

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

MAY 8, 2001

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:43 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID Chairperson
ANN RENSHAW Vice Chairperson

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN Commissioner

NATIONAL CAPITAL PLANNING COMMISSION:

SUSAN MORGAN-HINTON Commissioner

COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Beverly Bailey, Office of Zoning
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning
John Fondersmith, Office of Planning
David McGettigan, Office of Planning
Arthur Jackson, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Mary Nagelhout, Esq.

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Robins, Kaplan, Miller & Ciresi, LLP	
1801 K Street, N.W., Suite 200	
Washington, D.C. 20006	
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P-R-O-C-E-E-D-I-N-G-S

(9:43 a.m.)

CHAIRPERSON REID: Good morning, ladies and gentlemen. The hearing will please come to order. This is the May 8th, 2001 public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Ann Renshaw, Vice Chairperson, and Susan Hinton, representing the National Capital Planning Commission, and representing the Zoning Commission is Carol Mitten.

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 the Office of Planning, Department of Public Works, et cetera. Three, the report of the Advisory Neighborhood Commission, the ANC.

Four, parties or persons in support. Five, parties or persons in opposition. Six, closing remarks by the applicant.

1 Cross-examination of witnesses is permitted by
2 the applicant or parties, and the ANC within the property is
3 located is automatically a party in the case.

4 The record will be closed at the conclusion of
5 each case, except for any material specifically requested by
6 the Board, and the staff will specify at the end of the hearing
7 exactly what is expected.

8 The Sunshine Act requires that the public
9 hearing in each case be held in the open before the public.
10 The Board may consistent with its rules of procedure and the
11 Sunshine Act either enter into executive session during or
12 after the public hearing, or in a case where for purposes of
13 reviewing a record or deliberating on the case.

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

18 Please turn off all beepers and cell phones, or
19 set them to vibrate at this time, so as not to disrupt these
20 proceedings. The Board will now consider any preliminary
21 matters.

22 Preliminary matters are those which relate to
23 whether a case will or should be heard today, such as a request
24 for a postponement, continuance, or withdrawal, or whether
25 proper and adequate notice of the hearing has been given.

1 If you are not prepared to go forward with the
2 case today, or if you believe that the Board should not
3 proceed, now is the time to raise such a matter. Does the
4 staff have any preliminary matters?

5 MS. BAILEY: No, Madam Chair, we do not.

6 CHAIRPERSON REID: If not, let's proceed with the
7 first case.

8 MS. BAILEY: Good morning to the Members of the
9 Board and the audience. My name is Beverly Bailey, and the
10 first case is Application Number 16697 of Edward J. and
11 Patricia K. Yates, pursuant to 11 DCMR 3104.1, for a special
12 exception under Section 223 to allow an addition to a single-
13 family dwelling not meeting the lot occupancy requirements
14 under Section 403 in an R-4 District at premises 1631 Harvard
15 Street, Northwest. The property is located in Square 2591, and
16 on Lot 1056.

17 All those wishing to testify, please stand and
18 raise your right hand.

19 (All witnesses were sworn.)

20 MS. BAILEY: Please come to the table. Members
21 of the Board, after checking the file the property was
22 properly posted and the affidavit timely filed. This is a
23 self-certification application.

24 We did not receive a report from the Office of
25 Planning, and as of last night, we did not receive the ANC

1 report, but I understand that the applicant does have it with
2 her today, and there are no requests for party status.

3 CHAIRPERSON REID: Okay. All right. You may
4 begin, Ma'am. Turn on the mike and give us your name and your
5 address.

6 MS. YATES: Good morning. My name is Patricia
7 Yates, and this is my husband, Edward Yates. We live at 1631
8 Harvard Street, Northwest. We have been there for about 32
9 years.

10 CHAIRPERSON REID: Go ahead.

11 MS. YATES: We are requesting this special
12 exception because Mr. Yates' mobility is becoming increasingly
13 more limited with age, and as a result, he badly needs a
14 bedroom and bath on the first floor, contiguous with our
15 living, dining, and kitchen areas.

16 This addition will be for residential use only in
17 keeping with the residential character of the neighborhood.
18 The design prepared by our architect is compatible with
19 existing houses and has already been reviewed and approved by
20 the Historic Preservation Review Board.

21 We have with us a copy of the Board's approval,
22 which I would be happy to submit. As the design illustrates,
23 the bed and bath will be on one floor only, the first floor,
24 and will create no visual intrusions on the character, scale,
25 and pattern of the street, or for that matter of the back

1 alley.

2 There will be no negative impact on the air or
3 light of nearby properties. Neither will this addition cause
4 any neighbors to lose privacy, and/or enjoyment of their homes.

5 There has been no opposition from anyone in our
6 community, and the Mount Pleasant Advisory Neighborhood
7 Commission is supporting our request. I do have a copy of the
8 letter that they delivered to our house late last night.

9 Our neighbors on both sides are also very
10 supportive. Our lot is about 3,814 square feet, and our home
11 presently uses 1,438 square feet. We have been advised by
12 zoning that we may use an additional 164 square feet without
13 special exception, but we need a bit more, 300 square feet
14 total.

15 Thus, the special exception request is for the
16 additional 136 square feet. With the addition included, our
17 total use would be 1,738 square feet, about 46 percent of our
18 lot.

19 This underscores that the addition will not be
20 intrusive or cause negative impact on our surroundings. Though
21 we are here today to request a special exception, we are
22 advised that we also may need to justify an area variance.

23 Our lot is a very peculiar one, sloping down in
24 the front towards the street. On one side the property line is
25 not a complete straight line. The addition of the bed and bath

1 is to be tucked neatly into the back of the house away from all
2 property lines.

3 The rooms, as I said before, will be for
4 continued residential use only, and will present no detriment
5 to the public good. We greatly appreciate your consideration
6 of our application.

7 CHAIRPERSON REID: Members, have you seen the
8 drawings? The drawings are right here. Just give us a second,
9 please, to review and look at the drawings.

10 SECRETARY PRUITT: Ms. Yates, if you would like,
11 you can pass up your HPRB report.

12 (Brief Pause.)

13 COMMISSIONER MITTEN: Mrs. Yates, if we could
14 ask. We have a plat that shows your existing dwelling and
15 where the addition will go, and we also have these drawings.

16 In terms of the area that you are adding, when
17 you speak of the addition are you speaking exclusively of the
18 enclosed area, or are you including the deck as well? Is the
19 deck new?

20 MS. YATES: No, the deck is existing. It is back
21 there. It is flat on the ground.

22 COMMISSIONER MITTEN: Okay. And the deck is
23 accessible from the garage right now, or --

24 MS. YATES: No. From the walkway that comes --
25 the exit from the garage is to the alley, and then we walk

1 around to the entrance way.

2 MR. YATES: To the back door.

3 COMMISSIONER MITTEN: And the deck is between the
4 garage and your dwelling right now?

5 MS. YATES: Yes.

6 CHAIRPERSON REID: There is a ramp, and is that a
7 ramp that goes from the garage to the house?

8 MR. YATES: Yes. There is a ramp from the
9 walkway up into the back door.

10 CHAIRPERSON REID: Okay. Where is the area --
11 you said there was a slope?

12 MS. YATES: Oh, that is in the front of the
13 house.

14 CHAIRPERSON REID: In the front?

15 MR. YATES: It slopes down.

16 CHAIRPERSON REID: Okay. All right.

17 MR. YATES: But that has nothing to do with what
18 we are building.

19 CHAIRPERSON REID: No, it was just basically in
20 regard to the topography of the property itself being unique or
21 unusual, and based on the fact that it does have the slope in
22 the front, and that is just what I was trying to ascertain.

23 MR. YATES: Right.

24 VICE CHAIRPERSON RENSHAW: Mrs. Yates, do you
25 have any sign-offs from your neighbors that they have agreed to

1 this design?

2 MS. YATES: No, we don't. We have talked with
3 them, yes.

4 MR. YATES: We have talked with all of them.

5 VICE CHAIRPERSON RENSHAW: But they did not sign
6 anything?

7 MS. YATES: We did not ask them to. We weren't
8 advised that that would be necessary.

9 CHAIRPERSON REID: But they were made aware, or
10 they all received -- everyone within 200 feet did receive the
11 notice?

12 MS. YATES: Yes, they did, and not only that, we
13 talked in depth with our neighbors on both sides; the one in
14 the attached house and the one in the detached house.

15 Plus, when I walk my dog up and down the alley,
16 people holler out the back door how is it going and have you
17 had your hearing yet. So I think everybody knows about it.

18 CHAIRPERSON REID: Did anyone complain or raise
19 any objection that you know of?

20 MS. YATES: No.

21 MR. YATES: No.

22 CHAIRPERSON REID: There were no letters that we
23 received in that regard either, but just in case you had some
24 knowledge of that.

25 MS. YATES: And it is not wheelchair accessible,

1 and so Mr. Yates didn't go, but I went to the advisory
2 neighborhood meeting in April, and they had advertised that
3 through their usual methods, and I presented orally there.

4 And the Advisory Neighborhood Commission, which I
5 think is six people in Mount Pleasant, unanimously supported us
6 as the letter says.

7 CHAIRPERSON REID: Okay. Questions, Board
8 Members?

9 MS. YATES: And may I add one other thing? We
10 also were in contact by telephone with the Office on Planning
11 and the gentleman there told us that the Office on Planning
12 didn't propose to submit any sort of report.

13 CHAIRPERSON REID: All right. Any questions?

14 COMMISSIONER MITTEN: If I could just ask a
15 question. The measurement that Mrs. Yates recited about the
16 existing lot occupancy of 1,438 square feet, based on the
17 drawing, and again I am speaking of the plat with the existing
18 dwelling superimposed on it, I get a higher number than that,
19 and I was wondering who made the measurement of 1,438?

20 MS. YATES: Well, from this, when we started this
21 process, we went to DCRA on North Capital Street and had an
22 appointment with a gentleman named Mr. Toye Bello, and he
23 mapped this out for us, and told us exactly what the
24 percentages were, and what he could do without exception, and
25 that is where I got those figures from.

1 COMMISSIONER MITTEN: Do you have anything in
2 writing from Mr. Bello?

3 MS. YATES: No, because the only thing we have in
4 writing from Mr. Bello is the little work sheet that he gave
5 us. We were told that it would be faster to come straight to
6 you folks than to wait for a denial from them. So that is what
7 we did.

8 COMMISSIONER MITTEN: I see.

9 MS. YATES: So we don't have a letter from Mr.
10 Bello. We have the handwritten notes that he made for us when
11 we went to see him. If you could give me one second. I hope I
12 brought it with me.

13 CHAIRPERSON REID: This is self-certification?

14 SECRETARY PRUITT: Yes.

15 CHAIRPERSON REID: Okay. I see it. Right.

16 (Brief Pause.)

17 CHAIRPERSON REID: Are you still on your
18 questioning, Ms. Mitten?

19 COMMISSIONER MITTEN: I am looking at the sheet
20 to see if I reconcile what Mr. Bello did with what I did.

21 (Brief Pause.)

22 COMMISSIONER MITTEN: Okay. I see the
23 difference. The measurement that I used on the garage, I
24 believe that is actually the measurement of the rear lot line.
25 So I think his measurements are accurate.

1 CHAIRPERSON REID: Okay. All right. If there
2 are no questions, Board Members, and there is no Office of
3 Planning report, and this is under government reports. But
4 there is a letter that was submitted by the applicant from the
5 ANC. Do you want to read that, Ms. Renshaw.

6 VICE CHAIRPERSON RENSHAW: This letter is dated
7 May 5th, 2001, and the Board has received it as of today, with
8 no request for this to be waived in.

9 CHAIRPERSON REID: I think by procedure that we
10 should just automatically waive it, even though they didn't
11 request it.

12 VICE CHAIRPERSON RENSHAW: And do we vote on
13 that?

14 SECRETARY PRUITT: Yes, you need to vote on that.

15 VICE CHAIRPERSON RENSHAW: All right. I move
16 that we accept the ANC-1E's letter, dated May 5th, 2001,
17 regarding Application Number 16697.

18 COMMISSIONER MITTEN: I second.

19 CHAIRPERSON REID: All in favor?

20 (A chorus of ayes.)

21 VICE CHAIRPERSON RENSHAW: The letter is signed
22 by Christopher Schaein, who is the ANC Commissioner for 1E-01,
23 and Chair of the Committee of Environment and Infrastructure.

24 And the letter states that on April 2nd, 2001,
25 the Mount Pleasant Advisory Neighborhood Commission 1-E held a

1 public hearing to discuss Application 16697. The meeting was
2 advertised in each of the six single member districts within
3 the ANC boundaries.

4 The ANC requires that four members of the
5 Commission be present to constitute a quorum. All six
6 Commissioners were present at the meeting. The Commissioners
7 had no issues or concerns with the application for the first
8 floor addition to build a bedroom and a bath.

9 The community had an opportunity to discuss the
10 application. There was no opposition, and the Commission
11 unanimously voted to support the zoning variance for 1631
12 Harvard Street, Northwest.

13 And the ANC passed the following resolution:
14 "ANC-1E hereby supports the variance proposed under BZA
15 Application 16697, in reference to 1631 Harvard Street."

16 CHAIRPERSON REID: Thank you. Now, in regard to
17 this letter, I think that all the elements are here in regard
18 to a forum being present, and the fact that there was a vote
19 taken.

20 Nevertheless, prior to affording this particular
21 letter the great weight, I think I would like to see a letter
22 that came directly from the ANC to this board, rather than
23 from the applicant, and I don't see any letterhead.

24 VICE CHAIRPERSON RENSHAW: That is what I was
25 going to mention.

1 CHAIRPERSON REID: Yes. I mean, not that I am
2 questioning it, but it is just for protocol for our records, we
3 need to make sure that we move correctly, and typically we
4 don't accept a letter from an applicant from the ANC. And we
5 just ask staff to request that they fax over this letter
6 directly from the ANC.

7 VICE CHAIRPERSON RENSHAW: And the letter should
8 be signed by the Chair or the Vice Chair in the absence of the
9 Chair.

10 MS. YATES: If I might just add that I feel
11 myself fortunate to get any kind of letter from them to bring
12 today, because I think they are all very busy, and they go off
13 in different directions.

14 CHAIRPERSON REID: Well, the Chair --

15 VICE CHAIRPERSON RENSHAW: The signature was by
16 the Chair of the Committee on Environment and Infrastructure.

17 CHAIRPERSON REID: Do you know the name of the
18 Chair?

19 COMMISSIONER HINTON: I think his name is Mr.
20 Wittman.

21 VICE CHAIRPERSON RENSHAW: Mr. Wittman. Well, we
22 can certainly look that up.

23 CHAIRPERSON REID: And, Ms. Pruitt, can you ask
24 if this is the signature of the chairperson of the full ANC.
25 Thank you very much. All right. Now, if there are no other

1 government reports, then persons or parties in support.

2 SECRETARY PRUITT: Excuse me, Madam Chair, you
3 did just recently get a plan from HPRB.

4 CHAIRPERSON REID: Oh, right. HPRB did review it,
5 and they did send us a letter basically -- well, wait. Is this
6 letter -- what is this letter?

7 SECRETARY PRUITT: Madam Chair, this is what HPRB
8 calls a consent calendar project. It is reviewed by the staff,
9 and the staff determines that it is not really that major a
10 project. There is no historic preservation issues, and then
11 they sign off on it.

12 CHAIRPERSON REID: And this basically constitutes
13 an approval of sorts?

14 SECRETARY PRUITT: Yes. It is a consent calendar
15 approval, and it doesn't go to the full board.

16 CHAIRPERSON REID: Okay. So the staff basically
17 gives the okay, the go ahead?

18 SECRETARY PRUITT: Correct.

19 VICE CHAIRPERSON RENSHAW: Madam Chair, where it
20 says on this notice, "Subject to final permit review," when is
21 the final permit review?

22 SECRETARY PRUITT: That is when they go to DCRA
23 to get their permits. They don't have a permit yet because
24 they still have to go through zoning and other -- I mean, they
25 have to come here to get --

1 VICE CHAIRPERSON RENSHAW: I just wanted to know
2 the date when the final permit review would be done.

3 SECRETARY PRUITT: It depends on the applicant,
4 and it depends on the Board. I mean, depending upon if you
5 give them an affirmative decision, once they get their order,
6 then they have six months -- well, they actually have two years
7 from the signature on the order to file for a building permit,
8 and not even to get a completed one, but to file. So it is a
9 good deal of time.

10 MS. YATES: And if you want to know what our plan
11 is, our plan is to file as soon as we get the approval of this
12 -- if we get the approval of this Board.

13 CHAIRPERSON REID: Okay. No persons or parties
14 in opposition. Closing remarks by the applicant. Now, this is
15 your opportunity to give us your closing remarks and make any
16 requests.

17 MS. YATES: I have no closing remarks to make. I
18 was going to ask for a bench decision and a summary order. I
19 don't know if that is possible since you still need the more
20 official letter from the advisory neighborhood commission.

21 CHAIRPERSON REID: I think we can handle that by
22 having it come in prior to any order being issued.

23 MS. YATES: Okay. That was all that I was going
24 to request, a bench decision and a summary order.

25 CHAIRPERSON REID: Okay. All right. Board

1 Members.

2 COMMISSIONER MITTEN: Madam Chair, Mrs. Yates
3 raised the issue that they may need to actually be requesting a
4 variance. Their garage is legally nonconforming regarding the
5 setback from the alley. So I think that they do technically
6 need a variance from -- what is it, 2001.3?

7 SECRETARY PRUITT: Yes.

8 CHAIRPERSON REID: That was my understanding,
9 that she was requesting both a special exception and a
10 variance. I think that she amended her self-certification,
11 because after she had submitted it, she realized that she had
12 made it a variance as well. And I think that is what she is
13 proffering here today, asking for both.

14 COMMISSIONER MITTEN: And I was going to say that
15 perhaps that she needed some guidance then about what the
16 burden of proof is for the variance.

17 CHAIRPERSON REID: Okay. Did you want to help
18 her?

19 COMMISSIONER MITTEN: Well, you are quite an
20 expert in this area.

21 CHAIRPERSON REID: Well, I think, Mrs. Yates,
22 that I was impressed with the fact that you seemed to have made
23 a great attempt to reasonably prepare yourself for this
24 particular hearing here today. And is this your first time
25 coming here?

1 MS. YATES: Yes.

2 CHAIRPERSON REID: And as such, she is kind of
3 groping her way through, but she did talk about the fact that
4 the first prong of the test is that your property has to have
5 something unique and unusual that is inherent in the property.

6 And then you did talk about the fact that the
7 property had a slope in the front, and also there is an
8 irregular shape to the land itself. And there are two things,
9 a special exception and a variance.

10 Let me go to the special exception.

11 And in that particular instance, basically your
12 subsection that you are applying for is Subsection 223.1, and
13 basically that section pertains to the aspect of the request
14 not interfering with any or having any adverse impact, or
15 adverse affects on the air and light of adjacent properties, or
16 interfere with the privacy and enjoyment of other properties,
17 and not visually intrude upon the current skill and impairment
18 of houses along the street frontage.

19 And we don't have anything to -- well, we don't
20 have any objections by any of the adjacent property owners in
21 that regard. So I would think that that is not a problem.

22 Now, with the variance, which is a much more
23 difficult test, we go to first to whether or not the property
24 is unusual or unique; and then we look at if there is a
25 practical difficulty to comply with the existing zoning

1 regulations.

2 And in that regard, if I am not mistaken
3 -- and I don't want to put words in your mouth, but what were
4 you saying -- well, this part is in regard to what you feel
5 makes it difficult for you to comply with the existing zoning
6 regulations, and if you would speak to that.

7 MS. YATES: Well, first of all, our house was
8 built about 1928 or '29.

9 MR. YATES: 1926.

10 MS. YATES: Excuse me, about 1926, prior to the
11 adoption of the zoning regulations, and I believe that the
12 garage that Ms. Mitten mentioned has been there since the house
13 was built or shortly thereafter.

14 MR. YATES: Yes, since the house was built.

15 MS. YATES: It was there long before we moved in
16 there in 1969. There is no other place because of the strange
17 way this lot is shaped to put an addition to the house. I
18 think that is what we were trying to say.

19 And that is why Mr. Alvarez, the architect,
20 tucked it in as neatly as he could in the back of the house,
21 and as small as he could, too, because he really wanted to do
22 more square feet, but he pulled it in as much as he could.

23 I don't know if that answers the question or not.
24 On our alley, all of the garages up and down the alley back
25 right up on the alley, just like ours does because they are all

1 old houses that existed long before the zoning regulations.

2 COMMISSIONER MITTEN: Madam Chair, if I could. I
3 think that in other cases related to the unique nature when
4 properties are in an historic district, that does contribute to
5 -- you know, that does contribute limitations on the property,
6 in terms of opportunities for making modifications.

7 So I think that helps your case. In other cases,
8 what we have done in order to just make sure that we have an
9 adequate record about the practical difficulty issue is the
10 only thing we can see on your first floor plan is the addition
11 itself.

12 And if we had a sense of what the entirety of
13 your first floor, what that floor plan looked like, then I
14 think we would have a more adequate record on which to base a
15 finding of practical difficulty. Is that something that you
16 could get for us?

17 Because the only thing that we have in this
18 submission, in terms of identifying room placement, is just
19 with where the addition will go. Do you have something that
20 shows the entire first floor?

21 MS. YATES: I was thinking. I was trying to
22 think. I may have something tucked away at home somewhere. I
23 am not sure. I could draw something myself.

24 CHAIRPERSON REID: Well, do you mean you want to
25 see the layout as far as like the living room and dining room,

1 and kitchen?

2 COMMISSIONER MITTEN: Yes, which is something
3 that we have often requested.

4 CHAIRPERSON REID: And where there may not be
5 additional space?

6 COMMISSIONER MITTEN: Exactly.

7 CHAIRPERSON REID: Or space that could be
8 utilized?

9 COMMISSIONER MITTEN: Correct.

10 CHAIRPERSON REID: And then also we would like to
11 see the room dimensions.

12 COMMISSIONER MITTEN: That would be helpful also,
13 yes. If we could have just a fully dimensioned first floor
14 plan.

15 CHAIRPERSON REID: As far as how the space is
16 allocated. Okay. All right. Further questions? If not, the
17 square footage of your first floor, do you know what it is?

18 MS. YATES: Well, I'm sorry --

19 CHAIRPERSON REID: Well, do you know what the
20 square footage of your house is?

21 COMMISSIONER MITTEN: Madam Chair, the square
22 footage of the first floor is 1,037 square feet.

23 MS. YATES: And I can explain it, but I can't
24 tell you the dimensions of each room, but I can explain it.

25 MR. YATES: There is no place in there to build

1 anything else in the existing space on the first floor.

2 CHAIRPERSON REID: What do you have on the first
3 floor?

4 MR. YATES: We have a kitchen, a dining room, and
5 a living room.

6 MS. YATES: And an entry hall.

7 MR. YATES: And an entry hall.

8 VICE CHAIRPERSON RENSHAW: Is there a powder room
9 on the first floor?

10 MS. YATES: I'm sorry?

11 VICE CHAIRPERSON RENSHAW: Is there a powder room
12 on the first floor?

13 MR. YATES: No.

14 MS. YATES: No, there is not.

15 VICE CHAIRPERSON RENSHAW: Okay.

16 MR. YATES: There is an entrance from the back
17 door into the kitchen, and then a hallway coming in to the
18 front door.

19 CHAIRPERSON REID: And that little area that is
20 in the rear of the property, what is that? Is that part of --

21 MR. YATES: The back yard.

22 CHAIRPERSON REID: No, this little box right
23 here.

24 MS. YATES: That is the entry way to the outside
25 or from the outside. It is simply a little entry way.

1 CHAIRPERSON REID: Like a little porch?

2 MS. YATES: No, it is enclosed.

3 CHAIRPERSON REID: Okay.

4 MS. YATES: Well, wait a second. There is a
5 porch, yes.

6 MR. YATES: There is a little back porch.

7 MS. YATES: There is a porch and then a little
8 room that you just come in. It is not a --

9 MR. YATES: It is not an entry way.

10 CHAIRPERSON REID: Okay.

11 COMMISSIONER MITTEN: Madam Chair, I don't want
12 to prolong this unnecessarily, but I think just the problem of
13 you conveying to us what you know about the design of your
14 house, if we could just see a floor plan, it would make it
15 clearer to us, and it would make it clearer for the record,
16 too, if that is something that we could get.

17 CHAIRPERSON REID: Okay. What is it that -- Ms.
18 Pruitt, what is this? Did this come from Bello?

19 SECRETARY PRUITT: That is what the applicant --
20 the applicant went to see Mr. Bello, and those are handwritten
21 notes that Mr. Bello gave the applicant. Then they self-
22 certified. That is what she was basing her information on in
23 reference to lot occupancy when Ms. Mitten asked her in
24 reference to that.

25 MR. YATES: The architect used that to draw up

1 the plans.

2 SECRETARY PRUITT: So she is just submitting it
3 for the record.

4 MS. YATES: Because Ms. Mitten asked for it.

5 SECRETARY PRUITT: Correct.

6 CHAIRPERSON REID: Okay. All right. For the
7 floor plan request, if you could please have that submitted,
8 submit that to us. And are there any other requests?

9 (No audible response.)

10 CHAIRPERSON REID: Okay. I have a question. The
11 variance amount that they are requesting is how much totally,
12 the square footage?

13 VICE CHAIRPERSON RENSHAW: 136 additional, I
14 believe.

15 CHAIRPERSON REID: Okay. 136 additional. This
16 is where -- okay. Now, the two percent flexibility that Mr.
17 Bello is referring to here, what I am trying to ascertain is
18 that if in fact -- well, is he saying that it falls within that
19 category? And if so, then -- well, Ms. Pruitt, can you help
20 me out?

21 SECRETARY PRUITT: I am just getting a copy of
22 this right now, and so I have to look at it.

23 CHAIRPERSON REID: Thank you.

24 MS. YATES: I can tell you what Mr. Bello told
25 us, if that would help, except that I don't have a copy of it

1 anymore.

