

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 4, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

KEVIN HILDEBRAND	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	ACTING Secretary
JOHN NYARKU	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON	Office of Planning
DAVID MCGHETTIGAN	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL STAFF PRESENT:

SHERRY GLAZER, ESQ.

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

2:14 p.m.

CHAIRPERSON GRIFFIS: Very good. Good afternoon, ladies and gentlemen. Let me call to order the 4<sup>th</sup> of May '04 afternoon session of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Ms. Miller the Vice Chair and also our esteemed Member, Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann and representing the Zoning Commission with us this afternoon is Mr. Hildebrand.

Copies of today's hearing agenda are available to you. They are located on the wall where you entered into the hearing room. You can pick it up and see. I will be adjusting the afternoon schedule, so, please, pay close attention. We do ask everyone here present today several important items. One of the most important is, of course, to refrain from any disruptive noises or actions in the hearing room while we proceed with our hearings, and that is for very important reasons. One, so people can give testimony correctly before us.

Also, it should be noted that we are being recorded in two fashions. One, the court report,

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1 sitting to my right, is creating the official  
2 transcript. Secondly, we are being broadcast live on  
3 the Office of Zoning's website, so clearly you don't  
4 want to be noted as being disruptive and making  
5 furtive crazy actions in the hearing room, so we'll  
6 ask you to refrain from that.

7 I also ask in coming forward that you fill  
8 out two witness cards. Witness cards are available  
9 where you entered in the hearing room. They are also  
10 available in front at the testimony table. You can  
11 give those to the recorder, sitting to my right, prior  
12 to coming forward to speak to the Board. When  
13 addressing the Board, we would ask that you just  
14 provide your name and address once and then you can  
15 proceed. That, of course, will be so we can give  
16 credit on the official transcripts for those who are  
17 speaking.

18 Also, we get quite a bit of feedback at  
19 times with the microphones if all four are on, so I  
20 would ask if you are speaking to obviously turn on a  
21 microphone and when you are finished if you would turn  
22 it off. Believe me, I will remind you as we go  
23 through this, because we will get some feedback, which  
24 is fairly disruptive to everybody involved.

25 The order of procedure for special

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1 exceptions and variances is, first, we hear from the  
2 applicant, their statements and any witnesses that  
3 they may have. We then go to Government reports.  
4 Government reports from the Office of Planning,  
5 Department of Transportation and any other attendant  
6 agencies that have put into the record. Third, we  
7 hear from the report of the Advisory Neighborhood  
8 Commission. Fourth would be persons or parties in  
9 support of the application. Fifth would be persons or  
10 parties in opposition. Sixth, finally, we'll have  
11 closing remarks by the applicant.

12 Pursuant to section 3117.4 and .5, we do  
13 have constraints that we can put on applicants in  
14 terms of time. I won't go through all of those, but  
15 just be it known if we establish numerous parties and  
16 applications, we will set times for presentation and  
17 it will be of great fair and judicious nature of the  
18 time allotted. Of course, persons giving testimony  
19 are given three minutes before the Board and I will  
20 keep a close watch of that. Otherwise, I think we  
21 will be able to get through the afternoon without me  
22 putting time restraints on applications right now.

23 Cross examination of witnesses, of course,  
24 is permitted by the applicant and parties in the case.

25 The ANC within which the property is located is

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1 automatically a party in the case, and therefore will  
2 also be able to conduct cross examination. There is  
3 nothing that prohibits this Board from limiting cross  
4 examination based on its reasonableness in terms of  
5 direction, substance and pertinence to the case, and  
6 again we will be very clear and direct if we move you  
7 on from subjects of cross examination or the time that  
8 is being utilized for it.

9 The record will be closed at the  
10 conclusion of each hearing on a case, except for any  
11 material that is specifically requested by the Board,  
12 and we will be very specific on what material is to be  
13 submitted and when it is to be submitted into the  
14 Office of Zoning. It should be clearly understood  
15 that once that material is received, the official  
16 record is then finally closed and no other information  
17 would be accepted into the record.

18 This is an important aspect to understand.

19 First of all, you are establishing and creating the  
20 record before us today. Anything you want the Board  
21 to deliberate on must be in the record. We are not to  
22 deliberate and do not deliberate on anything else that  
23 is outside of the record that is created before us.  
24 The Sunshine Act requires us, in fact, to hold all  
25 hearings and procedures in the open and before the

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1 public. This Board may, however, enter into Executive  
2 Session during or after a hearing on a case, and that  
3 would be in accordance with our rules of procedure and  
4 the Sunshine Act and be utilized for the purposes of  
5 our own deliberation and reviewing all that record  
6 that has been created before us.

7 But our, as I said, decisions in contested  
8 cases must be based exclusively on the record, so that  
9 we do ask again that you give us all the information  
10 you want us to hear. And most importantly, please,  
11 refrain from any sort of discussions with Board  
12 Members today, so that we do not give the appearance  
13 of receiving information outside of the record. We  
14 will make every effort to conclude this afternoon's  
15 hearing by 6:00. We do appreciate everyone's patience  
16 with our late start today. We had a long morning to  
17 get through and needed some nourishment.

18 At this time, the Board will consider any  
19 preliminary matters. Preliminary matters are those  
20 which relate to whether a case will or should be heard  
21 today, such as request for postponements, continuances  
22 or withdrawals. If you are not prepare to go forward  
23 with a case today or you believe the Board should not  
24 proceed with a case, I would ask that you come forward  
25 and have a seat at the table, as an indication of

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1 having a preliminary matter.

2 I will say a very good afternoon to our  
3 staff from the Office of Zoning, Mr. Moy, sitting to  
4 my close right Mr. Nyarku, on my very far right, and  
5 Ms. Glazer, in between, representing the Office of  
6 Corporation Counsel. Mr. Moy, any preliminary matters  
7 for us, at this time?

8 MR. MOY: Yes, sir, good afternoon, Mr.  
9 Chairman, Members of the Board. We have one  
10 preliminary matter in the afternoon session and it is  
11 a request to withdraw an application, which is  
12 Application No. 17071.

13 CHAIRPERSON GRIFFIS: Very well. Thank  
14 you. And no action by the Board need be taken on that  
15 then. Is there any other preliminary matters for the  
16 Board?

17 MR. MOY: No, sir.

18 CHAIRPERSON GRIFFIS: Thank you. Not  
19 seeing any indication from anyone present as having a  
20 preliminary matter, then I would ask that everyone  
21 that is anticipating or planning on testifying before  
22 the Board today, if you would, please, stand and give  
23 your attention to Mr. Moy? He is going to administer  
24 the oath.

25 (Whereupon, the witnesses were sworn.)

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1 CHAIRPERSON GRIFFIS: Thank you all very  
2 much. Then I think we're ready to call the first  
3 case. Oh, actually, what I would like to do is, where  
4 are we here, is the applicant from 17155 present and  
5 ready to go?

6 UNIDENTIFIED SPEAKER: Yes, we are  
7 present.

8 CHAIRPERSON GRIFFIS: Okay. Then I'm just  
9 going to rearrange the afternoon schedule briefly.  
10 We'll call that case first.

11 MR. MOY: Yes, sir, and that case is  
12 Application No. 17155 of Ray Hwang and Matthew Depue,  
13 pursuant to 11 DCMR 3103.2, for a variance from the  
14 minimum lot carrier requirements under subsection  
15 401.3, to allow the conversion of a single-family  
16 semi-detached dwelling into a four unit apartment  
17 house in the R-4 District at premises 3518 10<sup>th</sup> Street,  
18 N.W., Square 2832, Lot 807.

19 I believe also, Mr. Chairman, that -- no,  
20 never mind.

21 CHAIRPERSON GRIFFIS: Excellent. Good  
22 afternoon. I would have you just turn on your  
23 microphone. Just touch that base there and just give  
24 me your name and address for the record.

25 MR. RAY: Good afternoon, Mr. Chairman.

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1 My name is Charles Ray, R-A-Y. My address is 1625 K  
2 Street, N.W., Suite 400, Washington, D.C. 20006.

3 CHAIRPERSON GRIFFIS: Okay. And you are  
4 the owner of the property or you're representing the  
5 owner?

6 MR. RAY: Mr. Chairman, I am here as  
7 attorney/agent representing the owners of the  
8 property.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. RAY: With me also is Ray Hwang, one  
11 of the owners, who is present here with us.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. RAY: And we have several other  
14 witnesses available as well.

15 CHAIRPERSON GRIFFIS: How many witnesses  
16 are you going to call?

17 MR. RAY: We have -- there will be five  
18 witnesses in all, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Okay. Let's  
20 proceed. Let me just get a show of hands, so I know  
21 how to time the schedule here. How many people are  
22 planning to testify on this application? Okay. All  
23 right. Let's proceed. I turn it over to you.

24 MR. RAY: Okay. Thank you, Mr. Chairman.  
25 Mr. Chairman, we have had an opportunity to review

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1 the report of the Office of Planning and we do think  
2 that we have compelling evidence to substantiate and  
3 justify the variance for a four unit that we seek.  
4 However, at this point, with the Board's permission,  
5 we would like to amend the application to seek a  
6 variance for three units.

7 CHAIRPERSON GRIFFIS: Why? If you can  
8 make a variance for four, why is three any different?

9 MR. RAY: Well, three is different in that  
10 we think the degree of variance itself will be  
11 significantly less and we have unconditional and total  
12 community support for three.

13 CHAIRPERSON GRIFFIS: That's pretty  
14 strong, unconditional and what was that total?

15 MR. RAY: Total.

16 CHAIRPERSON GRIFFIS: Total unconditional  
17 support.

18 MR. RAY: Yes, Mr. Chair, and I think, and  
19 I hope that, I did give to Mr. Nyarku the letter from  
20 the single member District Commissioner, Ms. Boyd,  
21 which states the support of the community.

22 CHAIRPERSON GRIFFIS: What about the ANC?

23 MR. RAY: The ANC has -- because of, I  
24 guess, the time that we were coordinating, the ANC was  
25 not able to take up the application as it has been

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1 adjusted and amended prior to May 12, 2004, and we  
2 elected to go forward with the support that we have,  
3 Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Okay. Any comments,  
5 questions regarding amending the application from four  
6 units to three units from the Board? Clarifications?  
7 Yes, Ms. Miller?

8 VICE CHAIR MILLER: I was just going to  
9 say I would be in favor of allow them to amend.

10 CHAIRPERSON GRIFFIS: Okay. Is there any  
11 objections to amending the application, at this time?  
12 Not noting any objections from the Board, let's  
13 proceed and amend it.

14 MR. RAY: Also, Mr. Chairman, I think the  
15 Office of Planning correctly notes that we did not  
16 seek a variance for parking. We are about a foot  
17 short in width and I would like to also amend the  
18 application, at this time, to seek a variance for  
19 parking.

20 CHAIRPERSON GRIFFIS: A variance?

21 MR. RAY: With the Board's permission.  
22 Well, I think, we are at 25 feet in width, and I think  
23 the three cars that we want to put on there, we need  
24 27.

25 CHAIRPERSON GRIFFIS: All right. So

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1 what's the variance?

2 MR. RAY: I'm sorry. Well, to permit  
3 three cars on 25.13 feet.

4 CHAIRPERSON GRIFFIS: So you want a  
5 variance from the minimum dimension requirements of  
6 the parking?

7 MR. RAY: That's correct.

8 CHAIRPERSON GRIFFIS: So you're going to  
9 provide three?

10 MR. RAY: That's true.

11 CHAIRPERSON GRIFFIS: Not at conforming  
12 size. Okay.

13 VICE CHAIR MILLER: Mr. Chairman, I think  
14 we should discuss this variance, because this is a  
15 variance of a different nature. Often when we have an  
16 amendment for a different type of variance, such as a  
17 parking variance, they have to readvertise.

18 CHAIRPERSON GRIFFIS: That's not  
19 necessarily true. They are both area variances. I  
20 think as it was advertised as a variance, I don't  
21 think that it is necessary to go out and readvertise,  
22 unless you feel strongly about it. I mean, what would  
23 be the implication? The implication in terms of  
24 advertising is whether the community was aware that  
25 this was going in. And I think the aspect of having

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1 this advertised as four units probably put people on  
2 notice that something big was happening at this  
3 property. Adding on the parking, I'm not sure would  
4 make people that are here today or people that were  
5 not interested before become interested.

6 VICE CHAIR MILLER: Well, I don't feel  
7 strongly, but I just want to --

8 CHAIRPERSON GRIFFIS: Okay.

9 VICE CHAIR MILLER: -- air my concern.  
10 It's that sometimes a parking variance raises other  
11 issues like people concerned that that is going to  
12 affect their parking on the street or something like  
13 that.

14 CHAIRPERSON GRIFFIS: Right.

15 VICE CHAIR MILLER: Whereas the area  
16 variance may just affect the density or the appearance  
17 of the building or whatever.

18 CHAIRPERSON GRIFFIS: Understood.

19 VICE CHAIR MILLER: So I just want --

20 CHAIRPERSON GRIFFIS: And I can understand  
21 if this was asking for relief from parking, but  
22 actually what this is now being asked for is a  
23 variance from the dimensions of the parking. And  
24 therefore, the provision is to have made but not the  
25 dimensions.

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1 VICE CHAIR MILLER: I see.

2 CHAIRPERSON GRIFFIS: Of course, I want to  
3 see how they actually fit three cars on the site, but  
4 nonetheless, we'll get to that point.

5 VICE CHAIR MILLER: Okay. I think that's  
6 an important distinction.

7 CHAIRPERSON GRIFFIS: Okay.

8 VICE CHAIR MILLER: I also would be  
9 curious did that come up with the community? Is there  
10 unconditional support for that?

11 MR. RAY: There is.

12 VICE CHAIR MILLER: In total?

13 MR. RAY: Total and unconditional.

14 CHAIRPERSON GRIFFIS: Okay. Any  
15 objections then to adding the variance from the  
16 parking dimensions? Not noting any, let's continue.  
17 Oh, yes.

18 UNIDENTIFIED SPEAKER: May we have a  
19 comment from the Corporation Counsel?

20 CHAIRPERSON GRIFFIS: What?

21 MS. GLAZER: I'm sorry to spoil the fun,  
22 but I'm afraid I agree with Ms. Miller on the  
23 advertising issue. If you are changing the nature of  
24 the relief that is sought, even though it may seem  
25 like a minimal request, I think that for notice

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1 purposes the community is entitled to know that a  
2 parking variance is being sought. And in addition,  
3 you might want further input from OP, which OP would  
4 be --

5 CHAIRPERSON GRIFFIS: Is there anything  
6 that requires us to readvertise this, at this point?

7 MS. GLAZER: Well, notions of due process  
8 for the relief sought.

9 CHAIRPERSON GRIFFIS: Interesting point.  
10 Is the Office of Planning ready to respond and take  
11 this on as you are present today, Mr. McGhettigan?

12 MR. MCGHETTIGAN: Yes, we can discuss the  
13 issue of the parking variance.

14 CHAIRPERSON GRIFFIS: Okay. I think what  
15 we will do is proceed with the hearing today. We have  
16 the people that are down here. We have the applicant  
17 ready to go. If we feel that we need to keep the  
18 record open and have this readvertised, we can keep  
19 the record open for additional submissions by those  
20 that were not interested in the first variance and now  
21 have become, based on the parking. Anything else?

22 MR. RAY: That's all, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Good. Have a good  
24 afternoon then. Oh, no, let's hear your case.

25 MR. RAY: That's all.

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1 CHAIRPERSON GRIFFIS: Go ahead.

2 MR. RAY: Okay. Thank you. Mr. Chairman,  
3 Members of the Board, we believe that the applicant  
4 has made a compelling case and satisfies the  
5 requirements that must be met for the variance and the  
6 relief that we have sought. Under section 5-424(G)(3)  
7 of the Code and 11 DCMR section 3103, the Board is  
8 authorized to grant a use and area variance when it  
9 finds that three conditions exist.

10 CHAIRPERSON GRIFFIS: Why don't we get to  
11 the heart of the matter? We pretty much know that  
12 stuff.

13 MR. RAY: The heart of the matter? Thank  
14 you, Mr. Chair. The exceptional situation or  
15 condition of this specific piece of property is that  
16 the property has been vacant and abandoned for periods  
17 ranging from 10 to 25 years, depending on who in the  
18 community you talk to. There is one member of the  
19 community who is present here who has indicated that  
20 the property has been vacant and abandoned for at  
21 least 15 years.

22 CHAIRPERSON GRIFFIS: And that's unique to  
23 what this property?

24 MR. RAY: No, it's not unique to this  
25 property. Mr. Chairman, what is unique about it is

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1 that the deteriorated condition of the property over  
2 this extended period of time has caused damage to the  
3 adjacent property, the vacancy and deterioration has  
4 forced the use of this property for illegal drug use,  
5 drug sales, prostitution over an extended and  
6 inordinately long period of time. The vacancy and  
7 abandonment has enabled perpetrators of assault and  
8 petty theft in the community to find a safe harbor,  
9 and the condition of the property over this extended  
10 period of time has attracted rats that have plagued  
11 the community and have been difficult to exterminate.

12 We noticed that the Office of Planning  
13 focused on the condition of the property and decided  
14 that the condition alone did not create an exceptional  
15 situation. Well, we think this misses the point. The  
16 point is that the deterioration of the property is but  
17 one factor, and I have listed five factors. And we  
18 think that in an area where this is the only property  
19 that has been vacant and abandoned in this community  
20 for this extended period of time, where everyone else  
21 is generally hardworking, they maintain their  
22 properties and have had to suffer through this, we  
23 think that this is an exceptional situation.

24 CHAIRPERSON GRIFFIS: This is the only one  
25 that has rat problems that has been vacant and

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1 abandoned and deteriorating?

2 MR. RAY: In this block, that is correct,  
3 Mr. Chairman.

4 CHAIRPERSON GRIFFIS: In this block.

5 MR. RAY: In this block, that is correct.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. RAY: And that's over a period of  
8 anywhere from 10 to 25 years, the only one, the only  
9 one. We think that the factors that I have  
10 enumerated, Mr. Chairman, establish an exceptional  
11 situation, and the members of the community certainly  
12 do agree with that exceptional situation, too, as  
13 evidenced by the letter from the single member  
14 District Commissioner Janie Boyd, as will be further  
15 attested to by members of the community who live in  
16 the same block as the subject property one of whom  
17 lives immediately next door to the subject property.

18 CHAIRPERSON GRIFFIS: I'm sure they want  
19 something done.

20 MR. RAY: And we're prepared to do it, Mr.  
21 Chairman.

22 CHAIRPERSON GRIFFIS: Indeed.

23 MR. RAY: We also think that having  
24 established, in our view, that this is an exceptional  
25 situation, we also think that strict enforcement of

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1 the Zoning Regulations, in this case, would cause a  
2 hardship to this particular -- to these particular  
3 applicants. We noticed that the Office of Planning  
4 concludes that no hardship or practical difficulty  
5 would result in part because it seems that the  
6 applicant paid too much for the property and therefore  
7 the hardship arises out of the applicant's own  
8 actions, rather than the dilapidated state of the  
9 structure. That's the OP report at page 5.

10 We also noticed that in reaching this  
11 conclusion the Office didn't take issue with our cost  
12 estimates for construction and return on the various  
13 uses of the property. And, Mr. Chairman, I would  
14 parenthetically note that we do have with us a real  
15 estate agent, who is an expert in this field, who will  
16 testify as to what the fair market value of similar  
17 properties was at the time that this property was  
18 purchased. His testimony will establish that the  
19 purchase price these applicants paid was actually  
20 slightly less than the fair market value at the time,  
21 and I would defer to allow him to make that point with  
22 the Board's permission.

23 I would note, Mr. Chairman, that attached  
24 to the supplement are three exhibits. Exhibit 1 is an  
25 investment and return statement for the property's use

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1 as a single family residence. Exhibit 2 is an  
2 investment and return statement for the property's use  
3 as a flat. And Exhibit 3 is the property's use as a  
4 four unit property, Exhibit 3. Present today and able  
5 to provide testimony and to field questions is our  
6 numbers person, Mr. Ray Hwang. He will be available  
7 for testimony to address any particular aspect of the  
8 construction costs. Although, we noticed that the  
9 Office of Planning didn't take issue with that.

10 We also think, Mr. Chairman, that having  
11 demonstrated the exceptional situation and the  
12 hardship that would result from strict enforcement of  
13 the regulations, the community benefit and the  
14 integrity of the Zone Map Regulations requirement is  
15 also met. The Office of Planning takes the position  
16 that the additional parking and loading and traffic  
17 generation is not compatible with the existing  
18 neighborhood. But we submit, Mr. Chairman, that the  
19 Office of Planning has simply not correctly assessed  
20 the existing neighborhood.

21 The residents in the same block as the  
22 subject property are of the opinion that the proposed  
23 use will mean less traffic of persons than the traffic  
24 of persons previously moving in and out of the  
25 property. The traffic of persons will be

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1 substantially different both in degree and kind. The  
2 degree of people traffic is likely to be less.  
3 Currently people moving in and out of the property  
4 range from drug users and sellers to prostitutes and  
5 vagrants and are virtually unlimited in number and  
6 have no particular schedule.

7 If the application is approved, the  
8 traffic of people would be limited to the same people  
9 who own their individual units.

10 CHAIRPERSON GRIFFIS: So you're saying  
11 that we ought to look at this in the context of  
12 illegal activity in the Zoning Regulations and based  
13 on the fact that the existing illegal or the previous  
14 bad behavior somehow should say well that should grant  
15 you relief from the regulations, because it's sure  
16 going to be better than it was?

17 MR. RAY: I think the regulations  
18 contemplate that we assess a particular piece of  
19 property with regard to the conditions that exist with  
20 respect to that property, and I don't think that there  
21 is a distinction as to whether is the activity going  
22 on is right then is legal.

23 CHAIRPERSON GRIFFIS: Don't you think it's  
24 more correct to assess what is matter-of-right and the  
25 use and then do the comparison to if the relief is

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1 granted? Not necessarily on the specific one instant  
2 condition.

3 MR. RAY: I think that is an appropriate  
4 analysis, but I think that it also should be in  
5 context. And the context is what is actually going  
6 on? What is actually existing with this particular  
7 piece of property?

8 CHAIRPERSON GRIFFIS: So you're saying if  
9 I have a fraternity house that loves to throw keg  
10 parties and I buy that and kick them all out, that  
11 that's a good case for me to come to this Board to  
12 make an apartment building out of it?

13 MR. RAY: Well, the distinction between  
14 your example there and this case, Mr. Chairman, is  
15 that --

16 CHAIRPERSON GRIFFIS: And I like keg  
17 parties, so don't get me wrong.

18 MR. RAY: So do I. But I think the  
19 distinction is that you do have occupants and you do  
20 have a permitted use in your example. In our example,  
21 in the facts of this case, we don't have occupancy.  
22 We don't have a valid legal use of the property. It  
23 has been vacant and abandoned for 15 to 25 years.

24 CHAIRPERSON GRIFFIS: Okay.

25 BOARD MEMBER ETHERLY: If I could, Mr.

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1 Chair, I think the additional part of the test that  
2 will be useful for your presentation and your  
3 witnesses to speak to Mr. Ray will be that's all well  
4 and good, but why still not simply use it as a single  
5 family residence? Why the introduction of the  
6 additional units? As you probably, of course, saw in  
7 the OP report, there is a concern about the  
8 concentration of -- the over concentration, if you  
9 will, of population in this particular type of  
10 District.

11 So part of the struggle that I think I  
12 will have as the presentation goes forward on this  
13 application is why not simply -- why can't this  
14 property simply work as a single-family residence? As  
15 OP, I think, identifies in their report, the vast  
16 majority of the properties in this immediate area are  
17 single-family residences, perhaps with the exception  
18 of one apartment building to the north. So the  
19 existing structure on the lot at present is very  
20 similar to what you see on the rest of the block.

21 So the challenge is what do we hang our  
22 hats on and as you go to presentation, you will  
23 perhaps feret this out, but where do we hang our hats  
24 in terms of what is different and what is unique about  
25 this property? I'm not sure if the deteriorating

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1 condition and some of the other factors that you have  
2 enumerated while, of course, they would be a concern  
3 to any member of any community in the city, I'm just  
4 not sure if that's really necessary to get you to  
5 where you need to be in terms of does that make this  
6 property unique, such that it should be converted into  
7 three units. You know, what you are proposing now is  
8 three units.

9 So just as a little bit of a flag for what  
10 I think the hurdle is for you as you go through the  
11 test here.

12 MR. RAY: Okay. If I could, Mr. Etherly,  
13 just to clarify, the test is the uniqueness of the  
14 property or exceptional situation, and I read those to  
15 be two distinct alternatives. Either one of which  
16 will, if met, at least satisfy that portion of the  
17 test. And what we are submitting today is that the  
18 factors that I have listed on page 6 of the  
19 supplemental statement, the five factors create an  
20 exceptional situation.

21 And certainly, the deteriorated condition  
22 of the property is one of the factors and that,  
23 however, goes more to whether the applicant can  
24 realize a reasonable return from use of the property  
25 as a single-family residence or as a flat or as the

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1 three unit that we have proposed. And we have Mr. Ray  
2 Hwang, who will address why enforcement would preclude  
3 or prevent the applicants from realizing a reasonable  
4 return.

5 BOARD MEMBER ETHERLY: Do you read the  
6 Zoning Regulations as guaranteeing any applicant a  
7 reasonable return?

8 MR. RAY: No. No, I don't read them as  
9 guaranteeing a return. But I think it is viewed in  
10 the context of -- I mean, certainly it has been hailed  
11 that if the use -- I mean, if the properties -- if  
12 strict enforcement will prevent the applicant from  
13 breaking even or realizing a reasonable return, then  
14 it is within the permissible range of relief to be  
15 granted.

16 This is not a case I would hasten to add  
17 in which we are saying well, we can make more money  
18 with three than we can with the single-family  
19 residence. I think Mr. Hwang will establish, based on  
20 his testimony and the exhibits we have proffered, that  
21 is the break even point for us. So we're not trying  
22 to make more money with three than we would with two,  
23 than we would with one.

24 BOARD MEMBER ETHERLY: Okay.

25 MR. RAY: Okay. Prior to addressing the

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1 Board's questions, I had indicated that the degree of  
2 traffic was different in degree. We also submitted it  
3 would be different in kind. And if the application is  
4 approved, families owning the units will be moving in  
5 and out of the property and the traffic of property  
6 owners in contrast to the traffic of drug users and  
7 sellers as well as prostitutes and vagrants will  
8 enhance the safety and stability of the community.

9 For the reasons stated above, we submit  
10 that the applicant has satisfied, has met its burden  
11 of proof as required under the regulations. And, at  
12 this point, with the Board's permission, I would like  
13 to interpose the testimonies of Mr. Ray Hwang, who  
14 will address the practical difficulty and hardship  
15 that will result from strict enforcement of the  
16 regulations in detail, followed by Darryl Fields, who  
17 is our real estate expert, who will address the issue  
18 of whether or not the applicant paid too much for the  
19 property, and third we will have Mr. John Depue, who  
20 is our construction manager, who can put the subject  
21 property in the context of other surrounding -- of  
22 other properties in the immediate community. So with  
23 your permission?

24 CHAIRPERSON GRIFFIS: Let's go.

25 MR. RAY: Mr. Chairman, okay.

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1 CHAIRPERSON GRIFFIS: If they are  
2 comfortable, they should all just come up now and be  
3 ready to go.

4 MR. RAY: Okay.

5 BOARD MEMBER ETHERLY: And, Mr. Ray, as  
6 your witnesses are coming forward, are you intending  
7 to offer all three gentlemen as experts in their  
8 particular areas or designations?

9 MR. RAY: Yes, Mr. Chairman.

10 BOARD MEMBER ETHERLY: Okay.

11 MR. RAY: Mr. Vice Chairman, excuse me.

12 CHAIRPERSON GRIFFIS: Okay. Did you  
13 submit any sort of resumes or background to establish  
14 them as expert witnesses? Do we have any  
15 documentation on folks?

