

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JULY 13, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:09 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

KEVIN HILDEBRAND,	Zoning Commission
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY,	Secretary
BEVERLEY BAILEY,	Zoning Specialist
JOHN NYARKU,	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS,	Office of Planning
ARTHUR JACKSON,	Office of Planning
JOEL LAWSON,	Office of Planning
STEPHEN MORDFIN,	Office of Planning
TRAVIS PARKER,	Office of Planning
KAREN THOMAS,	Office of Planning

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.
JANICE SKIPPER, ESQ.

I-N-D-E-X

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

2 10:09 a.m.

3

4 CHAIRPERSON GRIFFIS: I call to order our
5 13 July 2004 Public Hearing of the Board of Zoning
6 Adjustments of the District of Columbia. If you're
7 just walking in, I am Geoff Griffis, Chairperson.
8 And with me today, of course, is the Vice Chair,
9 Ms. Miller. We would ask if Mr. Etherly could be
10 brought out and join us for the hearing, if someone
11 has a moment to get him from the executive room.
12 Also representing the National Capitol Planning
13 Commission with us today is Mr. Mann.

14 Copies of the hearing agenda are
15 available to you. Again, I say I appreciate
16 everyone's patience as we have gotten through some
17 of the decisions that were left over, one might say
18 "hangovers" from last week, of our 13 cases to
19 decide. We've just been through that, and let's
20 move ahead with our hearing today, and very
21 expeditiously, of course.

22 All proceedings before the Board of
23 Zoning Adjustment are recorded. They're recorded
24 in two fashions. First and most importantly, the
25 recorder sitting on the floor to my right is

1 creating the transcript. Secondly, we are being
2 broadcast live on the Office of Zoning's website.
3 Attendant to that I do ask that people turn off
4 cell phones and beepers, and any sort of noise-
5 transmitting devices so we don't disrupt the
6 proceedings.

7 Also, when coming forward I would ask
8 that people fill out witness cards. Two witness
9 cards need to be filled out and presented to the
10 recorder on my right prior to coming forward. They
11 are located at the table where you entered into,
12 and there are available cards at the table where
13 you will give testimony. When coming forward, of
14 course, those cards should be in. And I would ask
15 that you have a seat and make yourselves
16 comfortable. When speaking to the board you will
17 need to have the microphone on. I'll give
18 technical assistance if it needs. You will need to
19 state your name and your address for the board once
20 when starting. And you will only need to do that
21 once.

22 It is very important to understand that
23 everything created for the record must be said on
24 the record or put into the record in writing. This
25 is what the board will deliberate on and only what

1 the board will deliberate on. So it's important,
2 of course, not to disrupt the proceedings, and also
3 to make sure you take your time and tell the board
4 what you need us to understand.

5 The order of procedures for special
6 exceptions and variances is first we hear from the
7 applicant, their case presentation and any
8 witnesses they will present. Second, we'll have
9 government reports attendant to the application.
10 That would be anything from the Office of Planning
11 or Department of Transportation, or other agencies
12 reporting on the application. Third, we will hear
13 the report from the Advisory Neighborhood
14 Commission. Fourth would be parties or persons in
15 support of the application. Fifth would be parties
16 or persons in opposition to the application.
17 Sixth, finally we'll have closing or any rebuttal
18 from the applicant.

19 Cross examination of witnesses is
20 permitted by the applicant and parties within the
21 case. The ANC with interested properties located
22 is automatically a party in the case and therefore
23 is allowed to conduct cross examination. We have
24 great restrictions, limitations, and also
25 jurisdiction over directing cross examination, as

1 outlined in our regulations 3117. I'm not going
2 to go through them all today because it doesn't
3 look like we will need to necessarily invoke them,
4 but I will if needed.

5 The record will be closed at the
6 conclusion of each case, except for any material
7 that is specifically requested by the board. And
8 we will be very specific as to what is to be
9 submitted and when it is to be submitted into the
10 record and into the Office of Zoning. Of course
11 this is a very important aspect to understand. As
12 I have said, we are creating the record before us
13 here today. And so if there are things the board
14 thinks it needs, it would be appropriate and would
15 be required to submit those in. After that
16 material is received, of course the record will
17 finally be closed and no other information is
18 accepted into the record.

19 The Sunshine Act requires that this board
20 conduct all proceedings in the open and before the
21 public. This board may, however, enter into
22 executive session both during or after a hearing on
23 a case. And that would be in accordance with the
24 Sunshine Act and our own rules of procedure and
25 regulations, and would be utilized for reviewing

1 record or deliberating on cases. The decision of
2 the board in contested cases must be based
3 exclusively on this record I keep talking about.
4 So I ask one more thing, and that would be people
5 present today presenting to the board not engage
6 board members outside of the proceedings so that we
7 do not give the appearance of receiving information
8 off the record during our proceedings today.

9 The board will now consider any
10 preliminary matters. Preliminary matters are those
11 which relate to whether a case will or should be
12 heard today, such as requests for postponements,
13 continuances, or withdrawals, or whether proper and
14 adequate notice of an application has been
15 provided. If you are not prepared to go forward
16 with a case today, or you believe the board should
17 not hear one of the cases on its agenda for this
18 morning, I would ask that you come forward, have a
19 seat at the table, indicating that you have a
20 preliminary matter.

21 Let me say a very good morning to Mr.
22 Nyarku on my very far right from the Office of
23 Zoning, and also Mr. Moy with us from the Office of
24 Zoning, and ask them if they are aware of any
25 preliminary matters for us at this time.

1 MR. MOY: Not this morning, Mr.
2 Chairman.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you. We are also joined by Ms. Glazer from -- I
5 have to say it because it's so intriguing now --
6 the Office of Attorney General. And so let us
7 proceed. If there are no preliminary matters, I
8 think we can ask if anyone is thinking about or
9 will in fact be testifying today, if you could
10 please stand and give your attention to Mr. Moy,
11 who is going to administer the oath.

12 (Whereupon, the witnesses were sworn.)

13 CHAIRPERSON GRIFFIS: Let's go.

14 MR. MOY: All right. The first case is
15 Application Number 17186 of TC MidAtlantic
16 Development, Inc., on behalf of Avalon Bay
17 Communities, Inc., and 777 6th LLC, pursuant to 11
18 DCMR § 3103.2, for a variance from the rear yard
19 requirements under Section 774, and pursuant to 11
20 DCMR § 3104.2, for a special exception from the
21 roof structure provision under Section 411 (770.6),
22 to permit the construction of a 10-story office
23 building with ground floor retail in the DD/C-2-C
24 District at premises 777 6th Street, Northwest
25 (Square 486, Lots 10 through 13, 36, 804 through

1 808).

2 The staff notes that there's a
3 preliminary matter on this case in that the ANC 6-C
4 submitted a supplemental report on July 12, 2004,
5 which is untimely, which is in your case folders
6 under Exhibit 29. And that completes the staff's
7 briefing.

8 CHAIRPERSON GRIFFIS: Good. Thank you
9 very much, Mr. Moy. Before the board takes up
10 whether they waive in the ANC report or not,
11 there's an additional preliminary matter and that
12 is I will be recusing myself from this case and not
13 hearing it. I will turn it over to Ms. Miller to
14 conduct the proceeding, as this application is --
15 well, I do work for the architecture firm that is
16 representing it today. So I'll see you all in a
17 few minutes.

18 VICE CHAIR MILLER: Good morning. Would
19 the parties identify themselves for the record
20 first, please?

21 MS. BROWN: Good morning, Vice Chair
22 Miller. My name is Carolyn Brown with the law firm
23 of Holland & Knight. To my right is Mr. Fred
24 Rothmeijer of the Trammel Crowe companies. To his
25 right is Mr. Steven Sher of our law firm, and Frank

1 Durkin from the architectural firm of Hickok
2 Warner Cole.

3 VICE CHAIR MILLER: I just want to ask
4 you if you have an objection to our waiving our
5 rules and accepting the ANC report?

6 MS. BROWN: No objection. We would
7 encourage it.

8 VICE CHAIR MILLER: Okay. Do my board
9 members have any objection to accepting it?

10 MR. MANN: No objection, Madam Chair.

11 VICE CHAIR MILLER: Okay. Then I would
12 move that we waive our rules and accept the report
13 into the record. And I gather we can do that by
14 consensus. Okay. You can proceed then.

15 MS. BROWN: Thank you. Good morning
16 members of the board. For the record again, my
17 name is Carolyn Brown with the law firm of Holland
18 & Knight. With me from our office is Steve Sher,
19 and I'll skip the other introduction that I have
20 written out here because I just introduced Mr.
21 Rothmeijer and Mr. Durkin.

22 We return to the board today for
23 additional relief for a project that you reviewed
24 and approved last fall. At that time, we received
25 special exception approval from the penthouse

1 structures setback requirements to allow the
2 construction of a 10-story office building with
3 ground floor retail. Since that time, the project
4 has been modified to incorporate an existing
5 structure on the site known as Hockmeyer Hall as a
6 result of a landmark application that was filed
7 this spring. Fred Rothmeijer will provide you with
8 more information on this aspect of the project.

9 VICE CHAIR MILLER: Ms. Brown?

10 MS. BROWN: Yes.

11 VICE CHAIR MILLER: Can I just interrupt
12 you for one second? I just wanted to seek
13 clarification with respect to the special exception
14 relief that this board granted last November. Is
15 there a change in the design affecting that relief
16 in this case?

17 MS. BROWN: The penthouse is located in
18 the exact same location. The setback dimensions
19 changed slightly as a result of having to
20 reconfigure the building.

21 VICE CHAIR MILLER: And how did they
22 change?

23 MS. BROWN: I'll have the architect
24 explain that in greater detail, but it has
25 diminished a little bit.

1 VICE CHAIR MILLER: Okay, so we're
2 looking at something a little bit different, but
3 not much?

4 MS. BROWN: Correct.

5 VICE CHAIR MILLER: Okay, thank you.

6 MS. BROWN: As I was saying, as a result
7 of the design change, and in addition to the
8 setback relief, we now seek an area variance from
9 the rear yard requirements. Hockmeyer Hall is
10 located in what was the rear yard of the project.

11 Through the testimony you will hear today
12 and the evidence that has already been submitted to
13 the record, we will demonstrate that we meet the
14 standards for special exception relief in an area
15 variance. We believe that the filing of a landmark
16 application on the eve of securing the building
17 permits for the project, and then the subsequent
18 negotiated agreement with DCPL, create an
19 exceptional and extraordinary condition for the
20 property. And Mr. Rothmeijer, again, will explain
21 that in a little more detail. And thus I think we
22 meet the first prong of the variance test.

23 This existing building certainly creates
24 practical difficulties for the applicant in
25 complying with the rear yard setbacks if they are

1 strictly applied. That is, they could not
2 proceed with the project as designed. They would
3 not be able to provide the rear yard. So that's
4 the second prong of the test.

5 Third, we believe that the relief can be
6 granted without causing any detriment to the public
7 good. It will not impair the intent and purpose of
8 the zoning regulation. And again, we will have our
9 witnesses testify to that standard.

10 We're pleased to have the support of OP,
11 DCPL, and the ANC. And with that introduction, I'd
12 like to turn the testimony over to our first
13 witness, Mr. Fred Rothmeijer.

14 VICE CHAIR MILLER: Okay. We have one
15 question, and this may be answered later on or now.
16 And that is what is exactly the status of that
17 landmark application? Has it been withdrawn? Is
18 it pending?

19 MS. BROWN: No. Pursuant to the
20 agreement, the landmark application will not be
21 withdrawn until we know that we can get the
22 variance relief that's needed to incorporate it
23 into the site.

24 VICE CHAIR MILLER: Okay, thank you.

25 MS. BROWN: You're welcome.

1 Mr. ROTHMEIJER: My name is Fred
2 Rothmeijer. I'm a principal with Trammel Crowe
3 Company, and address is 844 West Park Drive in
4 McLean.

5 To explain a little bit about the
6 background of the project, we started the project
7 in the first quarter of 2003. And the first thing
8 that we basically did is to ask Traceries' Emily
9 Eig to review and analyze the existing structure,
10 now sort of known as Hockmeyer Hall. And through
11 her analysis, we came -- or she came to the
12 conclusion that the townhouse was really not
13 architecturally or historically of value. And as
14 such, we pushed forward on a design that did not
15 incorporate the townhouse.

16 I also want to state that our company is
17 very sensitive to existing structures of value, and
18 I think that's proven by projects like Calgary
19 Baptist Church on 8th and G Street, and Columbia
20 Hospital for Women, that incorporates an existing
21 structure in the new project.

22 We started the design, like I said,
23 without the townhouse, and proceeded with that,
24 obtained large tract approval, ANC support,
25 Chinatown approval, and we also obtained the BZA

1 approval for the penthouse sort of relief, if you
2 will. We submitted, then, for demolition permit
3 for the structure in the fourth quarter of 2004,
4 such that we could start construction in the first
5 quarter of 2005. And I think it was a week before
6 obtaining that demo permit DCPL filed for landmark
7 status for the structure.

8 VICE CHAIR MILLER: Can I ask you a
9 question?

10 MR. ROTHMEIJER: Yes.

11 VICE CHAIR MILLER: Had you talked with
12 DCPL previous to the previous application?

13 MR. ROTHMEIJER: We did not.

14 VICE CHAIR MILLER: And they didn't
15 approach you all either until the construction
16 permits were ...

17 MR. ROTHMEIJER: That's correct.

18 VICE CHAIR MILLER: Okay.

19 MR. ROTHMEIJER: So, after that filing we
20 went back to Traceries' Emily Eig and asked her,
21 hey, did we do -- did you do your homework
22 initially well. And she basically redid her
23 assessment, and came out with the same assessment,
24 that it architecturally and historically was not of
25 value and shouldn't necessarily be preserved as a

1 landmark.

2 In order to resolve the problem, what we
3 did is negotiate out with DCPL a solution that they
4 could support and we could live with. And with
5 that, after extensive and in-depth negotiations, we
6 came to this resolution in which we basically are
7 retaining the townhouse and integrating the
8 townhouse with the new structure. And with the
9 design issue, we'll see it today, and Frank Durkin
10 will explain to you, that reflects the DCPL sort of
11 requirements for negotiated design.

12 In the meanwhile, we did obtain support
13 from ANC. DCPL is onboard on this design, and we
14 are adhering as such to their wishes to integrate,
15 retain the townhouse and integrate the new
16 structure with the townhouse. And as such we hope
17 to be able to start construction in the first
18 quarter of 2006.

19 MS. BROWN: If I could just ask one
20 follow-up question. Mr. Rothmeijer, could you tell
21 the board whether or not the agreement with DCPL
22 requires you to retain this structure on the site
23 in its present location?

24 MR. ROTHMEIJER: Yes, it does.

25 MS. BROWN: Thank you.

1 VICE CHAIR MILLER: Did you get an
2 opinion from the staff at HPRB with respect to the
3 historic value of the structure?

4 MS. BROWN: I'll address that question.
5 The staff does not release its reports on landmark
6 applications to the public in advance of the
7 hearing -- not until five days in advance of the
8 hearing. We were working with them closely, and we
9 postponed the hearing each time so the negotiations
10 could continue. They did not give a -- they did
11 not tell us which way they were inclined to write
12 their staff report. I can say that under the DC
13 Preservation statute, it is considered a landmark
14 at this moment under the definition of landmarks.
15 So it is a landmark as of today, as we speak.

16 VICE CHAIR MILLER: It is because there's
17 an application pending?

18 MS. BROWN: That's correct.

19 VICE CHAIR MILLER: Okay.

20 MR. MANN: So once the application is
21 withdrawn, then that status goes away?

22 MS. BROWN: Yes. But if we do not reach
23 an agreement, or we do not get approval today, the
24 landmark application hearing will go forward, and
25 we -- there's a potential that it would be

1 designated a landmark.

2 MR. MANN: Is this project located in a
3 historic district?

4 MS. BROWN: No, it is outside the
5 boundaries of the downtown historic district. It
6 bounds it, but it is not in the historic district
7 at this time.

8 MR. MANN: So, HPRB wouldn't have any
9 reason to review this project after the application
10 is withdrawn?

11 MS. BROWN: That's correct. Not at this
12 time.

13 MR. MANN: And is there any other
14 organization -- is there any organization that
15 would be eligible for submitting this building as a
16 -- for its landmark status again?

17 MS. BROWN: Yes, it is possible that the
18 landmark application could be filed subsequently,
19 although there is a provision in the D.C.
20 preservation law that precludes consideration of
21 the landmark application on the same property
22 within a 12-month period. So if it is withdrawn,
23 they should not be able to reconsider the same
24 property for 12 months.

25 MR. MANN: Are there limitations on who

1 can nominate a building for inclusion?

2 MS. BROWN: Yes. The ANC, the board
3 itself, or an organization that has historic
4 preservation among its purposes.

5 MR. MANN: And so these are all
6 organizations that you've coordinated with already?

7 MS. BROWN: New organizations are created
8 all the time. So, no, we cannot cover all that,
9 and no, we have no way of ensuring that some new
10 group won't be formed to try to designate this.
11 But this is the best agreement that we can come up
12 with with the people that we know that are
13 interested in it. And this area has been studied
14 extensively, so I think that we are covered. But
15 we just don't know.

16 MR. MANN: Yes. Okay.

17 VICE CHAIR MILLER: I have one more
18 follow-up question, because I thought I had read
19 this somewhere, and it's in the Office of Planning
20 report, and I can ask Office of Planning when we
21 get there. But I just want to read it to you so
22 you know where I'm coming from and you can respond
23 if you want. On Office of Planning's report, Page
24 4, they say that consistent with Section 3103.2 of
25 the Zoning Regulations, the preliminary statement

1 of the applicant includes the following
2 justifications for granting the requested variance.
3 And then the first bulleted paragraph, it said, "If
4 the application were to move forward, HPO staff
5 indicates that they would support designation."
6 And I'm reading that statement as coming from OP
7 saying it comes from your preliminary statement.
8 So is that not quite right?

9 MS. BROWN: No, we have not been told one
10 way or the other specifically by the staff person
11 in charge that they would be inclined to designate
12 this. I would assume that perhaps the Office of
13 Planning spoke with someone within. Since the
14 Historic Preservation Office is within the Office
15 of Planning, perhaps they had some better insight.

16 VICE CHAIR MILLER: Okay. So when we get
17 to Office of Planning, I'll ask them. Then it's
18 not coming from your knowledge?

19 MS. BROWN: That's correct.

20 VICE CHAIR MILLER: Okay. Thank you.

21 MS. BROWN: You're welcome.

22 MR. ETHERLY: Madam Chair, if I could,
23 just to follow up real briefly on that line of
24 questioning, and perhaps just as a flag for Mr.
25 Sher's testimony when we get there. I think

1 perhaps the spirit of the board's questions kind
2 of come down to making sure that essentially this
3 is the design that you're going with. Obviously
4 you have, shall we say, a fly in the ointment which
5 is Hockmeyer Hall. And it sounds like what we're
6 hearing is you feel that you've done everything you
7 can to ensure that this is the final design for
8 this particular project. There could, of course,
9 be some other organizations or groups that might
10 pop out and decide to continue pursuit of the
11 landmark designation, but you think you've done
12 just about all of the due diligence that you can do
13 to ensure that this design that's once and for all
14 going to accommodate Hockmeyer Hall and at the same
15 time get your building done. So that's more or
16 less just kind of a comment about I think the
17 spirit of the question in terms of where they're
18 coming from.

19 Secondly, I just wanted to ask, I don't
20 believe, and perhaps this is first to my colleagues
21 but then to Ms. Brown, do we have a copy of the
22 agreement with DCPL in our file? I don't believe
23 I've seen it.

24 MS. BROWN: No, we did not submit it for
25 the record.

1 MR. ETHERLY: Okay. Okay. That might
2 be, I think perhaps, just because we're referencing
3 it, and I think it plays a role in the overall case
4 that you're making, I think it would be useful to
5 have that submitted for the record.

6 MS. BROWN: We would like to, you know,
7 confer with DCPL to make sure that they feel
8 comfortable having that submitted to the record.
9 But I don't know that we'd have a problem with
10 that.

11 MR. ETHERLY: Okay. Thank you.

12 MS. BROWN: You're welcome.

13 MR. ETHERLY: Thank you, Madam Chair.

14 VICE CHAIR MILLER: Thank you. You can
15 continue.

16 MS. BROWN: We can move to our next
17 witness, Mr. Frank Durkin, the architect for the
18 project.

19 MR. DURKIN: Good morning. I know that
20 sometimes this does not project well. Is this
21 okay? My name is Frank Durkin. I'm with Hickok
22 Warner Cole architects, who's been retained by the
23 Trammel Crowe Company for this project, which we
24 call 777 6th Street.

25 As we mentioned, we have already been

1 before this board seeking relief for the
2 penthouse of the building. I'll address that in
3 just a second. But just very quickly, this is the
4 6th Street elevation, with H Street to the north,
5 and we have a 30-foot alley to the south between
6 our property and the property which is occupied by
7 Coyote Ugly.

8 Previously when we came in, our building
9 at the ground level started adjacent to the alley
10 and went up the 25 feet and over 15 feet for the
11 rear yard setback that was required. Now that we
12 are saving the townhouse which is adjacent to the
13 alley, that becomes a practical difficulty for us.

14 If I can show you the massing of the
15 building just to explain the penthouse issue. We
16 had sought relief from the requirement of the
17 setback from all four sides, and asked that the
18 board approve us pushing the penthouse all the way
19 back to the alley. The penthouse has not
20 materially changed since then. The only thing that
21 has changed is the dimensions have actually gotten
22 smaller. So there's more of a setback from the
23 north side than there had been previously. And I
24 believe the dimension may have come this way a
25 couple of feet, three feet at the most, but it's

1 still well back from 6th Street, and won't be
2 visible from the street at all. And at the time we
3 stated that we believed that the penthouse by being
4 back against the alley actually complied with the
5 spirit of the penthouse setback requirements, as it
6 was actually less visible from the streetscape than
7 the matter-of-right penthouse would be.

8 MR. ETHERLY: Madam Chair? If I could,
9 just because I think this is a helpful point. But
10 just to be sure I'm clear. So the penthouse from
11 the north side has moved away, further away from
12 the north edge of the building?

13 MR. DURKIN: That's actually the west
14 edge.

15 MR. ETHERLY: The west, I'm sorry. Okay.
16 So it's moved further back from this edge here,
17 from the west edge?

18 MR. DURKIN: It has not. It has actually
19 crept out two feet.

20 MR. ETHERLY: Okay. Okay.

21 MR. DURKIN: It has moved back from the
22 north edge.

23 MR. ETHERLY: From the north edge this
24 way. And then as far as the south side here, any
25 change there?

1 MR. DURKIN: Well, what's changed is
2 the location of our south wall. So while it's
3 further away in the back, it's closer when you --
4 on the H Street side of the building because our
5 building has this bend in it that it didn't once
6 have.

7 MR. ETHERLY: Okay. Thank you. Thank
8 you, Madam Chair.

9 VICE CHAIR MILLER: And what made you
10 change the sides and the location of the penthouse?

11 MR. DURKIN: It was as the building
12 developed and our core took shape, the requirement
13 of the elevators and so forth. When we applied for
14 the previous relief, it was as a schematic design
15 where we were taking our best guess at how big that
16 penthouse would be, and it was actually larger than
17 it ended up needing to be in toto.

18 VICE CHAIR MILLER: Thank you.

19 MR. DURKIN: If I can now proceed, this
20 is a photograph of the townhouse, of the Hockmeyer
21 Hall that we are preserving. And previously this
22 red line is the line that our building form had
23 taken, which was in compliance with the rear yard
24 setback requirements. Clearly, now that we are
25 saving this townhouse, the existing structure

1 violates the letter of the law for that setback.
2 And if we are to preserve the townhouse, then we
3 require relief from that, and that's why we're here
4 before you today.

5 I will just very briefly show you in plan
6 what we are doing, so we all understand exactly
7 what it is that we came to agreement with with
8 DCPL. On the ground floor, we -- before the
9 townhouse was an issue, this 30-foot alley was
10 essentially our only option for loading the
11 building, and for entering the parking lot below
12 grade.

13 This alley on the east side is a 16-foot
14 alley, and it was impractical to try to get trucks
15 in there to make the swing, as well as two-way
16 traffic in and out of the garage. So in preserving
17 the townhouse, we worked out with DCPL that we
18 would be maintaining the structure of the
19 townhouse, which goes all the way back to the east
20 alley, but that we would still be entering our
21 parking garage below grade and our loading dock
22 through the back part of the existing townhouse.
23 And we worked out the aesthetics of that with them,
24 how big the openings would be and the location of
25 them, so that they were respectful of the window

1 pattern on that elevation, and they signed off on
2 this, and I think we're all happy with that
3 compromise.

4 So on the ground floor we have very
5 little of the actual townhouse as usable space, but
6 on the second and third floors -- our office plate,
7 of course has gotten a little smaller, but we're
8 maintaining and restoring the second and third
9 floors of the existing townhouse. And then up
10 above that on the typical floor we're wrapping
11 around the top of the back of the townhouse and
12 this will be open to the air above the townhouse.

13 VICE CHAIR MILLER: Are you changing the
14 interior of the townhouse?

15 MR. DURKIN: Well, currently it's pretty
16 run down. It's been a tenement for quite some
17 time. It's going to need a lot of cleaning and
18 renovation. And there really is no existing
19 documentation of what Hockmeyer Hall looked like in
20 its heyday. So there's no possibility of restoring
21 it. However, we are maintaining the structure and
22 anything that's salvageable on the interior, and
23 we're maintaining the -- where we can't salvage the
24 existing structure, we're going to replace the
25 existing structure with the same type of materials.

1 And while Trammel Crowe does not have a tenant
2 for any of this building yet, I think their notion
3 -- and I'll let Fred address this -- is that the
4 townhouse will be something of its own nature.

5 MR. ROTHMEIJER: The way it's set up,
6 it's a completely different structure and will
7 function as such. It has its own front door and
8 its own stair, own elevator. So the way we can see
9 it work is that it will be a boutique-type user,
10 either a retailer or an office user. Somebody
11 mentioned, I think from the ANC, that there is a
12 not-for-profit American-German association looking
13 for space that might fit. So who knows.

14 VICE CHAIR MILLER: Is there access from
15 the garage to that space as well as the rest of the
16 building, or no?

17 MR. ROTHMEIJER: Currently it's not
18 planned, but it would be maybe one of the ways to
19 make it handicapped accessible to have a door come
20 in from the ingress/egress to the parking garage,
21 into the first floor, the back of the first floor,
22 of the townhouse.

23 VICE CHAIR MILLER: Thank you.

24 MS. BROWN: If you're ready we'll proceed
25 to our next witness, Mr. Sher.

1 MR. SHER: Good morning, members of the
2 board. For the record my name is Steven E. Sher,
3 the Director of Zoning and Land Use Services with
4 the law firm of Holland & Knight.

5 As you've heard from our previous
6 witnesses, this case was before the board, and the
7 only relief we sought the last time was with
8 respect to the roof structure. And that was
9 essentially because with a rectangular site, we
10 could -- and assuming you could remove the existing
11 building, you could construct a building with a
12 conforming rear yard. In classic terms, the
13 presence of the existing building creates the
14 practical difficulty for complying with the rear
15 yard.

16 Let me say as an aside, we've addressed
17 the roof structure issues in our statement. I'm
18 not going to spend a lot of time with that unless
19 the board wants to, because as Mr. Durkin was
20 describing, those changes are essentially minimal
21 and the same rationale applied before applies now.

22 As to the rear yard, this site is a
23 corner lot. It fronts on both H Street and 6th
24 Street, so the applicant or a property owner or
25 developer has the opportunity to decide which of

1 those two streets is the front. This is a long
2 and narrow site. It's 85 feet deep by 225 feet
3 wide. If you picked 6th Street as the front, then
4 you would be taking a 15-foot slice off the length
5 of that property which you couldn't build on for
6 your rear yard. If you picked H Street as the
7 front, then you're taking an 85-foot wide slice in
8 theory for which you would have your rear yard, and
9 that's what we did the last time we were here. As
10 Mr. Durkin's illustration indicates, Hockmeyer Hall
11 or the building that sits at the south end of the
12 site, sits right in that spot where that 15-foot
13 rear yard would be. So instead of it now being 15
14 feet, it's 25 feet, but instead of starting at the
15 20-foot plane vertically, you've got to go to the
16 top of Hockmeyer Hall before you've got open space
17 above that. So the volume is different, and in
18 order to make up the space that's partially lost by
19 having to reconfigure that rear yard, the rear of
20 the building along the alley on the east side
21 extends to the south line of the property. So we
22 actually have rear yard relief required along that
23 whole south wall, part of it all the way up the
24 building, part of it to the top of Hockmeyer Hall.
25 Again, if Hockmeyer Hall wasn't there, we wouldn't

1 be sitting in front of you this morning. And
2 that's sort of the whole genesis of the case. The
3 practical difficulty, the exceptional situation,
4 the fact that the volume of space is there, the
5 preservation of the building that is technically a
6 landmark now, may not be a landmark forever within
7 the legal sense, but we have an agreement that we
8 will preserve it as if it were a landmark. I think
9 that's what occasions the need for the relief from
10 the board. And I think that the submission we've
11 made and the testimony you've heard today justifies
12 the granting of that relief. And I'll stop there
13 and answer any questions that the board may have.

14 VICE CHAIR MILLER: We don't have any
15 further questions.

16 MS. BROWN: That concludes our
17 presentation and we'll be happy to make a closing
18 statement when the time is appropriate. Thank you.

19 VICE CHAIR MILLER: Okay, thank you.
20 Office of Planning. Good morning.

21 MR. JACKSON: Good morning. My name's
22 Arthur Jackson of the D.C. Office of Planning, and
23 I will briefly summarize our report. Essentially
24 we are standing on the record wherein we have
25 previously submitted a report on this application

1 during a December 1, 2003, BZA hearing,
2 considering just the special exception for the roof
3 structure.

4 Circumstances have changed, and at this
5 point, given the information that's been provided
6 and our own analysis, the Office of Planning
7 recommends approval of the variance to reduce the
8 required rear yard setback from 15 feet to 0 feet,
9 and a special exception for the relocated roof
10 structure adjacent to the eastern building wall.
11 With that, that concludes our brief summary of the
12 Office of Planning report, and we stand available
13 for questions.

14 VICE CHAIR MILLER: Mr. Jackson, I just
15 want to ask you the question I raised earlier about
16 the reference to -- on Page 4 of your report, the
17 statement that if the application were to move
18 forward, HPO staff indicates that they would
19 support designation. Can you comment on that,
20 please?

21 MR. JACKSON: Yes. I think one of the
22 key issues in this application would be something
23 that hasn't occurred yet. There's been an
24 application filed. Status has been granted to a
25 building that has not been reviewed by HPRB in

1 regard to becoming a landmark. The question to
2 the staff was whether or not the staff would
3 support it. And I would note that their response
4 was not official. And of course the actual
5 official statement would be in a report, which then
6 would be the basis for making a definitive action.

7 However, in light of the fact that the
8 application has not been removed, and in light of
9 the fact that the HPRB has not come to a
10 determination, we basically asked staff if this
11 would be something they would support. This was
12 important for the Office of Planning in that if
13 there was a question that could flavor the
14 interpretation of the submission, whether or not --
15 of course if the response was 'Absolutely not. It
16 doesn't' -- they concurred with the analysis that
17 had been done by the applicant, that would be one
18 factor. But it appears that they were not in
19 concurrence, and as such we thought we could move
20 forward, viewing this in light of what could
21 possibly occur, which actually adds to the -- is
22 the crux of the unique nature of this application.
23 So in essence this is the unofficial response from
24 staff, and was not included in the applicant's
25 report.

1 VICE CHAIR MILLER: I'm sorry. Could
2 you just articulate again what you mean by the crux
3 of the uniqueness to this situation?

4 MR. JACKSON: Well, their application is
5 that they basically have to leave the building the
6 way it is, based on the fact that the building has
7 been granted landmark status -- in light of the
8 possibility that it could be granted permanent
9 landmark status, which would eliminate the
10 possibility of them altering the building to a
11 certain extent. The agreement they've come to is
12 such that the building would be kept in its current
13 form in terms of the exterior. If the exterior
14 remains the same, then there's no way they can meet
15 the setback requirement above 15 feet, or 25 feet.
16 As such, if they cannot meet the zoning
17 requirement, there's a practical difficulty with
18 regard to meeting the zoning requirements for the
19 proposed construction.

20 VICE CHAIR MILLER: Thank you.

21 MR. MANN: So, I guess, are you saying
22 the potential problem is that the -- I've forgotten
23 the name of the organization that applied for the
24 landmark status.

25 VICE CHAIR MILLER: DCPL.

1 MR. MANN: Right, DCPL could say 'Oh,
2 we're going to withdraw it' but HPRB could say
3 'Well, you can withdraw it, but we actually think
4 it's still under consideration.'

5 MR. JACKSON: Oh, no, no, no. I was
6 saying that at this point this is still a pending
7 application. No formal action has been taken.

8 MR. MANN: Okay.

9 VICE CHAIR MILLER: Does the change in
10 the penthouse in size and location affect the
11 adjacent neighbor with respect to light and air at
12 all?

13 MR. JACKSON: In the previous application
14 the penthouse was located adjacent to the eastern
15 wall. However, it was longer, and it extended
16 further to the north and the back. The previous
17 application also noted, however, that the setbacks
18 from the rear walls, walls along the street, along
19 H and 6th Street, were also more than enough such
20 that there was more than one setback. This
21 continues to be the case where there is more than a
22 one to one setback from the south, north, and
23 western walls. It's simply there is no setback
24 along the eastern wall.

25 So the circumstances haven't changed. We

1 do not believe that the location of this
2 penthouse structure adjacent to the eastern wall,
3 given the fact that there is an alley there, an
4 additional 15-foot setback of the Red Roof Inn on
5 its property would allow -- provides additional
6 setback from the property line, and as such we
7 don't think that the existing siding of the Red
8 Roof Inn means that there is significant impact
9 from the roof structure on the adjacent property.

10 VICE CHAIR MILLER: I have one more
11 question. With respect to Chinatown Design Review,
12 is this going to be going before that review again,
13 or are they finished with this?

14 MR. JACKSON: Based on the information I
15 was provided, these changes would not affect the
16 Chinatown review, the design features of the new
17 construction. As such I do not believe they would
18 be subject to additional review. But I would have
19 to verify that with our Chinatown representative.

20 VICE CHAIR MILLER: Okay. And I'll ask
21 the applicants one more time. But also, if it were
22 to go before Chinatown Design Review again, would
23 that affect the zoning relief in this case?

24 MR. JACKSON: Well, my understanding is
25 that the Chinatown review process really deals with

1 the features that relate the project to the
2 surrounding Chinatown area. As such, only those
3 features would be subject to review. But I would
4 defer to the applicant with regard to what detail
5 the application might be reviewed by that group.

6 VICE CHAIR MILLER: Would the applicant
7 like to respond right now?

8 MR. ROTHMEIJER: As I understand it, we
9 had basically approval -- conditional approval by
10 Chinatown, and we needed to come back with the
11 spire on the top anyway. So what our intention is
12 is to keep the Chinatown package on the face of the
13 building the same. We hope that we don't have to
14 incorporate any Chinese elements on the townhouse.
15 I don't think that that makes sense. But we will
16 be going back and showing them that basically
17 nothing has changed on the building, and then come
18 back with that spire, the changes that they wanted
19 to have there. So we will be back visiting with
20 them.

21 VICE CHAIR MILLER: My understanding is
22 that it does not affect the zoning relief you're
23 seeking in this case.

24 MS. BROWN: I'm sorry. For the basic
25 question, no, it does not affect the zoning relief

1 whatsoever. It's only addressing architectural
2 details on the facades of the building.

3 VICE CHAIR MILLER: Okay. I don't
4 believe the ANC is here, but I'll just inquire if
5 the ANC is here in this case. And not hearing
6 anything, is any person here to speak in support or
7 opposition to this application?

8 (No response.)

9 VICE CHAIR MILLER: And there are no
10 other governmental reports then that I know of
11 also. Okay. In which case I guess you're ready
12 for your closing?

13 MS. BROWN: Thank you, Madam Vice Chair.
14 We believe that we have met the standard of relief
15 for the special exception roof structure request,
16 and also the variance test for the rear yard
17 setback as set forth in the testimony you've heard
18 today and in the evidence of record. And we would
19 ask that you approve this application. We would
20 hope for a bench decision, and ask that the record
21 be left open to submit the DCPL agreement. Thank
22 you. If DCPL agrees.

