

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

FEBRUARY 5, 2002

+ + + + +

The Public Meeting convened in Room 210 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JAMES HANNAHAM	Commissioner
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COMMISSION STAFF PRESENT:

Beverly Bailey, Office of Zoning
Paul O. Hart, Office of Zoning
John K. A. Nyarku, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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

(9:47 a.m.)

CHAIRPERSON GRIFFIS: Okay. I think we're ready to proceed and I will call to order the Tuesday, February 5th, 2002, Public Meeting. Oh, you know, that's a fabulous idea, Ms. Mitten. While we have a moment here why don't I just introduce us.

I believe my mind is just unfreezing from this morning's walk here, but my name is Geoff Griffis, Chairperson this morning. With me is Vice Chair, Ms. Anne Renshaw, and Mr. Etherly is also with us today and we're happy to have him here.

Ms. Mitten is representing the Zoning Commission and Mr. Levy is with us today representing the National Capitol Planning Commission. And we have able bodied staff and corp. counsel, which I will take a moment to introduce as they participate.

Mr. Hart, good morning to you.

MR. HART: Good morning, sir. Thank you for recognizing me. Do I go ahead?

CHAIRPERSON GRIFFIS: Please.

MR. HART: All right. I will take up from the Chair by introducing our staff to the Board. To my right is Ms. Bailey. To my extreme left is Ms. Sansone and I'm Paul Hart. The first item on the Agenda this morning of our February 5th Public Meeting is the minutes.

1 The first set of minutes I'm going to put before
2 the Board is for January 2nd, 2002, Public Hearing. The members
3 that sat on that meeting -- hearing, rather, were Mr. Griffis,
4 Ms. Renshaw, Mr. Levy and Mr. Peter May.

5 CHAIRPERSON GRIFFIS: Good. Thank you, Mr. Hart.

6 And if it is okay with you, what I'm going to do is take each
7 of these and what I will do is just give the members present and
8 call the dates so that we can walk through these fairly quickly.

9 Board members January 2nd, we are looking at it,
10 any comments on this? Any corrections? I have one quick
11 request from staff, and that is that we just fill in the
12 participants in the two cases and any other information that is
13 pertinent to summarize the case. Any other comments?

14 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Yes.

16 VICE CHAIRPERSON RENSHAW: On the January 2nd
17 meeting are you referring to 16813?

18 CHAIRPERSON GRIFFIS: Yes.

19 VICE CHAIRPERSON RENSHAW: And is there any other
20 case --

21 CHAIRPERSON GRIFFIS: Well, 813 and 812 and 810,
22 I would say, that we could -- although 810 looks fine.

23 VICE CHAIRPERSON RENSHAW: So it's just the first
24 two?

25 CHAIRPERSON GRIFFIS: Yes.

1 VICE CHAIRPERSON RENSHAW: All right. I so move,
2 if you need that.

3 CHAIRPERSON GRIFFIS: Thank you. Second. All in
4 favor?

5 (Chorus of ayes.)

6 CHAIRPERSON GRIFFIS: January 8th, 2002,
7 participating members with myself as Chairperson, Vice Chair
8 Anne Renshaw, David Levy; Curtis Etherly was with us and Mr.
9 Parsons.

10 Mr. Hart, you can interrupt me also if we have
11 proxies from anybody that is not here today.

12 MR. HART: Certainly.

13 CHAIRPERSON GRIFFIS: Any comments on --

14 MEMBER LEVY: Mr. Chair?

15 CHAIRPERSON GRIFFIS: Yes.

16 MEMBER LEVY: On page 4, this is Case No. 16682,
17 item number one, I think it would be clearer if that was written
18 as 18 inches in height where we described those retaining walls.
19 It occurs in two places in that paragraph.

20 CHAIRPERSON GRIFFIS: Sounds good. Anything
21 else?

22 VICE CHAIRPERSON RENSHAW: I so move.

23 CHAIRPERSON GRIFFIS: Second? All in favor?

24 (Chorus of ayes.)

25 CHAIRPERSON GRIFFIS: January 15th, participating

1 members, myself as Chairperson, Ms. Renshaw, Vice Chair; Mr.
2 Levy, Mr. Etherly and Mr. Hood. Comments?

3 VICE CHAIRPERSON RENSHAW: Yes. On case -- page
4 number 3, Case No. 16785, the Board requested that the
5 Applicant's representative somewhere in this, whether it was OP,
6 we had wanted a verification of street parking.

7 And whether the Applicant was to do that or --
8 the Office of Planning was to make sure that we had that in this
9 case.

10 CHAIRPERSON GRIFFIS: Oh, indeed. This is the 33
11 New York Avenue, correct?

12 VICE CHAIRPERSON RENSHAW: That's right.

13 CHAIRPERSON GRIFFIS: Yes, I don't recall. It
14 sounds -- my recollection is that it was Office of Planning that
15 was directed to do that. But I think we can verify that and
16 then put in a comment; street. Anything else?

17 VICE CHAIRPERSON RENSHAW: I so move.

18 CHAIRPERSON GRIFFIS: Second. All in favor?

19 (Chorus of ayes.)

20 CHAIRPERSON GRIFFIS: January 22nd, 2002,
21 participating members, myself as Chairperson, Ms. Renshaw, Vice
22 Chair, Mr. Levy, Mr. Etherly and Mr. Hannaham. Comments?

23 MEMBER LEVY: Mr. Chair, page 2, Case No. 16820.

24 CHAIRPERSON GRIFFIS: Yes.

25 MEMBER LEVY: Item number 2. I think we need to

1 clarify that that was Exhibit No. 24 of the record from the
2 previous hearing, or perhaps put a date on that.

3 CHAIRPERSON GRIFFIS: Quite precise, Mr. Levy,
4 and a good point.

5 MEMBER LEVY: Thank you.

6 MEMBER SANSONE: Mr. Chairman --

7 CHAIRPERSON GRIFFIS: Yes.

8 MEMBER SANSONE: -- on page 4 of those minutes,
9 on Application 16817, the Capitol City Public Charter School --

10 CHAIRPERSON GRIFFIS: Yes.

11 MEMBER SANSONE: -- you recused yourself in that
12 case. However, you're listed as a participating Board member on
13 page 4.

