON MILLER: Mr. Mondie?

7 MR. MONDIE: Yes.

8 VICE-CHAIRPERSON MILLER: Here I am.

9 MR. MONDIE: Yes.

10 VICE-CHAIRPERSON MILLER: I just wanted to
11 ask you what you meant by your statement that they
12 won't be apartments. How are you defining apartments
13 or distinguishing them from apartments?

14 MR. MONDIE: We intend to come back to the
15 Board, as indicated in paragraph six, and ask to
16 subdivide these units into single families, right there
17 at the fourteen foot line. And whereupon we hope to
18 sell them fee simple, not as condominiums and with the
19 intent of saying this is now your single family home,
20 you can occupy it.

21 We have designed them as well, some
22 buildings design intentionally --

23 CHAIRPERSON GRIFFIS: Keep your voice up,
24 she can't hear. Keep your voice up.

25 MR. MONDIE: Okay. Some buildings are

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1 designed intentionally with a separate entrance whereas
2 the party can now enter from the front of the building,
3 go downstairs and open a door and come and go
4 separately. The person living in the cellar of this
5 building will have to go through the main entrance door
6 shared by the family of ownership, go to a stairway
7 within and go downstairs. That person, that family
8 occupying or anyone living in the cellar would have to
9 go through the main residence to go downstairs.

10 MS. MITTEN: Do you understand that what
11 you just said is that you intend to build plats, a two
12 family dwelling is a plat.

13 MR. MONDIE: No, this is not a dwelling.
14 When you go downstairs this is you're going to your
15 cellar where you have an additional bedroom for the one
16 family that owns the four floors. We are not making it
17 for separate families within this building.

18 MS. MITTEN: Then why would you have the
19 separate entrance? You lost me.

20 MR. MONDIE: No, no, I said there is no
21 separate entrance from the outside. There is one
22 single entrance into this, into each one of these
23 buildings here.

24 MR. MCCANTS: May I just say, in most
25 District of Columbia, most townhouses have ability

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1 where one can go into the basement from the front of
2 the building. And what he's saying, he's negating that
3 so that won't be an issue.

4 MS. MITTEN: Okay. Then maybe I just have
5 on the cellar plan that we have in the record there
6 shows stairs at the rear and stairs at the front of the
7 cellar that are not part of the interior.

8 You're going to need to get on a mic.

9 MR. MONDIE: Okay. At the rear, at the
10 rear for fire purposes you're required to have an exit.
11 At the front there's no separate -- the stairs you see
12 are the ones you enter and you go upstairs to get to
13 the main entrance for the one residence. The one
14 residence --

15 CHAIRPERSON GRIFFIS: We have all that in
16 front of you so you don't need to -- just point to it
17 and we have the copies in front. So you could probably
18 just have a seat and be on the mic.

19 MR. MONDIE: Okay.

20 CHAIRPERSON GRIFFIS: I think it's be easy
21 enough.

22 MR. MONDIE: Okay. These stairs that you
23 see at the front of the building are the ones that you
24 walk up to get height for the cellar. You are not
25 inside the building with these stairs. That's a --

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1 it's not an entrance to the building.

2 MS. MITTEN: Okay. I guess I wouldn't
3 expect to see that on the cellar plan but maybe that's
4 just me.

5 MR. MONDIE: Yes, so if you go to the first
6 floor, to the first floor plan you'll see that at the
7 entrance there's one, two, three, four, five, six,
8 seven, eight rises to get to where you can enter this
9 particular building.

10 MS. MITTEN: Right.

11 MR. MONDIE: And those eight rises are the
12 one that I guess showing and reflected in the cellar
13 because they are taking up space in the cellar.

14 MS. MITTEN: Okay. And then at the rear?
15 Why is there a requirement to have that -- that's not
16 a fire code requirement to have a walkout cellar?

17 MR. MONDIE: Yes, you don't want people in
18 the cellar to get trapped with one exit-way and can't
19 get out, can't come back up these stairs they can run
20 out the back.

21 MS. MITTEN: Are you representing that
22 that's a fire code requirement?

23 MR. MONDIE: Yes, yes, my architect, Mr.
24 Adebity, who was one of the leading architects at
25 Howard University, now retired, a lot of the

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1 requirements he was pointing out we cannot get around
2 and this was one of them, for the fire exits.

3 MS. MITTEN: Okay. I noticed that there's
4 an awful lot of plumbing in the basement. There
5 appears to be a full bathroom and then a half bath in
6 the basement?

7 MR. MONDIE: Yes.

8 MS. MITTEN: Why do you need so much
9 plumbing in the basement?

10 MR. MONDIE: We want -- this is -- we're
11 making it high end. The person who might occupy that
12 bedroom in the cellar will have complete privacy.

13 MS. MITTEN: Why do they need their own
14 bathroom plus another half bath?

15 MR. MONDIE: For that individual who is
16 watching the game or whatever who's in the wreck room
17 area, that does not now disturb the person who is
18 sleeping in the backroom. And there is serious
19 consideration taken into what you're saying to make
20 this into the hot water, the furnace room. It is
21 interesting that you would mention that because that is
22 one of the areas we are seriously considering putting
23 the furnace area and hot water services, in that half
24 bath.

25 MS. MITTEN: I just have a concern that

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1 you're basically creating a de facto apartment in the
2 basement and that it will become a separate unit. And
3 there are a lot of plats on Capitol Hill that have sort
4 of been grandfathered over time, but when you build it
5 new you have to conform to all of the requirements,
6 including the requirement for parking.

7 MR. MONDIE: Right, well the only thing I
8 can say to address that is we have designed it as a
9 five bedroom house. We feel there is a shortage of
10 such, to have -- to make it exclusive and to give it
11 some of the high end characteristics we are going for,
12 which I have not gone into. A lot of the high tech is
13 to have each bathroom -- each bedroom will have its
14 separate, and we want some additional half baths for
15 guests and visitors.

16 MS. MITTEN: Who do you envision living in
17 this dwelling with five bedrooms, five and a half
18 baths? No, five baths and two half baths?

19 MR. MONDIE: That is correct. We are
20 looking for that family who has a need for extra space.
21 And we definitely do not -- we're not building it as
22 the neighbors are worried about low income. That's why
23 we're putting so many amenities within the property.
24 We have amenities such as everything from being able to
25 see the person who is at the front door, to having

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1 heated toilet seats, a lot of privacy, a lot of none-
2 sharing of restrooms and the like.

3 MS. MITTEN: I guess I just, you know, this
4 is all part of your case, but I find it a little ironic
5 that you're talking about high end and so on, and yet
6 you're putting it into a 14 foot wide house. Part of
7 what's luxury is space. And there is an awful lot
8 being crammed into the amount of space that you're
9 talking about. So I just find that somewhat ironic.

10 MR. MONDIE: Well, I think, personally, as
11 the developer here, I think there's a shortage of that
12 number of bedrooms, which will give this property an
13 attraction.

14 CHAIRPERSON GRIFFIS: Okay. And I think
15 what Ms. Mitten is just trying to get a handle on is
16 just 410.16 and getting into the character or group.
17 Certainly zoning wouldn't prescribe who lives here or
18 how they live, but getting a handle on the density and
19 the size of this and whether that would in fact
20 adversely affect the present character and future
21 development of the neighborhood.

22 Okay, any other questions from the Board?

23 MR. MONDIE: If I might comment, sir.

24 CHAIRPERSON GRIFFIS: Certainly.

25 MR. MONDIE: When and if the Board

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1 determines that this is in fact residential that issue
2 goes away as far as density because then again we have
3 -- we are less than the 60 percent. It is high density
4 when you define them as apartments over the 40 percent.
5 When we go to 60 percent and we are only at 59.7 I
6 believe it was, it is now within the code, the zoning
7 regulations, and is no longer dense. And I can't say
8 often enough that we are willing to make where the next
9 person who purchases this property cannot make it into
10 apartments.

11 CHAIRPERSON GRIFFIS: Good, and I
12 understand that but let me address just briefly
13 because, in my mind, I'm looking at and anticipating
14 the rebuttal case presentation. And you say that
15 although this is, the density isn't impacted because
16 you're complying with, as you said, 60 percent lot
17 occupancy, then I would have to say it's been proposed
18 here that you're not complying with the dimensional
19 requirements of the lots and size, and that would
20 directly impact the number of structures that you have.
21 Because if you had a compliant lot width and lot
22 dimension you would diminish the number of housing.
23 So, just to put it in perspective, but I understand
24 your point.

25 Okay. Anything else then, any other

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1 questions or clarifications?

2 (No response.)

3 Anything further presentation?

4 MR. MCCANTS: Just a couple of questions.
5 In terms of the lot area, what is the required, minimum
6 requirement?

7 MR. MONDIE: The minimum requirement --
8 those numbers I've got to admit I don't carry them in
9 my head.

10 MR. MCCANTS: Mr. Chairman, I believe the
11 minimum lot required is 1,800 square feet. He's
12 providing 1,258 per lot, if one were to look at it this
13 way. So you talked about variance, I'm just trying to
14 put on the record what the variance requirements would
15 be. Two variance would be required, lot area and lot
16 width, if we were to look at it as individual lots and
17 not under the 410 description.

18 CHAIRPERSON GRIFFIS: True, or you could go
19 under lot occupancy. If you came under 410 there's
20 still the question of the Board that you would have to
21 comply with the lot occupancy as it's designated in
22 403, which would allow for 40 percent, not 60.

23 MR. MCCANTS: Well, that's the debate
24 because the 40 percent comes when you call them
25 apartments or Aother structures@.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. MCCANTS: This is not.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MCCANTS: What I'm saying to you is
5 that's not the way in which it's to be looked at.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. MCCANTS: It's to be looked at as plats
8 or townhouses.

9 CHAIRPERSON GRIFFIS: But I hope I'm clear
10 that the Board said that they were not definitive that
11 you were; however, we're putting you on notice that you
12 need to make the case of a variance for the lot
13 occupancy because it may well be determined that after
14 hearing all the facts of this case that we reside in
15 that definition and that interpretation of the
16 regulations. Is that clear?

17 MR. MCCANTS: Yes.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. MCCANTS: In terms of the lot
20 occupancy, Mr. Mondie, would it be possible for you to
21 build these four buildings using only 40 percent of the
22 lots, of the area of the lots?

23 MR. MONDIE: Using only 40 percent, no.

24 MR. MCCANTS: And why is that? Why could
25 you not do 40 percent?

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1 MR. MONDIE: That would require, to do what
2 we want to do, the only way we could do it is if they
3 were apartments.

4 MR. MCCANTS: And --

5 MR. MONDIE: Another -- well, let me see,
6 the only way we could do this if they are residences,
7 single family residences, where it requires 60 percent.

8 MR. MCCANTS: All right. And having 40
9 percent occupied you would only be able to put I assume
10 two units on there, on the property?

11 MR. MONDIE: Thereabout, it would go down
12 from 40 -- it would go down from 60 to 40, that's a 33
13 percent reduction.

14 MR. MCCANTS: All right. Is it possible
15 then for you to get any other property or adjoining
16 property to make these properties comply with the
17 zoning regulation, in terms of occupancy?

18 MR. MONDIE: No, the only land available is
19 the lot there. We are bounded by an alley on one side
20 and existing buildings on the other.

21 MR. MCCANTS: All right. I think that's
22 it. I don't have anything further.

23 MR. MONDIE: And the one thing that I did
24 want to get into was -- if you don't mind, I could
25 address that.

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1 MR. MCCANTS: Sure, go ahead.

2 MR. MONDIE: The last packets we passed
3 out, and I think the members of the opposition have it
4 as well and I think you have one, Ms. Karen Thomas.

5 CHAIRPERSON GRIFFIS: Right, we have it.

6 BOARD MEMBER MANN: And the Board Members.
7 In our research we came across Section -- where did we
8 start? At the beginning is -- we already talked about
9 Section 6, which allows it to be subdivided. We have
10 to come back for subdivision and it has to meet A, B,
11 and C, which was there should be adequate free access
12 to the street. B was access for protection for other
13 purposes like good fire protection.

14 CHAIRPERSON GRIFFIS: Good, I don't think
15 we need to go through that again. You've addressed
16 that completely.

17 MR. MONDIE: What's new is if you go to
18 Exhibit A in that packet, you'll see that we're
19 starting -- what is acceptable for special exceptions.
20 And there's a chart there. It goes from accessory
21 apartments on the first page to overlay district,
22 that's the way it ends. Those pages -- that's 31.4.
23 As we go alphabetically to get to the end on 31.8, it
24 specifically lists and is circled and asterisked that
25 residential buildings, groups of districts, are

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1 permitted and those residential buildings are R-4, R-
2 5A, and R-5B, are permitted to have special exceptions.
3 And the third column asks what sections and which
4 conditions are specified. Sections in which the
5 conditions are specified and those sections are 410.12,
6 410.14, and 410.16. As we have listed, 410.12, on the
7 next page, the next page shows that 410, again, that's
8 just a duplication of what we've already looked at, but
9 R-5 and R-4 are under specifications. 410.12 is
10 specifically for R-5A, which we pointed out earlier
11 today. As you read further, if you turn to Exhibit E,
12 410.14 is specific for R-5B. These are specific on the
13 record zoning codes that are allowing residential
14 exceptions for R-4, R-5A, and R-5B. Now, if R-5A is
15 410.12 and R-5B is 410.14, and that's for R-5B
16 specific, 410.16 is required the erection of that group
17 of buildings shall not affect adversely the present
18 character or the future development of the
19 neighborhood. That 410.16 is not for R-5A, it's not
20 for R-5B, it must be, as indicated in that table, for
21 R-54. And this is what I was saying we have done the
22 research to find where this R-54 applies as a
23 residential district for exceptions. And here is a
24 clear indication that 410.16 is not specific for R-5A.
25 It doesn't mention it. R-5 --

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1 CHAIRPERSON GRIFFIS: Okay. I don't think
2 you need to persuade us on what the regulations say.

3 MR. MONDIE: Yes, okay. So here it is.
4 And the most important thing, as I just said, Mr.
5 Chairman.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. MONDIE: Was the character. It says
8 the erection of the group of buildings shall not affect
9 adversely the present character or future development
10 of the neighborhood.

11 CHAIRPERSON GRIFFIS: Good.

12 MR. MONDIE: And I believe our character
13 that we're proposing is like if right now ten-tuplets
14 would be fourteen-tuplets, would be right in line with
15 the width of those buildings that exist there.

16 CHAIRPERSON GRIFFIS: Good, in fact your
17 testimony is that it will be in conformance with the
18 presence character in all form and character, is that
19 correct?

20 MR. MONDIE: Yes, sir.

21 CHAIRPERSON GRIFFIS: Okay, understood,
22 anything else?

23 MR. MCCANTS: That's all.

24 CHAIRPERSON GRIFFIS: Good. Mr. Mondie,
25 let me ask you, what's unique about this property?

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1 MR. MONDIE: What's unique about the
2 property?

3 CHAIRPERSON GRIFFIS: Yes, what's unique?
4 What's the unique circumstance or unique aspect of the
5 lot or property?

6 MR. MONDIE: The size of the property, the
7 location, Northwest Washington, D.C.

8 CHAIRPERSON GRIFFIS: And out of that size,
9 configuration, location, what's the practical
10 difficulty in complying with the lot occupancy?

11 MR. MONDIE: The lot occupancy, well when
12 we do this what's interesting is that we do qualify for
13 residential construction for row houses at less than 60
14 percent. We are 59.7.

15 CHAIRPERSON GRIFFIS: Okay, understood.
16 Okay, let's move ahead. Anything else, any other
17 questions?

18 MS. MITTEN: I just wanted to ask a
19 question. You were talking about the similarity
20 between -- I'm over here.

21 MR. MONDIE: Okay.

22 MS. MITTEN: In case you were looking for
23 me. I see you were looking for me.

24 MR. MONDIE: Yes, yes.

25 MS. MITTEN: You were talking about the

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1 similarity between what you're proposing and existing
2 dwellings.

3 MR. MONDIE: Yes.

4 MS. MITTEN: I'm just having trouble
5 reconciling a three story building as being a close
6 relative of a two-story building.

7 MR. MONDIE: Okay. In character what the
8 opposition has most closely questioned us on was things
9 like the roof shape, the dormers that we were first
10 proposing. At the last meeting that was required by
11 the Board, we actually went down to the detail of the
12 number of panes of windows in the windows, so yes, we
13 are matching all of those characteristics while staying
14 within the Board. So maybe I should characterize that.

15 MS. MITTEN: No, I'm asking you to
16 specifically explain to the Board how a three-story
17 dwelling is consistent with the character of a little
18 neighborhood that you've pointed out to us that has
19 only two-story dwellings.

20 MR. MONDIE: Okay, maybe I should qualify
21 it to that extent that in compliance with the
22 height/density regulations permitted we are making them
23 identical so that it doesn't clash architecturally with
24 the existing buildings.

25 MS. MITTEN: So you're just not answering

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1 my question directly. Are they consistent, are three
2 story dwellings consistent with two-story dwellings in
3 character?

4 MR. MONDIE: In terms of number of stories,
5 no.

6 MS. MITTEN: Okay.

7 MR. MONDIE: Yes.

8 MS. MITTEN: The other thing is you
9 mentioned that the five bedroom product that you are
10 interested in constructing is something that is unusual
11 and you think that it's a niche that hasn't been met in
12 terms of the product that's being offered. If that's
13 true, then how is that consistent with the character of
14 the neighborhood? How is a five story or how is a five
15 bedroom dwelling consistent with the neighborhood if
16 that's not typical?

17 MR. MONDIE: I'm speaking purely from the
18 outward appearance as far as -- but when we get into --
19 we want to meet a niche we think is existing in the
20 housing market where five bedrooms there's a need and
21 a demand for.

22 MS. MITTEN: Okay. Is a five bedroom house
23 consistent with the character of the neighborhood?

24 MR. MONDIE: In these particular existing,
25 the ten buildings, no, no.

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1 MS. MITTEN: Okay. Thank you.

2 MR. MCCANTS: Board Member Mitten?

3 MS. MITTEN: Yes.

4 MR. MCCANTS: I think the regulation says
5 that the erection of the group of buildings shall not
6 affect adversely the present character or future
7 development of the neighborhood. So what we're talking
8 about is the neighborhood.

9 MS. MITTEN: Yes.

10 MR. MCCANTS: And it would not adversely
11 affect the character or future development of the
12 neighborhood. Putting these houses there isn't going
13 to adversely affect it. It doesn't have to be
14 identical to the other buildings.

15 MS. MITTEN: I understand.

16 MR. MCCANTS: It just has to not adversely
17 affect it.

18 MS. MITTEN: I understand.

19 MR. MCCANTS: Okay.

20 MR. MONDIE: Right and this photo easily
21 shows that this has the one, two, three, and so on.

22 MS. MITTEN: Thank you, Mr. Chairman.

23 MR. MONDIE: And where it has an exterior
24 entrance from the front we definitely are not putting
25 one in there.

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1 CHAIRPERSON GRIFFIS: Indeed. I understand
2 in matching the character and not being adverse in
3 character is you're matching materials of the adjacent.

4 MR. MONDIE: Yes, sir, exactly.

5 CHAIRPERSON GRIFFIS: And also the window
6 patterns or other patterns.

7 Okay. Any other questions or
8 clarifications from the Board?

9 MS. MITTEN: Oh, I did need some
10 clarification.

11 CHAIRPERSON GRIFFIS: Yes.

12 MS. MITTEN: Which is I just think that for
13 the record to be complete that we don't have a rear
14 elevation I don't believe. And the front elevation
15 that we have doesn't show the materials that are going
16 to be used. I know it's been represented to us but in
17 order to have that be part of the record I think we
18 need to know the various materials and have them
19 indicated on the elevation.

20 CHAIRPERSON GRIFFIS: Excellent. It was
21 done in a bit of a narrative description but I
22 absolutely agree, in terms of you have the elevations
23 that are submitted. You can just put notes on what is
24 going to be proposed. I understand that there may be
25 some siding on the read but brick on the face, but we

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1 can have that noted along with the parking dimension on
2 the site plan.

3 Okay, anything else?

4 MR. MCCANTS: I believe that's all we have
5 at this time.

6 CHAIRPERSON GRIFFIS: Thank you very much.

7 MR. MCCANTS: Thank you.

8 CHAIRPERSON GRIFFIS: Does the party in
9 opposition have any cross-examination of the witness or
10 do you want to save it for your case presentation?

11 Have a seat. You're going to need to sit
12 over here.

13 MR. LA COUR: Okay. I'm going to just move
14 that over and sit down there.

15 Mr. Mondie, one thing that we've been
16 confused about since the very beginning and there's
17 been several plans that have come in and it's been
18 resubmitted several times, we still don't have a really
19 good working knowledge of what exactly is going to be
20 built here. And from this presentation it's changed
21 yet once again, which really is frustrating the
22 opposition. But I guess my question is first goes to
23 you indicate you are the owner of the lots, and we
24 don't know what your ownership interest is. We've gone
25 through the records, the OP and it's comment --

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1 CHAIRPERSON GRIFFIS: Please ask a question
2 and get a quick answer.

3 MR. LA COUR: What is -- is it just that
4 you own the tax liens on these or do you own these free
5 and clear? Do you have entire clear interests of these
6 property lots? I can't figure that out --

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. LA COUR: -- and we can't find that
9 from the record either.

10 MR. MONDIE: Okay. To answer your
11 question, I have clear -- I've gone to settlement on
12 three of the lots. I have a memorandum of
13 understanding signed with Jim Norris with all of the
14 details of conversion to the fourth lot, known as a
15 garden lot.

16 MR. LA COUR: And the fifth lot?

17 MR. MONDIE: I have gone to settlement on
18 four, lots 811, 812, 13, and 14, a memorandum of
19 understanding with Jim Norris on lot 815.

20 MR. LA COUR: So you don't have clear title
21 on all five lots yet?

22 MR. MONDIE: No, I have a memorandum of
23 understanding signed by Jim Norris and myself.

24 CHAIRPERSON GRIFFIS: Is that on lot 815?

25 MR. MONDIE: 815, yes.

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1 CHAIRPERSON GRIFFIS: Okay, next question.

2 MR. LA COUR: I'm curious that you had some
3 bidding on these lots for purposes of the construction.
4 We did a Google search and found out on Google that
5 you're doing an open auction to the lowest bidder for
6 building on these lots, is that correct?

7 MR. MONDIE: Oh, absolutely not. The
8 lowest bidder usually has the worst product.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. MONDIE: One of our assessing is --

11 CHAIRPERSON GRIFFIS: So no, the answer is
12 no.

13 MR. MONDIE: The answer is no.

14 MR. LA COUR: Fine, that's inconsistent
15 with what your application says.

16 CHAIRPERSON GRIFFIS: Okay. What's your
17 question?

18 MR. LA COUR: Let's see. When you talk
19 about the character of the neighborhood, are you being
20 inclusive of only those twelve units that are on
21 Richardson Place, or the square, which consists of some
22 64 buildings?

23 MR. MONDIE: Well, in our research of
24 neighborhood, we did not find a definition in the
25 zoning regulations, but we did look up the definition

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1 in Websters. And Websters --

2 CHAIRPERSON GRIFFIS: How are you
3 characterizing the character of the neighborhood?
4 What's the perimeter of neighborhood?

5 MR. MONDIE: Exactly. We're saying this is
6 a unique neighborhood and we want to maintain that look
7 of the exterior structures as we see it.

8 MR. LA COUR: So you're only considering
9 the twelve units there on Richardson Place and
10 excluding the other 60-something homeowners that live
11 in the neighborhood?

12 MR. MONDIE: My definition of Websters,
13 this is a neighborhood that we want to maintain the
14 character of and we are doing so.

15 MR. LA COUR: Is that a yes or a no.

16 MR. MONDIE: We are maintaining the
17 character of Richardson Place, yes.

18 MR. LA COUR: So Richardson Place only,
19 twelve units rather than the entire square, okay.

20 MR. MONDIE: To us that's a unique
21 neighborhood.

22 CHAIRPERSON GRIFFIS: We got it, next
23 question.

24 MR. LA COUR: With respect to sending out
25 notice, after the last hearing that we had hear did you

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1 go back to the Board or did you go back to the Office
2 to request that those individuals, which are more than
3 50 percent that did not receive notice that you send
4 them notice out?

5 MR. MONDIE: No, we did not. It was not a
6 requirement of the Board. It was a continuation as I
7 understand it.

8 MR. LA COUR: At the time that we had the
9 last hearing it was indicated for the purposes of you
10 expediting your project because money was a concern to
11 you, did you not indicate that you wanted a meeting as
12 quickly as possible?

13 MR. MONDIE: That is correct.

14 MR. LA COUR: And with that conciliation,
15 did not the ANC indicate that they had to meet first to
16 review and write a written report regarding --

17 CHAIRPERSON GRIFFIS: Let's stick to the
18 relief that's before us. There's not much that we can
19 do about what happened.

20 MR. LA COUR: Well, it gets to be objected
21 with regards to the seven day notice. And I don't
22 think it's fair that the attorney should now object
23 when earlier they had agreed to it.