23 MS. MILLER: Okay, we had a little
24 sidebar conversation. And we have determined that
25 we don't need the agreement in our record. We have

1 the letter from DCPL also indicating that there
2 is such an agreement, and you're indicating that
3 there is an agreement. And that's sufficient for
4 our deliberation. And also, we have decided that
5 we are ready to proceed with a decision in this
6 case.

7 Okay, at this point then I would move to
8 grant Application Number 17186 of TC MidAtlantic
9 Development, Inc., on behalf of Avalon Bay
10 Communities, Inc., and 777 6th LLC, pursuant to 11
11 DCMR § 3103.2, for a variance from the rear yard
12 requirements under Section 774 and pursuant to 11
13 DCMR § 3104.2 for a special exception from the roof
14 structure provisions under Section 411 (770.6) to
15 permit the construction of -- I'm sorry. I have to
16 pause here for a minute. I think it's an 11-story
17 office building, isn't that correct?

18 MS. BROWN: That's correct.

19 MS. MILLER: An 11-story office building
20 with ground floor retail at premises 777 6th
21 Street, Northwest. And do I have a second?

22 MR. ETHERLY: Seconded, Madam Chair.

23 MS. MILLER: Okay. I think in this case,
24 two out of three of us have already heard the
25 previous case for the special exception -- for the

1 setback for the roof structure. But in comparing
2 this case with the previous case in which we
3 granted the special exception, very little seems to
4 have changed, and in fact the change has been for
5 the better in that the roof structure has gotten
6 smaller. So I think that I'm going to go fairly
7 quickly through the special exception because we
8 have already determined that in our order
9 previously, and the facts are consistent in this
10 case with what we found in that order. It's
11 highlighting -- we did find then, and we clarified
12 again with Office of Planning that the location of
13 the roof structure will not adversely affect the
14 light and air of the adjacent neighbor. OP stated
15 that "Staff agrees that the modified penthouse
16 location would not affect adversely the air and
17 light of the neighboring hotel due to the
18 intervening alley, 16.75 feet wide, and the hotel
19 being further set back a distance nearly equal to
20 the alley width."

21 I think what I want to do is move into
22 the variance test, because that's the new relief
23 that's being sought here, which is the rear yard
24 setback. And obviously from -- by incorporating
25 this townhouse they can't possibly meet the rear

1 yard setback. Now, the question is meeting the
2 test. Is the property unique because of some
3 physical aspect or other extraordinary, exceptional
4 situation or condition inherent in the property. I
5 would suggest that it is. There exists here an
6 existing 19th century building on the site that has
7 temporary landmark status precluding demolition,
8 which would allow compliance with regulatory
9 requirements. We have in place here an agreement
10 with the D.C. Preservation League to preserve this
11 building. And it's also unique in that there's no
12 other building in the area affected by this type of
13 temporary landmark status.

14 And applicant has cited Clerics of Saint
15 Viator, Inc. v. D.C. BZA, for the proposition that
16 you don't look just to the topography of the land,
17 but you look to any structures on it. And the
18 structure on this land does preclude their being
19 able to build with the rear yard setback under the
20 regulations. And they also cite Monaco, I think
21 appropriately, for the proposition that, you know,
22 where there's an agreement or a covenant
23 restricting use of a property, that also is
24 considered unique or exceptional situation.

25 Given that situation, I think I've

1 already covered, given the existence of the
2 building and the agreement, strict application of
3 the zoning regulations would create a practical
4 difficulty for them to have their rear yard
5 setback. It's impossible. And then the third
6 prong is -- I mean, in order for them to have the
7 rear yard setback they have to demolish the upper
8 story of this temporary landmark building and they
9 can't do that because it's under this status.

10 Finally the third prong is no public
11 detriment. And we have no opposition in this case.
12 Office of Planning has found no public detriment.
13 Whether or not this townhouse should be preserved,
14 at least the DCPL believes that it furthers the
15 goals of historic preservation, and it certainly
16 doesn't do any detriment. And Office of Planning
17 found that it was in harmony with the zoning regs
18 and the map area designated in the comp plan
19 generalized land use map. As a mixture of high-
20 density commercial development and high-density
21 residential development, and this will be mixed use
22 in accordance with those goals.

23 It's also undergone Chinatown Design
24 Review, and is coming in in accordance with that.
25 Therefore, I would say that it meets the prongs,

1 and we should grant them the variance. Do my
2 board members have further comments?

3 (No response.)

4 MS. MILLER: Okay. In which case we can
5 call a vote on that. All those in favor say 'Aye.'

6 (Chorus of Ayes.)

7 MS. MILLER: All those opposed?

8 (No response.)

9 MS. MILLER: All those abstaining?

10 (No response.)

11 MR. MOY: The staff would record the vote
12 as 3-0-2 on the motion of Ms. Miller, Madam Chair,
13 to approve the application. Seconded by Mr.
14 Etherly. Also in support of the motion, Mr. Mann.
15 We have Mr. Griffis and a Zoning Commission member
16 not participating on the case.

17 MS. MILLER: Mr. Moy, as there's no
18 opposition in this case, I would think we could
19 waive our rules and issue a summary order unless
20 the applicant objects to that? Okay.

21 MS. BROWN: No objection.

22 MS. MILLER: That will be ordered then?

23 MR. MOY: That's fine. Thank you.

24 MS. MILLER: Thank you.

25 MR. MOY: The next case, Application

1 Number 17187 of Greg Stack and Gabrielle Boccher,
2 pursuant to 11 DCMR § 3104.1 for a special
3 exception to allow a two-story rear addition to a
4 single-family semi-detached dwelling under Section
5 223 not meeting the lot occupancy (Section 403) and
6 side yard (405) requirements in the R-1-B District
7 at premises 4611 Van Ness Street, Northwest (Square
8 1555, Lot 1).

9 And staff notes for the board that we do
10 have a request for a party status.

11 CHAIRPERSON GRIFFIS: Thank you very
12 much. Is Mr. Douglas Shanklin here? Easy to see.
13 No one else is in the room. Indeed. And this was
14 actually a party status application, a request
15 proponent. I think as we have in the past in this
16 circumstance, one, not having the presence of the
17 applicant. Also as it is coming in a proponent, we
18 can take this in as a written testimony in support.
19 Unless the applicant is aware of anything else we
20 should be attendant to in this application?

21 Very well. Why don't I have you both
22 state your name and address for the record. We can
23 proceed fairly quickly with this.

24 MR. STACK: Hi, I'm Greg Stack, 4611 Van
25 Ness Street, Northwest, Washington, D.C., 20016.

1 MS. BOCCHER: Gabrielle Boccher, 4611
2 Van Ness Street, Northwest, 20016.

3 CHAIRPERSON GRIFFIS: Excellent. As Mr.
4 Moy has laid out, of course this is a 223 that's
5 coming before us for a special exception.
6 Obviously it's not conforming with the lot area
7 requirements if it was so subdivided today. It
8 looks like there's a small addition that's being
9 proposed of less than 50 feet. Is that correct?
10 We're looking at a lot occupancy of about 800
11 square feet, and you're proposing to occupy the lot
12 about 848 square feet. Substantial. We should
13 take our time and really look at this.

14 Okay. So that being said, there's also
15 the issue of the side yard, and whether relief from
16 the side yard is required. And I think we'll get
17 into that more fully because it's a 5-foot side
18 yard, which would mean that it actually would
19 comply as it was built before 1958, but I can get,
20 as you present briefly your case, I will get more
21 information on that.

22 Irregardless, you're here for the special
23 exception based on the lot. So why don't we just
24 walk through very quickly. Of course, the
25 provision of the special exception for 223 you can

1 highlight the aspects of whether this would
2 somehow impair or diminish the light and air of the
3 adjacent properties or the use and enjoyment of the
4 adjacent properties. And I'll turn it over to you
5 for that.

6 MR. STACK: Okay. We are asking that the
7 board allow relief by special exception to the 5-
8 foot side yard setback due to the narrowness of the
9 property line uniquely abutting the alley in Zone
10 R-1-B. The existing home is a one bedroom, one
11 bath property that abuts the alley. Because the
12 home is 15 feet wide, any attempt to build an
13 addition that's less than that width would be
14 unfeasible, or just un -- we wouldn't be able to do
15 that.

16 The integrity of the overall zoning plan
17 would not be compromised. The proposed addition
18 would not require substantial changes to the
19 environment. Extending further into the alley
20 space is not an issue. We're not asking to extend
21 into the alley space at all. Continuing along the
22 existing lines, in other words maintaining the
23 nonconformity that exists on the alley with the
24 addition would neither enhance nor impair the air
25 flow or light. No existing structures would be

1 blocked, one side being the alley and the
2 garages, the other side being the rear yard of our
3 neighbor who actually does not object to this. And
4 I'm not sure if this is a good point to mention
5 that all neighbors in proximity have not objected,
6 and their signatures are included in the file, I
7 believe.

8 CHAIRPERSON GRIFFIS: Which is Exhibit
9 Number 24.

10 MR. STACK: Thanks. The north-south
11 orientation in our opinion doesn't block any
12 sunlight any further than the structures that are
13 on either side of us now. The alley sort of acts
14 as a buffer for that, and the house on the opposite
15 side of the alley is much larger and looks down on
16 our house. So the trees and that property does
17 create more of an issue that we're already under.
18 We're already the umbrella of whatever light is
19 blocked there.

20 On the opposite side, that would be the
21 west side, the Monroe's residence does not go
22 further back than what currently exists. So the
23 air and light would still not be blocked because of
24 the north and south orientation, in my opinion.
25 I'm not an expert on this in any way, but once

1 again they don't object.

2 CHAIRPERSON GRIFFIS: In your passing
3 around the petition to the neighbors, showing
4 plans, have you had anybody raise concerns that it
5 might, or concerns about the impact of their
6 property?

7 MR. STACK: Absolutely not. The Monroes
8 and the other residents are very much in favor of
9 us doing it.

10 CHAIRPERSON GRIFFIS: Right, okay. In
11 that sense, has anyone given you any sort of
12 evidence that they feel that this would, together
13 with the original building, the addition, somehow
14 intrude on the visual character or architecture of
15 the surrounding area?

16 MR. STACK: Not that I'm aware of.

17 CHAIRPERSON GRIFFIS: So no one's ever
18 brought that up to you?

19 MR. STACK: No.

20 CHAIRPERSON GRIFFIS: Okay. And
21 according to the plans, you're actually matching
22 the roofing material, which is slate, on the
23 addition, is that correct?

24 MR. STACK: We -- yes.

25 CHAIRPERSON GRIFFIS: And then, so the

1 roof is the main portion that would be actually
2 visible. And then in terms of the exterior skin on
3 the addition, you find that in your opinion, and
4 you haven't heard anything otherwise to the
5 contrary, that it is in character with the
6 surrounding area and the existing structure?

7 MR. STACK: Our goal is to make it look
8 original.

9 CHAIRPERSON GRIFFIS: Excellent. Okay.
10 According to the regulations Section 405.8, it
11 reads as follows, "In cases of a building existing
12 on or before May 12, 1958." Was this built before
13 1958?

14 MR. STACK: '39.

15 CHAIRPERSON GRIFFIS: Indeed. "With a
16 side yard less than eight feet wide, an extension
17 or addition may be made to the building, provided
18 that the width of the existing side yard shall not
19 be decreased, and provided further that the width
20 of the existing side yard shall be a minimum of
21 five feet." You have a minimum of five feet side
22 yard, correct?

23 MR. STACK: Yes, and on the neighboring
24 side, the west side, there is a 5-foot side yard
25 setback. And with the addition we would also --

1 CHAIRPERSON GRIFFIS: You're not
2 decreasing that side yard?

3 MR. STACK: No.

4 CHAIRPERSON GRIFFIS: Okay. Very clear.
5 Any other questions from the board? Yes, Mr. Mann?

6 MR. MANN: Is this structure located in a
7 historic district?

8 MR. STACK: No.

9 MR. MANN: And it's not a historic
10 structure?

11 MR. STACK: No, it's not.

12 MR. MANN: And do you have to submit this
13 to any other sorts of review boards for any
14 approvals, or not?

15 MR. STACK: No, I wasn't planning to
16 based on your recommendation.

17 MR. MANN: Okay.

18 MS. BOCCHER: We did receive the ANC's
19 report.

20 CHAIRPERSON GRIFFIS: Right, and we'll
21 get to that. Excellent. Any other questions? Did
22 you think it might be in any sort of review?

23 MR. MANN: No, nothing led me to believe
24 that. It was just such a cute little house, I just
25 wanted to make sure that nothing was going to occur

1 to it that might raise any eyebrows.

2 CHAIRPERSON GRIFFIS: Right. Okay.
3 Excellent. Good. Any other questions from the
4 board or the applicant at this time? I have one
5 question, which really doesn't relate very well to
6 the application, or frankly doesn't at all. But
7 you have three staircases running through the
8 building. Is that an efficient use of space? I
9 understand that the basement itself has two areas,
10 so you're not digging out the portion that would
11 connect the entire basement level.

12 MR. STACK: Well, that's what we
13 struggled with getting. We didn't want to waste
14 the interior space in the addition, because the
15 staircase could still be exterior, so the interior
16 staircase would only go from the second floor to
17 the first floor in the addition.

18 The exterior staircase I think we need
19 just for practical, getting in and out of the
20 basement because there's so little storage. We
21 would like to do that on the exterior of the
22 building.

23 CHAIRPERSON GRIFFIS: So you actually
24 have four stairs.

25 MR. STACK: Yes.

1 CHAIRPERSON GRIFFIS: So the exterior,
2 then you have the one from the new kitchen area,
3 which goes down, doesn't it?

4 MR. STACK: Yes, it does.

5 CHAIRPERSON GRIFFIS: Okay. None of my
6 business. Yes, Ms. Miller.

7 MS. MILLER: I just want to know if the
8 applicant is aware of a letter which is marked as
9 Exhibit 22 in our file which seems to be a mistake,
10 opposing your application. But they're actually
11 referencing a different address, 4532, and a deck
12 that's going to be, quote, "flush with the park
13 land."

14 MR. STACK: Yes, it's actually in another
15 block, and I spoke with Ms. Bailey about that last
16 Friday. And my understanding was that was going to
17 be removed from this particular case. But I'm
18 surprised it's there.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. MILLER: Okay.

21 CHAIRPERSON GRIFFIS: Well, it certainly
22 isn't in this case, but as it was a submission,
23 obviously the board got it. You know, it will
24 probably be removed as -- right, exactly. The
25 document's being destroyed. But obviously someone

1 will pay some attention to that and see whether
2 there is a noncompliance issue or it should be
3 addressed by this board. Okay.

4 Anything else? Anything else for the
5 applicant? Questions? Then let's move right
6 ahead. Did you meet with the Office of Planning on
7 this at all?

8 MR. STACK: I had some telephone contact
9 with them.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. STACK: And I'm not aware of
12 anything.

13 CHAIRPERSON GRIFFIS: Very well. There's
14 no Office of Planning report available at this time
15 that I'm aware of, unless it came in late, so we
16 can move ahead. ANC 3-E of course is Exhibit
17 Number 23 you presented to the ANC, and it did
18 recommend approval of this. It was filed in a
19 timely manner, I believe, and meets all the
20 requirements to give it great weight, and we will
21 do so unless there's anything that you'd like to
22 add in terms of the ANC, we can move ahead.

23 Okay. I do not have any notes of any
24 other government reports attendant to this
25 application. Unless the applicant's aware of any

1 other submissions, we can move ahead and ask for
2 anyone here to testify either in support or in
3 opposition of Application 17187. They can come
4 forward now at this time. Not seeing anybody
5 progress to give testimony in support or in
6 opposition, let us move on to any closing remarks
7 you might have. Any summations. Any last-minute
8 comments.

9 MR. STACK: I would like to thank the
10 board, and I have a new respect and appreciation
11 for what it is you do here. One other thing, I
12 wanted to ask about the drawings that were
13 submitted, and if it's possible that when actual
14 construction, or the finished, perfect drawing that
15 we like, if a skylight is allowed in that, or is
16 that disallowed by what is going to happen?

17 CHAIRPERSON GRIFFIS: We're going to have
18 to see the shape and the size. In all seriousness,
19 no. Obviously you're here for a special exception
20 for the addition, the aspect of which we're
21 focusing on is the lot occupancy. Now, of course,
22 a condition of any order that was approved, the
23 first condition would be the plan. So you are to
24 build as the plans show it. But it would only
25 impact that aspect of which the relief was looked

1 to, or granted. So I would say if the skylight
2 doesn't impact the lot occupancy, that no, it would
3 not need to come in as a minor modification. And I
4 think it would be fairly straightforward. And in
5 fact, the addition of a skylight I don't think has
6 any impact on zoning regulations, unless this is
7 some monster that's about 26 feet high.

8 MR. STACK: No.

9 CHAIRPERSON GRIFFIS: Which may even
10 constitute 18 levels -- all right. So I don't
11 think so.

12 MR. STACK: And the movement of a window?

13 CHAIRPERSON GRIFFIS: Oh.

14 MR. STACK: I mean, the reason I bring
15 that up is because we're not sure exactly if
16 there's going to -- if we need one in the kitchen.

17 CHAIRPERSON GRIFFIS: Exactly. I don't
18 see any difficulty in understanding, unless other
19 board members do, in terms of granting, if this is
20 moved and approved, granting some flexibility in
21 minor modifications of the details of the plans as
22 shown. My hesitation is this. We've had in the
23 past applications, and the critical aspects of
24 those applications were the diminishment of
25 privacy, which had a lot to do with placements of

1 windows. And so as plans were originally looked
2 at and changed, there was a major impact to the
3 adjacent properties. I don't see any evidence of
4 that in this specific case, certainly no facts
5 presentation on that. So I don't see any
6 difficulty in allowing some minor modifications and
7 minor adjustments to the details and placements of
8 things as this rolls along. Unless any other folks
9 have comments on that, I think that's probably the
10 proper way to proceed.

11 MR. MANN: The kitchen's on the alley
12 side, isn't it?

13 MR. STACK: That's correct.

14 MR. MANN: And that's the only place
15 where you're contemplating changing the windows?

16 MR. STACK: The alley side, and whether
17 or not in the back where the kitchen looks out into
18 the rear yard, whether or not we'd want to put a
19 window there.

20 MR. MANN: So it would be on the sides
21 that are farthest away from any adjacent homes?

22 MR. STACK: Yes, they would be separated
23 by the alley. That would be the furthest.

24 CHAIRPERSON GRIFFIS: I don't see this
25 causing a major problem. Okay. Then if there's

1 nothing else on this, any other comments,
2 conclusions? Very well. This is a very
3 straightforward special exception 223, and I would
4 move approval of Application 17187 for that, the
5 special exception not meeting the requirements in
6 Section 403, which is the lot occupancy. It was
7 advertised as a side yard relief also in terms of
8 nonconformity with 405. I think it's fairly clear
9 in 405.8 that that's not needed, although it's
10 already with us here.

11 Evidence in the record clearly go through
12 the compliance with the test requirements for 223
13 special exception. It would not impair the use,
14 enjoyment, light, and air of the adjacent
15 properties. It certainly falls within the
16 character of the existing structure, and also the
17 character of the surrounding area. Having no
18 evidence of any other issues as determined, I think
19 it's a very strong and very straightforward case.
20 As noted, we would allow for flexibility in the
21 detailing as this is finished and submitted, and
22 then finally constructed. And I would --

23 MR. ETHERLY: Seconded.

24 CHAIRPERSON GRIFFIS: Thank you. Any
25 other deliberation, comments, questions? Very

1 well. All those in favor of the motion signify
2 by saying 'Aye.'

3 (Chorus of Ayes.)

4 CHAIRPERSON GRIFFIS: Any opposed?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Abstaining?

7 (No response.)

8 MR. MOY: Staff would record the vote as
9 4-0-1 on the motion of the chair, Mr. Griffis, to
10 approve the application, seconded by Mr. Etherly.
11 Also in support of the motion: Ms. Miller, and Mr.
12 Mann. And we have a Zoning Commission member not
13 participating on the case.

14 And finally, staff would just like to
15 make clear on the record, since the issue came up,
16 that Exhibit Number 22 has been voided from the
17 record file.

18 CHAIRPERSON GRIFFIS: Good. Thank you
19 very much. And one last thing. I had a note in my
20 own review of this application. I'm not sure if
21 you ever referred to this as a two-story and
22 basement, but in any case, certainly for our review
23 it's a two-story and cellar for any clarification
24 if that ever comes back up. Okay. Anything else?
25 Very well. Thank you very much. I appreciate your

1 patience with us this morning.

2 MR. STACK: Thank you.

3 MS. BOCCHER: Thank you.

4 CHAIRPERSON GRIFFIS: Let's call the next
5 case in the morning.

6 MR. MOY: Mr. Chair, is there a summary
7 order in this case?

8 CHAIRPERSON GRIFFIS: Yes.

9 MR. MOY: Very good.

10 CHAIRPERSON GRIFFIS: We can waive
11 regulations.

12 MR. MOY: The next case in the morning is
13 Application Number 17188 of Debra Miles pursuant to
14 11 DCMR § 3103.2 for variances from the lot
15 occupancy requirements under Section 403, and a
16 variance from the alley setback requirements under
17 Subsection 2300.2(b), to construct an accessory
18 garage serving a single-family row dwelling in the
19 CAP/R-4 District at premises 409 3rd Street,
20 Northeast (Square 780, Lot 26).

21 MR. DOMINIQUE: Good morning.

22 CHAIRPERSON GRIFFIS: If you would, you
23 just press the button on the base there. There,
24 that should be good. And we're going to have to
25 have both of them, or one on at a time. If you

1 could turn that off. Perfect. Actually, I don't
2 know, that one seems to be giving feedback. You
3 might want to just pull this one over and try and
4 use that, and see if it makes any difference at
5 all. Okay.

6 MR. DOMINIQUE: Good morning. My name is
7 Matthew Dominique of 15311 Diamond Cove Terrace,
8 Rockville, Maryland. And with me today is Gayle
9 Patrick, the architect. My wife Debra Dominique,
10 Debra Miles Dominique couldn't be here today due to
11 the fact that she's just been released from the
12 hospital, and the doctor asked her to get some bed
13 rest.

14 So I'll let Gayle introduce herself.

15 MS. PATRICK: I'm Gayle Patrick, and I'm
16 representing Debra.

17 CHAIRPERSON GRIFFIS: Your microphone.

18 MS. PATRICK: Let me try this. I'm Gayle
19 Patrick, and I'm representing Matthew and Debra
20 Miles Dominique on this particular case, 1118
21 Columbia Road, Northwest, Washington, D.C.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. DOMINIQUE: I would just like to say
24 just before Gayle makes her presentation that Debra
25 Dominique, my wife, was born and raised at the

1 property. She inherited the property from her
2 mom, who died about three years ago. And we have
3 decided to move back in the city. It struck me
4 when about a week ago, when she received a letter
5 from a gentleman who now lives in Southeast, to
6 remind her of when she was just about six years
7 old, it was in 1970, that she was involved in
8 planting a cherry tree right in the neighborhood
9 where she lives. And up to today, he is older. He
10 is physically impaired. He tends to go back every
11 so often just to take a look at the cherry tree.
12 So I would just like to indicate that as a means to
13 express her terribly keen interest in moving in the
14 area and seeing the place be up-kept and
15 beautified.

16 CHAIRPERSON GRIFFIS: Thank you very much
17 for that. I think it does show a great investment
18 and a great dedication, which the board certainly
19 appreciates. The cherry tree is on 3rd Street?
20 It's near this property?

21 MR. DOMINIQUE: It's 3rd and Mass. I
22 will submit the letter that the gentleman wrote to
23 her. I'll get a copy and submit that for the
24 record.

25 CHAIRPERSON GRIFFIS: Okay. That'd be

1 fine. Good. Okay, let's proceed.

2 MR. DOMINIQUE: Also, before she starts,
3 I would like to say we attended both the ANC and
4 the restoration meetings, and at both of those
5 meetings we had neighbors, you know, who'd been
6 living in the area for over 35 to 40 years come to
7 support us in the quest for getting this zone
8 variance.

9 CHAIRPERSON GRIFFIS: Good. Thank you.
10 To that, let me just state what we're going to have
11 to do here, because I think it's absolutely
12 important to know that you have great support, and
13 certainly I can't imagine why the surrounding
14 neighbors wouldn't support it. However, we have an
15 additional burden for this board in reviewing these
16 applications. As you have come in for variances,
17 there's essentially the legal test that has to be
18 made. And so that's what we're going to really
19 push you to meeting each of the criteria so that we
20 can -- well, so that the burden of meeting that is
21 met. And then we can move ahead with that.
22 Outside of that, the board would be very -- it
23 would be very difficult for the board to do
24 anything else if those tests can't be met. So
25 we're definitely going to take the time and effort

1 to make sure that we flesh out everything within
2 this application.

3 So with that, I'll turn it over.

4 MS. PATRICK: Okay. Is this working?

5 MR. MOY: You have to hold that very
6 closely to your mouth. Closer.

7 MS. PATRICK: All right, can you hear me?

8 CHAIRPERSON GRIFFIS: Yes.

9 MS. PATRICK: What we have here, what I
10 show here is the block of 3rd and D Street where
11 this property is located. And as you can see there
12 are townhouses or row houses around the whole
13 block. And this is the site in question.
14 Originally these buildings were built somewhere in
15 the late 1800s, early 1900s. Originally in this
16 spot in here were a block of carriage houses, as
17 you see in some of the neighborhoods in Washington
18 that over the years have been torn down. It is now
19 a public parking lot that's in the middle of this
20 block.

21 And what my client proposes to do is to
22 restore the garage. As he mentioned, Ms. Miles
23 grew up here. When she was a child here, there was
24 a garage here. Right now it's a concrete pad. The
25 garage is no longer there, but there is a concrete

1 pad here. And there's indication that there
2 probably were other similar garages because that's
3 the general design of the row houses of Washington
4 during that time. And that's what's here now. The
5 reds are the presently existing garages. And you
6 can see some of them along here. These lots --
7 well, let me see.

8 The reason that we're here is because the
9 lot right now is zoned for 60 percent occupancy,
10 and the present occupancy of the house as it exists
11 is somewhere between 59 and 60 percent. If you add
12 the court to it, it's around 64 percent. And to
13 add a garage, a two-car garage across the back of
14 this site will consume 84 percent of the lot, plus
15 or minus. It also will reduce the back yard to 14
16 feet from the back of the house of clear land.
17 There's a porch under here, but from the actual
18 base of the house there would be 14 feet of land
19 left, which is in violation of the 20-foot setback.
20 So those are the two violations.

21 CHAIRPERSON GRIFFIS: How about the
22 setback from the center of the alley?

23 MS. PATRICK: The 12-foot setback?

24 CHAIRPERSON GRIFFIS: Right.

25 MS. PATRICK: It would be in violation of

1 that one too.

2 CHAIRPERSON GRIFFIS: Okay. It's setting
3 back about 7 and a half feet from the center?

4 MS. PATRICK: It's setting -- it's right
5 on the alley, so that's about 7 and a half feet.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. PATRICK: I believe this is a 15-foot
8 alleyway in here.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. PATRICK: And you can see what the
11 area looks like now. There are a number of
12 existing garages. The rest of them are open fences
13 and some pretty undesirable looking things. The
14 reason that my client wants to put this garage
15 here, the basic reason is really security. And
16 this is a neighborhood that is in transition. They
17 have crime. Right now the house is being
18 renovated. We already have a permit. And the
19 contractor's already been robbed. But there is an
20 open parking lot in here, which means there's no
21 control of who's in here. And this creates a
22 security problem. Plus, this is the designated
23 code area for them to park.

24 Right now they have a six and a half foot
25 wood fence, and a sliding door across. And they

1 propose to simply close it in and make themselves
2 a secure garage, which would be only a couple of
3 feet higher than what's up there. This is what it
4 looks like now. All of this is being changed.

5 Last April we went through the -- this is
6 in the historic district. Last April we went
7 through Historic, and they approved putting the
8 garage up with the exception that the garage be
9 brick to match the existing brick, and that it only
10 be one story and no deck on top. And they approved
11 the restoration of the rear of the house, providing
12 that it's wood siding or brick. And it's now being
13 restored, and it will be brick siding, keeping the
14 house the same existing size that it is.

15 As I said again, the basic reason is
16 security. There are a number of other ones, and
17 you can see, already up there. That's the one
18 that's right here. And the way we see it is that
19 even though these are existing, and were existing
20 before the code changed, a number of people have
21 these amenities. Why shouldn't someone else have
22 it? We also have letters from neighbors who have
23 no objection to it, and we've been informed by
24 several neighbors that they would like to have the
25 same experience, and put a garage up for the

1 absolute same reason.

2 We went to the ANC. We have a letter of
3 approval. We had two meetings with the ANC. And
4 we have a letter from Restoration, which is not
5 approving it. I believe you have that letter?

6 CHAIRPERSON GRIFFIS: Right. Yes. And
7 we'll run through all those. Okay. A couple of
8 concerns. Of course, in terms of granting the
9 variance, we were talking about the test. The
10 first is to establish the uniqueness of the
11 property, what's unique, and out of that
12 uniqueness, what practical difficulty arises out of
13 it. And then we need to go to whether it would
14 impair the intent and the zone plan, or it would
15 impair the public good. So really, I think it's
16 important for you just to help steer the board to
17 the direction of what -- what is the unique
18 circumstance that creates the practical difficulty
19 in complying strictly with the zoning regulations.

20 MS. PATRICK: Well, the difficulty is
21 that because of the present zoning laws, which
22 changed over the years, they are not able to have a
23 garage, which they would like to have, and they
24 would like to have the garage for security's sake.
25 And of course the lot is too small to do this.

1 CHAIRPERSON GRIFFIS: Right. And
2 what's unique about this specific property? One of
3 the things about being granted a variance, and the
4 complication of granting a variance is it has to be
5 based on the uniqueness of the property.
6 Otherwise, this board is basically writing zoning
7 regulations. We grant the variances from the
8 regulations that are written by the Zoning
9 Commission, meaning something has to arise
10 specifically and uniquely, a condition, an element,
11 a circumstance, out of this specific property.
12 Otherwise, as you've indicated, everyone in the
13 area would love a private garage, and anyone that
14 would, will come in. But then how do we -- how do
15 we not destroy the zoning regulations, whether
16 they're right or wrong. Is that fairly clear?

17 MS. PATRICK: Yes. It's really difficult
18 because this is a kind of simple thing. It's
19 either A or B as you kind of said. The only -- the
20 thing that I see as unique is that parking lot in
21 there, which is owned by a private developer. I
22 understand once a condominium was proposed and
23 rejected. But there still is the possibility that
24 that site could be developed in some kind of way,
25 which would vastly affect the whole block by what's

1 in there. And the fact that it is a public
2 parking lot now provides no security over who's in
3 your yard any time of day and night. And the noise
4 factor, light factor. And they have had
5 substantial problems with burglary in there. But
6 that's --

7 CHAIRPERSON GRIFFIS: When you say it's a
8 public lot, I mean, it's just open for anybody?
9 They can just drive in and use it?

10 MS. PATRICK: No, it's a private
11 developer I believe is paid or something. But it's
12 still not --

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. DOMINIQUE: Actually --

15 CHAIRPERSON GRIFFIS: You just need to
16 turn on your mic.

17 MR. DOMINIQUE: Actually, that's the
18 Heritage parking lot that was discussed earlier on
19 this morning.

20 CHAIRPERSON GRIFFIS: Exactly.

21 MR. DOMINIQUE: And we had spoken to the
22 Heritage people. In fact, they were submitting it
23 as we were. And we got their support also.

24 CHAIRPERSON GRIFFIS: So what you're
25 saying is --

1 MR. DOMINIQUE: One of the things --

2 CHAIRPERSON GRIFFIS: Actually, let me
3 see if I'm hearing you correctly. Here you have a
4 private surface parking lot, which is utilized
5 during the business hours, and there's some
6 evidence in the written submission that there's
7 different and heavier traffic, and they're
8 obviously not just all your neighbors back in the
9 alley system. But this is inviting additional use
10 back in that area. That, as I understand it, is
11 creating this unique situation for this piece of
12 property of having a larger potential for malicious
13 behavior or different people back there, outside of
14 just talking to your neighbors over the rear yard
15 fence. So part of the aspect of compliance is --
16 or the uniqueness of that is the amount of
17 circulation that's happening in the interior of the
18 block. The practical difficulty of the fact is
19 that you need the privacy and the security, but you
20 cannot and do not have the lot area available in
21 order to set this back one from a small dimensioned
22 alley, and also to balance the compliance with the
23 rear yard.

24 MR. DOMINIQUE: That is correct.

25 CHAIRPERSON GRIFFIS: Okay.

1 MR. DOMINIQUE: And also, this is a
2 point to note. I think if you were to look at the
3 many pictures that we have, you will find that all
4 of the properties with garage and gates. And the
5 gates are in a sense built almost the same way the
6 garages were built, excepting that they don't have
7 the top. They really do not meet 20 yard
8 requirement, and the 60 percent lot occupancy, even
9 in the cases where the lots are bigger as indicated
10 by the Restoration Society.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. DOMINIQUE: If you simply just a
13 visual look. One would not even have to measure.
14 Just a visual look would indicate that they do not
15 meet those variances. And so in a sense we can say
16 that the fact as you've just indicated, the fact
17 that our lot is extremely small, and the constant
18 traffic caused by having that rare lot.

19 It's also, at night, I know for a fact it
20 tends to be unsafe. One of the neighbors that
21 attended the ANC meeting said to me that on several
22 occasions when he came home late at night, and he
23 doesn't have a garage in the back, and he would not
24 park on the parking lot, although he has permission
25 to park there from the Heritage Foundation. And he

1 had to spend about 20 minutes several times
2 trying to find a parking area. Just for fear of
3 going into the alley and backing out. It seems the
4 logical thing to do, is to park and run.

5 Now also, I can tell you that we've had
6 several instances when my mother-in-law was alive
7 where things were just thrown over the fence at the
8 back there. But one instance there was an old
9 bicycle. Serious. How and why someone would want
10 to throw an old bicycle over the lot, I have no
11 idea. And so we see part of that as our situation
12 being unique in the sense that giving us that would
13 give us needed security and privacy.

14 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

15 MR. DOMINIQUE: In terms of the physical
16 such, other than the size, you know, we couldn't
17 say that it's an oblique, it's a whatever. It's
18 rectangular in shape. The concrete slab is in
19 existence. We have plants and flowers up at the
20 front, that it wouldn't -- the lot itself couldn't
21 be used for anything else but the garage.

22 MS. MILLER: I just have a few questions.
23 Do either of you know how many homes about the
24 parking lot? How many homes go around the parking
25 lot?

1 MR. DOMINIQUE: We would have to count.

2 MS. PATRICK: But they are all homes.

3 MS. MILLER: Is it approximately around
4 50 or so?

5 MR. DOMINIQUE: Probably. Yes.

6 MS. MILLER: Is there anything
7 particularly different about your --

8 MS. PATRICK: Sixty-five.

9 MS. MILLER: Sixty-five. Is there
10 anything particularly different about your lot from
11 the other homes abutting this parking lot? I mean,
12 does yours experience more of the security concerns
13 than they do, or is it smaller, is it more
14 vulnerable for some reason?

15 MR. DOMINIQUE: It may be more vulnerable
16 in a sense because the next -- on the D side,
17 they're all garages. On the 3rd Street side, with
18 the lot that is close to the -- judging it, I think
19 it's a little bit taller. The parking -- the fence
20 is taller than ours. And I think it -- and the one
21 to our -- if you're facing the west, the one to our
22 right are lower, probably does not -- in fact, the
23 two others to our right does not obscure the
24 person's presence, you know. But on the left, I
25 think, because of the nature of the fence that's

1 there currently probably would obscure to some
2 degree the presence of anybody lurking out there.

3 MS. MILLER: Okay. And Ms. Patrick, I
4 think you also made some kind of statement about
5 the original design of these homes having
6 something. Having garages? Did you say something
7 to that effect?