14 CHAIRPERSON GRIFFIS: Yes. That was one of my
15 comments.

16 MEMBER SANSONE: You should be --

17 CHAIRPERSON GRIFFIS: We'll take myself off as
18 Board member participating. It is noted in the second -- second
19 sentence that I recused myself, but thank you, Ms. Sansone.
20 Anything else?

21 Yes, Mr. Hart?

22 MR. HART: In that -- Mr. Hannaham called in his
23 proxy in favor of approving it.

24 CHAIRPERSON GRIFFIS: Very good. And any
25 comments?

1 MR. HART: No commentary.

2 CHAIRPERSON GRIFFIS: Good. Anything else we
3 needed to address?

4 MEMBER LEVY: One comment on that.

5 CHAIRPERSON GRIFFIS: Mike.

6 MEMBER LEVY: Sorry. On that same Case No. 16817

7 --

8 CHAIRPERSON GRIFFIS: Yes.

9 MEMBER LEVY: -- page 3, the paragraph that
10 begins: "The Board instructed the staff to wait two weeks," in
11 that paragraph we say: "The Applicant is to file all
12 information requested by the Board," and I don't know if we
13 spelled that out anywhere.

14 VICE CHAIRPERSON RENSHAW: But the information is
15 --

16 MEMBER LEVY: Right. But I don't see where we --
17 maybe we should -- could put that in.

18 CHAIRPERSON GRIFFIS: Ms. Renshaw, I'll defer to
19 you on that.

20 VICE CHAIRPERSON RENSHAW: All right. Let's see.
21 All right. I think that that is a matter just to go back into
22 our record and list the information that the Board did request.

23 MEMBER LEVY: Right.

24 VICE CHAIRPERSON RENSHAW: So I accept that. Mr.
25 Etherly, do you have any comment? Are we ready? Do you have

1 any additional comments?

2 MEMBER LEVY: No, that's it.

3 VICE CHAIRPERSON RENSHAW: All right. I so move
4 the minutes of January 22nd.

5 MEMBER LEVY: Second.

6 VICE CHAIRPERSON RENSHAW: All those in favor?

7 (Chorus of ayes.)

8 CHAIRPERSON GRIFFIS: Okay. We can go to -- oh,
9 indeed. Board members have January 29th?

10 MEMBER MITTEN: Mr. Chairman?

11 CHAIRPERSON GRIFFIS: Yes.

12 MEMBER MITTEN: The minutes of January 29th
13 incorrectly list James Hannaham as the participating Zoning
14 Commissioner. That should be me.

15 CHAIRPERSON GRIFFIS: Okay.

16 MEMBER MITTEN: And with that correction, I would
17 move approval of the minutes of January 29th.

18 MEMBER LEVY: One more correction, if I could.

19 CHAIRPERSON GRIFFIS: Yes.

20 MEMBER LEVY: Please. On page 4 -- or a
21 clarification, actually. Page 4, item number 8.

22 VICE CHAIRPERSON RENSHAW: Case number.

23 MEMBER LEVY: I beg your pardon, 16827.

24 CHAIRPERSON GRIFFIS: Right.

25 MEMBER LEVY: We talk about referring to the

1 issue of egress from the property under government agencies. I
2 think we need to specify by exiting the premises that we mean
3 the physical -- the grounds rather than the building, because
4 that was the concern.

5 MEMBER MITTEN: Right. How would you -- how
6 should we modify that? Property?

7 MEMBER LEVY: Would that be clearer, to use
8 property? I want it to be clear that it's land.

9 MEMBER MITTEN: Right.

10 CHAIRPERSON GRIFFIS: Yes. We could just
11 indicate --

12 VICE CHAIRPERSON RENSHAW: Premises is not
13 enough? Doesn't premises include the grounds, in addition to
14 the building?

15 MEMBER LEVY: Well, I think it was -- I don't
16 know. I think it was an important issue we discussed and it's -
17 -

18 CHAIRPERSON GRIFFIS: Why don't we just add
19 property to it, premises and property?

20 MEMBER LEVY: Okay.

21 CHAIRPERSON GRIFFIS: From the rear.

22 MEMBER LEVY: Thanks.

23 CHAIRPERSON GRIFFIS: And do you want -- in the -
24 - this is the Fire Department? Do you want to change "able to
25 exit" and "able to egress"?

1 MEMBER LEVY: Okay.

2 CHAIRPERSON GRIFFIS: Okay. Anything else? Ms.
3 Mitten has moved approval. I'd second. All in favor?

4 (Chorus of ayes.)

5 CHAIRPERSON GRIFFIS: And Mr. Hart, I think that
6 takes us through January. Is that correct?

7 MR. HART: That's correct, sir.

8 CHAIRPERSON GRIFFIS: Good.

9 MR. HART: Okay. The next item on the Agenda is
10 going to be treated as a preliminary matter. It's Application
11 16553-E, George Washington University Campus Plan. And Mr.
12 Chair, I am going to turn this over to you.

13 CHAIRPERSON GRIFFIS: Yes. Thank you, Mr. Hart.

14 And in fact, I don't think we're calling that. What we have is
15 a preliminary matter that we are adjusting the schedule, if I'm
16 -- and I am not mistaken.

17 Let me just grab my information here. And where
18 did I put that? Okay. We have regarding this, comments that
19 were submitted by Ms. Dorothy Miller. We are at this time not
20 able to accept these comments, based on the fact that the record
21 has and is closed.

22 And our rules are fairly explicit in that, and
23 therefore, I do not believe there is anything other than this
24 that we can do at this time. And I would suggest that we direct
25 staff to return the submission to Ms. Miller, who is the

1 Commissioner of ANC 2A-05, and leave it at that.

2 Board members, any other information, comments on
3 that? Noting dead silence, I must be absolutely correct in my
4 statements. Yes?

