

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 13, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

|                  |              |
|------------------|--------------|
| MICHAEL TURNBULL | Commissioner |
|------------------|--------------|

OFFICE OF ZONING STAFF PRESENT:

|                |                       |
|----------------|-----------------------|
| CLIFFORD MOY   | Secretary             |
| BEVERLY BAILEY | Sr. Zoning Specialist |
| JOHN NYARKU    | Zoning Specialist     |

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE

The transcript constitutes the minutes from the public hearing held on December 13, 2005.

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

10:10 a.m.

CHAIRMAN GRIFFIS: Good morning, ladies and gentlemen, let me call to order the 13<sup>th</sup> of December, 2005, morning hearing of the Board of Zoning Adjustment, the District of Columbia.

My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and also Mr. Etherly is with us. Representing the National Capital Planning Commission, is Mr. Mann. And representing the Zoning Commission, with us we welcome Mr. Turnbull for sitting with the Board of Zoning Adjustment.

Copies of today's hearing agenda are available for you. They are located on the table where you entered into the hearing room, it's the table by that door. You can pick it up and see where we are or what we will accomplish in this morning's session.

Normally, I would tell you that we are being broadcast live, however, we still are getting through the final cable pulling. Many of you may not know we have just gone through a major renovation, in order to equip this hearing room, and actually the entire Office of Zoning area, for better public access

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1 and utilization.

2 It will be final in the short-term.  
3 However, attendant to that aspect that is working in  
4 the hearing room today, we do have the Court Reporter  
5 who is creating the official transcript for all of our  
6 proceedings, and attendant to that, there are several  
7 things that I will make mention of.

8 First, I'd ask that everyone turn off  
9 their cell phones and beepers, at this time, so we  
10 don't disrupt that transmission, and also don't  
11 interrupt anyone providing testimony or evidence for  
12 the Board's consideration.

13 When coming forward to speak to the Board,  
14 you should have filled out witness cards. Witness  
15 cards are available where you entered into the hearing  
16 room, they're also available in front where you will  
17 provide testimony.

18 Two witness cards should go to the Court  
19 Reporter prior to coming forward. And, when you are  
20 ready to address the Board, we would ask that you just  
21 state your name and address for the record.

22 You just need to do this once and then you  
23 can proceed. The order of procedure for special  
24 exceptions and variances is as follows. First, of  
25 course, we hear, from the Applicant, their case

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1 presentation.

2 Second, we will hear any government  
3 reports attendant to the application, such as the  
4 Office of Planning, or perhaps DHCD has submitted a  
5 report on cases, elements of that nature.

6 Then we will go to the Advisory  
7 Neighborhood Commission, of which the property is  
8 located, for their report. And, we will then go to  
9 persons or parties in support of an application.

10 Fifth, would be persons or parties in  
11 opposition to the application. And sixth, finally, we  
12 will hear from the Applicant, again, any rebuttal  
13 witnesses, testimony they might have, closing remarks  
14 or summations.

15 As you can tell, the work is still going  
16 on as we conduct our hearings.

17 Cross examination of witnesses is  
18 permitted by the Applicant in the case, and also any  
19 parties established in a case. The ANC within which  
20 the property is located, is automatically a party in  
21 the case and, therefore, will be a full participant as  
22 a party, but will also be able to cross examine any  
23 witnesses, as they see fit.

24 The record will be closed at the  
25 conclusion of the public hearing. So it should be

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1 very clear to everyone present today, that anything  
2 that you would like the Board to deliberate on, to  
3 base its decision, should be in the record.

4 Either it should be presented orally  
5 today, or it should be submitted in writing during the  
6 hearing. We will keep the record open on a very few  
7 cases, for submission of additional information.

8 And we are very specific on what should be  
9 submitted into the record and when it is required to  
10 be submitted. But that will be something we will go  
11 through very clearly at the end of any hearing, if it  
12 is so fit.

13 The Sunshine Act requires that the Board  
14 conduct all its hearings in the open and before the  
15 public. This Board does enter into Executive Session,  
16 both during and after, hearings on a case, and that is  
17 utilized for the purposes of reviewing the record on  
18 cases.

19 Or sometimes utilized for deliberating  
20 on a case. Our Executive Sessions are in accordance  
21 with our rules, regulations and procedures. They are  
22 also in accordance with the Sunshine Act.

23 The decision of this Board in contested  
24 cases, of which all cases before the Board, and  
25 special exception variances are, must be based

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1 exclusively on the record, which, as I went through,  
2 it's important to have the record full.

3 We would also request that people present  
4 today not engage Board members in private  
5 conversation, so that we do not give the appearance of  
6 receiving information outside of the record.

7 With that, let me say a very good morning  
8 to Ms. Bailey, who is on my far left, with the Office  
9 of Zoning. Ms. Monroe, with the Office of Attorney  
10 General, and Mr. Moy will be joining us again shortly.  
11 Oh, I'm sorry, he's on my right. Mr. Moy with the  
12 Office of Zoning.

13 Mr. Nyarku, who is also assisting the  
14 Board today, and with the Office of Zoning, and will  
15 be in and out.

16 Let me, at this time, ask that everyone  
17 present, that is planning to testify, if you would  
18 please stand and give your attention to Ms. Bailey,  
19 she's going to swear you in.

20 (Participants are sworn.)

21 CHAIRMAN GRIFFIS: Excellent, thank you  
22 all. Now that that's taken care of, it is appropriate  
23 for us to consider any preliminary matters.  
24 Preliminary matters are those which relate to whether  
25 a case will, or should be heard today.

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1 Request for postponements, continuances,  
2 whether proper and adequate notice has been provided.  
3 These are elements of a preliminary matter.

4 If you are not prepared to go forward with  
5 a case this morning, or you believe that the Board  
6 should not go forward with a case that is on our  
7 schedule, I would ask that you come forward and have  
8 a seat at the table, as an indication of having a  
9 preliminary matter.

10 Let me also ask Ms. Bailey, if you're  
11 aware of any preliminary matters for our attention at  
12 this time.?

13 MS. BAILEY: Mr. Chairman, members of the  
14 Board, good morning and seasons greetings. Yes, sir,  
15 there is. It has to do with Application Number 17404  
16 of Wilbur Mondie. There is a request for postponement  
17 of this application.

18 CHAIRMAN GRIFFIS: Good morning, sir. I'm  
19 going to have you just touch the base of that  
20 microphone. On the base, there's a little button  
21 there, you should turn it on, the light will come on.

22 Perfect. If you wouldn't mind saying your  
23 name and address for the record.

24 MR. MONDIE: My name is Wilbur Mondie. My  
25 address is 1311 Delaware Avenue, S.W., Washington,

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1 D.C.

2 CHAIRMAN GRIFFIS: Excellent. And you're  
3 here, as Ms. Bailey as also said, to request a  
4 postpone, is that correct?

5 MR. MONDIE: That's correct, sir.

6 CHAIRMAN GRIFFIS: Is ANC-5 represented  
7 today? Is the ANC here? Would you mind coming up?  
8 Then, my understanding in your submission, Mr. Mondie,  
9 is that you're requesting more time in order to work  
10 with the Office of Planning, the ANC and the  
11 community, on some of the details of your plan?

12 MR. MONDIE: That's correct, sir.

13 CHAIRMAN GRIFFIS: Okay. Would you mind  
14 introducing yourself?

15 MR. BERRY: Yes, Mr. Chairman, my name is  
16 James Berry. I live at 140 Bay Street, N.W. I'm the  
17 Chairman of ANC-5C.

18 CHAIRMAN GRIFFIS: Indeed. Thank you very  
19 much, Mr. Berry. And, if I'm not mistaken, you had a  
20 letter submitted in today, is that correct?

21 MR. BERRY: That's correct.

22 CHAIRMAN GRIFFIS: You were also in favor  
23 of the continuance. Mr. Mondie, did you receive this  
24 letter also, from the ANC? Do you have a copy of it?

25 MR. BERRY: He does not. I have a copy.

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1 CHAIRMAN GRIFFIS: Well, I'm sure Mr. Berry  
2 will avail himself and hand you a copy, as you sit so  
3 close together today.

4 Let me ask, we do have a request for party  
5 status, of course, we haven't called this case and  
6 therefore haven't set party status.

7 But let me ask is Ms. Redhead present?

8 MR. REDHEAD: Mr. Redhead is here.

9 CHAIRMAN GRIFFIS: Oh, indeed, Mr., forgive  
10 me. And Mr. LaCour?

11 MS. LACOUR: I'm present.

12 CHAIRMAN GRIFFIS: Also here.

13 MS. LACOUR: Yes, sir.

14 CHAIRMAN GRIFFIS: Indeed, very well. This  
15 is what I suggest. And I'll hear from Mr. Mondie and  
16 the ANC, but first from the Board. I think we, there  
17 seems to be some substantiation for a postponement  
18 here, but I think we ought to take up the first  
19 preliminary matter, and that is to establish party  
20 status.

21 Board members, do you have any concerns or  
22 discussion on that? Anything?

23 (No response.)

24 CHAIRMAN GRIFFIS: Mr. Mondie, do you have  
25 any difficulty, well, actually I'm not going to have

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1 you answer that. Well, that's what I would suggest.

2           Regardless of the silence of the rest of  
3 the Board, I think we ought to establish parties in  
4 this case. So what I'm going to ask is just your  
5 patience.

6           What I'm going to do is call this case  
7 this morning. We're going to establish party status.  
8 That way I can have the parties, if they are  
9 established as parties, weigh into this motion for  
10 postponement.

11           Our first two cases, as my viewing of it  
12 does not seem like it will take a lot of time. So,  
13 unless there's any quick questions I can answer at  
14 this point, what I'll do is have you both have a seat  
15 and then I'll call this case in short order. Does  
16 that make sense?

17           MR. MONDIE: That's fine, thank you.

18           CHAIRMAN GRIFFIS: Excellent. Thank you  
19 very much, Mr. Mondie. In which case, let's move  
20 ahead Ms. Bailey, if you're not aware of any other  
21 preliminary matters for the Board's attention.

22           MS. BAILEY: That's it, Mr. Chairman, and  
23 I'll call the case now.

24           CHAIRMAN GRIFFIS: Excellent.

25           MS. BAILEY: It's Application Number 17404

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1 of Wilbur Mondie, pursuant to 11 DCMR 3103.2, for a  
2 variance from the lot width and lot area requirements  
3 under Section 401.3, to allow the construction of four  
4 flats.

5 The property is zoned R4, it's located at  
6 410, 412, 414, and 416 Richardson Place, N.W., Square  
7 507, Lots 810, 812, 814, and 816.

8 CHAIRMAN GRIFFIS: I'm sorry, Ms. Bailey,  
9 I was going to call the first case in order. And  
10 we'll get to the first two cases.

11 MS. BAILEY: And then come back to this?

12 CHAIRMAN GRIFFIS: Yes.

13 MS. BAILEY: I'm sorry.

14 CHAIRMAN GRIFFIS: I think that would be a  
15 better utilization of time to stick to the schedule.  
16 Forgive me for not being clear.

17 MS. BAILEY: Okay. The first case this  
18 morning is Application Number 17400 of Peter and  
19 Katherine Powers, pursuant to 11 DCMR 1202.1, and  
20 3104.1, for a special exception to construct a rare  
21 addition to an existing single-family row dwelling,  
22 under Section 223, not meeting the court  
23 requirements(Section 406).

24 The property is located in the CAP/R-4  
25 District at premises 325 A Street, S.E., Square 788,

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1 Lot 38.

2 CHAIRMAN GRIFFIS: Excellent, thank you  
3 very much. Make yourselves comfortable. I'm just  
4 going to have you introduce yourselves, name and  
5 address for the record.

6 MS. POWERS: Katherine Powers, 325 A  
7 Street, S.E.

8 CHAIRMAN GRIFFIS: Excellent, thank you,  
9 Ms. Powers.

10 MR. OSSOLINSKI: Matthew Ossolinski, 5232  
11 44<sup>th</sup> Street, N.W.

12 CHAIRMAN GRIFFIS: Indeed, welcome both.  
13 I think the record is incredibly full on this, and of  
14 course it is a special exception under 223. And I'd  
15 ask if there's any opening statement you want to make  
16 or any highlights you would like to bring to the  
17 Board's attention.

18 MS. POWERS: No, I mean we've lived here  
19 for a long time and we would like a larger kitchen  
20 with more windows.

21 CHAIRMAN GRIFFIS: Indeed, indeed. And the  
22 largest aspect of the 223 Special Exception is to  
23 prove the fact that you actually have to have this.  
24 That's very facetious for the record. Of course, the  
25 Section 223 is an excellent provision of the Zoning

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1 Regulations that allows for additions to non-  
2 conforming, existing non-conforming structures.

3 And I think, as I said, that is a very  
4 full record and very straightforward. I think we can  
5 move ahead, then, and have you stand on the record.

6 Are there any Board questions,  
7 clarifications of the Applicant at this time?

8 (No response.)

9 CHAIRMAN GRIFFIS: Very well, not noting  
10 any, at this time, we're going to move straight ahead  
11 to any of the, to, rather, the Agency reports. I note  
12 that the Office of Planning is here, present to  
13 provide their analysis. A very good morning to you,  
14 sir.

15 MR. MOORE: Good morning, Mr. Chair, and  
16 members of the Board. Our analysis is, we stand on  
17 the record in support of the application.

18 CHAIRMAN GRIFFIS: Excellent, thank you  
19 very much. And I must say if the Applicant doesn't  
20 have the Office of Planning's report, you should pick  
21 one up before you leave.

22 It's an excellent report. It goes to the  
23 entire tests of the requirements of a special  
24 exception, the specificity, of course, to the 223, but  
25 more importantly it has some great aerial shots of

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1 your own property.

2 That being said, going to the 223, there  
3 hasn't been any evidence, in the Office of Planning,  
4 in their analysis, that substantiates that in fact,  
5 that would not unduly impact the light, air or use or  
6 privacy of adjoining neighbors.

7 It's interesting the kind of movement of  
8 what fenestration and windows that was done to  
9 accommodate certain aspects of this that seemed to  
10 avail both the adjacent neighbors. I think that was  
11 well done here.

12 The requirements, of course, also shows  
13 the Board would be provided graph representation in  
14 order to indicate what will, in fact, occur. And the  
15 elevations, I think, do a lot to show exactly what's  
16 going to happen.

17 The plans are very clear, in addition to  
18 that. Let's move ahead then to the other submissions,  
19 reports. We do have a letter from the Architect of  
20 the Capitol, which is Exhibit Number 25.

21 I don't know, is there a representative  
22 from there to present that?

23 (No response.)

24 CHAIRMAN GRIFFIS: Not noting any, we do  
25 have a DACD also weighing in, in Exhibit Number 28,

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1 recommending approval. And then, of course, the  
2 Capitol Hill Historic District, the Capitol Hill, is  
3 there a representative? Have you been through HPRB,  
4 yet? Is this going to HPRB?

5 MR. OSSOLINSKI: Yes, we have been through  
6 HPRB. We received a preliminary approval on the first  
7 set of documents.

8 We have coordinated with Emily Pollis on  
9 the revised set of documents. She's indicated that it  
10 will be a staff decision, they have no objections.

11 CHAIRMAN GRIFFIS: Excellent, excellent.  
12 And the Capitol Hill Registration Society, Exhibit  
13 Number 26, it also indicated, similarly, that they  
14 were in support of this addition.

15 Is there anyone here from the Capitol Hill  
16 Registration Society present for this application?

17 (No response.)

18 CHAIRMAN GRIFFIS: Not noting any, we'll  
19 make note of that in the record. I don't have any  
20 other government reports attendant to this  
21 application, unless the Applicant is aware of any  
22 other submissions on this? Anything else?

23 Is the Board aware of anything I've  
24 missed?

25 (No response.)