8 MS. PATRICK: Yes. You know, the
9 standard urban design, which the District is a part
10 of, and in fact the District is a planned city.
11 You know, the District and Paris are two of the
12 oldest planned cities in the world. And the
13 standard urban design is, in this city, was a row
14 house with a carriage house behind it, for certain
15 quality neighborhoods which this was. And to
16 restore a garage would not really hurt the
17 restoration intent because that's actually the
18 actual restoration, is to restore the garage back
19 there. Because there originally were garages. In
20 fact, that center part was a group of garages which
21 you are probably familiar with on other sites in
22 the District, which made it quite a heck of a
23 place, you know. A little tight area with walls
24 up, because there's some -- I live in Columbia
25 Heights, and there's some in our neighborhood like

1 that.

2 MS. MILLER: So are you saying that there
3 originally was a garage on this parking pad?

4 MS. PATRICK: Yes. There originally were
5 a whole group of garage carriage houses.

6 MS. MILLER: On the parking pad or in the
7 interior of the parking lot? Oh, on the site of
8 this particular property?

9 MS. PATRICK: Both. Originally there
10 were garages, right on these lines most likely.
11 Right on the property, with the 15-foot driveway
12 around them. And you could enter the carriage
13 houses here. And most of them were two stories.

14 CHAIRPERSON GRIFFIS: What about on the
15 particular site in question here?

16 MS. PATRICK: But on our site there was a
17 garage, and this one was probably one story.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. PATRICK: The same as these are.
20 See, these are --

21 CHAIRPERSON GRIFFIS: And how do you know
22 that there may have been or that there was a garage
23 on this particular site?

24 MS. PATRICK: Because the owner of the
25 lot was born and raised here, and it was there as a

1 child. It hasn't been gone, I don't know, what,
2 five or six years.

3 CHAIRPERSON GRIFFIS: You need to turn
4 your microphone on.

5 MR. DOMINIQUE: Thank you. I think at
6 one point prior to Heritage building the parking
7 lot out there, for instance, they had broken down
8 all those garages and built a warehouse out of
9 there. And then Heritage bought it over, and built
10 it.

11 CHAIRPERSON GRIFFIS: Okay. I don't
12 think we're so concerned about what happened in the
13 alley on your side.

14 MR. DOMINIQUE: That's according to
15 Debra's mom. I mean, I recall in conversation with
16 her.

17 CHAIRPERSON GRIFFIS: Sure. That there
18 was an existing garage there.

19 MR. DOMINIQUE: An existing garage.

20 CHAIRPERSON GRIFFIS: Originally it had
21 some sort of accessory structure.

22 MR. DOMINIQUE: Yes.

23 CHAIRPERSON GRIFFIS: And how long ago do
24 you think it was taken down?

25 MR. DOMINIQUE: I have no idea. I've

1 known Debra for -- I would say probably, maybe 20
2 or 25 years. I have no idea.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. ETHERLY: Mr. Chair, on that
5 particular question. Perhaps not a question for
6 the applicant, but as we move towards the Office of
7 Planning report, there was an indication in the OP
8 report that there is the remnant of a concrete wall
9 from the preexisting structure. So perhaps as OP
10 gets into its report, I'd love to kind of hear a
11 little bit about how much of that remains. I think
12 the difficulty clearly is the variance test here,
13 in terms of making that case. But perhaps with
14 some understanding of just how much of that prior
15 existing accessory structure remains might be
16 useful.

17 CHAIRPERSON GRIFFIS: Yes, I tend to
18 agree. And whether there's actually -- obviously
19 that's a unique situation and condition if there
20 was an existing and remnants of a structure and
21 foundation. And whether that rises then to a
22 practical difficulty.

23 Okay. Anything else you'd like to tell
24 us? It might be informative to move on to the
25 Office of Planning's report. We'll get to the ANC

1 and all the other submissions. And then we
2 obviously will come back to you for anything else.
3 And you do have an opportunity to ask questions of
4 the Office of Planning now that they're here, after
5 they present their report.

6 So if you're so amenable, why don't we
7 have them present their report. Do you have copies
8 of it?

9 MS. PATRICK: Yes.

10 CHAIRPERSON GRIFFIS: Excellent. Okay.
11 Very well. Then let's move on. Good morning, sir.

12 MR. LAWSON: Thank you, Mr. Chair,
13 members of the board.

14 MS. PATRICK: We don't have copies of the
15 planning. We have Restoration copy.

16 CHAIRPERSON GRIFFIS: Have you not seen
17 the Office of Planning report?

18 MR. DOMINIQUE: No, we have not.

19 CHAIRPERSON GRIFFIS: Can you turn one of
20 those microphones off?

21 MS. PATRICK: I have talked with the
22 Office of Planning once, but I have never seen the
23 actual report.

24 CHAIRPERSON GRIFFIS: Okay. Why don't we
25 -- excellent. Thank you, Mr. Nyarku. Mr. Nyarku

1 is going to make a quick copy and he'll get it
2 out. The Office of Planning will present their
3 entire report right now, though, orally. So we'll
4 get you a hard copy in front, but why don't we
5 proceed with that and they can walk through. And
6 what they've done is a full analysis of the
7 variance test.

8 So, with that.

9 MR. LAWSON: Okay. Mr. Chair, members of
10 the board, thank you. My name is Joel Lawson with
11 the D.C. Office of Planning. Just very briefly,
12 the owners of the property at 409 3rd Street,
13 Northeast, wish to construct a new 10-foot high
14 detached garage over the location, an existing
15 concrete pad. The applicant requires variances to
16 lot occupancy, setback of an accessory garage from
17 the alley, and a mounted rear yard covered-width
18 building.

19 Again, very briefly, and then I'll be
20 available for questions. The Office of Planning
21 feels that a sufficient case for the requested
22 variance has not been made, and that the
23 development of garages along the alley on these
24 small lots would have a detrimental impact on the
25 character of the square and the integrity of the

1 zoning regulations.

2 Existing lots on the square that are
3 developed with garages currently are typically
4 considerably larger than the subject lot. The
5 subject lot is of a similar width, depth, area,
6 shape and form of development as other lots facing
7 3rd Street, so is not unique in that respect.
8 Similar variances to the ones requested in this
9 case would be required for the addition of a garage
10 on any of these smaller lots. The property
11 currently has parking for two cars in a form
12 consistent with the remainder of the street.

13 However, the presence of an extensive
14 commercial parking lot at the center of the square
15 is a unique circumstance for the square as a whole
16 in that there is no building office at this one,
17 and there is likely a greater than normal number of
18 vehicles utilizing the alley system.

19 The District Department of Transportation
20 noted that the proximity of the garage to the alley
21 could impact the ability of trash and other
22 vehicles to get through without damaging themselves
23 and the garage, and recommend some setback from the
24 edge of the alley. Subsequent to filing the
25 report, OP also received email comments from the

1 Fire Department noting no concerns with the
2 proposal, provided all fire codes are complied
3 with. OP did not receive comments from any other
4 District departments.

5 Just to briefly address the question
6 related to what's on the property right now. I did
7 do a site visit, and there is what would probably
8 be most of the former masonry wall for a former
9 garage located on the -- it would be the south
10 property line of this property. In other words,
11 the masonry wall is still existing. Because it's
12 masonry, it indicated that it's not an original
13 structure. It's concrete block, essentially,
14 rather than what probably -- if there was an
15 original structure, it would be more likely brick
16 or some material like that. So that wall is
17 remaining.

18 I didn't take a look to see if the
19 concrete pad looked like an existing or former pad,
20 or whether that was more recently poured. And I
21 wouldn't be able to give any kind of a definitive
22 guess as to when the former garage on the property
23 was removed.

24 The plat shown there shows that there are
25 some other garages on the alley, particularly on

1 some of the larger lots facing E and D Streets.
2 Most of the properties -- a more typical form of
3 development in the rear is either tall fences,
4 presumably for security and privacy, or concrete
5 parking pads directly off the alley.

6 I think I'll leave it at that. So that
7 concludes my presentation, and I'm available for
8 questions. Thank you.

9 CHAIRPERSON GRIFFIS: Good. Thank you
10 very much. Do you have any questions of the Office
11 of Planning?

12 MR. DOMINIQUE: Just one.

13 CHAIRPERSON GRIFFIS: I'm sorry to keep
14 bugging you, but I just need your microphone on.
15 Excellent.

16 MR. DOMINIQUE: Just one question. Would
17 you agree that in regards to say a fire truck or
18 anything coming out of there, giving permission to
19 build a garage would not impair, or would not
20 interfere as is right now. I mean, building the
21 garage would not change anything from as it is
22 right now. Would you agree to that?

23 MR. LAWSON: Well, the Fire Department,
24 as I said, has noted that they did not note a
25 concern with this. I think the concern we've had

1 on alleys like this in the past is that, you're
2 correct, that often there are fences and structures
3 like that located right on the alley. There is
4 some concern that a garage being a more substantial
5 structure, if it is damaged that represents I guess
6 a kind of higher level of damage, and easier to
7 repair than having to repair a garage.

8 But the discussions I've had with DPW and
9 Fire Department on this issue in general has
10 indicated that they would prefer to see fences,
11 garage, whatever, moved back from the property
12 line, whatever the structure may be. Light poles,
13 whatever it might be.

14 MR. DOMINIQUE: Right. In fact, there's
15 a light pole right at the corner out there. And
16 you are correct in that. But you know, just to
17 make --

18 CHAIRPERSON GRIFFIS: Is there a light
19 pole that's aligned with your property line in the
20 alley? Is that what you're saying?

21 MR. DOMINIQUE: Yes, that's correct.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. DOMINIQUE: I mean not aligned. I
24 mean right on the side. I think it's more or less
25 on our neighbor's side. I think there's a light

1 pole right there. We need to go back and take a
2 look at this.

3 CHAIRPERSON GRIFFIS: But it sets the
4 drive aisle, the clearance of the alley, from the
5 property line to the rest of the alley, is that
6 correct?

7 MR. DOMINIQUE: I think so.

8 CHAIRPERSON GRIFFIS: Is it situated on
9 one of the rear property lines? Is that what
10 you're indicating?

11 MR. DOMINIQUE: I think -- okay. That's
12 the one I'm thinking of. Right going into the
13 alley right here. It's not necessarily --

14 CHAIRPERSON GRIFFIS: Okay. That's the
15 one coming off of 3rd Street. Okay. I think the
16 point that OP -- and they've presented their
17 report, and their analysis, and then other
18 agencies' reports, one of which was the Fire
19 Department, that basically said, look, if you're up
20 to Fire Code, you're okay. They don't see any
21 impact in terms of the proposed.

22 The others is going to trash. And I
23 think in previous applications we've noted it is
24 not necessarily physically that a truck couldn't
25 make it through, but that when you place trash cans

1 out in the alley and all that, they want it on
2 your property, not in the alley so that they don't
3 get all kicked and pushed all the way over, or they
4 get in the way of a truck getting through. So
5 that's why in a lot of these alleys, setbacks from
6 the center line, originally the city is not laid
7 out this way. Our current regulations seem to
8 require 2-foot setback from the property line.

9 MR. DOMINIQUE: I am not saying there is
10 a 2-foot requirement, because I have not made any
11 measurements myself. But one thing I can tell you
12 is that we've been putting trash out there for that
13 -- my folks have been putting the trash out there
14 for a number of years. And I've never heard anyone
15 complain of any obstruction of trucks.

16 One of the things I must say that's a
17 plus is the fact that the Heritage has an open
18 space out there. It certainly lends to having a
19 wider right there.

20 CHAIRPERSON GRIFFIS: Understood. Okay.
21 Any other questions of the Office of Planning that
22 you had?

23 MR. DOMINIQUE: No.

24 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

25 MS. MILLER: Mr. Lawson, with respect to

1 our conversation earlier about the possible
2 uniqueness of this property with respect to the
3 fact that there may have been a garage there
4 earlier in time, do you have any idea as to whether
5 this is unique to the property in the square? Did
6 you have occasion to look at other properties
7 around the square to see if any of them share that
8 trait?

9 MR. LAWSON: When I did my site visit, I
10 did take a look at other properties. In many cases
11 it was difficult to see what was going on because
12 many of them had fences or something which
13 prohibited kind of viewing onto the property, you
14 know, without getting kind of obnoxious on my part.

15 There were a number of properties right
16 now that had parking pads, and in fact I would
17 guess that most of the properties have parking, if
18 not all of the properties, have parking from the
19 rear alley system simply because parking from the
20 front is not an option. Some of those are behind
21 tall fences, as I said. Many of them are,
22 actually. And some of them are open concrete pads
23 with a security fence on the inward side of that
24 parking pad. But I wasn't able to determine
25 whether or not at one point there were a series of

1 garages. I wouldn't be surprised if garages were
2 much more common than they are now. But right now
3 there aren't a lot on the square, other than that
4 one row on the larger lots.

5 MS. MILLER: I just want to follow up a
6 little bit on the point that granting the variance
7 would have a negative impact on the character of
8 the area. I mean, as I read your report, I
9 interpret it starting with if this wasn't unique,
10 then it would lead to all the others doing the same
11 thing, and that would change the character, and
12 that would be negative. But if we remove that, if
13 this is a unique property, does it have a negative
14 impact because of the increase in lot occupancy on
15 this small lot? Or is there another reason?

16 MR. LAWSON: Well, I think that would
17 start to get to, you know, the integrity of the
18 zoning regulations and the reasons for granting a
19 variance. If it was determined that this property
20 was unique in some way, and as I said, so far the
21 Office of Planning hasn't been able to come up with
22 what that reason might be. But if this is
23 determined unique, and it meant that other
24 properties on the square would be assessed
25 differently, I think you're right. That could

1 affect the whole question of uniqueness. OP's
2 concerns -- or certainly part of OP's concern was
3 that because we feel it's not particularly unique,
4 we would foresee all of the other properties being
5 developed in the same way, which cumulatively would
6 have an impact both on the zoning regulations and
7 on the overall character of the area.

8 MS. MILLER: Thank you.

9 CHAIRPERSON GRIFFIS: Mr. Mann?

10 MR. MANN: If the structure that had
11 previously existed on that pad, if that had been of
12 some -- if it had contributed to the historical
13 significance of the site, do you think the Capitol
14 Hill Restoration Society would have noted that? If
15 the structure had a one-time -- if it were historic
16 -- if it had been there for some time and it had
17 contributed to the historic integrity of that site,
18 do you think they would have noted that?

19 MR. LAWSON: Well, I can only kind of
20 guess what they might feel, but I would assume that
21 in our historic districts, that the restoration or
22 reinstatement, if you would, of a historic portion
23 of a structure is being proposed that would be
24 received more favorably than brand new
25 construction, which is considered contrary to the

1 current, you know, to the overall character of
2 the area. But you would have to ask them that to
3 get a real answer.

4 MR. ETHERLY: Mr. Chair, if I could real
5 quickly, I wanted to follow up, I think, on the
6 direction that Mrs. Miller and perhaps Mr. Mann's
7 question were heading towards. Mr. Lawson, you
8 said something I think that was very important
9 here. With respect to the lots that are located
10 towards the southern edge of this square, and the
11 northern edge. Those lots are larger than the lots
12 that are to the east and the west, correct?

13 MR. LAWSON: They are larger, by at least
14 500 square feet, or about -- well, about 500 square
15 feet.

16 MR. ETHERLY: Okay. And of course, the
17 majority of the carriage houses or accessory
18 garages that we see appear on the D Street, or the
19 south side of this particular square, where those
20 lots are larger. Now, for the properties that
21 front what would be 4th Street, I believe, there
22 are, and I'm taking a look at applicant's
23 architectural submissions at Exhibit Number 10, and
24 looking at Drawing A-5. There are, of course, what
25 appears to be four dwellings that fall on those

1 smaller lots, lots that might be characterized as
2 similar to the applicant's lot. There are four
3 dwellings that appear to have garage structures or
4 carriage houses. Did you, during your site visit,
5 have an opportunity to look or observe those four
6 buildings? Those four accessory structures?

7 MR. LAWSON: Well, when I did my site
8 visit, I guess to be honest I was concentrating
9 more on this property. So I didn't spend a lot of
10 time looking at the other area. I kind of wish now
11 I had, because quite honestly when I was there, I
12 didn't notice those structures at all. It seemed
13 to me that there weren't a lot of structures. I
14 have no doubts that they exist, but they certainly
15 weren't popping out at me, I guess, on the street.

16 MR. ETHERLY: Okay. No, that's fair.
17 Because what I'm getting at is I think that the
18 challenge, Mr. Chair, is obviously grappling with
19 the uniqueness here in that there are a lot of
20 other properties around this parking lot that find
21 themselves in a very similar predicament to what
22 the applicant is sharing with us. However, if you
23 have four structures that have accessory garages, I
24 was kind of leaning towards inquiring whether or
25 not those appear to be preexisting structures, or

1 substantially original in terms of what's on
2 those lots. Because we had a little bit of
3 discussion about that wall that exists at the rear
4 of the subject property here. But I think the
5 Office of Planning answered the question in terms
6 of Mr. Lawson's site visit.

7 It can best be described at this point as
8 simply a concrete masonry wall. Clearly not
9 original, it's not the original structure. So I
10 think I'm clear that we're not talking about the
11 remnants of a post-Civil War building. It's a
12 concrete masonry wall. How far out does that wall
13 extend towards, perhaps as it heads towards -- I
14 mean, does it just run the full length of that
15 property, of the subject property, from east to
16 west?

17 MR. LAWSON: I'm going from some bad
18 memory here, but I simply noticed the wall, and it
19 seemed to run straight out to the property, the
20 rear property line. How far it goes into the
21 property, to be honest I didn't notice. Sorry.

22 MR. ETHERLY: Okay. Thank you. Thank
23 you, Mr. Chair.

24 CHAIRPERSON GRIFFIS: Thank you. Other
25 questions? Clarifications?

1 MR. ETHERLY: One final question,
2 Office of Planning, and perhaps this is more
3 perhaps for one of my other colleagues to add.
4 Office of Planning did note that if there were a
5 reduction in the width of the proposed garage, that
6 might move the lot occupancy question more towards
7 a special exception scenario as opposed to a
8 variance scenario, correct?

9 MR. LAWSON: Yes. I'd like to clarify
10 that a bit. I spent a bit more time looking at the
11 numbers, actually, after I kind of rushed to get
12 the report in. I think it's actually more likely
13 now that a variance would still be required even
14 for a one-car garage, given the amount of
15 development on this property, and because this
16 narrow court area is required to be included in the
17 lot occupancy calculations. So I don't think
18 there's any way around -- on these smaller lots I
19 don't think there's any way around a variance
20 application. Certainly on some of the smaller lots
21 if somebody came in they may be able to get through
22 with either -- possibly not even a special
23 exception, but certainly not a variance to the lot
24 occupancy requirements. But for the small lots,
25 that wouldn't be the case.

1 MR. ETHERLY: Excellent. Thank you for
2 that clarification.

3 CHAIRPERSON GRIFFIS: Thank you. Yes.
4 Anything else? Any other questions for the Office
5 of Planning? Okay. Let's move ahead then to the
6 other submissions on this. Of course, it has been
7 indicated, HPRB did review this and gave conceptual
8 approval. That's Exhibit Number 7. The ANC, I
9 don't see any representative from the ANC here who
10 was recommending approval, and that is Exhibit
11 Number 26. And they did indicate that the garage
12 is to be constructed on a concrete slab upon which
13 a garage previously sat. All other garages in the
14 neighborhood do not meet 20-foot rear yard
15 requirement. So we have that in as Exhibit Number
16 26.

17 We have the Capitol Hill Restoration
18 Society, which sent the letter, Exhibit Number 25,
19 which was opposing the application. And we have
20 just received the Stanton Park Neighborhood
21 Association letter, which also recommends denying
22 the variance. You have a copy of the Stanton Park
23 Neighborhood letter?

24 MS. PATRICK: He just gave it to us.

25 CHAIRPERSON GRIFFIS: Okay. Yes, he

1 probably just presented it to you. It did come
2 into the record today. I don't have any other
3 government reports attendant to this application,
4 unless others are aware of any, or the applicant is
5 aware of any. Not having anyone else in the
6 hearing room at this time, I would ask if there is
7 anyone here to testify as persons either in support
8 or in opposition, but noting that no one is here to
9 do that, we can move on with it.

10 Let's just go to final kind of questions
11 and where we can go with this. First of all, in
12 reviewing the Historic Preservation Review and also
13 the Office of Planning's report, it was indicated
14 when you went to present to HPRB you presented a
15 plan that had some sort of deck on top of the
16 garage structure. Is that correct?

17 MS. PATRICK: That's correct.

18 CHAIRPERSON GRIFFIS: So obviously you
19 wanted to utilize that on top as an open space and
20 enjoy it, and all that. They removed that from
21 their conceptual approval.

22 MS. PATRICK: That's correct.

23 CHAIRPERSON GRIFFIS: Okay. So it goes
24 and raises a question for me, at this point, just
25 more of a desire aspect and functionality.

1 Obviously you see the difficulty of what's
2 happening with getting through the threshold test
3 of the variance case. Why at this point --
4 wouldn't you think the best case scenario would be
5 to put up a secure door, roll-up door or however
6 you want to do it, set back a foot or a little bit
7 from the alley, and keep the entire rear portion
8 open. And not put a structure, is what I'm saying.

9 MS. PATRICK: Well, is that legal? Are
10 those so-called garage -- are they legal?

11 CHAIRPERSON GRIFFIS: Are they legal?

12 MS. PATRICK: That was my first question
13 to ask somebody up there.

14 CHAIRPERSON GRIFFIS: You mean in terms
15 of building codes are they allowable?

16 MS. PATRICK: As far as zoning and
17 building codes, is it legal to actually put that
18 garage door up there like that? Because actually
19 it's the same height as a garage. Seven-foot
20 doors.

21 CHAIRPERSON GRIFFIS: Well, let's talk --
22 I don't know legal.

23 MS. PATRICK: Okay.

24 CHAIRPERSON GRIFFIS: Except for these
25 aspects of legal, and that is zoning. In terms of

1 the zoning, a fence or an enclosure does not
2 create the same lot occupancy or elements that a
3 structured garage does.

4 MS. PATRICK: I understand that. I
5 understand that as far as occupancy. My point is
6 that's legal, and apparently it is because I see it
7 everywhere, that if everyone in the block were to
8 do so to provide their own privacy and security and
9 have that roll-up shutter which is 7-feet high,
10 plus the supporting structure above it, you would
11 have a wall which in essence is no different than a
12 garage. The thing that's missing are the side
13 walls. And you could put the side ones up because
14 you could fence off. The only thing you don't have
15 is a roof.

16 CHAIRPERSON GRIFFIS: Right. Sometimes
17 that which is prohibited in the zoning regulations
18 fly in the face of common sense. I don't disagree
19 with you there.

20 MS. PATRICK: I would rather see people
21 do something that's aesthetically pleasing.

22 CHAIRPERSON GRIFFIS: I would too. But
23 you're going into a larger argument which I'll join
24 you, and we'll go to the Zoning Commission and
25 we'll have them rewrite the regulations. That's

1 our problem here is that we've got these
2 regulations. We have to make sure they're either
3 adhered to or the test is made so that we can grant
4 relief from them. I absolutely agree, I think it's
5 -- if we digress terribly here.

6 But I think it's absolutely absurd that
7 in our residential zones that two things. One,
8 most of our new zoning has made illegal or
9 nonconforming our typical and beautiful row
10 dwellings. No question about it. A lot of them
11 come in with lot occupancies that are way over,
12 height, way over. And so why did we write
13 regulations like that. Parking's the same way. An
14 accessory parking structure. I absolutely agree.
15 The difficulty is that's what our regulations are.

16 MR. DOMINIQUE: And in answer to your
17 question, I think the one thing as we said earlier
18 was the security aspect of it.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. DOMINIQUE: You know. So having a
21 roll-up door would not afford us that security that
22 we discussed earlier.

23 CHAIRPERSON GRIFFIS: How so?

24 MR. DOMINIQUE: Well, because as I said
25 before, on a number of occasions --

1 CHAIRPERSON GRIFFIS: People throw
2 things over.

3 MR. DOMINIQUE: Yes. People have been
4 known to throw things over.

5 CHAIRPERSON GRIFFIS: I see. Okay.

6 MS. PATRICK: I also wanted to mention
7 what Planning brought up about the walls. On the,
8 what is it, east, 4th Street side, some of those
9 garages there do have the walls, the original
10 walls. You can see them in some of the
11 photographs. The original walls that indicates
12 that there definitely were garages on these backs
13 of these homes.

14 CHAIRPERSON GRIFFIS: Right.

15 MS. PATRICK: And all of the ones facing
16 for the D Street lots are definitely the original
17 walls. And also that the lots on D Street and E
18 Street are larger, but they still also exceed the
19 lot occupancy. The ones that have another
20 structure.

21 CHAIRPERSON GRIFFIS: I'm going to just
22 give you a little direction here because it's hard
23 for you to argue uniqueness of your property if you
24 show me how many times it happens everywhere else.
25 But what I understand is that this square is

1 unique. This is not a typical block. It has
2 three or four accesses into it. It has a large
3 interior separate division of ownership lot. It
4 was originally built and historically built as
5 carriage houses, total accessory, or principal
6 structures in the alley. Most of these structures
7 around also accommodated, and I think it's clear
8 what you're saying in the visual presentation,
9 there was originally, which is a unique aspect to
10 how this kind of balanced different uses. There
11 were originally either parking garages or actual
12 carriage houses in the area. The current condition
13 also lends itself to some uniqueness in terms of
14 how that area is utilized.

15 It would be interesting to know, if we
16 had a little bit more information on what the
17 previous structure on this particular, specific
18 property was. Do you think there's any way to find
19 any sort of documentation is in the family
20 histories? For instance, the original permit
21 documents?

22 MR. DOMINIQUE: It might be, I'm not
23 certain. I recalled that when we were starting up
24 together and made out the original design of the
25 building. I thought we had quite a bit of

1 difficulties in coming up with that, even when
2 we went downtown.

3 CHAIRPERSON GRIFFIS: Yes, it's often
4 hard to find the original documents.

5 MR. DOMINIQUE: Yes. And you know,
6 that's part of the reason why we have absolutely no
7 choice but to go out and hire an architect to just
8 do the whole thing.

9 CHAIRPERSON GRIFFIS: Right. Well, let
10 me see. This is what I would like to do. I'd like
11 to set this for a decision and keep the record open
12 for several things. First of all, you've just
13 received the Office of Planning's report today, so
14 I would give you an opportunity to respond to all
15 the elements of what the Office of Planning is
16 saying. And I would pay particular attention to
17 how they structured their report. Because it's
18 very critical. That's exactly the way we structure
19 our deliberation. We'll go from uniqueness, to
20 practical difficulty, to the impaired integrity of
21 zone plan, to public good. Those are the real
22 steps. One starts it and you've got to make it all
23 the way to the finish. And it's very valuable
24 information. They do an excellent job of putting
25 it together.

1 Secondly, I think I would urge you,
2 and I keep the record open for submission of
3 documentation of the existing structure, and how --
4 that can be several-fold. I mean, a couple of
5 photographs -- thank you. As Mr. Etherly has just
6 said, add some photographs into it. The other
7 thing I would do is I think available in the Office
8 of Zoning is a base atlas, which would be from 1958
9 or prior. And see if it was ever drawn, or
10 platted, or any sort of documentation, not
11 necessarily the permits, showing a structure there
12 that may well be or could have been in existence
13 prior to the zoning regulations. Whether that has
14 pertinence or not, I don't know.

15 And then we'll keep the record open for
16 any additional submission that you want to put in
17 that ties all that together in terms of the
18 uniqueness and practical difficulty of having a
19 garage.

20 Let me open it up to anybody. Mr.
21 Etherly?

22 MR. ETHERLY: And just as additional
23 clarification, in terms of the photographs, I don't
24 think that you're suggesting an extensive
25 photographic study.

1 CHAIRPERSON GRIFFIS: Oh, no.

2 Exactly.

3 MR. ETHERLY: But photographs of the rear
4 of the property, and in particular that wall
5 structure that you've heard us talk a little bit
6 about I think would be very helpful so we get a
7 sense of what that looks like.

8 I mean, I don't think there's any hide-
9 the-ball here. The challenge is when you look out
10 the rear of that property, you see some other
11 properties that have garages, that have these
12 accessory buildings. And so it begs the question
13 in your mind why can't I do the same thing too.
14 And it's a very logical question to ask yourself.

15 The challenge is, as the chair was
16 alluding to, we have zoning regs that essentially
17 kicked in mid-twentieth century that made a lot of
18 the unique and original D.C. architecture
19 noncompliant. But it got grandfathered in. So
20 you're stuck with -- well, not stuck. You're
21 blessed with a wonderful structure that you want to
22 improve for your own purposes, for security and
23 other reasons. And you're in an area where there
24 are other properties that have the same thing. But
25 you might be stuck between a rock and a hard place

1 in that now the zoning regs make it very
2 difficult for you to do that unless you can present
3 a unique reason.

4 The thing that we're struggling with is
5 you have a property that's a lot like other
6 properties in this square. But that wall that's
7 existing there could be helpful. I'm not
8 suggesting that it might be, but it'd be useful to
9 get some additional photographic evidence so we can
10 see what you're working with back there. So
11 photographic evidence that focuses on that rear,
12 and to the extent -- I know it's always difficult -
13 - if there's, in terms of your own family
14 possessions, those of your wife, if there happen to
15 be any old photographs, you never know, that might
16 show that rear, that preexisting structure that
17 might have been there in the past. That might be
18 helpful. It's a shot. It's a little bit of a
19 needle in the haystack, but it could be helpful.
20 So I just wanted to offer that clarification, Mr.
21 Chair.

22 CHAIRPERSON GRIFFIS: Thanks. Well said.
23 Yes.

24 MR. DOMINIQUE: Just for my own
25 clarification, when we say "uniqueness" are we

1 always talking about uniqueness as to that
2 property, or could something be unique due to the
3 fact -- I mean, even if all the properties have
4 exactly the same thing, could they be unique in the
5 general sense that they are different. Say for
6 instance from all of the D and the E in a sense.

7 CHAIRPERSON GRIFFIS: I think I
8 understand your question, and the answer is
9 twofold. First of all, yes. There can be a unique
10 condition, a unique circumstance. Clearly the most
11 direct is a unique condition of the land. You
12 know, there's this huge slope and you can't build
13 on it, so you've got to build somewhere else.
14 Whatever it is. But it is fairly clear that
15 uniqueness can be in a condition that arises out of
16 the property. And so how that is put forth is an
17 important aspect.

18 Now the other aspect to it is does this
19 need to be unique, does this need to be the only
20 place it's ever happened, ever will happen, in the
21 entire District of Columbia. That is not
22 necessarily the situation. It certainly will lend
23 itself to not being replicated on other properties,
24 but properties are incredibly unique, I think. I
25 think they're all very unique. Whether they all

1 rise to a level of creating a practical
2 difficulty for the zoning is another question.

3 Okay. Anything else? Yes.

4 MS. PATRICK: I have just one question,
5 and thank you very much for your consideration of
6 this. What is the board's position on the parking
7 lot for the future impact of the particular block
8 if something were proposed?

9 CHAIRPERSON GRIFFIS: You mean in terms
10 of the Heritage parking lot?

11 MS. PATRICK: Yes. What can the property
12 owner expect that could happen with that lot,
13 should it be changed from a parking?

14 CHAIRPERSON GRIFFIS: Okay, good point.
15 Let me just see, is there anything else, any other
16 questions or clarifications we can provide for this
17 application? Okay.

18 Then let me just bring you up to speed,
19 because it's interesting timing that the Heritage
20 special exception and variances came to the board
21 and were decided this morning. And I'll just take
22 a brief moment to tell you. First of all it was
23 approved for 10 years. And secondly, the case --
24 actually the presentation of the variance was the
25 fact that this could not be used in any other way.

1 And it is fairly clear from the record that we
2 had that the development of alley lots is
3 precluded, almost entirely prohibited within the
4 District of Columbia except for those alley lots
5 that meet certain criteria, of which this was
6 testified as not meeting. So it's not as if this
7 is one huge lot that could be set up for sale for a
8 matter-of-right development at this point.

9 MR. DOMINIQUE: I would like to thank
10 each of you very much. It's been a very
11 enlightening experience for me personally. I think
12 I've learned a lot today. So thanks again.

13 CHAIRPERSON GRIFFIS: Good. Well, thank
14 you very much. And we appreciate --

15 MS. MILLER: We're not finished.

16 CHAIRPERSON GRIFFIS: No, we're not
17 finished. But we appreciate your patience and also
18 your great effort in putting this forward and
19 working on this. We need to set this for decision.
20 You have questions? Oh, go ahead.

21 MS. MILLER: I'm sorry.

22 CHAIRPERSON GRIFFIS: Go ahead. I
23 thought we were done.

24 MS. MILLER: No. I'm sorry. I want to
25 respond to the uniqueness question, and then I want

1 to ask Office of Planning something. But just
2 to your question about uniqueness. It's not
3 clearly defined in the regulations. The courts
4 have interpreted how we can apply that uniqueness.
5 And I just want to say that the rationale behind it
6 is that if it isn't unique, then everybody else
7 around you can come in for the same thing, and then
8 you're not giving a variance, you're changing the
9 regulation. And that's where we have to be
10 careful, and that's where I see the opposition
11 coming from, that if you do something and you're
12 not any different from your neighbors, what's to
13 stop everybody else from doing it. And that's
14 going to change the character. Okay.

15 That being said, I'm looking at, and we
16 started talking about this, what's unique about
17 your property, and you came up with the point that
18 there may have been a garage there before. And
19 that may be different from other people's
20 properties. And if that's the case, then we don't
21 have the slippery slope. Then your case is
22 different. It doesn't lead to everybody else's
23 getting the same relief. So therefore, when you
24 come in with your submittals, whatever you can find
25 out that makes your property different and

1 particular that way would be useful. And there
2 is -- I gather there are all these other homes, and
3 if you can provide any documentation that all the
4 ones that don't have garages didn't have them
5 before, or only two of them are in your situation,
6 you know. That would give us the context of how
7 unique is your property.

8 And that being said, I just wanted to ask
9 Office of Planning whether or not it's possible to
10 do a little more investigation on that subject.
11 One, either by a site visit to the other
12 surrounding properties, and/or looking in an atlas
13 to see whether there were structures on properties
14 like theirs that are no longer there now.

15 MR. LAWSON: I think Office of Planning
16 can certainly agree to do both. We have access to
17 a whole series of historic maps dating back to the
18 1880s, actually. So I can look through those. I
19 don't know if any of them will show any detail for
20 this particular square, but I can go through those
21 maps and submit those to the board. I can take
22 another look at the property, but again, my
23 recollection is that it would be difficult to come
24 up with a lot of definitive information because so
25 many of the properties are closed off from view

1 because of privacy fences.

2 MS. MILLER: Thank you.

3 CHAIRPERSON GRIFFIS: Okay. So we'll set
4 this for decision on August 3. Why don't we have,
5 in terms of the submission of Office of Planning, a
6 week to do the map submissions?

7 MR. LAWSON: That's fine.

8 CHAIRPERSON GRIFFIS: Okay. We'll allow
9 a week for that to be submitted to the record. Is
10 there any -- I want you to be able to see those.
11 And you need to see those before you do your final
12 submission into us. So I would suggest that you
13 make contact with the Office of Planning, and
14 they'll let you know when they put it into the
15 record. And you can either come down and make
16 copies of it, or maybe they'll be good enough to
17 provide copies for you. So before you all leave
18 for the day you can get contact information.

19 And then final submissions by the
20 applicant we can take -- Mr. Moy, what did you
21 propose?

22 MR. MOY: Well, if we're contemplating
23 Office of Planning doing their further research, to
24 be completed in a week's time, that takes us to
25 July 20. And if you're contemplating the applicant

1 the chance to read OP's supplemental, then maybe
2 -- and to respond to that, we can give you another
3 week, which would take us to the 27th. Would that
4 be doable then?

5 CHAIRPERSON GRIFFIS: Would that work?

6 MR. MOY: And then give the meeting on
7 August 3, which would be the following week.

8 CHAIRPERSON GRIFFIS: Is there a problem?

9 MS. PATRICK: Well, I'm personally out of
10 town and will not be able to pull this thing
11 together by then. I won't be back till August 4,
12 and I'll be out two weeks prior to that. When do
13 you reconvene again? After the summers. Is it in
14 August?

15 CHAIRPERSON GRIFFIS: We take a few weeks
16 off in August.

17 MS. PATRICK: You take three weeks back
18 in August?

19 CHAIRPERSON GRIFFIS: Right. So
20 September 14, actually, we'll be back.

21 MS. PATRICK: I have no objection to just
22 waiting till your next session starts. Is that too
23 much of an inconvenience?