2 CHAIRPERSON REID: Okay. What did he tell you?

3 MS. YATES: I need a copy so I can be looking at
4 it. Thank you. He used a term of maximum out of coverage. He
5 said that that would be 87 to 93 square feet that we could use,
6 but that he had authority to grant two percent flexibility.

7 CHAIRPERSON REID: Right.

8 MS. YATES: Which would bring it up -- I don't
9 understand the mathematics of it, but he did, and our architect
10 did, which would bring the amount up to exactly 164.21 square
11 feet that we could use in our back yard without coming before
12 the Board of Zoning Adjustment.

13 CHAIRPERSON REID: And if you exceed that?

14 MS. YATES: Yes. But anything to exceed that, we
15 would need to come to you for.

16 CHAIRPERSON REID: Okay. I got it. All right.
17 Any other questions, Board Members?

18 (No audible response.)

19 CHAIRPERSON REID: Okay. I think, Mrs. Yates,
20 because of the fact that -- well, we need additional
21 information. So we can't give you a bench decision today, but
22 I think that given the fact that we do need additional
23 information so we can get kind of a better perspective as to
24 how your house is laid out, and then we can garner from that, I
25 guess, more of the practical difficulty in you not being able

1 to comply with existing zoning regulations.

2 But given the fact that you also have the
3 constraint with the garage, at what meeting can we plan to make
4 that decision, Ms. Pruitt?

5 SECRETARY PRUITT: This can go on the June 5th
6 agenda. Ms. Yates, do you think you would be able to get
7 drawings to us by the 22nd of May?

8 MS. YATES: I can go home and draw them myself
9 this afternoon.

10 CHAIRPERSON REID: Well, we actually want to see
11 them to scale, which means that you have to show the dimensions
12 of each room.

13 MS. YATES: I may have something at home already.
14 I don't know for sure, but if not, we will get Mr. Alvarez to
15 come in and do us a real quick drawing, and I'm sure we can get
16 it done within a week.

17 SECRETARY PRUITT: Well, then if we put it on the
18 June 5th agenda, if you make submissions on May 22nd, then that
19 will give everybody enough time, I think. There are no parties
20 and no one to respond. So hopefully that also gives the ANC
21 enough time to get in a letter on letterhead since it is
22 already written.

23 MS. YATES: And may I ask another question? Will
24 I need to contact the ANC again? I apparently have not been
25 too successful thus far.

1 SECRETARY PRUITT: We will do that from the
2 staff's end.

3 MS. YATES: Okay. But I will get the drawing
4 into you then?

5 SECRETARY PRUITT: Yes. Right.

6 CHAIRPERSON REID: Okay. And then we will -- and
7 this is what we do. Sometimes we give bench decisions if it is
8 a clear cut case and we can do it that day. But if there is
9 additional information or whatever, then in those instances it
10 will do at our next regularly scheduled decision meeting.

11 And that decision meeting is open to the public,
12 and you may attend, or you don't have to. It is not required.
13 But it is your prerogative, okay?

14 MS. YATES: Yes.

15 CHAIRPERSON REID: Okay. Thank you very much.

16 MS. YATES: And thank you very much.

17 CHAIRPERSON REID: So, June 5th will be the
18 decision meeting.

19 MS. YATES: June 5th?

20 CHAIRPERSON REID: Yes.

21 VICE CHAIRPERSON RENSHAW: I want to compliment
22 Mrs. Yates on her preparation. I think that it was very
23 thorough, save the omission of the first floor floor plans, but
24 I do feel that you very adequately addressed the special
25 exception, and the variance and laid out your case very well.

1 MS. YATES: Well, I must say that I got a lot of
2 help from Ms. Pruitt on the telephone and from my husband, and
3 we sat down at the dining room table last night and tried to
4 get it all together. Thank you very much.

5 CHAIRPERSON REID: Thank you. The next case.

6 MS. BAILEY: Application Number 16698 of Donna
7 Oetzel and David Belman, pursuant to 11 DCMR 3104.1, for a
8 special exception under Section 223 to allow a rear addition to
9 a single family dwelling not meeting the year yard, Section
10 404, and lot occupancy, Section 403 requirements in an R-4
11 District at premises 1841 Ingleside Terrace, Northwest, Square
12 2617, Lot 146. Please stand and raise your right hand.

13 (All witnesses were sworn.)

14 MS. BAILEY: Thank you, and please come forward.
15 Members of the Board, this project was referred from the
16 zoning administrator's office. The architect is Ms. Robin
17 McGrew. The Office of Planning did not file a report.

18 This site is located in 1E. However, it is in
19 proximity to 4A, and that is ANC-1E and 4A, and there are no
20 requests for party status.

21 CHAIRPERSON REID: Okay. Thank you. Please give
22 your names and your address.

23 MR. BELMAN: David Belman, and I live at 1841
24 Ingleside Terrace.

25 MS. MCGREW: Robin McGrew, 3808 Jocelyn Street,

1 Northwest.

2 MS. OETZEL: Donna Oetzel, 1841 Ingleside
3 Terrace.

4 CHAIRPERSON REID: Okay. Now, as you speak --
5 I'm sorry, you already gave your name and address, and when you
6 begin speaking, if you wouldn't mind repeating it, I would
7 appreciate it.

8 MR. BELMAN: Sure.

9 CHAIRPERSON REID: Okay. You may proceed.

10 MS. MCGREW: I am Robin McGrew, and I am the
11 designer for the proposed project, which is a deck addition.
12 It is not an enclosed space. I don't know if there is any
13 distinction there.

14 But we are replacing an existing deck which is
15 smaller, and fairly dilapidated, and we are proposing a larger
16 wooden structure. And we don't feel that this would adversely
17 affect any of the neighboring residents.

18 It is at the back of the house, and this house is
19 bordered on one side by an alley, and on another side by a row
20 house. And a good 50 percent of the houses on this alley have
21 already built decks that are of similar dimensions to the one
22 that we are proposing.

23 And we don't find that this deck would impact
24 adversely on the light or air to the neighboring property. The
25 owners have spoken to several of their neighbors, who have

1 responded to the posting of the request for an exception, and
2 no one has voiced any opposition to the project.

3 And several people have supported it and said
4 that they would be happy to see a nicer deck built in the back
5 alley. And we had submitted for an a permit and had gotten the
6 approval from Fine Arts and from Historic Preservation already.

7 And for those reasons we think that this would be
8 a positive addition to the neighborhood, rather than any
9 detriment to its use. It is also in keeping with the
10 residential use and would be for private use only.

11 CHAIRPERSON REID: Questions, Board Members?

12 COMMISSIONER MITTEN: Did the Staff inform you
13 that you also have a variance test to meet because your lot is
14 legally non-conforming?

15 MS. MCGREW: Ms. Pruitt called yesterday and said
16 that that may be the case.

17 COMMISSIONER MITTEN: I think it is the case, and
18 the computation sheet shows that the required lot area is 1,800
19 square feet, and this is below that.

20 So, for properties that have legally non-
21 conforming issues, then there is an additional variance test
22 that you must meet, which is what Ms. Reid was describing to
23 the folks in the previous case, and I think you were here.

24 So I don't know if you can speak to the test for
25 the variance. So far what I think you have addressed yourself

1 to is the special exception.

2 MS. MCGREW: The additional proof for the
3 variance is to show that you have a practical difficulty, and -
4 -

5 COMMISSIONER MITTEN: Well, the first test is
6 that there is something unique about the property.

7 MS. MCGREW: Well, in this property, I suppose
8 that it is smaller than the other lots in the area. The
9 topography is level, but it is just that it is a smaller lot is
10 its difficulty.

11 So I suppose for that reason that we overstep the
12 setback sooner, and we don't have as much room to work with on
13 the lot.

14 COMMISSIONER MITTEN: All right. And then the
15 practical difficulty?

16 MS. MCGREW: Well, that is with the lot smaller.
17 If we were proposing a deck similar to what other people have
18 built, that we would oversee the setbacks sooner.

19 CHAIRPERSON REID: Okay. Now, what you have to
20 understand is that many of the people who may have those decks
21 on the back of their houses are illegal.

22 And it is not good to use that as an example,
23 because what happens is that those folks who did not come down
24 to the Board of Zoning Adjustment to get variances, but just
25 went on and did it.

1 But unfortunately for you, you being here means
2 that you have to make your case for why you should be given a
3 special exception or a variance for your particular property
4 there.

5 And one of the things that we would like to see
6 is -- and when you say it is smaller, compared to what? So you
7 would have to show -- typically there is a map, a base map that
8 would show compared to the other properties in that lot, in
9 that square, how does your property compare that would then
10 convince us that there is something unusual or unique about
11 your particular property. Do you have that?

12 COMMISSIONER MITTEN: Madam Chair, we do have a
13 plat that shows some of the surrounding residences. Just on
14 the point that you had raised earlier, I had asked the staff to
15 check on whether or not the special exceptions for variances
16 for the properties shown on the photographs, for 1833, 1835,
17 and 1837, and 1839 Ingleside Terrace, and no special exceptions
18 or variances were granted.

19 So I would say that at a minimum to be fair to
20 these people, and not punish them for coming down, we need to
21 make a referral to the zoning administrator to have an
22 investigator go out and look at the decks on the rest of that
23 block.

24 CHAIRPERSON REID: Well, that's probably for half
25 the properties in D.C. unfortunately.

1 COMMISSIONER MITTEN: Well, it's not really fair
2 that when --

3 CHAIRPERSON REID: Well, definitely, I agree. I
4 mean, this is something that has been happening through the
5 years and the applicants who are the good samaritans, good
6 citizens, law abiding applicant comes down and then they start
7 to show us pictures of all the other people who already have
8 their decks in or whatever back there, and only to find out
9 that those people have illegal occupant structures back there,
10 and they are the ones who come down and try to do the right
11 thing, invariably they find themselves in hot water because
12 they can't make a case and it is really unfair.

13 MR. BELMAN: If I may speak for a moment. This
14 is actually a deck that we had planned to build a year ago. We
15 were hoping to build it in May of last year, and it is our
16 first real building enterprise in the District.

17 And it was the first time that we recognized and
18 realized that there was a significant process that we would
19 need to engage in. So we have actually been learning the
20 process over the course of the past year, and have not gone to
21 the extent of going up and just throwing up the deck ourselves
22 in the back yard without coming through the process, which a
23 lot of people did suggest that we do. But we decided to take
24 our time and come through the process.

25 COMMISSIONER MITTEN: And we appreciate that very

1 much.

2 CHAIRPERSON REID: And who are those people who
3 suggested that?

4 COMMISSIONER MITTEN: How about the names and
5 addresses.

6 (Laughter.)

7 CHAIRPERSON REID: And they are looking at -- you
8 said that your lot is smaller?

9 MR. BELMAN: Yes. The back is smaller. It is
10 sort of where the lots progressively get smaller as you come
11 east to west on our row.

12 MS. MCGREW: This map was part of our application
13 process and something that the staff had put together, and it
14 shows that the adjoining property is 1,700 square feet or
15 1,713, and their property is 1,684.

16 CHAIRPERSON REID: Say that again?

17 MS. MCGREW: The adjacent property has a lot
18 square footage --

19 CHAIRPERSON REID: Well, I see that, but isn't
20 that rather --

21 MS. MCGREW: It isn't that much smaller, no.

22 CHAIRPERSON REID: Well, it is like -- we are
23 talking degrees here.

24 MS. MCGREW: Well, I was just trying to
25 understand how our case would just satisfy the burden of proof.

1 CHAIRPERSON REID: It has got to be something
2 unusual or unique in land either regarding the slope, or the
3 topography, or the size, or the shape, or something that would
4 make your property very unique or unusual than the other
5 properties that would justify you having a practical difficulty
6 to comply with the existing zoning regulations. And I don't
7 know if you are demonstrating that right now or not.

8 MS. MCGREW: And is it our problem that our deck
9 is too deep, that it is too long? The current deck adheres to
10 the setbacks; is that correct?

11 COMMISSIONER HINTON: I don't see actually the
12 current deck on here. How deep is the current deck?

13 MS. MCGREW: Do you have a copy of the plans? It
14 is right here. The current deck is shown on the demolition
15 plan.

16 CHAIRPERSON REID: Right here. Okay.

17 COMMISSIONER HINTON: The existing deck is about
18 4 feet?

19 MS. MCGREW: It is 4 feet deep and the stairs
20 extent out 12 feet, 3 inches, from the house.

21 COMMISSIONER HINTON: How high is the deck off
22 the ground?

23 MS. MCGREW: It is about 9 foot 10.

24 COMMISSIONER HINTON: I don't think the existing
25 deck -- well, what I am seeing from the zoning administrator's

1 comp sheet is that you are required to have a 20 foot rear
2 yard, and it is 20 feet from the back of your building to the
3 rear property line.

4 And it doesn't look like you have that in the
5 existing condition, and that would be the existing deck.

6 COMMISSIONER MITTEN: Madam Chair, on Exhibit
7 Number 2, which is the plat, it shows -- if you turn it
8 sideways in the area where the alley is, it says, "Rear S/B, 20
9 feet." So, rear setback, 20 feet.

10 And it looks like the house is right on the 20
11 foot setback line. So that anything projecting off the rear
12 wood reduce the required setback.

13 COMMISSIONER HINTON: Do you have any idea about
14 that existing deck and how long that has been there?

15 MS. MCGREW: I think it was originally there.

16 MR. BELMAN: It is an original wrought iron, and
17 almost a fire escape at some level. So it is just sort of a
18 platform, and then it steps down.

19 MS. MCGREW: And actually it would be dangerous
20 not to have anything on the back of the house.

21 CHAIRPERSON REID: Okay. All right. Now, the
22 second part is practical difficulty, and this is the second
23 part of the test. The practical difficulty for you to comply
24 with the existing zoning regulations.

25 MS. MCGREW: And which would -- well, would that

1 allow us to rebuild the deck as it is now, or that would not
2 allow us to have any deck?

3 We would have a severe practical difficulty, as
4 there would be no -- we would have a door from the first floor,
5 which is -- well, in the back of the house, the first floor is
6 now 10 feet off the ground. And if we have no deck, then we
7 have a problem with the door.

8 MS. OETZEL: And no access from the back of the
9 house, and no other entrance out. There would be only one
10 entrance out of the house in that case.

11 VICE CHAIRPERSON RENSHAW: Which may be a fire
12 hazard if they don't have any rear access.

13 MS. OETZEL: Yes, I would think so.

14 COMMISSIONER MITTEN: Could you correct me if I
15 am wrong, but is this a picture of your house or is that the
16 neighbor's house?

17 MR. BELMAN: That is --

18 COMMISSIONER MITTEN: 1841, is that yours?

19 MR. BELMAN: That's us.

20 COMMISSIONER MITTEN: Okay. I see it now, and is
21 that a door?

22 MR. BELMAN: That is a door downstairs.

23 COMMISSIONER MITTEN: So that is a second means
24 of egress from your house isn't it?

25 MR. BELMAN: Yes.

1 COMMISSIONER MITTEN: And it is access to the
2 rear?

3 MR. BELMAN: It is access to the rear, yes.

4 COMMISSIONER MITTEN: So we keep needing to work
5 on that practical difficulty issue.

6 COMMISSIONER HINTON: Is that the basement?

7

8 MR. BELMAN: That is the basement.

9 COMMISSIONER HINTON: So that is the basement,
10 and so there is a door out of the basement?

11 MS. OETZEL: Right.

12 COMMISSIONER HINTON: Okay. And it is a single
13 family house is it not?

14 MR. BELMAN: It is built into a hill, and so it
15 is two stories in the front and three in the back.

16 COMMISSIONER MITTEN: So there is only access
17 from the basement.

18 COMMISSIONER HINTON: Maybe I could offer an idea
19 for you to think about. The zoning commission is probably
20 going to reconsider Section 2001, which is the section that is
21 causing you to need a variance. It will probably take about 6
22 months for the whole process to go through.

23 But if that is reconsidered, then the zoning
24 commission makes that a special exception rather than a
25 variance. It would be much easier for you to get this approved

1 the way that you have proposed it.

2 The way the regulations are written now, you have
3 to meet the test for a variance, which is very difficult to do.

4 But once they change the regulations, it will be a special
5 exception and that is a lot easier.

6 MS. MCGREW: Is there any reason why we were
7 recommended from the Office of Zoning at the Bureau of Land
8 Regulation that we needed to apply for a special exception?
9 Why is it that this gets kicked back to a variance?

10 COMMISSIONER MITTEN: Well, the zoning
11 administrator has a different interpretation about that
12 particular aspect of nonconformity, and there is -- and even
13 though this sounds very strange, by definition a lot that is
14 below the minimum creates a legally nonconforming structure.

15 And that one aspect is one thing that the zoning
16 administrator has not been making referrals for variances, and
17 I believe that is going to change. But it is the prerogative
18 of the BZA, there is ultimate authority on interpreting the
19 zoning.

20 And so we believe that the zoning administrator
21 is in error about that, and we have had many cases like this.
22 So, unfortunately, you are getting caught in that, and again it
23 is terribly unfortunate that you all, who have chosen to come
24 through the process, are basically being stymied and postponed,
25 and punished, you know, because of it.

1 But we have -- our charge here is to apply the
2 standards of the zoning regulations, first of all, as they are
3 written and not as we hope they will be rewritten at some point
4 in the future.

5 And also we apply them to the people that come
6 before us and the people that are out there violating things,
7 again it is back to the zoning administrator to enforce.

8 CHAIRPERSON REID: Well, Ms. Mitten, let me ask
9 you something. Ms. Hinton made mention of the aspect of
10 Section 2001 being changed by the zoning commission, and this
11 has come up before. I think just last week that we had a
12 similar situation.

13 COMMISSIONER MITTEN: Right.

14 CHAIRPERSON REID: So are we saying that it is?
15 I mean, if it is coming before you that it will be changed?

16 COMMISSIONER MITTEN: Well, I can't predict what
17 the zoning commission will do. The issue of whether or not
18 there needs to be some easing of this requirement for non-
19 conforming structures is going to come before the zoning
20 commission on Monday for a possible set down for a hearing.

21 And so I can't even predict that it will be set
22 down for a hearing. But it is coming before the zoning
23 commission. So we will have within either -- well, on Monday,
24 or within a period of a hearing and deliberation by the zoning
25 commission -- you know, within six months, we will know whether

1 or not the standard will remain, or whether this standard will
2 be eased.

3 CHAIRPERSON REID: The reason that I brought that
4 up is because also the test for a variance includes an
5 exceptional condition or circumstance, and given the ambiguity
6 that we are dealing with with this particular subsection, do
7 you think that it would then be incumbent upon us to make that
8 determination whether we feel that is arduous enough to
9 constitute a practical difficulty within itself?

10 Because, you know, it is. I mean, let's remember
11 now that we are talking about citizens who are coming forward
12 and trying to comply, and they were the only ones on their
13 block who tried to do the right thing.

14 And then they come here and find out, oh, no, it
15 is not such and such and now it is a variance. And they have
16 to try and determine or grope for how to meet the exception for
17 a variance. And then they said, okay, you know, there is a
18 subsection that may be changed by the zoning commission that
19 will help you.

20 But given all these various situations that we
21 are bringing up, I think for the most part that it is further
22 confusing them rather than helping them.

23 COMMISSIONER MITTEN: All right. Well, here is
24 some language --

25 CHAIRPERSON REID: I am seeing some very

1 quizzical looks on all three faces.

2 MR. BELMAN: I can honestly say that if we are
3 waiting another six months for maybe this section to be voted
4 on and changed, we are simply not going to build a deck. The
5 rear egress will continue to decay and maybe we will throw a
6 coat of paint on it.

7 But it is just something that we won't do, and we
8 won't enjoy the house as much, and we will move to a house
9 where we can have a deck.

10 COMMISSIONER MITTEN: We are struggling to help
11 you and so just give us a minute and we will see if we can't
12 help you.

13 CHAIRPERSON REID: Don't get too frustrated and
14 just hang in there with us.

15 COMMISSIONER MITTEN: I am going to just pick
16 some language out of the variance test. "By reason of
17 exceptional topographical conditions or other extraordinary or
18 exceptional situations, the strict application of any
19 regulation would result in peculiar and exceptional practical
20 difficulties to, or exceptional and undue hardship upon the
21 owner, and to authorize upon an appeal relating to the property
22 a variance from the strict application so as to relieve the
23 difficulties or the hardship."

24 I mean, I could make an interpretation, and I am
25 interested in what Ms. Hinton has to say, because she has been

1 around as long as we have, and --

2 CHAIRPERSON REID: Well, longer, but the signal
3 that we want to give is that if you come here and you try to
4 comply, that you may get a legal variance, and then this would
5 make them be the only people who really are legal.

6 And then the zoning administrator comes and
7 everyone else has to tear down their additions because of the
8 fact that they don't comply, and then they will hate you
9 because you are the ones that started it all.

10 COMMISSIONER MITTEN: Well, I do feel strongly
11 that the zoning administrator needs to visit the neighbors and
12 do something.

13 CHAIRPERSON REID: Right. Right. Okay. Did you
14 have anything else to add to this, Ms. Hinton?

15 VICE CHAIRPERSON RENSHAW: We were just trying to
16 be creative over here, Ms. Hinton and I, to see if we could not
17 come up with some kind of a solution to this, or a temporary
18 solution, and we just did not have any luck.

19 The problem is that these good people are not
20 going to be able to have the enjoyment of their property as
21 they had planned, and they have gone a while now in trying to
22 come to grips with this regulation in order to get a permit to
23 do what they need to do.

24 And one of our creative thoughts which perhaps
25 cannot be voted on was to give them some kind of an additional

1 approval, understanding that if the regulation isn't changed
2 that they would not be in compliance and the deck would have to
3 come down.

4 But that would not be cost effective, and it
5 would be prohibitive. So we are going to -- we mean well, but
6 we just can't do that.

7 COMMISSIONER MITTEN: Ms. Renshaw, maybe you and
8 Ms. Hinton were in conference over there when I was reading the
9 variance test.

10 VICE CHAIRPERSON RENSHAW: We were.

11 COMMISSIONER MITTEN: I guess I just want to see
12 if you can be induced to a certain interpretation, because the
13 language of the regulation says that by reason of exceptional
14 topographical conditions or other extraordinary or exceptional
15 situation, which I would put this in the category of a
16 situation, the strict application of any regulation would
17 result in a particular and exceptional practical difficulty to,
18 or exceptional and undue hardship upon the owner.

19 And that an appeal may be granted relating to the
20 property, a variance to the strict application so as to relieve
21 the difficulties or hardship. So there may be some room for an
22 interpretation that would allow this to go forward.

23 CHAIRPERSON REID: And also this is an area
24 variance. So it would be a practical difficulty, and not an
25 undue hardship. And the practical difficulty, Ms. Mitten,

1 that I was saying was perhaps the fact that given the
2 circumstances surrounding the uncertainty with the Subsection
3 2001, and for them to wait to see whether or not that would
4 actually pass.

5 And the fact that they came and felt they needed
6 a special exception, and then later to find that it was a
7 variance that they really needed because of the nonconforming
8 aspect of that different property, that then may constitute a
9 practical difficulty.

10 COMMISSIONER HINTON: Well, here is an idea, if I
11 may.

12 CHAIRPERSON REID: Yes.

13 COMMISSIONER HINTON: The yard level in your back
14 yard, it looks like there is a garage on one side of the home.

15 MS. MCGREW: It is part of the structure.

16 COMMISSIONER HINTON: It is in the basement.

17 MS. MCGREW: Right.

18 COMMISSIONER HINTON: So there is a garage door,
19 and that which is in front of the garage, is that a driveway?
20 Is it paved?

21 MR. BELMAN: Yes.

22 COMMISSIONER HINTON: And because of that, and
23 because this is a rowhouse, so then there is not really a big
24 area in your back yard. It is very small.

25 MS. MCGREW: Yes, it is very small.

1 COMMISSIONER HINTON: The other thing that seems
2 to me to be unusual in your situation is that the front of the
3 house is set back pretty far from the street. So you have a
4 pretty long front yard, and because of that the back edge of
5 the building is on the line. It is right at the 20 foot line.

6 So there isn't any kind of deck that you can have
7 on this property according to the zoning regulations, and I
8 think that is an unusual situation, because normally in a
9 townhouse or a rowhouse the back yards are more evenly divided,
10 and that there is some room both in front and in back.

11 This seems very unusual to me that the big house
12 line is right on the 20 feet line. So there is no deck that
13 could be provided, and because you have a garage in the
14 basement, you need to have that area of the yard paved in order
15 to access the garage.

16 So it seems to me that we could permit the
17 construction of a deck at the level of the first -- the first
18 level of the house to provide some outside space within the
19 regulations. What do you all think about that?

20 COMMISSIONER MITTEN: I think that is really
21 good.

22 CHAIRPERSON REID: I think, Ms. Hinton, that this
23 applicant is very fortunate to have you on this Board, and to
24 be able to articulate for them and act as eloquently as you did
25 what in fact is unusual or different, or unique about their

1 property.

2 Okay. So then we go to the third part, which is
3 -- well, no, that was the first part. The second part is
4 adverse impact, and that is in regard to air, noise, light,
5 traffic parking, and we don't have anyone who is opposed to or
6 who has registered any complaint in regard to this particular
7 application.

8 An so we can assume that there is no adverse
9 impact, and the third part is will it impair the integrity or
10 impact of the zoning regulations or map, and I don't think that
11 it does. Now, that is the first part segment of your
12 particular case.

13 And then we go to -- well, there was no ANC
14 report?

15 VICE CHAIRPERSON RENSHAW: No.

16 CHAIRPERSON REID: Did you talk to the ANC?

17 MR. BELMAN: I don't believe we did.

18 COMMISSIONER HINTON: You know, if you look at
19 the -- well, because this lot is adjacent to a public alley,
20 building this deck I think is not going to affect the light and
21 air to any adjacent property. So you are really lucky to have
22 that.

23 MS. OETZEL: We have had that sign up on our
24 house for over -- well, for far more than we were supposed to,
25 like for a month.