5 MEMBER MITTEN: No objection.

6 CHAIRPERSON GRIFFIS: Okay. There it is, then.
7 We can proceed.

8 MR. HART: The next item on the Agenda is
9 Application 15826 of Alvin Mitchell, pursuant to 11 DCMR Section
10 3104.1, for a special exception under Section 357 to establish a
11 youth rehabilitation home for ten youths ages 13 through 19
12 years and 12 staff, basement through the third floor, in a R-4
13 District at 2 T Street, N.E., at Square 3509 South, Lot 12.

14 The hearing date of this case was November 22nd,
15 1995. The decision date was February 7th, 1996. Before the
16 proposed order was sent out the record was circulated to all the
17 Board members and a vote taken to send the proposed order to the
18 parties for exceptions. The record was left open for 15 days
19 from the date of service of the proposed order.

20 When reviewing the record before it, the Board
21 noticed that the Certificate of Occupancy was to expire two
22 years after the Board's November 18th, 1993, order. The Office
23 of Zoning has no record of application for a renewal of the
24 Certificate of Occupancy, as required in order to continue
25 operation.

1 The Board, at its December 4, 2001, Public
2 Meeting, instructed staff to request that the Applicant submit
3 proof of such renewal. In accordance with the Board's request,
4 staff made several telephone calls and by letter, Exhibit 93,
5 dated December 19th, 2001, attempted to contact the Applicant.

6 A copy of the letter that was sent to the
7 Applicant was also sent to the Acting Zoning Administrator and
8 General Counsel at the Department of Consumer and Regulatory
9 Affairs. There was no response from the Applicant by the
10 Board's last public meeting, January 2nd, 2002.

11 On a motion made by Carol J. Mitten, seconded by
12 Anne M. Renshaw, the Board voted 4 to zero to 1 to rehear the
13 application. The Board also directed staff to request
14 clarification from the Zoning Administrator as to the status of
15 the site's Certificate of Occupancy.

16 Staff accordingly contacted both the Zoning
17 Administrator and the resident supervisor of the business at the
18 subject site. The result of these actions have been submitted
19 to you in your packages in a letter dated January 9th, 2002, see
20 Exhibit No. 108.

21 On January 17th, 2002, the Office of Zoning staff
22 met with the Applicant, who produced a Certificate of Occupancy,
23 see Exhibit 110. He was apprized of the need for the Board's
24 approval to continue to operate his business, and also, the
25 status of the Certificate of Occupancy was in question, as the

1 Board's Order allowed two years, which would have expired in
2 February 1998.

3 The Applicant informed staff that he intended to
4 withdraw his application and to reapply. Staff explained that
5 Applicant had to submit a letter to the Board indicating his
6 intentions. This letter was not submitted to the Office of
7 Zoning as of Thursday, January 31st, 2002.

8 This letter was in your package and was submitted
9 yesterday. The participating Board members in this case are Mr.
10 Griffis, Ms. Renshaw, Mr. Levy and Ms. Mitten. The case is now
11 before the Board.

12 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart, for a
13 very explicit history of this case, and if I'm not mistaken,
14 they've withdrawn, in which case we have nothing to do on it.

15 MR. HART: Yes, sir.

16 MEMBER MITTEN: Is there a letter that indicates
17 that they've withdrawn?

18 MR. HART: Yes. The Board members got a letter -
19 -

20 CHAIRPERSON GRIFFIS: Yes. Let's --

21 VICE CHAIRPERSON RENSHAW: It's dated February 1,
22 2002.

23 CHAIRPERSON GRIFFIS: Oh, is that right?

24 VICE CHAIRPERSON RENSHAW: Yes. It is signed by
25 Alvin Mitchell to Ms. Kress, as Director of the Office of

1 Zoning, and it said: "Dear Ms. Kress, please accept this as
2 official notice" --

3 MEMBER MITTEN: I'd just as soon get a copy of
4 the letter, rather than have it read to me.

5 CHAIRPERSON GRIFFIS: Well, I have that dated, if
6 it's starting off with the correct date, I have that dated
7 January 28th.

8 VICE CHAIRPERSON RENSHAW: This one is February
9 1, 2002.

10 CHAIRPERSON GRIFFIS: Fabulous stuff we have.
11 Let me borrow one of your copies, then, and just -- I see.
12 Okay. The January 28th, 2002, which is what my question was, is
13 the date that the above-stated matter was they wanted to update
14 their application.

15 February 1st indicates that they hereby withdraw
16 their application. Ms. Mitten, you want to review that, too,
17 please?

18 MEMBER MITTEN: I've seen Mr. Hart's copy.

19 CHAIRPERSON GRIFFIS: Okay.

20 MEMBER MITTEN: Thank you.

21 CHAIRPERSON GRIFFIS: Are we all clear on that,
22 then?

23 MEMBER MITTEN: I just have a question. Given
24 that -- well, notwithstanding the fact that they have a valid --
25 seemingly -- well, that they have a Certificate of Occupancy,

1 let me put it that way, but based on everything that we know
2 about the previous BZA order and the fact that there was a time
3 limit on it, the fact that it was never finalized and so forth,
4 and now, we're in this limbo state where the Applicant doesn't
5 have permission from this Board to operate the facility and
6 they're going to -- they will be coming back or we anticipate
7 that they will be coming back, what's the status of the --
8 what's the legal status of the operation now?

9 CHAIRPERSON GRIFFIS: That's an excellent point.

10 Let me digress for one second. Mr. Etherly has left us this
11 morning because he did not hear these cases and is not part of
12 the decision-making.

13 Picking back up on that, I think your point is
14 correct and I think it was a major concern to the Board when we
15 looked at that, is whether they first have the C of O, and now,
16 whether it is in legal operation.

17 I think what -- our intention is to in fact bring
18 this into legal compliance, and we have -- and staff has worked
19 with the Applicant to urge them to put, as quickly as possible,
20 the application in.

21 I don't think we have any other recourse at this
22 time but to wait for the application to come before us and to
23 monitor the fact of when, and perhaps we in our own minds keep
24 an idea of how much time we allow before we expect to see that,
25 and then contact, obviously, it would be an enforcement agency

1 of DCRA that would look into the C of O and how it was actually
2 issued.