24 CHAIRPERSON GRIFFIS: Are you sure? How
25 does that impact the construction?

1 MS. PATRICK: The construction right
2 now is of the house itself, which has been approved
3 and the building permit and all.

4 CHAIRPERSON GRIFFIS: Okay. So that's
5 not going to delay anything.

6 MS. PATRICK: The garage would be a
7 separate issue.

8 CHAIRPERSON GRIFFIS: I'll leave it
9 totally open to you. I was going to try and get
10 this done as quickly as possible.

11 MS. PATRICK: Well, I would love that
12 too, but we're just --

13 CHAIRPERSON GRIFFIS: Excellent.

14 MS. PATRICK: -- far into the summer
15 season.

16 CHAIRPERSON GRIFFIS: If you're both
17 amenable we can set it for --

18 MR. MOY: September 7.

19 CHAIRPERSON GRIFFIS: The fourteenth.

20 MS. PATRICK: And Debra is out on medical
21 right now. It would be better as she would like to
22 be a part of this.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. PATRICK: And that would be much
25 better for her.

1 CHAIRPERSON GRIFFIS: Okay. Then that
2 seems to work out well. September 14 we'll have it
3 for decision. Now just to let you know, once all
4 that's in, and we'll give you new dates to submit
5 everything, but what we have set this for is
6 decision-making, which actually you sat through
7 some this morning. There would not be any other
8 time for testimony or questions from the board or
9 anything like that. You're obviously welcome to be
10 here and hear us deliberate. So why don't we set
11 it then a week before the fourteenth, which is
12 actually the eighth, then. Or I guess we could do
13 the seventh.

14 MR. MOY: In September?

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. MOY: Well, you can make it September
17 7, which would be fine.

18 CHAIRPERSON GRIFFIS: No, I mean just for
19 submissions.

20 MR. MOY: For submissions.

21 CHAIRPERSON GRIFFIS: Applicant
22 submissions on September 7?

23 MR. MOY: That's fine.

24 CHAIRPERSON GRIFFIS: Okay. And then
25 we'll have decision on the fourteenth. And we'll

1 still just give OP a week. No, okay, we'll give
2 him -- you don't need more than a week, right? You
3 can get that done.

4 MR. MOY: Okay. All right. That's good.
5 So once again, then, OP will have their work done
6 by July 20. The applicant to submit September 7.
7 And the board's decision on this on September 14.
8 Okay?

9 CHAIRPERSON GRIFFIS: Good. All clear?
10 Excellent. Thank you all very much. I appreciate
11 you spending the effort on doing this. Mr. Moy,
12 any other business for the board's morning session?

13 MR. MOY: No, sir.

14 CHAIRPERSON GRIFFIS: Very well. Then
15 let's conclude and take a short lunch break, and
16 come back in a bit.

17 (Whereupon, the foregoing matter went off
18 the record at 12:29 p.m. and went back on the
19 record at 1:54 p.m.)

20 CHAIRPERSON GRIFFIS: Good afternoon,
21 ladies and gentlemen. Let me call to order the 13
22 July 2004 afternoon Public Hearing of the Board of
23 Zoning Adjustment of the District of Columbia. My
24 name is Geoff Griffis, Chairperson. Joining me is
25 the Vice Chair, Ms. Miller. Also, Mr. Etherly,

1 representing the National Capitol Planning
2 Commission is Mr. Mann. And representing the
3 Zoning Commission with us this afternoon is Mr.
4 Hildebrand.

5 Copies of today's hearing agenda are
6 available for you. They are located on the wall
7 where you came into the hearing room. A couple of
8 very quick but important aspects as we go into our
9 hearing. First of all, you should be aware that
10 all proceedings before the Board of Zoning
11 Adjustment are recorded. They are recorded in two
12 fashions. We are being broadcast live on the
13 website of the Office of Zoning, and also we are
14 having a court reporter create the transcript. So
15 several things attendant to that. I'd ask that
16 people please turn off all cell phones and beepers.

17 Also, when coming forward, if you would
18 fill out two witness cards. Witness cards are
19 available where you came in to the hearing room,
20 and also in front of us at the testimony table.
21 Those two witness cards should go to the recorder
22 to my right prior to coming forward. And when you
23 are in front of us and ready to give testimony, I
24 would ask that you please state your name and your
25 address for the record once, and that way obviously

1 we can give you credit for all the things that
2 you say on the record.

3 The order for procedure for special
4 exceptions and variances is first we hear from the
5 applicant, second we will hear any government
6 reports attendant to the application, third we will
7 hear from the Advisory Neighborhood Commission,
8 fourth we will hear persons or parties in support
9 of an application, fifth would be persons or
10 parties in opposition to an application, and sixth,
11 finally we'll have closing remarks by the
12 applicant. Anyone unfamiliar with that, believe me
13 I will make sure that everyone is called up when
14 appropriate and given time.

15 Cross examination of witnesses is
16 permitted by the applicant and parties in the case.
17 The ANC within which the property is located is
18 automatically a party in the case and therefore
19 will be able to conduct cross examination. The
20 record on each case will be closed at the
21 conclusion of the hearing on the case except for
22 any material that is specifically requested by the
23 board. And we will be very specific as to what
24 information is to be submitted, and when it is to
25 be submitted into the Office of Zoning. After that

1 material is received, of course, the record
2 would then be finally closed and no other
3 information would be taken into it.

4 The Sunshine Act requires that this board
5 conduct all proceedings in the open and before the
6 public. This board may, however, enter into
7 executive session, both during or after the
8 proceeding on a case. And this would be in
9 accordance with the Sunshine Act and our rules of
10 procedure. And this is utilized for reviewing
11 records and/or deliberating on the case.

12 The decision of the board and contested
13 cases must be based exclusively on the record
14 that's created before us today, which is why it's
15 so important to make sure that your name is on the
16 record and that you give us all the information
17 into a microphone. The microphone should be on.
18 And any other written submissions that you have for
19 us.

20 We would also ask that people present
21 today refrain from engaging board members in any
22 conversation here in the hearing room, or around
23 the area today, so that we do not give the
24 appearance of receiving information outside of the
25 record.

1 At this time, the board will consider
2 any preliminary matters. Preliminary matters are
3 those which relate to whether a case will or should
4 be heard today, such as requests for postponements,
5 withdrawals, or whether prior and adequate notice
6 has been provided. I guess that made sense. If
7 you are not prepared to go forward with a case
8 today, or you believe the board should not hear and
9 proceed with one of the cases on our agenda this
10 afternoon, I would ask that you come forward and
11 have a seat at the table as an indication of a
12 preliminary matter.

13 I would first go to staff and a very good
14 afternoon to Mr. Nyarku from the Office of Zoning,
15 and also Mr. Moy, and ask if Mr. Moy, you're aware
16 of any preliminary matters for the board?

17 MR. MOY: To the staff's knowledge, Mr.
18 Chair, there are no preliminary matters.

19 CHAIRPERSON GRIFFIS: Excellent. Then I
20 would ask that everyone contemplating or testifying
21 today before the board, if you would please stand
22 and give your attention to Mr. Moy, and he is going
23 to administer the oath.

24 (Whereupon, the witnesses were sworn.)

25 CHAIRPERSON GRIFFIS: Whenever you're

1 ready we can call the first case for the
2 afternoon.

3 MR. MOY: Yes, sir. The first case is
4 Application Number 17166 of Dinesh Sharma and
5 Murali Nadipelli, pursuant to 11 DCMR § 3103.2, for
6 a variance from the lot area and width requirements
7 under Section 401, a variance from the lot
8 occupancy requirements under Section 403, a
9 variance from the rear yard requirements under
10 Section 404, a variance from the off-street parking
11 requirements under Section 2101.1, and a variance
12 from the use provisions under Subsection 330.5 to
13 allow the construction of a three-story, four-unit
14 apartment building in the CAP/R-4 District at
15 premises 430 3rd Street, Northeast (Square 755, Lot
16 835).

17 The board previously has heard this case
18 on June 8, June 29, and of course scheduled to hear
19 it today, July 13. The staff notes for the board
20 that it's the staff's understanding that there's
21 been a number of changes, with revised drawings.
22 So this will have the effect of possibly changing
23 some of the zoning relief that's being sought.
24 That completes the staff's briefing, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Excellent. Thank

1 you very much. I'm going to just go and have
2 you introduce yourselves for the record, and we'll
3 jump right into this.

4 MR. HORTON: Earle Horton, attorney for
5 the applicant.

6 MR. NADIPELLI: Murali Nadipelli, one of
7 the partners.

8 MR. SHARMA: Dinesh Sharma, one of the
9 partners.

10 CHAIRPERSON GRIFFIS: Excellent. Okay.
11 As Mr. Moy laid out, this has gone through a lot of
12 revisions. Are you aware of any other additional
13 relief that needs to be sought, or any relief
14 that's being removed?

15 MR. HORTON: I guess there's a question
16 to you, Chair. That the Office of Planning feels
17 that this would come under Section 12.3, and our
18 request for lot occupancy variation from 60 to 75
19 percent, they feel that would bring us over the FAR
20 to I think their calculation is 2.3. And under the
21 regulations, there's none prescribed, but if there
22 is, I think it goes to 1.8. And so there would be
23 a variation. Because it's in the Capitol Hill
24 overlay district, their opinion is that there would
25 be an FAR prescribed 1.8. And I think what we're

1 proposing is 2.3.

2 CHAIRPERSON GRIFFIS: Okay. Yes. And I
3 also wanted to bring up the cite of the Section
4 1203.3 in the Cap Hill overlay, which states that
5 except as specified in Chapters 20 through 25 of
6 the title, maximum permitted four-area ratio while
7 building a structure in the CAP overlay district
8 shall not exceed 1 and 8/10, or 1.8 FAR.

9 MR. HILDEBRAND: Can we clarify, too.
10 This is now a two-unit flat, as opposed to a four-
11 unit building, is that correct?

12 MR. HORTON: Yes, sir. We amended the
13 application. We're just requesting -- no use.
14 We're not requesting a use variance. Just we're
15 going to build -- we're going to use it as a
16 matter-of-right use.

17 MR. HILDEBRAND: Okay.

18 CHAIRPERSON GRIFFIS: Right. Okay. And
19 then attendant to, of course, the rear yard was
20 removed?

21 MR. HORTON: Yes.

22 CHAIRPERSON GRIFFIS: And the off-street
23 parking we had asked that you submit just a showing
24 of where the parking was going to be provided.

25 MR. HORTON: Yes. And can I -- I would

1 like to submit something, that was inadvertently
2 not put in the package they submitted last Thursday
3 was the request to put -- sort of the measurements
4 of the buildings, and sort of the plat. So if I
5 could submit that to you.

6 CHAIRPERSON GRIFFIS: Okay. Excellent.
7 Why don't we do this, and this -- just an initial
8 question to the board. Let's just turn it over to
9 you. I mean, we're all very familiar now, having a
10 third time round on this. And we'll just have you
11 present where we are to date, and whatever you want
12 to show up, submit all this stuff. If there's
13 submissions right now, why don't you put them in so
14 they're in front of us while you address, and then
15 we'll take more board questions.

16 MR. HORTON: Well, I want to say good
17 afternoon to the board, and we are glad to be here
18 to present Application Number 17166. This has gone
19 through several variations, and we are hopefully
20 here with the last variation that will be accepted
21 by the board. The first hearing that was scheduled
22 was postponed because there was just not an
23 opportunity to get to the case. The second one was
24 postponed because the board requested more
25 information, and hopefully now we're here today

1 with everything that you need to deliberate and
2 make a decision.

3 We are here under the amended application
4 requesting relief from Section 401.3 and 403.2 of
5 the zoning regulations. And I guess last time I
6 started with I would say it would be the easiest
7 one for you to consider in my opinion, which would
8 be for the area and width variances. And if you
9 don't mind, I would like to just start with that
10 one, and then proceed to lot occupancy.

11 CHAIRPERSON GRIFFIS: If you feel you
12 need to. I mean, I think you've established that
13 in the record. The unique character.

14 MR. HORTON: The uniqueness, okay.

15 CHAIRPERSON GRIFFIS: You've got an
16 existing dimensioned lot which is nonconforming,
17 and I think, unless board members feel differently,
18 let's move on to the more critical ones that are in
19 question here.

20 MR. HORTON: Okay. No, I usually hear --
21 I've heard you mention before 'We'll accept that'
22 you know, the uniqueness and a practical
23 difficulty. At the last hearing I didn't hear you
24 sort of utter those words, so I didn't know if you
25 wanted me to repeat that.

1 CHAIRPERSON GRIFFIS: I had a good
2 lunch.

3 MR. HORTON: Okay. Good, good. So, now
4 to lot occupancy, which I think is a more difficult
5 one to judge. We are asking for -- the 60 percent
6 that is required as a matter of right. We are
7 requesting a variance of 75 percent. So 15 percent
8 over what is required. Our uniqueness is the same
9 as in the prior argument, that the lot width is
10 only 14 feet wide, and the area is 1,372 square
11 feet in area. The practical difficulty we feel is
12 that since the lot is not as wide as normal lots,
13 and not as many square feet as normal lots, that
14 the structure is a very thin structure, and is sort
15 of very condensed, and it's not really practical in
16 the sense of I guess constructing a row dwelling.

17 And we mentioned that we have to put a
18 stairs, and this is one of the toughest things that
19 we've had so many iterations about the design is my
20 clients are engineers, but they've had to sort of
21 figure out how the stairs would work in here and
22 make it, I guess, livable space. You don't want a
23 stair to come halfway in the middle of the house
24 and then you really have a very -- you don't have a
25 room that's really wide. And it sort of doesn't

1 really make a lot of sense.

2 So that's where last time we had looked
3 at it, and you were really curious about why the
4 stairs came out in front, and you were asking a
5 bunch of questions about the court. And they
6 thought about that, and they went back and revised
7 it, and put the stairs back inside again, but we
8 still feel there's a practical difficulty in making
9 this a livable space without extending the lot
10 occupancy to 75 percent. Because if we went to 60
11 percent, we feel with the stairs in there the
12 building would be too small and narrow, and not
13 really practical because the front room with the
14 stair right there would be very narrow.

15 CHAIRPERSON GRIFFIS: Okay. So the width
16 of this doesn't accommodate a stairs and a room in
17 the same area?

18 MR. HORTON: Yes. And just to add to
19 that now, we don't have any architectural drawings
20 that we submitted for a building permit, obviously,
21 until we know what we can do. But if you think
22 about a little bit, and if you look at the pictures
23 we were talking about last time. I think Mr.
24 Hildebrand was really interested in that. You can
25 see the narrowness of the lot, and you can see that

1 you really have to build from building to
2 building, lot line to lot line. And with the
3 stairs there you have the party wall that you build
4 from this neighbor. Then you have the stairs.
5 Obviously you have your studs that go there. Then
6 you have your fire rating. You really start taking
7 up feet pretty fast, and then the stairs are pretty
8 much halfway in the room. So to us that's just not
9 a practical way to go about it, and we feel that
10 presents a practical difficulty for us.

11 Going to the last prong of the test of we
12 do not feel that this would damage the
13 comprehensive plan or the community because we are
14 using the building with the use as a matter of
15 right. There is a uniqueness here. We do feel
16 there's a practical difficulty. It is residential
17 use that the area is very accustomed to. And in
18 this block, on this side of the street -- let me
19 say this, because some of the neighbors don't
20 appreciate it if I say the neighborhood -- so this
21 block, there is actually right next to us a large
22 apartment building. On the other side it's a
23 similar structure, but I think it's a two-unit
24 condo structure to the other side of us. Then on
25 Massachusetts you have several large office

1 buildings. And then I believe on 2nd or 1st you
2 have the Republican National Committee. So you
3 have a lot of different uses and type of buildings
4 in this block. And we feel that this would not
5 affect the comprehensive plan or the community.

6 CHAIRPERSON GRIFFIS: Good. Thank you.

7 MR. HORTON: And if I can direct you to
8 what Mr. Moy kindly handed out was this new one
9 that was inadvertently not put in the package we
10 submitted last week. You see the building to my
11 right is 92 feet long. And if you look at the
12 pictures, that's the pretty large apartment
13 building. That's on Photo Number 1 that was
14 submitted in the original application.

15 And then if you look on that same photo
16 and if you look to my left, you will see the
17 building that is 46 feet long going to this, not
18 the picture, but going on this would be facing me,
19 my left. I don't know if that was clear or not.
20 But that's what you see here. We are to alleviate
21 some of the questions that was raised before, but I
22 think this is because the stairs were coming out.
23 Since we changed our design, we do have 18.6 feet
24 in the front from the sidewalk, from the end of the
25 sidewalk to the front of the house where the

1 structure starts. And I know Mr. Hildebrand was
2 concerned. But that was the prior design with the
3 stairs since we've had a lot of problems coming
4 out.

5 And if you look at the rendering that we
6 did submit, obviously it's in the historic district
7 and we are definitely going to comply with any
8 requirements that the Historic Preservation would
9 have. And I would like to mention, just touching
10 back on the first one, that mostly everybody has
11 endorsed the lot area of the width and the length
12 variance, but obviously there's some dispute with
13 the community upon the lot occupancy. So that's
14 pretty evident with the record. And so I'd just
15 like to put that out there.

16 CHAIRPERSON GRIFFIS: Where did you say
17 you were with Historic Preservation? You haven't
18 been before?

19 MR. HORTON: No, we have not. I was just
20 saying that we were going to comply with them. And
21 that's why we came up with --

22 CHAIRPERSON GRIFFIS: Right. So you
23 haven't put in anything. You haven't started
24 working with Preservation staff or anything of that
25 nature?

1 MR. HORTON: Not at all. What we did
2 was we put a rendering together for the ANC
3 meeting, and it's going to be your typical row
4 dwelling. We actually had a more modern design
5 that was submitted at first with the original
6 application, or submitted later, and the community
7 did not like that. So what we did was we went back
8 and did a new rendering that was very liked by the
9 community, in conformance with them now. And I
10 think hopefully the board can see from the way
11 we've amended our application, we met with the
12 community and we tried to meet their needs. We're
13 trying to be genuine partners in this and not
14 trying to push anything through that the community
15 does not want, but we feel that there's a minimum
16 we need to make sure this is a building that's
17 practical.

18 CHAIRPERSON GRIFFIS: Okay. And when you
19 said you showed images to the community, is that
20 this rendering?

21 MR. HORTON: Yes, sir.

22 CHAIRPERSON GRIFFIS: So that's Exhibit
23 Number 40. Were they aware that the adjacent
24 structures are not the existing structures in this
25 rendering? I don't know, did that ever come up?

1 MR. HORTON: No, it never came up.
2 They just were more interested in what our
3 structure was going to look like.

4 CHAIRPERSON GRIFFIS: A very nice frame
5 for your structure.

6 MR. HORTON: Yes, they pretty much
7 recommended where we should look, on what street,
8 for a structure that would be liked by the
9 neighborhood.

10 CHAIRPERSON GRIFFIS: Indeed. Mr. Mann,
11 did you have a question?

12 MR. MANN: I did. I just didn't
13 understand -- I guess what they addressed before.
14 I didn't understand what the depth of 432 3rd
15 Street was, or what the depth of 428 3rd Street
16 was. And what the depth of your proposed structure
17 is.

18 MR. NADIPELLI: The depth of 428 3rd
19 Street is 92 feet. And the one, 432 3rd Street is
20 46. And what we are proposing is 78 feet.

21 MR. MANN: 432 3rd Street is 46 feet
22 deep?

23 MR. NADIPELLI: Yes.

24 MR. MANN: And 428 3rd Street is 92 feet
25 deep?

1 MR. NADIPELLI: That's right.

2 MR. MANN: Okay, so the length of the
3 structure actually has no relationship to the hash
4 marks.

5 MR. NADIPELLI: Well, this is only shown
6 after -- we didn't show the full. In this
7 triangle, these buildings were not shown completely
8 because we didn't know the measurements when we
9 made the drawing.

10 MR. MANN: I see. And the depth of your
11 proposed structure is how many?

12 MR. NADIPELLI: Seventy-eight feet.

13 MR. MANN: Seventy-eight feet.

14 CHAIRPERSON GRIFFIS: Did you say 428 3rd
15 Street is 92 feet deep?

16 MR. NADIPELLI: That's right.

17 CHAIRPERSON GRIFFIS: There's the
18 structure itself.

19 MR. NADIPELLI: The structure -- from
20 here to all the way --

21 CHAIRPERSON GRIFFIS: So it's set back
22 four or five feet from the alley?

23 MR. NADIPELLI: That's right. It's set
24 back about six feet from the alley.

25 CHAIRPERSON GRIFFIS: Four, five, or six.

1 MR. NADIPELLI: Yes.

2 CHAIRPERSON GRIFFIS: Okay. All right,
3 that makes sense. Mr. Mann, follow-up? Okay.
4 Other questions. Mr. Hildebrand?

5 MR. HILDEBRAND: I'm still trying to
6 understand your front property line, the 98-foot
7 dimension. Is 432 actually projecting beyond its
8 property line? Is that what you're suggesting in
9 your elevation -- or your plan?

10 MR. HORTON: Existing condition in -- let
11 me just point this out. I don't know if you can
12 see this, Mr. Hildebrand. But this is the
13 sidewalk. So what we're saying is this is the
14 start of where our building would be, and this
15 would be where theirs would be. And this is their
16 existing condition. So I would assume that their
17 property line is I guess public space is usually a
18 couple of feet back from the sidewalk, so you know,
19 it would be -- I would just say right along the end
20 of the sidewalk.

21 MR. HILDEBRAND: Well, I could be wrong
22 in this particular case, but it's very unusual that
23 the property line is at the sidewalk edge. The
24 property line is usually associated with the
25 building face in some way on the hill. You have

1 bays that project beyond the property line, and
2 you have the building face typically on the
3 property line. So I'm just trying to get an idea
4 of where your 98-foot dimension actually starts. I
5 guess, you're convinced you've depicted it
6 correctly?

7 CHAIRPERSON GRIFFIS: The 98 feet's got
8 to start from the alley.

9 MR. NADIPELLI: The 98 feet starts right
10 here.

11 CHAIRPERSON GRIFFIS: Their property line
12 stops at the end of their building.

13 MR. HILDEBRAND: Okay.

14 CHAIRPERSON GRIFFIS: I think, Mr.
15 Hildebrand, if I understand your question, I
16 understand the evidence in the file, if you go to
17 the plat that was submitted, there might be one
18 right underneath that. On top of your file.

19 MR. HILDEBRAND: Yes.

20 CHAIRPERSON GRIFFIS: Do you see a 98-
21 foot dimension?

22 MR. HILDEBRAND: Yes. I guess I'm
23 concerned that they may be misinterpreting where
24 the property line actually is relative to the
25 street. Okay. Because if I go 78 feet divided by

1 98 feet, which is their lot length, I'm getting
2 a lot occupancy of 80 percent, not 75.

3 CHAIRPERSON GRIFFIS: Oh, I see what
4 you're doing. Okay. So the question is not --
5 okay. The question is the calculation of the lot
6 occupancy.

7 MR. HILDEBRAND: And then also I have a
8 question about the height of the ceiling in the
9 lowest level, and whether or not, based on your
10 elevations you've given us, does this count, does
11 the lowest level count as a story or not. Can you
12 please talk to that a bit?

13 CHAIRPERSON GRIFFIS: To be actually
14 direct, what you're proposing, is it a cellar or a
15 basement?

16 MR. NADIPELLI: Basement.

17 CHAIRPERSON GRIFFIS: It's a basement.
18 Did it calculate into your FAR?

19 MR. NADIPELLI: Yes.

20 CHAIRPERSON GRIFFIS: You did. You
21 calculated the whole thing. Can you walk out the
22 back?

23 MR. NADIPELLI: Yes, we do. We can walk
24 out the back.

25 CHAIRPERSON GRIFFIS: The basement has a

1 full access out in the rear.

2 MR. NADIPELLI: Yes.

3 CHAIRPERSON GRIFFIS: Okay. So does that
4 answer your question?

5 MR. HILDEBRAND: Then it becomes a four-
6 story structure. Are you allowed four stories in
7 this zone?

8 CHAIRPERSON GRIFFIS: It appears to me
9 that you'd need also relief from the story
10 limitation in an R-4 zone. The difference between
11 a basement and a cellar, of course, is based on the
12 grade adjacent to the exterior of the building and
13 the ceiling height of that floor, or level, let's
14 call it. So if the ceiling is below four feet, if
15 it's below four feet above the adjacent grade. If
16 it's not above four feet of the adjacent grade.

17 MR. NADIPELLI: I'm sorry. There's no
18 entrance from the back.

19 CHAIRPERSON GRIFFIS: The entrance, that
20 doesn't matter. How far above the grade is the
21 ceiling?

22 MR. HORTON: You're right, and that's --
23 we had run into that problem when we submitted our
24 building permit. My understanding was, and I'm
25 checking with them now, that this was going to be -

1 - we were going to excavate, do underpinning,
2 and go below grade, and I thought we were going
3 like nine feet, eight or nine feet we were going to
4 excavate, and then put a slab. My understanding
5 was the four feet was not going to -- it was going
6 to be considered a cellar, or a basement. It was
7 not going to be put in the FAR because we were not
8 going to have four feet above ground, which is the
9 rule. And that was my understanding.

10 MR. NADIPELLI: That's correct. I
11 misunderstood, I'm sorry.

12 MR. HORTON: If you want to put that as a
13 condition, but that's what my understanding was.

14 CHAIRPERSON GRIFFIS: No, it's not going
15 to be a condition piece. I mean, there's not
16 really a judgment call for us. It either is or it
17 isn't.

18 MR. HORTON: Right.

19 CHAIRPERSON GRIFFIS: So we just need to
20 see the documentation of that, and I think the
21 clearest way to document that is the section. And
22 it would have to be -- well, it's going to have to
23 be a fairly detailed section that shows us what the
24 existing grade is, and where the ceiling level is
25 above that grade, and a dimension on it.

1 MR. HORTON: That's fine.

2 CHAIRPERSON GRIFFIS: That's pretty easy
3 to do.

4 MR. HORTON: And I would also submit to
5 you that DCRA would not approve it if --

6 CHAIRPERSON GRIFFIS: No, you're exactly
7 right.

8 MR. HORTON: -- four feet.

9 CHAIRPERSON GRIFFIS: Quite frankly we
10 could let it go and you guys can get kicked out and
11 you'll be back here.

12 MR. HORTON: Back here, right.

13 CHAIRPERSON GRIFFIS: There's no reason
14 to do that. Frankly, just for our own schedule we
15 don't need to see it again. Let's get it all in
16 there that needs to be.

17 MR. HORTON: Yes.

18 CHAIRPERSON GRIFFIS: Okay. So it looks
19 like at minimum we're going to just need that
20 section and documentation to make sure we have the
21 proper FAR calculation, and whether it's story or
22 not. And you said, you indicated that you counted
23 that level in the FAR calculations?

24 MR. NADIPELLI: No, I totally
25 misunderstood. I did not.

1 CHAIRPERSON GRIFFIS: So the lowest
2 level of this as proposed is not calculated into
3 the FAR?

4 MR. NADIPELLI: No.

5 CHAIRPERSON GRIFFIS: And no portion of
6 that level is calculated?

7 MR. NADIPELLI: I'm confused over that
8 one, too.

9 CHAIRPERSON GRIFFIS: Okay. That's fine.
10 That's not a problem to be confused. However,
11 we'll need to get to clarity fairly quickly. So I
12 guess probably the most important thing to do is
13 just have some FAR calculations in, or however you
14 want to document it, you know. But that's going to
15 be the answer to the question. Because just on our
16 base level, the board is well aware that often --
17 most of the times in an architectural drawing
18 you're going to call the lowest level a basement.

19 But there's an impact for calling it a
20 basement and cellar for zoning purposes. So we
21 just want to make sure exactly what it is, basement
22 or cellar, and how you calculate it. There may
23 well be a portion of it that's a basement and a
24 portion of it's a cellar. So we're going to need
25 to know which portion is calculated in, which

1 portion isn't. And I'd suggest using a
2 perimeter calculation method in order to calculate
3 that FAR which we can easily provide you with how
4 to do that, as the board has established that that
5 is the proper way to calculate FAR.

6 Okay. Other questions?

7 MR. SHARMA: I would like to address and
8 bring to your attention that we will need access on
9 back because this parking and the parking.

10 CHAIRPERSON GRIFFIS: I'm sorry if I
11 confused things by asking about access. It has
12 nothing to do with access. All we care about is
13 what the grade is and how high above the grade the
14 ceiling is at that lowest level. Your documents
15 aren't showing that in fact you have any access out
16 the rear. In fact, you have a door, which lends me
17 to start thinking about out of the first level,
18 first floor on your plans, you have a door that has
19 no stairs to it. So I assume that you were walking
20 straight out on a grade. Now it confuses me that
21 then I go to a basement plan and I see fenestration
22 below that door. I'm not really sure where that is
23 and how it happens that a window could be under a
24 door that walks right out on a grade. But this
25 section is going to be able to clear that up for

1 me.

2 MR. HILDEBRAND: And if in fact that
3 first floor is at five feet, if you have a deck off
4 the back, will the deck count in FAR?

5 CHAIRPERSON GRIFFIS: On the main floor
6 which the residential starts?

7 MR. HILDEBRAND: Yes.

8 CHAIRPERSON GRIFFIS: It would not count
9 towards lot occupancy, no.

10 MR. HILDEBRAND: The deck would not at
11 five feet above grade.

12 CHAIRPERSON GRIFFIS: Right. At five
13 feet. No, it wouldn't be above the main
14 residential floor.

15 MR. HILDEBRAND: They're also showing a
16 door out at the second level.

17 CHAIRPERSON GRIFFIS: Right, with no
18 structure.

19 MR. HILDEBRAND: With no structure. And
20 that would be intruding into the required parking
21 space depth of 20 feet for a parking space.

22 CHAIRPERSON GRIFFIS: On the first level.

23 MR. HILDEBRAND: On the ground level.
24 Minimum parking space is what, 20 by 9?

25 CHAIRPERSON GRIFFIS: 9 by 19.

1 MR. HILDEBRAND: 9 by 19.

2 CHAIRPERSON GRIFFIS: Oh my goodness.
3 Okay.

4 MR. HILDEBRAND: So I just want to make
5 sure that we don't lose our one parking space
6 that's required with any deck structure that's in
7 the back.

8 MR. HORTON: And I don't -- this might be
9 a good clarification. It was my understanding, and
10 I just talked to my client, maybe this was a
11 formatted document that the architect used, but
12 there is not going to be a deck off the back.
13 There's never been mention of a deck. So I
14 apologize if that's shown on the drawing.

15 CHAIRPERSON GRIFFIS: No, there is no
16 deck shown on the drawing. But how far above grade
17 is the main story, the main level, first floor
18 kitchen? You open that door in the back and what
19 do you do? The first step is a real doozy?

20 MR. HORTON: It's going to be I guess a
21 small set of stairs, a little set of stairs.

22 MR. HILDEBRAND: I'd only suggest that
23 you look at the position of the door, because I
24 think if you're creating a platform and a stair off
25 of that door location, you're going to encroach on

1 your parking requirement, which would not be a
2 good thing.

3 MR. HORTON: No, you're right about that,
4 and ... We will make a determination and see where
5 this door comes out and make sure it does not
6 encroach on the parking.

7 CHAIRPERSON GRIFFIS: Let's go through
8 other questions just to put it all together here on
9 a list and see where we go from here. We have the
10 FAR. We have the lowest level calculation, right?
11 We just need some documentation just to make sure
12 as we had talked about before in terms of the
13 providing the legal dimension of the parking. Just
14 drop the stair out. Of course the stair doesn't go
15 to lot occupancy or anything else. It's perfectly
16 acceptable, obviously, that you're going to walk
17 out your residence in the rear. Let's just show
18 it. It seems to me just on basic looks you've got
19 five additional feet. You can obviously set the
20 landing and the stair down. So it's just how it's
21 going to happen. Okay.

22 What else do we do? Well, the
23 basement/cellar kicks off a lot. Okay. What other
24 questions, clarifications? Questions at this
25 point.

1 MR. HILDEBRAND: I'm looking at the
2 photograph of the neighboring property. Let me see
3 if I can get an exhibit number for you. It's Photo
4 Number 6 in your photo packet of color photographs.
5 Exhibit Number 5. Your building is set back about,
6 if I'm reading your plan correctly, about three
7 feet or so from the corner of the building to the
8 north. And you can see there is a very rough
9 condition where the demolition occurred on your
10 property. How do you plan -- are you planning on
11 addressing that somehow in your new building?

12 MR. HORTON: Let me just start, and I'll
13 have my client address that. Yes, we are. And let
14 me point out for the record as it was pointed out
15 at the last hearing, that my clients just purchased
16 this property, and the building was razed I think
17 back in 2002. And so I don't know the history. It
18 sounds like you're very familiar with Capitol Hill,
19 but the prior property owner I guess had quite a
20 few of these properties on Capitol Hill and sort of
21 did things that weren't what the community wanted
22 to see. And we would probably rather have the
23 structure up there and just convert it over to
24 something, than have just a blank lot. But, having
25 said that, they do plan on doing something with

1 that. So.

2 MR. NADIPELLI: We thought about this
3 issue, and there are two major issues involved with
4 this wall. This existing wall was left -- I asked
5 the construction man when we were in the process of
6 buying this property for the structural integrity
7 of the neighboring property just north to this
8 property. And the second issue is we do intend to
9 use that break for our main façade to give it more
10 neighboring look. So the architect we were
11 talking, he mentioned this issue. So that is
12 structure. We will try to preserve those breaks
13 and use in the front structure. But it depends how
14 it's going to go at the time of construction. But
15 that is the intent as of right now.

16 MR. HILDEBRAND: Okay.

17 CHAIRPERSON GRIFFIS: Other questions?
18 Okay. Anything else? You want to point out just
19 as clarifications your openings? Otherwise, we can
20 go right into government reports. And then
21 obviously you have other time and opportunity to
22 address all this.

23 MR. HORTON: No, sir.

24 CHAIRPERSON GRIFFIS: Okay. Why don't we
25 move ahead, then, to Office of Planning's report,

1 and have them present that. Good afternoon.

2 MR. MORDFIN: Good afternoon, Chair and
3 members of the board. I'm Stephen Mordfin with the
4 Office of Planning. And we did not receive copies
5 of the plans until around noon yesterday. So we
6 have not prepared anything on this and we didn't
7 receive any documentation explaining the request
8 for the variances the way they are in these plans
9 either.

10 CHAIRPERSON GRIFFIS: Okay. So basically
11 for these obviously you haven't done a supplemental
12 review on these specifics, but in terms of your
13 report of 22 June, is it still prevalent, or you
14 think it's not even worth going through?

15 MR. MORDFIN: Well, I believe that the
16 building as shown on the plans we received is the
17 same size as what we were assuming when I prepared
18 the supplemental report.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. MORDFIN: And so the lot occupancy
21 and the FAR I believe are the same. The FAR that I
22 have in my report of 2.25 is based on a three-story
23 building with a cellar underneath of it, not a
24 basement.

25 CHAIRPERSON GRIFFIS: So actually, if the

1 front portion of this was to be calculated, or
2 came into a partial basement/cellar, then it would
3 obviously be in addition to 2.25?

4 MR. MORDFIN: Yes.

5 CHAIRPERSON GRIFFIS: Okay. Okay. Does
6 the applicant have any questions of Office of
7 Planning? Do you have the supplemental report, the
8 22nd of June? You do.

9 MR. HORTON: Yes, I do.

10 CHAIRPERSON GRIFFIS: Excellent. Okay.
11 Do you have any cross examination questions of
12 Planning based on that report, or the original?

13 MR. HORTON: No, just a question for the
14 record. Does the Office of Planning plan on
15 submitting something on the new information they
16 have received?

17 CHAIRPERSON GRIFFIS: I imagine they'll
18 say if we direct them to. Which would be a good
19 answer. Tell me, in terms of their calculations,
20 one, the FAR, we're still in question. So
21 certainly I think we'll all take a view on that
22 one. It's the definitive nature of it, isn't it?
23 But is there any sort of impact on the lot
24 occupancy? Is there any change as you've stated in
25 terms of these documentations? From 60 to 75

1 percent?

