

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

NOVEMBER 19, 2002

+ + + + +

The Public Hearing was convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

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

9:32 a.m.

CHAIRMAN GRIFFIS: Good morning, ladies and gentlemen. I would like to call to order the 19 November 2002 public hearing of the Board of Zoning Adjustments of the District of Columbia. My name is Jeff Griffis, and I am Chairperson. Joining me today is the Vice Chair, Ms. Ann Renshaw. Also, Mr. Curtis Etherly, who will be joining us momentarily.

Representing the National Capital Planning Commission is Mr. David Zaidain, and representing the Zoning Commission is Mr. Parsons. Copies of today's agenda are available for you. There should be plenty at the table next to the door where you entered into the hearing room. Please be aware that these proceedings are being recorded. There are several issues attendant to that. First, when you come forward, you will need to speak into that microphone; that microphone should be on. Second, we would ask that we not have any disruptive noises or actions in the hearing room which would clearly distract from the proceedings.

I would also ask that everyone turn off cell phones and beepers so that we don't have additional distractions. And, when coming forward to

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1 speak to the Board to give testimony, you're going to
2 need to fill out witness cards -- two witness cards
3 per person. Those witness cards are to be filled out
4 and delivered to the reporter who is sitting to my
5 right.

6 Order and procedure for special exceptions
7 and variances today will be, first, statements and
8 witnesses of the applicant. Second will be government
9 reports, such as Office of Planning and any other
10 reports attendant to the application. Third is the
11 report from the advisory neighborhood commission.
12 Fourth would be parties or persons in support of the
13 application. Fifth would be parties or persons in
14 opposition. And sixth, we will have closing remarks
15 and any rebuttal testimony from the applicant.

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

20 The record will be closed at the
21 conclusion of each case, except for material
22 specifically requested by the Board. And we are very
23 specific about what is to be submitted and when it is
24 to be submitted to the Office of Zoning. If there are
25 any questions, clearly, we will make sure that

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1 everyone understands. After the final submissions are
2 received, clearly, the record will be closed and no
3 other information would be accepted by the Board.

4 The Sunshine Act requires public hearings
5 on each case be held in the open and before the
6 public. However, the Board may, consistent with its
7 rules and procedure and the Sunshine Act, entered into
8 executive session, either before or during, in order
9 to review the record and to deliberate on the case.
10 The decision of the Board in contested cases and in
11 all cases is to be based exclusively on the public
12 record. To avoid any appearance to the contrary, we
13 ask that people present today not engage Board members
14 in conversation.

15 With that, I think we are ready for any
16 preliminary matters. Preliminary matters are those
17 which relate to whether a case will or should be heard
18 today, such as requests for postponements,
19 continuances, withdrawals, or whether proper and
20 adequate notice has been given regarding the case. If
21 you are not prepared to go forward today with a case,
22 now is almost the time to bring it to the Board's
23 attention.

24 First, let me also say good morning to the
25 Office of Zoning staff who is with us today, Ms.

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1 Bailey and Mr. Moy, also corporation counsel, Ms.
2 Monroe. With that, I turn to the staff to see if they
3 have any preliminary matters for the board.

4 MS. BAILEY: Mr. Chairman, members of the
5 Board, good morning. There are several preliminary
6 matters, Mr. Chairman, the first of which has to do
7 with the first case application 16945, Calvary Baptist
8 Church, and Congregation, Inc., and Calvary Baptist
9 Church Extension Association. Mr. Chairman, that
10 application has been withdrawn.

11 CHAIRMAN GRIFFIS: Thank you.

12 MS. BAILEY: The second preliminary matter
13 has to do with Case No. 16948, Nicholas Perrins. The
14 applicant in that case requested that it be postponed
15 to a later date. Is Mr. Perrins here? Would you
16 please have a seat at the table, sir.

17 The Chair will take it from here, Mr.
18 Perrins.

19 CHAIRMAN GRIFFIS: If you wouldn't mind,
20 just turn the mic on. Excellent, and would you just
21 introduce yourself for the record, your name and
22 address.

23 MR. PERRINS: I live at 1830 F Street,
24 N.W.

25 CHAIRMAN GRIFFIS: Okay, and we do have a

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1 brief request for a continuance. Do you want to just
2 fill in some detail.

3 MR. PERRINS: Sure, we put in the request,
4 and the subsequent -- put in the proposal to the
5 Board. And subsequent to that, we found out that our
6 neighbors behind us had an issue with what we were
7 designing. We met at the ANC Board, and my wife and I
8 want to work it out with them before -- we don't want
9 to have it contested or them unhappy with us. so, we
10 want to work with their architects, and we just need
11 some more time to create a new drawing that we'd then
12 like to submit to you.

13 CHAIRMAN GRIFFIS: I see. Okay, so in
14 that sense, what I'm understanding is that you're not
15 prepared to go forward today based on the fact that
16 you think the design will be substantially changing.

17 MR. PERRINS: I think it will be
18 substantially different, so yes, that's right, sir.

19 CHAIRMAN GRIFFIS: Okay. Any other
20 questions from the board?

21 (No response.)

22 CHAIRMAN GRIFFIS: Any opposition to
23 granting a continuance in this case?

24 (No response.)

25 CHAIRMAN GRIFFIS: Mr. Perrins, let me

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1 just say we frown on continuances.

2 MR. PERRINS: I'm sorry. We didn't find
3 out -- it's a weak defense. We didn't find out until
4 they were unhappy with us until fairly late in the
5 game, and so --

6 CHAIRMAN GRIFFIS: Indeed. I think the
7 Board's understanding of this situation, and I have to
8 say that with every one we get because it does make it
9 difficult, as you are about to see.

10 What is the new date for continuance of
11 this case?

12 MR. PERRINS: We ask for 90 days. And you
13 should have received, Ms. Bailey, a letter from our
14 neighbors, and they were happy with that as well.

15 MS. BAILEY: When did that letter come in?

16 MR. PERRINS: It should have come in
17 yesterday. She was traveling. It came to Mr. Nero,
18 here.

19 MS. BAILEY: Mr. Chairman, we're looking
20 at sometime in February, then.

21 CHAIRMAN GRIFFIS: That's about the
22 closest we can do it, regardless. Is that not
23 correct?

24 MS. BAILEY: Yes, Mr. Chairman. February
25 11, the morning session, is now open, from looking at

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1 the schedule.

