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

(9:40 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. This will call the morning public hearing of -- gosh, time is just slipping by. What is the date today?

VICE CHAIRPERSON RENSHAW: 18th.

CHAIRPERSON GRIFFIS: 18th of December 2001.

The hearing will please come to order.

This is the December 18th, 2001 public hearing of the Board of Zoning Adjustments for the District of Columbia.

My name is Geoff Griffis, Chairperson. Joining me today is Ms. Anne Renshaw, Vice Chair. Mr. Levy is here with us this morning also representing the National Capital Planning Commission, and Mr. May is representing the Zoning Commission.

Copies of today's hearing are available to you. They are located to my left near the door, which is the door you all came in.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on the end of the table in front of us, and I believe there's also some on the table as you came in.

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

The order of procedure for special exceptions and variances will be, first, the statement and witnesses of the

1 applicant;

2 Second is the government reports, including
3 Office of Planning, Department of Public Works, et cetera.

4 Third would be the report from the Advisory
5 Neighborhood Commission;

6 And, fourth, parties or persons in support;

7 Fifth, parties or persons in opposition;

8 And, sixth, we will have closing remarks by the
9 applicant.

10 Cross examination of the witnesses is permitted
11 by the applicant or parties. The ANC within which the property
12 is located is automatically a party in the case.

13 The record will be closed at the conclusion of
14 each case, except for any material specifically requested by the
15 Board, and the staff will specify at the end of the hearing
16 exactly what is expected.

17 The Sunshine Act requires that the public hearing
18 on each case will be held in the open before the public. The
19 Board may, consistent with rules of procedure and the Sunshine
20 Act, enter executive session during or after the public hearing
21 on a case for purposes of reviewing the record or deliberating
22 on the case.

23 The decision of the Board in these contested
24 cases must be based exclusively on the public record. To avoid
25 any appearance to the contrary, the Board requests that persons

1 present not engage the members of the Board in conversation.

2 You can pass that down to Mr. Levy and see if he
3 needs some water.

4 And I would ask that we please turn off any cell
5 phones and beepers at this time so as not to disrupt the
6 proceedings.

7 The Board will now consider any preliminary
8 matters. Preliminary matters are those which relate to whether
9 a case will or should be heard today, such as requests for a
10 postponement, continuance or withdrawal, or whether proper and
11 adequate notice of the hearing has been given.

12 If you are not prepared to go forward with the
13 case today or if you believe that the Board should not proceed,
14 now is the time to raise such a matter. And I would turn first
15 to the staff to see if they have any preliminary matters for us.

16 MS. BAILEY: Mr. Chairman, no, we do not.

17 CHAIRPERSON GRIFFIS: Very well. Is there anyone
18 here with cases this morning that have any preliminary matters?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Wow, we are just going to
21 be incredibly efficient and timely today. So why don't we call
22 the first case?

23 MS. BAILEY: Thank you, Mr. Chairman.

24 Good morning to everyone. In the spirit of the
25 season, Mr. Chairman --

1 CHAIRPERSON GRIFFIS: Yes.

2 MS. BAILEY: -- I'd like to introduce myself.
3 I'm Beverly Bailey and this is Mr. Paul Hart.

4 CHAIRPERSON GRIFFIS: You know, actually if
5 you'll forgive me, and I should take that time to do that
6 because we wouldn't be as efficient and timely without you.
7 This is the problem when I don't have my coffee in the morning.

8 MS. BAILEY: The first case of the morning is
9 Application 16806 of Mr. and Mrs. James R. Kerr, pursuant to 11
10 DCMR 3104.1, for a special exception to allow a deck addition to
11 a single family dwelling under Section 223, not meeting the side
12 yard -- that's Section 404 -- closed court, Section 406, and lot
13 area, Section 401 and Subsection 2001.3. These are the
14 requirements, and the property is located in an R-1-B district
15 at premises 3831 Macomb Street, N.W., Square 1818, Lot 820.

16 All those wishing to testify, please stand.
17 Please raise your right hand, sir.

18 (The witness was duly sworn.)

19 MS. BAILEY: Thank you.

20 Please come forward and have a seat at the
21 table.

22 Mr. Chairman, while Mr. Kerr is being seated, I
23 just wanted to let the Board know that on the plat, on the
24 surveyor's plat, there is not a lot of record. However, Mr.
25 Kerr has indicated that he has requested a new plat, a new lot

1 number, and that is in the process of being worked on at this
2 moment.

3 CHAIRPERSON GRIFFIS: Good. Is that something
4 that's being submitted today or it's in the process?

5 Before you go, let me not jump ahead. You can
6 just hit that. The red light will come on, and if you wouldn't
7 mind just stating your name and address for the record.

8 MR. KERR: My name is James Kerr. The
9 application is by me and my wife for the rear deck at 3831
10 Macomb Street, N.W.

11 CHAIRPERSON GRIFFIS: Good.

12 MR. KERR: Your question relative to the change
13 of the record lot number. My contractor has submitted that
14 paper work as of about two and a half or three months ago, and
15 that process is underway at the present time.

16 CHAIRPERSON GRIFFIS: Oh, I see. So the issue is
17 that you're changing the record lot number, not that you haven't
18 produced a plat that indicates the lot and square.

19 MR. KERR: Apparently the plat that's been
20 submitted here does not yet have the new lot number on it.

21 CHAIRPERSON GRIFFIS: Okay. I don't think that
22 the change of lot and square is pertinent to the case that's
23 before us at this time. So I think we can proceed.

24 We have documents, and we have, Board members,
25 the full size plans that are here. So with that, I will turn it

1 over to you for opening statements.

2 MR. KERR: My wife and I have owned this house
3 for 29 years. It was built in 1940 before the zoning such that
4 the lot area is nonconforming. It's about 4,300 square feet,
5 where it should be 5,000 square feet.

6 The lot is at a corner lot at an angular
7 intersection such that that shape of the lot is quite peculiar,
8 and the back of our house comes quite close to the side lot line
9 of our neighbor.

10 What we would like to do is to create a sun deck
11 with a trellis at one end that would extend out from the first
12 floor, and it would be essentially at grade level of the front
13 of the house.

14 The property falls off to the rear such that our
15 garage -- it's a one car garage -- has a driveway that's down in
16 the area where the sun deck would be. This sun deck would be
17 right over the top of that driveway and would, in effect, create
18 not only a sun deck, but there would be a covered place where
19 our second car could be located.

20 Our next door neighbor, who would be closest to
21 this house, is in the process of selling his house, but we have
22 talked with the contract purchasers. We understand that they
23 will settle on the house at the end of January. We've shown
24 them the drawings, and they spoke very favorably about it
25 because they feel that the way we've designed it with the

1 trellis at one end would provide them additional privacy.

2 I don't know that there's anything else to be
3 said.

4 CHAIRPERSON GRIFFIS: Did the contract purchaser
5 happen to have an opportunity to submit anything for us today?

6 MR. KERR: No.

7 CHAIRPERSON GRIFFIS: That's fine. I just want
8 to be clear.

9 Good. Board members, questions?

10 VICE CHAIRPERSON RENSHAW: Mr. Kerr, do you have
11 any drawing that shows your driveway? I have here a surveyor's
12 plat, which shows the deck, but I don't see where there's a cut-
13 in for your driveway.

14 MR. KERR: I believe there are drawings of the
15 deck itself submitted, and I believe on page 2 or 3 there's a
16 site plan. If I could come up there, I could show you where the
17 driveway --

18 VICE CHAIRPERSON RENSHAW: No, we'll take a look
19 at the plans.

20 CHAIRPERSON GRIFFIS: I'll point out that, in
21 fact, for the record it is on Sheet 3, dated 3/5/01. There's a
22 site plan that shows the driveway.

23 No, that would be the walkway. This should be
24 the driveway. It looks like that's the curb cut.

25 MR. KERR: The driveway is on the west side of

1 the house, and the garage is down below the house.

2 VICE CHAIRPERSON RENSHAW: Mr. Kerr, how many
3 feet off the ground is this deck, the proposed deck?

4 MR. KERR: It's at grade relative to the front of
5 the house, but it is about nine feet above grade relative to the
6 rear of the house.

7 VICE CHAIRPERSON RENSHAW: Nine feet. Thank you.

8 CHAIRPERSON GRIFFIS: Please. Mr. May, question?

9 COMMISSIONER MAY: Mr. Kerr, your property is --
10 well, the neighbor who's most affected by this is the one where
11 we would have the reduced side yard there.

12 MR. KERR: That's correct.

13 COMMISSIONER MAY: And that neighbor is to the
14 north of you. You're south.

15 MR. KERR: Northwest, yes.

16 COMMISSIONER MAY: Northwest.

17 MR. KERR: I'm sorry. The northeast.

18 COMMISSIONER MAY: Okay. How high is the or,
19 rather, where is the raised portion or the trellis portion of
20 that deck? Is that out toward that property line?

21 MR. KERR: Yes, it is.

22 COMMISSIONER MAY: Okay. So at the low end of
23 the deck, your trellis is where the ground is the lowest and
24 where presumably your neighbor's ground is also the lowest.
25 You're -- I don't know -- five feet away from his property, and

1 you're six or seven feet off the ground, plus the trellis height
2 above that.

3 MR. KERR: Well, about nine feet plus the trellis
4 height.

5 COMMISSIONER MAY: Nine feet. Nine feet. Sorry.
6 Okay.

7 MR. KERR: Plus the trellis height, which is
8 about seven feet or so.

9 COMMISSIONER MAY: Nine feet plus seven feet. So
10 five feet away from the property line you've got a 16 foot high
11 construction.

12 MR. KERR: That's correct.

13 COMMISSIONER MAY: Okay.

14 CHAIRPERSON GRIFFIS: Is it your understanding
15 that the rear portion actually goes towards your lot occupancy
16 or it does not count towards your lot occupancy?

17 MR. KERR: I believe it did not count towards the
18 lot occupancy.

19 CHAIRPERSON GRIFFIS: And do you know? I mean,
20 it's okay if you don't, but do you know why it would not?

21 MR. KERR: Because it's at grade.

22 CHAIRPERSON GRIFFIS: Okay. Grade based on the -

23 -

24 MR. KERR: The front of the house.

25 CHAIRPERSON GRIFFIS: -- front elevation grade

1 that you would carry around.

2 I think this brings up a question, and maybe
3 Corp. Counsel can assist us a little bit. And we'll put this in
4 the context. This is a special exception, and it is under
5 Section 223, which is made specifically for additions to single
6 family houses, but I think we just need the clarity of
7 everything that we're looking at because it would be my first
8 indication that that actually goes towards lot occupancy because
9 it's above four feet of the grade in the rear of the house.

10 And if Corp. Counsel might just give us some
11 assistance on that if we can count it towards the front grade or
12 the average of the grade around, I think clarity is what we need
13 just to proceed here.

14 So indulge us for a moment, unless there's other
15 questions that we want to proceed with. I think the
16 nonconformity is pretty straightforward. I think the issue of
17 the closed court was also fairly clear, unless other Board
18 members had questions on that, and of course, we do have the
19 side yard, if I'm not mistaken, which is a variance of five feet
20 requested.

21 VICE CHAIRPERSON RENSHAW: Mr. Kerr, in your
22 design -- and I want to apologize here because we only have
23 these one set of files or plans that were in the main file. So
24 we're rather studying these as we speak, but I note in a
25 photograph that there is a rear door. Is that rear door, the

1 lower door, going to be enclosed or in some way covered with
2 this deck?

3 MR. KERR: The deck will be over top of that rear
4 door, yes.

5 VICE CHAIRPERSON RENSHAW: But it still will be
6 an operating exit --

7 MR. KERR: Oh, yes.

8 VICE CHAIRPERSON RENSHAW: -- from your house?

9 MR. KERR: Oh, yes.

10 VICE CHAIRPERSON RENSHAW: Okay.

11 CHAIRPERSON GRIFFIS: While others help us find
12 that stuff, I think we can also look at 2503.1, which is a
13 section entitled "Structures and Required Open Spaces." And it
14 reads, "Except for structures specified, the exemptions set
15 forth in this section, every part of a yard required under
16 provision of this title shall be open and unrestricted to the
17 sky from the ground up."

18 Point, two would speak to this, I believe. "A
19 structure not including a building, no part of which is more
20 than four feet above the grade at any point, may occupy any yard
21 required under provisions of this title. Any railing required
22 by the D.C. building code shall not be calculated in the
23 measurement of this height. Stairs leading to the ground from a
24 door located on a story in which the principal" -- right, stairs
25 wouldn't count either.

1 I think 2503.2 gives us some direction on how to
2 evaluate this. Do we have additional assistance?

3 MS. SANSONE: Mr. Chairman, you might want to
4 look at the definition of building area in Section 199.1, and
5 then the related definition of percentage of lot occupancy. And
6 those definitions for purposes of lot occupancy are concerned
7 with the level of the main floor of the main building.

8 CHAIRPERSON GRIFFIS: That is, it would be your
9 indication, based on the definition that, in fact, that would
10 not go toward lot occupancy?

11 MS. SANSONE: Right. I would think so. Well,
12 it's tied to the main floor of the main building.

13 CHAIRPERSON GRIFFIS: I see. Okay. I would
14 concur.

15 Board members, unless there's strong objection, I
16 would concur. I think Mr. Kerr has done it correctly, and that
17 it's actually taken off of the grade at front, which actually is
18 taken off the first floor. That would extend it out back.

19 Is that clear to everybody?

20 COMMISSIONER MAY: No. Could you rerun that for
21 me?

22 CHAIRPERSON GRIFFIS: There's always one in a
23 crowd, isn't there?

24 Okay. The issue -- and I will pass this down
25 perhaps if you need for the definition, and Ms. Sansone had

1 given us building area, correct?

2 MS. SANSONE: Building area and percentage of lot
3 occupancy.

4 CHAIRPERSON GRIFFIS: Percentage of lot.

5 MS. SANSONE: And they talk to the horizontal
6 plane that's used as the starting point.

7 CHAIRPERSON GRIFFIS: So basically the percentage
8 of lot occupancy would be based on the footprint of the first
9 floor, is what they're indicating, and therefore, that would
10 carry through and cut the point of the site that would then go
11 to the calculation of lot occupancy.

12 So this exterior deck out back is actually going
13 to be not part of the lot occupancy because it's on the same
14 plane as the first floor, which is below four feet of the
15 finished grade in the front of the building.

16 COMMISSIONER MAY: It's at the finished grade,
17 isn't it?

18 CHAIRPERSON GRIFFIS: Yeah, it's at the finished
19 -- I'm sorry. Did I -- yeah, yeah.

20 COMMISSIONER MAY: You're saying it was below the
21 --

22 CHAIRPERSON GRIFFIS: It's not above four feet.

23 COMMISSIONER MAY: Not above four feet. I see.
24 So that's the datum that we measure from for the four feet rule
25 as opposed to the grade at any given moment, and the first floor

1 is defined as the main floor as opposed to the basement level,
2 which is down below that.

3 Okay. I think I'm there.

4 VICE CHAIRPERSON RENSHAW: Mr. Kerr, the property
5 owner immediately behind you, the property that's for sale or
6 undergoing a change in hands, is that below yours? Does the
7 ground slope down to their property or is there property on an
8 even level with your backyard?

9 MR. KERR: Their property, as does ours, slopes
10 from the street down. Their first floor and our first floor are
11 roughly at the same level, although he may be a foot or so above
12 mine, but the rear of their house also slopes down so that the
13 rear of their house is out of grade relative to the first floor.

14 And they have a deck that extends out off the
15 back of their house. The previous owner has erected an opaque
16 fence that separates our two properties, but if it were not for
17 the fence, they would be substantially at the same grade.

18 VICE CHAIRPERSON RENSHAW: Is there an amount of
19 screening with trees? Do you have trees behind --

20 MR. KERR: Oh, yes.

21 VICE CHAIRPERSON RENSHAW: -- between your two
22 properties?

23 MR. KERR: Well, there's one large tree, and
24 there were a couple of large hemlocks which we've had cut down
25 in anticipation of this construction, but which we plan to then

1 put up some screening in the space between our two properties.
2 So some new trees.

3 VICE CHAIRPERSON RENSHAW: And how many large
4 hemlocks did you have to cut down?

5 MR. KERR: Oh, there were three of them.

6 VICE CHAIRPERSON RENSHAW: Three. Okay.

7 CHAIRPERSON GRIFFIS: Anything else?

8 MEMBER LEVY: Mr. Chair.

9 CHAIRPERSON GRIFFIS: Yeah.

10 MEMBER LEVY: Mr. Kerr is it?

11 MR. KERR: yes.

12 MEMBER LEVY: Regarding the contract purchaser of
13 the neighboring home -- well, not regarding the purchaser, but
14 regarding the home itself --

15 MR. KERR: Right.

16 MEMBER LEVY: -- how far is that just
17 approximately off of the property line? How far is their home
18 off of the property line?

19 MR. KERR: They have a side yard that parallels
20 our rear lot line of about five feet.

21 MEMBER LEVY: Five feet, and I'm assuming there
22 are windows facing the back.

23 MR. KERR: Yes, they have a door to their
24 kitchen, and they have a little concrete side steps that go into
25 their kitchen. Towards the front of the lot they've got the

1 garage with a window that opens to our property, and in the back
2 they have an enclosed sun room or porch.

3 MEMBER LEVY: Okay.

4 MR. KERR: That's got windows on all -- I think
5 on all three sides of the porch.

6 MEMBER LEVY: Okay, and just to reiterate, I know
7 you've said this. You've been in touch with them. We don't
8 have anything in writing from them, but you've been in touch
9 with them?

10 MR. KERR: Yes. As I say, we've had them --
11 showed them the drawings that you see there and explained what
12 it is that we have in mind.

13 MEMBER LEVY: They're aware that your deck is
14 going to be three feet or so --

15 MR. KERR: Right.

16 MEMBER LEVY: -- from the property line?

17 MR. KERR: They're aware of that.

18 MEMBER LEVY: Okay. Thanks.

19 CHAIRPERSON GRIFFIS: Mr. May.

20 COMMISSIONER MAY: Yes, I see from our notes here
21 that we don't have a report from the ANC, and do we know why or
22 do we know where?

23 VICE CHAIRPERSON RENSHAW: Mr. Kerr, did you
24 attend a 3C ANC meeting?

25 MR. KERR: No, we did not.

1 VICE CHAIRPERSON RENSHAW: Did you hear from the
2 ANC?

3 MR. KERR: No, we've not. We've got the notice
4 out in front of the house, and we know that neighbors have
5 received letters relative to this application, but we have not
6 talked with anybody other than the contract purchasers of the
7 house that would be most immediately affected.

8 CHAIRPERSON GRIFFIS: Yeah, and frankly, Board
9 members, I mean, I think we should proceed. I mean, we can't --
10 I wish we had those reports, but we can't stop ourselves when
11 they are not submitted.

12 VICE CHAIRPERSON RENSHAW: Mr. Chair, I'm just
13 looking at the date that the chairperson of ANC-3C was sent a
14 letter, on November 1st, and I just got a mailing from the
15 District government that was mailed out in early November, and I
16 just got it. So it took what, six weeks to get to me? One of
17 the regular mailings that I get in two days.

18 So I just wonder whether or not mailings have
19 been because of the anthrax business -- mailings may have been
20 held up, but that's not to say we should hold up these
21 proceedings.

22 CHAIRPERSON GRIFFIS: Right. No, and I think
23 that's well said, and that's, in fact, why our process has
24 duplication of notification, and I think we all would concur
25 that, frankly, the big orange signs out in front of a property

1 are probably more attention grabbing than a letter.

2 But I understand the concern. I just wouldn't
3 want to delay whichever direction we go with this based on the
4 speculation that we might get some information.

5 So I would say we continue with this and proceed.

6 What I have seen so far in the case, and of course, in the
7 discussion this morning, this is a special exception under 223.

8 It does appear to be in harmony with the general purpose and
9 intent of, frankly, the neighborhood, but the general zoning.

10 Having no objection in the case with the adjacent
11 neighbors, I mean, I think we have brought up, you know, fairly
12 classic examples of where you might run into problems with
13 certain things. What I see on these plans is that there is some
14 screening, kind of a nice trellis effect that is on the adjacent
15 -- and correct me if I'm wrong -- on the elevation that would be
16 facing the adjacent property --

17 MR. KERR: That's correct.

18 CHAIRPERSON GRIFFIS: -- which will set up that
19 dynamic of exterior space, but semi-private space.

20 I mean, I'll draw your attention to elevation B-
21 2, which is on Sheet 2. That shows the kind of lattice work
22 that's done, and so I would ask Board members if we're ready to
23 proceed on this. Any other questions?

24 VICE CHAIRPERSON RENSHAW: Mr. Chairman, just
25 that under 223.4, where the Board may require a special

1 treatment in the way of screening, I would just like to point
2 out that there is very little distance between the end of Mr.
3 Kerr's deck to his property line. It looks like on the plans
4 it's about three feet.

5 MR. KERR: That's correct.

6 VICE CHAIRPERSON RENSHAW: Three feet, and then
7 the neighbors have only a five foot side yard, which is not very
8 far, not very much property.

9 MR. KERR: All of their side yard is paved.

10 VICE CHAIRPERSON RENSHAW: All of their side is
11 paved. Is it a driveway?

12 MR. KERR: Well, it's a walk to the steps that
13 get to the kitchen level, and then there are steps that go down
14 and get to the level which is below their sun porch.

15 VICE CHAIRPERSON RENSHAW: Well, I was just going
16 to suggest that perhaps Mr. Kerr plant some trees along that
17 area way so that there is additional screening.

18 MR. KERR: That is our intent, yes.

19 VICE CHAIRPERSON RENSHAW: To make up for the
20 three hemlocks that you have cut down.

21 MR. KERR: Yes. We do plan to do that.

22 VICE CHAIRPERSON RENSHAW: All right. Thank you.

23 CHAIRPERSON GRIFFIS: And already on the plan,
24 too, I think, to speak to your issue in terms of the privacy
25 factor of adjacent neighbors, it appears to me from the plans

1 that this deck actually walks out from perhaps a study of some
2 sort with bookshelves. The adjacent neighbor, as has been
3 indicated, it's a kitchen space.

4 In my mind, I'm viewing it as two different times
5 of use for these things. So you may not have as opposed to two
6 outdoor decks abutting each other and each is out there
7 barbecuing at the same time. You may have different times of us
8 that will be flexible, and I think you wouldn't necessarily be
9 talking to your neighbor when you didn't want to.

10 VICE CHAIRPERSON RENSHAW: You hope.

11 CHAIRPERSON GRIFFIS: Right. That being said, we
12 also understand that this is a city, and we live in an urban
13 environment, which is what we all love and enjoy, but before I
14 get to far afield, I would move approval of Application 16806 of
15 Mr. Kerr, pursuant to 3104.1 for a special exemption to allow
16 the deck addition to a single family dwelling under Section 223,
17 which is not meeting the side yard; Section 405, closed court,
18 which is Section 406; and lot area, which is Section 401,
19 Subsection 2001.3. The lot area, of course, goes to the
20 nonconformity.

21 And these are requirements at the premises 3831
22 Macomb Street, N.W., and I would -- can we get a second?

23 VICE CHAIRPERSON RENSHAW: Second.

24 CHAIRPERSON GRIFFIS: Thank you very much, Ms.
25 Renshaw.

1 Again, Board members, I think we are in a special
2 exception. I think we look at two things for that, and that is
3 the harmony and then the non-adverse impact to adjacent
4 properties. I think we've fleshed out quite a bit on this and
5 would ask for your support and take any discussions briefly if
6 we have.

7 Mr. May.

8 COMMISSIONER MAY: Let me say often when we
9 consider cases such as this it's very, very straightforward when
10 we have a petition or written agreement from the next door
11 neighbor or adjacent properties. It makes it very easy to say
12 that this will not have an effect, even if, in fact, the
13 property is going to be sold the next day or something. I mean,
14 at least there's that much on paper.

15 Failing that, again, very often we have a report
16 from the ANC saying that they considered it and had no objection
17 to it.

18 In this case we don't have either, and I'm not
19 entirely comfortable simply saying that since it's a special
20 exception and the threshold is not so high that we can't go
21 forward with this. I mean, I mean, it seems straightforward
22 enough, and there has been notice and chances are the people who
23 would potentially have an objection to it would have raised it,
24 but there's nothing like having that direct contact between the
25 applicant or his or her agent and the ANC and the neighbors.

1 It's more direct. People understand more
2 directly. What I'm afraid of is that, you know, the next door
3 neighbor moves into that property and sees this deck being built
4 and the trellis above it, and it's towering over their property
5 line on the south side of their property, potentially
6 obstructing light to the lower areas of their property, whether
7 it's the ground or windows or what have you; that they're going
8 to have an issue with it then.

9 And so that's why I'm not entirely comfortable
10 with proceeding with this exactly as is.

11 VICE CHAIRPERSON RENSHAW: Could I ask Mr. May
12 what he is suggesting? Are you wanting the ANC to submit a
13 report, in other words, some inquiry to the ANC, something in
14 the record from the neighboring property?

15 COMMISSIONER MAY: Yeah, I would prefer having
16 something from the ANC or having, if not something from the ANC,
17 something from the next door neighbor. Just something in
18 writing.

19 CHAIRPERSON GRIFFIS: Yeah, it seems like you
20 could go directly to the adjacent neighbor, not the ANC, which
21 would speak to the community impact.

22 COMMISSIONER MAY: Right.

23 CHAIRPERSON GRIFFIS: I don't see, although it's
24 appropriate for the ANC -- well, I think it is more pertinent to
25 your concern, which I share. It is difficult to asset part of a

1 test for exception when we don't have direct testimony or
2 information that would put it to rest, which is why I think this
3 on face is a fairly straightforward, simple case, but we're
4 taking so much time with it because we are lacking the
5 information that is often very helpful.

6 Well, I mean, one point is that we could keep the
7 record open and move this to a decision making schedule. I
8 could table the motion, and we could take it up at that point,
9 and we could ask that Mr. Kerr take it upon himself to have
10 further conversations with the perhaps contract purchaser.

11 When did you say they were going to settle?

12 MR. KERR: I understand it will be the end of
13 January or the first week in February.

14 CHAIRPERSON GRIFFIS: Right. And then try and
15 submit something from them.

16 My concern with that is just balance; that if Mr.
17 Kerr has to approach a neighbor and say, "Look. My exemption is
18 in balance, and I need your support," hopefully we will get --
19 and that's just pure speculation -- but hopefully we will get a
20 fair assessment of it and not, you know, have a --

21 MR. KERR: I have no problem approaching him and
22 asking for a letter or something to that effect.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. KERR: That he could direct to you if that
25 would resolve the question.

