

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 11, 2014

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson
S. KATHRYN ALLEN, Vice-Chairperson
JEFFREY HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN VARGA, Zoning Specialist

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOT
PAUL GOLDSTEIN
STEPHEN GYOR
STEPHEN MORDFIN

DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

LOUIS BOOKER

The transcript constitutes the minutes from the Public Hearing held on March 11, 2014.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

<u>Application No. 18725</u> of Rafael Romeu	9
<u>Application No. 18724</u> of 819 D Street LLC	19
Office of Planning Report	28
DOT Report	29
<u>Parties in Support</u>	
Mark McGahey	30
Ali Noorani	32
Vote	34
<u>Application No. 18727</u> of 2951 Mills Avenue Incorporated,	35
Office of Planning Report	39
Vote	40
<u>Application No. 18728</u> of Church of Jesus Christ	39
Office of Planning Report	48
Vote	5
<u>Application No. 18725</u> (cont.) of Rafael Romeu	53
<u>Witness</u>	
Rafael Romeu	
Direct/Redirect	58/109
Cross/Recross	88/118
Office of Planning Report	120

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

Parties in Support

Noah Smith	131
Will Stephens	142

Parties in Opposition

James Hill	142
Amir Afkhami	157
Robert Uth	160
Mr. Hanlon	163
Cross Examination	172

Closing Statement of Applicant	193
--------------------------------------	-----

Vote	205
------------	-----

Adjourn

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

2 (9:58 a.m.)

3 BZA CHAIR JORDAN: Good morning,
4 ladies and gentleman. We are located at
5 Jerrily R. Kress Memorial Hearing Room at 441
6 4th Street, Northwest. And we're here for the
7 public meeting and public hearing of the Board
8 of Zoning Adjustment of the District of
9 Columbia.

10 My name is Lloyd Jordan,
11 Chairperson. To my far left is Anthony Hood,
12 member of the Zoning Commission. To my
13 immediate left is Marnique Heath, member of the
14 Board of Zoning Adjustment.

15 To my immediate right is S. Kathryn
16 Allen, Vice Chair of the Board and to her right
17 is Jeffrey Hinkle, a member of the Board.

18 Please be advised that today's
19 meeting and hearings are being recorded by a
20 court reporter, who's sitting to my right, and
21 also being webcast live.

22 Therefore, I'm going to ask you to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 refrain from any disruptive noises here in the
2 room today. This would be a good time for you
3 to silence any communication devices that you
4 may have.

5 If you're not familiar with the
6 Board's process and procedures, there's a
7 pamphlet by the door to my left in the back.
8 And feel free to get that so that you can kind
9 of follow along what we do and how we operate
10 here at the Board.

11 Additionally, if you're planning to
12 give any testimony and/or statement in any case
13 that's on today's docket, I'm going to need you
14 to do two things.

15 If you're planning to give any
16 testimony or any statement to the Board, I'm
17 going to need you to do two things. The first
18 of which is to complete two witness cards per
19 person. That's two witness cards per person
20 and after the cards are completed, please give
21 them to the court reporter to my right.

22 Certainly, before you testify, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 any other point before you testify, be sure you
2 give two witness cards per person to the court
3 reporter sitting to my right.

4 The second thing I'm going to need
5 you to do is to stand and take the oath or
6 affirmation which will be given by Mr. Moy, the
7 Board secretary. So I'm going to need you
8 stand if you're going to provide any statement
9 or testimony to the Board and be sworn in by Mr.
10 Moy.

11 MR. MOY: Good morning. Do you
12 solemnly swear or affirm that the testimony
13 you're about to present at this proceeding is
14 the truth, the whole truth and nothing but the
15 truth?

16 (Multiple ayes.)

17 MR. MOY: Ladies and gentlemen, you
18 may consider yourselves under oath.

19 BZA CHAIR JORDAN: All right.
20 Would the parties of representative from the
21 applicant and the representative of those
22 seeking party status in Case 18725, please come

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 forward. And Mr. Moy, why they're doing that,
2 any announcements you need to make?

3 MR. MOY: Yes, sir. Thank you,
4 sir. For the record -- no, you could still come
5 up to the table, please. For the record, on the
6 cases on the docket, I just wanted to note that
7 there are two applications that have been
8 rescheduled to another day.

9 Application number 18722 of Andrew
10 Keegan Theatre, that's been rescheduled to May
11 6th, 2014 and --

12 BZA CHAIR JORDAN: Please take a
13 seat.

14 MR. MOY: -- application number
15 18723 of Morning Bright has been rescheduled to
16 May 20th. Other than that there are other
17 preliminary matters, Mr. Chairman, but I think
18 where you're standing would be best to handle
19 those on a case-by-case basis.

20 BZA CHAIR JORDAN: All right.
21 Okay. Now, this is a case where we have at
22 least three individuals seeking party status

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and I understand you're represented by counsel?

2 Is there --

3 MR. TRUITT: Yes.

4 BZA CHAIR JORDAN: Okay. Do me a
5 favor, please introduce yourselves starting
6 from my left going to the right. Make sure the
7 microphones are turned on, please. You should
8 have a bright, glowing, green light.

9 MR. TRUITT: My name is Stephen
10 Truitt. I represent the three applicants for
11 party status, Mr. Hill, Mr. Uth and Mr. Afkhami.

12 MR. HILL: My name is James Hill.

13 BZA CHAIR JORDAN: Let's make sure
14 that your microphone's on, please.

15 MR. HILL: My name is James Hill.

16 MR. AFKHAMI: My name is Amir
17 Afkhami.

18 MR. UTH: My name is Robert Uth.

19 BZA CHAIR JORDAN: Uth?

20 MR. UTH: Uth.

21 MR. SULLIVAN: Marty Sullivan, Mr.
22 Chairman, on behalf of the applicant.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ROMEU: I'm Rafael Romeu. I am
2 the property owner jointly with my wife,
3 Larissa Leony, who is sitting directly behind
4 me.

5 BZA CHAIR JORDAN: Yes. And this
6 gentleman?

7 MR. MORRIS: Oh, I'm Mr. Morris,
8 the architect for the proponent.

9 BZA CHAIR JORDAN: Morrisey?

10 MR. MORRIS: Morris.

11 BZA CHAIR JORDAN: Morris. Okay.
12 We have before the Board, a request for party
13 status, but Mr., is it Utz?

14 MR. UTH: Uth.

15 BZA CHAIR JORDAN: Uth, oh, it's
16 Uth, okay. I may have missed something. And
17 Afrikeme?

18 MR. AFKHAMI: Afkhami.

19 BZA CHAIR JORDAN: Afkhami.
20 Afkhami and Mr. Hill. So that's first before
21 the Board. Mr. Sullivan, any input on these?

22 MR. SULLIVAN: The applicant

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 doesn't have any issue with the party status
2 application of Mr. Hill. However, we believe
3 that Mr. Afkhami and Mr. Uth are not --

4 BZA CHAIR JORDAN: In a --

5 MR. SULLIVAN: -- active parties.

6 BZA CHAIR JORDAN: Okay. In
7 looking that the file and the request for party
8 status, I see that Mr. Hill, based upon the
9 application, has submitted his application
10 that his privacy and enjoyment would be
11 disturbed by the property, if the development,
12 by the application if the application was
13 granted.

14 Then he talks in regards to the
15 height and the structure affecting his peace
16 and enjoyment. However, in the other two
17 requests for party status, they fail to make any
18 zoning argument how they'd be impacted by the
19 zoning regulations regarding any relief that we
20 might do.

21 I would therefore, offer to this
22 Board that we grant party status to Mr. Hill and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 deny party status on the other two requests.
2 Their argument was simply that the easement
3 argument in regards to the property.

4 Now, the other thing that we would
5 do typically anyway, was still even if we did
6 grant party status to all three, we would
7 require you to consolidate.

8 And you're all being represented by
9 the same counsel, so you're still, your issue
10 is going to be presented and Mr. Hill is going
11 to be the party status, but Mr. Truitt will
12 still provide your participation kind of, sort
13 of, in the fact that he is the counsel for. But
14 let me get some feedback from the Board, your
15 thoughts on this matter.

16 MR. TRUITT: Yes, Mr. Chairman --

17 BZA CHAIR JORDAN: You'll get --

18 MR. TRUITT: -- may I be heard --

19 BZA CHAIR JORDAN: Not at this
20 point.

21 MR. TRUITT: -- at some point?

22 BZA CHAIR JORDAN: Not at --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TRUITT: Okay.

2 BZA CHAIR JORDAN: -- this point.

3 MR. TRUITT: All right.

4 BZA CHAIR JORDAN: Yes, yes. Any
5 thought?

6 VICE CHAIR ALLEN: No, thank you.

7 BZA CHAIR JORDAN: Okay. Now, Mr.
8 Truitt, please.

9 MR. TRUITT: Thank you. With
10 respect to Mr. Afkhami, he has made it clear
11 that the application as filed would have
12 interfered directly with his access to the
13 right of way at the rear of his property.

14 Now, I understand that as a general
15 matter the Board does not get into questions of
16 rights of way and so on. However, the impact
17 of permitting this particular construction
18 that has been proposed would directly the
19 easement and the ability of his mother to use
20 a motorized wheelchair to get out of the right
21 of way and have other impacts as well.

22 This is no different, we submit,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 than determining whether a structure, which is
2 asked to be permitted by your action, impairs
3 light and air or impairs access.

4 We do not ask for any sort of a
5 ruling as to who has title to what, but we do
6 say the practical effect of building what has
7 been proposed to be built, would impair Mr.
8 Afkhami's use and also Mr. Uth's use.

9 BZA CHAIR JORDAN: Yes. Mr.
10 Sullivan?

11 MR. SULLIVAN: I think party
12 applicant opponent's counsel stated it
13 correctly when he says he understands that the
14 Board does not get involved in non-zoning
15 issues in the midst of a case.

16 And in this case, the relief that
17 we're requesting, rear yard and lot occupancy,
18 the reason for lot occupancy restrictions and
19 rear yard restrictions is to protect the light
20 and air of neighboring properties.

21 It's not to protect private
22 easements. And so if we're just arguing about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the easement then I'm not sure the Board has the
2 jurisdiction or expertise to determine whether
3 or not this easement is impeded. And, in fact,
4 I won't get into facts of the case, but it's not
5 impeded in the slightest, so.

6 BZA CHAIR JORDAN: Well, all right.
7 Thank you. This is what we're going to do.
8 First of all let me say this, and for those who
9 are not here and who may review this tape or who
10 are watching us on the webcast live, when these
11 party status applications come in, they ought
12 to be succinct, to the point and be relevant.

13 The Board's not required to give a
14 hearing on it. And we allowed some
15 conversation on that. The applications
16 submitted, as I said, that were defective
17 didn't answer the questions directly as it
18 related to how the property's going to be
19 affected by the zoning regulations.

20 Hearing your argument now, Mr.
21 Truitt, I'm going to accept them as party
22 status, however, they're going to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 consolidated anyway and be represented by
2 yourself based upon the alleged of
3 representation. So we will do that for the
4 sake of moving this forward.

5 However, understand the discussion
6 about easements and the enforcement of the
7 easement is not going to be allowed. You can
8 talk about the property affecting you within
9 the zoning regulations.

10 We have no authority or
11 jurisdiction whatsoever regarding easements.
12 And that's something you're going to have to
13 work out on your own.

14 More importantly, I understand
15 there's been some changes in the applicant's
16 case that may not impact the easement. That
17 being said, as the practice of this Board, I'm
18 going to ask the parties to go outside and have
19 a serious conversation.

20 And please do not come back in this
21 room in three minutes and pretend like you've
22 had conversation. I'm very serious about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that. This is one I think you need to have
2 conversation and you potentially might have a
3 meeting of the minds on this particular issue.

4 If you don't, then we'll come back
5 and do the hard thing and make a decision and
6 somebody's not going to be happy. But I'm
7 asking you to go out and have serious
8 conversation. And that goes for anybody else
9 in the future.

10 We've seen this work. Having
11 meaningful conversation works. We've had
12 party status's of ten and 12 different party
13 status, where you wouldn't think that they're
14 going to work some things out and they do.

15 And I've also seen to the contrary,
16 where people walked out this room pretending to
17 fake the Board out and come back out that door
18 and come back in this door.

19 We make mental note of that and I'm
20 serious, it works and we're requiring you to do
21 so. So please have meaningful conversation,
22 would you please?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So we will call your case later on
2 the docket. In the interim, please have a
3 conversation. And I thank you.

4 MR. TRUITT: Thank you.

5 MR. SULLIVAN: Thank you.

6 MR. MOY: Mr. Chairman, I might
7 want to add that since there's a large number
8 of people, if they check in with the
9 receptionist in our front office, our green
10 conference room may be open.

11 BZA CHAIR JORDAN: Okay. Mr.
12 Sullivan, Mr. Truitt, if you can inquire in the
13 Office of Zoning reception, we might have a room
14 for you. Okay. Wait one second. I'm
15 catching up with myself here. Another minute
16 or so. One second here.

17 (Whereupon, the proceedings went
18 off the record to resume at 11:04 a.m.)

19 BZA CHAIR JORDAN: There we go.
20 Let's come back to order, please. All right.
21 Mr. Moy.

22 MR. MOY: Yes, sir.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Since we lost
2 the first two cases, 18722 and 18723 --

3 MR. MOY: Yes.

4 BZA CHAIR JORDAN: -- let's move to
5 18724.

6 MR. MOY: Okay. Very good.

7 BZA CHAIR JORDAN: Is that --

8 MR. MOY: Yes.

9 BZA CHAIR JORDAN: Is that you?
10 I'm sorry, ma'am. I don't if you need to go
11 through set-up.

12 MR. MOY: Okay. Let me read this.
13 This is Application Number 18724 of 819 D Street
14 LLC.

15 BZA CHAIR JORDAN: Yes.

16 MR. MOY: This is advertised for a
17 number of variance requests.

18 BZA CHAIR JORDAN: Yes, well, let's
19 not do any --

20 MR. MOY: Okay.

21 BZA CHAIR JORDAN: -- set-up until
22 you think if we need to do setting up. Let's,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you know, you might not need a set-up.

2 MR. MOY: Okay.

3 BZA CHAIR JORDAN: Unless there's
4 some problem to.

5 MR. MOY: Well, anyways this is
6 property, as the caption says, at 819 D Street
7 Northeast.

8 BZA CHAIR JORDAN: Unless there's
9 whole opposition. Was there opposition in
10 this case?

11 MR. MOY: Variance on lot area,
12 401.3, 401.1 and court requirements under 406.

13 BZA CHAIR JORDAN: Oh, no, no, I see
14 this. Okay. Is there anyone in opposition on
15 case 18724? Opposition in case 18724? Okay.
16 We can do an introduction if -- would you begin?
17 Let's just do an introduction who's here, so.

18 MR. COLLINS: Thank you, Mr. Chair.
19 My name is Christopher Collins with the law firm
20 of Holland and Knight.

21 MR. AUGER: Good morning. Greg
22 Auger with 819 D LLC.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HOLMES: David Holmes, ANC 6A.

2 BZA CHAIR JORDAN: Yes.

3 MS. MILANOVICH: Jami Milanovich
4 with Wells and Associates.

5 MR. BONSTRA: I'm Bill Bonstra at
6 Bonstra Haresign Architects.

7 MS. HACKNEY: Good morning. Lynn
8 Hackney a president of Urban Pace Sales and
9 Marketing.

10 BZA CHAIR JORDAN: Okay. Thank
11 you. This is a matter, I think, that the
12 submissions and files would show that the
13 request for relief should be granted.

14 I don't think there's any
15 additional information that we would need from
16 the applicant on this point. I think you have
17 dotted the I's and crossed the T's and it's
18 clear in the filings that this is something
19 which meets the test.

20 So Mr. Collins, it's certainly up to
21 you to decide to whether or not you're going to
22 put some things -- no, we're still going to go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 through the process. Oh, it's someone else?

2 MR. MOY: Mr. Chairman?

3 MR. MCGAHEY: My name is Chris
4 McGahey and I'm with two other people who are
5 interested in considering a waiver for the
6 filing deadline applying for party status.

7 BZA CHAIR JORDAN: We're not going
8 to grant party status at this point. We're
9 already into the inner. So you're party status
10 in opposition?

11 MR. MCGAHEY: No, we're party
12 status proponent.

13 BZA CHAIR JORDAN: All right.
14 Well, you'll have the opportunity to talk in
15 support of the application.

16 MR. MCGAHEY: Okay. Thank you.

17 BZA CHAIR JORDAN: Yes, thank you.
18 Thank you, Mr. Holmes. So, Mr. Collins, if
19 there is, certainly up to you to decide to go
20 forward. The only question I have, on the TDM
21 measures as offered by Department of
22 Transportation and some offered by you, are you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 good?

2 Let me tell you what I think we're
3 going to have. What I would suggest to the
4 Board is that the applicant shall provide
5 information packages to be provided to new
6 residents include information on Capital
7 Bikeshare, Carshare and the commuter
8 connection program.

9 The applicant should provide
10 information boards in this common area with
11 information on public transportation options
12 including Metrorail, Metrobus stops, et
13 cetera, et cetera, et cetera.

14 That the applicant shall provide
15 each new resident at the time of the initial
16 sale either a complimentary one-year
17 membership of the Capital Bikeshare or
18 registration fee for the car2go program.

19 Applicant shall limit the number of
20 residents in the project who get RPP stickers
21 to a maximum of six and record a covenant to run
22 the property for the time of this particular

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 use.

2 The applicant shall provide
3 convenient and covered bicycle storage in the
4 cellar of the church to accommodate a minimum
5 of 12 bicycles with additional four bicycle
6 spaces provided in the townhouse units, for a
7 total of 16 bicycle spaces.

8 And the applicant shall provide
9 information on the go DCGO program in the
10 information packets to new residents. I think
11 we might have already covered that, so.

12 MR. COLLINS: Those are the
13 conditions that we were about to proffer to you
14 with another condition that the applicant shall
15 construct the project in substantial
16 conformance with the architectural drawings
17 presented in Exhibit 23, which are the plans
18 submitted with our pre-hearing statement.

19 But with flexibility to amend the
20 final designs and details to conform with the
21 final approval of the Historic Preservation
22 Review Board.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Okay. That's
2 kind of inherent in our rule, but we would add
3 the part about historic preservation.

4 MR. COLLINS: Yes.

5 BZA CHAIR JORDAN: But it's --

6 MR. COLLINS: Yes.

7 BZA CHAIR JORDAN: -- generally the
8 approval we grant you, you're tied into the
9 plans as submitted --

10 MR. COLLINS: Okay.

11 BZA CHAIR JORDAN: -- but we would
12 add into any motion to allow you to make some
13 minor modifications as required by Historic
14 Preservation.

15 MR. COLLINS: Thank you.

16 BZA CHAIR JORDAN: So if those
17 things are okay, then if you think you need to
18 do a presentation then --

19 MR. COLLINS: The only thing I'd
20 like to point out is that there are three expert
21 witnesses on our team and for purposes of
22 question and answer that you might get into as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a Board.

2 And if necessary, if you think it's
3 necessary, I'd like to qualify them as experts
4 before this case evolved here previously and
5 before this Board as expert witnesses and
6 they're resumes --

7 BZA CHAIR JORDAN: I don't think --

8 MR. COLLINS: -- are in the record.

9 BZA CHAIR JORDAN: I think Ms.
10 Hackney had not, but I think we can accept her
11 as an expert. Our records indicate that she
12 had previously been an expert accepted by the
13 Board, however, we did review the resume. I
14 can offer the Board to accept her, if necessary,
15 so.

16 MR. COLLINS: Does that apply to
17 all three?

18 BZA CHAIR JORDAN: Yes. Yes.

19 MR. COLLINS: Okay.

20 BZA CHAIR JORDAN: The other two
21 are already in.

22 MR. COLLINS: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: And so then,
2 lets make sure, Mr. Moy, that we now allow Ms.
3 Hackney in our expert book. Okay?

4 MR. MOY: Yes, sir. She's in.

5 BZA CHAIR JORDAN: Okay, thank you.
6 Good.

7 MR. COLLINS: And for that --

8 BZA CHAIR JORDAN: We'd do anything
9 to make you happy. High fives all around.

10 MR. COLLINS: We'd be happy to
11 answer any questions you might have.

12 BZA CHAIR JORDAN: No, fist bumps.
13 No, but anyway. Okay, good.

14 VICE CHAIR ALLEN: We did that
15 under the table.

16 BZA CHAIR JORDAN: Right. Any
17 other questions the Board has for the
18 applicant? Okay. Let's turn now to Ms.
19 Elliot and see what she has, if she wants to add
20 anything in addition to her report.

21 MS. ELLIOT: Thank you, Mr.
22 Chairman. For the record, the Office of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Planning is recommending approval of the
2 variances that have been requested for this
3 project and I don't have anything additional to
4 add. But I would be happy to answer any
5 questions you may have.