3 MEMBER MITTEN: All right.

4 VICE CHAIRPERSON RENSHAW: Mr. Chairman, just a
5 question about the C of O. Where this one is dated October the
6 12th, 2000, with no expiration date, does the C of O take
7 precedence over a BZA order?

8 CHAIRPERSON GRIFFIS: Absolutely not. You should
9 not be able to get -- and Ms. Sansone can correct me if I'm not
10 correct -- you would not be able to get a C of O if you were not
11 in compliance with a BZA order.

12 VICE CHAIRPERSON RENSHAW: But you --

13 MEMBER MITTEN: Well, we already know that that's
14 not true.

15 CHAIRPERSON GRIFFIS: Well, I understand that. I
16 understand that, but --

17 VICE CHAIRPERSON RENSHAW: Then shouldn't the C
18 of O have as an expiration date the term of the BZA Order?

19 CHAIRPERSON GRIFFIS: That would make sense.

20 MEMBER SANSONE: Mr. Chairman, maybe I can help
21 you out here. When the BZA hears this case again, which
22 hopefully will be very soon, and if it decides at that time to
23 approve the continued operation of the facility, the BZA can
24 specify an order -- I mean -- a term limit for the order, and
25 then perhaps direct staff to send a separate cover letter to

1 DCRA and ask them to make sure that the Certificate of Occupancy
2 identifies the BZA approval number and the term correctly, and
3 indicate that this is of concern, especially with respect to a
4 youth rehabilitation home.

5 CHAIRPERSON GRIFFIS: But Ms. Sansone, generally
6 speaking, if we're looking at a Certificate of Occupancy for a
7 use that has to have some sort of relief from BZA, you could not
8 -- and I understand we have one in front of us -- but you could
9 not legitimately, or correctly, let's say, get a C of O without
10 a standing order from the BZA.

11 MEMBER SANSONE: That's correct, Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Right.

13 MEMBER SANSONE: This C of O was issued in error.

14 CHAIRPERSON GRIFFIS: Okay. Anything further?

15 MEMBER MITTEN: No, thank you. I just wanted to
16 get that on the record.

17 CHAIRPERSON GRIFFIS: Yes. No, and I appreciate
18 that. Good.

19 Mr. Hart, when you're ready.

20 MR. HART: The next case is Application No.
21 16794, of Sylvia and Christopher Addison, pursuant to 11 DCMR
22 3104.1, for a special exception to allow an addition to a
23 single family dwelling under Section 223, not meeting the side
24 yard requirements, Section 405, and pursuant to 11 DCMR 3103.2,
25 for a variance from the side yard provisions under subsection

1 2500.6 to allow the construction of an accessory building in an
2 R-1-B District at premises 3207 Cathedral Avenue, Northwest.
3 This is in Square 2101, Lot 3.

4 The hearing date was November 27th, 2001. The
5 decision dates were January 2nd and today. At the November 27th,
6 2001, Public Hearing, the Board requested that the Applicant
7 provide additional information to augment the file.

8 The Applicant had met the burden of proof for the
9 special exception; however, supplemental information was needed
10 to demonstrate that a practical difficulty exists at the site.
11 The Board asked Applicant to identify the compelling reason for
12 enlarging the accessory building.

13 Also, in an effort to demonstrate the unique or
14 exceptional conditions and practical difficulty of the case, the
15 Board suggested that the Applicant review the site in the
16 context of: the large old oak tree that exists on the property,
17 the history of the building, how the landscape and pool have an
18 effect on the site and alignment of the existing elements on the
19 property.

20 The Board indicated that George Chopivsky, Jr.,
21 the abutting property owner, should be informed that a decision
22 would be made at the Board's January 2nd, 2002, Public Meeting,
23 and that he may submit an additional statement to the file.

24 At its January 2nd, 2002, Public Meeting, the
25 Board determined that the Applicant had not adequately met the

1 required burden of proof relating to the existence of a
2 practical difficulty. The Board directed the Applicant to
3 provide additional and relevant information that would meet the
4 requirements for the requested relief.

5 The requested relief information was scheduled to
6 be submitted on January the 29th, 2002, for a decision at
7 today's Public Meeting. The Applicant's submission is included
8 in your package. The participating Board members are: Mr.
9 Geoffrey Griffis, Mr. David Levy, Ms. Anne Renshaw and Ms. Carol
10 J. Mitten. The application is now before the Board for a
11 decision.

12 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart. Did
13 we have any motions? I know we've indicated in this that the
14 Applicant had met the burden of proof for the special exception,
15 but do we have any motions in this case?

16 MEMBER MITTEN: I believe we just had a consensus
17 on that.

18 CHAIRPERSON GRIFFIS: Yes. That's -- okay. I
19 just wanted to be clear and know where we're going here. Okay.
20 Well, as Mr. Hart has outlined, we're pretty clear on what's
21 happening. We do have the latest submission from the architect,
22 which I think is very well laid out and very explicit into the
23 three-pronged test that we asked for, and frankly, some of the
24 other additional information that we looked at.

25 One of the things that struck me in looking at

1 this and reviewing this again is to look at -- if you look at --
2 in the letter dated January 24th, 2002, I think this is the most
3 precise way to do it, the description of the project.

4 The proposed two-story accessory structure, which
5 is of course a matter of right building in this R-1-B District,
6 measures 21 feet odd inches, 26. The existing is at 19 feet odd
7 inches and 22.

8 The difference and the point I'm bringing this up
9 is literally a matter of several feet and not an extensive
10 piece, and that I think goes to -- one of the tests, of course,
11 is the impact on the area and the adjacent neighborhoods, but
12 also I think puts into perspective the issue of what we're
13 looking at in terms of relief.

14 If we go to the variance in the side yard for a
15 structure, what is the encroachment on the side yard that this
16 is actually asking relief from? And again, I would go to
17 section 4 of the letter: "The relief requested variance from
18 side yard set back requirements."

19 For the R-1-B it's required to be eight feet.
20 Now, the existing is five feet, nine inches. Of course, it's
21 nonconforming. And I think it's laid out here also the fact
22 that that is a common occurrence in this specific area, to have
23 nonconforming side yards.