2 CHAIRMAN GRIFFIS: Mr. Perrins, are you
3 available on February 11th in the morning?

4 MR. PERRINS: Yes, sir.

5 CHAIRMAN GRIFFIS: If we don't have any
6 party status requests in this case, then there is it.
7 Unless anyone has any objection to that, I'd say we
8 set it for the morning, February 11 -- you know, it's
9 going to be 2003.

10 MS. RENSHAW: Mr. Chairman, I just want to
11 ask Mr. Perrins, you will be taking this back to your
12 ANC?

13 MR. PERRINS: Yes, ma'am.

14 MS. RENSHAW: Very good.

15 MR. PERRINS: Yes.

16 MS. RENSHAW: Thank you.

17 CHAIRMAN GRIFFIS: Excellent, then there
18 it is. Thank you very much.

19 Anything else in the morning, then, for
20 preliminary matters?

21 MS. BAILEY: No, Mr. Chairman.

22 CHAIRMAN GRIFFIS: Very good. Does anyone
23 in the hearing room have any preliminary matters for
24 the Board?

25 (No response.)

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1 CHAIRMAN GRIFFIS: Not seeing anyone jump
2 to the table, why don't we call the first case of the
3 morning, then.

4 MS. BAILEY: Application 16949 of
5 Monterrey Cooperative Inc., pursuant to 11 D.C.M.R.
6 3104.1, for a special exception to construct a roof
7 structure with enclosing walls that are not equal to
8 the height under Section 411 and pursuant to D.C.M.R.
9 3103.2, a variance to enlarge an existing roof
10 structure of a building, which is non-conformant as to
11 height under subsection 2001.3 to permit the
12 renovation of an apartment building in the CP-C28
13 district at premises 2902 Porter Street, N.W., Square
14 2068, block 91.

15 Please stand to take the oath.

16 Whereupon,

17 THE WITNESSES IN CASE 16949,

18 having first been duly sworn, testified as follows:

19 CHAIRMAN GRIFFIS: Whenever you're ready.

20 MR. EPTING: Good morning, Chairman,
21 members of the Board. I'm John Epting of Shaw
22 Pittman. With me today is Mark Hoffman,
23 representative of the owner of the property, Chris
24 Morrison from Cunningham Krill Architects, and Ralph
25 Cunningham will also be coming.

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1 We're going to be brief. Our apartment
2 building located at 2902 Porter Street, at the corner
3 of Connecticut and Porter; it's in the Cleveland Park
4 C2A district. It's in the Cleveland Park historic
5 district. It's currently not conformed high
6 (inaudible) a number of issues and we need a variance
7 under 2001.3 to renovate the structure. And that's
8 what this case is all about.

9 I've circulated copies of the resumes of
10 our expert witnesses, the two architects. I think
11 Beverly's going to hand those out now. They've
12 already been witnesses before the Board, but I'd like
13 you to approve those, if you would.

14 (Brief pause.)

15 CHAIRMAN GRIFFIS: While this is going
16 out, it has -- and you've addressed it in your written
17 submission. Page 4 is the cite I'm looking at, but
18 that is in terms of the special exception. Do you
19 want to just brief the board currently about why that
20 isn't applicable at this point?

21 MR. EPTING: Sure. We've actually filed a
22 letter from the zoning administrator.

23 CHAIRMAN GRIFFIS: Is that on file now?

24 MR. EPTING: Yes. I don't know if I have
25 the exhibit number, but it's --

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1 CHAIRMAN GRIFFIS: Okay. I may have
2 overlooked it. I know that was cited.

3 Do you have a copy?

4 When was it put in, do you know?

5 MR. EPTING: It was done November 11.
6 I've got exhibit sheets.

7 CHAIRMAN GRIFFIS: Interesting. Okay --
8 here it is. It's dated November 6.

9 MR. EPTING: That's November 6.

10 CHAIRMAN GRIFFIS: What did I say?

11 MR. EPTING: That's it. I can show you --

12 CHAIRMAN GRIFFIS: I thought you were
13 correcting me. The letter is indicating it's signed
14 by Mr. Kelly, confirming discussion on November 1,
15 2002, regarding this property, 2902 Porter Street.
16 The D.C. Zoning Regulation Section 411.5 require that
17 roof structures and close walls shall be equal height
18 and shall rise vertically to a roof.

19 In this case, as shown on the plans
20 reviewed in this office, there is an ornamental
21 trellis feature at the center of the penthouse. The
22 trellis extends to a height greater than the penthouse
23 walls. Because of the ornamental nature of the
24 trellis, it is considered an architectural
25 embellishment and should not be subject to the

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1 requirement of Section 411.5 of the zoning regs.

2 If I understand that correctly, you have
3 the penthouses of equal height, and the trellis is
4 higher.

5 MR. EPTING: That's correct. So, when we
6 first filed --

7 CHAIRMAN GRIFFIS: Wait a second. Twelve
8 inches higher?

9 MR. EPTING: Yes.

10 CHAIRMAN GRIFFIS: Oh, my God. Everyone
11 clear on -- very good.

12 MR. EPTING: It was out of an abundance of
13 caution that I asked for the special exception.

14 CHAIRMAN GRIFFIS: Indeed. Well -- all
15 right, we'll get into it. How are the penthouses
16 connected? They're connected in the center, is that
17 correct, and the trellis doesn't project all the way
18 back. So there's an equal height and there's one
19 single penthouse, is that correct?

20 MR. EPTING: That's correct.

21 CHAIRMAN GRIFFIS: Okay.

22 MR. EPTING: We were trying to have a
23 feature that was more ornamental than a normal
24 penthouse.

25 CHAIRMAN GRIFFIS: Right. Okay.

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1 MR. EPTING: But Zoning didn't quite know
2 what to do with it.

3 CHAIRMAN GRIFFIS: Yeah. That's shocking,
4 actually.

5 MR. EPTING: I say, unless there are
6 further questions, I'm ready to turn it over to Mr.
7 Kaufman.

8 CHAIRMAN GRIFFIS: I think so. Any
9 preliminary questions?

10 (No response.)