6 BZA CHAIR JORDAN: Board,
7 questions for OP? Applicant questions for OP?

8 MR. COLLINS: No, sir.

9 BZA CHAIR JORDAN: Mr. Holmes, any
10 questions for OP?

11 MR. HOLMES: No, thank you.

12 BZA CHAIR JORDAN: Then, let's turn
13 to the Department of Transportation. Is there
14 anything in addition the Department of
15 Transportation wants to add to the report
16 that's been submitted that we've read that
17 we've already talked about the TDM measures?

18 MR. BOOKER: Louis Booker from the
19 Department of Transportation. I have no
20 additional comments. Louis Booker,
21 Department of Transportation. I have no
22 additional comments.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: All right.
2 Thank you. Board, questions Department of
3 Transportation, applicant?

4 MR. COLLINS: No, sir.

5 BZA CHAIR JORDAN: Mr. Holmes?

6 MR. HOLMES: No.

7 BZA CHAIR JORDAN: Okay. Then,
8 Mr. Holmes, do you want to make a statement or
9 stand on --

10 MR. HOLMES: Just, we'll stand on
11 the record, but briefly, the provision of these
12 various transportation options within the
13 package were requested by the ANC and we're very
14 grateful to have them there. Thank you.

15 BZA CHAIR JORDAN: Very good.
16 Thank you. Any questions anyone, Board,
17 applicant?

18 MR. COLLINS: No, sir.

19 BZA CHAIR JORDAN: Is there anyone
20 here wishing to speak in support of the
21 application?

22 MR. MCGAHEY: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Mr., is it Mark,
2 I'm sorry?

3 MR. MCGAHEY: McGahey.

4 BZA CHAIR JORDAN: Okay. McGahey.
5 You have three minutes to speak.

6 MR. MCGAHEY: No, I won't need much
7 time. I live two doors down from the
8 development. We're going to be affected by
9 several aspects of the development as it goes
10 forward.

11 We don't have any opposition to the
12 zoning variance request at this time, but that
13 was the origin of my request to be considered
14 party status to be part of the discussions going
15 forward.

16 We'll be affected by the increased
17 density. We'll be affected by the future
18 parking decisions. We'll be affected by the
19 decisions that are made with Historic
20 Preservation about external visual control.

21 And we'll be significantly impacted
22 by the increased traffic both in my case and in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the front side and the back side of the house
2 as they're purposing access for parking through
3 the alleyway in the back as well as the RPP
4 request which they made.

5 We'll also be affected by the
6 construction management decisions which are
7 made. And those were the basis for the request
8 for party status which, unfortunately, was
9 denied.

10 And I realize that it was a late
11 request, but I would put that back up. I am
12 possibly requesting a waiver from that deadline
13 so that we can be part of the process going
14 forward.

15 The people at this table have been
16 very supportive and have been involving us in
17 the decisions going forward. For myself,
18 we're definitely in favor of the development
19 going forward.

20 The conditions that have been
21 placed, I think are appropriate and will
22 continue to be part of the discussion as going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 forward.

2 BZA CHAIR JORDAN: Okay. Thank
3 you. We've already ruled in regard to party
4 status and we thank you for your comment and
5 certainly turn back to the applicant and let the
6 applicant, certainly, I would believe that the
7 applicant is going to keep you informed and have
8 the proper discussions with that. We would
9 strongly encourage that. Anyone else speaking
10 in support? And your name please?

11 MR. NOORANI: Sure. I'm Ali
12 Noorani. I live at 810 D Street Northeast.
13 I'd want to echo the comments of my neighbor as
14 well, but I would also ask that the applicants
15 really work to engage the entire neighborhood
16 in the process as it unfolds.

17 There's quite a bit of concern in
18 terms of the impact on parking and the
19 construction process as it moves forward. So
20 thank you for the time.

21 BZA CHAIR JORDAN: Okay. Thank
22 you. Anyone else speaking in support of this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 application? Anyone speaking in opposition?
2 Anyone in opposition?

3 We normally return back to the
4 applicant for any rebuttal and closing, but
5 there's nothing to rebut at this point. And so
6 we will close the record based upon the evidence
7 already in the record. And I would move that
8 we grant the relief requested in this
9 application.

10 VICE CHAIR ALLEN: Second.

11 BZA CHAIR JORDAN: With the
12 understanding that the TDM measures that I read
13 are part of the motion as well as that we leave
14 some leeway for minor modifications based upon
15 the HPRB's review. So, so seconded. All
16 right. Any further discussion? All those in
17 favor signify by saying aye.

18 (Multiple ayes.)

19 BZA CHAIR JORDAN: Those opposed
20 nay. The motion carries. Mr. Moy.

21 MR. MOY: Yes, staff would record
22 the vote as five to zero. This on the motion

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of Chairman Jordan to approve the application
2 with the relief requested as well as the
3 conditions as been cited by the Board,
4 including the provision for flexibility of
5 design depending on HPRB, I suppose.

6 So again, the motion by Chairman
7 Jordan, seconded by Vice Chair Allen. And also
8 in support Mr. Hood, Ms. Heath and Mr. Hinkle.
9 Unanimous vote, Mr. Chairman.

10 BZA CHAIR JORDAN: All right.
11 Thank you. Summary order, please.

12 MR. MOY: Yes, sir.

13 BZA CHAIR JORDAN: And be sure and
14 put the provision that we are allowing mild
15 modifications as required by HPRB.

16 MR. MOY: Yes.

17 BZA CHAIR JORDAN: Thank you.

18 MR. HOLMES: Thanks.

19 MR. COLLINS: Thank you very much.

20 MS. HACKNEY: Thank you.

21 BZA CHAIR JORDAN: See, I told you
22 not to set up.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (Off the record comments.)

2 BZA CHAIR JORDAN: Mr. Moy, we're
3 going to do 18727.

4 MR. MOY: Okay, then. Here we go.
5 Okay. To the table Application Number 18727 of
6 2951 Mills Avenue Incorporated. This is a
7 request, Mr. Chairman, for relief from variance
8 from the lot area requirements under Subsection
9 401.3 at 2840 Belair Place.

10 BZA CHAIR JORDAN: All right.
11 Thank you. Please introduce yourselves.

12 MR. BELLO: Good morning, Mr.
13 Chair. Toye Bello representing the applicant.

14 MR. DEMUREN: Taiwo Demuren.

15 BZA CHAIR JORDAN: I'm sorry?

16 MR. DEMUREN: Taiwo Demuren
17 representing 2951 Mills Avenue Inc.

18 BZA CHAIR JORDAN: Okay. We have
19 some preliminary things we have to get
20 straight. Do we have your letter of
21 authorization?

22 MR. BELLO: Yes. Yes, we do.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Okay. Does the
2 Office of Zoning have it?

3 MR. BELLO: We did submit one, yes.

4 BZA CHAIR JORDAN: When was that,
5 Mr. Bello?

6 MR. BELLO: Fifteen days ago.

7 BZA CHAIR JORDAN: We didn't have
8 it in the file, right?

9 MR. MOY: No, sir.

10 BZA CHAIR JORDAN: Is that it?
11 Yes, just give it to Mr. Moy. Mr. Varga, you
12 made copies of this for us and just make sure
13 we have it so we can proceed on.

14 Additionally, let me, oh, let you
15 get back to the table. Additionally, did you
16 do a presentation for the ANC?

17 MR. BELLO: Yes, we did. And --

18 BZA CHAIR JORDAN: And this --

19 MR. BELLO: -- we have a copy of the
20 ANC's resolution of support.

21 BZA CHAIR JORDAN: Oh.

22 MR. BELLO: I think they just sent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that this morning.

2 BZA CHAIR JORDAN: Okay. If
3 you'll, again. Oh, we got it? Okay. Let me
4 see it. I guess everybody else has that. I
5 just neglected to come out with it.

6 I try not to pick up extra stuff
7 before we come out. No need to fry my brain.
8 We already spend, you know, eight to ten hours
9 reviewing this stuff.

10 Okay. So we have a letter from the
11 ANC in support of the application. And since
12 all that housekeeping things have been taken
13 care of, I think this is, in my opinion, there's
14 nothing I need to here from the applicant.

15 I think the file is prepared in such
16 a manner that the evidence in the file supports
17 the request for relief. Board, any questions
18 or issues we have with this one, anybody? Do
19 you need to hear anything from the applicant?

20 Mr. Bello, as you know, it's up to
21 you if you want to do a song and dance, but you
22 know the potential problems that gives you. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there's nothing that we really need here, but
2 it's up to you. Do you want to proceed on?

3 MR. BELLO: Absolutely not. Sure.

4 BZA CHAIR JORDAN: Then we would
5 turn to the Office of Planning. Can somebody
6 take care of that back door for me? Thanks for
7 that. That's why you get this Vice Chair.
8 Thank you. The Office of Planning, is there
9 anything in addition you want to make to your
10 report? Hey.

11 MR. GYOR: Good morning, Mr.
12 Chairman and members of the Board. Stephen
13 Gyor with the Office of Planning. The Office
14 of Planning supports the applicant's request
15 for relief including the proposed changes to
16 the project's design and rests on the record.
17 Thank you.

18 BZA CHAIR JORDAN: All right.
19 Anyone, any questions for Office of Planning?
20 Applicant, any questions? Anyone here from
21 the Department of Transportation for this
22 matter?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Department of Transportation has
2 submitted their no objection to the relief
3 being requested. Anyone here from ANC 5C? We
4 do have a letter that we give great weight to
5 that supports this application by a vote of four
6 to zero.

7 Anyone here wishing to speak in
8 support? Anyone in support? Anyone in
9 opposition? Anyone wishing to speak in
10 opposition? Turning it back to the applicant.

11 There's nothing you need to say
12 since their's nothing to rebut and there's
13 nothing to close. And then, I would then move
14 that we grant the relief requested in 18727.

15 MEMBER HEATH: Second.

16 BZA CHAIR JORDAN: Motion made and
17 second. Any further discussion? All those in
18 favor of the motion signify by saying aye.

19 (Multiple ayes.)

20 BZA CHAIR JORDAN: Those opposed
21 nay. The motion carries. Mr. Moy.

22 MR. MOY: Staff will record the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 vote as five to zero. This is on motion of
2 Chairman Jordan to approve the variance request
3 from the lot area requirements. Also seconded
4 Ms. Heath. Also support Mr. Hood, Vice
5 Chairperson Allen and Mr. Hinkle. Motion
6 carries five to zero.

7 BZA CHAIR JORDAN: Summary,
8 please.

9 MR. MOY: Thank you, sir.

10 MR. BELLO: Thank you.

11 BZA CHAIR JORDAN: Thank you.

12 MR. DEMUREN: Thank you.

13 BZA CHAIR JORDAN: 18728.

14 MR. MOY: Application Number 18728
15 of Church of Jesus Christ. Mr. Chairman, this
16 is, of course, for a special exception to permit
17 a child development center. 120 children and
18 27 staff as advertised under Section 205.

19 BZA CHAIR JORDAN: All right.
20 Thank you. Would you please identify
21 yourself?

22 MS. GOLDRING: Yes. Good morning.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 My name is Anora Goldring and I'm the Director
2 of Lena Sears, I'm -- yes, Lena Sears Child
3 Development Center located within Church of
4 Jesus Christ.

5 BZA CHAIR JORDAN: And your last
6 name was Sears?

7 MS. GOLDRING: My last name is
8 Goldring. The name of the daycare --

9 BZA CHAIR JORDAN: Goldring.

10 MS. GOLDRING: -- Lena Sears.

11 BZA CHAIR JORDAN: You said
12 Goldring?

13 MS. GOLDRING: Yes, Goldring like a
14 gold ring on your finger.

15 BZA CHAIR JORDAN: I thought so.
16 Yes. So if you forget your name, you just kind
17 of look over and --

18 MS. GOLDRING: Yes.

19 BZA CHAIR JORDAN: Got you. Let me
20 ask you, have you been operating the daycare
21 outside of the authorization that you had? You
22 had a three-year authorization from the last

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time that you got approval, isn't that correct?

2 MS. GOLDRING: I'm sorry. Could
3 you repeat that? I didn't hear you.

4 BZA CHAIR JORDAN: Your special
5 exception expired November 2013, right?

6 MS. GOLDRING: That I'm not
7 familiar with. No, we have not operated
8 outside of any regulations whatsoever.

9 BZA CHAIR JORDAN: So --

10 MS. GOLDRING: And not to my
11 knowledge.

12 BZA CHAIR JORDAN: -- our records
13 don't indicate that we did an extension of any
14 previous order. Isn't that right, Mr. Moy? I
15 think our last would have -- because you would
16 kind of come up periodically for ongoing review
17 every, like every three years. The center's
18 been here several times. Right now, you're
19 operating with 80 children and 14 staff?

20 MS. GOLDRING: Correct. Right
21 now, we're not operating at all because of the
22 renovation project. We've been closed since

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 August 14, 2013. The project is done as far as
2 the daycare center is concerned. And so with
3 the renovated --

4 BZA CHAIR JORDAN: Got you.

5 MS. GOLDRING: -- space, we just
6 wanted to accommodate more families in the
7 area.

8 BZA CHAIR JORDAN: Got you. So you
9 weren't operating -- okay. So that's
10 acceptable. So you weren't actually in use,
11 although, the use actually expired 2013.

12 So now you're here trying to
13 increase and we would look at this as, kind of,
14 permission starting from zero children to zero
15 staff and look at this as an application for
16 special exception for 120 kids and 27 staff.

17 But this matter's been approved
18 over and over again by this particular Board.
19 And there was some conditions there. Do we
20 have anyone here is in opposition to this
21 application for special exception?

22 Let me go over a couple of things

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with you. Are you aware of the conditions that
2 are imposed on the use for your special
3 exception?

4 One that if we were to move forward,
5 the conditions we would place on here is that
6 the children shall not exceed 120, the number
7 of employees shall not exceed 27. The ages of
8 the children should be infants through age
9 five.

10 The hours and days of operations
11 should be 6:00 a.m. to 7:00 p.m. Monday through
12 Friday; that you should provide 40 on-site
13 parking spaces.

14 The outdoor playtime shall be
15 staggered so that all children should not be on
16 the play area at one time. And a diligent
17 effort shall be taken by the applicant to reduce
18 the noise in the play area.

19 And the children are to be escorted
20 throughout the neighborhood whenever they're
21 going throughout the neighborhood. That a
22 drop off and pick up of children shall occur at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the entrance of the building from the parking
2 lot.

3 Access to the site shall be via the
4 one-way driveway access by the ramp on
5 Pennsylvania Avenue, exiting onto 38th Street;
6 that you shall mitigate soil erosions on 38th
7 Street frontage of the property by planting
8 appropriate materials. All landscaping on
9 site shall be maintained in a neat and healthy
10 condition.

11 The property should be kept free of
12 refuse and debris at all times. Any outdoor
13 trash storage containers shall be screened from
14 view by fencing and landscaping.

15 MS. GOLDRING: Yes, all except one
16 and that is the timeframe. We'd actually open
17 from 6:00 to 6:00.

18 BZA CHAIR JORDAN: Okay.

19 MS. GOLDRING: Somehow the
20 information reflects 6:00 to 7:00 p.m..

21 BZA CHAIR JORDAN: We'll give you,
22 you sure you won't accept? That'll give you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 some leeway. We'll keep at 7:00 --

2 MS. GOLDRING: Okay.

3 BZA CHAIR JORDAN: -- then.

4 MS. GOLDRING: Well, I'll keep the
5 leeway.

6 BZA CHAIR JORDAN: We give you a
7 bonus bump.

8 MS. GOLDRING: Okay.

9 BZA CHAIR JORDAN: Yes. Because
10 otherwise, it'd be 6:05, we'd be on you. No,
11 okay. So with that, Board, any questions on
12 this application?

13 MEMBER HINKLE: No, Mr. Chair, I
14 just note that there's also nine letters of
15 support --

16 MS. GOLDRING: Yes.

17 MEMBER HINKLE: -- of the
18 application, which are helpful.

19 BZA CHAIR JORDAN: Oh, I didn't see
20 that. So we took out the soil erosion?

21 VICE CHAIR ALLEN: Yes, it says
22 right here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Okay. Let me
2 drop my Number 8 out of here.

3 VICE CHAIR ALLEN: Just the first
4 part.

5 BZA CHAIR JORDAN: I guess you
6 already took care of the soil erosions.

7 VICE CHAIR ALLEN: Especially with
8 the landscaping areas.

9 BZA CHAIR JORDAN: Yes, okay. The
10 landscaping stays in?

11 VICE CHAIR ALLEN: Yes.

12 BZA CHAIR JORDAN: Okay. Thank
13 you. See, I need that help. Okay. So then
14 let's turn to the Office of Planning and see if
15 Mr. Mordfin has anything else he wants to add
16 to this or take away from this.

17 MR. MORDFIN: Good morning, Chair
18 members of the Board. I'm Stephen Mordfin with
19 the Office of Planning. And the Office of
20 Planning continues to support this
21 application. There's nothing further to add.
22 Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Thank you.
2 Board, any questions for Planning? Is there
3 anything from DDOT in this file? Yes, we have
4 a letter of no objection from the Department of
5 Transportation. Anyone here from ANC 7B? Did
6 we get anything from ANC 7B?

7 VICE CHAIR ALLEN: This morning.

8 BZA CHAIR JORDAN: What?

9 VICE CHAIR ALLEN: This morning.

10 BZA CHAIR JORDAN: We got something
11 this morning from 7B?

12 MR. MOY: There's none in the
13 record, Mr. --

14 BZA CHAIR JORDAN: Nothing.

15 MR. MOY: -- Chairman. Unless
16 something slipped by this morning.

17 VICE CHAIR ALLEN: I guess it was
18 just the affidavit.

19 (Off the record comments.)

20 BZA CHAIR JORDAN: No, no, nothing
21 from 7B.

22 MEMBER HEATH: No?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR ALLEN: Nothing from the
2 ANC.

3 BZA CHAIR JORDAN: All right. Did
4 you have a chance to meet with ANC and talk to
5 the ANC?

6 MS. GOLDRING: Yes, we did meet
7 with the ANC Board on February the 20th and they
8 did grant us approval. We actually were
9 supposed to have Ms. Robin Marlin, who is the
10 vice chair, to be here today, but I don't see
11 her.

12 BZA CHAIR JORDAN: Okay. Then we
13 would take your representation on that. Thank
14 you. Is anyone here wishing to speak in
15 support of this application?

16 Anyone wishing to speak in support?
17 Anyone wishing to speak in opposition? Anyone
18 in opposition? Then we will close this hearing
19 based upon the evidence in the record and what
20 has been deduced here today.

21 Then I would make the motion that we
22 grant the special exception on the conditions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as already read into the record. Do I need to
2 go over them again? Is it okay?

3 MR. MOY: Yes, we got it in.

4 BZA CHAIR JORDAN: Okay. Good.
5 Good. So that would be my motion.

6 ZC CHAIR HOOD: Second.

7 BZA CHAIR JORDAN: Motion made and
8 second. All those in favor of the motion
9 signify it by saying aye.

10 (Multiple ayes.)

11 BZA CHAIR JORDAN: Did I hear --

12 (Multiple ayes.)

13 BZA CHAIR JORDAN: We are
14 definitely going to have to have aye choir
15 practice. Let's try this again. All those in
16 favor of the motion signify by saying aye.

17 (Multiple ayes.)

18 BZA CHAIR JORDAN: There you go. I
19 like that harmony. Motion carries, Mr. Moy.

20 MR. MOY: Yes, staff would record
21 the vote as to five to zero. This is on motion
22 of Chairman Jordan to approve the application

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with the conditions as cited. I believe there
2 were nine conditions. Also support or rather
3 seconded, Mr. Hood. Also in support, Ms.
4 Heath, Vice Chairperson Allen and Mr. Hinkle.

5 BZA CHAIR JORDAN: Okay. And
6 please make note that Number 8 was amended
7 dropping the first sentence. And just the last
8 sentence, all landscaping on site shall be
9 maintained in a neat and healthy condition.

10 MR. MOY: Yes, we got it, sir.

11 BZA CHAIR JORDAN: Thank you. All
12 right. Then let's have a summary order.

13 MR. MOY: Thank you.

14 BZA CHAIR JORDAN: All right.
15 Appreciate it. Thank you.

16 MR. MOY: Yes.

17 ZC CHAIR HOOD: Mr. Chairman, let
18 me just note, she mentioned Commission Marlin
19 having done work, but I'm sure if there was a
20 problem she definitely would have been here.
21 Trust me.

22 BZA CHAIR JORDAN: So you really

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 went through it. Very good. Then that leaves
2 our final matter for today's docket. Mr. Moy,
3 you want to call 18725?