16 MR. RAY: Yes.

17 UNIDENTIFIED SPEAKER: Here's a resume  
18 here.

19 MR. RAY: Yes, we do, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: On what?

21 MR. RAY: On Mr. Ray Hwang.

22 CHAIRPERSON GRIFFIS: And he is being  
23 proffered as an expert in what?

24 MR. RAY: In --

25 CHAIRPERSON GRIFFIS: Can you turn on your

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1 microphone, please?

2 MR. RAY: Yes, in the construction cost  
3 estimate preparation and analysis.

4 CHAIRPERSON GRIFFIS: He's an expert in  
5 performance?

6 MR. HWANG: With estimating construction  
7 costs for future planning buildings.

8 CHAIRPERSON GRIFFIS: Okay. And what is  
9 your background? Why are you an expert in that?

10 MR. HWANG: Well, I'm a mechanical  
11 engineer. I work for URS Corporation, which is a  
12 major downtown D.C. Architectural Engineering Firm. I  
13 am involved in many renovation projects with the  
14 Government as well as private investors.

15 CHAIRPERSON GRIFFIS: You do cost  
16 estimating?

17 MR. HWANG: I do do cost estimating as  
18 well as design and review of systems, etcetera,  
19 etcetera. Some of the buildings that I have been  
20 involved in is the National Archives Building.

21 CHAIRPERSON GRIFFIS: Is this similar in  
22 nature?

23 MR. HWANG: Renovation wise, it's -- in  
24 magnitude, no, but when it comes to cost analysis, the  
25 way the standard industry performs cost analysis is

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1 similar in nature, yes.

2 CHAIRPERSON GRIFFIS: Okay. What are the  
3 other experts you are offering?

4 MR. RAY: Darryl Fields, a real estate  
5 agent.

6 CHAIRPERSON GRIFFIS: You're offering him?

7 MR. RAY: I'm offering him as an expert in  
8 assessing the fair market value of real estate in the  
9 District of Columbia.

10 CHAIRPERSON GRIFFIS: Okay. Mr. Fields,  
11 how long have you been doing this? And believe me,  
12 I'm not putting folks on the spot. This is what we  
13 require, at least some dates and documentation. There  
14 is two types of witnesses you can have in our  
15 proceedings. You can have a fact witness that comes  
16 in and tells us whatever you want or you can establish  
17 an expert witness. An expert witness is going to give  
18 their opinions of things, in which we will need to  
19 weigh, and either believe or not believe or, you know,  
20 however we deliberate on. So you are an expert in  
21 real estate market analysis? Is that correct?

22 MR. FIELDS: Yes, sir.

23 CHAIRPERSON GRIFFIS: And how so?

24 MR. FIELDS: I would say from training and  
25 from experience. I have been in real estate in

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1 Washington, D.C. I have been selling properties for  
2 more than two years. Specifically in Columbia  
3 Heights. I have a lot of insight into the market and  
4 I have studied it studiously.

5 CHAIRPERSON GRIFFIS: Okay. Any questions  
6 from the Board? Clarifications? And what others?

7 MR. RAY: Those are the only two experts,  
8 Mr. Chairman.

9 CHAIRPERSON GRIFFIS: I see.

10 BOARD MEMBER ETHERLY: I don't have any  
11 objection, Mr. Chair, the only reason why I flagged  
12 the issue is as we heard from Mr. Ray's opening  
13 remarks that he wanted to introduce some expert  
14 testimony on this, and I was fairly certain that the  
15 individuals that he was bringing forward were going  
16 to, of course, have the relevant experience to back up  
17 the expertise. And I just wanted to have that  
18 clarified for the record. But I have no objection,  
19 Mr. Chair, in proceeding. No objection to  
20 establishing them as an expert witness for purposes of  
21 moving forward on the issues of cost estimates and the  
22 general market.

23 CHAIRPERSON GRIFFIS: Let's move ahead  
24 then and we'll accept them as experts in their decided  
25 fields. Okay. Let's go.

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1 MR. RAY: All right. If it's the Board's  
2 pleasure, we can --

3 CHAIRPERSON GRIFFIS: It's your case.

4 MR. RAY: Okay.

5 CHAIRPERSON GRIFFIS: Who is your witness?

6 MR. RAY: Mr. Ray Hwang.

7 CHAIRPERSON GRIFFIS: Indeed.

8 MR. HWANG: As you can see, I don't know  
9 if you have the Exhibit 1, 2 and 3 in front of you,  
10 the cost analysis submitted to the Planning Board.  
11 From original inspection, we anticipated a certain  
12 construction cost. However, due to high demand of  
13 construction costs in the area, and the deteriorating  
14 conditions that we were unaware of, the cost analysis  
15 determined that our construction and renovation cost  
16 would be significantly higher than what we had  
17 originally anticipated. As you know --

18 CHAIRPERSON GRIFFIS: Because of the  
19 demand for construction in the area?

20 MR. HWANG: Yes.

21 CHAIRPERSON GRIFFIS: What does that mean?

22 MR. HWANG: That means that we -- what we  
23 do as owners is that we don't go there and do the  
24 construction ourselves. We hire contractors who are  
25 bonded and insured in the District of Columbia.

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1 However, as you know, in the District of Columbia,  
2 especially Columbia Heights, there are --

3 CHAIRPERSON GRIFFIS: Okay. So you're  
4 saying that all the contractors are busy, so they are  
5 going to charge you more?

6 MR. HWANG: Yes, sir.

7 CHAIRPERSON GRIFFIS: That's pretty clear.  
8 Are these prices based on means?

9 MR. HWANG: Yes.

10 CHAIRPERSON GRIFFIS: RS means?

11 MR. HWANG: Yes, RS means residential.

12 CHAIRPERSON GRIFFIS: So you put a square  
13 footage number in?

14 MR. HWANG: Yes.

15 CHAIRPERSON GRIFFIS: And it pumps out  
16 these numbers?

17 MR. HWANG: Yes.

18 CHAIRPERSON GRIFFIS: What is involved in  
19 the main building cost as stated by mean statement,  
20 which is \$359,171.58? What is involved in that?

21 MR. HWANG: That's involved the square  
22 foot area of living spaces per floor.

23 CHAIRPERSON GRIFFIS: So that's just the  
24 square foot area of any house that you put in there  
25 and it pumps out \$86 a square foot. That's your base

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1 number?

2 MR. HWANG: No, sir.

3 CHAIRPERSON GRIFFIS: And then you start  
4 adding the rest of the pieces in?

5 MR. HWANG: Yes and no. There are several  
6 categories in RS means in which you categorize your  
7 house as. You categorize it as a three story  
8 building, two story building, single story, ranch,  
9 etcetera. There are many categories, but I  
10 categorized as a custom building, because this is a  
11 renovation project where it is a duplex.

12 CHAIRPERSON GRIFFIS: Is there a category  
13 where you say renovation or new construction?

14 MR. HWANG: Not under residential homes.

15 CHAIRPERSON GRIFFIS: So this is  
16 conceivably the same pricing as if there was an empty  
17 lot and you were doing new construction?

18 MR. HWANG: Yes, however, as you know,  
19 renovation costs are significantly higher in cost,  
20 rather than building a brand new building.

21 CHAIRPERSON GRIFFIS: Do I know that?

22 MR. HWANG: Excuse me. From my past  
23 experiences, renovation costs are significantly  
24 higher. It would have been cheaper for us to knock  
25 the building down and rebuild. However, it is a

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1 duplex. We have a neighborhood with --

2 CHAIRPERSON GRIFFIS: What about resale?  
3 Would it be more -- well, that's for him. Okay.  
4 Let's go ahead.

5 MR. HWANG: Okay.

6 CHAIRPERSON GRIFFIS: Ms. Miller?

7 VICE CHAIR MILLER: I need to understand  
8 the context here. You did a construction analysis  
9 when before the property was bought or after the  
10 property was bought or what is this? Is this for this  
11 specific property?

12 MR. HWANG: This is for this specific  
13 property.

14 VICE CHAIR MILLER: So when was it done?

15 MR. HWANG: This was done earlier this  
16 year.

17 VICE CHAIR MILLER: After the property was  
18 bought?

19 MR. HWANG: Yes.

20 VICE CHAIR MILLER: So was there one done  
21 before the property was bought?

22 MR. HWANG: We did a general cost estimate  
23 before it was done.

24 VICE CHAIR MILLER: And do we have that in  
25 the record?

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1 MR. HWANG: No, we do not.

2 CHAIRPERSON GRIFFIS: Okay. Let's go on.

3 MR. HWANG: Okay. And from the exhibits,  
4 you know, you can see that the main building structure  
5 is the most expensive. It doesn't matter whether it  
6 is one unit, two unit or three units. It's to bring  
7 the place back to -- in a reasonable shape where a  
8 person can live in safety without the walls crumbling  
9 down or the floor joist falling off. That's where the  
10 majority of the cost has been incurred or will be  
11 incurred.

12 CHAIRPERSON GRIFFIS: So if I take that,  
13 for \$360,000, you walk in there, you haven't done  
14 anything else, just spent that money on it, what do  
15 you walk in to? Basically, a finished shell?

16 MR. HWANG: Yes, but we had to demolish  
17 into a shell. We couldn't -- it wasn't a shell  
18 before. There was a lot of garbage a lot of --

19 CHAIRPERSON GRIFFIS: No, I understand  
20 that.

21 MR. HWANG: All right.

22 CHAIRPERSON GRIFFIS: I'm trying to give  
23 the Board a perspective of what all these numbers are.

24 MR. HWANG: Okay.

25 CHAIRPERSON GRIFFIS: So for \$360,000 you

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1 have a building that's standing up. It's not painted  
2 though. There's no windows in it. There's no  
3 kitchens. There's no bathrooms. It's basically empty  
4 rooms. There is no drywall. There is no finished  
5 drywall anyway. What is it that you got for \$360,000?

6 MR. HWANG: Basically, it is a shell, yes.

7 CHAIRPERSON GRIFFIS: Okay. Go ahead.

8 MR. HWANG: From that, of course, for  
9 \$360,000 we added the additional things per that's  
10 required. We categorized it as fixed costs and  
11 variable costs. What we just described as the empty  
12 shell is a fixed cost, because no matter what we have  
13 to fix that property up in that way. Variable costs  
14 go into the kitchens, cabinets, appliances, etcetera,  
15 per unit, HV/AC systems, depending on what it is.

16 And fixed costs are significantly higher  
17 than variable costs, because those are just --  
18 variable costs are mainly cosmetic issues, so they  
19 don't really bother us in the cost so much, but the  
20 fixed costs are the main issues where we have to incur  
21 it no matter what. As you can see from a single-  
22 family unit, two unit, four unit variable costs don't  
23 vary.

24 CHAIRPERSON GRIFFIS: Okay. Now, and  
25 these costs, from my understanding, and I think that's

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1 an important piece, fixed costs, it's, you know, no  
2 matter what. Your variable is more of, you know, do  
3 you want to do marble or do you want to do granite and  
4 all that kind of stuff, no big deal.

5 MR. HWANG: Yes.

6 CHAIRPERSON GRIFFIS: Is there something  
7 specific to these costs that go to the property  
8 itself? I mean, you're talking about the fixed costs  
9 as being based on a square footage cost.

10 MR. HWANG: Yes.

11 CHAIRPERSON GRIFFIS: And there is a  
12 certain amount that has to go into this building,  
13 which is constant. Is there anything different  
14 between this, between these numbers and a comparable  
15 size building?

16 MR. HWANG: Could you rephrase that?

17 CHAIRPERSON GRIFFIS: Go two blocks over  
18 and there is an identical building, let's say, and  
19 it's also falling apart.

20 MR. HWANG: Yes.

21 CHAIRPERSON GRIFFIS: Or not, well, yes,  
22 say it is. These numbers would fit that one also?

23 MR. HWANG: Yes, if the living square  
24 footage was correct and it was an end unit.

25 CHAIRPERSON GRIFFIS: End unit, square

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1 footage?

2 MR. HWANG: Yes.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. HWANG: On the last page of the  
5 exhibits, the RS means has the row house factor of  
6 0.93. A single-family home would be 1.0. A row house  
7 would be 0.93. And then, if you consider, depending  
8 on what type of property it is with the factor and the  
9 multiplier, then you can compare that to the house  
10 down the street.

11 CHAIRPERSON GRIFFIS: Okay. Wait a  
12 minute. You lost me there. The last page, is that --

13 MR. HWANG: I was basically confirming  
14 what we just previously discussed.

15 CHAIRPERSON GRIFFIS: Okay. So the means,  
16 when you put in all the numbers, is a multiplying  
17 factor depending on if it's single-family, row  
18 dwelling, end unit, five unit, all that?

19 MR. HWANG: Yes.

20 CHAIRPERSON GRIFFIS: And it's a  
21 multiplier, which means it multiplies, obviously, an  
22 increase in the number of your construction dollars.

23 MR. HWANG: Right, or in this case,  
24 increase from the single-family.

25 CHAIRPERSON GRIFFIS: Indeed. Okay.

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1 Anything else?

2 MR. HWANG: No, sir.

3 CHAIRPERSON GRIFFIS: Any questions? Mr.  
4 Hildebrand?

5 COMMISSIONER HILDEBRAND: What is your  
6 training in using means as a cost estimating tool for  
7 residential full construction, architecture,  
8 mechanical, electrical, plumbing?

9 MR. HWANG: Residential, I am very limited  
10 in my training. I have done brief analysis for my  
11 mother's house when she was renovating her house, but  
12 residential, my experiences are limited. However, my  
13 commercial experience, I have done it quite a few  
14 times. The last one was a kitchen exhaust study  
15 estimate, cost estimate for the Ronald Reagan Building  
16 portion of their Trade Center, International Trade  
17 Center pavilion area. So I have done cost estimates  
18 before.

19 Sometimes we get into extreme detail if  
20 the client wishes such, but in residential we do a lot  
21 of things by square footage when we design, do cost,  
22 do anything. You know, square footage, per square  
23 footage is like one of the main bases on how we  
24 design, do cost analysis, etcetera.

25 COMMISSIONER HILDEBRAND: Thank you.

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1 CHAIRPERSON GRIFFIS: Anything else? Ms.  
2 Miller?

3 VICE CHAIR MILLER: What is your bottom  
4 line with respect to what we're supposed to draw from  
5 this analysis?

6 MR. HWANG: Well, basically, we would --  
7 if we were to convert it to a single-family home,  
8 leave it as is, then as an investor our loss would be  
9 quite a bit, and we're not trying to sit in front of  
10 you to ask to make a lot of money. We're trying to  
11 break even pretty much, at this point, with the three  
12 units, and this cost is to prove to you that we're not  
13 trying to do anything extraordinary.

14 CHAIRPERSON GRIFFIS: Are you one of the  
15 owners of the property?

16 MR. HWANG: Yes, sir.

17 VICE CHAIR MILLER: Well --

18 CHAIRPERSON GRIFFIS: So you are the  
19 applicant?

20 MR. HWANG: Yes.

21 CHAIRPERSON GRIFFIS: And the expert  
22 witness?

23 MR. HWANG: Yes.

24 CHAIRPERSON GRIFFIS: There's no extra  
25 charge for that, of course. Ms. Miller?

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1 VICE CHAIR MILLER: I guess I want to know  
2 what it is that you paid for and what was the cost  
3 analysis that you did when you purchased the property?

4 MR. HWANG: We didn't go into a deep  
5 analysis. We anticipated not nearly as high.  
6 Obviously, my lack of residential experience was, I  
7 guess, kind of hurt us in the long run, but when I  
8 went into a full detail, this is what we got.

9 COMMISSIONER HILDEBRAND: So you are now  
10 saying that you are not an expert in residential  
11 construction?

12 MR. HWANG: No, no, no, excuse me. My  
13 inexperience or shall I rephrase, I made a judgment  
14 mistake when we first bought the property, because we  
15 didn't go through a full inspection, one by one, brick  
16 by brick, structure wise, electric wise, because there  
17 is still a lot of drywalls there and we can't make --  
18 I couldn't make a full analysis at that time, but we  
19 have a general idea per square footage, as you  
20 understand, as I discussed, and at the time we thought  
21 we would be okay overall, but from the -- after the  
22 walls had been torn down, after looking at the  
23 property in full detail, we had to -- I had to come up  
24 with a number that matches our full cost analysis.

25 CHAIRPERSON GRIFFIS: Okay. Yes?

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1 VICE CHAIR MILLER: It may be in our  
2 papers, but you have amended, so I'm really not sure  
3 where you are, at this point, but what's the economic  
4 loss that you have calculated if you don't get the  
5 variance?

6 MR. HWANG: As you can see in Exhibit 1 if  
7 we go single-family unit, it's \$949,804 for total  
8 construction and purchase cost. From what I  
9 understand in the comparable housing market in the  
10 area, which our realtor will go through, we're not  
11 going to be able to sell that property unless we put  
12 some major elevators or, I don't know, some kind of  
13 bells and whistles that are unrealistic in that  
14 property, there is going to be a significant loss.

15 CHAIRPERSON GRIFFIS: Is that the new  
16 future for residential elevators? I like that idea.  
17 Okay. Next?

18 VICE CHAIR MILLER: That \$900,000 is the  
19 cost if you fully fix it up and then sell it?

20 MR. HWANG: Right. Our realtor will go  
21 into exactly how much our place will sell for.

22 CHAIRPERSON GRIFFIS: Right.

23 VICE CHAIR MILLER: Okay.

24 CHAIRPERSON GRIFFIS: I think what her  
25 question was directly is now that you have amended for

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1 three units, you're proposing three units, your  
2 economic loss and economic hardship case in terms of  
3 this. So she is asking you well, what's the loss at  
4 three units? You have four units. We see that.  
5 What's the loss at three units?

6 MR. HWANG: Three units, we should be  
7 \$10,000 to \$20,000 or break even.

8 COMMISSIONER HILDEBRAND: Maybe this isn't  
9 the correct witness to ask this question of, but I  
10 know throughout the District right now renovation of  
11 homes is prevalent and ongoing and perhaps your real  
12 estate consultant is the person that this needs to go  
13 to, but how are these other developers managing to  
14 continue to do business if they are constantly giving  
15 the District or giving owners \$300,000 per house that  
16 they renovate in these historic areas?

17 MR. FIELDS: Well, if I can answer that a  
18 little prematurely, \$300,000 is not unreasonable to  
19 spend in Columbia Heights.

20 CHAIRPERSON GRIFFIS: Can I have you turn  
21 off your mike? Thank you.

22 MR. FIELDS: Turn it down?

23 CHAIRPERSON GRIFFIS: No, we're set.

24 MR. FIELDS: Okay. Is not unreasonable to  
25 spend for a shell. One of the things I have submitted

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1 to you, if you'll look at it, it has six bedrooms plus  
2 the previous year. There were four properties that  
3 were basically six and seven bedroom properties on a  
4 2,500 square foot lot that sold in excess of \$300,000  
5 in a similar condition in Columbia Heights. One of  
6 the premises that Office of Planning made in saying  
7 that we overbought for the property was that we were  
8 buying a property \$200,000 above tax assessment.

9 I will ask Mr. Chairman, Vice Chairman and  
10 you, Mr. Hildebrand, will you sell your house in  
11 Washington, D.C. for the tax assessed value? I don't  
12 think so. He just got his tax assessment and now, in  
13 Washington, D.C., which is a unique market, prices  
14 routinely sell for two to four times the tax assessed  
15 value. The market value and the tax assessed value is  
16 very different and, as you know from previous  
17 experience, the Government has realized this and has  
18 made the adjustment to assess properties more  
19 frequently and closer to market value because of the  
20 significant difference and the loss by using the old  
21 tax values.

22 So the tax assessment is not a good  
23 indicator of where the market is, and so for us to  
24 look at this we have to look at, as investors, as  
25 these guys are, what properties are available on the

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1 market at the time as the market is moving. At the  
2 time that this property was purchased, there were two  
3 properties available that offered us the type of  
4 footprint and project potential that we were looking  
5 for in Columbia Heights.

6 One of the things in terms of how Mr.  
7 Hwang is characterizing the project, Mr. Hwang and his  
8 partners were genuinely interested in developing  
9 affordable housing for the neighborhood. So when they  
10 looked at this project, they looked at it in terms of  
11 four units that they could market in the \$300,000  
12 price range. If you look at Columbia Heights right  
13 now, \$300,000 is an affordable unit. It would be one  
14 of the lowest priced units that's developed in  
15 Columbia Heights.

16 VICE CHAIR MILLER: How could they look at  
17 it for four units when it's zoned for single-family  
18 residence?

19 MR. FIELDS: Well, what was -- the idea  
20 here was there is not a major change that's going to  
21 occur to the property. The property, it's a very  
22 large footprint. It's a 2,500 square foot lot. The  
23 entry of the building is the only thing that would  
24 change that for four units. It already has a basement  
25 and three levels up, which average probably around 900

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1 square feet per floor. So it would make very good two  
2 bedrooms on each floor, okay, and two bedrooms, two  
3 baths is what initially this project was slated for.

4 And we thought that maybe somewhere in  
5 this Government with the Mayor wanting to move 100,000  
6 people in the city, that if we just took a chance and  
7 say hey, listen, someone has to be reasonable. All  
8 the new development that comes in the city can't be  
9 luxury housing and that is exactly what's being done  
10 here, is by the like of a variance this property is  
11 going to be forced to be a luxury product.

12 Whereas, now, if it's marketed as a single  
13 family, yes, it would be a million dollar plus  
14 property. If we are reduced to creating two duplexes,  
15 you're talking properties in the range of \$500,000 or  
16 more and, with the market as hot as it is, let's say  
17 we do offer two good luxury units at \$500,000, chances  
18 are they may go to \$550,000. Okay. So I mean, this  
19 is just the dynamics of the market. Almost every  
20 property --

21 CHAIRPERSON GRIFFIS: So what you're  
22 saying is in two units, they could conceivably sell  
23 for \$500 a piece, that would make a million dollars?

24 MR. FIELDS: Possibly, yes.

25 CHAIRPERSON GRIFFIS: Okay. And I think

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1 the Board is well aware and, believe me, this is not  
2 the first case even similar to what you're presenting  
3 to us. In fact, we could probably just recount our  
4 morning. So we're familiar with all these issues, and  
5 I need to make an important point to this. Whether we  
6 support or not, I'm not making a statement of the  
7 Mayor's initiative or even affordable housing or any  
8 of those elements, we have to look, and our  
9 jurisdiction goes directly to the regulations, and so  
10 that's what we're going to be assessing.

11 So why is it that you cannot provide what  
12 is matter-of-right outside of, frankly, a lot of the  
13 great ideas and initiatives or kind of the larger  
14 extenuating circumstances that's being proposed here?

15 We're tied. We're tied to what the regulations read  
16 and that is 900 square feet based on this lot size.  
17 And if you go above that, we need to see what is the  
18 actual practical difficulties from not providing that.

19 That's our charge.

20 MR. FIELDS: Okay.

21 CHAIRPERSON GRIFFIS: So what I hear you  
22 establishing is the fact of and with this comparison  
23 of what was sale prices of seven bedrooms, I think  
24 there is enough information for the Board to  
25 understand, you know, where this was in terms of the

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1 market value and the purchase price you have  
2 established of what the purpose and the program of  
3 providing the units and the number of units, and I  
4 think that's all very clear. Anything else you need  
5 to point us to?

6 MR. HWANG: If I may just add one more  
7 thing. If we were to go with the duplexes, you can  
8 tell the total cost of construction in obtaining the  
9 property is \$980,783. Assuming that the market  
10 continues in a fabulous way and we get \$500,000 for  
11 duplex, that's very close. That's not even 10  
12 percent. I mean, that's a little too close for us to  
13 get into a range of whether we're going to make money  
14 or lose money.

15 Three units, we can definitely be more  
16 comfortable with it. The two units, the numbers just  
17 don't work out and if construction costs increase in  
18 any way within the next however many months it takes  
19 to construct, then we're definitely going to end up  
20 losing money on this property.

21 CHAIRPERSON GRIFFIS: Okay. So you get  
22 this done. You get your three units. Then the  
23 building next to you, although not an end unit, comes  
24 to us and says I have an extraordinary amount of cost,  
25 because I want to convert to four units. How do we

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1 view that? Is it any different? Can we, in fact, if  
2 we grant this somehow not grant that? The facts would  
3 be somewhat the same in terms of how much money it  
4 would cost to put into the place and to add the units.

5 Now, I want the developer's perspective.  
6 I know the legal answer to it.

7 MR. HWANG: Our next door neighbor,  
8 however, doesn't have a property that's been used by  
9 drug users, drug sellers.

10 CHAIRPERSON GRIFFIS: Okay. So you have a  
11 unique situation.

12 MR. HWANG: Okay. Anything else?

13 BOARD MEMBER ETHERLY: Mr. Chair?

14 CHAIRPERSON GRIFFIS: Yes?

15 BOARD MEMBER ETHERLY: I agree with you in  
16 terms of, I think, we have probably exhausted the  
17 market side of this and I would be happy to move on,  
18 but I think perhaps just to drive home your point of  
19 your question, the telling part of this is when you  
20 look at the OP report, OP has a very excellent  
21 illustration in Attachment 1 that shows the immediate  
22 vicinity of this R-4 District, and when you look at  
23 how that illustration reflects the single-family  
24 units, the flats, the semi-detached, the detached,  
25 when you look at the immediate block where the subject

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1 property is, that's the challenge.

2 You have a whole lot of row house, a whole  
3 lot of single-family detached or semi-detached, and  
4 just for your benefit I'm looking at this page here  
5 for my colleagues and for the benefit of the  
6 applicant. That's the challenge here as we move  
7 forward, you know, where you are relative to what's  
8 going on in the rest of that District.

9 So maybe just as a closing question, when  
10 you looked at 10<sup>th</sup> Street or the rest of this immediate  
11 vicinity, did you see other properties of this type  
12 that were being used in a similar way? I mean, I  
13 don't want to go too far since I think we have  
14 exhausted it, but that's the challenge here. You're  
15 talking about doing something that's very different  
16 from what the character of the properties around you  
17 are, and that is our challenge.

18 MR. FIELDS: Well, externally, when you  
19 look at it from the exterior, there is no change to  
20 the building.

21 BOARD MEMBER ETHERLY: Right, and I  
22 understand that point. I mean, you're not going to do  
23 anything outside.

24 MR. FIELDS: Right.

25 BOARD MEMBER ETHERLY: But the Zoning

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1 Regulations speak to, in a sense, what's happening in  
2 terms of the intensity of the use on the interior and  
3 even though you're not going to change the outward  
4 look of the house, so if I'm driving down 10<sup>th</sup> Street  
5 and I look along the block, it looks the same.

6 MR. FIELDS: Yes.

7 BOARD MEMBER ETHERLY: But once you go  
8 inside that house, you are now saying I want to get  
9 three separate two bedroom units in there, and part of  
10 the R-4 District constraint is an effort to limit or  
11 cap that type of intensification.

12 MR. FIELDS: Right.

13 BOARD MEMBER ETHERLY: So that's your  
14 problem and you're asking us to buy the argument that  
15 the market is kind of dictating that now, because the  
16 market is one thing and the Zoning Regs are something  
17 totally different and they don't often have to meet in  
18 the same place.

19 MR. FIELDS: Right, I agree in terms of  
20 intensity and I think for economic purposes, a lot of  
21 the larger single-family homes are frequently used as  
22 rooming houses wherein even though it's a family  
23 situation, the house is not used solely for a single-  
24 family residence. So the intensity is still there is  
25 they are renting out each room for economic purposes,

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1 and so it's almost no different. Matter of fact, that  
2 may be the way a few of the neighbors used the house.

3 BOARD MEMBER ETHERLY: Would you  
4 characterize this house as being larger than any of  
5 the adjacent properties?

6 MR. FIELDS: Well, there is a number of  
7 houses that are detached. There are duplexes, which  
8 are detached, and so each of the units in that duplex  
9 are seven bedrooms a piece, which is different. So  
10 they are separate and they kind of lead the block,  
11 then it goes into row houses or row dwellings. Okay.

12 MR. RAY: Mr. Etherly, to further address  
13 your question, I would like to introduce to the Board  
14 Mr. John Depue, who is our construction manager with  
15 the illustration here, which is the same as, I think,  
16 Attachment 1 to OP's report, can elaborate and further  
17 address the question that you have raised.