2 MR. HORTON: No. I think the basic
3 numbers are pretty much still there. I would
4 believe that maybe the designer, I don't know if
5 that weighed into his considerations or not. I
6 really don't know. And in the arguments we've made
7 here today, I don't know if that would weigh into
8 his decision.

9 CHAIRPERSON GRIFFIS: Okay. Actually,
10 that's two good questions. First of all, in your
11 analysis as I understand the question and your
12 analysis, did the design of this structure factor
13 into the test that you're outlining? And the
14 second, is there anything you've heard today in
15 terms of the presentation both orally or written
16 that has indicated, one, you may have changed parts
17 of your analysis, or two, you need additional time
18 to submit a change in analysis?

19 MR. MORDFIN: The only thing that would
20 affect the analysis is I heard the explanation
21 having to do with the staircase and the narrow room
22 that you have in the front. If you had to reorient
23 the staircase, that may push the building back
24 further, which would then increase the lot
25 occupancy. So I think that could prove for some

1 justification for increasing the lot occupancy.

2 CHAIRPERSON GRIFFIS: Okay. Follow-up?

3 MR. HORTON: Yes, that would be exactly
4 the practical difficulty we're showing. So I would
5 -- maybe if he took that into consideration. He
6 sounds willing and open to that argument, and see
7 if that will change the Office of Planning's
8 opinion.

9 CHAIRPERSON GRIFFIS: Okay. Any other
10 cross examination of OP? Any other questions?

11 MR. HORTON: No, sir.

12 CHAIRPERSON GRIFFIS: Okay. Board
13 members? Questions, clarifications, Office of
14 Planning? No questions? Okay.

15 Did you -- when you go into this, this is
16 a little bit of an aside but it goes into
17 essentially the intent of the CAP overlay. It was
18 excellent that the Office of Planning brought that
19 to the attention on this application of 1203.3. Is
20 it just some rigid ironclad standard that CAP
21 doesn't want anything above 1.8? Or maybe I should
22 say that more politically astute. What is the
23 reasoning and intent behind maximizing an FAR in
24 the Capitol Hill overlay?

25 MR. MORDFIN: I'm not sure, but a lot

1 such as this, if you have the 1.8, and you get
2 the three stories, and you also are permitted a lot
3 occupancy of 60 percent max by the zone, it works
4 out to 1.8.

5 CHAIRPERSON GRIFFIS: So 1.8 in the CAP
6 isn't some arbitrary or some very hard ceiling, but
7 actually it was working within what may have been,
8 although the R-4 in the general zoning doesn't lay
9 out an FAR, this almost calculated what an FAR
10 would be for a more conventional row dwelling.

11 MR. MORDFIN: Yes.

12 CHAIRPERSON GRIFFIS: I see. Okay. So
13 it seems like the intent may well be, would you
14 agree that this was laying out the intent was to
15 keep this all essentially in harmony with the
16 massing, and structure, and character of the
17 Capitol Hill?

18 MR. MORDFIN: Yes.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. HORTON: If I might submit one other
21 thing on that.

22 CHAIRPERSON GRIFFIS: Sure.

23 MR. HORTON: And the same, there's almost
24 a parallel requirement that's required from
25 Historic Preservation. And I don't know if I have

1 this correct. Maybe Mr. Hildebrand can. I
2 think it's the Architect of the Capitol has review
3 authority of structures in the Capitol Hill.

4 CHAIRPERSON GRIFFIS: That's right.

5 MR. HORTON: And my understanding in
6 talking to different officials is that for a
7 project like this, they wouldn't even bother with
8 it. Really that was more for larger type projects.
9 The intent was.

10 CHAIRPERSON GRIFFIS: That brings up two
11 important issues that you just touched on, though.
12 One I have in my question because part of our
13 regulation is this is to be referred to the
14 Architect of the Capitol for review. And that's
15 one of the requirements, of course, that we'd have
16 to have done prior to us fully processing this.
17 But that's, as you say, I think this may come under
18 the radar of the Architects of the Capitol in terms
19 of how it would comply with the master plan in the
20 Capitol overlay.

21 But -- and obviously I don't speak to any
22 of that. But the other aspect is going through
23 Historic Preservation review. I'm wondering how
24 much you anticipate, or whether you've had any
25 conversations with the Preservation staff at this

1 point.

2 MR. HORTON: We have not, but I've done
3 several -- worked with several clients before
4 Historic Preservation, and my clients when we first
5 discussed this project, they're committed to
6 complying with Historic Preservation review. They
7 want to have a structure that fits in with the
8 neighborhood.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. HORTON: So, therefore they're
11 committed to doing that and spending that money.

12 CHAIRPERSON GRIFFIS: Yes, I'm not
13 questioning whether they will or they'll comply. I
14 guess the conflict I'm having is as we're going
15 through, and piecing this all together, and trying
16 to iron down all of the zoning aspects, a lot of
17 this may change as Historic Preservation starts
18 reviewing this. You know, I can't anticipate, but
19 we've seen quite a bit of applications that come
20 through that have taken on different forms after
21 review from the HPRB. But be that as it may.

22 MR. HORTON: I would just say that there
23 was a project I was working on with HPRB and a
24 structure like this, I would say a row structure
25 like this, I would think that as long as they made

1 sure it complied with what they wanted on the
2 aesthetics from the front, the windows, came within
3 I guess -- I don't want to say compliant, but with
4 the neighboring structures in the historic
5 district, I don't -- maybe some of the projects you
6 were thinking about were larger projects, but it
7 sounds to me like as long as we made a -- complied
8 with the other buildings in the area, they would be
9 fine with the historic nature of it.

10 CHAIRPERSON GRIFFIS: Okay. Well, I
11 don't know. I don't sit on that board.

12 MR. HORTON: Well, I know you deal with
13 larger projects. So you know, this is a small
14 project.

15 CHAIRPERSON GRIFFIS: Yes. Okay. All
16 right. Any other question from the board of Office
17 of Planning? Very well. Thank you very much.
18 Let's move on, then, to other submission. I don't
19 have actually any other government reports
20 submitting on this.

21 ANC-6C. We had Exhibit Number 28. They
22 have not done anything in addition to that, is that
23 correct? They were supportive of the variances for
24 the flat. That's Exhibit 28. Is that correct? Is
25 there anyone here from ANC-6C? The last paragraph

1 of the ANC report, help me understand this. It
2 says, "In the motion, the ANC indicated that it
3 supported the request for a minimum lot area, lot
4 width variances in the event that the granting of
5 these two variances would result in the
6 construction of a two-unit, two-story apartment
7 building. Motion passed unanimously."

8 And this is what you showed them, is that
9 correct?

10 MR. HORTON: That's exactly what we
11 showed them, and we told them that we were going to
12 do the height as a matter of right. We never told
13 them we would do two stories, or three or four
14 stories.

15 CHAIRPERSON GRIFFIS: Okay. That may
16 well just be a misunderstanding. I'm not that
17 concerned. I just need clarification on that.
18 Okay. Other than that, we do have the submission
19 now from -- was I not handed Stanton Park. Yes,
20 thank you. Okay. Did you get the submission from
21 Stanton Park?

22 MR. HORTON: Yes.

23 CHAIRPERSON GRIFFIS: Okay. Is the
24 applicant aware of any other submissions by any
25 other associations or agencies?

1 MR. HORTON: No.

2 CHAIRPERSON GRIFFIS: -- Preservation
3 Society.

4 MR. HORTON: Yes, we did read that. We
5 presented before them and I think they were of same
6 accord as the ANC, with approving lot area and
7 width, and I think they were against the lot
8 occupancy.

9 CHAIRPERSON GRIFFIS: Okay. Okay. So
10 there seems to be quite a consensus, as you've
11 said, on these issues. Okay. Very well. Let's go
12 to any testimony. Are any persons present here to
13 give testimony for Application 17166? Are there
14 persons here to give testimony this afternoon
15 either in support or in opposition? Not noting
16 any, let's move on then to any sort of -- at this
17 point, summation, if you'd like.

18 What we're going to do is we're going to
19 set this off for a decision. I'm going to run
20 through a couple of options. I'm also going to run
21 down a list of things that we're going to need just
22 to submit before we go to decision. And then I'm
23 going to give you -- actually, I'm going to give
24 you a big option here. We can set this off for
25 awhile, I would suggest, for decision. And it

1 would be for this reason. One, to get all this
2 together. Two, so that we don't find ourselves
3 looking at recalculations or re-massing, that at
4 least get into the first calendar session of HPRB
5 meeting. Hopefully you'll get on consent calendar,
6 and then you'll know exactly, having worked with
7 the Preservation staff. So, that's one aspect that
8 I think we could do. And that way you'll have that
9 kind of going the same way this is going, and then
10 we can get it all in the end, or best case,
11 whichever you have. Boy, I'm being flexible today,
12 aren't I?

13 If there were changes with the
14 Preservation staff that, you know, who knows what.
15 Maybe they cut the whole building in half. Then
16 that changes, obviously, this application. We
17 could have that submitted and still process it
18 without having to go back and forth a lot of times.
19 So let's put that in. Actually -- well, there it
20 is. Is there anything else that you want us to
21 know or pay attention to, focus on at this point?

22 MR. HORTON: If I can just have one
23 moment to talk to my clients about that, about your
24 suggestion?

25 CHAIRPERSON GRIFFIS: Yes, that's fine.

1 MR. HORTON: Chairman Griffis, I don't
2 know if I can speak up. I talked to them, and
3 here's -- we appreciate that suggestion. What we
4 would like to do, and let me give you the reason
5 why. We'd like to put this on earlier, probably
6 because you're talking about you guys will be going
7 in August. So we're probably talking about at the
8 earliest September.

9 We would like to probably do it earlier
10 than that for this reason, that once we know what
11 we can do, they're going to obviously get the
12 architect's drawings, put it in DCRA. We probably
13 won't get a permit till December. And since
14 they're going to do excavation in the wintertime,
15 we're really talking about a long delay. Where if
16 we can get something sooner, then obviously we can
17 start in the fall when there's a lot better
18 weather. And I would just say that what we can do
19 --

20 CHAIRPERSON GRIFFIS: You mean start this
21 fall?

22 MR. HORTON: Yes, start this fall. And
23 what we can do is we would sit down with HPRB, try
24 to get on the consent calendar. If we can we could
25 sit down with their staff and get a feel for what

1 they think, and sort of go from there if that's
2 going to really alter it. I mean, obviously they
3 have been willing to listen to people who have had
4 differing opinions on what they want to do. So,
5 you know, and I think we've shown good faith on
6 that. So I think if the HPRB says there's no way
7 the board's going to approve this, this is what you
8 need to do, obviously we're going to take that
9 direction. So I would submit that to you.

10 CHAIRPERSON GRIFFIS: Okay. So if I
11 understand it you want to put this on decision-
12 making as soon as possible.

13 MR. HORTON: Yes, but we don't want you
14 to take that personally and think that we're not
15 taking anything right. We appreciate you making
16 that offer.

17 CHAIRPERSON GRIFFIS: No, it's up to you.
18 It's your project. I don't see any reason why this
19 would actually delay time, but that's for you to
20 factor in. It may end up --

21 MR. SHARMA: May I add something to that?

22 CHAIRPERSON GRIFFIS: Sure.

23 MR. SHARMA: The only reason we believe
24 that it's going to happen. We are doing this
25 thing, and every time we send this thing out, we

1 got some quotients last time. The quotients, we
2 were deficient in submitting the papers. So this
3 time goes on, same thing happened. Once we know
4 what we can do over here, we will submit a second
5 set of documents. Right now, as of this morning,
6 it's six-week review time. Once you have your
7 submission ready.

8 CHAIRPERSON GRIFFIS: For permit?

9 MR. SHARMA: For permit.

10 CHAIRPERSON GRIFFIS: Yes, but you can't
11 get permits without HPRB approval.

12 MR. SHARMA: At the same time, but
13 architect needs some time to put the drawings
14 together.

15 CHAIRPERSON GRIFFIS: Right, I know.

16 MR. SHARMA: So all those things, and by
17 the time we are going to construction we are in
18 winter. So that's like a four- or five-month
19 period.

20 CHAIRPERSON GRIFFIS: I understand.

21 MR. SHARMA: That's all I was saying.

22 CHAIRPERSON GRIFFIS: My point is this,
23 and this is the last time I need to do it, because
24 it's my personal opinion and all that. But
25 something of this magnitude. We're not a design

1 review board. We're not going to kind of feel
2 it out to say, well, we kind of like this, we kind
3 of like that. We need to know exactly what it is,
4 what the FAR is. You start talking about putting
5 architectural plans together to get ready for HPRB
6 and I'm thinking, this came in the wrong direction.
7 We should be looking at that. We're not going to
8 have any control over what we tell you to do or
9 allow you to do. HPRB is the one that's going to
10 go through this and hopefully they ate a good
11 breakfast, and they'll love the design, and they'll
12 all be in great moods, and you'll move on. But
13 other than that, the potential of it changing in
14 massing, especially with this particular block and
15 everything else I think is very reasonable to
16 anticipate. And that's the only reason why I said
17 it. You know, we can be patient and set this off
18 for that process to continue, and you don't lose
19 any time with us. You can't get permits without
20 them both.

21 So, I don't know -- this will be the last
22 I say. This is not a strong application at this
23 point. Even with the submission that's in here, of
24 which this will be the second time we've asked you
25 to go out and put submissions and calculations in.

1 Look, I know this board well enough, and we've
2 reviewed this several times. There's still -- it's
3 not even that it's not making the test. It's not
4 to the level of which we can clearly deliberate on
5 what the tests needed are. So that was my whole
6 reasoning by saying, you know, maybe you ought to
7 get the design at least conceptually approved, and
8 then you'll be able to tick off your calculations
9 right away. I mean, how do you know HPRB is going
10 to let you go to 60 percent lot occupancy which is
11 a matter of right? How do you know they're even
12 going to let you do that?

13 MR. HORTON: I mean, those are good
14 points, and those are one of the things we talked
15 about, but obviously it's almost vice versa.
16 Because we can't build anything as a matter of
17 right, HPRB would've said the same thing. Well,
18 since you can't build anything period, what's BZA
19 going to allow you to do? They might allow you to
20 do nothing, so you're wasting your time.

21 CHAIRPERSON GRIFFIS: Right. I
22 understand. See they don't care about us. We care
23 about them, but they don't care about us. They'll
24 do whatever they want.

25 MR. HORTON: Okay. Well, I'm just --

1 CHAIRPERSON GRIFFIS: And it may well
2 help your application that you have zoning
3 approval. It may well help you. I don't know. I
4 doubt it. I mean, that's not the way it officially
5 works.

6 All right, well let's do it. We know --
7 I've put my maybe much too much out there here.
8 So, let's set this, and then we'll go forward with
9 discussion.

10 MR. HORTON: We appreciate your guidance.

11 CHAIRPERSON GRIFFIS: Yes, no, believe
12 me. I'm not trying to be adversarial, I'm just
13 trying to lay it out here. So, let's go through
14 what we need. We're going to need, first of all,
15 the section documentation that establishes, and
16 this is going to have to be fairly official. This
17 will be a document that will be, if this was
18 approved, attached to your permit documents. And
19 that's going to be the section. And the section's
20 going to have to tell me what the grade is front
21 and back, and the dimension of the ceiling of the
22 lowest level. That's going to establish whether
23 it's entirely a basement, entirely a cellar. And
24 it will easily establish whether some portion of it
25 is a cellar, and some portion of it's a basement.

1 All that goes into your FAR
2 calculation. We're going to need to see the FAR
3 calculations. However you want to show it to us,
4 know that we're going to look at -- somehow I need
5 to know what it is and show the calculations,
6 whether it's graphically that you're showing the
7 areas that are counted or not.

8 Obviously, once you establish basement or
9 cellar, you're going to establish story and whether
10 additional relief is in for additional story or
11 not. What else. We've got some sort of, at least
12 just some sort of representation of how you're
13 providing the parking out back again, with the
14 integration of the stair that is going to come off
15 of the first level. Again, I don't see the stair
16 attached from the first floor residential to the
17 basement impacting anything except where it might
18 encroach on the parking.

19 What else do we have. Two things. I
20 think we'll absolutely keep the record open for any
21 additional written submission, or however you want
22 to submit in terms of just re-establishing the
23 uniqueness, practical difficulty, and impair,
24 intent, integrity and the public good, basically
25 the test for the variance. What was I going to

1 say. I had something else going.

2 Oh. It certainly wouldn't hurt your
3 application I think, you know, one of the
4 things I can tell you quite frankly that the amount
5 of lot occupancy is always concerning in this zone
6 district, and especially in an overlay district,
7 historic district. So I think it might be actually
8 strengthen the application -- that's not the point.
9 It will help the board understand the entire
10 application if we had a little bit more even
11 photographic documentation. What's happening in
12 the rear? What are the adjacent structures? You
13 know, we look at this application, and only stuff
14 in this application. Even if we may have processed
15 two other applications in this specific
16 neighborhood today, I can't tell you that when I'm
17 looking at this application. If that makes sense,
18 shoot some photographs of this and back and how the
19 other buildings align in the rear, and all that.

20 Okay, what else?

21 MR. HILDEBRAND: And I think, again, to
22 reiterate what the chairman just said is showing
23 the full extent of the neighboring condition that
24 abuts your property line is really telling. If the
25 neighbor to one side is extending 98 feet back and

1 you're only extending 78 feet back, then there's
2 a brick or some face of wall that you're abutting
3 on your property line that's further than you, it'd
4 be nice to understand how that relates to your
5 property. And on the other side, how the
6 neighbor's property terminates relative to their
7 rear wall.

8 I'd also like for you to define on your
9 drawings, as all architects do, the property line,
10 and do it with a convention that is typical for the
11 industry so that we can understand where your
12 building sits precisely relative to the property
13 line. We're left to assume, based on the
14 dimensions you've given on the plan, that the front
15 of your building is on the property line. But I'm
16 not convinced that it's being shown correctly yet.

17 CHAIRPERSON GRIFFIS: Ms. Miller?

18 MS. MILLER: I would just like to also
19 ask if you would address more clearly what's
20 driving the need for the increase in lot occupancy.
21 That's a controversial issue in this case, and I
22 heard you make reference to stairs. But it really
23 needs to be fleshed out pretty clearly for us. At
24 least for me. Thank you.

25 CHAIRPERSON GRIFFIS: Okay. How much

1 time do you think you need to get all that
2 together? This is not a lot. I mean, it's some
3 documentation.

4 MR. HORTON: No, it's not, it's pretty
5 much the same issues we've been having every time
6 with getting -- all this is architectural, except
7 for addressing Ms. Miller's. So give me one
8 second.

9 I would submit that if you give us a
10 deadline of maybe two weeks, our -- let me just be
11 frank.

12 CHAIRPERSON GRIFFIS: Let me tell you our
13 choices. We've got August 3.

14 MR. HORTON: August 3.

15 CHAIRPERSON GRIFFIS: Right. And the
16 other flavor is September 14. Those are the two
17 decision-makings. We don't mean August -- August 3
18 will be our last meeting this year, essentially,
19 and then the first meeting back would be the
20 fourteenth.

21 MR. HORTON: Well, let me just confer
22 with them for one second, but I would just say that
23 frankly one of our deficiencies has been making
24 sure the architect has had everything so you guys
25 can deliberate, and this continues to be a problem.

1 So I don't -- we are probably going to opt to
2 the September date.

3 CHAIRPERSON GRIFFIS: Okay. Take
4 whatever. Take a quick second, and let me tell
5 you. If it's for August 3, you've got a week and a
6 half to get this in.

7 MR. HORTON: We're going to take the
8 September 14 date. We want to make sure we talk to
9 HPRB. We want to make sure we have our architect.

10 CHAIRPERSON GRIFFIS: Good. Good.
11 Because there's nothing wrong with meeting with
12 Preservation staff on the way.

13 MR. HORTON: Yes, definitely.

14 CHAIRPERSON GRIFFIS: Okay. In which
15 case let's get submission dates. Let's do them two
16 weeks before the September, which would be the last
17 week in August.

18 MR. MOY: Yes, sir, that would be the
19 last week in August. It would be August 31.

20 CHAIRPERSON GRIFFIS: Okay. Now, let me
21 just roll this in because I want to have the Office
22 of Planning take a look at that, and whether they'd
23 have time to review and put in a supplemental, not
24 really knowing what they're getting at. If they
25 had a week to put it in, seven days before the

1 hearing?

2 MR. MORDFIN: I think we could do it
3 then.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. MORDFIN: We would have one week to
6 turn in our report, which would be quick, but ...

7 CHAIRPERSON GRIFFIS: Not much happens in
8 the summer in the city. Okay. Why don't we do
9 that.

10 MR. MOY: Okay, so that's a one-week
11 turnaround for OP, so that would put the OP report,
12 supplemental report on September 7.

13 CHAIRPERSON GRIFFIS: That'll give you a
14 week to look at it.

15 MR. HORTON: And just clarifying,
16 September 14, I believe, obviously is just
17 decision-making hearing. There won't be any
18 testimony, just what's on the record. Is that
19 correct?

20 CHAIRPERSON GRIFFIS: Yes, yes, that's
21 correct.

22 MR. HORTON: Okay.

23 CHAIRPERSON GRIFFIS: Yes. I mean, I
24 think the stuff you give us is going to be really
25 straightforward. But note that, in fact, it will

1 be the decision. We're not going to have the
2 opportunity to ask you questions about it. So
3 submit some writing, you know, succinct but direct.
4 Okay.

5 Is that good, board members? Everyone
6 clear? Okay. Are you clear on dates, process?

7 MR. HORTON: Yes.

8 CHAIRPERSON GRIFFIS: Excellent. I'd
9 recommend, I think the Office of Planning avails
10 themselves to work with applicants also, if that --
11 I'm not saying it hasn't happened, but they're
12 probably available for a quick question or review
13 of the information that you're doing prior to
14 finalizing everything. This board certainly relies
15 heavily on their excellent analysis of cases and
16 then we do our own, of course. But it's one of the
17 major aspects to it. Go ahead.

18 MR. HORTON: They've availed themselves
19 to us. We really just have to get the
20 architectural part of this down. And we think
21 we'll give that to him with enough time that he'll
22 be able to review it and make hopefully a good
23 decision.

24 CHAIRPERSON GRIFFIS: Good. Exactly.
25 Two last things. First of all, there's no reason

1 why you have to wait so long to submit to the
2 Office of Planning. Obviously get them set and
3 then they won't be squeezed for a week at the end,
4 and then you'll be prepared, and you could actually
5 respond to what they've put in. So, that being
6 said.

7 The second is, you know, looking at this.
8 Obviously it's my personal opinion. I don't speak
9 for the entire board on this, but there's no reason
10 why an infill of this nature shouldn't happen. You
11 know? It seems like it would fit within the
12 overall I would say -- the architectural aspects of
13 infill for building. So, I'd spend some time on
14 making sure that it's tight and make it work. And
15 I think then the board would be -- well, I don't
16 think that's the level at which the board
17 deliberates on, but you know, I certainly don't see
18 any reason why there'd be some sort of opposition
19 to doing something of this nature within the reason
20 and also the -- within the parameters of the
21 zoning.

22 So. Anything else, board members? Mr.
23 Moy? Everyone clear? Do you want the dates said
24 again? You're clear on the dates, right?

25 MR. HORTON: Clear on the dates.

1 CHAIRPERSON GRIFFIS: Okay. Any
2 questions? Obviously, the Office of Zoning has
3 this all down and they'll be able to answer any
4 technical or procedural questions on that.

5 MR. HORTON: And just to -- and the board
6 has done it numerous times, I just want to make
7 sure. And this is no indication I want you to go.
8 But I mean, the board is willing to look at each
9 variance request separately and make a decision
10 separately on each one? Is that correct?

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. HORTON: Okay.

13 CHAIRPERSON GRIFFIS: Absolutely. Yes.
14 And I think -- yes. Actually, that's a lot of the
15 way this is breaking out. Who knows what happens
16 come September with the new information, but
17 there's nothing that precludes us from doing that.
18 Very well. Okay, if there's nothing further, thank
19 you very much. Let's call the next case for the
20 afternoon.

21 MR. MOY: The next case for the afternoon
22 is Application Number 17189 of Joseph Tortorici,
23 pursuant to 11 DCMR § 3103.2, for a variance from
24 the lot occupancy requirements under Section 403,
25 and a variance from the nonconforming structure

1 provisions under Subsection 2001.3, to construct
2 an accessory garage at the rear of a single-family
3 row dwelling in the R-4 District at premises 903
4 9th Street, Northeast (Square 932, Lot 3).

5 The staff has one preliminary matter on
6 this case, and that is the affidavit of posting.
7 The affidavit indicates the property was posted on
8 July 1, 2004, which is 12 days prior to July 13
9 public hearing date, which does not meet the
10 requirements for a 15-day posting. And that is
11 Exhibit Number 20.

12 CHAIRPERSON GRIFFIS: Good afternoon. If
13 you wouldn't mind, just state your name and address
14 for the record.

15 MR. TORTORICI: Joseph Tortorici.
16 Address: 903 9th Street, Northeast.

17 CHAIRPERSON GRIFFIS: Thank you, Mr.
18 Tortorici. Did you understand what Mr. Moy just
19 said about the posting? Are his dates correct?

20 MR. TORTORICI: I know I came over here
21 and I thought I was in line with the dates. I was
22 -- what was I involved with. I may have been out
23 of town and was not able to pick up the posting in
24 due time. But I did -- I thought it was -- was I a
25 day off?

1 CHAIRPERSON GRIFFIS: Mr. Moy, when
2 was it supposed to be posted?

3 MR. MOY: Well, it should've been posted
4 -- well, we're off --

5 MR. TORTORICI: I did it after July 4.
6 I'm sure it was after the holiday.

7 MR. MOY: Yes. We have in our files that
8 it was posted on July 1.

9 MR. TORTORICI: July 1, excuse me. Yes,
10 because I had a guest coming in, and I knew I came
11 down here before the holiday to pick it up.

12 MR. MOY: Well, I understand. The
13 requirements and the regulations say that posting
14 should be posted for the requisite 15 days, so
15 you're a couple days off.

16 MR. TORTORICI: Sorry about that.

17 CHAIRPERSON GRIFFIS: Three days shy.
18 We've kicked out applications for less. Let's just
19 go through very quickly, of course. You presented
20 this to the ANC, is that correct?

21 MR. TORTORICI: I did.

22 CHAIRPERSON GRIFFIS: Okay. So it was
23 advertised on the ANC. What day was July 1? It
24 was a Thursday? Okay. Board members, questions,
25 concerns? Okay, we don't have an ANC report.

1 MR. TORTORICI: There is no ANC
2 report?

3 CHAIRPERSON GRIFFIS: No.

4 MR. TORTORICI: I went before, I believe
5 it was a committee of the ANC-6A who said they were
6 sending in a report approving my application for
7 this request.

8 MR. ETHERLY: If I could, Mr. Chair. Mr.
9 Tortorici, did you have -- what type of outreach or
10 contact did you have with adjacent neighbors?

11 MR. TORTORICI: Adjacent neighbors. I've
12 been talking to my neighbors kind of off and on as
13 I meet with them and talk with them. I have lists
14 here for you of signatures. Let me pass those up.

15 MR. ETHERLY: And as far as you know, Mr.
16 Tortorici, we're not in receipt of an ANC report.
17 Do you know if the ANC took any formalized action?

18 MR. TORTORICI: I am not aware of what
19 they did or didn't do.

20 MR. ETHERLY: Okay. And when you met
21 with the ANC, was this with the full ANC or a
22 planning committee?

23 MR. TORTORICI: No, it was a planning
24 committee.

25 MR. ETHERLY: Okay, and were you on the

1 agenda of that committee?

2 MR. TORTORICI: Yes.

3 MR. ETHERLY: Was it like a formalized
4 agenda where you were listed?

5 MR. TORTORICI: Yes, I was on the agenda.

6 MR. ETHERLY: Okay.

7 MR. TORTORICI: Why there's no report I
8 do not know.

9 CHAIRPERSON GRIFFIS: Indeed. Office of
10 Planning has some information on the ANC.

11 Ms. THOMAS: Good afternoon Mr. Chairman,
12 members of the board. I'm Karen Thomas with OP.
13 Karen Woods from the ANC did give me a call
14 yesterday. And she has said that they had approved
15 it, but hers was the dissenting voice. And she
16 called for information from OP regarding lot
17 occupancy. But she did say that it was approved.

18 CHAIRPERSON GRIFFIS: From the full ANC?

19 MS. THOMAS: I guess.

20 CHAIRPERSON GRIFFIS: Or the planning and
21 zoning committee?

22 MS. THOMAS: From the ANC. She didn't
23 mention the planning and zoning committee.

24 CHAIRPERSON GRIFFIS: That's fine. I
25 mean, all we're trying to do is establish whether

1 there was enough public announcement, and
2 obviously if they had a public meeting, and as Mr.
3 Etherly said you were on the agenda, obviously it's
4 an important factor of this board's procedure and
5 regulations.

6 You're required to -- we're actually
7 precluded from hearing this application today
8 because this has not been properly posted. So it
9 takes an action by the board to waive our
10 regulations and our requirements in order to
11 proceed with this today. So we're just trying to
12 establish the fact of how we can go about doing
13 that based on the fact that enough people knew
14 about it.

15 You've indicated a neighborhood support
16 petition that's now in the record, which it will
17 get an exhibit number. Board members, I suggest
18 not getting into the substance of this, but let's
19 just move ahead with this application. Clearly we
20 have 16, to be safe, signatures of the surrounding
21 areas on I, E, and 6th, and L.

22 MR. TORTORICI: 9th.

23 CHAIRPERSON GRIFFIS: Wow, we've got a
24 lot of streets going around here. Where am I.
25 Does Florida Avenue come close to this? It does,

1 really? Man, I'm lost. Okay. Well, we'll get
2 into that at some point. Okay.

3 MR. TORTORICI: The property is between H
4 and Florida Avenue.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. TORTORICI: These are neighbors that
7 I work with on a cleanup project for H Street. And
8 so they're well aware of relationship to me, and
9 their concern about whether or not I am granted
10 this application or not.

11 CHAIRPERSON GRIFFIS: Good. Okay.

12 MR. TORTORICI: All my neighbors were
13 sent a notice from the city.

14 CHAIRPERSON GRIFFIS: We have two of the
15 postings possibilities. Obviously one is a
16 physical one, which we find is the one that most
17 people pay attention to. Generally most of those
18 folks throw out those letters they get. They
19 receive them and pay no attention to it.

20 This is also not a self-certified
21 application, is that correct? Was this referred by
22 the Zoning Administrator?

23 MS. PATRICK: Yes, it was.

24 CHAIRPERSON GRIFFIS: Okay. Let's move
25 ahead. I don't see any difficulty in waiving the

1 regulations for the three days lapse on the
2 posting of this. And let's move into presentation
3 of the case by the applicant. Whenever you're
4 ready.

5 MR. TORTORICI: Okay. What I'm proposing
6 simply is to I guess be in tune with the year of
7 the garage in terms of D.C.

8 CHAIRPERSON GRIFFIS: Return to the day
9 of the garages.

10 MR. TORTORICI: The day of the garages.
11 Anyway, if I can go to the board that my architect
12 has presented for the property in terms of this
13 block between 9th Street and my home.

14 CHAIRPERSON GRIFFIS: Let me just ask you
15 to do one thing. It's not that we can't hear you,
16 but the recorder can't hear you.

17 MR. TORTORICI: Oh.

18 CHAIRPERSON GRIFFIS: So either you can
19 use the hand, or you can use the table. Just turn
20 the microphone on, and just point it up toward you,
21 and I think that will work.

22 MR. TORTORICI: Okay. How does that pick
23 up now? Okay?

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. TORTORICI: The property is -- it's

1 the third lot in from the block on 9th and I
2 Street. And it's the blue here. The proposed
3 garage is towards the back on the alley. It's in
4 the red. And the green of course is the yard space
5 that remains if the garage is put in.

6 There is on the block, as you see, there
7 is a garage space right next to me. This is a
8 completely brick and block structure. So it's very
9 permanent. On right next to me. And then down
10 below on the alley there are three other structures
11 which are called garages, but in actual fact they
12 are -- what do you call them. They are -- I'm lost
13 for a word for a moment. Excuse me.

14 CHAIRPERSON GRIFFIS: Those structures?

15 MR. TORTORICI: The structures there.

16 CHAIRPERSON GRIFFIS: Are they carriage
17 houses?

18 MR. TORTORICI: No, they're not carriage
19 houses. They are -- what's the word now, Gayle?

20 MS. PATRICK: They're garages.

21 MR. TORTORICI: They're garages. Okay,
22 we'll just call them garages. But they are on the
23 end there.

24 CHAIRPERSON GRIFFIS: Now you've got me
25 intrigued.

1 MR. TORTORICI: The curiosity that you
2 have is that they are not complete garages. Okay.
3 But that's where it is.

4 CHAIRPERSON GRIFFIS: The number 9 on
5 that drawing. Does that indicate that there's a
6 photograph number 9 in the file?

7 MR. TORTORICI: That was set up by my
8 architect who has additional pictures if you want
9 them passed around of the area.

10 CHAIRPERSON GRIFFIS: So we don't have
11 that specific picture in of this so-called -- oh,
12 yes. Number 9. Is that the corresponding, is that
13 I-19?

14 MR. TORTORICI: I-19, yes.

15 CHAIRPERSON GRIFFIS: Okay. So why
16 aren't those garages? You mean just because
17 they're kind of shack-like construction?

18 MR. TORTORICI: They only have roofs.
19 They have an outside door, and they have a roof on
20 it.

21 MS. PATRICK: I think he said they were
22 carports?

23 MR. TORTORICI: The carport. I couldn't
24 come up with that word.

25 CHAIRPERSON GRIFFIS: Oh, a carport.

1 MR. TORTORICI: But they're only
2 carports.

3 CHAIRPERSON GRIFFIS: How can they be --
4 I don't care. Okay.

5 MR. TORTORICI: Well.

6 CHAIRPERSON GRIFFIS: Let's move ahead.
7 Understood. It's a hybrid carport garage. Okay.
8 But that's not what we're talking about today.

9 MR. TORTORICI: No, we're talking about
10 my wanting to put a garage up. In the
11 documentation I received from Office of Planning,
12 and I think somewhere else, is the whole question
13 of the burden of proof of why I need this garage.

14 CHAIRPERSON GRIFFIS: Can you turn one of
15 those microphones off? Thank you.

16 MR. TORTORICI: And obviously there's an
17 issue of security. I like to believe that my
18 neighborhood that I moved into and bought into is
19 very safe, but it is not. I have drug dealers in
20 the back on the alleyway, both drug dealers and
21 drug buyers in my neighborhood. My neighbor's car
22 next to me -- her name is Sharon Lee at 905 -- has
23 had her car, which she doesn't have any decent real
24 parking in the back of her place. She parks in the
25 street, and she's had her car broken into a few

1 times.

2 CHAIRPERSON GRIFFIS: But you have a
3 parking pad on your property now?

4 MR. TORTORICI: I have a parking pad on
5 my property.

6 CHAIRPERSON GRIFFIS: And you have a
7 rollup door.

8 MR. TORTORICI: With a rolling door.

9 CHAIRPERSON GRIFFIS: Is that not secure?

10 MR. TORTORICI: There's still access
11 through her yard, and if a cat can climb over that
12 6-foot fence, a person can, into my yard. So it's
13 not totally secure. And one of the controls for
14 the garage door that I inherited from the purchased
15 property is on one of the -- it was all exposed.
16 So the control is on one of the uprights. And so
17 anyone can jump into my yard, press the button,
18 open the door, and take the car. So I'd rather not
19 have that kind of insecurity if I could.

20 Does that answer your question about
21 that?

22 CHAIRPERSON GRIFFIS: That specific
23 question, yes.

24 MR. TORTORICI: Okay. Then, just general
25 yard, where the garage would increase the yard

1 protection of the property. Not only a
2 protection of the car but also things in my yard.
3 And also, the additional thing of why I feel I need
4 it, the houses on that block do not have basements
5 or cellars. And so the importance of having some
6 storage space, and having a garage that's secure
7 would provide also some storage space for me. So
8 that's one of my needs.