4 MR. MOY: Okay. The last case on
5 the docket for today is Application 18725 of
6 Rafael Romeu.

7 MR. ROMEU: You're not butchering
8 the name though.

9 MR. MOY: Thank you. 11 DCMR
10 3103.2. Mr. Chairman, this is a request for
11 variance relief from lot occupancy, rear yard
12 and nonconforming structure provisions to
13 allow the construction of a rear deck in the
14 DC/R-4 district at premises 1536 T Street
15 Northwest, square 191, lot 98.

16 BZA CHAIR JORDAN: All right.
17 Thank you. Would you begin starting from my
18 left going that way, if you'd identify
19 yourselves, please, for the record.

20 MR. TRUITT: Stephen Truitt --

21 MR. HILL: James --

22 MR. TRUITT: -- attorney for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 objectors.

2 MR. HILL: -- Hill.

3 MR. AFKHAMI: Amir Afkhami.

4 BZA CHAIR JORDAN: I'm sorry?

5 MR. AFKHAMI: Amir Afkhami.

6 MR. UTH: Robert Uth.

7 MR. ROMEU: Rafael Romeu. I'm
8 here with my wife, Larissa. We are the
9 property owners.

10 MR. SULLIVAN: Marty Sullivan of
11 the law firm of Sullivan and Barros.

12 MR. MORRIS: F. William Morris with
13 Morris Architects, architect for the
14 proponent.

15 BZA CHAIR JORDAN: Okay. So we
16 originally granted party status to the three
17 requests for party status, but we consolidated
18 them and they're being represented by Mr.
19 Truitt. We also requested that you go out and
20 have a conference. And can you provide me, did
21 anything come from that?

22 MR. SULLIVAN: None at all, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Chairman.

2 BZA CHAIR JORDAN: Okay. Then
3 we'll proceed on with the hearing. I think the
4 Board understands the project, Mr. Sullivan.
5 But it's certainly your case to present
6 whichever way you want to present it.

7 You know, you might want to
8 particularly hit those key points you think
9 that are special, but, you know, you don't have
10 to go through every detail unless you feel it's
11 necessary.

12 And you certainly have the right to
13 do some things in rebuttal if necessary. But
14 I think the Board is quite conscious and
15 knowledgeable of your filing. As you're
16 aware, OP has made the recommendation about not
17 approving, so you might want to hit those
18 things. Okay?

19 MR. MOY: Mr. Chairman, it's a very
20 quick, is there a desire to set a time limit or
21 do you just keep them under --

22 BZA CHAIR JORDAN: I'm so glad that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you did that. How much time do you think you
2 need, Mr. Sullivan?

3 MR. SULLIVAN: I think 20 minutes
4 would be safe. I would like to be short --

5 BZA CHAIR JORDAN: Yes --

6 MR. SULLIVAN: -- on that.

7 BZA CHAIR JORDAN: -- I think that
8 should be more than enough for this case and
9 both sides have 20 minutes of presentations.
10 Because I think we've read the briefs, we know
11 where we are. We just want to hear if there's
12 something in addition. Thank you. So 20
13 minutes, please. Yes. Yes.

14 MR. SULLIVAN: Thank you, Mr.
15 Chairman. My name's Marty Sullivan with the
16 law firm of Sullivan and Barros here on behalf
17 of Rafael Romeu and Larissa Leony, Application
18 Number 18725.

19 I have a, just to hit the points as
20 you said, I know there's a of information in the
21 record, I have a PowerPoint and I'd like to pass
22 out a hard copy of that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TRUITT: Thank you.

2 MR. SULLIVAN: I'm not sure if I
3 have enough copies, but we can, I'm happy to
4 provide more.

5 BZA CHAIR JORDAN: You did give one
6 to the --

7 MR. SULLIVAN: I did.

8 BZA CHAIR JORDAN: Okay.

9 MR. SULLIVAN: We did, yes. We're
10 looking at a request and as you know the lot
11 occupancy restriction is 60 percent. We're
12 currently at 72, we're requesting 97 percent.
13 In the rear yard, 20 feet's required, 14 feet
14 plus a little bit is the current rear yard size.

15 We're requesting .5 feet and also
16 requesting relief from 2001.3 for additions to
17 a nonconforming structure as to lot occupancy.

18 I won't go through all the
19 exceptional conditions. Obviously, our first
20 and foremost it's the zoning process is what led
21 us to this point, although there are several
22 others factors involved.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But this lot including the lot size
2 and the fact that the deck was there previous,
3 the easement restriction, the garage
4 encroachment and also the building's internal
5 configuration which doesn't have any access to
6 the rear yard from the first level, the living
7 level on the house. Mr. Romeu will provide
8 some testimony to go along with these slides
9 briefly. Mr. Romeu.

10 MR. ROMEU: Yes, thank you, Mr.
11 Chairman. We bought this house in September
12 2012. This is the first house that either me
13 or my wife buy.

14 At the advise of my realtor we
15 contracted Mr. Morris, a reputable architect,
16 to kind of walk us through what's available
17 because our house has a glaring kind of problem
18 that we don't have a back door.

19 We only have a front door. And so
20 the yard is just sitting isolated, can't use it.
21 And what we did is took contracts. The first
22 contract would investigate what our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 possibilities were.

2 That took us from November of 2012
3 until February of 2013 when the Office of Zoning
4 confirmed in writing to my architect that, in
5 fact, we could build a deck as a matter of right.

6 BZA CHAIR JORDAN: We really
7 understand that whole history --

8 MR. ROMEU: Sorry.

9 BZA CHAIR JORDAN: -- the whole
10 thing that happened with DCRA, the contract,
11 the contact periods, the timelines, so.

12 MR. ROMEU: All right.

13 BZA CHAIR JORDAN: I mean --

14 MR. ROMEU: So --

15 BZA CHAIR JORDAN: -- unless the
16 Board wants to hear it again. I mean, it's in
17 the files.

18 MR. ROMEU: Oh, so basically what
19 we're trying to do is to build a deck that we
20 can use from the main level of our house. To
21 make sure that we respect the easement that
22 these gentlemen have a right to use, but also

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that we can use our yard.

2 Because our yard butts up against
3 the alley, I have no buffer. So when my
4 children, you know, when I have kids, my
5 children can't play in my yard because they'll
6 run into the traffic of the alley.

7 We have no security there where, you
8 know, there's homeless people, a car was stolen
9 three days before the ANC meeting, a bike was
10 stolen two days before the ANC meeting. I have
11 those captured on my security camera.

12 So, you know, by elevating the deck
13 and kind of trapping the kids, they can't get
14 out and I can use, it's the level I can use off
15 my kitchen and I'll also have a parking space.

16 That's what I'm trying to do. I
17 have, you know, moved the columns in and put a
18 bollard on the other side to make absolutely,
19 literally, iron clad guarantee that they will
20 have access to their easement under all
21 conditions as far as I can tell and --

22 MR. SULLIVAN: Mr. Romeu, we've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 talked a little bit about the practical
2 difficulty as a result of relying on the
3 building permit that was issued.

4 MR. ROMEU: Right. But --

5 MR. SULLIVAN: So, in this picture
6 is what was there when you bought the house, is
7 that correct?

8 MR. ROMEU: Right. This is what my
9 house looked like when I bought it. This is my
10 yard, but I have no way to get there. I have
11 to walk out of my house through the front door,
12 go down the alley and then open that gate that's
13 on the far left and come into my yard. There's
14 no stairs, there's no door, there's no way to
15 get to that yard. Go ahead and flip it.

16 MR. SULLIVAN: And this is your
17 yard after you began work under the building
18 permit, is that correct?

19 MR. ROMEU: Right. So when I got
20 the permit, I started to dig the foundations and
21 so on. The yard is completely destroyed at
22 this point and it's still fenced off which is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 good because it keeps the property safe and
2 secure, but I have multiple, like over a half
3 a dozen like three/four foot holes in the ground
4 and the rock has been removed.

5 So I've paid, I don't know if you
6 want to get to that part, yes, I've paid. It
7 would cost me about \$8,000 to restore any kind
8 of yard.

9 I paid \$32,500 to a contractor who
10 bought Brazilian Ipe wood that is, frankly,
11 unusable for anything other than a deck because
12 it's very hard. And so I submit the evidence.

13 And I bought \$15,000 worth of
14 architectural services to design the deck and
15 the process with this. Now, my yard, as you can
16 see here, is very small. And my house is half
17 the size, the entire lot, you can see the arrow,
18 is half the size.

19 MR. SULLIVAN: We're on slide 19
20 right now.

21 MR. MOY: 19's there.

22 MR. ROMEU: On slide 19. It's half

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the size of a regular lot. So for example, the
2 house right on the corner of 16th and T covers
3 100 percent of its footprint.

4 And its two neighbors, including
5 Mr. Uth sitting right here, cover, I mean, a
6 very high percentage. I don't know if it's 90
7 or 95, but the dog legs extend all the way to
8 the back.

9 And, you know, the fact that my
10 kitchen and my main, I have no access to the
11 basement from the first floor of my house.
12 There's a rental unit. So there's no stairs
13 going down, that's it.

14 And I have no access out the back,
15 so that's why the house has always had a deck
16 historically, and a deck that size. And you
17 guys have seen the pictures, I'm sure. I don't
18 know, are we flipping too fast? All right. So
19 go ahead, right.

20 MR. MOY: You could mess around
21 that.

22 BZA CHAIR JORDAN: Let me ask, how

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 old are you children?

2 MR. ROMEU: No, we're having kids
3 now --

4 BZA CHAIR JORDAN: Oh --

5 MR. ROMEU: -- so.

6 BZA CHAIR JORDAN: -- okay. Oh.

7 MR. ROMEU: They're en route.

8 BZA CHAIR JORDAN: En route? Got
9 you.

10 MR. SULLIVAN: Mr. Romeu, would you
11 talk a little bit about, well, first let's about
12 this, what we could, and then we'll go back to
13 the Office of Planning's concerns.

14 So I'll talk about this part of it.
15 As the Board knows, the private easements are
16 not within the Board's jurisdiction because
17 that's another area of law.

18 It would be area of easement law to
19 determine whether or not the easement's being
20 impeded in such a way that impacts the validity
21 of the existing easement.

22 However, we haven't touched the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 easement. We moved the columns off the
2 easement. It's actually more open than it was
3 before because there was a privacy fence there
4 before and it was just the three feet. Now,
5 there's two columns where there was a privacy
6 fence. I'm not sure what slide it is I want to
7 show.

8 MR. ROMEU: Oh, yes. And we used
9 to originally, when I had spoken with Mr. Hill,
10 who's my immediate neighbor, he had shared a
11 concern that I also had which was that people
12 wander into our yards and urinate at night or
13 do, you know, commit crimes.

14 And so I was going to put gates to
15 protect not only my property, but everyone
16 else's. And from the appeal, he complains if
17 I remove the gates, I've moved in the columns,
18 I --

19 BZA CHAIR JORDAN: Where were you
20 going to put gates? Where?

21 MR. ROMEU: Just around the edge of
22 the property with a door for people to come in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and out, but --

2 BZA CHAIR JORDAN: You mean --

3 MR. ROMEU: -- you know --

4 BZA CHAIR JORDAN: -- right where
5 the alley portion?

6 MR. ROMEU: Yes, just to shut off
7 the alley --

8 BZA CHAIR JORDAN: Okay.

9 MR. ROMEU: -- access into the
10 property, but those have been removed.

11 BZA CHAIR JORDAN: Is this a
12 driveable alley or is it a walkable alley?

13 MR. ROMEU: It's driveable.

14 BZA CHAIR JORDAN: Driveable,
15 okay. Okay. What's the dimensions of the
16 alley? I forget. I have it in my notes here
17 somewhere.

18 MR. MORRIS: Ten feet --

19 MR. ROMEU: Yes. Yes --

20 MR. MORRIS: -- usual width.

21 MR. ROMEU: -- ten feet wide.

22 BZA CHAIR JORDAN: Ten feet, okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MORRIS: Yes.

2 MR. ROMEU: Yes, so --

3 MR. SULLIVAN: You don't have these
4 slides in hard copy yet. These were with our
5 rebuttal.

6 BZA CHAIR JORDAN: Okay.

7 MR. SULLIVAN: I'll pass those out
8 as well. This is a view of the easement.

9 BZA CHAIR JORDAN: We do have --

10 MR. SULLIVAN: You have that in the
11 pre-hearing statement.

12 BZA CHAIR JORDAN: Okay.

13 MR. SULLIVAN: So we've protected
14 the easement, we've moved the columns. We got
15 rid of the gate, although, we think that would
16 actually be a good thing to have for security
17 purposes.

18 BZA CHAIR JORDAN: I can't read
19 that fast, no.

20 MR. SULLIVAN: Sorry. Light and
21 air.

22 BZA CHAIR JORDAN: Well, which one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are you on?

2 MR. SULLIVAN: I'm going to go to
3 slide 27.

4 BZA CHAIR JORDAN: Okay.

5 MR. SULLIVAN: We took out, from
6 the sun studies that were included with the
7 pre-hearing statement, which went all the way
8 up to, I believe, 1:09 p.m. was the --

9 BZA CHAIR JORDAN: Right.

10 MR. SULLIVAN: Well, that's beyond
11 that there's no impact whatsoever. So we took
12 out the four times where there was the greatest
13 impact. And if Rafael or Bill, if you want to
14 explain --

15 MR. ROMEU: Yes.

16 MR. SULLIVAN: -- the difference
17 between those two.

18 MR. ROMEU: Yes. Basically, for
19 each quarter March 21st upper left, June 21st
20 upper right, September 21st lower left and
21 December 21st lower right.

22 We showed two pictures, a sun study

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the existing structure and the sun study of
2 what it would look like proposed. And as you
3 can see, basically, there's a little triangle
4 of shadow on the window belonging to Mr. Hill,
5 is --

6 BZA CHAIR JORDAN: Well, which one
7 are you looking at? Which one are you looking
8 at?

9 MR. ROMEU: So for example, March
10 21st, upper left. If you see the stairs --

11 BZA CHAIR JORDAN: Oh, I can see.

12 MR. ROMEU: -- for his deck --

13 BZA CHAIR JORDAN: Yes.

14 MR. ROMEU: -- and then to the right
15 there's a window, when you look to the proposed,
16 you can see that little triangle.

17 BZA CHAIR JORDAN: Okay.

18 MR. ROMEU: That's the largest
19 impact we could find, you know, broadly
20 speaking. It's the same around every day at
21 about 11:00 a.m. or about 10:30 a.m.

22 MR. TRUITT: Yes, there is.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SULLIVAN: Some benefits of the
2 project include this will provide a parking
3 space while still retaining an exterior living
4 level on the first floor where Mr Romeu's living
5 level is.

6 The easement, what I mean by the
7 easement is being more open instead of a fence.
8 If you had to, if more people had run through
9 or if you had to carry something larger through
10 it, you've got an open space if there's not a
11 car there. But yet --

12 BZA CHAIR JORDAN: But it's an open
13 space. You'd have your fence that's short of
14 your corner because you left the corner open.
15 And so you technically could actually put a
16 fence there.

17 MR. SULLIVAN: We could put a
18 fence. As long as the easement's --

19 BZA CHAIR JORDAN: Yes, but I'm
20 just --

21 MR. SULLIVAN: -- in. Yes.

22 BZA CHAIR JORDAN: Right. You

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 could actually put a fence up to, taking that
2 little corner out --

3 MR. SULLIVAN: Well --

4 BZA CHAIR JORDAN: -- which is kind
5 of --

6 MR. SULLIVAN: -- we could --

7 BZA CHAIR JORDAN: -- open now.

8 MR. SULLIVAN: -- but the --

9 BZA CHAIR JORDAN: No, no. I'm
10 just asking.

11 MR. SULLIVAN: Yes, I understand.
12 Yes, right. The idea was to leave it open.

13 BZA CHAIR JORDAN: Yes. Yes, but
14 I'm just -- okay.

15 MR. SULLIVAN: And part of the, and
16 this gets into a little bit of part of the
17 shortening the deck --

18 BZA CHAIR JORDAN: Let me ask one --

19 MR. SULLIVAN: Sure.

20 BZA CHAIR JORDAN: -- more
21 question. So actually your lot is that full
22 lot, but it's cut off because it's on the corner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 for your real use. But you actually could
2 expand it, the back of your fence, all the way
3 up, is that right?

4 MR. ROMEU: That's right.

5 BZA CHAIR JORDAN: Got it. But you
6 leave it open. Is that the car port? No.

7 MR. ROMEU: So we leave the whole
8 area open to bring the car underneath the deck
9 --

10 BZA CHAIR JORDAN: Got it.

11 MR. ROMEU: -- the proposed --

12 BZA CHAIR JORDAN: Okay.

13 MR. ROMEU: -- deck.

14 BZA CHAIR JORDAN: Yes.

15 MR. ROMEU: And then we put the
16 columns to the delimit where the car can go to
17 ensure that we don't block their access.

18 BZA CHAIR JORDAN: Okay. Yes,
19 proceed. I'm sorry.

20 MR. SULLIVAN: Thank you. Do you
21 want to explain that on this --

22 MR. ROMEU: Yes. So --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SULLIVAN: -- slide?

2 MR. ROMEU: -- on the slide we're
3 showing --

4 BZA CHAIR JORDAN: Do we have that
5 slide?

6 MR. SULLIVAN: You will. I have it
7 in my --

8 BZA CHAIR JORDAN: That's okay.

9 MR. SULLIVAN: -- rebuttal
10 package.

11 BZA CHAIR JORDAN: Oh no, just go
12 ahead. Just go ahead.

13 MR. ROMEU: So basically, what we
14 did was we went to the ANC and these individuals
15 never contacted me with their actual concerns.
16 We just find out at ANC meetings and --

17 BZA CHAIR JORDAN: Oh.

18 MR. ROMEU: -- things like that.
19 So in this particular meeting that we had a
20 couple weeks ago, they complained that the car
21 could cut off --

22 BZA CHAIR JORDAN: Excuse me. Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Truitt, could you grab that sign for us, please,
2 that poster right here? Yes, thank you.

3 MR. TRUITT: This one?

4 BZA CHAIR JORDAN: Yes, just move
5 that back.

6 MEMBER HEATH: Can you move the
7 whole flat surface?

8 VICE CHAIR ALLEN: Because I can't
9 see the screen.

10 MR. TRUITT: Do you want me to move
11 the whole --

12 BZA CHAIR JORDAN: The whole, yes,
13 move that whole thing for us. Thank you --

14 MEMBER HEATH: Thank you.

15 BZA CHAIR JORDAN: -- very much.
16 Yes.

17 MR. ROMEU: The columns originally
18 were going to be adjacent to the, basically, at
19 the edge of the property.

20 BZA CHAIR JORDAN: Do we have a
21 pointer?

22 MR. ROMEU: Yes. Bill, can you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 illustrate for me over there?

2 BZA CHAIR JORDAN: We do have a
3 pointer if you would like --

4 MR. ROMEU: I can point with the
5 mouse.

6 BZA CHAIR JORDAN: -- Mr. Morris.
7 Mr. Morris, if you want to use the pointer.

8 (Off the record comments.)

9 MR. ROMEU: So, originally, we were
10 going to put the columns --

11 BZA CHAIR JORDAN: Can I see it?
12 Is it on? Have you turned it on? Is it on?

13 MR. ROMEU: No, but I could use the
14 mouse. Originally --

15 MEMBER HEATH: Use the mouse.

16 BZA CHAIR JORDAN: Okay. Let's
17 try it again. Oh --

18 MR. ROMEU: Sorry.

19 BZA CHAIR JORDAN: -- that's not
20 good. Oh, we can use the mouse. Okay. You
21 can mouse it.

22 MR. ROMEU: I'll use the mouse.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Originally, this column here was going to be
2 here and down here and this column here was
3 going to be down here all the way at the edge
4 of the property to make it easy for me to kind
5 of turn in, but the car was always going to be
6 -- this is my parking space and then this would
7 remain open.

8 And what we tried to do between the
9 ANC meeting and today was say look, let's move
10 the column over to here, right there and then
11 the other one right here.

12 And now, the car, it'll be harder
13 for me to park for two reasons. The first is
14 that the column is now, instead of being here
15 is here. And the second is that I had to move
16 it back to be able to open my car door, so.

17 BZA CHAIR JORDAN: Do you have to
18 back into that to park? How do you know --

19 MR. ROMEU: I'm going to find out if
20 and when it's built. But in principle, I had
21 to move the column back to be able to open the
22 door. And, basically, this guarantees that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the car can never be in the area.

2 And then I put a bollard on this side
3 to further ensure that nobody could, you know,
4 drive in from this side and put their car in
5 their way. So, you know, to the extent that
6 they have concerns about the easement, I don't
7 see how those concerns remain.

8 BZA CHAIR JORDAN: Because --

9 MR. ROMEU: The car cannot go into
10 the easement. It cannot.

11 BZA CHAIR JORDAN: But you're not
12 affecting the easement in any way?

13 MR. ROMEU: Yes.

14 BZA CHAIR JORDAN: Okay. Those
15 pillars are not into the -- you've moved the
16 columns and they're not into the easement?

