

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 27, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 11:04 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

JOHN G. PARSONS	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

Beverley Bailey	Zoning Specialist
John K.A. Nyarku	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

Stephen Mordfin	Office of Planning
Travis Parker	Office of Planning
Steve Cochran	Office of Planning
Karen Thomas	Office of Planning

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D.C. OFFICE OF THE ATTORNEY GENERAL:  
Sherry Glazer, Esq.

(This transcript constitutes the minutes from  
the public hearing held on Tuesday, July 27, 2004)

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

(11:04 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the morning public hearing of the 27th of July 2004. This is the Board of Zoning of the District of Columbia and my name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and also it is my privilege to have Mr. Etherly with us, of course, as always, as member of this Board. Representing the Zoning Commission is Mr. Parsons with us this morning, and representing the National Capital Planning Commission is Mr. Mann. A very good morning to all of you.

Copies of today's hearing agenda are available for you. Pay no attention to the time that's listed on those hearing schedules, but you can see, obviously, the chronology of the cases which we're going to get through.

I do, let me say, appreciate everyone's patience with the Board as we had a lot of business obviously that you've sat through for our morning special public meeting.

Again, let me reiterate the fact that we have two ways that we record all proceedings before

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1 the Board of Zoning Adjustment. The most important,  
2 of course, is the court reporter, who is sitting to my  
3 right on the floor. We are also being broadcast live  
4 on the Office of Zoning's website. So to that,  
5 there's a couple of things.

6 First of all, when coming forward to speak  
7 to the Board, you need to fill out two witness cards.

8 Witness cards are available where you entered into  
9 the hearing room, and they are also available at the  
10 table where you will give testimony. Those two cards  
11 go to the recorder prior to coming forward to address  
12 the Board.

13 Also I would ask that when you do come  
14 forward, you are going to need to say your name and  
15 your address only once so that we can obviously give  
16 all the credit for the things that you say in the  
17 transcript.

18 Let me also have everyone turn off cell  
19 phones and beepers at this time so we can move on  
20 fairly quickly.

21 The order of procedure for special  
22 exceptions and variances is first we hear the  
23 statement of witnesses of the applicant. Second, we  
24 hear any government reports attendant to the  
25 application such as the Office of Planning's report.

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1 Third, we hear from the Advisory Neighborhood  
2 Commission. Fourth, we hear persons or parties in  
3 support of an application. Fifth, we hear persons or  
4 parties in opposition to the application. Sixth,  
5 finally, of course, is any time for rebuttal witnesses  
6 by the applicant and closing remarks by the applicant.

7 I'm going to race through a lot of these  
8 opening statements so we can get on with our schedule.

9 If there is a need for me to reiterate or, in fact,  
10 state, I will get that with the specific case. But an  
11 important aspect is cross-examination.  
12 Cross-examination of witnesses is permitted by the  
13 applicant and parties in a case. The ANC within which  
14 the property is located is automatically a party in  
15 the case and therefore will be afforded the ability to  
16 cross-examine witnesses.

17 The record will be closed at the  
18 conclusion of this hearing except for any materials  
19 that will be requested by the Board, and we are very  
20 specific on what is to be submitted and what it is to  
21 be submitted into the Office of Zoning. After that  
22 material is received, of course, everyone should  
23 understand that the record would be finally closed and  
24 no other information is accepted into the record.  
25 That record, of course, is what we will look at,

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1 review, deliberate and decide on.

2 The Sunshine Act requires that this Board  
3 conduct all hearings in the open and before the  
4 public. This Board may enter into executive session  
5 either during or after a hearing on a case, and that  
6 would be in accordance with our rules of procedure and  
7 also the Sunshine Act.

8 The decision of this Board in contested  
9 cases must be based exclusively on the record, and  
10 that is why it's so important, of course, to put all  
11 your testimony on the record today or submit it in  
12 writing while the record remains open.

13 We would ask that people present today not  
14 engage Board members in conversation today so that we  
15 do not give the appearance of receiving information  
16 outside of the record.

17 The Board will now consider any  
18 preliminary matters. Preliminary matters are those  
19 which relate to whether a case will or should be heard  
20 today, such as requests for postponements,  
21 continuances, or withdrawal, or whether proper and  
22 adequate notice has been provided. If you are not  
23 prepared to go forward with a case today or you  
24 believe the Board should not proceed with a case on  
25 its hearing agenda, I would ask that you bring that to

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1 our attention.

2 I am first going to say a very good  
3 morning again to Ms. Bailey from the Office of Zoning.

4 Mr. Moy, who is usually with us, is not here with us  
5 today, but I'm sure he's having a great time where he  
6 is. And Mr. Nyarku also from the Office of Zoning is  
7 with us.

8 Ms. Bailey, are you aware of any  
9 preliminary matters for the attention of the Board?

10 PRELIMINARY MATTERS

11 MS. BAILEY: Mr. Chairman, yes, sir, there  
12 is, and it does contain one of the cases this morning,  
13 Application Number 17095 of Sun Service, Inc. There  
14 is a request for that application to be continued to  
15 another date.

16 CHAIRPERSON GRIFFIS: Okay. Thank you.  
17 Let me think about where we take that up in the  
18 agenda, but in the meantime, while I take a moment,  
19 let me ask that all those that are going to testify  
20 today or even thinking about testifying, if you would,  
21 please stand and give your attention to Ms. Bailey.  
22 She is going to administer the oath.

23 (Witnesses sworn.)

24 CHAIRPERSON GRIFFIS: Very well. Why  
25 don't we get quickly just to Sun Service, 17095, which

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1 I believe is requesting a continuance. Do we need to  
2 call the case in that, Ms. Bailey?

3 MS. BAILEY: No, Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Good. Let's not.

5 Is a representative here? The applicant?

6 Okay. First of all, we did receive a  
7 written letter requesting the continuance and, quite  
8 frankly, the reason why I'm calling you up here is  
9 because I was handed it this morning walking into  
10 this. So I just need a little bit of clarification.  
11 So we're going to have you just introduce yourself for  
12 the record and we can proceed very expeditiously with  
13 this.

14 MR. GUNES: Bekir Gunes. I represent Sun  
15 Service.

16 CHAIRPERSON GRIFFIS: Okay. We have been  
17 through this before.

18 MR. GUNES: The reason I want a  
19 continuance is because I found out I couldn't get  
20 anywhere myself and I hired a lawyer, which is the  
21 lawyer that's going to represent me. Two weeks ago,  
22 we have conversation with the lawyer, but he just came  
23 from vacation, so physically he said we're not ready  
24 to have that this morning.

25 CHAIRPERSON GRIFFIS: Okay.

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1 Anything to add?

2 MR. GLASGOW: I was contacted officially  
3 to attend the hearing today yesterday, so obviously we  
4 didn't file a statement or any of the normal things  
5 that we file when we're contacted within a case.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. GLASGOW: I had been contacted by  
8 Bekir originally about two weeks ago to deal with  
9 this. I told him I was not able to get a statement in  
10 the record. I was on vacation last week so I was not  
11 in a position to proceed forward with this  
12 application.

13 Also, I am aware because of other cases  
14 that I've held that we potentially have a decision in  
15 a case on this same property which would in a fairly  
16 short period of time moot this case potentially.

17 CHAIRPERSON GRIFFIS: All right. We have  
18 a decision scheduled for August 3rd on this property  
19 which would obviously impact the existing application  
20 that is before us.

21 My concern is this, and I know the Board  
22 members remember this: The last two times you have  
23 been before us, we have said this is it, no more  
24 continuances. You have opposition from the -- I  
25 believe it's the Reed-Cooke Association that was

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1 saying that they want this dispensed with very  
2 quickly, and obviously I think that's what we're  
3 balancing here.

4 But let me -- if there are questions or  
5 anything from Board members -- Ms. Miller?

6 VICE CHAIRPERSON MILLER: I have two  
7 questions. One is, I want to know if there is anybody  
8 else here who wishes to speak to this case. The last  
9 time we were here, the Reed-Cooke Neighborhood  
10 Association opposed the motion for continuance.

11 (No response.)

12 VICE CHAIRPERSON MILLER: Okay. Not  
13 hearing from anybody, I'll move to my second question,  
14 and that is to Mr. Glasgow.

15 I don't know to what extent you have had a  
16 chance to look at this application, but is it your  
17 understanding that if the other application involving  
18 this same property is granted a variance on August 3rd  
19 or granted the variances at issue, that this case will  
20 be moot and over?

21 MR. GLASGOW: This case would be mooted as  
22 soon as construction starts, which we would like to  
23 start, as representing that other applicant, very  
24 quickly. As you probably are aware, there have been  
25 requests for the Board to decide that case and we

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1 understand the Board's schedule, that it couldn't come  
2 up until next Tuesday, but we're ready to move forward  
3 very rapidly with the commencement of construction at  
4 that site. We're awaiting the Board's decision and  
5 the issuance of the order.

6 VICE CHAIRPERSON MILLER: Okay. That  
7 really doesn't -- then our decision on August 3rd does  
8 not decide this case.

9 MR. GLASGOW: Oh, yes. Yes, it does.

10 VICE CHAIRPERSON MILLER: Because we don't  
11 have any control over when construction starts. So  
12 you're saying construction would moot the case, not a  
13 decision on the variance.

14 MR. GLASGOW: No, I'm saying both because  
15 we're not going to start construction if we don't have  
16 the granting of the case.

17 VICE CHAIRPERSON MILLER: I guess I also  
18 want to inquire when you were retained and if you have  
19 had a chance to look at this case, because, as the  
20 Chairman was saying, it was pretty clear to the  
21 applicant in this case that we had already continued  
22 the case a couple times and we were -- he was supposed  
23 to be prepared today.

24 MR. GLASGOW: Well, I was retained  
25 yesterday afternoon, so I haven't looked at the case.

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1 I'm aware that there is a case out there because of  
2 trying the other case, but I haven't looked at any of  
3 this in any kind of detail.

4 VICE CHAIRPERSON MILLER: And, I'm sorry,  
5 I didn't catch your name, but why is it that you took  
6 until two weeks ago to try to retain an attorney for  
7 yourself?

8 MR. GUNES: Because all Adams Morgan  
9 Association of Restaurant Owners business which we  
10 have contract, they're pushing the D.C. Councilmember,  
11 they want to continue that business, and I told them I  
12 can't myself just -- you know, it's no place and I was  
13 there last time, which I said we're going to advance  
14 it. But it's no space, and all Adams Morgan  
15 Association of Restaurant Owners, they support me,  
16 they say we can do something with help from the  
17 government because there's no parking in Adams Morgan.

18 VICE CHAIRPERSON MILLER: Okay. Mr.  
19 Glasgow, let me ask you this question even though you  
20 just recently picked up the case. If we deny or  
21 dismiss the case today, how does that impact on the  
22 applicant?

23 MR. GLASGOW: Well, I guess, depending  
24 upon what all the options would be, it's after the  
25 order is issued whether we would file for a motion for

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1 reconsideration and how that all would go. But I  
2 don't know that there is a -- hopefully there is not a  
3 necessity to do that just because of other things that  
4 are going to be happening with the property, although  
5 I don't want to prejudge what the Board is going to do  
6 next week.

7 VICE CHAIRPERSON MILLER: Okay. What I  
8 would like to say is, I mean, I would tend to lean  
9 towards denying today based on the history in this  
10 case; however -- dismissing -- however, since there is  
11 nobody here actually asking that this motion be denied  
12 today, I could go along with one more continuance.

13 CHAIRPERSON GRIFFIS: Others?

14 Okay. I don't want to spend a lot of time  
15 on this, although -- well, quite frankly, it doesn't  
16 deserve a lot of our time because we have been through  
17 this so many times. I can't imagine how we weren't  
18 more clear than we were last time when I said you  
19 should get representation to put this application  
20 together. That it took some time, I think we can  
21 grant a little bit of understanding.

22 I am with Ms. Miller in the fact that we  
23 knew if we saw this again and it wasn't ready to go,  
24 we were going to dispense with it; however, I think  
25 with the new information, with the application that

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1 has come in in the meantime that dealt specifically  
2 with this property obviously has a major impact on  
3 it.

4 What I would suggest we do is set this for  
5 the 21st of September 2004 for a hearing in the  
6 morning. Quite frankly, just based on the assurance  
7 that depending on what happens in our decisionmaking  
8 on August 3rd that we at least give you an opportunity  
9 to make your case. You know, my words my seem hollow  
10 because I think this is what I said last time. We  
11 can't do this again.

12 We are putting you in in a very packed  
13 morning, and so I will not be able to afford you an  
14 awful lot of time, so we're fully expecting that the  
15 case that would come before us to be incredibly well  
16 set out in the written submissions so that we might  
17 get through it very quickly at that time.

18 Let me hear any other comments or actually  
19 disagreements with doing that from the Board members  
20 who are actually on this case, which is Mr. Etherly  
21 and myself and Ms. Miller, regarding this application.

22 Is there any objection to doing that?

23 Okay. Not having any voiced objection, I  
24 think we should set this, then, for the 21st of  
25 September and move on with our agenda today. Thank

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1 you.

2 MR. GLASGOW: Thank you.

3 CHAIRPERSON GRIFFIS: Okay. Ms. Bailey,  
4 when you are ready.

5 APPLICATION OF MacARTHUR LAVEROCK LLC

6 17193 ANC-3D

7 MS. BAILEY: The first case, Mr. Chairman,  
8 is Application Number 17193 of MacArthur Laverock LLC,  
9 pursuant to 11 DCMR 3103.2, for a variance from the  
10 rear yard requirements under Section 404 to construct  
11 a single-family detached dwelling in the R-5-A  
12 District at premises 4600 block of Laverock Place,  
13 Northwest, also known as Square 1356, Lot 36.

14 Is the applicant here on this case? Would  
15 you please have a seat at the table.

16 CHAIRPERSON GRIFFIS: Thank you, Ms.  
17 Bailey.

18 Ms. Bailey, I know you are about to  
19 mention to me that there are two applications for  
20 party status; is that correct?

21 MS. BAILEY: Yes, sir.

22 CHAIRPERSON GRIFFIS: Excellent. Thank  
23 you very much.

24 These are applications for party status  
25 proponents, supporters of this application. Are

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1 Elizabeth Castaldi, Mark Myers, and Caroline Ortwein  
2 here? You are all here? All three. Fabulous. All  
3 right. We're going to combine that party application  
4 status.

5 Let me ask you a couple quick questions.  
6 You can make your way up, just have a seat at the  
7 table. First of all, of course, there are two  
8 different ways one can participate in an application.  
9 Actually, there are more, but here are the two that  
10 are before you.

11 First of all, as an individual, come and  
12 give your testimony as a person. We allow you the  
13 time. You do avail yourself to cross-examination and  
14 we take that in. The second is to, as you have done,  
15 apply for party status. If granted party status, you  
16 are a full participant in this case, meaning we will  
17 call you to present a case in support of this  
18 application, you are able to cross-examine all the  
19 witnesses that will be called, you will be required as  
20 the Board requests filings from the applicant,  
21 findings of facts, conclusions of law. You're a full  
22 participant.

23 What I am asking you is whether you want  
24 to be -- first of all, whether you understood that  
25 there were two ways to go about this, and secondly if

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1 you want to rise to the level of party status or do  
2 you just want to provide testimony as a person?  
3 Before you answer any of that, you can just state your  
4 name and address for the record.

5 MS. CASTALDI: Okay. I'm Elizabeth  
6 Castaldi at 4600 Laverock Place, Northwest.

7 CHAIRPERSON GRIFFIS: Excellent.

8 MS. CASTALDI: And I didn't understand  
9 that there were two -- we just got a form in the mail  
10 and I filled it out.

11 CHAIRPERSON GRIFFIS: Perfect.

12 MS. CASTALDI: I guess what I would like  
13 to do is be on the record in support of the  
14 application.

15 CHAIRPERSON GRIFFIS: Okay. So you want  
16 to provide testimony as a person.

17 MS. CASTALDI: I think so.

18 CHAIRPERSON GRIFFIS: Excellent.

19 MS. CASTALDI: Yes. Okay.

20 CHAIRPERSON GRIFFIS: What we're going to  
21 do then, as you heard, or maybe I went too quickly,  
22 but we do have the order going through. I'm going to  
23 have them present the case itself, we're going to get  
24 the government reports, and then I'm going to have you  
25 come up and just give testimony, say whatever you

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1 would like for three minutes, and then we will move on  
2 from there.

3 MS. CASTALDI: Okay. And would there be  
4 any advantage to my doing the second, the second one?

5 CHAIRPERSON GRIFFIS: The party status?

6 MS. CASTALDI: The party status.

7 CHAIRPERSON GRIFFIS: Any advantage?

8 MS. CASTALDI: No.

9 CHAIRPERSON GRIFFIS: I mean, for this  
10 application?

11 MS. CASTALDI: No. Okay. All right.  
12 Just asking. Okay.

13 CHAIRPERSON GRIFFIS: Well, you know, I  
14 have to think so heavily about the answers I give  
15 these days. No. I think in this instance, if you're  
16 supporting, there clearly wouldn't be unless -- no.

17 MS. CASTALDI: Good. Okay.

18 CHAIRPERSON GRIFFIS: We will give you  
19 every opportunity to provide what you want in the  
20 case. Excellent.

21 MS. CASTALDI: Thanks.

22 CHAIRPERSON GRIFFIS: Are the others here?  
23 Caroline Ortwein? Is that how you say your name?

24 MS. CASTALDI: Ortwein. She is not here,  
25 nor is Mark Myers.

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1 CHAIRPERSON GRIFFIS: Okay. And they were  
2 all supportive, so I think we can take them both as  
3 written submissions in support of the application, and  
4 we will call you back up hopefully very quickly.

5 MS. CASTALDI: Great. Thanks.

6 CHAIRPERSON GRIFFIS: Thank you very much.

7 Okay. With that, let's turn it over for  
8 introductions to Mr. Glasgow.

9 MR. GLASGOW: Mr. Chairman, for the  
10 record, my name is Norman M. Glasgow, Jr., of the law  
11 firm of Holland & Knight, appearing on behalf of the  
12 applicant, MacArthur Laverock LLC, for a variance from  
13 the rear yard requirement to construct a single-family  
14 detached dwelling on the subject property. The  
15 proposed rear yard is at twelve feet whereas the  
16 required rear yard is 20 feet.

17 Here with me today is Mr. John Casey of  
18 Laverock LLC, the developers of the property.

19 I guess the question I have for the Board  
20 members is if you have received a copy of the  
21 statement that we have filed, and I assume that you  
22 have received a copy of the report of the Office of  
23 Planning and the ANC report.

24 CHAIRPERSON GRIFFIS: Correct. We  
25 received yours and reviewed everything in the file,

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1 which includes the Office of Planning and the ANC  
2 report.

3 MR. GLASGOW: All right. We are prepared  
4 to go a couple of different ways. We can either give  
5 a very brief presentation, we can answer questions  
6 from the Board, we can --

7 CHAIRPERSON GRIFFIS: Good. I think it  
8 might be -- I think the filings are very clear and  
9 straightforward, both the applicant's, the Office of  
10 Planning's, and the ANC's. I don't think there is any  
11 difficulty with standing on the record unless the  
12 Board members have any difficulty with that. I think  
13 we have preliminary questions that could be answered.

14 Obviously one of the pieces that came up  
15 -- let me not race to that. Does anyone have any  
16 objection to having then stand on the record?

17 Very well. Then one of the issues that  
18 came up was lot occupancy. Is this being -- and the  
19 other aspect was, in the filing, there is a question  
20 -- actually, in the description of the proposed  
21 construction, the applicant proposes to develop the  
22 property with one matter-of-right single-family  
23 dwelling, and, in fact, the ANC echoes that language  
24 in their report. And then I was thinking, well, why  
25 am I reading this if this is matter of right? So

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1 really I think it goes to the lot occupancy or how you  
2 can explain that.

3 TESTIMONY OF JOHN CASEY

4 MR. CASEY: Mr. Chairman, my name is John  
5 Casey. I'm a representative of Bogdan Builders,  
6 Laverock LLC, for the proposed site.

7 Right now, the site is currently a vacant  
8 lot with a shed on it, and we're proposing to build a  
9 single-family dwelling on the property.

10 We felt as though there was some -- well,  
11 first of all, we have been in front of the Laverock  
12 Homeowners Association as well as the ANC and have  
13 letters of approval.

14 CHAIRPERSON GRIFFIS: Right. Yes. We  
15 have all those in here. They have all been read.

16 MR. GLASGOW: I think he has a specific  
17 question, and that is, I think that the ANC does not  
18 -- misinterpreted what percentage of lot occupancy is.

19 I think they were adding in paved areas, particularly  
20 on the two lots that face MacArthur Boulevard that  
21 aren't even subject to this application as being  
22 within lot occupancy.

23 I think just a quick review of the plat  
24 that is attached at page 2 --

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. GLASGOW: -- of the Office of Planning  
2 report pretty well shows, if you look at the lot area  
3 and the footprint of the house that we are -- we don't  
4 have a lot occupancy issue.

5 CHAIRPERSON GRIFFIS: Okay. I did want to  
6 address -- this is, of course, a self-certified  
7 application; it's not coming in for relief from lot  
8 occupancy. In your own self-certification  
9 application, the maximum allowable lot occupancy is 40  
10 percent for this zone district, and you are saying  
11 that your proposed construction is at 28.7 percent; is  
12 that correct?

13 MR. CASEY: Yes, that is correct.

14 CHAIRPERSON GRIFFIS: Excellent. Doing  
15 simple math with the simple mind I have, 28.7 is less  
16 than 40.

17 MR. CASEY: Correct.

18 CHAIRPERSON GRIFFIS: All right. We made  
19 it through that one, in which case, let's move ahead,  
20 then.

21 Are there any other questions of the Board  
22 regarding this application?

23 VICE CHAIRPERSON MILLER: I was just  
24 wondering about the ropes course. There seems to be a  
25 lot of mention to ropes course on another property and

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1 what this property is going to do with respect to that  
2 ropes course.

3 CHAIRPERSON GRIFFIS: Yes. We have had  
4 discussions with the owner of the property with the  
5 rope courses and the telephone poles that are  
6 supporting them, and we have had discussions with  
7 removing those when we start construction on our  
8 project. We have had discussion with the owner of  
9 that property to go ahead and take them down at our  
10 expense.

11 CHAIRPERSON GRIFFIS: Okay. Any other  
12 questions from the Board?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Is the ANC  
15 representative here, 3D? ANC representative?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Okay. I think it's  
18 pretty obvious that this has been all laid out very  
19 succinctly and directly to the case for the relief  
20 requested. I don't think there is any question,  
21 looking at the submissions and actually again the  
22 larger site plans that are there that this is a  
23 uniquely shaped piece of property.

24 There's also the point that where the  
25 building is allowed to sit on the site and how the

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1 property line abuts closely to -- or actually abuts  
2 the curb lent itself to its uniqueness and practical  
3 difficulty.

4 All that being said, I think we should  
5 move on, if there aren't further questions from the  
6 Board, to the Office of Planning's report, and I wish  
7 a very good morning to the Office of Planning's  
8 representative with us today.

9 REPORT FROM THE OFFICE OF PLANNING

10 BY STEPHEN MORDFIN

11 MR. MORDFIN: Good morning, Chairman and  
12 members of the Board. I'm Stephen Mordfin with the  
13 Office of Planning, and the Office of Planning would  
14 like to stand on the record in this case.

15 CHAIRPERSON GRIFFIS: Very well.

16 Does the Board have any questions of the  
17 Office of Planning? Applicant have any  
18 cross-examination for the Office of Planning?

19 MR. GLASGOW: No, sir.

20 CHAIRPERSON GRIFFIS: Good. I will take  
21 a quick moment to say that it's an excellent report  
22 and we can have everyone stand on the record because  
23 it is so sufficiently laid out and comprehensively  
24 laid out for the variance for the rear yard, the  
25 requirements, the uniqueness, the practical

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1 difficulty, and that this would not impair intent and  
2 integrity of the zone plan. Actually, the description  
3 also of the site was excellent with the use of the  
4 graphics.

5 Ms. Miller, questions of the Office of  
6 Planning?

7 VICE CHAIRPERSON MILLER: Well, either the  
8 applicant or the Office of Planning or both.

9 There is a letter here, Exhibit 27, from  
10 Washington MacArthur Associates, LLP, or something  
11 like that, which seemed to be suggesting conditions,  
12 and I would just like to get your response.

13 One is that -- am I reading this right? --  
14 that there be installed a thick buffer of evergreens  
15 to serve as a screen along the property shared with  
16 WMA, and two, that effective storm water management  
17 controls and designs be implemented to prevent  
18 potential erosion and possible flooding of WMA's  
19 property.

20 MR. CASEY: Yes. We do have a buffer of  
21 trees that are going to be planted between the  
22 neighboring property. With regard to the storm water  
23 system, we have been with our engineers to make sure  
24 that based on a 15-year flood, that the system can  
25 handle a 15-year flood, and currently the property has

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1 a -- at the bottom, it has a swell that leads to a  
2 sediment control pond, but our system is in place to  
3 handle 15-year floods.

