

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 6, 2001

+ + + + +

The board met in suite 220, 441 4th St, N.W. Washington, D.C. at 1:00 p.m. Robert Sockwell, Chair, presiding.

PRESENT:

ROBERT SOCKWELL	Chairperson
SUSAN HINTON	Board Member
ANNE RENSHAW	Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Commissioner
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COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
 Paul Hart, Office of Zoning
 John Nyarku, Office of Zoning
 Beverly Bailey, Office of Zoning

OFFICE OF PLANNING STAFF PRESENT:

Steve Cochran
Maxine Brown-Roberts
John Moore

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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Washington, D.C.	
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P-R-O-C-E-E-D-I-N-G-S

(1:35 p.m.)

CHAIRMAN SOCKWELL: The hearing will please come to order.

Good afternoon, ladies and gentlemen. This is the February the 6th public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Robert Sockwell, Chairperson. Joining me today is Susan Hinton, from the National Capitol Planning Commission; Anne Renshaw, also to my left; Mr. Anthony Hood, Chair of the Zoning Commission, will be sitting with us today.

Copies of today's hearing agenda are available to you. They are located to my left near the door.

All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us.

Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exceptions and variances is:

One, statement and witnesses of the applicant;

Two, government reports, including Office of Planning, Department of Public Works, et al.;

Three, report of the Advisory Neighborhood Commission, the ANC;

1 Four, parties or persons in support;

2 Five, parties or persons in opposition;

3 And six, closing remarks by the applicant.

4 Cross examination of witnesses is permitted by the
5 applicant or parties. The ANC, within which the property is
6 located is automatically a party in the case.

7 The record will be closed at the conclusion of
8 each case except for any material specifically requested by the
9 Board. And the staff will specify at the end of the hearing
10 exactly what is expected.

11 The decision of the Board in these contested cases
12 must be based exclusively on the public record. To avoid any
13 appearance to the contrary, the Board requests that persons
14 present not engage the members of the Board in conversation.

15 Please turn off all beepers and cell phones or set
16 them to vibrate only at this time, so as not to disrupt these
17 proceedings.

18 The Board will make every effort to conclude the
19 public hearing as near as possible to 6:00 p.m. If the
20 afternoon cases are not completed at 6:00 p.m., the Board will
21 assess whether it can complete the pending case or cases
22 remaining on the agenda.

23 At this time the Board will consider any
24 preliminary matters. Preliminary matters are those which relate
25 to whether a case will or should be heard today, such as

1 requests for postponement, continuance, or withdrawal, or
2 whether proper and adequate notice of the hearing has been
3 given.

4 If you are not prepared to go forward with the
5 case today or if you believe that the Board should not proceed,
6 now is the time to raise such a matter.

7 Does the staff have any preliminary matters?

8 MS. BAILEY: Good afternoon. Yes, Mr. Chairman we
9 do. I just want to take a moment to welcome Ms. Hinton. We're
10 old colleagues from the previous, previous Boards. And I just
11 wanted to say welcome.

12 The preliminary matter has to do with Application
13 Number 16655 of Delores Flowers. There is a request from the
14 Office of Planning in that case to send the project back to the
15 Zoning Administrator's Office for additional review.

16 Is Ms. Flowers here? And would you please come to
17 the table?

18 Just for the moment they're right behind you. So
19 you can just sit at the table and just identify yourself.

20 I can't see all the way down to the other end, Mr.
21 Chairman. Is a representative from the Office of Planning
22 there?

23 CHAIRMAN SOCKWELL: Yes.

24 MS. BAILEY: Okay.

25 MS. FLOWERS: My names is Delores Flowers. I'm

1 the owner of 1313 Harvard Street, N.W., Washington.

2 MS. BAILEY: Mr. Chairman, we're waiting for
3 someone from the Office of Planning to articulate the reasons
4 why they're asking for this project to be referred back to the
5 Zoning Administrator's Office.

6 Mr. Cochran, would you please -- you have made a
7 recommendation for the project to be referred back to the Zoning
8 Administrator's Office. Could you please explain your reasons
9 why?

10 MR. COCHRAN: Excuse me. The applicant filed was
11 a rooming house.

12 For the record, my name is Steve Cochran, from the
13 Office of Planning.

14 The applicant filed is a rooming house. Looking
15 through the supporting documents --

16 CHAIRMAN SOCKWELL: Let me, if I might interrupt
17 you first. The Office of Planning report may have to be waived
18 in as my understanding was that it was filed later than its
19 required deadline; is that correct?

20 Does the Board have any reason not to wish to
21 waive the rules to accept the Office of Planning report?

22 COMMISSIONER HOOD: No objection.

23 MEMBER RENSHAW: No objection.

24 CHAIRMAN SOCKWELL: With no objection, then the
25 rules will be waived. The Office of Planning report will be

1 accepted into the record, and, Mr. Cochran, you may continue.

2 MR. COCHRAN: In looking through the supporting
3 documentation that attested to the manner in which the facility
4 was run, it appeared to me that it actually was a community
5 based residential facility rather than a rooming house.

6 I've discussed this with staff at the DCRA. They
7 concur. So it seemed that it should be refiled as a CBRF.

8 CHAIRMAN SOCKWELL: Do you understand?

9 MS. FLOWERS: Yes, I do. But it was DCRA who told
10 us to file it as a rooming house in the beginning, over a year
11 and a half ago. So that's why it's filed the way it has been.

12 MR. COCHRAN: I don't mean to be faulting the
13 applicant or DCRA in this. It just appears to be an unfortunate
14 case of bad advice on someone's part.

15 SECRETARY PRUITT: Mr. Chairman, may I ask a
16 question?

17 CHAIRMAN SOCKWELL: Yes.

18 SECRETARY PRUITT: Down here. Your application
19 was a little vague in its assisted living. Are your clients
20 handicapped in some way? I mean, are they considered
21 handicapped, either physically, mentally challenged?

22 MS. FLOWERS: No. But some a little bit mentally
23 disturbed, some cases but not all.

24 And I guess maybe Stan is probably better than me
25 to answer because he's our senior manager. Can he come up and

1 address, if necessary, some of the questions.

2 SECRETARY PRUITT: The composition of your
3 clientele is real important on whether or not it becomes a CBRF
4 or whatever. So, yeah, I think that would be -- we need that
5 information.

6 MR. BLACKWELL: Good afternoon, Mr. Chairman,
7 ladies and gentlemen. My name is Stanley Blackwell. I'm the
8 senior manager and administrator for the 1313 Harvard Street
9 location.

10 Originally we did file for assisted living.
11 Unfortunately there seems to be a mix-up. But the question at
12 hand at present is the makeup of the clientele.

13 The clientele is basically mentally impaired and
14 physically impaired. These people are basically independent
15 clients. They can go back and forth. We have clients that work
16 for the Labor Department, clients that work for the Pentagon,
17 clients that work for the Commerce Department, clients that work
18 for private industry throughout.

19 Our basic function -- excuse me -- is to prepare
20 these individuals to come off the Social Security rolls and go
21 back out and be productive members of society, to pay tax and to
22 possibly come off the Social Security rolls.

23 SECRETARY PRUITT: Thank you. That helps a lot.

24 CHAIRMAN SOCKWELL: So these are -- I guess it's a
25 reasonably interesting line as to whether or not this is defined

1 as a CBRF or something else.

2 Now, these people reside and/or are transported
3 back and forth. So you have some residents, some residential
4 clients or overnight, long-term clients and some clients who
5 just come for a certain service; is that correct?

6 MR. BLACKWELL: Basically -- excuse me --
7 basically when our clients come to us, we set a criteria forth
8 and we basically interview them before we accept a client. We
9 may go through 20 to 25 interviews before one individual is
10 accepted.

11 At that particular time a client must, number one,
12 want to do something for himself to come off of the Social
13 Security rolls, to want to work to become a productive member of
14 society.

15 MS. SANSONE: Mr. Chairman, maybe I could just try
16 to amplify a little bit on what Mr. Cochran said to put this
17 into perspective. Also for the applicant.

18 Under the requested -- the applicant is applying
19 to the Board for a parking variance, and when the Zoning
20 Administrator looked at it to see what variance would be needed,
21 his memorandum construed this as a rooming house, which would
22 have necessitated a variance of two parking spaces.

23 Then an issue came up because if it's a community
24 based residential facility, it would only need a variance of one
25 parking space. So it's important to know what type of facility

1 it is in order to decide the parking question.

2 But the issue that the community based residential
3 facility raises another type of issue, in that in the R-4
4 district certain types of community based residential facilities
5 that provide housing to people that are considered to have a
6 mental or physical impairment that substantially limits that
7 person's life activities, that if the facility provides housing
8 for persons who fall within that legal definition, then the
9 facility would be matter of right, and no additional zoning
10 relief would be required.

11 If, however, it was a community based residential
12 facility that was providing housing for persons that were not
13 considered to be substantially impaired as defined in the zoning
14 regulations, then special exception relief would be needed.

15 So the question the OP is raising here is a very
16 important one as to whether additional types of relief are
17 needed for the community based residential facility, and whether
18 the number of parking spaces is correct.

19 I think for the applicant's purpose it's obvious
20 they're clients, you know, and they have written letters to the
21 Board that are very eloquent and informed. But the term
22 handicapped in the regulation really is not a reflection of
23 that. It's the, sort of, legal question for zoning purposes of
24 whether they have a matter of right use or whether they need
25 additional zoning relief.

1 And in the Section 330.5, Paragraph I, the
2 determination of whether the facility is a matter of right one
3 falls within the discretion of the Zoning Administrator. And he
4 is allowed to make this first call as to whether this is a CBRF
5 is a matter of right.

6 So what OP is suggesting is probably the proper
7 procedure here, is to have the Zoning Administrator go back and
8 examine whether additional relief is needed and whether then the
9 parking spaces should be one or two parking spaces.

10 CHAIRMAN SOCKWELL: What is -- Ms. Flowers?

11 MS. FLOWERS: Yes, sir.

12 CHAIRMAN SOCKWELL: Under the Department of Health
13 you are registered?

14 MS. FLOWERS: Yes.

15 CHAIRMAN SOCKWELL: And what is the Department of
16 Health designation for your --

17 MS. FLOWERS: Do you know what it is?

18 MR. BLACKWELL: We are registered under the mental
19 health section, and basically what we are basically registered
20 as would be a group home.

21 And when I say a group home, basically what for
22 clarification sakes, we give services similar to a CRF, but
23 they're not. They're more towards independent living.

24 CHAIRMAN SOCKWELL: So it seems like there's a
25 rather fine line of --

1 MR. BLACKWELL: Absolutely.

2 CHAIRMAN SOCKWELL: -- demarcation between one
3 aspect of your services and the basic definition by which we
4 would judge it. And I'm not sure that the Board feels -- it's
5 obvious that the Board does not feel particularly comfortable
6 with making the distinction without having, I think, a more
7 definitive description or analysis by the Zoning Administrator.
8 I think that would be fair to say.

9 MEMBER RENSHAW: And, Mr. Chairman, also could we
10 get a copy of the permit?

11 CHAIRMAN SOCKWELL: The Department of Health
12 registration?

13 MEMBER RENSHAW: Department of Health
14 Registration.

15 CHAIRMAN SOCKWELL: Yeah. Because they have to
16 call it whatever it is under their allowable definitions and
17 that would certainly go a distance.

18 And I would move that we remand this back to the
19 Zoning Administrator for a definition, for a more comprehensive
20 review of the specific section of the zoning ordinance that you
21 fall under for the services that you provide, and the Health
22 Department's registration definition will go a distance in
23 establishing that.

24 MR. BLACKWELL: Okay. We only have one slight
25 problem. The problem is that the Mental Health Department has

1 basically said pending this hearing they're allowing us to
2 operate, which they have come and they have inspected us on
3 several different occasions. Ms. McKenda (phonetic) of the
4 Mental Health Section.

5 CHAIRMAN SOCKWELL: As long as your case is
6 pending before this Board, would it not be held open?

7 SECRETARY PRUITT: In reference to situations, you
8 mean?

9 CHAIRMAN SOCKWELL: Well, they're being sort of
10 given a window pending a decision by the Board as to their
11 licensing issue, or their certificate of occupancy. And the
12 certificate of occupancy issue is always held in abeyance until
13 it comes back. Because we would -- we're sending it back to the
14 --

15 SECRETARY PRUITT: ZA person.

16 CHAIRMAN SOCKWELL: -- the ZA. We're not denying
17 the case. We're sending it back for a definition to determine
18 whether or not it's filed under the correct section.

19 SECRETARY PRUITT: But I'm not sure. I understood
20 that it's not the Zoning Administrator that's holding your CFO.
21 It's the Department of Health.

22 CHAIRMAN SOCKWELL: Well, the Department of Health
23 is holding the license.

24 SECRETARY PRUITT: License. Is that the one
25 that's in jeopardy?

1 CHAIRMAN SOCKWELL: That's correct.

2 MR. BLACKWELL: You can not get your license until
3 you get your CFO.

4 CHAIRMAN SOCKWELL: But they have not moved
5 against you pending the outcome of this hearing.

6 MR. BLACKWELL: Pending the outcome of this
7 hearing. We have, however, because the Mental Health Commission
8 has come in and examined our facility with a fine toothed comb,
9 if you want to put it that way. And pending, and hoping, and
10 we're praying that we can get to you all.

11 They have asked us to give them first preference
12 at placing new tenants and clients in our home because they
13 consider us -- they give us a triple A rating in this city.

14 CHAIRMAN SOCKWELL: The whole idea of the mental
15 health piece and the fact that you are under some specific
16 mandate for mental health evaluation of your agency evaluation -
17 -

18 MR. COCHRAN: Excuse me, Mr. Chair. I believe
19 that the applicant's company, nonprofit, runs another facility
20 in the 700 block of Quebec Street. It may be germane to know
21 how that has been categorized if it is serving the same client
22 base.

23 CHAIRMAN SOCKWELL: If they provide the same
24 services.

25 MR. BLACKWELL: That's pending also. Basically

1 at the present point in time we had some safety features which
2 we have corrected, such as on Quebec putting in smoke detection
3 systems, interlocking smoke detection systems, sprinkler
4 systems, that type of thing.