24 CHAIRPERSON GRIFFIS: That's fine --

25 MR. LA COUR: But I want it to be part of

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1 the record though. My concern is that we feel like we
2 are getting blind-sided.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. LA COUR: Unfortunately, we don't have
5 attorneys that we pay by the hour.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. LA COUR: We are the neighborhood here.
8 Unfortunately, our ANC had a serious issue and so if
9 you would bear with me too, I would appreciate it.

10 CHAIRPERSON GRIFFIS: But look at the
11 bottom-line fact that the Board actually accepted it
12 into the --

13 MR. LA COUR: I asked that and I didn't
14 know that.

15 CHAIRPERSON GRIFFIS: We absolutely did.

16 MR. LA COUR: Okay. I apologize. I did
17 not hear you say that.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. LA COUR: I just heard his objection to
20 it and you said that we could bring it up later and
21 that's why I'm bringing it up now.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. LA COUR: Okay, great. Okay.

24 You had indicated that, there was a
25 statement you said that you would write something --

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1 how are you going to bind sellers who purchase those
2 properties to not converting them to plats, as a matter
3 of right? How can you do that?

4 MR. MONDIE: Okay, my answer to you is that
5 is it's an owner burden, one not often or I've heard of
6 in all my years, but it's one that I'm willing to take
7 on if you are that concerned. I want this project to
8 go forward. I have talked with a Mr. Fred Greene, I
9 understand he was --

10 CHAIRPERSON GRIFFIS: Well, I think the
11 direct question is how would you do it? What's the
12 vehicle that you have to actually do that?

13 MR. MONDIE: I have -- it is my
14 understanding from talking to Mr. Fred Greene that it
15 is possible. When he was director of -- about 10 or 15
16 years ago that he put in place the possibility that it
17 can go with the lang, that this zoning requirement
18 could go with the land.

19 CHAIRPERSON GRIFFIS: Somehow you would tie
20 it to the deed or title?

21 MR. MONDIE: Yes, a covenant.

22 CHAIRPERSON GRIFFIS: A preclusion of some
23 sort at conversion.

24 MR. MONDIE: Right.

25 CHAIRPERSON GRIFFIS: Okay, next question.

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1 MR. MONDIE: That person would have one
2 year or two --

3 CHAIRPERSON GRIFFIS: Understood.

4 MR. LA COUR: The last thing is and what
5 we've asked for all along is what is the uniqueness of
6 this piece of property? Why can't you just put two
7 town homes on there like the law requires, why are you
8 building four there? I don't get it.

9 CHAIRPERSON GRIFFIS: Okay. I think we've
10 asked that already. If you don't mind, you can address
11 that in your case presentation, but asking him to
12 answer it again it's going to be productive at this
13 point.

14 MR. LA COUR: Has he answered it?

15 CHAIRPERSON GRIFFIS: He was posed the
16 question and there was an address to the question.

17 MS. MITTEN: I think just for the
18 distinction is the question to be put to the -- and
19 this is the question we did put to them and the
20 Chairman was attempting to elicit the answer; it's not
21 why you can't do something, it's why should you be
22 allowed to do what you're asking, which is a slightly
23 different question. But the burden is for why they
24 qualify for what they're asking, and that's why the
25 Chair was leading him through the test for a variance

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1 earlier.

2 MR. LA COUR: Well, I guess our point is
3 from the very beginning we've been asking why this
4 property is so unique and we've never got an answer to
5 that. This is the first time that I've heard the Board
6 address it, which I think is great, but I still don't
7 know why it's so unique.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. MITTEN: And you should make that
10 argument when you make your presentation.

11 MR. LA COUR: Thank you.

12 CHAIRPERSON GRIFFIS: Anything else?

13 MR. LA COUR: No.

14 CHAIRPERSON GRIFFIS: Thank you very much.
15 Let's move ahead to the Office of Planning.

16 MS. THOMAS: Good afternoon, Mr. Chairman
17 and members of the Board. I'm Karen Thomas with the
18 Office of Planning. And with respect to the
19 Application before us, the Office of Planning does not
20 support approval of special exception relief, pursuant
21 to Section 410, to construct a single building with
22 four single family units on a consolidated lot on the
23 R-4 zoned district.

24 However, if he could support a variance
25 from the minimum lot area requirement to permit

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1 construction of two plats on two matter of right lots,
2 subject to the consolidation and subdivision of 811
3 through 815, in conformance with the lot requirement of
4 the R-4 zone district.

5 Briefly based on information provided by
6 the application, OP's analysis concluded that the
7 proposal for a single building of four units
8 constituted an apartment by the definition of Section
9 199 and Section 300 does not contemplate or include
10 such a structure in its use of uses.

11 Further, Section 330.4 stipulates that no
12 building shall be erected that is arranged, intended,
13 or designed to accommodate uses not stipulated through
14 Sections 330 to 349. Therefore, the structure proposed
15 would qualify as **A**all other structures@ within the R-
16 4 zone. **A**All other structures@ require a lot
17 occupancy of 40 percent, as stipulated by 403.2, and
18 the developer is proposing a lot occupancy of 59.4
19 percent, or 59.7 percent as Mr. Mondie said.

20 Therefore, the occupancy for the proposed
21 structure would require variance relief since it
22 exceeds the 40 percent requirement and the applicant
23 would have to show that meeting this requirement
24 creates a practical difficulty.

25 In addition, we also believe that the

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1 applicant would need variance relief from Section
2 202.6, which provides that a new structure shall not be
3 erected to house a non-conforming use. Section 410 is
4 not applicable to establish an apartment using the R-4
5 zone district and the applicant would need a use
6 variance to supplement the application if Section
7 410.12 were applied.

8 While all structures along Richardson Place
9 street fronted are 12 feet in width, these structures
10 were built in 1900 and predate the current zone
11 regulations. Of the 52 lots in the square, only 21 are
12 between 12 to 13 feet wide, which represents less than
13 40 percent of lots within the square.

14 Therefore, we believe the structure would
15 not be in character with the existing neighborhood.
16 Section 401 is clearly intended to bring new
17 construction and subdivision into compliance with the
18 R-4 standards.

19 Based on the above reasons, approval of the
20 four unit single building would not be in character
21 with the neighborhood and would also impair the intent
22 and purpose of the zoning plan, as embodied in the
23 zoning regulations and map, including Sections 330.1
24 through 330.4, Sections 2000.2 and 2006.2, which would
25 result in an intensified use beyond that intended by

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1 the R-4 zone.

2 We concluded that a tax lot could be easily
3 subdivided into two conforming R-4 lots and two plats
4 could be built in conformance with the lot requirement
5 of the R-4 zone district, as anticipated by the zoning
6 regulations. Thank you.

7 CHAIRPERSON GRIFFIS: Thank you very much.
8 Any questions from the Board?

9 Ms. Miller?

10 VICE-CHAIRPERSON MILLER: Do you support a
11 variance from the lot area requirements because it's
12 not possible for them to comply with it or why?

13 MS. THOMAS: Yes, it would not be possible.
14 If the applicant were to build within the by-right,
15 matter of right, 18 feet wide lots, we could support a
16 variance, area variance from the lot area because there
17 would be no way for him to increase his lot size.

18 VICE-CHAIRPERSON MILLER: Okay. But
19 otherwise then the applicant could comply with the
20 regulations. Is that correct?

21 MS. THOMAS: That's correct.

22 VICE-CHAIRPERSON MILLER: Thank you.

23 MS. MITTEN: I just want -- maybe you just
24 said it and I just wasn't listening carefully enough.
25 If you would support a variance of the minimum lot area

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1 requirement, what is it about the property that's
2 unique?

3 MS. THOMAS: Well, in that regard, if he
4 could've met at least the lot width, there would be no
5 way for him to increase. It's unique because it's a
6 small piece. It's a small lot. If he actually went in
7 and said okay I'm going to create an 18 foot wide lot
8 there would be no way for him to increase the area.
9 But we would not support anything that's not 18 feet
10 wide beyond that.

11 MS. MITTEN: Okay. Maybe I'm -- just help
12 me with this a second. Isn't the total area of the
13 five lots 4,809 square feet? Is that right?

14 MS. THOMAS: That's correct.

15 MS. MITTEN: Okay. And you're advocating
16 for two lots?

17 MS. THOMAS: Two lots.

18 MS. MITTEN: Okay. So -- and those two
19 lots could meet the minimum lot width requirement? I
20 mean when I divide -- the minimum area requirement is
21 1,800. So I'm just wondering what is -- I'm just
22 wondering why they would need a --

23 MS. THOMAS: Well, if he did meet it, if he
24 did meet it, it was depending on how -- we want to know
25 how he subdivided the lots, but were saying definitely

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1 18. I guess I didn't look into area that much after
2 that.

3 MS. MITTEN: Okay.

4 CHAIRPERSON GRIFFIS: Right --

5 MS. THOMAS: We were stuck on the 18 foot
6 wide, we just didn't want anything out of character
7 beyond 18 foot.

8 MS. MITTEN: Okay.

9 MS. THOMAS: Less than 18 feet.

10 MS. MITTEN: Okay, because if I understand
11 it correctly I don't think you would need an area --

12 CHAIRPERSON GRIFFIS: Right, you could make
13 a conforming subdivision on two lots.

14 MS. MITTEN: Okay. I just wanted to
15 understand that.

16 CHAIRPERSON GRIFFIS: Anything else, any
17 other questions from the Board?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Does the applicant
20 have any cross-examination of the Office of Planning,
21 any questions or oppositions?

22 MR. MCCANTS: Oh, I have none.

23 CHAIRPERSON GRIFFIS: Mr. Mondie, do you
24 have questions?

25 MR. MONDIE: Of course for me it's an issue

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1 of time because what I'm hearing is we would get what
2 we want we'd have two --

3 CHAIRPERSON GRIFFIS: This is an
4 opportunity for cross. Do you have hard-hitting
5 questions of the Office of Planning that would crumble
6 their analysis?

7 MR. MONDIE: Oh, okay.

8 CHAIRPERSON GRIFFIS: I add that narrative
9 to sort of break here. Okay. You'll have plenty of
10 time to address in your closing and summations that
11 we'll get to very quickly I anticipate.

12 Does the opposition have any?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Not noting any. We
15 will take note of the ANC. They did present their last
16 or their submission to us today as presented. They're
17 not represented but it is in the record and we have
18 waived our rules and regulations and accepted that into
19 the record, noting the continuation of this and the
20 timing of the ANC, it is particularly important to have
21 that in. Where there is an objection by the applicant
22 in terms of accepting this and I think we can, if need
23 be, keep the record open for address of the ANC report
24 also.

25 With that, let's bring the opposition party

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1 up and I'll give Mr. Mondie and his representative a
2 moment if you want to address the ANC submission now.

3 MR. MCCANTS: Yes, sir.

4 CHAIRPERSON GRIFFIS: Go ahead.

5 MR. MCCANTS: If I'm understanding that the
6 record, the rules require that the ANC representative
7 be here as well?

8 CHAIRPERSON GRIFFIS: No, it doesn't
9 require them to be here in person. Is that what you
10 mean?

11 MR. MCCANTS: Yes.

12 CHAIRPERSON GRIFFIS: No. It would require
13 if they were here in person a representative of the
14 ANC, any presentation then would be the official
15 position of the ANC. So at this point I think what we
16 would be faced with is just presenting the letter and
17 not getting anecdotally into the other aspects of it.
18 But I think we can address that.

19 Is there any other comments?

20 MR. MCCANTS: No, I have nothing further.

21 CHAIRPERSON GRIFFIS: Very well.

22 MR. LA COUR: For the sake of brevity can,
23 without me having to read the entire letter into the
24 record, can we just --

25 CHAIRPERSON GRIFFIS: Absolutely, no need

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1 to read it into the record.

2 MR. LA COUR: I guess of emphasis is on
3 page two is where it says like the OP, the ANC does not
4 support the construction of the four unit building
5 proposed for the aforementioned of consolidated lot for
6 the reasons related to the requirements of the R-4 zone
7 regulation I think is important.

8 CHAIRPERSON GRIFFIS: Okay, good. Very
9 well then, we'll turn it over to you for presentation
10 of your case in opposition.

11 MR. LA COUR: Thank you for this
12 opportunity. As I said, this has been a learning
13 experience for me and the neighborhood. I moved into
14 the neighborhood only about two years ago and I'm not
15 very familiar with the zoning and I probably know more
16 than I probably want to know about zoning, but it's
17 very important and as a neighbor and having a viable
18 single family existing neighborhood and keeping it that
19 way, I think it's very important for us to be heard
20 here today, as well as the ANC's report, as well as OP,
21 all in opposition to Mr. Mondie's plan.

22 We feel that there's a hidden agenda here.
23 We feel that we want to keep the single family homes
24 that are in this neighborhood. We feel the best way to
25 do that is to keep it R-4. Our concern is that if a

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1 410 exception is granted here, effectively a single
2 building is going to become four units, which is
3 apartment building, which we feel is only going to
4 exasperate the density issues, infrastructure issues
5 that we have on Richardson Place. We have been very
6 amenable to having homes built, single family homes
7 built in the neighborhood, which has, single family
8 homes has been for 40 plus years now has been single
9 family homes. There are no apartment buildings there.
10 Our concern is by allowing someone to vertically build,
11 I guess it's vertically build, four town homes only 14
12 feet wide as a matter of right, somebody is going to
13 come along later and make them into plats. As a matter
14 of right that's two plats, that's eight apartment
15 buildings that we get there where there should've only
16 been, by law, 18 feet wide to put in two town homes,
17 and we would like to keep it that way.

18 We are no opposed with the fact that it is
19 taller than the character of the buildings that are on
20 Richardson Place because it's consistent with what's in
21 the rest of the neighborhood. What we are concerned
22 about with is getting the density issues and getting
23 the infrastructure issues resolved. I know it's
24 something that the zoning doesn't exactly weigh in on,
25 but our concern is that due diligence hasn't been done

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1 here. We've spoken with Pepco; we've spoken with water
2 and sewer. There's a lot of infrastructure issues here
3 that Mr. Mondie has not addressed. We've asked for
4 paperwork regarding this. We have not received it. We
5 are concerned about his ownership interest in this
6 property. At this point, we don't even know who owns
7 this property. He says he has an interest in it, but
8 we don't know that. He's gotten a written agreement
9 with the gentleman who owns four of the buildings next.
10 Our concern is once the Board approves this 410 section
11 exemption it's going to happen down the road with the
12 other four buildings and we absolutely don't want to do
13 that because then we're dealing with 16 apartment
14 buildings.

15 CHAIRPERSON GRIFFIS: Excellent.

16 MR. LA COUR: Thank you to be heard. Thank
17 you for this opportunity. I hope the Board will do the
18 right thing, listen to the concerns of the ANC, the OP,
19 and a neighborhood that is adamantly against having
20 construction done that doesn't follow the zoning
21 regulations and variance requirements of being 18 feet
22 wide.

23 CHAIRPERSON GRIFFIS: Excellent, thank you
24 very much. Let me be ask you this to be clear. In
25 terms of invoking the 18 feet of course would be a non-

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1 conforming dimension of the lot your concern is the
2 density, is that correct, and how that changes and
3 impacts the surrounding area, the number, as you said,
4 units, but of people that might be there?

5 MR. LA COUR: That's correct. If I can
6 expand on that just a little bit. Richardson Place is
7 a very unique street. It's less than 200 feet long.
8 This project is going in at the very end of Richardson
9 Place in very small lots. They want to put in four
10 town homes which could eventually be converted into, as
11 a matter of right, into eight plats. We have a serious
12 parking issue right now. It is abutted on three sides
13 by alleys. Richardson Place is the only access/egress
14 into Richardson Place right there. Our concern is
15 there's going to be safety issues, there's going to be
16 sewer issues, there's going to be electric issues. I
17 don't know if you follow the papers or not but we just
18 had a brownout again just yesterday in the Richardson
19 Place area because the electrical system is so taxed.
20 Adding in four to eight more units is only going to
21 make that worse.

22 CHAIRPERSON GRIFFIS: Good, okay, thank you
23 very much.

24 Any other questions from the Board?

25 (No response.)

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1 CHAIRPERSON GRIFFIS: Is there any cross
2 from the applicant?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Very well. Thank you
5 very much.

6 MR. MCCANTS: I have a -- go ahead, no
7 questions.

8 CHAIRPERSON GRIFFIS: Okay. Thank you.

9 MR. LA COUR: Thank you.

10 CHAIRPERSON GRIFFIS: Let's move ahead to
11 other persons present in this application to provide
12 testimony for 17404. Are there any persons in support
13 of the application?

14 (No response.)

15 CHAIRPERSON GRIFFIS: In opposition to the
16 application?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Not hearing any other
19 persons present to provide testimony we can move ahead
20 then and close.

21 MR. MCCANTS: Yes, thank you very much, Mr.
22 Chairman and members of the Board. I hope that we will
23 resolve the issue of 410 in this application to this
24 zoning application. I looked in the zoning files and
25 found a case that's similar to this case, case number

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1 17381. I have the file in front of me, in which the
2 same type of application is being filed -- had been
3 filed. I don't see any indication yet that the Board
4 has ruled on it. But in point, in fact, what they did
5 was the very same thing that we're doing. There's a
6 lot that they had --

7 CHAIRPERSON GRIFFIS: Is the address
8 Belmont?

9 MR. MCCANTS: Rock Creek Road, Northwest.
10 It is Application Number 17381.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. MCCANTS: Now, all I'm saying is -- and
13 Mr. Chairman, I understand that you are preparing to
14 deal with things as they are as opposed to exceptions.
15 Just give him the same justice that you give everyone
16 else. This is a small developer. He is a guy that's
17 trying to make it. The entire area that surrounds this
18 area is developing all over and people are developing
19 every piece and parcel of land. He happens to be one
20 who's attempting to do the very same thing. You know,
21 he's different from the others except that he's small.
22 This man needs an opportunity to develop and to invest
23 in the community like everyone else. He intends on
24 living in one of the units on the property. So he's
25 not a stranger. He's not a developer that's coming in,

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1 who is going to just build something and go away. He
2 is going to live in one of the units himself. He
3 definitely has an interest in this property and this
4 community as Mr. La Cour and everyone else. But he
5 wants a viable community as well as anyone else. What
6 the opposition continues to say is that he is
7 developing apartments. He has said under oath that he
8 is not developing apartments. The Board can, in its
9 order, make sure that it doesn't happen by restricting
10 the use to single family units. You can do that in
11 your order. You can in your order provide that there
12 will be no plats or additional units in the buildings
13 through your order. So there are ways in which this
14 could be done, but don't deny him the opportunity to
15 develop and to build in this community simply on
16 speculation and on unjustified fears because he is not
17 here to do anything other than to improve the community
18 and to develop the community in accordance with the
19 regulations.

20 Now, just briefly, with respect to the 410
21 application and how it applies here, he will do
22 everything he possibly can in order to comply and I
23 believe he has complied. As we went through the
24 regulation we indicated that he will comply with each
25 and every one of the enumerated requirements under the

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1 special exception. The only area that, Mr. Chairman,
2 you and some of the members have is whether or not he
3 complies with other parts of the regulation which deal
4 with the area requirements, lot requirements, and what
5 have you. I suspect that in terms of the lot
6 occupancy, the OP has indicated that this is apartment
7 use. I don't believe it is. As we indicated before,
8 that's a non-starter, it is not, and therefore that
9 should not be -- this property therefore should not
10 become -- be considered an **A**all other structures@
11 category. It is a plat. It is a townhouse. It is a
12 group of buildings. It is not an apartment. And I
13 think that the Board should be aware of that and keep
14 that in mind as you go through your deliberation on
15 this. All in all, I appreciate the Board's
16 opportunity to give us -- the Board give us this
17 opportunity to present our case and I hope that the
18 Board will consider this application objectively and
19 fairly and give this man an opportunity to build his
20 property in accordance with the regulation, but at the
21 same time not in a way that will economically strangle
22 him and kill him by just requiring that he build these
23 two units, because he simply could not make it if he
24 were to do it that way. Economically it just doesn't
25 make any sense.

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1 So I respectfully ask the Board to grant
2 him special exception and, if necessary, a variance in
3 order to build these properties as he proposed.

4 Thank you very much.

5 CHAIRPERSON GRIFFIS: Excellence, thank you
6 very much and I appreciate your patience getting
7 through all this, although you've added to it a little
8 bit by changing the relief required, but I think we
9 have a good handle on that with the full case
10 presentation, except for a few of the items and let's
11 run down. I'm going to set this for decision-making.
12 There will be a decision in the first meeting in
13 February. That's the 7th of February that it'll go on
14 our docket for our public meeting. My list of
15 information that we are keeping the record open to
16 receive and would be the requirement, and that is the
17 site plan showing the dimension of the parking
18 requirement and how the parking requirement is met;
19 second, the elevations indicating the materials that
20 are going to be used, front and well, one side and the
21 rear. We are allowing the record to stay open if you
22 will -- well, let me move -- we're going to have the
23 record open for the clarification of ownership of all
24 the lots and specific to 815. And I would be open to
25 having submissions on the reiteration of your case and

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1 also the case in opposition if you wanted to just
2 summarize into some short, very narrative fashion to
3 address that.

4 Ms. Bailey, other Board Members, if I've
5 missed anything, let me know.

6 VICE-CHAIRPERSON MILLER: I don't think you
7 missed anything but I would like to know, with respect
8 to the variance, that the applicant's attorney just
9 said that he couldn't comply with the regulations it
10 wouldn't be economically viable and I just want to note
11 that there's -- I don't believe there's any evidence in
12 the record to that effect, and so if we want to leave
13 open the record for them to address that I'd be open to
14 that. I guess you're leaving the record open for them
15 to address the variance just in general, is that
16 correct?

17 CHAIRPERSON GRIFFIS: Yes. I want to
18 caution to the effect that that's a whole new argument
19 to be made. In closing that's one aspect but to issue
20 as another argument we would need to allow the
21 opposition to address it and respond. We won't make a
22 February 7 decision. I don't think there's a need to
23 do that. I think -- well perhaps I could be corrected,
24 but you were making an assertion that the reality of
25 the market wouldn't have you indicate to do two

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1 buildings on that site when you believe that the
2 possibility is to do four?

3 MR. MONDIE: Well, just one clarification
4 I would like too is what Ms. Thomas is saying we could
5 essentially get four buildings but they would be
6 stacked on top of each other. Is that right? On two
7 lots we would have two buildings but now we have the 18
8 foot width. There would be one here and one
9 underneath, one here one underneath on two separate
10 lots.

11 CHAIRPERSON GRIFFIS: No, she's saying have
12 a conforming lot and two plats. Is that correct?

13 MS. THOMAS: Yes.

14 MR. MCCANTS: And so end up with two --
15 four units?

16 CHAIRPERSON GRIFFIS: Right. Okay,
17 anything else? Anything else I've missed, Mr. Bailey?

18 MS. BAILEY: No, Mr. Chairman, just when
19 would you like to have the documents come in to the
20 record?

21 CHAIRPERSON GRIFFIS: Three o'clock next
22 Wednesday, is that a difficulty?

23 MR. MCCANTS: No, I don't think so. We can
24 comply with that.

25 CHAIRPERSON GRIFFIS: Excellent. Those

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1 will also be served on the ANC and also the party in
2 opposition.

3 MR. MCCANTS: All right.

4 CHAIRPERSON GRIFFIS: Let me ask Mr. La
5 Cour, are you anticipating submitting anything into the
6 record?

7 MR. LA COUR: We'll do one final
8 submission, yes, but it will be brief.

9 CHAIRPERSON GRIFFIS: Okay. A narrative
10 submission we'll anticipate from the party in
11 opposition. Okay. It's just a reiteration of course
12 of what was presented today so it will be important for
13 the Board to look at all that. We're not offering an
14 opportunity for responses to those submissions, as
15 we've had ample time to address those today.

16 Anything else?

17 VICE-CHAIRPERSON MILLER: Mr. Chairman, are
18 you saying that we won't really be taking new
19 information in, they'll just be addressing what's been
20 in their case?

21 CHAIRPERSON GRIFFIS: That's exactly
22 correct.

23 VICE-CHAIRPERSON MILLER: Okay, thank you.

24 MR. LA COUR: Before you close can I make
25 two --

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1 CHAIRPERSON GRIFFIS: Can you come up?

2 MR. LA COUR: -- follow-ups to his comment?

3 CHAIRPERSON GRIFFIS: No, not really but
4 come up fast.

5 MR. LA COUR: It grieves me that economic
6 feasibility takes place in this.

7 CHAIRPERSON GRIFFIS: Okay, but it hasn't
8 been presented as an argument for the variance.

9 MR. LA COUR: Okay. Fine so that's not
10 going to be an issue of consideration for the
11 uniqueness of the property?

12 CHAIRPERSON GRIFFIS: I think that opens up
13 a whole new --

14 MR. LA COUR: Great, I just wanted to make
15 sure because we're talking about an individual who
16 after he did his original submission went out and got
17 two more lots.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. LA COUR: So I mean he keeps expanding
20 his project.

21 CHAIRPERSON GRIFFIS: Understood, okay
22 fine.

23 Anything else?

24 MR. LA COUR: Thanks.

25 CHAIRPERSON GRIFFIS: Okay. And I don't

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1 think it's difficult for you to add a sentence in your
2 submission to make sure that we have that on point.