18 BOARD MEMBER ETHERLY: Okay.

19 CHAIRPERSON GRIFFIS: You're going to need  
20 to be on a microphone though.

21 BOARD MEMBER ETHERLY: You probably can  
22 pick up Mr. Ray's microphone.

23 MR. DEPUE: You know, what we did was blow  
24 it up, so we could get a better idea of the housing.  
25 As you pointed out, from the front they all look the

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1 same, but, you know, the depth of the duplexes, you  
2 know, is twice the other houses, this being the  
3 apartment building. This is another apartment  
4 building and then at the end of the block are two more  
5 duplexes.

6 CHAIRPERSON GRIFFIS: So you have got 10  
7 duplexes on that block, all of bigger dimension than  
8 the row dwellings.

9 MR. DEPUE: Right.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. DEPUE: But in every case, except the  
12 one next to me, you know, they are single-family  
13 dwellings that have been in the families for years,  
14 you know, the people that I met there.

15 CHAIRPERSON GRIFFIS: Okay.

16 COMMISSIONER HILDEBRAND: Maybe this will  
17 help me to understand this a little bit further. Do  
18 you have any history of the vacancy of the property?  
19 You have listed as one of its exceptional  
20 characteristics for hardship that it was vacant for a  
21 long period of time. Why was it vacant for a long  
22 period of time? Do you know? Was it part of a tax  
23 sale?

24 MR. FIELDS: It was vacant, if I may add,  
25 because the previous owner, who had had it for a

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1 significant amount of time, had attempted at various  
2 levels to rehab the property, but had never been  
3 successful and I think she just got to the point where  
4 she cashed out of the project.

5 MR. DEPUE: You know, some of the  
6 neighbors that I talked to --

7 CHAIRPERSON GRIFFIS: Okay. I'm not sure  
8 how helpful that's going to be. What else?

9 MR. DEPUE: I mean, you know, she tried  
10 various schemes to, you know, let the people live and  
11 work in there.

12 CHAIRPERSON GRIFFIS: Understood.

13 MR. DEPUE: And that didn't work out.

14 CHAIRPERSON GRIFFIS: I don't think it's  
15 really going anywhere for us. Okay. What else?

16 MR. HWANG: Physically, our site, proposed  
17 site, is actually quite different from our neighbors.  
18 Across the street, as you can tell where the pink  
19 highlight is shown, those are all row houses.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. HWANG: Lot square footage all under  
22 2,000 square feet, mostly right around 1,500. Ours is  
23 at 2,500. 1,000 square foot is quite a bit larger  
24 than theirs.

25 CHAIRPERSON GRIFFIS: Indeed. How does it

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1 compare with the one it's attached to?

2 MR. HWANG: The one it's attached to, I  
3 don't know what their lot size is, but their building  
4 size is exactly the same.

5 CHAIRPERSON GRIFFIS: Okay. And the one  
6 to the south of it?

7 MR. HWANG: There are duplexes. All the  
8 duplexes are building size.

9 CHAIRPERSON GRIFFIS: Which are fairly  
10 identical?

11 MR. HWANG: Yes. The row houses are  
12 actually smaller.

13 CHAIRPERSON GRIFFIS: You've got two,  
14 four, six. Six on that side that are fairly  
15 identical.

16 UNIDENTIFIED SPEAKER: Right. It's a  
17 pretty good place.

18 CHAIRPERSON GRIFFIS: Six residences?

19 MR. HWANG: Yes.

20 UNIDENTIFIED SPEAKER: Evidently they were  
21 built at the same time.

22 CHAIRPERSON GRIFFIS: Okay. You're going  
23 to need a microphone on if you say that they are  
24 identical, all six of those. Okay. Next?

25 MR. HWANG: The cross street row houses

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1 are also smaller in building size.

2 CHAIRPERSON GRIFFIS: I understand. I  
3 think we're well aware of the difference between row  
4 dwelling and what we are looking at here. Is that  
5 correct? Across the street. We also have the aerials  
6 which are excellent. Okay. Who is talking about  
7 parking? What's your requirement for parking if you  
8 were granted three units? How about one?

9 MR. RAY: One to three.

10 CHAIRPERSON GRIFFIS: You would be  
11 required one parking space. Is that correct?

12 MR. RAY: One parking space for three  
13 units, I believe, is correct.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. RAY: No, two. I'm not quite sure.

16 CHAIRPERSON GRIFFIS: Why don't you trust  
17 me on this one?

18 MR. RAY: I'll trust you.

19 CHAIRPERSON GRIFFIS: Pull the microphone  
20 closer to you. So you're asking for relief from the  
21 size? Oh, man. Go ahead. Are you going to show me  
22 where they are going?

23 MR. DEPUE: This is the parking area, the  
24 back of the lot. The alley runs here. And we have 25  
25 feet 1 inch, basically. A legal parking place, I

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1 guess, is 9 feet.

2 CHAIRPERSON GRIFFIS: The width of the  
3 site. Okay.

4 MR. DEPUE: And, you know, we have the  
5 depth. So, you know, it would just be marginally  
6 smaller parking place if we get three in there instead  
7 of two big ones.

8 CHAIRPERSON GRIFFIS: Okay. I don't see  
9 how you can't make the required parking. The required  
10 parking is one. The dimension of the required parking  
11 spaces are in the regulations. You've got a 25 foot  
12 width of a lot. It doesn't seem like you need any  
13 relief from parking.

14 MR. DEPUE: Okay.

15 CHAIRPERSON GRIFFIS: We'll ride with it  
16 if we need to, but, you know, quite frankly, like I  
17 say I can be fairly direct even though perhaps we're  
18 being broadcast around the world, how you use it may  
19 well be a different thing. But what we have to see is  
20 how you provide the one required parking space. And  
21 by the dimensions you are showing me --

22 MR. DEPUE: I got more than that.

23 CHAIRPERSON GRIFFIS: You've got the  
24 dimensions for the parking space.

25 MR. RAY: Well, Mr. Chairman, your point

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1 is well taken. Particularly, if Ms. Glazer's view  
2 prevails that we would have to readvertise.

3 CHAIRPERSON GRIFFIS: Yes, I'm sure you  
4 wouldn't want to do that. Now, the issue will be, and  
5 I'll just digress briefly, obviously, if you were  
6 granted this, if these become condos, you cannot and  
7 would not be able to -- well, I'm not going to say  
8 anything. Okay. Let's move on then. Anything else  
9 attendant to the area variance?

10 MR. RAY: Nothing further as far as our  
11 case in chief, if you will, Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Okay. Anything  
13 else? Any other witnesses?

14 MR. RAY: We do have two witnesses from  
15 the community. One is immediately adjacent to us, Mr.  
16 Charles Hankins.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. RAY: And we also have Beverley  
19 Wheeler, who is, I think, across the street.

20 CHAIRPERSON GRIFFIS: Are you calling them  
21 as witnesses?

22 MR. RAY: Yes.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. RAY: Could I excuse my experts?

25 CHAIRPERSON GRIFFIS: Of course.

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1 MS. WHEELER: Good afternoon, my name is  
2 Beverley Wheeler and I live at 3527 10<sup>th</sup> Street, N.W.  
3 I'm going to speak quickly, because I have to pick up  
4 a child from school. I live directly across the  
5 street from the property in question, and I have lived  
6 there for 17 years. For that length of time, it has,  
7 in fact, been an abandoned property. At various times  
8 it has been used as a crack house, as a place of  
9 prostitution, as a drug house.

10 It has provided our community nothing but  
11 pain and grief. I am not an expert in real estate. I  
12 am a community activist and I can speak to the fact  
13 that this property has, in fact, has a detrimental  
14 affect on our entire neighborhood. When this building  
15 -- it is, in fact, the only house, the only building  
16 on our street, on 10<sup>th</sup> Street, that has been abandoned  
17 and had this use in the 17 years that I have lived in  
18 the neighborhood. It has, in fact, never had any  
19 reasonable residents.

20 I want to congratulate Ray Hwang and  
21 Matthew Depue for at least being willing to undertake  
22 this exercise. When we first heard about this, we  
23 were very concerned about the density in our  
24 neighborhood and the effect that having four units  
25 would have on our properties. We would love the idea

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1 of a single-family home there. We do not believe that  
2 that would happen. We support the three units in the  
3 property, because we also would like to see some  
4 housing in there.

5 All of you are aware of what is happening  
6 in Columbia Heights. We are losing many of our  
7 neighbors and while this isn't -- it won't be section  
8 8 housing and it won't be low income housing, it will  
9 be housing and we would like to see three units of  
10 housing there. We would like to see the property  
11 used. It is a beautiful property and we would like to  
12 see it used as a unit.

13 So that's basically what I had to say  
14 about the property. And I have lived there across  
15 from it for a very long time and I did not come to  
16 this easily. I will say I did not come to having that  
17 many units, because of density, parking is an issue  
18 for us on the street, that many people on the street  
19 is really tough, but we believe that it is the best  
20 use for us, non-experts, the best use of that property  
21 at this point is three units.

22 CHAIRPERSON GRIFFIS: Thank you very much.

23 In your understanding, is there any other properties  
24 for sale on this block, at this time?

25 MS. WHEELER: Not that I'm -- there is

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1 properties farther down on 10<sup>th</sup> Street that are for  
2 sale.

3 CHAIRPERSON GRIFFIS: Okay. How many do  
4 you suppose this block could support in three unit  
5 conversions?

6 MS. WHEELER: To be perfectly honest, I  
7 think it's going to be tough. I mean, after a while,  
8 it's going to be very, very tough. But I believe that  
9 this unit and as I said I came to it kicking,  
10 screaming, hollering because this unit is unique, it  
11 has been abandoned for so long and it has such a  
12 detrimental effect. If, in fact, it simply would be a  
13 single-family home and the person had died or decided  
14 that they simply wanted to leave, I would continue to  
15 be opposed to conversion of this. But I think this  
16 property deserves to be rehabilitated as a three unit.

17 CHAIRPERSON GRIFFIS: Thank you.  
18 Questions from the Board?

19 VICE CHAIR MILLER: Ms. Wheeler, why do  
20 you believe that it wouldn't become a single-family  
21 residence?

22 MS. WHEELER: I love my neighborhood. I  
23 think my neighborhood is wonderful. You could not get  
24 a single-family, I mean, because of the way this  
25 building has been destroyed over the years, you are

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1 not going to find anyone who is willing to -- the  
2 person who would be willing to invest this amount of  
3 money to renovate that home to have it liveable would  
4 not live in my neighborhood. We do not have the other  
5 amenities that someone who is going to rehabilitate a  
6 million dollar home would want.

7 CHAIRPERSON GRIFFIS: Are you aware of any  
8 million dollar homes in the neighborhood?

9 MS. WHEELER: No, a half million, but not  
10 a million.

11 CHAIRPERSON GRIFFIS: Did you look at the  
12 submission today from the expert witness?

13 MS. WHEELER: No, I did not.

14 CHAIRPERSON GRIFFIS: If I'm familiar from  
15 the aerials, it looks like it's about two or three  
16 blocks away \$1.15 million on the market for a detached  
17 house. Did that surprise you, Ms. Wheeler?

18 MS. WHEELER: No, it doesn't surprise me,  
19 but I know the one way street that we live on. I know  
20 how close the houses are together. I know what the  
21 school is down the street. Those things are going to  
22 take a while to change.

23 CHAIRPERSON GRIFFIS: I see.

24 MS. WHEELER: And if those of us who are  
25 in the neighborhood are really looking to keep our

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1 neighborhood diverse, too many million dollar homes,  
2 I'll be protesting as well.

3 CHAIRPERSON GRIFFIS: Interesting. Any  
4 other questions?

5 VICE CHAIR MILLER: Just since you've  
6 lived across the street from it during -- during the  
7 whole time that you have lived there it has been  
8 abandoned. Is that correct?

9 MS. WHEELER: Yes.

10 VICE CHAIR MILLER: Do you have any  
11 insight as to why it has been abandoned for so long?

12 MS. WHEELER: I can only speak to rumor.

13 CHAIRPERSON GRIFFIS: Any other questions?

14 COMMISSIONER HILDEBRAND: Has the  
15 neighborhood ever petitioned -- I mean, it has been  
16 used as a crack house and other things. Has it been  
17 boarded up by the city?

18 MS. WHEELER: It was partially boarded up,  
19 but we have had trouble with keeping it boarded, and I  
20 do not believe the city was, in fact, the ones that  
21 boarded it up.

22 MR. HANKINS: My name is Charles Hankins.  
23 I moved into the neighborhood in '85, I think. The  
24 house has been in my family. I moved out, I think, in  
25 1990, but we still own the house right next door.

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1 This house, when I moved in, it was a functioning  
2 living house. I mean, there were people there. My  
3 godson was born in that house and the people, the last  
4 tenants tore it up. And I have offered to buy the  
5 house on several occasions from the lady and they  
6 would not sell it to me.

7 It has been an eyesore. It has been a  
8 problem. I have had problems getting tenants in to my  
9 house, because they look at the house next door. I  
10 was recently in the market. My wife and I lived on  
11 Capitol Hill and we decided we were going to move back  
12 into my house and I put in \$100,000 worth of work, but  
13 she quite wouldn't -- she had to look at that house  
14 next door and was afraid. That -- she did not want  
15 that abandoned house and that element.

16 Since then, I have rented out our house.  
17 I had put lights all to the sides to make sure that  
18 walkway was lit up. I have had dealings with the  
19 owner of that house on several occasions. I do  
20 believe over the years I am very -- well, would I call  
21 myself an expert in D.C. realty, real estate. I would  
22 say yes, to some degree. I've dealt with -- all  
23 through the city. I do not think for the price that  
24 was paid they can convert that into a single-family  
25 house and sell it.

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1 I ran across that whole problem when I  
2 redid mine. Mine was in very sad shape over the  
3 years, and I had to finally decide whether I was going  
4 to try to sell it, convert it or do something with it.

5 I decided I wanted to keep it as a single-family  
6 house, all right. How many people can you say want to  
7 buy a seven bedroom house in the heart of the city,  
8 Columbia Heights, in that neighborhood for the price  
9 they are saying? It's very hard. It sits for a while  
10 if you're lucky and it eats up your time.

11 I am behind their purchase, behind their  
12 conversion. I'm a proponent to them, because I want  
13 something done with the property. I'm behind it,  
14 because I cannot stand to have that house just sit  
15 empty again. It has been an eyesore and a danger.

16 COMMISSIONER HILDEBRAND: Your last name  
17 was Hankins?

18 MR. HANKINS: Hankins, yes.

19 COMMISSIONER HILDEBRAND: Hankins. Thank  
20 you, sir. Did you say you renovated your property for  
21 \$100,000?

22 MR. HANKINS: I put \$100,000 worth of work  
23 into the house.

24 COMMISSIONER HILDEBRAND: And you made a  
25 nice liveable home for your family?

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1 MR. HANKINS: No, it was for my family,  
2 but my wife decided she did not want to move in with  
3 the house next door.

4 COMMISSIONER HILDEBRAND: When the  
5 petitioner says that it is going to cost them \$900,000  
6 to renovate their house next to yours, do you feel  
7 that that is a fair value given the amount it took you  
8 to renovate your house?

9 MR. HANKINS: Considering the amount of  
10 damage that was done to that house, I would say they  
11 are lucky. All right. I, for one, knew what my house  
12 had gone through. Nobody discussed that house with  
13 me, but I have walked through that house. I knew the  
14 condition that house was in. Because over time I knew  
15 the conditions. Yes, that house -- my house needed I  
16 would say cosmetic stuff, things to make it a house  
17 that is worth \$500,000 or \$600,000. The type of house  
18 where I could take my family and most of you  
19 understand. The type of work that that house needs,  
20 the other house, my house didn't need that. It has  
21 been maintained.

22 CHAIRPERSON GRIFFIS: Any other questions?

23 UNIDENTIFIED SPEAKER: No.

24 CHAIRPERSON GRIFFIS: Thank you both very  
25 much. Drive safely picking up your children.

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1 Anything else?

2 MR. RAY: We have no further witnesses,  
3 Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Okay. Let's go to  
5 the Office of Planning's report then. Mr. McGhettigan  
6 is here. The much talked and discussed planning.  
7 Anything else you want to add, if you wouldn't mind  
8 presenting your report for us?

9 MR. MCGHETTIGAN: Thank you, Mr. Chair,  
10 Members of the Board. For the record, my name is  
11 David McGhettigan from the Office of Planning. We  
12 have, I guess, discussed a lot of my recommendations  
13 and the applicant has read my report and you have read  
14 my report, so I won't go into great depth on it. I do  
15 want to say that we have -- we are not recommending  
16 denial of this application, because we don't think  
17 that the house needs to be renovated. It simply is a  
18 matter of not meeting the test for a variance. And we  
19 don't feel that the applicant has met the requirements  
20 to get a variance.

21 Also, as you have seen in other reports in  
22 similar cases, the R-4 Zone is being -- needs to be  
23 preserved. I mean, the intent of the zone is not to  
24 be an Apartment District. The 900 square feet of lot  
25 per unit is put into help control the concentration of

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1 population and to preserve the character of the R-4  
2 Zone. And we think this is important and therefore we  
3 don't think the variance request would meet the intent  
4 of the regulations for the R-4 Zone and we recommend  
5 denial of the application.

6 CHAIRPERSON GRIFFIS: Thank you.  
7 Questions from the Board? Clarifications? Ms.  
8 Miller?

9 VICE CHAIR MILLER: I was wondering if OP  
10 could comment on one of the main points that, I think,  
11 was being made today is that this property was in such  
12 horrible shape that it cost so much money to bring it  
13 up to code and everything, and that it is impossible  
14 to get a return on that were it to be sold as a  
15 single-family residence. One, I guess, one of my  
16 questions is, first of all, I don't think you saw  
17 those construction analyses when you did your report,  
18 but given that premise, do you think that that rises  
19 to the level of an exceptional situation?

20 MR. MCGHETTIGAN: Well, first, the R-4  
21 Zone does allow a flat, as a matter-of-right, so for a  
22 matter-of-right comparison, we would be looking at two  
23 units. The cost comparison does provide that an  
24 estimate for the two units and it shows that there  
25 would be a small loss on the property as a flat. And

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1 so if the renovation of the property as a flat, as a  
2 matter-of-right, is near to break even and with the,  
3 as has been testified, housing values are increasing  
4 in the area, I don't find a hardship in this case.

5 CHAIRPERSON GRIFFIS: Any other questions  
6 from the Board? Any cross examination from the  
7 applicant? Questions of the Office of Planning?

8 MR. RAY: Yes, yes, Mr. Chairman, just a  
9 few.

10 CROSS EXAMINATION

11 MR. RAY: Mr. McGhettigan, did you have  
12 any issue with the formulas or the calculations or the  
13 construction cost estimate?

14 MR. MCGHETTIGAN: No, I did not have any.  
15 I took them at their value as evidence in making your  
16 case. I did not analyze them in detail to see if  
17 there were any inaccuracies.

18 MR. RAY: Okay. In determining --

19 CHAIRPERSON GRIFFIS: Let me just clarify  
20 that question to Mr. McGhettigan. You're not asking  
21 him did he do an analysis of your numbers, but rather  
22 did he have any difficulties in, what, understanding  
23 them or using them? I understand Mr. McGhettigan, he  
24 took them as face value. Is that correct?

25 MR. MCGHETTIGAN: That's right.

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1 CHAIRPERSON GRIFFIS: You didn't do any  
2 other independent cost estimating?

3 MR. MCGHETTIGAN: No, I did not.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. RAY: So is it safe to say that you  
6 accept and agree with the estimate, the methodology  
7 and the result?

8 CHAIRPERSON GRIFFIS: What do you need to  
9 do that?

10 MR. RAY: I'm just wondering if he has any  
11 problems with the methodology with our computations.

12 CHAIRPERSON GRIFFIS: You mean using means  
13 estimated?

14 MR. RAY: Yes.

15 CHAIRPERSON GRIFFIS: Do you have any -- I  
16 don't know what his answer is. But if he has  
17 difficulty, what does that mean?

18 MR. MCGHETTIGAN: No, I mean, means is an  
19 accepted way of estimating costs.

20 MR. RAY: Well, I guess to put it simply,  
21 do you think we were wrong in our calculations for any  
22 reason?

23 MR. MCGHETTIGAN: I have no reason to  
24 think that it was wrong.

25 MR. RAY: Okay. That was all I was trying

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1 to establish. And when you were determining that  
2 there was a hardship or there was not a hardship  
3 because the applicant paid too much for the property,  
4 you were looking at the tax assessed value. Is that  
5 correct?

6 MR. MCGHETTIGAN: If the market value of  
7 the property is -- should have been taken into  
8 account, the cost to bring it into a habitable  
9 structure, so, yes. I mean, it doesn't matter what  
10 the assessed value was. You have paid too much.

11 MR. RAY: Well, except that your  
12 conclusion that we paid too much is based on the  
13 assessed value?

14 MR. MCGHETTIGAN: I think that's an  
15 indication that you paid too much, yes.

16 MR. RAY: Did you look at any comparable  
17 sales during that period for that particular area?

18 MR. MCGHETTIGAN: No.

19 MR. RAY: All right. I have no further  
20 questions of that witness.

21 CHAIRPERSON GRIFFIS: Okay.

22 COMMISSIONER HILDEBRAND: Can I ask a  
23 question?

24 CHAIRPERSON GRIFFIS: Sure.

25 COMMISSIONER HILDEBRAND: This is for the

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1 Office of Planning. Did you make your conclusion that  
2 they paid too much based on the assessed value of the  
3 house or on the amount that the applicant estimated  
4 that the construction renovation would be versus what  
5 they paid for the house? I notice you have the  
6 estimate attached to the back of your report.

7 MR. MCGHETTIGAN: Yes, because the  
8 applicant provided this with me -- to me after his  
9 statement and I wanted the Board to have that  
10 available to them, since I had it, so I wanted to make  
11 sure you all had that.

12 CHAIRPERSON GRIFFIS: Well, for clarity,  
13 Mr. McGhettigan, what I just heard you say is the fact  
14 that your base statement of you may have paid too much  
15 for this is based on the fact of if you bought it, and  
16 it cost too much to convert into a matter-of-right  
17 situation, a matter-of-right use, conforming area and  
18 use, then it wasn't a viable project. Is that  
19 correct?

20 MR. MCGHETTIGAN: Right, right.

21 CHAIRPERSON GRIFFIS: Okay. Follow-up?  
22 Everyone understood? Very well. Thank you very much,  
23 Mr. McGhettigan.

24 MR. MCGHETTIGAN: You're welcome, Mr.  
25 Chair.

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1 CHAIRPERSON GRIFFIS: Okay. Other  
2 Government reports attendant to this? We do have,  
3 where is that sheet -- Mr. McGhettigan, are you aware  
4 of any other Government reports?

5 MR. MCGHETTIGAN: No, I'm not aware of any  
6 other Government reports.

7 CHAIRPERSON GRIFFIS: Okay. Excellent.  
8 I'm not aware. Is the applicant aware of any other  
9 submissions on this?

10 MR. RAY: No, Mr. Chair.

11 CHAIRPERSON GRIFFIS: Okay. And then we  
12 do have ANC-1A which did not submit. Did you present  
13 this to the ANC?

14 MR. RAY: Yes, we did.

15 CHAIRPERSON GRIFFIS: Okay. And they  
16 decided they didn't have time to make a recommendation  
17 and send it into the Board. Is that correct?

18 MR. RAY: That's correct.

19 CHAIRPERSON GRIFFIS: Were there  
20 anticipating trying to?

21 MR. RAY: For the record, Mr. Chair, I  
22 would note that we do have the statement from the  
23 single member District Commissioner.

24 CHAIRPERSON GRIFFIS: That's clear.

25 MR. RAY: Okay.

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1 CHAIRPERSON GRIFFIS: Good.

2 MR. RAY: They indicated that they would  
3 take it up if we wanted them to consider it on May  
4 12<sup>th</sup>, which is, you know, after today's hearing.

5 CHAIRPERSON GRIFFIS: Okay. We'll keep it  
6 under recommendation. Maybe keep the record open to  
7 accept it. All right. I don't have anything else.  
8 There is no parties, obviously, and is there anyone  
9 here attendant to this Application 17155 to give  
10 testimony either in support or in opposition? Anyone  
11 like to give testimony? Very well. Let's turn it  
12 over to you for any closing remarks you might have.  
13 Ms. Miller, closing remarks? I mean, questions?

14 VICE CHAIR MILLER: I have a question with  
15 respect to the letter that was submitted to us.

16 CHAIRPERSON GRIFFIS: Oh, I'm sorry. I  
17 should have brought that up, yes.

18 VICE CHAIR MILLER: From Janie Boyd,  
19 Commissioner A7. The second line states that the  
20 applicants have agreed to allocate one unit per person  
21 having an income of at least \$30,000 per year. And  
22 I'm wondering if you can explain that?

23 MR. RAY: Well, the concern was from the  
24 community of making the property available to persons  
25 who were in -- whose income was at \$30,000 as opposed

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1 to persons who would be able to afford only luxury  
2 amounts or higher amounts.

3 CHAIRPERSON GRIFFIS: Is that factored in  
4 the information we have gotten in the sale of --  
5 what's the sale price of that unit? Which I imagine  
6 is the basement unit.

7 MR. RAY: Well, that was when we had four  
8 units.

9 CHAIRPERSON GRIFFIS: So now that's off  
10 the table?

11 MR. RAY: Well, I mean, the idea all along  
12 had been to try to cobble together available financing  
13 with grants to assist persons who had incomes of at  
14 least \$30,000 a year.

15 CHAIRPERSON GRIFFIS: So they would be  
16 paying the market value, but just not all themselves?

17 MR. RAY: That's correct.

18 CHAIRPERSON GRIFFIS: Indeed. Okay.  
19 Well, this isn't the Reed Cook Overlay, so let's move  
20 on. Any other questions? Clarifications? Very well.  
21 All yours.

22 MR. RAY: Thank you. Mr. Chair and  
23 Members of the Board, we submit that the applicant in  
24 this case has met its burden. We have overwhelming  
25 testimony from both the owners who investigated and

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1 inspected the property, both prior to acquisition and  
2 subsequent to acquisition. We have the testimony of  
3 two residents, one of whom has lived across the street  
4 from the property for 17 years. The other who has  
5 been there since 1988.

6 The overwhelming evidence as established  
7 by their testimony and as documented in the letter  
8 from the single member District Commissioner is that  
9 this property is an exception in this neighborhood.  
10 It is the only one that has been vacant and abandoned  
11 for at least 15 years. It is the only one that has  
12 suffered extraordinary deterioration. Both Ms.  
13 Wheeler and Mr. Hankins have testified first hand of  
14 the extent and the devastating effect of the  
15 deterioration of this property.

16 I would just direct the Board's attention  
17 to page 6 of my supplemental statement where we move  
18 beyond a consideration of the condition of the  
19 property as established as an exception or creating an  
20 exceptional situation. The property clear is an  
21 exception. But the exceptional situation that is  
22 created is the deterioration has caused damage to  
23 neighboring properties. It has attracted rats. It  
24 has attracted drug users, drug sellers, prostitutes.  
25 It has enabled perpetrators of assault and petty theft

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1 a place to hide.

2 So we think that these factors combined  
3 make this exceptional property creating an exceptional  
4 situation in this community. It is the only one in  
5 this community that has all of these characteristics.

6 And we submit that in a neighborhood of working class  
7 people who generally maintain their property the five  
8 factors that we have set forth on page 6 constitute an  
9 exceptional situation.

10 The hardship that will result from strict  
11 enforcement of the regulations goes directly to what  
12 is the effect of the use of the property as a matter-  
13 of-right? And we have had the testimony of the Office  
14 of Planning that said well, the applicant paid too  
15 much for the property, so whatever they have to do to  
16 it, is basically tough luck. They just paid too much.

17 But we also have the Office of Planning admitted that  
18 its estimate of what was too much to pay was based on  
19 assessed value and was not based on comparable sales.

20 We submit that the expert, Mr. Fields,  
21 that we have who established the fair market value of  
22 the property has documented in his submission to the  
23 Board should be the starting point in determining  
24 whether this applicant paid too much. Now, whether  
25 its going to cost more than they thought it was going

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1 to cost to renovate and to bring back into liveable  
2 condition, the simple fact of the matter is no one was  
3 aware of the extent of the devastation of the  
4 deterioration and the vandalism despite inspection.