5 All this is already been done. We're in the last
6 stage of final approval on Quebec.

7 As far as 1313 goes, everything that was asked of
8 us to do and told by DCRA for us to do was done immediately
9 within the time allowed which was 30 days. The expense was not
10 a governing factor.

11 However, what we did do, when we originally bought
12 the facility at 1313, we were told that it had a certificate of
13 occupancy.

14 When we filed -- when we came to check on the
15 certificate of occupancy, which at that time we did not check
16 immediately, which we do take fault for that, we basically
17 started putting people in there. When we did go to DCRA and
18 find out that we did not have a certificate of occupancy, we put
19 a freeze on all incoming clients. There was no more clients to
20 come in 1313 until this issue was resolved.

21 CHAIRMAN SOCKWELL: And how did the CFO issue come
22 up again?

23 MS. FLOWERS: It was advertised when I bought the
24 house, was advertised in the listing that it had a certificate
25 of occupancy. But it did not. And we didn't know that until

1 after I bought the house. We came down to get a copy of it.

2 CHAIRMAN SOCKWELL: Do you happen to have a copy
3 of the --

4 MS. FLOWERS: I believe we do.

5 CHAIRMAN SOCKWELL: That would -- that I think you
6 should submit a copy to the record.

7 MS. FLOWERS: Okay.

8 CHAIRMAN SOCKWELL: So that we know how the
9 circumstance came about. It would be helpful.

10 But I think that if we send this back to the
11 Zoning Administrator we could certainly attempt to reschedule it
12 as quickly as possible, so as not to impact you any more from
13 the standpoint of just waiting to get before us.

14 I'm sure that it could probably even with the
15 tight schedule we have, we would try to stick it in. Where?

16 SECRETARY PRUITT: I'm looking at the schedule now
17 and there's a couple of sort of alternatives. Since we can't
18 control the ZA and their timing of work, we do need to -- excuse
19 me for a second.

20 On your March 6th in the morning is your public
21 meeting. Currently you have two things to make a decision on.
22 You may end up having more given, you know, the agenda but you
23 could -- we have done in the past hearings in the morning of
24 meetings, of public meetings to accommodate emergency cases.

25 CHAIRMAN SOCKWELL: On March 6th, if we commenced

1 the public hearing at nine o'clock --

2 SECRETARY PRUITT: Or you could -- yes, the
3 hearing before the meeting.

4 CHAIRMAN SOCKWELL: Right. We could try to
5 commence the public hearing at nine o'clock, rather than say a
6 normal 9:30 start time so that we could get a jump on --

7 SECRETARY PRUITT: Correct.

8 CHAIRMAN SOCKWELL: -- putting this through.
9 Would that be satisfactory to you?

10 MS. FLOWERS: Yes, sir. That would be great.

11 MR. BLACKWELL: That would be excellent, sir.

12 CHAIRMAN SOCKWELL: Is there any question from the
13 Board members regarding doing something like that?

14 COMMISSIONER HOOD: My only concern is, again, is
15 that enough time for the Zoning Administrator?

16 I just want to make a statement because if he
17 doesn't do it, then we have them back down here again.

18 CHAIRMAN SOCKWELL: We will try our best to get
19 the Zoning Administrator's attention placed squarely on this
20 issue. We can not make the promise, but we will do what we can.

21

22 MS. FLOWERS: I appreciate that. Thank you so
23 much.

24 MR. BLACKWELL: Ms. Flowers and I could kiss all
25 of you because we've been going through this for about a year

1 and a half and we would really love to get this out the way and
2 get in hand of putting people back into jobs and back into their
3 own apartments.

4 CHAIRMAN SOCKWELL: And without taking any
5 testimony on this I would say that you had numerous letters that
6 seem to show that there's a great deal of appreciation for the
7 services that you provide and the quality of the environment for
8 those services. And we appreciate getting that kind of positive
9 response for applicants.

10 So I will move that we remand this case back to
11 the Zoning Administrator for a determination of the relief
12 requested or required and that we schedule for a date certain
13 return to this hearing room on March the 6th, at nine o'clock
14 a.m.

15 COMMISSIONER HOOD: I'll second the motion.

16 MR. COCHRAN: Mr. Chair, may I note?

17 CHAIRMAN SOCKWELL: Yes.

18 MR. COCHRAN: Should the Zoning Administrator not
19 determine that it is what it seems to several of us to be, then
20 it may require discussion by the ANC if it is not a matter of
21 right use, in which case March the 6th probably wouldn't be
22 time. I just wanted to get that into the record.

23 MEMBER HINTON: If I could say, I'm not sure it
24 would need to go back to the ANC because they've already looked
25 at --

1 CHAIRMAN SOCKWELL: Haven't they looked at the
2 more --

3 MEMBER HINTON: They've looked at the proposal and
4 that's the worse case.

5 MEMBER RENSHAW: If there is a change of
6 designation the ANC should be notified.

7 COMMISSIONER HOOD: Especially if it's going to be
8 classified differently. I think if we're going to make an
9 error, make it on the side of caution, and allow the ANC time to
10 comment if it is a CBRF.

11 MR. COCHRAN: If it isn't a rooming house, if it
12 is a CBRF but not for handicapped, then other provisions kick in
13 and the community -- there are certainly members of that
14 community that were instrumental in writing the regulations that
15 would then kick in and I think they would have an interest in
16 this. Matter of fact, I know they would.

17 I've been told they would by them.

18 CHAIRMAN SOCKWELL: Then the date certain will be
19 tentative based upon the ruling of the Zoning Administrator in
20 this case.

21 All right? Question? Yes.

22 All in favor.

23 (Chorus of ayes.)

24 CHAIRMAN SOCKWELL: Opposed?

25 (No response.)

1 MS. BAILEY: Staff will record the vote as four to
2 zero to send this project back to the Zoning Administrator for
3 additional ruling. The date tentatively is March 6th at 9:00
4 a.m. for the hearing. Motion made by Mr. Sockwell, seconded by
5 Mr. Hood. Ms. Renshaw and Ms. Hinton to approve.

6 CHAIRMAN SOCKWELL: Thank you very much, Ms.
7 Flowers, Mr. Blackwell.

8 MS. BAILEY: The first case of the afternoon is
9 Application Number 16652 of Lionel and Ann Rosenblatt pursuant
10 to 11 DCMR 3103.2 for a variance under Subsection 404.1 from the
11 required minimum depth of rear yard setback for a proposed
12 handicapped addition to an existing single-family dwelling, or,
13 in the alternative, pursuant to Section 3104.1, for a special
14 exception under Section 223 in an R-1-B District at 3928
15 Huntington Street, N.W. The property is located in Square 1754,
16 Lot 71.

17 All those wishing to testify would you please
18 stand to take the oath? Please stand ma'am. Please stand up.
19 Raise your right hand.

20 (The witness was duly sworn.)

21 MS. BAILEY: Thank you. Please be seated.

22 MS. ROSENBLATT: So, my name is Ann Rosenblatt.
23 I'm happy to be before you.

24 Sadly my husband could not be here nor the
25 contractor, who is constructing the addition. He did see Ms.

1 Booth, from the Zoning Office, in preparation for this.

2 It is my husband's project and he's doing it to
3 accommodate me because I want to stay in this house forever, and
4 so I love my house in the city and so we want to be here. So he
5 thought that that be appropriate to put up an addition in the
6 back yard.

7 We could do it without any problem in the front
8 yard but it looks better in the back yard. So that's how it
9 stands.

10 I'll answer any of your questions. Hopefully I
11 can do that.

12 CHAIRMAN SOCKWELL: In a variance, let me pull out
13 your folder.

14 MS. ROSENBLATT: I'm sorry. I understand it's
15 rather empty.

16 CHAIRMAN SOCKWELL: It was not as thick as the
17 morning folder that I had. But the issue here is that for your
18 variance you are looking for a reduction in the rear yard of
19 approximately 14.86 feet from the 25 foot minimum rear yard.
20 And you have to meet a certain test for that variance.

21 And generally that is stated to be where as by
22 reason of exceptional narrowness, shallowness, or shape of a
23 specific piece of property at the time of the original adoption
24 of the regulations or by reason of exceptional topographical
25 conditions or other extraordinary or exceptional situation or

1 condition of a specific piece or property, the strict
2 application of any regulation adopted under the code would
3 result in peculiar and exceptional practical difficulties or to
4 exceptional and undo hardship upon the owner of the property.
5 To authorize upon appeal relating to property variance from the
6 strict application so as to relieve the difficulties or
7 hardship, providing that we can grant it without substantial
8 detriment to the public good and without substantially impairing
9 the intent, purpose, and integrity of the zone plan as embodied
10 in the zoning regulations.

11 And that sort of says that is there something very
12 special about your property. Is there a particular practical
13 difficulty and does it not have negative or detrimental effects
14 to your neighbors and the surrounding property?

15 One of the issues of granting variances is that
16 while there may not be any particular opposition to what you
17 wish to do, unless the zoning ordinance itself can accommodate a
18 specific hardship that is presented to you, your property, your
19 circumstance, that is relatively unique and different from that
20 which would incumber your next door neighbors, other people on
21 the block, et cetera, it's difficult for the Board to find a
22 reason to justify certain relief.

23 And what you are asking for, while reasonable and
24 while your property obviously is wider than the minimum required
25 property for this zone in area, it has more square footage.

1 Prior to the proposed addition you have almost twice the side
2 yards of the minimum piece of property, and you actually have an
3 existing rear yard that's pretty much right on the money for 25
4 feet, without your addition.

5 And it appears that from what I see, and I have to
6 double check this, it appears that your existing rear yard is 25
7 feet.

8 MS. SANSONE: Mr. Chairman, before we burden the
9 applicant with having to make out a variance case, I noticed the
10 Office of Zoning also advertises this as a potential special
11 exception under Section 223 for an addition to a single family
12 dwelling, which would be a much easier burden of proof, and
13 possibly we could proceed on that basis.

14 CHAIRMAN SOCKWELL: Looking at a special exception
15 -- just a second. Where's the special exception statement?

16 SECRETARY PRUITT: It's actually in the hearing
17 notice.

18 MS. ROSENBLATT: It's in the notice exactly and I
19 wondered if that would be easier, I've been advised that that is
20 easier.

21 SECRETARY PRUITT: It's a lesser burden.

22 MS. ROSENBLATT: We could go there instead of a
23 variance.

24 MEMBER RENSHAW: Mr. Chairman, can we --

25 CHAIRMAN SOCKWELL: Yes, go ahead.

1 MEMBER RENSHAW: I would like to request some
2 plans. We don't have anything in our file other than the Office
3 of their Surveyor's outline.

4 CHAIRMAN SOCKWELL: Well, I think that the --
5 while I would normally suggest plans, I believe that the relief
6 requested actually does not deal with anything but the rear yard
7 aspect per se. But let's -- I'm sure you have plans for this.

8 MS. ROSENBLATT: Correct. And I would have
9 thought the contractor would have delivered them to Ms. Booth
10 when he visited so --

11 CHAIRMAN SOCKWELL: Is there anything in the
12 master file? Wait a minute.

13 MS. ROSENBLATT: But maybe he didn't.

14 CHAIRMAN SOCKWELL: Just a second. There is
15 something in here. No. Yes, there is. Of course. Don't blame
16 the contractor.

17 MS. ROSENBLATT: Good.

18 CHAIRMAN SOCKWELL: The thing is that when we get
19 plans unless sheets this large are made as copies for us all --

20 MS. ROSENBLATT: Oh.

21 CHAIRMAN SOCKWELL: -- they tend not to get broken
22 out into our individual packages.

23 Ms. Renshaw, we have to pass this around briefly.

24 MEMBER RENSHAW: Mr. Chairman, I'd like to, while
25 we're looking through this, I'd like to ask the applicant why

1 this is being advertised as a proposed handicapped addition?

2 MS. ROSENBLATT: Because the intention was to use
3 it eventually for ourselves because we live there forever, and
4 with the experience of our parents, we feature that we could be
5 there some day and, therefore, need that assessment for the
6 purpose.

7 The intention would first be for my husband to use
8 it as an office to receive people and rather than their
9 traipsing through the house to receive them there.

10 And thereafter depending on when, also to use it
11 for one of our parents, eventually ourselves, to build space so
12 that it can be used by a handicapped person in a wheelchair,
13 either one of our parents or ourselves. That was the objective.

14 CHAIRMAN SOCKWELL: It appears to me -- now, was
15 your property advertised as a special exception? I mean when I
16 say "advertised," did you post it as a special exception?

17 MS. ROSENBLATT: Post the?

18 SECRETARY PRUITT: The orange signs. What did
19 they say?

20 CHAIRMAN SOCKWELL: So --

21 SECRETARY PRUITT: They say exactly what was in
22 front of it?

23 MS. ROSENBLATT: Yes, I think it did.

24 SECRETARY PRUITT: Usually the staff here writes
25 this out for them.

1 CHAIRMAN SOCKWELL: Okay. So it would have said
2 both.

3 MS. ROSENBLATT: Both, for exception or variance.

4 CHAIRMAN SOCKWELL: So actually regardless if it
5 was advertised for a variance, it was advertised for the more
6 strict, stringent regulation, which would preclude us asking you
7 to go back and readvertise and those sorts of things.

8 Sometimes if there's opposition, opposition will
9 be more assertive if it's a variance because the tests required
10 for a variance are more rigid than those for a special
11 exception.

12 But it appears that if you come in under Section
13 223 as an addition to a one family dwelling, and you don't
14 comply with all of the requirements of Sections 404 on up, and
15 you're in there; that if your addition does not have a
16 substantially adverse affect on the use or enjoyment of any
17 abutting or adjacent dwelling or property, in particular, light
18 and air available to neighboring property shall not be unduly
19 affected.

20 Privacy of use and enjoyment of neighboring
21 property shall not be unduly compromised. The addition,
22 together with the original building as viewed from the street,
23 alley, and other public way, shall not substantially visually
24 intrude upon the character, scale, and pattern of those houses
25 along the subject street frontage, and in demonstrating

1 compliance with Paragraphs (a), (b), and (c), the applicant
2 shall use the graphical representations such as plans,
3 photographs or elevation and section drawings sufficient to
4 represent the relationship of the proposed addition to adjacent
5 buildings and views from the public ways.

6 And in photographs, you did submit photographs.
7 They show more the character, and they're hard to read because
8 they weren't really good photographs to start with. They show
9 more the character of your property, and to some degree they
10 tend to give the feeling that your area is rather densely
11 wooded, your yard.