9 CHAIRPERSON GRIFFIS: Okay. Let me be a
10 little bit directive here.

11 MR. TORTORICI: Yes.

12 CHAIRPERSON GRIFFIS: There's a clear
13 test for a variance.

14 MR. TORTORICI: Okay, and I don't know
15 those.

16 CHAIRPERSON GRIFFIS: Good. Here's a
17 crash course. You're going to need to present it.
18 Really, the board -- let's say, on the record, the
19 board is a huge advocate for detached garage.
20 However, for a situation like this application,
21 there are variance requests. The variance test is
22 this. You have to show us something that's unique
23 to the property, some unique aspect, whether that
24 be a physical constraint, whether it be a unique
25 circumstance or condition. Don't know what those

1 are in this particular case. And out of that
2 you uniqueness there's a practical difficulty of
3 you complying with the zoning regulations. So
4 something that's unique to you and this property is
5 creating that difficulty with compliance, and
6 that's why you're here.

7 And once that's laid out pretty
8 straightforwardly and directly, then you can tell
9 us that if we grant it, it would not crush the
10 zoning intent, the plan, and it certainly wouldn't
11 go against the public good.

12 MR. TORTORICI: But first thing's first.

13 CHAIRPERSON GRIFFIS: Exactly.

14 MR. TORTORICI: Okay.

15 MS. PATRICK: Well, as we met before this
16 morning, this particular lot is larger, number one.
17 So the violation is in the percentage of lot
18 occupancy. Right now the existing house is 59
19 percent, including that court. By putting this
20 garage on here and using the 12-foot setback from
21 the alley, we increase it to 76 percent, and we do
22 not violate this 20-foot rear yard, which he still
23 has. So, it's one major violation here is the
24 percentage of lot occupancy.

25 Now, we went through our things this

1 morning.

2 CHAIRPERSON GRIFFIS: Yes, but, this
3 morning has no bearing on this.

4 MS. PATRICK: I understand that. Well,
5 here again there is a wall existing of the original
6 garage that's almost 8 feet high between ...

7 CHAIRPERSON GRIFFIS: Now, is that a
8 retaining wall? Is that retaining a grade
9 adjacent?

10 MS. PATRICK: No, it's a wall on the
11 north side. There's a wall.

12 CHAIRPERSON GRIFFIS: Right, but there's
13 no earth on the other side. There's no grade
14 change of which that's taking up, right?

15 MS. PATRICK: No grade change or
16 anything. No. The old brick wall is there. As a
17 matter of fact it's two walls. It's the old brick
18 wall that's still there.

19 CHAIRPERSON GRIFFIS: Does it span the
20 property line? Is it on your property?

21 MR. TORTORICI: Yes.

22 CHAIRPERSON GRIFFIS: It's totally on
23 your property?

24 MR. TORTORICI: Yes, it's on my property.

25 CHAIRPERSON GRIFFIS: It's a brick

1 construction?

2 MR. TORTORICI: Yes.

3 CHAIRPERSON GRIFFIS: I just need one mic
4 at a time. I'm really sorry about that but there's
5 awful feedback on those. Okay. And it's only on
6 one side. Do we have any other -- oh, I see.

7 MR. HILDEBRAND: Was the brick and block
8 wall installed simultaneously, or was the brick
9 wall when you purchased your property?

10 MR. TORTORICI: Yes, the brick wall was
11 there when I purchased the property, as was the
12 wooden wall on the other side.

13 MR. HILDEBRAND: From the photographs, it
14 looks like it's a wall that your neighbors may have
15 built with block on their side and brick on your
16 side. But you're saying it's on your property
17 line? It's on your property or it's on the
18 property line?

19 MS. PATRICK: It's on the property line.

20 MR. HILDEBRAND: The face of the wall is
21 one the property line?

22 MS. PATRICK: It actually looks like the
23 one that you see in that photograph is in the wrong
24 place, because behind that on the north side is an
25 8-inch old brick wall that matches the buildings.

1 MR. ETHERLY: And is it your
2 understanding that the -- yes, Mr. Chair.

3 MS. PATRICK: And there's a concrete pad
4 there.

5 MR. ETHERLY: The brick wall that you're
6 referencing, is that wall a remnant of --

7 MS. PATRICK: It's a remnant of some time
8 ago.

9 MR. ETHERLY: -- of an older structure?

10 MS. PATRICK: That's right.

11 MR. TORTORICI: That I don't know for
12 sure. It was there when I purchased the house.

13 MS. PATRICK: Right.

14 MR. ETHERLY: Okay.

15 MS. PATRICK: But not the one that you
16 see in that photograph. There's one behind that.
17 I don't know if you can see it very well. There's
18 another brick wall behind that one. The one that
19 you see that looks like on his side was built more
20 recent than the others. The one behind that.

21 CHAIRPERSON GRIFFIS: Right, it's a block
22 wall. A brick and block wall.

23 MS. PATRICK: No, it's a brick, brick.

24 CHAIRPERSON GRIFFIS: There's two brick
25 walls?

1 MS. PATRICK: There are two brick
2 walls.

3 MR. ETHERLY: So if I'm looking at
4 Exhibit Number 4. You have Photo Number 13 at the
5 bottom of that page. Looking at the photograph at
6 the top of that page, which shows the concrete pad.

7 MS. PATRICK: Oh, okay. I'm sorry.
8 That's the -- the cinder block's on the other side.

9 MR. ETHERLY: Okay. And that's the
10 adjacent property owner's cinder block wall?

11 MS. PATRICK: Yes. The brick wall that's
12 up there now has been -- it probably was the old
13 one that's been renovated.

14 MR. ETHERLY: Okay. Okay. But Mr.
15 Tortorici, the brick wall that we're looking at,
16 that's yours?

17 MR. TORTORICI: Yes.

18 MR. ETHERLY: Okay, and that was there
19 when you purchased the property?

20 MR. TORTORICI: Yes.

21 MR. ETHERLY: Okay. But, I just want to
22 make sure I'm clear, you're not certain whether or
23 not that is the remnant of some fuller structure
24 existing at some prior point?

25 MR. TORTORICI: I am not certain, no.

1 MR. ETHERLY: Understood. Understood.

2 Okay. Thank you. Thank you, Mr. Chair.

3 CHAIRPERSON GRIFFIS: In terms of the
4 calculation of the lot occupancy, I note that
5 you're providing the conforming setback from the
6 center line of the alley for the structure,
7 correct?

8 MR. TORTORICI: Well, that's an issue for
9 me, and what I'd like to talk about as far as this
10 Commission is given to build. When we look at my
11 entire alley, I have this huge -- I mean, I have
12 this garage.

13 CHAIRPERSON GRIFFIS: You want us to
14 discuss whether you build right to the alley line?

15 MR. TORTORICI: Yes.

16 CHAIRPERSON GRIFFIS: Yes, no. So the
17 setback of two feet off the center line, what
18 you're doing is you're adding another variance
19 then. You want to add a variance to this
20 application?

21 MR. TORTORICI: I guess I do.

22 CHAIRPERSON GRIFFIS: Okay. Then let's
23 deal with that. What's your lot occupancy if you
24 move that structure out to the alley line?

25 MR. TORTORICI: I'm informed by I believe

1 it's the Office of Planning that whether I have
2 that five feet in from my property in terms of the
3 easement on the alley or not, it's still counted as
4 buildable space. It's not empty space. Am I
5 right, Karen?

6 MS. THOMAS: Back when we were talking I
7 was referring to this side. But I don't think
8 that's correct. Not the rear part. Were you
9 talking about your space to --

10 MR. TORTORICI: From the middle of the
11 alley to the 12 feet from the middle of the alley.

12 MS. THOMAS: No, that's still your lot.

13 MR. TORTORICI: Right. It's still my
14 lot, yes, but the five feet is counted against the
15 proportion of buildable space. If I understand
16 "buildable" correctly. It's not empty space, in
17 other words. It's still part of the built-on
18 space.

19 MS. THOMAS: If any portion of your -- if
20 you create a court area that's less than five feet
21 wide that counts as buildable space.

22 MR. HILDEBRAND: But this doesn't meet --
23 does this meet that requirement?

24 MS. THOMAS: No.

25 MR. HILDEBRAND: Because it's just rear

1 yard.

2 MS. THOMAS: I think he may have -- you
3 might have misunderstood.

4 MR. TORTORICI: Yes, that's why I'm
5 asking the question whether I understood you
6 correctly.

7 MS. THOMAS: Yes, we were talking about
8 the side. Okay.

9 MR. TORTORICI: If we go all the way to
10 the edge, which I don't believe you're open to
11 doing, then that creates a problem for me in terms
12 of tearing down my entire structure I have there
13 now, which is an extra expense. I'm just looking
14 to try and close in what I have.

15 CHAIRPERSON GRIFFIS: Well, I just wanted
16 to be clear, because I think I've said this too
17 many times in too many applications today, so I'm
18 not sure if I've said it here. But it's not really
19 a matter of our opinion. I mean, we sit here, we
20 all have this huge binder of zoning regulations.
21 And that's really all we're here to do is to look
22 to these, look to your application, and basically
23 say they meet the test to give the variance or they
24 don't. It's pretty straightforward.

25 So, you know, as nice as we are, all of

1 us, it doesn't really matter. Like I said, I'm
2 the biggest advocate for enclosed garages. I have
3 -- no, I won't go into what I have. But they're a
4 great idea. Why don't we? Parking is a problem in
5 the city. Why don't we allow people to build
6 enclosed parking on these lots? Well, gosh darn
7 it, our zoning regulations doesn't allow it
8 everywhere, and that's why we're here, and that's
9 why we're being very patient trying to walk you
10 through the variance test.

11 And that's a big difference between a
12 variance and then coming in under a special
13 exception under 223, which is created for existing
14 nonconforming single-family houses that want to do
15 additions. But this isn't going to make it for
16 that.

17 Okay, so what you want us to look at is
18 actually a structure on the alley line, which is
19 actually the line to the adjacent structure as
20 shown on that diagram. Is that correct?

21 MR. TORTORICI: Yes. Yes, precisely.

22 CHAIRPERSON GRIFFIS: Can you refresh me
23 again, how wide is this alley?

24 MS. PATRICK: 15.9 feet, I believe. 15.75
25 feet.

1 CHAIRPERSON GRIFFIS: So the center --
2 it's 15?

3 MS. PATRICK: 15.75 feet.

4 CHAIRPERSON GRIFFIS: 15.75 is the public
5 alley. I see. Okay, let's move ahead. Do you
6 walk out your first, main floor -- this is how
7 many, two level? Two story?

8 MS. PATRICK: Two story.

9 MR. TORTORICI: It is a two-story house,
10 yes. It's not three-story, as I think was a
11 mistake on the architectural drawings. It's two
12 stories. No basement.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. HILDEBRAND: This is not a flat.
15 It's a single-family house.

16 MR. TORTORICI: Single-family house, yes,
17 which was renovated and extended into the yard.

18 MR. HILDEBRAND: Can I ask you a question
19 about the size of the garage you're proposing?
20 Your drawing says 18 feet, 6 inches. And the
21 Office of Planning report says 20 feet. Which of
22 those is correct?

23 MS. PATRICK: It would be 20 feet and
24 still allow a 20-foot yard.

25 CHAIRPERSON GRIFFIS: That middle one

1 just gives us trouble I think. I don't know.

2 One of them does somehow.

3 MS. PATRICK: We would make the garage 20
4 feet and the back yard 20. That's using the 12-
5 foot setback. If you brought it out to the alley,
6 the rear yard could be more.

7 CHAIRPERSON GRIFFIS: You're saying 20
8 feet, and what's that dimension, outside to
9 outside?

10 MS. PATRICK: Outside to outside.

11 MR. HILDEBRAND: So will that give you
12 the required 19-foot by 9-foot parking space, by
13 the time you subtract out your structural walls?

14 CHAIRPERSON GRIFFIS: And the door.

15 MR. HILDEBRAND: And the door?

16 MR. TORTORICI: No. I need 19 and a half
17 inside to provide for movement and the inside
18 dimensions. And so that's why when I realized that
19 situation, and how much of my yard space would be
20 taken up by putting in this garage, that is why I
21 was thinking I can't really live with the setback,
22 and have a yard and a garage. I want it all. Of
23 course, everyone does. And I could live with an
24 inside 19 and a half feet for the car, with inside
25 measurements. Outside would have to be 20.

1 - okay.

2 MR. TORTORICI: That's the situation all
3 the way down the alley with all the other
4 properties of garages.

5 CHAIRPERSON GRIFFIS: How does that lend
6 to the uniqueness to your property and the
7 practical difficulty?

8 MR. TORTORICI: Well, the difficulty is -
9 -

10 CHAIRPERSON GRIFFIS: You've got to start
11 with uniqueness.

12 MR. TORTORICI: Uniqueness, I've got a
13 structure there already that I'd like to complete.
14 It's sitting on that line already. It's not like
15 I'm starting from scratch. If I was starting from
16 scratch, I'd be in a different place financially.

17 MS. MILLER: Okay. You're saying you're
18 unique because you have a garage-type structure out
19 there already?

20 MR. TORTORICI: I have what I'm told is
21 now an electric fence. I have a rollup door.

22 MS. MILLER: You're the only one in the
23 neighborhood that has that?

24 MR. TORTORICI: I'm the only one who --
25 no, I'm not the only one who has that. The three

1 garages -- two of the garages at the end of the
2 alley to the left of mine as you look at them also
3 have rollup garage doors.

4 MS. MILLER: So why are you unique?

5 MR. TORTORICI: Well, I want to be real
6 serious about it. I don't know, this whole
7 uniqueness thing throws me.

8 CHAIRPERSON GRIFFIS: Okay. We're going
9 to give you time to do that anyway. Let me get
10 some clarification. How long have you owned this
11 property?

12 MR. TORTORICI: I bought it in September
13 of 2003.

14 CHAIRPERSON GRIFFIS: Okay. So recent
15 purchase and not -- that framing was there when you
16 purchased it?

17 MR. TORTORICI: Yes. And the realtor of
18 sale told me that it was an unfinished garage, and
19 I could buy it as is and I could finish it off.

20 CHAIRPERSON GRIFFIS: Did you get any
21 information about -- that's what I thought.

22 MR. TORTORICI: And so --

23 CHAIRPERSON GRIFFIS: Good, bring him in
24 here. We'd like to talk to him.

25 MR. TORTORICI: Her.

1 CHAIRPERSON GRIFFIS: Or her.

2 MR. TORTORICI: But I understand that's a
3 problem throughout the city.

4 CHAIRPERSON GRIFFIS: Yes, his realtor.

5 Okay. That lends itself to something I guess.

6 2003. Okay. Anything else. Have you seen -- did
7 you read the Office of Planning's report?

8 MR. TORTORICI: I did.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. TORTORICI: The only surprise in the
11 report was the court taking up that amount of lot
12 occupancy, which brought me up to 76 percent.

13 CHAIRPERSON GRIFFIS: The only surprise?
14 Do you really realize they're recommending we deny
15 you?

16 MR. TORTORICI: Yes, they recommended
17 denial based upon the code and the law being that
18 anything over 70 percent is a variance. I would
19 need a variance decision on the part of this board.
20 But I think that when I put myself in their shoes,
21 I guess how could I --

22 CHAIRPERSON GRIFFIS: Okay, you don't
23 need to finish that part.

24 MR. TORTORICI: Yes.

25 CHAIRPERSON GRIFFIS: Let's go -- if

1 there's nothing further right now, why don't we
2 go to the Office of Planning, have them present
3 their report. We'll get to the rest of this, and
4 then we'll try and figure out where we are at the
5 end of this.

6 MR. TORTORICI: Okay.

7 CHAIRPERSON GRIFFIS: Excellent.

8 MS. THOMAS: Question. Am I presenting a
9 report on what was submitted?

10 CHAIRPERSON GRIFFIS: Yes.

11 MS. THOMAS: Okay.

12 CHAIRPERSON GRIFFIS: You can comment on
13 moving the structure to the alley property line,
14 but I think the board's well versed in that.

15 MS. THOMAS: Okay. All right.

16 CHAIRPERSON GRIFFIS: We have five
17 different opinions on it, so a sixth one won't
18 help. Oh, no, that's a joke, just for the record.

19 MS. THOMAS: I'm Karen Thomas with the
20 Office of Planning. And to jump right in, the
21 applicant's request for a variance was not
22 supported by the Office of Planning. Although the
23 addition itself conforms to use and structure
24 requirements as it is an accessory structure, in
25 this instance a variance would be increased beyond,

1 what is allowed by right up to 60 percent, and
2 under special exception approval up to 70 percent.

3 But we found no unique features or
4 characteristics that set it apart from other
5 neighboring properties, or exceptional situation
6 which makes it unique. Based on this, we determine
7 no relief can be provided to the property owner for
8 any practical difficulty arising from an
9 exceptional situation. The applicant has not met
10 the burden of proof for the granting of the
11 requested variance based on the strict
12 interpretation of the variance test.

13 We also note for the record that some of
14 the garage structures as proposed exist in the
15 immediate neighborhood, and we found no recorded
16 information regarding permits for all the
17 conformity of these structures to the zone regs.
18 However, if the variance were granted by the board,
19 we believe in this instance the proposed enclosed
20 garage would be minimal beyond the permitted lot
21 occupancy which can be granted without impairing
22 the intent of the zone plan. Thank you.

23 CHAIRPERSON GRIFFIS: Thank you very
24 much. Is there any questions of the Office of
25 Planning by the applicant? Questions of the board?

1 Clarifications for OP? Thank you very much. I
2 think it's an excellent report. Succinct, direct,
3 and can't ask much more of it.

4 You also know that in terms of our
5 regulations and procedure, we are required to give
6 great weight to the Office of Planning and also the
7 ANC. I mean, if we go in a different direction
8 than the Office of Planning, which we're allowed to
9 do, we do it all the time, but we have to state
10 exactly why we disagree.

11 MR. TORTORICI: I would hope that you
12 would -- I would --

13 CHAIRPERSON GRIFFIS: We don't create it
14 all. All we're going to need to do is have it
15 presented to us. So, I think just noting that --
16 walking through this a little bit, what I can do is
17 set this off, or set it for a decision-making, and
18 keep the record open for you to put together. I
19 would choose to take a look at the Office of
20 Planning. They've set it up the exact requirement
21 for the variance test. Their questions are in
22 bold. Those are the questions you have to answer.
23 Hopefully your answers will be different than
24 theirs for your sake. And that will give us a
25 different argument of which we will need to then

1 deliberate on.

2 Other than that, I don't ...

3 MR. TORTORICI: Mr. Chairman, I don't
4 like to invent things in terms of what is or isn't
5 there. And I dare say that when you present the
6 point about a uniqueness, I'm at a loss of how I'm
7 so unique.

8 CHAIRPERSON GRIFFIS: Okay, we're not
9 unaware of it. But if that's the case, you've
10 wasted your time being here. So what I would ask
11 you to do is take the time and look. It may be
12 more of an aspect of unfamiliarity with what
13 elements create uniqueness, which I perfectly
14 understand because very Tuesday when I'm here, I
15 hear a new element of uniqueness that I've never
16 heard of before. Maybe that's why it's unique.

17 But it may well be important for you
18 while you're here this afternoon is to go next
19 door. Every single application that's ever gone
20 through in this century is there next door. Not
21 all of them. But the best ones are. Pull out some
22 variances on lot occupancy. Pull out some on
23 single-family houses. Something that's fairly
24 analogous. You will not be able to copy that and
25 put it in because you're establishing uniqueness.

1 The point is it'll give you -- or talk to the
2 Office of Zoning staff that may be available this
3 afternoon.

4 Elements that are and do create
5 uniqueness. They are physical. They are
6 conditional. They are circumstantial. There's a
7 whole lot out there. I'm not seeing there is one
8 here, but I'd think a little thought on it probably
9 wouldn't be -- and it's not just -- this is the
10 last thing I'm going to say, but it's not just that
11 you've found your unique aspect. You know, you
12 discover gold, and God bless you, but no one else
13 has it. Out of that uniqueness your practical
14 difficulty has to arise. Right? So out of that
15 unique aspect, that's the reason why you can't
16 comply with the regulations.

17 MR. TORTORICI: Okay.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. TORTORICI: Thank you.

20 CHAIRPERSON GRIFFIS: No, thank you very
21 much. Then let's set this for -- how much time do
22 you need for this? I can set this for the 3rd of
23 August, in which case we'll decide it at that time,
24 which means you'd have, Mr. Moy, what is it, a week
25 or two weeks? Don't we have two weeks to put that

1 together?

2 MR. MOY: You could have two weeks, which
3 would take us to July 27.

4 CHAIRPERSON GRIFFIS: Okay. Oh, I'm
5 sorry. We have schedule problems, don't we? Oh,
6 you tell me.

7 MR. MOY: We'll wait till September.

8 CHAIRPERSON GRIFFIS: Okay. September 14
9 it will be set for decision-making. Also, then
10 with that obviously, as you've amended your
11 application for an additional variance we're going
12 to need the documentation that shows, just the
13 plans that show the exact placement of the garage
14 and where it is.

15 I would suggest it's probably not a great
16 idea, as you know you are aware of the discussions
17 of the other applications for this garage, it's
18 probably not the best idea to set it right at the
19 alley line. It has a lot to do with the access,
20 the availability, the setting of your own trash
21 cans and the trash trucks that are going to knock
22 it down. You end up getting a report from DDOT
23 that doesn't support your application once you set
24 to do that, because they will now review it if
25 you're impacting the accessway into the alley.

1 So you guys can work together. Again,
2 I would avail the expertise of Office of Planning
3 and also Office of Zoning, and putting together
4 these quick elements.

5 Very well, what else. Anything else from
6 the board? This documentation will be submitted on
7 the 7th of September at the latest. Does that work
8 for you Mr. Moy?

9 MR. MOY: Would the board care for any
10 further review by the Office of Planning?

11 CHAIRPERSON GRIFFIS: We'll keep the
12 record open for a supplemental. It would just be
13 the setback from the alley.

14 MS. THOMAS: So, just to clarify, is he
15 going to --

16 CHAIRPERSON GRIFFIS: Oh, I'm sorry. No,
17 that makes a heck of a lot of sense if we have a
18 new argument and documentation that's sent in. In
19 which case, let's set this -- we're going to just
20 take a week off, if that's not too difficult, or
21 get it in as quickly as possible to the Office of
22 Planning. Office of Planning will get their
23 supplemental in. Office of Planning supplemental
24 would have to come in a week before, which would be
25 on the 7th. A week before that it should be

1 delivered to them, so that's the first of
2 September, is that correct?

3 MR. MOY: Well, what we can do, Mr.
4 Chair, is if we're going to have this decision
5 being on the 14th of September, we could schedule
6 submissions in August, right? So possibly we could
7 have the applicant's submission in by say August
8 24. And that would give a week for OP if they want
9 to respond by August 31.

10 MS. THOMAS: That's not the question,
11 though. The question is what am I writing a
12 supplemental on? You said something about the 5-
13 foot?

14 MR. HILDEBRAND: And also, I think the
15 applicant has stated they're increasing the garage
16 size to 21.5, which would make the lot occupancy 80
17 percent instead of 76 percent.

18 CHAIRPERSON GRIFFIS: It looks like all
19 the information is going to be new. You may well
20 have different lot occupancy, you'll have a
21 different setback from the center line of the
22 alley. You're also going to have a very strong and
23 direct argument on how it makes the unique and
24 special -- unique aspect. So, yes, I think it's
25 well worth taking a look at, and keeping the record

1 open for that supplemental.

2 Okay, everybody clear. Yes, we are, but
3 are you clear, which is the most important?

4 MR. TORTORICI: I'm clear.

5 CHAIRPERSON GRIFFIS: You sure? Dates?
6 Okay. Any other questions? Of course, the Office
7 of Zoning staff is the best in the city, and they
8 can answer any questions that you might have in
9 terms of the dates and process questions. Okay.
10 Anything else I can answer for you?

11 MR. TORTORICI: I just want to say
12 compliments to the Office of Planning and my
13 conversations with them prior to this meeting.

14 CHAIRPERSON GRIFFIS: Okay. The Office
15 of Planning is pretty good too, but the Office of
16 Zoning is still the best.

17 MR. TORTORICI: Yes.

18 CHAIRPERSON GRIFFIS: Okay. What do we
19 have next. Okay, why don't we call the next case
20 of the afternoon.

21 MR. MOY: The next case is Application
22 Number 17190 of Katharine P. Rigby, pursuant to 11
23 DCMR § 3103.2, for a variance from the alley
24 setback requirements under Subsection 2300.2(b),
25 and pursuant to 11 DCMR § 3104.1, a special

1 exception under Section 223 to construct an
2 accessory garage at the rear of a single-family row
3 dwelling not meeting the nonconforming structure
4 provisions, Subsection 2001.3, in the R-5-B
5 District at premises 1816 Belmont Road, Northwest
6 (Square 2552, Lot 36).

7 CHAIRPERSON GRIFFIS: Good afternoon.
8 Why don't you introduce yourself, name and address,
9 for the record, and then you can just briefly and
10 succinctly just tell us what you've delivered into
11 the board into the record at this time.

12 MS. RIGBY: Okay. My name is Katharine
13 Rigby. I live at 1816 Belmont Road, Northwest.
14 And I want to build a parking garage behind my
15 house.

16 CHAIRPERSON GRIFFIS: It's the day of.

17 MS. RIGBY: I know. It would be an
18 accessory building separate from the house. And
19 the unique characteristic of this is that there's -
20 - I'm the only one on the block, on the alleyway,
21 either side of the alleyway, that this happens to.
22 But there is an 8-foot grade difference between my
23 property and my neighbor's property. They took
24 down the fence that was there because it was
25 falling over into my yard, actually. And they had

1 to remove the tree that was pushing it over. So
2 it wasn't there for OP to see, but with that fence
3 there's a total of 14 feet between me and the top
4 of my neighbor's fence. Anyway, so there's a big
5 grade difference.

6 CHAIRPERSON GRIFFIS: And just to be
7 clear for the board, you're talking about a
8 variance from the setback of the center line of the
9 alley.

10 MS. RIGBY: Yes, exactly.

11 CHAIRPERSON GRIFFIS: Which is different
12 than -- well. And you're talking about a special
13 exception under 223, which we'll get to. But let's
14 attack the variance first. So you're trying to
15 tell us, which a lot of your written submission I
16 think is very clear, in there's no way you can
17 change the setting of this structure. Is that
18 correct?

19 MS. RIGBY: Well, I could, but the cost
20 would triple.

21 CHAIRPERSON GRIFFIS: Right. You were
22 saying an estimated like \$60,000 just based on the
23 fact of what they'd have to do in taking down and
24 shoring up the existing wall.

25 MS. RIGBY: Yes, exactly.

1 CHAIRPERSON GRIFFIS: Okay.

2 MS. RIGBY: Shall I go through that?

3 CHAIRPERSON GRIFFIS: I don't know. Any
4 questions? Is everyone clear on that? Okay.

5 MS. RIGBY: Okay. Anyway, I've gotten a
6 lot of community support for this. This shows in
7 yellow.

8 CHAIRPERSON GRIFFIS: Okay. We're going
9 to skip beyond that.

10 MS. RIGBY: Oh, okay.

11 CHAIRPERSON GRIFFIS: What we're
12 interested in, of course, any support that they
13 have that speak to the direct aspect of it. And of
14 course the public good which, wow, if we get into a
15 discussion about how an enclosed garage may deter
16 the public good, we're all in trouble. But
17 obviously anything else that might be evidence in
18 terms of the adjacent neighbors, in terms of
19 conditions or objectionable condition, because
20 they're also under special exception. Go ahead.

21 MS. RIGBY: Yes, well after I got the
22 report from OP, I realized that I hadn't included
23 in the original submission all the information
24 relative to this grade difference being unique. I
25 mentioned it, but I didn't submit. Anyway, so

1 that's where these series of photographs. I
2 went behind, up and down the alley on both sides,
3 took photographs of each property line that exists.
4 And you can see if you go along that, you know, the
5 grade difference is even, a foot level, until you
6 get to mine, which is 8 feet, 1 inch. So you can
7 see that all the way along the alleyway I'm the
8 only one that has this difficulty.

9 The reason for that is that there was a
10 five-story apartment building built in the middle
11 of my side of the alleyway, and apparently that was
12 done at the same time as two houses next to me.
13 And when they did that, they put in a retaining
14 wall between me and all of those three structures,
15 and raised the level behind there eight feet. Both
16 of those lots also have parking structures behind
17 them on the alleyway. Anyway, that's what caused
18 this 8-foot difference. This is many, many years
19 ago. This is like, you know, 80 years ago that
20 this was done.

21 CHAIRPERSON GRIFFIS: Right. So the 8-
22 foot difference goes to the 1818 side, is that
23 correct?

24 MS. RIGBY: Yes, exactly.

25 CHAIRPERSON GRIFFIS: And it's going up.

1 MS. RIGBY: Exactly, to the west side.

2 CHAIRPERSON GRIFFIS: Okay. So basically
3 you have this entire -- the earth is sitting on top
4 of yours, and anything you do to change that --
5 okay.

6 MS. RIGBY: Yes.

7 CHAIRPERSON GRIFFIS: And that's why
8 you're moving out, to set in alignment with
9 essentially the structure and utilize the existing
10 retaining wall or enclosure wall that's there now,
11 is that correct?

12 MS. RIGBY: That's right. To excavate
13 the material --

14 CHAIRPERSON GRIFFIS: Can I ask you one
15 other thing?

16 MS. RIGBY: Yes.

17 CHAIRPERSON GRIFFIS: The grade. Where
18 is your first level of your house as you walk out
19 of it in comparison to the grade and to the top of
20 this garage?

21 MS. RIGBY: The top of the garage will
22 actually be lower than my grade. That's why it's
23 called "subterranean" on the plat. Because it's
24 actually going to be the top. Again because of the
25 difference of grade elevations around there.

1 CHAIRPERSON GRIFFIS: How far out of
2 the rear yard grade does the garage come? When
3 you're standing in your back yard, you can see the
4 structure of the garage, is that correct?

5 MS. RIGBY: Well, I'm going to use -- my
6 plan was to use part of the excavation material to
7 raise the level of my yard --

8 CHAIRPERSON GRIFFIS: Put a garden in.

9 MS. RIGBY: -- so that I'm kind of --
10 right now I'm like this between my two neighbors.
11 What I want to do is raise me up so I'm kind of
12 one, two, three, you know, in terms of grade
13 difference. And that will also make a level from
14 my kitchen to the grade of the yard to the top of
15 the garage.

16 CHAIRPERSON GRIFFIS: Fascinating. But
17 the structure itself, the new proposed garage
18 structure, as whatever level that finished grade
19 is, it's a rear yard?

20 MS. RIGBY: Yes.

21 CHAIRPERSON GRIFFIS: How far out does it
22 come?

23 MS. RIGBY: How far out from?

24 CHAIRPERSON GRIFFIS: The garage. Don't
25 you walk out your rear yard and the back of your

1 garage is here?

2 MS. RIGBY: Well, I don't have a garage,
3 but the intention is to have -- 20 feet, is that
4 what you're asking? That would be 20 feet of
5 garden and 20 feet of garage. That's approximately
6 25 feet.

7 CHAIRPERSON GRIFFIS: Anyone else
8 understand what I'm asking?

9 MS. RIGBY: I'm not sure --

10 CHAIRPERSON GRIFFIS: That's all I needed
11 to say. Is it going to be flat all the way across.

12 MS. RIGBY: Oh, yes. That's the
13 intention. And there's a cross-section that was
14 included in the original application.

15 CHAIRPERSON GRIFFIS: Yes, a confusing
16 one.

17 MS. RIGBY: Oh.

18 CHAIRPERSON GRIFFIS: But it's my
19 confusion, not theirs. The west longitudinal
20 little view.

21 MS. RIGBY: Yes. It's the main level of
22 the house, and the garden, and then the roof. But
23 the roof of the, there will be a roof garden.

24 CHAIRPERSON GRIFFIS: So let me ask the
25 Office of Attorney General who gives us legal

1 advice. How can a subterranean structure be
2 required to have a setback? They're not listening
3 to me, so I'll ask someone else. Does OP have
4 anything on that?

5 MS. THOMAS: I think because when you
6 look at it from the garage, you're looking at the
7 garage. You're not looking at the --

8 MS. RIGBY: From the alley.

9 MS. THOMAS: From the alley, I'm sorry.
10 When you're looking from the alley, you can see
11 that structure there. You see that structure. So
12 if you're taking, say the house was on top.

13 CHAIRPERSON GRIFFIS: So it would be the
14 same if you had a retaining wall just to cut the
15 alley in from the earth. Right now our regulations
16 would preclude you from putting a retaining wall
17 right on the property line. Okay, go ahead.

18 MS. RIGBY: Well, I'm not really sure
19 what else to say.

20 CHAIRPERSON GRIFFIS: Good. Let me just
21 make sure, because I think actually the written
22 submission and the photographs that you've put in
23 are very clear to me. So let me ask if the other
24 board has any concerns or questions on the fact of
25 the variance test. First of all, the uniqueness,

1 the aspect of the grade change, and also the
2 aspect of the existing retaining wall which also is
3 somewhat of a -- well, it's obviously a structural
4 wall, but it's a retaining and also an enclosing
5 wall. And the practical difficulty of setting
6 back, not aligning and utilization of that, and the
7 amount of work that goes into the excavation and
8 underpinning and structuring.

9 Is everyone clear on that?

10 MS. MILLER: Practical difficulty is this
11 is an economic argument?

12 MS. RIGBY: The practical -- I'm sorry?

13 MS. MILLER: Is this where the cost
14 triples? If you were to comply with the regulation
15 it would triple your costs?

16 MS. RIGBY: Oh, absolutely. Well,
17 actually, my original submission was for a 25-foot
18 garage, set back two feet from the edge of the
19 alleyway. Which is just like my neighbor's on one
20 side. And the problem with that is that it would
21 give five feet of exposure past my neighbor's
22 garage, which means -- but OP was saying in their
23 report why couldn't I move it even farther back,
24 and that would -- I don't know what it would do to
25 the cost because I haven't spoken to anybody about

1 that. But I just know that doing this with the
2 underpinning and the shoring, because you have to
3 go down two and a half feet below frost, you know,
4 to get to the frost level for the footer. So they
5 would have to be excavating 14 and a half feet at
6 this point to get to the alley level, and two and a
7 half feet below, which would require -- well, you
8 can understand, it's almost two levels of 8-foot
9 floor. So it would require shoring.

10 CHAIRPERSON GRIFFIS: So it's not
11 necessarily -- I would say it's not a direct
12 economic aspect. It's actually, it's construction.
13 It's the means and methods, the difficulty of doing
14 that and moving it back create a practical
15 difficulty which is based on the uniqueness and the
16 physical aspects of the land, of the grade change,
17 the adjacent structure. Okay.

18 MS. RIGBY: And I asked --

19 CHAIRPERSON GRIFFIS: Follow-up?

20 MS. MILLER: No, I was just going to say
21 that your response to my question gave me -- makes
22 me agree with what the chairman just said. It's
23 not just an economics argument, it's also a
24 construction argument. It's a lot more difficult
25 to do with respect to construction.

1 MS. RIGBY: Oh, I wouldn't be able to
2 do it.

3 CHAIRPERSON GRIFFIS: Okay. Any other
4 questions, clarifications?

5 MR. HILDEBRAND: Is your trash collection
6 currently on the street or on the alley?

7 MS. RIGBY: It's on the alley. And I
8 spoke to someone actually across the street about
9 the problem when OP raised this and I was talking
10 to them about whether I'd be able to actually go
11 forward with this. And he said that he and some
12 friends of his on Q Street have a hoist system from
13 the top of their garage to put their trash cans
14 down into the alley. They, you know, have a winch
15 that they put them down into the alley, and after
16 the trash has been collected they hoist it back up.

17 CHAIRPERSON GRIFFIS: What?

18 MR. HILDEBRAND: But actually what I'm
19 getting at more is what I think the chairman had
20 alluded to earlier, and that is a 15-foot wide
21 alley, neighbors on both sides are putting trash
22 cans out, that narrows the drive aisle to less than
23 10 feet, and you have a trash truck that's trying
24 to get down it. If you build directly to the
25 property line, then you will create a hardship for

1 the District in removing trash from the alley.
2 I mean, if you put your can behind your garage, you
3 will be protruding into public space, and
4 potentially blocking access for the trash truck.

5 MS. RIGBY: Yes, I understand, and that's
6 one of the reasons why I developed this, which is
7 the last sheet of the original submission. Which
8 shows various points, although it's a 15-foot wide
9 alley, there are various points along it where
10 other structures, permanent structures, have
11 intruded such that it's actually only 13 feet, 10
12 inches wide at those points. It's further intruded
13 by various poles that make it even narrower.

