

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING

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TO CONSIDER THE FOLLOWING: |

16731 APPLICATION OF BARRY W. JOHNSON, JR. |

16741 APPLICATION OF GREG AND HOLLY PORTER |

16734 APPLICATION OF THOMAS B. GROOMS |

16737 APPLICATION OF JOHN AND LAURA CHADWICK |

16732 APPLICATION OF JIM BARNETT |

16744 APPLICATION OF THE HELLMAN COMPANIES/  
AMOCO OIL COMPANY |

16736 APPLICATION OF CIH RENAISSANCE  
LIMITED PARTNERSHIP |

16749 APPLICATION OF STEVEN AND SUSAN DAVIS |  
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Tuesday,  
July 24, 2001

Hearing Room 220 South  
441 4th Street, N.W.  
Washington, D.C.

The Public Hearing convened at 9:44 a.m., Sheila  
Cross Reid, Chairperson, presiding:

BZA MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE M. RENSHAW	Vice Chairperson
GEOFFREY GRIFFIS	Board Member
DAVID LEVY	Board Member
JOHN PARSONS	Zoning Commission Member

ALSO PRESENT:

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

BEVERLY BAILEY           Office of Zoning  
PAUL HART                Office of Zoning  
JOHN NYARKU            Office of Zoning  
DAVID MCGHETTIGAN    Office of Planning  
JOHN MOORE             Office of Planning  
JENNIFER STEINGASSER  Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

MARIE SANSONE, ESQ.  
CHRISTINE RODDY, Intern

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

(9:44 a.m.)

CHAIRPERSON REID: Good morning, ladies and gentlemen.

The hearing will please come to order. This is the July 24th public hearing of the Board of Zoning and Adjustment of the District of Columbia.

My name is Sheila Cross Reid, Chairperson.

Joining me today is Anne Renshaw, Vice Chair; Geoff Griffis; and also David Levy representing the National Capital Planning Commission; and John Parsons representing the Zoning Commission.

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 sitting to my right.

The order of procedure for special exceptions and variances is:

1. Statement and witnesses of the applicant.
2. Government reports including Office of Planning, Department of Public Works, et cetera.
3. Report of the Advisory Neighborhood

1 Commission, the ANC.

2 4. Parties or persons in support.

3 5. Parties or persons in opposition.

4 6. Closing remarks by the applicant.

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

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

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

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

22 Please turn off all beepers and cell phones at  
23 this time so as not to disturb these proceedings and also put  
24 them on vibrator.

25 The Board will now consider any preliminary

1 matters. Preliminary matters are those which relate to whether  
2 a case will or should be heard today such as requests for  
3 postponement, continuance or withdrawal or whether proper and  
4 adequate notice of the hearing has been given. If you are not  
5 prepared to go forward with a case today or if you believe the  
6 Board should not proceed, now is the time to raise such a  
7 matter.

8 Does the Staff have any preliminary matters?

9 MS. BAILEY: No, Madam Chair.

10 CHAIRPERSON REID: Let's proceed with the first  
11 case.

12 MS. BAILEY: Members of the Board, good morning.

13 To my left is Mr. Paul Hart and I'm Beverly Bailey.

14 The first case of the morning is Application  
15 Number 16731 of Barry W. Johnson, Jr., pursuant to 11 DCMR  
16 3103.2 for a variance under subsection 2001.3 to allow a roof  
17 deck addition to an existing nonconforming structure in an R-4  
18 District at premises 647 Massachusetts Avenue, N.E. (Square  
19 866, Lot 52).

20 All those persons wishing to testify would you  
21 please stand.

22 Please raise your right hand, sir.

23 Do you swear that the information that you'll be  
24 giving today will be the truth? Please say I do.

25 MR. JOHNSON: I do.

1 MS. BAILEY: Thank you. Please have a seat at  
2 the table.

3 Madam Chair, before members of the Board, there's  
4 an additional submission that the applicant asked that the  
5 Board accept this morning. That was placed in front of you.

6 We do have a letter of approval from the historic  
7 preservation review board. There's also a letter from ANC-6A  
8 in support. I should say from the single member district  
9 commission. It's 6A05 in support.

10 The property was properly posted and the  
11 affidavit of posting timely filed and this project is now ready  
12 to be heard by the Board.

13 CHAIRPERSON REID: Okay. I'm sorry. Prior to  
14 you beginning your case, sir, did have a preliminary matter  
15 that we have not yet taken up and that was basically for case  
16 number 16734.

17 Are the parties involved in that case here? The  
18 applicant here today? That is the Thomas B. Grooms case.

19 All right. Then, sir, we'd like for you while  
20 this case is going on talk to Mr. Nero of our staff. There may  
21 be something for him to discuss with you that maybe you might  
22 find helpful for you today. All right.

23 Thank you very much.

24 All right. Go ahead, sir.

25 MR. JOHNSON: I don't have too much to add to the

1 application.

2 CHAIRPERSON REID: Give your name and your  
3 address please.

4 MR. JOHNSON: My name is Barry Johnson. My  
5 address is 647 Massachusetts Avenue, N.E., Washington and I'm  
6 the person who's applying for the variance.

7 What I'm hoping to do is to add a rooftop deck or  
8 to complete a rooftop deck really on an additional to the house  
9 that was put on in the -- in the 1940s.

10 If you have the plot in front of you, you can see  
11 that the lot I have is -- is -- is an odd lot in that it faces  
12 both Massachusetts and Constitution Avenue which means that I  
13 essentially have two front yards and so, I'm requesting a  
14 variance to -- to put the deck on top of the -- the first --  
15 the one-story addition that's been put on back of the house.

16 There's already a door existing leading out onto  
17 that -- that space on top of the one-story addition. So, it  
18 wouldn't require any modifications to the house.

19 The project is being supported by the Capital  
20 Hill Restoration Society, the Stanton Park Neighborhood  
21 Association, the -- and the ANC and I have also given you today  
22 two letters from the neighbors, one, my immediate neighbor to  
23 the west and the other a neighbor directly across the street on  
24 Constitution Avenue both in support of the -- the project.

25 I think that the addition of the deck will give a

1 more complete look to the back of the house. Right now,  
2 there's just a -- sort of a flat roof that's not very  
3 attractive and the architect's plans I think make the project  
4 look more -- more finished particularly since it has a view  
5 from Constitution Avenue.

6 CHAIRPERSON REID: Okay. Is that all you have to  
7 say?

8 MR. JOHNSON: Yes.

9 CHAIRPERSON REID: Mr. Johnson, are you familiar  
10 with the three-prong test that you have to meet in order to  
11 make your burden of proof in order to receive the relief that  
12 you're requesting?

13 MR. JOHNSON: Yes, ma'am. I thought that the --  
14 the uniqueness of the property was the fact that it does face  
15 out onto two streets, two major streets, and is a rather odd  
16 shaped lot and, therefore, I don't really have any private yard  
17 at all because of the -- of the way the property spans through  
18 two major streets. I thought that made it unique.

19 CHAIRPERSON REID: Okay. Before you go there, on  
20 the survey --

21 MR. JOHNSON: Yes.

22 CHAIRPERSON REID: -- the way that this lot is  
23 configured, I'm a little confused. Can you explain it to me?

24 MR. JOHNSON: I'm sorry. Yes, the -- the front  
25 of the house faces out onto Massachusetts Avenue.

1 CHAIRPERSON REID: Right.

2 MR. JOHNSON: And then the back of the house  
3 faces Constitution Avenue.

4 CHAIRPERSON REID: Okay. I see that. Just --

5 MR. JOHNSON: So -- so, it kind of dog legs. The  
6 lot bends.

7 CHAIRPERSON REID: Right.

8 MR. JOHNSON: Because Massachusetts Avenue is a  
9 crooked street and Constitution Avenue is a straight street --

10 CHAIRPERSON REID: Yes.

11 MR. JOHNSON: -- and each of the -- the two  
12 facades of the house are perpendicular to the -- to the street  
13 that runs in front. The lot on Mass Avenue side is 18 feet  
14 wide. The lot on the Constitution Avenue side is only 16 feet  
15 wide.

16 CHAIRPERSON REID: Okay. But, the question is  
17 isn't that a feature that is similar to the other lots that  
18 abut your property?

19 MR. JOHNSON: The house -- the houses immediate  
20 to my left and right have the same feature, but mostly the  
21 houses on Mass Avenue in that block have a back yard because  
22 there's a -- as you go west, there are houses facing  
23 Constitution Avenue with Constitution Avenue addresses. So, as  
24 the block widens, the -- there are houses facing out onto the -  
25 - onto the street.

1 CHAIRPERSON REID: Okay.

2 MR. JOHNSON: So, there's only four houses --  
3 three or four houses that have my footprint.

4 CHAIRPERSON REID: Yes, but --

5 MR. JOHNSON: The house immediately to my right  
6 has a garage on their property.

7 CHAIRPERSON REID: Okay. I'm looking at the  
8 Sanborn map.

9 MR. JOHNSON: Yes.

10 CHAIRPERSON REID: And it appears that there are  
11 one, two, three, four -- four or five houses that are adjacent  
12 to your house and abut your house that all have that same  
13 configuration and so --

14 MR. JOHNSON: That's right.

15 CHAIRPERSON REID: -- the point I want to make to  
16 you, sir, is that you have to demonstrate how your property is  
17 unique from the other properties that are --

18 MR. JOHNSON: I see. The two houses to my east  
19 already have approve exemptions for rooftop decks. The two  
20 houses that are --

21 CHAIRPERSON REID: Exemptions or variances?

22 MR. JOHNSON: Variances I mean I -- I guess.  
23 They -- they both have rooftop decks already.

24 CHAIRPERSON REID: Okay. So, you say you guess  
25 or you know that they do?

1 MR. JOHNSON: Well, I know that they do have  
2 rooftop decks.

3 CHAIRPERSON REID: No. No, do you know if that  
4 are legal or not?

5 MR. JOHNSON: I'm sorry. I don't know that part.  
6 I'm sorry.

7 CHAIRPERSON REID: Okay. Well, see what happens,  
8 sir, is that oftentimes in a given community, this happens a  
9 lot.

10 MR. JOHNSON: Yes.

11 CHAIRPERSON REID: People will have illegal decks  
12 or garages or what have you and then people come to us and ask  
13 for a variance using those as an example saying well, these  
14 other people have this.

15 MR. JOHNSON: Yes.

16 CHAIRPERSON REID: But, that does not necessarily  
17 mean that those particular decks are legal.

18 MR. JOHNSON: Yes, ma'am.

19 CHAIRPERSON REID: So, all right. Go ahead.

20 MR. JOHNSON: Well, the practical difficulty that  
21 that footprint gives me is that there isn't any even  
22 semiprivate backyard space for sitting out and having dinner or  
23 reading the paper of anything like that because Constitution  
24 Avenue is a rather busy street which is the reason for -- for  
25 desiring to be able to go up and -- and put a deck on top of

1 the one-story addition that's -- that's already existing.

2 As I said, there's already a door onto that one  
3 story addition and has been used as a deck by the -- by the  
4 people who lived in the house before. It just doesn't have any  
5 railings or anything. It's not safe. It shouldn't be used  
6 that way.

7 So, what I'm proposing to do is to -- to  
8 -- to put a deck there. But, it wouldn't require any  
9 modifications to the house and then the third element of course  
10 is the -- the -- whether or not there's an adverse affect on  
11 the zone plan and the --

12 CHAIRPERSON REID: No. No, that's the practical  
13 difficulty. You're saying the practical difficulty is the fact  
14 that --

15 MR. JOHNSON: That -- that I don't have very much  
16 outdoor space and this outdoor space I have is -- is right on  
17 the street. There's no private outdoor space at all with my  
18 house. It's essentially having two front yards.

19 CHAIRPERSON REID: Okay.

20 VICE CHAIRPERSON RENSHAW: Mr. Johnson, you said  
21 that you got a letter from -- that we have now a letter from  
22 your neighbor to the east.

23 MR. JOHNSON: A neighbor to the west.

24 VICE CHAIRPERSON RENSHAW: To the west. How  
25 about to the east?

1 MR. JOHNSON: I -- I -- they had said that they  
2 would write one, but I -- they had been out of town a lot and I  
3 didn't get one. But, I -- they -- so, I don't have that for  
4 you today.

5 VICE CHAIRPERSON RENSHAW: All right. So, the  
6 two houses to the east that have decks have not written a  
7 letter?

8 MR. JOHNSON: They did not. No. But, they -- if  
9 -- if it matters, they both are in support of it and had  
10 promised letters. I -- I didn't --

11 VICE CHAIRPERSON RENSHAW: And you're not  
12 changing the footprint of the house at all?

13 MR. JOHNSON: No.

14 VICE CHAIRPERSON RENSHAW: You're just putting  
15 down some decking on top of the existing roof of the --

16 MR. JOHNSON: That's right.

17 VICE CHAIRPERSON RENSHAW: -- one-story addition  
18 and putting a railing around it.

19 MR. JOHNSON: Do you architect's --

20 VICE CHAIRPERSON RENSHAW: Yes, sir.

21 MR. JOHNSON: You do? Because I brought copies  
22 of the picture.

23 VICE CHAIRPERSON RENSHAW: Yes, we have them. We  
24 have what looks to be Exhibit Number 8.

25 MR. JOHNSON: Yes.

1 VICE CHAIRPERSON RENSHAW: That is what you have  
2 submitted.

3 MR. JOHNSON: Yes.

4 CHAIRPERSON REID: Have you seen the plan?

5 VICE CHAIRPERSON RENSHAW: I looked over their  
6 shoulder.

7 CHAIRPERSON REID: Okay.

8 MR. GRIFFIS: Madam Chair.

9 CHAIRPERSON REID: Yes.

10 MR. GRIFFIS: Also in the file is a letter from  
11 Capital Hill Restoration Society that is in support and I think  
12 it brings some pointed issues to this case. The first element  
13 of variance a uniqueness of property, it states that the lot is  
14 oddly shaped through lot with 79 percent coverage that proceeds  
15 these current zoning regulations.

16 The applicant has also stated that the second  
17 element of the variance practical difficulty because of the  
18 high lot occupancy applicant has no usable outdoor space.  
19 Also, I see in the file the pictures and as the applicant has  
20 stated there is construction or buildings on several of the  
21 lots that are there which is not the case in this current lot  
22 making somewhat of a uniqueness also in the practical  
23 difficulty of the usable outdoor space.

24 Then the third element I think has been well  
25 stated that this will have no adverse affect on the zone plan.

1 I think --

2 CHAIRPERSON REID: Was there a question?

3 MR. GRIFFIS: No, no question. I just wanted to  
4 make sure that we saw this and I think that, in fact, obviously  
5 the applicant would be in agreement of this and I just think  
6 this reiterates the case that's being made and this was helpful  
7 to me in looking at this case.

8 CHAIRPERSON REID: Okay. All right. When we get  
9 to the last part, closing remarks or the deliberation then if  
10 you'd like to reiterate that, the things that you just talked  
11 about, that would be great and then now the adverse impact.

12 MR. JOHNSON: Yes, I would say the -- the  
13 neighbor to -- immediately to my west would be the -- the only  
14 neighbor that would be even moderately affected because of the  
15 way the houses are angled.

16 CHAIRPERSON REID: Yes.

17 MR. JOHNSON: And she is in support of the  
18 project I think mainly because the design of the deck has open  
19 railings that won't cause anymore shade or affect -- affect the  
20 light in her yard and won't diminish the air that -- that she  
21 gets and -- and -- as -- as well as the rest of the block going  
22 up into the alley. It should really make no difference to --  
23 they shouldn't even notice the difference and -- and I don't  
24 think it's going to change -- I think it will improve the look  
25 of the house in the back and then actually make the -- that

1 side of Constitution Avenue look more complete than it does  
2 right now.

3 CHAIRPERSON REID: Okay.

4 MR. LEVY: Madam Chair.

5 CHAIRPERSON REID: Yes.

6 MR. LEVY: I'd just like to follow up, Mr.  
7 Johnson, on the question I think Ms. Renshaw raised about your  
8 neighbor to the east for whom you have not provided a letter of  
9 support. They have a roof deck that located on the top roof of  
10 the structure?

11 MR. JOHNSON: It's on the top of their house,  
12 yes.

13 MR. LEVY: And I'm having trouble seeing from the  
14 documents in the file how your proposed roof deck relates to  
15 the design of their house, the layout of their house and my  
16 concern is whether --

17 MR. JOHNSON: I --

18 MR. LEVY: -- there will be a noise impact or  
19 some other impact to their property.

20 MR. JOHNSON: I don't think so because of the way  
21 the -- the houses angle. They have a very small addition on  
22 the back their house that is their kitchen and above that I  
23 believe a bathroom, but the deck for the most part won't --  
24 there's a -- a large  
25 -- their -- their addition isn't as -- isn't as wide as their

1 house and is -- is justified to the east and my addition isn't  
2 as large as my house and it's justified to the west. So,  
3 there's actually quite a bit of space between the two additions  
4 and theirs doesn't come out as far as my deck would and I don't  
5 believe there's a second story window at all in that addition.

6 So, there's no -- it wouldn't be as though we're peering in  
7 second-floor windows while we're sitting there. So, it  
8 actually won't -- it shouldn't impact their privacy at all.

9 MR. LEVY: And you have discussed the project  
10 with them? They're aware of what you're planning to do?

11 MR. JOHNSON: Yes. Yes.

12 MR. LEVY: Okay. Thank you.

13 MR. JOHNSON: And they're fairly new neighbors  
14 and I -- I just have had trouble coordinating getting a letter,  
15 but they -- they offered to write one.

16 MR. LEVY: Thanks.

17 CHAIRPERSON REID: Okay. Mr. Johnson, to your  
18 knowledge, have you had any of your neighbors or anyone in the  
19 community in opposition to your case or who --

20 MR. JOHNSON: I haven't heard of anyone. No.  
21 Everyone has been supportive that I've spoken  
22 to --

23 CHAIRPERSON REID: Okay.

24 MR. JOHNSON: -- including people stopping by.

25 CHAIRPERSON REID: Okay. Thank you very much.

1 All right. We move now to government reports.

2 To my knowledge, we still don't have an Office of  
3 Planning report on this case. Did one not come in, Ms. Bailey?  
4 Still don't have one?

5 MS. BAILEY: No, Madam Chair.

6 CHAIRPERSON REID: Okay. So, then can we move to  
7 ANC report. I don't think -- you said that you did talk to the  
8 ANC?

9 MR. JOHNSON: I -- I gave you this morning a  
10 letter from the --

11 CHAIRPERSON REID: Oh. Okay. I'm sorry.

12 MR. JOHNSON: -- the ANC.

13 CHAIRPERSON REID: That's the one that we  
14 received. All right. Got ya. And --

15 MR. JOHNSON: She felt that it didn't need a  
16 letter from the full ANC body and so, she wrote me just a  
17 letter from --

18 VICE CHAIRPERSON RENSHAW: So, it's the single  
19 member district commissioner who wrote the letter?

20 MR. JOHNSON: Yes, that's right.

21 VICE CHAIRPERSON RENSHAW: Provided the letter.

22 CHAIRPERSON REID: We don't have a letter from  
23 the full ANC?

24 MR. JOHNSON: She didn't feel that was necessary  
25 because of the --

1 CHAIRPERSON REID: Okay.

2 MR. JOHNSON: -- the scope of the project.

3 CHAIRPERSON REID: Okay.

4 MR. JOHNSON: They debated it and liked it and  
5 she decided that it was easiest if she just wrote the letter.

6 CHAIRPERSON REID: That's Janet Quigley?

7 MR. JOHNSON: Yes.

8 CHAIRPERSON REID: And she says that there was no  
9 objection from the neighbors and that she's in support of the  
10 project.

11 Go ahead. Did you have something?

12 VICE CHAIRPERSON RENSHAW: No, I just wanted to  
13 ask Mr. Johnson did this matter come before the full ANC at  
14 all? Did she discuss it before the full ANC at a public  
15 meeting?

16 MR. JOHNSON: Yes, ma'am, it happened on I -- I  
17 believe it was the 11th. It was the -- the day before the  
18 Capital Hill meeting. They had a larger -- they were debating  
19 the -- the proposed hospital plans that night as well and so,  
20 they decided not to take up my time and -- and much of their  
21 time debating my thing. So, they -- but, they did discuss it  
22 and she said they were -- they were supportive.

23 VICE CHAIRPERSON RENSHAW: And it would be in the  
24 ANC public minutes?

25 MR. JOHNSON: It should be. Yes, ma'am.

1 VICE CHAIRPERSON RENSHAW: All right.

2 CHAIRPERSON REID: Okay. Typically, Mr. Johnson,  
3 if we don't receive a letter from the ANC, it is assumed that  
4 they have no opposition to your application. The only  
5 difference is that when they do give us a letter with quorum  
6 present and vote taken, receive what we call great weight. In  
7 this instance, we will take into consideration the fact that  
8 apparently there is no opposition, but it would not be afforded  
9 a great weight.

10 MR. JOHNSON: I see.

11 CHAIRPERSON REID: Yes. Okay. Then other  
12 government reports.

13 I think we have a letter from Historic  
14 Preservation and Historic Preservation Review Board basically  
15 they recommend that -- they support this particular application  
16 and it says that the addition will not alter the -- correctly  
17 define the features of the building of the historic district  
18 and staff had recommended that it be approved and it appears  
19 that they have approved it as signed by Steven Calcutt.

20 MR. JOHNSON: Calcutt.

21 CHAIRPERSON REID: Calcutt.

22 MR. JOHNSON: Yes.

23 CHAIRPERSON REID: Of the HPRD staff and then we  
24 did have -- I think --

25 VICE CHAIRPERSON RENSHAW: That's what Mr.

1 Griffis was --

2 CHAIRPERSON REID: -- that's the report. That's  
3 not a government.

4 VICE CHAIRPERSON RENSHAW: Okay.

5 CHAIRPERSON REID: Okay. And I think there are  
6 no other government reports.

7 Board members, do you know of any?

8 VICE CHAIRPERSON RENSHAW: No.

9 CHAIRPERSON REID: Okay. If not, then we move to  
10 persons in support. Seeing none. Persons in opposition.  
11 Seeing none. Then closing remarks by the applicant.

12 MR. JOHNSON: I just want to thank you for taking  
13 time to look at this --

14 CHAIRPERSON REID: There was -- excuse me. There  
15 were a couple of letters of support and let me  
16 -- I'm sorry.

17 MR. JOHNSON: No. No.

18 CHAIRPERSON REID: I skipped over. The Capital  
19 Hill Restoration Society and there was from Bill Cruz and Steve  
20 Kehoe and in effect, Mr. Geoffrey, had given us the salient  
21 points of that letter earlier. If you want to just basically -  
22 -

23 MR. GRIFFIS: Yes, I would just reiterate that I  
24 think the support from the Capital Hill Restoration Society  
25 speaks for itself in the letter and I think they've addressed

1 all three of the prongs of the test and frankly I am in  
2 agreement with the letter from the Restoration Society.

3 CHAIRPERSON REID: I think that one of the  
4 strongest points of that letter in my opinion, Mr. Geoffrey, is  
5 the fact that the non-conformance results in a 79 percent lot  
6 occupancy.

7 MR. GRIFFIS: Indeed.

8 CHAIRPERSON REID: Which certainly bolsters the  
9 case by Mr. Johnson.

10 MR. GRIFFIS: One other interesting issue that  
11 the applicant hasn't addressed, but did address in his letter,  
12 was the fact that 40 years ago there was a kitchen addition on  
13 this structure and then, in fact, there was an anticipation  
14 from the second story access to a roof deck.

15 CHAIRPERSON REID: Yes.

16 MR. GRIFFIS: It seems like it follows the form  
17 that was proposed and, of course, zoning did then come in. I'm  
18 not sure whether it was before or exactly after, but in any  
19 case, I think this structure, one, can accommodate that easily  
20 and two, I think it has the support that it needs and the case  
21 has been made.

22 CHAIRPERSON REID: Okay. All right. Thank you.

23 All right.

24 Closing remarks, Mr. Johnson.

25 MR. JOHNSON: Again, I'd just like to thank the

1 whole Board for taking time to look at this and -- and I was  
2 going to point out again that I did have just the two letters  
3 from -- from immediate neighbors and general support from the  
4 rest of the people in the block. When they received their  
5 letters, they were all rather enthusiastic about it and thought  
6 it would improve the -- the look of the back yard.

7 So, thank you.

8 CHAIRPERSON REID: Okay. Mr. Johnson, are you  
9 desirous of a bench decision summary order today?

10 MR. JOHNSON: Yes, if that's okay.

11 CHAIRPERSON REID: Board members?

12 VICE CHAIRPERSON RENSHAW: Agreed. Agreed.

13 CHAIRPERSON REID: Motion.

14 VICE CHAIRPERSON RENSHAW: Madam Chair --

15 CHAIRPERSON REID: Is there a motion?

16 VICE CHAIRPERSON RENSHAW: Madam Chair, I move  
17 that --

18 CHAIRPERSON REID: Or not?

19 VICE CHAIRPERSON RENSHAW: I move that the BZA  
20 approve the application of Barry W. Johnson, Jr. for a variance  
21 under Subsection 2001.3 to allow a roof deck addition to an  
22 existing nonconforming structure in an R-4 District at 647 Mass  
23 Avenue, N.E. (Square 866, Lot 52).

24 MR. GRIFFIS: Second.

25 CHAIRPERSON REID: Okay. And would you like to

1 bend the motion or read the --

2 VICE CHAIRPERSON RENSHAW: Mr. Johnson has spoken  
3 to the variance request. He has talked about the unique  
4 structure that his home is between two major streets and --

5 CHAIRPERSON REID: Irregularly.

6 VICE CHAIRPERSON RENSHAW: -- irregularly shaped  
7 and his practical difficulty is that he does not have any  
8 semiprivate backyard space, that the modification to the house  
9 is not going to change the footprint of the house, that there  
10 is not going to be any detriment to the zoning regulations and  
11 the map.

12 CHAIRPERSON REID: No adverse impact.

13 VICE CHAIRPERSON RENSHAW: And no adverse impact.

14 CHAIRPERSON REID: And also, there's a 79 percent  
15 lot occupancy.

16 VICE CHAIRPERSON RENSHAW: Correct.

17 CHAIRPERSON REID: Okay. Any further discussions  
18 with members? Okay.

19 All in favor.

20 (Ayes.)

21 CHAIRPERSON REID: Opposed?

22 MS. BAILEY: Staff will record the vote as 5-0-0  
23 to approve the application. Motion made by Ms. Renshaw.  
24 Seconded by Mr. Griffis. Ms. Reid, Mr. Levy, and Mr. Parsons  
25 in agreement.