12 MS. ROSENBLATT: Yes.

13 CHAIRMAN SOCKWELL: Does that include, from what I
14 see here, tall and mature trees and shrubs that shroud your
15 house from it's adjacent neighbors to the sides?

16 Based on the photographs that I'm looking at I
17 think I'm seeing a lot of old and well developed vegetation.

18 MS. ROSENBLATT: Correct. But particularly from
19 facing the back yard there's a row of Leland Cypress that
20 definitely will eventually protect us from the neighbor to the
21 right.

22 On the left it's not as well protected, but there
23 are indeed trees there and mature bushes, and we've discussed
24 this at great length with our neighbor.

25 CHAIRMAN SOCKWELL: Does your adjacent neighbor's

1 house set further back in the lot than your own?

2 MS. ROSENBLATT: To the left, no, but then they
3 have a deck that will be able to have a good view of the
4 addition.

5 CHAIRMAN SOCKWELL: And that's to the left facing
6 Huntington Street?

7 MS. ROSENBLATT: No, that's to the left facing the
8 back alley.

9 COMMISSIONER HOOD: Mr. Chair, can I --

10 CHAIRMAN SOCKWELL: Yes sir.

11 COMMISSIONER HOOD: -- just pause for a moment
12 here and ask a question?

13 From the letter from the Zoning Administrator,
14 he's saying review of the plans from the proposed rear addition,
15 the relief requested is the variance from Section 404.1.

16 Even though it was advertised under a special
17 exception, I still think the Zoning Administrator's asking us to
18 deal with the variance of 404.1. And I stand to be corrected,
19 but I'm reading what's in front of me.

20 CHAIRMAN SOCKWELL: The Board can under certain
21 circumstances amend the application in a manner more consistent
22 with the relief requested as long as it's, I think,
23 fundamentally within reasonable doubt that this can be done
24 without having to go back through a process.

25 And I think that we could accept the special

1 exception category in that it's clear in the code that the
2 special exception category of 223 would also have applied to
3 this.

4 And this does not state that the Zoning
5 Administrator's relief requested was incorrect. It's just that
6 it is one of several that could have applied to the property.

7 And I'm comfortable in amending it here because it
8 was advertised as the more stringent of the two reliefs,
9 potential for relief, and that this would be not inconsistent
10 with the proper notice to the community.

11 COMMISSIONER HOOD: Okay, Mr. Chair. I guess I
12 have to follow your lead. You do this every week. I don't.

13 MEMBER HINTON: May I ask a question?

14 CHAIRMAN SOCKWELL: Yes.

15 MEMBER HINTON: How did the relief that was
16 noticed get changed from what the Zoning Administrator had
17 determined to the less stringent special exception?

18 SECRETARY PRUITT: That actually has happens in
19 this office when the application comes in. We review it, get it
20 ready for referrals and put together the public hearing notice.

21
22 And based on the information that's in the file at
23 that time, if it's got the ZA letter we follow that. But then
24 in further investigating in the file, it may be determined that
25 it could come under something else, and that's how it got

1 advertised in the alternative, sort of as a safeguard.

2 MEMBER HINTON: Isn't it -- is that ever
3 coordinated then back ever with the Zoning Administrator to make
4 sure that -- because I think it's the Zoning Administrator that
5 determines the relief needed and not the Office of Zoning.

6 SECRETARY PRUITT: Correct. It does get
7 coordinated back. This generally happens on self-
8 certifications, which are major problems in and of themselves,
9 and it's sort of a system that generally is developed to
10 hopefully relieve people from having to go back and forth in a
11 circle from us to Zoning Administrator back and forth. And we
12 sort of make a best estimate on it that way.

13 MS. SANSONE: Mr. Chairman and Ms. Hinton also,
14 Section 223 is a relatively recent addition to the regulations.
15 It only became effective in March of '98, and since it's being
16 used by the owners of single family dwellings, frequently they
17 may not have spent as much time trying to analyze or study the
18 zoning regulations, and unfortunately the Zoning Administrator'
19 Office sometimes forgets about 223 because it is a new
20 regulation.

21 So this situation of variances for the one family
22 dwellings versus a special exception has come up over the last
23 year or so, and people are just starting now to remember that
24 there is a Section 223, and I think once we have a new Title 11
25 published, which should be fairly soon, it will become more of a

1 matter of course to use the Section 223.

2 CHAIRMAN SOCKWELL: And one thing might be made
3 clear. This Section 223 has not even been incorporated yet into
4 the zoning ordinance that is being sold by the District of
5 Columbia. And therefore, it isn't a matter of fact that it will
6 make its way into every circulating copy of the ordinance.

7 So the Zoning Administrator, unless he gets to
8 register on a regular basis and sees these things or has them
9 targeted to him for inclusion, they may not get to him
10 effectively in a way that he can put them in.

11 So this has been a problem even with the BZA not
12 having direct access to all the updated things in a coordinated
13 fashion, but we're working on that.

14 So I am comfortable in suggesting that we can
15 amend your application, especially since it was advertised
16 appropriately, which means that the Advisory Neighborhood
17 Commission and others would not have been given the less
18 stringent requirement, but were in fact noticed on the more
19 stringent requirement.

20 So if there's no additional discussion and if
21 we're comfortable with that --

22 MEMBER RENSHAW: Mr. Chairman, I would like to ask
23 the applicant if she appeared before the ANC?

24 MS. ROSENBLATT: Who is asking that?

25 MEMBER RENSHAW: Over here. Right here.

1 MS. ROSENBLATT: No. We have not. Yes, we would
2 have had to actually. Wouldn't you have instructed us?

3 MEMBER RENSHAW: The ANC should have called you to
4 come into a meeting and appear before the ANC.

5 MS. ROSENBLATT: No.

6 MEMBER RENSHAW: At which time you're normally
7 asked to bring some sign-off from your neighbors as to their
8 agreement in what you're doing, that everything's fine.

9 MS. ROSENBLATT: You know what? What I remember
10 well doing is receiving a list of all the neighbors that had to
11 be contacted, including the ANC, and our mailing letters to all
12 of them. But that's all I remember. I don't remember actually
13 --

14 SECRETARY PRUITT: Ms. Renshaw, the record shows
15 that we did mail out to the ANC single member district, the ANC,
16 and council people, as generally we do.

17 MEMBER RENSHAW: Thank you.

18 SECRETARY PRUITT: So it was covered.

19 MS. ROSENBLATT: And so they would not necessarily
20 have had to call us in to be there to show our faces for any --

21 MEMBER RENSHAW: Well, it was up to the ANC to
22 contact you to come in to a meeting, and if they didn't do it
23 they didn't do it.

24 CHAIRMAN SOCKWELL: Ms. Rosenblatt, there are
25 times when the applicant will approach the ANC, in particular,

1 when there is at least the belief that there may be some
2 conflict between what's proposed and what the neighbors
3 traditionally will accept.

4 Barring that, the ANC has the responsibility of
5 coming down, looking at the file and deciding whether or not it
6 is something that they want to get involved with.

7 And they may solicit your appearance at an ANC
8 meeting to discuss this with your neighbors, along with your
9 proposal.

10 I'm trying to remember whether or not you had
11 letters of support from your neighbors.

12 MS. BAILEY: No, Mr. Chairman. The file doesn't
13 contain any letters from the neighbors.

14 CHAIRMAN SOCKWELL: So --

15 SECRETARY PRUITT: In support or opposition.

16 CHAIRMAN SOCKWELL: Yeah, in support or in
17 opposition.

18 Construction had not started on this addition, had
19 it?

20 MS. ROSENBLATT: No.

21 CHAIRMAN SOCKWELL: Okay.

22 MS. ROSENBLATT: And we'd talked with, once we
23 sent those letters out from everybody except the one immediately
24 behind us, on the other side of the alley, on therefore
25 Harrison, I guess, Harrison Street. And we did not receive a

1 call from them for example.

2 And they could see the addition from their house,
3 and they didn't have a problem with it apparently.

4 CHAIRMAN SOCKWELL: Well, I mean when we don't
5 have responses from the Advisory Neighborhood Commission and we
6 don't have responses from the ANC, I mean from the adjacent
7 neighbors, then what we have to go on is what we have.

8 And on that basis I would suggest we just proceed.
9 There is no report from the Office of Planning. There is no
10 ANC report.

11 Are there any parties or persons in support of the
12 application here in the room today?

13 (No response.)

14 CHAIRMAN SOCKWELL: Are there any parties or
15 persons in opposition?

16 (No response.)

17 CHAIRMAN SOCKWELL: Then what we have is what we
18 have.

19 Board members, do you have any questions, any
20 issues that you feel need to be ironed out under the
21 circumstance of the special exception?

22 It appears to fit the requirements. It's a one
23 story addition attached to a two story main house. It will
24 present a projection into the rear yard, but it does not meet
25 the same massing as the principal structure prior to the

1 addition because it's smaller and lower and has a similar roof.

2

3 There's vegetation on one side, which serves as a
4 barrier not only to views of the addition, the proposed
5 addition, but as well it sort of blocks a direct down line view
6 of all the yards and the streets. So it would not apparently
7 cause a tremendous change in the direct view along the
8 properties that front on Huntington Street and have the alley to
9 the interior.

10 As far as not having any opposition to it, I don't
11 see that under a special exception this would be difficult to
12 approve. But I would like some input from my fellow Board
13 members.

14 We would have to move to amend.

15 No, we don't have to move to amend. Okay. Fine.
16 We'll just do it administratively.

17 MEMBER RENSHAW: Mr. Chairman, I'm just wondering
18 about the construction schedule. Do we discuss that at all?

19 CHAIRMAN SOCKWELL: We can.

20 MEMBER RENSHAW: All right. I have not heard from
21 the applicant as far as --

22 CHAIRMAN SOCKWELL: Well, we can't condition it --

23 MEMBER RENSHAW: Right.

24 CHAIRMAN SOCKWELL: -- because it's a special
25 exception.

1 MEMBER RENSHAW: But I just would like to know how
2 long a period of construction this is going to be and whether
3 that was discussed with the neighbors.

4 MS. ROSENBLATT: The period of construction?

5 MEMBER RENSHAW: Construction and whether you have
6 to excavate and all of that.

7 MS. ROSENBLATT: I don't recall my husband's
8 discussing the time frame. But the contractor made it clear
9 that he would not like other contractors put the -- well, I
10 don't know how you call it, but the container to put all the
11 debris --

12 CHAIRMAN SOCKWELL: Yeah.

13 MS. ROSENBLATT: -- he wouldn't put it out front
14 on Huntington Street, but it would be in the back and maybe in
15 the driveway, but he's very conscious of that.

16 COMMISSIONER HOOD: I guess, we would just ask
17 that you use --

18 CHAIRMAN SOCKWELL: Dumpsters.

19 MS. ROSENBLATT: Dumpsters, thank you.

20 COMMISSIONER HOOD: -- very courteous to your
21 neighbors. That's all we can ask, is good faith --

22 MS. ROSENBLATT: Yeah.

23 COMMISSIONER HOOD: That you be very curious to
24 your neighbors, through the process.

25 MS. ROSENBLATT: Yes. We are and he also is very

1 conscious of that factor.

2 CHAIRMAN SOCKWELL: Now --

3 MS. ROSENBLATT: We've been there a long time and
4 the neighbors have been there a long time. I mean they say
5 everybody moves around in D.C. but --

6 CHAIRMAN SOCKWELL: Now the reason the addition is
7 being built for handicapped accessibility is that?

8 MS. ROSENBLATT: Is that eventually we see
9 ourselves, given our parents' history, in that state, and we
10 could bring one of them to live in the addition, and given that
11 they are handicapped, we would need that. Rather than their
12 living in our house, it's better to have somebody in that
13 addition.

14 CHAIRMAN SOCKWELL: It gives them privacy.

15 MS. ROSENBLATT: Privacy.

16 CHAIRMAN SOCKWELL: And you privacy.

17 MS. ROSENBLATT: Us, them.

18 MEMBER RENSHAW: And, Mr. Chairman, we had a case
19 some months ago where I remember an applicant having a problem
20 or thinking ahead to a potential problem, physical problem, and
21 wanting to have an addition on the house for that reason.

22 MS. ROSENBLATT: Yes. My husband has very good
23 foresight and sees it that way.

24 CHAIRMAN SOCKWELL: All right. Then I don't see
25 any reason why we can't approve this under a special exception.

1 And I think in my view you're fortunate to be able to fall
2 under a special exception because it would have been very
3 difficult to prove a variance.

4 MS. ROSENBLATT: That's good to know.

5 CHAIRMAN SOCKWELL: If we're ready for a vote on
6 this, I move that the Application Number 16652 of Lionel and Ann
7 Rosenblatt for a one story addition as a special exception under
8 Section 223 of the ordinance be approved as per the plans
9 submitted.

10 MEMBER RENSHAW: Second.

11 CHAIRMAN SOCKWELL: Discussion?

12 (No response.)

13 CHAIRMAN SOCKWELL: All in favor?

14 (Chorus of ayes.)

15 CHAIRMAN SOCKWELL: Opposed?

16 (No response.)

17 CHAIRMAN SOCKWELL: Now, I'm sure that you will
18 want what is called a summary order, and that means that you
19 will have your order in about two weeks. That's what it takes
20 for the administrative process, and --

21 MS. ROSENBLATT: And that allows the construction
22 to start?

23 CHAIRMAN SOCKWELL: That will allow you to
24 complete your building permit.

25 MS. ROSENBLATT: I see.

1 CHAIRMAN SOCKWELL: The term construction to start
2 comes after the term receive building permit.

3 So we thank you for your time.

4 MS. ROSENBLATT: Thank you. Well done, well done.
5 Thank you.

6 CHAIRMAN SOCKWELL: Look forward to your addition.

7 MS. ROSENBLATT: Thank you. I'm pleased.
8 Everybody will be, my husband.

9 MS. BAILEY: Staff will record the vote as four to
10 zero to approve the application for a special exception. Motion
11 made by Mr. Sockwell, seconded by Ms. Renshaw. Mr. Hood and Ms.
12 Hinton to approve.