1 CHAIRPERSON REID: Well, let's see if the ANC has
2 been noticed. I think that --

3 SECRETARY PRUITT: They have been noticed.

4 CHAIRPERSON REID: And there was no response from
5 them.

6 SECRETARY PRUITT: They have been noticed and the
7 single member district has been noticed, and council person.

8 MS. MCGREW: Yes.

9 VICE CHAIRPERSON RENSHAW: And in two ANC areas;
10 both 1E and 4A.

11 CHAIRPERSON REID: When you come before this
12 Board, which I guess you never will have to again hopefully, it
13 is recommended that you contact your ANC, because it is always
14 good politics to contact them to let them know what you are
15 doing, and ask them if they have any objections.

16 Or sometimes they will ask you to come to their
17 meetings, or what have you, and in this instance there is
18 fortunately no objection because if there were, they would let
19 us know. There weren't noticed and they did not file any
20 report.

21 So we assume that there is no objection to your
22 application, and then there is no persons here in support or in
23 opposition. So we go to closing remarks by the applicant.

24 MR. BELMAN: I guess in closing I would like to
25 thank you for your creativity, and appreciation of our

1 situation. And I hope that we are able to build the deck, and
2 nothing really beyond that.

3 CHAIRPERSON REID: Okay. Now, would you like a
4 bench decision, or --

5 MR. BELMAN: If that is possible, that would be
6 wonderful.

7 CHAIRPERSON REID: And a summary order?

8 MR. BELMAN: If possible, yes.

9 CHAIRPERSON REID: Okay. Do you know what that
10 is?

11 MR. BELMAN: It means that you will tell us today
12 that this is all right with you.

13 CHAIRPERSON REID: All right. Board Members,
14 what is your preference?

15 VICE CHAIRPERSON RENSHAW: I think we should
16 vote.

17 CHAIRPERSON REID: Okay. Can I have a motion?

18 COMMISSIONER HINTON: I would move for approval
19 of Application Number 16998.

20 COMMISSIONER MITTEN: Second.

21 CHAIRPERSON REID: Okay. Can you summarize it
22 for the record?

23 COMMISSIONER HINTON: Well, for all the reasons
24 that we have already discussed and what the applicant's let us
25 know about by the photos that they put in the record.

1 CHAIRPERSON REID: That they do meet the standard
2 for the test for a variance and for a special exception.

3 COMMISSIONER HINTON: Correct.

4 CHAIRPERSON REID: All right. All in favor?

5 (A chorus of ayes.)

6 CHAIRPERSON REID: Opposed?

7 (No audible response.)

8 CHAIRPERSON REID: Well, your case has been very
9 unique in a lot of different ways.

10 VICE CHAIRPERSON RENSHAW: And enjoy your deck.

11 CHAIRPERSON REID: You should have your decision
12 in about 2 to 3 weeks. Now you can go in your neighborhood and
13 gloat.

14 SECRETARY PRUITT: Just for your information
15 though, once you get your order, it will be mailed to your home
16 and there will be a date on there. You have to wait 10 days
17 from that date before it is actually effective before you can
18 go to the DCRA, okay?

19 MR. BELMAN: Thank you.

20 CHAIRPERSON REID: Ms. Bailey, if you would call
21 the next case.

22 MS. BAILEY: Application Number 16708, of Terence
23 L. Pickney, pursuant to 11 DCMR 3104.1, for a special exception
24 under Section 223 and a variance from Subsection 2001.3 to
25 allow a rear addition to a non-conforming single-family

1 dwelling not meeting the side yard requirements under Section
2 405 in an R-2 District at premises 1015 - 48th Street,
3 Northeast, Square 5153, Lot 9. Sir, would you please come
4 forward.

5 (Whereupon, the witness was sworn.)

6 CHAIRPERSON REID: All right. Go ahead, sir.
7 Give your name and your address, please, and present your case.

8 MR. PICKNEY: My name is Terence L. Pickney, and
9 I live at 1015 - 48th Street, Northeast, Washington, D.C.

10 CHAIRPERSON REID: You can go ahead and present
11 your case.

12 MR. PICKNEY: Okay. The case that I am
13 presenting today is that the house that I live in over at 1015
14 - 48th Street, Northeast, I inherited through my grandmother.
15 I had been living there as a child, and the house started to
16 deteriorate after a few years, and I went through the 203(k)
17 plan through the District of Columbia.

18 And I got approved for a loan and had an
19 architect come out and come over and look, and draw up some
20 plans, and what had happened was that I came down for the land
21 plat, and it showed that the right side yard of the house was
22 less than five feet away.

23 Actually, it was only three feet away from the
24 property line on the right side of the house, and to my
25 knowledge, before I was born and to my mother's knowledge as

1 well, the right side of the house was also our property.

2 The property that I live in now is Lot Number 9,
3 and the lot on the right side of the house is actually Lot
4 Number 8. I think I may have a picture of it, but on Lot
5 Number 9 is Lot Number 8, and then there is an alley.

6 We have been using Lot Number 8 for my entire 29
7 years that I have been living there, and even before that. So
8 what had happened was that through the codes of today that if I
9 wanted to tear a section of the house off, and put it back up,
10 it would have to meet the requirements of the side lot.

11 What I was trying to do was the kitchen is on the
12 rear end of the house, and it is falling off. It is detaching
13 from the house because there is no solid foundation under it.

14 And because it was already coming down and it was
15 going to be torn down, I was going to put it back up and
16 enclose the small porch that is on the right side of the house.

17 And in addition, just add a bedroom over on the
18 top of it, because now the house is a two bedroom, one bath,
19 and I wanted to make it a three bedroom, two bathroom.

20 And because the rooms in the house are very
21 small, I was going to extend it out and toward the yard an
22 additional -- I think it is 4-1/2 feet, and not going in the
23 direction of the property line.

24 COMMISSIONER MITTEN: Do you own Lot 8 also?

25 MR. PICKNEY: No, Ma'am, I don't own Lot 8. To

1 my knowledge, Lot 8 was my yard. I didn't find out that Lot 8
2 wasn't the yard until I got the land plat, and I went down to
3 the tax and revenue, and it showed that a company does own Lot
4 8, but they don't have a phone number.

5 And I tried to reach them by going to the address
6 that they had, but they are behind in the taxes, and they have
7 not paid the taxes in 5 years, and the lady said that it would
8 go up for bid in July, and that I could bid on it, but then
9 they would have six months after I bid on it to pay the back
10 taxes on it.

11 But like I said, to my knowledge, I have been
12 parking my car there ever since I started driving, and playing
13 football, and the rear of the house, the fence, is in the
14 entire Lot 8 yard.

15 And it has been there my entire life, and so like
16 I said, whoever does own the property, I have never in my life
17 seen the -- well, if you see it, it looks like it is part of
18 the yard, you know.

19 COMMISSIONER MITTEN: Okay. Thanks.

20 COMMISSIONER HINTON: It looks like it is a
21 pretty small lot.

22 MR. PICKNEY: It is a small lot. It is assessed
23 at -- well, it is actually about 12 feet wide, and so that's
24 why, you know, whoever owns it, I don't know why they stopped
25 paying the taxes on it. But there is nothing that can really

1 be put there anyway.

2 And even if I wanted to put a garage up, it would
3 be actually in the alley, you know. Whatever you tried to put
4 in Lot Number 8, it is a small lot. And the trash trucks that
5 come through there now need enough space, because they have to
6 go through the entire alley and behind my house.

7 COMMISSIONER HINTON: Okay. All right.

8 CHAIRPERSON REID: Ms. Mitten.

9 COMMISSIONER MITTEN: We have a plat, and the
10 plat shows -- it has a rectangle that is white, and then we
11 have like two other rectangles attached at the back that are
12 shaded.

13 Now, is the whole thing existing right now, or is
14 only part of this existing?

15 MR. PICKNEY: The whole thing is existing, except
16 for a small part of this here.

17 COMMISSIONER MITTEN: This?

18 MR. PICKNEY: Yes, that.

19 COMMISSIONER MITTEN: And so I am pointing now to
20 the rectangle that is furthest to the rear?

21 MR. PICKNEY: Yes, Ma'am. That would be
22 considered the deck that we wanted to add on, and about four
23 feet from the right side of the picture, over where the lines
24 are, that is the kitchen.

25 COMMISSIONER MITTEN: The kitchen is now where,

1 here?

2 MR. PICKNEY: Yes, Ma'am.

3 COMMISSIONER MITTEN: So now I am pointing to the
4 rectangle, the shaded rectangle that is attached to the white
5 rectangle?

6 MR. PICKNEY: Yes.

7 COMMISSIONER MITTEN: And that is what you want
8 to tear off and rebuild?

9 MR. PICKNEY: Yes. The kitchen that is there
10 existing now, it is probably about a 3 foot porch on the
11 kitchen, and because it is coming off, I want to put it back
12 up, but I don't have such a need for such a small porch.

13 I want to just enclose the porch, and go up to
14 the second floor with it, and then add a room over the top of
15 it.

16 COMMISSIONER MITTEN: Okay.

17 COMMISSIONER HINTON: I am wondering if someone
18 on the staff could maybe find a map that would have the lots.

19 SECRETARY PRUITT: The Sandborn map for that
20 area?

21 COMMISSIONER HINTON: Yes.

22 SECRETARY PRUITT: Okay. I can get that for you.

23 COMMISSIONER HINTON: Great.

24 (Brief Pause.)

25 CHAIRPERSON REID: Mr. Pickney, did you say that

1 you thought that that Lot 8 was part of your property because
2 you always used it?

3 MR. PICKNEY: Yes.

4 CHAIRPERSON REID: For how long?

5 MR. PICKNEY: For the 29 years that I have been
6 living there, we have been using that property.

7 CHAIRPERSON REID: And you never knew that it
8 belonged to someone else?

9 MR. PICKNEY: No, I was too young, and even for
10 the years that I have been living there, the fence is all the
11 way in Lot Number 8 as it is now. I have been having cookouts,
12 and I have parked the car there, and this my yard as far as I
13 am concerned. When I got the plat is when it showed
14 differently.

15 CHAIRPERSON REID: That it wasn't?

16 MR. PICKNEY: Yeah, and that's when I said, well,
17 it has been like this even before I was even born, and I have
18 pictures before I was born of my mother, and uncles, and inside
19 the yard.

20 CHAIRPERSON REID: So you never knew who that lot
21 belonged to, and they can't find the owner?

22 MR. PICKNEY: No, Ma'am.

23 CHAIRPERSON REID: Well, you might be able to use
24 adverse possession.

25 COMMISSIONER MITTEN: Have you maintained it and

1 mowed the grass and all of that?

2 MR. PICKNEY: Yes. I don't know what kind of
3 picture you have, but if you see it --

4 CHAIRPERSON REID: Well, we saw it, but there is
5 a concept in real estate called adverse possession, wherein if
6 you use the property for X-number of years, and I think it is
7 16 or 18 years, and you are open and without permission of the
8 owner, and you are not interfered with, then it basically
9 becomes your own property.

10 MR. PICKNEY: I asked the woman down at the Tax
11 and Revenue about that, and she said that even though I have
12 been using it, someone apparently had been paying the taxes,
13 and since it has only been five years that they haven't paid
14 it, it still would not be my property.

15 And they have not paid the taxes in five years,
16 but it has been like that before I was born, you know.

17 CHAIRPERSON REID: Well, okay. Let's go back to
18 this particular lot now. At first, the zoning administrator
19 put you under a special exception. But this is similar to the
20 case that we just had, and that actually had been for a
21 variance because of the nonconforming aspect of it, because of
22 a nonconforming structure, and it comes under 2001.

23 COMMISSIONER MITTEN: Well, yes, and then under
24 405.8, it says in the case of a building existing on or before
25 May 12th, 1958, with a side yard less than 8 feet wide, an

1 extension or addition may be made to the building provided that
2 the width of the existing side yard shall not be decreased, and
3 provided further that the width of the existing side yard shall
4 be a minimum of 5 feet.

5 CHAIRPERSON REID: Let me see that.

6 COMMISSIONER MITTEN: That is 405.

7 MR. PICKNEY: I have the original deed where my
8 grandparents had purchased the property, and I think it was in
9 1947, and then the person who had it before that, I have their
10 deed, too. It was in a box that my grandma kept. That was
11 from 1927.

12 COMMISSIONER MITTEN: So do you know when the
13 house was built approximately?

14 MR. PICKNEY: No. It was built before -- well, it
15 was actually either built in 1927 or before then.

16 COMMISSIONER MITTEN: So well before 1958?

17 MR. PICKNEY: Yeah.

18 COMMISSIONER HINTON: Do those deeds show the lot
19 lines at that time?

20 MR. PICKNEY: I think it has just the square and
21 the lot, 5153 and Lot Number 9.

22 COMMISSIONER MITTEN: Mr. Pickney, the porch is
23 the structure at the back?

24 MR. PICKNEY: Yes, Ma'am.

25 COMMISSIONER MITTEN: Is there some reason why

1 you couldn't -- I see right now the way that it is configured
2 that it would create a 3 foot side yard, because it is more
3 narrow than the rear of the house.

4 Is there any reason why you couldn't bring that
5 in a couple of more feet to be a 5 foot side yard there?

6 MR. PICKNEY: Well, that is actually the kitchen
7 now, and the kitchen is pretty small now, and because the porch
8 is there and is existing, I didn't see a difference between the
9 kitchen.

10 And then if the house is -- well, I think it is
11 18 feet wide, and if the kitchen is in that 10 feet and the
12 porch is 8 feet, I didn't see a problem with closing the porch
13 off.

14 COMMISSIONER MITTEN: I just want to be sure that
15 I understand the concept. You have a porch and it has a
16 footprint, let's call it, where you can trace it out on the
17 ground. And you want to enclose what is now a porch and make
18 that a structure, right?

19 MR. PICKNEY: Yes, Ma'am.

20 COMMISSIONER MITTEN: Okay. I understand your
21 position about why not just enclose effectively what is there,
22 but that is where the problem comes in related to this issue
23 with the variance.

24 It is one thing to replace a structure with a
25 structure, because you effectively -- you know, it could be

1 viewed as a partial demolition, and not a full demolition. So
2 you could retain that.

3 But for enclosing what is not currently enclosed,
4 that would create a problem. So if you could just make that
5 not quite as wide, that would eliminate one of your problems.

6 So I guess I am just trying to understand is
7 there any reason why you couldn't make that area somewhat
8 smaller? Is it that you want to put the kitchen where the
9 porch is now?

10 MR. PICKNEY: Can I show you?

11 CHAIRPERSON REID: What do you have?

12 MR. PICKNEY: Well, I have a little small plan
13 that I have, and I just want to show you.

14 CHAIRPERSON REID: Please give it to the staff.

15 (Brief Pause.)

16 MR. PICKNEY: The property is 25 feet wide from
17 the property itself, and if the entire house was to fall down
18 for any reason and I wanted to put it back up, it would have to
19 be 8 feet on both sides, which would make it a 9 foot wide
20 house. I couldn't comply.

21 COMMISSIONER HINTON: Ms. Mitten, that is the
22 thing that I am thinking on with this next thought. Even if it
23 is 27 feet wide, if you take out 16, because it needs two side
24 yards --

25 COMMISSIONER MITTEN: Well, I guess my only

1 concern is -- and I think all of this is legitimate, but we are
2 sort of making a decision about Lot 8 when Lot 8 is not
3 currently before us.

4 COMMISSIONER HINTON: You're right.

5 COMMISSIONER MITTEN: So, we can take into
6 consideration the fact that Lot 8 has constraints, but there
7 are still the standards to be applied to Lot 9.

8 COMMISSIONER HINTON: I agree. I was thinking of
9 it more as how it would impair the intent of the zone plan and
10 affect adjacent properties.

11 CHAIRPERSON REID: And so the third prong.

12 COMMISSIONER HINTON: Yes.

13 CHAIRPERSON REID: We still have yet to get to
14 that. Let's see what we have here.

15 (Brief Pause.)

16 CHAIRPERSON REID: Did you have an architect do
17 this?

18 MR. PICKNEY: Yes, Ma'am, I submitted some
19 architectural drawings.

20 CHAIRPERSON REID: Okay. Here we go. Here we
21 are.

22 MR. PICKNEY: Those are the plans right there,
23 Ma'am.

24 CHAIRPERSON REID: Oh, okay.

25 SECRETARY PRUITT: They were in the file.

1 COMMISSIONER MITTEN: We just need to make sure
2 that we are not having an off the record conversation.

3 SECRETARY PRUITT: Do you want to go off the
4 record and go into executive session for a minute so you can
5 look at these very carefully.

6 CHAIRPERSON REID: Okay. All right. What we are
7 going to do, Mr. Pickney, is that we are going to go into
8 executive session since we have not looked at these yet. And
9 in about 10 minutes, we will come back, and then we will have a
10 better idea of what we are talking about.

11 (Whereupon, the Board went into executive session
12 at 11:18 a.m., and the hearing was resumed at 11:28 a.m.)

13 CHAIRPERSON REID: We will resume the hearing.
14 Okay. Now, where are we? Mr. Pickney, was there anything else
15 that you wanted to tell us, or do you just want to hear what we
16 basically have come up with.

17 MR. PICKNEY: Well, I also wanted to say that for
18 myself and for the community, because the community is starting
19 to put up new houses in the community, and a couple of people
20 have redone some of the homes in the community, and to better
21 the community and maybe inspire some other people around there
22 to do stuff with their house, I was just also trying to help
23 the community.

24 And with the way that they are redoing the City,
25 you know, I would love to be more a part of making my house

1 just as nice as everything else they are doing in the City.

2 CHAIRPERSON REID: Thank you. That makes a lot
3 of sense. Now, back to what in fact is the relief that you are
4 requesting, and how you meet that test. One is the special
5 exception aspect of it, and that was in regard to having your
6 non-conforming side yard pursuant to Section 405.

7 Now, it is because of that that we determined
8 that a variance was required, and extending a nonconforming --
9 you know what we mean by nonconforming? Basically, already it
10 does not comply with the existing zoning regulations.

11 So it is already there, and what you want to do
12 is to extend the non-conformity. So the first thing is looking
13 at whether or not the property is unique and unusual. And we
14 determined that in looking at the comp sheets that it is a
15 substandard lot. It is 25 square feet, when what is required
16 is 30 square feet. So you are already dealing with a smaller
17 lot.

18 So then you have got the side yard question,
19 wherein looking at the plats, we determined that the side yard
20 -- Ms. Mitten, would you speak to that part?

21 COMMISSIONER MITTEN: Yes. Well, the existing
22 side yard, as it abuts Lot Number 8, is 2 feet, and the
23 extension at the rear would extend that nonconformity further
24 beyond the existing condition.

25 CHAIRPERSON REID: And also, Ms. Hinton, did you

1 have anything to add concerning the figuration of the lot? Oh,
2 the part about although it is a single family, actually the
3 dimensions are somewhat like a townhouse?

4 COMMISSIONER HINTON: Right. The size of the
5 home built here is more similar to a rowhome than to a single
6 family detached normally. And normally a row home would not
7 have the required side yards.

8 It would be on a lot that is the size and shape,
9 and it would not have required side yards because there would
10 be party walls. So I think that is a very unusual condition to
11 have a single family home on a lot that is this shape.

12 And it in itself is a substandard lot in the
13 width. It is 25 feet, and not 30, and that increases a
14 practical difficulty in complying with the regulations as far
15 as side yards are concerned.

16 CHAIRPERSON REID: Okay. Did you understand
17 that? Well, that's all right. At least it gives you a better
18 perspective of what you are dealing with, and the regulations
19 that we have to apply in order to help you make your test.

20 And there are regulations that are existing, and
21 then what we have to determine -- and this is what Ms. Mitten
22 was just pointing out to you -- is that because of the way that
23 it was figured, and because it is substandard, and because of
24 the fact that it is more of a townhouse makes it a practical
25 difficulty for you to comply with the existing zoning

1 regulations, and that's all.

2 And then the second part of it is the adverse
3 impact, and is there any adverse impact to the neighbors or the
4 community as far as noise, parking, light, traffic, and we have
5 not gotten any letters of opposition or any opposition here
6 today.

7 But have you had any complaints regarding that
8 and notifying the community that you were going to do this?

9 MR. PICKNEY: Yes, Ma'am. I also went to the
10 neighborhood advisory meetings.

11 CHAIRPERSON REID: Well, before we get to that,
12 my question was whether there were any objections to what you
13 are trying to do?

14 MR. PICKNEY: No. I had just three neighbors
15 come to me and ask me what I was trying to do, because they did
16 receive a letter. And I explained it to them, and they said
17 good, that you need to do stuff to the house. One guy was
18 saying that it was probably going to fall anyway, but --

19 CHAIRPERSON REID: So they were glad to see
20 something positive happening rather than it being an eyesore,
21 and not the property itself, but that part that you were
22 improving?

23 MR. PICKNEY: Right.

24 CHAIRPERSON REID: Also, in regard to the intent
25 and integrity of the zoning regulations and map, we felt that

1 it would not impair the intent and integrity of the zoning
2 regulations and map given our analyses of the entire situation
3 as it pertains to other properties, or the regulations or map
4 as we deem or as we have analyzed it.

5 MR. PICKNEY: All right.

6 CHAIRPERSON REID: Now, Board Members, are there
7 any questions? If not, we go to government reports. Now, we
8 did not have an ANC report, but did you speak to the ANC? I'm
9 sorry, we do have one, and it is from ANC-7C. And can you
10 summarize that for us, Ms. Renshaw.

11 VICE CHAIRPERSON RENSHAW: Yes. ANC-7C sent in a
12 letter, dated April 23rd, 2001, and the letter is signed by
13 Mary L. Gafney, Chairperson, and the letter states that
14 Advisory Neighborhood Commission 7C held a special public
15 meeting on April 11th, 2001 to discuss the Application Number
16 16708.

17 Proper notice was given to the public, and three
18 members of the Commission constitute a quorum. All five of the
19 Commission members were present at the meeting. Therefore, a
20 quorum was established, and two representatives from the D.C.
21 Office of Planning were also in attendance, and the applicant.

22 Many issues and concerns were raised after a
23 lengthy discussion with blueprints, demonstrations,
24 measurements, et cetera. Our concerns and the community
25 concerns were answered about the special variance.

1 Therefore, the community voted in favor of the
2 applicant. On Thursday, April 12th, 2001, ANC-7C held its
3 regular public meeting, and a quorum was established. Four
4 commissioners were present out of five.

5 Advisory Neighborhood Commission 7-C recommended
6 that Application Number 16708 be approved, and asked the Board
7 of Zoning Adjustment to approve our support and grant the
8 request favorably of the applicant.

9 Commissioner Crook made the motion and the motion
10 was seconded by Commissioner Adderly. The motion passed
11 unanimously.

12 CHAIRPERSON REID: Thank you, Ms. Renshaw.
13 Therefore, ANC-7C will be afforded the great weight in which
14 they are entitled. There are no persons here in support or in
15 opposition to the property, and so Mr. Pickney, we now go to
16 the last part, which is closing remarks by the applicant. Do
17 you have any closing remarks?

18 MR. PICKNEY: Yes. I have been trying for a
19 long, long time to get this house situated, and I have been
20 running into the problems with the property line, and what have
21 you, and just a big long ordeal, and not something as easy as I
22 thought it would be, and just to get the property fixed.

23 Like I said, I would like to better the community
24 and also fix the house for my own personal reasons. It is not
25 in a liveable condition at this time at all, and hopefully

1 whatever the outcome may be, I can better the community and
2 have a place to stay for myself. Thank you very much.

3 CHAIRPERSON REID: Would you like a bench
4 decision and summary order?

5 MR. PICKNEY: Yes.

6 CHAIRPERSON REID: And you heard that described
7 earlier what that was?

8 MR. PICKNEY: Yes.

9 CHAIRPERSON REID: Okay. Board Members, I would
10 like to move for approval of this particular application. I
11 think that based upon the earlier discussion that it has been
12 demonstrated that he has met his burden of proof for the test
13 for this special exception and a variance, and that there does
14 not appear to be any adverse impact, and does not seem to
15 impair the integrity of the zoning regulations or map.

16 COMMISSIONER MITTEN: I second the motion.

17 CHAIRPERSON REID: All in favor?

18 (A chorus of ayes.)

19 CHAIRPERSON REID: And I would also like to say
20 that I think that Mr. Pickney should be commended in his
21 attempt to do something with that property and that
22 neighborhood, because that particular neighborhood is
23 experiencing considerable blight.

24 And any type of thing that is done to try and
25 improve, and to help bring the properties into a more liveable

1 and more attractive condition certainly helps the District of
2 Columbia. So, thank you very much.

3 COMMISSIONER MITTEN: And I also think that Mr.
4 Pickney should be commended, and his family, for taking care of
5 Lot 8 over all those years. Otherwise, this clearly would not
6 have been taken of. So he did the neighborhood a favor.

7 VICE CHAIRPERSON RENSHAW: And we urge you good
8 luck should you decide that you would like to go after Lot 8
9 next to you and to acquire it for your own.

10 And I just want to also commend you for your
11 preparation. I thought that your presentation before the Board
12 was excellent and we are very pleased with your thoroughness.

13 MR. PICKNEY: I thank you very much.

14 CHAIRPERSON REID: Thank you.

15 MS. BAILEY: The staff will record the vote as
16 four to zero to approve the application. Motion made by Mrs.
17 Reid, and seconded by Mrs. Mitten, and Mrs. Susan Morgan
18 Hinton, and Mrs. Anne Renshaw to approve.

19 CHAIRPERSON REID: Okay. So that will conclude
20 this morning's session. Thank you very much. We will resume
21 at one o'clock.

22 (Whereupon, at 11:26 a.m., the hearing was
23 recessed.)

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A-F-T-E-R-N-O-O-N P-R-O-C-E-E-D-I-N-G-S

(1:15 p.m.)

CHAIRPERSON REID: The hearing will please come to order. Good afternoon, Ladies and Gentlemen. This is the May 8th, 2001 public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Anne Renshaw, Vice Chair, who will be coming in momentarily; and Susan Hinton, representing the National Capital Planning Commission, and representing the Zoning Commission is Carol Mitten.