1 CHAIRPERSON REID: Okay. Thank you very much.  
2 You should receive your order in approximately two to three  
3 weeks, but don't call them. They'll --

4 MS. BAILEY: Next case, Madam Chair?

5 CHAIRPERSON REID: Next case please.

6 MS. BAILEY: Application Number 16741 of Greg and  
7 Holly Porter, pursuant to 11 DCMR 3103.2 for a variance to  
8 allow roof deck addition to an existing nonconforming apartment  
9 building under subsection 2001.3 in an R-5-B District at  
10 premises 1523 Vermont Avenue, N.W. (Square 278, Lot 818).

11 Please stand to take the oath. Raise your right  
12 hand.

13 Do you swear the information that you'll be  
14 giving today will be the truth? Please say I do.

15 MS. PORTER: I do.

16 MS. BAILEY: Thank you.

17 CHAIRPERSON REID: Okay.

18 MS. PORTER: Hello, my name is Holly Porter. I  
19 am the owner of the property. This is Bill Bonstra an  
20 architect and also a neighbor of mine. He lives two doors  
21 down.

22 We are here today seeking a variance in order to  
23 build a rooftop deck on the top of our house. The property,  
24 and the reason that we're here, is exceptionally shallow which  
25 is why we're seeking the variance.

1           The footprint of the house sits on approximately  
2           our entire amount of land with perhaps about a 5 percent amount  
3           in the back of the land and it's because of the street  
4           situation and an alley behind my house that creates the  
5           shallowness.

6           I live on a diagonal street. My house faces that  
7           diagonal street and there's an alley immediately to my north  
8           that runs back around my house and is immediately to my rear of  
9           my house. So, I'm bounded on all four sides by something other  
10          than any land that we own with the exception of the 5 percent  
11          in the back.

12          My property is the most shallow lot on my block  
13          that has alley access. So, the alley and the diagonal street  
14          are creating the triangle that causes me to have the small lot  
15          which is why we're here.

16          My house was built 110 years ago approximately  
17          and we have not added any additions onto the land -- the house.  
18          It -- it sits on that land and that was how it was built.

19          We are seeking private outdoor space. Our front  
20          yard as is most of the front yards is a -- a publicly owned  
21          type situation where we just have the  
22          -- the land that we have and we're seeking out the outdoor  
23          space.

24          As far as the area impact and the public good, we  
25          have gone to Historic. I live in an historic district.

1 Historic approved it and asked us to do a couple of things  
2 which we have agreed and put on the plans.

3 One is instead of having a pop-up deck top to  
4 access it from the -- from the -- the top of the house, we've  
5 agreed to go back out a metal staircase so that you can't see  
6 it from the street. Because I'm on the alley, you have the  
7 full visibility of seeing not just the front of my house, but  
8 the side. So, we have said we'd go up the back which creates -  
9 - we'll have a spiral staircase if approved which also covers  
10 about that 5 percent of land that we do have that accesses the  
11 rear of the property. That's where the spiral staircase will  
12 be above that. So, it'll be sort of in the air space of that  
13 property.

14 They also ask that we move a railing in so that  
15 it was not as visible from the street which we agreed to do and  
16 also raise the parapet of the house just a couple of bricks so  
17 that you couldn't see the wooden deck structure and all you  
18 would be seeing is the railing.

19 I have thus gotten support from Historic. I have  
20 support from my Logan Circle Community Association Historical  
21 District. I have my neighbors support, the two south of me,  
22 the one across the street, the one north of me, and the one  
23 behind me who actually their -- their backyard is really north  
24 of me, but they're really behind me. So, I have my -- all my  
25 surrounding neighbors support and I have heard of no complaints

1 from anybody else in my neighborhood.

2 I also have ANC support. I went to the Community  
3 Development Committee meeting where they supported -- voted to  
4 support it and they -- although there wasn't time to get a  
5 letter, I have the letter from the Community Development  
6 Committee saying they support it and the ANC -- when the  
7 support -- the report is read at the ANC Committee has always  
8 voted in support of the Community Development Committee's  
9 recommendations.

10 As far as impact on zoning, I do not feel that it  
11 impairs the zoning at all, but rather furthers the goals of the  
12 zoning. The deck will give us light and air to our property.  
13 It will give us a recreational use to our property which we now  
14 have not.

15 It gives us an emergency exit. Our only exit  
16 right now is through the front door of our house and we now  
17 have a three-story house. This gives us rooftop exit where we  
18 can cross over to other roofs in case of emergency.

19 And I definitely believe it will increase  
20 property values in my neighborhood. My -- my neighborhood is  
21 going through immense building of condos and that sort of thing  
22 and a rooftop deck is considered highly valuable.

23 CHAIRPERSON REID: Thank you very much. Let's  
24 see here now.

25 Ms. Porter, I think that given the various

1 aspects of your case, I don't think that -- is there anyone  
2 else here either in support or in opposition to this case?

3 MS. PORTER: My architect supports it.

4 CHAIRPERSON REID: I wonder why. Was there  
5 anyone else who was in opposition to your case that you know of  
6 once you posted it?

7 MS. PORTER: Nobody has. Nobody has expressed  
8 any opposition to me --

9 CHAIRPERSON REID: Okay. Okay.

10 MS. PORTER: -- whatsoever.

11 CHAIRPERSON REID: I think that this Board has  
12 read the materials that have been submitted for the most part  
13 and as such, we can expedite your case.

14 MS. PORTER: I would like that. Yes.

15 CHAIRPERSON REID: And since there is no  
16 opposition and we do have the approval of the Office of  
17 Planning as well the Historic Preservation Review Board with  
18 their suggests for the modifications which you have put on  
19 record that you have accepted and have now --

20 MS. PORTER: With Historic.

21 CHAIRPERSON REID: -- incorporated with them --

22 MS. PORTER: Right.

23 CHAIRPERSON REID: -- in your particular  
24 application within your plans and that the ANC even though they  
25 did not have the full ANC meeting that there was a meeting of

1 their Community Development Committee and they approved it and  
2 they -- my understanding was that they -- full ANC usually  
3 always takes the recommendation of the CDC. The ANC will not  
4 receive great weight nonetheless. We will take into  
5 consideration the fact that it was approved through the CDC of  
6 the ANC-2F and as such, Board members, do you have any  
7 questions regarding this case? I'll allow -- open the floor  
8 for questioning. If not, then we can move forward with closing  
9 remarks.

10 Oh, also, I should note that you did have several  
11 letters of support for your application and again that there  
12 was no opposition. Okay.

13 MS. PORTER: I just want to thank the committee  
14 for hearing it and do you have any final comments?

15 MR. BONSTRA: Unclear of the procedural aspects  
16 of this, but it possible, we'd like to have an expedited order.

17 I understand it was two, three weeks. It that could be  
18 expedited, we'd -- we'd greatly appreciate that.

19 CHAIRPERSON REID: All right.

20 VICE CHAIRPERSON RENSHAW: Would you give your  
21 name please?

22 CHAIRPERSON REID: And address?

23 MR. BONSTRA: Yes, I'm sorry. William Bonstra.

24 CHAIRPERSON REID: And address.

25 MR. BONSTRA: 1519 Vermont Avenue, N.W.

1 CHAIRPERSON REID: Okay. And basically, you're  
2 asking for a bench decision summary order?

3 MR. BONSTRA: Anything to expedite the --

4 CHAIRPERSON REID: Whatever huh?

5 MR. BONSTRA: If that's what I'm asking, then  
6 that's what I'm asking.

7 CHAIRPERSON REID: All right. Okay. Thank you  
8 very much.

9 Board members, comments, motions, discussion.

10 COMMISSIONER PARSONS: Madam Chairman, I would  
11 move we approve this application. I think the rationale is  
12 excellently summarized in the Office of Planning report.

13 CHAIRPERSON REID: Okay. I would second it. All  
14 in favor?

15 (Ayes.)

16 CHAIRPERSON REID: Opposed?

17 MS. BAILEY: Staff will record the vote as 5-0 to  
18 approve the application. The motion was made by Mr. Parsons.  
19 Seconded Ms. Reid. Mr. Griffis, Mr. Levy, and Ms. Renshaw in  
20 agreement. Summary order bench decision.

21 MS. PORTER: Thank you very much.

22 CHAIRPERSON REID: Thank you.

23 MR. BONSTRA: Thank you.

24 VICE CHAIRPERSON RENSHAW: May we ask is it a boy  
25 or a girl?

1 MS. PORTER: This is Lucy. This is my little  
2 girl. I had her five weeks ago and she comes with me  
3 everywhere now. So.

4 VICE CHAIRPERSON RENSHAW: Maybe as you go out  
5 you will just turn enough so we can see Lucy's face?

6 MS. PORTER: I'd love to show her off.

7 VICE CHAIRPERSON RENSHAW: Oh. Isn't she  
8 adorable.

9 CHAIRPERSON REID: Lucy's sleeping.

10 VICE CHAIRPERSON RENSHAW: A little tired. Oh,  
11 she is so sweet.

12 CHAIRPERSON REID: This is also someone in  
13 support I'm sure.

14 MS. PORTER: Oh, definitely. Thank you.

15 VICE CHAIRPERSON RENSHAW: And she was so well  
16 mannered.

17 MS. BAILEY: Madam Chair?

18 CHAIRPERSON REID: Yes.

19 MS. BAILEY: Ready?

20 CHAIRPERSON REID: Yes.

21 MS. BAILEY: Application Number 16734 of Thomas  
22 B. Grooms, pursuant to 11 DCMR 3103.2 for a variance from  
23 subsection 2001.3 to allow a read addition to a nonconforming  
24 structure devoted to a conforming use. This is a single family  
25 dwelling. It's located in the CAP/R-4 District at premises 500

1 D Street, N.E. (Square 836, Lot 821).

2 All those wishing to testify, please stand and  
3 raise you right hand.

4 Do you swear the information that you will be  
5 giving today will be the truth? Please say I do.

6 MR. GROOMS: I do.

7 MR. FINN: I do.

8 MS. BAILEY: Thank you.

9 CHAIRPERSON REID: Okay.

10 MR. FINN: May we -- may we begin? Where is the  
11 volume?

12 CHAIRPERSON REID: You have to turn on your mike.  
13 Be sure as you speak give your name and your address.

14 MR. FINN: My name is Michael Alan Finn. I  
15 reside at 2402 Chain Bridge Road, N.W., Washington, D.C. 20016  
16 and I'm an architect in the District of Columbia and I'm here  
17 to help out and present Mr. Thomas Grooms who is the owner.

18 MR. GROOMS: Good morning. My name is Thomas  
19 Grooms. I live at 500 D Street, N.E. and I'm the owner of the  
20 property.

21 We've come here today to ask for a variance to a  
22 nonconforming use in order to tear down the second-story porch  
23 and close it and build an addition on top.

24 The footprint of the house will not be expanded.  
25 The reason for the variance is that the house where the

1 addition is proposed is set back two feet and is considered an  
2 open court which is a nonconforming use.

3 I think it's probably best to have Michael  
4 explain this in more detail to you.

5 MR. FINN: Basically, these -- can I take this  
6 up? Is that okay?

7 CHAIRPERSON REID: Okay.

8 MR. FINN: What -- what I want to show here in  
9 these drawings is making an easy drawing to look at a more or  
10 less before and after what we're proposing here. Here's the  
11 5th Street elevation of the existing dwelling showing this  
12 covered porch and what we're proposing here is to basically  
13 enclose this porch and build a second story on top and raise  
14 the roof on this portion of the building.

15 If you look at the site plan, we have what seems  
16 to be sort of a classic case of a practical difficulty.  
17 According to a strict interpretation of the zoning regulations,  
18 we have an existing nonconforming court. So, basically, what  
19 we're doing is just building on top of this and extending this  
20 nonconforming use.

21 It's -- it's actually a curiosity to me as to why  
22 we're here because in actuality this court couldn't never be a  
23 court because one side of it even though it's a property line  
24 actually faces a street. So, by definition, we would never  
25 have an enclosed space.

1                   So, we're here basically because of a -- of a  
2 strict interpretation where in actuality we would never have a  
3 court in this space.

4                   CHAIRPERSON REID: No.

5                   MR. FINN:       So, we -- we have a lot of  
6 neighborhood support. We're -- I was working with Steve  
7 Calcutt at Historic Preservation and he has a letter of support  
8 of the -- of the project and the Capital Hill Restoration  
9 Society rather enthusiastically supports it and the Stanton  
10 Park Neighborhood Association supports it and I believe you  
11 should have a letter from the ANC in support, too.

12                   So, Tom Grooms here has a series of letters from  
13 all of the adjoining neighbors who also enthusiastically  
14 support the project.

15                   So, basically, that's it.

16                   MR. GROOMS:     By way of explanation for the  
17 addition, currently it is a two-family or two-apartment house.

18                   There is no connection between the first floor and the second  
19 and third floor. The addition is to put in a staircase to make  
20 it a single family house for myself to connect the entire house  
21 and also to connect the backyard. At present, there is no  
22 connection to the backyard from the second floor. You have to  
23 go out the front entrance and around because it's a L-shaped  
24 lot. Actually two lots were -- were combined about I think 25  
25 or 30 years ago.

1                   As Michael explained, I have letters from  
2 actually three neighbors. But, probably of most interest to  
3 you are the immediate neighbors to the east, five neighbors and  
4 the five neighbors immediately to the -- to the north who  
5 potentially might be affected by this, but they have no  
6 problem. The Restoration Society has found that there would be  
7 no adverse, you know, affect in terms of the light on the  
8 neighbors.

9                   Actually, my immediate neighbor has signed a  
10 letter giving permission to go on her property to actually, you  
11 know, build the wall. Actually give her more privacy in the  
12 backyard because currently this porch looks down over her yard.

13                   CHAIRPERSON REID: Okay. Any further questions,  
14 Board members?

15                   MR. LEVY: Madam Chair, I have a question. You  
16 talked about the neighbor to the east.

17                   MR. GROOMS: Yes.

18                   MR. LEVY: Directly to the east. There is a  
19 letter in the file from that neighbor?

20                   MR. GROOMS: I can give you copies of all the  
21 letters. Specially, hers were -- you want all these letters?

22                   MR. LEVY: I'm sorry.

23                   MR. GROOMS: I have copies of all the letters if  
24 you would like them including hers.

25                   MR. LEVY: I'd like to see those.

1 MR. GROOMS: Sure.

2 MR. LEVY: Just you can give it to the staff.

3 MR. GROOMS: Oh. Okay.

4 MR. LEVY: What is the name of the neighbor  
5 directly to the east?

6 MR. GROOMS: Katherine Maloy.

7 MR. LEVY: Thanks.

8 MR. GROOMS: The 502 D Street.

9 MR. LEVY: Thank you.

10 MR. GROOMS: I would be the third letter in your  
11 packet.

12 MR. GRIFFIS: Madam Chair, I had a quick question  
13 for the applicant in terms of the practical difficulty. Can  
14 you speak a little bit more as to the areas or elements that  
15 you give the practical difficulty and essentially how this is  
16 helping that?

17 MR. FINN: Well, for -- for example, since it's a  
18 -- since it's a corner house as -- as far as I can understand  
19 the zoning regulations, if our address were actually on 5th  
20 Street where the front door is, we wouldn't need the variance  
21 because it's -- it's impossible to have anything other than an  
22 open court on this -- on this side of the property because it  
23 faces the street.

24 Typically and -- and, you know, in Capital Hill  
25 these -- this -- this type of house were -- were built in rows

1 where they had the dogleg courtyard and the width -- the  
2 minimum width of the courtyard was established to get light and  
3 air within -- within the open court at the back of the house,  
4 but in this case, it's impossible because the property is --  
5 even though the house goes from property line to property line,  
6 the west property line is on the street since it's a corner  
7 house. So, we're -- by reading the zoning regulations  
8 literally, we do have a courtyard, but if -- if -- from a  
9 practical point of view, it's impossible because it faces the  
10 street. So, it'll always been open to the light.

11 Did I get that -- that clear?

12 MR. GRIFFIS: Yes, I think --

13 MR. FINN: It's kind of complicated in a way.

14 MR. GRIFFIS: I think there's a next step. In  
15 your letter, you indicated that perhaps due to the historic  
16 nature of the house, you could not in fill that courtyard or  
17 that it couldn't be dealt with even though by definition  
18 perhaps you could redefine it as if the address changes on the  
19 street so that it was just a set back and not an open court.  
20 So, the historic nature of the house perhaps is lending to that  
21 practical difficulty.

22 Let me ask directly perhaps. I think another  
23 important element that I saw and again the Capital Hill  
24 Restoration Society letter in your case file indicates that  
25 there is actually no communication stair between the floors.

1 Is that correct?

2 MR. GROOMS: Yes, that's what I was explaining.

3 MR. GRIFFIS: Oh, I may have missed that.

4 MR. GROOMS: This -- this -- the original part of  
5 the house was built I believe in 1875 and it's the -- the  
6 second and third floor is stucco over wood. In 1908, the house  
7 was jacked up and the first floor was added and it was a  
8 commercial floor which is why there's a -- a bay.

9 MR. GRIFFIS: A bay.

10 MR. GROOMS: So, there is no connection then  
11 between the first floor and the second and third floor  
12 internally.

13 MR. GRIFFIS: And you've already said that? I  
14 missed that, too, I believe.

15 MR. GROOMS: Right. All right. I'm sorry.

16 MR. GRIFFIS: Where was I?

17 CHAIRPERSON REID: Talking.

18 MR. GRIFFIS: Oh, forgive me.

19 MR. GROOMS: And the same, there's no way to get  
20 to the backyard.

21 MR. GRIFFIS: Indeed. Indeed.

22 MR. FINN: Basically, if -- if we could fill in  
23 the court because it goes to property to property line and then  
24 we wouldn't need a variance either, but we can't do that  
25 because the historic, you know, facade that we're, you know,

1 obligated to keep and that we want to keep to maintain the  
2 character of the house. So, we're sort of trapped in these  
3 rigid interpretations.

4 MR. LEVY: Madam Chair?

5 MR. FINN: Not that the Historic is rigid because  
6 we agree with everything they say basically.

7 MR. LEVY: This might seem like kind of an  
8 obvious question, but I'll ask it nevertheless. I'm assuming  
9 that there are no windows on your immediate neighbor's house on  
10 the west side, on the party wall that abuts the existing porch.  
11 Is that correct? Does that make it clear?

12 MR. FINN: Yes, actually -- it was shown that on  
13 the drawings. That -- that little side view. Right over --

14 MR. GROOMS: Yes, that's -- that's -- that's  
15 correct.

16 MR. LEVY: I mean --

17 MR. FINN: The -- the house immediately to the  
18 east --

19 MR. LEVY: To the east, yes.

20 MR. FINN: -- comes currently maybe only about a  
21 foot and a half or two feet out to where the porch is kind of  
22 thing.

23 MR. LEVY: Okay.

24 MR. FINN: And then that house ends and then they  
25 have a very small backyard. Probably -- well, about the same

1 size as the porch take off the two feet. It's ten by -- I  
2 think their -- their lots are 16 feet wide and this lot is 18  
3 feet wide.

4 MR. LEVY: And so, it's just a small portion of  
5 blank wall extends. Okay.

6 MR. FINN: Right. If -- if I can add one more  
7 thing, these houses immediately to the east of -- of this  
8 property actually have rather an intimate connection to this  
9 house because there's an easement through the rear yard that  
10 allows all three of these houses to access the street. So,  
11 they're all sort of interconnected.

12 CHAIRPERSON REID: Any other questions? Were  
13 those questions?

14 I just wanted to -- one, I just wanted a quick  
15 question. On the survey, the way that this lot is configured  
16 it appears to be L-shaped.

17 MR. GROOMS: Yes. It's -- at one time, the  
18 owners owned all four lots and then in 1892, the two houses to  
19 the east were built, 502 and 504. They kept two lots the L-  
20 shaped lot. So, initially, they were -- they were two lots.  
21 They were combined about 30 years ago into one which is why  
22 it's L-shaped and why they have a three-foot easement, you  
23 know, for access.

24 CHAIRPERSON REID: Yes. Oh. Okay. All right.  
25 Thank you very much.

1 Now, is there anyone else here that is affiliated  
2 with this case at all? All right.

3 Then, what we can do now is also expedite your  
4 case as well.

5 There does not appear to be anyone in opposition  
6 to your case, Mr. Grooms and there you can stand on record as  
7 to the other aspects of your case for the most part.

8 To my knowledge, there was no Office of Planning  
9 report. Was there?

10 And to your knowledge, you didn't have anyone who  
11 made any complaint to you or was opposed to your case at all?

12 MR. GROOMS: No.

13 CHAIRPERSON REID: Okay. There is a letter from  
14 the ANC, but it is the Zoning and Licensing Committee of the  
15 ANC in support of your application. I don't think that we had  
16 any other letter from the full ANC.

17 Ms. Renshaw, do you know?

18 VICE CHAIRPERSON RENSHAW: No, we did not.

19 CHAIRPERSON REID: All right. And the -- go  
20 ahead, Ms. Renshaw, if you wanted to.

21 VICE CHAIRPERSON RENSHAW: Just to say that the  
22 ANC is going to be meeting after this hearing. So, that it was  
23 not -- it's going to be meeting on the 26th.

24 CHAIRPERSON REID: Okay. And the letter that we  
25 have is from Mr. Jerry Burrell who was the Chair of the Zoning

1 and Licensing Subcommittee who supports this application. We  
2 had a letter from Historic Preservation in support of the  
3 application as well and basically, they were reiterating many  
4 of the aspects of the property that you had pointed out to us  
5 in regard to the nonconforming aspect of the property making it  
6 very difficult to comply with the existing zoning regulations  
7 particularly as pertains to the court and it also speak to the  
8 fact that the left is oddly shaped with the rear wing set back  
9 and they're in support of your application.

10 There is no opposition that we know of to the  
11 case. So, we move now to the closing remarks.

12 MR. GROOMS: I have nothing more unless you have  
13 any questions.

14 MR. FINN: Could I just --just to clarify one  
15 thing. I actually did meet with Maxine Brown Roberts at the  
16 Office of Planning.

17 CHAIRPERSON REID: Yes.

18 MR. FINN: And we were both trying to figure out  
19 a way not to come before the Board because of this literal  
20 translation of the zoning regulations.

21 CHAIRPERSON REID: Yes. Yes.

22 MR. FINN: You know, we just couldn't. So, I  
23 thought -- the Office of Planning is aware of this project.

24 CHAIRPERSON REID: Okay. Okay. So, are you  
25 asking for a bench decision summary order?

1 MR. GROOMS: Yes.

2 CHAIRPERSON REID: Decision today? All right.  
3 Board members, discussion, motion --

4 MR. GRIFFIS: I would approval of Application  
5 16734 by Thomas B. Grooms for a variance from subsection 2001.3  
6 to allow a rear addition to a nonconforming structure devoted  
7 to a conforming use.

8 VICE CHAIRPERSON RENSHAW: Second.

9 CHAIRPERSON REID: And also, Mr. Griffis, can you  
10 please just give your -- defend the motion as to why you feel  
11 they should be given an --

12 MR. GRIFFIS: Absolutely. I think first of all  
13 it's been a strong case that's put on. The property is clearly  
14 unique in terms of it's shape and also in terms of its  
15 configuration with the addition of a commercial base I think  
16 and it's historic nature and I think those uniqueness have  
17 actually lead into it's practical difficulty in terms of  
18 changing and use as a single family residence and I believe  
19 that from the plans and the case presented today that there  
20 would be no adverse impact to the zone plan.

21 CHAIRPERSON REID: And also, I would add I concur  
22 with my colleagues, but also the fact that because of the  
23 nonconforming aspect of the rear yard and the inability to  
24 provide a rear court in the first place, the practical  
25 difficulty, the applicant could not -- it would cause practical

1 difficulty for the applicant to be able to comply with the  
2 existing zoning regulations and I think would not impair the  
3 integrity and intent of the zoning regulations in that.

4 All in favor?

5 (Ayes.)

6 CHAIRPERSON REID: Opposed?

7 MR. GROOMS: Thank you very much.

8 MS. BAILEY: Staff will record the vote as 5-0-0  
9 to approve the application. The motion was made by Mr.  
10 Griffis. Seconded by Ms. Renshaw. Ms. Reid, Mr. Levy, and Mr.  
11 Parsons in agreement. Summary order and bench decision.

12 CHAIRPERSON REID: You should have it in  
13 approximately three weeks, Mr. Grooms, your order.

14 MR. GROOMS: Thank you.

15 CHAIRPERSON REID: Thank you very much.

16 Okay. The last case of the morning.

17 MS. BAILEY: Application Number 16737 of John and  
18 Laura Chadwick, pursuant to 11 DCMR 3103.2 for a variance to  
19 allow a fourth floor addition to a nonconforming building under  
20 subsection 2001.3, and a variance from the story limitations  
21 under section 400, in an R-3 District at premises 1406 30th  
22 Street, N.W. (Square 1257, Lot 234).

23 Sir, would you please stand and raise your right  
24 hand.

25 Do you swear the information you'll be giving

1 today will be the truth? Please say I do.

2 MR. SNOWBER: I do.

3 MS. BAILEY: Thank you.

4 CHAIRPERSON REID: Okay. All right. Give your  
5 name and -- give your name. Turn on the mike, sir, and give  
6 your name and your address.

7 MR. SNOWBER: My name is -- I'm sorry.

8 CHAIRPERSON REID: Turn the mike on.

9 VICE CHAIRPERSON RENSHAW: Press the button.

10 CHAIRPERSON REID: The light will come on. Yes.

11 MR. SNOWBER: Got it. Thank you.

12 My name is Chris Snowber. My address is 2741  
13 Woodley Place, N.W., Washington, D.C.

14 I'm an architect with Hamilton, Snowber  
15 Architects and I'm here to represent John and Laur Chadwick.

16 CHAIRPERSON REID: And?

17 MR. SNOWBER: Can I go ahead and present? Okay.

18 CHAIRPERSON REID: Yes.

19 MR. SNOWBER: I guess -- how do you want to do  
20 it? All right. Okay.

21 I want to first of all apologize for the  
22 nonappearance of John and Laura Chadwick. They had a death in  
23 the family over the weekend and are out of town until at least  
24 tomorrow. They were planning to be here as part of the  
25 presentation.

1           They did ask me to convey their appreciation for  
2 the Board's review of the project and their desire in all of  
3 their efforts with us, they've always expressed their desire  
4 with me, to try to obtain the goals they want for the house,  
5 but at the same time work within the -- the character of  
6 Georgetown and the -- and the buildings around it and while  
7 we're having to ask for a -- a variance to try to make the  
8 additions to the house as minimal as possible and make the  
9 least impact on the surrounding neighborhood.

10           I'll just give a brief explanation of the  
11 project. I assume you have all the materials in front of you  
12 regarding the project.