13 Mr. Chairman, are you ready for the next case?

14 CHAIRMAN SOCKWELL: Yes.

15 MS. BAILEY: Application Number 16659 or John R.
16 Klein, pursuant to 11 DCMR 3104.1, for a special exception under
17 Sections 214 and 2303 to continue the use of an accessory
18 parking lot in an R-1-B District at premises Rear 4418-20
19 Connecticut Avenue, N.W. The property is located in Square
20 1971, Lot 825.

21 All those wishing to testify would you please
22 stand to take the oath. Please raise your right hand.

23 (Whereupon, the witnesses were duly sworn.)

24 MS. BAILEY: Thank you.

25 CHAIRMAN SOCKWELL: For the record I will indicate

1 that Mr. Kass is my attorney for Capitol Park for Condominium,
2 which I am the president of, and while Mr. Kass and I have
3 sparred on occasion in the past, when he was on the other side
4 of the table, I finally have my chance at him.

5 Now, there is absolutely no reason why I feel that
6 I could not carry out my duties as Chair on the issues before us
7 with regard to this case.

8 MS. BAILEY: Mr. Chairman, there are a couple of
9 notes. Would you like for me to go over them or do you want the
10 applicant to start right away?

11 CHAIRMAN SOCKWELL: You may go over the notes.

12 MS. BAILEY: We do have a report from the Office
13 of Planning, and the Office of Planning is recommending that the
14 application be approved for two years.

15 We also have a report from ANC 3F. The property
16 was properly posted and the affidavit was timely filed.

17 This is a case, Mr. Chairman, where this site has
18 been used as a parking lot for a very long time, approximately
19 48 years, as a matter of fact.

20 The last order approved this application for five
21 years, and attached to our write-up that we do on each project
22 there's a list of all the previous orders approving this site in
23 the past.

24 And with that said, the applicant may present his
25 case.

1 MR. KASS: May I proceed?

2 CHAIRMAN SOCKWELL: Yes.

3 MR. KASS: Thank you.

4 CHAIRMAN SOCKWELL: Your microphone has to be
5 pressed on.

6 MR. KASS: Thank you, Mr. Chairman, members of the
7 committee.

8 For the record, I'm Benny Kass and I'm the
9 attorney for the applicant. To my right is Mr. John R. Klein,
10 II, who is a part owner with his father John R. Klein, I, I
11 guess.

12 MR. KLEIN: Senior.

13 MR. KASS: Senior. I'm not going to waste the
14 commission's time. Our application spells out what our request
15 is. This is used by the Dry Cleaning Depot. My client bought
16 the property in '99. It's continued to be used as the Dry
17 Cleaning Depot and behind it is the parking area that's in
18 question.

19 I do have a potential procedural matter that Ms.
20 Sansone raised with me yesterday. And that is it appears that
21 the application should have been under Section 213 parking lots
22 instead of Section 214, accessory parking spaces. The only
23 reason that it was made under 214 was because we followed the
24 old 1995 order that specifically said that.

25 Having read very carefully and analyzed the

1 requirements of Section 213 and the requirements of Section 214,
2 it seems to me based on the similar argument that you just had
3 earlier, 213 is actually less restrictive than -- I mean more --
4 is less restrictive than 214.

5 I believe we meet all the requirements of 213.
6 The Board certainly has the authority to amend on its own the
7 application. There's absolutely no harm. The Office of
8 Planning has supported it in principle.

9 I have met personally with the ANC. We had a long
10 discussion with them. Their major concern was that the dumpster
11 lid was not being closed, and we are taking and will continue to
12 take steps to make sure that that's closed.

13 That is not a zoning issue. That's a health and
14 safety issue that is equally of concern to my client. And we
15 have taken steps to advise the tenant of that.

16 So without wanting to delay in anyway this process
17 because our application, our C of O has expired, we are
18 requesting and formally moving to amend the applications to
19 reflect the proper section, Section 213.

20 CHAIRMAN SOCKWELL: Actually, Mr. Kass, the
21 certificate of occupancy would have needed to be transferred to
22 Mr. Klein upon his taking possession of the property. Was it?

23 MR. KASS: It was, yes. Immediately after he
24 bought it in 1999 it was put into his name.

25 CHAIRMAN SOCKWELL: All right.

1 MR. KASS: Actually it was put into his name in
2 his sister's name who just died, and Mr. Klein is now another
3 part owner, but that's a procedural matter.

4 We're still in probate on the Marguerite Klein
5 issue so we can't transfer that at this point.

6 I do have one request of the Board. The earlier
7 order, and I didn't go back to orders going back 50 years, but
8 the 1995 order did have a life span of five years.

9 It also had that the hours of operation shall not
10 exceed 8:00 a.m to 9:00 p.m. I'm delighted and pleased that the
11 Office of Planning, when you'll hear their report, is
12 recommending that the hours be from 7:00 a.m. until 9:00 p.m.
13 That's more realistic with the needs of the consumers, the needs
14 of the people who live there.

15 They go to work. They stop by on the way to the
16 metro and drop off their dry cleaning at seven o'clock in the
17 morning. And that certainly is not going to cause any greater
18 traffic problems at all.

19 I do have a problem, however, with respect to the
20 request that this be for two years. The previous order was for
21 five years. I do not understand the necessity for a two thing.

22 If the -- if my clients or the tenants are violating health and
23 safety or other requirements, they certainly can be brought to
24 their attention and their feet brought on the carpet if
25 necessary.

1 But to do a two year, at this point in time, is,
2 first of all, from your point of view a potential waste of time
3 because we got to come back in two years again with the same
4 process, start all over again, and everything else.

5 From my client's point of view and from the
6 tenant's point of view, there's a great uncertainty.

7 The city is trying to build up economic
8 development, and to tell a tenant or a landlord that we've got
9 to go back to another zoning; this has been used for 50 years,
10 but we can't guarantee it, and you've got to disclose to a
11 potential tenant if dry cleaning wants to expend it or we need
12 another -- right now I have no reason to leave. But if we have
13 to tell them, "Well, we have to go back to BZA," they're going
14 to say, "Hey, it's not worth it. I'll go somewhere else. I'll
15 go out of the district. I'll go where it's more user friendly."

16
17 And it seems to me there is absolutely no
18 justification to drop it down to a two year.

19 We are accordingly requesting that the order, if
20 the BZA agrees with the proposal, be for five years. As I say,
21 if there is a problem with regard to we're not doing the right
22 thing, we're violating safety, then DCRA, the inspectors, and
23 everything else can certainly come after us, and we are more
24 than anxious and willing to respond and to take care of the
25 property.

1 It's my client's investment and he's not a
2 speculator. It's his property and his property and they want to
3 take care of it.

4 But I strongly recommend that the order be
5 continued and respectfully requested that it be for five years.

6
7 That's the extent of my testimony, Mr. Chairman.

8 CHAIRMAN SOCKWELL: Does Mr. Klein have any
9 testimony?

10 MR. KLEIN: No, sir.

11 CHAIRMAN SOCKWELL: And, Mr. Klein, you have the
12 Board's condolences on your loss.

13 MR. KLEIN: Thank you.

14 CHAIRMAN SOCKWELL: Board members?

15 If I may -- yes.

16 MEMBER RENSHAW: I just want to point out, and
17 this can be mentioned when you call for government reports, but
18 the ANC in its letter did not state anything about a time limit.

19 MR. KASS: It's the Office of Planning that does.

20 MEMBER RENSHAW: I know, but I just was pointing
21 out that 3F did not.

22 MR. KASS: I appreciate that.

23 MEMBER RENSHAW: Okay.

24 CHAIRMAN SOCKWELL: Board members, do you have any
25 questions of the applicant?

1 MEMBER HINTON: I would like to hear about the
2 landscape offer that was supposed to be installed according to
3 the order that was granted in 1995.

4 MR. KASS: Ms. Hinton, I was not aware of that
5 until I saw this recent order. As I say, my clients bought the
6 property in 1999. I can assure you, and that's one of the
7 reasons I brought the owner, we will look into that. Apparently
8 there's some sort of a site plan. There's ivy I understand
9 growing.

10 I do not know what that landscaping is. We
11 certainly intend to comply and have no problem with reinstating
12 that into a new order.

13 As I say, we bought it. This is the first time
14 when I read the order about four or five weeks ago, I realized
15 for the first time that there is this requirement. We certainly
16 will want to make it as attractive, and I'm speaking for the
17 owner, make it as attractive and user friendly as can be.

18 I honestly don't know the answer at this point,
19 but I certainly will look into that, and if the Board needs a
20 supplemental as to what the requirements are I've got to go back
21 to the property manager.

22 Fortunately the property manager for the old owner
23 is the same property manager as now. I on the record want to
24 find out why he didn't do it five years ago. And that's not a
25 concern of the BZA, but that's my concern from a lawyer's point

1 of view.

2 But we will get back to the Board, and if the
3 Board wants a supplemental, I'll be glad to supplement.

4 MEMBER HINTON: Well, it is a concern of the BZA.

5 MR. KASS: I understand.

6 CHAIRMAN SOCKWELL: Five percent. Five percent of
7 the lot, of parking lots is required to be landscaping.

8 MEMBER HINTON: I didn't see a copy of any sort of
9 plan with this application. So that is something that needs to
10 be required before we would make a decision. If you have a plan
11 of, that you have a plan of the parking area, and you show where
12 that landscape area is going to be and you show how it's going
13 to be treated.

14 MR. KASS: I'd be happy to submit that shortly. I
15 was going on Paragraph 8 of the 1995 --

16 COMMISSIONER HOOD: You may need to turn your
17 microphone on so we can pick you up.

18 MR. KASS: I'm sorry. I keep hitting it.

19 COMMISSIONER HOOD: Okay.

20 MR. KASS: I was going on Paragraph 8 of the 1995
21 order of this body, which says landscaping shall be provided as
22 identified on the site plan. And I have not seen the site plan.

23 I will attempt to get it. Sometimes it's very difficult, but I
24 will submit that very shortly to the Board.

25 MEMBER HINTON: We can't vote on it until we see

1 it.

2 MEMBER RENSHAW: We shouldn't vote until we see
3 that site plan, Mr. Chairman.

4 CHAIRMAN SOCKWELL: Because a parking lot is
5 required to have that five percent, and at this point it may or
6 may not be there as far as we know, the Board would need a site
7 plan that shows the layout of the lot and any landscaping that
8 has been provided, if it's existing, or that would be proposed
9 if it is not there now.

10 MR. KASS: May I keep the record open instead of
11 having to go through another hearing and submit that within the
12 next ten days?

13 CHAIRMAN SOCKWELL: There is no opposition to the
14 case. The Advisory Neighborhood Commission has supported it by
15 a seven to zero vote, which means that all single member
16 districts, including the one in which it is located, have
17 endorsed it's continued use subject to the trash removal on a
18 regular basis, and in the ANC's approval there was a statement
19 that the dumpster lid be kept close as well, but there has been
20 no statement in the ANC report of any previous deficiencies with
21 regard to that.

22 In other words, they didn't say, "By the way
23 you've been letting trash accumulate on the lot. Please improve
24 that condition. By the way, you haven't been keeping a closed
25 dumpster. We're having trouble with rodents or with garbage or

1 whatever."

2 They haven't said that. They have just said that
3 they want the trash picked up and placed inside a dumpster and
4 that dumpster's lid would be closed. And that's it.

5 Since the lot is not a new lot, and this use is to
6 be continued rather than to be initiated with a condition that
7 this parking lot meet the requirements of DCMR-11 with regard to
8 such, and that further the request of the ANC be bound in, I
9 don't see a reason why we could not approve this, leave the
10 record open for the submission of the site plan, but the order
11 would not be issued until the documentation is in hand. But that
12 would be subject --

13 COMMISSIONER HOOD: Mr. --

14 MEMBER RENSHAW: Mr. Chairman.

15 CHAIRMAN SOCKWELL: Yes.

16 MEMBER RENSHAW: I would like to hear from the
17 Office of Planning representative as to why the term of two
18 years was applied to this application.

19 CHAIRMAN SOCKWELL: Yeah, we'll have to get to
20 that.

21 COMMISSIONER HOOD: Yeah, can I just make a
22 statement though to Mr. Kass?

23 In his testimony he mentioned he didn't understand
24 why it was two years, and my colleague, Ms. Hinton, in looking
25 at her I see she voted on this.

1 MEMBER HINTON: Yes I did.

2 COMMISSIONER HOOD: When you vote on something
3 five years ago, you expect for the conditions and things to be
4 followed. And I can tell you from what I'm hearing right now,
5 from what I'm seeing, it hasn't been done, and not blaming the
6 client here, the applicant here.

7 That's why I believe that you take it and you
8 condense the time frame. I just wanted to bring that to your
9 attention. I heard you loud and clear when you said you didn't
10 understand why it was two years. But when it was five years
11 before, there were conditions that should have been carried out,
12 and while I wasn't here my colleague Ms. Hinton was here and she
13 voted on that.

14 And five years from now if I'm still here and I
15 come back and see things that have not been done, then I
16 eventually have a problem, too.

17 So I just wanted to put that on the record to you.

18 MR. KASS: I thank you.

19 CHAIRMAN SOCKWELL: Let's go to the government
20 reports, which would be the Office of Planning, represented by
21 Ms. --

22 MS. BROWN-ROBERTS: Brown-Roberts.

23 CHAIRMAN SOCKWELL: I'm sorry.

24 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman
25 and members of the Board.

1 I'm Maxine Brown-Roberts from the Office of
2 Planning.

3 We would also like to amend our report to reflect
4 that it's Section 213 instead of Section 214.

5 The application meets all the requirements of
6 Section 213, except for one provision under 214.5. This area
7 addresses the landscaping, and it refers the landscaping with
8 trees and shrubs to cover five percent of the total area.

9 From our inspection of the existing parking lot,
10 the landscaped area shown on the site plan and landscape plan
11 have not been maintained. Many of the trees shown on the plan
12 were either not planted or have died.

13 The applicant has also requested that the
14 requirement from Section 2303.2 be waived. And this addresses a
15 major wall at least 12 inches thick and 42 inches high. This
16 was also waived in the original application.

17 The Office of Planning agrees.

18 Referring to the BZA conditions on this
19 application, in October 11th, 1995, the BZA approved Application
20 16078, and there were a number of conditions. The application -
21 - the applicant has not satisfied condition two, three, six, and
22 nine.