1 COMMISSIONER MAY: Yeah, you could even write the
2 letter for him and just ask for the signature, I mean.

3 CHAIRPERSON GRIFFIS: Yeah, which is absolutely
4 appropriate.

5 COMMISSIONER MAY: Yeah.

6 CHAIRPERSON GRIFFIS: And, I think, pertinent.

7 Well, Board members, I --

8 VICE CHAIRPERSON RENSHAW: that's fine.

9 CHAIRPERSON GRIFFIS: -- I am comfortable with
10 that. Can we set this to -- let's just check the schedule
11 before we make anything concrete. We're in December now. Can
12 we do this by -- I see it's going to be February now.

13 SECRETARY PRUITT: Well, I believe Mr. Kerr said
14 at the end of February they go to closing. Do you think you
15 would be able to get the signature prior to that?

16 MR. KERR: Well, I certainly could get it right
17 away.

18 CHAIRPERSON GRIFFIS: Could we do it in January?

19 SECRETARY PRUITT: We could. I just didn't know
20 if that would be possible.

21 CHAIRPERSON GRIFFIS: Let's do that. I think we
22 have a good opportunity. We have our decision making at the
23 first meeting of the month, which means if we miss January we're
24 all the way into February. And you think it's fairly easy
25 enough for you to get a letter submitted to the record for our

1 deliberations for the January meeting, which we'd need it a week
2 in advance.

3 MR. KERR: Yeah, I could get it. These people
4 that are buying the house live in A.U. Park. They're only half
5 a mile away right now.

6 CHAIRPERSON GRIFFIS: Fabulous.

7 COMMISSIONER MAY: Great.

8 CHAIRPERSON GRIFFIS: Well, I would do that then,
9 table the motion at this time, and set this for decision making.
10 Is everyone okay with that?

11 VICE CHAIRPERSON RENSHAW: Sure.

12 CHAIRPERSON GRIFFIS: Okay. Before you leave,
13 let me just have staff reiterate what we've said, what we're
14 asking for and the dates certain.

15 MS. BAILEY: Mr. Chairman, I can reiterate what
16 was said.

17 Ms. Pruitt, would you please find us a date? Are
18 we looking for a date? Are you looking for a date, Mr.
19 Chairman, for a --

20 CHAIRPERSON GRIFFIS: No. What I just wanted to
21 make sure is when we need the letter in by and then just say the
22 date. I don't think we've actually said the specific date of
23 the January meeting.

24 MS. BAILEY: What we're asking from Mr. Kerr is
25 to provide a letter from the contract purchaser of the

1 properties located to the northwest of your property, and that
2 letter should be provided to the Board.

3 And, again, Mr. Chairman, I'm not with you. The
4 26th of January? December. Okay. So this is set for the
5 January meeting, Mr. Chairman, and then the letter is due on the
6 26th from Mr. Kerr.

7 CHAIRPERSON GRIFFIS: Well, I mean, it's one
8 letter. I think we can process that. We need it in by the
9 26th, but I don't think we're going to throw this case out, if I
10 can be so open about this, if it comes in that week.

11 Does staff agree with that, that that's not
12 problematic? Very good. I mean, if you look at the
13 practicality, we're at Tuesday. Great if it comes in. The 26th
14 would be fabulous, but then we're going into all sorts of -- I
15 think there's some holiday coming up and, you know, there's
16 complications.

17 So that being said, we're all together?

18 SECRETARY PRUITT: Mr. Kerr, you can fax the
19 letter in if you'd like and just mail us an original.

20 MR. KERR: Okay.

21 SECRETARY PRUITT: With the holiday.

22 MR. KERR: Can you give me a fax number?

23 SECRETARY PRUITT: Sure. After the hearing.

24 MR. KERR: Thank you.

25 CHAIRPERSON GRIFFIS: Thank you very much, Mr.

1 Kerr.

2 And I think we should move on and call the next
3 case.

4 MS. BAILEY: Application No. 16807 of John Paul
5 and Dolores A. Royston, pursuant to 11 DCMR 3104.1, for a
6 special exception to construct a rear addition to an existing
7 single family dwelling under Section 223 not meeting the rear
8 yard requirements. That's Section 404. The property is located
9 in an R-1-B district at premises 3514 Runnymede Place -- that's
10 Place, not Street -- N.W., Square 2003, Lot 65.

11 Please stand to take the oath, all those wishing
12 to testify. Please raise your right hand.

13 (The witnesses were duly sworn.)

14 MS. BAILEY: Thank you. Please have a seat at
15 the table.

16 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I want
17 to state that this next case, 16807, is within ANC-3G. I did
18 not participate in any discussion. I was not in the room when
19 this case was discussed.

20 CHAIRPERSON GRIFFIS: Good. Thank you very much
21 for stating that.

22 And don't we have a -- we just don't approve
23 anything in 3G. Isn't that what the Board policy is?

24 VICE CHAIRPERSON RENSHAW: No, the Board policy
25 does not encompass that feeling.

1 CHAIRPERSON GRIFFIS: Okay. I was mistaken.

2 Yes. Excuse me one moment.

3 (Pause in proceedings.)

4 CHAIRPERSON GRIFFIS: We're going to have a
5 technical difficulty here for one minute.

6 Good. All right. We are all set, and I would
7 just have you -- actually what we would do because we get
8 feedback, we can't have all of the mics on the table on at the
9 same time. So we're going to ask you just to turn your mic on
10 when you speak and remember to turn it off.

11 So if you wouldn't mind, we will just introduce
12 everybody for the record. Then we all know who, and you are
13 welcome to proceed.

14 MS. ROYSTON: My name is Dolores A. Royston. I'm
15 a resident at 3514 Runnymede Place, N.W.

16 MR. ROYSTON: I'm John Paul Royston, also
17 residing at 3514 Runnymede Place.

18 MR. DONOVAN: And I'm Peter Donovan, helping the
19 Roystons with this addition.

20 CHAIRPERSON GRIFFIS: Indeed. Well, welcome this
21 morning.

22 Again, and I'm sorry for perhaps what we seem a
23 little distracted and all. What happens is, especially in cases
24 like this, is we get our files sent to us at our place of
25 reading and go through it. We've been through your case. We're

1 all very well aware.

2 What we don't get are the plans. It is
3 indicated, no, no, no, this is not a fault of the applicant or
4 any of the filings. The plans are in the case. The issue is
5 that they're not reduced so that we can get them in the office.

6 So at times we come in and are able to review
7 them before the cases. We have had an incredible schedule this
8 past couple of months that when we're here, we're doing other
9 business. So that's the only reason why perhaps you see us
10 focusing on different directions, et cetera.

11 So we are going to be passing that plan around,
12 and without further speaking on my part, I'll turn it over to
13 you.

14 MS. ROYSTON: Good morning, and thank you for
15 letting us present our case before you.

16 We do have the support of the ANC of our
17 particular neighborhood. We also have a signed document from 15
18 of the 30 or so people that were listed. All of the people who
19 have signed not protesting this small excursion toward the rear
20 alley are immediate neighbors, that is, on both sides of us and
21 to the rear of us.

22 So we have discussed this personally with all of
23 them, and we have their approval.

24 MR. ROYSTON: Yeah, I noted that there was one
25 that made a comment that they were happy to see that this -- or

1 maybe that was even the ANC -- to see the reconstruction of the
2 deck that seemed to be falling apart.

3 MS. ROYSTON: If you've seen the picture which
4 we've submitted, I think you'll agree --

5 CHAIRPERSON GRIFFIS: Right, indeed.

6 MS. ROYSTON: -- that our proposal is a lot
7 better than what people are now looking at.

8 CHAIRPERSON GRIFFIS: Not that this Board would
9 advocate letting things deteriorate in order to get the relief
10 that's sought for new construction, but that being said.

11 MS. ROYSTON: And I can assure you that we have
12 not enjoyed living with a deteriorating back porch.

13 Basically the facts are these. Our house was
14 built in 1929. We purchased the house in 1968, and about six
15 years later we had to replace the existing rear porch, which was
16 basically an ice porch for people to access the kitchen, believe
17 it or not.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. ROYSTON: It is similar to the case before
20 ours, a grade above the back alley and the back lot. The house
21 is on a slope similar to the previous applicant.

22 What we are basically proposing is to remove that
23 now existing rear deck and enclosed screen porch with a room
24 that will extend two and a half feet closer to the rear alley.
25 That means that the distance between the side of the alley and

1 our back new room will be approximately 12 and a half feet.

2 The alley for our back neighbors, their garage
3 faces this alley exposure. So nothing about their living
4 quarters are going to be impacted by anything that we do. In
5 fact, it will be enhanced, as you mentioned.

6 Part of the reason that we want to replace the
7 porch is because it's literally disintegrating. The other part
8 is that we tend not to use it as much because our life style has
9 changed somewhat, and we just don't spend that much time
10 outdoors anymore in this kind of an arrangement.

11 Secondly, it gets very dirty, and almost every
12 time we do want to use it, we have to clean it and so forth.

13 We do, however, like the grill area. So there
14 will be in our proposal a small deck that will be to the side of
15 our new room. Nothing about our addition is going to extend
16 beyond our current boundaries closer to our neighbors on either
17 side. Nothing that we're doing is impacting that for our
18 neighbors.

19 The only issue here is going two and a half feet
20 closer to the alley.

21 CHAIRPERSON GRIFFIS: Which is going into the
22 rear yard is what you're indicating.

23 MS. ROYSTON: That's correct.

24 CHAIRPERSON GRIFFIS: The rear yard abuts the
25 public alley as you've indicated.

1 MS. ROYSTON: Right.

2 CHAIRPERSON GRIFFIS: And there's actually the
3 driveway back there. You have currently a 14 foot rear yard,
4 and you are asking to go to?

5 MS. ROYSTON: Fourteen feet? Well, we're
6 actually going to allow for --

7 CHAIRPERSON GRIFFIS: Twelve, point, five feet.

8 MS. ROYSTON: -- 12.5 feet.

9 CHAIRPERSON GRIFFIS: Right, which is for our
10 purposes, requesting a variance for the entire difference from
11 25 feet, which is the required piece, which is why we look at 11
12 foot variance and 44 percent.

13 Okay. Board members.

14 VICE CHAIRPERSON RENSHAW: Ms. Royston, one of
15 your photographs shows a tree. The photograph is not numbered,
16 but it shows a tree --

17 MS. ROYSTON: Yes.

18 VICE CHAIRPERSON RENSHAW: -- very close to the
19 back of your property or the porch area. Is that tree going to
20 remain?

21 MS. ROYSTON: Yes, it is.

22 VICE CHAIRPERSON RENSHAW: It will. Good.

23 MS. ROYSTON: I'm not sure we really want it.
24 It's a walnut tree, and it drops its fruit on the roof. So you
25 hear this (indicating) periodically, but we are leaving the

1 tree.

2 CHAIRPERSON GRIFFIS: The issue that's come from
3 Mr. Donovan is -- I'm looking at plans here now. Can we talk a
4 little bit about the materials? Speak to me quickly about the
5 existing condition.

6 And I understand from the rear elevation sheet,
7 A-4, that this addition will be clad with wood shingles, and it
8 looks like they're called out as cedar shingles. Is that
9 correct at this point?

10 MR. DONOVAN: Yes, it is, and that matches the
11 material on the dormer on the main house.

12 CHAIRPERSON GRIFFIS: Indeed. Okay, and the main
13 house is actually shingle and brick; is that correct?

14 MR. DONOVAN: It's brick up to the -- that's
15 right -- the gable walls on each end, I think, are brick, and
16 the dormers --

17 CHAIRPERSON GRIFFIS: And the dormer, they are
18 actually wood shingles?

19 MR. DONOVAN: Yes, they are.

20 CHAIRPERSON GRIFFIS: That's good. Okay, and
21 then the roofing material will match the existing, which is --

22 MR. DONOVAN: Moving material, which is a
23 composite shingle, I believe.

24 CHAIRPERSON GRIFFIS: Is it?

25 MR. DONOVAN: I don't think it's slate anymore

1 CHAIRPERSON GRIFFIS: Right. So it's an asphalt
2 as someone indicated. As you know, I mean, that's obviously an
3 important part of the regulation that talks to design,
4 materials, lighting, et cetera, but it also goes to the impact
5 obviously of adjacent neighbors, and I think this is a well
6 thought out in terms of materiality and in terms of connection
7 with the existing and low impact on the adjacent areas.

8 Any other questions, Board members?

9 Yes, you can absolutely see -- I also just
10 briefly saw that there's an area drain that is existing that is
11 to remain in terms of -- oh, there it is. We do have two sets -
12 - which will obviously deal with the drainage on the back side
13 of that.

14 As the applicant has stated -- is anyone else
15 here for this case this morning?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Okay. Let us go -- as
18 Board members take their time, let us move ahead and go to
19 government reports. Applicant has here that they have the
20 support of the ANC, which is 3G, which is submitted as Exhibit
21 No. 20, and it is true. They do. The commission voted five,
22 zero, to one, quorum being four, to support the Application
23 16807, and that was signed by Joseph Bishop, which is the vice
24 chair of ANC-3G.

25 And we'll take special note that that is one

1 abstention, I believe, in that vote.

2 So we also have -- I'm going to just briefly --
3 applicant had held up the petition that was signed by adjacent
4 neighbors. Was that submitted in the case file? I'm not
5 putting my finger on it.

6 MS. ROYSTON: Yes, it was submitted to the ANC.

7 CHAIRPERSON GRIFFIS: It was. Okay. Oh, to the
8 ANC?

9 MS. ROYSTON: To the ANC.

10 CHAIRPERSON GRIFFIS: Oh, but not to us.

11 MS. ROYSTON: Not to here.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. ROYSTON: Would you like --

14 CHAIRPERSON GRIFFIS: Would you mind if we just
15 had a copy for the case file?

16 MS. ROYSTON: Well, you may have the original.

17 CHAIRPERSON GRIFFIS: Oh, well, that would be
18 tremendous. And if you want, you can just bring it up to the
19 staff on this side here, and we'll make copies. And actually I
20 think we can get you back a copy. It's probably well worth you
21 keeping a record of it.

22 MS. ROYSTON: I do have a copy, sir.

23 CHAIRPERSON GRIFFIS: Oh, okay. Very good.
24 That's tremendous.

25 Okay. Board members?

1 VICE CHAIRPERSON RENSHAW: Are we ready to vote?

2

3 Mr. Chairman, I move that we approve Application
4 of John Paul and Dolores A. Royston, pursuant to 11 DCMR 3104.1,
5 for a special exception to construct a rear addition to an
6 existing single family dwelling under Section 223, not meeting
7 the rear yard requirement, Section 5404 in an R-1-B district at
8 3514 Runnymede Street, N.W., Square 2003, Lot 65.

9 There is no impact on light and air to the
10 neighboring properties. We have the petition signed by 15
11 neighbors. The privacy and use and enjoyment of the neighboring
12 property is not compromised, and I believe that the Roystons
13 have demonstrated compliance with all of the regulations before
14 them.

15 COMMISSIONER MAY: I second that motion.

16 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
17 May.

18 Any discussion?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Not seeing any in the case,
21 I would ask all those in favor.

22 (Chorus of ayes.)

23 CHAIRPERSON GRIFFIS: And opposed?

24 (No response.)

25 CHAIRPERSON GRIFFIS: And staff will record the

1 vote when they're ready.

2 MS. BAILEY: The voted is recorded as four, zero,
3 one to approve the application. The motion was made by Ms.
4 Renshaw; Mr. May second; Mr. Levy and Mr. Griffis in agreement,
5 and this is the issuance of the summary order, Mr. Chairman?

6 CHAIRPERSON GRIFFIS: Is that your pleasure, a
7 summary order?

8 The issue of a summary order, just to explain
9 quickly, we've just obviously done a bench decision. A summary
10 order is a brief order. It is often done with a bench decision,
11 which means there's noncontested cases.

12 A full order obviously takes more time.

13 MS. ROYSTON: We would be delighted with a
14 summary order.

15 CHAIRPERSON GRIFFIS: Very well. Then I think
16 that's what we'll do.

17 Good. I thank you very much and have a great
18 day, and --

19 MR. ROYSTON: I just wanted to make --

20 CHAIRPERSON GRIFFIS: yes.

21 MR. ROYSTON: -- a comment of appreciation.
22 We've had just superb cooperation from starting with the ANC in
23 terms of their requirements and also from the staff here on the
24 Board. So I can't say enough good things about the efficiency
25 of the process, the fairness of it, and we've -- I just wanted

1 to compliment everybody really on a very, very professional
2 process that we've gone through.

3 Thank you.

4 CHAIRPERSON GRIFFIS: Well, thank you very much,
5 and I think that is very appreciated, and I think oftentimes the
6 behind the scenes aren't acknowledged as they should be.

7 I mean, if it's clear and it comes to us and
8 things go smoothly, it means that the staff and applicant have
9 been working together and the ANC and the community, and that's
10 why we can proceed fairly efficiently and effectively.

11 So thank you very much for that comment. I do
12 appreciate it, and I think everyone else does.

13 Okay. Then with that, let me -- why don't we
14 call the next case as we put these away?

15 MS. BAILEY: Application No. 16809 of AvalonBay
16 Communities, Inc., pursuant to 11 DCMR 3103.2, for a variance
17 from the residential recreation space requirements under
18 Subsection 1706.4(f), and a variance from the retain space
19 requirement under Subsection 1695.3, to construct an apartment
20 building in a DD/C-2-C district at premises 719 through 735
21 Sixth Street, N.W., Square 486, Lots 11 through 13, and 804
22 through 808.

23 All those wishing to testify, please stand to
24 take the oath.

25 (The witnesses were duly sworn.)

1 MS. BAILEY: Thank you.

2 CHAIRPERSON GRIFFIS: Good morning, gentlemen.
3 When you're ready, I think you know how to proceed. You can
4 introduce the members of the group today.

5 MR. NETTLER: Thank you.

6 My name is Richard Nettler. I'm here on behalf
7 of AvalonBay Communities, which is seeking the variances that
8 have just been referred to for their what is I guess you will
9 hear more about in terms of a second stage of a project that
10 encompasses a large portion of the square, this particular
11 project on 719 through 735 Sixth Street, involving the assembly
12 of a number of lots for the construction of a residential
13 housing, something sorely needed downtown and certainly
14 consistent with the Office of Planning's desires and the
15 comprehensive plan's dictates.

16 The variances that we're seeking today are a
17 factor of a number of different issues both relating to the
18 narrowness of the lot, the ability to provide the housing that
19 is a policy of the District of Columbia on this site, impacts
20 from the use of the alley as access to the rear loading and
21 parking, and some other issues that the parties will give you
22 some brief history about.

23 And with that, rather than get into anything more
24 extensive, I would like to present Mr. Koch. Before I do so, I
25 would like to note one issue. There may be in your package a

1 letter form the ANC. We had met with the NAC, and you'll see a
2 number of letters of support.

3 The ANC had submitted a letter deferring any
4 support for the project pending a meeting that we were to have
5 with the Chinatown Steering Committee regarding the
6 architectural component of the project that are reviewed by the
7 Chinatown Steering Committee.

8 That meeting with the Chinatown Steering
9 Committee was to be held a number of weeks ago, but was canceled
10 and rescheduled until after, unfortunately, this hearing.

11 But the design elements that were approved by
12 them for the project across the alley are similar to the design
13 elements that are being put in place for this project, and I
14 just wanted to give you that little bit of background if you
15 don't already have the ANC's letter in your file about that
16 issue.

17 They did not have a quorum. so I'm not sure
18 whether they decided to write something specifically on that
19 issue.

20 CHAIRPERSON GRIFFIS: Are you indicating that you
21 have something from the ANC?

22 MR. NETTLER: No. We were at the ANC's meeting.

23 CHAIRPERSON GRIFFIS: Right.

24 MR. NETTLER: And made a presentation, and that
25 the members who were left at the end of that meeting, as I said,

1 which was not a quorum, had deferred taking a position in
2 support of the project until there had been a resolution with
3 the Chinatown Steering Committee.

4 I know that's not an issue before you, but that
5 was the only thing that had happened at that meeting.

6 CHAIRPERSON GRIFFIS: Okay. Well, actually it's
7 an excellent point to bring up first because unless my memory
8 fails me, reading all of this, I don't recall seeing the ANC
9 letter.

10 We also have something from staff that I think we
11 need some clarification on. Can we look at the indication from
12 staff on what we have from 6A before I actually read that?

13 SECRETARY PRUITT: I'm sorry. You mean the ANC
14 letter?

15 CHAIRPERSON GRIFFIS: Yeah. Well, I don't need
16 to be secretive here. Staff put together a quick memo for us
17 that tells us everything that's in our package so we can briefly
18 review it after reading the lengthiness of it.

19 Right, indeed. What's been indicated is that we
20 have from ANC-6A a letter of denial, and then on a note we also
21 have the fact that the letter of support from the Downtown
22 Housing Now Committee, which would be a different issue --

23 VICE CHAIRPERSON RENSHAW: That's a different
24 issue.

25 CHAIRPERSON GRIFFIS: -- than the ANC.

1 There's a waiver needed for the ANC report, which
2 indicates that it didn't come in in a timely fashion, which may
3 mean that it didn't get into our packets.

4 MS. BAILEY: Right. Mr. Chairman, do you have
5 the letter from the ANC? Do you have a copy of it?

6 CHAIRPERSON GRIFFIS: It is not something that I
7 marked, and I usually do. And believe me, I spent some time
8 reading this one.

9 I don't see it even indicated on the submission
10 exhibit list. Do we know what day it came in or is there an
11 exhibit number on it?

12 Well, this is a fun start. Just give us a couple
13 of minutes. Better to have everything together that we should
14 at the beginning rather than walking you guys through this five
15 or six, eight times.

16 Beautiful. Okay. Board members, it is Exhibit
17 No. 26, which would indicate that our case files -- my exhibit
18 numbers stopped at 22. So we had missing perhaps a few things.

19 I think that we could easily be walked through. I have the
20 Downtown Housing Committee letter here, and when we get to that,
21 we will review all of these things, and I will make sure
22 everyone has full understanding.

23 Okay. This came in on -- well, it's dated the
24 12th, and it was actually submitted on the 14th. So there's
25 obviously reasons why we didn't get it expeditiously.

1 So that being said, let's have the applicant
2 start. I think the Board members have read the entire file
3 outside of these pieces that haven't come in, and there's enough
4 substance to grab onto here that we can get started.

5 So I would appreciate it, Mr. Nettler.

6 MR. NETTLER: I will do that, and also if you
7 could give me a copy of the letter that you may or may not have.

8 CHAIRPERSON GRIFFIS: Not a chance.

9 MR. NETTLER: Not a chance?

10 CHAIRPERSON GRIFFIS: No.

11 MR. NETTLER: Okay. Thank you.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. NETTLER: Mr. Koch is my first witness who is
14 here on behalf of AvalonBay Communities.

15 MR. KOCH: Hi. Good morning. My name is Richard
16 Koch.

17 First, I'd like to tell you a little bit about
18 who AvalonBay is. We are a national real estate investment
19 trust. Our stock is traded on the New York Stock Exchange. We
20 have communities in 12 states, plus D.C., that we own,
21 approximately 140 communities, and we have development rights
22 for approximately another 40 communities in those same 12 states
23 and the District of Columbia.

24 Next I would like to give you a little bit of
25 background of our endeavor here on Fifth and Sixth Street to try

1 to bring into context why we're here today for the variances on
2 what we call Gallery 2.

3 Gallery 1 is the building footprint that you see
4 on the lower portion of the exhibit. It fronts on Fifth Street.

5 It's separated by an alley in the back that goes between G
6 Street and H Street from what we call our second phase Gallery
7 2, which fronts on Sixth Street.

8 The Gallery 1 building has 203 apartments, and it
9 just has been our experience that to efficiently manage a
10 community, we need in the range of 300 to 350 apartments.

11 So when we first purchased -- when we purchased
12 the Gallery 1 site, we within three or four months of that
13 purchase purchased the Gallery 2 site, and the intention was to
14 manage them as one community and benefit from the efficiencies
15 of managing them as one community.

16 Unfortunately we weren't able to consolidate them
17 into one building because of different timing constraints. So
18 we made the decision to move forward with Gallery 1. We are
19 actually under construction on Gallery 1, and we would hope that
20 we would be able to start the construction of the Gallery 2
21 building late this summer.

22 The Gallery 1 building was designed with a
23 fitness center, community room, business center, and a rooftop
24 deck -- excuse me. Everything but the rooftop deck is in the
25 first floor of the Gallery 1 building, and there's a rooftop

1 deck, approximately 5,000 square feet, on the roof of the
2 Gallery 1 building.

3 The intention and the plan that we have always
4 envisioned was -- excuse me. I'm going to go up to the --
5 excuse me.

6 There's a separate access to the rear of the
7 Gallery 1 building that is separated from the loading dock, the
8 corridor that goes into the back of the building. So this
9 access here is directly across from the fitness center, and the
10 areas in here, this is the conference room, the business center,
11 and this is the community area in here.

12 We have a similar direct access proposed at the
13 back of the Gallery 2 building that would allow the connection
14 for the residents of the Gallery 2 building to come over and
15 utilize the facilities in the Gallery 1 building.

16 The elevators for the Gallery 2 building, one of
17 the two elevators goes all the way to the rooftop deck.

18 You'll notice on the Gallery 2 site in order to
19 maximize the retail, we've actually shifted the core of the
20 building to one side so we could have the large contiguous space
21 of retain on the first floor, and in order to meet the retail
22 requirements there's clearly no space on the first floor
23 remaining for any other use once you factor in the core for the
24 elevator, the rear entrance ramp to the garage, the trash room,
25 and the services out front for the concierge and the mail rooms

1 and so forth.

2 The architect will describe or talk about this a
3 little bit more.

4 COMMISSIONER MAY: If you could -- I'm sorry to
5 interrupt you. I was just hoping that you'd get into a
6 discussion of the different types of units that you have in the
7 buildings.

8 MR. KOCH: The design of the two buildings is --

9 CHAIRPERSON GRIFFIS: You know, if I can
10 interrupt you.

11 MR. KOCH: Sure.

12 CHAIRPERSON GRIFFIS: Although in your mind it's
13 very important, these are both of your projects, but I think I
14 want to keep the Board very focused on Gallery 2, which is what
15 is before us today. And there is information, in fact, in the
16 filing that gives us, in fact, the unit counts of one and all of
17 that, and it may be me, not enough coffee, but what I don't want
18 to do is get confused with Gallery 1 and Gallery 2. So if we
19 can keep focused on that.

20 You wanted to be brief in terms of layout of
21 units and all of that. I think, Board members, unless you
22 disagree, it's fairly clear, and I think it's well set forth for
23 us in terms of information included.

24 But I think we do have questions that we'd like
25 to probably get to quickly.

1 So that being said.

2 MR. KOCH: That being said, I'll make a brief
3 follow-up comment.

4 CHAIRPERSON GRIFFIS: Please.

5 MR. KOCH: The only point that I was going to
6 make was that the intention for Gallery 2 is it's a less
7 expensive -- although it's a smaller building, it is actually
8 more expensive per square foot to build, but we're creating
9 smaller apartments with the intention to provide housing for a
10 more middle income market as opposed to Gallery 1 is much larger
11 apartments and, therefore, the residents would probably be of a
12 higher income. So that's the only distinction that I wanted to
13 make with respect to the design of the two buildings --

14 CHAIRPERSON GRIFFIS: I see.

15 MR. KOCH: -- and the apartment types.

16 CHAIRPERSON GRIFFIS: And I think that's
17 important. I mean, it's obviously the impact and what you're
18 going to be doing is creating for the residential component, but
19 also the mix of incomes that will be very important in that
20 area, and that's clear.