17 MR. ROMEU: No, they're not and,
18 frankly, the easement is three feet off the end
19 of the property line. I have the garage
20 encroaching my property on eight inches.

21 I am out of courtesy giving them
22 three feet from the edge of the garage. So I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have actually moved the columns eight inches
2 into my property. It's, well frankly, it's all
3 my property, but eight inches into the area
4 that's not considered the easement of my
5 property.

6 BZA CHAIR JORDAN: Got you. Okay.

7 MR. SULLIVAN: Regarding the
8 integrity of the zone plan, this application is
9 unique for several different reasons.

10 BZA CHAIR JORDAN: All right. Do
11 we need the lights back on or what are we doing?

12 MR. SULLIVAN: First of all, the
13 start of the show, the zoning process that was
14 involved in this and the building permit on
15 which the applicant relied was obtained through
16 a extraordinarily deliberative and diligent
17 process over a course of eight months.

18 This wasn't a counter job that
19 somebody accidentally approved and then when they
20 took a closer look at it, then they changed
21 their mind.

22 He hired the architects

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 specifically and only for the task of
2 ascertaining the zoning feasibility of this.
3 And when they got a verbal okay from zoning
4 staff, moved forward with another contract with
5 the architect and then that eventually ended up
6 in a building permit.

7 Throughout this time, Mr. Romeu,
8 did you hear any objections from your
9 neighbors?

10 MR. ROMEU: No, I discussed with
11 them on several occasions both that I would have
12 a gate. And they, Mr. Hill offered to pay for
13 the gate or help pay. And, obviously, I'm not
14 going to take my neighbors money for a project
15 that belongs to me.

16 I also discussed with them the
17 ongoing issues of people wandering in. I
18 remember one night, for example, he was
19 grilling and I heard a noise.

20 So I went over to his yard to see
21 what was going on and he was there and we
22 discussed the issue that sometimes he's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 grilling and people wander into his yard
2 through my yard.

3 I had also discussed this with Mr.
4 Afkhami and he was also supportive of the issue
5 as far as I could see. And more importantly,
6 there were no objections.

7 So in August, Mr. Hill received a
8 full set of plans and I walked him through the
9 yard, through the construction site. He
10 didn't raise a single objection.

11 The first notice I got was, I was
12 with my job in Europe and it was 4:30 in the
13 morning and my wife called me because he had
14 shown up at my house when my wife was home alone
15 on a Sunday night at 10:00 p.m. with a cease and
16 desist letter and, basically, not only handed
17 her the letter, but sat there and began to tell
18 her that we were in trouble, that it was
19 illegal.

20 And I want to make sure I get the
21 words right because this is being recorded.
22 But he said that we were to something to the --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. LEONY: That we were breaking
2 the law.

3 MR. ROMEU: That we were breaking
4 the law, that we were in big trouble, that we
5 had violated the law. He left her in tears. I
6 had a call at 4:30 in the morning.

7 I had to get back on a plane. The
8 soonest I was able to get back into the United
9 States. It was 4:30 in the morning on a Monday
10 morning in Spain. I was here by Tuesday night
11 and I had, you know, I started retaining
12 attorneys to see what was going on.

13 By Wednesday night I was getting
14 emails from Mr. Hanlon in Bankruptcy Center at
15 verizon.net or whatever his email his, showing
16 me these appeals and that I had just basically
17 entered the legal process. And I have not
18 looked up since.

19 MR. SULLIVAN: So that was the
20 first --

21 MR. ROMEU: That was the first --

22 MR. SULLIVAN: And didn't --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ROMEU: -- time.

2 MR. SULLIVAN: -- notice any
3 opposition.

4 MR. ROMEU: These people never took
5 the time to, you know, come across through the
6 yard and tell me I don't like your project, I
7 have a problem with your gate, nothing. And I
8 walked, and in particular, my abutting
9 neighbor, Mr. Hill, through the project in
10 August.

11 MR. SULLIVAN: Now, what other
12 actions did you take in the reliance on the
13 building permit? Did you enlist a contractor
14 or --

15 MR. ROMEU: Yes, I --

16 BZA CHAIR JORDAN: Yes, your record
17 is already in the record and if you want to,
18 you've got another minute. I just want to tell
19 you the best way to use your minute.

20 MR. SULLIVAN: Can we talk about,
21 the Office of Planning has said there's a
22 practical difficulty. But there's only a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 practical difficulty for a certain size deck.
2 We don't know what that size is, but can you talk
3 about the practical difficulty in shortening
4 the deck as it was originally approved in the
5 building permit?

6 MR. ROMEU: Yes, I mean, basically,
7 to change the deck now would mean to, yet again,
8 hire another set of plans from the architect.
9 So this \$32,000 in materials can be used, but
10 to the extent that I start shortening the deck,
11 I start wasting this. And so that money is gone
12 forever.

13 I have to redo plans and the area of
14 my yard, I lose one-third of the deck,
15 basically. It becomes nearly unusable. It's
16 like a seven or six-foot area that I'm going to
17 be left with and this is just being
18 expropriated. I mean there's no other word for
19 it.

20 It's my property. I realize that
21 people have a right to pass through it, but that
22 doesn't mean I relinquish my property rights

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 over it. And I just want to understand what the
2 objection is. I don't know where to go.

3 MR. SULLIVAN: And what about the
4 fact of the internal configuration. Do you
5 need to provide a three-foot wide staircase?

6 MR. ROMEU: Yes, I'm going to lose
7 the first three feet of the deck to the stairs,
8 then I'm going to lose the last three feet of
9 the yard or more to the easement and then,
10 eventually, I'm left with a little strip of deck
11 because I can't get from inside my house, I
12 cannot get to the basement. There's not
13 stairs.

14 MR. SULLIVAN: And is that a unique
15 condition as compared to your neighbors because
16 of the --

17 MR. ROMEU: Right.

18 MR. SULLIVAN: -- living level?

19 MR. ROMEU: So everyone, if you
20 look at the building plans, Mr. Hill, my
21 abutting neighbor, has his kitchen on the
22 ground floor. So he can use the full, his

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 entire yard is his patio. It's the equivalent
2 of his deck off his kitchen.

3 Mr. Afkhami has an addition to his
4 house which makes it bigger than mine and so,
5 he's using the majority of his yard. And, you
6 know, the fact that I have no buffer from the
7 alley is a serious concern.

8 Any space that I lose off my deck is
9 space that I've lost forever because, you know,
10 my kids can't use it, there's people wandering
11 through that alley at all times.

12 Like I said, I mean, I have video of
13 people stealing a car and stealing a bike two
14 days before the ANC meeting which was just a few
15 weeks ago.

16 MR. SULLIVAN: Do you think having
17 the deck go all the way to the end would improve
18 the security situation by having it appear to
19 be somebody's property rather than in --

20 MR. ROMEU: Yes, I mean --

21 MR. SULLIVAN: -- the alley?

22 MR. ROMEU: -- it won't look like a,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 kind of like a dark alley anymore. It'll be my
2 property and I'll be out there and people will
3 be, you know, circulating around it. So this
4 is the way to go, in my view.

5 MR. SULLIVAN: Thank you.

6 BZA CHAIR JORDAN: If with a
7 shortening deck has been discussed, what's the
8 occupancy? What's the percent of occupancy?

9 MR. SULLIVAN: Well, we're at 72
10 already.

11 BZA CHAIR JORDAN: Right. And if
12 you shorten the deck?

13 MR. SULLIVAN: If we shortened it,
14 I don't know. No number --

15 BZA CHAIR JORDAN: That's --

16 MR. SULLIVAN: -- has been
17 discussed, but I would imagine it would be
18 around 85 or so. It wouldn't -- or maybe
19 between 85 and 90.

20 MR. MORRIS: That's a good range.
21 Yes.

22 MR. SULLIVAN: And our position on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that is that it would make no change in any
2 potential impact on neighboring properties to
3 have that deck.

4 It's in the area that's furthest
5 away from their properties. In fact, it may be
6 just as much a benefit to them for the security
7 purposes.

8 BZA CHAIR JORDAN: All right.
9 Thank you. Board, any questions of the
10 applicant? I think we kind of asked those as
11 we went along. Mr. Truitt, any cross
12 examination that you --

13 MR. TRUITT: Yes --

14 BZA CHAIR JORDAN: -- would like to
15 ask?

16 MR. TRUITT: -- Your Honor. Mr.
17 Romeu, when you bought your house, it had no
18 deck on it, did it?

19 MR. ROMEU: No.

20 MR. TRUITT: And I think you
21 decided that you wanted the deck and the parking
22 space, correct?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ROMEU: I decided I would hire
2 an architect to explore what my possibilities
3 were.

4 MR. TRUITT: And you're not an
5 architect yourself, are you?

6 MR. ROMEU: No.

7 MR. TRUITT: So you relied upon
8 this architect in order to navigate, as it were,
9 the process of finding out whether you could get
10 a building permit?

11 MR. ROMEU: Yes. I mean, that's
12 correct. Certainly, I wouldn't be able to do
13 it, so I hired him.

14 MR. TRUITT: And you relied upon
15 his expertise?

16 MR. ROMEU: I relied, yes, on his
17 expertise.

18 MR. TRUITT: Were you aware that he
19 was not licensed in the District of Columbia?

20 MR. ROMEU: I'm aware that he -- to
21 my knowledge he is. His firm is licensed in the
22 District of Columbia, but I don't know.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TRUITT: Well, the District of
2 Columbia doesn't license firms, does it?

3 MR. ROMEU: Sir, I'm not an expert
4 on architecture firms or the law --

5 MR. TRUITT: Well --

6 MR. ROMEU: -- on that.

7 MR. TRUITT: -- I take it your
8 answer is you're not sure whether he was
9 licensed or not?

10 MR. ROMEU: I --

11 BZA CHAIR JORDAN: It's been asked
12 and answered. Next question. He said he's
13 not aware of it.

14 MR. TRUITT: In your conversations
15 with Mr. Morris, did you ever discuss the
16 possibility of a procedural appeal of the
17 issuance of a building permit?

18 MR. ROMEU: A procedural -- I don't
19 even know what you're referring to. Can you
20 explain it?

21 MR. TRUITT: Well, an appeal was
22 taken from the issuance of your building

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 permit, wasn't there?

2 MR. ROMEU: Right. These folks
3 appealed it.

4 MR. TRUITT: And my question is,
5 did you ever discuss with Mr. Morris, the
6 possibility that somebody could do that?

7 MR. ROMEU: No.

8 MR. TRUITT: Never?

9 MR. ROMEU: Not that I can recall.

10 MR. TRUITT: And he never advised
11 you of the possibility of such an appeal, did
12 he?

13 MR. ROMEU: I don't recall every
14 conversation I had, but I don't recall an appeal
15 being discussed.

16 MR. TRUITT: I'd like to turn now,
17 if I could, to what you call your reliance
18 costs. First of all, how much did the wood cost
19 that you said or your contractor has said is
20 irreplaceable or difficult to sell?

21 MR. ROMEU: So I gave the
22 contractor 32,000-and change.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TRUITT: Did he spend all of
2 that on wood?

3 MR. ROMEU: My understanding is he
4 spent all of that on something and that
5 documents that I have from him is that this is
6 non-refundable.

7 MR. TRUITT: Yes. And the
8 document you have attached as the letter from
9 the contractor also has an article from the Wall
10 Street Journal attached to it, doesn't it?

11 MR. ROMEU: Yes.

12 MR. TRUITT: All right. Do you
13 remember that article saying that 500 square
14 feet of this I-P-E wood would cost about \$450?

15 MR. ROMEU: I recall they give some
16 quote, yes.

17 MR. TRUITT: So the great bulk of
18 the \$32,000 you have mentioned is not discussed
19 in your contractor's letter, is it?

20 MR. ROMEU: Well, I'm not an expert
21 on the cost of this wood. I know that I signed
22 a contract and I had to pay these amounts

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 contractually for the milestones that were met.
2 And I know that I'll have a difficult time
3 getting this money back from this contractor.

4 MR. TRUITT: Well, the milestones
5 met, let's turn to that for a second. You
6 described digging for the footings, but the
7 footings haven't been put in yet, have they?

8 MR. ROMEU: Well, the milestone is
9 to dig for the footings and then bring the
10 cement truck. And, you know, I can't pour the
11 cement truck because this work is stopped. The
12 footings are dug, yes.

13 BZA CHAIR JORDAN: The footings are
14 dug?

15 MR. ROMEU: Yes.

16 MR. TRUITT: But the footings --

17 MR. ROMEU: In fact, I have
18 pictures I'll show you right here.

19 MR. TRUITT: -- are not in --

20 BZA CHAIR JORDAN: That's good.

21 MR. TRUITT: -- are they?

22 MR. ROMEU: Yes, they're right

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 here.

2 MR. TRUITT: But they have not been
3 poured, is that correct?

4 MR. ROMEU: Right, they're right
5 there.

6 MR. TRUITT: Right where?

7 MR. ROMEU: Right behind you.

8 MR. TRUITT: So the hole is there
9 It's been dug there.

10 MR. ROMEU: Exactly. Those are
11 the footings.

12 MR. TRUITT: Now, 20 percent of the
13 payments to your contractor were due when the
14 footings are complete.

15 MR. ROMEU: Right.

16 MR. TRUITT: You paid 20 percent
17 before they were complete, didn't you?

18 MR. ROMEU: No, this is what, I
19 mean, this is how we define --

20 MR. TRUITT: Did you get --

21 MR. ROMEU: The yard has, look, I'm
22 not an expert, but my understanding is that they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 yard has, you pour the footing and you pour the
2 whole thing at once. Do you understand? So
3 you have to cover the thing. So that the work
4 is to dig the footings, but again, I'm not an
5 expert.

6 MR. TRUITT: Well, did you receive
7 a certificate from your contractor saying that
8 the footings had been complete and that the 20
9 percent payment was due or not?

10 MR. ROMEU: Bill, do you mind
11 helping me out at this time?

12 MR. MORRIS: May I answer to --

13 BZA CHAIR JORDAN: Yes, you can.

14 MR. MORRIS: The payment of
15 \$30,000--some was the initial payment, not the
16 milestone for the footings complete. The
17 footings --

18 MR. TRUITT: I'm asking about the
19 second payment.

20 MR. MORRIS: The 20 percent payment
21 application was not made because the footings
22 were not, in fact, complete.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TRUITT: So --

2 MR. ROMEU: No, no, but we paid --

3 MR. TRUITT: -- but the payment was
4 made.

5 MR. ROMEU: We made two payments.

6 BZA CHAIR JORDAN: You can go too.
7 When we generally hold questions and cross
8 examination, it's to the party and the party's
9 witnesses collectively.

10 MR. ROMEU: Okay.

11 BZA CHAIR JORDAN: So feel free to
12 add your two cent, if whoever has the firsthand
13 knowledge of what's going on.

14 MR. ROMEU: Yes. So what happened
15 is that the link that you're referring to, to
16 pour the footings would have happened exactly
17 at the same time as you pour the entire slab.

18 So you don't get two cement trucks,
19 one to pour the footing, one to pour the slab.
20 So the footings are, in this case, the work is
21 done and now we have to pour the entire cement
22 thing. This is how I understand it, you put

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 rebar and you pour it in.

2 MR. TRUITT: Well, as I understand,
3 the footing --

4 MR. ROMEU: So there's no step
5 between the footing and pouring the slab.

6 MR. TRUITT: And neither had been
7 done?

8 MR. ROMEU: Right, neither had been
9 done --

10 MR. TRUITT: Right.

11 MR. ROMEU: -- because --

12 MR. TRUITT: Thank you. Now,
13 let's turn to what's called costs due to permit
14 reliance which is your Exhibit J to the
15 pre-hearing statement.

16 MR. ROMEU: Yes.

17 MR. TRUITT: The payment we are
18 talking about of 9/27/2013 of \$13,000 was the
19 payment for the footings which have not yet been
20 put in, I believe --

21 MR. ROMEU: Yes.

22 MR. TRUITT: -- is that correct?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ROMEU: Yes.

2 MR. TRUITT: Okay. The payment
3 before, \$19,500, which is also included, I
4 believe, in your reliance costs, said deposit
5 on materials, pre-cut Brazilian planks, custom
6 door, custom steel beams, footings, I think it
7 says.

8 Now, if the deck would cost \$500,
9 and that's the attachment to your contractor's
10 letter, what makes you think all of these other
11 costs are not recoverable?

12 MR. ROMEU: Well, look, I think
13 that the \$500 cost you're referring to is not
14 anywhere near what my contractor was paying. I
15 think that a static article from the Wall Street
16 Journal is not a --

17 MR. TRUITT: Well, we will have
18 more on that later. But so, you think that the
19 exhibit that you put in is misleading in that
20 respect?

21 MR. ROMEU: No, I don't. I think
22 the exhibit that I put in is showing a custom

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ordered wood. If I had built a pine deck, you
2 could use that wood for other stuff. You could
3 build, you know, it's more fungible from one
4 project to the other.

5 But I tried to do a nice deck in Ipe
6 and there's really that the intention of the
7 article was to show that this wood is pretty
8 much used for outside construction of decks.

9 And unless, I can find a deck that
10 is exactly like mine and someone who is willing
11 to go out and buy the stuff that I bought, my
12 contractor is going to say this is all custom
13 ordered, there's no refund policy and I lost all
14 that money.

15 MR. TRUITT: Yes, but the question
16 is how much is that money and you don't seem to
17 know how much it is --

18 MR. ROMEU: Well, I --

19 MR. TRUITT: -- which is why I --

20 MR. ROMEU: -- showed you the
21 cancelled checks. It's 32,000.

22 MR. TRUITT: Not for the wood. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there's no evidence in the record, is there, as
2 to what the wood cost.

3 BZA CHAIR JORDAN: Well, you know,
4 we've kind of beat this up.

5 MR. TRUITT: Okay. I --

6 BZA CHAIR JORDAN: And I understand
7 where you're going and I understand what he's
8 saying, and it's not making points either way
9 for anybody. Let's move to the next question.

10 MR. TRUITT: Thank you for the
11 guidance. I'm going to hand you two items
12 before we go and ask if you recognize either of
13 them.

14 BZA CHAIR JORDAN: Is that
15 something that the Board has?

16 MR. TRUITT: I have copies for the
17 Board. Well, I'm going to start. Take a
18 little time to look.

19 (Off the record comments.)

20 MR. TRUITT: I can supply the rest
21 later.

22 COURT REPORTER: Mr. Truitt, if you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would also check right now, your microphone.

2 MR. TRUITT: I'm sorry.

3 BZA CHAIR JORDAN: Your
4 microphone. You can't talk unless you're on
5 the microphone. If you need to walk around,
6 which we don't welcome, you can use the hand
7 mic.

8 MR. TRUITT: Thank you. Do you
9 recognize either of these documents, Mr. Romeu?

10 MR. ROMEU: Yes, I recognize this
11 as an email and the other one as an appeal
12 timeline that I had created.

13 MR. TRUITT: You made the appeal
14 timeline yourself?

15 MR. ROMEU: Yes.

16 MR. TRUITT: At the very top right
17 under appeal timeline it indicates that date is
18 approximate, recall that because this appeal
19 was never anticipated, conversations were not
20 recorded in 2012. Were you recording
21 conversations you had with anyone?

22 BZA CHAIR JORDAN: It's not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 relevant. Next question, please. Let's go
2 on.

3 MR. TRUITT: The centerpiece, Mr.
4 Chairman, of the applicant's zoning
5 difficulties has been they did everything by
6 the book.

7 BZA CHAIR JORDAN: But here's my
8 point. Whether he recorded the conversation
9 or not, you can ask the direct question how he
10 recalls his timelines or whatever.

11 But did he record it, was he
12 recording conversations, I don't find that to
13 be relevant. So you want to make another offer
14 on that?

15 MR. TRUITT: Not without knowing
16 whether he recorded them.

17 BZA CHAIR JORDAN: Why do you need
18 to know if he recorded them? What are you
19 trying to get?

20 MR. TRUITT: It indicates a certain
21 unusual pattern of behavior in the prosecution
22 of this particular zoning here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: I don't find it
2 relevant, so I'm going to ask you to withdraw
3 that question and do another one, please.

4 MR. TRUITT: I will let the record
5 say what it says and I will move on.

6 BZA CHAIR JORDAN: Thank you.

7 MR. TRUITT: The second one says hi
8 Noah and Leo?

9 MR. ROMEU: Yes.

10 MR. TRUITT: That's an email.
11 That's your email, is it not?

12 MR. ROMEU: It is.

13 MR. TRUITT: And did you send this?
14 Who are Noah and Leo?

15 MR. ROMEU: Noah is Noah Smith, he
16 is an ANC single-member district
17 representative and Leo is Leo Dwyer, who is the
18 head of the, to my mind, the --

19 MR. SULLIVAN: Chair of the --

20 MR. ROMEU: -- architectural --

21 MR. SULLIVAN: -- committee.

22 MR. ROMEU: -- part of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 committee.

2 MR. SULLIVAN: Chair of the Zoning
3 Committee for the ANC.

4 MR. TRUITT: Well, my question to
5 you is you wrote this email to them and provided
6 some information that is attached to it, right?