3 Okay. Anything else in terms of process
4 and submissions?

5 MR. MCCANTS: I don't believe that's -- I
6 don't have anything further.

7 CHAIRPERSON GRIFFIS: Okay, we're all
8 clear?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Very well, thank you
11 all very much. We do appreciate everyone's patience
12 this morning.

13 MR. MCCANTS: Thank you, sir. I appreciate
14 it very much.

15 CHAIRPERSON GRIFFIS: Unfortunately those
16 that are here for our 1:00 session have now sat through
17 a substantial and exciting presentation of our morning
18 session. I will adjourn the morning session with this
19 and say we're going to need to take a 30 minute break
20 and then resume and call to order the afternoon
21 session. So I would anticipate being back -- no, it's
22 afternoon -- so we will be back at 2:30.

23 (Whereupon, the above-entitled matter went
24 off the record at the conclusion of the morning session
25 at 1:58 p.m. and resumed its afternoon session at 2:44

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

21 (2:44 p.m.)

22 CHAIRPERSON GRIFFIS: Good afternoon ladies
23 and gentlemen. Let me call to order the afternoon
24 session of the 24th of January 2006. My name is Geoff
25 Griffis, Chairperson.

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1 Joining me today is the Vice-Chair, Ms.
2 Miller, and our esteemed colleague, Mr. Etherly will
3 join us. He's been called out and will come back in,
4 as is Ms. Mitten who is representing the Zoning
5 Commission with us this afternoon. Both will be
6 present shortly. Representing the National Capital
7 Planning Commission with us is Mr. Mann and we're going
8 to move forward with the opening and call the first
9 case of the afternoon.

10 But, before I do call the first case, a
11 couple of quick opening remarks of great import. First
12 of all, let me ask that everyone turn off cell phones
13 and beepers at this time so that we don't have a
14 disruption of our testimony and recreation of our
15 hearing.

16 It should be known to everybody that we are
17 recording all proceedings in our hearing room, recorded
18 in the most important fashion of the court reporter
19 sitting on the floor to my right. Two witness cards
20 need to be filled out by everyone that is going to be
21 providing testimony before the Board. Those should be
22 given to the reporter prior to coming forward so that
23 we have your name for the record.

24 Copies of today's hearing agenda are
25 available for you. I imagine you've had ample time to

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1 review that and re-review the schedule. So let's get
2 right to it.

3 The order of procedure for special
4 exceptions and variances is as follows: first, we hear
5 from the applicant and their case presentation; second,
6 would be any government reports attendant to the
7 application; third, will be the report of the Advisory
8 and Neighborhood Commission; fourth, would be persons
9 or parties in support of an application; fifth is going
10 to be persons or parties in opposition to an
11 application; and sixth, closing remarks by the
12 applicant. The applicant and the ANC within which the
13 property is located are automatically parties in the
14 case. We do have, from time-to-time, requests for
15 party status in cases and we will decide those as
16 preliminary matters as the case is called. All parties
17 in the case are able to cross-examine witnesses. That
18 includes the applicant and the ANC within which the
19 property is located.

20 It should be noted that we anticipate
21 closing the record at the end of today's session. That
22 would close the hearing on each individual case. If
23 the record is to be kept open, the Board will be very
24 specific on what and why it is being kept open and what
25 material should be submitted and when it should be

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1 submitted into the Office of Zoning.

2 It is a very important understanding for
3 everyone here that we have certain requirements and
4 regulations. One important one is the Sunshine Act
5 requires us to hold all our proceedings in the open and
6 before the public. This Board does enter into
7 Executive Session during and after hearings on the
8 case. This is used for reviewing records and
9 deliberating on cases and is in accordance with our
10 rules, regulations, procedure; it is also in accordance
11 with the Sunshine Act. Attendant to that though, in
12 terms of the public forum and all of our creating of
13 records and deliberating in the public we ask the
14 people present today not engage Board Members in
15 private conversation so that we do not give the
16 appearance of hearing information or evidence outside
17 of the record that will be created before us today.

18 Let me ask all those persons -- well,
19 first let me say a very good afternoon to Ms. Bailey
20 who is with the Office of Zoning. She's on my far
21 right. And Ms. Glazer with the Office of the Attorney
22 General. Mr. Moy will be with us also representing the
23 Office of Zoning shortly. Let me thank everyone for
24 their patience as our morning did run over, but we are
25 going to make up time in this afternoon's case.

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1 And to that, let me ask all those people
2 who are planning to testify or thinking about both
3 cases in the afternoon if you would please stand and
4 give your attention to Ms. Bailey. She is going to
5 swear you in for this afternoon's hearing.

6 (Whereupon, an oath was administered to
7 those persons present at the hearing who will be
8 testifying before the Board.)

9 CHAIRPERSON GRIFFIS: Excellent, thank you
10 all very much. You can take your seats. And with that
11 I'm going to ask if there are any preliminary matters
12 that people are aware of for the Board's attention
13 today. Preliminary matters are those which relate to
14 whether a case will or should be heard today. Requests
15 for postponements, continuances, withdrawals, or
16 whether proper and adequate notice has been provided,
17 these are elements of preliminary matter. If you have
18 a preliminary matter you can come forward, have a seat
19 at the table.

20 In any case, I'm going to ask Ms. Bailey if
21 you're aware of any preliminary matters for the Board's
22 attention today.

23 MS. BAILEY: Mr. Chairman, members of the
24 Board, not at this time and good afternoon.

25 CHAIRPERSON GRIFFIS: Excellent, and good

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1 afternoon to you. Then in which case then, not noting
2 any except that the applicant is ready to roll, I do
3 believe, why don't we call the first case of the
4 afternoon.

5 Oh, I'm sorry, were you coming up for the
6 preliminary matter?

7 MR. BJORGE: A preliminary matter.

8 CHAIRPERSON GRIFFIS: Excellent, I'm just
9 going to have you turn your microphone in front of you.
10 Just state your name and address for the record.

11 MR. BJORGE: Yes, good afternoon members of
12 the Board. My name is Mike Bjorge. I represent ANC
13 2-B, single member District 2-B05. And this would be
14 --

15 CHAIRPERSON GRIFFIS: And that's for the
16 case of N Street Follies?

17 MR. BJORGE: Yes, 17337.

18 CHAIRPERSON GRIFFIS: Good.

19 MR. BJORGE: I'm not entirely sure that
20 it's appropriate to mention this because it doesn't
21 fall within the strict confines of what you defined as
22 a preliminary matter, but ANC 2-B was not given
23 sufficient notice of this hearing. We did not receive
24 the filing by N Street Follies in time for us to call
25 a public meeting and take a vote, and therefore

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1 register great weight. We would not, however, request
2 a continuance. We would rather request, given the
3 amount of energy and effort displayed by the other
4 parties to this case, that the record be left open, and
5 that I, as single member District Commissioner be
6 allowed to describe our last vote on a substantially
7 similar but not identical proposal put forth by N
8 Street Follies.

9 CHAIRPERSON GRIFFIS: Excellent, I think
10 it's appropriate that we take that up when we call the
11 case then and then we'll get onto the aspect of whether
12 and what should've been noticed, as this was postponed
13 from the 1st November 1, 2005 to today. But I
14 appreciate you bringing that to our attention and we
15 can bring that up when we call the first -- when we
16 call your case.

17 MR. BJORGE: Thank you, Chair.

18 CHAIRPERSON GRIFFIS: Excellent, thank you
19 very much. In which case, if there's nothing else for
20 the Board's attention let's proceed, Ms. Bailey.

21 MS. BAILEY: Application Number 17409 of
22 Gonzaga College High School, pursuant to 11 DCMR
23 3104.1, for a special exception to increase the student
24 enrollment from 900 to 980, and to increase the faculty
25 and staff from 110 to 120 persons. This is under

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1 Section 206. The property is located at 19 I Street,
2 Northwest. It is zone C-2A, C-3A, and R-4, and it's
3 also known as square 622, lots 90 and 840.

4 CHAIRPERSON GRIFFIS: Excellent, thank you
5 very much, Ms. Bailey.

6 Good afternoon, Mr. Tummonds.

7 MR. TUMMONDS: Good afternoon. My name is
8 Paul Tummonds with the law firm of Pillsbury Winthrop
9 Shaw Pittman. With me here this afternoon is Father
10 Allen Novotny, the President of Gonzaga College and
11 Osborne George of O.R. George and Associates is here
12 with us as well.

13 Our application is very simple. We are
14 requesting the Board's approval to increase the number
15 of students from 900 to 980 and to increase the staff
16 levels from 110 to 120. No new construction is
17 proposed with this application. We believe that our
18 pre-hearing statement thoroughly and completely
19 addresses the applicant's satisfaction of Section 206
20 and 3104 of the zoning regulations. I would note that
21 this application has received unanimous support of ANC
22 6-C, the Office of Planning, and the Department of
23 Transportation. We are not aware of any opposition to
24 this application. Therefore, our only witness will be
25 Father Novotny, who will briefly describe Gonzaga's

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1 history and role in the neighborhood, as well as the
2 need for these proposed staff and student increases.
3 Mr. George is here to answer any questions that you may
4 have. I'll have Father Novotny provide his testimony.

5 CHAIRPERSON GRIFFIS: Excellent, thank you
6 very much.

7 REV. NOVOTNY: Thank you for your time
8 today, Mr. Chairman. I've been the Chief Executive
9 Officer of Gonzaga now for 12 years. It's a school
10 with 185 years of history behind it. And although I
11 did at one time teach history, I won't bore you with
12 all the details, but just to say you could read it in
13 a book we just published on Gonzaga in the press, 1821
14 to 1899. It moved to its present location from F
15 Street --

16 CHAIRPERSON GRIFFIS: Of course you know
17 we'll need 20 copies of that in the record.

18 (Laughter.)

19 REV. NOVOTNY: I understand. That wouldn't
20 be considered a bribe?

21 (Laughter.)

22 REV. NOVOTNY: It moved to its present
23 location from F Street in 1871. And it's present
24 location is just a few blocks from our hearing today.
25 And it stayed in that area through thick and thin and

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1 all the ups and downs in the District over the ensuing
2 period. It is a place and institution that has a great
3 social consciousness. We have a diverse student body,
4 both geographically diverse, ethnically diverse, and
5 socioeconomically diverse. And to that end we give
6 this year \$1.4 million in financial aid, which covers
7 almost one out of three of our students. So we don't
8 want ability to pay to be a barrier for students to
9 come to Gonzaga.

10 In addition to serving the District through
11 education of the youth, including those who could not
12 otherwise afford to come, Gonzaga has always tried to
13 be a good neighbor to those around it, in terms of
14 letting our facilities be used; for example, providing
15 office and program space for the higher achievement
16 program, the college bound program, the Washington
17 Jesuit Academy, especially in its formation stage. Our
18 theater has been used by other groups and
19 organizations, not-for-profits. The gym has been used
20 for not-for-profit, for fundraising, basketball games;
21 for example, between members of Congress and the
22 faculty of Georgetown Law School. And our track and
23 field has been used by groups such as the Police Boys
24 and Girls Clubs.

25 In addition to the use of facilities, we

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1 have an extensive community service program, whereby
2 our students provide help for the needy, including the
3 McKenna Center right on our campus, which is a homeless
4 center and soup kitchen. Our students work at the
5 Perry School Community Center a few blocks away in
6 tutoring and working in the medical clinic. The J.B.
7 Johnson Nursing Home right next door; they read to
8 residents there. They take food out and aid on
9 McKenna's Wagon and Food and Friends. And as of
10 yesterday, we were the first high school in the country
11 to become a site for the Campus Kitchen Program, which
12 takes surplus food from restaurants and hotels and
13 prepares it for the needy.

14 The need that we come before you today, as
15 Paul mentioned, we have in a given year between 700 and
16 750 applications for our freshman year. That demand is
17 far in excess of our current capacity, and as Paul also
18 mentioned we have the capacity in terms of our physical
19 facilities. It involves no new construction and would
20 not take place, the increase, over a one year period
21 but would be phased in over three to four years.

22 MR. TUMMONDS: That concludes our
23 presentation. We're available for any questions you
24 may have.

25 CHAIRPERSON GRIFFIS: Excellent. Thank you

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1 very much. I do appreciate that and it's an excellent
2 submission actually and very full. And the Board has
3 taken the time to go through and in fact, I spent an
4 ample amount of time this weekend trying to find the
5 second half of the application because I couldn't
6 imagine an increase enrollment coming in with such a
7 small file, but nonetheless it was establish that it's
8 full and we move ahead.

9 A question, you are under section 206 and
10 you've asked for an increased enrollment and also
11 faculty. Some of what Mr. George's submission went to
12 is the trip generation, but also parking. I had a very
13 quick question on parking. Because you are a high
14 school, what is the age that your students drive?

15 REV. NOVOTNY: Well, if your question is
16 how do they get parking, they have to be seniors.

17 CHAIRPERSON GRIFFIS: I'll be clear. I
18 understand it's very clear in its submission that they
19 have to be -- there's a certain -- they have to be
20 given a permit to park and that's the way they drive,
21 but my understanding is what is it, 18 years to drive
22 in the District, do you know?

23 REV. NOVOTNY: Sixteen.

24 CHAIRPERSON GRIFFIS: Are you sure of that,
25 Mr. George?

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1 MR. GEORGE: Mr. Chair, Osborne George for
2 the record, I'm not sure but I think I've heard it
3 discussed that students get a license at 16.

4 CHAIRPERSON GRIFFIS: Excellent, let's get
5 some clarification on that for the next case. It won't
6 necessarily be required for this. But my understanding
7 is that it may be that the District of Columbia
8 residents it's 18 and then the surrounding jurisdiction
9 might be less. But we'd love to look at that because
10 it will have some impact on obviously other parking
11 requirements. I don't see it rising to the level of
12 getting to the bottom of it in this case, because I
13 think there's ample parking. In fact, it's over 101
14 for the students, if I recall correctly, on the
15 adjacent site, and then there's certainly ample for
16 faculty and staff.

17 That's all the questions that I have for
18 clarification unless Board Members have any other
19 questions?

20 Yes?

21 VICE-CHAIRPERSON MILLER: I do.

22 Caps were put on in 1998 for 900 students
23 and 110 faculty and staff and I'm wondering if you or
24 Mr. Tummonds, one of you can tell me how those numbers
25 were arrived at. I mean why did they pick those

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1 numbers then? The Board set those numbers but it's a
2 summary order, it's not really apparent why those
3 numbers were picked.

4 REV. NOVOTNY: Well, certainly in our
5 internal planning at the time that's what we foresaw a
6 student body of 900. Since then, as I pointed out, the
7 demand has continually gone up so we would like to be
8 able to accommodate more of the demand, slightly more,
9 and that's the reason why we're back.

10 VICE-CHAIRPERSON MILLER: Okay. So at that
11 time it wasn't chosen based on your facilities or the
12 traffic and parking situation, any of that?

13 REV. NOVOTNY: I think that's what we
14 requested.

15 VICE-CHAIRPERSON MILLER: I also had a
16 question. I think you identified two spaces being
17 allocated for visitors, is that correct? And I was
18 just wondering that sounds kind of low but maybe that's
19 been working all these years, so I was just wondering
20 the rationale for that?

21 REV. NOVOTNY: Well, one of the ways the
22 parking works is that we have a certain number of
23 spaces allocated for faculty. The understanding is
24 that those are reserved up until the time that school
25 starts, so about 8:00, 8:15, they become open during

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1 the day they're open for visitors.

2 VICE-CHAIRPERSON MILLER: Oh, okay.

3 REV. NOVOTNY: So the reservation is only

4 --

5 VICE-CHAIRPERSON MILLER: Okay, so there
6 are actually more spaces available for visitors?

7 REV. NOVOTNY: Right.

8 VICE-CHAIRPERSON MILLER: Okay. Thank you.

9 CHAIRPERSON GRIFFIS: Is there anything
10 else? Any other questions or clarifications at this
11 time?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Excellent, not noting
14 any, Mr. Tummonds, we'll move ahead. Excellent, let's
15 go then to the Office of Planning, Exhibit Number 26,
16 a very good afternoon.

17 MR. MORDIN: Good afternoon, Mr. Chairman
18 and members of the Board, I'm Stephen Mordin with the
19 Office of Planning. The subject application is in
20 conformance with the specific criteria contained in
21 section 206, in that it is for the continuation of an
22 existing private school predominantly located within
23 the R-4 zone district. The remainder of the site is
24 located within the C-2A or C-3C zone districts, which
25 permit private schools as a matter of right.

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1 The traffic study concludes that the
2 proposed increases are not likely to result in
3 conditions that are objectionable or otherwise
4 injurious to neighboring properties. Parking provided
5 is in excess to the minimum required and approximately
6 one third of the students arrive by public transit.
7 And the athletic field is located on the south side of
8 the site and separated from the row houses on K Street
9 by brick buildings, with a result that noise generated
10 by the field is not likely to become objectionable.
11 Therefore, the proposed increases in enrollment of
12 faculty and staff are not likely to become
13 objectionable to adjoining or nearby properties.

14 The Office of Planning recommends that the
15 application be approved as submitted and that concludes
16 the presentation by the Office of Planning.

17 CHAIRPERSON GRIFFIS: Thank you very much.
18 Is there any cross-examination from the applicant?

19 MR. TUMMONDS: None.

20 CHAIRPERSON GRIFFIS: Any questions from
21 the Board?

22 (No response.)

23 CHAIRPERSON GRIFFIS: None? Very well,
24 we'll move on. That being said we can move on to other
25 government reports relevant to the application..

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1 Exhibit Number 22 we will note DDOT, is there a
2 representative from DDOT here today?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Not noting any, of
5 course, we do have that into the record. I note, Mr.
6 Tummonds, you've seen that, is that correct?

7 MR. TUMMONDS: That is correct.

8 CHAIRPERSON GRIFFIS: Excellent. And they
9 were indicating in Exhibit Number 22 that there was
10 ample parking supplied to accommodate the students and
11 the staff increase. They have no objection to the
12 proposal and we'll take that into consideration as we
13 continue through this.

14 ANC 6-C is the ANC within which the
15 property is located. Exhibit Number 23 is in the
16 record. Is the ANC representative here today?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Not noting any ANC 6-
19 C here today, we'll take note of that. It was, as my
20 understanding, timely filed and can be given a great
21 weight, although it does appear to have been submitted
22 to OPM. But nonetheless, it was routed correctly down
23 to OZ and it was a unanimous in support of the
24 application.

25 I am not aware of any other government

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1 reports attendant to the application unless you are,
2 Mr. Tummonds?

3 MR. TUMMONDS: No.

4 CHAIRPERSON GRIFFIS: Very well, at this
5 time we'd ask for any persons present to provide
6 testimony to the Board to come forward in support of
7 the application or in opposition to the application.
8 Is anyone here to provide testimony in this
9 application?

10 (No response.)

11 CHAIRPERSON GRIFFIS: Not noting any coming
12 forward then we can move ahead. Mr. Tummonds, I
13 believe we'd be ready for any closing remarks you might
14 have.

15 MR. TUMMONDS: Just real briefly, as we
16 stated earlier, we believe our pre-hearing statement
17 discusses how we satisfy the special exception
18 standards. Based on the support for this project of
19 the government agencies as well as the ANC, we'd
20 request a bench decision and summary order for this
21 application. Thank you very much.

22 CHAIRPERSON GRIFFIS: Excellent, thank you
23 very much, Mr. Tummonds.

24 Board Members, last opportunity for
25 questions or clarifications from the applicant.

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1 No? Yes?

2 VICE-CHAIRPERSON MILLER: I just wanted to
3 offer a clarification on the driving age. Having a
4 teenage daughter, my understanding is they're eligible
5 for a learner's permit at 16 and a driver's license --
6 I mean at 16 and a half, but the 18 year comes in with
7 certain restrictions that apply until they are 18.

8 CHAIRPERSON GRIFFIS: Like driving alone.

9 VICE-CHAIRPERSON MILLER: Like driving
10 alone or driving after midnight, or things like that.

11 CHAIRPERSON GRIFFIS: So could a 17 year
12 old drive to high school on their own or with a bunch
13 of friends in their car or would they need a driver
14 that's 21 years old?

15 VICE-CHAIRPERSON MILLER: They could drive
16 on their own.

17 CHAIRPERSON GRIFFIS: They could.

18 VICE-CHAIRPERSON MILLER: That's my
19 understanding. Not with a packed car of kids though.

20 CHAIRPERSON GRIFFIS: Good, all right. My
21 daughter has a few more years not to worry about.

22 However, moving ahead with the specifics of
23 this case; first of all, I think it should be commended
24 on one level just the application and presentation.
25 Obviously there was a lot of good work that went ahead

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1 in doing this. And of course I joke, but it's not
2 always that easy in making any changes to institutions
3 like this in the City. It goes without saying and I
4 think your opening remarks were excellently put of what
5 a community service Gonzaga does in that specific
6 location but I think citywide. I mean it's great to
7 hear these brief but stories of how the campus and
8 facilities are opened up to other uses so we don't have
9 places that are just dark or closed off of the real
10 definition of private and not accessible to others.
11 And I think it's to be commended to do that.

12 Now, that doesn't go directly to the case,
13 but I think it does talk a lot about 206, Section 206,
14 and how we needed to decide if this change would in any
15 way have some sort of negative impact or objectionable
16 condition. And it's fairly clear in the presentation
17 and obviously the lack of any opposition that there is
18 nothing that's been evidenced or persuasive that would
19 lend us to go in that direction.

20 So with that, I think it's appropriate at
21 this time to move for approval of 17409, Gonzaga
22 College High School. That would be pursuant to the
23 special exception to allow for the enrollment increase
24 from 900 to 980 and also the faculty/staff level from
25 110 to 120 persons under 206. And I would ask for a

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1 second.

2 VICE-CHAIRPERSON MILLER: Second.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 I have said what I've needed in terms of
5 the motion. Obviously, I'm in support of it. I'm
6 going to let others speak to it if they have any
7 comments.

8 (No response.)

9 CHAIRPERSON GRIFFIS: Very well, not noting
10 any other additional deliberation on the motion we do
11 have a motion before us that has been seconded. I'm
12 going to ask for all those in favor to signify by
13 saying aye.

14 (Chorus of ayes.)

15 CHAIRPERSON GRIFFIS: And opposed?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Abstaining?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Very well, Ms.
20 Bailey, if you wouldn't mind recording the vote.

21 MS. BAILEY: Mr. Chairman, may I ask a
22 question please before recording the vote, and that is
23 the conditions, are there no conditions, just have you
24 have articulated?

25 (No response.)

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1 MS. BAILEY: The vote is recorded as 4/0/1
2 to approve the application. Mr. Griffis has made the
3 motion. Mrs. Miller second. Mr. Mann, Mr. Etherly is
4 not with us at this time. The vote is 3/0/2, Mr.
5 Etherly and Mrs. Mitten are not present at this time.

6 CHAIRPERSON GRIFFIS: Excellent, thank you
7 very much, Ms. Bailey.

8 Thank you all very much.

9 MR. TUMMONDS: Thank you.

10 CHAIRPERSON GRIFFIS: We do appreciate you
11 putting the application together and if there's no
12 further questions, have an excellent afternoon.

13 Let's move ahead then and call the next
14 case of the afternoon.

15 MS. BAILEY: Mr. Chairman, I'm going to
16 call the case as it is advertised, but as you are aware
17 there are revisions to this application.

18 Application Number 17337 of N Street
19 Follies, Limited, pursuant to 11 DCMR 3104.1 and 3103.2
20 for a special exceptions to allow a hotel under Section
21 512, for a partial waiver of the rear yard requirements
22 under subsection 534.6 to allow multiple roof
23 structures and roof structures not meeting the normal
24 setback requirements of subsection 530.4, under
25 subsection 411, and for variances from the height

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1 requirements under section 530, the floor area
2 requirements under section 531, and the court
3 requirements under section 536. This is to allow the
4 construction on an addition to an existing building to
5 be used as a hotel at premises at 1743 through 1745 N
6 Street, Northwest.

7 Mr. Chairman, there are several, well
8 probably four preliminary matters associated with the
9 application. One of which, as I had indicated, it has
10 been substantially revised.

11 CHAIRPERSON GRIFFIS: Excellent, that's
12 one. Request for party status is two. What is three
13 and four?

14 MS. BAILEY: The ANC indicated that they
15 did have a preliminary matter associated with the
16 revised application, and number four is I think there
17 was a request, I'm not sure if it's from the Office of
18 Planning that there possibly is a postponement for a
19 portion of the application that they were not able to
20 make a complete recommendation at this time.

21 CHAIRPERSON GRIFFIS: Okay. All right, and
22 actually Exhibit 41, Mr. Glasgow has addressed possible
23 postponement. So, let's take them up. Well, let's do
24 it one at a time. But first I think it would be
25 appropriate to look at the new request for party

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1 status, and that's William Greene representing Science
2 Service, Inc.? Am I correct?