5 The extent of it was determined only after  
6 they were able to go in as a matter-of-right to start  
7 tearing walls down, started doing demolition work and  
8 checking the foundation. We have the submissions  
9 Exhibits 1, 2 and 3 to the applicant's supplemental  
10 statement and also attached to OP's report that give  
11 the cost analysis for the property's use as a single-  
12 family residence as a duplex and as a four unit  
13 condominium. And we are not trying to submit that the  
14 applicant is guaranteed a profit in this situation.

15 But we do submit that suffering a  
16 financial loss is a practical hardship that this Board  
17 has recognized and we think that that is present in  
18 this case. We have heard Mr. Hankins who has  
19 renovated his property next door stating that the  
20 estimates that we have for renovation "we will be  
21 lucky." So the estimates there, we think, are pretty  
22 much in line.

23 Lastly, Mr. Chairman and Members of the  
24 Board, we think that again as substantiated by the  
25 single member District Commissioner and by the

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1 testimonies of people who actually live in the  
2 neighborhood, these are people who live in the  
3 neighborhood, they are saying the impact on traffic,  
4 well, there is going to be an impact, but it's going--  
5 it can be tolerable. Ms. Wheeler said that she fully  
6 supports the application.

7           Clearly, as documented in the single  
8 member District Commissioner's letter, the traffic of  
9 people that will be -- that will ensue if the  
10 application is granted is far better than the traffic  
11 that is there now. In view of, I think, the  
12 overwhelming -- the total and unconditional support  
13 from the community and the evidence that we have  
14 established here, we think that we have proven or met  
15 our burden to grant, to justify this Board granting  
16 the relief that we have sought. And we respectfully  
17 request that the Board approve this application.  
18 Thank you.

19           CHAIRPERSON GRIFFIS: Thank you very much.

20           A quick clarification. How do you define community,  
21 neighborhood and the block?

22           MR. RAY: Okay. The block is the 3500  
23 block of 10<sup>th</sup> Street, N.W. The community, when I say  
24 community, we are referring to the area immediately  
25 surrounding the block which can go from the radius as

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1 required by -- it sees the radius required for notice  
2 purposes and what was the last one?

3 CHAIRPERSON GRIFFIS: The neighborhood.

4 MR. RAY: Neighborhood. Well,  
5 neighborhood and block I'm using synonymously.

6 CHAIRPERSON GRIFFIS: Okay. So you're  
7 saying there is no other building like this that has  
8 ever been in this condition in the entire community?  
9 Is that correct?

10 MR. RAY: Well, the community -- if I said  
11 community, I misspoke. What I mean is in this block,  
12 this particular property.

13 CHAIRPERSON GRIFFIS: Okay. You said  
14 community, neighborhood.

15 MR. RAY: Okay. Neighborhood, I'm using  
16 neighborhood synonymously with block.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. RAY: And I apologize if I created the  
19 confusion.

20 CHAIRPERSON GRIFFIS: And just for  
21 clarification, the numbers that we are looking at are  
22 cost estimates. Is that correct?

23 MR. RAY: That's correct.

24 CHAIRPERSON GRIFFIS: Are there  
25 construction documents that have actually been priced?

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1 MR. RAY: I would have to defer to Mr.  
2 Hwang on that.

3 MR. HWANG: We have.

4 CHAIRPERSON GRIFFIS: Do you have bids to  
5 do this job?

6 MR. HWANG: Excuse me?

7 CHAIRPERSON GRIFFIS: Do you have bids to  
8 do this property?

9 MR. HWANG: We have bids. Right now, what  
10 we are doing is excavation.

11 CHAIRPERSON GRIFFIS: The whole thing?

12 MR. HWANG: The whole thing, no, we do  
13 not.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. HWANG: We do it in phases.

16 CHAIRPERSON GRIFFIS: Okay. Okay. Good.  
17 Anything else? Anything else needed? Very well.  
18 Thank you all very much. You're appreciated. I don't  
19 think we're going to be prepared to deliberate on this  
20 this afternoon, so what I want to do is set this for a  
21 Special Public Meeting. If I could have you turn  
22 those off, please? I'm going to set this for the 18<sup>th</sup>  
23 of May, that will give us time to have the ANC report  
24 submitted if it does come in. Is the Board aware of  
25 anything else to keep the record open for? Mr. Moy,

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1 did you take note of anything that we may have  
2 mentioned?

3 MR. MOY: A few things just for staff  
4 clarification. With the amendment from four units to  
5 three, would that involve revised drawings for  
6 submission as a filing? And two, there was some  
7 discussion earlier on about the size of the parking  
8 spaces, relief from parking space dimensions, that  
9 would be under, I believe, 2115.

10 CHAIRPERSON GRIFFIS: Okay. Excellent  
11 point. I think that is appropriate. How long is it  
12 going to take you to get revised drawing submitted to  
13 the Office of Zoning for three units?

14 MR. HWANG: We can get that to you at the  
15 same time we talk to ANC and we'll submit.

16 CHAIRPERSON GRIFFIS: You're joining the  
17 ANC on the 12<sup>th</sup>?

18 MR. HWANG: We can get it to you. What's  
19 today's date? We can get it to you by next Monday at  
20 the latest.

21 CHAIRPERSON GRIFFIS: What's the date next  
22 Monday?

23 MR. MOY: The 10<sup>th</sup>. May 10<sup>th</sup>, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Okay. And if you  
25 would just on the site plan that you will be

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1 submitting in with the revised plans, then you are  
2 going to indicate where the required parking is being  
3 provided on-site. Is that understood?

4 MR. HWANG: Yes, sir.

5 CHAIRPERSON GRIFFIS: Okay. Anything  
6 else?

7 MR. MOY: That's all I have, Mr. Chairman.

8 CHAIRPERSON GRIFFIS: Ms. Miller?

9 VICE CHAIR MILLER: Well, I just want a  
10 clarification. Are they going to be seeking relief  
11 from parking dimensions or were they just seeking to  
12 have relief from the one parking spot that is required  
13 and we decided they met that? So are they coming in  
14 with another variance or are they not coming in with  
15 another variance? Is my question.

16 CHAIRPERSON GRIFFIS: Who do you want to  
17 answer it?

18 VICE CHAIR MILLER: I guess, I don't know,  
19 the applicant.

20 MR. RAY: No.

21 VICE CHAIR MILLER: Okay. Thank you.

22 CHAIRPERSON GRIFFIS: Good answer. And  
23 what they are going to do is provide for our  
24 understanding is exactly where they comply with the  
25 parking regulations so we can say you don't need a

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1 variance or if they can't provide it based on their  
2 understanding of the regulations, then they are going  
3 to show us how they would and that will throw a whole  
4 monkey wrench in the whole piece. Okay. Are we  
5 understood? Clear? Everyone clear?

6 MR. RAY: Yes.

7 CHAIRPERSON GRIFFIS: Mr. Moy, anything  
8 else?

9 MR. MOY: No, that's all I have, Mr.  
10 Chairman. Special Public on the 18<sup>th</sup> seem to be  
11 reasonable?

12 MR. MOY: That's right and I'm assuming  
13 that submissions would be filed with the Office, was  
14 it May 10<sup>th</sup>?

15 CHAIRPERSON GRIFFIS: That's correct.

16 MR. MOY: Okay.

17 CHAIRPERSON GRIFFIS: Right. No later  
18 than 3:00.

19 MR. HWANG: Yes, sir.

20 CHAIRPERSON GRIFFIS: Good?

21 MR. RAY: Good.

22 CHAIRPERSON GRIFFIS: Excellent. Thank  
23 you all very much. It's 9:00 on the 18<sup>th</sup>.

24 MR. RAY: Thank you.

25 MR. HWANG: Thank you very much.

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1 CHAIRPERSON GRIFFIS: Thank you all. All  
2 right. We're going to take a quick five minutes and  
3 we're going to get right into the next case. If the  
4 next applicant wants to get setup and ready to roll.

5 (Whereupon, at 3:54 p.m. a recess until  
6 4:09 p.m.)

7 CHAIRPERSON GRIFFIS: Okay. Let's resume.  
8 Forgive the delay getting back. I thought that first  
9 application would go quite quickly, but here we are.  
10 Ready.

11 MR. MOY: All right.

12 CHAIRPERSON GRIFFIS: Are you ready?

13 MR. MOY: Yes, sir. The next case is  
14 Application No. 17154 of Bruno Freschi, pursuant to 11  
15 DCMR 3103.2, for a variance from the lot width and lot  
16 area requirements under section 401, a variance from  
17 the lot occupancy requirements under section 403, a  
18 variance from the rear yard requirements under section  
19 404, and a variance from the height requirement for a  
20 building on an alley lot under subsection 2507.4, to  
21 allow the construction of a single-family row dwelling  
22 in the FBOD/R-3 District at premises the rear of 935  
23 26<sup>th</sup> Street, N.W., Square 16, Lot 95.

24 CHAIRPERSON GRIFFIS: Good. Anything  
25 else? Everyone has been sworn in? Excellent. Let's

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1 move ahead.

2 MR. FEOLA: Thank you, Mr. Chair. For the  
3 record, my name is Phil Feola with the Law Firm of  
4 Shaw Pittman. With me is Ashleigh Horn of our firm  
5 and we're here on behalf of the property owner, Bruno  
6 Freschi, and the contract purchaser Sid Rasekh of the  
7 subject property. I have to say after listening to  
8 the last case, I really don't know what Mr. Ray has  
9 done, but I've never had unequivocal, unanimous and  
10 unconditional and total support.

11 CHAIRPERSON GRIFFIS: Total.

12 MR. FEOLA: As a matter of fact, I've  
13 never even got that around my dinner table.

14 CHAIRPERSON GRIFFIS: That's right.

15 MR. FEOLA: So I'm not sure how that  
16 works.

17 CHAIRPERSON GRIFFIS: That's right. We  
18 made a note of it for the scrapbook.

19 MR. FEOLA: Anyway, the first thing I  
20 would like to do is withdraw the relief requested for  
21 the area variance for the height.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. FEOLA: And we have submitted in our  
24 prehearing submission revised drawing that accommodate  
25 the height limit that is permitted in the zone, and so

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1 we do not need that area variance. The second thing I  
2 would like to do, if it pleases the Board, is have two  
3 experts qualified. We have only two experts. I would  
4 like to have them both qualified as experts if I  
5 might. The first is Mr. Bruno Freschi, who is the  
6 owner and I would like to have him qualified as an  
7 expert architect, so it's another twofer that you had  
8 earlier today. We will turn in his resume, if we  
9 could.

10 CHAIRPERSON GRIFFIS: Okay. Why don't you  
11 do that and then I need to establish, because we have  
12 two requests for party status here.

13 MR. FEOLA: Oh, I'm sorry.

14 CHAIRPERSON GRIFFIS: Ms. Farrell and Dr.  
15 Nam Pham, I believe. I'm sorry, he is out of town for  
16 business? Okay. And is Ms. Farrell here? Oh, okay.

17 UNIDENTIFIED SPEAKER: We also have a  
18 request from the Foggy Bottom Historic District  
19 Conservancy for party status.

20 CHAIRPERSON GRIFFIS: Okay. Why don't I  
21 have both of you come sit. First of all, I don't have  
22 anything from the Foggy Bottom Historic Society. Is  
23 that what you said?

24 MS. FARRELL: Conservancy.

25 CHAIRPERSON GRIFFIS: Conservancy. Mr.

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1 Moy, do you have any submissions?

2 MR. MOY: Not to my knowledge, sir.  
3 There's none in our record file.

4 MR. BOND: I have a copy that Mr. Bower,  
5 our president, told me that was faxed in, if that  
6 helps any? I mean, I have my copy of it.

7 CHAIRPERSON GRIFFIS: What is that cover  
8 sheet attached to, a letter dated 30 April?

9 MR. BOND: It looks like April 20<sup>th</sup> fax of  
10 4:17 p.m.

11 CHAIRPERSON GRIFFIS: It's a party  
12 application request?

13 MR. BOND: It's a 140 Party Status  
14 Application.

15 CHAIRPERSON GRIFFIS: All right. Why  
16 don't you bring it up to staff and we'll get copies of  
17 that right away? And you said, what date was that?

18 MR. BOND: He just took it. I believe it  
19 was April 20<sup>th</sup>.

20 CHAIRPERSON GRIFFIS: April 20<sup>th</sup>.

21 MR. BOND: At 4:15 p.m.

22 MR. MOY: Yes, he went to make copies. We  
23 have no indication of that being filed in the record,  
24 sir.

25 CHAIRPERSON GRIFFIS: Yes, I'm looking at

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1 the exhibit log and I'm not seeing anything around  
2 those times. So we'll get a copy of that and pass it  
3 around. Do you know it well enough without it in  
4 front of you just to speak quickly to the requirements  
5 of being established as a party?

6 MR. BOND: Yes, I do, Your Honor.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. BOND: Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Why don't you go  
10 ahead then?

11 MR. BOND: Well, first of all, my name is  
12 John Bond and I'm here as legal representative for the  
13 Foggy Bottom Historic District Conservancy. Mr. Bower  
14 sends his regrets, but is unable to attend today for  
15 business reasons. The Conservancy was formed for the  
16 specific purpose of channeling or coordinating  
17 community activism in promotion of protecting the  
18 purposes of the Historic District Overlay, preserving  
19 the historic character of the Foggy Bottom area.

20 It comprises mostly of people who live in  
21 the area, but it is a fully incorporated 501(c)(3)  
22 corporation with federal tax status and is open to  
23 membership from people who live anywhere. The direct  
24 connection, the real estate connection, if you will,  
25 is not as an adjacent owner per se, though many of its

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1 members are adjacent owners, but because of its  
2 mission to protect the Historic District within which  
3 this property lies. And as such, it is -- there is no  
4 distance between it and its property and interest, but  
5 it is a part of it.

6 The Conservancy seeks to speak  
7 collectively on behalf of the historic purpose of the  
8 Overlay District as well as the individual interest of  
9 its members. There is about a dozen or so who live in  
10 the immediate community or in the immediate  
11 neighborhood if you will and so we're here to speak to  
12 the interest of both the Historic District Overlay  
13 purpose and of the interest of our individual members.

14 CHAIRPERSON GRIFFIS: And the Conservancy  
15 or those that it represents would be distinctly or  
16 uniquely affected in character or kind, and your  
17 statement is the historic character of the Historic  
18 Overlay District and the integrity of the District is  
19 directly threatened by the proposed building having an  
20 extreme variation from the surrounding buildings and  
21 the Zoning Ordinance for the lot and building size,  
22 building height and yard area. So protection of  
23 historic properties. Okay. Additional questions from  
24 the Board? Clarifications?

25 BOARD MEMBER ETHERLY: Just very quickly,

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1 Mr. Chairman. You talked a little bit about the  
2 membership of the organization. Membership dues or  
3 fees associated with membership or any kind of other  
4 prerequisite requirements for membership?

5 MS. FARRELL: It's a \$20 a year fee.

6 BOARD MEMBER ETHERLY: Okay. A \$20 per  
7 year fee. And once again, all of the members are  
8 residents of the Foggy Bottom Overlay area, so to  
9 speak.

10 MR. BOND: Well, there's no specific  
11 requirement, but as a practical matter.

12 BOARD MEMBER ETHERLY: Okay. Okay. Okay.  
13 And just with respect to the -- okay. I'm clear.  
14 Thank you. Thank you, Mr. Chair.

15 COMMISSIONER HILDEBRAND: May I ask one  
16 question?

17 CHAIRPERSON GRIFFIS: Yes.

18 COMMISSIONER HILDEBRAND: Are you or  
19 either Mr. Bower or Mr. --

20 MR. BOND: No, as I introduced myself, my  
21 name is John Bond.

22 COMMISSIONER HILDEBRAND: Bond.

23 MR. BOND: And I work with Mr. Bower on  
24 this issue since it has come out of review from the  
25 Historic Preservation Board.

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1 COMMISSIONER HILDEBRAND: Do you have any  
2 kind of letter of authorization to speak on their  
3 behalf?

4 MR. BOND: I don't have my signed  
5 representation agreement with me, if that is what you  
6 are asking.

7 COMMISSIONER HILDEBRAND: Thank you.

8 MR. BOND: Ms. Farrell here is a member of  
9 the Conservancy and, in fact, is the person who signed  
10 my representation agreement.

11 COMMISSIONER HILDEBRAND: But you have a  
12 formalized agreement of representation?

13 MR. BOND: Yes.

14 COMMISSIONER HILDEBRAND: With the  
15 Conservancy?

16 MR. BOND: Yes, I do.

17 COMMISSIONER HILDEBRAND: Okay.

18 CHAIRPERSON GRIFFIS: Isn't your concern  
19 more appropriate before the HPRB?

20 MR. BOND: The Historic Overlay District  
21 is part and parcel of the Zoning Ordinance, the  
22 Regulations. You know, they go hand in hand.

23 CHAIRPERSON GRIFFIS: Right.

24 MR. BOND: And we believe that the  
25 integrity of the Zoning Ordinance for the entire

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1 community is essential -- is an essential component of  
2 preservation of the historic character of the historic  
3 buildings themselves. In other words, our interest is  
4 beyond just each individual historic building, but it  
5 is for the applicability of the zoning, the integrity  
6 of the zoning for the whole neighborhood, not just --

7 CHAIRPERSON GRIFFIS: I see. But you do  
8 understand that going through with the relief that is  
9 sought here, we wouldn't be stepping into the design  
10 of the building necessarily, unless it impacted one  
11 aspect of the Zoning Regulation.

12 MR. BOND: Yes, we're not here to argue  
13 historic compatibility of design or structure if that  
14 is what you're asking.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. BOND: No, we're here strictly to  
17 address the zoning issues and how the variances would  
18 impact on the protection that the Zoning Ordinance  
19 provides the Historic District.

20 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

21 VICE CHAIR MILLER: I'm just wondering how  
22 many members do you have?

23 MR. BOND: About -- well, depending on how  
24 you count whether they signed or paid, but we're  
25 looking at 10 or 12. It's not a big neighborhood.

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1 There's only a few blocks in that area.

2 VICE CHAIR MILLER: 10 or 12 members total  
3 or 10 or 12 households?

4 MR. BOND: Well, that neighborhood is  
5 dominated by one person households.

6 VICE CHAIR MILLER: Okay.

7 MR. BOND: So it would be households or  
8 property owners, if you will. We're not talking about  
9 husband and wife being two different members.

10 CHAIRPERSON GRIFFIS: Anything else? Does  
11 the applicant have any opposition to granting of party  
12 status?

13 MR. FEOLA: I guess I would object,  
14 because I'm not sure I understand what different  
15 representation they would bring that Ms. Farrell  
16 wouldn't bring as both a member of the organization  
17 and apparently a member high enough to authorize an  
18 appearance today and also an adjacent property owner.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. FEOLA: But it's not a strong  
21 objection. It's just seems to be duplicative.

22 CHAIRPERSON GRIFFIS: Good question. Ms.  
23 Farrell, let's go to yours before we decide the other.  
24 You are obviously a member of the Foggy Bottom  
25 Historic Conservancy.

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1 MS. FARRELL: Correct.

2 CHAIRPERSON GRIFFIS: Okay. And do you  
3 have unique interests that would not be represented by  
4 the Conservancy or likewise the concerns of the  
5 Conservancy that you could not represent?

6 MS. FARRELL: I think the Conservancy  
7 retained an attorney to fully represent the zoning  
8 issues and to be able to discuss them, which I do not  
9 really have in depth knowledge of as a professional,  
10 and we thought that coming up against a formidable  
11 opposition in this or in this project with Shaw  
12 Pittman at the table and an architect like Mr. Freschi  
13 that just an adjacent property owner, I could not  
14 fully address the issues.

15 CHAIRPERSON GRIFFIS: Okay. So if I  
16 understand you correctly, the Conservancy is  
17 addressing the larger impact on the Zoning Regulations  
18 and, essentially, the Zone Plan and your party request  
19 is as an adjacent neighbor and how it would directly  
20 impact your property?

21 MS. FARRELL: Yes, and to represent the  
22 other two adjacent neighbors.

23 CHAIRPERSON GRIFFIS: And you're  
24 representing others? Who are the others?

25 MS. FARRELL: Well, the other two

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1 adjacently, Mr. Pham, who had to go out of town.

2 CHAIRPERSON GRIFFIS: I see. And do we  
3 have indication, before my other Board Members ask  
4 you, that you are actually representing those folks?

5 MS. FARRELL: I do not believe so since  
6 this happened about 8:30 this morning.

7 CHAIRPERSON GRIFFIS: Indeed. Mr. Pham  
8 and who else?

9 MS. FARRELL: Well, we have Ann-Marie  
10 Emmett, who is the other adjacent property owner, who  
11 is in the Peace Corps in Lesotho.

12 CHAIRPERSON GRIFFIS: Oh, we have a  
13 letter. Didn't she have a relative that was going to  
14 represent her that submitted the letter?

15 MS. FARRELL: It could be. We were having  
16 a very difficult time communicating to Lesotho.

17 CHAIRPERSON GRIFFIS: She appointed her  
18 brother, Frank Emmett.

19 MS. FARRELL: Oh, good, excellent.

20 CHAIRPERSON GRIFFIS: To speak and act on  
21 her behalf on this matter, and he did submit in a  
22 letter and it is Exhibit No. 22. Okay.

23 MS. FARRELL: I will just speak for myself  
24 then.

25 CHAIRPERSON GRIFFIS: Okay. Board

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1 Members, questions, comments?

2 BOARD MEMBER ETHERLY: Mr. Chair, I don't  
3 have any objection to either piece. Although, perhaps  
4 before I speak, emails from the ANC. I was about to  
5 move forward there.

6 CHAIRPERSON GRIFFIS: Does the ANC have  
7 any comment on the party request?

8 MS. MILLER: I'm Dorothy Miller, Chair of  
9 ANC-2A, thank you, and I would like to know what  
10 position in the Conservancy that Ms. Farrell holds.

11 MS. FARRELL: I'm a member of the  
12 Conservancy and, indeed, actually I did not sign Mr.  
13 Bond's letter. Tom Bower did.

14 CHAIRPERSON GRIFFIS: Okay. So you're  
15 just a member?

16 MS. FARRELL: I'm just a member.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. MILLER: And I don't know why that if  
19 they have someone representing the Conservancy, that  
20 one person can't do it. I'm inclined to agree with  
21 the Shaw Pittman objection.

22 CHAIRPERSON GRIFFIS: Okay. Understood.

23 BOARD MEMBER ETHERLY: Okay.

24 MS. FARRELL: Mr. Chairman, could I just  
25 say that under the circumstances, I will just

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1 represent myself as an adjacent property owner and not  
2 as a Conservancy representative.

3 CHAIRPERSON GRIFFIS: Well, that's what  
4 your party request is for.

5 MS. FARRELL: Correct, correct.

6 CHAIRPERSON GRIFFIS: Yes.

7 BOARD MEMBER ETHERLY: And just to be sure  
8 I'm clear, Mrs. Farrell, because I think the Chairman  
9 had asked, it's your preference to represent yourself  
10 as an individual property owner not to be consolidated  
11 in any way with the Conservancy. You happen to be a  
12 member, but you desire to represent yourself as a  
13 party, as a property owner.

14 MS. FARRELL: Yes, correct.

15 BOARD MEMBER ETHERLY: Okay. Okay. Mr.  
16 Chair, I don't have any objection to either party  
17 status application.

18 CHAIRPERSON GRIFFIS: Other comments?

19 VICE CHAIR MILLER: I just want to make  
20 sure that Ms. Farrell understands party status, what  
21 it means and what rights and responsibilities you have  
22 if you're a party. Otherwise, you can always  
23 represent your interests before the Board. Basically,  
24 you can come before the Board without getting party  
25 status and testify about the impact on your property

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1 and your views.

2 As a party, it means that you will be  
3 cross examining, that you will be filing findings of  
4 facts, conclusions of law and things like that and  
5 sometimes, you can consolidate, for instance, with  
6 another party, so that we don't have so many different  
7 parties participating.

8 You know, as an adjacent property owner  
9 you certainly have an interest that we'll consider,  
10 you know, that may entitle you to party status, but I  
11 just want to make sure that you understood that you  
12 don't need party status to participate.

13 CHAIRPERSON GRIFFIS: This is a good  
14 point, and I'm sorry that I didn't -- usually, I do  
15 address this. What she is saying is as a party, you  
16 are an equal participant as the applicant, meaning  
17 that comes with all the responsibilities and  
18 privileges that the applicant has. Cross examination  
19 is one.

20 We will in certain cases, and perhaps in  
21 this one, ask issues to be briefed of which we would  
22 ask you to submit on that. So it's a high level of  
23 participation in the case, as opposed to being just a  
24 person in which you would come and bring testimony,  
25 and that would be the beginning and the end of it. Is

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1 that understood?

2 MS. FARRELL: Yes.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. FARRELL: It's no problem at all.

5 CHAIRPERSON GRIFFIS: To be a party?

6 MS. FARRELL: Correct.

7 CHAIRPERSON GRIFFIS: Okay. In that case  
8 then, we have two requests for party status. I think  
9 it's important to look at both of them together and  
10 that being I see the Foggy Bottom Historic District  
11 Conservancy taking on, frankly, a unique and distinct  
12 and unique element to this, and that's the overall  
13 integrity of the Zone Plan Map and how it relates to  
14 the historic character of the Foggy Bottom. I do not  
15 have any objection to granting party status to that  
16 group.

17 In terms of the party request for Ms.  
18 Farrell, again, I see the distinct and unique  
19 character in kind as an adjacent property owner and  
20 can speak specifically to the elements and the impact  
21 on the adjacent property. I would hear from others if  
22 need be. Not noting any other comment, then I will  
23 hear any objections to granting party status. If  
24 there's no objection, we'll take it as acceptance by  
25 the Board and grant party status to those two.

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1           Let's move on then. As has now been  
2 established, Mr. Feola, you are with Shaw Pittman. Is  
3 that correct? I have a note in the application that  
4 indicates that Ms. Gladys Hicks is representing the  
5 applicant and you have come on recently or have been  
6 involved in this for some time?

7           MR. FEOLA: Recently, I believe.

8           MS. GLAZER: Mr. Chair?

9           CHAIRPERSON GRIFFIS: Yes.

10          MS. GLAZER: Pardon me. Mr. Moy just  
11 pointed out there is one other request for party  
12 status that I don't believe was addressed, Dr. Nam  
13 Pham.

14          CHAIRPERSON GRIFFIS: Right. Sorry, I  
15 just assume our silence is equated to action.  
16 Frankly, I don't support the request for party status  
17 for Mr. Pham. I believe that there's two aspects of  
18 that. First of all, Ms. Farrell said that she could  
19 represent, whether we combine and whether to decide or  
20 coordinate with her I think is important. The issue  
21 is, in fact, looking at both of the applications, it  
22 would be difficult to establish both as individual  
23 parties as they share common elements and interests in  
24 this case.

25          Mr. Pham also, although it's not a

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1 requirement, it is obviously a pertinent part of party  
2 status, is the full participation in the hearing. I  
3 think it is a minimal threshold that we ask that if  
4 you're going to participate in the hearing, that you  
5 be present and to that and those elements, I would not  
6 support the granting of the party status. Others, any  
7 other comments? I will be glad to hear any support of  
8 the request for party status. If there is not any,  
9 then I can take it as a consensus to deny the party  
10 status in that case and move back to where we were in  
11 which case, yes?

12 MR. FEOLA: And I'm still at Shaw Pittman.

13 CHAIRPERSON GRIFFIS: Okay. Thank  
14 goodness things don't change so quickly around here.

15 MR. FEOLA: I think where I -- I'm sorry.

16 CHAIRPERSON GRIFFIS: Go ahead.

17 MR. FEOLA: I think where I was, Mr.  
18 Chairman, I was going to offer two, our only two  
19 witnesses, to proffer them as experts in their  
20 respective field and the first one is Bruno Freschi,  
21 who is also the owner of the subject property, and we  
22 have submitted his resume for your consideration.