13           Okay. The -- the project is -- we're asking for  
14 a variance under two -- two sections of the code. What -- what  
15 the essence of the project is is to add a dormer to the rear of  
16 the project. It is -- the existing third story of the  
17 residence is a -- excuse me, the existing attic of the  
18 residence is currently occupied by a small bedroom and bathroom  
19 space. It was put in by the previous owners, but as you can  
20 see in the building sections, I think you have these materials,  
21 there's -- this is -- this is an existing building section  
22 showing that a very minimal portion of the actual attic is  
23 occupiable by people. This very small portion here has about a  
24 seven foot head height. Everything else is between four and  
25 seven feet and, in fact, on the plan here, this very small

1 swath down the middle is where you can actually walk.

2 They took an existing attic. They put a bath and  
3 a bedroom up there, but it's not really -- other than this  
4 little space you can walk down in between. I mean when you're  
5 -- you can barely sort of stand in the shower or sit in --  
6 stand in front of the sink.

7 So, the -- so, the attic is -- is -- is not  
8 adequate for actually being a real room. It doesn't meet any  
9 of the building code requirements for minimum space  
10 requirements and so, when they came in and they wanted to use  
11 this as a bedroom, they -- they saw that they were going to  
12 have to revise it.

13 I -- I -- I assume that the previous renovation  
14 did not get a building permit because it would -- would not  
15 have been permissible.

16 So, anyhow, so they -- they asked me what could  
17 we do and we -- my proposal was to add a dormer to the rear of  
18 the project which -- which changes the usable area of the house  
19 considerably just -- or that -- that -- that attic space. It  
20 brings a dormer out to within two feet of the rear of the  
21 building. Comes in three feet on one side, two feet on the  
22 other and creates a space ranging in height from about seven  
23 foot four at one end to seven foot eight at the other and makes  
24 a room that's not very large. It's about -- I think they end  
25 up with about 14 by 12 feet inside plus the bathroom space.

1 It's a fairly -- space, but it -- it does meet the building  
2 code requirements.

3 So, that -- that is the -- the purpose of the  
4 project and our goal was to create a dormer that again had a  
5 minimum impact and we then proceeded with the outside design to  
6 try to work it in with other dormers that you might see in  
7 Georgetown. It's a shed dormer. It is covered on the outside  
8 with stucco that would be complimentary to the mortar material  
9 on the brick house that exists now and it has more or less a  
10 flat roof. It slopes towards the rear. The existing -- the  
11 proposed addition does not rise any higher than the ridge on  
12 the front of the house or at the center of the house here. So  
13 that, as you can see from the photographs there, it is not  
14 visible from the front of the house at all and there is no  
15 public space from which it actually is visible.

16 There's a rendering in the lower right here sort  
17 of the -- of -- of the ground side of the -- the worm's eye  
18 view of the project, but that is from  
19 -- from private space. It's not from any public space.

20 So, that -- that is sort of the goal of the  
21 project. We've reviewed the project with the Old Georgetown  
22 Board. It's been approved in concept by them. If -- if we get  
23 approval by the BZA, we -- we have to go back and show them  
24 detailed drawings. But, they've approved in concept the -- the  
25 whole massing, the materials, the windows, the whole project in

1 general and we've been before the ANC and they gave us their  
2 support which I think you have a letter in the file there  
3 stating their I think unanimous approval of it. I presented it  
4 earlier in June before them.

5 In addition, there is some neighbors -- there is  
6 some -- there is a letter which several neighbors have signed.

7  
8 Well, even in the file, you've probably also seen  
9 there's one letter from the adjacent neighbor. This house  
10 here. Again, that's -- that's the rear view of the project. I  
11 think there are photos you've seen there which show the front  
12 view.

13 The neighbor to the -- to the side which is the  
14 adjacent townhouse and the matching townhouse has expressed  
15 some concern about it if you read the letter. I think from  
16 reading the letter, you can see that she's -- she's the woman  
17 who owns the house. Apparently rents it and lives in Italy for  
18 she's stationed abroad according to the letter and I think from  
19 reading the letter you can see that she has not been able to  
20 see the drawings. She -- she seems to be under the impression  
21 when you read the letter that the -- the addition is going on  
22 the front of the house not on the rear of the house and that  
23 she is concerned is it a fifth story or what does it mean that  
24 it's a fourth story.

25 When I saw the letter a couple of weeks ago, I

1 immediately -- she had given onto the copy --head of her letter  
2 her fax number or e-mail number. I put together a whole  
3 package of -- of drawings. I faxed it to her at the fax number  
4 she gave. I e-mailed her several times. I left phone messages  
5 with individuals at her house, but she never called me back.  
6 So, I don't -- I -- I want -- you know, the tone of my letter  
7 was, you know, I think you are against it and -- any maybe on  
8 some misunderstandings of what the project is. She -- but, I  
9 never got a response.

10 So, that is -- was the one negative comment I'd  
11 heard about it, but I -- I've never been able to get any  
12 response from her to try to get her to maybe have a better  
13 understanding of the project before she made a judgment on  
14 exactly how she felt about it.

15 In any event, the -- the reason we're here before  
16 you is that we have -- the project because it is an attic and  
17 is -- there are existing three stories on the house, a garage  
18 occupies the first floor. Then there's living space on the  
19 second floor and third floor and then this is the attic.  
20 Technically, when we raise that roof up, we turn it into a  
21 usable story and the building is called a fourth story -- it's  
22 called a fourth story and so, it -- under the 400.1 in this  
23 zone, you're not allowed to have the -- a building cannot  
24 exceed the 40-foot height nor the three-story limitation. We  
25 do not exceed the 40-foot height. We're only at 36 feet and

1 we're not changing that, but -- but this does turn it into a --  
2 technically a fourth story and, therefore, we have to seek  
3 under -- from the BZA.

4 The -- the other variance that we have to seek is  
5 related to 2001.3 which is because the -- the existing lot is  
6 nonconforming. It has -- it's less than the minimum area. It  
7 is -- has a less than adequate rear yard and it's -- since it  
8 is not technically a row house because it doesn't go property  
9 line to property line, it does not -- it can only have a 40  
10 percent lot occupancy and it currently has a 56 percent lot  
11 occupancy.

12 So, we -- we are a nonconforming structure  
13 conformed to a conforming use. I'm telling you everything you  
14 probably know much better than I and so, we have to get a  
15 variance under 2001.3.

16 Also, there is -- on the northern part of the  
17 property, there's an easement of four and a half feet in width.

18 I don't know if you have a document that shows that. There's  
19 a site -- do you or don't you? Is there a site plan there for  
20 you? Okay.

21 So, there's -- there's a five-foot side yard and  
22 four and a half feet of that five feet is devoted to a -- an  
23 easement which allows the rear property behind there to have  
24 access to their backyard. It's not their -- their only entry  
25 and by losing that four and a half feet to an easement that

1 -- that is what actually converts this to being not a row  
2 property and, therefore, puts this into the -- puts this into  
3 the category of requiring the -- of -- of not being a row house  
4 and, therefore, requiring this variance under 2001.3.

5 So, it's really the -- the -- the -- the rather  
6 small way that the -- of the large house put on a small lot  
7 back in 1954 before the zoning was established that has put us  
8 in the position of requiring a variance under 2001.3 and I  
9 think that unusual shape of the lot has created the practical  
10 difficulty for us.

11 Going to again back to the 401. -- 400.1 issues  
12 about the building height, we've -- we've attempted to keep the  
13 project again minimal impact in terms of its height and width.

14 The -- the final size of it would allow the bedroom and bath  
15 to meet building code. It would -- it pulls back from the  
16 property lines both the rear and the sides as much as possible  
17 to still create a space usable inside but not -- but make the  
18 minimal impact on the outside and as I said before, it's on the  
19 rear of the property and not visible from public space in  
20 anyway. It's -- we feel that it's in -- the dormer's in  
21 harmony with the general purpose and intent of the zoning  
22 regulations.

23 It does not affect we feel any -- any neighboring  
24 property. We do have some neighbors particularly to the north  
25 who -- who -- who would be the most affected theoretically by

1 an addition like this because it might block his light. He's  
2 expressed his support for the project. Mr. James Taylor. His  
3 name is on the -- the letter and I mentioned earlier my  
4 attempts to reach the owner immediately to the south.

5 So, I submit the project for your review. I'll  
6 be happy to answer any questions.

7 CHAIRPERSON REID: All right. Questions, Board  
8 members?

9 MR. GRIFFIS: A quick clarification. The  
10 abutting property, is that considered a townhouse? Is it a  
11 property line?

12 MR. SNOWBER: That's a good question. I can't  
13 say that I know. Well, actually, I might. I -- I have a  
14 document from the city surveyor's office that may show. I'm  
15 sorry. I may not have it with me.

16 MR. GRIFFIS: That's fine. It appears that --

17 MR. SNOWBER: I'm not sure. I can't -- I  
18 couldn't state it one way or the other. I'm sorry.

19 MR. GRIFFIS: On the plat that I have, obviously  
20 it's built on one of the party walls and I  
21 -- I just think it goes even further to underscore the  
22 uniqueness of the property in question. But, I just wanted to  
23 see if, in fact, that was the case.

24 MR. SNOWBER: Yes, I'm sorry. I thought I had  
25 the -- a portion of the -- one of the things from the zoning

1 packet. But, I don't seem to have it with me. Sorry.

2 MR. GRIFFIS: That's fine. Don't --

3 VICE CHAIRPERSON RENSHAW: Mr. Snowber.

4 MR. SNOWBER: Yes.

5 VICE CHAIRPERSON RENSHAW: The letter from the  
6 attached neighbor --

7 MR. SNOWBER: Yes.

8 VICE CHAIRPERSON RENSHAW: -- Petra

9 Goette --

10 MR. SNOWBER: Yes.

11 VICE CHAIRPERSON RENSHAW: Is dated June 18th.

12 What attempts did you make prior to June 18th to get in touch  
13 with her?

14 MR. SNOWBER: We -- well, we -- first, we went to  
15 the -- we first went to the neighbors and discovered that it  
16 was a rental property. We then -- it wasn't until we went  
17 ahead and filed the -- you know, went ahead and got the  
18 addresses as part of the -- the variance that we were -- had  
19 her address and we were able to -- actually, it was just part  
20 of the letter. Her reaching as part of the BZA process that --  
21 that she was notified. I don't know that we made any  
22 particular phone calls to her or letter to her before that. I  
23 mean we knew that she'd be notified as part of the variance  
24 process. So, that was -- so, other than that, it wasn't -- she  
25 -- she -- her first notification would have been from the --

1 from -- as part of the variance process.

2 VICE CHAIRPERSON RENSHAW: Well, she took the  
3 time to write a very strong letter of opposition to changing  
4 the structural symmetry of this house and you have tried to --  
5 you stated that you sent her a packet, but she did not respond?

6 MR. SNOWBER: That's right. I -- I -- I  
7 -- I -- I sent the letter on the 15th of July which is the day  
8 after I discovered it in the file. I can -- I'm certainly glad  
9 to give you a copy of exactly what I -- I faxed to her. She  
10 had given her fax number on the -- on her documents.

11 What I -- what I said in the letter was I'm the  
12 architect working with the Chadwicks. I reviewed the file  
13 regarding our variance and request and found your letter of  
14 opposition to the project. After reading the letter, I was  
15 concerned you may have misunderstandings about what the project  
16 entails and wanted to send you some information to clarify  
17 things. Perhaps after seeing some further materials, you would  
18 revise your position on this matter, but that's up to you. I  
19 just want to make sure your comments are based on complete  
20 information about the project.

21 So, I faxed her. She had given a fax number. I  
22 faxed it. She gave an e-mail address. I sent her four e-mails  
23 and then I made numerous phone calls. I left messages on  
24 several and then the last one, I actually talked to a person.  
25 She wasn't there. I mean I talked to a person. I said is --

1 is Petra Goette there and they said she wasn't and they said  
2 she'd return later and she'd give me a call. I just  
3 -- I never heard back. So.

4 VICE CHAIRPERSON RENSHAW: But, your first  
5 communication with her was July 15th?

6 MR. SNOWBER: Correct.

7 VICE CHAIRPERSON RENSHAW: A very short time ago.  
8 This is only the 24th of July.

9 MR. SNOWBER: Right. And her letter -- right.  
10 It's -- I -- you know, I just -- as part of our -- she didn't  
11 send the letter to me. She sent it to the BZA and I had  
12 somebody from my office checking every couple of weeks to see  
13 if there was any notes in there. I don't know exactly when her  
14 letter arrived.

15 VICE CHAIRPERSON RENSHAW: So, it's only been a  
16 span of about nine days that --

17 MR. SNOWBER: Yes.

18 VICE CHAIRPERSON RENSHAW: -- from your letter to  
19 this date and you're dealing with someone who is stationed  
20 abroad who may be traveling on business. We don't know, but --

21 MR. SNOWBER: She -- she was home. The -- the  
22 day I called they said she was home and would be back and  
23 would, you know, they would give her the message, but I did not  
24 get a call back.

25 VICE CHAIRPERSON RENSHAW: Yes. But, she states

1 in her letter that she purchased her home and she wants to  
2 retire to that location --

3 MR. SNOWBER: Right.

4 VICE CHAIRPERSON RENSHAW: -- in 1985 and your  
5 clients purchased the adjoining space in what was it 2000?

6 MR. SNOWBER: One. I mean they just moved in in  
7 March.

8 VICE CHAIRPERSON RENSHAW: They just moved in  
9 2001.

10 MR. SNOWBER: Yes. No, I agree. I mean, when I  
11 saw the letter, I immediately felt, you know, if we're going to  
12 have comments from somebody she's certainly the -- the most  
13 valid party to respond to this and I wanted to give her  
14 drawings so that she -- you know, she -- if she wants to be  
15 opposed to it, that's fine. I just wanted to make sure she  
16 knew what we were talking about doing and I think from the --  
17 she probably just got the -- the notice from -- from you all  
18 and it just says fourth-story addition and it doesn't -- it  
19 doesn't completely state exactly what the project is. So, she  
20 didn't understand it.

21 MR. GRIFFIS: I think, if I might Ms. Renshaw, I  
22 think that is, in fact, what she's reacting to. Reading the  
23 letter, I had some concern as I think Mr. Snowber has made an  
24 adequate address of it that she's not understanding of the  
25 project. I mean the third paragraph of her letter dated June

1 18, she's saying throughout the years certain adjacent  
2 neighbors have renovated their attics for use and why can't  
3 this, and I'm just paraphrasing here, why can't this project do  
4 the same thing and not add another floor and she's saying --

5 VICE CHAIRPERSON RENSHAW: Without touching the  
6 exterior.

7 MR. GRIFFIS: Right. But, the last piece of it  
8 making the pending application difficult to understand, she  
9 states in parentheses a fifth floor. In reality, I think she's  
10 assuming that there is actual structural, which she talks about  
11 structural symmetry. She's talking about structural additions  
12 to the top of this house and then the paragraph next says any  
13 floor addition would grossly alter and disfigure the original  
14 structure.

15 I think looking at the case before us, we don't  
16 have an actual floor addition in terms of adding ten feet,  
17 let's say, ten feet to the existing structure but rather an  
18 adaptation of a story level maybe is clearer --

19 VICE CHAIRPERSON RENSHAW: But, you are changing  
20 the symmetry of the back of the house and you are adding  
21 windows to the roof line and in the design, the side view that  
22 we see in the lower right-hand corner, is the bathroom as shown  
23 being afforded more headroom or is all of the room in the  
24 bedroom portion because you spoke about not having enough room  
25 in the bathroom?

1 MR. SNOWBER: No, we are actually moving the  
2 bathroom forward so that in the -- in the existing scheme, here  
3 is the window in the center of the house and that's where the  
4 bathroom is in the front of it and in the current -- in the  
5 proposed scheme, the bathroom is being moved forward to have  
6 that bath -- that window in the bathroom so it gets more  
7 headroom inside the bathroom.

8 VICE CHAIRPERSON RENSHAW: Okay. Thank you.

9 CHAIRPERSON REID: Let's see. You know, first of  
10 all, in regard to the three-prong test for a variance, tell me  
11 again what is it that is unique about this property.

12 MR. SNOWBER: I think the fact --

13 CHAIRPERSON REID: Different from any other  
14 property there in that neighborhood.

15 MR. SNOWBER: Well, excuse me. I think the --  
16 the main aspect of it is that it's uniquely small relative to  
17 the lot -- to the building that's put upon it, it's -- it has a  
18 minimal rear yard. It has -- it is occupied by a building that  
19 takes up more than the required amount -- the allowed amount of  
20 site and so, it's -- it's -- you know, it's -- it's over built  
21 basically to the site and -- and so, there's more building  
22 there and, therefore, there is not any sort of expansion room  
23 that one might normally have on a -- on a townhouse.

24 CHAIRPERSON REID: Okay. So, that's the unique  
25 aspect of it the fact that it exceeds -- nonconformity and it

1 exceeds the lot occupancy?

2 MR. SNOWBER: Yes. Yes.

3 CHAIRPERSON REID: And it causes a practical  
4 difficulty. What's the practical difficulty for you to conform  
5 with the existing zoning regulations?

6 MR. SNOWBER: Well, if we were to -- if we were  
7 to conform with the regulations, it would say that we couldn't  
8 alter it at all because the -- because it -- it is doing this  
9 thing of over occupying the lot and this -- and part of it is  
10 this whole aspect I was mentioning about the side yard where we  
11 have this easement that has been put through. I -- I don't  
12 know. I would assume that was probably from the beginning of  
13 the project when it was built and that -- we wouldn't -- we  
14 wouldn't have to be before you on the -- on the lot -- on the  
15 nonconforming use if it weren't for the fact that this -- that  
16 -- that that -- that portion of the parcel has been given over  
17 for the -- the walk to the rear.

18 MR. GRIFFIS: It's my understanding that this is  
19 not a townhouse, that it's another structure within this zone  
20 that you are not allowed 60 percent lot occupancy but rather 40  
21 percent. That this is currently occupying 56 percent of the  
22 lot. Therefore, there's a practical difficulty that you cannot  
23 utilize the remainder of the difference between 56 and 60  
24 percent if this has been actually built out as an attached  
25 townhouse to the property line.

1           So, therefore, I think you're saying is that you  
2           have a difficulty in the current classification of this and  
3           that this building was built before the actual zoning, that  
4           you, therefore, cannot build out increasing the lot occupancy,  
5           but are looking to adapt the existing attic area.

6           MR. SNOWBER:     Right.     Too, these can't be  
7           enlarged in any other way certainly.

8           CHAIRPERSON REID:   Okay.   Other questions, Board  
9           members?

10          All right.   Now, is there anyone else here today  
11          that is affiliated with this case?   Wants to speak in regard to  
12          this particular case?

13          All right.   Then we can expedite the remainder of  
14          the case predicated upon the fact that I don't think we have an  
15          Office of Planning report, the government reports and we do  
16          have an ANC report.   Do you have it?

17          VICE CHAIRPERSON RENSHAW:   We have an ANC letter  
18          from ANC-2E dated June 15th, 2001 and signed by Peter Pulsafer,  
19          the Chair of ANC-2E and he states that this came before the ANC  
20          on June the 5th, 2001.   It was a regularly scheduled meeting,  
21          duly noticed and attended by seven of the eight commissioners  
22          and they unanimously passed the following resolution that ANC-  
23          2E approve the design concept for 1406 30th Street by unanimous  
24          consent at it's April 3rd, 2001 meeting and whereas, the  
25          proposal does not, in fact, create an additional story to the

1 property and whereas, the proposed dormer addition to the house  
2 does not extend the current roof pitch and whereas, the  
3 neighbors who has been contacted support the project, ANC-2E  
4 does not object to the requested variance.

5           However, I might add, Madam Chair, that ANC-2E  
6 was not aware because of a few days of the opposition from the  
7 adjoining neighbor Petra Goette.

8           CHAIRPERSON REID: Okay. Thank you very much.

9           We have no other government reports. Persons in  
10 support, we did have letters and a petition in support of this  
11 application and in opposition, we did have the letter that has  
12 been referenced a couple of times during this case from Ms. --

13           VICE CHAIRPERSON RENSHAW: Goette.

14           CHAIRPERSON REID: Goette. Petra Goette and so,  
15 we take note of that and move on to closing remarks by the  
16 applicant.

17           MR. SNOWBER: Yes, well, I -- I -- I feel that  
18 the -- the case before you is -- we're asking you to address an  
19 owner who is on a -- a very limited site and wants to make a --  
20 a space that exists within his property conform to the building  
21 code. It is a minimal addition to the house. We've done  
22 everything we could to keep it as small as possible.

23           We do regret the opposition of the neighbor.  
24 We've made an attempt to contact her.

25           The substantive point of her letter, if she

1 perhaps had the information, if her concern is about the  
2 overall impact on her property, I would argue that  
3 architecturally the addition is on the back of the house. It's  
4 not on the front of the house. It's doesn't impact the street  
5 which I think is a primarily elevation. In the rear is a  
6 secondly elevation and certainly if I had been able to speak to  
7 her, I would have made the case that it is secondary.

8 And I -- I think I would disagree with her -- her  
9 idea that -- that it might devalue the value of the property  
10 because it had altered a structure that had existed since 1954.

11 I don't -- I don't feel it -- my own opinion obviously is that  
12 it doesn't degrade the value of her property or degrade the  
13 architecture on the rear of the house to have an addition on  
14 the house next door. I don't think there's anything  
15 particularly unique on the rear of the property that  
16 maintaining the symmetry of the rear of the property, a view  
17 which is seen from no public space and almost no private space,  
18 I don't -- I don't think that is -- what seem to be her main  
19 issues and I don't think any of those are -- are affected by  
20 the -- by the work being done on the rear of the home.

21 So, I would ask that you support our petition for  
22 a variance.

23 Thank you very much.

24 CHAIRPERSON REID: All right. Just before taking  
25 the vote, I'd just like to ask one question.

1                   When you say dormer, what is your definition of  
2 dormer?

3                   MR. SNOWBER:       Well, I think the typical  
4 definition of a dormer is a -- is an exterior addition to a --  
5 to a structure typically at the roof level, always at the roof  
6 level, that does not fully extend to the side of the property  
7 from edge to edge on the building and -- and often steps back  
8 from the rear face of the property.

9                   There are several types of dormers. There are --  
10 this one is referred to as a shed dormer because the roof on it  
11 is a shed roof. Other dormers it might have a hip roof on it  
12 or it might have a gable roof on it.

13                   Again, very common things that you see in  
14 Georgetown. All of these shapes are -- both the sheds and the  
15 -- the gable dormers, you often see them on the front of a  
16 house and it makes -- the -- the goal of it is to make an under  
17 attic, under roof eave space usable. It's sort of extending  
18 the usable square footage of the house by sort of squeezing out  
19 a little square footage without going to the point of making it  
20 a full story. So that the -- so that the entire mass of the  
21 building is raised up. It's only a portion of it that you need  
22 for that particular use is raised up and that's certainly what  
23 we have tried to do architecturally with our -- our addition.

24                   CHAIRPERSON REID:   So, without the extending of  
25 the top --

1 MR. SNOWBER: Yes.

2 CHAIRPERSON REID: -- and raising the pitch of  
3 the roof, then it's not a dormer?

4 MR. SNOWBER: Right. In the existing condition  
5 which is here.

6 CHAIRPERSON REID: That's not a dormer. That's  
7 an attic.

8 MR. SNOWBER: There's no dormer. That's just a  
9 gable roof.

10 CHAIRPERSON REID: Okay.

11 MR. SNOWBER: Pitch is towards the front and the  
12 rear.

13 CHAIRPERSON REID: And that --

14 MR. SNOWBER: Gabled on the side.

15 CHAIRPERSON REID: And that portion where that  
16 lady is standing right here --

17 MR. SNOWBER: Right.

18 CHAIRPERSON REID: -- in your diagram --

19 MR. SNOWBER: Right.

20 CHAIRPERSON REID: -- is an attic?

21 MR. SNOWBER: It's an attic. I think the way to  
22 think of it is you -- the way it used to be is you walked up  
23 into the attic and there would be -- there were these roof  
24 rafters right over your head like this.

25 CHAIRPERSON REID: Yes.

1 MR. SNOWBER: The people who lived there before  
2 simply dry walled those roof rafters and called it usable  
3 space, but in fact, as you walk up there, you can go -- you  
4 have a swath of about three or four feet where you're not  
5 hitting your head. In fact, you literally -- there's a set of  
6 stairs here that comes up and you literally hit your head on  
7 the ceiling as you come up the stairs if you don't duck.

8 It was just an attic that has dry wall on it.

9 CHAIRPERSON REID: Okay. So, once you rise that  
10 pitch, then that becomes a dormer and I guess my question is it  
11 is a partial story, but is not considered a story because of  
12 the fact that it doesn't go completely over entire roofs?

13 MR. SNOWBER: Well, technically, by the  
14 definition of the city, it is -- it becomes a story because it  
15 has full ceiling height and any -- I -- I  
16 -- I think the definition of a story, I don't have the  
17 definition with me, basically I think it's anything that has  
18 ceiling height and meets other light and air requirements. So,  
19 it's usable square footage on any given level and we have  
20 usable square footage one, two, three and as soon as you raise  
21 this up and make it technically usable square footage, it  
22 becomes a storage.

23 CHAIRPERSON REID: That's what I thought. I  
24 understand, but I thought that you just said earlier that  
25 because of the fact that it didn't go all the way across, it

1 was not considered a story. That's where I --

2 MR. SNOWBER: I -- I didn't say that.

3 CHAIRPERSON REID: Oh.

4 MR. SNOWBER: It's a dormer, but it -- but by --  
5 by -- technically, it creates a story by doing that.

6 CHAIRPERSON REID: all right.

7 MR. SNOWBER: I mean clearly and that -- and I  
8 think that's why this alarmed Ms. Goette when she saw it. It  
9 said -- it said we're building a fourth story on the building  
10 and certainly if I saw this townhouse and somebody said we're  
11 building a fourth story on the building, I would assume that  
12 you're raising this whole -- this whole roof up.

13 CHAIRPERSON REID: Right.

14 MR. SNOWBER: And you have brick wall, brick  
15 wall, brick wall, and another wall of brick and then the roof  
16 way up on top of that and, in fact, what we're doing is we're  
17 occupying a portion of what is now the attic, but by --

18 CHAIRPERSON REID: Okay.

19 MR. SNOWBER: -- by giving it adequate space, it  
20 technically becomes a story. We are not raising -- and I think  
21 the main point here is that we're not raising the height of the  
22 building.

23 CHAIRPERSON REID: Yes.

24 MR. SNOWBER: We're not raising the -- the ridge  
25 line. We're not changing in anyway any view from any public

1 space and, in fact, it would be almost impossible for Ms.  
2 Goette to see this from any portion of the property she owns.  
3 I --

4 MR. GRIFFIS: The point being the attic is not a  
5 story at this point. Correct?

6 MR. SNOWBER: Technically, an attic is not -- is  
7 not -- is -- is not a story.

8 MR. GRIFFIS: And once you make it an occupiable  
9 space, it then becomes a story. So, therefore, we're looking  
10 at a three-story structure that will become a four story which  
11 I think was part of the misinterpretation that the letter came  
12 from. at least, that's the way I was reading it. As she  
13 indicates --

14 MR. SNOWBER: Yes.

15 MR. GRIFFIS: She was assuming there was a fifth  
16 story added on.

17 MR. SNOWBER: Right. Because she said well,  
18 you've got these three stories and then you're occupying the  
19 attic and now you're going to add another story.