21 Am I correct in recalling in the submission that
22 you actually are increasing the height in some of the units? Is
23 that in Gallery 2?

24 MR. KOCH: In Gallery 2, we evaluated the market.
25 We believe that it's no longer feasible to just provide eight

1 foot tall ceilings. So we are providing nine foot tall ceilings

2 --

3 CHAIRPERSON GRIFFIS: Right.

4 MR. KOCH: -- as a result of that, foregoing the
5 opportunity to build 12 additional apartments that would --
6 otherwise could fit in that envelope if we had not raised the
7 ceiling heights.

8 CHAIRPERSON GRIFFIS: Exactly. Okay. So for
9 common folk, it would be not adding an extra floor in order to
10 increase the height of all the rest of the floors.

11 MR. KOCH: That's correct.

12 CHAIRPERSON GRIFFIS: Excellent. Okay. Sorry.

13 MR. KOCH: Having said all of that, I would turn
14 it over to questions to you or over to the architect for his
15 presentation, unless Richard has got other questions for me.

16 MR. NETTLER: No, thanks. I'd rather pursue it
17 with the architect so we can --

18 CHAIRPERSON GRIFFIS: Yes, I agree.

19 MR. NETTLER: -- get to the essence of the
20 issues that are -

21 CHAIRPERSON GRIFFIS: Board members, questions at
22 this point?

23 I think let's move on.

24 MR. NETTLER: I am proposing Mr. Kirkdil as an
25 expert. He has appeared before the Board of Zoning Adjustment

1 before and has been accepted, and I think you have his resume
2 before you, and I would ask that you grant my request.

3 CHAIRPERSON GRIFFIS: Indeed, Board members, I
4 know we've all reviewed it, and it's in the applicant's
5 submission, Exhibit E. If you want to take another quick, ten
6 seconds to review that, I do not have any problem in granting an
7 expert witness title on the architect before us.

8 In terms of expert witness, Mr. Nettler, it's my
9 understanding as an expert witness in the architecture of the
10 building itself with knowledge of zoning; is that correct?

11 MR. NETTLER: That's correct.

12 CHAIRPERSON GRIFFIS: Okay. Board members, any
13 objections?

14 (No response.)

15 CHAIRPERSON GRIFFIS: Fine. I think that's a
16 consensus.

17 And we welcome you this morning.

18 MR. KIRKDIL: Hi. My name is Sami Kirkdil. I'm
19 one of the principals of SKG Architects and Planners.

20 When we started this building, started the
21 design, I think one of the challenges was this is a very small
22 site, basically 85 by 150, and to locate all of the core as well
23 as the parking was the biggest challenge, and I think I can show
24 you some of the exhibits in terms of parking.

25 The things that we need to do in order to get --

1 I guess we have 75 parking spaces. We are going three levels
2 down the first floor of the building, and we are locating the
3 ramp on the left side of the property. That's a speed ramp that
4 comes down to the lower level, and since site is so tight, I
5 think you get into a parking arrangement basically. You're
6 looping through single limited parking, and it becomes very
7 inefficient layout.

8 And in this layout the only place that you can
9 put your elevator and stairs ends up being real critical, where
10 they need you to locate it and so forth.

11 Another thing was basically in the first of the
12 units --

13 CHAIRPERSON GRIFFIS: If I could, before you move
14 off the parking, just so we get clear clarification, your
15 submission indicates that there were 78 parking spaces that
16 would be provided is that still the correct count?

17 MR. NETTLER: Correct, yes.

18 MR. KOCH: Yes.

19 CHAIRPERSON GRIFFIS: Okay, and when Office of
20 Planning gives their report, if I'm not mistaken, they indicated
21 that there were 50 spaces. So I just wanted to make sure that
22 we're all clear on what we're looking at.

23 Great. Thank you.

24 MR. KIRKDIL: And the first of the units, I think
25 we were trying to capture as big a retail space as possible. So

1 for that purpose we located the elevator and stairs on one side
2 of the building basically and then we are transferring, exiting
3 onto this staircase. I mean, this allows us to get somewhere
4 around 5,000 square feet of retail. So we have 500 square feet
5 short and the remaining open space ends up getting utilized as
6 loading docks and service areas and so forth.

7 So in ground we don't have any space to give in
8 terms of recreational space, and a typical floor of the
9 building, the way we arranged it, basically we have staircases
10 at either end of the building, and a core, actually left side of
11 the building, and we have basically all medium units and
12 efficiencies and two bedroom units. The majority of the
13 building is market rate units, and they are smaller in
14 comparison to the first building.

15 In terms of architecture of the building, briefly
16 the building is rendered in a very contemporary fashion. We
17 have in a very strong meeting of base metal and top, and we are
18 basically doing somewhat osmetical (phonetic) composition to
19 highlight the entrance of the building, which is on the right
20 side basically. We are bringing the bay al of the way down to
21 the floor, and then the other base, which happens to be in the
22 living room of the units, basically they start from the second
23 floor, third floor up to the ninth floor.

24 CHAIRPERSON GRIFFIS: Great. Two things on that
25 before you proceed. First of all, I understand in the

1 submission that you are using actually a Chinese design
2 consultant.

3 MR. KIRKDIL: Yes.

4 CHAIRPERSON GRIFFIS: And that it is informing
5 different elements and details that will go on, and I believe,
6 if I recall correctly, that the front canopy and perhaps some
7 lighting, and of course the site in that this is in Chinatown.

8 MR. KIRKDIL: And as well as a streetscape will
9 have Chinese elements and so forth.

10 CHAIRPERSON GRIFFIS: Fabulous. Okay.

11 Another question for you, and maybe Mr. Koch can
12 answer on two things, but -- well, actually I'll take one.
13 These do not have any exterior balconies. Is that fairly
14 typical in a contemporary residential building to have enclosed
15 balconies? Is that the kind of type?

16 And this is not an important question, but --

17 MR. KIRKDIL: I'll answer.

18 CHAIRPERSON GRIFFIS: Good.

19 MR. KIRKDIL: We are currently doing, I think,
20 several buildings, and I have been in front of this Board on
21 several locations, and I think all the projects we are doing
22 currently, I think 99 percent of them, you know, in the city
23 facades, we don't have balconies. Maybe in the best case French
24 balconies, you know, on the back side of the project, because of
25 the look of it, and people end up storing articles and so forth.

1 CHAIRPERSON GRIFFIS: Exactly.

2 MR. KIRKDIL: You know, and we don't want to get
3 into affecting the views and other conditions.

4 CHAIRPERSON GRIFFIS: Right. So it more --

5 MR. KOCH: And I would say the other part of the
6 answer is it basically costs the same as the interior square
7 feet that we're rendering, and we can't charge rent on the
8 balcony. So in order to maximize revenue, which is very
9 difficult and it's important to do in the building downtown, you
10 sometimes just have to forego the balconies because you can't
11 charge rent for them, but yet they cost the same amount of money
12 to build.

13 CHAIRPERSON GRIFFIS: Right, right. So based on
14 design and bottom line of it. Okay.

15 But we do -- and not to mislead, you do have
16 enclosed bays which gives that undulation of the elevation and
17 the articulation of it, which I think is very important in any
18 building in this city.

19 But please continue.

20 MR. KIRKDIL: That brings back to me a point.
21 One of the points that we wanted, you know, our staircase
22 located on the left side of the building. We want to basically
23 bring one of the means of egress or one of the staircases and
24 how we bring that staircase ends up becoming an issue. And what
25 we were proposing was basically setting it back, say, six feet

1 of the penthouse, and that way, you know, we have cut sections
2 and so forth. We can clear and get the staircase to the main
3 roof of the building.

4 And the other point was basically roof, the way
5 the building mechanical is going to be worked basically. The
6 roof is going to end up being used as a mechanical space. We're
7 going to have condensers and also as well as rest from exhaust
8 is going to come up to roof and so forth. So --

9 CHAIRPERSON GRIFFIS: So bringing this to the
10 roof, do you find in conflict actually the building code
11 requirements --

12 MR. KIRKDIL: Yes.

13 CHAIRPERSON GRIFFIS: -- that would require
14 separation of egress stairs and the zoning regulations that say
15 that you need a one-to-one setback of any sort of structure on
16 the roof?

17 Interesting. Four, eleven is a problematic
18 little section of our zoning regulations. Okay.

19 MR. KIRKDIL: In terms of architecture of the
20 building, I think it kind of like highlights the building having
21 the penthouse on one side of the building. It kind of like
22 balances the main element of the entrance bay.

23 CHAIRPERSON GRIFFIS: I'm glad you say that, that
24 the penthouse begins to highlight and actually becomes part of a
25 form and is an important piece of the elevation, especially when

1 you see it in this.

2 Now, to be realistic, you won't ever see the
3 penthouse with such magnitude as showing in a flat elevation.

4 MR. KIRKDIL: Absolutely.

5 CHAIRPERSON GRIFFIS: But it is also going to be
6 a visible element.

7 MR. KIRKDIL: Un-huh.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. KIRKDIL: Another point was basically as I
10 was saying in the rooftop we've been locating some of the
11 condensers of the unit, as well as the kitchen exhaust from the
12 restaurant --

13 CHAIRPERSON GRIFFIS: Right.

14 MR. KIRKDIL: -- downstairs.

15 CHAIRPERSON GRIFFIS: How tall are those
16 condensers? Are they on curbs?

17 MR. KIRKDIL: They're only like three feet tall.

18 CHAIRPERSON GRIFFIS: Three feet. So they're
19 below four feet. So they wouldn't come in under 411 in terms of
20 one enclosure.

21 MR. KIRKDIL: Yes.

22 CHAIRPERSON GRIFFIS: So you're showing one
23 enclosure.

24 MR. KIRKDIL: Yes, which will be basically boiler
25 room as well as elevator machine room, you know, and so forth.

1 PARTICIPANT: Stairwell.

2 CHAIRPERSON GRIFFIS: Right, and the stairwell
3 that comes up.

4 MR. KIRKDIL: And the stairwell.

5 CHAIRPERSON GRIFFIS: Was there any ever thought
6 of creating an entire -- your penthouse structure right now is
7 the rectangular. Actually carrying that all the way down and
8 trying to put all of the condensers on top of the penthouse?

9 MR. KIRKDIL: No.

10 CHAIRPERSON GRIFFIS: No, I know it would be
11 another three feet, but it would speak to the utilization of
12 the roof.

13 MR. KIRKDIL: In reality, I mean, I would see
14 when we engineer this building this penthouse may be very well
15 smaller --

16 CHAIRPERSON GRIFFIS: Right.

17 MR. KIRKDIL: -- than we are actually showing.

18 CHAIRPERSON GRIFFIS: Right. Okay. I'm not
19 saying it's a good idea. I was just -- you know, in terms of if
20 you wanted to start to -- and there's problems with that, too,
21 if you put the roof terrace on. Say you wanted to have new
22 recreation space happen on the roof and you put the condensers
23 then on that, and then you need the two stairs coming up.
24 You're still going to be here trying to get the setbacks for
25 those stairs.

1 MR. KIRKDIL: The stairs.

2 CHAIRPERSON GRIFFIS: But I was just wondering
3 whether it was ever entertained to try and do something of that
4 nature.

5 MR. NETTLER: Well, wouldn't you need a variance,
6 another variance to be able to put the condensers on top of the
7 penthouse because of the height that we don't have?

8 MR. KIRKDIL: Yeah.

9 CHAIRPERSON GRIFFIS: Oh, yeah. No question
10 there, but --

11 MR. KIRKDIL: The problem with the current code,
12 as you know, in order to get the elevator up to the penthouse,
13 you really need to depress the top floor slab.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. KIRKDIL: Eighteen foot, six doesn't really
16 allow you to bring elevators up to the penthouse of the
17 building.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. KIRKDIL: It puts a burden on the building.
20 Also it forces the elevators to be only eight feet tall inside
21 the cabs

22 CHAIRPERSON GRIFFIS: Right.

23 MR. KIRKDIL: Which is, you know, it's important
24 to have nine feet, move-ins and so forth, in this building.

25 CHAIRPERSON GRIFFIS: Right. Yeah, if I'm not

1 mistaken there is provisions to allow an elevator to exceed
2 that, but then you do get into a problem with your penthouses
3 out at 411 that need to have the same roof line.

4 It's very cumbersome. It's hard to do, to really
5 make roofs useful for anything other than straight mechanical
6 equipment.

7 MR. KOCH: You would also end up needing an
8 additional variance for another penthouse because you need two
9 means of exit. So --

10 CHAIRPERSON GRIFFIS: Right. No, exactly.

11 MR. KIRKDIL: You need to take this staircase out
12 basically.

13 CHAIRPERSON GRIFFIS: Yeah. Okay. Well, no need
14 to speculate on what might be. Why don't we focus on what is
15 being proposed?

16 Hold on just a second. I've just been handed a
17 whole bunch of stuff. Okay.

18 MR. NETTLER: Let me just ask you to run through
19 then in terms of getting to the specifics of the requirements of
20 the zoning regulations in terms for a variance; if you could
21 just run through the specifics of what's unique about the site
22 in terms of being able to develop on it.

23 You had mentioned starting with the mention that
24 you did of the constraints that the size of the site has either
25 both in length or the width, and any other constraints that it

1 has on it.

2 MR. KIRKDIL: I mean as just to summarize, I
3 think the issues was -- oh, the other point that I forgot, this
4 existing building is, you know, right now currently a foot
5 overlapment (phonetic) of our property line. So basically we
6 are losing another foot to the existing building.

7 CHAIRPERSON GRIFFIS: And that's because there
8 was a common party wall from an adjacent townhouse that was
9 digging down or --

10 MR. KIRKDIL: It's because of the way it was
11 constructed.

12 CHAIRPERSON GRIFFIS: It's more complicated than
13 that. Well, we may not --

14 MR. KIRKDIL: The way it was constructed, it was
15 basically encroaching into our light. So instead of 150 feet,
16 we have 149 feet to work with.

17 CHAIRPERSON GRIFFIS: I see. Okay.

18 MR. NETTLER: and could you talk about the alley
19 issue in terms of how that impacts on the ability to do any
20 recreational space in the rear of the building?

21 MR. KIRKDIL: Currently this alley is 16.75 feet
22 wide, and it's subject to be basically widening it up to 20 feet
23 so because of the two-way traffic. So there will be basically
24 1.67 feet will be taken away from our side of the lot line, as
25 well as on the other side of the lot line to increase this alley

1 to 20 feet basically.

2 We're losing a certain square footage basically
3 in the alley, and what's left of it, I think, will be low income
4 in terms of trash, dumpsters, and so it doesn't really allow any
5 space.

6 CHAIRPERSON GRIFFIS: is it my understanding --
7 my understanding is, and tell me if I'm correct, that that is
8 happening, that the 20 feet expansion of that alley is because
9 one of the accesses to the alley is being closed; is that
10 correct?

11 MR. NETTLER: Well, one of the alleys has already
12 been closed.

13 CHAIRPERSON GRIFFIS: Correct.

14 MR. NETTLER: And as a condition of that closure,
15 the city required that using that alley that exists for access
16 to the rear of the building would necessitate --

17 CHAIRPERSON GRIFFIS: Needs to be 20.

18 MR. NETTLER: Right, would necessitate a 20 foot
19 wide easement area, and that requires taking from both sides of
20 those lots.

21 CHAIRPERSON GRIFFIS: Exactly, and if I'm not
22 mistaken it actually is the Gallery 1 that has moved the closing
23 of that small alley; is that correct?

24 MR. NETTLER: That's correct.

25 CHAIRPERSON GRIFFIS: Then frankly, I wouldn't

1 spend a lot of time talking about how it's being problematic for
2 you losing space on each of the sites when, in fact, it's
3 something that you've moved to have happen, and it is somewhat
4 attendant to the closing of an alley, that it allows Phase 1 to
5 happen.

6 MR. NETTLER: No, actually it would happen on the
7 site regardless of what they had done on the alley because --

8 CHAIRPERSON GRIFFIS: You're saying --

9 MR. NETTLER: -- because the alley that provides
10 the access into the loading and the parking is only 16 --

11 MR. KIRKDIL: Point, seventy-five.

12 CHAIRPERSON GRIFFIS: Point, seventy-five, right.

13 MR. NETTLER: -- point, seventy-five, and the
14 city would require to have a 20 foot wide alley to provide
15 appropriate access --

16 CHAIRPERSON GRIFFIS: I see.

17 MR. NETTLER: -- for the loading and the parking
18 on this site. So regardless of what is happening there --

19 CHAIRPERSON GRIFFIS: You would have had to step
20 it back in order to have that distance.

21 MR. NETTLER: Right.

22 CHAIRPERSON GRIFFIS: That's an excellent point.
23 That was not as clear to me in the filing.

24 MR. NETTLER: And if I just might add onto that a
25 little bit because if you look at the other alley that provides

1 access to the square, it's not adjacent to the area where you
2 would have the access into the loading and the parking for this
3 building. So once you came into that alley, you'd still be into
4 the 16 foot alley. So you'd still have to provide that
5 additional space.

6 If you notice, there's an alley that's on the --
7 right over there. So we're not concerned with that alley, how
8 it impacts on the property.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. NETTLER: It's where we could have possibly
11 located the recreational space and how that impacts the alley
12 requirements that the city has.

13 CHAIRPERSON GRIFFIS: Okay. that's clear to me.

14 Board members, is that clear?

15 Okay. I'm usually the slowest among the group.
16 So please.

17 Oh, while you're here, unless you're going in a
18 different direction, it has been, and Mr. Koch had mentioned in
19 the filing, the opportunity of being able to share the
20 recreation space in the facilities in Gallery 1, and it is made
21 a large point. Mr. Koch actually walked us through the access
22 in and out of Phase 1.

23 But talk to me about the access out of Phase --
24 out of Gallery 2. I'm sorry. I probably shouldn't be calling
25 them phase. But the issue to me, and I'll let you have it, but

1 talk to me and tell me if I'm not mistaken, you're walking right
2 out onto a loading space.

3 MR. KIRKDIL: I think the way we have organized
4 this, I think there is still some of this stuff needing work
5 basically. We have a space basically for things to get this.
6 The intention was basically we have just a lobby, and main
7 concierge at this lobby, at this location. And we have a trash
8 compactor and a service lobby for the move-ins and so forth, and
9 we are pulling access from the main lobby to the back of the
10 project, which will have a clear, marked pathway --

11 CHAIRPERSON GRIFFIS: Right.

12 MR. KIRKDIL: -- from one building basically,
13 from this point to entrance of the other building right there,
14 which is basically in close proximity to each other.

15 There is basically all of these spaces. This
16 building is almost, you know, half of it total amenity to serve
17 this building, as well as this.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. KIRKDIL: I mean you can see in terms of
20 scale of it.

21 CHAIRPERSON GRIFFIS: Okay, right. So I mean
22 that's fairly clear to me, and perhaps I shouldn't belabor this
23 too long, but looking at your exhibit, which is Board A-0, is
24 that, in fact, identical to what the submission documents is,
25 the plans? Has that changed since submission?

1 MR. KIRKDIL: No.

2 CHAIRPERSON GRIFFIS: Okay. Just to be clear
3 then for the record, we're looking at A-0.

4 The project north as your plan is laid out, that
5 alley that runs north-south, how wide is that?

6 MR. KIRKDIL: This alley?

7 CHAIRPERSON GRIFFIS: Correct.

8 MR. KIRKDIL: It looks like 20 feet.

9 CHAIRPERSON GRIFFIS: Okay. So let's say it's 20
10 feet. Do you know offhand is there lighting in that alley? Are
11 there Cobras?

12 MR. KIRKDIL: No.

13 CHAIRPERSON GRIFFIS: You don't know. That's
14 fine.

15 Would you not say that, you know, one of the
16 opportunities, depending on what that alley looks like, is that
17 people will be coming out of that building and walking up the
18 alley and going in the front door or, frankly, you are looking
19 to set up the connection?

20 If people come from work, they go to the gym in
21 Gallery 1. They're going to go out the back door and into the
22 back door in Gallery 2.

23 MR. NETTLER: Yes. In fact, the District
24 recently, Department of Public Works has allowed for developers
25 who have projects on both sides of alleys to essentially, while

1 upgrading the alley, to essentially take control of the alley
2 for the District's purposes, now without closing the alley
3 itself, but to provide increased lighting, to --

4 CHAIRPERSON GRIFFIS: Yeah.

5 MR. NETTLER: -- make the connections that are
6 necessary between the buildings, and that actually is being
7 looked at for this square because the other square that doesn't
8 have a project on it, which is a square which is owned by JBG or
9 JBG is trying to assemble, is also trying to look at a way of
10 trying to insure that all of the projects there do take over the
11 alley for purposes of maintaining it and providing additional
12 lighting so that there is that flow that goes back and forth.

13 CHAIRPERSON GRIFFIS: Yeah. I don't want to
14 spend a lot of time on it, but I think it's important.
15 Obviously we're talking about the recreation use. You brought
16 up the fact that you're going to share recreation use. So I
17 want to make sure, and I think it only helps the owner of the
18 building that that looks to be a safe, a clean, and direct
19 connection. Otherwise, frankly, who wants to walk out on the
20 alley?

21 So that being said, I think we will have more
22 information on that and probably more discussion.

23 Okay. Any other questions for the architect
24 while we have the plans up to walk through?

25 MR. NETTLER: If I could just tie up two other

1 loose ends just for the record.

2 CHAIRPERSON GRIFFIS: There's only two?

3 MR. NETTLER: There's only two from my
4 perspective.

5 CHAIRPERSON GRIFFIS: Okay. Good.

6 MR. NETTLER: As a consequence of these varying
7 conditions, in your view the zoning regulations present a
8 practical difficulty for purposes of complying with those area
9 requirements that deal with the recreation space, the retail
10 space, and the penthouse set-back.

11 MR. KIRKDIL: Absolutely.

12 MR. NETTLER: And in your view, and given the
13 work that you've done around the District and your knowledge of
14 this area, do you view any of these variances has having an
15 adverse impact on the neighborhood or the zoning plan?

16 MR. KIRKDIL: I think it does. I think in this
17 case --

18 MR. NETTLER: Does it have an adverse impact or
19 does this have a positive impact?

20 MR. KIRKDIL: Not having it, you mean?

21 MR. NETTLER: Right. Does it have a positive
22 impact or --

23 MR. KIRKDIL: I mean, I don't think it affects.

24 MR. NETTLER: Okay.

25 CHAIRPERSON GRIFFIS: So to be clear, you would

1 say that it has no adverse impact.

2 Anything else?

3 MR. NETTLER: That's all.

4 CHAIRPERSON GRIFFIS: Good. Could you bring up
5 the elevation again? And actually it would be good if you have
6 the roof plan on the other side of that.

7 MEMBER LEVY: Mr. Chair.

8 CHAIRPERSON GRIFFIS: Yes, Mr. Levy.

9 MEMBER LEVY: I'd just like to ask the architect
10 a couple of questions if I could.

11 CHAIRPERSON GRIFFIS: Please, proceed.

12 MEMBER LEVY: Given that we have the elevation
13 up, and perhaps we're headed down the same path, but I would
14 like to know what the exterior building materials are, both for
15 the building itself and the penthouse.

16 MR. KIRKDIL: I think what we had mentioned to
17 use is basically two different colors of brick, and we will have
18 a metal panel, which will be -- and all of the bay windows will
19 be detailed with the metal panel and so forth, and then we will
20 have some precast trim around the windows as well as sills and
21 so forth.

22 The penthouse will be basically brick to match
23 the building color.

24 MEMBER LEVY: Okay. Thanks.

25 CHAIRPERSON GRIFFIS: Is there any indication

1 that there's any sort of reveal or any sort of design lines that
2 are going to be picked up in the penthouse rather than just to
3 add to the connection with the building? Similar materials is
4 great. Any other articulation that you're proposing at this
5 point?

6 MR. KIRKDIL: Unfortunately, I mean, this
7 elevation doesn't show that, I think, but we have basically in
8 our best effort to try to tie the penthouse design to the rest
9 of the building design to make a composition.

10 CHAIRPERSON GRIFFIS: Right. I mean, I think
11 this Board is fully aware of the kind of, well, let us say the
12 low impact of dollars spent on a penthouse structure.

13 However, Section 411 does lay out; in fact, its
14 entire intent is to have a reasonable degree of design control,
15 and I think when the regulations speak of design, we're not
16 necessarily asking to submit details, and we're not a design
17 committee, but the fact of they are looking at visual impact.

18 And again, you yourself have said that this
19 penthouse is going to be playing into holding the elevation and
20 the elements together of the building itself. And so I think
21 this Board would feel very strongly in pushing you and the
22 owner, frankly, the owner, in terms of articulating the
23 penthouse so that it does look a little bit more animated rather
24 than having it just kind of the top layer of the wedding cake on
25 a lot of buildings, not that that's what yours is by any means,

1 but -- and we're fully aware, and I think very strongly of the
2 fact that the regulations kind of move you in that direction.

3 However, I think it's important to have
4 especially with this building, specifically with this building,
5 I should say, in that there is great attention to the cultural
6 aspect of this neighborhood and integrating it into the
7 building. I think there may be a great opportunity to bring
8 that all together in the entire elevation and integrate even
9 further the penthouse.

10 But that's a lot said. So anything else?

11 COMMISSIONER MAY: Yeah, I have a handful of
12 questions.

13 CHAIRPERSON GRIFFIS: Fabulous.

14 COMMISSIONER MAY: I'm glad you think so.

15 CHAIRPERSON GRIFFIS: Yeah. We can do this now
16 or do you want to go to Planning and come back to it? It's very
17 appropriate to do it right now.

18 COMMISSIONER MAY: No, it has to do with the
19 architecture primarily.

20 CHAIRPERSON GRIFFIS: Good, good.

21 COMMISSIONER MAY: So I would like to --

22 CHAIRPERSON GRIFFIS: Let's move ahead.

23 COMMISSIONER MAY: -- cover that.

24 Just out of curiosity, the site we know is very
25 small. It's small in part because you're bounded by two other

1 properties that you don't own. I assume that at some point
2 there was an attempt to buy those properties, in particular, Mr.
3 Lee's parking lot, which is frankly going to wind up being an
4 anomaly because if you can't get a good building on the site
5 that you've got or you're so constrained, how is that building
6 going to fit the new context?

7 So anyway, I assume you made some attempt to try
8 to assemble more of that block.

9 MR. KOCH: Yes, a couple of times and were not
10 successful to assemble that.

11 COMMISSIONER MAY: Okay.

12 MR. NETTLER: There is another issue, and that is
13 the building on the other side which does overlap a foot is a
14 historic building. So it could not be demolished anyway even if
15 it was acquired.