23 CHAIRPERSON GRIFFIS: And an expert in?

24 MR. FEOLA: Architecture.

25 CHAIRPERSON GRIFFIS: Oh, indeed. Well,

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1 the first thing we should start with is the party in  
2 opposition has already bestowed great fear in us for  
3 the eminence of Mr. Freschi as an architect by her own  
4 words. Questions, clarifications?

5 BOARD MEMBER ETHERLY: No objection, Mr.  
6 Chair.

7 CHAIRPERSON GRIFFIS: Wow, I love that. I  
8 have this. Obviously, a very impressive resume and  
9 awards. A quick question, and that is how many  
10 similar residential projects have been done?

11 MR. FRESCHI: This is really the second in  
12 Washington. The first was my own house, 935 26<sup>th</sup>  
13 Street, and this is the second one designed, I might  
14 add, just to allay the fears with Sid Rasekh, who is  
15 the purchaser, hopefully, purchaser of the house. Sid  
16 is also an architect. We have known each other.

17 CHAIRPERSON GRIFFIS: And you guys get  
18 along?

19 MR. FRESCHI: We have known each other for  
20 30 years.

21 CHAIRPERSON GRIFFIS: Good, good. Okay.  
22 Any other questions, clarifications, recommendations  
23 to the Chair? If not, then I don't see any  
24 difficulty. Oh, does the ANC have any objection?

25 MS. MILLER: None, sir.

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1 CHAIRPERSON GRIFFIS: Does the party, Ms.  
2 Farrell, do you have any objection?

3 MR. BOND: No.

4 CHAIRPERSON GRIFFIS: Conservancy is  
5 noting no objection. I have no difficulty in  
6 establishing an expert witness in architecture. And  
7 the next?

8 MR. FEOLA: Our second witness is Gladys  
9 Hicks who is a zoning consultant and we would like to  
10 proffer her as an expert in District of Columbia  
11 Zoning Regulations. Her resume is also before you and  
12 she has testified as an expert before this Board  
13 previously.

14 CHAIRPERSON GRIFFIS: ANC, comments?

15 MS. MILLER: Mrs. Hicks is very  
16 acceptable. I am quite familiar with her expertise  
17 and I have watched it over the years and I wish she  
18 was back there. Thank you. That's with DCRA.

19 CHAIRPERSON GRIFFIS: Back there at DCRA.  
20 I see.

21 MR. FEOLA: A whole bunch of us wish that.

22 CHAIRPERSON GRIFFIS: Yes, yes, yes,  
23 indeed. Conservancy?

24 MR. BOND: No.

25 CHAIRPERSON GRIFFIS: Have you seen the

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1 submissions?

2 MR. BOND: The resume?

3 CHAIRPERSON GRIFFIS: Yes.

4 MR. BOND: Yes, I have.

5 CHAIRPERSON GRIFFIS: Okay, good. Ms.  
6 Farrell, any objection? We have an endorsement from  
7 the ANC and no objections from the parties. Comments  
8 from the Board? Okay. I think we can establish Ms.  
9 Hicks as we have done in the past.

10 MR. FEOLA: Thank you. As Mr. Moy has  
11 said, we are seeking three area variances here today  
12 before you on a record lot that was platted in the mid  
13 1960s at a time when the property was zoned R-5-B. At  
14 the time when this lot was platted, it was in complete  
15 conformance with the Zoning Regulations then in  
16 effect.

17 Subsequent to that platting in the early  
18 '90s, 1992, the Zoning Commission downzoned the  
19 properties in this square as part of the Foggy Bottom  
20 Overlay District and redesignated the site Foggy  
21 Bottom Overlay District/R-3. So consequently, the lot  
22 that now exists on this property record lot is a  
23 nonconforming lot with regard to size and width of  
24 lot.

25 CHAIRPERSON GRIFFIS: Can I interrupt you

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1 just briefly?

2 MR. FEOLA: Yes, sir.

3 CHAIRPERSON GRIFFIS: Just to make sure,  
4 because it's an excellent clarification point, this  
5 was when it was platted. When it was subdivided, it  
6 was a conforming lot and the existing zoning, if I  
7 recall correctly, was R-5 something.

8 MR. FEOLA: R-5-B, sir.

9 CHAIRPERSON GRIFFIS: R-5-B. And when was  
10 it done, do you know?

11 MR. FEOLA: The plat, the platting?

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. FEOLA: I can ask Ms. Hicks for the  
14 specific date.

15 MS. HICKS: A lot of the Queen Anne's and  
16 Hughes Mews properties were platting in 1960 and some  
17 was in 1961. I have documents from the Zoning  
18 Administrator's Office indicating Queen Anne's Lane  
19 properties were --

20 CHAIRPERSON GRIFFIS: But do we know  
21 specifically when this one was done?

22 MS. HICKS: No.

23 CHAIRPERSON GRIFFIS: Okay. And your  
24 estimation is it was sometime in the early '60s, '60,  
25 '61?

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1 MS. HICKS: Yes.

2 CHAIRPERSON GRIFFIS: Okay. Could it have  
3 been in 1966?

4 MS. HICKS: No, no, because research on  
5 the other lots indicated 1960 and 1961.

6 CHAIRPERSON GRIFFIS: I see. Okay. I'm  
7 sorry. I'll try not to interrupt again. Go ahead.

8 MR. FEOLA: So the first variance that we  
9 seek is a variance from section 401.3, which is a  
10 combination of lot width and area lot, lot area. As  
11 platted, this lot can't meet the zoning requirements  
12 for the R-3, which is a 2,000 square foot minimum size  
13 and a 20 foot lot width.

14 The second variance is from 404.1, which  
15 is a 2 foot variance from the rear yard requirement in  
16 the R-3 District. There R-3 District requires a 20  
17 foot rear yard. The applicant is proposing to provide  
18 an 18 foot rear yard.

19 And finally, the third variance is from  
20 403.2, which is the lot occupancy requirement, which  
21 for an R-3 lot is 60 percent. We're about 30 square  
22 feet over that for this property.

23 We believe the property is unique for the  
24 reasons that we just talked about, and that is that  
25 its size, it exists, it is a record lot. It's a

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1 buildable lot. It's a lot that conformed with the  
2 zoning at the time it was created, and it is the only  
3 lot in this square that has been undeveloped in the  
4 past 40 years in this situation.

5 As you'll see from the discussion, the  
6 owner faces a practical difficulty, because he can't  
7 build anything on this lot, because the lot is  
8 undersize. And finally, we don't believe that a  
9 single-family townhouse in a townhouse zone would  
10 create a detrimental effect on the Zone Plan or the  
11 integrity of the Zoning Map.

12 So with that, I would ask Mr. Freschi to  
13 walk through the plans to let you see the project and  
14 explain in further detail.

15 CHAIRPERSON GRIFFIS: Good. Let me,  
16 before you do that, ask one legal interpretation of  
17 the Zoning Regulations, is a one-family dwelling a  
18 matter-of-right use on an alley lot?

19 MR. FEOLA: Yes.

20 CHAIRPERSON GRIFFIS: And that it would  
21 be --

22 MR. FEOLA: If the alley lot is 30 feet,  
23 if the alley is 30 feet wide.

24 CHAIRPERSON GRIFFIS: So that would be  
25 going to 2507.1. Is that correct?

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1 MS. HICKS: Yes.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. FEOLA: And as Mr. Freschi turns on  
4 the microphone, the lot that it fronts, that this  
5 building, this property fronts on is 30 feet wide,  
6 Hughes Mews. Thank you.

7 Mr. Freschi, again, just state your name  
8 for the record, please.

9 MR. FRESCHI: The name is Bruno Freschi.

10 MR. FEOLA: And you want to describe the  
11 property and what's on it and what the proposal is,  
12 please?

13 MR. FRESCHI: Yes. The subject property  
14 is Lot 95, Square 16.

15 MR. FEOLA: Just use that one. You can  
16 point that towards you.

17 MR. FRESCHI: Is it working?

18 MR. FEOLA: It's on.

19 MR. FRESCHI: The subject property is Lot  
20 95, Square 16, adjacent to Hughes Mews Alley and is  
21 bounded on the north by a five story apartment  
22 building, to the south by the rear yards of a series  
23 of row dwellings, and the subject property currently  
24 is an improved, paved parking area best seen, and I  
25 think you have this document, in this site plan. This

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1 is the subject property, Hughes Mews, Queen Anne, 26<sup>th</sup>,  
2 my home and these are the townhouses on Queen Anne.  
3 This property is slightly larger than these and, in  
4 fact, these are larger footprints, just marginally  
5 larger footprints for houses.

6 MR. FEOLA: Describe the land uses in the  
7 square for the Board, please.

8 MR. FRESCHI: In this immediate vicinity,  
9 the land uses are basically, of course, townhouses,  
10 which are single-family or others in here on Queen  
11 Anne and along Hughes Mews, apartment buildings,  
12 condominiums further north, condominiums across the  
13 street, eight, nine, 10 stories high and, in fact,  
14 directly across the lane from the subject property is  
15 an eight to nine story condominium and adjacent to  
16 that is a hotel. So the immediate vicinity is  
17 essentially residential in that sense, but with a mix  
18 of densities and stretching from major condominiums,  
19 which front onto K Street and 26<sup>th</sup>, and then townhouses  
20 immediately south.

21 MR. FEOLA: Would you care to, please,  
22 describe the project that is proposed, that you are  
23 proposing before the Board, please?

24 MR. FRESCHI: The project in simple terms,  
25 to keep this as brief as possible, is really a three

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1 story, 30 foot tall single-family townhome with a roof  
2 deck. The building height is measured from the alley,  
3 which is 30 feet wide. It has two bedrooms and a den,  
4 three bathrooms, a garage and is a total of 1,700  
5 square feet, probably somewhere between 1,700 and  
6 1,730.

7 It occupies, approximately, 63 percent of  
8 the lot, has an 18 foot rear yard. The design, quite  
9 simply, is seen to be contextual in the sense that --  
10 I don't know if they have the small package.

11 MR. FEOLA: Well, no. We're going to show  
12 them alternatives. No, they don't, they don't.

13 MR. FRESCHI: It's contextual in the sense  
14 that as you see in the site plan here, this identical  
15 situation exists right here as you go further along on  
16 Hughes Mews. That is, indeed, a photograph. This is  
17 the subject property. These are the fronting houses  
18 on Queen Anne and there is a townhouse beyond those,  
19 which is just off of our site plan. This would be a  
20 symmetrical situation to that within all the same  
21 massing and height constraints of that building.

22 Should we show the actual subject? Not  
23 yet?

24 MR. FEOLA: For the Board, will you give  
25 the specific dimensions of the lot and the lot width,

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1 so we can have that on the record, please?

2 MR. FRESCHI: The lot size is 18.17 feet  
3 wide, 51 feet deep from Hughes Mews' back. It is  
4 fronting my back yard from my property.

5 MR. FEOLA: Have you presented this  
6 project to the Historic Preservation Review Board?

7 MR. FRESCHI: Yes, I have.

8 MR. FEOLA: And could you tell the Board  
9 what the results were, sir?

10 MR. FRESCHI: It was approved. Initially,  
11 there were questions about the height. We lowered it  
12 that 1.6 foot hat was a difference in height, because  
13 we actually could do a different structure for the  
14 floors and, more importantly, there is a roof access  
15 way. There is a roof access way. You can see it here  
16 and here.

17 We had initially housed the equipment on  
18 the roof. This is a very contentious thing. I was  
19 unaware of that. I noticed as an architect that roofs  
20 are blighted by equipment, a lot of equipment, but  
21 that's not for me to criticize others. We were  
22 housing it. Mr. Rasekh really wanted to house the  
23 equipment. We removed the housing of the equipment  
24 and we have reduced the roof structure to purely roof  
25 access. It's a circular stair up to that roof.

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1           We further moved it to the north side of  
2 the property to reduce the impact on the neighboring  
3 properties. It was initially on the south side. We  
4 moved it to the north side, which fronts on a parking  
5 lot behind that apartment building. This was to  
6 ameliorate any causes of that. We have to remember  
7 that this property is to the north of the surrounding  
8 townhouses, casting shadows northward from a southern  
9 exposure.

10           MR. FEOLA: Did the Review Board adopt the  
11 staff report?

12           MR. FRESCHI: They did.

13           MR. FEOLA: I have turned in the staff  
14 report, which was adopted by the Review Board, for  
15 your consideration.

16           Would you briefly describe the  
17 difficulties of designing a house on this lot for the  
18 Board, please?

19           CHAIRPERSON GRIFFIS: I'm sorry. Did you  
20 just turn that in?

21           MR. FEOLA: Yes, sir.

22           CHAIRPERSON GRIFFIS: Okay. All right.  
23 So it's coming to us. Good.

24           MR. FRESCHI: That was approved. I don't  
25 know if it was unanimous. It may have been one

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1 descending vote in that. The real challenge in the  
2 design of this was, as you know, small lot, townhouse,  
3 as everybody thinks, there is no windows on the side  
4 walls, so it's getting the light and penetration, air  
5 and light to the interior rooms and to get a  
6 significant esthetic statement on the two elevations,  
7 the lane to the east and to the west facing the rear  
8 yard.

9 There is basically three windows per  
10 floor, a pattern that is well established in the  
11 existing buildings in the lane, and the difficulty was  
12 to really achieve a habitable, liveable home for Mr.  
13 Rasekh who will live there and, in fact, wants to have  
14 also a roof deck to enjoy as many can in the area.

15 MR. FEOLA: Could you briefly touch on the  
16 reason for the rear yard variance and why that exists,  
17 please?

18 MR. FRESCHI: The rear yard variance is  
19 best seen on these plans of the top three floors.  
20 It's this bay window. We have noted and we have  
21 photographed bay windows on the surrounding  
22 townhouses. This is in the rear yard. The party that  
23 is affected is me and my wife and we are not, of  
24 course, opposed to this. We attempted to create this  
25 bay window to the north side of the property, again,

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1 not to reduce the impact on the south side of the  
2 townhouse, and it's to achieve more habitable space in  
3 the main rooms, more light, quality of light, which  
4 bay windows are famous for worldwide and, in fact, to  
5 get a better esthetic on that elevation.

6 And I may be a little selfish here, it's  
7 the elevation that we look at, we hope to look at when  
8 we look out the rear of our property, so it was very  
9 important. The pattern really provides liveable space  
10 on the three top floors, as you can see in the three  
11 plans. I think you have reductions of these in front  
12 of you for your information.

13 The ground level does not come down to the  
14 lower level, the basement level, which has a den here.

15 The bay window does not exist at the ground level,  
16 but according to code interpretation, the footprint of  
17 the building includes that bay window and, thereby, we  
18 extended 2 feet into that 20 foot rear yard and,  
19 thereby, are asking for a variance.

20 CHAIRPERSON GRIFFIS: So the rear yard  
21 variance is because of the bay above the first floor?

22 MR. FRESCHI: The bay window, yes.

23 MR. FEOLA: Is it your judgment that the  
24 granting of these variances would create a detrimental  
25 effect on the zoning in the area or the neighborhood?

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1 MR. FRESCHI: No, I don't believe that  
2 they will. This is, as I said, primarily a contextual  
3 design reflecting the symmetrical development on  
4 Hughes Mews, one. Two, it's at a high and the massing  
5 that is reflected on all the other townhouses close in  
6 massing scale size, window fenestration to the  
7 existing housing and, in fact, I would say will  
8 compliment and doesn't create any serious negative  
9 effects on the surrounding housing, any different than  
10 any of the rest of us in townhouses there.

11 MR. FEOLA: I have no further questions.

12 CHAIRPERSON GRIFFIS: Quick Board  
13 questions? And let me just establish for the parties,  
14 what I'm going to have the applicant do is run through  
15 the entire case. We'll just take quick Board  
16 questions and then we'll go through cross examination  
17 of all the witnesses. Okay. Quick clarifications?

18 VICE CHAIR MILLER: I just have one  
19 question. When you say reflecting symmetrical design  
20 on another property, you're not saying that there is  
21 another property that is so like this one that has  
22 such a small area and the same dimensions?

23 MR. FEOLA: I think I can answer that.  
24 The properties were built property line to property  
25 line, but those are conforming lots. They are not

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1 undersized lots. Is that the question?

2 VICE CHAIR MILLER: Yes, I was just trying  
3 to understand more fully what you mean by symmetrical.

4 MR. FRESCHI: Perhaps I could refer you to  
5 this exhibit we turned in just a few minutes ago.

6 VICE CHAIR MILLER: Okay.

7 MR. FRESCHI: If you look at the first  
8 page, it says subject house in blue and then there's  
9 an ABC in red below. If you flip to the next page,  
10 you have Building A, which is the one which is in the  
11 symmetrical location precisely to what we are  
12 proposing. And the other two, B and C are  
13 freestanding townhouses in the lane.

14 The first one is closest to massing size  
15 and scale and in the symmetrical location. It's in  
16 that sense that I'm using the word contextual. The  
17 last page, just for your reference, is a photograph of  
18 a bay window on the back of that same subject A. It's  
19 a small bay window.

20 CHAIRPERSON GRIFFIS: Okay. Anything  
21 else?

22 VICE CHAIR MILLER: No, thank you.

23 CHAIRPERSON GRIFFIS: Did any of the A, B  
24 or C require any sort of zoning relief?

25 MR. FEOLA: Curiously, number C was

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1 appealed to this Board about two years ago.

2 CHAIRPERSON GRIFFIS: Indeed.

3 MR. FEOLA: It was issued as -- the  
4 permits were issued as a matter-of-right, and certain  
5 parties appealed that decision of the Zoning  
6 Administrator. This Board did not sustain the appeal.

7 It sustained the decision of the Zoning Administrator  
8 for allowing that project to go forward. One of these  
9 buildings was built before the zoning changed.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. FEOLA: The other one I can't tell.

12 CHAIRPERSON GRIFFIS: Right. Okay. Very  
13 well.

14 VICE CHAIR MILLER: Do you have an address  
15 or something on the C property?

16 MR. FEOLA: I knew you were going there.  
17 You would have it, Gladys. One second, please. I do  
18 have it here someplace. Oh, yes, the address of the C  
19 property is 909 Hughes Mews, N.W., Square 16, Lot 888.

20 The BZA Appeal Case was No. 16830. The property  
21 owner, I think, was a man named Nasser, Farhad  
22 Nasser.

23 VICE CHAIR MILLER: Thank you.

24 MR. FEOLA: You're welcome. Our final  
25 witness is Gladys Hicks. Ms. Hicks, state your name

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1 and address, please.

2 MS. HICKS: My name is Gladys Hicks and  
3 I'm a zoning consultant. My street address is 7710  
4 Merrick, M-E-R-R-I-C-K, Lane and that's in Landover,  
5 Maryland. The ZIP Code is 20785.

6 MR. FEOLA: Ms. Hicks, could a single-  
7 family house be built on this lot as a matter-of-  
8 right?

9 MS. HICKS: The use is permitted as a  
10 matter-of-right. However, because it's such a small  
11 lot, you need area variances in order to build.

12 MR. FEOLA: And what are the standards for  
13 building a single-family house on an alley lot in the  
14 R-3 District?

15 MS. HICKS: The width of lot, well, the  
16 width of the alley must be 30 feet wide and you must  
17 be able to connect into an alley to a dedicated street  
18 with the alley that is 30 feet in width. The maximum  
19 height allowed at the mid point of the front of the  
20 structure is 30 feet measured all the way up to the  
21 ceiling height of the top story.

22 MR. FEOLA: Do the alleys that abut this  
23 property, Hughes Mews and then Queen Anne's Lane that  
24 run to a public street, are they 30 feet wide?

25 MS. HICKS: Yes.

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1 MR. FEOLA: I'm sorry?

2 MS. HICKS: Yes.

3 MR. FEOLA: Have you looked at the other  
4 properties that bound Queen Anne's Lane and Hughes  
5 Mews?

6 MS. HICKS: Yes, I have. I have done some  
7 research in the D.C. Office of the Surveyor and also  
8 in the Zoning Administrator's Office. I have looked  
9 at computation sheets for buildings and they are all  
10 designated along Queen Anne's Lane and Hughes Mews as  
11 being R-5-B residentially zoned in 1960 and 1961. I  
12 also looked in the street card file in the D.C. Zoning  
13 Administrator's Office and those street addresses also  
14 were designated as being R-5-B Zoning in 1960, 1961.

15 MR. FEOLA: Would those houses on Queen  
16 Anne's Lane meet the standards of the R-3 Zone today?

17 MS. HICKS: No, especially on the width of  
18 lot and lot area they would not meet the R-3 current  
19 zoning.

20 MR. FEOLA: In your opinion, do you  
21 believe that this property meets the variance test for  
22 uniqueness?

23 MS. HICKS: Yes, due to Zoning Commission  
24 Order No. 714. It's a text and map amendment for the  
25 Foggy Bottom Overlay District and it was approved on

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1 April 17, 1992. It changed the zoning to a higher  
2 density, from a higher density R-5-B Residential Zone  
3 to a more restrictive R-3 Zone.

4 MR. FEOLA: Finally, would you believe  
5 that construction of this single-family house, if it's  
6 approved by the Board, would violate the purpose or  
7 intent of either the Foggy Bottom Overlay District or  
8 the R-3 Zone District?

9 MS. HICKS: With the existing lot and also  
10 the constraints of the existing lot and the difficulty  
11 in designing for such a small lot, I don't see that  
12 what is being proposed would be a detriment to the  
13 surrounding area.

14 MR. FEOLA: I have no further questions,  
15 Mr. Chair.

16 CHAIRPERSON GRIFFIS: Thank you. Ms.  
17 Hicks, looking at this, first of all, row dwellings,  
18 matter-of-right structures in an R-3 Zone?

19 MS. HICKS: Yes.

20 CHAIRPERSON GRIFFIS: How would you  
21 characterize this proposed structure?

22 MS. HICKS: I would say it meets the  
23 definition of section 199 for a row dwelling. It's a  
24 one-family row structure, which is built from side lot  
25 line to side lot line.

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1 CHAIRPERSON GRIFFIS: Okay. How do you  
2 reconcile 401.6, which reads "Each lot created after  
3 February 15, 1966 to be used and occupied by a one-  
4 family detached dwelling, one-family semi-detached  
5 community row dwelling shall have street frontage  
6 measured along the street, a distance equal to at  
7 least 40 percent of the required minimum lot width and  
8 in no case less than 14 feet." I can read that  
9 through or give you a copy of it if you want.

10 MS. HICKS: Well, that's what makes this  
11 property unique. These are dedicated alleys and they  
12 are on the plat books in the D.C. Office of the  
13 Surveyor and the alley widths are 30 feet in width, as  
14 prescribed under section 2507, and especially under  
15 2507.4. So if you have an alley lot, then the width  
16 of the alley lot must be 30 feet in width. It must  
17 lead out to the dedicated street with an alley, which  
18 is 30 feet in width.

19 CHAIRPERSON GRIFFIS: So if I understand  
20 what you're saying is 2507, which regulates  
21 specifically alley lots, so there is more specific  
22 direction in terms of that regulation, actually  
23 supersedes 401.6, which is generally speaking about  
24 other aspects and, frankly, of lots created after  
25 1966?

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1 MS. HICKS: Yes, this is a very unique  
2 situation for an alley dwelling, so you have to go to  
3 the more restrictive part of the regulations, which  
4 cover building on alley lots, which is section 2507.

5 CHAIRPERSON GRIFFIS: Okay. And as you  
6 said before, your estimation in your expert opinion is  
7 that this was done in 1960 or '61?

8 MS. HICKS: Yes.

9 CHAIRPERSON GRIFFIS: Okay. Mr.  
10 Hildebrand?

11 COMMISSIONER HILDEBRAND: Are there any  
12 records available, which show these lots being  
13 referred to by their current designations, '94 and  
14 '95, pre 1967?

15 MS. HICKS: Okay. I have some documents  
16 that I copied, wall test of properties in Queen Anne's  
17 Lane and Hughes Mews, and these are from the -- they  
18 were attached to records in the Zoning Administrator's  
19 Office. Also, I have copies of street card files  
20 available in the Zoning Administrator's Office. It  
21 shows the development owners and that the properties  
22 were R-5-B, plus structures that were built on Queen  
23 Anne's Lane and Hughes Mews in 1960 and '61. Also, I  
24 have computation sheets from the Zoning  
25 Administrator's Office and they have stamps and

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1 signatures from the person who approved the  
2 development in the Zoning Administrator's Office.

3 COMMISSIONER HILDEBRAND: And these two  
4 lots were part of that development, is that what  
5 you're saying, or are they adjacent to that  
6 development?

7 MS. HICKS: They were adjacent to this  
8 development and all of that property was Zone R-5-B in  
9 1961, '60 and 1961.

10 COMMISSIONER HILDEBRAND: What I'm trying  
11 to clarify in my mind though is when these two lots  
12 were created as they currently are configured. I  
13 think we saw some documentation in the literature that  
14 we were given as part of the record that they  
15 previously had been through lots that went from 26<sup>th</sup>  
16 Street to the alley and, at some point, they were  
17 subdivided into an alley lot and a street lot, and I'm  
18 trying to clarify in my mind when that took place.  
19 And I just wanted to know if, in your research, you  
20 had found anything that clarified that for you.

21 MS. HICKS: Okay. I entered into the  
22 records a copy of this plat, which shows Lot 94 and  
23 95. Lot 94 has been improved, but there is a separate  
24 Lot 95, which has not been improved or built over,  
25 which fronts on the Hughes Mews alley. And I think

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1 there is a record for July 15, 1960 and also, I have  
2 copied the back.

3 COMMISSIONER HILDEBRAND: So as of 1960 it  
4 was already referred to as 94 and 95?

5 MS. HICKS: Yes.

6 MR. FEOLA: That's right.

7 COMMISSIONER HILDEBRAND: So that would  
8 predate?

9 MS. HICKS: Yes.

10 COMMISSIONER HILDEBRAND: Thank you. That  
11 answers my question.

12 MR. FEOLA: And that's in the prehearing  
13 submission dated April 23<sup>rd</sup>.

14 CHAIRPERSON GRIFFIS: Okay. Anything  
15 else?

16 VICE CHAIR MILLER: I have a clarifying  
17 question. I think you're seeking four variances. Is  
18 that correct?

19 UNIDENTIFIED SPEAKER: Three.

20 VICE CHAIR MILLER: Three? And what --

21 MR. FEOLA: Excuse me, the lot width and  
22 lot size are the same section, so technically it's one  
23 variance.

24 VICE CHAIR MILLER: Okay. My question  
25 goes to what you have described as a lot here that was

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1 legally conforming previously, then became not  
2 conforming when the text amendment changed the  
3 overlay. Okay. And it would be impossible to put a  
4 conforming matter-of-right house on this property. Is  
5 that correct? Am I paraphrasing that correctly?

6 MR. FEOLA: Yes.

7 VICE CHAIR MILLER: Okay. Now, what I'm  
8 asking now is is that true for each and all of the  
9 variances or only for some of the variances and that  
10 you may be seeking a variance for another reason in  
11 this application?

12 MR. FEOLA: That's a good point. It's  
13 really the prior recordation of the lot that gave  
14 title to be defeasible to whoever owns it under zoning  
15 would really only go to the first variance. The  
16 second two variances, the rear yard variance and the  
17 lot occupancy variance, actually go together, because  
18 if you eliminated the bay window, that would  
19 essentially reduce the amount of lot occupancy.

20 Those variances are created by the  
21 practical difficulty of putting a liveable unit on  
22 this small lot, so that it is a comfortable place for  
23 a family to live. So it is, in theory, possible to  
24 have a single-family house that doesn't have the bay  
25 window and is at 60 percent lot occupancy. Although,

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1 our architects haven't been able to design something  
2 that makes it comfortable.

3 VICE CHAIR MILLER: Thank you.

4 CHAIRPERSON GRIFFIS: The architects  
5 always get blamed, don't they? Yes, in my  
6 calculations it's roughly --

7 MR. FEOLA: There are too many architects  
8 in this room. Usually, we just have a lot more  
9 lawyers.

10 CHAIRPERSON GRIFFIS: Far more lawyers.

11 MR. FEOLA: Ms. Miller and Mr. Etherly.

12 CHAIRPERSON GRIFFIS: That's right, a more  
13 comfortable feel for the whole thing this afternoon.  
14 Just a quick estimation of what we're talking about,  
15 because, you know, 60 percent, 63 percent lot  
16 occupancy, 2 feet of the rear yard we understand, but  
17 3 percent of the lot occupancy on this, the lot is  
18 about 936 square feet or something like that. We're  
19 talking about 30 square feet.