3 Is Mr. Greene available? If you wouldn't
4 mind coming up please.

5 Good afternoon. Just touch it, touch it
6 again.

7 MR. GREENE: Is it on?

8 CHAIRPERSON GRIFFIS: There it is.

9 MR. GREENE: Okay, good.

10 CHAIRPERSON GRIFFIS: If you wouldn't mind
11 just stating your name and address for the record?

12 MR. GREENE: My name is William A. Greene.
13 I work for Science Service who I am representing, 1719
14 N Street, Northwest, Washington, D.C.

15 CHAIRPERSON GRIFFIS: Excellent, and you've
16 indicated in your submission several things for sure
17 that you will be here not using legal counsel. You're
18 also very adjacent to the property and you're
19 representing other groups, is that correct?

20 MR. GREENE: Yes, there are several
21 organizations on our street who are in opposition to
22 this based on the traffic situation. Science Services
23 won the United Auto Workers, the Penn Arts Ladies, the
24 Middle East Institute, and Johns Hopkins University.

25 CHAIRPERSON GRIFFIS: Okay. And you have

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1 stated in your submission that you are uniquely
2 impacted if this is to be approved, based on your
3 proximity and those impacts that would include but not
4 be limited to accessing alley safety and the traffic
5 conditions, is that correct?

6 MR. GREENE: That is correct.

7 CHAIRPERSON GRIFFIS: Any questions from
8 the Board, clarification?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Mr. Glasgow, do you
11 have a position on the party status request.

12 MR. GLASGOW: Yes, we're going to object in
13 that it's untimely and by the way that it's been
14 structured. They are not uniquely affected.

15 CHAIRPERSON GRIFFIS: Okay. Would you like
16 to elaborate on that one?

17 MR. GLASGOW: They have stated that there's
18 use of the alley, which all property owners are
19 permitted by law to use the alley. So just to say that
20 there is going to be increased use of the alley by a
21 property owner within the square is not a unique
22 situation. All the property owners are using the
23 alleys, that's why they were established in that
24 fashion. And due to the historic nature of the N
25 Street facade frontages and being in the historic

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1 district, you're not going to get a curb cutoff of N
2 Street anyway so you're going to have to use the alley.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. GLASGOW: But I think the basic issue
5 is that party status was taken up in this case on
6 November 1, and they did not appear. So their request
7 is untimely.

8 CHAIRPERSON GRIFFIS: Very well, Mr.
9 Greene, address the first. Why wasn't this when we
10 first called the case?

11 Mr. Nettler?

12 MR. NETTLER: Can I just weigh in --

13 CHAIRPERSON GRIFFIS: Yes, sure, sure.

14 MR. NETTLER: -- since we are a party?

15 This is Richard Nettler on behalf of the
16 Tavern Inn. We don't have an objection to them being
17 allowed as a party, as you recall. I recognize, as Mr.
18 Glasgow has pointed out, that they did not file for
19 party status two weeks before the first hearing, which
20 of course the applicant's sought to postpone, but I
21 don't think anybody has been harmed by -- there's no
22 prejudice to having them coming in as a party at this
23 point, particularly giving the fact that this is an
24 ever changing project, which even to this day appears
25 to keep on changing, which we will get to.

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1 As far as them being uniquely affected, I
2 think the fact that they -- this individual appears to
3 represent the commercial establishments off of
4 Massachusetts Avenue who, at least from our experience,
5 more heavily use this alley than would seem any other
6 owner of the buildings certainly on N Street, it would
7 seem that their concerns are, while they're somewhat
8 different than the concerns, they are somewhat similar
9 as well that we have, they are different in magnitude
10 and raise completely different issues of what a very
11 large part of our presentation will be, so I think they
12 clearly are damaged and have a position to present that
13 is different than what other property owners would
14 present.

15 CHAIRPERSON GRIFFIS: Okay. I think I
16 understand. Follow-up questions from Board Members?

17 VICE-CHAIRPERSON MILLER: What I would just
18 don't understand this. What property owners that are
19 not participating are we talking about? I mean I don't
20 understand this. Is this a large group of property
21 owners or is this a group that they're residential as
22 opposed to organizations?

23 MR. GLASGOW: Well, I'm just looking at Mr.
24 Greene's submission. That's what I'm taking this from
25 and what his earlier statement was. He said he's

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1 representing several groups that are seeking party
2 status. That's his position.

3 VICE-CHAIRPERSON MILLER: You just -- you
4 said they weren't different because -- they weren't
5 different from all the other property owners, so I was
6 just wondering what other property owners?

7 MR. GLASGOW: Well, I think that the -- I
8 didn't see where they distinguished themselves from any
9 other property owners in the square.

10 VICE-CHAIRPERSON MILLER: Okay. I think
11 Mr. Nettler just addressed that to a certain extent, I
12 just wanted to see if you had any other knowledge about
13 property owners.

14 MR. GLASGOW: About their particular
15 groups?

16 VICE-CHAIRPERSON MILLER: Yes.

17 MR. GLASGOW: I mean there are commercial
18 groups, there's a residential building, and there are
19 various organizations that have properties within this
20 square.

21 VICE-CHAIRPERSON MILLER: I hear who they
22 are. I just thought you may have had other property
23 owners in mind that were not participating.

24 MR. GLASGOW: I believe that there are
25 other property owners in the square that are not

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1 participating.

2 VICE-CHAIRPERSON MILLER: Okay, but you
3 don't have anymore information about their interests
4 being different or anything?

5 MR. GLASGOW: No.

6 VICE-CHAIRPERSON MILLER: Okay. And also
7 how is the applicant harmed or prejudiced if we admit
8 them as a party at this point?

9 MR. GLASGOW: Well, I think it has been the
10 Board's position, generally, that when there is -- when
11 party status is taken up it's taken up at one time
12 during the proceeding. That's generally the way the
13 Board has handled these type of cases. Whether there's
14 a postponement or not, and party status was addressed
15 at the November 1 meeting.

16 CHAIRPERSON GRIFFIS: Anything else?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Mr. Greene, you've
19 heard two comments in opposition to your request for
20 party status. The first being you're not any
21 differently impacted on this alley than anybody else on
22 the alley and then second, which I'd like to hear
23 first, is what precluded you from filing party status
24 request in November?

25 MR. GREENE: We actually were going to do

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1 it but did not get it done in time and my understanding
2 was, by the fact of the case, I was here that day when
3 the case was brought out. There was a lady
4 representing N Street, it was continued to today and so
5 I wanted an opportunity to talk to more folks in our
6 area.

7 And to address the first one, we tried to
8 get a cross-section of folks; I think and I would be
9 happy to give this a try if this case is continued, I
10 don't think there is anyone who works or lives in that
11 area or works in that alley that would not join us in
12 this same basic believe that we are, I think we do have
13 a cross-section of most everyone in that alley and we
14 certainly could strive to get that, but I realize that
15 we don't have that today.

16 CHAIRPERSON GRIFFIS: Right, and you're
17 indicating the impact on you may not be 100 percent
18 unique from all those property owners on the alley, but
19 it would be unique from that of the general public?

20 MR. GREENE: It would be unique to anyone
21 entering and exiting that alley in the day and we just,
22 because we are there day in and day out and have
23 experienced these things for 20 or so years can attest
24 to the fact with the problems of the alley.

25 CHAIRPERSON GRIFFIS: Indeed. Mr. Glasgow?

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1 MR. GLASGOW: Sure, I think he's indicated
2 just in the last sentence that they're problems with
3 the alley. Just that general type of statement, that's
4 the same for anybody that's got any property in the
5 square. There's one way in and out of that alley and
6 I don't believe that that rises to party status. He's
7 certainly in a position to be a person in opposition or
8 take whatever position they want to do.

9 CHAIRPERSON GRIFFIS: Board Members?

10 VICE-CHAIRPERSON MILLER: Mr. Greene,
11 could I just -- I just want to get a clarification
12 of the impact. Is it because you all enter and exit
13 the alley more frequently than members of the
14 general public or is it because your buildings are
15 there, and you work there, and you are affected by
16 other people entering there?

17 MR. GREENE: We are affected by the
18 traffic flow. The question and the problem is not
19 who it is, the increase in the traffic flow is the
20 problem, as per the photographs and things that I
21 attached with my application. It's the increase in
22 the number and the amount of cars that are going to
23 cause the problem. And it's not only any particular
24 use -- any particular time of the day, primarily for
25 us it would be in the morning and in the afternoon.

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1 For some of the other organizations it would be any
2 number of times. The Middle East Institute has
3 folks coming and going all throughout the day, so
4 they would be severely impacted. The UAW, the same
5 way. And everyone of these, across each of these
6 groups, has different time frames that these
7 problems would exist and so the general consensus
8 is, as we stated it in there, is that it's just the
9 increase in the number of cars in the alley is
10 what's going to be almost intolerable.

11 VICE-CHAIRPERSON MILLER: Thank you.

12 CHAIRPERSON GRIFFIS: Anything else?

13 Does ANC have a position on this?

14 MR. BJORGE: On the position of the
15 alley?

16 CHAIRPERSON GRIFFIS: No, the position
17 of the request for party status?

18 MR. BJORGE: The ANC does not have a
19 position. We do not stand in opposition.

20 CHAIRPERSON GRIFFIS: Okay, excellent.
21 Anything else? Any other clarifications for the
22 Board? Direction?

23 BOARD MEMBER MANN: I don't have any
24 opposition to granting party status to Mr. Greene's
25 group.

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1 CHAIRPERSON GRIFFIS: Okay. Others?

2 VICE-CHAIRPERSON MILLER: I would also
3 be in favor. I think it sounds like these
4 organizations will be impacted more than the general
5 public of the alley. And I don't think that there's
6 any prejudice to the applicant by allowing them to
7 come in at this point.

8 CHAIRPERSON GRIFFIS: Very well, I would
9 tend to concur and I will tell you my great
10 hesitation was the lateness of the submission and I
11 think Mr. Nettler has made an interesting and
12 persuasive point in the fact that we have changed.
13 So I mean the importance of establishing party
14 status early on in preliminary matters is full
15 participation throughout. So as things change, as
16 things were submitted, or as we required things, it
17 seems like we are here today to really get ruling,
18 conceivably. So I'm not concerned in terms of the
19 timing and I would be amenable to waiving our
20 requirements on that and granting party status.
21 Also, attendant to the substance of the case in
22 terms of how this group would be uniquely -- I think
23 they have a unique perspective on their issue, and
24 that issue is utilization of the alley and how they
25 are compared with their differing functions and I

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1 think it would be appropriate to have them as a
2 participant.

3 So with that, unless there is any
4 opposition to it, we'll take into those
5 participating, Board Members, and grant party status
6 at this time --

7 BOARD MEMBER ETHERLY: Mr. Chair, just
8 very briefly --

9 CHAIRPERSON GRIFFIS: Yes.

10 BOARD MEMBER ETHERLY: I will be voting
11 in opposition to the application for party status.
12 I understand the arguments that have been offered by
13 Mr. Greene and understand the circumstances that you
14 found yourself in, but however, I am not swayed by
15 the rationale that was offered for the lateness of
16 the reply. Clearly, should your motion be
17 successful, of course, I would definitely welcome
18 you and perspectives of your representative bodies
19 to this particular case, but I do continue to have
20 a little bit of a concern about setting the
21 precedent without a very clear reason for the
22 lateness of the reply. I understand Mr. Nettler's
23 argument with respect to the issue of no prejudice,
24 but I think it's very important that clarity be
25 established as quickly as possible in our

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1 proceedings as it relates to all of the
2 participants. And I think that's something that's
3 in place both for the protection of the applicant as
4 well as for the integrity of the process. But that
5 being said, once again, should the motion be
6 successful, I would definitely welcome the
7 perspectives that you will bring to the table.

8 Thank you, Mr. Chair.

9 CHAIRPERSON GRIFFIS: Excellent, thank
10 you very much, well said.

11 And let's put it to a vote then. I
12 would move to approve the party status application
13 of William Greene as representing the organizations
14 as attached to his applications. Is there a second?

15 BOARD MEMBER MANN: Second.

16 CHAIRPERSON GRIFFIS: Thank you, Mr.
17 Mann.

18 Let me have anyone speak to that motion?

19 MS. MITTEN: I just wanted to say that
20 since I was unable to be here to hear the arguments
21 I'll just abstain.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. MITTEN: I feel not fully informed
24 on the subject.

25 CHAIRPERSON GRIFFIS: And little did you

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1 know it was going to be controversial.

2 MS. MITTEN: Little did I know.

3 CHAIRPERSON GRIFFIS: Very well,
4 appropriately said. Any other comments,
5 deliberations?

6 Very well, we do have a motion before
7 us. Let me ask for all those in favor signify by
8 saying aye.

9 (Chorus of ayes.)

10 CHAIRPERSON GRIFFIS: Opposed?

11 BOARD MEMBER ETHERLY: Opposed.

12 CHAIRPERSON GRIFFIS: Abstaining?

13 (No response.)

14 CHAIRPERSON GRIFFIS: One abstention.

15 Ms. Bailey, if we can move ahead. Let's
16 get down to business, shall we? There are a couple
17 more preliminary matters if I am not mistaken.

18 Second was -- oh, the ANC is here. Do
19 you want to just address now, you're on the record,
20 we've called the case, and the issue was that you
21 had late notice of this hearing, is that correct?

22 MR. BJORGE: Actually, we had late
23 notice of the modification of the proposal. I do
24 believe the ANC is on record regarding the first
25 proposal. This one seems to us to be substantially

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1 similar though not identical.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. BJORGE: So we would of course like
4 the opportunity to weigh this proposal and would
5 request, given the amount of time and effort people
6 are here, people are ready, that the record be held
7 open for this and that we be allowed to comment on
8 some initial reactions, although not having the
9 great lead of course.

10 CHAIRPERSON GRIFFIS: Excellent, I don't
11 see any objection in doing that and I appreciate
12 your perspective in continuing today and getting as
13 much done as we can. Certainly we can keep the
14 record open if required.

15 Let's go on the same position, Mr.
16 Glasgow, you have submitted into the file also of
17 January 10 indicating that you were not able to
18 present revised plans to the ANC and therefore you
19 were amenable, if it's appropriate and also to allow
20 OP additional time to continue this case.

21 Are you prepared to go forward today?

22 MR. GLASGOW: We are prepared to go
23 forward.

24 CHAIRPERSON GRIFFIS: Okay. Is there
25 any objection of Mr. Nettler or the party in

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1 opposition to continuing today?

2 MR. NETTLER: We have no objection with
3 going forward today.

4 CHAIRPERSON GRIFFIS: Excellent. Phew.
5 All right, any other preliminary matters that we
6 have?

7 Ms. Bailey, have I covered all four,
8 consolidating two?

9 MS. BAILEY: Just that the application
10 was revised substantially.

11 CHAIRPERSON GRIFFIS: Excellent. Okay.
12 In which case we'll get right into that then. Thank
13 you all very much. Let's move right ahead.

14 Mr. Glasgow, are you going to clarify
15 the relief that's being sought?

16 MR. GLASGOW: Yes, I am, sir.

17 CHAIRPERSON GRIFFIS: Excellent, we'll
18 move ahead.

19 MR. GLASGOW: All right. Good afternoon
20 members of the Board. For the record, my name is
21 Norman M. Glasgow, Jr of the law firm of Holland and
22 Knight, representing the applicant. Here with me
23 today are Mr. Morton Bender, the applicant in this
24 case, Mr. Tom Carroll and Mr. Steven Sher, also
25 Holland and Knight are here. And Mr. Sher will be

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1 submitted as an expert witness in land planning.
2 Mr. Osborne George is in attendance and Mr. Iain
3 Banks. Mr. George will be submitted as an expert
4 traffic consultant. Mr. Jamie Karn for the
5 architect, or Karn for the architect is here to
6 represent on behalf of the architecture for the
7 project. We are submitting Mr. Sher and Mr. George
8 as expert witnesses and before proceeding with --
9 would you like to make a comment?

10 MR. NETTLER: I've just been handed by
11 someone who obviously works with Mr. Glasgow another
12 change in plans it appears from the ones that were
13 submitted to you before this hearing. I don't think
14 that's appropriate to be submitting the change in
15 plans today for this project yet again when here
16 we've just gone through a discussion over the fact
17 that the ANC hasn't even had an opportunity to
18 review the plans that were submitted on the 10th.

19 CHAIRPERSON GRIFFIS: Mr. Glasgow?

20 MR. GLASGOW: Sure, the sheet -- there's
21 one particular sheet that was submitted and that was
22 to address the issue with respect to the roof
23 structure relief.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. GLASGOW: It was -- there was a

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1 question raised by the Office of Planning and by the
2 Historic Preservation Division representative that
3 they would like to see the roof structure reduced in
4 size, as fronted on N Street, and we have responded
5 to that. In fact, every submission that we have
6 made to modify the plans have been in response to
7 either a concern expressed by the Office of
8 Planning, History Preservation Division, staff, or
9 in response to comments that Mr. Bender received at
10 an ANC Meeting.

11 CHAIRPERSON GRIFFIS: Okay. So these
12 are responsive in leading up to this.

13 Mr. Nettler?

14 MR. NETTLER: Yes, if I might respond.
15 I mean if you recall, and it may take some history
16 here, we were -- we came before you in November and
17 this matter was continued because the applicant
18 wasn't ready until today to provide revised plans so
19 that they might be reviewed by the Board of Zoning
20 Adjustments. And that was presumably giving the
21 applicant enough time to present whatever revised
22 plans they had to both the Advisory Neighborhood
23 Commission, to the Dupont Circle Conservancy, to the
24 Historic Preservation Review Board, and any other --
25 and us who had party status at that time in order to

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1 prepare for this hearing today.

2 I understand that a request was made to
3 place this on the agenda, that the plans that had
4 been submitted on the 10th from the Dupont Circle
5 Conservancy, at its meeting this month, no one
6 showed up for that meeting. There was a request to
7 place it on the HPRB agenda but the plans weren't
8 submitted in time for that meeting, which is being
9 held this week. There was never any attempt to get
10 the plans to the ANC's so they could make a
11 recommendation this month for this meeting, and now
12 we're having new plans submitted that's purportedly,
13 because we have no testimony here from anybody
14 either from the Historic Preservation Office or from
15 anybody else that purportedly, according to Mr.
16 Glasgow, responded to comments that we have no
17 record of, and to have the parties essentially
18 address plans that they've never seen before, at
19 this hearing and to have this Board address those
20 plans. I just think it's inappropriate to do that
21 and I think that what we should be going forward
22 with are the plans that were submitted. If there
23 are going to be modifications that are made to those
24 plans as a result of comments that are made to the
25 Board and to the parties, then maybe each party will

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1 have an opportunity to address those, but to have a
2 completely different presentation made responding to
3 issues that Mr. Glasgow knows that we made even
4 before November 1 in our pre-hearing statement
5 without giving us an opportunity to even look at
6 those plans I think is entirely inappropriate.

7 CHAIRPERSON GRIFFIS: I don't disagree
8 with your position, Mr. Nettler, in terms of overall
9 process; however, just looking at it and we're doing
10 a quick comparison because it's just been handed to
11 us, I don't think this is monumental in terms of
12 getting a quick study and understanding what the
13 issues are. And in terms of whether it was modified
14 or not, there are two aspects. I'm not sure that
15 they would be precluded from presenting this today.
16 It perhaps is -- if it is to address Historic
17 Preservation staff members comments or not, they
18 still will be going through that review after this.
19 We have our own review that we need to account for.
20 So I'm not sure why we would stop the proceedings
21 based on this scenario.

22 MR. NETTLER: Well, I'm not asking to
23 stop the proceeding. I'm saying that to the extent
24 there are any plans that are being presented here
25 that are different, and we've had an opportunity to

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1 just look at these, that are, in effect, some of the
2 issues that we've raised and that we will raise in
3 our opposition, I think the, because we do not want
4 this thing to be continued, that we want to make
5 sure that we have an opportunity to be able to
6 respond to those plans and submissions subsequent to
7 this hearing.

8 CHAIRPERSON GRIFFIS: Excellent, I don't
9 see any difficulty in laying that out and in fact we
10 might have our own questions and have additional
11 information. Just to be clear though that you're
12 asking, as the ANC also asked that if there is need
13 to, if we cannot accomplish everything in cross and
14 presentation today that we would look to and be
15 requested to keep the record open for additional
16 filings. Certainly we won't prohibit that at this
17 point and we'll address it when we move on.

18 Okay. Anything else?

19 (No response>0

20 CHAIRPERSON GRIFFIS: Then we're ready.

21 MR. GLASGOW: Sure. Mr. Chairman, I'd
22 just like to note for the record that it's not
23 uncommon for applicants to submit plans, revised
24 plans, on the day of the hearing. It happens
25 constantly before the Board.

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1 CHAIRPERSON GRIFFIS: Right and not
2 always productively, but nonetheless it happens a
3 lot.

4 MR. GLASGOW: It happens, right.
5 Getting back to the opening statement and before
6 proceeding with the testimony of the witnesses, the
7 revisions that we have are principally shown on
8 sheets D-8 and D-10, and that is a reconfiguration
9 of the roof structure elements. That's on that
10 part. But also and to reduce the height of the main
11 penthouse to 14 feet and to provide a great setback
12 from M Street.

13 CHAIRPERSON GRIFFIS: I think if you
14 look at D-10 just for quick clarification, Mr.
15 Etherly was looking at that. That's a stair
16 enclosure on the very left side. Is there a change
17 in that?

18 MR. GLASGOW: Yes, what that did is the
19 part of the stair tower than went up through the
20 building toward N Street was relocated to the rear
21 of the structure and was greatly reduced in size.
22 If you look at the overall size of the roof
23 structure, on the eastern side of the site, it has
24 been substantially reduced in size.

25 CHAIRPERSON GRIFFIS: Okay. But this

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1 one stair enclosure that was also moved back?

2 MR. GLASGOW: Yes, that was moved back
3 off and that was part of the reason why we were able
4 to significantly reduce that area because of the
5 introduction of that stair tower back in that area.

6 CHAIRPERSON GRIFFIS: And the height of
7 these structures, have they been reduced also?

8 MR. GLASGOW: Yes.

9 CHAIRPERSON GRIFFIS: Okay. We were
10 looking and the original penthouse was 16'-8" wasn't
11 it? It's hard to read, 16'-8" and I think it's 14'
12 now. Is that what we're?

13 MR. GLASGOW: That is correct.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. GLASGOW: All right, and the one to
16 the rear that you're talking about has been reduced
17 further. That is even smaller. That is going to be
18 like approximately eight feet in height. The one at
19 the north --

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. GLASGOW: -- side of the site.

22 CHAIRPERSON GRIFFIS: It's 8 feet with
23 some detail it seems, so an overall height of about
24 10 feet?

25 MR. GLASGOW: Yes.

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1 CHAIRPERSON GRIFFIS: All right, I think
2 I'm clear. What other changes are we looking at?

3 MR. GLASGOW: All right, from the
4 original case we have -- we no longer have an FAR
5 variance. We no longer have a height variance.
6 Those were two items that as we received comments
7 back from the Office of Planning, the ANC, and in
8 review of the transcript of the November hearing, it
9 was indicated that there was desire on the Board's
10 part that we address some of those issues, and we
11 have by reducing -- by eliminating those two areas
12 of relief and we have eliminated the relief for the
13 rear yard setback. So the building is, in our view,
14 substantially smaller than it was previously. We
15 have reduced the number of hotel units from I
16 believe it's 118, 117 to 77. The parking spaces
17 have been reduced from 128 to 96.

18 And so there are three areas of relief
19 that remain: a special exception for hotel use in
20 the SP-1 District, special exception relief from the
21 roof structure requirements, and a variance to
22 continue an open space, which is now classified as
23 a side yard, which will become under the
24 redevelopment will technically become a court and is
25 a non-conforming court. But the distance between

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1 the walls, the walls already exist, their separation
2 remains the same. So we believe that we have
3 significantly reduced the areas of relief requested.

4 CHAIRPERSON GRIFFIS: Excellent, any
5 questions or clarification from the Board?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Very well, let's
8 move ahead.

9 MR. GLASGOW: I would like to confirm
10 that the Board Members do have a copy of the
11 statement of the applicant that was filed January
12 10, 2006.

13 CHAIRPERSON GRIFFIS: Absolutely. And
14 I'm sorry I don't have an Exhibit number on mine but
15 we do have in receipt and have read it.

16 CHAIRPERSON GRIFFIS: We are pleased
17 that the Office of Planning is in support of the
18 hotel special exception and the court request, and
19 we hope that when discussed today that there will be
20 comment made on the roof structure special
21 exception.

22 And with that, I would like to introduce
23 Mr. Bender, call him as the first witness in the
24 case.

25 Would you please identify yourself for

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1 the record?

2 MR. BENDER: Morton Bender, I'm the
3 managing partner of N Street Follies. We've owned
4 the property since the late-1980's and I believe it
5 was the early 90's we had a different plan to
6 develop the property. We were going to an office
7 building an apartment house and that didn't receive
8 too much acceptance. We then have been working on
9 it and have come up with doing a hotel. Our
10 original plan for the hotel we asked for increase in
11 FAR and height, primarily because the Historical
12 Preservation wanted us to maintain all of the walls
13 inside the existing structures. And, as a result,
14 it just got a lot wider than it should and we
15 thought we were losing useful FAR, and that was
16 approximately 25,000 feet. So we asked for an
17 increase and to do that we needed an extra 10 feet
18 of FAR.