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 the Office of Planning, Department of Public Works, et cetera. Three, the report of the Advisory Neighborhood Commission, the ANC.

Four, parties or persons in support. Five, parties or persons in opposition, and, six, closing remarks by

1 the applicant.

2 Cross-examination of witnesses is permitted by
3 the applicant or parties, and the ANC within the property is
4 located is automatically a party in the case.

5 The record will be closed at the conclusion of
6 each case, except for any materials specifically requested by
7 the Board, and the staff will specify at the end of the hearing
8 exactly what is expected.

9 The Sunshine Act requires that the public hearing
10 on each case be held in the open before the public. The Board
11 may, consistent with its rules of procedures and the Sunshine
12 Act, enter executive session during or after the public hearing
13 on a case for purposes of reviewing the record or deliberating
14 on the case.

15 The decision of the board in these contested
16 cases must be based exclusively on the public record. To avoid
17 any appearance to the contrary, the Board requests that persons
18 present not engage the members of the board in conversation.

19 Please turn off all beepers and cell phones, or
20 set them to vibrate at this time, so as not to disrupt these
21 proceedings. The Board will make every effort to conclude the
22 public hearing as near as possible to 6:00 o'clock p.m.

23 If the afternoon cases are not completed by 6:00
24 o'clock p.m., the board will assess whether it can complete the
25 pending case or cases remaining on the agenda.

1 At this time the Board will consider any
2 preliminary matters. Preliminary matters are those which
3 relate to whether a case will or should be heard today, such as
4 a request for a postponement, continuance, or withdrawal, or
5 whether proper and adequate notice of the hearing has been
6 given.

7 If you are not prepared to go forward with the
8 case today, or if you believe that the Board should not
9 proceed, now is the time to raise such a matter. Are there any
10 preliminary matters?

11 MS. BAILEY: The staff has none, Madam Chairman.

12 CHAIRPERSON REID: Okay. Then we will proceed
13 with the first case of the afternoon.

14 MS. BAILEY: Application Number 16682, of W.F.
15 Equipment Corporation, pursuant to 11 DCMR 3104.1, for a
16 special exception to allow new residential development
17 consisting of five row dwellings under Section 353, and
18 pursuant to Subsection 3103.2, for variances under Sections 401
19 and 405 from the lot area, lot width, and side hard
20 requirements for one semi-detached dwelling, Lot 36, and a
21 variance under Section 402 for the FAR requirements for the
22 five new dwellings in the R-5-A District at premises 5516
23 through 5526 Hunt Place, Northeast, Square 5204, Lots 31
24 through 36.

25 All those wishing to testify, please stand and

1 raise your right hand.

2 (All witnesses were sworn.)

3 MS. BAILEY: Members of the Board, while the
4 applicants are getting ready, we do have a revised referral
5 member from the Zoning Administrator on this project.

6 We have three letters of approval from government
7 agencies, and that is from the Office of Planning, the
8 Department of Housing and Community Development, and the
9 Department of Public Works. We do also have a letter of
10 approval from ANC-7C, and there are no requests for party
11 status.

12 CHAIRPERSON REID: Okay. Go ahead.

13 MR. KANE: Ms. Reid, my name is James Kane, and I
14 am an attorney, and I represent W.F. Equipment Corporation.

15 CHAIRPERSON REID: Mr. Kane, you don't have to
16 stand. You can sit if you would like.

17 MR. KANE: It is just a bad habit. If you will
18 indulge me that one peculiarity.

19 CHAIRPERSON REID: That's fine.

20 MR. KANE: I represent the applicant W.F.
21 Equipment Corporation, and the request is for a special
22 exception. There are six lots involved in the 5500 block of
23 Hunt Place, Northeast. The development is in the R-5-A zone,
24 which requires the Board of Zoning Appeals to at least review
25 what is taking place.

1 This hearing is continued from a hearing on March
2 13th, and the reason for the continuance is that the
3 advertising was incorrect. The advertising on the site was
4 incorrect, and so it had to be readvertised and another
5 hearing.

6 In the meantime, I guess there was another issue
7 that developed, and that had to do with the setbacks of the
8 units, and that I believe has been resolved and the setback is
9 now 18 feet, which has the six units, the six dwellings,
10 correspond with the existing properties on the street.

11 So that nothing sits out closer to the street,
12 and it doesn't read if you will correctly or tastefully at
13 least. It is all in harmony with the existing houses.

14 There is one unit which I believe is the only
15 special exception issue if you will. It is the end unit of the
16 six dwellings. That unit is technically a semi-detached unit.

17 It will have a five foot side yard instead of an
18 eight foot side yard, and there is a requirement that we obtain
19 a special exception for that. As I mentioned, the setbacks
20 have been taken care of and have been addressed, and they are I
21 believe acceptable to the Office of Planning, as well as the
22 rest of the design of the houses.

23 The square footage and the lot size, I believe,
24 also is within the zoning law and the regulations. The
25 standards for the variance are a unique property, and by virtue

1 of shape, size, and topography, and if you apply those
2 conditions in this case, particularly with this one unit, the
3 end unit, it could result in a peculiarly shaped house or a
4 hardship to the owner, and the builder of the property, the
5 house.

6 And you have the third principle to apply, which
7 is that if you grant the variance that it is not going to harm
8 either the zoning regulations and the map, and this doesn't do
9 that, I don't believe.

10 All of the approvals from the agencies that are
11 involved in this have been received, and most notably the
12 Advisory Neighborhood Commission 7C, and there is a report from
13 the Office of Planning, and I commend them for the work that
14 they have done.

15 Mr. Chavis' office is aware of the project, and
16 they don't have an opinion, but we at least discussed what we
17 are doing with them, and I didn't have an objection from them,
18 and they are aware that we are here today.

19 And with that, I would like to introduce Ann
20 McGee, who will go through the details of the development and
21 some of the specifics with respect to the lots.

22 CHAIRPERSON REID: Before we move forward, I just
23 had a question, and that was in regard to the letter from Mr.
24 Nero. The correct zoning of this property is R-5-A?

25 MR. KANE: Yes, Ma'am.

1 CHAIRPERSON REID: All right. What I was raising
2 was there is a question about the correct zoning being
3 reflected in the ZA letter.

4 SECRETARY PRUITT: Madam Chair, I can answer
5 that. The first time it was advertised, it came from the
6 zoning administrator as R-2. Mr. Fondersmith, from the Office
7 of Planning, came over and talked with us here, and then we
8 realized that it was incorrect.

9 So we sent it back to the Zoning Administrator,
10 and the Zoning Administrator sent us a revised letter with the
11 correct zone and then the correct zoning relief requested.

12 CHAIRPERSON REID: So this is revised?

13 SECRETARY PRUITT: Correct.

14 CHAIRPERSON REID: And then this letter from Nero
15 then is moot?

16 SECRETARY PRUITT: Well, actually that letter
17 from Mr. Nero is actually explaining what happened.

18 CHAIRPERSON REID: But the fact of the matter is
19 that it is correct now?

20 SECRETARY PRUITT: It is correct now, yes. But
21 the letter that came in after that was put in the file.

22 CHAIRPERSON REID: All right. Fine. I just
23 wanted to know exactly what had happened with that in that
24 particular regard. Okay. Go ahead.

25 MS. MCGEE: Thank you. My name is Ann McGee, and

1 I represent the owner, W.F. Equipment, of the six lots. I
2 brought these pictures just to give you a general idea, if you
3 can see, or would you like for me to bring them closer to you.

4 Would you like me to bring them up so you can
5 have a look? You need to see one of the basic reasons why all
6 of this needs to be done.

7 COMMISSIONER MITTEN: You need to stay close to a
8 mike so we can pick you up.

9 MS. MCGEE: Now, these are pictures of the site
10 as it exists at the moment, and the very worst problem on this
11 site is the collection of trash as I am sure that you can
12 imagine, and we have cleaned those lots off, and I can't tell
13 you about the tons of trash.

14 And it is unsightly as far as the neighborhood is
15 concerned, and so I think they are very pleased to have us
16 frankly coming in there, or at least the people that I talked
17 to are pleased.

18 Now, this is the house that is on the last lot on
19 the left, the adjacent house, and this is the area where we are
20 applying for the variance right in here.

21 And he is very close to his lot line and so are
22 we, but he is so glad to have us there that it gets rid of the
23 -- well, I guess he has a lot of rats and things back there,
24 because they are running across the back of the property.

25 This again is the same photograph, except it is

1 further back. This is this house further down, and you can see
2 the apartment buildings behind. And the land rises slightly at
3 the back as you can see.

4 This again is a continuation of this, and it is
5 just going across the property. And here we have the adjacent
6 building on the right-hand side of the lots. Now, the
7 townhouses abut right up against or rather the first time house
8 abuts right up against this wall.

9 So you only have a free standing or semi-detached
10 house down at this end. The other one is abutting right up and
11 there is it again. Okay. Now, you can see also -- yes, this
12 is the one that I wanted to show you.

13 You see the position of these houses relevant to
14 the street, and this is where we are going to keep them all
15 level. I'm sorry that I can't turn it every which way. Does
16 anybody have any questions so far?

17 (No audible response.)

18 MS. MCGEE: Now, this is the site plan that our
19 engineers have prepared, positioning the townhouses on the
20 lots, and this is an area again which is the problem.

21 But as you can see, they have all been pushed
22 back level with the other houses. They are
23 slightly offset just so you don't have a straight line, and
24 that is just for appearances.

25 Now, each one of them is 31 feet 6 inches deep,

1 and 20 feet, 4 inches wide. Each house has 3 bedrooms and 2-
2 1/2 baths. I will show you the floor plans in a minute. And
3 each has a living room, a dining room, kitchen, basement, with
4 the garage parking at ground level.

5 VICE CHAIRPERSON RENSHAW: Are they two-story
6 houses?

7 MS. MCGEE: They are really three if you look at
8 it, because you have your garage, which is at ground level. So
9 you drive right into it, and then you have two living areas
10 above it.

11 Now, we will not be finishing the basements,
12 because we want to hold the pricing at around \$135,000. But if
13 anybody wants us to finish the basements, we will give them a
14 quote to do whatever they want to do. The basements will have a
15 garage area for their cars, and a washer and dryer.

16 If they wanted to make a family room, or
17 whatever, we can certainly do it for them. We will have people
18 there and so it is not a big deal. Now, I am going to leave
19 these things behind if you want to have a look at them in
20 greater detail so we don't hold you up too much.

21 Now, this is the drawings of the house itself,
22 and these are pairs. This is two houses, and these are the
23 first floor and the second floor, and t his is the living room
24 here, and this is that and that there. This is the garage
25 area, and so as you can see there is parking straight off the

1 street.

2 VICE CHAIRPERSON RENSHAW: And the entrance is at
3 street level?

4 MS. MCGEE: Right.

5 VICE CHAIRPERSON RENSHAW: And the other houses
6 showed in your pictures that you have just shown us, they had
7 stairways going up to the first floor, but you are entering the
8 building from the ground level?

9 MS. MCGEE: Right. It seems to be the only way
10 to do it for the floor space, for the best use of space.

11 VICE CHAIRPERSON RENSHAW: And you explained that
12 the property angled upwards?

13 MS. MCGEE: Right.

14 VICE CHAIRPERSON RENSHAW: Does it go up a hill?

15 MS. MCGEE: No, it isn't. I mean, we will be
16 level as far as the houses are concerned, but we do have to
17 deal with leveling it because of drainage at the back.

18 CHAIRPERSON REID: So, in other words, the
19 existing condition of the property is that it is rather uneven
20 in topography?

21 MS. MCGEE: Yes.

22 CHAIRPERSON REID: And, of course, as a part of
23 you developing that land, you are going to level it?

24 MS. MCGEE: Of course. Absolutely, you have to.
25 But you will have a certain rise at the back, because that is

1 the way the land is, and there is not much we can do about it.

2 CHAIRPERSON REID: Oh, I see. Regardless, you
3 are still going to have -- still it is going to be a bit
4 irregular?

5 MS. MCGEE: At the back.

6 CHAIRPERSON REID: At the back part is what I am
7 saying.

8 MS. MCGEE: Correct.

9 CHAIRPERSON REID: And the land itself.

10 MS. MCGEE: Do you want me to show you the
11 photograph again just for a minute, and you will see the --

12 CHAIRPERSON REID: I saw that, but I thought that
13 was the part that you were bringing to us as being level?

14 MS. MCGEE: No, we will level up to the 31 feet
15 that we need, but certainly at the back behind that, we will
16 just seed it and we can't bring it right down to the same grade
17 as this, because we are going to move a lot of earth, and then
18 you are going to have a big sort of hole at the back, and it
19 won't look very attractive.

20 CHAIRPERSON REID: Right. Okay.

21 MS. MCGEE: Our aim is to make this as attractive
22 as possible for the area, and we do a lot of townhouses, a lot
23 of townhouses. That is our major business.

24 VICE CHAIRPERSON RENSHAW: How long a project is
25 this? How many months of construction?

1 MS. MCGEE: Six months, max, and a lot of that,
2 you know, is not literally construction time. It is putting
3 the foundation, and then having to get an inspector out to
4 check it and to approve it, and say I don't like this and make
5 this change, and get that done.

6 And then you do the electrical inspection as you
7 know, and the plumbing inspection. You have to have permits as
8 you know right at the beginning for the plumbing, and for the
9 water and sewer lines. All those things are elapsed time
10 things.

11 VICE CHAIRPERSON RENSHAW: Do you anticipate any
12 blasting on the property?

13 MS. MCGEE: No, no blasting. We do not. But the
14 modular comes in on trucks, and it is like shoe boxes coming in
15 on trucks if you can imagine that.

16 And you put the whole thing together in a day.
17 In a day. Now, that is not finishing them, but you put them
18 together in a day, and they simply go one on top of the other,
19 like that, stacked.

20 Then they anchor them to the foundation and they
21 anchor them to each other, and they pop the roofs up which have
22 been down during transportation because they are too high for
23 moving around.

24 And then we have about 6 weeks after that of
25 interior finishing. Now, that is trimming out the doorways

1 where the boxes come together, and laying the carpeting down
2 over the doorways, and the same thing with the vinyl.

3 And then final connections for plumbing and for
4 electrical, because each one is plumed and the electrical is
5 done in each box, but they have to be interconnected to the
6 panel.

7 Now the kitchens are complete, absolutely
8 complete, and you could walk in and use your kitchen the day
9 they arrive; and the bathrooms are complete in the same way.
10 The only thing that has to be done, of course, is to connect
11 them for the plumbing. It is quite an amazing sight actually.

12 CHAIRPERSON REID: It sounds like it.

13 VICE CHAIRPERSON RENSHAW: So on the first floor,
14 which is in the drawing the second floor --

15 MS. MCGEE: Right.

16 VICE CHAIRPERSON RENSHAW: -- you would come in
17 the main entry way and go upstairs?

18 MS. MCGEE: Right.

19 VICE CHAIRPERSON RENSHAW: And there you would
20 have in the front of the house the living room?

21 MS. MCGEE: The living room is here and is quite
22 small.

23 VICE CHAIRPERSON RENSHAW: And so it looks like
24 the dining room -- no, the living room in the front, and the
25 dining room and kitchen in the back?

1 MS. MCGEE: Right.

2 VICE CHAIRPERSON RENSHAW: And the bathroom in
3 the back?

4 MS. MCGEE: Right.

5 VICE CHAIRPERSON RENSHAW: All right. Thank you.

6 CHAIRPERSON REID: And you are going to leave
7 these?

8 MS. MCGEE: I am going to leave them so you can
9 study them, and I also have sets for you to look at as well.
10 Has anybody any questions they want to ask me?

11 COMMISSIONER HINTON: I wanted to check, Madam
12 Chair, if there are full-sized drawings in the record?

13 MS. MCGEE: You have prints like this that have
14 been submitted.

15 COMMISSIONER HINTON: Right. Now, some of the
16 plats that we have are before the change of the locations of
17 the townhouses were made. So they still show the houses at
18 that front building line rather than set back further?

19 MS. MCGEE: Right. But what you have are
20 drawings of the houses themselves. Now the actual drawing of
21 the site plan you do not have until this moment, or I said it
22 before, but this is a very current thing, the site plan,
23 because at the time that this was originally planned, they were
24 not thinking in terms of setting them back level with the other
25 houses.

1 COMMISSIONER HINTON: Right. That's what I
2 wanted to make sure about. We need to have those in the
3 record.

4 MS. MCGEE: It is on the drawing now.

5 MR. KANE: I have one which I think will meet the
6 size for the file that I can leave.

7 MS. MCGEE: I have eight sets here for you if you
8 want, and all with these drawings.

9 CHAIRPERSON REID: Well, can you give them to the
10 staff and to us now?

11 MS. MCGEE: Sure.

12 (Brief Pause.)

13 SECRETARY PRUITT: Ms. McGee, we will take it
14 down here. Procedurally, we have to do it this way.

15 COMMISSIONER HINTON: What exhibit number will
16 this be? Do you know so we can mark that on the file?

17 MS. BAILEY: We can make it the next exhibit,
18 whatever it might be. You have the file, Ms. Reid?

19 CHAIRPERSON REID: It was reading 37, the OP
20 report. What are you asking, Ms. Bailey?

21 MS. BAILEY: Ms. Hinton was asking what exhibit
22 number shall we give this, and I was saying we can give it
23 whatever the next number is.

24 COMMISSIONER HINTON: Thirty-eight.

25 COMMISSIONER MITTEN: I had a couple of questions

1 for the application if I could.

2 CHAIRPERSON REID: All right. Go ahead.

3 COMMISSIONER MITTEN: I understand now what these
4 revised plats are and what the footprint that we are showing is
5 630 square feet for the dwelling.

6 MS. MCGEE: It is a total of 1,240 living area.

7 COMMISSIONER MITTEN: And that is two of the
8 floors?

9 MS. MCGEE: Yes. Are we talking living area now
10 or just the footprint?

11 COMMISSIONER MITTEN: Well, actually, I wanted to
12 start with the footprint.

13 MS. MCGEE: Oh, okay.

14 COMMISSIONER MITTEN: And I just wanted to be
15 certain that the computations from the zoning administrator
16 showed 680 square feet as the footprint. So we are certain now
17 that the footprint is 630 square feet?

18 MS. MCGEE: Yes. We had an engineering firm out
19 at the site, plus our drawings.

20 COMMISSIONER MITTEN: Okay.

21 MS. MCGEE: So that is what is on that drawing,
22 that engineering firm in the lower right-hand corner.

23 COMMISSIONER MITTEN: All right. Then the total
24 zoning floor area of the house, or the gross floor area of the
25 house, which is what we would calculate the density from, would

1 be three times 630, which would be 1,890 square feet, I
2 believe.

3 MS. MCGEE: It depends on how you count them. We
4 always count it from a factory point of view as living area and
5 not including the garage area, which you are doing now.

6 COMMISSIONER MITTEN: Well, are counting it from
7 a zoning perspective. So the density from a zoning perspective
8 is 1,890 square feet, which is somewhat different than what the
9 zoning administrator had, and it is also somewhat different
10 from what is on the building permit.

11 But it does require a variance for density. Is
12 there any reason why you can't excavate and make instead of the
13 lower level completely on grade, that you couldn't make it a
14 cellar so that it wouldn't count for zoning density?

15 MS. MCGEE: Yes. I will give you a very good
16 reason.

17 COMMISSIONER MITTEN: All right.

18 MS. MCGEE: Expense.

19 COMMISSIONER MITTEN: Is there anything related
20 to the soil or --

21 MS. MCGEE: We have not done soil tests yet. We
22 have done borings to some extent just to make sure that it is
23 not a disaster area, because we know that there was something
24 underneath that property at one stage of the game or on top
25 that has been removed.

1 But it is very expensive to start doing
2 basements. Very expensive. And we have got to get the cars
3 in. They are going to have to go downhill to get in, and how
4 are they going to get in if -- well, you would have to see the
5 site, but as you drive right in you want the car at the level
6 that you are driving in.

7 COMMISSIONER MITTEN: Maybe we can come at this
8 question differently. I mean, for each of the variances, you
9 have this test, and Mr. Kane briefly spoke about the tests.
10 But given that you are asking for more density than is
11 permitted, what is the reasoning behind that other than it is
12 more economic if you can build a bigger building.

13 What argument can you make to us about why we
14 should grant a variance related to additional density on the
15 site?

16 MR. KANE: Let me see if I can respond to that.
17 I don't think by way of argument that the density changes. I
18 understand by the way that the rules are applied to this, that
19 if you put one level underground that you by virtue of the
20 application of the rules now turn this into a 1,260 square
21 dwelling.

22 The point that Ms. McGee made about the costs I
23 think is important, because one of the ideas is to -- obviously
24 the end result is to sell this property, but it is also to
25 provide a property for sale, or offered for sale, which is

1 affordable and that is one way to do that, is to try and get
2 housing and to make it affordable.

3 As I said, by way of argument, you could depress
4 -- and although there are physical limitations, you don't have
5 really quite the distance between the street and what would
6 then be going down 8 or perhaps 10 feet to run a driveway down,
7 and then go into a basement and into a garage.

8 COMMISSIONER MITTEN: And I understand the issue
9 related to excavating and still have three levels, but one of
10 them be partially below grade. So then approach the question
11 from a different perspective, which is, one, why not just build
12 a smaller house that does meet the density limitations of the
13 zoning?

14 MR. KANE: Then you get into issues that get into
15 the factory built nature of the property.

16 MS. MCGEE: Well, you could build a smaller
17 house, but it is not very practical. People want three
18 bedrooms, and they don't want two bedroom houses.

19 And, you know, you are getting pretty small for a
20 family if you start cutting it back. I mean, you have to think
21 of the practicality of somebody living there and enjoying where
22 they are living.

23 COMMISSIONER MITTEN: Let me just explore this
24 with you. One of the ways that you could build these houses
25 and not need any relief related to the density is to instead of

1 trying to spread six houses out over this land, you spread five
2 houses out over this land.

3 MS. MCGEE: It is not practical again from an
4 economical point of view. Remember, we are trying to meet a
5 selling level, and because of mortgages, and the mortgage money
6 that is available, and what people can afford.

7 Now, if we have to spread the value of the land
8 into five houses, up will go the value of each house because it
9 will suddenly increase each house by the difference in the lots
10 by \$3,000 or \$4,000, you know, by losing the income from one
11 lot.

12 COMMISSIONER MITTEN: Right. And I appreciate
13 that, but it is just that the test for a variance is really
14 related to physical aspects of the site, and the application of
15 the zoning, and not a person's ability to make money.

16 MS. MCGEE: Well, it isn't a case of making
17 money. It is a case of how much we have to sell them for, and
18 which we want to keep them as reasonable as we can so that they
19 are available to people.

20 COMMISSIONER MITTEN: Okay. I think I understand
21 your perspective.

22 COMMISSIONER HINTON: And have you prepared a
23 site plan that shows the grading in the front and the back?

24 MS. MCGEE: Not yet. We have not, and that will
25 be the next thing, believe me.

1 COMMISSIONER HINTON: I think we are going to
2 need to see that, because it seems to me from the photographs
3 that you have quite a difference in grade from the front to the
4 back, and it is possible that this first level, your basement
5 level, will be below grade in the back; isn't that possible?
6 It looks like you have 6 or 7 feet from the front to the back.

7 MS. MCGEE: You mean in the increased level, is
8 that what you are saying? No, you don't have as much as that.
9 The big rise -- and probably the photographs don't answer the
10 question -- is right at the back.

11 COMMISSIONER HINTON: Do you have those
12 photographs, and can we see them again?

13 MS. MCGEE: Sure.

14 COMMISSIONER HINTON: That's why we need a site
15 plan, in order to figure that out. Ms. Mitten, how much over
16 density are they on these?

17 COMMISSIONER MITTEN: Let's see. It is actually
18 on every lot, but on the lots that measure -- the typical lots
19 which are 20 feet wide, they are over by 16 percent.

20 COMMISSIONER HINTON: Do you have that in the
21 square footage?

22 COMMISSIONER MITTEN: Yes. What they are
23 proposing is 1,890 and what they would be permitted is 1,632.
24 And the difference is 258.

25 COMMISSIONER HINTON: Then it seems to me that --

1 well, look how high the hill is in the back. If these units
2 are --

3 MS. MCGEE: Look at the level. This is how deep
4 these units would be. That is the next house that we are
5 abutting up against. You see that it is quite level there.
6 The big rise occurs in the back, and it starts about back here.

7 COMMISSIONER HINTON: Right.

8 MS. MCGEE: But here it is quite level, which is
9 the same space that we would be occupying. Do you see that?

10 CHAIRPERSON REID: Right. We can see that.

11 COMMISSIONER HINTON: My idea here is -- and
12 maybe these are modular, and so you might have to make some
13 changes, and I am not sure. But because the ground is higher
14 in the back, instead of digging that out to keep your three
15 levels level, you add to it so that the ground in the back
16 comes up to your first level.

17 MS. MCGEE: I'm sorry, but try me again.

18 COMMISSIONER HINTON: Let me see if I can draw
19 it. If you were looking at the side of your townhouse, the
20 grade is here in the front?

21 MS. MCGEE: Right.

22 COMMISSIONER HINTON: And you have got the three
23 levels and your car comes in here, and here is your garage?

24 MS. MCGEE: Yes.

25 COMMISSIONER HINTON: In the back the grade is up

1 here at your first level, and so somewhere across here --

2 MS. MCGEE: You have to dig. You have to level
3 the ground. Yes, you do.

4 COMMISSIONER HINTON: But you won't be digging.
5 You will be adding. You will be raising the ground in the back
6 so that from your first floor, from your kitchen, or whatever
7 is back there, you can walk straight out into your back yard.

8 What that does according to the zoning
9 calculation is that then you average that half of this level is
10 underground and half of it is out. So only half of the square
11 footage on that level will count.

12 MS. MCGEE: Oh, I see what you are trying to say.
13 I get you. So that works for you is what you are saying?

14 COMMISSIONER HINTON: Well, it depends on what
15 kind of construction you are doing. I would think that you
16 would need to have foundation walls on that back.

