

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

PUBLIC HEARING

TUESDAY
DECEMBER 16, 2003

APPLICATION NUMBERS:

17084 (Application of Christina M. Handley)
17091 (Application of John .D. Echeverria)
17093 (Application of Paramount Baptist Church)
17059 (Application of Sam Homes, LLC)
17066 (Appeal of Judy and Clarke Brinckerhoff, et
al)

The Public Hearing 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.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE MILLER	Board Member
DAVID ZAIDAIN	Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY	COMMISSIONER
JOHN PARSONS	COMMISSIONER

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Office of Zoning

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OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER
KAREN THOMAS
DAVID McGHETTIGAN

OFFICE OF CORPORATION COUNSEL:

MARY NAGELHOUT

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

9:45 a.m.

CHAIRMAN GRIFFIS: Call the Public Hearing of the 16th of December, 2003. This is, of course, the Board of Zoning Adjustment of the District of Columbia and my name is Jeff Griffis. I am Chairperson.

Joining me today is Ms. Miller, Mr. Zaidain is representing the National Capital Planning Commission and Ms. Mays with us representing the Zoning Commission.

Obviously, copies of today's agenda are available to you. They are located where you entered into the hearing room on the wall there.

There are several important aspects of our public hearing that should be fully understood.

Of course, all public hearings before the Board of Zoning Adjustments are recorded. Therefore, we ask several things of you. First of all, to fill out two witness cards. They are available to you at the table where you entered into the door and also the table in front of us. Those two witness cards go to the recorder who is sitting to my right. That's prior to coming forward to

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1 address the Board. Then, when you do want to
2 address the Board, please come forward and make
3 yourself comfortable. You will need to state your
4 name and your address for the record and you will
5 need to speak into a microphone. That microphone
6 should be on.

7 Of course, this is a very important
8 aspect of setting and establishing the record, of
9 which we will deliberate.

10 The order of procedure are special
11 exceptions and public hearings this morning will be,
12 first, we'll hear from the applicant and any
13 witnesses they might have.

14 Second, we'll hear any government such
15 as the reports from the Office of Planning or
16 Department of Transportation, anything attendant to
17 the application.

18 Third, we'd hear from the Advisory
19 Neighborhood Commission, ANC.

20 Fourth, would be parties or persons in
21 support of the application.

22 Fifth, would be parties or persons in
23 opposition to an application.

24 And sixth, finally we would have closing

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1 and summations by the applicant.

2 Cross examination of witnesses is
3 permitted by the applicant and parties in the case.

4 The ANC within which the property is located is
5 automatically a party in the case.

6 Our record will be closed at the
7 conclusion of each public hearing, except for any
8 material that is specifically requested by the Board
9 and, of course, we will be very specific on what is
10 to be submitted and when it is to be submitted into
11 the Office of Zoning. After that is received, it
12 should go without saying that the record would then
13 be finally closed and no other information would be
14 accepted into the record.

15 The Sunshine Act requires that public
16 hearings on each case be held in the open and before
17 the public. This Board may, however, consistent
18 with its rules of procedure and the Sunshine Act,
19 enter executive session. Executive session would be
20 for the purposes of reviewing a record or
21 deliberating on a case.

22 The decision of this Board in contested
23 cases must be based exclusively based on the record,
24 which is why it's so important to make sure that you

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1 state everything on the record for us. Not in the
2 hearing room, but on the mikes so that we might be
3 able to deliberate on it. And, of course, getting
4 in timely submissions that address the Board's
5 concerns.

6 That being said, I would ask for
7 everybody to turn off their cell phones and beepers
8 so you don't disrupt anybody that's giving testimony
9 before the Board.

10 And I believe we are prepared to hear
11 any preliminary matters for the morning cases.

12 Preliminary matters are those which
13 relate to whether a case will or should be heard
14 today, such as: Request for a postponements;
15 continuances or withdrawals or whether proper and
16 adequate notice has been provided for the
17 application. If you are not prepared to go forward
18 with an application today or you believe the Board
19 should not proceed, now is the time to bring that to
20 the attention of the Board.

21 I note somebody having a preliminary
22 matter, if they come forward and make themselves
23 comfortable, and I will ask Staff if they have any
24 preliminary matters and also say a very good morning

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1 to Mr. Moy from the Office of Zoning and also Ms.
2 Bailey.

3 Any preliminary matters for the Board?

4 MS. BAILEY: No, Mr. Chairman. The staff
5 has none.

6 CHAIRMAN GRIFFIS: Very well. Then not
7 noting any indication of any preliminary matters,
8 let's call the first case of the morning.

9 MS. BAILEY: Thank you, sir.

10 Good morning to everyone. Happy
11 holidays.

12 CHAIRMAN GRIFFIS: Happy holiday.

13 MS. BAILEY: The first case is continued
14 from last week, Mr. Chairman, and that is
15 Application 17084 of Christina M. Handley, pursuant
16 to 11 DCMR § 3103.2, for a variance from the lot
17 occupancy requirements under section 404, and a
18 variance from the rear yard requirements under
19 section 404, and a variance from subsection 2001.3,
20 from the nonconforming structure provisions to allow
21 the construction of a deck in the R-5-B District at
22 premises 1418 Q Street, Northwest. Also known as
23 Square 209, Lot 875.

24 Ms. Handley, are you here today? Is

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1 there anyone else here associated with this case?

2 Please have a seat at the table.

3 You were sworn in so you don't need to
4 be sworn in again today.

5 CHAIRMAN GRIFFIS: Anything else for us?

6 We're all set. Very well.

7 I'd like to make one quick clarification
8 on the application. It is my understanding from the
9 last public hearing that we had testimony from the
10 Applicant that the drawings were to be revised to
11 reflect the 70 percent lot occupancy, which would
12 move this to a special section under 223. Is that
13 correct?

14 MS. HANDLEY: Yes. Yes.

15 CHAIRMAN GRIFFIS: Good. Okay.

16 Next question?

17 MEMBER ZAIDAIN: Well, I just wanted to
18 make sure that we're clear, because there was some
19 discussion regarding the relief. That clarified the
20 lot occupancy issue so that there's that under the
21 special exception test. The other two was, I guess,
22 was the circular stair and carport variances. And
23 the -- yes, the circular stair and carport to
24 encroach the entrance court and the carport from the

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1 center line of the alley. I wanted to make sure.
2 Because I was rereading my material, I wanted to
3 make -- we kind of got focused on the lot occupancy
4 issue and I wanted to make sure I was clear on the
5 relief needed for those two elements. Am I correct?

6 CHAIRMAN GRIFFIS: Those are covered
7 under special exception under 223 as long as the lot
8 occupancy is complying within the 70 percent.

9 MEMBER ZAIDAIN: Okay. Okay.

10 COMMISSIONER MAY: I'm sorry. Could you
11 say that again? The special exception to the lot
12 occupancy allows them variance from the requirement
13 for the carport offset from the center of the alley?

14 CHAIRMAN GRIFFIS: I'm going to look at
15 the rear yard. He was talking about the court and
16 the stair first.

17 COMMISSIONER MAY: Okay.

18 CHAIRMAN GRIFFIS: 223.1 indicated in
19 addition to a one family dwelling or flat in those
20 residences in the District where the flat is
21 permitted but does not comply with all the
22 applicable areas of requirements 401, 403, 404, 405,
23 406 and 2001.3.

24 403 is the lot occupancy, of course

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1 we've addressed that.

2 The variance from the rear yard
3 requirement is 404 also covered on 223 which make it
4 a special exception. And the variance from the
5 subsection 2001.3 is also covered in 223.1 special
6 exception.

7 Is that everyone else's understanding?

8 MEMBER ZAIDAIN: I just want to take
9 another look.

10 CHAIRMAN GRIFFIS: While Mr. May's
11 looking at that, while the Board Members are, let me
12 just state for the record, of course, we had
13 continued this to receive additional information of
14 which has been submitted by the Applicant showing
15 the conceptual drawings at the rear elevation and
16 also essentially a conceptual acts on showing what
17 would be a lattice fence along the perimeter of the
18 deck.

19 Yes, questions?

20 COMMISSIONER MAY: I'm sorry, but 223
21 the way I understand it, allows an addition when a
22 property is not conforming with 401 through 406. It
23 doesn't mean that anything -- that any relief sought
24 under 401 through 406 becomes a special exception.

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1 CHAIRMAN GRIFFIS: Actually, we've been
2 through this on a previous case in which there was a
3 noncompliant area way, which was a court. And it is,
4 in fact, covered as a special exception under 223.

5 COMMISSIONER MAY: But extending and
6 existing nonconforming. I remember the case.

7 CHAIRMAN GRIFFIS: It seems to be an
8 absurdity to think that you're making an addition
9 onto a nonconforming, and especially in this
10 situation which 223 is made for as anticipating road
11 dwellings, that you wouldn't touch one of these
12 aspects, which is why it's so fully covered all the
13 way through all of the requirements for the area
14 requirements under 400.

15 COMMISSIONER MAY: Okay. Well, I think
16 it's a secondary issue, in any case, because I think
17 that regardless the property is sufficiently unique
18 that I think it would justify a variance to these
19 provisions anyway in terms of rear yard and closed
20 court and all of that.

21 CHAIRMAN GRIFFIS: Well, and the
22 setback. Yes, I understand what you mean.

23 COMMISSIONER MAY: And the setback from
24 the alley, yes.

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1 CHAIRMAN GRIFFIS: Right.

2 COMMISSIONER MAY: Yes. And I think
3 it's sufficiently unique it would be the variance
4 test.

5 CHAIRMAN GRIFFIS: Good. Then that
6 should cut our discussion very brief.

7 COMMISSIONER MAY: Yes.

8 CHAIRMAN GRIFFIS: In that we're going
9 to a lesser burden, of course, to a special
10 exception not a variance.

11 Mr. Zaidain?

12 MEMBER ZAIDAIN: Well, I was just going
13 to weigh in. I mean, it's all a matter of how you
14 read the paragraph, and the way I read it if you
15 remove what's in the commas there, and that is "in
16 those residences in the District where a flat is
17 permitted." If you remove that, it says "An
18 addition to a one family dwelling or flat that does
19 not comply with all the requirements."

20 I mean, it seems to me it's referring to
21 the addition.

22 CHAIRMAN GRIFFIS: That's right.

23 MEMBER ZAIDAIN: That's the way I read
24 it.

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1 CHAIRMAN GRIFFIS: That's correct.

2 MEMBER ZAIDAIN: I mean -- okay.

3 So the fact that 406 deals with courts
4 and the elements that we're discussing is the court
5 issues, then it seems to me it would fall under 223.
6 That's the way I read it.

7 COMMISSIONER MAY: Okay.

8 CHAIRMAN GRIFFIS: Very well.

9 MEMBER ZAIDAIN: Okay.

10 CHAIRMAN GRIFFIS: Everyone clear on
11 what we're doing?

12 MEMBER ZAIDAIN: Yes.

13 CHAIRMAN GRIFFIS: Then let's do it.

14 I would like to have the deliberation on
15 this to be very substantive, and I think it's most
16 appropriate to do it under a motion and take that up
17 for direct discussion. So I would move approval of
18 Application 17084 for the special exception to allow
19 the addition to the nonconforming structure
20 provisions to allow the construction of the deck to
21 the conforming building at premises 1418 Q Street,
22 Northwest. And this is, of course, is just to
23 establish under Section 223, ask for a second.

24 MEMBER MILLER: Second.

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1 CHAIRMAN GRIFFIS: Thank you, Ms.
2 Miller.

3 Discussion on this? Think, you know,
4 actually to look at this I think the case for a
5 variance can be made. As we're going into a special
6 exception, as you all will recall, this is a very
7 unique property in terms of its setting on its own
8 lot, which has impacted the difficulty in the rear.

9 Going to the special exception, of
10 course -- well, and accessing onto the second level
11 of a flatbed, of course, is a matter of right use
12 into the rear area. But the testimony established
13 the fact that the owner had to walk all the way
14 through the alley and around to the street, which
15 was over 500 feet, if I recall.

16 Going to special exception and in the
17 variance also, but the special exception that we're
18 taking under now we need to look at and assess
19 impact, of course, light and air, privacy, etcetera.

20 We have to establish my deliberation on
21 this, first of all, a recommendation for approval
22 from the Office of Planning, a recommendation of
23 approval from the ANC. This has also been through
24 the Historic Preservation Review Board which

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1 indicates to me that they have taken substantial
2 amount of time to look at the design of which they
3 are in fact justified to do and have moved to not
4 deny it, but to actually to recommend approval or
5 processing of this application.

6 That being said, we go into the privacy
7 and light and air issue. Noting that there are full
8 structures, brick structures on each of the adjacent
9 neighbors' properties, also the support of the
10 adjacent neighbors that have, as testified before
11 us, seen the drawings and have had ample time to
12 assess any impact, I feel very secure that this
13 construction will not have or attend to have any
14 detrimental impact.

15 I think there were some excellent points
16 that were brought up in terms of design aspects,
17 whether that deck wanted to drop a little bit below
18 what it was proposed to be. That to me is an
19 interesting point, and I have no difficulty giving
20 some of our own opinions, as limited as they may be,
21 but it is up to the Applicant on what they might
22 pursue. Of course, if you start dropping the deck,
23 then it starts to limit the light and air into the
24 bottom unit, and so there is some balance there.

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1 What's been submitted is the surrounding
2 fencing, which is a lattice fence. Of course, that's
3 fairly open in terms of allowing some light and air
4 to pass through but also preserving the privacy to
5 it. And I think it has sufficiently addressed any
6 concerns that I have.

7 That being said, let me open it up to
8 others for comments, discussion. Yes, Mr. May?

9 COMMISSIONER MAY: I'm sure you'll not
10 be surprised to hear that I disagree with much of
11 what you said.

12 I don't agree that some relief's in
13 order.

14 CHAIRMAN GRIFFIS: It only shocks me.

15 COMMISSIONER MAY: Yes. And as much as
16 you would have wanted to dismiss the concerns that I
17 have an design criticism, it's not. I mean, it has
18 to do with the bulk, the height bulk and lot
19 occupancy that this particular addition creates.
20 And I think that in terms of the overall
21 preservation of light and air, not only to this
22 property but to adjacent property; that building a
23 deck 15 feet up in the air with a six foot fence on
24 top of it I think is a significant addition to the

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1 rear skyline, if you will, in these yards. And
2 while, you know, the current neighbor may not object
3 to it, I'm thinking in particular the neighbor on
4 the court side. They may not object to it now. I'm
5 not sure since we don't have anything in writing
6 indicating that they clearly understand what's going
7 on and that they agree, or at least it's not clear
8 to me that they truly understand what's being built
9 and what the impact is; regardless of that we have
10 to be concerned not just for that occupant but the
11 overall life of the property. And I think that this
12 is too much.

13 I would not have an objection to a
14 solution that was significantly lower and, in fact,
15 was along the lines of what immediately adjoins
16 this. WE have garages on either side with walls or
17 fences around them. And I think if the fences were
18 not any higher than the fences of the adjacent
19 property, I don't think it would be an issue.

20 I think that any kind of occupancy of
21 the Court has some issues to it in terms of privacy,
22 but I think that they can be -- that's far more
23 acceptable than having something that's 15 feet in
24 the air at the starting point.

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1 I also think that the concern about
2 being able to get to the upper floor is certainly
3 valid. And I would have no objection to a stairway
4 that would go up there. But having to elevate the
5 entire deck up to that point, I think it an
6 unreasonable intrusion on the light and air of the
7 surrounding properties and, frankly, on this
8 property.

9 CHAIRMAN GRIFFIS: Good. Thank you.

10 Let me address one of your points in
11 terms of aligning to the adjacent, which is a brick
12 structure and then a deck on top, which is part
13 solid and part lattice. And I think it's an
14 excellent point.

15 It would make a whole lot more sense if
16 they could align it at a more traditional garage
17 height. But in viewing the photograph you realize
18 that if they did that, they would be constructing a
19 deck almost -- well, exactly midway between the
20 windows on their first floor; meaning clearly the
21 properties don't align or their floor lines don't
22 align.

23 So if one was to take your
24 recommendation and build the deck or the structure

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1 of any sort at that level that aligned, you'd be
2 building over the windows on the basement level. So
3 I don't think it's --

4 COMMISSIONER MAY: Yes, but I believe
5 that can be addressed in how this structure is
6 built. And, you know, we're not here to offer what
7 that solution is.

8 CHAIRMAN GRIFFIS: Right.

9 COMMISSIONER MAY: But it's not hard to
10 imagine that there's another solution that could
11 preserve the light and air into that first floor and
12 still maintain a reasonable height.

13 CHAIRMAN GRIFFIS: Okay. Good.

14 COMMISSIONER MAY: But, again, we have
15 to judge what's before us.

16 CHAIRMAN GRIFFIS: Right.

17 COMMISSIONER MAY: And I'm just saying
18 that I think it's too small.

19 CHAIRMAN GRIFFIS: Indeed. Okay.

20 Others?

21 MEMBER MILLER: I just want to note for
22 the record that Office of Planning didn't find that
23 light and air available to neighboring properties
24 would be unduly affected nor that the privacy would

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1 be compromised. And we do give great weight to
2 Office of Planning.

3 CHAIRMAN GRIFFIS: Okay. Anything else?

4 COMMISSIONER MAY: I think Office of
5 Planning would note that this is probably not the
6 first time that I've disagreed with -- thank you.

7 CHAIRMAN GRIFFIS: No one's keeping
8 score.

9 MEMBER MILLER: Yes?

10 CHAIRMAN GRIFFIS: Good. The other
11 pieces, also which were submitted, which helped me
12 to understand a lot of what was being proposed was a
13 somewhat close proximity construction in a deck that
14 was fairly similar or was testified to be fairly
15 similar. And although it was taken on a very bright
16 sunny day, it is amazing to me to see that the
17 properties adjacent get quite a large amount of
18 sunlight with that.

19 So, that being said, if there's nothing
20 further -- yes?

21 MEMBER ZAIDAIN: Yes, I just want to ask
22 a question. I want to be clear on this. If this in
23 fact is going to be considered a carport and we're
24 granting relief to the provision that it be 12 feet

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1 off the center line, or whatever that exact
2 dimension is, that is a variance, right? And if it
3 is, then we do need to grant that separately because
4 it's not an existing nonconformity under 401 through
5 406.

6 CHAIRMAN GRIFFIS: Oh, that would make
7 sense. Although it's not covered under the rear
8 yard 404, is that correct?

9 MEMBER ZAIDAIN: I don't believe it is,
10 but I just don't recall and I don't have my --

11 CHAIRMAN GRIFFIS: Okay.

12 MEMBER ZAIDAIN: And again, you know I
13 would have no issue with the idea that this property
14 meets the test. I mean, it is certainly a unique
15 property and it does present a practical difficulty.

16 And I think that, you know, building anything in
17 this --

18 CHAIRMAN GRIFFIS: Right.

19 MEMBER ZAIDAIN: -- rear yard is going
20 to require that kind of relief. So I would not have
21 an issue with that.

22 CHAIRMAN GRIFFIS: Okay.

23 MEMBER ZAIDAIN: The issue that I have
24 has to do with the proposed solution, and that

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1 survives whether it's simply the special exception
2 or the variance?

3 CHAIRMAN GRIFFIS: Right. Excellent.

4 Then I say we amend the motion to
5 approve the application to also not take or not
6 remove the variance from the setback for carport
7 from the alley. Is that clear to everybody?

8 COMMISSIONER MAY: Yes.

9 CHAIRMAN GRIFFIS: Excellent.

10 MEMBER MILLER: I'll second it.

11 CHAIRMAN GRIFFIS: Thank you.

12 Then I can ask for if there's no
13 further discussion or deliberation -- yes.

14 MEMBER ZAIDAIN: Well, just deliberate on
15 the advantage very quickly. I find that regulation
16 to be quite a challenge. If you look at the alley
17 systems within the District and how narrow they can
18 tend to be and the lots and how narrow they tend to
19 be, I mean, I think it seems to me to be quite a
20 challenge for a lot of the lots to meet that
21 setback.

22 Go ahead and chime in when you like.

23 COMMISSIONER MAY: Okay. But feel free
24 to raise the issue with the Zoning Commission and

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1 they'll consider rewriting the regulations.

2 MEMBER ZAIDAIN: No. I understand that,
3 and there may be an instance where that can be
4 addressed, and obviously it's a case-by-case basis.

5 COMMISSIONER MAY: Yes.

6 MEMBER ZAIDAIN: But we've been recently
7 exposed to that regulation in the last week or so,
8 and I find that a really challenging regulation. I'm
9 kind of curious as to attempt to this --

10 CHAIRMAN GRIFFIS: And I think it's a
11 good point, so we should bring it up to the Zoning
12 Commission.

13 MEMBER ZAIDAIN: Right.

14 CHAIRMAN GRIFFIS: But it's almost as if
15 it's trying to assure us a slight setback from the
16 alley line.

17 MEMBER ZAIDAIN: Right.

18 CHAIRMAN GRIFFIS: Which is an
19 appropriate piece for maneuvering but taking it off
20 the center of an alley gets to be, I think -- to be
21 difficult and doesn't always translate well into
22 every --

23 MEMBER ZAIDAIN: Right. And to address
24 very briefly the issue that was being discussed in

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1 regards to the light and air, there have been no
2 detailed elevation studies showing that the
3 relationship of the surrounding properties. So
4 speaking for this Board member, you know, I'm trying
5 to use what I've seen. And I know that this
6 treatment has been done in other areas of the
7 District specifically on an alley parallel to U
8 Street by U and 18th where there's a whole row of
9 these upper decks that are being accessed by spiral
10 staircases and the decks are at varying levels,
11 mainly to reflect the interior -- the inconsistency
12 between the interior levels. And I have found that
13 it works pretty well and that there wasn't an
14 intrusion in the light and air from my experience in
15 those areas.

16 COMMISSIONER MAY: How many of them
17 border the alley?

18 MEMBER ZAIDAIN: I think there were four
19 in a row --

20 COMMISSIONER MAY: Actually border, the
21 deck is right on the alley?

22 MEMBER ZAIDAIN: Yes. Yes. It was on
23 the alley, the whole entire block was.

24 I mean, it's an interesting treatment. I

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1 mean, I think you raise an interesting issue but
2 unfortunately we have to kind of judge that by our
3 experience. And just from what I've seen in terms
4 of that treatment in other areas of the city, I've
5 found that it works fairly well. But that's just my
6 opinion.

7 CHAIRMAN GRIFFIS: Excellent.

8 COMMISSIONER MAY: Thank you.

9 CHAIRMAN GRIFFIS: And an important one.

10 Any other comments, deliberation? If
11 not, then I'd ask for all those in favor of the
12 motion signify by saying aye?

13 ALL: Aye.

14 CHAIRMAN GRIFFIS: And opposed?

15 COMMISSIONER MAY: Opposed.

16 CHAIRMAN GRIFFIS: And abstaining?

17 Very well. Why don't we record the vote?

18 MS. BAILEY: The vote is recorded as
19 three/one/one to approve the application.

20 Motion made by Mr. Griffis, seconded by
21 Ms. Miller, Mr. Zaidain support, Mr. May opposed to
22 the relief being granted and Mr. Etherly is not
23 present and not voting today, Mr. Chairman.

24 CHAIRMAN GRIFFIS: Thank you very much.

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1 Ms. Bailey, you see any difficulty in
2 doing a summary order on this?

3 MS. BAILEY: No, sir.

4 CHAIRMAN GRIFFIS: Very well.

5 Board Members, I think we should have a
6 summary order on this.

7 Ms. Handley, we thank you very much for
8 your patience with the Board. Appreciate you doing
9 your final submission.

10 Do you have any questions?

11 MS. HANDLEY: No.

12 CHAIRMAN GRIFFIS: Do you understand
13 what just happened?

14 MS. HANDLEY: Yes. I'm getting a
15 permit, right?

16 CHAIRMAN GRIFFIS: Indeed. Enjoy the
17 deck.

18 Thank you very much.

19 Let's call the next case for the
20 morning.

21 MS. BAILEY: Application No. 17091 of
22 John D. Echeverria, pursuant to 11 DCMR § 3104.1,
23 for a special exception to allow a third floor
24 bathroom addition to an existing single-family row

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1 dwelling under section 223, in the R-4 District at
2 premises 1016 Massachusetts Avenue, Northeast,
3 Square 96, Lot 41.

4 Mr. Echeverria, please stand so you can
5 take the oath.

6 Is there anyone else in the room
7 associated with this case?

8 (Witness sworn.)

9 MS. BAILEY: Thank you, sir.

10 CHAIRMAN GRIFFIS: Very well.

11 I think we're ready to proceed. Let me
12 also just welcome Zoning Commission member Mr.
13 Parsons and also the Vice Chair Mr. Etherly joining
14 us at this time for this application.

15 As has been announced, this is special
16 exception under 223. The Applicant is before us at
17 this point.

18 Would you mind introducing yourself for
19 the record?

20 MR. ECHEVERRIA: My name is John D.
21 Echeverria and I reside at 1016 Massachusetts
22 Avenue, Northeast.

23 CHAIRMAN GRIFFIS: Very well. Do you
24 have any brief remarks?

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1 MR. ECHEVERRIA: Nothing, other than
2 this is an application to construct a small addition
3 to the third floor of a rowhouse on Capitol Hill to
4 facilitate the construction of a bathroom. The
5 reason for the special exception application is that
6 the existing footprint of the building exceeds the
7 lot coverage requirement. Therefore, as I
8 understand it, any extension of the building envelop
9 requires a special exception.

10 We're not in fact extending the envelop,
11 the footprint anymore than it already is. The
12 addition on the third floor would extend the third
13 floor a little bit more. Basically we're converting
14 some existing permitted deck area into building
15 space.

16 It's a very modest addition. I've
17 consulted with all the neighbors and they've all
18 voiced no objection and all the relevant agencies
19 and authorities have reviewed this, including the
20 Capitol Hill Restoration Society, and they all
21 support it.

22 CHAIRMAN GRIFFIS: Excellent.

23 And when you said neighbors, you
24 actually showed plans to your adjacent neighbors, is

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1 that correct?

2 MR. ECHEVERRIA: Yes. Yes.

3 CHAIRMAN GRIFFIS: Both on the -- this
4 is oriented north/south, is that correct? So both
5 on the east/west or your left and right?

6 MR. ECHEVERRIA: The 220, 218, 214 and
7 210 -- I'm sorry. 1012, 1014, 1018 and 1020.

8 CHAIRMAN GRIFFIS: Okay. And they
9 didn't indicate any sort of difficulty or potential
10 for blocking any light and air to their properties?

11 MR. ECHEVERRIA: No. There was a
12 question raised by the neighbor at 1014
13 Massachusetts regarding noise that might be created
14 by our plumbing fixtures and how that might affect
15 their quiet enjoyment. And we worked out an
16 understanding which is actually reflected in an
17 amendment to my application about where the plumbing
18 fixtures would be located in the addition that
19 satisfied the owner at 1014.

20 CHAIRMAN GRIFFIS: Indeed. Excellent.

21 And it's your testimony, of course, that
22 your addition won't impact the light and air to the
23 neighboring properties, is that correct?