23 Condition two requires 18 parking spaces shall be
24 provided on the side. The site plan approved by the BZA shows
25 18 parking spaces and a space for the garbage dumpster.

1 However, from a site inspection the dumpster has
2 been relocated to the rear of the parking lot and the space is
3 now used for parking.

4 Requirement number three, that the hours of
5 operation shall not exceed 8:00 a.m. to 9:00 p.m. Due to the
6 Dry Cleaning Depot at the side which opens at seven, staff
7 agrees that the time of operation should be extended from 7:00
8 a.m. to 9:00 p.m.

9 Condition number six requires that all parts of
10 the lot shall be kept free of refuse or debris and shall be
11 paved and landscaped. There's a garbage dump on the parking
12 lot. From inspection it is kept free of debris. The lot is
13 paved and has some landscaping which needs to be improved and
14 maintained.

15 The next condition requires landscaping shall be
16 provided as identified on the site plan. Landscaping shall be
17 maintained in a healthy growing condition and in a neat and
18 orderly appearance. The landscaping shown on the site and
19 landscape plan has not been maintained. Many of the 20 Leland
20 Cyprus evergreen trees that are shown in the plan were either
21 not planted or have died. The few existing trees have not grown
22 to any appreciable size in the past five years due to neglect.

23 The applicant has not maintained a healthy growing
24 condition and the landscape area does not present a neat and
25 orderly appearance. Therefore, the image and buffer that was

1 envisioned to be created by the landscape area has not
2 materialized.

3 CHAIRMAN SOCKWELL: Ms. Brown-Roberts, you
4 apparently had access to the site plan and landscape plan.

5 MS. BROWN-ROBERTS: Yes.

6 CHAIRMAN SOCKWELL: Unfortunately the Office of
7 Zoning didn't.

8 MS. BROWN-ROBERTS: I saw it in the original BZA
9 application in the case file.

10 CHAIRMAN SOCKWELL: Which would -- if the site
11 plan has not been physically altered, then that could be
12 provided to us as well as to the applicant for confirmation of
13 conditions.

14 MS. BAILEY: But based on what I just heard from
15 Ms. Brown-Roberts, sir, there are more than 18 spaces.

16 How many spaces, Mr. Klein, is on that parking
17 lot?

18 MR. KLEIN: I believe it's 18 with a space for the
19 dumpster.

20 MS. BROWN-ROBERTS: Right, but what has happened
21 is that they have moved the dumpster from that location and
22 there is now parking there. Car parking and not the dumpster.

23 And so there is some concern that the dumpster
24 being placed so close to the landscaped area, they're not able
25 to get into that area.

1 In addition, being that close to the area which is
2 planted, it does attract rodents there.

3 CHAIRMAN SOCKWELL: Is the only use for that
4 dumpster is for your dry cleaning facility?

5 MR. KLEIN: I believe so, yes.

6 CHAIRMAN SOCKWELL: Continue.

7 MS. BROWN-ROBERTS: Okay. The Office of Planning
8 recommends approval of this special exception to continue the
9 use as parking lot with the following conditions.

10 We had recommended for a period of two years, and
11 why we recommended two years is to give them time in which to
12 bring the landscaping area up to what is required so they can
13 come back in to us and say, "Yes, we have done this," and at
14 that time we may want to alter this recommendation.

15 But at least this gives us a time to make sure
16 that the applicant is complying with this condition.

17 The hours of operation not to exceed 7:00 a.m. to
18 9:00 p.m., and all driveways devoted to driveway access lane and
19 parking areas shall be maintained.

20 All parts of the lot shall be kept free of refuge
21 or debris and shall be paved and landscaped.

22 The garbage dumpster shall be relocated to the
23 areas as shown on the site plan. The dumpster shall be kept
24 closed in order to minimize rats and other rodents in the area.

25

1 Landscaping shall be provided as identified on the
2 site plan. The landscaping shall be maintained in a healthy
3 growing condition in a neat and orderly appearance.

4 Thank you, Mr. Chairman.

5 CHAIRMAN SOCKWELL: In number four of your
6 conditions, I would recommend that you substitute the word "or"
7 for "and" between "paved" and "landscaped."

8 MS. BROWN-ROBERTS: Okay.

9 CHAIRMAN SOCKWELL: Because this would either be
10 one or the other.

11 MEMBER RENSHAW: A question, Mr. Chairman, to the
12 Office of Planning's representative. If the garbage dumpster is
13 relocated to the areas shown on the site plan, I don't have
14 that, but is that anywhere near any residential dwellings?

15 MS. BROWN-ROBERTS: No. No.

16 MEMBER RENSHAW: So it's a parking lot.

17 MS. BROWN-ROBERTS: It is closer to the
18 residential area now where it's located than if it was placed,
19 replaced in its original location.

20 MEMBER RENSHAW: Thank you.

21 CHAIRMAN SOCKWELL: Ms. Brown-Roberts, from your -
22 - when did you visit the lot?

23 MS. BROWN-ROBERTS: About a month ago.

24 CHAIRMAN SOCKWELL: And the condition that you
25 found was one of the lot not having been taken care of?

1 MS. BROWN-ROBERTS: The lot itself is well
2 maintained. It is striped. It has the wheel stops, but it's
3 the landscaped area that hasn't been maintained.

4 CHAIRMAN SOCKWELL: Give us just a moment, please.

5 (The Board conferred).

6 CHAIRMAN SOCKWELL: This is the record copy so it
7 can't circulate. Is there any circumstance under which we can
8 allow Mr. Kass access to it for the purpose of making a copy?

9 SECRETARY PRUITT: We do not want it to leave the
10 office.

11 CHAIRMAN SOCKWELL: Okay.

12 MR. KASS: Can you make a copy for me? I mean, if
13 I have to pay for it, I'll pay for it.

14 SECRETARY PRUITT: I guess we can do a paste
15 together copy. It wouldn't be very -- you know. We don't
16 unfortunately have the capacity to large --

17 CHAIRMAN SOCKWELL: Well, Mr. Colbert (phonetic)
18 is still very active in this town. He's the architect.

19 MR. KASS: And my client may have it, too, my
20 property manager. May I show this to Mr. --

21 CHAIRMAN SOCKWELL: Yes.

22 MR. KASS: Thank you, Mr. Chairman.

23 May I make a representation?

24 CHAIRMAN SOCKWELL: Yes.

25 MR. KASS: For the record, having seen the plan,

1 and the owner is sitting next to me, we will take -- I don't
2 want to say immediate because of weather and other things -- but
3 reasonable steps, one, to make sure that the dumpster is put
4 back per the site plan after I get a copy of the site plan, and,
5 two, to make sure that any trees that have died are in fact,
6 restored or rebuilt, refurnished. That will have to be after
7 the spring time. I mean in the spring, not now.

8 CHAIRMAN SOCKWELL: Well, depending upon what is
9 planted, there are things that are best planted in the winter
10 and things that are best planted in the spring and that's a
11 determination. But the restoration or the replacement of the
12 landscaping with an adequate and similar or appropriate species
13 of plant and ground cover would be what the Board would expect.

14
15 MEMBER RENSHAW: And also to highlight "and
16 maintain."

17 MR. KASS: Obviously. And I make that
18 representation that it will be done.

19 MEMBER RENSHAW: Very good. Thank you.

20 CHAIRMAN SOCKWELL: Because actually that's a
21 fairly reasonable response from the Board. As well, the lot,
22 it's been mentioned in our observing the plan, that there are 19
23 parking spaces shown on the lot. If you chose to have the 18
24 spaces that are the ones that had been listed in the previous
25 orders, and that includes the one handicapped space and more

1 room for the dumpster in that original location for ease of
2 access, that might be something you'd want to do. I don't know.

3 If the size of the dumpster space is adequate for the dumpster,
4 that's fine.

5 MR. KASS: Is it something that you have to make a
6 decision now because I have to talk to the trash people and the
7 dumpsters and --

8 CHAIRMAN SOCKWELL: Well, the dumpster has got to
9 go back where it was.

10 MR. KASS: Right. If you want --

11 CHAIRMAN SOCKWELL: Where it was shown.

12 MR. KASS: If you want to give me 19 spaces on the
13 condition that the dumpster will stay where it is on the plan, I
14 so request. I mean if that's what you're suggesting.

15 CHAIRMAN SOCKWELL: Well, we're saying that the
16 plan shows 19 spaces, and that includes one handicapped space.

17 MR. KASS: Right.

18 CHAIRMAN SOCKWELL: If that's the way the lot is
19 configured and Ms. Brown-Roberts is capable of saying that is a
20 continuous -- a continued configuration and you want your 19
21 spaces, then we can arrange to show in the order that you'll
22 provide 19 spaces rather than 18.

23 MR. KASS: That's exactly what I'm asking for.

24 CHAIRMAN SOCKWELL: And in such configuration you
25 can put the dumpster in enough room to accommodate it, then

1 fine.

2 The issue of the wall that was a requirement where
3 no wall had been provided previously, it would seem to me that
4 there is no reason to require a wall to be built as long as the
5 property is maintained properly; the landscaping is maintained
6 properly; the dumpster is maintained properly; and the removal
7 of trash is accomplished appropriately. And there are no
8 objectionable noises and odors and nobody is rebuilding cars on
9 the lot or anything like that, and it's well policed.

10 Then I would think that the Board may wish to be
11 lenient with regard to that particular requirement.

12 However, with regard to other things let's go
13 forward. Are there no questions? Do you have any questions of
14 the Office of Planning?

15 MR. KASS: No, I don't.

16 CHAIRMAN SOCKWELL: And the Board did not have
17 question of the Office of Planning further.

18 Are there any persons or parties-- we don't have
19 an ANC person here, but we have discussed the ANC report
20 generally, but for the record if Ms. Renshaw would state the
21 specifics of the ANC approval.

22 MEMBER RENSHAW: The letter from ANC 3F is dated
23 January 19th, 2001, and it is signed by David J. Bardin, the
24 Chair of ANC 3F. And the letter states that at its regularly
25 monthly meeting, held with due notice on January 16th, 2001, a

1 quorum being present, the ANC adopted Resolution 1-02 by a vote
2 of seven to zero to zero, not to object to the authorization for
3 continued use of the property as a parking lot behind 4418 to
4 4420 Connecticut Avenue, upon the condition that the owner take
5 the action to ensure that all trash on the premises be picked up
6 and placed inside the dumpster and that the dumpster lid is kept
7 closed as required as required by law.

8 CHAIRMAN SOCKWELL: Thank you.

9 Are there any persons or parties in support of
10 this application here in the room today?

11 (No response.)

12 CHAIRMAN SOCKWELL: Are there any persons or
13 parties in opposition here in the room today?

14 (No response.)

15 CHAIRMAN SOCKWELL: Then it's appropriate for
16 closing remarks by the applicant.

17 MR. KASS: Mr. Chairman, I'll be very brief.

18 I would like to -- I appreciate the time and the
19 patience you've given us. I'd like to submit for the record,
20 but I didn't make copies and just get it to the BZA tomorrow, a
21 three-page document. One is a -- I'm sorry -- a two-paged
22 document.

23 In response to Mr. Bardin, the Chair of the ANC,
24 when he sent me a courtesy copy of the letter that was just
25 read, I immediately sent him, on January 24th, a letter;

1 basically thank you for your letter.

2 And after our meeting the other night I had the
3 property manager send a memorandum to the tenants of the
4 building regarding the dumpster. Enclosed is a copy of this
5 memorandum, and I indicated further, "Thank you for assistance.

6 I will make sure that this is periodically monitored."

7 And I'd like for the record, attached and
8 submitted tomorrow to the BZA, my letter of January 24th to Mr.
9 Bardin and a copy of Voyager Management's notice dated January
10 23rd to the tenant of the Dry Cleaning Depot advising them of
11 their responsibility to deposit the trash and keep the trash
12 dumpster closed at all times.

13 I was the record to reflect that.

14 And otherwise we appreciate your courtesy and
15 request that, one, it be changed, amended to Section 213, to
16 correct it from now on so there's no issue on that, and that's
17 it.

18 CHAIRMAN SOCKWELL: All right. Thank you, Mr.
19 Kass.

20 While I think the principle issue that we're
21 looking at is the landscaping and provision of a site plan which
22 I believe that the applicant has agreed does represent the
23 current condition of the lot with regard to striping, with
24 regard to the location of landscaping, and it's been
25 substantiated by Ms. Brown-Roberts of the Office of Planning,

1 and that the lot has been reasonably well maintained with the
2 exception of the landscaping which requires a different type of
3 effort which will have to be provided by the owner to bring it
4 up to the required level of condition and maintained at such
5 condition.

6 The Office of Planning, having recommended a
7 change in the operational hours of the lot, which did not seem
8 to meet resistance by the applicant, I believe you said that the
9 hours recommended by the Office of Planning were sufficient for
10 your operation.

11 MR. KASS: They're fine. Yeah, absolutely.

12 CHAIRMAN SOCKWELL: Okay. Just a couple of things
13 that we would have to deal with. One is whether or not we await
14 the report and then vote, which would mean we would schedule the
15 application for a public meeting vote after receiving an updated
16 or -- updated site plan if we need it or do we take the existing
17 site plan and request that the applicant provide indications of
18 a contract for landscaping installation and a reasonable
19 contract for landscaping maintenance, which should be the
20 minimums required, as I see it, for an approval?

21 And that that would allow us to make a decision
22 with regard to the duration of such approval with perhaps more
23 confidence that there would not be a lapse in the maintenance of
24 this property.

25 MEMBER RENSHAW: Mr. Chairman, I would like to add

1 that in the landscaping installation that the landscaper
2 indicate the size of the trees, the type and the size of the
3 trees.

4 CHAIRMAN SOCKWELL: Let the record reflect that
5 the types of shrubbery or trees and any other ground cover.

6 MR. KASS: If I could add, I was going to ask a
7 question shrubbery but he added. I don't want to be limited to
8 trees if the landscaper thinks that shrubs and others are
9 better.

10 CHAIRMAN SOCKWELL: The issue is --

11 MR. KASS: Something to buffer.

12 CHAIRMAN SOCKWELL: Yeah, whatever the buffer is
13 that's there now should be probably replaced either in kind of
14 in a similar quality and substantial nature because the idea of
15 a buffer is that in some cases when it's property against
16 property, it is truly a visual barrier as well as an attractive
17 strip or an attractive landscaping.