17 MS. MCGEE: We are using superior walls if that
18 means anything.

19 COMMISSIONER HINTON: I don't know what that
20 means.

21 MS. MCGEE: They are pre-capped walls.

22 COMMISSIONER HINTON: Oh, so that should work
23 then.

24 MS. MCGEE: That works, that's right.

25 COMMISSIONER HINTON: Ms. Mitten, is that making

1 sense to you?

2 COMMISSIONER MITTEN: I understand what you are
3 saying, but my understanding of the way that these things gets
4 built is that you build the bottom and the top is the modular
5 part, right?

6 MS. MCGEE: Right.

7 COMMISSIONER MITTEN: So you have flexibility.

8 MS. MCGEE: The bottom level is all done on site,
9 and the boxes are always the add on.

10 COMMISSIONER HINTON: But for the way the square
11 footage is calculated.

12 MS. MCGEE: I know exactly what she is trying to
13 say.

14 COMMISSIONER HINTON: I think that is my
15 understanding and I think that's correct.

16 COMMISSIONER MITTEN: But if it is going to
17 change the rear elevation, then you won't have the walkout.

18 COMMISSIONER HINTON: Well, you won't have a
19 walkout from the basement. You will have a walkout from the
20 first floor.

21 MS. MCGEE: Right.

22 COMMISSIONER HINTON: Which is actually better.

23 COMMISSIONER MITTEN: So can that be
24 accommodated, Ms. McGee?

25 MS. MCGEE: You know, we have to draw it. I

1 can't literally tell you, because I don't know or have not
2 surveyed it from that point of view. But certainly it has to
3 be done before we can do anything. Absolutely, it has to be
4 done.

5 COMMISSIONER HINTON: And we can give that some
6 thought. I can see or understand exactly what you are trying
7 to say, and that is a very good point.

8 MR. FONDERSMITH: Madam Chair, can I say
9 something here at this point?

10 CHAIRPERSON REID: Sure. Give your name.

11 MR. FONDERSMITH: John Fondersmith, from the
12 Office of Planning. I think that I certainly understand what
13 is being talked about here. But I think from being at this
14 site, and I think you can see from looking at the photographs
15 that you do have this situation where although the land is
16 sloping down, and it is from Eastern Avenue, and then from the
17 other existing houses, and sloping down somewhat there, the
18 topography of the lots themselves going back are fairly level
19 until you get back toward the back of the lot, which is
20 actually where this adjoining garden apartment is.

21 And then it kind of rises there, and I am not
22 sure exactly of that difference. So whether in fact it is
23 practical -- and the principal that you are talking about, Ms.
24 Hinton, would be true in some cases. I am not sure that it
25 would always be true in this case because of the topography of

1 the land.

2 MS. MCGEE: I don't think we can guarantee it,
3 because the land varies within itself. In other words, it is
4 higher at one end than it is at the other. But you certainly
5 have a point. Some of those units will be into the side of the
6 hill, but not all of them.

7 Now, the photographs that I showed you here, this
8 one, it is quite level. You can see through the depth of this
9 house that it is level, and you can see it quite clearly.

10 But if you look at this end, which is where the
11 semi-detached unit is, which is also the lowest house if you
12 like, then it starts to rise here. Do you see it? So it
13 varies and it is not consistent.

14 So I don't think we could guarantee that X-
15 percentage of the lower level would be in the hill, and also
16 the looks of the land gets into it. You want it nicely graded
17 at the back.

18 You don't want to be worrying too much about
19 whether we are varying a little of the square footage I don't
20 think. You know, from the point of view of the families.

21 The owner, Mr. French, is very conscious of --
22 well, let me say that he wants to do a decent job in other
23 words, because I think he wants to do other houses like this in
24 D.C., and he wants it to be done nicely.

25 COMMISSIONER HINTON: I think it would help us to

1 see a site plan with the existing and proposed grading on it to
2 see what is possible.

3 MS. MCGEE: Well, that we can do. That is no
4 problem.

5 COMMISSIONER HINTON: Great.

6 COMMISSIONER MITTEN: And just to follow up on
7 the last comment that Ms. Hinton made. Is one of the
8 requirements for the special exception for developments in R-5-
9 A is not only the floor plans and elevations, but existing and
10 final grading plans, and landscaping plans, and I don't think
11 that those have been submitted so far.

12 MS. MCGEE: Well, with landscaping, we have shown
13 some landscaping on the site plan. I don't know if other than
14 seeding there is room for a great deal more, because it has got
15 to look pretty well like the other houses in the area.

16 CHAIRPERSON REID: Ms. Mitten, did you ask for
17 information regarding final grading and landscaping?

18 COMMISSIONER MITTEN: Well, what is required by
19 the ordinance is that grading plans, both existing and final,
20 be submitted, as well as landscaping plans. So I think I
21 appreciate the fact that there is some trees shown on here.

22 But I think to give full weight to what you
23 intend regarding landscaping, if you had a drawing that was
24 specifically devoted to depicting whatever landscaping you
25 intend, that would meet the requirement.

1 MR. KANE: I think we will provide that.

2 COMMISSIONER MITTEN: That would be great. And
3 then you heard about the existing and final grading, which I
4 take you need to do some more work on?

5 MS. MCGEE: Yes, we have to do that anyway.

6 COMMISSIONER MITTEN: Okay. That is a
7 requirement before we can make a decision on this case.

8 CHAIRPERSON REID: Ms. McGee, clarify for us
9 again what is your role in this particular project? You are
10 not the owner and you are not the architect.

11 MS. MCGEE: Personally my role?

12 CHAIRPERSON REID: Right.

13 MS. MCGEE: Me personally?

14 CHAIRPERSON REID: Yes.

15 MS. MCGEE: I will be managing the whole project.

16 I do that for Mr. French, who is the owner of the property, on
17 other projects that he has owned.

18 CHAIRPERSON REID: So you are the project
19 manager?

20 MS. MCGEE: I guess that is a correct term. I
21 represent the owner. Well, wait a minute. What I do is hire
22 the general contractor and also the engineers, and I will chase
23 the permits if they are not getting them properly. You know,
24 I just manage the project.

25 That is what it boils down to, and take care of

1 whatever is not being done by somebody else, and make sure the
2 whole thing is smoothly handled. I guess I am the authority on
3 this, okay? If you would ask Mr. French, he would say ask Mrs.
4 McGee.

5 CHAIRPERSON REID: Okay. All right.

6 VICE CHAIRPERSON RENSHAW: Mrs. McGee, just a
7 question about the rear. In any case, I am looking at the rear
8 of your property, the site plan, and this is Exhibit 38 that
9 you handed in today. And with some of the houses now you have
10 explained that it may not be possible to have all of the
11 houses with the rear property up to the second story, and some
12 of the basement area, or the cellar area. Is it a cellar or a
13 basement? Have we defined that? It is a first floor right now
14 isn't it?

15 MS. MCGEE: Well, if you look at it from the
16 front, it is above ground level.

17 VICE CHAIRPERSON RENSHAW: It is above grade. So
18 the first floor is exposed in the back, but I am just looking
19 at the second floor option, and are you giving the buyers the
20 opportunity to put in a deck?

21 MS. MCGEE: We offered that as an option if they
22 wanted. What we do is having a sliding door at the back and it
23 will have bars on it. If they want decks, yes, we charge them,
24 but we don't do it automatically, because for one thing people
25 have different ideas about decks, number one.

1 And, number two, just as we are offering the
2 finishing of the basement level as well, decks will be offered
3 as well. Now, we don't have a problem with any of this. We
4 just have to remember mortgage applications, and it is very
5 important to stay within a certain monetary limit.

6 And certainly if somebody wants it and they can
7 handle it mortgage wise, it will be done, and it will be part
8 of the options that will be offered.

9 VICE CHAIRPERSON RENSHAW: And they can get the
10 permit for it?

11 MS. MCGEE: Yes, no problem, and it will be one
12 of the options. We will offer options with the property.

13 VICE CHAIRPERSON RENSHAW: Thank you.

14 CHAIRPERSON REID: Further questions at this
15 point, Board Members? If not --

16 VICE CHAIRPERSON RENSHAW: Well, I do have a
17 question. Since this is going to be a six month construction
18 envelope, I wanted to know if you have worked out a
19 construction agreement with ANC-7C on behalf of the
20 neighborhood, and an understanding of the hours of operation,
21 and the dirt hauling, and the truck routes, or anything like
22 that?

23 MS. MCGEE: No, I have not.

24 VICE CHAIRPERSON RENSHAW: Has 7C asked you to do
25 that?

1 MS. MCGEE: No.

2 VICE CHAIRPERSON RENSHAW: Not yet?

3 MS. MCGEE: We really are at square one right
4 now.

5 VICE CHAIRPERSON RENSHAW: Thank you.

6 MS. MCGEE: But then you asked me what do I do,
7 and that's the kind of thing that I do.

8 MR. KANE: I think we can proffer that they will
9 enter into an agreement that is acceptable to ANC-7C.

10 CHAIRPERSON REID: All right. Thank you very
11 much. Now, government reports. We have Mr. Fondersmith from
12 the Office of Planning.

13 MR. FONDERSMITH: Good afternoon, Madam Chairman,
14 and Members of the Board. You have gotten a pretty full
15 discussion of this property and project. I think that the
16 point to make here is with respect to the -- well, two main
17 things here, the special exception and the variances.

18 With respect to the special exception, in effect
19 the special exception proceed that is set up in the R-5-A
20 district is really geared to larger scale projects. That is,
21 garden apartments, or townhouse complexes, and so on.

22 What we have here is a situation where there is
23 this remaining -- well, sliver is the wrong word, but piece of
24 R-5-A land, and lots that have previously been subdivided in a
25 relatively simple situation.

1 I don't mean to make it should too simple, but it
2 is a row of lots where you can put houses, this townhouses, and
3 the one semi-detached, and you could not move them around too
4 much on this site. I mean, it is pretty clear how they need to
5 be situated.

6 What we did when we initially saw the site plan
7 that had been submitted, because the initial plan showed the
8 houses coming out to the -- it is not actually the property
9 line, but a building restriction line because this is a narrow
10 street, and that put them out in front of the other townhouses
11 that are to the right as you look at them, or up the hill
12 towards Eastern Avenue.

13 And it also put them further out -- that is, not
14 in line, with the single family detached house that is adjacent
15 at the other end of the row. And so we simply suggested, and
16 the applicant did this, that the houses be moved back to be in
17 line with the other townhouses, and essentially therefore with
18 the single family house that is adjacent. There is a little
19 difference there.

20 The only difference in that, and I think it is a
21 good design feature, is that the applicant proposes to have as
22 you can see from the site plan if you have it there, to stagger
23 each townhouse by a foot so that there is some variation in
24 there.

25 But essentially as you look at this street, the

1 previous townhouses and these will be lined up and you are
2 essentially even. They are in line with the single-family
3 house at 5512 Hunt Place, Northeast.

4 And that is really to our mind the major kind of
5 overall site plan and correction if you will, or revision that
6 was necessary. We thought that in terms of looking at the
7 site, and in terms of grading it out in the back, and of course
8 we would want -- the applicant would want to have as useable
9 yards back there as possible.

10 That grading these out level and then sloping up
11 as necessary in the back would be appropriate. So that is
12 really the key kind of feature with the location of the
13 dwellings, the townhouses or the row dwellings, in terms of the
14 special exception.

15 The variance then comes in with respect to Lot
16 36, the last lot where the house will be a semi-detached. And
17 that lot is larger than the others, but you can see that that
18 is 2,267 square feet. It is a 25 foot lot, as opposed to the
19 20 foot lot.

20 And these were previously subdivided, I believe,
21 about 25 years ago. So that the end dwelling, and that is Lot
22 36, with a lot of 25 feet, and in a lot area of 2,267, need a
23 variance in terms of the side yard, which should be eight under
24 the standard, and it is only -- it is five.

25 Then in terms of the minimum lot requirements for

1 the R-5-A district, the lot area is in the regulations as
2 prescribed by the board. Now, again I think this is because
3 you are usually dealing with a larger development.

4 Here we think that it is appropriate that you
5 look to the R-4 district standard, and in that district the
6 requirement for a one-family semi-detached dwelling is 3,000
7 square feet. And, of course, the 8 foot lot.

8 And so an area variance is required for the end
9 unit, both in the side yard and the lot area. And as we
10 indicated, in theory, it would be possible to go back and
11 reduce the width of the other lots, and reduce the width of the
12 dwellings, and that would be some additional subdivision, of
13 course.

14 We did not think that that was -- is a practical
15 thing the way to go, and we thought that the variance here
16 could be granted without injury to the zoning plan so to speak.

17 So I think that is about the major things we have
18 to say about this proposal. As has been indicated, we did meet
19 with the ANC as the applicant did, and in fact they had a
20 public meeting on this and another case, which you heard this
21 morning, to have neighborhood discussion and then the ANC voted
22 to support this proposal.

23 And you have in your folder comments from the
24 Department of Public Works, and from the DHCD, approving this -
25 - recommending approval of the project. And because of the R-

1 5-A, they are to -- the project was referred to both those
2 agencies.

3 I understand that there is not a reply back from
4 the Department of Education, and so in summary, we recommended
5 that the Board of Zoning Adjustment approve a special exception
6 for the overall design of the five row dwellings, and one semi-
7 detached dwelling, and grant variances from the side yard and
8 lot size requirement for the semi-detached dwelling on Lot 36.

9 CHAIRPERSON REID: Any questions for Mr.
10 Fondersmith?

11 COMMISSIONER MITTEN: Madam Chair, I have a
12 question. Mr. Fondersmith, you didn't mention it today, and I
13 don't think it is in the written report either, what the
14 position of the Office of Planning is related to the variance
15 for the FAR on the row house lots, 31 through 35?

16 MR. FONDERSMITH: Yes, we would support the
17 variance there also.

18 COMMISSIONER MITTEN: Could you speak a bit to --
19 you mention on page 4 of the report where you lay out the
20 standards for a variance. In your mind, how does the property
21 owner meet the test?

22 MR. FONDERSMITH: Well, I think they meet the
23 test in dealing with these lots that they have, which like I
24 said were subdivided some time ago, and in trying to build
25 these units to meet those lots that are there -- and I think

1 obviously as someone said before, you could go back and
2 theoretically go back and resubdivide the land.

3 I think we felt that since the five row dwellings
4 meet the requirements of the row dwelling, and the issue is
5 really with the variance issue, in terms of the side yard and
6 the area variance, are with the last lot. That is, lot 36.
7 And that that variance could be granted without doing harm to
8 the zoning plan.

9 COMMISSIONER MITTEN: Could I restate what I
10 think you said, and see if I got what you said? Is it your
11 position that if you are going to build row dwellings in an R-
12 5-A zone that the density that is permitted is inadequate to
13 meet market demands, in terms of the size of the dwelling?

14 That is kind of what I got from what you were
15 saying. That if you are going to have a lot, or given that
16 these lots are of this size, if you are going to build a house
17 that is big enough that anybody would want it, then you are
18 going to have to build a house that is bigger than .9 FAR? Is
19 that what you said?

20 MR. FONDERSMITH: I think I would say that is
21 true in this particular case, because again I get back to the
22 kind of unusual -- and I don't want to use that too strongly,
23 but somewhat unusual situation here, where this is an R-5-A
24 land, and therefore gets into this special exception issue that
25 came up, and also triggers the FAR issue.

1 But in reality, it is a pretty straight-forward
2 situation of existing lots. I hope that I am responding to
3 what you were saying.

4 COMMISSIONER MITTEN: Well, let me just step back
5 from this. Given that there was some confusion, when these
6 lots were subdivided what was this property zoned given that
7 the subdivision was done 25 years ago? Do you know the answer?

8 MR. FONDERSMITH: I am not sure of that, because
9 even in zoned districts that were -- well, typically in zoned
10 districts where townhouses are permitted, the permitted density
11 exceeds .9 FAR, and typically one would not be building
12 townhouses in an R-5-A district.

13 Well, I suppose there are certain circumstances
14 where you would, but it is not the typical thing to build. So
15 I guess what I am wondering is whether there is some unusual
16 situation that occurs because of the zoning that was in place
17 at the time that the subdivision was done, and now we are
18 trying to lay on a density that really is not compatible with
19 the original intent of the subdivision?

20 MR. FONDERSMITH: I think that is probably so.
21 If you look at the -- but I am not sure, and so I hesitate to
22 give zoning history so to speak when it is not clear. If you
23 look at the photograph that is the second to last page of the
24 report, you can see that there is a garden apartment
25 development in back of this project. Is that clear?

1 You have got Eastern Avenue over on the right of
2 the dwelling, and Hunt Place coming down perpendicular, and you
3 can't tell of course from the photograph, but it slopes
4 slightly.

5 And then you have up there a row of garden
6 apartment units, one of which has a white roof. So it really
7 stands out, but here is a whole row of them there. Then where
8 you have the first or the existing townhouses, and in cross-
9 hatching is the location of these things.

10 So my assumption is -- but I am not sure of this
11 actually, is that this was originally zoned
12 R-5-A in anticipation of the whole area being garden
13 apartments, and that later -- and as I say, it was about 25
14 years ago is my understanding -- these lots were subdivided,
15 and the first units, the existing townhouses, were built.

16 COMMISSIONER MITTEN: Do you know what the
17 developed density of the existing townhouses is?

18 MR. FONDERSMITH: Not offhand, but perhaps I can
19 look here.

20 (Brief Pause.)

21 MR. FONDERSMITH: They have essentially the
22 identical -- let me see. Well, they are -- I am looking at a
23 subdivision plat here. They are actually identical in lot size
24 with the five lots that are being proposed here with the
25 townhouses.

1 COMMISSIONER MITTEN: And so you are saying the
2 lot size, but what about the dwelling size? You don't know
3 about that?

4 MR. FONDERSMITH: I am not sure of the dwelling
5 size.

6 COMMISSIONER MITTEN: Okay. Thanks.

7 CHAIRPERSON REID: Any further questions?

8 COMMISSIONER HINTON: I just wanted to respond to
9 Ms. Mitten's question. If you look on the site plan that we
10 were given today, there is one existing house that is shown,
11 and it appears to be larger or longer from front to back than
12 the ones that are proposed, and it is three levels. We can see
13 that from the photographs.

14 COMMISSIONER MITTEN: Well, I would be curious to
15 know if variances were granted for the FAR of those dwellings.

16 I mean, there is an issue here, and I just want to make sure
17 that we have adequate information in the record to grant a
18 variance for density given that it is optional how big of a
19 house you build.

20 And the parking can be accommodated in a parking
21 space, as opposed to a garage. So that's why I want to have a
22 discussion about that.

23 MS. MCGEE: Could I make a comment about that?
24 Do you mind?

25 CHAIRPERSON REID: Yes, go ahead.

1 MS. MCGEE: When I was talking to the real estate
2 agents for that area, they were very adamant that the parking
3 should be houses, and that they did not want outside parking,
4 because the residents are very concerned about their cars being
5 -- you know, their tires being slashed, and that kind of thing,
6 and were very concerned.

7 And that it was very important to have the cars
8 inside under protection if you like, and were very strong on
9 that. And one other comment. Directly across the street, or
10 almost directly, are townhouses that are just about identical
11 to what we are doing.

12 Now, the zoning is not the same because it is
13 across the street. But nevertheless directly across the
14 street, and they are identical.

15 COMMISSIONER MITTEN: Well, the irony of this is
16 that in -- that for the semi-detached dwelling, in many
17 respects, you have to meet the requirements of R-2, and then
18 for the row, you meet the requirements for R-4. Both of those
19 really allow more density than R-5-A. So that is the problem.

20 CHAIRPERSON REID: Okay. Other questions or
21 comments?

22 (No audible response.)

23 CHAIRPERSON REID: All right. Then going to the
24 ANC report, and that would be ANC-7C I think it is, and that
25 was a timely filed report. And, Ms. Renshaw, would you read

1 that since they are not here.

2 VICE CHAIRPERSON RENSHAW: The BZA has a letter,
3 dated April 23rd, 2001, from Advisory Neighborhood Commission
4 7C. The letter is signed by Mary Gaffney, the Chairperson of
5 7C.

6 The ANC held a special public meeting on April
7 11th, 2001, to discuss the application. Proper notice was
8 given to the public. Three members of the Commission
9 constitute a quorum, and all five commission members were
10 present at the meeting.

11 The quorum was established, and two
12 representatives from the D.C. Office of Planning were also in
13 attendance, and the applicant. Many issues and concerns were
14 raised and after a lengthy discussion with blueprint
15 demonstrations and measurements, et cetera, our concerns and
16 the community concerns were answered about this special
17 variance.

18 Therefore, the community voted in favor of the
19 applicant, and on Thursday, April 12th, 2001, ANC-7C held its
20 regularly public meeting. A quorum was established and four
21 Commissioners were present out of five.

22 Advisory Neighborhood Commission 7C recommended
23 that the application 16682 be approved, and asked the Board of
24 Zoning Adjustment to approve our support and grant the request
25 favorably of the applicant.

1 CHAIRPERSON REID: Thank you, Ms. Renshaw. ANC-
2 7C will be afforded the great weight to which it is entitled.
3 We have one other government report, and that is from DPW.

4 (Brief Pause.)

5 CHAIRPERSON REID: Well, we do have two other
6 government reports. One is from Ken Laden, which he states
7 basically in pertinent part that the applicant will provide one
8 parking garage in the rear lot of each dwelling unit. I
9 thought it was in the front. Is it in the front or the rear?

10 COMMISSIONER HINTON: The front.

11 VICE CHAIRPERSON RENSHAW: The front.

12 CHAIRPERSON REID: It says that the applicant
13 will provide one parking garage in the rear of each dwelling
14 unit, but actually it is in the front.

15 MS. MCGEE: That's right.

16 CHAIRPERSON REID: I don't think that makes any
17 difference. The schedule of requirements for parking is in the
18 DCMR, Title 11, Zoning, and those issues will not negatively
19 effect on street parking, nor cause a large increase in traffic
20 volume on neighboring streets.

21 Accordingly, DVOT has now objection to the
22 application. And from the Department of Housing and Community
23 Development, we have a report, and I think Ms. Renshaw has that
24 in her hand.

25 VICE CHAIRPERSON RENSHAW: The report is dated

1 April 4th, 2001 from -- and the signature is over the
2 typewritten name, but it looks like Milton Bailey, from the
3 Department of Housing and Community Development.

4 And they say pursuant to Section 353 of the zoning
5 regulations, DCMR Title 11, requiring the BZA to review new
6 residential developments other than single family detached and
7 semi-detached dwelling in an R-5-A zone, the Department of
8 Housing and Community Development has reviewed the above-
9 referenced Board of Zoning Adjustment application, and visited
10 the referenced project site location, and has the following
11 comments to make.

12 And we have five comments from the Housing and
13 Community Development. One, the neighborhood --

14 CHAIRPERSON REID: You can go to two.

15 VICE CHAIRPERSON RENSHAW: All right. I am going
16 to skip number one on the advice of the Chair, and go to number
17 two. The six proposed townhouses to be built on the largest
18 piece of vacant land on the 5500 hundred block of Hunt Place
19 are in character with the existing rowhouses on the block.

20 The new townhouses will help revitalize and
21 stabilize the block by adding more residential units of the
22 same type and scale as the existing rowhouses, and removing a
23 trash gathering vacant process from the neighborhood.

24 And that the new townhouses will provide badly
25 needed affordable housing units for purchase in this portion of

1 the District, and will further help stabilize the neighborhood
2 by increasing the number of homeowners. I think that is about
3 it.

4 CHAIRPERSON REID: And number five.

5 VICE CHAIRPERSON RENSHAW: And number five is
6 that although the side yard provided for the six proposed
7 townhouses, only five feet wide, there is normally no side yard
8 requirement for rowhouses in an R-3 zone, which is the type of
9 townhouse scale being proposed by the applicant for all six new
10 townhouses in this R-5-A zone.

11 CHAIRPERSON REID: Thank you, Ms. Renshaw. Oh,
12 is there a page two?

13 VICE CHAIRPERSON RENSHAW: Oh, there is a page
14 two. Based on the above comments, the Housing and Community
15 Development Department supports the issuance of a variance
16 pursuant to Section 401.3 to permit a 1,813.8 square foot lot
17 area, and a 20 foot lot width for Lots 31 through 35, Square
18 5204, on five proposed new townhouses and a variance pursuant
19 to Section 405.9, to permit a 2,267.2 square foot lot area,
20 and a side yard 5 feet wide for Lot 36, Square 5204, on a six
21 proposed townhouse in an R-5-A zoned district.

22 CHAIRPERSON REID: Thank you very much, M s.
23 Renshaw. All right. Then that concludes the government
24 reports, and there is no one else here today for this
25 particular case either in support or in opposition?

1 (No audible response.)

2 CHAIRPERSON REID: Okay. Then we move now to
3 closing remarks by the applicant. Were there any letters? We
4 have no letters in support or opposition, and so now we move to
5 closing remarks by the applicant.

6 MR. KANE: I just would very briefly ask that you
7 approve the request for the special exception. I understand
8 the argument and the issues involved, and the FARs, and I would
9 rely on the support of the Office of Planning, and their
10 analysis if you will of that issue.

11 I think that under the standards that are to be
12 applied that I think it would be appropriate to grant the
13 special exception. I understand that there are a couple of
14 issues related to the site plan, and we will make available the
15 site plan.

16 And I would add that as part of the site plan
17 that landscaping or a landscaping plan be provided with that.
18 And my guess is that the site plan would also show topography
19 and elevations or grades.

20 So you would be able to analyze that in the
21 placement of the dwellings with respect to the topography.
22 That I think is the only -- and I think we have proffered that
23 we would contact the ANC and work out a construction plan or
24 mobilization plan with them to minimize the effects and
25 disruption that construction brings with it.

1 And we will certainly follow their guidance on
2 that. With that, I appreciate your time, as does Mrs. McGee.

3 MS. MCGEE: May I make one comment as far as
4 disrupting the area, which I think is the proper term. With
5 the use of superior walls, the walls come in completely
6 finished, and they are just placed in position.