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1 CHAIRMAN GRIFFIS: Not noting any  
2 indications that we may have missed other submissions  
3 on that, we'll go to the ANC, ANC-6B. Is ANC-6B  
4 represented today?

5 (No response.)

6 CHAIRMAN GRIFFIS: Not noting a  
7 representative from the ANC, it is Exhibit Number 29,  
8 and they were also recommending approval of the  
9 application.

10 Let me then go to anyone present here to  
11 provide testimony in this Application 17400, in  
12 support or opposition, can come forward at this time?

13 (No response.)

14 CHAIRMAN GRIFFIS: Not noting any persons  
15 present to provide additional testimony, or any  
16 testimony, for that matter, today, we would continue  
17 and move ahead, noting Exhibit 30, which is the  
18 residence of 323 A Street, and also 327 A Street, are  
19 submitted in the record in support of the application.

20 Let me open it up then to any additional  
21 Board questions that they might have?

22 (No response.)

23 CHAIRMAN GRIFFIS: Very well. Not noting  
24 any additional questions from the Board, I'll turn to  
25 you for any closing remarks that you might have?

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1 MR. OSSOLINSKI: We'll pass, thank you.

2 CHAIRMAN GRIFFIS: Indeed. Again, I'll  
3 take just a brief moment to indicate that I think that  
4 the Section 223 is a well-written and clear and  
5 concise, which is why we can, in fact, move ahead so  
6 quickly on these cases, especially when the record is  
7 full in terms of the submissions that were done.

8 I think it was absolutely well done  
9 running through the course of requirements. In  
10 addition to that, the Board has full jurisdiction and  
11 design control from lighting to screening to colors to  
12 materials.

13 This case doesn't rise to that level of us  
14 actually getting involved in trying to mitigate some  
15 potentially adverse condition that may arise. I think  
16 the design is an excellent one, and it's a small,  
17 deminimus addition on the back that fits very well  
18 into the character as it's shown by the elevations.

19 This, of course, did meet the threshold  
20 test of not exceeding the allowable lot occupancy in  
21 order to move it to a variance, but rather can stay  
22 within the special exception. All that being said, I  
23 think it's appropriate to move approval of Application  
24 17400 for the special exception to construct a two-  
25 story rear addition to the one-family dwelling that

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1 has the nonconforming open court.

2 I'll also note that the design is actually  
3 establishing a conforming open court, but the  
4 nonconformity is in existence.

5 This is, of course, in an R-4 District,  
6 and is under Section 223, and is for the premises of  
7 325 A Street, S.E. And I would ask for a second.

8 MEMBER MANN: Second.

9 CHAIRMAN GRIFFIS: Thank you very much, Mr.  
10 Mann. I'll open it up for any further deliberations  
11 from the Board? Any additional deliberation on that?

12 (No response.)

13 CHAIRMAN GRIFFIS: Very well then, we do  
14 have that motion before us. It has been seconded and  
15 I ask for all those in favor signify by saying aye.

16 (A chorus of ayes.)

17 CHAIRMAN GRIFFIS: And opposed?

18 (No response.)

19 CHAIRMAN GRIFFIS: Abstaining?

20 (No response.)

21 CHAIRMAN GRIFFIS: Very well. Ms. Bailey,  
22 if you wouldn't mind recording the vote.

23 MS. BAILEY: Yes, Mr. Chairman, the vote is  
24 recorded as 5-0-0, to approve the application. Mr.  
25 Griffis made the motion, Mr. Mann second, Mrs. Miller,

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1 Mr. Etherly, and Mr. Turnbull are in support of the  
2 application. And we're doing a summary order, sir?

3 CHAIRMAN GRIFFIS: Excellent. I see no  
4 reason not to waive our rules and regulations for a  
5 summary order, unless the Board has any objection to  
6 doing so?

7 (No response.)

8 CHAIRMAN GRIFFIS: Not hearing any  
9 objection, we'll issue a summary order, and I thank  
10 you very much, Mrs. Bailey. Thank you all very much.

11 MR. OSSOLINSKI: Thank you.

12 MS. POWERS: Thank you.

13 MS. BAILEY: Application 17405 of MacArthur  
14 Laverock, LLC, and on behalf of Cathie E. and Philip  
15 C. Guzzetta, pursuant to 11 DCMR 3104.1, for a special  
16 exception to permit an addition to a single-family,  
17 detached dwelling under Section 223, not meeting the  
18 rear yard requirements, that's Section 404.

19 The property is zoned R-5A. It's located  
20 at 4598 Laverock Place, N.W., Square 1356, Lot 36.

21 CHAIRMAN GRIFFIS: A very good morning.

22 MS. BROWN: Good morning, Mr. Chairman and  
23 members of the Board. I'm Carolyn Brown with the law  
24 firm of Holland and Knight, on behalf of the  
25 Applicant.

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1 With me this morning, is Joe Cooper, to my  
2 right, of our office, and Cathie Guzzetta, to my left,  
3 who is the owner of the property.

4 This case involves two issues, only one of  
5 which is before you today. The first issue is whether  
6 or not the deck meets the special exception  
7 requirements under Section 223, that is does it unduly  
8 affect the light, air, privacy, or use of enjoyment of  
9 its neighboring properties.

10 And the second issue, the noncompliance  
11 or, quote, illegal construction of the existing deck  
12 at the rear of the Guzzetta residence, which is an  
13 enforcement issue that is not before you, but which  
14 triggered this BZA application.

15 As set forth in our pre-hearing statement,  
16 beginning on Page 4, and through Page 6, through the  
17 testimony you'll hear today, we meet the standard for  
18 special exception relief.

19 The deck does not unduly affect air,  
20 privacy or use and enjoyment of any neighboring  
21 properties. In fact, Mrs. Guzzetta has the full  
22 support of her adjacent neighbors and the Homeowners'  
23 Association.

24 And we have additional letters that we  
25 will supply for the record, from the adjacent

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1 neighbors. We are also pleased to have the full  
2 support of the Office of Planning.

3 While the circumstances surrounding  
4 construction of the deck, without proper  
5 authorization, is germane to the background and  
6 understanding of this matter.

7 It is important to remember that  
8 enforcement action has already taken place. It took  
9 the form of a letter to the Builder, who no longer  
10 owns the property, and the current property owner, the  
11 Guzzettas.

12 The Office of Zoning instructed them to  
13 either, one, remove the deck, or two, seek special  
14 exception approval from this Board.

15 So, it is, that's the reason that we're  
16 here before you. We chose Door Number Two to come get  
17 the relief retroactively.

18 Unfortunately, we do not have the full  
19 support of the Advisory Neighborhood Commission.  
20 However, the ANC report does not address the standard  
21 of relief under Section 223, but focuses on  
22 enforcement issues.

23 So to that extent, we are addressing the  
24 ANC concerns by seeking the necessary relief, albeit,  
25 retroactively. A third issue that was identified in

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1 the Office of Zoning letter, concerns the proposed  
2 evergreen buffer, which the builder, Bogdan Builders,  
3 committed to planting in the initial BZA proceeding  
4 under Case 17193.

5 That was replaced with a wood fence, and  
6 we discussed that in our pre-hearing statement as to  
7 the circumstances. While the enforcement letter  
8 states that the evergreen buffer must be planted in  
9 order to come into full compliance, we don't believe  
10 that's the case.

11 As we stated, the evergreen buffer was not  
12 a condition of approval, and in fact was expressly  
13 excluded as a condition of the order.

14 Nevertheless, we believe the builders met  
15 the condition, the spirit of intent of the buffer by  
16 installing the wood fence, and it's not just behind  
17 the one property that was before you last year, but it  
18 extends the full length to MacArthur Boulevard, to  
19 have a good buffer between the hospital to the east.

20 So we don't believe the evergreen buffer  
21 is an issue that we need to address, but if you have  
22 questions about it, we'll be glad to answer them.

23 With that, I'd like to turn to our first  
24 witness, Cathie Guzzetta, on my left.

25 CHAIRMAN GRIFFIS: Before we get to her,

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1 let me ask you a couple of preliminary questions.  
2 First of all, I note in the application that there's  
3 not a certified or signed plat.

4 Are you aware of having one or submitting  
5 one? If we can take a look at that, we'd need that.

6 MS. BROWN: Yeah, we'll follow up on that.

7 CHAIRMAN GRIFFIS: And I believe that we  
8 had a look and actually I didn't see that either. So  
9 that would need to be remedied. But getting into the  
10 further substance of this.

11 You said a couple of fascinating things.  
12 Let's talk about the buffer first. In your own  
13 statement, you've indicated that the evergreen buffer  
14 was shown on the improved plan, is that correct, of  
15 the original variance?

16 MS. BROWN: That's correct.

17 CHAIRMAN GRIFFIS: Okay. Now the first  
18 condition of our order would be the plans, would they  
19 not?

20 MS. BROWN: Yes.

21 CHAIRMAN GRIFFIS: Therefore, compliance of  
22 the plans would be compliance with an order. So if it  
23 wasn't listed specifically as a condition, but was  
24 talked about as something that was a mitigating factor  
25 of the variance, or at least an element in the

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1 deliberation, to the level of even, you have the  
2 transcript in here, so we reread it.

3 But to the element of stating as a finding  
4 of fact, isn't that a basis of what the deliberation  
5 was put upon? So, isn't that part and parcel, isn't  
6 there a nexus between the variance that was approved  
7 and this buffer?

8 MS. BROWN: Our view is that, no, it  
9 wasn't. Because while it was a suggestion by the  
10 neighboring property, and it was something that was  
11 agreed to by the Builder.

12 When there ended up being a dispute  
13 between the, or misunderstanding between the actual  
14 property owner and the tenant of the property, which  
15 is the Riverside Hospital.

16 And when the Builder went to install the  
17 evergreen buffer, the hospital tenant said that they  
18 didn't want any branches growing onto their property,  
19 so that it would have to be an evergreen buffer that  
20 was planted, not necessarily on the property line, and  
21 something that would be far closer to the Guzzetta  
22 residence, and thereby sort of eating up their rear  
23 yard.

24 And, as a --

25 CHAIRMAN GRIFFIS: Oh, I see. So they

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1 didn't want any of the canopy coming over across the  
2 property?

3 MS. BROWN: Correct.

4 CHAIRMAN GRIFFIS: Okay, I understand that.  
5 I think I have a handle on that. I think I may, and  
6 we'll hear from others, but I may disagree with the  
7 fact that an element that was part of the hearing  
8 process and is part of the plan, would need to be  
9 conditioned, literally conditioned on an order, in  
10 order to maintain a compliance.

11 This, I think it's more of an element of  
12 bringing some clarity to this issue, and maybe not so  
13 substantively specific on this.

14 But lastly, it appears to me, even under  
15 the special exception of 223, that it's within the  
16 Board's jurisdiction if it felt required to mitigate  
17 an adverse impact.

18 That there would be designer screening  
19 elements. So it may have some substance in terms of  
20 how we process this particular application.

21 MS. BROWN: Absolutely, I agree entirely  
22 that that's one of those things that the Board  
23 decides, is whether or not a buffer is required or  
24 needed.

25 And I think that, number one, even though

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1 the plans showed it, the reason that we were able to  
2 get the building permit approved, is because of the  
3 zoning, the flexibility granted to the Zoning  
4 Administrator.

5 And since there was not the condition in  
6 the order, I think that, my guess is that the Zoning  
7 Administrator felt comfortable seeing a fence, as  
8 opposed to an evergreen buffer.

9 CHAIRMAN GRIFFIS: I see, okay, so that  
10 type of buffer. Is there additional questions on that  
11 element?

12 VICE CHAIR MILLER: I'm a little perplexed  
13 and I'm wondering with respect to the plans that were  
14 approved in connection with 17193, the variance, it  
15 didn't include a deck. And I'm wondering how is that  
16 deck permitted, if it was permitted?

17 MS. BROWN: It was not permitted, Madame  
18 Vice Chair. It was an error committed by an employee  
19 of the Bogdan Builders. That employee is no longer  
20 with the company and the deck work was subcontracted  
21 out.

22 And there were three houses built at the  
23 same time, each one having a deck. Two were, didn't  
24 need any variance or special exception relief, so it  
25 was a matter of right.

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1                   And my understanding is that the  
2                   Subcontractor just went ahead and built the deck on  
3                   the third house, because they were out there for the  
4                   other two.

5                   And it was an oversight on the Builder's  
6                   part to let this occur. And that's why they're taking  
7                   full responsibility to correct it now.

8                   CHAIRMAN GRIFFIS: Okay. Any other, yes,  
9                   Mr. Mann?

10                  MEMBER MANN: I did have one question  
11                  concerning the previous case and the buffer, and you  
12                  might have alluded to his a moment ago.

13                  The buffer was at the request of the  
14                  hospital?

15                  MS. BROWN: It was at the request of the,  
16                  I believe the owner of the property, as opposed to the  
17                  hospital.

18                  MEMBER MANN: The owner of the property on  
19                  which the hospital is located?

20                  MS. BROWN: Correct.

21                  MEMBER MANN: And what was the, do you know  
22                  what the purpose of the buffer was?

23                  MS. BROWN: I do have the original letter  
24                  of support. Let me find it and I'll read it to you.

25                  MEMBER MANN: Thank you.

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1 MS. BROWN: This is a letter from the  
2 Washington MacArthur Associates, LT, dated July 12<sup>th</sup>,  
3 2004, to the Board of Zoning Adjustment.

4 Let me just get to it. It says Washington  
5 MacArthur Associates, supports the request for the  
6 reduced rear yard setback for Lot C, which is now 36,  
7 the property in question, provided that MacArthur  
8 Laverock properly addresses the following issues.

9 WMA's property currently serves as an  
10 adolescent psychiatric hospital. As with other recent  
11 developments in the area, MacArthur Laverock, LLC,  
12 should install a thick buffer mature evergreen to  
13 serve as a screen along the property line shared with  
14 WMA.

15 MEMBER MANN: Okay, so no reason was  
16 explicitly given why they wanted a buffer, but the  
17 buffer was clearly at the request of the hospital  
18 property?

19 MS. BROWN: Yes. In the letter they also  
20 talk about some of the tall, let me go to the second  
21 page. There are numerous tall poles and equipment  
22 associated with the rope course that, whether or not  
23 that should still be there.

24 And Bogdan/Laverock volunteered to remove  
25 that. The sent the cranes out to remove them one day

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1 and then they were told don't bother, you know, and  
2 they, they did a lot of other improvements to the  
3 property.

4 They replaced their chain-link fence and  
5 some of the, I guess some of the evergreen shrubs that  
6 were around the fence, the landscaping that was  
7 improved by the Builder.

8 Instead of the evergreen buffer, because  
9 of the dispute of the canopy, a board fence, privacy  
10 fence was built instead.

11 VICE CHAIR MILLER: I just want one more  
12 clarification, and I don't know if they're here, but  
13 I'm under the impression that the owners of the  
14 property wanted the buffer but the tenant of the  
15 property, that being Riverside Hospital, did not?

16 MS. BROWN: I'm unclear on the exact nature  
17 of the dispute. We've been trying to contact the  
18 former Bogdan Builders employee to get resolution to  
19 that issue, because she was the one that dealt with  
20 this.

21 But, our understanding was that it was the  
22 owner of the property, who's letter I just read, who  
23 wanted the evergreen buffer, and the tenant did not,  
24 the hospital did not want the canopy of trees or any  
25 branches growing onto their property.

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1                   And so it's kind of, it's hard to have a  
2                   thick evergreen buffer on the property line that  
3                   wouldn't extend over to their side.

4                   VICE CHAIR MILLER: So we don't have  
5                   anything in writing from them, do we?

6                   MS. BROWN: From?

7                   VICE CHAIR MILLER: From Riverside  
8                   Hospital?

9                   MS. BROWN: No, we do not.

10                  VICE CHAIR MILLER: Okay, thank you.

11                  CHAIRMAN GRIFFIS: Anything else? Any  
12                  other questions at this time?

13                  (No response.)