16 COMMISSIONER MAY: Right, but it could have been
17 incorporated into the design, and this is one of the things that
18 kind of raises a question about it because we have now a very
19 tall building next to a three story building, and the advantage
20 of having acquired that would have been some greater attention,
21 I think, to try and to marry the two, although I wouldn't begin
22 to suggest that we could simply just glum (phonetic) on top of
23 it and make another taller building there.

24 MR. NETTLER: Well, it creates an additional
25 problem because when the historic district was mapped out for

1 the downtown, it left out this site and the other site around
2 the block. It stopped at that building.

3 To be able to subdivide this building into that
4 building would actually probably require a major agent hearing
5 because the subdivision restrictions under the historic
6 preservation law would then come into play here.

7 So there's the difficulty then of trying to
8 incorporate that other building into this.

9 There already is a hotel on the site that is
10 already a tall structure, and while --

11 COMMISSIONER MAY: Not this tall though.

12 MR. NETTLER: Not this tall, but while -- it's
13 unfortunate that that one building sort of got carved out, and
14 then it gets surrounded by the rest of the site, which is not
15 historic. It is. It's a fact that has to be dealt with, and
16 you can't really just simply incorporate it into it if it could
17 be purchased.

18 COMMISSIONER MAY: Right. Okay. Well, that's
19 good background.

20 Back to the question of getting across the alley
21 from the one project to the other, and if we could look at that
22 plan for just a second, I realize that the floor plan on that
23 level, which shows that corridor connecting to the loading area,
24 I understand your statement before that you haven't quite mapped
25 it all out for the final version yet; is that right?

1 MR. KIRKDIL: Yes.

2 COMMISSIONER MAY: Okay. Given that, bear in
3 mind as you do try to finalize that you've basically put that
4 passage between the service lobby for the elevator and the trash
5 compactor room, both of which want to have immediate access to
6 the loading area.

7 So you have no choice but to send people out into
8 the loading area the way that's been done, notwithstanding other
9 statements about trying to make the passage across the alley
10 more attractive. I think so long as those two are sandwiching
11 that passage, you're going to be locked into a less than
12 comfortable access to the alley.

13 MR. KOCH: I think at your suggestion we're going
14 to reevaluate that because you're bringing to light something
15 that I hadn't focused on, and I think you guys are right.

16 COMMISSIONER MAY: Okay. The last thing that I
17 would mention or that I would ask about goes to the penthouse
18 setback, and if I understand the diagrams correctly, the choice
19 essentially architecturally comes down to having a partial
20 penthouse or ramped kind of structure in there that would go up
21 to the 18 feet or bringing it all over another ten feet
22 approximately.

23 And I guess what concerns me about this has to do
24 with the fact that this penthouse is in a permanently exposed
25 position the way it is right now because of that building next

1 door and because of the alley next door to that. There's always
2 going to be a sight line down the street.

3 So while we may not ever see it like this because
4 the way I picture it right now I'm in the middle of the GAO
5 building looking at it, and you know, people in GAO will
6 probably see it, but really no one else.

7 People walking down the street will have a
8 regular view of that penthouse because there's essentially about
9 40 feet or so that's clear, and I think that requesting that
10 variance for that setback in that location is particularly
11 difficult, and what I'm wondering is whether there's another
12 solution that would essentially give you a transfer corridor on
13 the upper level.

14 I understand it would take some rentable square
15 footage to be able to do that, but if you had a ten foot wide
16 passage on the upper floor, then you could emerge into that
17 penthouse without having to have the setback.

18 And so I'm wondering if you looked at any of
19 those sorts of solutions or other ways of trying to address
20 that.

21 CHAIRPERSON GRIFFIS: You're saying, for my
22 clarification, adding actually a third stair that would just be
23 --

24 COMMISSIONER MAY: No.

25 CHAIRPERSON GRIFFIS: -- a communicating stair?

1 COMMISSIONER MAY: No, it would not be a third
2 stair. It would just be an extension.

3 MR. KIRKDIL: What I hear is basically suggested
4 transferring this staircase somewhere around here.

5 COMMISSIONER MAY: Right.

6 CHAIRPERSON GRIFFIS: It would shift as it gets
7 to the top floor.

8 MR. KIRKDIL: the problem is going to be
9 basically you're going to land lock certain units. Now, you
10 need to have to make a really large unit behind this staircase.
11 You have to move from this location to a more central location.

12 COMMISSIONER MAY: I don't think it has to go
13 that far, and that's why -- and it's really a transfer. It's --
14 well, it's based on a pretty simple reading of the plan, but I
15 would like to believe that there may be an architectural
16 solution to this that wouldn't require this particular setback,
17 and then I understand it would require some rejiggering of the
18 units that are there.

19 MEMBER LEVY: Mr. Chair.

20 CHAIRPERSON GRIFFIS: Yes.

21 MEMBER LEVY: Just a point of clarification on
22 the issue that Mr. May has raised. In looking at the drawings -
23 - well, let me just ask the question, if I could --

24 CHAIRPERSON GRIFFIS: Un-huh.

25 MEMBER LEVY: -- of the architect.

1 Does this stair access the roof by means of a
2 hatch or by means --

3 MR. KIRKDIL: Direct access.

4 MEMBER LEVY: The stair itself goes? Because I
5 guess what's confusing to me is that the plans show the stair
6 flush with the face of the building, but the penthouse has a
7 setback, and I don't understand architecturally.

8 MR. KIRKDIL: What's happening is, you know, we
9 are building this area in a way the same height with the parapet
10 of the building. Okay? So we are getting clearance here in the
11 way of the top floor, and then, you know, we are setting it
12 back, and the point that -- what we try to do is, you know, try
13 to push this ball as much as we can basically. Technically what
14 we are doing is --

15 CHAIRPERSON GRIFFIS: Actually, let me just draw
16 Mr. Levy's attention to the section that was submitted, and it's
17 in Section D of the applicant's submission.

18 MEMBER LEVY: Okay.

19 CHAIRPERSON GRIFFIS: And it shows that basically
20 what can happen is because the stairway, the head height that is
21 required at the last landing before accessing the roof, you can
22 actually have the slope.

23 And often as I'm sure the way the regulations
24 were written it was thought that certainly enough you could set
25 back one to one based on that. However, with a residential

1 building it also becomes very problematic, but --

2 MR. NETTLER: Well, in addition to that, one of
3 the problems is that when the city decided and the comprehensive
4 plan mandated that you maximize housing downtown as well sa
5 maximize retail --

6 CHAIRPERSON GRIFFIS: Right.

7 MR. NETTLER: -- when you're doing the housing,
8 you had to end up when you had a narrow lot like this of having
9 to locate the core at one corner or the other corner.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. NETTLER: Because otherwise you would lose
12 the retail component to it.

13 MR. KIRKDIL: And that's a very good point
14 actually.

15 MEMBER LEVY: I appreciate your pointing the --

16 CHAIRPERSON GRIFFIS: Actually let me just -- Mr.
17 May, are you finished with your questions?

18 COMMISSIONER MAY: Well, no. I think I
19 understand that point, and that's a very good point, and I think
20 normally if it weren't for the fact that this is a very exposed
21 setback, it wouldn't give me any heartburn because it's -- you
22 know, very often you can do that and you're adjacent to other
23 buildings or there are other reasons why.

24 MR. KIRKDIL: Well, technically --

25 COMMISSIONER MAY: Or you're closer to other

1 buildings.

2 MR. KIRKDIL: Technically, I mean, this is being
3 assembled, and you would see a building there, similar height to
4 this building. So, you know, the only slot basically is when
5 it, again, exposes this 20 feet or 40 feet, you know. You're
6 not going to have any problem along Eighth Street. You might
7 have along the Sixth Street across the site.

8 MEMBER LEVY: Mr. Chair, I am really trying to
9 build on Mr. May's point.

10 CHAIRPERSON GRIFFIS: Yes. No, it --

11 MR. NETTLER: I know it's not obviously, but --

12 CHAIRPERSON GRIFFIS: I know you are. I just
13 wanted to make sure that he was --

14 MEMBER LEVY: Yeah, and I'm struggling with his -
15 - with his concept of the setback, and I guess I appreciate your
16 pointing out the section. I would ask the architect then: what
17 is the height of the roof parapet above the roof deck? Do you
18 know? I don't see that in here.

19 MR. KIRKDIL: Four feet.

20 MEMBER LEVY: It's only four feet?

21 MR. KIRKDIL: Yeah.

22 MEMBER LEVY: I guess what I'm getting at is
23 given the way that the stair accesses the roof deck, there may
24 be -- there's an opportunity to have the penthouse moved further
25 in from the edge of the building, but it would depend on the

1 parapet height, I guess, the parapet height.

2 CHAIRPERSON GRIFFIS: Are you talking about the
3 main penthouse structure that we're looking at or the enclosure
4 of the stair, which is part of the penthouse?

5 MEMBER LEVY: I'm looking specifically at the
6 enclosure of the stair, and I'm assuming that we're showing the
7 penthouse, the top of the penthouse enclosing the portion of the
8 stair that's above four feet in height, if you look at that Tab
9 D section.

10 CHAIRPERSON GRIFFIS: All right. Maybe we're not
11 getting all of this.

12 MEMBER LEVY: Okay.

13 CHAIRPERSON GRIFFIS: I'm not sure what you're
14 saying, and let me just lay out my understanding, and AvalonBay
15 can correct me if I'm wrong, but in terms of regulations, once
16 this goes four feet above, then it needs to set back one to one.
17 If it stays under four feet, then they're fine.

18 So at the point at which it goes to four feet one
19 inch, it needs to be set back one inch. So --

20 MEMBER LEVY: But it has to be part of the one
21 enclosure.

22 CHAIRPERSON GRIFFIS: Well, and that's where you
23 get into some difficulties then, making it part of one
24 enclosure, and then you get into further difficulty when you
25 have to have it all the same roof levels.

1 MR. KOCH: Can I throw in a design consideration
2 that we focused on? Because we sort of thought this through, I
3 think, similar to what you guys are talking about.

4 If you look at the vertical element that
5 identifies the entrance to the building, we thought that it
6 would be critical that at least that penthouse had to reach the
7 edge of that vertical element so that it would read as a part of
8 the concept of the design. So you'll notice that the line to
9 the right side of that vertical element matching the front entry
10 is where the penthouse starts.

11 And as Sami was explaining, as you're walking up
12 the steps, your head height increases. So in the area from the
13 edge of the penthouse out to the parapet, it's actually four
14 feet tall. The roof is raised four feet tall in that area in
15 order to get the head height above the stair, and we were able
16 to push it to allow it to then pop up at that same point that
17 would correspond to the vertical element that identifies the
18 front entry feature.

19 And we had given some thought to making sure that
20 those are coordinated because we thought it was important in
21 terms of the overall design, even though in a lot of cases you
22 won't see it as we're looking at it in its elevation, but I
23 mean, that was a consideration.

24 COMMISSIONER MAY: Yeah, I believe that goes to
25 the question of what you're more likely to see, and I would ten

1 to think that you're more likely to see and appreciate the
2 beauty of that penthouse walking down the street and seeing it
3 in full height, where we're already towering over the building,
4 as opposed to seeing it in pure elevation here, which again is
5 kind of the view from the roof of the GAO.

6 MR. KOCH: Well, keep in mind it will be from the
7 front and the back -- it's set back the 18 feet. So standing on
8 the street, you would not, in fact, see it towering.

9 COMMISSIONER MAY: Exactly.

10 MR. KOCH: And I think the point that Sami was
11 making earlier is the apartment building to the right of the
12 entry that's now, I believe, three stories tall, to the opposite
13 side of that alley that's adjacent to that, that community will
14 be built up to a similar height at some point in the future. So
15 visibility from the MCI direction to that penthouse will be
16 blocked.

17 So the reality is the only place that -- I mean,
18 you would not actually see this as close to the parapet once
19 that building is built.

20 COMMISSIONER MAY: Yeah, I think the only area
21 where I have a concern about where it's visible is walking down
22 Fifth Street; is that right? Or Sixth? Fifth Street.

23 CHAIRPERSON GRIFFIS: Yeah, you have difficult
24 with the south elevation, which is actually shown on A-8, if we
25 want to go to that.

1 MR. KOCH: Which is the one that I'm saying will
2 be blocked by the JBG building.

3 CHAIRPERSON GRIFFIS: Yeah, exactly, exactly.
4 And actually what that's showing and what I think you were
5 getting to is that the entrance bay comes up and projects above
6 the roof or above the consistent parapet running around.
7 There's actually another little bump-out of the parapet that
8 looks exactly where the stairs is proposed to go.

9 MR. KOCH: Correct, at the four foot level.

10 CHAIRPERSON GRIFFIS: Right, and that's what your
11 point was, is that integrates that into the elevation as it
12 moves back.

13 MR. NETTLER: We actually had tried to work out a
14 number of different alternatives with the Zoning Administrator's
15 Office to try and deal with this issue, and none of them would
16 have -- none of them worked. They all would require us to get a
17 variance to deal with it, and they all would have unfortunately
18 -- none of them would have resolved the 18 and a half feet
19 setback that would have been required on that side anyway.

20 So it just wasn't a solution that we could find.

21 CHAIRPERSON GRIFFIS: Right, which is why you're
22 here.

23 MEMBER LEVY: Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Yeah.

25 MEMBER LEVY: Just to clarify, in looking at the

1 section that is in Tab D, are we -- which of the two -- there's
2 two scenarios shown here, and I guess I'm not clear which
3 scenario we're being asked to approve.

4 CHAIRPERSON GRIFFIS: Yeah, that's an excellent
5 question to the applicant, and you're talking about the two
6 scenarios. One is listed as worst case scenario.

7 MEMBER LEVY: Right.

8 CHAIRPERSON GRIFFIS: And the other is listed as
9 small angles. So maybe we do need just to begin with the exact
10 idea of what's being proposed. That's where we're going.

11 MEMBER LEVY: Right, because there are two
12 completely different conditions for what's going to be exposed
13 on the roof.

14 CHAIRPERSON GRIFFIS: Right.

15 MEMBER LEVY: And I'd just like to know which one
16 we're considering.

17 MR. KIRKDIL: Currently what's being proposed is
18 basically we have a six feet setback in the penthouse area, and
19 we are going up.

20 MEMBER LEVY: Okay.

21 MR. KIRKDIL: And there's another sketch here
22 showing, you know, if we didn't have to do that, we could do
23 some sort of, you know, basic little appendage to the penthouse
24 to get the basically staircase under this one setback line.

25 MEMBER LEVY: But you're proposing the six foot?

1 MR. KIRKDIL: Yes.

2 MEMBER LEVY: Okay. Thanks.

3 MR. NETTLER: But either one of those would have
4 required -- would require a variance.

5 MEMBER LEVY: I understand. I just want to be
6 clear about which architectural condition we're talking about.

7 CHAIRPERSON GRIFFIS: But are you offering that
8 as an option? I mean, should we even be talking about this or
9 should we be sticking to the six feet and the penthouse is 18,
10 six, the six foot setback, and that's the relief that we're
11 going?

12 MR. KIRKDIL: Well, I think --

13 MR. KOCH: Based on the design considerations
14 that I had discussed earlier that we were trying to design it to
15 line up with the front entry, first we were told that the
16 slanted penthouse was not desirable. So then we stepped
17 backwards and said really what we want to do is design it to
18 line up with the right side of the entry feature anyway. So
19 that's the six foot offset that we've requested the variance
20 for.

21 So there's a shoehorn type thing in here where
22 it's not desirable, we think, from a design perspective.

23 CHAIRPERSON GRIFFIS: I see, and so we'll cause
24 more problems if we actually direct you to go in that way.

25 MR. KIRKDIL: Because we have two different

1 elevations and --

2 CHAIRPERSON GRIFFIS: No, I'm kidding. I concur
3 with Mr. Koch in what he's saying in terms of what's happening
4 in that we have a mass here. I mean, it's 1806, and that to
5 keep it consistent, but also to line it up with an element
6 that's happening on the elevation. That's the direction you're
7 going. That's what's proposed, and that's why we're looking at
8 the six feet so that we're all in the understanding.

9 Mr. May, you look perplexed.

10 COMMISSIONER MAY: No, I'm not perplexed. I do
11 want to clarify. I did make the mistake of confusing Gallery 1
12 with Gallery 2.

13 CHAIRPERSON GRIFFIS: Good.

14 COMMISSIONER MAY: In terms of understanding what
15 this elevation was. However, it doesn't change the original
16 point. My concern is for people walking up Sixth Street and
17 seeing that side elevation which is shown in A-8, where this
18 penthouse does really emphasize the height of that building.

19 I had been thinking that we were on the other
20 side of the block, and my concern was for people walking down
21 Fifth Street.

22 CHAIRPERSON GRIFFIS: Right, right.

23 COMMISSIONER MAY: It's the opposite side, but
24 again, it is the same. It's people walking up Sixth Street,
25 walking past the proposed JBG assembly site there, and then

1 being able to really appreciate the true height of the building
2 with the penthouse from that dimension.

3 If it were set back the full 18, six, I don't
4 think there would be any question that people couldn't see it.
5 That's correct?

6 MR. KIRKDIL: You're correct, and my response was
7 because the JBG site, once it gets developed, will be the same
8 height as our community. You will not actually see it in that
9 full height. You may see -- because it is closer to the site of
10 the building, you will see it, but you really have to be --

11 COMMISSIONER MAY: Yeah, I guess my concern is
12 that with the -- because we have the alley and because we have
13 the existing three story building, there is just enough
14 clearance for you to get a good view of it there.

15 Now, maybe I'm wrong. I'd have to look at the
16 site line drawings or something like that.

17 MR. NETTLER: Now, do remember that it is going
18 to be stepped back eight and a half feet from the front. So
19 there's that one -- clearly there may be that one point where
20 you can see it, but there only is that one point. It's not a
21 direct -- you're not seeing it directly when you're walking,
22 except for when you get into that alley, and when you walk -- I
23 hate to testify here. I should not be testifying -- but when
24 somebody walks, they're generally looking straight ahead.
25 They're not looking up unless something directs them to do that,

1 and when you have just that small point there --

2 COMMISSIONER MAY: Maybe that's why I keep
3 running into things.

4 MR. NETTLER: Oh, okay.

5 MR. KIRKDIL: As suggested from the Board members
6 --

7 CHAIRPERSON GRIFFIS: I have that problem, too.

8 MR. KIRKDIL: -- I think we each have perhaps
9 embellished the penthouse design and made it --

10 CHAIRPERSON GRIFFIS: Yes.

11 MR. KIRKDIL: -- part of the building design and
12 then make it an opportunity to paint it a certain way, delineate
13 it a certain way. It becomes an asset instead of, you know,
14 something that you don't want to see, you know.

15 CHAIRPERSON GRIFFIS: Right, and I think
16 obviously in terms of money spent, if we can put it in that
17 practical issues, but obviously any sort of articulation of the
18 penthouse will have cost implications.

19 I think obviously you look at adding the
20 embellishments or however you want to detail it towards the top
21 of it because that will be the most important piece in the
22 visual -- I think Mr. Nettler bring up a pertinent point of when
23 the regulation is talking about visibility.

24 It is often as a common person walking on the
25 street and the visibility, but I think in terms of the overall

1 and what we do go to obviously is the overall impact of the
2 area, the penthouses have impact outside of that. I mean, sure,
3 as an adjacent building, but also as an overall city view, and
4 it goes beyond that.

5 So I think we're in the right direction. We now
6 understand exactly what we're looking at, and I think that makes
7 some understanding for the roof. Are there any other questions
8 regarding the roof layout, penthouse, six foot setback, relief
9 requested at this point?

10 (No response.)

11 CHAIRPERSON GRIFFIS: Okay. We're all pretty
12 satisfied with that. Any other questions on any of the other
13 issues in terms of the recreational space requirements, in terms
14 of how they're balancing the retail space, anything of that?

15 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Yes.

17 VICE CHAIRPERSON RENSHAW: On the recreational
18 space, we are looking at 1706.4(f), and yet in my handbook, I
19 only get up to (e).

20 CHAIRPERSON GRIFFIS: Yes. In fact, the
21 submission was --

22 VICE CHAIRPERSON RENSHAW: So would someone
23 clarify?

24 CHAIRPERSON GRIFFIS: Yeah, that's great, and the
25 submission from the applicant actually gave us copies of the new

1 regulations, and maybe Ms. Sansone can help us, or was it the
2 Office of Planning that actually -- I'm sorry. Do you know
3 what? That was. It was the Office of Planning report that gave
4 us the regs. because it has been redone.

5 And I believe they are the standard regulations.

6 Am I correct?

7 MS. SANSONE: They are in effect.

8 CHAIRPERSON GRIFFIS: Indeed.

9 MS. SANSONE: The new regulations are in effect.

10 CHAIRPERSON GRIFFIS: They are in effect. so let
11 us get clarity on that before we go down a direction that we
12 don't need because I have the same problem looking through the
13 regulations trying to find out. We often have typos in
14 submissions and in our own regulations.

15 But it was pretty clear there. Let me understand
16 that, and are there any other questions of the applicant at this
17 time in terms of the submissions or any other issues?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Not seeing any, I think it
20 would be pertinent then -- let's go to the OP report, and they
21 can walk us through those issues.

22 MS. BROWN ROBERTS: Good morning, Mr. Chairman
23 and members of the Board. I am Maxine Brown Roberts from the
24 Office of Planning.

25 I would like to make a few corrections to the

1 Office of Planning's report, and I would just walk you through
2 it.

3 On page 1, under site area and description, the
4 address and lot and square of the subject property is incorrect
5 there.

6 CHAIRPERSON GRIFFIS: It looks like we're going
7 to have to start the whole thing over then. Let's rewind the
8 tape.

9 I'm sorry. Go ahead.

10 MS. BROWN ROBERTS: On page 2, the third
11 paragraph that begins to the east and says across a 16 foot
12 alley. That should be the width of the alley, 16.75.

13 And then on page 4, under the section "Parking,"
14 in the first sentence the parking spaces that are provided
15 should be 78.

16 CHAIRPERSON GRIFFIS: Right, and actually while
17 we're there, and I'm sure you'll get to it, but just for
18 clarification, you stated correctly that the zoning regulations
19 require a total of 37 parking spaces, and the applicant concurs
20 with that?

21 MR. NETTLER: That's correct.

22 CHAIRPERSON GRIFFIS: Fabulous, and then we have
23 a provision of 78 spaces.

24 MS. BROWN ROBERTS: Okay. That's correct.

25 And then on page 6 under community comments in the first

1 sentence, the sentence should read, "The application reviewed by
2 the licensing and zoning committee of ANC-6A on November 14th,"
3 period.

4 Okay. The applicant has requested variances from
5 the recreational space under Section 773.4, the retail and arts
6 space under 1705.3, and roof and structure under 770.6(b). The
7 standards by which the BZA should approve variances is set forth
8 in Section 3103.2.

9 This subject property is unique due to the fact
10 that the property is long and narrow, and it's between two very
11 small lots which are not part of the project.

12 Providing both the required recreational and
13 retail space would limit the area left for other amenities for
14 the residents. Since the required amount of retail and
15 recreational space is unable to be accommodated on the ground
16 floor, the applicant has chosen to maximize the retail space
17 that they're able to provide.

18 The recreational space is usually provided on the
19 ground floor of the building or on the rooftop of the building
20 or outside of the building. Space on the ground floor of this
21 building is limited due to the size and the requirement for
22 providing retail space and other amenities, and providing space
23 on the rooftop is not possible due to the fact that required
24 condenser units and other facilities use most of the space.

25 Additionally, outside of the building is also

1 limited as the building in the front is located along the
2 property line and in the rear is occupied by the ramp to the
3 parking lot. Connection to the service lobby and the remainder
4 will be used by the proposed retail uses.

5 The reduction in the setback of the roof, of the
6 roof structure is required due to the size of the lot and the
7 necessity to provide mechanical equipment on the roof. These
8 factors combine to make it possible to meet the setback
9 requirements on all side on the penthouse.

10 Granting the variances requested would not impair
11 the intent, purpose, and integrity of the zoning regulations as
12 a variance for recreational space on the subject property is
13 mitigated by the applicant allowing the residents of the
14 proposed apartments to use the facilities to be provided under
15 the proposed Gallery 1 apartments.

16 Secondly, the reduction in retail space will
17 still meet the aim of having and improving activity along Sixth
18 Street.

19 Thirdly, the reduction of the penthouse setback
20 is due to the need and necessity to provide mechanical equipment
21 on the roof of the building.

22 Additionally, the reduction to setback
23 requirement will not affect the light and air on adjacent
24 properties.

25 The Office of Planning, therefore, recommends

1 approval of the required variances.

2 Thank you, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Thank you very much, and I
4 do want to compliment you on providing the information to us and
5 also the site plan. It was very straightforward notwithstanding
6 the corrections that I think were not critical in terms of our
7 understanding.

8 And I just wanted to follow up. As we just
9 indicated, you did attach Order No. 943, which is the revised
10 order for the Zoning Commission of the District of Columbia, is
11 the notice of final rulemaking, and it was a text amendment,
12 which is what the applicants have filed under --

13 MS. SANSONE: Mr. Chairman, since we're making
14 corrections, I just wanted to point out that revised order
15 actually was published in error. The original order was on
16 August 3rd, published in the register. The revised order is
17 simply the same order all over again. It was just a mistake but
18 --

19 CHAIRPERSON GRIFFIS: Who's to blame?

20 MS. SANSONE: Who's to blame? Well, it was just
21 a slip-up --

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. SANSONE: -- in getting it published in the
24 right sequence, and then for some reason it got republished.

25 CHAIRPERSON GRIFFIS: Okay.

1 MS. SANSONE: But the text is exactly the same,
2 and the regulation went into effect on August 3rd.

3 CHAIRPERSON GRIFFIS: Fabulous. So it was in
4 enforcement.

5 And the quick overview of this, and perhaps
6 others can chime in that know it even better than I, but
7 obviously it was a reduction of the recreational requirement
8 from 15 percent to five percent, which is what we're looking at
9 now.

10 And actually I would ask the Office of Planning
11 to speak briefly on residential requirements in that it seems to
12 be a move that is happening -- well, how do I want to phrase
13 this?

14 There seems to be -- and I'm talking overall in
15 terms of planning ideas -- there seems to be a tension between
16 requiring recreational, residential, recreational, or space,
17 which is enclosed and private for a certain structure, and
18 requiring retail space, which seems to animate and draw people
19 onto the sidewalk.

20 So at one point we're asking, look, keep
21 everybody inside and get them exercised, and we're saying, you
22 know, we really want all of these people out on the street
23 shopping, animating our urban blocks and all of that.