7 MR. ROMEU: Yes, that's why it says
8 I'm attaching three documents.

9 MR. TRUITT: And you asked them not
10 to -- you asked them to keep the information
11 secret?

12 MR. ROMEU: I asked them not to
13 share with anyone else not copied on this email
14 because Marty handles my communication to
15 ensure that our supporting evidence is
16 disseminated in a way that is consistent with
17 our message.

18 MR. TRUITT: That's --

19 MR. ROMEU: That's why I contracted
20 an attorney, to ensure that the message that I'm
21 sending out is done in a way that is correct.
22 I'm not a specialist.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TRUITT: I understand that, but
2 I mean, if it would be useful to the Advisory
3 Neighborhood Council's deliberations, why
4 wouldn't it be also useful to the general public
5 as well.

6 MR. ROMEU: Because I don't think
7 everything that I have or everything that I've
8 done or everything I've written down is useful
9 for public information to everyone at all
10 times.

11 MR. TRUITT: Well, I'm sure that's
12 true. Now, to the best of your knowledge or
13 information, there was not a deck at the back,
14 the rear of lot 98 continuously from 1958 on,
15 was there?

16 MR. ROMEU: To the best of my
17 knowledge every or nearly every satellite
18 photograph I've seen of my house and my yard has
19 a deck of identical size to the one I'm
20 proposing to the best of my knowledge.

21 And I've provided a half-a-dozen or
22 more photos, including the photo on D.C.'s

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Property Quest database that shows in 2010 a
2 deck exactly the size of the one I'm proposing.
3 And I have it here for you to see in case you
4 haven't seen it.

5 BZA CHAIR JORDAN: You went past
6 the slide that says previous.

7 MR. ROMEU: Yes. This is it.
8 This is the Property Quest photo of the deck.
9 This is in the District of Columbia's --

10 MR. TRUITT: You --

11 MR. ROMEU: -- Property Quest
12 website.

13 MR. TRUITT: -- know for a fact that
14 there were no periods at which there was no deck
15 back there at all?

16 MR. ROMEU: Sir, I was born in 1975.
17 How could I possibly know for a fact what was
18 happening prior to my birth.

19 MR. TRUITT: Looking at pictures
20 like the ones you've just been testifying
21 about.

22 BZA CHAIR JORDAN: I --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. ROMEU: So I --

2 BZA CHAIR JORDAN: -- going to find
3 that -- what are you trying to do with this
4 questioning? We know that this picture
5 presents at some point-in-time there was a
6 deck. He indicated that he moved there in
7 2012. Where are you going? What are you
8 trying to do?

9 MR. TRUITT: If you read the
10 pre-hearing statement, Mr. Chairman, it
11 attempts to give the impression that there has
12 been a continuous deck occupying the rear of lot
13 98 ever since before 1958. But that is not the
14 case.

15 BZA CHAIR JORDAN: Okay.

16 MR. TRUITT: I think --

17 BZA CHAIR JORDAN: So we can accept
18 that proposition because I think you testified
19 you can't say how long the deck has been there
20 prior to you going, is that correct?

21 MR. ROMEU: That's correct.

22 BZA CHAIR JORDAN: And that your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testimony is that you do know that there is a
2 picture that was on D.C.'s website that
3 indicated that there was a deck at whatever
4 period of time, correct?

5 MR. ROMEU: Right. There's
6 several pictures. Here are the pictures I
7 have.

8 BZA CHAIR JORDAN: Okay. And it's
9 from various years. So --

10 MR. ROMEU: Exactly.

11 BZA CHAIR JORDAN: -- you're not
12 testifying to any other period other than what
13 you could find in the records as to what these
14 pictures represent? Okay. Does that get you
15 where you need to be, Mr. Truitt?

16 MR. TRUITT: It does. In fact, it
17 gets me through.

18 BZA CHAIR JORDAN: Okay. Good.
19 Any redirect?

20 MR. SULLIVAN: Yes, Mr. Chairman.
21 Thank you. First, Mr. Morris, quick question.
22 Your firm, could you explain the situation of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 who's licensed in your firm and --

2 MR. MORRIS: Yes.

3 MR. SULLIVAN: -- what activity
4 they undertook in this matter?

5 MR. MORRIS: Yes, we're a husband
6 and wife firm. My wife is my business partner,
7 also an architect. Her name is Paula Morris.
8 She's the architect of record. We're
9 registered in the District of Columbia and has
10 been for a number of years.

11 And she was directly involved in
12 this project and, in fact, was the person
13 speaking with Zoning staff, Historic staff at
14 DCRA and has been extensively involved in this
15 project from the very beginning until now.

16 BZA CHAIR JORDAN: We do have plans
17 or do we not, that are sealed with a Virginia
18 stamp, is that --

19 VICE CHAIR ALLEN: There's
20 something in --

21 BZA CHAIR JORDAN: Something in the
22 records indicated that it has a Virginia seal.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR ALLEN: In the --

2 MR. ROMEU: I can --

3 VICE CHAIR ALLEN: -- PowerPoint.

4 MR. ROMEU: -- answer that
5 question, Mr. Chairman. Those were taken from
6 the D.C. archives in our archival research of
7 this past project --

8 BZA CHAIR JORDAN: That's not
9 yours.

10 MR. ROMEU: -- and that was from the
11 permits that were from 2010. Not ours.

12 BZA CHAIR JORDAN: Got you.

13 VICE CHAIR ALLEN: Okay.

14 BZA CHAIR JORDAN: Pretty good.
15 Thank you. All right.

16 MR. SULLIVAN: Thank you. Mr.
17 Romeu, after hiring an architect to figure out
18 the zoning feasibility and going through an
19 eight-month process and then receiving a
20 building permit, based on the evidence of a
21 previously existing deck, did you have any idea
22 that the city could or would revoke a dually

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 issued permit?

2 MR. ROMEU: No, I had no idea. I
3 didn't know even that this process existed. I
4 didn't know what the ANC or BZA was.

5 MR. SULLIVAN: Did you spend money
6 on architecture fees in reliance on the
7 issuance of that building permit?

8 MR. ROMEU: Yes, I did.

9 MR. SULLIVAN: Did you spend money
10 with a contractor in reliance on the issuance
11 of that building permit?

12 MR. ROMEU: Yes, I spent a lot of
13 money with the contractor.

14 BZA CHAIR JORDAN: Let me. Have
15 you asked about your ability to get money back?

16 MR. ROMEU: Yes.

17 BZA CHAIR JORDAN: And what did he
18 say?

19 MR. ROMEU: He said that,
20 basically, he shrouded himself in language
21 relating to the custom nature of the order and
22 the inability to refund this and that, frankly,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to resell this stuff and to market it because
2 it's a custom order would, I think his exact
3 words were, would mean you would get very little
4 back and --

5 BZA CHAIR JORDAN: What about
6 labor? Was labor included in the
7 \$30,000-something?

8 MR. ROMEU: Yes, but that's water
9 under the bridge in terms, I mean --

10 BZA CHAIR JORDAN: How much of the
11 labor would he refund?

12 MR. ROMEU: No, no. I mean, he's
13 already spent labor to dig the foundations and
14 do all that stuff. That's what I meant. In
15 other words, 32,500 is kind of a halfway point.

16 BZA CHAIR JORDAN: So I understand
17 he did the holes for the footing. What else did
18 he do?

19 MR. ROMEU: He dug up the yard and
20 there used to be these slate tiles on there.
21 That became rubble and he brought a truck and
22 kind of took it away. And then he took delivery

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the materials and he is storing them and --

2 BZA CHAIR JORDAN: So he began to do
3 some substantial performance --

4 MR. ROMEU: Oh, yes.

5 BZA CHAIR JORDAN: -- is that what
6 you're saying?

7 MR. ROMEU: Yes. This is --

8 BZA CHAIR JORDAN: And you did ask
9 about the return and what the return would be.
10 He's saying that you're going to be very little
11 return on material because the material cannot
12 be used --

13 MR. ROMEU: Because it's custom
14 ordered --

15 BZA CHAIR JORDAN: -- just --

16 MR. ROMEU: -- and on top of that,
17 he's going to take a piece on marketing and
18 storage.

19 BZA CHAIR JORDAN: Did you have any
20 money left for labor with him?

21 MR. ROMEU: There may be some for
22 labor, but, you know, this is not a contract

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that anticipated refunds, if you know what I'm
2 saying.

3 BZA CHAIR JORDAN: I got you.
4 Okay. I'm sorry, Mr. Sullivan. Continue on
5 redirect.

6 MR. SULLIVAN: Thank you.
7 Briefly, because you are somewhat maligned on
8 the question, can you explain what you meant by
9 conversations being recorded?

10 MR. ROMEU: Right. So basically,
11 I didn't actually record a conversation. It
12 just means I don't have a record, so it's not
13 recorded. There's no record, there's no.

14 I can't prove that I had a
15 conversation with Mr. Hill. And I don't know
16 if he wants to be forthcoming about it, where
17 he said that he would help pay for the very gate
18 that he then turned and appealed.

19 I can't prove because I have no
20 record of these conversations because to my
21 mind through September of 2013 until, or to
22 October, until I received that appeal and my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 wife was visited at 10:00 p.m. with a cease and
2 desist letter, I had no idea, not one inkling
3 of complaints coming from any of the neighbors.

4 And this was nearly a year after I
5 started on this process and we had had
6 conversations about security issues, about I'm
7 going to build a deck, about I'm going to put
8 a gate. Everyone was supportive.

9 BZA CHAIR JORDAN: All right.

10 MR. SULLIVAN: In addition to the
11 amount spent for the architect and for the
12 contractor, there was some actual work done as
13 well, right? And you have an estimate from the
14 contractor to, basically, get you back to
15 square one or get you back to zero.

16 MR. ROMEU: Right. So, well, I
17 would be left in the event that I would go back
18 to not having a back door, not having stairs,
19 but at least having --

20 BZA CHAIR JORDAN: If you were
21 denied relief, is that what you're saying, Mr.
22 Sullivan?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SULLIVAN: That's correct.

2 MR. ROMEU: Right. I would still
3 have to fix --

4 BZA CHAIR JORDAN: Let me try to zip
5 through all the --

6 MR. ROMEU: Yes.

7 BZA CHAIR JORDAN: -- editorial.
8 Let's get to the point. The question is if you
9 were denied relief and you wanted to get the
10 property back to where it was prior to this
11 undertaking, what is that amount?

12 MR. ROMEU: 7,800.

13 BZA CHAIR JORDAN: All right, Mr.
14 Sullivan.

15 MR. SULLIVAN: Mr. Romeu, there was
16 four months in between the time that the
17 building permit was issued and when it was
18 revoked. Why didn't you build the deck?

19 MR. ROMEU: I didn't build the deck
20 because I was, frankly, unsure of the legal
21 process and didn't want to overstep my rights,
22 although I did have the right to build.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The permit was valid until December
2 6. I didn't, you know, I could've built the
3 deck and now we would be discussing, you know,
4 about the hardship to tear it down.

5 I said let me respect the process
6 and not go forward until I know that I'm legally
7 entitled to build this deck. And that's what
8 I've done at every step of the way.

9 MR. SULLIVAN: And if you had built
10 a deck, which you were entitled to do and
11 permitted to do, we would be here presenting
12 information on the cost to remove that deck.

13 MR. ROMEU: Right. It would be a
14 deck that would have exactly the dimensions of
15 the deck that I'm asking for, except, you know,
16 if I had pushed forward, the discussion would
17 be not centered on, it would be centered on
18 tearing down a full deck because I respected the
19 process.

20 MR. SULLIVAN: Thank you.

21 BZA CHAIR JORDAN: Is that it?

22 MR. SULLIVAN: No further

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 questions. Thanks.

2 BZA CHAIR JORDAN: Any recross?

3 MR. TRUITT: One question. Mr.
4 Romeu, how many days were the laborers at your
5 site working?

6 MR. ROMEU: They worked, I don't
7 recall exactly, three or four days.

8 MR. TRUITT: Three or four?

9 MR. ROMEU: Yes.

10 MR. TRUITT: That long?

11 MR. ROMEU: Yes.

12 MR. TRUITT: Thank you.

13 MR. ROMEU: So between September
14 26th or September 23rd we signed a contract.
15 Let's say, I don't recall exactly when they came
16 and when they didn't, but basically, between
17 September 23rd the contract was signed and
18 September 29th when Mr. Hill showed up at my
19 house at 10:00 p.m. and my wife was alone --

20 BZA CHAIR JORDAN: Look --

21 MR. ROMEU: -- that --

22 BZA CHAIR JORDAN: -- we've crossed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that. I've asked you before about the
2 editorials. Let's just --

3 MR. ROMEU: All right.

4 BZA CHAIR JORDAN: I understand it
5 was something that might have been traumatic,
6 but we're trying to move forward and it's not
7 helping you with that, okay? So your answer is
8 three or four days and you don't remember the
9 exact dates that they were there. Is that your
10 --

11 MR. ROMEU: Right.

12 BZA CHAIR JORDAN: -- response?

13 MR. ROMEU: Right.

14 BZA CHAIR JORDAN: Okay. Any
15 other requests?

16 MR. TRUITT: Nothing further.

17 BZA CHAIR JORDAN: All right. Then,
18 let's move to the Office of Planning.

19 MR. GOLDSTEIN: Good afternoon,
20 Mr. Chair, members of the Board. For the
21 record, my name is Paul Goldstein with the
22 Office of Planning. You've seen the OP

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 reports. I don't --

2 BZA CHAIR JORDAN: Right.

3 MR. GOLDSTEIN: -- want to repeat
4 everything in it. We did not support the
5 project as proposed, but we felt that there was
6 an exceptional situation leading to practical
7 difficulty to the applicant in building any
8 deck.

9 What we suggested was the applicant
10 either look at a smaller deck or somehow prove,
11 demonstrate more, the practical difficulty of
12 altering their reliance, their wood that they
13 bought or their plans, just to be able to create
14 a smaller deck.

15 In our report I should note we used
16 a \$32,500 number for the cost of the wood. That
17 sounds like that's not accurate anymore, but
18 there certainly was that amount paid from
19 what's in the record.

20 The Board asked about what would the
21 lot coverage be with cutting the deck back. I
22 did just some informal estimates. If it was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 pulled back four feet, for instance, from the
2 rear yard, keeping the same width, that would
3 be about seven percent less lot coverage.

4 So that would be about a 90 percent
5 lot coverage. That would be about a
6 seven-by-seventeen foot deck. So that's just
7 kind of one yardstick.

8 We haven't recommended a particular
9 size. We were hoping that maybe there would be
10 some kind of discussion about what size might
11 be appropriate in this circumstance. We don't
12 have a threshold size that the deck should be.

13 BZA CHAIR JORDAN: Let me ask you
14 why do you recommend a reduction?

15 MR. GOLDSTEIN: Well, you know, 97
16 percent lot occupancy and half-a-foot rear yard
17 is an exceptional amount of coverage and an
18 exceptionally small amount of rear yard.

19 If this had come, originally, if
20 there'd been no reliance, there'd been no
21 permit, I don't think there's any way we would
22 have supported this design at all.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Under the circumstance, we felt
2 that there was enough reason to support that a
3 deck should exist. They relied on a permit.
4 We think there was reasonable reliance, but
5 what we're pushing the applicant to do is to see
6 can they modify this to make it less
7 non-conforming.

8 We don't typically say it has to be
9 this size of non-conforming versus that size.
10 We're just hoping to create a less
11 non-conforming deck.

12 BZA CHAIR JORDAN: And doesn't
13 under the rules and under the various case
14 holdings, a detrimental reliance would offset
15 a practical difficulty showing because a
16 detrimental reliance would also absorb the
17 practical difficulty and usually is used in
18 undue hardship it can offset it, correct?

19 MR. GOLDSTEIN: I don't know that
20 detail.

21 BZA CHAIR JORDAN: Okay. All
22 right. I didn't know if you -- all right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 That answers why it wasn't in your report.
2 Okay. Good.

3 ZC CHAIR HOOD: Mr. Chairman?

4 BZA CHAIR JORDAN: Yes.

5 ZC CHAIR HOOD: Mr. Goldstein,
6 you've heard some dialog today. Does that
7 change any of your report?

8 MR. GOLDSTEIN: Well, there was
9 some more testimony on their practical
10 difficulty. I don't know if I'm quite there
11 yet as far as seeing why they can't create a
12 smaller deck at this point.

13 ZC CHAIR HOOD: And, Mr. Goldstein,
14 typically, have you been out to this site?

15 MR. GOLDSTEIN: Twice.

16 ZC CHAIR HOOD: Okay. All right.
17 That's good to hear. Because if not, well, I
18 still share the Chairman's concern about
19 recommending a size. Okay, thank you. Thank
20 you, Mr. Chairman.

21 BZA CHAIR JORDAN: Thank you, Mr.
22 Hood. Additional questions of Mr. Goldstein,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Board? Vice Chair is pondering. She was into
2 this real deep thought about this question, Mr.
3 Goldstein. Okay.

4 VICE CHAIR ALLEN: I really am. I
5 guess, clearly there was a deck of this size
6 there in prior years, so I'm still questioning
7 the suggestion to make it smaller.

8 I'm just trying to understand. I
9 mean, bottom line, you're saying that it just
10 to make it less non-conforming, that's really
11 the impetus for that suggestion?

12 MR. GOLDSTEIN: Yes, I think two
13 things. One, make it less non-conforming and
14 two, the deck doesn't exist. It was taken
15 down. Just because it was there at one point
16 in the past, does not mean you can rebuild it
17 exactly as it was.

18 BZA CHAIR JORDAN: Yes.

19 VICE CHAIR ALLEN: Yes.

20 BZA CHAIR JORDAN: Okay.

21 VICE CHAIR ALLEN: Okay. Thank
22 you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Any additional
2 questions of Mr. Goldstein, Board? I don't
3 meant to cut you off. Is that good enough for
4 your testimony?

5 MR. GOLDSTEIN: That's good
6 enough.

7 BZA CHAIR JORDAN: All right.
8 Now, and we really appreciate it. And, you
9 know, I really commend you for the work that you
10 do, especially going out to the sites. You
11 seem like you do a lot more than some other folks
12 and I really appreciate it.

13 ZC CHAIR HOOD: Mr. Chairman, I
14 want to echo that. Mr. Goldstein is making
15 sure people get their reports and I was glad to
16 hear you went out to the site.

17 BZA CHAIR JORDAN: And, you know,
18 we know the pressures that everybody has, but
19 I do appreciate your reports. Mr. Sullivan,
20 any questions to Office of Planning?

21 MR. SULLIVAN: Yes, Mr. Chairman.
22 Thanks.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Yes.

2 MR. SULLIVAN: Mr. Goldstein, you
3 do agree though, that at 97 percent relief can
4 be granted at 97 percent without substantial
5 detriment to the public good, is that correct?

6 MR. GOLDSTEIN: Well, I think there
7 was certainly the shadow study. I think was
8 helpful. The privacy screen I think was
9 helpful. I didn't really reach that prong as
10 much because I, you know, it doesn't satisfy the
11 uniqueness to practical difficulty. You
12 really don't get to the third prong.

13 MR. SULLIVAN: But you do agree it
14 did satisfy the practical difficulty test?
15 You just wanted a smaller number?

16 MR. GOLDSTEIN: Correct.

17 MR. SULLIVAN: At what point does
18 the practical difficulty go away or reappear?
19 What --

20 MR. GOLDSTEIN: Yes, as I
21 mentioned, I don't have a number in mind.

22 MR. SULLIVAN: And wouldn't that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 question go more towards prong three and the
2 substantial detriment to the public good rather
3 than the practical difficulty?

4 MR. GOLDSTEIN: It might go to
5 both.

6 MR. SULLIVAN: I have no further
7 questions.

8 BZA CHAIR JORDAN: Okay. Mr.
9 Truitt, any questions of Office of Planning?

10 MR. TRUITT: Yes, thank you. Were
11 you aware when you made your conclusion in the
12 report to the effect that there were reliance
13 expenses here, that the wood which supposedly
14 is difficult to resell, was a very, very minor
15 part of the cost of the 32,000?

16 MR. GOLDSTEIN: I don't believe
17 I've heard testimony that it was a very, very
18 minor cost. But I do understand that it wasn't
19 the full cost.

20 MR. TRUITT: And --

21 MR. GOLDSTEIN: I understand that
22 now, now that it's been clarified.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TRUITT: If it turned out there
2 was independent testimony to indicate that the
3 cost was say, \$500/\$600 would that change your
4 recommendation?