7 Everything that you do in a modular world greatly
8 reduces the disruption in the area greatly. Now, the houses,
9 for instance, when their trucks come in the night before, and
10 they are staged as they call it somewhere else, normally within
11 a half-an-hour of the building site.

12 And they come in around eight o'clock in the
13 morning generally, depending on what the traffic situation is,
14 and what permits we get, and the whole thing is over with by
15 the end of the day.

16 So that the finishing -- everybody is looking at
17 me, but the finishing really is done inside, but it does not
18 upset the outside of, and the use of a lot of equipment
19 outside, because there just isn't.

20 You have got a lot of carpenters inside, and
21 painters, and that kind of thing. But you do not have a lot of
22 mess in the neighborhood. You really don't. It is not the
23 same as a standard construction site.

24 CHAIRPERSON REID: Okay.

25 VICE CHAIRPERSON RENSHAW: I still would like to

1 ask for the construction agreement with 7C, I believe it is.

2 MS. MCGEE: Oh, there is no question about that.

3 VICE CHAIRPERSON RENSHAW: And to be given to the
4 Board in advance. Thank you.

5 CHAIRPERSON REID: Okay. Were you asking for a
6 bench decision and summary order today?

7 MR. KANE: Today? I don't think we are going to
8 get a decision today because we have a couple of things that we
9 have to do. So I would ask if it is appropriate to hold the
10 record open until we can provide those two items.

11 And I don't know if we need an appearance before
12 you for that or not.

13 CHAIRPERSON REID: No, you don't. It is up to
14 the Board whether or not they would want to do that.
15 Basically, I think we are asking for a site plan and a
16 construction plan, and a grading plan, but that would not in my
17 opinion preclude a decision today.

18 Well, on the other hand, too, if in fact we would
19 want to be able to review these before making a decision and
20 you are right. Therefore, your decision would be at the next
21 regularly scheduled business meeting of the Board, which would
22 be June 5th, Ms. Pruitt?

23 SECRETARY PRUITT: That's correct.

24 CHAIRPERSON REID: At which time we will then
25 have received your information and had an opportunity to look

1 over it before rendering our chair.

2 COMMISSIONER MITTEN: And, Madam Chair, if I
3 could just reiterate something that was said earlier, which is
4 Ms. McGee had said that she would explore the possibility of
5 doing what Ms. Hinton had suggested regarding putting part of
6 the property below grade so that it would eliminate the need
7 for the variance related to the FAR.

8 CHAIRPERSON REID: The suggestion that you had,
9 Ms. Hinton, regarding adding something -- adding more to the
10 back to make it --

11 COMMISSIONER HINTON: It would be grading the
12 rear of the site so that the first level walks out to a level
13 back yard, and the first level of the home being sort of the
14 level above the garage. So in the back, that is where the
15 grade is, and in the front, of course the garage is where the
16 grade is.

17 CHAIRPERSON REID: And Ms. McGee did not seem to
18 think that was a problem?

19 MR. KANE: Well, we can certainly explore that.

20 MS. MCGEE: I can't really do it until the
21 engineers get at it. I am not an engineer and I need somebody
22 out there saying yes you can, and no you can't frankly.

23 MR. KANE: I think part of what Ms. Mitten has
24 asked for with respect to the site plan will develop what could
25 be done with the buildings insofar as elevation.

1 And I think there is an issue when you look at
2 elevation. I think that is what it comes down to. I think
3 that's where the question goes; how do these buildings read
4 with the rest of the neighborhood. Are they going to stick up
5 and be something that out of character, and I think that is a
6 question that maybe could be answered when they explore the
7 site plan and these elevations.

8 MS. MCGEE: Okay. May I ask -- I didn't write
9 down all four things that you wanted. You were going so
10 quickly that I couldn't write them.

11 SECRETARY PRUITT: Madam Chair, I can review that
12 for them if they would like.

13 CHAIRPERSON REID: Okay.

14 SECRETARY PRUITT: Right now you are set to be
15 set for a decision at the June 5th meeting, and that is in the
16 morning. We would like submissions due by May 22nd, and those
17 submissions should include a landscaping plan, a final grading
18 plan, existing grading plan, the construction agreement with
19 the ANC, and that you explore the possibility of regrading the
20 rear of the site so that the garage level is below ground. And
21 if you could provide the information regarding that.

22 And just to reiterate, your submissions on due on
23 the 22nd of May, with a decision set to be made on June 5th, at
24 9:30 in the morning.

25 MS. MCGEE: Excuse me, but May 22nd is not very

1 far off. Can I have a little bit more time and still make the
2 June 5th meeting. We are at the 8th, and I am a bit bound with
3 engineers who say that I can't possibly do it in that time.

4 SECRETARY PRUITT: Let me check the calendar,
5 please.

6 MS. MCGEE: I would like to make it for the June
7 5th meeting, but just ask if I can sneak it in by the 1st of
8 June maybe.

9 SECRETARY PRUITT: How about the 30th of May?

10 MS. MCGEE: Thank you. And I don't know that I
11 have a problem. I am just anticipating it.

12 SECRETARY PRUITT: Right. Contingency planning.

13 MS. MCGEE: Right. And to whom should they be
14 sent?

15 SECRETARY PRUITT: You can send it to my
16 attention or to the attention of the Board of Zoning
17 Adjustments.

18 MS. MCGEE: Oh, you are Sherri Pruitt?

19 SECRETARY PRUITT: Yes.

20 MS. MCGEE: How are you?

21 SECRETARY PRUITT: Fine, thank you.

22 MS. MCGEE: I can't see your name from here.

23 CHAIRPERSON REID: Okay. Is that it? Okay.
24 Thank you very much, and the decision meeting is open to the
25 public, although you cannot participate and you are not

1 required to be here, but it is open to the public.

2 MS. MCGEE: So do you need for us to come on the
3 5th of June?

4 CHAIRPERSON REID: It is open to the public,
5 which means that you can come if you would like, but you don't
6 have to. It is not required.

7 MR. KANE: We will plan probably to just be here,
8 and if there are questions, we are here to answer.

9 CHAIRPERSON REID: If it solely up to you. If
10 you would like to, you are welcome to do so. Okay. the next
11 case, please.

12 MS. MCGEE: Thank you very much for your time.

13 MR. KANE: Yes, thank you.

14 MS. BAILEY: Ms. McGee, the large graphics that
15 you have, is it possible to get that in a smaller size so that
16 we can put those in the file?

17 MS. MCGEE: Which ones are you referring to?

18 MS. BAILEY: The graphics that you presented
19 today; is it possible to get a small or even the photographs,
20 and --

21 MS. MCGEE: I will leave all of that with you

22 CHAIRPERSON REID: We are going to take a short 5
23 to 7 minute break before the last two cases of the afternoon.

24 (Whereupon, at 2:40 p.m., the hearing was
25 recessed and resumed at 2:45 p.m.)

1 CHAIRPERSON REID: The hearing will please come
2 to order.

3 MS. BAILEY: Madam Chair, should I call the case?

4 CHAIRPERSON REID: Please.

5 MS. BAILEY: Application Number 16688 of Michael
6 R. Kain, et al, pursuant to 11 DCMR 3104.1, for a special
7 exception from the rear yard set-back requirements pursuant to
8 subsections 774.2 and 774.9(a), to allow an accessory building
9 abutting an alley to be connected to the principal building in
10 an DC/C-3-B District at premises 1619 Connecticut Avenue,
11 Northwest, Square 111, Lot 815.

12 All those wishing to testify, would you please
13 stand and raise your right hand.

14 (All witnesses were sworn.)

15 MR. NETTLER: Good afternoon. My name is Richard
16 Nettler, and I am here on behalf of the applicant. As a
17 preliminary matter, the representatives from the Advisory
18 Neighborhood Commission asked if they could precede me. They
19 must individually need to go somewhere else and I have no
20 objection to that if that is fine with yourself.

21 CHAIRPERSON REID: Okay. Board Members, is there
22 any objection to the ANC reversing sequence?

23 COMMISSIONER HINTON: No objection.

24 MR. MICONE: Thank you, Madam Chair, and Members
25 of the Board. My name is Vince Micone, and I am the Chair of

1 ANC-2B, and I am also the single member district commissioner
2 for the area which this property is located.

3 ANC-2B considered issues regarding the requested
4 special exception at its regularly scheduled meeting on April
5 11th, 2001. We did have a quorum present and we took a vote
6 after hearing testimony from residents regarding several
7 issues.

8 During that testimony neighbors indicated that
9 they were concerned about persistent noise complaints on
10 property owned by the applicant, which abuts the area where the
11 proposed special exception would be.

12 The cause of the noise complaints has been an
13 air-conditioning unit which is in the alley way and causes a
14 great deal of noise. The neighbors were concerned that when
15 the construction was completed, and the build out was
16 completed, it would create more of a canyon like atmosphere,
17 and increase the impact of the noise on the property.

18 There were also of course questions and concerns
19 about the impact of construction and when heavy construction
20 would begin, because of course that alley way is commercial on
21 one side and residential on the other.

22 So the residents were concerned about the
23 beginning of heavy construction at 7:00 a.m., and had some
24 concerns related to that, and also wished to know how
25 sanitation was going to be handled after construction.

1 And the ANC, when it voted to oppose the special
2 exception request, also authorized me to enter into
3 negotiations to establish a voluntary agreement to address
4 these three issues, because it was the Commission's
5 determination that it felt that those three issues could be
6 addressed easily in a voluntary agreement.

7 I am pleased to announce that as of this morning
8 the applicant and I were able to secure a voluntary agreement
9 which addresses our concerns. Mr. Kain and I are both tough
10 negotiators.

11 So it went up to the last minute, but the
12 proposed resolution to our problems is for an agreement which
13 would include moving that air-conditioning unit at the tenant
14 who actually uses that particular unit, moving that unit to the
15 basement area is currently what we are looking at doing.

16 And the voluntary agreement allows a framework
17 for that to happen. Also, the applicant has agreed that
18 construction, although it will begin at 7:00, that they will
19 take reasonable efforts to mitigate loud construction noises
20 before 7:30, which is what the neighbors had asked.

21 And finally upon completion of the addition,
22 there will be enclosed trash and a garage door that will open
23 up that you will hear more about during Mr. Wiebenson's
24 presentation, and all the trash will be in there.

25 So our prior concern about the trash being in the

1 public alley way will be taken care of, because then of course
2 the trash will be in a private area, and it will be cleaned and
3 secured, which is something that the neighborhood is very
4 pleased about.

5 Therefore, based on that, there are two other
6 issues. We, of course, want to know that that HVAC unit is
7 going to be moved expeditiously and we are going to be working
8 with the applicant on that issue separately because we would
9 like to see that air-conditioning unit moved as quickly as
10 possible to mitigate further noise problems which will occur
11 during the construction phrase.

12 And also we will look forward to making sure
13 during the construction phrase that special efforts are taken
14 to secure trash from the properties which will continue to do
15 business during that time, because of course moving the soil
16 and everything is going to aggravate the rats' nests and get
17 them out, and we want to do everything we can to abate those
18 problems.

19 However, I feel that by working together that we
20 can accomplish those. Finally, I am pleased to note that as
21 the Commission instructed me, since we have reached a voluntary
22 agreement, we are withdrawing our opposition and protest on
23 this matter, and forwarding our support.

24 CHAIRPERSON REID: Okay. Thank you very much.
25 Any questions for the ANC?

1 VICE CHAIRPERSON RENSHAW: Yes. Madam Chair, I
2 would like to ask Mr. Micone whether or not in your agreement
3 that you have addressed the routing of trucks from the site.
4 Is that a concern of your area, of your constituents?

5 MR. MICONE: That was not identified as a major
6 concern in the area. It is a high traffic area right now.
7 Even that alley way is very high traffic because of the nature
8 of the commercial zone on the one side and the residential zone
9 on another, and that has not been expressed to us as a major
10 concern.

11 VICE CHAIRPERSON RENSHAW: And the other matter
12 is keeping a record of the truckers' licenses. this has been
13 an issue in many ANCs where development is happening, and have
14 you addressed that issue?

15 MR. MICONE: That has not been a major issue in
16 ANC-2B.

17 VICE CHAIRPERSON RENSHAW: All right. Thank you.

18 CHAIRPERSON REID: Okay. Mr. Micone, you are
19 going to submit your revised amended letter to the BZA?

20 SECRETARY PRUITT: Madam Chair, that is the
21 letter that you have before you. It just came in late, or
22 rather it was just given to me before the hearing. It is dated
23 May 8th.

24 CHAIRPERSON REID: I'm sorry, but I had not seen
25 it, and I guess it was put here during the break.

1 SECRETARY PRUITT: Yes, that's when I got it.

2 CHAIRPERSON REID: Oh, okay. All right. So this
3 is basically a summarization which was presented to us?

4 MR. MICONE: Yes, Madam Chair.

5 CHAIRPERSON REID: All right. This is the
6 agreement that you all have come to?

7 MR. MICONE: Yes, Madam Chair, it is.

8 CHAIRPERSON REID: All right. I really
9 appreciate this very much, because any time there are officers
10 present from the ANC, and because we take this as a very
11 serious matter, we always encourage there to be meetings
12 between the two entities -- the applicant and the ANC -- when
13 there is some point of opposition, so that you can kind of
14 reconcile your differences to the point of however you want to
15 mitigate whatever the adverse impact is to come to some kind of
16 a meeting of the minds, and this certainly helps us a lot.

17 MR. MICONE: Well, thank you, and I think that
18 the neighborhood on balance is supportive of the expansion that
19 mr. Kain wants to do because of the level of tenants that are
20 going to be coming in and using that space.

21 I think that there is a degree of excitement
22 about the positive impact that will have on the neighborhood.
23 Our base issues are we basically want to get rid of the noise,
24 and since this is a special exception request, the neighborhood
25 wants for its support the removal of the noise that has been a

1 constant source of complaint, and we believe that this
2 agreement will address that.

3 CHAIRPERSON REID: Great. Thank you.

4 VICE CHAIRPERSON RENSHAW: And an additional
5 question for Mr. Micone, and that is have you established a 24
6 hour hotline during construction between the ANC and on behalf
7 of your constituents with the developer?

8 MR. MICONE: No, we have not, but certainly if
9 the BZA were to include that in its final order, we would be
10 quite pleased with that. And I believe that we have
11 established an open line of communication with the property
12 owner, Mr. Kain.

13 But it is always helpful to have designated in an
14 order that there needs to be a way during construction for the
15 applicant and the community to converse about issues that come
16 up.

17 CHAIRPERSON REID: Okay. So basically do you
18 want to add that to your agreement; that you just basically
19 want a contact point so that in the event there is a problem
20 the community would be able to have access to some member of
21 the construction team, or someone that could help to solve or
22 abate what problem may emerge?

23 MR. MICONE: Yes.

24 CHAIRPERSON REID: Okay. Thank you. Any other
25 questions?

1 (No audible response.)

2 CHAIRPERSON REID: All right. Thank you. Now to
3 the applicant's presentation.

4 MR. NETTLER: Again, good afternoon. My name is
5 Richard Nettler, and I am here on behalf of the applicant.
6 What I would like to do first before turning this over to Mr.
7 Wiebenson, the architect, is to sort of set the stage of what
8 is before you and what isn't before you.

9 And that's because notwithstanding the fact that
10 we are agreeable and have signed an agreement to the conditions
11 that you have before you, and have no problems with you
12 referencing those in your order, no new construction is before
13 you.

14 All that is before you is a situation that arises
15 as of a consequence of the new construction, which is a matter
16 of right construction, being completed.

17 Adjacent to the -- and Mr. Wiebenson will go into
18 this more specifically, but adjacent to a historic carriage
19 house on one of the lots is construction that is actually
20 ongoing, and that is as I said allowed as a matter of right,
21 and it will be completed in due course.

22 When that construction is finished, it will then
23 border on this carriage house. Now, this carriage house is an
24 accessory structure, and when it then meets that new
25 construction that is being finished as a matter of right, the

1 carriage house will become part of a principal structure.

2 So as Mr. Wiebenson will testify, the roof of
3 that carriage house is then above the rear yard point for
4 measuring structures that face on an alley in this zone.

5 So it is simply the fact that the roof of the
6 historic structure that is already existing, and which nothing
7 is being done to, will change its character from becoming an
8 accessory structure to becoming part of a principal structure
9 that we have to get the zoning relief.

10 And with having said all of that, I will turn it
11 over to Mr. Wiebenson. But it is clear that none of the new
12 construction is before you, and that is proceeding as a matter
13 of right, and the situation with the air-conditioning units,
14 actually which is on 1601 Connecticut Avenue, is not even
15 actually part of the new construction. It is down the block.

16 But this is old property, and it is owned by Mr.
17 Kain, and I appreciate the fact that it is an opportunity to
18 provide to the ANC to address a number of issues, and we are
19 willing to address those issues, and with that, I will turn it
20 over to Mr. Wiebenson.

21 And I would submit Mr. Wiebenson as an expert.
22 He has been testifying before this Board and the Zoning
23 Commission for almost 40 years, and has been accepted as an
24 expert on numerous occasions during his tenure as an architect
25 in the District of Columbia.

1 MR. WIEBENSON: Well, 30 years.

2 MR. NETTLER: So, 30 years, excuse me.

3 MR. WIEBENSON: My name is John Wiebenson, and I
4 live at 1916 S Street, Northwest, in Washington, D.C.

5 CHAIRPERSON REID: Mr. Wiebenson, let us just
6 have a moment so that we can go over resume, and then have you
7 formally accepted as an expert witness.

8 MR. WIEBENSON: Sure.

9 (Brief Pause.)

10 CHAIRPERSON REID: Any objections or questions?

11 (No audible response.)

12 CHAIRPERSON REID: If there are no objections or
13 questions, then Mr. Wiebenson, we extend our approval of you as
14 an expert witness.

15 MR. WIEBENSON: Thank you. I live around the
16 corner from the project, but my position here today is as the
17 architect of the project and an expert witness on the issues
18 that come up before you. I would like to point out what the
19 project is.

20 This small red rectangle here is the carriage
21 house that we are talking about. It is a two-story masonry
22 structure, about a hundred years old, built before zoning came
23 along.

24 It is on this alley here behind Connecticut
25 Avenue, and Connecticut Avenue is the top of this piece of

1 paper, and the little red rectangle is on the alley. It is 20
2 by 30 roughly, a two-story masonry structure, and it has been
3 accepted as a building that contributes to the historic
4 character of the Dupont Circle historic neighborhood.

5 So it is a considered a valuable piece of the
6 neighborhood. These green dots here are the condition of the
7 adjacent buildings up until a few months ago. The existing
8 four story building here that are fronted on to Connecticut
9 Avenue also for many, many decades.

10 And this is the empty site behind them for which
11 a building permit was secured and construction has started that
12 was done as a matter of right. The additions to these
13 buildings are this further green material, green for go.

14 They have got permission without any problems
15 from the BZA, from zoning, from codes, and these are all legal
16 in terms of all of the rules and regulations.

17 They go up to the alley property line because of
18 the exceptions within the zoning rules under 774.9 in a C-B-3
19 district, that within 20 feet of the center line of the alley
20 that comes up to the property line.

21 And so these are two-story buildings relatively
22 large, but they don't exceed the height limit until it is
23 permissible within the zoning regulations.

24 So these large green buildings here are
25 permissible under the regulations of the building permit, and

1 this small red rectangle is the carriage house that we are
2 talking about.

3 This diagram here shows this small red rectangle,
4 in terms of the alley itself. It is on a 10 foot alley not
5 quite at the property line, but very close to it.

6 The neighbors across the alley are at the closest
7 22 feet away from the alley, and so it means that they are more
8 than 32 feet away from this carriage house. The carriage house
9 is approximately 20 feet at its eaves, in terms of height, and
10 it has a ridge to it that brings it up to another 10 feet or
11 so.

12 And in terms of making this an accessory building
13 part of the main structure, and therefore losing its accessory
14 status, it means that it would be legal for us to do that if
15 the top were taken off, and it were made into a 20 foot tall
16 structure.

17 It is a historic building, and a very charming
18 building of the neighborhood, too. This illustration here
19 shows the part of it -- and I think there is an uncolored copy
20 of this in your brochure, and the 20 foot line shows coming
21 across at the eaves.

22 And so I think nobody wants to take the top off
23 of his this building, and nobody wants to -- or at least I know
24 of, wants to deny allowing this to be transferred as an
25 accessory building and becoming the primary use of the

1 property.

2 And in terms of the provision of 774.2, it says
3 the Board of Zoning Adjustment may waive the rear yard
4 requirements of this section within a C-3-B district. So I
5 think that is what we are asking, and I stand ready to answer
6 any questions.

7 CHAIRPERSON REID: Board Members, do you have any
8 questions?

9 MR. NETTLER: Could I ask him a question first
10 before the Board does?

11 CHAIRPERSON REID: Yes.

12 MR. NETTLER: Could you just explain how the rear
13 yard is measured on the matter of right buildings, and how that
14 is different when you are dealing with a carriage house?

15 MR. WIEBENSON: Yes. It says in the zoning
16 regulations that the rear yard may be measured in a C-3-B area
17 from when the lot is on an alley from the center line of the
18 alley, and then 12 feet from that back towards where the 20
19 foot exception doesn't have to be followed anymore.

20 MR. NETTLER: So does that allow you then to
21 build up to the alley as long as the rear portion of your
22 building is not greater than 20 feet?

23 MR. WIEBENSON: Yes, that's right, and that's why
24 as a matter of right --

25 MR. NETTLER: In height, not greater than 20 feet

1 in height.

2 MR. WIEBENSON: That's right, and as a matter of
3 right, these two additions come all the way to the alley
4 because they don't get up above 20 feet, but they are not
5 exception zoned.

6 Whereas, the carriage house, because of its ridge
7 on this roof, exceeds that and everything else about the
8 carriage house meets all the zoning regulations, in terms of
9 being on the alley, and width, and height, and use, and it is
10 just that the ridge there exceeds the requirements of that
11 exception for the alley rules.

12 MR. NETTLER: And is it not correct then that the
13 rear yard, if it was a matter of right building, would then be
14 12 feet above that first floor that is 20 feet? You would step
15 back another 12 feet on top of the matter of right buildings,
16 and that would be your rear yard of 12 feet?

17 MR. WIEBENSON: It is similar to the matter of
18 right buildings, yes.

19 MR. NETTLER: Which the only way you could
20 accomplish with a carriage house, is it not correct, is by
21 taking off the roof?

22 MR. WIEBENSON: Yes. In fact, you would not have
23 to take off the entire roof, but just from the 12 feet from the
24 center line alley. So you would only have to take off the roof
25 7 feet back from the back wall of the carriage house.

1 But that would be enough to destroy its quality
2 as a historic structure, and its contribution to the Dupont
3 Circle neighborhood.

4 CHAIRPERSON REID: Any further questions at this
5 time?

6 MR. NETTLER: No.

7 COMMISSIONER HINTON: I have one.

8 CHAIRPERSON REID: Ms. Hinton.

9 COMMISSIONER HINTON: The carriage house, are you
10 keeping all four walls intact?

11 MR. WIEBENSON: Yes, all four walls will be
12 intact, and this addition to the building at 1611 Connecticut
13 Avenue will come up and abut it where its wall was formerly on
14 the property line.

15 It was a face on line building, and then this
16 building here will be face on line at that point and so their
17 two surfaces will meet.

18 COMMISSIONER HINTON: So there are still going to
19 be two separate buildings; the carriage house is still its own
20 building?

21 MR. WIEBENSON: Structurally they are separate,
22 yes.

23 COMMISSIONER HINTON: Structurally?

24 MR. WIEBENSON: Yes. But right now these two
25 buildings are touching and that makes them or destroys the

1 accessory quality of the carriage house as I understand it.

2 COMMISSIONER HINTON: It does? And that is what
3 I am trying to get at; is it still an accessory building?

4 MR. NETTLER: It will no longer be an accessory
5 building. There will be a door that connects the two of them.
6 For example --

7 COMMISSIONER HINTON: On the inside. Well, can
8 you show me where the door is?

9 MR. WIEBENSON: The door is not on the drawing,
10 but it would be right here.

11 MR. NETTLER: For example, if it was merely
12 connected to the building on the lot that it now sits on -- and
13 if you can just outline that.

14 MR. WIEBENSON: Yes. There is a building at the
15 front of this lot and that could be connected with a canopy,
16 let's say.

17 MR. NETTLER: Right. If you merely connect it
18 with a canopy, the fact that you connected it at all would turn
19 it into a principal building. So when we -- just to give you
20 some history. When we went in for approval for construction
21 and a subdivision of the lots, the initial suggestion was why
22 don't you just connect it with a canopy.

23 Except that zoning said, well, if you connected
24 it with a canopy, it would still turn into a principal
25 building. So if you wanted to subdivide the lots into one lot,

1 anyway you did it, you would turn that carriage house into a
2 principal building.

3 It would no longer have an accessory building
4 status. So that's why we have to get a special exception, or a
5 waiver from the rear yard requirement as it relates to the top
6 of that carriage house.

7 MR. WIEBENSON: So right now that building has a
8 certificate of occupancy in terms of it being an accessory
9 building used for storage. I guess it used to be used for
10 carriages and horses, but times have changed, and it is now
11 just for storage.

12 So even though its future use when it is attached
13 to that 1611 Connecticut Avenue would be principally storage,
14 with maybe some future change to retail. Even if it was
15 forever storage, it would still not meet the requirements
16 because it is being turned into a primary building because of
17 that attachment.

18 MR. NETTLER: Principal building.

19 MR. WIEBENSON: Principal, yes.

20 COMMISSIONER HINTON: So the subdivision, all the
21 buildings that we see there are going to become one building?

22 MR. WIEBENSON: Not all of them, but I think
23 these two lots here, Ma'am.

24 COMMISSIONER HINTON: But not the building that
25 is in the front of the lot that has the carriage house?

1 MR. NETTLER: That's correct. Historically,
2 actually, the carriage house was on the lot of the building
3 that is adjacent to. That little sliver that you see on the
4 top there is an in-fill building, but that carriage house was
5 associated with the lot next to it.