11 CHAIRMAN GRIFFIS: Very good. Let's do
12 that.

13 MR. KAUFMAN: Good morning, Mr. Chairman
14 and members of the Board. I'm Mark Kaufman, president
15 of the Monterrey Cooperative Inc. and a neighbor of
16 the project. Monterrey Cooperative Inc. is the
17 applicant of this zoning application.

18 Monterrey Cooperative Inc. owns all of the
19 units of the Monterrey Condominium, except for the
20 commercial space on the corner of Connecticut Avenue
21 and Porter Street, which is a separate condominium and
22 is leased to 7-11. There is a separate entity that
23 owns that -- just that 7-11 store.

24 My company, Hastings Development
25 Corporation, purchased the interest in Monterrey

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1 Cooperative Inc. earlier this year. Since then, we
2 have been working with Cunningham & Quill to come up
3 with a design to take full advantage of the building
4 as it sits and to renovate it for the future.

5 Currently, the property is in a terrible
6 state of disrepair. There are many windows broken;
7 the roof leaks; damage is continually occurring
8 through neglect throughout the building. When we
9 purchased the building, only 13 units out of 33 were
10 occupied. The property is now empty, other than the
11 7-11, and ready for renovation.

12 Our goals for the property are to perform
13 a historically sensitive renovation and reposition the
14 property as an upscale rental building consistent with
15 its design and location, and also consistent with its
16 history -- its 80-year history -- rental property in
17 the District of Columbia.

18 In order to accomplish this goal, we need
19 to renovate the building and provide amenities
20 consistent with other upscale buildings. One of those
21 amenities is recreation space. The only area
22 available for recreation space is on the roof. The
23 roof has very attractive views, both up and down
24 Connecticut Avenue, and we are planning on taking
25 advantage of that and creating recreation space.

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1 We have met with the ANC, we have met with
2 the Cleveland Park Architectural Review Committee, and
3 received unanimous support from both for this project.

4 Additionally, we have received conceptual design
5 approval from HPRB.

6 In conclusion, we believe that this
7 renovation, with the addition of the moderate roof
8 structure, will be a benefit for both the neighborhood
9 and the city, and we ask for your approval.

10 CHAIRMAN GRIFFIS: Good. Thank you very
11 much. I think that this is very straightforward, so
12 I'm going to turn to the Board's questions. I think
13 we can run through quite a bit of this. But let me,
14 first of all, see if I'm understanding correctly why
15 we're here.

16 2001.3 -- clearly it's a non-conforming
17 based on the '58 new zoning regs. The penthouses that
18 cover the area are actually set back substantially,
19 although not set back from -- well, I don't want to --

20 MR. EPTING: They're set back from the
21 property line but not from the building --

22 CHAIRMAN GRIFFIS: Right, exactly.

23 MR. EPTING: -- because the building
24 itself is -- they're jammed against the corner of the
25 courtyard and we can't move them.

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1 CHAIRMAN GRIFFIS: Right. Okay.

2 MR. ZAIDAIN: Just to follow up on that
3 issue, is that part of the non-conforming nature
4 because it would have to be set back from the building
5 lines?

6 MR. EPTING: It's supposed to be set back
7 from the edge of the roof, one to one.

8 MR. ZAIDAIN: One to one. Right.

9 MR. EPTING: And we put in our statement
10 that basically we cannot move the two staircases, so
11 therefore, that's part of our exceptional condition.
12 We think we have others, including the way the lot's
13 shaped, the courtyard.

14 And in terms of no adverse impact, it is
15 set back from the property line.

16 CHAIRMAN GRIFFIS: Yeah. That's fairly
17 dramatic in terms of -- on any elevation. It's in the
18 center of the property, essentially.

19 MR. EPTING: Yes.

20 CHAIRMAN GRIFFIS: In other words, the
21 building doesn't continue through that.

22 Is there a driving turnaround currently?
23 So that's new?

24 MR. MORRISON: No. That's just a
25 landscaped courtyard.

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1 CHAIRMAN GRIFFIS: Oh. I thought there
2 was one plan I saw where cars were actually driving in
3 behind. Well, it's a good idea, if you can do it.

4 (Laughter.)

5 CHAIRMAN GRIFFIS: Okay. All right, and
6 just for perfect clarity's sake, then, I mean, we're
7 at 2001.3, which is talking about enlargements and
8 additions. What is the enlargement and addition,
9 then? Is it just the treatment of the penthouse with
10 the trellis?

11 MR. EPTING: The interpretation, going
12 back through (inaudible) of -- when you have a non-
13 conforming building, even I don't necessarily
14 agreement, it's that this is an enlargement to the
15 building, and therefore it requires variance relief.

16 CHAIRMAN GRIFFIS: But the physical
17 enlargement is happening in the penthouse?

18 MR. EPTING: Right.

19 MR. KAUFMAN: Just to help clarify, only
20 one of the staircases now penetrates to the roof.

21 CHAIRMAN GRIFFIS: Oh, I see. Well, there
22 it is, then.

23 MR. KAUFMAN: Yes.

24 CHAIRMAN GRIFFIS: Okay, well that's
25 fairly clear. Everyone clear on that? That seems to

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1 be very straightforward.

2 Okay, let's zip through this, then. Are
3 there things that we need to walk through in terms of
4 plan? Board have any questions?

5 MS. RENSHAW: Just again, the 7-11 is a
6 separately leased co-op?

7 MR. KAUFMAN: Well, it's a condominium
8 unit, and it is separately owned and they control
9 their space.

10 MS. RENSHAW: I see.

11 CHAIRMAN GRIFFIS: Is part of the
12 renovation -- this is a bit outside of the scope of
13 our application right now -- but part of the
14 renovation dealing with the storefront --

15 MR. KAUFMAN: We would like to be able to
16 make some changes there, but we are not certain we
17 will be able to.

18 CHAIRMAN GRIFFIS: I see. Okay. Any
19 other questions?

20 (No response.)