4 CHAIRPERSON GRIFFIS: Okay. Part of the  
5 permitting process for this is that you're going to  
6 have to submit a storm water management plan; is that  
7 correct?

8 MR. CASEY: The storm water management  
9 plan has been reviewed and approved.

10 CHAIRPERSON GRIFFIS: Okay. Did you bring  
11 it to the attention of those reviewers of how  
12 important an issue this is and that may be more  
13 unique, that they ought to take a special look at it?

14 MR. CASEY: Yes. The system has been  
15 redesigned three times based on comments.

16 CHAIRPERSON GRIFFIS: I see. Okay. So  
17 you have confidence that they have looked at this in  
18 great detail?

19 MR. CASEY: Oh, yes.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. CASEY: It has been brought to the  
22 attention of the storm water management review office.

23 CHAIRPERSON GRIFFIS: Okay. Good.

24 Any other questions? Follow-up?

25 (No response.)

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1 CHAIRPERSON GRIFFIS: Very well. Let's go  
2 to the ANC report. I asked if the ANC member was  
3 here. I don't know if they have come in. If so, they  
4 can come forward and read their report. If not, it is  
5 Exhibit Number 26 and does meet the requirements, as I  
6 reviewed it, although I don't see when it was  
7 submitted, to be given great weight. They did vote 4  
8 to 3 to approve the request.

9 Comments from the Board regarding the  
10 letter? Yes?

11 VICE CHAIRPERSON MILLER: I would just  
12 note that they also supported the buffering of the  
13 evergreens.

14 CHAIRPERSON GRIFFIS: Indeed. And also  
15 the storm water management plan.

16 I can say also the ANC and the other  
17 association that submitted were in great support and,  
18 in fact, they felt that the siting of this building,  
19 moving it back in alignment with the other  
20 construction, was going to be not only in keeping but  
21 if you did it any other way, my interpretation of what  
22 they were saying is they would come in and object to  
23 the placement of it. So I think there is an aspect of  
24 negative -- you know, "make sure you look at this" --  
25 but also positive in terms of what you have been

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1 looking at, which is actually one of the basis of  
2 which your variance request relied on.

3 Ms. Miller, anything else?

4 VICE CHAIRPERSON MILLER: No.

5 CHAIRPERSON GRIFFIS: Okay. I do not have  
6 any other government reports submitted in regards to  
7 this application. As indicated, we do have the  
8 Washington MacArthur Association, LLP, letter, Exhibit  
9 Number 27. Is Mr. Holbrook here, any representative  
10 of that who wanted just to reaffirm?

11 (No response.)

12 CHAIRPERSON GRIFFIS: It is in the record,  
13 then, and we will take a look at that or have taken a  
14 look at that.

15 I don't have anything else submitted into  
16 the record at this time unless others are aware. Is  
17 the applicant aware of any other association or  
18 government documents?

19 MR. GLASGOW: No, sir.

20 CHAIRPERSON GRIFFIS: Very well. Let's  
21 hear the testimony, then, persons here to give  
22 testimony in support of the application. Just in  
23 order to fill out the panel here, let me call all  
24 persons in opposition to the application also. They  
25 can come forward. We will give a moment. Okay. I

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1 think we have everybody at the table that we need.

2 A very good morning again to you. I would  
3 just have you state your name and address again and  
4 proceed with your testimony.

5 TESTIMONY OF ELIZABETH CASTALDI

6 MS. CASTALDI: Sure. Elizabeth Castaldi,  
7 4600 Laverock Place, Northwest. It's the property  
8 right next door to the lot in question.

9 I just wanted to say on behalf of myself  
10 and our neighborhood association, which is Canal View,  
11 that given that they can build on this lot as a matter  
12 of right, which we are taking at their word, we would  
13 much prefer it to be set back from the road. The  
14 original plan had it built right on the sidewalk of  
15 our private road, and this allows it to have a little  
16 green space in the front and we think it will look  
17 better.

18 They have worked very hard with us. This  
19 has been a long process. I don't know if you know the  
20 original proposal was for five houses. They did scale  
21 it back to three and worked with us on the setback  
22 issue.

23 I am also happy to hear the commitment to  
24 take down the ropes course, which was one of our  
25 requests, and we had talked to the hospital and they

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1 were willing if Bogdan was willing, and that is  
2 wonderful and that has been an eyesore for all of us,  
3 and the hospital didn't have the funds to remove it.  
4 We thought it might make the properties more appealing  
5 when they want to sell them. So I think that will  
6 work out well for the neighborhood.

7 CHAIRPERSON GRIFFIS: Okay. Thank you  
8 very much.

9 A couple of things. First of all, we  
10 would have no jurisdiction about what happens to the  
11 ropes course.

12 MS. CASTALDI: Right.

13 CHAIRPERSON GRIFFIS: So I don't want you  
14 to leave here with the impression that we can somehow  
15 or we have required that the applicant go and remove  
16 those. We are concerned with this specific property.

17 I think obviously we encourage the communication. If  
18 everyone is in agreement, hopefully it will happen.

19 The other is, just for quick  
20 clarification, you said you are taking it on the  
21 belief that this is a -- they are able to build on  
22 this site matter of right. You mean that this is  
23 actually a buildable residential site?

24 MS. CASTALDI: Well, the lot originally  
25 that they bought was -- it had one house with a big

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1 lot and it has been split into three lots, which I  
2 understand was not -- I mean, it was a matter of right  
3 that they could just do that.

4 CHAIRPERSON GRIFFIS: Okay. So the  
5 subdivision in order to get ready for construction is  
6 what you believe is correct as a matter of right.

7 MS. CASTALDI: Correct. I'm assuming that  
8 that is correct.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. CASTALDI: Yes.

11 CHAIRPERSON GRIFFIS: Okay. So are we.

12 MS. CASTALDI: Okay.

13 CHAIRPERSON GRIFFIS: Otherwise we would  
14 be looking at -- okay. Very well.

15 Any other questions from the Board?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Does the applicant  
18 have any cross-examination?

19 MR. GLASGOW: None.

20 CHAIRPERSON GRIFFIS: Very well. Thank  
21 you very much.

22 MS. CASTALDI: Thanks.

23 CHAIRPERSON GRIFFIS: I appreciate you  
24 coming down and being so patient with us all morning.

25 MS. CASTALDI: Thank you.

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1 CHAIRPERSON GRIFFIS: Okay. Is there  
2 anyone else here attendant to Application 17193 to  
3 give testimony in support, opposition?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Very well. Mr.  
6 Glasgow, let's turn it over to you for summation,  
7 closing remarks.

8 MR. GLASGOW: Just very quickly, Mr.  
9 Chairman, if we could, we would like to get a bench  
10 decision and a summary order so we can move forward  
11 with the development of this property. Thank you.

12 CHAIRPERSON GRIFFIS: Very well. If there  
13 are no other further questions from the Board, I think  
14 it's appropriate to take this application up in a  
15 motion and further deliberation on that, and I would  
16 move approval of 17193 of application of MacArthur  
17 Laverock -- is that how you say it? See, I can read  
18 them, but I don't always say them out loud -- for a  
19 variance from the rear yard requirements under Section  
20 404 to construct a single-family detached dwelling in  
21 the R-5-A District, premises 4600 block of Laverock  
22 Place, Northwest. I would ask for a second.

23 VICE CHAIRPERSON MILLER: Second.

24 CHAIRPERSON GRIFFIS: Thank you very much.

25 I am going to be very brief on this. I

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1 think the criteria for variance of the rear yard has  
2 been set, one on the unique shape of the site, one on  
3 the unique setting, actually, of the property line and  
4 the road alignment, the adjacent properties, and also  
5 the other information that's in the record. I think a  
6 great reliance on my own deliberation is the Office of  
7 Planning's report, which has recommended approval of  
8 this and laid out the entire test, which I think was  
9 succinctly done.

10 Others? Yes, Ms. Miller.

11 VICE CHAIRPERSON MILLER: Mr. Chairman, I  
12 mean, I would suggest that we issue a summary order in  
13 this case, but I'm wondering if we can include in that  
14 summary order just a reference to their agreement to  
15 install the thick buffer of mature evergreens to serve  
16 as a screen along the property line shared with WMA.  
17 I believe that we can if the Board would like to. It  
18 would just be a one-line --

19 COMMISSIONER PARSONS: Just as a finding  
20 of fact, not a --

21 VICE CHAIRPERSON MILLER: Right, not as a  
22 condition. No one has really asked for it to be a  
23 condition. But just as a, right, as a finding. We're  
24 not even doing official findings of fact. Just in the  
25 narrative.

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1 COMMISSIONER PARSONS: A hybrid order.

2 VICE CHAIRPERSON MILLER: A hybrid summary  
3 order with the one line.

4 CHAIRPERSON GRIFFIS: Comments?  
5 Questions? Concerns? I don't have any difficulty  
6 with that, I guess. I have some hesitation but  
7 nonetheless no difficulty with it. Any other  
8 comments, questions?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Very well. We have  
11 a motion before us. It has been seconded. I would  
12 ask for all in favor of the motion to indicate by  
13 saying aye.

14 (Chorus of ayes.)

15 CHAIRPERSON GRIFFIS: And opposed?  
16 Abstaining?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Ms. Bailey.

19 MS. BAILEY: The Board has voted 5-0-0 to  
20 approve the application. Motion made by Mr. Griffis,  
21 seconded by Mrs. Miller. Mr. Mann, Mr. Parsons and  
22 Mr. Etherly are in agreement. It is a summary order.

23 Mrs. Miller, I heard the portion about the  
24 buffer, but was there something else that you wanted  
25 to include? Just the buffer.

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1 VICE CHAIRPERSON MILLER: Just the buffer.

2 MS. BAILEY: Okay. Thank you.

3 CHAIRPERSON GRIFFIS: Good. Thank you all  
4 very much.

5 MR. GLASGOW: Thank you.

6 CHAIRPERSON GRIFFIS: Very well. Ms.  
7 Bailey, when you are ready, we can call the next case  
8 for the morning.

9 APPLICATION OF 701 LAMONT LLC

10 17198 ANC-1A

11 MS. BAILEY: That's Application Number  
12 17198 of 701 Lamont LLC, pursuant to 11 DCMR 3104.1,  
13 for a special exception from the roof structure  
14 requirements under Section 411, and pursuant to 11  
15 DCMR 3103.2, a variance from the lot occupancy  
16 requirements under Section 772, a variance from the  
17 residential recreation space requirements under  
18 Section 773, and a variance from the nonconforming  
19 structure provisions under Subsection 2001.3 to  
20 convert an existing storage facility to a residential  
21 apartment building in the C-2-A District at premises  
22 701 Lamont Street, Northwest, also known as Square  
23 2893, Lot 878.

24 CHAIRPERSON GRIFFIS: Thank you, Ms.  
25 Bailey.

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1           Who all here is in attendance for this  
2 application, 17198? Is everyone here? Are you  
3 involved in this case or you're the next case?

4           SPEAKER: We're students.

5           CHAIRPERSON GRIFFIS: You're students.  
6 Oh, my goodness. Well, for the record, we have  
7 students in the audience. This is the last case of  
8 the morning. Well, small audience, but I will say  
9 what I need to say anyway.

10           I guess just the applicant is here. There  
11 is no opposition to this; is that correct? Why don't  
12 I have you introduce yourselves?

13           MS. PRINCE: Allison Prince from Shaw  
14 Pittman. No, there is no opposition.

15           CHAIRPERSON GRIFFIS: Okay. And there is  
16 no one else in the hearing room at this point that is  
17 attendant to this application. But Board members, I  
18 know the applicant in this case, Mr. Jentoft. He and  
19 I sit on a board of trustees together for a public  
20 charter school for which he has done great work in  
21 setting up, running, constructing, and the whole  
22 works. I admire him greatly and I have known him for  
23 numerous years. I don't have any direct connection to  
24 this application or any sort of involvement in it. I  
25 think I can get through this with great impartiality,

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1 but I put that before you for any questions or  
2 discussion. Any questions?

3 MEMBER ETHERLY: Just, of course, Mr.  
4 Chairman, to do our due diligence. In no way does the  
5 business of the charter school impact this application  
6 or involve your relationship's role as a charter  
7 school board trustee when reviewing this application.

8 CHAIRPERSON GRIFFIS: No. Indeed, no. In  
9 no way it does.

10 Oh. Actually, this developer does have  
11 projects in my office also, but not this specific  
12 project.

13 MEMBER ETHERLY: Okay. And you, of  
14 course, would be comfortable that you can continue to  
15 participate in the case and rule impartially and  
16 without favor or bias.

17 CHAIRPERSON GRIFFIS: I have no difficulty  
18 in doing that.

19 MEMBER ETHERLY: Excellent. I would have  
20 no objection, Mr. Chairman.

21 CHAIRPERSON GRIFFIS: Questions?

22 VICE CHAIRPERSON MILLER: I have no  
23 concerns unless there are concerns from the party.

24 CHAIRPERSON GRIFFIS: Right.

25 Does the applicant have any difficulty

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1 with me continuing on this case?

2 MS. PRINCE: No, we have no difficulty.

3 CHAIRPERSON GRIFFIS: Okay. Does anyone  
4 else here, anyone at all? Students? Questions?  
5 Opposition? We've got to give everyone an opportunity  
6 for this one.

7 (No response.)

8 CHAIRPERSON GRIFFIS: Okay. If there is  
9 no objection, then, why don't we move ahead with this.

10 Of course, as Ms. Bailey has called this, we have six  
11 items that we need to get through.

12 Let me just start out because my reading  
13 of this and actually going through obviously a lot of  
14 other cases -- this seems to be the textbook case for  
15 the Clerics of St. Viator, which is a court case I  
16 think we are all very familiar with, some of us even  
17 more so with all the times it's cited. But I think  
18 we're going to see evidence of its importance as we  
19 run through this.

20 So with that, I think, if there aren't  
21 major difficulties, we can probably get through this  
22 fairly expeditiously as, in my understanding of this,  
23 and other Board members and the applicant can tell me  
24 differently, all these arise very quickly out of the  
25 same situation, the uniqueness and the practical

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1 difficulty. So with that, I don't think we need to  
2 break all these down individually. We will have  
3 questions on each of the individual elements, but let  
4 me turn it over to you.

5 MS. PRINCE: I will make a fairly brief  
6 opening statement. We have two witnesses. I think we  
7 can have our whole presentation done in about 15  
8 minutes, maybe less.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. PRINCE: Good afternoon. Well, Good  
11 morning, Chairman Griffis and members of the Board.  
12 I'm Allison Prince with Shaw Pittman and I'm here  
13 today in connection with Neighborhood Development  
14 Corporation's proposal to convert a vacant warehouse  
15 into a housing project.

16 The building is located at 701 Lamont  
17 Street, just west of Georgia Avenue. The building is  
18 nonconforming in many respects: height, rear yard,  
19 FAR, lot occupancy, roof structure.

20 In connection with the conversion, there  
21 will be no change to the nonconforming aspects of the  
22 building, no net gain in FAR, no change in rear yard,  
23 no change in height nor lot occupancy. We are here  
24 seeking variance relief since residential buildings  
25 are limited to a lot occupancy of 60 percent and this

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1 building's lot occupancy is over 90 percent. So  
2 technically, variance relief is required just to even  
3 allow the conversion.

4 I know there is some dispute over that  
5 issue, but that is definitely the position being taken  
6 by the Zoning Administrator, so we have been  
7 conservative in our interpretation of the regs to make  
8 sure that we were cited for any conceivable area of  
9 relief that the Zoning Administrator may identify.

10 In addition, the existing penthouse, which  
11 is nonconforming as to height, setback, and enclosure,  
12 is inadequate for the new building. The applicant  
13 proposes to add a fully conforming penthouse, allowing  
14 the existing penthouse to remain.

15 Given the nonconformity of the existing  
16 penthouse, we have requested special exception and  
17 variance relief to allow the new structure. While it  
18 could be argued that no relief is necessary because  
19 our new penthouse is fully conforming, again, we have  
20 cited ourselves for relief in the most conservative  
21 manner to ensure there are no difficulties in the  
22 zoning review in connection with our building permit.

23 The Zoning Administrator has taken the position that  
24 relief is required even to construct a fully  
25 conforming penthouse because we are adding the fully

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1 conforming to a roof that contains a nonconforming  
2 penthouse.

3 In addition, the applicant seeks variance  
4 release from the residential recreation space  
5 requirement of 20 percent of the building's GFA. The  
6 applicant will provide more than 80 percent of the  
7 required amount of residential rec space. The  
8 building is only under the requirement by about 2,000  
9 square feet, and given the fact that the building  
10 occupies almost 100 percent of the lot, it is simply  
11 difficult to make that requirement.

12 In connection with its review of this  
13 application, the Office of Planning had some concerns  
14 about the accessibility of a portion of the  
15 residential recreation space in the basement.  
16 Specifically, Office of Planning requested the  
17 revision of the plans so that users of the space would  
18 not have to cross over any portion of the garage, any  
19 portion of the parking spaces in the garage to access  
20 the rec space. In adjust the drawings to accommodate  
21 Office of Planning's request, the applicant has added  
22 200 additional feet of residential recreation space.

23 The applicant has also prepared a list of  
24 the potential uses for the residential recreation  
25 space in the building. We would prefer to not be

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1 locked into specific uses of specific spaces but  
2 rather have the flexibility to use the residential  
3 recreation space for any of the uses that we have  
4 cited in a list that I will submit for your review.

5 The applicant has spoken to many members  
6 of the community and has appeared before ANC-1A. The  
7 ANC lacked a quorum and took no action on the  
8 application. There is widespread for the conversion  
9 of this vacant building to a viable residential use.  
10 I think you have in the record a letter from  
11 Councilmember Jim Graham that was recently filed. It  
12 was probably filed late yesterday. We are aware of no  
13 opposition to the application.

14 If the Board has no questions, I would  
15 like to proceed with the testimony of the first of our  
16 two witnesses, Mr. Karl Jentoft of the Neighborhood  
17 Development Corporation.

18 I will submit the revised basement plan  
19 which we have previously shared with the Office of  
20 Planning but did not accompany our prehearing filing  
21 because it was a change made in response to OP's  
22 report, and the list of uses to which we would propose  
23 to put the residential recreation space.

24 CHAIRPERSON GRIFFIS: Let's get  
25 clarification of what's coming in. You're giving us a

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1 list of uses? Some of the questions that OP came up  
2 and I think the Board also was looking at was the  
3 location of the square footage for satisfying the  
4 residential requirement. You are giving us uses?

5 MS. PRINCE: Office of Planning  
6 specifically asked that we label each portion of the  
7 residential rec space to indicate the purpose to which  
8 it would be used. We would rather have the  
9 flexibility to note all the residential rec space but  
10 have flexibility --

11 CHAIRPERSON GRIFFIS: Yes. I'm wondering  
12 why we need to know that. I mean, don't we --

13 MS. PRINCE: I don't believe the  
14 regulations require it, but we thought a compromise  
15 was to list all the uses that we have in mind.

16 CHAIRPERSON GRIFFIS: Sure. I mean,  
17 that's fine.

18 Now, the other thing was -- something.  
19 What was the other thing? You mentioned the  
20 Councilmember's letter. I do not have that. I don't  
21 know if other Board members have that. I don't think  
22 we have received that into the record yet. So if you  
23 have a copy --

24 MS. PRINCE: It was dated yesterday. It  
25 was faxed to you, Mr. Griffis. I will submit it to

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1 Ms. Bailey.

2 MS. PRINCE: It was sent quite late  
3 yesterday.

4 CHAIRPERSON GRIFFIS: Okay. All right.  
5 Well, let's pass this around.

6 VICE CHAIRPERSON MILLER: Did you say that  
7 the ANC did not take a position for lack of a quorum?

8 MS. PRINCE: Correct.

9 VICE CHAIRPERSON MILLER: Did you present  
10 to them? Can you --

11 MS. PRINCE: We presented the entire  
12 application to the ANC, showed the plans, reviewed the  
13 plans with the ANC. The ANC raised questions and we  
14 discussed the application I think fairly thoroughly  
15 given the fact that there was no quorum, and they were  
16 unable to take any action due to the lack of a quorum.

17 VICE CHAIRPERSON MILLER: Okay. Thank  
18 you.

19 CHAIRPERSON GRIFFIS: Good.

20 Two other quick things. First of all, in  
21 terms of the direction of the witnesses as we go  
22 forward, obviously I think one of the big issues is,  
23 is just the location of the residential rec satisfied,  
24 and generally speaking about what is going to happen  
25 there so we understand, I think OP has brought up a

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1 good point and they will talk more about it, but a  
2 good point about, you know, how you get there, is it  
3 safe to get there and will people use it, and if no  
4 one is going to use it, then why are we actually  
5 providing it. But that is digression.

6           Lastly, I need clarification on this.  
7 You're indicating that the Zoning Administrator is  
8 saying if you have an existing building, an existing  
9 structure, that you cannot go in and renovate it and  
10 occupy it if it is not conforming to the current  
11 regulations, or is it that it is getting tipped off in  
12 their minds that because this is a -- well, that it's  
13 somehow a change of use?

14           MS. PRINCE:       The Zoning Administrator  
15 takes the position that when the use is changed from  
16 commercial to residential for an existing commercial  
17 building in a commercial zone, since the lot occupancy  
18 requirement changes from 100 percent to 60 percent,  
19 there is a need for a lot occupancy variance.

20           CHAIRPERSON    GRIFFIS:           That's an  
21 interesting position to hold -- a safe one, perhaps,  
22 from the Zoning Administrator's point of view of not  
23 making a decision on that, but it's almost -- I mean,  
24 I can't say definitively, but it almost puts itself up  
25 to -- well, I shouldn't say that. It makes for a very

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1 strong variance case if you have an existing building  
2 and you're just going in to convert it, the building,  
3 whether it existed before the regulations or not, and  
4 so you end up having to come down here, and what's  
5 your uniqueness and practical difficulty? Well,  
6 you've got an existing building. You know. Okay.  
7 You know, we're here for fun and enjoyment, but it  
8 raises some question.

9           Maybe it's just something that the Zoning  
10 Commission needs to look at of how we address this  
11 situation, because -- and I bring this up because it's  
12 of interest, one, of this application, but I think  
13 this Board is familiar with at least three others  
14 analogous to this that we've seen where, you know,  
15 what is happening in the city now is old commercial  
16 structures are going to residential conversions.

17           Okay. That's enough for me unless there's  
18 other -- I understand the issue; am I correct?

19           MS. PRINCE: You understand the issue.

20           CHAIRPERSON GRIFFIS: Okay.

21           MS. PRINCE: We have cited ourselves, as I  
22 stated, in the most conservative manner.

23           CHAIRPERSON GRIFFIS: Right.

24           VICE CHAIRPERSON MILLER: We have had a  
25 number of experiences of late with the Office of the

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1 Zoning Administrator where, having appeared before  
2 this Board based on self-certified relieve, the Office  
3 of the Zoning Administrator comes up with a quite  
4 unusual interpretation of the regulations and feels  
5 that that would require even additional relief, and  
6 the Zoning Administrator's response generally has been  
7 to request that we go back to the Board and almost  
8 treat this Board as an advice-giving body to get your  
9 opinion as to whether additional relief is required.

10 Well, we don't have the time for that in  
11 this case or in, really, any of the others, so we have  
12 bent over backwards to cite ourselves for every  
13 conceivable area of relief that could be required  
14 including I believe unnecessary relief regarding the  
15 roof structure. But --

16 CHAIRPERSON GRIFFIS: Yes, let's go to the  
17 roof structure. The roof structure you were saying --  
18 and let me see if I follow -- you have existing, and  
19 obviously it's --

20 MS. PRINCE: Totally nonconforming roof  
21 structure.

22 CHAIRPERSON GRIFFIS: Totally  
23 nonconforming because of the setback, the height --

24 MS. PRINCE: Setback, height, enclosure.

25 CHAIRPERSON GRIFFIS: And what you're

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1 doing is you're providing a conforming --

2 MS. PRINCE: A totally conforming roof  
3 structure.

4 CHAIRPERSON GRIFFIS: It doesn't max out  
5 the FAR allowance --

6 MS. PRINCE: No.

7 CHAIRPERSON GRIFFIS: -- for all the  
8 penthouses together.

9 MS. PRINCE: No. Even when combined with  
10 the existing nonconforming roof structure, we're  
11 within the .37 FAR.

12 CHAIRPERSON GRIFFIS: So really you're not  
13 here for relief for what you're proposing; you're only  
14 here for relief of what is there. I mean outside of  
15 the residential rec.