14                  CHAIRMAN GRIFFIS: Let's move ahead then.

15                  MS. BROWN: Okay, thank you, Mrs. Guzzetta.

16                  MS. GUZZETTA: Hi, I'm Cathie Guzzetta and  
17                  I live at 4598 Laverock. My husband and I moved here  
18                  from Dallas, Texas, eight months ago. We arrived in  
19                  February of 2005.

20                  Found the Laverock home. Bid on the home  
21                  in the height of the housing bubble, and moved into  
22                  our home on April 4<sup>th</sup> of this year.

23                  At the time I saw the home it was built.  
24                  It was finished. The deck was there. It's on a very  
25                  odd, little piece of property. There's really no

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1 front yard/back yard/side yard.

2 So the deck really is the only viable  
3 outside living space that we have on this particular  
4 house. And it was there when we bought it and we  
5 moved in in April.

6 And two months later, in June, I received  
7 a letter from the Office of Zoning, informing me that  
8 a complaint had been filed by the ANC regarding my  
9 deck and its noncompliance.

10 And I have to admit I was pretty surprised  
11 at that point, because really, there was really no red  
12 flag at all when we saw the property. I had a very  
13 experienced Realtor, 28 years in the business in D.C.

14 There just was no red flag that would have  
15 suggested anything was wrong. The deck is attractive.  
16 We drink our coffee out there, eat our breakfast out  
17 there, grow our herbs out there.

18 I enjoy it. It, in reading the standards  
19 for relief, I understand that it does not affect the  
20 air and light of my neighbors or their privacy.

21 And so I'm here today hoping that you will  
22 support the relief, thank you.

23 CHAIRMAN GRIFFIS: Excellent, thank you  
24 very much. Questions from the Board?

25 (No response.)

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1 MS. BROWN: That concludes our direct  
2 presentation. I would like the opportunity to have a  
3 closing remark, as necessary.

4 CHAIRMAN GRIFFIS: Of course.

5 MS. BROWN: Thank you.

6 CHAIRMAN GRIFFIS: Good, very well. Let's  
7 ask the ANC, if the ANC is present, if they have any  
8 cross examination? A very good morning.

9 MS. GATES: Good morning, Chairman Griffis.  
10 Alma Gates, ANC-3D. Mrs. Guzzetta, did you receive a  
11 copy of the letter from the ANC that we submitted into  
12 the file?

13 MS. GUZZETTA: Yes.

14 MS. GATES: Okay. And in that letter there  
15 were several exhibits, correct?

16 MS. BROWN: I'm going to object because  
17 this doesn't go to any of the direct testimony of Mrs.  
18 Guzzetta.

19 MS. GATES: Yes, it does, excuse me.

20 MS. BROWN: She did not testify to any, to  
21 the ANC letter at all.

22 CHAIRMAN GRIFFIS: Ms. Gates, let's get to  
23 the substance of how you're crossing on the testimony  
24 that you've heard. Why don't you ask the full  
25 question.

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1 MS. GATES: I believe, did you mention that  
2 there was no letter from Riverside Hospital? I have  
3 you a copy of this letter. It is also in the record,  
4 about the evergreen buffer.

5 CHAIRMAN GRIFFIS: Right, all right, so  
6 you're trying to establish the fact that we have a  
7 letter from Riverside in the record.

8 MS. GATES: Yes.

9 CHAIRMAN GRIFFIS: Okay, we'll, we'll --

10 MS. GATES: We'll get there?

11 CHAIRMAN GRIFFIS: Absolutely.

12 MS. GATES: Thank you. I'm turning to Tab  
13 C, in their submission. Photograph 1, can you  
14 describe the fencing or wooden screen around the  
15 interior of your deck?

16 CHAIRMAN GRIFFIS: But, actually, why don't  
17 you ask a more penetrating question. Why describe it?  
18 We have a picture of it. What's the question that  
19 you're trying to get at?

20 MS. GATES: Why is it there?

21 CHAIRMAN GRIFFIS: Good question. What is  
22 that element that's showing?

23 MS. GUZZETTA: That is a detachable bamboo  
24 fence.

25 MS. GATES: And why is it there?

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1 MS. GUZZETTA: Because I share that deck  
2 with the Psychiatric Institute directly behind me.  
3 And the kids come out to play and I go out to drink a  
4 cup of coffee. And by putting up the bamboo fencing,  
5 there's some privacy.

6 CHAIRMAN GRIFFIS: Okay.

7 MS. GATES: So you're protecting your  
8 privacy. What about their privacy?

9 CHAIRMAN GRIFFIS: Okay.

10 MS. GUZZETTA: It's their privacy as well.

11 CHAIRMAN GRIFFIS: Indeed, let's move on.

12 MS. GATES: Also on the fence, if we  
13 compare Photograph 4 with 3, there are vines on the  
14 fence. And did you plant those vines?

15 CHAIRMAN GRIFFIS: We're looking at the new  
16 property line fence, the wood fence?

17 MS. GATES: No, we're looking at the chain-  
18 link fence.

19 CHAIRMAN GRIFFIS: The chain-link fence.

20 MS. GUZZETTA: No, there's vines there.

21 MS. GATES: But there are no vines, these  
22 vines are these vines, but there are no vines anywhere  
23 else on the fence, just in front of your property.  
24 Did you plant those vines?

25 MS. GUZZETTA: No.

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1 MS. GATES: Under Tab F, Ms. Castalbi  
2 mentions three homes in Canal View can see your deck  
3 from their windows. Are two of those homes the other  
4 Bogdan houses that were built?

5 MS. GUZZETTA: Yes.

6 MS. GATES: So which house, in Canal View,  
7 can see your deck? In the old, in the original Canal  
8 View?

9 MS. GUZZETTA: That would be --

10 MS. BROWN: Can we get clarification of  
11 what the original Canal View is?

12 MS. GATES: Yes, the original development.  
13 There are three new houses that were welcomed in by  
14 Canal View that were built by Bogdan, but were not  
15 originally part of that development.

16 MS. BROWN: To the extent you have  
17 knowledge of that, you can answer.

18 MS. GUZZETTA: If I understand, and it  
19 would be looking at the very first picture. The  
20 original neighbor would be to the south, and in fact  
21 that neighbor is President of the Homeowners'  
22 Association, who has written, not only a letter for  
23 the Homeowners, but also her private letter in support  
24 of the --

25 CHAIRMAN GRIFFIS: Okay, so you're

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1 understanding is that --

2 MS. GATES: So, Mimi is your immediate  
3 neighbor?

4 MS. GUZZETTA: Yes.

5 MS. GATES: Thank you. But there's a  
6 buffer between the two of you, of these trees?

7 MS. GUZZETTA: Yes.

8 MS. GATES: So she really can't see your  
9 house?

10 MS. GUZZETTA: No, she can, see from her  
11 deck, she can see my house.

12 MS. BROWN: I'm going to ask for  
13 clarification on this line of questioning, since we  
14 already have letters in support from the adjacent  
15 neighbors.

16 MS. GATES: I'm moving on, I'm moving on.

17 MS. BROWN: Thank you.

18 MS. GATES: Would your privacy be improved,  
19 your rear privacy be improved, if there were an  
20 evergreen buffer there?

21 MS. BROWN: I'm going to object again.  
22 This wasn't part of her direct testimony, and the  
23 standard goes to the privacy of others, not her.

24 CHAIRMAN GRIFFIS: Correct.

25 MS. GATES: Did we not discuss the

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1 evergreen buffer?

2 CHAIRMAN GRIFFIS: We did, Ms. Gates, but  
3 taking into one speculative or hypothetical, I'm not  
4 sure what it gets us in terms of the Board looking at  
5 the special exception.

6 So I'm not really sure how it's germane.

7 MS. GATES: Okay, did you ask Riverside  
8 Hospital to write a letter of support for this special  
9 exception?

10 CHAIRMAN GRIFFIS: I also don't understand  
11 why we would need to know that. What difference does  
12 it make?

13 MS. GATES: They are the most immediate  
14 neighbor.

15 CHAIRMAN GRIFFIS: I understand that, and  
16 we have, and you submitted, in fact, a --

17 MS. GATES: No, but now, that was the ANC  
18 submission. In their submission there is --

19 CHAIRMAN GRIFFIS: So are you --

20 MS. GATES: -- they're talking about  
21 letters of support. I'm simply asking if they asked  
22 for one.

23 CHAIRMAN GRIFFIS: Okay, are you aware, was  
24 a letter of, asked of the Riverside, regarding the  
25 special exception?

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1 MS. GUZZETTA: To my knowledge, I don't  
2 know.

3 CHAIRMAN GRIFFIS: Okay.

4 MS. GATES: Are you aware that behind your  
5 house there are a serious of storm chambers, on your  
6 property?

7 CHAIRMAN GRIFFIS: I'm not sure where that  
8 comes into play?

9 MS. GATES: Well, if the Board were to  
10 decide to plant, that this evergreen buffer needs to  
11 be planted, could it be planted there?

12 CHAIRMAN GRIFFIS: Okay.

13 MS. GATES: On top of the storm chamber.  
14 If you look at the plans, you can see it.

15 CHAIRMAN GRIFFIS: Okay. It might be more  
16 persuasive to just bring that up in your own case  
17 presentation, bring that to the light of the Board.

18 I'm not sure the current property owner  
19 would be able to answer that, unless you're aware of  
20 how it was actually, how that storm water management  
21 was put under your house.

22 Are you aware of any of that? The site  
23 control or the construction?

24 MS. GUZZETTA: I am not.

25 CHAIRMAN GRIFFIS: Okay.

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1 MS. GATES: No more questions.

2 CHAIRMAN GRIFFIS: Okay, thank you very  
3 much, Ms. Gates. Any redirect, Ms. Brown?

4 MS. BROWN: No redirect.

5 CHAIRMAN GRIFFIS: Very well. Let's move  
6 ahead then, that's the case in chief from the special  
7 exception under 223. Let's move ahead to the Office  
8 of Planning Exhibit Number 27, is their analysis.

9 MR. MOORE: Good morning, again, Mr.  
10 Chairman and members of the Board, I'm John Moore with  
11 the Office of Planning.

12 The Office of Planning believes the  
13 Applicant met the test under 223 and we support the  
14 application, and therefore said on the record.

15 CHAIRMAN GRIFFIS: Okay, thank you very  
16 much, Mr. Moore. Does the Applicant have any cross  
17 examination of the Office of Planning?

18 MS. BROWN: No, sir.

19 CHAIRMAN GRIFFIS: Does the ANC, Ms. Gates,  
20 do you have any cross of the Office of Planning?

21 MS. GATES: No.

22 CHAIRMAN GRIFFIS: Very well. And  
23 indicating that there is no cross of the Office of  
24 Planning, Mr. Moore, we appreciate it, and again thank  
25 you for your thorough analysis on this application.

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1           Let's move ahead then. And at this time  
2 we can call ANC up for their case presentation and  
3 their recommendation report, which is Exhibit Number  
4 26, in our record.

5           I know the Board members have taken the  
6 time to read this entire submission with the Exhibits  
7 1 and 2, attached.

8           MS. HAAS: My name is Ann Haas, I live at  
9 1601 45<sup>th</sup> Street, N.W.

10          CHAIRMAN GRIFFIS: Excellent. We ask that  
11 you pull that mic a little bit closer to you.

12          MS. HAAS: My name is Ann Haas, I live at  
13 1601 45<sup>th</sup> Street, N.W. I'm Advisory Neighborhood  
14 Commissioner for ANC-3D-09, it includes Laverock  
15 Place, Foxhill Village, Colony Hill and the Georgetown  
16 Reservoir Area.

17          I'm just going to speak, I'm not going to  
18 read my testimony. I'm not happy to be here today.  
19 It doesn't please me to, well, not that I'm not glad  
20 to see the Board, mind you.

21          CHAIRMAN GRIFFIS: We don't take any  
22 offense.

23          MS. HAAS: No, no. This is causing further  
24 stress to a new neighbor, who happens to be a  
25 constituent of mine, so that's sort of a double-barrel

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1       burden here.

2               The reason we're here is that Bogdan  
3 Buildings, having received support for a variance to  
4 set a new house back farther than it would be allowed  
5 ordinarily, to keep the rear yard setback, went ahead  
6 and built a deck along with that, effectively reducing  
7 the rear yard to four feet.

8               Well, try telling people about a four foot  
9 rear-yard setback and see what kind of reaction you  
10 get. I think this is a case of bait and switch on the  
11 part of Bogdan Builders.

12              They knew at the beginning that this, they  
13 could build an apartment building in the R-5A area.  
14 They worked with the neighbors and worked something  
15 out, reducing the number of houses from five to three.

16              And if you'll look at the photo that I  
17 attached, that is of the third house, which is  
18 supposed to have been setback 12.56 feet to 15 point  
19 something else feet from the property line.

20              Now that I hear that we don't have a  
21 certified plat, I'm a little, even more concerned than  
22 I was previously. I think the crux of this matter is  
23 that we are dealing with overbuilding throughout our  
24 community.

25              What used to be a lot for a single house,

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1 has become a lot for three houses. Mrs. Guzzetta  
2 really sums it up when she said the only viable  
3 outside living space that they have is their deck.

4 That's it, overbuilding. This isn't as  
5 simple a case as it seems. The Guzzettas want to keep  
6 their deck. We're afraid that if this one stands,  
7 then what will the Board not say not to in the future?

8 We have a case right now that a neighbor  
9 wants to build a 1,400 square foot deck that would  
10 leave him with a five foot rear yard.

11 So those are our basic issues. I look to  
12 the Board to act in the long-term interest of our  
13 community, recognizing the constraints that you find  
14 yourself in today.

15 CHAIRMAN GRIFFIS: Excellent. Thank you  
16 very much. Let me just address a couple of things for  
17 clarity. I perfectly understand what you're  
18 indicating is that this deck, because of its height  
19 above the ground, would reduce the dimensional rear  
20 yard.

21 But the adjacent, the next adjacent  
22 structure is how far away, in your estimation?

23 MS. HAAS: I don't know. But that really  
24 gets me to another part of this issue, and that is  
25 that the same Zoning Regulations that constrain

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1 building on one side of the fence, also constrain it  
2 on the other.

3 CHAIRMAN GRIFFIS: Right.

4 MS. HAAS: Now if we say okay to this --

5 CHAIRMAN GRIFFIS: Would you estimate that  
6 it's about 100 feet, at least, away?

7 MS. HAAS: Probably.

8 CHAIRMAN GRIFFIS: From the --

9 MS. HAAS: And that's by virtue of  
10 Riverside Hospital's own imposed constraints. But we  
11 don't know what could happen to that property, and  
12 then what will the next neighbor say?

13 CHAIRMAN GRIFFIS: Right.

14 MS. HAAS: Could we be having decks that  
15 are eight feet apart?

16 CHAIRMAN GRIFFIS: I guess they rise to the  
17 level of, we're faced with having gone through the  
18 variance which established the footprint of this  
19 building and the reduction of the rear yard.

20 Your concern, first of all, this is a  
21 special exception, so whether it's precedential or  
22 not, I wouldn't get too far into. But I'm not sure  
23 how you think that this would open up a floodgate of  
24 diminishing rear yard?

25 MS. HAAS: Well, you can see it when you

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1 drive by on MacArthur Boulevard. It's actually pretty  
2 ludicrous. If you go to their web site, I mean, the  
3 photos are amazing.

4 In fact, the whole, the Guzzetta's  
5 interior house is fully exposed in the web site. But  
6 this is the little channel of the --

7 CHAIRMAN GRIFFIS: Well, I understand that.

8 MS. HAAS: Yeah.

9 CHAIRMAN GRIFFIS: So, what I want to do is  
10 get to the heart of your concern, outside of other  
11 properties that may come or may need relief, this  
12 specifically, and the test that we're charged with  
13 looking at is does this addition to the nonconforming  
14 structure, somehow impede the light and air of the  
15 adjacent property?