24 MR. ECHEVERRIA: Yes, it is.

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1 CHAIRMAN GRIFFIS: Very well.

2 And the privacy, enjoyment also was
3 discussed with the adjacent neighbors? It's your
4 testimony today that that would not be impacted
5 negatively?

6 MR. ECHEVERRIA: That would not be an
7 impact.

8 CHAIRMAN GRIFFIS: Okay. And, of
9 course, as you've just indicated, this was reviewed
10 by Capitol Hill Restoration Society. And they
11 didn't have any difficulties with it?

12 MR. ECHEVERRIA: Yes.

13 CHAIRMAN GRIFFIS: And it's your
14 testimony that this wouldn't visually intrude or be
15 out of character of the other properties in the
16 area?

17 MR. ECHEVERRIA: Capitol Restoration
18 Society has favorably supported the application.
19 And, yes, the addition would have no impact on the
20 historic character. Indeed, since we're replacing a
21 1970's era addition, I think we would be making a
22 positive improvement to the character --

23 CHAIRMAN GRIFFIS: Yes.

24 MR. ECHEVERRIA: -- from a historic

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1 standpoint.

2 CHAIRMAN GRIFFIS: It was a period
3 piece, but don't tell the preservationists that; you
4 may get it landmarked.

5 I think it's sufficient and, of course,
6 in compliance with 223 is the submission of adequate
7 drawings to represent what is proposed, I find that
8 to be clearly met.

9 As you've indicated, of course -- yes,
10 Office of Planning has recommended approval. The
11 ANC voted unanimously, which is Exhibit 23, to
12 support this. And I would like to ask if there's
13 anything in addition that you need to tell us that
14 we wouldn't be aware of that's not in the record
15 already?

16 MR. ECHEVERRIA: Just that I wish every
17 feature of the D.C. Government worked as efficiently
18 as the land use review process has in this case for
19 me.

20 CHAIRMAN GRIFFIS: I'm not sure that's
21 everyone's experience, but we're glad to hear it.
22 Thank you very much.

23 Okay. Any questions from the Board at
24 this time?

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1 MEMBER MILLER: I have a question.

2 CHAIRMAN GRIFFIS: Yes.

3 MEMBER MILLER: I think you make
4 reference to amending your application, and I just
5 wanted to see where is that reflected in the record?

6 MR. ECHEVERRIA: Well, what we've filed
7 was a set of plans along with the signed statements
8 of the neighbors indicating in an email indicating
9 that they had reviewed the plans and approved it.
10 We submitted a blueprint and -- there was copy of a
11 blueprint indicating where plumbing fixtures would
12 go. And there's no further submission explaining
13 the purpose of that, but it was intended to indicate
14 that that was --

15 CHAIRMAN GRIFFIS: Okay. So it's not an
16 amendment to the application, but rather an addition
17 or clarification of the documents that support the
18 application.

19 MR. ECHEVERRIA: Right. Yes. I don't
20 think the application --

21 CHAIRMAN GRIFFIS: Okay.

22 MR. ECHEVERRIA: -- touched upon
23 plumbing, where the plumbing material would be
24 located. So we were simply trying to clarify that

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1 this was what our intention was when we got to that
2 stage.

3 CHAIRMAN GRIFFIS: Are you using amazing
4 new and futuristic nuclear plumbing fixtures or
5 something that create an outrageous amount of noise?

6 MR. ECHEVERRIA: No, we have a -- we
7 have two small children and a noisy household that
8 we have a couple next door live a very quiet life --

9 CHAIRMAN GRIFFIS: You have a common
10 wall between the adjacent property, right?

11 MR. ECHEVERRIA: Yes.

12 CHAIRMAN GRIFFIS: Is it -- what
13 material is it made out of?

14 MR. ECHEVERRIA: It's a brick?

15 CHAIRMAN GRIFFIS: Is that pretty
16 standard for this area?

17 MR. ECHEVERRIA: Yes, it is.

18 CHAIRMAN GRIFFIS: Indeed. Okay.

19 Other questions? Very well. Let's see
20 if the Office of Planning if they have anything to
21 add to their excellent report?

22 MS. THOMAS: Good morning, Mr. Chairman,
23 members of the Board.

24 The Office of Planning believes that the

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1 application has met its burden of proof and we would
2 just stand on the record.

3 CHAIRMAN GRIFFIS: I appreciate that.
4 Any questions from the Board? Having no questions,
5 does the Applicant have any cross examination of the
6 Office of Planning?

7 MR. ECHEVERRIA: No.

8 CHAIRMAN GRIFFIS: Are you in receipt of
9 their report?

10 MR. ECHEVERRIA: I have reviewed it.

11 CHAIRMAN GRIFFIS: Excellent. And let
12 me just restate the fact of how fantastic it is, and
13 especially with the graphics, and it definitely
14 supports our deliberation and review of the record
15 for this substantive requirements of the case. And
16 also the fact basis in the case.

17 That being said, then let's go to the
18 ANC. Is the ANC present today in this application?

19 Not seeing an indication, it is Exhibit 23. And,
20 as I've noted, it is in unanimous support of the
21 application.

22 Does it meet our requirements?

23 MS. THOMAS: Yes, it does.

24 CHAIRMAN GRIFFIS: Very well. So we can

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1 grant it the great weight with which it is accorded.

2 Is there anybody here either in support
3 or in opposition to Application 17091 that would
4 like to give testimony as person to come forward
5 now. Not seeing any indication of giving testimony,
6 let's go to the Applicant for any closing remarks
7 you might have.

8 MR. ECHEVERRIA: None. Thank you very
9 much.

10 CHAIRMAN GRIFFIS: Thank you very much.

11 And I think 223, of course, I'm going to
12 save time and not give my normal speech on my
13 admiration for that section. But I think the
14 expeditious nature of processing this comes from the
15 full record that was submitted to us and it allows
16 us to do a full review before coming to the public
17 hearing.

18 So I would move approval of Application
19 of 17091 for a special exception to allow a third
20 floor bathroom addition to an existing single-family
21 row dwelling at section 223 at premises 1016
22 Massachusetts Avenue, Northeast, and ask for a
23 second.

24 COMMISSIONER PARSONS: Second.

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1 CHAIRMAN GRIFFIS: Thank you, Mr.
2 Parsons.

3 I think it has been clear and I've
4 spoken enough to attest to this in how the Applicant
5 has met his burden, but I'd open it up to anybody
6 else who wants to speak to the motion. Not seeing
7 any indication, let me ask for all in favor signify
8 by saying aye?

9 ALL: Aye.

10 CHAIRMAN GRIFFIS: And opposed?
11 Abstaining?

12 If we could record the vote?

13 MS. BAILEY: The vote is recorded as
14 five/zero/zero to approve the application.

15 Mr. Griffis made the motion, Mr. Parsons
16 second, Mr. Zaidain, Mr. Etherly and Ms. Miller are
17 in agreement.

18 CHAIRMAN GRIFFIS: Excellent. Thank
19 you.

20 Let's issue a summary order on this.

21 MS. BAILEY: Thank you, sir.

22 CHAIRMAN GRIFFIS: Great. We wish you
23 great enjoyment with your new bathroom.

24 MR. ECHEVERRIA: Thank you.

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1 CHAIRMAN GRIFFIS: Have a great day.

2 Okay. Let's call the next case in the
3 morning.

4 MS. BAILEY: Application No. 17093 of
5 Paramount Baptist Church, pursuant to 11 DCMR §
6 3103.2, for a variance from the floor area ratio
7 requirements under section 402, and a variance from
8 the off-street parking requirements under subsection
9 2101.1, to construct an addition to a church in the
10 R-5-A District at premises 3924 4th Street,
11 Southeast, also known as Square 6154, Lots 57, 58,
12 65, 68, 806 and 818.

13 All persons wishing to testify, would
14 you please stand to take the oath?

15 (Witnesses sworn.)

16 CHAIRMAN GRIFFIS: Good morning.

17 MR. GLASGOW: Good morning, Mr.
18 Chairman.

19 CHAIRMAN GRIFFIS: Why don't we jump
20 right in. I'll open it up to you.

21 MR. GLASGOW: Thank you.

22 Mr. Chairman, for the record my name is
23 Norman M. Glasgow, Jr. of the law firm of Holland
24 and Knight here on behalf of the Paramount Baptist

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1 Church, Applicant in Application No. 17093.

2 Seated here with me at the table is
3 Pastor Shaw of Paramount Church, John Rosecrans,
4 architect of the project and Mr. Steve Sher is in
5 the front aisle there, who will be also testifying
6 on this application.

7 CHAIRMAN GRIFFIS: He's in the expensive
8 seats.

9 MR. GLASGOW: Right.

10 CHAIRMAN GRIFFIS: Okay.

11 MR. GLASGOW: Also in the audience are
12 some persons that are in support of the application.

13 I think they're seated in the back row there, who
14 are here as they are members of the congregation.

15 Before proceeding with the testimony of
16 the witnesses, I'd like to make sure that the Board
17 has in the record, there are reports from two
18 Advisory Neighborhood Commissions in support of the
19 application. And I think they're --

20 CHAIRMAN GRIFFIS: Are they separate or
21 they're bound in your submission?

22 MR. GLASGOW: No, they're separate.
23 They've been separately submitted. I believe one is
24 in our packet. That is Exhibit G. That is an ANC

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1 resolution there for ANC 8-E.

2 CHAIRMAN GRIFFIS: Right.

3 MR. GLASGOW: And there was another ANC
4 resolution, I think it was from 8-B -- was it 8-D?
5 I think we have a copy that we can submit for the
6 record if the Board --

7 CHAIRMAN GRIFFIS: I have Exhibit 22,
8 which is the ANC support letter. And I have -- I
9 believe that's it. We can just take a copy of
10 whatever you have then.

11 MR. GLASGOW: Mr. Sher will submit that
12 for the record.

13 CHAIRMAN GRIFFIS: Are they from the
14 same ANC?

15 MR. GLASGOW: No, they're from two
16 different ANCs.

17 CHAIRMAN GRIFFIS: Two different ANCs.
18 Okay.

19 MR. GLASGOW: We are in close proximity
20 to a second ANC.

21 CHAIRMAN GRIFFIS: Okay.

22 MR. GLASGOW: And we made sure to go to
23 both ANCs.

24 CHAIRMAN GRIFFIS: Okay. Which one is

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1 it officially?

2 MR. GLASGOW: 8-E.

3 CHAIRMAN GRIFFIS: 8-E. Okay.

4 MR. GLASGOW: And that's the one that's
5 in the statement of the Applicant, and that leads to
6 my next question. I wanted to make sure the Board
7 Members all have a copy of the statement of the
8 Applicant.

9 CHAIRMAN GRIFFIS: We are in receipt and
10 fully read.

11 MR. GLASGOW: Wonderful.

12 And in proceeding through the statement
13 of Applicant, I think you'll see in Exhibit A that
14 we do have a very unusually shaped lot and it is
15 effected by very significant change in the
16 topographic condition from Condon Terrace slopping
17 down to 4th Street and then also along 4th Street.
18 And that shape of the property, that very unusual
19 shape, in conjunction with the extreme change in
20 topography leads to the two variances that we have
21 requested, the FAR variance and the parking
22 variance.

23 If we had a regularly shaped lot, which
24 was flat, the testimony of the witnesses would show

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1 that we would not need an FAR variance and we would
2 not a parking variance.

3 We do have the western portion of the
4 parking facility of the main parking lot which is on
5 Condon Terrace. A part of that is used essentially
6 as a ramp to get down to the church itself. And so
7 that eats up a large section of the parking garage.

8 And then along 4th Street, as is shown
9 by the Tab C exhibits, the photographs, you see the
10 slope of the property along 4th Street. And you
11 proceed down 4th Street, which is really heading
12 north which is where the new building will be, the
13 slope is even more pronounced as you go from south
14 to north.

15 CHAIRMAN GRIFFIS: A quick
16 clarification. I think it's fairly clear, but just
17 for absolutely clarity, when we go to Tab A,
18 obviously, that is an old plat plan that shows the
19 adjacent lot across an alley. That alley has been
20 closed, is that correct?

21 MR. GLASGOW: That is correct.

22 CHAIRMAN GRIFFIS: And it is a single
23 lot of some incarnation at this point?

24 MR. GLASGOW: Yes.

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1 CHAIRMAN GRIFFIS: Okay.

2 MR. GLASGOW: Yes, it is.

3 CHAIRMAN GRIFFIS: And that's shown by
4 the exhibit that you have up on the board now, and
5 that exhibit also is in our record. Okay.

6 MEMBER ZAIDAIN: Chair, I've got a
7 question. When was that alley closed, do you know?
8 Was it historically? I mean was it --

9 MR. GLASGOW: Several years ago.

10 MEMBER ZAIDAIN: But it wasn't closed
11 specifically for this project, right?

12 MR. GLASGOW: No.

13 MEMBER ZAIDAIN: It was closed for other
14 reasons? Okay.

15 MR. GLASGOW: If there are no
16 preliminary questions, I would like to proceed with
17 the testimony of Pastor Shaw.

18 CHAIRMAN GRIFFIS: Yes.

19 MR. GLASGOW: Thank you.

20 Pastor Shaw, would you please identify
21 yourself for the record and proceed with your
22 testimony?

23 PASTOR SHAW: I am Ishmael Shaw, the
24 Pastor of the Paramount Baptist Church. I have been

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1 the pastor of this church for the last 21 years
2 plus.

3 Our church has been existence for some
4 96 years. It has been at its present location since
5 1969 and since we have been there, we have acquired
6 a number of pieces of properties because of the
7 growth of our church and to meet the needs of our
8 congregation and the community.

9 In 1986 through 1998 we enlarged our
10 facilities and renovated an apartment building
11 that's adjoined to the church which we use as our
12 educational facilities. That was in 1986 through
13 1988.

14 However, because of the continued growth
15 of our church, our present facilities are somewhat
16 inadequate and consequently, we have been forced to
17 build. It's inadequate to the extent that there are
18 not enough classrooms. We place a great deal of
19 emphasis on Christian education. It's inadequate.

20 The sanctuary is inadequate because
21 there are poles standing in the midst of the
22 sanctuary that prevents many people from seeing the
23 pulpit properly.

24 The sanctuary is inadequate because th

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1 choir loft is small. Because of our growing
2 membership and our choirs need more place to sit.

3 It's inadequate because there are no
4 elevators for our seniors.

5 Consequently, it's inadequate further
6 because of our continued community outreach. Our
7 food pantry, clothes pantry; the space, they are
8 inadequate.

9 Thus, because of these things we are
10 limited because of the inadequacy and the practical
11 difficulties of some things, we are limited in terms
12 of enlarging our community outreach.

13 Presently our community outreach, we have what
14 is known as Home Bound program where members of our
15 congregation visit the sick in the community.

16 We have an outreach ministry, we are --
17 in August, we block off the street from Bailey
18 Avenue up to Condon Terrace, Atlantic and just -- of
19 course we have received permission from the
20 government officials to do that. And we just have a
21 good time there; music, clothes give away, food give
22 away, material for school children, parents come and
23 get blood pressure screening, eye tests and college
24 representatives coming to talk to our young people

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1 who have ambitions of going on to school.

2 A part of our community outreach
3 consists of those prisoners who are coming in into
4 the community, we are working with the court system
5 and trying to help them as they are integrated in
6 the community.

7 So we are involved with a great deal of
8 community outreach.

9 Our present ward Council member has been
10 to one of these community activities and has seen
11 what we are doing.

12 We have been to the community, both ANC
13 groups to seek their support and they heartily
14 endorsed our application.

15 Thus, Mr. Chairman, we come to you
16 seeking the relief that is necessary so as to enable
17 our church to continue to meet its responsibilities
18 to our present membership and those who will come,
19 and also to the community that has a great amount of
20 need.

21 CHAIRMAN GRIFFIS: Good. Thank you very
22 much. Appreciate that summation of your mission and
23 your overall mission. Of course, actually I have
24 two quick questions, Pastor Shaw.

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1 Would you just state your address for
2 the record?

3 PASTOR SHAW: The church's address is
4 3924 4th Street, Southeast.

5 CHAIRMAN GRIFFIS: Okay. Do you live
6 near the church?

7 PASTOR SHAW: I live in Assateague,
8 15406 Jamie's Way, Assateague.

9 CHAIRMAN GRIFFIS: Where's that?

10 PASTOR SHAW: In Maryland.

11 CHAIRMAN GRIFFIS: Oh, in Maryland?

12 PASTOR SHAW: Yes.

13 CHAIRMAN GRIFFIS: I see.

14 PASTOR SHAW: Straight down, yes.

15 CHAIRMAN GRIFFIS: Very well. And
16 Pastor Shaw, is the Paramount Baptist Church a
17 nonprofit?

18 PASTOR SHAW: Yes, 501(c)(3).

19 CHAIRMAN GRIFFIS: 501(c)(3). Okay.

20 And in noting that, and also in terms of
21 the mission statement, I think it's appropriate to
22 look to the Applicant's submission in the citing of
23 Monaco, which goes to the nonprofit and public
24 service case and its relevancy to this in terms of

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1 the burden of proof that goes in reviewing. I think
2 the Board is very well aware of that case and what
3 it indicates for our deliberation, so I won't need
4 to further address it.

5 Any questions of the Board of Pastor
6 Shaw at this time?

7 Let me -- oh, yes?

8 MEMBER MILLER: I just have two factual
9 questions. One is we just a letter from ANC 8-D, I
10 guess, supporting your application and I'm wondering
11 where are they located with respect to your
12 property?

13 PASTOR SHAW: Atlantic Avenue, I think
14 is the -- Atlantic Street is the border between 8-E
15 and 8-D. Since they are both adjacent, we thought
16 it feasible to go to 8-E and let them -- 8-D and
17 apprise them of our intentions.

18 MEMBER MILLER: Okay. Thank you.

19 And then my other question is I think
20 you said that the church has been in its present
21 location since 1969?

22 PASTOR SHAW: Yes.

23 MEMBER MILLER: And I think there's a
24 statement in the application that says the church

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1 has a sanctuary which accommodated approximately 400
2 seats at the time the zoning regulations were
3 changed to require parking for churches. Was there
4 a church there previously to your church?

5 PASTOR SHAW: We built that sanctuary in
6 1969.

7 MEMBER MILLER: Okay. We can get to
8 that later then, I guess. That's not when the regs
9 were changed, is it?

10 MR. GLASGOW: I believe the regs were
11 changed in either -- I think it was 1985.

12 MEMBER MILLER: Okay. Thank you for
13 clarification.

14 CHAIRMAN GRIFFIS: Two points, Pastor
15 Shaw. First of all, and we will get to it further,
16 Office of Planning was recommending not accessing
17 several of the parking spaces from the street, but
18 rather from the alley. Is that an objectionable
19 situation?

20 PASTOR SHAW: Not at all.

21 CHAIRMAN GRIFFIS: Okay. And the second
22 is there's a question of the 16 parking spaces I
23 believe was the number that was thrown around that
24 was off site. Where is that site located? Oh, is

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1 that is what's going to show here. Okay. Perfect.

2 And I know I've seen the other -- is
3 that whole document in the record?

4 MR. GLASGOW: Yes, I believe that that's
5 in the record, but if not we can leave that drawing.

6 CHAIRMAN GRIFFIS: Is that an attachment
7 in your submission or is that a separate? I mean,
8 I'll look for it. I think --

9 MR. GLASGOW: Well, I think it's
10 something very similar to it, but I'm not sure
11 exactly that plat.

12 CHAIRMAN GRIFFIS: That's right. We
13 don't have that portion, which is why the question
14 is raised.

15 MR. GLASGOW: Right.

16 CHAIRMAN GRIFFIS: That shows across the
17 street for the adjacent piece. So we'll walk through
18 that very quickly for the record.

19 MR. GLASGOW: Yes. Yes. And we can
20 leaver that for the record.

21 CHAIRMAN GRIFFIS: Okay.

22 Mr. Zaidain?

23 MEMBER ZAIDAIN: I just want to be clear
24 because we always get into these discussions when it

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1 comes to parking reduction and off site spaces.
2 You're in here for a reduction in the schedule, not
3 a variance for off site space, correct?

4 MR. GLASGOW: Correct.

5 MEMBER ZAIDAIN: That's correct. Okay.

6 Well, I mean and that's played into our
7 deliberations in the past in terms of weighing off
8 site spaces as opposed to just an outright
9 reduction. I'm in favor of just deliberating on the
10 outright reduction. But if you want to provide
11 testimony on the off site spaces, that's fine.

12 CHAIRMAN GRIFFIS: I don't think we need
13 to. I think it's pretty clear. I think the question
14 arose of not seeing where that adjacent parking, and
15 there was some question there. But the regulations
16 allow the 50 percent reduction for a church. It's
17 the specific use that is identified.

18 MEMBER ZAIDAIN: Right.

19 CHAIRMAN GRIFFIS: Of which they're
20 coming under, as long as 50 percent is provided on
21 site and no less than three if it was reduced down
22 to that point, if I'm remembering the regulation.

23 MEMBER ZAIDAIN: That's a special
24 exception, though, isn't it?

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1 CHAIRMAN GRIFFIS: No, it's a matter of
2 right.

3 MEMBER ZAIDAIN: Oh. Well, okay.

4 CHAIRMAN GRIFFIS: And then there's a
5 special exception attendant to it. I'll -- it's
6 cited in the --

7 MEMBER ZAIDAIN: Regardless of what
8 we're dealing with, even after the 50 percent we're
9 still dealing with the reduction in the schedule?

10 CHAIRMAN GRIFFIS: Well, that goes just
11 for the total. That doesn't reduce the required
12 number of parking spaces. And so what we have
13 before us now is utilization of that but not the
14 provision of the total required parking spaces. So
15 it comes for a variance to reduce the total number.

16 MEMBER ZAIDAIN: Okay.

17 CHAIRMAN GRIFFIS: Is that your
18 understanding?

19 MR. GLASGOW: Yes. We have a parking
20 requirement of about 90 spaces. And we are providing
21 65 spaces in, I guess you could say, really in three
22 locations, but two principal locations. And all of
23 those spaces are being provided as a matter of
24 right. So we're asking for a reduction by variance

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1 relief from the parking requirement from 90 spaces
2 to 65 spaces.

3 MEMBER ZAIDAIN: But are all those 65 on
4 site?

5 MR. GLASGOW: Well, we're permitted
6 through section 2116.3 to provide for a church,
7 there's a special provision dealing with churches
8 which allow them to provide required parking a
9 certain percentage of those spaces, required parking
10 can be off site within certain parameters of that.

11 MEMBER ZAIDAIN: Okay.

12 CHAIRMAN GRIFFIS: If you need it for
13 clarification, 1216.3 starts "For a church up to 50
14 percent of the number of parking spaces may be
15 located elsewhere." That's a matter of right. And
16 so they're utilizing that.

17 MEMBER ZAIDAIN: Okay. I see.

18 CHAIRMAN GRIFFIS: And then the spaces
19 have to be located in a certain part.

20 MEMBER ZAIDAIN: Okay. So I guess that's
21 why I was confused, because normally most uses don't
22 have that provision in it.

23 MR. GLASGOW: That's correct.

24 MEMBER ZAIDAIN: Okay.

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1 CHAIRMAN GRIFFIS: Right. And, in fact,
2 and to further confuse things and hopefully clarify
3 through that, often times we see churches that are
4 saying that they will provide a 100 percent of the
5 parking off site and come in for a special exception
6 or something of that nature. And so --

7 MEMBER ZAIDAIN: Okay.

8 CHAIRMAN GRIFFIS: -- I think this is a
9 very straightforward, but it obviously is a
10 reduction and a variance for that.

11 MEMBER ZAIDAIN: I understand.

12 CHAIRMAN GRIFFIS: Good. Okay.

13 Any further questions? Good. Let's go.

14 MR. GLASGOW: I'd like to call the next
15 witness, Mr. John Rosecrans.

16 Would you please identify yourself for
17 the record and proceed with your testimony?

18 MR. ROSECRANS: My name is John
19 Rosecrans. My address is 455 Old Baltimore Pike in
20 Chaddsford, Pennsylvania.

21 I am currently the owner and President
22 of Dimensional Dynamics Architects and Planners and
23 we specialize in churches throughout the United
24 States.

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1 I have been licensed since '91 and
2 currently have a license in a number of different
3 states, including the Washington, D.C. area.

4 What we have today, and I'm going to be
5 going through the drawings -- which should I hold
6 this here?

7 CHAIRMAN GRIFFIS: Hopefully.

8 MR. ROSECRANS: Okay. Does that sound?
9 Can you hear that? Okay. Cool.

10 What we have here is, as previously
11 stated, the site is quite unique in its shape. We
12 have an area up here of Condon Terrace that comes
13 down and we also have 4th Street that meet down here
14 in an intersection.

15 The property is bordered by an alley on
16 one side and the unique point of this property --
17 and this is the property they have across the street
18 with the 16 spaces. The most unique part of this
19 property is the fact that from this point to this
20 point there's about 50 foot grade change. And from
21 this point to this point there's about a 25 foot
22 grade change. So it's slopping in two different
23 directions.

24 The existing facility sits right here on

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1 this square -- not square, the triangle, but on this
2 side of it. There is currently a vacant apartment
3 building that's situated here and an apartment
4 building that is situated here that is vacated.

5 The church has -- their existing
6 building is actually a building that's been
7 constructed over three phases. They have the
8 original church building, there was an apartment
9 building and then later the two were combined and
10 brought up to code, fully sprinklered.

11 The biggest concern with the property is
12 the fact that we had quite a large program of needs
13 that needed to be put on this site but at the same
14 time the issue of all the parking is up here and the
15 front door currently down on 4th Street. So what we
16 did is we came in and created an addition to the
17 site that gave us the ability to create a new
18 entrance halfway between the two grade levels.
19 Basically like a covered car drop off so that people
20 could park in the parking and just come down to this
21 new entrance while at the same time they still
22 maintained an entrance off of 4th Street.

23 In addition to that, one of the biggest
24 concerns of course was the fact that the church was

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1 wanting to create the entire facility to be
2 handicapped accessible. This facility is currently
3 one story with a basement cellar space. And then we
4 also had, I believe, a two story apartment building
5 with a basement cellar space.

6 I should point out, the area that is
7 surrounding this is mainly apartments, some single
8 family housing, but mainly multifamily apartment
9 buildings that some of them are abandoned and some
10 of them are still occupied.

11 Okay. What we have here is this dotted
12 line here represents the footprint of the existing
13 building. The existing building is up from our new
14 lower level by, I believe, 13 feet. We have an
15 entrance down here currently that was into two
16 garages which the Office of Planning has requested
17 to come off of the alley. We also have some
18 drawings in here to show how that would work so that
19 this basically -- there are two garage spaces for
20 the pastor's car and they are part of our parking
21 requirements.

22 Down in the lower level is the
23 fellowship hall. It has kitchen space, meeting
24 rooms, rest rooms, elevators, the main stairs and

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1 all the fire stairs. They also have access from the
2 alley -- from the garage area for loading and
3 unloading.