20 MR. FEOLA: That's right.

21 CHAIRPERSON GRIFFIS: Is that correct?

22 MR. FEOLA: That's correct.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. FEOLA: 31, I believe.

25 CHAIRPERSON GRIFFIS: Okay. Yes, so 31

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1 square feet total, overall. Okay. Any other  
2 questions, clarifications, anything else?

3 MR. FEOLA: No, sir.

4 CHAIRPERSON GRIFFIS: Okay. Then let's do  
5 cross examination then. It doesn't matter to me, the  
6 order. ANC, any cross? No cross? Conservancy have  
7 cross?

8 MR. BOND: Yes, Your Honor. Pardon me --

9 CHAIRPERSON GRIFFIS: Oh, please, yes,  
10 come on and sit up and you don't need to call me Your  
11 Honor.

12 MR. BOND: Just a habit.

13 CHAIRPERSON GRIFFIS: Yes, indeed. Oh,  
14 Ms. Hicks, you're going to need to stay.

15 MS. HICKS: Okay.

16 UNIDENTIFIED SPEAKER: Sid, you can slide  
17 down.

18 CROSS EXAMINATION

19 MR. BOND: Actually, as the first  
20 question, I only have one question for Ms. Hicks, and  
21 it goes to the same question. In my own mind, I'm  
22 still not certain I understand when the deep lot that  
23 fronted on 26<sup>th</sup> Street was divided, so that you then  
24 had two lots, a street lot and an alley lot, and I  
25 still don't understand that date.

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1 CHAIRPERSON GRIFFIS: So the question is?

2 MR. BOND: And I think that's a crucial  
3 fact.

4 CHAIRPERSON GRIFFIS: What is the evidence  
5 that shows when you have established the fact that it  
6 was --

7 MS. HICKS: Well, this is a copy of a  
8 plat, which covers part of Hughes Mews, which goes  
9 this way, and a public alley, which is now Queen  
10 Anne's Lane in parenthesis. This is Lot 94. You see  
11 an improvement on Lot 94. The property lot line goes  
12 back here and this is Lot 95. This is Lot 94 to the  
13 front. The only date that I have on here is July 15,  
14 1960.

15 MR. BOND: Okay. Does the Board have  
16 this?

17 MR. FEOLA: Yes.

18 MS. HICKS: Yes.

19 CHAIRPERSON GRIFFIS: We have got a lot of  
20 them.

21 MS. HICKS: Yes, it's part of the record.

22 CHAIRPERSON GRIFFIS: Which one are you  
23 looking at?

24 UNIDENTIFIED SPEAKER: Do you have an  
25 exhibit number on there?

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1 CHAIRPERSON GRIFFIS: No, they wouldn't  
2 have it on theirs. It's going to be titled Square 16,  
3 scale, 1 inch, 20 feet, is that correct, 26<sup>th</sup> Street,  
4 N.W., is showing on the left side?

5 MS. HICKS: Yes.

6 CHAIRPERSON GRIFFIS: Okay. And now,  
7 you're pointing us to what is indicated as Lot 94.

8 MS. HICKS: Lot 94 to the front.

9 CHAIRPERSON GRIFFIS: And Lot 95?

10 MS. HICKS: And Lot 95 to the rear on  
11 Hughes Mews.

12 CHAIRPERSON GRIFFIS: And this is dated,  
13 and the date is showing where?

14 MS. HICKS: Up in the upper right area. I  
15 see a date of July 15, 1960.

16 CHAIRPERSON GRIFFIS: '60? Is that  
17 correct?

18 MS. HICKS: Yes.

19 CHAIRPERSON GRIFFIS: Okay. Ours is cut  
20 off.

21 MS. HICKS: Yes, it's partially cut off,  
22 but it's definitely 1960.

23 CHAIRPERSON GRIFFIS: I see.

24 COMMISSIONER HILDEBRAND: Is this an  
25 accumulative document that is modified over time or

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1 does this reflect a given time period?

2 MS. HICKS: This is really what's called a  
3 wall test or it shows the walls that are built on  
4 proposed development. It looks like a survey and this  
5 is from the D.C. Surveyor's Office.

6 COMMISSIONER HILDEBRAND: So everything  
7 that is shown on this diagram, on this particular  
8 type, assumably would have been surveyed on that date.

9 MS. HICKS: Yes.

10 COMMISSIONER HILDEBRAND: Or close to?

11 MS. HICKS: Yes.

12 MR. BOND: The question I have, that I  
13 seek clarification for, is the same handwriting that  
14 says the date, 7-15-60, by its own handwriting  
15 pertains to lot 75 to 92 and there I would challenge  
16 whether there is anything on this document that  
17 establishes the date of when anything else occurred  
18 before or after. I mean, it could go either way, but  
19 what I'm saying is there is simply nothing on this  
20 date, and I note there is a plat in comparison to the  
21 OP's report that said this lot was divided in the late  
22 '60s. I would simply propose that it's open to  
23 question. I don't think from what I can -- and I  
24 haven't been able to find anything out either.

25 CHAIRPERSON GRIFFIS: Okay. Understood.

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1 Ms. Hicks, do you know what -- that is 95 to 92 equals  
2 record 140/129. What is the 140/129?

3 MS. HICKS: That's a parcel number. Now,  
4 in the jacket, the file jacket, there is also the back  
5 of the survey, which gives several dates of when  
6 properties were surveyed.

7 CHAIRPERSON GRIFFIS: Is this subject  
8 property one of these listed?

9 MS. HICKS: Let me see if I can find a  
10 copy of the -- no, it's another one.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. FEOLA: Mr. Chairman, if this is an  
13 issue, we could get a title report done and find out  
14 exactly. If this is a major issue to look at, we'll  
15 provide evidence of that.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. FEOLA: As opposed to everybody tried  
18 to look through it.

19 CHAIRPERSON GRIFFIS: Right. I figured it  
20 might be fairly quick and painless, but it may not be.

21 COMMISSIONER HILDEBRAND: Can I ask just  
22 one question about the back jacket, I think, is the  
23 following page in what was submitted to us. There is  
24 a reference to 16:94 from 6569 in the bottom right  
25 hand edge of the page, second column from the right,

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1 examine walls. What would that be in reference to?  
2 Do you have any idea?

3 MS. HICKS: No, I'm not for sure whether  
4 that reference is to Lot 90.

5 COMMISSIONER HILDEBRAND: 94, that's the  
6 26<sup>th</sup> Street house.

7 MS. HICKS: That's right. That's the 26<sup>th</sup>,  
8 so it shows Square 16 colon.

9 COMMISSIONER HILDEBRAND: Lot 94.

10 MS. HICKS: And then it says Lot 94 would  
11 be the reference.

12 COMMISSIONER HILDEBRAND: Would the  
13 examine walls be when the building was constructed or  
14 would that just be an examination?

15 MS. HICKS: It's --

16 COMMISSIONER HILDEBRAND: It's probably an  
17 irrelevant question.

18 MS. HICKS: It could be one or two things.  
19 It could be the wall test on all of these properties  
20 to pinpoint how the foundation has been poured or it  
21 could also indicate an addition to an existing  
22 structure, but this looks like it's a wall test for a  
23 new construction.

24 COMMISSIONER HILDEBRAND: So the house was  
25 built somewhere in 1969?

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1 CHAIRPERSON GRIFFIS: And would you survey  
2 it typically a year later?

3 MS. HICKS: It depends on whether the  
4 property owner wanted to survey or not.

5 COMMISSIONER HILDEBRAND: There is another  
6 survey.

7 CHAIRPERSON GRIFFIS: But if you go up the  
8 column, there is one June 1970. Okay. I don't think  
9 that information then is necessarily definitive in  
10 answering Mr. Hildebrand's question. I think Mr.  
11 Feola has offered additional information if we need.  
12 Any follow-up questions for any of the witnesses?

13 MR. BOND: Yes, Your Honor. I would like  
14 to clarify when the current owner purchased the  
15 property and, I'm sorry, I don't want to mispronounce  
16 your name, the current owner.

17 MR. FRESCHI: It's Freschi.

18 MR. BOND: Freschi.

19 MR. FRESCHI: The name is Freschi. We  
20 purchased the property exactly a year ago, both  
21 properties, 94 and 95.

22 MR. BOND: So April, May 2003?

23 MR. FRESCHI: Right.

24 MR. BOND: That's close enough. Okay.  
25 Again, by way of clarification, I want to go back to

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1 what I think has approached the critical issue, which  
2 is this facade massing and one of the critical issues.

3 Again, I just want to make sure I understand what is  
4 being referred to. Do you have the front facade? I  
5 saw you had that up earlier.

6 UNIDENTIFIED SPEAKER: Don't trip over it.

7 CHAIRPERSON GRIFFIS: If you can pick up a  
8 mike on the table or use the handheld.

9 MR. BOND: If you could just clarify for  
10 me what the height is to the actual top of the wall  
11 here, and what is the presentation look, function, if  
12 you could describe the building material between the  
13 top of the window and the top of the actual front of  
14 the building for me. I just don't understand what  
15 you're representing there.

16 MR. FRESCHI: The question is on the east  
17 facade, which is fronting onto Hughes Mews, per se, is  
18 front door, garage door and then the two floors above,  
19 and then the roof deck and there is a planter on the  
20 roof deck. The roof deck has a handrail at legal  
21 handrail height. It was recommended by the HPRB that  
22 we, in fact, elevate the walls to meet the handrail  
23 height. The code itself, the code constraint of 30  
24 feet taken from the width of the lane is measured to  
25 the ceiling of the top floor and to the ceiling of the

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1 top floor is 30 feet.

2           There is about a foot of structure and  
3 about a 3 foot handrail height on the wall. So you  
4 have got walls that are up 4 feet from the legal  
5 height of 30 feet. But nonetheless, it meets the  
6 spirit of that code constraint, 30 feet to the ceiling  
7 of the third floor.

8           MR. BOND: Just to clarify, I'm not  
9 challenging the height limit or the 30 foot.

10           MR. FRESCHI: Yes.

11           MR. BOND: I'm just trying to understand  
12 what was drawn without challenging the heights.

13           MR. FRESCHI: There is more to this front  
14 elevation going to the difficulty of designing  
15 something in this tight space, which I think is a  
16 wonderful challenge, by the way. The planter on that  
17 end of the roof is really a copper coated planter and  
18 has a semicircular line. There is some planting in  
19 it. This is to green the roof of the house, and  
20 that's the backside of the roof deck facing a 9 story  
21 apartment building directly 30 feet in the lane.  
22 That's what you see on that front elevation at the  
23 roof level. That planter is within the height of the  
24 handrail. The planter acts as a handrail on the lane  
25 side.

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1 CHAIRPERSON GRIFFIS: And the materials  
2 going up to it?

3 MR. FRESCHI: On the frontage of the  
4 house, here is glass and wood.

5 CHAIRPERSON GRIFFIS: And the elements of  
6 the parapet itself that frame out the planter, I  
7 think, was one of the questions. Is that also, what,  
8 wood?

9 MR. FRESCHI: This is wood structure, yes.

10 CHAIRPERSON GRIFFIS: The finish, the  
11 exterior finish is wood?

12 MR. FRESCHI: Painted wood.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. FRESCHI: It may be metal clad. Those  
15 details are not done yet.

16 CHAIRPERSON GRIFFIS: Indeed.

17 MR. BOND: All right. That answers my  
18 questions. I have got two more. One, a real quick  
19 question. You showed a picture on the back page of a  
20 handout of Building A, described that as a bay window.

21 In fact, isn't that a bow window? It sticks out  
22 maybe 8 inches?

23 MR. FRESCHI: I think you can all it  
24 anything you like. It really extends beyond the wall  
25 of the building and the traditional architectural

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1 jargon would be bay window. You can call it a bow  
2 window. It must project beyond the wall. I think you  
3 don't have legislation or bylaw controls for bay  
4 windows.

5 MR. BOND: No, I understand there is not a  
6 legal standard, but an architectural standard. And  
7 that gets to a critical issue on the rear yard  
8 setback. I have seen lots of houses, as I suspect  
9 everybody in this room has. We have been through lots  
10 of real estate. I am at a loss to understand what  
11 standard you can articulate, so this is what the  
12 question is.

13 Could you, please, articulate to me why a  
14 2 foot bay window makes that house practical and  
15 liveable when the same amount of glass space as a flat  
16 window makes the house unlivable and impractical?

17 MR. FRESCHI: I would have to say I would  
18 drop the word practicality, per se, and say that the  
19 reason bay windows exist as a traditional  
20 architectural feature globally is to introduce more  
21 light into the habitable rooms. It also, in this  
22 case, extends the depth of the room 2 feet, so that's  
23 better. It improves the room itself. The corner of  
24 the bay window actually is exposed to the southern  
25 light. That introduces southern sunlight into the

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1 rooms, which is better. This client, and I agree with  
2 him, feels that's better light than coming from the  
3 north.

4 MR. BOND: And that's the last of my  
5 questions.

6 CHAIRPERSON GRIFFIS: Thank you very much.  
7 Ms. Farrell, cross?

8 MS. FARRELL: I just wanted a  
9 clarification. When Mr. Freschi said that he had  
10 experienced with building two homes, one was your own  
11 and the second would be this?

12 CHAIRPERSON GRIFFIS: You need to take a  
13 microphone.

14 MR. FRESCHI: The clarification there is I  
15 purchased the house at 935 26<sup>th</sup> Street and extensively  
16 renovated that house. The renovation itself took  
17 something like eight months to complete. In fact,  
18 we're almost complete at this point. That was my  
19 first major experience with the codes and the rules,  
20 the bylaws of the District. I have built some 32  
21 prizewinning houses elsewhere in the world.

22 CHAIRPERSON GRIFFIS: Okay. Do they have  
23 as many codes and bylaws that we have? Okay.

24 MR. FRESCHI: I would say it's unique  
25 here.

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1 CHAIRPERSON GRIFFIS: Thank you.

2 UNIDENTIFIED SPEAKER: Exceptional.

3 COMMISSIONER HILDEBRAND: May I ask one  
4 question?

5 CHAIRPERSON GRIFFIS: Yes.

6 COMMISSIONER HILDEBRAND: I have one  
7 question for the architect. When you were testifying,  
8 you said that you had paid a lot of attention to the  
9 rear facade that would be facing your house, because  
10 you were going to have to be looking at it. Did you  
11 pay an equal amount of attention to the sides that  
12 will be faced by your other neighbors?

13 MR. FRESCHI: Yes, indeed. The two east  
14 and west facades, the lane and the backyard, are the  
15 two where there is glazing and, of course, that really  
16 improves immensely the character of those elevations.

17 The two side walls must, in fact, be enclosed.  
18 You're not allowed window openings in those walls by  
19 code, and they are simple masonry load bearing walls  
20 not unlike a lot of the other townhouses in the Mews.

21 The proportions, however, we did study.  
22 We did introduce on the southern side at great  
23 expense, I might add, a two story slit of glass block,  
24 which must meet the fire code constraint of opening up  
25 a side wall.

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1 COMMISSIONER HILDEBRAND: Would you  
2 compare for me the articulation on the side of Alley  
3 Building A to what you're proposing on your buildings?

4 MR. FRESCHI: These are the two side  
5 walls, which you can see the masonry and the slit of  
6 glass block at the lower level. That has nothing.  
7 It's quite simply a blank wall. It will be a light  
8 colored masonry, which will reflect light not unlike  
9 the character of this, which is I think A that you are  
10 referring to. This is on a lane as well. It's a lane  
11 on two sides of that building and, therefore, in fact,  
12 they could have windows on that wall.

13 COMMISSIONER HILDEBRAND: Thank you.  
14 That's all I wanted to know.

15 CHAIRPERSON GRIFFIS: Okay. Anything  
16 else, clarifications?

17 VICE CHAIR MILLER: I have a question for  
18 Mr. Feola. We're going to be hearing from Office of  
19 Planning, but since you all made your presentation,  
20 they make a comment that the rooftop penthouse  
21 requires a special exception and I'm interested in  
22 your view on that. You didn't apply for a special  
23 exception for that. Is that correct?

24 MR. FEOLA: That is correct, and maybe Ms.  
25 Hicks should answer this, but the rulings that have

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1 historically come out of the Zoning Administrator for  
2 roof structures on townhouses are that the setbacks  
3 apply to the front and the rear. And if you think  
4 about it, if a townhouse is 20 feet wide and you can  
5 have a 10 foot high penthouse, it's impossible to set  
6 it back one to one from each side and still have any  
7 roof structure, and that has been the historical  
8 interpretation from the Zoning Administrator's Office  
9 for row houses in the R-3 and R-4 Districts.

10 This penthouse is set back one to one or  
11 more actually from the front and the rear and, as Mr.  
12 Freschi said, it has been relocated to the apartment  
13 side of the property to get it further away from the  
14 other townhouses that front Queen Anne's Lane, so  
15 that's why we did not apply for it.

16 Now, I understand after meeting with the  
17 Office of Planning that there is some changing of  
18 thought in the Office of the Zoning Administrator as  
19 to how that's ruled, but we went along with what we  
20 have historically seen and maybe Ms. Hicks would like  
21 to comment on that.

22 MS. HICKS: In the past, roof structures  
23 or roof access in residential zones were required to  
24 meet the front and the rear setback and not on the  
25 side lot lines, because theoretically if anyone had an

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1 adjacent lot on both sides, you could also build a  
2 roof access on either side of the structure. And at  
3 this point, I'm just leaving it up to the Board of  
4 Zoning Adjustment to give us guidance as to whether a  
5 special exception is required in this case or not.

6 VICE CHAIR MILLER: Thank you.

7 CHAIRPERSON GRIFFIS: Do you want to  
8 provide the guidance now?

9 VICE CHAIR MILLER: No.

10 CHAIRPERSON GRIFFIS: Or we'll give it to  
11 them a little later?

12 VICE CHAIR MILLER: I think we'll hear  
13 from Office of Planning.

14 CHAIRPERSON GRIFFIS: Oh, boy. Okay. If  
15 there is no other questions from the Board, if we have  
16 finished questions, why don't we go to Office of  
17 Planning and have them present their report?

18 MR. LAWSON: Thank you, Mr. Chairman,  
19 Members of the Board. My name is, for the record,  
20 Joel Lawson, and I'm with the D.C. Office of Planning.

21 Very briefly, the owners of 935 26<sup>th</sup> Street  
22 have submitted an application to permit the  
23 construction of a new dwelling on the adjoining alley  
24 lot facing Hughes Mews. The north half of Square 16  
25 is mostly developed with apartment buildings while the

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1 south half, that's south of Queen Anne's Lane, is  
2 developed with row houses, including some alley  
3 dwellings. Queen Anne's Lane provides access to the  
4 interior of the square from 26<sup>th</sup> Street and also  
5 provides access to an internal north/south alley  
6 called Hughes Mews. The alley is sufficiently wide to  
7 permit an alley dwelling.

8 As noted in our report, OP has some  
9 concerns that the configuration of the lot and the  
10 adjacent lots would preclude a row dwelling on this  
11 lot, and that any dwelling would be considered either  
12 semi-detached or detached. In addition to the  
13 variances requested, this would necessitate an  
14 additional variance request for a side yard, as well  
15 as increases to the extent of the lot width, lot area  
16 and lot occupancy variances. As was just stated, OP  
17 also feels that a special exception for rooftop  
18 penthouse setback is required.

19 The Department of Parks and Recreation and  
20 the Water and Sewer Authority noted no major concerns  
21 with this proposal. The Department of Housing and  
22 Community Affairs, however, noted opposition to the  
23 proposal as being inappropriately large for the size  
24 of the lot. OP did not receive comments from other  
25 District departments or agencies.

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1           If a dwelling is to be developed on this  
2 lot, variances to lot area and lot width are  
3 unavoidable. OP has no major concerns with the side  
4 yard setback variance if required, but notes that the  
5 provision of some side yard setback along the south  
6 elevation could reduce impacts on neighboring lots.  
7 OP also has no major concerns with the special  
8 exception approval for the rooftop penthouse setback.

9           This concludes OP's testimony and I am  
10 available for questions. Thank you.

11           CHAIRPERSON GRIFFIS: Thank you very much.

12           A quick clarification. You said in your report is  
13 Department of Housing and Community Affairs, is that  
14 the Department of Housing and Community Development,  
15 DHCD?

16           MR. LAWSON: I'm sorry, yes, it is. I'm  
17 sorry.

18           CHAIRPERSON GRIFFIS: Okay. I was going  
19 to say boy, these agencies are popping up everywhere.  
20 I have never heard of that one. All right. Other  
21 questions from the Board? Ms. Miller?

22           VICE CHAIR MILLER: Well, I think I should  
23 follow-up and ask OP its rationale for asserting that  
24 the special exception is required for the rooftop  
25 penthouse.

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1 MR. LAWSON: I thought you might ask me  
2 that question. It's simply that we could find nothing  
3 in the code that states that the setback is only  
4 measured from the front and the rear lot lines.  
5 Again, I don't necessarily disagree with the rationale  
6 of the applicant in this case, whether or not a side  
7 yard setback for the penthouse is logical or sensible  
8 when it comes to a row house type development.

9 And as I said, we have no problems with  
10 the special exception request, particularly since the  
11 rooftop enclosure was moved to the north side of the  
12 property. However, as I said, we can see nothing that  
13 says that a setback isn't required in the current  
14 regulations.

15 COMMISSIONER HILDEBRAND: Could I ask a  
16 question, please? On your report, page 2, where  
17 you're describing the previous configuration of the  
18 property, Item 4, second paragraph, second sentence,  
19 you say "It was created in the late '60s through a re-  
20 subdivision of two long, narrow lots each of which  
21 fronted 26<sup>th</sup> Street. The lots were 12.33 feet wide and  
22 148 feet long."

23 How did you develop a designation of the  
24 date of those lot conversions as late 1960?

25 MR. LAWSON: First of all, like the

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1 applicant, we weren't able to determine exactly when  
2 this subdivision happened. The properties actually  
3 have a bit of a complicated history. In going through  
4 the Surveyor's Office information, it was a bit  
5 difficult to determine exactly, as I said, what  
6 happened when.

7 The lot, as far as I could determine, was  
8 originally created, you know, certainly back in the  
9 1800s and, at some point prior to 1957, which is the  
10 next record I was able to find in the Office of  
11 Surveyors, was re-subdivided to create the two what  
12 are sometimes called cigarette lots, the two very  
13 narrow lots that fronted both the street and the rear  
14 alley.

15 We found references in the Office of  
16 Surveyors, although not plans, references to Lots 66  
17 and 67 and my notes indicate that they were as late as  
18 1966. The recent submission from the applicant shows  
19 a reference to Lots 66 and 67 in 1964, and then the  
20 next reference in the Office of Surveyor's records is  
21 actually 1969 where it refers to Lot 94. That's how  
22 we determined that the lots were created -- sorry, the  
23 current configuration of lots were created, was  
24 created in the late 1960s, prior to 1969.

25 COMMISSIONER HILDEBRAND: Thank you.

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1 CHAIRPERSON GRIFFIS: In section 199, of  
2 course, the definition of a row dwelling is a one-  
3 family dwelling having no side yards. Do you think  
4 this fits that definition?

5 MR. LAWSON: I have trouble, I guess,  
6 personally with the interpretation and also in terms  
7 of how past approval or, sorry, past interpretations  
8 of what constitutes a row dwelling coming from the  
9 Board of Zoning Adjustment. The property is proposed  
10 or the development proposed provides no setback, and  
11 so I guess one could argue that makes it a row  
12 dwelling. I think the question is more should the  
13 property, should the dwelling provide a setback? Do  
14 the regulations require a setback, which is otherwise  
15 in a road, any proposed building which provides no  
16 setback would be considered a row dwelling in any  
17 zone.

18 CHAIRPERSON GRIFFIS: That's true.

19 MR. LAWSON: Am I making any sense? I'm  
20 sorry.

21 CHAIRPERSON GRIFFIS: Absolutely making  
22 sense. But this fits the definition of dwelling row,  
23 one-family dwellings having no side yards. When you  
24 look at the photographs, you agree?

25 MR. LAWSON: I agree with that definition.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. LAWSON: Yes.

3 CHAIRPERSON GRIFFIS: Right. And I  
4 understand your concern. If you just call something  
5 as having no side yards a row dwelling, then there's  
6 row dwellings everywhere, but let me address that.  
7 This is an R-3 Zone. Are row dwellings a matter-of-  
8 right structure?

9 MR. LAWSON: Yes, they are.

10 CHAIRPERSON GRIFFIS: Okay. Now, and I  
11 understand that you would have concern, especially in  
12 an R-1, if you started having row dwellings, but don't  
13 you have a minimum lot width in a lesser residential  
14 zone?

15 MR. LAWSON: There are minimum lot widths  
16 for different uses in lesser zones, as well as for in  
17 this zone, yes.

18 CHAIRPERSON GRIFFIS: So conceivably, in a  
19 lesser zone you might have other requirements, not in  
20 a typical row lot, be it 18 or 20 feet. Say it was a  
21 larger 50 foot wide and all of a sudden, you're afraid  
22 of a structure that, in that kind of required lot, you  
23 would have a facade of a single structure that's 50  
24 feet long when actually the zone would be more  
25 appropriate to have some sort of open space or

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1 setbacks or fully detached structures. Is that  
2 correct?

3 MR. LAWSON: That would be part of the  
4 concern, yes.

5 CHAIRPERSON GRIFFIS: Okay. Now, wouldn't  
6 that be precluded if you had a conforming lot width  
7 and you had to, in the lesser zones, meet the lot  
8 occupancy, which may be 40 percent or so, if you  
9 filled your front porch and then the entire property  
10 line to property line, don't you think you would be  
11 looking at structures that may well be 50 feet wide  
12 and 10 feet deep, so almost like a flipped townhouse?

13 MR. LAWSON: While it's a hypothetical  
14 situation, but I guess there's all kinds of -- you  
15 know, there's all kinds of permutations.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. LAWSON: Permutations that could  
18 result.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. LAWSON: I think more central to our  
21 questioning of how this lot is to be determined, and I  
22 should stress that Office of Planning doesn't have an  
23 answer to this, which is why we note in our report  
24 that these variances are required no matter what the  
25 kind of lot this is, other than the side yard setback,

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1 which, again, Office of Planning does not have a major  
2 concern with, is the impact of development on adjacent  
3 lots and what's considered reasonable and what's  
4 considered expected forms of development.

5 In this case, the property particularly on  
6 the south side is either not developable as a row  
7 house or certainly, as you stated, is not a logical  
8 row development lot. This is always going to be a  
9 rear yard facing this property, and does that make  
10 this then de facto a semi-detached lot? I think  
11 that's the central question, and I know that this is a  
12 question that the BZA itself has been struggling with,  
13 as well, over a number of cases over the last little  
14 while.

15 CHAIRPERSON GRIFFIS: One might say  
16 endless. The existing structures, this is the last,  
17 I'm just trying to understand. How would you  
18 characterize those?

19 MR. LAWSON: I'm sorry, which existing  
20 structures?

21 CHAIRPERSON GRIFFIS: The existing. We  
22 have photographs of three different structures on the  
23 same alley. I don't know if you have those in front  
24 of you. Yes, it's the board that we have in front of  
25 us. Let's take the blue one, for instance, on the top

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1 left corner.

2 MR. LAWSON: Well, I think the first thing  
3 I would say is not being the Zoning Administrator, I  
4 wouldn't make the final determination on what -- any  
5 of these lots.

6 CHAIRPERSON GRIFFIS: No, I know that.

7 MR. LAWSON: But it could very well be  
8 that these should be considered semi-detached or  
9 detached units as well. I think you would have to  
10 look at the context, look at the nature of the lots  
11 adjacent to them, the nature of the lots around them  
12 to make that determination.

13 CHAIRPERSON GRIFFIS: The nature of the  
14 lots around them? Wouldn't it have to matter where  
15 they land on the property line?