16 MS. HAAS: I guess I would leave that to  
17 the Chair of ANC-3D to address.

18 CHAIRMAN GRIFFIS: Okay. So let me  
19 understand what is your major concern with this  
20 application?

21 MS. HAAS: My concern is that I think that  
22 the ANC and the BZA both operated in good faith on the  
23 basis of the application for a variance. And I don't  
24 believe that the developers returned that good faith.

25 CHAIRMAN GRIFFIS: Okay.

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1 MS. HAAS: So I'm, frankly, ticked off.

2 CHAIRMAN GRIFFIS: Okay, indeed. And let  
3 me address that, because I was also. In fact, I read  
4 this a little bit differently than I normally read  
5 cases. I didn't read the Applicant's submission  
6 before I got to a lot of it.

7 And I shared that concern with, you know,  
8 why do we spend so much time going through variances  
9 when anyone could go build whatever they wanted.

10 My concern was allayed substantially, I  
11 must say, when I realized in the submissions and it  
12 became very clear in the written aspects that the  
13 Builder has taken full responsibility and is here in  
14 order to remedy that situation.

15 MS. HAAS: But what does that mean,  
16 Chairman Griffis?

17 CHAIRMAN GRIFFIS: What do you mean, what  
18 does it mean? It means --

19 MS. HAAS: Taking responsibility?

20 CHAIRMAN GRIFFIS: -- they are faced with  
21 bringing this application at the chance that it may  
22 not be approved. That they haven't walked away and  
23 said that this is the private owner, look, they sold  
24 it, we're done, let the owner try and wade through  
25 this.

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1 But rather has brought, what I think, is  
2 a substantial amount of information. Obviously, we  
3 haven't heard everything with this, but just that  
4 threshold issue, I'm satisfied.

5 But I'm open to hearing further on it, but  
6 getting quickly to what we, what we would be able to  
7 do with that?

8 MS. HAAS: What the Board would be able to  
9 do with what the developer's plan is?

10 CHAIRMAN GRIFFIS: By what precludes or  
11 prohibits them from bringing a special exception in  
12 right now? I mean I understand that it's difficult  
13 and this is not the correct sequence to do it.

14 MS. HAAS: Well, I guess I would ask the  
15 questions of after the fact permitting process, what  
16 role does that allow the community in the decision-  
17 making process?

18 CHAIRMAN GRIFFIS: Agreed.

19 MS. HAAS: We're going to be living with  
20 the legacy here, whatever it is, the community.

21 CHAIRMAN GRIFFIS: Okay, that makes it  
22 sound like a huge, that we call it a legacy.

23 MS. HAAS: Well, it just ticks me off.

24 CHAIRMAN GRIFFIS: No, no, I understand.

25 MS. HAAS: I mean we really, you know --

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1 CHAIRMAN GRIFFIS: I understand your point.  
2 I absolutely do. I think the entire Board fully  
3 appreciates that. Okay, let's move ahead then, Ms.  
4 Gates?

5 MS. GATES: I would just like to mention  
6 one other thing, following up on the testimony we  
7 heard earlier. The decks were placed on all three of  
8 these houses.

9 CHAIRMAN GRIFFIS: Right.

10 MS. GATES: Now, only this house came  
11 before the BZA. But at this point, the other two  
12 houses may also need special exceptions.

13 CHAIRMAN GRIFFIS: Okay, but you know we  
14 can't --

15 MS. GATES: We're not going to go there.

16 CHAIRMAN GRIFFIS: Right.

17 MS. GATES: But those rear yards are also  
18 substantially reduced. Good morning, Chairman Griffis  
19 and members of the Board.

20 My name is Alma Gates, I'm Chair of ANC-3D  
21 and reside at 4911 Ashby Street, N.W. Commissioner  
22 Ann Haas, as the single-member District Commissioner,  
23 has outlined the humanistic aspects of this case.

24 And there's every reason to have sympathy  
25 for the new homeowners, Mr. and Mrs. Guzzetta. In now

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1 way does ANC-3D find them responsible in this matter.  
2 Rather, like the BZA and the ANC, Mr. and Mrs.  
3 Guzzetta are the victims of ledger domain,  
4 unscrupulous builders and a Zoning Administrator who  
5 was full of fancy talk and unfulfilled promises to  
6 look into the case and get back.

7 Illegal construction. I want to take a  
8 brief look at what happened in this case and ask that  
9 you bear with me for a moment, as it is possible there  
10 is a problem with the process by which approved plans,  
11 included in BZA orders, are received by DCRA.

12 Some sort of disconnect. Laverock Place  
13 is not the first time in this ANC's experience, that  
14 construction outside the plans presented to and  
15 approved by the BZA occurred without an approved  
16 modification.

17 It is also possible that third party  
18 inspectors, hired by the Builder, played a role in  
19 approving altered plans.

20 The Office of Zoning may want to take  
21 steps to ensure what you see is what you get. That  
22 aside, the former Zoning Administrator, also the  
23 former Office of Zoning Compliance Review Program  
24 Specialist, should have known the plans submitted and  
25 the plans built were substantially different when this

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1 matter was first reported to him and before the  
2 Guzzetta's put ink on their contract.

3 As outlined in ANC-3D's letter of November  
4 29<sup>th</sup>, Bogdan Builders appeared before the ANC in July,  
5 2004, to request relief from the rear-yard setback at  
6 4598 Laverock Place, N.W.

7 The Commission supported the variance  
8 because there did appear to be a practical difficulty,  
9 based on the Canal View Homeowners' Association  
10 request that the Builder ensure a uniform front-yard  
11 setback along Laverock Place, with the existing homes  
12 in a private development.

13 A 12-foot rear-yard setback, instead of a  
14 20-foot setback was granted in the R5-A District. ANC  
15 alleges to violations occurred following the BZA  
16 approval.

17 The plans submitted and the plans built  
18 differ substantially, a violation under Title 11,  
19 3125. An Applicant shall carry out the construction,  
20 renovation or alteration only in accordance with the  
21 plans approved by the Board.

22 French doors instead of windows and a deck  
23 where none was planned. The Order states the  
24 Applicant agreed to install an evergreen buffer along  
25 the property line shared with Washington MacArthur

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1 Associates, Riverside Hospital.

2 The letter submitted by Michael Goodman,  
3 CEO, and Administrator of Riverside Hospital,  
4 addresses the issue of the buffer. Bogdan presented  
5 a buffer that was to be planted on someone else's  
6 property.

7 Rather than avail themselves the  
8 opportunities provided in the zoning code, under  
9 Section 3129, modification of approved plans within  
10 six months of approval.

11 MacArthur Laverock offers a series of  
12 excuses for their slight of hand, claiming the rear  
13 deck resulted from a misunderstanding of both the  
14 zoning regulations and the permitting process.

15 Yet, no substantive reasons are offered  
16 for the replacement of windows with french doors, an  
17 addition of an eight foot wide deck, in the rear yard,  
18 or why the agreed upon evergreen buffer could not be  
19 placed on the owner's property line.

20 After the fact, Applicant uses Section  
21 223.2 to validate the existence of the deck, but fails  
22 to recognize that the deck affects the privacy of  
23 patients in the play-yard at Riverside Hospital.

24 An eight foot wide structure in the rear  
25 yard, abutting a play-yard surrounded by a ten-foot

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1 high barbed-wire fence, cannot support the standard of  
2 review used by the Applicant, because the most  
3 immediate neighbor, with whom that rear property line  
4 is shared, has not been consulted.

5 Finally, let me turn to Section 2503,  
6 Structures and Required Open Spaces. The deck is a  
7 structure over four feet in height in a required open  
8 space. The same open space was significantly reduced  
9 by a previously granted variance.

10 There should be no further reduction in  
11 the rear yard granted. ANC-3D voted unanimously to  
12 oppose the current application of MacArthur Laverock  
13 for a special exception.

14 As noted in our letter, granting a four-  
15 foot rear-yard setback would establish a precedent  
16 that would render rear-year setbacks meaningless, and  
17 substantially impair the intent, purpose and integrity  
18 of the zone plan as embodied in the zoning regulations  
19 and map.

20 CHAIRMAN GRIFFIS: Excellent, thank you  
21 very much. There is a substantial amount of  
22 information here. Let me, let me start at the end.  
23 I think I'm understanding, but I need to understand  
24 more.

25 First of all, the, where is the connection

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1 of the barbed-wire fence to this application and how  
2 it should not be approved? Isn't that part of the  
3 adjacent property's?

4 MS. GATES: Yes, yes.

5 CHAIRMAN GRIFFIS: Okay, I'm not sure why  
6 that, I'm not sure why it's stated in that paragraph  
7 and in your statement?

8 How does, let's go directly to it. How  
9 does the deck, and the existence of the deck, fails to  
10 recognize that the deck affects the privacy of the  
11 patients in Riverside Hospital?

12 How does it, how does it impact the  
13 privacy?

14 MS. GATES: Mr. Griffis, it hangs over  
15 their play-yard. It absolutely hangs over their play-  
16 yard. And I think you heard -

17 CHAIRMAN GRIFFIS: Okay.

18 MS. GATES: -- Mrs. Guzzetta mention  
19 earlier that they have actually put up a screen --

20 CHAIRMAN GRIFFIS: Sure.

21 MS. GATES: -- for their own privacy.

22 CHAIRMAN GRIFFIS: Sure.

23 MS. GATES: From the residents.

24 CHAIRMAN GRIFFIS: But could one argue that  
25 there are an awful lot of windows that look over on

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1 Riverside, right, from all the property, this property  
2 and the others?

3 MS. GATES: No. The other properties  
4 really don't look there.

5 CHAIRMAN GRIFFIS: Okay, well even these  
6 properties?

7 MS. GATES: Excuse me, the two new Bogdan  
8 houses in addition to this one, do look there.

9 CHAIRMAN GRIFFIS: Okay. And conceivably,  
10 on that fenestration, you might have window treatment,  
11 you might close blinds once in a while, right?

12 MS. GATES: Yes.

13 CHAIRMAN GRIFFIS: So what's the difference  
14 here in this rear deck? How is it rising to the level  
15 of such an adverse impact that we might look on --

16 MS. GATES: Privacy is a condition under  
17 that section.

18 CHAIRMAN GRIFFIS: Privacy is not, ultimate  
19 privacy, I don't see anybody, anywhere, ever, but  
20 rather it rises to a level of an undue burden that  
21 this privacy is so burden --

22 MS. HAAS: Can I jump in here?

23 CHAIRMAN GRIFFIS: Sure.

24 MS. HAAS: Neighbors apparently have,  
25 neighbors apparently have been greeted by hospital

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1 patients who've mooned them. So they would like some  
2 privacy.

3 CHAIRMAN GRIFFIS: Who would, the patients?  
4 I would, too.

5 MS. GATES: Earlier, before this buffer  
6 that you see in the back the photograph, this buffer  
7 here.

8 CHAIRMAN GRIFFIS: We call that the  
9 demilitarized zone, in between the fences.

10 MS. GATES: That buffer is separating the  
11 original Canal View homes, from the view of Riverside  
12 Hospital. And it continues around behind all those  
13 houses.

14 CHAIRMAN GRIFFIS: So who are we buffering?  
15 We're trying to save the residents from looking into  
16 Riverside?

17 MS. GATES: Well, no, Ann just brought up  
18 the fact that residents of Riverside, and it's true,  
19 were mooning.

20 MS. HAAS: They would like some privacy.

21 CHAIRMAN GRIFFIS: Now, we're talking --

22 MS. GATES: They were required to put  
23 screens, heavy wooden screens on all their windows  
24 that face the properties, so that there could be no  
25 interaction between patient and residents.

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1 But when they're outside, there is no  
2 buffer.

3 CHAIRMAN GRIFFIS: So what's the ANC's  
4 concern? Which direction is this privacy going?

5 MS. GATES: Well, I think that the patients  
6 in the hospital deserve as much privacy as the  
7 Guzzettas do.

8 CHAIRMAN GRIFFIS: So they should be able  
9 to --

10 MS. GATES: And putting a deck over their  
11 play-yard, does not provide them, I mean it's almost  
12 like being at a baseball stadium and watching the  
13 game.

14 CHAIRMAN GRIFFIS: Oh, oh, okay.

15 MS. GATES: And I don't think we think --

16 CHAIRMAN GRIFFIS: A little bit extreme.

17 MS. GATES: -- of a baseball stadium as  
18 being a private place.

19 CHAIRMAN GRIFFIS: How is it -- what about  
20 if Ms. Guzzetta opened her window and sat in her  
21 windowsill and had her coffee, rather than that?

22 MS. GATES: That would be fine. But I  
23 think --

24 CHAIRMAN GRIFFIS: But isn't the impact the  
25 same?

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1 MS. GATES: The ANC's position is also that  
2 had the buffer been put up, there would be a greater  
3 sense of privacy.

4 CHAIRMAN GRIFFIS: Good, let's get to the  
5 buffer then, and what it would actually mitigate. The  
6 buffer wouldn't deal with the deck issue, would it?

7 MS. GATES: I don't understand your  
8 question.

9 CHAIRMAN GRIFFIS: Well, the evergreens  
10 would have to be about 30 feet high, would they not?

11 MS. GATES: Yes.

12 CHAIRMAN GRIFFIS: Is that what you  
13 anticipate this buffer would be?

14 MS. GATES: I think that Leyland Cypress  
15 would be there in a number of years, a couple of  
16 years, had they been planted.

17 And if you, also, if you look at this  
18 photograph, this green space actually belongs to the  
19 hospital.

20 CHAIRMAN GRIFFIS: That's right.

21 MS. GATES: It is not Laverock property.

22 CHAIRMAN GRIFFIS: We understand that.

23 MS. GATES: Okay, I wasn't --

24 CHAIRMAN GRIFFIS: Is it your understanding  
25 that Riverside doesn't want anything planted in that

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1 area?

2 MS. GATES: They were happy to have it  
3 planted where the fence is. They didn't want Laverock  
4 to use their space to plant the trees.

5 CHAIRMAN GRIFFIS: Then how concerned would  
6 they be of actually getting a buffer? If they want a  
7 buffer, why don't they plant it there? A lot of this  
8 isn't making any sense.

9 MS. GATES: They're required to keep their  
10 view of the fence open, because occasionally the  
11 patients get out. They want to be able to see what's  
12 happening up against their fence line.

13 CHAIRMAN GRIFFIS: Then how --

14 MS. GATES: If there were bushes planted  
15 against the fence, it would be more difficult for them  
16 to see.

17 CHAIRMAN GRIFFIS: But ten feet away, there  
18 isn't that problem?

19 MS. GATES: Not the same problem, no. The  
20 open space remains.

21 CHAIRMAN GRIFFIS: Not if you plant big  
22 trees that are 30 feet high.

23 MS. GATES: Well, they would be back on the  
24 Laverock property line. Laverock could also trim  
25 those bushes on their property, if they grow over.

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1 CHAIRMAN GRIFFIS: Okay. It's all so  
2 complex.

3 MS. HAAS: Can I say one more thing about  
4 privacy?

5 CHAIRMAN GRIFFIS: Umm hmm.

6 MS. HAAS: The people on the outside of the  
7 fence are not constrained in terms of what they can do  
8 for privacy. The people who are required to be inside  
9 the fence, don't have that kind of freedom.

10 CHAIRMAN GRIFFIS: So, but you're worried  
11 about precedential value if this is approved. Is  
12 every deck that you're looking at, overlooking a  
13 psychiatric hospital?

14 Is that what we're really concerned about,  
15 is the protection of the patients in Riverside?

16 MS. HAAS: No, I'm looking at decks just,  
17 per se, frankly. They've become kind of a --

18 CHAIRMAN GRIFFIS: Okay, then I'm not  
19 understanding why --

20 MS. HAAS: -- aspect of houses today. To  
21 the extent that one that we have right now, proposed,  
22 would be, have almost as big a footprint as the house.