21 CHAIRMAN GRIFFIS: And --

22 MR. PARSONS: Yes, I guess I would like to
23 be able to follow up on that. There are some drawings
24 here that show substantial renovation of 7-11, putting
25 windows in that facade and awnings, and the 7-11 sign

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1 is gone and the bronze is gone. It's a dream.

2 MR. KAUFMAN: Well, it is maybe a dream,
3 but it's certainly a hope that we would like to
4 accomplish. But we're not certain we'll be able to.

5 MR. PARSONS: Well, we all wish you luck

6 MR. KAUFMAN: Thank you.

7 CHAIRMAN GRIFFIS: We sure do. Should we
8 do a signage count today to see if they're conforming
9 in that 7-11?

10 (Laughter.)

11 MR. PARSONS: While I'm at it, I also
12 notice on the south facade, you're going to be putting
13 some windows in that horrible wall that's been there
14 so long.

15 MR. KAUFMAN: Yes, we're planning to, on
16 the fourth and fifth floor.

17 MR. PARSONS: Only -- that's as far as you
18 can go, huh?

19 MR. KAUFMAN: That's right, because of the
20 height of the building next door. And we have to be
21 above that.

22 MR. PARSONS: The required separation.

23 MR. KAUFMAN: Yes.

24 MR. PARSONS: That's all I have.

25 MR. EPTING: Chris Morrison can run

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1 through the plans if you want.

2 CHAIRMAN GRIFFIS: I'm trying to expedite
3 it, but it may be even more cumbersome. Why don't we
4 do that, then. I'll let you -- and I would just ask
5 the board members to ask the questions as you're
6 presenting so we can get through.

7 MR. MORRISON: The building was
8 constructed in 1922. It's a Stern & Tomlinson design.
9 It's a five-story masonry and concrete frame
10 building, and as part of the renovation, we're looking
11 at a cleaning of the masonry, complete window
12 replacement. And what we're here before today is the
13 rooftop addition.

14 As Mark indicated, the current roofscape
15 provides one stair and roof access, the elevator
16 overrun. But the rest of the roofscape is not widely
17 accessible for all the tenants. And what we're hoping
18 to do is allow those roof views and the terrace to
19 become an amenity, a public residential recreation
20 space, for all the future tenants of the renovated
21 building.

22 And so, in that, we're -- but we're
23 leaving the elevator and the stair in its existing
24 locations; bringing up the stair, up to provide two
25 means of egress; and then, tying in adjacent

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1 mechanical spaces and trying to provide an area that
2 will be a good amenity for the building.

3 As we've discussed before, the proposed
4 penthouse is set back from all of the street facades -
5 - not from the courtyard building line but from the
6 street facade so that it's located essentially in the
7 center of the property. And we believe it will have -
8 - because of that setback and the low height, we're
9 not going up to 18'6"; we're keeping the height of the
10 structure minimal, to 14 feet, and that will -- we're
11 using a hydraulic elevator so that we won't have a
12 traction overrun. We'll just have the head height on
13 that -- and trying to keep that all minimal so that
14 the visual impact of the top of the building will be
15 minimal.

16 CHAIRMAN GRIFFIS: What's the trellis made
17 out of?

18 MR. MORRISON: The trellis is made -- what
19 we're anticipating is a steel structure with cedar
20 posts -- with cedar joists and beams up at the top.

21 CHAIRMAN GRIFFIS: And the elevation right
22 below that, there's the projection. Is that part of
23 the cedar that would be --

24 MR. MORRISON: The bracket would be out of
25 metal, and then the cedar will be the --

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1 CHAIRMAN GRIFFIS: Okay. It's perhaps
2 none of our business, but it's interesting. They're
3 nice drawings. Okay, any other questions? Is
4 everyone clear?

5 (No response.)

6 CHAIRMAN GRIFFIS: Fabulous. I noted that
7 there's a guardrail showing on the roof plan. I mean,
8 Historic will have more of an issue with that. You
9 did give a visual perspective of how much would be
10 seen from the street, which didn't look like a lot,
11 but are you doing this in steel and glass?

12 MR. MORRISON: No, what's significant on
13 the railing is that the terrace and the perimeter
14 railing are held back from the perimeter of the
15 building.

16 CHAIRMAN GRIFFIS: Right.

17 MR. MORRISON: So, we're anticipating that
18 that's going to be a metal railing.

19 CHAIRMAN GRIFFIS: Oh, I see. Right.
20 Right, right.

21 MR. MORRISON: But again, because of the
22 setback, it won't be visible from the -- really from
23 anywhere. We're just going to be see the top part of
24 the cresting of the trellis and the buildings.

25 CHAIRMAN GRIFFIS: Right. You're going to

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1 have all your roof fence all around the parapet?

2 Okay, any other questions?

3 (No response.)

4 CHAIRMAN GRIFFIS: We were submitted
5 qualifications from Cunningham Quill. If there's no
6 objections, I think we can accept the architect as an
7 expert witness in design and architecture. Any
8 objections ahead of time to look at it?

9 (No response.)

10 CHAIRMAN GRIFFIS: Not hearing any
11 objection, I can take that as a consensus of the
12 board, just to make it official.

13 MR. EPTING: Unless there are further
14 questions, we had intended to be brief. That
15 concludes our testimony.

16 CHAIRMAN GRIFFIS: Very well. Thank you.
17 Let's go to the Office of Planning. Good morning.

18 MS. THOMAS: Good morning, Chairman,
19 members of the Board. I'm Karen Thomas with the
20 office of planning. Pursuant to 11 D.C.M.R.
21 2201.3(b)(2) and (3), the applicant is requesting
22 variance relief to permit modifications to the roof
23 structure at 2902 Porter Street.

24 The modification includes one enclosure
25 for the upgraded mechanical and elevator systems, its

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1 relates equipment, as well as access to the roof. The
2 existing elevator and stairway shafts will be enclosed
3 by a unifying structure of even height, creating a
4 more appealing entry to the roof and the proposed
5 recreation area.

6 The existing structures covering these
7 shafts will be demolished. However, the stairway and
8 elevator shaft area will not be relocated. Therefore,
9 the non-conformity with respect to the one-to-one
10 setback requirements from the rear of the roof will
11 remain.