16 MR. LAWSON: I'm sorry?

17 CHAIRPERSON GRIFFIS: I don't understand  
18 what the pertinence of the nature of the lots around  
19 them would be.

20 MR. LAWSON: Most of my discussion right  
21 now is centered around past BZA cases where it was  
22 found that where a house or, sorry, where a lot, which  
23 is in a zone which permits a row dwelling sides onto  
24 the rear of another row of lots as is the case here,  
25 that that would be considered a semi-detached

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1 dwelling.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. LAWSON: That's what I have been  
4 basing my argument on.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. LAWSON: It's a difficult question  
7 and, quite frankly, I think I could probably argue  
8 both ways. I could argue that this is logically a row  
9 dwelling lot. I could argue that this is logically a  
10 semi-detached dwelling lot. As to which this is,  
11 that's a legal determination.

12 CHAIRPERSON GRIFFIS: Well done. It seems  
13 like we have done the same thing, argued both ways. I  
14 appreciate that. I'm not pressing you, but actually  
15 looking for further understanding, as has now been  
16 said several times.

17 MR. FEOLA: May I respond, Mr. Chair, on  
18 behalf of the applicant?

19 CHAIRPERSON GRIFFIS: Yes.

20 MR. FEOLA: Just real briefly, because I  
21 agree with Mr. Lawson. The regulations are  
22 contradictory, let's say, and I guess I would urge  
23 this Board to at least, until the Zoning Commission,  
24 and I would urge the Zoning Commission, to take a look  
25 at this, because there is this ambiguous conflicting

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1 provision that the Board support the precedent that  
2 has come out of the Zoning Administrator's Office for  
3 50 years now, and that is what you see on these  
4 buildings that were built and what has happened with a  
5 series of buildings, because I think people on my side  
6 of the table, property owners, can play by the rules,  
7 but they need to know the rules.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. FEOLA: And if the rules change, they  
10 should change in a logical reasoned way and that's the  
11 Zoning Commission, and I urge the Zoning Commission to  
12 do this, because this is not the first one I have had  
13 before this Board.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. FEOLA: And the Office of Planning has  
16 the same -- it's the same. As Mr. Lawson is saying,  
17 go either way. So I guess I hope when you look at  
18 this case, we ask Mr. Hildebrand to take it back to  
19 the Zoning Commission to take a look at why these two  
20 sections seem to conflict so directly, and what do we  
21 do as property owners when we're confronted with that.

22 CHAIRPERSON GRIFFIS: No, I think it's an  
23 excellent point and I think you're absolutely right.  
24 All we need to know is what the rules are and then we  
25 can accommodate those and deal with it, but when we do

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1 have conflicting aspects it becomes very difficult to  
2 deal with. Okay.

3 COMMISSIONER HILDEBRAND: Maybe then could  
4 we rely on you to create a document to the Zoning  
5 Commission requesting, referencing which ones you feel  
6 are conflicting and we'll get a clarification?

7 CHAIRPERSON GRIFFIS: How long a list do  
8 you want? Yes.

9 COMMISSIONER HILDEBRAND: Just the ones on  
10 end unit townhouses, please.

11 CHAIRPERSON GRIFFIS: Absolutely. That  
12 would be easy to do. In fact, I think it has already  
13 been done. That being said then, let's move on. Just  
14 a quick question in terms of the density, and we're  
15 talking about the Foggy Bottom Overlay, and in your  
16 report you did a lot of like comparisons of what  
17 density is and it was a concern of yours.

18 I guess trying to get an understanding of  
19 this, does one house actually fit into the projection  
20 of the number of units per acre or are you just trying  
21 to set up an idea of what would be if everything was  
22 done like this application?

23 MR. LAWSON: I would say it's closer to  
24 the latter of what you just said.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. LAWSON: I'll leave it at that.

2 CHAIRPERSON GRIFFIS: Okay. And do you  
3 see other opportunities? I mean, it's an interesting  
4 comparison and it was well done. However, do you see  
5 the potential for that happening? Are there other  
6 areas that look to having an increase of alley  
7 dwellings that would give rise to a large area density  
8 issue?

9 MR. LAWSON: I don't believe so and the  
10 analysis was more intended, I guess, to get at what  
11 was the intent for this lot when this lot was  
12 developed or when this lot was created as opposed to  
13 what could the potential be for future development in  
14 the area.

15 CHAIRPERSON GRIFFIS: I see. Okay. I  
16 think that's clear. And we have had some brief  
17 discussion on -- well, I was going to say 401.6, but  
18 perhaps we don't have all the answers to that one.

19 I don't have anything further. Does  
20 anyone else, Board Members have any other questions  
21 for the Office of Planning? Yes, Mr. Hildebrand,  
22 anything?

23 COMMISSIONER HILDEBRAND: Not really of  
24 the Office of Planning.

25 CHAIRPERSON GRIFFIS: Okay.

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1 COMMISSIONER HILDEBRAND: Just as a  
2 clarification to myself though, the existing Hughes  
3 Mews dwellings, can you give me an idea of the height  
4 of those structures?

5 MR. LAWSON: They are, approximately, 30  
6 feet.

7 COMMISSIONER HILDEBRAND: 30 feet? Okay.

8 CHAIRPERSON GRIFFIS: Approximately, 30  
9 feet the architect has indicated. Okay. If there is  
10 nothing further from the Board for the Office of  
11 Planning, I can say excellent report. It was very  
12 informative and we appreciate that, and also the  
13 aerials are always, always a pleasure to see. Let's  
14 go to the applicant, any cross examination of the  
15 Office of Planning?

16 MR. FEOLA: No, sir.

17 CHAIRPERSON GRIFFIS: Does the ANC have  
18 any questions, none? Conservancy, any cross?

19 MR. BOND: No.

20 CHAIRPERSON GRIFFIS: No? Ms. Farrell?

21 MS. FARRELL: No.

22 CHAIRPERSON GRIFFIS: Indeed. Then we  
23 thank you very much. Let's move down then to the rest  
24 of the agency reports. I don't note that there are  
25 any other representatives, but, please, let me know if

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1 there are. The Department of Parks and Recreation, we  
2 have a submission. We also have one from WASA. We  
3 have the Historic Preservation's Office staff report  
4 on the record now and we also had, as indicated,  
5 DHCD's report. I don't have any other. Actually,  
6 that's quite a lot, unless the applicant is aware of  
7 any other agency submissions.

8 In that case, let's go to the ANC-2A. It  
9 is Exhibit No. 28 and, Ms. Miller, you are going to  
10 present that. Is that correct?

11 MS. MILLER: My name is Dorothy Miller. I  
12 am Chair of ANC-2A. I live at 2440 Virginia Avenue,  
13 N.W., and I think our letter is rather clear. They  
14 came before us and they had been approved both by the  
15 Historic Preservation and the Commission on Fine Arts,  
16 and we are looking forward to having more residential  
17 that pay taxes in Foggy Bottom. There are so few.

18 CHAIRPERSON GRIFFIS: Paying taxes in  
19 residential? Okay.

20 MS. MILLER: Residents that live there and  
21 pay taxes. We have so few of those.

22 CHAIRPERSON GRIFFIS: Indeed. Okay.  
23 Thank you.

24 MS. MILLER: And a number of the houses in  
25 that area have been sold to students, by the way,

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1 quite a few of them.

2 CHAIRPERSON GRIFFIS: We'll take note.  
3 Any questions from the Board then, clarifications?  
4 Excellent. Does the applicant have any cross  
5 examination of Ms. Miller? No cross?

6 UNIDENTIFIED SPEAKER: No.

7 CHAIRPERSON GRIFFIS: Thank you.  
8 Conservancy?

9 MR. BOND: Just one point of  
10 clarification.

11 CHAIRPERSON GRIFFIS: You're going to need  
12 to be on a mike.

13 MR. BOND: Just one point of  
14 clarification. It's my understanding that the ANC  
15 representative for the area where the property is,  
16 where the applicant property sits, was not at the ANC  
17 meeting. Is that correct?

18 MS. MILLER: She has only been to one in  
19 the last year and a half.

20 CHAIRPERSON GRIFFIS: Your mike's off, Ms.  
21 Miller.

22 MS. MILLER: She has only been to one in  
23 the last year and a half and she knows of the  
24 meetings. She gets the postings and she knows what's  
25 on the agenda and she knows what's coming up.

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1 MR. BOND: And my understanding is she is  
2 very gravely ill and is unable to attend the meetings.

3 MS. MILLER: Almost everybody in the  
4 neighborhood is.

5 MR. BOND: Fair enough. No further  
6 questions.

7 CHAIRPERSON GRIFFIS: That's not a  
8 resounding endorsement for the new resident or  
9 potential resident. Am I right?

10 UNIDENTIFIED SPEAKER: Yes.

11 CHAIRPERSON GRIFFIS: I see. Ms. Miller,  
12 while I have, it has been brought to my attention by  
13 Mr. Etherly, would you just note officially what the  
14 vote -- it was a unanimous vote, but what was the  
15 number?

16 MS. MILLER: Our Commission is very small.

17 CHAIRPERSON GRIFFIS: Indeed.

18 MS. MILLER: We only have five. One seat  
19 is vacant. One is sick and we had one whose mother  
20 died the night of the meeting and that left three of  
21 us and three of us voted.

22 CHAIRPERSON GRIFFIS: And a quorum is?

23 MS. MILLER: Three.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. MILLER: We had a quorum and a

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1 unanimous vote.

2 CHAIRPERSON GRIFFIS: Okay. Good. Thank  
3 you very much. Excellent. In that case, let's go to  
4 the parties. Do you need more paper? Who are we  
5 going to hear from first?

6 UNIDENTIFIED SPEAKER: Ms. Farrell.

7 CHAIRPERSON GRIFFIS: Ms. Farrell?

8 MS. FARRELL: My name is Lisa Farrell. I  
9 live at 2523 Queen Anne's Lane. I wanted to address  
10 first off some faxes that had been sent to you in  
11 opposition to the project, and I was asked to bring  
12 today a letter from Maria Tyler who opposes the  
13 development of this property and I will give that to  
14 staff. Okay?

15 CHAIRPERSON GRIFFIS: One piece. That  
16 mike seems to be getting feedback. Could you turn off  
17 and then yes, that would be perfect. I think you can  
18 just move right there and let's see if that makes a  
19 difference.

20 MS. FARRELL: Is that better?

21 CHAIRPERSON GRIFFIS: Oh, much.

22 MS. FARRELL: Okay.

23 CHAIRPERSON GRIFFIS: Okay. You wanted to  
24 clarify faxes.

25 MS. FARRELL: I have some faxes, some

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1 faxes have been sent in and I had some original copies  
2 of letters that people had signed, so I just thought I  
3 would submit those for the record.

4 CHAIRPERSON GRIFFIS: Oh, I see.

5 MS. FARRELL: Okay?

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. FARRELL: I started out saying good  
8 afternoon, but I guess I should say good evening.

9 CHAIRPERSON GRIFFIS: Unfortunately.

10 MS. FARRELL: I'm Lisa Farrell. I am  
11 speaking to you as a 20 year resident of the District,  
12 as a community member, as an adjacent neighbor. I  
13 have lived at 2523 Queen Anne's Lane for the last 15  
14 years.

15 The proposed building in this application  
16 is too much building on too little of a lot, squeezing  
17 those of us who are adjacent property owners,  
18 significantly affecting light and air, privacy and our  
19 property values in particular and generally harming  
20 our quality of life and enjoyment of our property. I  
21 say this fully recognizing the realities of living in  
22 small spaces with close neighbors.

23 Speaking as an adjacent neighbor, the  
24 applicant's property runs along the back of three  
25 current homeowners. The proposed building would place

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1 a solid wall just 18 feet from our living room  
2 windows. The solid wall would be higher than any  
3 existing house on the block. The picture up there is  
4 taken at the applicant's property and at our rear  
5 yards. The applicant's house in the original  
6 proposal, in fact even in the revised drawing, goes  
7 higher than this tree, which is about 34 feet tall.

8 Even if the fifth story mechanical closet  
9 roof access was removed, that's still a very, very  
10 tall building. These gentlemen, wise as they are, try  
11 and argue that it is measured by the Zoning Ordinance,  
12 the building height meets the 30 foot requirement.  
13 While we have some doubts about this claim, the  
14 technical calculations for zoning purposes do not  
15 change the simple fact that when the wall is built, it  
16 will be higher than any of the buildings on Queen  
17 Anne's Lane and tower over us.

18 Even though the applicant has been forced  
19 to remove the fifth story, he still plans to use the  
20 roof as living space. Such a desirable is  
21 understandable since the lot is not big enough to  
22 provide the amount of living space desired in a modern  
23 house. Putting living space on the roof with people  
24 perching atop of it, an observation tower that would  
25 basically be 40 feet, 35 to 40 feet, taller than my

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1 yard would also give them views into my living room,  
2 into my neighbors' living rooms and into our bedrooms.

3 As a community member, the proposed  
4 building violates so many provisions of the Zoning  
5 Ordinance that this building completely defeats the  
6 purpose and the intent of the neighborhood standards  
7 and protections that the Zoning Ordinance and Historic  
8 Overlay District seeks to provide. If this many  
9 variances are granted for this clearly substandard  
10 lot, then the Zoning and Historic Ordinances will have  
11 lost all meaning for our neighborhood.

12 In speaking with my neighbors over this  
13 matter and other neighborhood issues, I find an  
14 incredible frustration and, in some members, even  
15 anger about the constant erosions of support from the  
16 District Government from both elected and appointed  
17 officials. We buy our homes in good faith. We pay  
18 our taxes with the expectations that the laws, rules  
19 and regulations will be enforced. Yet, we are  
20 constantly diminished by variances and exceptions that  
21 are sought by newcomers and commercial ventures and by  
22 what appear, on some occasions, to be arbitrary and  
23 capricious decisions by our representatives.

24 We have stood by this city in some pretty  
25 dark times, and in this case purchased in a Historic

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1 District because of its charm and the protection  
2 afforded from developers by the Zoning Commission and  
3 the overlay. Because of the severe impact this  
4 proposed building will have on those of us who are  
5 immediate neighbors and because of the general impact  
6 it will have on our neighborhood, I urge the Board to  
7 deny the variances requested in this application.

8 CHAIRPERSON GRIFFIS: Anything else?  
9 Excellent. Thank you. You have copies of this  
10 photograph. Is that correct?

11 UNIDENTIFIED SPEAKER: Did you make  
12 copies?

13 CHAIRPERSON GRIFFIS: Is that just what  
14 you have?

15 MS. FARRELL: For that view, yes.

16 MR. BOND: And one --

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. BOND: And one photo.

19 CHAIRPERSON GRIFFIS: Good. I just need  
20 it put into the record.

21 MS. FARRELL: Oh.

22 CHAIRPERSON GRIFFIS: Was it put into the  
23 record?

24 UNIDENTIFIED SPEAKER: Yes.

25 CHAIRPERSON GRIFFIS: Okay. And for

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1 clarification, we're looking, you said we're actually  
2 looking at your rear yard primarily. Is that correct?

3 MS. FARRELL: Correct.

4 CHAIRPERSON GRIFFIS: And on the right  
5 side of that photograph is the lot in this  
6 application.

7 MS. FARRELL: Right. This is the property  
8 line right here.

9 CHAIRPERSON GRIFFIS: That fence is the  
10 property line?

11 MS. FARRELL: That would be mine.

12 CHAIRPERSON GRIFFIS: Okay. The second  
13 house in?

14 MS. FARRELL: Yes.

15 CHAIRPERSON GRIFFIS: Close to the tree?

16 MS. FARRELL: Close to the tree.

17 CHAIRPERSON GRIFFIS: Okay. Any other  
18 Board questions? Cross?

19 MR. FEOLA: I just have a couple  
20 questions, Mr. Chairman.

21 Ms. Farrell, do you know how big your lot  
22 is?

23 MS. FARRELL: I would have to go and  
24 reference it.

25 MR. FEOLA: Do you know how big your house

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1 is in square footage, ballpark?

2 MS. FARRELL: 2,100.

3 CHAIRPERSON GRIFFIS: 2,100 square feet?

4 MS. FARRELL: 2,100 square feet including  
5 the garage.

6 CHAIRPERSON GRIFFIS: I don't know why we  
7 have that. It's really terrible.

8 MR. FEOLA: I'm sorry, I shut mine off.

9 CHAIRPERSON GRIFFIS: Well, yes, that's  
10 fine.

11 MR. FEOLA: So you said, as I wrote down,  
12 that there's too much building on this lot, but at  
13 1,700 square feet it's smaller than your house.

14 MS. FARRELL: That's true.

15 MR. FEOLA: Okay. So you have a bigger  
16 house, but this house is too big, because I'm trying  
17 to understand?

18 MS. FARRELL: This house is very big for  
19 that very small piece of property that is sandwiched  
20 between a row of houses and an apartment building.

21 MR. FEOLA: No, you said it was too big  
22 for this small lot.

23 MS. FARRELL: Well, if you look at the --

24 MR. FEOLA: That's what you said.

25 MS. FARRELL: If you look at the Zoning

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1 Regulations --

2 MR. FEOLA: No.

3 MS. FARRELL: -- that are currently in  
4 place, it is too big for the lot.

5 MR. FEOLA: Okay. And how big is your  
6 lot?

7 MS. FARRELL: I said I didn't have that  
8 information available.

9 MR. FEOLA: It's okay.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. FARRELL: Could I --

12 MR. FEOLA: Do you know how wide your lot  
13 is?

14 MS. FARRELL: My lot is 14 feet wide.

15 MR. FEOLA: Okay. And so this lot is 18  
16 feet wide, so it's actually wider than your lot. Is  
17 that correct?

18 MS. FARRELL: That would be correct.  
19 However, I would state that my house was built in 1963  
20 under the prevailing rules and regulations and Zoning  
21 Ordinances, as opposed to the Zoning Ordinances of  
22 2004.

23 MR. FEOLA: I understand. And how tall is  
24 your house?

25 MS. FARRELL: 29 feet.

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1 MR. FEOLA: Three stories?

2 MS. FARRELL: Correct.

3 MR. FEOLA: Okay. And this house is too  
4 tall, because it's three stories?

5 MS. FARRELL: It's three stories that are  
6 taller than my house and the prevailing other row  
7 houses in the neighborhood.

8 MR. FEOLA: By a foot?

9 MS. FARRELL: Probably by 5 once you put  
10 the rooftop on it.

11 MR. FEOLA: Okay.

12 CHAIRPERSON GRIFFIS: Anything else?

13 MR. FEOLA: Nothing else.

14 CHAIRPERSON GRIFFIS: Thank you very much,  
15 Ms. Farrell. Any cross? I don't see the ANC here at  
16 this point. Okay. Let's move on then.

17 MR. BOND: Thank you, Mr. Chairman. I,  
18 too, will get some pictures in a little bit, but right  
19 now I'll present those at the end. In recognition of  
20 the qualifications of the architect, it's never been  
21 questioned what the architect is capable to do. The  
22 question had always been what's appropriate use and  
23 development or lack of development on this particular  
24 lot.

25 I actually congratulate the applicants for

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1 presenting this project in the best possible light and  
2 the ingenious or the genius of the architecture in  
3 pushing every conceivable zoning restriction possible  
4 in designing a building. As impressive as that is  
5 from kind of a gaming point of view, from the  
6 Conservancy's point of view that's exactly what it is,  
7 a gaming of the Zoning Ordinance.

8 My understanding of the realities of the  
9 project, instead of the way it has been kind of spun  
10 or presented here, to us at least clearly demonstrates  
11 the inappropriateness of even developing this lot.  
12 The Conservancy categorically rejects that the  
13 project, as proposed, is symmetrical in context,  
14 massing and appearance as the existing structures in  
15 both the Zoning and Historic Overlay District, and not  
16 because it's not a colonial style. We're not talking  
17 about style. We're talking about context.

18 As originally proposed, the building was a  
19 five story building with a roof room that was a living  
20 space with a full room at the top and with a den  
21 below. Nobody is disputing that they have adhered to  
22 the letter of the law in the sense of how they have  
23 calculated certain things, but when you leave the  
24 technicalities aside and when you walk down the street  
25 or look out your back window, there is a certain

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1 reality that's there whether or not the Zoning  
2 Ordinance technicalities have been adhered to.

3 CHAIRPERSON GRIFFIS: But you're not  
4 saying that we're looking at a five story enclosed  
5 liveable space on the roof?

6 MR. BOND: No, but what I'm saying is they  
7 have pushed every envelope, every restriction, every  
8 requirement, which simply demonstrates how unsuitable  
9 this lot is for development. The Historic Board did  
10 and they have removed the roof room from the structure  
11 and have changed the height and appearance in some  
12 ways, and that was absolutely to their credit. It was  
13 demanded of them and they have done so.

14 The row house definition, I must say, even  
15 with my experience in zoning land use issues, not only  
16 in D.C. but the entire area, still leaves me a little  
17 perplexed. As skimpy as the definition is, there is  
18 nothing in legal canons that writes the use of the  
19 English language out of legal definitions.

20 The fact that you have a row house with no  
21 side yard is because you have no yard. You have a row  
22 of houses, and I understand things can get a little  
23 more complicated in many people's points of view down  
24 here, but the fact of the matter is when you look at  
25 legal canons, Sutherland's statutory interpretation,

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1 even D.C. Court of Appeals, the English language still  
2 counts in defining words and legal definitions, and  
3 it's simply not possible to take the row out of a row  
4 house. If it's not in a row then it's a detached or  
5 semi-detached house.

6 Any way you look at -- and I have some  
7 pictures of these additional alley houses in here, and  
8 I think it will become a little clearer when we get  
9 down to those pictures. The logical extension of any  
10 other argument is one I think you were getting to  
11 earlier, Mr. Chairman, which is if you're afraid  
12 you're not going to meet the side yard requirement,  
13 just build the lot line and then you don't need a side  
14 yard setback, but don't be an inch short, because then  
15 you got an inch side yard and then you don't meet the  
16 requirements of the Zoning Ordinance.

17 When people expect a side yard setback,  
18 you know, they have a certain expectation of some  
19 space, some distance, some privacy, it's difficult for  
20 me to talk to Conservancy members and other clients in  
21 other situations when I say, have to try to explain to  
22 them that oh, where in the English language does it  
23 mean what English means? And I don't think there's  
24 anything in the Zoning Ordinance for the cases that  
25 says you can have a row house that's not in a row.

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1 I, too, would certainly defer to the  
2 Zoning Commission and would urge some clarification  
3 from the appropriate legislative body on that issue.

4 CHAIRPERSON GRIFFIS: Well, let's just  
5 quickly explore that, very quickly and briefly. What  
6 is a row? Let's say we have three lots, 18 feet wide,  
7 none of which are developed, and you develop the  
8 center one property line to property line, nothing on  
9 either side. Is that a row dwelling? Is it in a row?

10 MR. BOND: I don't think I have it with  
11 me, but there was a definition, a reference in the  
12 zoning and, to be honest with everybody in terms of  
13 everybody, I don't think the definitions are  
14 sufficiently clear on any of them, but there was a  
15 reference in one place in the ordinance about three  
16 buildings and I forget. I don't have that in front of  
17 me, so I can't give you the specific cite. It talks  
18 about row, semi-detached, detached. It does talk  
19 about three buildings or less than three buildings  
20 together, and I can look that up for you. I just  
21 don't happen to have it in front of me at the moment.

22 CHAIRPERSON GRIFFIS: I'll find it.

23 MR. BOND: Okay. I'm not sure that even  
24 the row house definition, you know, even if we grant  
25 that it's defined as a row house, it doesn't really

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1 meet the requirement. The lot is still a substandard  
2 lot. There is still multiple variances required,  
3 possibly some more special exceptions. It's still a  
4 substandard lot on numerous counts.

5 The burden is on the applicant to prove  
6 the validity and the worthiness of the variances that  
7 they seek. In Regulation 3103.2, there is a couple of  
8 very specific requirements in there. One is hardship  
9 and one is exceptional, practical difficulties. There  
10 is nothing remotely reflecting undue hardship in this  
11 case.

12 We may or may not know exactly when the  
13 lots were subdivided, but it's very clear that the  
14 current owner bought the house a year ago when the  
15 existing Zoning Ordinance, the Historic Overlay  
16 District and the regulations had been in place for  
17 many years. There was no doubt about what he  
18 purchased. He purchased a nice house with a big yard  
19 with parking spaces in the back.

20 The undue hardship is on the community to  
21 try and absorb multiple variances that threaten the  
22 application of the Zoning Ordinance to any particular  
23 property. I mean, if you're looking at an application  
24 with four variances and two special exceptions, what  
25 property owner is going to be inhibited from getting

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1 very creative and, you know, where does the line stop?

2 How many variances, how many exceptions can you get  
3 and still have a Zoning Ordinance that means anything?

4 The members of the Conservancy, people who  
5 are interested in preserving the character of the  
6 community, take this concern extremely seriously.  
7 Where is the law drawn? Where do they have protection  
8 and where don't they? This lot, I mean, conceding  
9 that in favor of some variance at least is the fact  
10 that it is on the property line of the Historic  
11 District, and so it is not in a core position, but it  
12 is still -- even taking the historic aspect aside, it  
13 is still a serious challenge to the legitimacy and the  
14 integrity of the whole concept of Zoning Ordinances  
15 and what they require in order to protect the  
16 character and the stability of the neighborhood.

17 And I'll stray a little bit, the undue  
18 hardship, the simple fact is what was purchased was a  
19 big lot with some parking in back and what the owner  
20 is trying to achieve here is not relief from undue  
21 hardship, but a free ride. He bought a parking lot, a  
22 couple of parking spaces. Now, he wants a house lot.

23 He didn't buy anything that was deprived of him by  
24 the Zoning Ordinance. He is trying to get something,  
25 an additional house lot that he never purchased to

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1 begin with.

2           There are undoubtedly exceptional  
3 difficulties to look at the other side of the two  
4 requirements there in 3103.2, but every substandard  
5 lot has exceptional difficulties. You can't have --  
6 you know, you would render standards meaningless if  
7 you just said well, they don't meet the standard.  
8 Therefore, it's difficult, therefore, you don't have  
9 to meet the standard. It makes no sense.

10           The qualification at the end of that  
11 paragraph is "without substantially impairing the  
12 intent, purpose and integrity of the Zone Plan."  
13 Again, the critical issue is how many variances, how  
14 many exceptions, how far can you go away from, leave  
15 the requirements of the Zoning Ordinance and still  
16 have any meaning or intent in place?

17           There seems to be an effort to divert  
18 intention from what the owner, the applicant/owner, is  
19 legally required to prove and to focus on what is the  
20 existing houses on Queen Anne's Lane. Queen Anne's  
21 Lane was built per Zoning Ordinance, at the time, and  
22 it was subsequently downzoned for a specific purpose.

23           Everybody knew what Queen Anne's Lane and all the  
24 other lots in that neighborhood were when it was  
25 downzoned. It was downzoned for a purpose.

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1           It is not relevant that those lots don't  
2 meet current standards. They were grandfathered for a  
3 specific purpose, to preserve what was there by  
4 increasing the standard for future development, and it  
5 is a red herring to look at existing structures in  
6 order to determine what is in the public interest for  
7 existing structures when the zoning change was made  
8 for a specific purpose, to protect what was already  
9 there and with a specific means of achieving that.

10           The practical difficulties also impends on  
11 the purpose of the Zoning Ordinance and the Historic  
12 Overlay District in preserving light and air, open  
13 space, density and privacy, all factors listed either  
14 in 101.1, 101.2 of the Zoning Ordinance or in the  
15 Foggy Bottom Historic Overlay Zoning Regulations  
16 itself.

17           The stability of the District is also  
18 mentioned and, again, you know, it's extremely  
19 important. What is the stability of the District?  
20 The Zoning Ordinance does not afford the protection  
21 and the requirements that the existing owners believe  
22 it does.

23           I would like to commend the Office of  
24 Planning's report in that it was a very thorough  
25 analysis, raised many questions. It still does not

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1 address, and I believe the representative spoke to  
2 this, the threshold issue is is this lot even a  
3 buildable lot, and I think that that has to be the  
4 initial determination before the issue of whether any  
5 particular or all the variances are granted, is  
6 whether it's even a buildable lot at all.