4 Then the main floor basically which is
5 rally the basement of the existing buildings ends --
6 and it's not the main floor, it's the basement of
7 the existing building from 4th Street, because
8 currently what you do is you come in this entrance
9 or this entrance, and you go up a flight of stairs
10 to the sanctuary. So what this is is this the lower
11 level fellowship hall and these are all going to be
12 their classroom spaces for their Christian
13 education. We also have all their missions food
14 pantry and food and cloth pantry areas, and then the
15 fellowship hall is a two story space because they're
16 also going to use that for light activities for the
17 youth.

18 CHAIRMAN GRIFFIS: How do you access the
19 elevator if you're entering that.

20 MR. ROSECRANS: From the elevator here?

21 CHAIRMAN GRIFFIS: Yes.

22 MR. ROSECRANS: Basically you'd be --

23 CHAIRMAN GRIFFIS: You'd go in that
24 entrance?

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1 MR. ROSECRANS: This is handicap
2 accessible here.

3 CHAIRMAN GRIFFIS: Okay.

4 MR. ROSECRANS: And they come through
5 this big open foyer area, then you basically have to
6 go through the hall down around to the elevator.

7 CHAIRMAN GRIFFIS: Okay.

8 MR. ROSECRANS: This floor is not
9 necessarily as public as the other floors are.

10 CHAIRMAN GRIFFIS: Right.

11 MR. ROSECRANS: This is more in-house
12 church use. They do keep bathrooms, the existing
13 kitchen is going to remain.

14 So upstairs, which is their current main
15 level which has their sanctuary on it, is now going
16 to be where the new entrance is. They would come up
17 25 feet from 4th Street, all the way up to here.
18 This is going to be their new front entrance. Their
19 bookstore that they have Christian literature, they
20 have a reception desk, bathrooms, ladies lounge,
21 deacon's room, main sanctuary, elevator. And then
22 all of this is administrative for the church staff.

23 CHAIRMAN GRIFFIS: Okay. And there's an
24 elevator off that main entrance?

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1 MR. ROSECRANS: Yes.

2 CHAIRMAN GRIFFIS: Okay.

3 MR. ROSECRANS: Come right in the main
4 entrance and --

5 CHAIRMAN GRIFFIS: And that's the new
6 configured sanctuary, is that correct?

7 MR. ROSECRANS: Yes. The current
8 sanctuary is this space right here.

9 CHAIRMAN GRIFFIS: Okay.

10 MR. ROSECRANS: And it's in a large
11 sanctuary to meet their needs of their --

12 CHAIRMAN GRIFFIS: Where's the choir
13 sit?

14 MR. ROSECRANS: The choir is all right
15 there.

16 CHAIRMAN GRIFFIS: Does that sit the
17 whole choir?

18 MR. ROSECRANS: Yes.

19 CHAIRMAN GRIFFIS: Okay.

20 MR. ROSECRANS: It's tight. We allowed
21 for some overflow.

22 CHAIRMAN GRIFFIS: Okay.

23 MR. ROSECRANS: It also has a balcony.

24 Now, what's interesting about this is

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1 the floor levels -- make things really fun, the
2 floor levels of the existing apartment building --
3 well, it's not an apartment building. The existing
4 Christian education building do not align with any
5 of the floors. So we have a situation where the
6 elevators can be double sided to make up for those--

7 CHAIRMAN GRIFFIS: Indeed.

8 MR. ROSECRANS: You know, to hit all the
9 floors. So, it did actually surprise, but it did
10 actually work so that everything is handicap
11 accessible.

12 There is also off of 4th Street a ramp
13 that comes in right here.

14 CHAIRMAN GRIFFIS: Okay.

15 MR. ROSECRANS: So they can come up to
16 this area here.

17 CHAIRMAN GRIFFIS: Great.

18 MR. ROSECRANS: A small little chapel.

19 CHAIRMAN GRIFFIS: Clearly going through
20 these plans, I think what I'm seeing is the
21 difficulty in being exact about the FAR based on the
22 site slope, based on all the different levels of the
23 floors and the like.

24 Let spin through very quickly if there's

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1 anything else you want to just illuminate in the
2 plans.

3 MR. ROSECRANS: This is the upper level.
4 It is classrooms and balcony space.

5 This is the main elevation on 4th
6 Street. The existing building is kind of a
7 conglomeration of different of different items.

8 We have the original church structure,
9 we have the original apartment building. Then they
10 have the in-fills. So what we had to do was look at
11 that and kind of create a flow that made sense.

12 This is the main grand stairs so people
13 from 4th Street can see activity. The sanctuary and
14 balcony area here, fellowship hall is here, pastor's
15 room is there and then this garage is going to be
16 moved around the corner.

17 CHAIRMAN GRIFFIS: Excellent.

18 MR. ROSECRANS: This is the back
19 entrance. The car drop off entrance area, ladies
20 lounge, workroom, Christian education.

21 And then the side, basically they come
22 in from here and then they drive all the way up to
23 the upper level where all the handicapped parking
24 will be at that front door.

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1 And then is the revised drawing showing
2 the elevation -- or excuse me, the elevation with
3 the garage door moved to the side.

4 CHAIRMAN GRIFFIS: Oh, I see. Is it
5 reflected in the plans?

6 MR. ROSECRANS: It is on that plan.
7 Moved it to the side, so that it'll cover all that.

8 CHAIRMAN GRIFFIS: I see. Okay. And
9 what drawing is that? MP?

10 MR. ROSECRANS: That is MP, but it's
11 revision 2.

12 CHAIRMAN GRIFFIS: Revision 2. And what
13 was the elevation?

14 MR. ROSECRANS: Elevation would be MP-8
15 revision 2.

16 CHAIRMAN GRIFFIS: Okay.

17 MR. GLASGOW: And we will be leaving
18 copies of those for the record.

19 CHAIRMAN GRIFFIS: Right.

20 MR. GLASGOW: Because there was a
21 technical issue raised by the Office of Planning.

22 CHAIRMAN GRIFFIS: Right.

23 MR. GLASGOW: With respect to a side
24 yard. And I guess when you look at them, they were

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1 concerned that there was a side yard created off the
2 north end of the site.

3 CHAIRMAN GRIFFIS: Oh, right.

4 MR. GLASGOW: And we determined that the
5 most expeditious way to address that issue given the
6 size and the shape, because there are some
7 complexities as you've seen with the site even from
8 a zoning standpoint given where Condon Street is you
9 technically have a negative elevation for the
10 church, if you want to take a point of measure from
11 Condon Street. We decided the easiest way to -- and
12 most simple way to address the problem was to ask
13 the Board to allow us to increase the FAR variance
14 by about, I think, it's 60 feet to provide a
15 covering that cuts off the side yard so that there
16 would be no side yard required.

17 CHAIRMAN GRIFFIS: I see. But is that
18 amendment within the 2 percent of the 1,000 square
19 feet that's in the original application or that is
20 in addition to the FAR variance?

21 MR. GLASGOW: What we would be
22 requesting is instead of an FAR variance of 1,038
23 square feet, we would be requesting 1,098 square
24 feet.

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1 CHAIRMAN GRIFFIS: Oh, I see.

2 MR. GLASGOW: I think we would rather do
3 it that way than have potentially a new area of
4 relief being requested at the hearing.

5 CHAIRMAN GRIFFIS: Right. Exactly.

6 Okay.

7 MEMBER ZAIDAIN: So what's the
8 calculation got FAR? I mean the original request
9 was .918 FAR. What is it now?

10 MR. GLASGOW: Yes, .918.

11 MR. ROSECRANS: It's .919.

12 CHAIRMAN GRIFFIS: Well, we're looking
13 at square footage, so we're looking at --

14 MR. SHER: It's 60 square feet, but it's
15 .0001 FAR.

16 CHAIRMAN GRIFFIS: Okay. Sixty square
17 feet.

18 MEMBER ZAIDAIN: I have a question
19 regarding the FAR element. Because of the slope of
20 the site your bottom floor exceeds the four feet
21 minimum at certain spaces. What is the highest point
22 that the basement floor is?

23 MR. ROSECRANS: The basement floor, here
24 is the lowest level right and then the basement

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1 comes to that.

2 MEMBER ZAIDAIN: Okay.

3 MR. ROSECRANS: However, the --

4 MEMBER ZAIDAIN: And that's the highest
5 point?

6 MR. ROSECRANS: -- fellowship hall is a
7 two story space and so that did not calculate into
8 the FAR item.

9 CHAIRMAN GRIFFIS: It did once.

10 MR. GLASGOW: It did once.

11 MR. ROSECRANS: It did once. Correct.

12 CHAIRMAN GRIFFIS: Not twice.

13 MR. GLASGOW: Not twice.

14

15 MR. ROSECRANS: The FAR was quite fun on
16 this because we have half of the building
17 underground that's existing because the whole lower
18 level is underground on the backside. And then there
19 are two levels underground on the new structure, but
20 at the same time parts of the front are not
21 underground.

22 MEMBER ZAIDAIN: Okay. So in terms of
23 the bottom level here, though, on this elevation
24 let's say --

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1 MR. ROSECRANS: For this lowest level
2 right here.

3 MEMBER ZAIDAIN: Right. Okay. And that
4 encompasses -- I wish I had a pointer.

5 MR. ROSECRANS: Basically all of the new
6 area --

7 MEMBER ZAIDAIN: Thank you very much.
8 So really the issue is, is this story
9 here, correct?

10 CHAIRMAN GRIFFIS: Level.

11 MEMBER ZAIDAIN: Or this level. I mean
12 story and it's a big difference.

13 MR. ROSECRANS: Right.

14 MEMBER ZAIDAIN: What is the highest
15 point of that level? Do you have that?

16
17 MR. ROSECRANS: Twelve foot two is the
18 height of that space.

19 MEMBER ZAIDAIN: Of that level. Okay.

20 CHAIRMAN GRIFFIS: Above the adjacent
21 grade?

22 MR. ROSECRANS: Not above the adjacent
23 grade. It varies.

24 MEMBER ZAIDAIN: It varies because of

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1 the slope?

2 MR. ROSECRANS: At this corner it's 12.2
3 but as you go up the other way it disappears to
4 negative.

5 MEMBER ZAIDAIN: Okay.

6 MR. ROSECRANS: It'll go to a negative
7 point.

8 MEMBER ZAIDAIN: Well, but in terms of
9 this level, everything between 12 feet and 4 feet
10 count in the FAR and everything below it's not
11 counted, correct?

12 MR. ROSECRANS: Yes.

13 MEMBER ZAIDAIN: Okay. I have a
14 question on a different issue. I don't know if we're
15 ready to --

16 CHAIRMAN GRIFFIS: Okay.

17 MEMBER ZAIDAIN: I don't know if you
18 guys are going to address this. This is the plat of
19 the site, and unfortunately the exhibit number is
20 cut off.

21 CHAIRMAN GRIFFIS: Of the adjacent site
22 used for parking.

23 MR. ROSECRANS: Oh, that's the adjacent

24 16 --

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1 MEMBER ZAIDAIN: Right. And this is
2 part of your application, correct.

3 MR. ROSECRANS: Yes. That's this --

4 MEMBER ZAIDAIN: Okay.

5 MR. ROSECRANS: That's the piece across
6 the street.

7 CHAIRMAN GRIFFIS: What's the question?

8 MEMBER ZAIDAIN: The question is these
9 improvements are in right of way, I take it? Are
10 you guys doing those improvements, are they
11 existing, what's --

12 MR. ROSECRANS: No, they're not
13 existing.

14 MEMBER ZAIDAIN: Okay.

15 MR. ROSECRANS: Currently there is a
16 vacant home sitting on that site. And that --

17 MEMBER ZAIDAIN: Okay.

18 MR. ROSECRANS: --there is improvements
19 being done along with the whole project.

20 MEMBER ZAIDAIN: Okay. And this is just
21 more so I understand the project, are these coming
22 right off of the lanes, right of the current way?

23 MR. ROSECRANS: It's coming off the
24 parking. 4th Street has parking on each side.

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1 MEMBER ZAIDAIN: Okay.

2 MR. ROSECRANS: And that's the center
3 parkway.

4 MEMBER ZAIDAIN: Okay.

5 MR. ROSECRANS: So they'll be losing a
6 couple on street parking spaces.

7 CHAIRMAN GRIFFIS: And how far along is
8 this work? Has it gone into permit that's adjacent?

9 MR. ROSECRANS: No, none of this has.

10 MR. GLASGOW: We're waiting.

11 CHAIRMAN GRIFFIS: Okay. Any other
12 questions? Yes?

13 COMMISSIONER PARSONS: Just a couple.

14 I notice in the photograph there
15 alongside the parking lot is playground equipment.
16 Is that function still provided for in this site
17 plan?

18 MR. ROSECRANS: Yes. Currently this
19 area right here is where the existing playground
20 sits and it's still going to remain there fenced
21 off.

22 COMMISSIONER PARSONS: Okay.

23 MR. ROSECRANS: So they can access from
24 the building directly into that playground without

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1 crossing any driveways.

2 COMMISSIONER PARSONS: Good.

3 It appears as though the existing
4 parking lot is sheet runoff into the street, and
5 this will be a vast improvement, obviously, because
6 you're occupying it with a building. But how about
7 the other parking lot? We haven't got a copy of
8 that drawing in the record. Is there any drainage
9 shown on this?

10 MR. ROSECRANS: Yes. What we have here
11 is we have three different storm water management
12 areas. We have a storm water management area here
13 that handles this parking load. Then it is piped
14 down this -- and the pipe runs down the center of
15 the alley or part of the alley on the northside of
16 the alley and connects to the storm water system in
17 the middle of the street.

18 There's another storm water management
19 area right here to take care of the flow that comes
20 down in through here.

21 And then there's an additional storm
22 water management on the corner of this parking lot
23 here that will connect.

24 COMMISSIONER PARSONS: That's fine.

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1 Thank you.

2 CHAIRMAN GRIFFIS: Okay. Anything else?

3 Yes, Ms. Miller?

4 MEMBER MILLER: I have a question with
5 respect to parking, but it's a legal question so I
6 think that's for Mr. Glasgow. And I kind of was
7 referring to this before, but under the existing
8 situation the church is required to have 40 parking
9 space but they were waived because the church was in
10 existence prior to the new regulation that required
11 the parking spaces.

12 MR. GLASGOW: Yes.

13 MEMBER MILLER: Now the church is
14 required to have 50 more spaces. And my question is
15 do you have an opinion as to whether or not the 40
16 spaces might be grandfathered or continued under the
17 law somehow and that you might only need 50?

18 MR. GLASGOW: We went back and forth on
19 that internally on several occasions. And we
20 determined that we thought we could make the burden
21 of proof for a variance case as opposed to when you
22 have a building and you have the main sanctuary and
23 that main sanctuary is being discontinued in its use
24 and a new building addition is being constructed

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1 with a new main sanctuary. You know, there
2 was a question as to whether that remains or not.
3 And since we need an FAR variance, we decided we
4 would go ahead and just ask for the parking variance
5 at the same time, and therefore not be in a
6 situation where we had plans filed, you know, the
7 working drawings filed trying to get a building
8 permit and then have somebody say we have a
9 potential area with the parking variance.

10 MEMBER MILLER: Thank you.

11 CHAIRMAN GRIFFIS: Anything else?

12 MR. GLASGOW: We have Mr. Sher as a
13 witness if he's needed.

14 CHAIRMAN GRIFFIS: Let's see if we have
15 any questions after. Are we going to have
16 testimony? Are you bringing any witnesses?

17 MR. GLASGOW: He's available for any
18 questions the Board may have.

19 CHAIRMAN GRIFFIS: Okay.

20 MR. GLASGOW: Because I think most of
21 the principal questions at least that we were
22 anticipating have been asked by the Board. If
23 there's more testimony that's needed, we have Mr.
24 Sher available.

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1 CHAIRMAN GRIFFIS: Okay. I think it's
2 excellent to have the report in and it was
3 informative, the review.

4 Are there any questions from the Board?
5 Anything in addition to what was submitted?

6 MR. SHER: No, sir.

7 CHAIRMAN GRIFFIS: Okay. Thank you very
8 much. It was very clear and very well done, and we
9 do appreciate it as always.

10 There has been question in terms of
11 whether we can look at an accessory parking or an
12 off site parking when it isn't built yet or doesn't
13 have any sort of permit construction or CFO on it.
14 Do you have any opinion on that?

15 MR. GLASGOW: Yes. At least the way
16 that those regulations are structured with respect
17 to a church, we think it's no different than
18 building a parking garage or a parking lot in
19 conjunction with the construction of a new building.

20 CHAIRMAN GRIFFIS: I see.

21 MR. GLASGOW: So all that permitting
22 would occur at the same time.

23 CHAIRMAN GRIFFIS: Okay.

24 MR. GLASGOW: So when we get a building

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1 permit for the church addition, we'll get a permit
2 for the parking lot across the street.

3 CHAIRMAN GRIFFIS: And so it'll be
4 obvious that this was a successful application and
5 it'll be based on the record that was submitted
6 before us, which is the documentation of that
7 construction with the accessory parking.

8 First to the architect, did you ever
9 explore below grade parking so that you wouldn't
10 need to have your client acquire the adjacent
11 property?

12 MR. ROSECRANS: We have actually talked
13 about that. Right now we're already sending the new
14 structure down below the existing grade or down
15 below the finished floor of the existing building.
16 And it's going to be quite extensive. They do have a
17 budget that we're looking at.

18 So financially it did not meet the
19 parameters that they had. We also looked at
20 possibility of parking on the upper level, on this
21 upper level being a parking garage. But it's again
22 it was a budget item that they -- their desire is as
23 they grow they will continue to buy properties for
24 additional property. But at this time to meet the

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1 needs of their current congregation and their
2 current ministries, this project had to go forward
3 with what we have here.

4 CHAIRMAN GRIFFIS: I see. So you're
5 saying that because the required mission has a
6 required square footage that created the building
7 going down a bit below grade, that trying to get
8 underneath that was fairly impractical?

9 MR. ROSECRANS: Yes.

10 CHAIRMAN GRIFFIS: And then creating a
11 whole structured parking garage for the 16 other
12 required where in addition to -- wouldn't perhaps
13 not be a full deck, so that it would probably be
14 impractical to do that also.

15 You just made an interesting comment,
16 though. The church had anticipated as it grows to
17 acquire more properties around. I certainly hope
18 they're not going to acquire enough properties that
19 then the community goes away and they have surface
20 parking surrounding it, in which case their
21 population may even drop so it may be counter
22 productive.

23 I am not a huge fan of surface parking.

24 And I understand that it is needed and is practical

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1 or impractical to do otherwise. But I certainly
2 wouldn't encourage acquiring more to create more
3 surface parking. But that's just my statement.

4 So, any questions?

5 MEMBER ZAIDAIN: Yes, I just have two
6 quick ones.

7 Mr. Glasgow is referencing permitting.
8 Do you have to get a public space permit in order to
9 do the improvements for the parking lot?

10 MR. GLASGOW: Well, we're going to have
11 to -- anytime you have a curb cut --

12 MEMBER ZAIDAIN: Right.

13 MR. GLASGOW: -- with a public space
14 permit. And in fact, just about every job that we
15 have, you have a series of public space permits and
16 private property permits that go with it.

17 MEMBER ZAIDAIN: Okay. Has DDOT seen
18 any? I mean, I know they probably got the -- from
19 the BZA and I don't think I have a report in the
20 file, but have you guys notified DDOT or anything on
21 any of this stuff?

22 MR. GLASGOW: We haven't had any comment
23 from them on that.

24 MEMBER ZAIDAIN: Okay.

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1 MR. GLASGOW: We think it's pretty
2 straightforward given the traffic patterns around
3 that area.

4 MEMBER ZAIDAIN: Okay. And there was a
5 point ion the Office of Planning report about
6 practical difficulty for the parking spaces that
7 talks about the rising elevation requiring a longer
8 drive the lot. I think that's a pretty important
9 piece to the practical difficulty test. And I was
10 going to ask this of Office of Planning, but I'll
11 ask the architect, because they could probably
12 answer it quicker. No offense.

13 Is that because you're trying to achieve
14 a slope that a car can easily go up? And I guess
15 well what is that slope and what's the length that
16 you've had to use to -- how much space got displaced
17 in order to achieve that slope? Can you answer that
18 as best you can?

19 MR. ROSECRANS: Well, we were originally
20 request to have a 7 percent slope, not to exceed 7
21 percent.

22 MEMBER ZAIDAIN: And that's a standard
23 for driveways?

24 MR. ROSECRANS: And I believe so.

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1 However, in dealing with the Office of Planning --
2 the Department of Traffic, the existing alley is a
3 12 percent slope. And if we were to go to 7 percent,
4 it would severely encroach onto the neighbor's
5 property.

6 MEMBER ZAIDAIN: Right.

7 MR. ROSECRANS: Trying to maintain that
8 grade. So we do have a 12 percent slope coming up
9 the side alley and then it flattens out to be the
10 kind of the requested slopes.

11 MEMBER ZAIDAIN: Okay. But you're
12 trying to achieve a 7 percent slope for the
13 driveway?

14 MR. ROSECRANS: Yes, we have a 7 and a 9
15 percent slope.

16 MEMBER ZAIDAIN: So you say the length
17 of the driveway represents that transition --

18 MR. ROSECRANS: Yes.

19 MEMBER ZAIDAIN: -- from the 12 percent
20 to the 7 percent?

21 MR. ROSECRANS: Correct.

22 MEMBER ZAIDAIN: Okay.

23 MR. ROSECRANS: It's from the upper
24 parking lot going down the hill, there's that

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1 cartway there that has a significant slope that is a
2 7 percent and then a 9 percent and back to 7 percent
3 to the entrance way.

4 MEMBER ZAIDAIN: Okay.

5 MR. ROSECRANS: So it is mainly like you
6 said, cartway to obtain the different slopes.

7 MEMBER ZAIDAIN: Right. It's
8 interesting. You figure with today's SUV driving
9 population they could handle steeper slopes, but we
10 don't want to plan for that, I guess, right.

11 CHAIRMAN GRIFFIS: Well, there's a lot
12 of aspects I think that the slope goes to, not just
13 the driving. I mean, it also goes to the angle. But
14 outside of getting into the engineering of it, it's
15 an excellent --

16 MEMBER ZAIDAIN: Well, I think that
17 establishes the practical difficulty for the
18 parking.

19 CHAIRMAN GRIFFIS: Indeed.

20 MEMBER ZAIDAIN: Part of it.

21 Thank you.

22 CHAIRMAN GRIFFIS: Good. Thank you very
23 much.

24 Any other questions from the Board at

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1 this time?

2 Any further factual evidence in the
3 submission?

4 MR. GLASGOW: No, sir.

5 CHAIRMAN GRIFFIS: Then to the Office of
6 Planning, and have them review their report.

7 Good morning, sir.

8 MR. PARKER: Is that you're request of
9 me.

10 CHAIRMAN GRIFFIS: Absolutely.

11 MR. PARKER: Good morning. Travis Parker
12 with the Office of Planning.

13 With the Applicant's willingness to
14 change the access of those two internal parking
15 spaces, we have no objection to approval of this.
16 And short of any questions you have me, I'll stand
17 on the record as submitted.

18 CHAIRMAN GRIFFIS: Excellent. I
19 appreciate that. And, of course, you recommended in
20 a favorable memo that was very well documented, not
21 only with the aerial photographs, but utilizing some
22 of the submissions on the record in this case and
23 then the summation of test requirements. So it's
24 most appreciated.

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1 I don't have any questions for the
2 Office of Planning. Does any other Board Member
3 have any questions of the Office of Planning? Not
4 seeing any, does the Applicant have any cross
5 examination of the Office of Planning?

6 MR. GLASGOW: No, sir.

7 CHAIRMAN GRIFFIS: Very well.

8 And I do thank you very much.

9 Let's go then, is the ANC represented
10 today? Any representatives from the ANC? Not
11 seeing any, we have noted that they had submitted a
12 favorable recommendation, Exhibit 22 and we have
13 today received ANC 8-D, which is the adjacent ANC
14 that submitted testimony on this application.

15 If there are no questions or concerns
16 raised by the Board regarding those, let us move on
17 to other submissions.

18 I have note of no other governmental
19 submissions on this case unless the Applicant's
20 aware of any or Board Members.

21 Then, is there any persons here in
22 support or in opposition to Application 17093 that
23 would like to give testimony today? Not seeing an
24 indication of presenting persons in testimony, I

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1 think we can move on to any sort of summation,
2 closing remarks that you might have, Mr. Glasgow?

3 MR. GLASGOW: Yes, sir.

4 Mr. Chairman, members of the Board, we
5 believe we met our burden of proof for the granting
6 of FAR variance and the parking variance. And we
7 would love to get this project on its way. And we
8 would respectfully request a bench decision with
9 summary order.

10 Thank you.

11 CHAIRMAN GRIFFIS: Thank you.

12 Last questions of the Board?

13 I think it make sense to move into a
14 motion and it would be for approval of Application
15 17093, the Paramount Baptist Church, for the
16 variance of the FAR and also the variance from the
17 off-street parking under 402 and 2101.1 for the
18 premises at 3924 4th Street, Southeast. And I'd ask
19 for a second.

20 MEMBER ETHERLY: Second, Mr. Chair.

21 CHAIRMAN GRIFFIS: Thank you, Mr.

22 Zaidain.

23 I think it's first of all coming under
24 the deliberation with our full understanding of

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1 Monaco and how it relates to the burden of proof
2 that is required for nonprofits that are expanding
3 their mission and space requirements. Addressing
4 the variance I think it's fairly clear.

5 And my deliberation is based on the
6 submission to the record today of MP-2, revision
7 number 2 and MP-8 revision 2 which go to the
8 reorientation of the parking that would access the
9 alley and not another curb cut off the street.
10 Correct.

11 And then also the addition of 60 square
12 feet to the FAR which still puts it into a very
13 small area of relief requirement for the FAR.

14 And then I will get to the actual
15 parking count after I let others speak to it,
16 because I don't have it right in front of me.

17 That being said, it's a very strong
18 application in terms of -- you know, actually one of
19 the strongest statements that I found in the
20 Applicant's submission was the fact that if this was
21 -- and really is the parameter of all deliberations
22 that we look to in terms of uniqueness and then the
23 project particularly arising -- if this was a
24 rectangular, a perfect rectangular lot it would

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1 accommodate: (1) The Far, and; (2) The parking more
2 efficiently and perhaps would remove all the
3 variances. I think it is very clear in terms of the
4 triangular shape of this the existing structures
5 that are also on the site and being an addition to
6 the whole existing structure has lent itself to
7 practical difficulties with in addition to the
8 grade, the large grade change which goes I think
9 very firmly towards the FAR and what counts and what
10 does not count.

11 That being said, I think it was --
12 easily outlined the practical difficulty in terms of
13 not impairing the integrity of the zone plan or
14 diminishing the public good. I think it's obvious
15 that this service that this church provides to the
16 existing community and perhaps the much larger
17 surrounding community is an important one and I
18 don't see anything in the application today in the
19 record that would evidence any sort of diminishment
20 of public good or, in fact, anything in the zone
21 plan or map.

22 I'll open it up to other Board members
23 if they have other comments to speak to the motion.

24 Mr. Etherly, if you have any other

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1 comments? I was going to buy some time here to try
2 and get the actual count.