12 The existing structures meet the one-to-
13 one setback to the front of the building, along
14 Connecticut Avenue and Porter Street. The building
15 has ground-level commercial space, which will be
16 retained in the upgrade.

17 OP believes that the property has an
18 exceptional situation or condition, being that the
19 stairway and elevator shaft at the rear of the
20 building is not set back an equal distance at a height
21 from the edges of the roof. The improved roof
22 structures will also be looking to near the edge of
23 the roof along the courtyard in the rear of the
24 building, since the elevator and stairs will remain in
25 its existing location.

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1 We believe by reason of this exceptional
2 condition it creates a practical difficulty for the
3 owner. Strict application in the regs will result in
4 a practical difficulty since it is not possible to
5 meet the one-to-one setback of the roof structures.

6 We do not believe -- OP does not believe
7 that this variance relief will cause a substantial
8 detriment to the public good if granted. The
9 applicant is addressing a residential recreation space
10 requirement for buildings in the C2A zone district, as
11 required by Section 773. OP believes that inclusion
12 of the space on the rooftop and accessibility to such
13 space is a desirable upgrade of this older residential
14 building.

15 In summary, we recommend approval of the
16 variance from the requirements of 2001.3. The
17 applicant has also requested special exception relief,
18 since the proposed roof structure was believed to be
19 of an equal height. However, the Zoning administrator
20 determined that his trellis at the center of the
21 penthouse is considered an architectural embellishment
22 and was not subject to requirements of Section 411.

23 OP concludes that the requested variance
24 meets the requested tests, and can be granted without
25 substantial detriment to the public good. Thank you.

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1 CHAIRMAN GRIFFIS: Good. Thank you very
2 much. Any questions of the Office of Planning by the
3 Board?

4 (No response.)

5 CHAIRMAN GRIFFIS: Does the applicant have
6 any questions of the Office of Planning?

7 MR. EPTING: None.

8 CHAIRMAN GRIFFIS: Okay. A couple of
9 things. I just want to make it absolutely clear that
10 although there are recreation requirements in zoning -
11 - in several zoning districts, this being one -- that
12 this is actually a voluntary amenity that's being
13 added to this building, is that correct?

14 MR. EPTING: Well, also, we're trying to
15 come into compliance, but it wouldn't be required
16 because it is a non-conforming, and we grandfathered.

17 CHAIRMAN GRIFFIS: Right. The important
18 thing in my thinking is that it is not a requirement
19 for this to be put on, but it is, I think, a positive
20 amenity. But it's a voluntary one. Well, there it
21 is.

22 Any other questions of the Office of
23 Planning?

24 MS. BAILEY: Mr. Chairman, not a question,
25 but the Office of Planning report was filed late and

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1 does need to be waived in.

2 CHAIRMAN GRIFFIS: Indeed. We're doing
3 everything backwards today. We're going to hear
4 everything and then decide whether we accept it or
5 not. Any objections to waiving in the report of the
6 Office of Planning?

7 (No response.)

8 CHAIRMAN GRIFFIS: Great. I'll take that
9 as the consensus of the Board to waive in the
10 substantive report, and we do appreciate having this.

11 Okay, let's move on. The HPRB staff memo
12 has been cited in the record. I don't think we need
13 to review it. ANC 3C -- we do have not an official
14 letter, unless the applicant knows of one. We have a
15 single-member district commissioner letter, is that
16 correct?

17 MR. EPTING: There's no official letter.

18 CHAIRMAN GRIFFIS: Okay, in which case, do
19 we need to review that? Ms. Renshaw, do you have that
20 in front of you?

21 MS. RENSHAW: Yes, I do. The letter from
22 Commissioner John Welsh, ANC 3C05 is dated November 4,
23 and it is sent to Mr. Morrison of Cunningham & Quill
24 Architects, and he states his support for the
25 initiative to renovate the Monterrey. He does state

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1 that at the ANC meeting on September 23, the
2 Commission voted in favor of the proposed design
3 enhancements for purposes of gaining support from
4 HPRB.

5 While our resolution supports HPRB
6 approval, it did not speak specifically to the issues
7 of height therein for work to be performed, to augment
8 fire egress and to improve existing structures on the
9 roof. Nonetheless, the Commission did review the
10 facade treatment and elevations, including that for
11 the roof. I found the concept plans attractive and a
12 vast improvement from existing structures. However,
13 we don't have the full ANC letter.

14 Was there any difficulty with the ANC
15 submitting a letter?

16 MR. EPTING: There was no difficulty, and
17 Chris may talk about this more. I think there was
18 some initial -- they were reviewing the project and
19 didn't understand it was going to two forums, and --

20 MR. MORRISON: What happened was, when we
21 had our initial conversations with HPRB for all of the
22 HPRB issues -- and when we initiated that and it came
23 up on the HPRB calendar, we found out at late notice
24 that we were going to need to go before the ANC for
25 that, as well. So, we made a presentation of the

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1 project to the ANC board at that time.

2 At that time, it was unclear whether we
3 were going to need to come back and present the
4 project again for the BZA hearing. And what happened
5 was we just presented the project. We didn't call out
6 this is an HRPB issues; this is a BZA issue. We just
7 presented the overall renovation plans as they're
8 presented to you.

9 When I went back to Chairman Nancy McWood
10 to see if we could get a letter, she explained that we
11 would need to come back again but that they weren't
12 really interested in us coming back again unless we
13 needed, in particular, that letter. But she felt that
14 because of the general support and the support of the
15 single-member commission, that should be sufficient.
16 So that was how we proceeded.

17 MS. RENSHAW: And there was no one in the
18 audience in opposition?

19 MR. MORRISON: No. They were all --

20 MS. RENSHAW: It was just a
21 straightforward presentation?

22 MR. MORRISON: Right.

23 MR. EPTING: We had discussions with her,
24 but it wasn't her sense that we needed to come back,
25 so we took her lead on that.

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1 CHAIRMAN GRIFFIS: They would have been
2 notified in terms of the application and the
3 announcement. So, they knew the issue.

4 MS. RENSHAW: They had notice. They were
5 notified.

6 CHAIRMAN GRIFFIS: So, I think it was
7 appropriate for your presentation to present the
8 entire project to ANC because ANC does have larger
9 issues. And if they didn't hone in on the zoning,
10 then I think it was not of great concern.