18 In this case because you have a parking lot
19 against another piece of property, the visual barrier seems to
20 be appropriate and it appears that what was there before, albeit
21 not in good condition, was designed as more of a visual barrier
22 and was so stated on the site plan as trees and not shrubs.

23 And therefore within the range of things that you
24 can plant in a strip of that width based on the root ball. You
25 may be able to install something that is more of a visual

1 barrier, that is low maintenance, and attractive.

2 MEMBER RENSHAW: Mr. Chairman, could we be
3 specific and pick up the wording from the previous site plan
4 that cited Leland Cyprus trees?

5 CHAIRMAN SOCKWELL: Well --

6 MEMBER RENSHAW: Because I have asked for the type
7 and the size of trees to be indicated, not shrubbery.

8 MEMBER HINTON: Okay. This is where I think we
9 are. I would like to have the applicant submit a site and
10 landscape plan before we make a decision. Let them work with
11 whoever is going to install this plant material, get an opinion
12 on what will actually do well in that location because it may be
13 that the Leland Cyprus just didn't grow well under the
14 conditions that are there.

15 So I really think we need to put the burden back
16 on the applicant. Do a site and landscape plan; present it to
17 the Board. And then we can look at it and see if what you've
18 proposed is acceptable in the shrubbery or the trees that you
19 are proposing, the type, the size of the plant or in everything.
20 We can look at your proposal once you do it.

21 That means we don't decide today, but --

22 MR. KASS: I accept that because it makes more
23 sense. Because I'm not a botanical person. I'm not a
24 horticulturalist, but I know, my wife knows it, we have some
25 bushes that are growing in front of our house in the District of

1 Columbia that have grown gorgeously, spread. It is a complete
2 buffer. They're not trees, but they're something that's got red
3 leaves on the inside. I forgot what it is. It grows up and
4 grows down. I can't remember the name of it.

5 But the point is, it may be -- let the landscapers
6 decide rather than the lawyers and the Zoning Commission as far
7 as I'm concerned, subject to your guidance.

8 CHAIRMAN SOCKWELL: Right, yeah. I believe that
9 Ms. Hinton has expressed the view of the Board that it should be
10 something that's designed for the location and that's fair.

11 MEMBER HINTON: And I would like to echo the idea
12 that with a contract for installation and maintenance I would be
13 more agreeable to an extended approval time. Because that's my
14 concern that these plants actually be installed and be
15 maintained.

16 If you can demonstrate that, then I would agree
17 with you that the two years is probably a little too short --

18 MR. KASS: Thank you.

19 MEMBER HINTON: -- to be reasonable.

20 COMMISSIONER HOOD: Mr. Chair.

21 CHAIRMAN SOCKWELL: Yes.

22 COMMISSIONER HOOD: I, again, I will refer to
23 Board Member Hinton. But I was more in line of thinking that we
24 only have a few things to tweak. I was ready to vote on today
25 and then contingent on what we know what needs to come in, be

1 able to find out from staff whether -- you know, if everything's
2 in order then we would let staff determine whether or not the
3 order needed to be released.

4 But I just didn't see us holding it up. I'm kind
5 of putting it all together. I see the site plan, the proposal
6 from the applicant, the other issues they're continuing to work.

7 I'm ready to vote today, but if my Board members would rather
8 wait until we have everything in hand before we proceed, then
9 I'll just follow suit.

10 CHAIRMAN SOCKWELL: Well, under the circumstances
11 the question would be raised as to whether or not the -- because
12 we're asking the applicant to place the landscaping in the hands
13 of a professional, therefore, we would expect to get back a
14 professional plan, which should have the required elements based
15 upon what's there as soil conditions et cetera, et cetera, and a
16 landscape maintenance plan.

17 I don't particularly have a problem. I don't have
18 a particular problem with holding the record open for receipt of
19 those things if the Board feels that the applicant has
20 sufficiently provided what we have requested and will hopefully
21 abide by the long-term requirements of such an order, which are
22 for maintenance, cleanliness, the provision of the dumpster, and
23 of course, the dumpster would be relocated to its original
24 location.

25 All those things would be written into the order.

1 Ms. Hinton, what do you think about that? And Ms. Renshaw?

2 MEMBER HINTON: Realize, I have been away for a
3 couple of years so I'm not sure. This may be --

4 CHAIRMAN SOCKWELL: Just like coming home, isn't
5 it?

6 MEMBER HINTON: This may be something that the
7 Board does more now. A couple years ago we always tried to make
8 sure that everything was in the record before we made a
9 decision. And so this being my first day, I'm a little bit
10 concerned about doing that because what we have now are
11 promises, and we had promises five years ago that did not
12 materialize from different people, but nevertheless the same
13 property.

14 I would just like to have something in writing
15 that the Board base its decision on. I would like to see the
16 plan. I would like to see the contracts.

17 CHAIRMAN SOCKWELL: How quickly does the applicant
18 feel that it can provide the contract? And we're providing you
19 with a copy of the landscape plan that's been sort of pieced
20 together for you.

21 MEMBER HINTON: I guess the other thing I would
22 think about while you're thinking about that answer is this
23 parking lot is already in place, and it's being used and its
24 approval has already expired. So taking another month or so to
25 finalize our decision isn't going to hurt anything.

1 It's not like these applicants are waiting to
2 construct something. They're using the parking lot. They won't
3 have the loss of use while this gets finalized. So I would
4 rather take the time and get the paper work in order.

5 MR. KASS: As long as this hearing is not -- our
6 application is still pending. That's all I care about.

7 CHAIRMAN SOCKWELL: Your application would be
8 pending until such time as a vote's taken.

9 MR. KASS: Obviously from our point of view we'd
10 like you to have an order and subject to conditions that come in
11 afterward, but I think Ms. Hinton is making a good point. I
12 honestly don't know how long it will take to get a landscaper to
13 give me a good, comprehensive plan. I don't want to do a sloppy
14 job. I don't want to do an el cheapo job. And I got this plan
15 right now. I mean, I know what it is. It's basically something
16 here.

17 I'm going to try to get something to the Board
18 within two weeks so you can hopefully get it on your agenda for
19 March 6th.

20 MEMBER RENSHAW: I'm satisfied with that. But I
21 would like to hold on the term until we get a look at that site
22 plan and landscaping plan.

23 MR. KASS: Well, the site plan --

24 CHAIRMAN SOCKWELL: The site plan's essentially
25 going to be the same. It's the landscape that we're --

1 MEMBER RENSHAW: All right. The landscaping plan,
2 and the maintenance agreement.

3 MR. KASS: Okay.

4 CHAIRMAN SOCKWELL: All right. Then it has been
5 surmised by the Board that with a proper submission that there
6 may be some flexibility in the recommended time of the order, or
7 recommended duration of the order.

8 So we'll hold that until we return and you expect
9 that by March 6th you'll be able to provide us with --

10 MR. KASS: Ill make every reasonable effort, yes.

11 CHAIRMAN SOCKWELL: Yes.

12 MR. KASS: Before that.

13 CHAIRMAN SOCKWELL: For the March 6th meeting,
14 when would he have to have --

15 SECRETARY PRUITT: If we could get it by the 27th
16 of February, 27th of February.

17 CHAIRMAN SOCKWELL: Which is?

18 SECRETARY PRUITT: A Tuesday.

19 CHAIRMAN SOCKWELL: Yeah.

20 SECRETARY PRUITT: The Tuesday before.

21 CHAIRMAN SOCKWELL: Fortunately it's not the
22 summer season and the landscapers should have a little free time
23 on their hands.

24 MR. KASS: I hope.

25 CHAIRMAN SOCKWELL: So a decision meeting will be

1 scheduled or the decision in this case will be scheduled at a
2 meeting on March the 6th, which would be in the morning.

3 SECRETARY PRUITT: Correct, with the submission
4 due by February 27th.

5 CHAIRMAN SOCKWELL: And the conditions that we've
6 all agreed to would become part of the order.

7 All right. In that case I don't think we don't
8 have to vote on that. We just request that you come to see us
9 and hopefully if everything's in order we will try to put you
10 early in the agenda so that you can get out quickly.

11 MR. KASS: So there be a -- this is not a --

12 CHAIRMAN SOCKWELL: You won't speak. If you wish
13 to be present once we have everything --

14 MR. KASS: Okay, that's what I thought.

15 CHAIRMAN SOCKWELL: -- in hand. Mr. Klein may
16 wish to come alone. You may have other things to do. I'm just
17 saying that it's not a meeting where you would do anything
18 because your submission will speak for you, and we will discuss,
19 if there's any discussion with regard to the submission.

20 The only thing that we might have a reason to ask
21 is some question that we didn't understand something regarding
22 either the contracts or the chosen landscaping, which of course
23 is the professional's decision. And you understand that we're
24 looking more for buffer barrier than low bushes.

25 We want something that provides somewhat of a

1 visual barrier.

2 MR. KASS: Certainly. So somebody should be here
3 to answer questions if necessary?

4 CHAIRMAN SOCKWELL: Someone should be here --

5 MR. KASS: Okay.

6 CHAIRMAN SOCKWELL: -- to answer questions.

7 Thank you very much.

8 MR. KASS: Thank you.

9 MR. KLEIN: Thank you.

10 CHAIRMAN SOCKWELL: Would you call the next case
11 please.

12 MS. BAILEY: Application Number 16653 of Danny
13 Gibson, pursuant to 11 DCMR 3103.3, and Subsection 2001.3(a),
14 (b) and (c) for proposed renovation and to allow construction
15 of a two-story rear addition enlargement of an existing
16 nonconforming single-family dwelling in an R-4 District at
17 premises 821 12th Street, N.E., Square 1003, Lot 128.

18 Please stand, all those wishing to testify.

19 Please stand and raise your right hand.

20 (The witnesses were duly sworn.)

21 MS. BAILEY: Thank you.

22 Mr. Chairman, a couple of notes on this project.
23 The Office of Planning did submit a report into the file. A
24 waiver will be needed to accept that report. It was filed late.

25 And let's see. The property was posted late as

1 well. It was not posted. As you know, the property is required
2 to be posted 15 days prior to the hearing today, and it was not
3 properly -- it was not posted in a timely manner.

4 And those are the preliminary matters prior to
5 hearing this case.

6 CHAIRMAN SOCKWELL: I believe it was one day,
7 right?

8 MS. BAILEY: No, this was three days late.

9 CHAIRMAN SOCKWELL: Oh, it was three days late.

10 We can -- you'll have to turn your microphones on
11 by pressing the button.

12 Have they been sworn in?

13 MS. BAILEY: They have been sworn in.

14 CHAIRMAN SOCKWELL: All right. You want to
15 explain what happened with regard to the posting notice? It
16 would be appreciated.

17 MS. GIBSON: I picked it up 15 days prior to but
18 that was correct. I couldn't find anything to keep it up. It
19 kept falling down.

20 CHAIRMAN SOCKWELL: So you attempted to post it on
21 the proper day?

22 MS. GIBSON: That's correct. And it would unroll
23 because it was in -- when I got it from here it was like this.
24 And I guess that was just the way it wanted to stay. And when I
25 posted it up to the building it would just unravel. So I didn't

1 want to just leave it there, and I came back maybe a day or two
2 afterwards. I had some hard tape that would keep it up. I
3 tried nailing it, but I hit my finger.

4 CHAIRMAN SOCKWELL: Well, it seems to me that as
5 you made the attempt and people don't post things every day. If
6 you didn't use the proper method of posting and you were able to
7 remedy it at a reasonable period of time and the point is that
8 at some point during the 15-day period, at least on the date
9 that you post it, if you post it at the right time, at some
10 point it was up and then it was down, and it was back up again.

11 And within three days you were able to put it up
12 effectively. I would move that we accept the posting as not
13 having been continuous, but having been on good faith the
14 applicant attempted to put the posting up at the proper time and
15 did, in fact, after several attempts make the posting permanent.

16 COMMISSIONER HOOD: Second.

17 CHAIRMAN SOCKWELL: Any discussion?

18 (No response.)

19 CHAIRMAN SOCKWELL: All in favor.

20 (Chorus of ayes.)

21 CHAIRMAN SOCKWELL: Thank you.

22 Present your case please, and identify yourself
23 and your address, sir.

24 MR. KILLETTE: My name is James Kilette, 930 M
25 Street, N.W. I'm the client's architect. I'm also an architect

1 for the DACD Homestead Preservation Housing Program, in which
2 Ms. Gibson was awarded her property in 1998. She selected three
3 properties. This is the one that she actually received.

4 At the time, well, the property itself is on a lot
5 that's only 527 square feet. The house itself is approximately
6 800 square feet, 400 square feet per floor. This is a very
7 unusually small lot.

8 At the time Ms. Gibson was single, and since that
9 time there's some plans for her to get married sometime in the
10 future.

11 Originally we designed the house. Because the
12 house is so small we designed the house so that the entire
13 second floor would be a master suite, bedroom, bathroom and
14 closet. That was okay until we submitted the plans to the
15 lending institution. They said they do not finance one bedroom
16 homes.

17 At that time we went to another institution and
18 they said that they do not finance one bedroom homes. So they
19 wanted us to do two bedrooms, but the house is so small that we
20 could not get two bedrooms to code. And certainly we are code
21 compliant.

22 So we ended up doing a scheme that lends itself to
23 a one bedroom and a den. Having done that, the bedroom size was
24 reduced considerably and it was -- it's really not user
25 friendly. It's almost like a large walk-in closet.

1 So what we are requesting is that a two story
2 addition be put on the rear of the structure. When she was
3 initially awarded the property there was a one story,
4 dilapidated structure that was torn down during the demolition
5 and it was nonconforming. So we couldn't build it -- we
6 couldn't put it back without breaking the code.

7 So we're requesting that we get a two story
8 addition in the rear.

9 The rear of her property contains approximately 15
10 linear feet, five feet, which is an egress easement. The
11 property on either side of her built out to the easement and we
12 simply want to build out to the line where the other properties
13 are.

14 CHAIRMAN SOCKWELL: So you're saying that -- would
15 you repeat the part about the easement please?

16 MR. KILLETTE: In the rear there is a 15 feet
17 behind her house. Five feet of that is an egress easement that
18 comes from Wiley Street through the rear of the property and
19 egresses to the alley.