3 The minimum of required parking spaces
4 as Ms. Miller had evidence -- or brought up the
5 interesting question, the minimum required would be
6 90 and the proposed is 65. It is a variance for the
7 25 spaces, and that is what the motion is for. Is
8 that everyone's understanding?

9 Having that as everyone's understanding,
10 if there's nothing further from the Board, then I
11 can ask for the vote. In favor of the motion
12 signify by saying aye.

13 ALL: Aye.

14 CHAIRMAN GRIFFIS: Opposed? Any
15 abstaining?

16 MS. BAILEY: Call the vote, Mr.
17 Chairman?

18 CHAIRMAN GRIFFIS: Yes, if you would.

19 MS. BAILEY: The vote is recorded as
20 five/zero/zero to approve the application. Motion by
21 Mr. Griffis, seconded by Mr. Etherly, Ms. Miller,
22 Mr. Zaidain and Mr. Parsons are in agreement.

23 And a summary order, Mr. Chairman?

24 CHAIRMAN GRIFFIS: I see no reason to go

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1 forward on this. We can issue a summary order.

2 MS. BAILEY: Okay.

3 CHAIRMAN GRIFFIS: Excellent. Thank you
4 very much.

5 Thank you all very much.

6 Pastor Shaw, good luck and enjoy.

7 We're going to take just a 7 minute
8 recess and then we're going to come back for the
9 last case in the morning and finish up.

10 (Whereupon, at 11:05 a.m. a recess until
11 11:23 a.m.)

12 CHAIRMAN GRIFFIS: Let's call the next
13 case.

14 MS. BAILEY: Application No. 17059 of
15 Sam Homes, L.L.C, pursuant to 11 DCMR § 3103.2 for a
16 variance from the minimum lot area and lot width
17 requirements under section 401, to allow the
18 construction of two single family detached dwellings
19 in the Sixteenth Street Heights Overlay, R-1-B
20 District at premises 1340 and 1342 Montague Street,
21 N.W., Square 2796, Lot 46.

22 Please stand to take the oath.

23 (Witnesses sworn.)

24 CHAIRMAN GRIFFIS: Very well. Let's go.

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1 MR. ELLIS: Good morning, Mr. Chair and
2 Board Members.

3 My name is Craig Ellis, and I am counsel
4 for Sam Homes, L.L.C.

5 With me is Mr. Oliver Samuels, the head
6 of Sam Homes, L.L.C.

7 As was stated by Ms. Bailey when she
8 announced us, Sam Homes is attempting to build two
9 single family residences, 1340 and 1342 Montague
10 Street, Northwest.

11 Now, I want to just say briefly, and
12 I'll then let Mr. Samuels give his testimony,
13 originally we had sought three areas of a relief
14 because what we were trying to do was this is a very
15 large lot and there were -- this is on the border of
16 R-5 and R-1. This is actually in R-1, but we were
17 trying to keep it consistent with the two semi-
18 detached one rowhouse which typically three
19 townhouses that were going to the east of this
20 property.

21 The ANC, we met with the ANC. The ANC
22 did not go along with that. There is -- there was
23 some parking concerns that they thought about if you
24 put three townhouses there. So after meeting with

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1 the ANC and they announced that they were not going
2 to be supportive, we came back and went to the
3 drawing board and came back with a proposal that
4 they felt that they could support.

5 Now with that, I will then introduce, as
6 I've already introduced Mr. Samuels and Mr. Samuels,
7 can you give your direct your direct testimony,
8 please?

9 MR. SAMUELS: My name is Oliver Samuels.
10 And my address is 4203 16th Street, Northwest.

11 I am like all the parties have stated to
12 ask for a variance for minimum side yard, which what
13 it means is we have --

14 MR. ELLIS: Minimum lot width.

15 MR. SAMUELS: Minimum lot width. We
16 have a lot that is extraordinarily big, 10,000
17 square feet and 80 feet wide by 131 feet deep. So
18 due to the dynamics of the market in the area it
19 would not -- notwithstanding the fact that the lot
20 is extraordinarily big, it would be inconsistent
21 with the houses that we are to build such a large
22 house, number one. And it would be not too -- not as
23 much economically feasible as if you would build two
24 smaller houses and more affordable houses. So for

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1 that reason we thought that, like he said at first,
2 three would be the best bet. We went to the ANC, we
3 did not get the support. So we went back to the
4 drawing board and got approval for two.

5 I personally went around to all the
6 neighbors, spoke to them. And they had one concern,
7 which was that the garages not be in the front of
8 the houses. We went back and we addressed that also,
9 and they approved it on that specific condition that
10 all the garages be on the back of the house. So we
11 went ahead and did that.

12 CHAIRMAN GRIFFIS: And that's reflecting
13 in the submission that we've just received today, is
14 that correct?

15 MR. ELLIS: That's correct.

16 CHAIRMAN GRIFFIS: And that's in the
17 elevation. But if you go to the plans, the first
18 floor plan, it's still showing a garage and a --

19 MR. SAMUELS: I'm sorry, Mr. Griffis. I
20 didn't hear what you said.

21 CHAIRMAN GRIFFIS: The plan that's
22 attached to the submission that came in today.

23 MR. SAMUELS: Yes.

24 CHAIRMAN GRIFFIS: There's a revised

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1 front elevation, but the first floor plan appears to
2 show the original floor plan with a garage access
3 off the front.

4 MR. SAMUELS: He's correct.

5 MR. ELLIS: You're absolutely correct,
6 and I'm going to tell you what happened. When I
7 took them in to be -- when I took it in to be
8 copied, I thought that they had copied the -- both
9 sheets, and they didn't.

10 CHAIRMAN GRIFFIS: Okay.

11 MR. ELLIS: And I thought the second one
12 would be all right, but I could submit for the Board
13 my full sheets.

14 CHAIRMAN GRIFFIS: Okay.

15 MR. ELLIS: And could have mine, because
16 I don't -- I have another one.

17 CHAIRMAN GRIFFIS: Okay. Yes, we'll
18 need that in the record.

19 MR. ELLIS: Okay.

20 CHAIRMAN GRIFFIS: So it does reflect
21 the fact that the first floor is all occupiable and
22 there is no garage in it? Okay.

23 MR. ELLIS: To clarify one thing that
24 Mr. Samuels said, this lot is 80 feet wide as the

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1 submission that I have submitted to you says. It's
2 80 feet wide. Dividing it up, each lot meets this
3 square footage requirements. The problem is that
4 the lots when you divide the 80 foot wide, you get
5 two 40 foot lots. In an R-1 zone you're required to
6 have 50 feet.

7 This one needs -- each of these lots
8 need ten feet variance here because they're short
9 those ten feet.

10 Now, to be clear this lot is the largest
11 lot in the area. The lots to the west of this are
12 only 40 feet wide anyway. The lots in the community
13 were established before the zoning regulations, and
14 they're all 40 feet. So the two lots that we're
15 creating are the exact same size as all the
16 surrounding lots. But the fact is that, you know,
17 today to build you need a 50 foot wide lot. But
18 these lots are no different than the lots that we're
19 going to be adjacent to.

20 Now, when I say "adjacent," again I'm
21 talking about to the west because that's an R-1. To
22 the east of this lot is R-5. So, you know, you're
23 right on the border, as I said before.

24 This lot faces, of course, the even side

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1 of Montague Street. Those lots on that side are 40
2 foot wide lots. The house, the plans that are here
3 are consistent. These houses have a lot of tutor
4 styling. This neighborhood, everything is done in
5 tutor styling. And so these houses were being
6 designed to mesh right in with the community, and
7 that's why the community decided to support this
8 Applicant.

9 This Applicant, of course, when they
10 bought this lot and the time that they've had to
11 carry the lot, it just would be difficult for them
12 to -- it would a tremendous hardship for them to be
13 able to develop this lot as one single house. And
14 also, it would also take the community -- it would
15 be out of character with the remaining portion --
16 with the remaining community.

17 CHAIRMAN GRIFFIS: If you left it one
18 big lot?

19 MR. ELLIS: One big lot, yes.

20 CHAIRMAN GRIFFIS: I see. Okay.
21 Anything else?

22 Yes, a question?

23 COMMISSIONER PARSONS: I just wondered,
24 now that you've removed the question from within the

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1 building, where is the parking going to occur? On
2 the street?

3 MR. ELLIS: No, in the rear of the
4 building on a pad in the rear.

5 COMMISSIONER PARSONS: Oh, access from
6 the alley, but there'll be a garage, no. Just a pad
7 at the alley?

8 MR. ELLIS: Yes.

9 COMMISSIONER PARSONS: Okay.

10 MEMBER ZAIDAIN: I guess I've been
11 struggling to understand this, because we don't deal
12 with variances a lot or variances on a consistent
13 basis that deal with creating new lots. So it's
14 usually having to deal with an existing building
15 that's got a challenge from a natural feature of the
16 site like the previous case we just had before us.

17 And I guess one of my fundamental
18 question is a big -- and just to lay it on the table
19 about a variance, obviously is a fairly high burden
20 as to compared to a special exception.

21 MR. ELLIS: And if I may add, you have
22 different types of variance.

23 MEMBER ZAIDAIN: This is area variance.

24 MR. ELLIS: This is an area variance.

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1 MEMBER ZAIDAIN: Yes, I understand that.

2 MR. ELLIS: And a use variance is very
3 different.

4 MEMBER ZAIDAIN: No. And I understand
5 that. I'm just saying that your case even under an
6 area variance is somewhat of a challenge because you
7 could create a conforming lot. You just want to
8 create -- I mean, you could create at least one lot
9 that was conforming to the zoning regulations but
10 you want to create two that are nonconforming? Do
11 you follow me?

12 MR. ELLIS: Well, I could -- but it
13 wouldn't draw less relief. If we created one lot
14 that was 50, then we would have one that was 30.

15 MEMBER ZAIDAIN: No, and I understand
16 that.

17 MR. ELLIS: But then you would still
18 have a nonconforming lot that we would still be here
19 requesting and with all likelihood on the 30 foot
20 lot, we would end up with more relief needed because
21 it would, you know, some side yard and other --

22 MEMBER ZAIDAIN: I -- I totally --

23 MR. ELLIS: And the minimum --

24 MEMBER ZAIDAIN: I totally understand

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1 that. But the problem is with variances, in my mind
2 and I can hear from other board members if they
3 disagree, economics is a very, very touchy issue in
4 terms of whether or not we can variance based on
5 that. It's usually stemming from some sort of
6 practical difficulty from a site. Uniqueness,
7 you've stated that it's one of the largest lots in
8 that District, and I think that's an important
9 point.

10 My fundamental question that I was
11 trying to get at is that part of your argument is
12 you're trying to replicate the character of an
13 adjacent zoned district, that being the R-5-A and --

14 MR. ELLIS: No we're not. I didn't say
15 that. I said we originally were trying.

16 MEMBER ZAIDAIN: Okay.

17 MR. ELLIS: Don't confuse our first
18 application. We're not trying to go th R-5-A
19 anymore. We're just doing the R-1. We're doing two
20 separate single family detached properties. So
21 we're not trying to replicate an R-5 at all.

22 MEMBER ZAIDAIN: Okay. But in terms of
23 the lot width, is that consistent with what's to
24 your east?

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1 MR. ELLIS: To the east is R-5, to the
2 west is R --

3 MEMBER ZAIDAIN: No. But in terms of
4 lot width of the actual existing sites to the east?

5 MR. ELLIS: The existing sites in the R-
6 1 are only 40 feet wide.

7 MEMBER ZAIDAIN: What about in the R-5?

8 MR. ELLIS: In the R-5, they're only 20
9 feet.

10 MEMBER ZAIDAIN: Oh, really? Okay.

11 MR. ELLIS: So we're actually -- if we
12 had built one house, we would have been even bigger
13 than the three houses next to it.

14 MEMBER ZAIDAIN: Right.

15 MR. ELLIS: If we built one house, we're
16 bigger than two houses to the next of us.

17 MEMBER ZAIDAIN: Right.

18 MR. ELLIS: And so --

19 MEMBER ZAIDAIN: Well, you answered my
20 question without letting me ask that. I appreciate
21 that.

22 CHAIRMAN GRIFFIS: Let me just summarize
23 so that everyone has the same understanding.
24 Looking at this as a subdivision of a single

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1 conforming lot into two nonconforming lots brings it
2 into the context of the R-1-B in terms of the same
3 width dimensions.

4 The existing adjacent R-1-B lots were
5 done prior to the change of the zoning that
6 increased the width requirement to 50 from the 40.
7 So in the R-1, which is obviously the most
8 restrictive of the zones in this area, they were
9 originally done at 40 feet and what is now being
10 proposed is to be in context with those adjacent and
11 not with the higher less restrictive residential,
12 which are smaller.

13 MEMBER ZAIDAIN: Right. And, as I
14 stated, I mean I think the information we just
15 received clarified my point in terms of the
16 character of the adjacent zone districts. And I
17 would like to hear some more testimony on this. I
18 guess the challenge is for the various tests to be
19 satisfied without it purely relying on economics.

20 CHAIRMAN GRIFFIS: Okay. To address the
21 economics and not go too far into it, but the Board
22 does have a jurisdiction to hear economic issues.
23 We have had --

24 MEMBER ZAIDAIN: That's part of that

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1 confluence of factors, correct?

2 CHAIRMAN GRIFFIS: It is. And the
3 courts have actually decided that that is a point of
4 which we can deliberate and decide and act.

5 MEMBER ZAIDAIN: Purely on economics?

6 CHAIRMAN GRIFFIS: Yes. Based on the
7 feasibility.

8 MEMBER ZAIDAIN: That's interesting.

9 CHAIRMAN GRIFFIS: Now, I know that the
10 Board does have difficulty in measuring as to
11 economic impact as it creates a practical difficulty
12 or a hardship in use variance.

13 On a issue of this, I think we don't go
14 into great documentation of the economics. I think
15 it's fairly straightforward and understanding the
16 difference between building a large single family on
17 an 80 foot wide lot as opposed to two on 40s. So my
18 point being, I think we have enough --

19 MEMBER ZAIDAIN: Where are you getting
20 the 80 foot wide lot from? I mean, that was their
21 previous -- well, not the previous --

22 CHAIRMAN GRIFFIS: Well, that's the
23 existing lot.

24 MEMBER ZAIDAIN: That's the existing

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1 lot, I know. But you're talking about balancing
2 that between you have the 80 foot lot or you have
3 the two 40 foot lots. And I don't look at it that
4 way. I look at it you either have the 80 foot -- you
5 either have lots that conform to the zoning or lots
6 that don't.

7 CHAIRMAN GRIFFIS: Well, we have an
8 existing lot.

9 MEMBER ZAIDAIN: Right.

10 CHAIRMAN GRIFFIS: And then we have the
11 application to look at two within two 40 foot.

12 MEMBER ZAIDAIN: And we're assuming that
13 the two 40 foot is the only way to proceed on this?

14 CHAIRMAN GRIFFIS: No. I'm saying that's
15 what before us.

16 MEMBER ZAIDAIN: Okay.

17 CHAIRMAN GRIFFIS: That we don't need
18 economic feasibility studies. I think it's clear
19 what --

20 MEMBER ZAIDAIN: Okay. But it's your
21 opinion that we can deliberate on this variance
22 solely on the economic issues? I thought that's what
23 I heard you just say.

24 MR. ELLIS: Could I just interject for a

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1 second?

2 CHAIRMAN GRIFFIS: No. I think we don't
3 need additional documentation to address that if we
4 want to address that in our deliberation. I think
5 that there is more information in this application -
6 -

7 MEMBER ZAIDAIN: Okay.

8 CHAIRMAN GRIFFIS: -- that addresses the
9 practical difficulty.

10 MEMBER ZAIDAIN: Okay. Thank you.

11 CHAIRMAN GRIFFIS: Okay. Ms. Miller?

12 MEMBER MILLER: Just to follow up on
13 that point, though, you do have a conforming lot on
14 which you could build a single family residence
15 without getting a variance from us. And one of the
16 reasons you want the variance from what I understand
17 it is that is for economic return? I mean, the way
18 I read your application is that if it's divided into
19 two lots, you have two single family residences
20 which would give you a certain profit. And if you
21 only had one, in the application you say well it
22 could be a very big house which people couldn't
23 afford in that neighborhood, would be out of sync in
24 that neighborhood or else you could go the smaller

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1 home and get a lower economic return. Is that
2 correct?

3 MR. ELLIS: No, it's not correct.

4 MEMBER MILLER: Okay. Maybe you can --

5 MR. ELLIS: One, this is not about we
6 come in and we're saying well we make more money by
7 building two houses. I mean, if you get the right
8 person you can build one single house and you can
9 build that big house, if somebody's looking for the
10 right thing, and you can make, you know, quite a
11 money off of a single house. That's not what it's --
12 what it's about is you look at the lot and you look
13 at the community. And you're sitting there and you
14 look at it and you say, okay, we build this one big
15 house here, it's out of place. Even though it fits
16 in the zoning, it's just out of place.

17 You've got this huge piece of property
18 here and in this community it doesn't look right
19 there. It's like an albatross and you put it in the
20 midst of this community, but you can do it.

21 What we're saying is here we have an
22 opportunity to build two separate houses. And in
23 today's market, if you look at it you can build a
24 single house and make a good return. I mean,

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1 there's a house that's not too far from there on a
2 large lot and it's going for \$1.9 million. So I
3 mean, that's -- I mean, it's a house on 16th Street
4 right now that's on the market for \$1.9. I mean,
5 I'm not saying that it can't be done. What I'm
6 saying is that here in this community it would be
7 better to have two separate houses and it be
8 consistent with what's there.

9 You have two 40 foot lots that are
10 consistent with the other 40 foot lots in the
11 community. The houses look a lot like the houses
12 that are in the community. If you build a single
13 house there, it would be no way that it would look
14 anything like anything else that was there; because
15 it would be larger than the R-3 properties and very
16 much larger than the R-1 properties that are already
17 there.

18 COMMISSIONER PARSONS: Mr. Chairman?

19 COMMISSIONER PARSONS: Yes, Mr. Parsons?

20 COMMISSIONER PARSONS: I want to chime
21 in here. I agree with the Applicant in this
22 discussion. And I find the Office of Planning's
23 exhibits helpful, at least to describe my point of
24 view on this.

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1 If you go to the Office of Planning's
2 report, the three exhibits at the back. The third
3 page from the rear at the end is a zoning map which
4 shows the relationship between the R-1-B and the R-
5 5-A. And then the photograph at the last exhibit at
6 that report is an aerial photograph which clearly
7 shows the circumstance in the neighborhood.

8 I mean, you take the two lots to the
9 south in the photograph --

10 CHAIRMAN GRIFFIS: Interesting.

11 COMMISSIONER PARSONS: I mean, they're
12 exactly identical to what the Applicant is doing,
13 even though they're in R-1-B along with this
14 property.

15 CHAIRMAN GRIFFIS: Interesting.

16 COMMISSIONER PARSONS: It seems to me
17 that what the Applicant has proposed is in concert
18 with and would not detract from the fabric, the
19 pattern of the facades of the neighborhood as
20 opposed to a larger house which would seem out of
21 context, at least in this photograph.

22 CHAIRMAN GRIFFIS: Excellent point.

23 COMMISSIONER PARSONS: Well, I stole the
24 thunder of Mr. McGhettigan, although I don't know

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1 how he's going to revise that report today because
2 he wrote about three houses, not two.

3 CHAIRMAN GRIFFIS: Right. Which we will
4 get to.

5 Okay. Further questions?

6 MEMBER ZAIDAIN: Just to say that I
7 agree with Mr. Parsons. Going into this I had some
8 concerns about the nature of these developments and
9 as they relate to the adjacent zone district. But I
10 think that this zoning map does clarify that quite a
11 bit. I think it's a good point to make.

12 CHAIRMAN GRIFFIS: Good. Excellent.

13 I had major concerns also because the
14 issue was raised in terms of context. And I think
15 the fundamental aspect is the context of the R-1-B
16 and the R-5-A. And Mr. Parsons has made his point
17 very clearly. And my biggest concern was then why
18 are we in fact dealing with the site differently
19 than anything else in the area, and that is parking
20 straight through the front door, a much more
21 suburban model. So I think the agency was right on
22 in terms of addressing that issue. And with the new
23 submissions, I find it very appropriate and
24 contextual. It supports the application.

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1 Now, do we have a site plan in the
2 record? For instance, where do these align, where
3 are they going to be sited in relation to the
4 adjacent properties. They're different in the R-1
5 with the houses and then the R-5-A. Is there
6 anything that illustrates that?

7 MR. ELLIS: The positions of the houses
8 are on the third page.

9 CHAIRMAN GRIFFIS: The third page?

10 MR. ELLIS: Of the --

11 CHAIRMAN GRIFFIS: Of the recent
12 submission? Oh, I see. Right. I'm sorry. I do have
13 that. And what I was trying to do, and maybe I
14 didn't look at it clearly enough, why don't I just
15 take testimony very briefly as does that align with
16 the adjacent R-1-B properties or with the R-5-A?

17 MR. SAMUELS: Yes, they do. Yes, they
18 do. They do align the existing properties on both
19 sides.

20 CHAIRMAN GRIFFIS: How could they? The
21 two properties don't align, they're different?

22 MR. SAMUELS: No. What we're saying is
23 is that the two new proposed properties are the
24 front of them is in line with -- if that's what

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1 you're trying to ask --

2 CHAIRMAN GRIFFIS: Right.

3 MR. SAMUELS: -- with the existing
4 properties in both the R-1 and R-5 zoning areas.

5 MR. ELLIS: The street is sort of --
6 it's sort of hard to explain, but that street when
7 you look down it, it shows it on the map that it's
8 straight, but it's not.

9 CHAIRMAN GRIFFIS: I understand. But
10 the actual placement of the houses on the R-1-B are
11 different than that of the R-5-A. Here we are.

12 MEMBER MILLER: It doesn't help.

13 CHAIRMAN GRIFFIS: It does a little bit.

14 But I understand. This makes it clear.

15 I mean, clearly they are set with a front setback
16 similar if not totally aligned with the rest of the
17 block, which makes a lot of sense. Okay.

18 Very well. Any other question of the
19 Board?

20 Additional comments from the Applicant?

21 Let's go to the Office of Planning then
22 for their report presentation. As noted -- well,
23 there it is. Mr. McGhettigan, good morning.

24 MR. MCGHETTIGAN: Thank you, Mr. Chair.

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1 My name is David McGhettigan from the
2 Office of Planning. I would like to go some --
3 bring up some points, that some of which have
4 already been discussed, but just to clarify things.

5 On the uniqueness test, there are 368
6 lots in this 16th Street Heights zoning district, R-
7 1-B zoning district, and as far as size goes, this
8 ranks 349th, which puts it about larger than 95
9 percent of the lots in the district. The
10 median lot size being around 5,600 square feet.

11 And the practical difficulties, I think
12 the two key statements that the Applicant makes that
13 the property would not be of a size compatible with
14 the neighborhood properties to its side would be
15 difficult at best to sell, since there would be no
16 lots or houses of comparable size in the
17 neighborhood.

18 And the second one is it would be
19 unlikely if not impossible to sell the subject
20 property for the amount that they -- \$900,000.

21 I didn't find a lot of evidence to
22 support those two statements. I don't know if
23 there's a real estate expert that's presenting it,
24 or that Mr. Ellis is presenting himself as an expert

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1 or the Applicant is But I think if that's the case,
2 that that may be true but certainly an institutional
3 use might find this property attractive and due to
4 its large size, it would be permitted in the R-1-B
5 zone. So there may be some development of it that's
6 possible.

7 As far as the public good and intent,
8 I'd like to refer to attachment 1 in my report,
9 which Commissioner Parsons has already looked at.
10 And also I'll pass out some additional information.

11 I'm handing out or having passed down a
12 copy of the property maps for the area. If you look
13 on the one that says 648, and we'll get you one, Mr.
14 Ellis, the subject square 2796, the benefit of this
15 is that it has the lot widths shown on it. We see
16 that the two lots to the west of the subject
17 property are 40 feet and also on the south side, the
18 four lots that are on the R-1-B zone are all 40
19 feet.

20 Also to the west side of the lot on 14th
21 Street Lot 21 and 22 are 42½ feet.

22 Down on the south side of Madison
23 Street, we find Lot 18, 20, 21 and 22 are all 40
24 feet.

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1 If you turn this over and look to the
2 lot squares to the west, particularly visible or
3 legible on this is the Square 2722 from Montague to
4 Madison, and you see there's for lots at the top
5 that are 40 feet and on the bottom on Madison
6 there's Lot 52, 53, 51 and also 842 are all 40 feet.

7 And the south side of Madison, there's also a
8 number of lots that are 40 feet.

9 So the point is that the 16th Heights
10 has a lot of lots that are only 40 feet wide. So as
11 far as the integrity of the zone in this particular
12 case two 40 foot lots would probably be in character
13 with the area.

14 The other thing I'd like to point out if
15 we turn to page 3 of my report, is the objectives of
16 the 16th Street Heights overlay district, which
17 include promote the conservation and enhancement of
18 stability of this low density single-family
19 neighborhood for housing and neighborhood related
20 uses and control the further conversion of
21 residential housing to nonresidential uses in order
22 to maintain the housing supply and minimize the
23 external negative impacts of new nonresidential
24 uses.

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1 I think maintaining a 10,625 square foot
2 lot in this 16th Street Height zone would probably
3 be unattractive to nonresidential uses, such as
4 churches or schools or things that are permitted in
5 the R-1-B zone institutional uses that might like
6 that. So --

7 CHAIRMAN GRIFFIS: Embassy, mass transit
8 facility, things of that nature?

9 MR. MCGHETTIGAN: Yes. And it would be
10 within the intent, I think of the 16th Street Height
11 overlay to -- that it would more meet the intent to
12 actually subdivide this into two 40 foot lots than
13 to leave it as a large 10,000 square foot lot.

14 Similarly, in the comp plan we see that
15 single-family is the preferred use for the site.
16 And looking again at the attachment 1 of my report
17 that shows the adjoining usage, you see that the
18 16th Street Heights neighborhood is all single-
19 family homes. And it's good that the Applicant has
20 switched from the three to the two. It's really
21 much more consistent.

22 The last thing I wanted to bring up in
23 this category is I -- we received these plans very
24 late, so I didn't have --

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1 CHAIRMAN GRIFFIS: The revised plans?

2 MR. MCGHETTIGAN: Yes.

3 CHAIRMAN GRIFFIS: Okay.

4 MR. MCGHETTIGAN: I agree that not
5 having the garage in the front is very important.
6 You see that it's not typical in the neighborhood
7 that they have garages in the front. Most of them
8 have detached garages on the alley, which I would
9 encourage the Applicant to consider providing a
10 detached garage if possible.

11 Also, I'm concerned about the setback. I
12 think having a setback more consistent with the
13 houses to the west, across the street and to the
14 south would be in character with the area. I think
15 from the plan that's shown, they're setback a little
16 farther than would be consistent with the
17 neighborhood.

18 CHAIRMAN GRIFFIS: Do you know
19 approximately what the setback is of the -- across
20 the street that you like?

21 MR. MCGHETTIGAN: I don't. But there is
22 a building restriction line at 15 feet. And you can
23 see from the -- well, from my attachments to my
24 report that the houses have a much smaller setback

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1 across the street and to the west than the houses to
2 the east do. So I think it's -- especially from the
3 aerial photograph you can see that there's really
4 not a lot of -- not as much space as appears to be
5 available in the site plan provided by the
6 Applicant.