11 MR. EPTING: We were always confident that
12 if they had concerns, you would have heard about it.

13 CHAIRMAN GRIFFIS: We share that
14 confidence.

15 (Laughter.)

16 MS. RENSHAW: Definitely from that ANC.

17 CHAIRMAN GRIFFIS: Okay. Anything else
18 from the Board? Other questions, clarifications,
19 steps, all the official submissions that I have noted
20 at this time, in which case can go to testimony. Is
21 anyone here present to give testimony in support of
22 this application, or in opposition?

23 (No response.)

24 CHAIRMAN GRIFFIS: Our regs say we have
25 give 30 seconds.

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1 MR. EPTING: Thirty seconds? Fifteen.

2 (Laughter.)

3 CHAIRMAN GRIFFIS: Very well. I don't see
4 anyone coming forward to give testimony on this, so I
5 can turn it back over to you, sir, to give any closing
6 remarks that you may feel need --

7 MR. EPTING: In summary, we think this is
8 a great project. It's going to be fixed up. It's
9 going to be a substantial upgrade. I think the
10 architects and the record have shown that we meet the
11 standards of the variance relief. As you can see from
12 the picture of the existing rooftop, it's going to
13 much improved from what's there now. We have support
14 of the HPRB, general support of the ANC, support of
15 the other community groups in Cleveland Park, and the
16 support of the Office of Planning. We request that
17 you approve the project today, if you would, as a
18 bench decision, and issue a summary order. We
19 appreciate your time.

20 CHAIRMAN GRIFFIS: Very well. Any follow-
21 up questions from the board? Clarifications?

22 (No response.)

23 CHAIRMAN GRIFFIS: If not, then I would
24 move approval of application 16949, the Monterrey
25 Cooperative Inc., and that is for variance relief

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1 under subsection 2001.3, which would permit a well-
2 needed renovation of the apartment building at 2902
3 Porter Street. I would ask for a second.

4 MS. RENSHAW: Second.

5 CHAIRMAN GRIFFIS: Thank you very much,
6 Ms. Renshaw. I think it is very clear from what we've
7 heard today and also in the written submission that
8 clearly this is an existing building built in 1922,
9 prior to the zoning.

10 It is a non-conforming building and it is
11 looking to come into some aspects of conformity, but
12 also in terms of updating for current use, which is
13 absolutely appropriate in terms of animating and
14 utilizing the roof structure; also adding egress stair
15 to service that. With that, it's been fairly clear
16 that the practical difficulty arises that they have
17 the existing stair, existing location, existing
18 building, and part of its modification comes into
19 controversy with our zoning regs.

20 And so, I think it is a very strong
21 application. I would ask that anyone else speak to
22 the motion, if needed.

23 (No response.)

24 CHAIRMAN GRIFFIS: Very well. I would ask
25 for all those in favor to signify by saying aye.

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1 (Unanimous ayes.)

2 CHAIRMAN GRIFFIS: Opposed.

3 (No response.)

4 CHAIRMAN GRIFFIS: And we can record the
5 vote. Mr. Epting, are you requesting a summary order
6 -- I don't see any -- unless there's an objection from
7 the Board, I don't see any difficulty in doing that.

8 MS. BAILEY: The vote is recorded as 5-0-0
9 to approve the application. Mr. Griffis made the
10 motion; Ms. Renshaw seconded; Mr. Zaidain, Mr. Etherly
11 and Mr. Parsons are in agreement. And that's the
12 issuance of a summary order.

13 CHAIRMAN GRIFFIS: Thank you all very
14 much. Have a great day. And do put some pressure on
15 --

16 MS. RENSHAW: What is your construction
17 time frame?

18 MR. KAUFMAN: We will begin construction
19 in approximately July.

20 MS. RENSHAW: And it'll go for how long?

21 MR. KAUFMAN: About a year.

22 CHAIRMAN GRIFFIS: And I think the Board
23 has stated also, putting some pressure on 7-11 to
24 upgrade their space, actually, I think, would be
25 beneficial to them in terms of the draw and the

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1 marketability of that street frontage. So, good luck
2 to you, and we'll drive by and see it.

3 Good. Anything else we have in the
4 morning session, then?

5 MS. BAILEY: No, Mr. Chairman.

6 CHAIRMAN GRIFFIS: Well, this is decidedly
7 a precedent for us. So, I would note that we can
8 adjourn the morning session of 19 November 2002.

9 (Whereupon, the morning session was
10 adjourned at 10:09 a.m., to reconvene at 1:02 p.m.)
11

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AFTERNOON SESSION

P R O C E E D I N G S

1:02 p.m.

CHAIRMAN GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of the Board of Zoning Adjustments for the District of Columbia. I would like to waive, in most part, my opening statements I would normally do in progressing with a public hearing. However, let me just mention quickly, we do have a preliminary matter on the only case in the afternoon.

If there is a need, in fact, for someone to address the board, I will state that all our public hearings are recorded and, therefore, you will need to come to the table and turn on the microphone, and if speaking to the Board, fill out two witness cards, and those will go to the reporter.

That being said, why don't we move ahead, and I will go to Office of Zoning staff to announce the case in the afternoon. Ms. Bailey and Mr. Moy are with me this afternoon.

MS. BAILEY: Mr. Chairman, good afternoon. The case this afternoon is appeal number 16934, and it's an appeal that was filed by an Advisory Neighborhood Commission 6A. Is there a

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1 representative of the ANC in the audience? Would you
2 please come to the table.

3 MS. WIRT: My name is Karen Wirt. I'm an
4 ANC 6C commissioner-elect. I previously was an ANC 6A
5 commissioner.

6 CHAIRMAN GRIFFIS: And your address?

7 MS. WIRT: My address is 234 E Street,
8 N.E. I'm here today because Ms. Gaddis could not
9 make it; she's the primary person in this case. I
10 think that's supported by 6A. I believe you've got
11 copies of the correspondence; if not, I'm happy to
12 leave a copy today.