16 MS. PRINCE: Correct. Except that the  
17 Zoning Administrator indicated that -- that office  
18 indicated that they believe that relief is required to  
19 add a roof structure to a building that already has a  
20 nonconforming roof structure, and it was unclear what  
21 kind of relief --

22 CHAIRPERSON GRIFFIS: They're reading that  
23 out of 2001.3?

24 MS. PRINCE: Addition of -- sort of a  
25 twofold argument, and we don't have a clear answer,

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1 but one argument, that it is considered an addition to  
2 a building that is nonconforming as to lot occupancy  
3 even though roof structures are subject to the FAR  
4 credit and I do not believe constitute an addition --

5 CHAIRPERSON GRIFFIS: Well, you couldn't  
6 have a roof structure go to lot occupancy, could you?

7 MS. PRINCE: No.

8 CHAIRPERSON GRIFFIS: It would obviously  
9 have to be on top of a building that would already --

10 MS. PRINCE: Right. But 2001.3 limits any  
11 additions to buildings that are already nonconforming  
12 as to lot occupancy.

13 CHAIRPERSON GRIFFIS: Right.

14 MS. PRINCE: The rationale would be that  
15 this building, upon its conversion, is nonconforming  
16 as to lot occupancy and a roof structure constitutes  
17 an addition.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. PRINCE: I don't believe a roof  
20 structure is an addition, but we need our permit and  
21 we've cited ourselves.

22 CHAIRPERSON GRIFFIS: And here you are.  
23 Very well. Let's move on, then. Any other questions?  
24 Clarifications?

25 (No response.)

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1 MS. PRINCE: Mr. Jentoft.

2 TESTIMONY OF KARL JENTOFT

3 MR. JENTOFT: Good morning, Chairman  
4 Griffis and members of the Board. My name is Karl  
5 Jentoft, I'm at 1756 Lamont Street, Northwest, in  
6 Washington, D.C. I am here on behalf of the developer  
7 of this project, the Neighborhood Development Company.

8 Let me give you a brief description of us  
9 and who we are. We are a small development  
10 corporation, about 20 employees, located up in the  
11 Petworth neighborhood. We are an LSDB company. We  
12 have a combination of about 15 years on our senior  
13 management team of construction development  
14 experience. We have developed about 200,000 square  
15 feet of residential space in the District and  
16 currently have about 300,000 more in different stages  
17 of planning and development that should be delivered  
18 in the next 18 months.

19 Projects that we have done recently that  
20 are along this line is we did a 40-unit condominium  
21 rehab of vacant buildings up in the Brightwood  
22 neighborhood, and we have brought two other vacant  
23 buildings back to life on Rhode Island Avenue and up  
24 on Missouri Avenue. We are also participating as  
25 equity partners in the Wax Museum development site and

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1 the development of the old Convention Center.

2 I respectfully request that the BZA  
3 approve the special exception and variance relief  
4 which is necessary for this conversion of existing  
5 warehouse to residential use. Currently this is a  
6 five-story plus basement vacant warehouse on the site.

7 Our plans are to develop it into loft condominiums  
8 with 38 residential units and 23 parking spaces  
9 located on the rear of the first floor and in the  
10 basement itself.

11 We are really hoping to make a real impact  
12 in the neighborhood here through this building that  
13 has been vacant for so long. The neighborhood itself  
14 is right on the edge of Columbia Heights and Petworth  
15 and this building sits next to other retail on Georgia  
16 Avenue and next to other commercial space with the  
17 Linens of the Week sitting next to it on the west  
18 side.

19 With our conversion, we will be able to  
20 bring back owners into this section of the  
21 neighborhood and people who are committed to really  
22 being members of the community.

23 In terms of community outreach, we did, on  
24 July 14th, present to the ANC-1A, and unfortunately  
25 they were not able to make a decision due to lack of

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1 quorum. But we are committed to maintaining positive  
2 relationships with the neighborhood property owners  
3 and improving the surrounding area.

4 We have also reviewed this application  
5 with the Office of Planning.

6 CHAIRPERSON GRIFFIS: Good. Thank you  
7 very much.

8 Questions from the Board?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Excellent.

11 TESTIMONY OF BILL BONSTRA

12 MR. BONSTRA: Good morning, Chairman  
13 Griffis and members of the Board. My name is Bill  
14 Bonstra, I'm the project architect for 701 Lamont  
15 Street.

16 I respectfully request the BZA approve  
17 this special exception and variance relief, area  
18 variance relief which is necessary for the conversion  
19 of this existing 38-unit residential apartment  
20 building.

21 The building is unusual in that it is a  
22 large nonconforming structure built as an industrial  
23 warehouse, and we are converting to residential use.  
24 It has a long history of vacancy. It was built prior  
25 to the adoption of the current zoning laws in 1951,

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1 and there is practical difficulty in converting this  
2 to residential use since it was not built in that  
3 vein.

4 I am here today -- I can run through the  
5 drawings to give a clarification to anyone, I can  
6 answer questions, whatever the Board would like.

7 CHAIRPERSON GRIFFIS: Let me ask you a  
8 first quick question regarding the penthouse structure  
9 in laying this out. In your view, is it being placed  
10 or -- you know, it's kind of hard to ask a special  
11 exception question of a penthouse that is conforming,  
12 you know, because I'm about to ask you whether it's  
13 impractical because of operating difficulties or size  
14 of buildings to not provide this in the correct place  
15 that it is, but you're putting it where it's supposed  
16 to be.

17 MR. BONSTRA: Well, that is true, and  
18 maybe I can answer the question in this way: We have  
19 an existing structure. It's a concrete structure, it  
20 has a column grid, and we are putting holes in this  
21 structure, so there is certain practical difficulty in  
22 locating the stairs, and we believe we have installed  
23 them or are providing them in the locations that do  
24 make structural sense.

25 CHAIRPERSON GRIFFIS: Actually, let's

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1 dispense with all this. Let's get to the residential  
2 rec, which is actually tied to specifically this  
3 project and what is proposed. I think it's important,  
4 well, from my understanding, but can you run through  
5 just quickly the areas where you're providing it?  
6 Also obviously you read OP's report and they are going  
7 to be much more fluid with this, but kind of point out  
8 how you access these places.

9 MR. BONSTRA: I would be happy to. Do we  
10 have a microphone that I can --

11 CHAIRPERSON GRIFFIS: Or you can just move  
12 the -- well, you have already set up a lot of them.  
13 There is a pointer. Actually, you can probably just  
14 turn that microphone on and then just point it to you.

15 Use the pointer that's over here so you can kind of  
16 stay close. The reporter obviously will draw my  
17 attention if you're not getting picked up on it.

18 Let me also -- last direction is anything  
19 that's underneath, we cannot see. So if you want us  
20 to look at a board, you can just put them up or just  
21 tell us that you're looking down there and we will  
22 take a look at it so it doesn't take a lot of time.

23 MR. BONSTRA: Okay. I will first show you  
24 the existing footprint of the building and then I will  
25 show you where the residential recreation areas are at

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1 three levels of the building.

2 The A1.1 drawing shows the boundaries of  
3 the site and, in fact, the footprint of the building,  
4 and as Ms. Prince said, we're over 94 percent lot  
5 coverage, so we have very limited amount of outdoor  
6 space that's at ground level.

7 A major component of the project is the  
8 need for parking, which is really part and parcel to  
9 a successful residential project. The building  
10 currently has no parking, so we are putting parking  
11 levels at the lower level as well as partial first  
12 floor. The partial first floor is here --

13 CHAIRPERSON GRIFFIS: And that's bringing  
14 it up to the zoning regulated parking requirement.

15 MR. BONSTRA: The spaces that we show do  
16 not all necessarily conform to zoning requirements.

17 CHAIRPERSON GRIFFIS: But you meet the  
18 count that's required.

19 MR. BONSTRA: We meet the count because  
20 the building was built as an industrial building and  
21 it has a certain count that's associated with it.

22 CHAIRPERSON GRIFFIS: Understood. So if I  
23 understand what you're saying, given that, you're  
24 certifying that, in fact, you are conforming with the  
25 regulations of what is required for the parking

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1 numbers, and now you're factoring a market element and  
2 saying you're trying to maximize the amount of parking  
3 in the building?

4 MR. BONSTRA: Yes. We're trying to put as  
5 many cars in this project as we can, yes.

6 CHAIRPERSON GRIFFIS: Or you can say it  
7 that way. Okay. Understood.

8 MR. BONSTRA: Yes.

9 This is the lowest level of the building.  
10 We have a ramp coming down here. The areas that are  
11 hatched here and here are what we designate as  
12 residential recreation area. Those areas total 1,060,  
13 and in working with Mr. Mordfin, we have added 202  
14 square feet by linking these specifically to the core.

15 This is the existing elevator, which will  
16 be refurbished, existing fire stair, another fire  
17 stair here. We have direct access to the core of the  
18 building and access to all of the units above with  
19 both these residential recreation spaces.

20 On the ground floor level, the entry  
21 level, one comes in and comes down into the lobby. We  
22 have designated a portion of the lobby area, which is  
23 quite large, to our residential recreation, and we  
24 also have an area at the back here where the old  
25 elevator was that we're filling in which is part of

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1 the residential recreation. So we have two spaces,  
2 two components of residential recreation on the ground  
3 floor.

4 Since we don't have any grade area to put  
5 our outdoor residential recreation, we have shown  
6 outside of the private decks, which are here, this  
7 hatched area as well as some inside space here are all  
8 public residential recreation area. The total of this  
9 area falls some 1,800 short of the requirement.

10 CHAIRPERSON GRIFFIS: Eighteen-hundred  
11 square feet, and it's 20 percent --

12 MR. BONSTRA: Twenty percent requirement,  
13 which is quite substantial, especially given the  
14 conditions that we're working within right here.

15 CHAIRPERSON GRIFFIS: And that is --

16 MR. BONSTRA: Eighteen-ninety-three would  
17 be --

18 CHAIRPERSON GRIFFIS: Right. The special  
19 condition is when you have an oversized building; is  
20 that what you're saying?

21 MR. BONSTRA: Yes.

22 CHAIRPERSON GRIFFIS: So you take up all  
23 that square footage that's going to residential --

24 MR. BONSTRA: We would love to have a  
25 court, some sight.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. BONSTRA: We don't have any sight  
3 area.

4 CHAIRPERSON GRIFFIS: And, of course,  
5 that's as we have said all too often going to  
6 residential recreation requirements, but clearly the  
7 intent is to maximize the outdoor space. Is that your  
8 understanding?

9 MR. BONSTRA: There is a minimum of 50  
10 percent outdoor.

11 CHAIRPERSON GRIFFIS: Okay. So one can  
12 logically think that --

13 MR. BONSTRA: Right.

14 CHAIRPERSON GRIFFIS: I mean, you can  
15 provide all of it outside, correct, but not all of it  
16 inside. Okay.

17 MR. BONSTRA: Well, one of the other  
18 things I would like to mention is that we have added  
19 private balconies in this project and certainly at  
20 great cost on just about every floor level, and we  
21 feel like even though that does not satisfy the  
22 residential recreation requirement, that is an area  
23 that will be used quite intensively by the majority of  
24 the residents.

25 CHAIRPERSON GRIFFIS: You indicate that

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1 and you say that they're sized -- I think it's like  
2 900 square feet total.

3 MR. BONSTRA: That's correct.

4 CHAIRPERSON GRIFFIS: And that they are of  
5 adequate size to be utilized by the residents. So  
6 you're saying that they are not these what we've seen  
7 a lot downtown, which are really lovely type things,  
8 these Juliet balconies, but these are actually walkout  
9 areas? And these are projecting over the property  
10 line; is that correct?

11 MR. BONSTRA: They are not.

12 CHAIRPERSON GRIFFIS: They are not.

13 MR. BONSTRA: They are on the property.

14 CHAIRPERSON GRIFFIS: They are projecting  
15 in the property.

16 MR. BONSTRA: We have cut these into the  
17 building.

18 CHAIRPERSON GRIFFIS: Oh, I see. So  
19 you're cutting it into the envelope, so it's not  
20 actually impacting any sort of lot occupancy issue.

21 What are you trying to show us? A section  
22 or elevation?

23 MR. BONSTRA: No, I'm trying to show the  
24 floor plan that has the balconies, but I don't believe  
25 -- it's in your package.

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1 CHAIRPERSON GRIFFIS: Right. I think we  
2 can assist. A1.3, which is the third floor plan, I  
3 believe starts showing it.

4 MR. BONSTRA: You can see here an  
5 elevation. These are cut in.

6 CHAIRPERSON GRIFFIS: Oh, 1.4 seems to  
7 show it.

8 MR. BONSTRA: Third floor, fourth floor, I  
9 believe fifth floor have cut-in balconies.

10 CHAIRPERSON GRIFFIS: Okay. And they are  
11 actually hatched, meaning they have a graphical --

12 MR. BONSTRA: Yes.

13 CHAIRPERSON GRIFFIS: Okay. I see.

14 VICE CHAIRPERSON MILLER: So how many  
15 units have balconies and how many don't?

16 MR. BONSTRA: Well, there are 38 units  
17 total. Twenty-three have private balconies, which is  
18 over two-thirds -- almost two-thirds.

19 CHAIRPERSON GRIFFIS: Thirty-eight, 23.  
20 The chimney is off the property, isn't it?

21 MR. BONSTRA: That's correct.

22 CHAIRPERSON GRIFFIS: A huge stack.

23 MR. BONSTRA: This stack right here?

24 CHAIRPERSON GRIFFIS: Yes.

25 MR. BONSTRA: It's off the property.

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1                   CHAIRPERSON GRIFFIS:  Maybe that could be  
2 used as the rope course.  Oh, that's a different  
3 application.  Okay.

4                   MR. BONSTRA:  I should say a total of 31  
5 units have either outside balconies and/or private  
6 roof decks.

7                   CHAIRPERSON GRIFFIS:  What was that?

8                   MR. BONSTRA:  Thirty-one of the 38 --

9                   CHAIRPERSON GRIFFIS:  Oh, 31 of 38 have  
10 private --

11                  MR.  BONSTRA:           Have  either  private  
12 balconies and/or private roof decks.

13                  CHAIRPERSON GRIFFIS:  And/or roof decks.  
14 So if you add all the private roof decks and the  
15 balconies, 31 --

16                  MR. BONSTRA:  Thirty-one out of 38.

17                  CHAIRPERSON GRIFFIS:  -- you're cutting  
18 seven people out.

19                  MR.  BONSTRA:       So  we  feel  that's  a  
20 substantial effort to provide space that people will  
21 use quite frequently.

22                  CHAIRPERSON GRIFFIS:  Yes.  I imagine it  
23 being nonconforming to the height in the photograph in  
24 the record that this has a pretty nice view, doesn't  
25 it?

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1 MR. BONSTRA: No question.

2 CHAIRPERSON GRIFFIS: Yes. Okay.

3 MR. BONSTRA: Another aspect of the  
4 project that we are showing, on the private decks --  
5 and this has been cleared with DCRA -- we actually  
6 have shown private hot tubs, and along with that, we  
7 are allowed to put a toilet facility as well as  
8 ancillary storage, and that's allowed by the building  
9 code.

10 CHAIRPERSON GRIFFIS: I saw that in this  
11 filing. That intrigues me. It's an interesting  
12 analysis that ties a lot of things together. You're  
13 telling me there's something to do with building code.

14 We didn't understand what that actually is. And then  
15 there's something to do that ties us back into the  
16 regulation, because clearly in the regulations we look  
17 at penthouses that can accommodate restroom facilities  
18 that are accessories -- this isn't the right language,  
19 but they are accessory to a pool. Okay. So how do we  
20 get where we're going here?

21 MS. PRINCE: We get where we're going  
22 under Section 411.1. The regs do specifically address  
23 rooftop swimming pools and toilet rooms and storage  
24 accessory to those pools. "Swimming pool" is not a  
25 defined term in the zoning regulations, so we turn to

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1 the building code. The building code acknowledges  
2 that spas and hot tubs constitute swimming pools. So  
3 the Zoning Administrator was comfortable with the  
4 concept that rooftop spas are swimming pools for  
5 purposes of the regulations and are, therefore,  
6 entitled to have the accessory storage and toilet  
7 rooms associated with them.

8 CHAIRPERSON GRIFFIS: I see. Okay.

9 MS. PRINCE: Now, having said all that,  
10 the toilet rooms, the storage, the spas, everything is  
11 well within the .37 FAR.

12 CHAIRPERSON GRIFFIS: Right. You don't  
13 get any sort of additional --

14 MS. PRINCE: No.

15 CHAIRPERSON GRIFFIS: -- space, height,  
16 anything of that nature in your penthouse --

17 MS. PRINCE: No.

18 CHAIRPERSON GRIFFIS: -- under 411 with  
19 that in regards to it. So water sports are okay. I  
20 see. Okay. So clearly, if I understand this  
21 correctly, what we have is obviously an undefined term  
22 in the regulations, but it's spoken to in terms of  
23 what is allowable within a penthouse structure. That  
24 undefined term is a pool.

25 The pool, then, if you try and start to

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1 define it, which this Board has done and others before  
2 us have done, is, well, let's go to the building code  
3 and find a building -- some sort of construction  
4 authority that starts defining these terms, which is  
5 actually very useful, and in the building code, then,  
6 with its responsibilities of what it will be for  
7 building code requirements, a spa or -- what are  
8 these? Hot tubs? Hot tubs are actually classified  
9 under the building codes as pools and therefore have  
10 their own requirements that would have to be dealt  
11 with and obviously then substantiate the definition in  
12 the zoning regs as being a pool. Okay. I think I  
13 understand.

14 MR. BONSTRA: If I could just add one  
15 thing. Beyond what we have talked about as those  
16 ancillary spaces, the penthouse does contain  
17 mechanical equipment. All of the units, the  
18 fifth-floor units are served by mechanical units which  
19 are located in the penthouse, in the mechanical  
20 penthouse.

21 CHAIRPERSON GRIFFIS: Ms. Miller?

22 VICE CHAIRPERSON MILLER: No. I just want  
23 to clarify, the hot tubs are for private use or are  
24 they counted toward the residential rec space for the  
25 whole building?

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1 MS. PRINCE: Private use and they are not  
2 counted toward the residential rec space. I think  
3 under the regulations, there has never been a question  
4 that a swimming pool, a rooftop swimming pool is  
5 permitted, and they are done all over the city. This  
6 is a slight twist on that concept that has apparently  
7 been done before where instead of one roof top  
8 swimming pool, we have multiple spas. But it does not  
9 count toward the residential rec space requirement.

10 MEMBER MANN: Is there elevator access to  
11 the roof?

12 MR. BONSTRA: No, there's no elevator  
13 access to the roof.

14 MEMBER MANN: There's no elevator access  
15 to the roof. How is it that the roof deck can count  
16 towards residential recreation space if it's not  
17 accessible by elevator?

18 MR. BONSTRA: We have two means of egress  
19 to the rooftop, but we do not have an elevator access  
20 to that area.

21 MEMBER MANN: So the roof cannot be  
22 counted as residential recreation space. It doesn't  
23 go towards the requirements, then; is that correct?

24 MS. PRINCE: I'm not aware of a  
25 requirement that to count toward residential rec

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1 space, the rooftop has to be accessible by elevator.  
2 It's my understanding there are two means of egress,  
3 but we're not aware of an elevator requirement.

4 CHAIRPERSON GRIFFIS: I think perhaps what  
5 is coming up here, in our regulations, what we have is  
6 the phrase "The residential rec must be made  
7 accessible to all those in the building" or whatever  
8 the wording is. We have had, in fact, different  
9 applications that have addressed this in different  
10 ways, and I think that's really why this is an  
11 excellent question of, can you count it as residential  
12 rec according to our requirements if you are not  
13 providing an elevator which would rise it to the level  
14 of ADA accessibility?

15 Is that correct, Mr. Mann?

16 MEMBER MANN: That's correct. We have had  
17 several cases recently that have discussed exactly  
18 that point.

19 VICE CHAIRPERSON MILLER: I just want to  
20 bring your attention to the provision we're referring  
21 to. It's 773.9: Residential recreation space shall  
22 be physically accessible to all residents of the  
23 building served by that space.

24 CHAIRPERSON GRIFFIS: So I guess one  
25 question is whether we're talking about in our

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1 building regs if we're talking about ADA accessibility  
2 or is it, you know, you can't count your private  
3 balcony as residential rec because it's not accessible  
4 for everybody.

5 MS. PRINCE: It has always been my  
6 understanding that that accessibility requirement is  
7 exactly what Chairman Griffis just stated. It's  
8 accessibility versus closed off for private use only.

9 A private roof deck associated with an individual  
10 unit is not accessible to all residents of the  
11 building whereas a roof deck that is open to all  
12 members that's not private, as is the case with the  
13 peripheral roof deck here, is accessible to all  
14 members of the building.

15 I think it's a building code question that  
16 you're asking regarding whether an elevator has to  
17 access the roof, roof deck. I don't think there is  
18 anything in the zoning regulations that require  
19 elevator access.

20 VICE CHAIRPERSON MILLER: I think the only  
21 provision that we're thinking about is the one that I  
22 read, 773.9, and you're saying that can be interpreted  
23 as not having to require the general residential rec  
24 space, not the private residential rec space but, say,  
25 the general areas say on a roof deck, to be accessible

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1 to the --

2 MS. PRINCE: I think this is the same  
3 language that would be used to preclude the individual  
4 balconies in the units from counting toward the  
5 residential rec space requirement.

6 CHAIRPERSON GRIFFIS: It's a  
7 differentiation between private and anyone can use it.

8 MS. PRINCE: Right.

9 CHAIRPERSON GRIFFIS: Is that what you're  
10 saying?

11 MS. PRINCE: That's what I'm saying.

12 CHAIRPERSON GRIFFIS: That's what our  
13 regulations lay out. Obviously the use of  
14 accessibility has different implications these days  
15 based on our federal regulations and building codes.

16 Now, clarify, then, to the Board, if you  
17 can in this instance what is the threshold of which  
18 you would need an elevator to access the roof deck?  
19 And we're not trying to put you on the spot here. If  
20 you don't know, you don't know, we move on and we  
21 figure this out, but we are asked this question all  
22 too many times in terms of what is being provided for  
23 residential rec, and especially on the roof, and some  
24 folks have indicated that if an area was provided for  
25 public use, then they would have to provide an

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1 elevator based on ADA requirements, and that -- you  
2 know, I'm talking about a totally different  
3 application, but that created all sorts of issues for  
4 them, and so we looked at it that way. It seems like  
5 we're looking at it from a different perspective in  
6 this one.

7 But is there a threshold that you're aware  
8 of where all of a sudden, the occupancy might require  
9 or the diversity of provisions of the residential rec  
10 --

11 MR. BONSTRA: No. Actually, it's not  
12 linked to an occupancy load. Only egress is on the  
13 fire stairs. As far as the elevator itself, we have  
14 an existing condition.

15 CHAIRPERSON GRIFFIS: Actually, hold that  
16 thought for two seconds.

17 MR. BONSTRA: Okay.

18 (Pause.)

19 CHAIRPERSON GRIFFIS: Okay. A quick crash  
20 review of past cases and elements that were before the  
21 Board I think has clarified quite a bit. So what I  
22 think, unless the Board has other additional  
23 questions, I think we leave it as is in terms of  
24 elevator going to the roof and all that. That is a  
25 building code requirement that you're going to have to

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1 get into, you know. Certainly -- well, there it is.

2 Mr. Mann does have follow-up questions,  
3 though, on the space and dimensions provided on the  
4 roof.

5 MEMBER MANN: Does the roof deck space  
6 need to meet the minimum 25-foot dimension requirement  
7 in order to be counted as recreational space?

8 MS. PRINCE: It does, and I think we have  
9 discussed this with the Zoning Administrator and they  
10 take the position that you consider the space as a  
11 whole, so it can have little jogs in and out. But  
12 they will look at the footprint of the proposed rec  
13 space as a whole. So you can have nooks and crannies  
14 of residential recreation space as long as it's part  
15 of a larger whole.

16 MEMBER MANN: That was the indication that  
17 you got on this particular case --

18 MS. PRINCE: On this particular case.

19 MEMBER MANN: -- from the Zoning  
20 Administrator?

21 MS. PRINCE: Yes.

22 VICE CHAIRPERSON MILLER: I think it's the  
23 first we've heard about the zigs and zags, you know.

24 MS. PRINCE: I think the -- it's my  
25 understanding that the section of the regulations that

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1 imposes a minimum dimensional requirement on  
2 residential rec space is to prevent an owner from  
3 going through a building and picking out tiny little  
4 pieces of space that are not contiguous and arguing  
5 that those count toward the residential rec space  
6 requirement.

7 CHAIRPERSON GRIFFIS: Let's get  
8 clarification on this. I don't have the regs right in  
9 front of me anymore, I just put them away, but it  
10 seems to me that the dimensional requirements says "no  
11 dimension shall be less than."