19 After going to the ANC and the Office of
20 Planning and hearing all the negative comments, I
21 went back to the architects and said let's -- what
22 can we do, let's just stay within what we are
23 allowed to do for FAR, a 55 foot height that
24 existing buildings are. So we cut the building back
25 from 117 hotel units to 77. We cut the garage down

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1 to 96 from 127 and minimized whatever issues would
2 be questionable by anybody. And that's what we're
3 hoping to do. We -- I know the opposition from Mr.
4 Greene is about the alley. The alley is what it is.
5 We can't get a curb cut to come through to feed our
6 garage. We feel it's important to have a garage for
7 our hotel and here we are. Thank you.

8 CHAIRPERSON GRIFFIS: Thank you very
9 much.

10 MR. GLASGOW: I'd like to call the next
11 witness, Mr. Jamie Karn, to discuss the plans for
12 the proposal.

13 MR. KARN: Good afternoon. I don't know
14 how familiar you have been with the project from
15 earlier iterations.

16 CHAIRPERSON GRIFFIS: We've had months
17 to study it.

18 MR. KARN: Okay. Well really quickly
19 then, the first floor has not changed substantially
20 other than what was a atrium, the courtyard in the
21 back, was previously an atrium. It is now an open
22 space. It will not be roofed over. Generally, you
23 know, entrance, lobby, public bar or restaurant, and
24 lobby check-in et cetera are on the first floor. On
25 the second floor there are two or one large meeting

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1 room that can be divided into two, and then guest
2 rooms. And then from the third, fourth, and fifth
3 floors there are guest rooms only essentially. The
4 configurations of the plans changes as you go up,
5 entirely in response to the historic facades. You
6 can see the first and second floor the facades are
7 pretty consistent. And the courtyard and the court
8 that was mentioned is this area that previously was
9 a side yard that went through. And because of the
10 subdivision of property that court is ended by the
11 new work.

12 CHAIRPERSON GRIFFIS: Is that the extent
13 of the court?

14 MR. KARN: Yes.

15 CHAIRPERSON GRIFFIS: What's the
16 dimension of that

17 MR. KARN: 21 foot deep by 10 foot wide.
18 And these are historic -- I'll just point out, the
19 gray walls are historic fabric that's being
20 retained. So all these exterior walls out here are
21 historic fabric and what's what's defining the width
22 of the courtyard, the court.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. KARN: As you go up, again, this
25 atrium remains open. It's not roofed over; it's

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1 just an open area. This facade, these are all guest
2 rooms, a total of 77, as had been --

3 CHAIRPERSON GRIFFIS: Sorry, let me
4 interrupt you again just to make sure the Board sees
5 with clarity, you have an **AL@** shaped court, is that
6 correct?

7 MR. KARN: This court?

8 CHAIRPERSON GRIFFIS: No, the one that
9 you're coming in for relief for?

10 MR. KARN: The -- I'm not sure if this
11 part in front qualifies as a court or not. I'd have
12 to admit to ignorance n that. Mr. Sher could can
13 respond to that.

14 CHAIRPERSON GRIFFIS: I guess -- I mean
15 the court has got to be bounded by two exterior or
16 more walls in a property line. Is that correct, Mr.
17 Sher?

18 MR. SHER: Yes, for the record, my name
19 is Steven Sher, Director of Zoning and Land Use
20 Services for the law firm Holland and Knight.

21 There are in effect two courts there, or
22 one could call one **AL@** shaped court. The front
23 piece of the court, the wider part, actually meets
24 the court with requirements. So we don't need a
25 variance for the front part. It's the part that

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1 extends -- this part here that's only ten feet wide,
2 where the minimum is 12 feet for a court in an SP-2
3 district. So that's the part where the variance is
4 required. This dimension here that you measure the
5 court with, parallel with the open end of the court,
6 that dimension meets the court requirements. But it
7 is the piece back here that does not.

8 CHAIRPERSON GRIFFIS: Okay. How
9 obscure. As we go through that, obviously the other
10 part is we need to bring chairs around. By all
11 means, make sure everyone can see it.

12 So what is the court width end in the
13 conforming court? Where does it start and stop?

14 MR. SHER: It follows the wall of
15 building here on the west side, the wall of the
16 building here on the east side, the front of 1751
17 here, and then that line extended across. And then
18 this court is created by the two walls of the
19 building on the east and west, the rear, the wall of
20 I guess this is new construction that doesn't exist
21 now behind the piece of 1751 and adjacent to 1755,
22 and then the front of that court is that same line
23 extended before.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. SHER: So this distance here is

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1 substantially more than the 12 foot minimum required
2 for the width of a court in an SP-district, because
3 you can see that this dimension is 10 feet, we only
4 need to have 12, we're about 3 times that across the
5 front.

6 CHAIRPERSON GRIFFIS: So, if I
7 understand you correctly what you're saying is that
8 there is one you could have defined it as a portion
9 that is conforming, and you've taken up a portion
10 that is not because it doesn't meet at that one
11 point the minimum dimensions required in the SP-
12 zone?

13 MR. SHER: That's correct.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. SHER: At the present there is a
16 property line that runs down this wall of building.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. SHER: And this space is actually a
19 side yard for the building at 1745, rather than a
20 court.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. SHER: When we subdivide all this
23 into one lot that's no longer -- and build the
24 building behind it that's no longer a side yard it
25 becomes a court. The dimensions of the court are

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1 such that it needs to be three inches per foot of
2 height but not less than 12 feet. If you measured
3 the width of the court based on the height, it's
4 actually less than 12 feet, it's only 10 feet, but
5 it has to be not less than 12 feet. So we're 2 feet
6 short on the existing condition.

7 CHAIRPERSON GRIFFIS: Got you. Okay.
8 Is everyone clear? You know what I might have you
9 do is with the easel, why don't we just angle it a
10 little bit here so that others can see this. At
11 some point I'm told this will be broadcast
12 everywhere, in all these televisions and screens
13 around so there will always be a good view. But
14 until that day, we'll use the manual effort.
15 Excellent.

16 MR. KARN: Again, the fourth floor, the
17 third floor is all guest rooms and circulation. And
18 you can see the size of the corridors, et cetera,
19 maintaining the historic fabric. The fourth floor
20 is exactly the same. It's the fifth floor that, as
21 you can see, the existing structure, some of the
22 existing structures stop at the fourth floor and
23 you're looking down now at their roofs. So that
24 pulls the envelope of the structure back. And guest
25 rooms here, storage here, and then the typical

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1 pattern of guest rooms toward the back.

2 CHAIRPERSON GRIFFIS: On the fifth floor
3 there show me what's creating the penthouse on the
4 enclosure.

5 MR. KARN: The elevators are a
6 controlling factor.

7 CHAIRPERSON GRIFFIS: That's okay.
8 That's a good plan to have. So what's the impact if
9 you move it? Why aren't you just moving the
10 elevators into the plan and setting it back? You're
11 here for a special exception for 411, a setback.

12 MR. KARN: I think for purposes of
13 circulation in the lobby if we push this back then
14 we lose access back to the back, the rear portion of
15 the building, and it just, it doesn't work very well
16 for circulation essentially. And I think we have,
17 we pushed them back, they were here. The original
18 effort was to place them where there were air
19 shafts, as a request from Historic Preservation to
20 maintain as much fabric as possible. We initially
21 located them in air shafts and they have been pushed
22 back.

23 MR. GLASGOW: Mr. Griffis, maybe it
24 would be helpful if we said exactly where we need
25 the relief from because we no longer, with the

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1 revised plan, would need relief from our setback
2 from N Street.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. GLASGOW: We do not setback from our
5 exterior wall on that interior court now. Okay.
6 That's an area of relief that we had.

7 CHAIRPERSON GRIFFIS: Okay. Maybe that
8 would be helpful, yes.

9 MR. GLASGOW: Okay. Steven, do you want
10 to help with that and then show the relocated piece
11 and how it confronts the alley so we get this -- I
12 think if you understand exactly where we're asking
13 it from and why that may be helpful to the Board.

14 CHAIRPERSON GRIFFIS: Absolutely.

15 MR. SHER: Okay. Sheet D-7 is the roof,
16 the roof plan. And the property line is here at the
17 front. The main penthouse is at the double line
18 here. You can see the elevator is popping up here.
19 And you know where the elevators are. These would
20 be the lobby level and if you look at the floor
21 plans you will see that they come out right at one
22 of the corners of the **AL@** of the wing and that's
23 sort of where they want to be. The penthouse is set
24 back approximately 40 feet from the property line,
25 21 and a half feet from the edge of the room at this

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1 point, but only 10 feet from the edge of the roof at
2 this point, which would have to be four feet more
3 because the room structure is 14 feet above the
4 height of the roof at this point here. Again, this
5 is because there are lower elements of the existing
6 building that are being retained so that the new
7 construction is set back at this point here. Four
8 more feet gets you to a point where you can't get
9 out of the elevators when you get to the roof level.

10 As Mr. Glasgow was mentioning, along
11 this side, on the west side of the main penthouse we
12 are on the line of this interior open courtyard,
13 which at one point was covered but is now open to
14 the sky from the ground. So the wall of the
15 building goes all the way up on the east side of the
16 court house, which is the west side of the
17 penthouse, so we don't have a setback there. On the
18 east side we are now setback 8 feet from the lot
19 line but the Board in the Belmont Street appeal
20 ruled that penthouses didn't have to be setback from
21 a common lot line wall so we don't have to have any
22 setback there but in fact we have eight feet on the
23 east side of the penthouse. We have in excess of 14
24 feet, the dimension widens because the property is
25 not square in the back there. So on the north side

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1 of the penthouse we don't have a setback issue.

2 CHAIRPERSON GRIFFIS: And would you
3 address the --

4 MR. SHER: The second penthouse is the
5 freight elevation. This is the one that's only five
6 feet above the roof and that one meets the setback
7 requirements on all sides.

8 Okay. The third penthouse is the stair,
9 which in the earlier plans had been located next to
10 the elevator here. We need one stair going up to
11 the roof. In order to bring this penthouse setback
12 further back we've taken that stair, taken it from
13 this corner of the corridor and put it all the way
14 at the northwest corner of the building so it is --
15 this is a total of ten feet if you could all the way
16 to the top of the decorative elements of the stair
17 tower. It is not set back on the westside property
18 line, but again it does not have to be. It is not
19 set back from this court that is created here by
20 this indentation in the building. It does meet the
21 setback requirements on the east side by plenty and
22 on the, let me get my directions straight, and on
23 this side, this is the south side, I'd have to look
24 at the other plan that had that dimension on it, but
25 it does not meet the setback requirement on the

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1 north side as well. So we have three penthouses,
2 one of which is entirely complying and two of which
3 are partially complying but for different reasons.

4 CHAIRPERSON GRIFFIS: And then we're
5 looking for the single enclosure also, correct?

6 MR. SHER: Right. We, under the
7 regulations we are able to have two penthouses
8 because we have two elevator cores, but because we
9 have a third penthouse we now have multiple
10 enclosures as well.

11 CHAIRPERSON GRIFFIS: Okay. Is
12 everybody clear? Excellent.

13 MR. GLASGOW: Okay. Let's see, is there
14 anything -- are there any other aspects of the
15 plans, Mr. Karn, that you need to review with the
16 Board?

17 MR. KARN: No.

18 MR. GLASGOW: All right, Mr. Sher,
19 you're now the next witness. And we have Mr.
20 Osborne George here for questions for the Board, his
21 report is in the record.

22 MR. SHER: Mr. Chairman, members of the
23 Board --

24 MR. GLASGOW: Excuse me Steve. And I
25 understand that the Board has accepted both Mr. Sher

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1 and Mr. George as expert witnesses in their
2 respected fields?

3 CHAIRPERSON GRIFFIS: Right.

4 MR. GLASGOW: Thank you.

5 CHAIRPERSON GRIFFIS: Yes, I don't have
6 any difficulty in doing that, again, in this case,
7 particularly for the elements that are going to be
8 discussed and testified by.

9 MR. SHER: This is a DC/SP-1 district.
10 The DC is the Dupont Circle overlay. It frankly has
11 no bearing on this application because it talks about
12 standards for PUD's and prohibits curb cuts on
13 Connecticut Avenue, neither of which are applicable
14 here. So it doesn't really add or subtract anything
15 to the application. So you're basically looking at a
16 piece of property that's in an SP-1 zone. The SP-1
17 permits a hotel as a special exception. It allows a
18 maximum height of 65 feet, a maximum FAR of 4, of
19 which no more than 2.5 may be for other than
20 residential purposes. But for a hotel you are allowed
21 to prorate parts of the hotel between the residential
22 and non-residential FAR. So all of our building fits
23 within the 4.0 FAR allowed under the SP-1 District.
24 Rear yards are required to be 2 and a half inches per
25 foot of height but not less than 12 feet, and in an SP

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1 District where you abut an alley at the rear you can
2 measure the rear yard from the center line of the
3 alley. We have an alley that varies in width from at
4 its eastern side in excess of 25 feet to the western
5 side where it is in excess of 40 feet. So even at the
6 narrowest point of the alley the building meets the
7 rear yard requirements because it is less than half
8 the distance to the -- less -- the rear yard is
9 required to be less than half the width of the alley
10 at its narrowest point. The reason we were able to
11 eliminate the rear yard waiver from the earlier
12 application was because the height of the building
13 went down by 20 feet. So that reduced the minimum
14 required depth of the rear yard by enough to make the
15 alley sufficient to account for the rear yard. So
16 instead of having a 75 foot high building we now have
17 only a 55 high foot building. And that reduces the
18 rear yard requirements because it's based on the
19 height.

20 As you heard, we're talking about a 77
21 room hotel, five stories, a little bit less than 55
22 foot in height and 4.0 FAR. And the relief that we
23 require is three fold: a special exception for the
24 hotel use itself, a special exception on the
25 restructure requirements, and a variance on the

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1 court. I think to try to clear up the court I think
2 I described what that area is before. The basic
3 reason for that relief is it is an existing
4 condition. The walls are ten feet apart. We, in
5 some respects, we'd like to be able to take those
6 walls down and make them 12 feet but they can't.
7 They are contributing buildings in the historical
8 district. We've accepted as a given the fact that
9 those walls are going to remain, so that space which
10 is now a side yard becomes a court. When it is a
11 court it is required to be three inches per foot of
12 height. The actual computation of that is just
13 about the width of that court now but the
14 regulations say but not less than 12 feet, and we're
15 not 12 feet we're 10 feet. So we need a variance on
16 the 2 feet and it all arrives out of the fact that
17 that is an existing condition and if we want to
18 consolidate this and adaptively reuse the existing
19 buildings and build anything behind it, whether it
20 was a hotel, an office building, or an apartment
21 house you'd have the same problem. The court --
22 you'd either have to pull the building all the way
23 to the front and eliminate the court, which how do
24 I want to say contradicts the existing historic
25 condition, or if you maintain some setback to leave

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1 that condition in place you've got a court that
2 doesn't comply.

3 On the hotel itself, the standards for
4 special exception are set forth in Section 512. The
5 Board is required to determine that the design
6 should be in harmony with existing uses and
7 structures on neighboring property. This block of
8 N Street, the 1700 block of N Street has essentially
9 lost its entire residential character. There are no
10 longer any residential uses to my knowledge in that
11 block. The uses are predominantly office uses.
12 There are two hotels in that block, the Tavern Inn,
13 immediately to the east of the subject property and
14 the Topaz, which is immediately to the east of that.
15 Other than that the uses are office uses in those
16 buildings. The height of the development is
17 essentially the same as the three existing buildings
18 on the western portion of the site as you can see on
19 the front elevation which is on the easel on my far
20 right your far left, and then they are slightly
21 higher than the two buildings on the eastern side of
22 the site which are a little bit lower than what we
23 are proposing. But we are still talking about a
24 height of 55 feet, which is 10 feet lower than the
25 height permitted as a matter of right, which is 65

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1 feet. As we stated earlier, the bulk is within the
2 FAR. The building mass is comparable to other
3 existing buildings on N Street in the 1700 block.
4 The exterior design of these four buildings, as
5 viewed from the street, is essentially unchanged,
6 but of course the exterior design is subject to
7 review and will be controlled by HPRB because we've
8 got to go through that process as well.

9 Another one of the requirements that the
10 Board has to find is that approval results in a
11 balance of residential office and hotel or in-uses
12 in the SP-district in the vicinity of the site. In
13 order to reach some conclusion about that I looked
14 at the subject square and the square immediately to
15 the south and immediately to the north in terms of
16 the area zoned SP. And what I've determined was
17 that there is in fact a balance of those uses and
18 that balance would be retained. There are high rise
19 apartment houses on 18th street and on the north
20 side of Massachusetts Avenue. There are office uses
21 along both sides of N Street, the south side of the
22 1700 block of Mass Avenue and at other places on the
23 north side of Mass Avenue. And as I indicated
24 before there were two hotels in the 1700 block of N
25 Street. There are other uses besides residential

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1 hotel and offices uses in that space, but the
2 essential balance is not disturbed by allowing this
3 property to be used by a hotel. The buildings have
4 been vacant for quite some time and putting them in
5 any use will almost not upset or destroy that
6 balance as it now exists.

7 We are required to show that the
8 function rooms occupy less than 15 percent of the
9 gross floor area of the building. The building is
10 -- 15 percent would be approximately 12,385 square
11 feet. We have small function rooms on the first and
12 second floor which total 6,400 square feet so we're
13 just a little more than half of what we would be
14 permitted to have in way of function rooms.

15 We have to show that we are within 1,300
16 feet of the central employment area or the metro
17 station. We are actually within the boundaries of
18 the central employment area, so the 1,300 foot
19 measurement doesn't make any difference. No parking
20 or loading is required for this hotel because this
21 is in addition to five contributing buildings in the
22 Dupont Circle Historic District. However, we are
23 providing both parking and loading and we meet the
24 requirements that would apply if they did apply,
25 which they don't. But we have mor than enough

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1 parking and more than enough loading to meet those
2 requirements if they were applicable. As has been
3 indicated earlier, access to both parking is through
4 the alley at the rear because we don't have a curb
5 cutoff in N Street and we're not going to get one,
6 so we've got to come in through the alley. There's
7 one loading berth and one service delivery space off
8 the alley, and there is a parking garage, three
9 levels in the basement, which is actually accessed
10 by an elevator. We can do that because this is not
11 required parking and it doesn't have to be accessed
12 by a paved impervious surface. We can use an
13 elevator to do that so we've been able to -- and
14 given the way the site lays out, that was actually
15 the most efficient way to get access to an
16 underground garage.

17 CHAIRPERSON GRIFFIS: Right. So the
18 elevator is taking the cars down. That's why it's
19 going to be valet parking?

20 MR. SHER: Well, it's a hotel. It would
21 probably be valet parking in any event, but it will
22 be valet parking.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. SHER: Patrons of the hotel will not
25 take their cars directly to the garage and park them

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1 themselves. This is a -- I want to call it a
2 mechanical/electronic system. You bring your car to
3 the garage. It takes it down to one to three
4 levels, carries it along a platform, inserts it in
5 a parking space and you don't even know where your
6 car is. It's down there somewhere.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. SHER: When you want it back the
9 valet know which spot you're in, you're in spot 17
10 on the second level. He pushes a button, the thing
11 goes down, gets the car, and brings it back up.

12 CHAIRPERSON GRIFFIS: And you hope you
13 didn't fall asleep in the backseat.

14 (Laughter.)

15 MR. SHER: I've never used one but they
16 tell me it works.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. SHER: There's an example of one in
19 the District in the building at the corner of 15th
20 and I that was the addition to the Mineworkers
21 Building. But it can't be required parking because
22 it's not a driveway formed of all weather,
23 impervious materials, but since it's not required
24 parking and wasn't in that case either, you can do
25 that.

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1 CHAIRPERSON GRIFFIS: Excellent. Okay.

2 MR. SHER: Roof structure special
3 exception I think we've gone over what are the
4 conditions that create the need for relief from the
5 Board. As the architect indicated, one of the
6 things that happened when we were trying to
7 accommodate the desire to reduce the visibility of
8 the penthouse from N Street was we took the elevator
9 core, which had initially been in the very front
10 right-hand corner of the building and pushed it to
11 the other side of the lobby a little bit more
12 further back and more away from that east property
13 line. And as a consequence they're here rather than
14 they were here before, pointing to the east side lot
15 line as opposed to the more central position where
16 they are now. In so doing, you still wind up with
17 a penthouse that, at this point, can't meet the
18 setback requirements for four feet in this,
19 essentially opposite here to here, and again as we
20 indicated we pushed the penthouse back along our own
21 interior court line, courtyard line, so that we've
22 got the setbacks that otherwise would be pushing the
23 thing towards the front. And then we've relocated
24 the stair, which was also in the front of the
25 penthouse to the back corner so we have the one

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1 access to the roof that is required. And that is
2 caused by what is essentially AU@ shaped hotel
3 building around the central courtyard here with
4 space that goes this way and then goes around the
5 back. And the dimensions of those again, this is a
6 hotel, not an office building. If this were an
7 office building we wouldn't have that courtyard,
8 we'd fill in the whole square and you'd put a
9 penthouse in the middle and there wouldn't be an
10 issue. But because hotels and/or apartment houses
11 want to have -- need to have windows in rooms that
12 look out on open spaces, we've essentially got rooms
13 that face the street, and rooms that face the back,
14 and rooms that face the courtyard, and so we've got
15 to have some open space in the middle of the site
16 and that constricts the location for rooftop
17 penthouses.

18 So for all those reasons we need relief
19 from the Board and I think I've kind of gone through
20 and explained as I've done that how we meet the
21 tests of the regulations. I believe we meet those
22 tests and this is something the Board can and should
23 approve.

24 CHAIRPERSON GRIFFIS: Thank you very
25 much, questions of the Board?

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1 MR. GLASGOW: That completes our direct
2 presentation.

3 CHAIRPERSON GRIFFIS: Excellent. If
4 there's no questions of the Board, let's start with
5 cross.

6 Mr. Nettler, did you want to be first?

7 MR. NETTLER: Sure.

8 I thought I'd start with Mr. Bender.
9 Good afternoon, Mr. Bender, Richard Nettler for the
10 Tabard Inn. You had commented in your testimony
11 about the fact that you had previously sought a
12 planned unit development approval and this is a
13 substantial change from what you had sought at that
14 time. Do you recall that?

15 MR. BENDER: Yes.

16 MR. NETTLER: And how long have you
17 owned these buildings that you're seeking the relief
18 for?

19 MR. BENDER: Late 80's.

20 MR. NETTLER: Late 80's, and how -- when
21 is the last time that you had residence in these
22 buildings?

23 MR. BENDER: I don't recall the date.

24 MR. NETTLER: Did you have residents in
25 the buildings before you sought the PUD application?

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1 MR. BENDER: Yes.

2 MR. NETTLER: Okay. Do you know if you
3 had residents in the building after you had the PUD
4 application.

5 MR. BENDER: I don't recall.

6 MR. NETTLER: You don't recall, okay.
7 But these buildings were used for residential
8 occupancy at some point, is that correct?

9 MR. BENDER: They were used for
10 apartment house, office space, and a hotel.

11 MR. NETTLER: Okay. And how much of it
12 was used for a hotel, do you recall?

13 MR. BENDER: I couldn't tell you.

14 MR. NETTLER: And do you know how much
15 was used for office space?

16 MR. BENDER: No.

17 MR. NETTLER: Apartment house?

18 MR. BENDER: No, I don't have any of
19 that.

20 MR. NETTLER: Okay. You don't recall
21 what particular buildings were used for those
22 purposes either?

23 MR. BENDER: I believe 1743 and 45 were
24 used as a hotel and 1755 was apartment and 1751 was
25 office space. And it changed from time to time.

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1 MR. NETTLER: The office space changed
2 from time to time or the use as apartments changed
3 from time to time?

4 MR. BENDER: All of it did. The use
5 before I bought the property is what I was telling
6 you about. And when I acquired the property I
7 didn't use it as a hotel. And the space that was
8 used as a hotel I was using as office space.

9 MR. NETTLER: Okay. Did you get special
10 exception relief for that to use it for office
11 space?

12 MR. BENDER: I don't know.

13 MR. NETTLER: Okay. And when did you
14 stop using it for office space?

15 MR. BENDER: I couldn't tell you.

16 MR. NETTLER: At the time that you
17 submitted the application for planned unit
18 development approval you had a traffic study that
19 was done by -- a traffic report that was done by
20 Robert Morris. Do you remember?

21 MR. BENDER: I believe that's correct.

22 MR. NETTLER: Okay. And at that time
23 you had proposed to have a garage underneath the
24 property that would access off of N Street as
25 opposed to off of the alley, do you recall that?

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1 MR. BENDER: That's correct.

2 MR. NETTLER: And do you recall Mr.
3 Morris's traffic report providing support for having
4 that garage off of N Street rather than off of the
5 alley.

6 MR. BENDER: Yes, then we were told we
7 couldn't gain access off of N Street so we had no
8 choice but to go through the alley.