7 And that's --

8 CHAIRMAN GRIFFIS: Okay. So your
9 comment on the location, the setting of the new
10 structures if approved, is to move them closer to
11 the street or is that --

12 MR. MCGHETTIGAN: Yes, closer to the
13 street.

14 CHAIRMAN GRIFFIS: Okay. To move them.
15 I see. Okay. Very well.

16 Thank you very much, Mr. McGhettigan.
17 And so if I'm clear with the testimony that you've
18 given today and the presentation, that the Office of
19 Planning is now recommending approval of the
20 application, is that correct?

21 MR. MCGHETTIGAN: Yes, Mr. Chairman.

22 CHAIRMAN GRIFFIS: Okay. Good. And let
23 just also note that you brought up the issue of
24 there could be another use attendant to this, and I

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1 think you've made an excellent point of however the
2 comp plan does not support that and its longevity.
3 Of course, another matter of right use to note is
4 that this could become a temporary premises for a
5 fair or circus or carnival, which might be enjoyed
6 by the neighbors though it doesn't make a lot of
7 sense mid-block or not off of a major thoroughfare.

8 That being said, questions of Office of
9 Planning from the Board?

10 MEMBER MILLER: Could you just clarify
11 for me OP's position on the practical difficulty
12 prong in this case? I mean, this is what I was
13 trying to get a grip on before. Is the practical
14 difficulty here the economic return or is there
15 something I'm missing?

16 MR. MCGHETTIGAN: That's the one part of
17 the test that I have trouble with. And I think the
18 Office of Planning needs more evidence to make sure
19 that there was some economic hardship. But I think
20 economic difficulty, feasibility of developing the
21 site could come into play. I just didn't find -- I
22 wasn't convinced that Mr. Ellis was a real estate
23 expert or the Applicant was. And so I'm not -- so
24 that's the most troubling part of the case is that

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1 test.

2 CHAIRMAN GRIFFIS: Other questions of
3 the Board?

4 MEMBER ZAIDAIN: Yes, let me clarify a
5 point you mentioned in the discussion there. You
6 were concerned with the setback from the main street
7 for the buildings?

8 MR. MCGHETTIGAN: Yes. I thought they
9 were set back a little too far. Also, the Applicant
10 didn't provide any lot occupancy information or any
11 of the other zoning analysis for the lots.

12 MEMBER ZAIDAIN: Right. And actually
13 that leads into my general question for the Board is
14 it's my understanding, and I wish we had Corporate
15 Counsel here, that if we grant this variance we will
16 be creating two legal nonconforming lots. Is that
17 correct?

18 CHAIRMAN GRIFFIS: We'd be granting the
19 variance which would allow them to go for the
20 subdivision, yes.

21 MEMBER ZAIDAIN: Right. Okay. So how
22 does that pay into requirements with all the balance
23 of the --

24 CHAIRMAN GRIFFIS: With lot occupancy,

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1 side yard, all that?

2 MEMBER ZAIDAIN: Well, the R-1-B
3 district and the overlay as well as, let's say for
4 example, you know these houses are constructed, ten
5 years go by and then somebody wants to come in for
6 an addition? I mean, is that a 223 case? Is that a
7 variance? IS it matter of right? I mean, I guess
8 that's just something I'm struggling with.

9 CHAIRMAN GRIFFIS: I know. It would
10 have to have a full analysis of it. Right now in
11 this application the only thing that we're dealing
12 with is the lot width.

13 MEMBER ZAIDAIN: Right.

14 CHAIRMAN GRIFFIS: And once they do the
15 permit documents, it'll go through and be reviewed
16 for everything else. It is assumed at this point
17 that it would be conforming to everything else. So,
18 yes, if a petition came in --

19 MEMBER ZAIDAIN: I hate to assume that,
20 though. I mean, I just -- I'd like to have some
21 clarity on that.

22 CHAIRMAN GRIFFIS: Well, we don't have to
23 address it. The Zoning Administrator in review of
24 the permit documents will pick up anything else that

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1 isn't according to the zoning regulations. It may
2 be back to us, conceivably, or they'll bring it in
3 total compliance with all the other area
4 requirements of the regulations.

5 MEMBER ZAIDAIN: Okay. I mean, I think
6 that's a part of the -- you know, I think the
7 presentation has been good to this point in regards
8 to the intent of the zoning district. But my main
9 concern is is granting this going to compromise
10 other elements of the zoning regulations. But from
11 what you said, it seems like it will not.

12 CHAIRMAN GRIFFIS: And I would agree
13 with that statement. I don't see anything that
14 would intend to impair the intent and integrity of
15 the regulations or the map, in fact.

16 MEMBER ZAIDAIN: And to follow up on Mr.
17 McGhettigan's point, is the setback for this
18 building from the street, does that meet the R-1-B
19 front yard setback or your concerns keeping it
20 consistent with the other nonconforming properties
21 to the west?

22 MR. MCGHETTIGAN: Yes, I'm concerned
23 with the consistency with the properties to the west
24 and, indeed, the altogether lots in the 16th Street

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1 Heights district seem to be setback closer to the
2 street than other ones, I think.

3 From an urban design sense, the closer
4 the buildings are to the street, the better we don't
5 want them to be --

6 MEMBER ZAIDAIN: Oh, sure.

7 MR. MCGHETTIGAN: -- setback that far
8 from the street because it creates of sense of
9 space. And I think it should be consistent with the
10 neighborhood if these lots are developed.

11 CHAIRMAN GRIFFIS: But, Mr. McGhettigan,
12 do you have some comfort in the testimony that was
13 provided today that they are aligning these with the
14 adjacent properties?

15 MR. MCGHETTIGAN: No, I still was not
16 clear on where this is in relation to the
17 properties. It seems to be more aligned, from just
18 looking at the maps. But, again, there's no evidence
19 in the file. But looking from the aerial photo and
20 the zoning map, they seem to be --

21 CHAIRMAN GRIFFIS: Right. Let me pass
22 down something that's been handed to me, and
23 actually it's -- it's from the base map. And I had
24 some confusion, I believe it's the aerial, thinking

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1 that the properties were aligned both in the R-1 and
2 the adjacent zoning. But they actually are, except
3 in the R-1 they have a covered porch. So the
4 actually building primary facade are aligned.

5 And I'll pass that down for everyone's
6 view of it.

7 And so the testimony that is represented
8 today is that these proposed structures would align
9 with the face of the adjacent properties lends me to
10 have confidence that they will actually in fill that
11 street scape and I think would be a fairly positive,
12 although one point of it, but a fairly positive
13 urban design --

14 MEMBER ZAIDAIN: I hate to make you
15 reiterate this, but how are you determining that?
16 You're visually superimposing this onto that?

17 CHAIRMAN GRIFFIS: I'm not. I'm taking
18 the testimony that I heard today from the Applicant
19 that's saying that those will align. I mean, we can
20 certainly have that submitted and show the adjacent
21 properties and show where they're located on the
22 plat.

23 MEMBER ZAIDAIN: In this poor member's
24 opinion, I think that we should get some more detail

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1 on the front yard setback to make sure that it's
2 consistent with the neighborhood as that is the crux
3 of the argument to this point.

4 CHAIRMAN GRIFFIS: Very well.

5 Anything else for the Office of Planning
6 from the Board? Mr. Parsons?

7 COMMISSIONER PARSONS: Well, I'm again
8 over here calculating. It seems to me the aerial
9 photograph puts these houses back at around 30 to 35
10 feet and the plat map puts them back at 30 to 35
11 feet. I don't know what else we need here. If the
12 scales are correct and my estimations are correct.

13 MEMBER ZAIDAIN: Are you getting that
14 from the aerial?

15 COMMISSIONER PARSONS: I'm doing that
16 from the plat map here that they submitted, which is
17 one inch equal 20 feet. With a 15 foot building
18 restriction. And I'm calculating it's about 32 to 35
19 feet. I can do the same thing with the aerial
20 photograph to show the -- at least the houses to the
21 east are measurable. But we could stipulate in our
22 order that --

23 MR. ELLIS: I was going to suggest that
24 you may want to put in your order if you so choose

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1 to approve that we must comply. And then, you know,
2 when the inspector comes out we're not there, they
3 will make us move it before they will give us
4 permit.

5 So, believe me, we're not trying to do
6 something after we've done everything we can to go
7 along with the community to turn around and then
8 have something that sits there that doesn't sit
9 well, that doesn't sit with the rest of the
10 community. I mean, we've worked too long with the
11 community to come up with a project that they would
12 go along with to then turn around and then a put a
13 house that's out of align. We want it to be in
14 align.

15 CHAIRMAN GRIFFIS: Right.

16 MR. ELLIS: And Mr. Parsons is
17 absolutely correct. What we did, we sited it base
18 don the other houses.

19 MEMBER ZAIDAIN: Well, I guess am I
20 wrong in looking at this aerial and seeing that the
21 houses to the east are not aligned with the houses
22 to the west of the property? Okay.

23 CHAIRMAN GRIFFIS: And that's what I
24 advised before.

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1 MEMBER ZAIDAIN: I think that might be a
2 problem, right.

3 MR. ELLIS: On the street it's not --
4 you have to go on the street to see that.

5 CHAIRMAN GRIFFIS: I think we're clear.
6 And that's where you need to look at the plat that
7 Ms. Bailey made sure we looked at, which is an
8 important piece. And the other is, there's a
9 covered port that looks like that building stands
10 out further.

11 MEMBER ZAIDAIN: Right.

12 CHAIRMAN GRIFFIS: So the faces of the
13 building are fairly aligned.

14 MEMBER ZAIDAIN: I have to ask because
15 it's driving me nuts, on the aerial photo is that a
16 garden? Are those corn rows in the yard there?

17 CHAIRMAN GRIFFIS: On the existing site?

18 MEMBER ZAIDAIN: Yes.

19 MR. ELLIS: No. It was weeded, very
20 badly weeded and Mr. Samuels cleaned it up. And
21 right now they have animals that most of us would
22 not want in our neighborhood. I mean, they have
23 foxes, rats like you would not believe. And so, yo
24 know, they've been wading through this process so we

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1 can then tear down that building that's there.

2 MEMBER ZAIDAIN: Right. Okay.

3 CHAIRMAN GRIFFIS: Of course, this
4 aerial was taken some time ago.

5 MEMBER ZAIDAIN: Right. Okay. Okay.
6 Very well.

7 CHAIRMAN GRIFFIS: Does the Applicant
8 have any cross examination of the Office of
9 Planning?

10 MR. ELLIS: No.

11 CHAIRMAN GRIFFIS: Okay. Then moving
12 on, let's go to the ANC, which I don't see any
13 representatives of the ANC 4-A. Of course, it is
14 Exhibit 25 and Exhibit 22 is the prior submission.
15 And the ANC has come in support of the application
16 as amended. And it has been noted by the Board
17 their comments and excellent direction. And I
18 believe it can be granted the weight afforded it.

19 And let's then go to -- I don't have any
20 other government reports attendant to this. I'm not
21 aware of any other submissions on this unless the
22 Applicant is aware of anything else. I'd ask for
23 anyone present to give testimony. As there are no
24 other people present, we can dispense that and go to

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1 any closing remarks that you might have.

2 MR. ELLIS: I would just say, Mr. Chair,
3 that we have met our burden and we would request if
4 the Court so approves, that we have a bench
5 decision.

6 CHAIRMAN GRIFFIS: Very well.

7 I am in a position to take up a motion
8 now unless there's any major objection. I think we
9 can through the deliberation on this motion, unless
10 someone wants to speak to that. Yes?

11 MEMBER MILLER: Okay. Well, I concur
12 with Mr. Parsons' conclusion that this fits within
13 the context of the neighborhood. My only concern is
14 whether we have enough information to meet this
15 second prong of the variance test for practical
16 difficulty, which looks like it rests to me from
17 reading the application as well as hearing the
18 evidence today, on economic return. And that's
19 addressed in the application, but it's not supported
20 by any expert submission. It's not allegations of
21 profits.

22 CHAIRMAN GRIFFIS: Let me address that.

23 As far as my understanding of the Applicant's
24 submission and what we're being asked to deliberate

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1 on is, it's not a full blown economic analysis of
2 the return of the investment on this, but rather the
3 impracticality of: (1) renovating the existing
4 structure, of which is in the record and testified
5 is falling apart. In fact, I think the ANC even
6 noticed that they thought that the city might be
7 going to condemn it and demolish it. So you have
8 that aspect of not being able utilize the site and
9 the existing structure.

10 And then the second aspect is if you
11 built anything, even as testified today by the
12 Applicant, a single family resident that was of size
13 comparable to the others, it puts it so far out of
14 context. We're not really talking in my
15 understanding of this application exact dollars and
16 sense comparison. What we're talking about is the
17 fact of what is real estate, but real is contextual.

18 And if you did that, it would be so far removed and
19 such an odd product, an odd element that it lends
20 itself to the impracticality, unfeasibleness of
21 trying to sell something like that.

22 Now, you add that back into the fact of
23 they have site that is noncontextual ad you add it
24 back into the element of what the comprehensive plan

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1 is talking about, what the ANC has been looking at,
2 and then what the context of the -- essentially as I
3 look at it, it's the public good in terms of the
4 urban design aspects of what would in fill this
5 block in a context that would not make it look like
6 there was kind of missing teeth here and there. I
7 think that fully supports a subdivision. Mr.
8 Parsons making us focus on the adjacent and southern
9 sites, which are identical to what's being proposed
10 here again reiterates the contextual nature.

11 Now, the contextual nature I think
12 weaves through all of the arguments of the
13 impracticality of maintaining the existing site.

14 Is there an economic element to that? I
15 think there is an absolutely economic element.

16 Is it one that requires, as I said as I
17 started this, is it one that requires a full
18 economic performance and feasibility? I do not think
19 so. Because I think we look at it much more of a
20 broader aspect and perhaps it's not legally correct
21 to say, but I look at it as a more common sense
22 perspective of what would be practical to do with a
23 site of this nature and size.

24 I think the uniqueness is well shown. I

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1 think the practical difficulty is the confluence of
2 all these aspects, not to mention the adjacent
3 zoning. And it sits on a zone boundary. I don't
4 think we want to discuss why it made sense to bring
5 R-1 straight through, half way through an entire
6 square to abut an R-5. We'll leave that to the
7 Zoning Commission to figure out.

8 MEMBER ZAIDAIN: Yes, I'm actually glad
9 you brought that up. As I'm sitting here thinking
10 about it, it makes you wonder why all that got zoned
11 that way.

12 CHAIRMAN GRIFFIS: Yes.

13 MEMBER ZAIDAIN: Because it seems like
14 from the testimony I've heard, that whole entire
15 area is nonconforming.

16 CHAIRMAN GRIFFIS: That's correct. And
17 the zoning regulations that change then to 50,
18 requiring the 50, which again I think lends itself
19 to its uniqueness and the practical difficulty in
20 this case of that zoning change where as you had a
21 single lot that may have been thought of at one
22 point to be a conforming or able to conform in its
23 subdivision, now renders it totally nonconforming in
24 its context.

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1 So, interesting point.

2 MEMBER ZAIDAIN: Yes. It is an
3 interesting point. I don't --

4 CHAIRMAN GRIFFIS: Good.

5 And then lastly, in terms of the last
6 prong even not under a motion here, but looking at
7 whether we're prepared to take it to zone plan or be
8 adverse to the public good, I think it's fairly
9 clear that in fact that's the strongest test that's
10 been presented, really over the top in bring this
11 back into its contextual nature. And that, in fact,
12 flows straight out of its uniqueness and the
13 practical difficulty.

14 So I think it's appropriate, actually at
15 this point, to take up a motion for approval of
16 Application 17059 for the variance from the minimum
17 lot dimensions at the premises of 1340, 13442
18 Montague Street, Northwest. And I would ask for a
19 second.

20 COMMISSIONER PARSONS: Second.

21 CHAIRMAN GRIFFIS: Thank you, Mr.
22 Parsons.

23 I think I've done enough talking on it.

24 I think the motion, and it's my assumption as

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1 presented today by the testimony, that the proposed
2 structures will align in their setback from Montague
3 Street with those adjacent. And I think we've
4 clarified all the other specific issues on it. So
5 I'll let others speak to the motion.

6 MEMBER ZAIDAIN: Mr. Chair, I support
7 the motion with some reservation. I was a little
8 concerned going into this about the evidence
9 presented. However, I think that the discussion on
10 the Board has been, and especially with the Office
11 of Planning, incredibly helpful and in clarifying
12 the arguments here.

13 I want to say that I'm not supporting
14 this on the basis of trying to squeeze more lots out
15 of a site, which is what my initial thought was that
16 this was the direction this project was going. It's
17 clear it's more in play here.

18 I guess my one concern is, and I still
19 have some concerns related to the effect or approval
20 it will have on the balance of the site in terms of
21 zoning and permitting purposes and how that'll
22 effect, but I think that can be -- my concerns can
23 be quelled with having a discussion with Corporation
24 Counsel at a later date.

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1 CHAIRMAN GRIFFIS: Good.

2 Others? Yes, Mr. Parsons?

3 COMMISSIONER PARSONS: Mr. Chairman, I'm
4 glad you used the word "common sense." And I think
5 that's what this is about. But I would say if we
6 left the lot in its current configuration, it would
7 cause substantial detriment to the public good by
8 just the urban design issues that we talked about.
9 But the potential for a house of this size then
10 resulting, not this year or next, but in the future
11 of acquisition and demolition of the houses on the
12 street to replicate the return to larger lots, in
13 this community is not beyond my imagination. And I
14 just -- the other alternative of a church or some
15 other use that would be adverse I think is obvious
16 to me.

17 So, I think I would obviously support
18 the motion.

19 CHAIRMAN GRIFFIS: Good. Thank you.

20 MEMBER MILLER: Mr. Chairman, I would
21 just like to say that I'm ready to support the
22 motion that I think you articulated very well that
23 the practical difficulties extend beyond the
24 economics, about which I was concerned.

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1 CHAIRMAN GRIFFIS: Very well. Others?
2 Any addition.

3 Okay. We have a motion before us. It's
4 been seconded. And I would ask for all those in
5 favor signify by saying aye.

6 ALL: Aye.

7 CHAIRMAN GRIFFIS: And opposed? Any
8 abstaining?

9 Very well. Why don't we record the
10 vote?

11 MS. BAILEY: The vote is recorded as
12 five/zero/zero to approve the application as
13 amended. A motion made by Mr. Griffis, seconded by
14 Mr. Parsons, Mr. Zaidain and Ms. Miller and Mr.
15 Etherly are in agreement.

16 And are we doing a summary order on
17 this, Mr. Chairman?

18 CHAIRMAN GRIFFIS: I think a summary
19 order is appropriate.

20 MS. BAILEY: Thank you, sir.

21 CHAIRMAN GRIFFIS: Thank you very much.
22 Anything else for us in the morning
23 session?

24 MS. BAILEY: No, Mr. Chairman. Not for

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1 the morning.

2 CHAIRMAN GRIFFIS: Excellent. Then let
3 us adjourned the 16th of December, 2003 morning
4 session.

5 Thank you very much. Appreciate it.

6 (Whereupon, at 12:15 p.m. the Public
7 Hearing was adjourned, to reconvene this same day at
8 1:26 p.m.)

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

1:26 p.m.

CHAIRMAN GRIFFIS: Good afternoon,
ladies and gentlemen.

Let me call to order the 16 December
'03 afternoon public hearing of the Board of Zoning
Adjustment of the District of Columbia. I am Jeff
Griffis, Chairperson.

Joining me today is Vice Chair Mr.
Etherly and also Ms. Miller. Representing the
Zoning Commission with us this afternoon is Mr.
Parsons. And also a very good afternoon to Ms.
Bailey and Mr. Moy representing of the Office of
Zoning.

Copies of today's hearing agenda are
available to you, of course. We have one appeal
case in the afternoon so it should be fairly
understandable, that agenda.

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1 Let me run through several very
2 important notes in terms of the process of our
3 public hearing.

4 First of all, all public hearings before
5 the Board of Zoning Adjustments are recorded.
6 Therefore, we ask several things of you.

7 Prior to coming forward to speak to the
8 Board, you will need to fill out two witness cards.

9 Witness cards are available at the table where you
10 entered into and also the table in front of us.
11 Those two witness cards go to the recorder who is
12 sitting to my right.

13 Also, we ask that -- actually require
14 that any testimony you provide to the Board is done
15 on the record, which means you will need to speak
16 into a microphone. The microphone should be on. We
17 will easily assist you if there is technical
18 difficulty in utilizing the microphones.

19 The order of procedure for the appeal
20 this afternoon will be as follows: We will have the
21 statement and witnesses of the Appellant.

22 We will have the Zoning Administrator or
23 government official present their case.

24 We will go to the owner, lessee,

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1 operator, intervenors as we have established and
2 then that level, and then any other intervenors
3 attendant to the application that are granted.

4 And finally, six, we would have rebuttal
5 and closing statement by the Appellant.

6 It should be made very clear because we
7 often have confusion on this that the presentation
8 of case by the intervenors should be presented and
9 then concluded as the Appellant would be afforded
10 the opportunity for rebuttal and the last closing
11 statement. But I'll run through that again as we get
12 to that.

13 Cross examination of witnesses of course
14 is permitted by those that have standing in the
15 case, albeit the Appellant, applicant or parties.
16 The ANC within which the property is located is
17 automatically a party in a case before us.

18 The record would be closed at the
19 conclusion of this public hearing, except for any
20 specific information that's requested by the Board
21 and we will be very specific on what is to be
22 submitted and when it is to be submitted into the
23 Office of Zoning. After that is received, of course
24 it should go without saying, that no other

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1 information would be allowed into the record and the
2 case would then be finally closed.

3 The Sunshine Act requires that this
4 Board conduct all hearings in the open and before
5 the public. However, attendant to our rules of
6 procedure and the Sunshine Act, this Board may enter
7 executive session. Executive sessions would be for
8 the purposes of reviewing records and/or
9 deliberating on a specific case.

10 The decision of this Board in contested
11 cases must be based exclusively on the record. So,
12 we will need everything that you want to us to
13 deliberate on to be put into the record, be it in
14 writing or be it orally today into a microphone and
15 on the record.

16 We would ask, of course, that people
17 present today not engage Board Members in
18 conversation so that we do not give the illusion of
19 gaining information outside of the record that is
20 established for us today.

21 Let's go to any preliminary matters at
22 this time.

23 Preliminary matters, of course, are
24 those which relate to whether a case will or should

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1 be heard today, such as: motions for a continuance
2 or withdrawals. If there is anyone here present
3 with the afternoon schedule applications that
4 believes the Board should not go ahead, I would ask
5 that they come forward and have a seat as an
6 indication of a preliminary matter.

7 I'd ask staff if they have any
8 preliminary matters attendant to the afternoon for
9 us.

10 MS. BAILEY: Mr. Chairman, and to all,
11 good afternoon.

12 There is a preliminary matter, Mr.
13 Chairman, concerning a motion for a summary
14 judgment. But since the appeal case is the only one
15 scheduled for the afternoon, perhaps with your
16 agreement we can call the case and then deal with it
17 at that time.

18 CHAIRMAN GRIFFIS: I think it's
19 absolutely attendant to the case before us. So we
20 would do that.

21 Are there any other preliminary matters
22 before we get started? If not, then why don't we
23 call the case and get into it.

24 MS. BAILEY: Appeal No. 17066 of Judy

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1 and Clarke Brinckerhoff, and others, pursuant to 11
2 DCMR §§3100 and 3101 from the administrative
3 decision of the Zoning Administrator in the issuance
4 of Building Permit No. B452591, dated June 26, 2003,
5 to John Walsh and Linda Jewell, for the construction
6 of a rear addition to an existing single-family
7 detached dwelling. Appellant alleges that the Zoning
8 Administrator erred by issuing the building permit
9 without correctly applying the requirements of
10 section 405 (side yard setback) and subsection
11 2001.3 (nonconforming structure provisions). The R-
12 1-B zoned property is located at 4624 Brandywine
13 Street, Northwest, Square 1548, Lot 21.

14 All those wishing to testify would you
15 please stand to take the oath.

16 (Witnesses sworn.)

17 CHAIRMAN GRIFFIS: Very well. I think it
18 might be appropriate first to establish intervenor
19 as the property owner. I'm assuming that there is --
20 well, no assumption. They will need to be granted
21 that by the Board.

22 Did you want to introduce yourself?

23 MS. BROWN: Yes. My name is Carolyn
24 Brown from the law firm of Holland and Knight on

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1 behalf of the property owners Linda Jewel and John
2 Walsh. And they are automatically parties to this
3 proceeding under the rules of procedure before the
4 Board of Zoning Adjustment.

5 CHAIRMAN GRIFFIS: That's that operative
6 word, "automatically."

7 MS. BROWN: 399 point something. I've
8 just to find it for you.

9 CHAIRMAN GRIFFIS: Where were you going?

10 MS. BROWN: I was going to find the
11 section for you if you need.

12 CHAIRMAN GRIFFIS: No, I don't. Right.

13 This is a small piece, so we're not
14 going to spend a lot of time on this. Does
15 Corporation Counsel have a different opinion to the
16 section that which we have to at least grant.

17 MS. BROWN: I'm looking at 3112.15.

18 CHAIRMAN GRIFFIS: Right.

19 MS. BROWN: "The Board in its discretion
20 for good cause shall/may persons who have a specific
21 right or interest that will be affected by action on
22 the appeal to intervene in the appeal for such
23 general and limited purposes as the Board may
24 specify."

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1 CHAIRMAN GRIFFIS: All right. I think
2 just for semantics at this point, I don't think
3 unless I heard any objections from the Board, but in
4 terms of semantics and in terms of establishing the
5 intervenor and the property owner, it seems to make
6 great sense, obviously, that they be represented and
7 a participant in this appeal case. Is there any
8 objection to that from the Board? Not seeing any
9 and noting the two sections that have just been
10 cited, I think we will bring it together and grant,
11 of course, the intervenor status to the Walsh/Jewell
12 -- is that way you say it?

13 MS. BROWN: Yes.

14 CHAIRMAN GRIFFIS: Very well. Okay.

15 Ms. Brown, anything else?

16 MS. BROWN: Yes, I'd like to address the
17 motion for summary judgment, if I may.

18 CHAIRMAN GRIFFIS: Okay. Very well.
19 I'll give a brief moment to address it as you have a
20 fairly full submission on that. But is there
21 additional information that you wanted to address
22 for the brief?

23 MS. BROWN: Yes, just very briefly then.

24 CHAIRMAN GRIFFIS: Okay.

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1 MS. BROWN: I believe this is the first
2 time that the Board has ever entertained a motion
3 for summary judgment. It's a very simple concept.
4 It's a mechanism to cutdown on a court or
5 administrative agency's time and case load. It's a
6 way to cut down on the amount of testimony you
7 receive to deciding factual issues, particularly
8 when there's only a legal question before you. And
9 it's sometimes appropriate to hear oral argument on
10 whether or not a summary judgment should be granted.