24 So I see this as -- one, do you agree that there
25 is some inherent tension between the two requirements?

1 MS. BROWN ROBERTS: I don't know if I'd call it
2 tension, but I think what happened is that originally we wanted
3 for the recreational space is to have some sort of activity, you
4 know, additional activity for the persons who live in the
5 building so that -- to make it a real living space.

6 CHAIRPERSON GRIFFIS: I see.

7 MS. BROWN ROBERTS: I think there was -- the
8 tension that occurred was between the percentage that we were
9 requiring from under the C-2-1. Under the C-2-C it was 15
10 percent, and in some other denser zoning categories it wasn't --
11 we didn't think that it was equitable, and so --

12 CHAIRPERSON GRIFFIS: Yeah, it could be a huge
13 amount.

14 MS. BROWN ROBERTS: Right. So that's why it was
15 reduced.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. BROWN ROBERTS: But I think the overriding
18 factor for the retail space is still there, that we do need to
19 have the retail space.

20 CHAIRPERSON GRIFFIS: Oh, no question, and I
21 would say this is pertinent to this case, but it is maybe a
22 generality, but I mean, I think in terms of a retail requirement
23 that is an excellent thing to have in some of these areas.

24 I absolutely support the reduction of the
25 residential recreation in the fact that I think it is a fairly

1 antiquated idea of what cities should be and in terms of putting
2 together a residential and encouraging residential buildings and
3 projects downtown. The whole point is to bring people downtown,
4 not to build buildings and keep them inside them, but to get
5 them out, to go to the gyms that are three blocks away, to use
6 the Metro that's two blocks, and then to shop in the stores to
7 make our local entrepreneurs more affluent.

8 But that being said, that's my only sermon of the
9 day, maybe.

10 Okay. Any questions of Office and Planning from
11 the Board?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Applicant cross examination
14 of the Planning.

15 MR. NETTLER: Actually I just have one question.

16 CHAIRPERSON GRIFFIS: Yeah.

17 MR. NETTLER: Following up on what Mr. Griffis
18 said, even if we were to put in an athletic facility on the
19 first floor to satisfy the retail service requirement, that
20 wouldn't satisfy the recreational requirement, correct?

21 MS. BROWN ROBERTS: Right, yeah. Being able to -
22 - I don't -- this site is not one of the areas where we can
23 accommodate both the retail and the recreation. I think that
24 the applicant made the choice to go with the retail space, and
25 we agreed with that.

1 CHAIRPERSON GRIFFIS: Yeah, and I think that is a
2 good place to agree.

3 MS. BROWN ROBERTS: And I think that especially
4 since, you know, there's Gallery 1 where they have retail, the
5 required -- well, where they have the recreational space that
6 can be used by these residents.

7 CHAIRPERSON GRIFFIS: Right, and I think that it
8 does speak to the balance and how things -- but even still
9 they've got to walk outside. It's a great thing.

10 Let me just bring up one issue, and I --

11 COMMISSIONER MAY: Maybe we shouldn't have that
12 alley cross through to make sure that they walk on the street
13 and go shopping along the way.

14 CHAIRPERSON GRIFFIS: All right. Let's decree to
15 close the alley and -- wait a minute. Now we're overstepping
16 our bounds.

17 A quick clarification. I don't think we need
18 discussion, but I had one issue. I think you laid out the
19 uniqueness, which is the narrowness and the shallowness, but
20 then you include the end of the sentence there that if they
21 included the two adjacent properties, then they'd be in full
22 compliance, which I find very hard to step to because anyone
23 could say, "Yeah, if I could own the place next to me, then I'd
24 be in full compliance and be twice as large."

25 So I think the issue of narrowness and

1 shallowness is done without trying to add to the fact that they
2 should have brought other properties or could have and,
3 therefore, will deny the application.

4 So that being said any other questions of
5 Planning?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Again, I thank you very
8 much for the information that was submitted. It was very
9 helpful.

10 MS. BROWN ROBERTS: You're welcome.

11 CHAIRPERSON GRIFFIS: Is anyone else here for
12 this case, just to be clear?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Okay. Very well. Then
15 let's move on to other government reports, and we'll include the
16 ANC in that, too. Let us assemble some of the stuff that has
17 come in very recently.

18 We have a letter from Council Member Ambrose, I
19 believe, who is council member for Ward 6.

20 Is this in Ward 6?

21 MR. NETTLER: This year, today it is.

22 CHAIRPERSON GRIFFIS: Today it is. It still is.

23 MR. NETTLER: It keeps moving in and out of the
24 ward.

25 CHAIRPERSON GRIFFIS: Indeed. Good. Okay. And

1 this is -- very briefly, the applicant has this letter?

2 MR. NETTLER: Yes.

3 CHAIRPERSON GRIFFIS: Okay. A copy of the letter
4 obviously. The council member is writing in support of the
5 application. Yes, indeed. Thank you.

6 Any other government reports outside of ANC
7 before we get to the ANC? I do not have record of any.

8 Does any other Board member have a record or have
9 anything in front of them?

10 VICE CHAIRPERSON RENSHAW: No.

11 CHAIRPERSON GRIFFIS: Okay. Are you aware of any
12 other -- okay. Good. Then let's go to the ANC report, which is
13 the Commission 6A.

14 Ms. Renshaw, have you had an opportunity to read
15 this?

16 VICE CHAIRPERSON RENSHAW: Yes.

17 CHAIRPERSON GRIFFIS: Can you read what it is?

18 VICE CHAIRPERSON RENSHAW: Mr. Chairman, it's
19 dated December 12, and it's signed by Gregory Farrell, who is
20 the chair of the zoning and licensing subcommittee of the ANC,
21 and he states under his signature it's on behalf of ANC-6A.

22 And he reviews for us the fact that on November
23 14th, the zoning and licensing subcommittee for 6A, which is
24 where a project, an applicant would start, met with a quorum
25 present to hear the referenced case, and the representative was

1 accompanied by members of the development team, and the
2 subcommittee had concerns, one of which is whether the property
3 is located in a housing priority area.

4 And because the property is in Chinatown, DD/C-2-
5 C, the subcommittee wanted to hear from the applicant as to how
6 they would incorporate the Chinatown element in the design
7 concept, and he states that the applicant responded by
8 indicating the Chinatown steering committee had not met with the
9 developer, and the developer committed to working with the
10 Chinatown steering committee.

11 And the subcommittee of ANC-6A voted unanimously
12 to have the developer present to the full ANC at its December
13 6th meeting the Chinatown steering committee's recommendation as
14 it relates to the Chinatown design concept for the project.

15 And then Mr. Farrell goes on to say that the ANC
16 met on December 6th. A quorum was present, eight members, and
17 they voted unanimously not to support the applicant's request
18 until such time as the matter of incorporating the design --
19 Chinatown design element is satisfied in accordance with the
20 Chinatown DD/C-2-C designation.

21 And he states that the applicant came unprepared
22 to answer the concerns presented by the subcommittee on November
23 14th; that the applicant suggested that the Chinatown designed
24 element be addressed after the BZA ruled on the application.

25 The ANC disagreed strongly, he states, and the

1 ANC would like to see the Chinatown steering committee approve
2 the design before the BZA rule on the merits of the application.

3 In addition, he states the ANC-6A requests that
4 the BZA rule whether this property is or is not within the
5 housing priority zone, and if so, whether the applicant is
6 obligated to comply with the affordable housing clause.

7 And that is the content of Mr. Farrell's letter
8 on behalf of ANC-6A.

9 CHAIRPERSON GRIFFIS: Thank you very much.

10 So it is not a full out denial, but actually
11 perhaps a withholding of approval pending the answering of some
12 questions.

13 VICE CHAIRPERSON RENSHAW: There are some
14 conditions here.

15 SECRETARY PRUITT: And, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: yes.

17 SECRETARY PRUITT: I'd just like to note this is
18 not an official ANC report.

19 CHAIRPERSON GRIFFIS: It is not, right, exactly.

20 SECRETARY PRUITT: So it does not get great
21 weight.

22 CHAIRPERSON GRIFFIS: But as these things are,
23 this is not clean in terms of its understanding because they are
24 actually, again, I would say withholding the full ANC action
25 based on that.

1 But let me give the applicant an opportunity just
2 to respond to this letter at this time and see if we can have
3 some clarification. Mr. May, do you want to respond to that
4 question?

5 COMMISSIONER MAY: I just wanted to ask is there
6 anybody here from the ANC.

7 CHAIRPERSON GRIFFIS: Right, and I did not see
8 any indication of anybody --

9 COMMISSIONER MAY: Okay.

10 CHAIRPERSON GRIFFIS: -- from -- I mean, I'll ask
11 it again. If anyone's here for this case, which is the
12 AvalonBay, 16809, today.

13 You are here to hear this case?

14 MR. LEE: I'm an observer.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. LEE: I just have a question.

17 CHAIRPERSON GRIFFIS: Okay. Hold on just a
18 second. I'm going to get through government reports and then
19 I'm going to come back to you, and I'm going to have you --
20 you're going to have to come up to the table and state your
21 name, et cetera, but we'll handle that briefly.

22 Does the applicant have -- just give us a quick
23 clarification on this ANC issue.

24 MR. NETTLER: Just a few comments. One is as I
25 said earlier, we had scheduled a meeting with the Chinatown

1 steering committee prior to the ANC meeting because one of the
2 members of the committee who did the design elements for the
3 Gallery 1 is also doing the design elements for Gallery 2. They
4 asked to reschedule the meeting because of that issue, because
5 he could not sit on that committee at the same time that he was
6 working for the applicant.

7 And we had been working with the Office of
8 Planning to put that meeting together so that it could be before
9 the ANC meeting, and as we explained at the ANC meeting, the
10 Chinatown steering committee and the design elements are not a
11 part of the zoning process. Those are a separate aspect of the
12 planning requirements that we have to go through, which we are
13 going through.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. NETTLER: And we will have a meeting on that.

16 There was not a quorum present when this matter
17 was presented actually, and that may not matter since it's not
18 even an official letter anyway, but the vote was three to two on
19 those who were present, and it's as I said before. It is our
20 intention clearly to work with the Chinatown steering committee
21 and make sure that the design elements are incorporated into
22 this as we've done on the former project.

23 The only other issue in terms of the housing
24 priority area, yes, it's in a housing priority or clearly we
25 wouldn't be here seeking to maximize housing in the site. The

1 affordable housing requirements don't apply to this situation
2 because we are building all housing on the site.

3 So that comes into play perhaps if we were not
4 building housing on the site to the maximum that could be
5 permitted, but that's not the issue here, and this is an attempt
6 to provide housing, as Mr. Koch stated, for a population that is
7 geared more toward a market rate than the other building is
8 anyway.

9 CHAIRPERSON GRIFFIS: Okay. I think that does
10 bring clarity, and I do want to stress for our purposes the
11 applicant has submitted in their documents the fact that they
12 have a Chinese designer or I should say a designer of Chinese
13 elements or history, however they want to say that, that's
14 working with them in order to do that, and that it is not
15 essentially in our purview unless we can needle our way in there
16 through the regulations, which we often try and do, but I don't
17 see us doing that at this point, and frankly, I think that they
18 have identified the areas in which they will be incorporating
19 those elements, and I think that are decidedly high impact areas
20 and important areas, and we're talking about canopies. We're
21 talking about streetscape. We're talking about very pedestrian
22 oriented areas that will be seen.

23 We have also talked about the elements on the
24 penthouse, which is within our purview, and I believe also that
25 you had indicated that in the metal panels, and I'm assuming

1 that in the metal panel elements are in the bays that are going
2 up, those will have some articulation with some of the design
3 elements. Was that a correct assumption?

4 I don't know. Was that what you submitted and
5 stated?

6 MR. KIRKDIL: No.

7 CHAIRPERSON GRIFFIS: Okay. Then I like to push
8 things a little further. Well, be that as it may. I think the
9 elements are there that we had talked about.

10 Okay. Any other questions, ANC?

11 (No response.)

12 CHAIRPERSON GRIFFIS: Okay. Let us go to some of
13 the other community letters that were submitted and part of the
14 case and are part of the file and were part of our deliberation.

15 We have one letter from the Housing Now Committee
16 that supports the application of the AvalonBay. It is dated
17 December 12, 2001, and it is signed by Charles A. Doctor, who is
18 the chairman, and I'm assuming you have copies of this when you
19 were copied on it.

20 Any questions of that? Any other information you
21 want to pull out of that at this time?

22 (No response.)

23 CHAIRPERSON GRIFFIS: Good. Okay. Let us move
24 onto then persons or parties that are here today. We have no
25 parties in this case. So any persons that are here today to

1 give testimony.

2 The gentleman. You indicated that you had a
3 question, I believe.

4 MR. LEE: Yes.

5 CHAIRPERSON GRIFFIS: Before you say it, first of
6 all, you're going to have to come up. You're going to have to
7 tell us who you are and sit at the table with the mic, and the
8 other thing that I would ask is that if there's a question
9 directly related to this case that we can answer in terms of our
10 proceedings, that's what we need to look for.

11 If it's a question generally or outside, we
12 actually can't entertain that and answer it, but I will direct
13 you to staff or whatever it is.

14 So as a grand introduction, please come on up to
15 the table and introduce yourself to the Board.

16 MR. LEE: Thank you very much for this
17 opportunity.

18 CHAIRPERSON GRIFFIS: Sure.

19 MR. LEE: My name is William Lee. I'm a member
20 of the Chinatown community, a former member of the Chinatown
21 steering committee, and landowner of the two lots adjacent to
22 the project referenced today.

23 I'm here as an observer. I've listened to the
24 facts. I'm neither for nor against the project, but I do want
25 to, I guess, state that as a member of the Chinatown community,

1 I believe we wish to remain relevant. The fact that this has
2 not passed, I guess, review or final review of the Chinatown
3 steering committee concerns me.

4 Being a former member of the Chinatown steering
5 committee and seeing various projects come before us, I'm
6 concerned that we would be made irrelevant.

7 CHAIRPERSON GRIFFIS: I think if I'm
8 understanding you correctly, isn't it that they haven't --
9 excuse me -- proceeded through the steering committee and had
10 full support of that, that your concern is what sort of
11 enforcement policies the steering committee might have if they
12 come to the BZA and are approved; is that correct?

13 MR. LEE: Yes, either recommendations for or
14 against. We've had projects come before us previously where on
15 purpose there was delay on making presentations to the steering
16 committee so that other approvals could be gotten, and then when
17 they come back to the steering committee, they're basically
18 telling the steering committee, well, it's too late. We've got
19 our approvals, and we really don't need your input or your input
20 is not that valuable.

21 That's the feeling I'm getting.

22 CHAIRPERSON GRIFFIS: Right. Okay, and I
23 appreciate that in terms of the large pictures.

24 MR. LEE: Yes.

25 CHAIRPERSON GRIFFIS: And I certainly understand

1 that. Specifically that's your concern with this case; is that
2 correct?

3 MR. LEE: Yes, and I do have one question. The
4 attorney made reference to the property 719 being historical.
5 To my knowledge, it is not. That might have changed recently,
6 but as a property owner, I don't believe that's a fact.

7 CHAIRPERSON GRIFFIS: Okay. You own that
8 property?

9 MR. LEE: Yes.

10 CHAIRPERSON GRIFFIS: Right, and you're not aware
11 that it's been designated.

12 MR. LEE: I've been keeping tabs on it, and about
13 a year ago it was not, and if it has been changed within the
14 year, then --

15 CHAIRPERSON GRIFFIS: Then you didn't obviously
16 put in an application for historic designation.

17 MR. LEE: Okay. Well, there it is. I don't know
18 that that is a critical aspect of whether it is or isn't for
19 this case, but unless others feel --

20 COMMISSIONER MAY: No, I don't think it's that
21 important, but it may be that the statement had to do with the
22 Chinatown historic district --

23 CHAIRPERSON GRIFFIS: Right.

24 COMMISSIONER MAY: -- as opposed to that specific
25 structure. No?

1 MR. NETTLER: Well, the downtown historic
2 structure.

3 COMMISSIONER MAY: Downtown historic. Okay.
4 Sorry.

5 CHAIRPERSON GRIFFIS: So it's within and it would
6 -- perhaps the State Historic Preservation Officer would look at
7 that as a contributing structure within the historic district,
8 which would then obligate it to come under the historic
9 regulations. It wouldn't necessarily be a landmark designation
10 in a specific building, but if it's a contributing building,
11 then it's settled. We've got responsibility.

12 MR. LEE: But if, you know, if approved or not
13 approved, I think there should be conditions that the steering
14 committee needs to have input on this project.

15 CHAIRPERSON GRIFFIS: Well said, and I think the
16 Board fully appreciates that.

17 MR. LEE: Okay. Thank you.

18 CHAIRPERSON GRIFFIS: Anything else?

19 MR. LEE: No.

20 CHAIRPERSON GRIFFIS: Okay. Board members,
21 questions of Mr. Lee?

22 I believe the application would have an
23 opportunity -- well, no. As a party you wouldn't cross examine,
24 but there we are.

25 Thank you, Mr. Lee.

1 MR. LEE: Thank you.

2 CHAIRPERSON GRIFFIS: We appreciate it.

3 Is anyone else here this morning to testify in
4 favor or in opposition of this application for AvalonBay
5 Communities, Inc.?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Not seeing any other, Board
8 members, other questions, comments? There will be time again.

9 (No response.)

10 CHAIRPERSON GRIFFIS: Then I would turn to the
11 applicant for -- yes, Mr. --

12 MR. NETTLER: I just wanted to do a closing.
13 That's all.

14 CHAIRPERSON GRIFFIS: No, indeed, and I am now
15 giving you the opportunity to do that.

16 MR. NETTLER: And just to allay any concerns that
17 anyone may have about the Chinatown steering committee, first,
18 it was not us who had asked for it to be continued. We had
19 asked for it to be scheduled, and it was continued by the
20 steering committee for the issue that I stated.

21 But the Office of Planning would not allow a
22 permit to be issued on the property until we went through the
23 Chinatown steering committee. So if there's a concern about it
24 being irrelevant, at least from my understanding it shouldn't be
25 at this point because the Office of Planning is working closely

1 with the Chinatown steering committee to make sure that we are
2 not proceeding without their involvement and approval on certain
3 design elements.

4 CHAIRPERSON GRIFFIS: How would OP stop a permit
5 submission?

6 MR. NETTLER: Well, the same way they do under a
7 large tract, which is they have asked for matters that are --
8 and that's the way the Chinatown steering committee guidelines
9 work, is for matters that are located within that area, they've
10 asked those to be referred so that the design elements can be
11 reviewed by the Chinatown steering committee, and simply by
12 holding up that review can stop the issuance of a permit.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. NETTLER: Which is how a large tract review
15 works actually.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. NETTLER: But there is no --

18 CHAIRPERSON GRIFFIS: For a tract review. Okay.

19 MR. NETTLER: There's no statutory basis for a
20 large tract review either. It's purely --

21 CHAIRPERSON GRIFFIS: I see.

22 MR. NETTLER: -- a construct of the regulations
23 that the Office of Planning had adopted a few years ago.

24 CHAIRPERSON GRIFFIS: But, I mean, I think Mr.
25 Lee's issue, I think you would concur with the fact that there

1 is no standard operating procedure by which they have any sort
2 of -- well, let's put it bluntly -- power of enforcement.

3 So, I mean, I think we fully understand that,
4 your point being, for clarification that with Office of Planning
5 on the same page as the steering committee, you're not going
6 very far.

7 Okay.

8 MR. NETTLER: That's all of my closing.

9 CHAIRPERSON GRIFFIS: No, indeed.

10 MR. NETTLER: Just briefly because the issues in
11 this case sort of bring me to full circle here. I years ago had
12 drafted and then represented the community groups that created
13 the DD here, and it's interesting what has happened with the
14 recreational space requirement because it was an issue that
15 nobody ever focused on at the time when we were drafting the
16 regulations and working with the Zoning Commission to deal with
17 what was a belief at that time that developers were focusing on
18 office building downtown and an office market and trying to get
19 developers to integrate more retail and service uses and
20 housing.

21 And we have come full circle because now the
22 recognition is that this is a vibrant housing market downtown,
23 and the retail is a strong component to it, but the things that
24 were left over from both the prior zoning that existed and that
25 were incorporated into without thinking about their being a

1 change in the market ten or 15 years later is where AvalonBay
2 finds itself today because there are lots downtown that don't
3 lend themselves well in the way -- both the vacant lots and some
4 of the historic lots, although the historic lots present a whole
5 bunch of other issues, but the vacant lots don't lend themselves
6 the way that lots outside the downtown do to apartment
7 development and provides a number of other constraints that have
8 been put upon the downtown to make it a more vibrant area.

9 And those requirements, whether they're the
10 retail requirements that push out or recreational space
11 requirement or whether they're the setback requirements that in
12 a congested downtown have different impacts than they would in
13 other areas of the city, those are the issues that are
14 confronted here by AvalonBay on a very narrow site.

15 It is, as you've heard from the Office of
16 Planning, a development project that is not only consistent with
17 what the District has been trying to get downtown, but AvalonBay
18 is in the forefront of doing that. It has found a way to
19 finally break ground on one of its projects and pursue these
20 things notwithstanding the costs that are involved.

21 And the other important aspect of this is that it
22 provides the opportunity because of the way it's integrated with
23 the Gallery 1 of having a diverse population on this square.
24 Not every project is able to do because of the cost of doing
25 something downtown.

1 So we're not restricted to very, very high end
2 housing downtown with very large units that are a consequence of
3 the cost of doing the housing downtown, but we're able to take
4 those efficiencies of scale here and create the diverse
5 community and it's a community that you've heard from Downtown
6 Housing Now and the council member and the Office of Planning
7 that it should be supported.

8 And for that reason we would request your support
9 as well and ask you to rule today on a decision on the variances
10 that are being sought.

11 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
12 Nettler.

13 And I would agree. I think that this is a very
14 needed project, a project type in this area and downtown. I
15 think you have outlined very well the opportunities by having
16 controlled the two sites in order to kind of balance and reflect
17 off both in an economic sense, you know, for the owners, but
18 more importantly from the city's point of view of varying unit
19 sizes, varying income sizes, diversity of retail, and diversity
20 of amenities.

21 Again, we are looking at the
22 residential/recreation space and the retail space, which I think
23 we've had very good discussions on the balance and the ability
24 of provisions based on this site and the restrictions, and we
25 are also, of course, looking at the roof structure.

1 Board members, let me just get a quick indication
2 here of how you would like to proceed. We are at 12:05. We
3 have one more case for this morning. I am fully inclined --
4 well, there's a couple of issues.

5 One, not having -- irregardless of whether we
6 have an official letter from the ANC and giving it great weight
7 or not, there seems to be some lack of information, again, from
8 the ANC. I think it's fairly clear what they're asking for, and
9 I think the applicant is prepared and is moving to provide that.

10 That being said, we have an opportunity to decide
11 this today if people are of the mind and clarity to do that, and
12 I would urge us to do that, and I might say that we could take a
13 ten minute recess before we get that or we could try to dispense
14 of it now or we set this for decision making, which would be
15 fairly clear to do and straightforward.

16 Mr. Levy?

17 MEMBER LEVY: I guess a couple of questions. If
18 we were to set this for decision making, is there any indication
19 that we would get additional information from either the ANC or
20 the Chinatown steering committee that would help us make this
21 decision?

22 CHAIRPERSON GRIFFIS: Well, I think there's some
23 indication in that there would be some time. We could leave the
24 record open to accept that. I think that the balance that we
25 need to think about individually is whether we cannot decide

1 this case without that type of information or whether we have
2 enough today to deliberate and to decide it.

3 But either way, I mean, I think we could probably
4 set the -- well, let me get a quick understanding of direction.

5 Yeah, Ms. Renshaw, I'd happily hear.

6 VICE CHAIRPERSON RENSHAW: Well, as far as the
7 ANC is concerned, there's not enough days in the rest of the
8 month to bring in a response from ANC-6A, an official response
9 on letterhead signed by the chair or the vice chair or another
10 officer.

11 CHAIRPERSON GRIFFIS: For what?

12 VICE CHAIRPERSON RENSHAW: Pardon me?

13 CHAIRPERSON GRIFFIS: Not enough time?

14 VICE CHAIRPERSON RENSHAW: Not enough time to
15 receive that. In other words, I doubt that the commission is
16 meeting.

17 CHAIRPERSON GRIFFIS: Well, let me give you my
18 understanding. If we set this for decision making, this is
19 probably February or March. We're not trying to get it to
20 January.

21 VICE CHAIRPERSON RENSHAW: Exactly.

22 CHAIRPERSON GRIFFIS: Okay.

23 VICE CHAIRPERSON RENSHAW: I wanted to hear from
24 you as to a --

25 CHAIRPERSON GRIFFIS: Yeah.

1 VICE CHAIRPERSON RENSHAW: -- date, a projected
2 date.

3 CHAIRPERSON GRIFFIS: Yeah. I bring it up in
4 terms of decision making, setting it to give that impact of the
5 time. This would not be a January decision making. This is too
6 much because we would be keeping it open to receive or to -- I
7 mean, frankly, we may want application.

8 I would urge the Board to move today on it, and
9 that's why I indicate that we could take, you know, ten minutes,
10 frankly, to go to the bathroom and make it back here, but --

11 COMMISSIONER MAY: I second that motion.

12 CHAIRPERSON GRIFFIS: -- Mr. Nettler, did you
13 want to say something?

14 MR. NETTLER: There is, as Mr. Koch had alluded
15 to in the early part of his testimony, there is an economic
16 basis for trying to have this project come on line at the same
17 time as the other one, and it's for that reason putting this
18 thing off to whether it's February or March is really going to
19 upset that type of time frame.

20 I mean, we've already got a date set. We've
21 already got plans in motion meeting with the Chinatown steering
22 committee. We've got somebody who's already on board who's
23 developed previously and is working with us.

24 I just would request that we try to dispose of
25 this today if that's possible.

1 CHAIRPERSON GRIFFIS: You said you've broken
2 ground on this, haven't you?

3 MR. NETTLER: No, on Gallery 1.

4 CHAIRPERSON GRIFFIS: Oh, okay. I see.

5 VICE CHAIRPERSON RENSHAW: But your meeting with
6 the Chinatown steering committee would not be affected by a
7 delay by the BZA. Your meeting with that committee is going to
8 take place within the next several weeks.

9 Do you have a definite date on that?

10 MR. KOCH: Our meetings will continue to go
11 forward with the Chinatown steering committee and our
12 consultant. The problem that you would cause if you were to
13 delay a decision today is the architect, the engineers can't
14 move forward and progress the plan because, quite honestly, you
15 don't do the design elements for the Chinese steering committee
16 separately from the design of the rest of the building.

17 Everything is evolving at once, and there's input
18 from all groups. So we've brought Mr. Liu (phonetic) in as a
19 consultant to work with the team so that we can try to do it
20 right, but if you stop us here today, the whole process stops
21 and it would delay us for at least two or three months.