9 MR. NETTLER: Okay. And who told you
10 that you couldn't gain access off of N Street?

11 MR. BENDER: I believe Historic
12 Preservation.

13 MR. NETTLER: Was that the Historic
14 Preservation Review Board?

15 MR. BENDER: People on the staff.

16 MR. NETTLER: Who on the staff told you
17 that?

18 MR. BENDER: I couldn't tell you that.
19 It was over ten years ago.

20 MR. NETTLER: So it was ten years ago
21 you couldn't get access off the alley -- off of N
22 Street. Do you know if that person is still there?

23 MR. BENDER: I couldn't tell you who it
24 was, so I couldn't tell you whether he was still
25 there or not.

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1 MR. NETTLER: Do you know whether
2 subsequent to that time the Historic Preservation
3 Review Board has provided for curb cuts in the
4 Dupont Circle historic district off of main streets.

5 MR. BENDER: I have no knowledge.

6 MR. NETTLER: Okay. So you haven't gone
7 back and asked for a curb cut off of N Street since
8 then have you?

9 MR. GLASGOW: I'm going to object to the
10 line of questions. First of call, Mr. Bender didn't
11 testify to all of this type of detail. And if the
12 records are going to be left open we certainly can
13 through the Office of Planning get through comments
14 as to -- because there have been several meetings
15 with staff of Historic Preservation.

16 MR. NETTLER: Well, I'm not going to get
17 into hearsay of people who aren't here, but Mr.
18 Bender --

19 MR. GLASGOW: We'd be happy --

20 MR. NETTLER: -- testified in his direct
21 testimony that he could not get a curb cut on N
22 Street.

23 CHAIRPERSON GRIFFIS: And that's a
24 pertinent point that we can get to. I mean I think
25 we've exhausted that. I want to get quickly up to

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1 speed to the current. I'm not sure where the
2 history lesson was taking us.

3 MR. NETTLER: Well, Mr. Bender, do you
4 recall the reason why Mr. Morris said you should not
5 use the alley for any parking for the buildings that
6 you were trying to build at that time or the
7 rehabilitation that you were trying to do at that
8 time?

9 CHAIRPERSON GRIFFIS: Wait a minute.

10 MR. GLASGOW: I don't recall Mr. Bender
11 testifying to Mr. Morris's report at all.

12 CHAIRPERSON GRIFFIS: Mr. Morris was the
13 past traffic consultant that he was utilizing.

14 MR. GLASGOW: Or a PUD which has not
15 been testified to.

16 CHAIRPERSON GRIFFIS: Right. That's
17 attached to Mr. Greene's --

18 MR. NETTLER: Well, he testified to as
19 the PUD in his direct testimony the fact that he had
20 sought this PUD, the uses, the fact that it wasn't
21 provided for --

22 CHAIRPERSON GRIFFIS: That doesn't open
23 it all up for cross.

24 MR. NETTLER: It doesn't open it all up
25 but there's certainly a pertinent issue as whether

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1 the traffic and parking arrangement that's been
2 provided for this proposal here is an appropriate
3 one that, because of a special exception criteria
4 that you must consider --

5 CHAIRPERSON GRIFFIS: But isn't it more
6 pertinent to take the current traffic consultant to
7 look at rather than 1990 --

8 MR. NETTLER: Well, I'll get to the
9 traffic consultant as well. But we're dealing with
10 the rationale, one of the rationales given for why
11 they previously didn't seek to use the alley for
12 parking for this site.

13 Mr. Bender, well let's deal with --
14 let's go back to the question before you were
15 interrupted by your attorney about whether you have
16 talked to Historic Preservation since 1990 about
17 getting access into the building off of N Street for
18 parking. Have you?

19 MR. BENDER: I believe we have.

20 MR. NETTLER: I asked have you done so?

21 MR. BENDER: Me personally?

22 MR. NETTLER: Yes.

23 MR. BENDER: I think we may have. I've
24 been in many meetings.

25 MR. NETTLER: And do you recall the

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1 Historic Preservation Review Board taking a position
2 on that?

3 MR. BENDER: I believe they told us we
4 couldn't get a curb cut from N Street.

5 MR. NETTLER: You made a presentation to
6 the Historic Preservation Review Board?

7 MR. BENDER: What do you call a
8 presentation?

9 MR. NETTLER: Well, the Historic
10 Preservation Review Board has a number of members
11 which are chaired by Mr. --

12 MR. BENDER: Oh, we presented it to the
13 staff.

14 MR. NETTLER: So you haven't gone before
15 the Historic Preservation Review Board?

16 MR. BENDER: Not regarding this, no.

17 MR. NETTLER: Okay.

18 Mr. Karn?

19 MR. KARN: Good afternoon.

20 MR. NETTLER: The plans that you
21 submitted today. Were they submitted to the
22 Historic Preservation Office as well?

23 MR. KARN: I submitted a set of drawings
24 last week, early last week, yes.

25 MR. NETTLER: What date last week?

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1 MR. KARN: Aside from -- there had been
2 some slight changes made in the roof and aside from
3 changes made to the penthouses. Yes, and you know,
4 I'm drawing a blank. I haven't been getting a lot
5 of sleep. But I submitted them by the deadline that
6 we were asked to submit them.

7 MR. NETTLER: Okay. Do you know when
8 that deadline was?

9 MR. KARN: It was 4:00 I believe on
10 Tuesday afternoon of last week. Is that the correct
11 time?

12 MR. NETTLER: And did you get any
13 comments from the Historic Preservation Office
14 regarding those plans?

15 MR. KARN: I have not.

16 MR. NETTLER: Okay. Have you had any
17 discussions with the Historic Preservation Office
18 with regard to your prior plans.

19 MR. KARN: Not me personally, no.

20 MR. NETTLER: Okay. And has somebody who
21 works for you had any discussions with them?

22 MR. KARN: Define the time period. I
23 mean we have not been in the most recent meetings.
24 I know there have been meetings that we have not
25 participated in.

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1 MR. NETTLER: Okay. Have you been told
2 what Historic Preservation's position is with regard
3 to either these plans or the plans that were
4 submitted on January 10?

5 MR. KARN: Yes.

6 MR. NETTLER: Okay. Were you told that
7 they were going to oppose the -- they were going to
8 recommend disapproval by the Historic Preservation
9 Review Board?

10 MR. KARN: No, I was told that the staff
11 had comments and we'd revise the drawings in
12 response to the comments.

13 MR. NETTLER: Okay. Were you told that
14 a mayor's agent hearing would have to be held
15 because of the amount of demolition that was being
16 proposed?

17 MR. GLASGOW: Mr. Chairman, I'm going to
18 object to that question. I don't know what that --
19 he hasn't testified to any of that. This is cross-
20 examination.

21 MR. NETTLER: He testified that these
22 plans were changed in response to discussions he had
23 with the Historic Preservation Office. I'm asking
24 him whether he was -- about those discussions he had
25 with the Historic Perseveration Office.

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1 CHAIRPERSON GRIFFIS: Right. And he's
2 indicated -- I think he's answered the question and
3 now you're asking him for details of questions he
4 wasn't involved in.

5 But are you aware of anything of
6 discussions in terms of the mayor's agent or any
7 other additional review or relief that would be
8 required of a historic nature?

9 MR. KARN: No, I mean other than
10 conjecture no, I've not heard any reports.

11 CHAIRPERSON GRIFFIS: What does that
12 mean?

13 MR. KARN: Other than sort of in-house
14 conversations with my staff and stuff. So, no, we
15 haven't been told anything that it came from
16 historic preservation staff.

17 CHAIRPERSON GRIFFIS: Okay. Okay.
18 Other questions?

19 MR. NETTLER: Sure. I'm going to ask
20 you to look at a submission that was made. Your
21 plans are providing for a five story building,
22 correct?

23 MR. KARN: Yes.

24 MR. NETTLER: Okay do you know why the
25 D-1 of the submission, the pre-hearing statement,

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1 which is the plans being overlaid on top of the
2 survey from the office of the surveyor has a seven
3 story building?

4 MR. KARN: What's the date of this?

5 MR. NETTLER: Well, this was January 10,
6 January 10, 2006.

7 MR. KARN: You know, I don't know why
8 this plan is with this submission. This is dated
9 December 22. I know the most recent plats are
10 showing five story.

11 MR. NETTLER: Okay. Do you have a plat
12 with you that you've submitted that alters the plat
13 that was submitted two weeks ago?

14 MR. KARN: Yes.

15 MR. NETTLER: Okay. Thank you.

16 CHAIRPERSON GRIFFIS: We're looking at
17 B-1.

18 MR. NETTLER: I was looking at B-1,
19 that's right.

20 MR. KARN: Yes.

21 CHAIRPERSON GRIFFIS: And what date is
22 that?

23 MR. NETTLER: This was the January 10
24 submit. I was trying to understand the discrepancy
25 between the plans and the plat.

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1 MR. KARN: The most recent is dated
2 January 19.

3 MR. NETTLER: On the plans that you
4 submitted today, if you could turn to D-6. If
5 you'll look at the lower right hand corner you'll
6 have what you described as a sitting room that is
7 taking the place I guess of what used to be
8 stairwell, is that correct?

9 MR. KARN: Yes.

10 MR. NETTLER: Okay. Do you know what
11 that sitting room, is that part of the function area
12 space or what that was for?

13 MR. KARN: Well, you know, that was
14 actually I'll take credit for that personally. That
15 was probably my error. We were -- from an
16 architects point of view, if that room can be used
17 for something other than storage we'd love to do it.
18 We haven't had any conversations with the owner
19 about what that little room was. That became
20 available when we moved the stairs. And it's, you
21 know, 8 by 10 or so, so we haven't really finalized
22 what we would use that room for.

23 MR. NETTLER: Okay. And are there any
24 other mistakes that I should be aware of on these
25 plans that you submitted today?

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1 CHAIRPERSON GRIFFIS: All right, let's
2 go to the next question.

3 MR. NETTLER: Let me go to D -- let's
4 see, your elevations.

5 CHAIRPERSON GRIFFIS: Can I -- while
6 you're doing that, the whole point Mr. Nettler, just
7 for the Board's understanding of that question is
8 that you're assuming that that would go to the
9 calculation of that area?

10 MR. NETTLER: Well, we don't know
11 because as he said --

12 CHAIRPERSON GRIFFIS: Understood, but in
13 terms of the labeling that's why it would be
14 critical for us to look at that.

15 MR. NETTLER: Correct.

16 MR. STILLWELL: Okay.

17 MR. NETTLER: Well, just to know if it's
18 a small space and it doesn't add up to the amount,
19 the 15 percent that's permitted, then obviously it's
20 irrelevant. But if there was other space like that
21 in the building that's been mislabeled because of
22 the changes in the plans, then we don't know whether
23 it meets the 15 percent or doesn't meet the 15
24 percent.

25 MR. KARN: I can confidently say that, you

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1 know --

2 CHAIRPERSON GRIFFIS: That's okay. It
3 will be --

4 MR. KARN: We don't get anywhere close
5 to the 15 percent.

6 CHAIRPERSON GRIFFIS: Right now it's
7 indicating on the record that's submitted it's
8 upwards of a little over 12 percent, although you
9 have 6,000 something square foot calculation out in
10 the percentage so we'll be clear on that. Okay.

11 MR. NETTLER: All right, your elevations
12 are now -- what are they now numbered?

13 MR. KARN: D -- it started with D-10 for
14 the new elevations.

15 MR. NETTLER: In the area where the
16 court is indicated on your plans, where you have
17 that **AL@** shaped court between 1745 and 1751 you're
18 showing on your elevations what looks like a cornice
19 and underneath this cornice are gates. Could you
20 describe where those are located?

21 MR. KARN: On the plan you mean?

22 MR. NETTLER: Right.

23 MR. KARN: The cornice is actually the
24 proposed canopy.

25 MR. NETTLER: Right.

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1 MR. KARN: The columns adjacent to the
2 gates are, my understanding that's a historic
3 structure, a historic fabric that is there, and the
4 gates I don't know if that's reuse of historic
5 material as well.

6 MR. NETTLER: Okay, but where in
7 lactation to the court is this? Is this in front of
8 the court or behind the court?

9 MR. KARN: At the front.

10 MR. NETTLER: This is at the front of
11 the court?

12 MR. KARN: Yes, it's right at the
13 building line.

14 MR. NETTLER: Okay. So you had or you
15 and Mr. Sher had testified that you've got this more
16 than 12 foot wide **AL@** in the front of the building
17 and the nit goes to 10 feet which then goes back I
18 think probably another 15 or 16 feet after you're
19 finished with the 12 feet; correct? Is that
20 correct?

21 MR. KARN: Correct.

22 MR. NETTLER: Okay. And that cornice or
23 canopy and those gates are in front of those ten
24 foot piece, is that correct? On your plans you're
25 showing on D-10 gates, are those gates located in

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1 front of the 10 foot portion or in back of the 10
2 foot portion?

3 MR. KARN: In front of the ten foot
4 portion.

5 MR. NETTLER: Okay. Had you considered
6 at all putting behind that canopy a simple clear
7 glass roof over that court so that you would
8 eliminate the need for a variance?

9 MR. KARN: Not to my knowledge, no.

10 MR. NETTLER: Okay. And you never
11 presented anything like that to the historic
12 preservation either, did you?

13 MR. KARN: Not that I'm aware of.

14 MR. NETTLER: Okay. That's all the
15 questions I have of Mr. Karn. And now Mr. Sher.

16 MR. KARN: Thank you.

17 MR. NETTLER: Mr. Sher, you had
18 commented on the lost residential character of this
19 street. Are you familiar, although Mr. Bender was
20 unable to testify, are you familiar with when the
21 last residents lived in Mr. Bender's building?

22 MR. SHER: No.

23 MR. NETTLER: If I told you it was 1998
24 would that refresh your recollection at all?

25 MR. SHER: No.

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1 MR. NETTLER: Okay. Now you're -- you
2 stated that these properties -- that there's a
3 unique condition here. And as I understand it,
4 correct me if I'm wrong, the unique condition is
5 that they're in a historic district and that as a
6 result of the subdivision of the property you're
7 creating a non-conforming court by keeping those
8 historic portions of the building intact, that frame
9 that court, is that correct?

10 MR. SHER: I don't think I said it
11 exactly that way.

12 MR. NETTLER: Okay. Why don't you tell
13 me in your words what you think is unique about the
14 building, about the site?

15 MR. SHER: Well, the question is the
16 court. The court is now an existing side yard which
17 is 10 feet wide at the front. It narrows down to
18 about five feet wide further back because there's a
19 piece of the building that extends further over.

20 MR. NETTLER: Okay. Stop right there
21 then. How many other buildings on this block,
22 across the street, and down the street have that
23 exact same condition.

24 MR. SHER: I don't know.

25 MR. NETTLER: Okay. Why don't you go

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1 further. Keep going then. I interrupted you but I
2 just wanted to see if you had a response to that
3 question. But go ahead, keep on describing the
4 uniqueness.

5 MR. SHER: Rewind. The existing space
6 between the buildings at 1745 and 1751 is actually
7 a side yard on 1745. At the front of the lot that
8 side yard is 10 feet wide. Further back on the lot
9 that space narrows. It is not a conforming side
10 yard, but it is an existing condition now. When the
11 site is redeveloped, if redeveloped in accordance
12 with the plans that are proposed, the space between
13 the two walls, the two existing exterior walls would
14 remain at its existing dimension, which is just
15 about 10 feet. I think it might be 10 feet and half
16 an inch, but it's about 10 feet. The court
17 requirement is based upon the height of the court,
18 which starts above the canopy and goes to the
19 highest point of the bounding wall. That height is
20 up 40-some odd feet. And with the requirement based
21 on three inches per foot of height, the court width
22 requirement would be ten feet. It has to be a
23 minimum of ten feet. That is a condition that we
24 think is exception and extraordinary on this
25 property when you look at what has to happen in

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1 order to redevelop this site for adaptive reuse of
2 the existing buildings given our assumption that we
3 cannot remove those existing sidewalks.

4 MR. NETTLER: Okay. So it's a condition
5 that will be created by the subdivision. A
6 condition that will be created by not having a, any
7 -- a skylight, roof, enclosure of that court that
8 you made reference to, correct? Because if it was
9 enclosed then you wouldn't have that, you wouldn't
10 create anomaly, would you?

11 MR. SHER: If it was covered it would
12 not be a court, that's correct.

13 MR. NETTLER: And you also testified I
14 believe that you can't -- you're unable to pull the
15 building, the new building that you're constructing
16 in the back and the rear of the court to the front
17 to eliminate the need for that court also, correct?

18 MR. SHER: That's my assumption, yes.

19 MR. NETTLER: Okay. And that assumption
20 is based on something the Historic Preservation
21 Review Board has done or what?

22 MR. SHER: No, we have not -- this
23 design has not been reviewed or approve by the
24 Historic Preservation Review Board. It is based on
25 what we believe we will be able to do with respect

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1 to the design of the building and the retention of
2 existing historic fabric.

3 MR. NETTLER: Okay so rationale for
4 these conditions are something that will be --
5 you're expecting to be created sometime in the
6 future after this plan is reviewed by the Historic
7 Preservation Review Board. Is that a fair
8 assumption or fair characterization?

9 MR. SHER: That's part of the rationale,
10 yes. We -- there are two boards that have to work
11 their will here, the Board of Zoning Adjustments and
12 Historic Preservation Review Board. In this case we
13 happened to get here first.

14 MR. NETTLER: Okay. And as far as this
15 being unique along in this particular area, are you
16 aware of other sites that have the exact same
17 condition along N Street in this 1700 block of N
18 Street?

19 MR. SHER: I'm not aware of any, no.

20 MR. NETTLER: Okay. With regard to the
21 special exception, as I understand when you
22 finished, you needed the special exception for the
23 three penthouses, two of which need special
24 exception relief, correct?

25 MR. SHER: Yes, one penthouse meets the

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1 setback requirements because it's only five feet
2 high and it's setback on all sides at least five
3 feet from any exterior wall. The other two do not
4 meet the setback requirements.

5 MR. NETTLER: Okay. And the special
6 exception as well because of the hotel use and the
7 SP zone, correct?

8 MR. SHER: Yes.

9 MR. NETTLER: Okay and the variance as
10 you just described for the court, correct?

11 MR. SHER: If that's a question, yes.

12 MR. NETTLER: Well, I thought it was a
13 question. Okay. Thank you.

14 Okay. Mr George?

15 MR. GEORGE: Yes.

16 MR. NETTLER: If you'll look at your
17 page 7.

18 MR. GEORGE: Yes.

19 MR. NETTLER: And I'm not going to try
20 to beat a dead horse on this. But on page 7 you
21 have trips AM peak hour, trips in, 34, to the hotel
22 room and out 22. So are you telling me that if 34
23 cars are brought into the hotel that at that point
24 that only 22 are then being taken out onto the
25 streets?

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1 MR. GEORGE: I think you're misquoting
2 the numbers. On page 7, table 2, at the bottom of
3 the table we show 19 trips in, 13 trips out in the
4 morning.

5 MR. NETTLER: Okay. So let's look at
6 page 10 of your analysis. You're telling -- so what
7 you're saying is that if a car comes in on N Street,
8 and I'll drop it after this, if a car comes in on N
9 Street from the direction of 18th Street one way, it
10 stops in front of the site and the car is given over
11 to valet, since I understand only a valet service
12 will be provided that that doesn't also account for
13 a trip going back out to 17th Street, given the fact
14 that it were one way, and whatever way it can make
15 it's way to the back of the alley?

16 MR. GEORGE: I think what you show is
17 that we have trips entering N Street and we also
18 show trips exiting onto 17th Street in the morning.

19 MR. NETTLER: Right, but you're not
20 counting that car that comes in and gets dropped
21 off.

22 MR. GEORGE: It's the same number.

23 MR. NETTLER: Okay.

24 MR. GEORGE: It's the same number.

25 MR. NETTLER: And let me ask you about

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1 this people who drop off at say 9 o'clock on a
2 Monday morning for this hotel. Could you tell me
3 the route that's taken by the valet when he drops
4 that car off in front of the hotel at 9 o'clock,
5 when the car is picked up at 9 o'clock in the
6 morning?

7 MR. GEORGE: I think I can give you a
8 typical route.

9 MR. NETTLER: Why don't you tell me at
10 9 o'clock in the morning.

11 MR. GEORGE: At 9 o'clock in the
12 morning?

13 MR. NETTLER: Right.

14 MR. GEORGE: During the rush hour, which
15 is from 7 to 9:30, 17th Street is one way
16 southbound. So that vehicle would have to make a
17 somewhat circular movement, either turning right
18 onto 17th Street going to Rhode Island Avenue and
19 looping around, making a loop to get to 17th Street
20 at the point of the alley. The same --

21 MR. NETTLER: And then where does the
22 person go? After he goes to Rhode Island Avenue?

23 MR. GEORGE: He would have to make a
24 right onto Connecticut Avenue.

25 MR. NETTLER: And from Connecticut

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1 Avenue where does the person go?

2 MR. GEORGE: Continue onto 18th Street
3 North to Massachusetts Avenue. Make a right turn
4 and use 17th Street southbound toward the alley.

5 MR. NETTLER: Okay. And are all those
6 trips represented in this calculation that you did,
7 Exhibit 4?

8 MR. GEORGE: Yes.

9 MR. NETTLER: Okay. I have no other
10 questions.

11 CHAIRPERSON GRIFFIS: Very well.

12 Yes?

13 VICE-CHAIRPERSON MILLER: I have a
14 question for Mr. George.

15 When you're looking at the impact on the
16 alley, does it vary? Would you look at how many
17 cars would be being parked in a certain amount of
18 time. For instance, if you have only one valet
19 parker you might have fewer cars being parked within
20 a certain amount of time as opposed to more valet
21 parkers? Is that a variable?

22 MR. GEORGE: I think it would be a
23 consideration and that that would be taken into
24 consideration as part of the management operations.
25 For example, if a hotel is having a significant

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1 check-in due to any schedule of whatever type of
2 activity, then I think that would be programmed into
3 the operation, as far as the number of valets that
4 would be needed at any one time. Hotels, as you
5 know, Ms. Miller, have check-out and check-in times.
6 Most hotels check-out late morning, around 11
7 o'clock to midday and a check-in time around 3 to 4
8 o'clock. So I would think that those would be taken
9 care of as far as the scheduling and assignment of
10 staff.

11 VICE-CHAIRPERSON MILLER: So the cars
12 that are referenced here it's based on an estimate
13 of a demand, not based on how they would deal with
14 the parking?

15 MR. GEORGE: Yes, and I think that's
16 precisely the point. Because of the fact that this
17 is a small hotel, generating trips of approximately
18 30 in the morning and afternoon peak hours, you
19 might have heard said before from time-to-time a
20 detailed traffic analysis is not done for a use that
21 generates more than 50 trips. So we present it as
22 background information, but again we did not do a
23 detailed operational analysis of movement between
24 the front of the hotel and the parking.

25 CHAIRPERSON GRIFFIS: And -- sorry.

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1 VICE-CHAIRPERSON MILLER: Also, with the
2 elevator situation does the parking get done much
3 more slowly? It seems like if you've got to drive
4 in -- is it one car at a time going down on an
5 elevator, as opposed to the typical parking
6 situation where many cars can be coming into the
7 garage at one time?

8 MR. GEORGE: I have not been briefed on
9 the details of the operation. I'll defer. Mr.
10 Bender has advised me that there will be two
11 elevators.

12 VICE-CHAIRPERSON MILLER: But that would
13 have an impact as to how many -- how quickly the
14 cars would be parked, right, or how many cars might
15 be coming around the street?

16 MR. GEORGE: Yes. Your question is will
17 it impact the efficiency of the parking operation?

18 VICE-CHAIRPERSON MILLER: Well, just as
19 far as the impact on that alley goes, but I kind of
20 anticipate that your answer might be again it's a
21 management thing that they would only send to the
22 alley cars that they're ready to accommodate or
23 something. I mean there's not a backup in the alley
24 because these elevators are not ready for these
25 cars.

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1 MR. GEORGE: I would that this will be
2 managed through two-way communication and so if the
3 need arise. I would also like to say to the Board
4 that while our study has no addressed the
5 operational analysis, we did consider based on the
6 subsequent information, the degree to which that
7 activity, the checking in and the need for accessing
8 the parking in the rear and vice-versa in the
9 afternoon. It's so spread out over a four to five
10 hour period in the morning, between perhaps checkout
11 occurring as early as 6 and completing by 11:00.
12 That one could envision that even if you had the
13 entire 77 room hotel checking out in one day, which
14 would be extremely unlikely that spread over the
15 four hours the numbers would be very small indeed.

16 VICE-CHAIRPERSON MILLER: Thank you.

17 MR. GEORGE: Yes.

18 CHAIRPERSON GRIFFIS: Anything else?

19 MR. NETTLER: I have a follow-up from
20 Ms. Miller's question or do you want me to let --

21 CHAIRPERSON GRIFFIS: Go ahead.

22 MR. NETTLER: Ms. Miller had asked you
23 about the analysis and you responded that because it
24 was less than 50 trips being generated into this
25 whole analysis is that also why you didn't take into

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1 account how the alley is used by other buildings
2 that backup onto the alley, in terms of the parking
3 that goes on back there or the use of it for trucks?