24 The accessory building is looking to encroach on
25 the nonconforming five foot, nine inch side yard, all of making

1 it four feet, eight inches. And by my quick calculations,
2 that's one foot, one inch, 13 inches total, again, I think
3 underscoring the fact of small impact on this.

4 Now, that's where I want to start. I would open
5 it up and I have other things to speak to, but why don't we take
6 other comments, if there are any, or motions.

7 MEMBER MITTEN: Mr. Chairman, I think
8 notwithstanding the fact that the amount of variance relief is
9 relatively minor, it doesn't change the burden of proof, and I
10 have an ongoing concern that has not yet been allayed that this
11 Applicant had not met their burden of proof.

12 And the reason for that is the way that the
13 Applicant has approached responding to the Board in attempting
14 to meet the burden of proof is to show how this expanded
15 structure, if put elsewhere, if placed properly on the site,
16 would cause a practical difficulty, and that's not the test.

17 The test is, if the variance is not granted so
18 that if they cannot have a second story that's of sufficient
19 size to house a domestic employee, and if they can't enlarge the
20 garage to accommodate two cars and their pool equipment, how
21 that causes a practical difficulty.

22 Not -- and I think, you know, in the introduction
23 to this, Mr. Hart said it very well and I think the Board was
24 not unclear about what the test was, because we asked the
25 Applicant to identify the compelling reason for enlarging the

1 accessory building, and we haven't received that argument yet.

2 And so I know we've given them ample opportunity
3 to meet the burden, and I still think that they haven't as it
4 relates to practical difficulty.

5 CHAIRPERSON GRIFFIS: Okay. Well, I think, first
6 of all, in terms of enlarging they have given reason to do that.

7 And talking about the off street parking and talking about
8 making accommodations and -- for the storage of equipment, I
9 think goes to the reasoning behind the expansion of the
10 accessory building.

11 I think we cannot lose sight of the fact that we
12 need to take this also within context of the property itself,
13 and as that goes, your statement is the fact that, look, you
14 could build this, you could put two stories on it and you can
15 put it anywhere, why bother us for relief.

16 And I think we need to go to the difficulty in
17 its location anywhere else, based on the statements that were
18 said, and I'll go further into that. But I think a lot of it
19 has to do with the symmetry of the site and the structures that
20 are on the site.

21 MEMBER MITTEN: If I may just clarify my point,
22 because I think you may have missed my point, which is not,
23 look, you could -- my position is not, they could do this
24 elsewhere on the site, they could enlarge the garage in a
25 different manner, although I think they probably could.

1 But my point is -- and I think as it relates
2 directly to the burden of proof -- is they have not given us a
3 compelling reason. They may have given us a reason, but they
4 don't show, for instance, why there's a practical difficulty
5 created from having a one-car garage versus a two-car garage in
6 this location.

7 CHAIRPERSON GRIFFIS: But I think --

8 MEMBER MITTEN: I haven't --

9 CHAIRPERSON GRIFFIS: -- I think what we need to
10 --

11 MEMBER MITTEN: -- I'm just trying to clarify my
12 point.

13 CHAIRPERSON GRIFFIS: No. Okay. Go ahead.

14 MEMBER MITTEN: If I could just finish.

15 CHAIRPERSON GRIFFIS: Sure.

16 MEMBER MITTEN: We don't know why they can't, for
17 instance, house their pool equipment in a portion of their
18 house, perhaps in the basement. We don't have that argument in
19 the record.

20 We need to understand why denying this variance
21 creates a practical difficulty, because it thwarts the
22 enlargement of this accessory building, and I just -- that's my
23 point.

24 CHAIRPERSON GRIFFIS: Okay. And I fully
25 appreciate that, and I think what we're missing here is the fact

1 that I don't question that they can enlarge this, because they
2 can as a matter of right. They're not looking for a height
3 variance. They're not looking for any sort of density lot
4 occupancy.

5 Nothing is telling them that they cannot have, as
6 designed, this structure. Now, what they're telling us is,
7 look, this structure as it fits within this lot, which is of a
8 stature of age, has certain improvements on the site that lend
9 itself to this -- the continuing site layout.

10 They have this building that's a matter of right.
11 Now where do they place it on this site. And what we're
12 telling them is, no, you've got to set it back because we have
13 these strict regulations that tell us, you need to set back
14 eight feet.

15 And what they are telling us and saying, look,
16 that's a practical difficulty in the fact that it has no
17 relation to the design of the building. It has no relation to
18 any of the other aspects on this site.

19 It goes against some of the other intentions of
20 the zoning in terms of tree protection and in terms of, frankly,
21 some of the things that this Board looks at with great interest
22 these days, of the design, the location, the animation of this
23 site.

24 And that's where I am in terms of the placement
25 of this matter of right structure.

1 MEMBER LEVY: Mr. Chair.

2 CHAIRPERSON GRIFFIS: Yes.

3 MEMBER LEVY: If I could just add to that. I
4 think that the Applicant does lay out on page 4 of the new
5 submission that a practical difficulty exists regarding the
6 floor plate of the living space on top of the garage, and that
7 in order to comply with the existing regulations the floor plate
8 would be not of adequate size for the permitted use.

9 And I think that ties into this whole discussion
10 of whether or not the garage could be moved further toward an
11 existing mature tree in the yard, and what detrimental impact
12 that could have.

13 CHAIRPERSON GRIFFIS: Good.

14 MEMBER MITTEN: Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Yes.

16 MEMBER MITTEN: I would just like to recall to
17 mind an order that we read recently, because it was finalized in
18 a case that's not that dissimilar from this one, which is the
19 Goodman case. And it was -- and while the type of variance they
20 were seeking is different than this, the burden was the same.

21 And there were many challenges for the Applicant
22 in terms of -- many challenges for them if they wanted to
23 provide housing for a domestic employee. And the challenges
24 included that they have a historic dwelling, that they had a
25 granite something underground that was going to cause problems

1 for excavation. They had existing landscaping on the site.