13 On November 7, ANC 6A recommended that
14 Ms. Gaddis be the representative on this case.
15 However, Ms. Gaddis had a serious illness. Her
16 daughter required neurosurgery. She called me on
17 November 13, Wednesday night. We talked about it and
18 I said I would be happy to represent her case in her
19 absence, providing that we could get together last
20 weekend and talk about it. I have no knowledge of
21 her notes or the background or the details of the
22 case.

23 CHAIRMAN GRIFFIS: Okay. We do have that
24 letter.

25 MS. WIRT: And then she -- I called her

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1 Thursday morning, the 14th. She had gone, and so I
2 had no way of getting in touch with her or of
3 learning about the case. Therefore, I would like to
4 ask for a postponement. I believe that the ANC 6A
5 also sent a letter to that effect, dated the 14th.

6 CHAIRMAN GRIFFIS: That's correct. Thank
7 you. Okay, I would say -- several things I'd like to
8 go over. First of all, I do not believe that it
9 would be -- I think it's an appropriate thing, then,
10 to set this for a new date. I would anticipate that
11 this would not be continued again. Therefore, if the
12 appellant's representative was not available at the
13 new date, then certainly you'd have time -- ample
14 time -- to be briefed on and to be able to present
15 your case.

16 MS. WIRT: Yes.

17 CHAIRMAN GRIFFIS: Let us look to --

18 MR. KASS: Mr. Chairman, may I be very --
19 I represent the intervenor on this case.

20 CHAIRMAN GRIFFIS: You're going to need
21 to sit down at the table and --

22 MR. KASS: I was going to, but --

23 CHAIRMAN GRIFFIS: Please.

24 MR. KASS: My name is Benny Kass, and I'm
25 representing --

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1 CHAIRMAN GRIFFIS: Can you just have you
2 turn on the microphone.

3 MR. KASS: My name is Benny Kass and I'm
4 representing the intervenor. We filed a request to
5 change the name of the party to Clifford -- to
6 Christopher Row.

7 CHAIRMAN GRIFFIS: Right.

8 MR. KASS: And we are prepared today to
9 go forward on this matter. On the other hand, in the
10 interest of fairness and due process, we will
11 reluctantly grant -- concede to their request for a
12 postponement.

13 CHAIRMAN GRIFFIS: Okay.

14 MR. KASS: And basically just -- we do
15 not believe that they are right. We are prepared
16 right now to present our case. But since they
17 requested it, we will reluctantly go along with it.

18 CHAIRMAN GRIFFIS: Okay, and I'd
19 appreciate that. The Board did take this into
20 consideration. We certainly don't like continuing
21 anything. As you see, we could have had a full
22 afternoon of utilization of our time.

23 MR. KASS: It's too bad. It's rare that
24 you get only one case, which would have been nice.

25 CHAIRMAN GRIFFIS: It's very rare. In

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1 fact, having spent 13 hours last week in all hearings
2 and today not being able to fill our schedule --
3 however, it did seem to be not advantageous for
4 getting through the entire case, if, in fact, the
5 appellant is not prepared based on this emergency
6 that Ms. Gaddis was taken out of town [sic].

7 So, that being said, I'd like to look at
8 February, and I believe we have something in the
9 afternoon of the 18th. And the anticipation of the
10 board would be to have the entire afternoon again
11 scheduled so that we can begin and end this case in
12 one sitting, and then take time for our deliberation,
13 as needed, depending on the outcome of that.

14 Am I correct, February 18th, afternoon,
15 is open?

16 MS. BAILEY: Yes.

17 CHAIRMAN GRIFFIS: Excellent.

18 MR. KASS: Can you give me one second.

19 CHAIRMAN GRIFFIS: Yes.

20 MR. KASS: February 18th, at what time?

21 CHAIRMAN GRIFFIS: It would be called at
22 one o'clock.

23 MR. KASS: That's fine.

24 CHAIRMAN GRIFFIS: Good. Okay, now, for
25 the appellant, there has been some concern in

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1 reviewing the submissions of today that I think need
2 your attention. First of all, I do believe that the
3 permit number cited in this appeal is incorrect.

4 Secondly, I would request that in -- that
5 everyone involved in this, when preparing their
6 cases, look at some of the issues, well, first of
7 all, that were brought up with the ANC in this appeal
8 submission, and that is going to the retaining wall.

9
10 I think there may be better clarification
11 given if a review of the actual documents is done.
12 That is the full permit document and also attendant
13 to the -- the Board has viewed it as most probably
14 the correct permit under appeal. I think that's
15 going to help getting to the basis of what we need to
16 look at in terms of deliberation, in terms of the
17 merits of this case as a whole. So, I would give
18 that as direction.

19 I don't have anything else, then, unless
20 anyone else has further comments or questions -- Mr.
21 Kass.

22 MR. KASS: Mr. Casey asked --

23 CHAIRMAN GRIFFIS: If you wouldn't mind,
24 just introduce yourself with your address.

25 MR. CASEY: My name is John Casey, and my

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1 address is 2458 Sandburg Street, Dunn Loring,
2 Virginia.

3 One of the issues I wanted to clarify --
4 in the letters I've seen to the BZA regarding this
5 issue, some of these issues are pertaining to
6 historical issues, and I just want to clarify that.
7 In fact, when we're discussing that, nothing
8 historical.

9 CHAIRMAN GRIFFIS: That's very true. And
10 I think once we get -- for this new date, once we get
11 the entire -- in fact, I was prepared to do it today.

12 But once we call and get into the hearing, I will
13 give some direction and parameters, if we're finding
14 that things are actually outside our jurisdiction.
15 Clearly, if they're outside of our jurisdiction, then
16 we have no business talking about them. Although, we
17 do sometimes because it's so darned interesting. But
18 we will -- and especially with appeals because
19 appeals are difficult for everyone involved, the
20 presenting them and defending them and, frankly,
21 deliberating on them are often very complex.

22 So, I will hopefully have very
23 articulated directions and scope and issues that we
24 will talk about. And that will be based on the
25 submissions that we get from the ANC.