4 MR. GEORGE: Yes. We did not analyze but
5 that does not mean that we didn't observe it. We
6 observed it on numerous occasions. We observed it as
7 an alley that exists and we understood that there's
8 not the opportunity for making any changes to the
9 alley. We looked at the uses that are in the square
10 and the types of uses. There is not significant
11 parking in the alley and we -- one of the things that
12 traffic engineers do is that to observe the ease with
13 which you can make the movement. And so myself and
14 other staff made attempts to access the alley on
15 numerous occasion; for example, we'd be there between
16 7:00 and 9:00 and see how many times we could enter
17 and leave without problems. And we were able to do so
18 on different days, as you know we did this evaluation
19 over an entire year, with it being taken in January of
20 last year. So it was our experience that we were able
21 to access the alley at pretty much any time of the day
22 and I personally do not recall an occasion when I was
23 encountered by another vehicle. Vehicles travel very
24 slowly and I think one of the advantages is that the
25 users of the alley are people who are accustomed to

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1 it. So there is that type of courtesy type of
2 situation which seems to come into play. And I think
3 from that perspective I would say that it seems to
4 work well. Not from the perspective of any detailed
5 operational analysis as far as time and distribution
6 of traffic, et cetera.

7 MR. NETTLER: Okay. You're aware that
8 a portion of the alley is only seven feet in width,
9 are you not?

10 MR. GEORGE: I measured at ten feet?

11 MR. NETTLER: You measured some portions
12 at 10?

13 MR. GEORGE: The narrowest portion at
14 10.5.

15 MR. NETTLER: Okay. And have you seen
16 trucks using that alley?

17 MR. GEORGE: I have personally not seen
18 any trucks. I've seen vans.

19 MR. NETTLER: Vans. And is it possible
20 for the alley to be used by cars coming in and vans
21 coming out at the same time?

22 MR. GEORGE: No, there's a portion of
23 the alley that's definitely one way. Yes.

24 CHAIRPERSON GRIFFIS: Mr. Glasgow?

25 MR. GLASGOW: There was just one brief

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1 clarification of the record. I think on one
2 question Mr. George had answered that it was
3 extremely, I think he said in response to one of
4 your questions, Ms. Miller likely instead of I think
5 he meant to say unlikely that all 77 would be going
6 out at one time.

7 MR. NETTLER: No, I'll take the likely.
8 That's what he said.

9 CHAIRPERSON GRIFFIS: I thought that's
10 what you were re-crossing on.

11 (Laughter.)

12 CHAIRPERSON GRIFFIS: Okay. Good
13 clarification. I think we understood it as that.
14 Very well, Mr. Greene, cross to the witnesses? No
15 cross?

16 (No response).

17 CHAIRPERSON GRIFFIS: Excellent. ANC
18 have any cross?

19 MR. BJORGE: Very quick cross.

20 CHAIRPERSON GRIFFIS: Mr. George, if you
21 wouldn't mind coming up again, ANC has a quick
22 cross-examination question of you.

23 MR. BJORGE: Hello, Mark Bjorge for ANC
24 2-B. How did you measure the alley width? I assume
25 that you measured it at the mouth where it meets

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1 17th Street?

2 MR. GEORGE: We measured it at various
3 sections, at 17th Street, at approximately 100 feet,
4 and we measured it elsewhere along.

5 MR. BJORGE: Could you describe the
6 actual route that you used to measure. I was out
7 there this morning measuring and I'm kind of
8 wondering -- you're saying that the narrowest
9 constriction that you found was ten feet, is that
10 correct?

11 MR. GEORGE: Yes, sir.

12 MR. BJORGE: When you were taking your
13 measurements, did you measure from wall to wall of
14 the existing structure?

15 MR. GEORGE: Yes, at the entrance to the
16 alley way there are actually two metal posts, so in
17 that vicinity.

18 MR. BJORGE: Did your measurements take
19 into account any of the lampposts, or the metal
20 stairs, or any of the other things that are put
21 directly on the property lines that would frame the
22 brick portion of the alley?

23 MR. GEORGE: Yes, the alley is not very
24 well defined, so I think one observes the general
25 travel way, the section of the roadway which

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1 vehicles use. And we certainly don't go -- did not
2 go all the way to the fence, but pretty much
3 approximating what was the travel way or the travel
4 width that vehicles used.

5 MR. BJORGE: Okay. Maybe this is
6 something of a statement, but when I was out
7 measuring the alley --

8 CHAIRPERSON GRIFFIS: Why don't you keep
9 it for your case presentation.

10 MR. BJORGE: Thank you very much, sir.

11 CHAIRPERSON GRIFFIS: Anything else?

12 MR. BJORGE: No, sir.

13 CHAIRPERSON GRIFFIS: Okay. Excellent.
14 Very well, are there questions from the Board of the
15 witnesses?

16 MS. MITTEN: I have a couple of
17 questions, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Yes.

19 MS. MITTEN: And I apologize if this is
20 in anyway overlapping with what's been asked
21 already. I had to step out earlier and I don't want
22 to be tedious about anything. I want to understand
23 how the number of parking spaces was determined.
24 The zoning ordinance does not require nearly as many
25 parking spaces for a hotel. So in terms of where

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1 you see the demand coming from, how was the number
2 derived?

3 MR. GEORGE: Ms. Mitten, I think this
4 would be a question for Mr. Bender or for Mr.
5 Glasgow. I did not develop the need for parking.

6 MS. MITTEN: No, you just happened to be
7 sitting there. I'm just asking the question to
8 whoever can answer.

9 MR. GEORGE: I thought you were picking
10 on me.

11 MS. MITTEN: Not at all.

12 MR. BENDER: I have previous experience
13 in hotels and I felt that we needed at least one
14 parking space for each room. And since we're going
15 to have some public space, we'd have need for extra
16 parking beyond that. Though there's no requirement
17 for parking for a hotel, I felt to build a hotel and
18 not have it would be foolish.

19 MS. MITTEN: Right. I'm just trying to
20 understand the quantity of it. So do you foresee
21 accommodating any employee parking?

22 MR. BENDER: Maybe the manager or
23 assistant manager, but other than that the rest of
24 the help would hopefully be coming on public
25 transportation.

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1 MS. MITTEN: I guess what I'm looking
2 for is will you make a specific representation that
3 you will forbid other than a manager and the
4 assistant manager the opportunity to park in the
5 building?

6 MR. BENDER: Yes.

7 CHAIRPERSON GRIFFIS: Are you going to
8 be the operator of the hotel?

9 MR. BENDER: Right now I anticipate it
10 because I have operated a hotel before.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. MITTEN: In the -- you mentioned
13 that one of the demand drivers for the parking
14 garage is the fact that there will be some meeting
15 space. And I don't know exactly how this garage
16 will operate in terms of it looks like there is two
17 elevators. Will the valet go down into the garage
18 or is this all automated?

19 MR. BENDER: It's all automated. It's
20 a German system. The cars pull up in front of the
21 hotel and the luggage would be unloaded. And the
22 valet would take it around and put it into the
23 garage. It's all automatic. He parks it, pulls on
24 to this turntable, pushes the button, he gets out,
25 comes around front and the car is parked

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1 automatically. He doesn't even know where it's
2 parked. The machine does it itself. And there are
3 two elevators that are parking or unparking, as you
4 might call it.

5 MS. MITTEN: And I've actually seen one
6 of those over at the old Mineworkers Building.

7 MR. BENDER: Right.

8 MS. MITTEN: One of the things about
9 that is it's kind of slow to move through its whole
10 cycle of getting the car. You have to be very
11 precise about how the car gets into the lift. And
12 then it makes its way very gently through the
13 system. So I'm wondering when there's like a lot of
14 people coming to the hotel then, you know, the
15 valets are going to be stacking up someplace.

16 MR. BENDER: I don't anticipate that
17 occurring and my experience, and I visited the old
18 Mineworkers Building and went behind it, and you can
19 pull the car onto the turntable. You don't have to
20 be particular. It adjusts itself and whatever it
21 has to do. And it moves pretty fast. I didn't time
22 it but we went through -- I spent a couple of hours
23 there one day with the people that maintain it and
24 asked them lots of questions and it moves them
25 pretty fast.

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1 MS. MITTEN: Can you get us some
2 information how long it takes from the time a car is
3 put on to the -- you know drive the car onto the
4 turntable thing and then it goes through its cycle,
5 how long that might take?

6 MR. BENDER: I may have some of that in
7 my office but I'll get it for you.

8 MS. MITTEN: Okay. I think that might
9 help. Then I wanted to ask a couple of other just
10 sort of miscellaneous questions if I could. About
11 the loading, which is shown in your first floor
12 plan. It looks like the loading platform is blocked
13 by the loading berth so that it doesn't have direct
14 access from the alley as would be required.

15 MR. BENDER: Which drawing are you
16 looking at?

17 MS. MITTEN: Oh, I'm sorry, D-2.

18 MR. BENDER: D-2. Your question again
19 please?

20 MS. MITTEN: The required loading --

21 MR. BENDER: The 30 foot by 13 foot
22 loading berth, the truck will be parked parallel to
23 the ramp there and the other one would be back in
24 directly from the alley.

25 MS. MITTEN: Right. I'm just wondering

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1 -- I guess I'm wondering a couple of things. One is
2 the platform -- in order for -- required loading has
3 to be directly accessible from a right away, an
4 alley or a street, and so the loading platform is
5 not because it's blocked. You know, in the event
6 that there was a vehicle in the loading berth it's
7 blocked. That's point number one.

8 MR. BENDER: The platform has to be
9 open?

10 MS. MITTEN: Each one I thought had to
11 be.

12 MR. BENDER: No, I don't think so. The
13 platform would be accessed off of the berth.

14 MS. MITTEN: I thought there was a
15 requirement for a platform, a space, and a berth.
16 Isn't there --

17 MR. BENDER: Yes.

18 MS. MITTEN: And I thought each of those
19 three?

20 MR. BENDER: Not independent.

21 MS. MITTEN: Okay.

22 MR. BENDER: The berth would be a backup
23 to the platform. I think what maybe you're seeing
24 is the configuration is a little bit abnormal. One
25 would usually see that as a perpendicular, the berth

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1 loaded back straight into the platform. One might
2 ask a program question, how are you unloading a
3 truck in that berth with a platform to its side.

4 MS. MITTEN: I knew you would help me if
5 I just got it out there.

6 MR. BENDER: Indeed. Well, the
7 likelihood of having 30 foot trucks I think would be
8 remote.

9 CHAIRPERSON GRIFFIS: But even still
10 practically if that has to parallel park in there,
11 the back of the truck, the opening to the back is
12 actually facing the service dock. How does it get
13 the goods off of that to the platform which would
14 continually be at the loading?

15 MR. BENDER: I understand what you're
16 saying but we own other properties in the city and
17 we have similar situations and we don't have any
18 problem.

19 CHAIRPERSON GRIFFIS: How do you not
20 have a problem? How do you do it?

21 MR. BENDER: Well, they open the doors
22 and then they get on the ground. Then they unload
23 the truck and put it on a platform. And between the
24 20 by 12 space and the 30 by 13 there's probably
25 about 5 foot of open space there.

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1 CHAIRPERSON GRIFFIS: Okay. So there's
2 space enough to get out behind the truck?

3 MR. BENDER: Behind the truck, yes.

4 CHAIRPERSON GRIFFIS: Then conceivably
5 you're just not loading straight onto the platform?

6 MR. BENDER: It's not uncommon.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. MITTEN: Okay. I have one other
9 miscellaneous question. It's on D-2. It's on other
10 drawings as well, but there's -- I'm just trying to
11 figure out what this little opening is. In the
12 luggage valet room that fronts on N Street there's
13 like -- it looks like an opening but not a door.
14 What is that opening? Do you know what I'm pointing
15 to?

16 MR. BENDER: That actually is a door.
17 It's an existing door.

18 MS. MITTEN: It's a door but it's just
19 not shown as a door?

20 MR. BENDER: No, it's just like the rest
21 of the -- I think the problem -- the existing space
22 I think just missed it. But it is an existing door.

23 MS. MITTEN: Okay. Okay. It just needs
24 that little curve thing.

25 MR. GLASGOW: All right, we will revise

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1 that drawing.

2 MS. MITTEN: Okay. That's all I had,
3 Mr. Chairman.

4 CHAIRPERSON GRIFFIS: All right.

5 Ms. Miller?

6 VICE-CHAIRPERSON MILLER: I just have
7 one more follow-up question to Ms. Mitten's
8 questioning. Let's say, and I understand that it's
9 fairly remote, that there's a backup during rush
10 hour that you have cars that say you have six cars
11 and only two can be parked at one time, where are
12 the four going to wait? Is there going to be a
13 parking problem there?

14 MR. GLASGOW: I think we've got space,
15 Ms. Miller. The alley that's right behind this
16 particular part of the facility is, ranges between
17 about 43 at the narrowest point on the east side is
18 25 feet, but there's a 43 foot section width. N
19 Street curb to curb is 40 feet. It is slightly
20 smaller than the alley. We are going to be
21 requesting and I think in one of the reports there
22 is no parking right now in front of a couple of the
23 buildings that Mr. Bender owns. We're going to be
24 asking for loading zones and hotel valet parking
25 there, which is common in the city. That will give

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1 us two spaces there and we think that we've got room
2 for another two spaces plus the two that we're
3 parking behind the building. When you look at that
4 alley, while it's very, very narrow at the east end,
5 you know, 10 and a half feet or whatever, it's 43
6 feet at the widest end.

7 VICE-CHAIRPERSON MILLER: Thank you.

8 CHAIRPERSON GRIFFIS: Is that dimension
9 anywhere/

10 MR. GLASGOW: I believe that that
11 dimension is shown on the -- in the statement of
12 applicant, Exhibit A, what you'll see. You've got
13 to look at it for a second, but at the -- what it's
14 showing is a portion that's 43 feet at the western
15 end of the site, see the dimension on the based
16 atlas, the old based atlas, Exhibit A on the
17 statement of applicant.

18 CHAIRPERSON GRIFFIS: Oh, good, okay.

19 MR. GLASGOW: Okay. You've got 43 feet.
20 Then it shows a portion that's about halfway through
21 the site that's 32.5 feet. Okay, do you see it?
22 It's dimensioning the alley as it's going from west
23 to east.

24 CHAIRPERSON GRIFFIS: I see. What's
25 that dark line going through the middle of the

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1 alley?

2 MR. GLASGOW: Those were old -- they
3 used to show in the old based atlas the utilities.

4 CHAIRPERSON GRIFFIS: I see.

5 MR. GLASGOW: Like the sewer.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. GLASGOW: And a lot of times it's a
8 combined system back in the old says.

9 CHAIRPERSON GRIFFIS: Going to the
10 submitted sheet A-1, just in back of lot 836, that's
11 the wide dimension of 43 feet, is that correct?

12 MR. GLASGOW: Yes.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. GLASGOW: If that were dimensioned
15 it would be approximately 43 feet at the widest
16 point.

17 CHAIRPERSON GRIFFIS: And at the top end
18 of 835 is where you'll access the parking garage
19 that's proposed?

20 MR. GLASGOW: That's correct.

21 CHAIRPERSON GRIFFIS: And the dimension
22 there is approximately what?

23 MR. GLASGOW: I would say that that's 25
24 to 30 feet.

25 CHAIRPERSON GRIFFIS: That has to be

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1 more than 25 feet?

2 MR. GLASGOW: I believe it does.

3 CHAIRPERSON GRIFFIS: The next plat is
4 28.

5 MR. GLASGOW: Yes, I know on the plat
6 it's showing 28 feet, then 30 feet. So it would
7 probably --

8 CHAIRPERSON GRIFFIS: So it's 29 feet
9 roughly.

10 MR. GLASGOW: Something along those
11 lines.

12 CHAIRPERSON GRIFFIS: So you're saying
13 in answer to Ms. Miller's question that if there was
14 a queue of four cars going to that parking they
15 would be queuing in the public alley at the larger
16 dimensions?

17 MR. GLASGOW: I think that that is one
18 place that they could be, yes.

19 CHAIRPERSON GRIFFIS: Okay.

20 Anything else?

21 MS. MITTEN: I did have another question
22 for, and this is for Mr. George I guess, which is do
23 you have any estimate, and I know in your traffic
24 analysis you focused on trip generations, you know,
25 passenger car trip generations. Did you focus at

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1 all on how many trucks would be needed to service
2 the facility between providing food, providing -- I
3 don't think the laundry is going to be done on-site,
4 you know, the thing that a hotel needs, trash
5 removal and all that stuff, did you focus on that at
6 all?

7 MR. GEORGE: No, I didn't.

8 MS. MITTEN: Is that something that you
9 could do if the applicant were to ask you?

10 MR. GEORGE: Yes, we could. The
11 relevant programming information I think we can do
12 that, yes.

13 MS. MITTEN: Because I think that's
14 important because so far what we're getting is
15 exclusive -- exclusive in terms of the use of the
16 alley by passenger vehicles and clearly trucks are
17 going to be using it and that's a component that I
18 think needs to be addressed.

19 MR. BENDER: Your question about
20 laundry, laundry is going to be done on-site.
21 Hotels have come full circle.

22 MS. MITTEN: Okay.

23 MR. BENDER: They used to do on-site,
24 got away from it, and now it's back again.

25 MS. MITTEN: Okay. So you won't be

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1 having those trucks?

2 MR. BENDER: That's correct.

3 CHAIRPERSON GRIFFIS: Okay, let me see
4 if I'm clear, you were perhaps requesting that the
5 Board have Mr. George look into what, the number of
6 trips generated from the service vehicles coming
7 into the back?

8 MS. MITTEN: Yes.

9 CHAIRPERSON GRIFFIS: Okay. And what
10 about turning radius, anything of that nature?

11 Mr. George, are you able to estimate
12 that and the appropriate turning radius, or is that
13 something left to civil?

14 MR. GEORGE: We could do it. We could
15 work with the architect to do it and provide the
16 information on the plans.

17 CHAIRPERSON GRIFFIS: Good enough. I
18 don't think that's a bad objective to see how that's
19 going to be accessed in, especially with the
20 comments that have come up in terms of the loading
21 and service of the building. Additionally with that
22 Ms. Mitten was indicating and I think Ms. Miller was
23 also questioning the timing and how fast this
24 roulette of car park is going to be. But the
25 element -- we're not finished, so we'll probably

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1 have more at the end, but I want to make sure I
2 address this, comparison is going to be important.
3 You could tell us that could put in 10 cars per
4 second and I'm not sure if that's faster than a
5 speed ramp in a normal parking garage or slower. So
6 a little bit of comparison so for objectivity and
7 analysis would be important.

8 Okay, any other questions from the
9 Board, the witnesses, anything else at this time?

10 Does the ANC have something else?

11 MR. NETTLER: You had asked Mr. Glasgow
12 about the width of N Street and he said it was 40
13 feet, but the same Exhibit that he referred to that
14 shows the dimensions of the alley, Mr. Glasgow does
15 it not, does Exhibit A show the street as 32 feet,
16 not 40 feet?

17 MR. GLASGOW: Yes, that does show the
18 street as 32 feet. That's -- we believe that's even
19 better for our case.

20 MR. NETTLER: Well, we'll get to that
21 point later.

22 CHAIRPERSON GRIFFIS: Okay, indeed.

23 Okay. If there's nothing else -- oh
24 yes, the ANC had one more follow-up and then we'll
25 move on?

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1 MR. BJORGE: Yes, I'm sorry. Some of
2 the discussion recently has made me think of two
3 questions which I'm afraid I wasn't prepared to
4 think of earlier.

5 Mr. Bender, the parking mechanism sounds
6 intriguing, do you have any data on how much noise
7 is generated by the mechanical aspect of it?

8 MR. BENDER: Well, my visit to the
9 operation on 15th and I there's no discernible noise
10 at all.

11 MR. BJORGE: Are there specs?

12 MR. BENDER: I don't know.

13 MR. BJORGE: You don't know, okay. I'd
14 just be interested, given the location of it --

15 CHAIRPERSON GRIFFIS: Certainly if
16 you're going to grab the loading and stuff of that
17 nature, the speed and the mechanism is probably in
18 that same spec sheet.

19 MR. BENDER: Well, you must remember --
20 I'll see what I can get for you, but on 15th and I
21 the garage is under inhabitable space.

22 CHAIRPERSON GRIFFIS: Sure.

23 MR. BENDER: So if there were a lot of
24 noise there would be a lot of complaining, I'm sure.

25 CHAIRPERSON GRIFFIS: Not that we would

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1 here about but someone is going to complain.

2 MR. BENDER: You better believe it.

3 MR. BJORGE: And again, coming from the
4 mechanical nature of the garage, how much, if any,
5 of the height of the penthouse or the above roof,
6 the highest point on the east-most side is due to
7 the mechanical nature of the parking mechanism? Is
8 any of the --

9 MR. BENDER: The parking mechanism is
10 not on the roof at all.

11 MR. BJORGE: Okay. So none of the
12 lifting mechanism is contributing to the penthouse?

13 MR. BENDER: The whole parking garage
14 and its operation are below grade.

15 MR. BJORGE: So none of the mechanical
16 aspects go up and that was my only questions?

17 MR. BENDER: No, they're all below
18 grade.

19 MR. BJORGE: Okay. And then one more
20 question and it would be for Mr. George. And I
21 would wonder if the traffic study examined
22 pedestrian use of the sidewalks on 17th Street,
23 particularly the westside of 17th Street on that
24 block during rush hour. I was wondering if you took
25 a look at the crossing, the cars crossing the public

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1 space? I live on 17th Street and I know there's --

2 CHAIRPERSON GRIFFIS: No, I'm just
3 trying to understand what your question is trying to
4 get to. You're wondering how many cars are going to
5 be crossing the sidewalk or how many pedestrians are
6 walking?

7 MR. BJORGE: Well, Mr. George
8 represented that he had been there on numerous days,
9 you know, over the course of the year and had never
10 encountered any oncoming traffic. I'm wondering
11 whether or not he ever had to queue at the entrance
12 of that alley while waiting for, you know,
13 pedestrians to actually just get out of his way
14 because they're on the sidewalk, crossing the
15 sidewalk.

16 CHAIRPERSON GRIFFIS: Okay. So I hear
17 two questions. Anecdotally, of course, Mr. George
18 said he walked around. Let's ask his observance.
19 I'm more concerned about his expert study.

20 And Mr. George, did you look at, let's
21 call it the cross-sidewalk trips of vehicles. Did
22 you do a count of that nature?

23 MR. GEORGE: Not at that location.

24 CHAIRPERSON GRIFFIS: Did you do a count
25 coming off of 17th into the alley?

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1 MR. GEORGE: No, sir. No, we did not.

2 MR. BJORGE: That's the location that I
3 think I would be concerned about for safety reasons.

4 CHAIRPERSON GRIFFIS: There's nothing in
5 your traffic study that goes to the trips that are
6 generated off of 17th into the alley?

7 MR. GEORGE: 17th Street and N Street we
8 show trips being assigned or generalized estimate of
9 trips, new trips from the hotel that would enter the
10 alley.

11 MR. BJORGE: I was looking for some type
12 of duration of the queue to get into the alley from
13 17th Street. And I think that's --

14 CHAIRPERSON GRIFFIS: Well, let me see
15 if I understand what you're saying. You're
16 anticipating that cars might be backing up, like
17 four or five deep that would just sit across the
18 sidewalk. So if you were walking down the sidewalk
19 you'd have to walk into 17th Street to get around
20 them, is that my understanding?

21 MR. BJORGE: Well, I think and this is
22 of course all anticipatory, but thinking of 17th
23 Street as it exists as a pedestrian route, and I've
24 lived on it for 12 years or more, people walk to
25 work and they use those sidewalks quite heavily and

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1 that is a narrow, blind alley. I mean it's a
2 narrow, blind alley. And I think that you're going
3 to have cars queuing up on rush hour 17th Street if
4 you anticipate people arriving and departing during
5 peak business hours then that's going to be a safety
6 concern that we may have.

7 CHAIRPERSON GRIFFIS: Right. Good, okay
8 I think we're going to investigate more of your
9 testimony when you do your case presentation.

10 MR. BJORGE: Thank you.

11 CHAIRPERSON GRIFFIS: Thank you.

12 MR. NETTLER: This is a response to what
13 you just asked --

14 CHAIRPERSON GRIFFIS: Yes, I'm going to
15 stop talking because we're never going to get
16 through cross.

17 MR. NETTLER: Because I think maybe
18 there's a misunderstanding. On Appendix E of your
19 traffic study, if you could at that, Mr. George, the
20 counts that you have coming down 17th Street, those
21 are simply traffic from 17th Street. That's not --
22 there's no traffic counts for any of the cars coming
23 out of the alley, are there?

24 MR. GEORGE: No, sir.

25 MR. NETTLER: So there are no counts

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1 figured into this of what traffic is being produced
2 by that alley?

3 CHAIRPERSON GRIFFIS: I was clear on
4 that. Okay, anything else?

5 MR. GLASGOW: We also will submit post-
6 hearing because I've been advised by the traffic
7 consultant that their measurement of the right away
8 width of N Street is 40 feet and we will confirm
9 that and submit it for the record.