22 CHAIRPERSON GRIFFIS: I think that's a very
23 pertinent point to reemphasize, if I may take the liberty as
24 chair, that, for instance, let's project out. Say we do not
25 approve this application. They still have the residential and

1 retail requirement that would entirely change the building in
2 terms of floor layout, in terms of, you know, from the
3 beginnings of it.

4 And so I think Mr. Koch's point is well taken,
5 that the details on the building and how it has to be informed
6 by the program that's happening on the inside, and that's what
7 the architect is doing. And so they all need to happen at once.

8 This is a big piece. If there's not approval of
9 the day or whenever from the BZA, then this project changes
10 dramatically, and therefore, the detailing of the architecture
11 won't happen conceivably.

12 So I would suggest this, and then I'll hear from
13 you: that we take a ten minute break, get some fresh air, if
14 that is acceptable from the applicant; come back to this and try
15 and resolve this today.

16 I will say that we have one more case in the
17 morning, as it's obvious we are at ten after 12, and what we
18 will do after that, and that's what we're trying to do actually,
19 is give us a break now so that we don't need to break entirely
20 for lunch, so that we can finish the morning's schedule.

21 So we will call all of the morning's pieces when
22 we return.

23 Mr. Nettler?

24 MR. NETTLER: Just one other added piece for you
25 when you leave is that, as Mr. Koch has reminded me, when they

1 file their full plans with the Department of Consumer and
2 Regulatory Affairs, they must have a letter with them from the
3 Chinatown steering committee in approving it. They will not
4 pursue it past that without that letter.

5 So if there is a concern about us having
6 Chinatown steering committee's input into this and approval,
7 that's the way that things are being handled now for these
8 projects in this area.

9 CHAIRPERSON GRIFFIS: Yeah, yeah, and I think
10 that's important. Again, I mean, say you didn't put that letter
11 on and you had a good expediter and put it through. There's
12 nothing in the regulatory process that mandates that letter
13 being attached, right?

14 No question the understanding is, and everyone
15 has focused on it, it can't happen without it, but again, I go
16 to the letter of the law that Mr. Lee brings up, that what is
17 their power of enforcement.

18 So well said. We would certainly anticipate a
19 letter going in. We certainly understand that this will not
20 happen in the reality specifically without the steering
21 committee's concurrence, but I think this board is also well
22 aware of how things are balanced off each other and how an
23 approval can be weight enough to overwhelm another small
24 committee that has just, frankly, little issues.

25 So that being said, and probably too much, let's

1 have -- actually let's take 15 minutes. We'll be back at 12:30.
2 We will finish this case, AvalonBay, Inc., and then call the
3 next for the morning, and I thank you very much. We will
4 return.

5 (Whereupon, the foregoing matter went off the
6 record at 12:14 p.m. and went back on the record
7 at 12:31 p.m.)

8 CHAIRPERSON GRIFFIS: Thank you very much for
9 allowing us to take a breather on this, and let's jump right
10 back into it, Board.

11 I think I am prepared and would urge the Board to
12 move ahead with this today and would open this up for our
13 deliberations at this time, and I think that our hesitancy has
14 been for several reasons, but the largest piece has been the
15 fact of the issue of the ANC and some of the concerns that have
16 been brought up about not having a direct letter, an official
17 letter that we can give great weight to.

18 We will take notice of the fact that we have the
19 letter from Mr. Farrell, who is the chair of the zoning and
20 licensing subcommittee that illuminated some of their concerns
21 and perhaps has put a point to why the ANC, in my
22 interpretation, is withholding any sort of judgment at this
23 time.

24 The pertinent fact for our purposes with this
25 case is that it appears that the issues of concern with the ANC

1 do not necessarily directly go to the relief sought before us
2 today. That does not in any way, shape or form lessen the
3 importance of their concerns, but there will be other bodies and
4 processes to undertake that.

5 That being said, I would gladly open this up to
6 Board members for discussion or movement in a direction.

7 (The Board conferred.)

8 CHAIRPERSON GRIFFIS: I think, you know, that is
9 absolutely a great way to move. I've been whispered that
10 perhaps let's just get this going, and I would move that we
11 approve Application No. 16809 of the AvalonBay Communities, Inc.
12 for the variance from the residential recreation space
13 requirements under Subsection 1706.4(f) and a variance from
14 retail space requirements under Subsection 1705.3, in order to
15 construct this apartment building at the premises 719 to 735
16 Sixth Street, N.W.

17 I think that the applicant has submitted a very
18 strong case, and I might take this quick moment to say that it
19 was appreciated in the applicant's submission, one, the case law
20 that was cited and, two, the explanation of how it was, in fact,
21 directly pertinent or outlined for us in our interpretation,
22 whether it was directly pertinent to the case, and that was very
23 clear.

24 And I thin the cases for the variances are set
25 forth in today's hearings and in the submissions quite well, and

1 I would look for a second on that.

2 MEMBER LEVY: Mr. Chair, did you intend to
3 include a variance from the roof structure setback in your
4 motion?

5 CHAIRPERSON GRIFFIS: Oh, you know, I probably
6 did intend to include that, yes. Thank you.

7 MEMBER LEVY: I'll second.

8 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
9 Levy.

10 COMMISSIONER MAY: Discussion. I just have a
11 quick question. Is the -- I don't know what the timing of all
12 of this was, but there was a preliminary matter that had cited
13 the fact that the applicant was requesting this roof structure
14 setback in addition to the advertised variances. Is there any
15 sort of procedural issue with regard to us voting on the
16 structural setback, roof structure setback requirement, given
17 that it was not advertised with the other variances?

18 MR. NETTLER: It was on the posting. I'm sorry
19 if I interrupted you.

20 The advertising, it was not on -- we had talked
21 with your staff about what we should do. We had it on the
22 posting. We brought it before the ANC. It was on their notice,
23 the ANC's notice as well, and all the other subsequent notices
24 to anybody else who was interested in it included that as well.

25 SECRETARY PRUITT: And there is a corrected

1 public hearing notice that's on the board there. So we did
2 correct it.

3 MR. NETTLER: Right.

4 CHAIRPERSON GRIFFIS: So in that sense then the
5 answer is procedurally it's been done, taken care of. So it's
6 been advertised, and so to be clear, part of the motion would
7 then include the relief from 770.6(b), and that is the setback
8 requirement for roof structures, that is one-to-one or setback
9 equal to its own height, and it has been seconded. So we'll
10 take some discussion.

11 Let me amend the motion that I've actually
12 proposed and add that in the discussion today, in the relief
13 from the roof structure, it has been discussed, and the
14 articulation of the penthouse structure, the applicant has
15 stated that they have placed it, one, to align with a pertinent
16 bay of the elevation, and has indicated that they would provide
17 some sort of articulation of the penthouse.

18 They've also indicated that it is proposed to be
19 of brick construction. I would like to make a strong
20 recommendation, if not a condition of the order that that is
21 pursued in terms of the articulation of the break in order to
22 integrate within the building architecture.

23 And I probably will need to rephrase that more
24 clearly as we get through this in the next couple of minutes.

25 Other discussion?

1 VICE CHAIRPERSON RENSHAW: Yes, Mr. Chairman. It
2 is my hope or recommendation that the applicant pay particular
3 attention to these alley entrances because it seems to be that
4 there is going to be a lot of cross building traffic from
5 building two to one for recreation and from one to two for the
6 retail space in the building.

7 So I hope that insofar as design and security and
8 lighting, that those alley entrances are enunciated to a better
9 fashion than has been presented today.

10 And it is also my hope that the Chinatown
11 steering committee receives the application in the not too
12 distant future, and that its suggestions are, of course,
13 embraced by the applicant.

14 CHAIRPERSON GRIFFIS: Anything else?

15 I think that is very pertinent, I mean,
16 especially just in your own program as it was laid out by the
17 applicant. That rear door will actually have some unique end
18 purpose outside of just the access to the loading dock and the
19 egress issues.

20 So obviously lighting would be very important
21 just to encourage that use, and I think it would be an amenity
22 well defined for their own purposes as a building use.

23 I think the penthouse articulation also is
24 important in terms of twofold. One, just dealing with the size
25 of that structure that's up there, but also I think that Mr. May

1 has well put the fact that the relief being sought can possibly
2 be lessened if there is some breakdown in the massing of that
3 penthouse through its own articulation.

4 Brick will help, of course, as it matches the
5 rest of the building, but I think also in the articulation
6 perhaps, you know, you have an able bodied professional that
7 can help you through that in terms of making that not look so
8 encroaching upon that other side.

9 That being said, anything else?

10 COMMISSIONER MAY: I think we need to clarify
11 what has been moved and seconded since it's been in several
12 pieces.

13 CHAIRPERSON GRIFFIS: Fabulous. The motion as
14 stated would be for the approval of the AvalonBay Communities,
15 Inc., Application 16809, and that is from the residential
16 recreational requirements as outlined in the case and, as well,
17 the variance from the retail space requirements, again as
18 outlined in the case, and from the roof structure setbacks,
19 which is taken within 770.6(b), I believe, with two I might say
20 directional conditions on the order, and that is that there be
21 appropriate articulation within the penthouse to mitigate the
22 setback in mass and also to connect it with the building, and
23 second, that there is proper and adequate lighting of the rear
24 entrance, and I think Ms. Renshaw ably put the announcing of
25 that and how that is done may well be with a canopy, a cover, or

1 some sort of signage, and obviously adequate access to that
2 exterior door.

3 Does that bring great clarity?

4 COMMISSIONER MAY: Helps me.

5 MEMBER LEVY: Mr. Chair.

6 CHAIRPERSON GRIFFIS: Yes, sir.

7 MEMBER LEVY: In your conditions, I heard you
8 mention architectural articulation. Did you intend to condition
9 that it be brick as testified by the applicant's representative?

10 CHAIRPERSON GRIFFIS: Yeah, thank you for making
11 that clarity. I mean, it was testified that it was, and that
12 that is part of the record.

13 MR. KIRKDIL: Can I add basically --

14 CHAIRPERSON GRIFFIS: Only if you turn on your
15 mic.

16 MR. KIRKDIL: Only just add saying that similar
17 materials that are used in the building, means basically it
18 gives us a chance to use maybe two different color brick, maybe
19 a chance to use metal louvers and so forth and break, you know,
20 basically the penthouse so it's not just all a brick box, but
21 maybe there's opportunity to play with the metal and so forth.

22 CHAIRPERSON GRIFFIS: Yeah. I mean, I think that
23 I'm hesitant, although I'd like to, believe me, dictate exactly
24 what it's going to look like and design the damn thing, but I
25 think that we need to give the direction, and I think that's

1 what Mr. Levy is reinforcing, and I think you understand that
2 issue, but, yes, it would be materials that would be matching or
3 complementary. I think those are safe terms to use in terms of
4 the condition.

5 Does that go to your issue? Not as strongly as
6 you would like.

7 MEMBER LEVY: Not as strongly as it was before.

8 CHAIRPERSON GRIFFIS: Well, my hesitancy with
9 going beyond that is that it's easy to say that it's going to be
10 brick and that it's articulated, be it reveals or being it bands
11 or something like that.

12 MEMBER LEVY: Right.

13 CHAIRPERSON GRIFFIS: But what happens if there
14 is an opportunity that, as you say, an introduction of another
15 material actually breaks down that penthouse?

16 Without getting it right in front of us, without
17 designing it, I don't want to, again, impose something that's
18 supposed to get them to a design direction which actually does
19 the opposite and is so restrictive that they don't have the
20 latitude to do it.

21 MEMBER LEVY: That's fine. I'll reiterate my
22 section of your motion.

23 CHAIRPERSON GRIFFIS: Okay. Thank you very much.

24 Indeed, reading the Board, I think we are ready
25 to proceed. So I would ask for all those in favor signify by

1 saying aye.

2 (Chorus of ayes.)

3 CHAIRPERSON GRIFFIS: And any opposed?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Very well. Staff would
6 record the vote.

7 MS. BAILEY: The vote is recorded as four, zero,
8 one. The motion was made by Mr. Griffis, Mr. Levy second, Mr.
9 May and Ms. Renshaw in agreement.

10 This is a summary order, Mr. Chairman?

11 CHAIRPERSON GRIFFIS: Well, looking at all of the
12 information -- well, let ask the applicant if they're requesting
13 a summary order on this.

14 MR. NETTLER: We are requesting a summary order.
15 We could draft up something and submit it to the staff which
16 incorporates the comments that were made today so that they can
17 utilize that.

18 CHAIRPERSON GRIFFIS: I think that would be an
19 excellent way to proceed with that. So yes.

20 MS. BAILEY: Would you like to see, would the
21 Board like to see what the applicant has admitted for its
22 review?

23 CHAIRPERSON GRIFFIS: You mean the draft order?

24 MS. BAILEY: Yes, sir.

25 CHAIRPERSON GRIFFIS: Yes. Mr. Nettler, did you

1 want to comment to that?

2 MR. NETTLER: No. I was just going to say we
3 could get it to you by this Friday.

4 CHAIRPERSON GRIFFIS: By this Friday we would
5 have it and the Board would review the draft order.

6 MS. BAILEY: That's it, Mr. Chairman. It's
7 approved.

8 CHAIRPERSON GRIFFIS: Great. Thank you very
9 much, and thank you all for going through this with us.
10 Obviously the time that we spent on this just underscores the
11 importance of this, and frankly, I think this is going to be a
12 great project. So I wish you all the luck and have a great day.

13 MR. NETTLER: Thank you for your attention.

14 CHAIRPERSON GRIFFIS: Thanks.

15 Okay. Let's proceed on and call the next case.

16 And for other folks that are showing up, this is
17 the last case of the morning, and we will then break for lunch,
18 but I will let you know when that happens. So.

19 MS. BAILEY: Application No. 16808 of Abigail Y.
20 Parker, pursuant to 11 DCMR 3104.1, or a special exception to
21 allow a child development center -- that's 40 children ages six
22 months to three years -- with a before and after school program
23 for 25 children ages four to 12 years and 12 staff, under
24 Section 205 in the R-2 district at premises 2907 Seventh Street,
25 S.E., Square 5951, Lot 80.

1 Ms. Parker, please raise your right hand.

2 The young lady behind you, are you going to be
3 testifying?

4 (The witness was duly sworn.)

5 MS. BAILEY: Thank you.

6 Mr. Chairman, just prior to Ms. Parker starting,
7 when you were on break just now we received a copy of her
8 affidavit of posting and as you may recall from an earlier
9 conversation, this property was not posted in a timely manner.

10 CHAIRPERSON GRIFFIS: Indeed. Thank you.

11 Okay. Good afternoon. If you wouldn't mind,
12 just give me your name.

13 MS. PARKER: Abigail Y. Parker.

14 CHAIRPERSON GRIFFIS: And your address.

15 MS. PARKER: 2907 Seventh Street, S.E.,
16 Washington, D.C. That's the address I'm here about the new
17 construction.

18 CHAIRPERSON GRIFFIS: Okay, and yours?

19 MS. PARKER: 657 LaBaum Street, S.E.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. PARKER: Is the current.

22 CHAIRPERSON GRIFFIS: Okay. Very good. All
23 right. Let us first just ask you, the affidavit for posting, I
24 believe, will indicate that it was not posted for the correct
25 amount of time; is that --

1 MS. PARKER: Yes. I was in a car accident, and I
2 missed the posting, and so -- but I had been around to the
3 community, to the neighbors and introduced myself.

4 Currently I have a child development center
5 that's there right now at 657 LaBaum, and so consequently I had
6 gone through and sent the letter and met with the ANC, and as a
7 matter of fact, the chair of the ANC was here this morning, but
8 she had to leave because the hearings went over.

9 CHAIRPERSON GRIFFIS: I see.

10 MS. PARKER: So she had to leave. But the
11 community was well aware of the fact of, you know, what we were
12 trying to do.

13 CHAIRPERSON GRIFFIS: Okay. And we do have
14 something from the ANC.

15 Board members, other concerns, questions that you
16 would like to bring up at this point?

17 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I would
18 like to ask Ms. Parker to give us a little more detail about the
19 drop-off and the pick-up of students.

20 CHAIRPERSON GRIFFIS: Actually before we jump
21 into that type of specific, let me go to Mr. May who I think has
22 a general question.

23 COMMISSIONER MAY: Yeah. This is a preliminary
24 question with regard to the posting. It's my feeling that the
25 posting is a very important part of advertising what you're

1 proposing to do with the site, and my first question right off
2 the bat is whether if we were to postpone hearing this case so
3 that it could be posted for the proper period, what impact would
4 that have on you and your ability to, you know, open and
5 operate.

6 I mean, were you planning to be open by a certain
7 day and would, therefore, it be --

8 MS. PARKER: It's still under construction.

9 COMMISSIONER MAY: So, in other words, if we
10 waited to actually hear this case for another -- I'm not sure
11 how long it would be

12 SECRETARY PRUITT: The next available hearing
13 date would be February 12th.

14 COMMISSIONER MAY: February 12th. If we waited
15 until February 12th, what would that do to you?

16 MS. PARKER: Probably nothing. I don't foresee
17 because the applications for the gas and the electric and all of
18 that stuff, those haven't even been -- you know. Do you
19 understand what I'm saying?

20 So February 12th would not impose a burden on me.

21 I won't be in the place by February 12th.

22 CHAIRPERSON GRIFFIS: We appreciate that, Ms.
23 Parker. You've being very accommodating.

24 I mean, we take it very seriously in continuing
25 cases because of the burden that it does put on the applicant

1 of, one, coming down and sitting for an entire morning again
2 perhaps.

3 MS. PARKER: But I wouldn't have to pay another
4 fee, would I?

5 CHAIRPERSON GRIFFIS: Absolutely not, absolutely
6 not.

7 And I think Mr. May brings up a very critical
8 point, and especially with this type of special exception for
9 the day care and the population that you're talking about.

10 MS. PARKER: Right.

11 CHAIRPERSON GRIFFIS: And we have -- this Board,
12 and I think earlier Boards, have always found that that sign out
13 in front attracts more attention than any of the letters that we
14 send out, than any sort of announcement, and so I think it is a
15 very pertinent point.

16 MS. PARKER: But I say by us being there already,
17 currently being there, you know, it's just an extension to the
18 existing facility that's there. So all of your neighbors, and
19 it was a really burn-out crack house. It was a menace.

20 CHAIRPERSON GRIFFIS: Right.

21 MS. PARKER: For 11 years it was just sitting
22 there like that. I've only been up there for two years. Okay?

23 And then we proceeded, you know, to try to purchase the
24 property and do something about it because it was just unsafe,
25 unconducive (phonetic), a whole lot of things, for the

1 neighborhood.

2 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Yes.

4 VICE CHAIRPERSON RENSHAW: Possibly with a delay
5 to February 12th Ms. Parker might reflect on and give answer to
6 the questions about drop-off and pick-up that we would ask of
7 her.

8 MS. PARKER: Currently the population that I
9 serve is what you consider the TANF '95 because I have -- and
10 they use public transportation, and the problem, where the need
11 was derived was we have people that are dropping off pre-
12 schoolers now that have nowhere to take their infant-toddler,
13 and by the same token, there's no space for the before and
14 after.

15 So this is why we came up with that. Instead of
16 the parent having to get back on the bus and go to another
17 facility, to kind of keep it all within the framework right
18 there.

19 CHAIRPERSON GRIFFIS: Okay.

20 SECRETARY PRUITT: Excuse me, Mr. Chairman. May
21 I make a suggestion? I spoke with Ms. Parker a little bit
22 yesterday. If the Board does choose to continue this, I would
23 suggest that she sit down with staff. We could actually --

24 CHAIRPERSON GRIFFIS: Yeah.

25 SECRETARY PRUITT: -- sit down and go through

1 several cases of child development centers that were presented
2 so you can really put your case together --

3 CHAIRPERSON GRIFFIS: Right.

4 SECRETARY PRUITT: -- and identify your burden of
5 proof so that when you come back before the Board it would be
6 more complete, and they can give you --

7 CHAIRPERSON GRIFFIS: Yeah.

8 SECRETARY PRUITT: -- a cleaner answer.

9 CHAIRPERSON GRIFFIS: It goes to the second
10 issue. I think if it were just the posting that we were dealing
11 with, we have other reports that are coming in. We would
12 probably move ahead, but there is an additional piece, and that
13 is that I have found, and I think other Board members concur,
14 that there was not a lot of information for us to assess on
15 this, and it's important for you to be here in person in a
16 hearing to give us your case.

17 MS. PARKER: Right.

18 CHAIRPERSON GRIFFIS: But we also need the filing
19 and the back-up for that.

20 So I think the postponement, if there is
21 consensus among the Board, would be well served and would help
22 the applicant in putting together a very strong case, and that
23 Ms. Parker is being so amenable to come back to us on the 12th.

24 I think that would be an incredible good use of time.

25 Now, what I would like to do is take that if here

1 -- and I'm reading a consensus, and call me out if I'm wrong --
2 I think you outlined quickly Section 205, which is well put, and
3 I think what Ms. Renshaw is going to is you need to expand on a
4 lot of those issues.

5 MS. PARKER: Okay.

6 CHAIRPERSON GRIFFIS: And staff is going to
7 direct you to that, and they can, as has just been said, talk to
8 you a little bit about some of the other cases that have come
9 before and some of the issues that have been brought up.

10 So I would be prepared to have answers on that.
11 Certainly you look at impact areas in that.

12 MS. PARKER: Okay.

13 CHAIRPERSON GRIFFIS: The drop-off and the
14 parking.

15 I would also look to defining times of operation,
16 defining population. I would look -- I think we're going to
17 need a site plan if you have drawings of your -- you say you
18 have a renovation that's going on now. We obviously don't need
19 to see any issues that don't have anything to do with zoning,
20 but it gives you an opportunity with those plans to give us
21 context so that we understand the site; we understand the
22 building; we understand the connection with the streets, areas,
23 and such, and I think we'd leave it at that.

24 Now, the question is: do we keep the -- I would
25 say we keep the record open to accept information from the

1 applicant. We're not looking at any other information from any
2 other entities.

3 SECRETARY PRUITT: Traditionally when a case is
4 continued, the record just stays open.

5 CHAIRPERSON GRIFFIS: Okay. Well, then there it
6 is. We'll leave that. So knowing also that you might want to
7 just check in with the case file to make sure that there hasn't
8 been submissions that you're unaware of from other neighbors or
9 other folks because you'll need to respond to those also.

10 MEMBER LEVY: A quick question.

11 CHAIRPERSON GRIFFIS: Yes.

12 MEMBER LEVY: I'm sorry if I missed this, but are
13 we asking that the property be reposted then?

14 CHAIRPERSON GRIFFIS: And that's an excellent
15 point, and I think staff will direct you to that, that it will
16 need to be posted correctly, and by the February 26th will give
17 you ample time to have that done.

18 MS. PARKER: February 12th or 26th?

19 SECRETARY PRUITT: 12th, in the morning.

20 CHAIRPERSON GRIFFIS: Forgive me. See that.

21 SECRETARY PRUITT: So you need to post 15 days
22 before the 12th.

23 MS. PARKER: Okay.

24 CHAIRPERSON GRIFFIS: Anything else?

25 MS. BAILEY: Mr. Chairman, just to let the

1 applicant know that the Office of Planning did file a report,
2 and I don't know if she has a copy of it, but staff will make it
3 available to her, and that would help her in putting her
4 response together for when she comes back.

5 CHAIRPERSON GRIFFIS: Yeah, and I think it would
6 be very helpful to read that and look at some of those issues.

7 Yeah, again, I say generally check your file
8 because there is also DPW report. So before you leave today
9 make sure you have copies of all of that.

10 MS. PARKER: Okay.

11 CHAIRPERSON GRIFFIS: And that being said, we
12 will see you on the 12th of February.

13 MS. PARKER: Thank you so much.

14 CHAIRPERSON GRIFFIS: No, thank you very much. I
15 appreciate your accommodating us in order to help you.

16 MS. PARKER: Thank you.

17 CHAIRPERSON GRIFFIS: With that, that will end
18 the morning session, December 18th, 2001.

19 It is 12:55 roughly now. We have just finished
20 the morning schedule, and we will reconvene I would say at --
21 Board members, 45 minutes for lunch? -- we will be back at 1:45
22 to call the afternoon case.

23 (Whereupon, at 12:57 p.m., the hearing was
24 recessed for lunch, to reconvene at 1:50 p.m., the same day.)

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

(1:50 p.m.)

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. The hearing will please come to order.

This is the December 18th public hearing of the Board of Zoning Adjustments of the District of Columbia.

My name is Geoff Griffis, Chairperson. And joining me today is Ms. Anne Renshaw, Vice Chair. Representing the National Capital Planning Commission is Mr. David Levy. And representing the Zoning Commission this afternoon will be Ms. Carol Mitten.

Copies of today's hearing agenda are available to you. They are located to my left near the door, the door that you did enter into.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at that table and also at the table in front of us.

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

The order of procedure for special exceptions and variances will be, first, statement and witnesses of the applicant.

Second, government reports, including the Office of Planning, Department of Public Works, et cetera.

Third would be the report of the Advisory

1 Neighborhood Commission.

2 Fourth, parties or persons in support.

3 Fifth would be parties or persons in opposition.

4 And, sixth, finally, closing remarks by the
5 applicant.

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

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

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

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

23 Please turn off all beepers and cell phones at
24 this time so as not to disrupt the proceedings.

25 The Board will make every effort to conclude

1 public hearings as near as possible to 6:00 p.m. I think that
2 may be doable even though we have delayed this afternoon. If
3 the afternoon cases are not completed by 6:00 p.m., the Board
4 will assess whether it can complete the pending cases or case
5 remaining on the agenda.

6 At this time the Board will consider any
7 preliminary matters. Preliminary matters are those that relate
8 to whether a case will or should be heard today, such as
9 requests for a postponement, continuance or withdrawal, or
10 whether proper and adequate notice of the public hearing has
11 been given.

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

15 However, first I will go to the staff to see if
16 there are any preliminary matters.

17 MS. BAILEY: Mr. Chairman, yes, there is. It has
18 to do with the last case, that is, BP Amoco Corporation,
19 Application No. 16758. The applicant is requesting that the
20 application be postponed.

21 The case was continued from the October 2nd, 2001
22 public hearing, and at that time the applicant had also
23 requested a postponement, and the applicant is seated at the
24 table, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Thank you very much.

1 Good afternoon, sir. If you would, just give us
2 your name.

3 MR. COLLINS: Good afternoon. My name is Chris
4 Collins. I am with the law firm of Holland and Knight, the
5 applicant in this case.

6 We did file a letter, which is in the record,
7 dated November 16th, in which we requested a postponement,
8 stating the fact that the applicant is in the process of further
9 studying ways in which it can be responsive to the community on
10 a comprehensive basis.

11 We had hoped to be fairly far along with that
12 analysis right now, but it became evident just within the last
13 week or so that that was not going to be able to play out.

14 The applicant has a number of facilities in the
15 District, and given the initial response that we received from
16 the community in this case in conjunction with some other cases,
17 the applicant is looking for ways that it can be responsive and
18 to coordinate the efforts with this particular case with other
19 cases so that it can develop an approach on a city-wide basis.