2 CHAIRPERSON GRIFFIS: Antique boxwoods, I
3 believe.

4 MEMBER MITTEN: Yes, antique boxwoods, right, and
5 historic -- what they consider to be a historic cistern and many
6 things. And notwithstanding all of those challenges, we felt
7 that they did not meet their burden of proof because they did
8 not show that they could not accommodate these uses in another
9 way. And I don't think that this case is any different from the
10 Goodman case.

11 CHAIRPERSON GRIFFIS: I see hardly any
12 comparisons of the two. First of all, Goodmans had a two-car.
13 They're going to a three-car. They had a proximity of neighbors
14 that were in opposition because the extended height would in
15 fact impair the light and air and use of the adjoining
16 neighbors, and I think that's where a lot of it went.

17 So I don't think they met their case on several
18 levels, and the comparison here, although an accessory
19 structure, I wouldn't go further than that. Although -- well, I
20 might.

21 The comparison that you bring up is a good one,
22 that the -- in terms of the landscaping, in terms of the
23 existing structures in the site, in terms of the historic nature
24 -- that may not be directly to this one -- but yes, those were
25 all very seriously taken elements, and part of the deliberation.

1 But I think, as I state, the Goodman case had a
2 heck of a lot of other issues involved that this one clearly
3 does not. So that's maybe not crazy.

4 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I'd like
5 to get back to this case and just --

6 CHAIRPERSON GRIFFIS: With pleasure.

7 VICE CHAIRPERSON RENSHAW: -- just note for the
8 record that there is no opposition on the case. I think that
9 Mr. Horsey, the architect's January 24th, 2002, submission is
10 pretty explicit. The explanation of the problem with the tree
11 and -- is compelling.

12 That does play a part in the positioning and the
13 reliefs being sought. I am on the fence on this one. I
14 understand Ms. Mitten's practical difficulty argument. I'm not
15 sure that the placement of pool equipment is -- you know -- that
16 compelling to me.

17 In other words, it could be -- it might be able
18 to be put in a basement versus an enlarged garage. However,
19 this matter is small. Again, no opposition from the neighbor or
20 the neighborhood. I think that it is within the Applicant's
21 right to present this to us.

22 I don't think that it is going to harm the map
23 and the regulations. But again, I'm right on the fence and I am
24 listening carefully to the spirited discussion between you, Mr.
25 Chair, and Ms. Mitten, who is -- seems to be very much in

1 opposition to approval.

2 CHAIRPERSON GRIFFIS: Thank you. And who has
3 more spirit? Oh, wait. No. We'll get there.

4 VICE CHAIRPERSON RENSHAW: The discussion is
5 spirited.

6 CHAIRPERSON GRIFFIS: To some of what you're
7 saying, Ms. Renshaw -- and I want to add on because I think the
8 final paragraph of the January 24th, 2002, letter under Section
9 B, which goes to the practical difficulty, speaks to me loudly,
10 and I think it doesn't stand alone but is part of the larger
11 picture and what I was trying to get at.

12 And that is that if the building was to be set
13 back -- and I'm kind of paraphrasing what's actually written --
14 and the relationship between the main dwelling and the accessory
15 building would be less direct, the architectural and historic
16 quality of the whole, the whole here, could be diminished.

17 This would result in a detriment to both the
18 owners -- hopefully, that's -- both the owner's and the public
19 good, both of which are served by a more cohesive and
20 historically compatible project.

21 (Pause)

22 CHAIRPERSON GRIFFIS: Thank you. Again, I think
23 if you factor all the issues that are involved in this and you
24 put it in the context of the site, the difficulties that -- and
25 it's probably more difficult to grab clearly onto that concept.

1 But I think as a user of a building that that can
2 go to the practical difficulty of shifting something out of
3 symmetry and out of design of the existing structures. But I
4 think what is even more strong is the fact of how it will impact
5 the rest of the area.

6 And so what are we to do to uphold the
7 regulations as stated at, frankly, the detriment of the
8 surrounding area? Although it may not be monumental, it will be
9 slight and will be permanent.

10 Or do we, as we are afforded the authority,
11 provide relief on specific cases so that they can in fact
12 integrated well and be acceptable to the surrounding area and
13 the users themselves?

14 MEMBER MITTEN: If I can just have one last
15 opportunity to speak about this case, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Sure.

17 MEMBER MITTEN: One thing that always troubles me
18 about the cases that we have is that somehow it is perceived
19 that part of the burden of proof is either accommodating
20 opposition.

21 CHAIRPERSON GRIFFIS: Yes.

22 MEMBER MITTEN: Or if there is no opposition that
23 somehow that weighs on the burden of proof. And the fact that
24 there's no opposition in this case I don't think relieves the
25 burden of proof at all. The burden of proof is constant.

1 That's point number one.

2 Point number two is, I think there's a reason why
3 the test refers to practical difficulty, and I don't believe --
4 and that means the functioning of a property or the way in which
5 it fits into the larger context of a market, as opposed to the
6 way a particular property owner makes use of it.

7 And I think that the fact that it's a test of
8 practical difficulty, it's very difficult, if not improper, to
9 put -- to overemphasize the fact that you might achieve a
10 superior design by granting the variance.

11 I don't think that because if you grant a
12 variance you can get a better looking building. There's
13 probably a lot of cases around the city where granting variances
14 would result in superior design, but that's not -- again, I
15 don't think that's what the test is about.

16 So the fact that you can create some superior
17 historic and aesthetic symmetry for the property, again, I don't
18 think that weighs on the burden of proof. And I'm ready to vote
19 if --

20 CHAIRPERSON GRIFFIS: Okay. No, and it -- I want
21 to address some of the things because I do not agree with you,
22 and I think zoning, in numerous instances in fact, goes to
23 design. In the mere placement of a building we're talking about
24 design and how it functions within the area.

25 So I would say those buildings that can be

1 approved by relief, bring them on, but that's a larger picture.

2 When you go to practical difficulties you forget the two words
3 that also go to this, and that is "peculiar" and "exceptional."

4 Peculiar is a fascinating word, and I think
5 animates just the practical difficulty, if not opening up the
6 interpretation of what practical difficulties would be.
7 Opposition. Your point of opposition is very good and I think
8 it should be underscored, and I want to restate it.