23 CHAIRMAN GRIFFIS: I understand that. But  
24 that's not before us. I guess, I'm confused. We're,  
25 maybe others can get some clarity on this.

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1                   MEMBER MANN: Mr. Chairman, I have a  
2 question for the ANC. As I flip through the file  
3 here, are you aware of anything in the file, on the  
4 present case, from either the hospital or the  
5 property, the hospital operator or property owner,  
6 that expresses an opinion on this privacy issue, or  
7 the existence or non-existence of a buffer?

8                   MS. GATES: There's a letter in the ANC  
9 submission that addresses it.

10                  MEMBER MANN: Attached to your Exhibit  
11 Number 26?

12                  MS. GATES: I don't know what exhibit it  
13 is.

14                  CHAIRMAN GRIFFIS: The original submission.

15                  MS. BROWN: Is it the July 12<sup>th</sup>, letter from  
16 Washington MacArthur Association?

17                  MS. GATES: No, it's August 8<sup>th</sup>, it looks  
18 like this. Do you have our letter of November 29<sup>th</sup>?

19                  CHAIRMAN GRIFFIS: Yes. That's Exhibit 26.

20                  MS. GATES: Okay. Go to the very last  
21 page.

22                  CHAIRMAN GRIFFIS: Yeah, go to Exhibit 4.

23                  MS. GATES: In my submission it's Exhibit  
24 5. Did it get left off?

25                  MEMBER MANN: It may very well have been

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1 left off the information that I received.

2 VICE CHAIR MILLER: Can I, I want to ask  
3 you a question, Ms. Gates, while we're still looking  
4 for that exhibit, because I just glanced at it. And  
5 it goes to the buffer from the evergreens.

6 But we're talking about two separate  
7 things here. One is the buffer and one is the deck.  
8 And I'm wondering, I don't think I've seen anything in  
9 the file, and you can tell me if there is something,  
10 that talks about Riverside needing privacy protection,  
11 as it relates to the deck?

12 MS. GATES: I don't think we've heard  
13 anything from them on that. I think their concern  
14 really was more the buffer.

15 VICE CHAIR MILLER: Fine, okay.

16 MS. GATES: They were not consulted by the  
17 Applicant.

18 CHAIRMAN GRIFFIS: Who wasn't, Riverside  
19 wasn't?

20 MS. GATES: That's right.

21 CHAIRMAN GRIFFIS: But they were noticed  
22 like everybody else, were they not?

23 MS. GATES: Yes.

24 CHAIRMAN GRIFFIS: Okay.

25 MS. GATES: I assume so, I don't know.

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1                   VICE CHAIR MILLER: So is it the ANC's  
2 concern about privacy with respect to the deck, as  
3 opposed to Riverside, that you're, it sounds like  
4 you're conjecturing that these patients should have a  
5 privacy from the owners being on their deck and being  
6 able to look out at them as the play?

7                   MS. HAAS: What was the original purpose of  
8 the buffer? I guess that would be my question? I  
9 don't have the original -- that would be inherent in  
10 the privacy issue.

11                   I mean why else would you say, put a  
12 buffer up?

13                   VICE CHAIR MILLER: Well, they're a  
14 different area.

15                   MS. GATES: Well, the BZA Order says, it  
16 doesn't go into anything at length. It just says that  
17 the Applicant agreed to install an evergreen buffer  
18 along the property line shared with Washington  
19 MacArthur Associates.

20                   VICE CHAIR MILLER: Yeah, I understand  
21 that. And I'm just saying that I think that's a  
22 separate issue from the deck and the privacy question  
23 we're looking at, with respect to the deck, because  
24 there's a special exception before us with respect to  
25 the deck.

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1 I understand the buffer, but I'm looking  
2 at them separately.

3 MS. GATES: I believe that, and I think  
4 Commissioner Haas alluded to this a minute ago. That  
5 the purpose of the buffer was to maintain a separation  
6 between the new construction, the new homes, and the  
7 psychiatric hospital.

8 VICE CHAIR MILLER: And where is that?

9 MS. GATES: It's, it was sort of implied in  
10 the original application.

11 VICE CHAIR MILLER: Okay, okay. My  
12 question just was is there anything with respect to  
13 the deck, and it sounds like there isn't. The deck is  
14 one thing and the --

15 MS. GATES: Well, the deck came after the  
16 fact. We didn't know about the deck.

17 VICE CHAIR MILLER: Right, but we're  
18 looking at the deck now. And so, I don't see anything  
19 from the neighbor saying that I want privacy  
20 protection as it relates to the deck.

21 MS. GATES: Isn't privacy one of the points  
22 under Section 223?

23 VICE CHAIR MILLER: It is, that's why I'm  
24 asking you.

25 MS. GATES: Thank you.

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1 VICE CHAIR MILLER: Is there anything from  
2 the neighbors themselves saying that this deck is  
3 going to infringe on my property's privacy?

4 MS. HAAS: Well the deck wasn't a part of  
5 the original --

6 VICE CHAIR MILLER: No, we're talking about  
7 this proceeding.

8 CHAIRMAN GRIFFIS: This application.

9 MS. HAAS: Okay.

10 MS. GATES: I think we're sort of going in  
11 circles here. The answer is no, there is nothing from  
12 MacArthur, from Riverside Hospital, saying they're  
13 concerned about their privacy.

14 VICE CHAIR MILLER: Okay, because I think  
15 we need to, you know, there's a couple of layers of  
16 issues here and I want to say that I share your  
17 concern, I really do, about BZA granting an order,  
18 granting a variance, to build in accordance with  
19 plans, and then having a case come back, such as this  
20 one, it's like, well, what happened to our order, they  
21 just built whatever the wanted, with respect to this  
22 deck, at least?

23 I mean that's an overstatement. They  
24 didn't build exactly what they wanted, but they went  
25 ahead and just built this without permission. And I'm

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1 concerned about that.

2 The only comment I want to make is that,  
3 you know, they were given these options and they came  
4 back with a special exception and that there have been  
5 cases where they build without a permit and they come  
6 back and they don't get approved, and they do have to  
7 tear it down.

8 So it is at their risk. It's not like  
9 there's no consequence. But it doesn't mean that we  
10 necessarily say tear it down. So we're looking here  
11 at adverse impacts.

12 And that's what I'm trying to get at with  
13 respect to this privacy issue and the deck. I think,  
14 and I'm finished, thank you.

15 COMMISSIONER TURNBULL: Mr. Chairman?

16 CHAIRMAN GRIFFIS: Yes.

17 COMMISSIONER TURNBULL: I guess one of the  
18 questions which this is a little more complicated than  
19 what first appears. But I guess when you look at it,  
20 and it was brought up by the ANC, about the storm  
21 water management issue, and I guess, from a practical  
22 standpoint, you begin to wonder how practical it is to  
23 plant an evergreen buffer in light of this, that the  
24 fence itself is the more practical and most efficient  
25 way to create a buffer, which is what they have.

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1                   That the evergreens may cause more  
2 problems in the future with the water management  
3 system that is there. I'm just thinking that it, from  
4 a practical standpoint, it may not make sense.

5                   I'm just throwing that out. I just don't  
6 know how feasible it is to actually, in looking at the  
7 situation and looking at this particular lot, to  
8 actually plant an evergreen buffer on their property,  
9 that would make sense for everybody. I just can't see  
10 how that would work out. That it would be an adverse  
11 impact overall later on, with drainage and everything  
12 else, the whole site.

13                  MS. GATES: Mr. Turnbull, I believe the  
14 adverse impact was there when the original application  
15 was presented, because we all felt the buffer was  
16 going to be planted out a little further.

17                  Not realizing that it was not their  
18 property to build on.

19                  COMMISSIONER TURNBULL: I know, but I think  
20 I'm looking at where we are now.

21                  MS. GATES: Yes, I understand that.

22                  COMMISSIONER TURNBULL: And where we are  
23 now and looking at the site, looking at the conditions  
24 that exist and looking at how we move forward on this,  
25 to me, I think, a landscape treatment may be difficult

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1 to achieve on their property line.

2 MS. GATES: Which just goes, I think, to  
3 show that perhaps this property is overbuilt and that  
4 the deck exacerbates that.

5 CHAIRMAN GRIFFIS: Okay, I appreciate those  
6 comments. That seems to be an interesting point that  
7 you bring up, if we go even further. If the buffer  
8 was mitigating some impact doesn't, if I understand  
9 what you're saying, in some respects, logistically, it  
10 may be the best scenario to have done it.

11 But doesn't it also cure whatever impact  
12 there was in discussion in the past. An interesting  
13 thought to ponder. Okay, anything else for the ANC?  
14 Any other questions?

15 VICE CHAIR MILLER: I have one more  
16 question, and I don't know if you can answer it or  
17 not, but since it was attached to your filing.

18 In that August 8<sup>th</sup>, 2005, letter from  
19 Riverside Hospital. The last sentence says apparently  
20 Bogdan had not left sufficient area between his  
21 driveway and property line for his planting of the  
22 buffer and it constructed a fence instead.

23 And now we're looking at, it seems to me  
24 we're looking at this picture and saying there's not  
25 much space for this buffer now.

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1                   To your knowledge, was, could they have  
2 constructed a driveway in accordance with the  
3 regulations that left more room for this buffer?

4                   MS. GATES: Ms. Miller, I think we have to  
5 turn to same submission, Exhibit 2, where you can  
6 really see. Do you have it?

7                   CHAIRMAN GRIFFIS: She has it. You're  
8 looking at the site plan, is that correct?

9                   MS. GATES: Yes.

10                  CHAIRMAN GRIFFIS: Sheet 3 of 8? And why  
11 are we looking at this?

12                  MS. GATES: You asked me if a driveway  
13 could have been put there.

14                  VICE CHAIR MILLER: I was asking you if you  
15 knew whether or not the driveway could have taken up  
16 less room and still been in accordance with the  
17 regulations, so as to have left sufficient room for  
18 the planting?

19                  MS. GATES: The driveway does not actually  
20 go behind this house, which is Lot 36, on this plat,  
21 or this drawing. What you see behind there, those  
22 little squares, are the storm water chambers.

23                  The driveway stops at the edge of the  
24 Guzzetta property. So you go into their, am I not  
25 understanding you properly?

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1 CHAIRMAN GRIFFIS: Yes, I think you are,  
2 but I think we need clarity here. All set then?

3 VICE CHAIR MILLER: Yeah, go ahead.

4 CHAIRMAN GRIFFIS: Very well. Any other  
5 questions from the Board of the ANC? Does Applicant  
6 have any cross for the ANC?

7 MS. BROWN: No cross.

8 CHAIRMAN GRIFFIS: No cross. Thank you  
9 both very much. We do appreciate all the information  
10 you've put in. Obviously, the Board will take it  
11 under consideration in its deliberation.

12 Let's move ahead then. I do not have any  
13 other additional submissions on this. Let me ask if  
14 there are people present in regards to Application  
15 17405, in support of the Application, to come forward  
16 at this time.

17 And in opposition to the Applications,  
18 individuals who have testimony, come forward. Not  
19 noting anybody coming forward, we will make note there  
20 are other submissions.

21 I think we've highlighted an awful lot of  
22 them. Exhibit 25, Tab F, also has the Homeowners'  
23 Association. If there's nothing further, I don't have  
24 any other submissions or opportunities for further  
25 testimony.

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1 Ms. Brown, we'll go to you for closing.

2 MS. BROWN: Thank you, Mr. Chairman. Just  
3 a couple of quick points. We completely sympathize  
4 with anybody that has to deal with the drawings, or  
5 construction that was not done in accordance with  
6 plans.

7 It's embarrassing for our firm, it's  
8 embarrassing for the Builder that this happened, and  
9 we don't like to see it happen, but we're here to try  
10 to fix it.

11 And I know the ANC's desire to punish the  
12 Builder to exact some assurance that it won't happen  
13 again, but I think we're getting confused between an  
14 appeal case for a violation and a special exception  
15 case.

16 And I think we have to keep in mind that  
17 it's the Guzzettas who now own the property and have  
18 the responsibility for following through on getting  
19 the proper approvals. With, I just wanted to mention  
20 the bamboo screen that is on the deck again.

21 That is a temporary structure that is  
22 fastened, it's not a permanent fixture to the deck.  
23 So I just want to make that point clear. And I  
24 believe we have met the burden of proof showing that  
25 no properties are unduly affected by this deck.

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1                   We agree with Mr. Turnbull, your comment  
2                   that the fence actually does provide a better buffer  
3                   than perhaps an evergreen screening, particularly the  
4                   kind that you would end up having to build, plant  
5                   here, which would be a very small type of evergreen  
6                   planting.

7                   It couldn't be the Leyland Cypress because  
8                   it would just grow too large. So, with that, I  
9                   believe we've met the burden of proof. One final  
10                  point about the certified plat.

11                  We checked our records, and we see that it  
12                  was not signed. It is a plat produced by the Office  
13                  of the Surveyor and we will clarify that point with  
14                  the Office of the Surveyor, why it was not signed.

15                  And, with that, I believe we've met the  
16                  burden of proof and we ask for your approval of this  
17                  application. Thank you.

18                  CHAIRMAN GRIFFIS: Excellent, thank you  
19                  very much, Ms. Brown. Yeah, I didn't want to suggest  
20                  that there was a huge problem with the plat.  
21                  Actually, it's incorrect, because I know that the ANC  
22                  members, there was a little concern, but just to allay  
23                  that, in terms of my reading this, we also have a  
24                  certified site plan, which would have had to have been  
25                  based and reviewed.

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1           So I don't think the placement of it, but  
2           just for total compliance of all of our requirements.  
3           Let me open it up for any last questions, Ms. Miller?

4           VICE CHAIR MILLER: I know, you know, this  
5           is a special exception case and not an appeal, but  
6           given the nature of how this got here, they run into  
7           each other a little bit.

8           And I was just wondering if you can  
9           respond a little bit to this fence as a buffer issue.  
10          I just want to know whether the fence was there, is it  
11          there instead of evergreens, which we approved in the  
12          previous order, because it's not possible to, it was  
13          learned afterwards that the evergreens wouldn't work?  
14          Something to that affect? Or, because of any change  
15          in layout that occurred afterwards?

16          MS. BROWN: I don't know that I can answer  
17          that. I don't have direct knowledge. It is my  
18          understanding, however, that there was no change in  
19          the layout. It may have been a misunderstanding of  
20          where the actual property line was in relation to the  
21          chain link fence.

22          When you finally get out there and have  
23          your Surveyor, you know, marking it out and doing the  
24          field measurements, you realize where the exact  
25          dimensions are.

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1                   That's a guess, but I do not have any  
2                   direct knowledge of that. I will point again that the  
3                   fence only needed to be behind 4598 Laverock. The BZA  
4                   Application did not affect any of the fence or buffer,  
5                   screening that now extends towards MacArthur  
6                   Boulevard.

7                   That was just part of the other matter of  
8                   right construction of the other two houses. So if,  
9                   you know, for some reason, you decided that an  
10                  evergreen buffer needed to be in, it would only be  
11                  behind the Guzzetta residence.

12                  CHAIRMAN GRIFFIS: Right, because the  
13                  driveway doesn't have any impact where it was located.

14                  MS. BROWN: Correct.

15                  CHAIRMAN GRIFFIS: There seems to be some  
16                  confusion of that letter, okay. Anything else?

17                  VICE CHAIR MILLER: Well, separate from the  
18                  letter then, just, where that fence is, is it possible  
19                  to have evergreens there or not possible? I mean,  
20                  what's the rationale?

21                  MS. BROWN: You know, anything is possible.  
22                  It's impractical because of the size, if you start  
23                  planting them, the fence could be removed, I suppose,  
24                  but it's, it creates less privacy for both the  
25                  Guzzettas and the hospital because of the shrubs.

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1 I mean it's much safer, I would think, to  
2 have the board fence. Yes, you would get more  
3 screening, perhaps the top of the trees, but still you  
4 can see through them.