5 MR. GOLDSTEIN: I --

6 BZA CHAIR JORDAN: Which
7 recommendation are you talking about?

8 MR. TRUITT: The recommendation
9 that there was something special about the
10 reliance of the applicant here in terms of costs
11 that he had incurred that warranted zoning
12 relief.

13 BZA CHAIR JORDAN: Okay. I think
14 he has recommended that we deny it because he
15 says there hasn't been a showing of practical
16 difficulty. But, why don't you answer the
17 question now.

18 MR. GOLDSTEIN: I don't believe it
19 would change my opinion. There certainly were
20 substantial costs incurred.

21 MR. TRUITT: Okay. Let me ask you
22 a more general question related to your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 statement that just because there was once a
2 deck there doesn't mean that there should be one
3 forever. I believe that sort of summarizes
4 what you said.

5 My question is what is the role from
6 a planning standpoint of the non-conforming
7 structure and use regulations? What is their
8 purpose?

9 MR. GOLDSTEIN: Are you
10 specifically asking 2001.3, that provision,
11 the expansion of a non-conforming structure?

12 MR. TRUITT: I'm not being specific
13 about a particular section. I just want to
14 know as a planning matter, how are
15 non-conforming uses and structures to be
16 handled under the zoning regulations?

17 MR. GOLDSTEIN: Well, I'll try to
18 pin that down. There are regulations that deal
19 specifically with expansions of non-conforming
20 structures and those regulations are written
21 out in Chapter 20.

22 MR. TRUITT: But isn't the general

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 tendency once a non-conforming structure is
2 missing or been removed, that it should not be
3 extended through new construction?

4 MR. GOLDSTEIN: As a general
5 matter, if there was a non-conforming structure
6 that was torn down at some point in the past,
7 I would probably say, yes, it is not. You're
8 not entitled to have that non-conformity again.

9 MR. TRUITT: Thank you. That's
10 all I have here.

11 BZA CHAIR JORDAN: Right. Then is
12 there anyone here from the Department of
13 Transportation on this matter? I believe we
14 have a letter from the Department of
15 Transportation.

16 Yes, it's Department of
17 Transportation has no objection to the relief
18 being requested. Is anyone here from ANC 2B?
19 Anyone for ANC 2B? And you would like to
20 testify? Okay. Please come forward.

21 (Off the record comments.)

22 BZA CHAIR JORDAN: Okay. Please

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 identify yourselves.

2 MR. SMITH: Good afternoon. My
3 name is Noah Smith. I am the ANC Commissioner
4 for single-member district 2B-09, which
5 includes 1536 T Street Northwest. I'm also the
6 Vice Chair for the Dupont Circle ANC.

7 Thank you very much for the
8 opportunity to testify today on behalf of the
9 ANC. Thank you for your hard and often
10 thankless work for the district.

11 BZA CHAIR JORDAN: Thank you.

12 MR. SMITH: I've had the chance to
13 testify before HPRB several times, but this is
14 my first time in front of the BZA so it's nice
15 to meet you all.

16 BZA CHAIR JORDAN: Well, welcome.

17 MR. SMITH: Thank you. Now, I just
18 circulated copies of the ANC's official
19 resolution if you haven't seen it. I've also
20 asked that a copy be placed into the record
21 today, if it isn't already.

22 MR. TRUITT: We did not get that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SMITH: Oh, well, I have an
2 extra. I handed them all to Mr. Moy. Today
3 we're discussing a zoning variance application
4 for the construction of a deck.

5 I'm going to provide a little
6 history on the case. I'll try not to repeat
7 what's already been said today. I'm going to
8 discuss the ANC's process on passing a
9 resolution in support of the variance. I'm
10 going to discuss why we think approving the
11 variance is good both for the applicant and for
12 the neighborhood.

13 As I'm sure you're aware, there is
14 some relevant history of the application. I
15 first heard about this in the middle of last
16 year when I received notice of an appeal to a
17 DCRA building permit for the deck.

18 DCRA, of course, revoked the permit
19 after the applicant had begun construction, so
20 the appeal was never decided on.

21 Now, I decided not to get involved
22 in that appeal because it's a matter between the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 appellant, the zoning administrator and the
2 BZA. And we thought that the neighborhood
3 could not contribute to the technical arguments
4 that were being made at the time.

5 The residents of 1536 T then applied
6 for a variance to use 97 percent lot occupancy
7 for the construction of their rear deck and
8 that's when the ANC and I became involved.

9 Now, I knew from the beginning that
10 this was not going to be an application without
11 some conflict. I had read the October 2013
12 appeal from the immediate next door neighbor to
13 the building.

14 And it had used phrases like "ugly
15 behemoth deck carport garage structure, ugly
16 industrial canyon feeling, ugly eyesore and
17 ugly box" all in quotes. So I figured there was
18 some disagreement among the neighbors.

19 I also spoke with the immediate
20 neighbor, Mr. Hill, on the phone before the
21 permit was revoked. And he described his
22 concerns with the possible extinguishing of a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 three-foot easement in the rear and it
2 surprised the district.

3 After the meeting with the
4 applicant to review drawings and get an
5 understanding of the project, I asked him to
6 reach out of his direct neighbors who he had
7 been in contact with previously and set up a
8 meeting.

9 Our ANC has a committee process
10 where the week before the commission meeting we
11 have a zoning preservation and development
12 committee meeting to review complex projects.

13 I usually like to have an additional
14 meeting before that committee meets. We could
15 not get the parties together in time.

16 Our first meeting with all the
17 parties was less than amicable. We spent about
18 an hour relitigating the previous appeal with
19 little progress on the matter.

20 We finally agreed that the
21 architects would come to the following week's
22 ANC meeting with drawings of plans to alleviate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 concerns about privacy from the next door
2 neighbor.

3 During the week between meetings
4 there were dozens of emails back and forth among
5 the parties discussion specific concerns and
6 possible solutions.

7 Early and often I encourage the
8 parties to reach out to each other and simply
9 say what was on their mind. I reminded them
10 that at the end of the day they still had to be
11 next door neighbors and that finding compromise
12 was absolutely key.

13 At the ANC meeting on February 17th,
14 we spent over an hour of full commission time
15 on this matter. This should be noted not only
16 because it shows that all parties had a chance
17 to speak if they so chose, but also because we
18 only very rarely spend more than 15 minutes on
19 an individual project.

20 That night we had a four-and-a-half
21 hour meeting, fifteen minutes of which was
22 spent discussing the transition of the historic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Patterson Mansion on Dupont Circle to
2 apartments and well over an hour discussing
3 this rear deck.

4 There is clearly tension among the
5 neighbors. I tell you this not to highlight
6 it, but to indicate that it was difficult to
7 determine specific concerns and solutions
8 throughout the process and to find compromise
9 from an ANC perspective.

10 As our chairman, who sits to my
11 left, likes to say, the ANC is at the end of the
12 day, a process. We are not zoning experts nor
13 are we architects. We are neighbors and we
14 facilitate a process that lets voices be heard,
15 concerns raised and solutions found.

16 And unfortunately, we could not
17 find a perfect compromise here. As you can
18 see, there are still those who are opposed to
19 the variance.

20 In the end we voted four to two to
21 one to support the variance subject to several
22 conditions, which I'll describe voluntarily.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Then I wanted to just go quickly through the
2 resolution and describe why we voted the way we
3 did.

4 First, though the lot occupancy
5 they're asking for is large, we recognize
6 unique circumstances with the layout and design
7 of this variance such that we support it and
8 also do not believe it should be necessarily
9 precedent setting for the neighborhood.

10 These unique characteristics
11 include the use of space will not change, it
12 will remain a single family home, the small size
13 of the lot compared to others on the block, the
14 main living space is on the second floor and
15 thus requires access for that floor as opposed
16 to the ground floor and the deck in this case,
17 serves as, well, what a patio would serve for
18 other homes.

19 The plan clearly indicates
20 uninterrupted access to the rear yards of the
21 neighbors as afforded to them by the property
22 and the easement. I'm going to sort of skip

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 over this easement part as I think we've talked
2 about it how the plans will not extinguish the
3 easement.

4 Finally, we heard the general
5 concerns of neighbors loud and clear. There
6 are several in the area who do not want a deck
7 built at all.

8 However, when it came down to it,
9 there were three tangible concerns we heard and
10 we believe are well underway to being
11 addressed. Extinguishment of the easement as
12 I've already talked about.

13 Light and air quality is one of
14 them. The applicant submitted a light study
15 that shows there would be limited additional
16 impact to neighbors based on the construction
17 of the deck.

18 And finally, privacy. The
19 applicant agreed to construct a screen above
20 the railing on the west to limit the view into
21 a neighbor's property. Of course, more
22 massing will result in more impact to light and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 air quality, so it's a trade off.

2 Overall, we found that the
3 applicant was willing to make changes to their
4 proposal given specific concerns. And so with
5 this in mind, we've decided to support the
6 variance.

7 This was not an easy case. I think
8 all parties, including me, learned a great deal
9 about the importance of open communication and
10 process.

11 The ANC stands by it's well-tested
12 process for gathering neighborhood input and
13 making decisions on whether to recommend
14 support of a project. We ask that you afford
15 this process the great weight that it deserves
16 and approve this variance.

17 And I would just add that I'd like
18 to thank Mr. Goldstein from the Office of
19 Planning as well, who I thought wrote an
20 excellent staff report and is a real
21 professional asset to the office. Thank you
22 very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Thank you.
2 Board, any questions of the representative of
3 the ANC? Does the applicant have any
4 questions?

5 MR. SULLIVAN: No, Mr. Chairman.

6 BZA CHAIR JORDAN: Yes.

7 MR. STEPHENS: If I might, Mr.
8 Chairman.

9 BZA CHAIR JORDAN: And you are?

10 MR. STEPHENS: I wasn't sure if you
11 wanted to hear from both of us before there were
12 questions or --

13 BZA CHAIR JORDAN: We only usually
14 have --

15 MR. STEPHENS: -- one at a time?

16 BZA CHAIR JORDAN: -- one
17 representative. Yes. Yes.

18 MR. STEPHENS: Okay.

19 BZA CHAIR JORDAN: I'm sorry.
20 That's it.

21 MR. STEPHENS: That's all right.

22 BZA CHAIR JORDAN: Mr. Sullivan?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SULLIVAN: No questions, Mr.
2 Chairman.

3 BZA CHAIR JORDAN: Okay. Well, we
4 appreciate you both coming. Really, you guys.

5 MR. SMITH: All right.

6 BZA CHAIR JORDAN: It's good to
7 have ANC participation, really. Is there
8 anything that you want to say --

9 MR. STEPHENS: There --

10 BZA CHAIR JORDAN: -- quickly to
11 add into the record?

12 MR. STEPHENS: -- is actually in
13 anticipation of some potential questions with
14 this.

15 BZA CHAIR JORDAN: Please take a
16 minute to do so, if you can.

17 MR. STEPHENS: Chiefly, thank you.
18 My name is Will Stephens. I'm the Chair of ANC
19 2B. I have written testimony which I could
20 submit copies of to you all.

21 In general, the way we were
22 intending to tag team this a little bit, was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Noah was going to speak on the substance of the
2 application and I was going to speak a bit more
3 to our processes to make sure that you are
4 comfortable giving us great weight.

5 It's certainly our understanding
6 that one of the arguments that may come out here
7 is that the ANC's opinion shouldn't be
8 considered legally valid because of public
9 notice of our meeting, both in terms of time and
10 manner of notice.

11 We had a make-up meeting because our
12 regular meeting was on February 12th, which was
13 the D.C. snow emergency if you recall.

14 Luckily, fortunately, when we were
15 publically noticing our regular meeting on the
16 12th, we realized, as Noah mentioned, we had
17 four-and-a-half hours on our February 17th
18 meeting.

19 So we realized we had a very tight
20 agenda and a lot to do, so we set up a, what we
21 call, an overflow meeting for the 17th.

22 So when the snow emergency came, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 very fortunately had the opportunity to just
2 combine everything from our agenda into our
3 special meeting date that we had designated.
4 And we pushed out notice through all our various
5 portals, Facebook, websites, Tweeting by
6 commissioners and the commission itself, the
7 neighborhood, Yahoo group that a lot of people
8 rely on for information, our blog.

9 So we pushed it out through many
10 more sources than are required and well in
11 advance of legal requirements. You know,
12 there's a general seven-day rule for regular
13 meetings and a reasonable notice of ANC
14 meetings for special meetings.

15 And so we went well above and beyond
16 what was required for that. So the purpose of
17 me coming here was just to give you comfort in
18 relying on us and giving us great weight in
19 terms of the process of how the ANC came to a
20 resolution on this.

21 So I'll pass around or I'll pass out
22 to Mr. Moy, my written testimony, which goes

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 into a little bit more detail on this. But for
2 the interest of just speaking for a minute
3 instead of three or four, I'll just give you the
4 written testimony for your records.

5 BZA CHAIR JORDAN: All right.
6 Thank you.

7 MR. MOY: I think we already have
8 written testimony.

9 BZA CHAIR JORDAN: Yes, we do.
10 They're right here.

11 MR. STEPHENS: Not from me.

12 VICE CHAIR ALLEN: Okay. So I --

13 BZA CHAIR JORDAN: But not --

14 VICE CHAIR ALLEN: -- was going to
15 say.

16 BZA CHAIR JORDAN: Yes, this is --

17 MR. STEPHENS: This is separate.
18 This is written testimony from the chair.

19 MR. MOY: Oh, okay.

20 MR. STEPHENS: You have the vice
21 chair's.

22 MR. MOY: Got you. Got you. Got

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you.

2 BZA CHAIR JORDAN: We usually don't
3 get two or three different sets from the ANC,
4 so we're working with you.

5 MR. STEPHENS: We usually don't
6 have a matter like this come before us where we
7 have these process concerns, so that's why
8 we're both here.

9 BZA CHAIR JORDAN: Yes. Thank
10 you. Mr. Sullivan?

11 MR. SULLIVAN: No questions, Mr.
12 Chairman. Thank you.

13 BZA CHAIR JORDAN: Mr. Truitt.

14 MR. TRUITT: Yes, I have a question
15 for Mr. --

16 BZA CHAIR JORDAN: No, you're going
17 to ask the ANC in general. They're going to
18 respond whichever way they, well, one of two of
19 them can respond to it.

20 MR. TRUITT: Stephen is the one who
21 was talking about process.

22 BZA CHAIR JORDAN: Yes, why don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you just ask it to the ANC as authority. Yes,
2 correct. I'm with you.

3 MR. TRUITT: You referred to the
4 meeting on February 17th first as a make-up
5 meeting, but then later you called that a
6 special meeting. Which was it?

7 MR. STEPHENS: It was our make-up
8 meeting because of the snow day, but in terms
9 of what it's considered under ANC laws, I
10 suppose it would be considered a special
11 meeting or emergency meeting.

12 MR. TRUITT: Is there anything in
13 the minutes of that meeting which indicate that
14 it was being conducted as a special meeting?

15 MR. STEPHENS: Well, the minutes
16 are not available yet. The minutes are drafted
17 by our staff and then approved at our, usually,
18 as a matter of fact, at our subsequent meeting.
19 So there are no minutes that exist.

20 MR. TRUITT: Was there any
21 discussion of this being a special meeting or
22 not?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. STEPHENS: The labeling of it
2 really doesn't matter as a practical purpose,
3 it's a special meeting if it's not our regular
4 monthly meeting on the second Wednesday of the
5 month. What we call it in terms of
6 nomenclature is inconsequential. It's a
7 special meeting if it's not our regular second
8 Wednesday monthly meeting.

9 MR. TRUITT: That's automatic and
10 that's reflected in the bylaws someplace?

11 MR. STEPHENS: Our bylaws call for
12 our regular meeting to be on second Wednesdays
13 and for special meetings or other fora to be
14 called ad hoc as needed with a reasonable amount
15 of public notice.

16 MR. TRUITT: And your contention is
17 that the steps you described are adequate
18 notice to the public?

19 MR. STEPHENS: Absolutely. I have
20 no question about that. In fact, we went well
21 beyond what is required and our usual process
22 is to blast out through all these various

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 portals I described in addition to whatever
2 individual reach out there is between
3 applicants and others that forward it by
4 individual commissioners who know what's going
5 to be on the agenda.

6 MR. TRUITT: Okay. Thank you.

7 BZA CHAIR JORDAN: Any additional
8 questions?

9 MR. TRUITT: None.

10 BZA CHAIR JORDAN: Okay. Then
11 let's turn for anyone who wishes to speak in
12 support of the application. Anyone here
13 wishing to speak in support? Then let's turn
14 now to the opposition and you have 20 minutes,
15 please.

16 MR. TRUITT: Thank you. Mr.
17 Chairman, I propose to proceed by asking very
18 brief questions to the three parties that are
19 now here.

20 But at the same time, I wish to point
21 out to the Board that there is a tact to the
22 formal authorities in a part of the record here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The declarations of each of the
2 parties who are here today, I'm certainly not
3 going to have them read their declarations, but
4 I will ask them to specifically say that they
5 adopt them and then go into the questions. Is
6 that satisfactory?

7 BZA CHAIR JORDAN: That's fine.
8 But they're already in the record, so we would
9 accept as their --

10 MR. TRUITT: Right.

11 BZA CHAIR JORDAN: --
12 representation.

13 MR. TRUITT: Thank you. But my
14 first witness here will be Mr. Hill who is the
15 adjacent landowner. Please identify
16 yourself.

17 MR. HILL: My name is James Hill and
18 I live at 1538 T Street, abutting 1536 T Street.

19 MR. TRUITT: And when did you buy
20 that house?

21 MR. HILL: Late May 2011.

22 MR. TRUITT: And at that time was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there any deck on the rear of lot 98?

2 MR. HILL: No.

3 MR. TRUITT: When did you first
4 learn of the scope of the proposal by the
5 applicant to build a deck and a parking space
6 next to you?

7 MR. HILL: I received plans from
8 Mr. Romeu on August 13th, 2013. I first
9 realized the scope of the anticipated
10 construction project on September 29th, 2013.

11 MR. TRUITT: And what form were
12 those plans? Were they large architectural
13 drawings, were they postcards, what were they?

14 MR. HILL: They might as well have
15 been postcards. There were six drawings on an
16 eight-and-a-half by 11 sheet of paper.

17 MR. TRUITT: Were they easy and
18 accessible to read?

19 MR. HILL: Not at all.

20 MR. TRUITT: Well, when did you
21 actually become aware that there would be an
22 overhang of the right of way and pillars put in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the middle of or in the right --

2 BZA CHAIR JORDAN: Let me ask some
3 questions. I thought we pulled back. There's
4 not going to be a overhang on the right of way,
5 on the easement area. Is that right?

6 MR. SULLIVAN: The easement's not
7 impeded at all.

8 BZA CHAIR JORDAN: It's --

9 MR. SULLIVAN: But the deck is
10 still, it's 97 percent.

11 BZA CHAIR JORDAN: Okay.

12 MR. SULLIVAN: Yes, it's over a
13 seven-foot height clearance.

14 MR. TRUITT: You've hit upon a key
15 point, Mr. Chairman. The right of way will be
16 overhung by the proposed modified. Where were
17 we? When did you first learn of the overhang
18 and the placement of the pillars which have now
19 have been removed?

20 MR. HILL: On September 29th.

21 MR. TRUITT: And what did you do as
22 a result of that?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HILL: As a result of that, and
2 my serious concern that the applicant had not
3 notified anyone else who were deeded holders of
4 the right of way, I wrote the one-and-a-half
5 page letter during the course of Sunday
6 afternoon into Sunday evening. And as the
7 applicant has already testified, I delivered it
8 to his house at about 9:45 Sunday night
9 September 29th.

10 MR. TRUITT: Now, the applicant has
11 testified that you were supportive of this
12 project in a number of earlier meetings. What
13 would you say, is that correct?

14 MR. HILL: The applicant and I
15 spoke, actually standing in the right of way
16 about his interest in building a gate. As we
17 talked about it, I did express some support for
18 a gate, which I assumed would attach to his
19 existing fence and that, perhaps, he would have
20 another fence on the other side. And naturally
21 that gate would have to be acceptable to any of
22 the other right of way holders.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TRUITT: Did you offer to pay
2 for a fourth of that gate?

3 MR. HILL: I did.

4 MR. TRUITT: And from that time
5 until the September 29th you really, did you
6 have any further interaction with the
7 applicant?

8 MR. HILL: There was one and it's
9 actually noted on the applicant's timeline. I
10 don't know if the date is accurate, but he
11 references on the timeline that was discussed
12 before, a discussion he alleges to have had with
13 me on or about August 23rd where he indicates
14 that he gave me a very extensive tour of the
15 project and answered all of my questions. That
16 didn't happen at all.