12 MR. BONSTRA: We discussed that specific  
13 issue with Mr. Noble, Denzil Noble, and Faye of the  
14 Office of Zoning --

15 CHAIRPERSON GRIFFIS: Ms. Ogunneye.

16 MR. BONSTRA: Ogunneye.

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. BONSTRA: And we understood that the  
19 intent was that we would not have non-contiguous  
20 spaces that were of a small size. They looked at it  
21 as an overall, as long as there were overall  
22 substantial dimensions, that there could be dimensions  
23 that were less than 25 feet.

24 CHAIRPERSON GRIFFIS: Interesting. Okay.

25 MR. BONSTRA: And we have that

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1 confirmation.

2 CHAIRPERSON GRIFFIS: That's an  
3 interesting one to be definitive on, especially when  
4 the direct language of the regulation 773.7 does say  
5 "shall have no dimension less than 25 feet." Okay.  
6 So if you back out all the residential rec that you  
7 have provided on the roof that does not meet a 25-foot  
8 dimension, what do you have?

9 MR. BONSTRA: I can provide that. I can't  
10 answer that right now.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. BONSTRA: I would have to go through  
13 and --

14 CHAIRPERSON GRIFFIS: From my  
15 understanding, the amount that we're actually looking  
16 at, what -- is it possible just to point to the --  
17 maybe I can do it here. It's A1.8; is that correct?

18 MR. BONSTRA: A1.6.

19 CHAIRPERSON GRIFFIS: I'm sorry. Can you  
20 point out again the areas, then, that are the publicly  
21 accessible residential rec? It's on the north side.

22 MR. BONSTRA: The areas are shown hatched  
23 on A1.6.

24 CHAIRPERSON GRIFFIS: Right. But some of  
25 those are private.

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1 MR. BONSTRA: The only private areas --

2 CHAIRPERSON GRIFFIS: Oh. I understand.

3 MR. BONSTRA: -- are the white areas.  
4 Everything else --

5 CHAIRPERSON GRIFFIS: I understand.

6 MR. BONSTRA: Everything hatched is  
7 residential recreation.

8 CHAIRPERSON GRIFFIS: You mean you give  
9 the good views to the general public in the building?

10 MR. BONSTRA: It's not the general public;  
11 it's the occupants of the building.

12 CHAIRPERSON GRIFFIS: Right. The private  
13 general.

14 MR. BONSTRA: It's the private. These are  
15 38 residents that will have access to the roof.

16 CHAIRPERSON GRIFFIS: I see. All of them  
17 will have access to the residential rec space, all 38.

18 VICE CHAIRPERSON MILLER: There's more  
19 than 38.

20 CHAIRPERSON GRIFFIS: More than 38 what?

21 VICE CHAIRPERSON MILLER: Thirty-eight  
22 units. There's more than 38 individuals.

23 CHAIRPERSON GRIFFIS: Who can tell? Hey,  
24 might have one person that buys ten units. We could  
25 take all day with this one if we wanted to. All

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1 right.

2 So what you have is -- oh, I see what is  
3 happening, then. And what they were saying was the  
4 overall dimension, which is you're making 25, but  
5 you've actually carved up some private and some, well,  
6 publicly accessible, which is, I mean, obviously the  
7 phraseology.

8 MS. PRINCE: When you look at the plan,  
9 you can see that you could eliminate some of the areas  
10 that don't meet the minimum 25-foot dimension, but  
11 that would just be reducing the size of the  
12 residential rec space for no apparent reason.

13 One thought I have overall because, you  
14 know, we have a plan, this is the plan that we're  
15 seeking approval of. These interpretation issues  
16 concerning roof decks have been a quagmire for  
17 applicants, for this Board, for everyone. We are  
18 seeking approval of this plan. We have cited  
19 ourselves for relief from the residential recreation  
20 space requirement. We believe that we only need  
21 relief such that we will provide approximately 80  
22 percent of the required amount of residential  
23 recreation space.

24 If for any reason this Board is  
25 uncomfortable in counting any portion of the roof

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1 deck, the Board is free to not count it, in which case  
2 we need more variance relief. However, we will be  
3 bound to this plan.

4 CHAIRPERSON GRIFFIS: There's a more  
5 expeditious way to do this without redoing the plan,  
6 which I don't think was what the Board is really  
7 asking, but a full understanding. What I think we  
8 start including in the fact of what counts towards the  
9 15.9 percent provision of the residential rec is  
10 actually granting relief to the minimum dimension  
11 requirement, and that's all wrapped up in the same  
12 test in the same residential rec requirement. Is that  
13 a way to proceed?

14 MS. PRINCE: I'm simply saying that we  
15 have noted that we are not meeting the requirement.

16 CHAIRPERSON GRIFFIS: Right.

17 MS. PRINCE: We believe we're short by a  
18 certain extent for certain reasons.

19 CHAIRPERSON GRIFFIS: Right.

20 MS. PRINCE: If you have other reasons  
21 that lead you to believe we're short by a greater  
22 extent, it's still the same section.

23 CHAIRPERSON GRIFFIS: And we're still  
24 talking about the same square footage that's going to  
25 be utilized.

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1 MS. PRINCE: Yes.

2 CHAIRPERSON GRIFFIS: I think obviously  
3 the intent of that 25-foot dimension is to accommodate  
4 the useful areas without, you know, as you say carving  
5 out four-by-four little spaces all the way through the  
6 building.

7 MS. PRINCE: Which I think is something  
8 that was probably tried.

9 CHAIRPERSON GRIFFIS: Sure.

10 MS. PRINCE: And I think that -- I suspect  
11 that that's where that came from. I don't know. I  
12 don't know the background of the section.

13 CHAIRPERSON GRIFFIS: We have closets  
14 everywhere that are residential rec only. Okay.

15 I think we're pretty clear. We can move  
16 ahead with this unless -- yes, Ms. Miller.

17 VICE CHAIRPERSON MILLER: I just want to  
18 note that without the calculations, we just don't know  
19 the extent of the variance that we might be granting  
20 with this change in how we're counting, and that if we  
21 got that recalculated --

22 MS. PRINCE: If we excluded the entire  
23 roof deck, all of the square footage on the roof such  
24 that none of it counted, the building would be  
25 providing approximately 3,000 square feet of

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1 residential recreation space as opposed to the 10,000  
2 feet that's required if none of the roof deck were  
3 permitted to be counted.

4 CHAIRPERSON GRIFFIS: And actually it's  
5 difficult to look at it that way because if we start  
6 saying, okay, that's excluded, then we look for the  
7 relief of just 3,000. And say we were to approve  
8 that, well, then, they don't go and provide the  
9 rooftop. I mean, they are not required to. They have  
10 just gotten relief from providing that residential rec  
11 on --

12 MS. PRINCE: Except that we'll have a  
13 Board-approved set of drawings and --

14 CHAIRPERSON GRIFFIS: Right. Which will  
15 show decks and, you know, all that stuff. I  
16 understand what you're saying.

17 MS. PRINCE: Yes. I mean, we're obviously  
18 committed to providing it as we have shown it, so we  
19 want some credit for it, whatever that credit would  
20 be.

21 CHAIRPERSON GRIFFIS: Okay. Any other  
22 questions? Clarifications? Anything else?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Okay. Let's move  
25 on, then, to the Office of Planning's report.

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1 CHAIRPERSON GRIFFIS: Right.

2 REPORT FROM THE OFFICE OF PLANNING

3 BY STEPHEN MORDFIN

4 MR. MORDFIN: Good afternoon, Chairman and  
5 members of the Board. I'm Stephen Mordfin with the  
6 Office of Planning, and the subject application is for  
7 the adaptive reuse of an existing vacant industrial  
8 building to a 38-unit apartment house, and the subject  
9 property is located within the C-2-A Zone District.

10 The existing structure was built in 1951  
11 and predates the adoption of the zoning regulations.  
12 It is nonconforming for building height, rear yard,  
13 FAR and roof structures. Its conversion to  
14 residential use makes it nonconformant for a lot  
15 occupancy and the proposed layout of the building  
16 requires variances for residential recreation space  
17 and for the enlargement of nonconforming structures  
18 devoted to conforming uses.

19 A special exception is necessary to permit  
20 a penthouse addition onto the existing nonconforming  
21 roof structures. The site is unique because the  
22 industrial building that was constructed upon it prior  
23 to the -- because of the industrial building that was  
24 constructed upon it prior to the adoption of the  
25 zoning regulations.

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1           The extraordinary and exceptional  
2 situations are that the existing building cannot be  
3 made to conform to C-2-A regulations concerning  
4 building height, rear yard, FAR or lot occupancy,  
5 without the removal of a portion of the building, and  
6 that due to existing nonconforming roof structures,  
7 the applicant cannot construct a penthouse without a  
8 variance to permit additions to nonconforming  
9 structures or a special exception to allow for changes  
10 to a legally nonconforming structure.

11           A variance to residential recreation space  
12 is required. The design of the site is unique in that  
13 the majority of the units will be provided with  
14 private recreation space.

15           The Office of Planning recommends approval  
16 of variances to building height, FAR, lot occupancy,  
17 residential recreation space, rear yard, and to permit  
18 the expansion of a nonconforming structure. The  
19 Office of Planning also recommends approval of a  
20 special exception to permit a penthouse addition onto  
21 the existing nonconforming roof structures.

22           That concludes the presentation of the  
23 Office of Planning.

24           CHAIRPERSON GRIFFIS: Good. Thank you  
25 very much. Again, an excellent report, especially

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1 with all these aspects that needed to be touched upon.

2 Are there questions from the Board? Ms.  
3 Miller?

4 VICE CHAIRPERSON MILLER: Yes. I'm  
5 struggling with the general question regarding all the  
6 variances except for the residential rec requirement,  
7 whether or not they are necessary in this case, and  
8 I'm just wondering if Office of Planning has an  
9 opinion whether there is, for instance, a policy that  
10 I'm not aware of, a rationale that would go against  
11 saying that these variances aren't necessary, like  
12 there would be no circumstances in which you wouldn't  
13 need a variance to convert a commercial warehouse to  
14 residential use, you know, in this case where the lot  
15 occupancy as it is is up in the 90 percentage and the  
16 requirement for the residential rec is 60, just to use  
17 that example.

18 MR. MORDFIN: The Office of Planning had  
19 included all of those other variances as a part of  
20 this application in that as long as the applicant was  
21 coming before the Board just to ensure that there  
22 would be no questions that anybody would have in the  
23 conversion of this building and to ensure that the  
24 building would be able to be converted to the  
25 residential uses as proposed.

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1                   VICE CHAIRPERSON MILLER: I guess I want  
2 to take it one step further, because I heard the  
3 applicant say something to the effect that the ZA was  
4 looking to the Board as an advice-giving body on this  
5 kind of issue, and I'm just wondering for future  
6 cases, you know, whether that's something we might  
7 decide. If it weren't necessary at all, then  
8 individuals might not be sent to this Board  
9 unnecessarily. So, on the other hand, I'm wondering,  
10 though, if there is another side to this whereas these  
11 variances might be necessary.

12                   MR. MORDFIN: Well, I don't see that these  
13 variances are necessary. The purpose of including  
14 them was just to ensure that nobody would question  
15 that the use of the building -- the conversion of the  
16 building was possible.

17                   VICE CHAIRPERSON MILLER: Thank you.

18                   CHAIRPERSON GRIFFIS: Good.

19                   Any other questions from the Board?

20                   (No response.)

21                   CHAIRPERSON GRIFFIS: Does the applicant  
22 have any cross-examination for the Office of Planning?

23                   MS. PRINCE: No cross-examination.

24                   CHAIRPERSON GRIFFIS: Thank you.

25                   VICE CHAIRPERSON MILLER: I'm sorry. I

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1 have one more question.

2 Did the applicant make all the changes to  
3 your satisfaction that you are recommending in your OP  
4 report?

5 MR. MORDFIN: Yes.

6 CHAIRPERSON GRIFFIS: Good. If there are  
7 no further questions, then let's move on to the ANC  
8 report. Of course, we did have indication that there  
9 is no report of the ANC because they lacked a quorum  
10 to hold the vote on this. I don't have any other  
11 government attendant information on this building  
12 unless the applicant is aware of any other  
13 submissions.

14 MS. PRINCE: We are aware of no other  
15 submissions.

16 CHAIRPERSON GRIFFIS: Are you aware of any  
17 other submissions, surrounding neighbors, areas?

18 MS. PRINCE: No other submissions  
19 whatsoever.

20 CHAIRPERSON GRIFFIS: Okay. That would  
21 reflect what is reflected in our case files, in which  
22 case let's go to the applicant for any closing remarks  
23 unless Board members have questions immediately at  
24 this point. Why don't we do so?

25 MS. PRINCE: Thank you for your time this

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1 afternoon and this morning. We would appreciate your  
2 immediate approval of this application, if possible.  
3 The project is ready to start. I would like to  
4 confirm and clarify with the Board that we're seeking  
5 your approval of the plans that we have put before  
6 you.

7           Should the Board decide that the  
8 residential recreation space on the roof is deficient  
9 in any way, especially with our acknowledgement that  
10 it is not accessible by elevator, we would like to  
11 clarify and confirm that that is the space we will  
12 provide and the space we are asking this Board to  
13 approve.

14           This project is ready to go forward  
15 immediately. It is in for permit, as a matter of  
16 fact, with the assumption that the relief will be  
17 granted by this Board and we're waiting for an order  
18 from the Board so that we can proceed with the  
19 interior work and proceed forward with the project.

20           CHAIRPERSON GRIFFIS: Good. Thank you  
21 very much.

22           I think we can proceed with this today;  
23 however, let me ask you one question, and this is  
24 probably more of a legal question, but it has a direct  
25 application to this instant case, and that is, if the

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1 Board felt -- and I don't know, but hypothetically if  
2 the Board felt that, in fact, four of the variances  
3 that you are here for were not required, how would the  
4 Board deal with that?

5 Conceivably one is we would not grant the  
6 variance, kick it out and say you're here unwarranted  
7 today or however the legal wording would go. Is that  
8 the only other way?

9 MS. PRINCE: I think that a very helpful  
10 thing for this Board to do would be to grant my  
11 variances and my special exception and to state on the  
12 record that you are granting them because they have  
13 been requested and, you know, you would like to  
14 expedite the application. However --

15 CHAIRPERSON GRIFFIS: So you're saying  
16 that a statement from this Board on the record in this  
17 application would hold weight with others --

18 MS. PRINCE: Exactly.

19 CHAIRPERSON GRIFFIS: -- but would not  
20 necessarily be reflected in the processing of this  
21 application.

22 MS. PRINCE: Exactly.

23 CHAIRPERSON GRIFFIS: I see.

24 MS. PRINCE: It would provide guidance for  
25 us to show to the Zoning Administrator in future cases

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1 that the Board is questioning whether certain types of  
2 these variances are, in fact, required.

3 CHAIRPERSON GRIFFIS: Okay.

4 Board members, let's take this up for  
5 deliberation if there are no objections --

6 MS. GLAZER: Pardon me, Mr. Chair.

7 CHAIRPERSON GRIFFIS: Yes.

8 MS. GLAZER: I'm sorry to interject, but  
9 another option, as the Board is well aware, is to say  
10 that this application is self-certified. The Board is  
11 not required to take a position or give advice about  
12 the necessity of the relief and the Board has done  
13 that in the past, I'm certain, and stated that the  
14 relief -- that the request is self-certified, that the  
15 Board is not stating one way or another whether it's  
16 required. That is just an option for the Board.

17 CHAIRPERSON GRIFFIS: Right. It doesn't  
18 send the same message that I'm hearing the Board  
19 wanting to send, though. Okay. I think the Board is  
20 very clear in the fact that we don't need to address  
21 this issue at all of whether we interpret or not or  
22 whether the Zoning Administrator should make a  
23 decision and then if it's not correct, it will come to  
24 us.

25 What I heard Board members talking about

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1 was their concern of us being looked at by the Zoning  
2 Administrator as an interpretive body, not of  
3 decisions, not of final decisions that are made, but  
4 actually interpretive of what the decisions should be.

5 So it's putting us into a role of which we usurp in  
6 an appeal, but an appeal is based on a final official  
7 authoritative decision, and then we judge whether  
8 there was error in it and we can go through the  
9 analysis of how we might have decided in that  
10 capacity.

11 But looking at this in the preliminary,  
12 let's say, looking at it and analyzing this as to  
13 whether it should come for variances, looking at the  
14 regulations as if it should go to the BZA for review  
15 I think is problematic for this Board. I think there  
16 is an excellent balance between this Board and the  
17 Zoning Administrator.

18 The Zoning Administrator is to look at  
19 these projects to assess it with the regulations and  
20 make a definitive decision, and they have no  
21 difficulty in sending projects to the Board for relief  
22 when it is warranted and there should be no fear that  
23 they should not make decisions. They should make the  
24 decisions, and if people feel it's in error, then  
25 there is the process that it can be appealed and then

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1 that appeal comes to us.

2 It does seem to slow down and rather ask  
3 an awful lot of us if we get an awful lot of  
4 applications that are coming in kind of saying, well,  
5 we need you to first decide whether we should be here,  
6 and then second decide, if we should, whether we  
7 should get it or not.

8 I guess we could take another extra week  
9 or day of the week and set up like an interpretive  
10 window in the Office of Zoning and each one of us  
11 could take a schedule time and do interpretations for  
12 like a nickel or something. That's a really long  
13 joke, for the record.

14 Okay. I think, first of all, let's  
15 dispense with this because the application is  
16 immediately before us, and would move approval of  
17 17198, the application of 701 Lamont LLC, and that is  
18 for first the special exception for 11, the variance  
19 under 770, variance under 771, 72, 73, 74, and 2001.3  
20 respectively. Of course, that is the maximum height,  
21 FAR, lot occupancy, residential rec, and rear yard  
22 requirements, and, of course, 2001.3 goes to the  
23 additions and enlargements to nonconforming  
24 structures, and I would ask for a second.

25 VICE CHAIRPERSON MILLER: Second.

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1 CHAIRPERSON GRIFFIS: Thank you very much.

2 As I started out in this, and I think  
3 actually the filing really brought it home, I mean,  
4 this does look like a fundamental textbook application  
5 regarding Clerics of St. Viator which established the  
6 fact that an existing structure can be the basis of  
7 uniqueness and practical difficulty, and if this isn't  
8 practically difficult, to have an existing building  
9 that is taller than is allowable but you're not adding  
10 to the height, I really don't see what is, which  
11 obviously lends our discussion back to, then, why are  
12 we actually granting for relief for a condition that  
13 exists and that is not changing.

14 But under undue caution, I think it is  
15 appropriate to go with the variance relief that is  
16 before us and make note, as Board members feel it  
17 appropriate, make note of the fact of perhaps how  
18 redundant, or maybe that isn't even the word, maybe  
19 just rise to the level of unnecessary requests for  
20 relief in terms of aspects that are not changed and  
21 are, in fact, existing.

22 Others?

23 VICE CHAIRPERSON MILLER: I would just  
24 like to note generally that I think it is appropriate  
25 for us to look at whether the proposed variances as

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1 well as other than the recreation requirement as well  
2 as the special exception is appropriate for us to  
3 determine as being unnecessary in this context. I  
4 think we can do it. I don't think we need to do it  
5 just in the context of an appeal. I think we could  
6 grant the variances but issue an opinion saying that  
7 we don't find them to be necessary or required, and we  
8 have a record before us, we have Office of Planning's  
9 opinion on this, we have specific facts, briefing by  
10 the appellant. So I have no problem doing that. I  
11 don't think we have to wait for an appeal of this kind  
12 of a decision.

13 CHAIRPERSON GRIFFIS: Okay. And that's  
14 not what I meant to derive. What I was saying, our  
15 capacity to act as the Zoning Administrator comes  
16 under appeal, not that "Let's wait and see if these  
17 come to appeal." This Board has, in fact, in the past  
18 had requests for relief that came before us that we  
19 said, "You don't need the relief that you're seeking"  
20 and has set it off.

21 I don't know if it has just been too long  
22 of a day, I'm too hungry, I don't really feel like  
23 looking at all of the aspects of implications of  
24 saying that for this particular application, but I  
25 think it's fairly important and fundamental, in my

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1 opinion, that an existing condition that isn't  
2 changing I don't see rising to the level of coming and  
3 being asked for relief.

4 For instance, if we go to 223 cases, we  
5 have additions to nonconforming structures and they  
6 come in for a certain conformity. We don't grant  
7 relief for their nonconformity; we grant relief in the  
8 special exception to 223 for the addition to that  
9 nonconformity.

10 In fact, we have had applications that  
11 came in that were one nonconformity, and it came up,  
12 "Well, you've got five others." Well, we don't grant  
13 relief for those five others. It's an existing  
14 condition, it's not changing, and we don't get into  
15 it. But that's as far as my mind can take me today.

16 VICE CHAIRPERSON MILLER: Okay. The other  
17 thing I would like to say, then, is I guess different  
18 from an appeal in that this can be looked at by the  
19 Zoning Administrator as precedent. You know, we're  
20 not ruling on these types of variances can never come  
21 before the BZA or something; we're just showing how  
22 it's inappropriate in this case and can be used as a  
23 guide by BZA for future cases.

24 CHAIRPERSON GRIFFIS: Excellent wording.  
25 You must have legal training. I, on the other hand,

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1 do not. However, we have a motion before us. It has  
2 been deliberated. Are there any other deliberations,  
3 opinions, comments?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Very well, then.  
6 The motion is before us, it has been seconded. I ask  
7 that all those in favor signify by saying aye.

8 (Chorus of ayes.)

9 CHAIRPERSON GRIFFIS: And opposed?  
10 Abstaining?

11 (No response.)

12 CHAIRPERSON GRIFFIS: Very well.

13 Ms. Bailey.

14 MS. BAILEY: Mr. Chairman, clarification  
15 or just for my understanding, the relief is being  
16 granted as outlined in the Office of Planning's  
17 report; am I correct?

18 CHAIRPERSON GRIFFIS: I'm sorry?

19 MS. BAILEY: The relief is being granted  
20 as outlined in the Office of Planning's report?

21 CHAIRPERSON GRIFFIS: I'm not sure of the  
22 distinction. The relief is being --

23 MS. PRINCE: May I interject? I think I  
24 can clarify.

25 CHAIRPERSON GRIFFIS: Yes.

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1 MS. PRINCE: We cited ourselves for fewer  
2 areas of relief than the Office of Planning cited in  
3 its report. For example, the Office of Planning said  
4 we needed a height variance even though we're not  
5 changing the height of the building.

6 I suggest that you cannot give us relief  
7 that we didn't request because we're not advertised  
8 for it.

9 CHAIRPERSON GRIFFIS: Oh. I'm sorry. And  
10 that's what I actually probably stated.

11 MS. PRINCE: Right. You listed the Office  
12 of Planning's areas of relief, which I think Mr.  
13 Mordfin himself will say were overly cautious and  
14 beyond the scope of what we had requested.

15 CHAIRPERSON GRIFFIS: Right.

16 MS. PRINCE: I also wanted to clarify that  
17 we are seeking a summary order in the interest of  
18 moving the project along. So I appreciate all of your  
19 conversation and effort, but we would appreciate a  
20 summary order.

21 CHAIRPERSON GRIFFIS: Sure. Okay. Well,  
22 you know, it seems to fall on the point of what we're  
23 saying. I mean, is there any burden if the -- oh,  
24 well. No, I think we're granting relief for what was  
25 requested.

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1 MS. BAILEY: Thank you, sir.

2 CHAIRPERSON GRIFFIS: Pay no attention to  
3 what I said. Go ahead.

4 MS. BAILEY: The Board has voted 5-0-0 to  
5 approve the application. Mr. Griffis made the motion,  
6 Mrs. Miller seconded. Mr. Etherly, Mr. Parsons and  
7 Mr. Mann are in agreement. It is a summary order.

8 CHAIRPERSON GRIFFIS: Yes. I believe we  
9 can waive our requirements and issue as summary order  
10 on this, and I think the Board can take up, first of  
11 all -- we do have the official transcripts on this  
12 which will have some standing for that discussion that  
13 we had regarding the relief process.

14 I think Ms. Miller also brought up a point  
15 of maybe we put together a position paper of some sort  
16 and I think we can facilitate that. You did actually  
17 say something of that nature.

18 VICE CHAIRPERSON MILLER: Position paper?

19 CHAIRPERSON GRIFFIS: Well, whatever it  
20 was that you -- the official opinion paper. You know  
21 what they teach in law school, stuff. So I think we  
22 can make that happen, but it's obviously going to be  
23 outside of the issuance of this order.

24 VICE CHAIRPERSON MILLER: I would like to  
25 request, like in the previous case, that maybe we

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1 could add one line -- we could make this more of a  
2 hybrid summary order -- reflecting, perhaps, that  
3 while we didn't find that relief was necessary for  
4 those specific variances and special exceptions, that  
5 we were granting them. Something to reflect to the  
6 Zoning Administrator --

7 CHAIRPERSON GRIFFIS: We're really moving  
8 forward on these hybrids.

9 VICE CHAIRPERSON MILLER: -- officially  
10 that that's our position.

11 CHAIRPERSON GRIFFIS: Good. Good. Yes.  
12 I think if that's legally allowable, we should do it.  
13 Okay. Everyone clear?