5 I'm just not sure what additional benefit  
6 you'd get from trees versus the fence, if the goal was  
7 privacy.

8 VICE CHAIR MILLER: Thank you.

9 CHAIRMAN GRIFFIS: The site plan is showing  
10 they were submitted, it looks like, I don't know, a  
11 six inch, but a maple, towards the edge. Do you have  
12 that in front of you? I'm sorry, I'd call your  
13 attention to that at this last moment, but it will be  
14 the last question, I believe.

15 Exhibit, if you look at the site plan that  
16 was submitted, and it is the site plan, sheet 3 of 8.  
17 It's not the plat, but rather the West Consulting  
18 Civil Site Plan that showed the storm water.

19 My question is only that there's showing  
20 as a maple tree on that corner, and whether that  
21 exists or not?

22 MS. BROWN: Are you looking at --

23 CHAIRMAN GRIFFIS: Yes.

24 MS. BROWN: This is a correct diagram. I  
25 will consult with the owner, because I don't know the

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1 answer to that. You're looking at the northeast  
2 corner, the back corner?

3 CHAIRMAN GRIFFIS: No, no. On the sheet  
4 setup it would be the southeast corner.

5 MS. GUZZETTA: Yes, in fact you can see,  
6 you can see the maple.

7 CHAIRMAN GRIFFIS: Okay, so that exists?

8 MS. GUZZETTA: Yes, you can see the maple  
9 tree in color right there.

10 CHAIRMAN GRIFFIS: Indeed, okay.  
11 Excellent. Very well, anything else? Any other  
12 questions from the Board? Clarifications? I don't  
13 know if there's anything else that we can request at  
14 this time.

15 I'm going to set this for decision-making  
16 on the 10<sup>th</sup> of January. We'll set this in the morning  
17 at our already scheduled public meeting. Ms. Brown,  
18 we'll keep the record open just for the clarification  
19 on the plat.

20 If the ANC has a procedural question you  
21 need to come forward and be at a microphone before you  
22 say anything. Come on forward and I'll run through  
23 the schedule in the meantime.

24 We'll just look at that as for the record.  
25 I don't have the record open for any other additional

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1 submissions, unless the Board is in need of anything  
2 additionally, which did not come up at this point.

3 MS. HAAS: I wonder if I could submit  
4 photos from the web site for the record?

5 CHAIRMAN GRIFFIS: Photos from the web  
6 site?

7 MS. HAAS: Of the Bogdan Builders, right.

8 CHAIRMAN GRIFFIS: What were they showing?

9 MS. HAAS: Well, they show the little  
10 alleyway where the rear yard should be and an aerial  
11 shot of the driveway that Ms. Miller was asking about.

12 CHAIRMAN GRIFFIS: Do you need that? Why  
13 not, it's not generally what I'm looking for. Do you  
14 have additional copies, do you have copies to give the  
15 Applicant also? Any objection?

16 MS. BROWN: I don't know what purpose it  
17 would serve, but no.

18 CHAIRMAN GRIFFIS: Indeed. But there it  
19 is. We're going to take that in. We're going to make  
20 sure that there's copies provided, we'll get the  
21 Applicant a copy before you leave today.

22 We'll put them into the record also.  
23 We'll make note that that was submitted in person from  
24 the ANC. If there's nothing further, then we'll set  
25 it for the January 10<sup>th</sup>.

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1           The record is open only for that technical  
2           aspect of the plat plan, to be submitted in. Unless  
3           there's anything else, not noting any other  
4           information, there it is. Thank you very much, we  
5           appreciate it, we appreciate you taking the time to  
6           get all this information in, and we appreciate the ANC  
7           being here also, in terms of getting all this  
8           together.

9           Let's move quickly ahead then to the next  
10          case in the morning, 17404. Ms. Bailey, when you are  
11          ready.

12          MS. BAILEY: Mr. Chairman, the last case's  
13          application, as you indicated is 17404 of Wilbur  
14          Mondie pursuant to 11 DCMR 3103.3, for a variance from  
15          the lot width and lot area requirements under Section  
16          401.3, to allow the construction of four flats.

17          The property is zoned R-4. It's located  
18          at 410, 412, 414, 416 Richardson Place, N.W., Square  
19          507, Lots 810, 812, 814, and 816.

20          CHAIRMAN GRIFFIS: Excellent. Thank you  
21          very much. And I appreciate everyone's patience  
22          through this. I'm going to ask Mr. Redhead if you  
23          would come forward, and also Mr. LaCour, and the  
24          Applicant, if you wouldn't mind.

25          Let's have the table panel full with those

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1 folks and we're going to move ahead. The preliminary  
2 matter, of course, in this case is establishing party  
3 status. We have Mr. Berry, also, of the ANC.

4 Has everyone completed their witness cards  
5 and given them to the Recorder? Witness cards, yeah,  
6 could you just pass them right over here. Everyone  
7 else did? Let's get those over.

8 Good. As I know you are aware, in our  
9 Party Status Application that we've provided to you,  
10 and you filled it out and submitted it in, I'm going  
11 to highlight one important aspect.

12 For me, really the crux of establishing  
13 party status goes to the last request from the Board  
14 in its application. But, now let me step back a  
15 little bit.

16 Of course there are two means of which you  
17 can participate, two primary means of which you can  
18 participate in a public hearing on a variance or  
19 special exception.

20 And one is as a person, just to provide  
21 testimony. You come in and you say, you know, you're  
22 opposed or your supportive of the application and that  
23 is taken in, and any written submission.

24 The other is if you are granted party  
25 status. Party status, of course, is a higher

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1 threshold of participation in a case. And party  
2 status requires you and puts you on par with the  
3 Applicant.

4 You are required to do a case  
5 presentation, you are also afforded the opportunity to  
6 give cross examination. If there is additional  
7 information the Board requests or requires from the  
8 Applicant, we will similarly request and require that  
9 of parties that are established in the case.

10 So, with that, I'm going to have, as we go  
11 into these very quick questions, have you assess  
12 whether you are looking to, one, entertain this  
13 application as a party or is it appropriate just to  
14 bring testimony to the Board's attention, of your  
15 opposition. And then, lastly, the important aspect of  
16 this is how you establish and you are uniquely or  
17 distinctly impacted outside of others in the general  
18 population.

19 That sets up apart in order to be  
20 established as a party. So, let me ask first, Mr.  
21 Redhead, you bring up numerous amount of concerns, and  
22 again, getting into this, we won't be going into the  
23 substantive issue of your concerns, but whether you  
24 meet the threshold of being granted party status.

25 Mr. Redhead, you've noted, and you may be

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1 aware now, if you weren't before, that there is  
2 another request for party status with a substantial  
3 amount of people joining into that party status.

4 How are you differently impacted than  
5 those groups, or have you thought of joining into one  
6 party with that group in requesting a party status?

7 MR. REDHEAD: I have to join in with that  
8 group to get --

9 CHAIRMAN GRIFFIS: Can you just turn your  
10 microphone on, I'm sorry. There it is, perfect.

11 MR. REDHEAD: As I was saying, I'd have to  
12 join with that group to get party status?

13 CHAIRMAN GRIFFIS: No, not necessarily.  
14 But I'm asking you what elements are you bringing to  
15 the case presentation that are not represented by  
16 others that have requested party status?

17 How are you uniquely and distinctly  
18 impacted if this is approved?

19 MR. REDHEAD: I would be impacted the same  
20 way as everybody else.

21 CHAIRMAN GRIFFIS: Okay, okay.

22 MR. REDHEAD: It won't be different.

23 CHAIRMAN GRIFFIS: Okay. Do you have any  
24 difficulty in joining with a larger party request?

25 MR. REDHEAD: No.

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1 CHAIRMAN GRIFFIS: Mr. LaCour, do you have  
2 any difficulty in also including Mr. Redhead in your  
3 party application?

4 MS. LACOUR: No, sir, none whatsoever.

5 CHAIRMAN GRIFFIS: It may have taken me  
6 longer to get it all out, than it did you guys to  
7 actually deal with that. Very well, Mr. Redhead, then  
8 what I'd like to do is process one single party status  
9 application and you both can speak to it limitedly, I  
10 guess, but let's go.

11 Any Board questions of Mr. LaCour in terms  
12 of the presentation and the request for party status?  
13 Clarifications? Yes, Ms. Miller.

14 VICE CHAIR MILLER: I guess my question is,  
15 this party status is on behalf of all the people  
16 attached on Pages 1 and 2, to the Party Status  
17 Application?

18 MS. LACOUR: And Page 3, as well.

19 VICE CHAIR MILLER: And Page 3, sorry, and  
20 Page 3. So, are you saying that all these people are  
21 uniquely impacted as a group different from the  
22 general public?

23 MS. LACOUR: That's correct.

24 VICE CHAIR MILLER: Okay, and can you  
25 explain how?

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1 MS. LACOUR: Ninety-five percent of them  
2 live within 200 feet of the proposed variance site.  
3 There's another five percent that live within three or  
4 four blocks of where the proposed variance sites are,  
5 and will be impacted by parking, as well as  
6 construction and other issues that were addressed in  
7 the Party Status Application.

8 CHAIRMAN GRIFFIS: Anything else? Any  
9 other questions? Yes, Mr. Etherly.

10 MEMBER ETHERLY: Very briefly, Mr. Chair.  
11 Mr. LaCour could you just share a little bit with us  
12 as to how the petition came to be signed? I just want  
13 to get a sense of how it was circulated, who  
14 circulated it? Was it yourself?

15 MS. LACOUR: Sure, sure. Thank you. First  
16 of all, there was an initial focus group back on  
17 September 27<sup>th</sup>, when the first notice came around  
18 indicating that there was going to be a variance  
19 request by Mr. Mondie and a hearing on this date.

20 We started a focus group of some, I think,  
21 15 core people. At that time we went through the  
22 variance request. We came down to the Zoning Office.  
23 I spoke with Mr. Nero in the office here.

24 We got the appropriate paperwork and that  
25 and we wanted to file a party status to make sure that

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1 those that were opposed to the way the variance  
2 request was going, would have an opportunity to be  
3 heard and be fully heard by this Board.

4 What had happened then, from our focus  
5 group, meeting with e-mails, meeting with the ANC,  
6 meeting with the Department of Planning, the  
7 Department of Transportation, we formulated a reply  
8 which is now incorporated in the Party Status  
9 Application that you have before us.

10 And five of us went around one evening to  
11 collect signatures after apprizing all of those  
12 individuals and several e-mails, as well as door  
13 knockings prior to that, to see if they would be  
14 willing to join on to that Party Status Application.

15 And we were very pleased that not a single  
16 person did not want to join that Party Application  
17 that we reached at their home on that evening.

18 The reason we only had the one day to do  
19 it is we were under the impression, from Mr. Mondie's  
20 attorney, at an ANC meeting, which was the only  
21 meeting in which the neighborhood had an opportunity  
22 to be heard at, prior to this hearing, the attorney  
23 made a motion not to, at that time, to withdraw his  
24 request and it kind of left our hands tied. We  
25 assumed wrongly or rightly, that when it's withdrawn

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1 that were would not be a hearing.

2 We found out afterwards, and so we had to  
3 hurriedly put in our Party Status Application. So I  
4 apologize if it's not complete, however it's a work in  
5 progress and we're still working on it.

6 We have many more signatures that are not  
7 on that, including Mr. Redhead, who, I never had the  
8 opportunity to meet until last evening on the phone at  
9 about 11:00 at night.

10 MEMBER ETHERLY: Okay, thank you, Mr.  
11 Chair, that answers my questions.

12 CHAIRMAN GRIFFIS: Good, anything else?  
13 Any other clarifications? Mr. Mondie, do you have any  
14 position on the granting of the party status of the  
15 group represented by Mr. LaCour?

16 MR. MONDIE: No, I do not.

17 CHAIRMAN GRIFFIS: Does the ANC have any  
18 position?

19 MR. BERRY: We support the petition.

20 CHAIRMAN GRIFFIS: The ANC supports the  
21 petition. Board members, comments?

22 VICE CHAIR MILLER: I think they've made  
23 the case for party status in this case and I think  
24 it's excellent the way they have coordinated and come  
25 together as one party.

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1 CHAIRMAN GRIFFIS: Excellent, I absolutely  
2 agree, and I think it meets the test for being granted  
3 party status based on, one, the proximity and the  
4 impact that that proximity raises.

5 Some of these elements, of course, we'll  
6 get into as we, if we postpone this, but we'll get  
7 into the fact that may not rise to the level of zoning  
8 or within our jurisdiction.

9 And so I will be very clear, I hope, in  
10 making sure that we note those that are under our  
11 jurisdiction and not raise to the level of expectation  
12 that we may have control over others that we do not.

13 But that being said, there are certainly  
14 issues that are of zoning impact here in terms of the  
15 placement, the density, that will be critical to the  
16 variance test.

17 Let's move ahead then now -- sure, just  
18 turn your mic on please.

19 MR. MONDIE: I have also gathered  
20 supporting petitions and I have not submitted them.  
21 Is it too late or is that --

22 CHAIRMAN GRIFFIS: We're going to get to  
23 that in a moment. Let's take up one issue at a time.  
24 In establishing the party status let me hear from any  
25 objections from the Board to establishing LaCour and

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1 group, we'll let you name it whatever you will, if you  
2 want to.

3 Is there any objection to granting the  
4 party status? Not noting any objection we'll take it  
5 as a consensus of the Board and establish that. Very  
6 well.

7 MS. LACOUR: If I may interject, sir. We  
8 refer to ourselves as the Richardson Focus Group. And  
9 although I'm honored that they picked me, I think it  
10 was the proverbial short straw that I got.

11 CHAIRMAN GRIFFIS: Good. RFG. There it  
12 is. And we'll note that you're taking a position of  
13 opposition and party opponent to the case has now been  
14 established, and Mr. Redhead we have included you in  
15 that party at this time. Good, okay, then we move on.  
16 We have a motion to postpone from Mr. Mondie,  
17 indicating the requirement for additional time.

18 The ANC is in support of that. I'm going  
19 to ask the party in opposition, do you have a position  
20 on the motion to postpone?

21 MS. LACOUR: We do, Your Honor. We are not  
22 opposed to allowing Mr. Mondie more time to come up  
23 with a better plan.

24 CHAIRMAN GRIFFIS: Okay, well it looks like  
25 we have a consensus then, in terms of supporting it.

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1 And clearly the Applicant is not prepared to go  
2 forward today, as the record isn't full on that.

3 So, I suggest that we do that. I'm going  
4 to set a date then, and then we'll get through  
5 specific procedural questions in terms of when things  
6 are to be submitted.

7 An important procedural question taking as  
8 a preliminary matter, first of all, now we have a  
9 party established in this case. Meaning, anything  
10 that comes into the record, from here on out, is going  
11 to be served, not only to the ANC, which is a party,  
12 but also to the party in opposition. So before you  
13 all adjourn today, you will need to give, exchange  
14 information of how you want to be served.

15 Address, whether fax is okay, whether e-  
16 mail, however it is you guys can establish service for  
17 the ease of transmission of material, but noting every  
18 direction it goes. If the Applicant puts in anything  
19 to the record, it should be served.

20 If the party in opposition puts in  
21 additional information, it will need to be served to  
22 the Applicant and the ANC. Okay, Ms. Bailey, do you  
23 have suggestions?

24 Mr. Mondie, how much do you need to get  
25 this ready to go?

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1 MR. MONDIE: I was hoping to get the  
2 earliest possible day.

3 CHAIRMAN GRIFFIS: That's today.

4 MR. MONDIE: I mean, in other words,  
5 postponing today, would it be in January or February?

6 CHAIRMAN GRIFFIS: So you need three weeks  
7 to pull it together?

8 MR. MONDIE: It would be three weeks?

9 CHAIRMAN GRIFFIS: Do you need three weeks?  
10 You can do it in a week. We can see you next Tuesday?  
11 I mean, you tell me what the reality is. I'll tell  
12 you our reality schedule. You know, we're way in  
13 2006. I'm thinking summer months.