20 In that case, we think that we would be able to
21 be ready to come before the Board in late April rather than in
22 February of next year.

23 CHAIRPERSON GRIFFIS: Okay. Thank you, Mr.
24 Collins.

25 This is the second request for a continuance.

1 The first one was granted. Am I correct?

2 MR. COLLINS: That's correct.

3 CHAIRPERSON GRIFFIS: Okay, and in the first
4 shift, if I'm not mistaken, there was a consensus among the
5 parties, and I'll say generally the community that was
6 interested in this, that the committee was appropriate.

7 Do you have documentation that that is, again,
8 the case?

9 MR. COLLINS: I did copy all of the -- excuse me
10 -- did copy all of the community representatives on this letter
11 before the Board today.

12 CHAIRPERSON GRIFFIS: But you didn't --

13 MR. COLLINS: The only one I've spoken with is
14 Mr. Berry, who's in the audience now from the ANC, and I don't
15 want to characterize what he might say, but it's my
16 understanding that he has no objection.

17 CHAIRPERSON GRIFFIS: Okay. Other than that
18 though you don't have any document that was submitted to you --

19 MR. COLLINS: No.

20 CHAIRPERSON GRIFFIS: -- perhaps speaking to
21 that?

22 Mr. Berry, if you wouldn't mind.

23 MR. BERRY: Good afternoon.

24 CHAIRPERSON GRIFFIS: Good afternoon, sir.

25 Just obviously we have a request for a

1 continuation on this case. Can you just give me the Agency
2 opinion on that?

3 MR. BERRY: Well, we didn't have an objection to
4 the February continuance. I just learned a few minutes ago
5 about the April date, but we don't necessarily have a problem
6 with it.

7 CHAIRPERSON GRIFFIS: Okay. Okay. So you don't
8 have an objection to the continuance at this point, and the date
9 is uncertain until we actually check the schedule.

10 MR. BERRY: Okay.

11 MR. COLLINS: And obviously the applicant puts
12 themselves up in the -- let's call it the lottery wheel today
13 and see which date is split out for us.

14 But I would also indicate -- I mean, I would say
15 that there was probably an understanding from parties in the
16 community in that this hearing room is not packed this
17 afternoon, which I would anticipate it will be if this case was
18 anticipated to go forward.

19 Ms. Mitten, did you have a comment on that?

20 COMMISSIONER MITTEN: I just wanted to ask Mr.
21 Collins how confident he is that you'll be able to go forward in
22 April because the BZA has a very heavy schedule, and when a
23 major case drops out, that leaves a hole, and that's now
24 happened twice.

25 MR. COLLINS: I understand.

1 COMMISSIONER MITTEN: So I guess what I'm asking
2 is pick a date that you're confident you'll be able to go
3 forward because I think a third postponement is unlikely.

4 CHAIRPERSON GRIFFIS: That being said, if you're
5 going to talk dates -- is that where you're going?

6 MR. COLLINS: Well, I was going to say that BP is
7 not here with me this afternoon.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. COLLINS: And they indicated that April might
10 -- March or April, and I kind of talked them into late April,
11 but just to be sure. There was no indication given to me that a
12 May date wouldn't be, for instance, you know, inappropriate for
13 them.

14 I understand your caveat, and I'm very mindful of
15 the time frame. Things can slip because what we need to do is
16 develop this strategy, and then as we said in our letter, go
17 back to the ANC, the community, and go back to the Office of
18 Planning, and that all takes time.

19 CHAIRPERSON GRIFFIS: I think the more time that
20 we can give at this point the better, but I would reemphasize
21 Ms. Mitten's point. I mean, this afternoon look at our -- we
22 put this case on with one other.

23 MR. COLLINS: Yeah.

24 CHAIRPERSON GRIFFIS: We usually can get through
25 four or five or we schedule four or five cases in the afternoon,

1 although we'd like to get out of here as soon as possible. It
2 just snowballs for us down the way obviously, and we'll have
3 these cases that we'll have to do.

4 So I would also, before we go too deep, think
5 that especially you have just brought up the fact that you're
6 looking at city-wide approach, and I can only assume from that
7 that you are looking at the other BP Amoco sites that might be
8 coming or may be before us or whatever kind of global issue that
9 the gas station is looking at.

10 And I would request that perhaps the applicant
11 look at some topologies that are used in urban centers, and it
12 may well be not in the United States, but urban centers around
13 the world, frankly, that deal with fueling stations in a fairly
14 successful manner, and that being successful in terms of tying
15 into the urban fabric in terms of layout, in terms of lighting,
16 and in terms, bottom line, design of the facilities.

17 I think that will encourage and direct very
18 substantive discussions with the community, this particular one,
19 but obviously you're bringing up other sites, and I think you're
20 going to have the exact same issues in all of the other
21 neighborhoods, and that is clearly more than enough said.

22 So let's go to dates.

23 SECRETARY PRUITT: Well, I spoke with Mr.
24 Collins yesterday, and I pulled up the calendar. For late April
25 we have the 6th -- actually the schedule is open -- the 16th and

1 23rd, but now looking into May there's 7th, 14th, and 21st. The
2 following week is Memorial Day, and I don't think anybody wants
3 to be here on that day.

4 CHAIRPERSON GRIFFIS: Mr. Collins?

5 MR. COLLINS: Well, I would imagine to be safe we
6 ought to pick a date in May and either the 14th or 21st. I'll
7 leave it up --

8 CHAIRPERSON GRIFFIS: Are we looking at the
9 afternoon?

10 SECRETARY PRUITT: We don't have anything
11 scheduled yet at all for those days. So it's a clean slate.

12 CHAIRPERSON GRIFFIS: Does that cost extra?

13 SECRETARY PRUITT: Yeah, there's a penalty for
14 that.

15 CHAIRPERSON GRIFFIS: Okay.

16 SECRETARY PRUITT: So, yeah, I would suggest that
17 we put this on as the first case in the afternoon on whatever
18 day we do and probably -- or would you prefer in the morning?

19 CHAIRPERSON GRIFFIS: Very well. I would say the
20 first case in the afternoon of whatever the applicant's
21 preference is for those.

22 MR. COLLINS: Fourteenth.

23 CHAIRPERSON GRIFFIS: The 14th would be great.

24 SECRETARY PRUITT: So this case is continued to
25 May 14th at one o'clock.

1 CHAIRPERSON GRIFFIS: Does the ANC have any
2 objection? I'm sorry I didn't turn to you.

3 MR. BERRY: That's okay.

4 CHAIRPERSON GRIFFIS: Okay. Thank you very much.
5 Thanks for coming down.

6 MR. COLLINS: Thank you.

7 CHAIRPERSON GRIFFIS: And thank you, Mr. Collins.

8 And we can proceed and call the next case or call
9 the first case, I should say.

10 MS. BAILEY: Application No. 16719 of Gordon
11 Bremer and Carla Yates-Bremer, pursuant to 11 DCMR 3104.1, for a
12 special exception to allow an addition to a flat under Section
13 223 that is nonconforming as to lot occupancy, Section 403 and
14 Subsection 2001.3, in an R-4 district at premises 633 A Street,
15 S.E., Square 870, Lots 832 and 833.

16 Please stand to take the oath.

17 CHAIRPERSON GRIFFIS: Is anyone else here to
18 testify today for this case?

19 MR. BREMER: We are.

20 CHAIRPERSON GRIFFIS: No, I understand. I'm just
21 checking the other folks that are sitting whether they want to
22 testify. They need to be sworn in, and if not, we can continue.

23 PARTICIPANT: Do you have to be sworn in to ask a
24 question?

25 CHAIRPERSON GRIFFIS: Yes. If you're even

1 thinking of the possibility of participating in this, probably
2 just swear in. You can just stand. It's a simple and very
3 quick oath, first born, things like that.

4 PARTICIPANT: Okay.

5 MS. BAILEY: Please raise your right hand.

6 (The witnesses were duly sworn.)

7 MS. BAILEY: Thank you.

8 CHAIRPERSON GRIFFIS: Thanks.

9 Okay. Good afternoon, and I will turn it over to
10 you.

11 MS. BROWN: Good afternoon, members of the Board.

12 My name is Carolyn Brown. I'm with the law firm of Holland and
13 Knight.

14 With me today is the property owner, Carla Yates-
15 Bremer, and the architect, Bill Gallagher and his associate
16 architect John Linam.

17 We are pleased to return to the Board today with
18 an amended application that we believe addresses many of the
19 concerns that the Board and the community had about the proposed
20 additions to this house.

21 As you may recall, last July two applications
22 were before you. One was the second story addition to a garage
23 at the rear of the property, and a second application was before
24 you for an infill addition to a small court area to the house
25 and a rooftop addition. Variance relief was being requested at

1 that time

2 The community raised some objections. I think
3 there were some concerns about the proper areas of relief being
4 requested. So the applicant pulled back and reexamined what
5 they were doing.

6 As a result, they have withdrawn the application
7 to build a second story to the garage, and they're now just
8 proceeding with the additions to the main house. It no long
9 requires variance relief. It's only a special exception. In
10 this case it's a nonconforming structure as to lot occupancy.

11 Right now the property consists of two A&T lots.
12 Those will be combined into one lot of record. When that
13 happens even before you do the additions, the property has a 70
14 percent lot occupancy.

15 The infill addition does not count toward lot
16 occupancy or already counts toward lot occupancy. So it will
17 not increase the occupancy of the property, and so essentially
18 there was no increase to the footprint of the building, just
19 that little dogleg that's getting filled in, and the architects
20 will go through that in detail with you.

21 CHAIRPERSON GRIFFIS: Can I just bring a point of
22 clarification?

23 MS. BROWN: Sure.

24 CHAIRPERSON GRIFFIS: You said it is 70 percent.
25 I thought in the submission it looked like it was less than 70

1 percent. It's 70 percent per minute though under 223.

2 Is that what you meant to say or is it 70
3 percent?

4 MS. BROWN: I'm sorry. Sixty percent is
5 permitted in the R-4.

6 CHAIRPERSON GRIFFIS: R-4, correct.

7 MS. BROWN: And right now the property is at 70
8 percent. It's, you know, a turn of the century house.

9 CHAIRPERSON GRIFFIS: I see. Okay. That's good.
10 With the combination of the two.

11 MS. BROWN: Combined lot, yeah. I think that the
12 ratio is a little different on the two existing A&T lots, but to
13 build the addition, it's being combined into one record lot.

14 CHAIRPERSON GRIFFIS: Oh, okay.

15 MS. BROWN: The other --

16 CHAIRPERSON GRIFFIS: Can I interrupt you again?

17 MS. BROWN: Yes, you may.

18 CHAIRPERSON GRIFFIS: Thank you so much.

19 Just so I don't confuse the Board, which I often
20 do, but if we look at the sheet, this was my confusion. Lot 832
21 is actually 77 percent --

22 MS. BROWN: Correct.

23 CHAIRPERSON GRIFFIS: -- lot occupancy, but Lot
24 833 is 62. When they're combined, it brings it to 70 percent.

25 MS. BROWN: That's correct.

1 CHAIRPERSON GRIFFIS: See that? It was easy for
2 me.

3 I'm sorry. Go ahead.

4 MS. BROWN: That's fine.

5 It's important to note that what's before you
6 today is simply the addition to the roof and the infill
7 addition. There is the roof deck that's part of this proposal,
8 but that's something that can be constructed as a matter of
9 right. So technically it is not before you.

10 And I also want to emphasize, too, that we
11 finally have support from the ANC, which we're very pleased to
12 have. We believe that we have addressed all of the concerns of
13 the neighbors. We have -- originally the Capitol Hill
14 Restoration Society was in opposition. They have withdrawn that
15 opposition.

16 We have to submit for the record at the
17 appropriate time signatures from neighbors in support of the
18 project, and we also have the Historic Preservation Review Board
19 that has looked at this in concept and has approved it in
20 concept.

21 It had some concerns about the visibility issues.

22 So we prepared site line studies for them, and they are happy
23 with the way it has turned out, and final approval was delegated
24 to the staff on that.

25 We have two witnesses this morning briefly. Ms.

1 Bremer will make a statement, and then the architects will go
2 through the proposal for you, and after that we would make
3 closing remarks and answer any questions that have been raised
4 during the testimony.

5 With that, I'll turn it over to Ms. Bremer.

6 Thank you.

7 MS. YATES-BREMER: My husband --

8 CHAIRPERSON GRIFFIS: Actually hold on just a
9 second. You just need to get close to a mic.

10 MS. YATES-BREMER: Oh, okay. I just wanted to
11 say my husband is regretfully not able to be here. He is in
12 Colombia, on business, Colombia the country, not Colombia the
13 town.

14 So anyway, we acquired the property from the
15 estate of my uncle five years ago, and prior to that he had
16 owned the property since 1958.

17 We are excited to move back into the city. We're
18 looking forward to doing the project. We had planned to do the
19 project with an addition to the garage.

20 When the neighbors didn't like that addition, we
21 decided that it was easier for us just to go on and withdraw it.
22 We just thought it looked better.

23 But at any rate, the house is 62 feet long. It's
24 very dark. So we decided that we would try to put in a skylight
25 into the house so that we could get light, and as the project

1 developed, it just made more sense to go up with an addition for
2 a greenhouse, which we wanted anyway -- would have liked to have
3 had anyway.

4 So that's the way the project developed from that
5 point of view. We have talked with the neighbors. We hope they
6 have addressed all of the concerns. There was some concern
7 about noise and that sort of thing, and we've, you know, tried
8 to do everything we can so that those concerns are alleviated.

9 And with that I'll pass it to the architect.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. LINAM: It's probably best if I come over
12 here and explain from this, which will be off the microphone,
13 but --

14 CHAIRPERSON GRIFFIS: No, actually we have a
15 cordless that you can use. And just to be clear, we can
16 obviously hear you, but if you're not on a microphone, then it
17 doesn't go on the record, and then we have to do the whole thing
18 over and you have to say exactly what you said.

19 MR. LINAM: As you can see, this is the site plan
20 of the property, and I think you can all sort of follow along
21 with your drawings up there. This is the existing house, and
22 this is the existing dogleg which we'd like to fill in. It's
23 about 30 feet deep.

24 And the neighbor's house next door, it was a two
25 story house which had about 15 feet of depth covering that

1 dogleg. There's 12 doors and windows in that dogleg which the
2 neighbors also added and partitioned onto the back. So that is
3 now 30 feet deep, when all of these doors and windows are in a
4 very dark sort of little alleyway, and the wall of the property
5 line is built as a party wall. So what we would like to do is
6 fill that in and bring that light and air which is being lost
7 there into the center of the house.

8 And this is the new house with that filled in,
9 keeping the back wall just exactly where it is. We're no longer
10 doing anything with the garage. So that part of the property
11 doesn't change.

12 From the front and the rear -- from the front,
13 nothing is done to the house other than restore it to its more
14 original condition. You cannot see the third floor addition due
15 to the height of the parapet and the turret, which are existing.

16 We won't change that.

17 When we started this project, we were building on
18 the roof, and we thought after speaking with the neighbors and
19 so on that it's much wiser and much more logical to build at the
20 ceiling level of the second floor, which we're saving about four
21 feet of depth.

22 We had thought that that might just be used for
23 storage, but it's very, very difficult space to be worked with.

24 So we've lowered the whole project down four feet, which really
25 does make it disappear behind this parapet.

1 From the ceiling line to the top of this is about
2 eight feet, and we're also setting back 16 feet.

3 This is the rear of the house. We are rebuilding
4 the rear of the house so that it is one consistent wall all the
5 way across.

6 This third floor part is set back about 16 feet
7 from the rear wall. It's only in the center of the house. So
8 at an angle you really can't see this or in a very small
9 respect.

10 So here's the new addition on the third floor.
11 You can see it's in the center of the house so that the old roof
12 stays exactly as it is in the back. From the front it's very
13 difficult to see this, and this is the area which is left over
14 in the front. By pulling this back, and that's what we're
15 considering, is a roof deck or actually it's a garden area for
16 an outdoor space next to the green house.

17 These are some sight lines from Brown's Court and
18 from across the street. On the front of the house there's
19 actually no way that you can see this addition from anywhere up
20 and down the street.

21 What we are doing in both cases is extending the
22 walls up on either side so that the visibilities on either side,
23 it's not visible other than the brick walls that do exist now.

24 And in sections -- that's what I'm saying --
25 we're going to raise these side walls about three and a half

1 feet, which protects both the view and the noise from the
2 neighbors.

3 So that we're replacing the 12 windows and doors
4 that face next door right now. That will be a completely solid
5 wall, and basically that wall is moved over about 32 inches from
6 where it exists now. So we think that that will have no effect
7 on the light and air of the next door neighbors to the east.

8 The neighbors to the west, their house is set
9 back. It's lower, and, again, that side of the house will only
10 have a three and a half foot, you know, raised parapet along
11 that edge, which has very little effect on the neighbor's
12 property next door.

13 In terms of -- I'll stay with this drawing -- in
14 terms of noise and sound, we think all of that will go up rather
15 than down. We have a very small open area on the roof. It's
16 not very large, and it's also very sunken. So we think that
17 that will have no adverse effect on the privacy of the
18 neighbors.

19 You cannot see to the front because you're too
20 low. You can't -- this addition is in the center of the house
21 so that the solid walls are looking out over the roofs of the
22 neighbors, and in the back it's set back about 16 feet. So you
23 really can't look down into anyone's back yard.

24 You can see way off in the distance, but you
25 can't see down in the neighbor's yards.

1 So I think that covers the light and air on both
2 sides, the privacy of both properties, surrounding properties,
3 both infringed.

4 And the nature of the construction is that we're
5 trying to match the neighborhood, keep the historic nature of
6 the structure in the back facade. From the front you will not
7 see it, and the whole construction stays within the 70 percent
8 of the developable property, which is what is existing right
9 now.

10 Any questions?

11 CHAIRPERSON GRIFFIS: One quick question. You
12 have indicated that, in fact, the usable portion of the exterior
13 space on the roof is towards the turret and the pent.

14 MR. LINAM: Yes.

15 CHAIRPERSON GRIFFIS: The pent. roof which
16 happens there, but there seems to be a large expanse in the
17 other direction.

18 MR. LINAM: To the rear.

19 CHAIRPERSON GRIFFIS: Yeah.

20 MR. LINAM: We have no intentions of using that
21 space. There's an existing standing C metal roof, and we will -
22 - it may have to be rebuilt, but there will be a roof area only
23 back there. That part of the roof won't be accessible other
24 than for maintenance.

25 CHAIRPERSON GRIFFIS: I see.

1 MR. LINAM: We won't use the back of the house.

2 CHAIRPERSON GRIFFIS: Okay. And briefly in the
3 submission there was talk about the construction of the
4 enclosure at that top level, and obviously it has glass panels
5 that's coming through. You've indicated it as a greenhouse type
6 of construction. Has there been any more refinement in terms of
7 it -- you know, not that it's absolutely critical, but just
8 looking at it, is it going to be really more in the vernacular
9 of a greenhouse in terms of very thin metal pieces and very
10 transparent glass or as the elevations are somewhat showing us,
11 it looks a little bit more of a traditional residential
12 construction in terms of larger truss members and such?

13 MR. LINAM: Well, the walls are completely solid
14 on the two sides.

15 CHAIRPERSON GRIFFIS: Right, right.

16 MR. LINAM: So the only real elevation will be in
17 the back. The front elevation is completely hidden --

18 CHAIRPERSON GRIFFIS: Right.

19 MR. LINAM: -- by the turret. And this elevation
20 we are still studying.

21 CHAIRPERSON GRIFFIS: Yeah.

22 MR. LINAM: But it will be steel and glass, and
23 if you look at -- we hope that it will match the character of
24 the neighborhood.

25 There's been some others built. It won't be, in

1 other words, a modern, slick kind of an elevation. It will be
2 more traditional.

3 Here's the piece that you would be able to see
4 from Brown's Court.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. LINAM: It's only the very top of it.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. LINAM: Which will be a sloped roof.

9 CHAIRPERSON GRIFFIS: Right, yeah. I mean, I
10 don't think we need to get too far into it because obviously you
11 have Historic Preservation on your back looking at that type of
12 situation, and they have great concern as indicated in the
13 material we have from them.

14 But I was just interested in seeing how it has
15 actually evolved. Okay.

16 Board members, questions of the architect?

17 VICE CHAIRPERSON RENSHAW: Yes, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Yeah.

19 VICE CHAIRPERSON RENSHAW: On the plans in our
20 material, we have existing plans for the layout of the house and
21 no designation as to floor space use. Is it the same as what is
22 on the proposed plan pretty much for the first floor and the
23 second floor?

24 MR. LINAM: The first floor will be -- we didn't
25 actually bring the newest plans. They are the living room,

1 dining room, and family room on the first floor.

2 The second floor will be basically two bedrooms
3 and a den and the stairwell and two bathrooms.

4 And then the third floor is just the conservatory
5 and the roof area to the front.

6 VICE CHAIRPERSON RENSHAW: Okay.

7 CHAIRPERSON GRIFFIS: Is there an issue there you
8 want to pursue in terms of the --

9 VICE CHAIRPERSON RENSHAW: No, no. I just
10 wondered.

11 CHAIRPERSON GRIFFIS: Okay.

12 VICE CHAIRPERSON RENSHAW: Since it was not noted
13 on the plans.

14 MR. LINAM: What we're trying to do because of
15 those 12 windows and doors that were in this 30 foot long, deep
16 passageway, all of that light and air which was not much -- I
17 mean, it's very minimal -- we're trying to create that in the
18 middle of the house.

19 And as you can see in this section, we really
20 want to open this up to let the light and air come down through
21 the center of the house, down to the first floor, which is
22 really part of the dining room. That stair will come down in
23 the dining area. It will allow light to come in both
24 directions, we hope. We have done some computer studies on
25 that. Hopefully it will help a lot.

1 CHAIRPERSON GRIFFIS: Yeah. Talk a little bit
2 about the adjacent property that this is attached to.

3 And you just brought up the fact of the massing
4 studies that you did are very helpful, and I hope Board members
5 had ample time to go through it. We might want to just look at
6 that.

7 Not only do you have massing studies, but you
8 also have your light studies per season, and the dates are below
9 that. But perhaps you want to walk us through a little bit
10 about the adjacent property.

11 It obviously does not hold the same massing as
12 the Bremer's property.

13 MR. LINAM: The property to the -- I actually
14 don't have any drawings up here that will show that.

15 CHAIRPERSON GRIFFIS: I'll tell you what. Let me
16 ask a direct question that you can maybe answer --

17 MR. LINAM: Sure.

18 CHAIRPERSON GRIFFIS: -- outside of my ramblings.

19 In terms of the impact of the adjacent property, what you will
20 be creating rather than that court that is now current, you will
21 be filling that in. Therefore, there will be some sort of
22 facade there.

23 What's the neighbor going to be looking at and
24 touching?

25 MR. LINAM: Oh. We will match the brick that's

1 there. In fact, we will do whatever the neighbors would like
2 for that to look like, but it will be a brick wall.

3 CHAIRPERSON GRIFFIS: Anything? Gold leaf?

4 MR. LINAM: No, no, no.

5 CHAIRPERSON GRIFFIS: No. I see. All right.

6 MR. LINAM: In terms of whatever color they
7 wanted that to be.

8 CHAIRPERSON GRIFFIS: I've got you. You have to
9 be careful.

10 MR. LINAM: Because they're going to look at it.
11 We won't be looking at it.

12 CHAIRPERSON GRIFFIS: That's right.

13 MR. LINAM: So we do have that elevation
14 actually, if I can just find it. This is the elevation you
15 would -- you won't really be able to see, but this is on the
16 roof of the neighbors. This is actually where the neighbor's
17 roof ends. So you can see it, too.

18 This is where your roof is. That's just what's
19 up on the roof. So nobody will really see that.

20 This is the piece that's next to your -- that's
21 new, but it's really only moved over about 30 inches, 32 inches
22 from where it is now. That wall right now has several windows
23 in it that look into the neighbor's property, and now it will be
24 a solid wall, but it is 30 inches closer.

25 So you're right. The shadow would move over 30

1 inches from where it is now.

2 Now, on the other side, you would only see this
3 piece up here. That's the only addition that you would see.

4 CHAIRPERSON GRIFFIS: What do you mean by "other
5 side"?

6 MR. LINAM: On the west side of the house. this
7 is the only piece that would affect the neighbors on the other
8 side.

9 CHAIRPERSON GRIFFIS: Oh, yeah.

10 MR. LINAM: Which is very minimal.

11 COMMISSIONER MITTEN: I had a few questions. I
12 think one of the concerns that was expressed by HPRB is that the
13 sight line studies that are Drawing No. ASK01, the orientation
14 generally at least at the front is either the center or to the
15 west.

16 And have you done anything -- because the concern
17 that was expressed by HPRB is that the impact of the roof
18 addition is going to be more visible from the east because the
19 dwelling there is not as tall as the subject property.

20 MR. LINAM: Well, in reality, the building to the
21 east is the height of the -- the two rooms are exactly level
22 right now, and this piece sits up about almost four or five feet
23 above that roof, above the neighbor's house.

24 Now, what we're doing is extending the side wall
25 back. So you might see a bit of that side wall, but you'll --

1 it's just the parapet.

2 In other words, see this piece up here that's
3 sticking up?

4 COMMISSIONER MITTEN: Yes.

5 MR. LINAM: We're going to extend that back with
6 the brick on the east side. So you won't see anything more than
7 what you could see right now. We didn't really do a study of
8 that because we didn't think it was visible.

9 From the street, you can barely see this. The
10 west side of the house is set back about 12 feet, and it's
11 lower. So you will see -- there's much more of a chance to see
12 it on the west side than it is on the east side.

13 COMMISSIONER MITTEN: Okay.

14 MR. LINAM: The east side, the building is about
15 the same height.

16 CHAIRPERSON GRIFFIS: My reading of that HPRB
17 comment was actually the view from the court.

18 COMMISSIONER MITTEN: They commented on two
19 things.

20 CHAIRPERSON GRIFFIS: Right. Okay. Because I
21 would concur. I mean, it seems difficult when you have a
22 structure there to be the view coming up from a pedestrian's
23 standpoint. You'd have to look up over the current elevation to
24 the back side.

25 I mean the impact for this is going to be from

1 the rear because --

2 MR. LINAM: Yes.

3 CHAIRPERSON GRIFFIS: -- that's where most of the
4 changes are going to be seen.

5 But don't let me get in the way.

6 MS. BROWN: Excuse me. If I could further answer
7 the question, the drawings that HPRB staff reviewed were an
8 earlier set when they wrote their staff report.

9 COMMISSIONER MITTEN: All right.

10 MS. BROWN: Subsequent to that, they saw these
11 sideline studies and agreed that it would not be visible, and
12 that was done in consultation. I guess it was two or three
13 weeks ago.