9 And that is, this is not a popularity contest;
10 clearly is not, if you have no opposition you get some sort of
11 relief or approval, and if you do have opposition you might as
12 well pack it up and go home. The test and the burden is equal
13 on both of those.

14 However, what opposition often does, in my
15 personal understanding or hearing of cases, but I think
16 specifically goes to, is the fact that opposition illuminates
17 problems that go to impact, and that is, of course, the light
18 and air, whether it be special exception or variance.

19 So opposition often gives us information or
20 actually creates those pieces that we need to take into
21 deliberations. So this is not that this has no opposition, I
22 think only says to me that there is an adverse -- it speaks to
23 the fact that there is an adverse impact. Is that clear?

24 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

25 CHAIRPERSON GRIFFIS: Yes.

1 VICE CHAIRPERSON RENSHAW: I just wanted to point
2 out again that this case has gone before ANC 3C and it was
3 exhaustively analyzed. And we have records in our file. It is
4 -- I don't have a record number. Let's see; do I?

5 There is no record number or exhibit number on
6 this, but we have a letter dated November 27th. I'm satisfied
7 that the community has examined this case very, very carefully,
8 as the ANC has expressed and has put it forward to us.

9 And we would have heard from the ANC if the ANC
10 or any of the neighbors who attended that meeting had
11 difficulties with our words and our test. But obviously, the
12 ANC did not and that is the first cut before it reaches the BZA.

13 So again, I think while we are looking very, very
14 closely at the test and we appreciate, or I appreciate Ms.
15 Mitten's very close examination of this, I am ready to put it
16 before the Board and I would move that we approve this
17 application.

18 Case No. 16794 for the special exception to allow
19 an addition to a single family dwelling under section 223, not
20 meeting the side yard requirements, and for the variance from
21 the side yard provisions under section 2500.6, to allow the
22 construction of an accessory building in an R-1-B District at
23 3207 Cathedral Avenue, Northwest.

24 CHAIRPERSON GRIFFIS: Second. Discussion.

25 MEMBER MITTEN: Just one further point, even

1 though I said that I was done talking. Since you went back --

2 CHAIRPERSON GRIFFIS: Can we waive the rules on
3 this?

4 (Laughter)

5 MEMBER MITTEN: This'll be brief. I just wanted
6 to point this out because this bears on our deliberations on
7 other cases, as well.

8 CHAIRPERSON GRIFFIS: Indeed.

9 MEMBER MITTEN: Since you went back to the
10 wording of the ordinance, I would just like to read precisely
11 what it says, which is that:

12 "Strict application of any regulation would
13 result in" -- and this is where you were quoting
14 -- "peculiar and exceptional practical
15 difficulties."

16 And I just want to emphasize for the Board that
17 "peculiar and exceptional" modify "practical difficulties."
18 These are not just any practical difficulties. These are
19 peculiar and exceptional practical difficulties.

20 And we've had very little showing by the
21 Applicant of the fact that there are any practical difficulties,
22 and I just don't think these rise to the level of peculiar and
23 exceptional practical difficulties. Thank you.

24 CHAIRPERSON GRIFFIS: Thank you. Other comments?

25 I have one, and the record will show -- and this is lengthy --

1 but obviously, we have the special exception and the motion, and
2 also the variance special exception under 223.

3 And I think we -- the record will show the fact
4 of the materials and the design of the building and all of our
5 discussion and deliberations and information on that. I would
6 then say -- and this I will give one more time. Okay. Good.
7 Then all those in favor of the motion.

8 (Chorus of ayes.)

9 CHAIRPERSON GRIFFIS: And those opposed?

10 MEMBER MITTEN: No.

11 CHAIRPERSON GRIFFIS: And if staff would record
12 the vote.

13 MR. HART: Staff will record the vote as three
14 to one to one, Ms. -- to approve. Ms. Renshaw, made the motion.

15 Mr. Griffis seconded. Ms. Mitten opposed and the third mayoral
16 appointee not voting, not having heard the case.

17 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart. Then
18 the motion would carry.

19 MEMBER MITTEN: May I just clarify one point,
20 which is I didn't -- I am still in -- I still agree with our
21 original consensus about the special exception.

22 CHAIRPERSON GRIFFIS: Yes.

23 MEMBER MITTEN: But I voted against the motion
24 because it included the variance. Just wanted to be clear about
25 that.

1 CHAIRPERSON GRIFFIS: Good. And I think the
2 Board thanks you for your comments and deliberation on this.
3 And that takes us to the next, Mr. Hart.

4 MR. HART: The next case is Application No.
5 16798, of Joanne E. Borsh and Joseph A. Ostoyich, pursuant to 11
6 DCMR 3104.1, for a special exception to allow an addition to a
7 one family dwelling under section 223, not meeting the lot
8 occupancy requirements, section 403 and subsection 2001.3, and
9 side yard requirements, section 405, in a R-1-B District at
10 premises 4325 47th Street, Northwest, at Square 1552, Lot 38.

11 The hearing date of this case was November 27th,
12 2001. The Board heard the facts of the case and requested that
13 the Applicant provide the following additional materials: one,
14 updated design drawing that incorporate the changes presented to
15 the Board at the hearing.

16 Two, elevation drawings allowing the rear --
17 showing the rear of the premises; three, redesigned roof plan; a
18 brief description of the materials that will be used to
19 construct the addition. The Board strongly recommended that the
20 Applicant consider using masonry materials for the addition;
21 however, it was not required.

22 The design elements should be consistent with the
23 requirements identified in the section 223 of the Zoning
24 Regulations. The Applicant offered to obtain a letter, to be
25 submitted into the file, from the property owner who resides

1 across from the alley, and who would be most affected by the
2 proposed addition.

3 The time line on this case was January 22nd, 2002.

4 Materials were to be filed with the Board. February 5th, the
5 day of the decision by the Board. The Applicant's submission is
6 in your package.

7 The Board members participating are: Mr.
8 Geoffrey Griffis, Mr. David Levy, Ms. Anne Renshaw and Ms. Carol
9 J. Mitten. The Applicant is now before the Board for a
10 decision.