14 But what's your, what's your realistic  
15 time requirement?

16 MR. MONDIE: Well, in the context that each  
17 day costs me money, about, to the tune of about  
18 \$200.00 a day, the way I've roughly estimated, the  
19 earliest --

20 CHAIRMAN GRIFFIS: That's the kind of  
21 burden we're taking on. And we take that very  
22 seriously and responsibly when we postpone things.  
23 But when you're requesting postponement, I'm not sure  
24 that goes very far.

25 How much time do you need to get ready to

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1 present a case?

2 MR. MONDIE: Well, I guess, sir, what I'm  
3 wondering is, I would like to, I've been anxious to  
4 work with the opposition here and try to meet, I  
5 think, well, but, I would like to try to work it out  
6 with them with some solution and come back and  
7 hopefully have some, that we can all agree.

8 So, with that in mind, I don't know how,  
9 you know, how soon we can meet and get together and  
10 hopefully iron and differences out.

11 I did get a group of questions from them  
12 in writing and I have responded to those. Some, for  
13 instances, of the design of the building that were  
14 modern and triangular in shape and I have now reduced  
15 it to a roof design trying to duplicate the buildings  
16 exactly next door.

17 CHAIRMAN GRIFFIS: Okay.

18 MR. MONDIE: So with those kinds of things  
19 I'm hopeful that they can see that I am working, I've  
20 done everything I can and we'll be in agreement.

21 CHAIRMAN GRIFFIS: Okay.

22 MR. MONDIE: So, assuming that could be  
23 done in a week, I would be ready to be back here in  
24 three weeks.

25 CHAIRMAN GRIFFIS: And are you going to,

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1 when you present this are you going to be represented,  
2 or you're presenting your case?

3 MR. MONDIE: Yes, yes, my attorney, Mr.  
4 Leonard McCants is not here today.

5 CHAIRMAN GRIFFIS: Okay, that's fine. And  
6 you have an Architect that's also assisting in those  
7 documents?

8 MR. MONDIE: Yes, sir.

9 CHAIRMAN GRIFFIS: So you're team is full.  
10 You're ready to meet whenever you can?

11 MR. MONDIE: Yes, sir.

12 MR. BERRY: Mr. Chairman?

13 CHAIRMAN GRIFFIS: Yes, Mr. Berry.

14 MR. BERRY: Without getting into the  
15 substance of the case, it should be known that the  
16 earliest the ANC could consider this matter would be  
17 the third week in January.

18 CHAIRMAN GRIFFIS: Okay.

19 MR. BERRY: And more likely, February.

20 MS. LACOUR: And it's also the opinion of  
21 our consensus for the opponents that we want to meet  
22 with the ANC before we meet again here for a hearing.

23 CHAIRMAN GRIFFIS: Okay.

24 MR. BERRY: We have never received a formal  
25 presentation from the Applicant.

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1 CHAIRMAN GRIFFIS: Well, the third week in  
2 January is the week of the 24<sup>th</sup>, is that correct?  
3 What's the date of the ANC meeting, do you know? What  
4 day of the week?

5 MR. BERRY: Third Tuesday.

6 CHAIRMAN GRIFFIS: Third Tuesday?

7 MR. BERRY: I believe it's like the 17<sup>th</sup> or  
8 the --

9 CHAIRMAN GRIFFIS: Oh, so you're meeting on  
10 the 17<sup>th</sup>, okay.

11 MR. BERRY: Whatever the third Tuesday in  
12 January is.

13 CHAIRMAN GRIFFIS: Okay. Here's what I'm  
14 trying to do, if we can just take a couple of seconds.  
15 I think I can fit this in on, Ms. Bailey, we were  
16 looking at the 24<sup>th</sup> of January, in the morning, is that  
17 correct?

18 MS. BAILEY: Yes, Mr. Chairman.

19 CHAIRMAN GRIFFIS: On the 24<sup>th</sup> of January.  
20 Because it looks like we have a case that has fallen  
21 off. So what we need to do is backtrack a little bit.  
22 Are you going to be prepared by the 17<sup>th</sup> to present to  
23 the ANC? And would the ANC be able to put that on its  
24 agenda.

25 That gives enough time for turnaround for

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1 an ANC response to be put into the record.

2 MR. BERRY: The only thing that complicates  
3 it, to some extent, is that, as you know ANCs get,  
4 hold elections of officers every year, and that will  
5 be the first meeting of the year in which those  
6 elections will take place.

7 It will depend, to some extent, on who is  
8 the Chair and how the meeting was agenzized, as to, I  
9 guess we can do it.

10 CHAIRMAN GRIFFIS: Are you running? Yeah,  
11 no, I understand that. That's, it may be a very  
12 complicated and full session, however, here we have,  
13 I mean, you know.

14 MR. BERRY: We'll work it out.

15 CHAIRMAN GRIFFIS: I'm not sure anyone  
16 wants to delay this further than we need to. That's  
17 one concern. So let's go ahead.

18 MR. BERRY: The only thing we would  
19 actually have to ask for a waiver of the seven day  
20 filing requirement because it will be precisely seven  
21 days from the hearing.

22 CHAIRMAN GRIFFIS: That's right, that's  
23 right. I don't see we'd have any difficulty with  
24 that, knowing full well that the opportunity to cross  
25 examine and question that is going to be provided in

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1 the hearing.

2 If the, I think setting the schedule and  
3 postponement we will be very aware of what we're  
4 putting upon people to get things done. Okay, other  
5 concerns? Mr. LaCour, concern about the 24<sup>th</sup>?

6 MS. LACOUR: I guess whatever our concern  
7 is, is right now, we've never been presented with a  
8 clear plan. The variance request that is before this  
9 Board, that was to be heard today, is inconsistent  
10 with what the modifications are that Mr. Mondie now  
11 wants to do.

12 It's now four town homes with two flats in  
13 each of those. And we need to get notice out to all  
14 of the neighborhood about that. The designs have  
15 changed four times in this period of time.

16 Half of the neighborhood has never  
17 received notice, and also for this hearing, proper  
18 notice wasn't put on the variance site.

19 There was never any notice put up pursuant  
20 to the Zoning Regulations, which it gives me great  
21 concern that we want to make sure our due process and  
22 our procedural rights are going to followed as well,  
23 on this.

24 CHAIRMAN GRIFFIS: Okay.

25 MS. LACOUR: I guess our, I guess really

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1 our last concern is that it has never been shown in  
2 the variance request, and this is a big concern and I  
3 think something the Zoning Commission is directly  
4 within your purview, is that it has never been shown  
5 or evidenced why the lots are so unique that they  
6 need, that they need to change.

7 CHAIRMAN GRIFFIS: Right.

8 MS. LACOUR: I know that might go to the  
9 merits on that, but it's something that's never been  
10 explained in the application and it's the reason that  
11 he's here before you now, is to say why it's so  
12 unique.

13 CHAIRMAN GRIFFIS: Indeed, indeed. And  
14 what we will require, I'll set a submission schedule  
15 together to get this all rolling.

16 Knowing full well, this is the forum of  
17 which all that is presented. And the case  
18 presentation will be made, and that's obviously the  
19 test that will have to be met in order to be granted  
20 a variance.

21 So, that being said, if we were to move  
22 back from the 24<sup>th</sup> of January, Mr. Mondie, what I'd  
23 like to do is get from you the, your proposed  
24 schedule.

25 And what I'm looking at is several steps

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1 here. First of all, you providing this, well, yes.  
2 You submitting into the record, well, no. You  
3 providing the plans to the ANC and the party in  
4 opposition for their review.

5 And this is somewhat up to you, but this  
6 is what I would suggest. We can set a date for that  
7 which will be, give you enough time to have the  
8 dialogue to get the final for the ANC presentation,  
9 and then we will set the submission date, which is  
10 what, the only thing we will hold you strongly to, but  
11 the submission date of your, right now, preliminary  
12 hearing application, the preliminary case  
13 presentation.

14 So that's the plan, the relief that you're  
15 seeking and your case presentation on that. That  
16 being said, we would have to have from our end, Ms.  
17 Bailey, you can assist, from our end, for the 24<sup>th</sup>, we  
18 would have that submission on that Wednesday.

19 This is pushing it tight, but that  
20 Wednesday at 3:00, it will be submitted into the  
21 record. Knowing full well you're going to be coming  
22 off that 17<sup>th</sup> ANC meeting and there may be things that  
23 adjust a little bit, but we can handle that in the  
24 hearing, I believe. Is that, is that doable?

25 MR. MONDIE: Yes, sir.

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1 CHAIRMAN GRIFFIS: You're prepared to give  
2 plans prior to the 17<sup>th</sup>, to the community and the ANC?

3 MR. MONDIE: Is there a precise date that  
4 is the deadline for that? I mean when you say the 17<sup>th</sup>  
5 is, in other words, the 17<sup>th</sup> is the date I need to  
6 deliver the plans to the ANC?

7 CHAIRMAN GRIFFIS: Well, no, you're going  
8 to have to do it much before that, because the ANC  
9 will be taking it up on their agenda on the 17<sup>th</sup>. So  
10 I would imagine you're going to want to get some  
11 feedback from the party in opposition and some of the  
12 ANC, who they represent, in order to prepare for the  
13 17<sup>th</sup> presentation.

14 MR. MONDIE: And which is the, which, I  
15 guess, leads to the question of, I would like to  
16 present, like I think they've said they have not  
17 formally been presented to.

18 CHAIRMAN GRIFFIS: Right.

19 MR. MONDIE: And so I guess, and I'm not  
20 looking at a calendar, I'm trying to figure out when  
21 can I present to the opposition to say, hey, this is  
22 what I have? What's the problem with that? And can  
23 we make a solution?

24 CHAIRMAN GRIFFIS: Good. I see it as a  
25 two-step process. I think you're going to meet with

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1 the party in opposition, the group that they can  
2 assemble at the time you guys can set that date.

3 And then I understand that the ANC is  
4 going to do all they can to put you on the agenda on  
5 the 17<sup>th</sup>, and that's when you present. Is that  
6 correct?

7 MR. BERRY: That's correct.

8 CHAIRMAN GRIFFIS: So you've got a public  
9 presentation on the 17<sup>th</sup> already scheduled, and then  
10 you've got the schedule to set with the party in  
11 opposition.

12 MR. MONDIE: And I'm hopeful, in other  
13 words, I'm trying to work as hard as possible to  
14 satisfy the questions. We've been presented with a  
15 group of questions about, I would say about 14  
16 questions that we have responded to.

17 We've generated the answers, have not had  
18 a chance to present those. So that's what I would  
19 like to do.

20 CHAIRMAN GRIFFIS: That sounds like the  
21 Agenda Item Number 1, of your first meeting.

22 MR. MONDIE: Exactly. And what I have  
23 extreme concern is that this is not an ever-expanding  
24 group of questions, such that it becomes impossible to  
25 meet because it could grow and grow and grow and

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1 hopefully, in other words, I could be such the  
2 impossible task.

3 CHAIRMAN GRIFFIS: Right.

4 MR. MONDIE: So I have drawings that we've  
5 tried to --

6 CHAIRMAN GRIFFIS: Good, and I'll give  
7 directions to everybody here. That, as I said before,  
8 there's a lot of issues that have come in from the  
9 opposition and that go well beyond zoning.

10 The capacity of the sewer system is one of  
11 the things that comes up. I have yet to be shown how  
12 that directly links into anything that I have  
13 jurisdiction over, or this Board has jurisdiction  
14 over.

15 So, the point being, you could not fail on  
16 a variance test based on the fact that there's  
17 something outside of zoning that you can't comply  
18 with.

19 So to be absolutely clear, from our end,  
20 I would suggest that there be very substantive and  
21 very direct discussion of the concerns and how you  
22 address the concerns.

23 From the community's aspect, I think you  
24 should, to make this efficient in the time that we  
25 have, and also the ANC, which is already, I'm sorry,

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1 the party in opposition, to have a representative that  
2 really focuses all these issues into one.

3 To get it to Mr. Mondie so that you can  
4 address them. We're not looking for, and we never  
5 fool ourselves that everything is going to be worked  
6 out before you get here.

7 There's some substantive things that will  
8 be here, and that's part of the hearing process. But  
9 the more information everyone has, the more  
10 expeditious we can through this, the more substantive  
11 we will be. And that's what I'm trying to facilitate.

12 So, I don't imagine you'll be able to deal  
13 with everything that comes your way, but I certainly  
14 hope that the dialogue is productive in terms of  
15 addressing them, so that you have the understanding  
16 and the community has the understanding also. Okay?

17 MR. MONDIE: Yes, sir.

18 CHAIRMAN GRIFFIS: Good. What else? Okay,  
19 as I understand this then, we'll set this for a  
20 hearing in the morning on the 24<sup>th</sup>. Prior to that, on  
21 the 18<sup>th</sup>, Wednesday, at 3:00, we will have the pre-  
22 submission, or it can be earlier than that, but we  
23 will have the pre-hearing submission from the  
24 Applicant.

25 The record is open to that date, also, for

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1 any other filings from the party in opposition and the  
2 ANC will keep the record open as quickly as possible  
3 for that to be submitted into the record, any position  
4 the ANC has taken on the 17<sup>th</sup> of January date.

5 You are all charged in setting your own  
6 schedule in terms of meeting and communicating and  
7 transferring information. If you're giving plans and  
8 you're giving comments and questions and all that  
9 back, none of, that does not have to be in the record,  
10 if you don't want it to be.

11 If you want it to be in the record, then  
12 make sure it comes in here. But, you know, you all  
13 can communicate as you will.

14 VICE CHAIR MILLER: I just want to make a  
15 suggestion for this to work as efficiently as  
16 hopefully it should. Because sometimes we have a  
17 window to make things work even better, when we have  
18 a postponement. So it sounds to me, and I was on an  
19 ANC once, so, that if you provide them the plans and  
20 your arguments for the variance, by the 10<sup>th</sup>, which  
21 would be a week ahead of the ANC meeting, that would  
22 give them time to study it and come back to you with  
23 any concerns.

24 And then there could be a productive ANC  
25 meeting and then hopefully there could be then, you

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1 could narrow your issues and it be a productive  
2 hearing on the 24<sup>th</sup>. Do you think you could do that by  
3 the 10<sup>th</sup>?

4 MR. MONDIE: I believe so. And I'm  
5 curious, what I have gathered from the meeting we had,  
6 with the BACA meeting, Bates Area Civic Association,  
7 was that group of 15 questions and I'm wondering if,  
8 are those the ones that we're focusing on? Has it  
9 grown? Are there, you know, an encyclopedia that's  
10 much larger than that?

11 MS. LACOUR: I think, at this point, what  
12 needs to be done is we need to sit down with the focus  
13 group and go over the plans and that and give feedback  
14 then. I'm not familiar with what happened.  
15 Unfortunately, I wasn't there and there's no minutes  
16 available for that.

17 I understand that it was a Q and A where  
18 the histrionics went through of where your attorney  
19 asks you a question and you answered it. I don't  
20 think it's the type of dialogue that we want to,  
21 whether it's pro-active on both parts, where we can  
22 tell you why is this property not unique.

23 There's lots of zoning issues and  
24 questions that weren't addressed in that Q and A that  
25 we're very interested in, and getting the answers to,

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1 but we're willing to except any plan that you come up  
2 with for your lot.

3 MR. BERRY: And I think, moving forward,  
4 Mr. Chairman, that I assume it's correct to suggest  
5 that the two parties that Mr. Mondie should respond to  
6 would be those who have party status in this case.  
7 So, he can start there.

8 CHAIRMAN GRIFFIS: That's right. No,  
9 absolutely. And to allay some concerns or maybe just  
10 to be direct, the Board doesn't sit around and count  
11 how many are for and how many are against. And, we're  
12 substantively based. We could have one person in  
13 opposition and 600 in favor of it.