20 MR. GRIFFIS: Exactly. Yes.

21 CHAIRPERSON REID: Okay. Under the R-3, three  
22 stories is admissible. It should be right in front. Just one  
23 second.

24 MR. SNOWBER: Surely.

25 CHAIRPERSON REID: Okay. Got ya. Okay. Got ya.

1 All right.

2 COMMISSIONER PARSONS: Madam Chairman?

3 CHAIRPERSON REID: Yes.

4 COMMISSIONER PARSONS: I've been looking at our  
5 notice --

6 CHAIRPERSON REID: Yes.

7 COMMISSIONER PARSONS: -- and normally when a  
8 notice like this goes forward to an adjacent property owner,  
9 they're at home. They're here in the city and they get engaged  
10 with the applicant and things like this are taken care of.  
11 But, if I was to read this sitting in Milan, Italy, I would  
12 imagine a fourth story --

13 CHAIRPERSON REID: Yes.

14 COMMISSIONER PARSONS: -- with a new roof as the  
15 architect has described here today and I think she's right on  
16 the mark, you know. If that was proposed, I think everybody in  
17 the community would oppose it.

18 CHAIRPERSON REID: Yes. Yes.

19 COMMISSIONER PARSONS: But, I'm sure by now she's  
20 learned that that was not the case.

21 CHAIRPERSON REID: Yes. And --

22 COMMISSIONER PARSONS: But, it's amazing when you  
23 read a notice in that context --

24 CHAIRPERSON REID: It says fourth-floor addition.

25 COMMISSIONER PARSONS: With no opportunity to

1 communicate with people, you say this is crazy.

2 CHAIRPERSON REID: Yes.

3 VICE CHAIRPERSON RENSHAW: And it affects my  
4 property.

5 COMMISSIONER PARSONS: But, it indeed is not.

6 CHAIRPERSON REID: Yes.

7 VICE CHAIRPERSON RENSHAW: That's what she would  
8 say.

9 CHAIRPERSON REID: Right.

10 VICE CHAIRPERSON RENSHAW: But --

11 CHAIRPERSON REID: Increases the value of the  
12 property.

13 VICE CHAIRPERSON RENSHAW: But, Madam Chair and  
14 Board members, I would fault the applicant in this regard that  
15 the applicant did not take any extraordinary measures to reach  
16 Ms. Goette who they knew or must have known was stationed  
17 abroad and you also only communicated with her again when you  
18 went through the files per your testimony and found that she  
19 had objected.

20 You only communicated with her nine days ago on  
21 July 15th and I feel that if you are sharing a party wall with  
22 another party and you want to do something to your house that  
23 is going to change even the back look of your property, it  
24 behooves you to make sure that that is your first notice to  
25 your adjoining property owner and you didn't do this.

1           The applicant went through the normal course of  
2 sending out the notices to everybody in the vicinity and that  
3 was that and I think that that was wrong.

4           MR. GRIFFIS: I think we --

5           VICE CHAIRPERSON RENSHAW: And I'm speaking up  
6 for Ms. Goette because I think that it's a shame that we don't  
7 give her more time to even put something into the record to say  
8 that she acknowledges receipt of the architect's letters and  
9 plans and she misunderstood because the notice was perhaps  
10 poorly written.

11           MR. GRIFFIS: Ms. Renshaw, if I might, I mean I  
12 believe that first of all we have a unique case in that the  
13 existing neighbor owner is out of the country which made  
14 communication difficult, but to fault the applicant, the  
15 applicant did what was required and that is to provide  
16 notification. I think they went beyond, in fact, once they  
17 reviewed the file and saw that there was an objection to  
18 continuing to try and make communication and I think a good  
19 effort has been shown there.

20           But, more importantly when I get back to the  
21 point of that we have this adjacent neighbor that has  
22 difficulty with this, I think the letter is fairly clear of  
23 what her difficulties were and I feel comfortable that there  
24 was a misinterpretation of what the actual project was and,  
25 therefore, to delay it in that the communication has been made

1 and she hasn't responded, I think is perhaps not appropriate at  
2 this point.

3 VICE CHAIRPERSON RENSHAW: Well, I would speak to  
4 the fact that it would be appropriate to get a response from  
5 her and have that as part of the file, but it's up to the  
6 Board.

7 CHAIRPERSON REID: I think that given the fact  
8 that -- I would concur with my colleague Mr. Geoffrey that the  
9 effort was made and even though there was a bit confusion, the  
10 effort was made to clear it up and also, this Board is charged  
11 with making decision that we feel given all the information  
12 before us would be the appropriate one and I think we have to  
13 satisfy ourselves as to what happened and what would be  
14 appropriate given the situation and vote accordingly.

15 One last question. I saw something rifling  
16 through my file regarding, you did talk to the CFA?

17 MR. SNOWBER: The Old Georgetown Board. Correct.  
18 The Commission on Fine Arts. Yes.

19 CHAIRPERSON REID: Yes. Yes. And what was their  
20 response?

21 MR. SNOWBER: I don't know if you're familiar  
22 with how the whole process works. The Commission on Fine Arts  
23 has a group called the Old Georgetown Board which is a three-  
24 member architectural board that reviews projects. They gave  
25 what -- we -- we -- we had an initial submission. They asked

1 for a revision which was we pulled it -- the original dormer  
2 was to the rear line of the building and they asked us to pull  
3 it back and we pulled it back the two feet and on the basis of  
4 that change, they approved. Gave conceptual approval to it.  
5 That was back in April I believe.

6 CHAIRPERSON REID: Do we have a letter from them?  
7 I didn't see -- I saw a petition in here where it was alluded  
8 to.

9 MR. SNOWBER: I think it was mentioned in my  
10 letter. I -- I can certainly get that for you, but it's --  
11 it's -- it's been a -- there is an official document that says  
12 that they're -- they've given conceptual approval.

13 CHAIRPERSON REID: That you complied with what  
14 their suggestion was in regard to this particular property?

15 MR. SNOWBER: Right. They -- they sort of gave  
16 it -- they gave it sort of a conditional --

17 CHAIRPERSON REID: So, you do have it? You do  
18 have it?

19 MR. SNOWBER: Do I have the letter? I do not  
20 have the letter. But, the -- well, let me -- I say that, but  
21 let me just see here. I don't have the letter. Mr. Jose  
22 Martinez who's the manager of the -- of the Commission on Fine  
23 Arts. I don't think I ever received a written notification,  
24 but he told me that I had been given conceptual approval and  
25 our next step would be to submit working drawings for which

1 they would give final approval. So, they have --

2 CHAIRPERSON REID: So, you still have that step -

3 -

4 MR. SNOWBER: I still have that step, yes.

5 CHAIRPERSON REID: -- you have to go through?

6 Okay.

7 All right. Board members, is there a motion with  
8 regard to this particular application?

9 MR. GRIFFIS: I would make motion to approve  
10 application 16737 from John and Laura Chadwick for a variance  
11 to allow for an addition to a nonconforming building under  
12 subsection 2001.3 and a variance from the story limitations  
13 under section 400 in an R-3 District. This is for the premises  
14 of 1406 30th Street, N.W.

15 CHAIRPERSON REID: And the test? Speak to the  
16 three-prong test.

17 MR. GRIFFIS: Do you want to have a second first  
18 or did you want me to speak to it?

19 CHAIRPERSON REID: Yes, either way. I would  
20 second it. All right.

21 MR. GRIFFIS: I would speak to my motion and say  
22 first of all that the uniqueness inherent in this property was  
23 many fold. First, being the smallness, the size of it.  
24 Second, being as I view the exhibits especially the elevations  
25 A-2, it is a townhouse, but it is by definition not a townhouse

1 based on the fact that it has an easement and is not built to  
2 the property line. Therefore, it is unique in the fact of how  
3 limited the lot occupancy can be utilized on the site.

4 That then obviously moves to its practical  
5 difficulties that are inherent in this site and that is in  
6 order to add an addition to this structure which, in fact, was  
7 built in 1951, is not under current zoning allowing for further  
8 addition and occupation under the current use and I don't  
9 believe that there is any -- how do I say?

10 CHAIRPERSON REID: Adverse impact?

11 MR. GRIFFIS: Yes, I don't think there's any  
12 adverse impact to the historic neighborhood, but also to the  
13 zone plan.

14 CHAIRPERSON REID: Right and I would concur with  
15 you, Mr. Geoffrey. I think that given the fact of the  
16 constraints the applicant was faced with in regard to the  
17 literal strict, rigid interpretation of the zoning regulations  
18 which he could not comply with would cause the practical  
19 difficulty and also the fact that because of the definition of  
20 dormer, there was a compliance with the height on R-3, but not  
21 the story because of the fact that the dormer in effect did  
22 cause another story and as such, granting the application does  
23 not impair the intent and integrity of the zoning regulations  
24 and the map in that it's visible only from the rear and we  
25 understand, we don't have a letter, but we understand that the

1 Commission of Fine Arts did review it and made recommendations  
2 which were complied with and it has yet the final step to go  
3 through with the Fine Arts Commission -- Commission on Fine  
4 Arts.

5 Any other comments?

6 All in favor?

7 (Ayes.)

8 CHAIRPERSON REID: Excuse me.

9 (Ayes.)

10 VICE CHAIRPERSON RENSHAW: I'm abstaining and I'm  
11 abstaining not that I'm against this project. Because it's  
12 been done in my neighborhood and your design looks to be very  
13 good, but just please understand and to let the applicant know  
14 that I am speaking up on behalf of the adjoining neighbor and I  
15 do not feel that there was enough of an effort made to clear up  
16 this difficulty before you came before the Board and I'm only  
17 sorry that the adjoining property owner was not notified in  
18 advance because of her special location being the adjoining  
19 property owner.

20 MR. GRIFFIS: Well, said. Madam Chair, before  
21 the record closes on this case actually, I wanted to bring to  
22 light the letter that's in the record that actually compliments  
23 the staff of BZA, Ms. Booth and Ms. Nero, but specifically in  
24 helping put together the submission, the technical aspects of  
25 this and I just think that ought to be brought to light and I

1 think most applicants gain benefit from the staff here in their  
2 procedural process.

3 CHAIRPERSON REID: Thank you very much for doing  
4 so. We always like to know when people acknowledge the fine  
5 work that our staff does here at the Office of Zoning.

6 MR. GRIFFIS: Sincerely stated. Thank you.

7 CHAIRPERSON REID: Thank you very much.

8 VICE CHAIRPERSON RENSHAW: Madam Chair, may I  
9 suggest that the letter that Mr. Snowber sent to Ms. Goette be  
10 included in the file so that we have that. The July 15th  
11 correspondence.

12 CHAIRPERSON REID: Okay. All right. Any further  
13 discussions, comments. All right.

14 Then this will conclude this morning's hearing.  
15 Thank you very much.

16 (Whereupon, at 11:20 a.m. off the record until  
17 1:09 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:09 p.m.)

CHAIRPERSON REID: The Board of Zoning Adjustment, District of Columbia. My name is Sheila Cross Reid, Chairperson.

Joining me today is Anne Renshaw, Vice Chair and Geoff Griffis. Representing the National Capital Planning Commission -- I mean and also David Levy. Representing the National Capital Planning Commission David Levy and representing the Zoning Commission is John Parsons.

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

1 All persons planning to testify either in favor  
2 or in opposition are to fill out two witness cards. These  
3 cards are located on each end of the table in front of us.  
4 Upon coming forward to speak to the Board, please give both  
5 cards to the reporter who is sitting to my right.

6 The order of procedure for special exceptions and  
7 variances is:

- 8 1. Statement and witnesses of the applicant.
- 9 2. Government reports including Office of  
10 Planning, Department of Public Works, et cetera.
- 11 3. Report of the Advisory Neighborhood  
12 Commission, the ANC.
- 13 4. Parties or persons in support.
- 14 5. Parties or persons in opposition.
- 15 6. Closing remarks by the applicant.

16 Cross examination of witnesses is permitted by  
17 the applicant or parties. The ANC within which the property is  
18 located is automatically a party in the case.

19 The record will be closed at the conclusion of  
20 each case except for any material specifically requested by the  
21 Board and the Staff will specify at the end of the hearing  
22 exactly what is expected.

23 The Sunshine Act requires that the public hearing  
24 on each case be held in the open before the public. The Board  
25 may consistent with its rules of procedure and the Sunshine Act

1 enter executive session during or after the public hearing on a  
2 case for purposes of reviewing the record or deliberating on  
3 the case.

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

8 Please turn off all beepers and cell phones at  
9 this time so as not to disrupt these proceedings or put them on  
10 vibrator.

11 The Board will make every effort to conclude the  
12 public hearing as near as possible to 5:00 p.m. If the  
13 application is not completed by 5:00 p.m., the Board will  
14 assess whether it can complete the pending case or cases  
15 remaining on the agenda.

16 At this time, the Board will consider any  
17 preliminary matters. Preliminary matters are those which  
18 relate to whether a case will or should be heard today such as  
19 requests for postponement, continuance or withdrawal or whether  
20 proper and adequate notice of the hearing has been given. If  
21 you are not prepared to go forward with a case today or if you  
22 believe the Board should not proceed, now is the time to raise  
23 such a matter.

24 Are there any preliminary matters? Yes.

25 MR. WILLIAMS: Good afternoon, Madam Chairperson,

1 Madam Vice Chairperson, and members of the Board. My name is  
2 Lindsley Williams. I'm Senior Advisor for Land Use, Planning  
3 and Zoning with the law firm of Holland & Knight and I'm here  
4 with a preliminary matter, actually two of them, in application  
5 BZA Number 16732 which is slated as the first called case this  
6 afternoon.

7 The first item on -- on this request is just to  
8 request a postponement. This is in furtherance of  
9 correspondence that I believe is in the record from our firm to  
10 the Board requesting the postponement to a date certain. We've  
11 explored and I believe you have that in front of you October  
12 9th as the date where the case would be heard.

13 The second matter is to call attention to the way  
14 in which the case is captioned in the hearing notice itself.  
15 It's identified as Ward One (ANC-1A). It is, in fact, ANC-1E  
16 and this particular application has been plagued by a series of  
17 mis-communications to two incorrect ANCs and we should end  
18 that. We'll do our part and we ask you to do yours.

19 CHAIRPERSON REID: Okay, Mr. Williams. I don't  
20 think that will be a problem. Now, that it's been brought to  
21 the attention of this Board and staff. I think that whatever  
22 corrections need to be made we'll make sure that they're taken  
23 care of.

24 MR. WILLIAMS: Okay. And is the postponement  
25 acceptable to you to that date?

1 CHAIRPERSON REID: Now, is there anyone else here  
2 today who was affiliated with that particular case? Case  
3 number 16732.

4 All right. Is there any objection by anyone here  
5 today to the request for postponement to October the --

6 MR. WILLIAMS: 9th.

7 CHAIRPERSON REID: -- 9th. Okay. All right.

8 MR. KELLER: I'm Keenan Keller. I'm one of the -  
9 -

10 CHAIRPERSON REID: Sir, I'm sorry, sir. Speak  
11 into the mike.

12 MR. KELLER: It's on now. Thank you.

13 I'm Keenan Keller. I'm at 1850 Monroe Street,  
14 N.W. I'm one of the neighbors who lives and owns one of the  
15 adjacent properties to 1841 Park Road which is the subject of  
16 the zoning application 16732.

17 We do not as a matter of principle object to the  
18 postponement until October 9th. We would request that we get  
19 some sort of communication from the BZA regarding the  
20 designation of party status so that we can determine how to  
21 best move forward.

22 One of the reasons that the continuance was  
23 requested until October 9th was to resolve a series of issues  
24 within the neighborhood and within the immediate neighbors and  
25 also with the ANC concerning the application itself.

1           It would be helpful if we did some advice  
2 concerning party status so that we could more easily have these  
3 discussions and if necessary, we could enter into some sort of  
4 formal agreement that would be useful to the BZA at that time  
5 of October 9th.

6           CHAIRPERSON REID: Okay. Now, Board members did  
7 you wish to take up the party status as a preliminary matter  
8 for this case today and then have it continue until October the  
9 9th which we have done previously particularly given the fact  
10 that there is a request to establish that. So, that if there  
11 are any meetings or if there's any dialogue or discussions, it  
12 could be predicated along those lines.

13           MR. KELLER: And we also have a large number of  
14 people who have taken time out their schedules to actually show  
15 up today and it would be -- I think be very helpful if they  
16 were able to take something formal away from their appearance.

17           CHAIRPERSON REID: Discussion.

18           VICE CHAIRPERSON RENSHAW: Madam Chair, I think  
19 it makes good sense to decide party status today. So, I would  
20 recommend that be done.

21           MR. GRIFFIS: Are all the parties that are  
22 actually requesting status present today and how can we discern  
23 that?

24           CHAIRPERSON REID: The persons that we have that  
25 requested party status is Mary Hathaway, Keenan Keller, Alice

1 David --

2 MR. GRIFFIS: Davis.

3 CHAIRPERSON REID: David? Okay.

4 VICE CHAIRPERSON RENSHAW: Davis.

5 CHAIRPERSON REID: Oh, I'm sorry. Here it says  
6 David. Okay.

7 VICE CHAIRPERSON RENSHAW: It's Davis.

8 CHAIRPERSON REID: Laura Krinch and Sharon and  
9 Tom Conway. So, they're all here. Okay.

10 All right. Any other discussion? Any objection  
11 to taking it up today? Okay. Very well.

12 As to --

13 MR. WILLIAMS: A quick question. Could I ask a  
14 question about that and that is whether you're entertaining  
15 them as five separate parties or as a consolidated single  
16 party?

17 CHAIRPERSON REID: That's what we have to  
18 ascertain during this particular preliminary matters  
19 discussion, Mr. Williams.

20 But, as to the requested self or party status, I  
21 think that -- I'm sorry, request for continuation, I think that  
22 we can dispose of that motion at this time.

23 I would move that we do continue it until October  
24 9th if there is no objection.

25 MR. GRIFFIS: Second.

1 CHAIRPERSON REID: All in favor?

2 (Ayes.)

3 CHAIRPERSON REID: Okay. Record the vote please,  
4 Ms. Bailey.

5 MS. BAILEY: The vote is recorded as 5-0 to  
6 continue the application onto October 9th. That's Application  
7 Number 16732. Motion made by Ms. Reid. Seconded by Mr.  
8 Griffis. Ms. Renshaw, Mr. Levy, and Mr. Parsons in agreement.

9 CHAIRPERSON REID: Okay. Now, as to the party  
10 status request, plural, I'd like to say that we try to have the  
11 cases moved as efficiently as possible and as such, when there  
12 are several parties, there is sometimes the possibility of the  
13 parties combining and having one person as the spokesperson.

14 Have you all discussed that, Mr. Keller?

15 MR. KELLER: Yes, we actually have had that  
16 discussion and for the purposes of talking with the Barnetts  
17 regarding the project itself, we have, in fact, met and we also  
18 have designated individuals to have these discussion. That's  
19 actually one of the reasons that we had hoped for the  
20 continuance that to the extent that we were able to come to  
21 some agreement we would be able to enter some formal  
22 resolution.

23 CHAIRPERSON REID: Okay. Who have you spoken to  
24 to combine the party status with?

25 MR. KELLER: We actually had a neighborhood

1 meeting of the immediate neighbors adjacent to the property and  
2 so, the individuals who are here and who have requested  
3 opponent party status, have met to discuss their objections and  
4 have agreed to move forward as a group to extradite the  
5 process.

6 CHAIRPERSON REID: Okay. Who's the spokesperson?

7 MR. KELLER: I have been designated as such and  
8 Tom and Sharon Conway in the alternative have been designated  
9 as such.

10 CHAIRPERSON REID: Okay. So, you all are  
11 combining the party --

12 MR. CONWAY: Is that true? I think it would be -  
13 -

14 CHAIRPERSON REID: You need to come up to the  
15 mike please, sir.

16 MR. CONWAY: Sorry.

17 MR. KELLER: You have to press.

18 CHAIRPERSON REID: And give you name and address.

19 MR. CONWAY: My name is Tom Conway, 1833 Park  
20 Road.

21 Mr. Keller is absolutely accurate in everything  
22 he said. However, I think and a quick straw poll in the back  
23 of the room, it would be best if we did not include Mary  
24 Hathaway as -- as part of the -- of the -- the larger group and  
25 allowed her to

1 -- to remain a separate party to the -- to the process.

2 That's my only point.

3 CHAIRPERSON REID: Okay. Well, Mr. Keller, you  
4 would then represent Davis, Krinch, and the Conways. All  
5 right.

6 Now, of those three persons that you're  
7 representing, what we need to understand you know that the  
8 criteria for party status is to demonstrate how you are more  
9 aggrieved than anyone else in the community.

10 MR. KELLER: Exactly.

11 CHAIRPERSON REID: And that your situation is  
12 rather unique or unusual. So, are you going to speak for each  
13 one of these persons or --

14 MR. KELLER: I can.

15 CHAIRPERSON REID: Okay. Please.

16 MR. KELLER: I would point to the --

17 CHAIRPERSON REID: Starting with yourself.

18 MR. KELLER: I'm sorry. As -- as a matter of  
19 fact, I would point to the letters that have already been  
20 entered into the record by all of the parties that detail the  
21 individual issues with regard to the quiet enjoyment of their  
22 property.

23 I would start with my own property which is  
24 immediately across the alley and adjacent to the property in  
25 question at 1841 Park Road.

1           The alley at -- on the 1800 block between Park  
2 and Monroe street is 14 feet wide and the carriage house in  
3 question which is the focus of the zoning variances is built  
4 out to the lot line. It is also built right next door to the  
5 lot line. So, it's actually less -- when you take the  
6 overhangs into account, it's actually less than a foot away  
7 from its neighboring property and slightly less than 14 feet  
8 from our property line.

9           Any variance that's granted which would result in  
10 an area variance and a use variance would actually change the  
11 nature of the property increasing traffic, trash, and noise.  
12 That would impact directly on the quiet enjoyment of our  
13 property.

14           CHAIRPERSON REID: Okay. Wait one second. You  
15 live where?

16           MR. KELLER: 1850 Monroe Street.

17           CHAIRPERSON REID: So, you're right --

18           MR. KELLER: Directly across the alley.

19           CHAIRPERSON REID: Right behind.

20           MR. KELLER: Behind and --

21           CHAIRPERSON REID: 1850.

22           MR. KELLER: Behind and behind and adjacent. If  
23 you continued the property line across the -- across the alley,  
24 it would intersect my property line.

25           CHAIRPERSON REID: Okay. And you said we. Now,

1 who's the other person?

2 MR. KELLER: The other owner of the property is  
3 my wife Donna M. Murphy.

4 CHAIRPERSON REID: Oh. No. No, I thought you  
5 were referring to one of the other.

6 MR. KELLER: No.

7 CHAIRPERSON REID: Okay. Now, all right. I see  
8 yours.

9 Board members is there any objection to this  
10 particular person being -- okay. Then is there a problem with  
11 this particular --

12 VICE CHAIRPERSON RENSHAW: No.

13 CHAIRPERSON REID: Okay.

14 MR. GRIFFIS: Well, let me get some  
15 clarification. Are we entertaining that he's representing all  
16 of the other three families or are we just entertaining --

17 CHAIRPERSON REID: At this point --

18 MR. GRIFFIS: -- his party status?

19 CHAIRPERSON REID: Him. His party status and  
20 then once we ascertain his party status, then we'll determine  
21 what other persons if any he would be representing other than  
22 himself.

23 He said right behind. I guess this -- this would  
24 be Monroe. Park right here.

25 MR. GRIFFIS: You don't happen to know the square

1 you're in. Do you?

2 MR. KELLER: Actually --

3 MR. GRIFFIS: And lot.

4 CHAIRPERSON REID: We need lot.

5 MR. GRIFFIS: Lot.

6 MR. KELLER: Actually, if I pulled my file. It's  
7 actually in the file.

8 MR. WILLIAMS: It's square 2614.

9 MR. KELLER: Yes.

10 MR. WILLIAMS: It's same square as the  
11 application.

12 MR. GRIFFIS: And then the lot.

13 CHAIRPERSON REID: No. No, he means lot.

14 MR. GRIFFIS: And the lot.

15 MR. KELLER: No.

16 VICE CHAIRPERSON RENSHAW: Where is --

17 CHAIRPERSON REID: I'm thinking. You said right?  
18 This is the property.

19 MR. WILLIAMS: Yes.

20 CHAIRPERSON REID: It is right --

21 MR. WILLIAMS: The lot number I don't know, but  
22 the square's the same.

23 MR. KELLER: Yes, the square -- he's correct.  
24 The square is the same.

25 CHAIRPERSON REID: The square is the same. So,

1 we just try to find out which of these properties and where.

2 Could you --

3 VICE CHAIRPERSON RENSHAW: Could Mr. Keller  
4 notate on one of these maps exactly where these parties are  
5 located? That would be very helpful.

6 CHAIRPERSON REID: Do you have one? You can use  
7 that one.

8 VICE CHAIRPERSON RENSHAW: Do you have one of  
9 these? You can color it in.

10 CHAIRPERSON REID: Do you have a colored  
11 -- a highlighter?

12 All right. Thank you. Thank you very much.

13 Okay, Mr. Keller. We had a question for you  
14 regarding the site of your particular property.

15 MR. KELLER: Right.

16 CHAIRPERSON REID: You said in your letter  
17 requesting party status, you're saying that you're immediately  
18 adjacent across the alley of the carriage house at the  
19 applicant's property and --

20 MR. KELLER: Yes.

21 CHAIRPERSON REID: -- from what we can see here,  
22 it looks like -- you don't look like you're immediately across  
23 the alley.

24 MR. KELLER: You're actually -- there's actually  
25 an inaccuracy on this map. The dot that you actually have on

1 the map --

2 CHAIRPERSON REID: Okay.

3 MR. KELLER: -- is a vacant lot that's actually  
4 separate from the property that where the application is. The  
5 lot where the carriage house actually sits is on -- is on lot  
6 42.

7 CHAIRPERSON REID: Oh. Okay. Okay. Got you.  
8 Got you. Thank you very much for that clarification.

9 MR. WILLIAMS: Let me just state for the record,  
10 Mr. Keller is entirely correct on that point. The -- the  
11 Barnetts own both lot 42 and the dotted lot.

12 MR. KELLER: Which is lot 41 and the carriage  
13 house sits in the northwest corner of lot 42. So, it's  
14 directly -- basically, it's direct -- almost directly across  
15 from us.