10 CHAIRPERSON GRIFFIS: Okay. I think we
11 can get that. I mean there's a difference -- well,
12 there it is, we'll figure it out. We've got right
13 aways that are measured and then of course the
14 street itself, curb to curb.

15 MS. MITTEN: And I think we should be
16 clear about what we want.

17 CHAIRPERSON GRIFFIS: That's right.

18 MS. MITTEN: Do we want the road bed
19 measured? You know, just so we're on the same page.

20 MR. GLASGOW: We were going to measure
21 it from curb to curb.

22 CHAIRPERSON GRIFFIS: You've got a right
23 away measured here that's 80 feet, I mean on the
24 base atlas, I mean that's obviously not functioning
25 for vehicles and I think that's going to be our

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1 critical aspect, so curb to curb is I think what
2 we're looking at.

3 MS. MITTEN: I did have one additional
4 piece of information that I think would be helpful
5 since I think the focus seems to be the alley and
6 not M Street or 17th Street, per se, but -- and we
7 have traffic counts on 17th Street and we have
8 traffic counts on M Street, but we don't have
9 traffic counts on the alley during the peak hour,
10 which is what Mr. Bjorge. So I think in order for
11 us to have a full understanding of the impact on the
12 most sensitive right away, we need to know during
13 peak hour what the existing usage of the alley is
14 and then that would then dovetail with our estimates
15 about what the demand in terms of service vehicles
16 and passenger vehicles how that all then weaves
17 together. But we'll only have half of it if we just
18 get the trip generation counts for the proposed
19 hotel.

20 CHAIRPERSON GRIFFIS: Good, understood.
21 I think we need just a quick calculation of that and
22 then we can factor in obviously the new trip
23 generation through the alley.

24 Okay, anything else from the Board? Any
25 other questions?

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1 (No response.)

2 CHAIRPERSON GRIFFIS: Very well, I thank
3 you very much.

4 MR. GLASGOW: Thank you.

5 CHAIRPERSON GRIFFIS: Let's move ahead
6 then to, let's move right into the Office of
7 Planning's report.

8 MR. PARKER: Good evening, Mr. Chairman
9 and Members of the Board. My name is Travis Parker
10 with the Office of Planning. As you recall, this
11 was before us in November and our main objection --
12 OP's main objective at that time were -- main
13 objections to the plan had to do with density,
14 height, FAR of the building. Subsequently, the
15 plans have changed to reduce the building to a scale
16 and character of the existing buildings and of the
17 surrounding neighborhood, so the plans -- the relief
18 is now related to three areas and I'll address those
19 three right now.

20 The first, of course, is the special
21 exception for hotel use. OP believes, as is laid
22 out in our written report, our supplement report,
23 that the application does meet the standards of
24 Section 512. Those are individually laid out in the
25 analysis section of my report. Most significantly

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1 that the height, bulk, and design of the hotel have
2 been reduced to be compliant with the Dupont Circle
3 overlay district and the surrounding neighborhood.
4

5 The second area of relief, of course, is
6 the court variance. We believe that the existing
7 conditions in combination with the adaptive reuse of
8 these historic buildings leads to the exceptional
9 circumstance and the practical difficulty in now
10 being able to either fill in the court or leave it
11 as a side yard. And therefore, we recommend
12 approval of the court variance.

13 We are not able to make a recommendation
14 on the roof structure relief at this time. We did
15 have a meeting with the applicant at the time of the
16 re-submission. And, as was stated by the applicant,
17 Historic Preservation expressed some concerns with
18 the position of the roof structure on the front of
19 the building. The visibility from N Street was the
20 main concern. The subsequent submission today has
21 taken some steps to address that but I have not had
22 adequate preparation time to consult with Historical
23 Preservation to determine if those changes are
24 adequate to meet those concerns and I'm not prepared
25 to recommend on that portion of the relief today.

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1 CHAIRPERSON GRIFFIS: Excellent, thank
2 you very much, we appreciate that and definitely
3 appreciate getting the updated report, revised
4 especially on the revised plans out.

5 As you indicated, in terms of the
6 changes, how would the Board proceed just from your
7 analysis under 411 in reviewing these, knowing well
8 that Historical Preservation will have its own
9 measurement. Could we not look at it just on the
10 basis of the special exception?

11 MR. PARKER: We certainly could.

12 CHAIRPERSON GRIFFIS: Okay. I
13 understand it's valuable for you to also get the
14 recommendation of Preservation.

15 MR. PARKER: Yes.

16 CHAIRPERSON GRIFFIS: And particularly
17 as the Conservancy and ANC to be, which you have not
18 had.

19 MR. PARKER: Yes.

20 CHAIRPERSON GRIFFIS: Okay.

21 Any other questions from the Board?

22 MS. MITTEN: I have a question, Mr.
23 Chairman?

24 CHAIRPERSON GRIFFIS: Yes.

25 MS. MITTEN: In reaching your conclusion

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1 under 512.9, related to parking and loading.

2 MR. PARKER: Yes.

3 MS. MITTEN: Did you consult with DDOT?

4 MR. PARKER: We had consulted with DDOT
5 on the original. We have not -- they have not had
6 a chance to review the new and revised plan.

7 MS. MITTEN: Do you intend to consult
8 with DDOT?

9 MR. PARKER: I have multiple calls into
10 DDOT.

11 MS. MITTEN: Okay. Thanks.

12 CHAIRPERSON GRIFFIS: But just for
13 clarity, the conversation was previous, which was
14 more parking being provided, is that correct?

15 MR. PARKER: Correct.

16 CHAIRPERSON GRIFFIS: And we're
17 obviously looking for additional information just
18 based on that but most specifically on the 101 I
19 think it is now, the other parking, and then the
20 access in the alley?

21 MR. PARKER: Correct.

22 CHAIRPERSON GRIFFIS: Okay. Excellent.
23 Anything else?

24 Does the applicant have any cross-
25 examination of the Office of Planning?

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1 (No response.)

2 Any cross, Mr. Nettler?

3 MR. NETTLER: Good afternoon, Mr.
4 Parker.

5 MR. PARKER: Good afternoon.

6 MR. NETTLER: Let me ask you about your
7 analysis on page 3 with regard to the special
8 exception for the hotel use. You make a number of
9 references to Historic Preservation Review Board,
10 with regard to the high bulk and design of the
11 hotel, and to ensure it's in harmony with existing
12 structures and uses. If the Historic Preservation
13 Review Board was to object this, would that change
14 your position regarding those 512.3 and 512.4?

15 MR. PARKER: I think the only issue that
16 the Historic Preservation Review Board might reject
17 us on would be whether the eastern most buildings
18 are considered demolition and from our viewpoint or
19 the other side, the zoning side, doesn't affect the
20 height, bulk, and design, the scale and character of
21 the buildings, the interior of the buildings.

22 MR. NETTLER: And when you look at that
23 issue with regard to the height bulk design being in
24 harmony with existing uses and structures, did you
25 look at in context with the provisions of the Dupont

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1 Circle overlay as well?

2 MR. PARKER: Of course.

3 MR. NETTLER: Okay. And one of those
4 provisions, if I might refer you to is Section
5 1501.4E, aside from others which deal with
6 historical buildings, which is to preserve areas
7 that are -- that had been planning as open gardens
8 and backyards and protect the light, air, and
9 privacy that those provide. Did you look at the
10 impacts of the rear additions to this property on
11 that open space that exists today, both in back of
12 the adjacent properties and other properties?

13 MR. PARKER: Personally I have not. The
14 Historic Preservation side of our office has and has
15 not raised objections to the additions on the rear
16 of the building.

17 MR. NETTLER: But this is a planning
18 situation here?

19 MR. PARKER: Right.

20 MR. NETTLER: That's a zoning regulation
21 and that's a provision of the Dupont Circle overlay.
22 So since you said that you're not relying on
23 historic preservation for your analysis here, you're
24 saying that you, yourself, haven't looked at it in
25 the context of the provisions of the Dupont Circle

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1 overlay with regards to those impacts?

2 MR. PARKER: You're asking on its
3 impacts on the space on the individual lots or on
4 the neighboring lots?

5 MR. NETTLER: On areas planned as open
6 gardens, and backyards, and the light and air and
7 privacy that they provide.

8 MR. PARKER: I don't believe that this
9 will have negative impacts on the light and air or
10 on those -- especially for the properties in -- the
11 subject properties.

12 MR. NETTLER: Okay, you did -- did you
13 do a light and -- have you seen a light and air
14 study?

15 MR. PARKER: I have not.

16 MR. NETTLER: Okay. And you did this on
17 the basis of the plans that were submitted on
18 January 10, correct?

19 MR. PARKER: Correct.

20 MR. NETTLER: This analysis, okay. So
21 you've not seen how that additional impacts the rear
22 of the Inn or anybody, or any other open yards that
23 are in the back there, have you?

24 MR. PARKER: Other than walking the
25 site? I've been to the site, yes.

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1 MR. NETTLER: Okay. So your position
2 was that a penthouse, and I know the penthouse has
3 been changed and we'll get to that --

4 MR. PARKER: Sure.

5 MR. NETTLER: -- in the future, at some
6 point in this application, but your position was
7 that adding that additional 18 feet didn't have any
8 impact on light and air on the rear of those
9 properties?

10 MR. PARKER: I can't say that wouldn't
11 have any impact.

12 MR. NETTLER: Or adverse impact?

13 MR. PARKER: I think that would be our
14 position.

15 MR. NETTLER: That it doesn't have any
16 adverse impact? Without having done a light and air
17 analysis?

18 MR. PARKER: Without having seen a light
19 and air analysis.

20 MR. NETTLER: And that's because you
21 intuitively know how that will impact them?

22 MR. PARKER: I do not.

23 MR. NETTLER: Okay. Now, with regard to
24 512.5, you said it will result in a balance of
25 residential office, hotel, or inn uses. What's the

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1 balance of residential that's being created by this
2 additional hotel?

3 MR. PARKER: There is significant
4 residential in the surrounding neighborhood. I
5 don't know that this offsets the balance of this
6 area in a negative way.

7 MR. NETTLER: Okay. Do you know how
8 many other blocks have three hotels on them in the
9 Dupont Circle area?

10 MR. PARKER: No.

11 MR. NETTLER: In the District of
12 Columbia?

13 MR. PARKER: No.

14 MR. NETTLER: Okay. So in terms of a
15 balance, in terms of a number of uses like hotels,
16 you didn't do any analysis to see whether having
17 three hotels on a block is something that provides
18 a balance of uses in that particular area?

19 MR. PARKER: No.

20 MR. NETTLER: Okay. And with regard to
21 the variance, could you explain what's unique here?

22 MR. PARKER: As I said, as far as the
23 court you're asking?

24 MR. NETTLER: Well, that's the only
25 variance I see that's now on the table.

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1 MR. PARKER: Fair enough, fair enough.
2 As I said, we believe that the existing situation
3 combined with the need to adaptively reuse these
4 historic buildings results in an acceptable --

5 MR. NETTLER: Okay. What's the existing
6 situation that's unique?

7 MR. PARKER: The 14 or excuse me 1751,
8 1745 having the ten foot separation rather than a 12
9 foot separation.

10 MR. NETTLER: Okay. Do you know how
11 many other buildings on that street have that exact
12 same separation?

13 MR. PARKER: That are under the same
14 ownership and being adaptable to --

15 MR. NETTLER: So the uniqueness depends
16 upon the building be under the same ownership?

17 MR. PARKER: The uniqueness depends on
18 the way that the buildings are situated, owned,
19 used, the entire situation.

20 MR. NETTLER: Okay. And so here that
21 entire situation is because you understand that
22 there -- well, you understand from a uniqueness
23 standpoint that the subdivision, the future
24 subdivision if this approval is granted, is going to
25 create a condition that you're saying is unique. Is

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1 that correct?

2 MR. PARKER: Correct.

3 MR. NETTLER: Okay. Not that there's
4 any current unique situation?

5 MR. PARKER: I fail to see where you're
6 going.

7 MR. NETTLER: Well, you're saying that
8 a subdivision will create a unique condition; there
9 isn't any existing unique condition.

10 MR. PARKER: I would say that the
11 condition rises to the level of exceptional.

12 MR. NETTLER: The future unique
13 condition or the present unique conditions?

14 MR. PARKER: Both.

15 MR. NETTLER: Okay. So what is it
16 that's unique about it? Maybe I misunderstood you.
17 What is it that's unique today, in the absence of a
18 subdivision of this site?

19 MR. PARKER: I think that the unique
20 situation doesn't depend on the subdivision of the
21 site but depends on the application before us, the
22 ownerships of the site, all of the above. These are
23 currently under the same ownership and proposed to
24 be used under the same use. And I think that
25 creates a situation that justifies.

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1 MR. NETTLER: Okay. Go back to my other
2 question then. Are you aware of how many buildings
3 on this block have the same exact side yard
4 situation that are owned by the same property
5 owners?

6 MR. PARKER: I'm not aware of any.

7 MR. NETTLER: Okay. Are you aware of
8 how many buildings are on this block that have that
9 situation at all?

10 MR. PARKER: A ten foot --

11 MR. NETTLER: Right.

12 MR. PARKER: -- side? There are very
13 few, perhaps on the south side of the block.

14 MR. NETTLER: The Iron Gate Inn?

15 MR. PARKER: I'm sorry.

16 MR. NETTLER: The Iron Gate Restaurant,
17 is that perhaps what you're thinking of?

18 MR. PARKER: The Iron Gate, yes, yes.

19 MR. NETTLER: And what about down the
20 block, are there a few more as well?

21 MR. PARKER: Perhaps.

22 MR. NETTLER: Okay. And you heard me
23 ask Mr. Gans a question about having this clear roof
24 over the -- behind the canopy, not visible from the
25 street, which would eliminate the need fo a court

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1 variance. Does that respond to the practical
2 difficulty issue in your view?

3 MR. PARKER: Well, it does not If it
4 runs afoul of historic preservation.

5 MR. NETTLER: But nobody has presented
6 that history preservation?

7 MR. PARKER: True.

8 MR. NETTLER: So the practical
9 difficulty from your perspective is the question --
10 is the consequence of whether historic preservation
11 is willing to accept a treatment that hasn't been
12 presented to it. Is that accurately stated?

13 MR. PARKER: That's accurately stated.

14 MR. NETTLER: Okay. Thank you.

15 I don't have any other questions.

16 CHAIRPERSON GRIFFIS: Thank you.
17 Excellent, thank you very much, Mr. Parker, we do
18 appreciate it. Let me just follow-up with you a
19 little bit on some of the line of questioning
20 because it seemed to be very clear in your analysis
21 in terms of the uniqueness, in terms of the court
22 variance.

23 MR. PARKER: Yes.

24 CHAIRPERSON GRIFFIS: And it's my
25 understanding that you're finding that in fact the

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1 existing situation, which creates unique difficulty,
2 is the existing structures, one, the configuration
3 of the existing structures, and then this confluent
4 development and factors of ownership. And then you
5 even mentioned, I was trying to find the actual
6 wording here, but you just said verbally the actual
7 reconfiguration and adaptive reuse. Am I
8 understanding that correctly as the unique and
9 practical difficulty of compliance?

10 MR. PARKER: That's correct.

11 CHAIRPERSON GRIFFIS: Okay. Let's
12 assess where we are this evening. We're at 5:22.
13 I understand that I will lose some Board Members
14 this evening. I want to get to the ANC's case
15 presentation and Mr. Greene and Mr. Nettler, but I
16 need an assessment of how much time that's going to
17 take.

18 The ANC will take how much time this
19 evening?

20 MR. BJORGE: The ANC will be very brief.

21 CHAIRPERSON GRIFFIS: Will be very
22 brief.

23 MR. BJORGE: I have not had a chance to
24 evaluate; therefore, we don't have time to discuss
25 it in anything other than generalities.

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1 CHAIRPERSON GRIFFIS: Okay. Okay. So
2 for the record the ANC is going to be brief due to
3 the lack of full preparation because of the new
4 information that has come into the record. And so
5 you'll be brief and in generalities.

6 Mr. Nettler?

7 MR. NETTLER: Since we won't be brief
8 and there are new plans that we've all just seen
9 today and the ANC can't -- I mean my suggestion is
10 unless you were prepared to go way beyond 6:00 that
11 we should continue it so that everybody can deal
12 with that issue.

13 CHAIRPERSON GRIFFIS: Exactly. It's not
14 often that we would not go late just to finish this
15 because we have everyone here, but I'll say and not
16 to embarrass her, but Ms. Miller is going to be
17 sworn in. So if we keep her here late then she
18 won't be here next week. So we need to get her over
19 there so that the mayor can swear her in this
20 evening and she can continue her service on the
21 Board.

22 So with that, I would suggest that we
23 get to the ANC, check our schedules on when we would
24 continue and finish this, we will then start up with
25 the -- forgive me, the parties in opposition's

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1 presentation of their cases, finish with any cross,
2 rebuttal, and summations.

3 MR. NETTLER: Well, if I might suggest,
4 since the ANC -- I don't know what date this is
5 when it can be continued to --

6 CHAIRPERSON GRIFFIS: We might continue
7 them also.

8 MR. NETTLER: Well, not necessarily
9 continue but allow them to also come back after
10 they've had an opportunity to look at the new plans
11 so that they can supplement whatever testimony
12 they're going to give today.

13 CHAIRPERSON GRIFFIS: Why don't you come
14 up Mr. Glasgow and Mr. Greene. We just need to get
15 a continue -- we're at a good breaking point right
16 now. I'm perfectly prepared to continue on a little
17 bit.

18 Mr. Glasgow, let me hear from you, any
19 comments on that?

20 MR. GLASGOW: No, that's fine.

21 CHAIRPERSON GRIFFIS: Okay. The ANC, it
22 may be well appropriate rather than having, you
23 know, generalities this evening to come back in full
24 preparation or I'm perfectly happy to hear you
25 tonight.

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1 MR. BJORGE: Preferable to come back
2 with better preparation, thank you.

3 CHAIRPERSON GRIFFIS: Okay. What do we
4 got?

5 MR. MONDIE: I would concur.

6 CHAIRPERSON GRIFFIS: We may have an
7 excellent opportunity on the 31st of January, which
8 would be next Tuesday.

9 MR. NETTLER: That's a problem.

10 CHAIRPERSON GRIFFIS: What's the
11 problem?

12 MR. NETTLER: I've got one of my
13 principle witnesses who's going to be out of town.

14 MR. BJORGE: The ANC's next meeting at
15 which we would be able to take a position on this is
16 scheduled for the 8th of February.

17 MR. NETTLER: Mr. Chairman, how does the
18 afternoon of the 14th look?

19 CHAIRPERSON GRIFFIS: I've got plans.
20 Actually, it looks like the first case in the
21 afternoon on the 28th.

22 MR. NETTLER: Of which?

23 CHAIRPERSON GRIFFIS: February, I'm
24 sorry.

25 MR. BJORGE: So that would be 1:00 p.m.

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1 on February 28?

2 CHAIRPERSON GRIFFIS: Right. We have
3 one other case which we promised them that we would
4 not schedule anything on; however, I believe that we
5 can be expeditious. We had an awful lot of time in
6 preliminary matters today and I think the case
7 presentation went fairly quickly. So I would
8 anticipate the case in opposition to do the same.
9 We'll set some time perimeters so at least we know
10 what to prepare for. And we'll go for there if
11 there isn't any difficulty for that day.

12 Excellent, we're all okay with that?
13 Very well. Ms. Bailey will make note of that. It
14 will be the first case in the afternoon on the 28th.
15 To that we have lots of things that we were kind of
16 asking for. I think it would be appropriate that we
17 have those submitted into the record as we have the
18 time now, if we have the time, you need to let me
19 know Mr. Glasgow and others. Likewise, while they
20 are checking their schedule and see how long it
21 might take, I forget what all we're asking for,
22 actually it doesn't seem that cumbersome, we can get
23 it in a week before the hearing.

24 Mr. Glasgow, do you see any difficulty
25 with that?

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1 MR. GLASGOW: Get it in on the 21st?

2 CHAIRPERSON GRIFFIS: Yes. Yes.

3 MR. GLASGOW: All right.

4 CHAIRPERSON GRIFFIS: Do you want to say
5 -- or we can event extend it to Wednesday, the 22nd
6 at 3:00 at the Office of Zoning, and then it would
7 get out to us and mostly, as I recall, we were
8 looking at the operational specifics of the elevator
9 and the garage, some counts into the alley, et
10 cetera. We'll go over the others specifically.

11 Let's assess the timing that I'm
12 anticipating on the 28th. In my calculations
13 outside of Board questions we had just about 45
14 minutes of presentation and that's actually
15 enlarging the time substantially. Of course, the
16 ANC is not restricted to time, so we'll ask you to
17 give us an idea when you come in how much time so we
18 can set the day schedule.

19 MR. BJORGE: Thank you.

20 CHAIRPERSON GRIFFIS: Sure. And then
21 the parties in opposition would then be splitting
22 the 45 minutes, so you'll present accordingly.

23 MR. NETTLER: That's fine.

24 CHAIRPERSON GRIFFIS: Okay. Outside of
25 that then, Ms. Bailey, do you want to just run

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1 through the list of things that we were looking at?

2 MS. BAILEY: Mr. Nettler had requested
3 to respond to the plans that were filed today, Mr.
4 Chairman.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. NETTLER: Well, we'll do that at the
7 hearing.

8 CHAIRPERSON GRIFFIS: Right.

9 MS. BAILEY: The applicant indicated
10 that he would provide details on how the mechanical,
11 electronic valet system would work or is intended to
12 work, some written documentation on that.

13 CHAIRPERSON GRIFFIS: Great and also
14 maybe if there's any information on the sound
15 generation.

16 MR. BJORGE: The speed and the sound I
17 think it was.

18 MS. BAILEY: The number of trips
19 generated by the service vehicles. I think and the
20 churning radius, Mr. George is to provide
21 information on trucks and so forth and how many
22 would be anticipated to use the site.

23 CHAIRPERSON GRIFFIS: Excellent.

24 MS. BAILEY: And also there's to be
25 information provided concerning the queuing,

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1 particularly as it concerns from 17th Street, and
2 again the trip generator, generation.

3 CHAIRPERSON GRIFFIS: Good. I think
4 there are two distinct points that are absolutely
5 important. One is to try to get an idea of the
6 valet program, what's being anticipated, and then
7 obviously the more scientific counts of how that
8 impacts one crossing the sidewalks and the alley,
9 and then the third aspect of that is in terms of the
10 service trucks to the building.

11 Okay, anything else we're missing?

12 MS. BAILEY: There was some discussion
13 about traffic count. And maybe you just said it and
14 I missed it, but traffic counts on the alley during
15 the peak hour?

16 CHAIRPERSON GRIFFIS: Good.

17 MS. BAILEY: Okay. Was there a request,
18 Mr. Chairman, for the right of way measurement of N
19 Street?

20 CHAIRPERSON GRIFFIS: Yes, Mr. Glasgow
21 is going to give us the curb-to-curb.

22 MR. GLASGOW: Right.

23 MS. BAILEY: And those were the things
24 that I had, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Perfect. I think

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1 it wouldn't be bad if, Mr. Glasgow, you mentioned in
2 your iteration of the applicant's testimony that
3 there is areas on N Street now current that are no
4 parking. There are other areas on the block that
5 have restricted parking because of the other uses,
6 and then you mentioned the potential or anticipation
7 of requesting valet areas, if there's a graphic
8 representation of that so that we could factor that
9 into the whole mix, certainly that would be part of
10 the valet programming I would think.

11 Okay. What else are we missing?
12 Anything else? Is there any other questions,
13 comments, clarifications?

14 (No response.)

15 CHAIRPERSON GRIFFIS: Very well, any
16 questions from the applicant?

17 MR. GLASGOW: I just wanted to make sure
18 that the time that you said that we were filing,
19 that we file?

20 CHAIRPERSON GRIFFIS: The latest would
21 be Wednesday at 3:00, which would be the 22nd.

22 MR. GLASGOW: The 22nd?

23 CHAIRPERSON GRIFFIS: Right.

24 MR. GLASGOW: Right. Okay.

25 CHAIRPERSON GRIFFIS: Okay. Everyone

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1 else clear? ANC is clear? You're going to put this
2 on your agenda then?

3 MR. BJORGE: Absolutely.

4 CHAIRPERSON GRIFFIS: Okay. And you're
5 going to talk to everyone in the room and whoever
6 you need to be there you're going to make sure that
7 they know the date, the times, and all that stuff.

8 MR. BJORGE: Hopefully everybody.

9 CHAIRPERSON GRIFFIS: And we'll let you
10 go from there.

11 Excellent, if there's nothing further
12 then, thank you all very much. I appreciate it. I
13 think we've made a lot of headway on this and we
14 look forward to seeing you on the 28th.

15 Ms. Bailey, any other business for the
16 Board this afternoon?

17 MS. BAILEY: No, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: If there's no
19 other business then let's adjourn the afternoon
20 session of the 24th. Thank you.

21 (Whereupon, the above-entitled matter
22 was adjourned at 5:37 p.m. to reconvene for further
23 testimony on February 28, 2006.)

24

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