20 CHAIRMAN SOCKWELL: Oh, okay. I understand.

21 MR. KILLETTE: And her house -- I'm sorry.

22 CHAIRMAN SOCKWELL: So that egress easement
23 crosses all of the adjacent lots?

24 MR. KILLETTE: Yes.

25 CHAIRMAN SOCKWELL: Until they reach the alley.

1 MR. KILLETTE: Yes.

2 CHAIRMAN SOCKWELL: Okay.

3 MEMBER HINTON: And the addition will be built
4 right up to the easement line?

5 MR. KILLETTE: Yes. And the reason that we
6 propose that is because the properties on either side are built
7 up to the easement line.

8 MEMBER HINTON: That didn't show in the
9 photograph. Are there photographs that show that?

10 CHAIRMAN SOCKWELL: No, there's a posting
11 photograph. I believe -- let's see.

12 We have a photograph that appears to be a front
13 photograph in the file. Your plat does not and isn't required
14 to show the adjacent properties. But the five foot line is
15 shown. It wasn't labeled as an easement line. Let's go to the
16 building plans.

17 MR. KILLETTE: I have a survey from the D.C.
18 Surveyor's Office that shows the adjacent properties.

19 CHAIRMAN SOCKWELL: Would you submit that to staff
20 and let staff give us copies of that please?

21 MEMBER RENSHAW: If you build out to the build out
22 ten feet are you going to be blocking the windows as is shown in
23 this picture of one of the houses?

24 MS. GIBSON: No.

25 MEMBER RENSHAW: This is a front shot?

1 CHAIRMAN SOCKWELL: Front shot, yes. In color,
2 they're all different colors in there.

3 MEMBER RENSHAW: Okay.

4 CHAIRMAN SOCKWELL: Yeah. These little houses are
5 somewhat difficult to --

6 MEMBER RENSHAW: Can I see the color photos?

7 CHAIRMAN SOCKWELL: You certainly may.

8 (The Board conferred.)

9 MEMBER HINTON: What is that easement for again?

10 MR. KILLETTE: That's an egress easement. In the
11 event of fire, the occupants can exit their rear and disburse to
12 either Wiley Street or the alley.

13 CHAIRMAN SOCKWELL: Because, see, the adjacent
14 properties abut --

15 MEMBER HINTON: It's land locked.

16 CHAIRMAN SOCKWELL: Yeah, it's land locked against
17 the adjacent property lots which turn the other way. So they
18 have to have that for all the interior properties.

19 So this maps across the three properties toward
20 the alley but not across the one toward the street probably.

21 Thank you.

22 No, it goes all the way through.

23 MR. KILLETTE: Yeah, it goes all the way through
24 to Wiley Street, from Wiley Street to the alley.

25 CHAIRMAN SOCKWELL: Now the adjacent properties on

1 this map don't show the buildings going all the way back.

2 MEMBER RENSHAW: Except over here.

3 CHAIRMAN SOCKWELL: Oh, wait a minute. I'm sorry.

4 MEMBER RENSHAW: On the right-hand side they do.

5 SECRETARY PRUITT: On lot 129 to the left.

6 CHAIRMAN SOCKWELL: Yeah, but the --

7 SECRETARY PRUITT: And 130.

8 CHAIRMAN SOCKWELL: The problem is that the
9 easement line from this drawing is really not mapped on Ms.
10 Gibson's property. It's apparently mapped on the adjacent lot,
11 which would be Lot 91. It looks like the adjacent building to
12 the left goes to the property line.

13 The way the lot is shown it doesn't appear that
14 the lot line is in fact -- see, the easement line should be
15 here.

16 (The Board confers.)

17 CHAIRMAN SOCKWELL: Pardon us while we look at
18 this.

19 (The Board conferred.)

20 CHAIRMAN SOCKWELL: Here's the question.

21 MR. KILLETTE: Okay.

22 CHAIRMAN SOCKWELL: The drawing that we're looking
23 at here, this surveyor's plat is showing your house bolded here
24 or you client's house right here, correct?

25 MR. KILLETTE: Correct.

1 CHAIRMAN SOCKWELL: The way the addition is drawn
2 here, it comes all the way out to the property line.

3 MR. KILLETTE: Okay.

4 CHAIRMAN SOCKWELL: It exceeds the easement line
5 if the easement line is mapped across the property. That's what
6 threw me off.

7 MR. KILLETTE: Let me clarify. That bold line is
8 just to outline the lot itself.

9 CHAIRMAN SOCKWELL: Oh, all right. See, let me
10 explain something to you. The convention used to indicate a
11 building is in this case a hatched line. The convention used to
12 indicate the lot is merely a line. And what you did was you
13 hatched the entire building. So my assumption was since that
14 followed the same convention that's typically used in these old
15 plans, that all of this was building and that the easement was
16 behind that.

17 So the hatching should only have occurred to the
18 extent that you were showing a building on the lot, not across
19 the entire lot, because if you look at everything else, the only
20 things that are actually shown with that diagonal hatching are
21 the structures on the lots, and the open part of the lot is just
22 shown as lines.

23 MR. KILLETTE: That is true. The reason it was
24 done like that, it was done for in-house purposes to identify
25 the lot.

1 CHAIRMAN SOCKWELL: Well, we architects tend to
2 look at things in black and white, and I was looking at it in
3 black and white as it was shown as compared to what else was
4 there.

5 Once a convention is shown I use it as it's
6 supposed to be used. Every time you see it it's the same thing.

7 MR. KILLETTE: I took the liberty to explain it to
8 staff because it was a document that we --

9 CHAIRMAN SOCKWELL: Okay.

10 MR. KILLETTE: -- never thought we would have to
11 use in this case.

12 CHAIRMAN SOCKWELL: Okay. It just didn't work for
13 me --

14 MR. KILLETTE: Right.

15 CHAIRMAN SOCKWELL: -- because I was looking for
16 it to be exactly --

17 MR. KILLETTE: I understand.

18 CHAIRMAN SOCKWELL: -- the way everything else is.

19

20 (The Board conferred.)

21 MR. KILLETTE: Excuse me. Can I submit this one?

22

23 (The Board conferred.)

24 MEMBER HINTON: So you still only have one
25 bedroom?

1 MR. KILLETTE: Yes. We have one bedroom and a
2 den. You mean in the proposed plan?

3 MEMBER HINTON: Yeah. I guess that's what's
4 confusing me. I thought you said when you had one bedroom and a
5 den, the bedroom got really small and wasn't useful.

6 MR. KILLETTE: The proposed plan has two bedrooms.

7
8 CHAIRMAN SOCKWELL: There's a question here.

9 MEMBER HINTON: The plans we have show a bedroom
10 and a study on the second floor. Is that your current plan?

11 MR. KILLETTE: Well, it's been changed. It's
12 going to be two bedrooms. The study is actually going to be a
13 bedroom.

14 MEMBER HINTON: So you're changing the -- but the
15 drawings are the same. Just you're changing the way you labeled
16 that room?

17 MR. KILLETTE: Yes.

18 CHAIRMAN SOCKWELL: I want to get to something
19 that -- if this drawing, now that I've added color to it --

20 MR. KILLETTE: Okay.

21 CHAIRMAN SOCKWELL: -- shows approximately the
22 representation looking at the easement line, it's also showing
23 that the adjacent property goes all the way to the property
24 line. And unlike what appears to be showing in your sketch in
25 this, what you show as a breezeway -- that's on the adjacent

1 property it seems to me.

2 See, I'm trying to decide what I'm actually
3 looking at because this shows a one story structure that goes to
4 the property line, and that structure has its side on Wiley
5 Street, and that's at the corner.

6 And that would be consistent with the fact that
7 this structure could exit to the street and that you're
8 structure's have to use the breezeway, or not the breezeway but
9 the egress easement to get to the alley because the don't have
10 access from the rear to the street.

11 This corner property is typically consistent being
12 able to go all the way back to the property line and that's the
13 way it shows on this drawing that its one story, brick, rear
14 portion goes all the way to the property line.

15 And I'm only going by what is shown here.

16 MR. KILLETTE: Right.

17 CHAIRMAN SOCKWELL: Unless that was torn down or
18 replaced with something else or unless you can tell me that this
19 house on the corner next to the one that you're working with
20 truly doesn't appear as it does on this drawing.

21 MR. KILLETTE: Well, if you stand on Wiley Street,
22 you can look clear through to the alley.

23 CHAIRMAN SOCKWELL: But are you looking through --
24 you should be looking through the side yard of the house next
25 door.

1 MR. KILLETTE: There is no side yard. It's an
2 easement. Now these documents oftentimes I find from the D.C.
3 Surveyor's Office a lot of times old and outdated and not drawn
4 to the current configuration of the existing structures. But I
5 can tell you that from Wiley Street there's a straight passage
6 right through to the alley.

7 So if you come out your house you can go in either
8 direction, either to Wiley or to the alley.

9 CHAIRMAN SOCKWELL: Understood, but the question
10 is based on the description of the property and the depth of
11 this piece of property at 40.5 feet, the portion that you're
12 looking through is really not from Wiley Street.

13 What you're really looking at is something that
14 should be -- the way it looks to me it would be very narrow at
15 first and then it would widen out to the easement because part
16 of it isn't on the property. But you say that you can see
17 straight through.

18 SECRETARY PRUITT: But this doesn't need to have
19 access because it's got it this way.

20 CHAIRMAN SOCKWELL: I understand but he's saying
21 that you can stand on Wiley Street and this doesn't exist.

22 SECRETARY PRUITT: No, you can because there's two
23 foot breezeway there.

24 CHAIRMAN SOCKWELL: No, but that's not what he was
25 saying.

1 SECRETARY PRUITT: That's what is shown on this
2 drawing.

3 CHAIRMAN SOCKWELL: I understand. I know what I'm
4 looking at. What I don't understand is why it doesn't match.
5 Everything doesn't match. There are things that are shown here
6 that I cannot make sense of. And if these houses are existing
7 as they are shown here, then this portion right here comes all
8 the way to the property line and from that point, including that
9 open space over to this party wall, that is another lot.

10 The lot edge goes all the way to the edge of this
11 property. And from this property up to the alley there should
12 be a five foot wide easement, if that is what the easement
13 really is, and it's mapped across the pieces of property. I am
14 only looking at what I see.

15 MR. KILLETTE: Can I --

16 CHAIRMAN SOCKWELL: And I don't have enough
17 information to tell me that I should see something else.

18 MR. KILLETTE: Can I resubmit? Can I submit this
19 also?

20 CHAIRMAN SOCKWELL: Yeah, sure.

21 MS. BAILEY: So do you need copies of these things
22 that you're submitting to us because we could --

23 CHAIRMAN SOCKWELL: Yeah, he gets them back.

24 MS. BAILEY: He does?

25 CHAIRMAN SOCKWELL: He should get the originals

1 back or a copy of what he presents back.

2 MR. KILLETTE: That's how it exists.

3 (The Board conferred).

4 COMMISSIONER HOOD: If you could just at your mic,
5 because I know you knew what you drew, could you just explain
6 what you just drew here, on the last document. If you could,
7 explain this document.

8 MR. KILLETTE: Okay. It doesn't appear the
9 Surveyor's Office has the property line, but I'm going to draw
10 it here. If you stand here on Wiley Street, the easement goes
11 straight through to the alley.

12 Now I don't know if the survey, because these are
13 old documents and we got them from the Surveyor's Office, and I
14 purposely used the documents because they came from a government
15 agency. I didn't want to just give you anything.

16 But you can stand on Wiley Street and there are
17 fences on either side, and it goes straight through to the
18 alley.

19 CHAIRMAN SOCKWELL: My problem is that this
20 drawing -- can you come up again? I hate to ask you to do this.

21 And I put in pencil I grade this area in over here.

22 MR. KILLETTE: Okay.

23 CHAIRMAN SOCKWELL: But what's in dark, you did
24 the dark thing, right?

25 MR. KILLETTE: Right.

1 CHAIRMAN SOCKWELL: Okay. The similar condition
2 exists over here. These two, this is identical to that because
3 this double house was apparently built with this slip through
4 and this slip through, which is too narrow to be a side yard by
5 side yard requirements.

6 So this becomes a row house, even though it has a
7 separation. And what I'm saying is are you -- when you look
8 down here, are you looking down this or are you looking down
9 from here, from this edge all the way down? And this thing
10 would then be probably seven or eight feet wide.

11 MR. KILLETTE: No, I'm looking right in this
12 narrow passage because it's not that wide.

13 CHAIRMAN SOCKWELL: So then does this building
14 come all the out to that?

15 MR. KILLETTE: Yes.

16 CHAIRMAN SOCKWELL: So it is correct the way I
17 thought it was.

18 MR. KILLETTE: This building comes all the way
19 over to the end, and it appeared that it should be a property
20 line here.

21 CHAIRMAN SOCKWELL: Yeah, but it isn't.

22 MR. KILLETTE: And I don't know if they didn't
23 show it because it's an old document.

24 CHAIRMAN SOCKWELL: Well, I think the easement is
25 on this guy's property.

1 MR. KILLETTE: On the other side.

2 CHAIRMAN SOCKWELL: Yeah, it's on the other piece
3 of property. So in reality -- now here's the other part that
4 I'm asking you.

5 This adjacent building over here, does it come all
6 the way out to this line or does it stop back here?

7 MR. KILLETTE: It stops back there. And that's
8 the line where we want to stop. And it doglegs in.

9 CHAIRMAN SOCKWELL: Okay. Now we're almost there.
10 We're almost there.

11 COMMISSIONER HOOD: Some of us.

12 CHAIRMAN SOCKWELL: The question of the dogleg is
13 the third question. Does this dogleg on his property in like
14 that or is it doglegging in on your property?

15 MR. KILLETTE: No, it doglegs the way you drew it
16 the first time.

17 CHAIRMAN SOCKWELL: So you're saying that in --

18 MR. KILLETTE: It's on a larger scale. It's like
19 that.

20 MEMBER HINTON: This is correct?

21 MR. KILLETTE: Yes.

22 MEMBER HINTON: What's that total at the back?
23 Because I thought it looked like it came right to here.

24 CHAIRMAN SOCKWELL: Yeah, it did, and that's the
25 problem that I have.

1 MEMBER HINTON: The property is 40 feet long?

2 CHAIRMAN SOCKWELL: So you're saying that if you
3 project along your property -- don't you have a rear shot of
4 your property? Where is the rear photo?