14 CHAIRPERSON GRIFFIS: Do the poles go on
15 the property line?

16 MS. RIGBY: I'm sorry?

17 CHAIRPERSON GRIFFIS: The light poles and
18 the telephone poles.

19 MS. RIGBY: The poles are into the
20 alleyway.

21 CHAIRPERSON GRIFFIS: Right, but they're
22 on the rear yard, rear property line, is that
23 correct?

24 MS. RIGBY: Yes. But none --

25 CHAIRPERSON GRIFFIS: And they line up

1 both sides?

2 MS. RIGBY: None on my side.

3 CHAIRPERSON GRIFFIS: They're not on your
4 side. They're on the other side.

5 MS. RIGBY: In other locations along the
6 alleyway where it's narrowed. And I also --

7 CHAIRPERSON GRIFFIS: You mean they're
8 only on one side on the alley?

9 MS. RIGBY: Yes, the poles are only on
10 one side.

11 CHAIRPERSON GRIFFIS: Telephone poles
12 also?

13 MS. RIGBY: Yes. It's a combination pole
14 for telephone, cable, all that good stuff.

15 CHAIRPERSON GRIFFIS: Right. And light
16 posts.

17 MS. RIGBY: And light posts. Yes, all on
18 the same side. They use the same -- well, actually
19 they don't use the same poles, but they're on the
20 same side of the alley. On the south side of the
21 alley. But you can see, I pointed out eight places
22 where there are structures right up against each
23 other that limit the width. And one of those,
24 whose photographs were included again in the
25 original submission, shows how long this whole area

1 is where it's 13 x 10. So it's not like,
2 although it's formally a 15-foot alley, there are
3 areas where for practical purposes it's really much
4 less than that.

5 Also, I did submit copies of a petition
6 that was signed by 21 of my neighbors. And you can
7 see how many if you look at this because there are
8 a lot of rentals and commercial areas where
9 absentee owners I couldn't get to. But -- and
10 people on vacation. But there were only I think
11 five who didn't answer their door. I couldn't get
12 their approval.

13 CHAIRPERSON GRIFFIS: That's okay.

14 MS. RIGBY: But every person I spoke with
15 was in favor of this. And this is the amended plan
16 where it goes right to the edge of the alley.

17 CHAIRPERSON GRIFFIS: Is parking a
18 problem in this neighborhood?

19 MS. RIGBY: I'm sorry?

20 CHAIRPERSON GRIFFIS: Is parking a
21 problem in this neighborhood?

22 (Laughter.)

23 MS. RIGBY: Oh, Adams Morgan? I'm half a
24 block from 18th Street.

25 CHAIRPERSON GRIFFIS: I can't imagine

1 neighbors supporting an application to build a
2 parking space. Okay. What else attendant to the
3 variance for special exception?

4 MS. RIGBY: Well, you know --

5 CHAIRPERSON GRIFFIS: Let me ask you in
6 terms of construction in the documents that you
7 have, I'm not sure what -- well. Has there been
8 any discussion with the person that's designing
9 this of at least setting back the door, if not the
10 entire structure, or the structure, but the door
11 back far enough that you would have a placement for
12 trash can or anything else? Perhaps not deep
13 enough for someone to hide behind and jump out in
14 the alley or something of that nature, but you
15 know, for practical purposes of setting something
16 out there?

17 MS. RIGBY: On the proposed plan, Option
18 1, where you can see it comes out. It's equal to
19 the other garage on the other side of me rather
20 than set back the two feet on one side. I'm going
21 equal to the other garage right at the edge of the
22 property line.

23 CHAIRPERSON GRIFFIS: I see.

24 MS. RIGBY: But the problem is that the
25 garage at 1818 that is set back two feet who has

1 the grade that's causing this problem is, well,
2 I don't know what the dimensions are, but it's not
3 deep enough that their cars can go in and their
4 door come down. They had to remove the door of
5 that.

6 CHAIRPERSON GRIFFIS: Right, you
7 indicated that. Their bumpers are hanging out.

8 MS. RIGBY: And there's another
9 relocation also on the same block that has the same
10 problem. They put down their garage so it sits on
11 the top of the hood of their car to get partial
12 security. So the only way that I can avoid this
13 grade issue --

14 CHAIRPERSON GRIFFIS: What is partial
15 security, actually? Is that like secure?

16 MS. RIGBY: We'll find out. Every little
17 bit helps.

18 CHAIRPERSON GRIFFIS: You have a clear
19 19-foot dimension interior, right? As proposed?

20 MS. RIGBY: Yes, 19 feet, and I also
21 checked the most popular cars.

22 CHAIRPERSON GRIFFIS: Right, we don't
23 care about -- what we care directly about is what
24 the regulations would require. A 9 by 19 is what
25 would be required for dimension.

1 MS. RIGBY: This would be 19 interior
2 and 21 exterior, which would allow for -- this has
3 to be a retaining wall, so it has to be thick.

4 CHAIRPERSON GRIFFIS: Okay. And that's
5 why the stairs moved on that?

6 MS. RIGBY: And the setting for the door.
7 I'm sorry?

8 CHAIRPERSON GRIFFIS: The stair location
9 on Option 1 is what I think that you're advocating
10 for us to look at, is that correct?

11 MS. RIGBY: Well, yes. I'm actually
12 moving the stairway because the stair --

13 CHAIRPERSON GRIFFIS: Right, and the
14 stairs move because why?

15 MS. RIGBY: -- has the same problem as
16 the garage.

17 CHAIRPERSON GRIFFIS: Okay. So if you
18 put the stairs down there, you don't necessarily
19 have to shore up, or at this point you're not
20 anticipating that you'd have to hold up the
21 adjacent retaining wall because you're not
22 excavating right next to it.

23 MS. RIGBY: Exactly. And I wouldn't have
24 to worry about hand-digging. It could be done by
25 machine. And I wouldn't have to worry about

1 underpinning their garage during the
2 construction.

3 CHAIRPERSON GRIFFIS: Okay. All right.
4 Anything else?

5 MR. MANN: Did we ever get an answer to
6 your question, though, about whether or not
7 nonetheless it was still possible to move the
8 position of the garage door? I mean, I think the
9 answer's probably no I guess, because of the --

10 MS. RIGBY: It wouldn't be functional. I
11 wouldn't be able to put the door down because of
12 the length of the garage. A Honda Accord, which is
13 the most popular car in America, would allow 19
14 inches at either end.

15 CHAIRPERSON GRIFFIS: What kind of car do
16 you own?

17 MS. RIGBY: I own a Honda. But I wanted
18 to get an SUV, and you know, after this is done.
19 You know, my car's been broken into so many times
20 and vandalized parking on the street. A Toyota
21 Siena would allow 14 inches.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. RIGBY: Which is the most popular
24 SUV.

25 CHAIRPERSON GRIFFIS: It's not really

1 pertinent to us what the cars are.

2 MS. RIGBY: Yes, but in terms of -- I did
3 this because I wanted to see if I could keep --

4 CHAIRPERSON GRIFFIS: I know. I know.
5 We can't let you go any less than 19. And Mr.
6 Hildebrand has indicated that it doesn't look
7 likely of moving the door and the dimension that is
8 set as you tried to align it to the 18 x 18
9 adjacent garage structure without going very far
10 into the retaining wall that you could get. Right
11 now you have a dimension outside, the outside is
12 21.

13 MS. RIGBY: Right.

14 CHAIRPERSON GRIFFIS: Conceivably that
15 wall is at least eight inches thick, wouldn't you
16 think? If it's got to support that earth behind it
17 with the stairs coming down. You're losing a foot.
18 That puts you at 20. You may have a foot setback,
19 which would probably not -- would be gone by the
20 time they set the door in.

21 MS. RIGBY: I want a roof garden on top,
22 which would mean a thicker wall.

23 CHAIRPERSON GRIFFIS: I mean, we should
24 be masters at this garage stuff after one day,
25 right? We're getting tired. Okay. Any other

1 questions?

2 MS. MILLER: I just want to make sure I
3 understand. With respect to setback from the
4 alley, is there going to be any setback for you to
5 put trash cans there or anything like that?

6 MS. RIGBY: No.

7 MS. MILLER: No. No setback at all?

8 MS. RIGBY: No. Otherwise I'd run into
9 the same grade problem or length of the garage.
10 You know, the fact of the matter is there just
11 isn't space.

12 MS. MILLER: So what do you do with the
13 trash cans? Put them in the alley, is that what
14 happens?

15 MS. RIGBY: Well, right now they're in
16 the alley. But what one of my neighbors said was
17 to use this hoist system, you know, and he was
18 going to give me their number. That's one
19 possibility, is to hoist them up and down. Have
20 some kind of open structure and a gate, and have
21 them sit on top of the garage and then hoist them
22 down. And that would certainly make trash, taking
23 the trash out from the yard would be certainly
24 easier.

25 The other alternative is to enlarge the

1 landing at the bottom of the stairs in this
2 dimension, well maybe both dimensions, and have
3 them sit here.

4 CHAIRPERSON GRIFFIS: How's the trash
5 person going to pick those up?

6 MS. RIGBY: Oh, they'd be brought out to
7 the alley for the trash.

8 CHAIRPERSON GRIFFIS: That's the only
9 concern we have.

10 MS. RIGBY: Oh, okay.

11 CHAIRPERSON GRIFFIS: It's not where
12 you're going to keep them.

13 MS. RIGBY: Oh, okay. Things that I
14 worry about.

15 MS. MILLER: In that neighborhood, do
16 they pick up out of the alley?

17 MS. RIGBY: Yes.

18 MS. MILLER: Okay.

19 MR. MANN: Well, I have a trash question.
20 Are they super cans or regular cans?

21 MS. RIGBY: Regular cans.

22 CHAIRPERSON GRIFFIS: Any other
23 questions?

24 MR. HILDEBRAND: I noticed -- one
25 question. In your original plan, you setback to 18

1 x 18's garage existing face, and then put a 25-
2 foot deep garage. Did you look at the option of
3 doing what you've done in Option B of just limiting
4 the garage depth to 21 feet? That would pull the
5 excavation back four feet from what you're showing
6 in your original plan. That might help
7 significantly on your cost and still achieve a 2-
8 foot setback from the edge of the alley.

9 MS. RIGBY: The problem is that once --
10 even by reducing this, I still have -- well I guess
11 the stairs could be moved to the center.

12 MR. HILDEBRAND: Right.

13 MS. RIGBY: But the problem is still
14 excavating down. Although this would be reduced,
15 it's excavating down to get the footer for the
16 height, the 14 and a half foot total height. You'd
17 go down 14 and a half feet from the top of their
18 grade, which means underpinning their garage for,
19 again, the depth of this. All you're doing is
20 removing this portion.

21 MR. HILDEBRAND: Well, aren't you --
22 isn't the garage going down to the same elevation
23 as yours, so you're really just underpinning their
24 back yard. There's no garage structure on top of
25 their yard that you're supporting, you're just

1 supporting the earth until you get your wall in
2 place.

3 MS. RIGBY: Well, no, we have to underpin
4 the garage wall here because you have to go down
5 two and a half feet below the frost level, and the
6 frost level is the alley -- the grade is the alley
7 level. So you have to go two and a half feet below
8 the alley level. And this garage doesn't have any
9 footers. So when you excavate two and a half feet
10 below the alley, which is the floor of this garage,
11 that's where the underpinning comes in.

12 MR. HILDEBRAND: You're going to be
13 underpinning theirs anyway because you're going to
14 have to go -- you're going to put a footer on your
15 entire wall, which is the entire length of their
16 alley, or their garage. You're going to be
17 underpinning their entire wall if that's the case.

18 MS. RIGBY: Well, but here, you see, I'm
19 going to be building my own footer for the garage.

20 MR. HILDEBRAND: But you'll have to
21 excavate it in order to build your footer, and it's
22 the excavation phase that will require you to
23 underpin their garage.

24 MS. RIGBY: Oh, I see what you're saying.
25 Maybe one of these photographs would show it, but

1 this wall of their garage is in very bad shape
2 structurally. They're going to have to rebuild
3 that anyway. And they said it would be okay,
4 they've given me permission, if it is necessary, to
5 have that wall removed during construction. It's
6 this wall that's the problem.

7 MR. HILDEBRAND: Ah.

8 MS. RIGBY: My contractor would build a
9 support wall inside. I think you can see in, well,
10 in the middle of this one you can see that they
11 already have a kind of cheap wall inside to
12 support.

13 CHAIRPERSON GRIFFIS: Okay, I think we're
14 clear on that. Any other clarifications? It all
15 goes back to the grade. Okay, looks like -- sounds
16 like we've still got more to go through here.
17 Let's go to the Office of Planning's report at this
18 point.

19 MS. BROWN-ROBERTS: Good afternoon Mr.
20 Chairman and members of the board. I am Maxine
21 Brown-Roberts representing the Office of Planning.
22 Regarding the special exception, you didn't have a
23 discussion on the special exception.

24 CHAIRPERSON GRIFFIS: Well, quite
25 frankly, if it makes the variance test it's going

1 to make the 223, and I can get through this 223
2 in a matter of two and a half minutes.

3 MS. BROWN-ROBERTS: Okay, great. Anyway,
4 we didn't think that was necessary, so we didn't
5 address that. Regarding the variance request, I
6 have been trying to work with her getting this
7 done. And I must say that some of the information
8 presented here today we did not receive.

9 I did go out and do a site visit, and I
10 think one of the greatest concerns of ours was
11 there was a lot of garbage in her back yard, and
12 she said that people have been putting things
13 there. And it's getting that addressed. And we
14 were hoping that a part of this whole garage thing
15 would be able to accommodate her garbage inside so
16 that we wouldn't have people continually putting
17 garbage in front of her property.

18 Another thing was the justification for
19 the financial problems. And we did not have a good
20 handle on that, and getting the information on
21 that. However, we do have some concern about the
22 alignment of the setback. And I think that we
23 would be satisfied if the garage, or the rear of
24 the garage was aligned with the property that has
25 the problem that has to do the underpinning. And I

1 think those were -- based on those issues,
2 that's why we were recommending denial on that.

3 One of the things that I also noticed
4 while I was doing the site visit, that there are a
5 number of properties that had parking pads instead
6 of garages. So that could be another way of
7 addressing her problem because we had looked at it
8 as a problem of keeping her back yard clean, and
9 also with the financial hardship. And that was an
10 alternative that was not sort of addressed. And we
11 would have liked if that was looked on to see how
12 could that help with both the garbage situation and
13 the financial hardship.

14 Thank you, Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Good, thank you
16 very much. Does the applicant have any cross
17 examination of the Office of Planning?

18 MS. RIGBY: No. I just have a couple of
19 comments, though.

20 CHAIRPERSON GRIFFIS: Okay, well why
21 don't you save them to the end.

22 MS. RIGBY: Okay.

23 CHAIRPERSON GRIFFIS: Questions from the
24 board? Clarifications? Ms. Miller.

25 MS. MILLER: I'm sorry. I'm just not

1 sure what your point was with respect to the
2 relationship between this garage and a problem with
3 garbage in her yard.

4 MS. BROWN-ROBERTS: Well, one of the --
5 when we spoke to her, I think one of the great
6 problems that she said she was having was the
7 problem of people putting garbage in her back yard.
8 And so having the garage was a way of alleviating
9 that problem. So to us that was her main problem,
10 not the fact that she wanted a garage. The garage
11 was to solve that problem.

12 MS. MILLER: And how about -- did you say
13 something about a parking pad would solve the
14 problem? How is that?

15 MS. BROWN-ROBERTS: That was an
16 alternative that we had looked at because there
17 were other people within the neighborhood who
18 didn't have garages, but they had a parking pad
19 where they were able to put their cars and also
20 have their garbage. Because I saw the garbage bins
21 that were off of the alley.

22 MS. MILLER: Could you just visit one
23 other point, and that was the alignment issue.

24 MS. BROWN-ROBERTS: I think in one of the
25 plans here she was showing that where the rear of

1 the garage was extended all the way to the
2 alley, and did not line up with the property that
3 was causing her the problem, that had the shoring.
4 So our concern was why not align it with that one.
5 Is it a financial problem also.

6 CHAIRPERSON GRIFFIS: So you're saying
7 align with 1818?

8 MS. BROWN-ROBERTS: Yes.

9 CHAIRPERSON GRIFFIS: Right. Not 1812.

10 MS. BROWN-ROBERTS: Right.

11 MR. HILDEBRAND: Am in understanding,
12 though, that if she was to align with 1818 you
13 would support a diminished setback that would just
14 be two feet from the edge of the alley instead of
15 the five feet that's normally required?

16 MS. BROWN-ROBERTS: That would be a
17 little better, we think.

18 MR. HILDEBRAND: So OP would support
19 that?

20 MS. BROWN-ROBERTS: Yes. Instead of
21 having the zero setback.

22 CHAIRPERSON GRIFFIS: Two's better than
23 nothing.

24 MS. BROWN-ROBERTS: Pardon me?

25 CHAIRPERSON GRIFFIS: Two is better than

1 nothing.

2 MS. BROWN-ROBERTS: That's exactly right.

3 CHAIRPERSON GRIFFIS: Okay. And that --
4 I don't know where the documentation is. Is that
5 about what it is, two feet? Is it two feet
6 setback, the difference between --

7 MS. RIGBY: Oh, 1-11.

8 CHAIRPERSON GRIFFIS: One foot, eleven
9 inches, to be precise. Very well. Any other
10 questions by the board of the Office of Planning?
11 Okay. Let's move ahead then. We do have the ANC-
12 1C. Anyone here from the ANC? Exhibit Number 25.
13 They did recommend approval. It was not unanimous.
14 The vote is actually laid out here. And it is --
15 it does meet our requirements to be given great
16 weight at this time. So any comments on that from
17 the board?

18 If not we'll move ahead to -- we don't
19 have any other government reports attendant to this
20 in terms of submissions. We do have that that was
21 attached to the ANC submission. Or this is the
22 petition that you passed around?

23 MS. RIGBY: Yes. There are two more
24 pages that I already had sent in.

25 CHAIRPERSON GRIFFIS: I see.

1 MS. RIGBY: Then these are two
2 additional page.

3 CHAIRPERSON GRIFFIS: I see. Okay. As
4 it was stated, this is -- the plans were attached
5 to this? Okay, good. Spreadsheet, excellent.
6 Very well. Let's go to last questions of the
7 board.

8 Let me just ask, in terms of these two
9 options that you submitted to us today, one is a
10 25-foot dimension which shows how far extending
11 that would increase the 5-foot excavation or
12 additional excavation, but it also aligns with
13 1818. On the second option, or Option 1 rather,
14 which you're saying, your garage diminished in size
15 to 21 feet but aligns with 1812. Is there an
16 option that you've looked at that would align 1818
17 garage and your garage, and 21-foot dimension? And
18 that would basically move, if this is dimensioned
19 and graphically correct, it may well move it a
20 little -- it would move it probably about, I don't
21 know, two feet beyond the existing structure that's
22 adjacent on 1818.

23 MS. RIGBY: Yes. I mean, the first thing
24 that I looked at was making the structure smaller
25 in length.

1 CHAIRPERSON GRIFFIS: I'm not asking
2 you to make it smaller. Take Option 1. You've got
3 21-foot dimension from exterior to exterior, right?

4 MS. RIGBY: Right, okay.

5 CHAIRPERSON GRIFFIS: That, you're
6 saying, is a functional dimension for you. It
7 gives you 19 feet minimum clear, right?

8 MS. RIGBY: Exactly. Right.

9 CHAIRPERSON GRIFFIS: And move that back
10 one foot, 11 inches.

11 MS. RIGBY: I'd run into the same
12 construction problem as here. This would be
13 reduced, this area, this length would be reduced,
14 but I would still have the problem with the depth
15 of the footer because there would be a 14 and a
16 half foot wall there.

17 CHAIRPERSON GRIFFIS: I don't think
18 Option 1 diminishes that impact.

19 MS. RIGBY: Oh, Option 1 eliminates it
20 entirely.

21 CHAIRPERSON GRIFFIS: I don't -- not if I
22 understand what's your problem.

23 MS. RIGBY: Because my wall would be
24 aligned with the back.

25 CHAIRPERSON GRIFFIS: But what I've

1 understood that there's a practical difficulty
2 in terms of excavating so substantially well along,
3 one, the perpendicular existing wall to yours, and
4 two, the parallel wall to yours. And the further
5 that goes, the larger, almost compounding larger
6 impact there is. Is that correct?

7 MS. RIGBY: Well, yes.

8 CHAIRPERSON GRIFFIS: You're already
9 overlapping it according to this document. Could
10 it conceivably overlap by another foot?

11 MS. RIGBY: I'd run into the same problem
12 with whatever -- it doesn't matter how long the
13 retaining wall is and this dimension. It matters
14 how high it is. And it's going to be 12 feet
15 exposed, 14 and a half feet tall, which is what
16 determines the footer length, which is this
17 problem. And any depth here requires underpinning
18 of the garage and shoring. Having only two feet
19 here, I mean that's not even enough room for a man
20 to work with a shovel and pick. So they'd probably
21 have to excavate just for practical purposes at
22 least three, maybe four, for a wheelbarrow to get
23 in. I mean, this all has to be hand-dug because of
24 the proximity of the wall there.

25 The parallel wall is no problem. As I

1 said, it's already damaged. My neighbors have
2 given me approval to have that removed if that's
3 required for my construction. And actually it
4 would save -- my construction would save them
5 because the footer could be used by them too.

6 CHAIRPERSON GRIFFIS: Right, I understand
7 that. But you're overlapping, Option 1 is
8 overlapping already.

9 MS. RIGBY: This Option 1?

10 CHAIRPERSON GRIFFIS: Right.

11 MR. HILDEBRAND: You're extending beyond
12 their building by about a foot, or eight inches.

13 MS. RIGBY: Oh, I see what you're saying.
14 That was just -- that's a drawing differential.

15 CHAIRPERSON GRIFFIS: You're sure?

16 MS. RIGBY: Yes. It's not.

17 CHAIRPERSON GRIFFIS: So you're saying
18 Option 1 doesn't go past the --

19 MS. RIGBY: Right. It would be in line
20 with the rear of their wall.

21 CHAIRPERSON GRIFFIS: So this is drawn
22 incorrectly?

23 MS. RIGBY: Yes. Yes. It should be on
24 the other side of the wall. It should be moved
25 over, what is that, an eighth of an inch or

1 something. Because the problem comes in with
2 any extension past this wall of their garage.

3 MR. HILDEBRAND: And this is based on
4 conversations you've had with contractors who've
5 actually given you estimates on doing the work?

6 MS. RIGBY: And engineers, you know,
7 trying to think of other ways of building a wall
8 that would satisfy the 12-foot height without
9 having such a depth in this direction of footer.
10 But they all say it's, you know.

11 MR. HILDEBRAND: Well, your footers can't
12 extend beyond your property line anyway.

13 MS. RIGBY: They've given me approval for
14 that.

15 MR. HILDEBRAND: Oh. They wouldn't need
16 to. I mean, you could design the wall in such a
17 way that it doesn't. But I would think that the
18 side walls of your garage would also brace your
19 retaining wall in such a way that it would
20 alleviate some of the need to over-design the
21 footer. In other words, if you have a single wall
22 sitting here, it's one thing to keep it from
23 falling over. But when you have a single wall
24 that's braced by two perpendicular walls, suddenly
25 it's much stronger, and it can reduce the design of

1 your footer. I'm wondering if your engineers
2 are taking that into consideration. Because the
3 span of the wall is significantly shorter.

4 MS. RIGBY: Yes. I don't know. I know
5 that they took that into account in terms of
6 allowing the stairs to be at a different location.
7 But that's only, it's a very different kind of
8 situation. And that's why they wanted the stairs
9 to be moved over into my yard, and away from that
10 retaining wall. Also, for purposes of the actual
11 construction process, if it's moved away from
12 there, it can be dug by machine, which saves a lot.

13 It all comes back to this grade
14 difference between us.

15 CHAIRPERSON GRIFFIS: Okay. I'm sorry,
16 but we only allow six hours per garage, so we're
17 going to have to move on. Any other questions?
18 Okay. I clearly understand the board's pushing I
19 think very heavily to maximize the setback on the
20 alley, just based on frankly, just practical
21 programming for your utilization of the alley. I
22 think we've kind of exhausted, unless there's any
23 other kind of situation we could figure out.

24 Just adjacent on the 1812 side, the
25 structure doesn't abut your property line. There's

1 a stair that drops there, is that correct?

2 MS. RIGBY: There is actually a parking
3 area.

4 CHAIRPERSON GRIFFIS: Okay. So it's not
5 a direct structure at that point?

6 MS. RIGBY: No.

7 CHAIRPERSON GRIFFIS: Okay. I see. That
8 was an interesting note. All right. Anything else
9 from the board? Any other clarifications? I think
10 we ought to move to action on this, and get into
11 quick deliberation and dispense with this.

12 I would move approval of Application
13 17190 for a variance from the alley setback
14 requirements under 2300.2. I do not see, and I do
15 concur with the Office of Planning's report that a
16 special exception under 223, although the Zoning
17 Administrator had sent it to us for review, is not
18 required in this case and therefore wouldn't be
19 part of the motion. Would be to construct the
20 accessory garage at the rear of a single-family to
21 the dimension of 21 feet, at 1816 Belmont Road,
22 Northwest.

23 MR. MANN: Seconded.

24 CHAIRPERSON GRIFFIS: Thank you very
25 much. I think it's fairly clear in terms of the

1 complication in terms of the retention of the
2 adjacent property which is well above grade on
3 this. I think the attendant difficulties in
4 setting it back further, although we've tried to
5 maximize that. And I think it's a strong direction
6 of the board to maximize that. Obviously if there
7 was no reason to utilize this or to diminish the
8 utilization of the relief for the setback from the
9 center of the alley, meaning if you could set it
10 back more than seven feet, six inches, you should
11 do so if the existing conditions as you get into
12 construction allow you to see it.

13 But in the absence of that, and in the
14 strict requirements that we have in terms of either
15 approving or denying a variance, I think that the
16 uniqueness of this and also the practical
17 difficulty of accommodating any sort of
18 construction due to the grade change certainly
19 would not impair the intent and integrity of the
20 zone plan as this is an accessory structure that is
21 allowed for parking.

22 And in terms of the public good I think
23 there's two aspects that have arisen in this case.
24 One is to gain control of a fairly rugged grade and
25 vegetation in the rear of the structure. And the

1 second is to provide a conforming parking space.
2 That being said, we have a motion before us that's
3 been seconded. Any other comments?

4 MR. ETHERLY: I'll just note for the
5 record, Mr. Chairman, very briefly just while we
6 still have the vote in front of us though, but I
7 would just like to commend the applicant for the
8 presentation because it was a rather complex set of
9 circumstances to present visually in the back
10 there. And with all the photographic evidence, and
11 just the documentation to help understand the
12 topography and the grade changes. I just think it
13 was a strong job for an atypical set of
14 circumstances.

15 MS. RIGBY: Oh, thanks.

16 CHAIRPERSON GRIFFIS: Good. Well said.
17 Mr. Hildebrand?

18 MR. HILDEBRAND: And I agree with that.
19 I think that all the work that the applicant has
20 done has been beneficial in understanding the
21 nature of the site. I'm still not convinced that
22 the setback of the garage to align with 1818
23 creates undue difficulty. But I would be
24 encouraged by your statement that if as
25 construction proceeds, there is an option of moving

1 this garage back that you should certainly look
2 into it. But at this point I don't think I can
3 support aligning with the alley edge.

4 CHAIRPERSON GRIFFIS: Okay, understood.
5 Others? I think that obviously focuses the
6 attention on one of the major detractions from the
7 variance, or the opposition. I think the Office of
8 Planning held the same position, which is obviously
9 an important one.

10 We have a motion before us that's been
11 seconded. Any other deliberations, comments? Very
12 well. Let me ask for all those for the motion to
13 signify by saying 'Aye.'

14 (Chorus of Ayes.)

15 CHAIRPERSON GRIFFIS: And opposed?

16 MR. HILDEBRAND: Nay.

17 CHAIRPERSON GRIFFIS: Abstaining?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you very much.

21 MS. RIGBY: Thank you.

22 CHAIRPERSON GRIFFIS: Good luck moving
23 that all the way back from the alley.

24 MS. RIGBY: Oh. I originally -- you
25 know, that's why I originally submitted it. You

1 said two feet back. But when I started getting
2 the costs.

3 CHAIRPERSON GRIFFIS: Good. Indeed. And
4 it's good to see you down here this afternoon, and
5 good luck constructing that. Mr. Moy, I think we
6 can issue a summary order on that. We can waive
7 our requirements for a full order.

8 Motion to take just a 10-minute break to
9 let the next applicant set up. And we're going to
10 get through this very quickly.

11 MR. MOY: Mr. Chair?

12 CHAIRPERSON GRIFFIS: Yes, sir.

13 MR. MOY: Just very quickly. The staff
14 would record the vote as 4-1-0 on the motion to
15 approve by Mr. Griffis, seconded by Mr. Etherly.
16 Also in support of the motion: Mr. Mann, Ms.
17 Miller. Opposed the motion: Mr. Hildebrand. And
18 this is a summary order.

19 CHAIRPERSON GRIFFIS: Thank you.

20 (Whereupon, the foregoing matter went off
21 the record at 4:36 p.m. and went back on the record
22 at 4:59 p.m.)

23 CHAIRPERSON GRIFFIS: Okay. Let's
24 resume.

25 MR. MOY: The next case is Application

1 Number 17191 of 14th & R Partners, LLC, pursuant
2 to 11 DCMR § 3103.2, for a variance from the
3 residential recreation space requirement under
4 Section 773, a variance from the open court
5 requirements under Subsection 776.3, and a variance
6 from the off-street parking requirements under
7 Subsection 2101.1, to construct a seven-story,
8 seven-unit residential building with retail on the
9 ground and first floors, in the ARTS/C-3-A District
10 at premises 1634 14th Street, Northwest, 1638 14th
11 Street, Northwest, and 1402 R Street, Northwest
12 (Square 208, Lots 806, 807, and 808).

13 The staff would note that the applicant
14 has indicated that the project's been revised to
15 comply with the open court requirements. And that
16 completes the staff's reading.

17 CHAIRPERSON GRIFFIS: Good. Thank you
18 very much, Mr. Moy. Let's get right into it. Why
19 don't we introduce who's here to present the case.

20 MR. SHER: Good afternoon, Mr. Chairman,
21 members of the board. For the record, my name is
22 Steven E. Sher, the Director of Zoning and Land Use
23 Services at the law firm of Holland & Knight, here
24 on behalf of the applicant 14th & R Partners, LLC.

25 We're requesting two variances for the

1 development of a residential project with ground
2 and first floor commercial uses in the ARTS/C-3-A
3 District at the southwest corner of the
4 intersection of 14th and R Streets, Northwest.

5 Here with me this afternoon are Jill
6 Cooper, who's an urban planner with Holland &
7 Knight, Mr. Paul Robertson on behalf of the
8 applicant and developer of the site, seated
9 immediately to my right, and Ms. Suman Sorg of the
10 architectural firm of Sorg and Associates at the
11 end of the table who's our architect today.

12 Before proceeding with the testimony of
13 the witnesses, I'd like to offer a brief opening
14 statement and confirm that the board members have
15 received a copy of the statement of the applicant,
16 which has been filed in this case.

17 CHAIRPERSON GRIFFIS: We've received it
18 and read it.

19 MR. SHER: Good. I can cut right to the
20 end then, if you'd like. We are prepared to stand
21 on the record if the board would like us to do that
22 to make a short presentation, do the full
23 presentation, or proceed in any manner that the
24 board would like us to proceed.

25 CHAIRPERSON GRIFFIS: Excellent. I think

1 it'd be expeditious if you eliminated opening
2 statement. Well, I think we can go right to
3 questions. I think the board is pretty much well
4 aware of what we're doing here.

5 MR. SHER: Here we are.

6 CHAIRPERSON GRIFFIS: If the board is
7 amenable to doing that. First of all, this is not
8 in the record yet, is that correct? This image
9 that we're looking at?

10 MR. SHER: The colored rendering, no.
11 But the plans there, they are in the record.

12 CHAIRPERSON GRIFFIS: Okay. But see I
13 like all the pretty pictures. Not to mention we're
14 probably going to refer to it. So if there's a
15 small reduced copy we'll just put it in the record.

16 MR. SHER: We will get one to you for the
17 record.

18 CHAIRPERSON GRIFFIS: Excellent. Okay,
19 let's start off first. My understanding is that
20 this obviously is going to have to combine lots.
21 There's numerous lots on this, different addresses.
22 Where is that in the process?

23 MR. ROBERTSON: I'm Paul Robertson. And
24 the -- we have not combined the lots yet. We're
25 about to start that process.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. ROBERTSON: And we hope to submit for
3 a permit within the next month and a half.

4 CHAIRPERSON GRIFFIS: Okay. Out of more
5 curiosity, what would be the address? 14th Street
6 address?

7 MR. ROBERTSON: It will be -- actually I
8 haven't even thought about that. Probably an R
9 Street address for the residential. And also as a
10 point of information, we have gotten approval from
11 HPRB for the project.

12 CHAIRPERSON GRIFFIS: Right. Good. Now,
13 just for total clarification, make sure we're all
14 looking at the same thing here, we're looking at
15 100 percent relief from the residential recreation.

16 MR. SHER: That is our proposal, yes.

17 CHAIRPERSON GRIFFIS: This is a seven-
18 story building and seven units.

19 MR. SHER: That's correct.

20 CHAIRPERSON GRIFFIS: Fascinating. The
21 top floor actually is a single unit, is that
22 correct? Spectacular. Okay. A couple of
23 questions I think, just setting out here. First of
24 all, you've indicated if we look at the residential
25 recreation space, and we'll have probably specific

1 questions, but am I correct in viewing the
2 plans, and also in looking at the written
3 submission, that each of the units has private
4 recreation space attendant to it? Is that correct?

5 MR. SHER: Yes, that is correct.

6 CHAIRPERSON GRIFFIS: Okay. And one
7 clarification. In the written submission it said
8 that there are also other public recreational
9 opportunities in the vicinity of the property, but
10 they're not enumerated. What are some of the
11 recreational opportunities in the vicinity?

12 MR. ROBERTSON: I live in the area, so
13 I'm kind of familiar. Logan Circle, just to hang
14 out, walk your dog. Dupont Circle, the same way.
15 On the 14th Street there really isn't, but I would
16 say those are probably the two closest areas.

17 CHAIRPERSON GRIFFIS: Any other adjacent
18 parks or open place?

19 MS. SORG: Well, we just designed and
20 opened a rec center at 7th & P Street, Northwest,
21 across from the O Street market and the --

22 CHAIRPERSON GRIFFIS: Right. And that's
23 a public recreation space.

24 MS. SORG: Public recreation.

25 CHAIRPERSON GRIFFIS: It has actually

1 indoor also, is that correct?

2 MS. SORG: It has indoor and outdoor. An
3 entire city block.

4 CHAIRPERSON GRIFFIS: Okay. What about
5 north on 14th Street?

6 MR. SHER: There's a public rec center on
7 the south side of V Street between 13th and 14th.
8 That's a few blocks up, but still there.

9 MR. ROBERTSON: And there's Bowen YMCA, I
10 believe, on like 13th and V, something like that.

11 CHAIRPERSON GRIFFIS: Okay. All right.
12 And one of the most fabulous parks in the city is
13 just north of this, is it not? Meridian Hill Park.
14 What a great place. Saw the fireworks from there.
15 But I digress. Let's move on.

16 Okay. Also, in terms of the parking, the
17 total required. Now, with the changes, just to
18 make sure we're absolutely looking at what we're
19 supposed to be, with the change in the retail
20 configuration of that, what's the total parking
21 required at this point?

22 MR. ROBERTSON: The parking required is
23 17 spots. And we're looking at providing 18 spots.

24 CHAIRPERSON GRIFFIS: Indeed. So then 17
25 is the combination of the retail, which you've

1 broken out to satisfy, and also the unit counts?

2 MR. ROBERTSON: Correct.

3 CHAIRPERSON GRIFFIS: Okay. And clearly,
4 three are within the building and the rest, 15, are
5 in the vault space?

6 MR. ROBERTSON: Correct.

7 CHAIRPERSON GRIFFIS: And the three are
8 conforming to the regulations or not? In terms of
9 --

10 MS. SORG: Of the size, yes.

11 CHAIRPERSON GRIFFIS: The size, and
12 access, and all.

13 MR. ROBERTSON: Yes.

14 CHAIRPERSON GRIFFIS: Okay. So we're
15 looking at a diminishment of 17 minus 3, which are
16 provided onsite. What are the conditions of the
17 vault space that you've entered into? Is there a
18 time constraint? Is there any sort of conditions
19 of which you could be removed from utilization?