11 The Appellants have argued in a pleading
12 that they submitted a couple of days ago that it's
13 too complex and that the Board rules do not allow
14 for summary judgment. I strongly disagree with this
15 characterization. I think this Board has been in
16 the situation many times before when you have appeal
17 cases where you're at wits end having to decide
18 whether or not to receive testimony, not receive
19 testimony when all you have is a legal question
20 before you. And it seems to be the perfect
21 mechanisms for dispensing with lengthy hearing
22 processes. And I think it's something that you all
23 really should consider for this case and other cases
24 in the future.

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1 And the fact that your rules do not
2 provide for it, is not dispositive. The rules don't
3 necessarily provide for motions to dismiss either,
4 and you entertain those and grant them routinely or
5 just deny them routinely. So it's nothing that you
6 cannot handle.

7 And just because you haven't seen it
8 before, isn't something that doesn't mean that you
9 shouldn't consider it.

10 So, I think it's something that, you
11 know, could be very helpful to the Board in this
12 instance and in other cases.

13 And, again, the standard is if there is
14 no material facts in dispute, that it is
15 appropriate. And here the only issue to be decided
16 is whether or not the side yard meets, complies with
17 405.8 of the regulations. Everybody agrees that
18 it's a 5.1 foot side yard; no one disputes that
19 fact. So all we have before you is a legal issue.
20 Does it comply? That's the only thing to be
21 decided.

22 And it's just as important to remember
23 what's not relevant o the case. Construction and
24 building permit issues such as falling debris or

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1 drainage issue; not relevant.

2 CHAIRMAN GRIFFIS: Good. Okay. I don't
3 think we need to run through all that because I
4 think the Board is very clear on what is relevant
5 and what isn't relevant. Also, the fact that the
6 appeal is based in a legal issue. I think the Board
7 is very well aware of how to hear the appeal. And,
8 in fact, in the last appeals that I've been a
9 participant in, I think it has been very narrow in
10 focus just based on what the appeal is brought upon.
11 So I have no difficulty doing that.

12 My question to you is how do you
13 reconcile 3112.8 in our regulations which indicate,
14 and I'll read it to you, "A public hearing shall be
15 held on each appeal to the Board." As I read that,
16 we wouldn't have the jurisdiction unless we waived
17 that rule, which I'm not clear that we can waive
18 that particular rule, I'm not sure that we could in
19 fact take a motion for summary judgment.

20 MS. BROWN: Well, you do have appeals
21 that you dismiss and --

22 CHAIRMAN GRIFFIS: Well, we certainly
23 have the jurisdiction to dismiss them.

24 MS. BROWN: And I think that in this

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1 case you do have the jurisdiction to waive the
2 regulation if you find that it's legal issue that is
3 just plain legal issue.

4 CHAIRMAN GRIFFIS: Okay.

5 MS. BROWN: And I think that, you know,
6 it's similar to court procedures as well.

7 CHAIRMAN GRIFFIS: But how is a regular
8 appeal not just a legal issue?

9 MS. BROWN: There might be disputes, for
10 instance, if you have -- it's a interpretation of
11 whether it's a side yard issue or a rear yard issue.

12 CHAIRMAN GRIFFIS: I see.

13 MS. BROWN: You know, there can be
14 factual issues. I think we had one last summer
15 about whether or not it was -- you know, you had a
16 side yard, whether it was based on a foundation or
17 whether it was a side wall that determined whether
18 or not a side yard issue. I mean, there's all sort
19 of ways of what triggers the side yard requirement.

20 CHAIRMAN GRIFFIS: Very well. Okay.

21 Let me hear from the Appellant, whose --
22 yes?

23 MR. BRINCKERHOFF: I'm Clarke
24 Brinckerhoff.

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1 CHAIRMAN GRIFFIS: Absolutely. Yes.
2 Make yourself comfortable.

3 MR. BRINCKERHOFF: Okay.

4 CHAIRMAN GRIFFIS: And what I need you
5 to do is just state your name and address for the
6 record. No. Touch the button there.

7 MR. BRINCKERHOFF: There we go.

8 I'm Clarke Brinckerhoff. I reside at
9 4628 Brandywine Street.

10 CHAIRMAN GRIFFIS: Good. And Mr.
11 Brinckerhoff, you just indicated you would like to
12 go first? How are we --

13 MR. BRINCKERHOFF: If that's okay with
14 you. I'm not sure.

15 CHAIRMAN GRIFFIS: I'm trying to get
16 whose second, whose third, what are my -- no.
17 Actually, let me be clear in my questions.

18 MR. BRINCKERHOFF: I'm sorry.

19 CHAIRMAN GRIFFIS: Why do I have three
20 stages? Are we having three different people
21 represent the Appellant?

22 MR. BRINCKERHOFF: All three of us are
23 Appellants in --

24 CHAIRMAN GRIFFIS: Are together?

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1 MR. BRINCKERHOFF: Are together, and
2 we'd like to speak briefly.

3 CHAIRMAN GRIFFIS: Okay. Okay.

4 MR. BRINCKERHOFF: And I emphasize
5 brief, because one thing we have in common was not
6 to waste your time with extraneous matters.

7 CHAIRMAN GRIFFIS: Indeed. Okay. So we
8 may need to hear from everybody.

9 Okay. Go ahead.

10 MR. BRINCKERHOFF: I'm Clark
11 Brinckerhoff, co-owner of 4624 Brandywine. I will
12 be very brief.

13 What we are relying on here is the plain
14 language of --

15 CHAIRMAN GRIFFIS: Okay. Actually, I'm
16 sorry. I'm going to redirect you. What am I asking
17 is for your reaction to a motion for summary
18 judgment; that's before us immediately now.

19 MR. BRINCKERHOFF: Oh, I'm sorry. Okay.
20 I will respond to that.

21 CHAIRMAN GRIFFIS: Before we get to any
22 substance.

23 MR. BRINCKERHOFF: We oppose the motion
24 for summary judgment. What is at stake here is a

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1 comparison of two different sections in the -- at
2 least two different sections in the zoning
3 regulations which are arguably, contradictory of one
4 another. There is another section of the zoning
5 regulations in section 101.1 that says any ambiguity
6 in the zoning regulations must be resolved in favor
7 of adequate light and air and avoiding overcrowding
8 of land. So it is at least conceivable that you
9 might have questions along those lines, which would
10 be questions of fact that you'd want to ask us
11 about.

12 CHAIRMAN GRIFFIS: Okay.

13 MR. BRINCKERHOFF: I guarantee you we
14 are going to be brief.

15 CHAIRMAN GRIFFIS: So you feel -- and
16 time is not the issue. I mean, if one error this
17 Board makes, and we only make one error and this is
18 it, it is that we gather much more information than
19 perhaps we actually need.

20 But if I understand what you are saying,
21 you believe that there may well be material facts in
22 dispute in this appeal? Okay. And in terms of
23 3112.8 my reading of "A public hearing shall be held
24 on each appeal to the Board," do you have a comment

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1 on that regulation?

2 MR. BRINCKERHOFF: No.

3 CHAIRMAN GRIFFIS: Okay. Very well. I
4 appreciate that.

5 Others? Anything else on that?

6 MR. BRINCKERHOFF: No.

7 CHAIRMAN GRIFFIS: Okay. Very well.

8 Board Members, comments, questions,
9 direction? Yes?

10 MEMBER MILLER: Well, from what I'm
11 hearing it sounds like it's basically a legal issue
12 that we're discussing, but there may be some factual
13 issues with respect to light and privacy or
14 whatever. And so I don't think at this time we would
15 to entertain the motion for summary judgment. But
16 after we hear what's presented today, we may end up
17 ruling on it as a legal question.

18 CHAIRMAN GRIFFIS: Is that like holding
19 a decision in abeyance?

20 MEMBER MILLER: Yes.

21 CHAIRMAN GRIFFIS: I think it's strongly
22 that we just sort of dispense with it and deny the
23 motion of summary judgment and call the appeal. I
24 think based on this, that there may well be an issue

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1 of factual dispute that the Board has clear
2 direction, I think, in filtering through that very
3 quickly.

4 I take a great pleasure noting that each
5 side has indicated that we will get through this
6 expeditiously. This is a narrow focus, and I will
7 set that focus as we go into this. But unless
8 there's any opposition of the Board, I think that's
9 the way to go rather than holding the motion off.

10 Yes.

11 MEMBER MILLER: I would be in favor of
12 holding it off because I'm not convinced at this
13 point that there are material issues of fact in
14 dispute?

15 CHAIRMAN GRIFFIS: So you want to hear
16 the entire appeal and then take up the motion for
17 summary judgment?

18 MEMBER MILLER: Yes, I think they're
19 very closely interrelated. I don't think there's
20 sufficient grounds to deny it right now. I don't
21 think it would serve any of the parties or the Board
22 to deny --

23 CHAIRMAN GRIFFIS: To deny a motion for
24 summary judgment?

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1 MEMBER MILLER: At this point --

2 CHAIRMAN GRIFFIS: How would we have a
3 summary judgment after we hear the entire appeal?

4 MEMBER MILLER: We could after we hear
5 the appeal we could determine there are no facts in
6 dispute and it's a question of law and grant it or
7 deny it. That's how we determine --

8 CHAIRMAN GRIFFIS: Based on the case.

9 MEMBER MILLER: That's how we determine
10 whether there are facts in dispute by hearing the
11 appeal.

12 CHAIRMAN GRIFFIS: That's what I
13 understand. But the motion is to keep us from
14 hearing the appeal.

15 Others? Strong opinions?

16 MEMBER ETHERLY: I'm inclined to deny
17 the motion, Mr. Chairman, before.

18 MEMBER MILLER: Can we have an opinion
19 from Corporation Counsel?

20 MS. NEGELHOUT: I'm sorry, what was the
21 question?

22 MEMBER MILLER: The question is whether
23 or not we hold the motion for summary judgment in
24 abeyance until we hear from the parties and find out

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1 whether or not there are facts in dispute or whether
2 we agree and do it now -- I mean deny it now and
3 then hear the appeal.

4 CHAIRMAN GRIFFIS: My point would be if
5 we hold the motion for summary judgment in abeyance
6 until after the appeal, it mutes the motion. So why
7 don't we just dispense with it now?

8 MEMBER ETHERLY: Is that a motion?

9 CHAIRMAN GRIFFIS: We may be the biggest
10 delay in this.

11 MS. NEGELHOUT: I agree with the Chair.

12 CHAIRMAN GRIFFIS: Very well. Any other
13 comments on that? Then I would move denial of the
14 motion for summary judgment. Is there a second?

15 COMMISSIONER PARSONS: Second.

16 CHAIRMAN GRIFFIS: Thank you. Motion
17 before it's decided, any discussion, further
18 discussion, deliberation?

19 Then I ask for those in favor signify by
20 saying aye.

21 ALL: Aye.

22 CHAIRMAN GRIFFIS: And opposed?

23 MEMBER MILLER: Opposed.

24 CHAIRMAN GRIFFIS: Very well. Any

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1 abstaining?

2 Would you record that vote?

3 MS. BAILEY: The vote is recorded as
4 four/one/zero to deny the motion for summary
5 judgment. Mr. Griffis made the motion, Mr. Parsons
6 second. Mr. Zaidain is not present. Mr. Etherly is
7 in support. Ms. Miller is opposed to the motion. So
8 it's three/one/one.

9 CHAIRMAN GRIFFIS: Excellent. Thank you
10 very much.

11 All right. Let's go straight into the
12 appeal.

13 First of all, let me set up the
14 direction. I think we do have the factual evidence
15 and we are talking about the side yard whether it's
16 compliant and the different sections that have been
17 cited, and we'll be going through that after the
18 case presentation.

19 I have found that the submissions are
20 absolutely adequate, and so there's enough to
21 deliberate on at this point. However, clearly
22 holding a hearing is to speak to some of those,
23 answer questions and add any evidence into the
24 record.

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1 To that, I am going to set the clock for
2 15 minutes presentation on each side for a case.
3 That, of course, won't take into account any time
4 for Board questions, any cross examination. It is
5 the pure presentation of case on each side.

6 So, with that, if the Appellant is ready
7 we can begin?

8 MR. BRINCKERHOFF: Well, if I
9 understand, we get 15 minutes amongst us?

10 CHAIRMAN GRIFFIS: Well, first thing to
11 set up is if you say anything, you have to say it
12 into a mike, which means you pretty much have to be
13 sitting down.

14 So questions of that nature, which are
15 excellent, need to be addressed. And your question
16 is whether I've allotted 15 minutes for all
17 participants on your case, which would actually look
18 at 45 for the presentation of your case or on the
19 other, I'll be direct. No. I've given 15 minutes
20 for the presentation of the your case; however you
21 want to do that, witnesses and all that, that's
22 fine.

23 Our regulations do set up an actual
24 time, and then I am granted the jurisdiction and

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1 authority to make sure that it is judicial on each
2 side. And I think, as I'm saying, reviewing this
3 record, I don't believe that there will be more time
4 needed for that. If there is, I can be flexible, of
5 course. But let's set to try and do presentation
6 within 15 minutes.

7 MR. BRINCKERHOFF: I'm confident that
8 our side will be well under 15 minutes.

9 CHAIRMAN GRIFFIS: That's fine.

10 MR. BRINCKERHOFF: I indeed to take
11 about three and time will tell what the rest of my
12 party will contribute on this.

13 CHAIRMAN GRIFFIS: Good. Good. Then
14 the last comment I'm going to make, I'm going to
15 turn it over to you, is you don't want to hear that
16 buzzer go off, because boy it is staggering.

17 MR. BRINCKERHOFF: It will not go off
18 while I am sitting here.

19 CHAIRMAN GRIFFIS: Okay. Fabulous.
20 Whenever you're ready.

21 MR. BRINCKERHOFF: Okay. I'll proceed.

22 Our case relies primarily on the words
23 of the regulations. The Welsh property has counsel,
24 and we do agree, is currently has a five yard side--

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1 side yard. It's a legal five foot side yard because
2 it was built after 1958, whereas the normal area
3 would be eight feet.

4 Now we rely that Walshs are building an
5 extension directly back from the existing property.
6 We rely on regulation 2001.3 that says additions --
7 enlargements or additions may be made to a
8 nonconforming structure as long as the addition
9 itself neither increases nor extends any existing
10 nonconforming aspect of this structure.

11 The other side wants to get away from
12 those plain words, they move onto other sections.
13 The main other section they move onto is section
14 405.8 which talks in terms of -- which I will quote
15 in full -- "In the case of a building existing on or
16 before May 12, 1958 with a side yard less than eight
17 feet an extension or addition may be made to the
18 building provided that the width of the existing
19 side yard shall not be decreased and provided
20 further that the width of the existing side yard
21 shall be a minimum of five feet."

22 Let the record show that my emphasis was
23 on the word "existing." In order to avoid that,
24 they have produced a staff memorandum from back in

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1 the '70s that they say leads to some other
2 conclusion. But the plain words of 2001.3 and 405.8
3 make it very clear as we outlined in somewhat more
4 detail in our papers that the proposed extension is
5 not lawful and that the decision denying our appeal
6 of the permit was invalid.

7 And I'm going to turn it over to my
8 friends, or do I answer questions for you? I'm
9 unfamiliar with your procedure, quite honestly, Mr.
10 Chairman. I've never been here before.

11 CHAIRMAN GRIFFIS: That's okay. We like
12 to make it up each time differently.

13 However, let's take Board questions if
14 there are any at this point. I think we're all set.

15 And if you wouldn't mind just stating
16 your name and address for the record.

17 MS. BRINCKERHOFF: Mr. Chairman, my name
18 is Judy Brinckerhoff. I live at 4628 Brandywine
19 Street.

20 My concerns are what as a citizen, as a
21 property owner, what this three foot difference does
22 to the privacy and light concerns in our backyard.

23 CHAIRMAN GRIFFIS: Okay. Actually,
24 before you go too far on that, that's one of the

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1 pieces that in fact becomes irrelevant to the
2 appeal. Because it really goes to the standard of a
3 special exception or perhaps a variance even.

4 What we do in this appeal and on all
5 appeals, obviously it's been brought to us that an
6 error or a potential error has been made by an
7 administrative body on a zoning issue, in this case
8 the granting of the permit by the Zoning
9 Administrator. That is, I think, very clear in
10 terms of -- has just been laid out and also in the
11 submissions is our issue.

12 So weighing or even hearing testimony or
13 evidence on whether there's adverse impacts or a
14 detriment in light and air is something that we
15 can't deal with under an appeal.

16 Question?

17 MS. BRINCKERHOFF: I'm not sure what you
18 mean.

19 CHAIRMAN GRIFFIS: Okay. What we're
20 looking at is whether it is possible for this
21 addition to have been -- to be constructed and
22 whether the permit was granted correctly in its
23 relation to the existing nonconforming side yard.

24 MS. BRINCKERHOFF: Okay.

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1 CHAIRMAN GRIFFIS: So that's essentially
2 what's at issue. And actually, that's it. So it
3 doesn't go to impact, it doesn't go to design, it
4 doesn't go to anything else except for whether as
5 filed they erred, the Zoning Administrator erred in
6 issuing a building permit without correctly applying
7 the requirements of section 405 and 2001.3.

8 MS. BRINCKERHOFF: Understand.

9 CHAIRMAN GRIFFIS: Okay.

10 MS. BRINCKERHOFF: Then is there
11 anything you need to hear from me? Having not been
12 through this before --

13 CHAIRMAN GRIFFIS: No, I understand
14 that. And believe me, we're going to be very
15 patient because I want to make sure that you
16 understand what your burden is. But your burden at
17 this point is to present to this Board clear and
18 concisely what the error was. So maybe it helps --
19 it my mind it always helps to say okay, I'm going to
20 put myself in the shoes of the Zoning Administrator.

21 I'm now reviewing this permit. What you have
22 brought to us in saying as that Zoning Administrator
23 they made an error in allowing this to go forward.

24 MS. BRINCKERHOFF: Okay.

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1 CHAIRMAN GRIFFIS: And that error is
2 based on 405, the section that is establishing the
3 side yard requirements and 405.8 seems to speak to
4 this directly.

5 MS. BRINCKERHOFF: That is correct. An
6 addition is allowed, but they made an error in
7 allowing the addition with the inadequate side yard
8 to a nonconforming structure. Then I would just
9 agree with what Clarke had already said.

10 CHAIRMAN GRIFFIS: Okay. Excellent.
11 Thank you very much.

12 MS. BRINCKERHOFF: Thank you.

13 CHAIRMAN GRIFFIS: And in the meantime,
14 let me just also indicate that Mr. Zaidain has
15 joined us. And Mr. Zaidain represents the National
16 Capital Planning Commission. And for a small
17 portion of which he missed, he will be reading the
18 entire record in order to fully deliberate on this
19 case.

20 Anything else? That's it? Very well.
21 Thank you very much.

22 Do we need a break? No. Let's continue
23 on.

24 Let's go to government. Is there a

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1 representative from the Zoning Administrator here?

2 MR. GREEN: Yes, there is.

3 CHAIRMAN GRIFFIS: It didn't go
4 unnoticed.

5 Whenever you're ready, I've established
6 15 minutes for each case presentation. You have a
7 big record to beat. We have three minutes about on
8 the presentation of the first. That's a joke, for
9 the record. I'm just trying to bide time while
10 you're getting ready.

11 MR. GREEN: I kind of thought so, Mr.
12 Chairman. Thank you very much --

13 CHAIRMAN GRIFFIS: If you wouldn't mind
14 turning your microphone on.

15 MR. GREEN: Oh, yes. Good afternoon,
16 Mr. Chairman and Members of the Board.

17 My name is Matthew J. Green, Jr., and I
18 represent the Department of Consumer and Regulatory
19 Affairs, and we're here on this appealed matter.

20 To my immediate right I will let Ms.
21 Ogunneye --

22 MS. OGUNNEYE: Okay. My name is Faye
23 Ogunneye, I'm the Chief Zoning Review Officer, DCRA.

24 MR. GREEN: Ms. Ogunneye, are you

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1 familiar with this property and this particular
2 matter?

3 MS. OGUNNEYE: Yes, I am.

4 MR. GREEN: And have you had an
5 opportunity to review the record in this matter?

6 MS. OGUNNEYE: Yes, I have.

7 MR. GREEN: And in your view of this
8 appeal, the property as I understand it, is located
9 at 4624 Brandywine Street, is that not right?

10 MS. OGUNNEYE: Correct.

11 MR. GREEN: And what is the Lot and
12 Square?

13 MS. OGUNNEYE: The Lot number is 21,
14 Square 1541.

15 CHAIRMAN GRIFFIS: Let me -- let's move
16 on pretty quickly. This is all in the record so
17 there's no reason to establish this for the record.

18 MR. GREEN: All right. All right.

19 Ma'am, in your analysis of this
20 particular request, did the structure conform to the
21 percentage of lot occupancy requirements?

22 MS. OGUNNEYE: Yes, it did.

23 MR. GREEN: And did the addition conform
24 to the use and structure requirements?

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1 MS. OGUNNEYE: Yes, it did.

2 MR. GREEN: And did the addition
3 increase or extend any existing nonconforming
4 aspects of the structure.

5 MS. OGUNNEYE: No, it didn't.

6 MR. GREEN: Now, you had an opportunity
7 to carefully review this plat map and chart, is that
8 not right?

9 MS. OGUNNEYE: Correct.

10 MR. GREEN: I don't know if it's a part
11 of the record or not. I'd like to enter this. This
12 is 4625 Brandywine?

13 CHAIRMAN GRIFFIS: Do you have copies?

14 MR. GREEN: Yes, we've got it. Yes.

15 CHAIRMAN GRIFFIS: How many copies do
16 you have?

17 MS. OGUNNEYE: Just the one.

18 MR. GREEN: We just have this one.

19 CHAIRMAN GRIFFIS: Oh, you have one
20 copy? Can you give it to the Appellant first,
21 please?

22 MR. GREEN: Yes.

23 CHAIRMAN GRIFFIS: They can review for a
24 minute, and then we're going to remove it from them

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1 to make copies.

2 MR. GREEN: I have one other document,
3 too.

4 MEMBER ZAIDAIN: Is this the plot
5 that's in our file?

6 MS. OGUNNEYE: Yes, the plot is your
7 file. We also have a report.

8 CHAIRMAN GRIFFIS: Where's the --

9 MS. OGUNNEYE: Report. This comes from
10 the site the dimension.

11 CHAIRMAN GRIFFIS: Is that what they're
12 looking at?

13 MR. GREEN: Yes, they're looking at the
14 wall test report and the plat that you have a copy
15 of.

16 MEMBER ZAIDAIN: I thought that was in
17 our file.

18 CHAIRMAN GRIFFIS: Okay. Are they in?
19 Let's take copies for our files. Got cut off.

20 MR. GREEN: May I approach, Mr.
21 Chairman?

22 CHAIRMAN GRIFFIS: Well, yes. Just hand
23 it to staff. Okay.

24 We're going to get copies of that.

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1 MR. GREEN: Okay.

2 CHAIRMAN GRIFFIS: We're going to
3 distribute to everybody, and then we can go.

4 In terms of the plat plan, we have the
5 bottom portion so the substantive portion is there.

6 The wall test we'll make copies of and we'll get it
7 to everybody.

8 MEMBER ZAIDAIN: Mr. Chair, I do have a
9 question on this really quick. Is this what they
10 used to pull the permit and that's what --

11 MS. OGUNNEYE: Correct.

12 MR. GREEN: Yes.

13 MEMBER ZAIDAIN: Okay.

14 MR. GREEN: This structure on
15 Brandywine, ma'am, can you tell us when it was
16 built?

17 MS. OGUNNEYE: The original structure
18 was built back in 1942.

19 MR. GREEN: Sot he structure was built
20 before 1958, is that not right?

21 MS. OGUNNEYE: Correct.

22 MR. GREEN: Was the side yard in this
23 instance less than eight feet wide?

24 MS. OGUNNEYE: Yes, it is.

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1 MR. GREEN: Was the width of the
2 existing side yard decreased in any way?

3 MS. OGUNNEYE: No, it wasn't.

4 MR. GREEN: Was the width of the
5 existing side yard a minimum of five feet?

6 MS. OGUNNEYE: Yes, it is.

7 MR. GREEN: What was the ultimate
8 determination made by the Zoning Administrator
9 regarding this property and this location?

10 MS. OGUNNEYE: If I refer back to
11 section 405.8 in the zoning regulations, it states
12 that in the case of a building existing on or before
13 May 12, 1958 with a side yard less than eight feet
14 an extension or addition may be made to the building
15 provided that the width of the existing side yard
16 shall not be decreased and provided further that the
17 width of the existing side yard shall be a minimum
18 of five feet.

19 So the existing structure we well over -
20 - the existing side yard was well over the minimum
21 five foot that was required for buildings that
22 predated the zoning regulations. And the wall test
23 will attest to the fact that it was more than the
24 five feet.

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1 MR. GREEN: Based on that, what did your
2 office do? What determined -- what final
3 determinations did your office make?

4 MS. OGUNNEYE: The final determination
5 was to approve the drawings because it was in
6 compliance with the intent of the zoning
7 regulations.

8 MR. GREEN: I don't have any other
9 questions.

10 CHAIRMAN GRIFFIS: Very well. Questions
11 from the Board? Yes, Mr. Zaidain?

12 MEMBER ZAIDAIN: I have trouble trying
13 to understand the way this regulation has been
14 interpreted. If the existing side yard was four
15 feet, you know predating the zoning regulations, and
16 they were going to provide for an extension, they
17 could do -- or they were applying for a permit for
18 an extension; they could do that provided that the
19 area of the addition was set back from the side yard
20 at least five feet, is that correct?

21 MS. OGUNNEYE: No.

22 MEMBER ZAIDAIN: Okay.

23 MS. OGUNNEYE: In a case like that, that
24 would be existing nonconforming and since it doesn't

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1 meet the minimum five feet --

2 MEMBER ZAIDAIN: Okay.

3 MS. OGUNNEYE: -- then you'll have to
4 provide the eight feet. Once they have five feet or
5 more, then they can align with that existing --

6 MEMBER ZAIDAIN: You mean -- okay. So
7 the five feet rule really comes into existing--

8 MS. OGUNNEYE: That's like a part of
9 mark.

10 MEMBER ZAIDAIN: Right. Okay.

11 MS. OGUNNEYE: Right.

12 CHAIRMAN GRIFFIS: I think it's
13 appropriate to --

14 MEMBER ZAIDAIN: Okay. I understand.

15 CHAIRMAN GRIFFIS: No. It's very
16 pertinent to go to 405.8, which establishes that in
17 the case of a building that existed before May 12,
18 1958 side yard must be eight feet wide, extension or
19 addition may be made to a building provided that the
20 width of the existing side yard shall not be
21 decreased and provided further, which goes to your
22 issue, Mr. Zaidain, that the width of the existing
23 yard shall be a minimum of five feet.

24 MEMBER ZAIDAIN: Well, I just wasn't

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1 sure if that meant the yard of the entire structure
2 after addition or just the yard of the addition.
3 And Ms. Ogunneye has stated that that means that the
4 yard of the entire structure either has to be five
5 feet or it has to meet -- or the addition has to
6 meet eight feet.