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1 MR. KASS: Are you going to put a time
2 limit on --

3 CHAIRMAN GRIFFIS: I need your mic.

4 MR. KASS: I'm sorry, are you going to
5 put a time limit on the ANC as to when they're going
6 to submit so that we can have an opportunity to
7 review it rather than at the last minute. It seems
8 to me that the 15-day -- the 14-day rule --

9 CHAIRMAN GRIFFIS: That's an excellent
10 point. Why don't we clarify that in terms of final
11 submission, as we have asked now for new information.

12 And by the way, while she's getting the calendar in
13 front of here, we do have the request for intervenor
14 status that was needing to be waived in if it was to
15 be decided upon. With this continuance, it will not
16 need a waiver. It will be timely. So, I imagine
17 that it's not going to change in any substance. So,
18 we will hold that letter in the record and take it up
19 as a preliminary matter on the 18th.

20 MS. BAILEY: Mr. Chairman, are we talking
21 about submissions and then responses to those
22 submissions, or just submissions?

23 CHAIRMAN GRIFFIS: I'm not sure we're
24 going to --

25 MS. KRESS: Submissions and responses. I

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1 believe that's what Mr. Kass was asking for, was the
2 opportunity --

3 CHAIRMAN GRIFFIS: You want the
4 opportunity to submit written responses to any of the
5 submissions that --

6 MR. KASS: I'd like that opportunity,
7 yes, sir.

8 CHAIRMAN GRIFFIS: Okay. I think that
9 would facilitate our afternoon hearing, so let us do
10 that. We have ample time.

11 MS. BAILEY: January 21st, would that be
12 a good day for you?

13 CHAIRMAN GRIFFIS: Is that to the ANC,
14 January 21st?

15 MS. BAILEY: Yes, to the ANC, January
16 21st.

17 MS. WIRT: Yes.

18 MS. BAILEY: With responses due by
19 February 10th -- I'm sorry -- February 3rd.

20 MR. KASS: What day is that?

21 MS. BAILEY: February 3rd is on a Monday,
22 and the hearing will be held on February 18th.

23 CHAIRMAN GRIFFIS: Okay, Ms. Wirt, you're
24 clear?

25 MS. WIRT: Yes.

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1 CHAIRMAN GRIFFIS: So, I'm going to
2 reiterate and make sure I understand it. January
3 21st, that would be, of course, 2003. You will have
4 your case submission into the record. That will be
5 served on -- actually, well -- not having established
6 intervenor status, how can we deliver it? Can the
7 Office of Zoning deliver it to the property owner?

8 MS. KRESS: Yes.

9 CHAIRMAN GRIFFIS: Okay, so we'll do
10 that. Clearly, you have the dates. If you're not
11 seeing things, you need to check with this office and
12 it will obviously be in the record if anything is
13 submitted. By February 3rd, we will have the
14 responses in the record, and then on the 18th, we
15 will see you all back here.

16 MR. KASS: Mr. Chairman, you said "the
17 property owner". Will counsel be getting that
18 instead of the property owner?

19 CHAIRMAN GRIFFIS: Yes.

20 MR. KASS: Benny Cass instead of Mr.
21 Casey. He's not the property owner.

22 MS. KRESS: Leave your name and address
23 with our staff, and we'll try to do that.
24 Unfortunately, you're not intervenor, legally, yet.

25 MR. KASS: I understand.

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1 MS. KRESS: If you were, it would be set.
2 But we'll make an exception. Just make sure we have
3 your information and we'll make an exception.

4 CHAIRMAN GRIFFIS: I'm not clear. What
5 are you saying?

6 MR. KASS: You said you'll submit
7 information to the property owner, and I wanted to
8 make it clear, since the property owner hasn't
9 formally been transferred to Christopher Row yet --

10 CHAIRMAN GRIFFIS: I see.

11 MR. KASS: -- and since counsel is
12 representing the property owner, I wanted to make
13 sure the property owner's counsel will get the ANC's
14 request.

15 CHAIRMAN GRIFFIS: I see.

16 MR. KASS: That's all I was asking.

17 CHAIRMAN GRIFFIS: Okay.

18 MR. KASS: And I do have one -- it has
19 nothing really to do with this hearing, but it
20 directly impacts on the hearing. It's my
21 understanding -- I want to get clarification -- that
22 upstairs, when they're selling the zoning manual, the
23 zoning regulations, they're selling records that are
24 not up to date. I have attempted to get on the D.C.
25 website, your website. Chapter -- the Rules of

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1 Procedures -- and while I can get everything else on
2 the zoning, the rules of procedure do not show up.
3 This is a tremendous handicap. I've tried it several
4 times. It's a tremendous handicap --

5 MS. KRESS: See us before you leave. Our
6 website goes -- I'm Jerri Kress. I'm the Director of
7 the Office of Zoning. We'll help you. If not, we'll
8 print some out before you get out of here. You're
9 the first person I've heard say that you can't get
10 it.

11 MR. KASS: I'm not raising this for Benny
12 Kass. I'm raising this for the consumer who doesn't
13 have a computer. We talked to the corporation
14 counsel and they said, well, we rely on Lexis. We
15 don't necessarily -- not everyone has Lexis.

16 MS. KRESS: We don't have Lexis, either.

17 MR. KASS: Well, corporation counsel
18 does. My point is -- I don't want to raise this as
19 an issue, but it's very frustrating when we go down
20 to file something based on the documents that's we've
21 obtained upstairs and we're told it's not applicable,
22 which is why there was a delay --

23 MS. KRESS: May I suggest, talk to City
24 Council; talk to the Mayor. We're very upset, too.
25 We've done everything in our power to get that

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1 issued, and we have not been able to -- not this
2 Board, not the Commission, not our staff. It's in
3 Office of Documents' hands.

4 MR. KASS: I'll be glad to help out.

5 MS. KRESS: Thanks.

6 MR. KASS: Thank you, Mr. Chair.

7 CHAIRMAN GRIFFIS: Good. If there isn't
8 anything else -- anything else you can think of? Any
9 other questions? Everyone's clear on dates?
10 Submissions?

11 (No response.)

12 CHAIRMAN GRIFFIS: Good. Thank you very
13 much. Appreciate your patience, and we'll see you on
14 the 18th.

15 Anything else I need to take care of?

16 Well, then, this will adjourn.

17 (Whereupon, the hearing was concluded at
18 1:17 p.m.)

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