5 (The Board conferred.)

6 CHAIRMAN SOCKWELL: All right. I apologize. this
7 is a bit difficult.

8 Okay. Now, this is the front shot and the rear
9 shot -- okay. That's the problem. What am I looking at? I
10 don't know what I'm looking at.

11 Okay. This is a rear shot of something. Tell me
12 what I'm looking at right here. There's a trash can there. I
13 have no idea what I'm looking at. What is that?

14 MS. GIBSON: Can you hold it up?

15 CHAIRMAN SOCKWELL: What is that? There's a trash
16 can there.

17 MS. GIBSON: That's the building that's beside.
18 That's the one that you were questioning did it come all the way
19 back. That small property, actually right there.

20 CHAIRMAN SOCKWELL: This is --

21 MS. GIBSON: This is the building next door.

22 MEMBER RENSHAW: Oh, I see.

23 CHAIRMAN SOCKWELL: Oh, all right.

24 MEMBER RENSHAW: Oh, okay.

25 CHAIRMAN SOCKWELL: All right. So we're looking

1 deep at your property this way.

2 MS. GIBSON: Right.

3 CHAIRMAN SOCKWELL: And this is the building that
4 goes all the way out and I can see it has a little notch in it
5 or maybe that's a pier. That's where the rest of your house
6 used to be.

7 MS. GIBSON: Correct.

8 CHAIRMAN SOCKWELL: Okay. All right. Now I'm
9 with you. All right. I can see that. Because this is what
10 remains of a plastered wall.

11 MS. GIBSON: Right.

12 CHAIRMAN SOCKWELL: That was an interior wall
13 along that line. Okay.

14 All right. What I don't see is on the other side.

15 Yeah, and, see, if I were looking at the wall on the other
16 side, to the best of your ability to tell me, does that wall
17 notch into this guy's property or does it come straight out
18 along your property line?

19 If you could figure walking out of your house and
20 this is your wall, and see over here we know that your house
21 used to have a little piece right there, and that's the piece
22 that you're seeing in this photograph where the white wall is.

23 Where this white wall is, that white wall is
24 actually what would have been, what is this wall right here
25 because this is an interior wall on your house when you had your

1 little piece sticking out here.

2 Now when you walk out, you can walk out the back
3 of your house here, right?

4 MS. GIBSON: That's correct.

5 CHAIRMAN SOCKWELL: Are you walking along a wall
6 that's right along your property line?

7 MS. GIBSON: To which side?

8 CHAIRMAN SOCKWELL: To this side over here. Or is
9 it wide open into the neighbor's lot? Is there a -- if you were
10 standing on your property, let's say if you had a fence along
11 here, do you have a fence?

12 MS. GIBSON: No.

13 CHAIRMAN SOCKWELL: No. If you were standing
14 right here and you were standing right next to your front door
15 or your rear door and you stepped out here, if you turn toward
16 this property would you be able to step two or three steps or
17 would you be looking at a wall?

18 MS. GIBSON: I'd be looking at a wall.

19 CHAIRMAN SOCKWELL: So if you turned in this
20 direction, you'd be looking at a wall and that wall would be
21 right smacking you in the face wouldn't it?

22 MS. GIBSON: Uh-huh.

23 CHAIRMAN SOCKWELL: So this doesn't notch in.

24 MR. KILLETTE: I don't know if she understands it,
25 but I went up and drew it as it exists. She's saying she looks

1 at the wall --

2 MS. GIBSON: If I walk out my back yard --

3 MR. KILLETTE: He wants to know if you turn this
4 way --

5 CHAIRMAN SOCKWELL: Here, here.

6 MR. KILLETTE: -- and walk out to the back wall,
7 is there a wall next to you?

8 CHAIRMAN SOCKWELL: Okay. So if you stepped out
9 right here and you just turned and this is your back door.

10 MS. GIBSON: Okay.

11 CHAIRMAN SOCKWELL: There's nothing here because
12 this is where you used to be.

13 MS. GIBSON: Okay. I know where I am.

14 CHAIRMAN SOCKWELL: You step out and you turn
15 toward the property this way. There's nothing here?

16 MS. GIBSON: No.

17 CHAIRMAN SOCKWELL: You'd have to look across his
18 yard to about halfway across --

19 MS. GIBSON: Right.

20 CHAIRMAN SOCKWELL: -- and then -- okay.

21 MS. GIBSON: There's a wall right here.

22 CHAIRMAN SOCKWELL: I'm just trying, yeah, yeah.
23 I'm just trying to make sure that I understand.

24 MS. GIBSON: And that's what this shows.

25 CHAIRMAN SOCKWELL: Okay. All right. I see it.

1 Okay. So this is wrong and that's right. That
2 works for me.

3 COMMISSIONER HOOD: Yes, it shows that.

4 CHAIRMAN SOCKWELL: All right. Now the question -
5 - see, there are a couple of issues that come up with regard to
6 an approval of this type and one of them has to do with side
7 yard.

8 Give us just a moment please.

9 (The Board conferred).

10 MEMBER RENSHAW: I would just like to ask our
11 architect if he is with UDC?

12 MR. KILLETTE: Yes.

13 MEMBER RENSHAW: Are you a faculty member or --

14 MR. KILLETTE: Well, we have a contract with the
15 DHCD. They hire the university to provide architectural
16 services for the homestead participants.

17 MEMBER RENSHAW: So you are a staff member of UDC?

18 MR. KILLETTE: I am an adjunct professor at UDC in
19 terms of being a professor, but I'm on contract with DHCD.

20 MEMBER RENSHAW: To do this.

21 MR. KILLETTE: To do -- we provide the services
22 and the permits and manage these constructions.

23 MEMBER RENSHAW: Thank you.

24 SECRETARY PRUITT: Do you want to go off the
25 record for a while?

1 CHAIRMAN SOCKWELL: Yeah. For a moment, yeah.

2 (Whereupon, the foregoing matter went off the
3 record at 4:07 p.m. and went back on the record at
4 4:08 p.m.)

5 CHAIRMAN SOCKWELL: All right. It appears that,
6 first of all, when was the second -- when was the addition
7 portion of your house torn down? Do you know? The portion of
8 the house that's not there anymore? The back?

9 MS. GIBSON: During the time of construction.

10 MR. KILLETTE: When she was awarded the property,
11 it was already in the dilapidated state.

12 MS. GIBSON: Fallen.

13 MR. KILLETTE: So it was simply removed during the
14 demolition phase. She never used it. I mean, it basically
15 caved in.

16 CHAIRMAN SOCKWELL: So what you're asking to do is
17 to -- and see, there's an issue here. There are several issues
18 now that come forward. One is that you are asking to restore a
19 nonconformity. Because the house is -- the lot's nonconforming,
20 and the house occupies, well, I'm not sure whether -- what's the
21 R zone on this?

22 MR. KILLETTE: R-4.

23 CHAIRMAN SOCKWELL: It's R-4. What's the lot
24 occupancy?

25 MR. KILLETTE: Sixty percent.

1 SECRETARY PRUITT: It's way under on everything.

2 CHAIRMAN SOCKWELL: Yeah, but in terms of
3 percentage to lot occupancy?

4 SECRETARY PRUITT: Sixty.

5 CHAIRMAN SOCKWELL: And how much of the lot is
6 occupied?

7 SECRETARY PRUITT: It's in the ZA's notes.

8 CHAIRMAN SOCKWELL: It should be -- it's possible
9 that right now you've got 26 times 13.

10 MR. KILLETTE: About 63.

11 CHAIRMAN SOCKWELL: Okay. So it's 63 percent.
12 But the problem with nonconforming is that it's a conforming
13 use, but it's a nonconforming structure. And it says that if a
14 nonconforming structure is destroyed by fire, collapse,
15 explosion, act of God to the extent -- okay. More than 75
16 percent shall not be restored.

17 Okay. It says, "A nonconforming use of land or of
18 land with structures incidental to the use of land shall neither
19 be extended in land area nor changed to any use."

20 Okay. Here we go. "Nonconforming structures.
21 Enlargements or additions may be made to the structure provided
22 the following requirements shall be met." This is Section
23 2001.3. "The structure shall conform to percentage of lot
24 occupancy requirements, and the addition or enlargement itself
25 shall conform to use and structure requirements, and the

1 addition or enlargement itself shall not increase or extend any
2 existing nonconforming aspect of the structure and shall not
3 create any new nonconformity of structure or addition combined."

4 And that's where the problem lies. The addition,
5 the portion of the structure that collapsed was not rebuilt in
6 place. It was removed. So it no longer exists. And yet the
7 structure that's remaining is still nonconforming because it
8 occupies 63 percent of the lot in a 60 percent zone, if that is
9 correct for an R-4.

10 Now, under the requirements of Section 2001, your
11 request for an addition would have to meet three tests, not BZA
12 oriented. Okay. But it would -- I'm looking to see where the
13 BZA may be bound in this.

14 Anyway, we can work with this. But the point is
15 that it says that the structure shall conform to the percentage
16 of lot occupancy requirements which it won't.

17 Okay. Now the addition or enlargement itself
18 shall conform to use and structure requirements. No problem
19 there. That's number B.

20 But number C, the addition or enlargement itself
21 shall not increase or extend any existing nonconforming aspect
22 of the structure and shall not create any new nonconformity of
23 structure and addition combined.

24 So the problem that we have is that you would have
25 to --

1 MEMBER HINTON: That's what they're asking for the
2 variance for.

3 CHAIRMAN SOCKWELL: Right. But you're at 21.
4 Wait. Let me see which -- where this is.

5 MS. BAILEY: But, Mr. Chairman, the applicant is
6 saying, "I can't meet the section of the zoning regulation" --

7 CHAIRMAN SOCKWELL: I understand that.

8 MS. BAILEY: -- "and I need relief from this."

9 CHAIRMAN SOCKWELL: I understand that. But what
10 I'm trying to do is make sure -- okay, it is point three. Okay.

11

12 SECRETARY PRUITT: A, B, and C.

13 CHAIRMAN SOCKWELL: Huh?

14 SECRETARY PRUITT: A, B, and C.

15 CHAIRMAN SOCKWELL: A, B, and C. Okay. It's A,
16 B, and C that are all involved.

17 Okay. The one part of this is that we're, in
18 fact, restoring something that was taken away as opposed to just
19 creating an addition. There had -- part of it had existed in
20 the past. It was removed and now we are not doing a complete --
21 I mean, because it's new it's a complete replacement and some.
22 But part of it had been there before. So the lot had been
23 encumbered by a nonconforming portion of the structure that was
24 larger than what's still there.

25 And now what you're asking to do is to return that

1 to your structure and add some to complete a build-out that will
2 take you to the edge of the adjacent structure to your east? Is
3 it going to the east or west? To the side where the thing's
4 knocked out.

5 MR. KILLETTE: South.

6 CHAIRMAN SOCKWELL: South. Okay. That's right
7 12th Street would run north and south. And so it's south, okay.

8 So all I'm saying is that I think I see -- there's
9 a reasonableness to the request, in part, because the structure,
10 which had existed, had been there. Your lot is in itself
11 somewhat unique but not -- in part because of the collapse of
12 the existing portion of the structure, and the fact that it was
13 taken away.

14 Because originally your lot would have been
15 identical to the adjacent lot to the south. It's different from
16 the lot to the north. And I'm not sure. If I read the zoning
17 ordinance correctly, there are certain things that it wants to
18 say that you can't do to create a nonconformity.

19 And you didn't create a nonconformity. You
20 actually reduced the nonconformity. So I suppose we can go
21 forward with this as a regular addition.

22 All right. So basically it seems reasonable that
23 because of the fact that your house as it exists today, the day
24 that you're here, is deficient in that it does not have the
25 elements of either the adjacent house on the left or the right,

1 or north or south, however you want to look at it, and that the
2 elements being proposed are, while a little bit greater than the
3 house to the south, they're less than the house to the north,
4 and they don't extend deeper into the site than either of the
5 two houses to the south, which is within -- there's an easement
6 so you couldn't go any further anyway.

7 And without them this house would not be
8 functional to the extent that the other houses are functional.
9 And, therefore, it seems to me that there would be every reason
10 to want to approve.

11 COMMISSIONER HOOD: Mr. Chairman, now that you've
12 decided that, where --

13 MEMBER RENSHAW: Do I have a motion? Do we have a
14 motion?

15 COMMISSIONER HOOD: -- where are we in the process
16 because this is very convoluted, and I understand your issue,
17 but I feel that we have a process and I think we need to stick
18 with it. And I really need to know where we are

19 Are we at the Office of Planning report?

20 CHAIRMAN SOCKWELL: Yeah, I think that we're at
21 the Office of Planning report.

22 MEMBER RENSHAW: We skipped ahead of that.

23 CHAIRMAN SOCKWELL: Oh, did we?

24 SECRETARY PRUITT: We completed that. Actually I
25 think Ms. Renshaw asked if there was a motion on the floor.

1 MEMBER RENSHAW: I did ask.

2 MEMBER HINTON: I'll make a motion. I think
3 having examined all the evidence here out of order probably, I
4 think that there's enough information in the record to show that
5 the applicant has met the burden of proof for the approval of
6 the variance, and I would so move that we approve it.

7 COMMISSIONER HOOD: I'll second the motion.

8 CHAIRMAN SOCKWELL: Any discussion? I didn't
9 think so.

10 COMMISSIONER HOOD: We've had enough.

11 CHAIRMAN SOCKWELL: All in favor?

12 (Chorus or ayes).

13 MS. BAILEY: Staff would record the vote as four
14 to zero to approve the application. Motion made by Ms. Hinton,
15 seconded by Mr. Hood, Mr. Sockwell and Ms. Renshaw in agreement.

16

17 CHAIRMAN SOCKWELL: And I -- do you have copies of
18 all the things that you've given us back in your hands?

19 MR. KILLETTE: Yes.

20 CHAIRMAN SOCKWELL: Okay. I assume that you will
21 want a summary order, bench decision, which you've gotten. You
22 want the order within whatever our standard summary order
23 procedure time period is, which is about two weeks; is that
24 correct?

25 MR. KILLETTE: Yes.

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CHAIRMAN SOCKWELL: All right. I assume that that concludes the business of the day.

The hearing is adjourned.

(Whereupon, at 4:18 p.m., the public hearing was concluded.)