7 CHAIRMAN GRIFFIS: Okay.

8 MEMBER ZAIDAIN: Correct?

9 MS. OGUNNEYE: Correct.

10 MEMBER ZAIDAIN: Okay.

11 CHAIRMAN GRIFFIS: Where does the side
12 yard end?

13 MS. OGUNNEYE: I'm sorry?

14 CHAIRMAN GRIFFIS: Where does the side
15 yard end, generally speaking?

16 MS. OGUNNEYE: The side yard is that
17 part of the yard to the side of the building that's
18 open from the front lot line all the way to the
19 rear.

20 CHAIRMAN GRIFFIS: So the side yard ends
21 at the rear lot line?

22 MEMBER ZAIDAIN: The rear building line.

23 CHAIRMAN GRIFFIS: The side yard ends at
24 the rear lot line? Does the side yard end at the

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1 rear, the required rear --

2 MS. OGUNNEYE: No. It's generally from
3 the front part -- the front part of the building to
4 where the building ends.

5 CHAIRMAN GRIFFIS: Okay.

6 MS. OGUNNEYE: But at no point can you
7 interrupt that cleared view from the front yards --
8 from the front of -- you know, the property line to
9 the rear yard.

10 CHAIRMAN GRIFFIS: So the side yard ends
11 at the extent of a structure?

12 MS. OGUNNEYE: Pretty much, yes. As
13 long as there nothing else obstructing it further
14 down.

15 CHAIRMAN GRIFFIS: I see.

16 MS. OGUNNEYE: Within the lot line.

17 CHAIRMAN GRIFFIS: I see.

18 MS. OGUNNEYE: There has to be a clear
19 view.

20 CHAIRMAN GRIFFIS: Something else that
21 would encroach on an open space?

22 MS. OGUNNEYE: Correct.

23 CHAIRMAN GRIFFIS: Okay. Understood.

24 Other questions of the Board? Yes, Ms.

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1 Miller?

2 MEMBER MILLER: I want to make sure I'm
3 understanding you correctly, so let me know. Is it
4 your opinion that if the existing side yard was five
5 feet and the building existed on or before 1958,
6 then that side yard is conforming as opposed to
7 nonconforming under regulations?

8 MS. OGUNNEYE: Correct. Correct.

9 MEMBER MILLER: And that's why you can
10 say that -- that's why you made the statement that
11 this addition didn't increase nonconforming aspects
12 of the structure?

13 MS. OGUNNEYE: It did not increase the
14 nonconforming aspect.

15 MEMBER MILLER: Okay.

16 CHAIRMAN GRIFFIS: Mr. Zaidain, you have
17 a question?

18 MEMBER ZAIDAIN: Yes. This is the plot
19 plan that was submitted for permit, correct?

20 MS. OGUNNEYE: Correct.

21 MEMBER ZAIDAIN: On the existing house,
22 and this is just for my clarification, what is that
23 that's into the side yard? Is that just a bay? Is
24 that part of the building footprint?

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1 MS. OGUNNEYE: I don't have anything
2 showing within the side yard.

3 CHAIRMAN GRIFFIS: The chimney.

4 MEMBER ZAIDAIN: The chimney?

5 MS. OGUNNEYE: On the copy I have there
6 is nothing within the side yard.

7 MEMBER ZAIDAIN: Do you see where the
8 6.0 --

9 CHAIRMAN GRIFFIS: It looks like an
10 allowable projection for a chimney.

11 MEMBER ZAIDAIN: Right.

12 MS. OGUNNEYE: Oh, right. Right.

13 CHAIRMAN GRIFFIS: That's what it's
14 indicating.

15 MS. OGUNNEYE: Right, I do see it.
16 That's a chimney and that is an allowable.

17 MEMBER ZAIDAIN: Allowable? Yes, it is
18 allowable.

19 MS. OGUNNEYE: Right.

20 MEMBER ZAIDAIN: Okay. I was just
21 wondering. Thank you.

22 MS. OGUNNEYE: You're welcome.

23 MEMBER ZAIDAIN: Okay.

24 CHAIRMAN GRIFFIS: Okay. Anything else

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1 from the Board? Very well. Nothing further? No
2 more Board questions.

3 All right. We're going to have cross
4 examination. Now, the government wasn't represented
5 before your conclusion. So what I'm going to do is
6 if there's any cross of the Appellant's case, we can
7 get to that after we cross government.

8 But cross examination from the
9 Appellant? Is there any questions?

10 MR. BRINCKERHOFF: We're not represented
11 by counsel at all.

12 CHAIRMAN GRIFFIS: I understand that.

13 MR. BRINCKERHOFF: One question --

14 CHAIRMAN GRIFFIS: If you wouldn't mind.

15 MR. BRINCKERHOFF: Yes.

16 CHAIRMAN GRIFFIS: Just make yourself
17 comfortable, have a seat. They can make room for
18 you.

19 MR. BRINCKERHOFF: Just one question on
20 405.8, which you read in its entirety, by the way, I
21 did when I sat up here before.

22 Is it correct to say that, as we do,
23 that section 405.8 refers only to the existing side
24 yard which is five feet or slightly more and says

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1 nothing at all about the required side yard that
2 would be necessary if an extension is built onto the
3 pre-1958 house? It refers only to the existing side
4 yard in the existing structure, does it not?

5 MS. OGUNNEYE: It does refer to the
6 existing side yard, but it goes further on to
7 explain that when you are doing an addition to or an
8 extension of a property with this condition, you
9 apply it as follows.

10 MR. BRINCKERHOFF: It says that you can
11 build on to such a structure, but as I read it, and
12 I don't want to ask an argumentative question here
13 and I'm not --

14 CHAIRMAN GRIFFIS: It's okay.

15 MR. BRINCKERHOFF: Sure. But as I read
16 it, it is silent on the amount of feet that the side
17 yard of the addition would have to have. And I'm
18 asking you to focus on the word existing and/or to
19 justify your analysis of the words of this
20 provision.

21 MS. OGUNNEYE: I'm not so sure I
22 understand.

23 MR. BRINCKERHOFF: All right.

24 CHAIRMAN GRIFFIS: If I might?

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1 MR. BRINCKERHOFF: Sure.

2 CHAIRMAN GRIFFIS: Is your question
3 under 405.8 is the extension of the side yard
4 limited to the existing structure?

5 MS. OGUNNEYE: The intent of 405 is how
6 we apply side yards. And I believe the only reason
7 .8 was put in was the exception to the rule, which
8 is if a structure existed prior to the zoning regs,
9 this is how it would be applied.

10 CHAIRMAN GRIFFIS: Follow up question?

11 MR. BRINCKERHOFF: Well, I have your
12 answer.

13 And in your analysis did you consider
14 the other section on which we rely that enlargements
15 or additions to nonconforming structures may be
16 allowed only if the addition itself neither
17 increases nor extends the existing nonconforming
18 aspect of the structure, in this case the narrow
19 five feet side yard?

20 MS. OGUNNEYE: Yes, we did apply that,
21 the nonconforming structure section 2001, yes.

22 CHAIRMAN GRIFFIS: Anybody else?

23 MS. BRINCKERHOFF: I have before me the
24 definition of nonconforming structure from the code.

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1 And I was wondering if you could explain to me how
2 the existing building at 4624 would be conforming?

3 Here is the definition of a
4 nonconforming structure: "A structure lawfully
5 existing at the time this title or any amendment to
6 this title became effective that does not conform to
7 all provisions of this title or the amendment other
8 than use, parking, loading and roof structure
9 requirements. Regulatory standards that create
10 nonconformity of structures include but are not
11 limited to: height of building, lot area, width of
12 lot, floor area ratio, lot occupancy, yard court and
13 residential recreation space requirements."

14 MS. OGUNNEYE: The last few that you
15 noted, I'm not so sure it mentioned anything about
16 side yard.

17 MS. BRINCKERHOFF: Yard.

18 MS. OGUNNEYE: It did? Okay.

19 And the question again?

20 MS. BRINCKERHOFF: My question is how
21 does 4624 Brandywine Street not meet the definition
22 of a nonconforming structure?

23 MS. OGUNNEYE: It's nonconforming to
24 side yard requirements, but because it predated the

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1 zoning regulations, again, I'll have to refer back
2 to 405.8, which is a provision that's been set for
3 those structures that existed predating the zoning
4 regulations and are allowed to have the five foot
5 minimum side yard.

6 MS. BRINCKERHOFF: So it is a
7 nonconforming structure?

8 MS. OGUNNEYE: Yes, it is. Yes.

9 MS. BRINCKERHOFF: Okay. Then I have
10 under the general provisions section 2000.2 It
11 talks about the overview of nonconforming uses and
12 nonconforming structures. It says "It is the intent
13 of this title that nonconformities may not be
14 enlarged upon, expanded or extended nor may they be
15 used as a basis for adding other structures or uses
16 prohibited elsewhere in the same district." And
17 this was done with the understanding that some of
18 these buildings were built before 1948 but in the
19 interest of all, buildings made after these
20 regulations were approved would not extend
21 nonconformities.

22 MS. OGUNNEYE: Right. But it goes
23 farther and says as long as it meets the minimum lot
24 requirement, then they can go ahead and proceed with

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1 any addition as long as they're not creating any new
2 nonconformities or they're not further nonconforming
3 an existing nonconformity.

4 MS. BRINCKERHOFF: But if we have
5 determined that we have a nonconforming structure,
6 and we are now adding to a nonconforming structure
7 an addition with an inadequate side yard, we are
8 extending the nonconformity?

9 MS. OGUNNEYE: Again, 405.8 allows in
10 this case for the side yards to be five feet. If
11 the side yard provided at the addition point we less
12 than five feet, then the side yard would be
13 nonconforming. So we're not further the
14 nonconforming the nonconformity. It is, in fact, an
15 existing nonconforming structure, but the addition
16 does not further nonconform the nonconformity.

17 MS. BRINCKERHOFF: How do you explain
18 the fact that 405.8 says that in a case of a
19 building existing before May 12, 1958 with a side
20 yard of eight feet wide an extension may be made to
21 the building provided that the width of the existing
22 side yard shall not be decreased and provided
23 further that the width of the existing side yard
24 shall be a minimum of a five feet? How do you glean

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1 from that statement that this is talking about
2 additions? How do you glean that this is talking
3 about the width of the side yard of the addition?

4 MR. GREEN: Mr. Chairman. Mr. Chairman.

5 MS. BRINCKERHOFF: I read that as --

6 MR. GREEN: Mr. Chairman, I delicately
7 interpose an objection. Because this question has
8 been asked and answered --

9 CHAIRMAN GRIFFIS: Indeed. Good point.

10 A simple remedy to the question, how do
11 you measure the width of a side yard? Where is it
12 taken from?

13 MS. OGUNNEYE: From the side property
14 lot line to the further most part of the existing
15 structure.

16 CHAIRMAN GRIFFIS: Okay. That's the
17 width of the side yard?

18 MS. OGUNNEYE: Correct.

19 CHAIRMAN GRIFFIS: Can you state that
20 again?

21 MS. OGUNNEYE: Well, more precisely from
22 the outer most edge of the building itself to the
23 side property lot line.

24 CHAIRMAN GRIFFIS: And the width was

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1 measured of this side yard as what?

2 MS. OGUNNEYE: Five point one foot was
3 what --

4 CHAIRMAN GRIFFIS: Okay.

5 MS. OGUNNEYE: -- the application had,
6 but the wall test shows it's slightly larger at
7 5.67.

8 CHAIRMAN GRIFFIS: And was the width of
9 the existing side yard decreased at all in this
10 addition?

11 MS. OGUNNEYE: No, it was not.

12 CHAIRMAN GRIFFIS: Okay.

13 Follow up questions?

14 MS. BRINCKERHOFF: Not at this time.

15 CHAIRMAN GRIFFIS: This would be the
16 time.

17 MS. BRINCKERHOFF: I have somewhere a
18 definition of side yard. I just --

19 CHAIRMAN GRIFFIS: Side yard from the
20 Title 11 DCMR?

21 MS. BRINCKERHOFF: Yes. Yes.

22 CHAIRMAN GRIFFIS: We can easily get
23 that.

24 Do you want her to address the

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1 definition of side yard?

2 MS. BRINCKERHOFF: I think that the
3 definition of side yard as it exists in the
4 regulation is a lot clearer. It's come up a number
5 of times here, and I think we should --

6 CHAIRMAN GRIFFIS: Yard, side. Title 11
7 1099 definition: "The yard between any portion of a
8 building or other structure and the adjacent side
9 lot line extending for the full depth of the
10 building or structure."

11 Is that your interpretation when
12 reviewing side yards as its definition?

13 MS. OGUNNEYE: Correct.

14 CHAIRMAN GRIFFIS: May I call you Faye?

15 MS. OGUNNEYE: Yes.

16 CHAIRMAN GRIFFIS: Thank you. Okay.

17 Are there any follow up question on
18 that?

19 MS. BRINCKERHOFF: No, sir.

20 CHAIRMAN GRIFFIS: I'm not rushing you.
21 I'm just trying to actually assist you in your
22 questioning.

23 So let's dissect that definition for a
24 moment. If we take the first portion, "A yard

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1 between any portion of a building or other
2 structure." So we've now defined an extent; "and
3 other structure and the adjacent side lot line." So
4 now we have two defining points to measure from.

5 Is that correct in your previous answer
6 that you are measuring from an extent of a structure
7 to the adjacent side -- the adjacent lot line?

8 MS. OGUNNEYE: Correct.

9 CHAIRMAN GRIFFIS: Okay. "Extending for
10 the full depth of the building or structure." Does
11 that also conform with your previous answer of where
12 does a side yard end?

13 MS. OGUNNEYE: Correct.

14 CHAIRMAN GRIFFIS: Okay. Then put
15 altogether, it would seem to me that you're saying
16 that this 5.1 is the width of the side yard in this
17 instant case?

18 MS. OGUNNEYE: Right.

19 CHAIRMAN GRIFFIS: And that 5.1 is
20 measured from the lot line and you stated to the
21 end, to the extent of the addition which actually if
22 I'm understanding your correctly, sets two elements
23 within the side yard. It sets a measuring point, but
24 also an end point to the side yard. But you could

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1 conceivably take that measurement anywhere along the
2 existing structure, is that correct?

3 MS. OGUNNEYE: Correct. As long as at no
4 point on that same plane the dimension changes to
5 become less than the existing.

6 CHAIRMAN GRIFFIS: I see. So what you're
7 saying is no matter where you measured it, it would
8 have to be a minimum of 5.1 feet?

9 MS. OGUNNEYE: Not quite. In this case
10 yes. If for instance --

11 CHAIRMAN GRIFFIS: Exactly. Okay.

12 MS. OGUNNEYE: Yes.

13 CHAIRMAN GRIFFIS: You were about to say
14 no it would have to be five feet. But in this case
15 it would be 5.1?

16 MS. OGUNNEYE: No. I was going to say
17 you could only go -- like have five feet and then go
18 to six feet elsewhere in the addition. You can
19 maintain the 5.1, but if you decide to move away
20 from the 5.1, then you will have to have the whole
21 eight feet.

22 CHAIRMAN GRIFFIS: Good point. Making it
23 a conforming to current matter of required side
24 yard?

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1 MS. OGUNNEYE: Correct.

2 CHAIRMAN GRIFFIS: Okay.

3 MEMBER ZAIDAIN: So the five feet's not
4 a minimum?

5 MS. OGUNNEYE: It is a minimum. It's a
6 minimum, but because it is an existing nonconformity
7 that's acceptable, so to speak, you can maintain
8 that at whatever it exists at. But you decide to do
9 your addition to align with the existing structure
10 and then you want to have a jog, when you do jog you
11 have to have that full eight feet. So it's either
12 you keep that line or you're forced to apply the
13 eight feet.

14 CHAIRMAN GRIFFIS: Okay. We're not
15 going to worry about that. Don't concern yourself
16 with that, because it's going a little bit off the
17 relevancy of now I know. So let's focus on what we
18 have actually directly in front of us.

19 Yes, Ms. Miller, a follow up?

20 MEMBER MILLER: Again, I want to make
21 sure I understand your interpretation of 2001.3
22 enlargements and additions may be made to the
23 structure provided to neither increase or extend any
24 existing nonconforming aspect of the structure.

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1 Okay. Now, increase or extend, from what I'm
2 hearing you interpret that to mean sideways when
3 you're talking about a side yard? You're not
4 interpreting it as back into the yard?

5 MS. OGUNNEYE: Correct.

6 MEMBER MILLER: Linear? Okay. Is that
7 correct?

8 MS. OGUNNEYE: That's correct.

9 MEMBER MILLER: Okay. Thank you.

10 CHAIRMAN GRIFFIS: Follow up on Ms.
11 Miller said, the width of the side yard is a point
12 dimension or a linear or a running dimension?

13 MS. OGUNNEYE: Correct.

14 CHAIRMAN GRIFFIS: Okay. So the side
15 yard, to really hammer this home, in this
16 application the width of the side yard was not
17 extended for 24 feet? Rather, the width was not
18 extended to 24 feet. The 24 is actually a dimension
19 of the addition?

20 MS. OGUNNEYE: Yes.

21 CHAIRMAN GRIFFIS: Yes, it's confusing
22 everything just trying to go backwards.

23 MS. BRINCKERHOFF: The length.

24 MS. OGUNNEYE: But I think you were

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1 still going farther with that.

2 CHAIRMAN GRIFFIS: No. I could, but I
3 stopped myself. All right.

4 Anything further? Questions? Board,
5 Appellant?

6 MS. BRINCKERHOFF: I think I have no
7 further question.

8 MS. BUCK: My name is Susan Buck. I'm
9 the neighbor on the other side of 4620. And I guess
10 I just -- basically I'm just asking a question about
11 clarification of what -- you're extending the -- I
12 mean, I think the 405.8 talks very clearly about an
13 existing side yard. And I don't understand how an
14 existing side yard can be -- that can be applied to
15 an addition. So it's a question of clarification.
16 Because it's clear that it's saying existing, not
17 addition.

18 The width of the existing side yard
19 shall not be decreased, and that stands to reason
20 because it is -- you know, you don't want to tear a
21 wall down. And it goes on and emphasizes it in the
22 next phrase by saying that the width of the existing
23 side yard shall be a minimum of five feet. But that
24 to me doesn't say anything about the side yard of an

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1 addition. It's the existing side yard. So you can't
2 build into the existing --

3 CHAIRMAN GRIFFIS: Well, let me see if
4 Understand your question. You're saying that
5 they've actually established two side yards and they
6 should be measured differently?

7 MS. BUCK: Basically. I mean, to me
8 this says that the -- you can't build an addition
9 into the nonconforming side yard.

10 CHAIRMAN GRIFFIS: That's true.

11 MS. BUCK: In other words, you can't go
12 closer to the other person's property line. But it
13 doesn't to me say that you can extend the side yard.

14 CHAIRMAN GRIFFIS: I understand your
15 point.

16 MS. BUCK: Yes.

17 CHAIRMAN GRIFFIS: But it's based on the
18 premise that there are actually two side yards
19 created. Because you've made a distinction there's
20 a side yard on the existing and then there's a side
21 yard with the addition.

22 MS. BUCK: Right.

23 CHAIRMAN GRIFFIS: That to me says
24 there's two different side yards. Is that your

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1 point?

2 MS. BUCK: I think that's basically what
3 I'm saying.

4 CHAIRMAN GRIFFIS: Okay.

5 MS. BUCK: Or it's a point I'm trying to
6 find clarification on.

7 CHAIRMAN GRIFFIS: Indeed.

8 Do you understand? Are there two
9 different side yards or is there a single side yard?

10 MS. OGUNNEYE: On that one side of the
11 building it's just one side yard. It's one
12 structure. And they're adding to an existing
13 structure which still keeps it one structure. So it
14 has to be one side yard.

15 MS. BUCK: So the assumption is that the
16 existing side yard -- I mean, why didn't they just
17 say side yard? Why then draw a distinction in the
18 code between an existing side yard and an extended
19 side yard?

20 MS. OGUNNEYE: Because there might not
21 be a side yard. So if there happens to be one, the
22 one that's there that does exist is what I believe
23 they're referring to.

24 MS. BUCK: Okay. That's just a point I

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1 wanted to bring up because I think a lot of our
2 concern was based on the extension of a
3 nonconforming side yard.

4 CHAIRMAN GRIFFIS: Right.

5 MS. BUCK: And I'll leave it at that.
6 And I guess it's just a question of interpretation.

7 MS. OGUNNEYE: Well, if I may add, there
8 are some properties that do not have side yards. So
9 that might be the reason why they do make a
10 distinction to existing side yards.

11 MS. BUCK: Thank you.

12 CHAIRMAN GRIFFIS: Cross, Intervenor?

13 No cross?

14 MS. BROWN: No questions.

15 CHAIRMAN GRIFFIS: Okay. Questions from
16 the Board? Anything.

17 Very well. Thank you very much.

18 Now I did slip over fairly quickly. Did
19 you have any cross examination of the Appellant?

20 MS. BROWN: No, I do not.

21 CHAIRMAN GRIFFIS: No cross? Okay.

22 All right. Let's go. Thank you.

23 MS. BROWN: Hi. Again for the record,
24 Carolyn Brown for the property owners Linda Jewell

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1 and John Walsh.

2 Two things that I want to focus on that
3 I think can, hopefully, wrap this up quickly. One
4 is the legislative history of the section 405.8,
5 which we went over pretty much in detail in our
6 submission to the record.

7 And secondly, is some general principles
8 of statutory construction. We've heard here today,
9 supposedly, some conflict between the provisions of
10 nonconforming uses of structures in section 2001 and
11 section 405.8. And just to go over that very
12 briefly, when you have two provisions that appear to
13 be at odds with one another, you're supposed to try
14 to harmonize them, reconcile them so that they read
15 together. And so that's point number one.

16 Point number two you don't make -- you
17 also have to read regulations so that you don't make
18 any provisions superfluous. So if you're going to
19 interpret it the way the Appellant's have asked us
20 to, 405.8 that you should have been required to
21 build the addition with an eight foot side yard,
22 then there's no purpose in having section 405.8. It
23 renders it meaningless.

24 So, you can't have it. You can't have

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1 had the Zoning Commission writing that provision
2 into the regulations for it to be meaningless. So
3 there's two reasons right there for statutory
4 construction to say that it has to have the meaning
5 that we believe it means, and that's also what it
6 means in the legislative history that we've
7 provided.

8 And, you know, even though we're basing
9 this on legal argument, I think that we've set it
10 out pretty clearly again in our submission.

11 We also happen to have the benefit of
12 somebody that was with the Office of Zoning at the
13 time that this regulation was written who
14 participated in the drafting of the report for the
15 Office of Zoning, and that's Steve Sher, who was
16 with the staff at that time. So he is available to
17 tell you exactly what went on at the time that this
18 report was drafted.

19 But I think most importantly I'd like to
20 refer you to Tab B of our submission, which I think
21 states most clearly what words do not, and that's
22 what the intent was.

23 When they drafted that legislative
24 report, figure 2 describes exactly what the Zoning

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1 Commission's intent was. If you have an existing
2 six foot side yard, and in our instance we have an
3 existing 5.6 foot side yard, and you build an
4 addition straight back as it shows in the shaded
5 area, exactly what the Walshs did they built an
6 addition straight out the back, that's exactly
7 what's permitted. And there it says, figure 2,
8 permitted.

9 CHAIRMAN GRIFFIS: Let me interrupt you
10 quickly. First of all, the Appellants have this
11 graph that is being referred to? Very well. They do
12 have it, they've indicated.

13 Now, who created these graphs?

14 MS. BROWN: These graphs, we have a hand
15 being raised to my right by Steven Sher. He created
16 them.

17 CHAIRMAN GRIFFIS: When? Yesterday?

18 MS. BROWN: 1976.

19 CHAIRMAN GRIFFIS: In what capacity?
20 What -- I mean why are we looking at these?

21 MS. BROWN: Why don't I let him speak to
22 this directly --

23 CHAIRMAN GRIFFIS: Okay.

24 MS. BROWN: -- for the record.

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1 MR. SHER: Mr. Chairman, Members of the
2 Board. For the record my name is Steve E. Sher, the
3 Director of Zoning and Land Uses Services with the
4 law firm of Holland and Knight.

5 In 1976 I was employed by the District
6 of Columbia in the Municipal Planning Office, which
7 was the office which provided staff support to the
8 Zoning Commission at that point in time. That
9 office is now known as the Office of Planning, but
10 it went through several reorganizations to get
11 there. In 1976 it was the Municipal Planning Office.

12 I prepared the report and the
13 recommendations to the Zoning Commission. And, as
14 you can see in Tab A where the complete report is
15 attached, it was signed by Ben Gilbert, who at that
16 point was the Director of the Municipal Planning
17 Office.

18 CHAIRMAN GRIFFIS: So this is part of
19 the staff report to the Zoning Commission in their--
20 -

21 MR. SHER: In 1976.

22 CHAIRMAN GRIFFIS: Right. And trying to
23 write the text to the regulation?

24 MR. SHER: In recommending amendments to

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1 the regulations in three areas, one of which had to
2 do with side yards.

3 CHAIRMAN GRIFFIS: Okay. And it's your
4 testimony that these permitted and not permitted
5 drafts were adopted within the text?

6 MR. SHER: The drawings themselves were
7 not adopted.

8 CHAIRMAN GRIFFIS: No.

9 MR. SHER: They were the basis of what
10 the regulation was intended to allow.

11 CHAIRMAN GRIFFIS: That's what I meant
12 to say.

13 They obviously illustrate the intent of
14 the text amendment?

15 MR. SHER: Yes, sir.

16 CHAIRMAN GRIFFIS: Okay.

17 What else?

18 MS. BROWN: Well, I think that we heard
19 here today that the Appellants are very much
20 focusing on the idea that there's a difference
21 between the existing side yard and that an addition
22 should have a separate side yard. And we know that
23 that's not the case based on what the zoning
24 reviewer said that you can't have two side yards for

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1 one side of a building. It just doesn't make sense.

2 So that we know that the side yard has to be
3 measured for the entire structure on that one side.
4 So we know that once you establish the side yard as
5 5.1 feet, that's it for the structure both at the
6 existing time and when you add an addition. You
7 don't have a separate measurement. Once you have an
8 addition it becomes of the original structure and
9 you measure the side yard for the full depth of that
10 structure.

11 CHAIRMAN GRIFFIS: Okay.

12 MS. BROWN: They do raise issues,
13 actually we didn't hear much of them today and I
14 think you cut them off about the applicability of
15 section 101.1. And those do not apply in this case
16 for a couple of reasons. One, they never raised in
17 their initial appeal. They only raised the issue of
18 section 405.8. So to the extent that it's raised in
19 supplemental filing that the Zoning Administrator
20 made an error that the building permit violates that
21 section, it is not germane at this point because
22 they did not raise in their initial appeal. And
23 that has to do with adequate light and air and
24 privacy issues.

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1 Secondly, as we stated in our pleading,
2 adequate light and air and privacy is for the actual
3 -- that would be for the Walsh/Jewell property, for
4 your own property. It's not for the protection of
5 neighboring property. So to that extent it should
6 not be considered either.