16 CHAIRPERSON REID: Okay.

17 MR. WILLIAMS: Again, to comment, you see the  
18 square designation on the map? You see the square designation.

19 CHAIRPERSON REID: Yes.

20 MR. WILLIAMS: The carriage house basically sits  
21 under SQR.

22 MR. KELLER: Right.

23 CHAIRPERSON REID: Okay. Oh. Okay. I see. All  
24 right.

25 MR. GRIFFIS: I wonder if you could just speak to

1 briefly how your property would be different than or have more  
2 impact on this than the ones directly behind in the alley?  
3 Frankly, lot 38, 39, 65, and 66.

4 MR. KELLER: Lots 38 and 39 are vacant and lots  
5 65 and 66 actually met with the individuals who are applying  
6 for party status here and have filed letters I think either in  
7 the file or with individuals who are applying for party status  
8 detailing their position with regard to the actual application  
9 itself.

10 MR. GRIFFIS: But, vacant or not, I don't mean to  
11 belabor this too long, but vacant or not, it still doesn't  
12 speak to the effect of how your property in its location would  
13 be more affected than the properties 38 and 39.

14 MR. KELLER: It actually -- the -- the actual  
15 language of the statute of says more effected than the general  
16 public and the general public would include individuals outside  
17 the 200 foot square notice area and that's actually the basis  
18 from which we are proceeding. There is a -- at least a prima  
19 facie finding in the statute that individuals within the notice  
20 area are affected by it such that notice of an application is  
21 required. That's -- that's actually what I'm talking about.

22 With regard to a comparison between my property  
23 and the neighboring properties, they would be similarly  
24 affected. One of the things you have to understand is that the  
25 individuals who are here seeking party opponents status use the

1 alley as a primary thoroughfare and entrance to their homes  
2 because the carriage houses actually function as garage/storage  
3 space so that they don't have to actually walk up the high, you  
4 know, heights that all of these houses sit on. So, to the  
5 extent that the carriage house is built out to the alley line  
6 and they have to put multiple supercans there, those supercans  
7 are approximately three-foot wide. Subtracting three feet from  
8 a 14-foot alley width to 11 feet.

9 To the extent that any trash is blowing around  
10 from supercans, it will blow immediately onto the adjacent  
11 properties, onto my property.

12 To the extent that -- that they're actually using  
13 the property to a density that's greater than it's currently  
14 used or currently approved as a nonconforming property, that's  
15 the impact.

16 MR. GRIFFIS: Let me interrupt you for a second.

17 Without going into the testimony of the case, I --

18 MR. KELLER: Right.

19 MR. GRIFFIS: -- think I understand you're saying  
20 that obviously the use of the alley is the connection and it's  
21 apparent to me.

22 MR. KELLER: Okay.

23 MR. GRIFFIS: Thank you.

24 CHAIRPERSON REID: All right. All right. Then  
25 the other person's Davis who is an abutter of the property and

1 also Krinch who is an abutter on the other side. Now, Conway  
2 is beside Krinch.

3 MR. KELLER: Krinch.

4 CHAIRPERSON REID: I think that party status -- I  
5 think that the two abutters, Davis and Krinch, should be  
6 granted party status and Conways seemed to be further down and,  
7 Mr. Keller, you're not direct across the alley. Are you?

8 MR. KELLER: There -- there is -- there's  
9 actually overlap between -- between the property lines. So --

10 CHAIRPERSON REID: Okay. Then I would grant it  
11 to Keller, Davis, and Krinch.

12 MR. KELLER: Can I speak to the Conway  
13 application?

14 CHAIRPERSON REID: Go on. Yes.

15 MR. KELLER: Okay. With regard to the Conway  
16 application to the extent that there are externalities created  
17 by the change in use by the variance. Change in the area and  
18 change of use. There's also a legal precedent with regard to  
19 public policy which is premised on the actual historic nature  
20 of the properties themselves.

21 The David property, the Krinch property, and the  
22 Conway property are all similarly large architect designed  
23 single family homes that sit on the heights of Park Road. All  
24 of those homes through the course of the 1970s were at  
25 intervals turned into rooming houses or apartment houses or

1 multiple use SROs. During the '70s and '80s, the owners of  
2 these properties purchases these properties and rehabilitated  
3 them and turned them back into single family homes and it is  
4 important the character of that row of houses be protected with  
5 regard to the development and any additions to those homes  
6 because the houses actually have a historical designation not  
7 only as one but as a unit of houses that sit along that section  
8 of Park Road. So, to the extent that there is adverse action  
9 with regard to a build out or use or variance with regard to  
10 one property, it would actually affect the character of the  
11 historical designation of all of the homes in that row of  
12 properties.

13 I -- I realize -- I --

14 CHAIRPERSON REID: Okay. But, Mr. Keller, let me  
15 finish.

16 MR. KELLER: Absolutely.

17 CHAIRPERSON REID: What you have to understand is  
18 what we're looking at is how they are unique or some unusual  
19 situation that make them more aggrieved than any other and when  
20 you --

21 MR. KELLER: It potentially goes --

22 CHAIRPERSON REID: -- testify. Let me finish.

23 MR. KELLER: Yes. Go ahead.

24 CHAIRPERSON REID: When you testify that it's a  
25 group of them altogether, that then the nullifies the whole

1 basis about what you'd be granted party status. So, let's be  
2 careful with that.

3 MR. KELLER: Well, I would actually argue that  
4 the individual homes on the run of Park Road on the heights  
5 exist as a unit, but the property values of each individual  
6 property owner is specific to them such that they need to  
7 actually protect their individual property interests.

8 CHAIRPERSON REID: No, well, let's approach it  
9 this way. The abutters and you and your citing of your  
10 particular property is one that is kind of marginal, but  
11 because you are the spokesperson, I would look to that.

12 MR. KELLER: I would actually argue that it's not  
13 marginal.

14 CHAIRPERSON REID: And the Conways will have an  
15 opportunity to testify. So, they can participate, but let's  
16 just got with having the three parties, yourself and Ms. Davis  
17 and Ms. Krinch and you can be the spokesperson and to speak for  
18 them and to do cross examination and the Conways or anyone else  
19 who's in that block or behind the properties have the  
20 opportunity to testify.

21 Now, Board members, I don't know how you feel.

22 VICE CHAIRPERSON RENSHAW: Madam Chair, would Mr.  
23 Conway like to speak to this?

24 MR. CONWAY: I guess my only -- my only question  
25 with respect that line of reasoning is what then is the -- is

1 the objective or the purpose of the 200 foot designation on  
2 either side of -- of the property in question?

3 CHAIRPERSON REID: Notice.

4 MR. CONWAY: Notice?

5 CHAIRPERSON REID: Yes.

6 MR. CONWAY: And --

7 CHAIRPERSON REID: For persons who live in that  
8 close proximity or property owners within that close proximity  
9 are the ones who are given notice regarding the particular  
10 property, the application.

11 The issue of party status is something that is  
12 different in that it pertains to those persons, special people,  
13 in that category of people within that group, a subgroup in  
14 that group, that would have some special grievance or some  
15 special unique impact of the application to come forward and be  
16 granted party status or request party status.

17 Mr. Williams.

18 MR. GRIFFIS: Can I also elaborate on that?

19 CHAIRPERSON REID: Sure.

20 MR. GRIFFIS: In terms of the party status just  
21 to be clear in terms of process, it means you have certain  
22 responsibilities and rights. Cross examination is one of them.

23

24 It does not preclude you from testifying or being  
25 part of the hearing. So, in terms of your own testimony that's

1           been developed, you can certainly give it.

2                       CHAIRPERSON REID:   Mr. Williams.

3                       MR. WILLIAMS:   The applicant would not object to  
4           any of these four being admitted including Mr. Conway if it's  
5           done as a group.

6                       CHAIRPERSON REID:   Thank you.

7                       Board discussion.   Should we vote?

8                       COMMISSIONER PARSONS:   Madam Chair, I agree with  
9           your assessment that abutting and directly across the alley  
10          certainly constitutes unusual impacts and would stick with your  
11          opinion as I understand it.

12                      VICE CHAIRPERSON RENSHAW:   I don't have any  
13          problem with Mr. Conway being included in the group and since  
14          the applicant has no problem with this, I don't see why Mr.  
15          Conway can't be included.

16                      CHAIRPERSON REID:   Mr. Conway cannot be included  
17          Mr. Conway does not fit -- Mr. Conway does not fit within the  
18          auspices of the requirements for party status.

19                      VICE CHAIRPERSON RENSHAW:   I thought that's what  
20          we were determining and it had not been concluded that Mr.  
21          Conway was not in this group.

22                      CHAIRPERSON REID:   It had been suggested that he  
23          was not.   Okay.

24                      But, none the less, could we have a motion?

25                      Okay.   I move that party status be granted to Mr.

1 Keller, Ms. Davis, and Ms. Krinch with Mr. Keller representing  
2 the group, speaking, being the spokesperson for the group.

3 COMMISSIONER PARSONS: The same motion going to  
4 deny the others or are you going to deal with that separately?

5 CHAIRPERSON REID: Well, I think it's just done  
6 automatically.

7 COMMISSIONER PARSONS: Well, I'd second.

8 CHAIRPERSON REID: No --

9 VICE CHAIRPERSON RENSHAW: Discussion.

10 CHAIRPERSON REID: I'm going to then put a motion  
11 on the floor or someone can put a motion on the floor regarding  
12 Ms. Hathaway.

13 VICE CHAIRPERSON RENSHAW: No, we haven't  
14 finished with this yet.

15 CHAIRPERSON REID: Okay.

16 VICE CHAIRPERSON RENSHAW: All right. It has  
17 been moved and seconded that Mr. Keller be a party and he will  
18 speak for the party of Ms. Davis and Ms. Krinch.

19 CHAIRPERSON REID: Yes.

20 VICE CHAIRPERSON RENSHAW: I would like to make  
21 an amendment that Sharon and Tom Conway be included in this  
22 party status. Do I have a second?

23 CHAIRPERSON REID: Okay. The motion fails for  
24 lack of a second.

25 All right. Let me restate my motion in the

1 original form. Mr. Keller, Ms. Davis, and --

2 VICE CHAIRPERSON RENSHAW: Well, that's on the  
3 table.

4 CHAIRPERSON REID: -- Mr. Krinch -- I mean Ms.  
5 Krinch. All right. Is there a second on those three?

6 COMMISSIONER PARSONS: Oh, I seconded that.

7 CHAIRPERSON REID: Oh, you did?

8 VICE CHAIRPERSON RENSHAW: It's already seconded.

9 CHAIRPERSON REID: Oh, I'm sorry. I'm sorry. I  
10 got --

11 VICE CHAIRPERSON RENSHAW: Since my failed, the  
12 main motion is back on the table.

13 CHAIRPERSON REID: Thank you. Okay. All in  
14 favor?

15 (Ayes.)

16 CHAIRPERSON REID: All right. Opposed?

17 All right. Now, the question of Mary Hathaway.

18 MS. BAILEY: Excuse me. Ms. Renshaw, were you  
19 opposed to that motion?

20 VICE CHAIRPERSON RENSHAW: No, I voted for it.

21 CHAIRPERSON REID: She voted for that motion.

22 MS. BAILEY: Okay.

23 VICE CHAIRPERSON RENSHAW: I proposed the  
24 amendment. The amendment failed and so that main motion was  
25 back on the table and I voted for that.

1 CHAIRPERSON REID: All right. Then record the  
2 vote please, Ms. Bailey.

3 MS. BAILEY: Staff records the vote as 5-0 to  
4 approve Mr. Keenan Keller, Ms. Alice T. Davis, and Ms. Laura D.  
5 Krinch as parties in this case. The motion was made by Ms.  
6 Reid. Seconded by Mr. Parsons. Mr. Levy and Mr. Griffis and  
7 Ms. Renshaw in agreement.

8 CHAIRPERSON REID: Okay. Thank you very much.

9 Now, as to Ms. Hathaway, Ms. Hathaway, will you  
10 please come forward.

11 Now, she lives? Where does she live?

12 VICE CHAIRPERSON RENSHAW: She lives at 1809 Park  
13 Road.

14 CHAIRPERSON REID: Oh, she's three --

15 VICE CHAIRPERSON RENSHAW: Three single family  
16 detachments.

17 CHAIRPERSON REID: Okay. Ms. Hathaway, can you  
18 speak into the mike, ma'am. Give your name and your address  
19 and tell us why you think you should receive party status. The  
20 mike's not on.

21 MS. HATHAWAY: My name is -- my name is Mary  
22 Hathaway. I reside at 1809 Park Road. That's 2614, lot 800 on  
23 your map.

24 CHAIRPERSON REID: Yes.

25 MS. HATHAWAY: I have resided there since 1968

1 and as the others have testified, I use the alley. I traverse  
2 the alley on a regular basis as a pedestrian and I am  
3 requesting party status as a proponent of this application  
4 since I believe that it will enhance pedestrian safety for me  
5 and for others who walk in that alley on a regular basis.

6 CHAIRPERSON REID: Okay. Ms. Hathaway, you  
7 realize that you are three houses removed from the subject  
8 property, one, and two, parties status as you heard us mention  
9 earlier is reserved for those persons who are more especially  
10 aggrieved that anyone else in that particular neighborhood.

11 Also, you have the opportunity to testify in  
12 support of the application.

13 But, I don't think that you meet the criteria for  
14 party status designation.

15 MS. HATHAWAY: Well, in veiw of your ruling with  
16 the Conways, I'm not particularly surprised. Since I'm not one  
17 house --

18 CHAIRPERSON REID: Three houses.

19 MS. HATHAWAY: -- but two houses further.

20 MR. WILLIAMS: If I could just note for the  
21 record, Madam Chair, what you just said earlier was that she  
22 had the duty to show that she was particularly aggrieved, but  
23 for a proponent party, that's troublesome.

24 So, she -- she would be particularly benefitted  
25 and she would be coming at this if you were to admit her from

1 the other side of the issue.

2 CHAIRPERSON REID: Well, thank you very much, Mr.  
3 Williams. But, I don't think that the criteria reflects those  
4 persons who are particularly benefitted and we go have to go by  
5 what the criteria stipulates at this point in time.

6 MR. WILLIAMS: Well, I think the  
7 language --

8 CHAIRPERSON REID: Good point.

9 MR. WILLIAMS: I think the language is -- is  
10 particularly affected so it's neutral in the -- in the  
11 regulations. I will stand to be corrected there.

12 MR. KELLER: But, to the extent that the Board  
13 has already set criteria based on proximity to the property and  
14 the application. Then that would apply to both proponents and  
15 opponents and so, I -- I think for reasons of consistency.

16 CHAIRPERSON REID: Okay. All right. Any  
17 discussion, Board members?

18 MR. GRIFFIS: Just as a clarification, I don't  
19 think that our decision is based specifically on geography and  
20 it is, in fact, correct. It's distinctively or uniquely  
21 affected, but I think it's clear that's what's before us now  
22 and although I think it would be good to have representation on  
23 both sides, I think the testimony can be heard on a personal  
24 basis.

25 CHAIRPERSON REID: Wait. I'm not following you -

1 - what you said.

2 MR. GRIFFIS: I would not initially support the  
3 party status for Ms. Hathaway.

4 CHAIRPERSON REID: All right. Is there a motion?

5 COMMISSIONER PARSONS: If that was a motion, I'll  
6 second it.

7 CHAIRPERSON REID: Okay. All right. All in  
8 favor?

9 (Ayes.)

10 CHAIRPERSON REID: Thank you. All right. So, I  
11 think that we have established now party status.

12 Mr. Keller, you're clear yourself as the  
13 spokesperson for Ms. Davis and Ms. Krinch.

14 Thank you very much.

15 MS. BAILEY: Madam Chair --

16 CHAIRPERSON REID: And everyone else -- go ahead.  
17 I'm sorry.

18 MS. BAILEY: I just wanted to remind the  
19 applicants that no additional notice will be given about this  
20 application.

21 We encourage the applicant to re-post the  
22 property prior to October 9th, but no additional notices will  
23 be sent out on this and so, this is the only notice of the --

24 MR. WILLIAMS: Ms. Bailey, we will post the  
25 property. We did not post it prior to today because we were

1 seeking this postponement. It will be appropriately in the  
2 time before the October 9th date.

3 MR. KELLER: And given the fact that there were  
4 notice issues with regard to the ANC -- ANC-A rather than ANC-  
5 E, we would hope that any notice issues would be cured with  
6 regard to the October 9th hearing so that the neighborhood can  
7 actually correctly receive notice in a timely basis for that  
8 hearing.

9 CHAIRPERSON REID: I appreciate the observation  
10 and the notice to us by yourself, Mr. Keller, and Mr. Williams,  
11 as to any discrepancies or any irregularities and that will be  
12 corrected.

13 Ms. Bailey, did you record the last vote?

14 MS. BAILEY: The vote was to deny party status to  
15 Mary Hathaway. The motion was made by Mr. Griffis. Seconded  
16 by Mr. Parsons. Mr. Levy, Ms. Renshaw, and Ms. Reid in  
17 agreement.

18 CHAIRPERSON REID: Okay. This case will now be  
19 continued to October 9th. Is this morning or afternoon?

20 MS. BAILEY: Madam Chair, can we --

21 CHAIRPERSON REID: And once again, Mr. Williams,  
22 did I hear you say that the property wasn't posted?

23 MR. WILLIAMS: That's correct.

24 CHAIRPERSON REID: Now, you were kind of taking a  
25 chance because suppose we didn't continue it?

1 MR. WILLIAMS: That is a risk that I am familiar  
2 with and we did take it. Yes, ma'am.

3 CHAIRPERSON REID: Well, I think that it would be  
4 instructive hereafter that in the event there is a case  
5 scheduled that it be posted not to assume that the Board is  
6 going to grant the continuation.

7 MR. WILLIAMS: I understand your sentiments.  
8 I'll advise my colleagues.

9 CHAIRPERSON REID: Thank you.

10 MS. BAILEY: Madam Chair, this application is  
11 scheduled tentatively for the morning session, but we encourage  
12 the applicant to double check with us on that. But,  
13 tentatively it's for the morning session on October 9th.

14 CHAIRPERSON REID: Well, this is the only notice  
15 we're going to have, Ms. Bailey. So, I think we need to be  
16 clear and not tentative.

17 MS. BAILEY: Well, based on the schedule that I'm  
18 looking at, Madam Chair, it is in the morning.

19 CHAIRPERSON REID: Okay. 9:30. All right.  
20 There was no other notice other than the posting of the subject  
21 property.

22 MR. LEVY: Madam Chair?

23 CHAIRPERSON REID: Thank you.

24 MR. LEVY: Given that it's been indicated that  
25 the ANC was never properly notified, will they be notified at

1 this point in time? Will they be given notice?

2 MS. BAILEY: Yes. Yes, the Office of Zoning will  
3 make sure that the proper notices are sent to the correct ANC.

4 CHAIRPERSON REID: Yes. Mr. Levy, all  
5 the --

6 MR. LEVY: Thank you.

7 CHAIRPERSON REID: -- I think I made mention of  
8 the fact that all of the irregularities and the corrections or  
9 omissions that have been made referenced by Mr. Keller and Mr.  
10 Williams would be corrected and taken care of prior to the next  
11 hearing.

12 MR. LEVY: I appreciate that. I just wanted to  
13 clarify. It wasn't clear in --

14 CHAIRPERSON REID: Thank you.

15 MR. LEVY: -- in my mind.

16 CHAIRPERSON REID: Thank you very much.

17 Okay. All right. Thank you very much. We'll  
18 see you on October the 9th.

19 MR. WILLIAMS: Thank you.

20 MR. KELLER: Thank you.

21 MS. BAILEY: Mr. Keller, may I please have my  
22 coloring marker back please?

23 Madam Chair, are you ready for the next case?

24 CHAIRPERSON REID: Please.

25 MS. BAILEY: Application Number 16744 of Hellman

1 Companies/Amoco Oil Company pursuant to 11 DCMR 3103.2 for a  
2 variance from the floor area ratio requirements under section  
3 771, a variance from the height requirements under section 700,  
4 a variance from the parking requirements under section 2102,  
5 and a variance from the loading requirement under section 2201  
6 to allow the construction of an office building with retail use  
7 in the HR/C-3-C District at premises 500 New Jersey Avenue,  
8 N.W. (Square 627, Lots 7, 12, 801, and 802).

9 All those wishing to testify please stand and  
10 raise your right hand.

11 Do you swear the information that you'll be  
12 giving today will be the truth? Please say I do.

13 (I do's.)

14 MS. BAILEY: Thank you.

15 MR. QUIN: Madam Chairperson, may we begin?

16 CHAIRPERSON REID: Yes. Please.

17 MR. QUIN: My name is Whayne Quin with Christine  
18 Shiker of Holland & Knight. We represent the applicant in this  
19 case.

20 Let me start by saying this application is a  
21 classic variance case.

22 CHAIRPERSON REID: Is there a problem?

23 MR. QUIN: Sorry. Oh. Sorry. I thought -- oh.  
24 Okay.

25 Once again, this application is a classic

1 variance case. In well over 30 years of practice and probably  
2 in excess of 2000 cases before this Board, I don't think I've  
3 ever seen a situation that more clearly demonstrates and  
4 illustrates why this Board was created and why the issuance of  
5 the variance clause was enacted and that followed as you  
6 probably know from your studies the Commerce Department's model  
7 statutes.

8 But, specifically where there are exceptional or  
9 extraordinary conditions that result in peculiar or exceptional  
10 practical difficulties, variance from the -- variances from the  
11 zoning regulations are authorized to help relieve those  
12 conditions so long as that relief can be granted without  
13 substantial detriment to the public good and without impairing  
14 the intent of the zoning regulations.

15 Sometimes this is referred to as a uniqueness  
16 test, but if you look at the statute, the word unique is not in  
17 the regulations. But, here we do have a unique situation which  
18 is something that you'll see through our witnesses.

19 First and maybe -- I'm sorry.

20 CHAIRPERSON REID: Mr. Quin, before you go on,  
21 let me just interrupt you for one second.

22 MR. QUIN: Yes.

23 CHAIRPERSON REID: Is there anyone here in  
24 opposition to this case?

25 That being the case, Mr. Quin, we did not observe

1 or read any submissions in the -- any opposition and obviously,  
2 we are very much aware of the rather unusual -- this being a  
3 rather unusual case and for the most part if you like, you can  
4 stand on your submission in that the Board members have read  
5 through the materials and I think that it is relatively  
6 apparent that given the weird shape of this property and the  
7 other characteristics that were pointed in your submission as  
8 well as that that comes from the Office of Planning and the  
9 fact that you enjoy the support of the ANC even I think there  
10 was no formal ANC meeting, but the Zoning and --

11 MR. QUIN: Licensing.

12 CHAIRPERSON REID: -- Licensing Committee did  
13 approve the application. The single member District  
14 representative did also send a letter in approval.

15 MR. QUIN: Yes.

16 CHAIRPERSON REID: The fact that you have several  
17 letters of overwhelming support --

18 MR. QUIN: Yes.

19 CHAIRPERSON REID: -- of this application. You  
20 have letters also from two council members, Ambrose and Brazil  
21 and a very in depth traffic analysis from Mr. George. That you  
22 could truncate and dispose of this case fairly quickly.

23 MR. QUIN: Right.

24 CHAIRPERSON REID: Let me ask Office of Planning  
25 to, you know, give us a few words. But, for the most part,

1 unless the Board have any objection, we could expedite this  
2 fairly quickly and open it up for questions that Board members  
3 may have.

4 MR. QUIN: We would be very please with that. In  
5 fact, we were hoping that would happen, but I would like to  
6 just say two things. One, the test I think I've clearly met by  
7 what we've set forth in our -- in our statement and I'm -- I  
8 don't think I've also ever seen a case that had this much  
9 support from different aspects of the community both business  
10 and residential.

11 The one comment I would like to make on the OP  
12 report. We're very pleased with the report although we think  
13 the conditions as stated there are too restrictive and go  
14 beyond what this Board would normally apply and -- and we have  
15 prepared proposed conditions which we have given to Mr.  
16 McGhettigan and I believe he supports those conditions.

17 We'd like to submit those for the record because  
18 they carry out the spirit of the recommendation and the spirit  
19 of this building and we believe that those conditions will  
20 insure that this building is a first-class building for a  
21 special site.

22 CHAIRPERSON REID: Okay. Let me understand this.  
23 You're saying that you have some difference with the Office of  
24 the Planning's recommendation or conditions in their report and  
25 that you have modified conditions that you want to submit to

1 us?

2 MR. QUIN: Yes.

3 CHAIRPERSON REID: All right. Have you discussed  
4 it with Office of Planning?

5 MR. QUIN: Yes.

6 CHAIRPERSON REID: And have they agreed?

7 MR. QUIN: I think so. He'll have to say for  
8 himself, but --

9 CHAIRPERSON REID: Okay. Well, then we'll have  
10 him say --

11 MR. QUIN: But, may I submit those for the  
12 record. There's just a statement of -- it's very brief  
13 conditions.

14 CHAIRPERSON REID: Just hold it one second. Wait  
15 until we ask Office of Planning for their remarks.

16 MR. QUIN: Okay. Then should I just say that all  
17 of our witnesses are here. If there are any questions, we have  
18 Mr. Hellman the -- representing the applicant, Mr. Black the  
19 architect, Mr. Kreis from Thompkins, Lew Bolan the economic  
20 consultant, Lindsley Williams as a planner and we also have  
21 Osborne George as a traffic consultant here to answer any  
22 questions if they -- if they should arise and with that, we  
23 would submit this case on the record.

24 CHAIRPERSON REID: Okay. Thank you very much.

25 Board members, any questions at this point?

1 Okay.

2 Then Office of Planning --

3 COMMISSIONER PARSONS: I'm sorry. I have a  
4 question.

5 CHAIRPERSON REID: I'm sorry.

6 COMMISSIONER PARSONS: I wanted to talk about  
7 drawing A1.02 which is a landscape plan indicating a  
8 improvement to the north of the property. That's it.

9 And ask Mr. Black, Mr. Hellman, what this  
10 represents. This proposal. Certainly this is not part of this  
11 project.

12 MR. QUIN: No.

13 COMMISSIONER PARSONS: It's not going to be built  
14 by the applicant and I just wanted to make sure this drawing is  
15 in the record as what it represents.

16 MR. QUIN: Yes, I should say that the  
17 improvements that this property owner will undertake are those  
18 that relate to the public space adjacent to their property. Do  
19 not relate to the Park Service property.

20 This is an illustrative drawing as to something  
21 that could occur if the Park Service would  
22 -- should so wish.

23 COMMISSIONER PARSONS: Right. And on this  
24 drawing that area is outlined as potential memorial site with  
25 the dashed line.