14 COMMISSIONER PARSONS: Yes.

15 CHAIRPERSON GRIFFIS: Ms. Bailey, thank  
16 you very much.

17 Thank you all very much. Appreciate your  
18 patience being down here this morning.

19 Is there any other business for the  
20 morning session, Ms. Bailey?

21 MS. BAILEY: No, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Excellent. Then  
23 let's adjourn the morning session of 27 July '04.

24 (Whereupon, at 12:50 a.m., the morning  
25 session adjourned.)

26

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

(1:50 p.m.)

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of the 27 July 2004 Board of Zoning Adjustment in the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and also Board member Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann. Representing the Zoning Commission with us this afternoon on part of the cases is Mr. Parsons.

Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room. You can pick one up and see where you are in the chronology of the cases.

A couple of very quick things to go through. First of all, all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions at this point. One is the court reporter, who is sitting to my right, and the second is we are broadcast live on the Office of Zoning's website.

Attendant to that, there are several things. First of all, when coming forward to speak to

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1 the Board, you will need to fill out two witness  
2 cards. Witness cards are available at the table where  
3 you entered into and also the table in front of us.  
4 Those two cards go to the recorder who, as I say, is  
5 sitting to my right.

6 I would ask that you turn off cell phones  
7 and beepers at this time so we don't disrupt the  
8 proceedings, and when coming forward, of course, you  
9 are going to need to speak into the microphone in  
10 order to be recorded into the transcript, and I ask  
11 that you say once as you start talking your name and  
12 your address for the record.

13 The order of procedure this afternoon for  
14 special exceptions and variances is first we hear the  
15 case presentation by the applicant. Second, we hear  
16 government reports. Third, we will have the Advisory  
17 Neighborhood Commission report. Fourth, we will hear  
18 persons or parties in support of an application.  
19 Fifth, we will hear persons or parties in opposition  
20 to an application. Sixth, finally, any closing  
21 remarks, summations, or rebuttal testimony by the  
22 applicant.

23 Cross-examination of witnesses is  
24 permitted by the applicant and parties in a case. The  
25 ANC within which the property is located is

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1 automatically a party in the case and therefore is a  
2 full participant and can participate in  
3 cross-examination.

4 The record will be closed at the  
5 conclusion of the hearing except for any material that  
6 is specifically requested by this Board, and this  
7 Board will be very specific of what information is to  
8 be submitted and when it is to be submitted into the  
9 Office of Zoning. After that material is received, of  
10 course, it should be obvious that the record would  
11 then be finally closed and no other information would  
12 be accepted.

13 The Sunshine Act requires that this Board  
14 conduct all hearings and procedures in the open and  
15 before the public. This Board may, however, enter  
16 into executive session both during or after a hearing  
17 on a case and that would be for the purposes of  
18 reviewing the record or deliberating on a case. This  
19 would be in accordance with our rules of procedure and  
20 the Sunshine Act.

21 The decision of this Board in contested  
22 cases must be based exclusively on the record that is  
23 created before us here today. So two things attendant  
24 to that. Of course, you want to get everything into  
25 the record that you want us to look at and deliberate

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1 on, and second, we ask that today, while you are here,  
2 please do not engage Board members in conversation so  
3 it does not give the appearance that we are receiving  
4 information outside of the record.

5 PRELIMINARY MATTERS

6 CHAIRPERSON GRIFFIS: At this time, we  
7 will consider any preliminary matters. Preliminary  
8 matters are those which relate to whether a case will  
9 or should be heard today, such as requests for  
10 postponements, continuances, or withdrawals, or  
11 whether proper and adequate notice has been provided.

12 If you are not prepared to go forward with  
13 a case today or you believe the Board should not  
14 proceed with a case on our agenda for this afternoon,  
15 I would ask if you would come forward and have a seat  
16 at the table in front of us as an indication of having  
17 a preliminary matter.

18 Not noting anyone coming towards the  
19 table, let me ask -- you have a preliminary --

20 MR. AKOPIAN: Yes.

21 CHAIRPERSON GRIFFIS: I am just going to  
22 have you come forward. Take your time. Have a seat.  
23 You're going to need to turn on the microphone and  
24 you're going to tell me your name and your address.

25 MR. AKOPIAN: My name is David Akopian. I

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1 am representing Lee Bauer. He gave me power of  
2 attorney.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. AKOPIAN: This is the first time. I  
5 didn't know whether I should present with the  
6 witnesses or how I should present, so I'm alone today.

7 CHAIRPERSON GRIFFIS: Do you have  
8 witnesses to call?

9 MR. AKOPIAN: No. No. You said you have  
10 to fill the witness cards.

11 CHAIRPERSON GRIFFIS: Oh.

12 MR. AKOPIAN: I'm not sure what is it all  
13 about.

14 CHAIRPERSON GRIFFIS: Okay. So a  
15 procedural question is not a problem. You're the only  
16 person that's going to present the case today,  
17 correct?

18 MR. AKOPIAN: Yes. That's right.

19 CHAIRPERSON GRIFFIS: Okay. That's  
20 absolutely fine. What you need to do for yourself  
21 only is actually, now that you're sitting here, the  
22 cards are right in front of you, take two. You can go  
23 back, have a seat, fill them out, and when you are  
24 ready to come forward, you are going to give them to  
25 the recorder and then we will get rolling on your

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1 case. You are I believe the second case in the  
2 afternoon.

3 MR. AKOPIAN: Second case.

4 CHAIRPERSON GRIFFIS: So plenty of time to  
5 get those filled out.

6 MR. AKOPIAN: Okay.

7 CHAIRPERSON GRIFFIS: Any other questions?

8 MR. AKOPIAN: No. That's it.

9 CHAIRPERSON GRIFFIS: Okay. Great.

10 MS. BAILEY: Mr. Chairman, is that the  
11 second or the -- he's representing Mr. Lee Bauer?

12 CHAIRPERSON GRIFFIS: Is my schedule all  
13 off? Okay. So you're the first case, so you will  
14 have to fill them out even faster.

15 MS. BAILEY: And also, Mr. Chairman, if I  
16 might, we didn't receive an affidavit of posting in  
17 this case. An affidavit of posting, as of Friday, it  
18 wasn't in the file. I'm not sure if it is now. The  
19 filing is in front of you, Mr. Chairman, if you could  
20 --

21 CHAIRPERSON GRIFFIS: Good. While we get  
22 that together, are there any other preliminary matters  
23 that you are aware of, Ms. Bailey, on any of the other  
24 applications?

25 MS. BAILEY: Just swearing the witnesses

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1 in, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Indeed. Okay.  
3 That's what I thought we would do, was do that, we'll  
4 call your case and we'll get to the questions that we  
5 need to ask you. So if you would remain standing, and  
6 I would ask that anyone else in the room that is going  
7 to provide testimony this afternoon if they would  
8 please stand and give your attention to Ms. Bailey and  
9 she is going to administer the oath.

10 (Witnesses sworn.)

11 CHAIRPERSON GRIFFIS: Okay. Why don't we  
12 call the case, then?

13 APPLICATION OF LEE C. BAUER

14 17090 ANC-2B

15 MS. BAILEY: Application Number 17090 of  
16 Lee C. Bauer, pursuant to 11 DCMR 3103.2, for a  
17 variance from the nonconforming structure provisions  
18 under Subsection 2001.3, and a variance from the  
19 accessory garage alley setback requirements under  
20 Subsection 300.2(b) to allow a roof deck addition to a  
21 freestanding accessory garage in the Dupont Circle  
22 Overlay R-5-B District at premises 2116 O Street,  
23 Northwest, Square 69, Lot 146.

24 MR. AKOPIAN: Should I start?

25 CHAIRPERSON GRIFFIS: Absolutely. Have a

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1 seat. We have one preliminary matter.

2 Ms. Bailey has indicated that the  
3 affidavit of posting was not filed in the application,  
4 meaning that you attest to the fact that this was  
5 placard, posted correctly. Are you aware that the  
6 affidavit is not in the record?

7 MR. AKOPIAN: No. No. He just asked me a  
8 few days ago and I didn't have much time to ask him  
9 any questions.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. AKOPIAN: So I came just with his  
12 power of attorney and --

13 CHAIRPERSON GRIFFIS: Okay. What is your  
14 relationship to the project?

15 MR. AKOPIAN: I did the project for him.

16 CHAIRPERSON GRIFFIS: Did it meaning what?

17 MR. AKOPIAN: Preliminary project so that  
18 he will see how it will work. It's not the final  
19 project --

20 CHAIRPERSON GRIFFIS: I still don't  
21 understand. So you built it for him, tore it down,  
22 and now you're back?

23 MR. AKOPIAN: No. No, no.

24 CHAIRPERSON GRIFFIS: Okay. Tell me what  
25 you --

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1 MR. AKOPIAN: I'm working for Joseph  
2 Passonneau, who is an architect, --

3 CHAIRPERSON GRIFFIS: Oh, I see.

4 MR. AKOPIAN: -- who is his neighbor, who  
5 has a similar deck with special exception built a long  
6 time ago.

7 CHAIRPERSON GRIFFIS: I understand. So  
8 you work in Mr. Passonneau's office?

9 MR. AKOPIAN: Yes. I was working. Right  
10 now I'm not working, but I was working for him.

11 CHAIRPERSON GRIFFIS: I see.

12 MR. AKOPIAN: Lee Bauer is a neighbor,  
13 asked me to prepare a preliminary project to see how  
14 it would work in his area, similar to what we have for  
15 Joseph Passonneau.

16 CHAIRPERSON GRIFFIS: Okay. I don't know  
17 what we do with this.

18 Ms. Bailey, there is no affidavit that it  
19 was posted; is that correct?

20 MS. BAILEY: No, sir. Mr. Chairman, I  
21 didn't check this morning, but if you could double  
22 check the file in front of you, Mr. Chairman, to be  
23 absolutely sure.

24 CHAIRPERSON GRIFFIS: Okay. Trusting that  
25 you have been thoroughly this, which I know you have,

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1 there is no current filing of affidavit without going  
2 through the entire official record, which is right in  
3 front of me.

4 MS. BAILEY: No, sir.

5 CHAIRPERSON GRIFFIS: Okay. Let me ask  
6 you a couple other questions.

7 MR. AKOPIAN: Yes, sir.

8 CHAIRPERSON GRIFFIS: Did you bring --  
9 have you prepared to provide us with the variance test  
10 today showing us how this property is unique, what the  
11 practical difficulty is, and whether it would impair  
12 the intent and integrity of the zone plan or the  
13 public good?

14 MR. AKOPIAN: I could explain how it  
15 started, how we did the project, why we did the  
16 project, why he wants to improve his lot.

17 CHAIRPERSON GRIFFIS: Okay. How about can  
18 you tell me about -- are you prepared to tell me why  
19 this property is unique and what the practical  
20 difficulty of complying with the zoning regulations  
21 is?

22 MR. AKOPIAN: No. It's not a unique  
23 property. You cannot say that it's a unique property.

24 CHAIRPERSON GRIFFIS: Okay. Before you go  
25 any further, let me just point out something that I

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1 think the Board members agree with me here, but they  
2 can obviously voice their disagreement if not.

3 I don't see any case presentation here in  
4 terms of the test for the variance which you are here  
5 for. In fact, even more so to this is the Office of  
6 Planning's report is recommending denial of this  
7 application because nothing has been presented in  
8 terms of exceptional situation or uniqueness. So this  
9 is what I think we ought to do with this. First of  
10 all, we also don't have an affidavit for posting. I  
11 don't think you're ready to go today. I think we  
12 ought to put this off and give specific direction on  
13 what you should submit when you come back to present  
14 the case.

15 MR. AKOPIAN: Okay.

16 CHAIRPERSON GRIFFIS: Now, have you  
17 reviewed the Office of Planning's report?

18 MR. AKOPIAN: I reviewed the Office of  
19 Planning report. It is based on the project I  
20 prepared. The project I prepared is not supposed to  
21 be submitted with obligation because he originally  
22 applied for a building deck improving his lot without  
23 any consideration -- any particular project, and the  
24 Office of Planning considered particular project as if  
25 it's already down for a build, but it is not.

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1 CHAIRPERSON GRIFFIS: I don't understand  
2 any of that.

3 MR. AKOPIAN: Okay. You could apply for a  
4 special exception to build a deck on your property,  
5 right, without particular project.

6 CHAIRPERSON GRIFFIS: What do you mean by  
7 not particular project?

8 MR. AKOPIAN: Without any project, just  
9 application to build a deck similar to property --  
10 neighbor's property.

11 CHAIRPERSON GRIFFIS: No, that's not  
12 correct.

13 MR. AKOPIAN: You are supposed to supply a  
14 project for that?

15 CHAIRPERSON GRIFFIS: You mean in terms of  
16 drawings and what you're actually thinking of doing?

17 MR. AKOPIAN: Yes.

18 CHAIRPERSON GRIFFIS: Absolutely. Perhaps  
19 let me just say maybe you're thinking of more when you  
20 go for a design review at Historic Preservation where  
21 you kind of talk about concept and things of that  
22 nature. This is not a design review board; this is a  
23 zoning relief review board.

24 MR. AKOPIAN: Yes.

25 CHAIRPERSON GRIFFIS: We have strict

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1 regulations of zoning. Really what we require are  
2 permit-ready documents. If you are going for a  
3 setback from the center line of an alley, I need to  
4 see exactly where that wall is going. We need to know  
5 exactly what that dimension is because that's what  
6 you're asking for relief for.

7 MR. AKOPIAN: It is possible to show.

8 CHAIRPERSON GRIFFIS: Yes. I know. To  
9 document it, yes. I think you're showing graphically,  
10 that's fine. That's what you have to present: why is  
11 this property unique; out of that unique quality on  
12 the property, what is the practical difficulty that  
13 arises, the practical difficulty in complying with the  
14 zoning regulations. So something is unique about this  
15 project that won't allow you to set back from the  
16 center line of the alley the appropriate dimension.

17 MR. AKOPIAN: If it's only about setback,  
18 it is possible, if it's only about setback. But there  
19 are many other questions that's impossible to  
20 overcome.

21 MEMBER ETHERLY: Mr. Chairman, I was going  
22 to suggest, perhaps to kind of move us along, I would  
23 agree with you that clearly the application  
24 unfortunately is just simply not ready to move forward  
25 at this time. That will leave us one or two options.

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1       Conceivably an option is just to dismiss the case  
2 outright which, without the affidavit posting,  
3 probably is somewhat of a stronger case. But I think  
4 at minimum the other option is scheduling this for a  
5 date in the future and offering some limited guidance  
6 on what will be needed so this case is ready to move  
7 forward at the appropriate point in time.

8               Clearly we do not have an ANC report.  
9 While we do have I believe two letters in opposition,  
10 which might suggest that there has been some type of  
11 at least public discussion or public knowledge of the  
12 proposed project, I just don't think we're ready to  
13 move forward today.

14               CHAIRPERSON GRIFFIS: Okay. Thank you. I  
15 would concur, and maybe I can start with the guidance  
16 so that when you come back, you will at least know  
17 what you need to do and you can assess your case.

18               Number one, we were talking about a  
19 posting. The applicant should have gotten a letter  
20 saying that they are required to do a posting that you  
21 are applying for these variances 15 days prior to the  
22 hearing, and the applicant would need to submit an  
23 affidavit attesting that, in fact, the posting was  
24 done. Many people take pictures of the posting as  
25 well as additional proof. Number two is the

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1 permit-ready documents that the Chairman was referring  
2 to; and number three, there's a legal test to meet a  
3 variance, and you need to do that, and the Chairman  
4 was leading you through that as well. And if you have  
5 any other questions, you can ask the Office of Zoning  
6 or even Office of Planning.

7 MR. AKOPIAN: Who do I contact with in  
8 regard to these questions?

9 CHAIRPERSON GRIFFIS: Pardon me?

10 MR. AKOPIAN: Who could I speak with?

11 CHAIRPERSON GRIFFIS: What we are going to  
12 do right now, we are going to set this for October  
13 19th in the morning. That's your official notice of  
14 the hearing. October 19. It will be one of the cases  
15 that we hear in our morning session.

16 I want you to, when you leave, to go over  
17 to the Office of Zoning just at the front desk and  
18 they are going to showy exactly everything that you're  
19 going to need to do, from the test to the posting to  
20 everything else.

21 MR. AKOPIAN: Okay.

22 CHAIRPERSON GRIFFIS: And that means next  
23 time we see you, this is going to be clean as a  
24 whistle and we will get through it very quickly.

25 MR. AKOPIAN: Okay. Hopefully.

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1 CHAIRPERSON GRIFFIS: Indeed. Thank you  
2 very much.

3 MR. AKOPIAN: Thank you.

4 CHAIRPERSON GRIFFIS: I'm sorry you had to  
5 come down here to hear this, but there it is.

6 Okay. That being said, we have  
7 rescheduled this application. Let's move to the next  
8 in the afternoon, Ms. Bailey.

9 APPLICATION OF INTERNATIONAL REAL ESTATE

10 AND HIGH TECH INVESTMENT GROUP

11 17176 ANC-2F

12 MS. BAILEY: Application Number 17176 of  
13 International Real Estate and High Tech Investment  
14 Group, pursuant to 11 DCMR 3103.2, for a variance from  
15 the lot occupancy requirements under Section 772, a  
16 variance from the rear yard requirements under Section  
17 774, and a variance from the nonconforming structure  
18 provisions under Subsection 2001.3 to construct an  
19 addition to an existing apartment building in the  
20 C-2-A District at premises 1320 9th Street, Northwest,  
21 Square 367, Lot 823.

22 CHAIRPERSON GRIFFIS: Good afternoon.

23 MR. GLASGOW: Good afternoon.

24 CHAIRPERSON GRIFFIS: Let's roll right  
25 into this.

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1 MR. GLASGOW: All right. Good afternoon,  
2 Mr. Chairman, members of the Board. For the record,  
3 my name is Norman M. Glasgow, Jr., of the law firm of  
4 Holland & Knight, representing the applicant in the  
5 above case, 17176.

6 Here with me today are Mr. Fred Sadedi,  
7 the applicant in the case; Mr. Faramarz Sabouri, the  
8 architect; and Steve Sher, land planning expert  
9 witness.

10 Once again, we are prepared to stand on  
11 the record and answer any questions that the Board may  
12 have on this case or we can go through our  
13 presentation depending upon how the Board wishes to  
14 proceed.

15 CHAIRPERSON GRIFFIS: Very well. I think  
16 we can get through this fairly expeditiously. This is  
17 the Blagden alley contributing building which was  
18 going to -- actually, as it comes across immediately,  
19 it sounds like, my goodness, they are asking a lot to  
20 be put on this, but really when you break it down from  
21 the submissions that I have seen, it's fairly small in  
22 nature of the requests and really it relies on or is  
23 based on the fact of the existence structure and the  
24 carriage house.

25 So, I don't know. If Board members feel

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1 they want a full presentation, I'm happy to go that  
2 way, or we can take limited statements and get through  
3 this by questions. Mr. Mann? Good. Okay. Let's go  
4 through this expeditiously, then, and obviously we  
5 will get the questions in that we need.

6 MR. GLASGOW: All right. As the Chairman  
7 indicated, the property is located in the Shaw  
8 Historic District. The applicant has worked with the  
9 Historic Preservation Review Board, with Steve  
10 Callcott, the staff member, and has received the  
11 approval of the Historic Preservation Review Board for  
12 the proposed addition.

13 We have also worked with the Advisory  
14 Neighborhood Commission and have their unanimous  
15 support. I think that the letter of the ANC is in the  
16 record.

17 We do have three variances that we're  
18 asking for. One is the rear yard, and that's because  
19 we -- right now we have no rear yard and are putting a  
20 small addition on top of the existing carriage house.

21 That all has been approved. We are putting the  
22 stairwell up to the residential recreation space, and  
23 that ends up being part of -- we have a 1 percent  
24 increase in our lot occupancy, and we have a court  
25 that is already nonconforming, and we change that by a

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1 minuscule amount of square footage.

2 CHAIRPERSON GRIFFIS: Okay. So you're not  
3 providing a rear yard right now, and, in fact, that's  
4 what your written submission is.

5 MR. GLASGOW: That's correct.

6 CHAIRPERSON GRIFFIS: The building  
7 provides no rear yard. That's exactly what you state.  
8 The existing building.

9 MR. GLASGOW: The existing building has no  
10 rear yard.

11 CHAIRPERSON GRIFFIS: So you are here for  
12 relief from a rear yard that doesn't exist.

13 MR. GLASGOW: That is partly because of  
14 some of the vagaries of the regulations. They allow,  
15 within a rear yard, you can have a two-story carriage  
16 house structure, and we are putting the third story on  
17 that. We're in a C-2-B zoning district, we can have a  
18 50-foot height.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. GLASGOW: C-2-A. C-2-A zoning  
21 district. We can have a 50-foot height. We're well  
22 under the height, we're well under the FAR.

23 CHAIRPERSON GRIFFIS: I see. Okay.

24 MR. GLASGOW: So we have a technical  
25 situation there, but we do not have a rear yard right

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1 now. If you go out physically to the lot, there is no  
2 rear yard.

3 CHAIRPERSON GRIFFIS: I see. Okay. And  
4 then the lot occupancy, of course, just for quick  
5 reiteration, is because they have an overhang and it's  
6 50 or so square feet that's increasing in terms of the  
7 lot occupancy.

8 MR. GLASGOW: That's correct.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. GLASGOW: Yes. So it's very minor  
11 what the areas of relief are technically even though  
12 we have three variances.

13 If there are any questions, we can have  
14 the architect go through the plans and Mr. Sher can  
15 cover anything with respect to the practical  
16 difficulty and those matters.

17 CHAIRPERSON GRIFFIS: Any questions at  
18 this time? Okay. I think we're pretty clear.

19 MEMBER MANN: Mr. Chairman, I have a  
20 question.

21 CHAIRPERSON GRIFFIS: Yes. I'm sorry.  
22 Mr. Mann, go ahead.

23 MEMBER MANN: Regarding the Historic  
24 Preservation Review Board, I noticed that it has been  
25 I believe almost three years since that approval was

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1 done. Will there be a need to revisit HPRB or can  
2 their former decision stand as it is?

3 MR. GLASGOW: As long as you don't change  
4 the plans, their approvals don't have a time limit  
5 like the BZA orders do.

6 CHAIRPERSON GRIFFIS: And just so it  
7 doesn't send out any flags, because you've said, you  
8 know, it has an existing carriage house which is two  
9 stories and this Board has seen many that want to add  
10 a story onto a garage and they can't do it in certain  
11 districts and zones, this is, first of all, a single  
12 building, it's not an accessory structure.

13 MR. GLASGOW: That is correct.

14 CHAIRPERSON GRIFFIS: Okay. And secondly,  
15 there is no -- does this fall under a carriage house  
16 and this would be an additional level that wouldn't be  
17 allowable?

18 MR. GLASGOW: No. No. This --

19 CHAIRPERSON GRIFFIS: I'm confusing you  
20 probably because obviously that's part of the  
21 regulations in a residential district.

22 MR. GLASGOW: That's right. Yes. And it  
23 has to do with alley lots, some of those things and  
24 all of that.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. GLASGOW: And we don't have any of  
2 that situation.

3 CHAIRPERSON GRIFFIS: Okay. Very good.  
4 Okay. Let's proceed, then. What else do you need to  
5 tell us.

6 MR. GLASGOW: Maybe we ought to have Mr.  
7 Sher give just a quick summary of the practical  
8 difficulty and how we meet the burden of proof and see  
9 if you all have any questions from that.

10 CHAIRPERSON GRIFFIS: Excellent.

11 TESTIMONY OF STEVEN E. SHER

12 MR. SHER: For the record, my name is  
13 Steven E. Sher, the Director of Zoning and Land Use  
14 Services with the law firm of Holland & Knight.

15 As Chip indicated and as the Board has  
16 already intuited, this is a single building, goes all  
17 the way from the front to the alley at the back. If  
18 there was a separation between the garage building at  
19 the back, it would be in a rear yard, it would be a  
20 different story, but it's all one building, so it runs  
21 to the alley, so you've got to measure the rear yard  
22 from the very back of the building, which is on the  
23 alley line. There is no rear yard there now, and so  
24 it's a nonconforming structure.

25 The reason we need a variance is we're

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1 adding a third floor over the existing two floors, and  
2 the third floor doesn't set back, either; it falls the  
3 same line of the building all the way up.

4 The reason for that is essentially that  
5 that garage is 22 feet deep. If you had a setback 15  
6 feet, you would have only seven feet left to build on,  
7 so you don't have enough space to build there unless  
8 you're able to follow the footprint of the existing  
9 building, and structurally it makes more sense to do  
10 that anyhow.