14 But the substantive elements that the  
15 opposition brings up, may in fact persuade the Board  
16 to deny an application. So, again, it's not the  
17 volume, it's the substance that we're looking for.

18 Okay, anything else?

19 MS. LACOUR: I have a question for the  
20 Board. You do give, I know you give great weight to  
21 what the ANC indicates. What about Department of  
22 Planning or DOT, if they weigh in. Are do you give  
23 that weight as well?

24 CHAIRMAN GRIFFIS: The Office of Planning?

25 MS. LACOUR: Right.

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1 CHAIRMAN GRIFFIS: Certainly.

2 MS. LACOUR: Great.

3 CHAIRMAN GRIFFIS: Also the thing to be  
4 clear, in my words, is the Board Advisory Agency.  
5 They do a thorough, and now you saw a few this  
6 morning, but the thorough analysis of an application,  
7 if we differ from the Office of Planning's analysis or  
8 position, the Board will, in its deliberation and it's  
9 order, address all those elements, and why we differ.

10 So, it raises the level of our discourse  
11 in terms of how much we substantiate or go into the  
12 substance of our position, if there is opposition.

13 MS. LACOUR: May I ask you, at this time,  
14 in your file, do you have anything from Planning?

15 CHAIRMAN GRIFFIS: No. In fact we have one  
16 indication from the Office of Planning that they were  
17 not submitting as they had understood that there was  
18 going to be a postponement, or I believe it was  
19 something, or they didn't have the full information.

20 Yeah, and they're going to be running this  
21 too. I mean Mr. Mondie has got a busy time, he's  
22 already started some of that, and he's going to be  
23 meeting with the Office of Planning also, as they're  
24 getting documents submitted for their analysis.

25 MS. LACOUR: And with all respect to Mr.

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1 Mondie, and no due difference, a group of us have  
2 taken half a day off of work, too, to come here for  
3 this. So we're all spending money as well.

4 CHAIRMAN GRIFFIS: Indeed, right, indeed,  
5 and we absolutely appreciate that. And, okay. That  
6 being said, lastly then we're just talking about  
7 notice.

8 Mr. Mondie we're going to require that the  
9 property be posted and it would be posted, we have a  
10 requirement of 14 days prior, if I'm not mistaken.  
11 Ms. Bailey, is that correct?

12 MS. BAILEY: Fifteen days, Mr. Chairman.

13 CHAIRMAN GRIFFIS: Fifteen days, rather.  
14 Before you leave today we'll have it re-posted for the  
15 full 15 days that things can come into the record, and  
16 we'll change the date of the new hearing on the  
17 placards, so I think that can be remedied right before  
18 you go.

19 Excellent, okay, anything else,  
20 procedurally?

21 MS. LACOUR: Does that mean that new  
22 notices will go out to all the neighborhood?

23 CHAIRMAN GRIFFIS: No.

24 MS. LACOUR: With respect to the  
25 modifications, then, how does that work? Where we're

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1 talking about a notice of September 27<sup>th</sup>, which I  
2 understand has been modified, however, he hasn't  
3 submitted that. It's going from two town homes to  
4 four town homes, from four flats to eight flats.

5 CHAIRMAN GRIFFIS: Right. There's two  
6 aspects that you're asking. Notification for our  
7 purposes and the regulations or requirements goes to  
8 making sure that everyone is aware of the public  
9 hearing.

10 We've called the case, we are in the case  
11 at this point. This is our public hearing. We only  
12 are required to, if we continue this or postpone it,  
13 we give public notice, which is now I've just said we  
14 are rescheduling it.

15 That's the element, we're adding to it and  
16 I'll get to the other point of it. We're adding to the  
17 posting. We want to have it re-posted. Now, going to  
18 the substantive element, there's nothing that's come  
19 forward today, of my understanding, that the relief  
20 sought or the substance of the relief, meaning the  
21 variance, would change.

22 Therefore, maybe raising the level of how  
23 much we wanted to provide in terms of mailing and  
24 postage.

25 MS. LACOUR: So you're going on the

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1 assumption that it's still the two town homes with  
2 four flats, then, correct?

3 CHAIRMAN GRIFFIS: That's correct.

4 MS. LACOUR: Okay. Because my concern is,  
5 is that we have a group of neighbors, it might be even  
6 a larger group when they find out it's now changed to  
7 four town homes.

8 CHAIRMAN GRIFFIS: But would the elements  
9 change? I mean, do you feel capable of addressing  
10 those issues?

11 MS. LACOUR: Sure.

12 CHAIRMAN GRIFFIS: I don't know. Go ahead,  
13 Mr. Mondie.

14 MR. MONDIE: We have originally submitted  
15 for four lots, and four buildings on those lots.

16 CHAIRMAN GRIFFIS: Okay.

17 MR. MONDIE: And there was discussion at  
18 the, at the Bates Area Civic Association meeting that  
19 we were considering condominiums. We never made that  
20 change, and so all, none of that has been formally  
21 introduced to the Zoning Administration. So, those  
22 internal changes that we were contemplating have not  
23 been formally made so only discussed.

24 CHAIRMAN GRIFFIS: Right.

25 MR. MONDIE: And I think that started a

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1 fervor and that made it seem like we weren't, and of  
2 course we were thinking along those lines, thinking we  
3 could make changes up until four weeks prior to the  
4 meeting, but the changes were, we submitted more  
5 formalized drawings, but they were just more  
6 expressing what was originally submitted. So, those  
7 types of things.

8 CHAIRMAN GRIFFIS: And you all are going  
9 off to look at them and discuss them and you're taking  
10 advice and changing as you will. We're waiting for  
11 the final version to get to the hearing.

12 I have been passed Exhibit Number 6, which  
13 is the mailing list, Mr. Mondie, which the Office of  
14 Zoning, I guess, has discussed with you that the  
15 ownership within 200 feet, the actual mailing needs to  
16 be corrected for the record?

17 MR. MONDIE: Well, now, that's an element  
18 of confusion. The way I understand we paid the money  
19 at the, we have no control over sending out that list.

20 CHAIRMAN GRIFFIS: Did you provide the  
21 list, though, to the Office of Zoning for the mailing?

22 MR. MONDIE: In other words, physically  
23 myself I carried it to the Office of Zoning. I  
24 thought they would get it through the normal course.

25 CHAIRMAN GRIFFIS: I guess that's looking

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1 to be corrected. I don't know. All I have in my  
2 case, I don't know if others have different, it's part  
3 of the record. It's Exhibit Number 6.

4 And Exhibit Number 6 is a listing of all  
5 the property owners within a 200 foot radius. Is that  
6 your understanding of what you submitted?

7 MR. MONDIE: Yes, sir. And if, maybe I'm  
8 not speaking that clearly, but we have no, I have no,  
9 how do you say, control, over.

10 CHAIRMAN GRIFFIS: Right.

11 MR. MONDIE: And that's something that is  
12 entrusted to the District of --

13 CHAIRMAN GRIFFIS: That's fine. Here's  
14 what we need to cure. Mr. Mondie, the list that you  
15 submitted is you, an entire page, 1311 Delaware  
16 Street.

17 (Laughter.)

18 MR. MONDIE: Oh, no. Exactly, sir.

19 (Laughter.)

20 CHAIRMAN GRIFFIS: So you may have received  
21 an awful lot of letters from the Office of Zoning.

22 MR. MONDIE: Precisely. Now, with  
23 permission from the Office of Zoning, to get on the  
24 calendar, we submitted that particular page and  
25 within, I think it was a week and a half or so, as

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1 quickly as the District could submit, it was  
2 forthcoming and that list was replaced by the mailing  
3 that the District of Columbia generates.

4 CHAIRMAN GRIFFIS: Do we have it? Do we  
5 have a replacement list?

6 MS. BAILEY: I'm sure we have it, Mr.  
7 Chairman. A copy just probably hasn't made it into  
8 the file.

9 CHAIRMAN GRIFFIS: Good, we're going to  
10 need that, and you can double check before you leave  
11 to make sure that's in the record and filed correctly,  
12 and then we're going to make sure that goes, you're  
13 going to work with staff to make sure that those  
14 letters were correctly sent out.

15 MR. MONDIE: And I might add, if I could,  
16 at that meeting, at the BACA meeting, Bates Area Civic  
17 Association, some people on New Jersey Avenue  
18 mentioned they had not received notice.

19 And again, I think it's in the wisdom of  
20 the mailing system that's not, that Wilbur Mondie  
21 would generate a list of pro people that we pay the  
22 funding for the postage, but the list is generated by  
23 the District Government and sent out by the District  
24 Government. We have no control over those.

25 MS. LACOUR: And I agree with that. I

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1 don't think there was any ill will on your part or  
2 your attorney's part. The fact remains though, and  
3 for the record, if appropriate, nobody on New Jersey  
4 Avenue, within 200 feet got the notice.

5 Half the people on R Street did not get  
6 the notice and nobody on Florida Avenue, which is in  
7 200 feet, got the notice.

8 CHAIRMAN GRIFFIS: Okay.

9 MS. LACOUR: The only people who did was  
10 Richardson Place and half of 4<sup>th</sup> Street, N.W.

11 MR. MONDIE: And which again, sir, if that  
12 points out the list was not just to that Wilbur Mondie  
13 addresses, but it did go out, a lot of people got it.

14 And if it was up to me, everyone would  
15 have gotten it.

16 CHAIRMAN GRIFFIS: We can chase it down  
17 very easily. It's all on the record, so we'll make  
18 sure that all the mailings went out. What we have  
19 found, in my experience, in the several years that  
20 I've been on the Board, some people get these and  
21 throw them out.

22 But we want to make sure we will have the  
23 record that it's done correctly, so Mr. Mondie you'll  
24 take responsibility just to make sure that that gets  
25 done.

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1 MS. LACOUR: And again, there's no ill will  
2 we have here and nothing nefarious going on. We just  
3 want to make sure the procedures are followed, that  
4 everybody gets a right to be heard, gets their due  
5 process.

6 CHAIRMAN GRIFFIS: Excellent, agreed, and  
7 I appreciate that statement. Okay, anything else  
8 procedurally we can answer at this point? We all  
9 understand our dates and responsibilities? Very well.

10 As long as you folks are aware, Ms. Bailey  
11 will restate the date for the convenience.

12 CHAIRMAN GRIFFIS: The Board suggested that  
13 the Applicant file plans with the ANC on January 10<sup>th</sup>.  
14 We have the understanding that the ANC is scheduled to  
15 meet on January 17<sup>th</sup>.

16 The Applicant the next day will file their  
17 submission, pre-hearing submission with the Board and  
18 the next hearing date is January 24<sup>th</sup>, 2006, in the  
19 morning.

20 VICE CHAIR MILLER: Mr. Chairman, shouldn't  
21 the Applicant also filed plans with the opposing  
22 party? I forgot what their name is, the Richardson  
23 Focus Group? That the plans also be filed with the  
24 Richardson Focus Group?

25 CHAIRMAN GRIFFIS: Yes.

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1 MS. LACOUR: I appreciate that, thank you.

2 VICE CHAIR MILLER: Sure.

3 CHAIRMAN GRIFFIS: No, we're not requiring  
4 a submission on the 10<sup>th</sup>. I mean it's certainly good  
5 advice to get those out, I mean there's nothing to  
6 talk about and it's going to be a more adversarial  
7 hearing if we all get here and there's been no  
8 communication.

9 I don't anticipate that to happen, but I'm  
10 not setting a required filing date outside of what  
11 we've set it forth. If the Applicant wants to take  
12 the risk of going to the ANC and presenting, without  
13 having shown anything before, that's his  
14 responsibility.

15 That's his case presentation to them. I'm  
16 not going to require it before.

17 VICE CHAIR MILLER: You're saying it's a  
18 suggestion.

19 CHAIRMAN GRIFFIS: It's a good, and I  
20 thought Ms. Bailey said it absolutely correct.

21 VICE CHAIR MILLER: My only comment was  
22 that the opposing party, the Richardson Focus Group,  
23 should see it at the same time. They've now got party  
24 status like the ANC.

25 CHAIRMAN GRIFFIS: It's excellent advice.

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1 And anything that's put into the record, of course,  
2 we're going to need in the record, would be served on  
3 everybody. But I don't think we need to go much  
4 further that this.

5 I think there's a strong understanding  
6 that there's communication that's happening. So, you  
7 know, I don't want to get too ridged in terms of what  
8 the filing dates are on that.

9 MR. BERRY: Mr. Chairman, the only thing  
10 that occurs to me is that, as you know, the month of  
11 January is notorious for inclement weather in the  
12 District.

13 So, in the event that there's a snow storm  
14 on the 17<sup>th</sup>, I'm sure the Board would understand if we  
15 didn't have the meeting and we would have to postpone  
16 it.

17 CHAIRMAN GRIFFIS: We're very rational.

18 MR. BERRY: I just want to make sure of  
19 that, be mindful of that, because sometimes our  
20 January meeting has been canceled.

21 CHAIRMAN GRIFFIS: That's right, but in all  
22 seriousness, also, if that was, if that was postponed  
23 or perhaps the presentation, one would hope that there  
24 might be other ways to get that done so that we could  
25 proceed so that we don't set this off or we don't go

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1 through the need to address whether we set this off  
2 again to another session.

3 So even if it was like an Executive  
4 Session of the ANC.

5 MR. BERRY: The only problem for us would  
6 be that the law requires that we do, have to approve  
7 it or reject it at a public meeting.

8 CHAIRMAN GRIFFIS: I understand.

9 MR. BERRY: Saturday notice that we would  
10 have to give our constituents. We only have a window  
11 of seven days before we'd have to be back here.

12 CHAIRMAN GRIFFIS: Understood.

13 VICE CHAIR MILLER: No, I --

14 CHAIRMAN GRIFFIS: But you're also working  
15 with a party which is a lot of your constituents also.  
16 So maybe we can get the substantive information in.

17 VICE CHAIR MILLER: I think the law  
18 provides for a special meeting with less notice, I  
19 believe.

20 MR. BERRY: I'll accept the --

21 MS. LACOUR: Our interest in having an ANC  
22 meeting is we want to make certain that people have an  
23 opportunity to be heard in a forum where our elected  
24 representatives have a chance to do Qs and As with the  
25 individual requesting the variance, as well.

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1                   So it's important for us that we get that  
2                   opportunity. We feel that's a part of our due  
3                   process.

4                   CHAIRMAN GRIFFIS: No, I absolutely agree,  
5                   absolutely agree. There's a lot of things that could  
6                   get in the way of us proceeding with the hearing in  
7                   January. And all I'm saying is --

8                   MR. BERRY: I mean, hopefully that won't  
9                   happen.

10                  CHAIRMAN GRIFFIS: Yeah, let's make our  
11                  best effort to get it all concluded. If not, we'll  
12                  assess when we get here, at the end of January.

13                  Excellent, anything else? Any other  
14                  procedural questions I can answer? Hearing none, and  
15                  thank you all very much. I appreciate you being  
16                  patient with us and being here. Indeed, enjoy and  
17                  hopefully we will have a wonderful, but clear and not  
18                  too snowy January.

19                  Ms. Bailey, anything else for the Board's  
20                  attention in the morning session?

21                  MS. BAILEY: Not for the morning session,  
22                  but just to say that the afternoon case was withdrawn,  
23                  Mr. Chairman.

24                  CHAIRMAN GRIFFIS: Excellent, thank you  
25                  very much. The Board will take administrative note

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1 for our afternoon session that the Application 17304,  
2 Washington Metropolitan Area Transit Authority was  
3 withdrawn.

4 Therefore, there will be no afternoon  
5 public hearing for the Board today. If there's  
6 nothing further, then, let's adjourn the morning  
7 session.

8 (Whereupon, the proceedings in the above-  
9 entitled matter were concluded at 12:19 p.m.)

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