1 MR. QUIN: That's correct.

2 COMMISSIONER PARSONS: So, when you say he will  
3 improve things in the public space adjacent to his property,  
4 it's the areas outside of the --

5 MR. QUIN: That is correct.

6 COMMISSIONER PARSONS: Along the sidewalk if you  
7 --

8 MR. QUIN: Along the sidewalk, yes.

9 COMMISSIONER PARSONS: Okay. Of New Jersey  
10 Avenue?

11 MR. QUIN: Yes, sir.

12 COMMISSIONER PARSONS: That's all I have, Madam  
13 Chair.

14 CHAIRPERSON REID: All right. Thank you very  
15 much.

16 We go now to the Office of Planning for your  
17 remarks.

18 MR. MCGHETTIGAN: Okay. Thank you, Madam Chair.

19 My name is David McGhettigan from the Office of Planning.

20 I've read the conditions that Mr. Quin has  
21 proposed. They are more flexible than what I had proposed, but  
22 I think they still meet the intent of our conditions which was  
23 to just insure that this was of high quality design for the  
24 site.

25 It's important that this site be developed of

1 high quality in relationship to the intent and purposes of the  
2 zoning district and -- and the detriment to the public good is  
3 -- is -- there is no detriment to the public good.

4 So, I am willing to accept Mr. Quin's conditions.

5 CHAIRPERSON REID: Mr. Quin, now could you please  
6 submit them to the staff for us.

7 So, you're going to amend your report to  
8 incorporate Mr. Quin's conditions or how are you going to do  
9 it?

10 MR. MCGHETTIGAN: Yes, that's fine.

11 CHAIRPERSON REID: Okay.

12 VICE CHAIRPERSON RENSHAW: Madam Chair, could I  
13 inquire when the Office of Planning received the conditions  
14 from the applicant?

15 MR. MCGHETTIGAN: Before the hearing today.

16 VICE CHAIRPERSON RENSHAW: Before the hearing.  
17 Thank you.

18 CHAIRPERSON REID: Okay. All right. Thank you.

19 MR. MCGHETTIGAN: Madam Chair?

20 CHAIRPERSON REID: Yes.

21 MR. MCGHETTIGAN: I should request that my report  
22 be waived into the record.

23 CHAIRPERSON REID: Oh, right. Okay. Thank you.

24 Unless the Board members have any objection, we  
25 would waive the report, waive the seven-day requirement for the

1 report to come into the record.

2 Okay. As I earlier mentioned, I mentioned the  
3 ANC's position, the fact that there was no full meetings with a  
4 quorum. So, the ANC does not receive the great weight to which  
5 they're entitled, but we will take into consideration the  
6 position that the Zoning and Licensing Committee had  
7 recommended to the ANC.

8 I don't think there were any other government  
9 reports.

10 Board members, do you know of any?

11 MR. GRIFFIS: If I might just -- frankly, I need  
12 about 30 more seconds to look at the proposal and then I  
13 probably have some comments --

14 CHAIRPERSON REID: Okay.

15 MR. GRIFFIS: -- and questions of Planning.

16 CHAIRPERSON REID: With the Office of Planning?

17 MR. GRIFFIS: Yes.

18 CHAIRPERSON REID: Okay.

19 MR. GRIFFIS: Before we move on. Did you have --

20 COMMISSIONER PARSONS: I think we have a report  
21 from Mr. Layden from the Department of Public Works.

22 MR. GRIFFIS: Right.

23 CHAIRPERSON REID: Okay. We have it? Let me  
24 see. Oh. Okay.

25 Mr. Layden's report from DPW dated July 23rd

1 which means we also have to waive for the record waive the  
2 rules to allow his report to come into the record.

3 Basically, he's saying in pertinent part that  
4 he's reviewed the traffic analyses and that they concluded that  
5 the traffic generated resulting from the floor area ratio will  
6 not significantly impact the level of service on adjacent  
7 streets and intersections during the a.m. and p.m. peak hours.

8 With regard to parking supply, the applicant  
9 could only provide six spaces on site compared to 54 spaces  
10 required by the zoning regulations. However, the applicant  
11 proposed to provide 54 additional spaces on vault space.

12 DDOT will review and comment upon a formal  
13 request for additional parking on vault space.

14 As regard to lowering due to the small size and  
15 narrow width of the site, a workable 30-foot loading berth  
16 cannot be accommodated on the site. We estimate that a loading  
17 zone can be provided on First Street adjacent to the site as at  
18 that location the site is 40 feet wide. The impact of such a  
19 loading zone will not have a significant impact on traffic  
20 circulation.

21 Regard to public transportation, numerous bus  
22 routes operate along E Street adjacent to the project serve the  
23 site. These routes link the site to the Metro Center Station  
24 and to the Union Station.

25 From a transportation standpoint, the proposal

1 will have no adverse traffic impact on the local transportation  
2 system currently provided that additional parking is made  
3 available on adjacent public space.

4 DOT has no objection to the proposal. Okay.

5 Are there persons here to speak in support of the  
6 application? In opposition to the application?

7 To your knowledge, Mr. Quin, have you heard any  
8 comments from anyone who had any objection or any opposition to  
9 this application?

10 MR. QUIN: This is one of those rare cases where  
11 there's no opposition.

12 CHAIRPERSON REID: Everybody says just hurry up  
13 and get it done.

14 MR. QUIN: Right.

15 CHAIRPERSON REID: All right. Thank you very  
16 much.

17 Closing remarks by the applicant and Board  
18 members.

19 COMMISSIONER PARSONS: Madam Chair --

20 CHAIRPERSON REID: No, excuse me. I was going to  
21 say Board members --

22 COMMISSIONER PARSONS: Sorry.

23 CHAIRPERSON REID: -- can also question the  
24 applicant at this time.

25 COMMISSIONER PARSONS: I want to go back to this

1 landscape plan because I noticed a note in the lower left  
2 corner.

3 Mr. Black or whoever, we're talking about these  
4 skylights providing light below. As I understand it, below the  
5 sidewalk here in the public space is a parking garage. Is that  
6 correct?

7 I know that's not before us, but as a matter of  
8 curiosity as to what these skylights would be lighting.

9 MR. BLACK: I'm Byron Black of By Design Group.

10 The skylights that you're speaking of, the first  
11 level below grade is partially rentable space.

12 COMMISSIONER PARSONS: Oh.

13 MR. BLACK: The garage right goes through that.  
14 There is a portion on New Jersey Avenue that is rental space  
15 and then the garage is below that and the idea would be that if  
16 there is a restaurant, a conference center or whatever, it  
17 would add some life into that and as well as life to the  
18 street.

19 COMMISSIONER PARSONS: So, in the alternative  
20 then, if that doesn't come about, the skylights would  
21 disappear. Is that what this means?

22 MR. BLACK: Possibly or it could be used where  
23 the skylights would not be appropriate. But, what we visualize  
24 is something somewhat in the same character like at the -- the  
25 roadway between the National Gallery and the East Wing --

1 COMMISSIONER PARSONS: Yes.

2 MR. BLACK: -- you have the pyramids.

3 COMMISSIONER PARSONS: Yes. Thank you.

4 MR. BLACK: Yes.

5 MR. GRIFFIS: I also had a question in the area.

6 What's showing is the paving pattern I'm assuming, but could  
7 you bring some clarification? Is there planting boxes or a  
8 raised retaining wall of any sort around defining that area  
9 around the skylight.

10 MR. BLACK: What we have shown on the -- is  
11 largely a preliminary design. That we would not want to have  
12 all hardscape in that public area because that's a huge area.  
13 It's 52 feet from the curb to the building. So, what we would  
14 propose would be a combination of paving and of low planters.  
15 We're not foreseeing any large planters. We would like to have  
16 as much green in that area as we could though.

17 MR. GRIFFIS: But, I guess my question is what  
18 defined elements that look like they may be softscape,  
19 greening, they wouldn't be raised off of the level. They would  
20 be all on the same grade as the hardscape. Correct?

21 MR. BLACK: Yes, essentially it is. Yes.

22 MR. GRIFFIS: Okay. That's fine.

23 MR. BLACK: Yes.

24 MR. GRIFFIS: Thanks.

25 VICE CHAIRPERSON RENSHAW: I would like to ask if

1 the applicant would put up there the look of the building just

2 --

3 MR. BLACK: Okay.

4 VICE CHAIRPERSON RENSHAW: Since I know you  
5 brought it, I would like to see it. There we go.

6 MR. BLACK: Yes, that's it. Yes.

7 VICE CHAIRPERSON RENSHAW: There we go.

8 MR. BLACK: The -- that -- that rendering, it --  
9 it looks a little faded and it sort of shows how long that Mr.  
10 Hellman and ourselves have been pursuing this project.

11 It illustrates the general character of the  
12 building. It's somewhat -- some of the things on the building  
13 may have changed a little bit, but it illustrates very much  
14 that what we want to achieve here and I think it's really a  
15 shame when you have a city where all the buildings are all  
16 300,000 square feet.

17 VICE CHAIRPERSON RENSHAW: I have some questions  
18 about looking at the Office of Planning's recommendations and  
19 Mr. Quin, your proposed conditions and I just wanted to ask you  
20 in 1-A where you say that the roof line will be similar to that  
21 depicted on plan 211, would you please clarify similar to?

22 MR. BLACK: Yes, what it is and -- and that's  
23 probably my fault. The plans and the elevation are somewhat  
24 inconsistent. The elevation shows more elaboration where the  
25 Mansard roof starts.

1                   What we want to do is you don't want to have a  
2                   Mansard roof that just comes down and then continues down the  
3                   wall. You need something that happens when that roof starts  
4                   and usually, that's done with a cornice or architectural  
5                   embellishments that go up above the roof. Both of which are  
6                   allowed. Either the Act of 1910 or the projections.

7                   VICE CHAIRPERSON RENSHAW: Would you please just  
8                   point to those? Hate to get you up, but if you would just --

9                   MR. BLACK: Okay. Let me -- let me get the  
10                  elevation. That may show --

11                  VICE CHAIRPERSON RENSHAW: All right. Thank you.

12                  MR. BLACK: What I'm referring to is the level.  
13                  The main roof is at this elevation and rather than just having  
14                  the roof come up and turn, you want something happening here.  
15                  Either a cornice or an architectural embellishment. But,  
16                  something. You may have seen some places where they have, oh,  
17                  particularly low-rise garden apartments, they'll put a phony  
18                  Mansard roof that just starts off and nothing happens. It's  
19                  very ineffective.

20                  VICE CHAIRPERSON RENSHAW: Does this mimic the  
21                  roof line of -- across New Jersey Avenue of one of the  
22                  buildings? I can't quite tell which one it is. 501 New Jersey  
23                  Avenue.

24                  I'm just wanting to know did you pick up a design  
25                  or are you doing that --

1 MR. BLACK: Oh. I believe that -- that design  
2 that you're pointing to is one -- this rendering actually was  
3 done about -- literally, I think in about 1984 or '85. Was --

4 MR. HELLMAN: No. No, '87 or --

5 MR. BLACK: Yes. Was it -- I'm sorry. I missed  
6 it a few years.

7 VICE CHAIRPERSON RENSHAW: Oh, this one is an  
8 oldie but a goodie.

9 MR. BLACK: Right and I'm not sure if that  
10 building was theoretical or whether it actually  
11 just --

12 MR. HELLMAN: Yes, that was theoretical.

13 MR. BLACK: Yes. Okay. That was  
14 another --

15 MR. HELLMAN: Pepco -- excuse me. This is Jay  
16 Hellman, the applicant.

17 CHAIRPERSON REID: Thank you.

18 MR. HELLMAN: That building today is a Pepco  
19 substation and when Byron and I were working on the larger  
20 urban plan for the redevelopment of this area, it seemed to me  
21 that it was a tragedy to have a 20,000 square-foot site at the  
22 corner of New Jersey and E a block from Union Station and a  
23 block from the U.S. Capitol devoid of human life.

24 The -- the Zoning Commission went through the  
25 exercise with the EEFs what six or eight months ago or so.

1        Anyhow, that -- that was the origin of that thinking.  Thank  
2        you.

3                       VICE CHAIRPERSON RENSHAW:  Thank you.

4                       MR. MCGHETTIGAN:  Madam -- Madam Chair, if I  
5        could answer also on the roof line.  The -- the intent of that  
6        -- that condition was if you see from the elevation that the  
7        Mansard roof is set back from the northern point of the  
8        building and -- but, on the illustration, the planned view, the  
9        Mansard roof looks to go all the way to the end of the point.

10                      What we'd like to see there is that the Mansard  
11        roof start whether it's set back some from the -- the cornice  
12        at the northern point and doesn't have this extra setback  
13        that's shown in the -- in the elevation.

14                      VICE CHAIRPERSON RENSHAW:  Would you make  
15        reference, Mr. McGhettigan?  What numbered plan are you looking  
16        at please?

17                      MR. MCGHETTIGAN:  A-2-11.

18                      VICE CHAIRPERSON RENSHAW:  A-2-11.  Okay.  So,  
19        the Office of Planning is still recommending A-2-11?

20                      MR. MCGHETTIGAN:  Correct.

21                      VICE CHAIRPERSON RENSHAW:  All right.

22                      MR. BLACK:  I think I'll have to apologize.  I  
23        think Mr. McGhettigan did a closer job of checking our drawings  
24        than I did and I -- I think he is -- is right.  The elevation  
25        was inconsistent in not showing that Mansard roof continuing

1 all the way to the edge.

2 VICE CHAIRPERSON RENSHAW: All right. Okay.

3 On 1-B, Mr. Quin, you say that the First Street  
4 facade will have windows to the maximum extent possible. Would  
5 you clarify maximum extent?

6 MR. QUIN: I -- I would say feasible. What we're  
7 talking about and Mr. Black really should address it is when  
8 you have an elevator shaft that goes up, one of the issues was  
9 how do we keep a rhythm in that side of the building in  
10 openings and Byron, if you would answer that question  
11 specifically. This is language which we were trying to make  
12 sure to follow Mr. McHettigan's suggestion that we would  
13 explore keeping a rhythm of windows fenestration on that side  
14 and Mr. Black is -- is presently looking at different  
15 alternatives for that, but basically the concept is to -- to  
16 keep the rhythm of the fenestration and to keep some glass in  
17 there as opposed to a solid brick wall.

18 MR. GRIFFIS: For my clarification and excuse me,  
19 Ms. Renshaw.

20 VICE CHAIRPERSON RENSHAW: Yes.

21 MR. GRIFFIS: But, in the planning report,  
22 there's the mention of the 81-foot blank wall. Is that what  
23 you're referring to? And I would ask also the planning that  
24 corresponds with the area that you just mentioned, actually the  
25 core area of the building, is that correct? That's where the -

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MR. MCGHETTIGAN: Yes, that's correct. The core area of the building --

MR. GRIFFIS: Okay.

MR. MCGHETTIGAN: -- is -- is on First Street. If you can look at the -- the plan views --

MR. GRIFFIS: My quick look at the elevation actually shows that we're looking at glazed areas. Perhaps in the egress stair that's coming down which may not be appropriate, but the direction just for my clarification from the planning, is it not that you want some sort of articulation that is reminiscent of the window pattern that's coming through as is showing on that small bay we have a relief in the elevation that is proportional and continuing of the fenestration across the building?

MR. MCGHETTIGAN: Well, we --

MR. BLACK: May I address that? The -- I think the original drawings which we filed had a -- essentially a solid wall on the -- the full length of the core of the building which is about 80 feet I believe and then we submitted the elevation above there which we did go back and look at it farther to see all right, we could possibly put windows in stairways. Even -- even in toilet rooms. I mean in this day and age, it would be nice to have a room that has natural light coming into it. There's very few buildings you have the

1 opportunity to do that on.

2 The section which is shown is blanked out. That  
3 is actually where the elevators are right now and we're looking  
4 at the possibility of maybe even doing it where you get on the  
5 elevator and you have windows. As you go up in the elevator,  
6 you're seeing something happen outside.

7 The elevators quite honestly on a building this -  
8 - of this type are technically a real problem because we're  
9 really sort of pushing everything to the limits to get the  
10 overhead space required for the machinery. So, we may have  
11 some first time high-tech elevators in this building before we  
12 get through.

13 VICE CHAIRPERSON RENSHAW: All right. Are those  
14 windows going to be recessed six inches SOP has recommended?

15 MR. BLACK: I would hate to promise six inches.  
16 Our -- our main problem with the -- being so specific that it's  
17 going to take a lot of time to -- to spend on the detailed  
18 design of the building and to say something is going to be six  
19 inches, it might be four inches. It might want to be 12  
20 inches. But, we just want the freedom to design the building.

21 VICE CHAIRPERSON RENSHAW: Yes. Understood.

22 MR. MCGHETTIGAN: If I could comment on that as  
23 well.

24 The reason I asked for that six inches is some --  
25 a little depth on the windows gives a play of shadowed light on

1 the facade which is somewhere to the -- the rendering and the  
2 amount shown on the drawings was -- was very small. So, I just  
3 wanted to make sure there was some depth there.

4 So, I think the applicant's condition addresses  
5 it sufficiently.

6 VICE CHAIRPERSON RENSHAW: All right. And if I  
7 could move on to 1-D where the facade may include  
8 distinguishing elements, could we say the facade will include  
9 distinguishing --

10 MR. QUIN: In the first -- in the first sentence,  
11 I think that's fine.

12 VICE CHAIRPERSON RENSHAW: Is that all right?

13 MR. QUIN: Will.

14 VICE CHAIRPERSON RENSHAW: Yes.

15 MR. QUIN: Since we're saying such as balconies  
16 or bay windows and may also include French doors with the  
17 balconies, that's fine.

18 VICE CHAIRPERSON RENSHAW: Thank you.

19 CHAIRPERSON REID: Did you finish?

20 VICE CHAIRPERSON RENSHAW: Yes. Yes.

21 CHAIRPERSON REID: Because I think Mr. Griffis --

22 MR. GRIFFIS: Yes, actually I wanted just to make  
23 a quick statement. I think based on the fact that the overlay  
24 that this is in HR obviously we're looking at a signature or  
25 moving to have a signature building put on this unique site.

1 My concern for this Board is that as I think the applicant  
2 apply said in the beginning is I don't believe we want to step  
3 too far into the minutia of details in designing this building.

4 Although frankly, I wouldn't mind spending the afternoon  
5 helping design the building.

6 But, nonetheless, I think direction can be given  
7 and I think Ms. Renshaw has done that and I think it appears  
8 that we are in agreement in terms of the direction this is  
9 going. I think what we're seeing here in the elevations and  
10 plans clearly indicate that and that's all I have.

11 CHAIRPERSON REID: Thank you.

12 Any other questions, Board members, before we go  
13 to closing remarks by the applicant?

14 Mr. Levy?

15 MR. LEVY: Thank you. I do have one question and  
16 I wonder if you could just explain quickly to me the operation  
17 of the loading dock? I'm not clear on what's happening with  
18 that.

19 MR. BLACK: This drawing probably explains what's  
20 happening on the loading dock. The -- the site is only about  
21 45 feet wide right at this point and this is the 12 by 30 foot  
22 loading berth which is required. That also has a hundred  
23 square foot loading platform in connection with that. If the  
24 two were put together, that would run literally almost all the  
25 way through the site.

1           The other problem with that is that that also  
2 requires a 14 foot ceiling height and the First Street is just  
3 a little bit higher than New Jersey Avenue. That -- and  
4 because of the -- well, the floor-to-floor height you always  
5 have in Washington. If we were to put that berth right in here  
6 on the high street, it would also effectively cut a portion of  
7 the second floor.

8           What we're proposing is we have a -- this is a  
9 service space the 10 by 20. It wouldn't have a 14 foot ceiling  
10 height. It'll probably have a 12 foot ceiling height. So, in  
11 spite of that, this interior loading berth is going to handle a  
12 lot of the trucks that would come to the building.

13           Now, for the 12 by 30 foot, this space in here  
14 there's 15 feet which is probably parking. That as part of the  
15 landscaping we are proposing a low wall around that. It won't  
16 screen the truck, but it'll define the space where the truck  
17 will come to rest so that you wouldn't -- you're not going to  
18 have a truck parked diagonally across the sidewalk and that --  
19 that basically is how the loading on it works.

20           And we feel the -- the size building that having  
21 something like this that that's appropriate. In reality, it's  
22 appropriate size loading for the building.

23           VICE CHAIRPERSON RENSHAW: Madam Chair, just to  
24 further question about the parking spaces. Would you describe  
25 and give a little bit more flesh to parking located within

1 vault space?

2 MR. BLACK: On the level, you can see the garage  
3 entry ramp coming in here. Now, when you have below grade  
4 parking, have more than one level, the most efficient way to do  
5 it is with a circular ramp.

6 Now, typically, we would consider good design to  
7 try to get a ramp that's maybe 65 feet in circumference. Now,  
8 even with the shape of the site, the width of it, the best we  
9 can do is get a circle of about 57 feet which is -- if it were  
10 a large building, it probably would not be adequate, but here  
11 you're not going to have enough like two-way traffic and also  
12 the newer cars do turn in a tighter circle than the other ones  
13 -- older ones used to.

14 Coming down the circle right in here, you then  
15 come down to the cellars of which this is the second cellar,  
16 but it's typical for them and to answer Mr. Parsons earlier  
17 question, the circular ramp is in here and the bulk of this  
18 area was that rental space we spoke of earlier.

19 At the second level, the ramp is coming down here  
20 and if you'll notice inside of the property lines, you can only  
21 get three I guess completely legal cars within the property  
22 line. So, what we're proposing doing is take advantage of  
23 vault space, this is all under public parking out there, of  
24 having the cars -- basically the aisle is within the property  
25 lines, the cars are outside the aisle and this -- the bulk of

1 our parking really is in these rows along here.

2 VICE CHAIRPERSON RENSHAW: Okay. Thank you.

3 CHAIRPERSON REID: All right. Any further  
4 questions? If not, then we'll move to closing remarks by the  
5 applicant.

6 MR. QUIN: I'll be very brief. We think based  
7 upon the submissions that we've made, the testimony in  
8 responding to questions of the Board, that we've met our burden  
9 of proof. We think that this building will be a dramatic  
10 improvement and great addition to the city. We ask for your  
11 earliest possible approval and we believe that the conditions  
12 we've submitted meet the intent and spirit of the -- of the  
13 recommendation from the Office of Planning and we ask for your  
14 approval.

15 CHAIRPERSON REID: Okay. Board members, motion?

16 MR. QUIN: We have prepared draft orders which we  
17 will submit at the appropriate spot -- time.

18 CHAIRPERSON REID: Okay.

19 COMMISSIONER PARSONS: Madam Chairman, I'm  
20 prepared to move that we approve this application.

21 VICE CHAIRPERSON RENSHAW: I second.

22 CHAIRPERSON REID: Okay. Mr. Parsons --

23 COMMISSIONER PARSONS: I guess I should add with  
24 the proposed conditions that the applicant submitted here this  
25 afternoon.

1 CHAIRPERSON REID: Okay. And for the record,  
2 based on their having met the burden of proof as submitted in  
3 the application, in the Office of Planning report?

4 COMMISSIONER PARSONS: Yes.

5 CHAIRPERSON REID: Yes. In regard to the  
6 uniqueness and practical difficulties, there be no adverse  
7 impact as to noise, traffic, light, air, the like and that it  
8 does not intend to impair the intent or integrity of the zoning  
9 regulation or the zoning map.

10 It was seconded by you, Mr. Griffis?

11 Was there was a second? Well, I'd second.

12 VICE CHAIRPERSON RENSHAW: I seconded it already.

13 CHAIRPERSON REID: Did you?

14 VICE CHAIRPERSON RENSHAW: Yes.

15 CHAIRPERSON REID: Okay. All in favor?

16 (Ayes.)

17 MS. BAILEY: Staff will record the vote as 5-0 to  
18 approve the application. Motion made by Mr. Parsons. Seconded  
19 by Ms. Renshaw. Ms. Reid, Mr. Levy, and Mr. Griffis in  
20 agreement.

21 CHAIRPERSON REID: With the amendment to the  
22 conditions, Office of Planning report conditions being amended  
23 as proposed by Mr. Quin.

24 MR. QUIN: And -- and amended by the Board in our  
25 statements today.

1 VICE CHAIRPERSON RENSHAW: And as amended.

2 Exactly.

3 CHAIRPERSON REID: Yes.

4 MR. QUIN: And we would also ask that we have a  
5 summary order if we may with those conditions.

6 CHAIRPERSON REID: Summary order on the Quin  
7 decision. Excuse me, Ms. Sansone. Even though this is a  
8 summary order in that there are conditions, do we need to have  
9 a full order or is still the summary order?

10 MS. SANSONE: Madam Chair, a summary order would  
11 be fine. There were no parties in opposition in this case  
12 which is when we typically require the full order.

13 CHAIRPERSON REID: Just with the conditions.  
14 Okay. All right.

15 MR. QUIN: Thank you.

16 CHAIRPERSON REID: Thank you.

17 MR. QUIN: Thank you very much. Appreciate it.

18 CHAIRPERSON REID: Thank you very much.

19 Good luck with that.

20 MR. QUIN: Thank you.

21 CHAIRPERSON REID: Very ambitious --

22 MR. QUIN: Thank you.

23 CHAIRPERSON REID: -- project.

24 MR. QUIN: Mr. Hellman has done a wonderful job.

25 MR. HELLMAN: Thank you.

1 VICE CHAIRPERSON RENSHAW: Congratulations and I  
2 hope that a depiction of your building is going to be  
3 prominently displayed?

4 MR. HELLMAN: Oh.

5 MR. QUIN: Absolutely.

6 MR. HELLMAN: I hope so, too.

7 VICE CHAIRPERSON RENSHAW: All right. Put in our  
8 good word for it.

9 CHAIRPERSON REID: I think it's going to be  
10 attention getting. That's for sure.

11 MR. HELLMAN: Well, there's a lot of people that  
12 never thought I would make it to this point. You were  
13 included. Thank you.

14 CHAIRPERSON REID: Quite welcome. All right.  
15 Next case please.

16 MS. BAILEY: Application Number 16736 of CIH  
17 Renaissance Limited Partnership, pursuant to 11 DCMR 3103.2 for  
18 a use variance under section 350 to allow offices of a mortgage  
19 lender and tax service in an apartment building in an R-5-D  
20 District at premises 3060 16th Street, N.W. (Square 2594, Lots  
21 2085 and 2087).

22 All those wishing to testify in this case.

23 Sir, would you please raise your right hand? Do  
24 you swear the information that you will be giving today will be  
25 the truth? Please say I do.

1 MR. BROWN: I do.

2 MS. BAILEY: Thank you.

3 MR. BROWN: Madam Chair, members of the -- the  
4 Board, Mr. Levy, welcome. My name is Patrick Brown with  
5 Greenstein, DeLorem, and Lux and counsel for the applicant, the  
6 CIH Limited Partnership, Renaissance Limited Partnership.

7 Much like my -- the preceding case with Mr. Quin,  
8 I have the good fortune and pleasure of being here on a case  
9 that I believe is uncontested with a positive recommendation  
10 from the Office of Planning and Mr. Moore and also a positive  
11 letter of support -- unanimous support from the affected  
12 Advisory Neighborhood Commission. We've submitted a rather  
13 detailed application as well as prehearing statement which goes  
14 through to establish the three-part variance test for this  
15 project.