17 We continued to talk about his
18 interest in the gate and his interest in a deck.
19 And when I began to ask specific questions with
20 respect to dimensions, height, length, width,
21 egress, ingress, my privacy concerns to the
22 extent that the deck would be longer north to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 south, at that point he indicated, well, you'd
2 have to talk to my architect, I don't know all
3 of these details.

4 MR. TRUITT: Are you concerned
5 about the height of the wall that will run north
6 and south between your two properties?

7 MR. HILL: Very much so.

8 MR. TRUITT: Explain what your
9 concern is and what you anticipate and expect
10 it might be.

11 MR. HILL: Even today, it appears
12 as though the applicant wishes to build a deck
13 that is eight feet high. I see no reason for
14 the deck to be eight feet high insofar as that
15 would be approximately a foot-and-a-half/two
16 feet higher than his main floor.

17 So as near as I can tell, he would
18 have to step up from his back door when that back
19 door is constructed in order to get to the deck
20 itself or the garage roof.

21 On top of that eight foot deck, he
22 contemplates five foot walls. So therefore,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 right at my lot line there'd be a 13-foot
2 structure. And that is the source of all of my
3 privacy, light and air concerns.

4 MR. TRUITT: Well, you've seen,
5 have you not, the sun screen drawings which are
6 Exhibit R, I believe, of the pre-hearing
7 statement. What did you make of them?

8 MR. HILL: I have no ability to
9 authenticate those as legitimate. It's my
10 understanding that there's an Internet
11 application that allows one to construct
12 something like that.

13 So I would assume that there would
14 have been an official formal sun and light
15 study, not something that could be accessed off
16 of Google Earth.

17 MR. TRUITT: Thank you. I have no
18 further questions.

19 BZA CHAIR JORDAN: Well, let me let
20 you finish your testimony and then we'll come
21 back, Mr. Sullivan. Do you want to handle
22 people individually or do you want to handle --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SULLIVAN: I think I'd wait --

2 BZA CHAIR JORDAN: Do them group?

3 MR. SULLIVAN: -- until the end.

4 BZA CHAIR JORDAN: Yes. Go ahead,
5 please. Next.

6 MR. TRUITT: Next witness?

7 BZA CHAIR JORDAN: Yes.

8 MR. TRUITT: Mr. Afkhami. Mr.
9 Afkhami, what are your concerns about the deck?

10 MR. AFKHAMI: Well, let me first
11 thank you for being here today on this very long
12 testimony, everybody on the Board. My
13 concerns, principally, are my freedom of
14 getting out of the back side of my house, both
15 in terms of movement.

16 As it was initially proposed, there
17 was going to be a column blocking some part of
18 that easement as a result. My wife is eight
19 months pregnant.

20 We're going to keep the stroller in
21 the back. For those of you guys who've had big
22 strollers, you realize taking it down the front

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 step is difficult.

2 And we were going to keep it in our
3 back basement and just put the baby in it and
4 roll out. And any lessening of that easement
5 is what's going to be problematic.

6 The second issue was that I was
7 never told that the bottom part of Mr. Romeu's
8 plan was going to be a parking. In which case,
9 at any point, a car without proper barriers
10 could come into the easement, once again
11 blocking my ability to get out of the easement
12 area. So that was another concern I had.

13 The third concern I had was that
14 when I purchased the house, the air
15 conditioning units were in the back of that
16 house and the only way I could get the A/C units
17 out from the back of the house that was sort of
18 financially tolerable was to get some form of
19 a pulley or a crane to go in the back of the
20 easement and bring it out.

21 Any form of reduction or any
22 blockage to that area, to my ability to come in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and out of that area would add to my costs.

2 Thirdly, I'm affected by the same
3 light issues considering the size and height of
4 the deck as proposed as my immediate neighbor.

5 MR. TRUITT: When you moved into
6 your house was there a deck behind lot 98?

7 MR. AFKHAMI: There was no deck and
8 actually even before we moved in, in 2011 while
9 we were looking for a home, there wasn't a deck
10 there.

11 MR. TRUITT: Okay. Thank you.
12 Mr. Uth.

13 MR. UTH: Yes, sir.

14 MR. TRUITT: Yes, would you explain
15 your concerns about the construction that was
16 proposed?

17 MR. UTH: My concerns are that that
18 egress is the only entrance into and out of the
19 back of my house. And though it's been useful
20 occasionally to bring in objects that could go
21 in no other way, my ultimate concern and my
22 concern for my next door neighbor is fire.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And that is the only way out and
2 there are a lot of people in those buildings and
3 I am always very concerned about the kind of
4 panic that would ensue in that very tight space
5 in the event of a fire. That is my true
6 concern.

7 MR. TRUITT: Tell me when did you
8 move in --

9 BZA CHAIR JORDAN: So --

10 MR. TRUITT: -- there?

11 BZA CHAIR JORDAN: Excuse me. Let
12 me ask you. So your concern is about fire
13 because -- how does that tie?

14 MR. UTH: It's already a very tight
15 and difficult space. It's the only way out of
16 the back of my building.

17 BZA CHAIR JORDAN: So there's no
18 way for fire trucks to reach the front of your
19 house or to come through the other part of the
20 alley?

21 MR. UTH: I think that by having the
22 overhang over the easement, it will make it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 difficult for firefighters to get into the
2 easement, yes.

3 BZA CHAIR JORDAN: And that's the
4 only way into the back of your house is through
5 that easement?

6 MR. UTH: That is correct, sir.

7 BZA CHAIR JORDAN: Okay. All
8 right.

9 MR. UTH: Getting to your question,
10 sir.

11 MR. TRUITT: Yes.

12 MR. UTH: I moved into the house in
13 1989.

14 MR. TRUITT: When you moved in was
15 there a deck of any sort behind the rear of lot
16 98?

17 MR. UTH: There was not.

18 MR. TRUITT: But there did come to
19 be some, did there not?

20 MR. UTH: There did.

21 MR. TRUITT: A series of them, is
22 that true?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. UTH: Well, I wasn't monitoring
2 what happened back there quick all the time, but
3 I do know a first deck was built in the late
4 '90s.

5 MR. TRUITT: Okay. Thank you. I
6 have one final witness for authorities, Mr.
7 Hanlon. Perhaps you should come up and take a
8 seat.

9 MR. HANLON: Good afternoon, Your
10 Honor. Good afternoon, Board members.

11 BZA CHAIR JORDAN: Welcome back.

12 MR. HANLON: Oh yes. Second case
13 in my whole life.

14 BZA CHAIR JORDAN: Yes.

15 MR. TRUITT: Mr. Hanlon, in your
16 prepared statements which were attached as an
17 exhibit to Mr. Hill's declaration, you
18 mentioned the notice issue of the Advisory
19 Neighborhood Council. I wish you would
20 amplify and explain what it is you believe was
21 defective about that notice.

22 MR. HANLON: Yes, the regular

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 monthly meeting of ANC 2B was scheduled for
2 February 12. Sometime on February 12 the
3 meeting was cancelled because of the weather
4 conditions.

5 BZA CHAIR JORDAN: Yes.

6 MR. HANLON: The chair of ANC 2B
7 decided to hold the meeting the following
8 Monday, February 17th, which would have been
9 only four days notice prior to the date of that
10 meeting.

11 I was concerned because there was
12 lack of adequate public notice. There was less
13 than seven days notice before the date of a
14 meeting.

15 I am concerned because, and I've
16 written a letter to Executive Director Simon
17 and to the Attorney General for the District of
18 Columbia, complaining that the open meeting
19 requirements of the ANC Act were violated in the
20 holding of this meeting because it's held on
21 less than the required notice.

22 It was not published to the members

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the public by at least two of the four
2 required methods in the ANC Act. I have a copy
3 of my letter with attachments here if the Board
4 would like to see it.

5 MR. TRUITT: I would like to put
6 this in, but I do need to make copies of it.

7 BZA CHAIR JORDAN: You can give to
8 --

9 MR. TRUITT: Thank you.

10 MR. HANLON: The meeting on
11 February 17th was never posted on the calendar
12 of ANC 2B's website. A copy of the calendar for
13 the month of February is attached to my letter
14 of complaint to the Office of the Attorney
15 General.

16 The Board will see that under
17 calendar events, the February 17th meeting is
18 not listed, only the regular meeting is listed.

19 I have indicated also in my letter
20 that the agenda for the February 17th meeting
21 was not posted on the website, on the agenda
22 button of the website until one hour after the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 meeting began. This meeting, the only
2 notice, there was no notice on the calendar,
3 there was no notice on the home page of ANC 2B's
4 website.

5 The only notice would have been on
6 the blog, the news blog part of the website that
7 you'd have to go to. And even then, that notice
8 was posted sometime on the 12th, which would
9 have only been four days prior to the date.

10 I did a Freedom of Information Act
11 request to ANC 2B which was answered a few days
12 ago. I asked them to provide me every means and
13 method by which they had notified the public of
14 this public ANC meeting on February 17th.

15 The answers to the Freedom of
16 Information Act request confirmed that they did
17 not notice it by at least two of the four
18 required methods under the ANC Act.

19 Specifically, the Freedom of
20 Information response indicates they did not
21 post the written notices in at least four
22 conspicuous places in each single-member

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 district, they did not publish the notice of the
2 meeting in any city or community newspaper.

3 The only notice would have been on
4 the news blog button of the ANC web page and that
5 would've only been four days prior to.

6 But again, any member of the public
7 trying to find out what the calendar is for the
8 ANC would have gone to the calendar page and
9 it's not there.

10 MR. TRUITT: I take it that if the
11 notice was bad, the Board is under no obligation
12 to give any weight whatsoever to the ANC
13 recommendation?

14 MR. HANLON: Yes, I've quoted a
15 letter from the Attorney General Nathan dated
16 August 26th, 2011, writing to an ANC
17 Commissioner, Yvonne Bennet, concerning
18 notifying the public less than seven days prior
19 to the notice of the meeting.

20 And that part succinctly states, we
21 reiterate it that any purported action taken at
22 a meeting not properly noticed under the ANC Act

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 was not legally valid.

2 MR. TRUITT: Thank you. I'd like
3 to turn to the issue of the wood. And is it
4 really worth \$32,000 or is it worth far, far
5 less.

6 MR. HANLON: Now, if I could have
7 the exhibit for a moment. The --

8 MR. TRUITT: The architect's
9 letter?

10 MR. HANLON: Yes, the letter from
11 the architect has the Wall Street Journal 2012
12 article attached to it and is entered as part
13 of one of the exhibits.

14 BZA CHAIR JORDAN: Are you
15 testifying as a fact witness or a expert?

16 MR. HANLON: A fact witness. I
17 wanted to point out on Page 4, that --

18 BZA CHAIR JORDAN: And what's the
19 foundation of the fact --

20 MR. TRUITT: Exhibit --

21 BZA CHAIR JORDAN: -- on the value
22 of the wood?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HANLON: Because there was
2 some, the reliance costs of --

3 BZA CHAIR JORDAN: No, no, let me
4 just ask you, did you go and price it? Is that
5 what you're saying?

6 MR. HANLON: Yes, I priced it and I
7 also looked at the article before I priced it.

8 BZA CHAIR JORDAN: Okay.

9 MR. HANLON: Because the article
10 indicated on the last page, on the section
11 called price. Now, this article is only about
12 this very special wood, I-P-E Brazilian walnut.
13 That's what the --

14 BZA CHAIR JORDAN: Yes.

15 MR. HANLON: -- article is, the
16 architect describes.

17 BZA CHAIR JORDAN: Okay. Yes.

18 MR. HANLON: And it says at 3.50 to
19 \$4.00 per linear foot, I-P-E typically costs
20 about 30 percent more than knotty cedar or pine.
21 A 400-square foot I-P-E deck would cost about
22 \$500 not including labor or other materials.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So the cost of the specialty wood
2 would have only been about \$500 for a 400-square
3 foot deck.

4 BZA CHAIR JORDAN: That's retail or
5 wholesale?

6 MR. HANLON: That's retail.

7 BZA CHAIR JORDAN: Okay. Is that
8 --

9 MR. HANLON: And --

10 BZA CHAIR JORDAN: -- contractor's
11 resell price?

12 MR. HANLON: The contractor, in his
13 letter, said that he did not think he could sell
14 that speciality wood for more than \$.40.

15 BZA CHAIR JORDAN: But I'm asking
16 what did his contractor charge him for the wood?

17 MR. HANLON: We don't know because
18 the letter doesn't say. But concern, I went to
19 three different websites for selling
20 speciality I-P-E Brazilian walnut. Every one
21 of those websites was consistent with the Wall
22 Street Journal article.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: And let me ask
2 you, what was the cost for the work that -- do
3 you know what the cost of the work that was done
4 on this property?

5 MR. HANLON: I was home both days
6 that the laborers appeared. There was only two
7 days of work done, Thursday and Friday the last
8 week of September. I was home all day Thursday
9 and part of the day Friday.

10 BZA CHAIR JORDAN: And was he
11 charged for that work?

12 MR. HANLON: I don't know, but I
13 know, but --

14 BZA CHAIR JORDAN: Okay.

15 MR. HANLON: -- I know --

16 BZA CHAIR JORDAN: Do you know how
17 --

18 MR. HANLON: -- but I know there
19 were two laborers there.

20 BZA CHAIR JORDAN: -- much he was
21 charged?

22 MR. HANLON: I don't know, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there was no equipment --

2 BZA CHAIR JORDAN: Do --

3 MR. HANLON: -- there.

4 BZA CHAIR JORDAN: -- you know how
5 much he can get back from his contractor if he
6 stopped the work?

7 MR. HANLON: I don't know. I can't
8 tell from the documents.

9 BZA CHAIR JORDAN: Okay. I'm
10 sorry. Please, go ahead.

11 MR. TRUITT: No, you've done an
12 excellent job. Thank you.

13 BZA CHAIR JORDAN: I was just
14 trying to -- I understood your line, I wanted
15 to see if there was some information in it, so
16 we can --

17 MR. TRUITT: I have no further
18 questions.

19 BZA CHAIR JORDAN: Okay. Any
20 cross, please, Mr. Sullivan?

21 MR. SULLIVAN: Yes, a little bit.
22 Thank you. I'll start from the end first and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Mr. Hanlon. So you subjected the ANC to a FOIA
2 request in relation to their process --

3 MR. HANLON: I submitted --

4 MR. SULLIVAN: -- isn't that
5 correct?

6 MR. HANLON: -- for a Freedom of
7 Information request. That is correct.
8 Following --

9 MR. SULLIVAN: And those requests
10 related to interactions with applicant's
11 counsel in other cases unrelated to this case,
12 is that correct?

13 MR. HANLON: I asked for all
14 Freedom of Information. I asked from the FOIA
15 for all --

16 BZA CHAIR JORDAN: What's he
17 saying?

18 MR. HANLON: -- communications
19 between you and the ANC during a specific period
20 of time. That was made to a Government email
21 or a Government provided phone.

22 MR. SULLIVAN: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HANLON: I was not asking for
2 anything that was made --

3 MR. SULLIVAN: That you.

4 MR. HANLON: -- by private email or
5 on a private phone.

6 MR. SULLIVAN: Regarding notice,
7 you did attend the Planning and Zoning
8 Committee meeting at which the Planning and
9 Zoning Committee of the Dupont Circle ANC voted
10 to recommend the full ANC approval of this
11 application, is that correct?

12 MR. HANLON: I attended it, but we
13 --

14 MR. SULLIVAN: Yes, he did.

15 MR. HANLON: -- requested --

16 MR. SULLIVAN: See he did attend.

17 MR. HANLON: -- to be able to record
18 it --

19 MR. SULLIVAN: Did you also attend
20 the ANC meeting at which the ANC considered this
21 application?

22 MR. HANLON: The February 17th

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 meeting?

2 MR. SULLIVAN: I'm not sure of the
3 certain date, but when they considered the
4 application and --

5 MR. HANLON: I --

6 MR. SULLIVAN: -- made their
7 decision. Do you attend that meeting?

8 MR. HANLON: Yes, I was there. I
9 was there --

10 MR. SULLIVAN: Did --

11 MR. HANLON: -- from the beginning
12 and --

13 MR. SULLIVAN: -- Mr. Uth attend
14 that meeting?

15 MR. HANLON: Yes.

16 MR. SULLIVAN: Did Mr. Afkhami
17 attend that meeting?

18 MR. HANLON: Yes.

19 MR. SULLIVAN: Did Mr. Hill attend
20 that meeting?

21 MR. HANLON: Yes.

22 MR. SULLIVAN: Thank you. No

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 further questions for Mr. Hanlon.

2 (Off the record comments.)

3 MR. SULLIVAN: Mr. Uth, do you have
4 any recorded legal right to enter the
5 applicant's property?

6 MR. UTH: I don't have any recorded
7 legal prohibition not to enter the property,
8 sir.

9 MR. SULLIVAN: Outside of trespass
10 laws.

11 MR. UTH: Sir, when I bought the
12 house, the man who sold it to me had been walking
13 through there for ten years and that right of
14 way goes directly to my back door and has done
15 so for 130 years.

16 MR. SULLIVAN: Okay. So the
17 question was do you have any legal recorded
18 right to enter the applicant's property?

19 MR. UTH: I don't actually know.

20 MR. SULLIVAN: Okay. Can you see
21 the applicant's property from your property,
22 from your house, from your property?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. UTH: Not unless I step out the
2 door.

3 MR. SULLIVAN: Thank you. I have
4 no further questions for Mr. Uth. Mr. Afkhami,
5 you mentioned that one of your concerns was that
6 the columns may be blocking the easement. And
7 now you learned today that the columns had been
8 moved off the easement. So does that address
9 your concern about impeding the easement?

10 MR. AFKHAMI: Not until that area
11 that's overhanging the easement is addressed as
12 well.

13 MR. SULLIVAN: So, and you also had
14 a concern about parking and that parking space
15 possibly blocking the easement. The fact that
16 the columns now would prevent and the bollard
17 would ever prevent a car from going anywhere on
18 the easement, does that address your concerns
19 about a --

20 MR. AFKHAMI: It does not.

21 MR. SULLIVAN: -- car blocking --

22 MR. AFKHAMI: The column and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 bollard would not ever prevent a car from going
2 into the easement.

3 MR. SULLIVAN: Okay. Well, maybe
4 we should bring up a picture on that and then
5 you can explain how that would happen. Here
6 there are steel columns five-and-a-half inches
7 in between your easement area and the area where
8 a car might go.

9 And obviously a car can't fit in the
10 three foot area, so a car would go on the north
11 side of the easement. Can you tell me how a car
12 would block that easement by parking on his
13 property?

14 MR. AFKHAMI: That picture is
15 misleading. If you come at an angle with a
16 small car, you can block that easement.

17 MR. SULLIVAN: Okay. So if he --

18 MR. AFKHAMI: Especially in a tight
19 area.

20 MR. SULLIVAN: -- tried really hard
21 he might be able to block your easement?

22 MR. AFKHAMI: Well, he has to try

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 very hard to park in that small area --

2 MR. SULLIVAN: Okay.

3 MR. AFKHAMI: -- so it wouldn't --

4 MR. SULLIVAN: Okay.

5 MR. AFKHAMI: -- surprise me.

6 MR. SULLIVAN: Or maybe if you put
7 a bike there or something --

8 BZA CHAIR JORDAN: You mean coming
9 --

10 MR. SULLIVAN: -- you know.

11 BZA CHAIR JORDAN: -- from the side
12 of the easement parking a car across?

13 MR. AFKHAMI: Yes, I mean, if he
14 comes from that end, from around there's a
15 external out way and if he turned --

16 BZA CHAIR JORDAN: External what?

17 MR. AFKHAMI: There's a way out by
18 the street, sort of --

19 BZA CHAIR JORDAN: If I go in
20 straight up where the back park or the behind
21 the car --

22 MR. AFKHAMI: So let me point it out

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to you.

2 BZA CHAIR JORDAN: Yes, if you
3 would, please.

4 MR. AFKHAMI: Yes. Comes in this
5 way and parks here.

6 BZA CHAIR JORDAN: All right. All
7 right. I just asked a question, was that the
8 only way into that part of the alley was that
9 easement and I was told yes. Am I
10 understanding that you can come into the alley
11 from the upper portion?

12 MR. SULLIVAN: Yes.

13 BZA CHAIR JORDAN: Maybe I wasn't
14 clear. Didn't I ask that question whether the
15 only way you can into the alley was through the
16 easement?

17 And I was told that's the only way
18 because the question was a discussion around
19 the fire trucks coming in and said that was the
20 only way that you could come in was through the
21 easement portion and that there was not another
22 way to be accessible to the back part of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 alley. So I want to make sure I'm clear. You
2 can come into that back portion through another
3 opening.