14 COMMISSIONER MITTEN: All right.

15 CHAIRPERSON GRIFFIS: Did they issue a revised
16 report or are you going to go for final approval?

17 MS. BROWN: No, they didn't because final was
18 delegated to staff. So it's just done informally with them.

19 CHAIRPERSON GRIFFIS: right.

20 COMMISSIONER MITTEN: I'd like to focus on the
21 height of the building for a minute. There's mention made of a
22 basement apartment.

23 MR. LINAM: Yes.

24 COMMISSIONER MITTEN: In a cellar, which is not
25 legally possible, and so I'd like to know what the height of the

1 ceiling of the English basement level is above the adjacent
2 finished grade.

3 MR. LINAM: Do we know exactly? It's about 30
4 inches.

5 MR. GALLAGHER: Three foot, oh and a half.

6 MR. LINAM: Three feet.

7 COMMISSIONER MITTEN: Is this an existing --

8 MR. LINAM: Existing?

9 COMMISSIONER MITTEN: -- rental unit?

10 MR. LINAM: No

11 COMMISSIONER MITTEN: No?

12 MR. LINAM: No.

13 COMMISSIONER MITTEN: Okay.

14 MS. BROWN: Yes. I'm sorry. The house has been
15 used as a flat for probably 40 years or more.

16 MR. LINAM: The building has been two apartments
17 for the last 40 years, but they're using the first floor and the
18 second floor.

19 COMMISSIONER MITTEN: Okay. So is there a
20 certificate of occupancy?

21 MR. LINAM: Well --

22 MS. BROWN: One has not been applied for yet
23 because of the renovations being done to the house.

24 COMMISSIONER MITTEN: But let me make sure I
25 understood what you just said, which is that the flat

1 orientation as it currently exists is the lower unit is the
2 first floor and the basement, and then there's an upper unit; is
3 that correct?

4 MR. LINAM: Yes, yes.

5 COMMISSIONER MITTEN: Well, I think you're going
6 to have a problem trying to get a certificate of occupancy for
7 an English basement apartment if that's truly a cellar. Then it
8 doesn't meet the height requirement. So I just want to --

9 MR. LINAM: In terms of height of the ceilings?

10 COMMISSIONER MITTEN: Yes, it has to be a minimum
11 of four feet.

12 MS. YATES-BREMER: We're going -- we're digging
13 out and making it the acceptable.

14 COMMISSIONER MITTEN: So you're going to excavate
15 some of your front yard?

16 MR. LINAM: No, the basement.

17 MS. YATES-BREMER: Only at the rear, only the
18 rear.

19 COMMISSIONER MITTEN: Okay.

20 MS. YATES-BREMER: But the basement itself, the
21 basement itself is going to be lowered.

22 MR. LINAM: The floor.

23 MS. YATES-BREMER: The floor in the house is
24 going to be lowered so that the ceiling will be eight feet.

25 COMMISSIONER MITTEN: But it's not --

1 MS. YATES-BREMER: Or seven feet or whatever.

2 COMMISSIONER MITTEN: -- exclusively about the
3 overall height of the space. It's about -- it's about light is
4 what it's about, and it's about the height of the ceiling above
5 the grade at the front.

6 And I believe that the unit is going to be
7 oriented to the front, and I guess given that it's clearly a
8 cellar so that we don't have an issue about number of stories, I
9 just want to make you aware of the fact that you may have
10 difficulty before you spend the money to create that. Be sure
11 that you can get the certificate of occupancy.

12 CHAIRPERSON GRIFFIS: Which if we want to give
13 further direction and guidance, which would be based on the
14 building codes if it's a cellar, not necessarily on the zoning
15 issues that we'd be before.

16 I'm just trying to give a quick clarification.
17 You've caught onto the fact that they've called this a cellar,
18 which indicates a height above a finished grade, which goes to
19 us. And they will have difficulty, as you said, getting a
20 certificate of occupancy based on building code.

21 COMMISSIONER MITTEN: Fine.

22 CHAIRPERSON GRIFFIS: Is that clear?

23 MS. BROWN: We're aware of those issues.

24 CHAIRPERSON GRIFFIS: Right.

25 MS. BROWN: We're addressing those.

1 COMMISSIONER MITTEN: Okay.

2 CHAIRPERSON GRIFFIS: Right.

3 COMMISSIONER MITTEN: Great. There's a
4 description of a new terrace at the rear. What's the height of
5 the terrace above the grade at the rear?

6 MR. LINAM: Well, that's still undefined exactly,
7 but it drops down one step from the existing floor. There is an
8 existing terrace there now, if you want to call it that, which
9 will be replaced with a new one. It would be down one step.

10 COMMISSIONER MITTEN: Okay. We just want to be
11 sure that that doesn't exceed four feet in height above the --

12 MR. LINAM: No, because the back yard --

13 COMMISSIONER MITTEN: -- grade.

14 MR. LINAM: It's about -- well, it's a little
15 more than 30 inches now up to the floor, the main floor of the
16 house. The front and the back is basically level, and so we'll
17 step down one step from that. So it would be less -- a lot less
18 than four feet.

19 COMMISSIONER MITTEN: All right.

20 CHAIRPERSON GRIFFIS: And your issue for that is
21 for lot coverage, if you got to lot occupancy, correct?

22 COMMISSIONER MITTEN: Yes.

23 CHAIRPERSON GRIFFIS: Okay.

24 COMMISSIONER MITTEN: An then when I did the
25 calculation, this is a very small point, but the technical

1 aspects of the zoning ordinance are, you know, not to be
2 ignored.

3 MR. LINAM: Sure.

4 COMMISSIONER MITTEN: When I did the calculation,
5 I got a lot occupancy of 71 percent, not 70 percent based on
6 1,756 square feet.

7 MR. LINAM: Well, what we're actually going to do
8 to the building is instead of trying to rebuild the -- you know,
9 add the addition to the house from the rear, when we fill in the
10 dogleg, we're doing several things, but instead of trying to
11 keep this existing facade, we're going to take it down and
12 rebuild it, and when we do that, we can move it back enough to
13 make up that difference because we want it to line up with the
14 house next door so that we don't have to extend out this party
15 wall with new foundations.

16 Do you know what I'm saying?

17 COMMISSIONER MITTEN: I do know what you're
18 saying.

19 MR. LINAM: -- back just a few inches.

20 COMMISSIONER MITTEN: Right. I guess what we
21 want in the record is the plans that you're going to be
22 following because we don't want to be approving something that's
23 actually in excess of what's permitted and then just kind of
24 take your word for it that it's not really going to be that way.
25 You know, we want to have a complete record.

1 So if you could submit whatever modified drawings
2 would be necessary.

3 MS. BROWN: Yes. I think based on our
4 calculations it was 70, point -- you know, it was under 70.5
5 percent the way we calculated it out, and if you --

6 COMMISSIONER MITTEN: Well, let me tell you what
7 I used --

8 MS. BROWN: Okay.

9 COMMISSIONER MITTEN: -- and then you can correct
10 me wherever I went astray.

11 I used the L100, which is the site plan/location
12 map, which has the existing site plan and the proposed site
13 plan, and I used the 1,139 square feet, which is unchanged in
14 each case for the dwelling itself. And then I added the garage.
15 I don't know why the garage changes size to the proposed site.

16 MS. BROWN: That was actually -- I can answer
17 that question. It was moved back because of the issue over lot
18 occupancy. My understanding is that the back wall -- in order
19 to build the addition, they have to have access to the property,
20 and it's going to be through the garage to do the work, and the
21 back wall of the garage will be taken down and then shifted back
22 enough so that we meet the 70 percent lot occupancy, and that
23 has been reviewed by HPRB staff, and that was agreed to be an
24 acceptable solution to them.

25 COMMISSIONER MITTEN: Okay. So you're taking

1 down a wall of the garage, and you're going to reconfigure that
2 somehow.

3 MS. BROWN: Shift it back.

4 COMMISSIONER MITTEN: Okay.

5 MS. BROWN: So that we hit the 70 percent on the
6 nose.

7 COMMISSIONER MITTEN: Okay.

8 MR. LINAM: We'll actually end up doing both.
9 The house will come back a little bit, maybe three or four
10 inches because of the neighbor's party wall. We will find out
11 what the --

12 COMMISSIONER MITTEN: Okay. So then when you
13 come up with the new calculation, it's just slightly over 70
14 percent and you round it down because it's not over.

15 MS. BROWN: Yes.

16 COMMISSIONER MITTEN: Okay. I think that's all I
17 had.

18 CHAIRPERSON GRIFFIS: Anything else?

19 MS. BROWN: I think that concludes our
20 presentation. I think, based on the testimony that you've heard
21 today, that we have met the test for special exception relief;
22 that the additions will not unduly affect the light --

23 CHAIRPERSON GRIFFIS: Are these closing remarks?

24 MS. BROWN: I can -- yes. You don't want these
25 now?

1 CHAIRPERSON GRIFFIS: No, not now.

2 MS. BROWN: Then just for housekeeping matters
3 I'd like to submit the letter of support from adjacent property
4 owners and the affidavit of maintenance.

5 CHAIRPERSON GRIFFIS: I think that would be
6 timely if you want to bring that up.

7 MS. BROWN: Yeah.

8 CHAIRPERSON GRIFFIS: Okay. Let's go to
9 government reports, of which we do not have an Office of
10 Planning report on file, and I don't have any record of any
11 other government reports, not speaking about ANC at this point.

12 Do any Board members want to correct that for me?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Not seeing the lights light
15 up, let's then go to the ANC, which has been an issue. I have
16 an indication in notes that the ANC voted to oppose the roof
17 deck. However, they voted to support the space between 633 and
18 635 A Street.

19 Actually, Ms. Renshaw, do you have that in front
20 of you? If you would just briefly give us the pertinents on
21 that.

22 VICE CHAIRPERSON RENSHAW: The ANC-6B letter we
23 have in our file, Mr. Chairman. It's dated June 26th, 2001, and
24 I understand there is a later one, but we don't have it in the
25 file.

1 MS. BROWN: If I could address that briefly, I
2 talked to the ANC last night, and they faxed in a copy to your
3 office yesterday, and I have a copy here with me that I can
4 submit to you, and it does request a waiver of the time limit.

5 CHAIRPERSON GRIFFIS: Yes. We're going to look
6 at that now, too.

7 VICE CHAIRPERSON RENSHAW: We're just on hold,
8 Mr. Chairman, until we see the letter.

9 (Pause in proceedings.)

10 CHAIRPERSON GRIFFIS: Okay. Perhaps what we're
11 waiting for is dated December 12th, 2001, and it looks as though
12 all previous reservations have been removed, and it is the sense
13 of the ANC that this project will not be detrimental to the
14 peace, quiet, and good order of that neighborhood.

15 And it looks to be in order, quorum, et cetera.

16 Unless there's any objections, we can waive that
17 into the record, and --

18 VICE CHAIRPERSON RENSHAW: And this becomes
19 Exhibit No. whatever?

20 CHAIRPERSON GRIFFIS: Yes, indeed. We will give
21 that -- this should be Exhibit No. 44, and we'll get one in
22 there, and I think it can be given the great weight so accorded
23 the ANC, and I think that's fairly clear.

24 Any other government reports at this time?

25 (No response.)

1 CHAIRPERSON GRIFFIS: Okay. Let's go to persons
2 or parties, and I will just call a general calling, in
3 opposition and support. Now is the time if you would like to
4 come before the Board.

5 Let me just preface that. In that these are
6 proceedings that need to be absolutely on record, you need to
7 come to the table and have a microphone on before you say
8 anything.

9 VICE CHAIRPERSON RENSHAW: This is your Oprah
10 Winfrey moment.

11 MS. BICKNELL: I don't dance.

12 CHAIRPERSON GRIFFIS: You may be much more
13 comfortable just sitting down and using the table mic. I'm
14 sorry to dislodge people, but we have limited numbers. Ticket
15 sales are cheap, but seats are limited.

16 MS. BICKNELL: Okay. I'm Alicia Bicknell
17 (phonetic). I live next door at 635 A Street, S.E.

18 CHAIRPERSON GRIFFIS: Indeed. Can I ask you a
19 quick question?

20 MS. BICKNELL: Sure.

21 CHAIRPERSON GRIFFIS: You were aware of the
22 opportunity to become a party in the case, correct?

23 MS. BICKNELL: Yes.

24 CHAIRPERSON GRIFFIS: Okay. Then please
25 continue.

1 MS. BICKNELL: I'm here probably because I'd like
2 to -- there's a lot of confusion in the neighborhood, and the
3 ANC meeting sort of demonstrated that confusion. You know,
4 there's a philosophical divide between people who want to build,
5 people who want the neighborhood to stay how it is, and I'm sure
6 that our block is not different than a lot of blocks in Capitol
7 Hill and elsewhere in the city that way.

8 And none of us are zoning lawyers, and when this
9 came up the first time, it was in the form of a variance, and we
10 were told that there were tests that had to be met, you know,
11 for a variance and all of that.

12 And then it came back as a special exception, and
13 it's a beautiful plan. You know, it's going to be a beautiful
14 house. It's a beautiful plan, but there is still this
15 philosophical divide between there are a lot of people who would
16 like to build roof decks.

17 Now, what I heard said earlier was that this is
18 as of a right you can build a roof deck, and I guess that wasn't
19 our original understanding. And if that's the case, then that's
20 the law, and that's fine, and everyone can do that.

21 But I guess that's the clarification I would like
22 to have, and I wish someone else on my block would do this,
23 although they all say that they want -- you know, that they're
24 serious about this, but then I end up having to be the
25 messenger, which I'm certainly not crazy about, but I think the

1 neighbor -- because this is going to come up again and again
2 soon.

3 And so if this is a battle, if that's the law,
4 that's the law. Fine, everyone proceeds accordingly, but that's
5 the clarification that I'd like to know as a neighbor because
6 the ANC said that they were not setting precedent, but there was
7 a divide between the neighbors who support it and the neighbors
8 who didn't support it.

9 And, frankly, I don't want to have anything to do
10 with that anymore, but I would like to know because it's going
11 to come up again I can tell you soon.

12 CHAIRPERSON GRIFFIS: Right.

13 MS. BICKNELL: I know of at least three neighbors
14 who are planning. There's one neighbor who has a beautiful roof
15 deck. He's an artist. It's gorgeous.

16 CHAIRPERSON GRIFFIS: Before you tell us too much
17 about it, we may see it and we don't want to know.

18 MS. BICKNELL: You don't want to know because
19 it's not legal.

20 CHAIRPERSON GRIFFIS: Let me quickly just address
21 some of the things you said, and I absolutely appreciate you
22 taking the time and effort to come in and speak to us.

23 First and foremost, we look at every case
24 individually and on its own merits. So it doesn't matter if
25 we've got ten roof decks behind this one in the same day. Each

1 one is going to put through its test as is required by the
2 regulations. So generally speaking the Board of Zoning
3 Adjustment does not set precedent because we decide our cases on
4 each individual merits.

5 To the specific and because -- well, to the
6 specific case I understand your concern. The attorney
7 representing the applicant today has stated that the roof
8 terrace, which is the small portion between the glassed in
9 portion and the turret and pent. roof is a matter of right
10 space.

11 We can easily assess that for the Board members
12 and also Corporation Counsel can give us an opinion. I would
13 tend to agree with that because I do not see anything that
14 evokes zoning as related to that space. I mean, there's nothing
15 that's being touched, be it the height of the structure or be it
16 anything else that we can have jurisdiction over essentially.

17 And again, let me also say the fact that what we
18 need to do is being answering direct questions to the specific
19 case, but I want to also give you the understanding that we
20 appreciate the larger issues obviously in any community, and
21 we're all community members in perhaps different communities.
22 So it is important for communication, and that goes to another
23 point of how I think the Zoning Office actually has a great
24 emphasis of an issue that they will do, and Board members take
25 it very seriously in terms of, one, our relation on specific

1 cases to the community, but also overall in terms of the
2 educational opportunities that we need to take.

3 So to that I think regulations were pulled out.
4 Were you looking for the roof?

5 COMMISSIONER MITTEN: Yes. We actually don't
6 respond to questions when you ask questions.

7 CHAIRPERSON GRIFFIS: Yeah, and --

8 MS. BICKNELL: Okay.

9 COMMISSIONER MITTEN: But since we have the
10 afternoon ahead of us --

11 MS. BICKNELL: Well, I'm new at this process.

12 COMMISSIONER MITTEN: That's fine.

13 MS. BICKNELL: That's why I'm raising the
14 question.

15 CHAIRPERSON GRIFFIS: Actually let me interrupt
16 you. It is stated actually in our regulations that we are not
17 allowed to take the time to answer questions that aren't
18 specific, and I can cite you that, and I'm asking latitude from
19 the applicant because of the fact that we have known of this
20 case obviously from the first submission and know of the
21 controversy with it, and I would like to take the latitude in
22 addressing this because I think there's been a coming together,
23 and I think there's been a lot of great work and good
24 communication.

25 We often see cases that there is no communication

1 and there's just straight battles. When we have all the
2 information in front of us, we can see how connections can be
3 made, but we can't make the connections for people.

4 So if it's not actually objectionable, we'll take
5 a couple of minutes and just walk through this.

6 COMMISSIONER MITTEN: We have a section of the
7 ordinance on roof structure. It's Section 411, and it governs
8 penthouses and various structures on the roof. And the last
9 subsection of this section is, "Roof structures less than four
10 feet in height above a roof or parapet wall," so a roof deck,
11 "shall not be subject to the requirements of this section."

12 So Zoning does not control non-structures on
13 roofs, and so to qualify as a structure, it has to be at least
14 four feet high relative to the surface of the roof.

15 So that's why Ms. Brown is correct. That's a
16 matter of right relative to Zoning.

17 Now, I think there's probably still control by
18 Historic Preservation over construction in an historic district.

19 It's not that there is no review. It's just not Zoning review.

20 MS. BICKNELL: Okay. Well, I have never been
21 through this before, and it is -- it becomes this very divisive
22 thing. As long as we know what the rules are, then you know,
23 you deal with what the rules are.

24 COMMISSIONER MITTEN: Sure.

25 MS. BICKNELL: And we don't have neighborhood

1 fights, which is better. So anyway, that's what -- because
2 people want to know.

3 COMMISSIONER MITTEN: Yes.

4 MS. BICKNELL: And there's a lot of
5 misunderstanding because we were told that there was this -- you
6 know, for a variance you had to be landlocked and able to build
7 a roof deck and all of this, which turns out apparently to be
8 incorrect.

9 CHAIRPERSON GRIFFIS: That's correct.

10 MS. BICKNELL: So that's fine.

11 CHAIRPERSON GRIFFIS: Right.

12 MS. BICKNELL: But that was the research that was
13 done the first time around, and so thank you for answering the
14 question.

15 CHAIRPERSON GRIFFIS: Sure, sure. Two last
16 things. Did you want to have any other testimony in terms of
17 this specific design as its impact to you as the adjacent
18 neighbor?

19 MS. BICKNELL: You know, I'll tell you. The
20 whole thing is give and take. I mean, our light is affected,
21 but there's more privacy. You know, so it's like any
22 construction. There are pluses and minuses, and you live with,
23 you know.

24 CHAIRPERSON GRIFFIS: So you're not standing in
25 opposition to this application today?

1 MS. BICKNELL: No.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. BICKNELL: I'm here to figure out what the
4 rules are and what the process is.

5 CHAIRPERSON GRIFFIS: Good.

6 MS. BICKNELL: So I came partly to observe
7 because I can tell you this comes up, and it becomes very
8 difficult and very emotional, and it's a very nice block. And I
9 want to understand what the process is.

10 CHAIRPERSON GRIFFIS: Great.

11 MS. BICKNELL: And so I can go back and tell
12 people this is what it is.

13 CHAIRPERSON GRIFFIS: Right. Two last things.

14 MS. BICKNELL: Yeah. I was at parties last
15 weekend with all of the people who signed, you know, both
16 petitions. It was, you know, comical. But you know, that's --

17 CHAIRPERSON GRIFFIS: Next time you just invite
18 the Board. We'll show up.

19 MS. BICKNELL: Okay. Well, I remember that next
20 time.

21 (Laughter.)

22 CHAIRPERSON GRIFFIS: We can't do that.

23 MS. YATES-BREMER: It would be easier.

24 CHAIRPERSON GRIFFIS: Yeah, it amay well be.

25 MS. YATES-BREMER: And if we ever do it again, I

1 guarantee you it'll start out that way.

2 CHAIRPERSON GRIFFIS: That's when they start
3 calling us the kangaroo court, when we start --

4 MS. BICKNELL: At ANC meetings.

5 CHAIRPERSON GRIFFIS: But let me do two very
6 serious things on this one. I mean, officially your testimony
7 will be going down on the record and not in opposition to this,
8 and you are an adjacent neighbor, which is an issue.

9 MS. BICKNELL: No, this is a beautiful plan.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. BICKNELL: My problem was not with the
12 Bremer's plan. My problem was with a precedent being set.

13 CHAIRPERSON GRIFFIS: Right, good.

14 MS. BICKNELL: And that was one point of view in
15 the neighborhood.

16 This is lovely.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. BICKNELL: It's going to affect our light,
19 but not to an extent that it's going to make us crazy.

20 And probably the person who owns my house after
21 me is going to build an addition that will go out farther. I
22 built a --

23 CHAIRPERSON GRIFFIS: Maybe. They'll talk to us
24 first.

25 MS. BICKNELL: They will.

1 CHAIRPERSON GRIFFIS: But let me --

2 MS. BICKNELL: And they'll build a roof deck on
3 it, too.

4 CHAIRPERSON GRIFFIS: Let me just stop you there
5 because we do have time -- and we're going to be losing a
6 member.

7 MS. BICKNELL: I'm losing my meter.

8 CHAIRPERSON GRIFFIS: Yeah, indeed. So two last
9 things. One, an important piece to understand is that this is
10 not a variance, which is a much harder test for an area
11 variance. Use variance is the hardest.

12 This is a special exception, which means there is
13 basically two items of which it has to comply with, and that is
14 in the biggest one that concerns the community is that there's
15 no adverse impact to adjacent neighbors, and the first one being
16 that it would be in compliance with the tone and the intent of
17 the zoning plan and all of that great stuff.

18 So very specifically, special exception, not
19 variance on this.

20 The second issue of that, and I think for further
21 problems or for community communication, I think an excellent
22 point is to talk to staff in the Zoning Office if there are any
23 sort of questions whether this is precedent setting, whether
24 this variance is -- what's involved. Stop down here to look at
25 the case, even to talk to staff because those are the objective

1 people. They are the bureaucracy that is running this whole
2 thing, that prepared the entire case, that talked to applicants,
3 and certainly talked to the community and the community
4 participants and anything else of question.

5 So in the future it's probably a great way to go,
6 but I absolutely appreciate you being here today. I think it's
7 been very helpful, and, well, frankly, we hope not to see you
8 again because if we see you again, we may have a problem.

9 MS. BICKNELL: Right.

10 CHAIRPERSON GRIFFIS: So there it is.

11 Let us go to the applicant then for closing
12 remarks unless the Board members have anything else that they
13 need to share.

14 VICE CHAIRPERSON RENSHAW: No. I just wanted to
15 applaud the neighbor, Ms. Picknell, is it?

16 MS. BICKNELL: Bicknell.

17 VICE CHAIRPERSON RENSHAW: Bicknell. For coming
18 down. I think it's great if you have a question that you appear
19 at a case which affects your home because you are the abutter.
20 Even though we are not supposed to react to questions, as the
21 Chair explained, we had a few moments to do so today with the
22 leniency of the applicant.

23 But it's great to ask the questions and get some
24 clarification of a question in your mind that impacts your
25 community. So I say thank you.

1 MS. BICKNELL: Well, I brought my 12 year old
2 daughter to the ANC meeting so that she could see democracy in
3 action, and it was embarrassing because it was a bunch of grown-
4 ups behaving very badly. So I wish I had brought her today.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 MS. BICKNELL: You guys are much more civilized.

7 CHAIRPERSON GRIFFIS: Ms. Brown, closing remarks?

8 MS. BROWN: Thank you.

9 Based on the evidence of record and the testimony
10 that you've heard today, I believe that the test for special
11 exception has been met. The light and air available to the
12 neighboring properties will not be unduly affected. The privacy
13 and use of, the enjoyment of neighboring properties shall not be
14 unduly compromised, and the addition shall not substantially
15 intrude upon the character of the houses along the street
16 frontage for the Brown's Court.

17 Based on that, we would ask that you approve the
18 application, and we would request a bench decision today for
19 approval.

20 Thank you.

21 CHAIRPERSON GRIFFIS: Thank you, Ms. Brown.

22 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Yes.

24 VICE CHAIRPERSON RENSHAW: With that, if we are
25 in line to propose action, I propose that the BZA approve

1 application of Gordon and Carla Yates-Bremer. This is
2 Application 16719, pursuant to 11 DCMR 3103.2 under 223, and,
3 let's see, to allow an addition to a row dwelling that is
4 nonconforming as to lot occupancy in an R-4 district at 633 A
5 Street, S.E.

6 I believe the applicant has met the burden of
7 proof regarding the light and air, of not impacting the light
8 and air of her neighbors, the privacy and the enjoyment of their
9 space, and that the addition maintains the character of the
10 neighborhood.

11 COMMISSIONER MITTEN: Second.

12 CHAIRPERSON GRIFFIS: Thank you.

13 The motion has been seconded. Any discussion?
14 Comments?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Then I would ask that all
17 those in favor.

18 (Chorus of ayes.)

19 CHAIRPERSON GRIFFIS: And opposed?

20 (No response.)

21 CHAIRPERSON GRIFFIS: And staff would record the
22 vote for us when they're ready.

23 MS. BAILEY: The vote is recorded as four, zero,
24 one to approve the application. The motion was made by Ms.
25 Renshaw, Ms. Mitten second, Mr. Griffis and Mr. Levy in

1 agreement.

2 And, Mr. Chairman, there was some discussion
3 about the applicant submitting modified drawings. Is that still
4 -- no? Okay.

5 COMMISSIONER MITTEN: I think it's been clarified
6 that the drawings are accurate because they will set back the
7 northern wall of the garage.

8 CHAIRPERSON GRIFFIS: And in point of fact, Ms.
9 Mitten, the application was for 70 percent lot occupancy, and
10 therefore, the order would reflect that we're approving for a 70
11 percent lot occupancy, correct?

12 COMMISSIONER MITTEN: That's a good point.

13 CHAIRPERSON GRIFFIS: Yeah. Okay. There it is.
14 Did we record that? Yes, okay.

15 MS. BAILEY: Bench decision, summary order?

16 CHAIRPERSON GRIFFIS: Yes. You're requesting a
17 summary order?

18 MS. BROWN: Yes, please.

19 CHAIRPERSON GRIFFIS: Okay. Yes then. In which
20 case I think we have nothing else further to go through.

21 Great. Then I would adjourn the afternoon
22 session of December 18th, 2001, and thank you all very much.

23 (Whereupon, at 2:51 p.m., the public hearing was
24 concluded.)

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