16 Before I turn over to Mr. Kevin O'Malley who's  
17 here on behalf of the applicant, I would like to point out one  
18 minor area of flexibility that I'd request. Originally, we  
19 sought use variances for professional offices, one for unit ten  
20 which was the minority-owned mortgage company. That applicant  
21 is very much desirous of getting in the space and -- and moving  
22 forward.

23 The potential user for unit 20 was an attorney  
24 and tax service. That gentleman was a contract purchaser and  
25 has since dropped out. Highlighting the -- the hardship and

1 difficulties that CIH has had in this property, he could no  
2 longer wait any longer for his approval and found other  
3 alternative space that -- that met his time constraints.

4 With that in mind, we still think that  
5 professional offices like an attorney or tax service are the --  
6 the best target market and we'd ask that the Board in  
7 considering this matter approve the variance with respect to  
8 unit 20 generically for professional offices so that we can  
9 have a -- a preapproved space that we can market and at the  
10 same time, maintain the -- the level of control that seems  
11 appropriate under the circumstances.

12 So, with that, I would turn it over to -- to Mr.  
13 O'Malley.

14 We're prepared to stand on our record which is  
15 there. We also have a drawing here that orients the -- the  
16 location of the -- the property and -- and respond to any  
17 questions from the -- the Board members.

18 MR. GRIFFIS: Madam Chair?

19 CHAIRPERSON REID: Yes.

20 MR. GRIFFIS: If I might, I would support the  
21 applicant standing on record.

22 CHAIRPERSON REID: Okay. That's fine. I'll lean  
23 in that direction.

24 However, I do feel that there are several  
25 questions at least that the Board would to ask. This Board

1 member especially and I'd also like to find out if there is  
2 anyone here affiliated with this case.

3 All right. Okay. Mr. Brown, the case certainly  
4 appear to be one in which we can expedite because there does  
5 not appear to be any opposition whatsoever and to your  
6 knowledge, have you received any comments from any of the  
7 neighbors or anyone in the community regarding this application  
8 having any opposition to it?

9 MR. BROWN: I've heard no opposition whatsoever  
10 from -- from any source to the application. I pose the  
11 question to Mr. O'Malley. He's been involved longer, but I --  
12 I think the answer would still be no.

13 CHAIRPERSON REID: Okay. So, we can expedite it  
14 fairly much.

15 Are there any questions other Board members? All  
16 right.

17 Mr. Brown, this is a new experience. Can you  
18 explain a little bit to me about -- this is a building in which  
19 you're asking for a use for two units. A changing use for two  
20 units in the building.

21 MR. BROWN: Yes.

22 CHAIRPERSON REID: And the zoning is R-5-D. Now,  
23 my question, where I'm a little confused is, the building  
24 itself is within the R-5-D zone and you're asking for -- I  
25 don't think I've seen a case like this where two of the units

1 in the building would be a departure from the zoning of the  
2 building itself. Is that what we're dealing with here?

3 MR. BROWN: Essentially and it goes back to the -  
4 - the three-part test. In particular the unique character and  
5 physical condition of -- of these two units. One, they've  
6 never been used for residential purposes. They're on the lower  
7 level backside of a seven-story apartment building.

8 As you can see here, the two units and this is  
9 somewhat misleading. The two units are ten and 20. The  
10 apartment building is entered at a higher level from 16th  
11 Street. So, and then above that are the -- the condominium  
12 apartment units.

13 On the -- the lower level, Mount Pleasant side,  
14 are the two units. They enter directly from the sidewalk. One  
15 of the other prominent features here is the HVAC chiller system  
16 and garbage dumpster which are right here which make these  
17 spaces noisy and also scenically challenged to say the least.

18 These -- this unit particularly in 1986 CIH was  
19 rewarded for its efforts in -- in renovating and saving the  
20 building. With this unit, it was not renovated at the time.  
21 They've never found a user. So, for 15 years, it's been  
22 vacant.

23 This unit was used previously by Catholic  
24 Charities. It was built out in an office type configuration.  
25 If you've been in the space and I try to describe it in my

1 statement, it's a -- it's a -- a series of small interior rooms  
2 with no windows. They're built out like office cubicles.  
3 You've got all your -- your exit lighting and -- and all your -  
4 - your standard package that you'd see in some sort of office  
5 space. You enter -- walk down the series of five or six steps  
6 to a large entry area with reception desk and so that it --  
7 it's uniquely unsuited for somebody to live there.

8 These are also big spaces, much larger than  
9 anybody would use. This space is center hallway with two  
10 separate spaces here. You've also got a lot of the building  
11 infrastructure, pipes and other improvements that you'd find in  
12 a core of a building running through here which makes it  
13 awkward. Very limited window space. Particularly in this case  
14 not sufficient to meet code for residential purposes and here  
15 just awkward space particularly with your scenic view of the --  
16 the dump and the -- the -- the chiller system.

17 And again, a long history. Nobody's ever lived  
18 in these spaces. This was the kitchen for the upstairs Kenesaw  
19 Cafe and again, just given it's size and configuration, not  
20 suited for residential uses.

21 To -- to put it in context, if you look at Mount  
22 Pleasant Street -- 16th Street, you're all aware of. Almost  
23 exclusively residential and buildings like this.

24 Mount Pleasant is -- is interesting because  
25 across the street, there's a little garage facility. The --

1 the zoning line is here and this -- on -- on this side of Mount  
2 Pleasant going up -- further up town is zoned C-2-A and you'll  
3 see a series of small shops, cafes, a liquor store here, and on  
4 down the block on both sides in Mount Pleasant.

5 So, you've got a situation where you've got a  
6 little neighborhood commercial zone permitted by zoning as well  
7 as some -- some existing nonconforming uses. So, this blends  
8 in quite nicely with that and, in fact, professional offices  
9 versus retail, it's an even lower level.

10 You've also got a -- a historic district. So,  
11 that the ability to change this building from the exterior in  
12 anyway to -- to somehow make it usable for residential purposes  
13 is -- is -- is limited and given the -- the age and the design  
14 of the building I think would -- would probably be unsuccessful  
15 in the final resort.

16 So, a long winded answer, but I hope I gave you  
17 an overview.

18 CHAIRPERSON REID: Okay. Yes. Yes, you did.

19 However, this is the question I have. Ms.  
20 Sansone, the building itself is zoned R-5-D and there are  
21 condominiums. So, the other units in the building are zoned  
22 accordingly. Is it because of the fact that it's a condominium  
23 and it's units are as such fee simple that these two units are  
24 capable or they're candidates for a variance in the same  
25 building that's zoned something else?

1 MR. BROWN: Well, Madam Chair, if I could come to  
2 Ms. Sansone's --

3 CHAIRPERSON REID: No. No. No. No, Ms. Sansone  
4 is corporation counsel for the BZA. Thank you very much. I'd  
5 like to hear from here.

6 MS. SANSONE: Thank you, Madam Chair. I think  
7 the reason here is that this would not be permitted as a matter  
8 of right use under the section 350 of the zoning regulations, a  
9 use of these two units which are separate -- capable of  
10 separate ownership for the office space. There is in the file  
11 I believe the condominium association has approved or has  
12 indicated support for this use variance. So, that is the  
13 rationale.

14 Perhaps Mr. Brown wishes to add something to  
15 that.

16 CHAIRPERSON REID: Notwithstanding that, I mean  
17 is that permissible in the same building? You have a variance  
18 from the use of the building itself?

19 MS. SANSONE: Yes, Madam Chair, and believe if  
20 the Board chooses to grant this application, the order would  
21 reflect it's for these specific units only that the use  
22 variance is being allowed.

23 CHAIRPERSON REID: So, my question is this is not  
24 uncommon? I mean it's legal? I mean we can do it? I mean  
25 that's the question.

1 MS. SANSONE: Yes, Madam Chair, I believe it's  
2 legal. I don't -- I'm drawing a blank on whether we've had any  
3 other cases. So, I guess it's not common.

4 CHAIRPERSON REID: Not to my knowledge, but, of  
5 course, you know, perhaps.

6 Mr. Parsons, are you familiar this?

7 COMMISSIONER PARSONS: (Off mike) No.

8 CHAIRPERSON REID: All right.

9 MR. BROWN: Madam Chair, and I understand the  
10 question you're raising and again, I can't draw a specific  
11 instance where the Board has approved this, but oftentimes  
12 buildings are used for a variety of purposes, particularly  
13 apartment buildings, and you see instances oftentimes where an  
14 apartment building will have and oftentimes you'll see it  
15 because they're historically existing nonconforming uses, but  
16 you'll find commercial enterprises, oftentimes retail or  
17 doctors' offices in the lower level of apartment buildings.  
18 So, that -- you know, condominium buildings and so, that you  
19 can see a -- a mixture of uses within a building.

20 CHAIRPERSON REID: But, that's usually like C-2-A  
21 or C-2-B.

22 MR. BROWN: No, if you -- if you look up and down  
23 streets where have a lot of apartment buildings, you'll  
24 oftentimes finding long standing commercial enterprises on the  
25 ground floor of those buildings in R-5 zones which is generally

1 where apartment buildings are permitted. So that it's not  
2 unusual. In this case, it's unusual given the circumstances of  
3 -- of these -- these spaces that -- that they'd ever been used  
4 for residential purposes given the lack of any historical  
5 residential use and the -- the physical nature of the property.

6 CHAIRPERSON REID: But, do you think that the  
7 intent and integrity of the zoning map and the zoning plan were  
8 they that they not be habitable, that they be for storage or  
9 for seller type of uses as opposed to being offices or as  
10 commercial?

11 MR. BROWN: And -- and I think -- and again, you  
12 have to and perhaps we're getting somewhat bogged down with the  
13 concept that these are units within an apartment building.  
14 They are separate. Consider this a row house on Capital Hill  
15 where you see all the time -- where you have a series of row  
16 houses and you've got commercial uses in one property and  
17 residential uses further and generally in the mid-block and  
18 then again another commercial use. A lot of those are not  
19 preexisting nonconforming uses, but some of them have been  
20 approved by variances. So, I think you can have a mixture of -  
21 - in the building.

22 One of the problems is and the suggestion you  
23 make of converting this space to -- to kind of the back room of  
24 this apartment building, it's separately owned. It's not owned  
25 by the apartment building. It's owed by CIH and to --

1 CHAIRPERSON REID: Yes, a fee simple ownership.

2 MR. BROWN: -- to -- to -- to suggest that one  
3 the building has made it clear as I put in my statement that  
4 they don't want access from these spaces to the main building  
5 for security and other purposes.

6 So, the ability to do something like that --  
7 these -- these spaces have got to stand on their own both from  
8 a -- a legal ownership standpoint as well as a use standpoint,  
9 independent of the building.

10 Also, to impose a -- you know, a back room  
11 storage, cellar type use on this makes them essentially  
12 worthless which is one of the critical elements of why there is  
13 a variance provision -- a use variance provision is that space  
14 should not be under used or used in such a way that it becomes  
15 a burden without any benefit.

16 CIH remains liable for substantial condo fees  
17 because the condo board doesn't allow them to -- to stop paying  
18 their -- their fees just because there's no user there. So,  
19 there on a prorated basis have to prorate it based on their  
20 percentage ownership of the building, pay -- pay fees. You've  
21 got to insure it and -- and maintain it to some level.

22 So, it's a continuing burden financial and  
23 otherwise on CIH without really any opportunity for use.

24 MS. BAILEY: Madam Chair?

25 CHAIRPERSON REID: Yes.

1 MS. BAILEY: The Board in the past has had a  
2 similar type -- well, I shouldn't say similar, but there has  
3 been requests for the use of apartments of specific units in  
4 apartment buildings to be used for commercial purposes. But,  
5 in general, those uses would cater to the occupants of the  
6 building.

7 In this particular instance, I'm not sure if it  
8 was stated, but my sense is this wouldn't be exclusively to the  
9 occupants of the building, but to the general public.

10 Once the use has been changed, it's changed  
11 forever as you well know, Madam Chair. I'm not trying to  
12 dissuade one or persuade.

13 What has not been made clear is whether the  
14 mortgage lender and tax service will that -- the certificate of  
15 occupancy be issued specifically for that or will the use be  
16 changed to just general commercial use. So, if this particular  
17 applicant isn't there any longer, who then would occupy that  
18 space or how would that space be used?

19 CHAIRPERSON REID: Thank you, Ms. Bailey.

20 MR. GRIFFIS: Yes, I think that's an excellent  
21 point.

22 Let me speak a little bit to the Chair's  
23 question.

24 First of all, this building -- my -- my question  
25 maybe comes from a different direction is why are we reviewing

1 a variance of this case in that it's fairly inherent to me  
2 looking at the case and the plan of the building that the  
3 building was built out to support some sort of nonresidential  
4 use. Unit 20 has direct access to the street with its own door  
5 if I'm correct in aligning the photographs with that. The  
6 grade seems to fall away from the -- the photographs fall away  
7 so that you would not necessarily and I don't think it was  
8 originally built for a residential unit because you are  
9 literally on the sidewalk level with no buffer.

10 So, it seems to be very appropriate and in fact,  
11 you spoke to briefly in the history which is included in the  
12 case's is quite illuminating that there was a whole cafe or a  
13 cafeteria as part of the building which had its accessory --  
14 well, it probably wouldn't be accessory, but had it's kitchen  
15 and all the attended features to it. It was obviously a large  
16 commercial component in this residential property and I would  
17 say even more so there are numerous cases of that around this  
18 city.

19 We now need to classify those as accessory uses  
20 because of our zoning that has come in after the fact that  
21 actually hinders this type of development which I find  
22 detrimental, in fact, to areas like this, Mount Pleasant being  
23 a retail street, to have mixed use buildings like this was  
24 originally based.

25 So, I would wonder why now it's come up? Perhaps

1 there were illegal for years and years and now, we're becoming  
2 legal. Except that it goes back to the fact of it was  
3 originally built for this type of purpose.

4 That would be my statement.

5 My one question is on the corner of Irving and  
6 Mount Pleasant, is there also retail or is there a unit there  
7 that accesses the street and what is that currently?

8 MR. BROWN: Yes, there is. That's what we refer  
9 to as unit 30.

10 MR. GRIFFIS: Thirty in the --

11 MR. BROWN: It is a -- for lack of a more  
12 specific term, a retail store.

13 MR. GRIFFIS: Again that one --

14 MR. BROWN: They were -- they were issued a  
15 certificate of occupancy by the city --

16 MR. GRIFFIS: Right.

17 MR. BROWN: -- in February of 2000. I wasn't  
18 involved and Mr. O'Malley wasn't, but apparently there was  
19 sufficient historical use that they could establish to -- to  
20 have a, and this is my speculation, a -- a valid nonconforming  
21 use that was continuing. We don't have the opportunity with  
22 units ten and 20 to do that. One with respect to unit 20, it's  
23 been vacant since the '80s and with respect to unit ten, the  
24 certificates of occupancy were very narrow, having to do with  
25 Catholic Charities and they're religious and -- and -- and

1 church nature.

2 So, that the ability -- a church is permitted in  
3 an R-1 zone. So, that calling it a church or church  
4 organization which was appropriate perhaps for their use  
5 doesn't allow you any broader use going forward. So, there's  
6 no history there of a valid nonconforming use that could --

7 MR. GRIFFIS: That I followed. Similarities  
8 between 30, 20, and ten, they're street grade access. Correct?  
9 They each have individual doors.

10 MR. BROWN: That's correct.

11 MR. GRIFFIS: Do any of the units as currently  
12 proposed have access up into the rest of the residential  
13 component of the building?

14 MR. BROWN: I should --

15 MR. O'MALLEY: They do indirectly. They have  
16 rear exit doors that are used for --

17 CHAIRPERSON REID: Sir, I'm sorry. Did you give  
18 your name and your --

19 MR. O'MALLEY: I apologize.

20 CHAIRPERSON REID: Okay.

21 MR. O'MALLEY: Kevin O'Malley. I'm Executive  
22 Vice President of CIH Ventures, Inc. which is the general  
23 partner of CIH Renaissance Limited Partnership, the applicant.

24 CHAIRPERSON REID: Give your address, too. Give  
25 your address.

1 MR. O'MALLEY: My home address, ma'am, or office  
2 address?

3 CHAIRPERSON REID: Office address is fine.

4 MR. O'MALLEY: 9316 Piney Branch Road, #106,  
5 Silver Spring, Maryland 20903.

6 They have alternate forms of ingress, egress that  
7 are fire exit doors that are -- so, that there's an alternate  
8 way to get in and out and you could conceivably exit through  
9 that rear door into a common stairwell, up the elevator to the  
10 main lobby.

11 But, it is the desire of the Board of Directors  
12 of the Renaissance Condominium that -- that those doors be used  
13 only for fire access and if I might add, that the point on unit  
14 30 -- the Board of Directors of the Renaissance  
15 enthusiastically supports uses in units ten, 20, and 30 and  
16 with respect to unit 30, which began to be utilized by the gift  
17 shop in November of last year, they're ecstatic about its use  
18 in that it has created life on the corner. Along Irving Street  
19 and because of the grade there are deep wells next to the  
20 building commonly unfortunately used for vagrants and what have  
21 you and sheltered activity that the community did not want to  
22 see. Now, that it's lit up, it's in operation from say 9:00 to  
23 9:00, they seen a tremendous decline in that kind of activity.

24 So, the -- the Board of Directors would support  
25 activities in those units as opposed to using them for storage.

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There are windows. While they're not sufficient egress windows for bedroom counts for residential uses, having them lit and full of activity provides a more vibrancy to the building, more safety, more security, easing of concerns and it can't be stated sufficiently that the building built in 1909, there have never been any residential uses in those spaces notwithstanding that the entire remainder of the building has been residential use with the exception of units on the first floor at the front left of the building where the Kenesaw Cafe had its main dining facility until the mid-'60s.

MR. LEVY: Madam Chair?

CHAIRPERSON REID: Yes.

MR. LEVY: I just want to ask regarding the photographs that you've included of units ten and 20, these are one-story units with condos above or these are multi-story units, but in all cases they're tucked into the building with condos above?

MR. O'MALLEY: Yes.

MR. LEVY: I'm having trouble from the photographs.

MR. O'MALLEY: They are flats, what would be considered flats. The building is built in tiers so there are condominium units immediately above the entire outline of these units ten and 20 for seven stories up.

1 MR. LEVY: Okay. And so the units are one-story.  
2 They're flats at the ground level. Okay. All right. Thank  
3 you.

4 CHAIRPERSON REID: Mr. Brown?

5 MR. BROWN: Yes.

6 CHAIRPERSON REID: In regard to the request for  
7 the relief that's being -- that's before us under section 350,  
8 is that in regard to 354(c) --

9 MR. BROWN: I -- I don't.

10 CHAIRPERSON REID: -- which pertains to in these  
11 instances and that was alluded to by Ms. Bailey that the  
12 accommodations that would be provided in this apartment house  
13 would be -- the services would be provided to only the  
14 residents of that particular building.

15 MR. BROWN: 350 I believe speaks to the permitted  
16 uses.

17 CHAIRPERSON REID: Yes.

18 MR. BROWN: And we're asking for a variance to --  
19 to allow beyond the -- just the compliance.

20 CHAIRPERSON REID: But, that's what I was asking.  
21 That's exactly my question. To include the matter of right  
22 use for the services provided by the commercial or retail to be  
23 distributed to only the residents in that building.

24 MR. BROWN: Well, we -- we don't want to restrict  
25 it to the residents of the building and that was certainly

1 never the intention.

2 CHAIRPERSON REID: So that -- go ahead.

3 MR. BROWN: And again, just going back to  
4 generically professional offices without regard to, you know,  
5 who their clients are. I mean certainly --

6 CHAIRPERSON REID: So, the bare essence from that  
7 provision also.

8 MR. BROWN: Yes.

9 CHAIRPERSON REID: That's what I -- okay. All  
10 right.

11 MS. SANSONE: Madam Chair?

12 CHAIRPERSON REID: Yes.

13 MS. SANSONE: It had just occurred to me we have  
14 had cases involving condominium buildings where the Board has  
15 granted relief to allow doctors' offices and psychiatrists'  
16 offices. The Lauren Condominium Building being one and I know  
17 there was another one where the Board did allow certain  
18 designated units to be used as office space for persons outside  
19 the condominium building.

20 CHAIRPERSON REID: Okay. Thank you, Ms. Sansone.

21 All right. Any further questions?

22 MR. O'MALLEY: Madam Chair?

23 CHAIRPERSON REID: Yes.

24 MR. O'MALLEY: And I'm also familiar with the  
25 Plaza West Cooperative Association on 1669 Columbia Road. It

1 is a cooperative not a condominium, but it's similar in that  
2 respect, a residential building, that did receive a -- a  
3 variance for an insurance agency for two units that are in the  
4 rear of the building and that -- the Board approved that. I  
5 couldn't give you a specific citing. It's from memory, but  
6 it's approximately four or five years ago.

7 CHAIRPERSON REID: Okay. Thank you. All right.  
8 All right.

9 Let's move to the Office of Planning. Do we have  
10 an Office of Planning report on this? Do did one come in?

11 MS. BAILEY: Yes, Madam Chair. They recommended  
12 approval, but a waiver is needed to accept the report into the  
13 record.

14 CHAIRPERSON REID: Okay. We don't have copies of  
15 it.

16 MS. BAILEY: Exhibit Number 24.

17 CHAIRPERSON REID: I don't have the master file  
18 here, but the Board members --

19 MR. BROWN: Madam Chair, can I share my copy with  
20 you?

21 CHAIRPERSON REID: -- don't have copies of the  
22 Office of Planning report.

23 MR. BROWN: We have not seen one in the record.  
24 I was there when they voted to support.

25 CHAIRPERSON REID: No, we don't, but let's first

1 go to this Office of Planning report.

2 Just give us a couple of minutes to look over it.

3 MR. BROWN: Can I share a copy?

4 VICE CHAIRPERSON RENSHAW: We'll just get some  
5 copies made.

6 CHAIRPERSON REID: Yes, we'll get some copies  
7 made real quick.

8 In the meantime, let's move on to -- we'll come  
9 back.

10 Mr. Moore, bear with us. We'll come back to your  
11 report. Your very illustrious report.

12 Let's move on to the ANC report. There appears  
13 not to have been one submitted and the assumption is that they  
14 apparently had no objection to your application.

15 There's no one here in support or in opposition  
16 to this particular application? Okay.

17 Are there any other questions, Board Members,  
18 while we're waiting for the Office of Planning report to come?

19 VICE CHAIRPERSON RENSHAW: Just to ask the  
20 applicant since you made comments about the chiller unit and  
21 you are saying that you've got some eyesore at that location in  
22 the back between ten and 20. Isn't there anything that can be  
23 done about the noise and the chiller unit?

24 MR. O'MALLEY: I'm not aware that the condominium  
25 association would desire to or could undertake efforts beyond

1 what they already have. They have enclosed the trash dumpsters  
2 and alternating board-on-board fencing. They've done the same  
3 with the chillers and put a sound insulation board on the  
4 inside of the fencing, but the large fans from the condensing  
5 units are still exposed to the -- to the sky and it's the  
6 operation of those that create noise that penetrates beyond the  
7 -- the fencing.

8 VICE CHAIRPERSON RENSHAW: And that's the  
9 responsibility of the condo association?

10 MR. O'MALLEY: It -- it is the responsibility of  
11 the condominium association. They own the common areas and the  
12 common area equipment. The chillers and cooling tower as  
13 opposed to being on the roof as is common in commercial office  
14 buildings, it happens to be on the ground and utilities are  
15 commonly metered for the residential owners in the condominium  
16 building. So, there is one master boiler in -- in the sub --  
17 subbasement and the chillers which provide air conditioning for  
18 all units in the building.

19 VICE CHAIRPERSON RENSHAW: You mention on page  
20 seven and onto page eight that the large trash enclosure and  
21 the chiller unit which produces noise and odor. Has that been  
22 brought to the attention of the city? Because that should not  
23 continue producing odor that would be offensive to anyone  
24 walking by on the street and also to anyone using units ten and  
25 20.

1 MR. O'MALLEY: The condominium association  
2 endeavors to maintain the facility as best they can in light of  
3 the fact that it is -- they are trash dumpsters and they are  
4 picked up. They're large dumpsters that are picked up by a --  
5 a large trash vehicle. So, they're wheeled out on -- about  
6 five feet from their enclosure to the sidewalk. They can be  
7 picked up and -- and dumped.

8 It -- it was the solution determined to be most  
9 appropriate when the condominium was renovated and converted in  
10 1985, '86, and '87 and it seems to be the -- the lesser of  
11 evils. Alternatives would be to have trash facilities within  
12 the building and, of course, that creates issues with rodents  
13 and pests and what have you.

14 So, I don't know that the -- the odor issue is  
15 extremely offensive, but it does highlight the  
16 inappropriateness of the uses as residential uses. Whereas  
17 commercial uses are a bit more accepting of, you know, urban --  
18 immediate urban types of environments.

19 CHAIRPERSON REID: All right. Thank you. Just  
20 take a couple of minutes and read over the Office of Planning  
21 report and continue.

22 (Whereupon, at 2:57 p.m. off the record until  
23 3:00 p.m.)

24 MR. MOORE: The photograph at the bottom of page  
25 four is actually of unit ten. Subject unit. Not 30.

1 CHAIRPERSON REID: Okay. Okay. Mr. Moore,  
2 please or just give us -- you don't have to go onto the very  
3 interesting and exhaustive history of this building which is --

4 VICE CHAIRPERSON RENSHAW: Interesting.

5 CHAIRPERSON REID: Yes, very interesting. I  
6 think we've all read that. Just give us the issues as it  
7 pertains to variance.

8 MR. GRIFFIS: Can I make a quick comment before  
9 he starts also.

10 CHAIRPERSON REID: Yes, couldn't resist?

11 MR. GRIFFIS: Right. Mount Pleasant might be  
12 clearly surprised that this building is in Columbia Heights.  
13 I'm not sure it actually is and specifically since it's in the  
14 Mount Pleasant historic district, it probably fits within that  
15 neighborhood.

16 CHAIRPERSON REID: Good observations.

17 MR. MOORE: As you're probably aware, the Office  
18 of Planning and the Mayor's office have been going through some  
19 iterations about which -- looking at neighborhoods and clusters  
20 now and it shows up in the cluster that I have on the --

21 MR. GRIFFIS: Yes, now --

22 MR. MOORE: I've viewed it probably wrong.

23 MR. GRIFFIS: That's fine. Thanks.

24 CHAIRPERSON REID: But, it really would be  
25 because I think -- all right. Mr. Moore.

1 MR. MOORE: Okay. The salient points of this  
2 case as I see them you would have to imagine three units  
3 attached to a building that had no other function in that  
4 building other than the fact that they are physically attached  
5 to it. Because of all the intent and purpose, these units have  
6 separate entrances. They are separated by a wall from the  
7 condominiums in the building and of course, they predate zoning  
8 by 50 years.