11 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart. And
12 in our submission package I think they have addressed all of the
13 issues that we asked for, and now we just need to see how our
14 deliberations go on the submissions.

15 But let me just state that January 18th we have
16 the letter stating that they will try, to the best of their
17 ability, to match the existing structure and proposed using
18 brick, although they are doing some budget calculations on that.

19 And the other is, we do have a letter of December
20 17th from John Kennedy, who is the neighbor, stating that they
21 have no objection to the plans. And finally, we have the new --
22 or the approved set of plans that give us an indication -- I
23 think -- if I -- I think what we were looking to do is find more
24 specifically what was happening in this addition, as they were
25 very schematic in terms of drawings previously. And with that,

1 I will take discussion.

2 MEMBER LEVY: Mr. Chair.

3 CHAIRPERSON GRIFFIS: Yes.

4 MEMBER LEVY: I move approval of Application No.
5 16798, to allow a special exception to a single family dwelling
6 under section 223, not meeting the lot occupancy requirements
7 and side yard requirements, at the premises 4325 47th Street,
8 Northwest.

9 I think with the additional materials the
10 Applicant has provided that he's made his case, particularly
11 with his letter from the neighbor across the alley, that he's
12 made his case. Light and air available to neighboring
13 properties and privacy and enjoyment of views will not be
14 adversely impacted.

15 And additionally, also I think they've laid out
16 the case that the addition as viewed from the street won't
17 substantially and visually intrude upon the character, skill and
18 pattern. The materials used are those similar to other houses
19 and similar to the house in question, so.

20 MEMBER MITTEN: Second.

21 VICE CHAIRPERSON RENSHAW: Comment?

22 CHAIRPERSON GRIFFIS: Yes.

23 VICE CHAIRPERSON RENSHAW: I just wanted to make
24 clear on these revised plans that we're looking at, on the first
25 floor plan we see some dimensions on the right-hand side showing

1 what I think is -- well, it says 12 feet. Do you see where it -
2 - the lines bracket --

3 CHAIRPERSON GRIFFIS: Right.

4 VICE CHAIRPERSON RENSHAW: -- kind of a little
5 above? And I wondered, is that a deck or is the door and the
6 steps just leading to --

7 CHAIRPERSON GRIFFIS: Yes.

8 VICE CHAIRPERSON RENSHAW: -- ground level patio?

9 CHAIRPERSON GRIFFIS: If you recall, they had a
10 deck proposed in the first go-round, and that's one of the
11 changes that we needed to see documented. No. That is a
12 dimension line that you're referring to in the first floor plan.

13 VICE CHAIRPERSON RENSHAW: That's what I thought.

14 CHAIRPERSON GRIFFIS: Which is a hand-drawn plan
15 in our record, and that is the dimension of the addition, which
16 it looks like is basically in a line with the existing
17 structure, however, not the bump-out, which was an addition to
18 the existing structure.

19 VICE CHAIRPERSON RENSHAW: So there is no deck.

20 CHAIRPERSON GRIFFIS: As it's showing here now,
21 there is no deck that walks down to grade.

22 Mr. Levy, is that your interpretation?

23 MEMBER LEVY: It is.

24 CHAIRPERSON GRIFFIS: Okay.

25 MEMBER LEVY: And additionally, one of my

1 concerns that I had at the hearing was that the roof plan didn't
2 match the elevations.

3 CHAIRPERSON GRIFFIS: Right.

4 MEMBER LEVY: And those have been clarified --
5 cleared up in the new submission.

6 CHAIRPERSON GRIFFIS: Yes. I think we can run
7 through it. Obviously, they're part of the record, though. But
8 the roof plan is there and they're talking about having a metal
9 roof over a portion of the piece that will actually have a lower
10 slope.

11 They have a skylight included and then they have
12 the south elevation, which is the rear elevation, and a side
13 elevation, which gives us -- excuse me -- a great indication of
14 what's happening. So any other comments? Clarification?

15 Very well, then. All those in favor, aye.

16 (Chorus of ayes.)

17 CHAIRPERSON GRIFFIS: And opposed?

18 MR. HART: Mr. Chair, all right. The vote is
19 four to zero to one. Mr. Levy made the motion. Ms. Mitten
20 seconded it and the third mayoral appointee did not vote, not
21 having heard the case. Mr. Chair, if I recall, there's no --
22 there was no opposition and is this a summary order?

23 CHAIRPERSON GRIFFIS: I don't recall that they
24 requested that, but I don't see any problem --

25 MR. HART: No problem.

1 CHAIRPERSON GRIFFIS: -- with doing a summary
2 order on this.

3 MR. HART: Now, here's another -- I don't know if
4 I'm stepping out of line, but the situation was the same with
5 the prior case, the Addison case, same request.

6 CHAIRPERSON GRIFFIS: Yes. Let's get some
7 direction, perhaps, or comments on -- in the fact that the Board
8 did have an opposing vote. Would it be appropriate to do a
9 summary order on this?

10 MEMBER SANSONE: Mr. Chairman, I think I'd
11 recommend a kind of compromise, perhaps an order with some
12 simple findings of fact and conclusions of law. In light of the
13 fact that there was a neighbor that did weigh in with some
14 comments, I think it'd probably be appropriate; perhaps not a
15 full-blown order, but something a little more involved than a
16 summary order.

17 CHAIRPERSON GRIFFIS: Okay. So somewhere in
18 between. We'll call it a summary order with some beef. Wait a
19 minute, is that technical enough?

20 VICE CHAIRPERSON RENSHAW: No.

21 CHAIRPERSON GRIFFIS: Oh, we can't say that.
22 Okay. Strike that from the record.

23 MS. BAILEY: Modified summary order?

24 CHAIRPERSON GRIFFIS: Yes, that's fine.

25 MS. SANSONE: Quasi; quasi.

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MR. HART: That is it from me, sir.

CHAIRPERSON GRIFFIS: Fabulous, then. This will then conclude the Public Meeting of February 5, 2002.

(Whereupon, the Board of Zoning Adjustment Public Meeting was concluded at 10:44 a.m.)