11 So we have a partial third floor that  
12 we're expanding across the building to the rear, we've  
13 got an overhang, as the Chairman indicated, over a  
14 piece of the court where you get to that narrow part  
15 of the building which is only about -- if you had to  
16 do a complying court, you would be like eight feet  
17 worth of building that you could build on. So the  
18 narrowness of the lot, the configuration of the  
19 existing building, create the exceptional situation  
20 and the inability to size an addition that is within  
21 the height and within the FAR. There is no more  
22 density on this lot than is permitted under the  
23 regulations. We're less than the 2.5 FAR. But it's  
24 just how you put it on the lot given the constraints  
25 of the existing building that creates the need for the

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1 variances. That's the 50-word-or-less explanation.

2 CHAIRPERSON GRIFFIS: Well said.

3 Questions?

4 VICE CHAIRPERSON MILLER: Just to  
5 understand this rear yard concept a little better, if  
6 you put the third floor on top of this carriage house  
7 and you set it back, would that count as rear yard  
8 even though it's three stories up?

9 MR. SHER: Well, you still -- you  
10 technically would not have a rear yard because the  
11 rear yard has to be open to the sky from the ground up  
12 and the building is already there and it's not going  
13 to be a rear yard. But when you look at Section  
14 2001.3, which allows additions to nonconforming  
15 structures, you can build an addition without coming  
16 to the Board if the addition itself complies. So if  
17 the addition complied with the rear yard setback and  
18 we weren't over the lot occupancy and it wasn't  
19 Tuesday in July, we might be able to do this as a  
20 matter of right, but we are over the lot occupancy, we  
21 don't have the rear yard, it is Tuesday in July, and  
22 that's why we're here.

23 CHAIRPERSON GRIFFIS: The universe is in  
24 order.

25 Anything else?

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1 (No response.)

2 CHAIRPERSON GRIFFIS: What else can you  
3 tell us?

4 MR. GLASGOW: Do you all have any  
5 questions concerning this, because we believe this is  
6 pretty straightforward because it all stems from the  
7 existing building.

8 CHAIRPERSON GRIFFIS: Okay. Let's keep  
9 going through this. We will go to the Office of  
10 Planning, which has a report, obviously, attendant to  
11 this, and an excellent one at that, and that may  
12 invoke a couple more questions, and let's proceed.

13 A very good afternoon, sir.

14 REPORT FROM THE OFFICE OF PLANNING

15 BY TRAVIS PARKER

16 MR. PARKER: Good afternoon, Mr. Chairman,  
17 members of the Board. My name is Travis Parker with  
18 the Office of Planning. Taking a cue from the  
19 applicant and the Board, I will keep my remarks short.

20 The variances involved here are the result  
21 of the existing conditions on the lot and the  
22 historical nature of the building. This is a building  
23 that would not -- that the applicants are not allowed  
24 to modify significantly or take down, and this results  
25 in an exceptional situation and practical difficulty

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1 on the property.

2 For those reasons, the Office of Planning  
3 finds that it meets the test. It would not result in  
4 a substantial detriment to the neighborhood since all  
5 of these situations are existing on the current  
6 building.

7 The only additional comment I would make  
8 is, in an overabundance of caution, the Office of  
9 Planning recommended consideration of a court width  
10 variance as well. The existing court does not meet  
11 the requirements and the building is getting higher  
12 around the court and we consider this to affect the  
13 court. The height is in direct relation to the court  
14 itself, and even though it would not require  
15 additional court width, it does not meet the height  
16 that -- or the width that would be required. So we  
17 recommend approval of a variance of court width if it  
18 is deemed necessary in addition to approval of the  
19 other variances.

20 CHAIRPERSON GRIFFIS: Excellent. Thank  
21 you.

22 The court width requirement is always an  
23 interesting one. We have seen several iterations on  
24 it, and this seems to be a straightforward aspect of  
25 it. But clearly there is a nonconforming court now.

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1 MR. PARKER: Correct.

2 CHAIRPERSON GRIFFIS: And then as you add  
3 height to it, the court dimension is calculated by the  
4 height or the depth of the court.

5 MR. PARKER: Correct.

6 CHAIRPERSON GRIFFIS: And so what you're  
7 saying is as you add height and it's a nonconforming  
8 court, aren't you in need of relief for a  
9 nonconforming court.

10 MR. PARKER: The only issue is that they  
11 do not reach the height required to expand on the  
12 minimum court width required. The existing building  
13 and the proposed building both would require the same  
14 court because there is a minimum court requirement and  
15 they are not going over the height that would require  
16 them to go above the minimum court requirement.

17 The court requirement doesn't change; my  
18 office just considered additional height on the court  
19 to affect the court directly, and therefore we figured  
20 it was appropriate to add that variance to the list.

21 CHAIRPERSON GRIFFIS: So you're saying  
22 that the court dimension required is 15 feet.

23 MR. PARKER: Correct.

24 CHAIRPERSON GRIFFIS: The existing  
25 condition is 10.8 feet.

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1 MR. PARKER: Correct.

2 CHAIRPERSON GRIFFIS: And even with the  
3 addition, it's still going to be 10.8 and 15 feet.

4 MR. PARKER: Correct.

5 CHAIRPERSON GRIFFIS: Interesting. Boy,  
6 it's a day of these. So basically we have a  
7 nonconforming aspect that isn't changing, but relief  
8 is being requested of it or indicated it might be  
9 requested.

10 MR. PARKER: Similar to the rear yard,  
11 although there are extenuating circumstances there as  
12 well.

13 CHAIRPERSON GRIFFIS: Okay. Interesting.  
14 We just had an application this morning with 16  
15 variances all based on existing conditions that  
16 weren't changing. That's why it's so fresh in my  
17 mind.

18 All right. I think in undue caution,  
19 exactly as we have treated that one, let's take it  
20 into discussion. The applicant has briefed it in  
21 their written submission. I think it's pretty clear  
22 what the practical difficulty -- well, you know, I  
23 don't think they really say this, but one of the  
24 practical difficulties would be removing the building  
25 in order to make it conforming.

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1 (Laughter.)

2 CHAIRPERSON GRIFFIS: You know, I didn't  
3 say that to be funny, actually. It kind of looked  
4 that way, didn't it? You know, we have to take out  
5 five feet, right? That's interesting. It's a  
6 22-foot-wide property, you've got a 15-foot required  
7 court, but the court required was only because the  
8 building is there. Okay. Sometimes it all makes good  
9 rational sense.

10 Let's proceed. You know, I'm flexible  
11 whether we throw this in or not. I'm tending to not  
12 indicate that there is a required relief from the  
13 variance although I think it's excellent to bring this  
14 up because, you know, it actually isn't -- like I said  
15 this morning, we had a very similar aspect to this, so  
16 it seems to be a continuing theme.

17 Okay. What else. Any other questions of  
18 the Office of Planning from the Board?

19 (No response.)

20 CHAIRPERSON GRIFFIS: I think the report  
21 is excellent and I appreciate the summation, and it is  
22 all in here. I know the Board has read it and begun  
23 its deliberation on it, so I think we can rely heavily  
24 on it.

25 Does the applicant have any

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1 cross-examination of the Office of Planning?

2 MR. GLASGOW: No, sir.

3 CHAIRPERSON GRIFFIS: Are there any other  
4 government reports attendant to this? I'm not showing  
5 any. We do have and have noted Exhibit Number 31,  
6 which is a Historic Preservation memo which did go  
7 through, and, has been indicated by the applicant, the  
8 actual plans that we're looking at were those that  
9 were approved by HPRB and they are now pursuing those  
10 plans.

11 ANC-2F. Is there a representative from  
12 the ANC here?

13 (No response.)

14 CHAIRPERSON GRIFFIS: ANC-2F is not  
15 represented today; however, they did submit Exhibit  
16 Number 28, which was dated May -- oh. The letter is  
17 dated May 18; the vote was taken on May 5th, 5-0-0 to  
18 approve. I believe it does meet the requirements for  
19 granting great weight before us.

20 Are there any comments from the Board on  
21 the ANC letter submissions? Questions?

22 (No response.)

23 CHAIRPERSON GRIFFIS: Does the applicant  
24 have any comments on the ANC?

25 MR. GLASGOW: No, sir.

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1 CHAIRPERSON GRIFFIS: Okay. Thank you.

2 Let's move, then, to -- is there anyone  
3 here to give testimony in support of Application  
4 17176? Any opposition?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Not noting any  
7 persons either in support or in opposition, we go to  
8 any sort of closing remarks you might have, Mr.  
9 Glasgow.

10 MR. GLASGOW: Mr. Chairman, if we may, we  
11 would like to request a bench decision and summary  
12 order.

13 CHAIRPERSON GRIFFIS: Not an unheard of  
14 request.

15 VICE CHAIRPERSON MILLER: I just want a  
16 clarification on the court width variance question. I  
17 thought I was hearing that the court width was staying  
18 the same, and then I was looking at the application  
19 and it looks like it says it will be reduced from 10.8  
20 to 8.8 feet.

21 CHAIRPERSON GRIFFIS: It's indicated that  
22 the two-foot overhang is projecting into the court.

23 MR. SHER: That's correct. On the third  
24 floor only that addition hangs two feet over what  
25 would otherwise be the court.

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1 CHAIRPERSON GRIFFIS: Is that an allowable  
2 projection to an open space required?

3 MR. SHER: No.

4 CHAIRPERSON GRIFFIS: It isn't?

5 MR. SHER: It's not an eave, it's not a  
6 cornice, it's a piece of the building.

7 CHAIRPERSON GRIFFIS: So it does change  
8 the dimension of the court, which would make the court  
9 variance requirement needed. That means you're  
10 reducing the -- the first argument is, okay, you have  
11 a nonconforming, it's not changing the requirement,  
12 it's still there, and this would be the reduction.  
13 That's interesting. That's why I had this note on  
14 this. Is that correct? Are we looking at that  
15 correctly?

16 MR. SHER: The reason that we didn't think  
17 that we needed a court variance was because the width  
18 of the court, as Mr. Parker indicated before, the  
19 required width of the court doesn't change regardless  
20 of whether the building goes up, whether we have the  
21 addition or it doesn't have the addition because we  
22 have this 15-foot minimum requirement for the width of  
23 a court regardless of how -- not regardless, but until  
24 you get to a height of 60 feet, it doesn't change  
25 that. We're below that. We have asked for the

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1 variance from 2001.3 for the addition to the  
2 nonconforming structure.

3 CHAIRPERSON GRIFFIS: Oh, I see.

4 MR. SHER: If the Board thinks that we  
5 need a court variance, we're happy to have a court  
6 variance. We didn't think we needed it.

7 CHAIRPERSON GRIFFIS: Clearly stated, what  
8 you're saying is under 2001.3. Courts are covered.

9 MR. SHER: Yes.

10 CHAIRPERSON GRIFFIS: That's the point.  
11 It's almost redundant if we go into the specificity of  
12 it.

13 MR. SHER: That's what it is. You can say  
14 we may need a court, you could say we don't need a  
15 court variance.

16 MEMBER MANN: Wouldn't the rest of the  
17 variances be covered under that as well, under that  
18 logic?

19 MR. SHER: No, because we are -- the lot  
20 occupancy changes by virtue of the requirement and the  
21 increase in the coverage of the building, and the rear  
22 yard -- if we had brought the building out to the end  
23 of the lot -- I'm sorry. If we had done the other  
24 thing, if we had set the building back 15 feet from  
25 the end of the lot, then we might not have needed the

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1 rear yard variance. But we didn't in this case.

2 MEMBER MANN: But didn't we just decide  
3 that the court is getting two feet narrower  
4 technically?

5 MR. SHER: Yes.

6 MEMBER MANN: So a variance -- I mean that  
7 --

8 MR. SHER: Either way. I think it can go  
9 either way, whatever the Board wants to do.

10 CHAIRPERSON GRIFFIS: Okay.

11 VICE CHAIRPERSON MILLER: Mr. Sher, I'm  
12 looking at the regulation. Tell me what you think  
13 about this. 2001.3(b)(2): Enlargements or additions  
14 may be made to the structure provided the addition or  
15 enlargement itself shall (2) neither increase or  
16 extend any existing nonconforming aspect of the  
17 structure. So doesn't that extend the nonconforming  
18 court?

19 MR. SHER: And that's why we asked for the  
20 variance.

21 VICE CHAIRPERSON MILLER: From 2001.3.

22 MR. SHER: From 2001.3, correct.

23 VICE CHAIRPERSON MILLER: Okay.

24 MR. PARKER: I think the Office of  
25 Planning has expressed a problem before with using a

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1 variance from that section as a catch-all to avoid  
2 applying for the individual variances.

3 CHAIRPERSON GRIFFIS: Very well. Let's  
4 move ahead as if we have a variance for the court in  
5 front of us. We can make a note of -- there it is --  
6 undue caution that, you know, just that two-foot  
7 projection, which is very minimal in terms of actually  
8 an overhang. It's not even a structure that's  
9 encroaching on the open space, but as Office of  
10 Planning has said, as is true, it needs to be open to  
11 the sky.

12 Of course, there is a question about,  
13 well, it was not advertised for a variance from a  
14 court, but it was advertised for two variances and  
15 they are both area variances, and I think it covers if  
16 someone had concerns that the advertising and  
17 announcements would have sufficiently drawn their  
18 attention to this and what was involved in it. So I  
19 don't think any sort of delay on this in terms of  
20 readvertising would be necessary unless others feel  
21 differently. Okay. Very well.

22 Let's move ahead. I would move approval  
23 of 17176, the International Real Estate and High Tech  
24 Investment Group, and that is pursuant to a variance  
25 from the lot occupancy, which is Section 772, a

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1 variance from the rear yard requirements, 774, a  
2 variance from the nonconforming structure provision in  
3 Section 2001.3, and that being paralleled with a  
4 variance for the court, which I believe is 776, for  
5 undue or total assurance of everything that we're  
6 looking at is, in fact, what we have deliberated on  
7 and looked to the tests and they have met those tests.

8 MEMBER ETHERLY: Seconded.

9 CHAIRPERSON GRIFFIS: Thank you so much.

10 There is a motion before us. It has been  
11 seconded. Further discussion on this?

12 (No response.)

13 CHAIRPERSON GRIFFIS: I think the  
14 applicant's filing with the Office of Planning can be  
15 relied upon greatly in terms of making the test for  
16 all the variances here: One, the existing structure,  
17 the historic and contributing nature of the structure,  
18 and the other information that we have in the record.

19 Any other deliberations, questions,  
20 discussion of the Board?

21 (No response.)

22 CHAIRPERSON GRIFFIS: Very well. I would  
23 ask for all those in favor to signify by saying aye.

24 (Chorus of ayes.)

25 CHAIRPERSON GRIFFIS: Opposed?

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1 (No response.)

2 CHAIRPERSON GRIFFIS: Very well. Thank  
3 you all very much.

4 MR. GLASGOW: Thank you.

5 CHAIRPERSON GRIFFIS: Thank you.

6 Good. Why don't we record the vote. I  
7 think we can waive our regulations and issue a summary  
8 order on this.

9 MS. BAILEY: Yes, Mr. Chairman. The Board  
10 has voted 5-0-0 to approve the application as  
11 advertised. The motion made by Mr. Griffis, seconded  
12 by Mr. Etherly. Mr. Parsons, Mr. Mann and Ms. Miller  
13 are in support, and that's with the issuance of a  
14 summary order.

15 CHAIRPERSON GRIFFIS: Thank you.

16 MS. BAILEY: Next case, Mr. Chairman?

17 CHAIRPERSON GRIFFIS: I think we're ready.

18 APPLICATION OF BENJAMIN AND LOUISE GODDARD

19 17199 ANC-2F

20 MS. BAILEY: Application 17199 of Benjamin  
21 and Louise Goddard, pursuant to 11 DCMR 3103.2, for a  
22 variance from the floor area ratio requirements under  
23 Section 402, a variance from the lot occupancy  
24 requirements under Section 403, a variance from the  
25 court requirements under Section 406, and a variance

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1 to permit an addition to a nonconforming structure  
2 under Subsection 2001.3, which now exceeds the FAR and  
3 lot occupancy requirements. This is to construct a  
4 one-story rear addition to an existing three-unit  
5 apartment building in the R-5-B District at premises  
6 1310 Rhode Island Avenue, Northwest, Square 242, Lot  
7 79.

8 CHAIRPERSON GRIFFIS: Good afternoon.

9 MS. GODDARD: Good afternoon.

10 CHAIRPERSON GRIFFIS: Would you just state  
11 your name and your address for the record.

12 MS. GODDARD: Louise Goddard, 1310 Rhode  
13 Island Avenue, Northwest.

14 CHAIRPERSON GRIFFIS: And with you is?

15 MS. GODDARD: Is --

16 MR. DELAVE: Good afternoon. My name is  
17 Paul Delave. I'm working with Louise as a design  
18 consultant to present the project.

19 CHAIRPERSON GRIFFIS: Excellent. If you  
20 are ready to move ahead, we will turn it over to you.

21 MS. GODDARD: I'm sorry if I'm not going  
22 to be following the way that it goes because I have  
23 not done this before.

24 CHAIRPERSON GRIFFIS: That is absolutely  
25 okay. We are very patient and I will walk you through

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1 it.

2 Basically what you are here for, of  
3 course, is a couple of variances, and the lot  
4 occupancy, the court requirements, the addition, and  
5 the FAR, the floor area ratio.

6 MS. GODDARD: Yes.

7 CHAIRPERSON GRIFFIS: So what you're going  
8 to tell us is the unique aspects of this property.

9 MS. GODDARD: Okay.

10 From what I can -- as is in the report  
11 from your office --

12 CHAIRPERSON GRIFFIS: Actually, let's be  
13 clear. Which report? We haven't issued a report.

14 MS. GODDARD: There was a report from --

15 CHAIRPERSON GRIFFIS: Office of Planning?

16 MR. DELAVE: Steve Cochran from Office of  
17 Planning.

18 MS. GODDARD: Yes.

19 CHAIRPERSON GRIFFIS: Good.

20 MS. GODDARD: That we're only one of two  
21 structures that are 17 feet wide, and with walls,  
22 inside, it's about 15, 14 to 15, and that that makes  
23 us unusual for the neighborhood because we're so  
24 narrow. Our kitchen is quite narrow and quite small,  
25 and so we are asking for a variance to push the

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1 kitchen out, and we will need a court variance because  
2 at this point -- do you want to -- I'm going to let  
3 Paul speak. He's better than I am.

4 TESTIMONY OF PAUL DELAVE

5 MR. DELAVE: One of the primary --

6 CHAIRPERSON GRIFFIS: This is a three-unit  
7 building, is that correct?

8 MR. DELAVE: Yes. The C of O is for, as  
9 it states, a three-unit apartment building. There are  
10 two studio apartments in the basement. The Goddards  
11 use those currently just for friends and family and  
12 for --

13 CHAIRPERSON GRIFFIS: So this is your  
14 primary residence.

15 MS. GODDARD: It's our primary residence  
16 and we do not rent.

17 CHAIRPERSON GRIFFIS: Okay. That doesn't  
18 really matter. But there isn't a different unit on  
19 every floor, and one unit is trying to expand.

20 MS. GODDARD: Oh, no.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. DELAVE: The kitchen would primarily  
23 be for the main living unit, which Mr. and Mrs.  
24 Goddard live in. So the narrowness of the lot and the  
25 existing nonconformities -- the building already, even

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1 without, you know, adding any more -- anything else to  
2 it is nonconforming in FAR, court, and lot occupancy.

3 So the proposal that we're making to make it a more  
4 functional kitchen for them is, and Mr. Cochran's  
5 report states, very minimal additional relief to an  
6 already nonconforming structure.

7 CHAIRPERSON GRIFFIS: Right. Okay. Let's  
8 get to the specifics of it. Of course, 1.8 is the  
9 allowable FAR for this zone district; is that correct?

10 Well, it is. And the existing structure has 2.7, and  
11 you're adding how much more that adds back into the  
12 FAR?

13 MR. DELAVE: We're asking for about a net  
14 increase of only about 65 square feet, and that  
15 increases the net FAR by only I think about --

16 CHAIRPERSON GRIFFIS: Okay. By .4.

17 MR. DELAVE: By .4, right.

18 CHAIRPERSON GRIFFIS: Or .04. So 65  
19 square feet.

20 MR. DELAVE: Yes.

21 CHAIRPERSON GRIFFIS: So that's where  
22 you're meaning it's very minimal.

23 MR. DELAVE: Yes.

24 CHAIRPERSON GRIFFIS: Okay. And that is  
25 because of why?

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1           MR. DELAVE:   The layout of the existing  
2 kitchen is very I guess -- it's very dysfunctional.  
3 There's only clearance between some of the counters of  
4 only two to two and a-half feet.  The Goddards --

5           CHAIRPERSON GRIFFIS:   So the FAR is all  
6 coming and the lot occupancy is coming and the open  
7 court is all coming because you pushed the building  
8 back a little bit because you don't have the width,  
9 you need the length to make it a functional kitchen  
10 and a functional room in the back.

11          MR. DELAVE:   That is part of the reason  
12 and, you know, just to get a reasonable workspace  
13 between counters.

14          MS. GODDARD:   At present, we can't even  
15 bring through the back door a chair.  The way that  
16 it's configured, there is a permanent island, there is  
17 a radiator, there is -- the way it's configured  
18 inside, we tried to bring furniture into the kitchen.

19          We couldn't do it.  We couldn't even bring in a new  
20 refrigerator.  We had to come in through, you know,  
21 through a window, through the front door and bring it  
22 around.  It is just very hard, very difficult to work  
23 in.

24          CHAIRPERSON GRIFFIS:   I see.  Kind of  
25 useless space back there.

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1 MS. GODDARD: Yes.

2 CHAIRPERSON GRIFFIS: All right. Okay.

3 Ms. Miller?

4 VICE CHAIRPERSON MILLER: I might be  
5 jumping ahead, but Office of Planning says that you  
6 can do this, it seems, as I read it, without the FAR  
7 variance and without the lot occupancy variance, and  
8 can you explain, you know, why you can't or what it  
9 would look like or what the problem is just with those  
10 two variances?

11 MR. DELAVE: We did bring boards. We  
12 worked directly with Mr. Cochran. He initially  
13 expressed basically the same question, you know, can  
14 you do this without these other variances. So I can  
15 walk you through that.

16 MS. GODDARD: I think the reason that  
17 we're asking for the original plan and that we didn't  
18 go to the one that didn't increase was that it is  
19 still going to be difficult to make a workable eat-in  
20 kitchen with modern appliances in that way.

21 CHAIRPERSON GRIFFIS: There is a practical  
22 difficulty in creating this kitchen that's useable  
23 based on the unique dimension of the property.

24 MS. GODDARD: Exactly.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. GODDARD: And I guess the other thing  
2 I would like to bring up is that the entire  
3 neighborhood is unique in the sense that --

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. GODDARD: All over Washington, D.C.

6 CHAIRPERSON GRIFFIS: Why don't we move  
7 away from that.

8 MS. GODDARD: Okay. All right.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. GODDARD: I will bring it up later.

11 CHAIRPERSON GRIFFIS: You were going to  
12 walk through this whole issue of what it would look  
13 like if you tried to conform; is that correct?

14 MR. DELAVE: Yes. This second scheme  
15 shows a six-foot-wide court, which is still  
16 technically noncompliant with the court because of the  
17 narrowness of the lot, the 17-foot lot, and creates a  
18 quite narrow galley kitchen. From the outside edge to  
19 outside edge is just over ten feet, so, you know,  
20 inside width is something, you know, between nine and  
21 a-half feet, something like that, which for, you know,  
22 two standard counters and for workspace and to get  
23 some degree of mobility working around, you could say  
24 in a small apartment, you know, sort of could work as  
25 a galley kitchen. In this case, we --

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1 CHAIRPERSON GRIFFIS: So based on the  
2 existing condition, the unique condition, to do  
3 something that is useful to the owner outside of a  
4 studio apartment kitchen, and this is a single-family  
5 residence, it becomes practically difficult, there is  
6 a practical difficulty in doing that and complying  
7 with the regulation.

8 MR. DELAVE: Yes, that's correct.

9 MS. GODDARD: Yes, sir.

10 MR. DELAVE: We believe that.

11 CHAIRPERSON GRIFFIS: Okay. That's Louise  
12 Goddard, correct? Ms. Goddard?

13 MS. GODDARD: Yes, sir.

14 CHAIRPERSON GRIFFIS: Great. I absolutely  
15 agree with your comment previously that this is a very  
16 unique city. It's one of the best cities in the  
17 world. However, the uniqueness factor, of course, is  
18 particular to our review of an application. So I know  
19 one can always say, you know, "I have the best  
20 neighborhood and it's intriguing and unique," and all  
21 of it is unique, but nonetheless, we look to  
22 specifically why your property is unique and contrast  
23 to others similar. It doesn't mean it's the only one  
24 that ever happens in the entire city, but what is it  
25 that's unique to it. I think it's laying out in terms

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1 of the overall neighborhood and in this zone district  
2 to have -- I think Office of Planning is stating the  
3 fact that it's uniquely narrow.