6 MR. WIEBENSON: So this was a grand mansion here,
7 and the horses and carriages were kept here, and an open space
8 here that allowed the people to walk behind here and approach
9 the carriage house.

10 In fact, its most attractive feature is on this
11 wall facing the lost passage way.

12 COMMISSIONER HINTON: So what would happen if we
13 don't approve the relief that you are asking for? Because what
14 is very unusual to me is the carriage house is already there,
15 and so if we say no, then -- well, normally you ask to build
16 something, and then if we say no, you don't build it.

17 But this is here, and it seems to me that -- and
18 this is what is confusing me also, is about the -- well, could
19 this also be handled as a use variance? So the problem is not
20 how you are going to use the carriage house. The problem is
21 how tall the carriage house is now that it is part of the
22 principal structure.

23 MR. NETTLER: And which is not unusual with
24 situations were you have small lots around the city that have
25 conforming structures, and that if you subdivide them into,

1 other lots becoming nonconforming, and you still have to come
2 before you to get relief.

3 And normally as a special exception, and
4 sometimes as a variance. What is unusual here is that in this
5 zone that you have the authority under the 1958 regulations to
6 waive an area requirement, and remember that special exceptions
7 usually are for use issues, and not for area issues.

8 But you have the authority as to waive an area
9 requirement for something that existed prior to the zoning
10 regulations when you change the nature of how it relates to the
11 other buildings on the site. It is a very unusual situation.

12 COMMISSIONER HINTON: And if we said no, what
13 would happen?

14 MR. NETTLER: If you said no, you could probably
15 never put a door there, or you would have to put a fire door in
16 that would have to close -- well, that would always have to be
17 closed actually.

18 COMMISSIONER HINTON: Okay. So if there is no
19 door, there is no connection, and then it remains as an
20 accessory building?

21 MR. NETTLER: That's correct.

22 COMMISSIONER HINTON: And as an accessory
23 building it can be where it is?

24 MR. NETTLER: That's right.

25 COMMISSIONER HINTON: So what we are really

1 permitting is a door?

2 MR. NETTLER: That's correct.

3 COMMISSIONER HINTON: That is probably the most
4 attention a door has ever gotten.

5 MR. KAIN: A most expensive door.

6 CHAIRPERSON REID: Thank you. Any other
7 questions from the Members of the Board?

8 (No audible response.)

9 MR. NETTLER: My last witness is Mr. Kain.

10 MR. KAIN: My name is Michael Kain, and I am the
11 applicant, and I am at 1601 Connecticut Avenue.

12 MR. NETTLER: If you could please tell the Board
13 the uses that you are going to be putting to this site.

14 MR. KAIN: The first floor will be occupied by --
15 will be retail. Ann Taylor is going to be moving in on the
16 first floor here, and then the upper floors will be general
17 office use.

18 MR. NETTLER: And with regard to the -- you are
19 familiar with the agreement with the Advisory Neighborhood
20 Commission are you not?

21 MR. KAIN: Yes.

22 MR. NETTLER: And with regard to the air-
23 conditioning units, could you please tell the Board where those
24 are located?

25 MR. KAIN: The air-conditioning units are in the

1 rear of 1601 Connecticut Avenue, and I understand that
2 approximately a year ago my tenant there, Wrap Works, entered
3 into an agreement with the ANC to I think take some steps to
4 alleviate the noise, and I understand that my tenant did take
5 those steps.

6 And the noise, although I understand it to be
7 within the zoning requirements, within an acceptable decibel
8 range, it apparently continues to provide some annoyance to a
9 couple of the neighbors.

10 So we are going to take -- I have agreed to
11 cooperate with my tenant by making a space available in the
12 parking garage to try to relocate the units there if it is
13 structurally feasible, which I have no reason to believe that
14 it won't be.

15 MR. NETTLER: I have no other questions of Mr.
16 Kain. I have no other witnesses. If the Board has any
17 questions, we would submit Mr. Kain for those questions.

18 If not, we would request approval of the door as
19 Ms. Hinton has described it, which is essentially what we were
20 talking about.

21 CHAIRPERSON REID: The ANC has given its report,
22 and will be given great weight to which it is entitled. We do
23 have the OP report.

24 MR. MCGETTIGAN: Yes, Madam Chair, and Members of
25 the Board, my name is David McGettigan, from the Office of

1 Planning. This is hopefully a short report.

2 MS. BAILEY: Excuse me, Mr. McGettigan, but was
3 your report filed a little late?

4 MR. MCGETTIGAN: Yes.

5 MS. BAILEY: Madam Chair, the Office of Planning
6 is asking to waive his report into the record.

7 MR. MCGETTIGAN: There should be a memo, and
8 would the Board please waive my report into the record.

9 CHAIRPERSON REID: Sure, I have no problem with
10 that, unless the other Board Members have an objection.

11 VICE CHAIRPERSON RENSHAW: No objection.

12 COMMISSIONER HINTON: No objection.

13 MR. MCGETTIGAN: Thank you. The Board in
14 granting a rear yard request is required to look at three
15 things. Two of them are really related to the sufficient
16 separation of the windows of the structure. As the applicant
17 pointed out, there is 30 feet, or more than 30 feet of
18 separation in this situation.

19 Also, it is an existing structure, and it is
20 lower than the existing grade there by a few feet. So,
21 therefore, the windows are of course running lower than the
22 windows across the way from it.

23 In addition, the windows are below the 20 foot
24 plane, which is -- they are permitted to build up to the ally
25 under a 20 foot plane. So we think that the situations meet

1 the requirements for providing sufficient separation from the
2 windows.

3 In regards to the third condition regarding
4 adequate off-street service functions, the applicant stated in
5 their pre-hearing statement that the on-street parking is
6 available in the surrounding area and the site at the entrance,
7 or is within a block of the entrance to the Dupont Circle Metro
8 Station.

9 Also, the existing alley will still be able to
10 provide access and loading space to the alley as an existing
11 building. And overall the door is in general harmony with the
12 surroundings, and will not adversely affect the use of nearby
13 parking. That is my report.

14 CHAIRPERSON REID: Thank you. Is there anyone
15 else here to testify either in support or in opposition of the
16 application?

17 MS. ZELDIN: Yes.

18 CHAIRPERSON REID: All right. If you would
19 please come forward.

20 MS. ZELDIN: You want me to come up?

21 CHAIRPERSON REID: Yes, please.

22 MS. ZELDIN: My name is Zelda Zeldin, and I own
23 1610 Nineteenth Street, which is on the residential side of
24 that alley. There are two issues which I would like to
25 present to you. The first thing is that Mr. Kain inadequately

1 stated the report of the decibel level.

2 Twice it was tested, and these huge, huge air-
3 conditioners back there, which -- and I am representing people
4 on my side, and the people directly behind him there, own a bed
5 and breakfast, and they have lost guests because of the huge
6 noise made by these air-conditioners, which two times were
7 tested, and found to be above allowable decibel level, and that
8 is that issue.

9 The other issue is the trash. I have owned my
10 building for about 22 years, and most of those years I have
11 lived in the building. I have tried intermittently over those
12 years to contact Mr. Kain about the trash situation.

13 The alley, as all alleys, have terrible rat
14 problems, and any alley that has food establishments there,
15 which we have there, have even worse rat problems.

16 Mr. Tom Day of the Streets and Alleys Division of
17 the Public Works has worked with me and other people on my side
18 of the alley to try and contact Mr. Kain about changing the
19 method of trash collection. He has refused.

20 He has been a very bad neighbor, and Mr. Day has
21 reported to us that he has even issued fines to Mr. Kain. The
22 method of collection has been that he has had a collection of
23 10 or 12 open cans in the middle of the alley, and picked up
24 not by a regular collector with a compactor, but a man who
25 comes in with a small truck, and spends hours bundling trash by

1 hand.

2 And I have seen this man, and other residents
3 have, too, that when he doesn't know what to do with some of
4 the trash, or has no room on his truck, he surreptitiously
5 places it behind our buildings.

6 We have asked Mr. Kain to please get a dumpster,
7 and he has refused over these years. Now, he has agreed as Mr.
8 Micone has told you to do this after his construction is
9 finished. We would like for him to do it immediately.

10 I went through the alley today and there was that
11 truck again with the man handling the trash by hand. We would
12 like Mr. Kain immediately, if not sooner, to put in a dumpster
13 with a lid, and get a regular contractor with a compactor so
14 that the trash is handled correctly.

15 We would like you to require him to do that, or
16 to hold up the application until he does it, because the rat
17 situation is only going to get worse. It has already gotten
18 worse with the disruption of the construction. And the
19 addition of the way his trash is collected makes it doubly
20 worse. So, there we are.

21 CHAIRPERSON REID: Any questions? And you said
22 that you did discuss this with Mr. Kain?

23 MS. ZELDIN: Excuse me?

24 CHAIRPERSON REID: You said that you have
25 discussed this matter with Mr. Kain?

1 MS. ZELDIN: I have tried over 22 years to
2 contact Mr. Kain, and have not been able to, or have left word
3 with his secretary, or through Tom Day of the Trash and Alleys
4 Division, we have tried to contact him. He has never ever
5 honored our request all these years.

6 CHAIRPERSON REID: So you have never talked to
7 him?

8 MS. ZELDIN: I could never get to him.

9 CHAIRPERSON REID: But he is here today. I mean,
10 he --

11 MS. ZELDIN: Oh, surely he is here today.

12 CHAIRPERSON REID: And before your case started
13 is when you could have perhaps raised it to him at that time.

14 MS. ZELDIN: Well, his answer is to take care of
15 it when construction is finished.

16 CHAIRPERSON REID: Well, did he say that?

17 MS. ZELDIN: He just -- it was in the agreement
18 that Mr. Micone just spoke about.

19 CHAIRPERSON REID: No, the other things, the
20 other things that you raise as far as the dumpster. You asked
21 that there be a dumpster with a lid, and a contract with a
22 compactor.

23 MS. ZELDIN: Well, this is what has been
24 suggested to him over the years, and he has refused.

25 CHAIRPERSON REID: Well, I guess the issue is,

1 and my thought was that since he was here today that perhaps
2 you would like the chance to talk to him.

3 MS. ZELDIN: Well, I would like to hear him
4 answer. That's why I am here today.

5 CHAIRPERSON REID: But you could have asked him
6 before we had this case, or before the case came up. Then we
7 could have had some kind of an answer. But we will make sure
8 that it is responded to. I was just wondering if you had
9 talked to him today.

10 MS. ZELDIN: No, not today. We did discuss the
11 matter of the noise. We don't have a date by which those air-
12 conditioners will be moved by the way. We would like a date
13 because now we are in the summer season, and those air-
14 conditioners are going to go constantly, you know, high tilt.

15 CHAIRPERSON REID: So basically that is your
16 objection; that he do something to mitigate the rat problem,
17 and in regard to the trash disposal adequately and sanitarily;
18 and that he give a date certain as far as the air-conditioners
19 are concerned?

20 MS. ZELDIN: Exactly.

21 CHAIRPERSON REID: The removal of, or relocation
22 of, or basically to abate the noise that is causing the
23 disruption in the community?

24 MS. ZELDIN: Exactly, yes.

25 CHAIRPERSON REID: Okay. Other questions?

1 VICE CHAIRPERSON RENSHAW: And regarding the
2 trash, to have a dumpster with a lid now.

3 MS. ZELDIN: Yes.

4 CHAIRPERSON REID: Right. That is what she was
5 asking.

6 MS. ZELDIN: Yes.

7 CHAIRPERSON REID: Okay. Thank you very much.
8 Closing remarks by the applicant.

9 MR. NETTLER: If I might just respond briefly. I
10 am not going to recall Mr. Kain up here, but to state that he
11 has not received any requests of the nature that have been
12 made. But the fact is that with the construction that those
13 trash cans are gone anyway, and which I think was alluded to by
14 the ANC.

15 Actually, the trash receptacles are going to be
16 inside of the new construction. Again, whether the special
17 exception for this carriage house is granted or not, that would
18 ultimately not resolve whether there is air-conditioning issues
19 or the trash issues.

20 We have nevertheless agreed to do that, and we
21 have an agreement with the ANC, and we have no
22 objection to those conditions being made a part of any order
23 that you issue.

24 But as things today exist the air-conditioning
25 situation that Wrap Works has is being taken care of and will

1 be resolved, and the trash situation does not exist anymore
2 since the construction has taken over the place where the trash
3 used to be, and the trash is going to be taken care of inside
4 the buildings that are in the process of being constructed.

5 We would ask for you to approve the special
6 exception, and we would ask for you to do so as a bench
7 decision. We would ask that since this is a special exception
8 -- and you normally do have conditions with a special
9 exception, and the ANC has established conditions which we are
10 willing to abide by -- that unlike a normal situation where you
11 have a use that is approved by special exception, we would not
12 ask that you put a time frame on this special exception,
13 because clearly once these buildings are finished, they will be
14 permanent buildings.

15 It is not so much that the door can be taken off
16 and put back on, or changed into a fire door. So
17 notwithstanding that and other conditions, we would ask for you
18 to approve the application. Thank you.

19 CHAIRPERSON REID: Okay. Now, we understand with
20 regard to the enclosed facility for the trash receptacles, that
21 that clause, number three, in the ANC agreement, which says
22 that the applicant will provide for an enclosed facility for
23 trash receptacles, and that addresses the issue regarding the
24 trash disposal adequately? I am speaking to -- you can come
25 up. You can come up.

1 MS. ZELDIN: Yes. If he takes care of this
2 immediately, because as I said, just this morning, I went
3 through and that same man with his little truck was there. We
4 need someone with a compactor to come in and get rid of the
5 trash, and compact it, and that's it.

6 CHAIRPERSON REID: Okay. I understand that, but
7 the point is that what we are talking about here today is that
8 while Mr. Kain has agreed to the condition from the ANC in
9 regard to enclosing it in the facility for trash receptacles,
10 that you would like that to start immediately.

11 MS. ZELDIN: Yes.

12 CHAIRPERSON REID: Or to make some provision for
13 a more adequate disposal of the trash?

14 MS. ZELDIN: Yes, especially since the rat
15 situation has been exacerbated by the construction. Ms.
16 Pollard had to leave, and she is another owner on my side of
17 the alley, and she was going to testify as to the calls that
18 she is getting from her tenants about the rat situation.

19 CHAIRPERSON REID: Now, Mr. Nettler.

20 MR. NETTLER: Mr. Wiebenson can tell you where
21 the trash is going to be dealt with.

22 MR. WIEBENSON: These two buildings now under
23 construction have some trash areas here, and actually dumpster
24 areas with hold down metal doors in the back along the alley of
25 each one.

1 So, whether this new door is permitted or not,
2 there is going to be a container of these dumpsters within the
3 two buildings. So I think that would take care of that
4 particular forever.

5 CHAIRPERSON REID: Well, when?

6 MR. NETTLER: When the buildings are finished.

7 VICE CHAIRPERSON RENSHAW: When are the buildings
8 going to be finished?

9 MR. WIEBENSON: Let's see. This dumpster area
10 here will be finished within two months I would reckon.

11 CHAIRPERSON REID: What happens in the interim?

12 MR. WIEBENSON: Let's see. There isn't -- well,
13 there is an area over here where I think the trash is now being
14 gathered for the entrepreneur and his little truck takes the
15 trash away. Is that right, Mr. Kain?

16 MR. KAIN: Yes. That is Mr. McKee, and he is
17 about almost 80 years old, and he has been working back there
18 for 50 or 60 years, and he hauls away a lot of the trash for
19 the local businesses.

20 But right now with very few exceptions the
21 buildings that are under construction are primarily vacant,
22 with the exception of a few tenants that are still in 1607, and
23 they are not producing a lot of trash.

24 But the trash that they do produce could be kept
25 in enclosed containers during the construction period, and I

1 suspect that is where it is being kept, because the trash that
2 Mr. McKee used to -- the cans that he used to empty were on the
3 construction site, and they are no longer there because the
4 site is under construction. So those are gone, and all the
5 tenants are essentially using enclosed containers now.

6 MS. ZELDIN: Are these dumpsters, or are these
7 pails? Are these separate pails that usually don't have lids
8 on them from what we have all sustained.

9 MR. KAIN: They were on the construction site,
10 and --

11 MS. ZELDIN: So what are they loading into now?

12 MR. KAIN: They are using the dumpsters on the
13 adjacent properties.

14 VICE CHAIRPERSON RENSHAW: They are using
15 dumpsters on adjacent properties where they --

16 MR. KAIN: That I own.

17 VICE CHAIRPERSON RENSHAW: That you own?

18 MR. KAIN: Yes, which I authorize them to use.
19 Yes, that's correct.

20 MS. ZELDIN: You mean that Mr. McKee is getting
21 them out of the dumpsters? That's not so. He could even reach
22 into the dumpsters in his method. He can only reach into small
23 pails. He doesn't have a truck that you attach the dumpster to
24 and load and unload it.

25 CHAIRPERSON REID: Well, at any rate, I think the

1 issue is that the trash be disposed of adequately, Mr. Kain. I
2 don't know how you can best do that. Apparently the assertion
3 that you have the dumpsters on your adjacent property is not
4 solving the problem.

5 And so you might want to look at some other types
6 of methodologies, and not to preclude a dumpster being put
7 there with the top to it, so that the trash would not be
8 disposed, or the garbage, or whatever. And then give rise to
9 the rodent problem there in that alley.

10 MR. NETTLER: Actually, the rodent problem is a
11 consequence of the construction which is disturbing the fact
12 that there are conditions there in which -- and throughout the
13 city, that every time when you do construction, you
14 unfortunately disturb where rodents are living, and that is
15 producing the rodent problem.

16 MS. ZELDIN: Oh, excuse me. We have had a bad
17 rodent problem in that alley all the years that I have owned my
18 building, which is why we have been in constant touch with Mr.
19 Tom Day, and he has come out there even with some green
20 tracking powder to try to alleviate the problem. It has been
21 a terrible problem in that alley all these years.

22 MR. KAIN: Before the construction commenced, Mr.
23 Day and members of his staff asked me to poison certain
24 burroughs in an effort to kill the rodents before their habitat
25 was disturbed, and we did that.

1 One of his staff people came out and took a look
2 at it to make sure that it had been done. So we did the best
3 that we could. I have been there since 1978, and I can't
4 remember there not being rats there. They have always been
5 there, and hopefully we are making some efforts and taking some
6 steps to solve the problem.

7 CHAIRPERSON REID: Okay. I think what I am
8 hearing is that you have agreed to the dumpster, and I think
9 that the architect referred to at the time of construction that
10 there would be dumpsters there.

11 But I think that in the interim that if there is
12 some type of receptacle that is adequate, be it a dumpster with
13 a cover on it or whatever, that would be helpful in addressing
14 some of the concerns of the community.

15 VICE CHAIRPERSON RENSHAW: And also just a
16 question. Does the hauler have a license? Is he licensed, Mr.
17 Kain?

18 MR. KAIN: To the best of my knowledge, he is.

19 VICE CHAIRPERSON RENSHAW: Have you checked?

20 MR. KAIN: No, I haven't.

21 CHAIRPERSON REID: Well, nonetheless, whoever it
22 is that removes the trash, I would assume that that person
23 should -- and I am using the word should --

24 MR. KAIN: There are a lot of trash haulers back
25 there.

1 CHAIRPERSON REID: -- be licensed. But that is
2 not before us as such. All right. Are there other questions?

3 (No audible response.)

4 CHAIRPERSON REID: All right. Board Members, did
5 you wish to dispose of this today?

6 COMMISSIONER MITTEN: Yes.

7 CHAIRPERSON REID: Then can I have a motion?

8 COMMISSIONER HINTON: Madam Chair, I would move
9 for approval of Application 16688.

10 CHAIRPERSON REID: Is there a second?

11 VICE CHAIRPERSON RENSHAW: Second.

12 CHAIRPERSON REID: And would you give your basis
13 for your motion?

14 COMMISSIONER HINTON: For the reasons that are
15 written about in the Office of Planning report.

16 CHAIRPERSON REID: I guess if you could briefly
17 summarize it, as it would be helpful to the people writing the
18 order.

19 CHAIRPERSON REID: I think it boils down to
20 basically a door, and all this hullabaloo,

21 COMMISSIONER HINTON: Actually, it does just boil
22 down to a door. What we are looking at is a special exception
23 from the rear yard for a building that is already existing, and
24 because it is being connected to new construction, its status
25 changes from an accessory building to the principal structure,

1 and therefore the setback and the height of the building
2 requirements change.

3 And so mostly based on the fact that it is an
4 existing building, and it is a historic building, and that the
5 situation in the alley will not change, and no adjacent
6 properties will be affected by any change, I think we should
7 approve the application.

8 COMMISSIONER MITTEN: Madam Chair, I wanted to
9 ask Ms. Hinton if you were also proposing any conditions, such
10 as including the voluntary agreement that the applicant has
11 with the ANC.

12 COMMISSIONER HINTON: I think we should pick up
13 the three conditions that the ANC requested that the applicant
14 agree to. The first one is very lengthy, but it deals with the
15 agreement to move the air-conditioning unit that is not on this
16 property, but a property owned by the applicant.

17 The second one has to do with the hours of
18 construction at this site, and that they will start no earlier
19 than 7:00 a.m., and they will make every effort to be quiet
20 until 7:30.

21 And the third condition is that upon completion
22 of the addition that the applicant will provide an enclosed
23 facility for trash receptacles.

24 CHAIRPERSON REID: Upon what?

25 COMMISSIONER HINTON: Upon completion of

1 construction.

2 CHAIRPERSON REID: Go ahead, Ms. Mitten.

3 COMMISSIONER MITTEN: I think that through some
4 of the additional testimony that we had that I think we have
5 gained agreement that there will be -- and maybe not in the
6 same place, but there will be facilities for proper trash
7 receptacles continually, even prior to the completion of
8 construction.

9 CHAIRPERSON REID: Starting immediately.

10 COMMISSIONER MITTEN: Right.

11 CHAIRPERSON REID: And also disposal, and not
12 just the receptacle itself, but also the adequate disposal.

13 COMMISSIONER MITTEN: Yes, the adequate disposal
14 by a licensed contractor, which is required by law.

15 VICE CHAIRPERSON RENSHAW: And also we had a
16 fourth point that there should be a 24 hour contact point for
17 the neighborhood access, a hotline during this construction.

18 CHAIRPERSON REID: I think, Ms. Mitten, that in
19 regard to the dumpster, with regard to disposal, I think we
20 mean pickup, the pickup on a regular basis.

21 COMMISSIONER MITTEN: Trash removal.

22 CHAIRPERSON REID: Yes, removal on a regular
23 basis.

24 COMMISSIONER MITTEN: And then I think also there
25 needs to be a condition given that the manner in which the

1 carriage house will become incorporated into the primary
2 structure is via the green area on the exhibit, is that this
3 would be subject to subdivision and consolidation of the lots.

4 Just so that is clear.

5 MR. NETTLER: That is already pending.

6 COMMISSIONER MITTEN: I'm sorry?

7 MR. NETTLER: That's how we got into this. We
8 had done a subdivision to do exactly that.

9 COMMISSIONER MITTEN: So you have accomplished
10 that?

11 MR. NETTLER: We can't finalize that until you
12 approve this.

13 COMMISSIONER MITTEN: Oh, okay. Sorry.

14 COMMISSIONER HINTON: So that we are not unclear
15 about this, the construction that this Board is sort of
16 authorizing is the door.

17 CHAIRPERSON REID: Yes.

18 COMMISSIONER HINTON: So when we talk about
19 having a 1-800 number for the duration of construction --

20 VICE CHAIRPERSON RENSHAW: It is not a
21 1-800 number.

22 COMMISSIONER HINTON: Or whatever it is.

23 VICE CHAIRPERSON RENSHAW: It is a 24 hour
24 hotline.

25 COMMISSIONER HINTON: A 24 hour hotline, it is

1 for the door, and it is not for the construction that is going
2 on in that site. It is a matter of right construction.

3 CHAIRPERSON REID: It is not really for the door.

4 The hotline number is really not for the door. Let's clarify
5 that. Mrs. Renshaw is a stickler for that construction plan
6 and that hotline number.

7 Now, typically, we could not require that since
8 that is not before us, and we could not require that they
9 provide that number typically because it is not really before
10 us.

11 However, notwithstanding the fact that it is not
12 before us, as an accommodation, and stating that they were not
13 opposed to providing that number, is that the way we understand
14 it?

15 COMMISSIONER HINTON: I think the Board needs to
16 be careful about not putting conditions --

17 CHAIRPERSON REID: That's not -- well, you're
18 right. That should not be made a condition as of this order.
19 You are absolutely right.

20 COMMISSIONER HINTON: Yes.

21 CHAIRPERSON REID: Only as an accommodation to
22 Ms. Renshaw if they would like to do that.

23 COMMISSIONER HINTON: Right, and not a condition.

24 CHAIRPERSON REID: And the only other thing I had
25 was in regards to letters of support, we did have one from the

1 Historic Preservation, and in which they basically -- and again
2 it was a consent calendar, I guess, they stated that they
3 recommend that the board find the subdivision appropriate.

4 This is on the subdivision, and recommends that
5 the applicant continue architectural investigation. The staff
6 also recommends that the applicant continue to develop a
7 facade; and I guess in essence what they are saying is that
8 they have no objection to this application.

9 And because it is a historic district, there is
10 no parking requirement. Are there any other questions or
11 comments?

12 COMMISSIONER MITTEN: Just to add the one point,
13 that Mr. Nettler requested that there be no time frame
14 associated with the special exception, and I think that is
15 entirely appropriate that there would not be a time limit.

16 COMMISSIONER HINTON: I agree.

17 CHAIRPERSON REID: We didn't, and so --

18 COMMISSIONER MITTEN: Well, I am just reinforcing
19 the point.

20 CHAIRPERSON REID: Yes. And if in fact we are
21 solid as to that requirement, then just assume that we don't.

22 COMMISSIONER MITTEN: All right.

23 CHAIRPERSON REID: Okay. All right. All in
24 favor?

25 (A chorus of ayes.)

1 CHAIRPERSON REID: Opposed?

2 (No audible response.)