20 MR. SHER: A vault is theoretically
21 revocable at any time by the District of Columbia,
22 but the number of times that that has occurred is
23 so rare that it is highly unlikely that that will
24 ever occur.

25 CHAIRPERSON GRIFFIS: And how is the

1 vault space agreement effectualized?

2 MR. SHER: You pay rent for a vault
3 annually to the District.

4 CHAIRPERSON GRIFFIS: And is that
5 agreement already settled?

6 MR. ROBERTSON: No. No, it is not, but
7 it's my understanding in talking with District
8 officials and civil engineers and so forth that
9 it's generally a matter of course once you submit
10 the proper forms and so forth to the proper
11 engineering. It's a revenue generator for the
12 District for space that would otherwise just be
13 sitting idle.

14 CHAIRPERSON GRIFFIS: Are you aware of
15 how much is below grade at this point, that might
16 have to be relocated?

17 MR. ROBERTSON: Yes. Wiles Mensch, our
18 civil engineers, have done extensive studies on the
19 utility locations.

20 CHAIRPERSON GRIFFIS: So you know exactly
21 what you're about to encumber in terms of trying to
22 free up that space.

23 MR. ROBERTSON: Yes. Absolutely.

24 CHAIRPERSON GRIFFIS: And there's nothing
25 that gives you any indication that there might be

1 trouble from the District side of allowing to
2 utilize that?

3 MR. ROBERTSON: Absolutely not, no.

4 CHAIRPERSON GRIFFIS: Okay. I think the
5 next -- well, does someone else want to pick up
6 questions on residential rec utilization of the
7 space inside roof? Okay. Then talk about the fact
8 of not being able to get access to the roof with an
9 elevator, et cetera, based on the location off of
10 14th Street, and the height of penthouse structures
11 or roof structures.

12 MR. SHER: This property is in an ARTS/C-
13 3-A District. C-3-A ordinarily permits a height of
14 65 feet and allows a roof structure of 18 feet, 6
15 inches, above the 65 feet. The ARTS overlay
16 district allows the height of the building to be
17 increased to 75 feet as a matter of right, but it
18 limits the overall height of the building,
19 including the top of the roof structure, to 83
20 feet, 6 inches. So if you build a building 75
21 feet, you cannot get an elevator access to the roof
22 within the 83 foot, 6 inches. So we cannot, again,
23 in order to have accessible space on the roof, meet
24 the ADA requirements and so forth, we cannot get an
25 elevator to the roof, and therefore we can't count

1 residential space on the roof.

2 MS. MILLER: And why do you have to build
3 to that level of height where you can't have room
4 for the elevator?

5 MR. ROBERTSON: In order to get the type
6 of units. As the chair noted, this is a unique
7 building, and quite dramatic and different.
8 Because we are building on such a small site with
9 such a high percentage of core, being the stairs
10 and hallways and so forth, it in and of itself
11 presents a unique economic and practical problem.
12 And therefore, in order to create residential
13 spaces that would justify building something here
14 with a parking garage and so forth, we needed that
15 kind of volume because that's what really sells.
16 And so that's the reason.

17 MS. SORG: If I may add to that. When
18 the HPRB reviewed this project, they were into the
19 minutiae of the proportions of the building, and so
20 on the floor-to-floor height of the residential and
21 the retail was gone over again and again, and then
22 we arrived at these proportions based on that.

23 MR. HILDEBRAND: So even if you were to
24 diminish the height of your penthouse, or the sixth
25 floor residential level to mesh with your other

1 levels, it still wouldn't give you adequate
2 height for rooftop access for the elevator? That
3 extra foot and a half?

4 MR. SHER: No, a foot and a half is not
5 enough to get the extra height to the top of the
6 roof. To get elevator access to the roof. We
7 would need about six feet more than what we have
8 now.

9 MR. HILDEBRAND: That seems like such a
10 spectacular view. I'm surprised you're willing to
11 give up ever using the rooftop as a terrace.

12 MR. SHER: Well, there is stair access to
13 the roof, but it can't be space that qualifies,
14 public space, because of the ADA requirements.

15 MR. HILDEBRAND: And you're willing to
16 give that up for the duration of the project?

17 MR. ROBERTSON: Personally I suspect that
18 there may be a resident or two who will go up
19 there, maybe to watch the fireworks on occasion.
20 But as it relates to defining it as public
21 recreation space, it was our belief that the
22 building overall benefits by not having this large
23 penthouse and so forth on the top, and the
24 community actually agree with us when Logan Circle
25 citizens, as well as the ANC. We presented that,

1 and everyone agreed.

2 MS. SORG: Also, if I can add to that,
3 almost every apartment has a spectacular view.

4 MS. MILLER: Well, this may be what you
5 were addressing, but am I correct to assume, then,
6 that you could've sought a variance from the height
7 requirements instead in order to have the elevator
8 and thereby meet the residential recreation
9 requirement? And that the sentiment in the
10 community was that they preferred not to have that
11 structure. So you're going for either one variance
12 or the other, basically.

13 MR. SHER: The short answer to that is
14 yes.

15 CHAIRPERSON GRIFFIS: Were there designs
16 that were presented to HPRB that had a large
17 elevator enclosure or a large penthouse?

18 MS. SORG: No, but the height of the
19 building was a big issue with the community,
20 overall height, as well as the HPRB.

21 CHAIRPERSON GRIFFIS: Right. Which I
22 think is no shock to this board, having seen
23 numerous applications just on this corridor, and
24 seen what Preservation has often taken on in terms
25 of the rooftop structures and the heights of

1 buildings. Okay.

2 MS. MILLER: I have just one more
3 question on that topic, I think. There's a
4 sentence in the Office of Planning report, and I'm
5 not sure if it's correct, and I wanted you to
6 respond to it. It says on Page 4 that the
7 applicant may provide a roof terrace accessible by
8 stairway.

9 MR. ROBERTSON: Yes, I noticed that. I
10 also noticed that in the report just today. It is
11 our intention to rely on the residential rec space
12 provided for each of the seven units and not have
13 anything up there defined as rec space. So that
14 isn't entirely -- that isn't really accurate.
15 There is a stair that will go up there for
16 maintenance. Someone could go up there and look t
17 fireworks. But that isn't part of the real plan.

18 CHAIRPERSON GRIFFIS: This is a condo
19 building, correct?

20 MR. ROBERTSON: Yes.

21 CHAIRPERSON GRIFFIS: Right. Okay. Yes,
22 Mr. Hildebrand?

23 MR. HILDEBRAND: Just to understand, if
24 you were to put an adequately sized elevator. I'm
25 sorry, I don't want to beat this to death. But I

1 can't even imagine that you'd see it in this
2 perspective. It's so far set back from the edge of
3 the building that adding an extra two or three feet
4 to give you the override required to get to the
5 roof, I can't imagine that it would have an
6 enormous impact. Are you doing hydraulic, or are
7 you doing overhead traction?

8 MS. SORG: We need four feet of overrun,
9 and then over that -- clear space between top of
10 the cab and the beam is four feet.

11 MR. HILDEBRAND: Right.

12 MS. SORG: That's the code requirement in
13 case you don't get squeezed up there.

14 MR. HILDEBRAND: So, 12 feet above the
15 roof.

16 MS. SORG: And then another two feet or
17 so of structure. And you need six more feet above
18 the cab level to do it. So it's quite a height.

19 MR. HILDEBRAND: So 14 feet you're
20 saying, roughly?

21 MS. SORG: Right. So I think that would
22 really be quite visible from our street as well as
23 14th Street. From the south.

24 MR. ROBERTSON: Heading north on 14th
25 Street, coming up this way, looking at the

1 building, it would be like a big pill bottle on
2 the top of the building. It would be not
3 attractive.

4 MR. HILDEBRAND: Well, you'd make your
5 stair tower the same height. It would just be a
6 nice little enclosure. But that's my own point of
7 view. Thank you.

8 CHAIRPERSON GRIFFIS: You could put the
9 pool up there and put a bathhouse too. Actually
10 that'd be pretty sweet. Helipad. See that, it
11 came up. And the salt water taffy vending machine.
12 Okay, we digress.

13 MR. HILDEBRAND: One clarification I did
14 have on the parking question. How many spaces are
15 required for your retail area? Of the 17 that
16 you're required, what is the percentage that's
17 required for retail versus residential?

18 MR. ROBERTSON: Thirteen.

19 MR. HILDEBRAND: Thirteen for retail?

20 MR. ROBERTSON: Yes.

21 MR. HILDEBRAND: And four for
22 residential?

23 MR. ROBERTSON: Correct.

24 MR. HILDEBRAND: So you're asking to
25 eliminate 11 retail spaces. Okay. Thank you.

1 CHAIRPERSON GRIFFIS: Okay. Anything
2 else? Any other clarifications right at this
3 point? It's an interesting point that shouldn't be
4 lost on the board in terms of -- and I know it was
5 well stated in the written submission is what has
6 been relayed to us as the core factor. And the
7 size of that. I mean, if you look at, and we've
8 seen this before on numerous cases. Mostly
9 commercial buildings, but some residential,
10 especially the diminished size of this. You know,
11 the basic, the smallest all of us can get, meaning
12 from the shafts to the elevators to the stairs, is
13 consistent at this size, or if it was twice as
14 large of a footprint, or five times as tall. And
15 so the difficulty in putting, as I understand the
16 application, the submission that's before us, the
17 difficulty in the utilization of the space that's
18 left over, once you get the circulation through, is
19 difficult. And what's actually amazing to me in
20 looking at this is how, at the lower levels, there
21 are three things that are coming in combination.
22 One, you have the circulation to the retail. How
23 do you service the retail and let people walk in
24 and out without walking in your second element, the
25 residential entrance, which is like a separate

1 building within the same envelope. And then the
2 third is you have a parking ramp that has to cut
3 through the first floor. And obviously if you look
4 at the section, it's pretty dramatic how the floor
5 levels, as the cars are going underneath the first
6 floor, which cuts out the first floor. The second
7 level is cutting up across it.

8 There's a lot being asked of a very small
9 site here. And it's kind of incredible to see how
10 this can all work together on this type of scale,
11 but it does. And then you've put in -- I mean, I
12 obviously think this is a fairly strong
13 application, but in terms of then the requirements
14 of the regulations with the ARTS overlay you've got
15 this huge retail requirement. With residential and
16 commercial, we have the residential recreation
17 requirement. So all in all, it's actually perhaps
18 even surprising that there aren't more relief
19 requests coming in. Not that we'd advocate for
20 that by any means. That they could bring it to
21 something of this level with this -- I would say,
22 frankly, a fairly diminished relief request.

23 You know, in terms of the parking, and
24 the relief from the parking Mr. Hildebrand, you
25 bring up an excellent point. The retail is what's

1 going to be heavily burdened on creating the
2 parking requirement, but looking at this, let me
3 ask the developer, first of all, roughly how much
4 rentable square footage is there for retail?

5 MR. ROBERTSON: Six thousand.

6 CHAIRPERSON GRIFFIS: And you're thinking
7 perhaps of one tenant or two tenants? Are you
8 negotiating with anyone right now?

9 MR. ROBERTSON: We haven't started
10 negotiations yet.

11 CHAIRPERSON GRIFFIS: Okay. But
12 conceivably in your experience in renting retail of
13 6,000.

14 MR. ROBERTSON: It will be difficult to
15 get one tenant. We'd like to have one tenant, but
16 it will probably be two to three.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. ROBERTSON: But the --

19 CHAIRPERSON GRIFFIS: So smaller -- what
20 type of tenants fit into 1,500 to 2,000 square foot
21 floor plans?

22 MR. ROBERTSON: Surprisingly a lot. I
23 thought, because I actually have not a lot of
24 experience renting commercial, but restaurants,
25 Starbucks type places, Marvelous Market. I talked

1 to them. They take 1,000 to 2,000 typically.
2 So I thought that they would take more. Lighting
3 design places like Illuminations, and furniture
4 places like Design Within Reach. I've talked to
5 Suman because she's worked in Caddy's Alley with
6 the developer there. And many of the spaces are
7 1,000 to 2,000 square feet.

8 So again, I've lived in the community and
9 I've talked to the neighbors. We're really
10 reaching out to the community to see what they
11 want. And frankly, the parking spots for the
12 retail will be for retail employees because we
13 expect, just as all of the 14th Street and U Street
14 strip, 99 percent of it is walk-in. People don't
15 drive, and don't expect to find a parking spot to
16 do that. It's walk-in.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. HILDEBRAND: You mentioned sort of
19 restaurant-type use. You don't envision
20 restaurant-type use in this building, do you?

21 MR. ROBERTSON: No.

22 MR. HILDEBRAND: Because there's no shaft
23 space for it. How do you plan on prorating the
24 available parking that you're providing for
25 designated retail use versus residential use? Do

1 you have a formula in mind? Is every unit going
2 to have a parking space, and then whatever's left
3 is available for retail? How do you plan on
4 divvying that up?

5 MR. ROBERTSON: Frankly, we plan on
6 providing two spaces for every residential unit,
7 with the balance for the retail.

8 MR. HILDEBRAND: How many residential
9 units do you have?

10 MR. ROBERTSON: Seven.

11 MR. HILDEBRAND: So 14 spaces, three for
12 retail.

13 MR. ROBERTSON: Correct, three for
14 retail. Being the manager, assistant manager, you
15 know, a staff person. This is a very, very high-
16 end building. Very high-end building. And it
17 would never be envisioned that any of the retail
18 parking spots would be for customers. You just
19 couldn't for security purposes, and managing the in
20 and out of this type of garage, it would be totally
21 impractical. Kind of physically and also from a
22 marketing perspective, to have customers coming in
23 and out of this. It needs to be very controlled
24 and secure.

25 MR. HILDEBRAND: What was the residential

1 response to having the loading dock on R Street
2 as opposed to 14th?

3 MR. ROBERTSON: There was not any comment
4 on that at all.

5 MR. HILDEBRAND: No issue for residential
6 to have your truck loading there next to the
7 apartment building?

8 MR. ROBERTSON: No.

9 MS. SORG: Sorry, I'm not understanding
10 the question.

11 MR. HILDEBRAND: I mean, R Street is more
12 of a residential neighborhood, and to put your
13 loading dock there facing R Street. I was just
14 curious. Loading berth.

15 MS. SORG: Yes, we are putting a screen
16 wall there as part of the platform and the loading
17 berth itself. Along the building line.

18 MR. ROBERTSON: There's a 20-foot alley
19 running north-south between the apartment building
20 and our building. And so the loading area actually
21 faces west, and not north directly onto R. It
22 faces the apartment building. And we will be
23 screening that.

24 MR. HILDEBRAND: Is there an elevation to
25 that screen in your package?

1 MS. SORG: We're just developing that.
2 We can send it to you.

3 MR. HILDEBRAND: Was that on A-201?

4 MR. ROBERTSON: You do have an elevation,
5 it just doesn't reflect the screen yet. We're
6 going to be working with Steve Colcott on that of
7 HPRB.

8 CHAIRPERSON GRIFFIS: Is that enclosed?
9 Or is that actually an open dock and it will be an
10 enclosure on the other side?

11 MR. ROBERTSON: It's the back yard, I
12 believe.

13 MS. SORG: It'll be like a louver. You
14 know, a wall that you can't see through, but not a
15 masonry wall per se.

16 CHAIRPERSON GRIFFIS: Running along the
17 alley.

18 MR. HILDEBRAND: Will it extend all the
19 way to the edge of the alley?

20 MS. SORG: No, running

21 MR. HILDEBRAND: So it carries the
22 building face along R Street to the edge of the
23 alley. Is that what you're saying?

24 MR. ROBERTSON: I believe that is what we
25 would be doing, correct.

1 MR. HILDEBRAND: Could you show me on
2 plan?

3 MS. SORG: It'll be right here, and I'm
4 hoping that it will go up to the alley.

5 MR. HILDEBRAND: So is your -- well, I
6 guess you can't ever come down R Street the other
7 direction, can you?

8 MS. SORG: No.

9 CHAIRPERSON GRIFFIS: But what happens on
10 the alley?

11 MS. SORG: It's open.

12 CHAIRPERSON GRIFFIS: It is open.

13 MS. SORG: Yes.

14 MR. HILDEBRAND: So the truck would just
15 pull off into that space and off-load, and then
16 pull out again.

17 MS. SORG: Right.

18 CHAIRPERSON GRIFFIS: And there wouldn't
19 be any --

20 MR. HILDEBRAND: It's like parallel
21 parking.

22 MS. SORG: Yes.

23 MR. HILDEBRAND: They would have to
24 parallel in.

25 CHAIRPERSON GRIFFIS: Oh.

1 MS. SORG: It would come in --

2 CHAIRPERSON GRIFFIS: Boy, I read that
3 wrong.

4 MR. HILDEBRAND: It'll knock the screen
5 down, is what it'll do.

6 MS. SORG: It'll come in like this, and
7 turn, and then pull in.

8 CHAIRPERSON GRIFFIS: Oh, I see.

9 MR. ROBERTSON: It's actually better than
10 a lot of the retail in the area where they park in
11 the street. It's a 20-foot alley, which is really
12 nice.

13 CHAIRPERSON GRIFFIS: Right. Oh, I see.
14 That makes a lot of sense. So this is actually a
15 fixed elevation on R Street, not the loading dock
16 or loading bay door, which you'd have to drive over
17 those trees to get to. Right, okay.

18 MR. HILDEBRAND: It's just this odd
19 little screen wall that projects off the side of
20 the building. What is it going to be, a story and
21 a half tall or something?

22 MS. SORG: No.

23 MR. HILDEBRAND: Is there a limitation on
24 how high a screen wall can be?

25 MS. SORG: I think it matches the --

1 MR. HILDEBRAND: It'll pick up a line
2 in the façade?

3 MS. SORG: And go around here. And
4 you'll have -- this is a precast building. The
5 whole building is stone-like precast. So I'm just
6 taking that precast across, and bringing it down,
7 and then filling it in with like a screen, a metal
8 screen that obscures vision into the loading area.

9 MR. HILDEBRAND: Thank you.

10 CHAIRPERSON GRIFFIS: Okay, last question
11 on this. You indicated this is your rear yard, is
12 that correct?

13 MR. SHER: Yes.

14 CHAIRPERSON GRIFFIS: And so the rear
15 yard as set back of the alley would be calculated
16 above the horizontal plane of 20 feet, is that
17 correct?

18 MR. SHER: Yes.

19 CHAIRPERSON GRIFFIS: Okay. And this
20 wouldn't go as a structure, is that correct? If
21 you brought something over, kind of a screen wall,
22 it would not be calculated as a --

23 MR. SHER: As a permitted projection into
24 a yard?

25 CHAIRPERSON GRIFFIS: Yes.

1 MR. SHER: Yes, it's like a fence.

2 CHAIRPERSON GRIFFIS: Right, okay. Good.

3 All right. Anything else? Any other questions,
4 clarifications? Oh, come on. There's got to be
5 something. Let's dig. We've got half an hour
6 more. Okay.

7 Okay, what else do we need to hear from
8 you?

9 MR. SHER: We're done.

10 CHAIRPERSON GRIFFIS: Very well. Let's
11 move on to the Office of Planning report.

12 MR. PARKER: Good afternoon Mr. Chairman,
13 members of the board. My name's Travis Parker with
14 the Office of Planning. Most of the issues raised
15 in my report have already been discussed here by
16 the applicant and yourselves.

17 CHAIRPERSON GRIFFIS: I know, I stole
18 your thunder, didn't I?

19 MR. PARKER: So all I'll do is just
20 highlight the few things that haven't been
21 mentioned or discussed really. In regards to the
22 parking, the main issue that we looked at was the
23 narrowness of the lot and the fact that it's really
24 impossible to get the parking spaces in two aisles
25 and the core features in the 50-foot width of this

1 lot. And that really is the main factor in
2 meeting the first two tests. And the third we
3 decided could be met by the fact that parking is
4 being provided in the vaulted space.

5 In regards to the residential rec space,
6 in our eyes, the fact that there are only seven
7 units in this building, more comparable to a
8 residential district, that they all have private
9 terrace space. And the last I spoke with the
10 applicant, there was a possibility that they would
11 be able to access the roof. Whether that's the
12 case or not, I suppose it is not a huge deal in
13 this variance.

14 But the overall consensus was that the
15 Office of Planning supported both of these
16 variances and I'd be happy to answer any questions.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you. I think it's an excellent point in terms of
19 what was brought up. And if you went even down
20 another level of parking, or down six levels, you
21 still get a diminished number of parking spots. So
22 each level would accommodate maybe three or four.
23 You might get efficient on the very last one. So
24 it doesn't -- you know, it is fairly strictly
25 confining based on the dimension of this site, once

1 you get access to the drive aisles as you've
2 indicated.

3 There's a statement in here. This isn't
4 a big deal, but you indicated that in addition,
5 public parking is available in the area, both
6 street and nearby public parking lots. I
7 understand street. Some of the other -- which
8 other parking lots were you talking about?

9 MR. ROBERTSON: I don't recall off the
10 top of my head, but I believe I surveyed -- I
11 believe there was one, two, or three blocks to the
12 south. But I can't confirm that.

13 CHAIRPERSON GRIFFIS: Okay. And that's
14 fine. I appreciate it's hard to show exactly where
15 they are. It raises some concern for me just on
16 the mere fact of how many applications we've seen
17 on 14th Street which obviously removes anything
18 that's going up as a matter of right. I can't
19 imagine many surface parking lots being maintained
20 for much longer, if forever. So I think the
21 board's clear on the aspect of the fact that the
22 variance test is not being made based on the
23 provision or the availability of outside or off-
24 site parking, but what is actually being
25 accomplished onsite. I mean, it's good to know.

1 It looks like there's one, just from your
2 aerial, across the street.

3 MR. ROBERTSON: Right.

4 CHAIRPERSON GRIFFIS: But who knows
5 what's happening with that. Okay, any other
6 questions for Office of Planning? Mr. Hildebrand?

7 MR. HILDEBRAND: No, not for Office of
8 Planning.

9 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

10 MS. MILLER: I already asked about one of
11 the statements in your report on access to the roof
12 terrace. But there's another statement at the
13 bottom of Page 4 where you say, "This project has
14 fewer units and will likely provide roof space that
15 will serve much the same purpose." What do you
16 mean by that?

17 MR. PARKER: Well, once again, my
18 original discussions with the applicant, I was
19 under the assumption that the roof space would be
20 open. Not accessible by elevator, but accessible
21 by stairs to all the residents. And therefore it
22 would be usable by all the residents as recreation
23 space at the time that I wrote this for you. If
24 that's not the case, that statement obviously can
25 be ignored.

1 MR. HILDEBRAND: Wouldn't that be in
2 violation of the Americans with Disabilities Act
3 and available space?

4 MR. PARKER: To count it towards this
5 requirement it would, but it could still be open to
6 residents of the building.

7 MR. HILDEBRAND: So if a handicapped
8 person buys a unit in here, and everyone else in
9 the building can go up there but he or she, would
10 that meet the requirement of the law?

11 MR. PARKER: I don't know.

12 MS. SORG: If I may answer that, no, it
13 would not.

14 MR. HILDEBRAND: So the intent of the
15 applicant is not to use the rooftop as occupiable
16 space typically.

17 MR. ROBERTSON: Correct.

18 CHAIRPERSON GRIFFIS: But perhaps we were
19 going in a lot of different directions here. You
20 weren't ever looking at your analysis as if this
21 was going to be informal residential rec space, but
22 that there was a stair provided, and someone might
23 avail themselves, but it wasn't in terms of how you
24 analyze it to look at whether you supported the
25 variance.

1 I think if they built it the way it
2 is, if I understand this correctly, and people went
3 up there, and somebody with a disability or a
4 handicap bought a unit, it would not violate
5 because you haven't offered a public amenity up
6 there. I mean, basically what it would mean is
7 that condo owners were going up there to repair the
8 roof, or to illegally sunbathe.

9 MR. HILDEBRAND: Unless over time it does
10 become an amenity of the building, at which point
11 then a tenant could possibly take legal action
12 against the condo association.

13 CHAIRPERSON GRIFFIS: Right. In which
14 case, is there anything from an architectural
15 standpoint that would preclude the condo
16 association from getting a new elevator and adding
17 a penthouse. Outside of the rigorous standard of
18 review by the city, just architecturally, would
19 there be anything that would preclude animation of
20 the roof in the future, at a future time?

21 MS. SORG: I think it would be a very
22 difficult and expensive thing to do to add another.

23 MR. ROBERTSON: Actually, I believe there
24 would be, because there's the core, and there's a
25 residential penthouse which occupies the entire top

1 plate. So the entire top plate is either a
2 residence or the current elevator, and that's it.
3 So there isn't any other way to get up to the roof.
4 You'd be going through somebody's -- that guy's
5 unit on the top floor.

6 MR. HILDEBRAND: Because you'd be adding
7 another story to the existing elevator. Can you
8 talk to me a little bit about the mechanical
9 system? I noticed there's no mechanical penthouse.
10 Are you just envisioning small equipment that's
11 like condensing units that are going to be on the
12 roof? There's no central unit for the entire
13 building.

14 MS. SORG: There's no cooling tower or
15 anything. There are mechanical spaces in each
16 unit, and then on the roof we will have some
17 mechanical.

18 MR. HILDEBRAND: Nothing -- Anything of a
19 height that would require screening?

20 MS. SORG: No.

21 MR. HILDEBRAND: That's a stair tower.
22 That's a linear. I don't know why it's so big.
23 Oh, it's a cutback stair. That's why.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. HILDEBRAND: Are you providing a

1 private stair access from the top unit to the
2 roof, independent of the building stair?

3 MR. ROBERTSON: No.

4 MR. HILDEBRAND: Okay. Good. I was
5 misinterpreting your drawings.

6 CHAIRPERSON GRIFFIS: Good. I thought
7 you wanted people up there using the thing. Okay.
8 Man, I want to be on the sixth floor. What else?
9 Anything else? Okay. Nothing else. Does the
10 applicant have any cross examination of the Office
11 of Planning?

12 MR. SHER: No.

13 CHAIRPERSON GRIFFIS: Okay. Let's move
14 on then to -- we've already noted that Historic has
15 looked at this, Exhibit Number 24. It's also
16 attached to the applicant's submission. The ANC-
17 2F. Is the ANC present? They are recommending
18 approval. Exhibit Number 22.

19 I don't have any other government or
20 association submissions attendant to this unless
21 board members are aware. Oh, you know, is this
22 what was on our chair, this ANC thing?

23 MR. MOY: Would you like to address that,
24 Mr. Chair?

25 CHAIRPERSON GRIFFIS: Did you submit

1 this?

2 MR. SHER: Mr. Chairman, the board has in
3 the record the report of the ANC dated May 18. We
4 went back to the ANC because we redesigned the
5 property to eliminate the one area of relief. So
6 in an abundance of caution we went back to them and
7 said we're asking for less than we asked for
8 before, is that still okay. And they sent us back
9 an email reflecting the fact that they said yes,
10 it's okay. We've given you a copy of that, but
11 it's not a final, signed, version of the ANC's
12 supplemental report, which we understand is perhaps
13 on its way to the board. But we got this and we
14 just wanted you to have it.

15 CHAIRPERSON GRIFFIS: Okay. Well, and I
16 think that's excellent. We'll certainly keep it in
17 the record for clarity. Of course the May 18 did
18 address three variances. And the two that we're
19 looking at today in addition, as you said, the core
20 variance. So. And here I thought we were getting
21 personal notes while we were on break. But
22 nonetheless, we'll put it in the public record.

23 Okay. Anything else? Is there anyone
24 here attendant to Application 17191 to give
25 testimony either in support or in opposition? Not

1 noting anyone here to present testimony, let's
2 go to any other questions from the board.
3 Questions from the applicant.

4 Well, then we're ready for any concluding
5 remarks.

6 MR. SHER: We believe that we've met the
7 burden of proof required for the granting of the
8 two variances, and we would respectfully request
9 the board to act in that direction, and we hope
10 that the board could do that this afternoon. Thank
11 you very much.

12 CHAIRPERSON GRIFFIS: Thank you very
13 much. Let me first say that the board's becoming
14 incredibly familiar with this area, especially with
15 the ARTS overlay. And I think from my
16 understanding of the board's review of the ARTS
17 overlay, it has established a good intent in terms
18 of animating. We've always run into the conflict
19 of as you take away square footage for retail,
20 which is such an important aspect for urban areas,
21 and especially originally retail corridors such as
22 14th Street, and how do you then balance the two
23 things. How do you balance first of all the
24 residential requirement inside the building, and
25 then how do you balance the fact that we're really

1 moving people to be out onto the sidewalks as
2 that liveliness in terms of utilizing all that
3 retail that we're starting to require, but also
4 getting out and enjoying the parks and the
5 recreating within the urban dynamic. We've seen
6 quite a bit of it.

7 And this is an interesting application
8 because this breaks what I don't think was a very
9 formal threshold, but certainly a threshold for the
10 board as I'm aware, as the board has never been
11 asked to grant relief of 100 percent of residential
12 recreation space. I may be wrong with that, but in
13 my recollection. And this in particular, I think,
14 makes the case incredibly strong in terms of the
15 amount of what's being asked of a very small site,
16 which as I said earlier, is coming in matter-of-
17 right on so many different aspects that one might
18 anticipate, generally speaking, that would
19 conceivably come in for variance.

20 So with that, I would move approval of
21 17191 of the 14th & R Partners LLC, and that would
22 be for the variance from the residential recreation
23 requirements and also from the variance for the
24 off-street parking requirements, to construct the
25 seven-unit residential building with a retail

1 ground floor and first floors of premises. As
2 noted as we called this out because there's too
3 many addresses to say this late in the afternoon.

4 MR. ETHERLY: Seconded.

5 CHAIRPERSON GRIFFIS: Thank you very
6 much, Mr. Etherly. I'll go over again, first of
7 all the residential rec space. I think it is clear
8 the fact of the uniqueness aspect of this. One,
9 the diminished site. Two, the expanded core, which
10 really puts you to the diminished area of which
11 would be utilized for the actual product, the
12 actual residential units.

13 I think what has been accomplished here
14 is actually much bigger units, only out of -- I can
15 only speculate, but out of the necessity of
16 utilizing the floor available, and making, frankly,
17 a more realistic, for lack of a better word, a more
18 realistic unit. You could try and pack 50 units
19 into this building, and probably wouldn't work at
20 all. They'd all be studios or what have you. When
21 you look at the encumbrances based on that, and
22 based on the diminished size, and then you try and
23 put in 15 percent of residential rec, which equates
24 to the thousands of square feet, as you pull it
25 through it's hard to imagine where you would find a

1 place for seven units that would need some sort
2 of communal recreating. And in fact, as you
3 started putting in the communal recreating space,
4 you would diminish the units. So it would probably
5 be down to more like six. And so providing for six
6 units, you know, something upwards of a nice big
7 health club that was private. Anyway, I could go
8 on and on, but shouldn't. I think the uniqueness
9 and the practical difficulty, just based on that,
10 is pretty clear.

11 In terms of impairing the intent and
12 integrity of the zone plan or the public good, I
13 think that factors back into what and why
14 residential rec was actually even created, which I
15 won't go through that whole litany of which I'm
16 prepared to. But certainly in this area, first of
17 all as it's adjacent to the residential area, as it
18 is part of one the original areas of Washington,
19 D.C., it does have access to large outdoor
20 recreating. The intent of the residential rec, as
21 we're well aware, is to maximize outdoor areas for
22 passive and active recreating. And we have, as has
23 been attested to here, some spectacular parks to go
24 and do that. In addition, we have the interior
25 which can be utilized, which are public facilities,

1 for actually more rigorous or more active
2 recreating.

3 In terms of the parking, that hardly
4 needs to be, I think, discussed any further than
5 we've done currently. It's near impossible, just
6 looking at this, with a 50-foot dimension. If you
7 look at the required, and you add it up. If you
8 have -- let's round it out to 20 feet per parking,
9 and you have a drive aisle that's required that may
10 be upwards of 17 or 20 feet, again averaging, and
11 you have access down into it, and you've got to
12 circulate around, you've only got 50 feet to do it.
13 You're upwards of 60 feet to get anything done to
14 get to one parking spot. So I think that's pretty
15 clear in terms of the unique aspect of this.

16 Although regularly shaped, it is a diminished shape
17 for what's a matter-of-right development on it, and
18 a practical difficulty is there.

19 Now, impairing the intent and integrity
20 of the zone plan or the public good. Parking is
21 always, I think, a difficult one for us to rush
22 through in terms of granting relief, especially
23 with areas of which this board's familiar -- I
24 think the whole city is -- that's really
25 dramatically changing. I think if it was at all

1 possible, the board would hold out as long as
2 possible in terms of diminishing the parking
3 requirement, although there's a balance of
4 reasoning for it also. As this becomes more urban,
5 perhaps more people do not drive. And perhaps as
6 more of these buildings are built and the amenities
7 and the services are within walking distance, the
8 less people will drive, and aren't we all better
9 off for it.

10 But in any case, it's clear that the
11 provision of the parking in this circumstance can't
12 be provided, and would not impair or rip apart the
13 zoning and the intent of the zoning. And I don't
14 think it would diminish or impair the public good.
15 But that's all I know. Others? Ms. Miller?

16 MS. MILLER: I just want to note that
17 while this may be the first case in which the board
18 may grant a 100 percent variance from the
19 residential rec requirement, I think it's also the
20 first case in which the residential units have 100
21 percent recreation space of their own. I think
22 that's what balances it out in this case. Each
23 resident has their own private terrace right off
24 their unit, so they don't need to go necessarily to
25 a roof or somewhere else inside.

1 MR. HILDEBRAND: That's a very
2 important point. I would only like to say that
3 depending upon how you tenant out the retail space,
4 you might consider, should this application be
5 approved, looking at potentially providing several
6 units with less space and trying to offset some
7 more parking towards the retail. I think if you
8 have a single tenant, perhaps three is enough. But
9 if you're looking at four to six different tenants,
10 you might find that that's underserved for your
11 office use.

12 CHAIRPERSON GRIFFIS: I'm not sure I
13 understood that.

14 MR. HILDEBRAND: I mean, well right now
15 they're providing 14 spaces for the residential
16 units and three spaces for the retail. If they're
17 doing multiple retail tenants, they might take
18 perhaps 12 for the residential side and five for
19 the retail side.

20 CHAIRPERSON GRIFFIS: Oh, I see. Provide
21 more parking for the retail. I see. Okay. That
22 makes sense. Okay. Others? Okay. Very well. We
23 have a motion before us. It has been seconded. If
24 there's nothing further to speak on the motion, I'd
25 ask for all those in favor to signify by saying

1 'Aye.'

2 (Chorus of Ayes.)

3 CHAIRPERSON GRIFFIS: And opposed?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Mr. Moy?

6 MR. MOY: Staff would record the vote as
7 5-0-0 on the motion of the chair to approve the
8 application, seconded by Mr. Etherly. Also in
9 support of the motion: Ms. Miller, Mr. Mann, and
10 Mr. Hildebrand.

11 CHAIRPERSON GRIFFIS: Good, thank you
12 very much. Anything else for the board this
13 afternoon?

14 MR. MOY: Would you care for a summary
15 order on this, sir?

16 CHAIRPERSON GRIFFIS: Yes. I don't see
17 any need for a full order on this. Maybe we can
18 waive our requirements and issue a summary order.
19 Yes, okay. Good. Thank you.

20 MR. SHER: We thank the board for its
21 consideration.

22 CHAIRPERSON GRIFFIS: Oh, indeed. Thank
23 you all very much. Appreciate it. It was an
24 excellent application, and I think that's why we
25 could do it so expeditiously. And definitely want

1 a copy of that. And for the record, what's the
2 -- you said you were going to pull permits in a
3 matter of weeks? Is that what you were
4 anticipating?

5 MR. ROBERTSON: I'd like to apply in mid-
6 August.

7 CHAIRPERSON GRIFFIS: Okay. So you may
8 be in construction in the fall? Excellent. Well
9 good luck to you. Okay, if there's nothing further
10 for the board, then I'll conclude the afternoon
11 session of the 13th.

12 (Whereupon, the foregoing matter went off
13 the record at 5:40 p.m.)

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