4 MS. GODDARD: Yes.

5 CHAIRPERSON GRIFFIS: Okay.

6 Ms. Miller, questions?

7 VICE CHAIRPERSON MILLER: No.

8 CHAIRPERSON GRIFFIS: Excellent.

9 Let's move on, then, to the Office of  
10 Planning report.

11 REPORT FROM THE OFFICE OF PLANNING

12 BY STEVE COCHRAN

13 MR. COCHRAN: Good afternoon, Mr.  
14 Chairman. For the record, my name is Steve Cochran,  
15 representing the Office of Planning.

16 The Office of Planning has a mixed  
17 recommendation on this report. We're recommending  
18 that the Board approve the request for the variance  
19 for the open court dimensions and request for a  
20 variance from Section 2001.3 to permit the addition  
21 but only if the addition is constructed in a way that  
22 does not require an FAR variance from Section 402.4 or  
23 a lot occupancy variance from Section 406.1.

24 Let's compress the lot occupancy and FAR  
25 variances. OP believes that it is not unique. If you

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1 turn to page 5 of our report, you will see that, I  
2 mean, it's generally a flat, rectangular,  
3 1500-square-foot lot. It has ample depth. The only  
4 respect in which it may be unique is with respect to  
5 width, and that has a later implication.

6 But with respect to lot occupancy and FAR,  
7 the width does not make it unique because the  
8 applicant has demonstrated that it has been able to  
9 meet the ADA-related needs of the applicant by  
10 constructing an addition that is longer than the  
11 existing addition but that does not need to be wider  
12 than the existing addition.

13 With respect to the practical difficulties  
14 or hardship, again, OP believes that the applicant  
15 could reconstruct the addition in a manner that would  
16 provide the requested access for ADA compliant needs  
17 and not increase the existing nonconformities.

18 Remember, the building already is over its  
19 FAR, lot occupancy, and open court requirements. What  
20 we're suggesting in our report is that the building  
21 can be constructed, the addition can be constructed in  
22 a way that it does not increase the FAR or lot  
23 occupancy nonconformity, that all it has to do is  
24 increase its nonconformity with respect to open court  
25 requirements.

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1           Clearly the rear addition needs to be made  
2 wider. It's difficult to do that in a 17-foot lot and  
3 respect to the open court requirements -- I'm just  
4 summarizing now --

5           CHAIRPERSON GRIFFIS: Yes, but how do you  
6 put an addition on, make it wider, and not impact the  
7 FAR?

8           MR. COCHRAN: Because you are already 144  
9 square feet over. Now, you can keep the same amount  
10 of nonconformity with respect to FAR and lot  
11 occupancy.

12           CHAIRPERSON GRIFFIS: But see, you're  
13 saying --

14           MR. COCHRAN: You're talking about 64  
15 square feet here of difference. I realize that a  
16 number of the neighbors have supported the addition.  
17 The ANC hasn't weighed in, as far as I know. It  
18 wasn't in the record.

19           CHAIRPERSON GRIFFIS: But you're saying  
20 take down the footprint that's there and just build  
21 back on the same footprint.

22           MR. COCHRAN: No, not on the same  
23 footprint; the same amount of nonconformity, different  
24 footprint. You clearly have to widen it, but not  
25 impact the FAR.

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1 CHAIRPERSON GRIFFIS: So it won't be as  
2 deep.

3 MR. COCHRAN: Correct.

4 CHAIRPERSON GRIFFIS: I suppose somewhere  
5 up there that's what you're --

6 MR. COCHRAN: The wheelchair access, as I  
7 understand it, has to do with how wide does an aisle  
8 need to be in addition to, of course, getting up to  
9 the right elevation, et cetera, and we recognize that  
10 you can't possibly do a kitchen addition in the  
11 footprint that is there now. But you can do a kitchen  
12 addition within the existing amount of nonconformity  
13 of FAR and lot occupancy. All you need to do is  
14 change the width.

15 CHAIRPERSON GRIFFIS: And what's served  
16 doing that?

17 MR. COCHRAN: Pardon me?

18 CHAIRPERSON GRIFFIS: What's served? Just  
19 not increasing the FAR?

20 MR. COCHRAN: You're respecting the  
21 integrity of the zone plan. To us, this seems like a  
22 matter of preference. It may well be a better  
23 kitchen, but it is not an unusable kitchen even for  
24 ADA requirements if you keep the existing amount of  
25 nonconformity, if you don't increase the nonconformity

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1 with respect to FAR and lot occupancy, and we have a  
2 set of plans where the applicant -- at least the  
3 applicant's architect demonstrated that these needs  
4 could be met.

5 This is a relative abstraction in OP's  
6 recommendation here. We recognize that it would not  
7 likely have a negative impact on neighboring  
8 properties. Neighboring properties have submitted  
9 testimonials to that effect. What we're talking about  
10 here is the integrity of the zone plan and whether the  
11 applicant has adequately demonstrated a need to  
12 increase nonconformity with respect to lot occupancy  
13 and FAR. We believe the applicant hasn't demonstrated  
14 that. In fact, the applicant has demonstrated that  
15 they can do it.

16 CHAIRPERSON GRIFFIS: Why are you asking  
17 them to demonstrate a need? They just need to  
18 demonstrate a practical difficulty in complying; they  
19 don't need to demonstrate a need. I don't understand  
20 where you're getting that.

21 MR. COCHRAN: Excuse me. In our view,  
22 they have not even demonstrated the practical  
23 difficulty.

24 CHAIRPERSON GRIFFIS: Okay. Do you have  
25 copies of those drawings that are supposedly showing

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1 us what it would look like if you conform to the FAR?

2 MR. DELAVE: We just submitted one copy to  
3 Mr. Cochran and the ones on this Board, but we have  
4 not -- there are not at this moment copies available.

5 CHAIRPERSON GRIFFIS: Okay. Can you walk  
6 us through this, then? I can't really -- maybe my  
7 eyes are too tired, but I can't see what you want us  
8 to see there.

9 MR. DELAVE: Okay. As Mr. Cochran said,  
10 this revised scheme basically takes down what is in  
11 these dashed lines here, which is the existing brick  
12 pantry, which is only about eight and a-half feet wide  
13 on the exterior walls, and then this lower is an  
14 elevated roof screened porch but not interior space.

15 CHAIRPERSON GRIFFIS: Did you count that  
16 in terms of lot occupancy?

17 MR. DELAVE: Yes, we did.

18 CHAIRPERSON GRIFFIS: Did you count it in  
19 towards FAR?

20 MR. DELAVE: Yes.

21 CHAIRPERSON GRIFFIS: Mr. Cochran, are you  
22 talking about utilizing all that square footage and  
23 putting the addition on and that wouldn't impair the  
24 zone plan?

25 MR. COCHRAN: I'm talking about utilizing

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1 exactly the amount of square footage that they have  
2 now in the combination of the pantry --

3 CHAIRPERSON GRIFFIS: Is it all that  
4 dashed red line? Is that what you were talking about?

5 MR. DELAVE: This --

6 CHAIRPERSON GRIFFIS: No, no, no. It's to  
7 Mr. Cochran.

8 MR. DELAVE: Excuse me.

9 CHAIRPERSON GRIFFIS: Is that the square  
10 footage you were thinking about that they just needed  
11 to reconfigure and pull it back?

12 MR. COCHRAN: That's correct.

13 CHAIRPERSON GRIFFIS: So all of that.  
14 Okay. Let's go.

15 MR. DELAVE: Yes, just to clarify that,  
16 this area that I'm outlining represents 144 square  
17 feet of space.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. DELAVE: And this area, which is  
20 slightly wider -- well, this area, which is the new  
21 proposed, represents 144 square feet of space.

22 CHAIRPERSON GRIFFIS: Okay. So you get a  
23 single door, not a double door, and not as wide.

24 MR. DELAVE: Yes.

25 CHAIRPERSON GRIFFIS: You have the same

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1 run of cabinets and counters and all that?

2 MR. DELAVE: No. It's --

3 CHAIRPERSON GRIFFIS: Not really.

4 MR. DELAVE: It's a shorter addition and,  
5 you know, primarily it's much narrower, which --

6 CHAIRPERSON GRIFFIS: Good.

7 MR. DELAVE: -- given, you know --

8 CHAIRPERSON GRIFFIS: Not good. I  
9 understand.

10 MR. DELAVE: Okay. Given, you know,  
11 typical wall construction and cabinet depths, this  
12 only leaves about just over five feet of space as an  
13 aisle, which, again, you know, is not unworkable, but  
14 given the applicant's desire for this to be more  
15 accessible and for more mobility inside, that's  
16 pushing the limits, I think, of a workable kitchen for  
17 someone who is impaired. Not impossible but I think  
18 more difficult.

19 CHAIRPERSON GRIFFIS: Is this being  
20 outfitted for someone? There's a lot of accessible  
21 and all that. There's somebody that is gong to  
22 utilize this kitchen that has a particular physical  
23 handicap.

24 MS. GODDARD: I do have family -- my  
25 mother-in-law's foot was just amputated and there's

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1 family that --

2 CHAIRPERSON GRIFFIS: Okay. So there's  
3 family that visit --

4 MS. GODDARD: Yes.

5 CHAIRPERSON GRIFFIS: -- that's going to  
6 utilize and that's part of your life.

7 MS. GODDARD: Yes.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. GODDARD: And we would like to stay  
10 there until we are old.

11 CHAIRPERSON GRIFFIS: That's an  
12 interesting point.

13 The deck that you have on the proposed  
14 addition on that top page, which will need to be  
15 submitted into the record -- just keep that right  
16 there on your right side, the proposed addition -- did  
17 you count that in towards lot occupancy?

18 MR. DELAVE: No.

19 CHAIRPERSON GRIFFIS: Okay. Good. And  
20 then so the 144 square feet is what we're talking  
21 about that would comply with what Office of Planning's  
22 recommendation is. Okay.

23 Board members, everyone clear on that?  
24 Very well.

25 What else, Mr. Cochran?

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1                   MR. COCHRAN: We feel that it's important  
2 to judge this by the standards of what it is, which is  
3 an apartment building. It is not something that comes  
4 under Section 223, so it has to be judged by the  
5 apartment building standards.

6                   With respect to the enlargement or the  
7 addition, we feel that it is unique with respect to  
8 width but not otherwise; that there is a practical  
9 difficulty for the addition, but there is not a  
10 practical difficulty for enlargement; that the public  
11 good would not be impaired by the addition even as it  
12 is imposed here, but that the intent of and integrity  
13 of the zone plan would be impaired.

14                  VICE CHAIRPERSON MILLER: Mr. Cochran, I  
15 just want to ask you a question. The way I read the  
16 variance test, it doesn't just say impaired; it says  
17 substantially impaired. I'm not an architect, but  
18 when I look at figures like 0.04 percent, that doesn't  
19 sound to me like substantially impairing the intent of  
20 the zone plan. Do you want to respond to that?

21                  MR. COCHRAN: All I can do is allude to  
22 the camel's nose under the tent. It's the burden of  
23 the applicant to demonstrate that there is a practical  
24 difficulty. The applicant has a five-foot six-inch  
25 wide aisle in the kitchen. The applicant has

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1 double-load counterspace. The applicant would have a  
2 nice kitchen even with ADA needs if the applicant did  
3 it without increasing the nonconforming. The  
4 applicant would have a yet nicer kitchen if the  
5 applicant did it with the proposal that it submitted  
6 first as opposed to the one it gave to OP later.

7 VICE CHAIRPERSON MILLER: I'm sorry. I  
8 just don't -- I'm not questioning the practical  
9 difficulty issue at this point and I don't want a  
10 prolonged, you know, a big dialogue on this, but it  
11 seems to me that there should be a difference between  
12 impairing the intent of the zone plan and  
13 substantially impairing the intent of the zone plan.  
14 So when I look at just figures that seem fairly minor  
15 and no neighbors being concerned, it looks to me like  
16 it's not substantially impairing. So that's my  
17 question.

18 COMMISSIONER PARSONS: Ms. Miller, I agree  
19 with you if you're wondering if you're all alone out  
20 here.

21 CHAIRPERSON GRIFFIS: Okay. I think we're  
22 clear on that.

23 Last question for the applicant. The  
24 width dimension of the proposed kitchen as shown and  
25 the sheet with your talks with Mr. Cochran, what is

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1 the dimension?

2 MR. DELAVE: Well, this revised plan which  
3 we submitted later, the outside wall dimension is  
4 ten-foot four and a-half inches and the original one  
5 that was submitted --

6 CHAIRPERSON GRIFFIS: Is twelve-foot four  
7 and a quarter inches.

8 MR. DELAVE: Yes.

9 CHAIRPERSON GRIFFIS: Okay. That puts it  
10 into some perspective and I think -- very well. Is  
11 there anything else, Mr. Cochran?

12 MR. COCHRAN: No, sir.

13 CHAIRPERSON GRIFFIS: Great. Thank you.  
14 Excellent report.

15 Let me reiterate where I think Mr. Cochran  
16 is coming from and -- well, I should just say, this is  
17 what I gleaned from Mr. Cochran's Office of Planning  
18 report, and that is it's not really getting into the  
19 aspect of, all right, it's 64 square feet, you know?  
20 This should take us five minutes to get through and  
21 figure out and decide to approve or not approve.

22 Mr. Cochran is looking at a larger  
23 picture, especially when he's talking about impairing  
24 the intent or the integrity of the zone plan, because  
25 we look at -- it is 0.04 lot occupancy or FAR increase

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1 and the lot occupancy is minimal, but if you look at  
2 that exponentially or in a different scenario where  
3 you have an R-5-D property which was conforming over a  
4 huge lot, even that small portion would be a large  
5 impact.

6 Now, the other aspect to look at in the  
7 frame is I think what he was trying to get to is,  
8 look, this is a three-unit building, it's an apartment  
9 building, it's not a single family, it's a little bit  
10 different dimension, even though it's used that way.  
11 That's fine. I'm going to move on from there. But  
12 there's 1.8 FAR that's allowable. This is already  
13 almost -- it's plus 1, it's 2.7, and then they are  
14 adding onto the 2.7. I think that's where Mr. Cochran  
15 is coming from, is the bigger picture of what the  
16 impact would be if someone looked at this and said,  
17 well, my goodness, they were over 1 FAR, and they got  
18 to add more to it.

19 So for clarity and obviously the fullness  
20 of the record, that's something that I think we ought  
21 to take under advisement from the Office of Planning  
22 in how they looked at the test being made for the lot  
23 occupancy and the FAR.

24 Okay. I don't have any other government  
25 reports attendant to this. The site is located in the

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1 Logan Circle Historic District. How far have you gone  
2 with HPRB?

3 MR. DELAVE: I had a meeting, an initial  
4 review with Steve Callcott. It was not formally  
5 submitted, but he expressed general positive comments  
6 about this. I only presented him the original larger  
7 slide.

8 CHAIRPERSON GRIFFIS: Right. And so  
9 you're anticipating going to the Historic Review  
10 Board?

11 MR. DELAVE: Yes.

12 CHAIRPERSON GRIFFIS: Mr. Callcott is the  
13 best one over there to work with.

14 Now, in terms of what we're looking at in  
15 terms of the proposed no FAR and lot occupancy, are  
16 the elevations the same? The design is essentially  
17 the same? Can you still fit that little bay window,  
18 the banding, the other stuff, or does that really  
19 start to seriously impact what is happening?

20 MR. DELAVE: The general aesthetic of the  
21 exterior is pretty similar, just a smaller, narrower  
22 version. We did not include bay window in the  
23 narrower version just in the spirit of trying to  
24 minimize all these nonconformities, and as you said,  
25 the primary aesthetic from the back, it's a more

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1 enclosed feeling -- you know, single door versus  
2 double, a double door.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. DELAVE: But generally similar intent.

5 CHAIRPERSON GRIFFIS: I see. Okay.

6 No other government reports attendant to  
7 that. ANC-2F, report of ANC-2F was not available.  
8 Are you aware if they're coming in? Did you present  
9 to the ANC?

10 MR. DELAVE: We missed the deadline to do  
11 the initial report -- to give the presentation.

12 MS. GODDARD: They didn't have one in the  
13 middle -- we would have to wait until September and we  
14 would have to have postponed you.

15 CHAIRPERSON GRIFFIS: Oh. They didn't  
16 have their meeting.

17 MR. DELAVE: But Mrs. Goddard has spoken  
18 directly with several of the members -- Helen Kramer,  
19 Cary Silverman -- and there was a letter of support  
20 written by --

21 MS. GODDARD: By the local neighborhood,  
22 the Rhode Island West.

23 CHAIRPERSON GRIFFIS: Oh. Right. We do.

24 MS. GODDARD: Yes.

25 CHAIRPERSON GRIFFIS: We have that, yes,

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1 indeed.

2 MR. DELAVE: And all the neighbors which I  
3 believe --

4 CHAIRPERSON GRIFFIS: Good. Thanks for  
5 bringing that to our attention. It's Exhibit Number  
6 27. It's the Rhode Island West Neighborhood  
7 Association, and it says officially: To Whom it May  
8 Concern: The Rhode Island Avenue Association, the  
9 Civic Community Association, Incorporated, and  
10 strongly support the application. That's just my  
11 summary. Actually, it's worth reading the rest of it:

12 "While we appreciate the existing  
13 residence is already in noncompliance, we feel that  
14 the addition being requested is minor and, in our  
15 view, would not harm the public order or threaten the  
16 integrity of our neighborhood zoning plan." Tim  
17 Hillard is the signatory of that.

18 Okay. Very well. Anything else that we  
19 need to make note of? Is there anyone here attendant  
20 to this application, 17199, to give testimony, persons  
21 in support, persons in opposition?

22 (No response.)

23 CHAIRPERSON GRIFFIS: Not noting any here  
24 present, we will note that there are several letters,  
25 of course, and letters of support, Exhibit 11, 12, 13,

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1 15, 27. Twenty-seven, of course, is what we just  
2 noted as the Rhode Island West Neighborhood  
3 Association.

4 If there is nothing else in terms of  
5 submissions, I turn to you for any summations, closing  
6 remarks, or last questions for the Board. No  
7 questions for the Board?

8 MS. GODDARD: No, sir.

9 CHAIRPERSON GRIFFIS: Okay.

10 Ms. Miller?

11 VICE CHAIRPERSON MILLER: Mr. Chairman, at  
12 this time, I would like to move to grant the  
13 application, Number 17199 of Benjamin and Louise  
14 Goddard, pursuant to 11 DCMR Section 3103.2 for a  
15 variance from the floor area ratio requirements under  
16 Section 402, a variance from the lot occupancy  
17 requirements under Section 403, a variance from the  
18 court requirements under Section 406, and a variance  
19 to permit an addition to a nonconforming structure  
20 under Subsection 2001.3, which now exceeds the FAR and  
21 lot occupancy requirements, to construct a one-story  
22 rear addition to an existing three-unit apartment  
23 building at premises 1310 Rhode Island Avenue,  
24 Northwest.

25 CHAIRPERSON GRIFFIS: Is there a second?

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1 MEMBER MANN: Second.

2 CHAIRPERSON GRIFFIS: Second from Mr.  
3 Mann.

4 VICE CHAIRPERSON MILLER: Mr. Chairman, I  
5 would like to note that I believe that the application  
6 does meet the variance test. There's evidence that  
7 it's unique and that it's narrow, that there is a  
8 practical difficulty with respect to the property and  
9 building a workable kitchen that is accessible to  
10 handicapped family members in general. Even though  
11 this is extending some nonconformities, the additions  
12 to the nonconformities I believe are minor and do not  
13 impact the public in any detrimental way nor  
14 substantially impair the intent purpose or integrity  
15 of the zone plan.

16 CHAIRPERSON GRIFFIS: Very well. Thank  
17 you, Ms. Miller.

18 Others? Deliberation? Additional  
19 comments?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Very well. We have  
22 a motion before us. It has been seconded. I ask for  
23 all those in favor of the motion to signify by saying  
24 aye.

25 (Chorus of ayes.)

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1 CHAIRPERSON GRIFFIS: And opposed?

2 (No response.)

3 MS. BAILEY: The Board has voted 5-0-0 to  
4 approve the application. Mrs. Miller made the motion,  
5 Mr. Mann seconded. Mr. Griffis, Mr. Parsons and Mr.  
6 Etherly are in agreement.

7 Is this a summary order, Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Yes, indeed. Thank  
9 you.

10 MS. BAILEY: You're welcome.

11 MS. GODDARD: Thank you.

12 CHAIRPERSON GRIFFIS: Thank you for your  
13 patience this afternoon, and enjoy.

14 MS. BAILEY: Mrs. Goddard, the plans that  
15 were discussed that were given to Mr. Cochran, is it  
16 possible for us to get a copy of that, please?

17 MS. GODDARD: The secondary plans?

18 CHAIRPERSON GRIFFIS: Right. We're going  
19 to need the secondary plans, the sheets, too, and  
20 actually that whole board that we were looking at as  
21 you have shown it in the hearing, I'm going to need it  
22 put in for the record.

23 MS. GODDARD: Okay.

24 MR. COCHRAN: Excuse me, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Yes.

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1 MR. COCHRAN: I have a copy that I won't  
2 need, so I can just give it to you.

3 CHAIRPERSON GRIFFIS: Okay. Do you want  
4 to put it into the record?

5 MR. COCHRAN: Sure.

6 CHAIRPERSON GRIFFIS: Excellent.

7 Ms. Bailey, Mr. Cochran is going to give  
8 you his copy. Do you need more than that? One copy  
9 will do. Perfect. Thank you all very much. Thank  
10 you, Mr. Cochran.

11 Let's take a ten-minute break. We will be  
12 back in ten minutes.

13 (Recess.)

14 CHAIRPERSON GRIFFIS: Very well. Let's  
15 resume.

16 Ms. Bailey, if you don't mind, would you  
17 call the last case in the afternoon?

18 MS. BAILEY: Sure, Mr. Chairman.

19 APPLICATION OF TYRONE BROWN

20 17182 ANC-8E

21 MS. BAILEY: Application Number 17182 of  
22 Tyrone Brown, pursuant to 11 DCMR 3104.1, for a  
23 special exception to construct a sunroom addition to  
24 the rear of an existing single-family row dwelling  
25 under Section 223 not meeting the lot occupancy

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1 requirements at Section 403, rear yard requirements,  
2 Section 404, and the side yard requirements, Section  
3 405. The property is located at premises 1385 Barnaby  
4 Terrace, Southeast, also known as Square 5923, Lot 49,  
5 and the property is zoned R-5-A.

6 CHAIRPERSON GRIFFIS: Very well.

7 Are you ready?

8 MR. MITCHEM: Yes.

9 CHAIRPERSON GRIFFIS: Were you sworn in?

10 MR. MITCHEM: I was not.

11 CHAIRPERSON GRIFFIS: Okay. If you don't  
12 mind, you can just give your attention to Ms. Bailey.

13 (Witness sworn.)

14 CHAIRPERSON GRIFFIS: Excellent. Very  
15 well. While you're getting organized there, of course  
16 you know that this is a continuation of a previous  
17 case. We had looked at the complication of how we  
18 were to assess this in terms of a single lot or was  
19 this somehow related to the larger development and how  
20 was it developed, and maybe more directly, how was  
21 this project subdivided in order to bring a single  
22 lot, a fee simple lot to us. Is that your  
23 understanding?

24 MR. MITCHEM: My understanding was that we  
25 had a continuance. I wasn't for sure on exactly what

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1 that was. This case was just handed to me last night.

2 I reviewed it today for the first time.

3 CHAIRPERSON GRIFFIS: Great. Why don't  
4 you state your name --

5 MR. MITCHEM: My name is John Mitchem.

6 CHAIRPERSON GRIFFIS: And your address.

7 MR. MITCHEM: It is 13230 Marina Way,  
8 Woodbridge, Virginia, 22191.

9 CHAIRPERSON GRIFFIS: And you are  
10 representing?

11 MR. MITCHEM: Patio Enclosures.

12 CHAIRPERSON GRIFFIS: Okay. So you're not  
13 bringing any additional information for us.

14 MR. MITCHEM: No. I don't even know if  
15 they have basically looked at the case and thought it  
16 might not even go through. They just told me at the  
17 last second to please come, have my information,  
18 whatever they had before, and have it. There was a  
19 different gentleman that represented us on the first  
20 time that we came up for this.

21 CHAIRPERSON GRIFFIS: Right. We were  
22 familiar that they had several before us. Okay. So  
23 we have a warm body in front of us. Let's move on. I  
24 think it might be most expeditious, then, let's go to  
25 the Office of Planning.

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1           There were several things that we had sent  
2 out, and the Office of Planning, of course, was going  
3 to go and try and find a lot of the information. So  
4 let's do that.