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 MR. BOND: While the Conservancy urges the  
4 denial of all variances and the de facto determination  
5 that it's not a buildable lot, in the alternative, the  
6 Office of Planning does present what we would consider  
7 the bare minimum requirements in the alternative,  
8 certainly not the preference, and that is the three  
9 yard setback and no variance from the lot occupancy or  
10 the rear yard requirements.

11 There is also a couple of other issues  
12 regarding -- there was representation that a masonry  
13 wall would be facing the existing Queen Anne's Lane  
14 homes as are currently the homes in masonry, but the  
15 current homes are in brick. They are a specific type  
16 of masonry. They are not painted concrete block or  
17 other type of material, and that is an issue that we  
18 would like to see addressed. Maybe it is already  
19 brick. I just didn't hear a specificity there. So at  
20 a minimum, if something is going to happen, that would  
21 also be an issue we would like to have addressed.

22 I would like to focus on the contextual,  
23 if I can borrow that word or steal the word from the  
24 applicant, I would like to address the contextual  
25 issue and what I think is an indication that what is

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1 proposed is not in context with what's already there,  
2 and I would like to share some photographs and I do  
3 have a copy of these that I can submit for the record.

4 And I'm sorry, I don't have copies to show everybody,  
5 so I will be happy to turn however I need to do this.

6 Does this work? Is it coming through? I  
7 took these photographs, and so I can answer any  
8 questions. If you are in photography at all, a 35  
9 millimeter lens is purported to be what the naked, you  
10 know, what our human eye sees in 20/20 vision, and  
11 what I would like to show first is what somebody would  
12 see looking from the distance that this wall is  
13 supposed to be, and that is when you look out your  
14 back window, and I'll show it to everybody and I'll be  
15 happy to pass it around, and that is what you see  
16 looking out your back window and in these houses, the  
17 living space is in the back, you know, the living  
18 rooms are on the back of these houses, you see a wall,  
19 a very massive wall very, very close to your living  
20 room window and your bedroom window.

21 There is simply not enough space between  
22 the houses without at least some side yard setback to  
23 provide some more distance if, in fact, anything is to  
24 be built. This I brought just to clarify if anybody  
25 is not familiar with what the neighborhood looks like.

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1 I mean, you're talking about possibly making sort of  
2 alley effect down the property line about where that  
3 tree is and, as already testified, the wall, while the  
4 building height as measured by the Zoning Ordinance is  
5 30 feet, the wall itself is 34 to 35 feet and you get  
6 an idea of where it does stick up higher than the  
7 existing house, which gets to the point about the  
8 context.

9 And I have to confess, I'm not sure which  
10 is A, B and C from the previous exhibits presented,  
11 but this is one of the houses at the other end of  
12 Hughes Mews Alley, and the important thing about this  
13 house and all of these pictures is that no matter how  
14 you define it, in fact, and I'll pass it around, you  
15 can get a little closer look if you wish, in fact, the  
16 top of the new building is not any higher than, in  
17 fact, the top of the buildings next to it. In fact,  
18 in all cases the buildings are the height of the  
19 building that it's closest to. In this case, it's a  
20 three story building.

21 In another case, it's only a two story  
22 building. One of the three houses that were pointed  
23 out that was supposed to be contextually consistent is  
24 only a two story building, because, you get a better  
25 look from the other angle, but there are two story

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1 buildings around it and there is also a significant  
2 amount of side and front space around these buildings.

3 They are not squeezed into either the lots or into  
4 the alleyway space with them.

5 This is another picture of the same house  
6 just from the other end and it's a two story house  
7 next to two story houses. And in fact, if you went  
8 out there with a tape measure, the buildings are the  
9 same height regardless of what the Zoning Ordinance  
10 specifies, and I'm happy to pass these around and I'll  
11 submit the pictures if anybody wants to take a closer  
12 look. But the key point is contextually to fit, it's  
13 the same height. It's the same material. It's the  
14 same mass proportionate to the lot. This building  
15 does not conform to that same standard or that same  
16 presentation.

17 I would simply repeat that the Conservancy  
18 believes that there are too many variance requests,  
19 too many unanswered questions about how many  
20 additional exceptions are needed for this building,  
21 for this house to be built and still preserve the  
22 integrity of the Zoning Ordinance and the protection  
23 of the Historic District that the Conservancy seeks.

24 Alternatively, if something is to be  
25 built, there has to be less building, fewer variances,

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1 fewer exceptions and with some conformity and some  
2 consideration of the adjacent homeowners for a smaller  
3 building and a side yard setback. And I thank you for  
4 your attention.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 Oh, I'm glad you reminded me. The section you were  
7 looking at 320.1, which is the general provisions of  
8 the R-3 District, and I think that's what you're  
9 talking about in terms of seeing something that had to  
10 do with groups of three. "The R-3 District is  
11 designed essentially for row dwellings, but there  
12 shall be included in R-3 District areas within which  
13 row dwellings are mingled with one-family detached  
14 dwellings and one-family semi-detached dwellings,  
15 etcetera, and groups of three or more row dwellings,"  
16 which is where the number comes up.

17 I'm not sure where that comes from or why  
18 or what. It actually has no real provision in terms  
19 of limiting. It's obviously the general provision,  
20 but, I mean, it doesn't preclude one from having two  
21 or six, but there it is. Ms. Miller?

22 VICE CHAIR MILLER: I'm wondering if you  
23 have any comments about the Historic Preservation  
24 Review Board's staff's recommendation that that Board  
25 approve the scale and general massing of the project.

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1 MR. BOND: The specific finding of that  
2 board includes the provision that nothing in this  
3 report shall be interpreted to be any reflection on  
4 its adherence to the zoning requirements. That was  
5 strictly a Historic Preservation view. And as I said,  
6 because it's right on the edge of the Historic  
7 District right next to significantly more contemporary  
8 buildings there and the Queen Anne's Lane buildings  
9 are noncontributing from the historic feel or  
10 character of the neighborhood, the report was simply  
11 saying that the Historic Preservation Review Board is  
12 not as concerned about the historic look of the  
13 building as, frankly, we are not either.

14 We're much more concerned about the threat  
15 to the integrity and the protections of the Zoning  
16 Ordinance than we are from whether the building is  
17 glass block sides and copper planter on the roof or  
18 that sort of thing is just not the issue that we're --

19 VICE CHAIR MILLER: Okay. So my question,  
20 I guess, then is you don't necessarily disagree with  
21 this recommendation? Your testimony goes to other  
22 aspects of it being out of context. As I understand  
23 your testimony, is that this project is out of context  
24 with the character of the neighborhood and you  
25 represent a historical group, and I am just clarifying

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1 whether your views for then and today are different,  
2 go to different issues than what was presented before  
3 the Historic Preservation Review Board where they  
4 specifically mentioned scale and massing.

5 MR. BOND: Okay. I think I understand  
6 what you are talking about. The Conservancy opposed  
7 the design of the building at the historic review  
8 level. But that has been decided, that's old news.  
9 We are now past that. I was speaking about the  
10 requirement as to what qualifies an applicant to even  
11 get a variance from the Zoning Ordinance. And that  
12 requirement goes to the issue of, and I don't have it,  
13 I buried it, without substantially impairing the  
14 intent, purpose and integrity of the Zone Plan, the  
15 applicant was arguing that the building is  
16 contextually consistent and therefore it does not  
17 threaten the integrity of the Zoning Ordinance.

18 The point I was making is that,  
19 contextually, it does threaten the integrity of the  
20 Zoning Ordinance as well as by the variances and  
21 number of variances and exceptions.

22 VICE CHAIR MILLER: Thank you.

23 CHAIRPERSON GRIFFIS: Good. I think we  
24 are clear on your point of that, and I think the Board  
25 can deliberate. One thing that really was of interest

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1 to me is you spoke quite extensively about the purpose  
2 of the downzoning. And it seems like your conclusion  
3 of the downzoning was, essentially, to render this an  
4 unbuildable lot. Is that your position?

5 MR. BOND: Well, I think it did render it  
6 an unbuildable lot. I think that the downzoning in  
7 the Historic Overlay clear states open space, alley  
8 ways, privacy, all as intent, the reason why they  
9 changed the zoning and imposed the Historic Overlay  
10 District. And I think yes. I guess, the short  
11 version is yes. And it's not, you know, reading tea  
12 leaves or anything. It is specifically stated in the  
13 Historic Overlay District's section of the  
14 regulations, which are part of the Zoning Ordinance.

15 CHAIRPERSON GRIFFIS: Okay. And just to  
16 follow-up on kind of what I think Ms. Miller was  
17 getting to, but you indicated the materials on the  
18 proposed property line wall. Is that something that  
19 came up in Historic Preservation?

20 MR. BOND: Well, it is something that came  
21 up in Historic Preservation.

22 CHAIRPERSON GRIFFIS: And I imagine it  
23 would.

24 MR. BOND: Yes.

25 CHAIRPERSON GRIFFIS: But the whole point

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1 and purpose of that is it seems much more of an  
2 appropriate jurisdiction in that realm. I mean, I  
3 think we have taken your point in terms of the  
4 location and the size of it and also the proposed  
5 materials. So I think we can address that if we  
6 might. Follow-up? Any other questions? Board  
7 questions? Yes, Ms. Miller?

8 VICE CHAIR MILLER: Well, I have followed  
9 up to Office of Planning based on this.

10 CHAIRPERSON GRIFFIS: Good. Why don't we  
11 get through cross and then we'll get to the Office of  
12 Planning.

13 VICE CHAIR MILLER: I'm sorry.

14 CHAIRPERSON GRIFFIS: None? See how  
15 quickly we can get through that. We've lost everybody  
16 else. Unless, Ms. Farrell, you have cross?

17 MS. FARRELL: No.

18 CHAIRPERSON GRIFFIS: Okay. Very well.  
19 Let's go to follow-up questions for the Office of  
20 Planning.

21 VICE CHAIR MILLER: With respect to, I  
22 guess, whether the intent of the change was to make a  
23 lot unbuildable, can you have -- and this also goes to  
24 your analysis of 401.6 where you say that "If the  
25 subject lot does not meet this requirement, in that it

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1 has no street frontage, which calls into question  
2 whether the lot was ever intended to permit a new  
3 dwelling." And my question, basically, is can we have  
4 a legal subdivision or a lot that is legally  
5 subdivided that is not allowed to be built upon?

6 MR. LAWSON: I thought I was finished for  
7 the night. I guess I'm not.

8 UNIDENTIFIED SPEAKER: I would say that  
9 calls for a legal conclusion, not a planning  
10 conclusion.

11 MR. LAWSON: Yes, with all due respect, I  
12 was going to say something similar to the same thing.

13 I would say that there are processes in place in the  
14 Zoning Regulations for the development, to permit the  
15 development of, essentially, any lot in the District,  
16 and those processes are the variance process and in  
17 some cases special exception process. So it may be  
18 that there are certainly lots that are not buildable  
19 as of right and are required to go through the  
20 variance process, which is exactly what these  
21 applicants are doing.

22 VICE CHAIR MILLER: I have a question.  
23 Would you say that it was the intent of the downzoning  
24 to prevent lots, such as this, from being built upon?

25 MR. LAWSON: To be honest, I have not

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1 researched that question. I think somebody would have  
2 to go through the records, read the transcripts. I  
3 have not done that. If the BZA wishes me to do that  
4 or wishes Corp. Counsel to do that, that may be an  
5 interesting question to have answered.

6 CHAIRPERSON GRIFFIS: Thank you.  
7 Excellent answers. Anything else?

8 VICE CHAIR MILLER: I would also, I guess,  
9 ask, Mr. Feola, if he has an opinion as to whether the  
10 intent of the downzoning was to prevent building on  
11 properties such as this?

12 MR. FEOLA: Well, in the first case, the  
13 city can't do that. The Land Use Regulations are  
14 pretty clear. You can't take away developable rights  
15 in their entirety, and I think Mr. Lawson is correct.  
16 As long as the city gives a property owner the  
17 opportunity to present a reasonable proposal, you may  
18 or may not turn it down, but you just can't say  
19 something is unbuildable.

20 But the answer to the other part of your  
21 question, I think, all you need to do is look at  
22 Zoning Commission No. 714. The whole purpose of the  
23 Foggy Bottom Overlay District, the whole purpose of  
24 the downzoning from R-5-B to R-3 was to prevent, not  
25 buildable lots, but to prevent what was happening at

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1 Foggy Bottom and that is if you look at the photograph  
2 in the Office of Planning report, the aerial  
3 photograph, the conversion of properties from small  
4 single-family, townhouse lots to apartments.

5 Everything on the north side of Queen  
6 Anne's Lane with the exception of that row of houses  
7 on Queen Anne's Lane turned into apartment buildings.

8 One of them was a PUD. One of them was a matter-of-  
9 right and there is a hotel. You read this text  
10 amendment, which is attached to our prehearing  
11 submission, and you can see that was the whole intent  
12 of it. In effect, I would argue and I will right now,  
13 that this application does exactly what the Foggy  
14 Bottom Overlay in R-3 did.

15 Now, it is on a smaller lot, but it is  
16 building a single-family townhouse lot in character  
17 and scale with the other single-family townhouse lots  
18 in the area. The last thing this regulation wants is  
19 for Mr. Freschi to sell it to the apartment building  
20 next door so they can do an addition to the north,  
21 because there is a five story apartment building  
22 immediately adjacent to this property. So I would  
23 argue just the opposite. The city can't do that and  
24 that wasn't the intent anyway. The intent is for the  
25 smaller lots and by the way, as the Conservancy showed

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1 very -- expressed very articulately about the side  
2 yard and then showed photographs of at least one of  
3 those buildings that was built about two years ago  
4 with no side yards in the same Foggy Bottom Overlay  
5 District.

6 So it seems to me you can't have it both  
7 ways. You can't say you can't do this and then say  
8 you can't have a building without side yards  
9 freestanding and then say it's out of context with  
10 what is permitted now. And we're not talking about  
11 the things that were built in the '60s. So it seems  
12 to me that what we have here is very simply an  
13 application for a legal lot that was created under  
14 different zoning. The Zoning Commission made it  
15 substandard, not the property owner, and that change  
16 in zoning created a practical difficulty on developing  
17 it, which is why we're here.

18 That's the uniqueness, that's why we are  
19 here. Whether or not we have made our case, that's  
20 the Board's decision. But I would urge you really to  
21 look at that photograph and the aerial photograph is  
22 attachment 3 of the Office of Planning's report. And,  
23 you know, everything around this little site, with the  
24 exception of Mrs. Farrell's house and the houses on  
25 Queen Anne's Lane is big apartment buildings. In

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1 fact, I would argue that a house here would be a nice  
2 buffer between what they are looking at now which are  
3 tall apartment buildings and the house, but that's in  
4 the eye of the beholder and she is entitled to her  
5 view as well. The trees aren't going away.

6 CHAIRPERSON GRIFFIS: Ms. Miller?

7 VICE CHAIR MILLER: Mr. Feola, would you  
8 also address the arguments that the project is  
9 somewhat out of scale with respect to height, that it  
10 is taller than the buildings surrounding it? I don't  
11 know how many feet it was, whether it was 5 feet or  
12 whatever. Is it out of scale in that respect?

13 MR. FEOLA: You know, what is out of  
14 scale? It's 30 foot tall, as is measured by the  
15 Zoning Regulations. Ms. Farrell said her's is 29. I  
16 have no reason to doubt that. 30 and 29 to me doesn't  
17 sound like a whole lot of difference. All these  
18 buildings have parapets on them, and I would guess all  
19 the parapets -- I'm sorry, not on Queen Anne's Lane,  
20 but some of the other photographs that the Conservancy  
21 shows show parapets. They may be 2 feet. They may be  
22 2.5 feet. They may be 3 feet. My guess is the  
23 heights in this square range from 29 feet to 35 feet,  
24 if you count the top of the parapet. But I don't  
25 know.

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1           If you would like, we can try to get a  
2 survey and get you more specific information. By the  
3 way, the house that Mr. Freschi lives in, which is the  
4 house. Where is that plat? It was just here.

5           UNIDENTIFIED SPEAKER: We don't have a  
6 picture of it now.

7           MR. FEOLA: No, no, I don't want the  
8 picture. I want the file. The house that Mr. Freschi  
9 lives in, which is on Lot 94, which mirrors the exact  
10 condition for the Lots 75, 76 and 77 that are proposed  
11 to mirror on Ms. Farrell's Lot 82 and 83, that house  
12 is 50 feet tall and that was built before the change  
13 in zoning. So this is actually 15 feet taller than  
14 this house and these people have the same view that  
15 Ms. Farrell will have into the wall. And they have  
16 been living there, I assume, peacefully and happy.

17           MS. FARRELL: Can I make a comment?

18           CHAIRPERSON GRIFFIS: Yes.

19           MS. FARRELL: On the new height of Mr.  
20 Freschi's house, none of the neighbors received  
21 notification of the zoning hearing prior to its being  
22 passed and had they, I know from speaking to all of  
23 them that they would have opposed the additional  
24 stories.

25           CHAIRPERSON GRIFFIS: Okay. What zoning

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1 hearing?

2 MS. FARRELL: Mr. Freschi added additional  
3 height to his house.

4 CHAIRPERSON GRIFFIS: I see.

5 MS. FARRELL: And none of the neighbors  
6 did receive --

7 MR. FEOLA: No, he didn't.

8 MS. FARRELL: Yes, he did. Yes, he did.  
9 He added a story.

10 CHAIRPERSON GRIFFIS: Okay. Just for my  
11 clarification, obviously, that's not the application  
12 that is before us. So we're talking about another  
13 property, but you've just said at the zoning hearing  
14 there was no notification.

15 MS. FARRELL: No, no. Mr. Feola was  
16 making a point that Mr. Freschi's house was 50 feet  
17 high.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. FARRELL: Mr. Freschi recently, when  
20 he bought the house, added an additional story to his  
21 house.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. FARRELL: The neighbors had not gotten  
24 appropriate notice, had they, they would have opposed  
25 the additional height.

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1 CHAIRPERSON GRIFFIS: Where would they  
2 have opposed it?

3 MS. FARRELL: At a hearing for a variance.

4 CHAIRPERSON GRIFFIS: Was there a variance  
5 associated with this work?

6 MR. FEOLA: Not to my knowledge.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. FEOLA: There was no additional story  
9 added to this house. There was an addition to the  
10 back of the house, which wouldn't have required a  
11 variance.

12 CHAIRPERSON GRIFFIS: Okay. I'm sorry,  
13 I'm just trying to get clarification. Do you know  
14 that there was a hearing that you missed?

15 MS. FARRELL: That's what I've been told  
16 that there was a hearing and that there was a hearing  
17 and people were not notified that this construction  
18 was taking place.

19 CHAIRPERSON GRIFFIS: Huh.

20 MR. FEOLA: It might be Ms. Farrell is  
21 referring to the HPRB hearing, because it did have to  
22 go through Historic Preservation.

23 CHAIRPERSON GRIFFIS: It went through  
24 HPRB. I see. Okay.

25 MR. FEOLA: And that might be the notice

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1 that they didn't get.

2 CHAIRPERSON GRIFFIS: That would be it.

3 MR. FEOLA: I don't know.

4 CHAIRPERSON GRIFFIS: Okay. Good.  
5 Anything else? Ms. Miller, follow-up questions? Very  
6 well. Then we are ready for any closing remarks.

7 MR. FEOLA: Thank you, Mr. Chairman. I'm  
8 going to keep this brief, because I think I just  
9 pretty much said everything I wanted to say, and that  
10 we believe that the downzoning creates the exceptional  
11 situation, the uniqueness on this property that  
12 creates a situation that requires a variance of some  
13 sort. The Office of Planning agrees with us that the  
14 size of lot and width of lot make it virtually  
15 unbuildable without a variance.

16 We believe that the solution that Mr.  
17 Freschi has proposed will make not only a contextual  
18 addition to the neighborhood, but also then create a  
19 living space for his client, friend and contract  
20 purchaser a viable living space to live in and we  
21 don't see how a single-family townhouse in a townhouse  
22 community between the existing townhouses and large  
23 apartment buildings would do anything detrimental to  
24 the Zone Plan or the public health, safety and  
25 welfare. And so with that, I really appreciate the

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1 very long day you've spent here, a lot with us and a  
2 lot with a whole lot of other people. So thank you  
3 very much.

4 CHAIRPERSON GRIFFIS: Yes, but you are all  
5 fun. So any other follow-up questions? Board? Very  
6 well. Thank you all very much and we appreciate your  
7 patience actually keeping you here and I'm sorry I  
8 changed the schedule around in the afternoon, but  
9 there it is.

10 Let's go to setting this. I think we can  
11 easily get this in on the 8<sup>th</sup> of June with our next  
12 Public Meeting. To that, Mr. Moy, I don't recall  
13 anything of addition that we need submitted into the  
14 record, unless people want: One, a title search, two,  
15 the survey of the surrounding building heights and,  
16 other than that I don't have any. Mr. Moy, did you  
17 note any other or Board Members any other additional?

18 MR. MOY: No, that's the only thing I have  
19 in my notes, too, and only minor would be the photos  
20 on the presentation boards.

21 CHAIRPERSON GRIFFIS: Right. For clarity,  
22 of course, anything that was shown to us today that  
23 isn't already in the record needs to be submitted in  
24 the record, and obviously that will be helpful in our  
25 deliberation. Mr. Hildebrand and Ms. Miller, I don't

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1 see the necessity for doing the survey of the building  
2 heights in the surrounding area. I think that is fair  
3 clear from the Board. In terms of the title search  
4 for the establishment of the plat?

5 COMMISSIONER HILDEBRAND: I would like to  
6 -- well, I'm sure if he just purchased the property  
7 last year there would have been a thorough title  
8 charge as part of his purchase, so I think you could  
9 get it fairly easily and get it to us.

10 MR. FEOLA: We would like to do that and  
11 show it to the Board.

12 CHAIRPERSON GRIFFIS: Indeed. We'll have  
13 that in and then I wasn't aware of anything else,  
14 unless others have note of it. If that's said, that  
15 can come in. Yes?

16 MS. GLAZER: Mr. Chair, I'm sorry, I have  
17 a clarification question about the exhibits. Mr.  
18 Feola referred a few times to his prehearing  
19 statement, and I'm sure I don't have that in my file  
20 and I don't know if that was just an oversight.

21 CHAIRPERSON GRIFFIS: Mr. Feola did?

22 MR. FEOLA: I said the applicant's  
23 prehearing submission. It is Exhibit 26.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. FEOLA: It was filed by Ms. Hicks.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. FEOLA: Exhibit 26.

3 MS. GLAZER: Thank you.

4 CHAIRPERSON GRIFFIS: That was a bit of  
5 confusion.

6 MR. FEOLA: I'm sorry.

7 CHAIRPERSON GRIFFIS: But I'm glad you  
8 clarified that. I think most of us are aware and will  
9 note 26, so obviously, I think, the confusion was, Mr.  
10 Feola, when we saw you, we were expecting something  
11 with Shaw Pittman on it, which we didn't have. Okay.  
12 Anything else? Clarifications, questions? Good.  
13 Then let's set the schedule on this. As far as that  
14 is concerned, we will have the title in, which  
15 obviously will be filed with everything else or as  
16 soon as it is ready. We'll have findings and  
17 conclusions by all parties submitted in. If we decide  
18 this on the 8<sup>th</sup>, let's have it?

19 MR. MOY: Well, working backwards then, if  
20 we could have findings due to June the 1<sup>st</sup> and the  
21 submissions as was discussed May 25<sup>th</sup>? Is that doable?

22 MR. FEOLA: Yes.

23 MR. MOY: Or sooner?

24 CHAIRPERSON GRIFFIS: It doesn't need to  
25 be sooner.

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1 MR. MOY: Okay.

2 CHAIRPERSON GRIFFIS: I think all at once.  
3 Let's not do several days.

4 MR. MOY: All at once?

5 CHAIRPERSON GRIFFIS: Yes. I mean, if  
6 they can come any time it comes in, that's fine, but  
7 we might as well just have it submitted in. Oh,  
8 actually, I'm mistaken. That should be -- oh, dear  
9 me. So we'll have it on what date did you say, Mr.  
10 Moy?

11 MR. MOY: Which one, findings?

12 CHAIRPERSON GRIFFIS: No, I'm sorry, the  
13 title search.

14 MR. MOY: The title search?

15 CHAIRPERSON GRIFFIS: The title  
16 information.

17 MR. MOY: Well, how long would that take  
18 to have done?

19 MR. FEOLA: I don't know. I think Mr.  
20 Hildebrand is right, but Mr. Freschi is not here.

21 CHAIRPERSON GRIFFIS: We're going to need  
22 responses to that, so we need to allow two weeks for  
23 that.

24 MR. MOY: All right. The 18<sup>th</sup>, will that  
25 do?

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1 CHAIRPERSON GRIFFIS: So the 18<sup>th</sup>, is that  
2 what it puts us to?

3 VICE CHAIR MILLER: Yes.

4 CHAIRPERSON GRIFFIS: Okay. And then  
5 we'll just take in the last submission and any sort of  
6 responses to the responses of response. And that will  
7 come in with findings.

8 MR. FEOLA: We'll all respond to the  
9 response.

10 CHAIRPERSON GRIFFIS: That may sound like  
11 humor, but we've had that numerous times before.

12 MR. FEOLA: I promise under oath I will  
13 respond.

14 CHAIRPERSON GRIFFIS: No, understood.  
15 Okay. So for clarification, of course, that  
16 submission is going to be served on both the parties  
17 and the ANC, who obviously can take a look at that.  
18 And then what we would expect or what the record is  
19 held open for is any response you have specifically to  
20 that information and so however you want to deal with  
21 that, but it's very narrow in scope of that evidence  
22 that would be put into the record. And then after  
23 that, we will look for proposed findings of fact,  
24 conclusions of law, and that would be due, as you  
25 said, on the 1<sup>st</sup> of June. Is that correct, Mr. Moy?

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1 MR. MOY: That's right. That's right.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. MOY: So the two dates then for the  
4 staff's clarification then will be everything,  
5 findings June 1<sup>st</sup>, which is a Tuesday, and the first  
6 submission of materials would be May 18<sup>th</sup>. Correct?

7 MR. FEOLA: Right.

8 MR. MOY: Okay. Good.

9 MR. FEOLA: And any responses will be June  
10 1<sup>st</sup>?

11 MR. MOY: Correct.

12 CHAIRPERSON GRIFFIS: Okay. Any other  
13 questions? Yes, Ms. Miller?

14 VICE CHAIR MILLER: Well, I'm just  
15 wondering what kind of responses you are anticipating  
16 to the title search.

17 CHAIRPERSON GRIFFIS: Well, if I told you  
18 that then the answer --

19 VICE CHAIR MILLER: Well, I --

20 CHAIRPERSON GRIFFIS: -- would be out and  
21 they wouldn't know what to do.

22 VICE CHAIR MILLER: Well, maybe they can  
23 just address it.

24 CHAIRPERSON GRIFFIS: Why don't I tell you  
25 when we're there.

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1 VICE CHAIR MILLER: Okay. We'll be  
2 surprised. I'll be surprised.

3 CHAIRPERSON GRIFFIS: By any evidence that  
4 comes in, we have to allow a response. I mean, it's  
5 new information that is coming in. We're obviously  
6 looking at it for a specific situation or evidence of  
7 something. So, I mean, the parties are not required,  
8 I don't really anticipate anything quite frankly, but  
9 we have to give them the opportunity for it.

10 VICE CHAIR MILLER: Well, I was just  
11 wondering if they might just address it in their  
12 findings the significance of it. But whatever.

13 CHAIRPERSON GRIFFIS: That's fine, too.  
14 No requirement for that additional submission. Okay.  
15 Anything else then? Everyone clear on dates,  
16 submissions? Of course, if there is any other  
17 questions for clarification of procedure, the Office  
18 of Zoning staff is well able to assist you and give  
19 you direction on that. Also, you know, quite frankly,  
20 if you want to look at other findings and conclusions  
21 that have been submitted in perhaps similar cases, it  
22 would be well worth taking a look at the public  
23 records that we have and get any direction that way.

24 If there is nothing else then? Good.  
25 Thank you all very much. We do appreciate your

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1 patience of this. That would adjourn the afternoon  
2 session of 4 May '04.

3 (Whereupon, the Public Meeting was  
4 concluded at 6:40 p.m.)

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