3 MS. BAILEY: The staff will record the vote as
4 four to zero to approve the application; motion made by Mrs.
5 Hinton, and seconded by Mrs. Renshaw, and Mrs. Sheila Cross
6 Reid, and Carole Mitten, in agreement.

7 CHAIRPERSON REID: Thank you very much. Your
8 order should be out in a couple of weeks, 2 or 3 weeks, and
9 enjoy your door.

10 MR. NETTLER: Yes. Sometimes it is a door and
11 sometimes it is something larger.

12 COMMISSIONER HINTON: Those drawings that have
13 color on them, could those be added into the record because we
14 referred to the color. Can they be taken off the board and
15 folded?

16 MR. NETTLER: Yes.

17 COMMISSIONER HINTON: Thank you.

18 MS. BAILEY: The last case of the afternoon is
19 Application Number 16700, of The Jerome S. and Grace H. Murray
20 Foundation, et al, pursuant to 11 DCMR 3103.2 and 3104.1, for a
21 variance from the residential recreation space requirements,
22 Section 772.3, a variance from the lot occupancy requirements,
23 772.1, a variance from the FAR requirements, Section 771.2, or
24 in the alternative a variance from Section 199, FAR
25 definition, to allow two unconnected phases of the project on

1 two separate lots to be considered as one for FAR purposes; and
2 a special exception to permit the construction of two
3 mechanical equipment enclosures provided for under Subsections
4 773.3, 772.1, 3202.3, and 411.3, in the DD/C-2-C District at
5 300 Massachusetts Avenue, Northwest.

6 The property is located in Square 529, on Lots 9,
7 21 through 25, 30 through 33, 811 through 817, 820, 821, 829
8 835 through 838, 840, 841 and 844.

9 CHAIRPERSON REID: Thank you, Ms. Bailey. A
10 board member has asked for a short break, a five minute break.

11 COMMISSIONER MITTEN: Before you break, I would
12 like to --

13 CHAIRPERSON REID: Just let me finish this.

14 COMMISSIONER MITTEN: Okay.

15 CHAIRPERSON REID: To give you an opportunity in
16 the meantime to set up all of your presentation.

17 COMMISSIONER MITTEN: And before the break
18 commences, I would like to recuse myself from this case because
19 one of my clients is one of the owners whose owner is under
20 contract, and I would not want my relationship with them to
21 influence anything that I would do.

22 (Whereupon, the hearing was recessed at 3:43
23 p.m., and was resumed at 3:50 p.m.)

24 CHAIRPERSON REID: All right. Now, it has just
25 been brought to my attention that Ms. Mitten had to recuse

1 herself, and Ms. Hinton has to leave about 10 after 4:00. So
2 therefore we will not have a quorum.

3 So, Mr. Feola, I would like for you to
4 demonstrate to us your savvy, and be able to present case in
5 record time this afternoon, given the fact that we have -- the
6 Board Members have read over the case, and there does not
7 appear to be any --

8 MS. BAILEY: Madam Chair, is it possible for me
9 to swear the witnesses in? I know that they are going to tell
10 the truth.

11 CHAIRPERSON REID: Do you mind if I finish my
12 sentence, Ms. Bailey? As I was saying, it appears that there
13 is no opposition in this case, and as such, Mr. Feola, you can
14 then expedite the case, and give us the salient points, the
15 high points.

16 Is there anyone here in opposition or in support
17 of this case?

18 (No audible response.)

19 CHAIRPERSON REID: All right.

20 MR. FEOLA: Thank you, Madam Chair. We will
21 finish this in plenty of time. We also have doors, but they
22 are all a matter of right. So we don't have to spend any time
23 on doors.

24 (Whereupon, all witnesses were sworn.)

25 Thank you, Madam Chair. For the record, my name

1 is Phil Feola, and with me is Marty Sullivan, of Shaw, Pittman
2 and we are here on behalf of Clark Realty Capital, which is the
3 contract purchaser of about 40,000 square feet of property in
4 the downtown area, in a DD/C-2-C Zone, and Housing Priority
5 Area B.

6 We are pretty excited about this project. It is
7 going to be built as a market rate housing project apartment
8 building, and we are here for the three variances that Ms.
9 Bailey articulated, and which I won't repeat, and a special
10 exception for a roof structure.

11 The rationale for the variances is in your
12 pleadings, and in the interest of time, we won't go through it.

13 But essentially the property, which is located in Square 529,
14 is bounded by 3rd Street, Northwest, and the expressway on the
15 east; 8th Street and Massachusetts Avenue on the north; 4th
16 Street Northwest on the west.

17 Both 4th Street, and 3rd Streets are on-way
18 south, and the freeway is really the abutting property to the
19 east, and we have on the site an historic landmark series of
20 buildings in the northeast corner of the site.

21 The historic landmarks are really the critical
22 element that has pushed us into asking for these variances. In
23 addition, the property has a unique location because of the
24 expressway, and a rather unattractive intersection of H and
25 Massachusetts Avenue.

1 If you look in the OP report, there is a great
2 aerial picture that shows that intersection, and it has to be
3 one of the ugliest in the region. In any event, those unique
4 situations in that property create the practical difficulty
5 with sticking within the bounds of the zoning regulations, and
6 with the strict application of those regulations, will
7 essentially kill the ability to go forward with this project.

8 And the third leg of the test is that the
9 variance could be granted without detriment to the public good.

10 And, in fact, this project will enhance the public good, and
11 is completely consistent with the city's plan for the downtown,
12 to have housing in and around the Massachusetts Avenue
13 corridor.

14 With that, I would just like to introduce John
15 Sunter, Vice President of Clark Realty Capital, who is to my
16 right; and to his right is the architect, Sami Kirkdil, of SKG
17 Architects and Planners. Mr. Sunter, would you briefly give an
18 overview of the project for the Board.

19 MR. SUNTER: Thank you. My name is John Sunter,
20 with Clark Realty Capital. This project will provide 350 new
21 apartment units in the Housing Priority B area of downtown.

22 You have in your application package drawings,
23 and so I will go straight to our design process to describe the
24 process that we went through, rather than just tell you about
25 the design. You can see that for yourself.

1 We had to go through several design review
2 agencies, and with each of the journey, we had some special
3 requirements put on our design, the first being the historic
4 preservation review board.

5 As a result of historic buildings being on the
6 northeast corner of the site, it was a requirement of HPRB that
7 we push our new apartment building back away from the historic
8 buildings, and not build up to the facade line, and not even
9 bridge over the back of them, but push the building all the way
10 away from the historic buildings.

11 In addition, the massing on the 3rd Street side
12 had to be only nine stories tall. That is all the way on the
13 left side. That caused us to have to again push some massing
14 over to the 4th Street side.

15 We then went to the Commission on Fine Arts. The
16 Commission on Fine Arts had also some requirements. One of
17 them being the requirement for more highly articulated facades,
18 which is a construction cost issue.

19 And also the notion that we have -- let's call
20 them on several buildings. As you look at our design in the
21 renderings there, you can see that it looks like we have one,
22 two, three, four -- four separate buildings, and that was an
23 architectural device to break down the scale of the building.

24 Now, that will play into our need for several
25 penthouses later as I will describe it. We also met with the

1 Office of Planning, and with members of the Mayor's Office, to
2 try to include their goals into the project.

3 And the requirement that came out of that was
4 that we have ground floor retail on our project. This is
5 significant because we originally planned to have an English
6 basement, with units below grade, which would not count in the
7 FAR.

8 But with the provision of ground floor retail, no
9 only could we not have an English basement, but also the space
10 that is now retail was to be housing space.

11 So that plays into our need for additional FAR to
12 compensate for the retail which took up housing space. We have
13 also met with the ANC, and we have met with landowners, with
14 neighbors, to present the design to them; and also with other
15 groups which have provided support letters for us to this
16 organization, as well as to other groups -- to the HPRB, to CFA
17 -- and those include our Council Member, Sharon Ambrose, who
18 has provided a letter which should be submitted into the record
19 now.

20 And also Downtown Housing Now, as well as the
21 Downtown Cluster of Congregations. I might add that both the
22 Commission on Fine Arts and the Historic Preservation Review
23 Board have approved the project that is before you now.

24 So, inclusion, the requirements that have been
25 placed on us by these various agencies have forced us into

1 meeting these various requirements, and we are at a point where
2 our design is ready to go into production with just the
3 approval of these few minor changes.

4 MR. FEOLA: I think in the interest of time that
5 we can stop talking and just answer questions, and I am sure
6 that the Board has some that they would like to ask, and we
7 would rather address your specific questions.

8 CHAIRPERSON REID: Board Members, any questions?

9 COMMISSIONER HINTON: The only question I wanted
10 to know is what is the status of closing the alley?

11 MR. SUNTER: We have applied for the closing of
12 the alley, and we are now in the administrative process of
13 getting the comments from the various agencies.

14 And to give you the up-to-date blow-by-blow, we
15 have all the utilities that have signed off on the closing, and
16 we are getting some comments from the various City agencies.

17 COMMISSIONER HINTON: And you are the property
18 owner on both sides of the alley?

19 MR. FEOLA: We will be. We are the contract
20 purchaser.

21 COMMISSIONER HINTON: So are there any parties
22 that have objections? I mean, it is pretty likely that the
23 alley will be closed at this point.

24 MR. FEOLA: Yes, I would say that that is very,
25 very likely that the alley will be closed, although it is a

1 political process and the Council has to vote on it. I don't
2 want to preclude their discretion, but it looks pretty good.

3 COMMISSIONER HINTON: So the relief that we are
4 looking at today assumes that the alley will be open?

5 MR. FEOLA: Some of it does. The FAR, for
6 example, does.

7 COMMISSIONER HINTON: The FAR count does not
8 count the land and the alley as part of your property?

9 MR. FEOLA: That's correct, but the lot occupancy
10 -- I'm sorry. The recreation space, we will need the relief
11 regardless of whether the alley is closed or not.

12 COMMISSIONER HINTON: Okay. Thanks.

13 CHAIRPERSON REID: Okay. If there are no other
14 questions, I will go the Office of Planning report.

15 MR. JACKSON: Madam Chair, I would request that
16 my report be -- that you waive the rules to allow my report to
17 be accepted into the record.

18 CHAIRPERSON REID: I have no problem with that
19 unless there is an objection. Therefore, we can waive the
20 rules.

21 MR. JACKSON: Madam Chairman, briefly, the
22 applicant's situation as a result of working closely with the
23 Historic Preservation bodies here in the City, and trying to
24 work with or around an existing historic structure on the
25 corner, and probably frame that structure for approval by the

1 various bodies.

2 It is also a result of an irregular lot, which if
3 you will go to your staff report and look at the plat of the
4 actual property, you will note that they are working with a
5 very irregular lot.

6 And as I described it in the staff report as
7 being J-shaped, it is actually J-shaped with a notch out of it.

8 And that a lot of the variances that are required as a result
9 of this irregular shape, and also a situation wherein they are
10 moving as quickly as possible to effect the construction of
11 this project.

12 However, we are dealing with an alley closing
13 situation, which could take longer than they would take to get
14 to the point where they would begin construction.

15 And as such the Office of Planning report
16 actually provides for the preferably situation where the alley
17 would be closed, and the variances and special exceptions that
18 would be necessary for the project to be built in that
19 instance.

20 But also if the alley is not closed, we would
21 like to provide enough of a relief so that the project could
22 begin, regardless of the alley being closed or not.

23 Also, I would note that all the variances that
24 they requested, particularly with regard to the FAR
25 requirement, and the open space requirement, are reflective of

1 pending legislation that the Office of Planning is supporting
2 to reduce the open space requirement, recreation requirement,
3 and to try to enhance the ability of entrepreneurs to come in
4 and develop high density residential development, and where we
5 think it should go in the central employment area.

6 And so based on that, my recommendation is
7 predicated on either one of the two options going forward. But
8 in any case, it has three conditions. One, that this proposed
9 development would be developed in one phase at one time, and
10 that any subsequent expansion of the site, which would include
11 the three lots that are in the notch in the J, would not
12 require that they come back to this Board, the Board of Zoning
13 Adjustment, to adjust their variances and special exception.

14 And that the conceptual plans as presented to you
15 today be made part of the approval. With that, I will stop and
16 ask for questions, Madam Chair.

17 CHAIRPERSON REID: Thank you very much. Now, I
18 had just one question and that was with regard to the variance
19 being requested. I do see the first test in regard to the
20 unusual or irregular shaped lot.

21 The practical difficulty, can you speak more to
22 that, because I am not clear on that at this point.

23 MR. JACKSON: Well, in one instance the practical
24 difficulty has to do with the location of the elevator towers.

25 If you go to the illustration table, I think it is Exhibit

1 Number 2 that shows the roof of the building.

2 What you have is that you can see where there are
3 three penthouses, and the three penthouses are on the two --
4 the building that would be south of the alley, and two other
5 buildings north of the alley.

6 The situation that the applicant finds himself in
7 is that --

8 MR. FEOLA: Madam Chair, it might be easier to
9 look at the bigger one there.

10 CHAIRPERSON REID: All right.

11 MR. JACKSON: And that is that they have got two
12 separate elevator towers that are supporting two different
13 portions of the building. The applicant explained to us that
14 for the sake of access, appropriate access to the vertical
15 ingress/egress, they need to have at least two cores to serve
16 the building.

17 So what they have is a core that is in the
18 corner, the northwest corner of the building, and then one that
19 is close to the alley. The elevator core close to the alley
20 actually would primarily serve the service area, and would be
21 used for deliveries and for apartment dwellers moving in and
22 out, I assume.

23 There was -- the applicant was requested to
24 consider connecting both those elements into one structure, but
25 that created a bit of a strange piece of architecture.

1 Then also given the fact that you have the
2 encroachment of the adjacent lots that have not been acquired
3 yet, it created a problem architecturally, and would detract
4 from the efforts that they have made to meet the requirements
5 of the historic bodies and present an architecturally
6 attractive form.

7 So, with that, we think that is the situation
8 where it is a hardship, but not with their own creating, but it
9 is reflective of what is required by the building, which is why
10 we supported it.

11 With regard to the open space, or the penthouse
12 setback, we think that is an anomaly that is created
13 essentially by the notch in the building that is formed by
14 those lots.

15 So that the penthouses are where they should be,
16 but it is just that the perimeter of the building is where it
17 isn't normally. So in that case, we thought that could be
18 supported in its current state.

19 With regard to the floor area ratio, as we
20 stated, the applicant proposed two alternatives. One was to
21 increase the floor area ratio and the other was to change the
22 definition.

23 We felt that the more practical approach would be
24 to -- not to come up with an irregular definition that could
25 not be interpreted in the normal way when it comes to

1 permitting, but to actually address numbers that could be
2 calculated and applied to the plan as a matter of course.

3 And we do think that for the impact that we would
4 anticipate on this site, that is, providing a maximum number of
5 housing units, which would be consistent with the types of
6 efforts the Office of Planning has made that are in line with
7 the comprehensive plan, and of course with our own amendments,
8 we supported that proposal.

9 And then with regard to the off-site loading
10 berths and delivery spaces, the existing regulation does not
11 anticipate that you would have a building that actually sits on
12 two lots.

13 And in this case, we have a single building which
14 can be serviced by one set of loading docks that is on two lots
15 of record, if the other is not closed.

16 And in that regard, we think that this is a
17 unique situation where it is a single building on two lots, and
18 so we support the idea of a single building on two lots having
19 to use one set of loading docks and service bays.

20 The merits for the minimum court, we think as a
21 result of -- again, the unique design that is being presented,
22 if you will note the Plan E-4 that is before you on the board.

23 You will note that all the lots, all the units, are
24 approximately the same size.

25 That is, in terms of depth.

1 So what you have is a uniform building, and again
2 this is a single building, and a uniform building that
3 continues around the 3rd Street to H Street, to the 4th Street
4 facades.

5 What has happened though is that as the building
6 continues south, you enter into a space where the rear lot area
7 just gets narrower. Now, it will be possible for the applicant
8 to make these units simpler narrower to increase the width of
9 the courtyard behind.

10 But we really think that would detract from the
11 attractiveness and the effectiveness of this development, in
12 terms of being attractive to tenants.

13 And as such, we think that that would create a hardship on the
14 development, because, one, it will make sure that the entire
15 development is used and successful.

16 Therefore, we support the variance for the width
17 of the rear court yard. Am I missing anything else, Madam
18 Chair?

19 CHAIRPERSON REID: No, thank you very much.

20 MR. JACKSON: So overall we do think that this
21 project is a benefit to the community, and its constituency,
22 which would be downtown residents. We think that the relief
23 can be provided in such a way that it will not materially
24 impair by structure the air and light of adjacent buildings,
25 and they would not be adversely affected.

1 We also feel that in terms of the special
2 exception the fact that they have two penthouses, because they
3 need structure -- and based on that, we would recommend
4 approval of the application.

5 MR. FEOLA: Madam Chair, our pre-hearing
6 submission, in Roman Numeral V, we go through the variances,
7 and in Roman Numeral VI, we articulate our position, which is
8 very consistent with Mr. Jackson's position on how we view the
9 unique situation and the practical difficulty, and the no
10 detriment to the public. So for the record it is in the
11 pleading.

12 CHAIRPERSON REID: In the prehearing submission
13 what?

14 MR. FEOLA: In our prehearing submission, which
15 we filed two weeks ago, on April 24th, the statement of the
16 applicant.

17 CHAIRPERSON REID: When you say prehearing
18 submission, this is it?

19 MR. FEOLA: Yes.

20 CHAIRPERSON REID: It sounds like you were
21 referring to numerical tabs, and these are alphabetical that I
22 have.

23 MR. FEOLA: In the text, on pages 7 through --

24 CHAIRPERSON REID: Oh, the page number. I'm
25 sorry.

1 MR. FEOLA: Pages 7 through 12 are the
2 applicant's articulation of those tests, which as I said are
3 consistent with Mr. Jackson's, but it is in writing in one
4 place.

5 CHAIRPERSON REID: I do have that.

6 MR. JACKSON: Madam Chair, I neglected to follow
7 up on your earlier question concerning the alley closing, or a
8 question from the Board concerning the alley closing.

9 CHAIRPERSON REID: That was Ms. Hinton.

10 MR. JACKSON: Ms. Hinton, I was able to contact
11 the Department of Public Works and they did as I stated in the
12 staff report, they do feel that this can be accommodated.

13 There are still some outstanding issues with
14 regard to traffic inflows, and I have not gotten back a
15 response yet from the Fire and Police Departments.

16 But usually the key agency that deals with those
17 types of things would be Public Works, and so I think those are
18 well in hand and are in the process of being -- all the issues
19 are in the process of being worked out.

20 CHAIRPERSON REID: Okay. Thank you very much.
21 All right. If there are no other questions of the Office of
22 Planning, we move now to the ANC report. There was a report
23 from ANC-6A. Oh, it is not available, but the assumption is
24 that they don't seem to have a problem with it.

25 VICE CHAIRPERSON RENSHAW: Madam Chair, on page

1 13 of the applicant's submission it says under community
2 comments that a presentation was made to the Land Use and
3 Zoning Committee of ANC-6A.

4 The applicant was scheduled to discuss this
5 proposal at an April meeting, but was unable to do so. No
6 written comments have been received. So this is the OP report.

7 So the applicant was not able to get to an ANC meeting?

8 MR. SUNTER: Let me clarify that. We were on the
9 agenda of that April meeting. We went to the April meeting,
10 but the meeting was disbanded before they got to our subject.
11 We were second on the agenda, but unfortunately the meeting --
12 well, we lost a quorum, I guess.

13 CHAIRPERSON REID: Well, again, we have made
14 contact with and they have been noticed, but we have not gotten
15 a letter from them. So the assumption would be that they have
16 no problem with the application. Otherwise, they would let us
17 know.

18 There is one other report, I think, from Historic
19 Preservation, and with a recommendation from the staff, dated
20 April 16th, and basically it says that the staff recommends
21 that the Board find the subdivision appropriate, and the
22 conceptual plans compatible to the character of Miller Row. Is
23 that the correct pronunciation?

24 In terms of general architectural direction, the
25 staff recommends that the architect continue architectural

1 investigation pursuant to staff consultation.

2 The staff also recommends that the applicant
3 continue to develop a facade for review, and design development
4 space, as well as plans to rehabilitate the landmark buildings
5 in accordance with the Secretary of the Interior's statements
6 for rehabilitative treatment are familiar with that.

7 Are there any persons here in support of the
8 application?

9 (No audible response.)

10 CHAIRPERSON REID: In opposition to the
11 application?

12 (No audible response.)

13 CHAIRPERSON REID: Closing remarks by the
14 applicant.

15 MR. FEOLA: I think in the interest of time that
16 we will just ask that the Board look at this application and
17 possibly grant us a bench decision so we can move forward.
18 Thank you.

19 CHAIRPERSON REID: There was in reference to the
20 letters of support, there is no one here in support, but for
21 the record there was a letter from Council Member Sharon
22 Ambrose in regard to this particular application, and in which
23 she is asking for -- that they realize that the apartment
24 construction represented in the current design meets the City's
25 policies for this area.

1 Your approval of the reference application is
2 required to ensure that the project becomes a reality. So this
3 is a letter in support, and there was also one from Terry
4 Lynch. Does anyone have that letter? It was just right here.

5 Okay. Terry Lynch, of the Downtown Cluster of
6 Congregations basically is saying that this organization is in
7 support of the application, and asks the Board to approve the
8 project with its support.

9 And that it states that this project will create
10 200 new construction jobs and that it will with the tax base
11 increase revenues from \$65,000 a year to \$650,000 a year; and
12 some \$1 million annually in personal and sales taxes. Are
13 there any other questions?

14 (No audible response.)

15 CHAIRPERSON REID: All right. Mr. Feola has
16 asked for a bench decision and summary order. Board Members,
17 what is your pleasure?

18 COMMISSIONER HINTON: I move approval of the
19 application, with using the reasoning that is articulated in
20 the Office of Planning report in support of the variance and
21 special exception.

22 VICE CHAIRPERSON RENSHAW: I second.

23 CHAIRPERSON REID: I would agree that this
24 application does not appear to have any adverse impact with
25 regard to parking, noise, and traffic, light and air, and that

1 obviously it is in the historic district.

2 So there is no parking requirements and does not
3 tend to impair the intend or integrity of the zoning regulation
4 or map. All in favor?

5 (A chorus of ayes.)

6 CHAIRPERSON REID: Opposed?

7 (No audible response.)

8 MS. BAILEY: The staff will record the vote as 3
9 to 0 to approve the application. Motion made by Mrs. Hinton,
10 and seconded by Mrs. Renshaw, and Mrs. Reid is in agreement,
11 and Ms. Carol Mitten not present, and not voting.

12 VICE CHAIRPERSON RENSHAW: With respect to
13 conditions to investigate.

14 CHAIRPERSON REID: Well, let's see. There were
15 conditions -- weren't there conditions, Mr. Jackson? Didn't
16 the Office of Planning have a couple of conditions?

17 MR. JACKSON: Yes, we did.

18 CHAIRPERSON REID: All right. Can you please
19 recite those?

20 MR. JACKSON: Madam Chair, we had two sets of
21 recommendations having to do with the variance relief required
22 as per whether or not the lots are consolidated or not. So our
23 assumption is that was recommended for approval.

24 But our conditions were that the entire proposed
25 residential and commercial development be constructed in the

1 southern properties in one phase, and that the subsequent
2 expansion of the site by a subdivision, to include adjacent
3 lots 28, 29, and 818, and the expansion of the mixed-use
4 development on to these lots, would not require a recalculation
5 of the modified zoning requirements under this approval.

6 And that the revised site plan and building plan,
7 dated April 28th, become part of the approval.

8 CHAIRPERSON REID: Ms. Pruitt, in regard to these
9 conditions for this variance --

10 SECRETARY PRUITT: Well, the revised plans are
11 already a part of the record. I mean, that is a given. The
12 construction phase, I guess you could make a request, but I
13 really don't know how that impacts the applicant, and that
14 might be something that you want to discuss.

15 And the second one, I didn't get that, and I just
16 got lost. So if you could reiterate or sort of pare it down,
17 because it was very long.

18 MR. JACKSON: All right. If Lots 28, 29, and 818
19 are added to the site by a subdivision, that the expansion of
20 the mixed-use development on to those sites would not require a
21 recalculation of the modified zoning requirements approved as
22 per this application.

23 CHAIRPERSON REID: And then, Ms. Pruitt, if you
24 didn't get all of that, you can see him afterwards. It is on
25 the record, the verbiage.

1 SECRETARY PRUITT: I'm sorry, but you are talking
2 about the historic part that is out of the District section,
3 and yes, you can impose rules if you would like.

4 CHAIRPERSON REID: Okay. Then Ms. Renshaw had a
5 request.

6 VICE CHAIRPERSON RENSHAW: A request for a
7 construction agreement with 6A; that you work out a
8 construction agreement.

9 CHAIRPERSON REID: I guess we should basically
10 condition that if in fact they wanted it, and it is being
11 requested by the ANC, and if the ANC is desirous of one.
12 Explore the possibility. Would that be suitable to you if they
13 did that?

14 VICE CHAIRPERSON RENSHAW: That would be
15 suitable.

16 CHAIRPERSON REID: Not to condition it, but
17 basically --

18 SECRETARY PRUITT: It is a request from the Board
19 and not a condition.

20 CHAIRPERSON REID: Exactly. That it be explored
21 with the ANC. ANC -- what ANC is it?

22 VICE CHAIRPERSON RENSHAW: ANC-6A.

23 CHAIRPERSON REID: In the event that they so
24 desire.

25 VICE CHAIRPERSON RENSHAW: Including a 24 hour

1 contact line as discussed in the previous case.

2 CHAIRPERSON REID: Again, if in fact they are
3 desirous of it. Just kind of talk to them about it, and we
4 would appreciate that accommodation if you can. If there is
5 nothing else, then I would think that this would be the end of
6 the hearing, as well as the end of the session for today.
7 Thank you.

8 MR. FEOLA: Thank you very much.

9 (Whereupon, the hearing was concluded at 4:22
10 p.m.)

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