5           MR. MITCHEM: Okay.

6           REPORT FROM THE OFFICE OF PLANNING

7           BY KAREN THOMAS

8           MS. THOMAS: Good afternoon, Mr. Chairman,  
9 members of the Board. I'm Karen Thomas with OP. I  
10 would just state for the record we received these  
11 files that we requested about six weeks ago on  
12 Thursday, so we didn't have time to do a written  
13 submission.

14          CHAIRPERSON GRIFFIS: That's fine.

15          MS. THOMAS: So we will just go through.

16          CHAIRPERSON GRIFFIS: Yes.

17          MS. THOMAS: Mr. McGettigan is the one who  
18 handled this case and he is on vacation right now, so  
19 I tried to do the best I can with what we found in the  
20 files.

21          CHAIRPERSON GRIFFIS: You've got more than  
22 we do.

23          MS. THOMAS: All right. On the issue of  
24 the subdivision, each development, each building on  
25 the lot based on the site and grading plan was given

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1 an FAR. Each building had its own FAR.

2 CHAIRPERSON GRIFFIS: Oh. Excellent.

3 MS. THOMAS: Right. So in the case of  
4 what is considered this building for this location  
5 we're looking at, that building had an FAR of 0.6.  
6 The addition of 156 square feet would increase the FAR  
7 to 0.61, and the FAR allowed under R-5-A is 0.9. So  
8 on that basis, we would conclude that it is not a  
9 substantial increase and we would have no problems  
10 with it if you look at it that way.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. THOMAS: I looked at the report. OP's  
13 report did not seem to have a problem with it if it  
14 was looked at as a 223 as well, so we had no concerns  
15 in that regard as well. I will stand on the record as  
16 far as the report goes.

17 CHAIRPERSON GRIFFIS: Okay. Excellent.  
18 Thank you. And obviously this isn't your report and  
19 you got the information --

20 MS. THOMAS: Yes. I will try to answer  
21 any questions.

22 CHAIRPERSON GRIFFIS: Let's talk about the  
23 lot occupancy because that was one of the other  
24 aspects. Was there a given lot occupancy for this  
25 specific piece of property?

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1 MS. THOMAS: From the plans, no. Let me  
2 see. Not on the plans, but -- yes, the plans just  
3 list the square footage as 559 square feet. I guess  
4 the lot occupancy would be increased, based on the  
5 notes and computations submitted, would increase to 62  
6 percent. The existing would be 48 percent and it  
7 would go up to 62 percent. That's in the computation  
8 sheet that I have.

9 CHAIRPERSON GRIFFIS: Okay. All right.  
10 Which is in the file. Let's get that in front of  
11 everybody, if they have it. From the February 27th,  
12 it's the referral from the Zoning Administrator and  
13 their calculation on the specific property.

14 You say that the FAR for this would be .6  
15 or what is designated as .6 and the addition would  
16 make it .61?

17 MS. THOMAS: That's correct.

18 CHAIRPERSON GRIFFIS: Isn't the Zoning  
19 Administrator indicating that it's 1.1?

20 MS. THOMAS: Well, if you look at for the  
21 total lot area of what they consider this lot where  
22 this building, this whole building lies, that total  
23 area is given as 21,114, and the total building area  
24 of that was given as 12,768. So for this portion of  
25 the subdivision, the FAR is 0.6, and then if you add

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1 the 156 square feet of which you are increasing the  
2 total building by, when you work that out, it comes up  
3 to .61. I don't know where they got the 1.1 from.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. THOMAS: Yes, I guess they probably  
6 did not have this information and they probably based  
7 it on --

8 CHAIRPERSON GRIFFIS: Just the lot itself.

9 MS. THOMAS: Just that lot, yes. The lot  
10 itself.

11 CHAIRPERSON GRIFFIS: And I think that's  
12 the other difficulty with what we looked at. In that  
13 subdivision, this was taken as a single building on a  
14 single lot; is that correct? This portion under the  
15 R-5 provision?

16 MS. THOMAS: Yes. Single building on a  
17 single lot.

18 CHAIRPERSON GRIFFIS: Okay. So now we're  
19 looking at it being that area was now re-subdivided  
20 into fee simple for each of the buildings. So I guess  
21 our question as we ended was, one, everything that you  
22 have now given us, which is exactly right -- what was  
23 the overall calculation when it was first developed.  
24 Then the second question goes to, was this subdivided  
25 correctly, you know, and if it was subdivided, how are

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1 we supposed to look at this? If this is now fee  
2 simple, do we look at it as calculating exactly for  
3 the lot that it sits on? Have they lost the ability  
4 to do the overall calculation? Does that make sense  
5 to everybody?

6 MEMBER MANN: It makes sense. May I ask  
7 something?

8 CHAIRPERSON GRIFFIS: Yes.

9 MEMBER MANN: And we probably went over  
10 this. On this map, what is Lot 49? It's from the  
11 notes and computations --

12 MS. THOMAS: I was told that it's this one  
13 here.

14 MEMBER MANN: So Lot 49 is --

15 MS. THOMAS: I was told it's this one.

16 MEMBER MANN: -- is that smaller portion  
17 of what is identified as Building Number 23.

18 MS. THOMAS: Yes.

19 MEMBER MANN: But Building -- when you  
20 were providing the .6 FAR existing, that was for all  
21 of Building 23, not for Lot 49, right?

22 MS. THOMAS: No. No. That's correct.

23 MEMBER MANN: I guess that's the part that  
24 confuses me, is why are we looking at the FAR for all  
25 of a building rather than just for the particular lot?

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1 MS. THOMAS: Well, we don't have provision  
2 -- Section 406 and those related sections don't do  
3 FAR. They don't have variations from the FAR because  
4 it relates to a single-family addition, right, when  
5 it's not to FAR.

6 I will just add that we did send a request  
7 to the Zoning Administrator to help with this  
8 interpretation and we just didn't get an answer.

9 CHAIRPERSON GRIFFIS: Right. It is. It's  
10 410. See, my understanding was that this was done  
11 under the provisions of 410, which is the special  
12 exception for groups of residential buildings in R-5  
13 and R-4, and it would say that in an R-5 District, if  
14 approved, the special exception, a group of one-family  
15 dwellings, flats, or apartment houses, or a  
16 combination of these, with subdivision walls erected  
17 from the ground up, from the lowest floor up, may be  
18 erected and deemed a single building for the purposes  
19 of this title provided that . . . and it goes down all  
20 these things. So that's the way you take one big lot  
21 -- it's kind of -- you remember our conversation on  
22 this before -- it's kind of like a special exception  
23 in kind of the outline of a PUD without all the  
24 aspects of a PUD, but what it does is it takes the  
25 overall volume of the massing allowable in the zone

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1 and it then looks to how you place that massing within  
2 the one area. So it kind of all supposedly seems like  
3 a single building but isn't.

4 So the question was whether you could  
5 legally then subdivide each and every one of those  
6 properties. Can you look at this as a single building  
7 but then do fee simple ownerships of platted lots. So  
8 how do you do -- you know what I mean? It's kind of  
9 like you're doing both things. I'm subdividing all of  
10 this, but I'm building it under one lot, under the  
11 provision of 410.

12 But, you know, 410.6 goes to the fact of  
13 no subdivision of the property shall be authorized  
14 until the Board has determined -- but that's not clear  
15 to me whether it's the first original subdivision or  
16 is it subsequent, is there anything that precludes  
17 subsequent subdivision? So, you know, I guess there's  
18 one question we could ask: Was this correctly  
19 subdivided? And that may take us years to figure out.

20 The next piece is we need to figure out  
21 how we look at it. Is it overall cumulative, we use  
22 the table that Office of Planning has provided in  
23 terms of the original development subdivision and then  
24 go on that aspect or do you look at what's a matter of  
25 right in the zoning district now and take this as its

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1 own building?

2 VICE CHAIRPERSON MILLER: Just for my own  
3 clarification, was it subdivided or are you just  
4 looking at it as a subdivision?

5 CHAIRPERSON GRIFFIS: No. I think I'm  
6 absolutely clear. If my memory serves, the last we  
7 were looking at this, there's a plat -- yes, these are  
8 all plats, these are lots, and we're looking at Lot  
9 45. So this is a single record lot, which seems to  
10 tell me that we need to look at it that way, in which  
11 case we're not looking at, which is appropriate,  
12 Office of Planning is saying, .6 FAR, but we're  
13 actually looking at 1.1 with an allowable .9, which is  
14 pretty much the same thing. If .6 is allowable and  
15 then it's 6.1 or .9 and 1.1, you know, it's --

16 VICE CHAIRPERSON MILLER: Well, just  
17 because I'm not an architect, why is the floor area  
18 ratio different if it's looked at individually as  
19 opposed to part of the development?

20 CHAIRPERSON GRIFFIS: That's an excellent  
21 question. For the record, I'm going to draw it for  
22 you. What ends up happening, of course, is the FAR is  
23 taken from the site dimension, right? So if you look  
24 at this as we have one large site but we have ten  
25 houses on that site, what you're going to do is you're

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1 going to say, I'm going to take this, I'm going to  
2 divide it by how much each of these square footage  
3 are, and that will give me the overall FAR, and then  
4 I'm going to divide it by ten and give each of these  
5 an equal portion, okay?

6 So that being said, they did a large piece  
7 of land with a lot of open area, so you get open area  
8 because the lot size times the square footage or times  
9 FAR tells you how much is allowable. So the bigger  
10 lot you have, the more FAR you have, okay?

11 So then if you go back then, I said, well,  
12 all right, we've all got equal portions all the way  
13 down, well, now, I'm looking at a subdivided piece.  
14 This guy no longer gets the bonus of all of the open  
15 area that may have gone into the calculations of the  
16 overall, which is why in the big picture -- let's call  
17 it the big picture -- the FAR here is .6, but in the  
18 small or specific picture of what the actual lot is,  
19 it actually is -- what's the existing? 1.1. That's  
20 the proposed, isn't it? Provided. Provided existing  
21 is 1.1 and we're looking at a 2 percent increase on --  
22 that's a strange thing to do. Two percent. So that's  
23 .02? So it's 1.12.

24 VICE CHAIRPERSON MILLER: So what's the  
25 .9? Allowed?

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1 CHAIRPERSON GRIFFIS: Right.

2 VICE CHAIRPERSON MILLER: Okay.

3 CHAIRPERSON GRIFFIS: The .9 for the  
4 zoning district is what the FAR is allowed.

5 VICE CHAIRPERSON MILLER: Okay. All  
6 right.

7 CHAIRPERSON GRIFFIS: So let's look at it  
8 in square footage because actually that's the way the  
9 Zoning Administrator actually looked at it. The  
10 allowable square footage, FAR square footage, is 1,021  
11 square feet, the provided existing is 1,264 square  
12 feet, and they're looking to add 243 square feet. You  
13 disagree?

14 MS. THOMAS: They are not adding 243  
15 square feet, right?

16 CHAIRPERSON GRIFFIS: Oh. Yes, that's  
17 true.

18 MS. THOMAS: They're adding 156.

19 CHAIRPERSON GRIFFIS: Oh, man. This whole  
20 thing is a little bit crazy here. One-fifty-six. The  
21 1,264 is provided -- is actually proposed. There is  
22 no -- she doesn't have the existing FAR here. That's  
23 what we're looking at; is that correct? Do you agree  
24 with that?

25 MS. THOMAS: We don't see the existing

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1 FAR.

2 CHAIRPERSON GRIFFIS: She's not showing  
3 existing FAR. So what she is saying is the Zoning  
4 Administrator -- that is, when I refer -- what is  
5 indicated by the Zoning Administrator is that there is  
6 a 2 percent increase over .9, and that's what gets us  
7 at 1.1 FAR.

8 VICE CHAIRPERSON MILLER: Okay.

9 MS. THOMAS: That's correct.

10 CHAIRPERSON GRIFFIS: So actually, it's  
11 not a variance for the deck, which is the enclosure,  
12 which is 156; she's saying, no, you need a variance  
13 from everything above .9.

14 MEMBER MANN: So we don't know the  
15 existing FAR. You just said that, right?

16 CHAIRPERSON GRIFFIS: Right. I guess you  
17 could --

18 MS. THOMAS: Well, you could calculate it.

19 CHAIRPERSON GRIFFIS: Yes, 243 minus 156  
20 plus 1,021, to make it nice and clean. I think it's  
21 1,264 minus 156. Let's see what that comes out to be,  
22 see if it works.

23 MEMBER MANN: Well, couldn't we also do  
24 1,264 divided by 1,134?

25 CHAIRPERSON GRIFFIS: Oh, sure.

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1 MEMBER MANN: I just don't have a  
2 calculator with me.

3 CHAIRPERSON GRIFFIS: I'm just going to  
4 have to do it longhand.

5 VICE CHAIRPERSON MILLER: Which is going  
6 to be 1-point-something.

7 MEMBER MANN: Yes. Yes. It's definitely  
8 going to be 1-point-something. So it is already. So  
9 it's already over.

10 CHAIRPERSON GRIFFIS: Right. It would be  
11 already over.

12 MEMBER MANN: Right.

13 CHAIRPERSON GRIFFIS: How much did you say  
14 it was?

15 MEMBER MANN: The existing number of  
16 square feet? I mean the lot area is 1,134.

17 CHAIRPERSON GRIFFIS: Right.

18 MEMBER MANN: 1,264 is the proposed number  
19 of square feet.

20 CHAIRPERSON GRIFFIS: Right. Which you  
21 get 1.1 FAR. I think the existing square footage is  
22 1,108, which is over the allowable 1,021.

23 MEMBER MANN: I see. No. Wait a minute.  
24 What was that?

25 CHAIRPERSON GRIFFIS: 1,108, because if

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1 you look, what is being asked is to add 156 square  
2 feet FAR, right? So if you subtract that from 1,264,  
3 which is what they're saying would be the ultimately  
4 provided, it would give you an existing 1,108. The  
5 allowable is 1,021, which is a .9. If you want to  
6 find out actually the FAR, you would divide that.

7 Does the Office of Planning have a  
8 recommendation of how we should look at this? Should  
9 it be just the single lot or the overall part of the  
10 410 provision?

11 MS. THOMAS: If we look at it as a single  
12 lot, what would be the special exception that we would  
13 be looking at? I mean, to lot occupancy? For which  
14 zone?

15 CHAIRPERSON GRIFFIS: We would look at the  
16 lot occupancy and the FAR for the R-5-A.

17 MS. THOMAS: R-5-A. And what would the  
18 223 provide for? Does the 223 provide for the R-5-A  
19 zone?

20 VICE CHAIRPERSON MILLER: For the what?

21 MS. THOMAS: For the R-5-A, does the 223?  
22 So they allowed up to 70 percent in the R-5, and like  
23 the record said, we had no issue with it as a special  
24 exception, as a 223.

25 CHAIRPERSON GRIFFIS: All right. So we

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1 take it under special exception 223 as a single record  
2 lot and because we have the firm belief that this was  
3 correctly subdivided, which we have some hesitation  
4 believing because it would have subdivided with a  
5 nonconforming structure on it, but that may not --  
6 well, for what that's worth.

7 What do you think about all this?

8 MR. MITCHEM: You know, I think it's safe  
9 to say, since you guys are a little bit confused, I  
10 shouldn't feel as bad as I do about not knowing the  
11 specifics of this.

12 CHAIRPERSON GRIFFIS: No, you should feel  
13 pretty bad, and let me tell you why -- because this is  
14 not what we're supposed to be doing.

15 MR. MITCHEM: I understand.

16 CHAIRPERSON GRIFFIS: This is what you  
17 should have done coming in, not you personally, but --  
18 I mean, I understand what your situation is and just  
19 tell all your friends and neighbors how great people  
20 we are pulling this together.

21 Oh, did I say that on the record? Okay.

22 Actually, the reason, and very seriously,  
23 why we're being so patient is because I think this was  
24 well beyond this application in trying to figure it  
25 out, and so we're trying to bring clarity just for

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1 what and how we would deal with this because certainly  
2 if this is out there, there are others like it, so if  
3 we can start to answer this question for ourselves, it  
4 obviously will help us expedite other applications  
5 that come forward.

6 I think at this point I think we ought to  
7 pursue it as a single record lot, and I think it for  
8 several reasons. First of all, it is one. We have a  
9 plat and it's a fee simple ownership. Two, I think  
10 Office of Planning really helped. We could not have  
11 made this type of decision without the information  
12 that they have provided. What they have provided as  
13 the overall FAR is actually very proportional to what  
14 is existing.

15 If you follow, what I'm saying is if you  
16 take it as a large piece of property and it's a .6  
17 FAR, and then we take it up and look at now that it's  
18 all subdivided, that open space is not subdividable.  
19 You can't subdivide that open space, so you have  
20 already preserved that. So the cumulative impact is  
21 not going to change, so as we look at the .6 for  
22 overall each was proportioned at -- as they're  
23 subdivided, they have a smaller lot -- nothing  
24 changed, but the FAR ratio changed, and so whether  
25 we're looking at it at a .6 or a .1, it's the same

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1 situation.

2 I think for clarity's sake, as we go  
3 through these special exceptions, and if we're going  
4 to say it's a variance that might come in this single  
5 subdivision, it's going to be easier and more  
6 expeditious to look at it as a single record lot, and,  
7 more importantly, that's I think probably legally the  
8 way we should do it because it is that. Does that  
9 make sense? Excellent. Okay. In which case --

10 VICE CHAIRPERSON MILLER: I just want to  
11 make a comment about 223.

12 CHAIRPERSON GRIFFIS: Yes.

13 VICE CHAIRPERSON MILLER: It doesn't cover  
14 the floor area ratio requirements, I don't believe.  
15 It covers the lot occupancy, but not the floor area  
16 requirements.

17 MS. THOMAS: Right. And the report did  
18 say that Section 223 does not include relief from  
19 Section 402 FAR, and therefore an additional variance  
20 would be required. From my conversations with David  
21 on this issue, if that came up, he indicated that the  
22 Office of Planning wouldn't have any issues with the  
23 variance from the FAR. But I don't know if that's  
24 something that would need to be discussed with you  
25 guys.

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1 CHAIRPERSON GRIFFIS: The original Office  
2 of Planning report addressed the variance test. Is  
3 that what you're saying, Mr. Mann?

4 MEMBER MANN: I'm saying I see on page 3  
5 where they talked about it in the second paragraph.  
6 Whether or not they actually put it through the tests,  
7 I don't see.

8 MS. THOMAS: We just did the Section 223  
9 test. In the second paragraph, it says that an  
10 additional variance would be required from the FAR.  
11 In the second paragraph.

12 VICE CHAIRPERSON MILLER: I mean, it also  
13 looks like the applicant didn't address the variance  
14 test as well unless I'm missing something. Exhibit 4  
15 addresses the special exception, 223.

16 CHAIRPERSON GRIFFIS: Well, I can't  
17 imagine that they did. It's not advertised for a  
18 variance, right?

19 VICE CHAIRPERSON MILLER: Right.

20 CHAIRPERSON GRIFFIS: I mean, it came in  
21 as a special exception.

22 VICE CHAIRPERSON MILLER: Okay.

23 CHAIRPERSON GRIFFIS: I don't see any way  
24 we get around the variance. I mean, it doesn't  
25 matter, even if we went to the other single structure

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1 in the larger subdivision, you're looking at  
2 increasing, well, by their standard, the table, unless  
3 -- I mean, I guess one way to look at it, which I  
4 don't know if there is justification to look at it, is  
5 to say that you -- no, you can't. Okay.

6 VICE CHAIRPERSON MILLER: So perhaps they  
7 need to readvertise this as a variance and we could  
8 continue the case and they could, in the interim,  
9 address the test for variance for FAR. What do you  
10 think?

11 CHAIRPERSON GRIFFIS: Ms. Bailey? Does  
12 that make sense to you?

13 MS. BAILEY: Yes, sir.

14 CHAIRPERSON GRIFFIS: Okay. So the  
15 outcome is not great, but it's not devastating.  
16 Here's the situation. There are two things that we  
17 grant. Well, there are a lot of things, but these are  
18 the two general ones: special exceptions, which this  
19 is what first came in, which is a lesser burden, and  
20 then variance, which is a higher burden.

21 Obviously, through all the iterations of  
22 what you just listened to of how was this done and  
23 what are we looking at, we have established the fact  
24 that we are looking at a single record lot. So all  
25 the calculations that we're looking at take just Lot

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1 49, Square 5923, into account, not the larger history  
2 of this.

3 The point being this was advertised when  
4 it first came in as a special exception, which is the  
5 lesser burden of proof for the test. What we need to  
6 do is readvertise this for a variance because our  
7 regulations won't let us now change the application  
8 and proceed with it.

9 MR. MITCHEM: Just because it wasn't  
10 listed as a variance.

11 CHAIRPERSON GRIFFIS: That's right. And  
12 more importantly, it allows you time to actually  
13 present that type of case because it hasn't been  
14 presented, unless you are able to present a variance  
15 test case today, right now, I think we could get to  
16 it, but I think it would probably be more beneficial  
17 to have a little bit of time on it to talk about the  
18 uniqueness, the practical difficulty, and how this  
19 doesn't impair the intent and integrity of the zone  
20 plan or the public good.

21 MR. MITCHEM: Got you.

22 CHAIRPERSON GRIFFIS: All that's fast.  
23 You don't need to write it all down. But we're going  
24 to get a date, Ms. Bailey is going to tell us what  
25 that date is, and then, before you leave, you just

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1 stop in the Office of Zoning, they're going to tell  
2 you how to post it and all that, which you've already  
3 done.

4 MR. MITCHEM: It's right here?

5 CHAIRPERSON GRIFFIS: Right, just around  
6 the corner. And they are going to lay out all the  
7 tests for you. There is a great sheet that they have  
8 created, it's very, very easy to understand.

9 MR. MITCHEM: So the next time we actually  
10 come in front of the Board, it's going to be for just  
11 a variance only?

12 CHAIRPERSON GRIFFIS: Right.

13 VICE CHAIRPERSON MILLER: No.

14 CHAIRPERSON GRIFFIS: No. I mean, you're  
15 going -- I mean, the special exception is there. I  
16 mean they have -- the application is special exception  
17 and variance. You have already submitted for the  
18 special exception. I think the file is complete with  
19 that one. What you need to add to the application is  
20 the variance.

21 Now, I think one way we could dispense  
22 with this is just have this as a submission.

23 MEMBER MANN: What about the posting  
24 requirements?

25 CHAIRPERSON GRIFFIS: Yes, that's true. I

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1 was thinking of post and then have -- no, it's going  
2 to be too complicated.

3 MR. MITCHEM: As far as the variance goes  
4 and having some sort of argument for rear setbacks or  
5 side setbacks -- I mean, is it lot coverage?

6 CHAIRPERSON GRIFFIS: No. Just FAR. FAR.  
7 Floor area ratio. That's it. It's a variance for  
8 the FAR. As far as we found out today, is what Mr.  
9 Mann is saying. That's as far as we went with it. I  
10 am getting a little tired here, but Section 402 is the  
11 FAR which needs to be related.

12 Okay. Ms. Bailey, how does it fit in?

13 MS. BAILEY: October 19th is too far away,  
14 Mr. Chairman? No? October 19th it is, in the  
15 morning.

16 CHAIRPERSON GRIFFIS: Excellent.

17 MS. BAILEY: Is it possible for you to get  
18 the information in to us two weeks before that date?

19 MR. MITCHEM: Two weeks.

20 MS. BAILEY: And that would make it  
21 October the 5th. And the Office of Planning's report,  
22 if they intend to do a supplemental, would be due  
23 seven days prior to the 19th as usual.

24 MR. MITCHEM: Thank you.

25 CHAIRPERSON GRIFFIS: Okay. Whoever put

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1 this together for you before knew how to do in terms  
2 of who to contact, but let me just tell you this  
3 because this is an important factor. As soon as this  
4 is done -- I mean, you ought to do this next week or  
5 whenever your schedule permits -- get it to the Office  
6 of Planning. Mr. McGettigan will be back from  
7 vacation if he still working on this application and  
8 work with him because he will then do his report, and  
9 the more time you guys have to just talk this out  
10 quickly, the more you can dispense with it, and then  
11 the record is full and then it's just ours to call the  
12 hearing. Okay.

13 Any other questions I can answer for you?

14 MR. MITCHEM: Not for me, no.

15 CHAIRPERSON GRIFFIS: Excellent. Thank  
16 you very much. Appreciate your --

17 MR. MITCHEM: May I go now?

18 CHAIRPERSON GRIFFIS: Absolutely.  
19 Appreciate you coming down and spending the afternoon  
20 with us.

21 Ms. Bailey, is there any other business  
22 for the Board this afternoon?

23 MS. BAILEY: No, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: It feels like it has  
25 been a year here already.

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1                   Very well.  If there is no other business  
2 before the Board this afternoon, I will adjourn the  
3 afternoon session of the 27th of July 2004.

4                   (Whereupon, at 4:12 p.m., the afternoon  
5 session adjourned.)

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