7 We still believe that the motion for
8 summary judgment would have been appropriate in this
9 case, but I understand that you have denied that.
10 But we hope that overall that you would deny this
11 appeal. And we believe that the Appellants have not
12 met their standard of proof, and we would urge you
13 to deny the appeal.

14 If you have any questions, we'd be happy
15 to answer them.

16 CHAIRMAN GRIFFIS: Indeed. Thank you.

17 Mr. Zaidain?

18 MEMBER ZAIDAIN: I have three questions.

19 I guess I'm confused, because you guys dealt with
20 this before I got here, so I apologize if I'm
21 raising something. But I think they did raise
22 section 101.1 in their appeal as item 15.

23 MS. BROWN: It was not in the initial
24 application form.

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1 MEMBER ZAIDAIN: Oh, okay. Secondly, I
2 guess my question is for Mr. Sher, just to give
3 another alternative scenario somewhere to the one I
4 gave before. If there's an existing side yard of a
5 structure -- well, first of all, let's say in the
6 zoning district you have to have eight feet. And
7 there's an existing side yard. It's a legal
8 nonconforming predating zoning of five feet. And
9 they're going to extend an addition and the side
10 yard for that addition is going to be 7 feet. Is
11 that legal?

12 MR. SHER: In my view it is.

13 MEMBER ZAIDAIN: Okay. And that would
14 be 405.8?

15 MR. SHER: Yes.

16 MEMBER ZAIDAIN: Okay.

17 MR. SHER: What 405.8 says is that it
18 doesn't -- and I disagree only in limited part with
19 this Ogunneye on that. It says that the width of
20 the existing side yard shall not be decreased. So
21 if it's five feet and you make it seven feet, you
22 aren't decreasing it. You can go five feet, you can
23 straight back. But I believe you can set it back to
24 six feet or seven feet or eight feet, but that's not

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1 the issue here. We're going straight back --

2 MEMBER ZAIDAIN: Right. And, actually,
3 I agree with you. I just wanted to --

4 MR. SHER: Yes.

5 MEMBER ZAIDAIN: You know, I wanted to
6 make sure there was some clarity between that point
7 and --

8 MR. SHER: Right.

9 MEMBER ZAIDAIN: -- Ms. Ogunneye point
10 early on.

11 MR. SHER: Not at issue in this case.

12 MEMBER ZAIDAIN: No, not at all. Not at
13 all.

14 MR. SHER: But I agree that it could be.

15 MEMBER ZAIDAIN: Okay.

16 CHAIRMAN GRIFFIS: It's a slight issue
17 in this case. We've been talking about a 5.1. The
18 wall test actually establishes it at 5.67. And then
19 the width at the end point, if I read the wall test
20 correctly, is 5.81. Clearly it's not diminishing or
21 decreasing the side yard. Obviously, the structure
22 itself is in alignment, but the property line is
23 not.

24 MR. SHER: I have to confess that my

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1 assertion that it's not at issue was based on the
2 plat submitted with the plan --

3 CHAIRMAN GRIFFIS: Right.

4 MR. SHER: -- which showed it as 5.1 all
5 the way across.

6 CHAIRMAN GRIFFIS: Right.

7 MR. SHER: If in fact it got a little
8 wider, then I stand by the assumption that that is
9 permitted. If that's so, it's only because as you
10 say there's a slight skew there.

11 CHAIRMAN GRIFFIS: Okay. Mr. Parsons,
12 did you have a question? Okay.

13 COMMISSIONER PARSONS: I'll be beating
14 the horse.

15 CHAIRMAN GRIFFIS: I'm sorry. Indeed.

16 COMMISSIONER PARSONS: I think Mr.
17 Zaidain took care of mine.

18 CHAIRMAN GRIFFIS: Very well. Any other
19 questions of the Board? Oh, I'm sorry, Ms. Miller?

20 MEMBER MILLER: Mr. Sher, I appreciate
21 that the illustrations that are presented here as to
22 how the regs are to be interpreted were part of the
23 Municipal Planning Office's recommendation. Do we
24 have any other information that the Zoning

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1 Commission actually interpreted the regulations that
2 way?

3 MR. SHER: What you actually have in
4 Exhibit A to the motion for summary judgment is the
5 transmission that the Zoning Commission made to the
6 National Capital Planning Commission, which is a
7 required step in an amendment to the regulations,
8 which is before the Commission may adopt finally,
9 they have to seek the advice of the National Capital
10 Planning Commission.

11 What the Zoning Commission sent to NCPC
12 was a transmittal letter, dated December 15, 1976, a
13 one page listing of two text amendments and the full
14 report of the Office of -- Municipal Planning
15 Office. I was about to say Office of Planning, but
16 the Municipal Planning Office as the background for
17 what it was the Commission had done. So I believe
18 that that sort of connects the dots, if you will.

19 MEMBER MILLER: Thank you.

20 CHAIRMAN GRIFFIS: Anything else from
21 the Board?

22 Anything else?

23 MS. BROWN: No.

24 CHAIRMAN GRIFFIS: Very well. Cross

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1 examination?

2 MR. BRINCKERHOFF: Very short.

3 CHAIRMAN GRIFFIS: Take your time. As
4 much time as you need.

5 CHAIRMAN GRIFFIS: I'm sorry. I missed
6 the witness' name.

7 MR. SHER: Sher, S-H-E-R.

8 MR. BRINCKERHOFF: All right. Mr. Sher,
9 is it your position that the section 405.8 as
10 finally enacted tracks exactly the proposal that was
11 made in the memorandum that you referred to or that
12 your counsel referred to as legislative history
13 word-for-word?

14 I haven't been through it line-by-line
15 right here as we speak, but I believe it is not
16 exactly the same, which is basically one of the
17 points we made in our paper if I may be slightly
18 argumentative. That this document is somewhat
19 improperly referred to as legislative history.
20 We're used to in the Federal Government, used to
21 legislative history where you can follow different
22 pieces to a final statute. Here we've got one
23 memorandum not published like the *Congressional*
24 *Record* and we don't know what happened between there

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1 and here. And the final -- I believe the final
2 words, and you can correct me if I'm wrong, were not
3 exactly the same as in this memo.

4 CHAIRMAN GRIFFIS: So your question is,
5 is this legislative history?

6 MR. BRINCKERHOFF: Well, it's twofold.
7 Is it legislative history and were -- is what is
8 reflected in your memo exactly what came out in the
9 final regulation?

10 MR. SHER: It is legislative history,
11 and it is not exactly word-for-word. In the current
12 regulations they write the word "eight" E-I-G-H-T
13 and put paren Roman number eight with an FT, that
14 didn't appear here. There are other changes of that
15 order of magnitude where it said -- one says
16 "provided further" the other says "further
17 provided."

18 I mean there is no significant
19 substantive different. Okay. Is it exactly the
20 same word-for-word? No. But it is not at all in
21 anyway in any diminish substantively different.

22 CHAIRMAN GRIFFIS: Okay.

23 MR. BRINCKERHOFF: Okay. And I'll leave
24 it to the members of the Board to decide whether the

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1 nomenclature means anything or not. To us, it
2 doesn't -- it's not what we're used to looking at as
3 legislative history in other context.

4 MS. BRINCKERHOFF: Just a point of
5 clarification. Our appeal did mention section
6 101.1. Did I hear you say that it didn't?

7 MS. BROWN: Not in the appeal form.

8 MS. BRINCKERHOFF: Okay. Because the
9 point -- paragraph 15 of the appeal, the narrative
10 that accompanies it that explains our position does
11 address section 101 and how adequate light and air
12 effects -- how our light and air is effected by this
13 addition.

14 MS. BROWN: Thank you. Point taken.

15 CHAIRMAN GRIFFIS: Okay. Any other
16 question of the Board? Very well.

17 Thank you.

18 I'm going to ask Ms. Ogunneye to come
19 back up for a quick question from the Board.

20 I want to make it absolutely clear
21 whether 101.1 was properly within the appeal or not.

22 I think we ought to take it up, and I think I can
23 dispense with it pretty quickly.

24 First of all, Ms. Ogunneye, I'm going to

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1 ask you are you familiar with section 101.1? Do you
2 have the regs here? Thank you, Mr. Sher, if you
3 would allow her to review that.

4 Section 101 starts with the title
5 heading "Interpretation and Application." It
6 further reads "In their interpretation and
7 application the provision of this title shall be
8 held to be minimum requirements adopted for the
9 promotion of the public health, safety, morals,
10 convenience, order, prosperity and general welfare
11 to provide adequate light and air, undue
12 concentration of population and distribution of
13 population, businesses and industry."

14 Ms. Ogunneye, does this factor into your
15 review of permit submission in terms of compliance
16 with zoning regulations and if so, how would that
17 be?

18 MS. OGUNNEYE: It does. And the key
19 word being that in our interpretation the provisions
20 of this title shall be held to the minimum
21 requirements. So any provisions within DCMR 11 is
22 usually the minimum. Like you'd have your minimum
23 dimension, maximum height or whatever. But within
24 the limits of what the zoning regs intends.

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1 CHAIRMAN GRIFFIS: I see. Am I
2 understanding you correctly to say that 101.1 is the
3 general direction of which the other sections then
4 clearly define how that is to be complied with?

5 MS. OGUNNEYE: Yes.

6 CHAIRMAN GRIFFIS: So you've indicated
7 that there are setback requirements --

8 MS. OGUNNEYE: Correct.

9 CHAIRMAN GRIFFIS: -- that are specific?

10 MS. OGUNNEYE: Correct.

11 CHAIRMAN GRIFFIS: And that goes to
12 providing adequate light and air?

13 MS. OGUNNEYE: Correct.

14 CHAIRMAN GRIFFIS: The prevention of
15 undue concentration of population?

16 MS. OGUNNEYE: Correct.

17 CHAIRMAN GRIFFIS: And overcrowding?

18 MS. OGUNNEYE: Yes.

19 CHAIRMAN GRIFFIS: Okay. Could one be
20 granted a permit that wasn't in compliance with the
21 specifications in this zone of section 400 but
22 indicated that they were fully compliant with 101.1
23 or could they be in compliant with 101.1 and not be
24 compliant with chapter 4?

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1 MS. OGUNNEYE: No, that won't be
2 possible.

3 CHAIRMAN GRIFFIS: Okay. Thank you.

4 Does the Appellant have any cross on
5 that testimony? I'll give you a minute. Take a
6 minute.

7 Do you mind if I take you out of order
8 and I'll go to cross if there is any, or do you want
9 to take a minute and --

10 MEMBER MILLER: Can I have some follow
11 up?

12 CHAIRMAN GRIFFIS: Okay. Follow up
13 question.

14 MEMBER MILLER: I just have a follow up
15 question to the Chair's question. I mean, could an
16 applicant be in compliance with 405.8 but not be in
17 compliance with 101.1?

18 MS. OGUNNEYE: No, that won't be
19 possible. No.

20 CHAIRMAN GRIFFIS: When you're ready,
21 let me know.

22 MR. BRINCKERHOFF: Okay. I'm ready to
23 give it a shot on explaining how you could -- light
24 and air could be affected if you're building was

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1 technically, as you say, if it's in compliance light
2 and air could not be adequate.

3 CHAIRMAN GRIFFIS: I'm sorry. You're
4 going to give an explanation or you going to conduct
5 cross examination?

6 MS. BRINCKERHOFF: I'm going to say --
7 ask how a building --

8 CHAIRMAN GRIFFIS: Good.

9 MS. BRINCKERHOFF: -- that is compliant
10 can protect and preserve light and air when the
11 amount of space it now occupies was once grass now
12 it's concrete, where it should be eight feet of
13 grass but now it's five feet of grass, where the
14 loss of grass and trees -- well, I'm confused. I'm
15 not being very clear here.

16 CHAIRMAN GRIFFIS: That's okay. I think
17 I understand what you're going with, and that is how
18 can you say that -- really what you're going to is
19 how can we sit here and pretend like light and air
20 is not impacted when we have a solid structure? Is
21 that correct?

22 MS. BRINCKERHOFF: We have a solid
23 structure with 23 windows --

24 CHAIRMAN GRIFFIS: Okay. Okay. So

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1 we're kidding ourselves that there isn't a
2 difference between a previous condition and a
3 proposed condition.

4 MS. BRINCKERHOFF: Right.

5 CHAIRMAN GRIFFIS: I don't mean to be
6 evasive; it's an existing condition of the addition
7 we see in the pictures. However, my reading of 101.1
8 is there is a provision of adequate light and air
9 which seems to be a different degree of, you know,
10 one day I looked out and I had a mountain view and I
11 loved it, or let me use another extreme example.

12 There's a commercial building downtown
13 of 110 feet high and adjacent to that is a surface
14 parking lot. It's been a surface parking lot
15 forever. But now a matter of right building is going
16 up next to it, which is 110 feet; is there not an
17 impact of light and air on the adjacent building?
18 Well certainly there is. But the provision of the
19 regulations provide for the allowable development.

20 Is my analogy somewhat clear?

21 MS. BRINCKERHOFF: The provisions
22 provide for development, but they also -- they also
23 are provided with the character and the nature of
24 the neighborhood in mind.

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1 CHAIRMAN GRIFFIS: Right.

2 MS. BRINCKERHOFF: These are not large
3 lots. You can open a side window and look directly
4 into the next person's window. It's a high density
5 area.

6 CHAIRMAN GRIFFIS: Right.

7 MS. BRINCKERHOFF: The addition, the
8 development, the added development of a large
9 structure so close to another building can cause
10 problems related to light and air, to safety, to
11 health, to loss of recreation. May I give an
12 example of th problems we've encountered with the
13 water?

14 CHAIRMAN GRIFFIS: No.

15 MS. BRINCKERHOFF: Okay.

16 CHAIRMAN GRIFFIS: Because it goes to a
17 construction. And if there is a drainage problem,
18 then certainly you have ability to take that up. But
19 we wouldn't have any jurisdiction to do anything.

20 MS. BRINCKERHOFF: Okay.

21 CHAIRMAN GRIFFIS: All right. There it
22 is. Is there anything else, a follow up trying to
23 bring clarity whether Ms. Ogunneye can answer any
24 question that might start to help the Board fully

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1 understand the error that was processed by the
2 Zoning Administrator?

3 MR. GREEN: Excuse me, Mr. Chairman.

4 CHAIRMAN GRIFFIS: Yes.

5 MR. GREEN: You used the "error was
6 processed" and you just say that -- it gives the
7 impression on the record that you've already formed
8 an opinion.

9 CHAIRMAN GRIFFIS: No, I'm being
10 presumptive and taking a role of cross examination.

11 MR. GREEN: Oh, all right. I'm sorry.

12 CHAIRMAN GRIFFIS: I'll make the same
13 mistake next, and assume that it isn't. But I have
14 clearly not made an opinion in this.

15 But, go ahead.

16 MS. BRINCKERHOFF: I have nothing else.

17 CHAIRMAN GRIFFIS: Okay. Ms. Brown,
18 cross?

19 MS. BROWN: Yes, I just have one or two
20 brief questions.

21 Ms. Ogunneye, is there anyway for you to
22 enforce section 101.1, these general positions,
23 without having the specific provisions of section
24 405.8 to guide you?

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1 MS. OGUNNEYE: No.

2 MS. BROWN: Is there anyway for you to
3 enforce section 101.1 without any of the other
4 specific provisions of the zoning regulations?

5 MS. OGUNNEYE: No, there won't be.

6 MS. BROWN: So there's no way for you to
7 enforce 101.1 in isolation?

8 MS. OGUNNEYE: Correct.

9 MS. BROWN: Okay. And I have one other
10 follow up question. Are you aware of the accepted
11 principle of statutory construction that says
12 specific regulations govern over the general?

13 MS. OGUNNEYE: Yes, I am.

14 MS. BROWN: Thank you.

15 MEMBER ZAIDAIN: I have a quick question
16 for Ms. Ogunneye. I mean, do you view 101 as even a
17 regulation that is to be enforced or do you view
18 that as a more broad supporting statement on what
19 the zoning regulations are based?

20 MS. OGUNNEYE: I view it as part of the
21 basis of what the whole -- the intentions of the
22 regulations are.

23 MEMBER ZAIDAIN: What the goals of the
24 regulations are?

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1 MS. OGUNNEYE: Correct. Right.

2 MEMBER ZAIDAIN: Right. Okay. Thank
3 you.

4 CHAIRMAN GRIFFIS: Okay. Any redirect?

5 MR. GREEN: No.

6 CHAIRMAN GRIFFIS: Very well.
7 Excellent. Thank you very much.

8 MS. OGUNNEYE: Thank you.

9 CHAIRMAN GRIFFIS: In which case, where
10 are we? The ANC isn't represented today, is it?
11 Which I didn't think it was, not having any other
12 people in the audience participating in this.

13 Let's go to any rebuttal witnesses that
14 would be called and/or closing statements at this
15 time. If you need five minutes to pull that
16 altogether based on some of the testimony that
17 you've heard today, you can clearly indicate that.
18 Do you want five minutes to pull it together?
19 Excellent.

20 We're going to take a five minute
21 recess, which in reality is probably ten minutes.
22 But we'll be back.

23 (Whereupon, at 2:56 p.m. a recess until
24 3:13 p.m.)

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1 CHAIRMAN GRIFFIS: Are you ready?

2 MR. BRINCKERHOFF: Yes, we are.

3 CHAIRMAN GRIFFIS: No, no, concluding --
4 I take it you're going to do your conclusions?

5 MR. BRINCKERHOFF: Yes.

6 CHAIRMAN GRIFFIS: The only thing
7 required is that you're comfortable. So if you're
8 comfortable standing, that's fine.

9 MR. BRINCKERHOFF: Okay. Real
10 comfortable. We're real comfortable.

11 CHAIRMAN GRIFFIS: Okay.

12 MR. BRINCKERHOFF: We want to also thank
13 you for putting up with our lack of comfort with
14 this. We've never been here before. You've been a
15 great attentive Board.

16 We have given a lot of thought to our
17 position. We put it all down in paper. We ask that
18 you read with candor all the papers we filed. We
19 believe in them. We don't want to take anymore of
20 your time or our time here. And we're done.

21 CHAIRMAN GRIFFIS: Very well. Thank you
22 very much.

23 Let me first state in addressing that,
24 prior to coming and being prepared for this, the

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1 Board did read everything that's in the record. And
2 I know for a fact that most of us, if not all of us,
3 have read through several times in order to be
4 prepared.

5 I think this case has been fully
6 presented at this point, and the parties are have
7 been articulate in their position and in their case
8 presentation. I think the Board will be fully able
9 to move forward today for a bench decision, unless
10 there's any opposition to that.

11 Yes, Mr. Zaidain, do you have a
12 question?

13 MEMBER ZAIDAIN: I guess I find myself
14 in somewhat of an --

15 CHAIRMAN GRIFFIS: Oh, excellent point.

16 MEMBER ZAIDAIN: -- odd position having
17 arrived a little bit late for the proceeding. It's
18 my understanding from my fellow Board members that
19 the date that I missed centered around the motion
20 for summary dismissal. However, I did miss a
21 portion of the Appellant's argument, and I guess I
22 wanted to ask the Appellants, if this is the proper
23 thing to do, if they would feel comfortable with me
24 sitting on this case. I did read your arguments and

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1 I did read the document, I just was not --

2 CHAIRMAN GRIFFIS: Does the Appellant
3 have any objection to Mr. Zaidain deliberating at
4 this point?

5 MR. BRINCKERHOFF: No.

6 CHAIRMAN GRIFFIS: Okay. No objection
7 stated.

8 Does any of the other participants have
9 any objection to Mr. Zaidain continuing deliberating
10 at this time?

11 MR. GREEN: Not at all, Mr. Chairman.

12 CHAIRMAN GRIFFIS: Thank you very much.

13 So, let's proceed then.

14 I think it's very clear what we're
15 looking at in terms of 405.8, 2001.3 and also 101.1.

16 Let me begin as the review of this and
17 to start off the deliberation in dealing with 101.1.

18 I think it was well aired by Ms. Ogunneye,
19 questions from the Board regarding the pertinence
20 and relevancy of 101.1. And, in fact, based on her
21 cross examination question it was elicited from Ms.
22 Ogunneye that 101.1 could not stand alone meaning it
23 could not be enforced in insolation, was the exact
24 question in affirmative action. And I fully agree

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1 with that.

2 101.1 lays out the premise of which all
3 other or most of the other regulations might flow or
4 address. I think the Board is very well aware of how
5 many times special exceptions address the issues of
6 that that are enumerated in the regulations and are
7 to be attentive to use, density, light and air and
8 privacy are clearly each of the specific regulations
9 address in great specificity and in the elements.

10 Going to 2001.3 -- actually to restate,
11 I think the relevancy and the core issue and the
12 fact of the matter here is 405.8. I think what is
13 before us is whether in review the Zoning
14 Administrator misinterpreted or actually was in
15 error in granting a permit and in their reliance on
16 405.8 which clearly sets out that in the case of a
17 building in prior existence before 1958. To address
18 that, it has been documented by testimony and
19 evidence of the sworn witnesses this was built prior
20 to 1958. So clearly the section itself is relevant
21 in review of the permit documents and any addition
22 to it.

23 The side yard less than eight feet wide,
24 obviously is the case that we have before us. And

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1 the provision of a minimum five feet is also
2 pertinent to our point or to this appeal.

3 Now, when we look at the extension or
4 addition that may be made, I think that's really
5 where we have to begin and that's -- 405.8. When
6 putting on an extension or an addition, how do you
7 deal with the side yard? The existing side yard, of
8 course, was not eight feet which would make it a
9 conforming side yard, but it is provided for within
10 this section.

11 I think the critical testimony that was
12 heard and supported was how a side yard is measured.

13 And for 405.8 does not allow a decrease in
14 dimension of that width. I do not believe that we
15 have before us in this property an addition a
16 decrease in a side yard, in the width of the side
17 yard.

18 In terms of how one views and the
19 language of the regulations as to extending the
20 nonconformities, and I'm going to go to the
21 pertinent section. I think nonconforming structures
22 devoted to conforming use is 2001, 2001.3
23 "enlargements and additions may be made to the
24 structure provided that there's conformity to use

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1 and structure requirements of which no evidence has
2 been shown that that is not true." And then the
3 increase or extent of the existing nonconforming
4 aspect of the structure or create any new
5 nonconformity.

6 I think it's pretty clear not only the
7 intent, but the exact reading and letter as it is
8 read with 405.8 allows for, and it was correctly
9 determined that this is an allowable addition in
10 that it maintains the width of the nonconforming
11 side yard or does not decrease the dimension of the
12 nonconforming side yard. And it does not encroach
13 further into the required side yard.

14 In terms of extending and the
15 utilization of the word "extending" or "extend" any
16 existing nonconforming aspect, it's a level of
17 magnitude. And I think the way I am familiar with
18 the regulations is -- or I might illuminate my
19 familiarity with the regulations is to give an
20 analogy. And an analogy I think would be if one had
21 a height that was nonconforming, let's say, of 50
22 feet and an addition then created a height that
23 above 50 feet or 70 feet, it would clearly be an
24 extension to that nonconformity. So it is talking

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1 about the level of intrusion or the increased
2 magnitude of the nonconformity.

3 I don't think anyone, I certainly don't,
4 refute the fact that there is a difference between
5 an undeveloped area and now one that has an existing
6 structure on it. I don't think there is any dispute
7 to the fact that there is a difference between the
8 light and air on the adjacent properties. But that
9 wasn't what is the basis of what is disputed here or
10 the basis to grant an appeal. Rather, the basis to
11 grant the appeal is whether it was an allowable
12 structure. And I find based on the evidence and the
13 testimony that we've heard and is in the record that
14 an error was not created but rather this is an
15 allowable addition to an existing nonconforming
16 structure.

17 Let me open it up to other Board Members
18 for discussion and addressing the issues at this
19 time. Ms. Miller?

20 MEMBER MILLER: To me, this case did
21 raise a question of law. And coming into this
22 hearing I needed to reconcile 2001.3 with 405.8,
23 which on their face looked like they were
24 contradictory. But after hearing the testimony

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1 today, I don't think so.

2 In particular, 405.8 says "In the case
3 of a building existing on or before May 12, 1958
4 with a side yard less than eight feet wide, an
5 extension or addition may be made to the building
6 provided that the width of the existing side yard
7 shall not be decreased and provided further that the
8 width of the existing side yard shall be a minimum
9 of five feet."

10 And then 2001.3 says "Enlargements or
11 additions may be made to the structure provided that
12 they neither increase or extend any existing
13 nonconforming aspect of the structure."

14 So I think that the way the Appellants
15 were interpreting 2001.3 and the way I wasn't sure
16 about how to interpret it was whether this increase
17 or extension going backwards as opposed to -- which
18 the addition further into the rear yard, as opposed
19 to going further into the side yard. And I think if
20 you interpret it as meaning further into the side
21 yard, then the two regulations harmonize. And that
22 is a matter of statutory construction where they
23 both make sense.

24 And also, I was also swayed by the

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1 legislative history with the illustrations showing
2 that this particular type of extension is permitted
3 under the regulations.

4 CHAIRMAN GRIFFIS: Excellent. Thank you.
5 Others? Yes, Mr. Parsons?

6 COMMISSIONER PARSONS: I just wanted to
7 concur with both of you and move that we dismiss
8 this appeal.

9 CHAIRMAN GRIFFIS: Very well. Deny the
10 appeal, is that correct?

11 COMMISSIONER PARSONS: Excuse me.

12 CHAIRMAN GRIFFIS: Okay.

13 MEMBER ETHERLY: Seconded, Mr. Chair.

14 CHAIRMAN GRIFFIS: And that's seconded
15 by Mr. Etherly.

16 Deliberations of the motion? Further
17 discussion? Any other evidence in the record that
18 need to be illuminated? Okay.

19 I think it should not be -- well, I
20 think it's an excellent point that Ms. Miller
21 brought up in terms of the clarity of what extend or
22 extending means and is properly stated.

23 If there's no other further discussion
24 then, no deliberation, we have a motion before us to

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1 deny the appeal. It's been seconded. I would ask
2 then for all those in favor of the motion signify by
3 saying aye.

4 ALL: Aye.

5 CHAIRMAN GRIFFIS: And opposed?

6 Abstain?

7 If we could record the vote?

8 MS. BAILEY: Mr. Chairman, the vote is
9 recorded as five/zero/zero to deny the appeal.
10 Motion made by Mr. Parsons, Mr. Etherly second, Ms.
11 Miller, Mr. Zaidain and Mr. Griffis are in
12 agreement.

13 CHAIRMAN GRIFFIS: Very well. Thank you
14 very much, Ms. Bailey.

15 Is there anything else for the Board's
16 consideration this afternoon?

17 MS. BAILEY: I would like to wish the
18 Board happy holidays and to say that we meet again
19 in January, sir.

20 CHAIRMAN GRIFFIS: That sounds like an
21 excellent idea. Very well.

22 Thank you all very much. We appreciate
23 everybody's work in putting together this case for
24 the Board's consideration.

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1 And I wish you all a great week and
2 happy holidays.

3 If there's nothing further, then I would
4 adjourn the 16th of December '03 afternoon of the
5 Board of Zoning Adjustment.

6 (Whereupon, at 3:26 p.m. the Public
7 Hearing was adjourned.)

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