4 MR. AFKHAMI: That's a street.

5 BZA CHAIR JORDAN: That's a street?

6 MR. AFKHAMI: That's not the
7 easement.

8 MR. HILL: That's the back alley.

9 BZA CHAIR JORDAN: No, I understand
10 what a easement is. Is that a alley back there.

11 MR. HILL: Right.

12 MR. AFKHAMI: Yes.

13 MR. HILL: Yes, on the right.

14 BZA CHAIR JORDAN: And so you can
15 enter that alley through the easement or
16 through another point that's further up?

17 MR. HILL: Both.

18 BZA CHAIR JORDAN: Okay. So I'm
19 not crazy and that was what was asked. I
20 understand. Got it straight now. Maybe I
21 wasn't clear when I asked the question.

22 MR. HILL: Oh, I'm sorry. You can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 enter the right of way only from the east.

2 BZA CHAIR JORDAN: What we call the
3 alley. The portion behind the car --

4 MR. HILL: Right.

5 BZA CHAIR JORDAN: -- is that an
6 alley or a street? What is that?

7 MR. HILL: That's an alley.
8 That's the ten-foot --

9 BZA CHAIR JORDAN: And --

10 MR. HILL: -- wide alley.

11 BZA CHAIR JORDAN: Okay. You can
12 enter that alley through what? How can you
13 enter that alley?

14 MR. HILL: From either T Street or
15 Swann Street.

16 BZA CHAIR JORDAN: So there are
17 more than one way of entering that alley,
18 correct?

19 MR. HILL: Well, yes, but --

20 BZA CHAIR JORDAN: And you can the
21 alley through that easement too? The right of
22 way, you can't? That's right. Because it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 so narrow. It's ten feet --

2 MR. HILL: Yes, right.

3 BZA CHAIR JORDAN: -- what have
4 you.

5 MR. HILL: The only access to the --

6 BZA CHAIR JORDAN: So what --

7 MR. HILL: -- right of way --

8 BZA CHAIR JORDAN: Okay.

9 MR. HILL: -- is on the east.

10 BZA CHAIR JORDAN: All right.

11 Thank you. Got it. Got it. So a fire truck
12 that wanted to get to that alley portion could
13 come through those other two ways which you
14 spoke about.

15 So the easement doesn't have an
16 impact on fire trucks accessing that port in the
17 alley, is that correct?

18 MR. AFKHAMI: There's only that one
19 opening into the alley. It's blocked on two
20 ways.

21 BZA CHAIR JORDAN: The alley's
22 blocked?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. AFKHAMI: Not the alley, the
2 easement. So --

3 BZA CHAIR JORDAN: I'm not talking
4 about the easement.

5 MR. AFKHAMI: Okay.

6 BZA CHAIR JORDAN: I'm talking
7 about getting behind those homes off the alley.

8 MR. HILL: You could enter the
9 alley from either Swann Street or T Street.

10 BZA CHAIR JORDAN: Okay.

11 ZC CHAIR HOOD: So there is a
12 entrance between both sides --

13 BZA CHAIR JORDAN: Yes, I must have
14 --

15 ZC CHAIR HOOD: -- of the alley.

16 BZA CHAIR JORDAN: -- missed.
17 Maybe I had misunderstood the testimony, but
18 I'm straight now. Thank you. Appreciate it.

19 ZC CHAIR HOOD: Mr. Chairman, are
20 we asking questions?

21 BZA CHAIR JORDAN: No, no, no.
22 Well, you can ask if you wish.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ZC CHAIR HOOD: I just wanted to ask
2 Mr., I think it's Afkhami.

3 MR. AFKHAMI: Afkhami, yes.

4 ZC CHAIR HOOD: It seems like the
5 only issue from what I've heard from the
6 testimony today is that you're concerned about
7 the baby stroller being able to through.
8 That's the only issue for you.

9 MR. AFKHAMI: And the fact that if
10 there's an overhang above, it blocks our
11 ability to freely move, whether it's bringing
12 in a ladder, if it's a fire truck as the house
13 besides us started burning, if they needed to
14 get on the roof, that's the only way they can
15 come in --

16 ZC CHAIR HOOD: I thought there was
17 some --

18 MR. AFKHAMI: -- and put it out.

19 ZC CHAIR HOOD: -- adjustments
20 though to the overhang.

21 MR. AFKHAMI: Yes.

22 ZC CHAIR HOOD: I thought there was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a testimony to this.

2 MR. AFKHAMI: No, there's been no
3 adjustment to the overhang. The second issue
4 is if we need to move our air conditioning units
5 and we need --

6 ZC CHAIR HOOD: Yes.

7 MR. AFKHAMI: -- to bring --

8 ZC CHAIR HOOD: I got all that, I
9 was just trying to narrow your concerns. I
10 think your concerns, I thought, were a little
11 closer to closing the gap here. That was my
12 only issue. Okay.

13 BZA CHAIR JORDAN: Okay.

14 ZC CHAIR HOOD: Thank you, Mr.
15 Chairman.

16 BZA CHAIR JORDAN: Okay.

17 MR. SULLIVAN: Mr. Afkhami, so you
18 take a baby stroller out into a ten-foot wide
19 alley with heavy traffic?

20 MR. AFKHAMI: Well, actually that
21 is an issue of concern for me.

22 MR. SULLIVAN: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. AFKHAMI: My field of vision
2 will be blocked if I have to constantly check
3 and see if a car is driving straight into a
4 parking lot. It is an issue of concern.

5 MR. SULLIVAN: Yes, thank you. Do
6 you know that the applicant is permitted to have
7 a parking space here whether --

8 MR. AFKHAMI: Sure.

9 MR. SULLIVAN: -- there's a deck or
10 not?

11 MR. AFKHAMI: Sure.

12 MR. SULLIVAN: So, okay.

13 MR. AFKHAMI: If he can fit it.

14 MR. SULLIVAN: Absolutely. I
15 agree with that. One more question and it's
16 for Mr. Hill. You said you have no ability
17 yourself, to authenticate the sun study, but
18 you have no response to it on your own, do you?

19 MR. HILL: If the structure of the
20 new deck is going --

21 MR. SULLIVAN: Have no document --

22 MR. HILL: -- call for a --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SULLIVAN: to submit in
2 rebuttal.

3 MR. HILL: -- 13-foot structure.
4 I would say by definition that's going to impair
5 light and air.

6 MR. SULLIVAN: Okay. But you're
7 not presenting any documentation or evidence in
8 response to a sun studies, is that correct?

9 MR. HILL: Nothing more official
10 than you've presented.

11 MR. SULLIVAN: I'll take that as a
12 yes, then or a no rather. I have no further
13 cross examination.

14 BZA CHAIR JORDAN: Okay.
15 Redirect.

16 MR. TRUITT: No.

17 ZC CHAIR HOOD: I generally did
18 have one follow-up question --

19 BZA CHAIR JORDAN: Sure.

20 ZC CHAIR HOOD: -- about the ANC.
21 And I'm very familiar with the Von Bennet case
22 that was mentioned. The only issue, I think,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 for the ANC, Mr. Chairman, I'm not how it would
2 proceed is if the notice was in question, they
3 have another meeting coming up, I'm not sure
4 what we're going to do, they can go ahead and
5 ratify that and do it in another meeting and
6 move forward.

7 If I'm not speaking out of turn.
8 Because I'm very familiar with that Von Bennett
9 issue and the ruling. There's a lot more to it
10 than that.

11 And then plus, the ANC
12 commissioners, and I know there's a rule and I
13 agree, but I note that the ANC commissioners are
14 not paid. They have other jobs. At least last
15 I checked, they weren't paid. I don't think
16 they're getting paid.

17 So, you know, a lot of times we're
18 doing volunteer work and from what I saw two
19 that have a chair and a vice chair could take
20 the time off to come in here, I think that's
21 applaudable to that community. That's just my
22 perspective. Thank you, Mr. Chairman.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: And Ms. Allen,
2 you want to make a statement on that
3 observation?

4 VICE CHAIR ALLEN: All right. I
5 reviewed the handout or exhibit that the
6 opponent sent in or gave us, and in the section
7 that you highlighted where it says D.C. code
8 Section 1-309.11 requires, and you highlighted
9 no less than seven days prior to the date.

10 But then if you complete that
11 paragraph, it says shorter notice may be given
12 in the case of an emergency or for other good
13 cause, which they already testified was the
14 snow emergency.

15 So I'm not sure. I would say that
16 this says that the seven days wasn't required
17 based on the emergency, the Government
18 shut-down, et cetera. So I just wanted to
19 bring that up as well.

20 BZA CHAIR JORDAN: And I think
21 Board member Allen, I think that's a good catch.
22 And also I'm just curious, how many people were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 at that meeting? How many people actually got
2 notice?

3 VICE CHAIR ALLEN: Well, they all
4 were.

5 MR. SMITH: They all were there.

6 BZA CHAIR JORDAN: I mean, no, I'm
7 not talking about here. I'm talking about the
8 numbers. Was it four/five people or did we
9 have a nice crowd?

10 (Off the record comments.)

11 BZA CHAIR JORDAN: Can somebody
12 tell me?

13 MR. HILL: Maybe 20.

14 BZA CHAIR JORDAN: Twenty? Isn't
15 that the average? But anyway, thank you.

16 VICE CHAIR ALLEN: Do you want him
17 to --

18 ZC CHAIR HOOD: I should have asked
19 that --

20 BZA CHAIR JORDAN: Yes, come --

21 ZC CHAIR HOOD: -- earlier. I just
22 --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Please come to
2 the microphone and say your name before we --
3 since --

4 MR. SMITH: Good afternoon, Noah
5 Smith, Vice Chair of ANC 2B. I thought there
6 were more people at the February 17th meeting
7 than we get in most months. I'd say there were
8 between 40 and 50 people there. Again, it was
9 a four-and-a-half hour very well attended,
10 exciting meeting.

11 BZA CHAIR JORDAN: Okay. Thank
12 you. All right. Thank you. Anyone else?
13 You got any more recross, I mean, it was
14 redirect? Did we do redirect? I think we did
15 redirect. Yes, we asked for redirect. Was
16 there any redirect?

17 MR. TRUITT: We're through.

18 BZA CHAIR JORDAN: Is there anyone
19 wishing to speak in opposition to this
20 application? Anyone wishing to speak in
21 opposition? Then we'll turn back to the
22 applicant for any rebuttal if you think it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 necessary.

2 MR. SULLIVAN: Briefly, Mr.
3 Chairman. I will, let's go to the rebuttal
4 part in the second half of that. I want to hand
5 out what we're putting as a rebuttal. A lot of
6 this you've heard already.

7 I want to make the point, too, while
8 I'm handing this out that we're not, we're
9 obviously, no, we're not contesting an appeal.
10 And we're not claiming nor that there was --

11 BZA CHAIR JORDAN: Is this your
12 rebuttal or your closing? This is your
13 closing?

14 MR. SULLIVAN: Yes.

15 BZA CHAIR JORDAN: Okay.

16 MR. SULLIVAN: We're not claiming
17 that there's always been a deck there. We're
18 claiming the evidence that was in front of DCRA
19 allowed them to issue the building permit.

20 So it was reasonable for my client,
21 a layperson, to believe that that building
22 permit was legitimate. We had the option. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 could have appealed the revocation based on an
2 estoppel argument or we could have come here for
3 variance relief, and that's what we chose to do.

4 I also, and I think this is really
5 important. My client, once he heard there was
6 an issue and he got this appeal, halted
7 everything.

8 Who doubts that if he had gone
9 forward as was his right because he had another
10 two months after that. I know a lot of counsel
11 might tell him go, go, go, build, build, build,
12 and then we'd be here talking about the \$30,000
13 to remove the deck that was lawfully
14 constructed.

15 As a matter of policy, I don't think
16 it's a good idea to discourage his
17 transparency, his openness and his respect of
18 the process.

19 But in addition to that he does have
20 real costs. He does have a practical
21 difficulty nonetheless. It may not be as needy
22 and as easy as it would be if we said we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 tearing down a deck and this is what it costs.
2 But even the Office of Planning agrees there's
3 a practical difficulty.

4 We've undertaken work in reliance
5 on the permit that would require \$7,800 just to
6 repair that work, just to get back to point
7 zero.

8 He's invested money in an architect
9 and a contractor that if the deck gets
10 completed, that investment is realized. If
11 the deck doesn't get completed, that investment
12 is gone. That's real money. That's a real
13 practical difficulty.

14 In addition to that, there's, you
15 know, the other ancillary issues, but the real
16 meat of it is the \$7,800 to repair the deck and
17 the 32,500 paid to a contractor which we have
18 not received back.

19 And I might add, too, that he's
20 paying that based on a contract. He can't go
21 to his contractor and say, well, the Wall Street
22 Journal says I overpaid.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So it's based on that contract and
2 we've submitted that evidence to the record.
3 And the other side hasn't submitted anything to
4 rebut that testimony.

5 Regarding the sun studies, there's
6 nothing to rebut the sun studies. It's showing
7 a minimal impact on the light and air of the
8 neighbor.

9 We've talked a lot about the
10 easement here and I think it's been helpful, but
11 it's not before the Board. Nevertheless, just
12 to make things clear, the easement's open.
13 It's more open than it was before. The
14 easement will be respected. It'll be more
15 respected than before.

16 Whereas before we could tear that
17 fence down and have this as a parking space and
18 occasionally impede the easement at the
19 applicant's peril if he wanted to violate the
20 easement, he can't even do that now even if he
21 wanted to.

22 And that was one of the things that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 they wanted, it was one of the things actually,
2 one of the ANC commissioners that voted no, that
3 was his desire, to have the demarcation line.
4 And so we responded to that and that's why we
5 moved the columns in and provided that
6 demarcation line.

7 BZA CHAIR JORDAN: All right.
8 Thank you.

9 MR. SULLIVAN: I just want to go
10 through to the end real quick. The lot
11 coverage back there and we have a slide that
12 shows the relevant lot coverage.

13 This highlighted area shows the lot
14 coverage of these six lots. Obviously, these
15 six lots are of a group and they're the only ones
16 in the square. They were divided in half 100
17 years ago.

18 They all have very high lot
19 occupancies as a result of that and I think that
20 this proposal isn't really out of line with that
21 history. And I believe that's all I --

22 BZA CHAIR JORDAN: All right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SULLIVAN: -- have. Thank
2 you.

3 BZA CHAIR JORDAN: Good. Then we
4 will conclude this hearing. Is the Board ready
5 to deliberate in this case or we want to? Is
6 there anything else --

7 VICE CHAIR ALLEN: Yes.

8 BZA CHAIR JORDAN: -- you need? I
9 think we can, yes. This is one which we've had
10 a lot of testimony. There's a lot of documents
11 and evidence in the file.

12 I think this is a case in which I can
13 support the relief being granted, being
14 requested. I think there's an exceptional
15 condition provided on this property that one,
16 the 16th Street lot includes a garage which
17 encroaches eight inches on the applicant's
18 property.

19 It's the end unit and it borders a
20 north-south alley and he does have complete use
21 and turn-off of the alley. Applicant has no
22 access to the back of his house without going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 outside and coming around the back, which is
2 also causes a condition for children.

3 There's a three-foot easement on
4 the rear of the property which restricts the
5 applicant's use of the ground floor. The
6 eight-inch encroachment, again, I said about
7 the garage. And the whole general shape of
8 responsibility being on that end unit, he
9 doesn't get the full effect and use.

10 And I think those provide, along
11 with the zoning history which shows at some
12 point of time there had been deck and there
13 wasn't a deck and there had been. So there had
14 been decks in and out this property at various
15 times.

16 And I think those things and the
17 confluence of this factors will allow for a
18 unique condition. More importantly, I think
19 that there is a practical difficulty and I do
20 waiver from Office of Planning.

21 I believe that there has been some
22 detrimental reliance by the applicant based

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 upon the things that transpired with the
2 Department of Consumer Regulatory Affairs that
3 there's been no evidence to the contrary that
4 they didn't get indications from in February
5 2013.

6 The applicant contacted an
7 architect who sought information from the
8 Department of Consumer Regulatory Affairs.
9 They provided that and said yes, they can have
10 a matter of right. And then, further, in June
11 a building permit was actually issued.

12 In reliance thereof the applicant
13 expended at least \$32,000. He may be able to
14 get some money back, but there's been some
15 materials which can't get compensated for.
16 And it appears that the evidence has shown that
17 the labor can all compensated for and there
18 actually was some work being done.

19 There's been no evidence to the
20 contrary. There might be a disagreement as to
21 the amount for the cost of the wood, but I don't
22 find that substantially offsetting.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The amount of money that's been
2 expended in reliance to the DCRA issuing a
3 building permit and then thereafter. I guess
4 about six months later, five months later, they
5 received a notice of revocation.

6 I think that there's been a good
7 showing of good faith, detrimental reliance
8 that would substitute in regard to the
9 practical difficulty. As well, I believe
10 there's practical difficulty in regards to
11 trying to comply with the zoning regulations
12 and have a deck that's useful for them.

13 The applicant has made, well,
14 there's practical difficulty for them having
15 access to their backyard and regarding the use
16 of what may be a deck or not. Even just trying
17 to park their car in a small space, there's
18 difficulty.

19 I don't find any substantial
20 detriment to the community or to the zoning
21 regulations. The easement, the use of his deck
22 has been pulled back so there's no restriction

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to the ingress or egress on the property. The
2 applicant still is providing the right of way
3 for others to use the easement.

4 The sun study which has not been
5 contradicted with any facts, has shown that
6 there is almost invisible amount of change in
7 condition once the deck is put up and to any
8 neighboring property.

9 As I said, the applicant's made
10 concessions regarding the deck to the
11 community. And there has not been any basis to
12 say a smaller deck would have less impact or
13 that it would substantially reduce the
14 occupancy size nor has there been any effort.

15 There has not been any evidence
16 showing what a smaller deck would do and with
17 that, also have any alleged, the same kind of
18 community issues that has represented here.

19 And I clearly do not find that
20 there's a hindrance in the fire safety issues
21 since there's an ability to get fire equipment
22 to the back.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I would recommend to the Board that
2 we would grant the relief requested. I think
3 we give great weight to the ANC in this matter
4 as they have met all the requirements, in my
5 opinion, for great weight and as indicated that
6 this was a special meeting, an emergency
7 meeting called because of the other issue for
8 the normal February 12th meeting. And that
9 this is well-noticed.

10 And all the those in opposition were
11 there as well as all the ANC members who should
12 have been at the meeting, was there. And
13 according to the Attorney General, although I'm
14 not trying to say whether that was a legal
15 meeting or not, for the purpose of this Board
16 it's acceptable.

17 As the Attorney General has said
18 shorter notice may be given in cases of
19 emergency or for other good cause. And I
20 believe we had testimony to that effect. With
21 all that, that's where I am on it. Anyone else?

22 MEMBER HEATH: And then?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR JORDAN: Oh, I would move
2 that we grant the relief.

3 VICE CHAIR ALLEN: And I would
4 definitely second that.

5 BZA CHAIR JORDAN: Additional
6 discussion?

7 ZC CHAIR HOOD: Chairman, I'm not
8 going to even try to go through that analysis
9 that you gave. I think it was very well done,
10 very well said and I'm not going to echo it.

11 I did want to say that the
12 Government, you're right, the Government
13 should be predictable which in creating some
14 other factors on this applicant. I think that
15 your analysis, and I'm going to leave it at
16 that, your analysis is good and I'm ready to
17 vote in support of.

18 BZA CHAIR JORDAN: All right.
19 Then, hearing that, all those in -- oh, I'm
20 sorry, Mr. Hinkle?

21 MEMBER HINKLE: No, I'm fine.

22 BZA CHAIR JORDAN: No, you can go on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 now.

2 (Off microphone discussion.)

3 BZA CHAIR JORDAN: All right. So
4 we're ready for the question. All those in
5 favor of the motion signify it by saying aye.

6 (Multiple ayes.)

7 BZA CHAIR JORDAN: Those opposed
8 nay. The motion carries. Mr. Moy.

9 MR. MOY: Yes, staff will record
10 the vote as four to zero for one. This is on
11 the motion of Chairman Jordan to approve the
12 application for the relief requested. Second
13 the motion, Vice Chairperson Allen.

14 Also in support Mr. Hood and Mr.
15 Hinkle. And we have a Board member not present
16 and not voting. So the motion carries on vote
17 of four to zero, sir.

18 BZA CHAIR JORDAN: Add a full
19 order, please.

20 MR. MOY: Yes, sir.

21 BZA CHAIR JORDAN: And I want to
22 thank all of you all for your time and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 courtesies one to the other and I just hope, you
2 know, we just get along and we get things
3 working. Thank you all and thank you ANC.
4 Thank you for really taking the time coming
5 down. Thank you.

6 Mr. Moy, is there any other business
7 coming before the Board at this time?

8 MR. MOY: Not to this time.

9 BZA CHAIR JORDAN: Better not be.
10 No. No, very good. Thanks everybody.
11 Thanks staff and everyone. And then we are
12 adjourned.

13 (Whereupon, the foregoing matter went off
14 the record at 1:28 p.m.)

15

16