9 In our opinion, the applicant has met the test in  
10 each of the three areas and the Office of Planning recommends  
11 that this variance be granted and that there will be no ill  
12 effect to the zone plan.

13 CHAIRPERSON REID: Mr. Moore, could you -- I know  
14 I said be brief, but you need to state a little bit more than  
15 just meets the test. How please?

16 MR. MOORE: Okay. I took that literally. Okay.

17 CHAIRPERSON REID: This is a little different.  
18 I'd just like you to elaborate just a little bit more.

19 MR. MOORE: On page, I think --

20 CHAIRPERSON REID: Six.

21 MR. MOORE: -- six of my report where we go into  
22 the text itself, we looked at the configuration and location of  
23 the units and that the uses have historically been  
24 nonresidential in this building from the inception of the  
25 building and I won't go into that long history, but it's

1 already there.

2           The one about the cafe and it's long history in  
3 the building. How long it's been there. We list the various  
4 uses that's gotten C of O's to operate in there. These are  
5 nonresidential uses in the building and support for the  
6 exceptionalness of the building and why we lean towards a  
7 recommendation of approval.

8           With respect to the strict application of the  
9 regulation, we do think it would result in a hardship on the  
10 property if the Board does not grant the request.

11           The original design and historic function as  
12 nonresident units would cause undue hardship on the owner.

13           Again, reiterated the fact that they all have  
14 separate entrances in the building and if for no other reason  
15 as I met with the applicant and his attorney and as we stood  
16 outside of the building discussing questions that I had raised  
17 regarding this application, we happened to be standing in the  
18 area where the air conditioner is and on the photograph on --  
19 well, actually all of them, but if you look at the one on page  
20 two of the report, unfortunately the ones I sent to you in  
21 color are not here. So, we'll not be able to adjust that.  
22 But, there are three vehicles parked there and there's a van  
23 about the third car up starting from the end car on page two.  
24 There's a fence after the third vehicle. That's where the air  
25 conditioner unit is and when you stand at the area and even try

1 to have a civil conversation, you can hardly hear yourself.  
2 So, I couldn't imagine anyone by design wanting to live at that  
3 location where it's appropriate for nonresidential, in that  
4 case office uses. It definitely wouldn't be for residential  
5 uses.

6 Again, I believe that after looking at all the  
7 facts in the case that the applicant has again met the burden  
8 of proof.

9 If you want anymore specificity, ma'am, I'd been  
10 glad to provide it relative to your questions of earlier.

11 CHAIRPERSON REID: Let's see. I think that --

12 VICE CHAIRPERSON RENSCHAW: A question for Mr.  
13 Moore.

14 CHAIRPERSON REID: Okay.

15 VICE CHAIRPERSON RENSCHAW: Mr. Moore, aren't  
16 there noise ordinances in the city?

17 MR. MOORE: Yes, there are.

18 VICE CHAIRPERSON RENSCHAW: And would any of them  
19 apply to this noise pollution?

20 MR. MOORE: Under test, they may. As I  
21 mentioned, I did say we were standing next to the unit.

22 VICE CHAIRPERSON RENSCHAW: Yes.

23 MR. MOORE: I mean the noise it wouldn't be as  
24 bad if we were standing at the corner of 14th and Irving.

25 VICE CHAIRPERSON RENSCHAW: Could you hear the

1 noise inside these units? Could you?

2 MR. MOORE: Basically not that I focused on it,  
3 but I would think no.

4 VICE CHAIRPERSON RENSHAW: All right. And just  
5 one last question. Whose responsibility is it to ask for a  
6 noise test? Would it be the owner of the property or could  
7 anyone ask the city?

8 MR. MOORE: I would imagine anyone who is  
9 impacted by what they perceived to be noise. Now, I think it  
10 would be the tenant.

11 VICE CHAIRPERSON RENSHAW: The owner or the  
12 tenant?

13 MR. MOORE: I would think so.

14 VICE CHAIRPERSON RENSHAW: All right. Mr. Brown,  
15 take it from there.

16 CHAIRPERSON REID: Okay. Mr. Brown, one question  
17 that was -- thank you very much, Mr. Moore.

18 Are there any other questions for Mr. Moore, for  
19 the Office of Planning?

20 And within the Office of Planning report, he did  
21 mention that there was a mortgage company already operating out  
22 of unit ten.

23 MR. BROWN: I -- yes, Madam Chair, the First  
24 Millennium Mortgage Company. I -- I don't know exactly how to  
25 explain it because I was not involved and -- and maybe defer to

1 Mr. O'Malley. But, the tenant there thought she was going to  
2 get a C of O, went down and tried to get one, did not, and she  
3 established her -- some part of her business in there as we've  
4 discovered.

5 That's not appropriate. We had filed for the  
6 variance to -- to make the use legal and I think leave it at  
7 that that she shouldn't have -- she shouldn't have established  
8 her -- her use. Her lease or my understanding is it may be her  
9 responsibility to get a C of O which she was unable to do so  
10 and kind of had crossed the path of no return I think.

11 So, we do two things here. One is correct that  
12 problem.

13 CHAIRPERSON REID: How?

14 MR. BROWN: By granting a use variance. By  
15 seeking a use variance and having one approved, First  
16 Millennium Mortgage will be able to get a certificate of  
17 occupancy and continue to -- to -- to follow through on her  
18 lease.

19 CHAIRPERSON REID: Oh. I thought that you were  
20 saying that you would correct the problem by her desisting the  
21 operation of that --

22 MR. BROWN: Well, she was told -- she was told  
23 that she shouldn't be operating both by the city and -- and I'm  
24 told and -- and by the -- the landlord.

25 I don't know what the state of her operations are

1 today other than she's waiting to hear about this application.

2 CHAIRPERSON REID: Well, I think that says that  
3 the OP is pointing that that is already operating and I think  
4 that's clearly a violation and as such, we fine quite heavily  
5 per day.

6 MR. BROWN: Absolutely. Absolutely and she's  
7 been advised of that.

8 CHAIRPERSON REID: So, the wise thing to have  
9 done would have been or to do would have been to desist the  
10 operation until such time a variance could be obtained -- if it  
11 could be obtained and I'm sorry.

12 Give me your name again, Mr.?

13 MR. O'MALLEY: It's Kevin O'Malley.

14 CHAIRPERSON REID: Mr. O'Malley, are you the  
15 owner?

16 MR. O'MALLEY: Yes, I am the Executive Vice  
17 President of the general partner of the applicant and owner.

18 CHAIRPERSON REID: Okay. And as such, you were  
19 aware of the fact that this violation is occurring in your  
20 building.

21 MR. O'MALLEY: Yes, ma'am.

22 CHAIRPERSON REID: In your facility.

23 MR. O'MALLEY: First Millennium Mortgage  
24 Corporation is owned and operated by Ritz Ellis, an African  
25 American woman, a minority-owned business. She was a mortgage

1 loan officer for a mortgage banking operation and desired to  
2 start her own business.

3 We entered into discussions and executed a lease  
4 last year which obligated her to obtain certificate of  
5 occupancy for -- for use of this space. We did not anticipate  
6 that there would be a problem in obtaining a certificate of  
7 occupancy.

8 However, CIH as an organization is a residential  
9 developer. We came to own these spaces as a result of our  
10 efforts in converting the building to condominium and  
11 preserving the households of the 29 low-income families in the  
12 late '80s.

13 So, we're not in a position to make  
14 representations with respect to commercial uses and what have  
15 you which is why we make it the responsibility of the  
16 perspective tenant.

17 In her least, she was given if I'm not mistaken  
18 90 days free rent. During that period, she began the process  
19 of applying for certificate of occupancy. She also had left  
20 her other position. Obviously she -- in hopes of starting this  
21 business and she spent about \$15,000 doing paint and plaster  
22 work and adding carpeting to this space and planned a grand  
23 opening and announced her grand opening all the while expecting  
24 that the issuance of the certificate of occupancy would not be  
25 a problem.

1           It was -- it would have been our contention and  
2 position at the time. The Spanish Catholic Center had occupied  
3 the space and vacated the space in December of 1998 and I think  
4 in reflecting on the zoning regulations we would have argued  
5 and did argue with DCRA that this was a continuation of a  
6 nonconforming use and should have been prohibited or, I'm  
7 sorry, should have been allowed.

8           Mr. Bellow decided that they would not allow it,  
9 wanted it to go before the BZA. So, we faced with the  
10 situation as a landlord where we had, you know, a minority-  
11 owned business, a start-up business, a lady who had left her  
12 prior position. She has children that she's caring for.  
13 Attempting to start a business in the District and we would  
14 have been forced to evict her from the space and I didn't feel  
15 comfortable doing that.

16           She has not paid any rent to us since she's been  
17 occupying the space. I have not billed her for any rent and it  
18 was our hope that this request could be met with your approval  
19 and we could resolve the issue that is creating or inhibiting  
20 her ability to obtain a certificate of occupancy and move on  
21 from that point.

22           As I understand it and as she has explained it,  
23 she is operating at about what she considers 25 to 30 percent  
24 of capacity for the space. She has done -- she has not put  
25 signs in her doors or windows. The mortgage business these

1 days to be competitive the loan officers generally more often  
2 than not take applications at the person's places of business  
3 or their home to make it convenient for the mortgage  
4 applications or the applicants. So, there's been minimal  
5 activity within the space and certainly there's been no  
6 objection. In fact, approval by the Board of Directors.

7 That doesn't absolve anyone of their  
8 responsibility to have a certification of occupancy prior to  
9 operating in the space. I think the circumstances are, in our  
10 experience, unique and we feel -- we -- I really felt for her  
11 and for her efforts to state her business.

12 CHAIRPERSON REID: Well, thank you. However, I  
13 think that given the fact that we're all aware that she's  
14 operating illegally and you own it. You own the actual unit  
15 itself and until such time that she receives the variance, then  
16 you may want to dissuade that kind of activity. Because there  
17 can be citations and fines.

18 All right. Any other questions?

19 Were you going to say something, Mr. Moore?

20 MR. MOORE: Yes, when I viewed the site, I  
21 couldn't in good conscious know that the business was in  
22 essence operating without reporting that. I'd be in violation.

23 After having done so, I called and talked to the  
24 inspector who actually went by and cited the applicant one  
25 time. I asked -- I told him about this hearing and the date of

1 the hearing because they were going to go back and cite them  
2 again \$1,000 a day until they cease.

3 CHAIRPERSON REID: But, once -- go ahead.

4 MR. MOORE: I told them that the case would be  
5 heard today and --

6 CHAIRPERSON REID: But, once they're cited, then  
7 aren't they given 30 days or something like that to come into  
8 compliance?

9 MR. MOORE: I think they're suppose to cease and  
10 desist until this --

11 CHAIRPERSON REID: Until? Okay.

12 MR. MOORE: Yes.

13 CHAIRPERSON REID: That's what I mean. Before  
14 they receive other citations.

15 MR. MOORE: She gotten another visit from that  
16 inspector since then.

17 CHAIRPERSON REID: Okay. Thank you.

18 All right. The ANC report, I understand we don't  
19 have one.

20 Mr. Moore, this was just brought to my attention  
21 that your -- you know, this is dated July the 19th. There  
22 still would be -- okay. Right. That you'd need a waiver for  
23 your report and unless there's any objection, we would so waive  
24 that the rules allow -- waive it to come in. We'll allow your  
25 report to come in late.

1                   We don't have an ANC report.    So, we are to  
2                   assume then that they don't object to the application.   Let's  
3                   see.

4                   We do have a letter of support from the  
5                   Renaissance Condominium Association.   We have any other persons  
6                   here in support?

7                   Any persons in opposition?   There seems to be no  
8                   opposition and Mr. Brown, I think you just said that you don't  
9                   know of any instance of anyone being opposed to the  
10                  application.

11                  So, then we go to closing remarks by the  
12                  applicant.

13                  MR. BROWN:   I'd just like to stand on the record  
14                  as we presented in writing today.   Also request the Board in  
15                  closing for a bench decision and summary order a draft of which  
16                  I can provide staff almost immediately to facilitate resolving  
17                  this matter.

18                  With the final point going back to my earlier  
19                  request for flexibility as to unit 20 which is the one that we  
20                  originally hoped to have the attorney and tax service, but he's  
21                  dropped out.   That we state the approval on -- in the context  
22                  of generically professional offices so that CIH and the  
23                  property owner can attempt to market the space.   You know, a  
24                  preapproved fashion so that we don't have a situation where  
25                  somebody enters into a lease and then finds out that they're --

1 they're not able to -- to go forward and obtain the C of O.

2 With that I'm --

3 MR. GRIFFIS: And that's specifically for unit  
4 ten and unit 20. Correct?

5 MR. BROWN: That's correct.

6 MR. GRIFFIS: Are you not going to run into  
7 problems with unit 30 when the new C of O needs to be applied  
8 for?

9 MR. BROWN: And again, the way it appears to have  
10 -- it has a valid C of O now for a retail use. That can be  
11 continued. That could be passed on --

12 MR. GRIFFIS: Right.

13 MR. BROWN: -- from -- from user to user as a  
14 valid nonconforming use provided there's no discontinuance of  
15 three years or more.

16 MR. GRIFFIS: So, you don't see it as an issue?

17 MR. BROWN: I don't anticipate that a problem. I  
18 hope it isn't.

19 CHAIRPERSON REID: All right. Board members, I  
20 move approval of the application.

21 I think that the applicant has demonstrated to  
22 meet the three-prong test in regards to the variance under  
23 section 350, that the property is unique in that it is small  
24 and it does not have any windows of any type or any of the  
25 other features that would be conducive to retail habitation,

1 and that the property had been used previously for commercial  
2 use. It's been vacant for some time which is contributing to  
3 blight in that particular area.

4 I think that given the fact -- the practical  
5 difficulty is because of the configuration, because of the  
6 size, because of the lack of residential features that it would  
7 not be conducive for retail use and, therefore, it would be the  
8 practical difficulty to comply with the existing zoning  
9 regulations.

10 As far as we know, there is no adverse impact.  
11 We've had no opposition as far as noise, traffic, parking,  
12 light, and the like.

13 The building is segregated from the rest of this  
14 area. These two units, ten and 20, are separated from the rest  
15 of the building and it does not tend impair the intent and  
16 integrity of the zoning regulations and map.

17 MR. GRIFFIS: Second.

18 CHAIRPERSON REID: Board discussion.

19 MR. GRIFFIS: I would actually like to briefly  
20 see if you would entertain a friendly amendment that would  
21 specify the variance of use for these units to retail and/or  
22 professional use.

23 CHAIRPERSON REID: Okay. Specifically retail or  
24 professional use.

25 MR. GRIFFIS: Correct.

1 CHAIRPERSON REID: All right. All in favor?

2 (Ayes.)

3 CHAIRPERSON REID: Opposed?

4 MS. BAILEY: Staff will record the vote as 5-0 to  
5 approve the application. Motion made by Ms. Reid. Seconded by  
6 Mr. Griffis. Mr. Levy, Mr. Parsons, and Ms. Renshaw in  
7 agreement to approve the application for units ten and 20 to be  
8 used for retail and/or professional office space.

9 CHAIRPERSON REID: Okay. Some other question I  
10 forgot. I know that the record's been already -- the votes  
11 been taken, but did you say that it had been marketed or you  
12 tried to get residential tenants in those units?

13 MR. O'MALLEY: We've never attempted to obtain  
14 residential uses for those spaces. They don't have bathrooms.  
15 They don't have kitchens.

16 CHAIRPERSON REID: Oh, right. Right. It's  
17 unrealistic.

18 MR. O'MALLEY: Yes.

19 CHAIRPERSON REID: Okay. All right. Thank you.

20 MR. O'MALLEY: You're welcome.

21 CHAIRPERSON REID: All right.

22 MR. BROWN: Thank you, Madam Chair, members of  
23 the Board.

24 CHAIRPERSON REID: Quite welcome.

25 Why don't we take a ten-minute break before we

1 finish the last one?

2 MR. GRIFFIS: Yes.

3 VICE CHAIRPERSON RENSHAW: Yes. Yes, I have to  
4 go at --

5 CHAIRPERSON REID: Okay. Ten minutes.

6 VICE CHAIRPERSON RENSHAW: Do you think you're  
7 going to be --

8 CHAIRPERSON REID: Go with the last one? Maybe.  
9 Maybe if we kind of -- okay.

10 We're going to take a ten-minute recess and we'll  
11 return in about ten minutes and we have one more case for the -  
12 -

13 (Whereupon, at 3:21 p.m. off the record for a  
14 recess until 3:40 p.m.)

15 CHAIRPERSON REID: All right. Give your name and  
16 your address.

17 MR. DAVIS: Sure.

18 MS. BAILEY: Excuse me, Madam Chair. I need to  
19 call a case.

20 CHAIRPERSON REID: Oh. Okay. A little too  
21 hasty. Anxious.

22 MS. BAILEY: Application Number 16749 of Steven  
23 and Susan Davis, pursuant to 11 DCMR 3104.1 for a special  
24 exception to allow the construction of an addition to a single  
25 family dwelling not meeting the lot occupancy requirements,

1 that is, section 403 under section 233 in an R-4 District at  
2 premises 613 E Street, S.E. (Square 877, Lot 837).

3 Please stand to take the oath. Raise your right  
4 hand.

5 Do you swear the information that you'll be  
6 giving today will be the truth? Please say I do.

7 MR. DAVIS: Yes, I do.

8 MS. BAILEY: Thank you.

9 VICE CHAIRPERSON RENSHAW: Madam Chairwoman, I'd  
10 like to ask Ms. Bailey is it under section 223 not 233?

11 CHAIRPERSON REID: Remember we talked about that  
12 --

13 VICE CHAIRPERSON RENSHAW: Yes.

14 CHAIRPERSON REID: -- and we wanted to have it  
15 amended.

16 VICE CHAIRPERSON RENSHAW: Correct. It must be a  
17 typo.

18 MR. DAVIS: Yes, I -- I believe it should be 223.

19 CHAIRPERSON REID: Go ahead.

20 MS. BAILEY: Thank you, Ms. Renshaw. I also  
21 wanted to bring to the Board's attention that we did receive an  
22 ANC report yesterday and that copy was placed in front of the  
23 Board members.

24 CHAIRPERSON REID: Okay.

25 MR. DAVIS: Madam Chairman and members of the

1 Board, I'm Steve Davis, the applicant. I'm here representing  
2 myself and my wife, Susan, who regrettably is not able to be  
3 here.

4 To my left is the architect, Nicola Hain, who has  
5 worked on the project. I left my attorneys at home.

6 I am hoping after having been here for the  
7 afternoon I've had something of an education and I see you've  
8 had kind of a full plate. I'm really hoping this will be like  
9 your favorite dessert and we'll be able to get through this and  
10 everyone will enjoy the afternoon.

11 The -- this is the application for a special  
12 exception to allow the construction of an addition to a single  
13 family dwelling not meeting the lot occupancy requirements.  
14 It's section 403 under section 223 in an R-4 District at  
15 premises 613 E Street, S.E.

16 CHAIRPERSON REID: Mr. Davis, before you go any  
17 further. Since you've been here the full afternoon, you know  
18 the drill.

19 MR. DAVIS: Yes.

20 CHAIRPERSON REID: Right. Since you've been here  
21 the entire afternoon and by this time you know the drill.  
22 Right?

23 Basically, again, we've been really fortunate  
24 today because we've had all, with the exception of one that was  
25 continued, none of the cases have been contested and there is

1 no opposition in your case. You have support of the ANC and  
2 also Historic Preservation Review Board and Office of Planning  
3 also has approved or recommended approval.

4 So, as such, especially given the fact that you  
5 have been here and we do appreciate your indulgence, you can  
6 expedite and just give us the salient points and we can dispose  
7 of this fairly quickly.

8 MR. DAVIS: Those are the points.

9 CHAIRPERSON REID: That's it?

10 MR. DAVIS: Those are the points. If I -- if I  
11 may, Madam Chairwoman, there -- there is some urgency that we  
12 feel to proceed with this. If the Board can approve this  
13 project, then I would ask if I can get a bench decision this or  
14 this afternoon to get an order number which I can take to the  
15 Office of Permits. We've had preliminary contact with Mr.  
16 Bellow in Permits who has accepted the plans under preliminary  
17 review and with the order number, we can move forward.

18 We made the purchase in December. We've not yet  
19 been able to move into the property and we feel some urgency to  
20 get moving.

21 CHAIRPERSON REID: Thank you.

22 Questions, Board members?

23 All right. We move to the Office of Planning.  
24 Do we need to waive the record? That was on July the 11th.  
25 So, it's okay.

1                   Again, the Office of Planning, you can stand on  
2 record for the most part. Do you have any comments or remarks  
3 you'd like to make?

4                   MS. STEINGASSER:       Just very briefly, Madam  
5 Chairman. My name is Jennifer Steingasser with the Office of  
6 Planning.

7                   We felt that this application met the full intent  
8 and purposes of section 223. We felt that the request for lot  
9 occupancy provided for full use of the property. It did not  
10 affect the light and air of the adjoining properties. It  
11 extended no further than the rear addition of the western  
12 property. It did not affect the privacy, use or enjoyment of  
13 the neighboring properties. There were no windows or doors on  
14 either side of the addition. The rear of the addition faced an  
15 alley also not affecting any of the adjoining neighbors'  
16 privacy or use. As viewed from the street, there were no  
17 changes to the character, scale or pattern of the houses or the  
18 neighborhood.

19                   The Historic Preservation Board recommended  
20 conceptual approval in January of this year.

21                   We felt that the graphic material submitted met  
22 the requirements of section 223 and we did recommend approval.

23                   CHAIRPERSON REID: All right. Thank you very  
24 much. Any questions for Office of Planning?

25                   Other government reports? We did have a letter

1 from ANC-6B.

2 VICE CHAIRPERSON RENSHAW: We're going to need to  
3 waive this in. It's dated July 23rd, ANC-6B and the ANC voted  
4 --

5 CHAIRPERSON REID: Let's first waive it in. I  
6 have no problem with --

7 VICE CHAIRPERSON RENSHAW: All right.

8 CHAIRPERSON REID: -- waiving it in unless  
9 there's an objection from Board members.

10 VICE CHAIRPERSON RENSHAW: No.

11 CHAIRPERSON REID: Okay.

12 VICE CHAIRPERSON RENSHAW: All right. ANC-6B  
13 voted 9-0, and seven commissioners constitute a quorum of it's  
14 13-member commission, at its properly noticed special meeting  
15 of July 19, 2001 to support this application and it said that  
16 Commissioner Ann Black and Executive Director Godlieve Simon  
17 are authorized to represent the ANC, but neither Ann Black or  
18 Mr. Simon are here and it's signed Kennan Jarbo the  
19 Chairperson.

20 CHAIRPERSON REID: Okay. And then the ANC report  
21 the weight to which it's entitled.

22 I don't think we have any other government  
23 reports except for Historic Preservation. Do we have a letter  
24 from them? Was there a letter from Historic Preservation that  
25 we just alluded to?

1 MS. STEINGASSER: Yes, ma'am, in the file, there  
2 is a copy of their February concept approval. It states under  
3 action: "Approved in concept by HPRB. Final HP sign off after  
4 zoning approval."

5 CHAIRPERSON REID: All right. Thank you and then  
6 present in support or parties in support, we did have a letter  
7 from Historic Restoration Society and basically, they have  
8 given their support particularly in view of the fact that the  
9 lot occupancy request be -- the deviation is only 10 percent  
10 from 60 percent to 70 percent and they don't see where there  
11 would be any adverse impact and, therefore, supports the  
12 application.

13 There's no opposition. So, closing remarks.

14 MR. DAVIS: I appreciate the review by the Board  
15 and hope that we can get that bench decision with a number.

16 CHAIRPERSON REID: Summary order.

17 MR. DAVIS: Summary order and --

18 CHAIRPERSON REID: Okay. All right. Board  
19 members, the pleasure.

20 VICE CHAIRPERSON RENSHAW: Madam Chairperson, I  
21 move that we approve application of Steven and Susan Davis  
22 under 3104.1 for a special exception to allow the construction  
23 of an addition to a single family dwelling not meeting the lot  
24 occupancy requirements under section 403 and under 223 in an R-  
25 4 District at 613 E Street, S.E. (Square 877, Lot 837) and I

1 believe that this special exception will be -- the application  
2 will be in harmony with the general purposes and intent of the  
3 zoning regulation as expressed by the Office of Planning report  
4 and will not affect the use of the neighboring property.

5 CHAIRPERSON REID: Okay. Any other comments?

6 MR. GRIFFIS: I'd second the motion.

7 CHAIRPERSON REID: All right. Comments?

8 All right. All in favor?

9 (Ayes.)

10 CHAIRPERSON REID: Opposed?

11 MS. BAILEY: Staff will record the vote as 5-0 to  
12 approve the application. Motion made by Ms. Renshaw. Seconded  
13 by Mr. Griffis. Mr. Levy, Mr. Parsons, and Ms. Reid in  
14 agreement and that is to -- I'm sorry. It should be stated  
15 that the announcement would change section 233 to section --  
16 excuse me. Let's do that again. Section 233 would be changed  
17 to 223.

18 CHAIRPERSON REID: Mr. Davis, I'd like to  
19 congratulate you on being the --

20 MR. DAVIS: The survivor. Right?

21 CHAIRPERSON REID: Yes. Right. Right.

22 MR. DAVIS: One of the survivors.

23 CHAIRPERSON REID: Right. The fastest  
24 application to be approved today. I think time is something  
25 like two or three minutes if that much.

1 MR. DAVIS: Thank you.

2 CHAIRPERSON REID: And thank you again for your  
3 indulgence. I'm glad that we were able to dispose of your  
4 application fairly quickly so that you wouldn't have to be  
5 detained any longer.

6 MR. DAVIS: Thank you very much.

7 CHAIRPERSON REID: Good luck and you have your  
8 approval -- I mean your order to be coming out in about three  
9 weeks.

10 MR. DAVIS: I'm asking is there anyway that I can  
11 get that expedited? I spoke with Ms. Bailey who said that with  
12 your consent that they might be able to turn something out next  
13 week. It would allow us to get back to the permit.

14 CHAIRPERSON REID: Oh. I have no problem with  
15 that unless the Board members object.

16 MR. DAVIS: All right.

17 CHAIRPERSON REID: If they can expedite it and  
18 put a rush on it to get it out early for you, I would certainly  
19 --

20 MR. DAVIS: I would appreciate that.

21 CHAIRPERSON REID: -- be supportive of that.  
22 Okay? All right.

23 Any other discussion, comments?

24 Then if not, that would then conclude our --  
25 today's hearing schedule. Thank you very much.

1  
2  
3  
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5  
6  
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(Whereupon, the meeting was concluded at 3:49

p.m.)